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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

[Docket No. FV97–999–1 FIR]

Specialty Crops; Import Regulations; Extension of Reporting Period for Peanuts Imported Under 1997 Import Quotas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which removed the 23-day reporting requirement and established a new date for importers to report disposition of peanuts imported under 1997 peanut import quotas. This rule also finalizes the establishment of a 120-day reporting period for any peanuts imported in excess of the 1997 import quotas. The 23-day report period established in the import regulation is impractical given the volume of peanuts imported under January 1 and April 1 peanut import quotas. These changes are for the 1997 peanut quota periods only. This rule is deemed necessary by the Agricultural Marketing Service (AMS) to provide peanut importers with sufficient time to meet the quality and reporting requirements of the peanut import regulation.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; tel: (202) 720–6862; fax (202) 720–5698. Small business may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule amends the peanut import regulation published in the June 19, 1996, issue of the **Federal Register** (61 FR 31306, 7 CFR Part 999.600), which regulates the quality of imported peanuts. An amendment to the regulation was issued December 31, 1996 (62 FR 1249, January 9, 1997). The import regulation is effective under subparagraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3), as amended November 28, 1990, and August 10, 1993, and section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C.7271). Those statutes provide that the Secretary of Agriculture (Secretary) shall require that all peanuts in the domestic and export markets fully comply with all quality standards under Marketing Agreement No. 146 (7 CFR Part 998) (Agreement), issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the regulations, disposition of imported peanuts must be reported to AMS within an established time period. This rule changes that time period and is intended to apply to Mexican peanuts imported from January 1, 1997, to December 31, 1997, and to Argentine and "other country" peanuts imported from April 1, 1997, to March 31, 1998. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This rule amends, for the 1997 peanut quota year, a provision in § 999.600 of the regulations governing imported peanuts (7 CFR part 999—Specialty Crops; Import Regulations). Section 999.600 establishes minimum quality, identification, certification, and safeguard requirements for foreign produced farmers stock, shelled and cleaned-inshell peanuts presented for importation into the United States. The quality requirements are the same as those specified in § 998.100 Incoming quality regulation and § 998.200 Outgoing quality regulation of the Agreement.

The import regulation was finalized June 19, 1996 (61 FR 31306). At that time, three duty-free peanut quotas for 1996 had been filled and no peanuts were entered under duty for the remainder of 1996. Therefore, the peanut import regulation had its first practical application with the opening of the Mexican peanut quota on January 1, 1997.

Under the safeguard procedures, importers are required to report to AMS disposition of all imported peanuts. Paragraph (f)(3) of the regulations sets a 23-day period for filing certificates of inspection and aflatoxin testing. Sixty day extensions are possible, but requests for these must be filed within the 23-day reporting period. The reporting period and procedures for extension were established with the expectation that three duty-free quotas would fill gradually during the quota year. However, this did not occur. The Mexican quota of 8.1 million pounds closed approximately 4 weeks after the January 1, 1997 opening. The Argentine quota of 73.5 million pounds and the "other country" quota of 13.3 million pounds filled immediately at 12:00 noon on opening day, April 1, 1997. Importers' applications to enter peanuts under the Argentine and "other country" quotas greatly exceeded the quota volumes for these countries. After pro-rata distribution of those quotas (based on the total peanut volume in each importer's entry applications), the Customs Service set April 15 as the entry date for approximately 86.8 million pounds of peanuts under the two quotas.

Because of the large volume of peanuts simultaneously released on April 15, 1997, importers have been unable to meet the 23-day reporting deadline for many of their imported lots. Obstacles to expedient certification of such large volumes of imported peanuts included: (1) Logistics of moving containers out of some congested port areas and into storage; (2) arranging for sampling and inspection, and receiving certifications;

and (3) arranging for and transporting failing lots to facilities for reconditioning and recertification.

Therefore, this rule finalizes establishment of the new reporting date of November 1, 1997, for reporting disposition of all peanuts entered under the 1997 import quotas. It also provides for an extension of the reporting period beyond November 1. Requests for extensions must be made in writing and include the Customs Service entry number, container and lot information for the unreported peanut lot(s), and the reason for delay in meeting the November 1 reporting date. AMS will evaluate each request on a case-by-case basis.

Peanuts may continue to be imported into the United States after the import quotas are closed (with payment of tariff charges). Therefore, this rule also provides that disposition of any peanuts imported after the 1997 import quotas close must be reported within 120 days after the peanuts are entered by the Customs Service.

As a compliance measure, paragraph (f)(4) provided that the Secretary would ask the Customs Service to demand redelivery of peanut lots not reported as meeting the requirements of the import regulation. Because this rule extends the reporting period beyond the Customs Service 30-day redelivery demand period, the first three sentences in paragraph (f)(4) are not applicable for peanuts entered under the three 1997 import quotas. Those sentences are therefore removed in this rulemaking. The remainder of paragraph (4) regarding failure to comply with the import regulation and falsification of reports is retained.

These changes do not affect the stamp-and-fax procedure established in paragraph (f)(1) of the safeguard provisions. That procedure ensures notification of the Federal or Federal-State Inspection Service of applications to import peanuts. This rule also does not change the safeguard requirement that all imported lots must be reported. Pursuant to paragraph (f)(1), all imported peanuts must be reported to AMS—including those peanut lots that meet import requirements. Paragraph (f)(2) provides that the quality and aflatoxin certifications and other documentation must be sent by regular mail to: Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090–6456, "Attention: Report of Imported Peanuts." Overnight or express mail reports may be sent to Marketing Order Administration Branch, F&V, AMS, USDA , 14th and Independence Avenue, S.W. Room 2525-S, Washington, D.C. 20250, "Attention: Report of Imported Peanuts."

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis relevant to this rulemaking.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. AMS records for 1997 show that approximately ten importers of peanuts were large handlers of domestically grown peanuts and six were importers of general food commodities, some of whom may be small entities. Small agricultural service firms, which include importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5 million. Although small business entities may be engaged in the importation of peanuts, the majority of the importers are large business entities.

This rule extends for the 1997 quota periods only the time period for importers to meet import requirements for each lot of imported peanuts and file reports on the disposition of those peanuts. The reporting requirements are an integral part of the safeguard procedures specified in the import regulation, which is required by statute. The requirements are applied uniformly to small as well as large importers.

The previous reporting time period was 23 days. The new reporting time period ended on November 1, 1997. This change represents an increase, depending on date of entry of a peanut lot, of up to 280 days for Mexican peanut imports (entered on January 1) and 175 days for Argentine and "other country" peanuts (all of which were entered on April 15). The rule also extends the reporting period for all other peanut entries during the 1997 quota year from 23 days to 120 days. The additional time to meet requirements enabled importers to more efficiently manage movement and disposition of their imported peanuts.

It is not possible to estimate cost savings that might result from any increased efficiency of operations because of this action. Extension requests, when properly requested, already have been granted by AMS. The rule will benefit importers of large quantities of peanuts by relieving the time pressure to have multiple lots certified, and many lots reconditioned, within a very short time period. The rule also will benefit small importers who do not have peanut handling resources and must contract with remillers and blanchers to recondition failing peanut lots. Records indicate that some importers, including small importers, are outside the domestic peanut production area, and must transport failing lots long distances for reconditioning.

Alternative reporting time periods were considered by AMS. For the purposes of clarity, AMS believes that a single date, applicable to all 1997 entries under the quota is less confusing than 60 or 90 days from the release date of a peanut lot by the Customs Service. Sixty days are considered too short, as some peanut lots entered on April 15 are being inspected for the first time more than two months later. Also, necessary reconditioning efforts, with appropriate sampling and re-inspections after each attempt may take longer than 60 days. Extensions may be requested for individual lots not certified by the end of their applicable reporting period.

AMS is not aware of any peanuts imported after the 1997 quotas were filled. However, any such imports would have been handled in a more routine manner and normal pace than when the great volumes were released simultaneously on quota opening days. Thus, the 120-day requirement for any peanuts imported after the quotas are filled is deemed reasonable by AMS.

For these reasons, AMS has determined that this action will be beneficial to all importers, both large and small.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) as amended in 1995, the information collection requirement contained in this rule was approved by the Office of Management and Budget (OMB) on September 3, 1996, and assigned OMB number 0581–0176. This rule does not establish new reporting or recordkeeping requirements. The current annual reporting burden for importers is estimated at 12 hours. Those affected by this rule have already reported entries and requested extensions of deadlines for reporting peanuts entered under the 1997 import quotas. Further, because no additional 1997 peanut imports are expected, there should be no need to file additional reports other than the final report of all entries, which is included in the approved 12 hour reporting burden.

Paragraph (f)(3) of the rule is revised for the 1997 import periods only. All certificates and other documents reporting the disposition of passing, as well as failing and reconditioned,

peanut lots must be reported to AMS by November 1, 1997. This reporting date applies to only AMS' peanut import regulation and does not supersede other reporting dates for those peanuts that may be established by the Customs Service or other agencies. For peanuts imported after the quotas are filled, this rule extends the reporting period from 23 to 120 days, thus, reducing or eliminating the burden of requesting an extension of the reporting period.

An interim final rule concerning this action was issued by the Department on September 19, 1997, and published in the **Federal Register** on September 25, 1997. Copies were mailed by AMS to all known peanut importers, exporters, customs brokers and appropriate embassies. That rule provided for a 30-day comment period which ended October 27, 1997. Three comments were received.

One comment was received from the executive director of the Peanut Shellers Association of America, which stated that its members handle approximately 65 percent of the peanuts used in the United States. The Association supports the interim final rule extending the deadline for importers to report compliance with the peanut import regulation. The commenter also stated that some of the Association members request that AMS collect needed information from its inspection service and chemical laboratories. This request will be reviewed and considered for futher rulemaking, if appropriate. It will be addressed in a subsequent proposed rulemaking for 1998 peanut imports.

A second comment was received from a major peanut importing company, which also is a handler of domestically produced peanuts. The commenter supports extension of the reporting period.

The final comment was received from a regional peanut growers cooperative. The commenter agreed that the single reporting date of November 1 is better than the original regulation's date of 30 days after entry of a peanut shipment. The comment, however, disagreed that extensions should be granted to those importers who were unable to meet the November 1 deadline. It was necessary to provide for such extensions in order to allow peanut importers sufficient time to meet the quality and reporting requirements for 1997 peanut imports. Also, because of the volume of certifications being filed simultaneously by approximately 30 importers, AMS needs time to review filed documents and complete reviews of each importers peanut entries.

Based on the comments received, no changes will be made to the interim final rule as published.

The action is a relaxation of the reporting time period which benefits peanut importers who are experiencing difficulty meeting the established reporting time period requirements.

After consideration of all relevant material presented, including the necessity by AMS to provide peanut importers sufficient time to meet the quality and reporting requirements of the peanut import regulation, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (62 FR 50241, September 25, 1997) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 999

Dates, Food grades and standards, Hazelnuts, Imports, Nuts, Peanuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR Part 999 is amended as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR Part 999.600 which was published at 62 FR 50241 on September 25, 1997, is adopted as a final rule without change.

Dated: March 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–6772 Filed 3–16–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 204, 208, 209, 244, 245, 264, 299, 316, 332, and 335

[INS No. 1891–97]

RIN 1115–AF03

Fingerprinting Applicants and Petitioners for Immigration Benefits; Establishing a Fee for Fingerprinting by the Service; Requiring Completion of Criminal Background Checks Before Final Adjudication of Naturalization Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations relating to fingerprinting applicants and petitioners for benefits under the Immigration and Nationality Act (Act). This rule implements certain provisions of the Department of Justice Appropriations Act, 1988, which prohibit the Service from accepting fingerprint cards (Form FD–258) for the purpose of conducting criminal background checks on applicants and petitioners for immigration benefits prepared by any individual or entity other than the Service, a registered State or local law enforcement agency, a United States consular office at a United States embassy or consulate, or a United States military installation abroad. The rule also announces the termination of the Designated Fingerprinting Services (DFS) certification program. In addition, this rule establishes a $25 service fee for fingerprinting by the Service, and requires Service receipt of a definitive response from the Federal Bureau of Investigation (FBI) before final adjudication of a naturalization application.

DATES:

Effective date: This interim rule is effective March 29, 1998.

Comment date: Written comments must be submitted on or before May 18, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please refer to INS No. 1891–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ann Palmer or Thomas E. Cook, Office of Naturalization Operations, Immigration and Naturalization Service, 801 I Street, NW., Room 935, Washington, DC 20536, telephone (202) 305–0539.

SUPPLEMENTARY INFORMATION:

Background

1. What is the Designated Fingerprinting Services (DFS) Program?

The Designated Fingerprinting Services (DFS) program allowed qualified individuals, businesses, and law enforcement agencies to apply to the Service for certification as a DFS entity to provide fingerprinting services to applicants and petitioners for immigration benefits. The primary purposes of the program were to facilitate the processing of applications

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and petitions for benefits and protect the integrity of the fingerprinting process. The Service developed the DFS program as a result of reports from the United States Department of Justice, Inspector General, and United States General Accounting Office which found that the Service's unregulated fingerprinting policy, in effect since 1982, did not provide sufficient security controls. Under the DFS program, the Service accepted fingerprint cards (Form FD–258) filed with applications and petitions for immigration benefits only if they were prepared by a designated Service employee, an approved DFS entity, an intending DFS entity that had submitted an application for certification prior to March 1, 1997, or a law enforcement agency registered as a DFS entity.

2. How Did the Service Implement the DFS Certification Program?

On May 15, 1995, the Service published a notice of proposed rulemaking in the **Federal Register** at 60 FR 25856 proposing to implement the DFS certification program, which set forth the certification requirements and application procedures for individuals and entities interested in providing fingerprinting services to applicants and petitioners for immigration benefits. The Service also specified a date by which it would no longer accept fingerprint cards prepared by unauthorized entities.

On June 4, 1996, after a 60-day public comment period, the Service published a final rule in the **Federal Register** at 61 FR 28003, formally implementing the DFS certification program. The final rule became effective July 5, 1996. However, due to the insufficient number of certification applications received by the Service, and to ensure that adequate fingerprinting services were available to all applicants and petitioners for immigration benefits, the Service published a final rule in the **Federal Register** on November 7, 1996, at 61 FR 57583, extending the effective date of the DFS certification program to March 1, 1997.

Legislative Authority

1. Why is the Service Terminating the Designated Fingerprinting Services Certification Process?

On November 26, 1997, the Department of Justice Appropriations Act, 1998 (Pub. L. 105–119, 111 Stat. 2440) was enacted. This legislative change necessitates elimination of the DFS program. Pursuant to this legislation, effective December 3, 1997, the Service can accept fingerprint cards (Form FD–258) for the purpose of conducting criminal background checks on applications and petitions for immigration benefits only if prepared by a Service office, a registered State or local law enforcement agency, a United States consular office at a United States embassy or consulate, or a United States military installation abroad. Accordingly, the Service is removing the DFS certification process from its regulations.

2. How Will the Service Implement the New Fingerprint Requirements?

To comply with Public Law 105–119, 111 Stat. 2440, the Service is establishing a new program to fingerprint applicants and petitioners for immigration benefits. The Service is opening new offices, known as Application Support Centers (ASCs), and establishing mobile fingerprinting centers nationwide to fingerprint applicants and petitioners for immigration benefits. The Service will also fingerprint applicants and petitioners for immigration benefits in certain Service field offices and, in less populated areas, is entering into co-operative agreements with designated State or local law enforcement agencies (DLEA) which have registered with the Service to provide fingerprinting services to applicants and petitioners for immigration benefits. This new fingerprinting program applies only to acceptance of Form FD–258, Applicant Card, submitted to the Service in connection with applications and petitions for immigration benefits.

3. How Does the New Legislation Affect Filing of Applications and Petitions for Immigration Benefits?

Under the Service's new fingerprinting program, effective on December 3, 1997, the Service began accepting fingerprinting cards with applications and petitions for immigration benefits only if prepared by the Service, registered State or local law enforcement agencies, a United States consular office at a United States embassy or consulate, or a United States military installation abroad.

Effective March 29, 1998, applicants and petitioners for immigration benefits residing in the United States will be required to file applications and petitions without completed fingerprint cards. After filing, the Service will notify applicants and petitioners to appear at an ASC or other Service-designated location, including designated State or local law enforcement agencies, to be fingerprinted. Applicants and petitioners residing outside of the United States submit completed fingerprint cards prepared by the Service, a United States consular office or a United States military installation abroad with applications and petitions for immigration benefits.

a. How Has the Fingerprinting Process for Naturalization Been Changed?

Effective December 3, 1997, naturalization applications from individuals residing in the United States (as defined in section 101(a)(38) of the Act) have been filed without completed fingerprint cards. After filing the Form N–400, these naturalization applicants have been notified to appear at an ASC or other Service-designated location to be fingerprinted. Naturalization applications from individuals residing outside of the United States have been filed with completed fingerprint cards prepared by a United States consular office at a United States embassy or consulate or a United States military installation aboard.

b. How Has the Fingerprinting Process for Immigration Benefits Other Than Naturalization Been Changed?

Effective on December 3, 1997, applicants and petitioners for immigration benefits other than naturalization have filed applications and petitions with completed fingerprint cards prepared by State or local law enforcement agencies registered with the Service to provide fingerprinting services.

Effective on March 29, 1998, applications and petitions for all immigration benefits other than naturalization, including asylum applications, from individuals residing in the United States, will be filed without completed fingerprint cards. After filing, these individuals, who require fingerprinting in connection with applications and petitions, will be notified to appear at an ASC or other Service-designated location to be fingerprinted. Under this new process, the Service will continue to give special consideration to processing of fingerprint cards associated with orphan petitions to ensure timely and flexible adjudication of these cases.

Effective December 3, 1997, applications and petitions for immigration benefits other than naturalization from individuals residing outside of the United States have been filed with completed fingerprint cards prepared by the Service, a United States consular office at a United States embassy or consulate, or a United States military installation aboard.

4. Will Applicants and Petitioners Who Were Fingerprinted by a DFS Entity Need to Be Re-fingerprinted?

Fingerprint cards submitted with properly filed applications and petitions for any immigration benefit which were accepted by the Service before December 3, 1997, will be processed in accordance with the regulations in effect at the time of acceptance. For purposes of implementing this rule, fingerprint cards are deemed accepted by the Service before December 3, 1997, if: (1) The application or petition was hand delivered to a Service office before December 3, 1997; or (2) the application or petition was postmarked before December 3, 1997, and was received in a Service office before December 6, 1997. Applicants and petitioners whose properly completed fingerprint cards were accepted before December 3, 1997, will not ordinarily be required to be re-fingerprinted in accordance with these new fingerprinting procedures, unless the Attorney General determines that it is necessary to re-fingerprint an applicant or petitioner. For example, the Attorney General may decide to take an additional set of fingerprints for an asylum applicant in order to comply with the identity provisions of section 208(d)(5)(A)(i) of the Act or in cases in which the Federal Bureau of Investigation rejects a fingerprint card. However, beginning on December 3, 1997, for naturalization applicants and on March 29, 1998, for applicants and petitioners for other benefits, the Service will notify applicants and petitioners who file a completed fingerprint card prepared by a DFS entity to be re-fingerprinted at an ASC or other Service-designated location.

5. Why is the Service Charging a Fee for Fingerprinting Services?

In Pub. L. 105–119, 111 Stat. 2440, Congress authorized the Service to charge a fee for fingerprinting in connection with the new fingerprinting program. Accordingly, the Service will charge the fee necessary to recover the administrative and support costs of the new fingerprinting program, and for the collection, safeguarding, and accounting of the fees. All fingerprinting fees initially collected from applicants and petitioners for immigration benefits will be deposited into the Immigration Examinations Fee Account established by 8 U.S.C. 1356(m)–(p). However, the Service will not begin charging the fee for fingerprinting applicants and petitioners for immigration benefits until March 29, 1998. This service fee for fingerprinting will apply only to applications and petitions for immigration benefits filed on or after March 29, 1998. Therefore, applicants and petitioners for immigration benefits who file before March 29, 1998, but who are scheduled to be fingerprinted by the Service on or after March 29, 1998, will be fingerprinted by the Service without charge. This delay in collecting the fee for fingerprinting services will allow the Service to ensure that the new ASCs and mobile fingerprinting centers are operating efficiently.

6. What Fee is Being Established for Fingerprinting by the Service?

In the interest of fairness and based on a Service-determined cost estimate, during the early stages of the new fingerprinting program, the service fee for fingerprinting by the Service is established at $25 per applicant, petitioner, beneficiary, sponsor, or other individual required by Service regulations or form instructions to be fingerprinted in connection with an application or petition for immigration benefits. The Service anticipates that this $25 fee will not recover all Service costs for fingerprinting individuals for immigration benefits at present. However, the Service plans to conduct a fee analysis under provisions of Office of Management and Budget Circular A–25 in the near future to determine the full cost to the Service of fingerprinting individuals for immigration benefits.

Congress has also authorized registered State and local law enforcement agencies and United States consular offices at United States embassies or consulates, or United States military installations abroad to charge a fee for fingerprinting applicants and petitioners for immigration benefits.

7. How Will Applicants and Petitioners Submit the Fee for Fingerprinting by the Service?

The one-time $25 fee for fingerprinting by the Service must be submitted at the time of filing the application or petition, in addition to the filing fee for the application or petition. However, applicants and petitioners residing abroad who are fingerprinted at United States consular offices or military installations abroad do not need to be fingerprinted by the Service. Therefore, these applicants and petitioners will submit the completed fingerprint cards at the time of filing the application or petition for immigration benefits, and do not need to submit the $25 fee for fingerprinting by the Service. In addition, asylum applicants are exempt from submitting the fee for fingerprinting by the Service in connection with filing an application for asylum and withholding of removal.

Applications and petitions for immigration benefits filed by individuals residing in the United States submitted without the $25 service fee for fingerprinting by the Service or with the incorrect service fee for fingerprinting, will not be rejected as improperly filed. The Service will notify applicants or petitioners to submit the correct fee for fingerprinting, and will withhold processing of the application or petition, including scheduling for fingerprinting, until the correct fingerprinting fee is received. Failure by an applicant or petitioner to submit the correct fee for fingerprinting by the Service within the time allotted in a notice to the applicant or petitioner will result in denial of the application or petition due to abandonment.

8. How Does Public Law 105–119 Affect Adjudication of Naturalization Applications?

The new legislation codifies current Service policy that the Service must receive confirmation from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed on applicants for naturalization before final adjudication of the application. This interim rule requires the Service to receive a definitive response from the FBI that a criminal background check has been completed before notifying applicants for naturalization to appear before a Service officer for the mandatory examination on the Form N–400, Application for Naturalization.

Explanation of Changes

What Changes is the Service Making to its Regulations?

1. Changes in § 103.1

In § 103.1, paragraph (f)(3)(iii)(NN) is amended to remove the Form I–850, Application for Certification for Designated Fingerprinting Services, from the list of decisions of which the Associate Commissioner for Examinations exercises jurisdiction. This change is necessary because the Service is eliminating the DFS certification program.

2. Changes in § 103.2

In § 103.2, paragraphs (a)(1) and (a)(7)(i) are revised to allow the Service to treat as properly filed applications and petitions which require completion of fingerprint cards but which are submitted without the $25 fee for fingerprinting by the Service. Paragraph (a)(7)(ii) is revised to allow the Service to reject applications or petitions as improperly filed if the check or other financial instrument used to pay the

fingerprinting fee is returned to the Service as not payable. Paragraphs (b)(9), (b)(10)(i), (b)(13), and (b)(14) are revised to include requests that applicants and petitioners for immigration benefits appear for fingerprinting at a Service office or other location designated by the Service, and to allow the Service to deny the applications and petitions of individuals who fail to appear for fingerprinting. Paragraph (e) is revised to eliminate the DFS program and establish new fingerprinting procedures for applicants and petitioners for immigration benefits.

3. Changes in § 103.7

In § 103.7, paragraph (b)(1) is amended to add the fee for fingerprinting by the Service, and to remove the fee for the Form I–850, Application for Certification for Designated Fingerprinting Services. Charging a fee for fingerprinting is necessary to fund the Service's new fingerprinting program and the fee is established at $25 per individual who requires fingerprinting. The fee for the Form I–850, Application for Certification for Designated Fingerprinting Services, is being removed because the form relates to the DFS program and the Service is canceling the DFS program by publication of this interim rule.

4. Changes in § 204.3 and § 204.4

In §§ 204.3 and 204.4, the Service is amending the regulations to require the Form I–600A, Application for Advanced Processing of Orphan Petition, the Form I–600, Petition to Classify Orphan as an Immediate Relative, and the Form I–360, Petition for Amerasian, Widow or Special Immigrant, filed on behalf of an Amerasian child of a United States citizen to be filed without completed fingerprint cards, and to require the prospective adoptive parents, other adult members of the prospective adoptive parents' household, and sponsors of Amerasian children to appear at a Service office, or other location designated by the Service, for fingerprinting in accordance with the new fingerprinting procedures being established in § 103.2(e).

5. Changes in § 208.7, § 208.10, and § 208.14

In § 208.7, the Service is amending the regulations to clarify that failure to follow requirements for fingerprint processing may affect an asylum applicant's eligibility for employment authorization. In § 208.10, the Service is amending the regulations to include failure to follow the requirements for fingerprint processing as a ground for dismissal of a case or waiver of an adjudication by an asylum officer. In § 208.14, the Service is amending the regulations to permit referral of an asylum application when the applicant is deemed to have waived adjudication by an asylum officer.

6. Changes in § 209.1 and § 209.2

In §§ 209.1 and 209.2, the Service is amending the regulations to require refugee entrants and aliens granted asylum to appear at a Service office, or other location designated by the Service, for fingerprinting in accordance with the new fingerprinting procedures being established in § 103.2(e) after filing the application, rather than submitting the fingerprints on a completed fingerprint card with the application.

7. Changes in § 244.6

In § 244.6, the Service is amending the regulations to require applicants for temporary protected status to appear at a Service office, or other location designated by the Service, for fingerprinting in accordance with the new fingerprinting procedures being established in § 103.2(e) after filing the Form I–821, Application for Temporary Protected Status, rather than submitting the fingerprints on a completed fingerprint card with the application.

8. Changes in § 245.7

In § 245.7, the Service is amending the regulations to require applicants for benefits under section 599E of Public Law 101–167 to appear at a Service office, or other location designated by the Service, for fingerprinting in accordance with the new fingerprinting procedures being established in § 103.2(e) after filing the Form I–485, Application to Register Permanent Residence or Adjust Status, rather than submitting the fingerprints on a completed fingerprint card with the application.

9. Changes in § 264.2 and § 264.5

In §§ 264.2 and 264.5, the Service is amending the regulations to require applicants for creation of a record of permanent residence and for a replacement alien registration card to appear at a Service office, or other location designated by the Service, for fingerprinting in accordance with the new fingerprinting procedures being established in § 103.2(e) after filing the application, rather than submitting the fingerprints on a completed fingerprint card with the application.

10. Changes in § 299.1 and § 299.5

In §§ 299.1 and 299.5, the Service is amending the regulations to remove the Form I–850, Application for Certification for Designated Fingerprinting Services, and the Form I–850A, Attestation by Designated Fingerprinting Service Certified to Take Fingerprints, from the listing of forms. These changes are necessary because the forms relate to the DFS program and, by publication of this interim rule, the Service is terminating the DFS program in order to comply with the new legislation relating to fingerprinting applicants and petitioners for immigration benefits.

11. Changes in § 316.4

In § 316.4, the Service is amending the regulations to require applicants for naturalization to file a complete application without a fingerprint card, and to appear at a Service office, or other location designated by the Service, for fingerprinting in accordance with the new fingerprinting procedures being established in § 103.2(e) after filing the Form N–400, Application for Naturalization.

12. Changes in § 332.2

In § 332.2, the Service is amending the regulations to remove references to fingerprinting services being provided by non-profit organizations. The change is necessary because the new legislation relating to fingerprinting applicants and petitioners for immigration benefits prohibits the Service from accepting fingerprint cards prepared by any organization other than the Service, registered State or local law enforcement agencies, United States consular offices, or United States military installations abroad.

13. Changes in § 335.2

The FBI currently performs criminal background checks on applicants for naturalization and notifies the Service of the results of these checks. It has been Service policy to request applicants for naturalization to appear for examination on the application only after receiving such a notice from the FBI. In § 335.2, the Service is amending the regulations to require a definitive response from the FBI on the criminal background check on an applicant for naturalization. A definitive response is defined as a response from the FBI that: (1) An applicant does not have an administrative or criminal record; (2) an applicant does not have an administrative or criminal record; or (3) an applicant's fingerprints cannot be classified for purposes of conducting a criminal background check, despite the

FBI's receipt of two properly prepared fingerprint cards. In the case of an applicant whose fingerprints cannot be classified, Service quality assurance procedures require the applicant to submit police clearances to the Service before final adjudication of the naturalization application.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C 553(b)(B) and (d)(3). The reason and necessity for immediate implementation of this interim rule without prior notice and comment is that new legislation prohibiting the Service from accepting fingerprint cards unless prepared by a Service office, a registered State or local law enforcement agency, a United States consular office at a United States embassy or consulate, or a United States military installation abroad, became effective December 3, 1997.

This rule is needed in order to establish the new fingerprinting process for applications and petitions filed on or after December 3, 1997. Accordingly, any delays in the implementation of the new fingerprinting process required by this law will result in unnecessary delays in the filing and adjudication of applications and petitions for immigration benefits, without a corresponding public benefit. Furthermore, Congress addressed its intent to permit the Service to use interim regulatory authority in the early stages of this program. In particular, the Congressional Record of November 13, 1997, at page H10837 notes:

> An interim regulation may be employed in the early stages of the program, to implement all aspects of the program, including setting of a fingerprint fee, while the normal studies to justify a fee regulation are being conducted.

For these reasons, the Commissioner has determined that delaying the implementation of this rule would be unnecessary and contrary to the public interest, and that there is good cause for dispensing with the requirements of prior notice. However, the Service welcomes public comment on this interim rule and will address those comments prior to the implementation of the final rule.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule, which provides procedures for the taking and submission of fingerprints under the standards of the new legislation, relates to applicants and petitioners for immigration benefits and does not have a significant adverse effect on small businesses. Any adverse economic impact on DFS entities is necessitated by the new legislation which, as of December 3, 1997, prohibits the Service from accepting fingerprint cards unless prepared by the Service, a registered State and local law enforcement agency, a United States consular office at a United States embassy or consulate, or a United States military installation abroad.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect of the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 209

Aliens, Immigration, Refugees.

8 CFR Part 244

Administrative practice and procedure, Aliens.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Registration and fingerprinting, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

8 CFR Part 316

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 332

Citizenship and naturalization, Education, Reporting and recordkeeping requirements.

8 CFR Part 335

Administrative practice and procedure, Authority delegations (Government agencies), Citizenship and naturalization, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

UMI
VOL 63 ISS 51 MR 17 1998
UMI

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.1 [Amended]

2. Section 103.1 is amended by:

a. Removing the "; and" at the end of paragraph (f)(3)(iii)(MM) and adding a period in its place; and by

b. Removing paragraph (f)(3)(iii)(NN).

3. Section 103.2 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(7);

c. Revising paragraph (b)(9);

d. Revising the heading for paragraph (b)(10);

e. Revising paragraph (b)(10)(i);

f. Revising paragraph (b)(13);

g. Revising paragraph (b)(14); and by

h. Revising paragraph (e), to read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) *Filing.* (1) *General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. Except as exempted by paragraph (e) of this section, forms which require an applicant, petitioner, sponsor, beneficiary, or other individual to complete Form FD–258, Applicant Card, must also be filed with the service fee for fingerprinting, as required by § 103.7(b)(1), for each individual who requires fingerprinting. Filing fees and fingerprinting service fees are non-refundable and, except as otherwise provided in this chapter, must be paid when the application is filed.

* * * * *

(7) *Receipt date.*—(i) *General.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as properly filed when so stamped, if it is properly signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date. An application or petition taken to a local Service office for the completion of biometric information prior to filing at a Service Center shall be considered received when physically received at a Service Center.

(ii) *Non-payment.* If a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter shall be notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension. If the application or petition is pending and these charges are not paid within 14 days, the application or petition shall be rejected as improperly filed. If the application or petition was already approved, and these charges are not paid, the approval shall be automatically revoked because it was improperly field. If the application or petition was already denied, revoked, or abandoned, that decision will not be affected by the non-payment of the filing or fingerprinting fee. New fees will be required with any new application or petition. Any fee and service charges collected as the result of collection activities or legal action on the prior application or petition shall be used to cover the cost of the previous rejection, revocation, or other action.

(b) * * *

(9) *Request for appearance.* An applicant, a petitioner, a sponsor, a beneficiary, or other individual residing in the United States at the time of filing an application or petition may be required to appear for fingerprinting or for an interview. A petitioner shall also be notified when a fingerprinting notice or an interview notice is mailed or issued to a beneficiary, sponsor, or other individual. The applicant, petitioner, sponsor, beneficiary, or other individual may appear as requested by the Service, or prior to the dates and times for fingerprinting or of the date and time of interview:

(i) The individual to be fingerprinted or interviewed may, for good cause, request that the fingerprinting or interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the application or petition.

(10) *Effect of a request for initial or additional evidence for fingerprinting or interview rescheduling*—(i) *Effect on processing.* The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If an application or petition is missing required initial evidence, or an applicant, petitioner, sponsor, beneficiary, or other individual who requires fingerprinting requests that the fingerprinting appointment or interview be rescheduled, any time period imposed on Service processing will start over from the date of receipt of the required initial evidence or request for fingerprint or interview rescheduling. If the Service requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on the Service for processing will be suspended as of the date of request. It will resume at the same point where it stopped when the Service receives the requested evidence or response, or a request for a decision based on the evidence.

* * * * *

(13) *Effect of failure to respond to a request for evidence or appearance.* If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. Except as provided in § 335.6 of this chapter, if an individual requested to appear for fingerprinting or for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied.

(14) *Effect of request for decision.* Where an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. Failure to appear for required fingerprinting or for a required interview, or to give required testimony, shall result in the denial of the related application or petition.

* * * * *

(e) *Fingerprinting*—(1) *General.* Service regulations in this chapter, including the instructions to benefit applications and petitions, require certain applicants, petitioners, beneficiaries, sponsors, and other individuals to be fingerprinted on Form

FD–258, Applicant Card, for the purpose of conducting criminal background checks. On and after December 3, 1997, the Service will accept Form FD–258, Applicant Card, only if prepared by a Service office, a registered State or local law enforcement agency designated by a cooperative agreement with the Service to provide fingerprinting services (DLEA), a United States consular office at United States embassies and consulates, or a United States military installation abroad.

(2) *Fingerprinting individuals residing in the United States.* Beginning on December 3, 1997, for naturalization applications, and on March 29, 1998, for all other applications and petitions, applications and petitions for immigration benefits shall be filed as prescribed in this chapter, without completed Form FD–258, Applicant Card. After the filing of an application or petion, the Service will issue a notice to all individuals who require fingerprinting and who are residing in the United States, as defined in section 101(a)(38) of the Act, and request their appearance for fingerprinting at a Service office or other location designated by the Service, to complete Form FD–258, Applicant Card, as prescribed in paragraph (b)(9) of this section.

(3) *Fingerprinting individuals residing abroad.* Individuals who require fingerprinting and whose place of residence is outside of the United States, must submit a properly completed Form FD–258, Applicant Card, at the time of filing the application or petition for immigration benefits. In the case of individuals who reside abroad, a properly completed Form FD–258, Applicant Card, is one prepared by the Service, a United States consular office at a United States embassy or consulate or a United States military installation abroad. If an individual who requires fingerprinting and is residing abroad fails to submit a properly completed Form FD–258, Applicant Card, at the time of filing an application or petition, the Service will issue a notice to the individual requesting submission of a properly completed Form FD–258, Applicant Card. The applicant or petitioner will also be notified of the request for submission of a properly completed Form FD–258, Applicant Card. Failure to submit a properly completed Form FD–258, Applicant Card, in response to such a request within the time allotted in the notice will result in denial of the application or petition for failure to submit a properly completed Form FD–258, Applicant Card. There is no appeal from denial of an application or petition for failure to submit a properly completed Form FD–258, Applicant Card. A motion to re-open an application or petition denied for failure to submit a properly completed Form FD–258, Applicant Card, will be granted only on proof that:

(i) A properly completed Form FD–258, Applicant Card, was submitted at the time of filing the application or petition;

(ii) A properly completed Form FD–258, Applicant Card, was submitted in response to the notice within the time allotted in the notice; or

(iii) The notice was sent to an address other than the address on the application or petition, or the notice of representation, or that the applicant or petitioner notified the Service, in writing, of a change of address or change of representation subsequent to filing and before the notice was sent and the Service's notice was not sent to the new address.

(4) *Submission of service fee for fingerprinting*—(i) *General.* The Service will charge a fee, as prescribed in § 103.7(b)(1), for fingerprinting at a Service office or a registered State or local law enforcement agency designated by a cooperative agreement with the Service to provide fingerprinting services. Applications and petitions for immigration benefits shall be submitted with the service fee for fingerprinting for all individuals who require fingerprinting and who reside in the United States at the time of filing the application or petition.

(ii) *Exemptions*—(A) *Individual residing abroad.* Individuals who require fingerprinting and who reside outside of the United States at the time of filing an application or petition for immigration benefits are exempt from the requirement to submit the service fee for fingerprinting with the application or petition for immigration benefits.

(B) *Asylum applicants.* Asylum applicants are exempt from the requirement to submit the service fee for fingerprinting with the application for asylum.

(iii) *Insufficient service fee for fingerprinting; incorrect fees.* Applications and petitions for immigration benefits received by the Service without the correct service fee for fingerprinting will not be rejected as improperly filed, pursuant to paragraph (a)(7)(i) of this section. However, the application or petition will not continue processing and the Service will not issue a notice requesting appearance for fingerprinting to the individuals who require fingerprinting until the correct service fee for fingerprinting has been submitted. The Service will notify the remitter of the filing fee for the application or petition of the additional amount required for the fingerprinting service fee and request submission of the correct fee. The Service will also notify the applicant or petitioner, and, when appropriate, the applicant or petitioner's representative, as defined in paragraph (a)(3) of this section, of the deficiency. Failure to submit the correct fee for fingerprinting in response to a notice of deficiency within the time allotted in the notice will result in denial of the application or petition for failure to submit the correct service fee for fingerprinting. There is no appeal from the denial of an application or petition for failure to submit the correct service fee for fingerprinting. A motion to re-open an application or petition denied for failure to submit the correct service fee for fingerprinting will be granted only on proof that:

(A) The correct service fee for fingerprinting was submitted at the time of filing the application or petition;

(B) The correct service fee for fingerprinting was submitted in response to the notice of deficiency within the time allotted in the notice; or

(C) The notice of deficiency was sent to an address other than the address on the application or petition, or the notice of representation, or that the applicant or petitioner notified the Service, in writing, of a change of address or change of representation subsequent to filing and before the notice of deficiency was sent and the Service's notice of deficiency was not sent to the new address.

(iv) *Non-payment of service fee for fingerprinting.* If a check or other financial instrument used to pay a service fee for fingerprinting is subsequently returned as not payable, the remitter shall be notified and requested to pay the correct service fee for fingerprinting and any associated service charges within 14 calendar days. The Service will also notify the applicant or petitioner and, when appropriate, the applicant or petitioner's representative as defined in paragraph (a)(3) of this section, of the non-payment and request to pay. If the correct service fee for fingerprinting and associated service charges are not paid within 14 calendar days, the application or petition will be denied for failure to submit the correct service fee for fingerprinting.

4. In § 103.7, paragraph (b)(1) is amended by adding the entry "For fingerprinting by the Service" before the entry "DCL System Costs Fee" to the listing of fees, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

For fingerprinting by the Service. A service fee of $25 will be charged by the Service for fingerprinting each applicant, petitioner, sponsor, or other individual who is required to complete Form FD–258 in connection with an application or petition for an immigration benefit (other than asylum) and whose residence is in the United States, as defined in section 101(a)(38) of the Act.

* * * * *

§ 103.7 [Amended]

5. In § 103.7, paragraph (b)(1) is amended by removing the entry for "Form I–850" from the listing of fees.

PART 204—IMMIGRANT PETITIONS

6. The authority citation for part 204 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

7. Section 204.3 is amended by:

a. Adding the word "and" at the end of paragraph (c)(1)(iii);

b. Removing paragraph (c)(1)(iv);

c. Redesignating paragraph (c)(1)(v) as paragraph (c)(1)(iv);

d. Removing paragraph (c)(1)(vi); and

e. Adding a new paragraph (c)(3), to read as follows:

§ 204.3 Orphans.

* * * * *

(c) * * *

(3) After receipt of a properly filed advanced processing application, the Service will fingerprint each member of the married prospective adoptive couple or the unmarried prospective adoptive parent, as prescribed in § 103.2(e) of this chapter. The Service will also fingerprint each additional adult member of the prospective adoptive parents' household, as prescribed in § 103.2(e) of this chapter. The Service may waive the requirement that each additional adult member of the prospective adoptive parents' household be fingerprinted when it determines that such adult is physically unable to be fingerprinted because of age or medical condition.

* * * * *

8. Section 204.4 is amended by:

a. Removing paragraph (f)(1)(iv); and

b. Revising the second sentence of paragraph (d)(1), to read as follows:

§ 204.4 Amerasian child of a United States citizen.

* * * * *

(d) * * *

(1) * * * If the preliminary processing is completed in a satisfactory manner, the director shall advise the petitioner to submit the documentary evidence required in paragraph (f)(1) of this section and shall fingerprint the sponsor in accordance with § 103.2(e) of this chapter. * * *

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

9. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

10. Section 208.7 is amended by revising paragraph (a)(2), to read as follows:

§ 208.7 Employment authorization.

(a) * * *

(2) The time periods within which the alien may not apply for employment authorization and within which the Service must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with §§ 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods, including delays caused by failure without good cause to follow the requirements for fingerprint processing. Such time periods shall also be extended by the equivalent of the time between issuance of a request for evidence pursuant to § 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

* * * * *

11. Section 208.10 is revised to read as follows:

§ 208.10 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprint processing.

Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the right to an interview. Failure to comply with fingerprint processing requirements without good cause may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer. Failure to appear shall be excused if the notice of the interview or fingerprint appointment was not mailed to the applicant's current address and such address had been provided to the Office of International Affairs by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview or fingerprinting appointment. Failure to appear at the interview or fingerprint appointment will be excused if the applicant demonstrates that such failure was the result of exceptional circumstances.

12. Section 208.14 is amended by revising paragraph (b)(2), to read as follows:

§ 208.14 Approval, denial, or referral of application.

* * * * *

(b) * * *

(2) If the alien appears to be deportable, excludable or removable under section 240 of the Act, the asylum officer shall either grant asylum or refer the application to an immigration judge for adjudication in deportation, exclusion, or removal proceedings. An asylum officer may refer such an application after an interview conducted in accordance with § 208.9, or if, in accordance with § 208.10, the applicant is deemed to have waived his or her right to an interview or an adjudication by an asylum officer.

* * * * *

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

12. The authority citation for part 209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

13. Section 209.1 is amended by revising the third sentence of paragraph (b), to read as follows:

§ 209.1 Admission for permanent residence after 1 year.

* * * * *

(b) * * * If the refugee entrant has been physically present in the United States for at least 1 year, Form G–325A, Biographic Information, will be processed, and the refugee entrant shall be fingerprinted on Form FD–258, Applicant Card, as prescribed in § 103.2(e) of this chapter. * * *

14. Section 209.2 is amended by removing the second sentence of paragraph (c), and adding two sentences in its place, to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(c) * * * A separate application must be filed by each alien. If the alien is 14 years of age or older, the application must be accompanied by a completed Form G–325A, Biographic Information, and the alien shall be fingerprinted on Form FD–258, Applicant Card, as

prescribed in § 103.2(e) of this chapter.
* * *

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONAL OF DESIGNATED STATES

15. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

16. Section 244.6 is revised to read as follows:

§ 244.6 Application.

An application for Temporary Protected Status shall be made in accordance with § 103.2 of this chapter except as provided herein. Each application must be filed with the filing and fingerprinting fees, as provided in § 103.7 of this chapter, by each individual seeking temporary protected status, except that the filing fee for the Form I–765 will be charged only for those aliens who are nationals of El Salvador, and are between the ages of 14 and 65 (inclusive), and are requesting work authorization. Each application must consist of a completed Form I–821, Application for temporary protected status, Form I–765, Application for Employment Authorization, two identification photographs (1½" × 1½"), and supporting evidence as provided in § 240.9 of this chapter. Every applicant who is 14 years of age or older shall be fingerprinted on Form FD–258, Applicant Card, as prescribed in § 103.2(e) of this chapter.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

17. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

18. Section 245.7 is amended by revising paragraph (a), to read as follows:

§ 245.7 Adjustment of status of certain Soviet and Indochinese parolees under the Foreign Operations Appropriations Act for Fiscal Year 1990 (Pub. L. 101–167).

(a) *Application.* Each person applying for benefits under section 599E of Public Law 101–167 (103 Stat. 1195, 1263) must file Form I–485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over the applicant's place of residence and must pay the appropriate filing and fingerprinting fee, as prescribed in § 103.7 of this chapter. Each application shall be accompanied by Form I–643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status, and the results of a medical examination given in accordance with § 245.8. In addition, if the applicant has reached his or her 14th birthday but is not over 79 years of age, the application shall be accompanied by a completed Form G–325A, Biographic Information, and the applicant shall be fingerprinted on Form FD–258, Applicant Card, as prescribed in § 103.2(e) of this chapter.
* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

19. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

20. Section 264.2 is amended by:
a. Removing and reserving paragraph (c)(1)(iii);
b. Removing and reserving paragraph (c)(2)(ii);
c. Removing the phrase ", or his/her fingerprints on Form FD–258" from paragraph (c)(3);
d. Redesignating paragraphs (d) through (h) as paragraphs (e) through (i), respectively; and by
e. Adding a new paragraph (d), to read as follows:

§ 264.2 Application for creation of record of permanent residence.

* * * * *

(d) *Fingerprinting.* After filing an application, each applicant 14 years of age or older shall be fingerprinted on Form FD–258, Applicant Card, as prescribed in § 103.2(e) of this chapter.
* * * * *

21. Section 264.5 is amended by:
a. Removing paragraph (e)(1)(v);
b. Redesignating paragraphs (e)(3)(i) and (e)(3)(ii) as paragraphs (e)(3)(ii) and (e)(3)(iii);
c. Adding the word "fingerprinting," immediately after the phrase "person filing," in newly redesignated paragraph (e)(3)(iii); and by
d. Adding a new paragraph (e)(3)(i), to read as follows:

§ 264.5 Application for a replacement Alien Registration Card.

* * * * *

(e) * * *
(3) * * *
(i) *Fingerprinting.* After filing an I–90 application, each applicant shall be fingerprinted on Form FD–258, Applicant Card, as prescribed in § 103.2(e) of this chapter.
* * * * *

PART 299—IMMIGRATION FORMS

2. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 8 CFR part 2.

§ 299.1 [Amended]

23. Section 299.1 is amended in the table by removing the entries for Form "I–850" and "I–850A".

§ 299.5 [Amended]

24. Section 299.5 is amended in the table by removing the entries for Forms "I–850" and "I–850A".

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

25. The authority citation for part 316 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1443, 1447; 8 CFR part 2.

26. Section 316.4 is amended by:
a. Adding the word "and" at the end of paragraph (a)(2);
b. Removing paragraph (a)(3);
c. Redesignating paragraph (a)(4) as paragraph (a)(3);
d. Redesignating paragraph (b) as paragraph (c); and by
e. Adding a new paragraph (b), to read as follows:

§ 316.4 Application; documents.

* * * * *

(b) Each applicant who files Form N–400, Application for Naturalization, shall be fingerprinted on Form FD–258, Applicant Card, as prescribed in § 103.2(e) of this chapter.
* * * * *

PART 332—NATURALIZATION ADMINISTRATION

27. The authority citation for part 332 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1447.

§ 332.2 [Amended]

28. Section 332.2 is amended by:
a. Removing the words "and fingerprinting" from the section heading; and by
b. Removing the phrase ", fingerprinting services or both" from the end of the first sentence.

PART 335—EXAMINATION ON APPLICATION FOR NATURALIZATION

29. The authority citation for part 335 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1147.

30. Section 335.2 is amended by:
a. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively; and by

b. Adding a new paragraph (b), to read as follows:

§ 335.2 Examination of applicant.

* * * * *

(b) *Completion of criminal background checks before examination.* The Service will notify applicants for naturalization to appear before a Service officer for initial examination on the naturalization application only after the Service has received a definitive response from the Federal Bureau of Investigation that a full criminal background check of an applicant has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:

(1) Confirmation from the Federal Bureau of Investigation that an applicant does not have an administrative or a criminal record;

(2) Confirmation from the Federal Bureau of Investigation that an applicant has an administrative or a criminal record; or

(3) Confirmation from the Federal Bureau of Investigation that two properly prepared fingerprint cards (Form FD–258) have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.

* * * * *

Dated: March 10, 1998.

Doris Meissner,

Commissioner, Immigration, and Naturalization Service.

[FR Doc. 98–6828 Filed 3–16–98; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AF78

Electronic Freedom of Information Act: Implementation; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 20, 1998 (63 FR 2873). This action is necessary to correct miscellaneous errors in the codified text of the final rule.

DATES: Effective February 19, 1998.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555–0001, telephone 301–415–7162, e-mail dlm1@nrc.gov.

1. On page 2878, in the second column, in the first sentence of § 9.21(b), insert a hyphen between "publicly" and "available," and in the second line of the introductory text of § 9.21(c), insert a hyphen between "publicly" and "available."

2. On page 2878, in the third column, in the last line of § 9.21(f), the Internet address is corrected to read "http://www.nrc.gov/."

3. On page 2833, in the third column, the section heading for § 9.45 is corrected to read, "§ 9.45 Annual report to the Attorney General of the United States", and in the first sentence of § 9.45(b), the ":" is removed after the word "as", and the Internet address is corrected to read "http://www.nrc.gov/".

Dated at Rockville, Maryland, this 11th day of March 1998.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 98–6822 Filed 3–16–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–20]

Revision of Class E Airspace; Eastland, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; Request for comments.

SUMMARY: This amendment revises the Class E airspace at Eastland, TX. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) and a Global Positioning System (GPS) SIAP to runway (RWY) 35 at Eastland Municipal Airport, Eastland, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Eastland Municipal Airport, Eastland, TX.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before May 1, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–20, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR Part 71 revises the Class E airspace at Eastland, TX. The development of NDB and GPS SIAP's to RWY 35 at Eastland Municipal Airport, Eastland, TX, has made this action necessary. The intended effect of this action is to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Eastland Municipal Airport, Eastland, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final

rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 98–ASW–20. The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Eastland, TX [Revised]

Eastland Municipal Airport, TX
(lat. 32°24'49" N., long. 98°48'35" W.)
Old Rip RBN
(lat. 32°23'55" N., long. 98°48'37" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Eastland Municipal Airport and within 8 miles east and 4 miles west of the 182° bearing from the Old Rip RBN extending from the 6.4-mile radius to 10.4 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on March 4, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6814 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–19]

Revision of Class E Airspace; Gallup, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Gallup, NM. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to runway (RWY) 6 at Gallup Municipal Airport, Gallup, NM, has made this rule necessary. This action is intended to provide adequate controlled airspace extending from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Gallup Municipal Airport, Gallup, NM.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before May 1, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 98–ASW–19, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

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SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Gallup, NM. The development of a GPS SIAP to RWY 6 at Gallup Municipal Airport, Gallup, NM, has made this action necessary. The intended effect of this action is to provide adequate controlled airspace extending from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Gallup Municipal Airport, Gallup, NM.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date, for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 98–ASW–19. The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points,* dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Gallup, NM [Revised]

Gallup Municipal Airport, NM
(lat. 35°30′40″N., long. 108°47′22″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Gallup Municipal Airport and with 3.8 miles each side of the 250° bearing from the Gallup Municipal Airport extending from the 6.7-mile radius to 12.6 miles southwest of the airport and within 2 miles each side of the 074° bearing from the airport extending from the 6.7-mile radius to 9.1 miles east of the airport and that airspace extending upward from 1200 feet above the surface within an area bounded by a line beginning at lat. 35°47′30″N., long. 108°34′02″W.; to lat. 35°26′50″N., long. 108°34′02″W.; to lat 35°13′15″N., long. 109°06′02″W.; to lat. 35°20′25″N., long. 109°10′42″W.; to lat. 35°52′00″N., long. 108°47′02″W.; to point of beginning excluding that airspace within the New Mexico, NM, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on March 4, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6815 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–11]

Revocation of Class E Airspace; Wrangell, AK, and Petersburg, AK

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E surface area airspace at Wrangell, AK, and Peterburg, AK. Plans to develop Required Navigation Performance (RNP) instrument approach procedures at these airports have been canceled or delayed indefinitely. Consequently, the surface areas at Wrangell Airport and Petersburg James A Johnson Airport are not longer necessary for air traffic operations. This action will result in the affected airspace reverting to Class G.

EFFECTIVE DATE: 0901 Coordinated Universal Time (UTC), April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov; Internet: http://www.alaska.faa.gov/at or at http://www.mmac.jccbi.gov/aal/at or at http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Background

In May 1996, rulemaking actions were initiated to create surface area airspace at the Wrangell Airport and the Petersburg James A Johnson Airport to support new RNP instrument approach procedures. Alaska Airlines planned to develop RNP approaches to runways 27 and 9 at Wrangell Airport, and for runways 4 and 22 at Petersburg James A Johnson Airport. These new RNP approaches were to be designed with minimums below 700 feet Above Ground Level (AGL). The establishment of surface areas at both airports were requested and the Notice of Proposed Rulemaking (NPRM) was published June 24, 1996 (61 FR 32372). No comments to the NPRM were received and the final rule was published October 16, 1996 (61 FR 53844), establishing new surface areas for Wrangell Airport and Petersburg James A Johnson Airport. After the Juneau Sectional Aeronautical Chart, 37th edition, was published on April 24, 1997, the FAA received one Congressional Inquiry and additional letters of concern and objections to the surface areas at both airports. Letters have been received from Sunrise Aviation INC., Nordic Air, Temsco Helicopters INC., Pacific Wing INC., Taquan Air, and Hawkair Aviation Services LTD objecting to the establishment of these surface areas without an apparent purpose and usage. Alaska Airlines has informed the FAA that their RNP instrument approach development for Wrangell Airport and Petersburg James A Johnson Airport has been delayed and that development of new RNP approaches is not scheduled in the immediate future.

On December 3, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Wrangell, AK, and Petersburg, AK, was published in the **Federal Register** (62 FR 63917). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No negative comments to the proposal were received. Letters confirming their support for this proposal were received from Sunrise Aviation INC., Nordic Air, Temsco Helicopters INC., Pacific Wing INC., Taquan Air, and Hawkair Aviation Services LTD. Thus, the rule is adopted as written.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class E airspace at Wrangell, AK, and Petersburg, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas for an airport are published in paragraph 6002 of FAA Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Petersburg, AK [Removed]

* * * * *

AAL AK E2 Wrangell, AK [Removed]

* * * * *

Issued in Anchorage, AK, on March 9, 1998.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–6820 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–25]

Revision of Class E Airspace; Gallup, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct Final Rule; Withdrawal.

SUMMARY: This action withdraws a Direct Final Rule (DFR) published in the **Federal Register** on December 15, 1997, which revised the Class E airspace at

Gallup, NM. The DFR was to provide adequate controlled airspace extending upward from 700 feet above the surface for Instrument Flight Rules (IFR) operations at Gallup Municipal Airport, Gallup, NM. The description of the airspace in the DFR incorrectly described the airspace necessary to contain aircraft IFR operations at Gallup, NM. Accordingly, the DFR as published, is withdrawn.

DATES: The direct final rule published at 62 FR 65606 is withdrawn on March 17, 1998.

FOR FURTHER INFORMATION CONTACT:
Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530 telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: On December 15, 1997 (62 FR 65606), a DFR was published in the **Federal Register** to revise Class E airspace at Gallup, NM. The intended effect of the DFR was to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations at Gallup Municipal Airport, Gallup, NM. The description of the airspace in the DFR incorrectly described the airspace necessary to contain aircraft IFR operations at Gallup, NM. Accordingly, the DFR published in the **Federal Register** on December 15, 1997 (62 FR 65606) is withdrawn. Since this action only withdraws a DFR, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Direct Final Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 97–ASW–25, as published in the **Federal Register** on December 15, 1997 (62 FR 65606), is withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Fort Worth, TX, on March 4, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6816 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–26]

Revision of Class E Airspace; Eastland, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct Final Rule; Withdrawal.

SUMMARY: This action withdraws the Direct Final Rule (DFR) published in the **Federal Register** on February 12, 1998, which revised Class E airspace at Eastland, TX. The DFR was to provide adequate controlled airspace extending upward from 700 feet above the surface for Instrument Flight Rules (IFR) operations at Eastland Municipal Airport, Eastland, TX. The description of the airspace in the DFR incorrectly described the airspace necessary to contain aircraft IFR operations at Eastland, TX. Accordingly, the DFR as published, is withdrawn.

DATES: The direct final rule published at 63 FR 7063 is withdrawn on March 17, 1998.

FOR FURTHER INFORMATION CONTACT:
Donald J. Day, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: On February 12, 1998 (63 FR 7063), a DFR was published in the **Federal Register** to revise Class E airspace at Eastland, TX. The intended effect of the DFR was to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations at Eastland Municipal Airport, Eastland, TX. The description of the airspace in the DFR incorrectly described the airspace necessary to contain aircraft IFR operations at Eastland Municipal Airport, Eastland, TX. Accordingly, the DFR published in the **Federal Register** on February 12, 1998, is withdrawn. Since this action only withdraws a DFR, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Direct Final Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 97–ASW–26, as published in the **Federal Register** on February 12, 1998 (63 FR 7063), is withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Fort Worth, TX, on March 4, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6817 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1274

Miscellaneous Revisions to the NASA Grant and Cooperative Agreement Handbook, Section D

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The NASA Grant and Cooperative Agreement Handbook regulation is published in the Code of Federal Regulations. This is a final rule to amend the Handbook to: require the centers to discuss whether any special provisions might be needed for a cooperative agreement which extends over three years or requires a NASA cash contribution of more than $20M; require that NASA non-cash contributions reflect the total cost of those contributions; require that a NASA Form 1678 be used to designate the NASA Technical Officer on cooperative agreements; require that a new provision be used which summarizes the reports required to be submitted under the cooperative agreement; and miscellaneous changes made to conform to the new FAR Part 15.

EFFECTIVE DATE: March 17, 1998.

FOR FURTHER INFORMATION CONTACT:
Thomas L. Deback, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0431.

SUPPLEMENTARY INFORMATION:

Background

The NASA Grant and Cooperative Agreement Handbook is the NASA regulation for awarding and administering grants and cooperative agreements (14 CFR Part 1260). Subpart D provides the policy and text of provisions for cooperative agreements with commercial firms and addresses NASA's authority, definitions, applicability, amendments, publications, deviations, pre-award

requirements and post-award requirements.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paper Reduction Act.

List of Subjects in 14 CFR Part 1274

Grant programs—science and technology.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 14 CFR Part 1274 is amended as follows:

1. The authority citation for 14 CFR Part 1274 continues to read as follows:

Authority: 42 U.S.C 2473(c)(1).

2. In § 1274.105, paragraph (b)(8) is added to read as follows:

§ 1274.105 Approval of Cooperative Agreement Notices (CANs) and cooperative agreements.

* * * * *

(b) * * *

(8) If the term of the cooperative agreement is anticipated to exceed 3 years and/or if the Government cash contribution is expected to exceed $20M, address anticipated changes, if any, to the provisions (see § 1274.202(f)).

* * * * *

3. In § 1274.202, paragraph (c)(6) is amended by adding three sentences at the end of the paragraph, and a new paragraph (f) is added to read as follows:

§ 1274.202 Solicitations and proposals.

* * * * *

(c) * * *

(6) * * * The Government's resource share should fully reflect the total cost of the cash and non-cash contributions. With respect to the non-cash contribution, a fully burdened cost estimate of personnel, facilities, and other expenses should be utilized. It is recognized that this will be an estimate in some cases, but the cost principles in Section 9091–5 of the NASA Financial Management Manual should be adhered to.

* * * * *

(f) The provisions set forth in § 1274.901 are generally considered appropriate for agreements not exceeding 3 years and/or a Government cash contribution not exceeding $20M. For cooperative agreements expected to be longer than 3 years and/or involve a Government cash contribution exceeding $20M, consideration should be given to provisions which place additional restrictions on the recipient in terms of validating performance and accounting for funds expended.

4. In § 1274.204, paragraph (b)(1), the third and last sentences in paragraph (b)(3), and the last sentence in paragraph (d)(2) are revised to read as follows:

§ 1274.204 Evaluation and selection.

* * * * *

(b) * * * (1) Competitive technical proposal information shall be protected in accordance with 48 CFR (FAR) 15.207, Handling proposals and information. Unsolicited proposals shall be protected in accordance with 48 CFR (FAR) 15.608, Prohibitions, and 48 CFR (FAR) 15.609, Limited use of data.

* * * * *

(3) * * * The use of outside evaluators shall be approved in accordance with 48 CFR (NFS) 1815.207–70(b). * * * A cover sheet with the following legend shall be affixed to data provided to outside evaluators:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with.

* * * * *

(d) * * *

(2) * * * An analysis consistent with 48 CFR (FAR) 15.404–1(c), 15.404–1(c), and 15.404–2 should be performed.

* * * * *

5. In § 1274.301, the following sentence is added at the end of the paragraph to read as follows:

§ 1274.301 Delegation of administration.

* * * NASA Form 1678 will be used to delegate responsibilities to the NASA Technical Officer.

6. In § 1274.901, the second sentence is revised to read as follows:

§ 1274.901 Other provisions and special conditions.

* * * The provisions at §§ 1274.902 through § 1274.909 and the provision at § 1274.933 are to be incorporated in full text substantially as stated in this part.

* * * *

7. Section 1274.933 is added to read as follows:

§ 1274.933 Summary of recipient reporting responsibilities.

Summary of Recipient Reporting Responsibilities (DEC 1997)

This cooperative agreement requires the recipient to submit a number of reports. These reporting requirements are summarized below. In the event of a conflict between this provision and other provisions of the cooperative agreement requiring reporting, the other provisions take precedence.

[The Grants Officer may add/delete reporting requirements as appropriate.]

Report	Frequency	Reference
Report of Joint NASA/Recipient Inventions.	As required	1274.911 Patent Rights (Paragraph (b)(4).
Interim Report of Reportable Items.	Every 12 months	1274.912 Patent Reportable Items Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(i)).
Final Report of Reportable Items	3 months after completion	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(ii)).
Disclosure of Subject Inventions	Within 2 months after inventor discloses it to Recipient.	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (c)(2)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(1)).
Election of Title Subject Invention	1 year after disclosure of the subject invention if a statutory bar exists, otherwise within 2 years.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(2)).
Listing of Subject Inventions	Every 12 months from the date of the agreement	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(5)(i)).
Subject Inventions Finall Report	Prior to close-out of the agreement	1274.913 Retention by the Recipient (Small Business) (Paragraph (f)(5)(ii)).

[The Grants Officer may add/delete reporting requirements as appropriate.]

Report	Frequency	Reference
Notification of Decision to forego Patent Protection.	30 days expiration of the response period	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(3)).
Notification of a Subcontract Award.	Promptly upon award of a subcontract	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (g)(3)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (g)(3)).
Utilization of Subject Invention	Annually	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (h)).
Notice of Proposed Transfer of Technology.	Prior to transferring technology to foreign firm or institution.	1274.915 Restrictions on Sale or Transfer of Technology to Foreing Firms or Institutions (Paragraph (b)).
Performance Report	60 days prior to the anniversary date of the agreement (except final year).	1274.921 Publications Reports: Non-Proprietary Research Results (Paragraph (d)(1)).
Summary of Research	90 days after completion of agreement	1274.921 Publications and Reports: Non-Proprietary Research Results (Paragraph (d)(2)).
Annual Inventory Report	Annually by October 31	1274.923 Equipment and Other Property (Paragraph (g)).
Final Inventory Report	60 days after expiration date of agreement	1274.923 Equipment and Other Property (Paragraph (g)).

[FR Doc. 98–6675 Filed 3–16–98; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–24]

19 CFR Part 101

Customs Service Field Organization; Designation of Kodiak, Alaska, as a Customs Port of Entry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs by designating Kodiak, Alaska, as a Customs port of entry and removing its designation as a Customs station. As part of the Treasury and General Government Appropriations Act, 1998 (Pub. L. 105–61 of October 10, 1997), Congress directed the Secretary of the Treasury to establish Kodiak, Alaska, as a port of entry.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, (202) 927–0196.

SUPPLEMENTARY INFORMATION:

Background

Section 123 of the Treasury and General Government Appropriations Act, 1998 (Pub. L. 105–61 of October 10, 1997), provides:

> Notwithstanding any other provision of law, the Secretary of the Treasury shall establish the port of Kodiak, Alaska as a port of entry and United States Customs Service personnel in Anchorage, Alaska shall service such port of entry. There are authorized to be appropriated such sums as necessary to cover the costs associated with the performance of customs functions using such United States Customs Service personnel.

This document amends § 101.3, Customs Regulations (19 CFR 101.3) to establish a port of entry at Kodiak, Alaska, in accordance with the Congressional direction set forth in Pub. L. 105–61. The port of Kodiak, Alaska, will be serviced by United States Customs Service personnel from Anchorage, Alaska. This document also amends § 101.4, Customs Regulations (19 CFR 101.4) to remove the listing of Kodiak as a Customs station with Anchorage as its supervisory port of entry.

Port Limits

The port limits of the port of Kodiak, Alaska, will be the Kodiak city limits.

Regulatory Flexibility Act

Because this document relates to agency management and organization and because this amendment is directed by Congress, this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information: The principal author of this document was Janet L. Johnson. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

Amendment To The Regulations

Accordingly, part 101 of the Customs Regulations is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citation for § 101.3 continue to read as follows:

> **Authority:** 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

2. Section 101.3(b)(1) is amended by adding, in alphabetical order under the state of Alaska, the listing "Kodiak" in the "Ports of entry" column and, adjacent to this entry, "T.D. 98–24" in the "Limits of port" column.

§ 101.4 [Amended]

3. Section 101.4(c) is amended by removing in the list of Customs stations the entry under the State of Alaska for Kodiak.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 26, 1998.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–6879 Filed 3–16–98; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 142

[T.D. 98–25]

RIN 1515–AB27

Publication of Filer Codes

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for the availability by electronic means of the code assigned by Customs to identify frequent entry filers. This action is expected to assist port authorities, sureties, carriers, customs brokers, bonded warehouse operators, and others involved with import transactions in identifying those who enter merchandise into the United States so that they can expedite their services regarding the importations. It is anticipated that the adoption of this amendment will eliminate paperwork burdens on those involved with import transactions by identifying who is responsible for the specific importation.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: For Operational matters: Angela Downey, Office of Trade Compliance, Office of Field Operations, (202) 927–1082; For Legal matters: Jerry Laderberg, Entry Procedures & Carriers Branch, Office of Regulations and Rulings, (202) 927–2269.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1993, in a document published in the **Federal Register** (58 FR 4113), Customs announced in an Advanced Notice of Proposed Rulemaking (ANPRM) that it was considering the amendment of the Customs Regulations to provide for the publication of a list of filer codes and the identity of the individuals, companies, licensed customs brokers, or importers assigned the specific filer codes. After analyzing comments received on the ANPRM, on April 22, 1997, Customs published a notice of proposed rulemaking in the **Federal Register** (62 FR 19534) that proposed to amend the Customs Regulations to provide for the availability by electronic means of the code assigned by Customs to identify frequent entry filers. This action was proposed to assist port authorities, sureties, carriers, customs brokers, bonded warehouse operators, and others involved with import transactions in identifying those who enter merchandise into the United States so that they can expedite their services regarding the importations. It was expected that the proposal would eliminate paperwork burdens on those involved with import transactions by identifying the party responsible for the importation of specific merchandise. As the proposal set forth Customs' intention no longer to consider filer codes confidential, it was expected that the proposal, if adopted, would also relieve Customs of the administrative burden of entertaining requests of importers for confidential treatment of their filer codes. The notice proposed to amend § 142.3a of the Customs Regulations (19 CFR 142.3a) by adding a new paragraph that would allow Customs to make available electronically a listing of the filer codes and identifying information regarding the importers, consignees, and customs brokers assigned those codes, and solicited comments concerning this action.

The comment period closed on June 23, 1997. Five comments were received, one from an importer and four from entities involved in the importation, movement, or insurance of imported merchandise. The comments received and Customs' responses are discussed below.

Analysis of Comments

Comment—The customs brokers who commented and the brokers association that commented indicated their approval of the proposal stating that identifying filers with their filer codes would facilitate and expedite the release of goods. It was also suggested that this filer code information be made available on the Customs Internet site.

Customs response—Customs agrees that the publication of the filer code information will facilitate the flow of importations and expedite the release of goods. Customs also agrees that it would be useful for the filer code information to be made available electronically. Accordingly, Customs will make the filer code information available periodically on the Customs Electronic Bulletin Board ((703) 440–6155) and its Internet web site (www.customs.ustreas.gov).

Comment—Two carrier/transportation companies supported the proposal stating that the publication of filer code information will improve notification procedures regarding the arrival of in-bond shipments. Further, it was stated that publication of filer code information would be useful in coordinating the release of all shipments, would facilitate the notification of parties in interest to resolve discrepancies or other problems or questions, and should enhance the efficiency and speed of import transactions.

Customs response—Customs agrees with these expectations, which are consistent with the purpose for the publication of the filer code information.

Comment—The sureties and surety associations stated that they are in favor of the proposal as the publication of the filer code information will be beneficial to the trade community.

Customs response—Again, Customs agrees with this expectation.

Comment—An importer opposed the proposal stating that publication of the filer code information will make proprietary business information known to competitors. The commenter further states that Customs should provide that importers can request confidentiality of this information.

Customs response—As stated in the Notice of Proposed Rulemaking, after a comprehensive review of the operational situation in the commercial environment, Customs has concluded that filer code information is not proprietary and, therefore, not confidential. Information that is proprietary, such as entry-specific information, will continue to enjoy confidential treatment. Because Customs no longer considers the identity of filer code holders proprietary information, Customs believes there is no reason to allow importers to request confidentiality of this information or for Customs to assume the administrative burden of processing such requests.

Conclusion

Having analyzed and discussed the five comments received and upon further consideration of the proposed action, Customs has decided to make the filer code information available electronically on its Internet web site (www.customs.ustreas.gov) and on the Customs Electronic Bulletin Board ((703) 440–6155). Accordingly, that portion of T.D. 88–38 that provides for the confidential treatment of filer code information upon the request of an importer is revoked and § 142.3a of the Customs Regulations is amended to provide for the availability by electronic means of entry filer code information, which will be updated periodically.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Because this final rule document will confer a benefit on the public by improving access to frequently needed information by the trade industry

without any action being required on its part, pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that the amendment to the Customs Regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information: The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 142

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

For the reasons set forth above, part 142 of the Customs Regulations (19 CFR part 142), is amended as set forth below:

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. In § 142.3a, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively; in the first sentence of newly designated paragraph (e) the reference "paragraph (c)" is revised to read "paragraph (d)"; and a new paragraph (c) is added to read as follows:

§ 142.3a Entry numbers.

* * * * *

(c) *Publication of Entry Filer Codes.* Customs shall make available electronically a listing of filer codes and the importers, consignees, and customs brokers assigned those filer codes. The listing will be updated periodically.

* * * * *

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 17, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–6880 Filed 3–16–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1220

[Docket No. 98N–0135]

Revocation of Regulations Under the Tea Importation Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the regulations under the Tea Importation Act. This action is in response to the passage of the Federal Tea Tasters Repeal Act on April 9, 1996, that repealed the Tea Importation Act of 1897. In addition, the agency is withdrawing the proposed rule that announced the agency's intentions to implement the Tea Importation Act in the wake of the agency's appropriation for fiscal year (FY) 1996, which did not provide funds to operate the Board of Tea Experts. The proposal has been rendered moot by the repeal of the Tea Importation Act.

DATES: The regulation is effective April 17, 1998. Comments by April 16, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12430 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hilario R. Duncan, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–8281.

SUPPLEMENTARY INFORMATION: On April 9, 1996, President Clinton signed into law the Federal Tea Tasters Repeal Act of 1996 (Pub. L. 104–128). This act repealed the Tea Importation Act of 1897 (21 U.S.C. 41 *et seq.*), eliminating the Board of Tea Experts and related programs that prohibited the importation of tea that does not meet the standards established by FDA for purity, quality, and fitness for consumption. The regulations implementing the Tea Importation Act of 1897 are codified in part 1220 (21 CFR part 1220).

In view of Congress' repeal of the Tea Importation Act of 1897, the legal authority under which part 1220 was issued, and the elimination of the Board of Tea Experts, the agency has concluded that part 1220 should be revoked. In addition, the agency is withdrawing the proposal published in the **Federal Register** of February 7, 1996 (61 FR 4597). The proposal announced the agency's intentions to implement the Tea Importation Act in the wake of the agency's appropriation for FY 1996, which did not provide funds to operate the Board of Tea Experts. The proposal has been rendered moot by the repeal of the Tea Importation Act.

Therefore, in accordance with the Federal Tea Tasters Repeal Act of 1996, FDA is revoking "Part 1220—Regulations Under the Tea Importation Act."

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA is revoking part 1220 by final rule without first publishing a general notice of proposed rulemaking. A final regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 601–612) is, therefore, not required. The agency expects the revocation of part 1220 to reduce the burden on small entities. In addition, FDA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

Because FDA is revoking regulations that were issued under legal authority that Congress has repealed, the agency for good cause finds that notice and public procedure on this rule is unnecessary and, therefore, not required under 5 U.S.C. 553. See *Hadson Gas Systems, Inc. v. FERC*, 75 F.3d 680 (D.C. Cir. 1996). Under 21 CFR 10.40(e), however, interested persons may, on or before April 16, 1998, submit to the Dockets Management Branch (address above) written comments regarding revocation of this part. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1220

Administrative practice and procedure, Customs duties and inspection, Imports, Public health, Tea.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1220 is removed.

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

Part 1220 [Removed]

1. Part 1220 is removed.

Dated: March 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–6777 Filed 3–16–98; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1806, 1807, 1816, 1819, and 1837

Revisions to the NASA FAR Supplement on Performance-Based Contracting and Other Miscellaneous Revisions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to clarify that Performance-Based Contracting (PBC) is the preferred contracting technique for the acquisition of all supplies and services at NASA; provide guidance on the appropriate contract type for PBC requirements; provide common sense guidance as to when positive and negative incentives should not be used; and clarify the use of award fee incentives in conjunction with other contract types. Other miscellaneous revisions are made to conform with recent FAR numbering changes.

EFFECTIVE DATE: March 17, 1998.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Sateriale, NASA, Office of Procurement, Contract Management Division (Code HK), 202) 358–0491.

SUPPLEMENTARY INFORMATION:

Background

Federal Acquisition Circular 97–1 revised FAR 7.105 and added FAR 37.6 to address Performance-Based Service Contracting. These changes obviate the need for similar coverage in the NFS, although coverage is added to clarify that NASA policy on use of PBC is not limited to service contracts. In addition, the following changes are made:

1. New guidance is added regarding the use of incentives in performance-based contracts. Included in this guidance is the addition of new sections discussing the use of a CPAF contract type for PBC requirements and the use of performance incentives. Previous restrictions on the use of CPAF for PBC requirements are deleted.

2. The requirement in 1806.302–470(b) for competition advocate approval of a memorandum justifying not preparing a justification for other than full and open competition pursuant to FAR 6.302–4, International Agreement, is deleted to reflect a statutory change made by section 841(b) of the Defense Authorization Act for Fiscal Year 1998.

3. Miscellaneous editorial changes are made to align the NFS with FAR section titles and numbers.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1806, 1807, 1816, 1819, and 1837

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1806, 1807, 1816, 1819, and 1837 are amended as follows:

1. The authority citation for 48 CFR Parts 1806, 1807, 1816, 1819, and 1837 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1806—COMPETITION REQUIREMENTS

1806.302–470 [Amended]

2. In section 1806.302–470, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).

PART 1807—ACQUISITION PLANNING

1807.105 [Amended]

3. In the introductory text to section 1807.105, the following sentence is added to the end of the paragraph to read as follows:

1807.105 Contents of written acquisition plans.

* * * The requirements in FAR 7.105 regarding performance-based contracting methods shall not be limited to acquisition plans for service contracts.

PART 1816—TYPES OF CONTRACTS

Subpart 1816.1—[Added]

4. Subpart 1816.1 is added to read as follows:

Subpart 1816.1—Selecting Contract Types

1816.104 Factors in selecting contract types.

1816.104–70 Contract type for performance-based contracting (PBC).

(a) PBC is defined in FAR 37.101 and discussed in FAR 37.6. Although FAR part 37 primarily addresses services contracts, PBC is not limited to these contracts. PBC is the preferred way of contracting for all supplies and services at NASA. Generally, when contract performance risk under a PBC specification can be fairly shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., FFP, FPIF, or CPIF) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using quantitative measures, a CPAF contract may be used.

(b) A level-of-effort contract is not PBC.

1816.402, 1816.402–2, 1816.402–70 [Amended]

5. Sections 1816.402 and 1816.402–2 and the first sentence in paragraph (a) to section 1816.402–70 are revised to read as follows:

1816.402 Application of predetermined, formula-type incentives. (NASA paragraphs 1, 2 and 3).

When considering the use of a quality, performance, or schedule incentive, the following guidance applies.

(1) A positive incentive is generally not appropriate unless—

(i) Performance above the target (or minimum, if there are no negative incentives) level is of significant value to the Government;

(ii) The value of the higher level of performance is worth the additional cost/fee;

(iii) The attainment of the higher level of performance is clearly within the control of the contractor; and

(iv) An upper limit is identified, beyond which no further incentive is earned.

(2) A negative incentive is generally not appropriate unless—

(i) A target level of performance can be established, which the contractor can reasonably be expected to reach with a diligent effort, but a lower level of performance is also minimally acceptable;

(ii) The value of the negative incentive is commensurate with the lower level of performance and any additional administrative costs; and

(iii) Factors likely to prevent attainment of the target level of

performance are clearly within the control of the contractor.

(3) When a negative incentive is used, the contract must indicate a level below which performance is not acceptable.

1816.402–2 Performance incentives.

1816.402–270 NASA technical performance incentives.

(a) A performance incentive shall be included in all contracts based on performance-oriented documents (see FAR 11.101(a)) where the primary deliverable(s) is (are) hardware and where total value (including options) is greater than $25 million unless it is determined that the nature of the acquisition (for example, commercial off-the-shelf computers) would not effectively lend itself to a performance incentive. * * *

1816.405–270 [Amended]

6. Section 1816.405–270 is revised to read as follows:

1816.405–270 CPAF contracts.

(a) Use of an award fee incentive shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the ~~o~~other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should not be used on contracts with a total estimated cost and fee less than $2 million per year. The procurement officer may authorize use of award fee for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(b) Except as provided in paragraph (c) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (e.g., FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(c) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

1816.405–274 [Amended]

7. In section 1816.405–274, paragraph (e) is revised to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(e) When an AF arrangement is used in conjunction with another contract type, the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g. CPIF, FPIF).

* * * * *

PART 1819—SMALL BUSINESS PROGRAMS

Subpart 1819.6—[Amended]

8. Section heading "Subpart 1819.6—Certificates of Competency" is revised to read "Subpart 1819.6—Certificates of Competency and Determinations of Responsibility".

PART 1837—SERVICE CONTRACTING

1837.102, 1837.102–70 [Removed]

9. Sections 1837.102 and 1837.102–70 are removed.

[FR Doc. 98–6674 Filed 3–16–98; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[RSPA Docket PS–128; Amendment 199–15]

RIN 2137–AC84

Drug and Alcohol Testing; Substance Abuse Professional Evaluation for Drug Use

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: In this final rule, the Research and Special Programs Administration (RSPA) modifies current procedures in its drug testing regulations by requiring a face-to-face evaluation by substance abuse professionals (SAP) for pipeline employees who have either received a positive drug test or have refused a drug test required by RSPA. In addition, the SAP could require a pipeline employee to complete a rehabilitation program before being eligible to return to duty. Similar requirements are included in the drug testing regulations of the other modal administrations. Adding these requirements will ensure conformity among the modal administrations which will assist with the overall management of RSPA's drug testing regulations.

DATES: This rule is effective April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Catrina M. Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202)366–6199, Fax: (202)366–4566, e-mail: catrina.pavlik@RSPA.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 49 U.S.C. 60601 of the pipeline safety law, RSPA administers drug testing regulations for pipeline operators.

On August 20, 1997, RSPA published in the **Federal Register** (62 FR 44250, Docket No. PS–128, Amendment 15) a notice of proposed rulemaking to modify current procedures in its drug testing regulations governing situations in which pipeline employees test positive on a drug test. Because similar requirements are found in the drug testing regulations of the other modal administrations, and in RSPA's alcohol testing regulations, RSPA proposed to make the procedures and policy in those regulations applicable to pipeline operators under the drug testing regulations. RSPA proposed to require pipeline operators to utilize a substance abuse professional (SAP) to evaluate pipeline employees who have either received a positive drug test or have refused a drug test required by RSPA. In addition, the SAP could require an employee to complete a rehabilitation program before being eligible to return to duty, if needed. RSPA also proposed to revise the word "employee" to "covered employee" and to add the definition for "covered function." Comments to the notice of proposed rulemaking were due on or before October 20, 1997.

Comments Received

RSPA received 10 comments: 6 from pipeline operators, 1 from a trade association and 3 from consortia. The comments fell within the following general categories: (1) Review of Drug Testing Results; (2) Drug Test Required—Return to Duty Testing; (3) SAP Determines Follow-up Testing; (4) Qualification for a SAP; and (5) Other Comments. The comments are addressed based on those categories.

1. Review of Drug Testing Results

The notice of proposed rulemaking proposed that if the Medical Review Officer (MRO) determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result, other than the unauthorized use of prohibited drug(s), the MRO shall verify the test result as positive. If unauthorized use is

found, the MRO shall require that the covered employee who engages in conduct prohibited under Section 199.9, be evaluated face-to-face by a substance abuse professional who shall determine what assistance, if any, the covered employee needs in resolving problems associated with illegal drug use.

All ten commenters supported this portion of the notice of proposed rulemaking. They stated that they were already performing this function for employees that are covered by another operating administration. They also said that conformity among the modes would make administering this program much easier.

RSPA received 2 comments on the continued employment of a covered employee after a positive drug test result or a refusal to test. In addressing the concerns of these commenters, RSPA has decided to change the language so that the MRO, not only must refer the covered employee to a SAP, but must also refer him/her to the personnel or administrative officer for the pipeline operator. This will enable the operator to follow through with internal proceedings that are in accordance with the operator's anti-drug plan.

2. Drug Test Required—Return To Duty Testing

The notice proposed language in Section 199.11(e) which stated that a covered employee who refuses to take or does not pass a drug test may not return to duty in the covered function until the covered employee has been evaluated by a SAP, and has properly followed any prescribed rehabilitation program.

We received 3 comments to review and clarify the language in this section. The first commenter was concerned that the proposed language creates the inference that a covered employee who refuses to take a drug test or who does not pass a drug test has a right to return to work upon evaluation by a SAP. Specifically, the concern was that the wording may have the unintended effect of altering the employer/employee relationship and requiring an employer to provide a rehabilitation opportunity to an employee, with that employee thereafter having a right to return to work for the employer. The second commenter wanted RSPA to clarify that the evaluation conducted by the SAP would be done on a face-to-face basis. The third commenter requested clarification of the "pass or fail" language.

RSPA agrees with the three comments and is revising the phrasing of the language in Section 199.11(e) along with the previously mentioned change in Section 199.15(d)(2). This will not alter the existing employer/employee relationship and will not require that the employer provide rehabilitation to an employee. RSPA is also clarifying that the SAP evaluation must be conducted on a face-to-face basis, and has changed the language to use "positive or negative."

One comment suggested that the follow-up testing requirements be separated from the return-to-duty requirements. RSPA has modified Section 199.11 to add Follow-Up Testing under a new subsection (f).

3. SAP Determines Follow-up Testing

RSPA received 2 comments requesting clarification of the language on the role of the MRO in relation to the SAP when determining the follow-up testing schedule. After further consideration, RSPA has agreed to remove the consultation requirement between the MRO and the SAP when determining the follow-up testing schedule. The role of determining the follow-up testing schedule will be the sole function of the SAP.

4. Qualifications for a SAP

RSPA received 1 comment requesting specific language on an MRO's ability to serve as a SAP. This change is not necessary because the definition of a SAP, found in 49 CFR Part 40, does not prohibit an MRO from becoming a SAP.

5. Other Comments

RSPA received 2 comments from pipeline operators requesting changes in parts of the regulations that were not covered by the notice of proposed rulemaking, such as, substituting a 72 hour time period for the 60 day time period requirement, eliminating the RSPA option for the pipeline operator to require payment in advance for a retest, and eliminating the RSPA requirement for an MRO to declare a specimen negative that has been determined to be scientifically insufficient.

RSPA received 1 comment requesting clarification on whether a positive pre-employment test result necessitates return-to-duty and follow-up testing. RSPA currently addresses this in Section 199.11(a). It states that no operator may hire or contract any person unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of the drug testing regulations.

Advisory Committee Review

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) and the Technical Pipeline Safety Standards Committee (TPSSC) met on November 18, 1997, to consider the items discussed in the August 20, 1997, Notice of Proposed Rulemaking, in Docket No. PS–128. (The THLPSSC and TPSSC were established by statute to evaluate the technical feasibility, reasonableness, and practicability of proposed regulations.) The consensus of the THLPSSC and TPSSC was to support the Notice of Proposed Rulemaking.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule requires that pipeline employees who either test positive for prohibited drugs or refuse to be tested must be evaluated by a substance abuse professional (SAP) who could require that an employee undergo rehabilitation prior to the employee's return to duty in a covered function. The reason for this rule change is to conform RSPA's drug testing program to its alcohol testing program as well as the drug and alcohol testing programs of all other DOT modes.

RSPA concluded that because all pipeline companies already employ SAPs for their alcohol testing programs it is likely the same professional will be used to perform this same function on the drug testing program. Furthermore, this final rule requires that employees who test positive could be required to undergo rehabilitation before their return to duty. RSPA, however, does not require that the employer pay for this treatment. Many employees may also be terminated or placed in non-covered functions rather than be given the opportunity for treatment. Therefore, the cost of the treatment is not the financial responsibility of the employer. Another factor that was taken into account is that the most recent drug testing results show that only 0.7% of the employees tested positive for drugs. Therefore, the number of employees who would need to be evaluated by a SAP is minimal. Given the fact that pipeline companies already employ or presently contract with SAPs, they are not required to pay for or offer rehabilitation for employees who test positive, and that a minimal number of employees would require evaluation, RSPA believes that this rule will have little to no economic impact on any pipeline company. RSPA finds that this rule is not significant under Section 3(f) of Executive Order 12866 and also not significant under the Regulatory Policies and Procedures of the Department of Transportation.

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Executive Order 12612

This final rule would not have substantial direct effect on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this final rule would not have sufficient federalism implications to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

Because this final rule will impose little to no additional cost on pipeline operators (see discussion on the regulatory evaluation), RSPA certifies under section 605 of the Regulatory Flexibility Act (5 U.S.C.) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements in this rule.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 199

Drug testing, Pipeline safety.

In consideration of the foregoing RSPA amends, 49 CFR part 199 as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 60101 *et seq.*; 49 CFR 1.53.

2. Section 199.3 is amended by removing the definition of *Employee* and adding new definitions of *Covered employee* and *Covered function* to read as follows:

§ 199.3 Definitions.

* * * * *

Covered employee means a person who performs, on a pipeline or LNG facility, an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter. This does not include clerical, truck driving, accounting, or other functions not subject to part 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

Covered function means an operations, maintenance, or emergency-response function conducted on the pipeline or LNG facility that is regulated by part 192, 193, or 195.

* * * * *

3. Section 199.11 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 199.11 Drug tests required.

* * * * *

(e) *Return to duty testing.* A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has had a face-to-face evaluation conducted by a substance abuse professional, and has properly followed any prescribed assistance.

(f) *Follow-up testing.* A covered employee who refuses to take or has a positive drug test shall be subject to unannounced follow-up drug tests administered by the operator following the covered employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. In addition, follow-up testing may include testing for alcohol as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

4. Section 199.15 is amended by revising paragraph (d)(2) and adding new paragraphs (e) and (f) to read as follows:

§ 199.15 Review of drug testing results.

* * * * *

(d) * * *

(2) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer:

(i) The individual tested to a personnel or administrative office for further proceedings in accordance with the operator's anti-drug plan; and

(ii) For evaluation by a SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with drug misuse.

* * * * *

(e) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.

(f) The operator shall ensure that a substance abuse professional, who determines that a covered employee requires assistance in resolving problems with drug abuse, does not refer the covered employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a covered employee for assistance provided through:

(1) A public agency, such as a State, county, or municipality;

(2) The operator or a person under contract to provide treatment for drug problems on behalf of the operator;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

Issued in Washington, DC, on March 11, 1998.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98–6859 Filed 3–16–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980225048–8059–02; I.D. 030698A]

RIN 0648–AK58

Pacific Halibut Fisheries; Catch Sharing Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; annual management measures for Pacific halibut fisheries and approval of catch sharing plans.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces the approval of modifications to the Catch Sharing Plan for Area 2A and publishes the implementing regulations for 1998. These actions are intended to enhance the conservation of the Pacific halibut stock in order to help rebuild and sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

DATES: This final rule is effective March 15, 1998.

ADDRESSES: NMFS Alaska Region, 709 West 9th St., P.O. Box 21668, Juneau, AK 99802–1668; or NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6143 or Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: The IPHC has promulgated regulations governing the Pacific halibut fishery in 1998, under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k). Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 1998 IPHC annual management measures are published in the **Federal Register** to provide notice of their effectiveness and to inform persons subject to the regulations of the restrictions and requirements.

The IPHC held its annual meeting on January 26–29, 1998, in Anchorage, Alaska, and adopted regulations for 1998. The substantive changes to the previous IPHC regulations (62 FR 12759, March 18, 1997) include:

1. New catch limits for all areas;
2. Elimination of the IPHC license requirements for halibut charter vessels operating in waters off the coasts of Alaska and British Columbia;
3. Revision of logkeeping requirements for commercial halibut vessels 26 ft (7.9 meter (m)) and longer; and
4. Establishment of opening dates for the Area 2 commercial directed halibut fishery.

In addition, this action implements Catch Sharing Plans (Plans) for regulatory Areas 2A and 4C, 4D, and 4E. These Plans were developed respectively by the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC) under authority of the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Convention between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NMFS requested the PFMC and NPFMC to allocate halibut catches should such allocation be necessary.

Catch Sharing Plan (CSP) for Area 2A

The PFMC has prepared annual Plans since 1988 to allocate the halibut catch limit for Area 2A among treaty Indian, non-Indian commercial, and non-Indian sport fisheries in and off Washington, Oregon, and California. In 1995, NMFS implemented a Council-recommended, long-term Plan (60 FR 14651, March 20, 1995), which was revised in 1996 (61 FR 11337, March 20, 1996) and 1997 (62 FR 12759, March 18, 1997). The Plan allocates 35 percent of the Area 2A total allowable catch (TAC) to Washington treaty Indian tribes in Subarea 2A–1 and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into two sectors: A directed (traditional longline) commercial fishery that is allocated 85 percent of the non-Indian commercial harvest, and a salmon troll fishery that is allocated 15 percent for harvests of incidental catches of halibut. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53′18″ N. lat.), Oregon and California. The Plan also divides the sport fisheries into seven geographic areas, each with separate allocations, seasons, and bag limits.

For 1998, PFMC recommended changes to the CSP to modify the Pacific halibut sport fisheries in Area 2A in 1998 and beyond, pursuant to recommendations from the Washington Department of Fish and Wildlife (WDFW) and the Oregon Department of Fish and Wildlife (ODFW). The purpose of the changes was to increase sport fishing opportunity for halibut at higher TAC levels, allow sport fishery users to better utilize their allocation, and provide an opportunity for sablefish longline fishermen to retain incidentally caught halibut when the halibut TAC is high. For the Washington sport fisheries, the PFMC recommended changing the CSP such that when the 2A TAC is above 550,000 lb (249.5 mt), the sharing of the Washington sport allocation among the four subareas would change to 32 percent each to the WA Inside Waters, WA North Coast and WA South Coast subareas, and 4 percent to the Columbia River subarea. Further, at TACs in excess of 900,000 lb (408.2 mt), the Council recommended applying the Washington sport share of the TAC above 214,110 lb (97.1 mt), provided a minimum of 10,000 lb (4.5 mt) is available (i.e., the Washington sport allocation is 224,110 lb (101.7 mt) or greater) to incidental catches in the non-Indian commercial fishery for sablefish north of Point Chehalis, WA. For the Oregon sport fisheries, the Council recommended frameworking the opening dates and providing a fixed season for the Oregon South Coast area.

A complete description of the PFMC recommended changes to the CSP, notice of a draft Environmental Assessment and Regulatory Impact Review (EA/RIR), and proposed sport fishery management measures were published in the **Federal Register** on January 26, 1998 (63 FR 3693), with a request for public comments. No public comments were received on the proposed changes to the CSP, except for a statement of support for the changes by the Washington Department of Fish and Wildlife. Also, no comments were received on the EA/RIR. Therefore, NMFS has approved the changes to the CSP as proposed, made a finding of no significant impact on the environment, and finalized the EA/RIR. Copies of the complete CSP for Area 2A as modified and the final EA/RIR are available from the NMFS Northwest Regional Office (see **ADDRESSES**).

In accordance with the CSP, the WDFW and the ODFW held public workshops (after the IPHC set the Area 2A quota) on February 2 and 9, 1998, respectively, to develop recommendations on the opening dates and weekly structure of the sport fisheries. The WDFW and ODFW sent letters to NMFS on February 6 and 17, 1998, respectively, advising on the outcome of the workshop and provided the following comments and recommendations on the opening dates and season structure for the sport fisheries. In addition, NMFS received one public comment on the proposed sport seasons included in the following comment and response section.

Comment: WDFW recommended a May 22 to August 3 season, 5 days per week (closed Tuesday and Wednesday) for the Washington Inside Waters area sport fishery. The recommended number of fishing days is based on analysis of past harvest patterns in this fishery.

Response: NMFS agrees with the calculated number of fishing days necessary to achieve, but not exceed, the subquota for this area. The recommended season has been incorporated in the 1998 sport fishery measures.

Comment: WDFW recommended that the Washington North Coast area sport fishery be structured such that 15,000 lb (6.8 mt) of the subarea quota be reserved to provide for the second priority in the CSP—a July 1 season. The WDFW recommendation is for the sport fishery to open on May 1 and to continue to June 30, or until 81,052 lb (36.7 mt) of the 96,052 lb (43.6 mt) quota are harvested. The fishery would reopen on July 1 and continue 5 days/week (closed Sunday and Monday) until the quota has been taken or until September 30.

Response: NMFS agrees and has incorporated these recommendations into the 1998 sport fishery measures.

Comment: WDFW recommended that the seasonal structure set forth in the CSP be implemented for the sport fisheries in the Washington South Coast and the Columbia River subareas.

Response: NMFS has structured the seasons for these subareas in accordance with the CSP.

Comment: ODFW recommended a 6-day season for the May opening in the Oregon Central Coast and South Coast subareas based on an analysis of past harvest rates which indicated an increasing annual trend in the sport fishery. Sport users at the ODFW workshop recommended a 7-day season based on the 1997 rates of harvest. ODFW did not recommend using the 1997 harvest per day because the annual harvest per day has consistently exceeded the rate from the previous year. One public comment submitted to NMFS recommended a 7-day season.

Response: NMFS has implemented a 6-day fixed season in May for these two subareas. The CSP stipulates that the number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas. Based on the increasing annual trend in harvest in these sport fisheries, a 7-day season may result in a catch that exceeds the subquota, and would not be consistent with the CSP.

Comment: ODFW and the public in attendance at the ODFW workshop recommended no additional open days in May-June if unharvested quota remains after the fixed opening days in the Oregon Central Coast subarea. Instead, it was recommended that any unused quota be used in the August fishery, which is a Friday-Saturday fishery. One public comment submitted to NMFS recommended additional fishing on Thursdays in June.

Response: The CSP stipulates that "If sufficient catch remains for an additional day of fishing after the May season or the August season, openings will be provided if possible in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason." Further, the CSP stipulates that "ODFW will monitor landings and provide a post-season estimate of catch within 2 weeks of the end of the fixed season." Since a 6-day May season would extend to late May (May 23), additional opening dates in May cannot be set that would provide the necessary 2-week timeframe for ODFW to estimate the catch during the fixed season. Therefore, NMFS agrees with the recommendation to transfer any unused quota to the August fishery.

Comment: ODFW and the public in attendance at the ODFW workshop recommended 4 additional opening days after the May fixed season on June 12, 13, 19, and 20, with a Saturday preference, for the Oregon South Coast subarea.

Response: NMFS has incorporated these dates in the sport fishery management measures.

Comment: ODFW recommended a 1-day fixed season for the August fishery on August 7 based on an analysis of past harvest rates. Sport users at the ODFW workshop recommended a 2-day season on August 7 and 8. ODFW did not recommend a 2-day season because the projected catch would exceed the quota with 2 full days of fishing. ODFW will make a projection in mid-July to determine whether sufficient quota remains to recommend a second day of fishing on August 8.

Response: The August fishery is scheduled for only 1 day on August 7 to ensure that the quota is not exceeded. Inseason action may be taken to allow for an additional all-depth fishing day in accordance with the CSP if sufficient quota remains. If the remaining unharvested quota is insufficient for 1 day of all depth fishing, the CSP stipulates that the fishery will reopen in the area inside 30 fathoms and continue until the quota is taken or September 30, whichever is earlier.

Accordingly, NMFS has implemented sport fishing management measures in Area 2A based on recommendations from the states in accordance with the CSP.

Catch Sharing Plan for Areas 4C, 4D, and 4E

The NPFMC developed a Plan in 1996 for allocating the Area 4 catch limit established by the IPHC among subareas 4A, 4B, 4C, 4D, and 4E. This Plan was approved by NMFS and first implemented in 1996 (61 FR 11337, March 20, 1996). In 1997, the NPFMC recommended changing the Plan. NMFS published a proposed rule in the **Federal Register** (63 FR 1812, January 12, 1998) to implement the NPFMC action to revise the CSP. Public comment on the proposed rule was invited for a 30-day period that ended on February 11, 1998. No comments were received. This final rule contains no changes from the proposed rule. Amendment of the Plan as proposed was approved by NMFS and implemented by this action.

The revised CSP removed Areas 4A and 4B from the CSP, so that catch limits for those areas and a combined Area 4C–4E may be set according to the IPHC's biomass-based methodology. Further, the revised CSP provides for apportioning the combined Area 4C–4E catch limit among Areas 4C, 4D, and 4E as separate catch limits. The revised CSP constitutes a framework to be applied to the combined annual catch limit established by the IPHC for Areas 4C, 4D, and 4E. The purpose of the revised CSP is to provide for the apportionment of catch limits to Areas 4C, 4D, and 4E apart from Areas 4A and 4B. This is necessary to carry out the objectives of the Individual Fishing Quota and Western Alaska Community Development Quota programs, which allocate halibut among U.S. fishermen. The IPHC, consistent with its authority and responsibilities, will implement the measures specified in this CSP beginning in 1998. This revised CSP

will continue in effect until amended by the NPFMC or superseded by action of the IPHC. The 1998 catch limits established by the IPHC for the Areas 4C, 4D, and 4E and published at section 11 of the following regulations are consistent with the Plan.

In addition to revision of the CSP, the proposed rule published January 12, 1998 (63 FR 1812), proposed a regulatory change at 50 CFR 300.63(b). This change is necessary for consistency with the revised CSP implemented by this action. The 30-day public comment period on the proposed rule change ended on February 11, 1998, and no comments were received. Therefore, NMFS is incorporating into this action the final rule implementing the change to 50 CFR 300.63(b) with no change from the proposed rule.

The 1998 Pacific halibut fishery regulations that follow are identical to those recommended by the IPHC and approved by the Secretary of State and include the domestic regulations approved by NMFS that are necessary to implement the CSP in Area 2A.

1998 Pacific Halibut Fishery Regulations

1. Short Title

These regulations may be cited as the Pacific Halibut Fishery Regulations.

2. Interpretation

(1) In these Regulations,

(a) *Authorized officer* means any State, Federal, or Provincial officer authorized to enforce these regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Division of Fish and Wildlife Protection (ADFWP), and the United States Coast Guard (USCG);

(b) *Charter vessel* means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(c) *Commercial fishing* means fishing the resulting catch of which either is or is intended to be sold or bartered;

(d) *Commission* means the International Pacific Halibut Commission;

(e) *Daily bag limit* means the maximum number of halibut a person may take in any calendar day from Convention waters;

(f) *Fishing* means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(g) *Fishing period limit* means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(h) *Land*, with respect to halibut, means the offloading of halibut from the catching vessel;

(i) *License* means a halibut fishing license issued by the Commission pursuant to section 3;

(j) *Maritime area*, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party;

(k) *Operator*, with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(l) *Overall length* of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(m) *Person* includes an individual, corporation, firm, or association;

(n) *Regulatory area* means an area referred to in section 6;

(o) *Setline gear* means one or more stationary, buoyed, and anchored lines with hooks attached;

(p) *Sport fishing* means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing;

(q) *Tender* means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the National Ocean Service or the Canadian Hydrographic Service.

(3) In these Regulations all weights shall be computed on the basis that the heads of the fish are off and their entrails removed.

3. Licensing Vessels

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid only for either the directed commercial fishery during the fishing periods specified in paragraph (2) of section 8 or the incidental catch fishery during the salmon troll fishery specified in paragraph (3) of section 8, but not both.

(4) A license issued in respect of a vessel referred to in paragraph (1) must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(5) The Commission shall issue a license in respect of a vessel, without fee from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(6) A vessel operating in the directed commercial fishery in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 P.M. on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(7) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 P.M. on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(8) Application forms may be obtained from any authorized officer or from the Commission.

(9) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(10) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(11) Licenses issued under this section shall be valid only during the year in which they are issued.

(12) A new license is required for a vessel that is sold, transferred, renamed, or re-documented.

(13) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(14) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, Code of Federal regulations, part 904.

4. Inseason Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) Will not result in exceeding the catch limit established preseason for each regulatory area;

(b) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.

(2) Inseason actions may include, but are not limited to, establishment or modification of the following:

(a) Closed areas;

(b) Fishing periods;

(c) Fishing period limits;

(d) Gear restrictions;

(e) Sport bag limits;

(f) Size limits; or

(g) Vessel clearances.

(3) Inseason changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce inseason actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

5. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(2) Sections 6 to 21 apply to commercial fishing for halibut.

(3) Section 7 applies to the Western Alaska Community Development Quota (CDQ) fishery in Area 4E.

(4) Section 22 applies to the United States treaty Indian tribal fishery in Area 2A–1.

(5) Section 23 applies to sport fishing for halibut.

(6) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

6. Regulatory Areas

The following areas shall be regulatory areas for the purposes of the Convention:

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′57″ N. lat., 136°38′18″ W. long.) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. lat., 155°35′00″ W. long.) to Cape Ikolik (57°41′17″ N. lat., 154°47′18″ W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. lat., 154°08′44″ W. long.), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. lat., 164°20′00″ W. long.) and south of 54°49′00″ N. lat. in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00′00″ W. long. and south of 56°20′00″ N. lat.;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. lat.;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00′00″ W. long., south of 58°00′00″ N. lat., and west of 168°00′00″ W. long.;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. long.;

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00′00″ W. long., and south of 65°34′00″ N. lat.

7. Fishing in Regulatory Area 4E

(1) A person may retain halibut taken with setline gear in the Area 4E CDQ fishery that are smaller than the size limit specified in Section 13, provided that no person may sell or barter such halibut.

(2) Section 7 shall be effective until December 31, 1999.

8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 10 have not been taken.

(2) Each fishing period in the Area 2A directed fishery south of 46°53′18″ N. lat. shall begin at 0800 hours and terminate at 1800 hours local time on July 22, August 19, August 26, September 9, and September 23, unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A. Vessels participating in the salmon troll fishery in Area 2A may retain halibut caught incidentally during authorized periods, in conformance with the annual salmon management measures announced in the **Federal Register**. The notice also will specify the ratio of halibut to salmon that may be retained during this fishery.

(4) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 15 and terminate at 1200 hours local time on November 15, unless the Commission specifies otherwise.

(5) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 15.

9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved under paragraph (6).

(9) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

10. Closed Area

(1) All waters in the Bering Sea north of 55°00′00″ N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. lat., 164°55′42″ W. long.) to a point at 56°20′00″ N. lat., 168°30′00″ W. long.; thence to a point at 58°21′25″ N. lat., 163°00′00″ W. long.; thence to Strogonof Point (56°53′18″ N. lat., 158°50′37″ W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00′00″ N. lat. and 54°49′00″ N. lat. are closed to commercial halibut fishing.

(2) In Area 2A, all waters north of Point Chehalis, WA (46°53′18″ N. lat.) are closed to the directed commercial halibut fishery.

11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods, specified in section 8 shall be limited to the weight expressed in pounds or metric tons (mt) shown in the following table:

Catch limits	Regulatory area	
	Pounds	Metric tons
2A	168,961	76.6
2B	13,000,000	5,895.7
2C	10,500,000	4,761.9
3A	26,000,000	11,791.4
3B	11,000,000	4,988.7
4A	3,500,000	1,587.3
4B	3,500,000	1,587.3
4C	1,590,000	721.1
4D	1,590,000	721.1
4E	320,000	145.1

(2) Notwithstanding paragraph (1) of this section, the catch limit in Area 2A shall be divided between a directed halibut fishery to operate south of 46°53′18″ N. lat. during the fishing periods set out in paragraph 2 of Section 8 and an incidental halibut catch fishery during the salmon troll fishery in Area 2A described in paragraph 3 of Section 8. Inseason actions to transfer catch between these fisheries may occur in conformance with the Catch Sharing Plan for Area 2A.

(a) The catch limit in the directed halibut fishery is 143,617 lb (65.1 mt).

(b) The catch limit in the incidental catch fishery during the salmon troll fishery is 25,344 lb (11.5 mt).

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken and the specific dates during which the directed fishery will be allowed in Area 2A.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas assigned by Canada's Department of Fisheries and Oceans are taken, or November 15, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will close only when all Individual Fishing Quotas and all Community Development Quotas issued by the National Marine Fisheries Service have been taken, or November 15, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3) or (6) the Commission has announced a date on

which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

12. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(a) The vessel's overall length in feet and associated length class;

(b) The average performance of all vessels within that class; and

(c) The remaining catch limit.

(6) Length classes are shown in the following table:

Overall length	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56+	H

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

13. Size Limits

(1) No person shall take or possess any halibut that:

(a) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

(b) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.

(2) No person shall possess on board a vessel a halibut that has been mutilated, or otherwise disfigured in any manner that prevents the determination of whether the halibut complies with the size limits specified in this section, except that:

(a) This paragraph shall not prohibit the possession on board a vessel of halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at Title 50, Code of Federal regulations, part 679; and

(b) No person shall possess a filleted halibut on board a vessel.

(3) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

14. Careful Release of Halibut

All halibut that are caught and are not retained shall be immediately released and returned to the sea with a minimum of injury by

(a) Hook straightening outboard of the roller;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

15. Vessel Clearance in Area 4

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the unloading of any halibut caught in any of these areas, unless specifically exempted in paragraphs (9), (12), (13), (14), or (15).

(2) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4C or 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(5) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(6) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(7) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(8) Before unloading any halibut caught in Area 4C or 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(9) Any vessel operator who complies with the requirements in Section 16 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, but must comply with the following requirements:

(a) The operator of the vessel must obtain a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the Areas in which the vessel will fish; and

(b) Before unloading any halibut from Area 4, the vessel operator must obtain a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(11) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(12) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(13) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4C and lands its total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Areas 4D and 4E and lands its total annual halibut catch at a port within Areas 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

16. Logs

(1) The operator of any U.S. vessel that has an overall length of 26 feet (7.9 meters) or

greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality. The log information must be recorded in the groundfish daily fishing logbook provided by NMFS, or Alaska hook-and-line logbook provided by Petersburg Vessels Owner Association or Alaska Longline Fishermen's Association, or the logbook provided by IPHC.

(2) The log referred to in paragraph (1) shall be

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing period;

(c) Retained for a period of two years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following offloading halibut:

(3) The log referred to in paragraph (1) does not apply to the incidental halibut fishery in Area 2A defined in paragraph (3) of section 8.

(4) The operator of any Canadian vessel shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality. The log information must be recorded in the British Columbia Halibut Fishery logbook provide by the Department of Fisheries and Oceans (DFO).

(5) The log referred to in paragraph (4) shall be:

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing period;

(c) Retained for a period of 2 years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following offloading halibut; and

(f) Within 7 days of offloading the yellow copy be mailed to the DFO and the white copy be mailed to IPHC.

(6) The poundage of any halibut that is not sold, but is utilized by the vessel operator, his/her crew members, or any other person for personal use, shall be recorded in the vessel's log within 24-hours of offloading.

(7) No person shall make a false entry in a log referred to in this section.

17. Receipt and Possession of Halibut

(1) No person shall receive halibut from a United States vessel that does not have on board the license required by section 3.

(2) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.

(3) A commercial fish processor in the United States who purchases or receives halibut directly from the owner or operator of a vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on State fish tickets or Federal catch reports the date, locality, name of vessel, Halibut Commission license number (for Area 2A), the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased; pounds in excess of IFQs, IVQs, or fishing period limits; pounds retained for personal use; and pounds discarded as unfit for human consumption.

(4) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on State fish tickets or Federal catch reports the date, locality, name of vessel, the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased; pounds in excess of IVQs; pounds retained for personal use; and pounds discarded as unfit for human consumption.

(5) No person shall make a false entry on a State fish ticket or a Federal catch or landing report referred to in paragraph (3) and (4).

(6) A copy of the fish tickets or catch reports referred to in paragraph (3) and (4) shall be:

(a) Retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) Open to inspection by an authorized officer or any authorized representative of the Commission.

(7) No person shall possess any halibut that he/she knows to have been taken in contravention of these Regulations.

(8) When halibut are delivered to other than a commercial fish processor the records required by paragraph (3) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (6).

(9) It shall be unlawful to enter a Halibut Commission license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

18. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in Regulatory Areas 2C, 3A, and 3B may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board when required by NMFS regulations published at Title 50, Code of Federal Regulations, section 679.7(f)(4); and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel when halibut caught in different regulatory areas are on board; and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(4) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel when in compliance with paragraph (3) and if halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear.

(2) No person shall possess halibut taken with any gear other than hook and line gear.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's name;

(b) The vessel's state license number; or

(c) The vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least 4 inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(a) Floating and visible on the surface of the water; and

(b) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(8) No vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or

4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these regulations, a person may retain and possess, but not sell or barter halibut taken with trawl gear only as authorized by NMFS' Prohibited Species Donation regulations.

20. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut

(a) May be retained for personal use; or

(b) May be sold if it complies with the provisions of section 13, Size Limits.

21. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in subarea 2A–1 by members of United States treaty Indian tribes located in the State of Washington shall be regulated under regulations promulgated by NMFS and published in the **Federal Register**.

(2) Subarea 2A–1 includes all waters off the coast of Washington that are north of 46°53′18″ N. lat. and east of 125°44′00″ W. long., and all inland marine waters of Washington.

(3) Commercial fishing for halibut in subarea 2A–1 is permitted with hook and line gear from March 15 through November 15, or until 272,000 lb (123.4 mt) is taken, whichever occurs first.

(4) Ceremonial and subsistence fishing for halibut in subarea 2A–1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 15,000 lb (6.8 mt).

23. Sport Fishing for Halibut

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) In all waters off Alaska:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(3) In all waters off British Columbia:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(4) In all waters off California, Oregon, and Washington:

(a) The total allowable catch of halibut shall be limited to 195,078 lb (88.5 mt) in waters off Washington and 168,961 lb (76.6 mt) in waters off California and Oregon;

(b) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in Section 24. All sport fishing in Area 2A (except for fish caught in the North Washington coast area and landed into Neah Bay) is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (48°35′44″ N. lat., 124°43′00″ W. long.) to the buoy adjacent to Duntze Rock (48°24′55″ N. lat., 124°44′50″ W. long.) to Tatoosh Island lighthouse (48°23′30″ N. lat., 124°44′00″ W. long.) to Cape Flattery (48°22°55″ N. lat., 124°43′42″ W. long.), there is no quota. This area is managed by setting a season that is projected to result in a catch of 57,191 lb (25.9 mt).

(A) The fishing season is May 22 through August 3, 5 days a week (Thursday through Monday).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (47°3′42″ N. lat.), the quota for landings into ports in this area is 96,052 lb (43.6 mt). Landings into Neah Bay of halibut caught in this area will be governed by this paragraph.

(A) The fishing seasons are:

(*1*) Commencing May 1 and continuing 5 days a week (Tuesday through Saturday) until 81,052 lb (36.8 mt) are estimated to have been taken and the season is closed by the Commission, or until June 30, whichever occurs first.

(*2*) Commencing July 1 and continuing 5 days a week (Tuesday through Saturday) until the overall area quota of 96,052 lb (43.6 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area about 19 nm (35 km) southwest of Cape Flattery is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 48°18′00″ N. lat., 125°11′00″ W. long.; 48°18′00″ N. lat., 124°59′00″ W. long.; 48°04′00″ N. lat., 125°11′00″ W. long.; and, 48°04′00″ N. lat., 124°59′00″ W. long.

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38′10″ N. lat.), the quota for landings into ports in this area is 36,648 lb (16.6 mt).

(A) The fishing season commences on May 3 and continues 5 days a week (Sunday through Thursday) until 35,648 lb (16.1 mt) are estimated to have been taken and the season is closed by the Commission. Immediately following this closure, the season reopens in the area from the Queets River south to 47°00′00″ N. lat. and east of 124°40′00″ W. long. and continues every day until 36,648 lb (16.6 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) The northern offshore portion of this area west of 124°40′00″ W. long. and north of 47°10′00″ N. lat. is closed to sport fishing for halibut.

(iv) In the area between Leadbetter Point, WA and Cape Falcon, OR (45°46′00″ N. lat.), the quota for landings into ports in this area is 8,565 lb (3.9 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 8,565 lb (3.9 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 cm).

(v) In the area off Oregon between Cape Falcon and the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.), the quota for landings into ports in this area is 149,362 lb (67.8 mt).

(A) The fishing seasons are:

(*1*) The first season is open on May 14, 15, 16, 21, 22, and 23. The projected catch for this season is 101,566 lb (46.1 mt). Any poundage remaining unharvested will be added to the August season.

(*2*) The second season commences May 24 and continues every day through August 6, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until 10,455 lb (4.7 mt) or the subarea quota is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(*3*) The third season is open on August 7 or until the combined quotas for the subareas described in paragraphs (v) and (vi) of this section totaling 161,189 lb (73.1 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. If the harvest during this opening does not achieve the 161,189 lb (73.1 mt) quota, the season will reopen. If the amount of unharvested catch available is sufficient for an additional day of all-depth fishing, the reopening date will be announced inseason on the NMFS hotline (206) 526–6667 or (800) 662–9825. If the amount of unharvested catch available is not sufficient for an additional day of all-depth fishing, a reopening of the fishery will be announced on the NMFS hotline for the area inside the 30-fathom curve (55 m) which will continue for 7 days per week until the quota is taken or September 30, whichever is earlier. No halibut fishing will be allowed after August 7 unless the opening is announced on the NMFS hotline.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

(vi) In the area off Oregon between the Siuslaw River at the Florence north jetty and

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the California border (42°00'00" N. lat.), the quota for landings into ports in this area is 11,827 lb (5.4 mt).

(A) The fishing seasons are:

(*1*) The first season is open on May 14, 15, 16, 21, 22 and 23. The projected catch for this season is 9,462 lb (4.3 mt). If sufficient unharvested catch remains for an additional day's fishing, the season will reopen. Dependent on the amount of unharvested catch available, the season reopening dates will be June 13, then June 12, then June 20, and then June 19. If a decision is made inseason by NMFS to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the additional dates unless the opening date is announced on the NMFS hotline.

(*2*) The second season commences May 24 and continues every day through August 6, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until 2,365 lb (1.1 mt) or the subarea quota is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(*3*) The third season is open on August 7 or until the combined quotas for the subareas described in paragraphs (v) and (vi) of this section totaling 161,189 lb (73.1 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. If the harvest during this opening does not achieve the 161,189 lb (73.1 mt) quota, the season will reopen. If the amount of unharvested catch available is sufficient for an additional day of all-depth fishing, the reopening date will be announced inseason on the NMFS hotline (206) 526–6667 or (800) 662–9825. If the amount of unharvested catch available is not sufficient for an additional day of all-depth fishing, a reopening of the fishery will be announced on the NMFS hotline for the area inside the 30-fathom curve (55 m) which will continue for 7 days per week until the quota is taken or September 30, whichever is earlier. No halibut fishing will be allowed after August 7 unless the opening is announced on the NMFS hotline.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

(vii) In the area off the California coast, there is no quota. This area is managed on a season that is projected to result in a catch of less than 4,393 lb (2.0 mt).

(A) The fishing season will commence on May 1 and continue every day through September 30.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 cm).

(c) The Commission shall determine and announce closing dates to the public for any area in which the subquotas in this Section are estimated to have been taken.

(d) When the Commission has determined that a subquota under paragraph (4)(b) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(5) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(6) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(7) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(8) The possession limit for halibut in the waters off the coast of British Columbia is three halibut

(9) The possession limit for halibut in the waters off Washington, Oregon, and California is the same as the daily bag limit.

(10) The possession limit for halibut on land in Area 2A north of Cape Falcon, OR is two daily bag limits.

(11) The possession limit for halibut on land in Area 2A south of Cape Falcon, OR is one daily bag limit.

(12) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(13) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(14) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(15) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(16) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

24. Flexible Inseason Management Provisions in Area 2A

(1) The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after making the following determinations.

(A) The action is necessary to allow allocation objectives to be met.

(B) The action will not result in exceeding the catch limit for the area.

(C) If any of the sport fishery subareas north of Cape Falcon, OR are not projected to utilize their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to a Washington sport subarea projected to have the fewest number of sport fishing days in the calendar year.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of sport fishing periods;

(B) Modification of sport fishing bag limits;

(C) Modification of sport fishing size limits; and

(D) Modification of sport fishing days per calendar week.

(3) Notice procedures.

(A) Actions taken under this section will be published in the **Federal Register**.

(B) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206–526–6667 or 800–662–9825 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) Effective dates.

(A) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the Federal Register. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the **Federal Register**.

(C) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) Availability of data. The Regional Administrator will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA.

25. Fishery Election in Area 2A

(1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(a) The sport fishery under Section 23;

(b) The commercial directed fishery for halibut during the fishing period(s) established in Section 8; or

(c) The incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(2) No person shall fish for halibut in the sport fishery in Area 2A under Section 23 from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a

permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed halibut fishery in Area 2A during the fishing periods established in Section 8 from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(4) No person shall fish for halibut in the directed commercial halibut fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in Section 8 for Area 2A or that is licensed to participate in the directed commercial fishery during the fishing periods established in Section 8 in Area 2A.

26. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

Classification

IPHC Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 does not apply to this notice of the effectiveness and content of the IPHC regulations. Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Catch Sharing Plan for Area 2A

An Environmental Assessment/Regulatory Impact Review was prepared on the proposed changes to the Plan. NMFS has determined that the proposed changes to the plan and the implementing management measures contained in and implemented by the IPHS regulations will not significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required by section 102(2)(C) of the National Environmental Policy Act or its implementing regulations. At the proposed rule state, the Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. No comments were received on this certification. Consequently, no regulatory flexibility analysis has been prepared. This action has been determined to be not significant for purposes of E.O. 12866.

Catch Sharing Plan for Areas 4C, 4D, and 4E

At the proposed rule stage, the Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this revision of the CSP would not have a significant economic impact on a substantial number of small entities. No comments were received on this certification. Consequently, no regulatory flexibility analysis was prepared. This action has been determined to be not significant for purposes of E.O. 12866. The revision to CFR 300.63(b) made by this rule is not substantive in that it merely revises the description of the contents of the CSP to reflect that the Council no longer allocates for subareas 4A and 4B. Accordingly, it is not subject to a delay in effective date.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 773–773k.

Dated: March 12, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

2. In § 300.63, paragraph (b) is revised to read as follows:

§ 300.63 Catch sharing plans and domestic management measures.

* * * * *

(b) The catch sharing plan for area 4 allocates the annual TAC among Areas 4C, 4D, and 4E; and will be implemented by the Commission in annual management measures published pursuant to § 300.62.

[FR Doc. 98–6854 Filed 3–12–98; 4:01 pm]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971124274–8052–02; I.D. 110597A]

RIN 0648–AH67

Fisheries of the Exclusive Economic Zone Off Alaska; Forage Fish Species Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 36 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 39 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This action creates a forage fish species category in both FMPs and implements associated management measures. The intended effect of this action is to prevent the development of a commercial directed fishery for forage fish, which are a critical food source for many marine mammal, seabird, and fish species. This action is necessary to conserve and manage the forage fish resource off Alaska and to further the goals and objectives of the FMPs. In addition, this action includes a technical amendment removing a date that is no longer applicable.

DATES: Effective April 16, 1998.

ADDRESSES: Copies of Amendments 36 and 39 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendments 36 and 39 are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) and of the Gulf of Alaska

(GOA) are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI and GOA appear at 50 CFR part 679, and general regulations governing U.S. fisheries appear at 50 CFR part 600.

A notice of availability of amendments 36 and 39 was published on November 12, 1997 (62 FR 60682), with comments on the FMP amendments invited through January 12, 1998. A proposed rule to implement amendments 36 and 39 was published in the **Federal Register** on December 12, 1997 (62 FR 65402), with comments invited through January 26, 1998. One letter of comment was received and is summarized and responded to in the Response to Comments section. Additional information on this action is contained in the preamble to the proposed rule and in the EA/RIR (See **ADDRESSES**). Upon reviewing amendments 36 and 39, the Administrator, Alaska Region, NMFS, has determined that amendments 36 and 39 are necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA and are consistent with the Magnuson-Stevens Act and with other applicable laws.

Response to Comments

The following comment summarizes the one letter received on the FMP amendments and proposed rule:

Comment. The Department of Interior believes that managing forage fish, by establishing a separate category for these species, will benefit the marine ecosystems of the North Pacific. The Department of the Interior supports approval of the amendments as well as issuance of the implementing regulations which would prohibit directed fishing on forage fish species, and the sale, barter, trade, or processing of forage fish.

Response. NMFS agrees with the conclusions of the Department of Interior and has approved amendments 36 and 39.

Elements of the Final Rule

The following is a summary of the main elements of the final rule.

Forage Fish Species Category

The rule defines forage fish species to mean all species of the following families:

Osmeridae (eulachon, capelin, and other smelts),

Myctophidae (lanternfishes),

Bathylagidae (deep-sea smelts),

Ammodytidae (Pacific sand lance),

Trichodontidae (Pacific sandfish),

Pholidae (gunnels),

Stichaeidae (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),

Gonostomatidae (bristlemouths, lightfishes, and anglemouths), and the Order

Euphausiacea (krill).

These species have been grouped together because they are considered to be primary food resources for other marine animals and they have the potential to be the targets of a commercial fishery.

Affected Vessels and Processors

The requirements of the rule apply to all vessels fishing for groundfish in the Federal waters of the BSAI or GOA or processing groundfish harvested in the Federal waters of the BSAI or GOA. The rule does not apply to fishing for forage fish species within State waters.

Prohibition on Directed Fishing

The rule prohibits directed fishing for forage fish at all times in the Federal waters of the BSAI and GOA. The rule establishes maximum retainable bycatch (MRB) percentage of 2 percent for forage fish, meaning that vessels fishing for groundfish may retain a quantity of forage fish equal to no more than 2 percent of the round weight or round-weight equivalent of groundfish species open to directed fishing that are retained on board the vessel during a fishing trip. NMFS data indicate that the aggregate percentage of forage fish incidentally caught in current groundfish fisheries rarely exceeds 2 percent, and many vessels rarely or never encounter catch of forage fish species. Consequently, bycatch of forage fish species is not considered a problem in the groundfish fisheries off Alaska, and the 2-percent MRB is unlikely to result in increased discards of forage fish species.

Harvest Quotas

Insufficient information exists upon which to specify a total allowable catch amount (TAC) for forage fish species. Therefore, this action does not establish procedures for specifying an annual TAC for forage fish species. However, by establishing a new species category for forage fish, NMFS will be able to collect additional data on forage fish from vessel logbooks, weekly production reports, and observer reports. This information may be used to evaluate the need for and appropriateness of other management measures for forage fish species.

Limits on Sale, Barter, Trade or Processing

The rule prohibits the sale, barter, trade, or processing of forage fish species by vessels fishing for groundfish in the Federal waters of the BSAI or GOA or processing groundfish harvested in the BSAI or GOA, except that retained catch of forage fish species not exceeding the 2-percent MRB may be processed into fishmeal and sold. The rule allows fishmeal processing of forage fish retained under the 2-percent MRB amount to prevent undue burdens on operations that process unsorted processing waste into fishmeal. Industry representatives have indicated that separating small quantities of forage fish from the volumes of fish and fish waste that typically enter fishmeal plants would be nearly impossible. The small volumes of fishmeal production allowed under this rule are not expected to provide an incentive for vessels to target on forage fish through "topping off" activity.

This rule does not apply to onshore processors due to limitations of the authority of the Secretary of Commerce under the Magnuson-Stevens Act. At the June 1997 Council meeting, the State of Alaska indicated that it intends to proceed with parallel forage fish regulations to restrict the harvest of forage fish within State waters and the processing of forage fish by onshore processors.

Changes From the Proposed Rule

In the proposed change to Table 2 to 50 CFR Part 679, the order *Euphausiacea* was incorrectly identified as a family. This error has been corrected in the final rule. No other changes have been made in the final rule.

A technical amendment is made to § 679.20(c)(5) by deleting a date that is no longer applicable.

Classification

At the proposed rule stage, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

An informal consultation under the Endangered Species Act was concluded for amendments 36 and 39 on July 11,

1997. As a result of the informal consultation, the Regional Administrator determined that fishing activities under this rule are not likely to adversely affect endangered or threatened species or critical habitat.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 10, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of "forage fish" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Forage fish means all species of the following families:

(1) *Osmeridae* (eulachon, capelin and other smelts),

(2) *Myctophidae* (lanternfishes),

(3) *Bathylagidae* (deep-sea smelts),

(4) *Ammodytidae* (Pacific sand lance),

(5) *Trichodontidae* (Pacific sandfish),

(6) *Pholidae* (gunnels),

(7) *Stichaeidae* (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),

(8) *Gonostomatidae* (bristlemouths, lightfishes, and anglemouths), and

(9) The Order *Euphausiacea* (krill).

* * * * *

3. In § 679.20, paragraph (c)(5) is amended by removing the phrase "(Applicable through December 31, 1996)" and a new paragraph (i) is added as follows:

§ 679.20 General limitations.

* * * * *

(i) *Forage fish*—(1) *Definition.* See § 679.2.

(2) *Applicability.* The provisions of § 679.20(i) apply to all vessels fishing for groundfish in the BSAI or GOA, and to all vessels processing groundfish harvested in the BSAI or GOA.

(3) *Closure to directed fishing.* Directed fishing for forage fish is prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing.* The sale, barter, trade, or processing of forage fish is prohibited, except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production.* Retained catch of forage fish not exceeding the maximum retainable bycatch amount may be processed into fishmeal for sale, barter, or trade.

4. In § 679.22, paragraph (c) is revised to read as follows:

§ 679.22 Closures.

* * * * *

(c) *Directed fishing closures.* See § 679.20(d) and § 679.20(i).

* * * * *

Table 2 to Part 679 [Amended]

5. Table 2 to 50 CFR part 679 is amended by adding species codes 207 Gunnels; 208 Pricklebacks, warbonnets, eelblennys, cockscombs and shannys (family *Stichaeidae*); 209 Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*); 210 Pacific sandfish; 772 Lanternfishes; 773 Deep-sea smelts (family *Bathylagidae*); 774 Pacific sand lance; and 800 Krill (order *Euphausiacea*); in numerical order as follows:

TABLE 2 TO PART 679.—SPECIES CODES

Code	Species
.	.
Group Codes:	
.	.
207	Gunnels.
208	Pricklebacks, warbonnets, eelblennys, cockscombs and shannys (family *Stichaeidae*).
209	Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*).
210	Pacific sandfish.
.	.
772	Lanternfishes.
773	Deep-sea smelts (family *Bathylagidae*).
774	Pacific sand lance.
800	Krill (order *Euphausiacea*).
.	.

Tables 10 and 11 to Part 679 [Amended]

6. Tables 10 and 11 to 50 CFR part 679 are amended by adding a column for aggregate forage fish as follows:

In Table 10 to 50 CFR part 679, a column for "Aggregate Forage Fish" is added between columns "Atka mackerel" and "Other species," and footnote 5 is added to read "Forage fish are defined at § 679.2." Table 10, as revised, reads as follows:

TABLE 10.—GULF OF ALASKA RETAINABLE PERCENTAGES

	Bycatch species [1]												
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish [2]	DSR SEEO [4]	Atka mackerel	Aggregate forage fish [5]	Other species
Basis Species													
Pollock	[3] na	20	20	20	20	20	35	1	5	10	20	2	20
Pacific cod	20	[3] na	20	20	20	20	35	1	5	10	20	2	20
Deep flatfish	20	20	[3] na	20	20	20	35	7	15	1	20	2	20
Rex sole	20	20	20	20	[3] na	20	35	7	15	1	20	2	20
Flathead sole	20	20	20	20	[3] na	20	35	7	15	1	20	2	20
Shallow flatfish	20	20	20	20	20	[3] na	35	1	5	10	20	2	20
Arrowtooth	5	5	0	0	0	0	[3] na	0	0	0	0	2	20
Sablefish	20	20	20	20	20	20	35	[3] na	15	1	20	2	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
DSR–SEEO	20	20	20	20	20	20	35	7	15	[3] na	20	2	20
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	[3] na	2	20
Other species	20	20	20	20	20	20	35	1	5	10	20	2	[3] na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	2	20

[1] For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.
[2] Aggregated Rockfish means any rockfish except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category.
[3] na=not applicable.
[4] SEEO=Southeast Outside District.
[5] Forage fish are defined at §679.2.

In Table 11 to 50 CFR part 679, a column for "Aggregate Forage Fish" is added between columns "Squid" and "Other species," footnote 3 is redesignated as footnote 4, and a new footnote 3 is added to read "Forage fish are defined at §679.2." Table 11, as revised, reads as follows:

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Bycatch species [1]												
	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rock sole	Flathead sole	Greenland turbot	Sablefish	Aggregated rockfish [2]	Squid	Aggregate forage fish [3]	Other species
Basis species [1]														
Pollock	[4] na	20	20	35	20	20	20	20	1	1	5	20	2	20
Pacific cod	20	na	20	35	20	20	20	20	1	1	5	20	2	20
Atka mackerel	20	20	na	35	20	20	20	20	1	1	5	20	2	20
Arrowtooth	0	0	0	na	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na	35	35	35	1	1	5	20	2	20
Other flatfish	20	20	20	35	35	na	35	35	1	1	5	20	2	20
Rock sole	20	20	20	35	35	35	na	35	1	1	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na	35	15	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na	15	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	35	na	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Sharpchin/Northern-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Shortraker/Rougheye-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	5	[4] na	2	20
Other species	20	20	20	35	20	20	20	20	1	1	5	20	2	[4] na
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	5	20	2	20

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera *Sebastes* and *Sebastolobus*.
[3] Forage fish are defined at §679.2.
[4] na = not applicable.

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Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–102–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Models ASW–19 and ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher Segelflugzeugbau (Schleicher) Models ASW–19 and ASK–21 sailplanes. The proposed AD would require: modifying the rudder surface panels; replacing the airbrake bellcrank; and modifying the rear canopy hinge structure. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent loss of the canopy caused by design deficiency, airbrake failure caused by cracking, and rudder panel flutter caused by high density altitude conditions, all of which, if not corrected, could result in reduced sailplane controllability.

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–102–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–102–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–102–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, notified the FAA that unsafe conditions may exist on certain Schleicher Model ASW–19 and ASK–22 sailplanes. The LBA reports the following:

- That airflow over the rudder flight control system when near maximum speed and under high density altitude conditions causes panel flutter of the rudder control panels on the Schleicher Model ASW–19 sailplanes;
- That cracks have been found in the rear canopy hinge structure, which could be caused by insufficient design or leaving the sailplane canopy open and exposed to wind forces on the Schleicher Model ASK–21 sailplanes; and,
- That cracks in the airbrake bellcrank have been found during routine maintenance inspection on the Schleicher Model ASK–21 sailplanes.

These conditions, if not corrected, could result in reduced controllability of these sailplanes.

Relevant Service Information

Alexander Schleicher has issued the following service information: Technical Note 2, dated September 6, 1976, which specifies procedures for stiffening the rudder surface panels on certain Model ASW–19 sailplanes; and, Technical Note 20 dated October 16, 1987, which specifies procedures for inspecting and replacing the airbrake bellcrank, and inspecting and reinforcing the rear canopy hinge on the Model ASK–21 sailplanes.

The LBA classified these service bulletins as mandatory and issued the following AD's in order to assure the continued airworthiness of these sailplanes in Germany: (1) LBA AD 76–258 dated September 3, 1976, against the Model ASW–19 sailplanes for the rudder panel flutter condition; and (2) LBA 88–2 dated January 18, 1988, against the Model ASK–21 sailplanes for the airbrake bellcrank and rear canopy hinge conditions.

The FAA's Determination

The Alexander Schleicher Models ASW–19 and ASK–21 sailplanes are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation

Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since unsafe conditions have been identified that are likely to exist or develop in other Alexander Schleicher Models ASW–19 and ASK–21 sailplanes of the same type design registered in the United States, the proposed AD would require modifying the sailplanes' rudder panel by stiffening the rudder panel, reinforcing the rear canopy hinge, and replacing the airbrake bellcrank. Accomplishment of the proposed actions would be in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 5 sailplanes in the U.S. registry would be affected by the rudder panel portion of the proposed AD, that it would take approximately 10 workhours per sailplane to accomplish the rudder panel portion of the proposed AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per sailplane. Based on these figures, the total cost impact of the rudder panel portion of the proposed AD on U.S. operators is estimated to be $3,250, or $650 per sailplane.

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the airbrake bellcrank portion of the proposed AD, that it would take approximately 6 workhours per sailplane to accomplish the rudder panel portion of the proposed AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per sailplane. Based on these figures, the total cost impact of the airbrake bellcrank portion of the proposed AD on U.S. operators is estimated to be $16,800, or $560 per sailplane.

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the rear canopy hinge portion of the proposed AD, that it would take approximately 11 workhours per sailplane to accomplish the rear canopy hinge portion of the proposed AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $15 per sailplane. Based on these figures, the total cost impact of the rear canopy hinge portion proposed AD on U.S. operators is estimated to be $20,250, or $675 per sailplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher Segelflugzeugbau: Docket No. 97–CE–102–AD.

Applicability: Model ASW–19 sailplanes (serial numbers 19019 through 19037, 19040, and 19042 through 19044), and Model ASK–21 sailplanes (serial numbers 21001 through 21345), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent loss of the canopy caused by design deficiency, airbrake failure caused by cracking, and rudder panel flutter caused by high density altitude conditions, all of which, if not corrected, could result in reduced sailplane controllability, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish the following:

(1) For Alexander Schleicher Model ASW–19 sailplanes, modify the rudder panel in accordance with the Instructions section in Alexander Schleicher ASW 19 Technical Note No. 2, dated September 6, 1976.

(2) For Alexander Schleicher Model ASK–21 sailplanes, replace the airbrake bellcrank with an airbrake bellcrank of improved design in accordance with the Action section, paragraphs 3.1, 3.2, and 3.3 in Alexander Schleicher ASW 21 Technical Note No. 20, dated October 16, 1987.

(3) For Alexander Schleicher Model ASK–21 sailplanes, modify the rear canopy hinge in accordance with the Action section, paragraph 4.2, in Alexander Schleicher ASW 21 Technical Note No. 20, dated October 16, 1987.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to the service information referenced in this AD, should be directed to Alexander

Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD No. 76–258, dated September 3, 1976, for the rudder panel condition; and German AD No. 88–2, dated January 1, 1988, for the airbrake bellcrank and the rear canopy hinge conditions.

Issued in Kansas City, Missouri, on March 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6768 Filed 3–16–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–21]

Proposed Amendment to Class E Airspace; Cedar City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Cedar City, UT, Class E airspace. If amended, the proposal would provide additional airspace necessary to fully encompass various new and revised Standard Instrument Approach Procedures (SIAP) at Cedar City Regional Airport, Cedar City, UT.

DATES: Comments must be received on or before May 1, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–21, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch at the address listed above

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–21, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date, for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) to amend Class E airspace at Cedar City, UT. This proposal is essential in order to fully contain new and revised flight procedures within controlled airspace at Cedar City Regional Airport. The existing Class E airspace requires modification to fully encompass the missed approach, the holding, and the transition procedures to four new or revised SIAP's.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas, extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Cedar City, UT [Revised]

Cedar City Regional Airport, UT
(Lat. 37°42'04" N, long. 113°05'55" W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 38°03'00" N, long. 113°13'30" W; to lat. 38°05'30" N, long. 112°58'30" W; to lat. 37°58'30" N, long. 112°45'30" W; to lat. 37°45'00" N, long. 112°56'45" W; to lat. 37°47'30" N, long. 113°15'00" W; thence to point of beginning; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 38°00'00" N, long. 113°45'30" W; to lat. 38°19'00" N, long. 112°51'30" W; to lat. 37°58'30" N, long. 112°45'30" W; to lat. 37°37'00" N, long. 112°56'30" W; to lat. 37°38'15" N, long. 113°22'18" W; thence to point of beginning, excluding Federal airways, the Milford, UT, and the St. George, UT Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on February 23, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–6705 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–2]

Proposed Revision of Class E Airspace; Homer, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Homer, AK. The modification of the Localizer (LOC)/Distance Measuring Equipment (DME) instrument approach to RWY 21 Homer, AK, has made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Homer, AK.

DATES: Comments must be received on or before May 1, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 98–AAL–2, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address. An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AAL–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising the Class E airspace at Homer, AK, due to the modification of the LOC/DME instrument approach to RWY 21. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Homer, AK.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas for an airport are published in paragraph 6002 and the Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491; October 8, 1997). The Class E airspace designations listed in this document would be revised and published subsequently in the Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points,* dated September 10, 1997, and effective September 16, 1997, is to be amended as follows:

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Homer, AK

Homer Airport, AK
(Lat. 59°38′42″ N, long. 151°28′42″ W)
Kachemak NDB
(Lat. 59°38′29″ N, long. 151°30′01″ W)
Homer Localizer
(Lat. 59°39′07″ N, long. 151°27′31″ W)

Within a 4.2 mile radius of the Homer Airport and within 1.9 miles either side of the Homer localizer northeast backcourse extending from the localizer to 7.2 miles northeast of the Homer localizer, and within 2.4 miles north and 4.2 miles south of the Kachemak NDB 235° radial extending from the Kachemak NDB to 8.3 miles southwest the Kachemak NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Homer, AK

Homer Airport, AK
(Lat. 59°38′42″ N, long. 151°28′42″ W)
Kachemak NDB
(Lat. 59°38′29″ N, long. 151°30′01″ W)
Homer Localizer
(Lat. 59°39′07″ N, long. 151°27′31″ W)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of the Homer Airport and within 4 miles either side of the Homer localizer northeast backcourse extending from localizer to 12 miles northeast of the Homer localizer, and within 8 miles north and 4.2 miles south of the Kachemak NDB 235° radial extending from the Kachemak NDB to 16 miles southwest of the Kachemak NDB.

* * * * *

Issued in Anchorage, AK, on March 9, 1998.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–6819 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Flame Retardant Chemicals That May Be Suitable for Use in Upholstered Furniture; Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Commission will conduct a public hearing on May 5–6, 1998 to receive scientific and technical information, such as published or unpublished studies, relating to the toxicity, exposure, bioavailability, and environmental effects of flame retardant ("FR") chemicals that may be suitable for use in residential upholstered furniture, particularly in upholstery fabrics. The Commission seeks written comments and oral presentations from individuals, associations, firms, and government agencies, with substantiated information or technical comments on these topics. The Commission will evaluate the information obtained from the hearing as part of its deliberations on whether to propose a standard to address the hazard associated with small open flame ignitions of upholstered furniture.

DATES: The hearing will begin at 10:00 a.m. on Tuesday, May 5, 1998, and, if necessary, conclude on May 6, 1998. Requests to make oral presentations, and the text of the presentation, must be received by the Office of the Secretary no later than April 21, 1998. Persons planning to testify at the hearing should submit 10 copies of the entire text of their prepared remarks to the Commission no later than April 21, 1998, and provide an additional 50 copies for dissemination on the date of the hearing. Written comments that are in place of, or in addition to oral presentations, must be received by the Office of the Secretary no later than May 5, 1998. Written comments must include the author's affiliation with, or employment or sponsorship by, any professional organization, government agency, or business firm. All data analyses and studies should include substantiation and citations. The Commission reserves the right to limit the number of persons who testify and the duration of their testimony.

ADDRESSES: The hearing will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, MD. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned "Flame Retardant Chemicals" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments, requests, and texts of oral presentations may also be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the purpose or subject matter of this hearing call or write Michael A. Babich, Ph.D., Directorate for Epidemiology and Health Sciences, U.S. Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0994, extension 1383; fax (301) 504–0079. For information about the schedule for submission of written comments, requests to make oral presentations, and submission of texts of oral presentations, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800, extension 1232; fax (301) 504–0127.

SUPPLEMENTARY INFORMATION: In 1994, the U.S. Consumer Product Safety Commission ("CPSC") initiated a regulatory proceeding to address the hazard of small open flame ignitions of upholstered furniture. 59 FR 30735 (June 15, 1994). Small open flame sources include, for example, cigarette lighters, matches, and candles. Such ignitions of upholstered furniture are associated with an estimated 3,100 fires resulting in an estimated 100 deaths, 460 injuries, and $50 million in property damage per year in the U.S. The CPSC staff believes that a small open flame performance standard for upholstered furniture could effectively reduce the risk of death, injury, and property loss resulting from small flame ignitions (1).[1]

[1] Numbers in parentheses refer to documents listed at the end of this document. The documents are available at the Commission's Public Reading Room, 4330 East-West Highway, room 419, Bethesda, Maryland 20814. For information call the Office of the Secretary at (301) 504–0800.

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The small open flame standard that the staff is considering would be a performance standard that specifies a requirement for flame resistance, but would not specify how furniture would have to be constructed to meet the standard. Manufacturers would be free to choose the means of complying with the standard. They could use inherently flame resistant textiles or apply FR treatments. Many different FR chemicals and combinations of chemicals are potentially available. FR chemicals could be incorporated within fibers, applied to the surface of the textile, or applied to the back of the textile in the form of a polymeric coating. Most cover fabrics currently used in upholstered furniture would require treatment with FR chemicals to pass the small open flame standard being considered by CPSC staff. Thus, a small open flame standard could result in the widespread use of FR chemicals in upholstered furniture manufactured for household use.

Possible Toxicity of FR Chemicals

The Commission is interested in information about the possible toxicity of FR chemicals for several reasons. In addressing the hazard associated with the small flame ignition of upholstered furniture, the Commission staff is working to develop a performance standard without creating additional health hazards to consumers or workers or harming the environment. The CPSC staff preliminarily considered the possible toxicity of FR chemicals to consumers. The staff believes that certain FR chemicals could probably be used without presenting a hazard to consumers (2). However, some questions remain, such as whether there is additional information on the chemicals the staff considered, possible hazards posed by new FR chemicals, the environmental impact of FR chemical usage and disposal, and the potential for worker exposure. Another issue is the possible smoke toxicity of FR-treated furniture. Therefore, the Commission is requesting additional information on these issues before considering a proposed rule.

The Federal Hazardous Substances Act ("FHSA") and the Commission's chronic hazard guidelines provide guidance for determining whether a given FR chemical would present a hazard to consumers. 15 U.S.C. 1261 (f)(1)(A); 16 CFR 1500.135. Under the FHSA, toxicity, dose response, exposure, and bioavailability must be considered in assessing the potential hazard to consumers. Toxicity includes acute toxicity, as well as chronic health effects such as cancer, reproductive/developmental toxicity, and neurotoxicity. 16 CFR 1500.3(c)(ii). The dose response is a measure of the potency of a given FR chemical. Exposure is the amount of FR chemical that may come into contact with consumers. Bioavailability is the amount of FR chemical that is absorbed by the body. A given FR chemical would not present a hazard to consumers unless it is toxic, there is sufficient exposure, and enough is absorbed by the body to exceed the acceptable daily intake. See 15 U.S.C. 1261 (f)(1)(A); 16 CFR 1500.135.

The staff believes that in many cases, the FR chemicals would be applied in the form of a polymeric back-coating. Thus, exposure would depend on the ability of the FR chemical to migrate to the surface of the fabric. The back-coating is expected to reduce exposure because the FR chemical most commonly seen in the FR-treated fabrics to date is incorporated into the polymer and the polymer is on the back of the fabric. However, exposure might occur if the FR chemicals could be extracted during cleaning, or as a result of wear or abrasion or by contact with other liquids.

The CPSC staff reviewed all available data on the acute and chronic toxicity of 16 FR chemicals (2). Based on the available data, the staff determined that 15 of the 16 FR chemicals considered would not present a hazard to consumers. Seven of the chemicals would not be considered "toxic" under the FHSA. Others would not be expected to present a hazard due to low exposure or low bioavailability. However, these conclusions could change if additional information became available that indicated certain chemicals could present a hazard. For some chemicals, only limited information was available on toxicity, exposure, or bioavailability. Furthermore, other FR chemicals not reviewed by the staff may be available for use in upholstered furniture.

A related issue is whether the smoke from FR-treated furniture could be more toxic than the smoke from non-FR-treated furniture. Only the upholstery fabric would be treated with FR chemicals. Although the standard under consideration would require upholstered furniture to resist ignition from a small open flame, the furniture could still ignite in a larger fire. Smoke toxicity must be considered because most fire-related deaths are due to smoke inhalation, rather than burns. The staff reviewed all available data on the smoke toxicity of FR-treated products, and it determined that the smoke from FR-treated products was generally not more toxic than the smoke from non-FR-treated products (2). However, the Commission seeks additional information on this issue.

Other Uses of FR Chemicals

Although FR chemicals are not currently used in most residential upholstered furniture, they are used in a number of other applications. FR treatments may be used in some commercial grade upholstered furniture, carpets, wall coverings, and automobile and airplane upholstery. FR chemicals are used in other textile products, such as workwear and children's sleepwear, and in a wide variety of plastic containing products, such as printed circuit boards, and television and computer cabinets. FR chemicals are also used in upholstered furniture sold in California and the United Kingdom to comply with certain flammability requirements. Experience gained with these other applications may be relevant to upholstered furniture. The Commission solicits information from those familiar with these applications.

Request for Information

To obtain information relevant to these questions, the Commission will conduct a public hearing on May 5–6, 1998. The Commission solicits written comments and oral presentations of scientific and technical information, including unpublished toxicity studies, from all interested parties on the following topics:

I. FR Chemicals

A. FR chemicals and treatments that are potentially suitable for use in complying with the small open flame standard.

1. Are there any FR chemicals or classes of FR chemicals included in the staff's review (see reference 2) that would not be suitable for upholstered furniture fabrics or barriers?

2. Are there any chemicals that would be suitable for upholstered furniture but were not included in the staff's review?

3. How would each type of FR treatment be applied, that is, incorporated into the fiber, surface treatment, or back coating?

4. With what types of fibers and fabrics can each FR treatment be used?

B. FR chemicals that are currently used in other applications to which consumers may be exposed (such as children's sleepwear, commercial grade furniture, carpet, and wall coverings, automobile and airplane upholstery, and residential furniture sold in California and the U.K).

1. Would any of these chemicals not reviewed by the staff be suitable for upholstered furniture?

2. How does experience gained with these applications address outstanding issues with upholstered furniture?

II. Toxicity

A. Data or analyses, such as unpublished industry-sponsored studies, relating to the toxicity, dose response, bioavailability, or exposure of FR chemicals (both existing studies and those that are planned or underway).

B. Federal, state, and international programs for evaluating new and existing FR chemicals.

1. How can these programs limit the introduction of new hazardous FR chemicals that would be used in upholstered furniture?

2. Are any FR chemicals considered "toxic" or "hazardous" under any current federal or state programs, such as the Environmental Protection Agency ("EPA"), Occupational Safety and Health Administration ("OSHA"), and Department of Transportation ("DOT")?

3. Are any FR chemicals currently on any regulatory lists, such as under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), Toxic Release Inventory ("TRI"), or the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65")?

4. If any are listed, what is the significance, if any, of being on the particular list, with regard to upholstered furniture?

C. Data or analyses relating to the smoke toxicity of FR-treated products, other than what was discussed in the staff toxicity review (including the need for any additional studies).

III. Exposure and Bioavailability

A. Possible consumer exposure to FR chemicals in upholstered furniture.

1. What scenarios and routes of exposure need to be considered to adequately assess consumer exposure to FR chemicals?

2. What must be considered to adequately assess exposure to children in particular?

B. Studies relating to bioavailability of FR chemicals, such as dermal absorption studies, that were not cited in the staff review.

C. Effect of aging and cleaning of furniture on exposure to FR chemicals.

1. Would the back-coating degrade over time? If so, under what circumstances?

2. Would cleaning with aqueous or non-aqueous agents extract FR chemicals?

3. How tightly would various FR chemicals be bound to or within the fabric or back-coating?

4. How would exposure to light, including ultraviolet and infrared, affect exposure to FR treatments?

5. Some FR treatments are considered to have low bioavailability due to high molecular weight. Could these FR chemicals degrade over time?

IV. Occupational Issues

A. Processes likely to be used to apply FR chemicals to the textiles used in upholstered furniture.

B. Effect of FR chemicals or treatments on workers who would be applying them to textiles or during the manufacture of upholstered furniture.

1. In industries where FR chemicals are currently used, what controls exist to protect workers?

2. What federal or state regulations are these industries subject to that are designed to protect workers?

C. Any controls that currently exist to protect workers from exposure to other chemicals or particles in the textile and upholstered furniture industry.

1. What federal or state regulations are textile and furniture manufacturers currently subject to that are designed to protect workers?

2. Would manufacturers be subject to any additional regulations if FR chemicals were introduced?

3. What additional controls, if any, would be required to protect workers from exposure to FR chemicals in these industries?

D. Cost of complying with additional regulations and implementing additional controls to protect workers, resulting from the use of FR chemicals in upholstered furniture, especially for small companies.

IV. Environmental Issues

A. Federal or state environmental regulations to which textile and upholstered furniture manufacturers are currently subject.

1. What environmental controls, if any, currently exist in these industries?

2. What additional federal or state regulations would textile and furniture manufacturers be subject to, if FR chemicals were introduced?

3. What additional environmental controls, if any, would be required?

B. Cost of complying with additional environmental regulations and implementing additional environmental controls, resulting from the introduction of FR chemicals into upholstered furniture, especially for small companies.

C. Federal or state transportation regulations to which FR chemicals would be subject and the likely cost of complying with them.

D. Any special disposal requirements when household furniture reaches the end of its useful life and any adverse impacts that disposal might have on the environment or human health.

E. If adopted, a small open flame standard could increase the overall production of FR chemicals. Beyond what is addressed in the previous questions, are there any known or likely environmental effects from the manufacture, use, or disposal of FR chemicals for use in upholstered furniture?

List of Relevant Documents

(Documents may be obtained from the Office of the Secretary or from the CPSC's web site at www.cpsc.gov.)

1. Briefing memorandum from Dale R. Ray, Project Manager, Directorate for Economic Analysis, to the Commission, "Upholstered Furniture Flammability: Regulatory Options for Small Open Flame and Smoking Material Ignited Fires," October 24, 1997.

2. Memorandum from Lakshmi C. Mishra, Ph.D., Directorate for Epidemiology and Health Sciences, to Dale Ray, Project Manager, "Toxicity of Flame Retardant Chemicals (FR's) Used in Upholstered Fabrics and the Toxicity of the Smoke from FR-treated Fabrics," October 1, 1997.

Dated: March 11, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–6904 Filed 2–16–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Minoxidil Preparations With More Than 14 mg of Minoxidil Per Package

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule to require child-resistant ("CR") packaging for minoxidil preparations containing more than 14 mg of minoxidil in a single package. The Commission has preliminarily determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from handling or

ingesting a toxic amount of minoxidil. The Commission takes this action under the authority of the Poison Prevention Packaging Act of 1970.

DATES: Comments on the proposal should be submitted no later than June 1, 1998.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301) 504–0800. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Ph.D., Division of Health Sciences, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477 ext. 1196.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as "child-resistant" ("CR") packaging, is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for "normal adults" to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20. Under these requirements, most special packaging must be child-resistant (85 percent of a panel of 200 children cannot open it without a demonstration and 80 percent cannot open it with a demonstration) and senior-friendly ("SF") (90 percent of a panel of 100 adults ages 50 to 70 must be able to open the packaging in a 5 minute test period and open and (if appropriate) properly resecure it in a 1 minute test). 16 CFR 1700.20(a)(2) and (3).

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a), 16 CFR 1700.5.

2. Minoxidil

Topical minoxidil is a liquid medication that is applied to the scalp to stimulate hair regrowth for individuals with a common form of genetic hair loss (androgenetic alopecia). In February 1996, the Food and Drug Administration ("FDA") approved the sale of topical minoxidil as an over-the-counter ("OTC") drug available without a prescription. There is also a tablet form of minoxidil for treatment of severe hypertension that is available only by prescription. Like most oral prescription drugs, the prescription form of minoxidil must be in special packaging. 16 CFR 1700.14(a)(10). However, special packaging is not required for topical drugs unless the Commission takes specific action to require it.

Topical minoxidil first became available by prescription in 1988. The OTC preparation is currently marketed as a two percent solution in 60 percent alcohol, propylene glycol, and water. The package instructions direct the user to apply one milliliter (20 milligrams of minoxidil) to the scalp twice a day. This application generally must continue for four months for there to be any noticeable hair growth. Continuous application is necessary to maintain the newly grown hair. The most prevalent package size contains 60 milliliters of the preparation (1200 milligrams of minoxidil) which is a 30-day supply if used as directed.(2) [1] On November 14, 1997, the FDA approved for OTC use a 5% minoxidil solution for men. The package size is also 60 milliliters, and the recommended dosage is one milliliter (50 milligrams of minoxidil) applied twice a day. The total contents of the package is 3000 milligrams.

The Commission is aware of ten manufacturers that have FDA's approval to market the OTC two percent minoxidil solution. In addition, the Commission knows of six other companies—probably repackagers or relabelers—that sell the OTC minoxidil formulation. The year after FDA approved OTC status for topical minoxidil preparations, retail sales of topical minoxidil were about $200 million (approximately 8 million packages).(3)

Topical minoxidil formulations are generally packaged either for men or for women. Although the formulations are the same, the packaging and instructions are different. All the bottles the Commission is aware of are secured with CR/SF continuous threaded closures. In addition to the primary closure, the packages the Commission staff examined contain one or more applicators that are reasonably expected to be used to replace the primary closure once the product has been used for the first time.

The Commission staff examined nine topical minoxidil packages for men. These packages contained dropper applicators. In six of these, the droppers were CR/SF, the other three droppers were non-CR. Four of the packages for men also contained a metered finger mechanical sprayer applicator (hereafter referred to as a "finger sprayer") in addition to the dropper applicator. The finger sprayer releases the solution in a mist which the package insert claims may be more useful than a dropper for broader areas of hair loss. None of the finger sprayers are CR.(4)

Hair loss for women occurs as a thinning of the hair over a broad area on the top of the scalp rather than at the vertex. All four of the topical minoxidil packages for women that the staff examined contained the metered finger mechanical sprayer applicator. Two products for women included a CR/SF dropper in addition to the finger sprayer. Three packages for women included an extender attachment to fit onto the finger sprayer applicator allowing the solution to be applied closer to the scalp than the pump spray alone would manage. Neither the finger sprayers nor the extenders in the packages intended for women were CR.(4)

3. CR Packaging for Applicators

Because the topical minoxidil formulations are packaged with applicators that are reasonably expected to replace the primary closure of the product after its first use, the question

[1] Numbers in parentheses refer to documents listed at the end of this document.

arises whether the applicators themselves must be CR if the Commission requires CR packaging for the product. The Commission has not previously addressed this issue.

Under the PPPA, a "package" is the "immediate container" that holds a substance when it is located in the household. Specifically, the term "package" is defined as:

> the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household.

15 U.S.C. 1471(3). The focus of this definition is on how the product is packaged in the home where it is "contained for consumption, use or storage" rather than its packaging in the store. This is fully consistent with the purpose of the statute, to reduce child poisonings from available household substances.

The exclusions from the definition of "package" also indicate that Congress was concerned with the package as maintained in the home. Congress excluded containers used only to transport the product. Thus, "package" does not include:

> (A) any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or
>
> (B) any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping.

Id.

The legislative history of the statute also supports the view that the "package" includes applicators that are reasonably expected to be used as closures in the home. The Senate Commerce Committee Report notes: "The term 'package' was defined here to [sic] in order to make explicit that special packaging refers to that package in which the substance is kept in or around the house." S. Rep. 845, 91st Cong., 2d Sess. 9 (1970).

Thus, the Commission believes that when an applicator is packaged with a product that requires CR packaging and the applicator is reasonably expected to replace the original closure of the packaging, that applicator must also be CR. This does not mean that every applicator packaged with a substance requiring CR packaging must itself be CR. It is permissible for an applicator, such as a dropper, to be packaged with a product so long as the applicator cannot be used to replace the original closure.

Early in the Commission's administration of the PPPA, the staff recognized the potential problem posed by applicators used to replace original closures. Accordingly, the staff advised that dropper bottles are not excepted from the PPPA's requirements. In 1974, the staff advised the Arizona State Board of Pharmacy that if a manufacturer of prescription drugs dispensed with droppers could not provide CR closures incorporating the dropper, the drug could be packaged with a conventional CR closure accompanied by a separate non-closing dropper. (See letter to Alfred J. Duncan, Executive Secretary of the Arizona State Board of Pharmacy from Robert Poth, April 11, 1974.) This position was reiterated in an internal staff memorandum stating "when a prescription drug is packaged in a dropper bottle, it is the dropper bottle that is the 'package' and any packaging exterior to this cannot be considered the 'package.'" The memo continues: "[U]ntil special packaging is available for the dropper unit itself, manufacturers should place the drug in a specially packaged bottle, with a separate dropper provided for proper administration of the drug. However, in our view, the separately provided dropper should not contain a cap, since the consumer would be apt to use the dropper and noncomplying cap permanently, and discard the special cap." (Memo from Poth and Lemberg, June 12, 1974.) The staff discussed this position with staff at the FDA a few months later. The FDA staff agreed with the Commission staff's approach. (Memorandum of meeting between FDA and CPSC representatives, October 15, 1974.)

Because the Commission has not previously addressed this question explicitly in a regulation, the proposed rule that the Commission issues today expressly states that applicators packaged with topical minoxidil that are reasonably expected to replace the original closures would be required to be CR and SF. The Commission recognizes that its other rules, such as the rule covering oral prescription drugs, do not contain such a provision. When previous special packaging rules were issued, few packages contained applicators that could be used as closures. Thus, previous rules did not expressly state that such applicator closures are "packages" under the PPPA. In order to clarify the issue, the Commission proposes to include such a statement in the proposed rule for minoxidil. The lack of such a statement in previous PPPA rules is not to be construed to mean applicator closures are exempt from special packaging requirements. As stated above, the Commission agrees with the staff's longstanding interpretation that special packaging requirements extend to applicators reasonably expected to replace primary closures when used and stored in the home.

B. Toxicity of Minoxidil

The Commission's Directorate for Epidemiology and Health Sciences reviewed the toxicity of minoxidil. This includes both information concerning the therapeutic ingestion of prescription minoxidil tablets to treat hypertension and ingestion of topical minoxidil. In either form, when it is ingested, minoxidil is rapidly and almost completely (over 95 percent) absorbed by the gastrointestinal tract and is distributed systematically throughout the body. In contrast, minoxidil is very poorly absorbed through the skin, and insufficient levels of minoxidil reach the bloodstream to cause effects on vascular and cardiac function. This is why a topical solution of two percent minoxidil is considered safe when used on the skin as directed but can be harmful if ingested.(2)

The tablet form of minoxidil is prescribed for use as an antihypertensive drug. It lowers blood pressure by relaxing the smooth muscle of the arteries. The body's nervous system responds by causing the heart to beat faster (tachycardia) and with more force (increased cardiac output) to compensate for the drop in blood pressure. Minoxidil tablets are typically used in combination with a β-adrenergic blocking agent and a diuretic to maximize its effect on blood pressure while minimizing associated side effects (the cardiac response and retention of fluids).(2)

The most prominent effects from therapeutic ingestion of minoxidil are increased heart rate, increased cardiac output and decreased blood pressure. When blood pressure becomes abnormally low (hypotension), it can lead to lethargy and lightheadedness with the possibility of damage to the heart and other tissues with high oxygen demand, if left untreated. Less frequent effects include salt and fluid retention and edema, aggravation of angina, and pericardial effusion (massive fluid accumulation around the heart) in patients with renal impairment. Repeated ingestion over several months can produce hypertrichosis (overstimulated hair growth) particularly to the face and to a lesser extent to the limbs and scalp. Less severe symptoms of nausea, headache, fatigue, and dermatologic reactions have been occasionally reported.(2)

Prescription minoxidil is available as 2.5 mg, 5 mg, and 10 mg tablets. The effective dosage is usually between 0.2 to 1 mg/kg/day (roughly 5 to 40 mg/day for an adult) depending on the individual and the desired antihypertensive response. Use in children has been limited with a similar effective body weight-normalized dose range as adults (0.2 to 1 mg/kg/day). Because of possible adverse effects, the maximum recommended daily therapeutic dosage is 100 mg in adults and 50 mg for children under the age of 12.(2)

C. Incident Data

The staff reviewed several sources for information of adverse health effects from ingestions of minoxidil. These sources are the American Association of Poison Control Centers ("AAPCC"), the FDA Spontaneous Reporting System ("SRS"), published reports in the medical literature, and reports from the injury surveillance databases maintained by the Commission. The most commonly cited injuries are prolonged hypotension and tachycardia that require hospitalization. There were reports of two deaths associated with minoxidil overdose.

AAPCC Data

The AAPCC collects reports made to participating poison control centers throughout the United States. A retrospective study evaluated AAPCC records of all minoxidil exposures from 1985 through 1991. (The study did not distinguish between ingestions of minoxidil tablets and topical solution.) During this time period, 285 incidents were reported. About half (51 percent) of these occurred in children under six years of age. Most of the 285 incidents were reportedly accidental ingestions (80%) and some involved co-ingestions (21%) of other substances. The most frequently reported adverse effects from 16 incidents involving moderate to severe poisoning were hypotension (69%), tachycardia (38%), and lethargy (31%) with 44% requiring medical treatment. Most of the more serious poisonings were intentional ingestions (69%) and involved co-ingestions (81%). It was not reported how many of these incidents occurred in children. There was one reported death caused by an intentional ingestion of minoxidil with other vasodilators, and acetaminophen.(2)

CPSC obtains annual AAPCC data on pediatric exposures to children under six years of age. Four accidental ingestions of topical minoxidil liquid were reported in 1995. (Prior to 1995, topical minoxidil was not given a specific code within the AAPCC database.) None of these four incidents led to serious toxicity. In 1996, the number of reported cases increased to 43. One of these exhibited moderate effects.

Because incidents involving minoxidil tablets (rather than topical solutions) are coded in a category that includes "other vasodilators," it is not possible to isolate incidents specific to minoxidil tablets. There were two childhood ingestions of "other vasodilators" reported in 1995 that resulted in a moderate toxicity.(2)

FDA/SRS Database

The SRS is a database maintained by the FDA for reports of adverse reactions detected after a drug goes on the market. Drug manufacturers are required to report any known incidents of adverse effects associated with their products. However, the incident reports are not verified by the FDA, and therefore, the adverse effects may reflect underlying diseases or reactions to multiple drugs.

There have been 16,795 SRS reports on topical minoxidil between 1983 and March 1997. Most of the reported adverse effects were dermal reactions to excessive application of topical minoxidil to the scalp. However, FDA specifically cited five overdose ingestion cases involving topical minoxidil. Three of these led to serious outcomes.(2)

One of these cases was a suicide in which an adult male ingested the contents of five bottles (6 grams in 300 ml) of topical minoxidil and died. No other details were provided. A second case was an adult male who mistakenly ingested 15–20 ml (300—400 mg) of topical minoxidil and experienced fainting, severe hypotension, cardiac effects, and acute renal failure. The person was taking anti-hypertensive medication at the time of the poisoning but no other details of his prior medical condition were cited. The third case was an ingestion of topical minoxidil by a two-year-old child. She was found with an empty bottle that had been full earlier. She was admitted to an intensive care unit in a lethargic state with a pulse of 160 (above normal range), blood pressure of 106/60 (within normal limits), but was discharged the same day. The amount of minoxidil actually ingested was never established.(2)

In addition, two possible childhood ingestions of topical minoxidil were reported in SRS to result in hospital visits. In both incidents, no adverse outcomes were recorded but the children were retained at the hospital for observation. While the children gained access to the medication in these cases, the hospital suspected that no minoxidil was consumed.(2)

CPSC Databases

CPSC has several databases for poison incidents. The staff reviewed cases from 1988 to 1997 in the National Electronic Injury Surveillance System ("NEISS"). NEISS monitors emergency room visits to a statistically-based sample of selected hospitals throughout the United States. One childhood poisoning case associated with minoxidil was reported in the NEISS database during that time period. This was an ingestion of an unknown quantity of topical minoxidil by a two-year-old male. The child was seen in an emergency room with normal temperature, pulse, and respiration and was released the same day without treatment. It is not known whether the minoxidil package was secured with a child-resistant closure at the time of the incident.(2)

The staff also reviewed CPSC's Injury and Potential Injury Incident ("IPII") files of consumer product-related incidents reported through letters, telephone calls, media articles and Death Certificate files of consumer product-related deaths. There were no minoxidil-related injuries or deaths found in these databases for the 1988 to 1997 time period.(2)

Medical Literature

Five case reports of injuries following minoxidil ingestion were found in the published literature. Two cases involved young children. In one instance, a two-year-old ingested an unconfirmed number of minoxidil tablets. In the second instance, a three-year-old swallowed an estimated 1–2 milliliters of three percent minoxidil solution (30–60 milligrams). Both children were seen at hospitals experiencing moderate tachycardia but no other reported abnormalities. The three other reports were intentional ingestions by adults of minoxidil tablets (one case) or two percent liquid (two cases). The latter two cases involved consumption of several hundred milligrams of minoxidil (10–20 mg/kg) along with alcohol and, in one case, several other substances. The clinical courses were similar. A few hours after ingestion, each individual was admitted to a hospital, usually in a disoriented and unresponsive state. They became moderately to severely hypotensive with tachycardia and elevated cardiac output. Medical treatment was administered and the patient's cardiac and vascular signs eventually normalized over the next 36 to 72 hours. In each instance, it was concluded that minoxidil was

primarily responsible for the observed effects, and that co-ingested substances were not consumed in amounts sufficient to cause the reported symptoms.(2)

D. Level for Regulation

The Commission is proposing a rule that would require special packaging for minoxidil products containing more than 14 mg of minoxidil in a single package. This is based on the maximum recommended therapeutic dose of minoxidil for an adult. The 14 mg dose level corresponds to 1.4 mg/kg for a 10 kg child. The equivalent minoxidil dose for the average 70 kg adult would be approximately 100 mg. The regulated dose level is expected to reasonably protect children under five years of age from serious personal injury or illness.(2)

E. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning ingestion of minoxidil demonstrate that minoxidil can cause serious illness and injury to children. Moreover, it is available to children in OTC topical minoxidil preparations. Although as far as the Commission is aware, all primary product containers for topical minoxidil products currently use CR packaging, all applicators are not CR. Some packages contain applicators meant to be used as closures after first use which are not CR. The Commission preliminarily concludes that a regulation is needed to ensure that products subject to the regulation, including applicators which it is reasonable to expect may be used to replace the original closures, will be placed in CR packaging by any current as well as new manufacturers.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission preliminarily finds that the degree and nature of the hazard to children from handling or ingesting minoxidil is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of minoxidil products and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is "technically feasible, practicable, and appropriate." 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.

a. Primary Product Containers

The primary product containers for all topical minoxidil products that the Commission is aware of have continuous threaded reclosable packaging. All of these closures that the staff examined were CR and SF. Thus, it is clear that CR packaging for primary product containers is technically feasible, practicable and appropriate.(4)

b. Applicators

As discussed above, topical minoxidil packages contain applicators—droppers and/or metered finger mechanical sprayers—which it is reasonable to expect may replace the original closures. Eight products have droppers that are CR and SF. This indicates that such droppers are technically feasible, practicable and appropriate.(4)

The Commission knows of eight minoxidil products that include a non-CR finger sprayer. Child-resistance for a finger sprayer means that it must be significantly difficult for children to (1) remove the finger sprayer closure from the container and (2) activate the finger sprayer mechanism to obtain an amount above the regulated level. One packaging manufacturer has developed a prototype CR metered finger sprayer applicator which the manufacturer believes can be modified to pass senior adult effectiveness testing in approximately 12 months. Additional time may be required to provide commercial quantities of this type of packaging. As discussed above, an applicator that cannot be used as a closure does not need to be CR.(4)

Three products for women also contain an extender to be used with the finger sprayer. Under the proposed rule, when the extender is attached to the finger sprayer, this applicator mechanism must be CR. That is, it must be significantly difficult for children to (1) remove the combined finger sprayer and extender from the container and (2) activate the combined finger sprayer and extender to obtain an amount above the regulated level. Currently no finger sprayers with extenders are CR. As noted above, CR/SF finger sprayer could be developed within 12 months. Some modifications to the extender may be needed so that it would operate with the CR finger sprayer.(4)

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this notice, and preliminarily finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

Senior-friendly special packaging is currently commercially available for most types of CR packaging. Primary product containers for topical minoxidil are already CR and SF. Most droppers that can be used to replace the original closures are also CR and SF. One packaging manufacturer has developed a prototype CR finger sprayer that the manufacturer believes can be modified to pass senior adult effectiveness testing in approximately 12 months. Additional time may be required to provide commercial quantities of this type of packaging. Modifications to the extender would likely require a similar amount of time. Thus, the Commission proposes that a final rule would take effect (1) six months after publication of the final rule for primary closures and dropper applicators and (2) 12 months after publication of the final rule for metered finger sprayer applicators and extenders. The Commission also proposes that if additional time is necessary to produce commercial quantities, manufacturers could request a temporary stay of enforcement for the finger sprayer and extender. A final rule would apply to products that are packaged on or after the effective date.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to require special packaging topical minoxidil products containing more than 14 mg of minoxidil in a single package.

This assessment reports that the staff is aware of 16 marketers of minoxidil-containing products. Ten of these are manufacturers, and two of the ten are small companies.(3)

As mentioned above, at the present time, the primary packaging for all topical minoxidil products is CR. Thus, there will be no additional cost to existing firms to use CR primary packaging. Firms entering the market in the future will find readily available CR primary packaging at prices competitive with non-CR packaging.(3)

Similarly, companies now using CR dropper applicators that can be used as closures will not incur any additional cost. For other companies to switch from non-CR droppers, there is an estimated 5 cent incremental cost of a CR dropper compared with a non-CR dropper. This cost is small relative to the retail price of a minoxidil product ($6–$30).(3)

Because there are no CR metered finger mechanical sprayer applicators or extenders currently on the market, the staff has no information on the incremental cost of senior friendly CR finger sprayers and extenders.(3) Firms do have the option of supplying only a CR/SF dropper applicator. They also could supply any type of applicator that cannot be used as a closure.

Based on this assessment, the Commission preliminarily concludes that the proposed requirement for minoxidil products would not have a significant impact on a substantial number of small businesses or other small entities. The Commission seeks additional information on the possible impact on small business.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed PPPA requirements for minoxidil-containing products.

The Commission's regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in this proposed rule alters that expectation.(3) Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

I. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, "no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard." 15 U.S.C. 1476(a). A State or local standard may be excepted from this preemptive effect if (1) the State or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the State or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through a process specified at 16 CFR Part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the proposed rule requiring CR packaging for products containing more than 14 mg minoxidil would preempt non-identical state or local special packaging standards for such minoxidil containing products.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that the proposed rule does not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Relevant Documents

1. Briefing memorandum from Val Schaeffer, Ph.D., EH, to the Commission, "Proposed Rule to Require Child-Resistant Packaging for Topical Minoxidil," February 10, 1998.
2. Memorandum from Val Schaeffer, Ph.D., EH, to Marilyn Wind, Ph.D., Director, Health Sciences Division, "Toxicity Assessment of Topical Minoxidil," November 14, 1997.
3. Memorandum from Marcia P. Robins, EC, to Val Schaeffer, Ph.D., EH, "Economic Considerations of a Proposal to Require Child-Resistant Packaging for Drug Preparations Containing Minoxidil," January 5, 1998.
4. Memorandum from Charles Wilbur, EH, to Val Schaeffer, Ph.D., EH, "Technical Feasibility, Practicability, and Appropriateness Determination for the Proposed Rule to Require Special Packaging for Products Containing Minoxidil," December 16, 1997.
5. Memorandum from Michael T. Bogumill, CRM, to Val Schaeffer, Ph.D., EH, "Special Packaging of Oral Prescription Drugs in Dropper Bottles," December 17, 1997.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraph (a)(28) to read as follows (although unchanged, the introductory text of paragraph (a) is included for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect

children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(28) *Minoxidil.* Minoxidil preparations for human use and containing more than 14 mg of minoxidil in a single retail package shall be packaged in accordance with the provisions of § 1700.15 (a), (b) and (c). Any applicator packaged with the minoxidil preparation and which it is reasonable to expect may be used to replace the original closure shall also comply with the provisions of § 1700.15 (a), (b) and (c).

* * * * *

Dated: March 11, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–6773 Filed 3–16–98; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Proposed Rulemaking Concerning Account Identification for Eligible Bunched Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission has reproposed to amend Commission Regulation 1.35(a–1) to permit eligible customer orders to be placed on a contract market without individual customer account identifiers either at the time of order placement or the time of report of execution. Specifically, the proposal would exempt from the customer account identification requirements of Regulation 1.35(a–1)(1), (2)(i), and (4) bunched futures and/or option orders placed by an eligible account manager on behalf of consenting eligible customer accounts as part of its management of a portfolio also containing instruments which are either exempt from regulation pursuant to the Commission's regulations or excluded from regulation under the Commodity Exchange Act. The proposed rule would permit orders entered on behalf of these accounts to be allocated no later than the end of the day on which the order is executed. The proposed rulemaking was in initially published for comment on January 7, 1998 (63 FR 695) with comments on the proposal due by March 9, 1998. In response to requests from the Futures Industry Association, the Managed Funds Association, the Investment Company Institute, and the New York Mercantile Exchange, the Commission has determined to extend the comment period on this proposal for an additional seven days. The extended deadline for comments on this proposed rulemaking is March 16, 1998. In response to requests from the Futures Industry Association, the Managed Funds Association, the Investment Company Institute, and the New York Mercantile Exchange, the Commission has determined to extend the comment period on this proposal for an additional seven days. The extended deadline for comments on this proposed rulemaking is March 16, 1998.

Any person interested in submitting written data, views, or arguments on the proposals should submit such views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

DATES: Comments must be received on or before March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5490.

Issued in Washington, D.C., on this 11th day of March, 1998, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary on the Commission.

[FR Doc. 98–6769 Filed 3–16–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

Customs Service Field Organization: Establishment of Port of Entry in Fort Myers, FL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of the Customs Service by designating Fort Myers, Florida, as a port of entry. The new port of entry would include Southwest Florida International Airport, which is currently a user fee airport. The geographical boundaries of the new port will be the same as those of Lee County, Florida. The change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers and the general public.

DATES: Comments must be received on or before May 18, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Third Floor, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, 202–927–0196.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is proposing to amend §§ 101.3(b)(1) and 122.15(b), Customs Regulations (19 CFR 101.3(b)(1) and 122.15(b)), by designating Fort Myers, Florida, as a port of entry. The Lee County Port Authority of Florida requested this designation. The geographical boundaries of the new port will be the same as those of Lee County, Florida, and will include the Southwest Florida International Airport (hereafter known as SFIA). SFIA is currently a user fee airport.

The criteria used by Customs in determining whether to establish a port of entry are found in T.D. 82–37 (47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328). Under these criteria, which are not absolute, a community requesting a port of entry designation must: (1) Demonstrate that the benefits to be derived justify the Federal Government expense involved; (2) be serviced by at least two major modes of transportation (rail, air, water or highway); (3) have a minimum population of 300,000 within the immediate service area (approximately a 70 mile radius); and (4) make a commitment to make optimal use of electronic data transfer capabilities to permit integration with Customs Automated Commercial System (ACS), which provides a means for the electronic processing of entries

of imported merchandise. Further, the actual or potential Customs workload (i.e., number of transactions per year) at the proposed port of entry must meet one of several alternative minimum requirements, among which are 15,000 passenger arrivals per year. Finally, facilities at the proposed port of entry must include cargo and passenger facilities, warehousing space for the secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas and other space necessary for regular Customs operations.

The request for port of entry status states that there will be several Federal Government benefits if the port of entry is approved. As tourism is on the rise in the Fort Myers area and there is an ever increasing demand for goods in that area, the SFIA airport located within the proposed port of entry would assist in moving aircraft, passengers and cargo efficiently.

The proposed port of Fort Myers is serviced by air, by highway and by railroad spur. SFIA is ranked the 56th busiest airport in North America. It is located three miles from Interstate 75, providing easy access to other points in Florida and the United States. The airport is adjacent to a railroad spur which allows Seminole Gulf Railway to provide freight service to the area.

The proposed port of Fort Myers includes all of Lee County, Florida. In a 70 mile radius, including Sarasota, the population is already well over one million people.

The proposed port of Fort Myers meets the criteria for a port of entry in terms of number of international passengers; SFIA far exceeds the 15,000 international passengers per year criterion. In 1996, Customs cleared flights carrying 57,962 arriving international passengers at SFIA. There were 58,431 outbound international passengers during the same time period.

All the U.S. government agencies which must be included in a port are already in place because SFIA is currently a user fee airport. In addition, Customs has the concurrence of other necessary federal agencies. The facilities required for these other federal agencies are already present because SFIA is a user fee airport. The requisite electronic data processing systems are also in place.

Based on the information provided above, Customs believes that Fort Myers meets the current standards for port of entry designations set forth in T. D. 82–37, as revised by T. D. 86–14 and T. D. 87–65. If Fort Myers is established as a port of entry, SFIA would lose its status as a user fee airport.

Proposed Limits of Port of Entry

The geographical limits of the proposed port of entry of Fort Myers, Florida, would be the same as those of Lee County, Florida, which includes SFIA and the city of Fort Myers.

Proposed Amendments

If the proposed port of entry designation is adopted, the list of Customs ports of entry in 19 CFR 101.3(b)(1) and the list of user fee airports in § 122.15(b) will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Third Floor, 1300 Pennsylvania Avenue N.W., Washington, D.C.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this are exempt from consideration under Executive Order 12866.

Drafting Information: The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

D. M. Browning,

Acting Commissioner of Customs.

Approved: February 23, 1998.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–6882 Filed 3–16–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 2763]

Bureau of Consular Affairs; Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Filing an Application

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Proposed rule.

SUMMARY: Consular offices abroad have been experiencing an ever-increasing volume of nonimmigrant visa (NIV) applications. Some have had to begin declining to accept new applications from persons denied as intending immigrants in the recent past. This proposed rule would put this practice on a regulatory footing by formalizing a non-acceptance-for-six-months policy with respect to a new application from an alien whose prior NIV application has been refused under the provisions of INA 214(b).

DATES: Written comments must be received on or before May 18, 1998.

ADDRESSES: Written comments should be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, CA/VO/L/R, Department of State, Washington, D.C. 20520–0106, (202) 663–1204.

SUPPLEMENTARY INFORMATION: Section 214(b) of the Immigration and Nationality Act (INA) establishes a presumption that an alien is an intending immigrant unless he or she can establish entitlement to a nonimmigrant classification. Moreover, for certain classes of nonimmigrants, there is also a statutory requirement incorporated in the definitions of those nonimmigrant classifications (INA 101(a)(15)) that the alien establish that he or she has a residence abroad which

the alien has no intention of abandoning. This is most commonly shown by possession of a well-paying job, a home, family or other ties, etc. which would, in themselves, compel the alien to return voluntarily to that place after a temporary period in the United States. Traditionally, the class of nonimmigrant most likely to fail this test is visitor for business or pleasure ("B") under INA 101(a)(15)(B). An applicant may request reconsideration by the refusing consular officer and all refusals must, by regulation (41.121(c)), be reviewed within 120 days by a senior officer, who looks at the information as originally before the consular officer. While an applicant may also file an entirely new application, the sooner such a new application is filed after the original application, the less likely it is that conditions relevant to the intending immigrant issue will have so changed as to warrant issuance of a visa on the new application.

Nonetheless, at a number of consular offices, significant resources are spent on "re-applications" based on nothing more than the original application, resources that the posts cannot afford no matter how strong their "service" orientation. Many posts continue to experience increasing workloads without concomitant increasing staffs. Some posts have therefore instituted local policies, similar to the proposed rule, to limit expenditure of time and space on the many re-applications which are non-meritorious, while reserving discretion to accept re-applications in special circumstances, such as genuine (documentable) emergencies. The Department believes it preferable to have this procedure reflected in uniformly applicable regulations as other procedures generally are.

The rules at 22 CFR 41.103(a) outline the general procedures for filing an application for a nonimmigrant visa, and are thus the logical location for this proposed rule. No regulation could prevent an alien from filling out an application form; it is possible, however, to prevent its "filing", i.e., acceptance for adjudication by a consular officer.

This rule is proposed under the authority of INA 104 which invests in the Secretary of State the right to promulgate regulations necessary to administer immigration laws relating to the duties and functions of consular officers.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule imposes no reporting or record-keeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required under E.O. 12998 and determined to be in compliance therewith.

This rule is exempt from review under E.O. 12866, but has been reviewed internally to ensure consistency therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

In view of the foregoing, 22 CFR Part 41 is proposed to be amended as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1104.

2. Section 41.103 is amended by adding paragraph (a)(4), to read as follows:

§ 41.103 Filing an application and Form OF–156

* * * * *

(4) A consular officer may refuse to accept for adjudication an application for a nonimmigrant visa from an applicant whose prior application at that post was denied under the provisions of INA 214(b) within the preceding six months, unless the applicant presents significantly different new evidence or evidence of a genuine emergency.

* * * * *

Dated: March 10, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–6826 Filed 3–16–98; 8:45 am]

BILLING CODE 4710–06–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–30; RM–9228]

Radio Broadcasting Services; Shenandoah, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Daryl A. Alligood requesting the allotment of Channel 296A to Shenandoah, Virginia, as the community's first local aural transmission service. Channel 296A can be allotted to Shenandoah in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 kilometers (1.3 miles) northeast of the community in order to avoid a short-spacing conflict with the licensed operation of Station WCHG(FM), Channel 296A, Hot Springs, Virginia. The coordinates for Channel 296A are 38–30–00 NL and 78–36–33 WL. Since the proposal is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, petitioner will be required to comply with the notification requirement of § 73.1030(a) of the Commission's Rules.

DATES: Comments must be filed on or before April 27, 1998, and reply comments on or before May 12, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Daryl A. Alligood, 1104 New Mill Drive, Chesapeake, Virginia 23320 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 98–30, adopted February 25, 1998, and released March 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–6850 Filed 3–16–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980302051–8051–01; I.D. 021198B]

RIN 0648–AK78

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 1998 Summer Flounder, Scup, and Black Sea Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to amend the regulations implementing the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). This rule proposes a possession limit of 8 fish per person and a minimum fish size of 15 inches (38 cm) for the 1998 summer flounder recreational fishery; a minimum fish size of 10 inches (25.4 cm) and an August 1 through August 15 seasonal closure for the 1998 black sea bass recreational fishery; and no change in the current regulations for the 1998 scup recreational fishery. The intent of this rule is to comply with the FMP implementing regulations that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these resources.

DATES: Public comments must be received on or before April 16, 1998.

ADDRESSES: Copies of the Environmental Assessment prepared for the 1998 summer flounder, scup, and black sea bass specifications and supporting documents used by the Monitoring Committees are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790. Comments on the proposed rule should be sent to: Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Please mark the outside of the envelope "Comments on the 1998 Recreational Fishing Measures for Summer Flounder, Scup, and Black Sea Bass."

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Management Specialist, (978) 281–9280.

SUPPLEMENTARY INFORMATION: The FMP was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. Implementing regulations for the fishery are found at 50 CFR part 648.

Sections 648.100, 648.120, and 648.140 outline the process for determining annual commercial and recreational catch quotas and other restrictions for the summer flounder, scup, and black sea bass fisheries. Pursuant to the FMP, Monitoring Committees (Committee) have been established for each of the three fisheries. Each Committee is comprised of representatives from the Commission, NMFS, and the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils. The FMP requires each Committee to review, on an annual basis, scientific and other relevant information and to recommend harvest limits and other restrictions necessary to achieve the fishing mortality rates (F) of the summer flounder, scup, and black sea bass fisheries. For 1998, the FMP defines F as 0.24 for summer flounder; 0.72 for scup; and 0.73 for black sea bass.

Each Committee reviews the following information annually: (1) Commercial and recreational catch data; (2) current estimates of stock mortality; (3) stock status; (4) recent estimates of recruitment; (5) virtual population analysis (a method for analyzing fish stock abundance); (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) impact of gear, other than otter trawls, on the mortality of summer flounder; and (9) other relevant information. Pursuant to §§ 648.100, 648.120, and 648.140, after this review, each Committee recommends to the Council and Commission management measures to assure achievement of the appropriate fishing mortality rate for each fishery. The Council and Commission, in turn, make a recommendation to the Regional Administrator.

Final specifications for the 1998 summer flounder, scup, and black sea bass fisheries were published on December 18, 1997 (62 FR 66304), including a coastwide recreational harvest limit of 7.41 million lb (3.36 million kg) for summer flounder; 1.553 million lb (0.70 million kg) for scup; and 3.148 million lb (1.43 million kg) for black sea bass. The recreational season, possession limit, and minimum size for 1998 were not established as part of the final specifications because recreational catch data for 1997 were not available for the Committees' use in evaluating the effectiveness of the 1997 measures. Shortly after preliminary data became available, each Committee met to review the 1997 data and to recommend measures for the 1998 recreational fisheries intended to complement the recreational harvest limits.

Summer Flounder

Using available data and catch estimates for the final months of 1997, the Council estimates that the summer flounder recreational sector exceeded its harvest limit by approximately 1.88 million lb (0.85 million kg). Since the 1998 specifications allocate the same recreational harvest level as in 1997 (7.41 million lb (3.36 million kg)), a 20.2 percent reduction in recreational landings from the 1997 level is needed. To accomplish this reduction, the Committee recommended either increasing the recreational minimum fish size to 15 inches (38 cm) and reducing the possession limit to 6 fish per person or maintain the minimum size at 14.5 inches (36.8 cm) and reduce the possession limit to 3 fish per person.

The Council and Commission reviewed the Committee recommendation but felt it was more restrictive than necessary. Instead, to achieve the needed reduction, the Council and the Commission proposed two alternative options, and proposed to allow each state to select either of the two sets of measures for implementation. The first option recommended an increase in the recreational minimum fish size to 15 inches (38 cm) and a reduction in the possession limit from 10 to 8 fish per person. The second option would maintain the minimum size at 14.5 inches (36.8 cm) and reduce the possession limit to six fish per person. Additionally, the second option included a closed season provision that would reduce the 1998 landings in a state by 8 percent from its 1997 landings level. The reduction attributed to each month would be calculated based on 1992–96 data.

The request by the Council to implement two distinct management regimes for summer flounder triggered

lengthy discussion concerning the legality of submitting alternative proposals to NMFS for review. The Council noted that if it was not found to be a legal option, it recommended the 15–inch (38–cm) minimum size and eight fish per person possession limit. At the December 1997 Council meeting, the Regional Attorney, Northeast Region, was asked for legal advice with respect to this issue. At that time, the Regional Attorney advised preliminarily that the underlying amendments (Amendment 2 for Summer Flounder and Amendment 9 for Black Sea Bass), did allow the setting of alternative possession limits and minimum sizes for summer flounder and black sea bass. The Regional Attorney also opined that the amendments did not allow a closure other than before and after a solitary continuous open season. After a more thorough review, the Regional Attorney advised that the amendments do not allow the Council to recommend alternative minimum sizes and possession limits or the states to adopt a minimum size or possession limit that differs from the measures specified by the Council. Therefore, NMFS is proposing to increase the recreational minimum fish size to 15 inches (38 cm) and to reduce the possession limit from 10 to 8 fish per person.

The Council believes that this combination of limits—the 15–inch (38–cm) minimum fish size and the eight fish possession limit—will constrain anglers to the 7.41 million lb (3.36 million kg) harvest limit in 1998. The possession limit is higher than that recommended by the Committee, which felt that it must be reduced to compensate for increased fish availability as the stock rebuilds. However, the eight fish per person limit is projected to reduce recreational landings by approximately 23 percent even if only 75 percent of the anglers comply with the proposed restrictions. Many Council members believe compliance is higher than 75 percent and the reduction in landings will be greater if that is true.

NMFS concurs with the Council recommendation. The analysis indicates that the decrease in the possession limit and the increase in the minimum fish size is expected to constrain the harvest to the specified level. In addition to these measures, the Council and Commission took action to reduce discard mortality associated with the recreational fishery. This complements the action it took for the commercial fishery by requiring each state to establish a 15 percent commercial quota set aside for a bycatch fishery.

During the 1998 fishery, the Council intended to recommend a recreational hook requirement to address discard mortality in the summer flounder recreational sector. Because there are so few studies available on which to base hook size requirements for summer flounder, the Council and Commission took action based on the limited studies available and the testimony from fishery participants. Accordingly, they intend to publicize their support for voluntary use of circle hooks greater than 2/0 in size when fishing for summer flounder. Given the absence of definitive data, NMFS believes this is a reasonable way to begin to address this issue for the recreational fishery.

Black Sea Bass

The first year that the FMP requires specification of a recreational harvest level for black sea bass is 1998. In 1997, the only recreational measure was a minimum fish size of 9 inches (22.9 cm). Because 70 percent of the landings occur from September through December and 1997 data are not available, the Council recommended that 1996 data be used to estimate the effects of fish size and possession limits. Relative to the 1996 data, landings would have to be reduced 47 percent to achieve the 1998 harvest limit of 3.148 million lb (1.43 kg). To accomplish this reduction, the Council and the Commission proposed two alternative options and proposed to allow each state to select either of the two measures for implementation. The first option proposed to increase the recreational minimum fish size to 10 inches (25.4 cm), establish an August 1 through August 15 seasonal closure, and set no possession limit. The second option, proposed to increase the recreational minimum fish size to 10 inches (25.4 cm), impose a 20 fish per person possession limit, and not to impose a seasonal closure.

As discussed above for summer flounder, the proposal by the Council and Commission to allow states to choose between two distinct management regimes was found inconsistent with the FMP according to the Regional Attorney. Therefore, NMFS proposes to increase the recreational minimum fish size to 10 inches (25.4 cm), establish an August 1 through August 15 seasonal closure, and not to impose a possession limit. Based on the staff analysis presented at the Council meeting, this combination of measures is expected to constrain anglers to the 3.148 million lb (1.43 million kg) harvest limit in 1998.

Scup

The only measure in place for the 1997 scup recreational fishery was a 7–inch (17.78–cm) minimum fish size. The Council used available data and catch estimates for the final months of the 1997 scup recreational fishery to project scup landings to be below the 1997 harvest limit (1.947 million lb (0.88 million kg)) by approximately 17 percent. The difference between the projected 1997 landings (1.616 million lb (0.73 million kg)) and the 1998 target limit (1.553 million lb (0.70 million kg)) is small.

The Council and Commission recommended no change in the current recreational regulations for scup in 1998. The Council believes that the 7–inch (17.78–cm) minimum fish size will constrain anglers to the 1.553 million lb (0.70 million kg) harvest limit in 1998 because of the limited fish availability associated with low stock levels. NMFS concurs with the Council/Commission recommendation.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

It is unlikely that the measures that would be implemented by this action would decrease ex-vessel revenues by more than 5 percent for more than 20 percent of the small entities engaged in the summer flounder, scup, and black sea bass fisheries. It is not expected that any small entities in these recreational fisheries will cease operations as a result of this action. The impacts were evaluated when the recreational coastwide harvest levels were analyzed as part of the proposed and final 1998 specifications. The review examined the impact the final 1998 specifications would have on all vessels that landed any of these three species in 1996. Impacts were examined by presuming a 23–percent reduction in summer flounder landings, a 47–percent reduction in black sea bass, and no reduction in scup landings. While it is possible that the recreational harvest limit for 1998 could cause some concern for recreational fishermen, there is no indication that it will lead to a decline in the demand for recreational trips. Within recreational fishing there are numerous alternative target species, and the number of trips targeting a given species in any given year is quite variable. For example, recreational fishing trips upon which summer flounder were landed have fluctuated over the past 4–5 years without

any discernible trend. Trips for black sea bass have similarly fluctuated. By contrast, scup targeted trips have been declining in recent years, and those declining years correspond to dramatic increases in trips taken where striped bass was the target species. However, little information is available to draw any causal inferences linking management regulations to switching behavior among the myriad of species available to recreational anglers. In the aggregate, the total number of recreational trips in the Mid-Atlantic region have remained relatively stable with a slight upward trend since 1993. It is likely that recreational anglers will target other species that are relatively more abundant (such as black sea bass) when faced with potential reductions in the amount of summer flounder and black sea bass that they are allowed to catch due to decreases in the respective recreational harvest limits. Since the proposed measures for each of these fisheries do not significantly change measures previously adopted, they are not expected to alter participation in the fishery. Therefore, this rule most likely would not have a significant impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 11, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) The minimum size for summer flounder is 15 inches (38 cm) TL for all vessels that do not qualify for a moratorium permit, and party and charter boats holding moratorium permits, but fishing with passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

* * * * *

3. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

(a) No person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit or is issued a summer flounder dealer permit. * * *

* * * * *

4. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(6) and fishermen subject to the possession limit may not fish for black sea bass from August 1 through August 15. This time period may be adjusted pursuant to the procedures in § 648.140.

* * * * *

5. In § 648.143, paragraph (a) is revised, existing paragraph (b) is redesigned as paragraph (c), and new paragraph (b) is added to read as follows:

§ 648.143 Minimum fish sizes.

(a) The minimum size for black sea bass is 10 inches (25.4 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) that fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3' N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.140.

(b) The minimum size for black sea bass is 10 inches (25.4 cm) TL for all vessels that do not qualify for a moratorium permit, and party and charter boats holding moratorium permits, but fishing with passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

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[FR Doc. 98–6771 Filed 3–12–98; 11:20 am]

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Notices

Federal Register
Vol. 63, No. 51
Tuesday, March 17, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–807]

Ferrovanadium and Nitrided Vanadium From the Russian Federation: Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On August 28, 1997, the Department of Commerce initiated an administrative review of the antidumping duty order on Ferrovanadium and Nitrided Vanadium from the Russian Federation for one manufacturer or producer of ferrovanadium and nitrided vanadium from the Russian Federation, Galt Alloys, Inc., covering the period July 1, 1996, through June 30, 1997. The Department of Commerce is terminating the review after confirming that Galt Alloys, Inc. made no sales of the subject merchandise during the period of review.

EFFECTIVE DATE: March 17, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Mary Jenkins, Office 5, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4136 or (202) 482–1756, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as published in the **Federal Register** on May 19, 1997. See Antidumping Duties: Countervailing Duties; Final Rule, 62 FR 27296 (May 19, 1997).

Background

On July 31, 1997, Shieldalloy Metallurgical Corporation (the petitioner) requested that the Department conduct an administrative review of the antidumping duty order on ferrovanadium and nitrided vanadium from the Russian Federation for the period July 1, 1996, through June 30, 1997.

On August 15, 1997, Galt reported that it made no sales of the subject merchandise during the period of review (POR). Subsequently, the petitioner challenged Galt's assertion that no sales were made during the POR, arguing the U.S. import statistics showed subject merchandise imports from the Russian Federation prior to and during the POR.

On October 2 and 21, 1997, Galt provided submissions claiming that entries of the subject merchandise originally declared to U.S. Customs as being of Russian origin were in error and were actually from Tajikistan. On January 13, 1998, the Department conducted a verification of Galt's claim and confirmed that the entries of ferrovanadium were actually from Tajikistan, as claimed by Galt (*see* January 29, 1998, memorandum reporting on verification of Galt's submitted data.)

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of this subject merchandise. In light of the fact that we determined that Galt did not make sales of the subject merchandise during the POR in question, we are terminating this review for Galt. We will issue appraisement instructions directly to the U.S. Customs Service.

In addition, petitioner requested on September 29, 1997, that the Department determine whether antidumping duties have been absorbed by Galt or its affiliates, in accordance with 19 CFR 351.231(j). However, as Galt made no sales of the subject merchandise during the POR, there is no basis to conduct this inquiry.

This notice is published in accordance with § 353.213(d)(4).

Dated: March 6, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–6897 Filed 3–16–98; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, Antidumping Duty Administrative Review; Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 1996–1997 administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States, Ta Chen Stainless Pipe Company, Ltd., and the period June 1, 1996 through May 31, 1997.

EFFECTIVE DATE: March 17, 1998.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or John Kugelman at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limit for completion of the preliminary results until June 1, 1998. See

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Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: February 25, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–6894 Filed 3–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–824]

Postponement of Final Antidumping Determination: Stainless Steel Wire Rod From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–2613 or (202) 482–4194, respectively.

EFFECTIVE DATE: March 17, 1998.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on March 2, 1998, Krupp Edelstahlprofile GmbH and Krupp Hoesch Steel Products Inc. (collectively "Krupp"), producers/exporters of the subject merchandise, requested that the Department postpone its final determination to 135 days after publication of the Department's preliminary determination. In addition, Krupp requested that the Department extend the period for provisional measures to not more than six months. In accordance with 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) Krupp accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than July 20, 1998, which is 135 days after the publication of the preliminary determination (see Notice of Preliminary Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Germany (63 FR 10847 March 5, 1998)). Suspension of liquidation will be extended accordingly.

Case briefs or other written comments in at least 10 copies must be submitted to the Assistant Secretary for Import Administration no later than June 1, 1998, and rebuttal briefs no later than June 8, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 15, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within thirty days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: March 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6898 Filed 3–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan, Antidumping Duty Administrative Review; Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 1995–1996 administrative review of the antidumping duty order on welded stainless steel pipe from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States, Ta Chen Stainless Pipe Company, Ltd., and the period December 1, 1995 through November 30, 1996.

EFFECTIVE DATE: March 17, 1998.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or John Kugelman at (202) 482–0649, AD/CVD Enforcement, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limit for completion of the final results until July 8, 1998. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: February 25, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–6895 Filed 3–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On February 20, 1998, Cerestar, USA, Inc., filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Several other Requests for Panel Review were also filed in this matter. Panel review was requested of the final antidumping duty determination made by the Secretaria de Comercio y Fomento Industrial with respect to Imports of High Fructose Corn Syrup originating in the United States of America. This determination was published in the *Diario Oficial* on January 23, 1998. The NAFTA Secretariat has assigned Case Number MEX–98–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230 (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on February 20, 1998, requesting panel review of the final antidumping determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is March 23, 1998);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 6, 1998); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 10, 1998.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 98–6862 Filed 3–16–98; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

[Docket No. 971021249–8006–02]

RIN 0625–AA50

Allocation of Duty-Exemptions for Calendar Year 1998 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates 1998 duty-exemptions for watch producers located in the Virgin Islands pursuant to Public Law 97–446, as amended by Public Law 103–465 ("the Act").

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: Pursuant to the Act the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with Section 303.3(a) of the regulations (15 CFR Part 303), this action establishes the total quantity of duty-free insular watches and watch movements for 1998 at 4,140,000 units and divides this amount among the three insular possessions of the United States and the Northern Mariana Islands. If this amount, 2,640,000 units may be allocated to Virgin Islands producers, 500,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (63 FR 5887).

The criteria for the calculation of the 1998 duty-exemption allocations among insular producers are set forth in Section 303.14 of the regulations.

The Departments have verified the data submitted on application form ITA–334P by Virgin Islands producers and inspected their current operations in accordance with Section 303.5 of the regulations.

In calendar year 1997 the Virgin Islands watch assembly firms shipped 922,229 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1997 plus the creditable wages paid by the industry during calendar year 1997 to residents of the territory was $3,458,360.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 1998 Virginia Islands annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA–334P) as a result of the Departments' verification.

The duty-exemption allocations for calendar year 1998 in the Virgin Islands are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc.	500,000
Hampden Watch Co., Inc.	200,000
Progress Watch Co., Inc.	350,000
Unitime Industries, Inc.	500,000
Tropex, Inc. Inc.	300,000

Robert S. LaRussa,
Assistant Secretary for Import Administration, Department of Commerce.
Allen Stayman
Director, Office of Insular Affairs, Department of the Interior.
[FR Doc. 98–6893 Filed 3–16–98; 8:45 am]
BILLING CODE 3510–DS–M, 4310–93–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098E]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Spiny Dogfish Technical Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, April 2, 1998, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610–521–8954.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss revised estimates of current fishing mortality, review results of surplus production modeling and biomass estimation, review projection model results, and develop definition of overfishing.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 11, 1998.
Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 98–6855 Filed 3–16–98; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098F]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in March and April 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between March 31, 1998, and April 27, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Peabody and East Boston, MA; Warwick, RI; and New London, CT. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036; telephone: (781) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, March 31, 1998, 10 a.m. and Wednesday, April 1, 1998, 9:00 a.m.—Joint Council Herring Committee and Atlantic States Marine Fisheries Commission Herring Section Meeting

Location: Sheraton Inn, Providence Airport, 1850 Post Road, Warwick, RI 02886; telephone: (401) 738-4000.

Selection of Atlantic Herring Fishery Management Plan (FMP) measures, including the identification of a preferred alternative, for public hearing purposes.

Thursday, April 2, 1998, 9:30 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: Holiday Inn, One Newbury Street (Route 1) Peabody, MA 01960; telephone: (978) 535-4600.

Review of the progress and status of essential fish habitat (EFH) identification and description, and discussion of alternatives for EFH designation.

Friday, April 3, 1998, 9:30 a.m.—Groundfish Committee Meeting

Location: Holiday Inn, One Newbury Street, (Route 1) Peabody, MA 01960; telephone: (978) 535-4600.

Final selection of measures to be recommended to the Council for public hearings on Amendment 9 to the Northeast Multispecies FMP and development of a recommendation to the Council on Framework Adjustment 26 to the FMP, an action that would implement alternative cod conservation measures.

Tuesday, April 7, 10 a.m.—Whiting Committee Meeting

Location: Holiday Inn, One Newbury Street (Route 1) Peabody, MA 01960; telephone: (978) 535-4600.

Development of final recommendations to the Council on a management alternative for consideration at public hearings.

Wednesday, April 14, 1998, 9:30 a.m.—Joint Monkfish Committee and Advisory Panel Meeting

Location: Airport Holiday Inn, 225 McClellan Highway, East Boston, MA 02128; telephone: (617) 569-5250.

Approval of final management measures to be included in the Monkfish FMP, for New England and Mid-Atlantic Council consideration. This agenda will include time for public comments on the proposed final management measures.

Monday, April, 27, 10 a.m.—Whiting Committee Meeting

Location: Radisson Hotel, 35 Governor Winthrop Boulevard, New London, CT 06320; telephone: (860) 443-7000.

Review of the draft Whiting Amendment, draft Environmental Impact Statement and a public hearing schedule.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting dates.

Dated: March 11, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–6856 Filed 3–16–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 98–0303053–8053–01]

Notice of Conference on Database Protection and Access Issues

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Patent and Trademark Office (PTO) is announcing that it will hold a one-day conference on issues related to protection of and access to compilations of data.

DATES: The conference will be held on Tuesday, April 28, 1998, beginning at 8:30 a.m.

Registration materials must be returned no later than April 20, 1998.

ADDRESSES: The conference will be held on Tuesday, April 28, 1998, beginning at 8:30 a.m. in the Falk Auditorium of the Brookings Institution, 1775 Massachusetts Avenue, NW, Washington, DC 20036. Conference sessions will be held in the Falk Auditorium, other conference facilities of the Brookings Institution, and conference facilities at the Carnegie Endowment for International Peace, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

Requests for registration materials should be made to Justin Hughes by electronic mail to database.conference@uspto.gov, by facsimile transmission marked to his attention at (703) 305–8885, or by mail marked to his attention and addressed to the Office of Legislative and International Affairs, Patent and Trademark Office, Washington, DC 20231. Because of limited seating in the conference facilities, the PTO will accept the first 175 participants on a first-come, first-served basis according to the date and time of each registration request.

There will be a reasonable charge to help defray costs of the lunch and refreshments served at the conference. However, payment is not obligatory to participate in the conference.

Arrangements for conference panelists and moderators will be made separately from conference participant registration.

FOR FURTHER INFORMATION CONTACT: Justin Hughes, by telephone at (703) 305–9300, by facsimile transmission marked to his attention at (703) 305–8885, by electronic mail to database.conference@uspto.gov, or by mail marked to his attention at the Office of Legislative and International Affairs, Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Issues concerning legal protection for compilations of data gained increased attention following the Supreme Court's 1991 decision *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U.S. 340 (1991), which determined that there is no copyright protection for compilations of data that lack creativity in their selection, arrangement, and presentation. The Feist decision, as well as subsequent cases in the lower courts, established that copyright does not protect all compilations of data or of information and that even where copyright exists in such compilations, it provides "thin" protection that does not inhibit unauthorized copying of all or substantial amounts of databases.

Protection of compilations of data has also become an issue abroad. In March 1996, the European Commission adopted a Directive on Databases which creates a sui generis intellectual property system for compilations of data. The Directive requires member states of the European Union (EU) to implement national legislation to provide database owners with a right to control extraction and reutilization of data from a proprietary compilation for a fifteen-year term; the Directive provides that member states may create exceptions to liability for education and research uses of databases.

In response to the *Feist* decision, subsequent cases, and the European initiative, H.R. 3531 was introduced in 1996 by then Congressman Carlos Moorhead. House bill 3531 would have provided a sui generis legal regime for database protection. The bill would have protected database owners for a twenty-five-year term from unauthorized extraction, use, or reuse of any substantial part of a database.

In the 105th Congress, Congressman Howard Coble, Chair of the House Subcommittee on Courts and Intellectual Property, introduced H.R. 2652, the "Collections of Information Antipiracy Act". House bill 2652 would provide a database owner with protection against misappropriation of substantial portions of its database if such misappropriation would harm the owner's actual potential market for the database or products incorporating the database. House bill 2652 provides exceptions from liability for use of data for not-for-profit, educational, scientific, research, or news reporting purposes, although the contours of these exceptions may not correspond precisely to fair use exceptions under copyright law. House bill 2652 has been supported by a wide variety of entities in the information industry and has been endorsed by the Copyright Office as a constructive step to restore protection for "sweat of the brow" compilations that was eliminated in the *Feist* decision.

At the same time, a number of organizations, particularly in the scientific and academic communities, have expressed concerns that H.R. 2652 may impede access to data necessary to scholarly and scientific research. Scientists have stressed that many research efforts rely on uses of entire databases, uses that might be deemed substantial extraction under the bill's provisions and that privately controlled databases might be priced so as to make many research projects impossible.

Opponents of providing additional database protection have argued that the database market is already characterized by single source, niche marketers; that there is no apparent market failure, i.e. undersupply of databases, because of the absence of comprehensive protection; and that existing copyright and contractual law coupled with current technology provide adequate protection to database owners.

Internationally, in 1996, the European Union submitted a draft international database protection treaty, similar in scope to the EU Directive, to the World Intellectual Property Organization (WIPO). In anticipation of a WIPO Diplomatic Conference in December 1996, and because of substantial concerns about provisions in the EU proposal, the United States submitted its own proposal to WIPO. The 1996 Diplomatic Conference ultimately focused on copyright and neighboring rights proposals; it did not resolve any issues related to possible protection of databases. WIPO has established a timetable to resume discussions concerning database protection in 1998.

The April 28, 1998 database conference is intended to bring together representatives from academia, private industry, and Government for an in-

depth, day-long discussion of the fundamental questions related to database protection and access. This conference is intended to help policy makers understand the wide range of issues in this important area by soliciting the advice of individual members of the public.

The conference will consist of morning and afternoon plenary sessions with additional, smaller working groups at midday. Conference topics will explore whether a comprehensive regime of legal protection is needed for compilations of data, what safeguards should exist to ensure robust levels of scientific and academic research, what market failures do exist or are likely to exist in data generation industries, and whether government-generated or government-financed data should be subject to special access rules.

Dated: March 11, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–6839 Filed 3–16–98; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

March 11, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 342/642 is being increased by recrediting unused carryforward applied to the 1997 limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67624, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 11, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the periods January 1, 1998 through May 30, 1998 and January 1, 1998 through December 31, 1998.

Effective on March 18, 1998, you are directed to increase the limit for Categories 342/642 to 180,210 dozen [1] for the period January 1, 1998 through May 30, 1998, as provided for under the Uruguay Round Agreement on Textiles and Clothing (ATC).

The Guaranteed Access Level for Categories 342/642 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–6863 Filed 3–16–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

March 11, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryforward used and an additional five percent increase for traditional folklore products made from handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67625, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 11, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on March 18, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Levels in Group I	
200	793,742 kilograms.
300/301	3,773,207 kilograms.
315–O [2]	25,383,379 square meters.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

Category	Twelve-month limit [1]
334/335	229,281 dozen.
336/636	606,771 dozen.
338/339	1,114,125 dozen.
340/640	1,372,074 dozen.
341	868,909 dozen.
342/642	381,212 dozen.
347/348	1,589,155 dozen.
350/650	166,863 dozen.
351/651	469,523 dozen.
359–C/659–C [3]	1,303,471 kilograms.
361	1,221,141 numbers.
445/446	53,767 dozen.
447	16,049 dozen.
611–O [4]	4,108,000 square meters.
619/620	8,506,863 square meters.
634/635	288,937 dozen.
638/639	1,426,959 dozen.
641	2,324,937 dozen.
647/648	3,324,571 dozen.
Group II 201, 218, 220, 222–224, 226, 227, 237, 239pt. [5], 332, 333, 352, 359–O [6], 362, 363, 369–O [7], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [8], 464, 469pt. [9], 603, 604–O [10], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [11], 666, 669–O [12], 670–O [13], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [14], as a group.	88,703,224 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 315–O: all HTS numbers except 5208.52.4055.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 611–O: only HTS numbers 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt.).

[7] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[8] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[9] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[10] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[11] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[12] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[13] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9025 and 6307.90.9907 (Category 670–L).

[14] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–6864 Filed 3–16–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25 March 1998.

Time of Meeting: 0800–1700.

Place: Natick Research, Development, and Engineering Center, Kansas Street, Natick, MA.

Agenda: The Army Science Board's (ASB) Independent Assessment Panel on "Hit-to-Kill Interceptor Lethality—Phase II" will receive briefing on biological and chemical defense from the staff of the Natick Research, Development, and Engineering Center. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist Army Science Board.

[FR Doc. 98–6834 Filed 3–16–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 30 March 1998.

Time of Meeting: 0830–1630.

Place: Abdingdon, MD.

Agenda: The Army Science Board's (ASB) Issue Group Study on "Review of Risk Assessment Methodology for Proposed DoD Range Rule" will meet for briefings and discussions. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–6835 Filed 3–16–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 16–17 April 1998.

Time of Meeting: 0830–1700 (both days).

Place: Association of the United States Army, 2425 Wilson Boulevard, Conference Main Room, Arlington, VA.

Agenda: The Army Science Board's (ASB) 1998 Summer Study Group on "Concepts and Technology for the Army Beyond 2010"

will meet to hear panel progress reports. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–6836 Filed 3–16–98; 8:45 am]

BILLING CODE 3210–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board, Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25–26 March 1998.

Time of Meeting: 0830–1700, 25 Mar 98; 0900–1600, 26 Mar 98.

Place: Association of the U.S. Army, 2425 Wilson Blvd., Arlington, VA.

Agenda: The Army Science Board's (ASB) 1998 Summer Study panel on "Concepts and Technology for the Army Beyond 2020" will meet for briefings and discussions. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–6837 Filed 3–16–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 31 March and 1 April 1998.

Time of Meeting: 0800–1700, 31 Mar 98; 0800–1600, 1 Apr 98.

Place: Picatinny Arsenal, NJ.

Agenda: The Army Science Board (ASB) Issue Group Study on "Impacts of Precision Guided Munitions on Future Tank and Howitzer Capabilities" will visit Picatinny Arsenal. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–6838 Filed 3–16–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend System of Records.

SUMMARY: The Department of the Army is amending the system identifier to a system of records notice. The Army system of records notice identified as A0635/690 TAPC, entitled Army Career and Alumni Program, Pre-separation and Job Assistance Counseling published on March 2, 1998, at 63 FR 10204, is being changed to A0600o TAPC, same title.

EFFECTIVE DATE: March 17, 1998.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Army system of records notice identified as A0635/690 TAPC, entitled Army Career and Alumni Program, Pre-separation and Job Assistance Counseling published on March 2, 1998, at 63 FR 10204, is being changed to A0600o TAPC, same title. The amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–6746 Filed 3–16–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, The Defense Logistics Agency, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received until May 18, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Logistics Agency Headquarters, ATTN: Mr. Joseph J. Kunda, DLSC–LC, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposal information collection or to obtain a copy of the proposal and associated collection instructions, please write to the above address, or call DLSC–LC at (703) 767–1542.

Title, Associated Form, and OMB Number: End-Use Certificate, DLA Form 1822, OMB No. 0704–0382.

Needs and Uses: The form is used to control the ultimate disposition of Munitions List Items and Commerce Control List Items. Successful bidders are checked to determine if they are responsible and are not debarred bidders, Specially Designated Nationals or Blocked Persons and will not divert the property to denied/sanctioned

counties or unauthorized destinations or sell bidder experience list, firms or individuals.

Affected Public: Individuals; businesses or other for profit; not-for-profit institutions; State, local or tribal government.

Annual Burden Hours: 13,200.

Number of Respondents: 40,000.

Responses per Respondent: 1.

Average Burden per Response: 33.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are customers that purchase surplus property, munitions and commerce control list items. Bidders are checked to determine if they are responsible and not debarred bidders, Specially Designated Nationals or Blocked Persons.

The form is available from the DEMIL Home Page on Internet, Defense Reutilization and Marketing Service sales catalogs, Defense Contact Management Command offices, FormFlow and ProForm.

Carla A. Von Bernewitz,

Chief Information Officer, Defense Logistics Agency.

[FR Doc. 98–6619 Filed 3–16–98; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Termination of an Environmental Impact Statement for Construction of a Solid Waste Landfill on Marine Corps Base, Quantico, VA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Marine Corps has been in the process of preparing an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act of 1969 for the construction and operation of a solid waste landfill on Marine Corps Base (MCB), Quantico, Virginia. The Notice of Intent for preparing the EIS was published in the **Federal Register** on November 10, 1993. After a thorough review of the project, the Marine Corps decided to dispose of solid waste generated by MCB Quantico at existing off-base landfills in the region. Accordingly, the EIS is terminated and the Marine Corps does not at this time propose to construct a new solid waste landfill at MCB Quantico.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Shrum, Environmental Department, Marine Corps Base, Quantico, Virginia 22134–5001, telephone (703) 784–5384.

Dated: February 13, 1998.

Lawrence L. Larson,

Colonel, USMC, Head, Military Construction and Land Use Branch, Facilities and Services Division, Installations and Logistics Department, Headquarters, U.S. Marine Corps.

[FR Doc. 98–6829 Filed 3–16–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Inventions, Government-Owned; Availability for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Intent to grant exclusive license; Environics, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Environics, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government owned invention described in U.S. Patent Application No. 08/625,506, entitled "Atmospheric Ozone Concentration Detector," filed March 29, 1996.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, not later than May 18, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: March 5, 1998.

Lou Rae Langevin,

LT. JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 98–6860 Filed 3–16–98; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Zesto Therm, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Zesto Therm, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government owned invention described in U.S. Patent No. 4,264,362 entitled "Supercorroding Galvanic Cell Alloys for Generation of Heat and Gas" issued April 28, 1981.

DATES: Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U. S. C. 207, 37 CFR Part 404)

Dated: March 6, 1998.

Lou Rae Langevin,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 98–6845 Filed 3–16–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Proposal To Revoke Designations of Inactive Uranium Mill Tailings Sites in North Dakota Previously Designated Under the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of proposal to revoke designations of inactive uranium mill tailings sites in North Dakota previously designated under the provisions of the Uranium Mill Tailings Radiation Control Act of 1978.

SUMMARY: In 1979, the Secretary of Energy designated inactive uranium milling sites, including two sites at Belfield and Bowman, North Dakota, for cleanup under the Uranium Mill Tailings Radiation Control Act of 1978. In 1995, the State of North Dakota requested that the designations of the Belfield and Bowman sites be revoked citing its belief that there will be minimal risk to the public and the environment if the sites are not cleaned up and the State's inability to pay its 10 percent share of the cleanup costs required by UMTRCA. The Department of Energy is proposing to revoke the designations of these sites because of the low risks to the public and the environment at the sites, DOE's lack of

authority to clean up the two sites without costsharing by the State, and the existence of alternative authority to regulate the sites following revocation of the designations. Following revocation, these two sites will no longer be eligible for cleanup under the provisions of UMTRCA.

DATES: Public comments will be accepted on this proposed action. Comments should be submitted by April 16, 1998. If the Department does not receive any comments on this proposed action that would cause it to reconsider its proposal, the revocations shall be effective on May 18, 1998; and the Belfield and Bowman, North Dakota, processing sites and associated vicinity properties will no longer be eligible for remedial action by the Department of Energy under the provisions of UMTRCA.

ADDRESSES: Comments should be sent to: Loretta B. Fahy, Office of Environmental Restoration, EM–45, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Loretta B. Fahy, Office of Environmental Restoration, (301) 903–3895.

SUPPLEMENTARY INFORMATION: The purpose of the Uranium Mill Tailings Radiation Control Act of 1978 is to provide, in cooperation with interested States, Indian tribes, and persons who own or control inactive uranium milling sites, a program of assessment and remedial action at certain designated sites to stabilize and control the tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards. Section 102(a)(1) of UMTRCA, 42 U.S.C. 7912(a)(1), required DOE to designate twenty-two sites specified in the Act and gave the Secretary discretionary authority to designate other sites. The Belfield and Bowman sites were designated under this discretionary authority of the Secretary (44 FR 74982, December 18, 1979).

Under the provisions of section 107(a) of UMTRCA, 42 U.S.C. 7917(a), the Secretary is authorized to pay only 90 percent of the cost of remedial action at designated sites not on Indian lands, and the State is required to provide the remaining 10 percent. If the State does not provide its share of the remedial action costs, the Secretary lacks the necessary authority to perform remedial action at the sites in that State.

The State of North Dakota, by letter dated March 14, 1995, requested that the Department of Energy take whatever action is necessary to revoke the designations of the Belfield and Bowman sites under UMTRCA and terminate the Cooperative Agreement between the State and the Department. The State's request expressed the view that there would be minimal risk to the public and environment if the sites were not cleaned up and noted that the North Dakota legislature was not likely to appropriate funds for the State's 10 percent share of the cleanup costs.

Under section 102(a)(1) of UMTRCA, 42 U.S.C. 7912(a)(1), the Department has the implicit authority to revoke the designations of the two sites. There are three reasons why the Department is taking this action. First, the risk to the public and environment is low, and the public will be protected through State regulation of the radioactive material at the sites. In arriving at this conclusion, the Department prepared an Environmental Assessment and has issued a Finding of No Significant Impact for this proposed action. Second, since the State of North Dakota has declined to appropriate the State's cost share, the Department lacks the authority under UMTRCA to conduct the cleanup.

Third, neither the Nuclear Regulatory Commission nor the Environmental Protection Agency has expressed any objection to the Department's proposed action. The Nuclear Regulatory Commission staff has advised the State and the Department that the State of North Dakota can regulate the sites under separate existing State authority. The Environmental Protection Agency has advised the Department that it will not object to the Department's action, provided that the State assumes regulatory responsibility for the sites. The State has notified the Department of its willingness to assume this responsibility.

Issued in Washington, D.C. on this 10th of March, 1998.

James J. Fiore,

Acting Deputy Assistant Secretary for Environmental Management.

[FR Doc. 98–6865 Filed 3–16–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, April 2, 1998, 6:00 p.m.—9:30 p.m.

ADDRESSES: Westminster City Hall, Lower-level Multi-purpose Room, 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will consider approving a recommendation concerning economic reuse at the Rocky Flats Technology Site.

2. The Board will discuss a survey of area residents regarding outreach preferences, community involvement, and knowledge of the Board and issues surrounding Rocky Flats.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of

operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on March 12, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–6867 Filed 3–16–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, April 1, 1998, 6:00 p.m.–9:30 p.m.

ADDRESSES: Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

A business meeting will be conducted with no technical presentation provided.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–0314.

Issued at Washington, DC on March 12, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–6868 Filed 3–16–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee teleconference:

Name: Secretary of Energy Advisory Board.

The purpose of the teleconference is to discuss the report of the Tennessee Valley Electric System Advisory Committee, a subcommittee of the Board.

DATES AND TIME: Tuesday, March 31, 1998, 11:00 AM—12:30 PM, EST.

ADDRESSES: Participants may call toll free by dialing 1–800–239–5258 and then providing the switchboard operator with participant code number 38271. Public participation is welcomed. However, the number of teleconference lines are limited and available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act. The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. On March 31, the Board will conduct a teleconference to discuss the report of the Tennessee Valley Electric System Advisory Council, a subcommittee of the Board.

Purpose of the Tennessee Valley Electric System Advisory Committee (TVC)

In late 1997, the Secretary of Energy directed the Board to form a subcommittee to provide advise, information, and recommendations to the Board on a legislative proposal to define the role of the Tennessee Valley Authority (TVA) in a restructured competitive electric industry. The Tennessee Valley Electric System Advisory Committee (TVC) was subsequently formed by the Board and Chaired by Butler Derrick, a member of the Secretary of Energy Advisory Board.

Tentative Agenda

Tuesday, March 31, 1998

11:00 AM—11:10 AM
Welcome and Opening Remarks—SEAB Chairman Walter Massey

11:10 AM—11:30 AM
Overview of TVC Findings and Recommendations—TVC Chairman, Butler Derrick

11:30 PM—12:00 PM
Public Comment Period

12:00 AM—12:30 PM
SEAB Review and Comment and Action—SEAB Chairman Walter Massey

12:30 PM
Adjourn

This tentative agenda is subject to change.

Public Participation

The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the teleconference in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its teleconference, the Board welcomes public comment. Members of the public will be heard during the public comment period. The

Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

Minutes and a transcript of the teleconference will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board may also be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on March 12, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–6866 Filed 3–16–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–261–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

March 11, 1998.

Take notice that on March 4, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–261–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an interconnection between ANR and DePere Energy LLC (DePere) for the ultimate delivery of natural gas to DePere's proposed power plant in DePere, Wisconsin, under ANR's blanket certificate pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR's proposed interconnection facilities will consist of metering facilities and a tap. The total cost of the facilities will be approximately $615,000, which will be fully reimbursed by DePere. ANR will initially provide deliveries to DePere at the interconnection pursuant to the provisions of its FERC Gas Tariff, Second Revised Volume No. 1. The proposed interconnection will accommodate up to 60 MMcf/d.

ANR states that the construction of the proposed interconnection facilities will have no effect on its peak day and annual deliveries, that its existing tariff does not prohibit additional interconnections, that deliveries will be accomplished without detriment or disadvantage to its other customers and that the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6794 Filed 3–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–000]

CNG Transmission Corporation; Notice of Informal Settlement Conference

March 11, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, March 19, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact William J. Collins at (202) 208–0248.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6798 Filed 3–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–000]

Koch Gateway Pipeline Company; Notice Rescheduling Informal Settlement Conference

March 11, 1998.

Take notice that the informal settlement conference scheduled to convene in this proceeding on March 12, 1998 has been canceled and rescheduled for March 17, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Sandra J. Delude at (202) 208–0583.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6797 Filed 3–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2077–000 NH/VT]

New England Power Company; Notice of New England Power Company's Request to Use Alternative Procedures in Filing a License Application

March 11, 1998.

On March 9, 1998, the existing licensee, New England Power Company (New England Power), filed a request to use alternative procedures for submitting an application for new

license for the existing Fifteen Mile Falls Hydroelectric Project No. 2077. The project is located on the Connecticut River, in Grafton County, New Hampshire, and Caledonia and Essex Counties, Vermont, and consists of the 10.56–MW McIndoes Development, 140.4–MW Comerford Development, and 140.4–MW Moore Development. New England Power has demonstrated that it has made an effort to contact all resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus exists that the use of alternative procedures is appropriate in this case.

New England Power has submitted a communications protocol that is supported by most interested entities. New England Power has also executed a settlement agreement with state and federal resource agencies and NGOs, which is attached to its request for use of alternative procedures.

The purpose of this notice is to invite any additional comments on New England Power's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations.[1] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedures being requested here combine the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Applicant Prepared EA Process and Fifteen Mile Falls Project Schedule

New England Power has distributed an Initial Consultation Document for the proposed project to stated and federal resource agencies, Indian tribes, and NGOs. New England Power has been engaged in settlement discussions, and met with the participants on February 12, 1998, for final approval by the participants. New England Power has submitted a proposed schedule for the APEA process that leads to the filing of a new license application by March 1999. New England Power has scheduled a presentation to the Commission staff at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, on March 19, 1998, in the afternoon.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on New England Power's proposal to use the alternative procedures to file an application for the Fifteen Mile Falls Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading "Comments on the Alternative Procedures," and include the project name and number (Fifteen Mile Falls Hydroelectric Project No. 2077).

For further information on this process or on the presentation, please contact William Guey-Lee of the Federal Energy Regulatory Commission at 202–219–2938 or E-mail at William.Gueylee@FERC.Fed.US.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6796 Filed 3–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–72–002]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 11, 1998.

Take notice that on March 6, 1998, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective as follows:

Sheet Nos.	Effective date
Sub 39 Revised Sheet No. 50	January 1, 1998.
Sub 40 Revised Sheet No. 50	January 1, 1998.
Sub 41 Revised Sheet No. 50	January 1, 1998.
Sub 42 Revised Sheet No. 50	March 1, 1998.
Sub 43 Revised Sheet No. 50	April 1, 1998.
Sub 39 Revised Sheet No. 51	January 1, 1998.
Sub 40 Revised Sheet No. 51	January 1, 1998.
Sub 41 Revised Sheet No. 51	January 1, 1998.
Sub 42 Revised Sheet No. 51	March 1, 1998.
Sub 43 Revised Sheet No. 51	April 1, 1998.
Sub 37 Revised Sheet No. 53	January 1, 1998.
Sub 38 Revised Sheet No. 53	January 1, 1998.
Sub 39 Revised Sheet No. 53	March 1, 1998.
Sub 40 Revised Sheet No. 53	April 1, 1998.

Northern states that this filing establishes a revised 1997–1998, System Balancing Agreement (SBA) Cost Recovery surcharge to be effective January 1, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

[1] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6799 Filed 3–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–99–000]

Tennessee Gas Pipeline Company; Notice of Technical Conference

March 11, 1998.

The filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Wednesday, April 8, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6800 Filed 3–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MG98–3–001, MG98–2–001, and MG98–4–001]

East Tennessee Natural Gas Company, Midwestern Gas Transmission Company, and Tennessee Gas Pipeline Company; Notice of Filing

March 11, 1998.

Take notice that on February 27, 1998, East Tennessee Natural Gas Company (East Tennessee), Midwestern Gas Transmission Company (Midwestern) and Tennessee Gas Pipeline Company (Tennessee) each filed revised standards of conduct.

East Tennessee, Midwestern and Tennessee each state that it served a copy of its filing on all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest one or more of the filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. All such motions to intervene or protest should be filed on or before March 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6795 Filed 3–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–150–000 and CP98–151–000]

Millennium Pipeline Company, L.P. and Columbia Gas Transmission Corporation; Notice of Change of Location for Scoping Meeting

March 11, 1998.

The location for the environmental scoping meeting in Mount Vernon, New York, on March 24, 1998, has been changed from the Mount Vernon High School to the following facility: Mark Twain Junior High School, 160 Woodlawn Avenue, Auditorium, Yonkers, New York.

For further information, call Paul McKee, Office of External Affairs, at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6793 Filed 3–16–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5979–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Clean Air Act Tribal Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Clean Air Act Tribal Authority (OMB Control No. 2060–0306), expiring 03/31/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1676.02.

SUPPLEMENTARY INFORMATION:

Title: Clean Air Act Tribal Authority (OMB Control No. 2060–0306; EPA ICR No. 1676.02.) expiring 03/31/98. This is a request for an extenstion of the currently approved collection.

Abstract: This ICR requests clearance of EPA's review and approval process for determining Tribe eligibility to carry out the Clean Air Act (CAA). Tribes may choose to submit a CAA eligibility determination and a CAA program application to EPA at the same time for approval and EPA will review both submittals simultaneously. EPA will use this information to determine if a Tribe meets the statutory criteria under section 301(d) of the CAA and is qualified for purposes of implementing an Air Quality Program. Section 114 of the CAA is the authority for the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/29/97 (62 FR 56160); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 40 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Clean Air Act Tribal Authority.

Estimated Number of Respondents: 36.

Frequency of Response: Once, at the time of application.

Estimated Total Annual Hour Burden: 480 hours.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1676.02 and OMB Control No. 2060–0306 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: March 11, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–6877 Filed 3–16–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00235; FRL–5777–3]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Four projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below in this notice. The public is encouraged to attend the proceedings as observers. However, in the interest of time and efficiency, the meeting is structured to provide maximum opportunity for state, tribal, and EPA invited participants to discuss items on the predetermined agenda. At the discretion of the chair of the project, an effort will be made to accommodate participation by observers attending the proceedings.

DATES: The four projects will meet March 30, 1998, from 8 a.m. to 5 p.m. and March 31, 1998, from 8 a.m. to noon. There will be a plenary session on Community-Based Environmental Protection on Monday, March 30, 1998, from 8 a.m. to 9:30 a.m.

ADDRESSES: The meetings will be held at The Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Darlene Harrod, Designated Federal Official (DFO), Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–6904; e-mail: harrod.darlene@epamail.epa.gov. Any observer wishing to speak should advise the DFO at the telephone number or e-mail address listed above no later than 4 p.m. on March 26, 1998.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific projects. The projects are the: (1) Toxics Release Inventory Project; (2) Pollution Prevention Project; (3) Chemical Management Project; and (4) Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: March 5, 1998.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–6873 Filed 3–16–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5979–2]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epamail.epa.gov," and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 0818.06; Hazardous Waste Industry Studies; was approved 02/10/98; OMB No. 2050–0042; expires 07/31/98.

EPA ICR No. 1593.04; Standards of Performance for Air Emission Standards for Tanks, Surface Impoundments, and Containers—40 CFR part 264, subpart CC, and 40 CFR part 265, subpart CC; was approved 02/13/98; OMB No. 2060–0318; expires 02/28/2001.

EPA ICR No. 1818.01; EPA's Transportation Partners; was approved 02/09/98; OMB No. 2010–0028; expires 08/31/99.

EPA ICR No. 0318.07; Clean Water Needs Survey; was approved 03/03/98; OMB No. 2040–0055; expires 12/31/99.

EPA ICR No. 1842.01; Notice of Intent of Storm Water Discharges Associated with Construction Activity under an NPDES General Permit—40 CFR 122.21; was approved on an emergency basis for six months on 02/23/98; OMB No. 2040–0188; expires 08/31/98.

EPA ICR No. 1659.03; National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage 1)—40 CFR part 63, subpart R; was approved 02/27/98; OMB No. 2060–0325; expires 02/28/2001.

EPA ICR No. 1814.01; National Health Protection Survey of Beaches; was approved 02/20/98; OMB No. 2040–0189; expires 02/28/2000.

EPA ICR Withdrawn

EPA ICR Nos. 1839.01 and 1591.09, Modification to Standards and Requirements for Reformulated and Conventional Gasoline; was withdrawn from OMB 02/13/98.

OMB Disapproval

EPA ICR No. 1837.01; Four Private-Party Anecdotal Surveys Regarding Prospective Purchaser Agreements and Comfort/Status Letters; was disapproved by OMB 02/06/98.

Dated: March 11, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–6878 Filed 3–16–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00512; FRL–5758–1]

Testing Guidelines; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS). The unified library for test guidelines is periodically updated by notices of availability of final test guidelines in the **Federal Register**. This notice describes the unified library of OPPTS guidelines and announces the availability of final test guidelines for the following two series: Series 810—Product Performance Test Guidelines, Groups A and C; and Series 840—Spray Drift Test Guidelines. The changes to the guidelines are editorial in nature and do not amend the existing requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). For both the 810 and 840 Series, the guidance for conducting the test studies has not been revised; however, background information provided in OPPTS 810.1000 and 840.1000 has been updated. Explicit test requirements for registration are set out in 40 CFR part 158 and the test guidelines contain standards for and examples of acceptable testing. Once final test guidelines are available through the U.S. Government Printing Office (GPO) and the Internet, earlier guidelines published as the Office of Pesticide Programs (OPP) Pesticide Assessment Guidelines will be removed from National Technical Information Services (NTIS).

ADDRESSES: The test guidelines are available from the U.S. Government Printing Office, Washington, DC 20402 on the **Federal Bulletin Board**. By modem dial (202) 512–1387, telnet and ftp: fedbbs.access.gpo.gov (IP 162.140.64.19) or for disks or paper copies: call (202) 512–0132. The test guidelines are also available electronically in ASCII and PDF (portable document format) from the EPA's World Wide Web site (http://www.epa.gov/epahome/research.htm) under the heading "Researchers and Scientists/Test Methods and Guidelines/OPPTS Harmonized Test Guidelines."

FOR FURTHER INFORMATION CONTACT: *For general information*: By mail: Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) information: Contact the Communications Services Branch (7506C), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: (703) 305–5017, fax number: (703) 305–5558.

For technical questions on Series 810 Group A test guidelines: David Brassard, (703) 308–1804 or e-mail: brassard.david@epamail.epa.gov.

For technical questions on Series 810 Group C test guidelines: Phillip Hutton, (703) 308–8260 or e-mail: hutton.phil@epamail.epa.gov.

For technical questions on Series 840 test guidelines: Arnet Jones, 703–305–7416 or e-mail: jones.arnet@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. EPA's Process for Developing a Unified Library of Test Guidelines

EPA's OPPTS has been engaged in a multi-year project to harmonize and/or update test guidelines among the OPP, the Office of Pollution Prevention and Toxics (OPPT), and the Organization for Economic Cooperation and Development (OECD). The goals of the project include the formulation of harmonized OPP and OPPT test guidelines for those in common between the two programs, the harmonization of OPPT and/or OPP test guidelines with those of the OECD, as well as the updating of any test guidelines unique to OPP or OPPT programs.

Test guidelines that are changed substantively in the harmonization process or through other updating/amending activities, or which are new (e.g., for a previously unaddressed test endpoint) will be made available for public comment by notice in the **Federal Register**. Additionally, EPA submits substantively revised and new test guidelines to peer review by expert scientific panels. Test guidelines which are reformatted but not changed in any substantive way are not made available for public comment or submitted to peer review.

All final test guidelines will be made available through the GPO electronic *Federal Bulletin Board* and the Internet on the EPA World Wide Web Home Page as a unified library of OPPTS test guidelines for use by either EPA program office. Printed versions of the unified library of OPPTS test guidelines will also be available to the public through the GPO. For purposes of this **Federal Register** notice, "publication" of the unified library of test guidelines generally describes the availability of these final guidelines through the GPO and the Internet. Because harmonization and updating is an ongoing task that will periodically result in modified test guidelines, some test guidelines being made available via GPO and the Internet will be revised in the future. These efforts will ensure that industry is provided with test guidelines that are current. Explicit test requirements for pesticide registration are set out in 40 CFR part 158 which refers to specific test guidelines by guideline number. EPA recommends that the OPPTS test guidelines available through GPO and the Internet be consulted instead of the OPP Pesticide Assessment Guidelines published earlier through NTIS.

The test guidelines appearing in the unified library will be given numerical designations that are different from the designations provided at 40 CFR parts 158, 795, 796, 797, 798, and 799. OPPTS test guidelines will be published in 10 disciplinary series as follows:

Series 810—Product Performance Test Guidelines
Series 830—Product Properties Test Guidelines
Series 835—Fate, Transport and Transformation Test Guidelines
Series 840—Spray Drift Test Guidelines
Series 850—Ecological Effects Test Guidelines
Series 860—Residue Chemistry Test Guidelines
Series 870—Health Effects Test Guidelines
Series 875—Occupational and Residential Exposure Test Guidelines
Series 880—Biochemicals Test Guidelines
Series 885—Microbial Pesticide Test Guidelines

As each notice of availability is published for a set of test guidelines, the notice will contain a "Master List" for the series affected, which cross references the new OPPTS guideline

numbers to the original OPP, OPPT, and OECD numbers.

810 and 840 Series

These final test guidelines in the 810 Series replace the corresponding test guidelines published in the OPP Pesticide Assessment Guidelines, Subdivision G: Product Performance (EPA Report 540/9–82–026, October 1982). The Group A test guideline, OPPTS 810.1000, provides an overview, definitions, and general considerations for product performance testing. In addition, test standards for pesticides other than antimicrobials are included in this test guideline. This test guideline replaces OPP guidelines 90–1 through 90–30, 92–1 through 92–20, and 93–1 through 93–30. For Group C, the Agency is republishing only those efficacy or product performance test guidelines for public health uses of invertebrate control agents. The test guidelines in Group C have been minimally edited with no substantive changes and replace OPP guidelines 95–1 through 95–30. Group B (Public Health Uses of Antimicrobial Agents) and Group D (Vertebrate Control Agent Product Performance Guidelines) are under development and will be published in the future. The OPPTS Series 840—Spray Drift guidelines replace the OPP Pesticide Assessment Guidelines, Subdivision R: Pesticide Spray Drift Evaluation (EPA Report 540/9–84–002, April 1984), OPP guidelines 200–1 through 200–4, 201–1, and 202–1. The guidelines in the 840 series have been minimally edited for re-publication, but have not been changed in any substantive way except for the description of the ongoing effort in developing the Spray Drift Data Base included in OPPTS 840.1000. Although the Agency plans to revise its approach for testing for spray drift in the future, the current guidelines are in effect and are being republished as part of the unified library of OPPTS test guidelines. When the Agency has completed the process of revising the Spray Drift guidelines, the revised guidelines will replace the current guidelines.

II. Notice of Availability of Final Test Guidelines

This notice announces the availability of final test guidelines in the 810 Series (Group A and Group C) and the 840 Series. The following is the list of guidelines being made available at this time.

Series 810—Product Performance Test Guidelines

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
	Group A—General.				
810.1000	Overview, Definitions, and General Considerations	none	90–1, 90–3 90–30	none	98–001
	Group C—Invertebrate Control Agent Product Performance Test Guidelines.				
810.3000	General considerations for efficacy of invertebrate control agents	none	95–1	none	98–409
810.3100	Soil treatments for imported fire ants	none	95–3	none	98–410
810.3200	Livestock, poultry, fur- and wool-bearing animal treatments	none	95–8	none	98–414
810.3300	Treatments to control pests of humans and pets	none	95–9, 95–30	none	98–411
810.3400	Mosquito, black fly, and biting midge (sand fly) treatments	none	95–10	none	98–419
810.3500	Premises treatments	none	95–11, 95–30	none	98–413
810.3600	Structural treatments	none	95–12	none	98–424

Series 840—Spray Drift Test Guidelines

OPPTS Number	Name	Existing Numbers			EPA Pub. no.
		OTS	OPP	OECD	712–C–
840.1000	Background for pesticide aerial drift evaluation	none	201–1, 201–4	none	98–319
840.1100	Spray droplet size spectrum	none	201–1	none	98–055
840.1200	Spray drift field deposition	none	202–1	none	98–112

List of Subjects

Environmental protection, Hazardous substances, Health.

Dated: March 10, 1998.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–6874 Filed 3–16–98; 8:45 am]
BILLING CODE 6065–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

March 11, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing

effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 16, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0106.

Title: Section 43.61, Reports of Overseas Telecommunications Traffic.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 248.

Estimated Time Per Response: 160 hours.

Frequency of Response: On occasion, quarterly, and annual reporting requirements.

Cost to Respondents: $98,900.

Total Annual Burden: 7,554 hours.

Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities.

OMB Control No.: 3060–0206.

Title: Part 21—Multipoint Distribution Service Stations.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 8,299.

Estimated Time Per Response: Ranges from .083 hours to 10 hours depending on the rule section.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $481,800.

Total Annual Burden: 16,114 hours.

Needs and Uses: The information requested under Part 21 is used by the Commission staff to fulfill its obligations as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended, to determine the technical, legal and other qualifications of applicants to operate a station in the MDS services. The information is also used to determine whether grant of an application will service the public interest, convenience and necessity, as required by Section 309 of the Communications Act. The staff also uses this information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act. On February 9, 1996, the Commission adopted a Report and Order in WT Docket No. 94–148, Terrestrial Microwave Fixed Radio Services. This Report and Order adopted a new part 101 and reorganized and amended Part 21. With this action, Part 21 contains only rules applicable to MDS. This action was approved by OMB on 9/8/96 with an OMB Control Number of 3060–0718.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–6847 Filed 3–16–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

March 9, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 16, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77 (47 CFR Sections 64.703(a), 64.709, 64.710).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,500.
Estimated Time Per Response: 2 seconds—50 hours (avg.)
Frequency of Response: Third party disclosure, on occasion and annual reporting requirements.
Cost to Respondents: $198,000.
Total Annual Burden: 699,157 hours.
Needs and Uses: Pursuant to 47 CFR 64.703(a), operator service providers ("OSPs") are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. Section 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. Section 64.710, among other things, requires providers of interstate operator services to inmates at correctional institutions to identify themselves, audibly and distinctly, to the part to be billed. This information collection has incorporated two other information collections contained in 3060–0666 and 3060–0478.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98–6848 Filed 3–16–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

March 11, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, 44 USC 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Jerry Cowden, Federal Communications Commission, (202) 418–0447.

Federal Communications Commission

OMB Control No.: 3060–0308.
Expiration Date: 3/31/2001.
Title: 90.505 Showing required.
Form Number: Not applicable.
Estimated annual burden: 200 hours; 2 hours per response; 100 respondents.
Description: This rule specifies additional information that must be submitted by applicants requesting a developmental authorization. Information is used to evaluate such request.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98–6846 Filed 3–16–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011614.
Title: CMA/Italia Space Charter and Sailing Agreement.
Parties:
Compagnie Maritime d'Affretement
Italia d'Navigazione S.p.A.
Synopsis: The proposed Agreement would permit the parties to charter space to one another and to coordinate their vessel services in the trade between United States Atlantic ports, and inland points via such ports, and ports on the Mediterranean Sea (excluding ports in North Africa), and inland points via such ports. The parties may cooperate with regards to container-related and other equipment, they will endeavor to utilize a common terminal at each port served, and they may agree upon their respective memberships in other agreements serving the trade. The parties have requested a shortened review period.
Agreement No.: 224–201047.
Title: Alabama-Total Logistics Agreement.
Parties:
Alabama State Docks Department
Total Logistics Company, Inc.
Synopsis: The proposed agreement concerns the terms and conditions under which the contractor performs cargo and freight handling services at the port. The term of the agreement runs until December 31, 2002.

Dated: March 12, 1998.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary,
[FR Doc. 98–6853 Filed 3–16–98; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Trade Commission.
TIME AND DATE: 2:00 p.m., Monday, April 6, 1998.
PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.
STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.
MATTERS TO BE CONSIDERED: Portions Open to Public:
(1) Oral Argument in Automative Breakthrough Sciences, Inc., Docket 9275.
Portons Closed to the Public:
(2) Executive Session to follow Oral Argument in Automative Breakthrough Sciences, Inc., Docket 9275.
CONTACT PERSON FOR MORE INFORMATION: Victoria Streitfeld, Office of Public Affairs: (202) 326–2180, Recorded Message: (202) 326–2711.
Donald S. Clark,
Secretary.
[FR Doc. 98–6983 Filed 3–13–98; 11:40 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Notice of Charter Renewal Correction

Federal Register Citation of Previous Announcement: 63 FR 7810—dated February 17, 1998.

Notice is given on page 7810, in the second column, the renewal dates should read, "February 1, 1998, through February 1, 2000."

For further information, contact Linda Kay McGowan, Acting Executive Secretary, Advisory Committee to the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, (D–23), Atlanta, GA 30333, telephone 404/639–7080 or fax 404/639–7181.

Dated: March 11, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–6810 Filed 3–16–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research (ACERER): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee for Energy-Related Epidemiologic Research, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period beginning February 28, 1998, through February 29, 2000.

For further information, contact Michael J. Sage, Executive Secretary, ACERER, Radiation Studies Branch, National Center for Environmental Health, CDC, 4770 Buford Highway, NE (M/S F–35), telephone 770/488–7040 or fax 770/488–7044.

Dated: March 11, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–6809 Filed 3–16–98; 8:45 am]

BILLING CODE 4861–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC); Meeting

Name: National Occupational Research Agenda (NORA) Musculoskeletal Team and Health Care Focus Group Meeting.

Time and Date: 9 a.m.–4:30 p.m., April 27, 1998.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW, Washington DC 20005, telephone 202/371–1300.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The NORA Musculoskeletal Committee is hosting a series of meetings to gather information, from a large array of partners, regarding important needs and issues with respect to prevention of musculoskeletal disorders in the health care industry. These meetings will use focus groups to elicit areas of concern as expressed by representatives of various health care sectors. The present meeting will address the following sectors: Acute care, ambulatory care, home health care, and long-term care.

The Committee will share with each specific sector a series of questions helpful in identifying potential research needs. Each sector will develop their own list of research needs. After the three regional meetings are completed, the NORA Musculoskeletal Team will combine the research needs into a consolidated list. The researchers will be asked to identify research activities which can address research needs identified at the regional meetings. A separate meeting of musculoskeletal researchers is proposed for summer 1998.

The goal of these meetings is to develop a research agenda that reflects the needs and information gaps identified by individuals who confront musculoskeletal disorders frequently, including those in industry, labor, and professional and non-professional groups. Output from the meeting will consist of a research agenda for health care, as well as transcripts. Meetings will be audio-taped to develop the transcript of the meeting, and to describe the process as well as the final outcome. Once the research agenda has been established, work will begin on the implementation process.

The goal of this process is to include diverse groups in the process of addressing and examining research needs of musculoskeletal disorders in the health care field and approaching practical ways of implementation and funding of this research. The goal is reflected in the motto of the NORA Musculoskeletal Committee: "Promote Health and Reduce Lost Work Time."

CONTACT PERSON FOR MORE INFORMATION: Bruce Bernard, NIOSH, CDC, 4676 Columbia Parkway, R–10, Cincinnati, Ohio 45226, telephone 513/841–4589, e-mail address: bpb4@cdc.gov.

Dated: March 10, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–6811 Filed 3–16–98; 8:45 am]

BILLING CODE 4160–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Arthritis Advisory Committee Meeting. This meeting was announced in the **Federal Register** of March 3, 1998 (63 FR 10399). The amendment is being made to reflect a change in the location for the March 24 and 25, 1998, meeting. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Kathleen R. Reedy or LaNise Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 1998 (63 FR 10399), FDA announced that a meeting of the Arthritis Advisory Committee would be held at the Holiday Inn Gaithersburg, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD. On page 10399, beginning in the 3d column, the *Location* portion of this meeting is amended to read as follows:

Location: Hilton Hotel, Ballrooms I, II, and III, 620 Perry Pkwy., Gaithersburg, MD.

Dated: March 11, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–6821 Filed 3–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub.

L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Increasing Donor Awareness on College Campuses; New

Despite apparent widespread public support for organ donation and transplantation, few individuals in the United States declare intent to be organ and tissue donors. Innovative interventions are necessary to help individuals move from positive attitudes about organ donation to the behaviors of declaring intent and informing family of that intent. The goal of the current project is to develop, implement and evaluate a donor awareness program on college and university campuses. The specific aim of the study is to evaluate the effect of a 6-month college-wide intervention program on organ donation intentions. An experimental design will be used consisting of two pairs of colleges matched on variables including freshman class size, geographic region, and cultural diversity of the student body. The design is a 2 (Intervention × Control) by 2 (School pair 1 × School pair 2). To increase donor awareness, intervention schools will receive a "how-to-kit" to aid them in implementing a campus-wide donor campaign. This kit will provide materials and activities, and serve as a guide for initiating an organ and tissue donor awareness campaign. The kits will be standardized across schools. Donation intentions and other variables of interest will be assessed by means of self-administered questionnaires completed by a sample of students at each university at two time periods, prior to and following the 6-month intervention period. The frequency of students declaring intent to donate organs and documenting that intent via college student identification cards or donor cards is the primary outcome measure. The frequency of students reporting that they have informed family members of their donation intent also will be evaluated. In addition, secondary and process outcomes (e.g., levels of readiness to become an organ donor) will be assessed.

The estimated respondent burden is as follows:

Survey phase	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Baseline	4,000	1	0.3	1,200
Follow-up	4,000	1	0.3	1,200
Total	4,000		0.3	2,400

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 10, 1998.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–6778 Filed 3–16–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institutes of Health

[Announcement 98044]

Implementation of the National Occupational Research Agenda; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH) announce that grant applications are being accepted for research related to some of the priority areas identified in the National Occupational Research Agenda (NORA) that is described in the Background section. Three types of grants will be supported: traditional research projects, demonstration projects, and pilot studies (see MECHANISMS OF SUPPORT section).

CDC and NIH are committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of "Occupational Safety and Health" and "Unintentional Injuries." (For ordering a copy of "Healthy People 2000," see the section Where To Obtain Additional Information.)

This announcement is jointly sponsored by (1) the National Institute for Occupational Safety and Health (NIOSH) in CDC, (2) the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS) in the National Institutes of Health (NIH), (3) the National Institute of Environmental Health Sciences (NIEHS) in NIH, and (4) the National Heart, Lung, and Blood Institute (NHLBI) in NIH. The portion of this initiative dealing with older workers is also of interest to the National Institute on Aging (NIA) in NIH.

Authority

This program is authorized under the Public Health Service Act, as amended,

Section 301(a) [42 U.S.C. 241(a)], and the Occupational Safety and Health Act of 1970, Section 20(a) [29 U.S.C. 669(a)]. The applicable program regulation is 42 CFR Part 52.

Smoke-Free Workplace

CDC and NIH strongly encourage all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include domestic and foreign non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments, and small, minority and/or woman-owned businesses.

Note: Effective January 1, 1986, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Availability of Funds

Approximately $8.0 million is available in fiscal year (FY) 1998 to fund approximately 45–50 grants. The approximate amounts that are expected to be available by each Institute are: NIOSH—$5.0 million, NIAMS—$1.0 million, NIEHS—$1.0 million, NHLBI—$1.0 million.

Target amounts for the NORA priority areas are as follows:

1. Occupational irritant contact dermatitis (approximately $1.0M).
2. Work-related musculoskeletal disorders, traumatic injuries, indoor environment, and asthma and chronic obstructive pulmonary disease (COPD) (approximately $3.0M).
3. Special populations at risk—nature and magnitude of the special risk factors experienced by older and/or minority workers (approximately $1.0M).
4. Social and economic consequences of workplace illness and injury and health services research (approximately $1.0M).
5. Intervention effectiveness research—the evaluation of existing or new interventions for work-related musculoskeletal disorders, traumatic injuries, asthma and COPD and other occupational risks via changes in work organization factors, through the implementation of control technology or other worker protection techniques (approximately $2.0M).

Awards are anticipated to range up to $250,000 in total costs (direct and indirect) per year for traditional research and demonstration projects, and up to $50,000 in direct costs for pilot studies.

Only applications that are found to be of high scientific merit will be considered for funding and not all of the funds will be spent if there are not enough highly meritorious applications.

The amount of funding available may vary and is subject to availability of funds. Awards are expected to begin in September 1998, although some awards may not begin until FY 99. Awards will be made for a 12-month budget period within a project period not to exceed 3 years for traditional research and demonstration projects, and 2 years for pilot studies.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

In 1970, Congress passed the Occupational Safety and Health Act "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions." In the years since then, substantial progress has been made in improving worker protection. Much of this progress has been based on actions guided by occupational safety and health research. However, workplace hazards continue to inflict a tremendous toll in both human and economic costs. Employers reported 6.3 million work injuries and 515,000 cases of occupational illnesses in 1994. In 1995, occupational injuries alone cost $119 billion in lost wages and lost productivity, administrative expenses, health care, and other costs. This figure does not include the costs of occupational diseases. Research is needed to advance the scientific base of knowledge necessary to define optimal strategies for ensuring the safety and health of all workers.

In 1996, the National Institute for Occupational Safety & Health (NIOSH) and its partners in the public and private sectors developed the National Occupational Research Agenda (NORA) to provide a framework to guide occupational safety and health research into the next decade—not only for NIOSH, but also for the entire occupational safety and health community. The Agenda identifies 21 research priorities and reflects consideration of both current and emerging needs. The priority areas are not ranked because each is considered to be of equal importance. Because the funding resources available for this special announcement are limited, both internal and external partners have recommended that only a subset of the priority areas be targeted as initial areas of emphasis in order to have a meaningful impact in any area. It is expected that, in future years, the remaining NORA priorities will receive similar, much-deserved attention.

Purpose

The purpose of this grant program is to develop knowledge that can be used in preventing occupational diseases and injuries and to better understand their underlying pathophysiology. Thus, the following types of applied research

projects will be supported: Causal research to identify and investigate the relationships between hazardous working conditions and associated occupational disease and injury; the nature and magnitude of special risk factors experienced by older and/or minority workers; methods research to develop more sensitive means of evaluating hazards at work sites; and evaluations of the effectiveness of prevention and intervention programs, including new approaches or combinations of techniques such as control technologies, personal protective equipment and changes in work organization factors, which have been developed and implemented in workplaces.

Mechanisms of Support

The types of grants supported under this announcement are as follow:

1. Research Project Grants (R01)

A research project grant application should be designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for addressing problems. These studies may generate information that is readily available to solve problems or contribute to a better understanding of the causes of work-related diseases and injuries.

2. Demonstration Project Grants (R18)

A demonstration project grant application should address the technical or economic feasibility of implementing a new/improved innovative procedure, method, technique, or system for preventing occupational safety or health problems. The project should be conducted in an actual workplace where a baseline measure of the problem will be defined, the new/improved approach will be implemented, a follow-up measure of the problem will be documented, and an evaluation of the benefits will be conducted.

3. Pilot Study Grants (R03)

A pilot study is a preliminary evaluation for the purpose of developing the foundation for a future, more comprehensive study. Thus, a pilot study might test feasibility, collect initial data, refine methodology, or evaluate critical factors that would influence the ability to conduct a larger study. An application should contain a clear description of how the pilot study could form the basis for preparing a research proposal that would be submitted for competitive review, in the future, if the results of the pilot study are promising. The application should include only the following sections of the PHS 398 application form: face page (in item 2, place "NORA Pilot Study"), abstract, budget, key person biosketches, aims, background, study plan, and human or animal subject matters. There is a 15 page limit for the aims, background, and study plan, not including references. The budget for an entire pilot study is limited to $50,000 in direct costs for a period of up to two years.

Programmatic Interest

The research needs identified in this announcement are consistent with the NORA developed by NIOSH and partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade towards topics which are most pressing and most likely to yield gains to the worker and the nation. The Agenda identifies 21 research priorities. The NORA document is available through the NIOSH Home Page at http://www.cdc.gov/niosh/nora.html.

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to contact the technical information personnel listed in this announcement in the section WHERE TO OBTAIN ADDITIONAL INFORMATION.

Applications responding to this announcement will be reviewed by staff for their responsiveness to the following program interests and their potential for developing knowledge that can be used in preventing occupational diseases and injuries.

Targeted NORA Priority Areas for this announcement are as follow:

1. *Occupational Irritant Contact Dermatitis.* This announcement targets a part of the NORA priority area, Allergic and Irritant Dermatitis. In 1993, the Bureau of Labor Statistics (BLS) data estimated an incidence of 76 cases of occupational skin disorders (OSDs) per 100,000 U.S. workers, making OSDs the most common non-trauma-related occupational disease affecting workers in many different occupations. Irritant contact dermatitis (ICD) is the most common form of dermatitis, usually resulting from reactions to chemical irritants such as solvents and cutting fluids. The goal of the "Healthy People 2000" is to reduce OSDs to an incidence of not more than 55 per 100,000. To aid in achieving this national health objective, further research in ICD is needed.

Research applications are sought in the following areas: (1) methods for identifying irritants prior to introduction into the workplace; (2) pathophysiology of ICD; (3) the genetic basis of susceptibility; (4) the influence of environmental factors on ICD; (5) the relationship of ICD to allergic contact dermatitis; (6) methods to identify skin changes that precede overt clinical disease; (7) risk factors for initiation and/or chronicity of ICD; (8) methods for measuring skin exposure and skin deposition; (9) methods for assessing percutaneous penetration and evaluating skin barrier function; (10) intervention design and evaluation; (11) enhanced membrane/film development for skin protection; (12) improved procedures for testing chemical protective clothing (CPC) field performance; and, (13) the effectiveness of CPC and/or barrier creams. The ultimate goal is the primary, secondary, and tertiary prevention of ICD.

2a. Work-Related Musculoskeletal Disorders. Thirty-two percent of the injuries and illnesses recorded in the BLS survey in 1994 involved musculoskeletal (MS) injuries or disorders and resulted from over-exertion or repetitive motion. In the United States (U.S.), back disorders account for 27 percent of all nonfatal occupational injuries and illnesses involving days away from work. Musculoskeletal disorders of the upper extremities (such as carpal tunnel syndrome and rotator cuff tendinitis) due to work factors are common and occur in nearly all sectors of the economy. More than $2 billion in workers' compensation costs are spent annually on these work-related problems.

Research applications are sought in the following areas: (1) Development and validation of models of nonspecific or specific musculoskeletal disorders which predict biomechanical, biochemical or structural changes in soft tissues resulting from repetitive exposure to physical loads. (An example of this type of research would be to develop an animal model for investigating the effects of repetitive use of tendons, ligaments, and synovium); (2) age and gender differences in the biochemistry and/or biomechanical responses of musculoskeletal soft tissues to injury and repair; (3) development and validation of exposure-assessment methods directed toward existing prevention activities in the private sector, State or local government agencies and for future epidemiologic studies of work-related musculoskeletal disorders; (4) epidemiological studies to determine exposure-response (injury/disorder) relationships between work-related musculoskeletal disorders and physical exposures as well as work organization

factors. These studies should include both work and non-work exposure and modifying factors; (5) evaluation of existing or new interventions directed at either primary, secondary, or tertiary prevention of common work-related musculoskeletal disorders. (Projects directed at secondary or tertiary prevention should focus on reducing lost work time and preventing future injuries or disorders, or their recurrence); and (6) evaluation of the effectiveness and outcomes of preventive, diagnostic and medical treatments (includes non-operative, operative, rehabilitative and alternative medicine treatments) for work injuries and illnesses of the musculoskeletal system.

2b. *Traumatic Injuries.* Injury exacts a huge toll in U.S. workplaces. On an average day, 16 workers are killed and more than 17,000 are injured. The leading causes of occupational injury fatalities over the period 1980 to 1992 were motor vehicles, machines, homicides, falls, electrocutions, and falling objects. The leading causes of the nonfatal injuries were overexertion, contact with objects or equipment, and falls.

Relatively good information is available on the overall burden of work injuries including the industries and occupations where they occur most frequently and with greatest severity. The challenge is to move beyond this broad understanding to specific strategies that address the complex interplay between machines, tools, and behavioral and environmental factors that cause injuries at a worksite. Research applications are sought which will: (1) Conduct etiological research into risk factors or contributors to occupational injuries; (2) advance knowledge of the interactions between human performance/human limitations and workplace, machine and equipment design to remove the possibility of unsafe actions; (3) develop models and simulations for the safe design, operation and maintenance of workplaces and equipment; (4) develop cost/benefit analysis models of various prevention strategies; and, (5) develop simple cost-effective injury prevention models and guidelines for application by safety and health practitioners in the field.

2c. Indoor Environment. Traditionally, indoor nonindustrial occupational environments have been considered clean and relatively free of exposures to substances which pose a health hazard. In the last 20 years, however, reports of symptoms and other health complaints related to these indoor environments have been increasing. More than half of the U.S. workforce is employed indoors, and estimates of the proportion of indoor workers affected by these problems range up to 30 percent. Among the requests received annually by NIOSH for occupational health investigations, the proportion related to indoor nonindustrial environments has increased dramatically, from 2 percent in 1980 to 40 percent in recent years.

Research applications are sought in the following areas: (1) Causes or prevention of health effects from indoor work environments, including the transmission of communicable respiratory diseases, asthma or other allergic diseases, or acute symptoms from unknown causes or multiple chemical sensitivities. (Strategies of particular interest include intervention designs to evaluate the effectiveness of environmental controls or of following current practice standards for building operation and improving relevant exposure (microbiological or chemical) assessments); (2) creating practical tools to help the building sector create healthier indoor environments, such as new or improved measurement tools for exposure assessment, and scientifically-validated guidelines to help assure healthy indoor environments (e.g., for design, operation, and maintenance actions, or through building performance); and (3) estimating health and other social and economic consequences (such as health care costs, absenteeism, and productivity losses) resulting from adverse effects of indoor environments, as well as potential benefits of improved indoor environments.

2d. Asthma and Chronic Pulmonary Obstructive Disease. Asthma and Chronic Obstructive Pulmonary Disease (COPD) are leading respiratory diseases in the U.S. and major causes of morbidity and mortality. Although both diseases have nonoccupational causes, workplace exposures also contribute to their development, persistence, and exacerbation. More research is needed to guide efforts to prevent and reduce the occupational contribution to these diseases.

Research applications are sought in the following areas: (1) Estimation of the proportions of COPD and/or asthma in the adult general population that are attributable to occupational causes, including industry- and agent-specific attributable fractions; (2) risk factors for developing asthma or COPD in response to occupational agents, which might include attention to exposure-response relationships, novel means of characterizing exposure or exposure kinetics, host factors, modifying factors (such as smoking or impaired lung function), and conditions necessary for occupational asthma to completely resolve; (3) methods for identifying substances that may cause asthma prior to their introduction into the workplace; (4) application of methodological approaches to assessing the burden of occupational asthma/COPD with attention to healthy worker effect; (5) mechanisms and pathophysiology of asthma or COPD caused by occupational exposures; and (6) approaches useful for effective screening and surveillance of worker populations at risk for airways diseases caused by occupational exposure.

3. Special Populations at Risk. Occupational hazards are known to be distributed differentially, and workers with specific biologic, social and/or economic characteristics are more likely to have increased risks of work-related diseases and injuries. This announcement targets a subset—older workers and racial ethnic minorities—of the special populations included in the NORA priority area. The relative proportions of these special populations within the workforce is increasing. It is estimated that, by the year 2000, approximately 39 percent of the projected U.S. population of 275 million will be a member of a minority population (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino.) The median age of the U.S. workforce is rising as a result of the aging of the "baby boom" generation, an increasing percentage of older workers remaining in the workforce, as well as an increasing number of older workers reentering the workforce after retirement. As a result, between 1992 and 2005, the number of workers aged 55 and older is projected to increase by 38 percent.

Research applications are sought in the following areas: (1) The nature and magnitude of risks to minority and older workers, including the social and biologic factors (e.g., biochemical susceptibility) that may influence a worker's risk for injury or disease; (2) the incidence and mechanisms of diseases and injuries in minority and older worker populations; (3) the interdependence between work organizations and individuals and the consequences of adapting work (flex-place, flex-time, job sharing, retraining, reengineering, etc.) to the needs and capacities of these special populations; and, (4) the characteristics of the work/workplace that facilitate or impede the productivity of older workers and the

ability of older workers to stay in the workforce.

4a. Social and Economic Consequences of Workplace Illness and Injury. Occupational injuries and illnesses remain a leading cause of morbidity, mortality, and economic loss in the United States. The annual costs to employers for workers' compensation increased from $2.1 billion in 1960 to $60 billion by 1992. In addition to the direct costs such as those for health care, employers also incur numerous indirect costs including those for additional hiring and training and disruption of work processes. Other costs are borne by injured workers and their families through reduced income, depletion of savings and increased expenditures and by the community through increased use of social services and cost shifting between health and social service agencies. Leigh, *et al.* (Leigh, J.P. *et al.*, Occupational Injury and Illnesses in the United States, Arch. Intern. Med., 157, 1557–68, 1997) estimated that, for 1992, the total direct and indirect costs associated with occupational injuries and diseases were $171 billion annually, but noted that these estimates were likely to be low in part due to the lack of data for a number of the associated indirect costs.

Research applications are sought in the following areas: (1) Measures of total economic costs (direct and indirect) and non-economic costs borne by injured workers and their families, by employers; and by non-occupational community, State and local government services; and (2) evaluation of the economic benefit of interventions (e.g., ergonomic work system and task redesign) including occupational health service interventions, and assessment of their contribution to the cost of work-related illness and injury at both the service system level (e.g., managed care in compensation services) and service component level (e.g., cost-effectiveness of different clinical treatments for back pain).

4b. Health Services Research. Despite the large burden and cost of work-related morbidity and mortality, relatively little is known about the structure and functioning of occupational health services. Occupational health services (OHS) research includes evaluation of both service components and delivery systems, including distribution and coverage, access, appropriateness, acceptability, utilization, equity, quality, organization, policy and planning, management, financing, productivity, effectiveness and efficiency, and impacts on health needs, health status and occupational hazards.

Research applications are sought in the following areas: (1) Descriptions of the state, the distribution of types, and the prevailing trends in the provision of OHS for the prevention, treatment and rehabilitation of work-related illness and injury, and the interactions of OHS with other parts of the health care system; (2) evaluation, in terms of health and vocational outcomes (e.g., return to work), of different occupational health services and systems (e.g., managed care versus fee-for-service compensation services), and service interventions (e.g., different treatments for back pain); and (3) evaluation of the effectiveness (through clinical trials, observational research, and clinical trials) of the effectiveness and efficiency of clinical therapeutic interventions and rehabilitation modalities for occupational diseases and injuries.

5. Intervention Effectiveness Research. Many workplace prevention and intervention programs have been developed and implemented in workplaces, yet few have undergone systematic evaluation to determine their impact on health and safety outcomes. Evaluations of the effectiveness of intervention efforts can provide crucial guidance and corrective feedback for current and future occupational health and safety (OSH) intervention efforts. Evaluation research, whether descriptive or experimental, can provide a firm base of evidence for what works, what does not, and why, and assure better use of limited resources in workplace implementations of preventive and control strategies. This announcement targets intervention efforts addressing work-related traumatic injuries, musculoskeletal disorders, asthma and COPD as well as the implementation of engineering controls, use of personal protective equipment (PPE) and/or changes in the organization of work systems or tasks.

Research applications are sought which focus on the systematic evaluation of (1) the effectiveness of intervention efforts addressing musculoskeletal disorders, traumatic injuries, and work-related asthma and COPD; (2) the practicality and usability of specific control strategies, technologies and/or PPE in the elimination or reduction of hazards; (3) the identification of critical factors for implementing and conducting effective OSH programs; (4) the components of effective OSH programs, including worker participation programs, training or other organizational and administrative aspects, as well as engineering solutions; and (5) identification and elimination of barriers to the implementation of interventions, such as a lack of acceptance due to practicality, perception that cost is prohibitive, etc.

Applications are encouraged that will evaluate interventions in real work settings, assessment of cost-effectiveness and identification of adverse or unexpected outcomes of interventions.

Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Depending upon funding entity, financial status reports (FSR) are required no later than 90 days after the end of the budget period.

The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC and NIH for completeness and responsiveness and will be assigned to the appropriate Institute. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed by an initial review group and determined to be competitive or non-competitive, based on the review criteria relative to other applications received. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified. Applications judged to be competitive will be discussed and assigned a priority score. Following initial review

for scientific merit, the applications will receive a secondary review for programmatic importance (for applications assigned to NIH Institutes, the review will be conducted by the appropriate Council).

Review criteria for scientific merit are as follows:

1. Technical significance and originality of proposed project.
2. Appropriateness and adequacy of the study design and methodology proposed to carry out the project.
3. Qualifications and research experience of the principal investigator and staff, particularly but not exclusively in the area of the proposed project.
4. Availability of resources necessary to perform the project.
5. Documentation of cooperation from collaborators in the project, where applicable.
6. Adequacy of plans to include both sexes and minorities and their subgroups as appropriate for the scientific goals of the project. (Plans for the recruitment and retention of subjects will also be evaluated.)
7. Appropriateness of budget and period of support.
8. Human Subjects. Procedures adequate for the protection of human subjects must be documented. Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Initial Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Review criteria for programmatic importance are as follows:

1. Magnitude of the problem in terms of numbers of workers affected.
2. Severity of the injury or disease in the population.
3. Usefulness to applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards on a national or regional basis.
4. Propensity to improve understanding of the pathophysiology (includes biomechanics), diagnosis, treatment, and prevention of occupational irritant dermatitis, work-related musculoskeletal disorders and asthma or COPD caused by occupational exposures.

The following will be considered in making funding decisions:

1. Merit of the proposed project as determined by the initial peer review.
2. Programmatic importance of the project as determined by secondary review.
3. Availability of funds.
4. Program balance among priority areas of this announcement.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance numbers are:

93.262 for the National Institute for Occupational Safety and Health (NIOSH) in CDC
93.846 for the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS) in NIH
93.113 and 93.115 for the National Institute of Environmental Health Sciences (NIEHS) in NIH
93.837, 93.838, and 93.839 for the National Heart, Lung, and Blood Institute (NHLBI) in NIH
93.866 for the National Institute on Aging (NIA) in NIH

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the CDC and the NIH to ensure that women and racial and ethnic groups will be included in CDC- or NIH-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects.

Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951 and/or in the "NIH Guidelines for Inclusion of Women and Minorities as Subjects in Clinical Research" **Federal Resister** of March 28, 1994 [FR 59, 14508–14513], and reprinted in the NIH Guide for Grants and Contracts, Vol. 23, No. 11, March 18, 1994.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than May 1, 1998. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC and NIH to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies on or before June 23, 1998 to: Ron Van Duyne, Grants Management Officer, ATTN: Joanne Wojcik, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry

Road, NE., Room 300, MS E–13, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

a. Received at the above address on or before the deadline date, or

b. Sent on or before the deadline date to the above address, and received in time for the review process.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call 1–888–GRANTS4. You will be asked your name and address and will need to refer to Announcement 98044. You will receive a complete program description, information on application procedures, and application forms. Also, this and other CDC Announcements can be found on the CDC homepage (http://www.cdc.gov) under the "Funding" section, as well as on the NIOSH homepage (http://www.cdc.gov/niosh/homepage.html) under "Extramural Programs." For your convenience, you may be able to retrieve a copy of the PHS Form 398 from (http://www.nih.gov/grants/funding/phs398/phs398.html).

If you have questions after reviewing the contents of all the documents, business management information may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS E–13, Atlanta, GA 30305, telephone (404) 842–6535; fax (404) 842–6513; internet jcw6@cdc.gov.

Programmatic technical assistance may be obtained from:

Roy M. Fleming, Sc.D., Research Grants Program, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS–D30, Atlanta, GA 30333, telephone 404–639–3343; fax 404–639–4616, internet rmf2@cdc.gov

Sidney M. Stahl, Ph.D., Behavioral and Social Research Program, National Institute on Aging, National Institutes of Health (NIH), Gateway Building #533, 7201 Wisconsin Avenue, Bethesda, MD 20892, telephone 301–402–4156, fax 301–402–0051, internet ss333h@nih.gov

Alan Moshell, M.D., Skin Diseases Branch, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health (NIH), Natcher Building, Room 5AS–25L, Bethesda, MD 20892–6500, telephone 301–594–5017, fax 301–480–4543, internet am40j@nih.gov

James S. Panagis, M.D., M.P.H., Musculoskeletal Diseases Branch, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health (NIH), 45 Center Drive, Room 5AS–37K, MSC 4500, Bethesda, MD 20892–6500, telephone 301–594–5055, fax 301–480–4543, internet jp149d@nih.gov

George S. Malindzak, Ph.D., Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health (NIH), 79 T.W. Alexander Drive, MD EC–23, Research Triangle Park, NC 27709, telephone 919–541–3289, fax 919–541–5064, internet malindzak@niehs.nih.gov

Gail Weinmann, M.D., Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health (NIH), Two Rockledge Center, Suite 10018, 6701 Rockledge Drive, MSC 7952, Bethesda, MD 20892, telephone 301–594–0202, fax 301–480–3557, internet weinmanng@gwgate.nhlbi.nih.gov

Please Refer to Announcement Number 98044 When Requesting Information and Submitting an Application.

CDC will not send application kits by facsimile or express mail.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Potential applicants may obtain a copy of the "National Occupational Research Agenda" (HHS, CDC, NIOSH Publication No.96–115) from the National Institute for Occupational Safety and Health, telephone (800) 356–4674. It is also available on the internet at "http://www.cdc.gov/niosh/nora.html".

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

Anthony L. Itteilag,

Deputy Director for Management, National Institutes of Health.

[FR Doc. 98–6869 Filed 3–16–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders (NIDCD); Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of a Vaccine Against Moraxella Catarrhalis Mediated Otitis Media

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: Moraxella catarrhalis is the third most common pathogen for otitis media, the most common cause of illness requiring medical treatment in children. The NIDCD is investigating candidate vaccines based on detoxified lipooligosaccharide-protein conjugates prepared from surface antigens of Moraxella catarrhalis.

The NIDCD, NIH, is seeking capability statements from parties interested in entering into a CRADA for the development of a candidate vaccine with the goal of conducting a Phase I clinical trial to determine the safety for most promising candidates. This project is with the Section on Experimental Immunology, Laboratory of Immunology, National Institute on Deafness and Other Communication Disorders, NIH. The goals are to use the respective strengths of both parties to achieve one or more of the following: (1) Establish an animal model to test experimental vaccines to provide protection against Moraxella catarrhalis mediated otitis media; (2) screen experimental vaccines for their relative efficacy; (3) determine the efficacy of the most promising vaccines; (4) prepare a sufficient quantity of vaccine to gain IND approval from the FDA and to conduct a Phase I clinical trial. Additional investigations may be undertaken when the efficacy of the candidate vaccines has been determined in an animal model and safety in humans has been assured.

It is anticipated that the commercial collaborator(s) will participate in

ongoing studies involving the determination of the efficacy and identification of most promising vaccines, preparing the vaccine for a clinical trial, and assisting in the conduct of such a trial. The collaborator may also be expected to contribute financial support under this CRADA for personnel, supplies, travel and equipment to support these projects.

CRADA capability statements should be submitted to Ms. Lili Portilla, Technology Transfer Manager, National Heart, Lung, and Blood Institute (NHLBI), Technology Transfer Service Center, 31 Center Drive MSC 2490, Building 31/Room 1B30, Bethesda, MD 20892–2490, Phone: (301) 402–5579, Fax: (301) 594–3080, E-mail address <LILIP@gwgate.nhlbi.nih.gov>. Capability statements must be received by the NHLBI on or before May 1, 1998.

The NIDCD has applied for patents claiming the core of the technology. Non-exclusive and/or exclusive licenses for these patents covering core aspects of this project are available to interested parties.

Licensing inquiries regarding this technology should be referred to Ms. Elaine Gese, M.B.A., Licensing Specialist, NIH Office of Technology Transfer, Suite 325, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, Phone: (301) 496–7735, Ext. 282, Fax: (301) 402–0220, E-mail address<gesee@od6100ml.od.nih.gov>

Dated: March 5, 1998.

Sheila E. Merritt,

Executive Officer, NHLBI.

[FR Doc. 98–6788 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Novel Adipose Seven Transmembrane Domain Protein

C Montrose-Rafizad, H Yang (NIA)

OTT Reference No. E–213–97/0 filed 19 Jun 97

Licensing Contact: Stephen Finley, 301/496–7056, ext. 215

A new seven transmembrane protein and cDNA clone has been isolated from mouse adipose tissues. The new clone is differentially expressed in several mouse and human tissues, but is overexpressed in the epididymal tissues of diabetic mice and in the epididymal tissues of older mice. It is thought this new clone may have important implications in aging and diabetes and may be helpful for studying aging and diabetes.

Human Papilloma Virus Inhibition by Anti-Sense Oligonucleotides

JA DiPaolo, L Alvarez-Salas (NCI)

Serial No. 08/929,140 filed 05 Sep 97

Licensing Contact: Carol Salata, 301/496–7735, ext. 232

The present invention relates to the use of antisense oligonucleotides to inhibit a Human Papilloma virus (HPV). The invention derives from the observation that an inhibited ribozyme, which bound to a specific sequence of the HPV16 E6 gene, but whose cutting ability had been destroyed, still inhibited HPV16. This leads to the conclusion that antisense molecules which bind to the same section of the E6 gene would be useful in the treatment of HPV infection. The antisense molecules have the advantage of being less expensive to manufacture than ribozymes. The antisense oligonucleotides have phosphorothioate backbone structure and sequences complimentary to portions of human papilloma virus 16.

Dated: March 7, 1998.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 98–6891 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Elaine Gese, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 282; fax: 301/402–0220; e-mail: eg46t@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Information on additional chemokine receptor technologies is also available.

STRL33, A Human Fusion Accessory Factor Associated With HIV Infection

J Farber, F Liao, G Alkhatib, EA Berger (NIAID)

DHHS Reference No. E–087–97/0 filed 31 Mar 97

STRL33 is a seven transmembrane domain G protein coupled receptor which appears to be a novel chemokine receptor-like protein functioning as a fusion cofactor for both macrophage-tropic and T cell-trophic HIV–1. Cells expressing STRL33 along with CD4 are capable of fusing with cells expressing the envelope glycoprotein (env) of M-tropic and T-trophic HIV–1 variants, thereby mediating fusion with a wider range of variants than other cofactors identified to date. As the STRL33 protein appears to be directly related to the development of HIV infection and progression to AIDS, agents which are capable of blocking the STRL33 receptor may represent valuable tools for use in the prevention or treatment of HIV–1/AIDS. Polynucleotides and polypeptides are provided by the invention.

Therapeutic approaches and pharmaceutical compositions are claimed, as are research uses, and are available for licensing.

Delayed Progression to AIDS by a Missense Allele of the CCR2 Gene

M Dean, SJ O'Brien, M Carrington, MW Smith (NCI)

DHHS Reference No. E–209–97/0 filed 14 Aug 97

A specific variant of chemokine receptor CCR2, which appears to be a co-receptor for HIV–1, has been identified. This variant, CCR2–64I, is associated with delayed progression to AIDS in individuals infected with HIV–1, and is the result of a conservative amino acid substitution within the first transmembrane receptor region of CCR2. CCR2–64I is independent of but additive with CCR5–d32, an allele of chemokine receptor CCR5 which is also associated with delayed progression to AIDS. Together, these two polymorphisms are present in nearly 40% of individuals in all ethnic groups; CCR2–64I alone occurs at an allele frequency of 10–29% in all ethnic groups. Polynucleotides and polypeptides are provided by the invention. Therapeutic approaches and pharmaceutical compositions are claimed, as are research uses, diagnostic uses, and screening methods.

CC Chemokine Receptor 8 DNA, New Animal Models And Therapeutic Agents For HIV Infection

HL Tiffany, PM Murphy, G Alkhatib, EA Berger (NIAID)

DHHS Reference No. E–220–97/0 filed 29 July 97

CCR8, a known chemokine receptor, has now been shown to serve as a co-receptor for HIV–1. This receptor, a seven transmembrane region G protein coupled receptor, binds chemokine I–309, which is a potent monocyte attractant and is capable of inhibiting apoptosis in thymic cell lines. CCR8 is expressed in both monocytes and thymus, and is encoded by a gene of previously unknown function. Polynucleotides and polypeptides are provided by the invention. Therapeutic approaches and pharmaceutical compositions are claimed, as are research uses.

Functional Promoter For CCR5

F Guignard (NIAID)

DHHS Reference No. E–222–97/0

Embodied in this invention is the identification of the functional promoter sequence for CCR5. CCR5 is a known chemokine receptor which functions as a cofactor for HIV binding and is found on the cell surface of macrophages and CD4+ T cells. Blocking or suppressing the expression of CCR5 may therefore serve to inhibit HIV infection. It is postulated that this could be accomplished by inhibiting the CCR5 promoter or by administering an oligonucleotide analog of the promoter, thereby treating or preventing HIV infection. Polynucleotide sequences are provided by the invention. Therapeutic approaches and pharmaceutical compositions are claimed, as are research uses.

CCR1 Knockout Mouse

J–L Gao, PM Murphy (NIAID)

DHHS Reference No. E–234–97/0

Embodied in this invention is a CC chemokine receptor 1 (CCR1) knockout mouse, which has been made deficient (−/−) by targeted gene disruption. CCR1 normally binds chemokines MIP–1a and RANTES. The inventors have already used these knockout mice to identify a number of biological functions for CCR1, which are described in Gao et al., The Journal of Experimental Medicine 185(11): 1959–1968, June 1997. The mice are available for licensing via a Biological Materials License, and numerous research uses are anticipated.

Dated: March 9, 1998.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 98–6892 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Biomedical Research Technology (Telephone Conference Call).

Date: April 1, 1998.

Time: 10:00 a.m.

Place: National Institutes of Health, 6507 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965.

Contact Person: Dr. Raymond R. O'Neill, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0820.

Purpose/Agenda: To evaluate and review grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology, National Institutes of Health, HHS)

Dated: March 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6790 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meetings:

Name of SEP: Biomedical Research Technology.

Date: March 23–25, 1998.

Time: March 23, 6:00 p.m.–10:00 p.m.; March 24, 8:00 a.m.–6:30 p.m; March 25, 8:00 a.m.–2:00 p.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852, (301) 468–1100.

Contact Person: Dr. Bela J. Gulyas, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0811.

Purpose/Agenda: To evaluate and review grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research, National Institutes of Health, HHS)

Dated: March 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6791 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Mucosal Immunity in the Human Female Reproductive Tract.

Date: April 7, 1998.

Time: 1:30 p.m. to Adjournment.

Place: Teleconference Call, 6003 Executive Boulevard, Solar Bldg., Room 1A3, Bethesda, MD 20892, (301) 402–0748.

Contact Person: Dr. Priti Mehrotra, Scientific Review Adm. 6003 Executive Boulevard, Solar Bldg., Room 4C14, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: March 10, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6784 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 19, 1998.

Time: 1 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 446–6470.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 10, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6785 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: March 27, 1998.

Time: 8:00 a.m.

Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sean O'Rourke, 6000 Executive Boulevard, Suite 409, Rockville MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance, Programs Nos. 93.271, Alcohol Research Career Development Awards for Scientist and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: March 10, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6786 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, National Institute on Aging, March 11, 1998, The Drake Hotel, Oak Brook, Illinois which was published in the **Federal Register** on March 4, 1998, (Vol. 63 FR10646).

This committee was to have met at the Drake Hotel, Oakbrook, Illinois on March 11, but the hotel has been changed to the Wyndham Garden Hotel, Oakbrook Terrace, Illinois. The time remains the same.

As previously announced, this meeting is closed to the public.

Dated: March 10, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6787 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–6 C1B.

Date: April 16, 1998.

Time: 2:00 p.m.
Place: Room 6AS–37A, Natcher Building, NIH (Telephone Conference Call).
Contact: Neal Musto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7798.
Purpose/Agenda: To review and evaluate grant applications.
This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6792 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: March 16, 1998.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 6152, Telephone Conference.
Contact Person: Dr. Camilla Day, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda, Maryland 20892, (301) 435–1037.

Name of SEP: Biological and Physiological Sciences.
Date: March 16, 1998.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 5210, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1265.

Name of SEP: Biological and Physiological Sciences.
Date: March 24, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4132, Telephone Conference.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.
This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: March 27, 1998.
Time: 8:30 a.m.
Place: Holiday Inn—Georgetown, Washington, DC.
Contact Person: Dr. Raymond Bahor, Scientific Review Administrator, 6701 Rockledge Drive, Room 3048, Bethesda, Maryland 20892, (301) 435–1256.

Name of SEP: Behavioral and Neurosciences.
Date: March 27, 1998.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, Maryland.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Behavioral and Neurosciences.
Date: March 27, 1998.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Samuel Rawlings, Scientific Review Administrator, 6701 Rockledge Drive, Room 5160, Bethesda, Maryland 20892, (301) 435–1243.

Name of SEP: Clinical Sciences.
Date: March 30, 1998.
Time: 8:30 a.m.
Place: NIH, Rockledge 2, Room 4116, Telephone Conference.
Contact Person: Dr. Terrell Hoffeld, Scientific Review Administrator, 6701 Rockledge Drive, Room 4116, Bethesda, Maryland 20892, (301) 435–1781.

Name of SEP: Clinical Sciences.
Date: April 2, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4128, Telephone Conference.
Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435–1210.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 9, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 14, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 15, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.
The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6789 Filed 3–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–840113

Applicant: N. Ross Carrie, Raven Ecological Services, Huntsville, Texas.

The applicant requests authorization to take (capture, band, translocate, and harass during surveys and installation of cavity restrictors) the red-cockaded woodpecker, *Picoides borealis*, throughout the species range in Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee, North Carolina, South Carolina, Georgia and Florida, for the purpose of enhancement of survival of the species.
Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia

30345. All data and comments must be received by April 16, 1998.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: March 6, 1998.

Sam D. Hamilton,

Regional Director.

[FR Doc. 98–6802 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–65–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Ronald Tokar, for the Washington Falconer's Association, Walla Walla, WA. The applicant wishes to amend the Washington Falconer's Association approved cooperative breeding program to include two subspecies of the Aplomado falcon: *Falco femoralis femoralis;* and *Falco femoralis pichinchae*. The Washington Falconer's Association maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: March 11, 1998.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–6803 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–65–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Newhall Land and Farming Project on the Santa Clara River, California

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: Newhall Land and Farming Company, Incorporated (Newhall), has applied to the Fish and Wildlife Service for a 50-year incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Newhall's project involves water diversions and low water crossings on the Santa Clara River between Castaic Creek in Los Angeles County and Rancho Camulos in Ventura County, California. The Service proposes to issue an incidental take permit and provide assurances for the endangered unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), the threatened California red-legged frog (*Rana aurora draytonii*), and should they be listed, for the Santa Ana sucker (*Catostomus santaanae*), a candidate for listing under the Endangered Species Act, and the following unlisted species of concern: arroyo chub (*Gila orcutti*), southwestern pond turtle (*Clemmys marmorata pallida*), and two-striped garter snake (*Thamnophis hammondii*). This notice opens the comment period on the permit application package, which includes the Habitat Conservation Plan for the Newhall Land and Farming Company's Crossings of the Santa Clara River (Newhall Plan).

The Service has determined that the Newhall Plan qualifies as a low effect plan as defined by the Service's Habitat Conservation Planning handbook (November 1996). The Service has further determined that approval of the Newhall Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This determination is explained in an Environmental Action Statement, available for public review.

Comments are requested on the Newhall Plan and the Service's Environmental Action Statement. In particular, the Service requests comments on the appropriateness of the "No Surprises" assurance discussed under the "Unforeseen Events" section of the Plan. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments should be received on or before April 16, 1998.

ADDRESSES: Comments should be addressed to Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Kirk Waln, Fish and Wildlife Biologist, at the above address (805–644–1766).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address, or by telephone at (805) 644–1766. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background Information

Newhall proposes to continue installation of six summertime crossings of the Santa Clara River and four temporary diversions of river water to supply irrigation needs. The crossings and diversions are an integral part of Newhall's agricultural operations; the crossings provide access to fields south of the river that are largely inaccessible by other means, and the diversions supply water for irrigation of row crops. Each year, in the spring, the crossings and diversions are installed in the same locations in the reach of the Santa Clara River from approximately Castaic Creek in Los Angeles County to Rancho Camulos in Ventura County. In the fall, the crossings and diversions are removed prior to flood events. The proposed action would result in the temporary disturbance of 14 acres of bank and river channel. The banks in the footprint of the crossings proper are devoid of vegetation due to many years of road installation and use. At the crossings and diversions, the active river channel is also largely devoid of vegetation because, in many years, the

active river channel is cleared of vegetation by scouring that occurs during flood events. In years with minimal rainfall, emergent vegetation that develops upstream of the crossings following their installation may persist until the next flood event.

The affected reach of the river supports populations of the endangered unarmored threespine stickleback and the following unlisted species of concern: the Santa Ana sucker, arroyo chub, southwestern pond turtle, and two-striped garter snake. Although not observed in recent years, the threatened California red-legged frog may occur in the affected reach.

Pursuant to section 9 of the Endangered Species Act, listed species are protected against take; that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are promulgated at 50 CFR 17.22 and 17.32.

The Service proposes to issue an incidental take permit to the applicant for the take of unarmored threespine sticklebacks and California red-legged frogs. The proposed permit would be effective upon issuance for species currently listed under the Endangered Species Act. Should the unlisted species covered by the Plan be federally listed as threatened or endangered during the term of the permit, take authorization for them would become effective concurrent with their listing under the Endangered Species Act. In addition, the applicant seeks Federal assurances that no additional land restrictions or financial compensation would be required for species adequately covered by the Newhall Plan. To receive assurances, all species covered by the Plan must be treated as if they are listed and the Plan, with its avoidance, minimization and management measures, must be implemented.

The proposed Federal action would authorize the incidental take, through harassment, of all unarmored threespine sticklebacks and California red-legged frogs within the individual crossing and diversion sites. Similarly, all Santa Ana suckers, arroyo chubs, southwestern pond turtles, and two-striped garter snakes would be harassed during their removal from harm's way prior to installation and removal of the river crossings and diversions. The Service anticipates that limited numbers of individuals of listed species and species of concern would be killed or injured during installation or removal of the crossings and diversions. Such incidental take, in the form of injury or mortality, would be authorized through the incidental take permit.

To minimize the effects of the proposed project, the proponent would implement a take avoidance plan during installation and removal of the crossings and diversions. The take avoidance plan includes: preconstruction surveys of the various sites by qualified biologists prior to installation activities; installation of blocking nets to isolate the work area; visual searches and seining of the work area; and removal from harm's way of individual fish and wildlife that are encountered.

The Service has determined that the Newhall Plan qualifies as a "low-effect" Plan as defined by the Fish and Wildlife Service's Habitat Conservation Planning Handbook (November 1996). Low-effect Plans are those involving (1) minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Newhall Plan qualifies as a low-effect Plan for the following reasons:

1. The effects of the plan are minor or negligible on federally listed, proposed, or candidate species and their habitats. The effects of Newhall's actions on the Santa Clara River are minor in comparison to natural river processes (e.g., low flows and high flows). The installation, presence, and removal of the river crossings appear not to negatively affect the federally listed, candidate, and species of concern that inhabit the affected reaches. By slowing the flow of water, the crossings create habitat conditions favorable to many species native to the project area.

2. The effects of the project are minor or negligible on other environmental resources. Relative to vehicle traffic on Highway 126, which lies along the northern margin of the river's floodplain, the contribution of Newhall's farming activities to air pollution is negligible. The limited pulses of elevated turbidity that occur through installation and removal of Newhall's river crossings do not greatly affect water quality and soil. Within the footprint of the river crossings, there are no known cultural resources; considering the natural disturbance which occurs during flood flows and the historic use of the crossing areas, the presence of cultural resources is extremely unlikely.

3. No significant cumulative effects are expected to occur as a result of project implementation. There currently are no other low-effect habitat conservation plans in preparation or foreseeable for the Santa Clara River. The effect of this action on natural resources is very limited and would contribute little to the cumulative effects of other projects if they did arise.

In addition, none of the exceptions to categorical exclusions (from 516 DM 2.3, Appendix 2) apply to the Newhall Plan. The Service therefore has determined that approval of the Newhall Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Therefore, no further National Environmental Policy Act documentation will be prepared.

This notice is provided pursuant to section 10(c) of the Endangered Species Act. The Service will evaluate the permit application, the Newhall Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: March 11, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–6806 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Coastal California Gnatcatcher Associated With Residential Development on the Bennett Property, City of Chula Vista, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: Western Pacific Housing (applicant) has submitted an application with a Habitat Conservation Plan to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The applicant proposes to develop residential housing on a 5-acre parcel in the City of Chula Vista, California. The proposed permit would authorize the incidental take of one pair of the threatened coastal California gnatcatcher (*Polioptila californica*

californica) known to occur on this parcel.

The Service has determined that the Bennett Habitat Conservation Plan (Bennett Plan) qualifies as a low effect plan as defined by the Service's Habitat Conservation Planning Handbook (November 1996). The Service has further determined that approval of the Bennett Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This determination is explained in an Environmental Action Statement which is available for public review.

DATES: Written comments on the permit application, Bennett Plan, and Environmental Action Statement should be received on or before April 16, 1998.

ADDRESSES: Written comments should be addressed to the Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Marsden, Fish and Wildlife Biologist, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Persons may obtain a copy of the permit application, Bennett Plan, and Environmental Action Statement by calling the Service's Carlsbad Fish and Wildlife Office at the telephone number above. Documents also will be available for public inspection by appointment during normal business hours at that office (see **ADDRESSES**).

Background

Section 9 of the Endangered Species Act and its implementing regulations prohibit the "taking" of threatened or endangered species. However, under limited circumstances the Service may issue permits to take endangered and/or threatened species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and/or threatened species are promulgated at 50 CFR 17.22 and 17.32.

Under the proposed action, construction activities would directly impact one pair of gnatcatchers by removal of 4.2 acres of foraging habitat on a 5-acre parcel. The parcel is bounded on three sides by development and on the fourth by a road. The parcel has been previously graded and revegetated with a mixture of plants that are native to both coastal and desert areas of southern California and with horticultural ornamentals. The revegetated scrub is similar in stature to coastal sage scrub but is not considered to be coastal sage scrub. The applicant has submitted a habitat conservation plan that describes consideration of alternatives to the action and provisions for minimization and mitigation of impacts including off-site acquisition of 4.2 acres of coastal sage scrub within the preserve area of the City of Chula Vista's Multiple Species Conservation Program. The Bennett Plan also provides measures to avoid direct take of the California gnatcatchers if vegetation clearing would occur within the normal California gnatcatcher breeding season.

Two alternatives to the proposed project action were considered: the "no project" alternative and the "partial-clearing" alternative. Each of these alternatives was rejected because they would not meet the project purpose and were economically unfeasible.

The Service has determined that the Bennett Plan qualifies as a "low-effect" plan as defined by the Service's Habitat Conservation Planning Handbook (November 1996). Low-effect plans are those involving (1) minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Bennett Plan qualifies as a low-effect plan for the following reasons:

1. The effects of the plan are minor or negligible on federally listed, proposed, or candidate species and their habitats. The harassment of one pair of California gnatcatchers by removal of 4.2 acres of their foraging habitat is considered a negligible effect because: (a) The project site has been previously graded and revegetated to an assemblage of plants that does not comprise a natural community; and (b) the removal of this vegetation will not appreciably reduce any food resource, or affect reproduction because there is foraging habitat within 50 meters of the project site in naturally-occurring suitable habitat. In addition, the project will not affect any proposed or candidate species or their habitats.

2. The effects of the project are minor or negligible on other environmental resources. The effects on air quality will not be significant because of the small size of the project site and the limited duration of construction. Impacts to geology and soils are negligible because the site has been previously graded. Impacts to water quality are not anticipated as a result of this project because it is small, surrounded by existing development, not located close to any body of water, and ground disturbing activities will be minimal. No known cultural sites exist on the site, therefore, no impacts to cultural resources are anticipated. No changes in land use or the socio-economic environment are expected to occur as a result of implementing the Bennett Plan because the project site is located in an existing housing subdivision surrounded by residential development and a paved road.

3. No significant cumulative effects are expected to occur as a result of project implementation. The site was previously graded and revegetated to an unnatural assemblage of plants. The loss of 4.2 acres of non-coastal sage scrub vegetation on previously graded land will not result in significant cumulative effects to the coastal California gnatcatcher.

In addition, none of the exceptions to categorical exclusions (from 516 DM 2.3, Appendix 2) apply to the Bennett Plan. The Service therefore has determined that approval of the Bennett Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further National Environmental Policy Act documentation will therefore be prepared.

This notice is provided pursuant to section 10(c) of the Endangered Species Act. The Service will evaluate the permit application, the Bennett Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: March 11, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–6807 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath Fishery Management Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5

U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objective of this meeting is to develop management options for the 1998 Klamath fall chinook salmon season, to be presented to the Pacific Fisheries Management Council. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 2:00 p.m. to 6:00 p.m. on Sunday, April 5.

PLACE: The meeting will be held at the Doubletree Hotel Jantzen Beach, 909 N. Hayden Island Drive, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:

Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: March 10, 1998.

Don Weathers,

Acting Regional Director.

[FR Doc. 98–6812 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Gas Pipeline Right-of-Way Permit Application Crossing a Stevens County, Minnesota Waterfowl Production Area, for Review and Comment

AGENCY: Fish and Wildlife Servic, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that Alliance Pipeline of Mankato, Minnesota has applied for the installation of a 36-inch diameter natural gas pipeline right-of-way across U.S. Fish and Wildlife Service, Tract 94, Stevens County, Minnesota Waterfowl Production Area.

DATES: Written comments should be received on or before April 16, 1998 to receive consideration by the Service.

ADDRESSES: Comments should be addressed to: Regional Director; U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building; 1 Federal Drive; Fort Snelling, Minnesota 55111–4056; Attention: Ms. Karen Siegfried, Realty Specialist, Division of Realty.

FOR FURTHER INFORMATION CONTACT: Karen Siegfried, Realty Specialist, at the above Fort Snelling Regional Office address (612/713–5410).

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public that the Service will be proceeding with the processing of this application, the compatibility determination and the approval processing which includes the preparation of the terms and conditions of the permit. The proposed natural gas pipeline crossing the Stevens County, Minnesota waterfowl production area is part of a larger project to deliver western Canadian natural gas to several existing pipelines in the Joliet, Illinois region. The route of the pipeline covers 50 feet in width of parcel 5 of the record plat, "Stevens County Wildlife Area No. 19" in the S½SW¼SW¼ of Section 17, Township 125 North, Range 43 West, Fifth Principal Meridian. See attached maps for location of proposed pipeline.

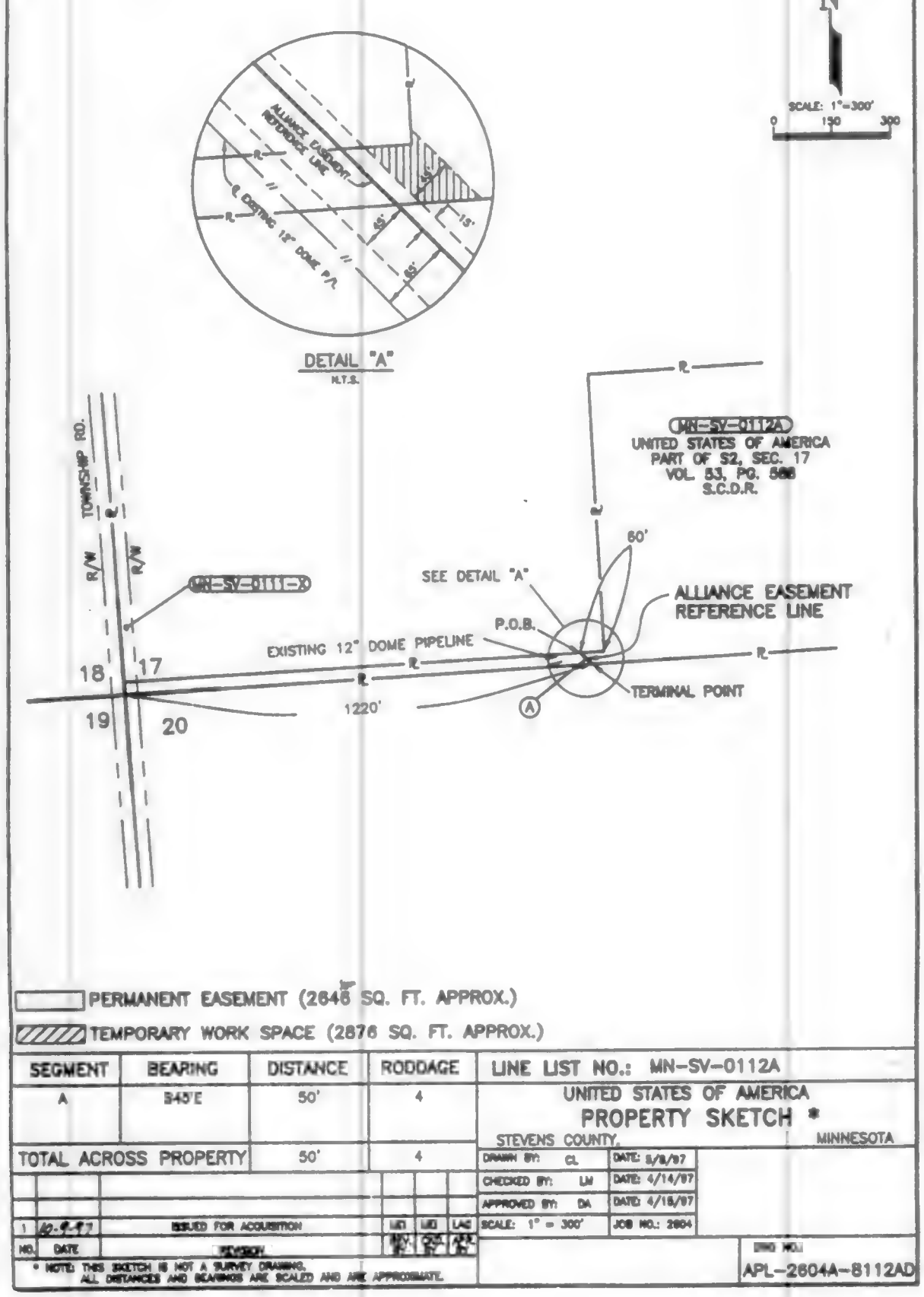
Right-of-way applications for pipelines are to be filed in accordance with Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C.), as amended by the Act of November 16, 1973 (37 Stat. 576, Pub. L. 93–153).

Dated: January 23, 1998.

Marvin E. Moriarty,

Regional Director, Region 3, Ft. Snelling, MN.

BILLING CODE 4310–55–M



[FR Doc. 98-5895 Filed 3-16-98; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–1430–00]

Temporary Closure of Selected Public Lands and Roads in Pima County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of selected public lands and roads.

SUMMARY: This notice is to inform the public of the Bureau of Land Management's (BLM) decision by the Tucson Field Office Manager of the Tucson Field Office of the temporary road closure of selected public lands under the Field Office's administration. The selected public land roads are located in: T. 17 S., R. 12 E., sections 3, 10, 11, 14 and 15. This action is being taken to provide for public safety and to prevent unnecessary environmental degradation to archaeological sites, soil resources, native vegetation and wildlife.

DATES: This closure is effective February 1, 1998.

ADDRESSES: 12661 E. Broadway Blvd., Tucson, AZ 85748.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Tucson Field Office, 12661 E. Broadway Blvd., Tucson, Arizona 85748, (520) 722–4289.

SUPPLEMENTARY INFORMATION: The construction of new unauthorized roads and road grading of existing roads has damaged archaeological sites, native vegetation and existing roads. Authority for this action is contained in 43 Code of Federal Regulations 8364–1. Violations are punishable as a Class A misdemeanor. This action is taken to protect life and property and allow for safe public land use. The following are supplemental rules for the area described above and apply to all persons using Public Lands. The special rules are in addition to existing rules and regulations previously established under 43 Code of Federal Regulations (CFR) as well as other Federal laws applicable to the use of Public Land.

Specific restrictions and closure are as follows:

1. All posted roads shall be closed to all vehicular use except for "Indian Kitchen" Road and "Dog Town" Road.

2. The Indian Kitchen Archaeological site shall be closed to all vehicular use.

3. All roads described above shall be open to BLM authorized and permitted activities on an event specific basis as authorized by the Tucson Field Office Manager or his designee.

4. Casual use of these lands such as hiking, and vehicular use on existing two track trails are permitted.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona, or Pima County. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined up to $100,000.00 and/or imprisoned for not more than 12 months as amended by 18 USC 3571 and 18 USC 3581. This closure shall stay enforced until a resolution of the unauthorized use is reached, terminated or modified by the Bureau of Land Management.

Dated: March 5, 1998.

Bill Childress,

Acting Field Manager.

[FR Doc. 98–6833 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1220–00]

Closure and Restriction Orders

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure of certain public lands to motorized vehicle use and target shooting in Shasta County, California.

SUMMARY: The BLM is prohibiting persons, for an indefinite period, from target shooting and operating motorized vehicles in certain areas around, and within, the Swasey Drive—Area of Critical Environmental Concern (ACEC). These closures will protect sensitive cultural resources on BLM lands and adjoining residential land until BLM has prepared a detailed ACEC Management Plan.

DATES: This emergency motorized vehicle closure will take effect March 17, 1998.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Field Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA. 96002.

SUPPLEMENTARY INFORMATION: The BLM designated the Swasey Drive area as an ACEC in 1993 with approval of the Redding Resource Management Plan. Public lands located in T. 31 N., R. 6 W., sections 1 and 12, and T. 31 N., R. 5 W., sections 6 and 7 are plagued by illegal garbage dumping and contain sensitive cultural resources which are vulnerable to looting. The BLM land is surrounded by privately owned residential development and unrestricted target shooting is a safety concern; therefore, target shooting is restricted to one area located at the end of the main access road. To reduce cultural resources damage and garbage dumping, motor vehicles are restricted to a series of roadways that are depicted on a map available at the BLM office in Redding. Exceptions to the motor vehicle closure include: emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles, law enforcement vehicles, and other motorized vehicles specifically approved by an authorized officer of the BLM.

The authority for this closure and rule making is 43 CFR 8364.1. Any person who fails to comply with a closure order or rule making is subject to arrest and fines of up to $100,000 and/or imprisonment not to exceed 12 months.

Charles M. Schultz,

Redding Area Manager.

[FR Doc. 98–6801 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–1320–01–P; MTM 87910]

Notice of Invitation—Coal Exploration License Application MTM 87910

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of invitation—Coal Exploration License Application MTM 87910.

SUMMARY: Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the lands described below located in Big Horn County, Montana:

T. 8 S., R. 39 E., P.M.M.

Sec. 13: SW¼NW¼, W½SW¼
Sec. 14: NE¼, NE¼NW¼, E½SE½
Sec. 15: N½NE¼, N½SE¼NE¼, NW¼, W½SW¼SE¼, SE¼SW¼SE¼
Sec. 22: NE¼, NE¼NW¼
Sec. 23: NE¼NE¼, E½NW¼NW¼, SW¼NW¼NE¼, S½N½NW¼, S½NW¼
Sec. 24: NW¼NW¼
1120.00 acres.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025. Such written notice must refer to serial

number MTM 87910 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Big Horn County News, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the Big Horn County News.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Spring Creek Coal Company, is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini, Mining Engineer, or Bettie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 255–2818 or (406) 255–2832, respectively (commercial or FTS).

Dated: March 9, 1998.

Edward L. Hughes,

Acting Chief, Branch of Solid Minerals.

[FR Doc. 98–6830 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Utah-Notice of Invitation To Participate in Coal Exploration Program; Canyon Fuel Company, LLC, West Ridge, Upper Huntington Canyon, UT

Canyon Fuel Company, LLC is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Sanpete County, Utah:

T. 13 S., R. 6 E., SLM, UT
Sec. 21, lots 1–4, E2E2;
Sec. 28, lots 1–8, S2NW, SW;
Sec. 33, E2, NWNW, E2NW, SWSW.
T. 14 S., R. 6 E., SLM, UT
Sec. 4, all;
Sec. 5, all;
Sec. 6, all.
Containing 3,229.73 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, and to Mark Bunnell, Mine Geologist, Canyon Fuel Company, LLC, Skyline Mine, P.O. Box 719, Helper, Utah 84526. Such written notice must be received within thirty days after publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. An exploration plan submitted by Canyon Fuel Company, LLC, detailing the scope and timing of this exploration program, is available for public review during normal business hours in the public room of the BLM State Office, 324 South State Street, Salt Lake City, Utah, under serial number UTU–76864.

Dated: March 11, 1998.

Douglas M. Koza,

Deputy State Director, Natural Resources.

[FR Doc. 98–6805 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–078–98–1430–00]

Resource Management Plan Amendment and Supplemental Environmental Impact Statement (EIS) on Oil and Gas Development

AGENCY: Bureau of Land Management.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 and Bureau of Land Management (BLM) regulations in CFR 1610.5–5, BLM intends to amend the Resource Management Plan (RMP) for its Glenwood Springs Resource Area (GSRA). As described in a Notice of Intent published on April 21, 1997 (62 FR 19349), BLM is preparing a supplemental EIS on the impacts of oil and gas development in the GSRA. That EIS process has indicated that some changes in the leasing decisions are necessary and that an RMP amendment will be required. Further, as anticipated in that original Notice of Intent, the Department of Defense Authorization Act of 1998 (November 18, 1997) transferred management authority for Naval Oil Shale Reserves (NOSR) 1 and 3 from the Department of Energy to BLM. The Act directs BLM to lease certain lands in the NOSRs for oil and gas development by November 18, 1998. Those lands will be included in the supplemental EIS, and the RMP will be amended to reflect decisions made on leasing of the NOSR lands as well as leasing decisions on other BLM lands in the GSRA.

DATES: Comments will be accepted until April 16, 1998.

ADDRESSES: Comments should be sent to the Area Manager, Glenwood Springs Resource Area, Bureau of Land Management, P.O. Box 1009, Glenwood Springs, CO 81602, ATTN: Oil and Gas EIS.

FOR FURTHER INFORMATION CONTACT: Steve Moore, (970) 947–2824.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare a supplemental EIS on oil and gas leasing and development in the GSRA was published on April 21, 1997 (62 FR 19349). That EIS process has indicated that some changes in the leasing decisions are necessary and that an RMP amendment will be required. Further, as anticipated in that original notice, the Department of Defense Authorization Act of 1998 (November 18, 1997) transferred management authority for the NOSRs from the Department of Energy to BLM. In addition to transferring management authority to BLM, the Act directs BLM to lease approximately 6,000 acres in the NOSRs for oil and gas development by November 18, 1998. Prior to the transfer, the Department of Energy had already begun development of this oil and gas production area. Oil and gas leases for the production area will be sold at auction next fall.

The general character of the NOSR lands that are to be offered for lease is similar to the surrounding BLM lands which are being evaluated in the supplemental EIS. Additionally, many of the issues concerning oil and gas development of those lands are the same as those being considered in the supplemental EIS. It has been decided, therefore, to include the NOSR lands in the supplemental EIS, and the RMP will be amended to reflect decisions made on leasing of the NOSR lands as well as other BLM lands in the GSRA.

Anticipating the change in management authority for the NOSRs, the GSRA has been collecting environmental and resource data on the production area and has already initiated preliminary evaluation of impacts.

Consideration of the wildlife, visual, soils, riparian, socioeconomic and other issues being evaluated in the supplemental EIS will now formally include the NOSR production area. A draft of the supplemental EIS is planned for late May, 1998.

Formal scoping for the supplemental EIS will be re-opened for the next 30 days. Comments concerning the potential impacts of oil and gas development in the NOSR production area as well as impacts of development

in the rest of the GSRA are welcome. Additional scoping measures will include a press release describing the addition of the NOSR production area to the EIS, an informational mailing to interested citizens and ongoing consultation with interested organizations.

Michael S. Mottice,

Area Manager.

[FR Doc. 98–6808 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WYW–142433]

Bighorn Basin Resource Area, WY; Discovery of Dinosaur Tracks

ACTION: Notice of intent to conduct a planning review and request for public participation concerning the discovery of dinosaur tracks in Big Horn County, Wyoming, Bighorn Basin resource area.

SUMMARY: The Bureau of Land Management (BLM) invites the public to identify management needs and issues associated with the recent discovery of dinosaur tracks on BLM-administered public lands in Big Horn County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mike Bies, Bighorn Basin Resource Area Archaeologist or Chuck Wilkie, Bighorn Basin Resource Area Manager; Bureau of Land Management, P. O. Box 119, Worland, Wyoming 82401–0119; (307) 347–5100.

SUPPLEMENTARY INFORMATION: A review of existing land-use planning decisions is being conducted to evaluate how to best manage public lands, resources, educational opportunities, and other values associated with the recent discovery of dinosaur tracks on BLM-administered public lands in the Bighorn Basin Resource Area near Shell, Wyoming. The tracks were not addressed in the Washakie Resource Management Plan (RMP) which was completed in 1988, and a review of BLM's planning decisions for the discovery area is needed to evaluate the adequacy of existing management prescriptions for the protection of the tracks and related values. The planning review will also consider management options for public education, interpretation, scientific research, and recreation in the area. Any needed changes in existing management or any new management actions to be prescribed for the area will be identified and, if necessary, the Washakie RMP will be amended.

The planning review will include opportunities for public participation. These opportunities will be announced through **Federal Register** notices, media releases, or mailings. The public will be invited to one or more meetings to discuss problems, conflicts, concerns, and planning issues in the review area along with potential management options. The National Environmental Policy Act (NEPA) environmental analysis process will be used for evaluating these options and for developing a management prescription for the discovery area.

If the planning review results in the need to amend the Washakie RMP, other notices, mailings, or media releases will announce a 30-day public comment/protest period on the proposed amendment.

Comments, including names and street addresses of respondents will be available for public review at the Worland District Office, 101 South 23rd Street, Worland, Wyoming, during regular business hours (7:30 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: March 10, 1998.

Alan R. Pierson,

State Director.

[FR Doc. 98–6945 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–0777–63; GP7–0063; ORE–017791]

Public Land Order No. 7322; Modification and Partial Revocation of Public Land Order No. 4145; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order to establish a 20-year term as to 20 acres of National Forest System land withdrawn for the Forest Service's West Eagle Meadow Campground in the Wallowa-Whitman National Forest. The land has been and remains closed to mining. This order also revokes the public land order insofar as it affects the remaining 49.82 acres, which will be opened to mining. All of the land has been and remains open to surface entry and mineral leasing.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 4145 is hereby modified to expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended insofar as it affects the following described land:

Willamette Meridian

Wallowa-Whitman National Forest

West Eagle Meadow Campground

T. 5 S., R. 43 E., unsurveyed,
Sec. 32, S½SW¼SW¼.

The area described contains 20 acres in Union County.

The land described above continues to be withdrawn from location and entry under the mining laws, but has been and remains open to such forms of disposition as may by law be made of National Forest System land, including leasing under the mineral leasing laws to protect the Forest Service's West Eagle Meadow Campground.

2. Public Land Order No. 4145 is hereby revoked insofar as it affects the following described land:

Willamette Meridian

Wallowa-Whitman National Forest

West Eagle Meadow Campground

T. 5 S., R. 43 E., unsurveyed,
Sec. 32, N½SW¼SW¼ and S½NW¼SW¼.

T. 6 S., R. 43 E.,
Sec. 5, NE¼ of lot 4.

The area described contains approximately 49.82 acres in Union and Baker Counties.

3. At 8:30 a.m. on April 16, 1998, the land described in paragraph 2 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of

applicable law. Appropriation of any of the land described in paragraph 2 of this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 5, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–6844 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–1430–00]

Notice of Public Land Use Restriction: Discharge of Firearms Prohibited

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public land use restriction: Discharge of firearms prohibited.

SUMMARY: This notice is to inform the public of the Bureau of Land Management's (BLM) decision by the Tucson Field Office Manager of the Tucson Field Office to prohibit the discharge of firearms on public land at Indian Kitchen archaeological site as posted, located in T. 17 S., R. 12., sec. 15, Pima County, Arizona, in order to protect persons, property and public land and resources. No person shall be exempt from this restriction except certified law enforcement personnel acting in the line of duty to enforce local, state or federal laws. This is a permanent restriction .

DATES: Effective February 1, 1998.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Tucson Field Office, (520) 722–4289, 12661 E. Broadway Blvd., Tucson, AZ 85748.

SUPPLEMENTARY INFORMATION: Authority for this action is contained in 43 Code of Federal Regulations 8364–1. Violations are punishable as a Class A misdemeanor. This action is taken to protect life and property and allow for safe public land use. Discharge of firearms at Indian Kitchen has resulted in significant damage to this important archaeological site.

The following are supplemental rules for the area described above and apply to all persons using Public Lands. The special rules are in addition to existing rules and regulations previously established under 43 Code of Federal Regulations (CFR) as well as other Federal laws applicable to the use of Public Land.

Specific restrictions and closure are as follows:

1. The discharge of firearms is prohibited at the Indian Kitchen archaeological site.
2. The Indian Kitchen site shall be closed to all vehicular use.
3. The Indian Kitchen site shall be open for day use only.
4. Ground fires and overnight camping are prohibited at the Indian Kitchen site.

Emergency vehicles and vehicles owned by the United States, the State of Arizona, or Pima County are permitted on the Indian Kitchen site. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined up to $100,000.00 and/or imprisoned for not more than 12 months as amended by 18 U.S.C. 3571 and 18 U.S.C. 3581.

Dated: March 5, 1998.

Bill Childress,

Acting Field Manager.

[FR Doc. 98–6832 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–00; IDI–31741]

Opening of Land in a Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 21,256.58 acres of public lands for the Department of Air Force's Mountain Home Air Force Base Enhanced Training in Idaho (ETI) site expires April 7, 1998, after which the lands will be open to surface entry, mining and mineral leasing.

EFFECTIVE DATE: April 7, 1998.

FOR FURTHER INFORMATION CONTACT: Jon Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3813.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register** (61 FR 15513, April 8, 1996), which segregated the lands described therein for up to 2 years from the land, mining and mineral leasing laws, subject to valid existing rights. The 2-year segregation expires April 7, 1998. The lands are described as follows:

Boise Meridian

(Alternative Site No. 1)—Proposal: Clover Butte Drop Zone

T. 12 S., R. 8 E.,
Sec. 10, SE¼SE¼;
Sec. 11, S½S½;
Sec. 12, S½S½;
Sec. 13;
Sec. 14;
Sec. 15, E½E½;
Sec. 22, E½E½;
Secs. 23 to 26 inclusive;
Sec. 27, E½E½;
Sec. 34, E½E½;
Sec. 35.
T. 12 S., R. 9 E.,
Sec. 7, lot 4, SE¼SW¼ and S½SE¼;
Sec. 8, S½S½;
Secs. 17 to 20 inclusive;
Secs. 29 to 32 inclusive.

(No Drop Zone)

T. 11 S., R. 4 E.,
Sec. 23, S½SW¼NW¼SE¼.
T. 9 S., R. 6 E.,
Sec. 21.
T. 13 S., R. 4 E.,
Sec. 4, N½NE¼NW¼SW¼.

(Emitters)

T. 8 S., R. 9 E.,
Sec. 34, SE¼SE¼NW¼SE¼.
T. 9 S., R. 6 E.,
Sec. 15, NW¼NW¼SW¼SW¼.
T. 11 S., R. 4 E.,
Sec. 23, NE¼NE¼NE¼SW¼.
T. 11 S., R. 5 E.,
Sec. 17, SE¼SE¼NE¼NE¼.
T. 12 S., R. 3 E.,
Sec. 26, NE¼NE¼NW¼NE¼.
T. 12 S., R. 10 E.,
Sec. 30, SW¼SW¼SW¼SW¼ within lot 4.
T. 13 S., R. 9 E.,
Sec. 10, NE¼NE¼NW¼NW¼.

The areas described aggregate 11,583.34 acres in Owyhee County.

(Alternative Site No. 2)—Proposal: Grasmere Drop Zone

T. 11 S., R. 4 E.,
Secs. 25 to 27 inclusive;
Secs. 34, N½, SE¼ and E½SW¼;
Sec. 35.
T. 11 S., R. 5 E.,
Sec. 30, lots 1 to 4 inclusive;
Sec. 31, lots 1 to 4 inclusive.
T. 12 S., R. 4 E.,
Secs. 1 to 4 inclusive;
Sec. 9;
Sec. 10, NW¼, S½, W½NE¼ and SE¼NE¼;
Sec. 11, S½, N½NE¼, SE¼NE¼ and NE¼NW¼;
Sec. 12;

Sec. 13, N½NW¼, N½SW¼NW¼, N½SE¼NW¼, NW¼NE¼, and N½SW¼NE¼;
Sec. 14, N½NW¼, N½SW¼NW¼, N½SE¼NW¼, N½NE¼, N½SW¼NE¼ and N½SE¼NE¼;
Sec. 15, N½NW¼, N½SW¼NW¼, N½SE¼NW¼, N½NE¼, N½SW¼NE¼ and N½SE¼NE¼.

(No Drop Zone)

T. 12 S., R. 9 E.,
Sec. 20, S½SW¼SW¼SW¼.
T. 9 S., R. 6 E.,
Sec. 21.
T. 13 S., R. 4 E.,
Sec. 4, N½NE¼NW¼SW¼.

(Emitters)

T. 8 S., R. 9 E.,
Sec. 34, SE¼SE¼NW¼SE¼.
T. 9 S., R. 6 E.,
Sec. 15, NW¼NW¼SW¼SW¼.
T. 11 S., R. 4 E.,
Sec. 23, NE¼NE¼NE¼SW¼.
T. 11 S., R. 5 E.,
Sec. 17, SE¼SE¼NE¼NE¼.
T. 12 S., R. 3 E.,
Sec. 26, NE¼NE¼NW¼NE¼.
T. 12 S., R. 10 E.,
Sec. 30, SW¼SW¼SW¼SW¼ within lot 4.
T. 13 S., R. 9 E.,
Sec. 10, NE¼NE¼NW¼SE¼.

The areas described aggregate 9,673.34 acres in Owyhee County.

At 9 a.m. on April 7, 1998, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on April 7, 1998, shall be considered as simultaneously filed at that time. Those thereafter shall be considered in the order of filing.

At 9 a.m. on April 7, 1998, the lands will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 9, 1998.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 98–6851 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group; Public Meetings

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG) on September 10, 1997. The TWG members were named by the members of the AMWG and will provide advice and information to the AMWG. The AMWG will use this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center science program and other direction as requested by the Secretary. All meetings are open to the public; however, seating is limited and is available on a first come, first served basis.

Dates and locations: The TWG will conduct FOUR (4) public meetings at the following times and locations:

There will be three two-day public meetings: April 7–8, 1998; May 18–19, 1998; and June 9–10, 1998. Each meeting will begin at 9:30 a.m. on the first day and conclude at 4:00 p.m. on the second day.

The meetings on April 7–8, 1998, and June 9–10, 1998, will be held at the Arizona Department of Water Resources, Conference Room A, 500 North 3rd Street, Phoenix, Arizona.

The meeting on May 18–19, 1998, will be held in Flagstaff, Arizona, in the main conference room of the Grand Canyon Monitoring and Research Center located at 2255 North Gemini Drive.

There will be a one-day public meeting on July 23, 1998. This meeting will be held in Phoenix, Arizona, at the Embassy Suites Hotel, 1515 North 44th Street (near the Sky Harbor Airport). The meeting will begin at 8:00 a.m. and end at 12:00 noon.

Time will be allowed at each meeting for any individual or organization wishing to make formal oral comments (limited to 10 minutes), but written notice must be provided at least five (5) days prior to the meeting to Mr. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702, faxogram (801) 524–5499, e-mail at: bmoore@uc.usbr.gov.

Agendas: General topics of discussion for the April 7–8, May 18–19, and June 9–10, 1998, meetings will be as follows:

Welcome
Monitoring and Research Plans for Fiscal Year 2000
Habitat/Maintenance and Beach/Habitat-Building Flows
Management Objectives
Spillway Gate Extensions
Science Advisory Board
Temperature Control Device
Cultural Resources
Conceptual Model
Budget
Public Comment

The agenda for the July 23, 1998, public meeting will be to discuss the assignments from the preceding Adaptive Management Work Group meetings.

Official agendas for each of the four public meetings will be available 15 days prior to each meeting on the Bureau of Reclamation's website under the Adaptive Management Program at http://www.uc.usbr.gov.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, telephone (801) 524–3702, faxogram (802) 524–5499, e-mail at: bmoore@uc.usbr.gov.

Dated: March 11, 1998

Eluid L. Martinez

Commissioner, Bureau of Reclamation

[FR Doc. 98–6775 Filed 3–16–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *A–1 Battery, Inc.*, Civil Action No. 3CV980363, was lodged on March 4, 1998, with the United States District Court for the Middle District of Pennsylvania. The defendants in the action are alleged to be persons who arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Tonolli Corporation Superfund Site, in Nesquehoning Borough, Carbon County, Pennsylvania. The proposed consent decree requires the defendants to conduct certain cleanup activities at the Site under the oversight of the United States Environmental Protection Agency. The

estimated cost of cleaning up the former lead smelter and battery recycling facility is $16.6 million.

The Department of Justice will receive, for a period ending thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should specifically refer to *United States* v. *A–1 Battery, Inc.*, DOJ No. 90–7–2–174B.

The proposed consent decree may be examined at the Office of the United States Attorney for the Middle District of Pennsylvania, Suite 1162, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G. Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library.

In requesting a copy of the proposed consent decree, please enclose a check in the amount of $83.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–6840 Filed 3–16–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that a consent decree in *United States* v. *Bell Petroleum, et al.*, Civil Action No. MO–88–CA–05(W.D. Tex.) was lodged with the United States District Court for the Western District of Texas on March 6, 1998.

This action was filed in 1988 against Bell Petroleum Company and others to recover costs the United States had incurred and was continuing to incur in connection with the Odessa Chromium I Site in Odessa, Texas. At the time of settlement, the case was on its third appeal to the United States Court of Appeals for the Fifth Circuit.

The United States previously settled with all defendants except Sequa Corporation and Chromalloy American Corporation, a subsidiary of Sequa, recovering in excess of $1 million through those settlements. The present settlement resolves the United States' pending claims and certain future claims against Sequa and Chromalloy.

Under the Consent Decree, Sequa Corporation and Chromalloy American Corporation will pay the United States $2.2 million in cash. Fifty percent of the payment will be used to complete ongoing remedial actions at the Odessa I Site. The other fifty percent will reimburse the United States for past costs incurred by the United States in connection with the Odessa I Site. In exchange for these payments, the United States will provide a covenant not to sue to Sequa and Chromalloy under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Recovery Act ("CERCLA"), 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, relating to the Odessa I Site.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Bell Petroleum et al.*, D.J. Ref. No. 90–11–3–229A.

The Consent Decree may be examined at the Region 6 Office of EPA, 1445 Ross Avenue, Dallas, Texas, 75202, and at the Office of the United States Attorney, 400 West Illinois, Suite 1200, Midland, Texas.

A copy of the Consent Decree (if requested) may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–6843 Filed 3–16–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Port of Moses Lake*, No. CS–98–0057–FVS (E.D. Washington), was lodged on February 23, 1998, with the United States District Court for the Eastern District of Washington. With regard to the Defendants, the Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601, *et seq.* The United States sought past costs and performance of work.

The United States entered into the Consent Decree in connection with the Moses Lake Wellfield Superfund Site located near Moses Lake, Washington. The Consent Decree provides that the Settling Defendant will perform work by installing a new water supply and reimburse the United States a total of $56,538.26 for past costs incurred by the United States at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Port of Moses Lake*, DOJ Ref. #90–11–2–1040.

The proposed Consent Decree may be examined at the office of the United States Attorney, 920 Riverside, Suite 300, Spokane, Washington 99201; the Region 10 office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $16.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 98–6841 Filed 3–16–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that an amendment to the previously entered consent decree in *United States* v. *Reynolds Metals Co. and Westvaco Corp.*, Civil Action No. 3:97–CV–226 (E.D. Va.) was lodged with the court on February 27, 1998.

The proposed amendment to the previous decree resolves the claims of the United States against J.W. Fergusson and Sons, Inc. under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, for past response costs and certain response actions at the HH Burn Pit Superfund Site in Hanover County, Virginia. The decree obligates the Settling Defendant to reimburse $175,000 of the United States' past response costs and to join with two parties who settled previously to perform the remedial action the U.S. Environmental Protection Agency has selected for the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Reynolds Metals Co. and Westvaco Corp.*, DOJ Ref. #90–11–3–1408.

The proposed amendment to consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C.20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–6842 Filed 3–16–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 98–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazardous Chemicals in Laboratories

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Hazardous Chemicals in Laboratories Standard 29 CFR 1910.1450. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addresses section of this notice. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted by May 18, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 98–8, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3718, telephone (202) 219–7075. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Adrian Corsey at (202) 219–7075 extension 105 or Barbara Bielaski at (202) 219–8076 extension 142. For electronic copies of the Information Collection Request on Hazardous Chemicals in Laboratories, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Chemicals in Laboratories standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to Hazardous Chemicals in Laboratories. The standard requires that employers establish a Chemical Hygiene Plan, including exposure monitoring and medical records. These records are used by employees, physicians, employers and OSHA to determine the effectiveness of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Hazardous Chemicals in Laboratories 29 CFR 1910.1450.

OMB Control Number: 1218–0131.

Affected Public: Business or other for-profit, Federal government, State and Local governments.

Total Respondents: 34,214.

Frequency: On occasion.

Total Responses: 306,909.

Average Time per Response: Ranges from 5 minutes to make records available to 1.75 hours for an employee to have a consultation and a medical examination.

Estimated Total Burden Hours: 96,571.

Total Annualized capital/startup costs: 0.

Total initial annual costs (operating/maintaining systems or purchasing services): $10,568,950.

Comments submitted in response to this notice will be submitted and included in the request for Office of Management and Budget approval of the information collection. The comments will become a matter of public record.

Signed at Washington, DC, this 11th day of March, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–6870 Filed 3–16–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, March 19, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from Three (3) Federal Credit Unions to Convert to Community Charters.
2. Request from a Credit Union to Convert Insurance.
3. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.
4. Request from a Corporate Federal Credit Union for a Wavier from Part 704 and a Field of Membership Amendment.
5. Final Amendments to Interpretive Ruling and Policy Statement (IRPS) 94–1, (Chartering Manual).
6. Final Rule: Amendments to Part 792, Subpart A, NCUA's Rules and Regulations, Procedures for Processing Freedom of Information Act Requests for NCUA Records.
7. Final Rule: Amendments to Part 723, NCUA's Rules and Regulations, Member Business Loans.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, March 19, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Three (3) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
2. One Administrative Action under Part 741, NCUA's Rules and Regulations. Closed pursuant to exemption (8).
3. Three (3) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–6964 Filed 3–12–98; 4:54 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Nebraska Public Power District, Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–46, issued to the Nebraska Public Power District (NPPD or the licensee), for operation of the Cooper Nuclear Station (CNS), located in Nemaha County, Nebraska.

The proposed amendment, requested by the licensee in a letter dated March 27, 1997, would represent a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4," Revision 1, dated April 1995. NUREG–1433 has been developed through working groups composed of both NRC staff members and industry representatives and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the TS. As part of this submittal, the licensee has applied the criteria contained in the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement)," published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the current CNS TS, and, using NUREG–1433 as a basis, developed a proposed set of improved TS for CNS. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, "Technical Specifications," in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the existing TS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1433 and does not involve technical changes to the existing TS. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1433 bracketed information (information that must be supplied on a plant specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1433 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TS. Relocated changes are those current TS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Volume 1 of its March 27, 1997, submittal, which is entitled, "Application of Selection Criteria to the Cooper Nuclear Station Technical Specifications." The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the Updated Safety Analysis Report (USAR), the TS BASES, The Technical Requirements Manual (TRM), the Core Operating Limits Report (COLR), the Offsite Dose Assessment Manual (ODAM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These

proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the current CNS TS that is more restrictive than the corresponding requirement in NUREG–1433 that the licensee proposes to retain in the improved Technical Specifications (ITS), they have provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1433 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1433, thus providing a basis for these revised TS, or if relaxation of the requirements in the current TS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive and less restrictive changes to the requirements of the current TS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the changes solely involving the conversion, changes are proposed to the current technical specifications or as deviations from the improved GE Technical Specifications (NUREG–1433) as follows:

1. ITS 3.1.8 revises the Scram Discharge Volume Vent and Drain Valve Actions from the corresponding actions of NUREG–1433, to eliminate the restoration requirement if the associated line is isolated.

2. ITS 3.5.1 revises the ECCS Allowed Outage Times from those in the CTS to allow continued operation for up to 72 hours with certain equipment or systems inoperable.

3. ITS 3.7.1, 3.7.2, and 3.7.3, would allow plant operation to continue indefinitely with only one pump per loop operable for the Residual Heat Removal Service Water Boqster, the Service Water and the Reactor Equipment Cooling (REC) systems, based on current analyses. The CTS allow continued operation for only 30 days with one pump inoperable; the ITS also deviate from the required actions of NUREG–1433.

4. ITS 3.7.2 and 3.7.3 revise the Service Water and REC system pump and valve testing frequencies from monthly to quarterly to be consistent with ASME Section XI requirements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 16, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest.

The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to

intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 27, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Dated at Rockville, Maryland, this 11th day of March 1998.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–6825 Filed 3–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 040–07924]

Schott Glass Technologies, Inc., License Termination Request, Opportunity for Hearing and Notification of Public Meeting on Licensee's Termination Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to terminate the NRC license for the Schott Glass Technologies, Inc. (Schott) facility located in Duryea, Pennsylvania, notice of a public meeting, and notice of opportunity for a hearing for release of the site for unrestricted use.

The U.S. Nuclear Regulatory Commission (NRC) is considering granting the license termination for Source Material License No. STB–988, requested by Schott Glass Technologies, Inc. (the licensee), Duryea, Pennsylvania. The NRC has determined that remediation of residual radioactive contamination, as a result of past operations with NRC licensed material in buildings and in exterior areas on the site, has successfully been completed and the facility meets the NRC Criteria for release for unrestricted use, which were identified in the "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites" (57 FR 13389–13392, April 16, 1992).

The NRC hereby provides notice of an opportunity to meet with the NRC staff to discuss the following: (1) The licensee's site remediation actions and final status survey; (2) the NRC confirmatory inspections including independent sampling; and (3) the proposed action to terminate the license and remove the site from the Site Decommissioning Management Plan (SDMP). The meeting will be held on March 23, 1998, from 7 to 9 p.m., at Victoria Inns located on Route 315, in Pittston Township, Pennsylvania.

Waste glass materials from manufacturing glass, including thoriated glass, which contained thorium concentrations that met the NRC definition of source material, were placed in a parabolic-shaped landfill area on the licensee's property from 1969 until 1980. Based on the licensee's site characterization data, the thoriated glass volume is approximately 0.01% of the fill area. Fixed residual contamination was also identified in localized areas where the thorium had been stored and processed in the manufacturing building. Schott's current NRC license authorized possession of this glass and residual contamination incident to decommissioning only. By letter dated January 22, 1997, Schott informed NRC that it had completed the final decommissioning survey of the buildings and loading dock, and multi-layered cap of the fill area at their facility located in Duryea. Additional information in response to the NRC review of this termination request was submitted on March 31, 1997, November 25, 1997, and January 21, 1998. Based upon the licensee completing the required remediation actions as represented in the above documents and the NRC confirmatory inspection report dated March 26, 1997, NRC concluded that the facility meets the NRC guidance for releasing the site for unrestricted use. Notwithstanding, the Pennsylvania Department of Environmental Protection (PADEP) required some land-use restrictions as a condition of approval of the waste management plan to address the non-radiological hazardous materials that are regulated by PADEP.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** Notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The licensee, Schott Glass Technologies, Inc, Attention: Thomas McDonald, Manager, Environmental and Safety, 400 York Avenue, Duryea, Pennsylvania 18642; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555 or at NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I Office should call Ms. Sheryl Villar at (610) 337–5239 several days in advance to assure that the documents will be readily available for review.

Dated at King of Prussia, Pennsylvania this 6th day of March 1998.

For the Nuclear Regulatory Commission.

A. Randolph Blough,

Director, Division of Nuclear Materials Safety Region I.

[FR Doc. 98–6824 Filed 2–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029–LA; ASLBP No. 98–736–01–LA]

Yankee Atomic Electric Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Yankee Atomic Electric Company, Yankee Nuclear Power Station

This Board is being established pursuant to the requests for hearing submitted by petitioners, the New England Coalition on Nuclear Pollution, the Citizens Awareness Network, the Nuclear Information and Resource Service, and the Franklin Regional Council of Governments. The requests were submitted in response to an amendment request of the Yankee Atomic Electric Company. The NRC has made a proposed determination that the amendment involves no significant hazards consideration. The amendment considered by the staff is the License Termination Plan for the Yankee Rowe Nuclear Power Station submitted for consideration on May 15, 1997. The findings of the staff is published in the **Federal Register** (63 F.R. 4308, 4328).

The Board is comprised of the following administrative judges:

James P. Gleason, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Thomas S. Elleman, 704 Davidson Street, Raleigh, NC 27609

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 9th day of March 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–6782 Filed 3–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–20]

Notice of Availability of the Final Environmental Impact Statement for the U.S. Department of Energy To Construct and Operate an Independent Spent Fuel Storage Installation To Store the Three Mile Island Unit 2 Spent Fuel at the Idaho National Engineering and Environmental Laboratory

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a Final Environmental Impact Statement (FEIS) (NUREG–1626) regarding the U.S. Department Of Energy's (DOE) proposed construction and operation of an independent spent fuel storage installation (ISFSI) to store the Three Mile Island Unit 2 (TMI–2) spent fuel at the Idaho National Engineering and Environmental Laboratory (INEEL).

As part of its overall spent nuclear fuel (SNF) management program, the DOE has prepared a final programmatic environmental impact statement that provides an overview of the spent fuel management proposed for INEEL, including the construction and operation of the TMI–2 ISFSI (the DOE SNF EIS). In addition, the DOE—Idaho Operations Office (DOE–ID) has prepared an environmental assessment (EA) to describe the environmental impacts associated with the stabilization of the Test Area North (TAN) storage pool and the construction/operation of the ISFSI at the Idaho Chemical Processing Plant (ICPP). As provided in NRC's National Environmental Policy Act (NEPA) procedures outlined in 10 CFR Part 51, Appendix A to Subpart A, a FEIS of another Federal agency may be adopted in whole or in part in accordance with the procedures outlined in 40 CFR 1506.3 of the regulations of the Council on Environmental Quality (CEQ). Under 40 CFR 1506.3(b), if the actions covered by the original EIS and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement.

The NRC has determined that its proposed action of issuing a license authorizing the construction and operation of the TMI–2 ISFSI is substantially the same as actions considered in 2 DOE's environmental documents referenced above and, therefore, has elected to adopt the DOE documents as the NRC FEIS. The NRC staff has independently reviewed the DOE SNF EIS and the DOE–ID EA to determine that they are current and that NRC NEPA procedures have been satisfied. The format used has been to excerpt from the DOE NEPA documents a description of the proposed action, an evaluation of alternative actions, a description of the affected environment, and an evaluation of the impacts of both construction and operation of the ISFSI. The NRC staff concludes that the facility can be constructed and operated with small and acceptable effects on the public and the existing environment at the INEEL.

The FEIS is available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street, NW, Washington, DC and at the Local Reading Room at the INEEL Technical Library, 1776 Science Center Drive, Idaho Falls, Idaho.

FOR FURTHER INFORMATION, CONTACT: Dr. Edward Y. Shum, Spent Fuel Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–8545.

Dated at Rockville, Maryland, this 9th day of March 1998.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–6780 Filed 3–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

IES Utilities Inc., Central Iowa Power Cooperative, Corn Belt Power Cooperative, and Duane Arnold Energy Center; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49 issued to IES Utilities Inc., (the licensee), for operation of the Duane Arnold Energy Center (DAEC), located in Linn County, Iowa.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise the existing Technical Specifications (TS) in their entirety and incorporate the guidance provided in NUREG–1433, Revision 1, "Standard Technical Specifications, General Electric Plants BWR/4," dated April 1995. The proposed action is in accordance with the licensee's amendment request dated October 30, 1996, as supplemented by letters dated June 10, September 5, 17, 25, and 30, October 16, November 18 and 21, December 8 and 15, 1997, January 2, 5, 12, 22 and 23, and February 10 and 26, 1998.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (52 FR 3788) contained proposed criteria for defining the scope of technical specifications. Later, the "NRC Final Policy Statement on TS Improvement for Nuclear Power Reactors," (58 FR 39132) incorporated lessons learned since publication of the interim policy statement and formed the basis for recent revision to 10 CFR 50.36. The "Final Rule" (60 FR 36953) codified criteria for determining the content of technical specifications. To facilitate the development of standard TS, each vendor owners' group (OG) and the NRC staff developed standard TS. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS, made note of its safety merits, and indicated its support of conversion by operating plants to the STS. For DAEC, the Standard Technical Specifications (STS) are NUREG–1433, Revision 1, "Standard Technical Specifications, General Electric Plants BWR/4," dated April 1995. This document formed the basis for DAEC Improved TS (ITS) conversion.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1433, and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1433, portions of the existing TS were also used as the basis for the development of the DAEC ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee.

The proposed changes from the existing TS can be grouped into four general categories. These groupings are characterized as administrative changes, technical changes—relocations, technical changes—more restrictive, and technical changes—less restrictive. They are described as follows:

1. Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, and rearranging of requirements and other changes not affecting technical content or substantially revising an operational requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1433 and do not involve technical changes to the existing TSs. The proposed changes include (a) providing the appropriate numbers, etc., for NUREG–1433 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1433 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events.

2. Technical changes—relocations are those changes involving relocation of requirements and surveillances from the existing TS to licensee-controlled documents, for structures, systems, components, or variables that do not meet the criteria for inclusion in the Improved Technical Specifications. Relocated changes are those existing TS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's Final Policy Statement and 10 CFR 50.36, and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Volume 1 of its October 30, 1996, application titled, "Duane Arnold Energy Center Improved Technical Specifications Split Report and Relocated CTS Pages." The affected structures, systems, components, or variables are not assumed to be initiators of events analyzed in the Updated Final Safety Analysis Report (UFSAR) and are not assumed to mitigate accident or transient events analyzed in the UFSAR. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the existing TS to administratively controlled documents such as the UFSAR, the BASES, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59.

3. Technical Changes—more restrictive are those changes that involve more stringent requirements for operation of the facility or eliminate existing flexibility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. Also, other more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the specification.

4. Technical changes—less restrictive are changes where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have

been shown to provide little or no safety benefit, their removal from the ITS may be appropriate. In most cases, relaxations granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the ITS. Generic relaxations contained in NUREG–1433 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. Changes which are administrative in nature have been found to have no effect on the technical content of the TS and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operators' control of the plant in normal and accident conditions. Relocation of requirements to other licensee-controlled documents does not change the requirements themselves. Further changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1433 and the Final Policy Statement, and are, therefore, acceptable.

Changes involving more restrictive requirements have been found to enhance plant safety and to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic action, or of agreements reached during discussions with the Owners Groups and found to be acceptable for DAEC. Generic relaxations contained in NUREG–1433 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revisions to the TS were found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendments.

With regard to potential nonradiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed TS amendments.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the amendment request. Such action would not reduce the environmental impact of plant operations.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the DAEC.

Agencies and Persons Consulted

In accordance with its stated policy, on February 23, 1998, the Commission consulted with the Iowa State official, Ms. Parween Baig, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated October 30, 1996, as supplemented by letters dated June 10, September 5, 17, 25, and 30, October 16, November 18 and 21, December 8 and 15, 1997, January 2, 5, 12, 22 and 23, and February 10 and 26, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C. 20555, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Dated at Rockville, Maryland, this 11th day of March 1998.

For the Nuclear Regulatory Commission

Richard J. Laufer,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–6823 Filed 3–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company; Surry Power Station, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company, (the licensee), for operation of the Surry Power Station (SPS) located in Surry County, Virginia.

Environmental Assessment

Identification of the Proposed Action

By letter dated November 5, 1997, as supplemented by letter dated January 28, 1998, the licensee proposed to change the technical specifications (TS) to allow an increase in fuel enrichment (Uranium 235, U–235) to 4.3 weight percent. Surry TS currently limit fuel in the spent fuel pool and reactor to a maximum enrichment of 4.1 weight percent of U–235.

The Need for the Proposed Action

The licensee intends, in the future, to use the more highly enriched fuel to support longer fuel cycles. Currently, TS 5.3.A.3 and 5.4.B limit the enrichment of reload fuel for the reactor core and the spent fuel storage racks to 4.1 weight percent U–235. The amendment is needed to give the licensee the flexibility to use more highly enriched fuel to support longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to

the TS and concludes that storage and use of fuel enriched with U–235 up to 4.3 weight is acceptable. The safety considerations associated with higher enrichments were evaluated by the NRC staff and the staff concluded that such changes would not adversely affect plant safety. The proposed changes will not increase the probability of any accident. The higher enrichment and increased fuel burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of accidents.

No changes are being made in the types or quantity of any effluents that may be released offsite, no changes are being made to the authorized power level, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988. This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322) in connection with an Environmental Assessment and Finding of No Significant Impact related to the Shearon Harris Nuclear Power Plant, Unit 1. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 gigawatt days per metric ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to these proposed amendments for Surry Power Station, Units 1 and 2, given that the proposal involves less than 5% enrichment and burnup of less than 60 GWD/MT. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Surry Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, on February 4, 1998, the staff consulted with the Virginia State official, Mr. L. Foldese of the Virginia Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 5, 1997, as supplemented by letter dated January 28, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at The Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this day of 1998.

For the Nuclear Regulatory Commission.

Gordon E. Edison, Sr.,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–6781 Filed 3–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Advanced Reactor Designs; Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on March 31 and April 1, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss Westinghouse Electric Company safeguards information related to the AP600 pursuant to 5 U.S.C. 552b(c)(3).

The agenda for the subject meeting shall be as follows:

Tuesday, March 31, 1998—8:30 a.m. until the conclusion of business

Wednesday, April 1, 1998—8:30 a.m. until the conclusion of business

The Subcommittee will hear discussion with representatives of the NRC staff and Westinghouse regarding the AP600 Standard Safety Analysis Report and the draft Final Safety Evaluation Report Chapters 2, 9, 10, 12, 13, and 15. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse Electric, their consultants and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on

requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 10, 1998.

Medhat El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–6783 Filed 3–16–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Thursday, March 19, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Thursday, March 19—Tentative

2:30 p.m.

Affirmation Session (Public Meeting)

a. Petition for Commission Review of Director's Decision on Paducah Seismic Upgrades Certificate Amendment Request

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661).

* * * * *

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 12, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–6984 Filed 3–13–98; 11:40 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Extension: Rule 206(3)–2 SEC File No. 270–216 OMB Control No. 3235–0243

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 206(3)–2 permits investment advisers to comply with section 206(3) of the Investment Advisers Act of 1940 by obtaining a blanket consent from a client to enter into agency cross transactions, provided that certain disclosures are made to the client. The information requirements of the rule consist of the following: (1) Prior to obtaining the client's consent appropriate disclosure must be made to the client as to the practice of, and the conflicts of interest involved in, agency cross transactions; (2) at or before the completion of any such transaction the client must be furnished with a written confirmation containing specified information and offering to furnish upon request certain additional information; and (3) at least annually, the client must be furnished with a written statement or summary as to the total number of transactions during the period covered by the consent and the total amount of commissions received by the adviser or its affiliated broker-dealer attributable to such transactions.

The information required by rule 206(3)–2 is used by the Commission in connection with its investment adviser inspection program to ensure that advisers are in compliance with rule 206(3)–2. The information is also used by clients. Without the information collected under the rule, the Commission would be less efficient and effective in its inspection program and clients would not have information valuable for monitoring the adviser's handling of their accounts.

The Commission estimates that approximately 233 respondents utilize the rule annually, necessitating about 122 responses per respondent each year, for a total of 28,426 responses. Each response requires about .5 hours, for a total of 14,213 hours.

These collections of information are found at 17 CFR 275.206(3)–2 and are necessary in order for the investment adviser to obtain the benefits of rule 206(3)–2. Commission-registered investment advisers are required to maintain and preserve certain information required under rule 206(3)–2 for five years. The long-term retention of these records is necessary for the Commission's inspection program to ascertain compliance with the Investment Advisers Act.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 4, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6764 Filed 3–16–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39738; File No. SR–OCC–97–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposing Rule Change Relating to the Stock Loan/Hedge System

March 10, 1998.

On July 11, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–97–11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Regiser** on December 9, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

OCC's stock loan/hedge system ("HEDGE system") is a clearing system for stock loans between OCC clearing members.[3] The rule change amends OCC's by-laws governing the HEDGE system to eliminate the requirements with respect to the accounts in which stock loan positions must be maintained.

OCC's by-laws that govern the HEDGE system [4] currently treat stock loans as if they were pledges of loaned securities subject to the Commission's hypothecation rules.[5] The hypothecation rules limit the circumstances under which a broker-dealer may pledge securities carried for the account of any customer [6] and specifically prohibit broker-dealers from pledging securities carried for the account of any customer under circumstances that will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such broker or dealer under a lien for a loan made to such broker or dealer.[7] Accordingly, under the HEDGE system's account segregation rules, a clearing member that desires to lend stock must (1) first determine whether the stock is a customer or proprietary security and (2) carry out the loan through its OCC customers' account (or where permitted through its OCC marketmaker's account) if the stock is a customer security.

OCC has determined that there is no legal reason for OCC's by-laws to treat stock loans under the HEDGE system as hypothecations. Therefore, OCC has concluded that it may eliminate the HEDGE system's account segregation requirements for stock loans without violating or causing its clearing members to violate the Commission's hypothecation rules.

II. Discussion

Section 17A(b)(3)(F) of the Act [8] requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions. For the reasons discussed below, the Commission believes that OCC's rule change relating to the HEDGE system is consistent with OCC's obligations under Section 17A(b)(3)(F).

The Commission is satisfied with OCC's determination that it is not obligated to treat stock loans carried out through the HEDGE system as if they were pledges of loaned securities subject to the Commission's hypothecation rules. The Commission believes that the rule change should increase the use of OCC's HEDGE system which should in turn help to improve the efficiency and safety of stock lending transactions. Accordingly, the Commission believes that the rule change should enable OCC to remove impediments to and to help perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act [9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6766 Filed 3–16–98; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39386 (December 2, 1997), 62 FR 64902 (December 9, 1997).

[3] For a complete description of the HEDGE system, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39254 (July 22, 1993) [File No. SR–OCC–92–34] (order approving proposed rule change establishing HEDGE system).

[4] OCC By-Laws, Article XXI, Section 5.

[5] 17 CFR 240.8c–1 and 240.15c2–1.

[6] For purposes of the hypothecation rules, the term "customer" includes registered broker-dealers so long as they are not affiliated in specified ways with the broker-dealer effecting the pledge. 17 CFR 240.8c—1(b)(1), 240.15c2–1(b)(1). References to customers" and "non-customers" herein are based on the definition in the hypothecation rules.

[7] 17 CFR 240.15c2–1(a)(2). See also 17 CFR 240.8c–1(a)(2) (providing the same requirements as Rules 15c2–(1)(a)(2) except that its scope is limited to exchange members and brokers and dealers that transact business through exchange members).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39742; File No. SR–Phlx–97–62]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its By-Law Article X, Sections 10–16, 10–17 and 10–19 To Require That Each of Its Trading Floor Committees Consult With Its Corresponding Quality of Markets Committee on All Matters of Policy and All Matters That Are To Be Presented to the Board

March 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] notice is hereby given that on December 29, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changed as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx hereby proposes to amend its By-Law Article X, Sections 10–16, 10–17 and 10–19 so that each of its respective trading floor standing

[1] 15 U.S.C. 78s(b)(1).

[2] A technical amendment, Amendment No. 1, was filed with the Commission on March 10, 1998. It amended By-Law Article X, Sections 10–17 to require that the Foreign Currency Options Committee ("Committee") consult with the Foreign Currency Options Trading Floor's Quality of Markets Committee on "all" matters which are to be presented to the Phlx Board of Governors by the Committee, consistent with proposed amendments to Section 10–16 and 10–19. The qualifying term "all" was unintentionally left out of the initial filing provisions relating to Section 10–17.

committees shall consult with its corresponding quality of markets committee on all matters which are to be presented to the Board of Governors.

The text of the proposed rule change is set forth in full in Exhibit B to the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Phlx By-Law Article X, Sections 10–16, 10–17 and 10–19 set forth the charters of the Exchange's various trading floor standing committees. The proposed amendments specify that each of the trading floor standing committees shall consult with its respective quality of markets on all matters of policy and all matters which are to be presented to the Board of Governors. The proposed amendments are intended to foster sharing of views on policy and other matters between the various trading floor standing committees (Floor Procedure, Foreign Currency Options and Options) and corresponding quality of markets committees. The intended sharing of views on all policy matters is designed to bring the perspectives of the non-industry representatives of the various quality of markets committees to matters that may be referred to the Board of Governors by the various trading floor standing committees.

The proposed rule change is consistent with Section 6 of the Act [3] in general, and in particular, with Section 6(b)(5) [4] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the submission is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Phlx. All submissions should refer to File No. SR–Phlx–97–62 and should be submitted by April 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,
Deputy Secretary.

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[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39740; File No. SR–Phlx–98–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Certain PACE Orders

March 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on, February 10, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution ("PACE") System,[3] Supplementary Material .07(c), Double-up/Double-down Situations, to adopt a new automatic price improvement initiative for PACE orders. Specifically, specialists could voluntarily choose to provide automatic price improvement of 1/16 to eligible orders where the PACE Quote [4] is 1/8 or greater, or 3/16 or greater. Eligible orders would be automatically executable market and marketable limit orders [5] in New York Stock Exchange or American

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the Exchange's automatic order routing and execution system for securities on the equity trading floor.

[4] The PACE Quote consists of the best bid/offer among the American, Boston, Cincinnati, Chicago, New York, Pacific and Philadelphia Stock Exchanges as well as the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"). *See* Phlx Rule 229.

[5] A market order is an order to buy or sell a stated amount of a security at the best price obtainable when the order is received. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price, which is received at a time when the market is trading at or better than the specified price.

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Stock Exchange listed securities received through PACE beginning at 9:45 A.M., in sizes of 599 shares or less (or the specialist's higher automatic execution guarantee size).

However, the proposed automatic price improvement feature would not price improve in certain situations. First, where a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. Similarly, where a buy order would be improved to the last sale price which is a down tick, or where a sell order would be improved to the last sale price which is an up tick, the order is also not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote.

Certain limitations regarding automatic price improvement are similar to the current double-up/double-down program.[6] For instance, odd-lot orders would not be eligible for the proposed automatic price improvement.[7] Nor would it be available where the execution price before or after the application of automatic price improvement would be outside of the primary market high/low range of the day. Further, only automatically executable orders would be eligible for automatic price improvement.[8]

Under the proposal, specialists may choose whether to participate in automatic price improvement, as opposed to the mandatory manual double-up/double-down price protection of Rule 229.07(c)(ii).[9] If a specialist elects to provide automatic price improvement, they must further determine whether to price improve in ⅛ or greater markets, or 3/16 or greater markets.[10] Necessarily, specialists who choose price improvements in ⅛ wide markets automatically agree to price improve in 3/16 or greater markets. However, although choosing automatic price improvement in 3/16 or greater markets obviously does not trigger automatic price improvement in ⅛ wide markets, the manual double-up/down price protection provision may be triggered, such that eligible orders would be stopped in ⅛ wide markets; in this situation, no *automatic* price improvement would be given, even in double-up/down situations.[11]

Although the proposed automatic price improvement proposal will be voluntary, all specialists will still be required to provide manual double-up/double-down tick price protection to eligible orders (⅛ markets. This feature provides that eligible orders will be stopped at the PACE Quote when received for an opportunity for price improvement. Automatically executable market orders not eligible for double-up/down price protection will continue to be stopped for the 30 second POES window, and then automatically executed.[12]

The new automatic price improvement feature will replace the current automatic double-up/double-down price improvement feature of Rule 229.07(c)(i). Thus, the Exchange is proposing to retitle Rule 229.07(c) as "Price Improvement for PACE Orders." Further, the Exchange is proposing to delete the term "double-up/double-down" when paired with automatic price improvement throughout the Rule to reflect that automatic price improvement will no longer be limited to double-up/double-down situations. The definition of a double-up/double-down situation is thus being moved from Rule 229.07(c)(i)(A) to (c)(ii). The language relating to ¼ wide markets is also proposed to be deleted and replaced with the specialist's choice of 3/16 or ⅛ as the minimum market width to activate automatic price improvement; furthermore, price improvement of ⅛ will be replaced with 1/16. The language creating an exception to automatic double-up/double-down price improvement better than the last sale will be deleted and replaced with reference to the two situations where an order would not receive the new, proposed automatic price improvement; such orders would be automatically executed at the PACE Quote. Lastly, Rule 229.10(a) would be amended to cover marketable limit orders.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As stated above, PACE is the Exchange's automated order routing and execution system on the equity trading floor. PACE accepts orders for automatic or manual execution in accordance with the provisions of Rule 229, which governs the PACE System and defines its objectives and parameters. The PACE Rule establishes execution parameters for orders depending on type (market or limit), size and the guarantees offered by specialists.

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[6] Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998) ("Double-Up/Double-Down Order").

[7] The paragraph concerning odd-lots is being moved from Rule 229.07(c)(i)(B) to (c)(i)(C). Respecting manual price protection, odd-lot orders are specifically addressed in Rule 229.07(c)(ii).

[8] For example, orders exceeding the specialist's automatic execution guarantee size would not be eligible, because the feature depends on automatically improving orders guaranteed a certain automatic execution price.

[9] Specifically, where the specialist does not agree to provide automatic double-up/down price improvement in a security, in any instance where the bid/ask of the PACE Quote is more than ⅛, beginning at 9:45 A.M., the specialist must provide manual double-up/down price protection to all customers and all eligible orders in a security. The manual double-up/down price protection feature causes eligible market and marketable limit orders of 599 shares or less in New York Stock Exchange or American Stock Exchange listed securities received through PACE in double-up/down situations to be stopped at the PACE Quote at the time of entry into PACE. Manual double-up/down price protection does not provide an automatic execution or automatic price improvement. Instead, this feature stops orders to provide an opportunity for manual price improvement in double-up/down situations.

[10] The specialist's choice to provide automatic price improvement, select ⅛ or 3/16 markets, establish an order size maximum and switch between the automatic and manual features may be changed, effective the next day. Member organizations entering PACE orders would be notified of such changes.

[11] A double-up/double-down situation is defined as a trade that would be at least: (i) ¼ (up or down) from the last regular way sale on the primary market: or (ii) ¼ from the regular way sale that was the previous intra-day change on the primary market.

[12] *See* Phlx Rule 229.05 and Securities Exchange Act Release No. 39275 (October 8, 1997), 62 FR 54147 (October 17, 1997) (SR–Phlx–97–32). Rule 229.05 provides that round-lot markets orders up to 500 shares and partial round-lot ("PRL") market orders of up to 599 shares, which combine a round-lot with an odd-lot, are stopped at the PACE Quote at the time of their entry into PACE ("Stop-Price") for a 30 second delay to provide the specialist with an opportunity to effect price improvement when the spread between the PACE Quote exceeds ⅛ of a point. This feature is known as the Public Order Exposure System ("POES") window. Further, market orders for more than 599 shares that a specialist voluntarily has agreed to execute automatically also are entitled to participation in POES. If orders eligible for POES are not executed within the POES 30 second window, the order is automatically executed at the Stop Price.

Currently, paragraph (c)(i), Automatic Double-up/Double-down Price Improvement, states that where the specialist voluntarily agrees to provide automatic double-up/double-down price improvements to all customers and all eligible orders in a security, in any instance where the bid/ask of the PACE Quote is ¼ or greater, market and marketable limit orders in New York Stock Exchange or American Stock Exchange listed securities received through PACE in double-up/double-down situations for 599 shares or less shall be provided with automatic price improvement of ⅛, beginning at 9:45 A.M. A specialist may also voluntarily agree to provide automatic double-up/double-down price improvement to larger orders in a particular security to all customers under this provision.

As a further effort to champion the principle of best execution, the Exchange is proposing a more comprehensive automatic price improvement initiative. Specifically, specialists could choose to provide 1/16 automatic price improvement to eligible orders in ⅛ or greater markets, or 3/16 or greater markets. Thus, as compared to the current automatic price improvement feature for double-up/double-down situations which is limited to ¼ wide markets or greater, the universe of orders eligible for the proposed feature would be expanded. Further, the proposal involves automatic price improvement without requiring a double-up/double-down situation. This again expands the benefits of price improvement to a larger universe of eligible orders.

Nevertheless, automatic price improvement would not occur in two situations. First, automatic price improvement would not occur to a price better than the last sale. More specifically, where a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. The following are examples[13] of this exception (not improving over the last sale): –

23–23⅛
LS 23+ or –
Buy improved to 1/16
Sell executed at 23

23–23⅛
LS ⅛+ or –
Buy executed at ⅛
Sell improved to 1/16

23–23 3/16
LS 23+ or –
Buy improved to ⅛
Sell executed at 23

23–23 3/16
LS 3/16+ or –
Buy executed at 3/16
Sell improved to 1/16

This is similar to the current exception from automatic double-up/double-down price improvement;[14] however, currently, where an improvemed price would be better than the last sale, the order would be stopped at the PACE Quote when received. Under this proposal, the order would be automatically executed at the PACE Quote when received.

Second, where a buy order would be improved to the last sale price which is a down tick, or where a sell order would be improved to the last sale price which is an up tick, the order is also not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. The following are examples of the exception to automatic price improvement respecting improvement to the last sale:

23–23⅛
LS 1/16 –
Buy executed at ⅛
Sell improved to 1/16

23–23⅛
LS 1/16+
Buy improved to 1/16
Sell executed at 23

23–23 3/16
LS ⅛ –
Buy executed at 3/16
Sell improved to 1/16

23–23 3/16
LS ⅛+
Buy improved to ⅛
Sell improved to 1/16

23–23 3/16
LS 1/16 –
Buy improved to ⅛
Sell improved to 1/16

23–23 3/16
LS 1/16+
Buy improved to ⅛
Sell executed at 23

23–23¼
LS⅛+or –
Buy improved to 3/16
Sell improved to 1/16

These exceptions are intended to cover situations where automatic price improvement may not be appropriate in light of overall market conditions. In this regard, the Exchange does not believe it is customary or appropriate to provide price improvement over the last sale price, or, in every case, to the last sale price. Price improvement generally takes the form of stopping orders, where the next sale price can benefit the stopped order; the last sale price also serves as a measure against the stop price.[15] Despite these exceptions to automatic price improvement under this proposal, the Exchange believes that automatic price improvement would be afforded in a meaningful way, considering the wider breadth of eligible orders.

This proposal would result in automatic price improvement of 1/16, as opposed to the current automatic double-up/double-down price improvement, which provides for ⅛ price improvement. Although the amount of automatic price improvement will be less under the proposal for a particular order, the number of orders receiving price improvement of 1/16 should increase, as explained above. Price improvement of 1/16 recognizes that 1/16 is the current minimum trading increment for PACE issues on the Exchange's equity trading floor.[16] Thus, it reflects the reality of today's marketplace, including other price improvement initiatives in the industry.

Because the proposal would provide automatic price improvement, no POES window would occur, similar to the current automatic double-up/double-down price improvement provision.[17] Instead, an automatic execution occurs at an improved price, with no window, timer or delay. Orders not eligible for automatic price improvement due to the two exceptions relating to the last sale price are automatically executed at the PACE Quote and not subject to the

[13] These examples consist of the PACE Quote, the last sale price with an up or down tick indicator, and the price at which a buy and sell order, respectively, would be executed.

[14] *See* Securities Exchange Act Release No. 39640 (February 10, 1998), 63 FR 8510 (February 19, 1998), which creates an exception where such price improvement would be better than the last sale price (for instance, a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale); pursuant to this exception, such orders are stopped by the specialist at the PACE Quote when received, meaning that the order is guaranteed to receive at least that price by the end of the trading day.

[15] In this regard, the Exchange notes that automatic price improvement on the Chicago Stock Exchange ("CHX") does not consist of price improvement over the last sale. See CHX Article XX, Rule 37.

[16] See Phlx Rule 125.

[17] See Double-Up/Double-Down Order, *supra* note 6, at note 10 and Securities Exchange Act Release No. 39640 (February 10, 1998), 63 FR 8510 (February 19, 1998).

POES delay. Where an order is otherwise not eligible for the proposed automatic price improvement, the POES window may apply.

Automatic price improvement will not occur where the execution price before or after the application of automatic price improvement would be outside the primary market high/low range for the day, if so elected by the entering member organization. This limitation currently appears in Rule 229.07(c)(i)(C), and has applied to both automatic double-up/double-down price improvement and manual double-up/double-down price protection. Similarly, pursuant to paragraph (c)(iii), the provision that member organizations entering orders may elect to participate in manual double-up/double-down price protection continues to apply. However, member organizations will not have the ability to elect the proposed automatic price improvement feature.

Currently, both the automatic double-up/double-down price improvement and manual price protection features are jointly subject to the entering firm's election.[18] As a result, electing these features where the specialist has not chosen automatic double-up/double-down price improvement in that security may currently cause a firm's orders to be stopped. Thus, firms who do not want their orders stopped because they prefer a prompt execution can currently elect out of both features.

Once automatic price improvement is no longer limited to double-up/double-down situations, the election for automatic price improvement will end, because the reason for allowing a firm's choice will no longer exist. Under this proposal, firms electing out of manual price protection could nevertheless receive automatic price improvement. For instance, where a specialist switches from manual to automatic price improvement for a security, the automatic feature would be activated even for firms that elected out of the manual feature. This proposal results in an assumption, and thus requirement, that all entering firms accept automatic price improvement from a participating specialist.[19]

The Exchange notes that the manual double-up/double-down price protection provision, which is mandatory for specialists, will continue to be subject to an election by entering member organizations,[20] who may continue to prefer a prompt execution over the opportunity for price improvement. Failure to elect will result in the activation of the double-up/double-down feature for that User. Specialists continue to determine whether to provide automatic price improvement in a particular security.

The extraordinary circumstances provision currently in the Rule would also apply to the new feature, such that automatic price improvement may be disengaged in a security or floor-wide in extraordinary circumstances with the approval of two Floor Officials. In addition to fast market conditions, for purposes of this paragraph, extraordinary circumstances also include systems malfunctions and other circumstances that limit the Exchange's ability to receive, disseminate or update market quotations in a timely and accurate manner.

The Exchange has determined that, as with many PACE features and participation in the PACE System itself, automatic price improvement should be made available on a voluntary, symbol-by-symbol basis, so that specialists can determine which securities are suitable for the program.[21] The availability of a price improvement feature benefits the specialist function, especially in high-volume securities, where stopping orders and manual intervention are time-consuming, delay execution and do not necessarily result in price improvement. The proposed feature triggers a superior result—an immediate automatic execution, with no specialist intervention or delay.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[22] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing an opportunity for automatic price improvement to eligible orders. In approving the existing price improvement/protection program, the Commission noted that price improvement opportunities may enhance intermarket competition and order execution quality.[23]

The Exchange also believes that the proposal is consistent with Section 11A[24] of the Act, and paragraph (a)(1)[25] thereunder, which encourages the use of new data processing and communication techniques that create the opportunity for more efficient and effective market operations. Specifically, the proposal is consistent with the public interest and investor protection purposes of Section 11A, in that it should assure the practicability of executing customer orders in the best market as well as an opportunity for investors' orders being executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[18] This election must be made for all Phlx stocks, not security-by-security. See Double-Up/Double-Down Order, *supra* note 6, at note 22.

[19] The Exchange believes that it is typical of competitors' automatic price improvement initiatives not to allow an opt-out.

[20] A firm's election continues to apply to all Phlx stocks, not security-by-security.

[21] Some securities are not appropriate for automatic price improvement due to, for instance, liquidity, trading patterns and volatility situations rendering it unfair for specialists to afford price improvement automatically and then manage the resulting positions. See Double-Up/Double-Down Order, *supra* note 6, at note 11.

[22] 15 U.S.C. 78f(b)(5).

[23] See Double-Up/Double-Down Order, *supra* note, 6.

[24] 15 U.S.C. 78k–1.

[25] 15 U.S.C. 78k–1(a)(1).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–98–10 and should be submitted by April 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6763 Filed 3–16–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39741; File No. SR–PHLX–98–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Disputes and Floor Official Rulings

March 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 22, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PHLX.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its rules by (1) replacing the current text of PHLX Rule 124, "Disputes," with new text; and (2) adopting Floor Procedure Advice ("Advice") F–27, "Floor Official Rulings—Options" and Advice F–27, "Floor Official Rulings—Equity," (together, the "Advices"), which incorporate and expand upon the provisions of proposed PHLX Rule 124 and will appear in the PHLX's Floor Procedure Advice Handbook. Proposed PHLX Rule 124(a) will allow floor officials to resolve trading disputes occurring on and relating to the trading floor if the dispute is not settled by agreement between the interested members or by a vote of members with knowledge of the transaction. In resolving trading disputes, a floor official may direct the execution of an order on the floor or adjust the transaction terms or participants to an executed order. In addition, two floor officials may nullify a transaction under certain circumstances.[3] Proposed PHLX Rule 124(b) states that all floor official rulings, including rulings made pursuant to PHLX Rule 60, "Assessments for Breach of Regulations," and pursuant to the PHLX's minor rule violation enforcement and reporting plan ("minor rule plan"),[4] are effective immediately and must be complied with promptly. Proposed PHLX Rule 124(c) states that floor officials' rulings issued pursuant to the PHLX's Order and Decorum Regulations are reviewable pursuant to PHLX Rule 60, and floor officials' rulings issued pursuant to Floor Procedure Advices are reviewable pursuant to PHLX Rule 970. All other floor officials' rulings are reviewable pursuant to proposed PHLX Rule 124(d), which addresses trading disputes. Among other things, the proposed Advices contain a conflict of interest provision which states that a floor official should not render a decision or authorize a citation where the floor official was involved in or affected by the dispute, or in any situation where the floor official is not able to objectively and fairly render a decision. The conflict of interest provision applies to all rulings by floor officials.

Copies of the proposed rule change are available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PHLX proposes to codify its procedures regarding floor officials' rulings by replacing the current text of PHLX Rule 124 with a new PHLX Rule 124 and adopting two Advices, which will be published in the PHLX's Floor Procedure Advice handbook.

PHLX Rule 124, as amended, will: (1) State that trading disputes not settled by the trading crowd may be referred to a PHLX floor official, define a floor official's duties, and establish procedures for reviewing floor officials' rulings in connection with trading disputes; and (2) require prompt compliance with all rulings by floor officials and establish a conflict of interest procedure applicable to all rulings by floor officials.

Proposed PHLX Rule 124(a) provides that disputes occurring on and relating to the trading floor, if not settled by agreement between the interested members, shall be settled, if practicable,

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[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] On March 3, 1998, the PHLX amended the filing. See Letter from Linda S. Christie, Counsel PHLX, to Yvonne Fraticelli Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated March 3, 1998 ("Amendment No. 1"). In Amendment No. 1, the PHLX modified the text of proposed PHLX Rule 124 to indicate that two options floor officials (rather than one floor official) may nullify a transaction if they determine that the transaction violated any of the following PHLX Rules: 1014, "Obligations and Restrictions Applicable to Specialists and ROTs;" 1015, "Quotation Guarantees;" 1017, "Priority and Parity at Openings in Options;" 1033, "Bids and Offers—Premium;" or 1080, "PHLX Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)." The amendment also states that two equity floor officials (rather than one floor official) may nullify a transaction if they determine that the transaction violated any of the following PHLX Rules: 110, "Bids and Offers—Precedence;" 111, "Bids and Offers Binding;" 118, "Bids and Offers Outside Best Bid and Offer;" 119, "Precedence of Highest Bid;" 120, "Precedence of Offers at Same Price;" 126, "'Crossing' Orders;" 203, "Agreement of Specialists;" 218, "Customer's Order Receives Priority;" 229, "Philadelphia Stock Exchange Automated Communication and Execution System (PACE);" 232, "Handling Orders When the Primary Market is Not Open for Free Trading (EXP, PPS, GTX Orders);" or 455; "Short Sales." Originally, proposed PHLX Rule 124 stated that a floor official may nullify an executed order on the Exchange floor. However, two proposed Floor Procedure Advices submitted as part of the proposal indicated that nullification of a transaction requires action by two floor officials. Amendment No. 1 makes the text of proposed PHLX Rule 124 consistent with the two proposed Floor Procedure Advices by indicating that two floor officials, rather than one floor official, may nullify a transaction if the floor officials determine that the transaction violated one of the PHLX rules enumerated in the proposed Floor Procedure Advices.

[3] See Amendment No. 1, *supra* note 2.

[4] See PHLX Rule 970, "Floor Procedure Advice: Violations, Penalties, and Procedures."

by vote of the members knowing of the transaction; if not so settled, the disputes shall be settled by a floor official summoned to the trading crowd. In resolving trading disputes, floor officials may institute the course of action deemed to be most fair to all parties under the circumstances at the time. A floor official may direct the execution of an order on the floor or adjust the transaction terms or participants to an executed order. In addition, two floor officials may nullify an executed order on the floor under certain circumstances.[5] The proposed Advices state that floor officials need not render decisions unless the request for a ruling is made within a reasonable period of time.

Proposed PHLX Rule 124(b) states that all rulings rendered by floor officials are effective immediately and must be complied with promptly. Failure to comply promptly with a ruling concerning a trading dispute may result in a referral to the PHLX's Business Conduct Committee ("BCC"). Failure to comply with floor officials' rulings issued pursuant to the PHLX's Order and Decorum Regulations (PHLX Rule 60), or pursuant to Floor Procedure Advices (PHLX Rule 970), and not concerning a trading dispute, may result in an additional violation of that regulation or Floor Procedure Advice. For example, a first violation due to disorderly conduct that does not cease promptly after the violation is issued by a floor official would result in a second violation, also for disorderly conduct.

Proposed PHLX Rule 124(c) identifies the procedures for review of floor officials' rulings. Specifically, proposed PHLX Rule 124(c) states that floor officials' rulings issued under the PHLX's Order and Decorum Regulations are reviewable pursuant to PHLX Rule 60. Floor officials' rulings issued under Floor Procedure Advices are reviewable pursuant to PHLX Rule 970. All other floor officials' rulings, including those regarding trading disputes, are reviewable pursuant to the procedures established in proposed PHLX Rule 124(d).

Under proposed PHLX Rule 124(d), floor officials' rulings for options and foreign currency option ("FCO") trading are reviewable by a minimum of three members of the appropriate Subcommittee on Rules and Rulings, a subcommittee of the standing floor committee, which shall be empowered by the standing floor committee to review such rulings, or the Chairperson of the standing committee (or his designee) if three Subcommittee members cannot be convened promptly. With respect to equity trading, floor officials' ruling are reviewable by a minimum of three members of the Floor Procedure Committee, or the Chairperson of the Floor Procedure Committee (or his designee) if three members cannot be convened promptly. This will be the designated Review Panel for floor officials' rulings.

Proposed PHLX Rule 124(d) also allows the Exchange to establish the procedures for the submission of a request for a review of a floor official's ruling. Floor officials' rulings may be sustained, overturned, or modified by a majority vote of the Review Panel members present. In making the determination, the Review Panel may consider facts and circumstances not available to the ruling floor official as well as action taken by the parties in reliance on the floor official's ruling (*e.g.*, cover, hedge, and related trading activity). Decisions of the Review Panel are final and may be appealed to the PHLX's Board of Governors as a final decision of the standing floor committee delegating such power, pursuant to PHLX By-Law Article XI, "Appeals."

In codifying proposed PHLX Rule 124, the proposed Advices contain many of the same provisions as the proposed rule. In addition, the proposed Advices state that a floor official should not render a decision or authorize a citation where the floor official is not able to objectively and fairly render a decision. Floor officials are empowered to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. Floor officials shall endeavor to be prompt in rendering decisions. However, in any instance where a floor official has determined that the benefits of further discovery as to the facts and circumstances of any matter under review outweigh the monetary risks of a delayed ruling, the floor official may determine to delay rendering the ruling until such time as that further discovery is completed. In issuing decisions for the resolution of trading disputes, floor officials shall institute the course of action deemed by the ruling floor official to be most fair to all parties under the circumstances at the time.

The proposed Advices also state that a floor official may direct the execution of an order on the floor, or adjust the transaction terms or participants to an executed order on the floor. However, two equity floor officials may nullify a transaction if they determine that the transaction violated any of the following PHLX Rules: 110, "Bids and Offers—Precedence;" 111, "Bids and Offers Binding;" 118, "Bids and Offers Outside Best Bid and Offer;" 119, "Precedence of Highest Bid;" 120, "Precedence of Offers at Same Price," 126, "Crossing" Orders;" 203, "Agreement of Specialists;" 218, "Customer's Order Receives Priority;" 229, "Philadelphia Stock Exchange Automated Communication and Execution System (PACE);" 232, "Handling Orders When the Primary Market is Not Open for Free Trading (EXP, PPS, GTX Orders);" or 455, "Short Sales."

With respect to option or FCO trading, two floor officials may nullify a transaction if they determine the transaction violated any of the following PHLX Rules: 1014, "Obligations and Restrictions Applicable to Specialists and ROTs;" 1015, "Quotation Guarantees;" 1017, "Priority and Parity at Openings in Options," 1033, "Bids and Offers-Premium;" or 1080, "PHLX Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)."

The proposed Advices note that floor officials' rulings may be appealed and that requests for such review must be submitted to the Director of the PHLX's Market Surveillance Department (or his designee) within 15 minutes from the time the contested ruling was rendered. The reviewing committee shall endeavor to meet on the matter as soon as practicable after notice of a request for a review of the floor official's ruling. Neither floor officials' rulings or reviews of floor officials' rulings preclude a person from seeking redress from the Exchange's arbitration facilities.[6]

In summary, the PHLX's proposal consists of amendments to PHLX Rule 124 and the adoption of two versions of Advice F–27, one for equity trading and one for options and FCO trading. The text of proposed Advice F–27, applicable to the equity floor varies slightly from that dealing with options in that it contains references to specific equity, as opposed to option, trading rules. The proposed Advices will appear in the Exchange's Floor Procedure Advice handbook, although no fine schedule will apply. The trading floor membership will be notified of these procedures by way of a memorandum and the proposal will take effect upon notice to the membership.

Current PHLX Rule 124 provides that disputes arising on bids or offers, if not settled by agreement between the interested members, shall be settled, if practicable, by votes of the members knowing of the transaction; if not so settled, the disputes will be settled by the appropriate floor standing

[5] See Amendment No. 1, *supra* note 2.

[6] *See* PHLX Rule 950, "Arbitration."

committee,[7] whose authority to settle disputes derives from the Exchange's By-Laws.[8] In practice, the FCO Committee and the Options Committee have delegated this authority to their respective Subcommittees on Rules and Rulings, and, further, to the floor officials who comprise those subcommittees.[9] For equity trading, the Floor Procedure Committee, the standing committee, continues to settle disputes and the floor officials for that trading floor are Floor Procedure Committee members.

Currently, when a dispute arises in a trading crowd, a floor official may be summoned to resolve it. If a party to the dispute disagrees with a floor official's resolution, that party may request a review of the floor official's ruling. PHLX floor officials also may authorize citations for violations of Floor Procedure Advices pursuant to the PHLX's minor rule plan.[10] In addition, floor officials may impose assessments for violations of the Exchange's Order and Decorum Regulations. Thus, the PHLX's proposal covers all floor official decisions, whether pertaining to Floor Procedure Advices, Order and Decorum Regulations, or trading disputes in general, except that the review process, set forth in proposed PHLX Rule 124(d), pertains only to trading disputes. The review process for violations of the Floor Procedure Advices pursuant to PHLX Rule 970 involves the PHLX's BCC Rule 60 governs the review process for violations of the PHLX's Regulations of Order and Decorum.

The PHLX proposes to amend PHLX Rule 124 to incorporate the dispute procedures and the role of floor officials expressly into the rule to enable interested persons to refer directly to the Exchange's rule book for the provisions governing disputes. For the same reason, the PHLX proposes to adopt the Advices, so that the procedures for handling trading disputes and other rulings will appear in the Exchange's Floor Procedure Advice handbook.[11]

In codifying the role of floor officials and the procedure for issuing rulings, including the ability of floor officials to adjust, direct or nullify trades, the proposal also codifies the use of certain standing floor committees' Subcommittees on Rules and Rulings, comprised of floor officials, to review floor officials' trading dispute decisions, as explained above. The procedure for review of floor officials' rulings also is enumerated, including a 15-minute deadline for requesting a review and a guideline that the review take place as soon as practicable.[12] With respect to the ability of two floor officials to nullify trades, the Exchange believes that listing specific rules should guide floor officials in deciding which situations warrant this measure.[13] Thus, two versions of Advice F–27 are proposed, one for the options and FCO floors and one for the equity floor, each specifically listing the rules that may trigger the need to nullify a trade. These rules predominately pertain to trading procedures and parity/priority principles.

2. Statutory Basis

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest. Specifically, the PHLX believes that the codification of the procedures respecting floor officials' rulings should promote fairness, certainty, and integrity in the process of resolving disputes. The Exchange believes that the proposal concerning floor officials' rulings also is consistent with Section 6(b)(6) of the Act as well as due process principles in that its members and associated persons shall be appropriately disciplined for violations of PHLX rules, in accordance with the proposed procedures respecting floor officials' rulings. In addition, floor officials' rulings may be appealed to a Review Panel, and, thereafter, to the PHLX's Board of Governors, consistent with PHLX By-Law XI, which authorizes appeals from standing committee decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission's should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

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[7] The appropriate floor standing committee for the equity floor is the Floor Procedure Committee; the appropriate floor standing committee for the equity options and index options floor is the Options Committee; and the appropriate floor standing committee for the FCO floor is the FCO Committee.

[8] See PHLX By-Law Article X, "Standing Committees," Sections 10–16, "Floor Procedure Committee;" 10–17, "FCO Committee;" and 10–19, "Options Committee."

[9] The authority to establish sub-committees appears in paragraph (b) of PHLX By-Law X, Section 10–3, "Proceedings of Special and Standing Committees."

[10] The PHLX's minor rule plan, codified in PHLX Rule 970, contains Floor Procedure Advices with accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting. Rule 19d–1(c)(1) under the Act requires prompt filing with the Commission of any final disciplinary action. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[11] The PHLX proposes no fine schedule for the proposed Advices such that the Exchange's minor rule plan is not impacted at this time.

[12] The PHLX notes that these deadlines would apply to the extent practicable under the circumstances, particularly if convening a Review Panel proves to be difficult due to the time of day, heavy trading volume, or scheduling conflicts. In addition, respecting options trading, for example, the obligations respecting the maintenance of a fair and orderly market contained in PHLX Rule 1014, including market liquidity, as well as the due diligence requirements of PHLX Rule 1063 applicable to floor brokers, may prevail over the obligation of a floor official to provide a ruling or attend a review.

[13] The Exchange notes that the ability to nullify a transaction is similar to CBOE Rule 6.20, "Admission to and Conduct on the Trading Floor," Interpretation and Policy .05.

Room. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–98–03 and should be submitted by April 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6765 Filed 3–16–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Department of Transportation has submitted an emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–113, 44 U.S.C. Chapter 35). OMB approval has been requested by March 31, 1998. The ICR abstracted below describes the nature of the information collection and it's burden.

DATES: Comments on this notice must be received on or before April 17, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall Schy, Federal Highway Administration (HRE–10); Department of Transportation, 400 Seventh St. SW., Washington, DC 20590 at (202) 366–2035.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

OMB Control Number: 2105–0508.

Affected Public: Federal, State, and Local government; individuals, households, businesses, farms, not-for-profit institutions.

Abstract: The regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR 24.9), require covered agencies to maintain adequate records of acquisition and relocation activities under the Act. In addition, the Federal Highway Administration requires the 52 state highway agencies carrying out the Federal-aid highway program to report their Uniform Act acquisition and relocation activities once every third year. The latest ICR authorizing burden hours for these activities has expired. Therefore, the Department of Transportation is seeking emergency clearance to reinstate approval to collect the afore-mentioned information.

Estimated Annual Burden Hours: 29,000 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on March 11, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–6886 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on October 21, 1997 [FR 62, 54679].

DATES: Comments must be submitted on or before April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard

Title: Carriage of Bulk Solids Requiring Special Handling.

OMB No.: 2115–0100.

Form(s): N/A

Affected Public: Solid Bulk Cargo Vessel/Barge Owners or Operators.

Abstract: The information required to be submitted when applying for a Special Permit allows the Coast Guard to make a determination as to the severity of the hazard posed by the material, allows specific guidelines for safe carriage, or if determined that the material presents too great a hazard, to deny permission for shipping the material. The U.S. Coast Guard administers and enforces laws and regulations for the safe transportation and stowage of hazardous materials, including bulk solids. Under 46 CFR part 148, the Coast Guard has the authority to issue Special Permits for transportation and stowage of hazardous material on board vessels.

Burden Estimate: The estimated burden is 573 hours annually.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention USCG Desk Officer.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Comments are invited on: The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

[14] 17 CFR 200.30–3(a)(12).

Issued in Washington, DC, on March 11, 1998.

Phillip A. Leach,

Clearance Officer, U.S. Department of Transportation.

[FR Doc. 98–6887 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 2, 1998 [6 FR 123].

DATES: Comments must be submitted on or before April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Vining, Office of Motor Carrier Information Analysis, (202) 358–7028, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

Electronic Availability: An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register's** WWW site at: http://www.access.gpo.gov/su<INF>--</INF>docs

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations.

OMB Number: 2125–0568.

Type Request: Extension of a currently approved collection.

Form(s): OP–1, OP–1(P), OP–1(FF).

Affected Public: Motor carriers, freight forwarders, and brokers.

Abstract: The Secretary of Transportation is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered. 49 U.S.C. 13901. Authority pertaining to these registrations has been delegated to the FHWA, and related regulations are found at 49 CFR part 365. Forms OP–1 (for motor property carriers and brokers), OP–1(P) (for motor passenger carriers), and OP–1(FF) (for freight forwarders) are used to apply for registration with the FHWA. The forms all ask for limited information on the applicant's identity, location, familiarity with safety requirements, and type of proposed operations. Minor differences in each form reflect specific statutory standards for registration of the different types of transportation entities.

Estimated Total Annual Burden: The estimated total annual burden is 36,000 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publishing in the **Federal Register**.

Issued in Washington, DC, on March 9, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–6888 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 10, 1997, [62 FR 65123].

DATES: Comments must be submitted on or before April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Office of Rulemaking Request for Evaluation of Customer Standards Survey.

OMB Control Number: 2120–0623.

Type of Request: Extension of currently approved collection.

Affected Public: 325 individuals/businesses who have applied for exemptions.

Abstract: This information is being conducted to comply with the Executive Order 12862, Setting Customer Service Standards. The information will be used to evaluate agency performance in the area of response to exemptions. The completion of this form is voluntary and the information will be conducted anonymously.

Annual Estimated Burden Hours: 81 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will

have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, D.C. on March 11, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–6890 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3584]

Proposed Modernization of the Coast Guard National Distress System

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent to prepare an environmental assessment; and request for public comment.

SUMMARY: The United States Coast Guard (USCG) is seeking early public input on their proposed action to modernize the National Distress System (NDS), a major portion of their Short Range Communications System (SRCS). To more effectively accomplish maritime safety, maritime law enforcement, national security, and marine environmental protection, the USCG needs a more efficient, modern, and technologically advanced system than the current NDS.

In accordance with the National Environmental Policy Act, the Coast Guard intends to prepare a programmatic environmental assessment (EA) on the viable alternatives for achieving a more modern and effective system. The environmental assessment will examine the reasonable alternatives available to the USCG to fulfill their need for an efficient, modern, and technologically improved National Distress System and whether any alternatives have the potential for significant environmental impacts. At this time, the USCG does not have a preferred alternative.

Specifically, we are requesting input on any environmental concerns you may have related to the existing NDS or to alternatives for achieving a modernized system, suggested analyses or methodologies for inclusion in the EA, possible sources of relevant data or information, or other alternatives not included in this notice.

DATES: Comments must be received by 13 April 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–1998–3584], U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number to the Docket Management Facility is (202) 366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Muslin, telephone: (619) 532–3403, for questions concerning this notice, the proposed modernization project, or the associated EA. For questions concerning the Docket Management Facility contact Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone (202) 366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages your participation in the environmental analysis of the proposed NDS modernization by the submission of written data, views, or arguments. Your comments should include your name and address, and identify this notice [USCG–1998–3584] and the specific section of the notice to which each comment applies, along with the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public hearing. You may request a public hearing by submitting a request to the address under **ADDRESSES**. The request should include the reasons a hearing would be beneficial. If the Coast Guard determines that oral presentations are crucial to the preparation of the EA, and will significantly aid in environmental planning for the proposal, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background

The NDS forms the backbone of the Coast Guard's Short Range Communication System (SRCS) which supports Coast Guard Activity, Group, Marine Safety Office (MSO), Vessel Traffic Service (VTS), Air Station, Cutter and Station operations. As part of the SRCS, the National Distress System incorporates the use of VHF–FM radios to provide two-way voice communications coverage for the majority of Coast Guard missions in coastal areas and navigable waterways where commercial and recreational traffic exists. The system, consisting of approximately 300 remotely controlled VHF transceivers and antenna high-level sites, was originally intended for monitoring the international VHF–FM maritime distress frequency (Channel 16), and as the primary command and control network to coorindate Coast Guard search and rescue (SAR) response activities. The secondary function was to provide command, control, and communications for the Coast Guard missions of National Security, Maritime Safety, Law Enforcement, and Marine Environmental Protection.

Need for Action

Due to the following deficiencies present in the current system, the Coast Guard has identified a need for an efficient, modern, more technologically advanced National Distress System than the one currently in place:

Obsolete/Nonstandard Equipment. The NDS was originally put into service in the 1970's and now suffers from technological obsolescence. Much of the existing equipment is no longer commercially available off-the-shelf and is becoming increasingly difficult to support. The expected service life of electronic equipment installed during this period was 15 years. Equipment failures have necessitated the replacement of many system components that are no longer commercially available, resulting in a lack of standardization. Costly short-term fixes such as individual off-the-shelf purchases of equipment (e.g., new command modules, recording and playback equipment, direction finding receivers, cellular phones, and Digital Encryption Standard (DES) radios) and services are being applied in the field to

marginally sustain the current system. The result is a collection of nonstandard and difficult to maintain equipment.

Coverage Gaps. The current NDS was intended to provide coverage extending out to approximately 20 nautical miles from shore. The present system does not provide complete coverage of the continental U.S. coastal areas, bays, inlets, and river systems. Presently there are over 65 verified gaps and numerous localized coverage deficiencies identified by local operational commanders.

Inadequate Channel Capacity. Twenty years of expanding CG mission requirements have also added to the traffic load, far exceeding the capacity of the original design. The NDS now suffers from inadequate channel capacity especially during multiple simultaneous operations and "surge" operations. The system does not have a sufficient number of channels or adequate channel capacity to allow the Coast Guard to respond to crisis operations and provide sufficient voice channel and communications capacity to support multiple Coast Guard operations. When the Coast Guard is transmitting on the system, we are unable to adequately monitor the VHF–FM international distress frequency at the same time.

No Digital Selective Calling Capability. Recent amendments to the International Maritime Organization (IMO) Safety Of Life At Sea (SOLAS) agreements concerning the Global Maritime Distress and Safety System (GMDSS) require that SOLAS-class vessels carry Digital Selective Calling (DSC) equipped VHF–FM radios by 1 February 1999. These vessels will no longer be required to monitor Channel 16 at sea after February 2005, and will increasingly be using Channel 70 VHF–FM (DSC only) as the international VHF–FM distress and calling channel after February 1999. Additionally, DSC equipment may be used by any vessel voluntarily. The current NDS does not have DSC capability which will result in the Coast Guard becoming increasingly unable to communicate with large segments of the maritime industry/public on international VHF–FM distress frequencies.

Not Adequately Reliable During/After Natural Disasters. The current NDS is extremely susceptible to catastrophic failure during a major natural disaster. A failure to any part of the system will in many cases result in loss of communication in wide areas of the system's advertised coverage. The system cannot restore key operational links and system components within a reasonable period following a failure. The system does not provide adequate backup power to critical and primary communications system components.

No Interface with Rest of the Coast Guard Telecommunication System. The current NDS has no interface with our Long Range Communications System (LRCS), our data network, nor the Pubic Switched Telephone Network (PSTN). These deficiencies decrease the Coast Guard's ability to effectively conduct its missions.

Inadequate Transmission Security. The system is severely limited in its ability to protect communications when transmitting sensitive information. This is key while conducting many Coast Guard missions (e.g., law enforcement, search and rescue, pollution response). Security of internal Coast Guard transmissions is mandated by National Security Decision Directive 145 (NSDD 145), Presidential Directive 24 (PD 24), and their follow-on directive, National Security Directive 42 (NSD 42).

Inadequate Communications with Public Safety and Other Agencies. Essential communications with other Federal, State, and local agencies are often hindered or unavailable due to lack of compatible communications equipment.

Poor Position Locating Capability. The system cannot adequately pinpoint the location of a caller and, therefore, is limited in its ability to aid in search for vessels or survivors that do not report, do not know, or incorrectly report, their position, nor can it adequately assist in locating hoax originators.

Limited Data Capability. The system also has limited ability to transmit or obtain information regarding marine safety, environmental monitoring/compliance, intelligence information, or information to and from mariners and others. Such information could include situational and operational reports, automated Coast Guard asset tracking, transmission of search and rescue (SAR) or law enforcement information, and marine safety broadcasts.

Poor Caller Verification Assistance and Recording Capability. Finally, the system does not have capability to adequately record and instantly playback incoming voice transmissions to aid immediate responses and for record purposes.

Purpose of the Proposed Action

The purpose of the proposed action is to provide an efficient, cost-effective, and technologically adequate National Distress System that rectifies the deficiencies listed previously and adequately supports Coast Guard Activity, Group, Marine Safety Office (MSO), Vessel Traffic Service (VTS), Air Station, Cutter, and Station operations.

Alternatives

The Coast Guard's proposed action is to modernize the current obsolete and nonstandard NDS by adopting one of the general concepts for a new system presented in alternatives B, C or D listed below. Alternative A (Status Quo or no action) will not fulfill the stated need; however, it will be analyzed in the EA to provide a baseline for comparison with the action alternatives. Currently, the Coast Guard does not have a preferred alternative among B, C or D. The following alternatives are being considered in the EA:

Alternative A—Status Quo. Continue operations with existing network of analog transceivers. Provide logistics support as needed and as available.

Alternative B—Upgrade Status Quo. Systematically upgrade existing network with modern analog transceivers. Integrate DSC, digital encryption standard (DES), and digital recording equipment. This alternative replaces old equipment with new equipment and adds additional radio capability. Adding position location and filling coverage gaps is also desired. It is expected that fulfilling these last two requirements will require additional antenna sites.

Alternative C—Dual Mode VHF and/or UHF Network. Replace existing analog network with dual mode (digital) and analog) transceivers. Digital: Programmable and adaptable to digital signal processing technologies and narrowband channel spacing. Analog: compatible to the VHF marine radios in use by the maritime public. Integrate DSC, encryption capability, digital recording equipment, and data transmission capability. This alternative replaces old radios with new equipment and also adds additional radio capability. Adding position location and filling coverage gaps is also desired. It is expected that fulfilling these last two requirements will require additional antenna sites.

Alternative D—Multi-Mode: Satellite, Cellular, VHF and/or UHF Network. Replace the existing network with multi-mode equipment that utilizes satellite, cellular, and VHF/UHF communications. Integrate DSC, signal encryption capability, digital recording equipment, and data transmission capability. Adding position location and filling coverage gaps is also desired. It is expected that fulfilling these last two requirements will require additional antenna sites.

All the alternatives will require approximately the same number of additional antenna sites with the

exception of the "Status Quo" alternative.

Affected Environment

The environment which may be affected by the proposed action may be portions of the marine and terrestrial (both urban and rural) coastal region of the continental U.S., Alaska, Hawaii, the Caribbean, Guam, the Great Lakes and major inland bays and waterways (including Western Rivers) where the Coast Guard has jurisdiction and where commercial and/or recreational maritime traffic exist. The EA will discuss the general aspects of the affected environment outlined above and areas of discussion may include air quality, terrestrial vegetation and wildlife (perhaps including endangered species and their habitat), prime and unique farmlands, historic and cultural resources, wetlands, parks, sanctuaries, conservation/preservation areas, 100-year flood plains, marine vegetation and wildlife (perhaps including endangered species and their habitat), and water quality.

Anticipated Environmental Issues

Areas of Potential Environmental Concern

Internal research has revealed that the following areas may be issues of possible environmental concern: Radio waves (estimated 100 MHz to 1 GHz) from antenna sites; disposal of replaced system components and any associated hazardous materials, including future disposal of any hazardous materials associated with the new system; disturbance of nesting birds, or possible bird mortality from striking tower guy wires or from construction of antenna sites, enclosures, and land lines. Possible impacts from construction could be: disturbance of vegetation and wildlife (perhaps including endangered species and their habitat) wetland disturbance, air emissions, effects to historic/cultural resources including archeological resources, air quality, aesthetics, and construction noise.

Anticipated Environmental Benefits

Oil Spill Prevention. Increased prevention of accident such as oil spills or other hazardous materials from increased ability to track commercial shipping and prevent groundings.

Oil Spill Clean Up. Expedited cleanup of accidents such as oil spills or other hazardous material spills from increased ability to: pinpoint the location of a distressed vessel or accident, respond quickly to distress calls, contact and coordinate with appropriate spill response teams and other important specialists outside the Coast Guard, disseminate marine safety information, and continue operations during natural disasters.

Endangered Species Act/Conservation Laws Warnings/Enforcement. Increased ability to communicate environmental information/warnings to mariners regarding endangered species sightings/activity (e.g., North Atlantic Right Whale, Kemp's Ridley sea turtle, manatee). Improved coordination of responses with National Marine Fisheries Service and state/local civilian responders to distressed endangered species (e.g., stranded, entangled, or distressed animals). Increased ability to communicate important environmental information to State or local environmental agencies for record purposes. Improved protection of communications for fisheries and conservation enforcement. Anticipated Non-Environmental Benefits.

Increased Safety of Human Life. Increased ability to communicate with, and respond to, the maritime public (recreational and commercial) when in distress. Position locating capability will improve response time, reducing loss of life. Digital Selective Calling capability will allow receipt of distress alerts from DSC-equipped vessels.

Increased Public Service. The Coast Guard will be able to receive all incoming short-range distress calls without interruption. Additionally, the Coast Guard will be able to close the current gaps in communication coverage and achieve improved overall communications with various Federal, State, and local agencies.

Increased Maritime Law Enforcement. The protection of sensitive communications will enhance the Coast Guard law enforcement capability and interoperability with other federal, state, and local agencies.

Increased National Security. In addition to supporting Maritime Law Enforcement, improved communications protection in the modernization NDS will support defense missions in the coastal areas.

R.J. Casto,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Acquisition.

[FR Doc. 98–6885 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186/Eurocae Working Group 51; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186/EUROCAE Working Group 51 joint meeting to be held April 1–2, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Report of Working Group Activities: a. Working Group 1; b. 1090 MHz MOPS; c. CDTI MOPS; d. Working Group 4; (4) EUROCAE Working Group 51 Report, Status of VHR MOPS; a. Present ATC Systems; b. Evolving ATC Systems; c. Aircraft Changes and Architecture Options; d. Implementation Strategy; e. Summary; (5) EUROCAE Discussion of VDL Mode 4, Technical Description and Ongoing European Programs; a. EMERALD Program; b. FREER Project; (6) Discuss Special Committee 186 Reorganization; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 11, 1998.

Terry R. Hannah,

Designated Official.

[FR Doc. 98–6813 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 191; Collaborative Decisionmaking and Near-Term Procedures

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 191 meeting to be held April 2, 1998, starting at 10:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Briefing on Prototype Operations; (3) Performance Analysis: a. Methods for Estimating; b. Plans for Studying/ Reporting Results; (4) Prototype Operations: a. Lessons Learned; b. Potential Solutions; c. Terminology/ Advisories; d. Compression; e. Simplified Sub Rules; f. Next Steps; (5) Collaborative Routing Briefing; (6) NAS Status Briefing; (7) Review of Action Items; (8) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 11, 1998.

Terry R. Hannah,

Designated Official.

[FR Doc. 98–6818 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–98–2]

Passenger Capacity Increases and Compliance With Type Certification Requirements for Transport Airplane Emergency Evacuation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement and request for comments.

SUMMARY: This notice announces the FAA's policy with respect to passenger capacity increases and compliance with the type certification requirements for transport airplane emergency evacuation. This notice advises the public of FAA policy and gives all interested persons an opportunity to present their views on the policy statement.

DATES: Comments must be received on or before April 16, 1998.

ADDRESSES: Send all comments on this policy statement to the individual identified under FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA Propulsion/ Mechanical/Cabin Safety Branch, ANM–112, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2136.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this policy statement by submitting such written data, views, or arguments as they may desire. Commenters should identify the Policy Statement Number of this notice and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff.

Discussion

The requirement for full-scale evacuation demonstrations was introduced into the Federal Aviation Regulations (FAR) in 1965 by a change to the operating rules. The rule change followed both a Notice of Proposed Rulemaking and a public hearing. The primary basis for this change was the identification of deficiencies in "equipment, procedures, and training" discovered during evacuation testing.

The rule applied to all passenger carrying airplanes with more than 44 passengers, and any subsequent increase in passenger capacity of those airplanes of more than five percent. In addition, a new demonstration was required for a "major change" in the cabin interior that would affect passenger evacuation. The time limit for the evacuation demonstration was two minutes, using one half of the available exits.

In 1967, the requirement for a full-scale evacuation demonstration was added to the type certification requirements of 14 CFR part 25. This demonstration, conducted by the airframe manufacturer, was done to help ensure comparable evacuation capability of each new model, and with the knowledge that much larger transport (widebody) airplanes were under development. At that time, the existing design requirements were not considered adequate to minimize variation in evacuation capability. The introduction of the full-scale evacuation demonstration requirement in part 25 was coupled with a change to the operating rules so that both demonstrations were required to be completed within 90 seconds. The proposal leading to this rule is clear that the reduction in the total time was implemented to take advantage of advances in emergency equipment, specifically escape slides. The manufacturer's demonstration did not have to be repeated for changes in interior arrangement, or increases in passenger capacity of five percent or less, provided that these changes could be substantiated analytically.

In 1978, after numerous evacuation demonstrations had been conducted, the type design requirements were amended again. This amendment allowed the use of analysis and tests to substantiate the evacuation performance of an airplane, and removed the previous explicit five percent limit on passenger increase. The primary prerequisite for this methodology was that there be sufficient test data to support an analysis.

In July 1986, the FAA Administrator established policy limiting the use of analysis to passenger capacity increases of five percent or less, due to the absence of any agreed industry standard on when an analysis was appropriate. This policy was applied while analytical methodologies were refined, such that the FAA could have confidence in approval of larger passenger capacity increases by a combination of analysis and test. The development of improved methodologies was undertaken.

In 1989, the FAA issued Advisory Circular (AC) 25.803–1, Emergency Evacuation Demonstrations, to provide specific demonstration test criteria, and discuss the use of analysis. The AC stated that a full-scale demonstration should be conducted for passenger capacity increases of greater than 5% because of the continued absence of an industry standard on when analysis could be used. However, the AC also acknowledged that it described one means, but not the only means, of complying with the relevant regulation, and therefore did not foreclose applicants from proposing to substantiate compliance by analysis, even for larger capacity increases. In actual practice, there have been approvals for increases in passenger capacity of greater than five percent under specific circumstances (i.e., the

resultant passenger capacity is still well below the theoretical maximum).

The Performance Standards Working Group, under the auspices of the Aviation Rulemaking Advisory Committee (ARAC) on emergency evacuation issues, was tasked to develop a standardized protocol to determine when an analysis is appropriate. One of the primary objectives of this effort was to reduce the number and severity of injuries that can occur in full-scale evacuation demonstrations. Although ARAC was unable to reach a consensus, it has submitted the group's final document to the FAA in the form of a draft advisory circular. The document submitted to the FAA does not include any limitation on passenger capacity increase with respect to analysis. While the FAA's action here is consistent with the ARAC document with respect to passenger capacity increases, it does not reflect each ARAC participant's views.

The FAA has now determined that standardized methodologies have been developed and there are sufficient data now available, such that a limitation on the use of analysis based only on an increase in passenger capacity is no longer necessary. This position is supported by the aviation industry. In addition, the FAA has also received a letter from a noted independent researcher endorsing the use of analysis in the general case, and not tied to an arbitrary limit on the increase in passenger capacity. Analytical techniques are used to substantiate various certification requirements, including those with safety of flight ramifications, and in all cases the key element in their use is the underlying data to support the analysis. The FAA has determined that evacuation demonstrations should be treated no differently and, where sufficient data are available, analysis is an option. Since the existing advisory circular has been interpreted by the public as effectively prohibiting the use of a combination of analysis and test in cases where the passenger capacity is increased by greater than five percent, the FAA is issuing a formal notice that analysis in such cases may be acceptable. Full-scale demonstrations will still be required when sufficient data are not available to support a combination of analysis and test.

While the FAA is seeking public comment on this policy, it is the FAA intention to immediately apply this policy to two specific certification programs in progress during the period of public comment and disposition of comments. It is the FAA position that for the Boeing 777–300 and the Airbus A330/340, there are currently sufficient full-scale evacuation data available to support analysis. The Boeing 777–300 involves a fuselage stretch and the addition of a pair of exits with an increase in demonstrated passenger capacity from 440 to 550. The Airbus A330/340 involve a fuselage stretch and increasing the size of a pair of exits with an increase in demonstrated passenger capacity from 361 to 440. In both these cases, a wealth of full-scale evacuation data are available to support analysis and the FAA is confident that the use of analysis is well within the intent of the regulation. Therefore, in accordance with the regulation, conduct of additional full-scale evacuation demonstrations is not required to demonstrate compliance, if a satisfactory analysis is produced. The FAA intends to publish a revised proposed advisory circular that reflects this policy. Resolution of the public comment will be considered in determining whether the policy should be refined for future projects, and so reflected in the advisory circular.

Issued in Renton, WA, on March 6, 1998.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6707 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Howard County, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Howard County, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Sigel, Planning, Research, and Environment Team Leader, Federal Highway Administration, The Rotunda Suite 220, 711 West 40th Street, Baltimore, Maryland 2112211, Telephone: (410) 962–4342.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway administration, will prepare an environmental impact statement (EIS) to improve MD 32 from MD 108 (Clarksville Road) to I–70, in Howard County, Maryland. Proposed improvements within the corridor would involve upgrading MD 32 to a four lane access controlled highway, between the town of Clarksville and I–70 for approximately 9 miles.

Improvements to the corridor are necessary to provide for the existing and projected traffic demands. Also, accident statistics indicate that some sections along this roadway (especially MD 32, from south of Triadelphia Road to south of West Ivory Road and from Terrapin Branch to north of I–70) experience accident rates higher than the statewide average.

Alternatives under consideration include taking no action and widening existing MD 32 to a four lane divided highway with various options for constructing new interchanges at Burntwoods Road, Triadelphia Road, Rosemary Lane, Nixon's Farm, Dayton Shop, and MD 144.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations, citizens, and citizen groups who have previously expressed or are known to have an interest in this proposal. It is anticipated that a Public Hearing will be held in the fall of 1998. The Draft EIS will be available for public and agency review and comment prior to a Public Hearing. Public notice will be given of the availability of the Draft EIS for review and of the time and place of this hearing. An Alternates Public Workshop was held in June of 1996, in addition to monthly focus group meetings to solicit opinions and ideas on proposed improvements from local citizens.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning these proposed actions and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: March 3, 1998.

Renee Sigel,

Planning, Research and Environment Team Leader, Baltimore, Maryland.

[FR Doc. 98–6831 Filed 3–16–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Domestic Finance; Notice of Open Meeting of the Advisory Committee, U.S. Community Adjustment and Investment Program

The Department of the Treasury, pursuant to the North American Free Trade Agreement ("NAFTA") Implementation Act (Pub. L. 103–182), established an advisory committee (the "Advisory Committee") for the community adjustment and investment program (the "Program"). The Program will provide financing to businesses and individuals in communities adversely impacted by NAFTA to create new jobs. The charter of the Advisory Committee has been filed in accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), with the approval of the Secretary of the Treasury.

The Advisory Committee consists of nine members of the public, appointed by the President, who collectively represent: (1) Community groups whose constituencies include low-income families; (2) scientific, professional, business, nonprofit, or public interest organizations or associations, which are neither affiliated with, nor under the direction of, a government; and (3) for-profit business interests.

The objectives of the Advisory Committee are to: (1) Provide informed advice to the President regarding the implementation of the Program; and (2) review on a regular basis, the operation of the Program, and provide the President with the conclusions of its review. Pursuant to Executive Order No. 12916, dated May 13, 1994, the President established an interagency committee to implement the Program and to receive, on behalf of the President, advice of the Advisory Committee. The committee is chaired by the Secretary of the Treasury.

A meeting of the Advisory Committee, which will be open to the public, will be held in Monterey, California at the Monterey Beach Hotel, La Grande Room, 2600 Sand Dunes Drive, Monterey, California 93940 (Tel 408–394–3321) from 9 a.m. to 4 p.m. on Thursday, April 2, 1998. The meeting room will accommodate approximately 100 persons and seating is available on a first-come, first-serve basis, unless space has been reserved in advance. Due to limited seating, prospective attendees are encouraged to contact the person listed below prior to March 26, 1998. If you would like to have the Advisory Committee consider a written statement, material must be submitted to the U.S. Community Adjustment and Investment Program, Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 3041, Washington, DC 20220 no later than March 23, 1998. If you have any questions, please call Dan Decena at (202)622–0637. (Please note that this telephone number is not toll-free.)

Gary Gensler,

Assistant Secretary, Financial Markets.

[FR Doc. 98–6774 Filed 3–16–98; 8:45 am]

BILLING CODE 4510–01–P

DEPARTMENT OF THE TREASURY

Customs Service

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Michael Compeau, Branch Chief, Seizures and Penalties Division, at 202–927–0762. For information regarding any of the legal aspects, contact Ellen McClain, Office of Chief Counsel, at 202–927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809) (signed December 12, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592A), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a biannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by §§ 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported,

or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must rely on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a biannual publication of the names of the foreign entities. On September 15, 1997, Customs published a Notice in the **Federal Register** (62 FR 48340) which identified 16 (sixteen) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending March 31, 1998, Customs has identified 19 (nineteen) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects the addition of 3 new entities to the 16 entities named on the list published on September 15, 1997. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 19 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 19 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Azmat Bangladesh, Plot Number 22–23, Sector 2 EPZ, Chittagong 4233, Bangladesh. (9/96)

Bestraight Limited, Room 5K, World Tech Centre, 95 How Ming Street, Kwun Tong, Kowloon, Hong Kong. (3/96)

Cotton Breeze International, 13/1578 Govindpuri, New Delhi, India. (9/95)

Cupid Fashion Manufacturing Ltd., 17/f Block B, Wongs Factory Building, 368–370 Sha Tsui Road, Tsuen Wan, Hong Kong. (9/97)

Eun Sung Guatemala, S.A., 13 Calle 3–62 Zona Colonia Landivar, Guatemala City, Guatemala. (3/98)

Hanin Garment Factory, 31 Tai Yau Street, Kowloon, Hong Kong. (3/96)

Hip Hing Thread Company, No. 10, 6/F Building A, 221 Texaco Road, Waikai Industrial Centre, Tsuen Wan, N.T. Hong Kong. (3/96)

Hyattex Industrial Company, 3F, No. 207–4 Hsin Shu Road, Hsin Chuang City, Taipei Hsien, Taiwan. (9/96)

Jentex Industrial, 7–1 Fl., No. 246, Chang An E. Rd., Sec.2, Taipei, Taiwan. (3/97)

Jiangxi Garments Import and Export Corp., Foreign Trade Building, 60 Zhangqian Road, Nanchang, China. (3/98)

Li Xing Garment Company Limited, 2/F Long Guang Building, Number 2 Manufacturing District, Sanxiang Town, Zhongshan, Guandgong, China. (9/96)

Meigao Jamaica Company Limited, 134 Pineapple Ave., Kingston, Jamaica. (9/96)

Meiya Garment Manufacturers Limited, No. 2 Building, 3/F, Shantou Special Economic Zone, Shantou, China. (9/96)

Poshak International, H–83 South Extension, Part-I (Back Side), New Delhi, India. (3/96)

Sun Weaving Mill Ltd., Lee Sum Factory Building, Block 1 & 2, 23 Sze Mei Street, Sanpokong, Bk 1/2, Kowloon, Hong Kong. (9/97)

Takhi Corporation, Huvsgalchdyn Avenue, Ulaanbaatar 11, Mongolia. (3/98)

Topstyle Limited, 6/F, South Block, Kwai Shun Industrial Center, 51–63 Container Port Road, Kwai Chung, New Territories, Hong Kong. (9/96)

United Fashions, C–7 Rajouri Garden, New Delhi, India. (9/95)

Yunnan Provincial Textiles Import & Export, 576 Beijing Road Kunming, Yun Nan, China. (3/96)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Additional Foreign Entities

In the September 15, 1997, **Federal Register** notice, Customs also solicited information regarding the whereabouts of 39 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 39 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1301 Constitution Avenue, Washington, D.C. 20229.

In this document, a new list is being published which contains the names and last known addresses of 54 entities. This reflects the addition of fifteen new entities to the list.

Customs is soliciting information regarding the whereabouts of the following 54 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Arsian Company Ltd, XII Khorcolo, Waanbaatar, Mongolia. (9/95)

Bahadur International, 250 Naraw Industrial Area, New Delhi, India. (9/95)

Balmar Export Pte. Ltd., No. 7 Kampong Kayu Road, Singapore, 1543. (3/98)
Bao An Wing Shing Garment Factory, Ado Shi Qu, Bao An Shen Zhen, China. (9/95)
Belwear Co., Ltd., Flat C, 3rd Floor, Yuk Yat Street, Kowloon, Hong Kong. (9/95)
Cahaya Suria Sdn Bhd, Lot 5, Jalan 3, Kedah, Malaysia. (9/95)
Changping High Stage Knitting, Yuan Jing Yuan, Chau Li Qu Chang, Guangdong, China. (9/95)
Confecciones Kalinda S.A., Zona Franca, Los Alcarrizos, Santo Domingo, Dominican Republic. (9/95)
Crown Garments Factory Sdn Bhd, Lot 112, Jalan Kencana, Bagan Ajam, Malaysia. (9/95)
Dechang Garment Factory, Shantou S.E.Z., Cheng Hai, Cheng Shing, China. (9/95)
Envestisman Sanayi A.S., Buyukdere Cad 47, Tek Is Merkezi, Istanbul, Turkey. (9/97)
Eroz Fashions, 535 Tuglakabad Extension, New Delhi, India. (9/95)
Essence Garment Making Factory, Splendid Centre, 100 Larch Street, Flat D, 5th Floor, Taikoktsui, Kowloon, Hong Kong. (3/98)
Fabrica de Artigos de Vest. Dynasty, Lda., Avenida do Almirante Magalhaes Correia, Edificio Industrial Keck Seng, Block III, 4th Floor "UV", Macau. (3/98)
Fabrica de Vestuario Wing Tai, 45 Estrada Marginal Da Areia Preta, Edif. Centro Poltex, 3/E, Macau. (3/98)
Galaxy Gloves Factory, Annking Industrial Building, Wang Yip East Street Room A, 2/F, Lot 357, Yuen Long Industrial Estate, Yuen Long, New Territories, Hong Kong. (3/98)
Grey Rose Maldives, Phoenix Villa, Majeedee Magu, Male, Republic of Maldives. (3/98)
Guangdong Provincial Improved, 60 Ren Min Road, Guangdong, China. (9/95)
Guidetex Garment Factory, 12 Qian Jin Dong Jie, Yao Tai Xian Yuan Li, Canton, China. (9/95)
Gulnar Fashion Export, 14 Hari Nagar, Ashram, New Delhi, India. (9/95)
Herrel Company, 64 Rowell Road, Suva, Fiji. (9/95)
Jai Arjun Mfg. Co., B 4/40 Paschim Vihar, New Delhi, India. (9/95)
Janardhan Exports, E–106 Krishna Nagar, New Delhi, India. (9/95)
Kin Cheong Garment Factory, No. 13 Shantan Street, Sikou Country, Taishan, Kwangtong, China. (9/95)
Kingston Garment Ltd., Lot 42–44 Caracas Dr., Kingston, Jamaica. (9/95)
Konivon Development Corp., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)
Kwuk Yuk Garment Factory, Kwong Industrial Building, 39–41 Beech St., Flat A, 11th Floor, Tai Kok Tsui, Kowloon, Hong Kong. (3/98)
Land Global Ltd., Block c, 14/F, Y.P. Fat Building, Phase 1,
77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)
Leader Glove Factory, Tai Ping Industrial Centre, 57, Ting Kok Road, 25/F, Block 1, Flat A, Tai Po, New Territories, Hong Kong. (3/98)
Lin Fashions S.A., Lot 111, San Pedro de Macoris, Dominican Republic. (9/96)
Luen Kong Handbag Factory, 33 Nanyuan Road, Shenzhen, Guangdong, China. (9/95)
Madan Exports, E–106 Krishna Nagar, New Delhi, India. (9/95)
Morrin International, E–106 Krishna Nagar, New Delhi, India. (9/95)
Patenter Trading Company, Block C. 14/F, Yip Fat Industrial Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)
Poltex Sdn, 8 Jalan Serdang, Kedah, Malaysia. (9/95)
Raj Connections, E–106 Krishna Nagar, Delhi, India. (9/95)
Richman Garment Manufacturing Co., Ltd., 7th Fl, Singapore Industrial Bldg., 338 Kwun Tong Road, Kowloon, Hong Kong. (9/95)
Round Ford Investments, 37–39 Ma Tau Wai Road, 13/f Tower B, Kowloon, Hong Kong. (9/97)
Royal Mandarin Knitworks Co., Flat C 21/F, So Tau Centre, 11–15 Sau Road, Kwai Chung, N.T., Hong Kong. (9/95)
Sam Hing Bags Fty, Ltd., 135 Tai Ping West Road, Jiu Jaing, Ghangdong, China. (9/95)
Sam Hing International, Enterprise, 5 Guernsey St., Guilford NSW, Australia. (9/95)
Shanghai Yang Yuan Garment Factory, 2 Zhaogao Road, Chuanshin, Shanghai, China. (9/97)
Shenzhen Long Gang Ji Chuen, Shenzhen, Long Gang Zhen, China. (9/95)
Silver Pacific Enterprises Ltd., Shun Tak Center, 200 Connaught Road, No. 2908, Hong Kong. (3/98)
Societe Prospere De Vetements S.A., Lome, Togo. (9/95)
Tat Hing Garment Factory, Tat Cheong Industrial Building, 3 Wing Ming Street, Block C, 13/F, Lai Chi Kok, Kowloon, Hong Kong. (3/98)
Tientak Glove Factory Limited, 1 Ting Kok Road, Block A, 26/F, Tai Po, New Territories, Hong Kong. (3/98)
Traffic, D1/180 Lajpat Nagar, New Delhi, India. (9/95)
United Textile and Weaving, P.O. Box 40355, Sharjah, United Arab Emirates. (9/97)
Wealthy Dart, Wing Ka Industrial Building, 87 Larch Street, 7th Floor, Kowloon, Hong Kong. (3/98)
Wilson Industrial Company, Yip Fat Factory Building, 77 Hoi Yuen Road, Room B, 3/F, Kwun Yong, Kowloon, Hong Kong. (3/98)
Wong's International, Nairamdliyn 26, Ulaanbaatar 11, Naaun, Mongolia. (9/95)
Yogay Fashion Garment Factory Ltd, Lee Wan Industrial Building, 5 Luk Hop Street, San Po Kong, Kowloon, Hong Kong. (3/98)
Zuun Mod Garment Factory Ltd., Tuv Aimag, Mongolia. (9/97)

If you have any information as to a correct mailing address for any of the above 54 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dated: March 12, 1998.

A.W. Tennant,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–6881 Filed 3–16–98; 8:45 am]
BILLING CODE [illegible]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–25–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–25–94 (TD 8686), Requirements to Ensure Collection of Section 2056A Estate Tax (§ 20.2056A–2).

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Requirements to Ensure Collection of Section 2056A Estate Tax.

OMB Number: 1545–1443.

Regulation Project Number: PS–25–94.

Abstract: This regulation provides guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under Internal Revenue Code section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOT'S). In order to ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the

requirements associated with each option. In addition, under certain circumstances the trust is required to file an annual statement with the IRS disclosing the assets held by the trust.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,390.

Estimated Time Per Respondents: 1 hour, 23 minutes.

Estimated Total Annual Recordkeeping Hours: 6,070.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6750 Filed 3–16–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–955–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–955–86 (TD 8350), Requirements For Investments to Qualify Under Section 936(d)(4) As Investments in Qualified Caribbean Basin Countries (§ 1.936–10(c)).

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Requirements For Investments to Qualify Under Section 936(d)(4) As Investments in Qualified Caribbean Basin Countries.

OMB Number: 1545–1138.

Regulation Project Number: INTL–955–86.

Abstract: This regulation relates to the requirements that must be met for an investment to qualify under Internal Revenue code section 936(d)(4) as an investment in qualified Caribbean Basin countries. Income that is qualified possession source investment income is entitled to a quasi-tax exemption by reason of the U.S. possessions tax credit under Code section 936(a) and substantial tax exemptions in Puerto Rico. Code section 936(d)(4)(C) places certification requirements on the recipient of the investment and the qualified financial institution; and recordkeeping requirements on the financial institution and the recipient of the investment funds to enable the IRS to verify that the investment funds are being used properly and in accordance with the Caribbean Basin Economic Recovery Act.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 50.

Estimated Time per Recordkeeper: 30 hours.

Estimated Total Annual Recordkeeping Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6751 Filed 3–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–24–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–24–94 (TD 8671), Taxpayer Identifying Numbers (TINs) (§ 301.6109–1).

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Identifying Numbers (TINs).

OMB Number: 1545–1461.

Regulation Project Number: INTL–24–94.

Abstract: This regulation relates to requirements for furnishing a taxpayer identifying number on returns, statements, or other documents. Procedures are provided for requesting a taxpayer identifying number for certain alien individuals for whom a social security number is not available. The regulation also requires foreign persons to furnish a taxpayer identifying number on their tax returns.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

The burden for the collection of information is reflected in the burden for Form W–7, Application for IRS Individual Tax Identification Number (For Non-U.S. Citizens or Nationals).

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6752 Filed 3–16–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–870–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–870–89, Earnings Stripping (Section 163(j)).

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Earnings Stripping (Section 163(j)).

OMB Number: 1545–1255.

Regulation Project Number: INTL–870–89.

Abstract: Internal Revenue Code section 163(j) concerns the limitation on the deduction for certain interest paid by a corporation to a related person. This provision generally does not apply to an interest expense arising in a taxable year in which the payer corporation's debt-equity ratio is 1.5 to 1 or less. Regulation section § 1.163(j)-5(d) provides a special rule for adjusting the basis of assets acquired in a qualified stock purchase. This rule allows the taxpayer, in computing its debt-equity ratio, to elect to write off the basis of the stock of the acquired corporation over a fixed stock write-off period, instead of using the adjusted basis of the assets of the acquired corporation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,300.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 1,196.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6753 Filed 3–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–30–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, IA–30–95 (TD 8672), Reporting of Nonpayroll Withheld Tax Liabilities (§ 31.6011(a)–4).

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Nonpayroll Withheld Tax Liabilities.

OMB Number: 1545–1413.

Regulation Project Number: IA–30–95.

Abstract: This regulation relates to the reporting of nonpayroll withheld income taxes under section 6011 of the Internal Revenue Code. The regulations require a person to file Form 945, Annual Return of Withheld Federal Income Tax, only for a calendar year in which the person is required to withhold Federal income tax from nonpayroll payments.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

The burden for the collection of information is reflected in the burden for Form 945, Annual Return of Withheld Federal Income Tax.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6754 Filed 3–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–221–83 and FI–100–83]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking (FI–221–83) and temporary regulation (FI–100–83), Indian Tribal Governments Treated as States for Certain Purposes (§§ 305.7701–1 and 305.7871–1).

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Indian Tribal Governments Treated as States for Certain Purposes.

OMB Number: 1545–0823.

Regulation Project Number: FI–221–83 (notice of proposed rulemaking) and FI–100–83 (temporary regulation).

Abstract: These regulations relate to the treatment of Indian tribal governments as States for certain Federal tax purposes. The regulations provide that if the governing body of a tribe, or its subdivision, is not designated as an Indian tribal government or subdivision thereof for purpose of sections 7701(a)(40) and 7871 of the Internal Revenue Code, it may apply for a ruling to that effect from the Internal Revenue Service.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 25.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6755 Filed 3–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–22, Employee Plans Compliance Programs.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Plans Compliance Programs.

OMB Number: 1545–1598.

Revenue Procedure Number: Revenue Procedure 98–22.

Abstract: This revenue procedure provides a comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of section 401(a) or 403(a) of the Internal Revenue Code, but that have not met these requirements for a period of time. This system permits plan sponsors to correct these qualification failures and thereby continue to provide their employees with retirement benefits on a tax-favored basis.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other-for-profit organizations, not-for-profit institutions and state, local, or tribal governments.

Estimated Number of Respondents/Recordkeepers: 2,000.

Estimated Time Per Respondent/Recordkeeper: 21 hours, 30 minutes.

Estimated Total Annual Reporting/Recordkeeping Burden Hours: 43,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6756 Filed 3–16–98; 8:45 am]

BILLING CODE 4830–01–p

UNITED STATES INFORMATION AGENCY

USIA Seeks Private Sector Support for U.S. Pavilion at Hannover Expo 2000

AGENCY: United States Information Agency.

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ACTION: Seeking private sector support for U.S. Pavilion at Hannover Expo 2000.

SUMMARY: The United States Information Agency is seeking private sector support for the United States Pavilion at the Hannover World's Fair in the year 2000. There is a wide range of tax deductible opportunities available, ranging from taking responsibility for the entire U.S. Pavilion to cash or in-kind contributions such as airline tickets, audio-visual equipment, pavilion vehicles, guide uniforms, etc. Sponsors may be fully credited as Official Sponsors of the U.S. Pavilion.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Ogul, Hannover 2000 U.S. Coordinator, by telephone, at 202–260–6511, or letter addressed to Mr. Ogul at USIA, 301 4th Street, S.W., Room 314, Washington, DC 20547. All correspondence will be considered.

Dated: March 11, 1998.

John G. Busch,

Senior Contracting Officer, Office of Contracts.

[FR Doc. 98–6889 Filed 3–16–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 51
Tuesday, March 17, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 1000 and 1005

[Docket No. FR–4170–F–16]

RIN 2577–AB74

Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule

Correction

In rule document 98–6283, beginning on page 12334, in the issue of Thursday, March 12, 1998, make the following corrections:

PART 1000—[CORRECTED]

1. Appendices A and B to part 1000 that appear on pages 12373 through 12374 should appear immediately following § 1000.558.

§ 1005.101 [Corrected]

2. On page 12372, in the second column, in § 1005.101, in the 14th line, after "and" insert ", after November 3, 1998,".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

[T.D. 98–16]

RIN 1515–AB95

Drawback

Correction

In rule document 98–5045 beginning on page 10970, in the issue of Thursday, March 5, 1998, make the following correction:

Appendix A to Part 191 [Corrected]

On page 11041, in appendix A to part 191, in the table, in each parallel column, remove the last entry.

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Part II

The President

Presidential Determination No. 98–16 of March 4, 1998—Vietnamese Cooperation in Accounting for United States Prisoners of War and Missing in Action (POW/MIA)

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Presidential Documents

Title 3—

The President

Presidential Determination No. 98–16 of March 4, 1998

Vietnamese Cooperation in Accounting for United States Prisoners of War and Missing in Action (POW/MIA)

Memorandum for the Secretary of State

As provided under section 609 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Public Law 105–119, I hereby determine, based on all information available to the United States Government, that the Government of the Socialist Republic of Vietnam is fully cooperating in good faith with the United States in the following four areas related to achieving the fullest possible accounting for Americans unaccounted for as a result of the Vietnam War:

(1) resolving discrepancy cases, live sightings, and field activities;

(2) recovering and repatriating American remains;

(3) accelerating efforts to provide documents that will help lead to the fullest possible accounting of POW/MIAs; and

(4) providing further assistance in implementing trilateral investigations with Laos.

I further determine that the appropriate laboratories associated with POW/MIA accounting are thoroughly analyzing remains, material, and other information, and fulfilling their responsibilities as set forth in subsection (B) of section 609, and information pertaining to this accounting is being made available to immediate family members in compliance with 50 U.S.C. 435 note.

I have been advised by the Department of Justice and believe that section 609 is unconstitutional because it purports to use a condition on appropriations as a means to direct my execution of responsibilities that the Constitution commits exclusively to the President. I am providing this determination as a matter of comity, while reserving the position that the condition enacted in section 609 is unconstitutional.

In making this determination I have taken into account all information available to the United States Government as reported to me, the full range of ongoing accounting activities in Vietnam, including joint and unilateral Vietnamese efforts, and the concrete results we have attained as a result.

Finally, in making this determination, I wish to reaffirm my continuing personal commitment to the entire POW/MIA community, especially to the immediate families, relatives, friends, and supporters of these brave individuals, and to reconfirm that the central, guiding principle of my Vietnam policy is to achieve the fullest possible accounting of our prisoners of war and missing in action.

You are authorized and directed to report this determination to the appropriate committees of the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, March 4, 1998.

[FR Doc. 98–7098
Filed 3–16–98; 10:20 am]
Billing code 4710–10–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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S. 916/P.L. 105–161

To designate the United States Post Office building located at 750 Highway 28 East in Taylorsville, Mississippi, as the "Blaine H. Eaton Post Office Building". (Mar. 9, 1998; 112 Stat. 28)

S. 985/P.L. 105–162

To designate the post office located at 194 Ward Street in Paterson, New Jersey, as the "Larry Doby Post Office". (Mar. 9, 1998; 112 Stat. 29)

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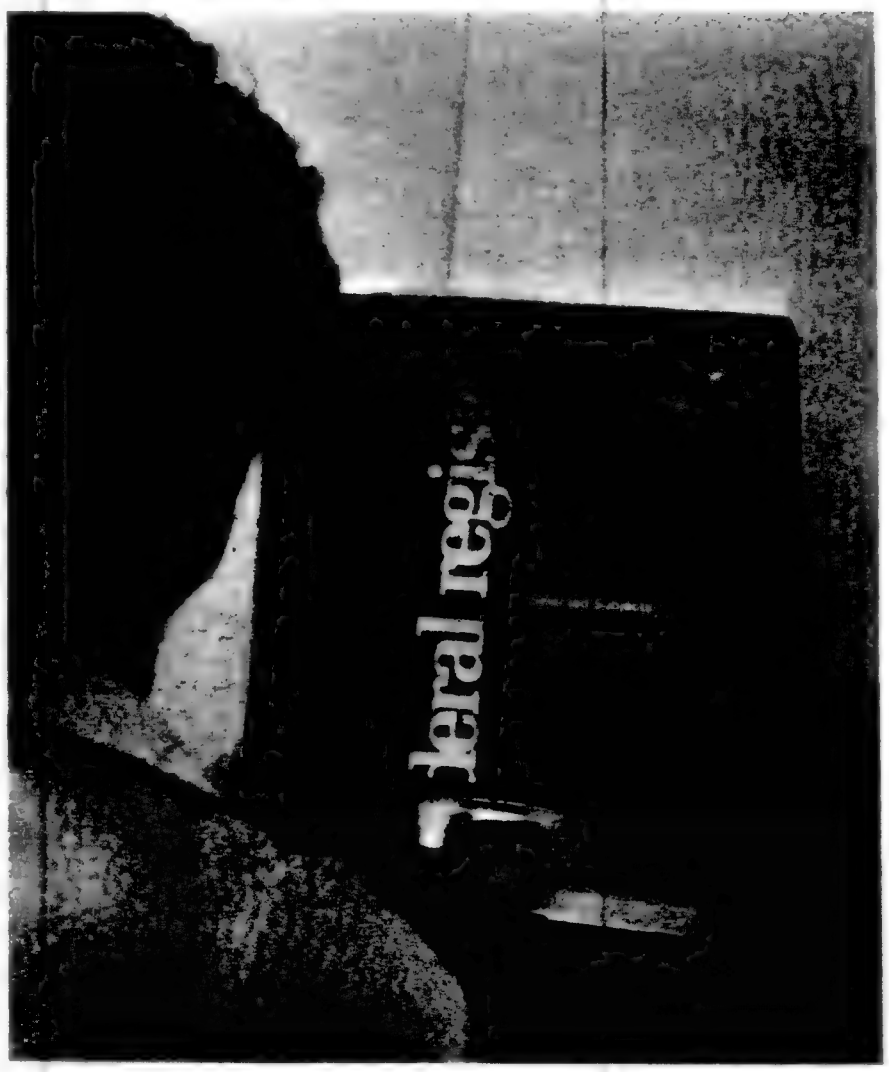

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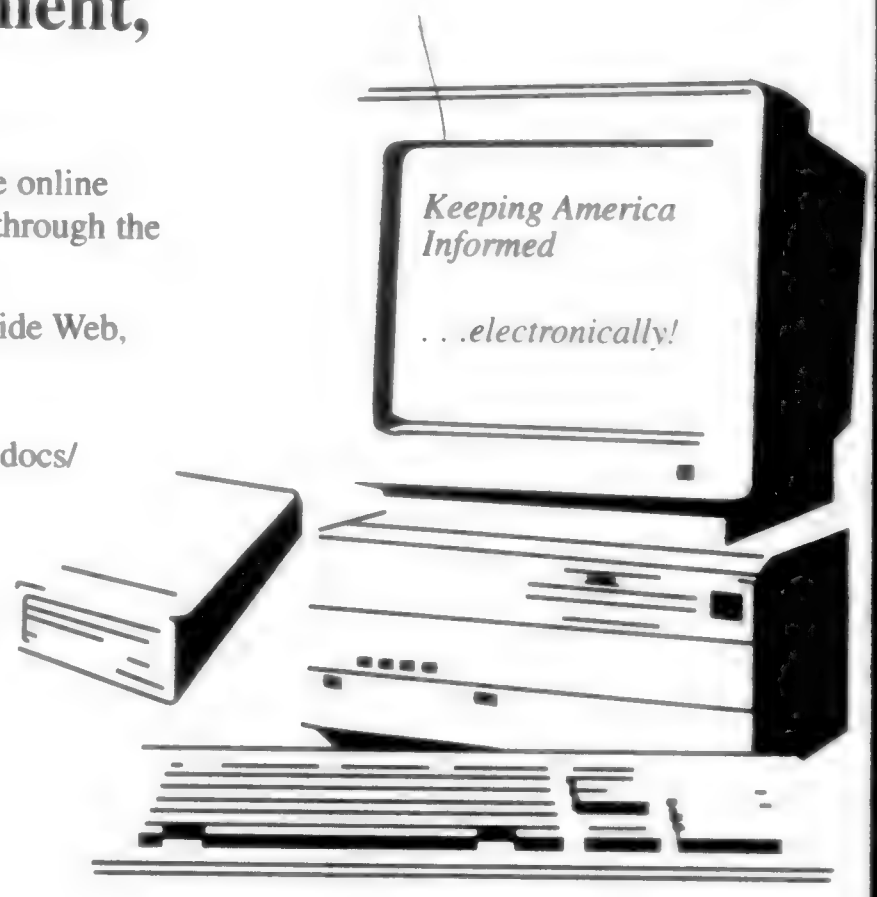

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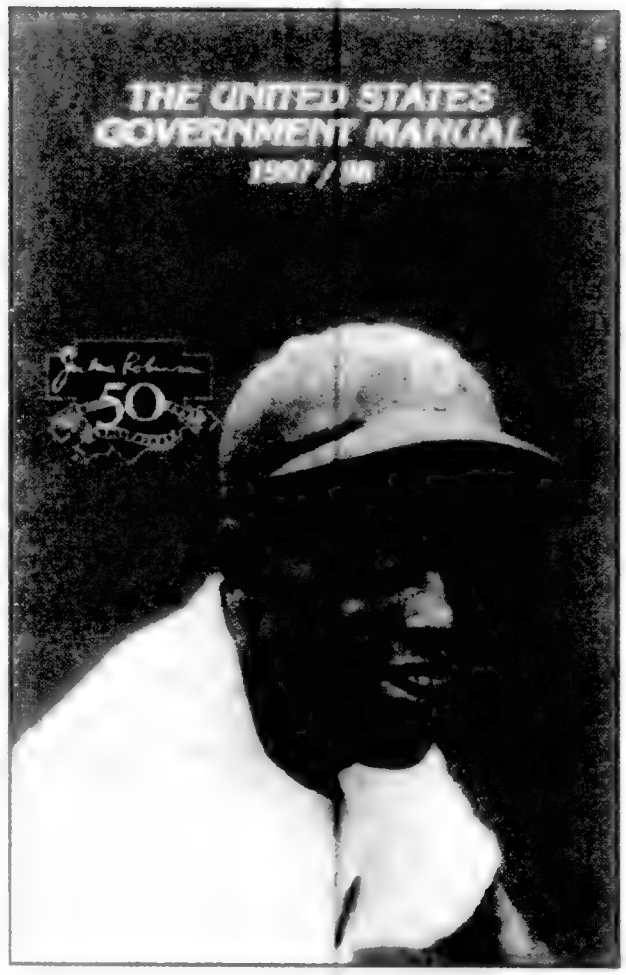

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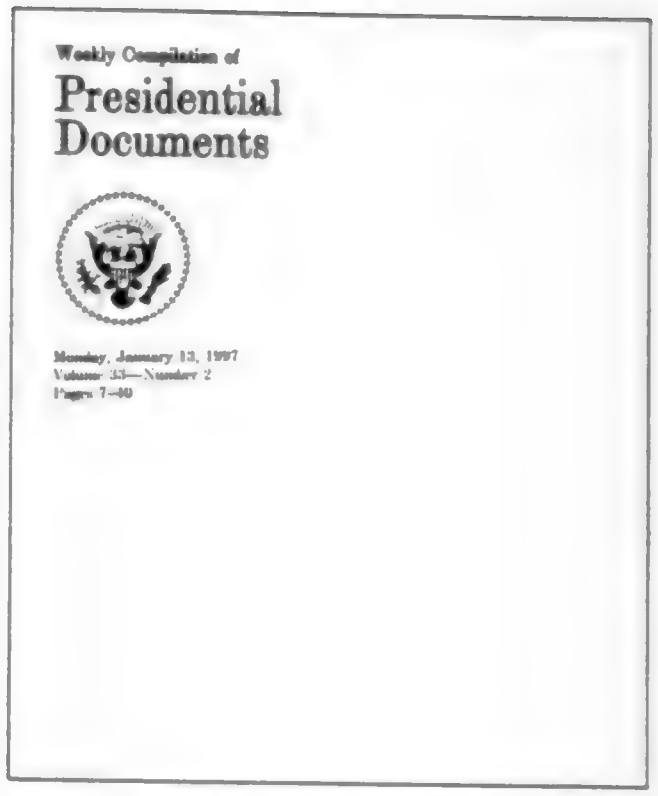

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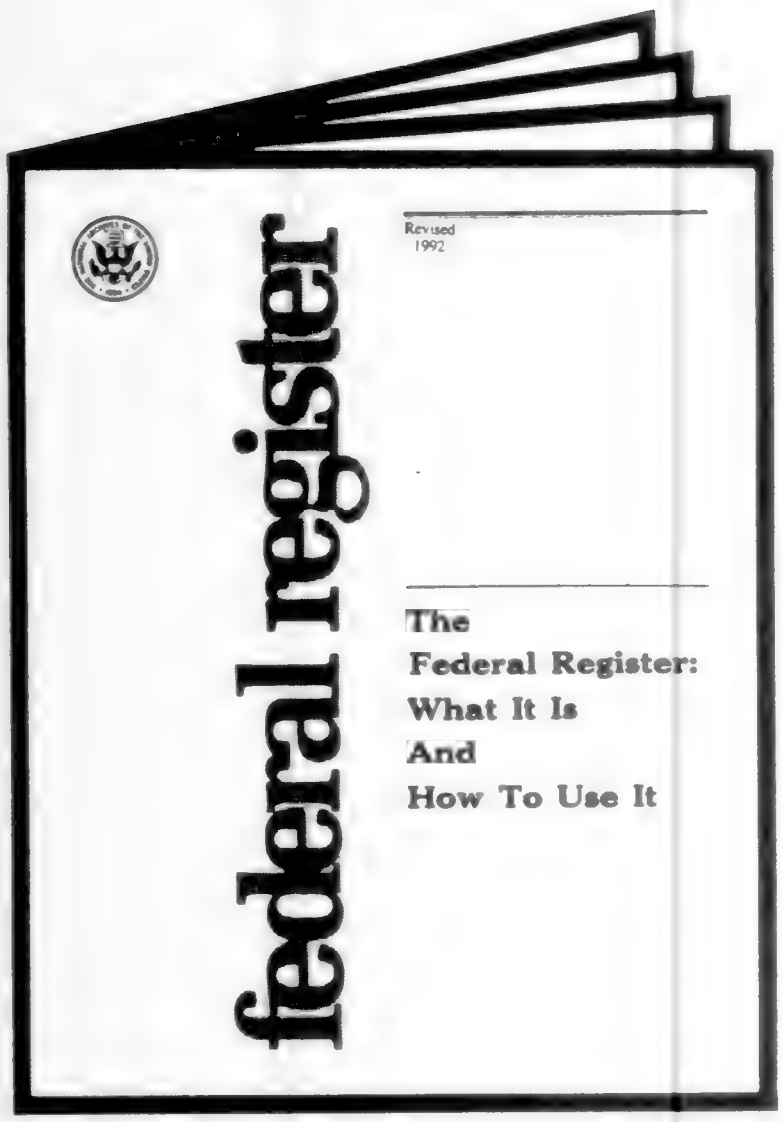

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Title 3—

The President

Executive Order 13078 of March 13, 1998

Increasing Employment of Adults With Disabilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the employment of adults with disabilities to a rate that is as close as possible to the employment rate of the general adult population and to support the goals articulated in the findings and purpose section of the Americans with Disabilities Act of 1990, it is hereby ordered as follows:

Section 1. Establishment of National Task Force on Employment of Adults with Disabilities.

(a) There is established the "National Task Force on Employment of Adults with Disabilities" ("Task Force"). The Task Force shall comprise the Secretary of Labor, Secretary of Education, Secretary of Veterans Affairs, Secretary of Health and Human Services, Commissioner of Social Security, Secretary of the Treasury, Secretary of Commerce, Secretary of Transportation, Director of the Office of Personnel Management, Administrator of the Small Business Administration, the Chair of the Equal Employment Opportunity Commission, the Chairperson of the National Council on Disability, the Chair of the President's Committee on Employment of People with Disabilities, and such other senior executive branch officials as may be determined by the Chair of the Task Force.

(b) The Secretary of Labor shall be the Chair of the Task Force; the Chair of the President's Committee on Employment of People with Disabilities shall be the Vice Chair of the Task Force.

(c) The purpose of the Task Force is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. The Task Force shall develop and recommend to the President, through the Chair of the Task Force, a coordinated Federal policy to reduce employment barriers for persons with disabilities. Policy recommendations may cover such areas as discrimination, reasonable accommodations, inadequate access to health care, lack of consumer-driven, long-term supports and services, transportation, accessible and integrated housing, telecommunications, assistive technology, community services, child care, education, vocational rehabilitation, training services, job retention, on-the-job supports, and economic incentives to work. Specifically, the Task Force shall:

(1) analyze the existing programs and policies of Task Force member agencies to determine what changes, modifications, and innovations may be necessary to remove barriers to work faced by people with disabilities;

(2) develop and recommend options to address health insurance coverage as a barrier to employment for people with disabilities;

(3) subject to the availability of appropriations, analyze State and private disability systems (e.g., workers' compensation, unemployment insurance, private insurance, and State mental health and mental retardation systems) and their effect on Federal programs and employment of adults with disabilities;

(4) consider statistical and data analysis, cost data, research, and policy studies on public subsidies, employment, employment discrimination, and rates of return-to-work for individuals with disabilities;

(5) evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities;

(6) evaluate whether Federal studies related to employment and training can, and should, include a statistically significant sample of adults with disabilities;

(7) subject to the availability of appropriations, analyze youth programs related to employment (e.g., Employment and Training Administration programs, special education, vocational rehabilitation, school-to-work transition, vocational education, and Social Security Administration work incentives and other programs, as may be determined by the Chair and Vice Chair of the Task Force) and the outcomes of those programs for young people with disabilities;

(8) evaluate whether a single governmental entity or program should be established to provide computer and electronic accommodations for Federal employees with disabilities;

(9) consult with the President's Committee on Mental Retardation on policies to increase the employment of people with mental retardation and cognitive disabilities; and

(10) recommend to the President any additional steps that can be taken to advance the employment of adults with disabilities, including legislative proposals, regulatory changes, and program and budget initiatives.

(d)(1) The members of the Task Force shall make the activities and initiatives set forth in this order a high priority within their respective agencies within the levels provided in the President's budget.

(2) The Task Force shall issue its first report to the President by November 15, 1998. The Task Force shall issue a report to the President on November 15, 1999, November 15, 2000, and a final report on July 26, 2002, the 10th anniversary of the initial implementation of the employment provisions of the Americans with Disabilities Act of 1990. The reports shall describe the actions taken by, and progress of, each member of the Task Force in carrying out this order. The Task Force shall terminate 30 days after submitting its final report.

(e) As used herein, an adult with a disability is a person with a physical or mental impairment that substantially limits at least one major life activity.

Sec. 2. Specific activities by Task Force members and other agencies.

(a) To ensure that the Federal Government is a model employer of adults with disabilities, by November 15, 1998, the Office of Personnel Management, the Department of Labor, and the Equal Employment Opportunity Commission shall submit to the Task Force a review of Federal Government personnel laws, regulations, and policies and, as appropriate, shall recommend or implement changes necessary to improve Federal employment policy for adults with disabilities. This review shall include personnel practices and actions such as: hiring, promotion, benefits, retirement, workers' compensation, retention, accessible facilities, job accommodations, layoffs, and reductions in force.

(b) The Departments of Justice, Labor, Education, and Health and Human Services shall report to the Task Force by November 15, 1998, on their work with the States and others to ensure that the Personal Responsibility and Work Opportunity Reconciliation Act is carried out in accordance with section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, so that individuals with disabilities and their families can realize the full promise of welfare reform by having an equal opportunity for employment.

(c) The Departments of Education, Labor, Commerce, and Health and Human Services, the Small Business Administration, and the President's Committee on Employment of People with Disabilities shall work together and report to the Task Force by November 15, 1998, on their work to

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develop small business and entrepreneurial opportunities for adults with disabilities and strategies for assisting low-income adults, including those with disabilities to create small businesses and micro-enterprises. These same agencies, in consultation with the Committee for Purchase from People Who Are Blind or Severely Disabled, shall assess the impact of the Randolph-Sheppard Act vending program and the Javits-Wagner-O'Day Act on employment and small business opportunities for people with disabilities.

(d) The Departments of Transportation and Housing and Urban Development shall report to the Task Force by November 15, 1998, on their examination of their programs to see if they can be used to create new work incentives and to remove barriers to work for adults with disabilities.

(e) The Departments of Justice, Education, and Labor, the Equal Employment Opportunity Commission, and the Social Security Administration shall work together and report to the Task Force by November 15, 1998, on their work to propose remedies to the prevention of people with disabilities from successfully exercising their employment rights under the Americans with Disabilities Act of 1990 because of the receipt of monetary benefits based on their disability and lack of gainful employment.

(f) The Bureau of Labor Statistics of the Department of Labor and the Census Bureau of the Department of Commerce, in cooperation with the Departments of Education and Health and Human Services, the National Council on Disability, and the President's Committee on Employment of People with Disabilities shall design and implement a statistically reliable and accurate method to measure the employment rate of adults with disabilities as soon as possible, but no later than the date of termination of the Task Force. Data derived from this methodology shall be published on as frequent a basis as possible.

(g) All executive agencies that are not members of the Task Force shall: (1) coordinate and cooperate with the Task Force; and (2) review their programs and policies to ensure that they are being conducted and delivered in a manner that facilitates and promotes the employment of adults with disabilities. Each agency shall file a report with the Task Force on the results of its review on November 15, 1998.

Sec. 3. Cooperation. All efforts taken by executive departments and agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation with public and private sector employers, organizations that represent people with disabilities, organized labor, veteran service organizations, and State and local governments whenever such partnerships and cooperation are possible and would promote the employment and gainful economic activities of individuals with disabilities.

Sec. 4. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
March 13, 1998.

[FR Doc. 98–7139
Filed 3–17–98; 8:45 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2610

RIN 3209–AA20

Amendments to the Office of Government Ethics Rules Under the Equal Access to Justice Act

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is amending its rules under the Equal Access to Justice Act on adversary administrative adjudicatory proceedings to conform with the revisions enacted as part of the Contract with America Advancement Act of 1996, which increased the ceiling on attorney and agent fees and added small entities as eligible parties to a new category of awards based on covered proceedings involving any excessive demands, and is also making a couple of minor clarifying and paperwork revisions.

EFFECTIVE DATE: March 18, 1998.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Grill.

FOR FURTHER INFORMATION CONTACT: Arielle H. Grill, Attorney-Advisor, Office of General Counsel and Legal Policy, Office of Government Ethics, telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending its rules at 5 CFR part 2610 for covered adversary administrative proceedings under the Equal Access to Justice Act to implement changes made to that law in subtitle C of the Small Business Regulatory Enforcement Fairness Act of 1996 under the Contract with America Advancement Act of 1996, Pub. L. 104–121. One change reflects that, for covered proceedings commenced on or after March 29, 1996, the general ceiling on attorney and agent fees was raised from $75.00 per hour to $125.00 per hour. The section on rulemaking on the maximum fee rate is also being revised to include agent fees along with attorney fees. In addition, an award is permitted if the demand of the Office for relief is substantially in excess of the decision in an adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Furthermore, a small entity as defined in 5 U.S.C. 601 is declared to be an eligible party for such relief. Finally, an out-of-date citation to a former provision in the Paperwork Reduction Act regulations of the Office of Management and Budget at 5 CFR part 1320 is being removed.

In this rulemaking, OGE is implementing these statutory changes as to any covered administrative proceedings before it by revising §§ 2610.102, 2610.105, 2610.106, 2610.107, 2610.108, 2610.201 and 2610.204 of OGE's equal access rules. This is not an executive branchwide regulation, as only covered OGE administrative proceedings are affected. Moreover, OGE notes that, to date, no administrative equal access claims have been filed with it.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, public comment procedures, and 30-day delay in effectiveness as to these revisions. The notice, comment, and delayed effective date are being waived because these technical amendments to the OGE equal access regulation concern matters of agency organization, procedure, and practice. Furthermore, it is in the public interest that the new, higher attorney fees provisions and other changes as to OGE administrative proceedings covered under the Equal Access to Justice Act, as revised, be implemented as soon as possible.

Executive Order 12866

In promulgating these technical amendments to its equal access rules, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive Order, as they are not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it only affects certain covered OGE administrative proceedings and OGE has not to date received any claims as to such proceedings under the Equal Access to Justice Act.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this technical amendments rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget, since the collections of information called for under this rule are expected to involve nine or fewer persons each year. Amended § 2610.201(f) of this rule contains a statement informing the public of this matter.

List of Subjects in 5 CFR Part 2610

Administrative practice and procedure, Claims, Conflict of interests, Equal access to justice, Government employees.

Approved: March 12, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2610 of chapter XVI of 5 CFR as follows:

PART 2610—[AMENDED]

1. The authority citation for part 2610 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 5 U.S.C. App. (Ethics in Government Act of 1978).

2. Section 2610.102 is amended by revising the second sentence and adding a new third sentence to read as follows:

§ 2610.102 Purpose.

* * * An eligible party may receive an award when it prevails over the Office, unless the Office's position in the proceeding was substantially justified or special circumstances make an award unjust. An eligible party may also receive an award when the demand of the Office is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. * * *

3. Section 2610.105 is amended by removing the word "and" at the end of paragraph (b)(4), by removing the word "any" at the beginning of paragraph (b)(5) and adding in its place the word "Any," by removing the period at the end of paragraph (b)(5) and adding in its place a semicolon followed by the word "and," and by adding a new paragraph (b)(6) to read as follows:

§ 2610.105 Eligibility of applicants.

* * * * *

(b)(6) For purposes of § 2610.106(b), a small entity as defined in 5 U.S.C. 601.

* * * * *

4. Section 2610.106 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, by revising newly redesignated paragraph (d), and by adding a new paragraph (b) to read as follows:

§ 2610.106 Standards for awards.

* * * * *

(b) If, in a proceeding arising from an Office action to enforce an applicant's compliance with a statutory or regulatory requirement, the demand of the Office is substantially in excess of the decision in the proceeding and is unreasonable when compared with that decision under the facts and circumstances of the case, the applicant shall be awarded the fees and other expenses related to defending against the excessive demand, unless the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. The burden of proof that the demand of the Office is substantially in excess of the decision and is unreasonable when compared with such decision is on the applicant. As used in this paragraph, "demand" means the express demand of the Office which led to the adversary adjudication, but it does not include a recitation by the Office of the maximum statutory penalty in the administrative complaint, or elsewhere when accompanied by an express demand for a lesser amount. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.

* * * * *

(d) An award under this part will be reduced or denied if the Office's position was substantially justified in law and fact, if the applicant has unduly or unreasonably protracted the proceeding, if the applicant has falsified the application (including documentation) or net worth exhibit, or if special circumstances make the award unjust.

§ 2610.107 [Amended]

5. Section 2610.107 is amended by removing the dollar amount "$75.00" in the first sentence of paragraph (b) and adding in its place the dollar amount "$125.00."

§ 2610.108 [Amended]

6. Section 2610.108 is amended by:

a. Revising the heading to read "Rulemaking on maximum rate for attorney and agent fees.";

b. Amending the first sentence of paragraph (a) by adding the words "or agents" between the words "attorneys" and "qualified" in the parentheses, adding the words "or agent" between the words "attorney" and "fees" outside the parentheses, and by removing the dollar amount "$75.00" and adding in its place the dollar amount "$125.00."; and

c. Amending the first sentence of paragraph (b) by adding the words "or agent" between the words "attorney" and "fees".

7. Section 2610.201 is amended by removing the last sentence of paragraph (f) and by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 2610.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall further state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of the Office in the proceeding that the applicant alleges was not substantially justified; or

(2) Show that the demand by the Office in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application shall also include, for purposes of § 2610.106 (a) or (b), a statement that the applicant's net worth does not exceed $2,000,000 (for individuals) or $7,000,000 (for all other applicants, including their affiliates) or alternatively, for purposes of § 2610.106(b) only, a declaration that the applicant is a small entity as defined in 5 U.S.C. 601. However, an applicant may omit the statement concerning its net worth if:

* * * * *

8. Section 2610.204 is amended by revising paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 2610.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding. An application may also be filed when the demand of the Office is substantially in excess of the decision in the proceeding and is unreasonable when compared with such decision. In no case may an application be filed later than 30 days after the Office of Government Ethics' final disposition of the proceeding.

* * * * *

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed or has been subjected to a demand from the Office substantially in excess of the decision in the adversary adjudication and unreasonable when compared to that decision, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. * * *

[FR Doc. 98–6966 Filed 3–17–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–34–AD; Amendment 39–10411; AD 98–06–32]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, and L1 helicopters. This action requires greasing and inspecting main rotor blade horn eye bolts (eye bolts), and replacing certain eye bolt bearings (bearings) with airworthy bearings. This amendment is prompted by one report of abnormally high amplitude inflight vibrations due to failure of a bearing. The actions specified in this AD are intended to prevent failure of a bearing, due to premature wear caused by an improper axial pre-load, which could result in loss of main rotor blade pitch control and subsequent loss of control of the helicopter.

DATES: Effective April 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 18, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–34–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, L, and L1 helicopters. The DGAC advises that, within 50 hours, for eye bolts that were installed before September 1, 1997 and have less than 500 hours time-in-service (TIS), the bearings should be greased and inspected, and removed if (1) the expelled grease has a "blackish" color or contains metal particles; or (2) the rotational torque exceeds 30,000 millimeters-grams (2.655 inches-pounds).

Eurocopter France has issued Eurocopter France Telex Service 39/0206/1997, dated July 25, 1997, (containing Eurocopter France AS 332 Telex Service No. 01.00.52 R1) which specifies an inspection of the eye bolts, and replacement of the bearings, if necessary. The DGAC classified this service telex as mandatory and issued DGAC AD 97–174–063(AB), dated August 1, 1997, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, and L1 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of a bearing due to premature wear caused by an improper axial pre-load, which could result in loss of main rotor blade pitch control and subsequent loss of control of the helicopter. This AD requires, within 50 hours TIS, for any eye bolt currently installed, or prior to installing any replacement eye bolt, that has less than 500 hours TIS, greasing and inspecting the eye bolt assembly, and replacing unairworthy bearings with airworthy bearings prior to further flight. The actions are required to be accomplished in accordance with the service telex described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore greasing and inspecting the eye bolt assembly, and replacing unairworthy bearings with airworthy bearings is required prior to further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–34–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined

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further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–06–32 EUROCOPTER FRANCE: Amendment 39–10411. Docket No. 97–SW–34–AD.

Applicability: Model AS 332C, L, and L1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade horn eye bolt (eye bolt) bearing due to premature wear caused by an improper axial pre-load, which could result in loss of main rotor blade pitch control and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD for any eye bolt currently installed, or prior to installing any replacement eye bolt, that has less than 500 hours TIS, grease and inspect the eye bolt assembly in accordance with paragraphs CC.1 through CC.3 of Eurocopter France Telex Service 39/0206/1997, dated July 25, 1997, (containing Eurocopter France AS 332 Telex Service No. 01.00.52 R1). If the expelled grease has a "blackish" color or contains metal particles, or if the rotational torque on the eye bolt exceeds 30,000 millimeter grams (2.655 inch-lbs.), replace the eye bolt bearings with airworthy eye bolt bearings in accordance with paragraph CC.4B of the Telex Service.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Eurocopter France Telex Service 39/0206/1997, dated July 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 2, 1998.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) Telegraphic AD 97–174–063(AB), dated August 1, 1997.

Issued in Fort Worth, Texas, on March 11, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–6966 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29165; Amdt. No. 408]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its

timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on March 13, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 406 effective date, April 23, 1998]

From	To	MEA
§ 95.6009 VOR Federal Airway 9 is Amended to Read in Part		
Madison, WI VORTAC	Oshkosh, WI VORTAC	3000
§ 95.6013 VOR Federal Airway 13 is Amended to Read in Part		
Rich Mountain, OK VORTAC *5000–MRA **3900–MOCA	*Hades, AR FIX	**4600
Fort Smith, AR VORTAC *5000–MRA **2700–MOCA	*Cheso, AR FIX	**3400
Cheso, AR FIX	Barkk, AR FIX	3500
Barkk, AR FIX	Razorback, AR VORTAC	3500
§ 95.6069 VOR Federal Airway 69 is Amended to Read in Part		
Pine Bluff, AR VOR/DME	Billi, AR FIX	2000
§ 95.6076 VOR Federal Airway 76 is Amended to Read in Part		
Welch, TX FIX *5200–MOCA	Patts, TX FIX	*6100
§ 95.6081 VOR Federal Airway 81 is Amended to Read in Part		
Patts, TX FIX *7000–MRA **5200–MOCA	*Welch, TX FIX	**6100
§ 95.6107 VOR Federal Airway 107 is Amended to Read in Part		
Fillmore, CA VORTAC *7200–MOCA	Pirue, CA FIX	
	SE BND	*6000
	NW BND	*9000
Pirue, CA FIX *9200–MOCA	Reyes, CA FIX	*11000
Derbb, CA FIX *6500–MOCA	Avenal, CA VORTAC	*7000
§ 95.6120 VOR Federal Airway 120 is Amended to Read in Part		
Fryre, SD FIX	Sioux Falls, SD VORTAC	3700

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REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 408 effective date, April 23, 1998]

From	To	MEA
§ 95.6124 VOR Federal Airway 124 is Amended to Read in Part		
Bonham, TX VORTAC	Paris, TX VOR/DME	2400
Deens, AR FIX	Hot Springs, AR VOR/DME	5000
*2600–MOCA		
Lonns, AR FIX	Little Rock, AR VORTAC	2300
Little Rock, AR VORTAC	Tafte, AR FIX	*4000
*1600–MOCA		
Tafte, AR FIX	*Hille, AR FIX	**6000
*6000–MRA		
**1500–MOCA		
§ 95.6278 VOR Federal Airway 278 is Amended to Read in Part		
Guthrie, TX VORTAC	Nifde, TX FIX	*4500
*3000–MOCA		
Nifde, TX FIX	Poste, TX FIX	*3300
*2600–MOCA		
Poste, TX FIX	Bowie, TX VORTAC	*3300
*2500–MOCA		
Bonham, TX VORTAC	Paris, TX VOR/DME	2400
Texarkana, AR VORTAC	Warlo, AR FIX	2200
Warlo, AR FIX	Locus, AR FIX	*3000
*1700–MOCA		
Locus, AR FIX	Monticello, AR VOR/DME	*2500
*1600–MOCA		
Monticello, AR VOR/DME	Greenville, MS VOR/DME	*2000
*1500–MOCA		
§ 95.6319 VOR Federal Airway 319 is Amended to Read in Part		
Eyaks, AR FIX	Johnstone Point, AK VORTAC	5000
§ 95.6341 VOR Federal Airway 341 is Amended to Read in Part		
Madison, WI VORTAC	Oshkosh, WI VORTAC	3000
§ 95.6369 VOR Federal Airway 369 is Amended to Read in Part		
Navasota, TX VORTAC	Bilee, TX FIX	*2300
*1800–MOCA	MAA–17500	
Bilee, TX FIX	Groesbeck, TX VOR/DME	*2300
*1800–MOCA	MAA–17500	
Groesbeck, TX VOR/DME	Dallas/Fort Worth, TX VORTAC	3400
	MAA–17500	
§ 95.6480 VOR Federal Airway 480 is Amended to Read in Part		
Kipnuk, AK VOR/DME	Bethel, AK VORTAC	2000
§ 95.6532 VOR Federal Airway 532 is Amended to Read in Part		
Fort Smith, AR VORTAC	*Akins, OK FIX	2500
*3000–MRA		
Akins, OK FIX	Okmulgee, OK VOR/DME	*3000
*2200–MOCA		
§ 95.6573 VOR Federal Airway 573 is Amended to Read in Part		
Texarkana, AR VORTAC	Pikes, AR FIX	*3500
*1800–MOCA		
Pikes, AR FIX	Marki, AR FIX	*3500
*2100–MOCA		
Lonns, AR FIX	Little Rock, AR VORTAC	2300

From	To	MEA	MAA
§ 95.7104 Jet Route No. 104 is Amended to Read in Part			
San Simon, AZ VORTAC	Socorro, NM VORTAC	20000	45000

From	To	Changeover points	
		Distance	From
§ 95.6003 VOR Federal Airway Changeover Points Airway Segment V–16 is Amended to Read in Part			
Texarkana, AR VORTAC	Pine Bluff, AR VOR/DME	62	Texarkana
V–124 is Amended to Delete			
Hot Springs, AR VOR/DME			

[FR Doc. 98–7027 Filed 3–17–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Amoxicillin Trihydrate and Clavulanate Potassium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Pfizer, Inc. The supplemental NADA's provide for oral use amoxicillin trihydrate and clavulanate potassium tablets and suspension for treatment of dogs for periodontal infections due to susceptible strains of aerobic and anaerobic bacteria.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mary E. Reese, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20857, 301–594–1617.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA's 55–099 and 55–101 that provide for oral use of amoxicillin trihydrate and clavulanate potassium tablets and suspension for treatment of dogs for periodontal infections due to susceptible strains of aerobic and anaerobic bacteria. The products are limited to use by or on the order of a licensed veterinarian. The supplemental NADA's are approved as of December 23, 1997, and the regulations are amended in 21 CFR 520.88g and 520.88h to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of the supplemental applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals for nonfood-producing animals qualify for 3 years of marketing exclusivity beginning December 23, 1997, because the supplemental applications contain substantial evidence of the effectiveness of the drug involved, or any studies of animal safety, required for approval of the applications and conducted or sponsored by the applicant. Three years of marketing exclusivity applies only to use of Clavamox® tablets and suspension in dogs for treatment of periodontal infections caused by susceptible strains of aerobic and anaerobic bacteria.

FDA has determined under 21 CFR 25.33(d)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.88g is amended in paragraph (c)(1)(ii) by adding a new sentence at the end of the paragraph to read as follows:

§ 520.88g Amoxicillin trihydrate and clavulanate potassium film-coated tablets.

* * * * *

(c) * * *

(1) * * *

(ii) * * * Treatment of periodontal infections due to susceptible strains of aerobic and anaerobic bacteria.

* * * * *

3. Section 520.88h is amended in paragraph (c)(1)(ii) by adding a new sentence at the end of the paragraph to read as follows:

§ 520.88h Amoxicillin trihydrate and clavulanate potassium for oral suspension.

* * * * *

(c) * * *

(1) * * *

(ii) * * * Treatment of periodontal infections due to susceptible strains of aerobic and anaerobic bacteria.

* * * * *

Dated: February 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–6907 Filed 3–17–98; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Desoxycorticosterone Pivalate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for use of desoxycorticosterone pivalate as replacement therapy for the mineralocorticoid deficit in dogs with primary adrenocortical insufficiency.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1612.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., P.O. Box 26402, Greensboro, NC 27404–6402, is the sponsor of NADA 141–029 that provides for the use of Percorten™-V (desoxycorticosterone pivalate) as replacement therapy for the mineralocorticoid deficit in dogs with primary adrenocortical insufficiency. The drug is limited to use by or on the order of a licensed veterinarian. The NADA is approved as of January 12, 1998, and the regulations are amended by adding new 21 CFR 522.535 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for nonfood-producing animals qualifies for 5 years of marketing exclusivity beginning January 12, 1998, because no active ingredient of the drug (including any salt or ester of the active ingredient) has been approved in any other application.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. New § 522.535 is added to read as follows:

§ 522.535 Desoxycorticosterone pivalate.

(a) *Specifications.* Each milliliter of sterile aqueous suspension contains 25 milligrams of desoxycorticosterone pivalate.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Dosage requirements are variable and must be individualized on the basis of the response of the patient to therapy. Initial dose of 1 milligram per pound (0.45 kilogram) of body weight every 25 days, intramuscularly. Usual dose is 0.75 to 1.0 milligram per pound of body weight every 21 to 30 days.

(ii) *Indications for use.* For use as replacement therapy for the mineralocorticoid deficit in dogs with primary adrenocortical insufficiency.

(iii) *Limitations.* For intramuscular use only. Do not use in pregnant dogs, dogs suffering from congestive heart disease, severe renal disease, or edema. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: February 6, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–6911 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Colistimethate Sterile Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma Inc. The NADA provides for subcutaneous use of colistimethate sodium powder, reconstituted in aqueous solution, in the neck of 1- to 3-day-old chickens.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–069 that provides for use of First Guard™ Sterile Powder (colistimethate sodium), reconstituted in sterile saline or sterile water for injection, for subcutaneous injection in the neck of 1- to 3-day-old chickens for control of early mortality associated with *Escherichia coli* organisms susceptible to colistin. The drug is restricted to use by or on the order of a licensed veterinarian. The NADA is approved as of January 13, 1998, and the regulations are amended by adding new § 522.468 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the regulations are amended by adding new § 556.167 to reflect that a tolerance for residues of colistimethate in edible chicken tissues is not required. The drug is a therapeutic product administered to 1- to 3-day-old chickens at the equivalent of 0.2 milligrams of colistin activity per chicken. At 28 days post-treatment, the earliest possible time broiler chickens would be considered marketable, total residues were calculated to be at least 36 times below the safe concentration level.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for food-producing animals qualifies for 5 years of marketing exclusivity beginning January 13, 1998, because no active ingredient of the drug (including any ester or salt thereof) has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen

in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.468 is added to read as follows:

§ 522.468 Colistimethate sodium powder for injection.

(a) *Specifications.* Each vial contains colistimethate sodium equivalent to 10 grams colistin activity and mannitol to be reconstituted with 62.5 milliliters sterile saline or sterile water for injection. The resulting solution contains colistimethate sodium equivalent to 133 milligrams per milliliter colistin activity.

(b) *Sponsor.* See 046573 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use.* (1) 1- to 3-day-old chickens.

(i) *Dosage.* 0.2 milligram colistin activity per chicken.

(ii) *Indications for use.* Control of early mortality associated with *Escherichia coli* organisms susceptible to colistin.

(iii) *Limitations.* For subcutaneous injection in the neck of 1- to 3-day-old chickens. Not for use in laying hens producing eggs for human consumption. Do not use in turkeys. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.167 is added to read as follows:

§ 556.167 Colistimethate.

A tolerance for residues of colistimethate in the edible tissues of chickens is not required.

Dated: February 22, 1998.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 98–6909 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Narasin, Bambermycins, and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst Roussel Vet. The NADA provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing narasin, bambermycins, and roxarsone.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2604.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059, filed NADA 140–843 that provides for using approved single ingredient Type A medicated articles, Monteban® (45 grams (g) narasin activity per pound (/lb)), Flavomycin® (4 and 10 g bambermycins activity/lb), and 3–Nitro® (45.4, 90, and 227 g roxarsone/lb), to make Type C medicated broiler feeds containing 54 to 72 g narasin, 1 to 2 g bambermycins, and 22.7 to 45.4 g roxarsone/ton of feed. The Type C medicated broiler feed is used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. mivati*, *E. acervulina*, *E. maxima*, and *E. brunetti*, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation in broiler chickens. NADA 140–843 is approved as of March 18, 1998.

Accordingly §§ 558.363 and 558.366 (21 CFR 558.363 and 558.366) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. In addition, 21 CFR 558.95(d)(5) is amended by adding new paragraph (d)(5)(iii) to provide a cross-reference to the 3-way combination drug Type C medicated feed.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

This approval is for use of approved Type A medicated articles to make combination Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required for making a Type B or Type C medicated feed as in this application. Under section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of narasin, bambermycins, and roxarsone Type A medicated articles to make Type C medicated feeds as provided in NADA 140–843 requires a feed mill license rather than an approved FDA Form 1900.

Under section 512(c)(2)(F)(ii) of the act, this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning March 18, 1998 because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

FDA has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.95 is amended by adding paragraph (d)(5)(iii) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) * * *

(iii) Narasin and roxarsone as in § 558.363.

3. Section 558.363 is amended by revising paragraph (a), redesignating paragraph (c) as paragraph (d) and reserving paragraph (c), and by adding paragraph (d)(1)(vii), to read as follows:

§ 558.363 Narasin.

(a) *Approvals.* Type A medicated articles containing specified levels of narasin approved for sponsors identified in § 510.600(c) of this chapter for use as in paragraph (d) of this section are as follows:

(1) To 000986: 36, 45, 54, 72, and 90 grams per pound, paragraph (d)(1)(i) of this section.

(2) To 000986: 36, 45, 54, 72, and 90 grams per pound, with 10, 20, 50, and 80 percent roxarsone, paragraph (d)(1)(ii) of this section.

(3) To 000986: 36 grams per pound, with 36 grams per pound nicarbazin, paragraph (d)(1)(iii) of this section.

(4) To 012799: 36, 45, 54, 72, and 90 grams per pound, with 2 and 10 grams per pound bambermycins, paragraph (d)(1)(iv) of this section.

(5) To 012799: 45 grams per pound, with 4 and 10 grams per pound bambermycins, and 45.4, 90, and 227 grams per pound roxarsone, paragraph (d)(1)(vii) of this section.

* * * * *

(d) * * *

(1) * * *

(vii) *Amount per ton.* Narasin 54 to 72 grams, bambermycins 1 to 2 grams, and roxarsone 22.7 to 45.4 grams.

(A) *Indications for use.* For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. mivati*, *E. acervulina*, *E. maxima*, and *E. brunetti*, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation in broiler chickens.

(B) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Do not allow adult turkeys or horses or other equines access to formulations containing narasin. Ingestion of narasin by these animals has been fatal. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. Withdraw 5 days before slaughter. Narasin as provided by 000986 in § 510.600(c) of this chapter, bambermycins by 012799, and roxarsone by 046573.

* * * * *

§ 558.366 [Amended]

4. Section 558.366 *Nicarbazin* is amended, in paragraph (c) in the table in the first entry, under the column "Limitations" by removing "558.363(c)(1)(iii)" and by adding in its place "558.363(d)(1)(iii)."

Dated: February 22, 1998.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 98–6905 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8739]

RIN 1545–AV09

IRS Adoption Taxpayer Identification Numbers; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8739, which was published in the **Federal Register** on Monday, November 24, 1997 (62 FR 62518) relating to taxpayer identifying numbers.

DATES: This correction is effective November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Michael L. Gompertz, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 6109 of the Internal Revenue Code.

Need for Correction

As published, TD 8739 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 8739), which was the subject of FR Doc. 97–30550, is corrected as follows:

§ 301.6109–1 [Corrected]

1. On page 62520, column 2, § 301.6109–1(h)(2)(iii), line 1, the language "(iii) Paragraphs (a)(1)(i), (a)(1)(ii)(A)," is corrected to read "(iii) Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A),". On the last two lines of the paragraph, the language "(a)(1)(ii) introductory text, and (a)(1)(ii)(A) and (B)." is corrected to read "(a)(1)(ii) introductory text, (a)(1)(ii)(A) and (a)(1)(ii)(B).".

§ 301.6109–1T [Corrected]

2. On page 62520, column 3, § 301.6109–1T(h), the last three lines of the paragraph, the language "further guidance prior to November 24, 1997, see § 301.6109–1(a)(1)(i), (a)(1)(ii)(A) and (a)(1)(ii)(B)." is corrected to read "guidance applicable prior to November 25, 1997, see § 301.6109–1(a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A) and (a)(1)(ii)(B).".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–6927 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 20

Implementation of New Market Opportunities Program

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: The Postal Service proposes to adopt, as an interim rule, new rates and conditions of mailing for the New Market Opportunities Program. This program is designed to meet the needs of direct mail and mail order companies seeking to easily and cost effectively enter the international marketplace. It is available for companies who wish to test sending catalogs and merchandise to any or all of the following markets: Brazil, Canada, Chile, China, France, Germany, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom. A mailer will send catalogs using International Surface Air Lift or VALUEPOST ™/CANADA service and merchandise using Global Package Link. To assist the mailers' tests in these markets, the Postal Service includes other services as part of the program, including translation of order form and

company information sheet into in-country language, and advice on catalog layout, as well as mailing list companies, call centers, and other resources in the destination countries.

DATES: These regulations take effect March 18, 1998.

ADDRESSES: Written comments should be directed to Manager, Mail Order, Room 370–IBU, International Business Unit, U.S. Postal Service, Washington, D.C. 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert E. Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: The New Market Opportunities Program provides bulk mailing services designed to assist direct mailers, catalogers, and other mailers in entering new international markets. This program ties together International Surface Air Lift (ISAL), VALUEPOST ™/CANADA, and Global Package Link (GPL) to Brazil, Canada, Chile, China, Hong Kong, France, Germany, Japan, Mexico, Singapore, and the United Kingdom with other services so that mailers may conduct market tests.

The New Market Opportunities Program is adopted as an interim rule in response to the requests of numerous mailers for an easy way to test whether their merchandise is marketable in the markets where the program is available. The Postal Service believes that this program will make it possible for companies to conduct such a test, with minimal risk and investment, and will cover the cost of providing the service with a reasonable contribution to institutional costs.

To qualify for this program, a direct mailer, cataloger, or other mailer must use ISAL or VALUEPOST ™/CANADA service to send a minimum of 25,000 catalogs to one of the test markets and use Global Package Link service to ship orders received. Each test will last up to 6 months, and more than one country may be tested simultaneously.

Companies that participate in the New Market Opportunities Program will receive information to determine their best country-specific prospects, delivery of their catalogs in the selected test market(s), delivery of their packages, and evaluation of test results at the end of the test.

The New Market Opportunities Program is available to Brazil, Canada, Chile, China, France, Germany, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom.

Rates for this program include delivery of catalogs; translation of the company's order form and company information to the in-country language of the test market; lists of suppliers for mailing lists, call centers, payment processing companies; country-specific information; lettershop services for mailers that have not used ISAL or VALUEPOST ™/CANADA for at least 1 year, a cost analysis worksheet; post-test evaluation of results; and participation in a post-test visit to USPS-selected destination countries. Rates are one fixed price for all markets for 25,000 catalogs and a per-piece charge for more than 25,000. Maximum weight allowable for each catalog is 6 ounces.

Although exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service adopts as an interim rule International Mail Manual (IMM) 248 , which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 20.1).

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408.

2. The IMM is amended to incorporate part 248, New Market Opportunities Program, as follows:

International Mail Manual (IMM)

2 Conditions for Mailing * * *

* * * * *

248 New Market Opportunities Program

248.1 Definition

The New Market Opportunities Program is designed for catalog companies that desire to test sending catalogs and merchandise to foreign countries. Each test will last up to 6 months. More than one market may be tested simultaneously. To participate in the New Market Opportunities Program, a company must sign a service agreement. This will contain the mailer's agreement to use International Surface Air Lift (ISAL) or VALUEPOST ™/CANADA service to send its catalogs and Global Package Link (GPL) service to fulfill catalog orders to selected destination markets. The mailer must meet all qualifications of GPL, either directly or through a GPL wholesaler (see 620 and 630). In addition to the delivery of catalogs and merchandise, the Postal Service will provide the mailer with:

.11. A translation of the company's order form and ordering instructions to the language of the destination country, if appropriate.

.12. A translation of a single page in the mailer's catalog, which describes the company and the products it sells, to the language of the destination country, if appropriate.

.13. A list of suppliers including list providers, call centers, and payment processing companies for the destination countries.

.14. A description of the destination country culture and mail order environment, including, but not limited to, country demographics, potential mail order products, direct marketing infrastructure, payment options, and catalog configuration.

.15. Lettershop service through the USPS Prequalified Wholesaler Program, if the mailer has not used ISAL or VALUEPOST ™/CANADA for 1 year or more.

.16. A cost analysis worksheet to assist the mailer in making a cost analysis and projections for each market test.

.17. Participation in a post-test visit to Postal Service-selected destination countries.

248.2 Qualifying Mailings

Only printed matter as defined in 241 that meets all applicable mailing standards may be sent through this program. To qualify, a mailing must consist of a minimum of 25,000 ISAL or VALUEPOST ™/CANADA pieces to each country tested.

248.3 Availability

The New Market Opportunities Program is available to the following markets: Brazil, Canada, Chile, China, France, Germany, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom. The service is available as a Direct Ship or Drop Ship acceptance under 246.712 and 246.32 for ISAL and 247 for VALUEPOST ™/CANADA.

248.4 Special Services

The special services described in chapter 3 are not available for items sent as part of the New Market Opportunities Program as ISAL or VALUEPOST ™/CANADA.

248.5 Customs Documentation

See the customs forms requirements in 244.6 for ISAL and in 247.42 for VALUEPOST ™/CANADA.

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248.6 Permits

ISAL and VALUEPOST™/CANADA mailings must be submitted to the Postal Service with PS Form 3651, International Statement of Mailing (for Permit Imprints and Metered Bulk Letters to Canada).

248.7 Postage

248.71 Rates

Rates for the first 25,000 pieces per country:

Price per country: $22,000
Price for Canada: $17,000
Discount per country $ 2,000
(3 or more countries in a 6-month period)

Additional catalogs over 25,000 pieces: Add $0.80 per piece.

Note: Cost for GPL shipments is additional (see 620).

248.72 Payment Methods

Payment must be paid through advance deposit account by permit imprint only. Mailings must consist of identical weight pieces.

248.8 Weight and Size Limits

The maximum weight per piece is 6 ounces.

248.9 Preparation Requirements

All of the requirements for preparation of ISAL and VALUEPOST™/CANADA in 246 and 247 must be met.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–6943 Filed 3–17–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300622; FRL–5773–1]

RIN 2070–AB78

Tebufenozide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide tebufenozide and its metabolites in or on non-brassica leafy vegetables (Crop Group 4) at 5.0 part per million (ppm), brassica (cole) leafy vegetables (Crop Group 5) at 5.0 ppm, and turnip tops at 5.0 ppm for an additional 1-year period, to February 28, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on leafy vegetables, brassica leafy vegetables, and turnip tops. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective March 18, 1998. Objections and requests for hearings must be received by EPA, on or before May 18, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300622], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300622], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 278, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of March 5, 1997 (62 FR 9984) (FRL–5591–7), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of tebufenozide and its metabolites in or on non-brassica leafy vegetables (Crop Group 4) at 5.0 ppm, brassica (cole) leafy vegetables (Crop Group 5) at 5.0 ppm, and turnip tops at 5.0 ppm, with an expiration date of February 28, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebufenozide on leafy vegetables, brassica leafy vegetables, and turnip tops for this year growing season because there are no viable alternative products due to the beet armyworm's (BAW) and diamondback moth's proclivity for developing resistance to all classes of insecticides. It was asserted that the last five years have seen a marked increase in the amounts of active ingredient necessary to achieve control of the BAW in vegetables, and during 1995 many growers reported failures with all products and combinations. This increase of pesticide use has lead to the pest developing a high tolerance to these chemicals. This tolerance has in turn allowed the pest to develop high populations which cause economic damage to the various cole and leafy vegetable crops. These pests tend to do the most damage to the crowns or growing points of young plants. Other damage is to the harvestable heads, in which they contaminate and lower the quality of the produce. The applicant contends that without new chemistry to combat these pests, growers will continue to suffer significant economic losses. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of tebufenozide on leafy vegetables, brassica lelafy vegetables, and turnip tops for control of the beet armyworm and diamondback moth in California and the beet armyworm in Texas.

EPA assessed the potential risks presented by residues of tebufenozide in or on leafy vegetables, brassica leafy vegetables, and turnip tops. In doing so, EPA considered the new safety standard

in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of March 5, 1997 (62 FR 9984). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on February 28, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on leafy vegetables, brassica leafy vegetables, and turnip tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 18, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300622]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

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required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 26, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.482 [Amended]

2. In § 180.482, by amending paragraph (b) in the table, for the commodities "Leafy vegetable (Colebrassica)," "Leafy vegetables (non-brassica)," and "Turnip tops" by removing "2/28/98" and by adding in its place "2/28/99".

[FR Doc. 98–6387 Filed 3–17–98; 8:45 am]
BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPPTS–300601; FRL–5764–7]

RIN 2070–AB78

Fludioxonil Pesticide Tolerance; Deletion of Duplicate Tolerance, Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a technical amendment to the tolerance regulations for Fludioxonil issued under section 408(e) and (l)(6) of the Food, Drug and Cosmetic Act.

DATES: This technical amendment is effective March 18, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. Office location, telephone number and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA (703) 308–9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 1997 (61 FR 41286; FRL–5732–5), EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e) and (l)(6), established a time-limited tolerance for residues of fludioxonil on potatoes at 0.02 parts per million (40 CFR 180.512). Subsequently, on October 29, 1997, EPA issued a rule establishing a permanent tolerance for fludioxonil on potatoes in reponse to a petition submitted by Ciba-Geigy requesting the tolerance (40 CFR 180.516). Through oversight, tolerances have been established for residues of fludioxonil on potatoes in two different sections of 40 CFR part 180. Tolerances for fludioxonil now appear in both §§ 180.512 and 180.516. In addition, the tolerance level is exactly the same in both sections. Since § 180.512 is time-limited and expires on August 1, 1998, and since that tolerance was established on the Agencies initiative, EPA is removing § 180.512. Also, EPA is revising the section title for § 180.516 and paragraph (a) to add the common name of the funigicide.

I. Regulatory Assessment Requirement

This is a technical amendment to a final tolerance regulation issued under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This technical amendment does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). In addition, since this type of action does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply.

II. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 26, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.512 [Removed]

2. By removing § 180.512.

§ 180.516 [Amended]

3. In § 180.516 by revising the section title and paragraph (a) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(a) *General.* A tolerance is established for residue of the fungicide fludioxonil, [4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile], in or one the following food commodities:

Commodity	Parts per million
Potatoes	0.02

* * * * *

[FR Doc. 98–6386 Filed 3–17–98; 8:45 am]
BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300616; FRL–5770–9]

RIN 2070–AB78

Clomazone; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide clomazone in or on watermelons at 0.1 part per million (ppm) for an additional 1-year period, to May 30, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on watermelons. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective March 18, 1998. Objections and requests for hearings must be received by EPA, on or before May 18, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300616], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300616], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9359; e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 2, 1997 (62 FR 24040–24045) (FRL–5713–6), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of clomazone and its metabolites in or on watermelons at 2 ppm, with an expiration date of May 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of clomazone on watermelons for this year growing season because no herbicides with efficacy similar to clomazone are currently registered for use and that without clomazone, significant economic loss will likely result. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of clomazone on watermelons for control of weeds in watermelons.

EPA assessed the potential risks presented by residues of clomazone in or on watermelons. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 2, 1997 (62 FR 24040-24045). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on May 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on watermelons after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 18, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility

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that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300616]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 3, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.425 [Amended]

2. In § 180.425, by amending paragraph (b) in the table, for the commodity "watermelons" by removing the date "May 30, 1998" and by adding in its place "5/30/99."

[FR Doc. 98–6385 Filed 3–17–98; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5040

[WO–130–1820–0024 1A]

RIN 1004–AC93

Sustained-Yield Forest Units

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: BLM is revising the regulations on sustained yield forest units to remove obsolete or unnecessary sections and update the remaining regulations that are still necessary for the administration of the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road grant lands in Oregon (referred to in this rule as O. and C. lands).

EFFECTIVE DATE: April 17, 1998.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lyndon Werner, telephone: 503–952–6071; or Erica Petacchi, telephone: 202–452–5084.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted
III. Responses to Comments
IV. Procedural Matters

I. Background

The final rule published today is a stage of a rulemaking process that revises the regulations in 43 CFR part 5040. This rule was preceded by a proposed rule published on November 15, 1996 in the **Federal Register** at 61 FR 58501. The proposed rule provided for a comment period of 60 days, and BLM received no public comments.

The final rule is part of BLM's initiative to streamline its regulations in the Code of Federal Regulations (CFR). BLM is removing unnecessary or obsolete regulations, and making the remainder of the regulations more understandable and relevant. BLM has determined that the existing regulations on master units and cooperative sustained-yield units are obsolete and will be removed from the CFR. The regulations on establishing sustained-yield forest units are still necessary, and BLM is rewriting this section to remove references to master units and cooperative sustained-yield units. The section on exchanges is still relevant, but is merely a restatement of the statutory language, and will be removed.

II. Final Rule as Adopted

The final rule removes obsolete requirements from the CFR and duplicative provisions that can be found in the underlying statutes. This rule will allow BLM to dissolve the existing master units and establish more appropriately configured sustained-yield forest units.

Subpart 5040—Sustained-Yield Unit and Cooperative Agreements

This subpart is removed in its entirety. These regulations merely restate the language in the Act of August 28, 1937 (50 Stat. 874, 43 U.S.C. 1181) ("the Act").

Subpart 5041—Annual Productive Capacity

This subpart is rewritten for clarity but not changed in any substantial way. BLM will continue to declare the annual productive capacity of the O. and C. lands under the principle of sustained-yield.

Subpart 5042—Master Units

This subpart is removed in its entirety. For the reasons presented in the Background section of the proposed rule (61 FR 58501–58504, November 15, 1996), BLM does not need to designate master units as an interim step to designating sustained-yield forest units and cooperative agreements. The currently designated master units will remain in effect until the final rule is effective and BLM completes the process for the designation of sustained-yield forest units.

Subpart 5043—Sustained-Yield Forest Units

This subpart is revised to improve clarity and consistency with the removal of subpart 5042—Master Units. The revision has no effect on BLM's customers because it does not diminish the level of public involvement in BLM's determination of sustained-yield forest units.

Subpart 5044—Cooperative Sustained-Yield Agreements

This subpart is removed in its entirety. There are currently no cooperative sustained-yield agreements or any apparent interest in their designation. If this changes, the O. and C. Lands Act provides for their designation and regulations governing their designation can again be published.

Subpart 5045—Exchanges

This subpart is removed in its entirety. This removal has no effect on BLM's operations, because BLM will still have the authority to exchange O. and C. lands under the Act of July 31, 1939.

The remaining sections of part 5040 are rewritten and renumbered in a new part 5040.

III. Responses to Comments

BLM received no comments from the public. In developing this final rule, however, BLM identified several issues that needed minor clarifications:

1. Section 5040.5(a) needs clarifying language to explain that until BLM follows the process of designating Sustained Yield Units, the Master Units remain in effect and section 5040.5(a) does not apply.

2. In the proposed rule, BLM referred to the lands affected by the regulations in two different ways: "the lands it manages in western Oregon" and "the O. and C. lands." Reviewers suggested that BLM should be consistent by referring to the lands affected as "the O. and C. lands."

In the final rule, we have corrected these minor inconsistencies, by:

1. Adding the following statement to section 5040.4: "Until new sustained-yield forest units are designated for the first time in accordance with 43 CFR 5040, the current master unit designations will continue to be in effect'; and

2. Adding the following to section 5040.1, after the first sentence: "'These lands are hereafter referred to as "the O. and C. lands."'

IV. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**).

Paperwork Reduction Act

This rule contains no information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities. The rule provides for a new process by which BLM may establish sustained-yield forest units. Before BLM can establish units, we must hold public hearings in the areas affected by the proposed units. This gives any potentially affected small entity the chance to provide input to BLM that could influence the outcome of the proposals. In addition, the O. and C. Lands Act provides that when BLM establishes sustained-yield forest units, the units must provide a permanent source of raw materials to support local communities and industries, giving due consideration to established forest products operations. For these reasons, BLM has determined that there is no need to prepare a regulatory flexibility analysis.

Unfunded Mandates Reform Act

Revision of 43 CFR part 5040 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. The final rule will allow BLM to establish new sustained-yield forest units, and will remove several obsolete provisions in the part 5040 regulations, but there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Lyndon Werner, Oregon State Office, Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington DC 20240; Telephone: 202–452–5042 (Commercial or FTS).

List of Subjects for 43 CFR Part 5040

Forests and forest products, Public lands.

Dated: February 18, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated above, and under the authority of 43 U.S.C. 1740, subchapter B, BLM is revising Part 5040, Group 5000, Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations to read as follows:

PART 5040—SUSTAINED-YIELD FOREST UNITS

Sec.

5040.1 Under what authority does BLM establish sustained-yield forest units?
5040.2 What will BLM do before it establishes sustained-yield forest units?
5040.3 How does BLM establish sustained-yield forest units?
5040.4 What is the effect of designating sustained-yield forest units?
5040.5 How does BLM determine and declare the annual productive capacity?

Authority: 43 U.S.C. 1181e; 43 U.S.C. 1740.

§ 5040.1 Under what authority does BLM establish sustained-yield forest units?

BLM is authorized, under the O. and C. Lands Act (43 U.S.C. 1181a *et seq.*) and the Federal Land Policy and Management Act, to divide the lands it manages in western Oregon into sustained-yield forest units. These lands are hereafter referred to as "the O. and C. lands." BLM establishes units that contain enough forest land to provide, insofar as practicable, a permanent source of raw materials to support local communities and industries, giving due consideration to established forest products operations.

§ 5040.2 What will BLM do before it establishes sustained-yield forest units?

Before BLM designates sustained-yield forest units, it will:

(a) Hold a public hearing in the area where it proposes to designate the units. BLM will provide notice, approved by the BLM Director, to the public of any hearing concerning sustained-yield forest units. This notice must be published once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the forest units are situated. BLM may also publish the notice in a trade publication; and

(b) Forward the minutes or meeting records to the BLM Director, along with an appropriate recommendation concerning the establishment of the units.

§ 5040.3 How does BLM establish sustained-yield forest units?

After a public hearing, BLM will publish a notice in a newspaper of general circulation in the county or counties affected by the proposed units, stating whether or not the BLM Director has decided to establish the units. If the BLM Director determines that the units should be established, BLM will include in its notice information on the geographical description of the sustained-yield forest units, how the public may review the BLM document that will establish the units, and the date the units will become effective. BLM will publish the notice before the units are established.

§ 5040.4 What is the effect of designating sustained-yield units?

Designating new sustained-yield forest units abolishes previous O. and C. master unit or sustained-yield forest unit designations. Until new sustained-yield forest units are designated for the first time in accordance with 43 CFR part 5040, the current master unit designations will continue to be in effect.

§ 5040.5 How does BLM determine and declare the annual productive capacity?

(a) If BLM has not established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to the O. and C. lands, treating them as a single unit.

(b) If BLM has established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to each separate forest unit.

(c) If it occurs that BLM has established sustained-yield forest units for less than all of the O. and C. lands, then BLM will determine and declare the annual productive capacity as follows:

(1) BLM will treat sustained-yield forest units as in paragraph (b) of this section; and

(2) BLM will treat any O. and C. lands not located within sustained-yield forest units as a single unit.

[FR Doc. 98–6896 Filed 3–17–98; 8:45 am]
BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 96–187; FCC 97–23]

Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996 (Tariff Streamlining Provisions for Local Exchange Carriers)

CFR Correction

In title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of October 1, 1997, on pages 131 and 132, paragraphs (e), (1), and (2) should be redesignated to paragraphs (f), (1), and (2), and paragraph (e) redesignated from paragraph (d) at 62 FR 5778, Feb. 7, 1997, should be reinstated to read as follows:

§ 61.58 [Corrected]

* * * * *

(e) *Other carriers.* (1) Tariff filings in the instances specified in paragraphs (d)(1) (i), (ii), and (iii) of this section must be made on at least 15 days' notice.

(i) Tariffs filed in the first instance by new carriers.

(ii) Tariffs filings involving new rates and regulations not previously filed at, from, to or via points on new lines; at, from to or via new radio facilities; or for new points of radio communication.

(iii) Tariff filings involving a change in the name of a carrier, a change in Vertical and Horizontal coordinates (or other means used to determine airline mileages), a change in the lists of mileages, a change in the lists of connecting, concurring or other participating carriers, text changes, or the imposition of termination charges calculated from effective tariff provisions. The imposition of termination charges does not include the initial filing of termination liability provisions.

(2) Tariff filings involving a change in rate structure, a new service offering, or a rate increase must be made on at least 45 days' notice.

(3) All tariff filings not specifically assigned a different period of public notice in this part must be made on at least 35 days' notice.

* * * * *

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1816 and 1852

FAR Supplement Coverage of Award Fee Evaluations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) coverage on award fee evaluations to correct inaccurate references and improve clarity.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Office of Procurement, Contract Management Division (Code HK), (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

NASA has different award fee evaluation procedures for service and end item contracts. For service contracts, all award fee evaluations during the contract term are final. For end item contracts, evaluations during the contract term are "interim" evaluations that are superseded by a single final evaluation at contract completion. The NFS has inaccurate references associating interim evaluations with service contracts, and these are deleted by this rule. In addition, NASA allow for provisional payment of award fee, i.e., payments made during award fee periods in anticipation of the Government evaluation at the end of the period. References to provisional payments in the NFS are inconsistent, and this rule conforms these references. Finally, to improve its clarity, the NFS coverage is restructured and miscellaneous editorial changes are made. None of the NFS revisions in this rule change NASA policy.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1816 and 1852

Government procurement.

Deidre Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1816 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1816 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1816–TYPES OF CONTRACTS

2. In section 1816.405–271, paragraph (a) is revised to read as follows:

1816.405–271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405–273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with another contract type (e.g., CPIF/AF).

* * * * *

3. In paragraph (a) of section 1816.405–272, the first sentence is revised to read as follows:

1816.405–272 Award fee evaluation periods.

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length.

* * *

* * * * *

4. Section 1816.405–273 is revised to read as follows:

1816.405–273 Award fee evaluations.

(a) *Service contracts.* On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) *End item contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405–276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as "Source Selection Information—See FAR 3.104".

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5. In section 1816.405–275, paragraph (b)(2) is revised to read as follows:

1816.405–275 Award fee evaluation scoring.

* * * * *

(b) * * *

(2) *Very good* (90–81): Very effective performance, fully responsive to contract requirements; contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

* * * * *

6. Section 1816.405–276 is added to read as follows:

1816.405–276 Award fee payments and limitations.

(a) *Interim award fee payments.* The amount of an interim award fee payment (see 1816.405–273(b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional award fee payments.* Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period. Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score.

(c) *Fee payment.* The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

1816.406–70 [Amended]

7. In paragraph (a) of section 1816.406–70, the last sentence is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. In section 1852.216–76, the clause date is revised, the designated paragraph (f) is redesignated as paragraph (g) and republished, a new paragraph (f) is added, and Alternate I to the clause is removed, to read as follows:

1852.216–76 Award fee for service contracts.

As prescribed in 1816.406–70(a), insert the following clause:

Award Fee for Service Contracts

March 1998

* * * * *

(f)(1)Provisional award fee payments [*insert "will" or "will not", as applicable*] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [*insert the frequency of provisional payments (not more often than monthly)*] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate. This determination is not subject to the Disputes clause.

(4) Provisional award fee payments [*insert "will" or "will not", as appropriate*] be made prior to the first award fee determination by the Government.

(g) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

[FR Doc. 98–7033 Filed 3–17–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Endangered Status for the Peninsular Ranges Population Segment of the Desert Bighorn Sheep in Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the distinct vertebrate population segment of bighorn sheep (*Ovis canadensis*) (Peninsular bighorn sheep) occupying the Peninsular Ranges of southern California, to be an endangered species pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). The Service originally proposed to list the Peninsular bighorn sheep throughout its range, which extends into Baja California, Mexico. However, because new information received during the comment periods indicated listing bighorn sheep populations in Baja California is not warranted, the final listing determination includes only the Peninsular bighorn sheep population segment in the United States. The synergistic effects of disease; low recruitment; habitat loss, degradation, and fragmentation; non-adaptive behavioral responses associated with residential and commercial development; and high predation rates coinciding with low bighorn sheep population numbers threaten the continued existence of these animals in southern California. This rule implements Federal protection and recovery provisions of the Act for the Peninsular bighorn sheep. Critical habitat is not being designated.

DATES: This rule is effective March 18, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Arthur Davenport, at the above address (telephone: 760/431–9440).

Background

The bighorn sheep (*Ovis canadensis*) is a large mammal (family Bovidae) originally described by Shaw in 1804

(Wilson and Reeder 1993). Several subspecies of bighorn sheep have been recognized on the basis of geography and differences in skull measurements (Cowan 1940, Buechner 1960). These subspecies of bighorn sheep, as described in this early work, include *O. c. cremnobates* (Peninsular bighorn sheep), *O. c. nelsoni* (Nelson bighorn sheep), *O. c. mexicana* (Mexican bighorn sheep), *O. c. weemsi* (Weems bighorn sheep), *O. c. californiana* (California bighorn sheep), and *O. c. canadensis* (Rocky Mountain bighorn sheep). However, as discussed later, recent genetic studies question the validity of some of these subspecies and reveal the need to reevaluate bighorn sheep taxonomy. Regardless of the taxonomy, Peninsular bighorn sheep in southern California meet the Service's criteria for consideration as a distinct vertebrate population segment and are treated as such in this final rule.

Bighorn sheep (*Ovis canadensis*) are found along the Peninsular Mountain Ranges from the San Jacinto Mountains of southern California south into the Volcan Tres Virgenes Mountains near Santa Rosalia, Baja California, Mexico, a total distance of approximately 800 kilometers (km) (500 miles (mi)). The area occupied by the distinct vertebrate population segment covered in this final rule coincides with the range of the currently questioned subspecies *O. c. cremnobates* in California. The California Fish and Game Commission listed *O. c. cremnobates* as "rare" in 1971. The designation was changed to "threatened" by the California Department of Fish and Game (CDFG) to conform with terminology of the amended California Endangered Species Act (CESA).

The Peninsular bighorn sheep is similar in appearance to other desert associated bighorn sheep. The species' pelage (coat) is pale brown, and its permanent horns, which become rough and scarred with age, vary in color from yellowish-brown to dark brown. The horns are massive and coiled in males; in females, they are smaller and not coiled. In comparison to other desert bighorn sheep, the Peninsular bighorn sheep is generally described as having paler coloration and larger and heavier horns that are moderately divergent at the base (Cowan 1940).

The habitat still remaining for the Peninsular bighorn sheep in the United States is managed by the California Department of Parks and Recreation (CDPR) (46 percent), Bureau of Land Management (BLM) (27 percent), private landowners (24 percent), Bureau of Indian Affairs (1 percent), U.S. Forest Service (USFS) (1 percent), and other State agencies (1 percent) (BLM 1993).

The Peninsular bighorn sheep occurs on open slopes in hot and dry desert regions where the land is rough, rocky, sparsely vegetated and characterized by steep slopes, canyons, and washes. Most of these sheep live between 91 and 1,219 meters (m) (300 and 4,000 feet (ft)) in elevation where average annual precipitation is less than 10 centimeters (cm) (4 inches (in)) and daily high temperatures average 104° Fahrenheit in the summer. Caves and other forms of shelter (e.g., rock outcrops) are used during inclement weather. Lambing areas are associated with ridge benches or canyon rims adjacent to steep slopes or escarpments. Alluvial fan areas are also used for breeding and feeding activities.

From May through October, bighorn sheep are dependent on permanent sources of water and are more localized in distribution. Bighorn sheep populations aggregate during this period due to a combination of breeding activities and diminishing water sources. Summer concentration areas are associated primarily with dependable water sources, and ideally provide a diversity of vegetation to meet the forage requirements of bighorn sheep.

Bighorn sheep species are diurnal. Their daily activity pattern consists of feeding and resting periods that are not synchronous either within or between groups, as some sheep will be resting while others are feeding. Browse is the dominant food of desert-associated bighorn sheep. Plants consumed may include brittlebrush (*Encelia* sp.), mountain mahogony (*Cercocarpus* sp.), Russian thistle (*Salsola* sp.), bursage (*Hyptis* sp.), mesquite (*Proposis* sp.), palo verde (*Cercidium* sp.), and coffeeberry (*Rhamnus* sp.). During the dry season, the pulp and fruits of various cacti are eaten. Native grasses are eaten throughout the year and are important food, especially near waterholes.

Bighorn sheep species produce only one lamb per year. The gestation period is about 5 to 6 months (Geist 1971). Lambing occurs between January and June, with most lambs being born between February and May. Lactating ewes and young lambs congregate near dependable water sources in the summer. Ewes and lambs frequently occupy steep terrain that provides a diversity of slopes and exposures for escape cover and shelter from excessive heat. Lambs are precocial and within a day or so climb as well as the ewes. Lambs are able to eat native grass within 2 weeks of their birth and are weaned between 1 and 7 months of age. By their second spring, bighorn sheep lambs are independent of the ewes and, depending upon physical condition, may attain sexual maturity during the second year of life (Cowan and Geist 1971, Geist 1971).

Distinct Vertebrate Population Segment

Recent analyses of bighorn sheep genetics and morphometrics suggest that the taxonomy of Peninsular bighorn sheep needs to be reevaluated (Ramey 1991, Whehausen and Ramey 1993, Boyce *et al.* 1997). A recent analysis of the taxonomy of bighorn sheep using morphometrics (e.g., size and shape of skull components) failed to support the current taxonomy (Wehausen and Ramey 1993). Ramey (1995) found little genetic variation among desert bighorn sheep using restriction fragment length polymorphism (RFLP) analysis.

By contrast, Boyce *et al.* (1997) found high genetic diversity within and between populations of desert bighorn sheep. In this study, microsatelite loci (MS) and major histocompatibility complex (MHC) were analyzed. It appears that the results of Ramey (1995) and Boyce *et al.* (1997) differ because dissimilar molecular markers were analyzed. That is, the choice of molecular markers (e.g., mtDNA, microsatelites, allozymes) and analytical techniques (RFLP, DNA sequencing, etc.) apparently influence both the discriminating power of the techniques and conclusions relating to the genetic variability of a species.

Ongoing research into the genetic variation of bighorn sheep using a refined technique of mtDNA analysis (i.e., DNA sequencing) has resulted in the discovery of significantly higher genetic variation in mtDNA of the Peninsular bighorn sheep than was found by Ramey (Walter Boyce, DVM, Ph.D. and Esther Rubin, University of California at Davis, *in litt.*, 1997). Boyce and Rubin found several matriarchal lines where Ramey (1995) found only one. The difference in results apparently is a result of the increased resolution provided by the technique used by Boyce and Rubin (Walter Boyce, DVM, Ph.D. and Esther Rubin, University of California at Davis, *in litt.*, 1997). Regardless how the taxonomy issue is finally resolved, the biological evidence supports recognition of Peninsular bighorn sheep as a distinct vertebrate population segment for purposes of listing as defined in the Service's February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722).

The definition of "species" in section 3(16) of the Act includes "any distinct

population segment of any species of vertebrate fish or wildlife which interbreeds when mature." For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered—(1) the discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?) (61 FR 4722).

The distinct population segment of bighorn sheep in the Peninsular Ranges is discrete in relation to the remainder of the species as a whole. This population segment is geographically isolated and separate from other desert bighorn sheep. This is supported by an evaluation of the population's genetic variability and metapopulation structure (Boyce *et al.* 1997). The genetic distance found to exist between the Peninsular bighorn sheep and their nearest neighbors at the north end of the range (i.e., bighorn sheep occupying the Orocopia, Eagle, and San Gorgonio mountains) was three times greater than that found within subpopulations of Peninsular bighorn sheep sampled (Boyce *et al.* 1997). Genetic distance is a measure of the degree of genetic difference (divergence) between individuals, populations, or species.

The distinct vertebrate population segment covered in this final rule extends from the northern San Jacinto Mountains to the international border between the United States and Mexico. The range of Peninsular bighorn sheep in Mexico extends southward into the Volcan Tres Virgenes Mountains, located just north of Santa Rosalia, Baja California, Mexico, and is not addressed in this rulemaking. In accordance with distinct vertebrate population segment policy, the Service may determine a population to be discreet at an international border where there are significant differences in (1) the control of exploitation; (2) management of habitat; (3) conservation status, or (4) regulatory mechanisms (61 FR 4722). In the case of the Peninsular bighorn sheep, there are significant differences between the United States and Mexico in regard to the species' conservation status.

Information received from the Mexican Government indicates the population in Baja California is not likely to be in danger of extirpation within the foreseeable future because there are significantly more animals there than occur in the United States (Felipe Ramirez, Mexico Institute of Ecology, *in litt.* 1997). Based on DeForge *et al.* (1993) there are estimated to be between 780 and 1,170 adult Peninsular bighorn sheep in Baja California, Mexico, north of Bahia San Luis Gonzaga. In addition to the higher population numbers, the Mexican Government has initiated a conservation program for bighorn sheep that should improve the status of these animals. Based on information received from the Mexican Government, components of the conservation program include the involvement of the local people in the establishment of conservation and management units that allow some use of the bighorn sheep while promoting its conservation and recovery. Approximately 1,199,175 ha (485,306 ac) have been included in this program for Peninsular bighorn sheep.

Peninsular bighorn sheep are biologically and ecologically significant to the species in that they constitute one of the largest contiguous metapopulations of desert bighorn sheep. The metapopulation spans approximately 160 km (100 mi) of contiguous suitable habitat in the United States. The loss of Peninsular bighorn sheep in the United States would isolate bighorn sheep populations in Mexico, including the Weems subspecies, from all other bighorn sheep, thereby producing a significant gap in the range of bighorn sheep. In addition, the Peninsular bighorn sheep occur in an area that has marked climatic and vegetational differences as compared to most other areas occupied by bighorn sheep. The majority of the range of the Peninsular bighorn sheep is classified as Colorado Desert, a subarea of the Sonoran Desert. This area experiences significantly different climatic variation (e.g., timing and/or intensity of rainfall) than the Mojave or other Sonoran deserts and contains a somewhat different flora (Monson and Sumner 1990, Hickman 1993). Though rainfall is greater in the higher mountains (e.g., San Jacintos), rainfall averages less than 13 mm (5 in) and snow is almost unknown in most of this area (Monson and Sumner 1990). It is important to note that the Peninsular bighorn sheep do not typically occur above 1,200 m (4,000 ft) in the higher mountains (Monson and Sumner 1990). This is unusual because bighorn sheep typically occupy higher elevational habitat that contains sparse vegetative cover. The low amount of rainfall, high evapotranspiration rate, and temperature regime in the majority of the Peninsular bighorn sheep's range is notably different from other North American deserts. The species' ability to exist under these conditions suggests unique behavioral and/or physiological adaptations.

Recent information further supports the significance of the Peninsular bighorn sheep to the overall species. Based on an evaluation of the population's genetic variability by Boyce *et al.* (1997) and Ramey (1995), the Peninsular bighorn sheep contain a large portion of the total genetic diversity of the species. Based on these initial studies, there is at least one distinct haplotype (Ramey 1995) and one unique MS allele (Boyce *et al.* 1997) that are restricted entirely to Peninsular bighorn sheep. High genetic diversity indicates a capacity to adapt to a changing environment.

Status and Distribution

The Peninsular bighorn sheep in the United States declined from an estimated 1,171 individuals in 1971 to about 450–600 individuals in 1991 (CDFG 1991). Recent population estimates indicate continued decline, and Peninsular bighorn sheep in the United States now number approximately 280 (DeForge *et al.* 1995, J. Deforge, *in litt.*, 1997, E. Rubin and W. Boyce, *in litt.*, 1996, W. Boyce and E. Rubin, *in litt.*, 1997). The population of Peninsular bighorn sheep in the United States is currently divided amongst approximately eight ewe groups.

About 20 Peninsular bighorn sheep are held in captivity at the Bighorn Institute in Palm Desert, California. The Bighorn Institute, a private, nonprofit organization, was established in 1982 to initiate a research program for the Peninsular bighorn sheep. The Living Desert, an educational and zoo facility also located in Palm Desert, California, maintains a group of 10 to 12 Peninsular bighorn sheep at its facility.

The continuing decline of the Peninsular bighorn sheep is attributed to a combination of factors, including: (1) the effects of disease (Buechner 1960, DeForge and Scott 1982, DeForge *et al.* 1982, Jessup 1985, Wehausen *et al.* 1987, Elliott *et al.* 1994); (2) low recruitment (DeForge *et al.* 1982, Wehausen *et al.* 1987, DeForge *et al.* 1995); (3) habitat loss, degradation, and fragmentation (J. DeForge, *in litt.*, 1997, David H. Van Cleve, CDPR, *in litt.*, 1997, USFWS, unpub. info., 1997); (4) and, more recently, high rates of predation coinciding with low population numbers (W. Boyce and E. Rubin, *in litt.* 1997).

Previous Federal Action

On September 18, 1985, the Service designated the Peninsular bighorn sheep as a category 2 candidate and solicited status information (50 FR 37958). Category 2 included taxa for which the Service had information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a proposed rule. In the January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), Notices of Review, the Peninsular bighorn sheep was retained in category 2. In 1990, the Service initiated an internal status review of these animals. This review was completed in the spring of 1991 resulting in a change from category 2 to category 1 designation. Category 1 were those taxa for which the Service had sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. This change to category 1 was inadvertently omitted from the November 21, 1991, Animal Notice of Review (56 FR 58804).

On July 15, 1991, the Service received a petition from the San Gorgonio Chapter of the Sierra Club to list the Peninsular bighorn sheep as an endangered species. The petition requested that the Service list the Peninsular bighorn sheep throughout its entire range, or, at least, list the population occurring in the Santa Rosa and San Jacinto mountains of southern California, through emergency or normal procedures. The Service used information from the status review and the July 15, 1991, petition to determine that substantial information existed indicating that the Peninsular bighorn sheep may be in danger of extinction throughout all or a significant portion of its range. This finding was made on December 30, 1991, pursuant to section 4(b)(3)(A) of the Act and was published in the **Federal Register** on May 8, 1992, as a proposed rule to list the Peninsular bighorn sheep as endangered (57 FR 19837). The proposed rule constituted the 1-year finding for the July 15, 1991, petitioned action. The proposed listing status was reconfirmed in the November 15, 1994 (59 FR 58982), and February 28, 1996, (61 FR 7596), and September 19, 1997 (62 FR 49398) Notices of Review. On February 14, 1995, the Sierra Club Legal Defense Fund (plaintiff) filed suit in Federal District Court for the Eastern District of California to compel the Secretary of the Interior and the Director of the Service to make a final determination to list the Peninsular bighorn sheep as an endangered or threatened species.

On April 10, 1995, Congress enacted a moratorium prohibiting work on listing actions (Public Law 104–6), thus preventing the Service from taking final listing action on the Peninsular bighorn sheep. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Appropriations Act (Pub. L. No. 104–134, 100 Stat. 1321, 1996). The Service published guidance for restarting the listing program on May 16, 1996 (61 FR 24722).

In response to the Sierra Club Legal Defense Fund suit, the District Court issued a stay order on April 10, 1996. On October 15, 1996, the plaintiff asked the Court to lift the stay and require the final Peninsular bighorn sheep listing decision within 30 days. On November 26, the District Court entered an order denying the plaintiff's request to lift the stay, but certified the issue underlying that denial for interlocutory appeal. The case is currently on interlocutory appeal before the Ninth Circuit Court of Appeals.

Due to new information becoming available during the lapse between the original comment period (November 4, 1992) and lifting of the listing moratorium, the Service reopened the public comment period on April 7, 1997, for 30 days (62 FR 16518). That comment period closed May 7, 1997. Because of additional requests, the Service reopened the public comment period on June 17, 1997, for an additional 15 days (62 FR 32733), and then again on October 27, 1997, for another 15 days (62 FR 55563).

The processing of this final rule conforms with the Service's final listing priority guidance as published in the **Federal Register** on December 5, 1996 (61 FR 64475) and subsequently extended on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals and fourth priority (Tier 4) to processing critical habitat determinations and delistings. This final rule constitutes a Tier 2 action. This rule constitutes the final determination resulting from the listing proposal and all comments received during the comment periods.

Summary of Comments and Recommendations

In the May 8, 1992, proposed rule (57 FR 19837) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule for the Peninsular bighorn sheep. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Legal notices were published in the *Riverside Press-Enterprise* and the *San Diego Union-Tribune* on May 26, 1992, and invited general public comment on the proposal. No public hearings were conducted.

In compliance with Service policy on information standards under the Act (59 FR 34270; July 1, 1994), the Service solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and issues relating to the taxonomy, population models, and supportive biological and ecological information for the Peninsular bighorn sheep. In addition, their opinions were solicited on the discreteness and significance of the Peninsular bighorn sheep. The responses received from two of the reviewers supported the proposed listing action and provided additional insight into the discreteness and significance of the population. All three reviewers commented on the taxonomy of bighorn sheep and the general need for a reevaluation of this group. The third reviewer did not comment on the discreteness or significance of the Peninsular bighorn sheep nor make a recommendation concerning the listing action. Information and suggestions provided by the reviewers were considered in developing this final rule, and incorporated where applicable.

During the initial 6-month comment period the Service received a total of 56 comments, including 14 that were submitted after the comment period closed. (Multiple comments from the same party on the same date were regarded as one comment.) Of these, 40 (71 percent) supported the listing, ten (18 percent) opposed the listing, and six (11 percent) were non-committal. During this initial period, the BLM and the Bighorn Institute took a neutral stance on the proposal. The CDPR, six conservation organizations, four local governments, and 30 other groups or individuals supported listing. The CDFG, the Desert Bighorn Council, and several property owners opposed the listing.

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During the three subsequent extensions of the public comment period, the Service received a total of 49 responses (multiple/same issue comments received from a single party were regarded as one comment). Of these, 36 (73 percent) supported the listing, ten (20 percent) opposed the listing, and four (8 percent) were non-committal.

During the first comment period extension, the BLM and the Bighorn Institute recommended listing the Peninsular population as endangered. The CDPR and one conservation organization reaffirmed their support for the listing of the Peninsular bighorn sheep as endangered. On May 6, 1997, MCO Properties, Inc. made an untimely request for public hearing. In lieu of a hearing, the Service extended the public comment period a second time.

Subsequent to the second public comment period extension, the Mexican Government expressed an interest in the potential listing of the Peninsular bighorn sheep. To acquire additional information on the status, distribution, and management of bighorn sheep in Baja California, Mexico, the public comment period was reopened on October 27, 1997 (62 FR 55563). During this third and last comment period extension, the Mexican Government submitted information pertinent to the listing proposal (F. Ramirez, *in litt.* 1997). In particular, the Mexican Government reported on population numbers and the institution of a new conservation program for bighorn sheep. Due in part to the implementation of this conservation program, the southern boundary of the distinct vertebrate population segment was re-delineated at the United States/Mexico International Border.

The Service reviewed all of the written comments referenced above. The comments were grouped and are discussed under the following issues. In addition, all biological and commercial information obtained through the public comment period have been considered and incorporated, as appropriate, into the final rule.

Issue 1: Several commenters contended that the subspecific taxonomy of *Ovis canadensis* was the subject of scientific debate that should be resolved before the Service finalizes this action. At a minimum, the Service should consider a listing of *O. c. cremnobates* rather than a population.

Service Response: The Service concurs that the taxonomy of the Peninsular bighorn sheep is in need of further scientific review. However, the final listing determination for the Peninsular bighorn sheep was based on analysis as a distinct vertebrate population segment. Section 3(16) of the Act defines a species to include "* * * any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." To guide decisions to recognize distinct vertebrate population segments the Service established policy on February 7, 1996 (61 FR 4722). The recognition of Peninsular bighorn sheep as a distinct vertebrate population segment is consistent with this policy and the biological status of this bighorn sheep group warrants such designation. See further discussion of this issue under the Distinct Vertebrate Population Segment section of this rule.

Issue 2: One commenter stated that bighorn sheep in Baja California, Mexico, were distinct from those occurring in southern California, and should therefore not be listed.

Service Response: The southern demarcation for the distinct vertebrate population segment was moved to the United States/Mexico International Border because a discreteness condition regarding a political boundary between two countries was satisfied. However, based on the best available biological information there is no indication that Peninsular bighorn sheep in Baja California, Mexico, are biologically distinct from those in California. The commenter did not provide additional information supporting this statement.

Issue 3: One commenter observed that the proposed rule did not comply with the policy on recognizing distinct vertebrate population segments.

Service Response: The proposed rule was published prior to the publication of the Service's policy on recognizing distinct vertebrate population segments (61 FR 4722). The final rule, in addressing only Peninsular bighorn sheep occurring in southern California, satisfies the policy. A discreteness condition of the policy recognizes the validity of delimiting population segments "by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist." See the section on Distinct Vertebrate Population Segment and its relation to the Peninsular bighorn sheep for further discussion of this issue.

Issue 4: Several commenters expressed concern that data from only a limited portion of the Peninsular Ranges in California (i.e., the Santa Rosa Mountains) was being used to characterize the overall status of the Peninsular bighorn sheep. In addition, the commenters stated that no attempt was made to gather and analyze data for other portions of this population's range (e.g., Mexico, Anza Borrego State Park).

Service Response: The Service has sought and evaluated all available information submitted during the public comment periods or otherwise available to determine this final listing action including information specifically related to Peninsular bighorn sheep populations located in areas other than the Santa Rosa Mountains. Information on threats and impacts to Peninsular bighorn sheep was obtained from those conducting research specific to this population segment. In addition, information on threats affecting bighorn sheep throughout the United States (e.g., see Geist 1971, Krausman and Leopold 1986) also was used as a reference to evaluate potential impacts on Peninsular bighorn sheep.

Although data were not available to plot specific population trends for all portions of the Peninsular bighorn sheep range (such as that in Mexico) (Alvarez 1976, Sanchez *et al.* 1988, Monson 1980, DeForge *et al.* 1993, Lee and Mellink 1996), there is a marked difference in recent and historic population estimates. Based on these estimates, there appears to have been a decline in the number of Peninsular bighorn sheep in Baja California, Mexico. It is not surprising that Peninsular bighorn sheep have declined in Baja California, Mexico, given the presence of the same factors identified for the decline in the United States (e.g., introduced pathogens). Although there is no empirical evidence that active epizootics are occurring at this time, the same diseases that have been implicated in the mortality of Peninsular bighorn sheep in the Santa Rosa Mountains have been detected in Peninsular bighorn sheep within Anza Borrego State Park (Clark *et al.* 1985), and Baja California, Mexico (J. DeForge, pers. comm., 1997). However, recent information provided by the Mexican government (F. Ramirez, *in litt.* 1997), regarding bighorn sheep found on the peninsula of Baja California, Mexico, supports the position that the Mexican population is not likely to be in danger of extirpation within the foreseeable future. Therefore, Peninsular bighorn sheep are not being listed in Mexico at this time.

Issue 5: Several commenters questioned a decline in the population numbers of Peninsular bighorn sheep. In addition, two of the commenters stated the information used in the proposed rule was speculative in nature. Another commenter observed that the population had remained stable over the past 7 years and, therefore, it was premature to list this species.

Service Response: The Service is required to base listing decisions on the best available scientific and commercial information available. Based on this information, the Service concludes that the Peninsular bighorn sheep has undergone a significant decline over much of its range since 1971 and there is a danger of extinction of this distinct population segment. See sections on Status and Distribution and Summary of Factors Affecting the Species for further discussion of this issue.

Issue 6: One commenter claimed that inadequate surveys have been conducted for Peninsular bighorn sheep in Baja California, Mexico.

Service Response: The Service agrees that, even under optimum conditions, it is difficult to detect each individual animal in a population during a survey. However, the survey methodology used by DeForge *et al.* (1993) (i.e., the use of a helicopter) is an accepted reliable method for censusing bighorn sheep populations.

Issue 7: One commenter expressed concern regarding the use of single-year data for sheep recruitment rates. The commenter stated that this use was not statistically valid or indicative of long-term trends and argued that high adult survivorship combined with pulses of good recruitment can counter a year of poor recruitment and allow the bighorn sheep to thrive. The commenter further suggested that data from Anza Borrego Desert State Park did not suggest clear and consistent declines in recruitment.

Service Response: The Service concurs with the general concerns of the commenter regarding the use of single year data versus long-term data in determining population trends. Single-year data were used as an example, in the proposed rule, of the potential effects of introduced disease on Peninsular bighorn sheep. Moreover, the example of low recruitment was also used for purposes of clarification. There is substantial information to support the conclusion that poor recruitment has been one of several factors contributing to the species' decline since at least 1977 (DeForge and Scott 1982, DeForge *et al.* 1982, Wehausen *et al.* 1987, Weaver 1989, Elliott *et al.* 1994, DeForge *et al.* 1995). As for the status of the Peninsular bighorn sheep, the population in the United States has declined from an estimated 1,171 individuals in 1971 to approximately 280 in 1997 (CDFG 1991, E. Rubin and W. Boyce, *in litt.* 1996; W. Boyce and E. Rubin, *in litt.* 1997). The overall precipitous decline is evident from years of data from representative portions of the range of the Peninsular bighorn sheep, (Wehausen *et al.* 1987, Sanchez *et al.* 1988, Weaver 1989, CDFG 1991, DeForge *et al.* 1995, Rubin *et al.* 1997).

Issue 8: One commenter questioned the validity of portions of the Service's analysis under Factor E (natural or manmade threats) in the proposed rule. The commenter additionally stated that the relative importance of population size, recruitment, and inbreeding in influencing the species' status was diminished because the Service did not take the metapopulation structure of the population into consideration. The commenter went on to contend the factors acting on small populations that Berger (1990) investigated were not necessarily limiting the Peninsular bighorn sheep and that his conclusions were speculative in nature. Another commenter questioned the scientific validity of Berger's study, because of issues of scale, and submitted a draft copy of a paper in support of their position.

Service Response: Although the metapopulation structure of the Peninsular bighorn sheep was not specifically mentioned in the proposed rule, the importance of maintaining connectivity within the range was stressed. In this regard, the potential impacts of isolation (e.g., inbreeding) were discussed.

The Service agrees that the factors affecting the populations Berger (1990) studied are not necessarily the same factors affecting the Peninsular bighorn sheep. However, the Service did not state the factors were the same in the proposed rule, but, referenced the conclusion of Berger (1990) that populations containing less than 50 bighorn sheep became extinct within 50 years. Again, the discussion on this issue in the proposed rule focused on the potential problems of isolation. Regardless of the metapopulation structure of Peninsular bighorn sheep, isolation compromises long-term viability. The Service finds no basis to support the statement that Berger's (1990) results were speculative. Berger's (1990) results appear to have been based on observed (reported) population numbers of several populations of bighorn sheep over an extended period of time. The Service concurs that the scale of a study can affect the results and ensuing interpretations. However, the issues facing the Peninsular bighorn sheep include fragmentation of habitat and the isolation of ewe groups. It is well known that small isolated groups are subject to a variety of genetic problems (Lacy 1997).

Issue 9: One commenter recommended the Service address the introduction and spread of disease due to equestrian use in Peninsular bighorn sheep habitat.

Service Response: The Service is unaware of any data that support the notion that disease transmission occurs between horses and bighorn sheep. If such information becomes available, this issue will be taken into consideration during the development and implementation of a recovery plan.

Issue 10: A commenter indicated the Service generally described the habitat of the Peninsular bighorn sheep in the proposed rule but did not specifically mention the habitat conditions that exist in the Santa Rosa Mountains or any other Peninsular Range. Furthermore, without this information, no specific management strategies can be formulated to protect the species.

Service Response: The Service agrees that specific management strategies will have to be based on more detailed ecological data. The CDFG has been sponsoring studies that will generate data needed to determine conservation requirements for the survival and recovery of the Peninsular bighorn sheep. The draft Peninsular Ranges Coordinated Bighorn Sheep Metapopulation Management Plan (BLM *et al.* 1993) describes the Peninsular Ranges' ecosystems and delineates Peninsular bighorn sheep historic, core, lambing, and movement habitat. These data will be used to develop conservation and recovery strategies.

Issue 11: One commenter pointed out that neither burros nor javelina (collared peccary) occur in the California Peninsular Ranges. Therefore, these species could not compete with the Peninsular bighorn sheep for food.

Service Response: The Service concurs. Javelina (collared peccary) and burros were mentioned in the proposed rule in an opening background paragraph describing potential competitors of bighorn sheep. The Service did not intend to suggest that javelina specifically competed with Peninsular bighorn sheep. Although not an issue for Peninsular bighorn sheep in the United States, burros have been documented in bighorn sheep habitat in Baja California, Mexico (DeForge *et al.*, 1993).

Issue 12: One commenter stated that the depleted status of Peninsular bighorn sheep was due more to mountain lion predation, conflicts with autos, and low population numbers than from impacts related to the construction and operation of golf courses.

Service Response: The decline of the Peninsular bighorn sheep is attributable to a number of factors that, in combination, are threatening the survival of this distinct population

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segment. See the Summary of Factors Affecting the Species section for further discussion.

Issue 13: Several commenters observed that many of the conclusions presented in the proposed rule appear to be based on information provided by the Bighorn Institute.

Service Response: In accordance with the Act and its implementing regulations, the Service has used the best scientific and commercial data available in assessing the status of the Peninsular bighorn sheep and making the final listing determination. The Service obtained information from various sources including the CDFG, CDPR, the Desert Bighorn Council, published articles from scientific journals, and the Bighorn Institute.

Issue 14: One commenter disagreed with the suggestion in the proposed rule that depressed recruitment was probably linked to disease throughout most of the Peninsular bighorn sheep's range. The commenter went on to state that exposure to disease did not demonstrate a population was declining because bighorn sheep populations commonly are exposed to disease organisms. The commenter also recommended that listing be delayed until further research could determine the different factors affecting the Peninsular bighorn sheep and its decline.

Service Response: The proposed rule indicated that depressed recruitment probably was linked to a disease epizootic. This was the most reasonable conclusion at that time based on available information regarding the effects of disease in the Santa Rosa Mountains and the general decline in the number of Peninsular bighorn sheep. The presence of recurrent disease remains a likely cause for the overall continuing decline of Peninsular bighorn sheep numbers. However, disease is not the only factor negatively affecting this species. The Peninsular bighorn sheep in the United States has declined by at least 76 percent since 1971. Another factor, in addition to disease, that has contributed to low recruitment is an increase in predation rates (W. Boyce and E. Rubin, *in litt.* 1997). The final rule indicates that exposure to diseases such as blue tongue occurs in a significant portion of the Peninsular bighorn sheep's range. Any delay in listing this distinct population segment to await the results of research on the interaction of the various threats could result in postponement of implementation of conservation and recovery measures, thus, contributing further to the Peninsular bighorn sheep's decline. See Factor C in the Summary of Factors Affecting the Species Section for a discussion of this topic.

Issue 15: One commenter stated that the effects of cattle grazing on wild sheep needed to be re-examined because the pathogen *Pasteurella* is not transmitted by cattle, but by domestic sheep. Another commenter stated that *Pasteurella* had not been a problem for the Peninsular bighorn sheep and was, therefore, not relevant to the listing.

Service Response: The Service's concerns about cattle grazing relative to the conservation of Peninsular bighorn sheep is prompted by the potential of cattle to harbor pathogens such as PI–3 and blue tongue. Both of these viruses have likely contributed to Peninsular bighorn sheep mortality. In addition, *Pasteurella* sp. also infect mule deer and there is overlap in the range of mule deer, domestic sheep, and Peninsular bighorn sheep. Although the Service is unaware of *Pasteurella* sp. infections in Peninsular bighorn sheep, domestic sheep use areas adjacent to San Jacinto Mountain and could be a source for this infection.

Issue 16: One commenter stated that data are inadequate to demonstrate an increase in predation, and the potential effect of this threat on Peninsular bighorn sheep had not been assessed in the defined range.

Service Response: The Service concurs that predation and its effect on Peninsular bighorn sheep has not been conclusively assessed. However, an increase in predation in the northern Santa Rosa Mountains had been noted. Since publication of the proposed rule, further indication of an increase in predation due to mountain lions has been documented (W. Boyce and E. Rubin, *in litt.* 1997)

Issue 17: Several commenters expressed concern about the use of current information and recommended the Service use information that is unbiased and peer-reviewed. One commenter questioned how a listing decision could be rendered when information is unavailable for review or has not undergone the scrutiny of impartial analysis. This commenter made specific reference to work being conducted by Oliver Ryder, Ph.D. of CRES, on Weems bighorn sheep.

Service Response: As required, the Service used the best available scientific and commercial information for the final listing decision and all such information was accessible for public review and analysis. However, only information related to Peninsular bighorn sheep ecology or otherwise relevant to determining whether listing this distinct population segment was warranted was the subject of this review. Moreover, peer review of the listing proposal by three appropriate and independent specialists was solicited to ensure the best biological and commercial information was used.

Issue 18: Several commenters suggested that development within and adjacent to Peninsular bighorn sheep habitat was not detrimental and that the Service should focus on other causes of the decline, such as grazing of cattle in bighorn sheep habitat. One of the commenters stated that current mitigation measures needed to be compiled and analyzed to determine if listing of the Peninsular bighorn sheep was warranted.

Service Response: Populations of Peninsular bighorn sheep located adjacent to urban development, such as golf courses and suburban housing areas, are known to modify their behavior in non-adaptive ways. For example, abnormally high concentrations of ewes, rams, and lambs regularly forage and water at such developments in the Rancho Mirage area of California throughout all months of the year (DeForge and Osterman, pers. comm., 1997).

This altered behavior has exposed the northern Santa Rosa Mountains ewe group to several unnatural conditions leading to relatively high levels of mortality (DeForge 1997): excessive exposure to high levels of fecal material increasing the chance for the spread of disease; excessive use of an unnaturally moist environment suitable for harboring infectious disease and parasites; unusually high levels of adult mortality associated with predation; exposure to non-native and potentially toxic plants; short-term lamb abandonment leading to increased risk of lamb predation; and loss of ewe group "memory" of other available water and forage areas in their historic home range (Rubin, Ostermann, and DeForge, pers. comm., 1997). See Factors C and E for further discussion of these issues.

Issue 19: One commenter stated that the Service had not monitored or considered the population numbers of bighorn sheep in some mountain ranges, such as the Little San Bernardino and Chocolate mountains.

Service Response: The bighorn sheep occurring in the Little San Bernardino and Chocolate mountains are not a component of the distinct vertebrate population segment under consideration in this final listing rule. Besides the geographic separation, recent genetic research (Boyce *et al.* 1997) concluded the Peninsular bighorn sheep population "formed a discrete group

with relatively high gene flow," whereas, the genetic distance between three nearby Mojave populations of desert sheep including the bighorn sheep occurring in the Little San Bernardino and Chocolate mountains was more than three times greater. That is, the genetic distance between the Peninsular bighorn sheep and their nearest neighbors supports the conclusion that the Peninsular group is discrete and meets the definition of a distinct vertebrate population segment.

Issue 20: One commenter stated there is no evidence to support the conclusion that hikers are contributing to the decline of Peninsular bighorn sheep.

Service Response: Peninsular bighorn sheep are sensitive to human disturbance during critical periods, such as lambing. For example, hikers detrimentally affect survival and recovery of this species when this activity is in proximity to lambing areas and bighorn sheep abandon these areas. Additional impacts occur when human activity hinders the access of Peninsular bighorn sheep to water during times of stress. MacArthur *et al.* (1979) documented a 20 percent rise in mean heart rate when bighorn sheep were continuously exposed to people. Another study found that areas experiencing more than 500 visitor-days of use per year resulted in a decline of use by bighorn sheep (Graham 1971 *in* Purdy and Shaw 1980).

Issue 21: Several commenters stated that the bighorn sheep decline could have been avoided. The Service should have been proactive and worked with local land use planning agencies by providing guidance concerning potential project-related impacts on Peninsular bighorn sheep. In addition, one of the commenters recommended that communication between land-use planning agencies and the Service commence immediately and that private, State, and Federal parties be treated equitably in the conservation process.

Service Response: The Service has long been involved with local planning agencies within the range of the Peninsular bighorn sheep as a technical adviser. Recommendations of the Service have not always been incorporated into project design and location resulting in irretrievable impacts (see Response to *Issue 18*). The Service concurs that all involved parties should be treated equitably during future efforts to conserve and recover the species.

Issue 22: One commenter stated that the grazing of cattle on Federal lands should be terminated where the activity may impact Peninsular bighorn sheep. The commenter also stated that movement corridors should be conserved.

Service Response: The Service contends that activities impacting Peninsular bighorn sheep should be avoided to the extent possible and endorses the conservation of movement corridors. Upon the listing of the Peninsular bighorn sheep, the issue of cattle grazing and movement corridors will be evaluated, and appropriate actions to be taken will be identified as part of the species conservation and recovery process.

Issue 23: One commenter stated that the Peninsular bighorn sheep would benefit from the addition of golf courses.

Service Response: The Service is unaware of scientific information demonstrating that golf courses are beneficial to the long-term survival and recovery of Peninsular bighorn sheep. There is evidence that golf courses negatively impact Peninsular bighorn sheep through the spread of parasites (e.g., hookworms) and availability of toxic plants such as oleander. Furthermore, golf courses do not provide ideal forage for this species and the associated human activity disrupts the normal behavioral patterns of bighorn sheep (see Response to *Issue 18*).

Issue 24: One commenter recommended that the Peninsular bighorn sheep be relocated where interaction with people would be less likely to occur.

Service Response: The Peninsular bighorn sheep have specific habitat requirements within the Peninsular Mountain Ranges of southern California. The removal of an animal from its native habitat to another location provides no assurance of survival. For listed species, such removal and relocation would have to meet recovery and conservation objectives to be consistent with purposes of the Act.

Issue 25: Several commenters suggested it was unlikely that Federal listing of this population would result in protection beyond that already provided by the California Environmental Quality Act (CEQA) and CESA. In addition, the commenters predicted that Federal listing may be detrimental by making the approval process for bighorn sheep reintroductions or management actions more complex.

Service Response: Federal listing of the Peninsular bighorn sheep will complement the protection options available under State law through measures discussed below in the "Available Conservation Measures" section. The Service will use established procedures to evaluate management actions necessary to achieve recovery of the species and thereby avoid any undue implementation delays. In addition, Federal listing would provide additional resources for the conservation of the species through sections 6 and 8 of the Act.

Issue 26: Several commenters stated that listing of the Peninsular bighorn sheep was unnecessary because effective voluntary efforts exist for safeguarding this species at no public cost. Furthermore, the existing population occurs almost exclusively on lands administered by State or Federal agencies on which private actions will not occur.

Service Response: Voluntary efforts are important to conservation of Peninsular bighorn sheep, but, to date, these efforts have not stabilized or reversed the numerical decline. The effects of urban and commercial development, disease, and predation continue to represent foreseeable threats to this distinct population segment. The inadequacy of existing regulatory mechanisms to stabilize or reverse the decline is discussed in Factor D.

Issue 27: Several commenters stated that the Service has ignored existing efforts to conserve the Peninsular bighorn sheep. In addition, one of these commenters recommends the Service consider the metapopulation approach to the management of wild sheep in California. This same commenter explained that the Peninsular Ranges population of bighorn sheep probably represents one of the most intact metapopulations of this species from the standpoint of demography and corridors connecting demes.

Service Response: Several State and Federal management plans have been prepared for bighorn sheep. However, these plans have not effectively reversed the decline of the Peninsular bighorn sheep population. Federal listing will complement and add to these conservation efforts. Existing management plans and the population ecology of the Peninsular bighorn sheep will be important components in the development of a recovery plan.

Issue 28: One commenter discussed the history of bighorn sheep management in Mexico and indicated that it had been ineffective in the past. The commenter also stated that the current program has inadequate resources for addressing threats on bighorn sheep such as poaching, disease exposure, and habitat loss from feral livestock. The commenter concluded that listing of the Peninsular bighorn sheep may substantially contribute to

the conservation and recovery of these animals.

Service Response: Based on information received during the last comment period extension, the Mexican Government established a new conservation program in April 1997 for bighorn sheep in Baja California, Mexico. Given that there are significantly more bighorn sheep in Baja California, Mexico, as compared to southern California, there is more time to ascertain the effectiveness of the conservation program and the status of Peninsular bighorn sheep in this area. If the population of Peninsular bighorn sheep decline under the Mexican Government's conservation program, future listing of the animals may be appropriate.

Issue 29: One commenter stated that Mexican authorities had not been properly consulted and these authorities did not support listing.

Service Response: As required, the Service corresponded on February 21, 1992, and June 8, 1992, with the Mexican government when the Peninsular bighorn sheep was proposed for listing. Moreover, the Service reopened the public comment period on October 27, 1997, for an additional 15 days to acquire additional information on the status, distribution, and management of bighorn sheep in Baja California, Mexico. Comments were received from the Mexican government during this third, and last, comment period extension and were considered in making the final listing determination.

Issue 30: One commenter stated the Service that the purpose of the Act was to conserve wild species. The commenter stated that the proximity of the Bighorn Institute to private development was, therefore, not a legitimate justification for proposing the species as endangered.

Service Response: The Service concurs with the commenter about conservation of species in the wild (i.e., "conserve wild species"). The Bighorn Institute and Living Desert Museum maintain captive populations of Peninsular bighorn sheep for scientific and educational purposes. This use is thought to have no negative impact on free-ranging bighorn. However, the fact that the Bighorn Institute is located close to residential/commercial development was mentioned in the proposed rule as an indirect factor affecting Peninsular bighorn sheep.

Issue 31: Several commenters criticized the Service for not addressing the economic impacts of listing the Peninsular bighorn sheep population as endangered. One of these commenters stated that the Peninsular bighorn sheep should not be listed if it would stifle economic development.

Service Response: In accordance with 16 U.S.C. § 1533(b)(1)(A) and 50 CFR 424.11(b), listing decisions are made solely on the basis of the best scientific and commercial data available. In adding the word "solely" to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act. The legislative history of the 1982 amendments states: "The addition of the word "solely" is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The Committee strongly believes that economic considerations have no relevance to determinations regarding the status of species and intends that the economic considerations have no relevance to determinations regarding the species' status.

Issue 32: One commenter indicated that a 30 day comment period for the listing proposal was inadequate and the continued processing of the proposed rule was prohibited by the Act.

Service Response: The Service has provided ample opportunity for public comment during this rule making process. The initial comment period for the proposed rule was open for 6 months. The Service reopened the comment period for an additional 30 days on April 7, 1997 (62 FR 16518), for an additional 15 days on June 17, 1997 (62 FR 32733), and then again for an additional 15 days on October 27, 1997 (62 FR 55564). See discussion under Previous Federal Action for added details.

Issue 33: One commenter stated that the Peninsular bighorn sheep should not be listed because once listed it becomes impossible to remove species from the list, and expressed concern regarding the closure of mountain areas to recreationists.

Service Response: A principal goal of the Service for listed species is to recover species to a point at which protection under the Act is no longer required. When the recovery goals for a species have been met, the Service may prepare a proposal to delist or reclassify the species based on the best available scientific and commercial information. The process for delisting or reclassifying a species, per section 4(b)(3)(A) of the Act, is similar to that used for listing. Regarding closure of mountain areas to recreationists, certain locations of special sensitivity, such as lambing areas, may be closed to prevent disturbance and promote the recovery of the Peninsular bighorn sheep. Most other recreational use restrictions would be unchanged.

Issue 34: One commenter recommended that the Service designate critical habitat concurrently with the listing of the Peninsular bighorn sheep. A second commenter disagreed with the Service's rationale for not proposing critical habitat but made no recommendation concerning the designation of critical habitat. Another commenter indicated that designation of critical habitat would not lead to increased poaching of the Peninsular bighorn sheep because of State listing and protection regulations. Commenters also stated that the discussions under the Critical Habitat and Available Conservation Measures sections in the proposed rule were contradictory.

Service Response: The Service has determined that designation of critical habitat would increase the threat of human activities to Peninsular bighorn sheep and that such a designation would not be beneficial to the species. The identification of such areas on critical habitat maps would likely call attention to the locations of bighorn sheep (especially lambing areas) and increase the degree of threat from human intrusion. Moreover, protection of habitat and other conservation actions are better addressed through recovery planning and section 7 consultation processes.

The discussions under Critical Habitat and Available Conservation Measures are not contradictory with respect to section 7. The Available Conservation Measures section addresses the conservation actions that result from listing. With or without critical habitat, Federal agencies are required to consult with the Service if an action may affect a listed species. Critical habitat is mentioned under Available Conservation Measures because regulations pertaining to section 7(a), 7(a)(2) and 7(a)(4) are reiterated. The responsibility of Federal agencies is discussed in general, and not in terms specifically related to the Peninsular bighorn sheep. For further discussion of this issue see the Critical Habitat section.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Peninsular bighorn sheep should be classified as an endangered distinct population segment. Procedures found at section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing

provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Peninsular bighorn sheep distinct population segment (*Ovis canadensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Peninsular bighorn sheep have been extirpated from several historic locations, including the Fish Creek Mountains (Imperial County) and the Sawtooth Range (San Diego County) (DeForge *et al.*, 1993). In the United States, the number of Peninsular bighorn sheep has declined from an estimated 1,171 individuals in 1971 to about 280 individuals in 1997 (DeForge *et al.* 1995; J. DeForge, *in litt.* 1997; E. Rubin and W. Boyce, *in litt.* 1996; W. Boyce and E. Rubin, *in litt,* 1997). Habitat loss (especially canyon bottoms), degradation, and fragmentation associated with the proliferation of residential and commercial development, roads and highways, water projects, and vehicular and pedestrian recreational uses are threats contributing to the decline of Peninsular bighorn sheep throughout its range.

Peninsular bighorn sheep are susceptible to fragmentation due to the distribution of habitat (narrow band at low elevation), use of habitat (e.g., occupying low elevations), and population structure. Restricted to elevations below the distribution of chaparral habitat (typically about 1,050 m (3,500 ft)), encroaching urban development and human related disturbance have the dual effect of restricting remaining animals to a smaller area and severing connections between ewe groups. The Peninsular bighorn sheep distinct population segment, like other bighorn sheep populations, is composed of ewe groups that inhabit traditional areas (cluster of canyons) and rams that move among these groups exchanging genetic material. Maintenance of genetic diversity allows small ewe groups to persist. The inability of rams and occasional ewes to move between groups erodes the genetic fitness of isolated groups. Urban and commercial development may ultimately fragment the metapopulation into isolated groups too small to maintain long-term viability, as apparently was the case in the extirpation of one ewe group in the United States in the recent past.

Urban development and associated increases in human activities in bighorn sheep habitat were reported to be the leading cause of extinction of an entire bighorn sheep population (ewes, rams, and lambs) in Tucson, Arizona (Krausman, pers. comm. 1997). In the River Mountains, Nevada, 9 of 17 marked desert bighorn sheep ewes altered their normal watering patterns; seven of these ewes abandoned the site (Leslie and Douglas 1980). Leslie and Douglas (1980) noted that, because ewes are more restricted in their movements and display a relatively high degree of fidelity to water sources, such abrupt changes in watering patterns are probably the result of extrinsic disturbances. Development has resulted in habitat abandonment in other bighorn sheep populations (Ferrier 1974). Other researchers have maintained that recreational encroachment can be most damaging during critical periods of the year for bighorn sheep, such as lambing (Geist 1971, Light 1973, Cowan 1974).

Abandonment of preferred habitat is anticipated to be detrimental to the long-term survival of Peninsular bighorn sheep. Abandonment of a lambing area in the Peninsular Ranges has been reported, and it has been attributed to human activities. The construction of a flood control project took place in Magnesia Canyon within the City of Rancho Mirage in 1982. This construction took place below a lambing area that was occupied by the northern Santa Rosa Mountains (SRM) ewe group. During the construction of the flood control project, the northern SRM ewe group relocated their lambing area from Bradly Peak (above Magnesia Canyon, and in direct line of site to the flood control project area) to Ramon Peak (DeForge, pers. comm., 1997). The distance between these two lambing areas is estimated at about 2.4 km (1.5 mi). Ramon Peak is situated away from areas occupied by humans, and human activities were correspondingly absent compared to Magnesia Canyon during construction. This relocation corresponded to the shift in habitat use and abandonment of some areas affected by the noise and view of humans during construction observed by DeForge and Scott (1982). DeForge and Scott (1982) also observed a marked difference in behavior when ewes with lambs used a watering area located 200 to 500 m (660 to 1650 ft) from the construction area. As further evidence that the abandonment of the lambing area was attributable to human activities, DeForge (pers. comm., 1997) also indicated that the ewe group re-occupied the Bradly Peak lambing area the following year after construction and human activities subsided. Approved and future projects such as Shadowrock Golf Course and Mountain Falls Golf Course, respectively, may result in the abandonment of the main remaining lambing area in the San Jacinto Mountains.

The Coachella Valley Association of Governments anticipates that by the year 2010 the human population there will increase from 227,000 to over 497,000, not including 165,000 to 200,000 seasonal residents. In 1989, the population of Imperial County was 116,000. The cities of El Centro, Imperial, and Calexico grew by about one-third between 1980 and 1989 (Bureau of Reclamation 1991). Increased human populations and associated commercial and residential development will likely continue to increase destruction of habitat and disrupt sheep behavioral patterns.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no open hunting season for Peninsular bighorn sheep in the United States. Although the limited opportunities for desert bighorn hunting in California create a temptation for taking without a license, poaching does not appear to be a problem at this time.

The Bighorn Institute and Living Desert Museum maintain captive populations of Peninsular bighorn sheep for scientific and educational purposes. This use is thought to have no negative impact on free-ranging bighorn.

C. *Disease or predation.* Disease is a major factor responsible for the precipitous decline of Peninsular bighorn sheep in the northern Santa Rosa Mountains and appears to significantly contribute to population declines elsewhere throughout its range. Elliott *et al.* (1994) found a higher level of exposure to viral and bacterial pathogens in the Peninsular bighorn sheep population than in other California bighorn sheep populations. Past higher exposure to pathogens suggests that disease may have been a major contributing factor in this distinct population segment's decline.

Bighorn sheep are susceptible to a variety of bacterial, fungal, and viral infections (DeForge *et al.* 1982, Turner and Payson 1982, Clark *et al.* 1985). Lambs and older sheep may be most susceptible to disease. Numerous endoparasites and ectoparasites are known to occur in this species (Russi and Monroe 1976, Lopez-Fonseca 1979). The relationship between disease, its transmission, and factors such as stress, density, competition, water availability, and disturbance are not well understood. Disease manifestation

probably occurs during stressful periods such as high or low population levels, reproductive activity, low nutrient availability, and climatic extremes (Taylor 1976, Turner and Payson 1982).

Disease is responsible for high lamb mortality rates in Peninsular bighorn sheep (Sanchez *et al.* 1988). In the northern Santa Rosa Mountains, excessive lamb mortality has occurred since 1977 (DeForge *et al.* 1995). DeForge *et al.* (1982) reported evidence that bighorn sheep lamb mortality in the Santa Rosa Mountains was due to pneumonia. Bacterial pneumonia is usually a sign of weakness caused by another agent such as a virus, parasite, or environmental stress that lowers an animal's resistance to disease. DeForge and Scott (1982) reported serological evidence that a combination of parainfluenza-3 (PI–3), blue tongue (BT), epizootic hemorrhagic disease (EHD), and contagious ecthyma (CE) viruses may be contributing initiating factors for the development of pneumonia in the Santa Rosa Mountains ewe group. In addition to exposure to the above mentioned diseases, antibody titers to respiratory syncytial virus (RSV) have been found in Peninsular bighorn sheep (Clark *et al.* 1985). Poor nutrition, predation, climatic changes, and human related impacts may contribute to high lamb mortality. Vaccination experiments have been conducted for BT and PI–3. Vaccines for PI–3 have been used with limited success in captive and wild sheep (Jessup *et al.* 1990).

Domestic and feral cattle can act as disease reservoirs. Several viruses discovered in sick bighorn sheep lambs were non-native and thought to be introduced by domestic livestock (DeForge, *in litt.* 1988). However, the potential role of livestock in disease transmission is not well understood. Staff of the Anza-Borrego Desert State Park (Park) completed a project to remove 119 feral cattle from the Park in 1990. Six types of viruses were detected in these cattle. Blood samples taken from cattle grazing in allotments adjacent to Peninsular bighorn sheep habitat within the Park have contained several viruses. Peninsular bighorn sheep in Mexico have also tested positive to exposure to viral and bacterial diseases (J. DeForge, pers. comm., 1997).

Other livestock may transmit diseases as well. Domestic sheep harbor bacteria (*Pasteurella* sp.) and viruses such as BT that can kill bighorn sheep, and close contact results in transmission to and the subsequent death of most or all of the exposed animals (Foreyt and Jessup 1982). Although no grazing allotments for domestic sheep have been issued by BLM or USFS in the Peninsular Ranges, the potential for their presence exists. Domestic sheep associated with commercial operations have been observed in the San Jacinto River along the northern edge of the San Jacinto Mountains. In addition, small numbers of domestic sheep are raised by private individuals living along the northern edge of the San Jacinto Mountains (A. Davenport, Fish and Wildlife Service, pers. obs. 1993).

Cattle or domestic sheep do not have to occupy Peninsular bighorn sheep habitat for disease transmission to occur. For example, Jessup *et al.* (1985) has found antibodies for this pathogen in mule deer. Blue tongue, a disease transmitted by a biting midge (*Culicoides* sp.), occurs in animals such as cattle, sheep, goats, mule deer, and bighorn sheep. Cattle appear to be capable of harboring the virus (Wallmo 1981, Jessup 1985, Jessup *et al.* 1990). Overlap in habitat use by Peninsular bighorn sheep, southern mule deer, and the biting midge may provide a pathway for disease transmission from deer populations associated with livestock to bighorn sheep. This pathway may involve either movement of an infected individual or the progression of an epizootic through the general deer population to Peninsular bighorn sheep where the two species overlap.

Based on available information, and given the susceptibility of bighorn sheep to introduced pathogens, disease will continue to pose a significant and underlying threat to the survival of Peninsular bighorn sheep. This situation is exacerbated by the presence of cattle and other livestock in and adjacent to areas occupied by Peninsular bighorn sheep.

Urban developments such as golf courses and associated housing areas also influence the effect of disease and predation on the Peninsular bighorn sheep. For example, high concentrations of ewes, rams, and lambs regularly forage and water at such developments in the Rancho Mirage area of California throughout all months of the year (DeForge and Osterman, pers. comm., 1997).

This behavior has exposed the northern Santa Rosa Mountains ewe group to several unnatural conditions leading to relatively high levels of mortality (DeForge 1997): excessive exposure to high levels of fecal material increasing the chance for the spread of disease; excessive use of an unnaturally moist environment suitable for harboring infectious disease and parasites; unusually high levels of adult mortality associated with predation; exposure to non-native and potentially toxic plants; short-term lamb abandonment leading to increased risk of lamb predation; and loss of ewe group "memory" of other available water and forage areas in their historic home range (Rubin, Osterman, and DeForge, pers. comm., 1997).

DeForge and Ostermann (in prep.) reported that urbanization was the leading known cause of death to Peninsular bighorn sheep occupying the northern Santa Rosa Mountains. During their investigation in the northern Santa Rosa Mountains, urbanization accounted for 34.2 percent of all recorded adult mortalities. Mortalities directly caused by urbanization were associated with ingestion of toxic, non-native plants, automobile collisions, and fences. Indirect causes of death associated with urbanization included parasite infestations and altered habitat use.

Exposure to high concentrations of feces can lead to unnaturally high levels of exposure to disease and parasites (Georgi 1969), and may contribute to Peninsular bighorn sheep population declines. Development in and adjacent to the Santa Rosa Mountains has established irrigated grass lawns, golf courses, and ponded waters providing environmentally suitable conditions for the strongyle parasite to successfully complete its life cycle, and increase its presence in a naturally arid environment. Sheep can be exposed to the strongyle parasite from the feces of an infected individual (Georgi 1969). Strongyle parasites have been reported in the northern Santa Rosa Mountains ewe group (DeForge and Osterman 1997). Animals exhibiting symptoms from the infection of a strongyle parasite are less active, forage less, tend to stay unusually close to water sources, become weak, are extremely emaciated, and exhibit anemia (Georgi 1969). Mortality from infection of the strongyle parasite may be experienced in sheep, particularly under situations that create additional stress (Georgi 1969).

Strongyle parasites are common in domestic ruminant, horse, and pig hosts, and require moist environments for the survival of its larval stages outside of the host. The strongyle parasite life cycle cannot be completed in arid environments, and strongyle infestations are generally rare in desert regions (Georgi 1969). However, between 1991 and 1996, more than 85 percent of the Peninsular bighorn sheep sampled in the Santa Rosa Mountains ewe group were infected with the strongyle parasite (DeForge and Osterman, unpubl. data). Ewes, rams, and lambs are susceptible to infection

with the strongyle parasite. Clinical signs of strongyle parasites in the Peninsular bighorn sheep have been reported only from the Santa Rosa Mountains ewe groups. Strongyle parasites have not been detected in the San Jacinto Mountains (SJM) ewe groups, and are considered rare or absent in other ewe groups.

Peninsular bighorn sheep exhibiting physiological stress related to an infestation of the strongyle parasite are at greater risk of predation, and less likely to successfully reproduce. Presently, there is no local or regional program to inoculate Peninsular bighorn sheep against non-native, introduced diseases, viruses, and parasites.

The reduction of disease outbreaks centers, in large part, on reducing factors that stress Peninsular bighorn sheep. Stress predisposes animals to disease (DeForge 1976). One of the major factors that stress bighorn sheep is human encroachment into their habitat. The decline of the Peninsular bighorn sheep is markedly steeper where the population borders the developing areas of the Coachella Valley. The decline in the population adjacent to urban areas in the Coachella Valley has been 35 percent greater than that occurring in Anza Borrego Desert State Park. Disease has been documented as an important factor in the decline of the population in the northern Santa Rosa Mountains (DeForge and Scott 1982, DeForge et al. 1982). Although the pathogens responsible for the diseases in the Santa Rosa Mountains have also been detected in Anza Borrego Desert State Park (Elliott et al. 1994), the population in Anza Borrego Desert State Park has declined at a slower rate (57 percent versus 92 percent).

Increased risk of predation has also been attributed to unnatural environments found at the urban interface. DeForge (pers. comm., 1997) has observed higher numbers of adult Peninsular bighorn sheep mortalities caused by mountain lions (*Felis concolor*) closer to the urban environment as compared to wild lands. Domestic dogs often occur along the urban-wild lands interface, and are also capable of injuring and killing lambs, ewes, and young or unhealthy rams. Encroaching development not only increases the abundance of domestic dogs along the urban-wild lands interface, but also creates unnatural landscape characteristics such as hedge rows, dense patches of tall vegetation, and other unnatural cover suitable for predators to hide and ambush potential prey. The Service has received complaints from residents of Thunderbird Cove that the presence of Peninsular bighorn sheep feeding on lawns attracts mountain lions, which some of the residents have observed.

Natural predation is not known to be a limiting factor in free-roaming desert bighorn sheep populations having adequate escape cover (Blaisdell 1961, Elliot 1961, and Weaver 1961). According to Wilson (1980), predation, as a mortality factor, decreases in significance as the size of a population increases. In addition, major predation problems have occurred with populations occupying restricted home ranges or fenced areas (Cooper 1974, Kilpatrick 1975). Compared to the northern Santa Rosa Mountains ewe group, ewe groups to the south, the majority of which do not occupy restricted home ranges, have experienced high rates of natural predation compared to urban-related mortalities (Boyce 1995). Ewe group sizes in these areas are larger than the northern Santa Rosa Mountains and San Jacinto Mountains ewe groups, and can likely tolerate such predation levels.

Coyote (*Canis latrans*), bobcat (*Lynx rufus*), mountain lion, gray fox (*Urocyon cinereoargenteus*), golden eagle (*Aquila chryseatos*), and free-roaming domestic dogs prey upon bighorn sheep. Predation generally has an insignificant effect except on small populations. In recent years, mountain lion predation of Peninsular bighorn sheep appears to have increased in the northern Santa Rosa Mountains (J. DeForge, pers. comm., 1991, W. Boyce and E. Rubin, *in litt.* 1997) and sheep encounters with domestic dogs are likely to increase with more urban development. The deaths of several radio-collared Peninsular bighorn sheep in Anza Borrego State Park have been attributed to mountain lions (W. Boyce and E. Rubin, *in litt.* 1997).

D. *The inadequacy of existing regulatory mechanisms.* The Peninsular bighorn sheep has been listed as threatened by the State of California since 1971 (CDFG 1991). Pursuant to the California Fish and Game Code and the CESA, it is unlawful to import or export, take, possess, purchase, or sell any species or part or product of any species listed as endangered or threatened. Permits may be authorized for certain scientific, educational, or management purposes. The CESA requires that State agencies consult with the CDFG to ensure that actions carried out are not likely to jeopardize the continued existence of listed species. However, most of the activities occurring within the range of the Peninsular bighorn sheep are not State authorized, funded, or permitted, resulting in few consultations under the CESA.

Shadowrock Golf Course and Altamira represent examples of locally approved projects that could have significant adverse effects on the Peninsular bighorn sheep. The City of Palm Springs approved the Shadowrock project which would eliminate important canyon bottom habitat and compromise or curtail sheep movement corridors. In addition, a settlement agreement between the developer of Shadowrock and the CDFG allows the project to proceed with only minor changes from the original design. Similarly, the City of Palm Springs has processed the Andreas Cove project proposal under a Negative Declaration, rather than the more rigorous Environmental Impact Report analysis. Moreover, the General Plans for most of the cities in the Coachella Valley inadequately address potentially significant development threats to the long-term conservation of Peninsular bighorn sheep. The Service is aware of approximately 15 additional project proposals that have the potential to adversely effect this species.

Regional conservation planning efforts are underway within the range of the Peninsular bighorn sheep, but these efforts are either incomplete, awaiting funding and implementation, or unproven for this distinct population segment. Given the development pressures and history of project approval in the Coachella Valley, the Service is concerned for the remaining Peninsular bighorn sheep in this area.

The Peninsular bighorn sheep receives some benefit from the presence of least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii extimus*) in its range; both are federally listed species. However, this benefit is limited due to the specialized habitats (riparian woodland) utilized by these birds. Similarly, section 404 of the Clean Water Act provides limited protection to small portions of the Peninsular bighorn sheep's range through the U.S. Army Corps of Engineers' (Corps) regulation of the discharge of dredged and fill material into certain waters and wetlands of the United States.

The California Fish and Game Code provides for management and maintenance of bighorn sheep. The policy of the State is to encourage the preservation, restoration, utilization, and management of California's bighorn sheep. The CDFG supports the concept of separating livestock from bighorn sheep (to create buffers to decrease the potential for disease transmission) through purchase and elimination of

livestock allotments. However, it has not been a policy of the CDFG to revoke current State livestock permits (State of California 1988), nor does the State have authority to regulate grazing practices on Federal lands. Accordingly, State listing has not prompted the BLM or USFS to effectively address disease transmission associated with Federal livestock grazing programs.

Since the Peninsular bighorn sheep was listed by the State of California in 1971, the CDFG has: (1) prepared management plans for the Santa Rosa Mountains and for the McCain Valley area of eastern San Diego County; (2) acquired 30,000 acres of land in the Santa Rosa Mountains; (3) initiated demographic, distributional, and disease research; and (4) established three ecological reserves that protect important watering sites. These actions are important to Peninsular bighorn sheep conservation, but, are not sufficient to stem the long-term population decline.

The BLM and the USFS manage lands that contain habitat for Peninsular bighorn sheep. The BLM has management plans that include management activities for the Peninsular bighorn sheep. The San Bernardino National Forest Plan also addresses the Peninsular bighorn sheep. Both agencies administer grazing allotments on portions of their land. The Bureau of Indian Affairs, Bureau of Reclamation, and the Department of Defense also conduct activities within or adjacent to the range of this distinct population segment. The BLM, CDFG, CDPR, USFS Service, and Service are jointly developing the Peninsular Ranges Coordinated Bighorn Sheep Metapopulation Management Plan (BLM *et al.* 1993). The completion of this plan is pending. Current Federal management plans have not stopped the decline in numbers of Peninsular bighorn sheep on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* Recurrent drought, disturbance at watering sites, urban and agricultural water withdrawals, and domestic livestock use decrease the amount of water available for Peninsular bighorn sheep. In particular, small ewe groups are affected. Peninsular bighorn sheep, similar to other bighorn sheep, exhibit a seasonal pattern of distribution based on forage and water availability. Water is available via tenajas (natural catchment basins adjacent to streams), springs, and guzzlers. During late summer and early winter (July to November), when water requirements and breeding activities are at a peak, the sheep tend to concentrate near water sources, particularly as tenajas and springs dry up. During this time, the sheep depend on reliable water and food sources. Bighorn sheep require a quantity of water approximately equal to 4 percent of their body weight (1 gallon) per day during the summer months and a dependable water supply is needed at about 2-mile intervals (Blong and Pollard 1968). When water is not available in sufficient quantities (especially during hot, dry weather) the mortality rate for older sheep, lambs, and sick or injured animals is likely to increase.

Several studies have shown that bighorn sheep respond to human presence (as well as roads and housing developments) by altering behavior patterns to avoid contact. This behavioral response may preclude or disrupt sheep use of essential water sources, mineral licks, feeding areas, or breeding sites (Hicks and Elder 1979, Hamilton *et al.* 1982, MacArthur *et al.* 1982, Miller and Smith 1985, Krausman and Leopold 1986, Sanchez et al. 1988). Proposed country club/residential developments that have been approved or proposed within or immediately adjacent to Peninsular bighorn sheep habitat will substantially increase human activity. Unrestricted use of hiking and mountain bike trails in sensitive areas could further disrupt bighorn behavior and negatively affect this species. A reversal in behavior has been noted by the immediate return of Peninsular bighorn sheep to areas that were recently closed off to hikers in the Santa Rosa Mountains (e.g., Magnesia Falls Canyon) (Ken Corey, U.S. Fish and Wildlife Service, pers. com., 1997)

Some species of ornamental plants, associated with urban developments, have been attributed to causes of mortality in bighorn sheep (Wilson et al. 1980, DeForge 1997). Between 1991 and 1996, five Peninsular bighorn sheep in the northern Santa Rosa Mountains ewe group died from ingesting ornamental, toxic plants such as oleander (*Nerium oleander*) and laurel cherry (*Prunus* sp.) (DeForge and Ostermann 1997). A toxic, ornamental nightshade plant may have caused the death of a young ram (a necropsy revealed an unknown species of nightshade) in Palm Springs in 1970 (Weaver and Mensch 1970). Due to the absence of comprehensive studies of the toxicity of ornamental plants to bighorn sheep, only the two plant species mentioned above are known to be poisonous to the Peninsular bighorn sheep. It is expected that more species of ornamental plants are toxic to this species (DeForge, pers. comm. 1997).

Collisions with vehicles also are a source of Peninsular bighorn sheep mortality. Turner (1976) reported Peninsular bighorn sheep being killed as a result of automobile collisions on Highway 74 in areas where blind curves exist in known sheep movement areas. The Thunderbird Estates and golf course is located across Highway 111 (on the east side) from Peninsular bighorn sheep habitat in Rancho Mirage. Individuals from the northern Santa Rosa Mountains ewe group cross over Highway 111, or use a flood control channel that is under Highway 111, to access forage and water at this golf course (DeForge, pers. comm 1997). Dominant ewes will lead five to seven other ewes and rams to the golf course across Highway 111 which has led to collisions with automobiles (DeForge, pers. comm. 1997). DeForge and Ostermann (1997) also reported that nine Peninsular bighorn sheep in the Santa Rosa Mountains were hit and killed by automobiles between 1991 and 1996, and in combination with other urban-related factors, accounted for the majority of mortalities.

The Peninsular bighorn sheep apparently is currently functioning as a metapopulation (BLM *et al.* 1993, Boyce *et al.* 1997); there is interaction between separate groups. However, the potential loss of dispersal corridors and habitat fragmentation by residential and commercial development and roads and highways may isolate certain groups. Isolation increases the chances for inbreeding depression by preventing rams from moving among ewe groups and eliminating exploratory and colonizing movements by ewe groups into new or former habitat. Inbreeding and the resultant loss of genetic variability can result in reduced adaptiveness, viability, and fecundity, and may result in local extirpations. Small, isolated groups are also subject to extirpation by naturally occurring events such as fire. Although inbreeding has not been demonstrated in the Peninsular bighorn sheep, the number of sheep occupying many areas is critically low. The minimum size at which an isolated group can be expected to maintain itself without the deleterious effects of inbreeding is not known. Researchers have suggested that a minimum effective population size of 50 is necessary to avoid short-term inbreeding depression, and 500 to maintain genetic variability for long-term adaptation (Franklin 1980). Berger (1990) studied bighorn sheep populations in the southwestern United States and found that all populations with less than 50 individuals became extinct within 50 years. Berger (1990) concluded that extinction in

populations of this size cannot be overcome without intensive management, because 50 individuals, even in the short-term, do not constitute a viable population size. This issue is complicated because of the structure and function of bighorn sheep populations. Because they appear to be functioning as a type of metapopulation, the effective size of a population is actually larger. That is, adjacent groups must be taken into consideration in determining the long-term viability of a group or an assemblage of groups. For example, connected groups (ewe herds) can be isolated from the other groups through the loss of intervening groups. The loss of an intervening group is detrimental to the long-term viability of the overall population due to the loss itself, and through the potential genetic and demographic isolation of the remaining groups. Other causes of mortality such as road kills may significantly affect the continued survival of small groups that are experiencing depressed recruitment.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this distinct vertebrate population segment in determining to make this rule final. Based on this evaluation, the Service finds that the Peninsular bighorn sheep is in danger of extinction throughout a significant portion of its range due to: (1) disease; (2) insufficient lamb recruitment; (3) habitat loss, degradation, and fragmentation by urban and commercial development; and (4) predation coinciding with low population numbers. Because of the threats and the decline of the species, the preferred action is to list the Peninsular bighorn sheep as endangered. Threatened status would not accurately reflect the rapid, ongoing decline of, and imminent threats to, the Peninsular bighorn sheep.

Status of Peninsular Bighorn Sheep Currently Held in Captivity

Under section 9(b)(1) of the Act, certain prohibitions applicable to listed species would not apply to Peninsular bighorn sheep held in captivity or in a controlled environment on the date of publication of any final rule, provided that such holding and subsequent holding or use of these sheep was not in the course of a commercial activity. In addition, certain prohibitions applicable to listed species would not apply to Peninsular bighorn sheep taken by hunters prior to publication of this final rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it was listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the act is no longer required.

Section 4(a)(3) of the Act, as amended, and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Peninsular bighorn sheep distinct population segment. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service concludes that critical habitat designation for the Peninsular bighorn sheep is not prudent because both of the described situations exist. Bighorn sheep life history research and population status surveys have been conducted for over 40 years (DeForge *et al.* 1995) and much of this work is ongoing. As a consequence, the distribution and location of Peninsular bighorn sheep in the United States are well known within the scientific community. The Peninsular bighorn sheep is a majestic and popular animal in the eyes of the general public. Attractive areas for recreational hiking and possible observation points for Peninsular bighorn sheep have been identified in commercially available information sources (Palm Springs Desert Access Guide (BLM 1978); Santa Rosa Mountains National Scenic Area Trails Map (Coachella Valley Trails Council 1995); Palm Canyon Trail Map 1995). The cumulative pressure of human attraction to the scenic canyons and mountains occupied by bighorn sheep has led to the proliferation of new, unauthorized trails that are becoming an increasing concern of land management agencies and scientific organizations. Annual aerial censuses by the Bighorn Institute and CDFG recently identified several new trails through important habitat areas in the vicinity of La Quinta (J. DeForge, pers. comm., 1998). Similarly, BLM recently discovered a newly constructed trail on its lands in the hills above Cathedral City and Rancho Mirage, through a lambing area. BLM and others are attempting to rehabilitate the trail (J. Dugan, pers. comm. 1997).

The majority of sheep range is owned by State and Federal agencies and managed for multiple human uses, especially recreational pursuits. Four of eight ewe groups in the U.S. largely occur in the Anza Borrego State Park, renowned as a premier hiking and camping destination. The remaining four ewe groups largely occur within BLM's Santa Rosa Mountains National Scenic Area, which is intended to expand recreational opportunities through acquiring private lands for public use and enjoyment. Coachella Valley commercial interests are aggressively promoting and developing outdoor recreational industries that capitalize on the scenic beauty of the Santa Rosa and San Jacinto mountains. These industries and activities include jeep nature tours, mountain biking, hiking, horseback riding, dog walking, camping, sight-seeing, and other ecotourist forms of recreation in bighorn sheep habitat that often use bighorn sheep images as advertising themes, corporate and civic logos, etc. During the more temperate months of October through April, the Coachella Valley attracts millions of tourists and seasonal residents from across the Country and around the world. The timing of maximum human use levels corresponds with particularly sensitive periods in bighorn sheep life history, including the lambing season, rut, and the late summer water stress period.

Publication of detailed critical habitat maps and descriptions, as required with critical habitat designation, would make the location of bighorn sheep more readily available to the general public and serve as further advertisement for human uses in sensitive areas. Human activity in bighorn sheep habitat has been identified as a threat (see Factor E of "Summary of Factors Affecting the Species"). An increase in human activity, even when harm is not intended, would disrupt bighorn sheep behavior and could cause abandonment of essential environments (e.g., lambing areas or watering holes) (Cowan and Geist 1971, Hicks and Elder 1979,

MacArthur *et al.* 1982, Hamilton *et al.* 1982, Sanchez *et al.* 1988). Desert-dwelling bighorn sheep are inherently slow to recolonize vacant habitat (Bleich *et al.* 1990). Thus, critical habitat designation would increase the degree of threat to the Peninsular bighorn sheep and result in harm to this distinct population segment rather than aid in its conservation.

In addition, designation of critical habitat likely would not benefit the conservation of this distinct population segment. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded or carried out by such agency, does not jeopardize the continued existence of a federally listed species or result in the destruction or adverse modification of designated critical habitat. This latter requirement is the only mandatory legal consequence of a critical habitat designation. Critical habitat designation provides protection only on Federal lands or on private or State lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. Almost half the habitat land area occupied by the Peninsular bighorn sheep in the United States is owned and managed by the State of California. The remainder is almost evenly divided between private and Federal ownership (see BACKGROUND section). The protection afforded under section 7 seldom extends onto State lands. Therefore, any potential designation of critical habitat on State lands (which account for about half of the U.S. range) would not be expected to benefit the bighorn sheep. Similarly, a section 7 nexus would seldom occur on private lands occupied by bighorn sheep because arid, upland habitats typically do not support jurisdictional waters or wetlands regulated under section 404 of the Clean Water Act.

Section 7 consultation is most likely to occur with the BLM concerning minerals rights for mining, granting of rights-of-way, recreational use permits, and management of grazing allotments. In addition, consultation with the Corps through permit application review under section 404 of the Clean Water Act may occur.

With about 75 percent of the U.S. range occurring on State and private lands with a limited section 7 nexus, potential benefits largely would be restricted to the remaining 25 percent of habitat that occurs on Federal lands. However, designation of those areas necessary for conservation (i.e., recovery) of the species cannot be accomplished primarily on Federal lands. In addition, for recovery planning under section 4 of the Act, designating critical habitat would not aid in creating a Peninsular bighorn sheep management plan, addressing transmission of diseases and establishing numerical population goals for long-term survival of the species, nor directly affect areas not designated as critical habitat. These types of issues will be addressed through the recovery planning process, wherein the Service establishes a framework for cooperation among key stakeholders and interest groups to prepare and implement a recovery plan based on private and public sector collaboration in defining and achieving recovery.

The Service acknowledges that critical habitat designation may provide some benefits to a species by identifying areas important to a species' conservation and calling attention to those areas in special need of protection. A critical habitat designation contributes to species conservation primarily by highlighting important habitat areas and by describing the features within those areas that are essential to the species. However, the Service is pursing alternative means to achieve the objective of disseminating information on important habitat areas by working directly with Federal and State land agencies and private landowners to develop a coordinated management plan for the Peninsular bighorn sheep.

In summary, there would be substantial risks to this bighorn sheep distinct population segment by publicizing maps of areas of occupancy and locations of habitats. Weighed against the fact that there would be little or no additional benefit to the species, the Service finds that designation of critical habitat for the Peninsular bighorn sheep is not prudent.

The Service will continue in its efforts to obtain more information on Peninsular bighorn sheep biology and ecology, including essential habitat characteristics, current and historic distribution, disease control, and other factors that would contribute to the conservation of the species. The information resulting from these efforts will be used to identify measures needed to achieve conservation of the species, as defined under the Act. Such measures could include, but are not limited to, development of a recovery plan, agency management plans, and conservation agreements with the State, other Federal agencies, local governments, and private landowners and organizations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Endangered Species Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include those within the jurisdiction of the Bureau of Indian Affairs, BLM, USFS, Corps, and Department of Defense. The Peninsular bighorn sheep occurs on private and State-owned land as well. Where the Peninsular bighorn sheep occurs on private lands there is little or no Federal involvement except where access is provided over Federal lands or permits are required from the Corps under the Clean Water Act. The BLM and COE are currently conferencing with the Service under section 7 of the Act to address the impacts associated with granting rights-of-way for several activities (e.g., recreational access).

The Act and implementing regulations found at 50 CFR 17.21 set

forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, as codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. Activities that the Service believes could potentially harm the Peninsular bighorn sheep and result in take include, but are not limited to:

(1) Unauthorized trapping, capturing, handling or collecting of Peninsular bighorn sheep. Research activities, where sheep are trapped or captured, will require a permit under section 10(a)(1)(A) of the Endangered Species Act.

(2) Unauthorized destruction or degradation of habitat through, but not limited to, clearing vegetation, bulldozing terrain, and disturbing natural drainage systems;

(3) Unauthorized destruction of habitat that will likely lead to habitat fragmentation and isolation of ewe herds.

(4) Unauthorized livestock grazing that could result in transmission of disease or habitat destruction.

Activities that the Service believes are unlikely to result in a violation of section 9 are:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this distinct population segment that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this distinct population segment to the list of endangered species;

(2) Accidental roadkills or injuries by vehicles conducted in compliance with applicable laws, on designated public roads as constructed upon the date of publication in the **Federal Register** of the final regulation adding this distinct population segment to the list of endangered species;

(3) Normal, authorized recreational activities in designated campsites and on authorized trails.

(4) Lawful residential lawn maintenance activities including the clearing of vegetation as a fire break around one's personal residence.

Questions regarding any specific activities should be directed to the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 Northeast 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503/231–6243)

Reasons for Effective Date

The Service is concerned that the issuance of the final rule for the Peninsular bighorn sheep may result in the destruction of habitat essential for maintaining the San Jacinto and Santa Rosa Mountain herds. In addition, any delay in the effective date of this rule provides an opportunity for habitat destruction in other portions of its range in the United States. Habitat has been destroyed outside the regulatory process at the Traditions Project in La Quinta. There is an existing golf course development proposal to grade essential habitat in the Palm Springs area. Because of the immediate threat posed by these activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. § 553(d)(3).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of references cited in this rule is available upon request from the Carlsbad Field Office of the U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author: The primary author of this final rule is Arthur Davenport of the Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends Part 17, Subchapter B of the Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
•	•	•	•	•	•	•	•
Bighorn sheep, (Peninsular Ranges population).	*Ovis canadensis*	U.S.A. (western conterminous states), Canada (southwest), Mexico (north).	U.S.A., Peninsular Ranges of CA.	E	634	NA	NA
•	•	•	•	•	•	•	•

Dated: March 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–6998 Filed 3–17–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 031398A]

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore Component Pollock in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 1998 pollock total allowable catch (TAC) apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 13, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. processors is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the amount of the 1998 pollock total allowable catch (TAC) apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI was established as 7,705 metric tons (mt) by the Final 1998 Harvest Specifications of Groundfish for the BSAI (to be published March 16, 1998).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,205 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the AI of the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient pollock as bycatch to support other anticipated groundfish fisheries. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § . 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 13, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7030 Filed 3–13–98; 3:48 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 52
Wednesday, March 18, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–400 gliders. The proposed AD would require replacing the upper rubber shock mounts with mounts made of stainless steel. The proposed AD would also require inspecting the rear plate of the propeller mount for cracks and proper mounting, and replacing or modifying as necessary. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent failure of the propeller suspension system caused by cracks in the propeller mounts, which could result in loss of the propeller with consequent reduced glider controllability.

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–14–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Glaser-Dirks Model DG–400 gliders. The LBA reports incidents where engine vibrations caused cracks at the upper rubber shock mounts and, in one incident caused a crack at the rear plate of the propeller mount.

These conditions, if not corrected, could result in failure of the propeller suspension system, which could lead to loss of the propeller with consequent reduced glider controllability.

Relevant Service Information

Glaser-Dirks has issued Technical Note No. 826/11, dated August 29, 1984, which specifies replacing the upper rubber shock mounts with mounts made of stainless steel. This technical note also includes procedures for:

—inspecting the rear plate of the propeller mount for cracks and an excessive gap between the aluminum blocks and the plate (more than 1 mm or .04 inches); and

—installing washers if an excessive gap exists between the aluminum blocks and the plate.

The LBA classified this service bulletin as mandatory and issued German AD 84–157, dated September 24, 1984, in order to assure the continued airworthiness of these gliders in Germany.

The FAA's Determination

This glider model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Glaser-Dirks Model DG–400 gliders of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require the following:

—replacing the upper rubber shock mounts with mounts made of stainless steel;
—inspecting the rear plate of the propeller mount for cracks and an excessive gap between the aluminum blocks and the plate (more than 1 mm or .04 inches);
—replacing the rear plate of the propeller mount if cracks are found; and
—installing washers if an excessive gap exists between the aluminum blocks and the plate.

Accomplishment of the proposed shock mounts replacement, the proposed inspections, and the proposed installation would be required in accordance with the technical note previously referenced. Accomplishment of the proposed propeller mount replacement, as required, would be required in accordance with the applicable maintenance manual.

Difference Between the Technical Note, German AD, and This Proposed AD

Both Glaser-Dirks Technical Note No. 826/11, dated August 29, 1984, and German AD 84–157, dated September 24, 1984, both specify accomplishing the actions proposed in this AD prior to further flight. The FAA does not have justification for requiring the proposed action prior to further flight. Instead, the FAA has determined that 3 calendar months is a reasonable time period for accomplishing the actions in the proposed AD.

Compliance Time of the Proposed AD

The compliance time of the proposed AD is presented in calendar time instead of hours time-in-service (TIS) because of the typical usage of the affected gliders. For example, an operator of an affected glider may only utilize the glider 50 hours TIS in a year, while another operator may utilize an affected glider 50 hours TIS in one month. The FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 35 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,100, or $460 per glider.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Glaser-Dirks Flugzeugbau GMBH: Docket No. 98–CE–14–AD.

Applicability: Model DG–400 gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the propeller suspension system caused by cracks in the propeller mounts, which could result in loss of the propeller with consequent reduced glider controllability, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, replace the upper rubber shock mounts with mounts made of stainless steel in accordance with the Instructions section of Glaser-Dirks Technical Note TN 826/11, dated August 29, 1984.

(b) Within the next 3 calendar months after the effective date of this AD, inspect (using 2× or greater lens) the rear plate of the propeller mount for cracks and an excessive gap between the aluminum blocks and the plate (more than 1 mm or .04 inches). Accomplish these inspections in accordance with the Instructions section of Glaser-Dirks Technical Note TN 826/11, dated August 29, 1984.

(1) If any cracks are found in the propeller mount, prior to further flight, replace the propeller mount with an uncracked mount in accordance with the applicable maintenance manual.

(2) If an excessive gap exists between the aluminum blocks and the plate, prior to further flight, install washers in accordance with the Instructions section of Glaser-Dirks Technical Note TN 826/11, dated August 29, 1984.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate

FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Glaser-Dirks Technical Note No. 826/11, dated August 29, 1984, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 84–157, dated September 24, 1984.

Issued in Kansas City, Missouri, on March 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6946 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–04]

Proposed Modification of Class D Airspace and Establishment of Class E Airspace; Klamath Falls, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would modify the Class D Airspace area at Klamath Falls, OR, by amending the effective hours to coincide with the Klamath Falls control tower hours of operation. This proposal also would establish Class E airspace from the surface at Klamath Falls International Airport when the Klamath Falls control tower is closed. The intended effect of this action is to clarify when two-way radio communication with the Klamath Falls tower is required and to provide adequate Class E airspace for instrument approach procedures when the Klamath Falls control tower is closed.

DATES: Comments must be received on or before May 4, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–04, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–04, 1601 Lind Avenue SW, Renton, Washington 98055–40506; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ANM–04." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date, for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to modify Class D airspace while also establishing class E airspace at Klamath Falls, OR. Currently, this airspace is designated as Class D when the Klamath Falls control tower is in operation. Nevertheless, Class E airspace to the surface is needed for Instrument Flight Rules (IFR) operations at Klamath Falls when the control tower is closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at Klamath Falls when the control tower is closed.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace areas designated as surface areas are published respectively in Paragraph 5000 and in Paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 500 General

* * * * *

ANM OR D Klamath Falls, OR [Revised]

Klamath Falls International Airport, OR
(Lat. 42°09′22″ N, long 121°43′59″ W)

That airspace extending upward from the surface to and including 6,600 feet MSL within a 5.4-mile radius of the Klamath Falls International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ANM OR E2 Klamath Falls, OR [New]

Klamath Falls International Airport, OR
(Lat. 42°09′22″ N, long. 121°43′59″ W)

Within a 5.4-mile radius of the Klamath Falls International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 23, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–6706 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N–384H and 96P–0500]

RIN 0910–AA19

Food Labeling; Nutrient Content Claims, Definition of Term: Healthy; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 19, 1998, the comment period for its advance notice of proposed rulemaking (ANPRM) on the use of the term "healthy." The ANPRM was published in the **Federal Register** of December 30, 1997 (62 FR 67771). The agency is taking this action in response to two requests for an extension of the comment period. This extension is intended to provide interested persons with additional time to submit comments to FDA on the ANPRM.

DATES: Written comments by May 19, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5763.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 30, 1997 (62 FR 67771), FDA published an ANPRM announcing that it is considering whether to institute rulemaking to reevaluate and possibly amend certain provisions of the nutrient content claims regulations pertaining to the use of the term "healthy." In the ANPRM, FDA asked for information and data to help resolve the issues pertaining to the use of the term "healthy" that were raised by a petition submitted by ConAgra, Inc (Docket 96P–0500, CP–1). Interested persons were given until March 16, 1998, to submit comments on the ANPRM.

In the **Federal Register** of February 13, 1998 (63 FR 7279), the U.S. Department of Agriculture (USDA) published an interim final rule extending until January 1, 2000, the effective date for certain requirements pertaining to the use of "healthy" on the label or labeling of meat products. In that final rule, USDA stated that written comments about its instituting additional rulemaking should be received by May 19, 1998. FDA has received letters from trade associations requesting the agency to extend the comment period on its ANPRM until May 19, 1998, to coincide with the date for USDA's interim final rule. The requests contend that additional time is needed for both food manufacturers and other interested groups to address both FDA's and USDA's comments. They also cite the need to coordinate comments to the two documents.

FDA has decided to extend the comment period to May 19, 1998, to allow additional time for the submission of comments on the ANPRM. FDA recognizes the value in providing an extension that will allow the coordination of comments on these FDA and USDA documents. Accordingly, FDA has decided to extend the comment period to May 19, 1998, to allow additional time for the submission of comments on the ANPRM.

Interested persons may, on or before May 19, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7056 Filed 3–13–98; 3:48 pm]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[MO 045–1045; FRL–5879–9]

Approval and Promulgation of Implementation Plans and Section 111(d) Plan; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve certain portions of the State Implementation Plan (SIP) revisions

submitted by the state of Missouri to consolidate the sulfur dioxide (SO_2) rules. In addition, the EPA is proposing to rescind eight rules which are replaced by the new rule, and the EPA is proposing to approve Missouri's Clean Air Act (CAA) section 111(d) plan for sulfuric acid mist plants.

DATES: Comments on this proposed rule must be received in writing on or before April 17, 1998.

ADDRESSES: Comments may be mailed to Kim Johnson, U.S. Environmental Protection Agency, Regions VII, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION:

I. Background

The consolidation and revisions were made to Missouri's SO_2 rules in response to an SO_2 rule enforceability review conducted by the EPA in 1991. On March 26, 1991, the EPA sent a letter requesting that Missouri consolidate its SO_2 rules to improve enforceability. The consolidated rule was presented at a public hearing on March 28, 1996. After addressing comments from the hearing, the state adopted rule 10 CSR 10–6.260 which became effective on August 30, 1996.

On August 12, 1997, Missouri submitted a request to amend the SIP by adding the new rule 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds.

In conjunction with Missouri's request for SIP approval of 10 CSR 10–6.260, Missouri also requests rescission of eight existing rules dealing with sulfur compound emissions (10 CSR 10–2.160, 2.200, 3.100, 3.150, 4.150, 4.190, 5.110, and 5.150). These eight rules were rescinded by Missouri on March 27, 1997.

Missouri simplified the SO_2 emission requirements by consolidating all of the source-specific emission limitations, tests methods, and monitoring requirements for the different geographical areas into one rule: 10 CSR 10–6.260. The rule is a combination of plans which contain requirements that have been previously approved as protecting the SO_2 NAAQS. This new rule does not change the emission limits contained in the existing eight rules proposed for rescission, but does contains enforceable emission limits, appropriate compliance methods, and requires recordkeeping sufficient to determine compliance.

Section (4) of the proposed rule requires affected sources to comply directly with the SO_2 National Ambient Air Quality Standard (NAAQS). In general, the EPA does not directly enforce the NAAQS. Section 110 of the CAA requires states to develop plans which contain enforceable emission limitations and other such measures as required to protect the NAAQS. The adoption of NAAQS as directly enforceable requirements is a matter which is not addressed by the CAA. Consequently, the EPA will not take action on section (4); however, the EPA continues to assert that it is a state's prerogative to protect air quality using all necessary and practical means.

This rule also contains the state of Missouri's section 111(d) plan as it applies to sulfuric acid mist plant emissions. Section 111(d) of the CAA and 40 CFR part 60, subpart B, require each state to adopt and submit a plan to establish emission controls for existing sources, which would be subject to the EPA's New Source Performance Standards (NSPS) if these sources were new sources.

This action, as proposed, will not impact current source control requirements, but will make it easier for sources to determine applicable requirements and enable sources and regulatory agencies to determine more clearly the methods by which compliance is required to be demonstrated.

Because the rule revision does not change existing emission limitations, the state has not determined whether the limitations continue to be adequate to demonstrate attainment of the NAAQS. The EPA's approval would not imply that any such judgment has been made. As stated previously, the purpose of the revision is to simplify and strengthen enforceability of the regulations.

The EPA also notes that other, more stringent, SO_2 controls may also apply to sources subject to these rules. For example, SO_2 emissions from some sources may be further restricted by the NSPS or by the Acid Deposition requirements under Title IV of the CAA. Any more stringent requirements supersede these revisions for sources subject to the more stringent requirements.

II. Proposed Action

The EPA is proposing to approve, as a revision to the SIP, rule 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds, submitted by the state of Missouri on August 12, 1997, except sections (3) and (4).

The EPA is proposing to approve, under 40 CFR part 62, section 3 of rule 10 CSR 10–6.260 pursuant to section 111(d) of the CAA. The EPA is proposing no action on section 4 of rule 10 CSR 10–6.260.

The EPA is also proposing to rescind SIP rules 10 CSR 10–2.160, Restriction of Emission of Sulfur Compounds; 10 CSR 10–2.200, Restriction of Emission of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–3.100, Restriction of Emission of Sulfur Compounds; 10 CSR 10–3.150, Restriction of Emission of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–4.150, Restriction of Emissions of Sulfur Compounds; 10 CSR 10–4.190, Restriction of Emissions of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–5.110, Restriction of Emissions of Sulfur Dioxide for Uses of Fuel; and 10 CSR 10–5.150, Emission of Certain Sulfur Compounds Restricted.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5. U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its

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actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 20, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–7038 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300626; FRL–5776–9]

RIN 2070–AB18

Propazine; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke the tolerances for residues of propazine in or on sorghum fodder, sorghum forage, sorghum grain, and sweet sorghum. EPA is proposing this action because the remaining registration for propazine on sorghum was canceled in 1990.

DATES: Written comments, identified by the document control number [OPP–300626], must be received on or before May 18, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VI of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Jeff Morris, Special Review Branch (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd floor, Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Propazine (2-chloro-4,6-bis (isopropylamino)-*s*-triazine) is a selective, pre-emergent herbicide used to control grassy and broadleaf weeds on sorghum. Propazine belongs to the class of herbicides known as chloro-*s*-triazines, which are currently undergoing a Special Review. Propazine, like the other chloro-*s*-triazines, is classified as a Group C, possible human carcinogen, based on studies showing induction of the same tumor type by the various triazines. Propazine also demonstrates environmental fate characteristics which raise concern for its potential to contaminate ground water and thus enter sources of drinking water.

II. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., as amended by the Food Quality Protection Act of 1996 (FQPA), Pub. L. 104-170, authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods pursuant to section 408, 21 U.S.C. 346(a), as amended. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a, or otherwise exempted from registration under the Act.

Under FFDCA section 408(f), if EPA determines that additional data are needed to support continuation of a tolerance, EPA may require that those data be submitted by registrants under FIFRA section 3(c)(2)(B), by producers under the Toxic Substances Control Act (TSCA) section 4, or by other persons by order after opportunity for hearing. EPA intends to use Data Call-In (DCI) procedures for pesticide registrants, and FFDCA section 408(f)(1)(C) orders for non-registrants as its primary means of obtaining data. In general, EPA does not intend to use the procedures under TSCA section 4, because such procedures generally will not be applicable to pesticides.

Section 408(f) of the FFDCA states that if EPA determines that additional data are needed to support the continuation of an existing tolerance or exemption, EPA shall issue a notice that: (1) Requests that any parties identify their interest in supporting the tolerance or exemption, (2) solicits the submission of data and information from interested parties, (3) describes the data and information needed to retain the tolerance or exemption, (4) outlines how EPA will respond to the submission of supporting data, and (5) provides time frames and deadlines for the submission of such data and information.

III. Regulatory Background

Tolerances for propazine residues in or on sweet sorghum, sorghum grain, sorghum fodder and sorghum forage, set at 0.25 ppm, were established in 1968. In 1981, Ciba-Geigy submitted a petition to revise the tolerances; the new tolerances would have included both the parent compound and two propazine metabolites, G-30033 and G-28273. In addition, the revised tolerances would have covered any secondary residues in meat, milk and eggs. The proposed tolerances were to have been set at 0.25 ppm for sorghum grain, 1 ppm for forage and fodder and 0.05 to 0.1 ppm for meat, milk and eggs.

At the same time, the International Research and Development Corporation was conducting a 2-year feeding study on rats and mice. The rat study was positive for oncogenicity and in 1983, the Agency required additional data for residue chemistry and chronic toxicity. Among the requirements were data on propazine metabolism, which was needed before EPA could act on Ciba-Geigy's tolerance petition. In 1988, EPA issued the Registration Standard setting forth all of the data requirements for maintaining the registration for propazine, including acceptable studies on chronic toxicity and additional data on storage stability, analytical methods, metabolites of concern and ground water studies. Rather than generate the required data, Ciba-Geigy requested voluntary cancellation.

Because Ciba-Geigy requested voluntary cancellation of its propazine registration, EPA viewed the 1981 tolerance petition as abandoned and did not act on the petition. Since the 1990 effective date of the voluntary cancellation, EPA has granted section 18 emergency exemptions to several states for the use of propazine on sorghum. For the 1993, 1994, 1995, 1996, and 1997 use seasons, EPA granted section 18 emergency exemptions for the use of propazine on sorghum to one or more of the following states: Colorado, Kansas, New Mexico, Oklahoma, and Texas.

IV. Current Proposal

This document proposes to revoke the following tolerances established under section 408 of FFDCA: sorghum, fodder, 0.25 ppm; sorghum, forage, 0.25 ppm; sorghum, grain, 0.25 ppm; and sorghum, sweet, 0.25 ppm.

EPA is proposing these revocations because the propazine sorghum uses have been formally deleted from all propazine registrations, and it is EPA's general practice to revoke tolerances where the associated pesticide use has been deleted from all FIFRA labels. See 40 CFR 180.32(b).

V. Effective Date

EPA proposes that these revocations become effective 30 days following publication in the **Federal Register** of a final rule revoking the tolerances. EPA is proposing this effective date because the section 18 use expired on August 1, 1997, and no use of existing stocks was authorized beyond that date.

Any sorghum commodities that are treated with propazine and that are in the channels of trade following the tolerance revocations shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this section, any propazine residue in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that: (1) The residue is present as the result of an application or use of propazine at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that propazine was applied to such food.

VI. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. After consideration of comments, EPA will issue a final rule. Such rule will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in future proceedings issues resolved in the final rule.

Comments must be submitted by May 18, 1998. Comments must bear a notation indicating the docket number [OPP–300626]. Three copies of the comments should be submitted to either location listed under "ADDRESSES" at the beginning of this document.

This proposal provides 60 days for any interested person to request that a tolerance be retained. If EPA receives a comment to that effect, EPA will not revoke the tolerance, but will take steps to ensure the submission of supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f). The order would specify the data needed, the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. Thereafter, if the data are not submitted as required, EPA will take appropriate action under FIFRA or FFDCA.

VII. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300626] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300626]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VIII. Regulatory Assessment Requirements

This is a proposed revocation of a tolerance established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this proposal does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in

accordance with Executive Order 13045, entitled Protection of Children from Environmental Health and Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether the revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. The factual basis and the Agency's certification under section 605(b) for tolerance revocations was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Since no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis, the Agency is able to reference the general certification. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

List of Subjects in 40 CFR Part 180

Enivornmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 4, 1998.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is proposed to be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

AUTHORITY: 21 U.S.C. 346a and 371.

§ 180.243 [Removed]

2. Section 180.243 is removed.

[FR Doc. 98–6979 Filed 3–17–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–31, RM–9227]

Radio Broadcasting Services; Johnstown and Altamont, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Hometown Broadcasting Corp. seeking the reallotment of Channel 285A from Johnstown, NY to Altamont, NY, as the community's first local aural service, and the modification of Station WSRD's license to specify Altamont as its community of license. Channel 285A can be allotted to Altamont in compliance with the Commission's minimum distance separation requirements with a site restriction of 8 kilometers (5 miles) southwest of the community, at coordinates 42–38–07 NL; 74–04–30 WL, to accommodate petitioner's desired transmitter site. Canadian concurrence in this allotment is required since Altamont is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 27, 1998, and reply comments on or before May 12, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Jason S. Roberts, Fisher Wayland Cooper Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–31, adopted February 25, 1998, and released March 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW,, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7036 Filed 3–17–98; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AE58

Seasonal Closure of the Moose Range Meadows Public Access Easements in the Kenai National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to restrict public access and use of the public easements in the Moose Range Meadows area within the boundary of the Kenai National Wildlife Refuge (Refuge). Public access and use will be prohibited on the Service-managed easements from July 1 through August 15 annually.

This seasonal closure is necessary to prevent incompatible levels of bank degradation that occur along the easements due to intensive bank angling during the sockeye (red) salmon fishery each summer. Concentrated bank angling along the easements has led to unacceptable levels of vegetation destruction and accelerated erosion of the riverbank. Healthy riverbank habitats are important in maintaining the River's famous anadromous and resident fish populations and in meeting the primary purpose of the Refuge.

DATES: Written comments must be received by May 18, 1998.

ADDRESSES: Written comments should be addressed to Regional Director, U.S. Fish and Wildlife Service, ATTN: Bob Stevens, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Robin West, Refuge Manager, Kenai National Wildlife Refuge, telephone: (907) 262–7021; or Bob Stevens, Public Involvement Specialist, telephone: (907) 786–3499.

SUPPLEMENTARY INFORMATION:

Background

The Service manages two public use easements on the banks of the Kenai River within lands conveyed to the Salamatof Native Association, Inc. The easements were reserved under terms of the August 17, 1979, stipulated settlement agreement between the United States, Cook Inlet Region Inc., and Salamatof Native Association Inc. The subject easements were reserved "* * * for the public at large to walk upon or along such banks, to fish from such banks or to launch or beach a boat upon such banks * * *" In addition, two access easements were also reserved from existing roadways to the river bank easements under the same agreement. Use of the two access easements was limited to foot travel or wheelchairs.

The level of foot traffic and use on the river bank easements has increased dramatically since the mid-1980's. The development and growth of the sockeye salmon sport fishery is the principal activity which has led to this high level of public use. In recent years, use has grown to the point where impacts to the vegetated banks of the Kenai River are readily apparent.

Discussions and meetings among Service staff, landowners, users, and other State and Federal managing agencies on how to deal with increasing use of the easements have been ongoing since the late 1980's. In 1995, the Kenai National Wildlife Refuge Manager (Refuge Manager) issued an emergency closure of portions of the public access easements pursuant to the authorities granted in 50 CFR 36.42. In issuing the emergency closure, the Refuge Manager determined that the human-caused bank degradation occurring as a result of the intensive bank angling effort was incompatible with the Refuge's purpose to, "* * * conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, moose, bears, mountain goats, Dall sheep, wolves and other furbearers, salmonids and other fish, waterfowl and other migratory and nonmigratory birds", [Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487, 94 Stat. 2371, 2391, Section 303(4)(B)(i)]. By regulation, this emergency action was limited to 30 days in duration.

Following the closure in 1995, the Refuge Manager prepared an environmental assessment (EA), with full public involvement, to analyze the management alternatives for the Moose Range Meadows access easements (copies of the EA may be obtained from the Refuge Manager). Through the EA process, the Service selected a management alternative that would permanently close the easements on a seasonal basis. A temporary closure during the peak use season of 1996 was instituted pursuant to 50 CFR 36.42 as an interim management measure. This rulemaking action is a necessary part of implementing the preferred alternative to make permanent the seasonal use closure.

The seasonal closure will be in effect on the 25-foot wide streamside easements on both banks of the Kenai River, and on the 25-foot wide access easements running from Funny River Road and Keystone Drive to the downstream ends of the stream side easements on the south and north banks of the River, respectively. Approximately three miles of stream side easements (two miles on the north bank and one mile on the south bank) and an additional one mile of access easements would be affected by this closure. Lands affected by this action are contained within T. 4 N.; R. 10 W.; Sections 1, 2, and 3; Seward Meridian. Maps of the affected area are available from the Refuge Manager.

Statutory Authority

The Refuge Recreation Act of 1962 (16 U.S.C. 460k–k–4) authorizes the Secretary to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the area was established.

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966 (16 U.S.C. 668 dd–ee) as amended, authorizes the Secretary under such regulations as he/she may prescribe to permit the use of any area within the National Wildlife Refuge System for any purpose whenever he/she determines that such uses are compatible with the major purposes for which such areas were established.

The National Wildlife Refuge System Improvement Act (NWRSIA) of 1997 (Pub. L. 105–57) amends and builds upon the NWRSAA in a manner that provides a strong and singular wildlife conservation mission for the Refuge System; it includes a requirement:

- To maintain the biological integrity, diversity and environmental health of the System;
- That no refuge use may be allowed unless it is first determined to be compatible; and
- That wildlife-dependent recreational uses (including hunting, fishing, wildlife observation and photography, and environmental education and interpretation), when determined to be compatible, will receive priority consideration over other public uses in refuge planning and management.

The NWRSIA serves to ensure that the Refuge System is effectively managed as a national system of lands, waters and interests for the protection and conservation of our nation's wildlife resources; however, if any conflict arises between any provision of NWRSIA and any provision of the ANILCA, then the provision in the ANILCA shall prevail.

Section 304 of ANILCA requires the Secretary to impose such terms and conditions as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska under any authority are compatible with the purposes of the Refuge.

The RRA, NWRSAA and NWRSIA and ANILCA authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

This rule is being proposed to manage public use of Service managed easements in a manner that is compatible with Refuge purposes as defined in section 303(4)(B) of ANILCA. The Service further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, helps implement Executive Orders 12996 (Management and Public Use of the National Wildlife Refuge System) and 12962 (Recreational Fisheries) and is otherwise in the public interest by regulating recreational opportunities at national wildlife refuges. Sufficient funds will be available within the refuge budgets to operate the hunting and sport fishing programs.

Request for Comments

A public hearing on this proposed rule was advertised in Alaska and held on March 19, 1997, at the Kenai Peninsula Borough building in Soldotna, Alaska. Department of Interior policy is, wherever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in

order to both facilitate public input and move forward to protect important refuge resources. Accordingly, interested persons may submit written comments concerning this proposed rule to the persons listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq., 5 CFR Part 1320, Pub. L. 04–13)

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Executive Order 12866

The document is not a significant rule subject to Office of Management and Budget review under Executive order 12866.

Regulatory Flexibility Act determination (5 U.S.C. 601 et seq.)

This rulemaking will not have a significant economic impact on a substantial number of small entities by decreasing visitation and expenditures in the surrounding area of Kenai NWR. This is not a fishing closure and the same number of anglers will continue to fish the Kenai River. They will simply access the river in a different location.

Since the first emergency closure in 1995 the public use has continued to increase. Many of these people are local or own summer homes along the river. They will continue to pay for fishing licenses, magazines, membership dues, contributions, land leasing, ownership, stamps, tags, permits and tackle.

Economic impacts of refuge fishing programs on local communities are calculated from average expenditures in the "1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation". In 1996, 35.2 million U.S. residents 16 years old and older enjoyed a variety of fishing opportunities throughout the United States. Anglers fished 626 million days and took 507 million fishing trips. They spent almost $38 billion on fishing-related expenses during the year. Among the 29.7 million freshwater anglers, including those who fished in the Great Lakes, but not Alaska, 515 million days were spent and 420 million trips were taken freshwater fishing. Freshwater anglers spent $24.5 billion on freshwater fishing trips and equipment.

Saltwater fishing attracted 9.4 million anglers who enjoyed 87 million trips on 103 million days. They spent $8.1 billion on their trips and equipment. Trip-related expenditures for food, lodging, and transportation were $15.4 billion; equipment expenditures amounted to $19.2 billion; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for $3.2 billion, or 19.2 percent of all expenditures. Overall, anglers spent an average of $41 per day in the lower 48 states and projecting a 25 percent cost of living increase for Alaska, spent an average of $51 per day in Alaska.

Five hundred angler-days, based on past creel surveys in the proposed closure areas, will continue to have the same economic impact ($51./angler-day) on local economies because these anglers that used the closure area will continue to purchase supplies, food or lodging in the area of the refuge, during the time of the closure resulting in a continuation of $25,500 to the local economy.

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities such as businesses, organizations and governmental jurisdictions in the area under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq., Pub. L. 104–4, E.O. 12875)

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform (E.O. 12988)

The Department has determined that this proposed regulation meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act (42 U.S.C. 4321 et seq., 40 CFR Part 1500, 516 DM)

The Service complied with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) by completing an environmental assessment following the emergency fishing closure in 1995. On May 9, 1996, a Decision Notice and Finding of No Significant Impact was signed. Copies of the EA may be obtained from the Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, Alaska 99669; telephone: (907) 262–7021. No further documentation is required by the National Environmental Policy Act (42 U.S.C. 4321–4347).

Section 7 Consultation (16 U.S.C. 1531 et seq., 50 CFR 402)

The Service reviewed the opening package documents for the proposed seasonal closure of the Moose Range Meadows public access easements in the Kenai National Wildlife Refuge with regards to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). There are no listed or candidate species present in this area of the refuge. The Service finds the action as presented will not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.

Intergovernmental Review of Federal Programs (E.O. 12372, 43 CFR Part 9, and the Intergovernmental Cooperation Act of 1968)

The Service reviewed this rule under E.O. 12372 and accommodated the recommendations of State and local governments concerning Federal programs affecting their jurisdictions.

Primary Author

Mark Chase, Deputy Refuge Manager of the Kenai National Wildlife Refuge, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, the Service proposes to amend part 36 of chapter I of title 50 Code of Federal Regulations as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 is revised to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq.*; and 44 U.S.C. 3501 *et seq.*

2. Amend § 36.39 by adding paragraph (i)(7)(ix) to read as follows:

§ 36.39 Public Use.

* * * * * *

(i) * * *

(7) * * *

(ix) From July 1 to August 15, and annually thereafter, the public may not use or access any portion of the 25-foot wide public easements along both banks of the Kenai River within the Moose Range Meadows area; or along the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the streamside easements. The

Kenai Refuge Manager has a map available for anglers and the general public to locate the above closures by referring to Sections 1, 2, and 3 of Township 4 North, Range 10 West, Seward Meridian.

* * * * *

Dated: March 2, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–6915 Filed 3–17–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 971015247–8061–02; I.D. 091597D]

RIN 0648–AK19

Fisheries in the Exclusive Economic Zone Off Alaska; Withdrawal of a Proposed Rule to Modify Individual Fishing Quota Survivorship Transfer Provisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed Rule; withdrawal.

SUMMARY: NMFS withdraws a proposed regulatory amendment to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off of Alaska that was published in the **Federal Register** on November 6, 1997 (62 FR 60060). The proposed regulatory change would have modified the IFQ Program's survivorship transfer provisions in a manner that would be inconsistent with the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This action is necessary to withdraw the proposed rule, and is intended to preclude implementation of regulations that NMFS has determined to be inconsistent with provisions of the FMPs.

DATES: This proposed rule is withdrawn on March 18, 1998.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The fixed gear halibut and sablefish fisheries are managed by the IFQ Program, a limited access system for fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in and off of Alaska. Under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982, NMFS implemented the IFQ Program in 1995, on the recommendation of the North Pacific Fishery Management Council (Council), to reduce excessive fishing capacity in the fixed gear Pacific halibut and sablefish fisheries, while maintaining the social and economic character of these fisheries and the Alaskan coastal communities where many of these fishermen are based.

Various limitations and restrictions govern the use and transfer of QS and IFQ. To harvest an IFQ allocation of halibut or sablefish species, the holder of QS from which the IFQ derives must qualify as an initial recipient of QS or as a crew member with at least 150 days experience in commercial harvest operations. Moreover, all leasing of IFQ in QS categories B, C, or D is prohibited. However, the FMPs provide for emergency transfer of IFQ. Under the authority of these emergency transfer provisions, a final rule published in the *Federal Register* on August 9, 1996 (61 FR 41523), granted surviving spouses of deceased QS holders emergency privileges allowing them to lease the total IFQ resulting from the deceased QS holder's QS for a period of 3 years following the QS holder's death. A surviving spouse might not otherwise be eligible to use or lease the deceased QS holder's IFQ (1) because of the 150-day crew members requirement and (2) unless or until a court determines the spouse to be the rightful beneficiary of QS. The emergency upon which such transfer privileges are predicated and, hence, authorized by the FMPs, is the temporary indisposition of QS while the deceased QS holder's estate remains in probate. NMFS implemented the surviving spouse transfer provisions expressly to allow a spouse to gain some pecuniary benefit from a deceased QS holder's fishing business pending the final disposition of the QS. Such privileges are temporary; once a deceased QS holder's estate is probated and an heir to the QS determined, that heir is free to transfer the QS to an individual eligible to fish an IFQ allocation of halibut or sablefish.

In June 1997, the Council recommended extending the surviving spouse transfer privileges to heirs. For the benefit of such an action to take effect, a legal determination of who would be the heir would first have to be made. Implementation of this proposed action would not extend the benefit of the existing surviving spouse transfer privileges to other surviving family members in addition to or in the absence of a spouse. Rather, it would nullify the benefit of the existing rule, which is to allow a surviving spouse to lease the deceased QS holder's IFQ for up to 3 years between the date of the QS holder's death and the time when the legal beneficiary of the QS may transfer the QS to an eligible individual.

Moreover, this proposed action is inconsistent with the FMPs. The proposed action would have effect only after the conclusion of the emergency for which the surviving spouse transfer privilege provides the often time-consuming legal process necessary to determine an heir. Because no emergency exists that would authorize the extension of temporary transfer privileges to heirs, this action is inconsistent with the FMPs and is hereby withdrawn. NMFS also withdraws the proposed rule amending survivorship transfer provisions for halibut QS and IFQ. Although the halibut IFQ fishery is not regulated pursuant to the FMPs, NMFS withdraws the amendment to transfer provisions for this fishery, as well, in order to allow the Council to reconsider this action and to maintain consistency in transfer provisions in these closely related IFQ fisheries.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Dated: March 12, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7041 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 63, No. 52
Wednesday, March 18, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Availability and Intent To Grant of Co-Exclusive Patent Licenses

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Patent Application Serial No. 08/974,709, "Composition and Method for the Control of Parasitic Mites in Honeybees," filed on October 19, 1997, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant two co-exclusive licenses to the following companies: Betterbee, Inc., of Greenwich, New York and Dadant & Sons, Inc., of Hamilton, Illinois.

DATES: Comments must be received on or before May 18, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 10300 Baltimore Boulevard, Room 401, Building 005, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: Willard J. Phelps, of the Office of Technology Transfer at the Beltsville address given above; telephone: 301/504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said companies have submitted a complete and sufficient applications for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective co-exclusive licenses may be granted unless, within ninety (90) calendar days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 98–6925 Filed 3–17–98; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Availability and Intent To Grant of Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Cook Industrial Electric Co., Inc., of Cordele, Georgia, an exclusive license to Serial No. 08/915,687, filed on October 21, 1997, entitled "Automatic Sampling Apparatus for the Farmer Stock Peanut Pneumatic Sampler."

DATES: Comments must be received on or before May 18, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 10300 Baltimore Boulevard, Room 401, Building 005, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: Willard J. Phelps, of the Office of Technology Transfer at the Beltsville address given above; telephone: 301/504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Cook Industrial Electric Co., Inc., has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) calendar days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 98–6924 Filed 3–17–98; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–010–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection that is used to evaluate the plant pest risk posed by the introduction of certain genetically engineered organisms and products.

DATES: Comments on this notice must be received by May 18, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 98–010–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket No. 98–010–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call

ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the introduction of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests, contact Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road, Unit 146, Riverdale, MD 20737–1236, (301) 734–7612. For copies of more detailed information on the information collection, contact Gregg Ramsey, APHIS' Information Collection Coordinator, at (301) 734–5682.

SUPPLEMENTARY INFORMATION:

Title: Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests.

OMB Number: 0579–0085.

Expiration Date of Approval: September 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing the introduction or dissemination of plant pests into or through the United States.

As part of that responsibility, APHIS regulates the introduction (importation, interstate movement, and release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests.

In administering the regulations, APHIS collects certain information through its permitting and notification processes. That information is collected to enable APHIS to evaluate the plant pest risk posed by the introduction of certain genetically engineered organisms and products.

The information we seek with our notification and permit process includes, among other things, a complete description of the organism or product, the safeguards that will be used in preventing escape, the destination or field test locations, and field test results that describe any unusual or harmful occurrences.

Without the information we obtain through our notification and permit application process, we would be unable to evaluate the plant pest risk posed by the introduction of certain genetically engineered organisms and products.

We are asking the Office of Management and Budget (OMB) to approve the continued use of these information collection activities.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.8434 hours per response.

Respondents: U.S. importers and shippers of genetically engineered organisms and products; agricultural companies that develop or test genetically engineered organisms or products; and members of the publicly-funded research community.

Estimated annual number of respondents: 150.

Estimated annual number of responses per respondent: 33.

Estimated annual number of responses: 4,950.

Estimated total annual burden on respondents: 4,175 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–6922 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–019–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: A copy of the environmental assessment and finding of no significant impact is available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the document are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, Suite 5B05, 4700 River Road, Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For a copy of the environmental assessment and finding of no significant impact, contact Ms. Linda Lightle at (301) 734–8231; e-mail: llightle@aphis.usda.gov. Please refer to the permit number listed below when ordering the document.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a

notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing the permit application, the Animal and Plant Health Inspection Service (APHIS) assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which is based on data submitted by the applicant and on a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field test.

An environmental assessment and finding of no significant impact has been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
97–301–01r	ProdiGene, Inc	1–30–98	Tomato plants genetically engineered to express a novel protein of pharmaceutical interest.	Texas.

The environmental assessment and finding of no significant impact has been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 11th day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–6923 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Blue Mountains Natural Resources Institute, Board of Directors, Pacific Northwest Research Station, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Blue Mountains Natural Resources Institute (BMNRI) Board of Directors will meet on April 24, 1998, at Agriculture Service Center Conference Room, 10507 N. McAlister Road, La Grande, Oregon. The meeting will begin at 9 a.m. and continue until 3:30 p.m. Agenda items to be covered will include: (1) Program status; (2) research results of specific projects; (3) outreach activities; (4) report on Initiatives; (5) presentations by guest speakers; (6) forum for issues discussion; (7) public comments. All BMNRI Board Meetings are open to the public. Interested citizens are encouraged to attend. Members of the public who wish to make a brief oral presentation at the meeting should contact Larry Hartmann, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6537, no later than 5:00 p.m. April 17, 1998, to have time reserved on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Larry Hartmann, Manager, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6537.

Dated: March 10, 1998.

Lawrence A. Hartmann,

Manager.

[FR Doc. 98–7021 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Committee of Scientists is holding its next two meetings on March 31–April 1, 1998, in Boston, Massachusetts and on April 14–15, 1998, in Albuquerque, New Mexico. The purpose of the Boston meeting is to discuss planning issues concerning the National Forests in the Eastern Region (Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin). The purpose of the Albuquerque meeting is to discuss planning issues concerning the Southwestern Region (New Mexico and Arizona). The Committee will meet with representatives from federal, state, and local organizations; will share information and ideas about Committee members' assignments; will continue discussions on the scientific principles underlying land and resource management; and will conduct any other Committee business that may arise. The meetings are open to the public and opportunities for the public to address the Committee will be provided.

DATES: The Boston meeting will be held March 31–April 1, 1998, and the Albuquerque meeting will be held April 14–15, 1998.

ADDRESSES: The Boston meeting will be held at the Holiday Inn Select, Government Center, 5 Blossom Street at Cambridge Street, Boston, Massachusetts. The Albuquerque meeting will be held at the Sheraton Hotel Old Town, 800 Rio Grande NW, Albuquerque, New Mexico.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Designated Federal Official to the Committee of Scientists, telephone: 202–205–2494.

SUPPLEMENTARY INFORMATION: The Boston meeting to discuss planning issues concerning the National Forests in the Eastern Region will begin at 9 a.m. and end at 7 p.m. on March 31. On April 1, the meeting will begin at 8 a.m. and end at 4 p.m. Citizens may address the Committee on March 31, beginning at 4 p.m., to present ideas on how to improve National Forest System land and resource management planning.

The Albuquerque meeting to discuss planning issues concerning the Southwestern Region will begin at 9

a.m. and end at 7 p.m. on April 14. On April 15, the meeting will begin at 8 a.m. and end at 4 p.m. Citizens may address the Committee on April 14, beginning at 4 p.m., to present ideas on how to improve National Forest System land and resource management planning.

Citizens who wish to speak at either meeting must register at that meeting before 5 p.m. Each speaker will be limited to a maximum of 5 minutes. Persons may also submit written suggestions to the Committee at either meeting or may mail suggestions to the addresses listed under the **ADDRESSES** heading.

The Committee of Scientists is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795). Agendas and locations for future meetings will be published as separate notices in the **Federal Register**.

Dated: March 11, 1998.

Gloria Manning,

Acting Deputy Chief for National Forest System.

[FR Doc. 98–6971 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Intent To Request Approval of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the 1998 Census of Horticultural Specialties.

DATES: Comments on this notice must be received by May 22, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117, South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: 1998 Census of Horticultural Specialties.

Type of Request: The 1998 Census of Horticultural Specialties, authorized by the Census of Agriculture Act of 1997 (Pub. L. No. 105–113), will include all operations in each State that produced and sold $10,000 or more of horticultural specialty crops during 1998. The horticulture census will provide data on the number of farms, production and sales by type of plant, area in production, selected production expenses, hired workers, and value of land and equipment. Census data are used by the growers, their representatives, the government, and many other groups of people concerned with the horticulture industry. The census will provide detailed data on the production of specialty horticultural crops for each State. Results from the census will be used to evaluate new programs, disburse Federal funds, analyze market trends, and measure performance across States. The horticulture census will provide the only source of dependable, comparable data by State. The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as tabulated totals.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 66 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 36,000.

Estimated Total Annual Burden on Respondents: 39,600 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162, South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., March 3, 1998.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 98–6941 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Intent To Request Approval of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the 1998 Farm and Ranch Irrigation Survey.

DATES: Comments on this notice must be received by May 22, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: 1998 Farm and Ranch Irrigation Survey.

Type of Request: The 1998 Farm and Ranch Irrigation Survey, authorized by the Census of Agriculture Act of 1997 (Pub. L. No. 105–113), will include a probability sample of farms reporting irrigation in the 1997 Census of Agriculture. This irrigation survey will provide detailed data relating to on-farm irrigation practices including acres irrigated by category of land use, acres and yields of irrigated and non-irrigated

crops, quantity of water distribution systems, and number of irrigation wells and pumps. Also included will be 1998 irrigation expenditures for maintenance and repair of irrigation equipment and facilities; purchase of energy for on-farm pumping of irrigation water; investment in irrigation equipment, facilities, and land improvement; and cost of water received from off-farm water supplies. Census data are used by the farmers, their representatives, the government, and many other groups of people concerned with the irrigation industry. The survey will provide a comprehensive inventory of farm irrigation practices. Results from the survey will be used to evaluate new programs, disburse Federal funds, analyze market trends, and measure performance across States. The irrigation survey will provide the only source of dependable, comparable data by State. The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as tabulated totals.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 25,000.

Estimated Total Annual Burden on Respondents: 18,750 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., March 3, 1998.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 98–6942 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the NRCS National Handbook of Conservation Practices for Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include "Early Successional Habitat Development/Management," "Restoration and Management of Declining Habitats," "Riparian Herbaceous Cover," "Shallow Water Management for Wildlife," "Wildlife Upland Habitat Management," "Wildlife Watering Facility", "Wetland Restoration," "Wetland Enhancement," "Wetland Creation," "Constructed Wetland," "Wildlife Wetland Habitat Management," and "Alley Cropping." NRCS State Conservationists who choose to adopt these practices for use within their State will incorporate them into Section IV of their Field Office Technical Guide (FOTG). These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

EFFECTIVE DATES: Comments must be received by May 18, 1998. This series of new or revised conservation practice standards will be adopted after the close of the 60-day comment period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from Ecological Sciences Division, NRCS, Washington, D.C. Submit individual inquiries in writing to Mike W. Anderson, National Wildlife Ecologist, Natural Resources Conservation Service, P.O. Box 2890, Room 6154–S, Washington, D.C. 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires the NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Signed in Washington, D.C., on March 12, 1998.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, D.C.

[FR Doc. 98–6926 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Second Quarter of 1998

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the second quarter of 1998.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the second calendar quarter of 1998.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning April 1, 1998, and ending June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn Dotson, Loan Funds Control Assistant, U.S. Department of Agriculture, Rural Utilities Service, Room 0227–S, Stop 1524, 1400 Independence Avenue, SW, Washington, DC 20250–1500. Telephone: 202–720–1928. FAX: 202–690–2268. E-mail: CDotson@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the second calendar quarter of 1998 for municipal rate electric loans. RUS regulations at 7 CFR 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to 7 CFR 1714.5, the interest rates on these advances are based on indexes published in the "Bond Buyer" for the four weeks prior to the second Friday of

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Dated: Marc

Wally Beyer,

Administrator

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the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in 7 CFR 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of "Municipal Market Data—General Obligation Yields" or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 1998 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under 7 CFR 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the second calendar quarter of 1998.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2019 or later	5.125
2018	5.125
2017	5.125
2016	5.000
2015	5.000
2014	5.000
2013	4.875
2012	4.875
2011	4.750
2010	4.625
2009	4.500
2008	4.500
2007	4.375
2006	4.375
2005	4.250
2004	4.125
2003	4.125
2002	4.000
2001	3.875
2000	3.750
1999	3.625

Dated: March 12, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–7020 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Estimates of the Voting Age Population for 1997

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1997, for each state and the District of Columbia are as shown in the following table.

I have certified these counts to the Federal Election Commission.

Dated: March 11, 1998.

William M. Daly,

Secretary of Commerce.

ESTIMATE OF THE POPULATION OF VOTING AGE FOR EACH STATE AND DISTRICT OF COLUMBIA: JULY 1, 1997

[In thousands]

Area	Population 18 and over
United States	198,108
Alabama	3,247
Alaska	421
Arizona	3,277
Arkansas	1,860
California	23,317
Colorado	2,877
Connecticut	2,478
Delaware	554
District of Columbia	422
Florida	11,183
Georgia	5,498
Hawaii	884
Idaho	859
Illinois	8,722
Indiana	4,367
Iowa	2,127
Kansas	1,907
Kentucky	2,947
Louisiana	3,161
Maine	945
Maryland	3,826
Massachusetts	4,666
Michigan	7,269
Minnesota	3,435
Mississippi	1,978
Missouri	3,996
Montana	649
Nebraska	1,212
Nevada	1,234
New Hampshire	877
New Jersey	6,066
New Mexico	1,230
New York	13,577
North Carolina	5,552
North Dakota	476
Ohio	8,348
Oklahoma	2,439
Oregon	2,433
Pennsylvania	9,156
Rhode Island	754
South Carolina	2,805
South Dakota	541
Tennessee	4,043

ESTIMATE OF THE POPULATION OF VOTING AGE FOR EACH STATE AND DISTRICT OF COLUMBIA: JULY 1, 1997—Continued

[In thousands]

Area	Population 18 and over
Texas	13,862
Utah	1,371
Vermont	443
Virginia	5,090
Washington	4,156
West Virginia	1,404
Wisconsin	3,823
Wyoming	348

Source: Population Estimates Program, Population Division, Bureau of the Census, Washington, DC 20233, March 1998.

For a description of methodology see Current Population Reports, P25–1127.

[FR Doc. 98–7077 Filed 3–16–98; 10:05 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Renewal of Census Advisory Committees on the African American Population, American Indian and Alaska Native Populations, Asian and Pacific Islander Populations, and Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of renewal.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and after concurrence of the General Services Administration, the Secretary of Commerce has determined that the renewal of the Census Advisory Committees on the African American Population, American Indian and Alaska Native Populations, Asian and Pacific Islander Populations, and Hispanic Population is in the public interest in connection with the performance of duties imposed on the Department by law.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Bureau of the Census, Washington, DC 20233, telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: These Committees will provide an organized and continuing channel of communication between the communities they represent and the

Bureau of the Census on its efforts to reduce the differential in the totals for all population groups during Census 2000 and on ways census data can be disseminated to maximize their usefulness to these communities and other users.

The Committees will draw on the experience of their members with the 1990 census process and procedures, results of evaluations and research studies, and test censuses, and also will draw on the expertise and insight of their members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phases of Census 2000. The Committees will provide advice regarding the tabulation plans for race and ethnic data.

These Committees will function solely as an advisory body with respect to the matters described above and will comply fully with the provisions of the Federal Advisory Committee Act. Each Committee shall consist of nine members to be appointed by and serve at the discretion of the Secretary of Commerce.

The Committees shall report to the Director, Bureau of the Census. The Designated Federal Official for the Advisory Committees shall be the Principal Associate Director for Programs at the Bureau of the Census.

The Department of Commerce will file copies of the Committees' renewal charters with appropriate committees in Congress.

Dated: March 11, 1998.

James F. Holmes,

Acting Director, Bureau of the Census.

[FR Doc. 98–6995 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–07–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 962]

Grant of Authority for Subzone Status: Shell Oil Company (Oil Refinery); Mobile County, Alabama

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Mobile, Alabama, grantee of Foreign-Trade Zone 82, for authority to establish special-purpose subzone status at the oil refinery complex of Shell Oil Company, located in Mobile County, Alabama, was filed by the Board on April 16, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 33–97, 62 FR 24080, 5/2/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 82F) at the oil refinery complex of Shell Oil Company, located in Mobile County, Alabama, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000—# 2710.00.1050, # 2710.00.2500, and # 2710.00.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);

—Products for export; and,

—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7016 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 959]

Grant of Authority for Subzone Status; Chevron U.S.A. Inc. (Oil Refinery); El Segundo, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Los Angeles Board of Harbor Commissioners, grantee of Foreign-Trade Zone 202, for authority to establish special-purpose subzone status at the oil refinery complex of Chevron U.S.A. Inc., located in El Segundo, California, was filed by the Board on March 31, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 25–97, 62 FR 17581, 4/10/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 202B) at the oil refinery complex of Chevron U.S.A.

Inc., located in El Segundo, California, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500, and #2710.00.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7013 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 960]

Grant of Authority for Subzone Status; Mobil Oil Corporation (Oil Refinery); Will County, Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Illinois International Port District, grantee of Foreign-Trade Zone 22, for authority to establish special-purpose subzone status at the oil refinery complex of Mobil Oil Corporation, located in Will County, Illinois, was filed by the Board on April 7, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 27–97, 62 FR 18739, 4/17/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 22J) at the oil refinery complex of Mobil Oil Corporation, located in Will County, Illinois, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500, and #2710.00.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7014 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 963]

Expansion of Foreign-Trade Zone 206; Medford, Oregon Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from Jackson County, Oregon, grantee of Foreign-Trade Zone 206, for authority to expand FTZ 206 to include one additional site in Jackson County and five new sites in Josephine County, Oregon, adjacent to the Medford-Jackson County Airport which has Customs user fee airport status, was filed by the Board on January 15, 1997 (FTZ Docket 3–97, 62 FR 7750, 2/20/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 206 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7012 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 961]

Grant of Authority for Subzone Status: Lyondell-Citgo Refining Company, Ltd. (Oil Refinery); Harris County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish special-purpose subzone status at the oil refinery complex of Lyondell-Citgo Refining Company, Ltd., located in Harris County, Texas, was filed by the Board on April 15, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 32–97, 62 FR 24080, 5/2/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84P) at the oil refinery complex of Lyondell-Citgo Refining Company, Ltd., located in Harris County, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500, and #2710.00.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puctinelli,

Acting Executive Secretary.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of antidumping duty administrative reviews.

SUMMARY: On September 9, 1997, the Department of Commerce ("the Department") published the preliminary results of the administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers/exporters of the subject merchandise to the United States and the period August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Baker (Dongbu), Steve Bezirganian (POSCO), Thomas Killiam (Union), Alain Letort, or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202/482–2924 (Baker), 202/482–0162 (Bezirganian), 202/482–2704 (Killiam), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR part 351 (62 FR 27296—May 19, 1997) ("*Final Rules*"), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993 (58 FR 44159). The Department published a notice of "Opportunity to Request Administrative Review" of the antidumping duty orders for the 1995/96 review period on August 12, 1996 (61 FR 41770). On August 30, 1996, respondents Dongbu Steel Co., Ltd. ("Dongbu") and Pohang Iron and Steel Co., Ltd. ("POSCO") requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea; respondent Union Steel Manufacturing Co., Ltd. ("Union") requested a review of corrosion-resistant carbon steel flat products only. On the same day, the petitioners in the original less-than-fair-value ("LTFV") investigations (AK Steel Corp., Bethlehem Steel Corporation, U.S. Steel Group—a unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company, collectively referred to as "petitioners") filed a similar request. We initiated these reviews on

September 13, 1996 (61 FR 48862—September 17, 1996).

On October 7, 1996, the petitioners requested, pursuant to section 751(a)(4) of the Act, that the Department determine whether antidumping duties had been absorbed by the respondents during the period of review ("POR"). Section 751(a)(4) provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA.

The regulations governing these reviews do not address this provision of the Act. However, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's new antidumping regulations provides that the Department will make a duty-absorption determination, if requested, in any administrative review initiated in 1996 or 1998. *See* 19 CFR § 351.213(j)(2), 62 FR at 27394. As noted above, while the new regulations do not govern the instant reviews, they nevertheless serve as a statement of departmental policy. Because orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea have been in effect since 1993, they are transition orders in accordance with section 751(c)(6)(C) of the Act. As these reviews were initiated in 1996, the Department has acceded to petitioners' request that it conduct a duty-absorption inquiry.

The Act provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In these cases, all reviewed firms sold through importers that are "affiliated" within the meaning of section 751(a)(4) of the Act. We have determined that the following firms have dumping margins on the percentages of their U.S. sales, by quantity, indicated below:

Name of firm and class or kind of merchandise	Percentage of U.S. affiliate's sales with dumping margins
Dongbu:	
Cold-Rolled	55.34
Corrosion-Resistant	5.82
POSCO:	
Cold-Rolled	35.54
Corrosion-Resistant	14.64
Union:	
Cold-Rolled	(1)
Corrosion-Resistant	8.99

[1] No U.S. sales in POR.

We presume that the duties will be absorbed for those sales which were dumped. This presumption can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. However, there is no such evidence on the record. Under these circumstances, we find that antidumping duties have been absorbed by the above-listed firms on the percentages of U.S. sales indicated. Although we afforded interested parties the opportunity to submit evidence that unaffiliated purchasers in the United States will absorb duties, no party availed itself of this opportunity.

On September 9, 1997, the Department published in the **Federal Register** the preliminary results of the third administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea (62 FR 47423). The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of the Reviews

The review of "certain cold-rolled carbon steel flat products" covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of "certain corrosion-resistant carbon steel flat products" covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc-, aluminum-, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000,

7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

The POR is August 1, 1995 through July 31, 1996. These reviews cover sales of certain cold-rolled and corrosion-resistant carbon steel flat products by Dongbu, Union, and POSCO.

Verification

As provided in section 782(i)(3) of the Act, we verified information provided by the respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Fair-Value Comparisons

To determine whether sales of the subject merchandise from Korea to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") of the merchandise to the normal value ("NV"), as described in the "Export Price (or Constructed Export Price)" and "Normal Value" sections of *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews*, 62 FR 47422 (September 9, 1997).

Since the publication of the preliminary review results, however, we have re-examined the facts of the record of these cases, our prior practice, and statutory definitions. As a result of our re-examination, we have concluded that treating certain transactions as indirect EP transactions is inappropriate. The Act defines the term "constructed export price" as "the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation *by or for the account of* the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." In contrast, "export price" is defined as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation *by the producer or exporter* of the subject merchandise *outside of the United States*." Sections 772(a)–(b) of the Act (emphasis added). In these cases, the record clearly establishes that the respondents' affiliates *in the United States* were in most instances the parties first contacted by unaffiliated U.S. customers desiring to purchase the subject merchandise and also that the sales affiliates in question signed the sales contracts and engaged in other sales support functions. These facts indicate that the subject merchandise is first sold in the *United States* by or for the account of the producer or exporter, or by the affiliated seller, and that the sales in question are therefore CEP transactions.

Factors relevant to that analysis include: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. sales affiliate was limited to that of a processor of sales-related documentation and a communications link with the unrelated U.S. buyer. Where the facts indicate that the activities of the U.S. affiliate were ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treated the transactions as EP sales. Where the U.S. affiliate had more than an incidental involvement in making sales (*e.g.*, soliciting sales, negotiating contracts or prices) or performed other selling functions, we treated the transactions as CEP sales. For company-specific details on the application of this methodology, please refer below to the "Analysis of Comments Received" section of this notice.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value ("CV") as the basis for foreign market value when the Department finds home-market sales to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ordinary course of trade to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign-market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Reviews" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

For purposes of these final review results, in accordance with the Department's regulations and the questionnaire issued to the respondents at the outset of these reviews, we have used the date of the invoice to the first unaffiliated purchaser in the United States as the date of sale, except for transactions where the date of invoice

occurred after the date of shipment, in which case we used the date of shipment as the date of sale.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Dongbu, POSCO, and Union, exporters of the subject merchandise ("respondents"), and from petitioners. POSCO requested a public hearing, which was held on November 7, 1997.

General Comments

Comments by Petitioners

Comment 1. Petitioners argue that the Department must deduct actual antidumping ("AD") and countervailing ("CVD") duties paid by respondents' affiliated importers from the price used to establish EP or CEP.

Department's Position. We disagree with petitioners. We continue to adhere to our longstanding practice as articulated in prior segments of these proceedings, which is not to make a deduction for antidumping duties. This practice was recently upheld by the Court of International Trade ("CIT") in *AK Steel Corp., et al.* v. *United States,* CIT Slip Op. 97–160 (December 1, 1997).

Comment 2. Petitioners contend the Department's duty absorption determination in the preliminary review results is flawed for two major reasons.

First, petitioners assert that by inviting the parties to submit new factual information after verification in order to rebut its presumption that "duties will be absorbed for those sales which were dumped," the Department undermined the statutory requirement that all information used in the final review results be verified. Petitioners argue that they were placed at a distinct disadvantage by the Department's decision to allow respondents to place information on the record which could not be verified. Petitioners argue that the Department's procedure is at odds with the ruling by the Court of Appeals for the Federal Circuit ("CAFC") that "the burden of production is properly placed upon the party in control of the necessary information." *See Creswell Trading Co. v. United States,* 15 F.3d 1054, 1060 (Fed. Cir. 1994). Although petitioners recognize that their concerns are no longer an issue in these reviews, since no party submitted information pursuant to the Department's request, they urge the Department to discard this poorly conceived method and to collect all relevant duty absorption evidence at the same time as it collects information necessary to complete its dumping analysis.

Second, petitioners believe the Department's methodology has the potential to understate the extent to which antidumping duties were absorbed. The Department's methodology, they argue, can give the casual reader the mistaken impression that the total amount of duties absorbed was limited to the dumped sales included in the final antidumping duty calculated. Because the overall dumping margin is weight averaged, petitioners contend, the true level of dumping and thus of duty absorption is significantly greater than the overall margin. To remedy this problem, petitioners suggest that the Department state its duty absorption finding as the percentage of sales dumped in conjunction with the average level of dumping *for those sales* (emphasis in the original). For example, if five percent of a respondent's sales were dumped, and the overall weighted-average dumping margin on the dumped sales was 40 percent, the Department should state that the respondent absorbed duties on five percent of sales at a margin of 40 percent.

Petitioners reject the alternative methodology suggested by POSCO, which would measure duty absorption not on a sale-specific basis but rather across all sales made during the POR. Petitioners argue that POSCO's proposal to determine duty absorption by comparing the average U.S. price to the average normal value is contrary to the statute, which mandates that, in administrative reviews, dumping margins be calculated by comparing the U.S. price and normal value of each entry. Similarly, petitioners argue that POSCO's proposal to include sales with negative margins in the calculation is contrary to the Department's long-standing practice of treating such sales as zero-margin sales. Petitioners maintain that calculating duty absorption levels on anything other than a transaction-specific basis undermines the presumption that "current dumping margins calculated * * * in reviews may not be indicative of the margins that would exist in the absence of an order." Uruguay Round Agreements Act, Statement of Administrative Action ("SAA"), H.R. Doc. 103–316, Vol. I, 103rd Cong., 2nd Sess. (1994) at 885.

Respondents argue that the Department's preliminary duty absorption determination violates the letter and intent of both the statute and Article 11.1 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade (1994) ("*UR Antidumping Agreement*"). It violates the statute, say respondents, because the statute recognizes that the antidumping law must be implemented in a fair manner. This is why the Department calculates dumping margins on a weighted-average basis, and measures dumping over the 12-month period in order to eliminate the effects of abnormal, outlying instances of dumping. It violates Article 11.1, assert respondents, because that article states that antidumping measures shall remain in effect only as long as and to the extent necessary to counteract injurious dumping.

Respondents maintain that the Department's current duty absorption methodology, as stated in the preliminary review results, would unlawfully make it more difficult for antidumping orders to be revoked by finding that duty absorption has occurred even in cases where the dumping margin is zero or *de minimis.* Respondents contend that the Department's present methodology implies that if a respondent, over a 12-month period, has not engaged in dumping but has one or two outlying sales which were dumped, then the Department will determine that not only has the respondent engaged in duty absorption, but at the magnitude of those one or two sales. Respondents claim that such a distorted result makes it more likely that the International Trade Commission ("ITC") will prolong the existence of the order, in violation of Article 11.1. Indeed, say respondents, one could envision a situation where the Department would revoke an order due to three consecutive years of zero or *de minimis* margins, yet recommend that the ITC not grant a "sunset" revocation because of duty absorption found under this distortive methodology.

Respondents therefore recommend that the Department base a duty absorption determination on a respondent's overall pricing policies and not on individual, isolated instances of dumping. In addition, they contend the Department should include a credit for negative margins, in fulfillment of its Article 11.1 obligations.

Department's Position. After carefully considering petitioners' and respondents' conflicting views, we have left our duty absorption methodology unchanged from the preliminary results.

Contrary to petitioners' contention that we violated the statute by requesting new factual information after verification, our regulations allow us to request factual information from the parties at any time, even after verification. Had any party chosen to submit new factual information in

response to our request in the preliminary results notice, we would have afforded the other parties an opportunity to comment in writing on such information. The issue of whether or not such information would have been verified is moot since we received no new factual information on duty absorption pursuant to our request.

We believe the approach suggested by petitioners is inappropriate because, as respondents point out, it would result in an artificially inflated duty absorption percentage and could mislead the ITC. In a hypothetical case where, out of 100 U.S. sales transactions, only one was dumped, but at a margin of 20 percent, petitioners apparently would have the Department determine that duty absorption had occurred at a rate of 20 percent on one percent of sales. We find this approach distortive and not mandated by either statute or regulation.

We also reject POSCO's suggestion that we offset sales with positive dumping margins with sales with negative dumping margins because doing so would disguise the fact that duty absorption may have occurred, thereby obfuscating our duty-absorption inquiry. In administrative reviews, negative dumping margins are systematically disregarded, because there is no basis in the antidumping law to use negative margins as an offset or a "credit" against positive margins.

Accordingly, for purposes of these final review results, we have left unchanged our duty absorption methodology.

Comment 3. Petitioners assert that in the event the Department reclassifies certain EP transactions as CEP transactions, it must ensure that these sales are reviewed in either the third or fourth administrative review, and not permit certain sales to escape review in their entirety as a result of the Department's practice of determining whether or not a sale is subject to review based on the date of sale rather than the date of entry.

Where reclassifying an EP sale as a CEP sale pushes that sale forward into the fourth administrative review, petitioners do not object. Where such reclassification, however, causes certain sales to be pushed backwards into the completed second review period, petitioners object strongly, because such sales will escape this review, which is contrary to the statutory provision that all entries be reviewed. *See* § 751(a)(2) of the Act.

Petitioners state that nothing prevents the Department from reviewing newly reclassified CEP sales even if the reported date of sale falls within the previous POR, since such transactions were not previously reviewed and will not be subject to review in the future.

Respondents retort that petitioners are requesting the Department simultaneously to administer the antidumping law in two different and mutually exclusive directions. On the one hand, they say, petitioners ask that the Department reclassify certain EP transactions as CEP transactions, yet at the same time they ask the Department to ignore its standard date-of-sale methodology with regard to those sales and revert to an EP date-of-sale methodology. Respondents affirm that this argument is internally inconsistent and unsupported by statute or regulations. If the Department (wrongfully) decides to reclassify the sales in question as CEP transactions, argue respondents, then it should use its standard date-of-sale methodology to determine whether those sales fall within the POR, even at the risk of those sales falling out of the POR.

Department's Position. We agree with petitioners. Although we have reclassified most of the respondents' U.S. sales as CEP transactions for purposes of these final review results, this change has no effect on the date of sale. As explained elsewhere in this notice (*see* the Department's Position to Comment 31, below), we have changed the date of sale for Dongbu and Union, but for reasons independent of the change from EP to CEP. There is no "EP date-of-sale methodology," as respondents claim. Where sales are classified as CEP transactions but the date of sale occurs *prior* to importation, we generally cover all *entries* during the POR; where sales are classified as CEP transactions and the date of sale occurs *after* importation, we generally cover all *sales* during the POR. In these cases the earlier of these situations applies; therefore, we have analyzed all entries during the POR, and no sales were pushed backward into the completed second review period as a result of our changing the date of sale.

Company-Specific Comments

Comments by Petitioners

Comment 4. Petitioners argue that the Department erred in its calculation of Dongbu's U.S. imputed credit by not adding to it the bank fees for opening letters of credit. (These letter-of-credit fees are charges that Dongbu incurs on the international letters of credit for transactions between Dongbu and Dongbu U.S.A.) Furthermore, they argue that, for two reasons, the Department should use facts available for the bank fee amounts. First, they argue that certain verification exhibits demonstrate Dongbu's calculation of its average letter of credit fees (submitted in exhibit C–20 of its January 31, 1997, supplemental questionnaire response) grossly misstates the amount of bank charges. Second, they argue that Dongbu's reported letter of credit charges failed verification. To support this latter claim, petitioners cite the following quotation from the U.S. verification report:

> We discussed the bank charges for letter of credit transactions * * * We asked Dongbu to explain and document, for a sample transaction, how bank charges were calculated and allocated. Dongbu representatives were unable to volunteer a cogent explanation of how these charges were calculated, within a reasonable span of time. We therefore moved on to the next topic.

See September 16, 1997 verification report (revised and reissued on November 18, 1997) at 2.

Dongbu argues that its sample letter of credit calculation in exhibit C–20 of its supplemental questionnaire response did not fail verification, and that the verification exhibits fully support it. Furthermore, Dongbu argues that for two reasons the Department should not adjust the U.S. sales prices for letter of credit fees. First, Dongbu argues that the letter of credit fees are already included in Dongbu's reported imputed credit, and that to make an adjustment for the letter of credit fees in addition to the reported imputed credit would constitute double-counting an expense. It argues that because the imputed credit period begins with the date of shipment and ends with the date of payment, it covers the entire time the merchandise is in the accounts receivable ledgers of Dongbu, Dongbu Corporation, and Dongbu U.S.A. Therefore, Dongbu argues, the reported imputed credit incorporates all expenses associated with financing the intercompany payment, including the letter of credit charges.

Moreover, Dongbu argues that its reported imputed credit figure includes the entire cost of financing receivables by virtue of the use of the short-term interest rate of Dongbu U.S.A. as the interest rate in the calculation. The assumption in using Dongbu U.S.A.'s rate, Dongbu argues, is that it is representative of the cost of financing receivables during the entire time the receivables are outstanding. Thus, to add the actual charge for taking out the letter of credit in a case where credit cost is fully imputed would be tantamount to double-counting the cost of credit during the time covered by the letter of credit.

Dongbu further argues that the Department's precedent supports this

interpretation. It cites a case where the Department stated that "deducting both the actual [letter of credit] fees and the imputed costs (which include these fees) would be double counting." *See Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19044 (April 30, 1996) ("*Bicycles*").

Second, Dongbu argues that the Department should not adjust the U.S. price for letter of credit fees because the record shows that the actual cost of the charges associated with the international letters of credit is such a minor expense that it is unnecessary to adjust the U.S. price.

Petitioners argue that Dongbu is incorrect in stating that its letter of credit fees are already included in its imputed credit calculation, and that in fact the Department verified that these fees are not included in the imputed credit expense or separately reported elsewhere in Dongbu's responses. *See* the September 16, 1997 verification report (revised and reissued on November 18, 1997), at 2 (quoted above).

Petitioners argue that this verification finding is further supported by other record evidence, such as the fact that Dongbu receives letters of credit from the Korean Exchange Bank, but this bank is not listed as a lending institution bank in the credit expense calculation that Dongbu prepared.

Furthermore, petitioners argue that *Bicycles* is inapposite. In *Bicycles*, an affiliated U.S. importer paid fees to its corporate parent to cover interest charges on letters of credit, and the fees were already included in the reported credit expense. Here, petitioners argue, the Department verified that Dongbu did not include the letter of credit expenses in the imputed credit expense. Moreover, at issue in *Bicycles* were interest charges associated with letters of credit; here the issue is other types of expenses associated with letters of credit. Additionally, petitioners argue, at issue in *Bicycles* was the payment from the U.S. affiliate to its corporate parent. Here the issue is fees paid to unaffiliated lending institutions. Accordingly, petitioners conclude, *Bicycles* is inapposite.

Therefore, petitioners argue, bank fees associated with letters of credit must be deducted from U.S. price as direct selling expenses in accordance with *Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 54616, 54618 (October 21, 1996) ("*Cookware*"). There the Department found that "bank fees associated with the letter of credit transactions * * * are a direct selling expense * * *." Similarly, they argue, letter of credit fees were treated as direct selling expenses and deducted from U.S. price for both Union and POSCO in the preliminary results of this review, and therefore the Department must make a similar adjustment for Dongbu.

Petitioners further argue that Dongbu is incorrect in saying that the adjustment is small. They argue that Dongbu's calculation is flawed and understates the actual expense associated with letter of credit fees.

Department's Position. We agree with both parties in part. We agree with petitioners that we should deduct bank fees for letters of credit in addition to the calculated imputed credit figure. We do not agree with Dongbu's argument that an imputed credit figure covering the entire credit period inherently includes all credit/financing expenses. Where a respondent pays bank fees to finance a letter of credit related to a U.S. sale, we must adjust for these fees as they are direct selling expenses. Moreover, these fees are not implicitly included in the calculated imputed credit figure simply because the interest rate used is the interest rate of an American subsidiary.

Furthermore, adjusting for bank fees associated with letters of credit is consistent with our past practice. As petitioners point out, *Bicycles* is inapposite because it dealt with an interest payment between two affiliated companies. Here the expenses at issue are charges paid to an unaffiliated bank. As we stated in *Cookware*, "[w]e determined that bank fees associated with the letter of credit transactions for certain U.S. customers are a direct selling expense and have made a COS [circumstance-of-sale] adjustment for these fees." *See Cookware* at 45618. We have followed this precedent in these final results of review, and have adjusted for bank fees as a direct selling expense. *See also Ferrosilicon from Brazil; Amended Final Determination of Sales at Less Than Fair Value*, 59 FR 8598 (February 23, 1994) and *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 62 FR 1954, 1969 (January 14, 1997).

However, we do not agree with petitioners that Dongbu's reported letter of credit fees failed verification, or that it is necessary to resort to facts available. At verification the Department found no inconsistencies in Dongbu's computation, which is supported by the verification exhibits. Therefore, in these final results, we have used the letter of credit fees as Dongbu reported them.

Comment 5. Petitioners argue that the Department erred in treating all except one of Dongbu's U.S. sales as EP sales, rather than as CEP sales. They set forth three arguments to support this contention. First, they argue that it is Dongbu U.S.A.'s Los Angeles office ("DBLA"), and not Dongbu, that plays the primary role in setting the price to the ultimate U.S. customer. They state that the record demonstrates that virtually all sales contact with the U.S. customer occurs through DBLA, and that DBLA is actively involved in price negotiation. The only confirmation of price and product characteristics, petitioners argue, is the sales contract, which is signed by DBLA and the unaffiliated U.S. customer. Nothing on the document indicates Dongbu's or Dongbu Corporation's involvement in the sale, nor is either entity bound under the contract.

Given this lack of involvement on the part of Dongbu, petitioners argue, Dongbu's statement that Dongbu approves all sales over the telephone, but has no written document showing the approval, is ludicrous. If Dongbu's approval is no more than a telephone approval, they state, with no written documentation showing the sales transaction and its terms, it can be no more than *pro forma*.

Moreover, petitioners dismiss Dongbu's statement that there is little negotiation regarding price on the part of Dongbu because its loyal U.S. customers already know the prices based on past experience. Petitioners also state that it is demonstrably untrue, because over the course of three administrative reviews, Dongbu's antidumping duty rate has declined steadily. This means that either prices in the home market or the U.S. market have changed (or that Dongbu has inaccurately reported its sales and expenses). In the previous review Dongbu certified that its home-market prices do not fluctuate and have remained constant for extensive periods of time. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404 (April 15, 1997) ("*Second Review Final Results*") at 18409. As home-market prices have remained constant, and Dongbu's antidumping duty has not, this means, barring the intentional misreporting of data, that Dongbu's U.S. prices do in fact vary.

The falsity of Dongbu's claim regarding its role in the price negotiation process, petitioners argue, is

demonstrated by the fact that Dongbu does not know the final price charged to the U.S. customer until long after the sale is completed. Furthermore, petitioners argue, the fact that Dongbu may give DBLA confirmation that it can produce merchandise ordered does not demonstrate Dongbu's involvement in the price negotiation.

Petitioners further argue that the only record evidence speaking to Dongbu's involvement in the sales negotiation relates to two sales transactions discussed at verification. In the first transaction, Dongbu rejected a sale "because the specifications * * * were not acceptable." Petitioners argue that this production issue is completely irrelevant to the question of Dongbu's role in price setting. In the second transaction, Dongbu denied a request by an American customer for a discount due to a delayed shipment. As with the first transaction, petitioners argue, this denial does not demonstrate Dongbu's control of the price negotiation.

Petitioners argue that a more notable example of a discounted sale is observation 454, the sale which Dongbu reported as an EP sale and which the Department determined to be a CEP sale. There, they argue, the sales process was identical to all Dongbu's other U.S. sales which the Department treated as EP. For this sale, petitioners argue, DBLA located the U.S. buyer, negotiated the price, and arranged all other aspects of the sale. *See* Korean verification exhibit 13 at 21–22. Thus, petitioners argue, if the sales process for this sale qualifies as a CEP sale, as the Department has found, then the same sales process used for Dongbu's other U.S. sales must likewise be deemed CEP sales.

Secondly, petitioners argue that in addition to playing a significant role in the setting of prices, documentation on the record demonstrates that DBLA is also involved with almost every other stage of the U.S. transaction. Specifically, they argue, DBLA arranges and pays for cash deposits for regular duties and for countervailing and antidumping duties, takes title to the subject merchandise and serves as importer of record, clears the subject merchandise through customs, invoices the U.S. customer, collects payment from the U.S. customer, finances the sale to the U.S. customer, and arranges warehousing and demurrage in the United States. The extent of DBLA's involvement in the U.S. sales process, petitioners argue, is also demonstrated by the value of its indirect selling expenses relative to the value of Dongbu's indirect selling expenses in Korea on behalf of its home market and U.S. sales. An analysis of Dongbu's role on behalf of U.S. sales shows, they argue, that it is limited to confirming the availability of production capacity and characteristics, arranging export transportation, and issuing pro forma approvals of DBLA's sales terms to the unaffiliated U.S. buyer.

Finally, petitioners argue that the Department must classify Dongbu's U.S. sales as CEP transactions to be consistent with its analysis in *Certain Cut-to-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review,* 62 FR 18390 (April 15, 1997) ("*German Plate*"). There the Department identified seven functions performed by the respondent's U.S. affiliate. The Department determined that these seven functions warranted classifying and analyzing the affiliates' resales as CEP transactions. Petitioners argue that with the possible exception of customer credit checks, DBLA performs all of those functions as Dongbu's selling affiliate in the United States. Perhaps more important, petitioners state, record evidence demonstrates that, like the U.S. affiliate in *German Plate,* DBLA plays the central role in negotiating U.S. transaction price.

Dongbu argues that the U.S. sales the Department classified as EP transactions were correctly classified. First, they argue that the Department has considered and rejected petitioners' argument in the first and second administrative reviews of this order, and that nothing new—either factually or legally—has changed with respect to this issue since those reviews. Furthermore, they argue that the Department again examined this issue at the verifications in this review, and found nothing to support petitioners' argument.

Second, Dongbu argues that petitioners' assertions that DBLA engages in substantial selling functions, which include price negotiation, have no basis in the record and are at odds with the Department's findings in the sales verification reports. It is a matter of record, Dongbu argues, that the most significant selling activities related to U.S. sales occur in Korea, including sales negotiation, production scheduling, shipping scheduling, Korean brokerage, handling, and loading expenses, Korean inland freight, and ocean freight. Dongbu states that DBLA has no direct role in these arrangements and that these expenses are all incurred in Korea.

Furthermore, Dongbu argues that during the verification in Korea the Department examined and verified multiple transactions that demonstrated that Dongbu U.S.A. was merely a communications link, and that Dongbu approved the terms of all sales. One such sale, it argues, was the sale (cited by petitioners) in which Dongbu denied a requested discount from an American customer. Dongbu states that after receiving the request, it wrote directly to the U.S. customer, and explained that constant requests for discounts could warrant a termination of their relationship. Nothing could be more illustrative, Dongbu argues, of Dongbu U.S.A."s function as a communication link and Dongbu's authority in setting the terms of sale. Dongbu also identifies observation 454 as another sale which serves as a prime example of Dongbu's ultimate authority over U.S. sales: in that transaction, Dongbu argues, it decided that a discount was appropriate, and confirmed the sale.

Moreover, Dongbu argues that there are fundamental differences in the relationship between Dongbu and its subsidiary and the relationship between the respondent and its sales affiliate in *German Plate.* In this regard the U.S. verification report dated December 16, 1997, says (at 2) that Dongbu U.S.A. "act[s] solely as an intermediary, inasmuch as headquarters in Korea exercise[s] active authority over pricing and terms." In *German Plate,* the U.S. sales affiliate played a major role in negotiating price with customers. Thus, it argues, *German Plate* cannot serve as a basis to reclassify Dongbu's transactions as CEP.

Third, Dongbu argues that all of DBLA's sales activities which petitioners argue warrant reclassifying Dongbu's sales as CEP sales are consistent with EP classification. To act as importer of record, to receive purchase orders to forward to Seoul for approval, to issue sales contracts once the quantities and prices have been approved by Seoul, to borrow to finance accounts receivable, to handle billing and accounting functions, and to contact U.S. customers, are all, Dongbu argues, well within the scope of activities normally associated with acting as a communications link and document processor. Furthermore, they argue that the CIT has consistently upheld purchase price ("PP") (now called "EP") classification in circumstances in which the related U.S. company undertook activities equal to, or far more extensive than, those at issue here. Dongbu cites the following four examples:

• PP classification was upheld where U.S. affiliate first shipped merchandise to independent warehouses whose cost was borne by U.S. affiliate, U.S. affiliate was importer of record, U.S. affiliate

paid estimated antidumping duties on the merchandise, U.S. affiliate retained title prior to sale to the unrelated U.S. party, and U.S. affiliate received commissions for its role in the transactions. *Outokumpu Copper Rolled Products* v. *United States*, 829 F. Supp. 1371, 1379–1380 (CIT 1993), *appeal after remand dismissed*, 850 F. Supp. 16 (CIT 1994).

- PP classification was upheld where U.S. affiliate received purchase orders and invoiced related customer, U.S. affiliate was invoiced for and directly paid shipping company for movement charges, U.S. affiliate occasionally warehoused, at its own expense, and U.S. affiliate received "substantial mark-up" over price at which it purchased from exporter. *E.I. Du Pont de Nemours & Co., Inc.* v. *United States*, 841 F. Supp. 1237, 1248–50 (CIT 1993).
- PP classification was upheld where U.S. affiliate invoiced customers, collected payments, acted as importer of record, paid customs duties, and may have taken title to the goods when they arrived in the United States. *Zenith Electronics Corp.* v. *United States*, 18 CIT 870, 873–874 (1994).
- PP classification was upheld where U.S. affiliate processed purchase order, performed invoicing, collected payments, arranged U.S. transportation, and served as the importer of record. *Independent Radionic Workers* v. *United States*, CIT Slip Op. 95–45 (March 15, 1995).

For all of these reasons, Dongbu argues, the Department should reject petitioners' argument.

Department's Position. We agree with petitioners that Dongbu's U.S. sales should be treated as CEP transactions. In the final results of the prior reviews, in order to determine whether sales made prior to importation through Dongbu's affiliated U.S. sales affiliate (DBLA) to an unaffiliated customer in the United States were EP or CEP transactions, we analyzed Dongbu's U.S. sales to determine whether the following three factors were present: (1) whether the merchandise was shipped directly from the manufacturer (Dongbu) to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling affiliate (DBLA) was limited to that of a processor of sales-related documentation and a communications link with the unrelated U.S. buyer. We concluded that DBLA was no more than a processor of sales-related documentation and a communications link, and classified Dongbu's U.S. sales as EP transactions. *Second Review Final Results* at 18423.

As explained above in the "Fair-Value Comparisons" section of this notice, to ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The statement in the verification report, quoted by Dongbu, that Dongbu U.S.A. "act[s] solely as an intermediary, inasmuch as headquarters in Korea exercise[s] active authority over pricing and terms' is not dispositive. Rather, the totality of the evidence regarding Dongbu's sales process demonstrates that DBLA's role is more than ancillary to the sales process.

We base this finding on several factors. First, we note that all of Dongbu's U.S. sales are made through DBLA, and that Dongbu's U.S. customers seldom have contact with Dongbu. Furthermore, it is DBLA (and not Dongbu) that writes and signs the sales contract. Though respondents claim that Dongbu approves all sales prices by telephone, such approval does not make DBLA's role in the sales negotiation process ancillary. Nor can we conclude that Dongbu's control over price discounts makes DBLA's role in the sales process ancillary. As with respondent A.G. der Dillinger Hüttenwerke ("Dillinger") in *Plate from Germany*, there is no evidence that Dongbu was involved in the sales process at all until after its U.S. subsidiary made the initial arrangements.

Furthermore, we find that, in addition to playing a key role in the sales negotiation process, DBLA played a central role in all sales activities after the merchandise arrived in the United States. As petitioners have pointed out, these activities included issuing invoices, collecting payment, financing the sale to the U.S. customer, and arranging for warehousing and demurrage in the United States. Though Dongbu is correct that the CIT has upheld an PP (or EP) classification despite significant sales activities on the part of the U.S. subsidiary, that fact does not render these activities irrelevant in making this determination. These activities carried out by DBLA are both extensive and significant, as evidenced by the value of the indirect selling expenses incurred by DBLA relative to the value of the indirect selling expenses incurred by Dongbu. Further, the existence of significant selling expenses in the United States itself belies Dongbu's claim that the role of its U.S. affiliate was not meaningful. *See* Dongbu's January 31, 1997 submission, exhibit 22.

In *German Plate* we stated, "We consider [the U.S. subsidiary] Francosteel's extensive involvement in negotiating respondent's U.S. sale during this review, along with Francosteel's other sales activities, to warrant classifying this sale as CEP." *German Plate* at 18392. For the same reasons, we have classified Dongbu's U.S. sales as CEP in these final results.

Comment 6. Petitioners argue that the Department erred with respect to Dongbu by classifying U.S. sales observation 440 as an EP sale, rather than a CEP sale. They argue that for three reasons this sale must be classified as a CEP sale. First, they argue that evidence on the record suggests it was not sold until after importation. They cite a statement contained in Dongbu's supplemental questionnaire response in which Dongbu stated that "Dongbu U.S.A. generally issues the invoice and sends it to the customer about a week *before* the expected arrival of the merchandise at the port." *See* Dongbu's January 31, 1997 supplemental questionnaire response at 33 (emphasis in original). Based on this information and documentation contained in verification exhibit five (the verification exhibit associated with this sale), petitioners argue that observation 440 must have been sold after entry. Second, they argue that documents in verification exhibit five contain discrepancies which render Dongbu's reported contract date (which the Department used as the sale date in the preliminary results) demonstrably untrue. Specifically, they argue that the sales contract in that exhibit does not even pertain to observation 440. Third, they argue that evidence in verification exhibit five indicates that DBLA played the primary role in price negotiation.

Furthermore, petitioners argue that the Department should resort to facts available in determining the warranty and warehousing expenses for this sale because Dongbu did not report any expenses for warranty and warehousing, and because information on the record suggests that Dongbu did not even report the correct sales price on its U.S. sales tape.

Finally, petitioners argue that the Department should consider deducting warranty and warehousing expense amounts for all of Dongbu's U.S. sales. Their basis for this argument is that the Department discovered at verification that for two of six sales verified, Dongbu incurred additional, unreported sums for warehousing and warranty charges for discounts necessitated by late shipments. Petitioners believe, based on

proprietary information on the record, that it is not unlikely that additional sales were canceled, and that Dongbu did not fully report expenses associated with those sales.

Dongbu argues that the petitioners have misrepresented what Dongbu reported as the date of sale. Dongbu states that the date it reported as the date of sale is not the contract date, but the date of the invoice between Dongbu and Dongbu Corporation. This date, it states, is before the entry date. Therefore, it argues, petitioners are incorrect in stating that there is evidence that the merchandise was not sold until after importation.

With respect to petitioners' second argument, Dongbu argues that the contract contained in verification exhibit five does cover observation 440. With respect to petitioners' argument that the Department should make an adjustment for unreported warehousing and demurrage charges, Dongbu argues that the Department verified all expenses for sale 440, and that there is therefore no reason to impose any additional charges on any of Dongbu's U.S. sales.

Department's Position. We agree with petitioners in part, and disagree with petitioners in part. As indicated in the Department's response to Comment 5, we have determined to treat Dongbu's sales as CEP sales in these final results. Observation 440 is no exception. However, we disagree with petitioners that we should make additional deductions from observation 440 or any of Dongbu's other U.S. sales for allegedly unreported expenses. We find no evidence that this sale was warehoused or that it incurred warranty expenses, or that Dongbu failed to report the correct sales price. Thus, there is only one U.S. sale for which Dongbu failed to report warehousing expenses, and these expenses Dongbu reported in its supplemental questionnaire response prior to verification. We found no other unreported expenses at verification. Therefore, we find no reason to make additional adjustments for warranty or warehousing expenses (beyond what Dongbu reported) for any of Dongbu's U.S. sales.

Comment 7. Petitioners argue that the Department erred in the calculation of Dongbu's U.S. imputed credit by using the bill of lading date as the start of the credit period, rather than the shipment date from Dongbu's production facility. They argue that in this review, unlike prior reviews, information is on the record demonstrating that there exists a significant time lag between the date of shipment from the factory and the bill of lading date. Thus, they argue, the Department is not bound by its decision in previous reviews to utilize the bill of lading date as the start of the credit period because the premise of that decision was that no discrepancy existed between the bill of lading date and the actual shipment date. The existence of the discrepancy, petitioners argue, distinguishes this case from *Melamine Institutional Dinnerware Products from Indonesia; Determination of Sales at Less Than Fair Value*, 62 FR 1719 (January 13, 1997) ("*Dinnerware*"), a case Dongbu has used to support its argument that the Department should use the bill of lading date as the start of the credit period. In *Dinnerware* the Department accepted the bill of lading date as the date of shipment because it verified that there was "no evidence to indicate any difference between the date of factory shipment and the bill of lading date." *Dinnerware* at 1724. Such is not the case here, petitioners argue.

Petitioners further argue that it would be especially inappropriate to use the bill of lading date here because in a supplemental questionnaire the Department requested that Dongbu calculate imputed credit based on the actual shipment date, and not the bill of lading date, but Dongbu refused to do so. They argue that the Department should not reward such recalcitrance. As an alternative, petitioners recommend that the Department use the date of the commercial invoice from Dongbu to Dongbu Corporation as the shipment date. Use of this date, petitioners argue, would neither reward Dongbu for its recalcitrance nor be unduly adverse. In addition, petitioners argue, the Department determined at verification that the commercial invoice between Dongbu and Dongbu Corporation is "prepared at the same time that Dongbu Steel ships the merchandise * * *." *See* the July 8, 1997 verification report at 4. As another possible alternative, petitioners suggest the Department add to Dongbu's reported imputed credit a credit amount reflecting the maximum period of time Dongbu estimated as existing between the date of factory shipment and the bill of lading date.

Dongbu argues the Department was correct in using the bill of lading date as the shipment date. It argues, based on the fact that it reported and the Department accepted the bill of lading date as the shipment date in all prior reviews of this order, that its action here was not the product of recalcitrance, but of reliance. It argues further that it was justified in its action, as explained in its supplemental questionnaire response, because of the difficulties associated with specifying shipment dates for particular transactions of the subject merchandise. The petitioners' appeal to equity, Dongbu argues, is ironic given that the equities here run plainly in favor of Dongbu. A change in practice at this stage, it states, would implicate the specter of arbitrariness in the Department's action.

Department's Position. We agree with petitioners in part. Unlike prior reviews of this order, the record of this review contains information that there is sometimes a significant difference between the date of shipment from the factory and the date of the bill of lading. Dongbu has stated that the bill of lading is consistently generated within a few days of actual shipment of the coil from the factory, but has also stated that the inventory carrying period is sometimes longer than a few days. *See* Dongbu's January 31, 1997 submission at 35. Given these facts, we can no longer use the bill of lading date as the shipment date in the credit calculation.

However, we also accept the argument Dongbu set forth in its January 31, 1997, supplemental questionnaire response that it would be an excessive administrative burden to report the shipment date for each sale because Dongbu does not have an automated system that links individual shipping invoices to commercial invoices and commercial invoice line items. Therefore, because its U.S. sales are sometimes shipped in lots from the plant to the port over a period of days, Dongbu would have to trace manually from coils reported on individual shipping invoices to the appropriate line items on commercial invoices. *See* Dongbu's January 31, 1997 supplemental questionnaire response at 3–4. Given the administrative burden of such a task, it would be inappropriate for the Department to resort to adverse facts available to represent the credit period.

Because we cannot use the bill of lading date as the shipment date, and because of the excessive administrative burden of reporting shipment dates for each sale, petitioners' suggestion that we use the date of the commercial invoice from Dongbu to Dongbu Corporation as the factory shipment date is not unreasonable. Our verification report states, "At the same time that Dongbu ships the merchandise (or sometimes immediately thereafter), it prepares a * * * commercial invoice." *See* July 8, 1997 verification report at 4. Based on this information, we determine that the commercial invoice date is sufficiently close to the factory shipment date that it can serve as the start of the credit period without being adverse to Dongbu. Therefore, we

have used this date in the credit calculation in these final results of review.

Comment 8. Petitioners argue that the Department erred in not making a deduction from Dongbu's export price for Korean warehousing expenses incurred on cold-rolled products. They argue that the statute requires that these expenses be deducted from U.S. price because it says that the price in the United States must be reduced by the amount of "costs, charges, or expenses * * * incident to bringing the subject merchandise from the original place of shipment in the exporting country." *See* § 772(c)(2)(A) of the Act. Furthermore, petitioners argue, according to the SAA, warehousing expenses are included among movement expenses. It states that the movement expense deduction includes a deduction for "transportation and other expenses, including warehousing expenses * * *." SAA at 823. Moreover, the Department itself, petitioners argue, stated in the comments to the new regulations that the statute requires the deduction of "all movement expenses (including all warehousing) that the producer incurred after the goods left the production facility." *See Final Rules* at 27345.

Petitioners also argue that the reason the Department gave in prior reviews for not making the warehousing adjustment is not valid. In prior reviews, petitioners state, the Department failed to make the warehousing adjustment because it accepted Dongbu's characterization of these expenses as cost of manufacturing ("COM") expenses. Petitioners argue that neither the statute nor the regulations permit exceptions to the mandatory nature of the deduction based on how the respondent characterizes the expenses or records them in its financial records. For the Department to make an exception here would be particularly unjust, petitioners argue, because the Department has not captured the warehousing expenses at issue in any direct price adjustment. To "capture" them in cost data, petitioners argue, would never result in a direct adjustment to price as mandated by the statute.

Dongbu argues that in accordance with its normal accounting practices which predate the antidumping duty orders, it reported these warehousing expenses as manufacturing overhead associated with its Seoul works. The cost of pre-shipment overhead of this kind, it argues, is no different from overhead expenses associated with temporarily storing semi-finished products between production lines. Therefore, it argues, to deduct them from U.S. price even though they are already accounted for in manufacturing overhead would constitute double counting. Thus, it states, in the prior review of this order the Department properly treated these costs as pre-shipment manufacturing costs, and not as selling expenses.

Dongbu also argues that if the Department does decide to deduct this expense as a direct expense, it should make the deduction only for cold-rolled products, and not corrosion-resistant products, because corrosion-resistant products are never stored in the warehouse. It further argues that the Department should also adjust the reported cost of cold-rolled products downward by an offsetting amount to avoid double-counting of expenses.

Department's Position. We agree with petitioners and Dongbu in part. We agree that we should make an adjustment to Dongbu's U.S. price for warehousing expenses incurred after the subject merchandise has left the Seoul plant. As the SAA specifies at 823, the URAA's mandate to deduct movement-related expenses specifically includes "warehousing" expenses. Further, our new regulations (which, though not binding on this review, embody our latest practice) state that "[t]he Secretary will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses." *See* 19 CFR § 351.401(e)(2) (May 19, 1997). Here, the original place of shipment is Dongbu's Seoul production facility, and the warehouse is in Inchŏn. Therefore, because these warehousing expenses are incurred after leaving Seoul, they must be considered movement expenses, and they must be deducted from Dongbu's export price.

However, we agree with Dongbu that we should deduct these movement expenses only from the selling prices of cold-rolled products, and not corrosion-resistant products, because they are incurred only on cold-rolled products. Furthermore, we agree with Dongbu that it would be double-counting to include these expenses as both a movement expense and overhead. Therefore, in these final results we have deducted them from Dongbu's COM for cold-rolled products.

Comment 9. Petitioners argue that the Department erred by accepting Dongbu's calculation of inland freight costs incurred by an affiliated party in the home market, but not using a comparable formula for calculating transportation-related costs incurred by an affiliated party in the U.S. market. In the home market inland freight is incurred by Dongbu's affiliated entity Dongbu Express. In the U.S. market Dongbu's affiliate DBLA incurs expenses for arranging U.S. brokerage and handling, U.S. customs clearance, warehousing certain sales, and paying customs duties. Both of these entities contract with unaffiliated entities to perform the services. Petitioners argue that the Department erred by accepting Dongbu's reported home-market inland freight costs (which consist of the unaffiliated trucking company's charge to Dongbu Express plus a markup attributable to Dongbu Express' estimated overhead and profit), but not making a similar mark-up (and deducting that markup from U.S. price) for the profit DBLA realizes on its provision of transportation-related services.

Petitioners argue that, to the extent that DBLA charges amounts in addition to its costs for the transportation services, these amounts represent expenses incurred in bringing the merchandise from the place of shipment to the unaffiliated U.S. customer. Thus, petitioners argue, the mark-ups DBLA and Dongbu Express charge are identical in substance even though they may be different in form, and consistency requires that the Department treat them the same way. Moreover, they argue that the Department's failure to adjust for the markup is inconsistent with its treatment of an affiliated-party markup in its analysis of POSCO. Finally, they argue that because Dongbu has failed to report the amount of DBLA's markup on these sales, the Department should rely on facts available. Petitioners suggest that as facts available, the Department should apply to DBLA the markup percentage that Dongbu Express charges for its services. As an alternative petitioners argue that, if the Department refuses to make a markup adjustment in the U.S. market, it should also not make a markup in the home market.

Petitioners note that in the previous review the Department rejected this argument, and gave several reasons for this rejection. None of these arguments, petitioners state, withstand scrutiny. First, petitioners state, the Department argued that the sums DBLA paid to unaffiliated companies were already reported on the record. Petitioners argue that this is true, but irrelevant. Their argument, they state, is not that the cost to DBLA has not been fully reported, but that the ultimate cost to Dongbu for these services is understated, because it does not include the markup charged by DBLA.

Second, petitioners state, the Department argued that because the U.S. affiliate did not directly perform these

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services, but rather contracted for them, the adjustment should not be made. Petitioners argue that this statement too, though true, is irrelevant because neither Dongbu Express in the home market nor DBLA in the U.S. market directly perform the transportation services, but rather contract with unaffiliated service providers for them. Furthermore, POSCO's U.S. affiliates also do not directly perform the services in question, yet the Department made an additional deduction from U.S. price to account for markups.

Third, petitioners state that the Department argued that there was no legal basis for the deduction of profit on these services because "U.S. profit deductions are allowed only in connection with CEP sales, and not EP sales." Petitioners see two flaws in this argument. First, they argue that the Department did not apply this argument to the deductions made for markups by POSCO's affiliates and Dongbu Express. Second, they state that it misconstrues the statute and petitioners' argument. They state that they do not seek the CEP deduction for profit earned in the United States which is provided for in section 772(f) of the Act. Rather, they ask that the Department fully account for all movement expenses because the statute requires that they be deducted in their entirety from U.S. price.

Dongbu argues that the Department rejected petitioners' argument in the second review of this order, and should do so here as well. It argues that there the Department determined that Dongbu's transactions with DBLA and Dongbu Express were not identical in substance, and that the expenses at issue were fully reflected in the brokerage fees paid by DBLA, and reported by Dongbu in its response. It argues that given no change in the factual record or the manner in which Dongbu reported these expenses, the Department should adhere to its past practice and reject petitioners' arguments on this issue. It notes too that the third reason upon which petitioners allege the Department based its determination (*i.e.*, that U.S. profit deductions are allowed only for CEP sales) was not a reason the Department gave to support its determination, but was a statement the Department used to summarize Dongbu's argument. Dongbu reiterates its position that there is no legal basis for deducting an amount for "profit" on these sales because U.S. profit deductions are permitted only in connection with CEP sales.

Department's Position. We agree with petitioners in part, and have changed our position from the preliminary results of this review and the final results of the prior review. Because the amounts paid to Dongbu Express in the home market and to DBLA in the U.S. market are both for the provision of transportation-related services, we believe that they are similar in substance. Accordingly, the more reasonable approach for these final results is to treat these expenses in the same way.

However, we do not agree with petitioners' preferred approach for treating the two markups identically. We are not satisfied from the information on the record that the markups between Dongbu and its affiliates in either market reflect arm's-length market values. Given the closeness of the affiliation between Dongbu and the affiliated entities at issue, we cannot presume the arm's-length nature of the markups, nor can we be certain that they are not simply intra-company transfers of funds. However, petitioners' suggestion that we use Dongbu Express's markup for export services as a surrogate for DBLA's markup for import services is inappropriate. The use of a surrogate for missing information is not justified where, as here, we never requested the respondent to provide the missing information, and where there are other options. Given the facts of this situation, we have determined that in this review we will adopt petitioners' alternative suggestion of not making a markup adjustment in either the U.S. or home markets.

Comment 10. Petitioners argue that the Department erred in granting Dongbu a home market adjustment which Dongbu allegedly mischaracterized in its submissions. They base their argument that Dongbu mischaracterized this adjustment on the following allegations:

- The expense is identified differently in Dongbu's financial statements and in the list of general expenses (contained in Dongbu's questionnaire response) from the way it is identified in Dongbu's claim for an adjustment;
- The Department's translator translated the name of the adjustment differently at the Korean verification than Dongbu translated it in its various submissions;
- There is a distinction in how Dongbu treats the expense with respect to its end-user customers (on the one hand) and its distributor customers (on the other hand).

Petitioners argue that Dongbu should be held to the way it characterizes these adjustments in its own financial records and agreements. Moreover, they argue, where the proper translation of a particular term is disputed, it is appropriate for the Department to rely upon its own translator, as it did in the second review of this order. *See Second Review Final Results* at 18411. Furthermore, petitioners argue that Dongbu's stated rationale for the distinction in treatment is not supported by evidence on the record. At the verification, Dongbu stated that the rationale behind the distinction is that distributors tend to buy in larger quantities than do end-users. *See* July 8, 1997 verification report at 10. Petitioners' analysis (submitted in its case brief) allegedly demonstrates that this rationale is not supported by Dongbu's sales listing. Finally, petitioners argue that because Dongbu mischaracterized the adjustment, the Department should use adverse facts available with respect to it.

Dongbu argues that petitioners' argument is not supported by record evidence. First, it argues that information on the record demonstrates that it does not, contrary to petitioners' argument, differentiate the expense at issue by class of customer. Second, it argues that the record of the review regarding the circumstances surrounding the expense should dispel any confusion resulting from translation questions. Third, it argues that petitioners are inconsistent in their own translation of the name of the expense.

Department's Position. We agree with Dongbu. Based on analysis not capable of public summary, we have determined that no basis exists in the record evidence to reject Dongbu's characterization of the requested adjustment. *See* the Department's final results analysis memorandum for additional information.

Comment 11. Petitioners argue, based on information given in the verification report, that Dongbu has understated its depreciation expense by not including the expenses related to the revaluation of depreciable assets. As a result, petitioners argue, Dongbu understated its cost of production and constructed value. Therefore, petitioners argue, in the final results the Department should revise Dongbu's costs upward to reflect the increase resulting from the company's revaluation of depreciable assets.

Dongbu argues that petitioners have misstated the amount of the difference as given in the verification report. It argues that given the insignificance of the difference, the Department correctly determined that it was appropriate to accept the reported depreciation expenses without adjustment.

Department's Position. We agree with petitioners in part. We agree that

Dongbu's reported depreciation is understated, and should therefore be adjusted. However, we agree with Dongbu that petitioners' case brief misstates the amount of the understatement. The correct amount is shown in the July 8, 1997 verification report at 14–15. In these final results we have adjusted Dongbu's reported depreciation to reflect the revaluation of the depreciable assets.

Comment 12. Petitioners argue that there is overwhelming evidence on the record demonstrating that BUS and POSAM were much more than mere "processors of sales-related documentation" or "communication links" for POCOS's and POSCO's U.S. sales. Petitioners note that the Department, in its preliminary results of *German Plate*, identified several functions performed by the respondent's U.S. affiliate that warranted classifying and analyzing the affiliate's resales as CEP transactions. Petitioners argue that, with the possible exception of customer credit checks, both BUS and POSAM performed all of those functions as POCOS's and POSCO's sales affiliates in the United States, and other functions as well.

Petitioners state that record evidence and POCOS's and POSCO's own statements during verification demonstrate that, like Dillinger's U.S. affiliate, BUS and POSAM play the central role in negotiating U.S. transaction prices. Regarding BUS, petitioners cite statements in the Department's report of the verification of the POSCO Group conducted in Korea ("Korea verification") that petitioners claim indicate, in contradiction to later statements made at the verification of BUS ("California verification"), that BUS could suggest prices to be charged to the U.S. customer and that BUS was involved in the establishment of quarterly base prices it would pay for the subject merchandise. Petitioners cite statements made by company officials and noted in the Department's California verification report that are seemingly contradictory: that BUS needed to know the quarterly base prices in order to be sure that it would not lose money, and that POCOS decided whether particular sales would be completed, and the prices, without input from BUS. Petitioners question the extent to which the U.S. customers are aware of POCOS pricing, given BUS's statement at the California verification that the U.S. customers were not informed of the quarterly base prices, and petitioners question how those U.S. customers could have proposed bid prices that were never rejected unless they consulted with BUS on the setting of the prices. Petitioners also argue that the fact that BUS is not controlled by POCOS provides further support for the conclusion that BUS acts independently to set transaction prices in the United States, and note that the respondent provided no tangible evidence of contact between U.S. customers and POCOS with regard to pricing.

Petitioners argue that POSAM, like BUS, had considerable discretion in the setting of U.S. prices. Petitioners note that there is no evidence to suggest that any price proposed by a U.S. customer was ever rejected by POSCO, even though POSAM claimed at the verification of POSAM ("New Jersey verification") that the U.S. customers were not aware of the quarterly base prices that had been provided to POSAM by POSCO.

Petitioners argue that the Department's New Jersey verification report demonstrates that the format of the computer spreadsheet files containing POSAM's U.S. sale cost breakdowns indicates that POSAM actively determined the amount of profit it would realize on its sales. Petitioners argue that this conclusion is supported by the fact that the profit field amounts were entered into the files as discrete figures, rather than being calculated by a formula as a residual between POSAM's selling price and its costs.

Petitioners argue that the record shows that, with the exception of POSCO sales to one specific U.S. customer, in which it was clear that POSAM was not included in the sales process, BUS and POSAM had the primary role with respect to every aspect of each transaction, and assumed the sole responsibility for the most significant portions of each transaction. Petitioners state that in addition to having significant discretion in pricing and active involvement in negotiating the terms of sale for each transaction, BUS and POSAM also arranged for a variety of expenses characterized by the Department under the broad category of movement expenses. Petitioners state that BUS and POSAM served as the importers of record, took title to the merchandise, and handled other administrative issues pertaining to the U.S. customers.

Finally, petitioners argue that the levels of involvement of BUS and POSAM in the U.S. sales are consistent with the substantial amount of selling, general, and administrative expenses ("SG&A") these companies incurred during the POR.

The POSCO Group argues that its U.S. sales should be classified as EP sales because POSAM and BUS function as communications facilitators for U.S. sales, and POSCO and POCOS set the terms of sale, including price, for U.S. sales. The POSCO Group notes that the Department determined in its second review final results that these entities operated as communications facilitators, and that the existence of sales contacts between the U.S. customers and these U.S. affiliates indicates nothing more than this limited role in the process nor establishes that the affiliates played any role in the actual setting of the prices. The POSCO Group also argues that POSAM and BUS did not participate in negotiation of other key sales terms for U.S. sales, citing as evidence of this a sale examined at the California verification for which POCOS required that the product characteristics of the merchandise requested by the U.S. customer be changed.

The POSCO Group argues that in numerous previous cases, including the first and second reviews of these orders, respondents' sales were classified as EP (or formerly purchase price) sales when their U.S. affiliates undertook activities identical to, or even in addition to, those undertaken here by POSAM and BUS. *See, e.g., Brass Sheet and Strip from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 1324, 1326 (Jan. 19, 1996); *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18551, 18562 (Apr. 26, 1996); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods from France*, 58 FR 68865, 68869 (Dec. 29, 1993) ("*Wire Rod from France*"); *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56371 (Nov. 4, 1991); and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 37125, 37133 (July 9, 1993). The POSCO Group argues that functions such as maintaining contact with customers requesting price quotations, invoicing customers, collecting payment from the customer, maintaining relationships with customers, serving as importer of record, arranging and paying cash deposits for antidumping and countervailing duties, arranging and paying for brokerage, and minimal roles in U.S. transportation services, are activities commonly undertaken by an affiliated selling entity that acts as a

communications link. The POSCO Group also states that the petitioners' case brief does not mention numerous functions performed by the Korean manufacturers in the sales process.

With regard to the setting of prices, the POSCO Group states that record evidence indicates that negotiations with each customer for each individual sale typically began in one of two ways: the customer may suggest a price to POSCO or POCOS in the initial inquiry, which POSAM or BUS forwards to the Korean manufacturer; or if the customer does not suggest a price, POSAM or BUS, based on their knowledge of the quarterly base price already established by POSCO, sometimes suggest a price to POSCO or POCOS for the sale when transferring the inquiry to Korea. The POSCO Group states that the record indicates that POSAM and BUS did not negotiate with U.S. customers, but rather simply transmitted information to the U.S. customers and to the Korean entities. The POSCO Group argues that the record shows that U.S. customers were not notified of the quarterly base prices to POSAM and BUS, and that U.S. customers' bid prices were based in part not on those quarterly base prices but, rather, on knowledge of past pricing by POSCO and POCOS. Given the small number of U.S. customers and their ongoing, long-term relationship with POSCO and POCOS, the POSCO Group explains, those customers do not need guidance from POSAM or BUS regarding what their price offer should be.

The POSCO Group argues that the fact that POSAM and BUS are informed in advance of the quarterly base price is irrelevant, and that the record is clear that POSCO and POCOS do not consult with the U.S. affiliates with regard to the setting of those quarterly base prices. The POSCO Group states that the U.S. affiliates need to be able to estimate quarter by quarter the general value of transactions for cash flow purposes, insuring for example that they have adequate credit available to support their business. The POSCO Group cites statements by company officials at the U.S. verifications that neither POSAM nor BUS provided input to the manufacturers as to the setting of the quarterly base prices for the U.S. market, and that neither POSAM nor BUS provided those quarterly base prices to the U.S. customers.

The POSCO Group argues that the fact that a POSAM official "entered" the value for the POSAM markups into its cost spreadsheets is no indication that POSAM has an influence over the magnitude of that amount, but rather that these markup values were in fact residual amounts that were calculated elsewhere prior to computer entry.

The POSCO Group states that because there is no commercial reason to maintain records of an unsuccessful transaction and because POSAM's and BUS's communications with POSCO and POCOS, respectively, regarding customer price offers often occur by telephone, the fact that there is a lack of written proof of a rejection by POSCO or POCOS of a U.S. customer price offer is not surprising.

The POSCO Group states that the Department's verification report refers to various instances in which U.S. customers were in direct contact with POSCO and POCOS. The POSCO Group cites company official statements made at verifications in Korea and California that a POCOS official dealt directly with U.S. customers and, therefore, petitioners' claim that the record contains no evidence of contact between U.S. customers and POCOS is incorrect.

The POSCO Group challenges what it characterizes as petitioners' claim that POSCO's sales did not "go through POSAM" to the one specific customer whose sales petitioners state were correctly classified as EP sales in the preliminary results. The POSCO Group argues that POSCO's sales to that U.S. customer were no different than any other U.S. sales and that under petitioners' own logic, therefore, all of POSCO's U.S. sales are EP sales.

The POSCO Group challenges the petitioners' argument that the levels of SG&A incurred by POSAM and BUS indicate they are more than a communications link. The POSCO Group states that sales of subject merchandise account for only a small fraction of the U.S. affiliates' total sales, so the bulk of SG&A is clearly related to non-subject merchandise; that POSAM and BUS are selling entities only, whereas POSCO and POCOS are both selling and manufacturing entities; and that petitioners erroneously compare POSAM's and BUS's total SG&A expenses only to POSCO's and POCOS's selling expenses.

The POSCO Group argues that the key facts that led the Department to reclassify certain U.S. sales as CEP sales in *German Plate* are not present in these reviews. The POSCO Group indicates that in the German case the affiliate of the respondent Dillinger essentially negotiated all sales in accordance with the respondent's limited guidelines, that the U.S. affiliate had the power to negotiate and set the price for the respondent's single U.S. sale, that the foreign parent only set a minimum price floor after considering the order information provided by the U.S. affiliate, and that the U.S. affiliate was the one that negotiated with the single U.S. customer to try to obtain the best price. *German Plate* at 18391–92. The POSCO Group argues that POSAM and BUS, like the affiliates in other cases cited by the Department in *German Plate* as differing from Dillinger's affiliate, did not have or exercise such authority. See *E.I. Du Pont de Nemours & Co.* v. *United States*, 841 F. Supp. 1237, 1249–50 (CIT 1993), and *International Radionic Workers of America* v. *United States*, CIT Slip Op. 95–45 (March 15, 1995). Finally, the POSCO Group argues that in another case the Department classified sales as EP sales even though the U.S. affiliate participated in the sales negotiations with U.S. customers, because the U.S. affiliate did not have the flexibility to set the price or terms of sale and acted only as a processor of sales-related documentation. *Wire Rod from France* at 68869.

Department's Position. We agree with petitioners that respondent's U.S. sales (with the exception of those made to one customer) should be classified as CEP transactions. In the final results of the prior reviews, in order to determine whether sales made prior to importation through the POSCO Group's affiliated U.S. sales affiliates (POSAM and BUS) to an unaffiliated customer in the United States were EP or CEP transactions, we analyzed the POSCO Group's U.S. sales in light of three criteria: (1) whether the merchandise was shipped directly from the manufacturer (POSCO or POCOS) to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the functions of the U.S. sales affiliates (POSAM and BUS) were limited to those of processors of sales-related documentation and communications links with unrelated U.S. buyers. We concluded that BUS and POSAM were no more than processors of sales-related documentation and communications links, and classified the POSCO Group's U.S. sales as EP transactions. *Second Review Final Results* at 18433.

In this case, the record shows, and petitioners do not contest, that the first two criteria have been met. Consequently, the third criterion, pertaining to the level of affiliate involvement in making sales or providing customer support, is the determining factor in this instance. As explained above in the "Fair-Value Comparisons" section of this notice, to ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we

normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The record evidence here suggests that it is POSCO's and POCOS's roles that may be ancillary to the sales process (except with respect to one customer of POSCO, as noted below), and that in any case the record does not demonstrate that the U.S. affiliates' involvement in making the sales were incidental or ancillary.

We base this finding on several factors. First, we note that POSCO and POCOS's U.S. sales (with the exception of those to one U.S. customer) were made through POSAM and BUS, respectively, and that U.S. customers seldom had contact with POSCO or POCOS. The record establishes that POSAM and BUS were typically the parties contacted first by unaffiliated customers desiring to purchase the subject merchandise and also that POSAM and BUS sign the sales contracts. Such facts indicate that the subject merchandise is first sold in the United States by or for the account of the producer or exporter, or by the affiliated seller, and therefore that the sales in question are CEP transactions.

In addition to their key involvement in the U.S. sales process, the U.S. affiliates also played a central role in the sales activities after the merchandise arrived in the United States, including many of the criteria cited in *German Plate*. While the CIT has upheld a PP (or EP) classification despite such activities on the part of the U.S. subsidiary, that fact does not render these activities irrelevant in making this determination. While we disagree with petitioners' assertion that the record demonstrates that POSAM and BUS acted independently to set U.S. transaction prices and the other key terms of sale, the respondent's claim that the U.S. affiliates had no role in the setting of prices is not demonstrated by the record either.

The respondent's claim regarding the lack of U.S. affiliate involvement in the negotiation of prices is actually called into question by various factors. For example, the respondent did not provide tangible evidence of price rejection by POSCO or POCOS. With respect to other terms of sale, POCOS's apparent rejection of the product characteristics proposed by a U.S. customer only suggests that BUS is not autonomous with respect to the sales process and that BUS does not have all information regarding the production process, not that BUS's role in the process is ancillary.

While the fact that the "markup value" cell in POSAM's cost spreadsheets, unlike numerous other values, was entered by hand rather than as a formula does not appear to be relevant, a possible interpretation would be that the affiliate does in fact have some type of input into the magnitude of the markup it earns on the sales. More importantly, though, neither respondent's submissions nor its statements at verification explain the inconsistency of statements made during the California verification with respect to BUS's need to know the quarterly base prices.

Furthermore, the respondent's claim that the absolute and relative levels of SG&A incurred by the U.S. affiliates with respect to U.S. sales of subject merchandise are well below those of their non-subject merchandise operations is unsupported by the record, at least in part because the respondent did not provide information concerning selling expenses incurred in the United States. The POSCO Group chose not to report the indirect selling expense and inventory carrying cost information in its U.S. sales response, despite the fact that such reporting for U.S. sales of subject merchandise was requested in the Department's original questionnaire. When the Department indicated in a supplemental questionnaire that it may use facts available to determine these expenses if they were not reported by the POSCO Group, the POSCO Group again failed to report those expenses. The POSCO Group's response was as follows:

> "POSCO notes that it is not reporting these expenses because the Department has not notified POSCO that it believes that the sales at issue are not export price sales, and it does not want to burden the record with unnecessary data. POSCO's U.S. sales are export price sales and the Department ruled in the less than fair value determination and in the second review preliminary results that they were export price sales. POSCO has cooperated fully and will continue to cooperate fully with the Department. If the Department believes that it might reverse its practice from that in prior determinations, POSCO is willing to submit these expenses." *See* the March 3, 1997 supplemental Section C questionnaire response at 21.

The POSCO Group incorrectly assumed that the Department was required to meet certain preconditions before requesting and obtaining the information in question. The Department may solicit any information it reasonably believes may be relevant to its determinations, and is not obligated to solicit this information three or more times, especially given that there are statutory deadlines to which we must adhere. At least in part as a result of the respondent's choice not to report the information we requested, we cannot determine the extent of U.S. selling expenses pertaining to sales of subject merchandise. We cannot presume that the information the POSCO Group failed to provide would support a conclusion that the operations of POSAM and BUS with respect to the U.S. sales of subject merchandise were ancillary. Further, we are using the aggregate information as the basis for estimating the unreported U.S. indirect selling expenses.

We reject the POSCO Group's claim that the petitioners' admission that sales by POSCO to one U.S. customer were correctly classified as EP sales also suggests that all of the POSCO Group's U.S. sales should be classified as EP sales. For the sales to the one customer in question, POSAM was clearly not involved in the initial negotiations and the primary work relating to setting of price and other terms of sale. Given the information from the record indicating POSCO's substantial involvement in those sales and a very limited role for POSAM (*see, e.g.*, Exhibit 45 of the Korea Verification report), we are not reclassifying sales to that one customer as CEP sales.

Comment 13. Petitioners argue that the Department erred in its calculation of constructed value in its cold-rolled programming for the POSCO Group. Petitioners indicate that the Department deducted the variable representing credit expenses attributable to the gross unit price of the merchandise ("CRED1CV") twice in the calculation of CV.

The POSCO Group argues that this point is moot, given that normal value will not be based upon CV if the Department reverses its erroneous adjustment for alleged discrepancies in reporting methodology for cold-rolled product thickness.

Department's Position. We agree with petitioners that the Department erred in its calculation of CV by deducting CRED1CV twice. We have corrected the programming to reflect this change.

Comment 14. Petitioners argue that the Department should reverse its methodology and apply the major input and fair value provisions to transfers of substrate between POSCO, POCOS, and PSI. Petitioners note that the collapsing of entities does not negate the applicability of statutory provisions regarding affiliated persons. Petitioners state that the statute provides explicitly that the major input and fair value provisions are to be applied to transactions between affiliated persons, and that both the legislative history and public policy support the application of these provisions to all transactions involving transfers of substrate between affiliates. Petitioners assert that the

statute is silent with respect to the collapsing of entities for purposes of review, and consequently a decision to collapse entities cannot override the definition of "affiliated persons" which is explicitly mandated by statute.

Petitioners assert that applying the major-input or fair-value provisions selectively based on the purported extent of affiliation would be contrary to the express language of the statute and regulations, would have the effect of reading these provisions out of the statute in certain cases, and would preclude the transparency and predictability of the law.

Petitioners argue that collapsing is done when the Department finds that one party has a sufficient degree of control over another to create a significant possibility of price manipulation by the controlling party, and the Department's inherent authority to collapse two entities stems from several requirements: the need to review an entire producer or reseller, and not merely part of it; the need to ensure that antidumping margins are calculated as accurately as possible; and the need to prevent circumvention of antidumping duty orders by the establishment of alternate sales channels. *See Queen's Flowers de Colombia et al. v. United States*, CIT Slip Op. 97–120 (August 25, 1997), at 7–8. Petitioners conclude that collapsing is done to ensure that all of a respondent's U.S. sales are included in the calculation of dumping margins, and that such a determination has no bearing on the Department's treatment of affiliated party transactions within the meaning of the fair-value and major-input provisions of the statute. A determination to collapse entities merely indicates that one party has sufficient control over another to be in a position to manipulate the controlled party's pricing decisions, but this does not mean that the two parties are so closely intertwined that one may be deemed to be merely a division of the other or that the separate corporate identities of these two entities suddenly cease to exist.

Petitioners state that when the Department issued regulations to implement the URAA, it had the opportunity to limit the application of the major-input and fair-value provisions, but did not. Petitioners state that the legislative history is silent as to any limitation on the application of the major-input rule. Petitioners indicate that the methodology used by the Department in this instance would require in each case that the Department determine whether affiliated companies are operated as "divisions" of a whole, which would be burdensome, compared to simply applying the major-input rule and fair-value provisions to all affiliated parties.

Petitioners note that the statute explicitly precludes use of the COP to value transfers of substrates between affiliates if the transfer price is greater than the COP. Therefore, the Department has the discretion to ignore the transfer price to use a higher market value, but does not have the discretion to ignore transfer price in order to employ a lower value.

Petitioners note that the application of the major-input rule would not result in double-counting. Application of the major-input rule may result in an increase to a respondent's reported costs, but these adjusted costs also are used subsequently to calculate respondent's profits, and to the extent that costs are increased, the calculated profits are reduced. Furthermore, petitioners state that POCOS's profit is captured in the input price, and POSCO's profit is captured in the CV calculation.

Petitioners note that the Department in its analysis completely ignored the fact that the three companies (POSCO, POCOS, and PSI) are indisputably separate and distinct legal corporate entities, unlike in the case of *Certain Forged Steel Crankshafts from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 61 FR 54613 (October 21, 1996) ("*Crankshafts*"). In that case, the entities in question were divisions of the same corporation; in this one, POSCO, POCOS and PSI are indisputably separate corporate entities, and neither POCOS nor PSI is wholly-owned or controlled by POSCO. Petitioners cite various examples of factors affected by whether or not entities are divisions of another company or are separate entities, and which the Department should take into account if it chooses to ignore the distinction between these entities: Financing costs; tax impacts on working capital; and insurance costs.

Petitioners indicate that in applying the major-input and fair-value provisions, the Department should determine "fair value" for each specific control number ("CONNUM"), based on a comparison of POSCO's sales to POCOS, and POSCO's sales to all unaffiliated companies.

Petitioners argue that if the Department continues to wrongly reject the application of the major-input and fair-value provisions, it must be consistent and find POSCO and Union Steel to be affiliated. If the Department treats POCOS and POSCO as one entity, petitioners argue, it must treat POSCO and Union as affiliated parties, because there is no doubt that Union and POCOS are affiliated.

The POSCO Group argues that the Department addressed these same petitioner arguments in the final results of its second reviews, noting that the POSCO Group (encompassing POSCO, POCOS, and PSI) represents one producer of subject merchandise, that a decision to treat affiliated parties as a single entity requires that transactions among the parties also be valued based on the group as a whole, that transfers of substrate between the group companies should be valued at the cost of manufacturing the substrate, and that because the POSCO Group is one entity for these final results, the major-input rule and fair-value provisions of the Act cannot apply because there are no transactions between affiliated persons. *See Second Review Final Results* at 18430–31.

The POSCO Group argues that it would be inappropriate to apply the fair-value and major-input provisions under the unusual circumstances presented in this case because the Department is reviewing the cost of transactions within a single entity. The provisions apply only to transactions between persons, not when the Department is examining one producer or a single entity. By collapsing the POSCO entity for purposes of the dumping and cost analysis in this proceeding, the POSCO Group argues, the Department has determined that there are no transactions between affiliated persons under the language of the major-input or fair-value provisions of the statute. The POSCO Group argues that this is consistent with the Department's decision in *Crankshafts* at 54614. The POSCO Group argues that the Department's practice of collapsing parties into a single entity for its analysis was a well-known practice that existed before Congress applied the fair-value provision and major-input rules to the COP, and had Congress intended for these provisions to apply to transactions within a collapsed entity, it would have drafted the provisions to cover transactions between "affiliated and collapsed persons." The POSCO Group challenges petitioners' argument that the Department has to apply the major-input and fair-value provisions to a collapsed entity because the regulations do not proscribe their application in such an instance, arguing that the regulations by definition serve as general guidelines, and do not spell out the specific application of every rule contained in the regulations. Furthermore, the POSCO Group argues that 19 C.F.R. § 351.407(b) explicitly

allows for the Department's discretion in the use of these provisions, and the agency that has the most experience and is most expert in analyzing these issues recognizes that there are limits to how closely it should scrutinize transactions within a single collapsed entity. The POSCO Group also challenges petitioners' assertion that there is a continuum of affiliation, upon which collapsed entities reside; the POSCO Group states that under Department case law and common sense, parties are either unaffiliated, affiliated, or collapsed, and that these categorizations are mutually exclusive.

The POSCO Group states that petitioners, in challenging the reliability of the prices paid for inputs transferred among controlled entities, have in fact provided support for the Department's decision to value the inputs based on the objectively verifiable cost of the input. The POSCO Group rejects as irrelevant petitioners' argument that the provisions should be applied because calculating the COP based on POSCO's substrate production costs is difficult and requires numerous allocations between products, cost centers, and divisions.

Regarding the issue of whether or not the application of the major-input rule would result in double-counting, the POSCO Group argues that petitioners mischaracterized the POSCO Group's argument that it raised in the second administrative review. The POSCO Group argues that, contrary to the assertion of petitioners, profit is not to be included in the calculation of cost of production. The POSCO Group states that by using the transfer price from POSCO to POCOS, the Department would be double-counting SG&A and including an artificial element of profit, thereby resulting in more home market sales being found to be below cost than should be the case, and thus affecting the calculation of NV. The POSCO Group states that using transfer prices to value POSCO substrate used by POCOS would result in POSCO's profit and SG&A that are reflected in the sales to POCOS being included in the calculation of costs applied to POSCO sales, given that costs for each CONNUM are a weighted-average across each collapsed company. The POSCO Group argues that this is inappropriate because the statute does not provide for profit to be included as an element of the COP, and the portion that is SG&A would already be in POSCO's reported costs in the COP buildup. Furthermore, the POSCO Group argues, petitioners' methodology would lead to the illogical result of more sales failing the cost test if POSCO's internal sales of substrate earned a higher profit, even though actual costs remain unchanged.

For instances where CV is used as the basis for NV, the POSCO Group argues, the aforementioned use of transfer prices would distort the calculation of profit. The POSCO Group states that, in its calculation of profit for CV, the Department only uses sales that are above the COP. Because, as argued earlier, costs would be overstated were transfer prices from POSCO to POCOS to be used (because of allegedly inappropriate additional amounts of SG&A and profit), the Department would inappropriately discard lower value home market sales, because of the cost test, prior to the Department's calculation of CV profit.

Regarding petitioners' assertion that POSCO and Union be treated as affiliated parties, the POSCO Group argues that petitioners' case brief makes no factual or legal arguments whatsoever concerning why the Department should find POSCO to be affiliated with Union. The POSCO Group notes that the Department, in the second administrative reviews of the orders, rejected this petitioner assertion and the arguments upon which it was based, and concluded that this decision was not inconsistent with its decision not to apply the fair-value and major-input rules to the collapsed POSCO entity.

Department's Position. In our preliminary results in these reviews, as in the second administrative reviews, we treated the entire POSCO Group as one entity for cost purposes. The Department clearly has discretion in its application of the major-input and fair-value provisions, as admitted by petitioners with respect to *Crankshafts*. A more rigid interpretation of the statute, as proposed by petitioners, would imply that the Department could not make a distinction for wholly-owned entities either, as such an entity would also, under the Department's definition, be "affiliated" with its owner.

We recognize that different types of affiliation exist, and that different treatment of such relationships may be appropriate. The Department also rejects the POSCO Group's assertion that adjustments to POCOS costs cannot be acceptable because they affect whether or not POSCO sales pass the cost test. The nature of collapsing POSCO and POCOS is that POCOS's costs affect whether or not POSCO sales pass the cost test, given that each CONNUM's costs are a weighted average of the costs for that product across all collapsed companies.

However, because we are treating these companies as one entity for our analysis, intra-company transactions should be disregarded. As noted in our final results in the second administrative reviews, the decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole and, as such, among collapsed entities the fair-value and major-input provisions are not controlling.

As noted by the POSCO Group, the petitioners have not in these reviews demonstrated why Union Steel should be considered affiliated with POSCO. The POSCO Group is treated as one entity for various purposes, but they of course maintain their distinction as separate legal entities. Unlike the relationship of POSCO to POCOS, there is no evidence that POSCO or Union control or influence each other's operations, and there is no indication on the record of any type of interaction between POCOS and Union Steel relating to subject merchandise.

Comment 15. Petitioners argue that the POSCO Group failed to incorporate into its submitted costs general and administrative expenses associated with severance benefits. Petitioners cite information in POSCO's U.S. SEC report indicating that POSCO calculated an estimate of its exposure relating to these benefits, which was still in litigation, but under Korean generally accepted accounting principles ("GAAP") did not need to reflect this estimated expense in its financial statements.

The POSCO Group argues that POSCO incurred no current expenses for these unresolved severance benefits claims. The POSCO Group asserts that the Department made an adjustment for severance benefits in the final results of the second administrative reviews because POSCO was required by a final Korean court decision to establish a reserve for additional severance benefits. The POSCO Group argues that in those reviews the Department attributed such expenses to G&A even if they related to years prior to the review in question. The severance benefits that petitioners argue should be included for the third reviews have not been incurred, and POSCO has only a future contingent liability for potential exposure from the unresolved litigation. The POSCO Group argues that under the plain language of the statute the Department is not authorized to adjust POSCO's G&A costs based on such potential exposure, as the costs should be calculated based on records that "reasonably reflect the costs associated with the production and sale of the

merchandise" (*see* section 773(f)(1)(A) of the Act), and the Department is limited to using "a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the product under investigation or review" (SAA at 835).

The POSCO Group argues that the Department did not adjust for similar speculative potential liabilities in another case, where the Department decided that there was no justification for adjusting costs to include potential royalty payments which were speculative, that the respondents were under no legal obligation to pay, and for which the respondents had incurred no current expenses. *See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15479 (March 23, 1993) ("*Semiconductors*").

Department's Position. We agree with the POSCO Group that we should not increase the respondent's costs by the potential expenses in question, as Korean GAAP does not require that they be recorded as expenses, and it has not been demonstrated that the absence of this estimated potential expense is distortive. We further believe that it would be unreasonable to impute to POSCO costs that, depending on the outcome of the litigation, it may not incur.

Union

Comment 16. Petitioners argue that Union failed to provide complete information regarding its U.S. affiliates, by failing to identify in its responses the existence of two different corporate entities, one being the Union America division of DKA (hereinafter "UADD"), the other, which petitioners contend respondent concealed, Union Steel America Inc. (hereinafter "UAC"). Petitioners further argue that Union refused to provide selling expense, financial, or sales information for UAC. Petitioners argue that the Department should apply adverse facts available and make a direct adjustment to Union's export price to account for any expenses incurred by UAC and possible unreported U.S. sales.

Petitioners argue that "[t]hroughout this administrative review, Union Steel hid from the Department the existence of two separate 'Union Americas.'" Petitioners argue that the distinction between the two corporate entities, and the existence of UAC as a separate entity, was not made clear until the home market sales verification in May of 1997, by which time it was too late, petitioners argue, for the Department to obtain and verify sales information for UAC specifically.

Petitioners point out that UAC has separate expenses for U.S. operations from those of UADD, and that these separate expenses were not duly reported as indirect selling expenses. Petitioners note that the Department's supplemental questionnaire of April 18, 1997 instructed the respondent to "[r]evise [its] reported selling expenses to include expenses, both direct and indirect, incurred by Union America with respect to Union's U.S. sales."

Petitioners argue that the Department clearly intended to elicit information on expenses specifically tied to UAC, as the supplemental questionnaire followed on petitioners' own notification to the Department, in a letter of April 9, 1997, that UAC's financial statements contained expenses that had not been reported by Union. Petitioners note also that the Department's request asked for copies of each type of report that respondent submitted to Korean or U.S. national or local tax authorities, "for affiliates involved with the manufacture and sale of subject merchandise in the United States and Korea," as well as the chart of accounts for Union America.

Petitioners contend that by not furnishing these documents as requested for UAC in addition to UADD, despite multiple opportunities to do so in the course of the present and the preceding reviews, Union evaded the Department's request and failed to provide the requested information.

Because Union only divulged the separate identity of UAC, as distinct from UADD, during the verification in May, petitioners argue, sales and expense information of the former remains unverified. Petitioners state that, respondent's claims notwithstanding, UAC must have performed functions during the POR, as its financial statements contain expenses and revenues. Petitioners argue that the revenues must be presumed to correspond to sales of subject merchandise.

As a result of Union's failure to provide requested information about UAC's expenses and operations as a separate entity in a timely manner, petitioners argue, the Department was not able to verify data pertaining to UAC, still does not know all the facts concerning UAC, and has been precluded from performing a proper analysis of UAC.

Petitioners argue that because Union failed to report expenses incurred by UAC despite the Department's requests, the Department, as facts available, should presume that any SG&A appearing on UAC's financial statement in 1995 and 1996 were costs incurred within the POR and were directly related to the subject merchandise.

Petitioners note that Union did provide a printout for UAC's monthly sales income statement for June and July of 1995, but claim that there is no evidence that respondent also provided the verifiers with the documentation necessary to test the accuracy of the document, either by testing the underlying computer program or tying the printout to invoices.

Because Union has stated that all its reported sales were made through UADD, petitioners argue, the Department should assume that any sales made by UAC were additional, unreported sales of subject merchandise. The petitioners urge the Department to derive a surrogate quantity based on the weighted-average value of reported sales, and to apply to that surrogate quantity a rate of 64.5 percent, the highest rate from the petition in the LTFV investigation.

In rebuttal, Union argues that it clearly and unequivocally identified its relationship with UAC and provided the Department with requested information pertaining to UAC. Union argues that petitioners have mischaracterized the record, and states that it informed the Department in its response, at the outset of the review, of its corporate relationship with UAC and of UAC's lack of a role in the manufacture and sale of subject merchandise. Union further argues that the Department verified that UAC and UADD are separate corporate entities and that the Department confirmed that UAC has no involvement in the manufacture of subject merchandise. Respondent argues that for this reason, it had no information to report with regard to any purported selling activities of the subject merchandise by UAC, and that the Department should dismiss petitioners' claim.

Referring to its submission of October 1995 submission and other documents, including a verification report, in connection with the preceding review, Union argues that the Department clearly understood the distinction between UAC and UADD at least as early as October 1995. In the current review, Union argues, it discussed the corporate relationship between Union and UAC at page 5 of its response, where it stated that UADD had taken over the selling functions for U.S. sales of subject merchandise, and that UAC continued to exist as a separate corporation but had no activity relating to the manufacture and sale of the merchandise under review.

Union also points to UAC's 1995 audited financial statement, submitted with Union's Section A response, and to UAC's 1996 statement, provided at the Korean verification, as further evidence of timely disclosure of the corporate identity of UAC and of UAC's complete disassociation from the manufacture and sale of the subject merchandise. Thus, respondent argues, it had placed on the record of the present review in October of 1996 the information which petitioners claim it withheld, ten months prior to the U.S. sales verification in August of 1997.

With regard to whether the information concerning UAC was duly reported, Union argues that there is no reason under the statute that Union need submit any further information regarding UAC, because it is not involved in any way in the production or sale of subject merchandise. Concerning verification, Union argues that the Department did verify that UAC in fact does not produce or sell subject merchandise. Union cites in this regard the Department's Korean verification report, which addresses the assignment of UAC's former functions to UADD and the inactive status of UAC.

Regarding whether UAC made sales of subject merchandise, Union argues that the record shows that all such revenue had been earned on or before June 30, 1995, prior to the POR, as evidenced by UAC's financial statements submitted with its response and at the Korean verification.

Concerning whether the general expenses which UAC showed in its income statement should be allocated to its U.S. sales in the present review, Union argues that because UAC's involvement with sales of subject merchandise ended with the second review, these general expenses, which it characterizes in any case as "trivial," are not associated with third review sales of subject merchandise.

Department's Position. We agree with Union. The record demonstrates that Union revealed the existence of the two corporate entities in question and did not understate its reportable expenses. On the basis of Union's submissions and our verification thereof, we are satisfied that Union shifted the responsibility for selling subject merchandise in the United States from UAC to UADD, and that the former was not involved with such sales during the POR.

Comment 17. Petitioners argue that there are numerous instances throughout Union's sales database in which it failed to report U.S. warehousing expenses. The first such omission which petitioners allege concerns sales for which the terms were reported as being "delivered." For all these sales, petitioners argue, a time gap between reported entry date and date of shipment from the dock signifies that respondent must have incurred, and must have failed to report, warehousing or demurrage expenses.

The second omission which petitioners allege Union made concerns warehousing expenses for sales with terms of sale of "W&D," *i.e.*, "warehoused and delivered to customer site." Petitioners note that for a certain subset of this type of sale, there is an apparent inconsistency: when inland freight expenses were incurred in the United States, and when merchandise apparently was not picked up for several or more days, warehousing expenses must also have been incurred and yet were not reported.

The third omission which petitioners allege concerns sales with terms different from those mentioned above, and with delays between entry dates and shipment to the U.S. customer, but for which Union did not report any warehousing or demurrage expenses. Petitioners argue that these sales must have involved either demurrage or warehousing expenses. Petitioners further argue that respondent failed to provide proof, at verification, that such expenses were not in fact incurred.

Petitioners argue that for all sales with a gap between entry and U.S. shipment dates, where no warehousing or demurrage and handling expenses were reported, the Department should calculate a facts available adjustment, based on the highest per-diem demurrage and handling expense which the company reported in its response. Further, petitioners argue that for all sales with terms of W&D, the Department should, as facts available, account for the possibility that warehousing expenses might have been incurred after the second shipment date (which in fact occurred for one particular transaction) by making a downward adjustment to reported U.S. price based on the highest reported warehousing expense.

In rebuttal, Union argues that it fully reported its U.S. warehousing and inland freight expenses, that petitioners are factually incorrect, and that the Department verified the expenses in question to the full extent it considered necessary, finding no discrepancies. Union notes that the Department found no unreported expenses of the type imagined by petitioners. Union argues that the Department, not petitioners, determines what constitutes adequate verification, that petitioners err in thinking verification procedures and documents are limited to those discussed in the report, and that the explanations provided at the verification were included in the report precisely to answer petitioners' concerns on these subjects, as expressed prior to the verification.

Concerning gaps between entry and invoicing to the U.S. customer for certain sales, Union states that the free warehousing which it is allowed accounts for nearly all the sales in question. For one of the sales with a lengthy gap of this type, Union argues, the Department investigated and found that there were special circumstances that led to the greater time period with no warehousing costs.

As for sales with W&D terms, but no warehousing expense indicated, respondent states that the freight amounts which appear for the 11 sales discussed by petitioners corresponded to actual freight expenses, that petitioners are wrong to suppose that warehousing expenses must have been incurred, that the expenses for these sales were correctly reported, and that warehousing expenses were not incurred for them.

Department's Position. We agree with Union that there is no evidence that it failed to report the expenses in question. We were aware of petitioners' interest in establishing that warehousing and inland freight expenses were reported fully and properly, and their interest in understanding why such expenses were not incurred in particular instances. Accordingly, at verification, we examined relevant records with particular attention to these questions. We found no evidence that Union failed to report warehousing and inland freight expenses as incurred. Union's explanations and the documentation we examined at verification are both consistent with the response data. We verified that free warehousing was allowed for certain sales as Union claimed. For the sale with an especially long gap, we examined the documents supporting Union's explanation of the special circumstances. Similarly, for the sales made under W&D terms for which respondent reported no warehousing expenses, we verified that the expenses were correctly reported and that no warehousing expenses were incurred which were not reported.

Comment 18. Petitioners argue that Union failed to report U.S. inland freight expenses for some U.S. sales. Petitioners' point concerns two data fields for this category of expense, one called INLFPWU (hereafter "P"), the other INLFWCU (hereafter "C"). Petitioners state that the Department's questionnaire called for reporting freight expenses as follows.

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For CEP sales, the P column should show freight expenses incurred on shipments from the U.S. port of entry to the affiliated reseller's U.S. warehouse or other intermediate location, and the C column should show expenses incurred on shipments from the affiliated U.S. reseller to the unaffiliated U.S. customer. For EP sales, petitioners argue, the P column should show expenses from the port of entry to an intermediate location and the C column should show expenses incurred on shipments from the port of entry or an intermediate location to the unaffiliated U.S. customer.

Petitioners note that Union claimed to conform to the above requirements in its initial response, and did report that the P column contained amounts for "occasional cases in which a customer requests delivery to a warehouse or its own facility," and the C column contained either freight from port to customer, when sales terms were "delivered," or freight from a warehouse to a customer's location, when sales terms were "W&D." However, petitioners argue, there are inconsistencies and omissions in Union's reporting of freight expenses for certain sales for which the terms were "DEL" (delivered) and for certain others for which the terms were "W&D" (warehoused and delivered). Petitioners argue that certain of respondent's U.S. sales which would be expected to show expense amounts in both the C and the P fields by virtue of the terms of sale reported, do not show expense amounts in the C field.

Petitioners note that the Department requested, in a supplemental questionnaire, that Union report charges for shipment to the customer where the terms indicated delivery to the customer was provided. Petitioners take issue with Union's answer to that request, which was that for those sales for which no inland freight was reported in the C column, inland freight was reported in the P column. Petitioners note that this answer contradicts the response, in which Union held that all sales for which the terms were "DEL" showed freight expenses reported in the C field. Petitioners argue that it remains totally unclear what Union has reported with respect to freight expenses for sales with delivery terms of "DEL."

The freight expense reporting for sales with "W&D" terms, petitioners argue, is similarly confused. Petitioners suggest that record evidence strongly suggests that Union simply neglected to report freight expenses incurred in delivering merchandise from the warehouse to the customer. Petitioners assert that Union was unable to provide documentation at verification to show that it fully reported all U.S. inland freight expenses. Petitioners question why certain sales with "W&D" terms have freight reported in the C column but not the P column.

Petitioners argue that because respondent failed to provide the Department with a logical, coherent, and consistent explanation for its failure to fully report U.S. inland freight expenses, and failed to produce evidence at verification to support its claims, the Department should apply adverse facts available for unreported U.S. inland freight expenses. Petitioners suggest that the Department should apply the highest reported corresponding per-ton rate incurred to sales where terms are "W&D" and where no expense amount appears in either the C or P columns. For sales with terms marked "DEL," petitioners argue, and where Union did not report any amount in either the C or P columns, the Department should insert the highest reported corresponding per-ton rate. Finally, petitioners argue that in instances where a significant number of days elapsed between entry and shipment to the customer, the Department should make an adjustment for freight to the warehouse, and from the warehouse to the customer, based on the highest reported rate for each.

In rebuttal, Union argues that of those sales which petitioners highlight as having terms that "should" imply freight, most had "DEL" terms, *i.e.*, were delivered to a warehouse, and did have freight reported in the "P" field, indicating that Union delivered the merchandise to a warehouse. In its response, Union stated that "for the occasional cases in which a customer requests delivery to a warehouse or its own facility, U.S. inland freight has been reported on a transaction-by-transaction basis."

For the other sales which petitioners suggest ought to have borne freight expenses, those with "DEL" terms, Union argues that it reported freight in the "C" field. Union explains that the choice of field depended on whether a sale was delivered to a warehouse or to the customer's site.

Union states that the only other sales about which petitioners raise concerns in their brief are transactions with "W&D" terms but no freight in the "C" field. Respondent states that these were simply picked up by customers from the warehouse, as called for in the terms of sale. Union further states that nothing in the record would support a reversal of the Department's verification findings.

Union answers petitioners' concerns on the verification of its sales transactions by observing that petitioners cannot cite one instance of Union failing to provide requested documents or other information, nor any evidence of unreported expenses for any of the sales examined at verification. Union characterizes petitioners' concerns in this regard as speculation.

Department's Position. We agree with Union. We verified that these expenses were fully reported, and the record of the review is consistent with Union's submissions and explanations. Petitioners' concerns about the possibility of unreported freight and warehousing expenses are not supported by any instances of verification discrepancies or documentation problems.

Comment 19. Petitioners raise the following concerns with respect to six transactions which the Department traced at verification:

- Union failed to prove that it did not incur certain warehousing or demurrage and/or inland freight expenses;
- Union failed to provide adequate documentation of its claims and explanations as to sales terms;
- documentation which Union provided at verification raises the possibility that additional expenses for further processing may have been incurred but not reported;
- there are apparent inconsistencies between the reported sales terms and the reported expense amounts; from the reported sales terms it would appear some expenses were incurred but not reported.

Union answers that petitioners' concerns are again merely speculative. Union further notes that petitioners' concerns come late, since the home market verification report in question was available over two months prior to the U.S. verification, so that petitioners could have requested further investigation of these matters at that time.

Department's Position. We agree with Union that petitioners' concerns are speculative in nature and are not supported by the record evidence, including our verification findings. We are satisfied with Union's explanations, in its rebuttal brief, of the particular facts and circumstances of the sales in question. The response data and the documentary evidence from verification are consistent with Union's explanations in its rebuttal brief and with its response submissions.

Comment 20. Petitioners argue that Union's U.S. affiliate, UADD, plays an active and substantive role in the U.S. sales process, that this role is not only greater than that of a mere processor of

documents, but greater than that of Union itself with respect to U.S. sales. Petitioners argue that the Department should therefore classify all of Union's U.S. sales as CEP sales, rather than EP sales, and, consistent with that action, deduct all of Union's direct selling expenses, indirect selling expenses and allocated profits from the reported gross unit price when calculating CEP.

Petitioners summarize the three criteria for EP sales, as distinct from CEP sales, as follows: (1) The merchandise is not inventoried in the United States; (2) the commercial channel at issue is customary; and (3) the selling agent is not substantively more than a processor of sales-related documentation, or a communications link. Petitioners argue that all three of these criteria must be satisfied for a sale to qualify as an EP sale, then argue that in this case the Department must focus on the last of the three, *i.e.*, the role of the U.S. affiliate in the U.S. sales process, and urge the Department to do so in the context of Union's customary selling practices. Petitioners argue that Union's U.S. affiliates perform significant selling functions in the United States and that its U.S. sales must be classified as CEP sales.

Petitioners cite Department precedent and record evidence on the importance of the role of Union's U.S. affiliates in the U.S. sales process, and argue that the activities performed by these affiliates parallels those performed in *German Plate* by Francosteel, the U.S. affiliate of the German respondent (Dillinger). Petitioners summarize the activities performed by Francosteel as these were evaluated by the Department in that review, citing (1) Price negotiation and maximization, (2) establishing contact with the customer, (3) providing credit, (4) obtaining purchase orders, (5) invoicing, (6) taking title, and (7) acting as the importer of record. Petitioners state that the Department found in that review that Francosteel performed the above functions and was thus more than a mere processor of sales documents and communications link. Petitioners argue that in the instant review Union's U.S. affiliate performs even more functions than Francosteel.

Petitioners cite a home-market sales verification exhibit, in which only intra-corporate transfer prices appear, and argue that this exhibit shows that UADD negotiates price without the Korean parent's involvement or its knowledge of the prices that were ultimately charged to the unaffiliated U.S. customers. Petitioners argue that at both the home-market and the U.S. verifications, the instances which Union provided as evidence of the Korean parent's control and involvement in the setting of prices paid by customers were essentially hand-picked and have not been shown to reflect the normal sales process. Furthermore, petitioners argue, these examples fail to document the parent's role in price-setting even for these selected examples. Petitioners argue that the exhibits thus supplied show only rejections based on limitations of production capacity, or unsatisfactory intra-corporate transfer prices.

Petitioners argue that the U.S. verification report, which mentions further examples of sales that the verifiers examined and where the parent initially disapproved certain terms, quantities, and prices, does not make clear what examples were examined, since the verifiers did not take exhibits for these sales. Petitioners suggest that these examples may be sales that were refused on the basis of transfer price or production capacity, not because of the price to the ultimate U.S. customer.

Petitioners assert that aspects of UADD's commissionaires' roles, and the role of UADD in appointing commissionaires, as reflected in commissionaire agreements, shows that UADD has authority over the sales process, and that UADD establishes the first contact with U.S. customers. Petitioners argue that the gap in timing between UADD's payment to Union in Korea and UADD's collections from U.S. customers, shows that UADD provides credit to U.S. customers.

Petitioners argue that UADD is responsible for handling purchase orders obtained directly from its U.S. customers, that UADD's commission agents, according to their contracts with UADD, may participate in the sales process actively, and that the commissionaires work directly for UADD. Petitioners also argue that the commission agent agreements contain clauses suggesting that UADD can make pricing decisions. Petitioners argue that UADD invoices its U.S. customers. Petitioners argue that UADD takes title to the subject merchandise, acts as the importer of record, and in so doing takes on a role so significant that, like Francosteel in the Dillinger review cited above, it rises above the role of a mere communications link and processor of sales-related documentation.

Petitioners argue that UADD's selling functions far outweigh those performed by Union itself, "which appear not to include anything more than producing and shipping the merchandise." Petitioners cite the following functions which UADD performed in the POR:

- Certain price agreement negotiations;
- Processing sales and import documents;
- Processing certain warranty claims;
- Paying customs and antidumping duties;
- Arranging warehousing and transportation at the customer's request;
- Accepting and reselling returned merchandise; and
- Engaging in communications with, and acting as point of contact for, U.S. customers.

Petitioners further argue that based on certain accounting records UADD "may carry inventories of the subject merchandise." Petitioners cite also some additional selling functions, which were "revealed" to have been performed by UADD in the prior review, pertaining to market research, planning, finding U.S. sales, negotiating purchase terms, maintaining customer relations, procurement services, and arranging and paying for post-sale warehousing and transportation to customers.

In rebuttal, Union argues that petitioners fail to come up with any new arguments on this issue, severely distort the factual record, mischaracterize Union's sales process, and rely on sheer speculation. Union points to the final results of the first and second reviews, in which the Department rejected the same arguments by the petitioners. Union also points to the verifications, particularly the U.S. verification, of which the report discusses the Department's examination of the authority which the Korean-based Export Team exercised over pricing and sales terms. Union states that nothing has changed regarding the assignment of selling functions between the Korean and U.S. affiliates. Union reviews the sales process as documented in its response and the verification report, and points to record evidence supporting the claim that UADD has no price negotiating ability.

Union further argues that no changes in the applicable law governing EP sales have emerged to alter the Department's position. Union contends that *German Plate* had an unusual aspect, in that the affiliated sales intermediary engaged in extensive price negotiations. Union cites Exhibit 3 of the U.S. verification report which shows an instance where Union disapproved a particular price and dictated a price different from that requested by the U.S. customer, via UADD. Union cites the U.S. verification report's description of the sales process as it relates to the determination, by the Export Team in Korea, of the final price to the unaffiliated U.S. customer. Union distinguishes these facts from those in

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German Plate, where the Department found the foreign manufacturer's role in the sales process to be minimal, whereas the affiliated sales intermediary essentially negotiated all sales. Union points to the Department's finding at verification that the Union controlled all the terms of sale, price and otherwise, and notes that the Department reviewed four months of correspondence to test the accuracy of Union's statements that it approves prices for all sales. Union notes that the Department found nothing inconsistent with the responses, and that the Department found that Union sometimes rejected sales based on price and other terms.

Concerning selling activities, Union notes that information on the record in this review confirms that, as the Department found in prior reviews, the commission agreement which establishes commission rates was drafted and controlled by Union. Union disputes petitioners' assertion that for at least one U.S. customer UADD has authority to adjust prices, and cites to its questionnaire response which states that Union itself retains that authority in full.

Union argues that UADD's role in accepting payments from U.S. customers, and arranging for the extension of credit to them, is in keeping with the Department's definition of a sales processor. Regarding warehousing and transportation, Union retorts that UADD arranges for these services but does not directly provide them. Concerning warranty claims, Union confirms that UADD processes these, but notes that Union sales personnel in Korea decide all claims. Union similarly confirms that UADD receives purchase orders, but explains that, as the Department verified, it then forwards these directly to Union, which is responsible for approving the sale or proposing alternative terms or prices.

With respect to the other selling functions enumerated by petitioners, Union confirms that UADD invoices U.S. customers, takes title to merchandise, pays duties and fees, and serves as a communications link and point of contact for U.S. customers. All of these functions, Union argues, are in keeping with the Department's definition of a sales processor, as discussed in the final results of the prior review.

Concerning instances when UADD accepts and resells returned merchandise, Union states that such instances have properly been reported as CEP transactions.

Department's Position. We agree with petitioners that Union's U.S. sales should be treated as CEP transactions. In the final results of the prior reviews, in order to determine whether sales made prior to importation through Union's affiliated U.S. sales affiliate (UADD) to an unaffiliated customer in the United States were EP or CEP transactions, we analyzed Union's U.S. sales in light of three criteria: (1) whether the merchandise was shipped directly from the manufacturer (Union) to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling affiliate (UADD) was limited to that of a processor of sales-related documentation and a communications link with the unrelated U.S. buyer. We concluded that UADD was no more than a processor of sales-related documentation and a communications link, and classified Union's U.S. sales as EP. *Second Review Final Results* at 18439.

As explained above in the "Fair-Value Comparisons" section of this notice, to ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The totality of the evidence regarding Union's sales process demonstrates it is Union's role that is ancillary to the sales process, and not that of UADD.

We agree in large part with petitioners that UADD fulfills several of the criteria cited in *German Plate*, including price negotiation, initial customer contact with respect to individual sales, credit, purchase orders, invoicing, title and importation. We agree that the verification results are not dispositive. The few instances which Union offered of disapproved prices and terms do not establish that UADD's involvement in the selling functions was ancillary. The authority which Union's export team exercised over the final terms does not amount, in the end, to placing all of the primary selling function in Korea. Indeed, the paucity of evidence that the home office played any role in the sales process reinforces petitioners' argument as to UADD's active role, as does the fact that UADD employed the services of independent agents in the United States. Therefore, we concur with petitioners that UADD's role in the sales process is more than ancillary.

Union's argument that the U.S. affiliate in *German Plate* engaged in extensive price negotiations is true, but does not nullify the fact that UADD is significantly involved in price negotiations and the other selling functions discussed above from the onset of client contact in each sale. We also note that the higher proportion of indirect selling expenses incurred in the United States in connection with Union's U.S. sales of subject merchandise, as opposed to those incurred in Korea, supports petitioners' contentions. Further, the existence of significant selling expenses in the United States itself belies Union's claim that the role of its U.S. affiliate was not meaningful. *See* Union's February 21, 1997 response at Volume II, Exhibit C–20. For the foregoing reasons, we have classified Union's U.S. sales as CEP transactions in these final results.

Comment 21. Petitioners argue that the Department should make several adjustments to Union's COP and CV data. Because of Union's affiliation with POSCO, petitioners argue, the Department should make an adjustment for Union's purchases of substrate from POSCO to ensure that they reflect fair value and are above POSCO's COP. Petitioners argue that in the preliminary results the Department wrongly concluded with respect to POSCO that the fair-value and major-input provisions of the statute do not apply to POSCO's affiliated transactions with POCOS; if the Department retains this approach, petitioners argue, then to be consistent it must also consider Union to be affiliated with POSCO.

Petitioners argue that the substrate which Union purchases from POSCO represents a major input and so must be assigned a value equal to the highest of (1) the transfer price from POSCO to Union, (2) POSCO's production cost, or (3) the market value. Invoking this last provision, petitioners argue that the Department should adjust Union's substrate costs by the difference between the price it paid POSCO and market value, as evidenced by purchases from unaffiliated entities.

Addressing the issue of whether POSCO and Union are affiliated, Union cites to the final results of the second review, where the Department determined that POSCO had not been shown to control Union. Union argues that petitioners offer no new evidence to buttress their presumption that Union and POSCO are affiliated or to cause the Department to revise its view on this point.

Department's Position. We agree with Union. We examined the basis for petitioners' concerns about the possibility of control of Union by POSCO in the prior review. We found insufficient evidence then in support of petitioners' assertion that the business relationship between POSCO and Union satisfies the Act's new affiliation criteria

at sections 771(33)(E→G). *Second Review Final Results* at 18417–18. No new evidence or argument has been offered in these reviews, and we again find that petitioner's assertion is not supported; therefore, for purposes of these final results, we have again treated Union and POSCO as unaffiliated. Accordingly, our position with regards to the fair-value and major-input provisions of the statute is that these do not apply.

Comment 22. Petitioners argue that the Department should reject Union's change in depreciation methodology because it is contrary to longstanding Department precedent and practice and is contrived. Citing the Department's position in *Semiconductors*, as well as the decision of the CIT in *Micron Technology, Inc. v. United States*, CIT Slip Op. 95–107 (June 12, 1997) ("*Micron*"), petitioners argue that a similar fact pattern is in evidence, that the change in methodology in accounting for depreciation expense understates respondent's fixed overhead, that the Department should reject the change for the same reasons as in *Semiconductors*, and increase respondent's fixed overhead amounts by a specific percentage rate. The petitioners suggest a rate, which they calculate on the basis of net asset value of the assets in Exhibit 9 of the Korean verification report, multiplied times a standard flat annual depreciation rate for assets with a remaining useful life of eight years. Petitioners argue that the Department should use the difference in percentage derived from this example and apply the differential to all of Union's fixed overhead expenses.

In rebuttal, Union argues that petitioners' suggested method would double-count depreciation expenses, and notes that its auditors and the Korean tax authorities both approved the changes in depreciation methodology. Union argues that petitioners provide no argument in support of their thesis that it is distortive to depreciate the remaining value of assets when such a change in method is adopted.

Union argues that if the Department wishes to use costs based on a double-declining balance method, the proper costs to use would be those contained in Union's supplemental response, which were verified, rather than those which would be obtained by relying on the straight-line method costs which were submitted later. Union also notes that if the Department wishes to use the later, straight-line data, petitioners' suggested ratio is too high, and would need to be decreased to reflect the actual proportion of depreciation within fixed overhead. Union supplies the revised factor which it claims the Department would need to make the adjustments using the correct ratio of depreciation to total fixed overhead expense.

Department's Position. We agree with petitioners that Union's change in depreciation methods understates overhead and that there are similarities in the instant case with the facts of *Semiconductors* and the related court decision, *Micron*. We also agree that, even if Union's change in methodology is made according to local accounting standards, the Department may still find the change to be distortive and decline to use the revised costs. We note that the CIT in *Micron* found that:

> Commerce was entirely justified in concluding that Samsung's methodology, as implemented, distorted depreciation expense during the POI to the extent that Samsung used the full useful life of the asset rather than the remaining useful life at the time of the change in depreciation method.

Union's adoption of a new depreciation method similarly would entail a restatement of asset values and depreciation expenses over multiple years, including years for which an investigation and subsequent reviews have already been conducted. The restatement would therefore also mean that "greater costs were attributed to products manufactured before the change than subsequent to the change." *Semiconductors* at 15479. Thus, here, as in *Semiconductors*, we find that "the basis used for the financial statement, even if stated in accordance with Korean GAAP at the time of the change, would be distortive for purposes of our antidumping analysis." *Id.*

Accordingly, we have determined not to accept Union's reported depreciation expense. Instead, for purposes of these final review results, we applied petitioners' suggestion, in part, by compensating for the accounting change; we also took into account Union's concern that we reflect the accurate proportion of depreciation within overhead, and used the amount indicated by multiplying Union's fixed overhead expenses times the ratio of straight-line (non-restated) depreciation in fixed overhead.

Comment 23. Petitioners argue that the Department should reduce Union's claimed offset for revenue from the sale of scrap, which Union based on theoretical amounts related to its production yield ratios, to reflect instead Union's actual scrap generation rate. Petitioners base their argument on verification results which indicated, petitioners argue, that the recovery rate which Union used was not accurate. Petitioners suggest a percentage by which they urge the Department to adjust the scrap offset to reflect the difference they describe.

Union answers that the difference in the numbers compared by petitioners can be accounted for by changes in work-in-process ("WIP") inventory. Union argues that scrap temporarily stored on the floor, prior to entering inventory, would not be accounted for immediately as it is produced, and that any change in the amount of scrap WIP inventory between the beginning and the end of the cost reporting period would not be captured in the production figures reviewed at verification. Union argues that the Department's test was a reasonableness check, not an attempt to recalculate the quantity of scrap through another means, and Union believes that the amount noted at verification falls within reasonable limits for such a by-product.

Alternatively, Union argues, if the Department determines it should reduce the reported scrap quantity, then it should adjust yield rates simultaneously, multiplying each by a factor of 0.84, then re-compute COP and CV based on the revised scrap and yield totals.

Department's Position. We agree with petitioners that it is more appropriate to use the corrected scrap recovery rate as discovered at verification. Accordingly, for these final results, we have adjusted the scrap rate as petitioners suggest; we have also revised the yield rate in keeping with Union's concern regarding the need for consistency in these two factors.

Comment 24. Petitioners argue that, as in the second review, the Department should revise Union's submitted costs to account for differences between submitted costs and actual costs of manufacturing (costs based on Union's financial statements).

Union argues that the difference in costs is less than petitioners assert once the change in accounting methodology is accounted for. Union also argues that the difference between the two sets of costs, *i.e.*, its questionnaire response costs and its financial statement costs, are trivial, and the Department's tests at verification were only to determine the reasonableness of Union's submissions.

Department's Position. We agree with petitioners. The record shows that there is a noticeable difference between the actual manufacturing costs (from the audited financial statements) and the manufacturing costs submitted by Union. The difference is not trivial since we disagree with the change in depreciation method which Union argues would narrow the cost difference. Our verification test is not

only a test of the reasonableness of a respondent's submissions but also a check on accuracy. When we find, as we did here, that submitted costs are less than actual costs, and when the information which would allow us to use the more accurate cost figure is on the record and is easily incorporated into our analysis, we have no reason not to use the more accurate figure. Accordingly, we have applied the corrected cost figure as suggested by petitioners.

Comment 25. Petitioners argue that the Department should account for the difference between costs which Union incurred during its fiscal period and the higher costs it incurred during the POR. Petitioners note that the Department allowed Union to report costs based on its corporate record-keeping period provided that this methodology did not distort the calculation of costs. Petitioners argue that the analysis which Union provided demonstrates that its methodology has a "noticeable" impact on the calculation of costs, reducing them by a percentage difference which petitioners assert is significant, unlike the difference in the same costs in the prior review. Petitioners urge the Department to revise Union's submitted costs to include a specific adjustment for the effect of Union's use of its record-keeping period.

In rebuttal, Union argues that for the sake of consistency with past practice, and relative ease of submission and of verification, Union requested that the third review cost reporting be on the same basis as the prior reviews, July through June, a difference of one month from the August-July POR. Union argues that it gave evidence showing that this method would not distort costs and that the Department did not find the method distortive, though Union concedes that the Department also later requested it to submit its costs for the POR itself rather than for the fiscal year.

Union argues that petitioners are wrong in at least two respects, since they have not supported their claim that the change in reporting period had a noticeable effect on submitted costs, and since the Department concluded previously that the choice of periods was not distortive. Concerning the magnitude of the difference in average unit costs, Union explains that it could be due to a change in the product mix, even if all unit costs remained unchanged. Union argues that the case has proceeded on the basis that the change in periods was not distortive, and petitioners cannot now claim differently.

Department's Position. We agree with petitioners that the POR costs are indeed higher than the fiscal-year costs, as is shown by Union's own information. When we allowed Union to report on the basis of a different period we also requested the information which would permit us to compare the reported numbers to those of the POR and to apply the latter if these were different enough to affect the results of our analysis, as we found they were. We disagree with Union's argument that petitioners failed to support their claim that the change in reporting period had a noticeable effect, and we disagree with the characterization of the change as less than noticeable. Finally, the argument that the difference in costs could have arisen from a difference in product mix is unpersuasive: the potential effect of the change is noticeable, and we find it is therefore more reasonable to revert to the actual POR data. Accordingly, for purposes of these final results, we based our margin calculations on the POR costs rather than on the fiscal period costs.

Comment 26. Petitioners argue that the Department should revise Union's submitted interest expense to account for expenses incurred by the Dongkuk Steel Mill ("DSM") group. Petitioners argue that it is the Department's longstanding policy to employ the financial expense incurred by the consolidated entity, not the unconsolidated entity, in calculating the interest expense component of COP and CV. Petitioners note that the Department obtained the necessary consolidated rate information from Union but failed to apply it in the preliminary results. Accordingly, petitioners argue that, for purposes of these final results, the Department should substitute the consolidated rate for the rate initially supplied by Union.

In rebuttal, Union concedes that it is Department policy to use the interest expense of the entity at the highest level of consolidation, but argues that Union is not further consolidated with any other entity, and its financial statements represent the highest level of consolidation. Union notes that at the petitioners' request, it provided the financing costs for DSM and DKI in its supplemental response, but that this does not signify that Union's interest costs are in any way consolidated with those of the other two firms. Union argues that the Department correctly applied its practice in the preliminary results and should continue to do so in the final results.

Department's Position. As in the prior review, where the same issue arose (though in the prior review the issue concerned all general and administrative expenses ("G&A") rather than merely interest expenses), we agree with petitioners. The ownership and affiliation ties at issue have not substantially changed. It is our practice to include a portion of the G&A expense incurred by the parent company on behalf of the reporting entity. We disagree with Union's arguments that Union's financial statements reflect the highest level of consolidation. Since Union is affiliated with the DSM group, we agree with petitioners that a portion of the interest expenses for the DSM group should be allocated to Union's costs. Accordingly, for these final results, we applied the interest expense ratio suggested by petitioners.

Comment 27. Petitioners note that the Department recently changed its policy regarding the calculation of interest expense for CV, and no longer includes imputed credit expenses or inventory carrying cost expenses in its calculation of CV, but uses the same interest expense ratio as it does for COP. In support of this argument, petitioners cite *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 69067, 69075 (December 31, 1996) and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea*, 62 FR 39809, 39822 (July 24, 1997). Accordingly, petitioners argue, for the final results the Department should ensure that the interest expense ratio used for CV reflects this new policy. Union offers no rebuttal.

Department's Position. We agree with petitioners and have amended our calculations accordingly for these final results.

Comment 28. Petitioners argue that the Department asked Union to "provide an analysis that compares year-end adjustment amounts provided in [its] responses to the amounts reported in [its] audited financial statement," but that the Union failed to provide this analysis. Petitioners note that such an analysis would have enabled the Department to determine whether the submitted costs reflect the year-end adjustments which are included in the financial statements, but which are not always incorporated in the normal accounting system. Petitioners argue that since Union neglected to provide the analysis, "the Department should apply facts available and increase Union's submitted costs by 8 percent (or 1/12)."

In rebuttal, Union argues that the July 1995–June 1996 costs which it

submitted included the full year-end adjustments for 1995 in accordance with Department practice. Union later supplied audited year-end 1996 adjustments when these became available. Union argues that petitioners have not claimed any significant changes from 1995 to 1996 in kind or in number, other than the change in depreciation method, to which petitioners have objected. Union argues that petitioners' claim that it failed to provide relevant information has no support in the record.

Union further points out that the Department verified its responses, including 1996 year-end adjustments, with its full cooperation.

Department's Position. We agree with Union. Union provided the information we requested as it became available, and the year-end adjustments in question were duly verified. We see no need for the application of facts available in this instance.

Comment 29. Petitioners note that in its deficiency questionnaire, the Department requested that Union revise its submitted G&A and interest expense calculations to make them consistent with the Department's final results in the second administrative review, with respect to the scrap revenue offset. Petitioners argue that Union failed to do so, causing a critical inaccuracy in the Department's analysis. Petitioners urge the Department to apply facts available and to use the financial statement entries for "Sales—Other" and "Non-operating Income " Miscellaneous" as offsets to the cost of sales.

Union argues that to be consistent with the Department's calculation of costs on a per-unit basis, a different, lower, adjustment would be called for, but that, if the Department begins adjusting the denominator for the cost of manufacturing, it must also take into account the fact that the denominator includes an offset for duty drawback, which unit costs do not include. Union suggests that there is a rough balance between the scrap and drawback adjustments, but that if both are made, the cost of manufacturing would decrease.

Department's Position. We agree in part with each party. We agree with petitioners that Union failed to make the adjustments to the G&A and interest expense calculations we requested. We agree with Union that for consistency, all relevant factors must be duly reflected in the revised expense ratios. For these final results, therefore, we have used revised expense ratios that are consistent with the prior review and which incorporate the relevant adjustments suggested by Union.

Comment 30. Petitioners urge the Department to increase Union's submitted G&A expenses to take account of corporate overhead expenses of DSM, as in the final results of the second review. In rebuttal, Union argues that nothing in the record suggests that DSM provides goods or services to Union, and that petitioners' argument should be rejected.

Department's Position. We agree with petitioners. It is our practice, as we stated in the final results of the prior reviews, and as mentioned above in the Department's Position on Comment 26 in connection with interest, to include a portion of the G&A incurred by the parent company on behalf of the reporting entity. For these final results, therefore, we allocated a portion of DSM's G&A to Union's G&A.

Respondents' Comments

Comments by Dongbu and Union

Comment 31. Dongbu and Union argue that the Department erred in using the contract date, rather than the commercial invoice date, as the date of sale for their U.S. sales. They base this argument on several considerations. First, they argue that the Department's stated rationale for using the contract date as the date of sale is fallacious. In the preliminary results the Department stated:

> The questionnaire we sent to the respondents on September 19, 1997 (*sic*) instructed them to report the date of invoice as the date of sale; it also stated, however, that "[t]he date of sale cannot occur after the date of shipment." Because in these reviews the date of shipment in many instances preceded the date of invoice, we cannot use the date of invoice as the new regulations prescribe.

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 47422, 47425 (September 9, 1997) ("*Preliminary Results*"). Dongbu and Union state that this rationale is factually incorrect. They state that for Dongbu there are no instances in which shipment date preceded invoice date. As for Union, it acknowledges that only three line items in the U.S. data base have a shipment date prior to the invoice date, but state that this reporting was a trivial data input error which the Department should ignore. Furthermore, it states that these three line items all pertain to a single shipment, and that the reported shipment date preceded the invoice date by only one day.

Second, Dongbu and Union state that using the contract date as the date of sale was inconsistent with the Department's regulations and recent case law, citing 19 CFR § 351.401(i):

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

Dongbu and Union argue that the invoice date is presumptively the date of sale, and that exceptions to this presumption must be narrowly drawn. Furthermore, they argue that the preamble to the regulations makes explicit the Department's intent to restrict the exceptions to the presumption when it says that the regulations put parties "on notice" that "in the absence of information to the contrary, the Department will use date of invoice as the date of sale." *Final Rules* at 27349.

Furthermore, they argue that recent case law demonstrates the Department's intention to restrict the exceptions to the presumption. As an example, they cite *Stainless Steel Wire Rod from India; Final Results of New Shipper Antidumping Review*, 62 FR 38976 (July 21, 1997) ("*Wire Rod from India*"), in which the Department rejected a petitioner's argument that the Department should use the purchase order date, rather than the invoice date, as the date of sale. There the petitioner based his argument on the allegation that there was too long an interval—presumably several months—between the purchase order date and the invoice date. However, the Department, citing its proposed regulations, stated that alternatives to invoice date are acceptable where there are long-term contracts or where there is an "exceptionally long lag time between date of invoice and shipment date." *See Wire Rod from India* at 38979. In *Wire Rod from India*, however, the Department noted that there were no long-term contracts and the lag between purchases and invoices during the period of review is not considered exceptionally long. Dongbu and Union note, however, that if in this instance the Department uses the contract date as the date of sale, there is a much longer lag between the sale date and invoice date.

As a further demonstration of recent Departmental practice, Dongbu and Union cite to *Seamless Pipe from Germany; Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 47446 (September 9,

1997) ("*Seamless Pipe*"). There the Department rejected a respondent's use of the date of invoice as the date of sale in the home market and the "date of order confirmation" as the date of sale in the U.S. market. Instead, the Department used the shipment date and stated that "[s]ince there can be several months between order confirmation and shipment, using shipment date in both markets puts home market and U.S. sales on the same basis for date of sale." Dongbu and Union argue that the Department's date of sale determination in the preliminary results of this review cannot be reconciled with its determination in *Seamless Pipe* because there it used the shipment date as the date of sale in the home market and the contract date as the date of sale in the U.S. market, and thus placed home market and U.S. sales on entirely different bases.

Third, Dongbu and Union argue that the Department's determination to use contract date as the date of sale is inconsistent with its determination to use date of shipment as the date of sale for POSCO. They argue there is no apparent justification for treating Union and Dongbu differently from POSCO. Both Union and POSCO have a shared sales channel. They argue that the Department has not articulated any reason that the contract should be used as the date of sale for Union, but that the shipment date should be used as the date of sale for POSCO.

Fourth, Dongbu and Union argue that the Department's determination with respect to Union in this review is inconsistent with its determination in the first administrative review of this order. There the Department determined that it was inappropriate to use the date of contract as the date of sale, and instead used the date of shipment, basing its decision on the fact that quantities changed between order and shipment. Moreover, Dongbu and Union note that unlike this review, the Department in the first review had stated no preference for using invoice date as date of sale.

For all of these reasons Dongbu and Union state that the Department should use the invoice date as the date of sale. For those limited instances in which the date of shipment preceded the date of invoice, they argue, the Department should use shipment date as the date of sale, as this most clearly implements the Department's narrowly construed exceptions to the invoice date preference.

Petitioners argue that the Department was correct in using the contract date as the date of sale for both Union and Dongbu.

They argue, first, that Dongbu and Union misinterpreted the Department's statement in the preliminary results notice (cited above) that there were many instances in which the date of shipment preceded the date of invoice. Petitioners claim that this statement referred not, as Dongbu and Union believe, to the date of invoice between Dongbu and Union and their U.S. affiliates, but between their U.S. affiliates and their U.S. customers. Thus, petitioners argue that Dongbu's and Union's comments regarding the lag time between contract dates and invoice dates are inapposite.

Second, petitioners argue that the proposed regulations give the Department the latitude to use a date other than the invoice date as the date of sale. The proposed regulations state that the invoice date "may not be appropriate in some circumstances" for use as the date of sale. *See Notice of Proposed Rulemaking and Request for Public Comment*, 61 FR 7308, 7330 (February 27, 1996) ("*Proposed Regulations*"). Petitioners argue that one such circumstance would be where the potential for manipulation exists; that potential, they argue, exists where, as here, the invoices are between affiliated parties. Indeed, given the Department's traditional scrutiny of affiliated-party transactions, petitioners argue, it is not unreasonable to assume that the preference stated in the *Proposed Regulations* for using the invoice date as the date of sale applies only to invoices between unaffiliated parties.

Third, petitioners argue that reliance on Dongbu's reported date of invoice would be particularly unwise. The Department's verification report, petitioners argue, indicates that the commercial invoice from Dongbu Steel to Dongbu Corporation (which Dongbu reported as its date of sale) is not a formal accounting record, but is prepared for purely collateral purposes, such as securing payment on letter of credit sales. This invoice, therefore, is not corroborated by reference to unaffiliated parties or even by reference to Dongbu Steel's own internal accounting records. Thus, petitioners argue, the date reflected on this invoice cannot be verified from Dongbu's accounting records, and does not meet the Department's verification requirements.

Fourth, petitioners argue that the Department should reject, with respect to Dongbu, Dongbu's and Union's proposal that the Department use the shipment date as the date of sale if it refuses to use the invoice date as the date of sale. Petitioners argue that because Dongbu reported the bill of lading date as the date of shipment, and not the date of shipment from its manufacturing plant, the reported shipment date is subsequent to the invoice date, which even Dongbu acknowledged. Therefore, petitioners argue, the Department cannot use it as the date of sale. Thus, with respect to Dongbu, petitioners argue that there was no other date on the record that the Department could use as the date of sale other than the contract date.

Fifth, petitioners note that the Department's determination regarding the correct date of sale is consistent with its determination in the most recently completed review of this order. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 51882, 51885 (October 4, 1996).

Department's Position. We agree with Dongbu and Union that we should use the invoice date as the date of sale. While petitioners are correct that the *Proposed Regulations* give the Department the latitude to use a date other than the date of invoice as the date of sale, Dongbu and Union are also correct that our current practice with respect to the selection of the date of sale adheres to the our regulations and recent case law. Our current practice, in a nutshell, is to use the date of invoice as the date of sale unless there is a compelling reason to do otherwise. The reason underlying this preference is that typically the material terms of sale are established on that date. *See* 19 CFR 351.401(i).

In these cases, there is no record evidence indicating that a date other than the invoice date is the date after which the essential terms of the sale could not be changed. Moreover, the fact that Dongbu's reported invoice date is not a "formal accounting record" does not, contrary to petitioners" argument, make it unverifiable. We are not using the date of invoice between affiliated parties, but rather the date of invoice to the first unaffiliated purchaser in the United States, as the date of sale. In light of the foregoing, after reconsidering our use of the contract date as the date of sale in the preliminary results, we now find no compelling reason to deviate, in these cases, from the Department's current practice of using the invoice date as the date of sale.

Comments by Dongbu

Comment 32. Dongbu argues that the Department erred in determining that one of its U.S. sales was a CEP transaction rather than an EP

transaction. The sale at issue is one in which the U.S. customer who ordered the material canceled the purchase while the material was on the water *en route* from Korea to the United States. Dongbu subsequently resold the material to another customer (for a discount) after it entered U.S. customs territory. Between the time of its arrival and its subsequent resale, DBLA incurred warehousing and demurrage charges on this shipment.

Dongbu argues that for two reasons the Department should classify this sale as an EP sale for the final results. First, it argues that information gathered at verification conclusively demonstrates that Dongbu (and not DBLA) bore the cost of all the warehousing and demurrage charges and the discount, and was thus ultimately responsible for the disposition of the merchandise.

Second, Dongbu argues that the sale was not in Dongbu's normal business channel. Thus, classifying this sale as a CEP sale, Dongbu argues, is inconsistent with *Seamless Pipe* in which the Department considered the role that unusual transactions should play in determining whether an exporter sells on an EP or CEP basis. In deciding the proper classification, the Department examined the four criteria consistently applied in making this determination. The first two criteria, and the ones relevant to this discussion, Dongbu states, are: (1) Whether the merchandise is shipped directly to the unaffiliated buyer without being introduced into the affiliated selling affiliate's inventory, and (2) whether this procedure is the customary sales channel between the parties. In *Seamless Pipe* the Department found that application of these criteria was an insufficient basis to classify sales as CEP sales. The Department stated:

> In applying the first two criteria to the present review, we found that for the majority of sales, the merchandise was shipped directly to the unaffiliated U.S. customer without being introduced into MPS's [the respondent's affiliated sales agent's] inventory. We found that MPS occasionally buys for its own inventory, but we did not find any subject merchandise purchased for inventory during the POR. In addition, several sales were warehoused upon arrival in the U.S. when the original customer canceled its order * * *. The Department verified that the terms of sale during the POR were CIF duty paid to a port of entry near the customer's plant, and that MPS did not take physical possession of the shipment, except in the unusual instance described above.

Seamless Pipe at 47448. In *Seamless Pipe* the Department ultimately determined, based on the third and fourth criteria, that the sales were all CEP. However, Dongbu states that what this citation shows is that the existence of a few unusual transactions was not sufficient evidence to classify the U.S. sales as CEP sales. It argues that the decision in *Seamless Pipe* to consider the way the majority of sales were made is a much more reasonable application of the criteria, particularly considering that the ultimate responsibility for the sale was borne by Dongbu.

Petitioners argue that the Department correctly classified the sale at issue as a CEP sale. They cite the statutory definitions of EP and CEP sales:

> [T]he term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation * * *. Section 772(a) of the Act.
>
> [T]he term "constructed export price" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation. Section 772(b) of the Act.

Petitioners argue that Dongbu's argument ignores these statutory definitions under which all sales made after importation must be classified as CEP transactions. They argue further that even if it were appropriate for the Department to consider selling functions in making this determination, the sale would still be a CEP sale because all relevant sales activity occurred in the United States.

Finally, petitioners argue that *Seamless Pipe* is inapposite. There, they state, the vast majority of U.S. sales were sold prior to importation, and the Department thus applied its three-prong test to determine whether those sales were properly classified as EP or CEP transactions. There is no indication in the notice, petitioners state, that the Department applied that test to those sales which had been sold after importation. Rather, in its discussion of the three-prong test, the Department noted that the only incidences of warehousing involved those sales which had been resold due to customer cancellations.

Department's Position. We disagree with Dongbu. As indicated above in the Department's response to Comment 5, we have treated all of Dongbu's U.S. sales as CEP sales in these final results. Therefore, Dongbu's argument that the sale at issue was an "unusual transaction" is moot. Furthermore, the statutory definition of a CEP sale requires that the sale at issue be classified as a CEP sale because it was sold after importation into U.S. customs territory. That it was Dongbu, rather than Dongbu U.S.A., that bore the costs of the U.S. warehousing and demurrage is not determinative.

Comments by POSCO

Comment 33. The POSCO Group argues that in its preliminary results the Department erroneously disallowed an adjustment for post-sale warehousing expenses incurred in connection with certain sales made through the Pohang Service Center ("PSC"). The POSCO Group claims that the Department verified the calculation of this allocated expense in its review of a pre-selected home market sale, and the Korea verification report does not indicate that any of the data reviewed with respect to this sale, including that relating to post-sale warehousing expenses, was not verified or otherwise raised concerns for the Department.

Department's Position. As noted by the POSCO Group, pages 20 and 21 of Korea verification Exhibit 29 contain information detailing how a calculation of the expense in question was made. Neither the information in this exhibit, nor the Department's writeup of its review of this transaction in its verification report, indicates whether the values and per/ton calculated amounts are based on POSCO's payment to PSC, or, alternatively, on the expenses actually incurred by PSC. As noted by the Department in its September 2, 1997, preliminary analysis memorandum at 6, "it is not clear from the record what that amount represents." Furthermore, the Department had not been made aware of even the basic information relating to these alleged expenses prior to verification, although the Department's original questionnaire asked for a complete explanation of all parties involved in the provision or receipt of post-sale warehousing with respect to the respondent's home market sales, as well as other information pertaining to such services. By introducing this topic for the first time during the Department's review of the pre-selected sale in question, the POSCO Group prevented the Department from conducting a timely inquiry into the nature of these transactions, including whether or not the warehousing services allegedly provided by PSC were at arm's length. Consequently, we are continuing to disallow this adjustment for the final results.

Comment 34. The POSCO Group argues that the Department should not have disallowed a portion of reported post-sale warehousing provided for certain home market sales by a company in which POSCO owns a small stake. The POSCO Group argues that there is no evidence on the record to support the Department's apparent assumption that the expense was not made at arm's

length, and that the Department should correct its calculation of post-sale warehousing by eliminating the reduction to that expense utilized in the preliminary review results for the transactions in question.

Petitioners argue that the absence of information on the record is due to the POSCO Group's failure to supply information demonstrating that the transaction was at arm's length, despite the fact that the Department had made a similar downward adjustment to this expense in the previous review. Petitioners argue that it is the POSCO Group's burden to demonstrate the arm's-length nature of such transactions, and consequently the Department should maintain the adjustment that it made in its preliminary results.

Department's Position. We agree with petitioners. The record does not demonstrate the arm's-length nature of a certain part of the reported post-sale warehousing expense for transactions involving the affiliated party in question. In our preliminary results, we reduced this reported expense by only a small portion of the part of the expense associated with the affiliated party, to reflect POSCO's ownership stake in that company. We have continued to make this adjustment in our final results. *See* Preliminary Results Analysis Memorandum for the POSCO Group, September 2, 1997, at 6.

Comment 35. The POSCO Group argues that it reported all movement expenses associated with U.S. sales, and that the Department should not deduct from U.S. price any portion of the markups charged by AKO and BUS. The POSCO group states that these deductions contradict the plain language of the statute and the Department's uniform practice in prior cases, including all prior steel cases, and that, if accepted, the Department's reasoning reflects a major shift in practice that would have to be applied in all instances in cases where sales are made through affiliated parties, including Union and Dongbu.

The POSCO Group argues that the Department's deduction of a portion of the markups charged by AKO and BUS constitutes a reduction of the price of EP sales for profit, which is contrary to the law, and if adopted would impact the vast bulk of the Department's dumping cases. The POSCO Group states that the law only allows for a deduction for profit from CEP. The POSCO Group states that it is not aware of a single other instance involving the steel industry or any other industry in which the Department deducted profit earned by affiliated parties on the purchase and resale of subject merchandise.

The POSCO Group argues that the Department's long-standing policy concerning EP sales is to utilize the price paid by the first unaffiliated U.S. customer, and to deduct only direct selling expenses from that price, and that the Department disregards transactions between affiliated parties, such as between POCOS and AKO and BUS, when calculating EP. The POSCO Group cites as an example *Certain Iron Construction Castings from Canada: Final Determination of Sales at Less Than Fair Value,* 51 FR 2412 (January 16, 1986) ("*Castings*"), where the Department rejected petitioners' request that a markup earned by a related U.S. distributor be deducted from purchase (now export) price.

The POSCO Group notes that AKO and BUS perform no movement services themselves but pay unaffiliated customs brokers to perform the services at issue. The POSCO Group states that in the final results of the second review and the preliminary decision in this review, the Department refused to deduct any portion of markup earned by U.S. affiliates for Dongbu or Union sales because those affiliates, likewise, did not provide movement services themselves but utilized customs brokers or other unaffiliated parties to perform movement services. The POSCO Group notes that in the final results of the second administrative reviews the Department determined that Union's U.S. affiliate did not directly perform the brokerage and handling services but rather employed brokers to do so, that all U.S. brokerage and handling expenses incurred by the affiliate on behalf of Union were fully reported, and that there is no legal basis for deducting an amount for U.S. profit on these sales because U.S. profit deductions are only allowed in connection with CEP sales, not EP sales. *See Second Review Final Results* at 18441. The POSCO Group states that for Dongbu the Department noted that the cost of arranging for U.S. brokerage and handling, U.S. Customs clearance, payment of customs duties, and for being the importer of record, are reflected in the brokerage fees paid by the U.S. affiliate, Dongbu USA.

The POSCO Group states that BUS paid the customs broker a fixed fee that covers the customs brokers' administrative and overhead costs incurred in arranging for and paying those expenses, and that applying a markup to those expenses to allegedly reflect BUS's overhead in effect improperly double counts those overhead expenses because the flat fee already paid to the customs broker includes any overhead and general expenses incurred in arranging for and paying for those expenses. Furthermore, the POSCO Group states that the Department deducted a portion of the markup purportedly relating to inland freight costs, and that this was factually incorrect because BUS in fact performed no U.S. inland freight services, nor did it even arrange for those services.

The POSCO Group argues that the Department's purported justification for the deduction is incorrect because the Department never asked for information relating to other supposed expenses incurred by AKO and BUS that the Department is associating with movement services. The POSCO Group indicates that the Department refused such information at verification that allegedly showed that no adjustment was necessary because the purported expenses, like those incurred by POSTRADE and POSAM in relation to U.S. sales, were *de minimis.*

Similarly, the POSCO Group argues that the Department's apparent reasoning that AKO's entire markup should be deducted because AKO only performs movement services is incorrect because AKO performs no movement services. The POSCO Group states that AKO performed the same services and played the same role for POCOS as POSTRADE did for POSCO. The POSCO Group alleges that the Department verified that POSTRADE incurs no additional expenses for movement services, and that the Department as a result determined that POSTRADE's markup should not be deducted, citing the Department's statement in its preliminary analysis memorandum that POSTRADE and POSAM "incurred virtually no additional expenses as a result of the services in question." Furthermore, the POSCO Group asserts that there is no information on the record contradicting its assertion in its Section C supplemental questionnaire response at 25 that AKO was not involved in any activities associated with the movement of subject merchandise to POCOS's U.S. customers, but rather that AKO only helps generally to facilitate communications between POCOS and the U.S. customers, transferring documents between BUS and POCOS, and that AKO took title to the merchandise for U.S. sales and relinquished it in back-to-back transactions by issuing invoices to BUS. Therefore, the POSCO Group concludes, there is no rationale for the Department's deduction of the markup earned by AKO.

The POSCO Group argues that the Department's reasoning that AKO's and BUS's markups should be deducted because they are only indirectly

affiliated with POCOS, while POSTRADE and POSAM are wholly-owned by POSCO, creates an artificial distinction between wholly-owned and affiliated firms that has no legal or factual basis. The POSCO Group also states that the Department made no such distinction for indirect affiliation for Union in either the final results of the second administrative reviews or in the preliminary results of these reviews, choosing not to make any adjustment for markups earned by its U.S. affiliate. The POSCO Group states that there is no basis in the law for the notion that profits should be deducted from "indirectly" affiliated parties, whereas they should not be deducted for transactions between wholly-owned parties. The POSCO Group claims that if this rationale is accepted, the Department would need to create an entirely new methodology for something called "indirectly affiliated" parties, a distinction which the statute does not make. The POSCO Group states that two parties either are or are not affiliated, and the "degree" of affiliation is irrelevant to the dumping analysis. The POSCO Group claims that the Department's decision in *Certain Internal Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 3167, 3179 (January 28, 1992) ("*Forklifts*") to deduct the markups made by an affiliated trading company was due to the fact that the markups represented actual expenses relating to movement of the subject merchandise, a situation which the POSCO Group asserts is not the case in these proceedings.

The POSCO Group states that the Department uniformly looks at the costs to the collapsed entity consisting of affiliated parties rather than to the transfer prices between affiliated parties. For example, the Department routinely disregards commissions between affiliated parties because it considers such commissions to be mere intra-corporate transfers of funds. *See Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980 (February 6, 1995) ("*Roses*"). The POSCO Group states that in *Timken* v. *United States*, 630 F.Supp. 1327, 1342 (CIT 1986) ("*Timken*"), the CIT held that the statutory deduction for commissions did not require the Department to also deduct the profit earned by a U.S. subsidiary. The POSCO Group states that the Department's decision to deduct the entire markup earned by AKO and a portion of the markup earned by BUS flies in the face of this logic and constitutes the deduction of profit earned by related parties on EP sales.

In any case, the POSCO Group argues that the Department's resort to an adverse facts available calculation based upon a third party's data is highly inappropriate because it did not request such information for AKO and BUS, that it refused such information when it was supplied at verification, and because the Department verified that the alleged "unreported movement expenses" for POSAM and POSTRADE were *de minimis*, and therefore should have used this information as the most accurate and reasonable "facts available" for the AKO/BUS purported "unreported movement expenses." Furthermore, the POSCO Group states that the Department, in utilizing information from Dongbu Express as the basis for the adjustment for BUS, erred in that BUS, unlike Dongbu Express, is not a freight forwarder. The POSCO Group asserts that Dongbu Express actually performs transportation services, while BUS does not.

Furthermore, in applying the Dongbu Express data to BUS, the POSCO Group asserts that the Department utilized an inappropriate methodology, and suggests several alternatives that utilize Dongbu Express public information from the record. Finally, the POSCO Group asserts that the Department, in applying the Dongbu Express data to BUS, utilized incorrect calculations, and presents what it characterizes as more reasonable alternative applications utilizing Dongbu Express public information from the record.

Petitioners retort that the Department properly deducted from U.S. price the markups charged by AKO and BUS for their role in arranging for the provision of movement-related services. Petitioners cite *Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988), and *Second Review Final Results* at 18433–18435, as precedents for such a deduction from U.S. price. Furthermore, petitioners note that the precedent was in fact established in the first administrative reviews of these orders with respect to Dongbu Express, a party affiliated with Dongbu Steel, for instances involving home market sales of that respondent. Petitioners argue that the POSCO Group is correct in its determination that the Department acted inconsistently across respondents on this issue in its preliminary results, but was wrong in its prescription for eliminating the inconsistency. Petitioners indicate that this inconsistency should be rectified not by dropping the adjustment for AKO and BUS, but by deducting from U.S. prices the markups charged by all of the respondents' Korean and U.S. affiliates to the extent that they can be linked to movement-related services.

Petitioners argue that even if it is assumed that the affiliates in question do not function as freight forwarders or customs brokers, they do act as intermediaries between the producers and the independent providers of movement-related services for U.S. sales. Contrary to certain claims of the POSCO Group, petitioners state, these affiliates do incur additional expenses and earn profit for performing this type of liaison and coordination function pertaining to movement services. Petitioners note that the Department previously has determined that intermediaries between the respondent and independent providers of movement-related services, such as Dongbu Express, incur expenses and earn profits that constitute legitimate movement-related expenses. Petitioners note that given that the affiliates of POSCO and of POCOS serve as intermediaries in a manner substantially identical to that of Dongbu Express, their markups charged for arranging for movement-related services also are legitimate movement expenses that must be included among the others for U.S. sales.

Petitioners state that the record establishes that the affiliated Korean and U.S. trading companies do perform movement-related services and incur expenses in the process in addition to what they are billed by the independent providers of movement-related services. Petitioners also state that it is clear that POSAM and BUS act as intermediaries between POSCO and POCOS and the independent movement-related service providers, and as such are integrally involved in the movement of subject merchandise. Consequently, the POSCO Group's characterization of the markups of the trading companies as solely intra-company profit is incorrect, because they also capture actual expenses. Petitioners argue that the record does not establish that the expenses incurred by AKO and BUS in providing movement-related services were *de minimis*. Regardless of the magnitude of those expenses, though, petitioners note that the entire portion of the markup that can be attributed to such services, including both profit and expenses, should be deducted from U.S. price. The Department has included in its deduction from home market price for Dongbu the entire payment to Dongbu Express, reflecting both the amounts paid by Dongbu Express to independent providers and its markup (which itself

includes additional Dongbu Express expenses and Dongbu Express profit). Consequently, petitioners argue, the Department should deduct the entire markup on movement-related services for POSAM, POSTRADE, AKO, and BUS, as a proxy for the amount of markup that the respondent would have to pay if it employed an independent party to arrange for movement-related services.

Petitioners argue that the Department should deduct POSAM's markups from POSCO's U.S. selling prices. Petitioners note that the Department, in its preliminary results, concluded that the amount of actual expenses incurred by POSAM in arranging for the provision of movement-related services, after the elimination of "internal transfers" between POSAM and POSCO, was not sufficiently material to warrant the calculation of an adjustment. Petitioners argue that this conclusion apparently is based on POSCO's flawed calculation during verification of the amount of actual expenses POSAM purportedly incurred in arranging for movement-related services. Petitioners argue that POSCO provided no explanation of how it determined the total expense pool used in the calculation of POSAM's markup, and therefore the Department should use POSAM's total SG&A as the appropriate basis for the calculation. Petitioners also question as unsupported by the record the percentage factor POSCO claimed at the Korea verification as the appropriate basis for determining the portion of the total expense pool to be attributed to the expenses in question. Finally, petitioners question the POSCO Group's cited total quantity of steel used to determine the per-ton expense, indicating that the quantity used was significantly larger than the total quantity of subject merchandise (cold-rolled and corrosion-resistant) reported in the databases.

The POSCO Group, responding to petitioners' arguments regarding the POSAM markup, states that petitioners' arguments are moot because there is no basis for the deduction of any markup for the affiliated parties in question. Nevertheless, the POSCO Group argues that the portion of the markup that constitutes an internal transfer cannot possibly be deducted from U.S. price, and the POSCO Group asserts that POSAM did not incur any movement expenses that it did not report in its tape submission. The POSCO Group argues that even under the Department's "stretched rationale," the only direct movement expenses even theoretically at issue would be those *de minimis* telephone and fax charges incurred by POSAM to contact customs brokers, and the Department's Korea verification Exhibit 41, its Korea verification report, and its preliminary analysis memorandum demonstrate these expenses were in fact *de minimis*. The POSCO Group argues that petitioners' challenge to the data in verification Exhibit 41 is based on the faulty assumption that the costs indicated in that exhibit should be compared to POSAM's overall SG&A expenses, when sales of subject merchandise account for only a small portion of POSAM's sales, and petitioners' incorrect assumption that indirect expenses indicated in verification Exhibit 41 should be relevant, when in fact the Department is only concerned with direct expenses if it is trying to estimate movement expenses. The POSCO Group says it obviously was not able to segregate out telephone and fax charges relating solely to imports of subject merchandise versus imports of all merchandise, so the total pool of expenses is for imports of all merchandise, and the corresponding quantity figures used in the calculation of the per-ton expense are for all imports.

Department's Position. We examined at verification the actual additional unreported movement expenses incurred by POSCO's affiliates (*e.g.*, expenses associated with telephone calls from POSAM to customs brokers). Because the actual unreported movement expenses are insignificant in relation to the prices of each respondent's merchandise, we are making no special adjustment to U.S. price for them. *See* section 777A(a)(2) of the Act. There is no evidence that POCOS's affiliates had any substantive unreported movement expenses, either. In any case, such unreported movement expenses for POSCO and POCOS will be accounted for in the additional deductions made from U.S. price resulting from our reclassification of all of the POSCO Group's U.S. sales (except for those made to one customer, as also noted earlier) as CEP sales, as such expenses are reflected in the trading companies' SG&A expenses that we are using as a basis for estimating the U.S. indirect selling expense variable.

With respect to the profit earned by those affiliates, we have determined those profits should be disregarded as an internal transfer. There is nothing unique about the affiliations between the manufacturers and the trading companies that would warrant a departure from this standard practice. Consistent with our practice in cases such as *Roses*, for purposes of these final results we are treating the profits earned by the affiliates as a result of these back-to-back transactions as intracorporate transfers of funds, and are thus making no adjustments to CEP to account for them.

Comment 36. The POSCO Group argues that the Department erred in adjusting POSCO's reported cold-rolled costs for alleged discrepancies in thickness. First, the POSCO Group states that its submitted costs accurately reflect the Department's required thickness product characteristic. POSCO's RPG system tracks products' thicknesses in bands that overlap various Department model-match characteristic thickness bands, and for instances where more than one RPG thickness band crossed into a Department thickness band, the POSCO Group says it reported costs reflecting each RPG thickness included in that Department thickness band.

The POSCO Group asserts that the Department erred in its conclusion that POSCO had been inconsistent in its application of this methodology. The Department's assertion that the POSCO Group had failed to include the costs of one RPG thickness band group of products in the calculation of costs for a certain CONNUM (possessing a specific Department thickness band) was based on the Department's failure to take into account that while POSCO sells products and tracks cost data on a nominal basis, the Department's thickness bands are specified in the questionnaire in actual terms. The POSCO Group notes that exhibit SD–12 of the March 3, 1997, supplemental submission indicates that the RPG system is based on nominal thickness.

The POSCO Group also argues that the Department, even if it persists in incorrectly characterizing the situation as a reporting inconsistency, was not justified in applying an adverse adjustment to the reported costs for the CONNUM in question, that the Department had not requested the necessary information and cannot penalize a respondent because it does not maintain its records in a manner in which the Department would prefer, and that the Department had access to data that would allow a less unreasonable adjustment.

Petitioners argue that the Department should make additional adjustments to POSCO's submitted cost information consistent with its sampling methodology. Petitioners argue that a large proportion of the CONNUMs reviewed contained problems involving understatements of cost to the POSCO Group's benefit. They cite, in addition to the example noted by the Department in its preliminary results, an example where the POSCO Group followed its

stated methodology so that a thicker, and hence probably a less costly, RPG grouping that barely overlapped into a Department thickness category was utilized in that calculation of costs for CONNUMs possessing thicknesses in that Department thickness category band. Because this is an indication that the problem may be pervasive, petitioners argue, the Department should make additional adjustments to CONNUMs exhibiting similar overlapping of RPG and Department thickness categories for both cold-rolled and corrosion-resistant products.

The POSCO Group reiterates that petitioners, like the Department, have failed to convert POSCO's nominal thickness information to an actual-thickness basis. The POSCO Group also argues that the petitioners have suggested that the POSCO Group should have altered its reporting methodology for certain unspecified instances. The POSCO Group argues that such an approach would have been subjective and would undoubtedly have raised concerns precisely because it would be ripe for manipulation. The POSCO Group argues that there is no evidence supporting petitioners' observation that a thinner RPG is more expensive to produce than a thicker RPG, and that the record demonstrates that the differences in costs between individual RPGs may not be due solely to differences in thickness. The POSCO Group argues that there is no basis for such an adjustment to corrosion-resistant CONNUMs either, and that there is no basis for any adverse adjustment such as that suggested by petitioners.

Department's Position. We agree with the POSCO Group that in its preliminary results the Department failed to account for the fact that POSCO's thickness groupings are based upon nominal thickness, as was noted in Exhibit SD–12 of the March 3, 1997, submission. When conversions are made to account for this, it is clear that there was in fact no discrepancy, and that the Department erred in making any adjustment to the POSCO Group's costs with respect to the thickness of cold-rolled merchandise. For the final results, we have removed the programming language that adjusted the costs for the CONNUMs at issue. The parties' other arguments, therefore, are moot.

Comment 37. The POSCO Group argues that the Department should reduce POSCO's reported costs by the amount of the requested startup adjustment for extraordinary costs associated with the startup phase of a facility. The POSCO Group states that the statute requires the Department to make an adjustment for startup operations where the producer is using new production facilities or producing a new product that requires substantial additional investment, and where production levels are limited by technical factors associated with the initial phase of commercial production.

The POSCO Group argues that a substantial investment was required to increase significantly its capability of producing a certain range of products. The POSCO Group claims that it has demonstrated it was using new facilities and manufacturing new products at those facilities during the POR, and as such POSCO met the first prerequisite for a startup adjustment under the statute.

The POSCO Group argues that the second prerequisite, that production levels during the POR were limited by technical factors associated with the startup, was also fulfilled, as demonstrated by data provided on the record. The POSCO Group asserts that POSCO's Korea verification exhibit 37 indicates at 3 that production was limited during the initial months so that the products would meet required stringent quality standards before full production ensued. The POSCO Group argues that it is clear that other factors unrelated to startup, such as demand, business cycles, chronic production problems, or seasonality do not account for the limited production quantities. It argues that demand was consistently high, with POSCO's other lines operating at full capacity and that production from the new line rose steadily throughout the startup period. POSCO noted that it was clear as of October 1996 that it had reached full capacity.

The POSCO Group states that the costs for products manufactured on this line were allocated over only a very small amount of production, and that this naturally resulted in abnormally high unit production costs for the affected merchandise. The production from the facility during the POR accounted for only a small percentage of total production of the general type of product, but, the POSCO Group notes, the Department requires that respondents provide a single weighted-average CONNUM-specific cost, regardless of the facility; consequently, the POSCO group states, it provided data showing the impact on the CONNUM-specific cost. The POSCO Group asserts that based on facts essentially identical to those in this case the Department recently granted a startup adjustment. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from Taiwan*, 62 FR 51442, 51448 (October 1, 1997). The POSCO Group states that the adjustment factors listed in Korea verification Exhibit 1 should be used to reduce the reported costs.

Petitioners argue that the Department should reject the POSCO Group's claim for a startup adjustment because, contrary to the POSCO Group's assertions, it has not met the statutory requirements for receiving such an adjustment, which are to demonstrate that it is using new production facilities or producing a new product that requires substantial additional investment, and that the production levels associated with the startup are limited by technical factors associated with the initial phase of commercial production. *See* section 773(f)(1)(C) of the Act.

Regarding the first prong, petitioners state that evidence on the record clearly demonstrates that POSCO's purported "startup" operations do not constitute "new production facilities," nor do they result in production of a "new product" that requires substantial additional investment. Petitioners note that the SAA at 836 defines "new production facilities" to include "the substantially complete retooling of an existing plant," and that "[m]ere improvements to existing products or ongoing improvements to existing facilities will not qualify for a startup adjustment." Petitioners state that the addition is simply of one line amidst others in the same facility, "a mere addition to an already existing facility," and that the POSCO Group has not shown that the new line is comprised of different machinery requiring different technicians or workers, or whether the production process differs from that of other lines.

Petitioners characterize the expansion of capacity resulting from the line as insufficient grounds for a startup adjustment, as the SAA states at 836 that an expansion of the capacity of an existing production line could be considered for a startup adjustment only if the expansion constitutes such a major undertaking that it requires the construction of a new facility, and that it results in a depression of production levels below previous levels due to technical factors associated with the initial phase of commercial production of the expanded facilities. The petitioners state that no new facility was constructed, and that the POSCO Group admits that overall production levels did not decrease during the POR.

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Petitioners argue that the POSCO Group also failed to demonstrate that its purported "startup" operations resulted in production of a "new product." Petitioners note that the SAA at 836 defines a "new product" to include "one requiring substantial additional investment, including products which, though sold under an existing nameplate, involve the complete revamping or redesign of the product." Petitioners state that while the POSCO Group claims that the new line produces or is capable of producing products with different physical characteristics for a specific class of end-users, the POSCO Group admitted at verification that its other lines could also be used to manufacture products with those same characteristics and for the same end-users. Petitioners state that the POSCO's Group's reported sales databases indicate that it produced substantial quantities of products with such physical characteristics prior to the operation of the new line. Petitioners also note that POSCO's product brochures pre-dating the new line explicitly indicate that the products with the characteristics in question were previously available, and thus should not be considered "new" to respondent's production. Furthermore, petitioners argue that the magnitude of the investment in the new line, relative to that of POSCO's total value of property, plant, and equipment, was not a "substantial additional investment," as is required by the SAA in order for the startup adjustment to be considered in the context of a "new product." Finally, petitioners argue that the SAA at 836 indicates that improved or smaller versions of a product will not render the product a "new product," and that the products to which the POSCO Group refers would be disqualified on this basis.

Regarding the second prong, petitioners state that evidence on the record clearly demonstrates that POSCO's production levels were not affected by its "startup" operations, and that the POSCO Group failed to demonstrate that "technical factors" negatively affected production. As noted earlier, petitioners argued that production levels were not depressed, and in fact they note that information on the record demonstrates that the difference between the monthly average production for the startup period as defined by the POSCO Group and the monthly production level for the line in question at the end of this period only represents a very small percentage of total estimated production of corrosion-resistant products. With regard to the influence of technical factors upon production levels, petitioners argue that the POSCO Group, in its own case brief, acknowledged that POSCO experienced no chronic production difficulties, and that it experienced no significant technical difficulties preventing it from bringing the line in question to commercial production levels in relatively short order.

Petitioners state that the SAA provides that to the extent necessary the Department would consider other factors, such as historical data reflecting producers' experiences in producing the same or similar products, and whether factors unrelated to startup operations may have affected the volume of production, such as market conditions of supply and demand, or seasonality or business cycles. SAA at 836–7. However, petitioners argue, the POSCO Group provided no such support, but rather only unsupported claims. For example, petitioners challenge the POSCO Group's assertion in its case brief that POSCO's substantial experience in starting up similar operations is relevant in helping explain what might be characterized as low initial production levels in this instance.

Petitioners argue that if a startup adjustment is granted, it cannot cover a period beyond May 1996, given the reported production levels for June 1996 and the POSCO Group's statement in its March 3, 1997, Supplemental Section D response at 31 that the company completed test production at the end of May 1996 and followed this testing period with commercial production. Petitioners also argue that any such adjustment would need to be limited to the specific operation in question, and that, because such information is not available on the record, the actual amounts of the adjustment cannot be calculated.

Department's Position. We agree with petitioners that the POSCO Group failed to demonstrate that it is entitled to a startup adjustment for the line in question. The POSCO Group's assertions regarding the output of the line constituting a "new product" are contradicted by the record. For example, the POSCO Group's databases and product brochures indicate that the POSCO Group manufactured products such as those produced from the new equipment prior to its installation. The POSCO Group indicated at verification "that the new line is capable of processing thinner and narrower merchandise than its other galvanizing lines, and that the intended uses of steel produced on the new line were for home appliances" produced by companies such as two Korean manufacturers, but the POSCO Group conceded upon later questioning "that the galvanized steel produced on its other lines could also be used for home appliances." June 27, 1997, Korea verification report at 2. The information noted at verification also indicates that the product range of the line in question is basically comparable to that of other POSCO Group lines with respect to dimensions.

If the products in question were truly new, as the POSCO Group has argued, assertions regarding the consistently high demand for POSCO's other products and its high capacity utilization at other lines would be irrelevant with respect to the second prong of the startup cost test, which requires that the production levels were limited by technical factors. The demand and supply associated with POSCO's other galvanizing lines could be unrelated to the supposedly thinner products being manufactured for appliance manufacturers on the new line. Furthermore, if the products were in fact new, there is no reason for distributing an adjustment concerning products in CONNUMs allegedly targeted to Korean appliance manufacturers to all galvanized products, including products in other CONNUMs purchased by U.S. customers. As noted by petitioners, such line-specific information is not available on the record.

In addition, it is not clear that the new line in question constitutes a new facility, as required by the new startup adjustment provision. The line is one of many producing merchandise similar to that manufactured on numerous other lines by POSCO and POCOS. The POSCO Group provides no convincing evidence that the new line should be considered "new production facilities" or "the substantially complete retooling of an existing plant."

The POSCO Group's assertion that it met both prongs of the requirement fails on other grounds. Even accepting that the general demand for POSCO galvanized merchandise, relative to overall capacity, was high, the POSCO Group has not demonstrated that production levels on the new line were limited by technical factors. At verification in Korea, the Department "requested additional information pertaining to the claimed startup adjustment" (June 27, 1997, Korea verification report at 2), and the POSCO Group provided what is contained in Korea verification Exhibit 37. The POSCO Group is incorrect in its assertion that that exhibit indicates at 3 that production was limited during the

initial months so that the products would meet required stringent quality standards before full production ensued. That page provides no information detailing the reasons for the variations in monthly output. Furthermore, even assuming that production levels were limited by technical factors (as also noted by petitioners), it is not clear from the record when commercial production levels were reached.

Because the POSCO Group has not met both conditions for being granted a startup adjustment, we have not made such an adjustment in the final results.

Comment 38. The POSCO Group argues that the Department erred when it adjusted POCOS's reported costs for quality. The POSCO Group argues that POCOS's cost accounting system does not track the quality of the input, so an adjustment was not warranted. The POSCO Group argues that, when reporting costs, the Department requires that companies rely on the actual costs as recorded in the normal accounting system if that system is in accordance with the foreign country's GAAP and it is clear that the figures do not distort the dumping calculations. *See Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 59407, 59409 (November 22, 1996) ("*Ferrosilicon*"). The POSCO Group notes that in many cases where respondents have not relied on their normal accounting system to report costs, the Department has applied adverse facts available. *See Certain Cut-to-Length Carbon Steel Plate from Sweden; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 51898, 51899 (October 4, 1996) ("*Swedish Plate*"). The POSCO Group argues that the Department has only adjusted a respondent's reported costs which are based on its normal accounting system where the Department determined that those normal practices resulted in an unreasonable allocation of production costs. *Semiconductors* at 15472. The POSCO Group argues that in cases where a company has been unable to provide costs at the level of detail requested by the Department, the Department has accepted the reported costs where it was satisfied that those costs nonetheless reasonably reflected the actual costs of producing the subject merchandise during the POR. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 13815, 13817 (March 28, 1996). The POSCO Group characterized cost differences between commercial, drawing, and deep drawing products as ones "perceived" by the Department. Finally, based on a reference elsewhere to the Department's preliminary adjustment for coating weight costs, the POSCO Group seemingly characterized the adjustments made by the Department for quality as the use of adverse facts available.

Petitioners argue that the facts in these reviews for this issue are identical to those in the second administrative reviews, where the Department made a similar adjustment to the POSCO Group's reported costs. Petitioners argue that the adjustment in question is not adverse, though the Department would have been justified in making the adjustment based upon adverse facts available because the POSCO Group did not provide product-specific cost information as requested by the Department and, in not doing so, it did not act to the best of its ability to comply with the Department's request for information. *See* section 776(b) of the Act.

Petitioners' argue that the POSCO Group's reference to *Ferrosilicon* is inapposite because the Department's decision to use the respondent's reported costs in that case was based upon the conclusion that the figures did not distort the dumping calculations, which clearly is not so in this case. Petitioners argue that submitted cost data for POSCO, which accounts for quality differences, suggest that failure to account for quality differences may lead to significant understatement of certain products' costs. Petitioners state that the POSCO Group's reference to *Swedish Plate* is also inapposite, because the Department resorted to facts available in that case not because the respondent failed to rely on its normal cost accounting system or developed a new cost system just for purposes of reporting, but rather "[b]ecause the company was unable to reconcile the submitted cost data to its normal accounting books and records." *Id.* at 51899.

Furthermore, petitioners argue that the Department's use of facts available in *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Brazil*, 58 FR 37091 (July 9, 1993) ("*Flat-Rolled Steel from Brazil*") supports the Department's preliminary decision in these reviews. In the Brazilian case, petitioners note, the Department found that the respondent had improperly aggregated its production costs based on certain product characteristics, and submitted production costs which included the average cost of extras, with the result that, according to the Department, the respondent's submitted costs, as averaged over several different products, "did not appropriately specify the cost of individual extras, as required by the Department." *Id.* at 37097.

Finally, petitioners note that if POCOS is selling products with different quality characteristics, it presumably would take this fact into account in pricing its products.

Department's Position. The Department has relied upon POCOS's normal accounting system, except to the extent that it determined that doing so would result in an unreasonable allocation of production costs and a possible distortion of dumping margins. The apparent inability of POCOS to distinguish costs on the basis of quality indicates that its reported costs do not reflect the actual costs of producing the subject merchandise at the level of detail desired by the Department. The quality characteristic is relatively high in the Department's model-matching hierarchy, and the POSCO Group companies distinguish between qualities in their selling practices. The presence of non-trivial differences between costs of CONNUMs produced by POSCO that differ in terms of the Department's hierarchy only for quality supports the contention that this is a characteristic for which differences should be reflected in costs, and the Department's approach in *Ferrosilicon* would not be appropriate here.

As noted in the Department's September 2, 1997, preliminary analysis memorandum at 7, the adjustment made to the costs for POCOS commercial, drawing, and deep-drawing qualities reflected a methodology comparable to that used in the final results of the second administrative reviews. At no time during these reviews did the POSCO Group suggest an alternative methodology, even though the Department's questionnaire indicated that the POSCO Group should report a single weighted-average cost for each unique product as represented by a specific CONNUM. However, because POCOS does not track costs based on quality, and because the Department did not insist that the POSCO Group devise a methodology to estimate differences in POCOS costs for quality, the use of adverse facts available, such as that used in *Swedish Plate* and in *Flat-Rolled Steel from Brazil*, would not be appropriate. The non-adverse nature of the adjustment the Department made in its preliminary results is demonstrated by the fact that the Department utilized data from POSCO CONNUMs that were chosen based on their aggregate

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production quantity, rather than on the magnitude of the differences in cost, and upon the fact that the methodology utilized resulted in the costs of some CONNUMs being decreased, while the costs of others were increased. *Id.* at 8. Furthermore, the Department's use of POSCO data to adjust the costs of POCOS production for quality is reasonable because the Department has collapsed these companies. The POSCO Group, in fact, urged the Department to base POCOS's substrate input costs upon POSCO's actual costs of producing that input, and the use of POSCO's costs as a basis for adjusting reported POCOS costs for quality is consistent with this approach.

Comment 39. The POSCO Group asserts that the Department, in its preliminary results, penalized the POSCO Group for submitting average costs for merchandise with different coating weights. The POSCO Group states that these average costs reflect the treatment of coating weight in POSCO's normal accounting system, that the Department had no basis for applying adverse facts available for different coating weights, and that the same arguments that it made for the Department's adjustments for quality apply to this issue. The POSCO Group argues that the costs reported were consistent with POSCO's accounting system. The POSCO Group states that based upon its experience in the distribution of produced coating weights, the product distribution of POSCO galvanized products is "skewed toward one value," and cites figures that it alleges are based upon reported home market sales information. Consequently, the POSCO Group argues, its decision not to track such costs is reasonable and its normal system not distorting. The POSCO Group argues that average costs for specific costs are often reported to and accepted by the Department.

The POSCO Group argues that the Department's methodology for calculating the adjustment for coating weight of POSCO products is erroneous, in that it was based upon information derived from POCOS production. The POSCO Group argues that even if one were to assume that coating weight cost differences at POCOS are the same as at POSCO, the Department's applied cost differentials for each coating weight implicitly assumes that POSCO's distribution of production of coated products is identical to that of POCOS. The POCOS Group argues that if the Department continues to adjust for POSCO coating weight differences, it should base its cost differential adjustments upon the distribution of production of POSCO coated products.

Petitioners argue that, as in the case of the adjustment for quality, the Department's adjustment for the POSCO Group's failure to account for the distribution of coating weight costs across different products was appropriate. Petitioners state that the POSCO Group did not report to the best of its ability, and that its reported costs distort the dumping analysis. Petitioners state that reported data for POCOS, which tracks costs by coating weight, indicate that the costs of certain products may be significantly understated if coating weight is not taken into account. Petitioners contest the POSCO Group's assertion regarding the distribution of POSCO production by coating weight, and the POSCO Group's conclusions from these data regarding the acceptability of the reported costs for POSCO products and the appropriateness of the Department's adjustment based upon POCOS production.

Petitioners counter the POSCO Group's statement that the Department often accepts the use of average costs for various items, such as labor, overhead, and SG&A, noting that it is the Department's clear practice to reject averages in cost reporting where it prevents the use of product-specific costs in its margin calculations, and that the Department usually prefers weighted averages to simple averages.

Finally, petitioners note that if POSCO is selling products with different coating weights, it presumably would take this fact into account in pricing its products.

Department's Position. The Department has relied upon POSCO's normal accounting system, except to the extent that it determined that doing so would result in an unreasonable allocation of production costs and a possible distortion of dumping margins. The apparent inability of POSCO to distinguish costs on the basis of coating weight indicates that its reported costs do not reflect the actual costs of producing the subject merchandise at the level of detail desired by the Department. The coating weight characteristic is relatively high in the Department's model-matching hierarchy, and the POSCO Group companies distinguish between coating weights in their selling practices. The presence of non-trivial differences between costs of CONNUMs produced by POCOS that differ in terms of the Department's hierarchy only for coating weights supports the contention that this is a characteristic for which differences should be reflected in costs, and the Department's approach in *Ferrosilicon* would not be appropriate here.

As noted in the Department's September 2, 1997, preliminary analysis memorandum at 8, the adjustment made to the costs for POSCO coating weights reflected a methodology comparable to that used in the final results of the second administrative reviews. At no time during these reviews did the POSCO Group suggest an alternative methodology, even though the Department's questionnaire indicated that the POSCO Group should report a single weighted-average cost for each unique product as represented by a specific CONNUM. However, because POSCO does not track costs based on coating weight, and because the Department did not insist that the POSCO Group devise a methodology to estimate differences in POSCO costs for coating weight, the use of adverse facts available, such as that used in *Swedish Plate* and in *Flat-Rolled Steel from Brazil*, would not be appropriate. The non-adverse nature of the adjustment the Department made in its preliminary results is demonstrated by the fact that the Department utilized data from POCOS CONNUMs that were chosen based on their aggregate production quantity, rather than on the magnitude of the differences in cost, and upon the fact that the methodology utilized resulted in the costs of some CONNUMs being decreased, while the costs of others were increased. *Id.* at 8–9.

The Department's use of POCOS data to adjust the costs of POSCO production for coating weight is reasonable because the Department has collapsed these companies. The POSCO Group in fact urged the Department to base POCOS's substrate input costs upon POSCO's actual costs of producing that input, and the use of POCOS's costs as a basis for adjusting reported POSCO costs for coating weight is consistent with this approach. Basing an adjustment upon a distribution of POSCO products, as the POSCO Group requests, is not feasible for the simple reason that POSCO does not track costs for coating weight. A completely neutral redistribution of costs relating to coating weights is not possible. Furthermore, basing an adjustment to costs upon verified cost information such as the Department did in its preliminary results is preferable to basing one upon unsubstantiated assertions about production that the respondent has founded upon ambiguous references to sales data and introduced late in the proceedings in its case brief.

The POSCO Group could have proposed alternative methodologies earlier in the process, and in fact did not

immediately provide all of its information pertaining to POSCO tracking of coating weights. In its original questionnaire response, the POSCO Group failed to identify the meaning of certain digits in the POSCO RPG product code. Asked about those digits in a supplemental questionnaire, the POSCO Group stated that they related to coating weight and were not utilized for cost purposes (see the March 3, 1997, Section D supplemental questionnaire response at 22–23), but this explanation significantly understated the extent to which such information had been previously utilized. Id. and the June 27, 1997, Korea verification report at 10–11.

Comments by Union

Comment 40. Union contends that the Department improperly classified Union's post-sale warehousing expenses as indirect selling expenses, instead of as movement expenses, contrary to Department practice.

Department's Position. We agree with respondent and have adjusted our analysis accordingly for these final results.

Comment 41. Union asserts that the Department improperly reclassified certain EP sales as CEP sales on the basis of some reported expenses, which appeared to suggest that further processing had been incurred, whereas the amounts in question merely reflected demurrage and handling, a fact which was reported in Union's response.

Petitioners do not agree that the Department can conclude that there was no further processing done on subject merchandise in the United States. Petitioners mention that Exhibit 29 of Union's home-market verification report, in which a warehousing provider enumerated its policies, together with the absence of certain warehousing-related charges on a sale examined at verification, suggests that further processing must have been performed. Petitioners also reiterate their argument that all of Union's U.S. sales should be reclassified as CEP sales due to the active role it alleges UADD played in selling subject merchandise.

Department's Position. This comment is moot as a result of our reclassification of most of Union's U.S. sales as CEP transactions, as explained above in the "Fair-Value Comparisons" section of this notice and in the Department's Position in response to Comment 20.

Final Results of Reviews

As a result of these reviews, we determine that the following margins exist for the period August 1, 1995 through July 31, 1996:

Producer/manufacturer/exporter	Weighted-average margin (percent)
Certain Cold-Rolled Carbon Steel Flat Products	
Dongbu	1.21
POSCO	0.63
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	0.60
POSCO	0.53
Union	0.39

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. As discussed above, because the number of transactions involved in this review and other simplification methods prevent entry-by-entry assessments, we have calculated exporter/importer-specific assessment rates. With respect to both EP and CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margins against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of the reviewed sales is not necessarily equal to the entered value of entries during the POR (particularly for CEP sales), use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates stated above, except for Union, which had a *de minimis* margin, and whose cash deposit rate is therefore zero; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in a previous segment of these proceedings, the cash deposit will be the company-specific rate published for the most recent segment; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the most recent segment of these proceedings; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) or 17.70 percent (for certain corrosion-resistant carbon steel flat products), which were the "all others" rates established in the LTFV investigations. *See Flat-Rolled Final* at 37191.

Article VI¶5 of the GATT (cited earlier) provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations; Certain Steel Products from Korea* (58 FR 37328—July 9, 1993), which is 0.05 percent *ad valorem*, will be subtracted from the cash deposit rate for deposit purposes.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations (19 CFR 353.34(d)). Timely notification of return/destruction of APO materials or conversion to judicial protective order is

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hereby requested. Failure to comply is with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22).

Dated: March 9, 1988.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6883 Filed 3–17–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 9, 1997, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. We also issued a supplemental questionnaire on December 18, 1997, on the issues of reimbursement and level of trade. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1997, the Department published in the **Federal Register** (62 FR 47418) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, August 19, 1993), as amended pursuant to Court of International Trade (CIT) decision (61 FR 47871, September 11, 1996). On December 5, 1997, the Department published in the **Federal Register** (62 FR 64354) a notice of extension of the time limit for completion of this review until March 9, 1998. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (1997).

Scope of This Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1995, through July 31, 1996. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands by Hoogovens Staal B.V. (Hoogovens).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (Hoogovens) and petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company).

Comment 1: Petitioners argue that Hoogovens failed to segregate properly its warranty and technical service expenses into direct and indirect portions, as required under the law. Where a respondent fails to report warranty and technical service expenses in direct and indirect components, petitioners claim that the Department's practice is to treat the expenses as direct in the U.S. market, and to deny any adjustment in the home market. According to petitioners, the CIT has upheld this policy on several occasions. See *RHP Bearings* v. *United States*, 875 F. Supp. 854, 859 (CIT 1995).

Petitioners argue that the three categories of warranty and technical service expenses Hoogovens identified and reported as part of indirect selling expenses (the amount of credit notes issued to customers to satisfy claims of defective merchandise, the cost of returned merchandise, and travel

expenses of Quality Assurance personnel) are direct expenses, as they are variable expenses incurred as a direct and unavoidable consequence of sales, and vary with the quantity sold. Although Hoogovens claims that it cannot tie these expenses to particular sales, petitioners argue this does not excuse its improper reporting. According to petitioners, the Court of Appeals for the Federal Circuit held in *Torrington Co.* v. *United States*, 82 F.3d at 1051 (Fed.Cir. 1996), that the respondent's method of allocating or recording expenses does not alter the relationship of the expenses to the sales under consideration, and that its failure to keep adequate records does not justify treatment of direct expenses as indirect.

Hoogovens argues that the Department verified and accepted the manner in which it maintains these expenses in its accounting records and the methodology Hoogovens adopted to report these expenses in the investigation, the two previous reviews and the preliminary results of this review. Further, Hoogovens claims that the Department frequently treats warranty and technical service expenses as indirect, citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2097 (January 15, 1997) ("AFBs 1997"). Hoogovens points out that warranty and technical service expenses incurred during the POR frequently relate to sales made before the POR. Accordingly, Hoogovens argues it is not possible for respondents to tie warranty expenses incurred during the POR to specific sales made during the POR, and therefore the Department's long-standing practice is to require respondents to report the warranty and technical service expenses actually incurred during the POR, regardless of when the sales were made. *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11839 (March 13, 1997). Hoogovens argues that its warranty and technical service expenses are primarily claims for damaged merchandise, and that these expenses are not analogous to the types of expenses the Department generally considers to be variable and/or associated with particular sales, *i.e.*, post-sale price adjustments, rebates and discounts. Moreover, Hoogovens claims its historical experience shows there is no direct relationship between its warranty expenses and the total quantity of sales. Therefore, Hoogovens urges the Department to reject petitioners' argument and continue its practice of treating Hoogovens' warranty and technical service expenses as indirect selling expenses in both the U.S. and home markets.

Department's Position: We agree with petitioners that Hoogovens' warranty and technical service expenses should be considered as direct expenses. Contrary to Hoogovens' claim that it has reported these expenses as indirect selling expenses (ISE) in both of the previous reviews, in the first administrative review it reported them separately as direct warranty expenses allocated to subject merchandise on the basis of tonnage sold. There has been no change since then in the manner in which Hoogovens records these expenses in its accounting system, and Hoogovens did not explain why it reported them differently in the second and third reviews. The Department verified Hoogovens' worksheets for calculating U.S. warranty expenses in this review, in which it reported expenses on warranty claims and travel expenses of Quality Assurance personnel for subject merchandise. For home market warranty expenses, Hoogovens reported expenses on claims, returned/rejected material, and travel expenses for the home market reporting period of December 1993 through September 1996, and calculated the total warranty expenses as a percentage of sales.

As noted in AFBs 1997, the Department has long recognized that warranty expenses generally cannot be reported on a transaction-specific basis and an allocation is necessary. Although Hoogovens cites AFBs 1997 as supporting its treatment of warranty and technical service expenses as indirect, the relevant comment makes clear that the expenses the Department allowed as indirect were fixed expenses for salaries, benefits, rent, utilities and depreciation, rather than the variable warranty expenses reported in this case. Accordingly, for the final results of this review, we have calculated warranty expenses as a separate direct variable expense in both the U.S. and home markets and deducted them from the reported ISE in the respective markets. We allocated the expense to the metric tonnage sold, rather than gross price, to avoid the distorting effects of dumping prices in the U.S. market and of different terms of sale in the home market. As Hoogovens reported these expenses, we disagree with petitioners' argument that we should invoke adverse facts available and penalize Hoogovens by denying an adjustment to normal value (NV).

Comment 2: Petitioners argue that the Department should match Hoogovens' sales by level of trade (LOT) on the grounds that in the second review, Hoogovens initially claimed that it provided much greater sales support to its end-user customers than to service centers, but later reversed itself. Petitioners cite the statute's requirement that an adjustment to NV be made where a difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of persistent price differences between sales at different LOTs in the country in which NV is determined. Petitioners also cite the Department's regulations providing that the Secretary shall determine that sales are made at different LOTs if they are made at different marketing stages.

Petitioners argue that Hoogovens' end-user and service center customers are at different phases of marketing. In the second review, Hoogovens stated that steel service centers sell subject merchandise to the same types of end-user customers as Hoogovens, and concluded that end-user customers are further removed from Hoogovens' factory than the service centers. In this review, Hoogovens explained that its products are incorporated into the merchandise manufactured by the end-user customers, and that service centers function as distributors, who purchase steel from Hoogovens, and after slitting, rolling and/or cutting to length, sell essentially the same product to end-user customers.

Petitioners note that in the final results of the second review, the Department agreed with petitioners that end-users and service centers/distributors constitute different phases of marketing. *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 62 FR 18476, 18480 (April 15, 1997). Petitioners argue that information on the record in this review supports the same finding: Hoogovens' product brochure states that Hoogovens advises its customers regarding the best processing options; in describing the company's research activities, the brochure states that car manufacturers involve Hoogovens in the design of new cars, and that Hoogovens advises manufacturers on which steel types and qualities are best for their production process. Section A Response at Exhibit A–14, pp. 10–11 (Public Version).

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Petitioners point out that Hoogovens claimed in this review that it is frequently aware of the nature of the product required by the end-user customers of its service center customers, and those downstream customers' processing capabilities, in order to provide the correct quality of steel. On this basis, Hoogovens claimed that it must supply the same support functions to service centers as to end-user customers. However, petitioners note, in the second review Hoogovens stated that steel service centers purchase steel from Hoogovens without having identified an end-user customer at the time of purchase. Hoogovens also stated that it provides far greater sales assistance to its end-user customers than to its service center customers, because the service centers do not know the ultimate use of the product at the time of purchase from Hoogovens. Petitioners point out that Hoogovens has not described any changes in the function or business of its service center customers that would explain these contradictory statements.

Petitioners argue that the Department should not assume from a respondent's failure to come forward with detailed information that there are no differences in selling functions, because it may be in the respondent's interest to refrain from claiming a LOT adjustment.

Hoogovens denies that respondents who do not claim different LOTs have a burden to prove the negative, *i.e.*, that no different LOTs exist. According to Hoogovens, the Department's practice is to verify the submitted data to ensure that respondent's position accurately reflects its sales practices. In the current review, Hoogovens argues, the Department asked extensive supplemental questions on the LOT issue, to which Hoogovens responded fully, and which the Department verified. Hoogovens claims that in virtually every other steel case in which the issue has arisen, the Department has concluded that the respondent's sales to end-users and steel service centers have been made at the same LOT.

According to Hoogovens, petitioners' entire LOT argument appears to be based on the facts of the second administrative review, rather than on the evidence on the record in this review. However, Hoogovens points out, petitioners fail to note that the Department concluded that Hoogovens export price (EP) sales and home market sales were made at a single LOT. The Department has consistently found in steel cases that sales to end-users and service centers, while representing sales at different phases of marketing, are not at different LOTs.

Hoogovens argues that petitioners' quotations from Hoogovens' product brochures are irrelevant on the grounds that advertising brochures are general descriptions of a company's operations and cannot constitute persuasive evidence of actual selling functions performed for different customers. According to Hoogovens, petitioners' arguments regarding different LOTs are almost entirely focused on alleged different selling functions performed by Hoogovens for automotive customers, rather than on differences between other end-users and service centers. Petitioners omit that the functions performed for automotive customers are also described in the brochures as available for other customers. Product/market development employees are described as working closely with sales teams, product line employees and R&D to deliver the best possible product without regard to customer category. Hoogovens claims this is consistent with its statement in its Supplemental Response (January 24, 1997, at 7) that "it is increasingly important for Hoogovens to provide as much product development assistance as possible to its steel service center customers to enable the service centers to maintain their relationships with their end-user customers."

Petitioners also argue that there are price differences by LOT. According to Hoogovens, the Department has consistently held that price differences are, by themselves, not sufficient to justify a finding of different LOTs. Hoogovens cites AFBs 1997, 62 FR at 2109, where the Department stated: "In any event, differences in prices do not determine the existence of levels of trade." Hoogovens further argues that as petitioners have allegedly failed to establish that there are different LOTs based on Hoogovens' selling functions, the Department need not consider the relevance of differences in price levels. Moreover, Hoogovens points out that petitioners have not argued that there is any consistent pattern of price differences on Hoogovens reported EP sales. Hoogovens therefore concludes that petitioners' arguments cannot sustain a finding that there are different LOTs in the U.S. market. Further, to the extent that petitioners are arguing that there is one LOT in the U.S. market and two LOTs in the home market, Hoogovens points out that petitioners have not explained to which alleged home market LOT the U.S. LOT should be matched, or how the Department should make any LOT adjustment between the U.S. LOT and either of the two alleged home market LOTs.

In its January 16, 1998, response to a supplemental questionnaire issued by the Department, Hoogovens reiterated prior claims that it provides services based on the ultimate end use of the product rather than the identity or category of the customer, and that it provides the same services to all customers in the home market. Hoogovens maintains that it is frequently aware of the nature of the end-use for which its products are required. Hoogovens also provided examples of its product development activities.

Petitioners commented on this response on January 30, 1998. Petitioners continue to argue that Hoogovens failed to substantiate its allegation that all of its customers were at the same LOT. Petitioners claim that Hoogovens' response consists of vague, unsupported assertions, tallies of customer visits and a small selection of customer visit reports that were chosen by Hoogovens to support its claim.

Department's Position: Under the URAA, a level of trade adjustment can increase or decrease normal value. SAA at 159. Accordingly, the SAA directs Commerce to "require evidence from the foreign producers that the functions performed by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade." *Id.* (Emphasis added). See also Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Duty Administrative Review, 62 Fed. Reg. 47446, 47450 (September 9, 1997). Thus, to properly establish the LOT of the relevant sales, Commerce specifically requests LOT information in every antidumping proceeding conducted under the URAA, regardless of whether a respondent sells solely to one nominal customer category, such as service centers or end-users. Moreover, consistent with that approach, we note that of necessity, the burden is on a respondent to demonstrate that its categorizations of LOT are correct. Respondent must do so by demonstrating that selling functions for sales at allegedly the same level are substantially the same, and that selling functions for sales at allegedly different LOTs are substantially different.

As a matter of policy, the Department cannot allow respondents to form their own conclusions on LOT and then submit the data to support their conclusions. Rather, it is the Department's responsibility, not respondent's, to determine LOTs. It is

not that respondents have the burden to "prove the negative," as Hoogovens states, but that respondents have a burden to demonstrate that there is only one LOT. We make no presumption as to the number of LOTs in a market. Rather, the respondent must provide information which satisfactorily demonstrates what LOTs exist. Respondent's failure in this case to provide detailed LOT information leads the Department to conclude that it has not met its burden of proof to demonstrate that there is in fact only one LOT, particularly in light of other information indicating the existence of two LOTs.

To make a proper determination as to whether home market sales are at a different LOT than U.S. sales, the Department examines whether the home market sales are at different stages in the marketing process than the U.S. sales. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT. An analysis of the chain of distribution and of selling functions substantiates or invalidates claimed LOTs based on customer classifications. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOT. Different LOTs are characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different LOT, we make a level-of-trade adjustment if the difference in LOT affects price comparability. We determine any effect on price comparability by examining sales at different LOTs in a single market, the home market. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different LOTs. We use the average difference in net prices to adjust the NV when it is based on a LOT different from that of the export sale. If there is a pattern of no price differences, then the difference in LOT does not have a price effect, and no adjustment is necessary.

As stated above, the Department begins its LOT analysis with an examination of the different distribution systems, or channels of trade. Normally, transactions at different LOTs occur at different points in the distribution system, which is reflected in the commercial designation of customer categories, such as distributor or service center, and the selling functions that support such commercial designations. In the present case, Hoogovens sold to end-users and service centers in both the U.S. and home markets. It is undisputed that these transactions constitute sales through different channels of trade.

With respect to the selling functions performed, we conducted a comprehensive examination of the available information provided by Hoogovens in this case. The Department requested information on selling functions in the original questionnaire and two supplemental questionnaires. Based upon the information submitted on the record, we are unable to determine conclusively whether the specific selling functions performed by Hoogovens with respect to sales to the service centers and end-users reflect sales at the same LOT.

In this review, Hoogovens has repeatedly claimed that it provides the same technical and warranty services to all customers in all markets. *See e.g.*, January 24, 1997 response at 7. However, as the Department has stated, different LOTs may be established where a respondent performs functions that are the same with respect to all markets and all customers, as Hoogovens claims in this case. The critical element in such a case is the degree to which the selling functions are performed.

Significantly, on this important issue, Hoogovens stated in the previous review that "increased quality assurance and product development assistance" may be the basis for treatment of end-user sales and service center sales as different LOTs. January 24, 1997 response at 12–13 (citing to its Section A response in the 1994–95 review). In this review, Hoogovens claims that the quantitative aspect of the selling functions performed varies only by customer, not customer category. Hoogovens also states that the services performed vary based upon the end-use of the product, but that performance of the same services does not vary by customer category. *Id. at 11.*

The statements and evidence Hoogovens has elected to place on the record indicate an ability to isolate data on selling functions and determine how they vary in kind and degree by customer category or end-use. Despite that apparent ability, Hoogovens declined to provide all of the detailed information which the Department requested for purposes of conducting a LOT analysis. As noted above, respondent's failure to provide detailed LOT information has left the Department with an inadequate record on this issue. For example, the Department specifically requested that Hoogovens "describe in detail the nature and extent of the selling functions performed." January 24, 1997 response at 9. The Department required that "[f]or each selling function, describe in detail whether it is performed to a greater degree, or in a different manner, depending on customer type." *Id.* By its own admission, Hoogovens performed varying levels of technical and quality assurance assistance. Nevertheless, Hoogovens did not provide the information necessary for the Department to make a proper evaluation of LOT and assess the assertions made by Hoogovens. Because Hoogovens has not provided an adequate explanation of the services it performs, nor demonstrated that variations in services supplied are not related to customer category, the Department is unable to assess the validity of Hoogovens' claim that it performs the same services for all customers in all markets.

Furthermore, other evidence on the record suggests that there are different selling functions performed based on customer category in this case. For example, while Hoogovens claims to provide the same support to all customers, it acknowledges that one large service center customer in the home market has itself received several important quality certifications in the automotive and other industries. Hoogovens claims that these certifications require assurance of chemical and mechanical properties. However, other information on the record shows that this customer also provides special delivery services, as well as further manufacturing. In addition, this customer itself guarantees the quality of its products and has a metallurgist on its staff. All of this suggests that there is less need for Hoogovens to provide technical support services to this service center and its customers than to Hoogovens' own end-user customers. Further, despite our requests, Hoogovens did not provide any detailed analysis or description of the precise nature of product research and technical support Hoogovens provides to various customers and amount of expenses incurred.

Further, Hoogovens' responses appear contradictory. Hoogovens claims that its quality assurance department has the same representatives assigned to all home market customers. *See* January 16, 1998 submission at 19. But Hoogovens also states that quality assurance representatives are assigned on the basis of the ultimate application of the

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product. *Id.* The Department is unable to determine how these representatives are assigned and whether their assignments reflect a greater level of technical and quality assurance assistance to end-users and whether greater expenses are incurred for either service centers or end-users. Moreover, Hoogovens has stated (1) that service centers frequently do not know the end-use of the product at the time of purchase from Hoogovens and (2) that service centers assume the risk of finding a customer for the material. *See* January 24, 1997 submission at 14. These statements demonstrate that Hoogovens frequently does not know the identity of the service center's customer and thus cannot provide technical services in support of such sales. Rather, these statements support Hoogovens' earlier position that it provides far greater sales assistance to end-user customers than to its service center customers.

Finally, we find the evidence concerning the number of visits to customers and the meetings with customers to be unpersuasive. The number of visits is not a useful tool for examination. In some instances, Hoogovens has common customers with service centers, thereby confusing the issue of whether the visit relates to products purchased from Hoogovens or from the service center. Second, the evidence on meetings with customers submitted by Hoogovens does not establish that technical services and quality assurance assistance are "the same for all customers." A comparison of the selling functions performed based upon a full description of such functions is necessary for the Department to make that conclusion. Further, the limited number of reports relative to the size of the customer base does not provide an adequate reflection of the circumstances in this case and cannot substitute for the description of the selling functions requested by the Department. Thus, Hoogovens has failed to meet its burden of proof establishing that there is only one LOT in the home market.

In sum, the evidence on the record demonstrates that, both in the home market and in the United States, sales occur at two different stages in the marketing process and to two different customer categories (*i.e.*, service centers and end-users). Significantly in this case, the Department has also determined that a pattern of consistent price differences exists with respect to sales occurring at these two different stages of marketing in the home market. In fact, Hoogovens has acknowledged that one primary factor governing prices charged to end-users and service centers is the "historic commercial reasons related to the relative functions of service centers and end-users." January 24, 1997 submission at 13. Therefore, on the basis of the facts available, we are treating EP and home market sales to end-users as a different LOT than home market sales to service centers. Further, since the basis for distinguishing LOT is the provision of technical and warranty services, and the LOT of the CEP sales is the LOT of the affiliated service centers, we are treating all CEP sales as sales to service centers and this LOT as equivalent to the home market service center LOT. Where it is not possible to match a U.S. sale to a home market sale at the same LOT, we have made a LOT adjustment based on our comparison of the weighted-average net prices, by product, of merchandise sold in the home market to service centers to the weighted-average net prices, by product, of merchandise sold to end-users. When a U.S. sale to an end-user is compared to a home market sale to a service center, the NV is adjusted upward; conversely, when a U.S. sale to a service center is compared to a home market sale to an end-user, the NV is adjusted downward. The CEP offset issue is addressed in the following comment.

Comment 3: Hoogovens argues that in the preliminary results the Department improperly failed to make a CEP offset adjustment to NV pursuant to section 773 (a)(7)(B) of the Act when comparing Hoogovens' reported CEP sales to NV, and that this failure was based on a misunderstanding of the facts of this review and on a misinterpretation of both the statute and the Department's current practice.

As the Department explained in the preliminary results, in identifying the LOT for CEP sales, its current policy is to consider only the selling activities reflected in the U.S. price after deduction of expenses and profit under section 772(d) of the Act. 62 FR 47421. In comparing the CEP LOT to home market sales, the Department considers the selling functions reflected in the starting price of the home market sales before any adjustments. According to Hoogovens, the Department makes a CEP offset when it finds after this comparison that the unadjusted home market price is at a more advanced LOT than the adjusted CEP.

Hoogovens argues that the Department's conclusion in the preliminary results that there were no differences between the adjusted CEP and the unadjusted home market price is not supported by the facts. 62 FR 47421. Hoogovens claims that in this case, this comparison "necessarily results in a comparison of sales at different levels of trade," because the starting price of the home market sales includes "many selling activities not reflected in the adjusted CEP price." These include indirect selling activities, indirect warranty and technical service expenses, and freight and delivery arrangements. All of these types of expenses, incurred both in the Netherlands and the United States, have been deducted from the net CEP used to establish the LOT for CEP sales. Hoogovens concludes that the home market LOT must be deemed to be a different, more advanced LOT than the adjusted CEP LOT. Case Brief at 10.

Hoogovens further argues that there were no sales in the home market at a LOT equivalent to the CEP LOT, and that all sales in the home market were at the same LOT. Hoogovens concludes that in the absence of data to quantify a LOT adjustment to account for the difference between the CEP LOT and the home market LOT, the Department should make a CEP offset adjustment to NV. Case Brief at 11.

Petitioners argue that the Department properly denied a CEP offset adjustment, inasmuch as Hoogovens has failed to provide information in the current review that would allow the Department to determine what selling functions are reflected in the price of either home market sales or the adjusted CEP. The Department's questionnaire instructed Hoogovens to provide a chart showing all selling functions provided for each customer category, and a list separately reporting those expenses deducted from U.S. price, with a narrative explanation detailing each selling function noted within each customer group. Questionnaire at Addendum I (Question 9.B.). Hoogovens failed to provide any chart regarding CEP sales, or any list or meaningful narrative separately detailing the expenses and selling functions deducted from U.S. price. See Section A Response at 20 (Public Version). Petitioners argue further that Hoogovens also failed to provide any meaningful analysis of whether its selling functions performed in the Netherlands for its U.S. sales were associated with economic activities in the United States, whether these functions related to the sale to the unaffiliated customer, and whether the expenses associated with these functions should be deducted from CEP. Petitioners therefore conclude that the Department has no basis to determine that there is a distinct CEP LOT.

Petitioners further comment that none of the three selling activities cited by Hoogovens, *i.e.*, indirect selling activities, indirect warranty and

technical service expenses, and freight and delivery arrangements, provides any basis for treating the CEP as a distinct LOT. In the first place, petitioners point out, the Department did not deduct "indirect selling activities" incurred in the Netherlands from CEP. See Preliminary Results, 62 FR at 47419. This was one of the reasons the Department did not allow an offset in the preliminary results—namely, because of its finding that the indirect selling functions incurred at the sales office in IJmuiden were common to both the adjusted CEP and the home market price.

Second, petitioners continue, Hoogovens' warranty and technical service expenses are not properly considered as indirect expenses at all. Accordingly, the Department may choose to account for such expenses under the circumstance of sale provision, in which case they are not removed from the adjusted CEP for purposes of the LOT analysis. Even if they are removed from the adjusted CEP, petitioners point out that Hoogovens has not shown that the significance of these functions would justify a finding of different LOTs.

Finally, petitioners argue, costs and expenses associated with freight and delivery are not deducted under section 772(d) and thus are not removed from the adjusted CEP for purposes of the LOT analysis. Neither are they removed from the home market price for purposes of that analysis. See the Department's regulations, 62 FR at 27370; 19 U.S.C. § 1677b(a)(6). Petitioners conclude that Hoogovens' assertion that these expenses are reflected in the home market starting price but deducted from the adjusted CEP is therefore false; on the contrary, such expenses are common to both the adjusted CEP and the starting price in the home market, and provide no basis for a CEP offset adjustment.

Department's Position: Section 773(a)(7)(B) of the Act provides for a CEP offset when: (1) NV is determined at a different LOT than the CEP LOT; and (2) the data available do not provide an appropriate basis for quantifying the amount of a LOT adjustment. Section 351.412(f)(1) of the Department's new regulations (62 FR 27296; May 19, 1997) provides that the Department will grant a CEP offset only where NV is determined at a more advanced LOT than the CEP LOT, and despite the fact that respondent has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability. "More advanced LOT" refers to a more advanced stage of marketing, which generally means that the home market LOT is more remote from the factory door than the CEP LOT. A more advanced, or remote, LOT is typically characterized by more selling activities and greater selling expenses.

Section 773(a)(7)(B) of the Act defines the CEP offset as the amount of ISE included in NV, up to the amount of ISE deducted in calculating the CEP. ISE in the CEP offset are selling expenses, other than direct selling expenses or assumed expenses, that the seller would incur regardless of whether particular sales were made, but that are attributable, in whole or in part, to such sales.

We adjusted the starting prices of the affiliated service center's sales to their first unaffiliated customers by deducting U.S. selling expenses, costs of further manufacturing and an amount for profits, which yields an estimate of the prices Hoogovens would have charged the service centers if they were not affiliated.

Hoogovens has suggested that the CEP is in effect an ex-factory transfer price to its U.S. affiliate. This is an inaccurate characterization for several reasons. First, transfer prices do not enter into our analysis because the CEP is a calculated price derived from the price to the first unaffiliated customer in the United States. Second, the deductions we make under section 772(d) of the Act do not include all possible direct and indirect selling expenses. These deductions remove only expenses associated with economic activities in the United States that support the U.S. resale. The CEP is not a price exclusive of all selling expenses because it contains the same type of selling expenses as a directly observed export price. Accordingly, the Department's new regulations clearly direct us not to deduct from the starting price any expense "related solely to the sale to an affiliated importer in the United States," *i.e.*, those expenses that support the sale from the exporter to its U.S. affiliate. 19 CFR 351.402. We may, however, make a circumstances of sale adjustment to normal value for such expenses, if they are direct expenses, under section 773(a)(6)(C)(iii) of the Act.

Petitioners correctly observe that Hoogovens did not answer the Department's questions on LOT with regard to CEP sales, and did not provide an analysis of selling functions associated with CEP sales, nor show how they differ from home market sales. Consequently, the Department has based its analysis in the final results on the facts otherwise on the record in this review.

In calculating CEP, the Department deducted the imputed credit expenses incurred by the Rafferty-Brown companies as direct selling expenses. Hoogovens' affiliated companies did not report any warranty or technical service expenses for the U.S. resales, and we did not deduct any allocated warranty expenses incurred in the Netherlands for sales to the Rafferty-Brown companies. In accordance with section 772(d)(1), the Department deducted ISE and imputed inventory carrying costs ("ICC") incurred in the United States by the Rafferty-Brown companies for sales to the first unaffiliated buyers to arrive at the CEP. For the final results of this review, the Department did not deduct ISE and ICC incurred in the Netherlands, nor expenses of the U.S. sales office from the adjusted CEP on the grounds that these are expenses associated with the sale to Hoogovens' U.S. affiliates, rather than with the sales by the affiliates to the first unaffiliated buyers. Thus, the CEP includes Hoogovens' warranty and technical service expenses for U.S. sales, as well as ISE, including the expenses of the sales offices in IJmuiden and New York, and ICC incurred in connection with the sale to the affiliated service center.

Hoogovens' starting price for home market sales includes direct warranty and technical service expenses, ICC, the expenses of the sales office in IJmuiden, and other indirect selling expenses incurred for home market sales. Thus, for the purposes of the LOT analysis, there is no distinguishable difference between the selling functions included in the home market starting price and the selling functions included in the CEP. On the basis of this analysis, the Department has determined that there is no basis for Hoogovens' claim that home market sales are at a different, more advanced LOT than the adjusted CEP sales. When a CEP sale could not be matched to a home market sale to a service center, we made a LOT adjustment. Therefore, the issue of a CEP offset is moot.

Comment 4: Hoogovens claims that the Department's decision in the preliminary results to deny an offset to the reported U.S. ISE for the cost of financing cash deposits of estimated antidumping duties during the POR is incorrect, and that the Department should continue to grant this adjustment for the reasons stated in the bearings determinations. *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty

Administrative Reviews and Termination in Part, 62 FR 11825, 11826–30 (March 13, 1997).

Hoogovens cities the preliminary results of this review, in which the Department stated that there may not be opportunity costs associated with paying cash deposits and that some respondents may not require loans to cover deposits. 62 FR at 47419 (September 9, 1997). Under this rationale, according to Hoogovens, the Department should not make adjustments for the opportunity costs of carrying either inventory or credit. Hoogovens argues that the opportunity cost of tying considerable sums up as cash deposits exists regardless of whether a loan must be obtained to cover the cost.

Petitioners urge the Department to adhere to its decision to deny this adjustment, supporting the Department's arguments that it is unclear that opportunity costs are incurred, given the fungibility of money, and that borrowing funds for one activity may simply mean that funds need not be borrowed for another activity. Petitioners argue that the difficulty in determining whether such opportunity costs exist, how such costs (if any) should be quantified, and whether such costs are appropriately accounted for in the calculation of ISE, makes an adjustment inappropriate. Petitioners contend that the Department has a longstanding policy of not making an adjustment to account for the time value of every deduction from sales price, such as freight charges, rebates, *etc.* Similarly, petitioners deduce, the multitude of arrangements whereby cash deposits are paid would make an inquiry into opportunity costs associated with such deposits extraordinarily complicated and in all likelihood inaccurate.

Petitioners further argue that the obligation to pay cash deposits arises only where a respondent has engaged in unfair trade activity in the United States, something that is within the respondent's control. Moreover, under the statute, interest accrues only for any overpayment or underpayment of cash deposits, meaning that the importer does not receive interest for the amount of its deposits that reflect the duty finally determined. As such, petitioners argue, the payment of cash deposits cannot be seen merely as an expense incident to an antidumping proceeding, such as lawyers' fees; rather, such payment reflects a current obligation resulting from a respondent's unfair trading activity in the United States. In petitioners' view, allowing a respondent to reap a benefit in its margin calculation based on payment of such deposits would be inconsistent with the fundamental goal of the statute—*i.e.*, to discourage unfair trade and provide a level playing field on which domestic producers can compete.

According to petitioners, the facts of the present case demonstrate why an adjustment for interest in financing cash deposits is inappropriate: Hoogovens has sought to reduce the ISE of the Rafferty-Brown companies (Hoogovens' affiliated U.S. service centers) based on "imputed" interest in financing cash deposits, notwithstanding the fact that neither company ever paid any cash deposits. In fact, petitioners point out, Hoogovens acknowledged that "HSUSA, as sales agent and importer of record for Hoogovens' sales, paid cash deposits on entries for sales during the period of review, using funds transferred periodically by HSBV to HSUSA for that purpose." Hoogovens' Response to the Department's Supplemental Questionnaire (Public Version, June 26, 1997 at 1).

Petitioners argue that the Rafferty-Brown companies incurred no expenses, imputed or otherwise, related to the payment of cash deposits, and there is no basis in fact or logic for making any adjustment to their ISE. Petitioners conclude that Hoogovens' claim points to a fundamental defect in the Department's past practice: parties could claim adjustments without any showing that they incurred opportunity costs, that such costs have any relationship to their reported ISE, or how such costs may be quantified.

Department's Position: We agree with petitioners that we should deny an adjustment to Hoogovens' U.S. ISE for expenses which Hoogoven's claims are related to the financing of cash deposits. The statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress gave the administering authority discretion in this area. It is a matter of policy whether we consider there to be any financing expenses associated with cash deposits. We recognize that we have, to a limited extent, allowed deductions of such expenses in past reviews of the orders on AFBs. However, we have reconsidered our position on this matter and have concluded that this practice is inappropriate.

We have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from U.S. price. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping. We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992). Underlying our logic in both these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of the antidumping duty order.

Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping duty order. As we stated in the preliminary results: "money is fungible within a corporate entity. Thus, if an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost." See *Preliminary Results* at 47,419. Companies may choose to meet obligations for cash deposits in a variety of ways that rely on existing capital resources or that require raising new resources through debt or equity. For example, companies may choose to pay deposits by using cash on hand, obtaining loans, increasing sales revenues, or raising capital through the sale of equity shares. In fact, companies face these choices every day regarding all their expenses and financial obligations. There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were inevitable.

In a different context, we have made similar observations. For example, we stated that "debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit" (see Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review, 61 FR at 59412, regarding whether the Department should allocate debt to specific divisions of a corporation).

So, while under the statute we may allow a limited exemption from deductions from U.S. price for cash deposits themselves and legal fees associated with participation in dumping cases, we do not see a sound basis for extending this exemption to financing expenses allegedly associated with financing cash deposits. By the same token, for the reasons stated above,

we would not allow an offset for financing the payment of legal fees associated with participation in a dumping case.

Finally, we also determine that we should not use an imputed amount that would theoretically be associated with financing of cash deposits. There is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. Like taxes, rent, and salaries, cash deposits are simply a financial obligation of doing business. Companies cannot choose not to pay cash deposits if they want to import nor can they dictate the terms, conditions, or timing of such payments. By contrast, we impute credit and inventory carrying costs when companies do not show an actual expense in their records, because companies have it within their discretion to provide different payment terms to different customers and to hold different inventory balances for different markets. We impute costs in these circumstances as a means of comparing different conditions of sale in different markets.

Comment 5: Petitioners argue that the Department should change its methodology for calculating profit for CV and CEP and revert to the method used in the previous review, accepting Hoogovens' reported profit for CV, which Hoogovens calculated by subtracting the weighted-average actual cost from the weighted-average net price for home market sales of subject merchandise during the POR. Hoogovens divided the profit per ton by the weighted-average actual cost to arrive at the reported profit rate. Petitioners object that instead of using Hoogovens' reported profit rate, the Department calculated it using the 1995 Profit and Loss Statement for Hoogovens' Steel Division with respect to the same general category of products as the subject merchandise, which was the same source the Department used to calculate the CEP profit ratio under section 772(d)(3) of the Act.

Petitioners argue that the Department's recalculation of the CV profit figure is unreasonable, and does not account for the actual amounts incurred for profits in connection with the production and sale of the foreign like product, as required by the statute. In addition, petitioners claim, the Department's use of a financial report that includes non-subject merchandise to calculate the CEP profit ratio is unnecessary and inconsistent with the statutory preference for information relating only to the subject merchandise and foreign like product. 19 U.S.C. § 1677a(f)(2)(C). Further, petitioners argue, there is no reason why the Department should use the same profit figure for both CV and CEP, particularly given that the two figures are typically calculated on a different basis. Petitioners claim that Hoogovens' sales and CV files contain all of the information needed to calculate the CEP profit ratio, with the exception of the cost of goods sold of merchandise sold in the home market, and that this figure can be obtained using the data supplied by Hoogovens in its calculation of CV profit.

Hoogovens argues that the Department's calculation of CEP profit was consistent with its policy bulletin, Calculation of Profit for Constructed Export Price Transactions, Policy Bulletin No. 97/1 (September 4, 1997), and should not be changed for the final results. This bulletin explains that section 772(f) of the Act provides a hierarchy of three alternative methods for calculating CEP profit and that the first of these alternatives "reflects the expense data available to the Department when conducting a sales below cost investigation." *Id.* at 4. Hoogovens points out that since there is no below-cost investigation in this case, the Department must use the next alternatives, described in the policy bulletin as "expense and profit information derived from financial reports provided by the respondent." As explained in the Department's analysis memorandum, the Department therefore "derived total profit and total expenses from the audited 1995 profit and loss statement of Hoogovens' steel division (Hoogovens Staalbedrijf)," which was the "narrowest category for which [the Department] had information on the record in this review." Analysis Memorandum (September 2, 1997) at 7.

Hoogovens also argues that petitioners' suggested methodology of using information from Hoogovens' CV files to calculate the cost of goods sold in the home market may be inaccurate because of differences in product mix and timing.

Department's Position: We disagree with petitioners that we should use cost data from the CV file to calculate CEP profit. The calculation of total actual profit under section 772(f)(2)(D) of the statute includes all revenues and expenses resulting from the respondent's U.S. sales and home market sales. However, the calculated profit for CV is only the profit on Hoogovens' home market sales of subject merchandise. It is also inappropriate to use the calculated weighted-average cost for CV as a substitute for the cost of goods sold in the home market, as it includes only the costs of the products sold to the U.S. market, and thus is not representative of the home market product mix. Moreover, because Hoogovens sells to some customers under long-term contracts, the period for reporting home market sales is much longer than the POR. Consequently, there may be more variation in the costs of home market sales than in the costs of U.S. sales, even for the same products. However, the Department agrees with petitioners that it should use the CV profit submitted by Hoogovens to calculate CV instead of the profit rate the Department calculated for the preliminary results, because the former more accurately reflects the scope of merchandise covered in this review. For the final results, the Department used the weighted average profit from the audited 1995 and 1996 profit and loss statements of Hoogovens' steel division to calculate CEP profit, and Hoogovens' reported CV profit ratio to calculate CV.

Comment 6: Hoogovens argues that the Department improperly deducted from CEP expenses incurred in the Netherlands that are attributable to U.S. sales. For the preliminary results, the Department recalculated Hoogovens' reported ISE to exclude ISE incurred in the Netherlands and allocated to U.S. sales of subject merchandise, on the grounds that they did not relate to economic activities in the United States. 62 FR at 47419. The Department then deducted from CEP the expenses of Hoogovens' U.S. sales office and warranty expenses for U.S. sales claimed as indirect. According to Hoogovens, these expenses were not incurred with respect to sales by the Rafferty-Brown companies to the first unaffiliated customers, and these expenses should therefore not be deducted from CEP.

Hoogovens cites the Statement of Administrative Action Accompanying the Uruguay Round Agreements (SAA) as stating that CEP will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by certain expenses and profit associated with economic activities occurring in the United States. SAA at 823. Hoogovens argues that the Department has consistently interpreted this provision to permit the deduction from CEP only of those expenses incurred with respect to the sale to the unaffiliated CEP customer. According to Hoogovens, the activities of its U.S. sales office, HSUSA, in connection with Hoogovens' U.S. sales are limited to the sales to the unaffiliated customer in the case of EP sales, and the sales to the affiliated Rafferty-Brown companies in

the case of CEP sales. Because HSUSA plays no role in the sales by the Rafferty-Brown companies to the unaffiliated customer, Hoogovens argues that the Department should not deduct HSUSA's expenses from U.S. price in CEP situations. See Grey Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17168 (April 9, 1997).

Similarly, Hoogovens argues, warranty and technical service expenses incurred in the Netherlands for U.S. sales are incurred primarily with respect to EP sales and should therefore not be deducted in calculating U.S. price for CEP sales. Hoogovens claims that although some of these expenses were incurred in connection with sales to the Rafferty-Brown companies, these expenses were not related to the Rafferty-Brown companies' sales to the unaffiliated CEP customers. Hoogovens concludes that under the Department's interpretation of section 772(d), these expenses cannot be said to constitute economic activity in the United States.

Petitioners argue that expenses incurred by HSUSA must be deducted from CEP, citing the statute's requirement that the CEP be reduced by "any selling expenses" that are "incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise." 19 U.S.C. § 1677a(d). According to petitioners, each of the cases Hoogovens relied upon in its argument dealt with ISE incurred in the home market, and the Department's practice is to deduct such expenses from CEP only where it finds that they are associated with U.S. economic activity, and that they do not relate solely to the sale to an affiliated importer. However, petitioners argue, none of the cases cited by Hoogovens holds that selling expenses incurred in the United States by a U.S. affiliate will not be deducted from CEP.

Department's Position: We agree with respondent. The expenses deducted under section 772(d) of the Act and the profit associated with those expenses represent activities undertaken in the United States to support the U.S. resale to an unaffiliated customer. Generally, these activities are undertaken by the affiliated importer and occur after the transaction between the exporter and the importer.

In the current case, the importer of record, HSUSA, is not a reseller. HSUSA does not take title to the subject merchandise; rather, in the case of CEP sales, the merchandise is shipped directly by Hoogovens to the affiliated service centers, the Rafferty-Brown companies. The Department's new regulations clearly direct us not to deduct from the starting price any expense "related solely to the sale to an affiliated importer in the United States"; *i.e.*, those expenses that support the sale from the exporter to its U.S. affiliate. 19 CFR 351.402. In this case, the expenses incurred by HSUSA, which are consolidated with those of Hoogovens in the latters accounting system, are related to sales to the Rafferty-Brown companies and to export price sales. Hoogovens reported these expenses as part of the selling expenses incurred in the home market to support U.S. sales. Therefore for these final results, we have deducted only the reported ISE incurred by the Rafferty-Brown companies from CEP.

Comment 7: Hoogovens argues that the Department's presumption that duty absorption will occur on those sales for which the Department found margins, together with its insistence that absorption can only be rebutted by evidence of a separate agreement that the unaffiliated customer will be responsible for antidumping duties, are contrary to Congress' intent that an analysis be performed to determine whether duty absorption is occurring. According to Hoogovens, had Congress intended that duty absorption would be presumed in all cases in which margins exist, Congress could have instructed the International Trade Commission (ITC) to assume that absorption occurred with respect to all sales on which margins were found, obviating the need for the Department to make an absorption determination.

Hoogovens further argues that there is no basis in either law or logic for ignoring the majority of the sales on which no margins were found. According to Hoogovens, the issue of duty absorption must be based on an examination of the respondent's overall sales practices in the U.S. market, including all sales that are examined by the Department in its reviews. The antidumping law does not require that absorption be determined either on a sale-specific basis or solely by reference to sales on which margins exist. Hoogovens contends that the Department should not find that absorption is occurring where a respondent sells to unaffiliated customers at prices which are high enough to cover any antidumping duties that may be assessed on some of the respondent's sales. The downward trend in Hoogovens' margins should be considered as *prima facie* evidence that Hoogovens is passing antidumping duties on to its customers. Finally, Hoogovens concludes, given that it is collecting from its unaffiliated customers revenue in excess of the fair value of the subject merchandise that is more than twice the amount of the antidumping duties calculated in the preliminary results of this review, it is unreasonable to conclude that it is absorbing any of the antidumping duties to be assessed in this review.

Petitioners argue that Hoogovens' objections are untimely and incorrect. In its preliminary results, the Department stated that if interested parties wish to submit evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty, they must do so no later than 15 days after the publication of the preliminary results. 62 FR at 47422. Hoogovens submitted no evidence within the time allotted by the Department to rebut the presumption that absorption of antidumping duties is occurring. According to petitioners, in another case the Department specifically rejected the argument that it should consider sales with prices above fair value in conducting its absorption inquiry:

> We disagree * * * that negative and positive margins should be aggregated. * * * The Department treats so-called "negative" margins as being equal to zero in calculating a weighted-average margin because otherwise exporters would be able to mask their dumped sales with non-dumped sales. It would be inconsistent on one hand to calculate margins using positive margin sales which is the Department's practice, and then argue, in effect, that there are no margins because credit should be given for non-margin sales. Thus, those sales which are used to determine whether there are margins should also be used to determine whether there is duty absorption. Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom, Final Results of Antidumping Duty Administrative Reviews, 62 FR 18744, 18745 (April 17, 1997).

Petitioners contend that the Department's policy makes perfect sense, in that under Hoogovens' approach, respondents could shield unfairly traded sales of a particular product through sales of other products that happen to be fairly traded. According to petitioners, this would open an enormous loophole in the law.

Department's Position: We agree with petitioners for the reasons cited, and have not changed our approach for the final results of this review. We have determined that there are dumping margins on 93.0 percent of Hoogovens' U.S. sales by quantity. In the absence of any information on the record that the unaffiliated purchasers in the United States will pay the ultimately assessed duties, the Department finds that respondent has absorbed antidumping duties on 93 percent of its U.S. sales.

Reimbursement

Given the circumstances of this case, the Department has continued to reconsider and refine its policy on reimbursement pursuant to the reimbursement regulation. Accordingly, on December 18, 1997, the Department issued a supplemental questionnaire addressing the reimbursement issue. We requested that parties comment on the following proposed statement of policy:

> The Department continues to presume that exporters and producers [1] do not reimburse importers for antidumping duties, absent direct evidence of such activity. However, where the Department determines in the final results of an administrative review that an exporter or producer has engaged in the practice of reimbursing the importer, the Department will presume that the company has continued to engage in such activity in subsequent reviews, absent a demonstration to the contrary. Accordingly, if the producer or exporter claims that the reimbursement situation no longer exists, such producer or exporter must satisfy the Department that (1) the importer is solely responsible for the payment of the antidumping duty, and (2) either (a) the importer was, and continues to be, financially able to pay the antidumping duties, or (b) a corporate event, such as a corporate restructuring or a capital infusion, enabled the importer to generate enough income to pay such duty. December 18, 1997 Supplemental Questionnaire.

In its response dated January 16, 1998, Hoogovens argues that a presumption on the Department's part that reimbursement will recur if there is a finding of reimbursement in the final results of an administrative review is a radical departure from the express terms of the reimbursement regulation. According to Hoogovens, the express terms of the regulation permit the Department to presume reimbursement only in those cases where the importer fails to file a certificate prior to liquidation of entries stating that it has not been reimbursed for antidumping duties. Hoogovens claims that the inclusion in section 353.26(c) of one instance in which reimbursement may be presumed would appear to exclude the Department's authority to apply other presumptions. In Hoogovens' view, to create a presumption found nowhere in the terms of the reimbursement regulation is also fundamentally inconsistent with the Department's application of the regulation, which in both this and other cases has turned on whether the factual circumstances satisfy the precise, literal language of the regulation.

Secondly, Hoogovens argues that the presumption that reimbursement will occur in subsequent reviews is inconsistent with the Department's long-standing position that "[e]ach antidumping review is a separate proceeding covering merchandise entering the United States during a specific time period, and the facts of each review are considered separately based on information submitted for that proceeding." Sulfanilic Acid from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 61 FR 53702, 53707 (October 15, 1996). Hoogovens concludes that a departure from this rule in the present case would be contrary to the Department's obligation to administer the antidumping law in a fair and impartial manner, and could create a burdensome precedent.

Hoogovens assumes that this presumption could not be permanent, and that it would reverse once the Department determined in the final results of an administrative review not to apply the reimbursement regulation. Establishing an essentially permanent presumption of reimbursement is particularly unfair, Hoogovens argues, where the burden with which the respondent is tasked involves proving the negative, that reimbursement has *not* occurred.

Hoogovens asks the Department to amend the proposed statement of policy to eliminate any presumption which fails to maintain the integrity of the section 751 administrative review process, or at least to add the following sentence to the end of the policy statement:

> Where a respondent has successfully rebutted allegations of reimbursement for the final results of an administrative review, there will no longer be a presumption of reimbursement in the subsequent review.

In their comments of January 30, 1998 on Hoogovens' January 16, 1998 response, petitioners comment that placing the burden on respondent to demonstrate that reimbursement is not recurring is appropriate, given that respondents control all of the information relevant to a reimbursement determination and the facts may be extremely difficult to uncover, especially where the parties are affiliated. Petitioners argue that because much of the documentation and information regarding the reimbursement issue has first been placed on the record in the present review, it would be inappropriate to relieve Hoogovens of its burden to show that reimbursement is not recurring, based merely on the Department's decision in the previous review. Given the difficulty of uncovering a reimbursement scheme, petitioners argue, a respondent found to have engaged in such a scheme should bear the burden in each subsequent review to show that reimbursement will not occur. At a minimum, a presumption must continue until a respondent has shown, through complete, fully verified information, that reimbursement has ceased.

Petitioners suggest, however, that it is incorrect not to apply the reimbursement regulation when a corporate event, such as a capital infusion, "enabled the importer to generate sufficient income to pay" antidumping duties. According to petitioners, such an event may in fact be the very means of reimbursing the importer. Petitioners argue that the Department's proposed policy statement is inconsistent with its stated policy of applying the reimbursement regulation where there is financial intermingling linked to reimbursement, or, in the words of the CIT, "a link between intracorporate transfers and the reimbursement of antidumping duties." *Torrington Company* v. *United States*, Consol. Court No. 95–03–00350 (CIT, October 3, 1996) at 7. Petitioners assert that even in cases where there is no specific agreement to reimburse antidumping duties, the law requires that the reimbursement regulation be applied if there is "financial intermingling" between an importer and the producer/exporter that can be linked to reimbursement. In the second administrative review, the Department committed itself to "examine [in future reviews] whether there is any inappropriate financial intermingling, to ensure that reimbursement does not recur." Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Administrative Review, 62 FR at 18478 (April 15, 1997). Petitioners observe that intracorporate transfers between affiliated parties could serve to reimburse duties, regardless of whether the transfers were specifically labeled "reimbursement," and regardless of whether the transfers were made pursuant to an explicit agreement to reimburse. Further, the Department's statement of proposed policy could be read to suggest that the regulation will not be applied where the importer is able to fund its obligations by means of a capital infusion or other intracorporate transfer, regardless of whether such an infusion or transfer is specifically linked to reimbursement. Petitioners argue that this position is inconsistent with the law and incompatible with the basic purpose of the reimbursement regulation. According to petitioners,

[1] Manufacturer, producer, seller, or exporter, as set forth in 19 CFR 351.402(f)(2).

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under the Department's proposed policy statement, a respondent caught reimbursing duties could continue to pay such duties without application of the regulation, simply by calling the transferred funds a "capital infusion." Petitioners conclude that this would defeat the entire purpose of the reimbursement regulation and would invite reimbursement schemes.

Petitioners propose the following changes to the Department's proposed policy statement: First, delete clause (2)(b) in the final sentence, and second, add a provision at the end of the statement to indicate that the reimbursement regulation will apply where the Department finds the requisite link between intracorporate transfers and the reimbursement of antidumping duties. Petitioners suggest the following language:

> The Department will apply the reimbursement regulation where it finds "financial intermingling"—i.e., intracorporate transfers—linked to reimbursement. In this regard, the Department will presume that reimbursement is occurring where an importer that is financially unable to pay antidumping duties receives an intracorporate transfer that enables it to pay such duties. Moreover, even where an importer is financially able to pay duties, the respondent will bear the burden to show that intracorporate transfers are not linked to reimbursement where there is a previous finding of reimbursement.

Petitioners' comments at 11 (January 30, 1998).

Department's Position: The Department has considered the comments submitted in this case and is continuing to follow the guidelines contained in the December 18, 1997, supplemental questionnaire. Based on the comments we received, we appreciate the need for further guidance. Accordingly, we may develop further guidelines in order to define more precisely such terms as corporate restructuring and the circumstances of reimbursement, as the need arises. In the present case, the facts and circumstances surrounding the corporate restructuring are clear and consistent with the purposes of the regulation. See case specific comments on reimbursement below.

Further, we disagree with Hoogovens that these guidelines violate the express terms of the regulation. Contrary to Hoogovens' claim, nothing in the regulation limits the application of a presumption exclusively to certifications under section 353.26(c) of our regulations. Further, while each review is a separate proceeding covering merchandise entering the United States during a specific time period, the establishment of a rebuttable presumption allows the Department to administer the law fairly and effectively. Based upon the final results of a previous review where the Department found reimbursement of antidumping duties, we conclude that respondent's behavior in the review or reviews following that determination requires careful scrutiny. The Department has been granted broad discretionary power to enforce the antidumping law. In the Department's view, that discretionary power is at its zenith when the fundamental purpose of the law is at stake. Reimbursement of antidumping duties relieves the importer of its obligation to pay antidumping duties and thereby undermines the remedial effect of the antidumping law and frustrates the purpose and administration of that law. Accordingly, the Department has full authority to address instances of reimbursement. See SAA at 216. The Department therefore concludes that it has proper authority to establish a rebuttable presumption where a respondent was previously found to have engaged in reimbursement activities.

Whether circumstances warrant reversing the presumption of reimbursement must be decided on a case-by-case basis. In the present case, we have determined that the continuing payment of antidumping duty cash deposits during the POR by Hoogovens warrants maintaining the rebuttable presumption of reimbursement. The prior finding of reimbursement together with the continuing payment of cash deposits is a sufficient basis for shifting the burden of proof to respondent, particularly in light of the fact that the relevant evidence is solely within the hands of the respondent.

We agree with petitioners that, under certain circumstances, the corporate event, such as a capital infusion, may be the very means of reimbursing the importer. The Department's policy is crafted to address the instances in which there has been a finding of reimbursement and the importer is financially unable to pay the duty on its own. In that circumstance, the Department will determine that the importer must continue to rely on reimbursements, such as intracorporate transfers, from the producer or exporter in order to meet its obligation to pay the duties. However, where a corporate event, such as a restructuring, has occurred, the importer must demonstrate that this event provides a continuing source of income to the importer such that the importer is able to pay the antidumping duty on its own (i.e., based upon the importer's total income). In contrast, a capital infusion that is used to pay antidumping duties directly would constitute further reimbursement of antidumping duties. In such a case, the Department will deduct the amount of the reimbursement from U.S. price in calculating the dumping margin.

Case-Specific Comments on Reimbursement

Petitioners argue that the evidence on the record demonstrates that HSUSA is being reimbursed for antidumping duties, and that the Department must apply its reimbursement regulation (19 C.F.R. § 353.26) for the final results. According to petitioners, both the courts and the Department have recognized that in cases where the importer is affiliated with the producer/exporter, the reimbursement regulation may be applied based on an agreement to reimburse or on "financial intermingling" that can be linked to reimbursement. See Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, 61 FR at 4410–11 (February 6, 1996); *Torrington Company* v. *United States*, Court No. 95–03–00350 at 7 (October 10, 1996). This practice reflects the fact that intracorporate transfers between affiliated parties could serve effectively to reimburse duties, regardless of whether the transfers are specifically labeled as "reimbursement."

Petitioners cite the Department's determination in the second administrative review to examine in subsequent reviews "whether there is any inappropriate financial intermingling between the companies in order to ensure that reimbursement does not recur." Memorandum on Proprietary Comments on Reimbursement in Cold-Rolled Carbon Steel Flat Products from the Netherlands (April 2, 1997), at 4 in Hoogovens' June 26, 1997 Submission at Exhibit D (APO Version). According to petitioners, Hoogovens' statement that "HSUSA, as sales agent and importer of record for Hoogovens' sales, paid cash deposits on entries for sales during the period of review, using funds transferred periodically by HSBV to HSUSA for that purpose" is evidence that Hoogovens reimbursed HSUSA on all sales during the POR. Hoogovens' June 26, 1997 Submission at 1 (Public Version). Petitioners summarize the proprietary information on the record in this review in support of their contention that there was financial intermingling between Hoogovens' parent company and HSUSA, and that the corporate restructuring undertaken after the application of the

reimbursement regulation in the first administrative review was motivated by the intention to circumvent the regulation.

Petitioners argue that the Department's decision not to apply the reimbursement regulation in Certain Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review, 62 FR 42496, 42505 (August 7, 1997) (POS Cookware) is not applicable to the facts of this case, and that to the extent that POS Cookware suggests that the regulation will only be applied where the source of funds for duty reimbursement is directly tied to the producer/exporter, it is clearly incorrect. Petitioners claim that under such reasoning, all importers, whether affiliated or unaffiliated, could receive direct reimbursement for duties without adverse consequences, provided the funds came from an affiliate of the producer/exporter, and not the producer/exporter itself. Given the fungibility of money and the numerous transactions between holding companies or parents of foreign producers and their affiliates, petitioners contend the Department could never hope to determine whether the source of funds was the producer/exporter or its affiliate.

Petitioners insist that the source of funds is irrelevant to the purpose behind the reimbursement regulation, which they claim is intended to prevent the absorption of antidumping duties by exporters, and to ensure that injured U.S. industries can fairly compete. Regardless of whether duties are reimbursed by a producer/exporter or its affiliate, according to petitioners it is clear that the duties will still be absorbed and the U.S. industry will continue to be deprived of the opportunity to compete fairly. Thus, petitioners conclude, POS Cookware provides no reason to refrain from applying the reimbursement regulation to the facts of this case.

Hoogovens argues that the Department lacks statutory authority to apply the reimbursement regulation on the basis of affiliated party transactions. Further, Hoogovens contends that there is no substantial evidence on the record of reimbursement within the meaning of the regulation. According to Hoogovens, verified evidence in this review, including the amended agency agreement between Hoogovens and HSUSA and the refund by HSUSA to Hoogovens of the amount of antidumping duties calculated by the Department in the first and second administrative reviews, clearly supports the Department's determination not to apply the reimbursement regulation in the Preliminary Results. See 62 FR at 47421 and Memorandum from Helen M. Kramer to Richard O. Weible (Decision Memorandum in 1995/96 Review), dated August 29, 1997, at 2.

Hoogovens contends that the standard announced by the Department in POS Cookware prevents application of the reimbursement regulation in this review on the grounds that Hoogovens' parent, KHNV, is neither a producer nor a reseller of scope merchandise. While HSUSA and Hoogovens share the same ultimate parent, Hoogovens argues that under the Department's interpretation of the language of the reimbursement regulation, a finding of reimbursement cannot be based on transactions between KHNV and HSUSA. Furthermore, Hoogovens argues, the Department stated in *POS Cookware* that payments from a non-producer/reseller affiliated party to a U.S. importer subsidiary that are specifically for the payment of antidumping duties do not trigger the reimbursement regulation, and this implies that payments that are not for such a purpose (as in this case) cannot trigger the reimbursement regulation. Hoogovens concludes that the Department cannot apply the regulation in either unaffiliated or affiliated party transactions unless the prerequisites of the regulatory language are met, namely that the Department expressly find reimbursement, or payment of antidumping duties by the producer or reseller on behalf of the importer. According to Hoogovens, there is no evidence of such reimbursement in this case.

Finally, Hoogovens rejects petitioners' contention that the purpose of the reimbursement regulation is to remedy duty absorption and to allow the U.S. industry "to fairly compete." Petitioners' brief at 48–49. Hoogovens points out that the reimbursement regulation says nothing about the issue of duty absorption, which is addressed in a separate provision and which may not affect the calculation of antidumping margins. SAA at 215.

Department's Position: After reviewing the proprietary information on the record in this review, the Department has determined that Hoogovens has met its burden of establishing that its affiliated importer, HSUSA, (1) is solely responsible for the payment of the antidumping duties in this review; and (2) has the financial ability to generate sufficient income to pay the antidumping duties to be assessed. See Memorandum from Helen M. Kramer to Richard O. Weible of March 9, 1998. The record shows that there is no longer an agreement to reimburse HSUSA for antidumping duties to be assessed and that HSUSA is now generating sufficient income to pay the duties. Furthermore, HSUSA has repaid Hoogovens the portion of the sums advanced for the payment of cash deposits equal to the antidumping duties to be assessed in the second review.

Further, we disagree with petitioners' position that the regulation should be invoked where a corporate restructuring was motivated by respondent's intention to circumvent the regulation. While we will be extremely vigilant in ensuring that respondent does not circumvent the regulation, it would be inappropriate to adopt a policy that requires us to divine a respondent's intent or motivation. Rather, we will examine the facts of a particular corporate restructuring to determine whether the restructuring provides a continuing source of income to the importer sufficient to cover payment of antidumping duties.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Hoogovens Staal B.V	8/1/95–7/31/96	6.08.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, the duty assessment rate will be a specific amount per metric ton. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or

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after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate for that firm as stated above; (2) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.32 percent. This is the "all others" rate from the amended final determination in the LTFV investigation. See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 61 Fed. Reg. 47871. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6884 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–F

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Cut-to-Length Carbon Steel Plate From Mexico; Extension of Time Limits for Antidumping Duty Administration Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 1996–1997 administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico. The review covers one manufacturer/exporter of the subject merchandise to the United States, Altos Hornos de México, S.A. de C.V. (AHMSA), and the period August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924, Alain Letort at (202) 482–4243, or John Kugelman at (202) 482–0649, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the preliminary results until August 31, 1998. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 12, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–7010 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Extension of Time Limit for the Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the final results of the antidumping duty administrative reviews of the antidumping finding on heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China. The period of review is February 1, 1996 through January 31, 1997. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Wendy Frankel, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5831/5849.

Postponement

Under the Act, the Department of Commerce (the Department) may extend the deadline for completion of an administrative review if it determines the deadline is not practicable to complete the review. The Department finds that it is not practicable to complete the above-referenced review within the statutory time limit.

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department will extend the time for completion of the final results of these reviews from March 12, 1998 to no later than March 27, 1998.

Dated: March 12, 1998.

Richard Moreland,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II.

[FR Doc. 98–7011 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–820]

Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 9, 1997, the Department of Commerce ("the Department") published the preliminary results of its 1995–96 administrative review of the antidumping duty order on Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany (62 FR 47446). This review covers one manufacturer/exporter of the subject merchandise, Mannesmannroehren-Werke AG ("MRW"), and Mannesmann Pipe & Steel Corporation ("MPS") (collectively "Mannesmann"), for the period January 27, 1995 through July 31, 1996.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Hollie Mance, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–0196 or 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1997, the Department published in the **Federal Register** the preliminary results of the 1995–96 review (62 FR 47446) of the antidumping duty order on Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany (60 FR 39704; August 3, 1995).

Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On December 31, 1997, the Department extended the time limits for the final results in this case. See Extension of Time Limit for Antidumping Duty Administrative Reviews (62 FR 68258). The Department has now completed this administrative review in accordance with section 751 of the Act.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 353 (April 1, 1997).

Scope of the Order

The scope of this review includes small diameter seamless carbon and alloy standard, line and pressure pipes ("seamless pipes") produced to the American Society for Testing and Materials ("ASTM") standards A–335, A–106, A–53, and American Petroleum Institute ("API") standard API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to this review are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The following information further defines the scope of this review, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple-certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple-certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines

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and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from this review are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–335, ASTM A–106, ASTM A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods ("OCTG") are excluded from the scope of this review, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this review are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Fair Value Comparisons

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 U.S. App. LEXIS 163. In that case, based on the pre-URAA version of the Act, the Court ruled that the Department may not resort immediately to constructed value ("CV") as the basis for foreign market value (now normal value, or "NV") when the Department finds home market sales of the identical or most similar merchandise to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ordinary course of trade to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV as the basis for NV where the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use other sales of similar merchandise to compare to the U.S. sales if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Accordingly, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all home market sales of the foreign like product that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. Thus, we have implemented the Court's decision in CEMEX to the extent that the data on the record permitted.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. The Department received briefs and rebuttal briefs from petitioner, Gulf States Tube Division of Quanex Corporation, and the respondent in this case, Mannesmann. At the request of petitioner, we held a hearing on November 6, 1997. Based on our analysis of the issues discussed in these briefs, we have changed these final results of review from those published in our preliminary results.

Comment 1

Mannesmann maintains that the Department improperly invoked the special rule for major inputs in section 773(f)(3) of the Act when it ignored Mannesmann's verified billet costs in calculating the company's cost of production ("COP"). Mannesmann objects to the Department's revaluation of major inputs based on one purchase of billets from an unaffiliated supplier. According to Mannesmann, the Department should have treated the production of billets by Hüttenwerke Krupp Mannesmann GmbH ("HKM"), an affiliate, as integrated with Mannesmann's production of seamless pipe. At the hearing as well as at verification, Mannesmann asserted that HKM is not, in fact, an affiliate in the traditional sense of the word, but that it is run as a cost center. Mannesmann points out that the Department conducted a separate verification of HKM, and that the Department confirmed that HKM sold billets to two MRW plants, Mannesmannrohr ("MWR") and Mannesmannröhren-Werke Sachsen GmbH ("MWS"), at cost, and that the affiliate had reported accurate and complete cost data.

Mannesmann contends that the Department has no legal basis for disregarding reported costs and instead applying the major input rule. Mannesmann argues that this provision has no relevance when the Department has verified COP data. Mannesmann argues that the Court of International Trade ("CIT") has held that, when costs of production have been provided, "this part of the statute is inapplicable" (*SKF USA Inc. and SKF GmbH* v. *United States*, 888 F. Supp. 152, 156 (CIT 1995)). Mannesmann argues that costs are merely being passed along, and that HKM operates as though it were a division of Mannesmann. Therefore, according to Mannesmann, section 773(f)(3) of the Act does not apply. Mannesmann maintains that the purpose of the major input provision is to allow the Department to use the "the best available evidence as to * * * costs of production if the Department has reasonable grounds to believe or suspect that the transfer price of an input is less than the cost of producing it." In this instance, Mannesmann holds that the rule has no application if the best available evidence as to the cost of producing the billets is the verified actual cost of the affiliate. Mannesmann states that sections 773(f)(2) and (3) provide that the Department may only disregard "transfer price" transactions if, based on the information considered, the transfer prices do not reflect a fair price. Mannesmann notes that the CIT has stated that this provision permits Commerce "to use best evidence available when it has reasonable grounds to suspect below cost sales" of a major input have occurred (*NSK Ltd.* v. *United States*, 910 F. Supp. 663, 670 (CIT 1995)). Mannesmann further notes

that the CIT upheld the Department's application of the major input rule in NSK because NSK failed to provide COP data, and that had NSK provided cost data, that data would have been the best evidence available.

According to Mannesmann, the Department had no reasonable basis for applying an across-the-board percentage price increase on all billets based on one exceptional purchase of a steel grade that was not sold in the United States and would not, in any event, be utilized in the calculation of NV.

Moreover, Mannesmann states that its representatives explained at verification that MWR and MWS only purchased from unaffiliated suppliers on occasions when the related party did not produce a specific grade or purity of steel or when a small volume was ordered. Mannesmann claims it must go to unaffiliated parties in these instances and purchase it at a higher price. Therefore, Mannesmann claims that no adjustment to billet costs is warranted. However, if the Department makes any adjustments for billet costs, Mannesmann asserts that the adjustment should be less punitive. Mannesmann maintains that such an adjustment could only be applied to the relevant steel grade billet, conforming to SPEC2H 61 and 62, that was sold to Mannesmann by both affiliated and unaffiliated suppliers. At the hearing, Mannesmann also proposed a third alternative which it claimed was the most adverse methodology that could reasonably be applied to this situation. Mannesmann suggested applying the same adjustment made in the preliminary results to the billets purchased from unaffiliated parties.

Petitioner argues that the statute plainly allows the Department to disregard transactions between affiliated parties (1) for any element of cost for which the transaction price between the parties "does not fairly reflect" the normal market prices under section 773(f)(2) and (2) where it has reasonable grounds to believe or suspect that a "major input" has been provided at less than the COP under section 773(f)(3).

Petitioner states that Mannesmann's citations to NSK and SKF are misplaced. According to petitioner, NSK dealt with the question of whether the Department could require a respondent to provide cost information, not for the proposition that the Department must rely on cost information to the exclusion of market value information (see NSK, 910 F. Supp. at 669). Petitioner states that in SKF, the court merely upheld the Department's discretion to apply the COP of the major input and, contrary to Mannesmann's characterization, did not find that the Department must apply the COP rather than the transfer price or market value.

Further, petitioner states that the Department's calculation of market value was supported by substantial evidence on the record and supported by law. According to petitioner's reasoning, the Department sought information "as to what the amount would have been if the transaction had occurred between parties who were not affiliated." Further, the only information on the record available to the Department about what the market value would have been if bought from an unaffiliated producer was a single purchase of billets. This price difference was used as an adjustment factor for the billets purchased from the affiliated producer in the preliminary results. Petitioner states that the Department has discretionary authority to determine the best evidence available as to market value in a manner that is not inconsistent with the statute, citing *Chevron USA, Inc.* v. *Natural Resources Defense Counsil*, 467 U.S. 837, 842–43 (1984). Petitioner also cites Daewoo Elec. Co. v. *Int'l Union of Elec., Technical, Salaried and Mach. Workers*, 6 F.3d 1511, 1516 (Fed. Cir. 1993), which petitioner claims indicates that considerable weight is accorded to the Department's construction of the statute. According to petitioner, Commerce's choice of methodology will be upheld absent a showing by Mannesmann that the methodology was unreasonable. Petitioner claims that nothing in the record indicates that the chosen methodology was unreasonable.

Petitioner refutes each of Mannesmann's three arguments as to why the choice of methodology was unreasonable. First, petitioner states that to base the adjustment upon a small volume purchase was, in fact, appropriate. Petitioner asserts that the Department is directed by the statute to use the "information available" to determine market value and that the information chosen was the only information available. Petitioner concludes that there are no more favorable or detrimental options available to the Department.

Second, petitioner contends that the fact that the grade used to calculate the adjustment factor was not sold in the U.S. does not invalidate the Department's chosen methodology. Petitioner asserts that there is no evidence on the record to suggest that another quantity would have not also shown a similar price differential.

Third, petitioner argues that, even though actual cost data has been provided, that is irrelevant to a determination of what an arm's-length market price from an unaffiliated supplier would be. Petitioner cites section 773(f)(2), which they claim requires a determination of the market value in addition to the COP. Furthermore, petitioner states that the major input rule in section 773(f)(3) allows the Department to use the producer's actual cost only where "such cost is greater than the amount that would be determined for such input under paragraph (2)," which is the market value.

Petitioner concludes that the Department should continue to value billets purchased from its affiliate at the highest of COP, transfer price, or market value. Petitioner states that the Department's use of market value, when it was higher than cost, was consistent with the statutory directive.

Department's Position

The Department agrees with petitioner and maintains its position as stated in the preliminary determination. We disagree with Mannesmann's assertion that the Department improperly invoked the special rule for major inputs. Sections 773(f)(2) and (3) of the Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (for use in determining both COP and CV) to the Department. Section 773(f)(2) indicates that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration (where the production takes place). Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties.

Section 773(f)(3) indicates that, if transactions between affiliated parties involve a major input, then the Department may value the major input based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under 773(f)(2). Section 773(f)(3) applies if the Department "has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input." The Department generally finds that such "reasonable grounds" exist where it has initiated a COP investigation of the subject merchandise.

Because a COP investigation was conducted in this case, the Department requested in its Supplemental Section D questionnaire that Mannesmann provide COP information for the billet rounds.

That cost information was provided by the affiliated party and was verified. In accordance with sections 773(f)(2) and (3), we used the highest of transfer price, COP or market value to value the billets.

The Department disagrees with Mannesmann's claim that it had no reasonable basis to apply an across-the-board percentage price increase on all billets based upon one exceptional purchase of a steel grade that was not sold in the United States. Market price information was requested in the Section D questionnaire for any purchases of the identical input from unaffiliated suppliers, but Mannesmann did not respond to this portion of the questionnaire. In the second Supplemental D questionnaire response at question 4, Mannesmann made a specific claim regarding purchases of inputs from affiliated and unaffiliated parties. (See proprietary Final Analysis Memo; March 9, 1998) At verification the Department attempted to verify this claim by examining Mannesmann's purchases of billets in one sample month. We discovered one such purchase in this month, and utilized this purchase price as market value. (See Cost Verification Report at V.5.B.3) Further, as there is no other information on the record, we have used this information as facts available to determine market values for other types of billets.

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

The use of adverse facts available is appropriate. Therefore, for the final results, as adverse facts available, we have continued to apply this market value adjustment to all purchases from affiliated suppliers.

Comment 2

Mannesmann states that the Department improperly rejected its claim for a startup adjustment pursuant to section 773(f)(1)(c) of the Act in its preliminary results in spite of the fact that it met the statutory requirement for this adjustment. Mannesmann states that it substantially retooled the push bench operations at Zeithain, and that production levels were substantially limited by technical factors associated with the initial phase of commercial production. According to Mannesmann, when the statutory criteria are fulfilled, the Department must make a startup adjustment. Mannesmann cites Notice of Preliminary Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 62 FR 51442, 51447–48 (Oct. 1, 1997), as a case in which the startup adjustment was preliminarily granted when the "threshold criteria" of the statute were met.

The Department's denial, in Mannesmann's view, is not supported by the record and the Department's Preliminary Analysis Memorandum of September 2, 1997 indicates that the Department misunderstood the evidence Mannesmann submitted to support its claim.

According to Mannesmann, the Department incorrectly equated the push bench machine with the push bench operation. Mannesmann states that the push bench operations encompass much more than one machine as implied by the Department. Mannesmann states that the Department's Cost Verification Report documents and describes the substantial investments made by Mannesmann in retooling and replacing the push bench operation at Zeithain (see Cost Verification Exhibit Z–4).

In addition, Mannesmann contends that it documented and the Department verified that a substantial percentage of the total fixed assets at the Zeithain mill consisted of push bench operations. See Supplemental Section D Response at 12, and Exhibit D–6; Cost Verification Exhibit Z–25.

Mannesmann claims that record evidence clearly documents the reduced productivity of the push bench operations during the startup period. In Mannesmann's opinion, the Department's conclusion that production and manufacturing activity levels were substantially the same during 1995 and the claimed startup period in 1996 is erroneous. According to Mannesmann, the machine operating time shown in Exhibit 5 of the Department's Cost Verification Report is not a measure of actual operating time and, therefore, does not provide an accurate factual basis of productivity. Instead, Mannesmann states that the Department must evaluate the efficiency of the plant measured in output over a given time period in order to gauge accurately the impact of retooling the push bench operations. Mannesmann points out that the Efficiency Comparison Table provided at the Zeithain cost verification documents the clear drop in productivity during the first seven months of 1996, compared to production in 1995. See Cost Verification Exhibit Z–25. Mannesmann refers to a graph which they included in their brief as an illustration of the substantial lower production efficiency of the push bench operations during the startup period when new and retooled equipment was being brought on line.

Moreover, Mannesmann points out that it has met the requirement that a company is entitled to a startup adjustment if it properly identifies the technical problems encountered during startup that resulted in reduced productivity. See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Rep. No. 103–316 (1994) at 168 (838).

Mannesmann concludes that the investment at the Zeithain mill has been substantial, and the startup problems well-documented. Accordingly, Mannesmann believes that the Department must grant it the requested adjustment in the final results of this review.

Petitioner counters that Mannesmann's investment amounts to a much smaller portion of total assets for the period of review ("POR") than it claims. Petitioner maintains that section 773(f)(1)(c)(ii)(I) makes clear that a substantial investment is not enough to trigger the adjustment; the substantial adjustment must result in a new production facility. According to petitioner, there is no evidence to indicate how much of the additional expenditures were part of ongoing improvements to the existing facility.

Petitioner also rejects Mannesmann's reliance on productivity in terms of tons per hour as a measure of limited production levels rather than reliance on total volume of production as stated in section 773(f)(1)(c)(ii) of the Act: "the administering authority shall consider factors unrelated to startup operations that might affect the volume of

production processed * * *" Petitioner maintains that the statute and the regulations are concerned with reaching commercial production levels and, in petitioner's view, Mannesmann had operated at commercial production levels.

Petitioner agrees with the Department's finding that the record does not show that production and manufacturing activity were significantly different during the alleged startup period and the same period in the previous year. Therefore, the Department should continue to deny Mannesmann's requested startup adjustments for these final results.

Department's Position

The Department agrees with petitioner that Mannesmann did not adequately demonstrate its eligibility for a startup adjustment. Under section 773(f)(1)(C)(ii) of the Act, Commerce may make an adjustment for startup costs only if the following two conditions are satisfied: (1) A company is using new production facilities or producing a new product that requires substantial additional investment, and (2) production levels are limited by technical factors associated with the initial phase of commercial production. Here, neither prong of the test has been satisfied.

Mannesmann did not construct new production facilities or produce a new product. This case is thus unlike Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17162 (April 9, 1997) or Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8930 (February 23, 1998), in which respondents constructed entirely new facilities. Mannesmann could not demonstrate the "substantially complete retooling of an existing plant," as required in the SAA at 166(836). The SAA states that "substantially complete retooling involves the replacement or equivalent rebuilding of nearly all production machinery." In Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails From Korea, 62 FR 51420, 51425 (October 1, 1997), the Department denied a startup adjustment where the "substantially complete retooling" requirement was not met. Because the respondent "merely relocated its production facility without replacing or rebuilding nearly all of its machinery, and the record evidence does not show that the relocation involved a substantial investment in connection with the revamping or redesigning of collated roofing nails, the first condition for the startup adjustment is not satisfied." Similarly, record evidence of the fixed asset expenditures in this case does not demonstrate that the 1996 push-bench replacement represented a "substantially complete retooling." The level of its investment which was reviewed by the Department, while substantial, does not reach the level where it could be classified as a complete retooling of the plant. Further, the Department has viewed the push-bench during the plant tour and has reviewed the plant layouts which were submitted in the Supplemental Section D questionnaire response to gain further understanding of the push-bench operation. While Mannesmann did work on a number of machines within the push-bench operation, in many cases, Mannesmann only replaced or rebuilt part of the machine (see page 19 of the Sales Verification Report). This did not result in the replacement or equivalent rebuilding of nearly all production machinery, and coupled with the level of investment, leads us to conclude that Mannesmann does not meet the criteria for new production facilities.

As stated in Collated Roofing Nails From Korea, 62 FR at 51426, "because [respondent] does not meet the requirements outlined in the first prong of the start-up provision, the Department is not required to address whether or not [respondent's] production levels were limited by technical factors associated with the initial phase of commercial production". The Department did, however, review evidence on the record whereby Mannesmann attempted to demonstrate that production levels at the Zeithain mill were substantially limited by technical factors during the startup period. The Department has fully reviewed the productivity, machine operating time, and efficiency data presented by Mannesmann in responses and at verification for all of 1995 and 1996. While productivity and efficiency decreased from 1995 to 1996 as shown in Cost Verification Exhibit Z–25, this decline was not substantial enough to indicate that Mannesmann was unable to produce in commercial quantities. Further, the decline in productivity occurred throughout the year and not only during the alleged startup period. Thus, we could not correlate the demonstrated decline in productivity with the installation of the push-bench operation. Therefore, due to the fact that neither the substantial retooling nor the reduced productivity requirements has been adequately supported, we have disallowed the startup adjustment.

Comment 3

Mannesmann claims that it has provided evidence on the record to support its claimed offset to financial expenses from short-term interest income. It states that the Preliminary Analysis Memorandum indicates that the Department wrongly denied the offset because it presumed that Mannesmann's reported financial income was from long-term investment. According to Mannesmann, this presumption is inaccurate.

According to Mannesmann, its consolidated financial statements and annual reports show that income from long-term loans and investments is separately listed and distinguished from short-term interest and investments. Mannesmann states that the amount of income earned from working capital is, by definition, related to manufacturing and sales operations, and cites a case in which this methodology was accepted (Notice of Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et al.*, 60 FR 10900, 10925 (Feb. 28, 1995)). Mannesmann states that its financial statements were verified for accuracy and completeness, and that the data reported in those financial statements should be used to calculate a short-term interest income offset in the reported financial expense.

Further, Mannesmann states that the CIT has held that short-term interest does not need to be exclusively related to the merchandise subject to review in order to qualify as an offset to interest expense (*Timken Co.* v. *United States*, 852 F. Supp. 1040, 1047–48 (CIT 1994)). Accordingly, Mannesmann concludes that the Department must allow the short-term interest income offset in the calculation of financial expense because it was derived from its verified financial statements, and it is related to the ordinary course of business.

Petitioner states that the Department properly denied the interest income offset in computing financial expense. Petitioner asserts that, because Mannesmann did not provide a requested schedule to support its claim that the interest income was, in fact, short-term in nature, the offset should be denied. It is petitioner's contention that, because the account title "other interest and similar income" does not describe the long or short-term nature of the account amount, that one cannot conclude that it is short-term in nature. Thus, petitioner urges the Department to

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continue to deny the interest income offset in its final results.

Department's Position

We agree with Mannesmann. For these final results, the Department has allowed the short-term interest income offset which Mannesmann claimed in its calculation of financial expense. Although a schedule which specifically supported this amount was not provided at verification, we have concluded through further review of the financial statements that the income is short-term in nature. Interest income appears in two line items in the disclosure of interest income and expense. One of the line items indicates that it is long-term in nature, and the other line item, which has a general description that does not specifically indicate that it is short-term, can reasonably be assumed to be short-term interest income.

We agree that the financial statements were verified and have been audited, thus providing a reliable basis for interest expense calculation. Further, we agree that the short-term interest income does not need to be exclusively related to the merchandise subject to review in order to qualify as an offset to interest expense.

Comment 4

Mannesmann objects to the Department's application of the highest duty reported to all U.S. sales as adverse facts available, when there were only minor differences between the U.S. duty reported and the verified amounts. At verification the Department examined the duty paid on more than half of total U.S. sales and found only minor discrepancies which, according to Mannesmann, were the result of allocation and rounding methodologies.

Given that the Department verified the reliability and accuracy of MPS' accounting system and record keeping (see U.S. Sales Verification Report at 14–16), Mannesmann believes the Department should use the duty data reported by Mannesmann for its final results. However, if the Department chooses to adjust the reported duty amounts, Mannesmann suggests that the Department add to the reported duty for all sales the weighted average or difference between what was reported and what was verified. Mannesmann believes this approach would result in a "fair comparison," the basic purpose of the URAA. According to Mannesmann, the punitive approach of adverse facts available is unwarranted.

Mannesmann contends that the use of adverse facts available under these circumstances is contrary to the purposes of the Act, the SAA and established principles of dumping law. According to Mannesmann, the Department's apparent rationale for choosing a punitive margin rate was that certain sales trace documents in the home market were not photocopied and provided promptly enough. Mannesmann reiterates that they were subject to four and a half weeks of verification at different locations, during which time the Department had every opportunity to check the accuracy and completeness of the data submitted by the Mannesmann companies. It is their contention that the Department simply has no grounds to allege that Mannesmann has in any way been "uncooperative." According to Mannesmann, the assertion that Mannesmann has been uncooperative in any aspect of the administrative review is contradicted by the factual record. Mannesmann argues that the initial threshold for applying facts available, let alone adverse facts available, is high. The Department is only authorized to use adverse inferences in extreme situations, such as when it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, in Mannesmann's view. Mannesmann states that it did not engage in any activity during the course of this administrative review that could even remotely be characterized as uncooperative behavior deserving of adverse inferences. Further, they claim that they have fully complied with the Department's requests for information and they state that there is ample information on the record that allows the Department to use more accurate evidence as "facts available" than to apply facts available based on adverse inferences. Mannesmann asserts that the Department is under a legal obligation to use the most accurate information available to make "fair comparisons" and obtain an accurate dumping margin. Mannesmann concludes that the Department should base its calculations for the final results on the factual evidence available in the records of this review.

Petitioner argues that the application of facts available in this case is justified because Mannesmann was unable to verify the correctness of the reported duty amounts and did not have the information to provide corrections to many of the sales. In addition, petitioner maintains that correcting each of Mannesmann's sales listings to account for these errors would have caused undue difficulty to the Department.

Concerning Mannesmann's complaint that the application of the highest duty constitutes adverse facts available out of proportion with the discrepancies found, petitioner states that the choice of the facts available is discretionary, and that both the Department's old and new regulations permit the use of other information submitted by the respondent as facts available. See 19 CFR 353.37(b) and 19 CFR 351.308(c) (62 FR 27296; May 19, 1997). Petitioner argues that the use of adverse facts available is thus warranted in this case.

Department's Position

We agree in part with both Mannesmann and petitioner. In this case, Mannesmann incorrectly reported U.S. duty for the majority of the U.S. sales examined at verification (see U.S. Sales Verification Report at 21). In determining whether U.S. duty was properly reported, we summed total U.S. duty paid on the entry we were examining and compared it to total U.S. duty reported in the applicable observations. For several of the entries (comprising numerous sales observations), we found that the total U.S. duty across the associated observations was underreported. This indicates that errors exist which are more pervasive than can be explained by rounding or allocation methodologies. In addition, the company could not recreate or explain the allocation methodologies used in its submission.

For the sales for which we were able to verify that duty was correctly reported, we are using the reported duty amounts for these final results. For all other sales, we have applied as adverse facts available one of two duty rates, depending upon product classification. We applied the highest reported duty amount for carbon products to all sales of carbon products, and we applied the highest reported U.S. duty amount for alloy products to all sales of alloy products (see Final Analysis Memorandum of March 9, 1998). While the Department has broad discretion on the use of facts available (see Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37874 (July 15, 1997) and *Allied Signal Aerospace Co. v. United States*, 996 F.2d 1185, 1191 (Fed. Cir. 1993)), we determined that it was appropriate to consider the differences in value and duty rates for the two classes of products in our choice of facts available.

By not providing verifiable information for U.S. duties when such information was available to Mannesmann, we have determined that Mannesmann failed to cooperate by not acting to the best of its ability to comply

with a request for information. Therefore, the use of adverse facts available is appropriate (see Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61739 (Final, Nov. 19, 1997)).

Comment 5

Mannesmann maintains that the adverse assumptions made by the Department about its U.S. sales data are not justified. Mannesmann states that in its attempt to accurately reflect its normal business practices in reporting U.S. sales data, it was necessary to allocate certain movement expenses between subject and nonsubject merchandise. Moreover, Mannesmann notes that it reported the actual inland freight it was charged by its German affiliate, MH. These costs, however, often differed slightly from the actual costs MH paid to outside unaffiliated suppliers for services. As a result, slight discrepancies occurred between the U.S. freight data submitted and the expenses reviewed at verification.

Mannesmann also objects to the Department's use of the highest reported amounts for foreign inland freight as partial facts available. Although Mannesmann reported the amounts it is charged and actually pays its affiliate for transportation, at verification the Department was unable to tie these amounts to third-party payments by MH because Mannesmann does not receive these third-party invoices, but simply pays MH based on MH's allocation of freight charges.

Mannesmann argues the Department should use the amounts reported or, alternatively, a freight amount that reflects the amounts verified at Mannesmann, such as the higher of the reported amount or the average of all foreign inland freight reported for each mill. In any case, Mannesmann holds that the Department should not make a freight amount adjustment where it is reported as zero. Further, Mannesmann states that the use of adverse facts available is not appropriate.

Petitioner points out that this same inability to provide the required information occurred in the original investigation and prompted the Department to apply best information available ("BIA") (see Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany, 60 FR 31980 (June 19, 1995)) ("German seamless pipe LTFV final"). In petitioner's view, in the instant case Mannesmann's failure even to attempt to provide payment records for sample sales at verification constitutes a failure to cooperate with the Department and justifies the use of adverse facts available.

Department's Position

We agree with petitioner. By not providing verifiable information for inland freight, including actual payment records, when such information was available to Mannesmann, we have determined that Mannesmann failed to cooperate by not acting to the best of its ability to comply with a request for information.

Mannesmann reported foreign inland freight in two fields: (1) Plant to border and (2) border to port. We examined one sale in which one of these fields was zero. The freight reported in the other field was explained to include all freight from plant to port, but it was incorrectly reported. Therefore, since the freight amounts reported were inaccurate or could not be supported, we are continuing to apply facts available. However, in these final results, we are using the highest reported inland freight amount in each freight field by mill. We realize that the mills are located hundreds of miles apart, and therefore, there could very likely be differences in the cost of freight from plant to port between the two plants. We were able to verify production by mill, and the mill source reported for each sale.

Comment 6

Mannesmann maintains that the Department should not deduct indirect selling expenses (DINDIRSU and RINDIRSU) (*i.e.*, amounts related to selling expenses incurred in the country of manufacture) from export price ("EP")/constructed export price ("CEP") because these fields do not contain expenses "which result from, and bear a direct relationship to, selling activities in the United States." See SAA at 153 (823). Mannesmann cites Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 171167 (April 9, 1997); Roller Chain, Other Than Bicycle, From Japan: Final Results of Antidumping Duty Administrative Review, 61 FR 64322, 64326 (December 4, 1996); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30326, 30352 (June 14, 1996). Mannesmann concludes that the Department should correct its final calculations to conform with the statute and the clear dictates of the SAA and not subtract these two fields from the U.S. price.

Petitioner holds that Mannesmann's claim that the selling expense must be incurred in the U.S. market in order to be deducted from CEP is not supported by the statute. According to petitioner, the phrase "in the United States" is a reference to the location of the affiliated seller and not an attempt to limit the deduction to selling expenses incurred in the United States. If such a limitation were intended, petitioner states that the phrase "in the United States" would have occurred immediately after the phrase "generally incurred" in section 772(d)(1) of the Act.

Department's Position

We agree in part with both Mannesmann and petitioners. The indirect selling expenses incurred in Germany (RINDIRSU and DINDIRSU) are associated both with sales of the merchandise from the producer/exporter to the affiliated importer in the United States and with sales from the affiliated importer to unaffiliated customers. See German Sales Verification Report at 11–12, U.S. Sales Verification Report at Exhibit 11, and Mannesmann's Section A Questionnaire Response at 24. As we explained in Gray Portland Cement and Clinker From Mexico, 62 FR at 17167–68, we do not believe that section 772(d) of the Act requires us to deduct selling expenses not associated with economic activities occurring in the United States. See SAA at 153 (823). Accordingly, we do not treat expenses associated with the sale of the merchandise from the producer/exporter to the affiliated importer as U.S. selling expenses.

Applying this practice here, we have deducted RINDIRSU (associated with MRW's selling activities), but not DINDIRSU (associated with MH's selling activities), from Mannesmann's CEP. We noted at verification that MRW worked directly with unaffiliated U.S. customers in the development of certain specifications. While MRW also incurred selling expenses associated with sales to MPS, the affiliated U.S. importer, the record nevertheless supports the deduction of RINDIRSU from CEP given MRW's involvement with unaffiliated U.S. customers. See U.S. Sales Verification Exhibit 20. MH's selling expenses, however, mainly relate to transactions between MRW and MPS. For these reasons, we believe that it is reasonable to deduct RINDIRSU, but not DINDIRSU, as indirect selling expenses.

Comment 7

Mannesmann claims that the Department, in calculating the margin for the preliminary results, assumed all products designated as low temperature

in MPS' list were subject merchandise and incorrectly treated A–333 pipe used in low temperature applications as covered products. Mannesmann states that at verification it provided the Department with a printout of all sales in the three MPS material classes that could possibly contain subject merchandise and noted why some sales were not on the sales database. The Department spot-checked unreported merchandise on the list and, according to Mannesmann, asked no further questions. See U.S. Sales Verification Exhibits 15 and 16.

Mannesmann maintains that since A–333 is a specialized low temperature pipe and more expensive than pipe used in standard, line and pressure pipe applications, it would make no economic sense for a customer to order the specialized low temperature pipe for a less exacting specification. Mannesmann also notes that A–333 pipe is not tested to perform at all levels of service required of A–106 pipe, and would not customarily be substituted for A–106 applications. According to Mannesmann, the Department erroneously assumed all products designated as low temperature in MPS' list were subject merchandise. Mannesmann explains that A–333 pipe is only covered by the scope of the antidumping duty order if such pipe is used in standard, line or pressure pipe applications. Mannesmann emphasizes that all A–333 invoices reviewed by the Department during verification confirmed that MPS' sales of A–333 pipe were for low temperature applications only.

Mannesmann claims that the Department did not question nor voice dissatisfaction with its spot-check of the invoices at verification. In Mannesmann's view, the Department was obligated to provide it with some notice at verification that the company's explanations did not satisfy the Department.

Mannesmann states that the confusion concerning whether A–333 pipe is covered by the antidumping order illustrates the difficulties inherent in having end-use as a scope criterion. See Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico and Venezuela, 61 FR 11608 (March 21, 1996). Mannesmann also claims that the Department decided in the original investigation that no end-use certification would be required "until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring" and that certifications would only be required for those products "for which evidence is provided that substitution is occurring." See German seamless pipe LTFV final at 31975–6. Mannesmann argues that the Department cannot assume that normally non-subject merchandise has been utilized for standard, line, or pressure pipe purposes without some evidence on the record to support such an assumption. Indeed, according to Mannesmann all available evidence on the record is to the contrary and the Department cannot as a matter of law include sales of non-subject A–333 merchandise in its margin calculation.

Moreover, Mannesmann objects to the Department's application of the margin rate from the initial investigation to sales of low temperature merchandise. Mannesmann claims that section 776(c) of the Act requires the Department to corroborate any secondary information used as facts available from independent sources reasonably at its disposal. Mannesmann states that the SAA makes clear that the Department "will satisfy [itself] that the secondary information to be used has probative value." See SAA at 200 (870). Mannesmann notes that it submitted information in the original investigation explaining why the margin calculated in the petition and chosen by the Department as BIA should not have been used. Mannesmann argues that petitioner's calculations cannot be corroborated as required by the Act, and applying the margin from the petition would be directly contrary to the URAA. According to Mannesmann, in Fresh Cut Flowers From Mexico; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 49567, 49568 (September 26, 1995), the Department rejected the highest rate from the previous review as BIA because it was not representative.

Mannesmann argues that the Department should not use adverse facts available to calculate a margin on non-subject A–333 low-temperature products. Mannesmann claims that it fully cooperated with the Department and the standard for applying adverse facts available is high. See Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 37014, 37019–20 (July 10, 1997); Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 32757, 32 758 (June 17, 1997).

Petitioner argues that the Department properly applied facts available to A–333 pipe that Mannesmann did not report in its U.S. sales listing. Petitioner notes that Mannesmann unilaterally determined that these sales were not within the scope of the order and the Department did not learn about such sales until verification.

Petitioner notes that the scope of the order specifically includes A–333 pipe when "such pipes are used in a standard, line or pressure pipe application." In petitioner's view, Mannesmann did not provide the Department with any information on the use of A–333 products at verification and the Department was unable to verify that these products were not used in covered applications. Petitioner claims that Mannesmann should have raised any doubts about the scope of the order and its reporting requirements, as it is the Department who determines what information is to be provided in a dumping review, not the respondent. See *Ansaldo Componenti, S.p.A.* v. *United States*, 628 F.Supp. 198, 205 (CIT 1992). According to petitioner, respondents cannot be allowed to make unilateral decisions about the information to be provided when ambiguity exists. In *Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 299, 303–304 (1994), petitioner points out that the CIT held that application of BIA was appropriate because the responding party had a duty to resolve the issue with the Department prior to submitting its response.

Petitioner states that the cost differential between A–333 and A–106 pipe would make substitution possible. Petitioner rejects Mannesmann's contention that Exhibit 28 provides an indication that the material was used for low-temperature service outside the scope of the order. Petitioner contends that invoices merely show the product was tested to meet low-temperature uses, but do not establish that the pipe was actually used in that way. Petitioner states that Mannesmann was obligated to fully report all sales of subject merchandise; it is not incumbent on the Department to prove that Mannesmann's A–333 sales were used for covered applications. Petitioner argues that, due to Mannesmann's lack of adequate preparation for verification, Mannesmann cannot reasonably expect the Department to have spent additional time chasing down information on A–333 sales—information that Mannesmann was obligated to provide in its questionnaire response.

Concerning Mannesmann's complaint that the Department cannot use the rate from the petition as the facts available margin because the rate cannot be corroborated, petitioner maintains that section 776 of the Act requires corroboration of the information only "to the extent practicable." Moreover,

the SAA at 200 (870) specifically provides that "the fact that corroboration may not be practicable in a given circumstance, will not prevent the Department from applying adverse inferences." Petitioner points out that since Mannesmann's responses were unusable for purposes of the final determination (see German seamless pipe LTFV final at 31978), they are equally unusable for purposes of corroborating the final results of this review. Petitioner argues that the use of adverse facts available is appropriate due to Mannesmann's unilateral decisions about what information to provide to the Department.

Department's Position

We agree with Mannesmann. While it is true that the scope of this order specifically includes A–333 pipe when such pipes "are used in a standard, line or pressure pipe application," the Department decided in the original investigation that no end-use certification would be required "until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring" and that certifications would only be required for those products "for which evidence is provided that substitution is occurring." See German seamless pipe LTFV final at 31975–6. Petitioner has not provided the Department with any information which provides us a reasonable basis to believe or suspect that A–333 pipe is being used for standard, line or pressure applications in the context of this review. In the absence of such information, we are considering Mannesmann's U.S. sales of A–333 pipe to be non-subject merchandise for these final results.

Comment 8

Mannesmann asserts that if there is a difference between the actual functions performed by sellers at the different levels of trade in the two markets and the difference affects price comparability, the Department is required to make a level of trade ("LOT") adjustment pursuant to section 773(a)(7)(A) of the Act.

Mannesmann maintains that during the POR it made sales in the home market at two distinct levels of trade, to end-users and to distributors. According to Mannesmann, the Department examined in detail documents demonstrating that products sold to end-users for special projects required different market research, quality control, delivery services, customer-specific R&D, engineering services, and communications services than products sold to distributors. According to Mannesmann, the fact that it devotes significantly greater resources to one of the two sales levels confirms that sales to end-users and distributors constitute separate levels of trade.

Mannesmann also claims that sales in the U.S. market also occur at these two different levels of trade. Mannesmann states that the Department verified its dedication of substantial resources and technicians' time to maintain close quality control over special project pipes manufactured for a major U.S. customer. In Mannesmann's view, sales of commodity-type pipes to distributors do not require such close collaboration or extensive customer-specific R&D and engineering services.

Mannesmann references the statistical analysis provided to the Department in Exhibit A–7 of its Supplemental Section A response as evidence that the price of the identical control number sold to a distributor is on average less than the prices to end-users.

Mannesmann concludes that the Department, pursuant to section 773(a)(7)(A) of the Act, must make an LOT adjustment to account for the differences in selling functions in the two markets. Alternatively, Mannesmann states that if the Department determines that its U.S. sales were CEP sales, the Department must make a CEP offset adjustment because the home market LOT is at a more advanced stage of distribution than the LOT of the CEP sales (see Certain Welded Carbon Standard Steel Pipes and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632 (September 10, 1997)).

Petitioner argues that Mannesmann failed to substantiate its claim that the two levels of trade in each market were different. Petitioner additionally notes that LOT was never discussed at the U.S. verification due to Mannesmann's lack of preparation in other areas (see U.S. Sales Verification Report at 29) and no information was provided at the home market verification to substantiate Mannesmann's claim of differences in selling functions (see German Sales Verification Report at 42).

Petitioner also points out that since Mannesmann did not provide in its response or at verification any of the data from its statistical analysis at Exhibit A–7, its claim of a pattern of consistent price differences is unsubstantiated and unverified.

According to petitioner, contrary to Mannesmann's claim, a CEP offset is not appropriate unless the Department finds more than one LOT. Therefore, in petitioner's view, Mannesmann's failure to establish the existence of two levels of trade renders a LOT adjustment under section 773(a)(7)(A) or a CEP offset under section 773(a)(7)(B) inappropriate.

Department's Position

We agree with petitioner. In determining whether separate levels of trade actually existed in the U.S. and home markets, we examined Mannesmann's marketing stages, reviewing the chains of distribution, customer categories and selling functions reported in the home market and in the United States. We agree with petitioner that Mannesmann did not substantiate its claims relating to differences in LOT.

As we stated in our preliminary results, Mannesmann's questionnaire response indicated that it provided higher levels of support to end-users than to distributors, but Mannesmann did not explain what distinguished high from low support or support these claims at verification. At verification, when we asked about differences in LOT, Mannesmann merely provided an organization chart. Mannesmann provided no documentation, as requested in the sales verification outline, regarding claimed differences or the extent of any differences in selling functions for sales to end-users versus distributors and between sales to its home market customers and the CEP LOT. We determined for the preliminary results that sales within each market and between markets are not made at different levels of trade. Of necessity, the burden is on a respondent to demonstrate that its categorizations of LOT are correct. Respondent must do so by demonstrating that selling functions for sales at allegedly the same level are substantially the same, and that selling functions for sales at allegedly different LOTs are substantially different. Mannesmann has not satisfied its burden in this case, and therefore the Department is not required to address whether prices at the allegedly different home market levels of trade resulted in a pattern of consistent price differences. Accordingly, for these final results, we continue to determine that Mannesmann's sales were at a single LOT in both markets. We are not granting Mannesmann a LOT adjustment or a CEP offset.

Comment 9

Although the Department's questionnaire, consistent with the new regulations, states that invoice date is generally to be considered the date of sale, petitioner holds that, in this case, the order confirmation date is more

appropriate than the shipment date as the date of sale. Petitioner claims that the Department's choice of shipment date for sale date is not in accordance with its past practice or its statement of current policy. Petitioner notes that, until recently, the Department's practice has been to require respondents to report the U.S. date of sale based on the date on which the material terms of the sale between the buyer and the seller were established. See Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170, 28175 (July 28, 1987). Petitioner points out that although the new regulations indicate a preference for the invoice date, the Department recognizes that the terms of sale may change or remain negotiable from the time of the initial agreement.

Petitioner states that, in this case, the order confirmation established the terms of sale. In petitioner's view, there is no information on the record from Mannesmann indicating that the terms of the U.S. sales change between the date of the order confirmation and the date of shipment. Petitioner notes that Mannesmann reported the order confirmation date as date of sale.

Moreover, since the Department has determined that Mannesmann's U.S. sales are CEP sales, petitioner holds that it is more appropriate to use the order confirmation date because the date of export from the German producer is somewhat arbitrary. Petitioner notes that the Department has stated its preference to use dates other than the date of shipment for date of sale See Notice of Final Rule, 62 FR 27296, 27349 (May 19, 1997).

Petitioner states that any delay between the order confirmation date and the shipment date should not affect price analysis because Germany does not suffer from hyperinflation. Even more significant, according to petitioner, is the fact that the Department's goal is to compare prices that have been set in the same contemporaneous period, and by using the order confirmation date for U.S. sales and the invoice date for home market sales, the terms of sale in the two relevant markets would have been set in the same month. Petitioner concludes that it is clear that, in the preliminary results, the Department incorrectly chose to align the dates of shipment rather than the dates the terms of sale were set.

Mannesmann terms petitioner's arguments regarding the proper U.S. and home market dates of sale without merit. It maintains that, consistent with the Department's preferred approach, it used the invoice date as the date of sale when reporting home market sales because the terms of the sale and the quantity are often not finally fixed until the invoice is generated (see Section A Response at 23). Since the Department did not permit Mannesmann to report the invoice date as the U.S. date of sale (the Mannesmann invoice is issued post-shipment in Germany), Mannesmann maintains that the Department's determination to use the shipment date as the U.S. date of sale is entirely appropriate.

Given that several months often elapse between order confirmation date and shipment date, Mannesmann agrees that the shipment date for U.S. sales is most comparable to the home market invoice date because it most closely corresponds to the invoice date. Mannesmann notes that the Department has utilized shipment date as date of sale, rather than the order or order confirmation date, when the shipment date most closely corresponded to the invoice date. See Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review, 62 FR 34216, 34227 (June 25, 1997). Mannesmann argues that the Department has also used shipment date as date of sale when there was a potential for the terms of sale to change. Mannesmann claims that the Department reviewed numerous change orders in this case, making shipment date the most logical choice for the U.S. date of sale. See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose From the Federal Republic of Germany, 55 FR 21058, 21059 (May 22, 1990). Mannesmann further states that the Department has used the shipment date as the date of sale when a respondent utilized this date for purposes of its financial reporting. Mannesmann claims that, in the normal course of business, it generates invoices on the date of shipment and that this date is used for purposes of recording sales and financial accounting in both markets.

Mannesmann also rejects petitioner's argument that any price analysis would not be affected by the time interval between order confirmation date and shipment because Germany does not suffer from "hyperinflation." Mannesmann states that many other factors (*e.g.*, market price fluctuations, a new competitor, a movement in exchange rates) can have substantial impact on the price analysis over the period of several months.

Department's Position

We agree with Mannesmann. Although we recognize that the Department's practice is normally to use the invoice date (see Memorandum from Susan G. Esserman, "Date of Sale Methodology Under New Regulations," March 29, 1996), we are continuing to use shipment date as the date of sale for U.S. sales for these final results. As we explained in the preliminary results, 62 FR at 47448, our questionnaire to Mannesmann stated that in no case could the date of sale be later than the date of shipment. The invoice date for each of Mannesmann's U.S. sales was later than the shipment date. Further, at verification we observed changes in U.S. terms of sale after the order confirmation date. See U.S. Sales Verification Exhibits 20, 21. We are thus satisfied that the date of shipment best reflects the date on which the material terms of Mannesmann's U.S. sales were established. This is also consistent with our preference of using comparable events in establishing the date of sale in both markets. As we also noted in the preliminary results, we used invoice date (which is the same as date of shipment) as date of sale in the home market. We are continuing to do so for the final results. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes From Mexico, 61 FR 56608, 56611 (Nov. 1, 1996) ("We based date of sale on shipment date to avoid the potential for distortion of cost and price comparisons that occur when there is a significant lag time between date of shipment and date of invoice within the same market and/or between the two markets.").

Comment 10

Petitioner maintains that Mannesmann did not report any warehousing expenses associated with those sales the Department discovered at verification to be in inventory. If the information on warehousing is not available, petitioner believes the Department should make an adjustment to CEP based on the facts available pursuant to section 776 of the Act. If the Department does not have sufficient information to make a facts available determination as to warehousing expenses, petitioner believes the margin for the affected sales should be based entirely on facts available.

Mannesmann counters that no adjustments to the reported sales data were necessary to account for warehousing expenses because none were incurred (see Sections B and C Response at 43).

For those observations specifically noted by petitioner, Mannesmann points out that complete documentation for these sales was provided to the Department at verification and a review of these documents confirmed the absence of warehousing expenses.

Department's Position

We agree in part with Mannesmann and with petitioner. We have no evidence that Mannesmann incurred warehousing expenses and we did not ask about them at verification. Mannesmann's brief indicates that if they had warehousing expenses, they would have appeared on the unloading invoice in the sales trace package. However, we do know the merchandise arrived in the U.S. and did not get sold until a later date. Therefore, while we cannot prove the existence of warehousing expenses, we agree with petitioner that these sales remained in inventory for a period of time. Therefore to account for this fact, we have calculated inventory carrying costs for these final results (see Final Analysis Memorandum of March 9, 1998).

Results of Review

We determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Mannesmann	1/27/95–7/31/96	22.12

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP/CEP and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Germany, within the scope of the order, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate of 57.72 percent, the all-others rate, established in the LTFV investigation, shall remain in effect until publication of the final results of the next administrative review.

We will calculate importer-specific *ad valorem* duty assessment rates based on the entered value of each entry of subject merchandise during the POR.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

This administrative review and notice are in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7017 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039, has been issued an amendment to Scientific Research Permit No. 974 (P368F).

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On January 6, 1998, notice was published in the Federal Register (63 FR 471) that an amendment of Permit No. 974, issued September 7, 1995 (60 FR 46577), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The amendment authorizes the researcher to: determine body fat of harbor seals (Phoca vitulina); handle 20 harbor seal pups up to four times and 80 pups one time annually to track changes in health, physiological condition, and diving behavior; handle 20 adults and 20 juveniles four times annually to determine seasonal shifts in health, physiological condition, and diving behavior; and harass 200 additional harbor seals as a result of the above activities.

Dated: March 12, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7039 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030598A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that Bruce A. Carlson, Ph.D., University of Hawaii at Manoa, Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815, has applied in due form for a permit to take Hawaiian monk seals, *Monachus schauinslandi*, for purposes of scientific research and enhancement. In addition, Douglas P. DeMaster, Ph.D., National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0070, has applied in due form for a permit to take Steller sea lions, *Eumetopias jubatus*, and northern fur seals, *Callorhinus ursinus*, for the purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before April 17, 1998.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment: See **SUPPLEMENTARY INFORMATION.**

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The activity proposed by Dr. Carlson involves the continued holding of three Hawaiian monk seals for the purposes of enhancing the survival and recovery of the species, and for scientific research. The seals have been held under the authority of Scientific Research Permit Numbers 413 and 482, issued to the Southwest Fisheries Science Center (SWFSC). The applicant seeks to: assess the efficiency with which Hawaiian monk seals assimilate and metabolize amino acids and fatty acids from common prey types; and elucidate and monitor how reproductive and metabolic activity of male Hawaiian monk seals are related.

In addition to the projected research above, the seals will be made available for scientific studies to other researchers whose protocols have been approved by the University of Hawaii Institutional Animal Care and Use Committee (UHIACUC) and the National Marine Fisheries Service, Office of Protected Resources. Due to the possibilities of disease transmission, release would present a finite and unwarranted risk to the wild population. Any public display of the seals would be incidental to and not interfere with the proposed research and enhancement activities.

The second applicant, Dr. DeMaster, seeks authorization to count, capture, handle, flipper tag, blood sample, and biopsy sample Steller sea lion pups, dart biopsy adult and juvenile Steller sea lions, and disturb Stellers of all ages during the conduct of aerial surveys. Research activities are scheduled to take place in Alaska. In addition, the applicant requests authority to disturb a small number of northern fur seals on Bogoslov Island during aerial surveys.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

The application and related documents submitted by Dr. Carlson may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; and

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396;

The application and related documents submitted by Dr. DeMaster may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0700; and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.

Dated: March 12, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7040 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technical Advisory Committee To Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure; Meeting

AGENCY: Technology Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure will hold a meeting on April 22–23, 1998. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure was established by the Secretary of Commerce to provide industry advice to the Department on encryption key recovery for use by federal government

agencies. All sessions will be open to the public.

DATES: The meeting will be held on April 22–23, 1998 from 9:00 a.m. to 6:00 p.m.

ADDRESSES: The meeting will take place at the Tremont House Hotel, 275 Tremont Street, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, Maryland 20899; telephone 301–975–3696. Please do not call the conference facility regarding details of this meeting.

SUPPLEMENTARY INFORMATION:

1. Agenda

Opening Remarks
Chairperson's Remarks
News Updates (Members, Federal Liaisons, Secretariat)
Working Group (WG) Reports
Intellectual Property Issues (as necessary)
Public Participation
Plans for Next Meeting
Closing Remarks

Note that the items in this agenda are tentative and subject to change due to logistics and speaker availability.

2. Public Participation

The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the **FOR FURTHER INFORMATION** section. In addition, written statements are invited and may be submitted to the Committee at any time. Written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

3. Additional information regarding the Committee is available at its world wide web homepage at: http://csrc.nist.gov/tacdfipsfkmi/.

4. Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and a similar notice placed on the Committee's electronic homepage.

Mark Bohannon,
Chief Counsel for Technology Administation.
[FR Doc. 98–7049 Filed 3–17–98; 8:45 am]
BILLING CODE 3510–CN–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition and Technology)/Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations) announces the proposed extension of a public information collection and seeks pubic comment on the provisions thereof. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 18, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations)/Office of Financial and Economic Analysis, ATTN: Mr. Michael Scullin, 5203 Leesburg Pike, Two Skyline Place, Suite 1401, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Michael Scullin at (703) 681–5479.

Title, Associated Form, and OMB Number: Department of Defense Application for Priority Rating for Production or Construction Equipment, DD Form 691, OMB Number 0704–0055.

Needs and Uses: Executive Order 12919 delegated to DoD authority to require certain contracts and orders relating to approved Defense Programs to be accepted and performed on a preferential basis. This program helps contractors acquire industrial equipment in a timely manner, thereby facilitating development and support of weapons systems and other important Defense Programs.

Affected Public: Businesses or Other for-Profit, Not-for-Profit Institutions; Federal Government.

Annual Burden Hours: 610.

Number of Respondents: 610.

Responses to Respondent: 1.

Average Burden Per Response: 1 Hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is used so the authority to use a priority rating in ordering a needed item can be granted. This is done to assure timely availability of production or construction equipment to meet current Defense requirements in peacetime and in case of national emergency. Without this information DoD would not be able to assess a contractor's stated requirement to obtain equipment needed for fulfillment of contractual obligations. Submission of this information is voluntary.

Dated: March 12, 1998.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 98–6917 Filed 3–17–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Foreign Acquisition—Defense Federal Acquisition Regulation Supplement Part 225 and Related Clauses at 252.225; DD Form 2139; OMB Number 0704–0229.

Type of Request: Extension.

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Number of Respondents: 31,347.
Responses per Respondent: Approximately 7.
Annual Responses: 224,262.
Average Burden per Response: 20 minutes (reporting only); 1.7 hours (including recordkeeping).
Annual Burden Hours: 374,428 (74,333 reporting hours; 300,095 recordkeeping hours).
Needs and uses: This information collection requirement pertains to information used to ensure contractor compliance with restrictions on the acquisition of foreign products imposed by statute or policy to protect the industrial base. Other information is required for compliance with U.S. trade agreements and Memoranda of Understanding, which promote reciprocal trade with U.S. allies, and for inclusion in reports to the Department of Commerce on the Balance of Payments Program.
Affected Public: Business or Other For-Profit.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 12, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–6916 Filed 3–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–27]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified test of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representives, Transmittal 98–27, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated March 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

04 MAR 1998

In reply refer to:
I-61710/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-27, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $214 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

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Transmittal No. 98-27

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 214 million
TOTAL	$ 214 million

(iii) Description of Articles or Services Offered:
Twelve MK 14 weapon direction systems, 12 OT-134 transmitters, U.S. Government and contractor engineering and logistics personnel services, installation and checkout of spares, installation support, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, and other related elements of logistics support.

(iv) Military Department: Navy (LOZ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 04 MAR 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - MK-41 Missile Launcher Sub-Systems, Support Equipment and Training

The Republic of Korea has requested a possible sale of 12 MK 14 Weapon Direction Systems (WDS), 12 OT-134 Continuous Wave Illumination (CWI) Transmitters, U.S. Government and contractor engineering and logistics personnel services, installation and checkout of spares, installation support, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, and other related elements of logistics support. The estimated cost is $214 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The Republic of Korea intends to use the MK 14 WDS and OT-134 CWI transmitters for STANDARD missile fire control (sends launch signal) and post-launch control (controls missile in-flight). Korea will have no difficulty absorbing this support equipment into its armed forces. These are components of the MK-41 STANDARD missile launcher systems that will potentially be installed on indigenously produced naval vessels.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Raytheon Electronic Systems, Wayland, Massachusetts, and Tracor Systems Engineering, Silver Spring, Maryland. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four U.S. Government personnel and 14 contractor representatives in-country to support the program through the development, production and equipment installation phases. The period of time required to be on-site is approximately 14 months.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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Transmittal No. 98-27

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The MK 14 Weapon Direction System (WDS) is classified Secret. The OT-134 Continuous Wave Illumination (CWI) Transmitter is unclassified, but considered sensitive. Technical documentation and publications for testing, operation and maintenance are Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–6918 Filed 3–17–98; 8:45 am]
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DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee

AGENCY: U.S. Army War College.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: April 5, 6, and 7, 1998.

Place: Root Hall, U.S. Army War College, Carlisle Barracks, Pennsylvania.

Time: 8:30 a.m.–5:00 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant, staff and faculty; review USAWC Master's Degree Campaign Plan and supplemental report to the Department of Education; plan future membership and composition of the Board of Visitors; and provide guidance regarding accreditation and areas for improvement.

FOR FURTHER INFORMATION CONTACT: Colonel Thomas D. Scott, Box 524, U.S. Army War College, Carlisle Barracks, PA 17013 or telephone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee after receiving advance approval for participation. To request advance approval or obtain further information, contact Colonel Thomas D. Scott at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7047 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command (MTMC) Freight Traffic Rules Publication (MFTRP) No. 1A and MTMC Guaranteed Traffic Rules Publication No. 50 (MGTRP No. 50): Proposed Changes

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Notice.

SUMMARY: MTMC proposes to change the procedures used to reimburse commercial motor carriers for the cost of overdimensional and overweight permits. MTMC is making the changes to support an Office of the Secretary of Defense initiative to automate the DoD Government bill of lading (GBL) costing and payment process.

DATES: Comments on the proposed changes must be received not later than May 18, 1998.

ADDRESSES: Comments may be mailed to Headquarters, Military Traffic Management Command, ATTN: MTTM–O, (Mr. John Alexander) 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. John Alexander, (703) 681–6870.

SUPPLEMENTARY INFORMATION: Currently, motor carriers seek reimbursement for permit costs after a movement is completed. This method is not consistent with DoD's goal of automated costing and payment. In the proposed changes, carriers must seek reimbursement for permit costs in their charges for transporting overdimensional and/or overweight shipments. To implement the new procedures, appropriate changes must be made in two MTMC rules publications, MFTRP No. 1A and MGTRP No. 50.

In MFTRP No. 1A, two rules items will be revised and one item will be cancelled. Item 415, Overdimensional Freight Service (OD), and Item 416, Overweight Permit Shipments will be revised, and Item 417, Overdimensional Permit Charges, will be cancelled. The items will read as follows:

Item 415 Overdimensional Freight Service (OD)

1. Carriers shall provide overdimensional freight service for DoD shipments, subject to the following:

a. *Definition.* A shipment will be considered to be overdimensional when it contains one or more non-divisible articles which measure in excess of 576 inches (48 feet) in length, 102 inches (8 feet 6 inches) in width, or 162 inches (13 feet 6 inches) in height from the ground to the top of the article after loading. Although paragraph 2 of this item provides coverage for overlength charges, overlength dimensional charges will not be assessed, for interstate or intrastate movements, when the gross length dimensions of the tractor and loaded semi-trailer combination are within the maximum gross length for such equipment combination on interstate and federally designated highways or other state highways and supplemental routes.

b. *Line-haul charges.* Line-haul transportation charges will be based on the applicable truckload charge (Rate Qualifiers PL and PM), or highest published truckload minimum weight applicable to the equipment loaded by the shipper, or actual weight if in excess of the minimum weight, and accompanying truckload rate. When distance rates are applicable, the determination of mileage will be subject to the practical route mileage determined by use of the governing mileage guide.

c. *Advancing Charges.* The charge for advancing monies, as outlined in Item 55, is not applicable to this item.

2. *Overdimensional charges.* When a shipment is overdimensional in more than one dimension (i.e. width, length, or height) the overdimensional mileage charge producing the greatest total charges will apply. In no case will overdimensional mileage charges be assessed on more than one dimension.

a. *Overwidth Charges.* Minimum Charge: OD(1) $____ Article Width (in inches)

Over	Not over	Charges per mile
102	108	OD(2)$____
108	120	OD(3)$____
120	132	OD(4)$____
132	144	OD(5)$____
144	156	OD(6)$____
156	168	OD(7)$____
168	180	OD(8)$____
180	204	OD(9)$____
204	.....	OD(10)$____ per foot or fraction thereof on that portion over 17 feet wide, plus the charge per mile in OD(9).

b. *Overlength Charges.* Minimum Charge: OD(11)$____ Article length (in inches)

Over	Not over	Charges per mile
576	600	OD(12)$____
600	660	OD(13)$____
660	720	OD(14)$____
720	780	OD(15)$____
780	.....	OD(16)$____ plus OD(17)$____ per foot or fraction thereof for that portion over 65 feet long.

c. *Overheight Charges.* Minimum Charge: OD(18)$____ Article height (in inches)

Over	Not over	Charges per mile
162	168	OD(19)$____
168	174	OD(20)$____
174	180	OD(21)$____
180	192	OD(22)$____
192	204	OD(23)$____

Over	Not over	Charges per mile
204	.....	OD(24)$____

d. Article height is measured from the ground to the top of the article after loading.

e. These charges are to reimburse the carrier for the costs of overdimensional permits, bonds, tolls, fees and for any administrative cost incurred in obtaining such services and will be in addition to line-haul transportation costs.

Item 416 Overweight Permit Shipments (OW)

1. Carriers shall provide the transportation of overweight shipments, subject to the following:

a. *Line-haul Charges.* Line-haul transportation charges for non-divisible articles exceeding 48,000 pounds will be determined from rates contained in the carrier's individual tender. When distance rates and/or permit mileage is involved, charges shall be based on the practical route mileage determined by use of the governing mileage guide.

b. *Advancing Charges.* The charge for advancing monies, as outlined in Item 55, is not applicable to this item.

2. *Overweight Charges.*

a. When a vehicle is loaded with a shipment weighing in excess of 48,000 pounds and a carrier is required to obtain a permit(s) and associated services from any city, county, state or municipal agency in order to transport the shipment, the following charges will be assessed for that weight in excess of 48,000 pounds:

Weight in excess of: (in pounds)	Charges per mile
48,000 but less than 68,000.	OW(1)____
68,000 but less than 88,000.	OW(2)____
88,000 but less than 108,000.	OW(3)____
108,000 and over	OW(4)____

b. These charges are to reimburse the carrier for costs of permits, bonds, tolls, fees, and for any administrative cost spent in obtaining such services and will be in addition to line-haul transportation costs.

Item 417 Overdimensional Permit Charges

This item is cancelled. All overdimensional charges to include permits, bonds, tolls, fees, and any other administrative costs spent in obtaining such services will be included in Item 415, Overdimensional Freight Service (OD).

In MGTRP No. 50, two items will be revised and one item will be cancelled. Item 385, Overdimensional Freight Service (520), and Item 390, Overweight Shipment (PER), will be revised, and Item 400, Permits and Special Tolls, will be cancelled. The items will read as follows:

Item 385 Overdimensional Freight Service (520)

1. Carriers shall provide overdimensional freight service for DoD shipments, subject to the following:

a. *Definition.* A shipment will be considered to be overdimensional when it contains one or more non-divisible articles which measure in excess of 576 inches (48 feet) in length, 102 inches (8 feet 6 inches) in width, or 162 inches (13 feet and 6 inches) in height from the ground to the top of the article after loading. Although paragraph 2 of this item provides coverage for overlength charges, overlength dimensional charges will not be assessed, for interstate or intrastate movements, when the gross length dimensions of the tractor and loaded semi-trailer combination are within the maximum gross length for such equipment combination on interstate and federally designated highways or other state highways and supplemental routes.

b. *Line-haul charges.* Line-haul transportation charges will be based on the applicable truckload charge (Rate Qualifiers VH and VU), or highest published truckload minimum weight applicable to the equipment loaded by the shipper, or actual weight if in excess of the minimum weight, and accompanying truckload rate. When distance rates are applicable, the determination of mileage will be subject to the practical route mileage determined by use of the governing mileage guide.

c. *Advancing Charges.* The charge for advancing monies, as outlined in Item 205, is not applicable to this item.

2. *Overdimensional charges.* When a shipment is overdimensional in more than one dimension (i.e. width, length, or height) the overdimensional mileage charge producing the greatest total charges will apply. In no case will overdimensional mileage charges be assessed on more than one dimension.

a. *Overwidth Charges.* Minimum Charge: 520(1) $____ Article Width (in inches)

Over	Not over	Charges per mile
102	108	520(2) $____
108	120	520(3) $____
120	132	520(4) $____
132	144	520(5) $____
144	156	520(6) $____
156	168	520(7) $____
168	180	520(8) $____
180	204	520(9) $____
204		520(10) $____ per foot or fraction thereof on that portion over 17 feet wide, plus the charge per mile in 520(9).

b. *Overlength Charges.* Minimum Charge: 520(11) $____. 4Article length (in inches)

Over	Not over	Charges per mile
576	600	520(12) $____
600	660	520(13) $____
660	720	520(14) $____
720	780	520(15) $____
780		520(16) $____ plus 520(17) $____per foot or fraction thereof for that portion over 65 feet long.

c. *Overheight Charges.* Minimum Charge: 520(18) $____ Article height (in inches)

Over	Not over	Charges per mile
162	168	520(19) $____
168	174	520(20) $____
174	180	520(21) $____
180	192	520(22) $____
192	204	520(23) $____
204		520(24) $____

d. Article height is measured from the ground to the top of the article after loading.

e. These charges are to reimburse the carrier for the costs of overdimensional permits, bonds, tolls, fees and for any administrative cost incurred in obtaining such services and will be in addition to line-haul transportation costs.

Item 390 Overweight Shipment (Per)

1. Carriers shall provide the transportation of overweight shipments, subject to the following:

a. *Line-haul Charges.* Line-haul transportation charges for non-divisible articles exceeding 48,000 pounds will be determined from rates contained in the carrier's individual tender. When distance rates and/or permit mileage is involved, charges shall be based on the practical route mileage determined by use of the governing mileage guide.

b. *Advancing Charges.* The charge for advancing monies, as outlined in Item 205, is not applicable to this item.

2. *Overweight Charges.*

a. When a vehicle is loaded with a shipment weighing in excess of 48,000 pounds and a carrier is required to obtain a permit(s) and associated services from any city, county, state or municipal agency in order to transport the shipment, the following charges will be assessed for that weight in excess of 48,000 pounds:

Weight in excess of: (in pounds)	Charges per mile
48,000 but less than 58,000.	PER(1) ____
68,000 but less than 88,000.	PER(2) ____
88,000 but less than 108,000.	PER(3) ____
108,000 and over	PER(4) ____

b. These charges are to reimburse the carrier for costs of permits, bonds, tolls, fees, and for any administrative cost spent in obtaining such services and will be in addition to line-haul transportation costs.

Item 400 Permits and Special Tolls

This item is cancelled. All overdimensional charges to include permits, bonds, tolls, fees, and any other administrative costs spent in obtaining such services will be included in Item 385, Overdimensional Freight Service (520).

Finally, the following definition will be added to Item 1001 of MFTRP No. 1A and to Item 1005 of MGTRP No. 50:

Practical Route Mileage—Mileage calculated over the most efficient route, primarily including National Interstate Highways, U.S. Highways, and Primary State Highways.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7048 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for nonexclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents covers a wide variety of technical arts including: A Simulator for Smart Munitions Testing and An Apparatus for Variable Optical Focusing.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Simulator for Smart Munitions Testing.

Inventor: Mark D. Sevachko.

Patent Number: 5,719,797.

Issued Date: February 17, 1998.

Title: Apparatus for Variable Optical Focusing for Processing Chambers.

Inventor: Somnath Sengupta.

Patent Number: 5,711,810.

Issued Date: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5055, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7046 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Programmatic Environmental Impact Statement (EIS) for the Aliso Creek Watershed Feasibility Study; Orange County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The Aliso Creek Watershed encompasses a drainage area of approximately thirty-six (36) square miles in southern Orange County extending approximately nineteen (19) miles from the foothills of the Santa Ana Mountains to the Pacific Ocean south of Laguna Beach. Rapid residential and commercial development within the past thirty-five years has produced a number of unintended consequences on the watershed and its creeks. These include decreased water quality and supply, loss of habitat, flooding, erosion, and loss of recreational opportunities. In response to these and other problems raised by various federal and state offices, interest groups, and private parties the Corps is developing an integrated watershed management plan to enhance positive trends in maintaining the Aliso Creek Watershed system.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Timothy J. Smith, U.S. Army Corps of Engineers, Attn: CESPL–PD–RN, P.O. Box 532711, Los Angeles, California 90053–2325; phone (213) 452–3854; email tjsmith@spl.usace.army.mil

SUPPLEMENTARY INFORMATION: To prepare for preparation of the EIS, the Corps will be conducting a public scoping meeting on March 25, 1998, at 7 p.m., at the Laguna Niguel City Council Chambers, located at 27841 La Paz Road, Laguna Niguel, California. This scoping will be held to solicit public input on significant environmental issues associated with the proposed project. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the Scoping Meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential environmental enhancement and restoration opportunities that exist in the watershed. Individuals and agencies may offer information or data relevant to the proposed study and provide comments suggestions by attending the public scoping meeting, or by mailing the information to Mr. Timothy J. Smith. Requests to be placed on the mailing list for announcements and the Draft EIS should be sent to Mr. Timothy J. Smith.

Alternatives: The study will develop an integrated watershed management plan as well as a list of potential environmental enhancement and restoration opportunities throughout the Aliso Creek Watershed. Specific measures selected for implementation will be analyzed in detail in supplementary National Environmental Policy Act/California Environmental Quality Act documentation.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7044 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–KF–M

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DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Hamilton Army Airfield Wetland Restoration Project, Marin County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, San Francisco District and the California State Coastal Conservancy propose to restore wetland habitat at the former Hamilton Army Airfield and adjacent properties. The airfield lies on former tidal wetland that has been diked to protect it from tidal flooding. The area has subsided significantly since its removal from tidal action. The project may modify existing levees and construct new ones around the project area. Dredged material suitable for wetland creation would be used to bring the area to an elevation where marsh would establish itself, after which the bayfront levee would be breached, returning tidal action to the area. Restoration without the use of dredged material is also being considered.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the EIS/EIR may be directed to Eric Jolliffe, U.S. Army Corps of Engineers, 333 Market Street, Seventh Floor, San Francisco, CA 94105–2102, (415) 977–8543, or Terri Nevins, California State Coastal Conservancy, 1330 Broadway, Suite 1100, Oakland, CA 94612–2530, (510) 286–4161.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the California Environmental Quality Act (CEQA), and Public Law 102–484 Section 2834, as amended by Public Law 104–106 Section 2867, the Department of the Army and the California State Coastal Conservancy hereby give notice of intent to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Proposed Hamilton Army Airfield Wetland Restoration Project, Marin County, California.

The U.S. Army Corps of Engineers will be the lead agency in preparing the EIS. The EIS/EIR will provide an analysis supporting the requirements of both NEPA and CEQA in addressing impacts to the environment which may result from restoring wetland habitat at the former Hamilton Army Airfield and adjacent properties.

1. Proposed Action

The Hamilton restoration site consists of the former Hamilton Army Airfield, adjacent Navy ballfields, and the former Hamilton North Antenna Field. The project would restore up to 950 acres of tidal marsh and seasonal wetland at the site. All restoration alternatives have a goal of creating a mix of 80% tidal marsh and 20% seasonal wetland. Existing levees would be raised and new ones would be constructed around the perimeter of the site. The re-establishment of tidal marsh would require higher elevations than currently exist to allow the growth of wetland vegetation. These higher elevations could probably be achieved by breaching the existing bayfront levee and allowing tidal activity to deposit sediments. However, placement of suitable dredged material at the site to raise elevations closer to the eventual marsh plain would allow marsh vegetation to establish much sooner. In addition, the placement of suitable dredged material or other suitable fill is needed to achieve target elevations for seasonal wetland habitat restoration. Placement of dredged material would be accomplished by pumping a slurry of dredged material to the site from barges moored in San Pablo Bay.

2. Project Alternatives

a. No action. The area would remain free from tidal action as it is now and no marsh would develop. Pumps would continue to be required to remove runoff water.

b. Wetland would be restored to the Airfield and Navy ballfields without the use of dredged material. Approximately 700 acres of wetland would be restored.

c. Wetland would be restored to the Airfield and Navy ballfields using dredged material to accelerate marsh establishment and raise elevations for seasonal wetlands. Approximately 700 acres of wetland would be restored.

d. Wetland would be restored to the Airfield and adjacent properties at the site without the use of dredged material. Approximately 950 acres of wetland would be restored.

e. Wetland would be restored to the Airfield and adjacent properties at the site using dredged material to accelerate marsh establishment and raise elevations for seasonal wetlands. Approximately 950 acres of wetland would be restored.

3. Scoping Process

Federal, state and local agencies, and interested individuals are invited to participate in the scoping process to determine the range of issues and alternatives to be addressed. The California State Coastal Conservancy and the U.S. Army Corps of Engineers will hold two public scoping meetings to receive oral and written comments at the following locations and times:

9:30 am–12:00 pm, March 25, 1998, Hamilton Community Center, 203 Bel Bonito Street, Novato, California

And

7:30 pm–10:00 pm, March 30, 1998, Novato City Council Chambers, 908 Machin Drive, Novato, California.

In addition, written comments will also be accepted until April 8, 1998 at the addresses listed above.

4. Availability of EIS/EIR

The Draft EIS/EIR should be available for public review in August 1998.

Richard G. Thompson,

Corps of Engineers, District Engineer.

[FR Doc. 98–7042 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Programmatic Environmental Impact Statement (EIS) for the San Juan Creek Watershed Feasibility Study; Orange County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The San Juan Watershed encompasses a drainage area of approximately 176 square miles in southern Orange County. Eight major tributaries feed San Juan Creek along its twenty-seven mile course from the Cleveland National Forest in the Santa Ana Mountains to the Pacific Ocean at Doheny State Beach near Dana Point Harbor. Rapid development since the early 1980s has produced a variety of environmental concerns that threaten the overall functional integrity of the watershed. Issues warranting concern identified in the Reconnaissance Study include channel degradation, loss of habitat, decreased water quality and supply, loss of recreational and aesthetic values, and increased flooding. In response to these and other problems raised by various federal and state offices, interest groups, and private parties the Corps is developing an

integrated watershed management plan to enhance positive trends in maintaining the San Juan Creek Watershed system.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Timothy J. Smith, U.S. Army Corps of Engineers, Attn: CESPL–PD–RN, P.O. Box 532711, Los Angeles, California 90053–2325; phone (213) 452–3854; email tjsmith@spl.usace.army.mil

SUPPLEMENTARY INFORMATION: To prepare for preparation of the EIS, the Corps will be conducting a public scoping meeting on March 26, 1998, at 7 p.m., at the Del Obispo Community Center, located at 34052 Del Obispo Road, Dana Point, California. This scoping meeting will be held to solicit public input on significant environmental issues associated with the proposed project. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the Scoping Meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential environmental enhancement and restoration opportunities that exist in the watershed. Individuals and agencies may offer information or data relevant to the proposed study and provide comments suggestions by attending the public scoping meeting, or by mailing the information to Mr. Timothy J. Smith. Requests to be placed on the mailing list for announcements and the Draft EIS should be sent to Mr. Timothy J. Smith.

Alternatives: The study will develop an integrated watershed management plan as well as a list of potential environmental enhancement and restoration opportunities throughout the San Juan Watershed. Specific measures selected for implementation will be analyzed in detail in supplementary National Environmental Policy Act/ California Environmental Quality Act documentation.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7043 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Wolf River, Memphis, TN, Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The purpose of this study is to determine the feasibility of providing aquatic and terrestrial ecosystem restoration, wetlands protection, and increased recreational opportunities within the Wolf River Basin of west Tennessee and north Mississippi. A resolution by the Committee on Public Works and Transportation of the U.S. House of Representatives on 24 September 1992 provides study authorization.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bodron, telephone (901) 544–3639, CEMVM–DD–P, 167 North Main Street, B–202, Memphis, TN 38103–1894. Questions regarding the DEIS may be directed to Mr. Richard Hite, telephone (901) 544–0706, CEMVM–PD–R.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

A Corps reconnaissance study, completed October 1995, revealed that channelization and realignment of the lower 22 miles of the river have significantly reduced seasonal flooding, eliminated large amounts of riparian forest and fisheries habitat, induced progressive channel bank and bed erosion, and initiated long-term drying of adjacent wetlands.

Also, agricultural practices have contributed to sediment movement and deposition. Sediment deposition in tributary streams and wetlands has adversely impacted fish and wildlife habitat and killed valuable timber. The Wolf River study will attempt to identify an economically and environmentally feasible plan that would retard damage to and help restore components of this important ecosystem. The study area currently comprises the entire Wolf River Basin. The river is 86 miles in length; and the drainage basin includes portions of Shelby, Fayette, and Hardeman counties in west Tennessee and parts of Marshall, Benton, and Tippah counties in north Mississippi.

2. Alternatives

Alternatives being considered include combinations of features such as main channel weirs to reduce erosion and provide fish habitat, reforestation, and wetland restoration. Alternative plans will be compared to the No Action alternative.

3. Scoping Process

An intensive public involvement program will be initiated and maintained throughout this study to (1) solicit input from individuals and interested parties so that problems, needs, and opportunities within the project area can be properly identified and addressed and (2) provide status updates to concerned organizations and the general public. Scoping is a critical component of the overall public involvement program. The scoping process is designed to provide early detection of public concerns regarding needed studies, plan alternatives, procedures and other important study-related matters. Affected federal, state and local agencies; affected Indian tribes; and other interested private organizations and parties are invited to participate in the scoping process. This study will analyze project impacts (positive and negative) to significant area resources such as wildlife, fish, endangered species, wetlands, water quality and recreation.

4. Public Scoping Meeting

A public scoping meeting will likely be held in Memphis, Tennessee, during the Spring of 1998.

5. Availability of DEIS

It is anticipated that the DEIS will be available for public review during the Spring of 1999. A public meeting will be held during the review period to receive comments and address questions concerning the DEIS.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 98–7045 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–KS–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 25, 1998. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30

p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

In addition to the subjects listed which are scheduled for public hearing, the Commission will also address the following: Minutes of the February 18, 1998 business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions; a resolution concerning appointments to the Commission's Estuary Model Peer Review Team; status of compliance: Evansburg Water Company; a resolution to amend DRBC's agreement with Hydro Qual, Inc., and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Heritage-Steeplechase L.P. D–97–33 CP.* An application for approval of a ground water withdrawal project to supply up to 4.39 million gallons (mg)/30 days of water to the applicant's distribution system from new Well Nos. 1 through 3, and to limit the withdrawal limit from all wells to 4.39 mg/30 days. The project is located in Plumstead Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Pocono Mountain School District D–98–3 CP.* A project to modify the applicant's existing sewage treatment plants (STPs) which will continue to serve its junior and senior high schools in Paradise and Pocono Townships, Monroe County, Pennsylvania. Currently, there are two STPs operating in combination that produce a single discharge of tertiary treated effluent to Swiftwater Creek in Pocono Township. The applicant proposes to modify the existing senior high school STP and eliminate the junior high school STP. The new STP will continue to produce tertiary treated effluent to be discharged at the same flow (0.0286 million gallons per day) via the existing outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: March 10, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–7001 Filed 3–17–98; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: Energy.

ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to paragraph 2 of Article 6 of the Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning the Peaceful Uses of Nuclear Energy, notice is hereby given of a proposed "subsequent arrangement" with respect to the alteration in form or content of unirradiated high enriched uranium (HEU) subject to the Agreement.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the alteration in form or content of up to 2 kilograms of unirradiated HEU subject to the Agreement in Argentina for the purpose of recovering and processing uranium for the production of medical isotopes.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: March 12, 1998.

For the Department of Energy.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 98–6987 Filed 3–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–264–000]

Arkla, a Division of NorAm Energy Corp.; Notice of Petition for Declaratory Order

March 12, 1998.

Take notice that on March 4, 1998, Arkla, a division of NorAm Energy Corp. (Arkla), P.O. Box 751, Little Rock, Arkansas 72203, filed with the Commission in Docket No. CP98–264–000 a petition for a declaratory order stating that certain pipeline facilities Arkla would purchase from Louisiana-Nevada Transit Company (LNT) would be exempt from the Commission's jurisdiction under Section 1(b) of the Natural Gas Act (NGA), which is open to the public for inspection.

Arkla proposes to purchase approximately 78 miles or 8-inch diameter pipe between Cotton Valley, Webster Parish, Louisiana, and Okay, Hempstead County, Arkansas, and approximately 17 miles of 6-inch diameter pipe that extends from Haynesville, Claiborne Parish, Louisiana, to an interconnection with the 8-inch diameter pipe in Webster Parish (collectively, the LNT facilities). Arkla states that LNT has contemporaneously filed a request with the Commission in Docket No. CP98–263–000 to abandon the LNT pipeline facilities by sale to Arkla.

Arkla states that it would blind-plate the 8-inch diameter pipeline at the Arkansas-Louisiana state line and operate the separated segments as reconfigured parts of its local distribution systems in Arkansas and Louisiana. Arkla also states that it operates as a local distribution company that distributes natural gas at retail solely within the states of Arkansas, Louisiana, Oklahoma, and Texas. Arkla further states that its operations are confined to each of the respective states and its local activities and operations within each state are regulated by the public service commissions of each respective state.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 23, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CRR 157.10). All protects filed with the Commission will be considered by it in determining the appropriate action to the taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6929 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–263–000]

Louisiana-Nevada Transit Company; Notice of Application

March 12, 1998.

Take notice that on March 4, 1998, Louisiana-Nevada Transit Company (LNT), 16415 Addison Road, Suite 610, Dallas, Texas 75248–2661 77002, filed an application with the Commission in Docket No. CP98–263–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon its pipeline facilities in Arkansas and Louisiana by sale to Arkla, a division of NorAm Energy Corp. (Arkla), all as more fully set forth in the application on file with the Commission and open to public inspection.

LNT proposes to abandon approximately 78 miles of 8-inch diameter pipe between Cotton Valley, Webster Parish, Louisiana, and Okay, Hampstead County, Arkansas, and approximately 17 miles of 6-inch diameter pipe that extends from Haynesville, Claiborne Parish, Louisiana, to an interconnection with the 8-inch diameter pipe in Webster Parish. LBT states that Arkla would buy the pipeline facilities for $226,500. LNT also states that Arkla is LNT's sole jurisdictional customer and that LNT also makes certain nonjurisdictional direct sales in Arkansas and Louisiana.

LNT states that it has filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. LNT also states that Arkla would concurrently file a petition for a declaratory order that the facilities it would acquire from LNT would not be subject to the Commission's jurisdiction. LNT further states that Arkla would blind-plate the pipeline facilities at the Arkansas-Louisiana state line and operate the separated segments as reconfigured parts of Arkla's local distribution systems in Arkansas and Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for LNT to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6928 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–153–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 9, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective April 1, 1998:

Substitute Thirtieth Revised Sheet No. 5
Substitute Thirtieth Revised Sheet No. 6
Substitute Twenty-Seventh Revised Sheet No. 7

MRT states that the propose of this filing is to amend its March 2, 1998 filing to correct surcharge column headings and to identify the GRI surcharge for the authorized overrun rate on the SCT and IT rate schedules.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6936 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–1384–000 and EL98–28–000]

PJM Interconnection, L.L.C.; Notice of Initiation of Proceeding and Refund Effective Date

March 12, 1998.

Take notice that on March 10, 1998, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98–28–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98–28–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6931 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–441–001, ER98–495–001, ER98–496–001 (consolidated)]

Southern California Edison Company, Pacific Gas & Electric Company and San Diego Gas & Electric Company; Notice of Informal Settlement Conference

March 12, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, March 18, 1998, at 10:00 A.M. The conference will be held at the offices of the Federal Energy Regulatory

Commission, 888 First Street, N.E., Washington, D.C.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission Regulations. See 18 CFR 385.214.

For additional information, please contact Paul B. Mohler at (202) 208–1240.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6930 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–28–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 9, 1998, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 4, to be effective April 8, 1998.

Stingray states that the purpose of the filing is to update Stingray's system map to reflect the addition and deletion of laterals.

Stingray requested a waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on April 8, 1998.

Stingray states that a copy of the filing has been mailed to Stingray's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6933 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–29–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 9, 1998, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 4, to be effective April 8, 1998.

Trailblazer states that the purpose of the filing is to update Trailblazer's system map to reflect a new compressor station and to modify the existing format to provide for greater clarity.

Trailblazer requested a waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on April 8, 1998.

Trailblazer states that a copy of the filing has been mailed to Trailblazer's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6934 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–157–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 9, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, to be effective April 9, 1998.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to provide a clarification to Trunkline's no notice service under Rate Schedules NNS–1 and NNS–2. These revised tariff sheets clarify when and who should pay the transportation charge for delivery of gas into storage in the event of a change in the furthest upstream primary point of receipt on the Designated Transportation Service Agreement and in-field storage transfers.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6935 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT 98–27–00]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 6, 1998, Williams Gas Pipelines Central, Inc., formerly Williams Natural Gas Company (Williams), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1.

Williams states that Williams Natural Gas Company changed its name to Williams Gas Pipelines Central, Inc. effective January 12, 1998. The instant filing is being made to file a new Volume No. 1 tariff and make other miscellaneous changes.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6932 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–168–000]

Williams Natural Gas Company; Notice of Site Visit

March 12, 1998.

On March 30 and 31, 1998, the staff of the Office of Pipeline Regulation will be conducting an environmental site visit of Williams Natural Gas Company's Pampa Pipeline Abandonment Project. All parties may attend. Those planning to attend must provide their own transportation.

For further information about where the site inspection will begin, please contact Paul McKee at (202) 208–1088.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 98–7018 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00236; FRL–5777–4]

Toxic Substances; Correction of Misreported Chemical Substances on the TSCA Inventory; Agency Information Collection Activities; Proposed Renewal and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12. Before submitting the following ICR to OMB for review and reapproval, EPA is soliciting comments on specific aspects of the information collection, which is briefly described below. The ICR is a continuing ICR entitled "Correction of Misreported Chemical Substances on the TSCA Inventory," EPA ICR No. 1741.02, OMB No. 2070-0145. This ICR covers the reporting of corrected information to the Toxic Substances Control Act (TSCA) section 8(b) Inventory of Chemical Substances, which relates to reporting requirements that appear at 40 CFR part 710. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Written comments must be submitted on or before May 18, 1998.

ADDRESSES: Each comment must bear the docket control number "OPPTS–00236" and administrative record number 191. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460. Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit III. of this document. No TSCA Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404, TDD: 202–554–0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact: Scott Sherlock, Information Management Division (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1536; Fax: 202–260–1657; e-mail: sherlock.scott@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of the ICR are available from the EPA Home Page at the Federal Register - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 4058 for a copy of the ICR.

I. Background

Affected entities: Entities potentially affected by this action are persons who manufacture, process, or import chemical substances in the United States.

For the collection of information addressed in this notice, EPA would like to solicit comments to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

II. Information Collection

EPA is seeking comments on the following ICR, as well as the Agency's intention to renew the corresponding OMB approval, which is currently scheduled to expire on May 31, 1998.

Title: Correction of Misreported Chemical Substances on the TSCA Inventory.

ICR numbers: EPA ICR No. 1741.02, OMB No. 2070-0145.

Abstract: Section 8(b) of the TSCA requires EPA to compile and keep current an Inventory of Chemical Substances in Commerce, which is a listing of chemical substances manufactured, imported, and processed for commercial purposes in the United States. The purpose of the Inventory is to define, for the purpose of TSCA, what chemical substances exist in U.S. commerce. Since the Inventory thereby performs a regulatory function by distinguishing between existing chemicals and new chemicals, which TSCA regulates in different ways, it is imperative that the Inventory be accurate.

However, from time to time, EPA or respondents discover that substances have been incorrectly described by reporting companies. Reported substances have been unintentionally misidentified as a result of simple typographical errors, the misidentification of substances, or the lack of sufficient technical or analytical capabilities to characterize fully the exact chemical substances. EPA has developed guidelines (45 FR 50544, July 29, 1980) under which incorrectly described substances listed in the Inventory can be corrected.

This information collection request pertains to the use of the TSCA Chemical Substance Inventory Reporting Form C (EPA Form 7710-3C), which is used by the chemical industry in submitting requests to EPA to correct misreported chemical identities of substances listed on the Inventory. The correction mechanism ensures the accuracy of the Inventory without imposing an unreasonable burden on the chemical industry. Without the Inventory correction mechanism, a company that submitted incorrect information would have to file a premanufacture notification (PMN) under TSCA section 5 to place the correct chemical substance on the Inventory whenever the previously reported substance is found to be misidentified. This would impose a much greater burden on both EPA and the submitter than the existing correction mechanism.

Responses to this collection of information are voluntary.

Burden statement: The burden to respondents for complying with this ICR is estimated to total 200 hours per year with an annual cost of $8,100. These totals are based on an average burden of 1 hour per response for an estimated 200 respondents making one response annually. These estimates include the time needed to determine applicability; review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

III. Public Record and Electronic Submissions

The official record for this document as well as the public version, has been established for this document under docket control number "OPPTS–00236" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–00236" and administrative record number 191. Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Information collection requests, Reporting and recordkeeping.

Dated: March 9, 1998.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–6978 Filed 3–17–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5980–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; OMB No. 2060–0308; expires 03/31/98. The ICR describes the nature of the information collection and its expected burden and cost; and where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 17, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-

Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1718.02.

SUPPLEMENTARY INFORMATION:

Title: Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years, (OMB Control No. 2060–0308; EPA ICR No. 1718.02.) expiring 3/31/98. This is a request for an extension (with revisions to burden estimates) of a currently approved collection.

Abstract: Section 211(i) of the Clean Air Act, 42 U.S.C. § 7545(i), requires EPA to implement and enforce regulations regarding the diesel fuel quality requirements of the Act. The Act specifically provides that EPA may require that diesel fuel not intended for use in motor vehicles contain dye to segregate it from motor vehicle (highway) diesel fuel. EPA regulations promulgated pursuant to the Act, at 40 CFR § 80.29, require that non-road diesel fuel contain visible evidence of red dye. The Internal Revenue Service (IRS) also requires that non-road diesel fuel contain red dye. The IRS further requires that low sulfur highway use diesel fuel sold to tax exempt organizations be dyed red. This latter IRS requirement resulted in the subject EPA recordkeeping requirement that transfers of dyed low sulfur (highway) diesel fuel to tax exempt entities be accompanied by customary business practice paperwork that includes a statement that the product meets EPA standards for highway use but that it is tax exempt fuel. The statement can be in brief code and it can be preprinted or automatically printed. The transferors and transferees of such fuel must keep the transfer documents for five years. There is no reporting requirement or periodic recordkeeping requirement. All responses are mandatory. EPA has authority to require this information under section 211 of the Act, 42 U.S.C. § 7545, section 114 of the Act, 42 U.S.C. § 7414 and section 208 of the Act, 42 U.S.C. § 7542.

Confidentiality of information obtained from parties is protected under 40 CFR Part 2.

The dye requirement and the associated recordkeeping requirement, which is limited to a relatively small quantity of diesel fuel, greatly assists EPA to enforce the highway diesel fuel requirements and also assists parties to determine if they are receiving or transferring appropriate product.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/24/97 (62 FR 62592–62593); no comments were received and therefore the ICR supporting statement does not summarize comments or EPA's actions taken in response to comments. However, EPA did consult industry persons by telephone and all parties contacted indicated the paperwork requirement has virtually no measurable burden both because the message is automatically printed on customary business practice documents and because the parties contacted all kept the documents for at least 5 years by normal business practice.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.047 hours per year for highway diesel fuel terminals; there is no measurable burden for other parties. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Terminals, distributors, and tax-exempt wholesale purchaser-consumers of highway diesel fuel.

Estimated Number of Respondents: 1,843 highway diesel fuel terminals; 1,000 truck distributors of tax exempt highway diesel fuel (with no measurable burden); and 10,000 tax exempt wholesale purchaser-consumers (with no measurable burden).

Frequency of Response: diesel fuel terminals: 170 transactions per year with paperwork required on the occasion of the transactions.

Estimated Total Annual Hour Burden: 87 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1718.02. and OMB Control No. 2060–0308 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: March 12, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–7008 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5980–4]

Federal Register Notice of Stakeholders Meeting on Chemical Monitoring Revisions and Alternative Monitoring Guidelines for Public Water Systems

AGENCY: Environmental Protection Agency.

ACTION: Announcement of stakeholders meetings.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a public meeting on April 16, 1998 in Washington, DC. The purpose of this meeting will be to collect opinions regarding the appropriate course of action to take with the Agency's effort to revise the monitoring requirements for certain chemicals in drinking water. On July 3, 1996, EPA issued an Advanced Notice of Proposed Rule Making (ANPRM) for Chemical Monitoring Reform (CMR) and Permanent Monitoring Relief (PMR). This ANPRM suggested regulatory changes in chemical monitoring requirements that EPA was considering in order to better focus monitoring on systems at risk of contamination and on the contaminants posing such risk. When finalized, the monitoring revisions were intended to meet Section 1445(a)(1)(D) of the Safe Drinking Water Act, which states that the Administrator shall, by August 6, 1998 "....after consultation with public health experts,

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representatives of the general public, and officials of State and local governments, review the monitoring requirements for not fewer than twelve contaminants identified by the Administrator, and promulgate any necessary modifications." The regulatory changes suggested in the ANPRM covered 64 chronic contaminants including inorganic chemicals (IOCs), synthetic organic chemicals (SOCs) and volatile organic chemicals (VOCs).

The monitoring changes suggested in the ANPRM were developed, in part, considering the occurrence data that were available at that time. Recognizing that this data was limited, we solicited additional data that could be used in developing the proposed rule. In response to this solicitation and as part of additional information gathering, EPA received a tremendous amount of new occurrence data. The Agency has completed a preliminary assessment of some of the data and intends to present these findings to stakeholders in order to gather opinions from interested stakeholders on whether EPA should proceed with its suggested revisions as presented in the ANPRM, or consider other approaches and modifications. We will consider the comments and views expressed in developing the proposed regulation, and encourage the full participation of all stakeholders throughout this process.

DATES: The stakeholder meeting regarding Chemical Monitoring Reform and Permanent Monitoring Relief will be held on:

1. April 16, 1998, 9:30 a.m. to 3:30 p.m. EST in Washington, DC.

ADDRESSES: To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Ed Thomas of EPA's Office of Ground Water and Drinking Water at (202) 260–0910. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines will be allocated on the basis of first-reserved, first served.

The stakeholder meeting will be held at the following location:

1. Washington Information Center, 401 M Street, S.W., Room 17, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to this rulemaking, contact: Ed Thomas, U.S. EPA at (202) 260–0910 or E-mail to thomas.edwin@epamail.epa.gov.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency.

[FR Doc. 98–7009 Filed 3–17–98; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34120; FRL 5775–5]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on September 14, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 22 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before September 14, 1998 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. (Note: Registration number(s) preceded by ** indicate a 30–day comment period).

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000100–00597	Dual 8E Herbicide	Metolachlor	Use on stone fruits, tree use on stone fruits, tree nuts, grapes (nonbearing) and citrus
000100–00673	Dual Herbicide	Metolachlor	Use on stone fruits, tree nuts, grapes (nonbearing) and citrus
000100–00710	Bicep II Herbicide	Atrazine; Metolachlor	Roadside uses
000264–00518	Weedone Lo Vol 6	Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexyl ester	Sugarcane & drainage ditchbank uses
**000352–00361	Du Pont Methomyl Composition	Methomyl	Greenhouse food crop uses
**000352–00366	Du Pont Methomyl Technical	Methomyl	Greenhouse food crop uses
000432–00541	Bioallethrin	*d-trans*-Allethrin	All feed/food uses
000432–00587	Crossfire Technical	*d-trans*-Allethrin	All feed/food uses

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000432–00750	Bioallethrin Technical	*d-trans*-Allethrin	All feed/food uses
000432–00751	Esbiol	*s*-Bioallethrin	All feed/food uses
000432–00752	Esbiothrin Technical	*d-trans*-Allethrin	All feed/food uses
000655–00788	Prentox Carbaryl 5D	Carbaryl	Uses for ticks & fleas on dogs and cats
000655–00789	Prextox Carbaryl 10D	Carbaryl	Uses for ticks & fleas on dogs and cats
**000862–00011	Sunspray 6E	Petroleum Oil	Herbaceous flowers & foliage plants
005905–00505	Weed Rhap LV–4D	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester	Sugarcane, drainage ditchbanks, aquatic non-food uses
**011678–00005	Thionex Endosulfan Technical	Endosulfan	Alfalfa (grown for forage), artichokes, field corn, watercress, peas (seed crop only), soybeans, sugarbeets, safflower, sunflower
**011678–00025	Thionex Endosulfan 35 EC	Endosulfan	Alfalfa (grown for forage), artichokes, field cord, watercress, peas (seed crop only), soybeans, sugarbeets, safflower, sunflower
**019713–00099	Drexel Endosulfan 2EC	Endosulfan	Artichokes, field corn, watercress, barley, oats, rye, wheat, peas (seed crop only), soybeans, bean (cannery residue), sugarbeets, safflower, sunflower, alfalfa (grown for forage)
**019713–00319	Velsicol Endosulfan Technical	Endosulfan	Artichokes, field corn, watercress, barley, oats, rye, wheat, peas (seed crop only), soybeans, bean (cannery residue), sugarbeets, safflower, sunflower, alfalfa (grown for forage)
048273–00003	Ametryne 80W	Ametryn	Citrus, potato use
**062719–00088	Dursban ME20 Microen-capsulated Insecticide	Chlorpyrifos	Termiticide uses
**066222–00002	Thionex Endosulfan 50 WP Insecticide	Endosulfan	Alfalfa (grown for forage), artichokes, field corn, watercress, peas (seed crop only),

(Note: Registration number (s) preceded by ** indicate a 30–day comment period)

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000100	Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000352	DuPont Ag Products, Registration & Regulatory Affairs, Walker's Mill, Barley Mill Plaza, Wilmington, DE 19880.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
000655	Prentiss Incorporated, C.B. 2000, Floral Park, NY 11002.
000862	Sun Company, P.O. Box 1135, Marcus Hook, PA 19061.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
011678	Makhteshim - Agan of North America, 551 Fifth Ave., Suite 1100, New York, NY 10176.
019713	Drexel Chemical Co., P.O. Box 13327, Memphis, TN 38113.
048273	RegWest Co., P.O. Box 2220, Greeley, CO 80632.
062719	DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268.
066222	Makhteshim - Agan of North America, 551 Fifth Ave., Suite 1100, New York, NY 10176.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations

Dated: March 4, 1998.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 98–6692 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34123; FRL 5779–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on March 19, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Margery M. Exton, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–9399; e-mail: exton.margery@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in six technical grade chlorpyrifos pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Although the food use sites being deleted have been registered sites for chlorpyrifos products, tolerances have not been established for these commodities under the Federal Food, Drug, and Cosmetic Act (FFDCA).

Therefore, under FIFRA section 2(bb), these uses represent an unreasonable adverse effect on the environment, as they would result in human dietary risk from residues resulting from use of a pesticide in or on food inconsistent with the standard under section 408 of FFDCA. As such, the Agency is hereby waiving the 180–day comment period normally given for the deletion of a minor use, in accordance with FIFRA section 6(f)(1)(c). The Agency has determined that, while these actions require publication for the purpose of announcement, a comment period is not warranted.

The remaining use deletions (non-food sites) announced in this Notice will retain a 30–day comment period. Users of these products who desire continued use on sites being deleted should contact the applicable registrant before April 17, 1998 to discuss withdrawal of the applications for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
062719–00015	Dursban® F Insecticidal Chemical	Chlorpyrifos	Use on popcorn and carrot (including seed)
062719–00044	Dursban® R Insecticidal Chemical	Chlorpyrifos	Use on popcorn and carrot (including seed)
011678–00045	Pyrinex Chlorpyrifos Insecticide	Chlorpyrifos	Use on popcorn and carrot (including seed)
011678–00054	Pyrinex Chlorpyrifos Insecticide	Chlorpyrifos	Use on popcorn; PEST CONTROL INDOORS (Indoor): Indoor broadcast use; total release foggers for indoor residential and non-residential (except greenhouse) use; coating products intended for large surface areas such as floors, walls, and ceilings inside residential dwellings, offices, schools, or health care institutions including, but not limited to, houses, apartments,nursing homes and patient rooms in hospitals. PETS AND DOMESTIC ANIMALS (Indoor): Animals dips, sprays, shampoos, dusts; AQUATIC USES (AQUATIC FOOD CROP) (AQUATIC, NON-FOOD): Any aquatic use, including mosquito larvicide; PEST CONTROL INDOORS OR OUTDOORS (DOMESTIC INDOOR OR OUTDOOR): Paint additives.
070907–00001	Gharda Chlorpyrifos Technical	Chlorpyrifos	Use on popcorn and as a paint additive.
004787–00027	Chlorpyrifos Technical	Chlorpyrifos	Use on popcorn

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
062719	DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268.
011678	Makhteshim - Agan of North America, 551 Fifth Ave., Suite 1100, New York, NY 10176.
070907	Gharda USA, Inc., P.O. Box 5068, Brookfield, CT 06804
004787	Cheminova Agro A/S 1700 Route 23, Suite 210 Wayne, New Jersey 07470

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 90 days after the effective date of use deletions. This determination was based in part on the voluntary agreement of these registrants to cease selling product bearing previously approved labeling within that time period.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 13, 1998.

Richard D. Schmidt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 98–6970 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66249; FRL 5775–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 14, 1998, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 103 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000000 WA–95–0043	Thiram 65	Tetramethyl thiuramdisulfide
000070–00228	Home Pest Insect Killer	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000100–00747	Dual Df Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100 AZ–96–0002	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000264 AZ–87–0021	Ethrel Plant Regulator	(2-Chloroethyl)phosphonic acid
000264 CT–97–0002	Aliette/Maneb 2+2 Fungicide	Aluminum tris(*O*-ethylphosphonate)
000279 AZ–93–0001	Dragnet FT Termiticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
000279 AZ–93–0010	Talstar 10WP Insecticide/Miticide	(2-Methyl(1,1'-biphenyl)-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-
000279 AZ–96–0005	Talstar 10WP Insecticide/Miticide	(2-Methyl(1,1'-biphenyl)-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-
000303–00218	Firing Squad Liquid Residual	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000334–00565	Mash Ant & Roach Crawling Insect Killer	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
000352 CA–78–0215	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000352 CA–80–0063	Vydate L Oxamyl Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 CA–82–0027	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 CA–82–0068	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 CA–90–0052	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 HI–82–0001	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 MT–89–0006	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 NM–81–0021	Vydate L Oxamyl Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 NM–92–0002	Du Pont "Vydate" L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 PA–80–0039	Vydate L Oxamyl Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 PA–95–0003	Du Pont "Vydate" L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 TX–86–0001	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 VA–94–0006	Du Pont "Vydate" L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000421–00021	Glyco Mist	Isopropanol
		1,2-Propanediol
		Diisobutylphenoxyethoxyethyl dimethyl benzyl ammonium chloride
		Triethylene glycol
000432–00510	SBP-1382 Technical-RF Refined Grade	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000432–00520	SBP-1382 Technical 90 RF	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000432–00521	SBP-1382 Technical 96 PR	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000499–00360	P/P Residual Ant + Roach Spray No. 3	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl 2,2-dimethyl-3-(2-
		O,O-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001182–00021	Pine Odor Sanamax P6	Isopropanol
		Pine oil
		Alkyl* dimethyl benzyl ammonium chloride *(58%C_{14}, 28%C_{16}, 14%C_{12})
001719–00041	BLP Weather Protector Exterior Wood Stain Preservative	3-Iodo-2-propynyl butylcarbamate
001719–00042	BLP Weather Protector Transparent Penetrating Sealer &	3-Iodo-2-propynyl butylcarbamate
001812 LA–93–0013	Direx 4l, Diuron Flowable Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
001812 OR–94–0040	Direx 4l, Diuron Flowable Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
001839–00170	Skasol Jet White Toilet Bowl Cleaner	Hydrogen chloride (hydrochloric acid, anhydrous)
		Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(50%C_{12}, 30%C_{14}, 17%C_{16}, 3%C_{18})
001839–00171	Warrior 240 Concentrated Toilet Bowl Cleaner	Hydrogen chloride (hydrochloric acid, anhydrous)
		Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
		Didecyl dimethyl ammonium chloride
		Octyl decyl dimethyl ammonium chloride

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Dioctyl dimethyl ammonium chloride
001839–00172	Scout 16 Porcelain Tile and Bowl Cleaner	Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
		Didecyl dimethyl ammonium chloride
		Octyl decyl dimethyl ammonium chloride
		Dioctyl dimethyl ammonium chloride
		Phosphoric acid
002393 KS–97–0001	Hopkins Zinc Phosphide Pellets	Zinc phosphide (Zn3P2)
002393 MO–96–0014	Hopkins Zinc Phosphide Pellets	Zinc phosphide (Zn3P2)
002935 TX–93–0019	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
004313–00003	Thrifty Pine Pine Odor Disinfectant Five	2-Benzyl-4-chlorophenol
		Potassium 2-benzyl-4-chlorophenate
		Pine oil
004758–00159	Hill's Holiday Flea Stop Dip for Dogs	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
007969–00165	Gowan Pacific Mepiquat Chloride	*N,N*-Dimethylpiperidinium chloride
008429–00005	Cairox Potassium Permanganate Technical Grade	Potassium permanganate
008429–00010	Cairox Potassium Permanganate USP Grade	Potassium permanganate
010163–00186	Gowan Mepiquat Chloride 4.2 Liquid	*N,N*-Dimethylpiperidinium chloride
010163 AZ–94–0011	Gowan Diazinon 50 WSB	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
010182–00135	Dyfonate II 20-Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00180	Dyfonate II 10-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00187	Dyfonate II 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00195	Dyfonate Tillam 1-4E Insecticide	*S*-Propyl butylethylthiocarbamate
		O-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00208	Dyfonate 2-G Granular Ornamental Turf Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00209	Dyfonate 5-G (Alt. Crusade 5-G)	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00212	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00268	Dyfonate Technical	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182 ID–94–0003	Dyfonate II 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182 LA–93–0009	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182 LA–93–0010	Dyfonate II 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182 NV–93–0005	Gramoxene Extra	1,1'-Dimethyl-4,4'-bipyridinium dichloride
		1,1'-Dimethyl-4,4'-bipyridinium dichloride
		6,7-Dihydrodipyrido(1,2-a: 2',1'-c)pyrazinediium dibromide
010182 WA–94–0012	Dayfonate 11 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010445–00061	H-303 WB Microbiocide	Methylenebis(thiocyanate)
010707–00039	Magnacide H Plus	2-Propenal
011715–00137	Force One Automatic Fogger	*N*-Octyl bicycloheptene dicarboximide
		O,O-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
011715–00282	Farnam Repel-XV Emulsifiable Fly Spray	Pine oil
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		2,2-Dichlorovinyl dimethyl phosphate
011715–00283	Farnam Wipe V	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
019713–00204	Chapman Weed-Free Bcb-8p	2,2-Dichlorovinyl dimethyl phosphate
		Sodium metaborate ($NaBO_2$)
		5-Bromo-3-sec-butyl-6-methyluracil
031910–00016	Aquatreat DNM-25E	Sodium chlorate
		Disodium ethylenebis(dithiocarbamate)
		Sodium dimethyldithiocarbamate
034704–00052	Clean Crop Bromacil Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
034704 CT–94–0001	Clean Crop Curbit EC Herbicide	Benzenamine, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)-
034704 ME–91–0001	Tenax	O-Ethyl S-phenyl ethylphosphonodithioate
034704 NC–91–0006	Tenax	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
		O-Ethyl *S*-phenyl ethylphosphonodithioate
034704 OR–88–0002	Rampart 10-G Soil and Systemic Insecticide	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034704 OR–91–0008	Clean Crop Curbit EC Herbicide	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034704 OR–91–0029	Dimethoate 2.67 EC	Benzenamine, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)-
034704 OR–92–0018	Clean Crop Methyl Parathion 4-E	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
034704 OR–92–0025	Tenax	*O,O*-Dimethyl *O*-*p*-nitrophenyl phosphorothioate
		O-Ethyl *S*-phenyl ethylphosphonodithioate
034704 OR–96–0008	Clean Crop Dimethoate 400	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034704 WA–91–0007	Tenax	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
		O-Ethyl *S*-phenyl ethylphosphonodithioate
034704 WA–93–0010	Rampart 10-G Soil and Systemic Insecticide	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
038635–00005	L-47 Algae Control	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
		2-(Thiocyanomethylthio)benzothiazole
042050–00009	Quick Kill V	Methylenebis(thiocyanate)
049428–00001	RWC B-2 D-2g Semi Soil Steriant	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
		5-Bromo-3-sec-butyl-6-methyluracil
057908 AL–92–0002	Dyfonate 4-EC	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
057908 HI–92–0008	Gramoxone Extra Herbicide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
057908 NC–91–0015	Dyfonate 4-EC	1,1'-Dimethyl-4,4'-bipyridinium dichloride
057908 NJ–90–0005	Gramoxone Extra Herbicide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
057908 OR–93–0004	Dyfonate 4-EC	1,1'-Dimethyl-4,4'-bipyridinium dichloride
057908 SC–82–0027	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
		O-Ethyl *S*-phenyl ethylphosphonodithioate
057908 WA–91–0045	Gramoxone Extra Herbicide	Aliphatic petroleum hydrocarbons
057908 WA–92–0046	Dyfonate 4-EC	1,1'-Dimethyl-4,4'-bipyridinium dichloride
060061–00008	Wolman Treat OO Concentrate	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
060061–00021	Woodtreat WB	Copper naphthenate
060061–00026	Copper Treat 00 Concentrate Copper Naphthenate Preservative	3-Iodo-2-propynyl butylcarbamate
		Copper naphthenate
062719–00206	Dursban WB05 II	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
062719 NC–97–0003	Recruit AG	Benzamide, *N*-(((3,5-dichloro-4-(1,1,2,2-tetrafluoroethoxy)phenyl)
064864–00021	Uniflow Sulfur	Sulfur
065730–00001	Shingle Shield	Zinc
066222–00013	Triflurex (Trifluralin) 4EC	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha)
066764–00001	FC-33	Boric acid

EPA Company No.
000070
000100
000264
000279
000303
000334
000352
000421
000432
000499
001182
001719
001812
001839
002393
002935
004313
004758
007969
008429
010163
010182
010445
010707
011715
019713
031910
034704
038635
042050
049428
057908
060061
062719
064864
065730
066222
066764
067591

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
067591 OR–96–0042	Clean Crop Trifluralin 4EC	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha)

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000070	SureCo Inc., An Indirect Subsidiary of Ringer Corporation, 9555 James Ave South, Suite 200, Bloomington, MN 55431.
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000279	FMC Corp. Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103.
000303	Huntington Professional Products, A Service of Ecolab, Inc., 370 N. Wabasha Street, St Paul, MN 55102.
000334	Hysan, A Division of Specialty Chemical Resources, 9055 Freeway Drive, Macedonia, OH 44056.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000421	James Varley & Sons, Inc., 1200 Switzer Ave, St Louis, MO 63147.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Rd, Montvale, NJ 07645.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct., Industrial Blvd, St Louis, MO 63122.
001182	Hubman Products, 720 S Three B's & K Rd., Galena, OH 43021.
001719	Mobile Paint Mfg. Co. Inc., Box 717–Theodore Inds. Park Hamilton Rd, Theodore, AL 36582.
001812	Griffin Corp., Box 1847, Valdosta, GA 31603.
001839	Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093.
002393	HACO, Inc., Box 7190, Madison, WI 53707.
002935	Wilbur Ellis Co., 191 W Shaw Ave, #107, Fresno, CA 93704.
004313	Carroll Co., 2900 W. Kingsley Rd., Garland, TX 75041.
004758	Pet Chemicals, 4242 Bf Goodrich Blvd Box 18993, Memphis, TN 38181.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
008429	Carus Chemical Co Inc., Division of Carus Corp., 315 5th Street, Peru, IL 61354.
010163	Gowan Co, Box 5569, Yuma, AZ 85366.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010445	Calgon Corp., Calgon Center - Box 1346, Pittsburgh, PA 15230.
010707	Baker Petrolite Corp., Box 27714, Houston, TX 77227.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
019713	Adams Technology Systems, Agent For: Drexel Chemical Co, 5145 Forest Run Trace - Suite B, Alpharetta, GA 30202.
031910	Alco Chemical Division, National Starch & Chemical Co., 909 Mueller Drive Box 5401, Chattanooga, TN 37406.
034704	Cherie Garner, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632.
038635	Rite Industries, Inc., 1124 Elon Place Box 1747, High Point, NC 27261.
042050	J & B Industries, 2100 J & B Dr., San Benito, TX 78586.
049428	RWC, Inc., 6210 Frost Rd., Westerville, OH 43081.
057908	Metam Sodium Task Force, c/o Stauffer Chemical Co., 1200 South 47th St, Richmond, CA 94804.
060061	Kop-Coat, Inc., 436 Seventh Ave., Pittsburgh, PA 15219.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/3e, Indianapolis, IN 46268.
064664	Pace International, L.P., Box 558, Kirkland, WA 98083.
065730	Chicago Metallic, 6750 Santa Barbara Ct, Baltimore, MD 21227.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave., Ste 1100, New York, NY 10176.
066764	Flea Control Systems, 23510 Telo Ave #6, Torrance, CA 90505.
067591	Nufarm Platte Pty Ltd, 1009-D W. St. Maartens Drive, St. Joseph, MO 64506.

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III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before September 14, 1998. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 4, 1998.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–6691 Filed 3–17–98; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00517; FRL–5761–6]

Minor Changes to Product Properties Test Guidelines; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) and is announcing minor changes to the Series 830—Product Properties Test Guidelines. The availability of final guidelines in this series was announced in the **Federal Register** on August 28, 1996 (61 FR 44308)(FRL–5390–7). The Agency periodically announces in the **Federal Register** the availability of new and changed test guidelines.

ADDRESSES: The guidelines are available from the U.S. Government Printing Office (GPO), Washington, DC 20402 on *The Federal Bulletin Board*. By modem dial (202) 512–1387, telnet and ftp: fedbbs.access.gpo.gov (IP 162.140.64.19), or call (202) 512–0132 for disks or paper copies. The guidelines are also available electronically in ASCII and PDF (portable document format) from the EPA's World Wide Web site (http://www.epa.gov/epahome/research.htm) under the heading "Researchers and Scientists/Test Methods and Guidelines/OPPTS Harmonized Test Guidelines."

FOR FURTHER INFORMATION CONTACT: For general information: By mail:

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) information: Contact the Communications Services Branch (7506C), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (703) 305–5017; fax: (703) 305–5558.

Toxic Substances Control Act (TSCA) information: Contact the TSCA Hotline at: TATS/7408, Environmental Protection Agency, 401 M St.,SW, Washington, DC 20460. Telephone number: (202) 554–1404; fax: (202) 554–5603, e-mail: TSCA-hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA's Office of Prevention, Pesticides and Toxic Substances is announcing minor changes to the following Series 830 test guidelines. These changes are editorial in nature and do not amend the existing requirements under FIFRA or the TSCA section 4 test rules. Explicit test requirements for registration are set out in 40 CFR parts 158 and 796 and the test guidelines contain standards for and examples of acceptable testing.

1. OPPTS 830.1000 Background for Product Properties Test Guidelines. Paragraph (e)(2)(x) addressing solubility data requirements has been revised to provide additional clarity on requirements for solubility in organic solvents data.

2. OPPTS 830.7200 Melting Point/Melting Range. The address for obtaining documents from the Collaborative International Pesticides Analytical Council (CIPAC) has been changed to that of the current publisher.

3. OPPTS 830.7300 Density/Relative Density/Bulk Density. The address for obtaining documents from the Collaborative International Pesticides Analytical Council (CIPAC) has been changed to that of the current publisher.

4. OPPTS 830.7840 Water Solubility, Column Elution Method; Shake Flask Method. A new paragraph (b)(3)(iv) has been inserted to address the requirement for organic solvents solubility data.

5. OPPTS 830.7860 Water Solubility, Generator Column Method. A new paragraph (b)(1)(iv) has been inserted to address the requirement for organic solvents solubility data.

The final guidelines issued in the **Federal Register** of August 28, 1996, and the revised guidelines containing these minor changes will be available from the GPO *Federal Bulletin Board* and EPA's World Wide Web site.

List of Subjects

Environmental Protection, Test guidelines.

Dated: March 10, 1998.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–6875 Filed 3–17–98; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 12, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 18, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0360.

Title: Section 80.409(c), Public coast station logs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, individuals or households, non-profit institutions, state, local or tribal governments.

Number of Respondents: 316.

Estimated Time Per Response: 95 hours.

Total Annual Burden: 30,020 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement.

Estimated Cost Per Respondent: $0.

Needs and Uses: The recordkeeping requirement contained in this rule section is necessary to document the operation and public correspondence service of public coast radio telegraph, public coast radiotelephone stations and Alaska-public fixed stations, including the logging of distress and safety calls where applicable. A retention period of more than one year is required where a log involves communications relating to a disaster, an investigation, or any claim or complaint. If the information were not collected, documentation concerning the above stations would not be available.

OMB Approval Number: 3060–0364.

Title: Section 80.409(d) and (e), Ship radiotelegraph logs, ship radiotelephone logs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 10,950.

Estimated Time Per Response: 47.3 hours.

Total Annual Burden: 517,935 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement.

Estimated Cost Per Respondent: $0.

Needs and Uses: The recordkeeping requirement contained in these rule sections is necessary to document that compulsory radio equipped vessels and high seas vessels maintain listening watches and logs as required by statutes and treaties (including treaty requirements contained in appendix 11 of the International Radio Regulations, Chapter IV, Regulation 19 of the International Convention for the Safety of Life at Sea, the Bridge-to-Bridge Radio Telephone Act, the Great Lakes Agreement, and the Communications Act of 1934, as amended.) A retention period of more than one year is required where a log involves communications relating to a disaster, an investigation, or any claim or complaint. If the information were not collected, documentation concerning station operations would not be available and treaty requirements would not be complied with.

OMB Approval Number: 3060–0357.

Title: Section 63.701, Request for Designation as a Recognized Private Operating Agency.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 30.

Estimated Time Per Response: 5 hours.

Total Annual Burden: 150 hours.

Frequency of Response: On occasion reporting requirement.

Estimated Cost Per Respondent: $0.

Needs and Uses: The Commission requests this collection of information to gather the information needed to recommend to the United States Department of Sate whether or not to designate persons requesting it recognized private operating agency (RPOA) status. The United States does not require anyone to obtain RPOA status but has created a voluntary process by which companies who believe it would be helpful in persuading foreign telecommunications operators to deal with them can obtain such a designation. RPOA status also permits companies to join the Telecommunications Sector of the International Telecommunications Union Formal (ITU), the standards-setting body of the ITU. Formal recognition of RPOA status is required by the ITU for companies desiring the ITU to grant them international free phone numbers.

Without this information the government cannot represent to other nations that the United States enhanced-service providers will obey international regulations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–7035 Filed 3–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarded License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders,

Federal Maritime Commission, Washington, D.C. 20573.

Worldwide Forwarding Company, 3846 Ingraham St., #402, Los Angeles, CA 90005, David Chun, Sole Proprietor

Dependable Auto Shippers Inc. of Texas, 9208 Forney Road, Dallas, TX 75227, Officer: Frederick A. London, President

AIMAR USA, INC., 8437 N.W. 72nd Street, Miami, FL 33166, Officers: Goffredo R. Holbik, President, Pablo Miguel Olaya, Vice President

Dated: March 13, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–6965 Filed 3–17–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Portage Banc Shares, Inc., Ravenna, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Portage Community Bank, Ravenna, Ohio, a *de novo* bank.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Security Bank Holding Company, Coos Bay, Oregon; to acquire 100 percent of the voting shares of Family Security Bank, Brookings, Oregon (in organization).

Board of Governors of the Federal Reserve System, March 12, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–6914 Filed 3–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, March 23, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed leasing of space within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7060 Filed 3–13–98; 4:19 pm]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Availability of Funds for Grants for the Bilingual/Bicultural Service Demonstration Grant Program

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Correction.

SUMMARY: On March 2, 1998 (63 FR 10226), OMH published a notice announcing the Availability of Funds for Grants for the Bilingual/Bicultural Service Demonstration Grant Program. This notice corrects the application receipt date which appeared in that notice, FR Doc. 98–5233, on page 10227. Under the Deadline Section in the second column, it stated that "grant applications must be received by the OMH Grants Management Office 60 days after date of publication or by April 13, 1998." This is corrected to read "grant applications must be received by the OMH Grants Management Office by May 1, 1998."

Dated: March 12, 1998.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 98–6980 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0147]

Agency Information Collection Activities: Proposed Collection; Survey of Mammography Facilities; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register**

concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a voluntary survey of mammography facilities to assess the impact of the Mammography Quality Standards Act (the MQSA) on access to mammography services.

DATES: Submit written comments on the collection of information by May 18, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Access to Mammography Services Survey—New

Under the MQSA (42 U.S.C. 2636), FDA is authorized to develop regulations, inspect facilities, and ensure compliance with standards established to assure quality mammography services for all women. In the legislative history of the MQSA, Congress expressed the need to balance quality improvements with impact on access to mammography services. The General Accounting Office has recently done an assessment and concluded that access has been minimally affected. However, new regulations will become effective April 28, 1999 and October 28, 2002.

The Mammography Facility Survey will provide FDA with important information about the impact of specific aspects of the MQSA program on access to mammography services. The survey will provide facility closure rates both pre- and post-implementation of the final regulations. Furthermore, the Survey will determine reasons for facility closures, including those related to specific MQSA regulations and those that are attributable to general operational challenges. Finally, the Survey will also gather information from operating facilities to determine the impact of MQSA regulations on facilities that continue to provide mammography services. Participation will be voluntary. A total of 120 facilities that have ceased to provide mammography services will be given the opportunity to take part in a 15-minute telephone survey. These facilities will be matched by zipcode to 480 open mammography centers to provide up to four controls for each closed facility . Each of the open facilities will also be offered the opportunity to participate in the study until we have two matched controls. The Survey will collect demographic information from each survey respondent, and then ask questions that address the perceived impact on the facility's ability to provide mammography services of factors related to specific MQSA regulations, as well as factors not directly associated with MQSA requirements. Additional descriptive information about the facilities will be abstracted from various FDA data bases in order to enhance the level of detail that is known about each respondent.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720	1	720	0.25	180

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

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Dated: March 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–6906 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0148]

International Drug Scheduling; Convention on Psychotropic Substances; Dihydroetorphine; Ephedrine; Remifentanil; Isomers of Psychotropic Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, medical usefulness, and trafficking of three drug substances. This information will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding abuse liability, actual abuse, and trafficking of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting information is required by the Controlled Substances Act (CSA).

DATES: Submit written comments by April 17, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1696, E–mail: NReuter@bangate.FDA.gov.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances. Article 2 of the Convention on Psychotropic Substances provides that if a party to that convention or WHO has information about a substance, which in its opinion may require international control or change in such control, it shall so notify the Secretary General of the United Nations and provide the Secretary General with information in support of its opinion.

The CSA (21 U.S.C. 811 *et seq.*) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances that it has information that may justify adding a drug or other substance to one of the schedules of that convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (the Secretary of HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance. The Secretary of HHS received the following notices from WHO:

I. WHO Notification

Ref. : C. L.23 .1997

WHO questionnaire for collection of information for review of dependence-producing psychoactive substances

The Director-General of the World Health Organization presents his compliments and has the pleasure of informing Member States that the Thirty-first Expert Committee on Drug Dependence will meet from 23 to 26 June 1998 to review the following substances:

1. Dihydroetorphine
2. Ephedrine
3. Remifentanil
4. With regard to all substances in Schedules I and II of the Convention on Psychotropic Substances, 1971:

(a) their isomers, except where expressly excluded, whenever the existence of such isomers is possible;

(b) their esters and ethers, except where included in another schedule, whenever the existence of such esters and ethers is possible;

(c) salts of those esters, ethers and isomers, under the conditions stated above, whenever the formation of such salts is possible;

(d) a substance resulting from modification of the chemical structure of a substance already in these schedules and which produces pharmacological effects similar to those produced by the original substance.

One of the essential elements of the established review procedure is for the Secretariat to collect relevant information from Member States to prepare a Critical Review document for submission to the Expert Committee on Drug Dependence. The Director-General invites Member States to collaborate, as in the past, in this process by providing all pertinent information mentioned in the attached questionnaire[1] concerning the substances mentioned in items 1 to 3 above. The questionnaire does not include any questions about the groups of substances specified under item 4, since the required information is already being sought by the Secretary-General of the United Nations in his Circular Letter NAR/CL.4/1997.

Further clarification on any of the above items can be obtained from Psychotropic and Narcotic Drugs (PND), Division of Drug Management and Policies, WHO, Geneva, to which replies should be sent not later than *1 March 1998.*

GENEVA, 30 December 1997

Questionnaire for data collection for use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

Substance reported on:

1. Availability of the substance (registered, marketed, dispensed, etc.).
2. Extent of abuse of the substance.
3. Degree of seriousness of the public health and social problems[2] associated with abuse of the substance.
4. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.
5. Identification of the seized substance as of local or foreign manufacture and indication of any commercial markings.
6. Existence of clandestine laboratories manufacturing the substance.

II. United Nations Notifications

The U.S. Government has received two notifications from the Secretary General of the United Nations. The first notification (NAR/CL./1997, signed May 28, 1997), transmits under to Article 2, paragraph 1 of the Convention on Psychotropic Substances, 1971, a request from the Government of Spain to amend Schedules I and II of the Convention to include:

"(a) isomers, except where expressly excluded, of substances listed in those Schedules, whenever the existence of such isomers is possible;

"(b) esters and ethers of substances in those Schedules, except where included in another Schedule, whenever the existence of such esters or ethers is possible;

"(c) salts of those esters, ethers and isomers, under the conditions stated above, whenever the formation of such salts is possible;

"(d) a substance resulting from modification of the chemical structure of a substance already in Schedule I or Schedule II and which produces pharmacological effects similar to those produced by the original substance."

The May 28, 1997, notification included as annexes, the original request from the Government of Spain, along with a questionnaire. A subsequent notification from the United

[1] For Ministries of Health only.

[2] Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behaviour problems, criminality, etc.

Nations Secretary General dated February 23, 1998 (NAR/CL.2/1998), identified additional issues to be considered within the context of the Government of Spain's request.

These notifications appear to relate to the amendment of the Convention and not to the addition of specific substances to the schedules of the Convention (See 21 U.S.C. 811 (d)). Therefore, they are not published in this notice. The notifications are on display and copies may be obtained by contacting Nicholas Reuter (address above). Comments submitted in response to the United Nations notifications will be forwarded to the WHO through the United Nations Secretariat.

III. Background

None of the three substances under consideration by WHO are controlled internationally. Dihydroetorphine is a hydrogenated derivative of etorphine and a potent μ-opioid-receptor agonist used as a short-acting analgesic in China. It is neither marketed nor controlled in the United States.

Ephedrine is available in the United States as an over-the-counter bronchodilator. Further, ephedrine has been designated as a listed chemical and is subject to chemical diversion regulations under 21 CFR part 1310 which are enforced by the Drug Enforcement Administration. According to WHO, information is now available to indicate that illicit trafficking in ephedrine has increased significantly in recent years. Further, although the substance is illicitly used primarily in the manufacture of stimulants, WHO has evidence to indicate the increasing abuse of ephedrine preparations in some countries.

Remifentanil is a selective μ-opioid-receptor agonist of the fentanyl group. Remifentanil is approved in the United States as an anesthetic for use in animals and is controlled domestically as a narcotic in schedule II of the CSA.

IV. Opportunity to Submit Domestic Information

As required by section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(c)(2)(A)). FDA on behalf of the Department of Health and Human Services (DHHS) invites interested persons to submit data or comments regarding the eight named drugs. Data and information received in response to this notice will be used to prepare scientific and medical information on these drugs, with a particular focus on each drug's abuse liability. DHHS will forward that information to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs, and could impose certain recordkeeping requirements on them.

DHHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, DHHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in late 1998 or early 1999. Any DHHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

V. Comments

Interested persons may, on or before April 17, 1998, submit to the Docket Management Branch (address above) written comments regarding this action. This abbreviated acceptance period is necessary to allow sufficient time to prepare and submit the domestic information package by the deadline imposed by WHO. Although WHO has requested comments and information by March 1, 1998, WHO will accept and consider material transmitted after the March date. Respondents should submit material in the format set forth by the WHO Questionnaire reprinted previously.

Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m, Monday through Friday.

This notice contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB). The requirements were approved and assigned OMB control number 0910–0226.

Dated: March 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–6910 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0067]

Draft Guidance for Industry on Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)." This draft guidance is intended to assist developers of drugs, biological products, or medical devices intended for the treatment of rheumatoid arthritis (RA). It provides guidance on the types of claims that could be considered for such products and on clinical evaluation programs that could support those claims. The draft guidance also contains recommendations on the timing, design, and conduct of preclinical and clinical trials for RA products and on special considerations for juvenile RA. The agency is seeking comments on the draft guidance.

DATES: Written comments may be submitted on the draft guidance document by April 17, 1998. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm and at http://www.fda.gov/cber/guidelines.htm.

Submit written comments on the draft guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rose E. Cunningham, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5468.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)." The draft guidance also contains recommendations on the timing, design, and conduct of preclinical and clinical

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trials for RA products and on special considerations for juvenile RA.

This draft guidance has been under development since 1995. The first version of the draft guidance was completed in March 1996. An additional section on juvenile RA was added in May of that year. A second version was completed in January 1997. Two public workshops have been held on the topic: One was held on March 27, 1996 (61 FR 8961, March 6, 1996), and the other was held on July 23, 1996 (61 FR 32447, June 24, 1996). On February 5, 1997 (62 FR 4535, January 30, 1997), the draft guidance was discussed at a meeting of the Arthritis Advisory Committee. This draft guidance is the result of those efforts.

The draft guidance represents the agency's current thinking on rheumatoid arthritis. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Written requests for single copies of the draft guidance for industry should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–6908 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3000–N]

Medicare Program; Solicitation of Proposals for a Demonstration Project for the Use of Informatics, Telemedicine, and Education in the Treatment of Diabetes Mellitus in the Rural and Inner-City Medicare Populations

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice announces our intent to solicit proposals from eligible health care telemedicine networks for a demonstration project to use high capacity computing and advanced networks for the improvement of primary care and prevention of health care complications for Medicare beneficiaries with diabetes mellitus, who are residents of medically underserved rural areas or medically underserved inner city areas. We are soliciting these proposals under the authority of section 4207 of the Balanced Budget Act of 1997, section 1875 of the Social Security Act, and sections 402(a)(1)(B) and (a)(2) of the Social Security Amendments of 1967.

This notice also describes the requirements for submitting proposals and applications for this demonstration project.

DATES: For consideration, letters of intent must be received by April 17, 1998 and mailed to the following address: Lawrence E. Kucken, Health Care Financing Administration, Office of Health Standards and Quality, Mailstop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online data base through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the data base by using the World Wide Web (the Superintendent of Document's home page address is http://www.access.gpo.gov/su_docs/), by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

FOR FURTHER INFORMATION CONTACT: Lawrence E. Kucken, (410) 786–6694

SUPPLEMENTARY INFORMATION:

I. Background

A. Diabetes Mellitus in the Medicare Population

Diabetes is one of the most prevalent and costly diseases in the Medicare population. The National Health Interview Survey reported a prevalence of 10.4 percent in individuals aged 65 and older, based on the American Diabetes Association (ADA) diagnostic criteria of fasting blood glucose greater than 140. Medical costs for patients with diabetes are two to five times higher than costs for patients without diabetes. Cardiovascular disease, stroke, renal disease, and amputation occur more frequently in the elderly patient with diabetes than in those without diabetes.

A significant percentage of the morbidity associated with diabetes can be reduced or delayed in the Medicare population by appropriate diagnosis, preventive strategies, and management. Appropriate foot care, eye examinations and treatment of retinopathy, and other interventions on the part of the health care team, and involvement of the patient in his or her own self-care, such as intense blood glucose monitoring for patients on insulin have been shown to significantly reduce poor outcomes associated with diabetes.

B. Current HCFA Initiatives in Medicare Diabetes Treatment

We have undertaken several major initiatives aimed at improving quality of life, decreasing morbidity and mortality, and providing the most appropriate, cost-effective care for Medicare beneficiaries with diabetes. Peer Review Organizations in each State have been charged with identification of quality of care issues in their State and

development of partnerships with hospitals and physicians to improve care for persons with diabetes. Projects are underway in all 50 states and the District of Columbia. In addition, we have coordinated and financed a partnership among key users and developers of performance measurement techniques to identify components of quality care for persons with diabetes and to develop a set of performance measures to assess and improve the care provided to these individuals across all health care settings.

C. Development of the Telemedicine Network Demonstration

In October 1996, we initiated a 3-year, rural outreach demonstration of Medicare payment for telemedicine services. The demonstration focuses primarily on medical consultations between a primary care physician with a patient located at a remote rural site (spoke) and a medical specialist (consultant) located at a medical center facility (hub). Through this demonstration, we are addressing concerns that certain populations, primarily persons in rural or inner-city areas, have limited access to health care specialists, and that recent advances in telecommunications technology can provide low cost access to medical specialists.

The demonstration is designed to examine alternative payment methods, including separate payments to providers at each end of the telecommunication network, as well as a single "bundled payment" to cover services of both providers. Provider payments are based on predetermined amounts associated with CPT–4 evaluation and management codes contained in the Medicare physician fee schedule. In the case of the bundled payment option scheduled to begin during the third year of the demonstration, sites will determine the relative payment amounts received by the consulting specialists and the referring primary care physicians. Coincident with the implementation of the bundled payment approach, we will negotiate with demonstration participants to develop a telemedicine facility fee structure based on telemedicine cost centers and billing data accumulated during the demonstration. These negotiations will recognize the principle of efficient provider pricing, reflecting the optimal use of telemedicine resources and prudent buying.

Through this demonstration, we will obtain information about the utilization and costs of telemedicine services, as well as the general characteristics and practice patterns of individual telemedicine programs. Ultimately, the demonstration should provide insight and information to help us determine whether telemedicine coverage is warranted and, if so, how to implement cost-effective Medicare coverage.

II. Provisions of This Notice

A. Purpose

The purpose of this demonstration is to determine and evaluate the advantage of informatics and telemedicine for improving access to needed services, reducing the cost of such services, and improving the quality of life for affected Medicare beneficiaries. In this notice, "medical informatics" means the storage, retrieval, and use of biomedical and related information for problemsolving and decisionmaking through computing and communications technologies, and "telemedicine" means the use of telecommunications technologies for diagnostic, monitoring and medical education purposes.

We are soliciting innovative proposals that will use medical informatics, including telemedicine, to improve primary care for Medicare beneficiaries who live in medically underserved rural and inner-city areas and who suffer from diabetes. Proposals should describe existing protocols for the application or demonstration of telecommunications or informatics, that, at a minimum, have been pilot-tested by the applicant, thus precluding the need for long developmental timeframes.

Those protocols that have been developed for the general population must be modified, as necessary, to meet the special needs of the Medicare elderly, disabled, and end-stage renal disease populations, and should be replicable for the general Medicare underserved population. They should address developmental issues through descriptions of end products, for example, a curriculum to train health care professionals, and related strategies and workplans. They should also contain available cost effectiveness data related to the described protocols and developmental components.

Proposals must specifically address the following issues:

- The application of telecommunications for the purpose of providing Medicare beneficiaries diagnosed with diabetes, access to, and compliance with, appropriate care guidelines;
- The development of a curriculum to train health care professionals in the use of medical informatics and telecommunications;
- The demonstration of the application of advanced technologies, such as video-conferencing from a patient's home, remote monitoring of a patient's medical condition, interventional informatics, and the application of individualized, automated care guidelines, to assist primary care providers in assisting patients with diabetes in a home setting;
- The application of medical informatics to residents with limited English language skills;
- The development of standards in the application of telemedicine and medical informatics; and
- The development of a model for the cost effective delivery of primary and related care both in a managed care and fee-for-service environment.

B. Minimal Qualifications of Health Care Providers

We are interested in proposals from eligible health care provider telemedicine networks. An eligible health care provider network must be a consortium that is comprised of:

- At least one tertiary care hospital, but no more than 2 such hospitals;
- At least one medical school;
- No more than four facilities in rural or urban areas; and
- At least one regional telecommunications provider.

The consortium must be located in an area with a high concentration of medical schools and tertiary care facilities in the United States and have appropriate arrangements (within or outside the consortium) with such schools and facilities, universities, and telecommunications providers, in order to conduct the project. We interpret "minimal concentration" as an area with at least three medical schools and three tertiary care facilities, physically located within a recognized area, such as a Standard Metropolitan Statistical Area, county or city. Additionally, eligible applicants must guarantee that they will be responsible for payment of all costs of the project that are not paid by Federal funds and that the maximum amount of Federal funds to be made to the consortium shall not exceed the limitation specified below under "payment provisions."

C. Payment Provisions

Under this demonstration, services related to the treatment or management of (including prevention of complications from) diabetes for Medicare beneficiaries furnished under the project shall be considered to be services covered under Part B of Title XVIII of the Social Security Act. Subject to the limitations described below,

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payment for these services will be made at a rate of 50 percent of the costs that are reasonable and necessary and related to the provision of such services.

Costs that may be included under these payments are as follows:

- Acquisition of telemedicine equipment for use in patients' homes (but only for patients located in medically undeserved areas);
- Curriculum development and training of health professionals in medical informatics and telemedicine;
- Payment of telecommunications costs (including salaries and maintenance of equipment), including telecommunications between patients' homes and the eligible network and between the network and other entities in the consortium; and
- Payments to practitioners and providers under the Medicare programs.

The following costs are not covered or payable under this demonstration:

- The purchase or installation of transmission equipment (other than such used by health professionals to deliver medical informatics services under the project);
- The establishment or operation of a telecommunications common carrier network; or
- The establishment, acquisition, or building of real property, except for minor renovations related to the installation of reimbursable equipment costs.

D. Limitation

The total amount of payments that may be made for this project will not exceed $30,000,000 for the 4-year period of the demonstration.

E. Limitation on Cost Sharing

The project may not impose cost sharing on a Medicare beneficiary for the receipt of services under the project in excess of 20 percent of the costs that are reasonable and related to the provision of such services.

F. Evaluation

Proposals submitted for this demonstration must contain provisions for an independent evaluation of the cost effectiveness of the services provided. The evaluation must be performed by an independent contractor competitively chosen according to bidding procedures approved by the our project officer. Proposals should address the elements to be incorporated into a request for proposal (RFP) to be used in the procurement of an evaluation contractor.

G. Length of Demonstration

This demonstration project will cover a period of 4 years.

III. Application Procedures

The application procedure is two-step process involving submission of letters of intent and formal proposals.

A. Step 1—Letters of Intent

A potential applicant is required to submit letters of intent containing brief descriptions of the applicant's ability to meet each of the provisions of this notice, including the following specific items:

- Protocols and plans related to the purpose of the project (Section II);
- Work plans describing the methods to be used in completing the project within the prescribed period of performance; minimal organizational characteristics and location requirements (Section II. B); and cost and payment guarantees (Section II. C);
- Descriptions of the use of Federal funds received under the project and the source and amount of non-Federal funds used in the project (Sections II. D and E);
- An evaluation strategy and design (Section II. F); and
- Length of the demonstration (Section II. G).

In addition, letters of intent should indicate acceptance of the payment provisions set forth in this notice, should not exceed six single spaced pages in length (including attachments), and must be signed by an appropriate official of the proposing entity.

For consideration, letters of intent must be received within 30 days from the publication of this notice and mailed to the following address: Lawrence E. Kucken, Mailstop C3–24–07, Health Care Financing Administration, Office of Health Standards and Quality, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Letters of intent will be screened against criteria based on provisions of this notice and period of performance requirements. Application kits, in turn, will be sent promptly to applicants whose letters of intent meet each these criteria.

B. Step 2—Formal Proposals

Detailed instructions for the preparation of formal proposals will be contained in application kits and will address criteria for screening proposals, evaluation criteria and associated weights, and procedural considerations. We may consider verbal presentations in lieu of written proposals. In addition, application kits will contain guidelines to be used by the applicant for preparation of the demonstration proposal cost estimate. This cost estimate will be used by the OMB in the final approval of Medicare waiver status for the project.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

AUTHORITY: Sec. 1875 of the Social Security Act (42 U.S.C. 139511); sections 402(a)(1)(B) and (a)(2) of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1(a)(1)(B) and (a)(2)); and Section 4207(a), (b), (c), and (d) of the Balanced Budget Act of 1997 (P.L. 105–33) (Catalog of Federal Domestic Assistance Program No 93.779 Health Financing Demonstrations, and Experiments)

Dated: February 25, 1998.

Nancy Ann-Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 10, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–6940 Filed 3–17–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Submission for OMB review; Comment Request; Customer and Other Partners Satisfaction Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Warren Grant Magnuson Clinical Center (CC), the National Institutes of Health, (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on (Volume 62, Number 79, page 20012) and allowed 60 days for public comments. No public comments were received. The purpose of this notice is to provide an additional 30 days for public comment.

5 CFR 1320.5

Respondents to this request for information collection should not respond unless the request displays a currently valid OMB control number.

Proposed Collection

Title: Customer and Other Partners Satisfaction Surveys. *Type of Information Collection Request:* New request. *Need and Use of Information Collection:* The information collected in

these surveys will be used by Clinical Center personnel: (1) To evaluate the satisfaction of various Clinical Center customers and other partners with Clinical Center services; (2) to assist with the design of modifications of these services, based on customer input; (3) to develop new services, based on customer need; and (4) to evaluate the satisfaction of various Clinical Center customers and other partners with implemented service modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by, Clinical Center management to enhance the services and operations of our organization. *Frequency of Response:* The participants will respond yearly. *Affected public:* Individuals and households; businesses and other for profit, small businesses and organizations. *Types of respondents:* These surveys are designed to assess the satisfaction of the Clinical Center's major internal and external customers with the services provided. These customers include, but are not limited to, the following groups of individuals: Clinical Center patients, family members of Clinical Center patients, visitors to the Clinical Center, National Institutes of Health investigators, NIH intramural collaborators, private physicians or organizations who refer patients to the Clinical Center, volunteers, vendors and collaborating commercial enterprises, small businesses, regulators, and other organizations. The annual reporting burden is as follows:

TABLE 1.—BURDEN ESTIMATE

Customer	Type of survey	Estimated number to be surveyed	Expected response rate (percent)	Time to complete survey (minutes)	Estimated burden hours
Clinical Center Patients	Questionnaire/Telephone	11,100	80	20	2,436.6
Family Members of Patients	Questionnaire/Post-Card	8,500	38	10	533.3
Visitors to the Clinical Center	Questionnaire/Post-Card	3,500	15	10	87.5
Former physician employees and trainees.	Electronic	550	35	10	38.2
Guest workers/Guest researchers	Electronic	950	60	22	210
Extramural collaborators	Electronic	600	30	15	45
Vendors and Collaborating Commercial Enterprises.	Questionnaire/Fax-Back	9,500	17	18	475
Professionals and Organizations Referring Patients.	Fax Back	9,000	30	28	1,250
Regulators	Fax Back	85	82	19	22
Volunteers	Questionnaire	850	58	68	230
Total			n = 16,812		5,327.6

Estimated costs to the respondents consists of their time; time is estimated using a rate of $10.00 per hour for patients and the public; $30.00 for vendors, regulators, organizations and $55.00 for health care professionals. The estimated annual costs to respondents for each year for which the generic clearance is requested is $72,894 for 1998, $30,276 to 1999, and $24,531 for 2000. There are no capital costs, operating costs and/or maintenance costs to report.

Requests for comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Clinical Center and the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the proposed information collections contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention Desk Officer for NIH.

FOR FURTHER INFORMATION: To request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, contact: Dr. David K. Henderson, Deputy Director for Clinical Care, Warren G. Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C 146, 9000 Rockville Pike, Bethesda, Maryland 20892, or call non-toll free: (301) 496–3515, or e-mail your request or comments, including your address to: dhenderson@cc.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before April 17, 1998.

Dated: March 12, 1998.

David K. Henderson,

Deputy Director for Clinical Care, CC.

[FR Doc. 98–7031 Filed 3–17–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Research on Minority Health; Notice of Meeting

Pursuant to Pub. L. 92–463, as amended, notice is hereby given of the first meeting of the Advisory Committee on Research on Minority Health on April 3, 1998, National Institutes of Health Conference Center, Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 9:00 a.m. to 12:00 p.m. on April 3. Attendance by the public will be limited to space available. The Committee will review and assess minority health activities, including those to be undertaken by the national research institutes, with respect to research related to minority health; the inclusion of members of minority groups as subjects in clinical research; and the enhancement of minority participation in research and research training programs. Additional agenda items include: (1) introduction of new members; (2) presentation by Dr. John Ruffin on the mission of ORMH; and (3) other business of the Committee.

In accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. and section 10(d) of the Federal Advisory Committee Act, as amended, the meeting will be closed to the public from 1:00 p.m. to adjournment for discussions of individual programs and projects including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Jean Flagg-Newton, Special Assistant to the Associate Director, ORMH, Building 1, Room 255, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301–402–2518, will provide a summary of the meeting and a roster of Committee members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Flagg-Newton no later than March 25.

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6957 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

Name of Committee: National Human Genome Institute Initial Review Group, Ethical, Legal, and Social Implications Subcommittee.

Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.

Date: April 1, 1998.

Time: 3:00 to 5:00 p.m.

Place: Via Telconference, Building 38A, Room 609, at the National Institutes of Health, Bethesda, MD.

Contact Person: Rudy Pozzatti, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

The meeting will be closed in accordance with the provisions set forth in secs. 552(b)(4) and 552(c)(6), Title 5 U.S.C. The applications and/or contract propsals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalogue of Federal Domestic Assistance Program No. 93,172, Human Genome Research)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6954 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: NIAMS Special Grants Review Committee.

Date: April 14, 1998.

Time: 8:30 a.m.-adjournment.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, Washington, D.C. 2007.

Contact Person: Tommy Broadwater, Ph.D., Chief, Grants Review Branch, Natcher Building, 45 Center Drive, Rm 5AS25U, Bethesda, Maryland 20892, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review research grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6955 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institutes of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting.

Name of SEP: Clinical Trial (TELECONFERENCE).

Date: April 4, 1998.

Time: 4:00 p.m. (ET)—adjournment.

Place: National Institutes of Health, Natcher Building, Room 5AS25U, Bethesda, Maryland 20852.

Contact Person: Tommy Broadwater, Ph.D., Chief, Grants Review Branch, Natcher Building, Room 5AS25U, Bethesda, Maryland 20892, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with this application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6956 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Purusant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–8 M3 M.

Date: April 7, 1998.

Time: 2:00 PM.

Place: Room 6AS–25N, Natcher Building, NIH (Telephone Conference Call).

Contact: Roberta J. Haber, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8898.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6958 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting, Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke, Division of Intramural Research on May 10–12, 1998, at the National Institutes of Health, Building 31, Conference Room 6C6, 31 Center Drive, Bethesda, Maryland 20892.

This meeting will be open to the public from 8:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. on May 11th, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 8:00 p.m. to 10:00 p.m. on May 10th, and from 10:30 a.m. until adjournment on May 12th, for the review, discussion and evaluation of individual programs and projects conducted by the NINDS. The programs and discussions include consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Ms. Kathleen Howe, Federal Building, Room 1012, 7550 Wisconsin Avenue, Bethesda, MD 20892, telephone (301) 496–9231 or the Executive Secretary, Dr. Story Landis, Director, Division of Intramural Research, NINDS, Building 36, Room 5A05, National Institutes of Health, Bethesda, MD 20892, telephone (301) 435–2232, will furnish a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6959 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Division of Extramural Activities; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: March 26, 1998.

Time: 11:00 a.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

Contact Person: Dr. Katherine Woodbury-Harris, Mr. Phillip Wiethorn, Scientific Review Administrators, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate Phase I SBIR Contract Proposal(s).

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel. (Telephone Conference Call).

Date: April 10, 1998.

Time: 12:00 p.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

Contact Person: Dr. Paul A. Sheehy, Scientific Review Administrator, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate a grant application.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6960 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Notice of Meeting of the Executive Committee of the Board of Governors of the Warren Grant Magnuson Clinical Center

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Executive Committee of the Board of Governors of the Warren Grant Magnuson Clinical Center, March 23, 1998. The Executive Committee will meet from 9 a.m. to approximately 12

noon in the Medical Board Room (2C116) of the Clinical Center (Building 10), 9000 Rockville Pike, Bethesda, Maryland.

The meeting will be entirely open to the public and will include updates on organizational planning and budget issues.

Attendance by the public will be limited to space available.

For further information, contact Ms. Maggie Stakem, Office of the Director, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, Bethesda, Maryland 20892, (301) 496–4114.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Stakem in advance of the meeting.

This notice is being published less than fifteen days prior to this meeting due to scheduling conflicts.

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6961 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–03]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 11, 1998.

David S. Cristy,

Director, IRM Policy, and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Assessment and Analysis of Multifamily Building's Conformity with Fair Housing Guidelines Provisions.

Office: Policy Development and Research.

OMB Approval Number: 2528–xxxx.

Description of the Need for the Information and its Proposed Use: The Fair Housing Amendments Act of 1988 requires that the newly constructed multifamily dwelling covered under the Act, available for occupancy after March 13, 1991 be designed and constructed to be accessible to persons with disabilities. The purpose of this project is to assess the extent of conformity with the accessibility requirements and to examine reasons, and any explanations for different patterns of conformity/non-conformity.

Form Number: None.

Respondents: State, Local or Tribal Government, Business or Other For-Profit and Individuals or Households.

Frequency of Submission: One time Collection.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden Hours
New Collection	1544		1		.67		1036

Total Estimated Burden Hours: 1036.

Status: New Collection.

Contact: Alan Rothman, HUD, (202) 708–4370 x139, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–6913 Filed 3–17–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–04]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk

Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Outline Specifications.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0012.

Description of the Need for the Information and Its Proposed Use: This form is prepared by architect employed by Public Housing Authorities (PHAs) or by Turnkey Developers' to establish quality and kind of materials and equipment to be incorporated into housing developments. The information is used by the PHA and HUD to determine that specified items comply with HUD standards and codes that are appropriate for the project.

Form Number: HUD–5087.

Respondents: State, Local or Tribal Governments and not-for-profit institutions.

Frequency of Submission: On occasion and recordkeeping

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5087	240		3.4		3		2,448
Recordkeeping	816		1		.25		204

Total Estimated Burden Hours: 2,652.

Status: Reinstatement, without change of a previously approved collection for which approval has expired.

Contact: William Thorson, HUD, (202) 708–4703; Joseph R. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 12, 1998.

[FR Doc. 98–7022 Filed 3–17–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–05]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Public Housing Agencies' Plan for Exception Request—Site-Based Waiting Lists.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0214.

Description of the Need for the Information and its Proposed Use: PHAs

will prepare and submit a plan which requests exception to the established site-based waiting lists. HUD needs the information to assure statutory and regulatory compliance. The information will be used to approve the PHA's plan.

Form Number: None.

Respondents: State, Local or Tribal Government.

Frequency of Submission: One-time plan.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
52		1		72		3744

Total Estimated Burden Hours: 3744.

Status: Reinstatement, without change, of a previously approved collection for which approval has expired.

Contact: Steve Holmquist, HUD, (202) 708–0713 x4246, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 12, 1998.

[FR Doc. 98–7023 Filed 3–17–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–06]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Section 203(k) Rehabilitation Mortgage Insurance Underwriting Program.

Office: Housing.

OMB Approval Number: None.

Description of the Need for the Information and Its Proposed Use: This information collection involves an expanded information collection requirement for lenders that originate and service Section 203(k) mortgages. The purpose of the information collection is to help mitigate program abused and have more documentation for internal control.

Form Number: HUD–92700.

Respondents: Business or Other For-Profit, Not-For-Profit Institutions, and the Federal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	18,000		7		1.28		161,850

Total Estimated Burden Hours: 161,850.

Status: New.

Contact: John W. Struchen, HUD, (202) 708–6396 x5626, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 12, 1998.

[FR Doc. 98–7024 Filed 3–17–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Alaska Region, Beaufort Sea Lease Sale 170

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of the final environmental impact statement.

The Minerals Management Service (MMS) has prepared a final Environmental Impact Statement (EIS) relating to the proposed 1998 Outer Continental Shelf oil and gas lease sale in the Beaufort Sea. The proposed Beaufort Sea Sale 170 will offer for lease approximately 1.08 million acres. You

may obtain single copies of the final EIS from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public Information. You may request copies by telephone at (907) 271–6070; 1–800–764–2627; or via e-mail at akwebmaster@mms.gov.

Copies of the final EIS are also available for inspection in the following public libraries:

Alaska Resource Library, U.S. Department of the Interior, Anchorage, Alaska
Alaska State Library, Juneau, Alaska
Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska
Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska
Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska
George Francis Memorial Library, Kotzebue, Alaska
Kaveolook School Library, Kaktovik, Alaska
Kegoayah Kozga Public Library, Nome, Alaska
Nellie Weyiouanna Ilisaavik Library, Shishmaref, Alaska
North Slope Borough School District Library/Media Center, Barrow, Alaska
Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska
Nuiqsut Library, Nuiqsut, Alaska
Tikigaq Library, Point Hope, Alaska
University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska
University of Alaska, Fairbanks Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska
University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, Alaska

Dated: March 3, 1998.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 98–6975 Filed 3–17–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 17, 1998 in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR Part 784; and the Abandoned Mine Land Problem Area Description Form, OSM 76. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0039 for Part 784, and 1029–0087 for the OSM 76 form.

As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on these collections of information was published on December 15, 1997 (62 FR 65713), for the OSM 76 form, and on December 19, 1997 (62 FR 66664), for Part 784. No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR 784.

OMB Control Number: 1029–0039.

Summary: Sections 507(b), 508(a) and 516(b) of Pub. L. 95–87 require underground coal mine permit applications to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards required by the law.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 130 underground coal mining permit applicants.

Total Annual Responses: 130.

Total Annual Burden Hours: 92,605.

Title: Abandoned Mine Land Problem Area Description Form, OSM 76.

OMB Control Number: 1029–0087.

Summary: This form will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

Bureau Form Number: OSM 76.

Frequency of Collection: On occasion.

Description of Respondents: 26 State governments and Indian tribes.

Total Annual Responses: 1,800.

Total Annual Burden Hours: 4,000.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: March 12, 1998.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 98–6967 Filed 3–17–98; 8:45 am]

BILLING CODE 4310–05–M

VOL 63 ISS 52 MR 18 1998 UMI

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; Application for procurement quota for controlled substances.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 30, 1997 at 62 FR 67901, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until April 17, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regrading the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1101 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the information collection:

1. *Type of Information Collection:* Extension of previously approved collection.

2. *Title of the Form/Collection:* Application for Procurement Quota for Controlled Substances.

3. *Agency form number:* DEA Form 250, if any, and the applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

Title 21, Section 1303.12, requires U.S. companies involved in the manufacture of dosage forms or into other substances of Schedule I or II controlled substances must apply on DEA Form 250 each year for assignment of their quota of a specific Schedule I or II controlled substance.

5. An estimate of the total estimated number of respondents and the amount of time estimated for an average respondent to respond: 531 respondents at 1 response per year at 1 hour per response.

6. An estimate of the total public burden (in hours) associated with the collection: 531 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 12, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–6962 Filed 3–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities; Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 29, 1997 at 62FR67661, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until April 17, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the information collection:

1. *Type of Information Collection:* Extension of previously approved collection.

2. *Title of the Form/Collection:* Application for Permit to Import Controlled Substances for Domestic

and/or Scientific Purposes pursuant to 21 U.S.C. 952.

3. *Agency form number:* DEA Form 357, if any, and the applicable component of the *Department of Justice sponsoring the collection:* Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

Title 21, Section 1312.11 of the Code of Federal Regulations promulgated under the Controlled Substances Import and Export Act, 21 U.S.C. 951, et seq., requires that any registrant who desires to import into the United States any Schedule I or II controlled substance, any Schedule III, IV or V narcotic controlled substance, or any specifically designated Schedule III non-narcotic controlled substance must have an import permit. In order to obtain the permit, an application for permit must be made to the Drug Enforcement Administration (DEA) on DEA Form 357.

5. An estimate of the total estimated number of respondents and the amount of time estimated for an average respondent to respond: 237 respondents at 1 response per year at 15 minutes per response.

6. An estimate of the total public burden (in hours) associated with the collection: 59.25 annual burden hours.

If additional information is required cóntact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 12, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–6963 Filed 3–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request; 1998 National Study of DNA Laboratories

ACTION: Notice of information collection under review; New collection.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until; May 18, 1998. Request written comments and suggestions from the public and effected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarify of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Greg Steadman, Statistician, Bureau of Justice Statistics, 810 7th Street NW., Washington, DC 20531, or via facsimile (202) 307–5846.

Overview of this information collection:

(1) Type of information collection: New collection.

(2) The title of the form/collection: 1998 National Study of DNA Laboratories.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number CLAB–1. Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Government Other: None.

This information collection is a census of public crime laboratories that perform DNA analysis. The information will provide statistics on laboratories' capacity to analyze DNA evidence, the number and sources of DNA evidence received per year, the number, types, and costs of analyses completed. It will also identify the capacities of states to participate in a national DNA database.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 160 respondents each taking an average 0.75 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 120 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 13, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–7037 Filed 3–17–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1162]

RIN 1121–ZA99

National Institute of Justice Solicitation for Investigator-Initiated Research 1998

AGENCY: Office of Justice Programs, National Institute of Justice (NIJ), Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Solicitation for Investigator-Initiated Research."

DATES: Due date for receipt of proposals is close of business June 16, 1998 and December 15, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is accepting research and development proposals through its 1998 Investigator-Initiated Solicitation. The most flexible

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of the Institute's funding opportunities, the Investigator-Initiated Solicitation invites applicants to submit proposals that will help NIJ address general themes related to criminal justice. While the solicitation offers examples of general areas of interest, research themes and topic areas are to be constructed by the applicant. In this way, investigator-initiated research and development proposals differ from those defined in directed solicitations.

Funding levels for the Investigator-Initiated Solicitation generally range from $25,000 to $300,000 and the Institute promotes research collaborations with other Federal agencies and private foundations. Both small grant applications (requests for less than $50,000) and other grant applications (requests for $50,000 or more) will be considered.

NIJ is firmly committed to the competitive process for awarding grants. All proposals are subjected to an independent, peer-review panel evaluation. Panel members possess academic, practitioner, technical, and operational expertise in the proposed subject areas. The solicitation welcomes proposals from applicants representing both the social sciences and the physical sciences.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Investigator-Initiated Research, 1998" (refer to document no. SL000240). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–7005 Filed 3–17–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed consolidation and renewal of Job Corps applicant forms. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 18, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: June P. Veach, Office of Job Corps, 200 Constitution Avenue N.W., Room N–4507, Washington, D.C. 20210. E–Mail Internet Address: Veachj@doleta.gov; Telephone number: (202) 219–5556 (This is not a toll-free number); Fax number: (202) 219–5183 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps program is designed to serve disadvantaged young women and men, 16 through 24, who are in need of additional vocational, educational and social skills training, and other support services in order to gain meaningful employment, return to school or enter the Armed Forces. Authorized by the Job Training Partnership Act (JTPA), Job Corps is operated by the Department of Labor through a nationwide network of 115 Job Corps centers. The program is primarily a residential program operating 24 hours per day, 7 days per week, with non-resident enrollees limited by legislation to 20 percent of national enrollment. These centers presently accommodate more than 40,000 students. To ensure that the centers are filled with youth who are disadvantaged as well as capable of and committed to doing the work necessary to achieve the benefits of Job Corps, certain eligibility requirements have been established by the legislation.

The purpose of this collection is to gather information from applicants to the program in order to determine their eligibility for Job Corps. These forms are critical to the screening process. They are the initial forms completed by the Job Corps admissions counselors for each applicant.

The ETA 652, Job Corps Data Sheet, is used to obtain information for screening and enrollment purposes to determine eligibility for the Job Corps program in accordance with Title IV–B of the Job Training Partnership Act. It is prepared electronically by the admissions counselor for each applicant. It also provides demographic characteristics for program reporting purposes. Data for the form are collected by interview. The information collected determines eligibility in regard to age, legal U.S. residency, family income/welfare status, school status, behavioral problems (if any), parental consent, and child care needs of each applicant.

The ETA 655, Statement from Courts or Other Agencies, and ETA 655A, Statement from Institution, collect essential information for determining an applicant's eligibility. They are used to document past behavior problems for all applicants, as well as provide a basis for projecting future behavior. If this information were not obtained, serious problems could result from enrolling potentially dangerous individuals in Job Corps, which is a residential program. This could have legal implications for the Federal government.

The ETA 682, Child Care Certification, is used to certify an applicant's arrangements for care of a dependent child(ren) while the applicant is in Job Corps.

II. Current Actions

The following Job Corps application forms have expired. It was anticipated that the change to electronic collection would be completed much more quickly than has happened. The final version was not completed until January 1998.

Job Corps has continued to collect application data because it was necessary to the application process that youth receiving training on Job Corps centers be eligible for the benefits provided. No harm has been done while the forms were expired. No reports have been submitted and/or developed for Congress during the period.

Job Corps has now implemented electronic collection of data during the Job Corps application process. We request that the following forms used in the application process be reinstated and consolidated under OMB 1205–0025:

- ETA 652, Job Corps Data Sheet (1205–0025);
- ETA 655, Statement from Court or Other Agency (1205–0026);
- ETA 655A, Statement from Institution (1205–0026); and
- ETA 682, Child Care Certification (1205–0033).

The ETA 682 was previously included with the ETA 653, Health Questionnaire, in 1205–0033, but was removed from that collection by OMB at Job Corps' request. In addition, 6 items from the ETA 660, Request for Readmission, in 1205–0031, have been moved to the ETA 652. The remainder of the form is not necessary to the application process and we are requesting that the ETA 660 be canceled as a separate form.

The overall result of these actions will be a reduction in paperwork burden hours and a streamlined electronic application. One other application form used to collect data for determining eligibility to Job Corps is the ETA 653, Health Questionnaire, which has previously been approved under 1205–0033. This will remain as a separate collection for OMB approval purposes, although it is collected electronically with the above forms at the time of application.

Type of Review: Reinstatement with change.

Agency: Employment and Training Administration

Title: Application Data Collection.

OMB Numbers: 1205–0025.

Agency Numbers: ETA 652, ETA 655, ETA 655A, and ETA 682.

Recordkeeping: Applicant is not required to retain records; admissions counselors or contractor main offices are required to retain records of applicants who enroll in the program for 3 years from date of application.

Affected Public: Individuals who apply to Job Corps; Business or other for-profit/Not-for-profit institutions; State, Local or Tribal Government.

Cite/Reference/Form/etc:

Title	Total respondents	Frequency	Average time per respondent	Burden
Job Corps Application ETA 652	103,000	1/person	.25	25,750
Statement from Court ETA 655	103,000	1/person	.25	25,750
Statement from Institution ETA 655A	10,300	On occasion	.25	2,575
Child Care Certification ETA 682	7,000	On occasion	.15	1,050
Total				55,125

Total Burden Cost (capital/startup): When the electronic system was initially piloted and implemented in 1996, the start-up costs totaled $2,680,000, including $2,000,000 for 925 computer workstations, $480,000 for training Job Corps admissions counselors and center staff and, in 1997, $200,000 for replacements and memory upgrades. These were one-time-only costs.

Total Burden Cost (operating/maintaining): Operating and maintenance services associated with these forms are contracted yearly by the Federal government with outreach and admissions contractors, according to designated recruiting areas. This is one of the many functions the contractors perform for which precise costs cannot be identified. Based on past experience, however, the annual cost for contractor staff and related costs is estimated to be about $771,750. With the addition of $283,894 for the value of applicant time based on a minimum wage of $5.15 per hour, the total burden cost is $1,055,644.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 10, 1998.

Mary H. Silva,

National Director, Job Corps.

[FR Doc. 98–7019 Filed 3–17–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title III, Demonstration Program: Dislocated Worker Technology Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test the ability of the workforce development system to partner with employers, training providers and others to train dislocated workers in the skills necessary to obtain work requiring high technology skills in occupations and industry settings with long-term growth potential. The program will be funded with Secretary's National Reserve funds appropriated for Title III of the Job Training Partnership Act (JTPA) and administered in accordance with 29 CFR Part 95 and 97 as applicable.

This notice provides information on the process that eligible entities must use to apply for these demonstration funds and how grantees will be selected. It is anticipated that up to $6 million will be available for funding demonstration projects covered by this solicitation, with no award being more than $750,000.

DATES: The closing date for receipt of proposals is April 30, 1998 at 2 p.m. (Eastern Time).

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor; Employment and Training Administration; Division of Acquisition and Assistance; Attention: B. Yvonne Harrell, Reference: SGA/DAA 98–006; 200 Constitution Avenue, N.W., Room S–4203; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: B. Yvonne Harrell, Division of Acquisition

and Assistance. Telephone (202) 219–8694 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program and identifies demonstration policy. Part II describes the application process and provides guidelines for use in applying for demonstration grants. Part III includes the statement of work for the demonstration projects. Part IV describes the selection process, including the criteria that will be used in reviewing and evaluating applications. Part V discusses the demonstration program's monitoring, reporting and evaluation.

Part I. Background

A. Authorities

Section 323 of JTPA (29 U.S.C. 1662b) authorizes the use for demonstration programs of funds reserved under Section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under Section 322 of JTPA (29 U.S.C. 1662a). Demonstration program grantees shall comply with all applicable federal and state laws and regulations in setting up and carrying out their programs.

B. Purpose

It is now well understood that the economy has transitioned from the industrial age to the information age. In this age, the most valued commodities are the skills and knowledge possessed by the individual. These skills are the essential ingredient necessary to compete for jobs in an information-based economy. Global competition has reached an unprecedented level. Technology plays an increasingly important role in this global scenario as nations strive to build things or provide services that are faster, better or cheaper than their competitors.

In this era of global competition and rapid technological advances, technology is the most critical driver of economic growth. The U.S. Department of Commerce, Office of Technology Policy, has reported advances in technology to be the single most important determining factor in sustaining economic growth, estimated to account for as much as half of the Nation's long-term economic growth over the past 50 years. Traditional work environments have altered, as have the requisite skills needed by workers to succeed in today's workplace. Technology provides the tools for creating a wide array of new products and new services that reach well beyond the narrow confines of traditional labor markets. A product or service can now be provided from almost any community, each with the potential to reach global markets. The ability of a company to innovate, incorporate technology, improve products or services, increase market share and thus expand capacity and employment is the engine of economic growth.

Information technologies are the most important enabling technologies in the economy today. They affect every sector and every industry in the United States, in terms of digitally based products, services, and production and work processes. The very nature of advanced technology lies in the ability of a business or industry to identify, assess, adopt and incorporate information based technologies into everyday business and production processes. However, too many Americans are not adequately prepared for work place roles in this new economy. The information/knowledge based workplace of today's leading companies requires workers to possess conceptual, analytical, communication, interpersonal, and self-management skills beyond the basic academic and technical skills of the traditional workplace. There is often a skills deficit experienced by employers who continuously push the envelop to innovate, and adopt new technology in order to stay ahead of competitors, both domestic and international.

With accelerated changes in technology, America's workers often discover their skill base has become out of date. New approaches are needed to help American workers stay competitive. Workers need to know and understand what skills employers are looking for, and they need to have the means to raise their skills to match that demand.

Our Nation's workforce development system is working to meet this need, but skill shortages in information and advanced technology are currently very high in some industry sectors and geographic areas. Severe shortages of workers who can apply and use information and advanced technologies could undermine U.S. innovation, productivity, and competitiveness in world markets. A steady supply of skill workers will help our Nation's industries remain competitive. More importantly, these workers need to possess the appropriate skills demanded in the workplace. Ideally, a system of "just in time" education and training would be able to supply skilled workers that meet industry driven standards and certifications.

The purpose of this demonstration is to test the ability of the Nation's workforce development system to partner with employers, training providers and others to train dislocated workers in the skills necessary to obtain work requiring information and advanced technology skills in occupations and industries experiencing shortages of such workers.

As a part of the Nation's Workforce Development System, programs funded under Title III of the Job Training Partnership Act annually provide adjustment and training assistance to over 500,000 individuals who have lost their jobs through no fault of their own. The vast majority of Title III funds are managed by over 600 substate grantees. These organizations design and operate a national system for training and reemployment programs based on: (1) The needs and characteristics of the local dislocated worker population; (2) the needs of local employers for skilled workers; and (3) the capabilities and capacities of training institutions and other local service providers. Also emerging is an infrastructure for a One-Stop/Career Center system to provide comprehensive and integrated workforce development services to both participants and employers. The Secretary of Labor uses a portion of the Title III funds to support demonstration projects to test new and innovative means of assisting dislocated workers.

Under this demonstration, the Department will fund projects that document the existence of and respond to the widely reported shortage across the nation of workers in information and advanced technology jobs. For purposes of this solicitation, the term "information and advanced technology" may be viewed broadly as the link between people, information and technology in the workplace. It encompasses computers, communication, data and information systems' hardware and software, but also the personnel who design, manage, operate, support and maintain these systems. For example, in the manufacturing sector, the application of information technology for technology transfer, high performance management, statistical process control, quality control, and data management are a fundamental part of operating as a high performance, world class organization. More specifically, information technology occupations comprise computer or computer systems related jobs engaged in either managing, storing, transmitting, or generating the information that organizations use to make decisions or installing, repairing or supporting the computer hardware and software used to perform such tasks.

Successful applications may be based on the use of new or innovative service strategies such as the involvement of new target groups of dislocated workers for existing training programs; the development and use of curricula geared specifically to eligible groups of dislocated workers and the needs of employers with openings in technology-related jobs; or the use of curriculum and skills training interventions designed to impart knowledge, skills and abilities of industry skill standards (where available). Each successful application will document substantive linkages with specific employers where there is a strong demand for workers with technology-related skills. Successful proposals will address the demonstration program goals of placement of the project participants in information and advanced technology jobs trained for as a part of the project. Participant satisfaction with project services and with their jobs, as well as their employer's satisfaction with project services and with the participants' skill level and work, should also be measured.

C. Demonstration Policy

1. Grant Awards

DOL anticipates awarding eight to ten grants, not to exceed $750,000 per grant. It is anticipated that awards will be made by June 30, 1998. Award decisions will be published on the Internet at ETA's Home Page at http://www.doleta.gov.

2. Eligible Applicants

Any organization capable of fulfilling the terms and conditions of this solicitation may apply. Under Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)(4) of the Internal Revenue code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award grant or loan. This is a risk free Federal program: therefore, all for profit organizations that apply will not be able to receive a fee if awarded a grant.

3. Eligible Participants

All participants must be eligible dislocated workers as defined at JTPA Section 301(a)(1), and 314(h)(1) of the Job Training Partnership Act. These sections of the law may be viewed at http://doleta.gov/regs/statutes/jtpalaw.htm. Proposed projects may target subgroups of the eligible population based on factors such as (but not limited to) occupation, industry, nature of dislocation, and reason for unemployment.

4. Allowable Activities

Funds provided through this demonstration may be used only to provide services of the type described at Section 314(c) and (d) of JTPA. Supportive services are defined in Section 4(24) of JTPA. (Use ETA's web site reference above to view.)

Grant funds may be used to reimburse employers for extraordinary costs associated with on-the-job training of program participants, in accordance with 20 CFR 627.240. Grant funds may not be used for the following purposes: (a) For training that an employer is in a position to provide and would have provided in the absence of the requested grant; (b) to pay salaries for program participants; and (c) for acquisition of production equipment. Applicants may budget limited amounts of grant funds to work with technical experts or consultants to provide advice and develop more complete project plans after a grant award. The level of detail in the project plan may affect the amount of funding provided.

Grant activities may include: (a) Development, testing and initial application of curricula focused on intensive, short-term training to get participants into productive, high demand information or advanced technology employment as quickly as possible; (b) working with employers to utilize cutting-edge technology and equipment in worksite-based learning strategies; (c) development of employer-based training programs that will take advantage of opportunities created by employers' needs for workers with new information and advanced technology skills; (d) development and initial application of contextual learning opportunities for participants to learn technology theory in a classroom setting while applying that learning in an on-the-job setting; (e) use of curriculum and skills training programs that are designed to impart learning to meet employer specified or industry specific skill standards or certification requirements; or (f) innovative linkage and collaboration between employers and the local Substate Grantee and/or One-Stop/Career Center system to ensure a steady supply of high demand, high skill information or advanced technology workers.

The above are illustrative examples and are not intended to be an exhaustive listing of possible demonstration project designs or approaches which may achieve the purpose of this solicitation. However, successful applicants must demonstrate the direct involvement by employers experiencing skill shortages as well as provide substantive documentation about the existence of skill shortages for the industry or occupations to be targeted by the proposed project.

5. Coordination

In order to maximize the use of public resources and avoid duplication of effort, applicants will coordinate the delivery of services under this demonstration with the delivery of services under other programs (public or private), available to all or part of the target group. Projects linking or collaborating with an existing USDOL funded One-Stop/Career Center initiative and/or local JTPA Substate Grantee located within a project area fulfill this requirement.

6. Period of Performance

The period of performance shall be 24 months from the date of execution by the Government. Delivery of services to participants shall commence within 90 days of execution of a grant.

7. Option To Extend

DOL may elect to exercise its option to extend these grants for an additional one (1) or two (2) years of operation, based on the availability of funds, successful program operation, and the needs of the Department.

Part II. Application Process and Guidelines

A. Contents

An original and three (3) copies of the application shall be submitted. The application shall consist of two (2) separate and distinct parts: Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. Financial Application

Part I, the Financial Proposal, shall contain the SF–424, "Application for Federal Assistance" (Appendix A) and the "Budget Information" (Appendix B). The Federal Domestic Assistance Catalog number is 17.246.

The budget shall include on separate pages detailed breakouts of each proposed budget line item, including detailed administrative costs and costs for one or more of the following categories as applicable: Basic readjustment services, supportive services, and retraining services. For each budget line item that includes funds or in-kind contributions from a source other than the grant funds, identify the source, the amount, and in-kind contributions, including any restrictions that may apply to these funds.

2. Technical Proposal

Part II, the technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part III of this solicitation. A grant application shall be limited to twenty (20) double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. Attachments shall not exceed ten (10) pages. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application shall include the Checklist provided as Appendix C, a Timeline outlining project activities, and an Executive Summary not to exceed two pages. No cost data or reference to price shall be included in the technical proposal.

B. Hand-Delivered Applications

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 2:00 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

C. Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next-Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

D. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Part III. Statement of Work

Each grant application must follow the format outlined in this Part. For sections A through G below, each application should include:

(1) Information that indicates adherence to the provisions described in Part I, Background (Authorities, Purpose, and Demonstration Policy) and Part II, Application Process and Guidelines, of this announcement; and (2) other information that the applicant believes will address the selection criteria identified in Part IV of this solicitation.

Information required under A and B below shall be provided separately for each labor market area where dislocated workers will be served. To the extent that the project design differs for different geographic areas, information required under section C below shall be provided for each geographic area.

A. Target Population

Describe the proposed target population for the project. If that population is limited to one or more subgroups of the dislocated worker population, explain the basis for such limitation. Describe the size, location, and needs of the target population relative to the services to be provided. Provide documentation showing there is a significant number of dislocated workers with the target population's characteristics in the project area(s).

If the project seeks to serve under represented subgroups within a particular occupation, describe services to that subgroup and provide reliable and substantive documentation of the group's under representation.

B. Available Jobs

Describe the jobs that will be available and targeted for placement to project participants upon completion of training and placement services, and the documentation on which such description is based. Include information about the number and type of jobs, wage information and the specific set of skills, knowledge or duties (including any industry-sponsored standards of certifications), and the insufficiency of qualified workers to fill those positions in the absence of the proposed project. Identify sources of the occupational information or data used. Anecdotal data should not be used. Information from the Bureau of Labor Statistics (BLS) available through a variety of web sites including BLS, O*NET and America's Labor Market Information System (ALMIS), should be considered as a key source of documentation. In addition, State Occupational Information Coordinating Committee (SOICC) and JTPA Substate Grantee local job training plan may also be considered.

C. Project Design

(1) Purpose. Describe the specific purpose or purposes of the proposed project.

(2) Outreach and recruitment. Describe how eligible dislocated workers will be identified and recruited for participation in the project. Recruitment efforts may address public service communications and announcements, use of media, coordination with the JTPA Service Delivery Area or Substate Grantee, use of community-based organizations and other service groups. Describe the applicant's experience in reaching the target population. Non-JTPA applicants should partner with the appropriate JTPA Title III Substate Grantee(s) to plan and implement effective outreach and recruitment strategies.

(3) Eligibility determination. Describe the criteria and process to be used in determining the JTPA Title III eligibility

of potential participants in the project. Non-JTPA applicants should partner with the appropriate JTPA Title III substate grantee(s) to carry out eligibility determination.

(4) Selection criteria. Describe the criteria and process to be used in selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project. Explain how the selection criteria relate to the specific purpose of the proposed project.

(5) Services to be provided. Describe the services to be provided from the time of selection of participants through placement of those participants in jobs. Describe any services to be provided subsequent to job placement. The descriptions shall provide a clear understanding of the services and support that will be necessary for participants to be placed successfully in jobs and to retain those jobs, including services not funded under the grant, and ways to address participants' financial needs during periods of training. Grant-funded activities should, at a minimum, include assessment, retraining, job placement, and supportive services.

Identify any assessment tools proposed to be used before or after services are provided. Describe how training will be customized to account for transferable skills, previous education, and particular circumstances of the target population and the skill needs of the hiring employer(s).

Include information to demonstrate that any proposed training provider is qualified to deliver training that meets appropriate employment standards, and any applicable certification or licensing requirement. Past performance, qualifications of instructors, accreditation of curricula, and similar matters should be addressed if appropriate. Address the costs of proposed training and other services relative to the costs of similar training and services through other providers.

Describe the limitations and eligibility criteria for relocation assistance, if such assistance is included in the proposal.

(6) Participant flow. Provide a flowchart with time indications to illustrate how the project will ensure access to necessary and appropriate reemployment and retraining services. Describe the sequence of services and the criteria to be used to determine the appropriateness of specific services for particular participants. Note if service choice options will be available to participants.

(7) Relationship to prior experience. Show how the applicant's prior experience in working with dislocated individuals affects or influences the design of the proposed project.

D. Planned Outcomes

A description of the project outcomes and of the specific measures, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures must include, but are not limited to:

(1) The number of participants projected: to be enrolled in services, to successfully complete services through the project, and to be placed into new jobs; a minimum of 80 percent entered employment rate is required;

(2) Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;

(3) Wages of participants prior to, at placement and 90 days after placement; a minimum of 90 percent average wage replacement rate is required;

(4) As part of the targeted outcome for wage at placement, each project should benchmark two key wage averages for the labor market in which each project will operate. These are: (a) The average weekly wage in the manufacturing sector; and (b) the average wage at placement for the JTPA Title III, dislocated worker program operated by the local Substate Grantee.

(5) For each project, at least 80 percent of the individuals placed shall be placed at a wage that meets or exceeds (a) the average manufacturing wage in the labor market area, or (b) the average wage at placement for the last program year completed (currently 1996) for the JTPA Title III dislocated worker program operated by the local Substate Grantee in the targeted labor market, whichever is greater. The manufacturing wage for any labor market may be obtained from the Covered Wages and Employment Program administered by each State's Employment Service.

(6) Customer satisfaction with the project services, and of critical points in the service delivery process;

(7) Planned average cost per placement (amount of the grant request divided by the number of program-related placements); and

(8) Other additional measurable, performance-based outcomes that are relevant to the project and which may be readily assessed during the period of performance of the project, such as cost effectiveness of services and comparison with other available service strategies.

Note: An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.

E. Collaboration

Describe the nature and extent of collaboration and working relationships between the applicant and other entities in the design and implementation of the proposed project. Include services to be provided through resources other than grant funds under this demonstration. Applicants are encouraged to commit matching funds to the implementation and management of their proposed programs. Matches may be in the form of cash or in-kind contributions. These may include but are not limited to such contributions as the development of training modules; payment of tuition costs for training; support for child care or transportation; and provision of staff time at no cost to the project. Sources of matching funds may include but are not limited to employers, employer associations, labor organizations, and training institutions. With reference to the sources and amounts of project funds and in-kind contributions identified in the financial proposal as being other than those requested under the grant applied for, describe the basis for valuation of those funds and contributions.

Provide evidence, which ensures the collaboration described can reasonably be expected to occur, such as letters of agreement or formally established advisory councils. Because a core purpose of this demonstration program involves the publicly funded workforce system, the applicant shall describe working relationships with local Substate Grantee(s), including One-Stop/Career Center entities where present. Describe activities that may be undertaken to link activities to program interventions under this grant to employer, industry, or curriculum/learning centers currently designing and developing occupational/job skill standards and certifications. Collaboration should focus on linking employers involved in grant activities with any employer, industry, or trade and worker association that has already developed or is developing skill standards certifications.

Documentation of consultation on the project concept from applicable labor organizations must be submitted when 20 percent or more of the targeted population is represented by one or more labor organizations, or where the training is for jobs when a labor organization represents a substantial number of workers engaged in similar work.

F. Innovation

Describe any innovation in the proposed project, including (but not

limited to) innovations in concept to be tested, services, delivery of services, training methods, job development, or job retention strategies. Explain the impact of such innovation on project costs. Explain how the proposed project is similar to and differs from the applicant's prior and current activities.

G. Project Management

(1) Structure. Describe the management structure for the project, including a staffing plan that describes each position and the percentage of its time to be assigned to this project. Provide an organizational chart showing the relationship among project management and operational components, including those at multiple sites of the project.

(2) Program Integrity. Describe the mechanisms to ensure financial accountability for grant funds and performance accountability relative to job placements, in accordance with standards for financial management and participant data systems in 29 CFR Part 95 or 97, as appropriate, and 20 CFR 627.425. Explain the basis for the applicant's administrative authority over the management and operational components. Describe how information will be collected to determine the achievement of project outcomes as indicated in section D of this part; and report on participants, outcomes, and expenditures.

(3) Monitoring. (a) Benchmarks. Provide a timeline of benchmarks covering the period of performance of the project. Include a monthly schedule of planned start-up events; a quarterly schedule of planned participant activity, showing cumulative numbers of enrollments, participation in training and other services, placements, and terminations; and quarterly cumulative expenditure projections.

(b) Participant progress. Describe how a participant's continuing participation in the project will be monitored.

(c) Project performance. Identify the information on project performance that will be collected on a short-term basis (e.g., weekly or monthly) by program managers for internal project management to determine whether the project is accomplishing its objectives as planned and whether project adjustments are necessary.

Describe the process and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided. The description shall identify the types of information to be obtained, the methods and frequency of data collection, and ways in which the information will be used in implementing and managing the project. Grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information. Technical assistance in the design and implementation of customer satisfaction data collection and analysis may be provided by DOL.

(d) Impact of Coordination and Innovation. Describe the process for assessing and reporting on the impact of coordination and innovation in the project with respect to the purpose and goals of the demonstration program and the specific purpose and goals of the project.

(4) Grievance Procedure. Describe the grievance procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with the requirements at Section 144 of JTPA and 20 CFR 631.64(b) and (c).

(5) Previous Project Management Experience. Provide an objective demonstration of the grant applicant's ability to manage the project, ensure the integrity of the grant funds, and deliver the proposed performance. Indicate the grant applicant's past experience in the management of grant-funded projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

Part IV. Evaluation Criteria

Selection of grantees for awards will be made after careful evaluation of grant applications by a panel selected for that purpose by DOL. Panel results will be advisory in nature and not binding on the ETA Grant Officer. Panelists shall evaluate proposals for acceptability based upon overall responsiveness in accordance with the factors below.

A. Target Population (10 points)

The description of the characteristics of the target group to be served is clear and meaningful, and sufficiently detailed to determine the potential participants' service need. Documentation is provided showing that a significant number of eligible dislocated workers who possess these characteristics are available for participation within the project area. Sufficient information is provided to explain how the number of dislocated workers to be enrolled in the project was determined. The recruitment plan supports the number of planned enrollments. The target population is appropriate for the specific purpose of the proposed project. The project identifies underrepresented groups to be trained in the targeted occupation(s).

B. Service Plan and Cost (30 points)

The scope of services to be provided is consistent with the demonstration program and project purposes and goals. The scope of services to be provided is adequate to meet the needs of the target population given:

(1) Their characteristics and circumstances;

(2) The jobs in which they are to be placed relative to targeted wage at placement goals;

(3) The match between the documented skill shortage and the training planned;

(4) The documentation provided specifying that training meets or is developed based on industry driven skill standards or certifications; and

(5) The length of program participation planned prior to placement.

Documentation and reliability of job availability is based upon recognized, reliable and timely sources of information.

Proposed costs are reasonable in relation to the characteristics and circumstances of the target group, the services to be provided, planned outcomes, the management plan, and coordination/collaboration with other entities, including One-Stop/Career Center organizations. The impact of innovation on costs is explained clearly in the proposal and is reasonable.

Identification is provided of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project. The application must include information on any non-JTPA resources committed to this project, including employer funds, grants, and other forms of assistance, public and private. Value and level of external resources being contributed, including employer contributions, to achieve program goals will be taken into consideration in the rating process.

C. Management (20 points)

The applicant (as a part of a collaborative approach) has experience working with technology training. The management structure and management plan for the proposed project will ensure the integrity of the funds requested. The project work plan demonstrates the applicant's ability to effectively track project progress with respect to planned performance and expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated. In addition, review by appropriate labor organizations, where applicable, is documented.

The proposal includes a method of assessing customer feedback for both participants and employers involved, and establishes a mechanism to take into account the results of such feedback as part of a continuous system of management and operation of the project.

D. Collaboration (15 points)

The proposal includes evidence of direct participation by JTPA SubState Grantees and One-Stop/Career Center entities (where present) in the planning and management of this grant. Evidence of participation of employers whose positions are targeted under the grant is present. Evidence of coordination with other programs and entities for project design or provision of services may also be provided. Evidence is presented that ensures cooperation of coordinating entities, as applicable, for the life of the proposed project. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose and goals of the proposed project.

E. Innovation (20 points)

The proposal demonstrates innovation in the concept(s) to be tested, the project's design, and/or the services to be provided. "Innovation" refers to the degree to which such concept(s), design and/or services are not currently found in dislocated worker programs. The project includes a reasonable method of assessing and reporting on the impact of such innovation, relative to the demonstration program and project purposes and goals.

F. Sustainability (5 points)

The proposal provides evidence that, if successful, activities supported by the demonstration grant will be continued after the expiration date of the grant, using JTPA Title III formula-allotted funds or other public or private resources.

Grant applications will be evaluated for the reasonableness of proposed costs, considering the proposed target group, services, outcomes, management plan, and coordination with other entities.

Applicants are advised that discussions may be necessary in order to clarify any inconsistency or ambiguity in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). The applicant's signature on the Application for Federal Assistance (Standard Form) SF–424 constitutes a binding offer.

Part V. Monitoring, Reporting and Evaluation

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding participants who are served, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to their additional reviews at the discretion of the Department.

B. Reporting

DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and data collection methods and processes. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically.

Applicants selected as grantees will be required to provide the following reports:

1. Monthly and Quarterly Progress Reports.
2. Standard Form 269, Financial Status Report Form, on a quarterly basis.
3. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department.

C. Evaluation

DOL will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s) under the direction of the Department.

Signed at Washington, DC, this 13th day of March 13, 1998.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

1. Appendix A—Application for Federal Assistance (Standard Form 424).
2. Appendix B—Information.
3. Appendix C—Application Checklist.

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION			
Legal Name:		Organizational Unit:	
Address (give city, county, State and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐		7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipa J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____	
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____		9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE:		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):			
13. PROPOSED PROJECT: Start Date / Ending Date		14. CONGRESSIONAL DISTRICTS OF: a. Applicant / b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
a. Federal	$ .00		
b. Applicant	$ .00		
c. State	$ .00		
d. Local	$ .00		
e. Other	$ .00		
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No	
g. TOTAL	$ .00		
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.			
a. Typed Name of Authorized Representative		b. Title	c. Telephone number
d. Signature of Authorized Representative			e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C
Application Checklist

Please complete and submit this checklist with your application. It should be used as a quick reference of key provisions of the Solicitation and whether or not these provisions have been included, complied with or addressed. This document is not intended to be comprehensive or address every aspect of the solicitation.

Organization Applying_____.

Contact Person_____.

Phone Number_____.

Date submitted_____.

Application Process

___Application is 20 pages or less.
___Attachments limited to 10 or fewer.
___An original and three copies submitted.
___SF424 (Appendix A) included.
___SF424a (Appendix B) included.
___Project Line-Item Budget Estimates (Appendix C) included.
___Checklist (Attachment D) included.
___Timeline included.
___Executive Summary of two pages or less included.

Financial and Technical Provisions

___Target Population identified, with supportive documentation.
___Underrepresented subgroup identified and services addressed.
___Number and type of targeted jobs, applicable skill sets and certifications/standards identified.
___Sources and credibility of labor market/job data cited.
___Approach to identifying and recruiting eligible participants included.
___Eligibility determination approach discussed.
___Process in selecting eligible participants discussed.
___Sequence of services and activities to be provided discussed.
___Justification and qualifications for each training provider (including instructors) discussed.
___Cost/Price analysis for use of specified training included.
___Relocation Assistance, if used, addressed.
___Flowchart of participant services included.
___Applicants' prior experience with dislocated workers addressed.

[FR Doc.
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___All project outcomes and measures of success specified in Part III D addressed.
___Role and involvement in the project of employers experiencing skill shortages discussed and documented.

___Role of the local JTPA Substate Grantee for dislocated worker programs and One-Stop/Career Center system discussed and documented.
___Method of assessing and reporting continuation and impact of coordination included.
___Specific skill standards and certification for targeted occupations identified and discussed.
___Labor organization consultation, where applicable, discussed and documented.
___Coordination with other entities discussed.
___Innovation and impact of the project discussed.
___Management structure and staffing plan addressed and method of continuous oversight described.
___Organizational chart and relationships included.
___Mechanism to ensure financial accountability discussed.
___Basis for applicant*s administrative authority addressed.
___Applicant's Method/System to collect, track, manage, report, and utilize data on the project's progress and performance addressed.
___Ability to collect and submit SPIR data indicated.
___Benchmarks to indicate planned implementation schedule included.
___Method to obtain feedback from participants and employers discussed.
___Grievance procedure addressed.
___Past experience in managing grant funded projects discussed.
___Project's sustainability addressed.

[FR Doc. 98–7000 Filed 3–17–98; 8:45 am]
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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–040)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas H. Jones, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109; telephone (818) 354–5179.

NPO–19522–1–CU: Optical Circuit Switched Protocol.

Dated: March 9, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–6920 Filed 3–17–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–039]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee.

DATES: Tuesday, May 12, 1998, 8 a.m. to 5:30 p.m. and Wednesday, May 13, 1998, 8 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1209, Room 180, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Victor Lebacqz, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–5792.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Capacity Program Update
—AATT Program Update
—Subelement 6 Technical Review
—National ATM Plan Review
—Related FAA CNA/ATM Research

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: March 11, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–6919 Filed 3–17–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–041)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that FlowGenix Corporation of Webster, Texas, has applied for an exclusive patent license to practice the invention described and claimed in NASA Case No. MSC–22419–2, entitle "Porous Article With Surface Functionality and Method for Preparing Same," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATES: Responses to this notice must be received by May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696, telephone (281) 483–1003.

Dated: March 6, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–6921 Filed 3–17–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Literary Journal Institute

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a two year Cooperative Agreement to provide literary magazines with training and technical assistance to help assist in areas designed to provide continual earned revenue streams such as the development of effective renewal strategies, distribution channels, compensated advertising, and use of the internet; provide consultation designed to help magazines generate new strategies for increasing and diversifying contributions and plan for growth; and develop a network of mentoring relationships between journals to disseminate organizational expertise and experience throughout the field. The project will include managing seminars throughout the country for literary magazine staff, providing in-person consultation to facilitate strategic organizational improvements, and coordinating mentoring. Those interested in receiving the Solicitation package should reference Program Solicitation PS 98–03 in their written request. Requests must be accompanied by two self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 98–03 is scheduled for release approximately April 6, 1998 with proposals due May 6, 1998.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 98–7003 Filed 3–17–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

In the Matter of the Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company (Perry Nuclear Power Plant, Unit 1); Order Approving Application Regarding Merger Agreement Between DQE, Inc., and Allegheny Power System, Inc.

I

The Cleveland Electric Illuminating Company (CEI), Centerior Service Company (CSC), Duquesne Light Company (DLC), Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Toledo Edison Company are the licensees of Perry Nuclear Power Plant, Unit 1 (PNPP). CEI and CSC act as agents for the other licensees and have exclusive responsibility for and control over the physical construction, operation, and maintenance of PNPP as reflected in Facility Operating License No. NPF–58. The Nuclear Regulatory Commission (NRC) issued License No. NPF–58 on March 18, 1986, pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50). The facility is located on the shores of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

II

Under cover of a letter dated August 1, 1997, DLC submitted an application for consent under 10 CFR 50.80 regarding a proposed merger of DQE, Inc. (the parent holding company of DLC), and Allegheny Power System, Inc. which would result in DQE, Inc. becoming a wholly owned subsidiary of Allegheny Power System, Inc. Allegheny Power System, Inc. would change its name to Allegheny Energy, Inc. (Allegheny Energy). CEI, CSC, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Toledo Edison Company are not involved in the merger. Supplemental information was submitted by letter dated October 30, 1997.

Under the proposed merger, DLC will become an indirect subsidiary of Allegheny Energy by reason of DQE, Inc. becoming a subsidiary of Allegheny Energy. DLC and the other current licensees will continue to hold the license, and no direct transfer of the license will result from the merger. On October 21, 1997, a Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** (62 FR 54655). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 21, 1997 (62 FR 54657).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application and letters of August 1, 1997, and October 30, 1997, the NRC staff has determined that the proposed merger will not affect the qualifications of DLC as holder of Facility Operating License No. NPF–58, and that the transfer of control of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated March 11, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the Commission approves the application regarding the merger agreement between DQE, Inc. and Allegheny Power System, Inc. subject to the following:

(1) DLC shall provide the Director of the Office of Nuclear Reactor Regulation with a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from DLC to its first-or second-tier parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent of DLC's consolidated net utility plant, as recorded on DLC's books of account; and (2) should the merger not be completed by December 31, 1998, this Order shall become null and void, unless upon application and for good cause shown, this date is extended.

This Order is effective upon issuance.

IV

By April 17, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Copies should also be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John O'Neill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see DLC's application dated August 1, 1997, and supplemental letter dated October 30, 1997, and the safety evaluation dated March 11, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 11th day of March 1998.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–6973 Filed 3–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2); Exemption

I

Pacific Gas and Electric Company, et al. (the licensee) is the holder of Facility Operating License Nos. DPR–80 and DPR–82, which authorize operation of the Diablo Canyon Nuclear Power Plant (DCNPP), Unit Nos. 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules,

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regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in San Luis Obispo County, California.

II

Section 50.71 of Title 10 of the Code of Federal Regulations (10 CFR), "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months." The two DCNPP units share a common Final Safety Analysis Report (FSAR); therefore, this rule requires the licensee to update the same document within 6 months after a refueling outage for either unit.

III

Section 50.12(a) of 10 CFR, "Specific exemption," states that * * *

The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of the 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *." The licensee's proposed schedule for FSAR updates will ensure that the DCNPP FSARs will be maintained current within 24 months of the last revision and the interval for submission of the 10 CFR 50.59 design change report will not exceed 24 months. The proposed schedule fits within the 24-month duration specified by 10 CFR 50.71(e)(4). Literal application of 10 CFR 50.71(e)(4) would require the licensee to update the same document within 6 months after a refueling outage for either unit, a more burdensome requirement than intended. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii).

IV

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Pacific Gas and Electric Company an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the DCNPP FSAR within 6 months of each outage. The licensee will be required to submit updates to the DCNPP FSAR within six months after each Unit 2 refueling outage. With the current length of fuel cycles, FSAR updates would be submitted every 24 months, but not to exceed 24 months from the last submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the environment (63 FR 10654).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–6974 Filed 3–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of March 16, 23, 30, and April 6, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 16

Thursday, March 19

2:30 p.m. Affirmative Session (PUBLIC MEETING)

A. Petition for Commission Review of Director's Decision on Paducah Seismic Upgrades Certificate Amendment Request

Week of March 23—Tentative

Monday, March 23

2:30 p.m. Briefing on MOX Fuel Fabrication Facility Licensing (PUBLIC MEETING) (Contact: Ted Sherr, 301–415–7218)

Thursday, March 26

11:00 a.m. Briefing by Executive Branch (Closed—Ex. 1)

2:00 p.m. Briefing on Recent Research Program Results (PUBLIC MEETING)

3:30 p.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of March 30—Tentative

Monday, March 30

2:00 p.m. Briefing by Nuclear Waste Technical Review Board (NWTRB) (PUBLIC MEETING)

Tuesday, March 31

10:00 a.m. Briefing on Fire Protection (PUBLIC MEETING) (Contact: Tad Marsh, 301–415–2873)

3:00 p.m. Briefing by Organization of Agreement States an Status of IMPEP Program (PUBLIC MEETING) (Contact: Richard Bangart, 301–415–3340)

Thursday, April 2

1:00 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (PUBLIC MEETING) (Contact: John Larkins, 301–415–7360

2:30 p.m. Briefing on Improvements to the Senior Management Meeting Process (PUBLIC MEETING) (Contact: Bill Borchard, 301–415–1257)

Friday, April 3

10:30 a.m. Affirmation Session (PUBLIC MEETING)

Week of April 6

There are no meetings the week of March 6.

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 13, 1998.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–7064 Filed 3–13–98; 4:19 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1998.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of March 1, 1998, of 24 rescission proposals and eight deferrals contained in two special messages for FY 1998. These messages were transmitted to Congress on February 3 and February 20, 1998.

Rescissions (Attachments A and C)

As of March 1, 1998, 24 rescission proposals totaling $20 million had been transmitted to the Congress. Attachment C shows the status of the FY 1998 rescission proposals.

Deferrals (Attachments B and D)

As of March 1, 1998, $3,606 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1998.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 7004, Wednesday, February 11, 1998

63 FR 10076, Friday, February 27, 1998

Franklin D. Raines,

Director.

Attachments

ATTACHMENT A.—STATUS OF FY 1998 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	20.1
Rejected by the Congress	.....
Amounts rescinded	.....
Currently before the Congress	20.1

ATTACHMENT B.—STATUS OF FY 1998 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	4,833.0
Routine Executive releases through March 1, 1998 (OMB/Agency releases of $1,227.5 million.)	1,227.5
Overturned by the Congress	.....
Currently before the Congress	3,605.5

ATTACHMENT C.—STATUS OF FY 1998 RESCISSION PROPOSALS—AS OF MARCH 1, 1998

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Department of Agriculture								
Agricultural Research Service:								
Agricultural Research Service.	R98–1	223	.....	2–20–98	.....	.....	.....	.....
Animal and Plant Health Inspection Service:								
Salaries and expenses ..	R98–2	350	.....	2–20–98	.....	.....	.....	.....
Food Safety and Inspection Service:								
Salaries and expenses ..	R98–3	502	.....	2–20–98	.....	.....	.....	.....
Grain Inspection, Packers and Stockyards Administration:								
Salaries and expenses ..	R98–4	38	.....	2–20–98	.....	.....	.....	.....
Agricultural Marketing Service:								
Marketing services	R98–5	25	.....	2–20–98	.....	.....	.....	.....
Farm Service Agency:								
Salaries and expenses ..	R98–6	1,080	.....	2–20–98	.....	.....	.....	.....

ATTACHMENT C.—STATUS OF FY 1998 RESCISSION PROPOSALS—AS OF MARCH 1, 1998—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Natural Resources Conservation Service:								
Conservation operations	R98–7	378		2–20–98				
Rural Housing Service:								
Salaries and expenses	R98–8	846		2–20–98				
Food and Nutrition Service:								
Child nutrition programs	R98–9	114		2–20–98				
Forest Service:								
National forest systems	R98–10	1,094		2–20–98				
Reconstruction and construction.	R98–11	30		2–20–98				
Forest and rangeland research.	R98–12	148		2–20–98				
State and private forestry	R98–13	59		2–20–98				
Wildland fire management.	R98–14	148		2–20–98				
Department of the Interior								
Bureau of Land Management:								
Management of lands and resources.	R98–15	1,188		2–20–98				
Oregon and California grant lands.	R98–16	2,500		2–20–98				
Bureau of Reclamation:								
Water and related resources.	R98–17	532		2–20–98				
Bureau of Mines:								
Mines and minerals	R98–18	1,605		2–20–98				
United States Fish and Wildlife Service:								
Construction	R98–19	1,188		2–20–98				
National Park Service:								
Construction	R98–20	1,638		2–20–98				
Bureau of Indian Affairs:								
Construction	R98–21	737		2–20–98				
Department of Transportation								
Office of the Secretary:								
Payments to air carriers	R98–22	2,499		2–20–98				
Payments to air carriers (Airport and airway trust fund).	R98–23	1,000		2–20–98				
Maritime Administration:								
Maritime guaranteed loan (Title XI) program account.	R98–24	2,138		2–20–98				
Total, rescissions		20,060	0					

ATTACHMENT D.—STATUS OF FY 1998 DEFERRALS—AS OF MARCH 1, 1998

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments	Amount deferred as of 3–1–98
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Funds Appropriated to the President									
International Security Assistance:									

ATTACHMENT D.—STATUS OF FY 1998 DEFERRALS—AS OF MARCH 1, 1998—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments	Amount deferred as of 3–1–98
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Economic support fund and International Fund for Ireland.	D98–1	2,330,098	.....	2–3–98	1,164,145	.....	.....	.....	1,165,953
International military education and training.	D98–2	43,300	.....	2–3–98	41,900	.....	.....	.....	1,400
Foreign military financing program.	D98–3	1,483,903	.....	2–3–98	1,200	.....	.....	.....	1,482,703
Foreign military financing loan program.	D98–4	60,000	.....	2–3–98	.....	.....	.....	.....	60,000
Foreign military financing direct loan financing account.	D98–5	657,000	.....	2–3–98	.....	.....	.....	.....	657,000
Agency for International Development:									
International disaster assistance, Executive.	D98–6	135,697	.....	2–3–98	20,250	.....	.....	.....	115,447
Department of State									
Other:									
United States emergency refugee and migration assistance fund.	D98–7	115,640	.....	2–3–98	.....	.....	.....	.....	115,640
Social Security Administration									
Limitation on administrative expenses.	D98–8	7,369	.....	2–3–98	.....	.....	.....	.....	7,369

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ATTACHMENT D.—STATUS OF FY 1998 DEFERRALS—AS OF MARCH 1, 1998—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (–)		Congressional action	Cumulative adjustments	Amount deferred as of 3–1–98
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Total, Deferrals.		4,833,007	0	.....	1,227,495	.....	.....	0	3,605,512

[FR Doc. 98–6944 Filed 3–17–98; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request Extension of Standard Form 113–G

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22,1995), this notice announces that OPM intends to submit a request to the Office of Management and Budget (OMB) for renewal of authority to collect data for the Monthly Report of Full-time Equivalent/Work-Year Civilian Employment (Standard Form 113–G). The data collected are used by OMB and OPM to: (1) monitor agencies' progress in increasing part-time employment; (2) aid OMB and the President in making decisions on agencies' budget appropriations for the next fiscal year; and (3) monitor agency work year usage under total approved FTE levels during the current fiscal year. One hundred thirty-one Federal agencies provide monthly reports to OPM. It takes 2 hours to complete one report, for an annual total information collection burden of 3,144 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of the clearance package, call James M. Farron, Reports and Forms Manager, on (202) 418–3208, or by e-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before May 18, 1998.

ADDRESSES: Send or deliver comments to: May Eng, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7439, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606–2684.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–6937 Filed 3–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection; Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. Court Orders Affecting Retirement Benefits, requires former spouses of Federal employees to provide specific information needed for OPM to make court-ordered benefit payments. This information is needed to identify affected employees and to certify that the court-order remains in effect.

Approximately 12,000 former spouses apply for benefits based on court orders annually. We estimate it takes approximately 6 minutes to apply. The annual burden is 1,200 hours.

Comments are particularly invited on:

—whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before May 18, 1998.

ADDRESSES: Send or deliver comments to—Mary Ellen Wilson, Acting Chief, Retirement Policy Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 4351, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–6939 Filed 3–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Optional Form 306

AGENCY: Office of Personnel Management.

ACTION: Proposed collection; Comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and 5 CFR 1320.5 (a) (i) (iv), this notice announces that OPM has submitted to the Office of Management and Budget (OMB) a request for clearance of an information collection.

The Declaration for Federal Employment, Optional Form 306, is used by OPM and other Federal agencies to collect information to determine the individual's acceptability for Federal employment and enrollment status in the Government's Life Insurance program.

It is estimated that 435,000 individuals will respond annually for a total burden of 118,500 hours. To obtain copies of this proposal contact James M. Farron at 202–418–3208 or by E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before April 17, 1998.

ADDRESSES: Send or deliver comments to—

Richard A. Ferris, Office of Personnel Management, Investigations Service, 1900 E. Street N. W., Room 5416, Washington, D. C. 20415,
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, N. W., Room 10235, Washington, D. C. 20503.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–6938 Filed 3–17–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Electro-Optical Systems Corp.; Order of Suspension of Trading

March 13, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Electro-Optical Systems Corporation ("EOSC") because of questions regarding the accuracy of statements, and material omissions, concerning, among other things, (1) the viability of EOSC's product, a fingerprint device, (2) customer interest in purchasing EOSC's product, and (3) the trading and true value of the common stock of EOSC.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company is suspended for the period from 1:30 p.m. EST, March 13, 1998 through 11:59 p.m. EST, on March 26, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7066 Filed 3–13–98; 4:53]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

International Heritage Inc.; Order of Suspension of Trading

March 13, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International Heritage, Inc. ("IHIN"), a Raleigh, North Carolina company which holds itself out to be a direct sales organization selling various products, including lines of expensive jewelry, collectibles, luggage, golf equipment and long distance service, because of questions regarding the accuracy of statements concerning, among other things, the return investors could expect to receive on their investment, the regulatory background of the company and the background of its president.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 1:00 P.M. EST, March 13, 1998 through 11:59 P.M. EST, on March 26, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7067 Filed 3–13–98; 4:53 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39739; File No. SR–OCC–97–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Early Warning Notices

March 10, 1998.

On May 15, 1997, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–97–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on August 25, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change revises OCC's Rule 303 to expand the circumstances under which a clearing member is to provide OCC with early warning notices. Currently, Rule 303 requires a clearing member to provide OCC with an early warning notice if the clearing member experiences certain enumerated financial difficulties or if the clearing member has provided any notice required pursuant to Commission Rule 15c3–1(e)(1)(iv).[3] Rule 303 is expanded to explicitly provide that a clearing member must immediately notify an officer of OCC of any notice that such clearing member gives, is required to give, or receives from any regulatory organization regarding any financial difficulty affecting the clearing member or of any failure by the clearing member to be in compliance with the financial responsibility rules or capital requirements of any regulatory organization. As proposed, Rule 303 requires the clearing member to promptly confirm such notice in writing. In addition, the language of paragraphs (b) and (c) of Rule 303 [previously paragraphs (a) and (b)] is revised to conform to the requirement in new paragraph 303(a) that an officer of OCC be immediately notified by telephone of any of the events described in those paragraphs.

The term "regulatory organization" is defined in proposed Interpretations and Policies .01 to mean (i) the Commission and any other federal or state regulatory agency having jurisdiction over the clearing member including the Commodity Futures Trading Commission ("CFTC") in the case of a clearing member which is subject to the jurisdiction of the CFTC; (ii) any self-regulatory organization as defined in Section 3(a) of the Act [4] of which the clearing member is a member or participant; (iii) any clearing

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38948 (August 19, 1997), 62 FR 44998.

[3] 17 CFR 240.15c3–1(e)(1)(iv). Rule 15c3–1(e) requires broker-dealers to provide written notice to the Commission in connection with the withdrawal of certain levels of equity capital.

[4] 15 U.S.C. 78c(a).

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organization as defined in Regulation Section 1.3(d) under the Commodity Exchange Act,[5] board of trade, contract market, and registered futures association of which the clearing member is a member or participant; and (iv) in the case of a non-U.S. clearing member, any non-U.S. regulatory agency or instrumentality or independent organization or exchange having jurisdiction over the non-U.S.clearing member or of which the non-U.S. clearing member is a member or participant.

These amendments will enhance the effectiveness of OCC's financial surveillance program by providing OCC with material information, some of which it currently does not receive, concerning a clearing member's financial condition. For example, many of OCC's clearing members are also registered as futures commission merchants ("FCMs") under the Commodity Exchange Act and as such are subject to the financial reporting requirements of the CFTC and the early warning notice requirements of commodity self-regulatory organizations. Because of differences in the early warning notice criteria used by the commodity regulatory organizations and those used by the securities regulatory organizations, events triggering early warning notice requirements for an FCM (*e.g.*, net capital below a specified percentage of segregated funds) would not necessarily create an early warning notice requirement for a registered broker-dealer. Consequently, under OCC's current rules, a situation could occur that would require a clearing member to give early warning notice to its commodity regulatory authority but would not require the clearing member to give notice to OCC. Accordingly, requiring a clearing member to provide OCC with early warning notices which it is required to provide to any other regulatory organization should assist OCC in assessing the ongoing creditworthiness of its clearing members.

There is potential overlap between the requirements of new paragraph (a) and existing paragraph (c) [previously paragraph (b)] whereby a non-U.S. clearing member might be required to notify OCC of a notice from a non-U.S. regulatory agency pursuant to both paragraphs.[6] However, the overlap should not impose an inappropriate burden on non-U.S. clearing members because the requirement to notify OCC of an event can be satisfied by the same notice to OCC even if the requirement arises under both paragraphs.

II. Discussions

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes the rule change is consistent with OCC's obligation to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible because it increases the effectiveness of OCC's financial surveillance program. Revisions to Rule 303 concerning early warning notices enables OCC to receive material information concerning a clearing member's financial condition that it does not receive currently. The early warning notices should assist OCC in assessing the ongoing creditworthiness of its clearing members and thus should help OCC to safeguard securities and funds in OCC's custody or control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6977 Filed 3–17–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 1.3(d).

[6] Paragraph (c) of Rule 303 currently provides that an exempt non-U.S. clearing member must notify OCC promptly of any violation on its part of the rules or regulations of its non-U.S. regulatory agency or any notice received from such agency that alleges a violation of such rules or regulations, informs the non-U.S. clearing member that it may violate such rules or regulations, or informs the non-U.S. clearing member that it has triggered any provision relating to early warning notices contained in such rules or regulations.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39744; File No. SR–PHLX–98–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Amend its Examination Fees to Pass Through Costs

March 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 17, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4,[2] proposes to amend its examination fee to include a provision which will allow the Phlx to pass through to a member or participant organization the costs incurred from contracting with another SRO to conduct an examination on behalf of the Phlx. The text of the proposed rule change is available at the Office of the Secretary, the Phlx or at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 17(b) of the Act,[3] the Exchange administers its examination program, which requires broker-dealers designated to an SRO to be examined for compliance with applicable financial responsibility rules on a periodic basis. The Exchange conducts reviews of organizations for which the Exchange is the Designated Examining Authority. The reviews focus on an organization's compliance with applicable financial and recordkeeping requirements including net capital, books and records maintenance, Regulation T and financial reporting requirements. Effective January 1, 1995, the Phlx adopted a $1,000 per month examination fee applicable to member and participant organizations for which the Phlx acts as a Designated Examining Authority.[4] The fee was adopted due to the substantial expense and time involved in conducting a proper examination of the member firms.[5]

In the past, the Exchange has entered into agreements with other SROs to conduct examinations of firms that are solely members of the Phlx.[6] The Exchange may contract with another SRO to perform an examination for various reasons, such as the location of the firm or where the type of business in which the firm is engaged may be more suited to another SRO's area of expertise. Generally, the Exchange only enters into such agreements where the firm designated to the Phlx has a retail customer base. Certain SROs have the resources and the expertise to examine firms that carry out customer accounts. Therefore, those SROs have a higher degree of experience in examination requirements pertinent to carrying customer accounts (e.g., sales practices, reserve and possession/control requirements).

However, these arrangements typically require that the Phlx pay 2.5 times the median salary for examiners and supervisors of the contracted SRO, resulting in a significant cost to the Exchange. Therefore, in the event that the Phlx determines to refer an examination to another SRO, the proposal would allow the Exchange to collect its costs directly from the member or participant organization. Members who are required to pay the pass through costs of an examination would not be required to pay the $1,000 examination fee charged to those members for which the Exchange conducts the examination.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4)[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (e)(2) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx–98–11 and should be submitted by April 8, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6976 Filed 3–17–98; 8:45 am]

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[3] 15 U.S.C. § 78q(b).

[4] *See* Securities Exchange Act Release No. 35091 (December 12, 1994), 59 FR 65558 (December 20, 1994) (SR–PHLX–94–66).

[5] There are a number of exemptions to the fee including, inactive organizations, organizations that operate from the trading floors, organizations that incur Phlx or Stock Clearing Corporation transaction fees on a monthly basis and organizations affiliated with an exempt active organization. Any organization that can demonstrate that it has derived at least 25% of its revenues in a calendar quarter from floor trading activity will be deemed to be "operating from the trading floors" and therefore, is exempt from the $1,000 per month examination fee. *See* Securities Exchange Act Release No. 38416 (March 18, 1997), 62 FR 14176 (March 25, 1997) (SR–PHLX–97–10).

[6] These agreements are entered into pursuant to Rule 17d–2 under the Act. 17 CFR 240.17d–2.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(e)(2).

[11] 15 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–98–3553]

Marine Transportation System: Waterways, Ports, and Their Intermodal Connections

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings; request for comments.

SUMMARY: The Coast Guard and the Maritime Administration, together with several other federal agencies, are holding seven two-day regional listening sessions to receive information concerning the current state and future needs of the U.S. marine transportation system—the waterways, ports, and their intermodal connections. This notice announces the dates and locations of the remaining six listening sessions. These listening sessions are a first step in developing a customer-based strategy to work together to ensure waterways,

ports, and their intermodal connections meet user and public expectations for the 21st century. The information provided at the regional listening sessions will be presented at a national conference in the fall of 1998.

DATES: The open forum public meetings will be held on the following dates:

Oakland, CA, April 14, 1998 from 9 a.m. to 3 p.m.
New York, NY, April 21, 1998 from 9 a.m. to 3 p.m.
Cleveland, OH, April 29, 1998 from 9 a.m. to 3 p.m.
St. Louis, MO, May 5, 1998 from 9 a.m. to 3 p.m.
Charleston, SC, May 13, 1998 from 9 a.m. to 3 p.m.
Portland, OR, May 19, 1998 from 9 a.m. to 3 p.m.

Comments must be received by the Docket Management Facility no later than June 30, 1998.

ADDRESSES: The open forum public meetings will be held at the following locations:

Oakland, CA—Port of Oakland, 2nd Floor Board Room, 320 Port of New Orleans Place, LA 70130.
New York, NY—Seamen's Church Institute, 241 Water St., New York, NY 10038.
Cleveland, OH—Windows on the River, Powerhouse-Nautica, 2000 Sycamore St., Cleveland, OH 44113.
St. Louis, MO—Robert A. Young Federal Building, 2nd Floor Auditorium, 1222 Spruce Street, St. Louis, MO 63103.
Charleston, SC—South Carolina State Ports Authority, Passenger Terminal, 186 Concord St., Charleston, SC 29413.
Portland, OR—Eastside Federal Complex Auditorium, 911 NE 11th Ave., Portland, OR 97232.

You may mail comments to the Docket Management Facility, (USCG–1998–3553), U.S. Department of Transportation (DOT), 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except holidays.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also electronically access the public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelley, Coast Guard Dockets Team Leader or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329; for information concerning the notice of meeting contact Joyce Short, U.S. Coast Guard (G-M–2), 2100 Second St., SW, Washington, DC 20593–0001, telephone 202–267–6164.

SUPPLEMENTARY INFORMATION:

Other Regional Listening Sessions

The first regional listening session was announced in the **Federal Register** (63 FR 10257). This notice announces the remaining six regional listening sessions.

Request for Comments

We encourage interested persons to participate in this information-gathering initiative by submitting written data, views, or other relevant documents. Persons submitting comments should include their names and addresses, identify this notice (USCG–1998–3553), and the reasons for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ x 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed post card or envelope.

Comments received, whether submitted in writing to the docket, or presented during the regional listening sessions, will be considered in preparing the agenda of a national conference in the fall 1998.

Background

The marine transportation system includes waterways, ports, and their intermodal connections with highways, railways, and pipelines. The marine transportation system links the United States to overseas markets and is important to national security interests. Excluding Mexico and Canada, over 95% of U.S. foreign trade by tonnage is shipped by sea, and 14% of U.S. inter-city freight is transported by water. Forecasts show that U.S. foreign ocean borne trade is expected to more than double by the year 2020; and commuter ferries, recreational boating and other recreational uses of the waterway are expected to increase, placing even greater demands on the marine transportation system.

Many federal agencies, state and local governments, port authorities, and the private sector share responsibility for the marine transportation system. The economic, safety, and environmental implications of aging infrastructure, inadequate channels, and congested intermodal connections will become more critical as marine traffic volume increases.

To meet these challenges, the Department of Transportation is pursuing the development of a customer-based strategy, in partnership with others responsible for waterways, ports, and their intermodal connections. The strategy will be aligned with the principles of the National Performance Review, will provide better delivery of Federal services, and provide a means to improve the nation's waterways, ports, and their intermodal connections to meet user needs and public expectations for the 21st century.

The regional listening sessions will build upon information from other Department of Transportation-led outreach activities that identified issues of significance to the marine transportation system. For example, in 1997 workshops addressed the impact of larger container ships; in 1994 outreach sessions led to an action plan to improve the dredging process in the United States; and in 1993 port visits identified land-side intermodal access impediments.

The Secretary of the Department of Transportation will host a national conference in the fall of 1998. That conference will address key issues raised by the regional listening sessions and written comments. The purpose of the national conference will be to address these issues, develop solutions, and explore potential strategies to implement these solutions. The conference will also develop a vision for an improved and more cooperative approach to the delivery of Federal services.

Objective and Issues

The objective of these regional listening sessions and the request for comments is to receive information from the general public and user perspective to identify concerns about the current state and future needs of our waterways, ports, and their intermodal connections. We need to identify the most critical issues that should be addressed to meet the challenges likely to be faced by our marine transportation system. We particularly need to identify those areas where the Federal government should improve existing services or provide future assistance in addressing these issues.

We specifically are interested in information on the following questions for each component of the marine

transportation system: waterways, the ports, and their intermodal connections:

- Currently, what elements work best in your region and why?
- Currently, what are the most significant problems in your region?
- What are the obstacles to resolving these problems?
- What is your vision of a marine transportation system that will accommodate the growing and competing demands of the future?
- What changes, additions, and types of assistance are needed to achieve your vision?

Format of Regional Listening Sessions

The first day of each regional listening session will be an open forum to receive views and opinions from the public concerning the current state and future needs of our waterways, ports and their intermodal connections. Persons wishing to make oral presentations should notify the person listed under FOR FURTHER INFORMATION CONTACT no later than the day before the meeting. Written material may be submitted before, during, or after the meeting. Speakers are encouraged to provide a written copy of their comments since time limits may be needed to accommodate all speakers, and summary notes will be made of oral comments.

The second day of each regional listening session will be a structured focus group format. A representative cross section from the region's ports, terminals, stevedores, pilots, vessel operators, railroads, truckers, environmental community, and others will be selected to provide expert views on the current state and future needs of our marine transportation system.

A summary of each regional listening will be placed in the public docket and will be available for public review and comment.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the person under FOR FURTHER INFORMATION CONTACT as soon as possible.

Dated: March 13, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–7034 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–14–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98–02–C–00–IAD) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Dulles International Airport, Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Dulles International airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Terry Page, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James A. Wilding, General Manager of the Metropolitan Washington Airports Authority, at the following address: Metropolitan Washington Airports Authority, 44 Canal Center Plaza, Alexandria, Virginia 22314.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Washington Airports Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office 101 West Broad Street, Suite 300 Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Dulles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 22, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Metropolitan Washington Airports Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 29, 1998.

The following is a brief overview of the application.

Application number: 98–02–C–00–IAD.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2005.

Proposed charge expiration date: May 1, 2008.

Total estimated PFC revenue: $81,748,000.

Brief description of proposed projects:

—Construct Regional Airline Midfield Concourse
—Construct Pedestrian Connector to North Flank Garage
—Construct Outbound Baggage System in the Main
—Interim Financing Cost

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 On Demand Air Taxis filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Washington Airports Authority.

Issued in Jamaica, New York on March 11, 1998.

Thomas Felix,

Planning and Programmming Branch, Airports Division, Eastern Region.

[FR Doc. 98–7029 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on PFC Application 98–04–C–00–SEA To Impose Only, Impose and Use, and Use Only, the Revenue From a Passenger Facility Charge (PFC) at Seattle-Tacoma International Airport; Submitted by the Port of Seattle, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

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ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose only, impose and use, and use only, the revenue from a PFC at Seattle-Tacoma International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Gina Marie Lindsey, Director, Aviation Division, at the following address; Port of Seattle, P.O. Box 68727, Seattle, WA 98168.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Seattle-Tacoma International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 98–04–C–00–SEA to impose only, impose and use, and use only, the revenue from a PFC at Seattle-Tacoma International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 11, 1998, the FAA determined that the application to impose only, impose and use, and use only, the revenue from a PFC submitted by the Port of Seattle, Seattle, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 9, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 8, 1998.

Proposed charge expiration date: January 1, 2023.

Total estimated net PFC revenue: 1,086,966,000.

Brief description of proposed projects: Use Only Projects: Regional ARFF Training Facility (AP4–1); Runway 16L–16R Safety Area Improvements (AP4–2); Passenger Conveyance System (AP4–3); Impose and Use Projects: Third Runway (AP4–4); Concourse "A" Expansion project, (AP4–5); Access Roadway Improvements Impose Only Projects: (AP4–6); Security System Upgrade (AP4–7); Noise Remedy Program (AP4–8); Airfield Pavement and Infrastructure Improvements (AP4–9); Terminal Infrastructure Upgrades (AP4–10).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Seattle-Tacoma International Airport.

Issued in Renton, Washington on March 11, 1998.

George K. Saito,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–7028 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3593]

Decision That Nonconforming 1996 Audi Avant Quattro Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1996 Audi Avant Quattro passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1996 Audi Avant Quattro passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the 1996 Audi A6 Quattro), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of March 18, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) petitioned NHTSA to decide whether 1996 Audi Avant Quattro passenger cars are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. NHTSA 97–3157 on December 1, 1997 (62 FR 63600) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Audi AG, the vehicle's manufacturer. In this comment,

Volkswagen disputed Champagne's claim that the 1996 Audi Avant Quattro complies with the Bumper Standard found in 49 CFR Part 581. Volkswagen asserted that the bumpers and their supporting structure on the 1996 Audi Avant Quattro do not conform to the standard. In order to achieve conformance, Volkswagen contended that the vehicle's frame rails must be modified, metallic impact absorbers must be added, and the bumper components must be changed.

Additionally, Volkswagen stated that the 1996 Audi A6 Quattro has been designated a high theft line vehicle under the Theft Prevention Standard at 49 CFR Part 541. Volkswagen contended that the 1996 Audi A6 Quattro received an exemption from the parts marking requirements of the standard on the basis that it is equipped with an anti-theft system which differs from the system found on the 1966 Audi Avant Quattro. As a consequence, Volkswagen asserted that the 1966 Audi Avant Quattro would have to be modified prior to importation so that it is equipped with the same anti-theft system as that found on the 1966 Audi A6 Quattro.

NHTSA accorded Champagne an opportunity to respond to Volkswagen's comment. In its response, Champagne stated that it compared the part numbers for the bumpers and associated structural components on the 1966 Audi Avant Quattro to those on the 1966 Audi A6 Quattro, and found them to be all identical with the exception of those for the impact absorbers. As a consequence, Champagne stated that it would replace any impact absorbers that do not have identical part numbers to those found on the 1966 Audi A6 Quattro. Champagne additionally asserted that it is not necessary to make any frame rail modifications, to perform structural welding, or to make any other component changes to conform the 1966 Audi Avant Quattro to the Bumper Standard. With respect to the Theft Prevention Standard issue raised by Volkswagen, Champagne stated that all 1996 Audi Avant Quattros will be modified prior to importation so that they conform to the standard in a manner that is identical or substantially similar to that of the 1966 Audi A6 Quattro.

NHTSA believes that Champagne's response adequately addresses the comments that Volkswagen has made regarding the petition. NHTSA further notes that those comments raise no issues regarding the capability of the vehicle to comply with the Federal motor vehicle safety standards. Accordingly, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–238 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1996 Audi Avant Quattro passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1996 Audi A6 Quattro passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 13, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–6994 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Program Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 17, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the application (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 12, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12044–N	RSPA–98–3612	Reagent Chemical & Research, Inc., Houston, TX.	49 CFR 179.3	To authorize the transportation in commerce of DOT 111A100W5 tank cars that exceed the authorized load capacity for use in transporting hydrochloric acid, Class 8. (mode 2)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12045–N	RSPA–98–3613	Jefferson Smurfit Corp., Fernandina Beach, FL.	49 CFR 174.67 (i) & (j) ...	To authorize tank cars loaded with chlorine to stand with unloading connections attached after unloading is completed and remain attached to transfer connection without the physical presence of an unloader. (mode 2)
12046–N	RSPA–98–3614	Univ. of Colorado Health Sciences Center, Denver, CO.	49 CFR 171 to 178	to authorize the transportation in commerce of various hazardous materials in small quantities inside lab packs without required markings and labelling as essentially non-regulated. (mode 1)

Note: In **Federal Register** Vol. 63, No. 35, Monday, February 13, 1998, Page 9043, Application No. 12038–N, SPA–98–3461 for Duracool Limited, the summary should have appeared as Regulations Affected: 49 CFR 173.304(a), 173.304(d)(3)(ii), 172.301 (a) & (c): To authorize the transportation in commerce of a Division 2.1 liquefied refrigerant gas, in DOT Specification 2Q containers, at a charging pressure in excess of the authorized maximum.

[FR Doc. 98–7025 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 2, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
7835–M	.....	Matheson Gas Products, East Rutherford, NJ (See Footnote 1)	7835
8096–M	.....	Scott High Pressure Technology, Plumsteadville, PA (See Footnote 2)	8096
11270–M	.....	The Specialty Chemicals Div. of B.F. Goodrich, Co., Cleveland, OH (See Footnote 3)	11270
11998–M	RSPA–97–3246	Union Tank Car Co., East Chicago, IN (See Footnote 4)	11998
12018–M	RSPA–98–3348	MVE, Inc., New Prague, MN (See Footnote 5)	12018
12041–M	RSPA–98–3480	General Electric Plastics, Pittsfield, MA (See Footnote 6)	12041

(1) To modify the exemption to provide for an additional pallet design for use in transporting compressed gas cylinders.
(2) To modify the exemption to provide for an alternative material to be used in manufacturing non-DOT specification steel cylinders for use in transporting Division 2.2 material.
(3) To modify the exemption to provide for unloading valves to remain open when rail cars are standing with unloading connections attached.
(4) To reissue the exemption originally issued on an emergency basis to authorize the transportation of DOT Specification 105J200W tank cars transporting various hazardous materials not meeting SP B74.
(5) To reissue the exemption originally issued on an emergency basis to authorize the bulk transportation of refrigerated liquids in cargo tanks when mounted on motor vehicles and provide for additional tanks.
(6) To reissue the exemption originally issued on an emergency basis to use an alternate method of testing of certain cylinders for transporting Division 2.3 material.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 13, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 98–7026 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–531 (Sub–No. 1X)]

Pioneer Valley Railroad Company, Inc.—Abandonment Exemption—in Hampshire County, MA

Pioneer Valley Railroad Company (PVRR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 4.6-mile line of railroad from milepost 9.4 near Easthampton to milepost 14.0 at Mount Tom, in Hampshire County, MA. The line traverses United States Postal Service Zip Code 01027.

PVRR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic formerly handled on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 17, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 30, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 7, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

PVRR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 23, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PVRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PVRR's filing of a notice of consummation by March 18, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: March 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–6852 Filed 3–17–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1000, effective March 20, 1998.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–23]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker license revocation.

Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.52 and 111.74 of the Customs Regulations, as amended (19 CFR 111.52 and 111.74), is canceling the following Customs broker licenses without prejudice.

Port	Individual	License No.
New York	Warner Forwarders, Inc	14042
New York	Columbia Shipping Inc	04416
Chicago	Columbia Shipping Inc	12462
Los Angeles	Columbia Shipping Inc	06300
New York	Laufer Shipping Co., Inc	02972
New York	Automated Cargo Corp	11494
Los Angeles	Sheung Yip Lee dba YSL Customs Broker	12365
Los Angeles	James G. Wiley	01892
Los Angeles	Charles Chow	06004
Los Angeles	Debra Marie Swanson	06474

Port	Individual	License No.
Los Angeles	First Brokerage Int'l Inc	09467
New York	Automated Cargo Corp	11494
New York	Cargo Plus Imports, Inc	13063
Chicago	CHR Green Int'l Co	13485

Dated: March 10, 1998.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 98–7002 Filed 3–17–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2438

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2438, Undistributed Capital Gains Tax Return.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Undistributed Capital Gains Tax Return.

OMB Number: 1545–0144.

Form Number: 2438.

Abstract: Form 2438 is used by regulated investment companies to compute capital gains tax on undistributed capital gains designated under Internal Revenue Code section 852(b)(3)(D). The IRS uses this information to determine the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 8 hr., 59 min.

Estimated Total Annual Burden Hours: 899.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6899 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1001

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1001, ownership, Exemption, or Reduced Rate Certificate.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Ownership, Exemption, or Reduced Rate Certificate.

OMB Number: 1545–0055.

Form Number: 1001.

Abstract: Form 1001 is used by owners of certain types of income to report to a withholding agent, both the ownership and any reduced or exempt tax rate under tax conventions or treaties, and, if appropriate, to claim a release of tax withheld at source. The withholding agent uses the information to determine the appropriate withholding.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 6 hr., 39 min.

Estimated Total Annual Burden Hours: 665,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6900 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2032

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2032, Contract Coverage Under Title II of the Social Security Act.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Contract Coverage Under Title II of the Social Security Act.

OMB Number: 1545–0137.

Form Number: 2032.

Abstract: U.S. citizens and resident aliens employed abroad by foreign affiliates of American employers are exempt from social security taxes. Under Internal Revenue Code section 3121(l), American employers may file an agreement to waive this exemption and obtain social security coverage for U.S. citizens and resident aliens employed abroad by their foreign affiliates. Form 2032 is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 160.

Estimated Time Per Respondent: 2 hr., 48 min.

Estimated Total Annual Burden Hours: 448.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6901 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 970, application To Use LIFO Inventory Method.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application To Use LIFO Inventory Method.

OMB Number: 1545–0042.

Form Number: 970.

Abstract: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the last-in first-out (LIFO) inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 14 hr., 9 min.

Estimated Total Annual Burden Hours: 42,450.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6902 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5300 and Schedule Q (Form 5300)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5300, Application for Determination for Employee Benefit Plan, and Schedule Q (Form 5300), Nondiscrimination Requirements.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Determination for Employee Benefit Plan (Form 5300), and Nondiscrimination Requirements (Schedule Q Form 5300)).

OMB Number: 1545–0197.

Form Number: Form 5300 and Schedule Q (Form 5300).

Abstract: Internal Revenue Code sections 401(a) and 501(a) set out requirements for qualification of employee benefit trusts and the tax exempt status of these trusts. Form 5300 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. The information requested on Schedule Q (Form 5300) relates to the manner in which the plan satisfies certain qualification requirements concerning minimum participation, coverage, and nondiscrimination.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 20 hr., 20 min.

Estimated Total Annual Burden Hours: 10,162,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6903 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on March 18 in Room 6000, 301 4th Street, S.W., Washington, D.C., from 8:30 a.m. to 12:00 noon. At 8:30 a.m. the Commission will hold a panel discussion on how policymakers view foreign opinion research. The panelists are Mr. John Gannon, Director, national Intelligence Council; Ambassador William Courtney, Special Assistant to the President and Senior Director for NIS Affairs, National Security Council; and Mr. David Pollock, Policy Planning Staff, Department of State.

At 10:00 a.m. the Commission will meet with Mr. Geoff Garin, President, Peter D. Hart Research Associates, Inc., to discuss views on opinion research in the polling community. At 11:00 a.m. the Commission will meet with Ms. Ann Pincus, Director, Office of Research, USIA, and Mr. Bill Bell, Director, Office of Research, Bureau of Broadcasting, to discuss USIA's opinion research and international broadcasting research capabilities.

FOR FURTHER INFORMATION: Please call Berry Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: March 13, 1998.

Rose Royal,

Management Analyst.

[FR Doc. 98–6985 Filed 3–17–98; 8:45 am]

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Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures and Certification and Enforcement Requirements for Plumbing Products; and Certification and Enforcement Requirements for Residential Appliances; Final Rule

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–97–600]

RIN 1904–AA71

Energy Conservation Program for Consumer Products: Test Procedures and Certification and Enforcement Requirements for Plumbing Products; and Certification and Enforcement Requirements for Residential Appliances

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), requires the Department of Energy (DOE or the Department) to administer an energy and water conservation program for certain major household appliances and commercial equipment, including certain plumbing products. This final rule codifies in Part 430 of Title 10 of the Code of Federal Regulations water conservation standards established in EPCA for showerheads, water closets and urinals; establishes, as directed by EPCA, water conservation standards for faucets and test procedures for faucets, showerheads, water closets and urinals by reference to revised American Society of Mechanical Engineers/ American National Standards Institute (ASME/ANSI) standards; and provides certification and enforcement requirements for plumbing products. This final rule also clarifies and extends the certification and enforcement requirements to all residential covered products.

DATES: This rule is effective April 17, 1998 except for §§ 430.62(a)(4)(vii), 430.62(a)(4)(xiv), 430.62(a)(4)(xv) and 430.62(a)(4)(xvi) which become effective March 18, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1998. In addition, as prescribed in Section 323(c)(2) of EPCA, beginning on September 14, 1998 no manufacturer, distributor, retailer, or private labeler may make representations with respect to water use covered plumbing products, except as reflected in tests conducted according to DOE test procedure found in this rule.

ADDRESSES: The Department is incorporating by reference test standards from ASME/ANSI. These standards (which contain both test procedures and water usage standards) are listed below:

1. American Society of Mechanical Engineers/American National Standards Institute Standard A112.19.6–1995, "Hydraulic Requirements for Water Closets and Urinals," Section 7.1.2, subsections 7.1.2.1, 7.1.2.2 and 7.1.2.3; Section 7.1.6; Section 8.2, subsections 8.2.1, 8.2.2, 8.2.3; and Section 8.5.

2. American Society of Mechanical Engineers/American National Standards Institute Standard A112.18.1M–1996, "Plumbing Fixture Fittings," Section 6.5.

Copies of these standards may be viewed at the Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Copies of the ASME/ANSI Standards may also be obtained by request from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007, or the American National Standards Institute, 1430 Broadway, New York, NY 10018.

FOR FURTHER INFORMATION CONTACT: Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Stop: EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–8714, FAX: (202) 586–4717, E-Mail: barbara.twigg@hq.doe.gov, or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop: GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103. Telephone: (202) 586–9507, FAX: (202) 586–4116, E-Mail: eugene.margolis@hq.doe.gov

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act of 1975, as amended (EPCA), created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The products covered under this program include faucets, showerheads, water closets, and urinals—the subjects of today's final rule.

This program consists essentially of three parts: testing, labeling, and energy and water conservation standards. In the case of faucets, showerheads, water closets, and urinals, the test procedures

measure water use or estimated annual operating cost of these covered products during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. EPCA, § 323(b)(3), 42 U.S.C. § 6293(b)(3).

One hundred and eighty days after a test procedure for a product is prescribed or established, no manufacturer, distributor, retailer, or private labeler may make representations with respect to energy use, efficiency, or the cost of energy consumed by products by this rule, except as reflected in tests conducted according to the new or amended DOE test procedure and such representations fairly disclose the results of such tests. Section 323(c)(2) of EPCA, 42 U.S.C. 6293(c)(2). Thus, beginning on [insert date 180 days from the date of publication], representations with respect to the products covered by this rule must be consistent with this amended test procedure.

EPCA states that the procedures for testing and measuring the water use of faucets and showerheads, and water closets and urinals, shall be ASME/ANSI Standards A112.18.1M–1989, and A112.19.6–1990, respectively, but that if ASME/ANSI revises these requirements, the Secretary shall adopt such revisions unless the Secretary determines by rule that the revised test procedures are not satisfactory for determining water use of the covered plumbing products or they are unduly burdensome to conduct. EPCA, § 323(b)(7) and 323(b)(8), 42 U.S.C. § 6293(b)(7) and § 6293(b)(8).

EPCA prescribes water conservation standards for faucets, showerheads, water closets and urinals. It further provides that if the requirements of ASME/ANSI Standard A112.18.1M–1989 or ASME/ANSI Standard A112.19.6–1990 are amended to improve the efficiency of water use, the Secretary shall publish a final rule establishing an amended uniform national standard unless the Secretary determines that adoption of such a standard at the level specified is not (i) technologically feasible and economically justified, (ii) consistent with the maintenance of public health and safety; or (iii) consistent with the purposes of this Act. EPCA, § 325(j) and 325(k), 42 U.S.C. § 6295(j) and § 6295(k).

B. Background

On February 20, 1997, the Department published in the **Federal Register** a Notice of Proposed Rulemaking regarding Test Procedures and Certification Requirements for Plumbing Products; and Certification Reporting Requirements for Residential Appliances. 62 FR 7834. A public hearing was held in Washington, DC, on April 1, 1997. The comment period for written submissions was closed on May 6, 1997.

The notice proposed to codify into the Code of Federal Regulations statutory requirements with respect to plumbing products (water conservation standards, test procedures, and definitions); provide regulations for certification and enforcement requirements for plumbing products; and to clarify and extend the certification and enforcement requirements to all residential covered products.

II. Discussion of Comments

A. Test Procedures

(1) Faucets and Showerheads

In the proposed rule, the Department proposed to incorporate by reference, section 6.5, "Flow Capacity Test," in ASME/ANSI Standard A112.18.1M–1994, for testing faucets and showerheads. On May 29, 1996, the test procedure requirements for faucets and showerheads in ASME/ANSI Standard A112.18.1M–1994 were revised and issued as ASME/ANSI Standard A112.18.1M–1996.

The Plumbing Manufacturers Institute (PMI), Moen Incorporated (Moen), and Kohler Company (Kohler) commented that the test requirements for measuring water consumption remained unchanged and urged that DOE incorporate instead ASME/ANSI Standard A112.18.1M–1996. (PMI, Transcript, at 20; Moen, Transcript, at 22; and Kohler, Transcript, at 23). No additional comments were received. The Department is incorporating by reference section 6.5 in ASME/ANSI Standard A112.18.1M–1996 in today's final rule.

(2) Water Closets and Urinals

In the proposed rule, DOE proposed to incorporate by reference, section 7.1.2, "Test Apparatus and General Instructions," and subsections 7.1.2.1, 7.1.2.2, 7.1.2.3, and 7.1.6, "Water Consumption and Hydraulic Characteristics," in ASME/ANSI Standard A112.19.6–1990, for testing water closets. In the same ASME/ANSI Standard, the Department also proposed to incorporate by reference, section 8.2, "Test Apparatus and General Instructions," subsections 8.2.1, 8.2.2, 8.2.3, and section 8.5, "Water Consumption," for testing urinals. On April 19, 1996, the test procedure requirements for water closets and urinals in ASME/ANSI Standard A112.19.6–1990 were revised and issued as ASME Standard A112.19.6–1995.

American Standard Inc. (American Standard) stated that test procedure requirements for water closets and urinals in both versions of ASME/ANSI Standard A112.19.6 are identical, and recommended that DOE incorporate instead ASME Standard A112.19.6–1995. (American Standard Inc., Transcript, at 95). No additional comments were received. The Department is incorporating by reference sections 7.1.2, 7.1.2.1, 7.1.2.2, 7.1.2.3, 7.1.6, 8.2, 8.2.1, 8.2.2, 8.2.3, and 8.5 in ASME Standard A112.19.6–1995 in today's final rule.

B. Water Conservation Standards

(1) Faucets

In the proposed rule, the Department proposed, in response to industry's request for conformity with a single standard, to adopt the faucet standard (2.2 gallons per minutes (gpm) at 60 pounds per square inch (psig)) contained in ASME/ANSI Standard A112.18.1M–1994. The American Water Works Association (AWWA), the California Energy Commission (CEC), PMI, and the International Association of Plumbing and Mechanical Officials (IAPMO) supported the standard for faucets in ASME/ANSI Standard A112.18.1M–1994 (2.2 gpm at 60 psig). (AWWA, No. 1, at 2; CEC, Transcript, at 18; PMI, Transcript, at 20; and IAPMO, Transcript, at 21).

As discussed above, ASME/ANSI Standard A112.18.1M–1994 was revised and issued as ASME/ANSI Standard A112.18.1M–1996; however, the standard for faucets remained the same as in ASME/ANSI Standard A112.18.1M–1994. No other comments were received. Based on the above considerations, the Department is incorporating the faucet standard in ASME/ANSI Standard A112.18.1M–1996 in today's final rule.

(2) Showerheads

In the proposed rule, the Department proposed to codify the statutory standard for showerheads (2.5 gpm at 80 psig) and incorporate by reference the tamper proofing requirement in section 7.4.4(a) of ASME/ANSI Standard A112.18.1M–1994. This requirement specifies that if a flow control insert is used as a component part of a showerhead, then it must be manufactured such that a pushing or pulling force of 36 Newtons (8 lbf) or more is required to remove the insert.

As previously mentioned, ASME/ANSI Standard A112.18.1M–1994 was revised and issued as ASME/ANSI

Standard A112.18.1M–1996. The standard for showerheads in both ASME/ANSI Standard A112.18.1M–1994 and ASME/ANSI Standard A112.18.1M–1996, is the same as the level prescribed in EPCA. DOE is codifying the statutory standard for showerheads and incorporating by reference Section 7.4.4(a) of ASME/ANSI Standard A112.18.1M–1996, in today's final rule.

(3) Water Closets and Urinals

In the proposed rule, DOE proposed to codify the statutory standards for water closets and urinals. The maximum water use allowed is 1.6 gallons per flush (gpf) for gravity tank-type toilets, flushometer tank toilets, and electromechanical hydraulic toilets, if manufactured after January 1, 1994; and for flushometer valve toilets and commercial gravity tank-type 2 piece toilets, if manufactured after January 1, 1997. The maximum water use allowed for blowout toilets is 3.5 gpf, if manufactured after January 1, 1994. The maximum water use for any urinal is 1.0 gpf, if manufactured after January 1, 1997.

As previously mentioned, ASME/ANSI Standard A112.19.6–1990 was revised and issued as ASME/ANSI A112.19.6–1995. The standards for toilets and urinals, which remained unchanged in the updated ASME/ANSI Standard, are also at the levels prescribed in EPCA. The Department is codifying the statutory standards for toilets and urinals in today's final rule.

C. Definitions

In the proposed rule, the Department proposed definitions for the terms "consumer product," "energy conservation standard," "estimated annual operating cost," "ANSI," "ASME," "blowout," "faucet," "flushometer tank," "flushometer valve," "low consumption," "showerhead," "urinal," "water closet," and "water use" drawn from EPCA § 321. No comments were requested or required for incorporation of these statutory definitions. DOE is incorporating these statutory definitions in today's final rule.

D. Definition of "Basic Model"

In the proposed rule, DOE proposed to establish definitions of "basic model" for plumbing products. These definitions allow models that exhibit essentially identical characteristics to be categorized into a family, where only representative samples within that family would need to be tested for certification purposes.

For faucets and showerheads, the Department proposed that "basic model" be defined by either the flow control mechanism attached to or installed with the fixture fittings, or the models that have identical water-passage design features that use the same path of water in the highest flow mode. For water closets and urinals, the Department proposed that "basic model" be defined as units which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect consumption. No comments on this issue were received. The Department is adopting these definitions as proposed in today's final rule.

E. Definition of "Electromechanical Hydraulic Toilet"

In the proposed rule, DOE proposed to define "electromechanical hydraulic toilet," as "any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of, or to aid, gravity in evacuating waste from the toilet bowl." No comments on this proposal were received. The Department is adopting the definition as proposed in today's final rule.

F. Statistical Sampling Plans for Certification Testing

In the proposed rule, DOE proposed statistical sampling plans for faucets, showerheads, water closets, and urinals based on the current approach used for residential appliances. The purpose of sampling plans is to minimize the test burden while ensuring that the true mean performance of the product being manufactured and sold meets or conforms to the statutory water usage standard.

DOE proposed a statistical sampling plan at 95 percent confidence limits with a 1.05 divisor for faucets and showerheads, and at 90 percent confidence limits with a 1.10 divisor for water closets and urinals. AWWA supported the statistical sampling plans at the levels proposed. (AWWA, No. 1, at 2; and Transcript, at 25). No other comments were received on this issue. The Department is adopting the statistical plans as proposed in today's final rule.

G. Certification Reporting Requirements for Plumbing Products

(1) Types of Information To Be Submitted

In the proposed rule, DOE proposed that each basic model of a covered product to be certified include the following information: the product type, product class, manufacturer's name, private labeler name(s), if applicable, the manufacturer's model number(s), and the water usage. IAPMO supported DOE's proposal. (IAPMO, Transcript, No. 38). No additional comments on this proposal were received. DOE is adopting this provision in today's final rule.

(2) Precision Level of Reported Test Results

In the proposed rule, DOE noted that statutory standards for faucets, showerheads, water closets, and urinals are specified in terms of a tenth of a gallon, or in the case of metering faucets, a hundredth of a gallon, and proposed that these levels be observed in certification and enforcement. No comments on this proposal were received. The Department is adopting this provision in today's final rule.

(3) Mathematical Rounding Rules

In the proposed rule, the Department proposed that reported test results conform to precision levels established in EPCA and that they be converted from test data utilizing the following mathematical rounding rules: Five and above round up, and less than five, round down. DOE also specified that such rounding rules are to be applied after the final result is calculated.

American Standard stated that there is confusion in the industry on whether to apply rounding rules to conform with specified precision levels at each step of the calculation or only once after the final result is calculated. American Standard claimed that different test results may be generated and requested that DOE clarify the application of the proposed rounding rules. (American Standard, Transcript, at 35). The California Energy Commission (CEC) and AWWA also supported clarification. (CEC, Transcript, at 35; and AWWA, No. 1, at 2–3).

The Department believes that rounding at each step of the calculation or rounding once after the final result is calculated may generate different reported test results. Therefore, today's final rule clarifies the application of the proposed rounding rules by specifying that measurements are to be recorded at the resolution of the test instrumentation and that at each step in the measurement and calculation procedure, the results are to be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place for water closets, urinals, and shower heads and

non-metered faucets, or two decimal places for metered faucets.

(4) Effective Date for Initial Certification Submissions

In the proposed rule, DOE proposed plumbing manufacturers be provided one year to comply with the certification requirements of sections 430.62(a)(4) (vii), (xiv–xvi) of this rule. No comments on this proposal were received. The Department is adopting this provision in today's final rule.

H. Modifications to Existing Language To Include Plumbing Products in the Code of Federal Regulations

In the proposed rule, DOE proposed to amend sections 430.27, 430.31–430.33, 430.40, 430.41, 430.47, 430.49, 430.50, 430.60, 430.61, 430.63, 430.70(a)(1), 430.70(a)(3), 430.70(a)(6) and 430.73 of Title 10 of the CFR by modifying existing language to include plumbing products covered by EPCA.

AWWA's proposed amendment to section 430.33 would allow States to set more restrictive water conservation standards and preempt States from setting less restrictive standards than the Federal standard. Section 327(c) of EPCA, however, specifies that when a Federal standard is in effect with respect to water use for faucets, showerheads, water closets and urinals, any State regulation concerning the water use of these covered products is preempted, regardless of whether it is more or less restrictive than the Federal standard, subject to six limited exceptions. (Two of the exceptions related specifically to water use standards of New York, Rhode Island, and Georgia in effect on the date of enactment of the Energy Policy Act of 1992.) Under current law, DOE is without authority to make the change requested by AWWA. While Congress preempted State standards, at the same time it showed a desire to allow State standards upon certain findings [327(d)]. Congress recognized that circumstances can exist where States will be permitted to establish or maintain standards, and EPCA established procedures for the Secretary to review the propriety of the State's exercise of regulatory authority.

The Association of Home Appliance Manufacturers (AHAM) commented that provisions in sections 430.27, 430.41, and 430.70, which DOE proposed to amend to include plumbing products by adding the term "water," could mistakenly subject certain AHAM products (i.e., clothes washers and dishwashers) to water consumption requirements that only need to meet minimum energy conservation standards. To alleviate potential confusion, AHAM requested that DOE either cross reference the term "water" to plumbing products or create separate paragraphs for products required to meet minimum energy or maximum permissible water conservation standards. (AHAM, No. 4, at 1–2). The Department agrees that it is appropriate to clarify to which products water consumption requirements are applicable. DOE is revising sections 430.27, 430.41, 430.70, and other sections as necessary by cross referencing the term "water" to apply only to faucets, showerheads, water closets, and urinals in today's final rule.

I. Faucet Standards for Multiple-User Sprayheads

(1) Application of Faucet Standards to Sprayheads With Independently-Controlled Orifices

In the proposed rule, the Department proposed that each orifice of a sprayhead with independently-controlled orifices, depending on its mode of actuation, shall not exceed the maximum flow rate for a lavatory or metering faucet. No comments on this proposal were received. The Department is adopting this provision in today's final rule.

(2) Application of Faucet Standards to Sprayheads With Collectively-Controlled Orifices

In the proposed rule, the Department proposed that the maximum flow rate of a manually-activated sprayhead with collectively-controlled orifices shall be the product of the maximum flow rate for a lavatory faucet and the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)). DOE also proposed that the maximum flow rate of a metered-activated sprayhead shall be the product of the maximum flow rate for a metering faucet and the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

CEC and the Building Officials and Code Administrators International (BOCA) supported DOE's proposal. (CEC, Transcript, at 83; and BOCA, Transcript, at 88). IAPMO objected and instead recommended that prorating be based on 24 inches and 18 inches, for sprayheads that are installed in a lineal and circular lavatory, respectively. (IAPMO, Transcript, at 89). Bradley Corporation (Bradley) claimed that lavatories to which sprayheads are mounted are generally circular or semicircular rather than lineal. Moreover, Bradley added that 18 and 20 inches are the two capacity criteria generally used for lavatories, that 20 inches is totally appropriate and is also more conservative than 18 inches. (Bradley, Transcript, at 89). The Department agrees with Bradley's comment regarding the appropriateness of prorating using 20 inches and is adopting the provision as proposed in today's final rule.

J. Urinal Standard for Trough-Type Urinals

On February 7, 1997, Kohler submitted a letter to DOE regarding trough-type urinals. Kohler stated that trough-type urinals, which are produced in sizes of 36 inches, 48 inches, 60 inches, and 72 inches, are fixtures designed for multiple-users and are generally installed in places of high density. Kohler believed these products are covered under EPCA and requested that it be allowed to satisfy compliance with the standard by prorating maximum water use based upon 16 inches per individual. In a March 24, 1997 letter to Kohler, the Department agreed that Kohler's proposal seemed reasonable but that it intends to seek additional input. This proposal was discussed at the April 2, 1997, public hearing for plumbing products.

Both IAPMO and CEC supported Kohler's proposal. (IAPMO, Transcript, at 66; and CEC, Transcript, at 83). Kohler claimed that Eljer Industries, Inc. also supported its proposal. (Kohler, Transcript, at 72). No additional comments on this proposal were received. The Department is adopting the provision in today's final rule to read as follows:

"430.32(r) *Urinals.* The maximum water use allowed for any urinals manufactured after January 1, 1994, shall be 1.0 gallons per flush (3.8 liters per flush).[1]

[1] The maximum water use allowed for a trough-type urinal shall be the product of (a) the maximum flow rate for a urinal and (b) the length of the trough-type urinal in inches (meters) divided by 16 inches (0.406 meters)."

K. Enforcement

In the proposed rule, the Department proposed to extend its enforcement policies to include plumbing products. DOE believes that its existing enforcement procedures are adequate for deterring would-be violators.

The New York State Department of Environmental Conservation (NYSDEC) claimed that it is necessary for DOE to establish a product or manufacturer listing program to protect consumers

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from non-complying manufacturers. (NYSDEC, No. 5, at 2).

Presently, the Department is not aware of any manufacturers who are producing non-compliant products for distribution. Furthermore, DOE believes that the enforcement mechanisms it proposed to extend to plumbing products in the proposed rule are adequate. Therefore, in today's final rule, the Department is establishing enforcement provisions for plumbing products as proposed.

L. Clarification of Certification Reporting Requirements for Residential Appliances

In the proposed rule, DOE proposed to redesignate, revise existing language, and add new language and paragraphs in section 430.62, and Appendices A and B to Subpart F of the CFR as necessary regarding certification and enforcement requirements for all residential appliances, including plumbing products. The proposed modifications for which DOE received no comments are incorporated in today's final rule. The proposed modifications for which comments were received are discussed below:

(1) Means of Certification

Section 430.62 of the CFR presently allows a manufacturer or private labeler to directly certify covered products to DOE or authorize a third party to certify on its behalf. In the proposed rule, DOE proposed to extend this coverage to plumbing products. Both IAPMO and AWWA questioned the integrity of self-certification by manufacturers and suggested that DOE revise its rule to allow only third-party certification. (IAPMO, Transcript, at 40; and AWWA, Transcript, at 57). PMI, CEC, Kohler, American Standard, Bradley, Delta Faucets (Delta) and the National Voluntary Laboratory Accreditation Program (NVLAP) argued that enforcement provisions presently exist to deter would-be violators, and that eliminating the option of self-certification would impose a logistic or financial burden on manufacturers. (PMI, Transcript, at 51; CEC, Transcript, at 55; Kohler, Transcript, at 56; American Standard, Transcript, at 60; Bradley, Transcript, at 62; Delta, Transcript, at 62; and NVLAP, Transcript, at 63).

The Department agrees with the comments by PMI, CEC, Kohler, American Standard, Bradley, Delta Faucets (Delta) and NVLAP that current enforcement provisions are adequate. DOE also believes it necessary to maintain flexibility in the certification of products to DOE by manufacturers and private labelers. Based on the above considerations, the Department does not believe the revision suggested by IAPMO and AWWA is justified for inclusion in today's final rule.

(2) Discontinued Model

Section 430.62(c) of the CFR presently requires that "discontinued models" be reported in writing to DOE. In the proposed rule, DOE proposed to clarify the section by defining "discontinued model" as "a basic model which has ceased production," specifying the type of information to be submitted, and requiring that such models be reported within six months of being discontinued.

AHAM claimed the proposed definition of "discontinued model" could cause confusion if applied to rebate models for which production has ceased but which may be sold for several years. (AHAM, No. 4, at 1–2). The Whirlpool Corporation (Whirlpool) added that the proposed six-month reporting period requirement would impose a logistic and financial burden on the manufacturers and requested that it be withdrawn. (Whirlpool, No. 6, at 4).

The Department agrees with AHAM that DOE's proposed definition of "discontinued model" needs to be clarified. DOE also agrees with Whirlpool that the proposed six-month reporting period requirement following discontinuance of models may impose an unnecessary burden on the industry. Based on the above considerations, DOE is revising the section in question to read as follows:

430.62(c) Discontinued model. A basic model is discontinued when its production has ceased and is no longer being distributed. Such models shall be reported, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–012. For each basic model, this report shall include: product type, product class, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such models can be included in the certification report.

(3) Amendment of Information

In the proposed rule, DOE proposed to add a new section: 430.62(f), "Amendment of Information," which would require a manufacturer or his representative to submit, by certified mail, a statement of compliance or certification report with the revised information if any information previously submitted has changed.

Both the Air-Conditioning & Refrigeration Institute (ARI) and AHAM asserted that such information would be submitted anyway in the course of new submissions and requested that the proposal be withdrawn. (ARI, No. 3, at 1; and AHAM, No. 4, at 2). DOE agrees with the suggestion by ARI and AHAM and is withdrawing this proposal in today's final rule.

(4) Submission of Annual Energy Use for Kitchen Ranges, Ovens, and Microwave Ovens

In the proposed rule, DOE proposed to require submissions of annual energy use on a per model basis for kitchen ranges, ovens, and microwave ovens.

Both AHAM and Whirlpool noted that there are presently no minimum energy efficiency reporting requirements for kitchen ranges, ovens, and microwave ovens, that it would create an unnecessary test burden on manufacturers, and recommended that the proposal be withdrawn. Section 323(a)(1)(B) that the Secretary may prescribe test procedures for a consumer product classified as covered product. Even without minimum efficiency standards for a covered product this information could be used to assist consumers in purchasing more efficient products. However, DOE does recognize that testing and reporting of efficiency data does place an added burden on manufacturers and therefore is withdrawing this requirement for kitchen ranges, ovens, and microwave ovens at this time.

M. Metric Equivalents

In the proposed rule, DOE proposed that along with English measurements (*i.e.*, gallons per minutes (gpm), gallons per cycle (gal/cycle), or gallons per flush (gpf)), metric equivalents (*i.e.* liters per minute (L/min), liters per cycle (L/cycle), or liters per flush (Lpf)) shall be required in certification reports submitted to the Department.

American Standard stated such requirement would impose a paperwork burden and requested that DOE select only one measurement system (*i.e.*, English or metric). (American Standard, Transcript, at 116). However, the Department does not believe the provision would unduly burden the industry. Only one certification report containing both English and metric units will be required rather than dual certification reports. Based on the above considerations, the Department rejects American Standard's request to select one measurement system for

certification submission and instead will finalize in today's rule the provision as proposed.

Mr. Lawrence J. Stempnik recommended that metric units be listed first, followed by the English conversion as supplementary units on certification reports to DOE. Also, he recommended that a statement be added to allow reports to be submitted in metric units only. In addition, Mr. Stempnik argued that the acronym "Lpf" (liter per flush) is not a metric unit, that it would confuse consumers, and recommended that "L" (liter) be used instead. (Lawrence J. Stempnik, No. 2, at 3–5). DOE believes that since the unit of liters per flush (Lpf) is well-accepted in the plumbing standards and literature, and adequately defines the water consumption on the basis of usage, it should not prove confusing for consumers. Therefore, the Department rejects Mr. Stempnik's request to replace the acronym "Lpf" with "L" in today's final rule. The Department also believes that because the standards are written in English units, the English units should be listed first in certification reports, followed by the metric equivalents in parentheses.

N. Other Issues

The following is a discussion of issues raised by other commenters:

(1) Establishment of an E-mail Address

Mr. Lawrence J. Stempnik requested that submissions of information via e-mail from companies to the Department be allowed. (Lawrence J. Stempnik, No. 2, at 5). Mr. Stempnik claimed that this would facilitate electronic storage of the data and enable multi-user access to electronic databases instead of paper files.

The Department currently has no mechanism for maintaining electronic databases of covered products, and therefore requires paper copies of compliance statements and certification reports. It should be noted that electronic copies would only be considered for certification reports, and not for compliance statements, which require an original signature. Although the Department declines to add e-mail as an official option for submitting certification reports in today's final rule, it will begin to evaluate the possibility of using electronic submittals for certification reports in the future. The Department would therefore appreciate manufacturers or their authorized representatives, at their option, submitting electronic files of their certification reports in addition to the required paper copies for DOE's consideration. The submission of electronic files is strictly voluntary.

(2) Performance-Based Standard

Mr. Lawrence Stempnik suggested that in addition to water consumption, a performance-based requirement, based on the unit's capability to expel a certain mass in one flush, be included in the testing of water closets. (Lawrence J. Stempnik, No. 2, at 3).

The current ASME/ANSI standard for water closets (ASME/ANSI A112.19.6–1995) includes some performance tests, but they are considered by the ASME committee responsible for the standard to be inadequate for accurately assessing the ability of a water closet to remove solid waste from the bowl and transport it to the drain line. The ASME committee responsible for the standard has established a task force to develop and refine an effective bulk media removal test for inclusion in the next revision of the standard. The Department agrees with Mr. Stempnik's emphasis on the importance of producing toilets that perform successfully, and supports the continuing efforts by industry to develop more effective tests to measure the performance of water closets.

(3) Consumer Tampering

The AWWA commented that toilets should be designed such that water consumption cannot be increased through tampering. (AWWA, No. 1, at 3). The manufacturers of plumbing products currently have a task group investigating adjustability issues. However, EPCA only authorizes DOE to regulate requirements to restrict consumer tampering to alter the water consumption of covered plumbing products for showerheads. 42 U.S.C. § 6295(j)(1) Therefore, the Department declines AWWA's suggestion to require tamper-proofing of toilets in today's final rule. The Department encourages manufacturers to consider development of designs which discourage tampering.

(4) Product Listing

The New York State Department of Environmental Conservation commented that a directory or listing of plumbing products conforming to the Energy Policy and Conservation Act should be produced. (NYSDEC, No. 5, at 1). It believes that such a directory is necessary to aid State and local officials in determining which products are in conformance, and to help rid the marketplace of non-conforming products. AWWA questioned how consumers would be made aware of conforming plumbing products (AWWA, Transcript, at 109).

Currently, listings of complying energy-efficient products (i.e., refrigerators, clothes washers, dishwashers, water heaters, etc) are compiled by industry and consumer groups such as the ARI, the American Council for an Energy Efficient Economy, and Gas Appliance Manufacturers Association. DOE believes that similar organizations in the plumbing industry could equally provide such listings for complying plumbing products. Therefore, the Department declines to develop a product directory in today's final rule.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department codifies statutorily mandated water conservation standards and test procedures for faucets, showerheads, water closets, and urinals. Implementation of this rule will not result in environmental impacts apart from the effects of the water conservation standards established by Congress in EPCA and incorporated in today's rule. The test procedures for measuring water consumption in this rule are mandated by EPCA and are already in general use in the industry. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.6 of appendix A to subpart D, 10 CFR Part 1021, which applies to "rulemakings that are strictly procedural," and which, therefore, have no environmental effect. By this final rule, the Department is following the direction of the Energy Policy Act and incorporating by reference test procedures that are already being used by industry, while adding sampling plans, certification reporting and labeling requirements, definitions, and clarifications of ambiguous issues and of the existing certification reporting requirements for residential appliances. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

This regulatory action is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

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C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. In the NOPR, DOE invited public comment on its conclusion that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The NOPR presented detailed information on the number of small manufacturers of plumbing fixtures and fittings that would be affected by the rule, and it discussed the statutory basis for standards and test procedures incorporated in the rule and steps DOE has taken to minimize the economic impact on covered firms. As explained in the NOPR, this rule includes water conservation standards that are prescribed by EPCA and updated test procedures that EPCA requires DOE to adopt. The test procedures which are incorporated in this rule (ASME/ANSI Standards A112.18.1M–1996 and A112.19.6–1995) are already in general use in the industry. The rule also revises certification and enforcement requirements in 10 CFR Part 430 that apply to all manufacturers of covered products (*see* discussion under "Review Under the Paperwork Reduction Act" in this **SUPPLEMENTARY INFORMATION** section). DOE received no public comments that specifically addressed the impact of the rule on small businesses.

DOE certifies that complying with this final rule (excluding the cost of compliance with the water conservation standards and test procedures directly imposed by EPCA) would not impose significant economic costs on a substantial number of small manufacturers.

D. Review Under Executive Order 12612, "Federalism"

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The rule published today will not regulate the States. They will primarily affect the manner in which DOE promulgates residential appliance, commercial product, and water conservation standards; test procedures; and certification requirements, prescribed under the Energy Conservation and Policy Act. State regulation in this area is largely preempted by the Energy Policy and Conservation Act. The rule published today will not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

E. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

It has been determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this regulation will not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today's final rule will revise certification and enforcement requirements applicable to manufacturers of covered consumer products. Appendix A to Subpart F of part 430, "Compliance Statement and Certification Report," was previously approved by OMB and assigned OMB Control No. 1910–1400. The final rule will revise this form to cover certification of plumbing products; facilitate use of the form by third party representatives of covered product manufacturers; and, in an attachment, specify the format of the certification report that manufacturers currently are required to submit to DOE by 10 CFR part 430.62(a)(2). OMB has approved the revised "Compliance Statement and Certification Report" and extended its effectiveness until June 30, 2000. An agency may not conduct or sponsor a collection of information unless the collection displays a currently valid OMB control number. (*See* 5 CFR § 1320.5(b)).

The final rule will require manufacturers of plumbing products to maintain records concerning their determinations of the water consumption of faucets, showerheads, water closets and urinals. DOE has concluded that this record keeping requirement is necessary for implementing and monitoring compliance with the water conservation standards, testing and certification requirements for residential and commercial faucets, showerheads, water closets and urinals mandated by EPCA. The final rule also requires manufacturers to submit initial certification reports for basic models of covered faucets, showerheads, water closets and urinals within 12 months after the publication of a final rule in the **Federal Register**. The initial certification reports will be a one-time submission stating that the manufacturer has determined by employing actual testing that the basic model of faucet, showerhead, water closet or urinal meets the applicable water conservation standard. After the first year, manufacturers of plumbing products will have to submit a certification report for each new basic model, or to certify compliance with a new or amended standard, before the model will be allowed to be distributed in commerce.

G. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of

them. DOE reviewed today's final rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, they meet the requirements of those standards.

H. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) identification of the federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

Prior to the effective date of this regulatory action, set forth above, DOE will submit a report to Congress containing the rule and other information, as required by 5 U.S.C. 801(a)(1)(A). The report will state that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on March 13, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as follows.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 of Subpart A is amended by revising the definitions for "consumer product," and "energy conservation standard," adding new paragraphs (17) through (20) in the definition of "basic model," and adding new definitions for "ANSI," "ASME," "blowout," "electromechanical hydraulic toilet," "estimated annual operating cost," "faucet," "flushometer tank," "flushometer valve," "low consumption," "showerhead," "urinal," "water closet," and "water use" in alphabetical order, to read as follows:

Subpart A—General Provisions

§ 430.2 Definitions.

* * * * *

ANSI means the American National Standards Institute.

ASME means the American Society of Mechanical Engineers.

* * * * *

Basic model * * *

(17) With respect to faucets, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(18) With respect to showerheads, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(19) With respect to water closets, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.

(20) With respect to urinals, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.

* * * * *

Blowout has the meaning given such a term in ASME A112.19.2M–1995. (see § 430.22)

* * * * *

Consumer product means any article (other than an automobile, as defined in Section 501(1) of the Motor Vehicle Information and Cost Savings Act):

(1) Of a type—

(i) Which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(ii) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals;

(2) Without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

* * * * *

Electromechanical hydraulic toilet means any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet bowl.

Energy conservation standard means:

(1) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under Section 323 of EPCA (42 U.S.C. 6293); or

(2) A design requirement for the products specified in paragraphs (6), (7), (8), (10), (15), (16), (17), and (19) of Section 322(a) of EPCA (42 U.S.C. 6292(a)); and

(3) Includes any other requirements which the Secretary may prescribe under Section 325(r) of EPCA (42 U.S.C. 6295(r)).

Estimated annual operating cost means the aggregate retail cost of the energy which is likely to be consumed annually, and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually, in representative use of a consumer

product, determined in accordance with Section 323 of EPCA (42 U.S.C. 6293).

* * * * *

Faucet means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

* * * * *

Flushometer tank means a device whose function is defined in flushometer valve, but integrated within an accumulator vessel affixed and adjacent to the fixture inlet so as to cause an effective enlargement of the supply line immediately before the unit.

Flushometer valve means a valve attached to a pressurized water supply pipe and so designed that when actuated, it opens the line for direct flow into the fixture at a rate and quantity to properly operate the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size, that when open, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

* * * * *

Low consumption has the meaning given such a term in ASME A112.19.2M–1995. (see § 430.22)

* * * * *

Showerhead means any showerhead (including a hand held showerhead), except a safety shower showerhead.

* * * * *

Urinal means a plumbing fixture which receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installations in prisons.

* * * * *

Water closet means a plumbing fixture that has a water-containing receptor which receives liquid and solid body waste, and upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

* * * * *

Water use means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under Appendices S and T of subpart B of this part.

* * * * *

3. Section 430.22 of subpart B is amended by adding paragraph (b)(6) to read as follows:

Subpart B—Test Procedures

§ 430.22 Reference Sources.

* * * * *

(b) * * *

(6) American Society of Mechanical Engineers (ASME). The ASME standards listed in this paragraph may be obtained from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007.

1. ASME/ANSI Standard A112.18.1M–1996, "Plumbing Fixture Fittings."

2. ASME/ANSI Standard A112.19.6–1995, "Hydraulic Requirements for Water Closets and Urinals."

* * * * *

4. Section 430.23 of subpart B is amended by revising the section heading and adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.23 Test procedures for measures of energy and water consumption.

* * * * *

(s) *Faucets.* The maximum permissible water use allowed for lavatory faucets, lavatory replacement aerators, kitchen faucets, and kitchen replacement aerators, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(a) of Appendix S of this subpart. The maximum permissible water use allowed for metering faucets, expressed in gallons and liters per cycle (gal/cycle and L/cycle), shall be measured in accordance to section 2(a) of Appendix S of this subpart.

(t) *Showerheads.* The maximum permissible water use allowed for showerheads, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(b) of Appendix S of this subpart.

(u) *Water closets.* The maximum permissible water use allowed for water closets, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(a) of Appendix T of this subpart.

(v) *Urinals.* The maximum permissible water use allowed for urinals, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(b) of Appendix T of this subpart.

5. Section 430.24 of subpart B is amended by adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.24 Units to be tested.

* * * * *

(s) For each basic model of faucet,[1] a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(1) The mean of the sample or

(2) The upper 95 percent confidence limit of the true mean divided by 1.05.

(t) For each basic model [1] of showerhead, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(1) The mean of the sample or

(2) The upper 95 percent confidence limit of the true mean divided by 1.05.

(u) For each basic model [1] of water closet, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(1) The mean of the sample or

(2) The upper 90 percent confidence limit of the true mean divided by 1.1.

(v) For each basic model [1] of urinal, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(1) The mean of the sample or

(2) The upper 90 percent confidence limit of the true mean divided by 1.1.

§ 430.27 [Amended]

6. Section 430.27 of subpart B is amended by:

a. Adding the phrase ", or water consumption characteristics (in the case of faucets, showerheads, water closets, and urinals) after the phrase "energy consumption characteristics" in paragraphs: (a)(1), (b)(1)(iii), and (l) (first sentence); and

b. Revising the existing referenced section "§ 430.22" in paragraph (a)(1) to read as "§ 430.23".

7. Subpart B of Part 430 is amended by adding Appendix S and Appendix T, to read as follows:

Appendix S to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads

1. *Scope:* This Appendix covers the test requirements used to measure the hydraulic performance of faucets and showerheads.

2. *Flow Capacity Requirements:*

a. Faucets—The test procedures to measure the water flow rate for faucets, expressed in gallons per minute (gpm) and liters per minute (L/min), or gallons per cycle (gal/

[1] Components of similar design may be substituted without requiring additional testing if the represented measures of energy or water consumption continue to satisfy the applicable sampling provision.

cycle) and liters per cycle (L/cycle), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M–1996 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place for non-metered faucets, or two decimal places for metered faucets.

b. Showerheads—The test conditions to measure the water flow rate for showerheads, expressed in gallons per minute (gpm) and liters per minute (L/min), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M–1996 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place.

Appendix T to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals

1. *Scope:* This Appendix covers the test requirements used to measure the hydraulic performances of water closets and urinals.

2. *Test Apparatus and General Instructions:*

a. The test apparatus and instructions for testing water closets shall conform to the requirements specified in section 7.1.2, Test Apparatus and General Requirements, subsections 7.1.2.1, 7.1.2.2, and 7.1.2.3 of the ASME/ANSI Standard A112.19.6–1995 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place.

b. The test apparatus and instructions for testing urinals shall conform to the requirements specified in section 8.2, Test Apparatus and General Requirements, subsections 8.2.1, 8.2.2, and 8.2.3 of the ASME/ANSI Standard A112.19.6–1995 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place.

3. *Test Measurement:*

a. Water closets—The measurement of the water flush volume for water closets, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 7.1.6, Water Consumption and Hydraulic Characteristics, of the ASME/ANSI Standard A112.19.6–1995 (see § 430.22).

b. Urinals—The measurement of water flush volume for urinals, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 8.5, Water Consumption, of the ASME/ANSI Standard A112.19.6–1995 (see § 430.22).

8. The subpart heading for Subpart C is revised to read as follows:

Subpart C—Energy and Water Conservation Standards

9. Section 430.31 is revised to read as follows:

§ 430.31 Purpose and scope.

This subpart contains energy conservation standards and water conservation standards (in the case of faucets, showerheads, water closets, and urinals) for classes of covered products that are required to be administered by the Department of Energy pursuant to the Energy Conservation Program for Consumer Products Other Than Automobiles under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*). Basic models of covered products manufactured before the date on which an amended energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) becomes effective (or revisions of such models that are manufactured after such date and have the same energy efficiency, energy use characteristics, or water use characteristics (in the case of faucets, showerheads, water closets, and urinals), that comply with the energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals).

10. Section 430.32 of subpart C is amended by revising the section heading, revising the introductory paragraph, and adding paragraphs (o), (p), (q), and (r), to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

The energy and water (in the case of faucets, showerheads, water closets, and urinals) conservation standards for the covered product classes are:

* * * * *

(o) *Faucets.* The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 60 pounds per square inch (414 kilopascals), shall be as follows:

Faucet type	Maximum flow rate (gpm (L/min)) or (gal/cycle (L/cycle))
Lavatory faucets	2.2 gpm (8.3 L/min)[1,2]
Lavatory replacement aerators.	2.2 gpm (8.3 L/min)
Kitchen faucets	2.2 gpm (8.3 L/min)
Kitchen replacement aerators.	2.2 gpm (8.3 L/min)
Metering faucets	0.25 gal/cycle (0.95 L/cycle)[3,4]

Note:

[1] Sprayheads with independently-controlled orifices and manual controls.

The maximum flow rate of each orifice that manually turns on or off shall not exceed the maximum flow rate for a lavatory faucet.

[2] Sprayheads with collectively controlled orifices and manual controls.

The maximum flow rate of a sprayhead that manually turns on or off shall be the product of (a) the maximum flow rate for a lavatory faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

[3] Sprayheads with independently controlled orifices and metered controls.

The maximum flow rate of each orifice that delivers a pre-set volume of water before gradually shutting itself off shall not exceed the maximum flow rate for a metering faucet.

[4] Sprayheads with collectively-controlled orifices and metered controls.

The maximum flow rate of a sprayhead that delivers a pre-set volume of water before gradually shutting itself off shall be the product of (a) the maximum flow rate for a metering faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

(p) *Showerheads.* The maximum water use allowed for any showerheads manufactured after January 1, 1994, shall be 2.5 gallons per minute (9.5 liters per minute) when measured at a flowing pressure of 80 pounds per square inch gage (552 kilopascals). Any such showerhead shall also meet the requirements of ASME/ANSI Standard A112.18.1M–1996, 7.4.4(a).

(q) *Water closets.* (1) The maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, shall be as follows:

Water closet type	Maximum flush rate (gpf (Lpf))
Gravity tank-type toilets	1.6 (6.0)
Flushometer tank toilets	1.6 (6.0)
Electromechanical hydraulic toilets	1.6 (6.0).
Blowout toilets	3.5 (13.2)

(2) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, shall be 1.6 gallons per flush (6.0 liters per flush).

(r) *Urinals.* The maximum water use allowed for any urinals manufactured

after January 1, 1994, shall be 1.0 gallons per flush (3.8 liters per flush). The maximum water use allowed for a trough-type urinal shall be the product of:

(1) The maximum flow rate for a urinal and

(2) The length of the trough-type urinal in inches (millimeter) divided by 16 inches (406 millimeters).

11. Section 430.33 of subpart C is revised to read as follow:

§ 430.33 Preemption of State regulations.

Any State regulation providing for any energy conservation standard, or water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement with respect to the energy efficiency, energy use, or water use (in the case of faucets, showerheads, water closets, or urinals) of a covered product that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in sections 327 (b) and (c) of the Act.

Subpart D—Petitions to Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

12. Section 430.40 of subpart D is revised to read as follow:

§ 430.40 Purpose and scope.

(a) This subpart prescribes the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard, water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement respecting energy efficiency, energy use, or water use (in the case of faucets, showerheads, water closets, and urinals) of a type (or class) of covered product not be preempted.

(b) This subpart also prescribes the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard, water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement respecting energy efficiency, energy use, or water use (in the case of faucets, showerheads, water closets, and urinals) of a type (or class) of covered product.

13. Section 430.41 of Subpart D is revised to read as follows:

§ 430.41 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy conservation standard, water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement for a type or class of covered equipment for which a Federal energy conservation standard or water conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he determines that the State has established by a preponderance of evidence that such requirement is needed to meet unusual and compelling State or local energy interests or water interests. For the purposes of this section, the term "unusual and compelling State or local energy interests or water interests" means interests which are substantially different in nature or magnitude than those prevailing in the U.S. generally, and are such that when evaluated within the context of the State's energy plan and forecast, or water plan and forecast the costs, benefits, burdens, and reliability of energy savings or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all equipment subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State's regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered equipment on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered product type (or class) in the State and the U.S.; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he finds that such a rule will result in the unavailability in the State of any covered product (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(1) *Requirements of petition for exemption from preemption.* A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR part 1004:

(i) The name, address, and telephone number of the petitioner;

(ii) A copy of the State standard for which a rule exempting such standard is sought;

(iii) A copy of the State's energy plan or water plan and forecast;

(iv) Specification of each type or class of covered product for which a rule exempting a standard is sought;

(v) Other information, if any, believed to be pertinent by the petitioner; and

(vi) Such other information as the Secretary may require.

(2) [reserved]

(b) *Criteria for exemption from preemption when energy emergency conditions or water emergency conditions (in the case of faucets, showerheads, water closets, and urinals) exist within State.* Upon petition by a State which has prescribed an energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) or other requirement for a type or class of covered product for which a Federal energy conservation standard or water conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the **Federal Register**, that such State regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this section the State has established that: an

energy emergency condition or water emergency condition exists within the State that imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas, electric energy, or water to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or water or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) *Requirements of petition for exemption from preemption when energy emergency conditions or water emergency conditions (in the case of faucets, showerheads, water closets, and urinals) exist within a State.* A petition from a State for a rule for exemption from preemption when energy emergency conditions or water emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR part 1004:

(i) A description of the energy emergency condition or water emergency condition (in the case of faucets, showerheads, water closets, and urinals) which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or water or the use of interconnection agreements; and

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(2) [reserved]

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) or other requirement for a type or class of a covered product, when the Federal energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) for such product subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines that the petitioner has shown the rule should be withdrawn.

(1) *Requirements of petition to withdraw a rule exempting a State standard.* A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in paragraphs (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered product for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

(2) [reserved]

§ 430.47 [Amended]

14. Section 430.47 of subpart D is amended in paragraph (a)(1), by revising the phrase "energy emergency condition" to read "energy emergency condition or water emergency condition (in the case of faucets, showerheads, water closets, and urinals)".

§ 430.49 [Amended]

15. Section 430.49 of subpart D is amended in paragraph (a), by adding the phrase ", water conservation standard (in the case of faucets, showerheads, water closets, and urinals)" after "energy conservation standard" in the first sentence.

Subpart E—Small Business Exemptions

§ 430.50 [Amended]

16. Section 430.50 of subpart E is amended by adding the phrase "or water conservation standards (in the case of faucets, showerheads, water closets, and urinals)." after "energy conservation standards" in paragraphs (a) and (b).

Subpart F—Certification and Enforcement

17. Section 430.60 of subpart F is revised to read as follows:

§ 430.60 Purpose and scope.

This subpart sets forth the procedures to be followed for certification and enforcement testing to determine whether a basic model of a covered product complies with the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) set forth in subpart C of this part. Energy conservation standards and water conservation standards (in the case of faucets, showerheads, water closets, and urinals) include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards), and prescriptive energy design requirements (also referred to as design standards).

§ 430.61 [Amended]

18. Section 430.61 of subpart F is amended in paragraph (a)(4), by adding the phrase "or water conservation standard (in the case of faucets, showerheads, water closets, and urinals)" after the words "energy efficiency standard" in the first sentence.

19. Section 430.62 of subpart F is revised as follows:

§ 430.62 Submission of data.

(a) *Certification.* (1) Except as provided in paragraph (a)(2) of this section, each manufacturer or private labeler before distributing in commerce any basic model of a covered product subject to the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) set forth in subpart C of this part shall certify by means of a compliance statement and a certification report that each basic model(s) meets the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) as prescribed in section 325 of the Act. The compliance statement, signed by the

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company official submitting the statement, and the certification report(s) shall be sent by certified mail to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(2) Each manufacturer or private labeler of a basic model of a covered clothes washer, clothes dryer, dishwasher, faucet, showerhead, water closet, or urinal shall file a compliance statement and a certification report to DOE before [date 1 year after publication of the Final Rule].

(3) The compliance statement shall include all information specified in the format set forth in appendix A of this subpart and shall certify that:

(i) The basic model(s) complies with the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals);

(ii) All required testing has been conducted in conformance with the applicable test requirements prescribed in subpart B of this part;

(iii) All information reported in the certification report(s) is true, accurate, and complete; and

(iv) The manufacturer or private labeler is aware of the penalties associated with violations of the Act, the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(4) A certification report for all basic models of a covered product (a suggested format is set forth in appendix A of this subpart) shall be submitted to DOE. The certification report shall include for each basic model the product type, product class (as denoted in § 430.32), manufacturer's name, private labeler's name(s) (if applicable), the manufacturer's model number(s), and for:

(i) Central air conditioners, the seasonal energy efficiency ratio.

(ii) Central air conditioning heat pumps, the seasonal energy efficiency ratio and heating seasonal performance factor.

(iii) Clothes washers, the energy factor in ft^3/kWh/cycle and capacity in ft^3.

(iv) Clothes dryers, the energy factor in lbs/kWh, capacity in ft^3, and voltage.

(v) Direct heating equipment, the annual fuel utilization efficiency in percent and capacity in Btu/hour.

(vi) Dishwashers, the energy factor in cycles/kWh and exterior width in inches.

(vii) Faucets, the maximum water use in gpm (L/min) or gal/cycle (L/cycle) for each faucet; or the maximum water use in gpm (L/min) or gal/cycle (L/cycle) for each flow control mechanism, with a listing of accompanied faucets by manufacturer's model numbers.

(viii) Furnaces, the annual fuel utilization efficiency in percent.

(ix) General service fluorescent lamps, the testing laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, lamp wattage, and the 12-month average Color Rendering Index.

(x) Incandescent reflector lamps, the laboratory's National Voluntary Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, and lamp wattage.

(xi) Pool heaters, the thermal efficiency in percent.

(xii) Refrigerators, refrigerator-freezers, and freezers, the annual energy use in kWh/yr and total adjusted volume in ft^3.

(xiii) Room air conditioners, the energy efficiency ratio and capacity in Btu/hour.

(xiv) Showerheads, the maximum water use in gpm (L/min) with a listing of accompanied showerheads by manufacturer's model numbers.

(xv) Urinals, the maximum water use in gpf (Lpf).

(xvi) Water closets, the maximum water use in gpf (Lpf).

(xvii) Water heaters, the energy factor and rated storage volume in gallons.

(5) Copies of reports to the Federal Trade Commission which include the information specified in paragraph (a)(4) could serve in lieu of the certification report.

(b) *Model Modifications.* (1) Any change to a basic model which affects energy consumption or water consumption (in the case of faucets, showerheads, water closets, and urinals) constitutes the addition of a new basic model. If such change reduces consumption, the new model shall be considered in compliance with the standard without any additional testing. If, however, such change increases consumption while still meeting the standard, all information required by paragraph (a)(4) of this section for the new basic model must be submitted, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(2) Prior to or concurrent with the distribution of a new model of general service fluorescent lamp or incandescent reflector lamp, each manufacturer and private labeler shall submit a statement signed by a company official stating how the manufacturer or private labeler determined that the lamp meets or exceeds the energy conservation standards, including a description of any testing or analysis the manufacturer or private labeler performed. This statement shall also list the model number or descriptor, lamp wattage and date of commencement of manufacture. Manufacturers and private labelers of general service fluorescent lamps and incandescent reflector lamps shall submit the certification report required by paragraph (a)(4) of this section within one year after the date manufacture of that new model commences.

(c) *Discontinued model.* When production of a basic model has ceased and it is no longer being distributed, this shall be reported, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. For each basic model, the report shall include: product type, product class, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such information can be included in the certification report.

(d) *Maintenance of records.* The manufacturer or private labeler of any covered product subject to any of the energy performance standards, water performance standards (in the case of faucets, showerheads, water closets, and urinals), or procedures prescribed in this part shall establish, maintain, and retain the records of the underlying test data for all certification testing. Such records shall be organized and indexed in a fashion which makes them readily accessible for review by DOE upon request. The records shall include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart. The records shall be retained by the manufacturer (private labeler) for a period of two years from the date that production of the applicable model has ceased.

(e) *Third party representation.* A manufacturer or private labeler may elect to use a third party to submit the

certification report to DOE (for example a trade association or other authorized representative). Such certification reports shall include all the information specified in paragraph (a)(4) of this section. Third parties submitting certification reports shall include the names of the manufacturers or private labelers who authorized the submittal of the certification reports to DOE on their behalf. The third party representative also may submit discontinued model information on behalf of an authorizing manufacturer.

§ 430.63 [Amended]

20. Section 430.63 of subpart F is amended in paragraph (a), by adding the phrase "or water performance standard (in the case of faucets, showerheads, water closets, and urinals)" after "energy performance standard" and revising "§ 430.23" to read "§ 430.24".

21. Section 430.70 of subpart F is amended by revising paragraphs (a)(1) introductory text, (a)(3) and (a)(6)(i), to read as follows:

§ 430.70 Enforcement.

(a) *Performance standard*—(1) *Test notice.* Upon receiving information in writing concerning the energy performance or water performance (in the case of faucets, showerheads, water closets, and urinals) of a particular covered product of a particular manufacturer or private labeler which indicates that the covered product may not be in compliance with the applicable energy performance standard or water performance standard (in the case of faucets, showerheads, water closets, and urinals), the Secretary may conduct testing of that covered product under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

* * * * *

(3) *Sampling.* The determination that a manufacturer's basic model complies with the applicable energy performance standard or water performance standard (in the case of faucets, showerheads, water closets, and urinals) shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in appendix B of this subpart and the test procedures set forth in subpart B of this part.

* * * * *

(6) *Testing at manufacturer's option.* (i) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy performance standard or water performance standard (in the case of faucets, showerheads, water closets, and urinals) at the conclusion of DOE testing in accordance with the double sampling plan specified in appendix B of this subpart, the manufacturer may request that DOE conduct additional testing of the model according to procedures set forth in appendix B of this subpart.

* * * * *

§ 430.73 [Amended]

22. Section 430.73 of subpart F is amended by adding the phrase "or , water conservation standard (in the case of faucets, showerheads, water closets, and urinals)" after "energy conservation standard" in the introductory paragraph.

23. Appendix A to subpart F of Part 430 is revised to read as follows:

Appendix A To Subpart F of Part 430—Compliance Statement and Certification Report

COMPLIANCE STATEMENT

Product: _____
Manufacturer's or Private Labeler's Name and Address:

_____

_____

_____

This compliance statement and all certification reports submitted are in accordance with 10 CFR Part 430 (Energy or Water Conservation Program for Consumer Products) and the Energy Policy and Conservation Act, as amended. The compliance statement is signed by a responsible official of the above named company. The basic model(s) listed in certification reports comply with the applicable energy conservation standard or water (in the case of faucets, showerheads, water closets, and urinals) conservation standard. All testing on which the certification reports are based was conducted in conformance with applicable test requirements prescribed in 10 CFR part 430 subpart B. All information reported in the certification report(s) is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act, the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Company Official: _____
Signature: _____
Title: _____
Firm or Organization: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____
Date: _____

Third Party Representation (if applicable)

For certification reports prepared and submitted by a third party organization under the provisions of § 430.62 of 10 CFR part 430, the company official who authorized said third party representation is:

Name: _____
Title: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

The third party organization submitting the certification report on behalf of the company is:

Third Party Organization: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

CERTIFICATION REPORT

Date: _____
Product Type: _____
Product Class: _____
Manufacturer: _____
Private Labeler (if applicable): _____
Name: _____
Title: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

For Existing, New, or Modified Models [1]:
For Discontinued Models [2]:

24. Appendix B to Subpart F of Part 430 is revised as follows:

Appendix B To Subpart F of Part 430—Sampling Plan For Enforcement Testing

Double Sampling

Step 1. The first sample size (n_1) must be four or more units.

Step 2. Compute the mean ($\bar{x}_1$) of the measured energy performance or water performance (in the case of faucets, showerheads, water closets, and urinals) of the n_1 units in the first sample as follows:

$$\bar{x}_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right) \qquad (1)$$

where ($\bar{x}_1$) is the measured energy efficiency, energy or water (in the case of faucets, showerheads, water closets, and urinals) consumption of unit I.

Step 3. Compute the standard deviation (s_1) of the measured energy or water performance of the (n_1) units in the first sample as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1}\left(x_i - \bar{x}_1\right)^2}{n_1 - 1}} \qquad (2)$$

Step 4. Compute the standard error ($S_{\bar{x}1}$) of the measured energy or water performance of the n_1 units in the first sample as follows:

$$s_{\bar{x}_1} = \frac{s_1}{\sqrt{n_1}} \qquad (3)$$

Step 5. Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy or water performance standard (EPS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

---

[1] Provide specific product information including, for each basic model, the manufacturer's model numbers and the information required in § 430.62(a)(4)(i) through (a)(4)(xvii)).

[2] Provide manufacturer's model number.

$$LCL_1 = EPS - ts_{\bar{x}_1} \qquad (4)$$

$$UCL_1 = EPS + ts_{\bar{x}_1} \qquad (5)$$

where t is a statistic based on a 95 percent two-tailed probability level and a sample size of n_1.

Step 6(a). For an Energy Efficiency Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(1) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(2) If the mean of the first sample is equal to or greater than the upper control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(3) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(a).

Step 6(b). For an Energy or Water Consumption Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(1) If the mean of the first sample is above the upper control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(2) If the mean of the first sample is equal to or less than the lower control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(3) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(b).

Step 7(a). For an Energy Efficiency Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1 \qquad (6a)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero and if the mean energy efficiency of the first sample ($\bar{x}_1$) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and $\bar{x}_1 \geq$ max (LCL_1, 0.95 EES), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy efficiency of the first sample ($\bar{x}_1$) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and $\bar{x}_1 \geq$ max (LCL_1, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6a). If the value of n_2 so calculated is greater than $20 - n_1$, set n_2 equal to $20 - n_1$.

Step 7(b). For an Energy or Water Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1 \qquad (6b)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy or water consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero and if the mean energy or water consumption of the first sample ($\bar{x}_1$) is either equal to or less than the upper control limit (UCL_1) or equal to or less than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $n_2 \leq 0$ and $\bar{x}_1 \leq$ min (UCL_1, 1.05 EPS), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy or water consumption of the first sample ($\bar{x}_1$) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $n_2 \leq 0$ and $\bar{x}_1 >$ min (UCL_1, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6b). If the value of n_2 so calculated is greater than $20 - n_1$, set n_2 equal to $20 - n_1$.

Step 8. Compute the combined mean ($\bar{x}_2$) of the measured energy or water performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2}\left(\sum_{i=1}^{n_1+n_2} x_i\right) \qquad (7)$$

Step 9. Compute the standard error ($S_{\bar{x}_2}$) of the measured energy or water performance of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{\bar{x}_2} = \frac{s_1}{\sqrt{n_1 + n_2}} \qquad (8)$$

Note: s_1 is the value obtained in Step 3.

Step 10(a). For an Energy Efficiency Standard, compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE energy efficiency standard (EES) as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$LCL_2 = EES - ts_{\bar{x}_2} \qquad (9a)$$

where the t-statistic has the value obtained in Step 5.

Step 10(b). For an Energy or Water Consumption Standard, compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE energy or water performance standard (EPS) as the desired mean and a one-tailed probability level of 102.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$UCL_2 = EPS + ts_{\bar{x}_2} \qquad (9b)$$

where the t-statistic has the value obtained in Step 5.

Step 11(a). For an Energy Efficiency Standard, compare the combined sample mean ($\bar{x}_2$) to the lower control limit (LCL_2) to find one of the following:

(1) If the mean of the combined sample ($\bar{x}_2$) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $\bar{x}_2 <$ max (LCL_2, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample ($\bar{x}_2$) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $\bar{x}_2 \geq$ max (LCL_2, 0.95 EES), the basic model is in compliance and testing is at an end.

Step 11(b). For an Energy or Water Consumption Standard, compare the combined sample mean ($\bar{x}_2$) to the upper control limit (UCL_2) to find one of the following:

(1) If the mean of the combined sample ($\bar{x}_2$) is greater than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $\bar{x}_2 >$ min (UCL_2, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample ($\bar{x}_2$) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $\bar{x}_2 \leq$ min (UCL_2, 1.05 EPS), the basic model is in compliance and testing is at an end.

Manufacturer-Option Testing

If a determination of non-compliance is made in Steps 6, 7 or 11, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3, of units be tested,

with n_3 chosen such that $n_1+n_2+n_3$ does not exceed 20.

Step B. Compute the mean energy or water performance, standard error, and lower or upper control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the revised lower or upper control limit to determine one of the following:

a.1. For an Energy Efficiency Standard, if the new combined sample mean is equal to or greater than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, the basic model is in compliance and testing is at an end.

a.2. For an Energy or Water Consumption Standard, if the new combined sample mean is equal to or less than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, the basic model is in compliance and testing is at an end.

b.1. For an Energy Efficiency Standard, if the new combined sample mean is less than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever, is greater, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

b.2. For an Energy or Water Consumption Standard, if the new combined sample mean is greater than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

c. Otherwise, the basic model is determined to be in noncompliance.

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Part III

Department of Education

Jacob K. Javits Gifted and Talented Students Education Program Notice Inviting Applications for New Awards for Fiscal Years 1998 and 1999; Notice

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DEPARTMENT OF EDUCATION

[CFDA No. 206A]

Jacob K. Javits Gifted and Talented Students Education Program Notice Inviting Applications for New Awards for Fiscal Years 1998 and 1999

Purpose of Program: To provide grants to help build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students; to encourage the development of rich and challenging curricula for all students; and to supplement and make more effective the expenditures of State and local funds for the education of gifted and talented students.

For fiscal years (FY) 1998 and 1999 the competition is based on an absolute priority. This priority supports projects that establish and operate model programs to serve gifted and talented students in schools in which at least 50 percent of the students enrolled are from low-income families. Within this absolute priority, the Secretary gives a competitive preference to projects that implement model programs in one or more schools in an Empowerment Zone or Enterprise Community. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

Eligible Applicants: State educational agencies; local educational agencies; institutions of higher education; and other public and private agencies and organizations, including Indian tribes and organizations—as defined by the Indian Self-Determination and Education Assistance Act—and Native Hawaiian organizations.

Deadline for Transmittal of Applications: May 15, 1998.

Deadline for Intergovernmental Review: July 15, 1998.

Applications Available: March 30, 1998.

Available Funds: $1,020,000.

Estimated Range of Awards: $100,000–$215,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: In no case does the Secretary make an award greater than $215,000 for a single budget period of 12 months. The Secretary does not consider an application that proposes a budget exceeding this maximum amount.

Project Period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total project period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Supplementary Information: It is the Department's intent to fund two cycles of awards from this competition. The first cycle of awards will be made from FY 1998 funds. If applications of high quality remain unfunded, additional awards will be made in the second cycle in 1999, pending availability of FY 1999 funds.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) 34 CFR Part 700; and (c) 34 CFR Part 299.

Note: The regulations in 34 CFR Part 791 previously applicable to this program will no longer apply to this program. See the **Federal Register** of April 29, 1996 (61 FR 1860).

Priorities: The priorities in the notice of final priorities for this program, as published in the **Federal Register** on April 24, 1996 (61 FR 18241) and repeated below apply to this competition.

Absolute Priority—Model Programs (CFDA 206A)

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that establish and operate model programs to serve gifted and talented students in schools in which at least 50 percent of the students enrolled are from low-income families. Projects must include students who may not be served by traditional gifted and talented programs, including economically disadvantaged students, limited English proficient students, and students with disabilities. The projects must incorporate high-level content and performance standards in one or more of the core subject areas as well as utilize innovative teaching strategies. The projects must provide comprehensive ongoing professional development opportunities for staff. The projects must incorporate training for parents in ways to support their children's educational progress. There must also be comprehensive evaluation of the projects' activities.

Competitive Preference Priority—Empowerment Zone or Enterprise Community

Within this absolute priority concerning model projects, the Secretary, under 34 CFR 75.105(c)(2)(1), gives preference to applications that meet the following competitive priority. The Secretary awards five (5) points to an application that meets this competitive priority:

Projects that implement model programs in one or more schools in an Empowerment Zone or Enterprise Community or that primarily serve students who reside in the EZ or EC. Applicants must ensure that the proposed program relates to the strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community program.

For Applications or Information Contact: Janet Williams or Kelley Berry, U.S. Department of Education, 555 New Jersey Avenue, NW, room 502, Washington, DC 20208–5645; Facsimile machine: (202) 219–2053; Telephone: (202) 219–1674 or (202) 219–2096, respectively. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to either of the contact persons listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting either person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8031–8036.

Dated: March 12, 1998.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones

California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley*

Enterprise Communities

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Mora, Rio Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*Denotes rural designee.

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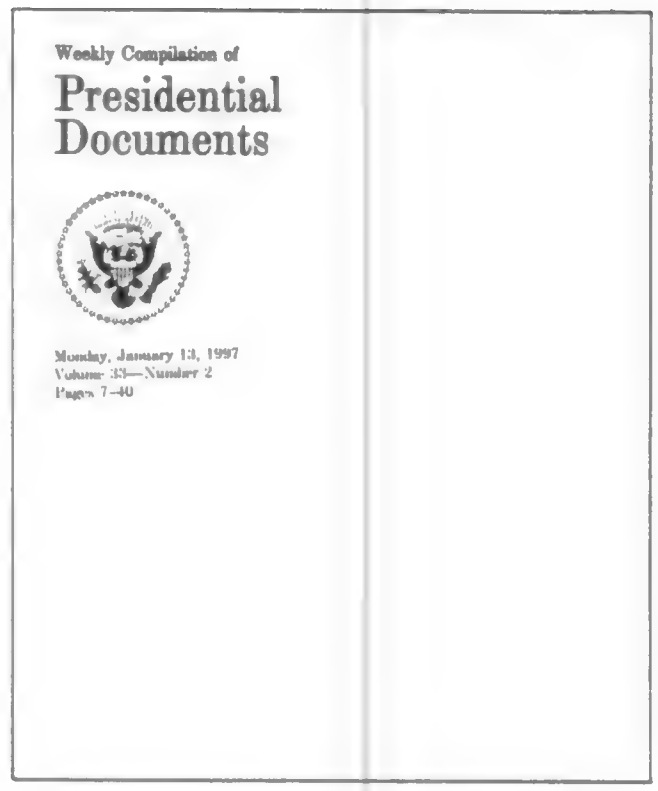

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Federal Register
Vol. 63, No. 53
Thursday, March 19, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–97–003]

Voluntary Shell Egg Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the regulations governing the voluntary shell egg grading program. The revisions require that scales of stated precision be provided to the grader; provide an alternative grademark for shell eggs; provide for the use of a "Produced From" grademark to officially identify products that originate from officially graded shell eggs; and remove the requirement for continuous overflow of water during the egg washing process. From time to time, sections in the regulations are affected by changes in egg processing technology and egg marketing. This rule updates the regulations to reflect these changes.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas C. Bailey, Chief, Standardization Branch, (202) 720–3506.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities as defined in the RFA (5 U.S.C. 601). There are almost 200 plants using the Agency's shell egg grading services and many of them are small entities.

Requiring electronic digital-display scales will affect some processors by requiring the purchase of one or more scales that cost from $150 to $1,000 each. This equipment will improve the accuracy of egg weight determinations, allowing processors to avoid the expense incurred when product is unnecessarily retained and re-processed.

Shell egg processors will be allowed to use a shield displayed in three colors on packaging materials to officially identify USDA graded eggs. Similarly, producers of products originating from officially graded shell eggs will be allowed to use a "Produced From" grademark on packaging materials. The use of these alternative forms of the USDA grademark gives processors greater flexibility in packaging and marketing their products. Since these alternative grademarks are used at the processors' discretion, any economic impact caused by their use is by the choice of the processors.

Removing the requirement for the continuous overflow of water during egg washing will conserve water and energy resources, decrease operating expenses of processors, and lessen the environmental impact of shell egg processing. This is expected to have a positive economic impact on processors.

Other editorial-type changes will clarify or update the existing regulations and will have no additional economic impact on entities using voluntary shell egg grading services.

For the above reasons, the Agency has certified that this action will not have a significant impact on a substantial number of small entities.

The information collection requirement in § 56.37 to be amended by this rule has been previously approved by OMB and assigned OMB Control Number 0581–0127 under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Background and Comments

Shell egg grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, and is offered on a fee-for-service basis. It is designed to assist the orderly marketing of shell eggs by providing for the official certification of egg quality, quantity, size, temperature, packaging, and other factors. Changes in egg processing technology and egg marketing require that the regulations governing shell egg grading be updated from time to time.

A proposed rule to amend the voluntary shell egg grading regulations was published in the **Federal Register** (62 FR 42944) on August 11, 1997. Comments on the proposed rule were solicited from interested parties until October 10, 1997.

During the 60-day comment period, the Agency received eight comments regarding the proposal. Comments from two State government agencies and one egg producer association expressed overall support for the proposal. The one egg producer who commented objected to the proposed requirement for precision scales. Comments from two State cooperative extension service specialists and two equipment manufacturers dealt with egg wash water overflow. The proposals and the comments are discussed below.

Scales

Grading personnel certify egg weights according to the official U.S. weight classes. Today, the highly mechanized, state-of-the-art equipment used to package shell eggs weighs individual eggs with high precision to satisfy container weight requirements. For processors to receive fair, uniform, accurate weight certification, graders need to have similarly precise scales to certify egg weights. Therefore, the Agency proposed to amend § 56.17(a). The proposal requires plants to replace balance or spring-type scales with electronic digital-display scales gradated in increments of 1/10-ounce or less and 1/4-ounce or less for weighing individual eggs and consumer packages, respectively. It also requires that scales used for weighing shipping containers be gradated in increments of 1/4-pound or less. The proposal continues to require test weights for calibrating all scales.

The one egg producer who commented felt that existing scales should only be replaced when they are clearly unreliable. One of the State government agencies commented that all plants receiving resident grading service in their State had already replaced their balance and spring-type scales with digital scales that comply with the proposed rule.

The Agency still finds the proposal to establish a minimum level of scale precision beneficial and appropriate for the conduct of a nationwide grading program and will issue it as a final rule. We continue to be of the view that for processors to receive fair, uniform, accurate weight certification, graders need to have similarly precise scales to certify egg weights and the change to the regulation made by this action will accomplish this.

Grademarks

Many processors want to identify their consumer-pack USDA graded shell eggs, or products prepared from those eggs, with a USDA grademark. The Agency proposed amending § 56.36 to allow processors additional flexibility in packaging and marketing their products. The proposal permits the use of a new grademark that contains horizontal bands of three colors. It also provides for the use of a new "Produced From" grademark to officially identify products produced from U.S. Grade AA or Grade A shell eggs for which there are no U.S. grade standards (e.g., pasteurized shell eggs). It also removes the option of using terms such as "Federal-State Graded" within the grademark because this option is no longer used. Finally, the proposal clarifies the organization and wording of § 56.36 and corrects references to § 56.36 that are in § 56.37 and § 56.40.

There were no comments about this proposal and the Agency will issue the final rule as it was proposed.

Overflow of Wash Water

Basically, the egg washing process involves moving eggs through brushes under a spray of wash water delivered through a system of pipes. The wash water, a mixture of water and an approved cleaning compound, is filtered and recirculated through the system of pipes from a holding tank. The tank is designed to permit both the inflow and overflow of wash water. Overflow occurs when the volume of wash water exceeds the holding capacity of the tank. When the tank is filled with water and the washer is turned on, the water is pumped from the tank into the system of pipes and the water level in the tank lowers. Also, some water is lost due to evaporation and other causes. Replacement water is added continuously and cleaning compound is added as necessary to maintain the cleaning efficacy of the wash water. Approximately every 4 hours and between shifts, wash water tanks are emptied and refilled with clean, potable water.

The Agency currently requires that replacement water be added continuously to the wash water in order to maintain a continuous overflow of water. However, the rate at which replacement water is added to today's egg washing equipment is not always of sufficient volume to provide for continuous overflow, particularly at the beginning of shifts or when the washing equipment is stopped and restarted during the day. Accordingly, the Agency proposed to amend § 56.76(e)(5) by omitting the requirement for maintaining a continuous overflow of water in shell egg washers.

One equipment manufacturer expressed support for the proposal as written. Another equipment manufacturer recommended that the regulation be reworded to suggest that the overflow of water be expected 10 to 15 minutes after start-up, and recommended that egg washers be equipped with a double rinse and traveling filter system. The two State cooperative extension specialists raised the concern that by not requiring continuous overflow of water, waste could build up in the wash water and overwhelm the detergents and sanitizers.

The Agency recognizes that rate of replacement water inflow, concentration of cleaning compound in the wash water, and rate of overflow all affect wash water quality. The proposal was published in recognition that the continuous overflow of wash water is not necessary to maintain the cleaning efficacy of the wash water. The Agency's existing requirement that replacement water be continuously added to the washing system will likely result in a periodic overflow of wash water during the washing process, with the frequency and rate of overflow dependent on factors such as the rate of replacement water inflow, tank size, rate of evaporation, and the number of eggs cleaned. While the proposal would eliminate the requirement for continuous overflow of wash water, it would not eliminate the periodic overflow of wash water.

The Agency continues to find no evidence that continuous wash water overflow is necessary to maintain the cleaning efficacy of wash water, and no comments provided evidence to the contrary. Moreover, the Agency believes the proposal to eliminate continuous overflow of wash water provides egg packers the flexibility they need to responsibly use today's egg cleaning equipment and technologies and to provide their customers with the cleanest eggs possible. Therefore, it will issue the final rule as proposed.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and record keeping requirements.

For reasons set forth in the preamble, Title 7, Code of Federal Regulations Part 56 is amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

1. The heading for part 56 is revised to read as set forth above.

1a. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In § 56.17, paragraphs (a)(2) and (a)(3) are removed and new paragraphs (a)(2) through (5) are added to read as follows:

§ 56.17 Facilities and equipment for graders.

* * * * *

(a) * * *

(2) Electronic digital-display scales graduated in increments of 1/10-ounce or less for weighing individual eggs and test weights for calibrating such scales. Plants packing product based on metric weight must provide scales graduated in increments of 1-gram or less;

(3) Electronic digital-display scales graduated in increments of 1/4-ounce or less for weighing the lightest and heaviest consumer packages packed in the plant and test weights for calibrating such scales;

(4) Scales graduated in increments of 1/4-pound or less for weighing shipping containers and test weights for calibrating such scales;

(5) An acceptable candling light.

* * * * *

3. Section 56.36 is revised to read as follows:

§ 56.36 Form of grademark and information required.

(a) *Form of official identification symbol and grademark.* (1) The shield set forth in Figure 1 of this section shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with shell eggs, shall be deemed prima facia to constitute a representation that the product has been

officially graded for the purposes of § 56.2.

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify USDA consumer-graded shell eggs shall be of the form and design indicated in Figures 2 through 4 of this section. The shield shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures.

(3) The "Produced From" grademark in Figure 5 of this section may be used to identify products for which there are no official U.S. grade standards (*e.g.*, pasteurized shell eggs), provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade AA or A shell eggs under the continuous supervision of a grader.

(b) *Information required on grademark.* (1) Except as otherwise authorized by the Administrator, each grademark used shall include the letters "USDA" and the U.S. grade of the product it identifies, such as "A Grade," as shown in Figure 2 of this section. Such information shall be printed with the shield and the wording within the shield in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

(2) The size or weight class of the product, such as "Large," may appear within the grademark as shown in Figure 3 of this section. If the size or weight class is omitted from the grademark, it must appear prominently on the main panel of the carton.

(3) Except as otherwise authorized, the bands of the shield in Figure 4 of this section shall be displayed in three colors, with the color of the top, middle, and bottom bands being blue, white, and red, respectively.

(4) The "Produced From" grademark in Figure 5 of this section may be any one of the designs shown in Figures 2 through 4 of this section. The text outside the shield shall be conspicuous, legible, and in approximately the same proportion and close proximity to the shield as shown in Figure 5 of this section.

(5) The plant number of the official plant preceded by the letter "P" must be shown on each carton or packaging material.

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Figure 1

Figure 2

Figure 3

Figure 4

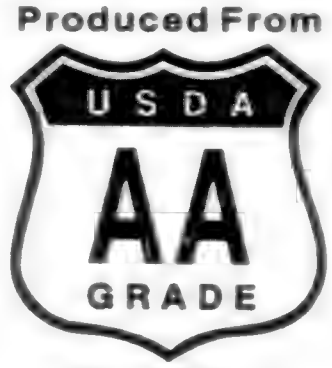

Figure 5

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4. In § 56.37, the first sentence is revised to read as follows:

§ 56.37 Lot marking of officially identified product.

Each carton identified with the grademarks shown in § 56.36 shall be legibly lot numbered on either the carton or the consumer package. * * *

5. In § 56.40, paragraph (a) is revised to read as follows:

§ 56.40 Grading requirements of shell eggs identified with consumer grademarks.

(a) Shell eggs to be identified with the grademarks illustrated in § 56.36 must be individually graded by a grader or by authorized personnel pursuant to § 56.11 and thereafter check graded by a grader.

* * * * *

6. In § 56.76, the first sentence in paragraph (e)(5) is revised to read as follows:

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

* * * * *

(e) * * *

(5) Replacement water shall be added continuously to the wash water of washers. * * *

* * * * *

Dated: March 13, 1998.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 98–7156 Filed 3–18–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–289–AD; Amendment 39–10401; AD 98–06–23]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires application of sealant to the auxiliary power unit (APU) firezone bulkhead. This amendment is prompted by issuance of mandatory continued airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent hazardous amounts of flame, fuel, and vapor from entering compartments outside the fire zone due to unsealed openings in the firezone bulkhead, which could result in a fire outside the APU firezone compartment.

DATES: Effective April 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on December 18, 1997 (62 FR 66315). That action proposed to require application of sealant to the auxiliary power unit (APU) firezone bulkhead.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Revise Description of the Addressed Unsafe Condition

One commenter notes that the description of the addressed unsafe condition that appeared in the proposal states, in part, "* * * to prevent hazardous amounts of flame, fuel, and vapor from entering the passenger compartments * * *." The commenter states that there are other compartments between the APU firezone compartments and the passenger compartment; the actual design makes it unlikely that flames, fuel, or vapor will enter the passenger compartment due to unsealed openings in the firezone bulkhead. The commenter suggests that a more accurate description of the unsafe condition would be "* * * to prevent hazardous amounts of flame, fuel, and vapor from entering compartments outside the fire zone * * *."

The FAA concurs that the commenter's proposed wording is a more accurate statement of the unsafe condition. The FAA has revised this final rule accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 3 Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–23 Saab Aircraft AB: Amendment 39–10401. Docket 97–NM–289–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers –004 through –040 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent hazardous amounts of flame, fuel, and vapor from entering compartments outside the fire zone due to unsealed openings in the firezone bulkhead, which could result in an uncontrollable fire outside the auxiliary power unit (APU) firezone compartment, accomplish the following:

(a) Within 400 flight hours or 2 months after the effective date of this AD, whichever occurs later, apply sealant to the APU firezone bulkhead, in accordance with Saab Service Bulletin 2000–53–024, dated December 2, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Saab Service Bulletin 2000–53–024, dated December 2, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–105, dated December 4, 1996.

(e) This amendment becomes effective on April 23, 1998.

Issued in Renton, Washington, on March 10, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6761 Filed 3–18–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–77–AD; Amendment 39–10400; AD 98–06–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A310 Series Airplanes, that currently requires measurement of the force required to move the interior control handle of the emergency exit doors, and various follow-on corrective actions, if necessary. This amendment adds repetitive functional tests to measure the force necessary to move the interior control handle of the emergency exit doors; and requires adjusting an emergency exit door or replacing the bearing of the door lifting mechanism, if necessary. This amendment is prompted by reports of seizure of a bearing and increased door handle forces that were outside the limits of the required hand forces due to seizure of two teflon line bearings on the lifting shaft. The actions specified by this AD are intended to prevent impeding passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door.

DATES: Effective April 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 23, 1998.

The incorporation by reference of Airbus All Operators Telex 52 08, Revision 1, dated December 1, 1994, was approved previously by the Director of the Federal Register as of May 2, 1995 (60 FR 19155, April 17, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–08–07, amendment 39–9196 (60 FR 19155, April 17, 1995), which is applicable to all Airbus Model A310 series airplanes, was published in the **Federal Register** on October 14, 1997 (62 FR 53269). The action proposed to supersede AD 95–08–07 to continue to require measurement of the force required to move the interior control handle of the emergency exit doors, and various follow-on corrective actions, if necessary. The action also proposed to require repetitive functional tests to measure the force necessary to move the interior control handle of the emergency exit doors; and adjusting an emergency exit door or replacing the bearing of the door lifting mechanism, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request for Additional Functional Testing

One commenter requests that testing of the force required to open the door be accomplished at least three times during accomplishment of the functional test. The commenter states that this would aid in identifying cases where the door handle force was very close to the limit.

The FAA does not concur with the commenter's request. The procedures described in the referenced service information indicate that the emergency exit door is to be moved at least three times into the closed position, and lifted each time. Additionally, the service information specifies that the operation of the door should be assessed during the lifting process for an aligned movement; since the movement of the interior control handle is smooth, constant hand force is required. In light of this, the FAA finds that the requirements of this AD, as proposed, are adequate to address the identified unsafe condition.

Request for Pre-Flight Checks

The commenter also requests that a requirement be added to the proposal to check the handle force on a pre-flight basis to ensure that the force would not exceed the limit shortly after the inspection is performed. The

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commenter indicates that the manner in which Teflon bearings fail is gradual.

The FAA does not concur with the commenter's request. In developing the proposed inspection interval of three months, the FAA has determined that this interval is appropriate in light of the safety implications, the average utilization rate of the affected fleet, and the practical aspects of an orderly inspection of the fleet during regular maintenance periods.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 6 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 95–08–07 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $360, or $60 per airplane.

The new actions that are required by this new AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $360, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9196 (60 FR 19155, April 17, 1995), and by adding a new airworthiness directive (AD), amendment 39– , to read as follows:

98–06–22 Airbus Industrie: Amendment 39–10400. Docket 97–NM–77–AD. Supersedes AD 95–08–07, Amendment 39–9196.

Applicability: Model A310 series airplanes, except those airplanes that have been modified in accordance with Supplemental Type Certificate (STC) ST0001NY; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent impeding passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door, accomplish the following:

Restatement of Requirements of AD 95–08–07, Amendment 39–9196

(a) Within 60 days after May 2, 1995 (the effective date of AD 95–08–07), measure the amount of force required to move the interior control handle of the emergency exit doors, in accordance with Airbus All Operators Telex (AOT) 52 08, Revision 1, dated December 1, 1994.

(b) If the force required to move the interior control handle of the door is equal to or does not exceed 20 daN (45 foot-pounds), no further action is required by this paragraph for that door.

(c) If the force required to move the interior control handle of the door exceeds 20 daN (45 foot-pounds), prior to further flight, perform a full functional test of the emergency exit doors to measure the amount of force required to open the doors, in accordance with the AOT.

(1) If the force required to open the door does not exceed 20 daN (45 foot-pounds), no further action is required by this paragraph for that door.

(2) If the force required to open the door exceeds 20 daN (45 foot-pounds), prior to further flight, perform a visual inspection to detect discrepancies of the mechanism inside the door, in accordance with the AOT.

(i) If no discrepancy is found, prior to further flight, replace seized bearings with new or serviceable bearings, in accordance with AOT.

(ii) If any discrepancy is found, prior to further flight, repair the discrepancy in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the findings of discrepancies to Airbus Industrie, Engineering Services, Attention: Mr. R. Filaquier, AI/SE E121, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

New Requirements of This AD

(e) Within 3 months after the effective date of this AD, perform a functional test to measure the force necessary to move the interior control handle of the emergency exit doors, in accordance with Airbus Service Bulletin A310–52–2060, dated July 22, 1996.

(1) If the emergency exit door opens and the force required to move the interior control hand is less than or equal to the limits specified in the service bulletin, repeat the test thereafter at intervals not to exceed 3 months.

(2) If the emergency exit door does not open or the force required to move the interior handle is greater than the limits specified in the service bulletin, prior to further flight, perform an inspection to detect discrepancies of the mechanisms inside the door, in accordance with the service bulletin.

(i) If no discrepancy is detected, prior to further flight, replace the bearings with new

bearings, in accordance with the service bulletin. Repeat the test thereafter at intervals not to exceed 3 months.

(ii) If any discrepancy is detected, prior to further flight, adjust the emergency exit doors in accordance with the service bulletin. Repeat the test thereafter at intervals not to exceed 3 months.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with Airbus All Operators Telex (AOT) 52 08, Revision 1, dated December 1, 1994; and Airbus Service Bulletin A310–52–2060, dated July 22, 1996.

(1) The incorporation by reference of Airbus Service Bulletin A310–52–2060, dated July 22, 1996, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus AOT 52 08, Revision 1, dated December 1, 1994, was approved previously by the Director of the Federal Register as of May 2, 1995 (60 FR 19155, April 17, 1995).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–239–205(B), dated October 23, 1996.

(i) This amendment becomes effective on April 23, 1998.

Issued in Renton, Washington, on March 10, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6760 Filed 3–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–200–AD; Amendment 39–10399; AD 98–06–21]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires repetitive inspections to detect uneven wear of the heat pack of the main landing gear (MLG) brake unit; measurement and setting of the wear remaining length (WRL) of the wear indicator pin (WIP); and replacement of the brake heat pack unit with a serviceable unit, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect uneven wear of the brake heat pack unit and prevent failure of the pressure stator of the MLG brake unit, which could result in reduced braking efficiency and consequent longer stopping distances upon landing.

DATES: Effective April 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on November 26, 1997 (62 FR 63042). That action proposed to require repetitive inspections to detect uneven wear of the heat pack of the main landing gear (MLG) brake unit; measurement and setting of the wear remaining length (WRL) of the wear indicator pin (WIP); and replacement of the brake heat pack unit with a serviceable unit, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the proposal be withdrawn because no instances of uneven brake wear of the brake heat pack have occurred. The commenter states that its airplanes have the lowest brake life of the worldwide fleet of the affected airplanes, the operating environment is different from all other operators of these airplanes models, and that, during maintenance, the whole brake assembly (rather than just the brake heat packs) are changed.

The FAA does not concur with the commenter's request to withdraw the proposal. As explained in the preamble of the proposal, this action was prompted by reports indicating that the heat pack unit of the main landing gear brake unit exhibited uneven wear at the pressure stator/first rotor interface in some instances, which resulted in a small number of failures of the pressure stator. In light of these reports, the FAA identified the existence of an unsafe condition that is likely to exist or develop in the affected airplanes. As a result, the FAA is issuing this AD to eliminate that unsafe condition by requiring repetitive inspections to detect uneven wear of the heat pack; measurement and setting of the wear remaining length of the wear indicator pin; and replacement of the brake heat pack unit with a serviceable unit, if necessary. The AD is the appropriate vehicle for mandating such actions.

Removal of Service Bulletin Citation

The FAA has revised this final rule to move references to Jetstream Service Bulletin ATP/J61–32–71, dated May 23, 1996, from paragraphs (a) and (b) of this AD to a new Note 2. This new note indicates that accomplishment of the actions required by those paragraphs prior to the effective date of this AD in accordance with the original issue of the

service bulletin is considered acceptable for compliance with those actions. The FAA has determined that the actions recommended by the original issue of the service bulletin are essentially identical to those specified in Revision 1. Therefore, the FAA finds that it is appropriate to cite the latest revision of the service bulletin and reference the original issue in a note.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,000, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–21 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10399. Docket 96–NM–200–AD.

Applicability: BAe Model ATP airplanes having constructors numbers 2002 through 2067 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect uneven wear of the brake heat pack unit and prevent failure of the pressure stator of the main landing gear (MLG) brake unit, which could result in reduced braking efficiency and consequent longer stopping distances upon landing, accomplish the following:

Note 2: Accomplishment of the actions required by paragraphs (a) and (b) of this AD prior to the effective date of this AD in accordance with Jetstream Service Bulletin ATP/J61–32–71, dated May 23, 1996, is considered acceptable for compliance with the applicable actions specified in this amendment.

(a) Within 300 hours time-in-service (TIS) after the effective date of this AD: Perform an inspection of the brake units of the left and right MLG to detect uneven wear at the pressure stator/first rotor interface, measure the wear remaining length (WRL) of the wear indicator pin (WIP), and accomplish the action specified in paragraph (a)(1) or (a)(2) of this AD, as applicable; in accordance with Jetstream Service Bulletin ATP/J61–32–71, Revision 1, dated June 18, 1996.

Note 3: Jetstream Service Bulletin ATP/J61–32–71, dated May 23, 1996, and Revision 1, dated June 18, 1996, reference Dunlop Service Bulletin AHA1612/AHA2004–32–1122, dated April 16, 1996, as an additional source of service information for procedures to inspect the brakes, measure the WRL of the WIP, and set the corrected length of the pin.

(1) If the WRL of the WIP is greater than or equal to 0.5 inches: Repeat the action required in paragraph (a) of this AD thereafter at intervals not to exceed 300 hours TIS.

(2) If the WRL of the WIP is less than 0.5 inches: Prior to further flight, measure the thickness of the pressure stator and accomplish the action specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable; and repeat the action required in paragraph (a) of this AD thereafter at intervals not to exceed 300 hours TIS.

(i) If the pressure stator is less than or equal to 0.31 inches thick: Replace the heat pack of the MLG brake unit with a serviceable unit and set the WRL of the WIP to indicate the corrected WRL measurement.

(ii) If the pressure stator exceeds 0.31 inches thick: Set the WRL of the WIP to indicate the corrected WRL measurement.

(b) If, during any inspection required by this AD, the WRL of the WIP on any brake unit shows that the wear status of the brake heat pack is not within the acceptable limits specified in Jetstream Service Bulletin ATP/J61–32–71, dated May 23, 1996, or Revision 1, dated June 18, 1996: Prior to further flight, replace the brake heat pack unit with a serviceable unit in accordance with Jetstream Service Bulletin ATP/J61–32–71, Revision 1, dated June 18, 1996; and repeat the action required in paragraph (a) of this AD thereafter at intervals not to exceed 300 hours TIS.

(c) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add additional comments, and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Jetstream Service Bulletin ATP/J61–32–71, Revision 1, dated April 16, 1996, which contains the specified effective pages:

Revision level page number	Shown on page	Date shown on page
1, 3	1	June 18, 1996.
2, 4, 5	Original	May 23, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in British airworthiness directive 002–05–96.

(f) This amendment becomes effective on April 23, 1998.

Issued in Renton, Washington, on March 10, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6759 Filed 3–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Carbadox

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for a revised tolerance for residues of carbadox used in Type A medicated articles to make Type C medicated swine feeds.

EFFECTIVE DATE: March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn G. Friedlander, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0675.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, is sponsor of NADA 41–061 that provides for the use of Mecadox® 10 (carbadox) Type A medicated articles used to make Type C medicated swine feeds used for control of swine dysentery, control of bacterial swine enteritis, increased rate of weight gain, and improved feed efficiency. The sponsor filed a supplemental NADA that provides for a revised finite tolerance for residues of carbadox and its metabolites in edible swine tissues. The supplement is approved as of January 30, 1998, and the regulations are revised in § 556.100 (21 CFR 556.100) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

A tolerance for no residues of carbadox or its metabolites and the method to determine said residues in the edible swine tissues had been previously established. Because better and more accurate regulatory procedures are found in general use, the analytical procedure is no longer codified. At this time, the method of analysis is removed and a finite tolerance for residues of quinoxaline-2-carboxylic acid (marker residue) in liver (target tissue) is established by amending § 556.100.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(jii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), approval of this supplement qualifies for 3 years of marketing exclusivity beginning January 30, 1998, because the supplement contains substantial evidence of effectiveness of the drug involved, studies of animal safety or, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant. Exclusivity applies only to the new tolerance as established by human food safety studies (total residue depletion and metabolism) which are summarized in the freedom of information summary.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.100 is revised to read as follows:

§ 556.100 Carbadox.

A tolerance of 30 parts per billion is established for residues of quinoxaline-2-carboxylic acid (marker residue) in liver (target tissue) of swine.

Dated: February 26, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–7057 Filed 3–18–98; 8:45 am]

BILLING CODE [illegible]

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program, Insurance Coverage

AGENCY: United States Information Agency.

ACTION: Notice to sponsors of exchange visitor programs.

SUMMARY: In March 1993, the United States Information Agency ("Agency") published a comprehensive set of final rules governing the exchange visitor program established under the authority of the Mutual Educational and Cultural Exchange Act of 1961 (22 CFR Part 514.) Section 514.14 establishes requirements regarding health insurance coverage on exchange visitors who come to the United States on the J visa. Those requirements merely establish criteria for insurance coverage on exchange

visitors, and they in no way purport to invalidate, impair or supersede State laws regulating the insurance industry.

DATES: This Notice to Sponsors is effective March 19, 1998.

ADDRESSES: United States Information Agency, Office of the General Counsel, Rulemaking 115, 301 Fourth Street, SW, Room 700, Washington, DC 20547–0001.

FOR FURTHER INFORMATION CONTACT: William G. Ohlhausen, Assistant General Counsel, United States Information Agency, 301 Fourth Street, S.W., Washington, DC 20547; telephone (202) 619–6972.

SUPPLEMENTARY INFORMATION: The final rules adopted by the Agency in March 1993 include a rule requiring that exchange visitors entering the United States on the J visa be covered by health insurance providing certain minimum coverage levels and that the insurance be underwritten by insurance corporations meeting certain nationally or internationally recognized financial ratings. 22 CFR 514.14. Federal, State or local government agencies, State colleges and universities, public community colleges, and, with Agency permission, non-governmental sponsors, may self-insure. 22 CFR 514.14 (c) and (d).

It has long been established by statute that the business of insurance, and every person engaged therein, is subject to the laws of the State or States in which such business is conducted. Federal law makes it clear that no Act of Congress shall be construed to invalidate, impair or supersede any State law regulating or taxing the business of insurance. [15 U.S.C. 1012 (known as the "McCarran-Ferguson Act of 1948"] That law allows an exception only with respect to the Sherman and Clayton Antitrust Acts and the Federal Trade Commission Act, and then only to the extent that the insurance business is not regulated by State law.

The Agency's regulation set forth at 22 CFR 514.14 does not purport to regulate the business of insurance, either in the United States or in foreign countries. It merely establishes mandatory minimum levels of coverage on health insurance policies issued to exchange visitors and requires that insurance companies underwriting such policies meet certain minimum financial ratings set by recognized insurance company rating services.

It has come to the Agency's attention that there have been instances where foreign insurance companies and their agents have been conducting business *in* a State or States where they are "unauthorized," i.e., unlicensed or otherwise not meeting the requirements of State law. Merely complying with the Agency's insurance regulation does not permit foreign insurance companies to do business in a State if the conduct of the business is a violation of that State's laws.

Nothing in the foregoing is meant to suggest that exchange visitors are prohibited from obtaining the required insurance coverage in their home country, as long as the policy of insurance and the company from which it is purchased meets USIA's requirements. However, foreign insurance companies and their agents conducting exchange visitor program health insurance business *in* the United States are required to be in compliance with the laws governing the business of insurance in the State or States where such business is being conducted.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1997, 3 CFR, 1977 Comp., p. 200; E.O. 12048 of 3/27/78, 3 CFR, 1978 Comp., p. 168.

Dated: March 13, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–7065 Filed 3–18–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

Office of Management and Budget Control Numbers Under Paperwork Reduction Act for Miscellaneous General Industry, Shipyard Employment and Construction Industry Rules and Regulations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; amendments and announcements of OMB approval of information collection requirements.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that the Office of Management and Budget (OMB) recently extended the approval for a number of information collection requirements in OSHA's rules and regulations. OSHA sought approval under the Paperwork Reduction Act of 1995 (PRA–95) and, as required by that Act, is announcing the approval numbers and expiration dates for 19 approved requirements. Seventeen of the approvals apply to certification records, records which provide information to verify that certain tests, inspections, or training activities required in parts 1910, 1915, and 1926 have been performed. The other two approvals announce the extension of approval for the collection of information requirements associated with the Safety Testing and Certification requirements and the Construction Industry Fall Protection Plans and Records. OSHA is also correcting the approval number for the certification record associated with Resistance Welding and removing the OMB approval numbers for four provisions no longer subject to approval by OMB under PRA–95.

EFFECTIVE DATE: These amendments are effective March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Bielaski, Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 219–8076, ext. 142.

SUPPLEMENTARY INFORMATION: In 1995, OSHA sought and obtained approval from OMB for 30 provisions in its general industry, shipyard employment and construction industry safety standards (parts 1910, 1915, and 1926) that require employers to prepare, maintain, and sign and date a certification record to verify that certain tests, inspections, maintenance checks or training activities had been performed. These provisions were all combined under one submission to OMB and received approval under one OMB Control Number, 1218–0210. Prior to the expiration of the approvals in late 1997, OSHA sought public comment on its burden hour and cost estimates through a series of **Federal Register** notices requesting public comment. At the conclusion of the public comment period, the Agency sought an extension of OMB's approval on 26 of the certification records. In accordance with the Paperwork Reduction Act (PRA–95) (44 U.S.C. 3501–3520), OMB has renewed its approval for these information collection requirements and issued separate OMB approval numbers, some approvals covering more than one provision. Below is a listing of the certification records, the citations they cover, the approval numbers, and the expiration dates for those records. OSHA is amending the tables in 1910.8, 1915.8 and 1926.5, as necessary, to display the new OMB Approval Numbers. The listing also contains the

date and page numbers of the **Federal Register** in which public comment was sought on the certification records. The approvals for all of the collections in this table expire on November 30, 1999.

Title	Federal Register date & number	OMB control No.
Forging Machines, Inspection Certification—29 CFR 1910.218(a)(2)(i) and 1910.218(a)(2)(ii).	July 2, 1997, 62 FR 34838	1218–0228
Portable Fire Extinguishers, Hydrostatic Test Certification Record—29 CFR 1910.157(f)(16).	July 7, 1997, 62 FR 36311	1218–0218
Telecommunication, Training Certification—29 CFR 1910.268(c)	July 7, 1997, 62 FR 36313	1218–0225
Manlifts, Inspection Certifications—29 CFR 1910.68(e)(3)	July 8, 1997, 62 FR 36576	1218–0226
Mechanical Power Presses, Inspection Certification—29 CFR 1910.217(e)(1)(i) and 1910.217(e)(1)(ii).	July 9, 1997, 62 FR 36849	1218–0229
Overhead and Gantry Cranes, Inspection Certification—29 CFR 1910.179(j)(2)(iii), (j)(2)(iv), (m)(1), and (m)(2).	July 14, 1997, 62 FR 37625	1218–0224
Servicing Multi-Piece and Single-Piece Rim Wheels, Manufacturer's Certification—29 CFR 1910.177(d)(3)(iv).	July 14, 1997, 62 FR 37626	1218–0219
Crawler, Locomotive, and Truck Cranes, Inspection Certifications—29 CFR 1910.180(d), 1910.180(g)(1), and 1910.180(g)(2)(ii).	July 15, 1997, 62 FR 37934	1218–0221
Aerial Lifts, Manufacturer's Certification of Modification—29 CFR 1910.67(b)(2)	July 15, 1997, 62 FR 37937	1218–0230
Derricks, Inspection Certifications—29 CFR 1910.181(g)(1) and 1910.181(g)(3)	July 16, 1997, 62 FR 38124	1218–0222
Certification Records for Slings—29 CFR 1910.184	July 16, 1997, 62 FR 38127	1218–0223
Shipyard Certification Records—29 CFR 1915.113(b)(1) and 29 CFR 1915.172(d)	July 18, 1997, 62 FR 38587	1218–0220
Rigging Equipment for Material Handling—29 CFR 1926.251(c)(150(ii)	July 14, 1997, 62 FR 37621	1218–0233
Crawler, Locomotive, and Truck Crane Inspection Records—29 CFR 1926.550(b)(2)	July 14, 1997, 62 FR 37624	1218–0232
Construction Records for Tests and Inspection for Personnel Hoists—29 CFR 1926.552(c)(15).	July 14, 1997, 62 FR 37621	1218–0231
Blasting Operations—29 CFR 1926.900(k)(3)(I)	July 14, 1997, 62 FR 37622	1218–0217
Trucks Used Underground to Transport, Explosives, Inspection Certification—29 CFR 1926.903(e).	July 14, 1997, 62 FR 37623	1218–0227

In addition to the certification records, in the April 29, 1997, **Federal Register**, at 62 FR 23277, OSHA announced its intent to request Office of Management and Budget (OMB) approval for construction fall protection plans and records. This included provisions addressing safety net certification records and fall protection plans and training certification records. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has extended the approval of this information collection requirement under OMB control number 1218–0197, which expires on November 30, 2000.

Also, in the **Federal Register** of July 18, 1997, OSHA issued a notice stating that it intended to seek an extension of approval from OMB on its collection entitled, Safety Testing and Certification in 29 CFR 1910.7. OMB has extended the approval of the information collection requirements in this section under OMB Approval Number 1218–0147. The approval expires on November 30, 2000.

OSHA is also removing the approval numbers for four provisions. Two provisions, §§ 1926.1001 and 1926.1002 concerning rollover protective structures are no longer in existence hence they no longer need approval numbers. The other two provisions in §§ 1910.106 and 1926.152, requiring employers to keep a copy of the manufacturer's test have been determined to be exempt from approval under the Paperwork Reduction Act. OSHA explained the reasons for the withdrawals in the **Federal Register** of July 7 and July 10, 1997 (62 FR 36312 and 62 FR 36850, respectively) and provided a period for public comment.

Finally, OSHA is making a correction to the table in 1910.8 to insert the correct OMB Approval Number for the collection of information requirement in 1910.255(e). OSHA has incorrectly listed its number in the last printing of approval numbers. The correct approval number is 1218–0207.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor a collection of information unless: (1) The collection displays a valid control number, and (2) the Agency informs potential persons who may respond to the collections of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Accordingly, now that OMB has extended the approval on these collections, OSHA is codifying the current OMB control numbers into §§ 1910.7, 1910.8, 1915.8, and 1926.5, as appropriate (if not already listed), which are the sections in which OSHA displays its approved collections under the Paperwork Reduction Act.

List of Subjects

29 CFR Parts 1910 and 1915

Occupational safety and health, Reporting and recordkeeping requirements.

29 CFR Part 1926

Construction industry; Occupational safety and health; Reporting and recordkeeping requirements.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 11th day of March 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, the Occupational Safety and Health Administration amends 29 CFR parts 1910, 1915, and 1926 as set forth below.

PART 1910—[AMENDED]

1. The authority citation for Subpart A of part 1910 continues to read as follows:

Authority: Secs. 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83

(48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR part 1911.

2. In § 1910.8, the table is amended by removing 1910.106(b) and its accompanying OMB control number, and revising the entries for the following sections, in numerical order, to read as follows:

§ 1910.8 OMB control numbers under the Paperwork Reduction Act.

1910.67(b)	1218–0230
1910.68	1218–0226
* * * * *	
1910.157(f)(16)	1218–0218
1910.177(d)(3)(iv)	1218–0219
1910.179(j)(2)(iii) and (iv)	1218–0224
1910.179(m)(1) and (m)(2)	1218–0224
1910.180(d)(6)	1218–0221
1910.180(g)(1) and (g)(2)(ii)	1218–0221
1910.181(g)(1) and (g)(3)	1218–0222
1910.184(e)(4), (f)(4) and (i)(8)(ii)	1218–0223
1910.217(e)(1)(i) and (ii)	1218–0229
* * * * *	
1910.218(a)(2)(i) and (ii)	1218–0228
* * * * *	
1910.255(e)	1218–0207
* * * * *	
1910.268	1218–0225
* * * * *	

PART 1915—[AMENDED]

1. The authority citation for part 1915 continues to read in part as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) of 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

* * * * *

2. In § 1915.8, the table is amended by revising the entries for the following sections, in numerical order, to read as follows:

§ 1915.8 OMB Control numbers under the Paperwork Reduction Act.

* * * * *	
1915.113	1218–0220
* * * * *	
1915.172	1218–0220
* * * * *	

PART 1926—[AMENDED]

1. The authority citation for subpart A of part 1926 continues to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

2. In § 1926.5, the table is amended by removing the entries for 1926.152, 1926.1001 and 1926.1002 and be revising the entries for the following sections, in numerical order, to read as follows:

§ 1926.5 OMB control numbers under the Paperwork Reduction Act

* * * * *	
§ 1926.251	1218–0233
* * * * *	
§ 1926.550(b)(2)	1218–0232
* * * * *	
§ 1926.552	1218–0231
* * * * *	
§ 1926.900	1218–0217
* * * * *	
§ 1926.903	1218–0227
* * * * *	

[FR Doc. 98–6871 Filed 3–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS MCFAUL (DDG 74) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: Effective 31 October 1997.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS MCFAUL (DDG 74) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii) pertaining to the vertical placement of task lights; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS MCFAUL:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
. . . . .	.	.
USS MCFAUL	DDG 74	1.91 meters.
. . . . .	.	.

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS MCFAUL:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
. . . . .	.	.
USS MCFAUL	DDG 74	102.00 thru 112.50E.
. . . . .	.	.

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS MCFAUL:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
. . .	.	.	.	.	.
USS MCFAUL	DDG74	X	X	X	13.9
. . .	.	.	.	.	.

Dated: October 31, 1997.

Approved:

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 98–7126 Filed 3–18–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC33

Shenandoah National Park, Recreational Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is removing the special fishing regulations for Shenandoah National Park. The NPS believes that the general regulations found at 36 CFR parts 1 and 2 will provide adequate regulatory control to enable the Superintendent to manage the fishing resources within Shenandoah National Park. This duplication of regulations is unnecessary and often confusing.

EFFECTIVE DATE: This final rule becomes effective on April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Greg Stiles, Assistant Chief Ranger, Shenandoah National Park, 3655 U.S. Highway 211 East, Luray, VA 22835. Telephone 540–999–3401.

SUPPLEMENTARY INFORMATION:

Background

The special regulations for fishing for Shenandoah National Park are codified at 36 CFR 7.15(a). These regulations

permit recreational fishing in selected streams of the Park as designated by the Superintendent, establish seasons, creel and size limits and licensing requirements. A proposed rule to eliminate these special regulations was published in the **Federal Register** on February 12, 1997 (61 FR 5354). Six comments were received during the public comment period. This final rule will eliminate all paragraphs of 36 CFR 7.15 pertaining to recreational fishing in Shenandoah National Park. General regulations found at 36 CFR 1.5 (Closures and public use limits) and 36 CFR 2.3 (Fishing) provide sufficient control for the park to adequately manage its fishing resources.

Section-by-Section Analysis

1. Open Waters and Applicability

The general regulations for Fishing, found at 36 CFR 2.3, establish that fishing in the parks, except in designated areas, will be in accordance with nonconflicting laws and regulations of the State within whose exterior boundaries a park area is located. Existing State fishing regulations are sufficient for the proper management of the fisheries at Shenandoah National Park. The opening, closing and public use limits for recreational fishing in the parks require an annual review by park management. Any possible changes in public use associated with fisheries resources are adequately covered at 36 CFR 1.5. Therefore, special regulation 36 CFR 7.15(a)(1) Open Waters, is not necessary and will be removed.

2. Applicability

In that the NPS is proposing to remove all special regulations pertaining to fishing, a separate paragraph on the applicability of special fishing regulations is not necessary. Therefore, 36 CFR 7.15(a)(2) Applicability, will be removed.

3. Season

The State of Virginia has established a year-round open season to permit fishing on all state designated trout streams. Special regulation 36 CFR 7.15(a) established an opening date that coincided with the State opening date, which no longer exists. However, 36 CFR 2.3 Fishing, provides for recreational fishing, except in designated areas, in accordance with the laws and regulations of the State. 36 CFR 1.5(a)(2) allows the park to designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity. This will allow the park to establish limits in certain designated areas when necessary. Therefore, 36 CFR 7.15(a)(3) is no longer needed and will be removed.

4. License

36 CFR 2.3 establishes that fishing in the parks will be in accordance with State laws. All persons 16 years and older fishing in the Shenandoah National Park must have a Virginia State fishing license in his/her possession. Since there is no need for a special regulation for licensing, 36 CFR 7.15(a)(4) will be removed.

5. Size and Creel Limits

The State of Virginia has increased the minimum size limit for trout from eight (8) inches to nine (9) inches and has a maximum creel limit of six (6) fish compared to current limit of five (5) the park has. To avoid confusion and to be consistent with the limits established by the State, the park uses the State's limits. Size and creel limits for other species of game-fish caught in the park will also be in compliance with those established by the State of Virginia. Special regulations concerning size and creel limits are not needed as 36 CFR 2.3, Fishing, would apply. Therefore, 36 CFR 7.15(a)(5) and 36 CFR 7.15(a)(6) will be removed.

6. Lures; Bait

36 CFR 2.3 Fishing, currently regulates the use of bait, and the State of Virginia permits only the use of a single hook, which may be barbed or barbed-less. A special regulation concerning lures and bait is not necessary, therefore 36 CFR 7.15(a)(7) will be removed.

7. Fish for Fun

The term "fish for fun" is normally associated with activities provided by fish stocking programs in specially designated streams. Fish stocking does not occur within the Park. However, the State law for "Catch and Release" adequately allows for the protection of native and non-native fish populations on designated streams. 36 CFR 1.5(a)(2) and 36 CFR 2.3(a) allow for the designation of "Catch and Release" streams that are consistent with State regulations. Therefore, 36 CFR 7.15(a)(8) is not necessary and will be removed.

Public Comments

The NPS received six comments during the public comment period. Five of the commenters supported the regulatory change. One of the commenters stated that the proposed rulemaking would not protect park fisheries as well as the special regulations. The NPS has determined that this is not a valid concern, as the use of existing regulations at 36 CFR parts 1 and 2 allow the Superintendent to take necessary action to protect fisheries at any time, including actions that may have the same effect as the special regulations, as well as actions which can be more or less restrictive. These actions can be taken in a much more timely manner than rulemaking allows.

Drafting Information

The process used to develop this proposed rule included numerous reviews by Park staff, consultations with Virginia Department of Game and Inland Fisheries Biologists, consultations with numerous fisheries biologists from other parks, agencies, research institutions and organizations. The primary authors of this rulemaking are William J. Cook, Center for Resources, Shenandoah National Park, Greg Stiles, Resource and Visitor Protection Services, Shenandoah National Park, and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This rule does not contain collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et.seq.). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the

human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) and by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

This final rulemaking is consistent with and supportive of Executive Order 12962, *Recreational Fisheries*, issued June 7, 1995. Through this Executive Order, Federal agencies will, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, improve the quantity, function, sustainable productivity and distribution of U.S. aquatic resources for increased recreational fishing opportunities. Establishment of this rulemaking is consistent with the extent and purposes of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–d, and e–j), the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) and the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801–1882).

List of Subjects in 36 CFR Part 7

National parks, District of Columbia, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS is amending 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.15 Shenandoah National Park.

2. Section 7.15 is amended by removing paragraph (a) and redesignating paragraphs (b) through (d) as new paragraphs (a) through (c).

Dated: January 16, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–7110 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IA 040–1040(a); FRL–5980–2]

Approval and Promulgation of Implementation Plans; and Designation of Areas for Air Quality Planning Purposes; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is approving a request by the state of Iowa to redesignate to attainment the portion of Muscatine County currently designated as nonattainment for the sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). With this approval, the entire state of Iowa will be in attainment status for SO_2. The EPA is also approving the maintenance plan for the Muscatine County nonattainment area which was submitted to ensure that attainment of the NAAQS will be maintained.

DATES: This action is effective May 18, 1998 unless by April 20, 1998 relevant adverse comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

A portion of Muscatine County, Iowa, was designated nonattainment for SO_2 on March 10, 1994, due to violations of the SO_2 NAAQS in 1991 and 1992. The state developed a control strategy for the area and submitted a nonattainment State Implementation Plan (SIP) satisfying the requirements of section 110 and part D of the Act. This SIP revision was approved by the EPA on December 1, 1997 (62 FR 63454).

As a result of source compliance with the control strategy and no violations of the standard since 1992, the state submitted a maintenance plan and redesignation request on April 21, 1997. Consequently, as discussed below, the EPA is taking final action to approve the maintenance plan and to redesignate the area to attainment. Additional technical material for this action is contained in the Technical Support Document (TSD) which is available from the contact listed above.

II. Evaluation Criteria

Section 107(d)(3)(D) of the Act, as amended in 1990, authorizes the governor of a state to request the redesignation of an area from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act. An area can be redesignated to attainment if the following conditions are met:

1. The area has attained the applicable NAAQS;

2. The area has a fully approved SIP under section 110(k) of the Act;

3. The EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions;

4. The EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act; and

5. The state has met all requirements applicable to the area under section 110 and part D of the Act.

III. Summary of State Submittal

The following paragraphs discuss how the state's redesignation request for Muscatine County addresses the Act's requirements.

A. Demonstrated Attainment of the NAAQS

Eight consecutive quarters of data showing SO_2 NAAQS attainment are required for redesignation. A violation of the NAAQS occurs when more than one exceedance of the SO_2 NAAQS is recorded in any year (40 CFR 50.4). The state's submittal includes ambient monitoring data from the three monitors in the Muscatine nonattainment area which show that this requirement has been met. The last violation of the NAAQS was in 1992 and the last exceedance in 1995. No additional exceedances of the NAAQS have been recorded in the Aerometric Information and Retrieval system database through December 1997.

B. Fully Approved SIP

The SIP for the area must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply to the area. The EPA's guidance for implementing section 110 of the Act is discussed in the General Preamble to title I (57 FR 13498, April 16, 1992). The SO_2 SIP for Muscatine met the requirements of section 110 of the Act and was approved by the EPA on December 1, 1997 (62 FR 63454).

C. Permanent and Enforceable Reductions in Emissions

Permanent and enforceable emissions reductions are contained in the revised permits issued to the three major SO_2 sources in the nonattainment area. These permits contain emission limitations and operating restrictions which result in both actual and potential SO_2 emission reductions. These permits are nonexpiring and are Federally enforceable.

D. Fully Approved Maintenance Plan

Section 175A of the Act requires states which submit a redesignation request for a nonattainment area to include a maintenance plan in order for an area to be redesignated to attainment. The maintenance plan is intended to ensure that the area will maintain the attainment status it has achieved, and, that if there is a violation, the plan will serve to bring the area back into attainment with prescribed measures.

Dispersion modeling for the nonattainment SIP demonstrated attainment and maintenance in the area except in the vicinity of one of the three monitoring sites, as was discussed in detail in the TSD and the **Federal Register** notice for the nonattainment SIP (62 FR 43681). Using the roll-back analysis as a basis for negotiating emission reductions with major SO_2 sources in the area, the state set emission rates and operating conditions in the major source permits which it believes will result in both attainment and maintenance of the NAAQS for the next ten years. The emissions from the sources cannot increase above those specified in the Federally approved permits. If the current analysis fails to result in the expected reductions and provide for the continued maintenance of the NAAQS, the state commits to reevaluate the emission rates and seek appropriate modification of the SIP, as well as implementing its contingency measures.

Once an area has been redesignated, the state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submittal, the state commits to continue to operate and maintain the three existing SO_2 monitors in the area to demonstrate ongoing compliance with the SO_2 NAAQS.

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9). However, if an area has been able to attain the NAAQS without implementation of the Part D nonattainment SIP contingency measures, and the contingency plan includes a requirement that the state will implement all of the SO_2 control measures which were contained in the SIP before redesignation to attainment, then the state can carry over into the area's maintenance plan the part D SIP measures not previously implemented. The state has included contingency measures which meet both the section 172 and 175A requirements.

E. Section 110 and Part D Requirements

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110 and part D of title I of the Act.

The EPA interprets this to mean that for a redesignation request to be approved, the state must have met all requirements that applied to the subject area prior to or at the time of a complete redesignation request.

The section 110 and part D requirements submitted and approved with the nonattainment SIP also satisfy the requirements for the redesignation request. As required by part D, the state has a fully approved and implemented new source review program. The state may elect to apply the existing Federally approved prevention of significant deterioration program subsequent to the redesignation, in order to help ensure maintenance of the standards.

F. Section 176 Conformity Requirements

The EPA promulgated final general conformity regulations on November 30, 1993 (58 FR 63214). The conformity regulations require states to adopt general conformity provisions in the SIPs for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. The state has adopted the general conformity requirements and thus meets the conformity requirements for maintenance areas.

The transportation conformity regulations do not apply in this instance since SO_2 is not emitted by transportation sources. Thus, the state need not adopt (and has not adopted) the transportation conformity regulations.

IV. Final Action

The EPA is approving the state's maintenance plan and request to redesignate a portion of Muscatine County to attainment for SO_2. With this approval, the entire state of Iowa will be designated attainment for the SO_2 NAAQS.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 18, 1998, without further notice unless the Agency receives relevant adverse comments by April 20, 1998.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 18, 1998, and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must

prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The EPA certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: March 2, 1998.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. Subpart Q is amended by adding § 52.834 to read as follows:

§ 52.834 Control strategy: Sulfur dioxide.

Approval—On April 21, 1997, the Iowa Department of Natural Resources (IDNR) submitted a maintenance plan and redesignation request for the Muscatine County nonattainment area. The maintenance plan and redesignation request satisfy all applicable requirements of the Clean Air Act.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. Section 81.316 is amended by revising the table for "Iowa-SO_2" to read as follows:

§ 81.316 Iowa.

* * * * *

IOWA–SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Entire state				X

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[FR Doc. 98–7133 Filed 3–18–98; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–5983–7]

Technical Amendments to Clean Air Act Interim Approval of Operating Permits Program; Commonwealth of Virginia; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On June 10, 1997 (62 FR 31516), the Environmental Protection Agency published in the **Federal Register** a final rule granting interim approval, pursuant to Title V of the Clean Air Act, of the operating permits program which the Commonwealth of Virginia had submitted for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources. The June 10, 1997, document stated that the interim approval would be effective July 10, 1997. This document corrects the effective date of the interim approval to March 12, 1998, consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This interim approval is effective on March 12, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, OAR, at (202) 260–9766.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes copy of the rule, to each House of the Congress and to the Comptroller General of the General Accounting Office (GAO). The EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated June 10, 1997, by operation of law, the rule did not take effect on July 10, 1997, as stated therein. Now that EPA has discovered its error, EPA is submitting the rule to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this mater. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 10, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule, to the extent they applied, is discussed in the June 10, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), the Agency finds that there is good cause to make this rule effective on March 12, 1998, for the reasons stated previously. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of the amendment.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 12, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, Appendix A to part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Appendix A to part 70 is amended by revising paragraph (a) in the entry for Virginia to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Virginia

(a) The Commonwealth of Virginia's Title V operating permit and fee program regulations submitted on September 10, 1996, the acid rain operating permit regulations submitted on September 12, 1996, and the non-regulatory operating permit program provisions submitted on November 12, 1993, January 14, 1994, January 9, 1995, May 17, 1995, February 6, 1997, and February 27, 1997; interim approval effective on March 12, 1998; interim approval expires on March 12, 1999.

* * * * *

[FR Doc. 98–7137 Filed 3–18–98; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–44, RM–7123, RM–7367]

FM Broadcasting Services; East Los Angeles and Long Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Chief, Policy and Rules Division dismissed the petition for reconsideration, filed by Antelope Broadcasting Co., Inc., of the *Report and Order* in this proceeding, 60 FR 15255, March 23, 1995 at the request of Antelope. *The Report and Order* had granted the petition (RM–7123) of Spanish Broadcasting System of Florida, Inc. to reallot Channel 250B from Long Beach, California to East Los Angeles, California, and to modify its permit to specify East Los Angeles as the new community of license. With this action, the proceeding is terminated.

DATES: Effective March 19, 1998.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 90–44, adopted February 25, 1998 and released March 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, N.W., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, N.W., Suite 140, Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–6849 Filed 3–18–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 980225046–8060–02; I.D. 073097E]

Endangered and Threatened Species: Threatened Status for Two ESUs of Steelhead in Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; notice of determination.

SUMMARY: Previously, NMFS completed a comprehensive status review of west coast steelhead (*Oncorhynchus mykiss*, or *O. mykiss*) populations in Washington, Oregon, Idaho, and California, and identified 15 Evolutionarily Significant Units (ESUs) within this range. After soliciting additional data to resolve scientific disagreements, NMFS now issues a final rule to list two ESUs as threatened under the Endangered Species Act (ESA). The threatened steelhead ESUs are located in Washington, Oregon, and California (Lower Columbia River and Central Valley, California ESUs). NMFS will issue shortly protective regulations under section 4(d) of the ESA for these threatened ESUs.

NMFS has determined that the Oregon Coast, Klamath Mountains Province (KMP), and Northern California ESUs do not warrant listing at this time. Available scientific information and conservation measures indicate these ESUs are now at a lower risk of extinction than at the time of the proposed rule. However, NMFS remains concerned about the status of steelhead in these areas; therefore, the Oregon Coast, KMP, and Northern California ESUs warrant classification as candidate species. NMFS will reevaluate the status of these ESUs within four years to determine whether listing is warranted.

In the two ESUs identified as threatened, only naturally spawned populations of steelhead (and their progeny) residing below naturally and man-made impassable barriers (*e.g.*, impassable waterfalls and dams) are listed. NMFS has examined the relationship between hatchery and natural populations of steelhead in these ESUs and has assessed whether any hatchery populations are essential for their recovery. At this time, no hatchery populations are deemed essential for recovery (and hence listed) in either of the two listed ESUs.

At this time, NMFS is listing only anadromous life forms of *O. mykiss*.

DATES: Effective May 18, 1998.

ADDRESSES: Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–231–2005, Craig Wingert, 562–980–4021, or Joe Blum, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Species Background

Oncorhynchus mykiss exhibit one of the most complex suites of life history traits of any salmonid species. *Oncorhynchus mykiss* may exhibit anadromy (meaning they migrate as juveniles from fresh water to the ocean, and then return to spawn in fresh water) or freshwater residency (meaning they reside their entire lives in fresh water). Resident forms are usually referred to as "rainbow" or "redband" trout, while anadromous life forms are termed "steelhead." Few detailed studies have been conducted regarding the relationship between resident and anadromous *O. mykiss* and, as a result, the relationship between these two life forms is poorly understood. Recently the scientific name for the biological species that includes both steelhead and rainbow trout was changed from *Salmo gairdneri* to *O. mykiss*. This change reflects the premise that all trouts from western North America share a common lineage with Pacific salmon.

Steelhead typically migrate to marine waters after spending 2 years in fresh water. They then reside in marine waters for typically 2 or 3 years prior to returning to their natal stream to spawn as 4- or 5-year-olds. Unlike other Pacific salmon, steelhead are iteroparous, meaning they are capable of spawning more than once before they die. However, it is rare for steelhead to spawn more than twice before dying; most that do so are females. Steelhead adults typically spawn between December and June (Bell, 1990; Busby *et al.*, 1996). Depending on water temperature, steelhead eggs may incubate in "redds" (nesting gravels) for 1.5 to 4 months before hatching as "alevins" (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, young juveniles or "fry" emerge from the gravel and begin actively feeding. Juveniles rear in fresh water from 1 to 4 years, then migrate to the ocean as "smolts."

Biologically, steelhead can be divided into two reproductive ecotypes, based

on their state of sexual maturity at the time of river entry and the duration of their spawning migration. These two ecotypes are termed "stream maturing" and "ocean maturing." Stream maturing steelhead enter fresh water in a sexually immature condition and require several months to mature and spawn. Ocean maturing steelhead enter fresh water with well developed gonads and spawn shortly after river entry. These two reproductive ecotypes are more commonly referred to by their season of freshwater entry (*i.e.*, summer-run and winter-run steelhead, respectively).

Two major genetic groups or "subspecies" of steelhead occur on the west coast of the United States: a coastal group and an inland group, separated in the Fraser and Columbia River Basins approximately by the Cascade crest (Huzyk and Tsuyuki, 1974; Allendorf, 1975; Utter and Allendorf, 1977; Okazaki, 1984; Parkinson, 1984; Schreck *et al.*, 1986; Reisenbichler *et al.*, 1992). Behnke (1992) proposed classifying the coastal subspecies as *O. m. irideus* and the inland subspecies as *O. m. gairdneri*. These genetic groupings apply to both anadromous and nonanadromous forms of *O. mykiss*. Both coastal and inland steelhead occur in Washington and Oregon. California is thought to have only coastal steelhead while Idaho has only inland steelhead.

Historically, steelhead were distributed throughout the North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula. Presently, the species distribution extends from the Kamchatka Peninsula, east and south along the Pacific coast of North America, to approximately Malibu Creek in southern California. There are infrequent anecdotal reports of steelhead occurring as far south as the Santa Margarita River in San Diego County (McEwan and Jackson, 1996). Historically, steelhead likely inhabited most coastal streams in Washington, Oregon, and California as well as many inland streams in these States and Idaho. However, during this century, over 23 indigenous, naturally reproducing stocks of steelhead are believed to have been extirpated, and many more are thought to be in decline in numerous coastal and inland streams in Washington, Oregon, Idaho, and California. Forty-three stocks have been identified as being at moderate or high risk of extinction (Nehlsen et al., 1991).

Previous Federal ESA Actions Related to West Coast Steelhead

The history of petitions received regarding west coast steelhead is summarized in the proposed rule published on August 9, 1996 (61 FR 56138). The most comprehensive petition was submitted by Oregon Natural Resources Council and 15 co-petitioners on February 16, 1994. In response to this petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and interested parties in Washington, Oregon, Idaho, and California. The PSBTCs consisted primarily of scientists (from Federal, state, and local resource agencies, Indian tribes, industries, universities, professional societies, and public interest groups) possessing technical expertise relevant to steelhead and their habitats. A total of seven PSBTC meetings were held in the States of Washington, Oregon, Idaho, and California during the course of the west coast steelhead status review. NMFS also established a Biological Review Team (BRT), composed of staff from NMFS' Northwest and Southwest Fisheries Science Centers and Southwest Regional Office, as well as a representative of the U.S. Geological Survey Biological Resources Division (formerly the National Biological Service), which conducted a coastwide status review for west coast steelhead (Busby et al., 1996).

Based on the results of the BRT report and after considering other information and existing conservation measures, NMFS published a proposed listing determination (61 FR 56138, August 9, 1996) that identified 15 ESUs of steelhead in the States of Washington, Oregon, Idaho, and California. Ten of these ESUs were proposed for listing as threatened or endangered species; four were found not warranted for listing; and one was identified as a candidate for listing.

On August 18, 1997, NMFS published a final rule listing five ESUs as threatened and endangered under the ESA (62 FR 43937). In a separate notice published on the same day, NMFS determined substantial scientific disagreement remained for the five proposed ESUs addressed herein (62 FR 43974, August 18, 1997). In accordance with section 4(b)(6)(B)(i) of the ESA, NMFS deferred its decision on these five remaining steelhead ESUs for 6 months for the purpose of soliciting additional data.

During the 6-month period of deferral, NMFS received new scientific information concerning the status of the proposed ESUs. This new information was considered by NMFS' BRT, and NMFS has now completed an updated status review that analyzes this new information (Memorandum to William Stelle and William Hogarth from M. Schiewe, December 18, 1997, Status of Deferred and Candidate ESUs of West Coast Steelhead). During this period, NMFS also assessed the status of existing hatchery stocks to determine their ESU status (Memorandum from Michael Schiewe to William Stelle and William Hogarth, January 13, 1998, Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations). Copies of these memoranda are available upon request (see **ADDRESSES**). Based on this updated status review and other information, NMFS now issues its final determinations for these five proposed ESUs.

Summary of Comments Received in Response to the Proposed Rule

NMFS held 16 public hearings in California, Oregon, Idaho, and Washington to solicit comments on the proposed rule. One hundred eighty-eight individuals presented testimony at these public hearings. During the 90-day public comment period, NMFS received 939 written comments on the proposed rule from Federal, state, and local government agencies, Indian tribes, non-governmental organizations, the scientific community, and other individuals. A number of comments addressed specific technical issues pertaining to a particular geographic region or *O. mykiss* population. These technical comments were considered by NMFS' BRT in its re-evaluation of ESU boundaries and status and are discussed in the updated Status Review document (NMFS, 1997a).

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service (FWS), published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In accordance with this policy, NMFS solicited 22 individuals to take part in a peer review of its west coast steelhead proposed rule. All individuals solicited are recognized experts in the field of steelhead biology and represent a broad range of interests, including Federal, state, and tribal resource managers, private industry consultants, and academia. Eight individuals took part in the peer review of this action; comments from peer reviewers were considered by NMFS' BRT and are summarized in the updated Status Review document (NMFS, 1997a).

The following is a summary of the comments received in response to the proposed rule:

Issue 1: Sufficiency and Accuracy of Scientific Information and Analysis

Comment: Numerous commenters disputed the sufficiency and accuracy of data which NMFS employed in its proposed rule to list 10 steelhead ESUs as either threatened or endangered under the ESA. Several commenters urged NMFS to delay any ESA listing decisions for steelhead until additional scientific information is available concerning this species.

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data after reviewing the status of the species. NMFS believes that information contained in the agency's status review (Busby et al., 1996), together with more recent information obtained in response to the proposed rule (NMFS, 1997a), represents the best scientific information presently available for the steelhead ESUs addressed in this final rule. NMFS has conducted an exhaustive review of all available information relevant to the status of this species. NMFS has also solicited information and opinion from all interested parties, including peer reviewers as described above. If new data become available to change these conclusions, NMFS will act accordingly.

Issue 2: Description and Status of Steelhead ESUs

Comment: A few commenters disputed NMFS' conclusions regarding the geographic boundaries for some of the ESUs and questioned NMFS' basis for determining these boundaries. Most of these comments pertained to the ESUs south of San Francisco Bay, suggesting that particular river systems be excluded from listing because of the historical or occasional absence of steelhead or rainbow trout.

Response: NMFS has published a policy describing how it will apply the ESA definition of "species" to anadromous salmonid species (56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy, which is consistent with NMFS' policy, regarding the definition of "distinct population segments" (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids and, therefore, was used for this determination. This policy indicates that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a scientific paper entitled: "Pacific Salmon (*Oncorhynchus* spp.) and the Definition of 'Species' Under the Endangered Species Act." It is also found in a NOAA Technical Memorandum: "Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon" (Waples, 1991). A more detailed discussion of individual ESU boundaries is provided below under "Summary of ESU Determinations."

Comment: Several commenters questioned NMFS' methodology for determining whether a given steelhead ESU warranted listing. In most cases, such commenters also expressed opinions regarding whether listing was warranted for a particular steelhead ESU. A few commenters provided substantive new information relevant to making risk assessments.

Response: Section 3 of the ESA defines the term "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range." The term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including, (1) Absolute numbers of fish and their spatial and temporal distribution, (2) current abundance in relation to historical abundance and current carrying capacity of the habitat, (3) trends in abundance, (4) natural and human-influenced factors that cause variability in survival and abundance, (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs), and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU. A more detailed discussion of status of individual ESUs is provided under the section "Summary of Conclusions Regarding Listed ESUs."

Issue 3: Factors Contributing to the Decline of West Coast Steelhead

Comment: Many commenters identified factors they believe have contributed to the decline of west coast steelhead. Factors identified include overharvest by recreational fisheries, predation by pinnipeds and piscivorous fish species, effects of artificial propagation, and the deterioration or loss of freshwater and marine habitats.

Response: NMFS agrees that many factors, past and present, have contributed to the decline of West Coast steelhead. NMFS also recognizes that natural environmental fluctuations have likely played a role in the species' recent declines. However, NMFS believes other human-induced impacts (e.g., incidental catch in certain fisheries, hatchery practices, and habitat modification) have played an equally significant role in this species' decline. Moreover, these human-induced impacts have likely reduced the species' resiliency to natural factors for decline, such as drought and poor ocean conditions (NMFS, 1996a).

Since the time of this proposed listing, NMFS has published a report describing the impacts of California sea lions and Pacific harbor seals upon salmonids and on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1997b). This report concludes that in certain cases where pinniped populations co-occur with depressed salmonid populations, salmon populations may experience severe impacts due to predation. An example of such a situation is Ballard Locks, Washington, where sea lions are known to consume significant numbers of adult winter-run steelhead. This study further concludes that data regarding pinniped predation are quite limited and that substantial additional research is needed to fully address this issue. Existing information on the seriously depressed status of many salmonid stocks is sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations (NMFS, 1997b). For additional information on this issue see Summary of Factors Affecting Steelhead.

Comment: One peer reviewer and several commenters stated that NMFS' assessment underestimated the significant influence of natural environmental fluctuations on salmonid populations. Several commenters stated that ocean conditions are one of the primary factors for decline. These commenters suggested that any listing

activity should be postponed until the complete oceanographic cycle can be observed.

Response: Environmental changes in both marine and freshwater habitats can have important impacts on steelhead abundance. For example, a pattern of relatively high abundance in the mid-1980s followed by (often sharp) declines over the next decade occurred in steelhead populations from most geographic regions of the Pacific Northwest. This result is most plausibly explained by broad-scale changes in ocean productivity. Similarly, 6 to 8 years of drought in the late 1980s and early 1990s adversely affected many freshwater habitats for steelhead throughout the region. These natural phenomena put increasing pressure on natural populations already stressed by anthropogenic factors, such as habitat degradation, blockage of migratory routes, and harvest (NMFS, 1996a).

Improvement of cyclic or episodic environmental conditions (for example, increases in ocean productivity or shifts from drought to wetter conditions) can help alleviate extinction risk to steelhead populations. However, NMFS cannot reliably predict future environmental conditions, making it unreasonable to assume improvements in abundance as a result of improvements in such conditions. Furthermore, steelhead and other species of Pacific salmon have evolved over the centuries with such cyclical environmental stresses. This species has persisted through time in the face of these conditions largely due to the presence of freshwater and estuarine refugia. As these refugia are altered and degraded, Pacific salmon species are more vulnerable to episodic events, such as shifts in ocean productivity and drought cycles (NMFS, 1996a).

Issue 4: Consideration of Existing Conservation Measures

Comment: Several commenters argued that NMFS had not considered existing conservation programs designed to enhance steelhead stocks within a particular ESU. Some commenters provided specific information on some of these programs to NMFS concerning the efficacy of existing conservation plans.

Response: NMFS has reviewed existing conservation plans and measures relevant to the five ESUs addressed in this final rule and concludes that existing conservation efforts in some cases have helped ameliorate risks facing the species. These conservation efforts are discussed in detail under the section Existing Conservation Efforts.

While several of the plans addressed in comments show promise for ameliorating risks facing steelhead, some of the measures described in comments have not been implemented. Some of these measures are also geographically limited to individual river basins or political subdivisions, thereby improving conditions for only a small portion of the entire ESU.

Even though in two ESUs existing conservation efforts and plans are not sufficient to preclude the need for listings at this time, they are, nevertheless, valuable for improving watershed health and restoring fishery resources. In those cases where well-developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process. In the case of threatened species, NMFS also has flexibility under section 4(d) to tailor protective regulations based on the contents of available conservation measures. NMFS has already adopted a 4(d) rule recognizing state conservation efforts that adequately address one or more factors contributing to the decline of a threatened species. For example, the interim 4(d) rule for Southern Oregon/Northern California coho salmon (62 FR 38479, July 18, 1997) relied on an Oregon fishery management plan and regulations rather than applying general take prohibitions to freshwater fishing activity in the Oregon portion of the ESU. It also relied on habitat restoration plans that meet specified standards. In appropriate cases, 4(d) rules could similarly rely on state or tribal forestry, agriculture, road construction and maintenance, or other programs found to provide adequate protections for threatened species.

These examples show that NMFS may apply modified take prohibitions in light of the strong protections provided in a state or tribal plan. There may be other circumstances as well in which NMFS would use the flexibility of section 4(d). For example, in some cases there may be a healthy population of salmon or steelhead within an overall ESU that is listed. In such a case it may not be necessary to apply the full range of prohibitions available in section 9. NMFS intends to use the flexibility of the ESA to respond appropriately to the biological condition of each ESU and the populations within it and to the strength of state and tribal plans in place to protect them.

Issue 5: Steelhead Biology and Ecology

Comment: Several commenters and a peer reviewer asserted that resident rainbow trout should be included in listed steelhead ESUs. Several commenters also stated that NMFS and FWS should address how the presence of rainbow trout populations may ameliorate risks facing anadromous populations within listed ESUs.

Response: In its August 9, 1996, proposed rule (61 FR 41541), NMFS stated that it was the consensus of NMFS scientists, as well as regional fishery biologists, that based on available genetic information, resident fish should generally be considered part of the steelhead ESUs. However, NMFS concluded that available data were inconclusive regarding the relationship of resident rainbow trout and steelhead. NMFS requested additional data in the proposed rule to clarify this relationship and determine whether resident rainbow trout should be included in listed steelhead ESUs.

In response to this request for additional information, many groups and individuals expressed opinions regarding this issue. In most cases these opinions were not supported by new information that resolves existing uncertainty. Two state fishery management agencies (California Department of Fish and Game (CDFG) and Washington Department of Fish and Wildlife (WDFW)) and one peer reviewer provided comments and information supporting the inclusion of resident rainbow trout in listed steelhead ESUs. In general, these parties also felt that rainbow trout may serve as an important reservoir of genetic material for at-risk steelhead stocks.

While conclusive evidence does not yet exist regarding the relationship of resident and anadromous *O. mykiss*, NMFS believes available evidence suggests that resident rainbow trout should be included in listed steelhead ESUs in certain cases. Such cases include (1) where resident *O. mykiss* have the opportunity to interbreed with anadromous fish below natural or man-made barriers or (2) where resident fish of native lineage once had the ability to interbreed with anadromous fish but no longer do because they are currently above human-made barriers and are considered essential for recovery of the ESU. Whether resident fish that exist above any particular man-made barrier meet these criteria must be reviewed on a case-by-case basis by NMFS. NMFS recognizes that there may be many such cases in California alone. Resident fish above long-standing natural barriers and those that are derived from the introduction of non-native rainbow trout would not be considered part of any salmonid ESU.

Several lines of evidence exist to support this conclusion. Under certain conditions, anadromous and resident *O.*

mykiss are apparently capable not only of interbreeding, but also of having offspring that express the alternate life history form, that is, anadromous fish can produce nonanadromous offspring, and vice versa (Shapovalov and Taft, 1954; Burgner et al., 1992). Mullan et al. (1992) found evidence that, in very cold streams, juvenile steelhead had difficulty attaining "mean threshold size for smoltification" and concluded that "Most fish here [Methow River, Washington] that do not emigrate downstream early in life are thermally-fated to a resident life history regardless of whether they were the progeny of anadromous or resident parents." Additionally, Shapovalov and Taft (1954) reported evidence of *O. mykiss* maturing in fresh water and spawning prior to their first ocean migration; this life history variation has also been found in cutthroat trout (*O. clarki*) and Atlantic salmon (*Salmo salar*).

NMFS believes resident fish can help buffer extinction risks to an anadromous population by mitigating depensatory effects in spawning populations, by providing offspring that migrate to the ocean and enter the breeding population of steelhead, and by providing a "reserve" gene pool in freshwater that may persist through times of unfavorable conditions for anadromous fish. In spite of these potential benefits, presence of resident populations is not a substitute for conservation of anadromous populations. A particular concern is isolation of resident populations by human-caused barriers to migration. This interrupts normal population dynamics and population genetic processes and can lead to the loss of a genetically based trait (anadromy). As discussed in NMFS' "species identification" paper (Waples, 1991), the potential loss of anadromy in distinct population segments may in and of itself warrant listing the ESU as a whole.

On February 7, 1996, FWS and NMFS adopted a joint policy to clarify their interpretation of the phrase "distinct population segment (DPS) of any species of vertebrate fish or wildlife" for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722). DPSs are "species" pursuant to section 3(15) of the ESA. Previously, NMFS had developed a policy for stocks of Pacific salmon where an ESU of a biological species is considered to be a DPS if (1) it is substantially reproductively isolated from other conspecific population units, and (2) it represents an important component in the evolutionary legacy of the species (56 FR 58612, November 20, 1991). NMFS believes available data suggest that resident rainbow trout are in many cases part of steelhead ESUs. However, the FWS, which has ESA authority for resident fish, maintains that behavioral forms can be regarded as separate DPSs (e.g., western snowy plover) and that absent evidence suggesting resident rainbow trout need ESA protection; the FWS concludes that only the anadromous forms of each ESU should be listed under the ESA (Department of Interior (DOI), 1997; FWS, 1997).

In its review of West Coast steelhead, NMFS' BRT stated that rainbow trout and steelhead in the same area may share a common gene pool at least over evolutionary time periods (NMFS, 1997a). The importance of any recovery action is measured in terms of its ability to recover the listed species in the foreseeable future. FWS believes that steelhead recovery will not rely on the intermittent exchange of genetic material between resident and anadromous forms (FWS, 1997). As a result, without a clear demonstration of any risks to resident rainbow trout or of the need to protect rainbow trout to recover steelhead in the foreseeable future, the FWS concludes that only the anadromous forms of *O. mykiss* should be included in the listed steelhead ESUs at this time (FWS, 1997).

Comment: Several commenters and peer reviewers questioned NMFS' inclusion of both summer- and winter-run steelhead in the same ESU. These commenters suggested that summer- and winter-run steelhead be segregated into individual ESUs based on life history differences.

Response: While NMFS considers both life history forms (summer-and winter-run steelhead) to be important components of diversity within the species, new genetic data reinforce previous conclusions that, within a geographic area, summer-and winter-run steelhead typically are more genetically similar to one another than either is to populations with similar run timing in different geographic areas. This indicates that an ESU that included summer-run populations from different geographic areas but excluded winter-run populations (or vice-versa) would be an inappropriate unit. The only biologically meaningful way to have summer- and winter-run steelhead populations in separate ESUs would be to have a very large number of ESUs, most consisting of just one or a very few populations. This would be inconsistent with the approach NMFS has taken in defining ESUs in other anadromous Pacific salmonids. Taking these factors into consideration, NMFS concludes that summer- and winter-run steelhead should be considered part of the same ESU in geographic areas where they co-occur.

Summary of ESU Determinations

The following is a summary of NMFS' ESU determinations for these species. A more detailed discussion of ESU determinations is presented in the documents entitled "Status Review Update for West Coast Steelhead from Washington, Idaho, Oregon, and California" (NMFS, 1997a) and "Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations" (NMFS, 1998a). Copies of these documents are available upon request (see **ADDRESSES**).

(1) Lower Columbia River ESU

This coastal steelhead ESU occupies tributaries to the Columbia River between the Cowlitz and Wind Rivers in Washington, inclusive, and the Willamette and Hood Rivers in Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls, and steelhead from the Little and Big White Salmon Rivers in Washington. This similarity results from the shared geology of the area and the transportation of Columbia River sediments northward along the Washington coast. Rivers draining into the Columbia River have their headwaters in increasingly drier areas, moving from west to east. Columbia River tributaries that drain the Cascade Mountains have proportionally higher flows in late summer and early fall than rivers on the Oregon coast.

Steelhead populations in this ESU are of the coastal genetic group (Schreck *et al.*, 1986; Reisenbichler *et al.*, 1992; Chapman *et al.*, 1994), and a number of genetic studies have shown that they are part of a different ancestral lineage than inland steelhead from the Columbia River Basin. Genetic data also show steelhead from this ESU to be distinct from steelhead from the upper Willamette River and coastal streams in Oregon and Washington. WDFW data show genetic affinity between the Kalama, Wind, and Washougal River steelhead. These data show differentiation between the Lower Columbia River ESU and the Southwest Washington and Middle Columbia River Basin ESUs. This ESU is composed of both winter- and summer-run steelhead.

NMFS determines that no changes in the boundaries of the Lower Columbia River ESU are warranted. No new information was received from peer reviewers or from other commenters regarding the boundaries of this ESU.

Hatchery Populations Pertaining to This ESU

Hatchery populations considered part of the ESU include late-spawning Cowlitz Trout Hatchery stock (winter-run) and Clackamas River Oregon Department of Fish and Wildlife (ODFW) stock # 122. For late-spawning Cowlitz River steelhead, this decision was based on the following: (1) Their April to late-May spawning period that mirrors the spawn timing of wild winter-run steelhead in this system; (2) the 58-chromosome count exhibited by this stock, which is indicative of native Columbia River Basin origin, in contrast to the 59 or 60 chromosomes seen in Chambers Creek steelhead; and (3) a genetic clustering with native late-spawning winter-run steelhead in the Clackamas River. Clackamas River ODFW hatchery stock # 122, which were recently established, are part of the ESU based on its apparent origin from a local wild population.

Hatchery populations not considered part of the ESU include Chambers Creek/lower Columbia River mix (early-spawning winter-run), Skamania Hatchery stock (summer-run), Eagle Creek National Fish Hatchery (NFH) stock (Clackamas River ODFW stock # 19) (winter-run), Clackamas River ODFW stock # 20 (winter-run), and Hood River ODFW stock # 50 (winter-run). For both Chambers Creek/lower Columbia River mix of early spawning steelhead hatchery stocks and the Eagle Creek NFH stock (also known as Clackamas River ODFW stock # 19), this conclusion is based on the substantial inclusion of original broodstock from outside the ESU and on significant deviation in current run-timing compared with native winter-run steelhead.

Available information indicates that a portion of the original broodstocks for Skamania Hatchery stock (summer-run) and the Clackamas River ODFW stock # 20 (winter-run) originated from outside the ESU. Also, Skamania summer hatchery steelhead stock exhibits a 3-month advanced spawn timing compared with wild summer-run steelhead in the Washougal River. Skamania Hatchery summer-run steelhead were derived from a combination of native Washougal River summer-run steelhead and summer-run steelhead imported from the Klickitat River, which is in the Middle Columbia River ESU. Clackamas River ODFW stock # 20 (raised at Clackamas Hatchery) originated from the Eagle Creek NFH stock (ODFW stock # 19), which was derived from a mixture of indigenous Clackamas River steelhead, Big Creek Hatchery steelhead from the Southwest Washington ESU, and Donaldson rainbow trout.

At this time, NMFS concludes that Hood River winter-run steelhead ODFW stock # 50 does not warrant inclusion in this ESU. Insufficient genetic data exist at this time to conclusively determine the stock's ESU status.

(2) Oregon Coast ESU

This coastal steelhead ESU occupies river basins on the Oregon coast north of Cape Blanco, excluding rivers and streams that are tributaries of the Columbia River. Most rivers in this area drain the Coast Range Mountains, have a single peak in flow in December or January, and have relatively low flow during summer and early fall. The coastal region receives fairly high precipitation levels, and the vegetation is dominated by Sitka spruce and western hemlock. Upwelling off the Oregon coast is much more variable and generally weaker than in areas south of Cape Blanco. While marine conditions off the Oregon and Washington coasts are similar, the Columbia River has greater influence north of its mouth, and the continental shelf becomes broader off the Washington coast.

Recent genetic data from steelhead in this ESU are limited, but they show a level of differentiation from populations from Washington, the Columbia River Basin, and coastal areas south of Cape Blanco. Ocean migration patterns also suggest a distinction between steelhead populations north and south of Cape Blanco. Steelhead (as well as chinook and coho salmon) from streams south of Cape Blanco tend to be south-migrating rather than north-migrating (Everest, 1973; Nicholas and Hankin, 1988; Pearcy et al., 1990; Pearcy, 1992).

The Oregon Coast ESU primarily contains winter-run steelhead; there are only two native stocks of summer-run steelhead. Summer-run steelhead occur only in the Siletz River, above a waterfall, and in the North Umpqua River, where migration distance may prevent full utilization of available habitat by winter-run steelhead. Alsea River winter-run steelhead have been widely used for steelhead broodstock in coastal rivers. Populations of nonanadromous *O. mykiss* are relatively uncommon on the Oregon coast, as compared with other areas, occurring primarily above migration barriers and in the Umpqua River Basin (Kostow, 1995).

Little information is available regarding migration and spawn timing of natural steelhead populations within this ESU. Age structure appears to be similar to other west coast steelhead, dominated by 4-year-old spawners. Iteroparity is more common among Oregon coast steelhead than in populations to the north.

NMFS determines that no changes in the boundaries of the Oregon Coast ESU are warranted. No new information was received from peer reviewers or from other commenters regarding the boundaries of this ESU.

Hatchery Populations Pertaining to This ESU

At this time, NMFS has not identified hatchery populations pertaining to this ESU.

(3) Klamath Mountains Province ESU

This coastal steelhead ESU occupies river basins from the Elk River in Oregon to the Klamath and Trinity Rivers in California, inclusive. A detailed discussion of this ESU is presented in a previous NMFS status review (Busby *et al.*, 1994). Geologically, this region includes the KMP, which is not as erosive as the Franciscan formation terrains south of the Klamath River Basin. Dominant vegetation along the coast is redwood forest, while some interior basins are much drier than surrounding areas and are characterized by many endemic species. Elevated stream temperatures are a factor affecting steelhead and other species in some of the larger river basins. With the exception of major river basins, such as the Rogue and Klamath, most rivers in this region have a short duration of peak flows. Strong and consistent coastal upwelling begins at about Cape Blanco and continues south into central California, resulting in a relatively productive nearshore marine environment.

Protein electrophoretic analyses of coastal steelhead have indicated genetic discontinuities between the steelhead of this region and those to the north and south (Hatch, 1990; Busby et al., 1993 and 1994). Chromosomal studies have also identified a distinctive karyotype that has been reported only from populations within this ESU. Steelhead within this ESU include both winter-run- and summer steelhead as well as the unusual "half-pounder" life history (characterized by immature steelhead that return to fresh water after only 2 to 4 months in salt water, overwinter-run in rivers without spawning, then return to salt water the following spring).

Among the remaining questions regarding this ESU is the relationship between *O. mykiss* below and above Klamath Falls, OR. Behnke (1992) has proposed that the two groups are in different subspecies and that the upper group, a redband trout (*O. m. newberrii*),

exhibited anadromy until blocked by the Copco dams in the early 1900s. However, Moyle (1976) stated that Klamath Falls was the upstream barrier to anadromous fish prior to construction of the dams.

NMFS determines that no changes in the boundaries of the KMP ESU are warranted. No new information was received from peer reviewers or from other commenters regarding the boundaries of this ESU.

Hatchery Populations Pertaining to This ESU

While NMFS has analyzed the relationship of hatchery stocks to naturally spawned steelhead within the KMP ESU (NMFS, 1998a), this discussion is omitted here since NMFS concludes that KMP steelhead do not warrant listing at this time.

(4) Northern California ESU

This coastal steelhead ESU occupies river basins from Redwood Creek in Humboldt County, CA, to the Gualala River, inclusive. Dominant vegetation along the coast is redwood forest, while some interior basins are much drier than surrounding areas and are characterized by many endemic species. This area includes the extreme southern end of the contiguous portion of the Coast Range Ecoregion (Omernick, 1987). Elevated stream temperatures are a factor in some of the larger river basins (greater than 20° Celsius (C)), but not to the extent that they are in river basins farther south. Precipitation is generally higher in this geographic area than in regions to the south, averaging 100–200 centimeters (cm) of rainfall annually (Donley *et al.*, 1979). With the exception of major river basins, such as the Eel, most rivers in this region have peak flows of short duration. Strong and consistent coastal upwelling begins at approximately Cape Blanco and continues south into central California, resulting in a relatively productive nearshore marine environment.

There are life history similarities between steelhead of the Northern California ESU and the KMP ESU. This ESU includes both winter-run- and summer steelhead, including what is presently considered to be the southernmost population of summer-run steelhead, in the Middle Fork Eel River. Half-pounder juveniles also occur in this geographic area, specifically in the Mad and Eel Rivers. Snyder (1925) first described the half-pounder from the Eel River; however, Cramer et al. (1995) suggested that adults with the half-pounder juvenile life history may not spawn south of the Klamath River Basin. As with the Rogue and Klamath Rivers, some of the larger rivers in this area have migrating steelhead year round, and seasonal runs have been named. River entry ranges from August through June, and spawning from December through April, with peak spawning in January in the larger basins and late February and March in the smaller coastal basins.

NMFS determines that no changes in the boundaries of the Northern California ESU are warranted. No new information was received from peer reviewers or from other commenters regarding the boundaries of this ESU.

Hatchery Populations Pertaining to This ESU

While NMFS has analyzed the relationship of hatchery stocks to naturally spawned steelhead within the KMP ESU (NMFS, 1998a), this discussion is omitted here since NMFS concludes that Northern California steelhead do not warrant listing at this time.

(5) Central Valley, California ESU

This coastal steelhead ESU occupies the Sacramento and San Joaquin Rivers and their tributaries. Excluded are steelhead from San Francisco and San Pablo Bays which are part of the Central California Coast ESU. In the San Joaquin Basin, the best available information suggests that the current range of steelhead has been limited to the Stanislaus, Tuolumne, and Merced Rivers (tributaries) and the mainstem San Joaquin River to its confluence with the Merced River by human alteration of formerly available habitat. The Sacramento and San Joaquin Rivers offer the only migration route to the drainages of the Sierra Nevada and southern Cascade mountain ranges for anadromous fish. The distance from the Pacific Ocean to spawning streams can exceed 300 km, providing unique potential for reproductive isolation among steelhead. The Central Valley is much drier than the coastal regions to the west, receiving on average of only 10 to 50 cm of rainfall annually. The valley is characterized by alluvial soils, and native vegetation was dominated by oak forests and prairie grasses prior to agricultural development. Steelhead within this ESU have the longest freshwater migration of any population of winter-run steelhead. There is essentially one continuous run of steelhead in the upper Sacramento River. River entry ranges from July through May, with peaks in September and February. Spawning begins in late December and can extend into April (McEwan and Jackson, 1996).

There are two recognized taxonomic forms of native *O. mykiss* within the Sacramento River Basin: Coastal steelhead/rainbow trout (*O. m. irideus*, Behnke, 1992) and Sacramento redband trout (*O. m. stonei*, Behnke, 1992). It is not clear how the coastal and Sacramento redband forms of *O. mykiss* interacted in the Sacramento River prior to construction of Shasta Dam in the 1940s. However, it appears the two forms historically co-occurred at spawning time, but may have maintained reproductive isolation.

Two questions were raised by commenters regarding the extent of the Central Valley, California, ESU. These are (1) whether steelhead were native to the San Joaquin River Basin, and (2) whether steelhead in the Central Valley comprised a single ESU or multiple ESUs. New information received during the 6-month deferral period has aided somewhat in addressing these questions.

Recent observations resulting from monitoring efforts for chinook salmon document steelhead juveniles and/or adults in the lower San Joaquin River, the Stanislaus River, the Tuolumne River, and the Merced River. These steelhead appear to represent natural production since hatchery releases in recent years have been made only into the Mokelumne River. CDFG presented evidence that steelhead historically occurred in the San Joaquin River Basin, and, historically, there is no evidence that have been any obvious barriers to colonization of the basin by steelhead. NMFS notes that spring chinook salmon and steelhead have somewhat similar ecological requirements and that the San Joaquin River Basin historically supported large runs of spring chinook salmon. From this, NMFS concludes that steelhead probably historically occurred in the San Joaquin River Basin.

Ecological information provides additional insight into species diversity within this region. First, the Central Valley as a whole can be divided into three ecoregions based largely on elevation and associated changes in climate and rainfall: (1) A mountainous region, averaging about 1000 m elevation, that includes the headwaters of the Sacramento and tributaries to the San Joaquin Rivers; (2) a region of tablelands and hills at intermediate elevation, through which the tributary rivers flow; and (3) the valley itself, which includes broad, flat lands that border the Sacramento and San Joaquin Rivers. Geologically, the upper Sacramento River Basin, which arises from the volcanic Cascade Range, differs from the lower Sacramento and San Joaquin River Basins, which flow out of

the northern and southern Sierra Nevada. The upper Sacramento River Basin is also hydrologically distinct, and it supports native subspecies of resident *O. mykiss*. The southern part of the San Joaquin River Basin is also very distinct ecologically. Limited run-timing information suggests there may have been historic differences between populations in the Sacramento River Basin, three distinct runs may have occurred there as recently as 1947 (McEwan and Jackson, 1996), including a summer-run in the American River (Cramer et al., 1995; McEwan and Jackson, 1996) but the data are far from conclusive. Currently, CDFG considers all Central Valley steelhead to be winter-run steelhead (McEwan and Jackson, 1996), others call them fall-run steelhead (Cramer et al., 1995).

Genetic data indicate that, as a group, Central Valley steelhead are quite distinct from all coastal populations. However, existing data are not very informative regarding historical relationships among populations within the Central Valley. The single sample we have from the San Joaquin River basin is genetically similar to samples from Coleman Hatchery, Feather River Hatchery, and Deer and Mill Creeks in the Sacramento River. It is not clear whether this reflects historical relationships or more recent effects of stock transfers and/or straying by hatchery fish.

After considering this information in the aggregate, NMFS concludes that it is likely that, historically, more than one ESU of steelhead occurred in the Central Valley. However, at this time, existing scientific information does not permit the formulation of ESU boundaries for more than one ESU in this region. Therefore, NMFS concludes that steelhead in the Sacramento and San Joaquin River Basins (Central Valley) should be considered a single ESU until additional information becomes available.

Hatchery Populations Pertaining to This ESU

Hatchery populations considered part of this ESU include the Coleman NFH stock and Feather River Hatchery stock (winter-run). The Coleman NFH and Feather River Hatchery steelhead stocks are part of the ESU since broodstock histories and genetic evidence show these two stocks to be similar to wild steelhead in Deer and Mill Creeks.

Hatchery populations not considered part of the ESU include the Nimbus Hatchery stock and Mokelumne Hatchery stock. Nimbus Hatchery steelhead cluster genetically with Eel River steelhead (Northern California ESU), the source of much of the steelhead broodstock used to found the Nimbus Hatchery stock. Nimbus Hatchery has provided the vast majority of eggs to the Mokelumne Hatchery.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, whether a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

As noted earlier, NMFS received numerous comments regarding the relative importance of various factors contributing to the decline of West Coast steelhead. Several recent documents describe in more detail the impacts of various factors contributing to the decline of steelhead and other salmonids (e.g., NMFS, 1997c). NMFS has prepared a supporting document that addresses the factors leading to the decline of this species entitled "Factors for Decline: A supplement to the notice of determination for west coast steelhead" (NMFS, 1996a). This report, available upon request (see **ADDRESSES**), concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary causes for the decline of West Coast steelhead. The following discussion briefly summarizes findings regarding factors for decline across the range of west coast steelhead. While these factors have been treated here in general terms, it is important to underscore that impacts from certain factors are more acute for specific ESUs. For example, impacts from water diversion are more pervasive for the Central Valley, California, ESU than for some coastal ESUs.

(1) The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Steelhead on the West Coast of the United States have experienced declines in abundance in the past several decades as a result of natural and human factors. Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. Water diversions for agriculture, flood control, domestic, and hydropower purposes (especially in the Columbia River and Sacramento-San Joaquin Basins) have greatly reduced or eliminated historically accessible habitat. Studies estimate that during the last 200 years, the lower 48 states have lost approximately 53 percent of all wetlands and the majority of the rest are severely degraded (Dahl, 1990; Tiner, 1991). Washington and Oregon's wetlands are estimated to have diminished by one-third, while California has experienced a 91 percent loss of its wetland habitat (Dahl, 1990; Jensen *et al.*, 1990; Barbour *et al.*, 1991; Reynolds *et al.*, 1993). Loss of habitat complexity has also contributed to the decline of steelhead. For example, in national forests in Washington, there has been a 58 percent reduction in large, deep pools due to sedimentation and loss of pool-forming structures, such as boulders and large wood (Forest Ecosystem Management Assessment Team (FEMAT), 1993). Similarly, in Oregon, the abundance of large, deep pools on private coastal lands has decreased by as much as 80 percent (FEMAT, 1993). Sedimentation from land-use activities is recognized as a primary cause of habitat degradation in the range of West Coast steelhead.

(2) Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Steelhead support an important recreational fishery throughout their range. During periods of decreased habitat availability (e.g., drought conditions or summer low flow when fish are concentrated), the impacts of recreational fishing on native anadromous stocks may be heightened. NMFS has reviewed and evaluated the impacts of recreational fishing on west coast steelhead populations (NMFS, 1996a). Steelhead are not generally targeted in commercial fisheries. High seas driftnet fisheries in the past may have contributed slightly to a decline of this species in local areas, but could not be solely responsible for the large declines in abundance observed along most of the Pacific coast over the past several decades.

A particular problem occurs in the main stem of the Columbia River where naturally spawned steelhead from the Upper Columbia and Snake River Basin ESUs migrate at the same time and are subject to the same fisheries as hatchery-produced steelhead, chinook,

and coho salmon. Incidental harvest mortality in mixed-stock sport and commercial fisheries may exceed 30 percent of naturally spawned populations.

(3) Disease or Predation

Infectious diseases constitute one of many factors that can influence adult and juvenile steelhead survival. Steelhead are exposed to numerous bacterial, protozoan, viral, and parasitic organisms in spawning and rearing areas, hatcheries, migratory routes, and the marine environments. Specific diseases, such as bacterial kidney disease (BKD), ceratomyxosis, columnaris, furunculosis, infectious hematopoietic necrosis virus, redmouth and black spot disease, erythrocytic inclusion body syndrome, and whirling disease, among others, are present and are known to affect steelhead and salmon (Rucker *et al.*, 1953; Wood, 1979; Leek, 1987; Foott *et al.*, 1994; Gould and Wedemeyer, undated). Very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases for steelhead. However, studies have shown that naturally spawned fish tend to be less susceptible to pathogens than hatchery-reared fish (Buchanon *et al.*, 1983; Sanders *et al.*, 1992).

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous river systems, thereby increasing the level of predation experienced by salmonids. Predation by marine mammals is also of concern in some areas experiencing dwindling steelhead run sizes.

(4) Inadequacy of Existing Regulatory Mechanisms

Federal Land and Water Management

The Northwest Forest Plan (NFP) is a Federal management policy with important benefits for steelhead. While the NFP covers a very large area, the overall effectiveness of the NFP in conserving steelhead is limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds within the affected ESUs. The extent and distribution of Federal lands limits the NFP's ability to achieve its aquatic habitat restoration objectives at watershed and river basin scales and highlights the importance of complementary salmon habitat conservation measures on non-Federal lands within the subject ESUs.

On February 25, 1995, the U.S. Forest Service and Bureau of Land Management adopted the Implementation of Interim Strategies for Managing Anadromous Fish-producing Watersheds in eastern Oregon and Washington, Idaho, and portions of California (known as PACFISH). The strategy was developed in response to significant declines in naturally reproducing salmonid stocks, including steelhead, and to the widespread degradation of anadromous fish habitat throughout public lands in Idaho, Washington, Oregon, and California outside the range of the northern spotted owl. Like the NFP, PACFISH is an attempt to provide a consistent approach for maintaining and restoring aquatic and riparian habitat conditions which, in turn, are expected to promote the sustained natural production of anadromous fish. However, as with the NFP, PACFISH is limited by the extent of Federal lands, and Federal land ownership is not uniformly distributed in watersheds within all the affected ESUs.

Within the range of KMP steelhead, the majority of available steelhead habitat is covered by the requirements of the NFP. Furthermore, on May 6, 1997, Southern Oregon/Northern California coho salmon were listed as a threatened species under the ESA (62 FR 24588) resulting in some new habitat protections. These existing management efforts have resulted in improvements in aquatic habitat conditions for salmonids within this region.

Over the past 3 years, NMFS has consulted with the Arcata, Redding, and Clear Lake U.S. Bureau of Land Management (BLM) Resource Areas and the Six Rivers, Klamath, Shasta-Trinity, and Mendocino National Forests (Forests) on all ongoing and proposed activities that may affect coho salmon and steelhead and their habitats. During this period of time, NMFS reviewed thousands of activities throughout northern California and helped develop numerous programmatic biological assessments (BAs) with the BLM and the Forests. These BAs cover a wide range of management activities, including forest and/or resource area-wide routine and non-routine road maintenance, hazard tree removal, range allotment management, watershed and instream restoration, special use permits (e.g., mining, ingress/egress), timber sale programs (e.g., green tree, fuel reduction, thinning, regeneration, and salvage), and BLM's land tenure adjustment program. Numerous other project-specific BAs received consultations and conferences. These forest and resource area-wide BAs include region-specific best management practices, all necessary measures to minimize impacts for all listed/proposed anadromous salmonids, monitoring, and environmental baseline checklists for each project. These BAs have resulted in a more consistent approach to management of public lands throughout the NFP and PACFISH [illegible].

On October 27, 1986, the Klamath Act (Pub. L. 99–552) was passed by Congress authorizing a 20-year-long Federal-State cooperative Klamath River Basin Conservation Area Restoration Program for the rebuilding of the river's fish resources. The Act created a 14-member Klamath River Basin Fisheries Task Force and directs the U.S. Secretary of Interior to cooperate with the Task Force in the creation and implementation of a Klamath River Basin Conservation Area Fishery Restoration Program (KRBFTF, 1991). The Task Force members are appointed by, and represent, the Governors of California and Oregon; the U.S. Secretaries of Interior, Commerce and Agriculture; the California counties of Del Norte, Humboldt, Siskiyou and Trinity; Hoopa Valley, Karuk and Yurok Indian tribal fishers; as well as by anglers and commercial fishermen. The KMP Act also created an 11-member Klamath Fishery Management Council to "establish a comprehensive long-term plan and policy * * * for the management of the in-river and ocean harvesting that affects or may affect Klamath and Trinity River basin anadromous salmon populations." The Council comprises essentially the same interests as the Task Force, except for the four county representatives which hold seats only on the Task Force.

In October 1984, the Trinity River Basin Fish and Wildlife Restoration Act (Act) was enacted by Congress. The Act appropriated $33 million over a 10-year period for design and construction of restoration projects and $2.4 million annually for operation, maintenance, and monitoring. The Act embodied in law an 11-point plan to restore and maintain fish and wildlife resources in the basin at levels which occurred prior to the construction of the Trinity River Diversion, Central Valley Project. The Trinity River Basin Fish and Wildlife Task Force was formed to investigate and develop an action plan to identify and correct fish and wildlife problems in the Trinity River basin. In 1982, the Task Force issued the Trinity River Basin Fish and Wildlife Management Program Report, which outlined five major goals to restore fish and wildlife. The report identified ten major actions and associated costs to restore fish populations and rehabilitate habitat. A 3-year action plan was issued by the

Task Force in 1988 and a second 3-year plan was issued in 1992. This most recent plan identifies over 100 restoration, supplementation, and monitoring activities to be completed over the next 3 years. Presently, final flow measurements are being analyzed by FWS to determine necessary flows and system capabilities for anadromous salmonids in the basin, and an Environmental Impact Statement, and National Environmental Policy Act (NEPA) report should be released in 1998. The funding for this project expired at the end of Fiscal Year (FY) 1995 and was re-authorized through FY 1998. However, many of the identified restoration activities have only just begun, and, unless this legislation is re-authorized, they will not be completed.

The Pacific Gas and Electric's (PG&E) Potter Valley hydroelectric project is a major diverter of water from the mainstem Eel River located in the Northern California ESU. This water is diverted into the Russian River basin to generate hydroelectric power and provide water for agriculture and urban uses. Pursuant to a Federal Energy Regulatory Commission (FERC) licensing requirement, PG&E was required, in consultation with FWS and CDFG, to develop and implement a 10-year monitoring program and develop recommendations for modifications in the flow release schedule or project structures and operations necessary to protect and maintain fishery resources. This study was completed in 1996, as was construction of a $14 million fish screen facility at the Van Arsdale Dam diversion on the Eel River. Based on the results of the monitoring study, NMFS, FWS, CDFG, and PG&E have recently completed negotiations on a plan to increase project flows to the Eel River by an additional 15 percent (20 TAF), as well as to make non-flow related capital improvements. This plan will be submitted to FERC by March 30, 1998, which will in turn trigger a NEPA review of the proposal. The provision of additional instream flows in the Eel River, in conjunction with the new fish screening facility, are expected to improve habitat quality and benefit steelhead in this ESU by increasing survival. As part of the proposal being carried forward to FERC, PG&E will also implement or fund additional mitigation measures that will provide benefits to both salmon and steelhead in the Eel River. These measures include direct funding of $30,000 annually to CDFG, funding of squawfish suppression in the Eel River, and funding of various monitoring activities.

Central Valley steelhead are benefitting from two major conservation initiatives which are being simultaneously implemented and developed to conserve and restore anadromous fish resources, including steelhead, in California's Central Valley. These include the Federal Central Valley Project Improvement Act (CVPIA) which was passed by Congress in 1992 and the CALFED Bay-Delta Program (CALFED Program) which is a joint State/Federal effort implemented in 1995.

The CVPIA is specifically intended to remedy habitat and other problems associated with the construction and operation of the Bureau of Reclamation's (BOR's) Central Valley Project. The CVPIA has two key features related to steelhead. First, it directs the Secretary of the Interior to develop and implement a program that makes all reasonable efforts to double natural production of anadromous fish in Central Valley streams (Section 3406(b)(1)) by the year 2002. This plan, which is called the Anadromous Fish Restoration Program (AFRP), was initially drafted in 1995 and subsequently revised in 1997. Funding has been appropriated since 1995 to implement restoration projects identified in the AFRP planning process. Second, the CVPIA dedicates up to 800,000 acre feet (AF) of water annually for fish, wildlife, and habitat restoration purposes (Section 3406(b)(2)) and provides for the acquisition of additional water to supplement the 800,000 AF (Section 3406(b)(3)). FWS, in consultation with other Federal and State agencies, has directed the use of this dedicated water yield since 1993.

The AFRP addresses six anadromous fish species, including steelhead, identified for restoration in the CVPIA. The revised 1997 plan presents the goals, objectives, and strategies of the AFRP; describes processes the AFRP used to identify, develop, and select restoration actions; and lists actions and evaluations determined at a programmatic level to be reasonable to implement as part of the AFRP. FWS intends to finalize this restoration plan in 1998 following completion of the Programmatic Environmental Impact Statement (PEIS) required by Section 3409 of the CVPIA. Additionally, FWS and BOR have released guidelines in the form of two administrative proposals that will provide guidance for several key aspects of the AFRP implementation. A draft administrative proposal regarding the development of the AFRP was released in June 1997. A final administrative proposal on the management of section 3406(b)(2) water and a set of flow-related actions for the next 5 years was released by DOI in November, 1997. These plans will be updated to include new information, consistent with the adaptive management approach described in the AFRP. To make restoration efforts as efficient as possible, the AFRP has committed to coordinate restoration efforts with those by other groups or programs. DOI has committed to working with NMFS, CDFG, and others to coordinate actions in this implementation and recovery plans for anadromous fish and for listed and proposed species under the ESA.

The CVPIA obligated $1.9 million in 1996 for 11 site-specific restoration actions and evaluations authorized by the AFRP, and $9.7 million for over 30 restoration projects in 1997. In 1998, the AFRP's projected budget for habitat restoration activities in the Central Valley is $8.2 million. Continued long term funding of AFRP restoration activities is currently authorized in the CVPIA. An estimated $20 million to $35 million will be spent on AFRP restoration actions per year for 25 years ($500 million to $875 million estimated total), most of which will be closely integrated with funding for activities implemented through the CALFED Bay-Delta Program.

The second conservation initiative that benefits Central Valley steelhead and other species is the CALFED Program. In June 1994, state and Federal agencies, including NMFS, signed a framework agreement that pledged all agencies would work together to formulate water quality standards to protect the Bay-Delta, coordinate State Water Project and Central Valley Project operations in the Bay-Delta, and develop a long-term Bay-Delta solution that would address ecosystem restoration and other objectives. In December 1994, a diverse group of state and Federal agencies, water agencies, and environmental organizations signed the Bay-Delta Accord which set out specific interim (3-year plan) measures for environmental protection, including the protection of Central Valley anadromous salmonids. The CALFED Program, which began in June 1995, is charged with the responsibility of developing a long-term Bay-Delta solution. The 1994 Bay-Delta Accord was recently extended through December 31, 1998.

Three types of environmental protection measures are detailed in the Bay-Delta Accord: (1) Control of freshwater outflow in the Delta to improve estuarine conditions in the shallow-water habitat of the Bay-Delta estuary (Category I measures); (2) regulation of water project operations

and flows to minimize harmful environmental impacts of water exports (Category II measures); and (3) implementation of projects to address non-flow related factors affecting the Bay-Delta ecosystem, such as unscreened diversions, physical habitat degradation, and pollution (Category III measures). Many of the Category I and II measures identified in the agreement were implemented by a Water Quality Control Plan that was adopted by the State Water Resources Control Board in 1995. Efforts were also initiated to fund and implement Category III non-flow projects beginning in 1995.

The CALFED Program completed Phase I in September 1996 with the identification of problems confronting the Bay-Delta system, the development of a mission statement and guiding principals, and the development of three basic alternative approaches to solving the problems. Currently in Phase II, the CALFED Program has refined the preliminary alternatives and is conducting a comprehensive programmatic environmental review with implementation strategies. In addition to the development of three water conveyance and storage alternatives, the CALFED Program has developed four common programs to resolve regional problems: ecosystems quality, water quality, levee system vulnerability, and water system reliability. A major element of the CALFED Program is the Ecosystem Restoration Program Plan (ERPP) which is intended to provide the foundation for long-term ecosystem and water quality restoration and protection throughout the region. Since adoption of the Bay-Delta Accord, urban water users have contributed approximately $21 million and State Proposition 204 has generated an additional $60 million for Category III non-flow habitat restoration projects. Among the non-flow factors for decline that have been targeted by the Category III program are unscreened diversions, waste discharges and water pollution prevention, impacts due to poaching, land derived salts, exotic species, fish barriers, channel alterations, loss of riparian wetlands, and other causes of estuarine habitat degradation. To ensure that Category III habitat restoration projects are coordinated with the Federal CVPIA and implemented in accordance with the draft ERPP, the CALFED Program's Restoration Coordination Program administers Category III funds and coordinates its funding with other related restoration programs and funding sources.

Continued funding of CALFED program activities and the Category III program are assured through funds provided by State Proposition 204, Federal funding through the DOI, and contributions by water development agencies under Category III. The total cost for implementing the ERPP component of the long-term CALFED Program has been estimated at $1.5 billion, of which about half should be available through State Proposition 204 bonds and expected Federal appropriations. These funds will be used to provide the initial funding necessary to begin implementing the ERPP. The current ERPP implementation strategy assumes that $390 million of Proposition 204 funding will be available for use after the CALFED Program's long-term plan is formally adopted by the CALFED agencies through filing of a Record of Decision for the Federal EIS and certification of the EIS by the California Resources Agency in late 1998.

Collectively, the CVPIA and CALFED conservation programs have the potential to provide a comprehensive conservation response to the extensive ecological problems facing steelhead and other salmonids in the Central Valley. However, the scope, intensity and effectiveness of the CALFED Program is still coming into focus. Therefore, NMFS concludes that the conservation measures provided by these programs are not currently sufficient to ensure recovery of steelhead. Nevertheless, NMFS believes the level of risk faced by the Central Valley steelhead ESU has diminished considerably since the 1996 listing proposal as a result of habitat restoration and other measures that have recently been implemented through the CALFED and CVPIA programs. NMFS is committed to working with the State and CALFED agencies to build on these programs to ensure that all risks to steelhead are adequately addressed. Through the prioritization of restoration funds available through the CALFED and CVPIA programs, NMFS can assist with the establishment of objectives and targets and implementation strategies which address many of the primary risk factors for Central Valley steelhead.

In the San Joaquin River Basin of the Central Valley, collaboration between water interests and state and Federal resource agencies, including NMFS, has led to the development of a scientifically based, adaptive fisheries management plan known as the Vernalis Adaptive Management Plan (VAMP). The VAMP will provide environmental benefits for fall-run chinook salmon smolts in the Delta and lower San Joaquin River and its tributaries by (1) using current scientific knowledge to enhance smolts survival by modifying flows; and (2) gathering additional scientific information on the effects of various San Joaquin River flows and Delta water export rates on the survival of salmon smolts to permit adaptive changes. This 12-year plan will be implemented through experimental flows in the San Joaquin Basin and operational changes at the Delta pumping plants during the peak chinook salmon smolts out-migration period (about April 15 to May 15). Initial implementation of the VAMP is scheduled for spring 1998; however, negotiations regarding some aspects of the program continue. The current focus of VAMP is to provide better protection for fall chinook in the San Joaquin basin. However, NMFS expects that the long-term commitment of all participating parties to fully implement the plan will provide ancillary benefits to Central Valley steelhead through improved flow and passage conditions.

State Land Management

The California Department of Forestry and Fire Protection (CDF) enforces the State of California's forest practice rules (CFPRs) on private and State managed forests, and these rules are promulgated through the State Board of Forestry (BOF). Timber harvest activities have been documented to result in negative effects on streams and streamside zones, including the loss of large woody debris, increased sedimentation, loss of riparian vegetation, and the loss of habitat complexity and connectivity. In the California portion of the KMP steelhead ESU, a relatively small percentage of the major river basins (i.e., the Smith, Klamath, and Trinity River basins) are composed of private forest lands where timber harvest is managed by CDFG. In these basins, private forest lands average approximately 18 percent of the total acreage, with a range of 17 (Trinity River) to 23 (Smith River) percent. In contrast, a much higher percentage of the acreage comprising the major river basins in the Northern California ESU (i.e., Redwood Creek, Mad River, Eel River, Mattole River, Ten Mile River, Noyo River, Big River, Albion River, Navarro River, Garcia River, and Gualala River) are composed of private forest lands where timber harvest is managed by CDFG. In these 11 river basins, private forest lands average about 75 percent of the total acreage, with a range of 42 percent (Eel River) to 94 percent (Gualala River).

NMFS has reviewed the CFPRs to determine their adequacy for protecting anadromous salmonids in California. Specifically, the review determined that, although the CFPRs mandate

protection of sensitive resources such as salmonids, the CFPR provisions and their implementation and enforcement, fall short of accomplishing his objective. Specific problems with the CFPRs include the inclusion of many protective provisions that are not supported by or with scientific literature; (2) provisions that are scientifically inadequate to protect salmonids including steelhead; (3) inadequate and ineffective cumulative effects analysis; (4) dependency upon registered professional foresters (RPFs) that may not possess the necessary level of multi-disciplinary technical expertise to develop appropriate THPs; (5) dependency by CDFG on other State agencies to review and comment on THPs; (6) failure of CDFG to incorporate recommendations from other agencies; and (7) inadequate enforcement due to staffing limitations.

On April 29, 1997, CDFG issued guidelines to RPF's for the protection of coho salmon which had been recently listed under the ESA. These "coho considerations" are an improvement over the CFPRs for the protection of steelhead in addition to coho salmon, but they are voluntary and not part of the CFPR provisions. Consequently, implementation of these provisions is unpredictable.

The CFPRs could be an effective vehicle for protecting steelhead and other species and reversing the factors for decline if there were substantial changes made to the provisions and their implementation and enforcement. Such changes include the following: (1) The provision for scientific peer review of the CFPRs, including science-based recommendations for modification of provisions; (2) development of comprehensive cumulative effects analyses; (3) implementation of mandatory provisions to protect anadromous fish; (4) additional and specialized training of RPFs, increased funding and staffing to review THPs; (5) improved enforcement of the CFPRs and THP requirements; and (6) mandatory incorporation of other State agency comments and modifications into THPs. Until a comprehensive scientific peer review process is adopted and appropriate changes to the CFPRs and the THP approval process are made, properly functioning habitat conditions will not exist in the KMP and Northern California steelhead ESUs.

The State is currently funding a conservation planning effort in Del Norte, Humboldt, Mendocino, Siskyou, and Trinity counties to review and analyze all county General Plans, ordinances, and policies relating to activities affecting salmon and steelhead. Examples of such activities include riparian habitat maintenance and setbacks, riparian water withdrawal, grading, erosion and sediment control, storm water retention, floodplain development, and stream crossings. Gaps or inconsistent policy application will be identified and General Plans or ordinances will be modified to better protect salmon and steelhead.

The Washington Department of Natural Resources implements and enforces the State of Washington's forest practice rules (WFPRs) which are promulgated through the Forest Practices Board. These WFPRs contain provisions that can be protective of steelhead if fully implemented. This is possible given that the WFPR's are based on adaptive management of forest lands through watershed analysis, development of site-specific land management prescriptions, and monitoring. Watershed analysis prescriptions can exceed WFPR minima for stream and riparian protection. However, NMFS believes the WFPRs, including watershed analysis, do not provide properly functioning conditions in riparian and instream habitats. Specifically, the base WFPRs do not adequately address large woody debris (LWD) recruitment, tree retention to maintain stream bank integrity and channel networks within floodplains, and chronic and episodic inputs of coarse and fine sediment that maintain habitats that are properly functioning for all life stages of steelhead.

The Oregon Forest Practices Act (OFPA), while modified in 1995 and improved over the previous OFPA, does not have implementing rules that adequately protect salmonid habitat. In particular, the current OFPA does not provide adequate protection for the production and introduction of LWD to medium, small and non-fish bearing streams. Small non-fish bearing streams are vitally important to the quality of downstream habitats. These streams carry water, sediment, nutrients, and LWD from upper portions of the watershed. The quality of downstream habitats is determined, in part, by the timing and amount of organic and inorganic materials provided by these small streams (Chamberlin *et al.* in Meehan, 1991). Given the existing depleted condition of most riparian forests on non-Federal lands, the time needed to attain mature forest conditions, the lack of adequate protection for non-riparian LWD sources in landslide-prone areas and small headwater streams (which account for about half the wood found naturally in stream channels) (Burnett and Reeves, 1997 citing Van Sickle and Gregory, 1990; McDade *et al.*, 1990; and McGreary, 1994), and current rotation schedules (approximately 50 years), there is a low probability that adequate LWD recruitment could be achieved under the current requirements of the OFPA. Also, the OFPA does not adequately consider and manage timber harvest and road construction on sensitive, unstable slopes subject to mass wasting, nor does it address cumulative effects.

Agricultural activity has had multiple and often severe impacts on salmonid habitat. These include depletion of needed flows by irrigation withdrawals; blocking of fish passage by diversion or other structures; destruction of riparian vegetation and bank stability by grazing or cultivation practices; and channelization resulting in loss of side channel and wetland-related habitat (NMFS, 1996b).

Historically, the impacts to fish habitat from agricultural practices have not been closely regulated. The Oregon Department of Agriculture has recently completed guidance for development of agricultural water quality management plans (AWQMPs) (as enacted by State Senate Bill 1010). The guidance focuses on achieving state water quality standards. It is open to question, however, whether they will adequately address salmonid habitat factors, such as properly functioning riparian conditions. Their ability to address all relevant factors will depend on the manner in which they are implemented. AWQMPs are anticipated to be developed at a basin scale and will include regulatory authority and enforcement provisions. The Healthy Streams Partnership schedules adoption of AWQMPs for all impaired waters by 2001.

Washington also has not historically regulated impacts of agricultural activity on fish habitat overall, although there are some special requirements in the Puget Sound area, and Department of Ecology is currently giving close attention to impacts from dairy operations. As in Oregon, development of Total Maximum Daily Loads (TMDLs; see following discussion) should over the long-term improve water quality; the extent to which other habitat impacts will be ameliorated is unknown.

Impacts from agricultural and grazing practices have not historically been closely regulated in California. This is an important concern to NMFS because a substantial amount of acreage in the KMP and Northern California ESU is comprised of farmland. Private lands, and public lands not administered by the federal government, are now being

addressed by the California Rangeland Water Quality Management Plan (CRWQMP) which was adopted by the State Water Resources Control Board as a voluntary compliance effort in accordance with its Non-point Source Management Plan. The emphasis of the CRWQMP is on outreach and education with assistance from the Natural Resources Conservation Service (NRCS), University of California Cooperative Extension, and California Association of Resource Conservation Districts (CSRCSs), and the California Cattleman's Association. The Best Management Practices (BMPs) contained in the CRWQMP are derived from the NRCS Field Office Technical Guides.

Under this program, the NRCS, Cooperative Extension and CARCD encourage rangeland owners to develop and implement ranch plans or other documents detailing their management goals and practices. NRCS and Cooperative extension provide training in this effort and the NRCS can condition assistance on implementation of the BMPs set forth in the CRWQMP. The Regional Water Control Boards promote implementation of the CRWQMP by also encouraging landowners to develop plans and by requiring ranch plans to be developed and implemented in accordance with the CRWQMP for watershed listed under section 303(d) of the CWA as requiring the development of TMDLs. As noted below, TMDLs will be developed for most all streams in the Northern California and KMP steelhead ESUs under the terms of a recent consent decree. Between 1995–1998, rangeland plans were developed under the CRWQMP for more than 250,000 acres on the north coast ranging from San Francisco to the Oregon border. The State plans to review the implementation status of these plans at intervals of 3, 5 and 10 years, provided resources are available. Efforts are currently in progress to incorporate existing rangeland management plans in the Garcia River into the TMDL development process for that watershed. NMFS is encouraged by these ongoing efforts. Plans that are consistent with this guidance are likely to result in meeting state water quality standards, but the program is voluntary and it is uncertain to what extent their implementation will contribute to improved habitat conditions and riparian function.

Dredge, Fill, and Inwater Construction Programs

The Army Corps of Engineers (COE) regulates removal/fill activities under section 404 of the Clean Water Act (CWA), which requires that the COE not permit a discharge that would "cause or contribute to significant degradation of the waters of the United States." One of the factors that must be considered in this determination is cumulative effects. However, the COE guidelines do not specify a methodology for assessing cumulative impacts or how much weight to assign them in decision making. Furthermore, the COE does not have in place any process to address the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

The Corps of Engineers, State, and local governments recently developed and implemented procedures reviewing, approving and monitoring gravel mining activities in Del Norte and Humboldt counties which are authorized under a Letter of Permission process. This process now regulates gravel mining in a substantial portion of the north coast, including all of the Klamath Mountains Province in California and a substantial portion of the Northern California ESU (including the Mad, Eel and Van Duzen Rivers). These procedures are designed to provide substantially improved protection for anadromous fish and their habitats, including steelhead. Important features of this new process include: A prohibition on gravel mining in the active channel except in limited instances, a restriction of gravel operations to the dry season, monitoring of channel cross section to detect channel degradation, fisheries monitoring, gravel mining on a sustained yield basis, and watershed-level analysis of gravel mining. NMFS participated in the development of these procedures and has concluded, through section 7 consultation with the Corps, that these procedures will not jeopardize the continued existence of coho salmon or steelhead in the KMP and Northern California ESUs.

Water Quality Programs

The Federal CWA is intended to protect beneficial uses, including fishery resources. To date, implementation has not been effective in adequately protecting fishery resources, particularly with respect to non-point sources of pollution.

Section 303(d)(1)(C) and (D) of the CWA requires states to prepare TMDLs for all water bodies that do not meet state water quality standards. TMDLs are a method for quantitative assessment of environmental problems in a watershed and identifying pollution reductions needed to protect drinking water, aquatic life, recreation, and other use of rivers, lakes, and streams. TMDLs may address all pollution sources including point sources such as sewage or industrial plant discharges, and non-point discharges such as runoff from roads, farm fields, and forests. Furthermore, TMDLs for water quality-limited waterbodies may address several factors including, temperature levels, sediment load, nutrient input, and dissolved oxygen levels.

The CWA gives state governments the primary responsibility for establishing TMDLs. However, EPA is required to do so if a state does not meet this responsibility. As a result of a recent consent decree, EPA and the North Coast Regional Water Quality Control Board (Board) have committed to preparing TMDLs for 18 river basins in California. All of these river basins are located within the Northern California or KMP steelhead ESUs, the majority of which (12) are located within the Northern California ESU. The consent decree establishes a schedule for developing TMDL criteria for listed rivers. Under this schedule, seven river basins in the Northern California ESU will have TMDLs developed within the next 2 years, with the remaining rivers having TMDLs developed by 2002. TMDLs for rivers in the KMP steelhead ESU (e.g., Klamath, Trinity, Scott, and Shasta Rivers) will not be developed until after 2001. This legally-binding schedule will result in significant progress on improving the beneficial uses of these watersheds, where the beneficial use has been identified as habitat for salmonids.

Currently, a sediment TMDL has been established for the Garcia River in the Northern California steelhead ESU. This TMDL will ultimately be adopted into the Water Quality Control Plan for the North Coast Basin (Basin Plan) in 1998. The adoption of the Strategy into the Basin Plan carries significant weight for compliance. The completion of the Garcia River TMDL and the initiation of TMDLs for the other listed rivers represent a significant step forward in improving watershed health for steelhead and other salmonids on the north coast of California.

State agencies in Oregon are committed to completing TMDLs for coastal drainages within 4 years, and all impaired waters within 10 years. Similarly ambitious schedules are being developed for Washington.

The ability of these TMDLs to protect steelhead should be significant in the long term; however, it will be difficult to develop them quickly in the short term, and their efficacy in protecting steelhead habitat will be unknown for years to come. Furthermore, it is essential EPA consults with NMFS on

the formulation of TMDLs in waters that contain listed salmonids. Such consultations will help ensure TMDLs adequately address the needs of these species.

State Hatchery and Harvest Management

In an attempt to mitigate the loss of habitat and to enhance fishing opportunities, extensive hatchery programs have been implemented throughout the range of steelhead on the West Coast. While some of these programs have succeeded in providing fishing opportunities, the impacts of these programs on native, naturally reproducing stocks are not well understood. Competition, genetic introgression, and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally reproducing steelhead (NMFS, 1996a). Collection of native steelhead for hatchery broodstock purposes often harms small or dwindling natural populations. Artificial propagation can play an important role in steelhead recovery through carefully controlled supplementation programs.

In the past, non-native steelhead stocks have been introduced as broodstock in hatcheries and widely transplanted in many coastal rivers and streams in California (Bryant, 1994; Busby *et al.*, 1996; NMFS, 1997a). Because of problems associated with this practice, CDFG developed its Salmon and Steelhead Stock Management Policy. This policy recognizes that such stock mixing is detrimental and seeks to maintain the genetic integrity of all identifiable stocks of salmon and steelhead in California, as well as to minimize interactions between hatchery and natural populations. To protect the genetic integrity of salmon and steelhead stocks, this policy directs CDFG to evaluate each salmon and steelhead stream and to classify it according to its probable genetic source and degree of integrity.

Hatchery programs and harvest management have strongly influenced steelhead populations in the Lower Columbia River and Central Valley, California, ESUs. Hatchery programs intended to compensate for habitat losses have masked declines in natural stocks and have created unrealistic expectations for fisheries. Collection of natural steelhead for broodstock and transfers of stocks within and between ESUs have detrimentally impacted some populations.

The three state agencies (ODFW, WDFG, and CDFG) have adopted and are implementing natural salmonid policies designed to limit hatchery influences on natural, indigenous steelhead. Sport fisheries now focus on harvest of marked, hatchery-produced steelhead, and sport fishing regulations are designed to protect wild fish. While some limits have been placed on hatchery production of anadromous salmonids, more careful management of current programs and scrutiny of proposed programs are necessary in order to minimize impacts on listed species.

(5) Other Natural or Human-Made Factors Affecting Its Continued Existence

Natural climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing, and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may help offset degraded freshwater habitat conditions (NMFS, 1996a).

Efforts Being Made To Protect West Coast Steelhead

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account state efforts being made to protect the species. Therefore, in making its listing determinations, NMFS first assesses the status of the species and identifies factors that have lead to the decline of the species. NMFS then assesses available conservation measures to determine whether such measures ameliorate risks to the species.

In judging the efficacy of existing conservation efforts, NMFS considers the following: (1) The substantive, protective, and conservation elements of such efforts; (2) the degree of certainty such efforts will be reliably implemented; and (3) the presence of monitoring provisions that permit adaptive management (NMFS, 1996b). In some cases, conservation efforts may be relatively new and may not have had time to demonstrate their biological benefit. In such cases, provisions for adequate monitoring and funding of conservation efforts are essential to ensure intended conservation benefits are realized.

During its west coast steelhead status review, NMFS reviewed an array of protective efforts for steelhead and other salmonids, ranging in scope from regional strategies to local watershed initiatives. NMFS has summarized some of the major efforts in a document entitled "Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act" (NMFS, 1996c). During the 6-month period of deferral, NMFS identified additional conservation measures in the States of Washington, Oregon, and California. We summarize these additional conservation measures below.

State of Washington Conservation Measures

The State of Washington is currently in the process of developing a statewide strategy to protect and restore wild steelhead and other salmon and trout species. In May of 1997, Governor Gary Locke and other state officials signed a Memorandum of Agreement creating the Joint Natural Resources Cabinet (Joint Cabinet). This body consists of State agency directors, or their equivalents, from a wide variety of agencies whose activities and constituents influence Washington's natural resources. The goal of the Joint Cabinet is to restore healthy salmon, steelhead, and trout populations by improving those habitats on which the fish rely. The Joint Cabinet's current activities include development of the Lower Columbia Steelhead Conservation Initiative (LCSCI), which is intended to comprehensively address protection and recovery of steelhead in the lower Columbia River area.

The scope of the LCSCI includes Washington's steelhead stocks in two transboundary ESUs that are shared by both Washington and Oregon. The initiative area includes all of Washington's stocks in the Lower Columbia River ESU (Cowlitz to Wind rivers) and the portion of the Southwest Washington ESU in the Columbia River (Grays River to Germany Creek). When completed, conservation and restoration efforts in the LCSCI area will form a comprehensive, coordinated, and timely protection and rebuilding framework. Benefits to steelhead and other fish species in the LCSCI area will also accrue due to the growing bi-state partnership with Oregon.

Advance work on the initiative was performed by WDFW. That work emphasized harvest and hatchery issues and related conservation measures. Consistent with creation of the Joint Cabinet, conservation planning has recently been expanded to include major involvement by other state agencies and stakeholders and to address habitat and tributary dam/hydropower components.

The utility of the LCSCI is to provide a framework to describe concepts, strategies, opportunities, and commitments that will be critically needed to maintain the diversity and long-term productivity of steelhead in the lower Columbia River for future generations. The initiative does not represent a formal watershed planning process; rather, it is intended to be complementary to such processes as they may occur in the future. The LCSCI details a range of concerns including natural production and genetic conservation, recreational harvest and opportunity, hatchery strategies, habitat protection and restoration goals, monitoring of stock status and habitat health, evaluation of the effectiveness of specific conservation actions, and an adaptive management structure to implement and modify the plan's trajectory as time progresses. It also addresses improved enforcement of habitat and fishery regulations and strategies for outreach and education.

The LCSCI is currently a "work-in-progress" and will evolve and change over time as new information becomes available. Input will be obtained through continuing outreach efforts by local governments and other stakeholders. Further refinements to strategies, actions, and commitments will occur using public and stakeholder review and input and continued interaction with the state of Oregon, tribes, and other government entities, including NMFS. The LCSCI will be subjected to independent technical review. In sum, these input and coordination processes will play a key role in determining the extent to which the eventual conservation package will benefit wild steelhead.

NMFS intends to continue working with the state of Washington and stakeholders involved in the formulation of the LCSCI. Ultimately, when completed, this conservation effort may ameliorate risks facing many salmonid species in this region. In the near term, for steelhead and other listed species, individual components of the conservation effort may be recognized through section 4(d) of the ESA. In this way activities conducted in accordance with full, matured, and implemented conservation efforts may be excepted from take under section 9 of the ESA.

In conjunction with the LCSCI process, industry in the Lower Columbia River ESU sponsored the review and assessment of existing conservation programs in this region (Cramer, 1997). This assessment provided a helpful summary of measures, which if fully implemented and funded, may aid in conserving steelhead in this region. In particular, NMFS found this assessment's analysis of impacts associated with trout fisheries on juvenile steelhead helpful in analyzing existing state harvest regulations.

State of Oregon Conservation Measures

In April 1996, the Governor of Oregon completed and submitted to NMFS a comprehensive conservation plan directed specifically at coho salmon stocks on the Coast of Oregon. This plan, termed the Oregon Plan for Salmon and Watersheds (OPSW) (formerly known as the Oregon Coastal Salmon Restoration Initiative) was later expanded to include conservation measures for coastal steelhead stocks (Oregon, 1998). For a detailed description of the OPSW, refer to the May 6, 1997, listing determination for Southern Oregon/Northern California coho salmon (62 FR 24602). The essential tenets of the OPSW include the following:

a. The plan comprehensively addresses all factors for decline of coastal coho and steelhead, most notably, those factors relating to harvest, habitat, and hatchery activities.

b. Under this plan, all State agencies whose activities affect salmon are held accountable for coordinating their programs in a manner that conserves and restores the species and their habitat. This activity is essential since salmon and steelhead have been affected by the actions of many different state agencies.

c. The Plan includes a framework for prioritizing conservation and restoration efforts.

d. The Plan includes a comprehensive monitoring plan that coordinates Federal, state, and local efforts to improve understanding of freshwater and marine conditions, determine populations trends, evaluate the effects of artificial propagation, and rate the OPSW's success in restoring the salmon.

e. The Plan recognizes that actions to conserve and restore salmon must be worked out by communities and landowners—those who possess local knowledge of problems and those who have a genuine stake in the outcome. Watershed councils, soil and water conservation districts, and other grassroots efforts are the vehicles for getting this work done.

f. The Plan is based upon the principles of adaptive management. Through this process, there is an explicit mechanism for learning from experience, evaluating alternative approaches, and making needed changes in the programs and measures.

g. The Plan includes an Independent Multidisciplinary Science Team (IMST). The IMST's purpose is to provide an independent audit of the OPSW's strengths and weaknesses. They will aid the adaptive management process by compiling new information into a yearly review of goals, objectives, and strategies and by recommending changes.

h. The Plan requires that a yearly report be made to the Governor, the legislature, and the public. This report will help the agencies make the adjustments described for the adaptive management process.

To implement the various monitoring and other programs associated with the steelhead portion of the OPSW, the Oregon Legislative Emergency Board allocated just under $2 million in January 1998. This funding commitment is in addition to funds previously allocated for the coho portion of the OPSW.

The state of Oregon recently implemented changes to its fishing regulations that will help conserve steelhead in the Oregon portion of the KMP ESU (State of Oregon, 1998). These regulations, adopted on February 5, 1998, and in effect prior to this listing determination, include the following: (1) Elimination of steelhead retention fisheries in all areas of the KMP ESU except select areas in the Rogue River basin; (2) creation of sanctuary areas for rearing steelhead where no angling is permitted; (3) elimination of the use of bait in trout fisheries that could negatively impact juvenile steelhead; (4) implementation of season closures for trout species during juvenile steelhead out-migration; and (5) modification of gear requirements to protect juvenile steelhead in trout fisheries. NMFS has analyzed these harvest regulation changes and finds that these harvest regulations, coupled with existing hatchery management practices, will greatly reduce mortality to adult and juvenile steelhead in the KMP ESUs (NMFS, 1998b). Current harvest regulations and hatchery programs will be modified in the future if monitoring results indicate that changes are needed. Such changes will be made after the State and NMFS confer on them.

In addition to these recently adopted harvest regulations, the state of Oregon has committed to: (1) Devise and fund monitoring programs, in association with NMFS, to assess stock status and redirect existing management programs if need be; (2) establish a process for setting wild steelhead escapement goals; (3) continue to implement marking of all hatchery steelhead; and (4) eliminate stocking of hatchery trout in juvenile

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steelhead rearing habitat. These commitments and additions to the OPSW are captured in a letter from John Kitzhaber, Governor of Oregon to William Stelle, Jr., dated March 11, 1998 (Oregon, 1998).

State of California Conservation Measures

The state of California's program for steelhead conservation consists of several major elements: (1) The CALFED Bay-Delta program, including the integrated components of the CVPIA; (2) the Governor's Watershed Restoration and Protection Council (WPRC) program, including ongoing State efforts to implement the watershed planning and habitat restoration objectives contained in Senate Bill (SB) 271; (3) CDFG strategic management plans for steelhead in the KMP and Northern California ESUs; and (4) a joint Memorandum of Agreement between NMFS and the State. The following briefly summarizes these measures and their benefits for steelhead.

(1) CALFED Bay-Delta Program and CVPIA

The CALFED Bay-Delta Program and CVPIA are discussed in detail above under "Summary of Factors Affecting the Species." Collectively, these Central Valley programs have the potential to provide a comprehensive conservation response to the extensive ecologic problems facing at-risk salmonids, including Central Valley steelhead. However, the scope, intensity, and effectiveness of the CALFED Program are still coming into focus. Therefore, NMFS concludes that the conservation measures provided for by this program are not currently sufficient to ensure long-term recovery of steelhead.

NMFS reviewed and evaluated habitat restoration efforts implemented by the CALFED and CVPIA programs to date, as well as other recently implemented measures (NMFS, 1998c). Based on this review, NMFS concludes that Central Valley steelhead have benefitted from improved habitat protection resulting from the placement of new fish screens, modifications of barriers to fish passage, and various habitat acquisition and restoration projects. NMFS believes that the benefits provided by these habitat improvements, and other measures recently implemented, have diminished the risk faced by Central Valley steelhead ESU. Furthermore, NMFS is committed to continue working with Federal and state agencies to build on the CALFED and CVPIA programs to ensure that all risks to steelhead are adequately addressed. Through the prioritization of restoration monies under the CALFED and CVPIA programs, NMFS can assist with the establishment of objectives and targets, as well as implementation strategies, that address the primary risk factors for Central Valley steelhead.

(2) WPRC Program and Implementation of SB 271

In July, 1997, California's Governor signed Executive Order W–159–97 which created the WPRC. The WPRC, which is chaired by the Secretary of Resources, is an umbrella body consisting of all State agencies that have programs addressing anadromous salmonid protection and restoration. Under State law, the WPRC is charged with (1) providing oversight of all State activities aimed at watershed protection and enhancement, including the conservation and restoration of anadromous salmonids in California, and (2) directing the development of a Watershed Protection Program that provides for anadromous salmonid conservation in the State. The WPRC has established a 12-member, multi-disciplinary science review panel to advise it in the development of the watershed protection program.

The WPRC is currently in the process of comprehensively reviewing and evaluating existing Statewide regulatory and non-regulatory programs protecting anadromous salmonids and their habitat, as well as state and local restoration program efforts that are ongoing or proposed. An important outcome of this review is expected to be a compilation of management, implementation, and monitoring improvements that are needed to protect and conserve anadromous salmonids and their habitat. NMFS has reviewed early workproducts generated by this review process and will continue to participate in the review and the development of the watershed protection program.

NMFS is encouraged to see the State taking a comprehensive, watershed based approach to salmon management and restoration. However, the WPRC process is still in progress and a Watershed Protection Program has yet to be developed. The 1998 Memorandum of Agreement (MOA) signed by NMFS and the Secretary of Resources and Director of the CDFG (NMFS/California MOA 1998) ensures that NMFS will substantively participate in the development of this program, including participation on the scientific review panel that will advise the WPRC in the development of the Program. An important initial focus of this scientific review panel will be a review of California's forest practice regulations and their implementation and enforcement to determine their adequacy.

To support implementation of the Governor's Executive Order and the WPRC's efforts to develop a Watershed Protection Program, CDFG began implementing a Watershed Initiative with $3 million in SB 271 funds in FY 1997–1998. This funding is currently being obligated, together with a relatively limited amount of funds from other state sources (e.g., Proposition 70, Proposition 99, Commercial Salmon Stamp Account, Steelhead Catch-Restoration Card, and Wildlife Conservation Board), for coastal watershed projects through CDFG's Fishery Restoration Grants Program. CDFG expects to allocate at least $1.3 million for watershed and riparian habitat restoration, up to $425,000 for instream habitat restoration, and up to $900,000 for watershed evaluation, assessment, planning, restoration project maintenance and monitoring, and a wide range of other activities. For FY 1998–1999 (beginning in July 1998), CDFG anticipates spending $1.0 million for eight new positions to assist in watershed planning efforts and grant proposal development, and $7.0 million on grants for actual projects.

In 1997, the California legislature enacted SB 271 which provides CDFG with $43 million over six years for habitat restoration and watershed planning in coastal watersheds. This new funding allows CDFG to significantly expand its existing habitat restoration program in coastal watersheds, including KMP and Northern California steelhead ESUs. Senate Bill 271 requires that 87.5 percent of the $43 million in funding be spent on project grants for habitat restoration, watershed planning and related programs, and permits CDFG to use the remainder for contract administration activities and biological support staff necessary to achieve the restoration objectives of the legislation. Senate Bill 271 also specifies that projects be given highest priority that, (1) emphasize the development of coordinated watershed improvement activities, (2) restore habitat for salmon and/or steelhead that are eligible for protection as listed or candidate species under the State or Federal ESA, and (3) treat the causes of fish habitat degradation. As part of this program, CDFG is currently funding $3.0 million in new projects this year, and will begin funding $7.0 million/year in new projects for five years, beginning in FY 1998–1999 (starting July 1998). In addition, CDFG will use SB 271 funding to support several new permanent

positions that will assist in administering the program and provide technical support in the development of watershed plans and habitat restoration projects.

In addition to the SB 271 funds, CDFG has committed to seeking additional funding in the FY 1998–1999 budget cycle for a new steelhead monitoring and adaptive management program (CDFG, 1998a and 1998b; NMFS/California MOA 1998). CDFG anticipates spending over $1.6 million to hire over 30 person-years of staff for this program in FY 1998–1999.

The NMFS/California MOA (see discussion on NMFS/California MOA) provides additional assurances that the SB 271 program will provide these benefits. The MOA allows NMFS to serve as an ex-officio member of the Advisory Committee that will oversee implementation of SB 271, including the allocation funds. Furthermore, the MOA commits CDFG to direct a major portion of the new personnel and fiscal resources provided by SB 271 to watershed restoration efforts in these ESUs (NMFS/California MOA, 1998).

(3) Klamath Mountains Province and Northern California Strategic Plans

The state of California recently provided NMFS with strategic management plans specifically designed to address steelhead stocks in the KMP and Northern California ESUs on January 23, 1998, and February 5, 1998, respectively (CDFG, 1998a and 1998b). These strategic plans describe substantial changes in CDFG's management of recreational angling and steelhead hatchery programs, along with its monitoring, assessment, and adaptive management programs for steelhead in these two ESUs. In addition, both plans describe CDFG's ongoing efforts to protect and enhance steelhead habitat. These management measures are intended to provide immediate protection for steelhead populations in these ESUs, while longer-term measures are implemented to protect anadromous fish habitat on non-Federal lands through the State's Watershed Protection Program. The following is a description of the main components of the strategic management plans.

a. Harvest Measures

CDFG's strategic plans propose several harvest management actions that are designed to increase escapement of adult steelhead and reduce impacts on juvenile steelhead in the Northern California and KMP steelhead ESUs. NMFS (1998d) has reviewed and analyzed these measures and concludes that impacts to adult steelhead will be greatly reduced as a result of these new measures. Impacts to juveniles will also be significantly reduced due to fishing closures in all steelhead rearing tributaries, expanded angling closures in mainstem areas through the end of May, and various gear and bait restrictions.

On February 6, 1998, the state of California's Fish and Game Commission (Commission) adopted emergency changes to the State's inland fishing regulations, which became effective on February 12, 1998. These regulation changes were intended to be consistent with the measures outlined in the KMP and Northern California strategic plans (CDFG, 1998a and 1998b). NMFS reviewed and evaluated these emergency regulation changes and determined that some of them did not adequately protect wild juvenile steelhead (NMFS, 1998e). The State and NMFS agreed to further modifications of the emergency regulations which were adopted by the Commission on March 6, 1998, as amendments to the emergency regulations. NMFS reviewed these modifications and concludes that they will reduce threats to steelhead and will help conserve the species in these ESUs (NMFS, 1998f).

b. Hatchery Measures

CDFG's strategic plans for KMP and Northern California steelhead identify a wide range of existing and new hatchery management measures that are intended to reduce the impacts of hatchery steelhead programs on wild steelhead populations in these ESUs. These measures include the following: (1) Release strategies that require a minimum 6" size and release at the hatchery; (2) marking all hatchery fish and conducting spawning surveys to assess the extent hatchery fish stray into natural spawning areas; (3) reductions in hatchery releases or other modifications of hatchery practices if significant straying of hatchery fish is found to occur; (4) a cap on hatchery production to current levels; regular health checks during each rearing cycle and the destruction of diseased fish that cannot be effectively treated; (5) review of the existing operating procedures for all cooperative rearing facilities permitted by the State; and (6) adoption of a requirement that all cooperative facilities develop and submit 5-year management plans to the State for approval.

NMFS has reviewed these existing and new hatchery management measures and concludes they will substantially reduce potential impacts to wild steelhead (NMFS, 1998d). However, NMFS continues to be concerned with operations at the Mad River Hatchery since its winter-run steelhead broodstock is non-indigenous to the Mad River. To address this concern CDFG commits, in conjunction with NMFS, to, (1) undertake a comprehensive review of the hatchery program, including its stocking history and genetic analysis of current broodstock, and (2) develop a plan to eliminate any adverse impacts of hatchery operations on Northern California steelhead if necessary (NMFS/California MOA, 1998).

c. Steelhead Monitoring and Adaptive Management

In its strategic management plans for KMP and Northern California steelhead, CDFG commits to implement ongoing and expanded monitoring programs for assessing steelhead abundance in these ESUs (CDFG, 1998a and 1998b; NMFS/California MOA, 1998). In addition, CDFG commits to establishing a joint scientific and technical team including representatives from California, Oregon as appropriate, and NMFS to design appropriate detailed monitoring programs for steelhead (CDFG, 1998a and 1998b; NMFS/California MOA, 1998). NMFS considers these monitoring efforts essential given the uncertain status of steelhead populations in these ESUs, and believes that adequate State funding is critical to implementing this program.

Through the MOA (see discussion on NMFS/California MOA), CDFG further commits to seek adequate funding for this program (NMFS/California MOA, 1998). To this end, CDFG has submitted a budget change proposal for $1.6 million to initiate the program in FY 1998–1999 (starting July 1, 1998). Aside from State funding commitments, NMFS commits to seek funding support for California's monitoring effort and to provide technical assistance in its design and implementation (NMFS/California MOA, 1998).

NMFS/California Memorandum of Agreement

NMFS evaluated a wide range of conservation efforts that California has adopted or is in the process of developing and concludes these efforts will provide substantial protections to KMP and Northern California steelhead populations. In particular, NMFS concludes that CDFG's harvest and hatchery management programs for KMP and Northern California steelhead will contribute to increasing escapement of adults, substantially reduce impacts on juveniles resulting in increased survival, and reduce adverse impacts of hatchery populations on wild fish

(NMFS 1998b and 1998d). In the near-term, NMFS expects these measures will contribute to improved survival and population stability for steelhead. Furthermore, CDFG's monitoring and adaptive management programs will provide the ability to assess the status of steelhead populations and their response to these management improvements. However, NMFS remains concerned that the State's habitat protection measures which are being evaluated as part of the WPRC's effort to develop a Watershed Protection Program and the watershed restoration program established by SB 271, are not presently adequate to secure properly functioning habitat conditions over the long-term. To address this concern, NMFS entered into a MOA with the WPRC, Resources Agency, and CDFG (NMFS/California MOA, 1998).

Under the terms of the MOA, NMFS will provide the State with guidance on its key programs that address habitat conditions affecting steelhead in the KMP and Northern California ESUs. Specifically, the MOA ensures that NMFS will substantially participate in (1) the ongoing development of the WPRC's Watershed Protection Program, including review of, and participation on, the multi-disciplinary scientific review panel that is an integral part of the WPRC program development, and (2) the implementation of the SB 271 watershed planning and habitat restoration program as an ex-officio member of the Advisory Committee.

The MOA commits NMFS and the State, in conjunction with the scientific review panel, to conduct an expedited review of California's forest practice rules and their implementation and enforcement, in order to assess their adequacy. In accordance with the provisions of the MOA, the State will make changes in implementation and/or enforcement of rules necessary to adequately conserve anadromous salmonids, including steelhead, by December 31, 1998. Also, by December 31, 1998, the State, in consultation with NMFS, will recommend any rule changes to the Board of Forestry that are necessary to adequately conserve anadromous salmonids. Because of the preponderance of private timber forested lands and timber harvest in the Northern California ESU, NMFS believes this is a critically important provision of the MOA.

In addition to these key provisions, the MOA also commits CDFG to: (1) Implement harvest and hatchery management changes contained in its strategic management plans for KMP and Northern California steelhead, including the emergency regulations adopted as a result of those plans; (2) comply with existing Federal law including the adoption of State fishing regulations that are consistent with Federal protective regulations for listed coho salmon; (3) implement a monitoring and adaptive management program for KMP and Northern California steelhead; (4) direct a major portion of new personnel and fiscal resources resulting from SB 271 funding for FY 1998–1999 to watershed protection efforts in the Northern California ESU; and (5) seek funding in FY 1998–1999 for those activities identified in the State's Eel River Action Plan that have the most immediate and direct benefit to steelhead (NMFS/California MOA, 1998).

Status of Steelhead ESUs

Section 3 of the ESA defines the term "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range." The term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thompson (1991) suggested that conventional rules of thumb, analytical approaches, and simulations may all be useful in making this determination. In previous status reviews (e.g., Weitkamp *et al.*, 1995), NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, include the following: (1) Absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

During the coastwide status review for steelhead, NMFS evaluated both quantitative and qualitative information to determine whether any proposed ESU is threatened or endangered according to the ESA. The types of information used in these assessments are described in the proposed rule, published August 9, 1996 (61 FR 41541). The following summaries draw on these quantitative and qualitative assessments to describe NMFS' conclusions regarding the status of each steelhead ESU. A more detailed discussion of the status of these steelhead ESUs is presented in the documents entitled "Status Review Update for Deferred and Candidate ESUs of West Coast Steelhead" (NMFS, 1997a) and "Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations" (NMFS, 1998a). Copies of these documents are available upon request (see **ADDRESSES**).

(1) Lower Columbia River ESU

Based on its previous review of this ESU and on new data received during the deferral period, NMFS identified several major concerns for steelhead within this ESU. First, populations are at low abundance relative to historical levels, placing this ESU at risk due to random fluctuations in genetic and demographic parameters that are characteristic of small populations. Second, there have been almost universal, and in many cases dramatic, declines in steelhead abundance since the mid-1980s in both winter-run and summer-run steelhead runs. For example, on the basis of recent severe declines, WDFW has identified a change in the status designation for Wind River summer-run steelhead from "depressed" in 1992 to "critical" in 1997. In addition, WDFW recently determined that, of 21 wild winter-run and summer-run steelhead stocks on the northern side of this ESU, only two are healthy and the remaining 19 are depressed or believed to be depressed (WDF *et al.*, 1993). NMFS also notes the results from ODFW's extinction risk modeling, which predicts that the Kalama River summer-run steelhead have a greater than 5 percent probability of extinction within 100 years.

The primary exception to the declines within this ESU is the Toutle River winter-run steelhead stock, which has increased following decimation by the eruption of Mount St. Helens in 1980, but which remains at very low abundance. In some cases, chinook salmon populations in the same streams have not shown such dramatic declines. No clear explanation presently exists for these declines in steelhead, but not chinook salmon.

NMFS remains concerned about the widespread occurrence of hatchery fish in naturally spawning steelhead populations throughout this ESU. Recent estimates of the proportion of hatchery fish on the winter-run steelhead spawning grounds are over 80 percent in the Hood and Cowlitz Rivers, 45 percent in the Sandy, Clackamas, and Kalama Rivers, and approximately 75 percent for summer-run steelhead in the Kalama River. Only three out of 14 populations for which data exist have low estimates of percent hatchery fish in

natural escapements (i.e., 0 percent in the Washougal River summer steelhead run and Panther and Trout Creeks of the Wind River Basin). NMFS is unable to identify any natural populations of steelhead in this ESU that could be considered "healthy." Contributing to NMFS" concern is new genetic data from WDFW which indicate that some introgression has occurred between Puget Sound Chambers Creek Hatchery stock and wild steelhead in this ESU.

Summer-run steelhead are native to the Hood, Lewis, Washougal and Kalama Rivers in this ESU. However, summer-run fish have also been introduced into the Sandy and Clackamas Rivers. Furthermore, ODFW has estimated that naturally spawning winter-run steelhead populations have been negatively impacted by introductions of non-native summer-run steelhead due to interbreeding and/or competition (Chilcote, 1997). Recently implemented changes in hatchery release practices by WDFW and ODFW are generally positive; however, NMFS believes these changes have relatively minor mitigating effects on overall risks due to widespread artificial propagation and the history of stock transfers within this ESU.

Listing Determination

Based on available information, NMFS concludes that steelhead in the Lower Columbia ESU warrant listing as a threatened species. Recent abundance information indicates that steelhead populations have seriously declined within this ESU over the past several years. In the Washington portion of this ESU, steelhead stocks have reached historically low levels in several areas. Adding to this concern are recent assessments by WDFW that indicate the majority of steelhead stocks in this area are depressed or believed to be depressed.

Recent conservation planning efforts by the states of Washington and Oregon, along with those of industry, may reduce risks faced by steelhead in this ESU in the future; however, these efforts are still in their formative stages. Specifically, the state of Washington's LCSCI is still in a developmental stage and various technical and financial aspects of the plan need to be addressed (NMFS, 1998g). The OPSW, while substantially implemented and funded on the Oregon Coast, has not yet reached a similar level of development in inland areas.

Hatchery Populations Essential for the Recovery of the ESU

NMFS concludes that the late-spawning Cowlitz River Trout Hatchery stock (winter-run), and the late-spawning Clackamas River ODFW stock #122 are not essential for recovery. At this time, sufficient numbers of wild steelhead remain in the ESU as a whole that can be used in recovery efforts. Therefore, inclusion of existing hatchery stocks in the listed ESU is not necessary at this time.

(2) Oregon Coast ESU

In the initial coastwide status review, NMFS concluded that the Oregon Coast ESU warranted listing as a threatened species based primarily on two factors: (1) Pronounced and nearly universal short- and long-term declines in abundance for populations throughout the ESU, and (2) substantial contribution of non-native hatchery fish to natural escapements in most basins. Abundance and trend estimates available at the time of the status review were based on angler catch through 1992. Subsequently, catch-and-release regulations for wild steelhead were implemented for most coastal streams, so angler catch no longer provides any information about wild steelhead abundance or trends. Unfortunately, ODFW has not initiated any comprehensive monitoring program to replace the angler catch data and as a result, NMFS is able to review only recent abundance data for three of the over 40 steelhead populations in this ESU.

The abundance of steelhead in the populations for which updated data exists (North Umpqua River summer- and winter-run-runs and Salmonberry River in the Nehalem River Basin) is moderate, and the trends are stable or increasing. However, these populations are among the few that showed relatively stable trends in the previous status review, so there is reason to believe they may not be representative of trends in the ESU as a whole (Chilcote, 1997). Spawner surveys from three coastal rivers (Trask, Wilson, and Nestucca Rivers) suggest mixed trends in abundance, but no expansions to total abundance estimates for these streams were provided. Of particular concern to NMFS is the absence of any recent information for a large number of streams that showed sharp declines in the initial coastwide status review.

Additional information provides some indication that the proportion of hatchery fish in natural escapements has declined in some of these coastal steelhead populations in recent years. A review of recent hatchery release information indicates that, compared with previous years, smolt releases have increased in four streams, decreased in four streams, and remained essentially unchanged in four streams. However, release programs have also been terminated in four streams, so the net effect has been some reduction in the number of smolts released. In addition, ODFW reported the locations of hatchery releases have been and will be modified in an effort to reduce the incidence of strays. NMFS believes these recent changes in hatchery practices will reduce risks to wild steelhead. However, significant opportunities for deleterious effects remain as many programs continue to release non-native fish and ODFW data show that hatchery fish stray into and spawn in streams with no hatchery releases.

Listing Determination

Based on the best available information, NMFS concludes that steelhead in the Oregon Coast ESU do not presently warrant listing as a threatened species. Recently obtained abundance and hatchery data indicate that naturally spawned steelhead are at a lower risk of extinction than was concluded in the proposed rule. However, this conclusion is tempered by the fact that abundance information in this ESU is sparse and may not accurately portray the status of naturally spawned steelhead in this region.

Recently implemented conservation efforts have reduced the degree of risk facing this species. Specifically, habitat, hatchery and harvest, and monitoring aspects of the Oregon Plan will likely provide conservation benefits for this species. Furthermore, implementation of the NFP has reduced risks associated with habitat destruction on Federal lands within this ESU. However, NMFS remains concerned about the overall lack of abundance and trend information for this ESU. NMFS believes additional monitoring of this ESU is necessary before it is eliminated from ESA consideration. Therefore, NMFS concludes that this ESU warrants classification as a candidate species. NMFS will revisit the status of this ESU within the next 4 years to determine whether ESA protection is warranted.

Hatchery Populations Essential for the Recovery of the ESU

As described previously, NMFS concludes that the Oregon Coast ESU does not currently warrant listing. Therefore, no hatchery stocks are essential for recovery at this time.

(3) Klamath Mountains Province ESU

The KMP ESU includes a number of populations with different life history attributes and very different indicators of stock health. The Rogue River winter-

run steelhead run appears to be the most robust stock in the ESU, with relatively high abundance, stable long-term trends, and a relatively low hatchery contribution to overall abundance. The opposite pattern is exhibited in the Klamath River, where returns of winter-run steelhead to Iron Gate Hatchery have declined precipitously since 1990. In the Trinity River, returns of naturally produced fish have remained relatively stable since 1992, but in recent years there have also been a very high percentage of naturally spawning hatchery fish. Outside the Rogue and Klamath River Basins recent data on winter-run steelhead are very sparse. Based on angler catch data through 1992, most of the non-Rogue River populations in Oregon were declining, but more recent data are not available. Smolts monitoring in the Elk River indicated a relatively stable trend in smolts production over the period 1985–1996. The usefulness of this information is limited by a lack of smolts-adult survival for this population.

Available data indicate that summer-run steelhead populations in this ESU are relatively small and show almost universal declines. Extinction analyses by ODFW (Chilcote, 1997) identified the Middle Rogue River summer-run steelhead run as having a sensitive status (i.e., it had a greater than 5 percent probability of extinction in 100 years if survival rates are lower in the future than they have been over the last 30 years). Summer snorkel surveys in the Klamath River show consistent declines, but counts in the Trinity River are up in recent years relative to lows in the mid-1980s. This latter pattern is directly opposite to that found for most other steelhead populations coastwide, which generally showed peaks of abundance in the mid-1980s.

As with the Oregon Coast steelhead ESU described above, NMFS is concerned about the lack of recent abundance data for many steelhead populations in the KMP ESU. In particular, the lack of reliable abundance and trend information for winter-run steelhead in the California portion of this ESU may lead to some bias in overall risk assessment. Although the percentage of naturally spawning hatchery fish is relatively low to moderate in Oregon streams in this ESU and the number of hatchery fish planted is being reduced, the percentage of hatchery strays of unknown origin spawning naturally in unplanted Oregon streams remains a concern for Oregon streams. In California, risks associated with hatchery operations in the Klamath and Trinity Rivers are a concern due to the long-term high abundance of naturally spawning hatchery fish in the Trinity River and the apparent inability of the Iron Gate Hatchery stock to maintain itself.

The states of Oregon and California expressed disagreement with the conclusions reached by NMFS in its KMP steelhead risk assessment. The States contend that NMFS gave inappropriate weight to snorkel surveys of summer-run steelhead in the Klamath and Trinity Rivers (California and Oregon, 1998). The States contend such snorkel surveys account for only one component of the entire spawning stock (spring migrating fish) and that such surveys are not representative of the status of winter-run steelhead in these areas. Furthermore, the States believe available information indicates recent improvements in summer- and winter-run-run steelhead status in the Rogue River, Oregon, and strong stock status in the Smith River, California.

Listing Determination

Based on available information, NMFS concludes that steelhead in the KMP ESU do not warrant listing as a threatened species at this time. In arriving at this determination, NMFS carefully considered the scientific conclusions of the BRT, existing and recently implemented State conservation efforts, and Federal management programs such as the NFP that have ameliorated risks to this species.

Available biological information indicates that some steelhead populations within this ESU are stable and increasing, such as winter-run steelhead in the Rogue River and summer-run steelhead in the Trinity River, while other populations, such as summer-run steelhead in the Middle Rogue River and winter-run steelhead in the Klamath River, are declining. Complicating NMFS' risk assessment is the lack of long-term data for steelhead populations within this ESU. Prior to 1992, angler catch data were available for streams in the Oregon portion of this ESU; however, these data have not been collected since then. Smolt monitoring conducted in the Elk River from 1985 to 1996 indicates stable trends in smolt production; however, the value of this data is limited since no studies of smolt to adult survival have been conducted for this population. In California, recent data on winter-run steelhead are sparse. Furthermore, summer snorkel survey information from the Klamath and Trinity Rivers may or may not reflect the actual status of steelhead within this region.

NMFS believes existing conservation efforts implemented by the states of Oregon and California have reduced threats to this species. NMFS has assessed recent harvest regulation changes implemented by the states of California and Oregon relating to juvenile and adult harvest in this ESU and concludes these regulations will contribute to steelhead conservation (NMFS, 1998b and 1998d). Monitoring efforts implemented and committed to by the states of California and Oregon should clarify the status of steelhead populations within this ESU and permit a more conclusive determination regarding the status of this ESU as a whole.

NMFS concludes that biological risks associated with habitat modification and degradation on Federal lands have declined in recent years with the implementation of the NFP, coupled with the consultation requirements associated with the listing of coho salmon as a threatened species in this region in 1997. While NMFS remains concerned about habitat conditions on non-Federal lands in this ESU, the majority of habitat in this area is under Federal management (about 64 percent). Efforts are currently underway in Oregon to improve habitat conditions on non-Federal lands. Recently implemented measures contained in the OPSW should improve habitat conditions for steelhead and other salmonids. In the California portion of this ESU, about 80 percent of the land area is under Federal management and is covered by the requirements of the NFP and ESA section 7 requirements for listed coho salmon. While NMFS remains concerned about the condition of non-Federal lands in this region, those areas comprise only 20 percent this ESU in California. Furthermore, NMFS believes that provisions contained in the California/NMFS MOA will result in stronger State/Federal partnerships in these and other areas. NMFS views this MOA as an important step in developing long-term conservation efforts that will benefit not only KMP steelhead, but other anadromous salmonids as well.

Given the lack of reliable information concerning the status of steelhead in this ESU, and available information indicating that certain populations within this ESU may have declined substantially, NMFS remains concerned about the status of steelhead in this ESU as a whole. NMFS believes that additional monitoring of this ESU is necessary before it is eliminated from ESA consideration. Therefore, NMFS concludes that this ESU warrants as a candidate species. NMFS will revisit the

status of this ESU within the next 4 years to determine if ESA protection is warranted.

Hatchery Populations Essential for the Recovery of the ESU

As described above, NMFS concludes that the KMP ESU does not currently warrant listing. Therefore, no existing hatchery populations are essential for recovery of the ESU at this time.

(4) Northern California ESU

Steelhead abundance data available for this ESU are very limited, particularly for winter-run-run steelhead and NMFS' BRT identified this lack of data to be a risk factor for this ESU. The most complete data set available in this ESU is a time series of winter-run steelhead dam counts on the Eel River at Cape Horn Dam. Updated abundance data through 1997 show moderately declining long- and short-term trends in abundance; however, these data show a strong decline prior to 1970 and no significant trend thereafter. Additional winter-run steelhead data are available for Sweasy Dam on the Mad River which show a significant decline, but the data set ends in 1963. For the seven populations where recent trend data are available, the only runs showing recent increases in abundance in this ESU are relatively small populations of summer-run steelhead in the Mad River, which has high hatchery production, and winter-run steelhead in Prairie Creek whose increase may be due to increased monitoring or mitigation efforts. Abundance data in this ESU, particularly for winter-run steelhead populations are limited. The BRT noted, however, that steelhead are considered to be widely distributed throughout the region.

Risks associated with interactions between wild and hatchery steelhead in the Northern California ESU were also of concern to the BRT. Of particular concern to the BRT was the potentially deleterious impact to wild steelhead from past hatchery practices at the Mad River hatchery, primarily from transfers of non-indigenous Mad River hatchery fish to other streams in the Northern California ESU and the production of non-indigenous summer-run steelhead. These potentially deleterious hatchery practices ended for summer-run steelhead in 1996 (NMFS, 1998a).

Habitat degradation and other factors were also of concern to the BRT in its evaluation of the long-term risks to this ESU. Specific factors identified by the BRT were dams on the upper Eel and Mad Rivers, the likely existence of minor blockages throughout the ESU, the continuing impacts of catastrophic flooding on the 1960s, and reductions in riparian and instream habitat and increased sedimentation from logging. The BRT also cited poaching of summer-run steelhead and predation from squawfish in the Eel River as factors for concern. NMFS' supplemental review of factors affecting west coast steelhead also identified additional factors including water diversion and extraction, agriculture, and mining (NMFS, 1996a).

Listing Determination

Based on available information, NMFS concludes that steelhead in the Northern California ESU do not warrant listing as a threatened species at this time. In arriving at this determination, NMFS carefully considered the scientific conclusions of the BRT, existing and recently implemented State conservation efforts, and Federal management programs such as the NFP that have ameliorated risks to this species.

The limited abundance data for steelhead in this ESU (Upper Eel River; Cape Horn Dam) indicate that some winter-run populations have declined, but most of this decline occurred prior to 1970. Since 1970, abundance has remained depressed relative to historic abundance levels (1930s and 1940s), but with no significant downward trend. Presence/absence information indicates that juvenile *O. mykiss* are broadly distributed throughout this ESU; however, the unknown origin of these juveniles makes this information difficult to interpret (i.e., observed juveniles may be hatchery steelhead, rainbow trout, or wild steelhead).

Based on the limited abundance data for steelhead in this ESU, the fact that recent data show mixed trends in abundance of steelhead of unknown origin, and the apparent widespread distribution of steelhead, NMFS concludes that there is a high degree of uncertainty about the current status of this ESU even though populations seem to be depressed. The lack of long-term and comprehensive monitoring data for steelhead in this ESU limits NMFS' ability to assess risk, a fact the BRT recognized as a significant problem.

NMFS analyzed the conservation measures and regulation changes described in CDFG's strategic management plan and concludes these measures will contribute to conservation of steelhead in this ESU (NMFS 1998b and 1998d). NMFS further concludes that the provisions in the NMFS/California MOA that provide for a comprehensive evaluation of the Mad River Hatchery and the implementation of a plan to eliminate any adverse impacts will contribute to the conservation of this ESU. Finally, monitoring efforts implemented and committed to by CDFG, including the establishment of a scientific and technical team to develop and evaluate this program, is expected to clarify the status of steelhead populations in this ESU and permit a more conclusive determination regarding the status of this ESU as a whole.

Although NMFS concludes that harvest and hatchery management improvements implemented or soon to be implemented by the State will help conserve steelhead in this ESU, and that new monitoring will improve our understanding of the status of this ESU, habitat protection and restoration are essential to ensuring the long-term survival of steelhead in this ESU.

Federal conservation efforts in this ESU are relatively limited, but do address some important risk factors. About 20 percent of the habitat within this ESU is under Federal management, including Redwood National Park in the lower end of Redwood Creek, and portions of the Mendocino National Forest in the upper reaches of the Eel and Mad Rivers. Although these Federal lands are limited, NMFS concludes that biological risks associated with habitat modification and degradation on Federal lands have declined in this ESU due to implementation of the NFP, coupled with the completion of numerous section 7 consultations.

NMFS concludes that conservation measures addressing habitat conditions on non-Federal lands do not currently provide for properly functioning habitat conditions needed to conserve Northern California steelhead over the long-term. However, the State's coastal conservation efforts, including its strategic plan for Northern California steelhead, the WPRC's watershed protection program, and the SB 271 habitat restoration program, contain measures that NMFS concludes will improve habitat conditions on non-Federal lands within this ESU. Specifically, NMFS has carefully reviewed the SB 271 program and concludes that its implementation will help conserve steelhead in this ESU by promoting the development of watershed protection plans and the restoration of degraded habitat conditions (NMFS, 1998c). In addition, the NMFS/California MOA provides an assurance that these conservation efforts will be implemented.

Continued review of California's forest practice rules and their implementation and enforcement is critical to achieving properly

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functioning habitat conditions for steelhead in this ESU since timber harvest on private lands is a major land management activity in this ESU. As discussed above, by December 31, 1998, under the terms of the NMFS/California MOA, the State will make changes in implementation and/or enforcement, as necessary, and will make recommendations to the Board of Forestry for rules changes if they are determined necessary to adequately conserve anadromous salmonids.

During the period the California forest practice rules and other State programs are under review through the WPRC program, NMFS believes harvest and hatchery measures that are currently being implemented will provide conservation benefits for steelhead in this ESU. However, if these State conservation processes and efforts are not fully implemented, or the provisions of the NMFS/California MOA are not fully met, NMFS will act promptly to change the ESA status of this ESU to the extent warranted.

Since the determination not to list the Northern California ESU relies heavily on the continued implementation of State conservation measures and implementation of the NMFS/California MOA, NMFS intends to review this listing determination no later than 4 years from the date this notice is published, or at any time sooner if substantive new information such as new biological data resulting from the State's monitoring program warrants consideration. Therefore, NMFS concludes that the Northern California ESU warrants classification as a candidate species under the ESA and will continue to monitor its status as well as the efficacy of the State's conservation measures and compliance with the MOA.

(5) Central Valley, California ESU

No new abundance data for the Central Valley was received since the ESU was proposed for listing as an endangered species in 1996. Therefore, NMFS' current risk assessment is based on the data available at the time of the coastwide status review, supplemented by new qualitative information about the presence of steelhead in the San Joaquin River Basin.

Various reports indicate that naturally spawning steelhead are distributed throughout a number of streams in the Central Valley region, but that they occur in small numbers. Furthermore, many populations are of non-native, mixed, or uncertain origin. In 1994, the recent total run size to the upper Sacramento River basin is probably less than 10,000 steelhead per year, and it is believed that fewer than 2,000 of those fish were the result of natural production from native populations (based on counts at Red Bluff Diversion Dam). In particular, the status of native steelhead in the American River is in considerable doubt; new genetic data indicate that a sample of natural fish from the river and a sample of fish from the nearby Nimbus Hatchery are genetically similar to samples from the Eel River on the coast of Northern California. Presumably, this reflects a lasting influence from transfers of Eel River stock steelhead into the Nimbus Hatchery in a number of previous years.

Newly compiled information exists on the presence of steelhead in streams in the San Joaquin River Basin. This information indicates steelhead smolts occur in the lower San Joaquin and Stanislaus Rivers and adult steelhead occur in the Stanislaus and Merced Rivers. The only steelhead hatchery program operating in the San Joaquin River Basin is on the Mokelumne River, and no recent releases of juvenile steelhead have been made in other rivers in the basin; therefore, these results were viewed as an indication that at least some natural production of steelhead occurs in several streams in the San Joaquin River Basin.

The BRT identified long-term declines in abundance, small population sizes in the Sacramento River, and the high risk of interbreeding between hatchery and naturally spawned steelhead as major concerns for steelhead in this ESU. Addition, the BRT emphasized the significant loss of historic habitat, degradation of remaining habitat from water diversions, reduction in water quality and other factors, and the lack of monitoring data on abundance as other important risk factors for this ESU. NMFS (1996) review of factors for decline for this ESU noted many of these same factors as well as harvest impacts.

Listing Determination

Based on available information, NMFS concludes that steelhead in the Central Valley ESU warrant listing as a threatened species at this time. In arriving at this determination, NMFS carefully considered the scientific conclusions of the BRT, existing and recently implemented State conservation efforts, and Federal management programs such as the CVPIA that have ameliorated risks to this species.

Significant steps have been taken over the past two years in the Central Valley towards the largest ecological restoration project yet undertaken in the United States. The CALFED Program and the CVPIA AFRP, in coordination with other Central Valley efforts, have implemented numerous habitat restoration actions that benefit Central Valley steelhead. The majority of these recent restoration actions address key factors for decline and emphasis has been placed on addressing tributary drainages with high potential for steelhead production. Additional actions during the past two years that benefit Central Valley steelhead include new efforts to enhance fisheries monitoring and conservation actions to address artificial propagation. Based on a review of these and other conservation efforts in the Central Valley, NMFS concludes that risks to Central Valley steelhead have diminished since the completion of the status review in 1996 (NMFS, 1998c).

NMFS is uncertain whether implementation of these Central Valley restoration programs are adequate to ensure long-term recovery of Central Valley steelhead at this time. However, the level of risk faced by the Central Valley steelhead ESU has diminished considerably since the completion of the August 1996 assessment by the NMFS biological review team. Considering the conservation actions implemented during the past 2 years and the direction of the Central Valley restoration efforts under the CALFED Program and CVPIA, NMFS concludes that Central Valley steelhead warrant listing as a threatened species at this time. If new information indicates a substantial change in the biological status of this ESU or the direction of restoration efforts in the Central Valley is judged to be inadequate, this determination will be reconsidered.

Hatchery Populations Essential for the Recovery of the ESU

NMFS concludes that neither the Coleman NFH nor Feather River Hatchery steelhead stocks are essential for recovery at present. While these stocks may be needed in future recovery programs, NMFS concludes that these stocks need to be analyzed more carefully before they are contemplated for use in recovery programs. In the case of the Coleman NFH stock, NMFS notes most of the original broodstock was taken at dams in the upper Sacramento River and that most historical production occurred above Shasta Dam. The Feather River Hatchery stock was founded from eggs taken from native Feather River steelhead that numbered no more than 100 to 200 wild fish at the time this stock originated. Based on the genetic clustering with Coleman NFH steelhead and wild steelhead in Deer and Mill Creeks, transplants of out-of-

basin steelhead into this system may not have been effective.

Determination

Section 3 of the ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that listing determinations be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Based on results from its coastwide assessments, NMFS determines that, of the five ESUs proposed for listing on August 9, 1996, and deferred from final determinations on August 18, 1997, two ESUs are threatened (Lower Columbia River and Central Valley). NMFS further determines that, three ESUs that were previously proposed for listing (Oregon Coast, KMP, and Northern California ESUs) do not currently warrant listing; however, NMFS remains concerned about the status of these ESUs and therefore is classifying these ESUs as candidates for listing at this time. NMFS will reevaluate the status of the Oregon Coast, KMP, and Northern California ESUs within 4 years to determine whether listing is warranted. The geographic boundaries (i.e., the watersheds within which the members of the ESU spend their freshwater residence) for these ESUs are described under section Summary of ESUs Determinations.

In both ESUs identified as threatened, only naturally spawned populations of steelhead (and their progeny) residing below naturally and man-made impassable barriers (e.g., impassable water falls and dams) are listed. NMFS has examined the relationship between hatchery and natural populations of steelhead in these ESUs and has assessed whether any hatchery populations are essential for their recovery. At this time, no specific hatchery populations warrant listing.

NMFS' "Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act" (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, "progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA." In accordance with this interim NMFS policy, all progeny of listed steelhead are themselves considered part of the listed species. Such progeny include those resulting from the mating of listed steelhead with non-listed hatchery stocks.

At this time, NMFS is listing only anadromous life forms of *O. mykiss*.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species; as described below, this is not the case for threatened species.

Section 4(d) of the ESA directs the Secretary to implement regulations "to provide for the conservation of [threatened] species" that may include extending any or all of the prohibitions of section 9 to threatened species. Section 9(a)(1)(G) also prohibits violations of protective regulations for threatened species implemented under section 4(d). NMFS will issue shortly protective regulations pursuant to section 4(d) for the Lower Columbia River and Central Valley, California ESUs.

Section 7(a)(4) of the ESA requires that Federal agencies consult with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action affects a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions likely to affect steelhead in the listed ESUs include authorized land management activities of the U.S. Forest Service and U.S. Bureau of Land Management, as well as operation of hydroelectric and storage projects of the Bureau of Reclamation and COE. Such activities include timber sales and harvest, hydroelectric power generation, and flood control. Federal actions, including the COE section 404 permitting activities under the CWA, COE permitting activities under the River and Harbors Act, National Pollution Discharge Elimination System permits issued by the Environmental Protection Agency, highway projects authorized by the Federal Highway Administration, FERC licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation. These actions will likely be subject to ESA section 7 consultation requirements that may result in conditions designed to achieve the intended purpose of the project and to avoid or reduce impacts to steelhead and its habitat within the range of the listed ESU. It is important to note that the current listing applies only to the anadromous form of *O. mykiss*; therefore, section 7 consultations will not address resident forms of *O. mykiss* at this time.

There are likely to be Federal actions ongoing in the range of the listed ESUs at the time these listings become effective. Therefore, NMFS will review all ongoing actions that may affect the listed species with Federal agencies and will complete formal or informal consultations, if requested or necessary, for such actions pursuant to ESA section 7(a)(2).

Take Guidance

NMFS and FWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that NMFS shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species' range. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9: (1) Possession of steelhead from the listed ESUs acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA; and (2) federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which a section 7 consultation has been completed, and when such an activity is conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanied by a biological opinion pursuant to section 7 of the ESA.

Activities that NMFS believes could potentially harm, injure or kill steelhead in the listed ESUs and result in a violation of section 9 include, but are not limited to the following: (1) Land-use activities that adversely affect steelhead habitat in this ESU (e.g.,

logging, grazing, farming, road construction in riparian areas, and areas susceptible to mass wasting and surface erosion); (2) destruction or alteration of steelhead habitat in the listed ESUs, such as removal of large woody debris and "sinker logs" or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow; (3) discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting listed steelhead; (4) violation of discharge permits; (5) pesticide applications; (6) interstate and foreign commerce of steelhead from the listed ESUs and import/export of steelhead from listed ESUs without an ESA permit, unless the fish were harvested pursuant to legal exception; (7) collecting or handling of steelhead from listed ESUs, (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species); and (8) introduction of non-native species likely to prey on steelhead in these ESUs or displace them from their habitat. These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of west coast steelhead under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule and general inquiries regarding prohibitions and permits should be directed to NMFS (see **ADDRESSES**).

Effective Date of Final Listing

Given the cultural, scientific, and recreational importance of this species, and the broad geographic range of these listings, NMFS recognizes that numerous parties may be affected by this listing. Therefore, to permit an orderly implementation of the consultation requirements associated with this action, this final listing will take effect 60 days after its publication in the **Federal Register**.

Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

Several conservation efforts are underway that may help reverse the decline of west coast steelhead and other salmonids. These include the NFP (on Federal lands within the range of the northern spotted owl), PACFISH (on all additional Federal lands with anadromous salmonid populations), Oregon's Coastal Salmon Restoration Initiative, Washington's Lower Columbia River Salmon Conservation Initiative, overlapping protections from California's listing of coho salmon stocks in California under both the Federal and State ESAs, and implementation of California's Steelhead Management Plan. NMFS is very encouraged by a number of these efforts and believes they have or may constitute significant strides in the efforts in the region to develop a scientifically well grounded conservation plan for these stocks. Other efforts, such as the Middle Columbia River Habitat Conservation Plan, are at various stages of development, but show promise to ameliorate risks facing listed steelhead ESUs. NMFS intends to support and work closely with these efforts to the extent that staff and resources permit, in the belief that they can play an important role in the recovery planning process.

Based on information presented in this final rule, general conservation measures that could be implemented to help conserve the species are listed here. This list does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA. (1) Measures could be taken to promote land management practices that protect and restore steelhead habitat. Land management practices affecting steelhead habitat include timber harvest, road building, agriculture, livestock grazing, and urban development.

(2) Evaluation of existing harvest regulations could identify any changes necessary to protect steelhead populations.

(3) Artificial propagation programs could be required to incorporate practices that minimize impacts upon natural populations of steelhead.

(4) Efforts could be made to ensure that existing and proposed dam facilities are designed and operated in a manner that will less adversely affect steelhead populations.

(5) Water diversions could have adequate headgate and staff gauge structures installed to control and monitor water usage accurately. Water rights could be enforced to prevent irrigators from exceeding the amount of water to which they are legally entitled.

(6) Irrigation diversions affecting downstream migrating steelhead trout could be screened. A thorough review of the impact of irrigation diversions on steelhead could be conducted.

NMFS recognizes that, to be successful, protective regulations and recovery programs for steelhead will need to be developed in the context of conserving aquatic ecosystem health. NMFS intends that Federal lands and Federal activities play a primary role in preserving listed populations and the ecosystems upon which they depend. However, throughout the range of all three ESUs listed, steelhead habitat occurs and can be affected by activities on state, tribal, or private land. Agricultural, timber, and urban management activities non-Federal land could and should be conducted in a manner that minimizes adverse effects to steelhead habitat.

NMFS encourages non-Federal landowners to assess the impacts of their actions on potentially threatened or endangered salmonids. In particular, NMFS encourages the establishment of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if all state, tribal, and local governments, landowner representatives, and Federal and non-Federal biologists, participate and share the goal of restoring steelhead to the watersheds.

Critical Habitat

Section 4(b)(6)(C) of the ESA requires that, to the extent prudent, critical habitat be designated concurrently with the listing of a species unless such critical habitat is not determinable at that time. NMFS intends to propose critical habitat for all listed and proposed steelhead ESUs in a forthcoming **Federal Register** notice. (See 63 FR 11798 for proposed rule to list two ESUS of steelhead and 62 FR 43937 for final rule to list 5 ESUs of steelhead). Copies of these proposed and final rules are available upon request (see **ADDRESSES**).

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the NEPA under NOAA Administrative Order 216–6.

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered

when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under E.O. 12866.

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for the threatened ESUS, NMFS will comply with all relevant NEPA and RFA requirements.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 13, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 227.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 227.4, paragraphs (m) and (n) are added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(m) *Lower Columbia River steelhead (Oncorhynchus mykiss).* Includes all naturally spawned populations of steelhead (and their progeny) in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls and steelhead from the Little and Big White Salmon Rivers in Washington;

(n) *Central Valley, California steelhead (Oncorhynchus mykiss).* Includes all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries. Excluded are steelhead from San Francisco and San Pablo Bays and their tributaries.

[FR Doc. 98–6972 Filed 3–18–98; 8:45 am]

BILLING CODE 3510–22–P

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Proposed Rules

Federal Register
Vol. 63, No. 53
Thursday, March 19, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AF84

Minor Revision of Design Basis Accident Dose Limits for Independent Spent Fuel Storage and Monitored Retrievable Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations governing the dose limits and the dose calculational methodology used in design basis accident analyses for Independent Spent Fuel Storage Installations (ISFSI) and Monitored Retrievable Storage Installations (MRS). This proposed rule would amend ISFSI and MRS design basis accident dose limits to conform to the dose calculational methodology currently used in the regulations that specify standards for protection against radiation and make a minor change to match the Environmental Protection Agency's (EPA) regulations. This action is needed to make limits for design basis accidents at ISFSI and MRS installations consistent with dose methodology specified in the regulations, and to afford licensees the flexibility provided by dose methodology when performing design basis accident analyses.

DATES: The comment period expires May 4, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff. Comments may be delivered to One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6103; e-mail: INTERNET:NST@NRC.GOV

SUPPLEMENTARY INFORMATION:

Background

Paragraph (b) of section 72.106 establishes the dose limit for a design basis accident at an independent spent fuel storage installation (ISFSI) or a monitored retrieval storage installation (MRS). The dose limit in § 72.106(b) is based on the dose calculational methodology contained in International Commission on Radiological Protection Publication Number 2 (ICRP–2, 1959). The ICRP–2 methodology was subsequently revised in ICRP Publication Number 26 (ICRP–26, 1977), and was incorporated into 10 CFR Part 20 when Part 20 was revised in 1991.

The calculational methodology in the revised Part 20 no longer quantifies dose in terms of whole body dose and individual organ dose. Instead, the dose is quantified as a risk equivalent dose. In this manner, the doses absorbed by the whole body and the individual organs can be summed to a single quantity relating to risk.

Under the Part 20 calculational methodology, deep-dose equivalent (H_d), which applies to the external whole-body exposure, is defined at 10 CFR 20.1003 as the dose equivalent at a tissue depth of 1 cm (1000 mg/cm^2). The committed dose equivalent (CDE) ($H_{T,50}$) is defined at § 20.1003 to mean the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake. The committed effective dose equivalent (CEDE) ($H_{E,50}$) is defined at § 20.1003 as the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = \Sigma w_T H_{T,50}$). The total effective dose equivalent (TEDE) is the sum of the deep-dose equivalent (for external exposure) and the committed effective dose equivalent (for internal exposures).

The ICRP–26 methodology was not incorporated into Part 72 at the time Part 20 was revised. Part 72 contains two regulations that specify dose limits: § 72.104, which sets dose limits during normal operations and anticipated occurrences; and § 72.106, which sets dose limits for design basis accidents.

The main objective of this proposed rule is to revise § 72.106(b) to incorporate the methodology in 10 CFR Part 20. A second objective of the rule is to make a minor word change to § 72.104(a) to match the language used by EPA in 40 CFR 191.03(a).

Discussion

At present, § 72.106(b), Controlled area of an ISFSI or MRS provides:

> (b) Any individual located on or beyond the nearest boundary of the controlled area shall not receive a dose greater than 5 rem to the whole body or any organ from any design basis accident. The minimum distance from the spent fuel or high-level radioactive waste handling and storage facilities to the nearest boundary of the controlled area shall be at least 100 meters.

This 0.05 Sv (5 rem) limit to the whole body or any organ would be amended in the proposed rule to conform with the Part 20 dose calculational methodology. The amended limit would become the more limiting of the TEDE of 0.05 Sv (5 rem), or the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue (other than the lens of the eye) of 0.5 Sv (50 rem). The amendment would also include a separate dose limit for the lens of the eye of 0.15 Sv (15 rem); and for the skin or any extremity, a shallow dose equivalent of 0.5 Sv (50 rem). The use of separate dose limits for the eye,

skin, and extremities would conform with the dose calculational methodology used in Part 20 and would ensure that no observable effects (e.g., induction of cataracts in the lens of the eye) would occur as a result of any accidental radiation exposure.

This action would make § 72.106 consistent with Part 20 dose calculational methodology. This action would also provide Part 72 licensees flexibility when performing design basis accident analyses because they would be able to use organ weighting factors to calculate the dose to the maximally exposed organ. In addition, Part 72 licensees would no longer need to comply with one calculational methodology for their radiation protection programs (i.e., the revised Part 20 methodology) and another methodology for their design basis accident analyses.

This proposed rule does not revise § 72.104(a) to incorporate ICRP–26 methodology because doing so would render this regulation incompatible with the Environmental Protection Agency's regulation at 40 CFR 191.03(a) which is applicable to ISFSI and MRS licensees. However, 40 CFR 191.03(a) phrases the standard in terms of dose limits to the whole body and any critical organ; whereas, § 72.104(a) phrases the standard in terms of dose limits to the whole body and any organ. The NRC staff proposes to make § 72.104(a) more consistent with 40 CFR 191.03(a) by inserting the word critical before the word organ. The critical organ (listed in Table 1 of ICRP–2) associated with an intake of radioactive material is considered to be that organ of the body whose damage by the radiation results in the greatest damage to the body.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment have been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement, and therefore is not subject to requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing information collection requirements were approved by the Office of Management and Budget, approval numbers 3150–0002, 3150–0127, and 3150–0132.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

To determine whether the amendments to 10 CFR Part 72 are appropriate, the NRC staff considered the following two alternatives:

1. The No-Action Alternative

This alternative is not acceptable to the NRC for the following reasons. Section 72.106(b) would continue to be inconsistent with Part 20. Part 72 licensees would demonstrate compliance with the dose limits in Part 20 using the 1977 dose calculational methodology of ICRP–26 for their radiation protection programs as required by §§ 72.24(e) and 72.44(d). However, Part 72 licensees would continue to use the 1959 dose calculational methodology of ICRP–2 in addressing radiation dose from a design basis accident as required in § 72.106(b). Thus, licensees would not be able to take advantage of the flexibility provided by the dose calculational methodology used in Part 20 when performing design basis accident analyses. Therefore, this alternative was not pursued.

2. Amendments of 10 CFR Part 72

In this option, the NRC staff considered preparing a proposed rule to amend the dose limiting design objective in § 72.106(b) to 5 rem TEDE. This is consistent with the intent of the existing § 72.106(b) and updates the dose calculational methodology to that used for demonstration of compliance with Part 20. Updating the dose calculational methodology also would increase the organ dose limit, CDE, from 5 rem to 50 rem; allow for the use of risk-based weighting factors for each organ or tissue to determine the 50 year CEDE; and provide licensees with additional flexibility in conducting and submitting design basis accident analyses to demonstrate compliance with the requirements in § 72.106(b).

In addition to the increased flexibility provided, licensees would no longer need to comply with one calculational methodology for radiation protection programs (i.e., the revised Part 20 methodology) and another methodology for design basis accident analyses.

Moreover, design basis accident analyses for ISFSIs and MRS installations would use the same dose calculational methodology as design basis accident analyses for a geologic repository operations area (10 CFR 60.136(b)). This alternative was chosen by the NRC.

This constitutes the regulatory analysis for this proposed rule. As discussed above, this rule does not impose any new requirements. Therefore, there will be no additional cost burden to Part 72 licensees or the Federal Government.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule would provide licensees with additional flexibility in conducting and submitting design basis accident analyses to demonstrate compliance with the requirements in § 72.106(b). In addition, the licensees would no longer need to comply with one calculational methodology for their radiation protection programs (i.e., the revised Part 20 methodology) and another methodology for their design basis accident analyses.

The proposed rule, if adopted, would not impose any additional obligations on entities that may fall within the definition of "small entities" as set forth in Section 601(3) of the Regulatory Flexibility Act; or within the definition of "small business" as found in Section 3 of the Small Business Act, 15 U.S.C. 632; or within the size standards adopted by the NRC on April 11, 1995 (60 FR 18344).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 72.62, does not apply to this proposed rule, and a backfit analysis is not required, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 72.62(a). The rule does not constitute a backfit under 10 CFR 72.62, because it does not require a change to existing structures, systems, components, procedures, or organization. Further, the rule would not result in a more stringent outcome than the existing rule, and therefore current licensees who are in compliance with the existing rule would not be required to make any changes or take any action. New applicants and license renewal applications would be able to take advantage of some additional flexibility in the dose calculations that is afforded by the rule.

Agreement State Implementation Issues

Under the "Policy Statement on Adequacy and Compatibility of

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Agreement State Programs" approved by the Commission on June 30, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." This regulation addresses areas of exclusive NRC authority. However, a State may adopt these provisions for the purposes of clarity and communication, as long as the State does not adopt regulations or program elements that would cause the State to regulate this area.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the Commission is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

§ 72.104 [Amended]

2. In § 72.104, the introductory text of paragraph (a) is revised to read as follows:

§ 72.104 Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS.

(a) During normal operations and anticipated occurrences, the annual dose equivalent to any real individual who is located beyond the controlled area must not exceed 25 mrem to the whole body, 75 mrem to the thyroid and 25 mrem to any other critical organ as a result of exposure to:

* * * * *

3. In § 72.106, paragraph (b) is revised to read as follows:

§ 72.106 Controlled area of an ISFSI or MRS.

* * * * *

(b) Any individual located on or beyond the nearest boundary of the controlled area may not receive from any design basis accident the more limiting of a total effective dose equivalent of 0.05 Sv (5 rem), or the sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue (other than the lens of the eye) of 0.5 Sv (50 rem). The eye dose equivalent shall not exceed 0.15 Sv (15 rem) and the shallow dose equivalent to skin or to any extremity shall not exceed 0.5 Sv (50 rem). The minimum distance from the spent fuel or high-level radioactive waste handling and storage facilities to the nearest boundary of the controlled area must be at least 100 meters.

* * * * *

Dated at Rockville, Maryland, this 3rd day of March 1998.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 98–7114 Filed 3–18–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 180, 182, and 185 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Cessna Aircraft Company (Cessna) 180, 182, and 185 series airplanes equipped with wing extension supplemental type certificate (STC) SA00276NY. The proposed action would require inspecting between wing station (W.S.) 90 and W.S. 110 for an angle stiffener at the lower wing spar splice. If the angle stiffener is not installed, the proposed action would require installing a reinforcing strap. The proposed action is the result of failed test results revealing that the wings of these Cessna airplanes, without the stiffener, do not meet the applicable design requirements after being modified by the above STC. The actions specified by the proposed AD are intended to prevent wing failure during flight, which, if not corrected, could cause loss of control of the airplane.

DATES: Comments must be received on or before May 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Air Research Technology, Inc., 3440 McCarthy, Montreal, Quebec, Canada H4K 2P5; telephone (514) 337–7588; facsimile (514) 337–3293. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200; telephone (516) 256–7522; facsimile (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–14–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has been notified by the Canadian civil airworthiness authority, Transport Canada, that certain Cessna 180, 182, and 185 series airplanes, equipped with wing extensions by way of supplemental type certificate (STC) SA00276NY, may not have had a wing stiffener installed at factory. This condition has been discovered on several of these airplanes during routine inspections. Since this discovery, further investigation has shown that without the wing stiffener, the wing is susceptible to structural failure. Both the FAA and Transport Canada have been in contact with the manufacturer of this particular STC and have approved an alternative to the wing stiffener. Tests have shown that the wing would be stabilized by installing a wing reinforcement strap to add strength to this area of the wing, if it is without the wing stiffener.

Relevant Service Information

Air Research Technology, Inc. has issued Service Bulletin No. SB–1–96, Issue 1, dated April 11, 1996, which specifies procedures for visually inspecting the underside of the wing, aft of the spar, closest to where the strut connects to the wing, for the installation of an angle stiffener along the lower spar cap between Wing Station (W.S.) 90 and W.S. 110. If an angle stiffener is not installed, then the service information provides procedures for installing a stainless steel reinforcement strap on the underside of the wing, along the spar, at W.S. 100.50.

The FAA's Determination

After examining the circumstances and reviewing all available information, including the relevant service information, related to the incidents described above, the FAA has determined that AD action should be taken to prevent wing failure during flight, which, if not corrected could cause loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other (Cessna) 180, 182, and 185 series airplanes equipped with wing extension STC SA00276NY, the proposed AD would require inspecting the inside of the underside of the wing, near Wing Station (W.S.) 100, for an angle stiffener. If an angle stiffener is not installed, the proposed AD would require installing a reinforcement strap along the lower wing spar.

Cost Impact

The FAA estimates that there are 55 airplanes in the U.S. registry that would be affected by the proposed AD, that it would take approximately 1 workhour for the initial inspection and 7 workhours for the installation of the reinforcement strap per airplane, and that the average labor rate is approximately $60 an hour. Parts are supplied by the wing extension kit manufacturer at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $26,400 or $480 per airplane. The FAA has no way to determine the number of owners/operators who may have already accomplished the proposed action, and would presume that none of the owners/operators of the affected airplanes have accomplished the proposed action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Cessna Aircraft Company: Docket No. 97–CE–14–AD.

Applicability: The following airplane models (all serial numbers), certificated in any category, that are equipped with wing extension supplemental type certificate (STC) SA00276NY.

Models

180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182S, R182, T182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent wing failure during flight, which, if not corrected, could cause loss of control of the airplane, accomplish the following:

(a) Inspect inside both left and right wings, aft of the spar, closest to where the strut connects to the wing, for an angle stiffener along the lower spar cap between Wing Station (W.S.) 90 and W.S. 110 in accordance with Part A of the Accomplishment Instructions of Air Research Technology, Inc. (ART) Service Bulletin (SB) No. SB–1–96, Issue 1, dated April 11, 1996.

(b) If an angle stiffener is not installed, prior to further flight, install a stainless steel reinforcement strap on the underside of each wing, along the spar at W.S. 100.50 in accordance with Part B of the Accomplishment Instructions of ART SB No. SB–1–96, Issue 1, dated April 11, 1996.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Air Research Technology, Inc., 3440 McCarthy, Montreal, Quebec, Canada H4K 2P5; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7089 Filed 3–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–400 gliders. The proposed AD would require replacing the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent the engine from locking in flight and not extending because of the left restraining cable or bowden cable of the rear door making contact with the engine, which could result in loss of glider power and potential loss of control.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Glaser-Dirks Model DG–400 gliders. The LBA reports that the left restraining cable and the bowden cable of the rear door may contact the engine and block the engine extension while in flight. The right engine restraining cable cannot contact the engine because it is wrapped together with the choke, throttle, propeller brake, and bowden cables.

This condition, if not corrected in a timely manner, could result in the engine locking in flight and not extending, which could result in loss of glider power and potential loss of control.

Relevant Service Information

Glaser-Dirks has issued Technical Note No. 826/15, dated October 1, 1985, which specifies and includes an installation plan for replacing the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door.

The LBA classified this service bulletin as mandatory and issued German AD 85–223, dated November 7, 1985, in order to assure the continued airworthiness of these gliders in Germany.

The FAA's Determination

This glider model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Glaser-Dirks Model DG–400 gliders of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door. Accomplishment of the proposed installation would be required in accordance with Glaser-Dirks Technical Note No. 826/15, dated October 1, 1985.

Compliance Time of the Proposed AD

Although the left engine restraining cable or bowden cable of the rear engine door would only contact the engine and block the engine extension during flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it is for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 27 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $20 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,400, or $200 per glider.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Glaser-Dirks Flugzeugbau GMBH: Docket No. 98–CE–13–AD.

Applicability: Model DG–400 gliders, serial numbers 4–1 through 4–140, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the engine from locking in flight and not extending because of the left restraining cable or bowden cable of the rear door catching on the engine, which could result in loss of glider power and potential loss of control, accomplish the following:

(a) Replace the bungees that secure the left engine restraining cable and the bowden cable of the rear engine door in accordance with the Installation plan included with Glaser-Dirks Technical Note No. 826/15, dated October 1, 1985.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Glaser-Dirks Technical Note No. 826/15, dated October 1, 1985, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 85–223, dated November 7, 1985.

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7088 Filed 3–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–15–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain British Aerospace Model 3101 airplanes. The proposed AD would require modifying the emergency hydraulic hand-pump by increasing the length of the access aperture. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent difficulty accessing the emergency hydraulic hand-pump because of the current design, which, in the event of a hydraulic system failure, could result in the inability to operate the flaps and landing gear.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–15–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–15–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Model 3101 airplanes. The CAA reports difficulty in accessing the emergency hydraulic hand-pump on the above-referenced airplanes. The emergency hydraulic hand-pump is provided for lowering the flaps and landing gear using the emergency selector valve in the event of hydraulic system failure.

This condition, if not corrected in a timely manner, could result in the inability to operate the flaps and landing gear, leading to hazardous conditions during landing.

Relevant Service Information

British Aerospace has issued Jetstream Service Bulletin 29–JM 7360, Revision No. 1, dated January 3, 1991, which specifies procedures for modifying the emergency hydraulic hand-pump by increasing the length of the access aperture.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace Model 3101 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying the emergency hydraulic hand-pump by increasing the length of the access aperture. Accomplishment of the proposed modification would be in accordance with the service bulletin previously referenced.

Cost Impact

The FAA estimates that 58 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 7 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. British Aerospace will provide parts to

the owners/operators of the affected airplanes at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $24,360, or $420 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 98–CE–15–AD.

Applicability: Model 3101 airplanes, serial numbers 601 through 646, 648 through 655, 657, 658, and 660, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 300 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent difficulty accessing the emergency hydraulic hand-pump because of the current design, which, in the event of a hydraulic system failure, could result in the inability to operate the flaps and landing gear, accomplish the following:

(a) Modify the emergency hydraulic hand-pump by increasing the length of the access aperture in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of British Aerospace Jetstream Service Bulletin 29–JM 7360, Revision 1, dated January 3, 1991.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to British Aerospace Jetstream Service Bulletin 29–JM 7360 Revision No. 1, dated January 3, 1991, should be directed to British Aerospace Regional Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Service Bulletin 29–JM 7360, Revision 1, dated January 3, 1991. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7087 Filed 3–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–112–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The proposed AD would require replacing the washers on the attachment bolts of the lower fitting of the main landing gear (MLG). The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent the bolts that attach the lower fitting of the MLG to the nacelle from becoming threadbound, which could result in structural failure of the MLG with consequent loss of control of the airplane during takeoff, taxi, or landing operations.

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–112–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: 44–1983 872511; facsimile: 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

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FOR FURTHER INFORMATION CONTACT: Mr. Roger Chudy, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6932; facsimile: (816) 426–2169

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–112–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–112–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain Pilatus Britten-Norman BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The CAA reports that the attachment bolts of the lower fitting of the main landing gear (MLG) may become "threadbound". This condition results because the bolt length may be slightly longer than necessary and thus the nut bottoms out of the thread. Although all indications show that the bolt is properly torqued, the assembled parts may become loose, which could result in the MLG fitting separating from the nacelle.

This condition, if not corrected in a timely manner, could result in structural failure of the MLG with consequent loss of control of the airplane during takeoff, taxi, and landing operations.

Relevant Service Information

Pilatus Britten-Norman has issued Service Bulletin (SB) BN–2/SB.231, Initial Issue, dated October 17, 1996, which specifies procedures for replacing the washer on the attachment bolts of the lower fitting of the MLG with two thicker washers. This SB also includes torque loading specifications for the attachment bolts.

The CAA classified this service bulletin as mandatory and issued British AD No. 008–10–96, dated January 31, 1997, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Britten-Norman BN–2, BN–2A, BN–2B, and BN–2T series airplanes of the same type design registered in the United States, the proposed AD would require replacing the washers on the attachment bolts of the lower fitting of the MLG. Accomplishment of the proposed installation would be in accordance with the service information previously referenced.

Cost Impact

The FAA estimates that 80 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $10 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,200.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Britten-Norman Ltd: Docket No. 97–CE–112–AD.

Applicability: Models BN–2, BN–2A, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–2, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, and BN–2T airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 landings after the effective date of this AD, unless already accomplished.

To prevent the bolts that attach the lower fitting of the main landing gear (MLG) to the nacelle from becoming threadbound, which could result in structural failure of the MLG with consequent loss of control of the airplane during takeoff, taxi, or landing operations, accomplish the following:

(a) Replace the washers on the attachment bolts of the lower fitting of the MLG in accordance with Pilatus Britten-Norman Service Bulletin No. BN–2/SB.231, Initial Issue, dated October 17, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Pilatus Britten-Norman Service Bulletin BN–2/SB.231, initial issue, dated October 17, 1996 should be directed to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: 44–1983 872511; facsimile: 44–1983 873246. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British AD No. 008–10–96, dated January 31, 1997.

Issued in Kansas City, Missouri, on March 12, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7091 Filed 3–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–11–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–400 gliders. The proposed AD would require replacing the Bosch electrical system regulator, part number (P/N) 0212920001, with a type 4 E 26 regulator. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent failure of the electrical system regulator, which could result in smoke entering the cockpit with consequent passenger injury.

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–11–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–11–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–11–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Glaser-Dirks Model DG–400 gliders. The LBA reports several incidents of defective Bosch electrical system regulators, part number (P/N) 0212920001.

This condition, if not corrected in a timely manner, could result in failure of the electrical system regulator and

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smoke entering the cockpit with consequent passenger injury.

Relevant Service Information

Glaser-Dirks has issued DG Flugzeubau GmbH Technical Note No. 826/33, dated July 19, 1996, which specifies replacing the Bosch electrical system regulator, part number (P/N) 0212920001, with a type 4 E 26 regulator. The procedures for accomplishing this replacement are included in DG Flugzeugbau GmbH Z 33 Conversion Kit Saprisa regulator Installation Instructions, dated July 4, 1996, and Glaser-Dirks Drawing 4 E 26.

The LBA classified this service information as mandatory and issued German AD 96–242, dated August 29, 1996, in order to assure the continued airworthiness of these gliders in Germany.

The FAA's Determination

This glider model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Glaser-Dirks Model DG–400 gliders of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the Bosch electrical system regulator, part number (P/N) 0212920001, with a type 4 E 26 regulator. Accomplishment of the proposed installation would be in accordance with the service information previously referenced.

Compliance Time of the Proposed AD

Although failure of the electrical system regulator will only be unsafe while the glider is in flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it is for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 35 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,200, or $320 per glider.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Glaser-Dirks Flugzeugbau GMBH: Docket No. 98–CE–11–AD.

Applicability: Model DG–400 gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 4 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of the electrical system regulator, which could result in smoke entering the cockpit with consequent passenger injury, accomplish the following:

(a) Replace the Bosch electrical system regulator, part number (P/N) 0212920001, with a type 4 E 26 regulator in accordance with DG Flugzeugbau GmbH Z 33 Conversion Kit Saprisa regulator Installation Instructions, dated July 4, 1996, and Glaser-Dirks Drawing 4 E 26. These documents are referenced in DG Flugzeubau GmbH Technical Note No. 826/33, dated July 19, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to the service information referenced in this AD should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 96–242, dated August 29, 1996.

UMI

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7090 Filed 3–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–243025–96]

RIN 1545–AU61

Tax Treatment of Cafeteria Plans; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed amendments that would provide guidance on the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage.

DATES: The public hearing will be held on Tuesday, May 5, 1998, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, April 14, 1998.

ADDRESSES: The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Requests to speak and outlines of oral comments should be submitted to the CC:DOM:CORP:R (REG–243025–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–243025–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 125 of the Internal Revenue Code. These regulations appear in the **Federal Register** (62 FR 60196) on Friday, November 7, 1997.

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, April 21, 1998, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–7166 Filed 3–18–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC67

Appalachian National Scenic Trail, Snowmobile Routes

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to establish and designate trail crossings of snowmobile trails at three locations along the Appalachian National Scenic Trail. These trail crossings are part of a State approved network of snowmobile routes that exist on adjacent State lands. These crossings existed prior to the NPS assuming management of the National Scenic Trail. Designating these crossings fulfills assurances made by the NPS at the time of land acquisition that establishment of the permanent linear trail corridor would not sever established snowmobile routes. The Park Manager also will be provided the discretion to designate temporary snowmobile crossings in the Compendium of Superintendent's Orders.

DATES: Written comments will be accepted through May 18, 1998.

ADDRESSES: Comments should be addressed to: Park Manager, Appalachian National Scenic Trail, National Park Service, Harpers Ferry Center, Harpers Ferry, WV 25425.

FOR FURTHER INFORMATION CONTACT: Pamela Underhill, Park Manager, Appalachian National Scenic Trail, National Park Service, Harpers Ferry Center, Harpers Ferry, WV 25425. Telephone 304–535–6278.

SUPPLEMENTARY INFORMATION:

Background

This proposed regulation will designate portions of snowmobile trails, that are part of a State approved network of snowmobile routes, to cross NPS administered Appalachian National Scenic Trail lands in order to connect with other state approved routes. The intent of this regulation is to designate the minimum number of crossings necessary to accommodate Statewide snowmobile trail networks.

The Appalachian Trail is a north-south hiking trail that stretches nearly 2,160 miles from Katahdin, Maine, to Springer Mountain, Georgia, along the crest of the Appalachian Mountains. The Trail is administered by the Secretary of the Interior through the NPS, in consultation with the Secretary of Agriculture through the U.S. Forest Service, as part of the National Trails System. Upon completion of the land protection program, the NPS will have protected approximately 800 miles of the Trail and approximately 100,000 acres of land. Because NPS administered lands are intermingled with private, local, state and other federal government lands, differing regulations apply and varying land uses are allowed. These agencies have become partners in the Appalachian Trail cooperative management system. The linear nature of the resource and the varied land ownership patterns require special consideration in management planning.

Generally, any motorized use along the Appalachian Trail is prohibited, including snowmobiles. However, Section 7 (c) of the National Trails System Act provides for limited authority for allowing snowmobile use for crossings, emergencies and for adjacent landowners:

"The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system,

the national wilderness preservation system where they are presently prohibited or on other federal lands where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary. Provided, that the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights * * *" (16 U.S.C. 1246(c)).

The proposed regulation will allow limited snowmobile crossings of the Appalachian Trail, while still prohibiting such use along the trail. Additionally, the proposed limited use is consistent with the Federal government's obligations to provide access for emergencies and to owners of lands adjacent to the Trail.

36 CFR 2.18 of the NPS general regulations prohibits the use of snowmobiles except on routes designated specifically for snowmobile use. These specific routes must be authorized through promulgation of special regulations. Snowmobile use may be designated only when the use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources. Section 2.18 establishes further procedures and criteria for the use of snowmobiles within park areas. The term "snowmobile" is defined in § 1.4 and conforms to the standard definition used by the International Snowmobile Industry Association. The NPS does not intend that this definition be broadly interpreted to include any other motorized or non-motorized off-road vehicles.

During the development of the NPS land protection program, the issue of continuing use of existing snowmobile crossings of the planned Trail corridor was raised by adjacent landowners, snowmobile organizations and State agencies. The NPS assured interested parties that establishment of the permanent linear trail corridor would not sever established snowmobile routes. For the purposes of this special regulation, established snowmobile routes are considered to be those routes in use at the time of NPS land acquisition. The NPS has worked closely with State snowmobile organizations and State agencies to identify only those trails that are part of a State-approved network of snowmobile routes.

There are a number of crossings of the Appalachian Trail corridor by established, State-approved snowmobile trails in Maine, New Hampshire, Vermont, Massachusetts and Connecticut. Most of these crossings are currently allowed by deeded right-of-way reserved by the seller or by public road right-of-way. Three State-approved snowmobile trails, two in Maine and one in Massachusetts, cross lands acquired for the protection of the Appalachian Trail and require designation. The NPS intends to designate these three State-approved routes that are existing crossings of the Trail corridor and part of a State network of snowmobile routes. Within the NPS corridor, snowmobile travel will be limited to the three designated crossings and the crossings that occur on deeded right-of-ways and public road right-of-ways. Snowmobiles will not be permitted to follow the trail footpath itself and all other crossings of Appalachian National Scenic Trail lands will be prohibited.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed regulation to the address noted at the beginning of this rulemaking. The NPS will review comments and consider making changes to the rule based upon an analysis of the comments.

Drafting Information

The principal authors of this rulemaking are Robert W. Gray, Park Ranger, Appalachian National Scenic Trail and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This rule does not contain collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks, District of Columbia, Reporting and recordkeeping requirements.

In consideration of the foregoing, NPS proposes to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Amend section 7.100 by revising paragraph (a) and adding new paragraph (d), to read as follows:

§ 7.100 Appalachian National Scenic Trail.

(a) The use of bicycles, motorcycles, or other motor vehicles is prohibited.

* * * * *

(d) *Snowmobiles.* (1) The use of snowmobiles is prohibited except on the following designated trail crossings of National Park Service administered

lands within the Appalachian National Scenic Trail corridor:

(i) Nahmakanta Lake Spur—the spur snowmobile route that leads from Maine Bureau of Parks and Lands Debsconeag Pond Road to the southeastern shore of Nahmakanta Lake.

(ii) Lake Hebron to Blanchard-Shirley Road Spur—the spur snowmobile route that leads from Lake Hebron near Monson, Maine to the Maine Interconnecting Trail System Route 85 near the Blanchard-Shirley Road.

(iii) Massachusetts Turnpike to Lower Goose Pond Crossing—that part of the Massachusetts Interconnecting Trail System Route 95 from the Massachusetts Turnpike Appalachian Trail Bridge to the northeastern shore of Lower Goose Pond.

(2) Temporary crossings of National Park Service administered Appalachian Trail corridor lands may be designated by the Park Manager in the Superintendent's Compendium of Orders when designated snowmobile routes are temporarily dislocated by timber haul road closures.

(3) Maps showing the designated trail crossings are available at the Appalachian National Scenic Trail headquarters, Harpers Ferry Center, Harpers Ferry, West Virginia 25425.

Dated: February 5, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–7109 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IA 040–1040(b); FRL–5980–1]

Approval and Promulgation of Implementation Plans; and Designation of Areas for Air Quality Planning Purposes; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a redesignation request submitted by the state of Iowa on April 21, 1997. In this submittal, Iowa submitted a maintenance plan and a request that a portion of Muscatine County be redesignated to attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide. In the final rules section of the **Federal Register**, the EPA is approving the State Implementation Plan revision and request for redesignation as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and redesignation and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 20, 1998.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 2, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–7132 Filed 3–18–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5980–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Reopening of the comment period for the notice of intent to delete the Berlin and Farro Liquid Incineration Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces the reopening of the comment period for its intent to delete the Berlin and Farro Liquid Incineration Site (the Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that the responsible parties have implemented all appropriate response actions required under CERCLA. U.S. EPA, in consultation with the State of Michigan, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before April 20, 1998.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Gaines Township Hall, 9255 W. Grand Blanc Rd., Gaines, Michigan 48436. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (SR–6J), Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Don Deblasio (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4360.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its Reopening of the comment period for the intent to delete the Berlin and Farro Liquid Incineration Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution

Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Potentially Responsible Parties or the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the Site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the Site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Environmental Protection Agency announces the reopening of the comment period for Berlin and Farro Liquid Incineration Site. The Notice of Intent to Delete was published in the **Federal Register** on January 21, 1998. The original basis for deleting the Site from the NPL has not changed. **Federal Register** (63 FR 3061) provides a thorough discussion of the basis for the intended site deletion.

Dated: March 9, 1998.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 98–7136 Filed 3–18–98; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 63, No. 53
Thursday, March 19, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Uruguay Round Agricultural Safeguard Trigger Levels

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the Uruguay Round Agreement on Agriculture.

SUMMARY: This notice lists the products which may be subject to additional import duties under the safeguard provisions of the Uruguay Round Agreement on Agriculture. It also includes the quantity level applicable to each of those products.

EFFECTIVE DATE: March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Cathy S. McKinnell, Multilateral Trade Negotiations Division, Foreign Agricultural Service, room 5530-South Building, U.S. Department of Agriculture, Washington, DC 20250–1022 or telephone at (202) 720–6064.

SUPPLEMENTARY INFORMATION: Article 5 of the Uruguay Round Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication during the Uruguay Round if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent three years for which data is available by 25 percent. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** the agricultural products subject to safeguards, the price and quantity trigger levels which will be applied to these products, and the relevant period for the quantity based safeguard for each product. On Wednesday, January 4 1995, the Secretary of Agriculture provided the above information including the definition of each product in the Notice of Safeguard Action published in **Federal Register**, Vol. 60, No. 2, page 427. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994. In the Revision of Delegations of Authority published in the **Federal Register**, Vol. 60, No. 216, Wednesday, November 8, 1995, page 56392, the Secretary of Agriculture further delegated the duty to the Administrator, Foreign Agricultural Service. Additional information on the levels of the additional duties and how they will be applied is provided in subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS). These duties became effective January 1, 1995

Notice

As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, additional duties may be applied in accordance with provisions of subchapter IV of chapter 99 of the HTS for the products, and under the conditions described in the annex to this notice.

Issued at Washington, DC this February 18, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

Annex

The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, Wednesday, January 4, 1995, Vol. 60, No. 2, page 427.

	Quantity based safeguard trigger
Beef	817,803 mt.
Mutton	9,335 mt.
Cream	4,528,994 liters.
Evaporated or Condensed Milk	1,629,815 kilograms.
Nonfat Dry Milk	1,866,593 kilograms.
Dried Whole Milk	1,022,123 kilograms.
Dried Cream	233 kilograms.
Dried Whey/Buttermilk	174,967 kilograms.
Butter	3,906,648 kilograms.
Butter Oil and Butter Substitutes	3,755,077 kilograms.
Dairy Mixtures	1,508,114 kilograms.
Bleu Cheese	3,062,388 kilograms.
Cheddar Cheese	9,359,355 kilograms.
American Type Cheese	3,814,413 kilograms.
Edam/Gouda Cheese	6,617,074 kilograms.
Italian-Type Cheese	14,375,304 kilograms.
Swiss Cheese with Eye Formation	33,381,481 kilograms.
Gruyere Process Cheese	7,686,048 kilograms.
Lowfat Cheese	4,946,949 kilograms.
NSPF Cheese	48,853,577 kilograms.

	Quantity based safeguard trigger
Peanuts	43,041 mt.
Peanut Butter/Paste	21,431 mt.
Raw Cane Sugar	2,263,717 mt.
Refined Sugar and Syrups	22,660 mt.
Blended Syrups	0 mt.
Articles Over 65% Sugar	0 mt.
Articles Over 10% Sugar	80,309 mt.
Sweetened Cocoa Powder	2,364 mt.
Chocolate Crumb	9,994,979 kilograms.
Lowfat Chocolate Crumb	195,249 kilograms.
Infant Formula Containing Oligosaccharides	3,852 kilograms.
Mixes and Doughs	1,274 mt.
Mixed Condiments and Seasonings	231 mt.
Ice Cream	31,590 liters.
Animal Feed Containing Milk	1,437,534 kilograms.
Short Staple Cotton	17,592,104 kilograms.
Harsh or Rough Cotton	0 mt.
Medium Staple Cotton	19,898 kilograms.
Extra Long Staple Cotton	234,089 kilograms.
Cotton Waste	39,828 kilograms.
Cotton, Processed, Not Spun	383 kilograms.

[FR Doc. 98–7172 Filed 3–18–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Georgia

AGENCY: Natural Resources Conservation Service (NRCS) in Georgia, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Georgia for review and comment.

SUMMARY: It is the intention of NRCS in Georgia to revise Section IV of the Field Office Technical Guide, as follows:—Add New Interim Conservation Practice Standards: Agrichemical Handling Facility (Code 702); Covered Anaerobic Lagoon (Code 360); Dry Hydrant (Code 712); Slope Roughening (Code 726); Stream Crossing (Code 728); Waste Facility Decommissioning (Code 709); Watering Ramp (Code 730); Well and Water Testing (Code 731);—Add Conservation Practice Standards: Animal Trails and Walkways (Code 575); Conservation Cover (Code 327); Forage Harvest Management (Code 511); Forest Harvest Trails and Landings (Code 655); Irrigation Water Conveyance, Low-pressure Plastic Pipe (Code 430-EE); Lined Waterways and Outlets (Code 468); Prescribed Grazing (Code 528A); Pumping Plant for Water Control (Code 533); Roof Runoff Management (Code 558); Structure for Water Control (Code 587); Well Decommissioning (Code 351); Windbreak/Shelterbreak Establishment (Code 380); Windbreak/Shelterbreak Renovation (Code 650);—Revise Conservation Practice Standards: Wildlife Upland Habitat Management (Code 645); Critical Area Planting (Code 342); Access Road (Code 560); Composting Facility (Code 317); Diversion (Code 362); Fence (Code 382); Heavy Use Area Protection (Code 561); Pond (Code 378); Riparian Forest Buffer (Code 391); Terrace (Code 600); Waste Storage Facility (Code 313); Waste Treatment Lagoon (Code 359); Streambank and Shoreline Protection (Code 580); Stream Channel Stabilization (Code 584); Surface Drainage, Field Ditch (Code 607), Main or Lateral (Code 608); Prescribed Burning (Code 338);—Rename Conservation Practice Standards: Forest Site Preparation (Code 490); Forest Stand Improvement (Code 666); Use Exclusion (Code 472); Tree/Shrub Establishment (Code 612). These practices can be used in systems that treat highly erodible land, improve water quality and improve wildlife habitat.

DATES: Comments will be received on or before April 20, 1998.

FOR FURTHER INFORMATION: Inquire in writing to Earl Cosby, State Conservationist, USDA State Office Service Center, Mail Stop 200, Stephens Federal Building, 355 East Hancock Ave., Athens, Georgia 30601. Copies of the Conservation Practice Standards will be made available upon written request. Copies are also available electronically on the Georgia Homepage or NRCS server. The web site address is "http://www.ga.nrcs.usda.gov/reg/cps.html". These standards are available as MS Word 6.0 files. The name of the Georgia NRCS server is "seweb.ga.nrcs.usda.gov". Practice standards appear as files in "/pub/outgoing/gastandards" directory. Using FTP download as binary files.

SUPPLEMENTAL INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of the 1996 states that revisions to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law made after enactment of the law shall be available for public review and comment. For the next 30 days the NRCS in Georgia will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Georgia regarding disposition of those comments and a final determination of change will be made.

Dated: March 11, 1998.

Earl Cosby,

State Conservationist, Natural Resources Conservation Service, Athens, Georgia.

[FR Doc. 98–7118 Filed 3–18–98; 8:45 am]

BILLING CODE 3412–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on

Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on Thursday, April 30, 1998, and reconvene at 9:00 a.m. and adjourn at 12:00 p.m. on Friday, May 1, 1998, at the Lake Hamilton Resort, 2803 Albert Pike Road, Hot Springs, Arkansas 71914. The purpose of the meeting on both dates is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 12, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–7123 Filed 3–18–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Customer Surveys.

Agency Form Number: None assigned.

OMB Approval Number: None.

Type of Request: New collection .

Burden: 905 hours.

Number of Respondents: 14,939.

Avg. Hours Per Response: Varies between one and seven minutes depending on program needs.

Needs and Uses: This is a request for a generic clearance for voluntary customer surveys to be conducted by NOAA program offices. The purpose of the surveys will be to determine whether their customers are satisfied with the services and/or products they are receiving and whether they have suggestions as to how the services/products may be improved or made more useful.

Affected Public: Individuals, businesses or other for-profit institutions, not-for-profit organizations, farms, federal, state, local, tribal governments.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: March 16, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7099 Filed 3–18–98; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: International Import Certificate.

Agency Form Number: BXA–645P.

OMB Approval Number: 0694–0017.

Type of Request: Extension of a currently approved collection of information.

Burden: 270 hours.

Average Time Per Response: 15 minutes per response.

Number of Respondents: 1,008 respondents.

Needs and Uses: The United States and several other countries have undertaken to increase the effectiveness of their respective controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country with respect to a specific transaction, the importer certifies to the U.S. Government that he/she will import specific commodities into the United States and will not reexport such commodities except in accordance with the export control regulations of the United States. The U.S. Government, in turn, certifies that such representations have been made.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dennis Marvich (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: March 16, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7100 Filed 3–18–98; 8:45 a.m.]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Grant Recipient Survey for the Telecommunications and Information Infrastructure Assistance Program (TIIAP).

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 178 hours.

Number of Respondents: 206.

Avg. Hours Per Response: Varies between 30 and 60 minutes.

Needs and Uses: The purpose of the Telecommunications and Information Infrastructure Assistance Program (TIIAP) is to promote the widespread and efficient use of advanced telecommunications in the public and nonprofit sectors to serve communities. In order to ensure that grant recipients are effectively promoting the efficient

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and widespread use of advanced telecommunications, NTIA will collect information to study the impacts of funded projects and the performance of the TIIAP program.

Affected Public: Not-for-profit institutions, federal government, state, local or tribal government.

Frequency: On occasion.

OMB Desk Officer: Tim Fain, (202) 395–3561.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Tim Fain, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: March 16, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7101 Filed 3–18–98; 8:45 am]

BILLING CODE: 3510–60–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 980310058–8058–1]

Advertising, Marketing, and Partnership Efforts Evaluation

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of new survey.

SUMMARY: In accordance with Title 13, United States Code, Sections 141 and 193, the Bureau of the Census will conduct a new survey called the Advertising, Marketing, and Partnership Efforts (AMPE) Evaluation. This survey was submitted to the Office of Management and Budget (OMB) on February 5, 1998 for review on an emergency basis. Approval was granted on February 12, 1998. The survey was given OMB Control Number 0607–0852. The emergency circumstances surrounding this survey prevented us from making prior notice in the **Federal Register** and from allowing public comment on the proposed survey prior to its submission to OMB. This notice describes the AMPE Evaluation, as approved by OMB.

ADDRESSES: Copies of the data collection instrument and the request that was submitted to OMB for clearance of the survey may be obtained from Solomona Aoelua, Census 2000 Publicity Office, Census Bureau, Washington, DC 20233–0001. When requesting information on this survey, please refer to the AMPE Evaluation.

FOR FURTHER INFORMATION CONTACT: Solomona Aoelua, (301) 457–2988.

SUPPLEMENTARY INFORMATION: The Census Bureau has contracted with an advertising company to provide a national advertising and awareness campaign for Census 2000. This campaign will be implemented on a test basis for the Census 2000 Dress Rehearsal, which will take place this year in the following locations: Sacramento, California; Columbia, South Carolina and the surrounding eleven counties; and the Menominee Indian Reservation and the surrounding areas of Menominee County, Wisconsin.

The AMPE Evaluation will measure the public's knowledge and awareness of the census before the start and after the completion of the paid advertising campaign. Our purpose is to learn about what factors affect the likelihood of people responding by mail in the Census 2000 Dress Rehearsal, barriers to participation, knowledge and awareness of the dress rehearsal, and sources of knowledge and the relative effectiveness of the various promotional activities. This knowledge will assist the Census Bureau in improving its plans for Census 2000.

The Census Bureau has hired a contractor to conduct telephone interviews with a sample of residents in two of the three Census 2000 Dress Rehearsal sites before and after the advertising campaign. Due to the small population of Menominee County, this site will be excluded from the evaluation. Respondents will be selected at random through a process called random digit dialing. Postadvertising interviews will be conducted using computer-assisted telephone interviewing (CATI). Due to the short time frame for developing the evaluation instruments, CATI will not be used in the preadvertising interviews.

Census Day for the Census 2000 Dress Rehearsal is April 18, 1998. The paid advertising began on March 1, 1998. To ensure that we obtained a sufficient number of interviews for the preadvertising period, we began our field data collection on February 13, 1998 immediately following OMB approval and concluded by the end of February. We completed approximately 2,000 interviews (1,000 per site) in the Sacramento, California and Columbia, South Carolina sites.

For the postadvertising period, we plan to complete approximately 3,000 interviews (1,500 per site) from mid-April to early June 1998. We estimate that it will take approximately 15 minutes to complete each interview. The total estimated burden to be imposed is 1,250 hours.

Due to the recent continuing resolutions, we were unable to fully define and finalize our marketing plans for the Census 2000 Dress Rehearsal until late January 1998. The evaluation mechanism could not be developed until the advertising program was finalized. This circumstance prevented us from following normal clearance processes and necessitated an emergency clearance.

Conclusion

The AMPE Evaluation is critical to the Census Bureau's mission, especially in regard to the objectives of Census 2000. The Census 2000 Dress Rehearsal is the Bureau's last major opportunity to test its advertising, marketing, and partnership plans. I, therefore, conclude that this important evaluation should be conducted.

Dated: March 11, 1998.

James F. Holmes,

Acting Director, Bureau of the Census.

[FR Doc. 98–7073 Filed 3–18–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping administrative review.

EFFECTIVE DATES: March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0648 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Background

The Department of Commerce (the Department) received a request from petitioners and respondents to conduct an administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate from Canada. On September 25, 1997 (62 FR 50292), the Department published its initiation of this administrative review covering the period August 1, 1996 through July 31, 1997.

Extension of Time Limits for Preliminary Results

Because of the complexity of certain issues of this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Administrative Review of Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate from Canada, dated February 12, 1998.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results sixty days to July 3, 1998. The final determination continues to be due 120 days after the publication of the preliminary results.

Dated: February 12, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–7164 Filed 3–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054, A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of administrative reviews.

SUMMARY: The Department of Commerce (the Department) is amending its final results of the administrative reviews, published on January 15, 1998, of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054), to reflect the correction of ministerial errors in those final results.

EFFECTIVE DATE: March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Ranado, Stephanie Arthur, or John Kugelman, Office of AD/CVD Enforcement III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3518, 6312, and 0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are in reference to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations are to the Department's regulations, 19 CFR part 353 (1997).

Background

On January 15, 1998, the Department published its final results of administrative review of the antidumping duty order (A–588–604) on TRBs and parts thereof, finished and unfinished, from Japan, and the antidumping finding (A–588–054) on TRBs, four inches or less in outside diameter, and components thereof, from Japan (63 FR 2558). The Department has now amended the final results of these reviews in accordance with section 751 of the Act.

On January 15, 1998, the petitioner filed clerical error allegations with respect to two of the respondents, NSK and NTN. On January 21, 1998, we received clerical error allegations from NSK, and on January 26, 1998, we received clerical error comments from NTN. None of the parties submitted rebuttal comments. The Department agreed that certain of the allegations constituted ministerial errors.

Scope of the Review

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of the A–588–604 order, except for those manufactured by NTN Corporation (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for the A–588–054 finding are provided for convenience and Customs purposes. The written description remains dispositive.

The A–588–054 review covers TRB sales by two TRB manufacturers/exporters (Koyo Seiko Ltd. (Koyo) and NSK Ltd. (NSK)), and two resellers/exporters (Fuji Heavy Industries (Fuji) and MC International (MC)). The review of the A–588–604 case covers TRB sales by three manufacturers/exporters (Koyo, NSK and NTN Corporation (NTN)), and two resellers/exporters (Fuji and MC). Because Fuji and MC had no shipments in the A–588–604 review, and for the reasons explained in our notice of preliminary results, we have not assigned a rate to these firms for these amended final results. The period of review (POR) for both cases is October 1, 1995, through September 30, 1996.

Clerical Error Allegations

Comment 1: NTN asserts that the Department erroneously attempted to correct the currency conversion error related to the calculation of CEP profit which is mentioned in the final results memorandum. The respondent claims that as the program is currently written, EP sales are divided by the exchange rate, which is incorrect since EP sales are already reported correctly. The respondent maintains that this error has distortive effects on the calculation of the total cost of goods sold and total revenue.

Department's Position: We disagree with NTN. The final results computer program for NTN properly converts all of NTN's sales while calculating CEP profit. NTN's allegations regarding the calculation of the total costs of goods sold and total revenue is discussed in Comment 2.

Comment 2: NTN maintains that the Department made a clerical error in its calculation of revenue for EP and CEP sales. The respondent claims that the final program calculates an EP and CEP revenue amount for all transactions, and that these two amounts are then added together to yield a total revenue amount.

Department's Position: We agree with NTN. Our final program for NTN incorrectly calculates both an EP revenue (EPREV) and a CEP revenue (CEPREV) amount for each U.S. sale. Therefore, for this amended final, we have changed our programming language such that each transaction is assigned only one revenue variable (CEPREV or EPREV), as appropriate. Because transaction-specific revenue amounts affect the calculation of total cost of goods sold and total revenue, the correction of this error addresses NTN's concerns from comment 1. This change ensures that the total cost of goods sold and total revenue calculations are correct.

Comment 3: Timken claims that in the final results computer program for NTN, the Department made a clerical error while attempting to adjust NTN's normal value (NV) billing adjustments. Timken maintains that the language added to the computer program for the final results failed to adjust NTN's billing adjustments as intended by the Department.

Department's Position: We agree with the petitioner that the programming language added to correct NTN's home market billing adjustments was not executing correctly and have revised our margin program accordingly.

Comment 4: Timken alleges that the Department made a ministerial error while attempting to correct the calculation of NSK's home market revenue (*i.e.*, by deducting home market post-sale price adjustments). The computer output log, Timken claims, indicates that there were missing values generated as a result of missing values in the variable fields used to adjust home market prices when calculating revenue. Timken suggests that the Department failed to identify these missing variables earlier in the program.

Department's Position: We agree with Timken that the missing values generated while calculating home market revenue resulted from our failure to identify the post-sale price adjustment variables earlier in the computer program. We have revised our final margin program as described in our Amended Final Results Analysis Memorandum.

Comment 5: NSK asserts that language in the Department's computer program which attempts to match negative quantity sales to the original sales for which the adjustment was made operates incorrectly.

Department's Position: We agree with NSK and have made the appropriate changes to our final results program. For further information, refer to the Department's Amended Final Results Memorandum for NSK.

Comment 6: NSK maintains that the Department calculated direct and indirect constructed value (CV) selling expense ratios based on imputed expenses (credit and inventory carrying costs (ICC)), multiplied these ratios by COP/CV to derive a direct and indirect selling expense amount, then added these amounts to other cost data to derive total CV. NSK asserts, however, that because total CV already includes imputed interest expenses, the Department double counted imputed expenses.

Department's Position: We agree with NSK that imputed expenses were double counted in the CV calculation. We have modified our program to calculate separate CV expense ratios for imputed credit and ICCs, deduct the credit expense from CV, and add ICCs to the home market indirect selling expenses used for the CEP offset (which effectively increases the CEP offset deduction by the ICC expense amount). In addition, because our CV calculation language for Koyo and NTN is identical to NSK's, we have likewise modified the margin programs for these firms.

Comment 7: NSK asserts that while the Department correctly added home market billing adjustments to calculate net home market price, it erroneously subtracted billing adjustments from gross unit price when calculating home market revenue.

Department's Position: We agree with NSK and have modified our program accordingly such that home market billing adjustments are properly added to, rather than deducted from, gross unit price when calculating home market revenue.

Amended Final Results of Review

Based on our review of the comments presented above, for these amended final results we have made changes in our final margin calculation programs. We determine that the following percentage weighted-average margins exist for the period October 1, 1995 through September 30, 1996:

Manufacturer/exporter/reseller	Margin (percent)
For the A–588–054 Case:	
Koyo Seiko	58
Fuji	.34
NSK	1.64
MC International	1.92
For the A–588–604 Case:	
Fuji	[1]
MC International	[2]
Koyo Seiko	28.65
NTN	21.41
NSK	10.17

[1] No shipments or sales subject to this review. These firms have no rate from any prior segment of this proceeding.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will calculate importer-specific *ad valorem* duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries that a particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between NV and U.S. price, by the total U.S. price of the sales compared and adjusting the result by the average difference between U.S. price and customs value for all merchandise examined during the POR.) While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as a basis of the assessment rate permits the Department to collect a reasonable approximation of antidumping duties which would have been determined if the Department had reviewed those sales of merchandise during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective after the publication date of these amended final results for all shipments of TRBs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rates for the reviewed companies will be those rates established in the amended final results of these reviews;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the less-than-fair-value (LTFV) investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate for the A–588–054 case will be 18.07 percent, and 36.52 percent for the A–588–604 case (see Preliminary Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, From Japan, 58 FR 51061 (September 30, 1993)).

The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated U.S. customer. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the assessment rate.

This notice serves as a final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22.

Dated: March 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7170 Filed 3–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Business Development Mission to Belfast and Londonderry (Derry), Northern Ireland and Sligo, Ireland, the Week of June 8th, 1998

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice serves to inform the public of a business development mission to Belfast and Londonderry, Northern Ireland and Sligo in the border counties of Ireland to be held the week of June 8th, 1998; provides interested U.S. firms with the opportunity to submit an application to participate in the mission; sets forth objectives, procedures, and selection review criteria for the mission; and requests applications. The recruitment and selection of private sector participants in the mission will be conducted in accordance with the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary William Daley on March 3, 1997 and reflected herein.

DATES: The mission is scheduled for the week of June 8th, 1998. Recruitment will begin after March 18th and conclude by April 24, 1998. Applications received after that date will be considered only if space permits.

ADDRESSES: Requests for and submission of applications:

Applications are available from Lucie Naphin, Director, Office of Business Liaison at (202) 482–1360, fax (202) 482–4054, U.S. Department of Commerce, Room 5062, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. An original and two copies of the required application materials should be sent to the Director at the above address. Applications sent by facsimile must be immediately followed by submission of the original application.

SUPPLEMENTARY INFORMATION:

Mission Description

The U.S. Department of Commerce will organize a business development mission to Belfast and Londonderry, Northern Ireland (NI) and Sligo in the border counties of Ireland, the week of June 8th, 1998. The Secretary of Commerce, William M. Daley, will lead the mission which will be comprised of about 20 U.S. company executives from five industry sectors: environmental technology, food technology/processing, health technology, information technologies, and wood/timber products.

The business purpose of the mission is the promotion of U.S. trade, exports, and investment in Northern Ireland and the Border Counties of Ireland. The present state of the Northern Ireland and Ireland economies and the ready access to the $7.8 trillion European market provide strong and growing markets for U.S. products and services.

The itinerary of the mission will include stops in Belfast and Londonderry (Derry), Northern Ireland and in County Sligo in the border counties of Ireland. The private sector participants will be offered:

(1) One-on-one, pre-screened, business appointments with Northern Ireland and Ireland companies; (2) expert market briefings with senior U.K. (Northern Ireland) and Ireland (regional) Government officials; (3) site visits to U.S. companies operating in Northern Ireland and the Border Counties of Ireland; and, (4) logistical support and transportation in and between Belfast and Londonderry, Northern Ireland and Sligo in the border counties of Ireland.

Mission Goals

The goals of the mission are to: (1) Reaffirm the U.S. Government's commitment and support to underpin the peace process through U.S. commercial activity in the region; (2) increase sales of U.S. products and services to Northern Ireland, Ireland, and the European Union; (3) foster the increase of joint ventures and investments involving U.S. companies in Northern Ireland and the border counties of Ireland, especially those likely to result in U.S. exports; (4) seek resolution of outstanding bilateral commercial issues, specific problems, and opportunities and advocate interests in the key sectors targeted for this mission; and, (5) facilitate and establish meetings between U.S. companies and Northern Ireland/Border Counties of Ireland businesses.

Participation Criteria

About 20 companies will be selected to participate in the mission. Participants must fall into one of the five sectors of environmental technology, food technology/processing, health technology, information technologies, and wood/timber products. A company's product or

service must be either produced in the U.S. or if not, marketed under the name of a U.S. firm and have at least 51% U.S. content of the finished product/service. New-to-market companies are encouraged to apply. Participant executives ideally will be at the level of CEO, president or senior vice president. Each firm participating in this mission will have been recruited by U.S. DOC in Washington and reviewed by our U.S. Embassies in London and Dublin and our U.S. Consulate in Belfast for:

(1) Consistency of the company's goals with the scope, nature and desired outcome of the mission (as described herein); (2) relevance of the company's line of business to the mission goals; (3) past, present, or prospective business activity in the U.K., Ireland, or Europe; (4) diversity of company size, type, location, demographics and traditional under-representation in business. An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

Endorsements/Referrals

Third parties may nominate or endorse potential applicants, but companies that are nominated or endorsed must themselves submit an application in order to be eligible for consideration. Referrals from political organizations will not be considered.

Costs

The fee for the mission will be determined prior to the application deadline. The participation fee will not cover the participant's travel, lodging or other personal expenses.

Authority: 15 U.S.C. 1512.

Ellis R. Mottur,

Acting Assistant Secretary for Trade Development.

[FR Doc. 98–7329 Filed 3–18–98; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030598B]

Magnuson-Stevens Act Provisions; Atlantic Swordfish Fisheries; Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for EFPs; request for comments.

SUMMARY: NMFS announces a pilot program in which swordfish vessel owners can apply for an EFP if they have a vessel monitoring system (VMS) on board. If granted, these EFPs would authorize delayed offloading of Atlantic swordfish after the closure of the directed North Atlantic swordfish fishery, expected mid-April 1998.

DATES: Written comments on this program must be received on or before April 3, 1998. Applications for EFPs must be received at least 7 days prior to the North Atlantic swordfish fishery closure date (to be announced in the **Federal Register**).

ADDRESSES: Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Informational materials concerning this pilot program and copies of the regulations to which exempted fishing permits are subject may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: These EFPs are authorized by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

The National Marine Fisheries Service (NMFS) is providing all Atlantic swordfish permit holders the option of participating in a pilot program that would allow offloading following closures of the directed fishery in the North Atlantic Ocean. A letter was sent on January 23, 1998, to all swordfish permit holders announcing this pilot program and inviting interested persons to contact NMFS for further information. Permit holders who wish to take part in this voluntary program must purchase, install, and properly operate a Standard-C VMS on the vessel for which the special permit is issued following conditions prescribed by NMFS.

Based on a very limited response to this program to date, NMFS expects that this program will minimally affect the North Atlantic swordfish stock. The extra days of fishing that will result from this program, which allows EFP holders to fish up until the time of the closure and then offload at any time after, will be considered in estimating the closure date.

A final decision on issuance of EFPs will depend on the submission of all required information and on NMFS' review of public comments received on this notice and of any consultations with any appropriate Regional Fishery Management Councils, state, or Federal agencies.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 13, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7157 Filed 3–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Patent and Trademark Office is announcing, in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), an open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The meeting will be held from 10:00 a.m. until 4:00 p.m. on Monday, April 20, 1998.

ADDRESSES: The meeting will take place at the U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, Room 912, Arlington, Virginia.

FOR MORE INFORMATION CONTACT: Sharon Marsh by mail marked to her attention and addressed to Office of the Assistant Commissioner for Trademarks, Patent and Trademark Office, 2900 Crystal Drive, South Tower Building, Suite 10B10, Arlington, VA 22202–3513; by telephone at (703) 308–9100, ext. 45; by fax at (703) 308–9395; or by e-mail to sharon.marsh@uspto.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to public observation. Accordingly, seating will be available to members of the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request. The agenda for the meeting is as follows:

(1) Current Trademark Office Performance
(2) Policy Issues
(3) TTAB Issues
(4) Finance
(5) Automation
(6) Domestic Legislation
(7) International Trademark Issues

Dated: March 12, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–7117 Filed 3–18–98; 8:45 am]

BILLING CODE 3515–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, April 3, 1998.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–7214 Filed 3–16–98; 4:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, April 10, 1998.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–7215 Filed 3–16–98; 4:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, April 17, 1999.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–7216 Filed 3–16–98; 4:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11.00 a.m., Friday, April 24, 1998.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–7217 Filed 3–16–98; 4:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, April 6, 1998.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl., Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–7218 Filed 3–16–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, April 13, 1998.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl., Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–7219 Filed 3–16–98; 4:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, April 20, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl., Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–7220 Filed 3–16–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, April 27, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl., Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–7221 Filed 3–16–98; 4:33 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

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SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 18, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 13, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: National Longitudinal Survey of Schools (NLSS).
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:

Responses: 12,460
Burden Hours: 7,845

Abstract: This study is being conducted to support the legislative requirements in P.L. 103–382, Section 1501 to assess the implementation of Title I and education reform. It will examine principals' and teachers' understanding and implementation of standards-based reform and the new provisions of Title I. Information on schools serving significant proportions of migrant, limited-English proficient (LEP), or Native American students, and schools that have been identified as in need of improvement will also be gathered.

[FR Doc. 98–7094 Filed 3–18–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent to Conduct Policy Analysis; Request for Public Comment

AGENCY: Department of Energy.

ACTION: Notice of intent to conduct policy analysis; request for public comment.

SUMMARY: Prior to 1979, the United States Department of Energy ("DOE") routinely used commercial facilities for the disposal of its low-level radioactive waste ("LLW") and mixed low-level radioactive waste ("MLLW"). In 1979, DOE decided to rely primarily on its own facilities for the disposal of these wastes, with only limited use of commercial facilities. While DOE still relies primarily upon its own facilities for the disposal of its LLW and MLLW, in recent years the Department's use of commercial disposal facilities has increased, and in the future greater use of commercial disposal facilities may occur as DOE proceeds with the cleanup of its sites. These developments have generated increased interest in the private sector in competing for DOE's LLW and MLLW disposal business. The Department is interested in encouraging competition for this business.

DOE has received two proposals from private entities for establishing LLW and MLLW disposal facilities at existing hazardous waste disposal sites. Neither of these proposals involves the establishment of a disposal facility pursuant to the Low-Level Radioactive Waste Policy Act. One proposal would have DOE regulate a commercial waste disposal facility through a disposal contract with the facility owner. The other proposal would have DOE pay for some or all of a commercial facility's maintenance before any LLW or MLLW is accepted, and would have DOE pay for the costs associated with obtaining licenses and appropriate regulatory approvals for the facility from the state in which the facility is located.

These proposals have prompted the Department to conduct an analysis of its policy regarding the disposal of LLW and MLLW at commercial facilities. As part of this analysis, the Department solicits comments from the public and interested organizations regarding its use of commercial disposal options for LLW and MLLW. The goal of this policy analysis is to assist the Department in determining whether to continue its use of existing, licensed commercial disposal facilities, pursue disposal options represented by either or both of these proposals, or in other respects change its policies or practices relating to the use of commercial facilities for the disposal of LLW and MLLW.

DATES: Comments are due by May 18, 1998. DOE will consider comments received by this date in its analysis of the commercial disposal of LLW and MLLW. Comments received after this date will be considered to the extent practicable.

ADDRESSES: The Department of Energy invites interested states, agencies, organizations, and the general public to comment on its use of existing, licensed commercial disposal facilities, the options represented by the proposals from Waste Control Specialists, LLC of Texas ("WCS") and Laidlaw Environmental Services, Inc., of Colorado ("Laidlaw") as described herein or on other aspects of the Department's policies or practices regarding the disposal of LLW and MLLW at commercial facilities. Written comments should be sent to: Mr. Jay Rhoderick, United States Department of

Energy, EM–35, 19901 Germantown Road, Germantown, MD 20874–1290.

Persons wanting to provide oral comments should call 1–800–635–4080.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Rhoderick, United States Department of Energy, EM–35, 19901 Germantown Road, Germantown, MD 20874–1290, (301) 903–7174.

SUPPLEMENTARY INFORMATION: Prior to 1979, DOE routinely used commercial facilities to dispose of its low-level radioactive waste and mixed low-level radioactive waste (waste that is both low-level radioactive waste and hazardous waste). Between 1975 and 1978, three of the six then-existing commercial facilities ceased operation. In addition, concerns were raised regarding the continued operation of the remaining three commercial disposal facilities. In 1979, DOE adopted a policy of disposing of its LLW and MLLW at its own sites to ensure uninterrupted disposal capabilities for its needs, while utilizing commercial facilities only on a case-by-case basis.

DOE's current policy concerning the disposal of LLW and MLLW is stated in DOE Order 5820.2A, Radioactive Waste Management (September 26, 1988). This Order provides that LLW and MLLW "shall be disposed of on the site at which it is generated, if practical, or if on-site disposal capability is not available, at another DOE disposal facility." Pursuant to this Order, the Department must dispose of these wastes at a DOE facility unless an exemption is granted for disposal at a commercial facility. DOE may approve exemptions from this policy for "[n]ew or alternate waste management practices that are based on appropriate documented safety, health protection, and economic analyses." Where an exemption is sought, the Department's policy requires that the proposed commercial disposal facility comply with all applicable Federal, state and local requirements, and that it have all of the necessary permits, licenses and approvals for disposal of the specific wastes involved, including a license to dispose of LLW and MLLW issued by the Nuclear Regulatory Commission ("NRC") or by an Agreement State.[1] The actual selection of a commercial facility for the disposal of DOE LLW and MLLW occurs in accordance with Federal procurement law. In addition, the state and state compact (as defined in the Low Level Radioactive Waste Policy Act) in which the commercial facility is located must be consulted before approval of the exemption and must be notified prior to the shipment of any waste. Exemptions allowing for the use of licensed, commercial facilities for the disposal of LLW and MLLW have been granted on a case-by-case basis.

Since the 1950's, DOE has disposed of approximately 3 million cubic meters of LLW from its weapons production activities in disposal facilities located at DOE sites and has sent approximately 200,000 cubic meters of such waste to commercial disposal facilities. DOE has disposed of approximately 40,000 cubic meters of MLLW from its weapons production activities primarily at commercial facilities. DOE's environmental restoration (cleanup) activities have increased significantly since the late 1980's. To date, the disposal of LLW and MLLW from DOE's environmental restoration activities has amounted to approximately 1.2 million cubic meters. Of this amount, approximately 250,000 cubic meters of high-volume low-activity environmental restoration waste have been disposed of at commercial facilities. Thus far, the commercial disposal of nearly all of this LLW and MLLW has occurred at one facility, Envirocare of Utah, Inc., ("Envirocare"). The Envirocare facility was licensed to dispose of LLW and MLLW by the State of Utah under the State's agreement with the NRC. DOE projects that future waste management and environmental restoration activities will generate approximately 31 million cubic meters of LLW and MLLW. The Department expects to dispose of the large majority of these wastes at DOE facilities. DOE projects, however, that of this 31 million cubic meters of LLW and MLLW, approximately two million cubic meters may be susceptible to disposal at commercial facilities under DOE's current policy.

WCS owns and operates a hazardous waste disposal facility in Andrews County, Texas. WCS has proposed to expand its business to include disposal of DOE LLW and MLLW. The State of Texas has authority to regulate certain activities involving radioactive materials, including the disposal of LLW, pursuant to an agreement with the NRC. Pursuant to that agreement, the State of Texas has licensed WCS to store, process and treat LLW and MLLW. Under Texas law, however, a radioactive waste disposal license may be issued only to a "public entity" specifically authorized by law for radioactive waste disposal. Because WCS is not a "public entity," it is precluded from obtaining a license for radioactive waste disposal services from the State of Texas.

In an attempt to overcome this impediment, WCS submitted a proposal to DOE under which it believes it could dispose of DOE LLW and MLLW in Texas without a state license. Under the WCS proposal, the facility would operate under contract with DOE, would be regulated by DOE exercising its authority under the Atomic Energy Act of 1954, and would accept radioactive wastes only from DOE. The proposal further suggested that DOE would perform its regulatory role through a contract with an entity or group of entities with nuclear engineering and environmental expertise. At the end of the operational phase of the facility, title maintained by WCS would be transferred without cost to the Federal government or at the State's option to the State of Texas.[2]

Laidlaw owns and operates an existing commercial hazardous waste disposal facility, Deer Trail, 70 miles east of Denver. Laidlaw is also exploring the potential of expanding its services to include the disposal of DOE LLW and MLLW, specifically from DOE's Rocky Flats Environmental Technology Site. Laidlaw's Deer Trail Facility is currently not licensed to accept LLW and MLLW for disposal. Like Texas, the State of Colorado regulates certain activities involving radioactive materials, including disposal, through an agreement with the NRC. Unlike Texas, however, Colorado does not restrict the ownership of such disposal facilities to "public entities."

Laidlaw's proposal is divided into two phases. Phase I would obligate the payment of Federal funds to Laidlaw in an amount that would pay for Laidlaw to maintain the facility in a condition ready to receive the waste, and reimburse Laidlaw for its expenses related to obtaining the necessary state licenses and permits to dispose of LLW and MLLW. (DOE could terminate Phase I by appropriate notice to Laidlaw at any

[1] The NRC may relinquish to states, by agreement, its authority to license and regulate certain activities, including LLW disposal facilities, as long as the state's standards to protect the public health and safety and the environment are equivalent to or more stringent than the NRC's corresponding standards. *See* 42 U.S.C. 2021(b), (d)(1), and (o)(2).

[2] WCS has filed suit against the Department in connection with its proposal. See *Waste Control Specialists, LLC* v. *United States Department of Energy, et al,* Civil Action No. 3:CV–93–1201–P (N.D. Texas 1997), appeal pending No. 97–11353 (5th Cir.). In this case, the district court entered orders granting WCS's motion for a preliminary injunction and denying the Department's motion to dismiss. The injunction has effectively prevented DOE from proceeding with the procurement of commercial disposal services for LLW and MLLW. The United States Court of Appeals for the Fifth Circuit granted the Department's request for expedited appeal from the injunction. Sixteen states have asked the appeals court for leave to file an amicus brief arguing that DOE's adoption of the WCS proposal is legally proscribed. Accordingly, the Department's policy analysis could be affected by, and may have to await the resolution of, this litigation.

time prior to the commencement of Phase II.) In exchange, Laidlaw would be obligated to construct an appropriate disposal cell at its facility to receive LLW and MLLW and commit to proceed with Phase II. Phase II would include the actual shipment of wastes to the Deer Trail Facility.

Comments are invited on the Department's current policy regarding the disposal of LLW and MLLW at existing, licensed commercial facilities under DOE Order 5820.2A, and on the options illustrated by the WCS proposal and the Laidlaw proposal, to assist the Department in determining whether to continue or change its existing policies related to the use of commercial facilities for the disposal of LLW and MLLW. The Department is particularly interested in receiving comments on other types of options it should consider in formulating future policies for the disposal of LLW and MLLW. If the Department's policy analysis results in a proposal that would require the preparation of an environmental analysis pursuant to the National Environmental Policy Act, an appropriate analysis will be prepared.

Dated: March 13, 1998.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 98–7155 Filed 3–18–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EMSSAB), Hanford Site

DATES: Thursday, April 2, 1998: 9:00 a.m.–5:00 p.m.; Friday, April 3, 1998: 8:30 a.m.–4:30 p.m.

ADDRESSES: Cavanaugh's, 1101 N. Columbia Center Boulevard, Kennewick, Washington, 1–800–843–4667.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

The Board will receive information on and discuss issues related to Spent Nuclear Fuel and the FY 2000 Draft Hanford Budget. The Board will also receive updates on the N-Area Remediation, Accelerating Cleanup: Paths to Closure, the FY 1997 Performance Measures and FY 1998 Performance Agreements, and the Board Progress Report.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on March 13, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–7154 Filed 3–18–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–158–000]

Arkansas Gas Consumers v. NorAm Gas Transmission Company; Notice of Complaint

March 13, 1998.

Take notice that on March 11, 1998, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, the Arkansas Gas Consumers (AGC) tendered for filing a complaint against NorAm Gas Transmission Company (NorAm). AGC alleges that NorAm plans to increase the number of pooling zones on its system from 5 to 10 effective April 1, 1998, and that it intends to do so without filing to revise its tariff. AGC contends that this proposal is unreasonable, and absent tariff authority, is a violation of the Natural Gas Act.

AGC also contends that if NorAm implements its proposal pool operators will suffer decreased flexibility and restricted balancing ability. AGC further contends that the increase in the number of pooling zones will decrease pool operators' ability to aggregate small shippers' supplies into bundles large enough for sale. AGC argues that this will benefit NorAm's marketing affiliate, and that this is the real purpose underlying the proposal. AGC contends that, even without the proposed change, pooling on NorAm's system is improper and contributes to what AGC contends is a discriminatory NorAm discounting policy.

Any person desiring to be heard or protest with respect to said complaint shall file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed on or before March 27, 1998. All protests filed with the Commission will be considered in determining the appropriate course of action to be taken, but will not serve to make a protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection in the

Public Reference Room. Answers to this complaint are due March 27, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7085 Filed 3–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–271–000]

K N Wattenberg Transmission Limited Liability Company; Complainant, v. Public Service Company of Colorado, Colorado Interstate Gas Company, Coastal Natural Gas Company, Wyoming Interstate Gas Company, New Century Energies, Inc., NCE/CIG Facilities Company LLC, NC Enterprises, Inc., WYCO Development, LLC, WYCO Capacity, LLC, Respondent; Notice of Complaint, Motion for Order To Show Cause and Request for Investigation

March 13, 1998.

Take notice that on March 9, 1998, K N Wattenberg Transmission Limited Liability Company (K N Wattenburg), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed a complaint, motion to show cause and a request for investigation in Docket No. CP98–271–000 pursuant to Rules 206, 209 and 212 of the Commission's Rules of Practice and Procedure. K N Wattenberg has filed this complaint requesting that the Commission issue an order requiring Public Service Company of Colorado (PSCo), Colorado Interstate Gas Company (CIG) and their affiliated companies named above to show cause why they should not be required to file under Section 7 of the Natural Gas Act (NGA) for authorization to construct and operate as a single jurisdictional pipeline the facilities which are currently the subject of the applications before the Commission in Docket No. CP98–128–000 and before the Colorado Public Utilities Commission, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Specifically, K N Wattenberg complains that PSCo and CIG have formed an anticompetitive alliance to finance, construct and operate an interstate pipeline project to compete against its Front Runner pipeline project, proposed in Docket No. CP98–49–000, which will follow virtually the identical route, provide service to the same markets and will deliver gas from the same source to those markets. K N Wattenberg adds that neither PSCo nor CIG has requested nor obtained section 7 authorization from the Commission to construct and operate their interstate pipeline project. Instead, alleges K N Wattenberg, both parties are blatantly attempting through the use of their affiliates and a complex series of interrelated, and newly-created, jointly-owned companies, to unlawfully evade the Commission's exclusive jurisdiction under the NGA.

Any person desiring to be heard or to make any protest with reference to this complaint should, on or before April 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before April 13, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7083 Filed 3–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–8–000]

Tuscarora Gas Transmission Company; Notice of Filing

March 13, 1998.

Take notice that on March 9, 1998, Tuscarora Gas Transmission Company (Tuscarora) filed a "Petition for Declaratory Order and Request for Waiver." Tuscarora seeks an order declaring that it is not subject to the Commission's marketing affiliate regulations promulgated in Order Nos. 497 *et seq.*[1] and Order Nos. 566, *et seq.*[2] In the alternative, Tuscarora requests a waiver of the marketing affiliate regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7082 Filed 3–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Non Power License

March 13, 1998.

a. *Type of filing:* Notice of Intent to File an Application for a Non Power License.

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992). Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 3284 (June 28, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

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b. *Project No.:* 2852.
c. *Date filed:* February 24, 1998.
d. *Submitted By:* New York State Electric & Gas Corporation, current licensee.
e. *Name of Project:* Keuka Hydroelectric Project.
f. *Location:* On Keuka Lake, Waneta Lake, Lamoka Lake, and Mud Creek, in Steuben and Schuyler Counties, New York.
g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.
h. *Effective date of current license:* April 1, 1962.
i. *Expiration date of current license:* February 28, 2003.
j. *The project consists of:* (1) a 183-foot-long and 13-foot-high Bradford dam; (2) a 74,000 acre-foot reservoir comprising the Waneta and Lamoka Lakes; (3) a 9,288-foot-long canal; (4) a 3,600-foot-long, 54-inch-diameter penstock; (5) a 835-foot-long, 42-inch-diameter penstock; (6) a powerhouse containing a single 2,000-kW generating unit; and (7) appurtenant facilities.
k. *Pursuant to 18 CFR 16.7, information on the project is available at:* New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, Kirkwood, NY 13795, Attn: Carol Howland, (607) 762–8881.
l. *FERC contact:* Tom Dean (202) 219–2778.
m. Pursuant to 18 CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2001.

David P. Boergers,
Acting Secretary.
[FR Doc. 98–7081 Filed 3–18–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Proceeding Pursuant to Reserved Authority To Determine Whether Modifications to the License Are Appropriate

March 13, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Action:* Proceeding Pursuant to Reserved Authority to Determine Whether Modifications to License Are Appropriate.
b. *Project No:* 2183–017.
c. *License Issued:* June 1, 1955.
d. *Licensee:* Grant River Dam Authority.
e. *Name of Project:* Markham Ferry Project.
f. Location: Grand (Neosho) River in Mayes County, Oklahoma.
g. *Authorization:* Section 10(a)(1) of the Federal Power Act and Article 41 of the License.
h. *Licensee Contact:* Mr. Robert W. Sullivan, Jr., Assistant General Manager, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.
i. *FERC Contact:* Jon Cofrancesco, (202) 219–0079.
j. *Comment Date:* April 27, 1998.
k. *Description of Proceeding:* The Commission has begun a proceeding to determine if reserved authority in article 41 of the license should be used to require a boat launch facility in the tailwater area below Markham Ferry Project's Kerr dam. The proceeding is in response to concerns raised by private citizens, and other entities about the removal of a haul road in the subject area that was used as an informal boat launching ramp. The concerned parties support the reestablishment of boat access to the tailwater area. The Commission has determined that a boat launch facility in the tailwater area is needed, could be operated in a safe manner, and would enhance public fishing opportunities.

The Commission staff prepared an analysis evaluating the need and feasibility of a boat launch facility in the tailwater area of Kerr dam. A copy of this analysis can be obtained by calling the Commission's public reference room at (202) 208–1371.

1. This notice also consists of the following standards paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,
Acting Secretary.
[FR Doc. 98–7086 Filed 3–18–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting

March 13, 1998.

On March 26, 1998, at 10:00 a.m. in Room 10A–07, Commission staff will meet with representatives of the North American Reliability Council (NERC), to discuss matters related to NERC's draft Transmission Line Loading Relief procedures.

Any person interested in attending may contact Donald LeKang at 202–208–1156 for further information.

David P. Boergers,
Acting Secretary.
[FR Doc. 98–7084 Filed 3–18–98; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5983–8]

Notice of Renewal of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency.
ACTION: Notice.

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) has been renewed for a two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA). The purpose of EFAB is to provide authoritative analysis and advice to the EPA Administrator regarding environmental finance issues to assist EPA in carrying out its environmental mandates. EFAB will strive to increase the total investment in environmental protection by facilitating greater leverage of public and private environmental resources.

Dated: March 9, 1998.

Michael W.S. Ryan,

Comproller.

[FR Doc. 98–7138 Filed 3–18–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–797; FRL–5776–7]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket control number PF–797, must be received on or before April 20, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Product Manager (PM) 25, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 239, 1921 Jefferson Davis Hwy., Arlington, VA., (703) 305–5697; e-mail: Tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw agricultural commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–797 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number PF–797 and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 3, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

E.I. du Pont de Nemours & Company, Agricultural Products

PP 3F4215

EPA has received a pesticide petition (PP 3F4215) from E.I. du Pont de Nemours & Company, Agricultural Products, P.O. Box 80038, Wilmington, DE 19880–0038, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of metsulfuron methyl (methyl-2-[[[[(4-methoxy-6-methyl-1–3, 5-triazin-2-yl)amino]carbonyl] amino]sulfonyl]benzoate) in or on the raw agricultural commodities sorghum grain at 0.1 parts per million (ppm), sorghum forage at 0.2 ppm, and sorghum fodder at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of metsulfuron methyl is adequately understood. Metabolism studies conducted with radioactive 14C-metsulfuron methyl on wheat and barley under field conditions and on wheat under greenhouse conditions showed that residues dissipate rapidly in plants, primarily due to growth dilution. In these metabolism studies conducted at exaggerated rates, wheat and barley grain did not contain any detectable level of metsulfuron methyl or its metabolites (<0.01 mg/kg). Residues of individual metabolites were very low in straw in studies conducted at 35 g a.i./ha (0.5 oz a.i./acre, <0.01 to 0.02 mg/kg). The only situation where residues of an

individual substance was detected in straw above 0.1 mg/kg was under greenhouse conditions at 70 g a.i./ha (1 oz a.i./acre), (8 X maximum recommended rate), metsulfuron methyl residue level measured in straw at maturity was 0.44 mg/kg (other individual metabolites were below 0.1 mg/kg).

The initial step of the metabolic breakdown of metsulfuron methyl involves either hydroxylation of the phenyl ring and subsequent conjugation with glucose or cleavage of the sulfonylurea bridge. The latter process results in triazine amine derivatives from one side of the molecule and sulfonamide derivatives from the other side, which may further evolve to saccharin through cyclization.

Plant/animal comparative metabolism showed two plant unique metabolites (4-hydroxy metsulfuron methyl and its glucose conjugate). However they do not occur at detectable levels (< 0.01 mg/kg) in cereal grain, even at exaggerated rates of application. For this reason they were not subject to any testing and were not of concern for the purpose of establishing the proposed tolerance.

Based on the absence of detectable residue in food commodities (wheat and barley grain) and on the expected low residue levels of individual substances in feed items (straw) under normal use conditions, and the Residue Chemistry Guidelines (OPPTS 860–1300, D, ii) which states that; one metabolism study will be required for each of the crop groups defined in CFR 40 180.34(f) except for herbs and spices, a plant metabolism study in grain sorghum was not required.

A confined crop rotation study was conducted using sugar beets, oats, rape and soybeans as following crops, an application rate of 16 g a.i./ha, (0.23 oz a.i./acre), (2 × the maximum recommended rate) and a 120–day treatment-to-planting interval. A field crop rotation study was also conducted using oats, rape, sorghum and soybean as following crops, a 30 g a.s./ha, (0.86 oz a.i./acre), application rate and a 1-year treatment-to-planting interval. Residues of metsulfuron methyl or its degradation products were not detected in any edible crop commodities (<0.01 mg/kg), suggesting that use of metsulfuron methyl should not expose consumers to detectable residues in food through following crops.

2. *Analytical method.* The quantification of metsulfuron methyl is by HPLC/UV (high performance liquid chromatography/ultra violet) utilizing eluent and column switching with UV absorbance detection at 254 nm. The LOQ (limits of quantitation) of the analytical method for sorghum is 0.10 ppm for metsulfuron methyl and its metabolite (4-hydroxy metsulfuron methyl) in grain and fodder, 0.050 ppm for metsulfuron methyl and its metabolite in forage, 0.070 ppm for the glucose conjugate metabolite in grain and forage, and 0.14 ppm for the glucose conjugate metabolite in fodder. The LOQ of the analytical method for metsulfuron methyl and its metabolite in wheat and barley is 0.05 ppm for wheat/barley forage or grain and 0.10 ppm for wheat/barley straw.

3.—a. *Magnitude of residues.* The results of an analyses of sorghum grain, fodder and stover (at seed maturity), forage and hay (30 days), after application of metsulfuron methyl at the maximum proposed label rate and twice the rate, show that all residues of metsulfuron methyl and its metabolites (4-hydroxy metsulfuron methyl and its glucose conjugate) were below the limit of quantitation (0.05 or 0.1 ppm).

b. *Magnitude of residues in processed commodities.* Sorghum was field treated with metsulfuron methyl at exaggerated rates and samples were analyzed for metsulfuron methyl and its metabolites in bran, large grits, small grits, flour, grain dust, starch and gluten. All residues of metsulfuron methyl and it's metabolites in sorghum seeds and its processed fractions were below the limit of quantitation (<0.02–0.05 ppm).

B. Toxicological Profile

1. *Acute toxicity.* Based on EPA criteria, technical metsulfuron methyl is in acute toxicity Category IV for oral and inhalation routes of exposure and for dermal irritation and Category III for the dermal route of exposure and for eye irritation. It is not a skin sensitizer.

Acute oral toxicity in rats LD50>5000 mg/kg

Acute dermal toxicity in rabbits LD50>2000 mg/kg

Acute inhalation toxicity in rats LD50>5.0 mg/L

Primary eye irritation in rabbits Effects reversed within 72 hours.

Primary dermal irritation in rabbits No irritation observed.

Dermal sensitization in guinea pigs Non-sensitizer.

2. *Genotoxicty.* Metsulfuron methyl has shown no genotoxic activity in the following listed *in-vitro* and *in-vivo* tests, except for *in-vitro* chromosomal aberration (CHO):

Ames | Negative

Mammalian gene mutation (CHO/HGPRT) Negative

Unscheduled DNA synthesis Negative

In-vivo bone marrow cytogenetics Negative

In-vivo mouse micronucleus Negative

In-vitro chromosomal aberration (CHO) Positive

Metsulfuron methyl was only positive at concentrations > 1,000 mg/L in an *in vitro* test for induction of chromosome aberrations in Chinese Hamster Ovary cells. *In vivo* studies included the assessment of chromosome aberrations by metaphase analysis in bone marrow of male and female rats and the evaluation of micronuclei in bone marrow polychromatic erythrocytes of male and female mice. The results of both studies were negative when exposures were conducted up to 5,000 mg/kg. The fact that no effects were observed in the more definitive *in vivo* tests and considering the negative results in all other genotoxicity studies, the weight-of-evidence indicates that metsulfuron methyl is neither genotoxic nor mutagenic.

3. *Reproductive and developmental toxicity.* The results of a series of studies indicated that there were no reproductive, developmental or teratogenic hazards associated with the use of metsulfuron methyl. In a rat multigeneration reproduction study, reduced parental body weights were observed for both generations at the highest dose tested, 5,000 ppm. There were no effects on fertility, lactation, litter size or pup survival. The NOEL was 500 ppm (or 34 to 43 mg/kg bw/day).

In studies conducted to evaluate developmental toxicity potential, metsulfuron methyl was neither teratogenic nor uniquely toxic to the conceptus (i.e., not considered a developmental toxin). In the rat study, maternal toxicity, presented as reduced food consumption and body weight gain, was observed at 250 mg/kg bw and above. The systemic NOEL for the dams was 40 mg/kg/day. There were no effects on the conceptus at the highest dose tested, 1,000 mg/kg/day. Therefore, the fetal NOEL for rats is greater than 1000 mg/kg/day. In the rabbit developmental toxicity study, maternal mortality, reduced food consumption, and reduced body weights were observed at or above 100 mg/kg bw. The NOEL for maternal toxicity in rabbits was 25 mg/kg, based on maternal mortality and body weight decreases. Impact on the fetuses was minimum at these maternally toxic doses and was characterized only by a non-statistically significant trend in incomplete ossification of frontal bones at 100 and 300 mg/kg bw and above. The NOEL for fetal toxicity in rabbits was >700 mg/kg, the highest dose tested.

4. *Subchronic toxicity.* Repeated dietary exposures to metsulfuron methyl presented low toxicity manifested as reduced food consumption and body weight gain in the rat and the dog. There were no adverse effects observed in mice in subchronic studies at the highest dose tested, 5,000 ppm. The NOEL for subchronic exposure in mice was >5000 ppm (814 and 944 mg/kg/day, M/F). The rat was the most sensitive species tested in subchronic toxicity studies. The NOEL was 1,000 ppm (68 and 84 mg/kg/day for males amd females respectively) based on decreased body weights, body weight gains, and total serum protein in females, and decreased relative liver weights in males exposed at 7,500 ppm. In a 90–day feeding study in dogs, the NOEL was 5,000 ppm (134 and 129 mg/kg/day, M/F), the highest dose tested.

A 21–day dermal study was conducted in rabbits at 0, 125, 500 or 2,000 mg/kg/day. The NOEL was 125 mg/kg/day based on dermal effects at the application site; the NOEL for systemic toxicity was 2,000 mg/kg/day.

5. *Chronic toxicity.* Chronic Toxicity studies of metsulfuron methyl resulted in only minimal effects in the rat, mouse, or dog. Metsulfuron methyl was not oncogenic in the chronic rat and mouse bioassays.

A 1–year feeding study in dogs, the NOEL for chronic toxicity in beagle dogs was 500 ppm (or 13 mg/kg/day) and 5,000 ppm (or 127 mg/kg/day) in male and female dogs, respectively. Metsulfuron methyl produced minimal toxicity after 12 months administration to male beagle dogs, manifested as minimal interference with normal nutrition by decreasing food consumption toward the end of 1 year. This minimal interference was not considered adverse since it did not cause changes in body weights or body weight gains.

In an 18–month study in mice, the NOEL was 5,000 ppm (666 and 836 mg/kg/day for males and females, respectively), the highest dose tested. Metsulfuron methyl is not an oncogen in this study.

A 2–year combined chronic toxicity and oncogenicity study in rats, the NOEL was 500 ppm (or 23 and 30 mg/kg/day for males and females, respectively). Metsulfuron methyl was not oncogenic in rats nor was target organ toxicity evident after two years administration. Chronic toxicity was manifested as minimal interference with normal nutrition and subsequent decreases in body weight gain that were more pronounced during the early growth phase of the animals life span and became less evident toward the end of the study.

6. *Animal metabolism.* The metabolism of metsulfuron methyl in animals (rat, hen and goat) is adequately understood and similar among the species evaluated. The rat metabolism and disposition data indicated rapid absorption, metabolism and elimination. In the rat, approximately 90% of the administered dose of metsulfuron methyl was excreted in the feces and urine within 72 hours. The biological half-lives were 9–16 hours for low-dose groups and 23–29 hours for high-dose groups. The major pathway was breakdown of the urea bridge to give rise to either aminosulfonyl benzoate or sulfonamide and the triazine amine derivative. The secondary biotransformation pathway was demethylation of aminosulfonyl benzoate to form saccharin. Preconditioning with low-dose exposures did not affect the metabolism of metsulfuron methyl. There was no evidence of accumulation of metsulfuron methyl or its metabolites in any organ or tissue. A significant portion (85–95%) of the recovered radioactivity from urine, feces and tissues was intact metsulfuron methyl. There were two major plant specific metabolites identified, that were not detected in the rat. However, in residue studies, no detectable residues of parent or major plant unique metabolites, were found in the feed and food items of cereal crops treated at the maximum seasonal use rate. Hence, toxicity testing of other degradation products of metsulfuron methyl was not needed.

Results from a metabolism study with two radioactive forms of metsulfuron methyl, (14C-Phenyl and 14C-Triazine) in the laying hens show that virtually all the radioactivity was eliminated in the excreta. The total radioactivity in edibale tissues and eggs represented </=0.2% of the total radioactivity administered for either radiolabel. Parent metsulfuron methyl was excreted largely unchanged, and a minor portion is metabolized to o- desmethyl metsulfuron methyl.

The fate of metsulfuron methyl and its metabolite was investigated in the lactating goat. Metsulfuron methyl and the metabolite were eliminated mostly in the urine and feces. Traces of radioactivity were found in some tissues and in milk (0.008–0.009%) of the parent and no radioactivity of the metabolite was detected in the milk or any organ or tissue sample.

In a cattle feeding study, metsulfuron methyl was rapidly excreted in the urine and feces of the treated cows. Less than 0.1% of the daily dose was excreted in the milk as metsulfuron methyl and <10% of the metsulfuron methyl residue level was found as the glucoronide conjugate. Residues (<0.1 ppm) were found in the kidney of cows slaughtered 12 hours after treatment stopped but not in cows slaughtered a week later.

Tolerances for metsulfuron methyl in fat (0.1 ppm), meat (0.1 ppm), meat by products (0.1 ppm), and kidney (0.5 ppm) of cattle, goats, hogs, horses and sheep, and a tolerance of 0.05 ppm in milk have been posted in 40CFR 180.428.

7. *Metabolite toxicology.* There is no evidence that the metabolites of metsulfuron methyl as identified in either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of metsulfuron methyl have been conducted. However, the standard battery of required toxicology studies has been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that metsulfuron methyl has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances have been established (40 CFR 180.428) for the residues of metsulfuron methyl in or on various food commodities ranging from 0.05 ppm in milk to 0.5 in kidney. There are no potential sources of exposure of the general population to residues of metsulfuron methyl from drinking water or non-occupational sources such as in door and out door residential uses. There are no in door or out door residential uses registered for metsulfuron methyl. There are no acute dietary exposure or cancer risk endpoints of concern for metsulfuron methyl. Aggregate risk has been assessed from chronic exposure to food.

2. *Food.* Tolerances have been established for metsulfuron methyl on the following food crops: barley, wheat, and sugar cane. A tolerance of 0.1 ppm for sorghum grain was included in this assessment. Also included were tolerances for meat and milk commodities. The dietary exposure was estimated using the Dietary Exposure Evaluation Model (DEEM ver. 5.03) which utilizes the 1989–1991 CSFII food consumption database. In conducting this assessment the

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conservative assumption was made that residues would be at the tolerance level. Use of the tolerances rather than actual field measurements will result in an overestimate of human dietary exposure. The existing metsulfuron methyl tolerances with the addition of the sorghum tolerance result in a theoretical maximum residue level (TMRC) that is equivalent to the following percentages of the RfD:

U.S. Population 0.3%
Nursing Infants (<1 year old) 0.1%
Non-Nursing Infants (<1 year old) 0.4%
Children (1–6 years old) 0.8%
Children (7–12 years old) 0.5%

Thus, the estimated exposure for the U.S. population and all subpopulation was less than 1% of the RfD. Metsulfuron methyl RfD (0.3 mg/kg/day)is based on the NOEL for the 2–year rat study. The most sensitive chronic toxicity/oncogenicity study. The subpopulation with the highest exposure was children ages 1–6 years (0.8% of the RfD). Based on the residue data, potential for dietary exposure is extremely low. Residue studies have shown no residue above LOQ (0.05 or 0.02 ppm) in sorghum samples evaluated including the sorghum grain processed fractions. No dietary exposure is anticipated from secondary residues in meat or milk. Although sorghum is considered a major foodstuff for cattle and poultry, residue studies and metabolism studies in the laying hen and lactating goat and cattle feeding studies showed residues below LOQ of processed fractions and less than 2% of the administered concentration in edible meat and eggs. Only traces of metsulfuron methyl were found in some goat meat and milk (0.008–0.009).

Direct human consumption of sorghum grain as a food commodity in the U.S. is extremely low. At the above levels of exposure, there is a reasonable certainty that no harm will result from dietary exposure to metsulfuron methyl.

3. *Drinking water.* Another potential source of dietary exposure to pesticides are residues in drinking water. There is no established Maximum Contaminant Level (MCL) for metsulfuron methyl in water. Based on the low use rate of metsulfuron methyl and a use pattern that is not widespread, DuPont does not anticipate residues of metsulfuron methyl in drinking water and exposure from this route is unlikely.

4. *Non-dietary exposure.* Metsulfuron methyl is registered for use in weed and brush control in non-crop situations including industrial, unimproved turf areas. Metsulfuron methyl is not to be used on lawns, walks, drive ways, tennis courts, golf courses, athletic fields, commercial sod operations, or other high maintenance, fine turf grass areas, or similar areas. Any non-occupational exposure to metsulfuron methyl in the unimproved areas is likely to be negligible.

D. Cumulative Effects

Metsulfuron methyl belongs to the sulfonylurea class of compounds. The herbicidal activity of the sulfonylurea is due to the inhibition of acetolactase synthase (ALS), an enzyme only found in plants. ALS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the low toxicity of the sulfonylurea compounds in animals. We are aware of no information to indicate or suggest that metsulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above, and based on the most sensitive chronic NOEL of 25 mg/kg/day and an RfD of 0.3 mg/kg/day, the aggregate dietary exposure will utilize less than 1% of the RfD for the U.S. population. Generally, exposure below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose risk to human health. We therefore conclude that there is a reasonable certainty that no harm will result from aggregate exposure to metsulfuron methyl residues.

Although no formal acute dietary margin of exposure (MOE) determinations were made, it is highly unlikely that the MOE would exceed a level of concern due to the low acute mammalian toxicity of this compound].

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of metsulfuron methyl, data were considered from developmental toxicity studies in the rat and the rabbit, and a multi-generation reproduction study in the rats. Thesa studies proved that metsulfuron methyl was not a teratogenic or a developmental toxin.

Using the conservative exposure assessment described above, the percent of the RfD that will be utilized ranges from 0.1 to 0.8% for infants and young children. Based on this we conclude that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to metsulfuron methyl residues.

Although no formal acute dietary margin of exposure determinations were made, it is highly unlikely that the MOE would exceed a level of concern due to the low mammalian toxicity of this compound.

F. International Tolerances

There are no Canadian, Mexican, or Codex Maximum Residue Level (MRLs) for metsulfuron methyl on sorghum grain.

[FR Doc. 98–7141 Filed 3–18–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–796; FRL–5776–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket control number PF–796, must be received on or before April 20, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public

inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager/Petition No.	Office location/telephone number/e-mail address	Address
Bipin Gandhi (PM 5); (PP 7E4918).	Rm. 4W53, Crystal Station, 703–308–8380, e-mail: gandhi.bipin@epamail.epa.gov.	2800 Crystal Dr., Arlington, VA
Sidney Jackson (PM 5); (PP 5E4463).	Rm. 233, CM #2, 703–305–7610, e-mail: jackson.sidney@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw agricultural commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–796 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number PF–796 and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 5, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Hercon Environmental Corporation

PP 7E4918

EPA has received a pesticide petition (PP 7E4918) from Hercon Environmental Corporation, Aberdeen Road, P.O. box 467, Emigsville, PA 17318-0467, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for Trioctyl Trimellitate (TOTM) as an inert ingredient under 40 CFR 180.1001(c).

A. Product Identity/Chemistry

Tris(2-ethylhexyl)1,2,4-benzenetricarboxylate, the chemical name for TOTM, CAS # [3319–31–1], has a molecular formula of C_{33} H_{45} O_6, and a molecular weight of 546.8.

TOTM is a primary plasticizer used in applications requiring good elongation retention such as high-temperature PVC wire coatings. Its excellent resistance to soapy water extraction also makes it attractive for use in vinyl film and vinyl-coated fabrics. Its stereochemical properties make it especially attractive in pheromone formulations as a control-release agent, and its extremely low vapor pressure (0.7×10^{-7} mm Hg), assures its retention in the formulation to perform its intended purpose.

B. Residue Chemistry

No residue chemistry data are available. However, arguments provided above relative to modes of exposure, support the lack of potential for any residues of TOTM to be present in raw agricultural product of the foods from them.

Since this petition requests an exemption from the requirement of a tolerance, Hercon believes that an analytical method for the detection and measurement of TOTM residues is not necessary. The low rate of application and the fact that it is encapsulated in the product leads to the conclusion that TOTM will not migrate into a food from the treatment of crops to any degree that would be detectable.

C. Toxicological Profile

Hercon has submitted to the EPA acute toxicological information and studies of chronic toxicology which exhibit the low toxicity of TOTM. In addition, it was determined from a manufacturer that no reports have been submitted on TOTM under TSCA 8(e) Substantial Risk Notification requirements.

1. *Acute toxicity.* Acute toxicology studies conducted with the "neat" material show:

Acute Toxicity: At most only slightly toxic. Slight skin irritant. LD^{50} >3200 mg/kg.

Skin Absorption and Irritation: No evidence of skin absorption. LD^{50} >20 mg/kg

Skin Sensitization: Sensitized 0/5 guinea pigs in drop-on test.

Inhalation: At lowest exposure of 0.23 mg/l, no mortality was experienced.

Eye Irritation: In unwashed eye, there was an initial moderate effect after 1 hour, but the effect disappeared after 48 hours. No effects reported in the washed eye.

2. *Genotoxicty. — a. TOTM evaluation in the CHO/HGPRT forward mutation assay.* TOTM was considered to be inactive under the conditions of testing in this assay. The test material did not induce dose-related increases in the mutant frequency at the HGPRT locus in CHO cell cultures. TOTM was not toxic to CHO cells at concentrations up to 5,000 nl/ml either with or without S9 metabolic activation. Mutation assays were performed in duplicate both with

a nd without S9 metabolic activation using 6 concentrations of TOTM ranging from 10.0 nl/ml to 200 nl/ml.

b. *Evaluation of TOTM in the rat primary hepatocyte unscheduled DNA synthesis assay.* The test material did not induce significant changes in the nuclear labeling of primary rat hepatocytes for an applied concentration range of 5000 nl/ml to 250 nl/ml. Little or no toxicity was observed (88.4% to 102.2% survival) but higher concentrations could not be assayed because of the insoluble nature of TOTM in medium. None of the criteria used to indicate UDS were approached by the treatments, and no dose-related response was observed. Therefore, the test material was evaluated as inactive in the Primary Rat Hepatocyte UDS Assay.

3. *Subchronic toxicity.* Twenty-eight Day Toxicity Study with TOTM in the Rat: The results of this study demonstrates that TOTM caused slight peroxisome proliferation but was less potent than DEHP [di(2-ethylhexyl) phthalate], with 2.0% TOTM producing less effects than 0.67% DEHP. There was no effect of feeding TOTM on the body weight or food intakes of the male rats. The females fed 2.0% TOTM showed an initial rejection of the diet which did not have any marked effect on their weight gain.

4. *Chronic toxicity.* Chronic Toxicity of TOTM to Daphnia magna Under Flow-Through Test Conditions: The daphnid lengths in all TOTM mean measured concentrations after 21 days of testing were not significantly different (a = 0.05) from the control. Statistical analysis of survival for Daphnia magna after a 21 days exposure to TOTM indicated that survival rates in all the mean measured test concentrations were not significantly different from the control. The mean young/adult/reproduction day after 21 days was not significantly affected in a deleterious manner in all mean measured test concentrations of TOTM. Based on the statistical analysis of adult mean length, survival and young/adult/reproduction day from the 21 day Daphnia magna dynamic life cycle study, the MATC (Maximum Acceptable Toxicant Concentration) limits were estimated to be greater than the TOTM mean measured concentration of 82 µg/l.

5. *Metabolite toxicology.* Study No. 4: Absorption and Metabolism of [Hexyl-2-14C] TOTM: TOTM is called TEHT in this study. These studies show that TEHT was hydrolyzed to a limited extent in the gastrointestinal tract and was largely excreted unchanged in the feces. Sixteen percent was excreted in the urine as metabolites and 1.9% was expired as CO_2.

D. Aggregate Exposure

Hercon's pheromone formulations containing TOTM will not result in an application rate of product in which more than 25 grams/acre of TOTM on food related crops will result. Depending on an extended or delayed infestation of target pests, no more than 3 applications per crop should be necessary.

It must be remembered that this amount of TOTM is contained in the formulated device, a 0.05 square inch laminated PVC flake, and therefore the TOTM itself does not come into direct contact with the plants or crops treated. At the maximum application rate, there are approximately 0.26 flakes per square foot. This equates to approximately 0.5 mg TOTM / sq.ft. At the lowest recommended application rate, this amount is halved.

To present a worst case scenario for dietary exposure to humans, Hercon has selected applications to a sugar cane crop. This worst case scenario hypothetically presumes that all available TOTM in the product is finally present in the processed sugar.

At an application rate corresponding to 0.5 mg TOTM/sq.ft, and a harvest resulting in 3.3 tons of sugar per acre, the available concentration of TOTM in the sugar would calculate to be 8.4 mg TOTM / Kg of sugar.

The assumption of an intake of 20 gms of sugar per day, would equate to a daily intake of 0.168 mg of TOTM. This hypothetical intake is much lower than the NOEL from a 28 day Chronic oral study in the male rat of 185 mg/kg/day noted in the MSDS.

Actually, it is expected that since the TOTM is contained in the formulated devise, that no detectable TOTM would be found in the sugar.

Exposure to drinking water will be minimal. Hercon's products containing TOTM are not sprayed on lawns or gardens, around swimming pools, etc., and due to the low rates of application, even drift from an agricultural application to lakes or waterways, will not affect drinking water.

Data, calculations, low exposure potential and low toxicity discussed and presented in this petition request, precludes a concern for significant dietary or non-dietary exposure to infants and children.

Non-dietary exposure to TOTM will be mitigated through the use of personal protective equipment which is described on the label of products for personnel which may be around or in a treated field.

E. Cumulative Exposure

No cumulative mode of exposure is expected. Again, the application rate is extremely low, and encapsulation of the TOTM in the product prevents direct exposure.

Normal use patterns will not lead to accumulation of TOTM in the environment.

F. Safety Determinations

Hercon believes that the use of pheromone products containing TOTM, which is of low toxicity and which is used in such low concentrations, is compatible with EPA's objectives to register reduced risk pesticides.

In an absorption and metabolism study on rats, which is included in this package, 75% of the dose was excreted in the feces, 16% in the urine, and 1.9% was expired as CO2. Less than 0.6% remained in the tissues.

At an acute oral LD^{50} toxicity level of >3200 mg/kg in the rat and mouse, TOTM is a low level toxin with at most a class III toxicity rating. A 28 day Chronic Oral toxicity study resulted in a NOEL of 184 mg/kg/day.

Mutagenicity and Genotoxicity data showed negative results in Salmonella typhimurium assay, DHO/HGPRT assay and the Unscheduled DNA synthesis assay.

Because of the low toxcicity of TOTM and the low rate of application, and encapsulation in the product, and more importantly because no residue is expected in the final food product, a determination can be made that there is little or no exposure to the general population or to children and infants.

G. List of International Tolerances

The petitioner understands that therte are no current or known established residue levels for TOTM.

H. Environmental Fate Summary

This summary is taken directly from the Material Safety Data Sheet from Eastman Chemical Co.

"Data for this material have been used to estimate its environmental impact. It has the following properties: a low biochemical oxygen demand and little potential to cause oxygen depletion in aqueous systems, a low potential to affect aquatic organisms, a low potential to biodegrade (high persistence) with acclimated microorganisms from activated sludge, a low potential to bio-concentrate. After dilution with a large amount of water, followed by secondary waste treatment, this material is not expected to cause adverse environmental effects."

2. IR-4 Project

PP 5E4463

EPA has received a pesticide petition (PP 5E4463) from the Interregional Research Project Number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR Part 180 by establishing a tolerance for residues of the insecticide cypermethrin ((+) alpha-cyano(3-phenoxyphenyl)methyl (+) cis, trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodity green onions at 6.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice contains a summary of the petition submitted by FMC Corporation, the registrant.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The analytical method is Gas Chromatography with Electron Capture Detection (GC/ECD).

3. *Magnitude of residues.* Field residue trials meeting EPA study requirements have been conducted at the maximum label rate for the crop green onions. Results from these trials demonstrate that the proposed cypermethrin tolerance on green onions at 6.0 ppm will not be exceeded when the product is applied following the proposed use directions. These data have previously been reviewed and classified by the Agency as supportive of this tolerance.

B. Toxicological Profile

1. *Acute toxicity.* The required battery of acute toxicity studies has been submitted and found adequate. The findings were as follows: oral toxicity, lethal dose $(LD)_{50}$ of 263 milligram (mg) per kilogram (kg); dermal toxicity, LD_{50} 2,460 mg/kg; inhalation toxicity lethal concentration LC_{50} 2.5 mg/liter (L); primary eye irritation is Toxicity Category III; primary dermal irritation is Toxicity Category IV. Cypermethrin is considered to be a dermal sensitizer.

2. *Genotoxicity.* All reported results from the following genotoxicity tests were all negative: gene mutation (Ames); chromosome aberration in Chinese hamster bone marrow cells; host mediated assay in mice; dominant lethal assay in mice.

3. *Reproductive and developmental toxicity.* No evidence of additional sensitivity to young rats or rabbits was reported following pre- or postnatal exposure to cypermethrin.

a. A 3-generation reproductive toxicity study in rats demonstrated a no observed effect level (NOEL) of 2.5 mg/kg/day and a lowest observed effect level (LOEL) of 7.5 mg/kg/day for parental/systemic toxicity based on decreased body weight gain in both sexes. There were no adverse effects in reproductive performance. The NOEL for reproductive toxicity was considered to be 37.5 mg/kg/day, the highest dose level tested.

b. A developmental study in rats demonstrated a maternal NOEL of 17.5 mg/kg/day and a LOEL of 35 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 70 mg/kg/day, the highest dose level tested.

c. A developmental study in rabbits demonstrated a maternal NOEL of 100 mg/kg/day and a LOEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the highest dose level tested.

4. *Subchronic toxicity.* The systemic NOEL of 5.0 mg/kg/day from the chronic toxicity study in dogs is also used for short- and intermediate-term margin of exposure (MOE) calculations (as well as acute toxicity, discussed in (1) above). This NOEL was based on neurotoxic clinical signs observed in the first week of treatment of the study.

5. *Chronic toxicity.* The Reference Dose (RfD) has been established at 0.010 mg/kg/day. This RfD is based on a chronic toxicity study in dogs with a NOEL of 1.0 mg/kg/day, based on gastrointestinal disturbances observed at the LOEL of 5.0 mg/kg/day during the first week of the study; an uncertainty factor of 100 is used.

Cypermethrin is classified as a Group C chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q* has not been recommended.

6. *Animal metabolism.* The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption.* No evidence of potential estrogenic or other endocrine effects of cypermethrin were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* a. *Food.* Tolerances have been established for the residues of cypermethrin, in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of cypermethrin on cottonseed; pecans; lettuce, head; onions, bulb; cabbage; Brassica, head and stem; Brassica, leafy and livestock commodities of cattle, goats, hogs, horses, and sheep as well as this pending tolerance for green onions. For the purposes of assessing the potential dietary exposure for these existing and pending tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

i. Acute exposure and risk. Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. For the purposes of assessing acute dietary risk for cypermethrin, the maternal NOEL of 1.0 mg/kg/day from the chronic toxicity study in dogs was used. The LOEL of this study of 5.0 mg/kg/day was based on gastrointestinal disturbances observed in the first week of the study. This acute dietary endpoint was used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the MOEs are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile

of exposure for the overall U. S. population was estimated to be 0.000488 mg/kg/day (MOE of 2,047); 99th percentile 0.002014 mg/kg/day (MOE of 496); and 99.9th percentile 0.004438 mg/kg/day (MOE of 225). The 95th percentile of exposure for all infants < one year old was estimated to be 0.00007 mg/kg/day (MOE of 14,240); 99th percentile 0.000345 mg/kg/day (MOE of 2,902); and 99.9th percentile 0.000997 mg/kg/day (MOE of 1,003). The 95th percentile of exposure for nursing infants < one year old was estimated to be 0.000033 mg/kg/day (MOE of 30,026); 99th percentile 0.000241 mg/kg/day (MOE of 4,144); and 99.9th percentile 0.001400 mg/kg/day (MOE of 714). The 95th percentile of exposure for non-nursing infants < one year old was estimated to be 0.000075 mg/kg/day (MOE of 13,331); 99th percentile 0.000375 mg/kg/day (MOE of 2,667); and 99.9th percentile 0.000748 mg/kg/day (MOE of 1,337). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) was estimated to be 0.000361 mg/kg/day (MOE of 2,767); 99th percentile 0.002088 mg/kg/day (MOE of 479); and 99.9th percentile 0.005465 mg/kg/day (MOE of 183). Therefore, FMC concludes that the acute dietary risk of cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

ii. Chronic exposure and risk. The acceptable RfD is based on a NOEL of 1.0 mg/kg/day from the chronic dog study and an uncertainty factor of 100 is 0.010 mg/kg/day. The endpoint effect of concern was based on gastrointestinal disturbances observed in the first week of the study at the LOEL of 5.0 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000025 mg/kg body weight (bwt)/day and utilize 0.3 percent of the RfD for the overall U. S. population. The ARCs for non-nursing infants (<1 year) and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000014 mg/kg bwt/day and 0.000042 mg/kg bwt/day and utilizes 0.1 percent and 0.4 percent of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the RfD. Therefore, FMC concludes that the chronic dietary risk of cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

b. *Drinking water.* Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into groundwater. Other data show that cypermethrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (<<0.001 parts per billion). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 parts per billion(ppb). Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, FMC believes that the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues of cypermethrin are not expected to occur in drinking water.

2. *Non-dietary exposure.* Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application and chronic dietary aggregate exposures associated with cypermethrin products used for residential flea infestation control and agricultural/commercial applications. The aggregate analysis conservatively assumes that a person is concurrently exposed to the same active ingredient via the use of consumer or professional flea infestation control products and to chronic level residues in the diet.

In the case of potential non-dietary health risks, conservative point estimates of non-dietary exposures, expressed as total systemic absorbed dose for each product use category (indoor total release fogger and lawn care) and exposed population group (adults, children 1–6 years, and infants < 1 year) are compared to the systemic absorbed dose NOEL for cypermethrin to provide estimates of the MOEs. Based on the toxicity endpoints selected by EPA for cypermethrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOEL for estimating MOEs.

In the case of potential aggregate health risks, the above mentioned conservative point estimates of non-dietary exposure (expressed as systemic absorbed dose) are combined with estimates (arithmetic mean values) of chronic average dietary (oral) absorbed doses. These aggregate absorbed dose estimates are also provided for adults, children 1 – 6 years and infants < 1 year. The combined or aggregated absorbed dose estimates (summed across non-dietary and chronic dietary) are then compared with the systemic absorbed dose NOEL to provide estimates of aggregate MOEs.

The total non-dietary MOEs (combined across all product use categories) for the inhalation plus incidental oral routes are 97,000 for adults, 2,100 for children 1–6 years old, and 1,900 for infants (< 1 year). The aggregate MOE (inhalation + incidental oral + chronic dietary, summed across all product use categories) was estimated to be 65,000 for adults, 2,000 for children 1–6 years old and 1,900 for infants (<1 year). FMC concludes that the potential non-dietary and aggregate (non-dietary + chronic dietary) exposures for cypermethrin are associated with substantial margins of safety.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA at in the **Federal Register** of August 4, 1997, (62 FR 42020), and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicology database, the acceptable reference dose RfD is 0.010 mg/kg/day, based on a LOEL of 5.0 mg/kg/day from the chronic dog study and an uncertainty factor of 100. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the Anticipated Residue Contribution (ARC) for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000025 mg/kg body weight (bwt)/day and utilize 0.3 percent of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000014 mg/kg bwt/day and 0.000042 mg/kg bwt/day and utilizes 0.1 percent and 0.4 percent of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the RfD. Therefore, FMC concludes that the chronic dietary risk of cypermethrin, as estimated by the aggregate risk assessment, does not appear to pose significant risk.

For the overall U.S. population, the calculated margins of exposure (MOE) at the 95th percentile was estimated to be 2,047; 496 at the 99th percentile; and 225 at the 99.9th percentile. For all infants < one year old, the calculated MOE at the 95th percentile was estimated to be 14,240; 2,902 at the 99th percentile; and 1,003 at the 99.9th percentile. For nursing infants < one year old, the calculated margins of exposure (MOE) at the 95th percentile was estimated to be 30,026; 4,144 at the 99th percentile; and 714 at the 99.9th percentile. For non-nursing infants < one year old, the calculated margins of exposure (MOE) at the 95th percentile was estimated to be 13,331; 2,667 at the 99th percentile; and 1,337 at the 99.9th percentile. For the most highly exposed population subgroup, children 1 – 6 years old, the calculated MOE at the 95th percentile was estimated to be 2,767 ; 479 at the 99th percentile; and 183 at the 99.9th percentile. Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to cypermethrin.

2. *Infants and children.* —a. *General.* In assessing the potential for additional sensitivity of infants and children to residues of cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a three-generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database.

b. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (70 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOEL in each study; the maternal NOEL was established at 17.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

c. *Reproductive toxicity study.* In the 3-generation reproduction study in rats, offspring toxicity (reduced mean litter weight gain) was observed only at the highest dietary level tested (37.5 mg/kg/day), while toxicity in the parental animals was observed at the lower treatment levels. The parental systemic NOEL was 2.5 mg/kg/day and the parental systemic LOEL was 7.5 mg/kg/day. There were no developmental (pup) or reproductive effects up to 37.5 mg/kg/day (highest dose tested).

d. *Pre- and post-natal sensitivity. —i. Pre-natal.* There was no evidence of developmental toxicity in the studies at the highest doses tested in the rat (70 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

ii. Post-natal. Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1 percent of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, FMC concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

F. International Tolerances

There are no codex, Canadian, or Mexican residue limits for residues of cypermethrin in or on green onions.

[FR Doc. 98–7140 Filed 3–18–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m., Wednesday, March 25, 1998.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- FHLBank Investment Practices and Implications for Finance Board Investment Policy .
- Final Rule: Eligibility for Membership and Advances.
- Proposed Rule: Elections Regulations.
- Office of Finance—Board Compensation Policy Approval.
- Office of Finance—Board Appointments.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–7313 Filed 3–17–98; 2:47 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 2, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Lee R. Anderson, Jr. Trust dated November 23, 1992, and Lee R. Anderson, Jr., Revocable Trust dated April 24, 1997, both of Golden Valley, Minnesota, to each acquire voting shares of, and Lee R. Anderson Jr., Golden Valley, Minnesota, to retain voting shares of, Anderon Financial Group, Inc., Golden Valley, Minnesota, and thereby indirectly acquire Northern National Bank, Nisswa, Minnesota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Drue A. Washburn, Alva, Oklahoma; to acquire voting shares of Community Bancshares of Alva, Inc., Alva, Oklahoma, and thereby indirectly acquire voting shares of Community National Bank, Alva, Oklahoma.

Board of Governors of the Federal Reserve System, March 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7074 Filed 3–18–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Cincinnati Financial Corporation, Cincinnati, Ohio; to acquire shares of FirstMerit Corporation, Akron, Ohio, and thereby indirectly acquire Citizens National Bank, Canton, Ohio; FirstMerit Bank, N.A., Akron, Ohio; Peoples Bank, N.A., Ashtabula, Ohio; and Peoples National Bank, Wooster, Ohio. FirstMerit received the Board's approval to acquire CoBancorp, Elyria, Ohio, and its subsidiaries Premier Bank & Trust, Elyria, Ohio and Jefferson Savings Bank, West Jefferson, Ohio.

2. Heritage Capital Corporation, Ashland, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank of Ashland, Inc., Ashland, Kentucky, a *de novo* institution.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Halbur Bancshares, Inc., Halbur, Iowa; to acquire at least 97.2 percent of the voting shares of Westside Banco, Inc., Westside, Iowa, and thereby indirectly acquire Westside State Savings Bank, Westside, Iowa.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First York Ban Corp., York, Nebraska; to acquire 60 percent of the voting shares of NebraskaLand National Bank, North Platte, Nebraska, a *de novo* insitition.

Board of Governors of the Federal Reserve System, March 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7075 Filed 3–18–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1998.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Neighborhood Bancorp, San Diego California; to engage *de novo* through its subsidiary, Neighborhood Housing Development Corporation, San Diego California, in community development activities, pursuant to § 225.28(12) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7076 Filed 3–18–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 981–0011]

Federal-Mogul Corporation, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 18, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joseph Krauss, FTC/H–386, Washington, D.C. 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 6, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from Federal-Mogul Corporation ("Federal-Mogul") and T&N plc ("T&N").

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

Both Federal-Mogul, a Michigan corporation, and T&N, a corporation organized under the laws of the United Kingdom, design, manufacture and sell fluid film or "plain" thinwall bearings ("thinwall bearings"). These are bearings that do not have roller or ball elements, but have a surface coating of oil which reduces friction. Among the thinwall bearings Federal-Mogul and T&N manufacture and sell are thinwall bearings for use in automobile and light truck engines ("light duty engine bearings") and thinwall bearings for use in heavy truck and heavy equipment engines ("heavy duty engine bearings"). Both Federal-Mogul and T&N sell light duty and heavy duty engine bearings to original equipment manufacturers ("OEMs"), which buy bearings and use them to manufacture engines, and to aftermarket companies, which buy bearings and use them to repair or service engines after the engines' warranty periods have expired. Federal-Mogul and T&N are the largest competitors in the manufacture and sale of thinwall bearings to OEMs and the aftermarket in the United States. On October 10, 1997, Federal-Mogul notified T&N of Federal-Mogul's intention to commence a cash tender offer to acquire 100 percent of the voting securities of T&N for approximately $2.4 billion.

The Proposed Complaint

The proposed complaint alleges that the proposed acquisition may substantially lessen competition in the development, manufacture, and sale of (1) thinwall bearings, (2) light duty engine bearings sold to OEMs, (3) heavy duty engine bearings sold to OEMs, and (4) engine bearings sold to the aftermarket. The proposed complaint also alleges that the relevant geographic market for evaluating the acquisition's effect on the thinwall bearings market is the world. Every engine has a unique set of bearings which, with few exceptions, cannot be used in any other engine. The bearings are engineered in terms of materials, shapes and sizes to meet the bearing performance demands of a particular engine. While engines built for the United States market have different performance characteristics from engines built for other markets, and require bearings engineered for those performance requirements, engine manufacturers in the United States are willing to buy engine bearings from anywhere in the world if the bearings meet the performance requirements for the United States market.

The proposed complaint alleges that Federal-Mogul and T&N are the two leading producers in the four different bearings markets. The complaint further alleges that the proposed transaction would give Federal-Mogul the ability to unilaterally exercise market power and that the transaction could also substantially increase the likelihood of collusion or coordinated anticompetitive conduct between Federal-Mogul and the other remaining bearings producers.

The proposed complaint alleges that entry into the four alleged markets would not be timely, likely, or sufficient to deter or offset the adverse effects of the acquisition on competition in these markets. Entry into the markets to sell engine bearings to OEM customers requires developing appropriate bearings and precision manufacturing capabilities and extensive testing before sales can be made. This process, from development to the completion of testing, would take substantially more than two years. In the aftermarket, the entrant would have to develop a broad product line to compete with Federal-Mogul and T&N, which would take more than two years, and a new entrant would be at a significant cost disadvantage to the incumbent firms.

The Proposed Order

The proposed Order would remedy the alleged violation by preserving the competition that would otherwise be lost as a result of Federal-Mogul's acquisition of T&N. The proposed Order requires Federal-Mogul to divest the thinwall bearing business of T&N, which includes the assets and plants that T&N now uses to make thinwall bearings, as well as the assets, including intellectual property, that T&N now uses to develop and design new bearings to meet the bearings needs of engines that OEMs will develop in the future. To insure that the divested thinwall bearing business would be in the same position that T&N had been in terms of research, the proposed Order specifically identifies the individuals in T&N who worked on bearings research and development and requires Federal-Mogul and T&N to assign those personnel to the business to be divested. In addition, certain employees who are believed to be particularly important to the future research success of the divested T&N thinwall business will be given incentives to remain with the divested thinwall business. Finally, certain assets relating the aftermarket

sales of bearings in North America, including the brand names under which T&N has sold bearings, must be included in the divestiture.

The proposed Order also addresses a relationship that T&N's thinwall bearings business had with Daido Metals ("Daido"), a Japanese bearing producer. For a number of years, T&N had cooperative technology exchange arrangements with Daido, as well as a joint venture to produce bearings at Bellefontaine, Ohio. In the past, these arrangements between T&N and Daido may have allowed the two companies together to compete better against other bearings producers and to meet their customers' needs for high quality, low cost, sophisticated bearings, better than either company could on its own. To allow for the continuation of cooperation between Daido and the divested T&N bearings business, the proposed Order prohibits Federal-Mogul from entering into such arrangements with Daido for a period of five years. In addition, because certain individuals at T&N are believed to be important to maintaining the cooperative relationships between T&N and Daido, these individuals are given incentives under the proposed Order to stay with the divested T&N thinwall bearings business. The purpose of these provisions is not to force the divested T&N thinwall bearing business or Daido to form any particular cooperative arrangements, but to allow any efficient cooperation between the two firms to continue as if T&N had not been acquired by Federal-Mogul.

The proposed Order also identifies certain assets related to dry bearings or polymer bearings that are to be included in the divestiture. Dry or polymer bearings are bearings that do not rely on a film of oil, but instead on a polymer coating, to reduce friction. These bearings are produced at T&N plants that also produce thinwall bearings, and the inclusion of these bearings in the assets to be divested may be important to the viability of the T&N plants to be divested. Absent the specific references to polymer bearings, the identification of the plants to be divested would require the divestiture of the manufacturing lines for these dry or polymer bearings that are contained in the named plants. However, Federal-Mogul wishes to include these products by name in the proposed Order, to insure the German Federal Cartel Office that the dry bearing products listed will be divested. The German Federal Cartel Office has raised concerns about a product overlap between Federal-Mogul and T&N in dry bearings that would adversely impact competition in dry bearings in Germany. By including these products in the Commission's proposed Order, Federal-Mogul avoids having to enter into a separate divestiture procedure, relating to the same plants, to satisfy the Federal Cartel Office.

The proposed Order requires that Federal-Mogul divest the identified assets within six months after the proposed Order becomes final. If Federal-Mogul does not divest the assets within that time period, the proposed Order provides for the appointment of a trustee to divest the assets.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

By direction of the Commission, Commissioner Azcuenaga not participating.

Donald S. Clark,

Secretary.

[FR Doc. 98–7115 Filed 3–18–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on April 9, 1998, 8:30 a.m. to 5:30 p.m., and April 10, 1998, 8:30 a.m. to 4 p.m.

Location: National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Parking in the Clinical Center is reserved for Clinical Center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Contact Person: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), 419–259–6211, or Danyiel D'Antonio (HFD–21), 301–443–5455, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 9, 1998, the committee will discuss nitric oxide. On April 10, 1998, the committee will discuss new drug applications 20–912 and 20–913, Aggrastat® (tirofiban HCl), Merck Research Laboratories, to be indicated: (1) In combination with heparin for patients with unstable angina or non-Q-wave myocardial infarction to prevent cardiac ischemic events, and (2) patients with coronary ischemic syndromes undergoing percutaneous translumenal coronary angioplasty or atherectomy to prevent cardiac ischemic complications related to abrupt closure of the treated coronary artery.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 2, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on April 9, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 2, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 11, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–7054 Filed 3–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on April 9, 1998, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I, II, and III, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Ermona McGoodwin or Danyiel D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Committee will discuss further considerations on the efficacy of new drug application 20–654 Myotrophin® (human mecasermin (recombinant deoxyribonucleic acid origin)) Injection, (Cephalon-Chiron Partners) for the treatment of amyotrophic lateral sclerosis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 3, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 3, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 11, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–7053 Filed 3–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on April 20, 1998, 8 a.m. to 5 p.m.

Location: Gaithersburg Hilton, Ballrooms C, D, and E, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the safety and efficacy of new drug application (NDA) 20–929 for Pulmicort Respules™ (budesonide suspension for nebulization, Astra USA) indicated for the maintenance treatment of asthma and as prophylactic therapy in children aged 6 months to 8 years. Pulmicort Respules™ is also indicated for children aged 6 months to 8 years with asthma who require systemic corticosteroid administration where adding Pulmicort Respules™ may reduce or eliminate the need for systemic corticosteroid administration.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 14, 1998. Oral presentations from the public will be scheduled between approximately 8:05 a.m. and 9:05 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 14, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 11, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–7055 Filed 3–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Uniform Data System (OMB No. 0915–0193); Extension and Revision

This is a request for extension and revision of approval of the Uniform Data System (UDS), which contains the annual reporting requirements for the cluster of primary care grantees funded by the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA). The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Outreach and Primary Health Services for Homeless Children and Public Housing Primary Care. Authorizing Legislation is found in Public Law 104–299, Health Center Consolidation Act of 1996, enacting Section 330 of the Public Health Service Act.

The Bureau of Primary Health Care collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, BPHC requires

a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The UDS includes two components: the Universal Report, completed by all grantees, provides data on services, staffing, and financing; and the Grant Report, completed by grantees funded under the Homeless or Public Housing Program as well as one of the other programs, provides data on characteristics of users whose services fall within the scope of the Homeless or Public Housing Program grant. The first UDS reports were collected March 31, 1997, and analysis of data indicates that several revisions should be made. Program officials have noted that additional information needs to be collected which was included in previous reporting systems but was deleted from the UDS. Grantees will be asked to provide information on the charges, collections, bad debt write off and contractual disallowances by payor sources (Medicaid, Medicare, self pay and private insurance). Additional revisions include adding categories to some of the lists (e.g., services, ICD codes, CPT codes) and annotating the forms to indicate which lines are subtotals and the lines to which they sum.

The proposed changes are not expected to add significantly to the reporting burden. Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Hours per response	Total burden hours
Universal Report	685	24	16,440
Grant Report	94	16	1,504
Total	685		17,944

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 13, 1998.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–7051 Filed 3–18–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1998.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: April 26, 1998, 8:00 a.m.–5:00 p.m.; April 27, 1998, 8:00 a.m.–11:00 a.m.

Place: Renaissance Washington DC Hotel, 999 Ninth Street, N.W., Washington, D.C. 20001; Telephone: (202) 898–9000.

The meeting is open to the public.

Agenda: The agenda item will be developing an outline for a paper pertaining to the NHSC of the 21st century.

Anyone requiring information regarding the subject Council should contact Ms. Eve Morrow, National Advisory council on the National Health Service Corps, Health Resources and Services Administration, 4350 East West Highway, 8th Floor, Bethesda, Maryland 20814, Telephone (301) 594–4144.

Agenda items are subject to change as priorities dictate.

Dated: March 13, 1998.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–7052 Filed 3–18–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting that is being held to review grant applications:

HEALTH PROMOTION AND DISEASE PREVENTION INITIAL REVIEW GROUP

Study section/contact person	April 1998 meeting	Time	Location
Epidemiology & Disease Control –2, Dr. H. Mac Stiles, 301–435–1785.	April 22–24 ..	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7158 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Cohort and Nested Case-Control Study of AIDS-Related Non-Hodgkin's Lymphoma, Kaposi's Sarcoma, and Other Maliganances.

Date: April 3, 1998.

Time: 9:00 a.m. to Adjournment.

Place: Executive Plaza North, Conference Room D, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Lalita Palekar, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, EPN, Room 622B, Bethesda, MD 20892–7405, Telephone: 301/496–7575.

Purpose/Agenda: To review, discuss and evaluate responses to Request for Proposal.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: March 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7174 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institutes; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee C—Basic and Preclinical Sciences.

Date: April 6–7, 1998.

Time: April 6–7:30 p.m. to Recess; April 7–8:00 a.m. to Adjournment.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Virginia P. Wray, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, North, Room 635D, Bethesda, Md 20892–7405, Telephone: 301/496–9236.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: March 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7175 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the National Cancer Institute Special Emphasis Panel, March 23–24, 1998, Double Tree Hotel, Rockville, Maryland, which was published in the **Federal Register** on February 9, 1998 (63 FR 6574).

The meeting was cancelled due to a scheduling conflict.

Dated: March 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7177 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Trauma and Burn (Teleconference).

Date: March 25, 1998.

Time: 10:00 a.m.—adjournment.

Place: NIH, NIGMS, Natcher Building, Room 1AS–13, Bethesda, Maryland.

Contact person: Dr. Bruce Wetzel, Scientific Review Administrator, NIGMS, Natcher Building—Room 1AS–13, Bethesda, Maryland 20892, Telephone: 301–594–3907.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.821], Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)]. National Institutes of Health)

Dated: March 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7159 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Mental Health; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel.

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Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 30, 1998.

Time: 11 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 446–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 31, 1998.

Time: 8:30 a.m.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Gloria B. Levin, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 2, 1998.

Time: 11 a.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, and 93.282)

Dated: March 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7160 Filed 3–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Trauma and Burn.

Date: March 30–31, 1998.

Time: March 30—8:30 a.m.–5:00 p.m.; March 31—8:30 a.m.–adjournment.

Place: University of Michigan, Ann Arbor, Michigan.

Contact Person: Dr. Bruce Wetzel, Scientific Review Administrator, NIGMS, Natcher Building—Room 1AS–13, Bethesda, Maryland 20892, Telephone: 301–594–3907.

Name of SEP: Pharmacological Sciences

Date: April 7–8, 1998.

Time: April 7—8:30 a.m.–5:00 p.m.; April 8—8:30 a.m.–adjournment.

Place: University of Washington, Seattle, Washington.

Contact Person: Dr. Bruce Wetzel, Scientific Review Administrator, NIGMS, Natcher Building—Room 1AS–13, Bethesda, Maryland 20892, Telephone: 301–594–3907.

Purpose/Agenda: To evaluate and review grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: March 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7161 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: March 31, 1998.

Time: 2:30 p.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

Contact Person: Dr. Katherine Woodbury-Harris, Mr. Phillip Wiethorn, Scientific Review Administrators, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate Phase I SBIR Contract Proposal(s). This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93–853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: March 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7176 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Mental Health; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 26, 1998.

Time: 1 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 1, 1998.

Time: 3:15 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7178 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 7, 1998.

Time: 12 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklaws, Room 9C–18, 5600 Fishes Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 10, 1998.

Time: 1 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contract Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7179 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences (NIEHS), May 3–5, 1998. The meeting will begin at 8:00 p.m. on May 3, at the Siena Hotel, 1505 E. Franklin Street, Chapel Hill, North Carolina. It will resume on May 4 at South Campus, Conference Rooms 101 ABC, NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, North Carolina.

This meeting will be open to the public from 8:30 a.m. to approximately 3:30 p.m. on May 4 for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Environmental Carcinogenesis and Mutagenesis. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of the Title 5, U.S. Code and sec. 10(d) of Pub. L. 92–463, the prereview meeting will be closed to the public on May 3 from approximately 8:00 p.m. to recess, as will the post review discussions on May 4 from 3:30 p.m. to adjournment and May 5 from 8:30 a.m. to adjournment, for the evaluation of the programs of the laboratory listed above, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Carl Barrett, Scientific Director, Division of Intramural Research, NIEHS, Research Triangle Park, N.C. 27709, telephone (919) 541–3205, will furnish rosters of committee members and program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dated: March 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7180 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–6 M2 M.

Date: April 24, 1998.

Time: 4:00 pm.

Place: Room 6AS–37A, Natcher Building, NIH (Telephone Conference Call).

Contact: Neal Musto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7798.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7181 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R03 (98–34).
Dates: April 1, 1998.
Time: 10:00 a.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute of Dental Research Emphasis Panel-Review of P01 (98–18).
Dates: April 16–17, 1998.
Time: 8:30 a.m.
Place: Marriott Suites Bethesda, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R01 (98–38).
Dates: April 21, 1998.
Time: 1:00 p.m.
Place: Natcher Building, Rm 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R13 (98–40)
Dates: April 23, 1998.
Time: 4:00 p.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).
Contact Person: Dr. George Hausch, Chief, Extramural Review Division, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R13 (98–23).
Dates: April 27–28, 1998.
Time: 8:30 a.m.
Place: The Bethesda Ramada, 8300 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dr. George Hausch, Chief, Extramural Review Division, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R03 & R13 (98–35).
Dates: May 7, 1998.
Time: 1:00 p.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: March 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7182 Filed 3–18–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments; Agents, Substances, Mixtures and Exposure Circumstances Proposed for Listing in or Removing From the Report on Carcinogens, Ninth Edition

Background

The National Toxicology Program (NTP) solicits final public comments on its intent to recommend additional agents, substances, mixtures and exposure circumstances for listing in or delisting from the Report on Carcinogens, Ninth Edition. This Report is a Congressionally-mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (HHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (HHS), shall publish a report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the report should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

In 1997, 14 substances or exposure circumstances were reviewed for listing in or removal from the Ninth Report. This review included two Federal and one non-government, scientific peer reviews and public comment and review. All available data relevant to the criteria for inclusion or removal of candidate substances or exposure circumstances in the Report were evaluated by the three scientific review committees. The criteria used in the review process and the detailed description of the review procedures, including the steps in the current formal review process, can be obtained by contacting: Dr. C.W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–2242, email:jameson@niehs.nih.gov.

Public Comment Requested

The NTP will be making a final recommendation for the 14 substances or exposure circumstances reviewed in 1997, for either listing in, delisting from, or changing the current listing from reasonably anticipated to be a human carcinogen to the known to be a human carcinogen category in the Ninth Report. These nominated substances or exposure circumstances are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and the recommendations from the three scientific peer reviews of the nominations.

Background documents provided to the review committees and the interested public and summary minutes of the public peer review by the NTP Board Subcommittee are available upon request. The NTP will review the recommendations of each of the review committees and consider the public comments received throughout the process in making decisions regarding the NTP recommendations to the Secretary, DHHS, for listing or removal of the nominated substances and exposure circumstances in the Ninth Edition of the Report on Carcinogens. The NTP solicits final public comment to supplement any previously submitted

comments or to provide comments for the first time on any substance or exposure circumstances in the following table. Because of the different recommendations forwarded by the three scientific review groups, the NTP is especially interested in obtaining additional relevant information in support of or against the petition to delist Saccharin from the Report on Carcinogens. The critical areas identified in the earlier scientific reviews where additional input is solicited include (1) information that addresses the adequacy of existing epidemiology data, particularly as it relates to reported increased incidences of bladder tumor formation in certain small populations; (2) the levels of human exposure, especially in infants and children; (3) information addressing the mechanism of urinary bladder tumor formation in male rats as it relates to other test species (especially female rats and male and female mice) and to humans; and (4) the adequacy of data for tumor formation in laboratory animals at target sites other than the urinary bladder. Comments will be accepted for a period of 60 days from the date of the publication of this announcement in the **Federal Register**. Comments or questions should be directed to Dr. C.W. Jameson at the address listed above.

Attachment.

Dated: March 12, 1998.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY OF RG1 [1], RG2 [2] AND NTP BOARD SUBCOMMITTEE [3] RECOMMENDATIONS FOR THE AGENTS, SUBSTANCES, MIXTURES OF EXPOSURE CIRCUMSTANCES REVIEWED IN 1997 FOR LISTING IN OR DELISTING FROM THE REPORT ON CARCINOGENS, 9TH EDITION

Substance or exposure circumstance/CAS No.	Primary uses or exposures	RG1 action	RG2 action	NTP Board Subcommittee action
DYES METABOLIZED TO BENZIDINE (BENZIDINE DYES AS A CLASS).	Benzidine-based dyes are used primarily for dyeing textiles, paper and leather products. More than 250 benzidine-based dyes have been reported by the Society of Dyers and Colorists.	RG1 voted 7/1 to list as known to be human carcinogen.	RG2 voted unanimously to list as a known to be human carcinogen.	The Subcommittee recommended unanimously listing as known to be human carcinogen.
1,3-BUTADIENE/106–99–0	Used primarily as a chemical intermediate and polymer component in the manufacture of synthetic rubber.	RG1 voted 9/0 with 1 abstention to upgrade the current listing to known to be human carcinogen.	RG2 voted unanimously to upgrade the current listing to known to be human carcinogen.	The Subcommittee recommended (4 yes votes to 2 no votes with 1 abstention) upgrading the current listing to known to be human carcinogen.
CADMIUM and CADMIUM COMPOUNDS/7740–43–9.	Used in batteries, coating and plating, plastic and synthetic products and in alloys.	RG1 voted 7/1 to upgrade the current listing to known to be human carcinogen.	RG2 voted unanimously to upgrade the current listing to known to be human carcinogen.	The Subcommittee recommended unanimously upgrading the current listing to known to be a human carcinogen.
CHLOROPRENE/126–99–8	Used as monomer for neoprene elastomers, industrial rubber products, and as a component of adhesives in food packaging.	RG1 voted 7/0 with 2 abstentions to list as a reasonably anticipated human carcinogen.	RG2 voted unanimously to list as a reasonably anticipated human carcinogen.	The Subcommittee recommended unanimously listing as reasonably anticipated to be a human carcinogen.
PHENOLPHTHALEIN/77–09–8.	Used as a laboratory reagent and acid-base indicator and as a cathartic drug in over-the-counter laxative preparations.	RG1 voted 9/1 to list as reasonably anticipated to be a human carcinogen.	RG2 voted 7/0 with 1 abstention to list as a reasonably anticipated to be a human carcinogen.	The Subcommittee recommended unanimously listing as reasonably anticipated to be a human carcinogen.
SACCHARIN/218–44–9	Used primarily as a nonnutritive sweetening agent.	RG1 voted 7/3 to delist from the Report on Carcinogens.	RG2 voted 6/2 to delist from the Report on Carcinogens.	The Subcommittee recommended (4 yes votes to 3 no votes) not to delist from the Report, and leave saccharin listed as reasonably anticipated to be a human carcinogen.
SMOKELESS TOBACCO ..	Oral use of smokeless tobacco products.	RG1 voted unanimously to list as a known to be human carcinogen.	RG2 voted unanimously to list as a known to be human carcinogen.	The Subcommittee recommended unanimously listing as a known to be human carcinogen.

SUMMARY OF RG1[1], RG2[2] AND NTP BOARD SUBCOMMITTEE[3] RECOMMENDATIONS FOR THE AGENTS, SUBSTANCES, MIXTURES OF EXPOSURE CIRCUMSTANCES REVIEWED IN 1997 FOR LISTING IN OR DELISTING FROM THE REPORT ON CARCINOGENS, 9TH EDITION—Continued

Substance or exposure circumstance/CAS No.	Primary uses or exposures	RG1 action	RG2 action	NTP Board Subcommittee action
STRONG INORGANIC ACID MISTS CONTAINING SULFURIC ACID.	Sulfuric acid is the one of the most widely used of all industrial chemicals. Used in the manufacture of fertilizers, rayon and other fibers, pigments and colors, explosives, plastics, coal-tar products such as dyes and drugs, storage batteries, synthetic detergents, natural and synthetic rubber, pulp and paper.	RG1 voted unanimously to list as known to be a human carcinogen.	RG2 voted 7/1 to list as known to be a human carcinogen.	The Subcommittee recommended unanimously listing as known to be a human carcinogen.
TAMOXIFEN/10540–29–1	Used as an anti-estrogen drug and in the palliative treatment of breast cancer.	RG1 voted unanimously to list as known to be human carcinogen with the added statement that there is also conclusive evidence that tamoxifen therapy reduces the risk of contralateral breast cancer in women with a previous diagnosis of breast cancer.	RG2 voted 7/0 with 1 abstention to list as known to be a human carcinogen with the added statement that there is also conclusive evidence that tamoxifen therapy reduces the risk of contralateral breast cancer in women with a previous diagnosis of breast cancer.	The Subcommittee recommended unanimously listing as known to be a human carcinogen, with the statement that there is also conclusive evidence that tamoxifen therapy reduces the risk of contralateral breast cancer in women with a previous diagnosis of breast cancer.
2,3,7,8-TETRACHLORODIBENZO-P-DIOXIN (TCDD)/1746–01–6.	Not used commercially, used only as a research chemical.	RG1 voted unanimously to upgrade the current listing to known to be human carcinogen.	RG2 voted unanimously to upgrade the current listing to known to be human carcinogen.	The Subcommittee recommended (4 yes votes to 3 no votes with 1 abstention) upgrading the current listing to known to be human carcinogen.
TETRAFLUOROETHYLENE/116–14–3.	Used in the production of polytetrafluoroethylene (Teflon) and other polymers. Has also been used as a propellant for food product aerosols.	RG1 voted unanimously to list as reasonably anticipated to be a human carcinogen.	RG2 voted unanimously to list as reasonably anticipated to be a human carcinogen.	The Subcommittee recommended unanimously listing as reasonably anticipated to be a human carcinogen.
TOBACCO SMOKING	Inhalation of tobacco smoke.	RG1 voted unanimously to list as known to be a human carcinogen.	RG2 voted unanimously to list as known to be a human carcinogen.	The Subcommittee recommended unanimously listing as known to be a human carcinogen.
TRICHLOETHYLENE/79–01–6.	Used as an industrial solvent for vapor degreasing and cold cleaning of fabricated metal parts. Has also been used as a carrier solvent for the active ingredients of insecticides and fungicides, as an anesthetic for medical and dental use, and for caffeine from coffee.	RG1 voted 6/2 to list as reasonably anticipated to be a human carcinogen.	RG2 voted 7/1 to list as reasonably anticipated to be a human carcinogen.	The Subcommittee recommended unanimously listing as reasonably anticipated to be a human carcinogen.
UV RADIATION	Solar and artificial sources of ultraviolet radiation.	RG1 voted unanimously to list Solar Radiation and use of Sunlamps and Sunbeds as known to be a human carcinogen.	RG2 voted 7/1 in favor of motion to defer action on UV Radiation until the Background Document could be revised to address the full spectrum of UV Radiation, including UVA, UVB, and UVC.	The Subcommittee recommended unanimously listing Solar Radiation and use of Sunlamps and Sunbeds as know to be a human carcinogen.

[1] The NIEHS Review Committee for the Report on Carcinogens (RG1).
[2] The NTP Interagency Executive Committee Working Group for the Report on Carcinogens (RG2).
[3] The NTP Board of Scientific Counselors Report on Carcinogens Subcommittee.

[FR Doc. 98–7183 Filed 3–18–98; 8:45 am]
BILLING CODE 4145–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Revised Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The collection of information listed below will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. Copies of the proposed information collection requirement, related forms, and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address listed below.

DATES: Comments must be submitted on or before May 18, 1998.

ADDRESSES: Comments and suggestions on the requirement should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer, Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 224—ARLSQ, 1849 C Street NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, (703) 358–1943; (703) 358–2269 (fax).

SUPPLEMENTARY INFORMATION: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Title: Migratory Bird Harvest Surveys.

Approval Number: 1018–0015.

Service Form Number(s): 3–1823A, 3–2056G, 3–165, 3–165A-C, 3–2056J-M.

Description and Use: The Migratory Bird Treaty Act (16 USC 703–711) and Fish and Wildlife Act of 1956 (16 USC 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird harvest of a geographic and temporal nature. Knowledge attained by determining harvests and harvest rates of migratory game birds is used to regulate populations (by promulgating hunting regulations) and to encourage hunting opportunity, especially where crop depredations are chronic and/or lightly harvested populations occur. Based on information from harvest surveys, hunting regulations can be adjusted as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

This information collection approval request combines three sets of surveys (the Waterfowl Hunter Survey, the Migratory Bird Hunter Survey, OMB Approval 1018–0015, and the Parts Collection Survey, OMB Approval 1018–0009) and associated forms because they are interrelated and/or dependent upon each other.

The Waterfowl Hunter Survey, which estimates the harvest of ducks and geese, is based on Federal Duck Stamp sales. This survey asks people who purchase Federal Duck Stamps from randomly sampled Post Offices and other stamp venders to complete and return a postcard (form 3–1823A) with their name and address. Hunters who complete and return the postcard are sent a postcard questionnaire (form 3–2056G) at the end of the hunting season, asking them to report their harvest of ducks and geese. Their responses provide estimates of the average harvest per hunter, which, combined with total Federal Duck Stamp sales, enables the Service to estimate the total harvest of ducks and geese.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program, under which each State annually provides a list of all licensed migratory bird hunters in the State. Randomly selected migratory bird hunters are sent either a waterfowl questionnaire (form 3–2056J), a dove and band-tailed pigeon questionnaire (form 3–2056K), a woodcock questionnaire (form 3–2056L), or a snipe, rail, gallinule, and coot questionnaire (form 3–2056M) and are asked to report their harvest of those species. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest of those species. This survey will replace the Waterfowl Hunter Survey after it has been fully implemented in all States and comparisons of results with Waterfowl Hunter Survey results have been completed.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Waterfowl Hunter Survey or the Migratory Bird Hunter Survey the previous year are asked to complete and return a postcard (forms 3–165A and C) if they are willing to participate in the Parts Collection Survey. Respondents are provided postage-paid envelopes before the hunting season and asked to send in a wing or the tail feathers from each duck, goose, or coot (form 3–165) they harvest, or a wing from each woodcock, band-tailed pigeon, snipe, rail, or gallinule (form 3–165B) they harvest. The wings and tail feathers are used to identify the species, age, and sex of the harvested sample. Respondents are also asked to report on the envelope the date and location (state and county) of harvest for each bird. Results of this survey are combined with harvest estimates from the Waterfowl Hunter Survey and the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable the Service to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help determine appropriate hunting regulations.

Frequency of Collection: Annually.

Description of Respondents: Individuals and households.

Estimated Completion Time: The reporting burden is estimated to average 2 minutes per respondent for the Migratory Bird Harvest Information Program, 8 minutes per respondent for the Waterfowl Hunter Survey, 4 minutes per respondent for the Migratory Bird Hunter Survey, and 50 minutes per respondent for the Parts Collection Survey.

Number of Respondents: About 3,300,000 individuals are expected to participate in the Migratory Bird Harvest Information Program. Recent Service experience indicates that about 34,000 hunters will respond to the Waterfowl Hunter Survey each year, and about 12,000 hunters will respond to the Parts Collection Survey annually. The Service anticipates that about 105,000 hunters will respond to the Migratory

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Bird Hunter Survey annually when that survey is conducted nationwide, beginning in 1998.

Annual Burden Hours: 131,992.

Dated: March 13, 1998.

Carolyn A. Bohan,

Acting Assistant Director for Refuges and Wildlife.

[FR Doc. 98–7078 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–55–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent to Prepare Comprehensive Conservation Plans and Associated Environmental Documents for the Ohio River Islands National Wildlife Refuge and the Rhode Island National Wildlife Refuge Complex

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare two Comprehensive Conservation Plans (CCP) and environmental documents pursuant to the National Environmental Policy Act and its implementing regulations. One CCP will be prepared for Ohio River Islands National Wildlife Refuge, in Ohio, West Virginia, Kentucky and Pennsylvania. The second CCP will be prepared for Rhode Island National Wildlife Refuge Complex, including Ninigret, Block Island, Pettaquamscut Cove, Sachuest Point, and Trustom Pond National Wildlife Refuges in Rhode Island and Massachusetts. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd et seq.):

(1) To advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Inquire at the addresses below for dates of planning activity and due dates for comments regarding specific projects.

ADDRESSES: Address comments, questions and requests for more information to the following:

Refuge Manager, Ohio River Islands National Wildlife Refuge, P.O. Box 1811, Parkersburg, WV 26101–1811, (304) 422–0752.

Refuge Manager, Rhode Island National Wildlife Refuge Complex, P.O. Box 307, Charlestown, RI 02813–0307, (401) 364–9124).

SUPPLEMENTARY INFORMATION: By federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service will solicit public input via open houses, public input via open houses, public meetings, workshops, and written comments. Special mailings, newspaper articles, and announcements will inform people of the time and place of such opportunities for public input to the CCP.

The Ohio River Islands National Wildlife Refuge is scattered along approximately 400 river-miles from western Pennsylvania, on the borders of northwestern West Virginia and northern Kentucky, and southeastern and southern Ohio. Established in 1990, the Refuge currently consists of 19 islands. Comments and ideas for the protection of threatened and endangered species and migratory birds and the protection and management of their habitats will be solicited as part of the planning process. Comments on the protection of shallow water embayments and wetlands along the river will also be solicited.

The Rhode Island National Wildlife Refuge Complex currently consists of 1534 acres of coastal habitats—barrier beach, salt marsh, freshwater wetlands, grasslands, and shrublands. The complex is comprised of five National Wildlife Refuges: Ninigret (408 acres), Block Island (68 acres), Pettaquamscut Cove (174 acres), Sachuest Point (242 acres), and Trustom Pond (642 acres). Comments and ideas for the protection of threatened and endangered species and migratory birds and the protection and management of their habitats will be solicited as part of the planning process.

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Dated: March 9, 1998.

Ronald E. Lambertson,

Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 98–7125 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–840255

Applicant: The Zoological Society of Philadelphia, Philadelphia, PA.

The applicant requests a permit to import a male Greater Indian One-horned Rhinoceros (*Rhinoceros unicornis*) from the Metropolitan Toronto Zoo, Scarborough, Ontario, Canada, for the purpose of enhancement of the species through breeding.

PRT–839380

Applicant: Dr. John Faaborg, University of Missouri, Columbia, MO.

The applicant requests a permit to import blood samples from Galapagos hawks (*Buteo galapagoensis*) collected in the wild in Ecuador, incidental to other research activities, for scientific research.

PRT–840226

Applicant: William Wrightson, Boston, MA.

The applicant requests a permit to purchase feathers of Swinhoe's pheasants (*Lophura swinhoei*) and of the genus Polyplectreon in interstate commerce for the purpose of enhancement of the survival of the species.

PRT–840483

Applicant: Keith Masserant, Newport, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–840484

Applicant: Linda Masserant, Newport, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd

maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–840485

Applicant: Lawrence I. Masserant, Newport, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–837414

Applicant: Alaska Sealife Center, Seward, AK.

Permit Type: Take for enhancement/scientific research.

Name and Number of Animals: northern sea otter (*Enhydra lutris lutris*) and walrus (*Odobenus rosmarus*), unlimited.

Summary of Activity to Be Authorized: The applicant requests authorization for species enhancement and scientific research for the following activities: recovery and rehabilitation of sick and stranded sea otters and walrus, and investigations of new rehabilitation protocols for sea otters to increase the chances of succesful reintroduction. The applicant has proposed to include an education component to the rehabilitation program to help educate the public of species biology and conservation.

Source of Marine Mammals: Range of species in Alaska.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–839985

Applicant: Thomas A. Rue, Ovando, MT.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Baffin Bay polar bear population, Northwest Territories, Canada for personal use.

PRT–840250

Applicant: Fred D. Rich, Portland, TX.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–840283

Applicant: Ralph W. Brockman, Monroe, LA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–840287

Applicant: Robert L. Zachrich, Holgate, OH.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–840286

Applicant: John Victor Lattimore III, Denison, TX.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 13, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–7079 Filed 3–18–98; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On December 19, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 244, Page 66660, that an application had been filed with the Fish and Wildlife Service by Eugene Giscombe for a permit (PRT–837603) to import a sport-hunted polar bear trophy, taken from the McClintock Channel population, Northwest Territories, Canada for personal use.

Notice is hereby given that on February 10, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On January 6, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 3, Page 571, that an application had been filed with the Fish and Wildlife Service by Stephen C. Slack for a permit (PRT–837990) to import a sport-hunted polar bear trophy, taken prior to April 30, 1994, from the Davis Strait population, Northwest Territories, Canada for personal use.

Notice is hereby given that on March 3, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: March 13, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–7080 Filed 3–18–98; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Application for a Natural Gas Pipeline Right-of-Way

SUMMARY: Notice is hereby given that under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449: 30 U.S.C. 185), as amended by Public Law 93–153,

Southern Natural Gas Company has applied for a right-of-way to install and maintain a 16-inch outer-diameter natural gas pipeline across 2.82 miles of Wheeler National Wildlife Refuge, in Morgan and Limestone Counties, Alabama, described as follows:

A right-of-way with a beginning width of fifty (50) feet, on, over, across, and through that part of the Wheeler National Wildlife Refuge (NWR) lying and being in Sections 25 and 36, Township 5 South, Range 4 West of Morgan County, Sections 13, 24, and 25, Township 5 South, Range 4 West and Section 18, Township 5 South, Range 3 West of Limestone County, Alabama. The boundaries of said right-of-way are more particularly described as being situated twenty five (25) feet either side and measured at right angles to the following described pipeline survey centerline. The boundaries of said right-of-way increase to approximately one hundred (100) feet in width for a length of approximately 882 feet in Section 24, Township 5 South, Range 4 West of Limestone County, as more particularly described below. The said right-of-way parallels and abuts an existing Department of Transportation easement for Interstate 65 in the same sections described above and becomes a part of the same corridor.

Commencing at a ½" rebar at or near the interior Southeast corner of the Wheeler NWR; thence S88°27'57" W along the interior South line of said tract or parcel of land a distance of 25.7 feet to the Point of Beginning, at which point the fifty (50) feet wide right-of-way is situated twenty five (25) feet either side and measured at right angles of a surveyed line; thence run N14°32'11" E a distance of 154.4 feet to a point; thence run N15°55'16" E a distance of 158.8 feet to a point; thence run N17°08'36" E a distance of 3,994.3 feet to a point; thence run N77°8'40" E a distance of 404.8 feet to a point; thence run N17°22'59" E a distance of 2,249.5 feet to a point; from said point (Sta. 560+94) the right-of-way starts a transition from fifty (50) feet to one hundred (100) feet in width; thence run N21°57'19" E a distance of 892.9 feet to a point;

At said point (Sta. 569+87) the one hundred (100) feet wide right-of-way is situated twenty five (25) feet East and seventy five feet (75) feet West of a surveyed line; thence run N17°15'43" E a distance of 881.7 feet to a point; from said point (Sta. 578+68) the right-of-way starts a transition from one hundred (100) feet to fifty (50) feet in width; thence run N12°18'06" E a distance of 864.6 feet to a point; at said point (Sta. 587+33) the right-of-way is twenty five (25) feet either side and measured at right angles of a surveyed line; thence run N17°30'24" E a distance of 1,274.7 feet to a point; thence run N10°31'35" E a distance of 142 feet to a point; thence run N14°54'58" E a distance of 225 feet to a point; thence run N13°45'48" E a distance 224.4 feet to a point; thence run N11°40'40" E a distance of 357.7 feet to a point; thence run N10°10'43" E a distance of 495 feet to a point; thence run N07°33'10" E a distance of 302.6 feet to a point; thence run N06°15'25" E a distance of 395.2 feet to a point; thence run N04°11'32" E a distance of 366.2 feet to a point; thence run N02°48'17" E a distance of 423.5 feet to a point; thence run N00°24'45" W a distance of 544.9 feet to a point, thence run N19°45'17" E a distance of 136.6 feet to a point; thence run N07°44'51" E a distance of 13.7 feet to the Point of Ending, which is a point on 136.6 feet to a point, thence run N07°44'51" E a distance of 13.7 feet to the Point of Ending, which is a point on the North line of said Wheeler NWR, said point is also located a distance of 1,448.6 feet from a "T" post (T.V.A. corner No. 99) at or near the Northeast corner of the Wheeler NWR.

Said right-of-way contains 18.666 acres, more or less.

Also for the purpose and duration of the initial construction and installation of the proposed pipeline, a temporary right-of-way and work space twenty (20) feet in width along and adjacent to the west right-of-way from Sta. 1000+35 to Sta. 1000+85. Also a twenty (20) feet in width temporary right-of-way and work space along and adjacent to the east right-of-way from Sta. 1000+85 to Sta. 636+46;

Also an additional temporary right-of-way and work space twenty (20) feet in width along and adjacent to the east temporary work space limits at the following locations: Sta. 566+65 to Sta. 573+50, Sta. 582+32 to Sta. 588+26, Sta. 605+01 to Sta. 617+45, Sta. 620+53 to Sta. 621+74, Sta 623+48 to Sta. 625+14, and Sta. 627+15 to Sta. 634+91;

Also a temporary work space (drill site) being one hundred fifty (150) feet in width and two hundred and fifty (250) feet in length;

Also twelve (12) twenty five (25) feet wide by one hundred (100) feet long temporary rights-of-way and work spaces located at water crossings.

The above-described temporary rights-of-way and work spaces contain, in the aggregate 7.448 acres, more or less.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service is currently considering the merits of approving this application.

DATES: Interested persons desiring to comment on this application should do so on or before April 20, 1998.

ADDRESSES: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 420, Atlanta, Georgia 30345.

Sam D. Hamilton,

Regional Director.

[FR Doc. 98–7095 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with the University of Florida—Gainesville to jointly perform Large Scale and Live Bed Pier Scour research at the Conte Anadromous Fish Research Center.

ADDRESSES: If any other parties are interested in similar activities with the USGS, please contact: Dr. Mufeed Odeh, 413–863–8994, Ext. 43.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: March 11, 1998.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 98–7124 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–952–08–1420–00]

Arizona State Office; Filing of Plats of Survey

March 9, 1998.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines and portions of certain mineral surveys; and the

subdivision of Sections 21 and 22, Township 4 North, Range 3 East, Gila and Salt River Meridian, Arizona, was accepted June 12, 1997, and was officially filed June 19, 1997.

This plat was prepared at the request of the Bureau of Land Management, Phoenix District Office.

A plat representing the dependent resurvey of a portion of the Fort McDowell Indian Reservation and a portion of the subdivisional lines; and the metes-and-bounds survey in Sections 27 and 28, Township 3 North, Range 7 East, Gila and Salt River Meridian, Arizona, was accepted June 24, 1997, and was officially filed July 3, 1997.

This plat was prepared at the request of the Tonto National Forest.

A plat, in two sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and portions of Mineral Survey Nos. 1134 and 3886; and the subdivision of Section 1, and a metes-and-bounds survey, Township 1 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted December 16, 1997, and was officially filed December 31, 1997.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A plat, in six sheets, representing the dependent resurvey of the Fifth Standard Parallel North (south boundary), the north boundary, and a portion of the subdivisional lines; and the subdivision of Sections 26, 27, and 34, and metes-and-bounds surveys, Township 21 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted July 22, 1997, and was officially filed July 31, 1997.

This plat was prepared at the request of the Navajo-Hopi Relocation Commission.

A plat representing the dependent resurvey of a portion of the Seventh Auxiliary Guide Meridian East (west boundary), and a portion of the subdivisional lines; and the subdivision of Section 18, Township 22 North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted March 31, 1997, and was officially filed April 10, 1997.

This plat was prepared at the request of the Navajo-Hopi Relocation Commission.

A plat representing the corrective dependent resurvey of a portion of the subdivisional lines, Township 12 North, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted June 30, 1997, and was officially filed July 10, 1997.

This plat was prepared at the request of the Kenneth Shaw, Registered Land Surveyor.

A plat representing the dependent resurvey of a portion of the subdivision of Section 14, and the metes-and-bounds surveys in Section 14, Township 26 North, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted July 30, 1997, and was officially filed August 7, 1997.

This plat was prepared at the request of the Navajo Area Office, Bureau of Indian Affairs.

A plat representing the dependent resurvey of a portion of the south boundary, Township 26 North, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted August 22, 1997, and was officially filed September 5, 1997.

This plat was prepared at the request of the Navajo Area Office, Bureau of Indian Affairs.

A plat representing the dependent resurvey of a portion of the subdivisional lines, Township 26 North, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted August 22, 1997, and was officially filed September 5, 1997.

This plat was prepared at the request of the Navajo Area Office, Bureau of Indian Affairs.

A plat representing the dependent resurvey of a portion of the First Guide Meridian East (west boundary); and the survey of the south boundary, a portion of the east boundary, and a portion of the subdivisional lines, Township 18 South, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted May 12, 1997, and was officially filed May 22, 1997.

This plat was prepared, at the request of the Phoenix Area Office, Bureau of Indian Affairs.

A plat representing the dependent resurvey of a portion of the First Guide Meridian East (west boundary); and the survey of a portion of the east boundary, and a portion of the subdivisional lines, Township 19 South, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted May 12, 1997, and was officially filed May 22, 1997.

This plat was prepared, at the request of the Phoenix Area Office, Bureau of Indian Affairs.

A plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines; and the subdivision of Sections 12 and 13, and an informative traverse in Sections 12 and 13, Township 9 South, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted June 24, 1997, and was officially filed July 3, 1997.

This plat was prepared, at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing amended lottings of fractional areas created by the segregation of patented mineral surveys and the cancellation of Mineral Survey Numbers 2718, 3367, 4644, and a portion of Mineral Survey 2605 in the west half of Section 11, Township 3 South, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted June 10, 1997, and was officially filed June 19, 1997.

This plat was prepared at the request of ASARCO, Incorporated.

A supplemental plat showing amended lottings of fractional areas created by the segregation of patented mineral surveys and the cancellation of Mineral Survey Numbers 3381 and 4640, in the Section 13, Township 3 South, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted June 10, 1997, and was officially filed June 19, 1997.

This plat was prepared at the request of ASARCO, Incorporated.

A plat representing the dependent resurvey and corrective dependent resurvey of portions of the subdivisional lines; and the subdivision of Section 28, and a metes-and-bounds survey, Township 18 South, Range 21 East, Gila and Salt River Meridian, Arizona, was accepted January 29, 1998, and was officially filed February 12, 1998.

This plat was prepared at the request of the Bureau of Land Management, Safford Field Office.

A plat representing the dependent resurvey of a portion of the San Rafael Del Valle Land Grant and a portion of the subdivisional lines; and the subdivision of certain sections, Township 21 South, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted February 24, 1998, and was officially filed March 6, 1998.

This plat was prepared, at the request of the Bureau of Land Management, Safford Field Office.

A plat, in sixteen sheets, representing the survey of the legal descriptive boundary of the North Maricopa Mountains Wilderness Area in Townships 3 and 4 South, Ranges 2, 3 and 4 West, and Townships 5 South, Ranges 2 and 3 West, Gila and Salt River Meridian, Arizona, was accepted April 8, 1997, and was officially filed April 24, 1997.

This plat was prepared at the request of the Bureau of Land Management, Resources Division.

A plat representing the dependent resurvey of a portion of the subdivisional lines; and the subdivision of Sections 14 and 15, and metes-and-

bounds surveys in Sections 14 and 15, Township 6 North, Range 4 West, Gila and Salt River Meridian, Arizona, was accepted February 4, 1998, and was officially filed February 12, 1998.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A plat, in seven sheets, representing the survey of the legal descriptive boundary of the Cottonwood Point Wilderness Area in Townships 41 and 42 North, Ranges 5 and 6 West, Gila and Salt River Meridian, Arizona, was accepted July 1, 1997, and was officially filed July 17, 1997.

This plat was prepared at the request of the Bureau of Land Management, Resources Division.

A plat, in three sheets, representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines; and the subdivision of certain sections, the metes-and-bounds survey of the Cottonwood Point Wilderness Area Boundary, and an informative traverse, Township 41 North, Range 5 West, Gila and Salt River Meridian, Arizona, was accepted April 29, 1997, and was officially filed May 9, 1997.

This plat was prepared at the request of the Bureau of Land Management, Resources Division.

A plat representing the dependent resurvey of the Arizona and Utah State Boundary (north boundary) from the 64 mile corner to the 66 mile corner, a portion of the south boundary, the west boundary, and a portion of the subdivisional lines; and the metes-and-bounds survey of the Cottonwood Point Wilderness Area Boundary, fractional Township 42 North, Range 5 West, Gila and Salt River Meridian, Arizona, was accepted April 29, 1997, and was officially filed May 9, 1997.

This plat was prepared at the request of the Bureau of Land Management, Resources Division.

A plat, in seven sheets, representing the dependent resurvey of a portion of the subdivisional lines; and the subdivision of certain sections, the metes-and-bounds survey of the Cottonwood Point Wilderness Area Boundary, and informative traverses, Township 41 North, Range 6 West, Gila and Salt River Meridian, Arizona, was accepted April 29, 1997, and was officially filed May 9, 1997.

This plat was prepared at the request of the Bureau of Land Management, Resources Division.

A plat, in three sheets, representing the dependent resurvey of the Arizona and Utah State Boundary (north boundary) from the mile corner 59 to the mile corner 64, a portion of the south boundary, and a portion of the subdivisional lines; and the subdivision of Section 32, and the metes-and-bounds survey of the Cottonwood Point Wilderness Area Boundary, fractional Township 42 North, Range 6 West, Gila and Salt River Meridian, Arizona, was accepted April 29, 1997, and was officially filed May 9, 1997.

This plat was prepared at the request of the Bureau of Land Management, Resources Division.

A plat representing the corrective dependent resurvey of a portion of the subdivisional lines, Township 13 North, Range 20 West, Gila and Salt River Meridian, Arizona, was accepted October 29, 1997, and was officially filed November 6, 1997.

This plat was prepared at the request of the Arizona State Land Department.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 98–7122 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 978–4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 12 N., R. 10 E.,—Supplemental plat of the NE ¼ of section 1, accepted February 3, 1998, to meet certain administrative needs of the BLM, Folsom Field Office.

San Bernardino Meridian, California

T. 9 S., R. 22 E.,—Supplemental plat of fractional section 9, accepted February 2, 1998, to meet certain administrative needs of the BLM (Arizona), Yuma Field Office. Tps. 1 N. and 1 S., R. 15 W.,—Metes-and-bounds survey, (Group 1141) accepted February 3, 1998, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 1 S., R. 16 W.,—Dependent resurvey and subdivision of fractional section 19, (Group 1247) accepted February 4, 1998, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 1. S., R. 19 W.,—Meets-and-bounds survey, (Group 1222) accepted February 4, 1998, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreational Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: March 9, 1998.

Lance J. Bishop,

Chief, Branch of Cadastral Survey.

[FR Doc. 98–7127 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Proposed Three Dimensional Seismic Testing at Jean Lafitte National Historical Park and Preserve, Barataria Preserve Unit, Louisiana

SUMMARY: Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Burlington Resources a Plan of Operations for the Couba Island 3–D Seismic Prospect encompassing a portion of the Barataria Preserve Unit of Jean Lafitte National Historical Park and Preserve, located within Jefferson Parish, Louisiana.

The Plan of Operations and Environmental Assessment are available for public review and comment for a

period of 30 days from the publication date of this notice in the Office of the Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 2400, New Orleans, Louisiana and will be sent upon written request.

DATES: This seismic operation is anticipated to take place during the months of April, May, or June and will last approximately six weeks within the park.

FOR FURTHER INFORMATION CONTACT: Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 2400, New Orleans, Louisiana 70130, Telephone: (504) 589–3882.

SUPPLEMENTARY INFORMATION: In compliance with 36 CFR 9B "Non-federal Oil and Gas Rights," Burlington Resources Corporation is proposing to conduct a three dimensional seismic survey encompassing approximately 50 square miles in Jefferson and St. Charles Parishes, Louisiana. A portion of this proposed survey occupies an area of 5,760 acres within the Barataria Preserve Unit of Jean Lafitte National Historical Park and Preserve. A Plan of Operation and Environmental Assessment has been prepared cooperatively by Burlington Resources and the National Park Service. This documents the actions required to accomplish the three dimensional seismic survey while avoiding and minimizing adverse environmental impact to park resources.

Dated: March 10, 1998.

Daniel W. Brown,

Regional Director, Southeast Region.

[FR Doc. 98–7106 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for Saint Croix Island International Historic Site General Management Plan

AGENCY: National Park Service, Interior.

ACTION: Availability for 30 days of Final Environmental Impact Statement (FEIS) for general management plan at Saint Croix Island International Historic Site located in Calais, Washington County, Maine, U.S.A. The National Park Service will take no action concurrent with the availability of the FEIS after which time a Record of Decision will be prepared.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the Final Environmental Impact Statement for actions described in the final draft general management plan for Saint Croix Island International Historic Site. The FEIS is bound with the final draft general management plan and final draft plans for interpretation and land protection that will be implemented when a Record of Decision is finalized.

St. Croix Island is the 1604 site of the first French attempt to colonize the territory called Acadia and the location of one of the earliest European settlements in North America. Saint Croix Island International Historic Site was authorized as a national monument in 1949, dedicated in 1968, and redesignated an international historic site (IHS) in 1984. It is the only IHS in the National Park System. A memorandum of understanding between Canada and the United States recognizes the international significance of the site and commits both nations to joint planning and commemoration.

Four alternatives for the future management of Saint Croix Island IHS were presented and evaluated in the draft general management plan and Draft Environmental Impact Statement. After considering public and agency comment, the NPS modified the preferred alternative to pursue cooperative development of a regional visitor center in downtown Calais with local, state, and other federal agencies. The FEIS considers the consequences of the actions recommended by the Saint Croix Island IHS final draft general management plan on cultural resources; visitor use and experience; natural resources; the socioeconomic environment; and NPS operations and administration.

DATES: The FEIS is available for a period of 30 days, March 20, 1998, through April 20, 1998.

SUPPLEMENTARY INFORMAITON: Public reading copies of the FEIS will be available for review at the Department of Interior Natural Resources Library, 1849 C. Street, N.W., Washington, D.C. 20240, and at Acadia National Park Headquarters, Eagle Lake Road, Bar Harbor, Maine, 04609.

For further information contact the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine, 04609; voice at (207) 288–5472; fax at (207) 288–5507; e-mail to *acadplanning@nps.gov*.

Dated: March 9, 1998.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 98–7107 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Spruce Creek Access Proposal and Environmental Impact Statement, Denali National Park and Preserve, Alaska

SUMMARY: The National Park Service (NPS) is preparing an environmental impact statement (EIS) to evaluate an application for a right-of-way permit to a private inholding on Spruce Creek in the Kantishna Hills of Denali National Park and Preserve. The application for the right-of-way was submitted by the owner of the inholding pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), Title XI, Section 1110(b) and the implementing regulations at 43 CFR Part 36. The application states that the right-of-way would provide access for the inholder to construct and operate a remote backcountry lodge.

On January 7, 1998, the NPS accepted a complete application for access to a 20-acre parcel on Spruce Creek (Spruce 4) for the proposed purposes. The proposed access route would follow a nine-mile, single-track gravel road from mile 88 of the Denali Park Road to the private inholding, and would cross Moose Creek 24 times and Spruce Creek four times. The applicant also requested use of an airstrip near Glen Creek for an alternate method of transportation. ANILCA Title XI, Section 1110(b) provides that the Secretary of the Interior shall give "* * * such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner and their successors in interest." Implementing regulations (43 CFR Part 36) define *adequate and feasible access* as "* * * a route and method of access that is shown to be reasonably necessary and economically practicable but not necessarily the least costly alternative for achieving the use and development by the applicant on the applicant's non-federal land or occupancy interest."

Possible alternatives to the proposed access to be considered in the EIS include: (1) construction of a new road on the north side of Moose Creek and air access via an airstrip near Glen Creek; (2) vehicle access only over a ridge-top route (Skyline Drive) to a point east of Glacier Creek and construction of a new road down a ridge to Spruce Creek; (3) air access only, with construction of a new airstrip near Spruce Creek; and (4) no action.

Primary issues to be addressed by the EIS are visitor access; environmental

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constraints; potentially adverse impacts on natural, physical, and/or cultural resources; concerns for NPS management and operations; and interrelationships with adjacent area users. The EIS will assess the cumulative effects of a new lodge in the Kantishna Hills with 15–30 double-occupancy cabins.

The EIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 et seq.) and its implementing regulations at 40 CFR Part 1500.

Interested groups, organizations, individuals and government agencies are invited to comment on the proposal and alternatives. Three public scoping meetings are scheduled as noted below. The draft EIS will be available for public review in the fall of 1998. Public hearings on the draft EIS will be scheduled in the McKinley Park/Healy area, Fairbanks, and Anchorage, Alaska, and Washington, DC.

DATES: *Public Scoping Meetings:*

1. Tuesday, March 31, 1998, 7 p.m., Golden Lion Hotel, Anchorage, Alaska.
2. Wednesday, April 1, 1998, 7 p.m., Pioneer Room at Alaska Land, Fairbanks, Alaska.
3. Thursday, April 2, 1998, 7 p.m., Tri-Valley Community Center, Healy, Alaska.

FOR FURTHER INFORMATION CONTACT: Steven P. Martin, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755. Phone (907) 683–2294.

Paul R. Anderson,

Regional Director.

[FR Doc. 98–7108 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Preservation Technology and Training Board: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on April 20, 21 and 22, 1998, in Philadelphia, Pennsylvania.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet in the First National Bank of the United States on Monday, April 20 and in Carpenters' Hall on Tuesday, April 21 and Wednesday, April 22 in the Independence Historical Park area in Philadelphia, Pennsylvania. Matters to be discussed will include, officer and committee reports; Northwestern University report; staff program updates; the establishment of non-Federal support for the Center's programs; budget review; grant program, long-range plan and cooperating organizations.

Monday, April 20 and Tuesday, April 21 the meeting will start at 8:30 a.m. and end at 5:00 p.m. On Wednesday, April 22, the meeting will be begin at 8:30 a.m. and end at 11:30 a.m. Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Elizabeth A. Lyon, Chair, National Preservation Technology and Training Board, P.O. Box 1269, Flowery Branch, Georgia 30542.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Chief, HABS/HAER, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the Office of the Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: 10 March 1998.

E. Blaine Cliver,

Chief, Preservation Assistance Division, Designated Federal Official, National Park Service.

[FR Doc. 98–7116 Filed 3–18–98; 8:45 am]

BILLING CODE 4310–70–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–
Form Number: N/A.
Title: Training Results and Information Network (TraiNet).
Type of Submission: New.
Purpose: The purpose of this information collection is to propose a new Training Results and Information Network (TraiNet) designed to take advantage of new information technologies that enhance information processing productivity at reduced cost, be approved to replace the existing Participant Training Information System (PTIS) system; and to be an operational compliance requirement for all contractors and grantees engaged in USAID training activities.

Annual Reporting Burden

Respondents: 374.
Total annual responses: 15,720.
Total annual hours requested: 2,620.

Dated: March 12, 1998.

Willette L. Smith,

Chief, Information and Records Division, Bureau for Management, Office of Administrative Services.

[FR Doc. 98–7144 Filed 3–18–98; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 4212–
Form Number: N/A.
Title: USAID Technical Consulting Services Resume Database.
Purpose: The purpose of this information collection is to gain approval for an electronic consultant data base that will allow USAID employees to sort and select consultant assistance based on language ability, regional expertise, and technical specialty. The data base will also include information on salary rates, clearance levels, and health status. Also will be a listing of previous consultant assignments and contact numbers for references.

Annual Reporting Burden

Respondents: 5,000.
Total annual responses: 5,000.
Total annual hours requested:

Dated: March 12, 1998.

Willette L. Smith,

Chief, Information and Records Division, Bureau for Management, Office of Administrative Services.

[FR Doc. 98–7145 Filed 3–18–98; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–362]

U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with the fourth annual report.

EFFECTIVE DATE: March 6, 1998.

SUMMARY: Following receipt on March 31, 1995, of a letter from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–362, U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy (60 FR 24884). The USTR letter requested that the Commission prepare its first annual report under this investigation not later than November 15, 1995, and provide annually thereafter for a period of 5 years. The first report was submitted on November 15, 1995 (USITC publication 2938 issued in January 1996). The second annual report was submitted on October 4, 1996 (USITC publication 3000 issued in October 1996). The third annual report was submitted on October 31, 1997 (USITC publication 3067 issued in October 1997). The fourth report will be submitted in October 1998.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton, Office of Economics (202–205–3263), or William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

Section 134 of the Uruguay Round Agreements Act (URAA), Pub. L. 103–465, directs the President to develop a comprehensive trade and development policy of the countries of Africa. The President is also to report to the Congress annually over the next 5 years on the steps taken to carry out that mandate. The Statement of Administrative Action that was approved by the Congress with the URAA states that the President will direct the International Trade Commission to submit within 12 months following the enactment of the URAA into law, and annually for the 5 years thereafter, a report providing (1) an analysis of U.S.-African trade flows, and (2) an assessment of any effects of the Uruguay Round Agreements, and of U.S. trade and development policy for Africa on such trade flows.

The fourth annual report on U.S.-African trade flows and effects of U.S. trade and development policy will contain the following information:

1. An update of U.S.-African trade and investment flows for the latest year available, including both overall trade and trade in the following major sectors: agriculture, forest products, textiles and apparel, footwear, energy, chemicals, minerals and metals, machinery, transportation equipment, electronics technology, miscellaneous manufactures, and services. It also requested that the basic trade flow information be provided for U.S. trade with the following regional trade groups: the Southern African Customs Union (SACU), the Southern African Development Community (SADC), Western African Economic and Monetary Union (WAEMU), and Common Market for Eastern and Southern Africa (COMESA).
2. An identification of major developments in the World Trade Organization and in U.S. trade/economic activities which significantly affect U.S.-Africa trade and investment flows by sector during the last year.
3. To the extent possible, changing trade and economic activities within African countries that have a significant impact will be highlighted.
4. Progress in regional integration in Africa.

As requested by the USTR, the Commission will limit its study to the 48 countries in Sub-Saharan Africa.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the fourth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than Friday, June 19, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, D.C. 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: March 10, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–7142 Filed 3–18–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed collection; Comment Request

ACTION: Notice of Information Collection Under Review; COPS Visiting Fellowship Program Application Form.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days from the date this is published in the **Federal Register**. Written comments and suggestions from the public and affected agencies concerning the proposed

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collection of information are requested. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments may also be submitted to Stacy Curtis, Social Science Analyst, Office of Community Oriented Policing Services, 1100 Vermont Avenue, N.W., Washington, D.C. 20530, or via facsimile at (202) 616–5998.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: COPS Visiting Fellowship Program Application Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: COPS 26/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Applicants interested in contributing to the use and enhancement of community policing to address crime and related problems in communities across the country. Applicants may include individuals, public agencies, colleges or universities, nonprofit organizations, and profit-making organizations willing to waive their fees.

The COPS Visiting Fellowship Program is intended to offer researchers, law enforcement professionals and legal experts an opportunity to undertake independent research, program development activities and policy analysis designed to (1) improve police-citizen cooperation and communication; (2) to enhance police relationships within the criminal justice system, as well as at all levels of local government; (3) to increase police and citizens' ability to innovatively solve community problems; (4) to facilitate the restructuring of agencies to allow the fullest use of departmental and community resources; (5) to promote the effective flow and use of information both within and outside an agency; and (6) to improve law enforcement responsiveness to members of the community. Visiting fellows study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. While in residence with the COPS Office, Fellows contribute to the development of community policing programs that are national in scope.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: COPS Visiting Fellowship Program Application Form: Approximately 15 respondents, at 22 hours per respondent (including record-keeping).

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 330 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 13, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–7059 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Problem Solving Partnerships Progress Reports.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 9, 1997, and received no comments.

The purpose of this notice is to allow an additional 30 days for public comments from the date this is published in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. Written comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) Type of information collection. New collection.

(2) The title of the form/collection. Problem Solving Partnerships Report on Analysis.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: 1103–0038. Office of Community Oriented Policing Services, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, Local or Tribal Governments. Other: None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 470 respondents at 8 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection. 3,760 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 13, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–7058 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; problem solving partnerships progress reports.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 9, 1997, and received no comments.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) Type of information collection. New collection.

(2) The title of the form/collection. Problem Solving Partnerships Report on Analysis.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: 1103–0038. Office of Community Oriented Policing Services, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, Local or Tribal Governments. Other: None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 470 respondents at 8 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection. 3,760 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 13, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–7102 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Community policing to combat domestic violence progress reports.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 9, 1997, and received no comments.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) Type of information collection. New collection.

(2) The title of the form/collection. Community Policing to Combat Domestic Violence Progress Reports.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: 1103–0039. Office of Community Oriented Policing Services, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, Local or Tribal Governments. Other: None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 336 respondents at 8 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection. 2,688 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 16, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–7103 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Allegheny-Singer Research Institute

Notice is hereby given that, on February 5, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Allegheny-Singer Research Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission reflecting changes in the membership of the National Medical Practice Knowledge Bank. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AT&T Solutions, Florham Park, NJ; AT&T Government Markets, Greensboro, NC; NCR Parallel Systems, El Segundo, CA; and NCR Human Interfact Technology Center, Atlanta, GA; have joined as members.

No other changes have been made in either the membership or planned activity of the National Medical Practice Knowledge Bank. Membership in this Bank remains open, and the Bank intends to file additional written notification disclosing all changes in membership.

On November 17, 1995, Allegheny-Singer Research Institute filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6038). The last notification was filed with the Department on January 3, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 1997 (62 FR 8992).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–7151 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cable Television Laboratories, Inc.

Notice is hereby given that, on November 3, 1997, pursuant to Section 6(a) of the National Cooperative Research Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have joined CableLabs: Marcus Cable Operating Company, L.P., Dallas, TX; and Rock Hill Cable TV, Rock Hill, SC.

No other changes have been made in either the membership or planned activity of CableLabs. Membership remains open and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593). The last notification with respect to membership changes was filed with the Department on June 24, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 6, 1997 (62 FR 52151).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–7148 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Motorola HOIT Consortium

Notice is hereby given that, on November 28, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Motorola HOIT Consortium ("Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Motorola, Inc., Schaumburg, IL; Arizona State University, Tempe, AZ; University of California at San Diego, La Jolla, CA; New Interconnections Packaging Technologies, San Diego, CA.

The Consortium's area of planned activity is to perform a coordinated research and development program designed to develop free-space holographic optical interconnect technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–7146 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum Project No. 95–04

Notice is hereby given that, on December 30, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1933, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 95–04, titled "Risk Assessment Cooperative Research Program," have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, The identities of the current parties in PERF Project No. 95–04 are: American Association of Railroads, Washington, DC; Amoco Corporation, Naperville, IL; Brookhaven National Laboratory,Upton, NY; Elf Aquitaine, Washington, DC; Exxon Biomedical Sciences, Inc., East Millstone, NJ; Lawrence Livermore National Laboratory, Livermore, CA; Lockheed Martin Idaho Technologies Company, Idaho Falls, ID; Los Alamos National Laboratories; Los Alamos, NM; Phillips Petroleum Company, Bartlesville, OK; Shell Oil Company, Houston, TX; Sandia National Laboratories, Albuquerque, NM: Texas Group, Inc., Bellaire, TX; and Unocal Corporation, Brea, CA.

The nature and objectives of the research program to be performed in accordance with PERF Project No. 95–04 are aimed at developing/improving methods, data and models for measuring or estimating the fate and transport of contaminants in support of risk assessment activities as applied to site cleanup efforts at petroleum, petrochemical, and chemical industry facilities. The results should fill gaps in the science of risk assessment allowing technically defensible and cost-effective measurement or estimation of concentrations at potential points of exposure to contaminants.

Participation in this project will remain open to interested persons and organizations until issuance of the final Project Report, which is presently anticipated to occur approximately May 31, 1998. The participants intend to file additional written notification(s) disclosing all changes in project membership.

Information regarding participation in this project may be obtained from Dr. Bruce Krewinghaus, Shell Oil Products Company, P.O. Box 1380, Houston, Texas 77251–1380, telephone: (281) 544–8970.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–7147 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Short Wavelength Optical Storage Consortium

Notice is hereby given that, on September 3, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Short Wavelength Optical Storage Consortium (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties added to the Joint Venture are: Hewlett Packard Company, Palo Alto, CA; Imation Corp., Oakdale, MN. The parties dropped are: Minnesota Mining and Manufacturing Company, IBM, Philips Electronics N.V., Philips Electronic North American Corporation.

A change in planned activities occurred in 1997. The venture entered into a new agreement with various effective dates to work together to develop technology for cost effective fabrication of commercially attractive wavelength systems. Advances in optical storage technology are required to meet the evolving, information-intensive requirements of military, commercial and consumer users. The goal of the venture is to develop the technology base for a high density blue-green laser rewritable optical storage system, targeting commercial sales by the year 2000. The technical approach includes parallel development of laser diodes, plastic substrates, recording layers, servo and recording formats, and detection systems.

On April 18, 1995, the participants filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–7150 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Southwest Research Institute; Correction

In notice document 97–31306 appearing on pages 63389 and 63390 in the issue of Friday, November 28, 1997, make the following correction:

In the third column of page 63389, line 34, starting after the word, "Inc.,", the following should be added: "has had a change of name to Texas Group, Inc.;".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–7149 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1880–97]

Notice of Implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Pertaining to Female Genital Mutilation (FGM)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces how the Immigration and Naturalization Service (Service) intends to implement the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as it pertains to the practice of female genital mutilation (FGM) which is carried out by members of certain cultural and religious groups within the United States. This is necessary to ensure that visa recipients, prior to or at the time of entry into the United States, are notified of the severe harm to the physical and psychological health of women and girls, caused by FGM, and of the potential legal consequences for performing FGM on a child or adult, or

by allowing FGM to be performed on a child, in the United States.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Bednarz, Office of Programs, (202) 514–2764; Susan Houser, Office of the General Counsel, (202) 616–0781; or Lorraine Eide, Office of Asylum, (202) 305–2663; Immigration and Naturalization Service, 425 I Street, NW; Room 6100, Washington, DC 20536.

SUPPLEMENTARY INFORMATION:

What Are the Requirements of Section 644 of IIRIRA?

Section 644 Of IIRIRA requires the Service, in cooperation with the Department of State, to make available for all aliens who are issued immigrant or nonimmigrant visas, prior to or at the time of entry into the United States, the following:

1. Information on the severe harm to physical and psychological health caused by FGM, compiled and presented in a manner which is limited to the practice itself, and respectful to the cultural values of the societies in which such practice takes place, and

2. Information concerning potential legal consequences in the United States for performing FGM, or allowing a child under one's care to be subject to FGM.

Section 644 also provides that, in consultation with the Department of State, the Service shall identify those countries in which FGM is commonly practiced and, to the extent practicable, limit the provision of information to aliens from those countries.

How Will the Service Comply With Section 644 of IIRIRA?

The Service, after consultation with the Department of State, shall comply with section 644 of IIRIRA by:

1. Posting a notice containing the required information in all United States Embassies and consulates concerning FGM, and

2. Providing a copy of the notice to each alien granted an immigrant or nonimmigrant visa in any of the those countries which have been identified by the Department of State as countries where FGM is prevalent, either countrywide or in particular ethnic subgroups. The United States Embassy or consulate in those countries will provide a copy of the notice to aliens at the time a visa is issued.

Which Countries Have Been Identified by the Department of State Where FGM is Prevalent?

The following 28 countries have been identified by the Department of State as countries where FGM is prevalent, either countrywide, or in particular ethnic subgroups:

Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Cote d'Ivoire, Djibouti, Egypt, Ethiopia, Eritria, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda, Zaire (Congo).

In What Language Will the Notice Be Provided?

The notice will be provided in English and in the official, or predominant, written language of the country where the United States Embassy or consulate is located.

What Information Will Be Contained in the Notice?

The following is the text of the proposed notice, which was drafted by the Service in consultation with the Department of Justice's Criminal Division, the Department of State, and the Department of Health and Human Services:

What is Female Genital Mutilation (FGM)?

Female genital mutilation (FGM) is the removal or infibulation (or both) of the whole or part of the clitoris, labia minora, and labia majora. The procedure can include sewing the vagina almost completely closed after the genitals are removed (infibulation). The procedure is common in certain cultures among various ethnic groups and across many different religions.

What are the Health Problems Associated With FGM?

The World Health Organization and other United Nations organizations, as well as the United States Government, recognize that FGM has very serious effects on the health of women and girls. Immediate complications of FGM include severe pain, shock, hemorrhage, urine retention, ulceration of the genital region, and injury to the adjacent tissue. Hemorrhage and infection can cause death.

Long-term consequences of FGM include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, painful intercourse, and sexual dysfunction. The most extreme forms of FGM can cause infertility, and may also cause an increase in the risk of stillbirths and maternal deaths.

Psychological consequences of FGM in childhood can include behavior disturbances and loss of trust and confidence in caregivers. As adults, these women may suffer feelings of incompleteness, anxiety, depression, chronic irritability, and frigidity, and may experience marital conflicts.

What Are the Legal Consequences of Performing FGM in the United States?

The United States is among those countries that have made FGM illegal because of the dangerous health problems associated with it. In the United States, it is against the law to perform FGM on a person under the age of 18, unless the operation is medically necessary. There is no exception for performing FGM because of a belief that it is required as a matter of custom or ritual. A parent who knowingly allows FGM to be performed on his or her child could potentially be held criminally liable.

Will Victims of FGM Be Eligible for a Visa to Come to the United States?

The fact that a person has been subjected to FGM will have no effect on the victim's eligibility for a visa to the United States.

Why is the United States Providing This FGM Notice?

The United States Government is committed to working with local community organizations, both in the United States and in other countries, to help educate people about the serious detrimental effects that FGM has on women and girls.

Dated: March 4, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–7162 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1888–97]

Expansion of the Direct Mail Program for the Dallas, El Paso, Harlingen, Houston, and San Antonio District Offices and the Albuquerque and Oklahoma City Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to include the Dallas, El Paso, Harlingen, Houston, and San Antonio District Offices and the Albuquerque and Oklahoma City Suboffices on the current list of direct mail sites for filing Form N–400, Application for

Naturalization. Applicants residing within these districts and suboffices will mail their Form N–400 directly to the designated INS service center for processing. This expansion is intended to improve INS service to the public by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective April 15, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION: Under the Direct Mail Program, certain applicants and petitioners for immigration benefits mail their applications and petitions directly to an INS service center for processing instead of submitting them to a local INS office. The purposes and strategy of the Direct Mail Program have been discussed in detail in previous rulemaking and notices (see, e.g., 59 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program, as applied to Form N–400, by adding the Dallas, El Paso, Harlingen, Houston, and San Antonio District Offices and the Albuquerque and Oklahoma City Suboffices as Direct Mail sites.

Where to File

Effective April 15, 1998 applicants for naturalization residing within the jurisdiction of the Dallas, El Paso, Harlingen, Houston, and San Antonio District Offices and the Albuquerque and Oklahoma City Suboffices must mail the Form N–400, Application for Naturalization, directly to the Texas Service Center at the following address: USINS Texas Service Center, Attention: N–400 Unit, P.O. Box 851204, Mesquite, Texas 75185–1204.

Transition

During the first 60 days following the effective date of this notice, the Dallas, El Paso, Harlingen, Houston, and San Antonio District Offices and the Albuquerque and Oklahoma City Suboffices will forward in a timely fashion to the Texas Service Center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective District or Suboffice. Applicants will be provided a notice at the time of filing at the District or Suboffice advising them that their application is being forward to the service center for initial processing. The applicant will receive written notification from their respective District or Suboffice of the date, place, and time of their interview for naturalization. When applications are forwarded from the District or Suboffices, they will be receipted and filed when they arrive at the service center. After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the Texas Service Center for processing.

Dated: March 12, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–7104 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1145]

RIN 1121–ZB03

Meeting of the Methamphetamine Interagency Task Force

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Meeting notice.

SUMMARY: Meeting of the Methamphetamine Interagency Task Force.

DATES: May 4, 1998, from 1:00 p.m. to 5:00 p.m. and May 5, 1998, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The Assistant Attorney General's Conference Room, Office of Justice Programs, 810 7th Street, N.W., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: For information and reservations: Kristina Rose, National Institute of Justice, 810 7th Street, N.W., Washington, D.C. 20531. Telephone: (202) 307–0466. Facsimile: (202) 307–6256. E-mail: rosek@ojp.usdoj.gov.

For submission of written questions: Cherise Fanno, National Institute of Justice, 810 7th Street, N.W., Washington, D.C. 20531. Telephone: (202) 307–9021. Facsimile: (202) 307–6394. E-mail: fanno@ojp.usdoj.gov.

SUPPLEMENTARY INFORMATION: The Methamphetamine Interagency Task Force will hold its inaugural meeting. The agenda will include an ethics briefing for all Task Force members; remarks by the Attorney General and the Director of the Office of National Drug Control Policy; presentations on the current status of methamphetamine abuse, and efforts to prevent and treat such abuse, in the United States; open discussion of issues of concern to Task Force Members; and procedures for organizing the work of the Task Force in order to carry out its statutory responsibilities.

The meeting will be open to the public on a space-available basis, and reservations will be required. A photo ID will be requested for admittance. See contact point listed above to reserve a space and to advise of any special needs. Anyone wishing to submit written questions to this session should notify the contact point listed above by Monday, April 20, 1998. Questions must be accompanied by the interested party's name, affiliation, and means of contact (address or telephone number). Interested persons are encouraged to attend.

Dated: March 16, 1998.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–7143 Filed 3–18–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of meeting.

SUMMARY: Notice is hereby given that the Metalworking Fluids Standards Advisory Committee (MWFSAC), established under section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Cleveland, Ohio, on Wednesday, April 8, 1998, at the Sheraton Airport Hotel, 5300 Riverside Drive, Cleveland, Ohio 44135–3196, (1–800–362–2244).

DATES: The meeting will be held on April 8, 1998. The meeting will begin at 8:30 A.M. and adjourn at approximately 5:00 P.M.

ADDRESSES: The meeting will take place at the Cleveland Sheraton Airport Hotel, 5300 Riverside Drive, Cleveland, Ohio 44135–3196. Mail comments, views or

statements in response to this notice to Dr. Peter Infante, U.S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, (202) 219–8151.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the April 8th public meeting of the Metalworking Fluids Standards Advisory Committee at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 219–8615 ext. 106 (Fax: 202–219–5986) no later than March 31, 1998, to obtain appropriate accommodations.

Meeting Agenda

This meeting will focus on the need for reducing exposure to metalworking fluids in small businesses, and the economic and technological feasibility of reducing such exposures in these industries. The Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health will introduce their small business study. Investigative strategies for obtaining health effects data and exposure data for a wide range of industries will be discussed. Concerns unique to small businesses will be explored.

Public Participation

Written data, views or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 20 copies, to Dr. Peter Infante at the address provided above. Submissions received by March 31, 1998 may be provided to the members of the committee and will be included in the record of the meeting. At this meeting it is unlikely that there will be any time for oral presentations by members of the public. However, anyone wishing to make a presentation to the committee should notify Dr. Peter Infante of this fact at the address listed above. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Requests to make oral presentations to the Committee may be granted if time permits.

Authority

This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, D.C. this 16th day of March 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–7173 Filed 3–18–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Work Group; Request for Comment on Options to Replace GRS 20

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of materials for public review and comment; request for comment.

SUMMARY: The Electronic Records Work Group has prepared a paper outlining possible short-term approaches for scheduling electronic records currently covered by General Records Schedule 20. Public comment is sought on the options and issues raised in the paper, and suggestions for other alternatives not identified in the paper. The Electronic Records Work Group is charged with identifying workable alternatives to the disposition practices currently authorized under NARA's General Records Schedule 20 for Electronic Records.

The options paper is posted on NARA's GRS 20 Internet Web page at <http://www.nara.gov/records/grs20/opt312.html>. Individuals who do not have Internet access may call the person indicated in the **FOR FURTHER INFORMATION CONTACT** section to request paper copies of these materials.

DATES: Comments must be received by March 31, 1998.

ADDRESSES: Comments should be sent electronically to the e-mail address <grs20@arch2.nara.gov>. If you do not have access to e-mail, comments may be mailed to Electronic Records Work Group (NWM), Room 2100, 8601 Adelphi Rd., College Park, MD 20740–6001, or faxed to 301–713–6850.

FOR FURTHER INFORMATION CONTACT: To request paper copies of the options paper or other materials posted on the GRS 20 Internet Web page, contact Lisa Haralampus at 301–713–7110, extension 266.

Dated: March 13, 1998.

Lewis J. Bellardo,

Deputy Archivist of the United States.

[FR Doc. 98–7050 Filed 3–18–98; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 474, "Simulation Facility Certification."
2. *Current OMB approval number:* 3150–0138.
3. *How often the collection is required:* One-time requirement for initial certification and quadrennial thereafter.
4. *Who is required or asked to report:* All power reactor licensees and applicants for an operating license.
5. *The number of annual respondents:* 20.
6. *The number of hours needed annually to complete the requirement or request:* 2,400 hours.
7. *Abstract:* Licensed power facilities that propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing operating tests are required to submit NRC Form 474.

The information on the form consists of the results of performance testing completed on the subject simulation facility and a schedule for the conduct of performance tests for the subsequent four-year period. NRC uses this information to ascertain the acceptability of simulation facilities for use in the conduct of operating tests for nuclear power plant operator and senior operator candidates and to determine whether to initiate a simulation facility inspection at a specific site due to concerns about their suitability for use in operating tests.

Submit by May 18, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 12th day of March 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–7113 Filed 3–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 2–4, 1998, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 20, 1997 (62 FR 62079).

Thursday, April 2, 1998

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:45 a.m.–9:45 a.m.: Performance-Based Regulation and Related Matters (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the performance-based regulation and related matters.

10:00 a.m.–11:00 a.m.: AP600 Design (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the Westinghouse Electric Company and the NRC staff regarding Chapters 2, 9, 10, 12, 13, and 15 of the AP600 Standard Safety Analysis Report (SSAR) and associated NRC staff's draft Final Safety Evaluation Report (FSER) Chapters.

[Portions of the session may be closed to discuss safeguards information related to the AP600 design.]

11:00 a.m.–12:00 Noon: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss with the NRC Commissioners the following topics:

- Improvements to the Senior Management Meeting Process.
- Proposed Revision to 10 CFR 50.59 Process.
- Risk-Informed, Performance-Based Regulations Including Use of PRA in the Regulatory Decisionmaking Process.
- Status of AP600 Review.
- NRC Safety Research Program.
- Fire Protection.
- Shutdown and Low-Power Operation.
- License Renewal.

1:00 p.m.–2:30 p.m.: Meeting with the NRC Commissioners—Commissioners' Conference Room, One White Flint North (Open)—The Committee will meet with the NRC Commissioners to discuss matters identified above.

2:45 p.m.–4:00 p.m.: Updated Source Term for Operating Plants (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff activities associated with the use of updated source term for operating plants.

4:00 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as proposed ACRS reports regarding the NRC Safety Research Program, and coordination of ACRS/ACNW review activities.

Friday, April 3, 1998

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:00 a.m.: Elevation of Core Damage Frequency (CDF) to a Fundamental Safety Goal and Possible Revision to the Safety Goal Policy Statement (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding elevation of the CDF to a fundamental Safety Goal and possible revision to the Safety Goal Policy Statement.

10:15 a.m.–11:15 a.m.: Proposed Final Standard Review Plan (SRP) Section and Regulatory Guide for Risk-Informed, Performance-Based Inservice Inspection (ISI) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final SRP Section and Regulatory Guide for risk-informed, performance-based ISI.

11:15 a.m.—11:30 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports.

11:30 a.m.—12:00 Noon: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:00 p.m.—2:00 p.m.: Continued Need for the Nuclear Safety Research Review Committee (NSRRC) Function (Open)—The Committee will discuss the need for the NSRRC function and will hold discussions with former NSRRC members.

2:00 p.m.—3:15 p.m.: Loss of Shutdown Cooling Event at River Bend Nuclear Station (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the inadvertent loss of cooling event at the River Bend nuclear plant, which resulted in an increase in the reactor coolant temperature, and the findings of the Special Inspection Team, which investigated this event.

3:30 p.m.—5:00 p.m.: SECY–97–225, Enhancing NRC Effectiveness and Efficiency and Related Matters (Open)—The Committee will hear presentations by and hold discussions with the Acting Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement regarding SECY–97–225 and related matters.

5:15 p.m.—7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, as well as proposed ACRS reports regarding the NRC Safety Research Program, and coordination of ACRS/ACNW review activities.

Saturday, April 4, 1998

8:30 a.m.—9:00 a.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters

related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

[**Note:** A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

9:00 a.m.—3:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, as well as proposed ACRS reports regarding the NRC Safety Research Program, and coordination of ACRS/ACNW review activities.

3:00 p.m.—3:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Medhat M. El-Zeftawy, Acting Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Acting Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Acting Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), to discuss safeguards information related to the Westinghouse AP600 design per 5 U.S.C. 552b(c)(3), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Dr. Medhat M. El-Zeftawy, Acting Chief of the Nuclear Reactors Branch (telephone 301/415–6889), between 7:30 a.m. and 4:15 p.m. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: March 13, 1998.

John C. Hoyle,

Acting Advisory Committee Management Officer.

[FR Doc. 98–7111 Filed 3–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 1, 1998, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, April 1, 1998—12:00 Noon until 1:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 12, 1998.

Medhat M. El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–7112 Filed 3–18–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Application for Search of Census Records, OMB 3220–0106.

Evidence of age is required when an employee or their spouse, widow(er), parents or children, apply for an annuity or Medicare enrollment under the railroad retirement system. This requirement is prescribed at 20 CFR 219.20. The RRB's authority for requesting the information is Section 7(b)(6) of the Railroad Retirement Act. When an applicant, after making reasonable efforts, is unable to provide adequate proof of age, or offers evidence of conflicting or little probative value, the RRB obtains a census record to help resolve the issue of age.

The RRB utilizes Form G–256, Application for Search of Census Records, to obtain records (with the applicant's authorization) from the Bureau of the Census.

The RRB proposes minor non-burden impacting editorial changes to Form G–256 which include the addition of language required by the Paperwork Reduction Act of 1995. No other changes are proposed. The completion time for the G–256 is estimated at 10 minutes per response. The RRB estimates that approximately 75 Form G–156's are received annually.

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–7121 Filed 3–18–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39746; File No. SR–GSCC–97–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Implementation of a Final Schedule

March 12, 1998.

On May 21, 1997, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–97–04) pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on September 19, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends GSCC's rules to implement a fine schedule as it relates to the late payment of a funds-only settlement obligations. This fee is being established in connection with GSCC's "autodebit" arrangement.[3] The severity of any fine will be a function of the magnitude and recent history of the member's late payments. In addition, the proposed rule change eliminates the current limitation of $5,000 as the maximum size of any single fine GSCC may impose.

After the first late payment of a funds-only settlement obligations, a warning letter will be sent to senior officials of the offender describing the nature of the violation and the consequences of successive violations. GSCC will deem each instance of late payment of a funds settlement debit or late satisfaction of a clearing fund deficiency call to be a separate occasion. These instances will be combined, regardless of type, to determine the number of occasions. The number of occasions is determined over a moving 30 calendar-day period beginning with date of the first occasion. A specific determination will be made by GSCC's Membership and Standards Committee of the Board of Directors ("Committee") when the number of occasions exceeds four or when the number of occasions of lateness of more than an hour exceeds two. The Committee will reserve the discretion to waive or reduce scheduled fines when a particular occasion is not deemed to be the fault of the affected member. GSCC's late payment fine schedule is set forth below.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities and Exchange Act Release No. 39054 (September 11, 1997), 62 FR 49281.

[3] The autodebit arrangement allows GSCC's netting members to satisfy funds-only settlement obligations by payment instructions given directly by GSCC to the members' banks. For a complete description of the autodebit arrangement, refer to Securities and Exchange Act Release No. 39309 (November 7, 1997) 62 FR 61158 [File No. SR–GSCC–97–06] (notice of filing and order granting accelerated approval of a proposed rule change regarding funds-only settlement payment procedures).

GSCC FINE SCHEDULE LATE PAYMENT OF FUNDS SETTLEMENT DEBIT/LATE SATISFACTION OF CLEARING FUND DEFICIENCY CALL

Amount	First occasion	Second occasion	Third occasion	Any lateness more than one hour or fourth occasion
$1 to $100M	Warning Letter	$100	$200	$500
Greater than $100M to $1MM	Warning Letter	300	600	1,000
Greater than $1MM to $2MM	Warning Letter	600	1,200	2,000
Greater than $2MM	$250	1,000	2,000	3,000

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that GSCC's proposed rule change is consistent with its obligations under the Act because the fine schedule should provide GSCC members with an incentive to meet their financial responsibilities on a timely basis. The possibility of being assessed a fine should increase GSCC's members' timeliness of their payments of settlement and clearing fund obligations to GSCC. By increasing compliance with GSCC's deadlines for the payment of settlement and clearing fund obligations, the proposed rule change should enable GSCC to better safeguard securities and funds which are in its custody or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with requirements of the Act and in particular with requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–97–04) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7069 Filed 3–18–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39745; File No. SR–PCX–98–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's Specialist Post Fee Waiver Program

March 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 19, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a fee waiver program for certain new specialist firms on the Exchange. The text of the proposed rule change is set forth in Exhibit A to the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The Exchange is proposing to adopt a Specialist Post Fee Waiver Program (the "Program") in order to provide short-term cost relief to new specialist firms that agree to operate a specialist post, and to existing specialist firms that agree to operate an additional specialist post, on the Equity Floors of the Exchange. The Program is intended to provide financial incentives to encourage specialist firms to operate specialist posts and to encourage those firms to bring new equity order flow to the Exchange. Any specialist firm that provides new backing of a specialist post, after the effective date of the Program, would be eligible to participate in the Program. Fees for posts already being operated by a specialist firm are not affected by this waiver Program.

The terms of the Program are as follows: First, if a specialist assumes new financial responsibility for a specialist post after the effective date of the Program, that specialist firm's fixed specialist fees for the post taken over will be waived for three months.[3] Second, once the three months of the fee waiver have been earned, all of the fees previously waived under the Program will be reinstated. Third, once the previously waived fees are reinstated, the specialist firm will be eligible to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The specialist fees that will be waived include: Exchange Member Dues, the Floor Privilege Fee, the Specialist Facility Fee, the Specialist Systems Fee, Workstation Fees, the Market Data Fee, the Card Access Fee, the Pacific Clearing Corporation ("PCC") Post Cashiering Fee and the PCC Post Clearing Fee. Some of the fees waived will vary based on the number of staff the firm has on the floor and the services the firm uses. Consequently, the actual dollar amount of waived fees will vary slightly by firm. Generally, waived fees will average $7,330 per month.

earn additional fee credits for three months based upon monthly trading volume at the specialist post taken over. The proposed schedule is set forth below. These fee credits are intended to serve as incentives for specialist firms to bring new equity order flow to the Exchange.

Monthly post trading volume	Post fee credit		Est'd effective monthly post fee
	Percent	Amount	
4 million shares or more	[illegible]	$6,230	$1,100
3 to less than 4 million shares	50	3,665	3,665
2 to less than 3 million shares	25	1,830	5,500
Less than 2 million shares	0	[illegible]	7,330

Fourth, a specialist firm is eligible to earn the fee credits provided above for three trade months. Fifth, if a specialist firm begins operating a specialist post under the Program during the course of a trade month, the Exchange will stagger the issuance of part of the fee waiver until after the passage of time in which fee credits may be earned. This will allow the Exchange to avoid crediting a specialist firm an amount that exceeds its fixed fees during any given trade month. Thus, for example, if a firm begins operating a post on February 15, the prorated fixed fees for February (*i.e.*, from February 15 to the end of February) will be waived, as will the fixed fees for March and April. The firm will then be eligible to earn fee credits during the months of May, June and July. Then, in August, the Exchange will provide a fee waiver equal to the amount not previously waived in February (*i.e.*, the portion equal to the fees for the first half of February). Finally, once a specialist firm has participated in the Program for six full months, the Exchange will no longer apply fee waivers and fee credits, and the specialist firm will be subject to regular specialist post fees for the post taken over.

Basis

The proposal is consistent with Section 6(b) of the Act[4] in general, and Section 6(b)(4),[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among members.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (e)(2) of Rule 19b–4 thereunder[8] because it constitute or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–11 and should be submitted by April 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7068 Filed 3–18–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b–10 and 11Ac1–3 under the Act, 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(e)(2).

[9] In reviewing the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2760]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the six letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must

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be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: March 3, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–M

United States Department of State

Washington, D.C. 20520

FEB 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount of $50,000,000 and or more.

The transaction described in the attached certification involves a technical assistance agreement with the Republic of Korea to support intermediate level maintenance training for the AN/ALQ-165 Airborne Self Protection Jammer line replacement units and system replacement units.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-9-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 53 MR 19 1998 UMI

United States Department of State

Washington, D.C. 20520

FEB 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves a technical assistance agreement with Germany to support development and production of imaging infra-red seekers for the Kinetic Energy Penetration Destroyer (KEPD) 350 Taurus air-to-ground cruise missile program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary

Legislative Affairs

Enclosure:
Transmittal No. DTC-10-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

FEB 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of the Sentry-based Air Defense System to the Republic of Korea (ROK) for end-use by the ROK Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-11-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 53 MR 19 1998 UMI

United States Department of State

Washington, D.C. 20520

FEB 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware for support of the Reconnaissance Airborne Pod for the Tornado (RAPTOR) Program for the Royal Air Force in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-13-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

FEB 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed export of defense articles or defense services sold under a contract in the amount of $50,000,000.

The transaction described in the attached certification involves the export of defense services and equipment for a Structural Life Extension Program upgrade of the Philippine Air Force's fleet of F-5A/B aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-14-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 53 MR 19 1998 UMI

United States Department of State

Washington, D.C. 20520

FEB 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed export of defense articles or defense services sold under a contract in the amount of $50,000,000.

The transaction described in the attached certification involves the transfer of technical data and assistance for the development and deployment of a littoral water surveillance system for end use by the Republic of Korea Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-15-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

[FR Doc. 98-7096 Filed 3-18-98; 8:45 am]
BILLING CODE 4710-25-C

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AGENCY:

ACTION:

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DEPARTMENT OF STATE

[Public Notice No. 2751]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the five letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: February 20, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–M

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United States Department of State

Washington, D.C. 20520

FEB 18 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed export of major defense equipment sold under a contract in the amount of $14,000,000, or more.

The transaction described in the attached certification involves the sale to Taiwan of four S-70A helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-108-97

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

FEB 10 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached notification involves the sale of 472 TOW-2B anti-tank missiles to Sweden.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-5-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

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United States Department of State

Washington, D.C. 20520

FEB 10 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached notification involves the sale of 703 TOW-2A anti-tank missiles to Denmark.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-6-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

FEB 10 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached notification involves the sale of 2205 TOW 2A anti-tank missiles to Norway.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-7-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

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United States Department of State

Washington, D.C. 20520

FEB 10 1998

Dear Mr. Speaker:

Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed manufacturing license agreement amendment with Germany concerning the sale of the AN/APG-65 radar to Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-19-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

[FR Doc. 98–7097 Filed 3–18–98; 8:45 am]
BILLING CODE 4710–25–C

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Notice of Meeting

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on April 3, 1998. The session will be held in Los Angeles, California, from approximately 8:30 a.m. to 12:30 p.m. at the Manhattan Beach Marriott, 1400 Parkview Avenue, Manhattan Beach, CA 90266. Tel.: 310–546–7511.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary for Enforcement, Room 4004, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: This is the sixth meeting of the current two-year term of the Committee. The provisional agenda to be considered at the meeting is as follows:

Old Business

1. Automated Export System: Interim report of the subcommittee to develop industry recommendations.
2. Status and progress of Customs automation.

New Business

1. Import restrictions on merchandise produced abroad with forced or indentured child labor.
2. Impact of "Operation Brass Ring".
3. The self-governance initiative and status of compliance assessment team (CAT) reviews.
6. Hours of operations for commercial processing at the border and Customs proposed rule clarifying the authority of port directors to designated crossings within a port that particular carriers must use.

The foregoing provisional agenda may be modified prior to the meeting.

Members of the public may verify the final content of the agenda and the precise time and location of the meeting by calling the information number one week prior to the meeting. The Committee, in its discretion, may take up other matters, time permitting.

The meeting is open to the public. However, participation in the discussion is limited to Committee members and Treasury and Customs staff. It is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give notice by contacting Ms. Theresa Manning no later than March 27, 1998 at 202–622–0220.

John P. Simpson,

Depty Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98–7063 Filed 3–18–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–103–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–103–90 (TD 8578), Election Out of Subchapter K for Producers of Natural Gas (§ 1.761–2).

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election Out of Subchapter K for Producers of Natural Gas.

OMB Number: 1545–1338.

Regulation Project Number: PS–103–90.

Abstract: This regulation contains certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. Under regulation section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements must file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two permissible accounting methods described in the regulation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 5.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7167 Filed 3–18–98; 8:45 am]

BILLING CODE 4830–01–U

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–50–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–50–86 (TD 8110), Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form (§§ 1.165–12 and 1.1287–1).

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form.

OMB Number: 1545–0786.

Regulation Project Number: INTL–50–86.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting requirements in this regulation are necessary to ensure that persons holding registration-required obligations in bearer form properly report interest income and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 750,000.

Estimated Time Per Response: 3 minutes.

Estimated Total Annual Burden Hours: 39,742.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7168 Filed 3–18–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–66–93 and PS–120–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, PS–66–93 (TD 8609), Gasohol; Compressed Natural Gas, and PS–120–90 (TD 8241), Gasoline Excise Tax (§§ 48.4041–21, 48.4081–2(c)(3), 48.4081–3(d)(2)(iii), 48.4081–3(e)(2)(ii), 48.4081–3(f)(2)(ii), 48.4081–4(b)(2)(ii), 48.4081–4(b)(3)(i), 48–4081–4(c), 48.4081–6(c)(1)(ii), 48.4081–7. and 48.4081–9).

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: PS–66–93, Gasohol; Compressed Natural Gas; and PS–120–90, Gasoline Excise Tax.

OMB Number: 1545–1270.

Regulation Project Numbers: PS–66–93 and PS–120–90.

Abstract: PS–66–93: This regulation relates to gasohol blending and the tax on compressed natural gas (CNG). The sections relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The sections relating to CMG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat. *PS–120–90:* This regulation relates to the federal excise tax on gasoline. It affects refiners, importers, and distributors of gasoline and provides guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 3,170.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 371.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7169 Filed 3–18–98; 8:45 am]

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Corrections

Federal Register
Vol. 63, No. 53
Thursday, March 19, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-020-1020-00]

Pelican Lake/Ouray National Wildlife Refuge Plan Amendment; Environmental Statement

Correction

In notice document 98–6686, beginning on page 12819, in the issue of Monday, March 16, 1998, in the **DATES** section, in the last line, "March 16, 1998" should read "April 15, 1998".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

Science and Technology Reinvention Laboratory Demonstration Project at the U.S. Army Research Laboratory (ARL)

Correction

In notice document 98–5426 beginning on page 10680, in the issue of Wednesday, March 4, 1998, make the following correction:

1. On page 10687, the note to the table should read:

"*Administrative Pay Band III includes two full performance levels because not all work assignments in band III will support movement to the top of the band. Positions that typically support the higher salaries perform non-supervisory work associated with formulating programs and policies with laboratory-wide scope and impact. Other positions perform supervision of operating level programs in one or more administrative fields. In order to move beyond the equivalent of the GS-12 Step 10 salary, duty and work assignments must satisfy the highest level of the criteria in the classification standard for this pay band.".

2. On the same page, in the first column, starting in the fourth line, remove:

"assignments in band III will support movement to the top of the band. Positions that typically support the higher salaries perform non-supervisory work associated with formulating programs and policies with laboratory-wide scope and impact. Other positions perform supervision of operating level programs in one or more administrative fields. In order to move beyond the equivalent of the GS-12 Step 10 salary, duty and work assignments must satisfy the highest level of the criteria in the classification standard for this pay band.".

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federal register

Thursday
March 19, 1998

Part II

Environmental Protection Agency

40 CFR Parts 302 and 355
Administrative Reporting Exemptions for Certain Radionuclide Releases; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[FRL–5970–8]

RIN 2050–AD46

Administrative Reporting Exemptions for Certain Radionuclide Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency today is issuing a final rule that will reduce reporting burdens under the Comprehensive Environmental Response, Compensation, and Liability Act and the Emergency Planning and Community Right-to-Know Act. Reducing reporting burdens is one of the goals of the President's government-wide regulatory reform initiatives.

Through this rule, EPA will broaden existing reporting exemptions for releases of naturally occurring radionuclides to include releases that result from: land disturbance incidental to extraction activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, and rare earth mines; and coal and coal ash piles at all sites.

Eliminating needless reporting burdens on persons responsible for certain mine sites and coal and coal ash piles will also allow EPA to better focus its resources on the most serious releases, resulting in more effective protection of public health and welfare and the environment.

EFFECTIVE DATE: April 20, 1998.

ADDRESSES: *Release Notification:* The toll-free telephone number of the National Response Center is 800/424–8802; in the Washington, DC metropolitan area, the number is 202/267–2675. The facsimile number for the National Response Center is 202/267–2165 and the telex number is 892427.

Docket: Copies of materials relevant to this rulemaking are contained in the U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202 [Docket Number 102RQ–RN–2]. The docket is available for inspection, by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 703/603–9232. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, an administrative fee of $25 and a charge of $0.15 per page for each page after page 266 will be incurred. The Docket Office will mail copies of materials to requestors who are outside the Washington, DC metropolitan area. The docket for this rulemaking will be kept in paper form.

FOR FURTHER INFORMATION CONTACT: The RCRA/UST, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/553–7672 (in the Washington, DC metropolitan area, contact 703/486–3323); or the Office of Emergency and Remedial Response (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (contact Elizabeth Zeller 703/603–8744).

SUPPLEMENTARY INFORMATION: *Potentially Affected Entities:* Entities that may be affected by this final rule include: (1) Persons in charge of vessels or facilities that may have naturally occurring radionuclide releases into the environment that are among those granted an administrative reporting exemption; and (2) entities that plan for or respond to such releases.

The table below lists potentially affected entities. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other entities not listed in the table could also be affected. To determine whether your organization is affected by this action, carefully examine the changes to 40 CFR parts 302 and 355. If you have questions regarding the applicability of this action to a particular entity, consult the contact names and phone numbers listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

POTENTIALLY AFFECTED ENTITIES

Type of entity	Examples of affected entities
Industry	Mines, coal ash landfills, coal preparation plants, coke plants, other industrial sites with coal piles, and coal transportation storage yards.
State, Local, or Tribal Governments	State Emergency Response Commissions, Local Emergency Planning Committees.
Federal Government	National Response Center, and any Federal agency that may have radionuclide releases granted a reporting exemption.

Outline of Today's Preamble: The contents of today's preamble are listed in the following outline:

I. Introduction
A. Statutory Authority
B. Background of This Rulemaking
C. Final Reporting Exemptions
D. Summary of Changes From the Proposed Rule
II. Response to Comments
A. Support for and Opposition to Reporting Exemptions
1. Proposed Exemptions
2. Alternative 1 Proposed on August 4, 1995
3. Alternative 2 Proposed on August 4, 1995
B. Requests for Broader Exemptions for Extraction, Beneficiation, and Mineral Processing
1. Similarities to Other Exemptions
a. Extraction versus Farming and Construction
b. Extraction versus Beneficiation and Processing
2. Properties of Certain Ores and Materials
3. Radiation Risk
4. Radon Releases
5. Feasibility of Response
6. Controls Under Other Programs
7. Site-Specific Exemptions
C. Scope of Reporting Exemptions for Coal and Coal Ash
1. Types of Ash
2. Beneficial Uses of Ash
3. Coal Preparation and Transportation
D. Requests for Other Exemptions
E. Interpretation of CERCLA Provisions
1. Release Into the Environment
2. Substantial Danger
III. Regulatory Analyses
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates
E. Small Business Regulatory Enforcement Fairness Act

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, establishes broad Federal authority to respond to releases or substantial threats of releases of hazardous substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous

substance" primarily by reference to various Federal environmental statutes.

Under section 103(a) of CERCLA, the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in an amount equal to or greater than its reportable quantity (RQ) must immediately notify the National Response Center (see 40 CFR 302.6). In addition, the person in charge of a facility from which a CERCLA hazardous substance has been released in an amount equal to or greater than its RQ must immediately notify State and local response authorities, as required by section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11001 *et seq.* (see 40 CFR 355.40). As established by EPA in an earlier rulemaking (50 FR 13463, April 4, 1985), a 24-hour period is used for measuring whether an RQ or more of a hazardous substance has been released (see 40 CFR 302.6(a)).

Section 102(b) of CERCLA establishes RQs at one pound for releases of hazardous substances, except for those substances for which RQs were established pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust the RQs for all hazardous substances by regulation.

A major purpose of the section 103(a) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require a response to protect public health or welfare or the environment. EPA emphasizes that an RQ merely establishes a trigger for informing the government of a release so that the appropriate government personnel can evaluate the need for a response action and can undertake any necessary response action in a timely fashion. Federal personnel evaluate all reported releases, but in some cases will not initiate a response, because the release of an RQ does not pose a hazard or require a response in all circumstances. Government personnel assess each reported release on a case-by-case basis to determine the appropriate response action, if any.

CERCLA sections 102(a), 103, and 115 together provide EPA with authority to grant administrative reporting exemptions. Such exemptions may be granted for releases of hazardous substances that pose little or no risk or to which a Federal response is infeasible or inappropriate. Requiring reports of such releases would serve little or no useful purpose and could, instead, impose a significant burden on the Federal response system and on the persons responsible for notifying the Federal government of the release. Through such reporting exemptions, therefore, the Federal response system is able to more efficiently implement CERCLA and EPCRA and more effectively focus on reports of releases that are more likely to pose a significant hazard to human health and the environment.

B. Background of This Rulemaking

Radionuclides are CERCLA hazardous substances because they are listed as hazardous air pollutants under section 112 of the Clean Air Act. Radionuclides initially had a one-pound RQ as established by CERCLA section 102(b). EPA recognized that an RQ of one pound for radionuclides was not appropriate because radionuclides are not generally measured in units of pounds, and releases of much less than one pound of radionuclides may present a substantial threat to public health or welfare or the environment. On March 16, 1987, EPA published a Notice of Proposed Rulemaking (NPRM) to adjust RQs for radionuclides (52 FR 8172), with the comment period ending on May 15, 1987. Twenty-eight comment letters, totaling about 150 pages, were received. The comments, together with the Agency's responses, are presented in "Responses to Comments on the Notice of Proposed Rulemaking on the Adjustment of Reportable Quantities for Radionuclides" (Responses to Comments), which is available for inspection in Docket Number 102RQ–RN located at the U.S. EPA CERCLA Docket Office (Mail Code 5202G), Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

The Agency promulgated a final rule (54 FR 22524; May 24, 1989) to adjust the RQs for all (approximately 1,500) radionuclides. In preparing the final rule, EPA considered carefully all of the public comments submitted on the proposals made in the March 16, 1987, NPRM. The final rule granted four administrative exemptions from CERCLA section 103 and EPCRA section 304 reporting requirements based on those comments. In particular, the Agency exempted: (1) Releases of naturally occurring radionuclides from large generally undisturbed land holdings, such as golf courses and parks; (2) releases of radionuclides naturally occurring from the disturbance of large areas of land for purposes other than mining, such as farming or building construction; (3) releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (4) radionuclide releases from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

Following the final rulemaking, the American Mining Congress (AMC), The Fertilizer Institute (TFI), and others challenged the rule in the United States Court of Appeals for the District of Columbia Circuit in *TFI* v. *EPA* 935 F.2d 1303 (1991). In the litigation, AMC and TFI argued, in part, that EPA violated the Administrative Procedure Act by failing to provide adequate notice and opportunity to comment on the proposed exemptions. The petitioners also argued that it was arbitrary and capricious for EPA to discriminate against mining by excluding it from the land disturbance exemption.

The Court found that the administrative reporting exemptions were improperly promulgated because EPA failed to provide adequate notice of, and opportunity for public comment on, those exemptions. The Court, however, left the four exemptions in place while the Agency undertakes a new round of notice and comment rulemaking.

In a proposed rule published on November 30, 1992 (57 FR 56726), the Agency complied with the Court's decision by providing notice of, and requesting comment on, the same four exemptions from CERCLA section 103 and EPCRA section 304 notification requirements that were promulgated in the 1989 final radionuclide RQ adjustment regulation. EPA requested that public comments on the November 30, 1992, proposal be submitted by January 29, 1993. In response to several requests for extension of the comment period, and in the interest of allowing the public greater opportunity to evaluate the issues raised in the November 30, 1992, NPRM, EPA re-opened the public comment period for an additional 60 days beginning on March 5, 1993 (58 FR 12876).

Twenty-seven comment letters, totaling more than 750 pages, were received on the November 30, 1992, NPRM, including two after the initial deadline and one after the close of the second comment period. These comments raised a number of issues that the Agency could not resolve without additional information and analysis. Chief among these issues were:

—Do radionuclide releases from land disturbance incidental to extraction activities at mines pose a greater risk than such releases from farming and construction?

—Do coal and coal ash piles at sites without coal-fired boilers (e.g., coal piles at mines, railroad stockyards, and steel mills, and coal ash disposed

of in off-site landfills) pose a greater radiological threat than such piles at boiler sites?

—Is the government likely to respond to radionuclide releases from land disturbance incidental to extraction activities or from coal and coal ash piles at non-boiler sites, and if so, what response realistically can be taken?

After evaluating these issues, the Agency decided to issue a supplemental proposal requesting information and comment on expanded reporting exemptions for certain radionuclide releases. The supplemental proposal, published on August 4, 1995 (60 FR 40042), proposed to (1) broaden the land disturbance reporting exemption to include land disturbance incidental to extraction activities at all mines, with the exception of certain types of mines that are likely to handle materials with elevated levels of radionuclides, and (2) broaden the coal and coal ash pile exemptions to include radionuclide releases to and from such piles at all kinds of sites, not just sites with coal-fired boilers. EPA also requested comments on two alternatives to these proposed broader reporting exemptions in the August 4, 1995, supplemental proposal. The first alternative would grant reporting exemptions for land disturbance activities incidental to extraction at all mines, as well as coal and coal ash piles at all sites. The second alternative would grant exemptions to all land disturbance activities incidental to extraction as well as to all releases of radionuclides to and from all piles of diffuse naturally occurring radioactive material (NORM) below a concentration cutoff. EPA originally requested that public comments on the supplemental proposal be submitted on or before October 3, 1995, but in response to requests submitted by a number of commenters, extended the close of the public comment period until December 4, 1995 (60 FR 51765).

Twenty-nine comment letters were received on the August 4, 1995, supplemental proposal. Seven of these commenters had also submitted comment letters on the November 30, 1992, NPRM. This final rule was developed following careful consideration of all issues and concerns raised in public comments on both the November 30, 1992, NPRM and the August 4, 1995, supplemental proposal.

C. Final Reporting Exemptions

In today's final rule, the reporting exemption for releases of naturally occurring radionuclides from large generally undisturbed land holdings, such as golf courses and parks, is being retained as promulgated in the 1989 final radionuclide RQ adjustment regulation and as re-proposed in the November 30, 1992, NPRM (57 FR 56726). EPA wishes to clarify that this reporting exemption applies to releases of naturally occurring radionuclides from generally undisturbed land containing ore reserves, including ores containing elevated concentrations of radionuclides, because those ore reserves would be generally undisturbed. Reporting of naturally occurring radionuclide releases from undisturbed land holdings is unnecessary because CERCLA section 104(a)(3) generally precludes removal or remedial actions in response to a release "of a naturally occurring substance in its unaltered form or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found."

EPA is broadening the present reporting exemption for land disturbance activities to include land disturbance incidental to extraction activities at all mines except certain categories of mines that are likely to handle raw materials with elevated radionuclide concentrations (greater than 7.6 picocuries per gram or pCi/g of U-238, 6.8 pCi/g of Th-232, or 8.4 pCi/g of Ra-226, which equal two times the upper end of the concentration range reported in the literature for typical surface soil). The types of mines that are not within the scope of the reporting exemption are uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. For the purpose of this preamble, monazite is evaluated along with bastnasite as a rare earth ore, but it is listed separately in the rule as a non-exempt category of mines because monazite also may be extracted to recover other elements, such as thorium and titanium. Releases of naturally occurring radionuclides from land disturbance at all other types of mines are exempted from CERCLA section 103 and EPCRA section 304 reporting requirements. For the purpose of this rule, land disturbance incidental to extraction activities includes land clearing, overburden removal and stockpiling, and excavating, handling, transporting, and storing ores and other raw materials. Land disturbance incidental to extraction also includes replacing materials in mined-out areas as long as such materials have not been beneficiated or processed and do not contain elevated radionuclide concentrations, as defined above. Beneficiation and mineral processing activities, including the associated handling, transporting, and storing of bulk materials, are not included within the scope of the exemption.

EPA also is broadening the existing exemptions for coal and coal ash piles to include radionuclide releases to and from coal and coal ash piles at all sites, not just sites where there is a coal-fired boiler.

Each of the above exemptions apply only to CERCLA section 103 and EPCRA section 304 reporting requirements. The exemptions do not apply to the related response and liability provisions.

EPA is promulgating these broader exemptions for three principal reasons, which apply equally to both land disturbance at certain mines and to coal and coal ash piles at non-boiler sites. First, the concentrations of naturally occurring radionuclides in the materials subject to the exemption (e.g., overburden and ores in the subject mining sectors, coal, and coal ash) are generally within the range of "typical" background concentrations in surface rocks and soils in the U.S. Second, EPA believes that a CERCLA response to the release otherwise reportable, would be very unlikely and possibly infeasible or inappropriate, because (1) the concentrations of materials being handled are at or near background, and (2) the resulting radionuclide releases are expected to be continuously low, spread over large areas, and widely dispersed in the environment. Third, the submission of individual notifications of these releases does not appear necessary for the government to assess whether a response action is needed, since the releases should be similarly low across all sites subject to the broader exemptions. As a result, the broader reporting exemptions are intended to allow EPA to focus its resources on the most serious releases and to protect public health and welfare and the environment more effectively and efficiently. At the same time, the exemptions would eliminate unnecessary reporting burdens on persons responsible for land disturbance at certain mine sites and any sites where coal or coal ash is stored or disposed.

D. Summary of Changes From the Proposed Rule

EPA has made one change from the August 4, 1995, supplemental proposal. Land disturbance incidental to extraction of the titanium-bearing ores ilmenite and rutile, but not monazite, has been included within the scope of the reporting exemptions for land disturbance activities. As discussed in more detail in Section II.B.2 of today's preamble, additional data submitted by public commenters and assembled by

the Agency in response to comments are sufficient to support a finding that most unprocessed ilmenite and rutile from the U.S. contain radionuclides in concentrations that are generally within the range of typical background concentrations, like the raw materials handled at the other kinds of mines granted a reporting exemption. Monazite, which also may be extracted at mines recovering titanium, tends to have radionuclide concentrations well above typical background levels.

II. Response to Comments

EPA's full responses to public comments related to this rule are contained in "Responses to Comments on the November 30, 1992, and August 4, 1995, Notices of Proposed Rulemaking on Administrative Reporting Exemptions for Certain Radionuclide Releases" (Responses to Comments), which is available for inspection in Docket Number 102RQ–RN–2 located at the U.S. EPA CERCLA Docket Office (Mail Code 5202G), Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. Additional background information supporting the Agency's position and response to many of these comments is provided in "Technical Background Document Supporting Final Administrative Reporting Exemptions for Certain Releases of Radionuclides," also available for inspection in Docket Number 102RQ–RN–2. The following sections provide a summary of the major public comments and EPA's responses.

A. Support for and Opposition to Reporting Exemptions

1. Proposed Exemptions

Of the 56 public comment letters submitted on the November 30, 1992, NPRM and August 4, 1995, supplemental proposal, 32 expressed support for the proposed exemptions. As discussed in more detail in Section II.B below, these commenters' only objections were that the proposed reporting exemptions were not broad enough.

Only three of the 56 public comment letters opposed the proposed exemptions. The main arguments made by these commenters were that the exemptions (1) will limit the government's ability to control naturally occurring radionuclide exposures and risks, including the risk associated with natural background radiation, indoor radon, and coal ash disposal, and (2) will limit the availability of public information regarding the sources and doses of radiation exposure in local communities.

EPA does not believe either of these concerns is valid. With respect to the government's ability to control naturally occurring radionuclides, the Agency reiterates that CERCLA section 104(a)(3) already precludes actions in response to natural background radiation, unless certain conditions are met as specified in section 104(a)(4). This response limitation does not apply to the releases of naturally occurring radionuclides exempted by this rule, which are not natural background releases but rather releases from anthropogenic activities. The rule, however, only exempts the radionuclide releases from CERCLA section 103 and EPCRA section 304 reporting requirements, not from CERCLA response or liability provisions. Therefore, the government can still respond under CERCLA to the exempted releases, if a response is ever determined to be necessary.

Eliminating the requirement to report the selected releases of naturally occurring radionuclides will not jeopardize the government's ability to respond to these releases, but rather will improve its ability to respond promptly to other releases that may be more serious. Moreover, these reporting exemptions under CERCLA in no way interfere with other government initiatives to address naturally occurring radionuclide releases, including EPA's ongoing programs to address indoor radon under the Indoor Radon Abatement Act, airborne emissions of naturally occurring radionuclides under the Clean Air Act (CAA), naturally occurring radionuclides in "special wastes" from mining and mineral processing under the Resource Conservation and Recovery Act (RCRA), and radiation exposures under the Federal Radiation Protection Guidance.

With respect to the availability of public information regarding the sources and doses of radiation exposure in local communities, the purpose of the CERCLA section 103 and EPCRA section 304 reporting requirements is to notify government personnel of releases of hazardous substances so that a timely decision can be made regarding the need for a response action to protect public health or welfare or the environment. These reporting programs are not intended to serve as a source of public information on radiation sources and exposures. The community right-to-know reporting requirements, toxic release inventory requirements, and related provisions under EPCRA sections 311, 312, and 313 remain in effect. Therefore, the reporting exemptions will not significantly impact a community's ability and right to know about hazardous substances.

2. Alternative 1 Proposed on August 4, 1995

Eight commenters supported Alternative 1 proposed on August 4, 1995, which would exempt land disturbance incidental to extraction at *all* mines. Of these eight commenters, three expressed support for Alternative 1 as a means to ensure that radionuclide releases to and from coal and coal ash piles at all sites were granted a reporting exemption. EPA would like to clarify that the final reporting exemptions include exemptions for coal and coal ash identical to the ones proposed in Alternative 1 (the proposed exemptions and Alternative 1 differ only with respect to mining).

Six of the eight commenters expressed support for an exemption for all kinds of mines but, in EPA's judgment, did not provide enough information to support such a broad exemption. Five of these six commenters either simply stated their preference for this regulatory approach without any technical justification or provided information in support of broadening the proposed exemptions to include certain mining sectors (zircon, bastnasite, and phosphorus), rather than all mining sectors as envisioned in Alternative 1. The sixth commenter made a number of arguments in favor of a broad reporting exemption for all kinds of mines, including: mining cannot be distinguished from the other exempted land disturbance activities (farming and construction); the radiation risks posed by mining are low; a CERCLA response is infeasible; and any potential problems associated with radionuclide releases from mines have already been addressed under other programs. The specific points raised by these commenters are addressed below in Section II.B of today's preamble.

Only one commenter directly opposed Alternative 1. This commenter expressed concern about the radiation risk posed by phosphate mining and reclaimed phosphate land. Based on the elevated levels of radionuclides in phosphate mining materials, and considering the lack of information demonstrating that the radiation risks are low or that a CERCLA response is infeasible, EPA continues to believe that radionuclide releases from phosphate mining should not be exempted from the release reporting requirements of CERCLA section 103 and EPCRA section 304. Several of the commenters who supported exempting all mines objected that the scope of Alternative 1 was too narrow. These comments, which are addressed in Section II.B.1.b below, support the view that Alternative 1

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should be broadened to include radionuclide releases from beneficiation and mineral processing in addition to releases from extraction.

3. Alternative 2 Proposed on August 4, 1995

Only one commenter expressed support for Alternative 2, which would base the reporting threshold on *concentration of radionuclides* in materials. This commenter, however, was in favor of a dose-based rather than a concentration-based limit as proposed. The commenter suggested that EPA utilize a broader version of Alternative 2, which would exempt all releases of diffuse NORM if the release resulted in a dose lower than 500 millirem (mrem), or 5 millisieverts (mSv), above background, excluding radon. While the Agency recognizes some of the basic advantages of a dose-based cutoff, EPA decided against such an approach because among other reasons: (1) Many individuals and organizations that handle naturally occurring radionuclides do not have the capability to accurately estimate radiation doses; (2) the time and analysis required to estimate doses may delay reporting and, hence, impede timely response if necessary; and (3) without standardization, different releasers would be likely to estimate doses in different ways, resulting in inconsistent reporting.

Five commenters opposed Alternative 2 altogether and seven others, though not entirely opposed to a concentration cut-off, provided information supporting their objections to the approach taken in the August 4, 1995, supplemental proposal. Many of these commenters highlighted the following potential difficulties with Alternative 2: (1) It would place a burden on the regulated community and government of planning and implementing such an approach; (2) the complex multiple-step task of determining radionuclide concentrations in a given material relative to background might jeopardize timely reporting; (3) uncertainties might lead to misinterpretations and abuse of the system; and (4) it would be difficult to establish a reasonable and scientifically sound cutoff level. For these reasons, EPA decided against Alternative 2 for the final rule.

B. Requests for Broader Exemptions for Extraction, Beneficiation, and Mineral Processing

Eighteen of the 56 public comment letters received requested broader exemptions for radionuclide releases from extraction, beneficiation, and mineral processing. This includes nine comment letters (out of 27) in response to the November 30, 1992, proposal to continue to exclude all mining from the reporting exemptions, and nine comment letters (out of 29) in response to the August 4, 1995, supplemental proposal to broaden the exemptions to include land disturbance incidental to extraction at most kinds of mines. These commenters offered the following points in support of their requests: (1) The exempted activities cannot be distinguished from the non-exempted activities; (2) the properties of certain ores and materials warrant a broader reporting exemption; (3) the radiation risk at non-exempted sites is low; (4) radon releases from non-exempted sites pose little threat; (5) CERCLA responses at non-exempted sites are infeasible; and (6) releases of potential concern are already controlled under other programs. A few commenters also requested that EPA establish a process for granting site-specific reporting exemptions if broader categorical exemptions are not granted in the final rule. Each of these points is addressed in turn below.

1. Similarities to Other Exemptions

a. *Extraction versus Farming and Construction.* Eight commenters, including seven addressing the November 30, 1992, proposal and one commenting on the August 4, 1995, supplemental proposal, asserted that EPA has not adequately distinguished land disturbance incidental to extraction during mining from that which occurs during farming and construction. Among other grounds for broadening the reporting exemptions to include extraction, these commenters pointed to similarities in the concentrations of radionuclides in the earthen materials being disturbed, and similarities in the level of radiation risk posed by the different activities.

In response to such comments on the November 30, 1992, proposal, EPA issued the supplemental proposal on August 4, 1995, to expand the exemptions for land disturbance activities to include radionuclide releases from all mines except certain categories of mines that are likely to handle raw materials with elevated radionuclide concentrations. These broader exemptions were based on a recognition that, if radionuclide levels in the earthen materials handled within a given mining (mineral commodity) sector are at or near background, as at most farms and construction sites, it would be reasonable to treat such mining the same as other land disturbances for the purpose of the CERCLA and EPCRA reporting exemption. If, however, the materials handled in a given mining sector are likely to have elevated levels of radionuclides, then there might be a reasonable basis for treating the disturbance of those materials differently from land disturbance at the vast majority of farms and construction sites. In EPA's judgment, elevated levels would indicate that further evaluation would be required before it could be concluded with a sufficient degree of confidence that risks were low and that a government response would be unwarranted or infeasible.

EPA followed a three-step approach to identify "elevated" radionuclide concentrations for the purpose of the supplemental proposal. First, based on a review of background concentrations reported in various publications for surface rocks and soils in different geographical areas, the Agency selected the ranges reported by Myrick et al.[1] as representative of "typical" background levels (0.12–3.8 pCi/g of U-238, 0.1–3.4 pCi/g of Th-232, and 0.23–4.2 pCi/g of Ra-226). EPA also considered reported concentrations in recognized hot spot regions of the country, such as the Reading Prong area, as an additional benchmark for the purpose of defining background. Second, EPA compiled available secondary data on the radionuclide concentrations in ores and raw materials handled in different mining sectors. EPA reviewed these data for the purpose of defining "typical" radionuclide concentrations in the various mining materials, rather than overall ranges that would encompass high-end values. Third, EPA compared the typical background range with the typical values assumed for the different mining materials. If based on this comparison a mining material was found to have concentrations greater than two times the upper end of the range defined by Myrick *et al.* (greater than 7.6 pCi/g of U-238, 6.8 pCi/g of Th-232, and/or 8.4 pCi/g of Ra-226), EPA concluded that concentrations in the material were elevated.[2] If

[1] Myrick, T.E., B.A. Berven, and F.F. Haywood, 1983, "Determination of Concentrations of Selected Radionuclides in Surface Soil in the U.S.," *Health Physics*, Vol. 45, No. 3 (September), pp. 631–642.

[2] In choosing background radionuclide values to define the concentration threshold for granting some categories of mines exemption from reporting requirements, the Agency recognizes that the primary purpose of notification is to ensure that releasers notify the government so that the government can assess the need to respond to the release. The exemption threshold levels, like RQ levels, do not reflect a determination that a release of a substance will be hazardous at the level chosen and not hazardous below that level. As in the case of RQ values, EPA is not attempting to make such a determination. (For information about levels that are considered protective of human health and the

concentrations in a mining material also exceeded the values reported in hot spot regions, EPA considered this comparison as further evidence that the concentrations were elevated.

The Agency used the cutoff of two times the upper end of the range defined by Myrick *et al.*, rather than some other multiple such as one or three times, in an effort to balance the need to be protective with the need to account for site-specific variability. On the one hand, a case could be made for using the upper end of the Myrick *et al.* range, because those values are themselves higher than the background concentrations reported for soils and rocks in most places in the U.S. On the other hand, background concentrations of radionuclides are highly site-specific and there are ample data showing that concentrations above the Myrick *et al.* range do exist in relatively isolated circumstances. In the Agency's judgment, two times the upper end of the Myrick *et al.* range prudently accounts for the possibility of "higher-than-normal" concentrations but is not so high as to be an extreme value likely to occur only in very rare instances. To account for those instances where higher background concentrations may occur, EPA also compared the concentrations in mining materials to representative concentrations reported for known hot spot regions of the country, which amount to roughly three to five times the upper end of the Myrick *et al.* range.

The data and conclusions from this comparison are presented in detail in the Technical Background Document supporting this final rule (available in the docket). The following table summarizes these results for the non-exempt categories of mines. The table shows, for each type of material, the full range of reported concentrations and the Agency's best estimate of a typical concentration (either a geometric mean when many data points are available, or a commonly cited or other central value that best reflects available data in EPA's judgment). For the purpose of comparison, the table also shows the ratio of the typical concentration to (1) the upper end of the background range reported by Myrick *et al.* for surface soils (3.8 pCi/g of U-238, 3.4 pCi/g of Th-232, and 4.2 pCi/g of Ra-226), and (2) selected background values reported for recognized hot spot regions (20 pCi/g of U-238 reported for the Reading Prong region and 9 pCi/g of Th-232 reported for the Colorado Front Range).

SUMMARY OF RADIONUCLIDE CONCENTRATIONS IN MATERIALS IN NON-EXEMPT MINING SECTORS

Material	U-238 [a] (pCi/g)	Th-232 [a] (pCi/g)	Ra-226 [a] (pCi/g)	Ratio of typical value to upper end of Myrick *et al.* range	Ratio of typical value to selected hot spot value
Uranium Ore	280–640 (460)	10–11 (10.5)	[b] NA	U: 121 Th: 3.1	U: 23 Th: 1.2
Phosphate Rock	2.7–267 (45)	0.07–4 (1.05)	3–62 (45)	U: 11.8 Th: 0.3 Ra: 10.7	U: 2.3 Th: 0.1
Vanadium Ore	0.18–340 (30)	0.18–58	NA	U: 7.9	U: 1.5
Tin-Bearing Materials	17–43 (30)	2.9–8,830 (12)	1–480 (20)	U: 8 Th: 3.5 Ra: 4.8	U: 1.5 Th: 1.3
Zircon	5–<165 (93)	NA	13–100 (93)	U: 24.5 Ra: 22.1	U: 4.7
Monazite [c]	600–3,000 (1,800)	2,900–80,000 (3,900)	880	U: 474 Th: 1,147 Ra: 148	U: 90 Th: 433
Bastnasite [c]	7	25–2,330	NA	U: 1.8 Th: 7.4–685	U: 0.4 Th: 2.8–259

[a] Where applicable, ranges are presented along with an estimated "typical" value, shown in parentheses.
[b] NA = not available.
[c] Ores extracted principally for their rare-earth or thorium content.

As these data show, the materials handled and stockpiled at non-exempt categories of mines are not "essentially the same as the soil at farming or construction sites," as asserted by some public commenters. In every material, one radionuclide is likely to be present at a level that is at least 7.9 times the upper end of the background range reported by Myrick *et al.* for typical surface soils. Typical radionuclide concentrations in each material also exceed elevated levels commonly reported in hot spot regions. Therefore, although there are hot spots across the country where farming and construction will disturb natural soils and rocks with concentrations more than two times the upper end of the typical range reported by Myrick *et al.*, EPA believes that the non-exempt materials are distinguished from the soils and rocks expected to be disturbed at the vast majority of farming and construction sites.

Finally, commenters asserted that the distinction between extraction at non-exempt mines and farming and construction sites is unfounded because EPA has not demonstrated that extraction activities at non-exempt mines pose a greater risk than the exempt activities. EPA does not believe that risk analysis provides the only reasonable basis for distinguishing between the two sets of activities. As outlined in the supplemental proposal, EPA is distinguishing between the different activities on the basis of the likely radionuclide concentrations in the materials being disturbed relative to background. In the case of the exempt activities, EPA concluded that a CERCLA removal or remedial response would very rarely, if ever, be necessary because the activities result in low-level, diffuse releases of radionuclides at concentrations that are at or near background. EPA also questioned

environment for response actions under CERCLA at radioactively contaminated sites see 40 CFR 300.430(e)2(i) and "Establishment of Cleanup Levels for CERCLA Sites with Radioactive Contamination" [OSWER No. 9200.4–18, August 22, 1997]).

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whether it would be feasible or practical to mount a CERCLA response to such releases, since the materials in question already have radionuclide concentrations likely to be at or near background and CERCLA responses would not normally clean up to below background levels. In contrast, when the radionuclide concentrations are likely to be elevated as at non-exempt mines, EPA believes that further analysis is needed before concluding that a reporting exemption is warranted.

As discussed in more detail in response to comments asserting that the radiation risk is low at the non-exempt categories of mines (see section II.B.3 below), EPA believes that currently available risk information and assessments do not provide enough of a basis for broadening the exemptions to include those mines. Therefore, the supplemental proposal requested that commenters wishing to support exemptions for the non-exempt mines provide data demonstrating that radionuclide concentrations in the mining materials are in fact at or near background concentrations, or, in the absence of such data, information showing that radiation exposures and risks are low despite the elevated concentrations in the materials handled. In EPA's judgment, only those commenters addressing titanium mining provided sufficient information to support broadening the exemptions beyond those proposed in the supplemental notice.

b. *Extraction versus Beneficiation and Processing.* Five commenters on the August 4, 1995, supplemental proposal requested that the proposed broader reporting exemptions be broadened even further to include radionuclide releases from beneficiation and mineral processing. The primary argument made by these commenters was that EPA has not provided a valid basis for excluding beneficiation and processing from the scope of the exemptions.

The scope of the administrative reporting exemption that pertains to mining activities is limited to releases from land disturbance. As proposed in the August 4, 1995, supplemental proposal, and as promulgated in today's final rule, the exempted land disturbance activities include farming, construction, and extraction activities at all mines except certain categories of mines where raw materials are likely to have elevated radionuclide concentrations. Land disturbance activities incidental to extraction include land clearing, overburden removal and stockpiling, and excavating, handling, replacing, transporting, and storing ores and other raw materials. These are earth moving activities involving natural materials and using technologically unsophisticated operations and equipment generally consistent across sites. The "enhanced" radionuclide releases that may occur as a result of these activities are low-level, diffuse, and difficult to control.

Beneficiation and mineral processing activities are outside the scope of such land disturbance activities. As stated in the preamble to the supplemental proposal, the factors that distinguish beneficiation and processing from land disturbance incidental to extraction include the potential for beneficiation and processing to: (1) Concentrate radionuclides in waste streams or other materials well above natural background levels; and (2) cause substantially greater releases. These factors are discussed below.

Radionuclides may become concentrated through beneficiation and processing activities relative to levels found in raw materials. Some ores and processing operations may yield a waste product, such as slag or tailings, with radionuclide concentrations higher than those in the ore. EPA's 1993 draft Diffuse NORM Waste report [3] summarizes the results of studies showing that some processes associated with the beneficiation and processing of certain minerals or metals appear to concentrate certain radionuclides and enhance their environmental mobility. Additional information showing how radionuclides can become concentrated in processing wastes was provided by comments on the supplemental proposal. For example, data referenced by one commenter show how the concentration of radium-226 can be increased in processing wastes relative to zircon sand.

The Agency acknowledges that other data show no increase in radionuclide concentration in certain products and wastes from the beneficiation and processing of certain minerals. However, there are numerous other wastes and by-products from these processing sectors that would have to be characterized before the Agency could conclude that concentrations are not being increased. For example, although available data from copper beneficiation and processing activities indicate no increase in radionuclide concentration in the tailings, copper concentrate, and leach materials, there are no data available on radionuclide concentrations for other wastes and by-products, including solvent extraction crude, spent bleed electrolyte, tankhouse slimes, acid plant blowdown, surface impoundment waste liquids, acid plant thickener sludge, and various process wastewaters, among others.

A separate issue is the potential for beneficiation and mineral processing activities to result in releases greater than those from land disturbance incidental to extraction. Larger releases could be the result of an increase in radionuclide concentration, an operation that results in point source releases, or an increase in environmental mobility due to physical and chemical changes. Many beneficiation and processing activities use heat and chemicals, such as acids, to change the physical or chemical structure of raw ore and intermediate products. For example, the use of solvents in the beneficiation process known as solvent extraction, or acids in leaching processes, tend to increase the mobility of certain constituents. Wastes such as sludges, muds, and slurries have a very different physical structure from that of the original ore, and more detailed study would be needed to determine the effect of the change in radionuclide releasibility and mobility. In any case, the resulting material no longer resembles the natural earthen material envisioned within the scope of the land disturbance exemption.

Additional evidence of the differences between land disturbance and beneficiation/processing is provided by 16 sites on the National Priorities List where radioactive contamination is an important health hazard, and where the primary source of contamination was a beneficiation or processing activity or waste.[4] Though many of these sites are old and environmental protection practices have changed, others were in operation more recently. Among the more recent sites are the United Nuclear Corporation uranium mill in Churchrock, NM, where ground water, surface water, and soils are all contaminated with radionuclides, and the Teledyne Wah Chang Albany zirconium and hafnium processing site in Oregon, where residual on-site sludges are contaminated with high levels of thorium, uranium, and radium. In contrast, there are no documented cases of CERCLA removal or remedial actions being taken in response to radionuclide releases at mine sites

[3] U.S. EPA, 1993, "Diffuse NORM Wastes," DRAFT, RAE–9232/1–2, Volume I, Office of Radiation and Indoor Air.

[4] These sites are identified in a report included in the public docket for the November 30, 1992 rulemaking entitled "Radionuclide Releases from Mining Activities: Background Information Related to CERCLA Reporting Requirements," Office of Emergency and Remedial Response, U.S. EPA, October 15, 1992.

within those categories proposed to receive a reporting exemption.

Another issue raised by commenters is the practical difficulty of drawing the line between extraction and beneficiation/processing. As guidance, for the purpose of implementing the reporting exemptions, EPA reiterates that land disturbance incidental to extraction includes land clearing, overburden removal and stockpiling, and excavating, handling, replacing, transporting, and storing ores and raw materials. All of these are earth moving operations, and the materials handled are natural and unprocessed. Beneficiation starts at the onset of the first occurrence of any of the following activities that are typically characterized as beneficiation: Crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining to remove water or carbon dioxide, roasting in preparation for leaching, gravity concentration, magnetic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation, and heap, dump, vat, tank, and *in situ* leaching. Each of these beneficiation activities is briefly described in the Technical Background Document supporting this final rule.

EPA believes that it would be impossible to draw and effectively implement a line between (1) land disturbance that occurs during beneficiation and processing, and (2) other beneficiation and processing activities. For example, there is no precise demarkation between "handling, transporting, and storing of materials," which is land disturbance, and certain operations characteristic of beneficiation, such as crushing, grinding, and leaching, which include more than just land disturbance. All extraction activities can be considered land disturbance as defined for this reporting exemption rule; however, because of the difficulty in segregating land disturbance from other activities at beneficiation/processing sites, the Agency has decided that it is not possible to broaden the exemption further to clearly include only land disturbance that occurs during beneficiation and processing.

2. Properties of Certain Ores and Materials

Four commenters on the August 4, 1995, supplemental proposal agreed with the proposed broader exemptions, but asserted that the exemptions should be broadened further to include additional mining sectors based on the properties of ores and raw materials handled in those sectors.

Two commenters said zircon extraction should be exempted because zircon contains low concentrations of radionuclides and has physical properties that inhibit radon emanation and radionuclide leaching. As shown in the above table of radionuclide concentrations, however, available data indicate that radionuclide levels in zircon sand can be quite elevated, including, on average, U-238 concentrations that are approximately 25 times the upper end of the range reported by Myrick *et al.* for surface soils and five times a higher background value (20 pCi/g) cited for the Reading Prong. It is true that, despite these elevated concentrations, zircon sands have a low radon emanation rate and may also leach radionuclides to only a limited degree. While these properties may mitigate the radiological consequences of zircon sand extraction, other possible exposure pathways must be considered before concluding that the radiation risk is low. Potential direct radiation exposures are a particular concern. A study by Boothe *et al.* (1980)[5] measured 170 μR/hr at the surface of zircon and 15 μR/hr at a distance of 3 feet above the ore. For reference, background measurements cited in the same study were generally 8–10 μR/hr. These measurements indicate that zircon sands could pose an incremental direct radiation hazard if people are in close proximity for an extended period of time. Without further characterization of this hazard, EPA believes that it cannot include zircon extraction within the scope of the reporting exemptions.

One commenter objected to EPA's characterization of radionuclide concentrations in rare earth ores in the supplemental proposal, pointing out that the Agency did not adequately distinguish between bastnasite and monazite ores. This commenter also submitted data indicating that radionuclides are present at much lower levels in bastnasite than in monazite. EPA has attempted to characterize these ores more precisely in the Technical Background Document supporting this final rule. Data specific to bastnasite, however, indicate that these ores also contain elevated concentrations (see the above table). Accordingly, a reporting exemption for bastnasite extraction cannot be granted, as there is no basis for a determination that radionuclide concentrations in the ore are at or near background.

One commenter submitted data indicating that the concentrations of radionuclides in titanium-bearing ores are lower than characterized by EPA for the supplemental proposal. In order to resolve this discrepancy, EPA obtained additional data on the radionuclide concentrations in titanium ores (principally rutile and ilmenite). All of the data collected are presented in the Technical Background Document supporting this final reporting exemption rule. In brief, these data indicate that radionuclide concentrations in foreign titanium ores can be slightly elevated over typical background concentrations; however, on average, concentrations are only 1.1 times the upper end of the background range reported by Myrick *et al.* for surface soils. Domestic rutile and ilmenite contain lower concentrations than foreign ores, with typical concentrations within the background range reported by Myrick *et al.* Based on these additional data, which show overall lower levels than available previously, EPA now concludes that most unprocessed rutile and ilmenite from the U.S. are likely to contain radionuclides at concentrations that are at or near background. Therefore, contrary to the position taken in the supplemental proposal, radionuclide releases from land disturbance incidental to rutile and ilmenite extraction are granted a reporting exemption in today's final rule. However, monazite extraction, including that which may occur at some mines recovering titanium, is not granted a reporting exemption because of the elevated concentrations of radionuclides found in monazite.

One commenter said phosphate ore mining should be exempted because most radionuclide concentration data cited in the Technical Background Document for phosphate ore are at or under approximately five times background levels. As discussed above, EPA selected two times the upper end of the Myrick *et al.* range as a cutoff for this rule because, in the Agency's judgment, this value prudently accounts for the possibility of "higher-than-normal" concentrations but is not so high as to be an extreme value likely to occur only in very rare instances. EPA believes that five times background cannot reasonably be labeled "at or near background" or "generally within the range of typical background concentrations in surface rocks and soils in the U.S.," as EPA judges to be the case for the categories of mines included within the proposed reporting

[5] Boothe, G.F., Stewart-Smith, D., Wagstaff, D., and M. Diblee, 1980, "The Radiological Aspects of Zircon Sand Use," *Health Physics*, Vol. 38, P. 393–398.

exemptions. Five times the upper-end values determined by Myrick *et al.* equates to 19 pCi/g of U-238, 17 pCi/g of Th-232, and 21 pCi/g of Ra-226. These values are approximately 20 times the mean background level of 1 pCi/g expected in most places in the U.S., and even above most of the elevated background levels reported for hot-spot regions of the country. Even if five times background were accepted as a threshold for defining elevated, 19 (76 percent) of the 25 U-238 concentrations in phosphate rock reported in the Technical Background Document exceed five times the upper limit reported by Myrick *et al.* These data adequately demonstrate that phosphate ore contains elevated levels of naturally occurring radionuclides and prevent the Agency from broadening the reporting exemptions to include phosphate ore mining.

3. Radiation Risk

Ten commenters stated that the reporting exemptions should be broadened to include additional categories of mines as well as beneficiation and processing because available information and analyses show that the radiation risk associated with these activities is low. As noted above, beneficiation and processing are beyond the scope of the final exemptions; nevertheless, the Agency examined public comments regarding the radiation risks posed by these activities as they pertain to extraction.

Several commenters asserted that previous EPA assessments under the CAA show that radionuclide releases from mining pose a low risk and do not warrant control under the National Emission Standard for Hazardous Air Pollutants (NESHAPs) program. These previous assessments include a 1984 study[6] of various mining and smelting operations as well as a 1989 assessment[7] of surface uranium mines, which are theoretically worst-case mining activities according to commenters. EPA believes it is inappropriate to rely on the risk assessments conducted for the 1983 and 1984 NESHAP rulemakings, in which the Agency determined not to regulate "other extraction facilities," as the basis for an administrative reporting exemption under CERCLA. The risk assessments supporting EPA's determination not to promulgate radionuclide NESHAPs for this source category are based on outdated information, exposure assessment methods, and risk characterization techniques. The Agency has not re-examined this source category under the NESHAPs program. The present lack of NESHAPs for certain mining sectors, therefore, does not necessarily indicate that EPA considers the current risk from radionuclide emissions from these sites to be insignificant.

EPA believes the scope of the 1989 NESHAP assessment is too narrow to support a CERCLA reporting exemption. In addition to covering only uranium mines, the assessment considers only the risks posed by airborne releases, not risks associated with other exposure pathways such as direct radiation, drinking water (both ground and surface water), and food consumption, all of which are of interest under CERCLA. Also, the 1989 assessment considers the risks to nearby residents but not workers, which are a concern under CERCLA.

Other commenters stated that mining waste proceedings under RCRA confirm that radiation risks at mines are low. EPA disagrees. EPA's decision not to regulate some mining wastes as hazardous under Subtitle C of RCRA was not based on a finding that the risks (including the radiation risks) are low, but rather on a finding that Subtitle C may not provide sufficient flexibility to address mining-related risks in light of the unique conditions at mining sites (51 FR 24496, July 3, 1986). Since issuing the mining waste regulatory determination, radioactivity has continued to be an important issue in EPA's development of the mining waste program under Subtitle D of RCRA.

Several commenters stated that, like exempted land disturbance activities, radon releases from non-exempt mines disperse rapidly and quickly dissipate into background levels. The Agency agrees that radon disperses rapidly in the ambient air; but this by itself does not mean that radon risks to nearby receptors are necessarily low. Even the low radon risk estimates developed by the Agency in support of the 1989 radionuclide NESHAP ruling for surface uranium mines (54 FR 51654, December 15, 1989), which are worst-case mine sites according to commenters, do not provide adequate basis for a CERCLA reporting exemption, because the 1989 assessment did not evaluate radon risks to workers or those associated with homes built on or around uranium-mining materials with elevated radionuclide concentrations. Such scenarios could warrant response under CERCLA if an abandoned site in the non-exempt mining categories is not fully reclaimed and is then used for other purposes, or if materials from non-exempt mines are taken off-site and used as fill around homes.

Commenters also stated that risks are low because mining occurs in remote locations. While the Agency acknowledges that many mines are located farther away from population centers than many construction and farming activities, this by itself does not provide sufficient basis for concluding that human exposures and risks around non-exempt mining sites are low. The distance to and exposures of maximally exposed individuals, including on-site workers and closest residents, are unrelated to population density around mining sites. Even if mining sites are located in less populated areas, it is still possible that such individuals may spend considerable time in close proximity to materials with substantially elevated concentrations of radionuclides, and thus experience significant risks.

A few commenters referenced other reports as evidence that radiation risks associated with mining are low. After reviewing each of these references, EPA believes they do not support a reporting exemption for the non-exempt categories of mines. For example, some commenters pointed to a National Research Council report[8] that states that "the health risks posed by exposures to radon from uranium mill tailings piles are trivial for the average U.S. citizen," and that by "virtually any measure, the risk for people living at distances beyond several kilometers from a pile is trivial." Without disputing these statements in the report, EPA notes that overall population risks or the potential to pose significant risks at great distances are not the most important factors in deciding whether a CERCLA response action may be needed at any individual site. An important determination of the need for response is the risk to reasonably maximally exposed individuals. Nothing in the Council's report enables EPA to conclude that risks to workers or nearby individuals from radon emissions are insignificant.

Commenters also pointed out that the total amount of radon released due to mining is but a small fraction of that released due to the exempted activities of farming and construction. The total amount of radon released across all sites in the country, however, is not relevant

[6] U.S. EPA, 1984, "Radionuclides—Background Information Document for Final Rules, Volume II." Office of Radiation Programs, EPA 520/1–84–022–2, October.

[7] U.S. EPA, 1989, "Risk Assessments, Environmental Impact Statement, NESHAP for Radionuclides, Background Information Document—Volume 2," Office of Radiation Programs, EPA/520/1–89–006–1, September.

[8] "Scientific Basis for Risk Assessment and Management of Uranium Mill Tailings," 1986.

for the purpose of determining whether a reporting exemption is appropriate for a given site or category of sites. Reports of releases are intended to alert government authorities to releases at individual sites so they may determine whether they pose risks warranting a response. A more meaningful measure, with a greater bearing on the potential for radon emissions to pose risks that may warrant a response, is the expected radon emission per site. When commenters' estimates of total annual radon releases from different categories of sources are divided by the number of sites in those categories, it appears that more radon is released from an average uranium or phosphate mine than from an average farm. The Agency recognizes that certain large farms emit more radon than certain mining sites, but this is due more to the relative sizes of the sites than to the rate of radon emission from the earthen materials being disturbed. Large farms emit radon at a low rate but over a large area, whereas certain uranium and phosphate mines emit radon at a higher rate but over a smaller area. The radon flux from uranium and phosphate mining materials is higher than that from most natural soils. This supports the Agency's decision to treat these materials differently from exempted materials in today's final rule.

Some commenters contended that the recent scientific information casts doubt on EPA's underlying Linear Non-Threshold Hypothesis that all ionizing radiation is harmful, and that epidemiological studies of populations exposed to even high ambient radiation levels, such as 50 to 100 times background, do not indicate significant adverse health effects. As EPA stated in the proposed Federal Radiation Protection Guidance for Exposure of the General Public (59 FR 66417, December 23, 1994), the risks to health from exposure to low levels of ionizing radiation have been reviewed by the National Academy of Sciences in a series of reports over the past two decades, as well as by the International Commission on Radiological Protection, the United Nations Scientific Committee on the Effects of Atomic Radiation, and the National Radiological Protection Board of the United Kingdom. Based on these studies as well as extensive reevaluations completed over the last decade of atom bomb survivors, the Agency continues to believe that it is appropriate, for radiation protection purposes, to assume that at and just above the level of natural background the risk of cancer and most serious hereditary effects increases linearly with increasing radiation dose, without a threshold (59 FR 66417, December 23, 1994). The Agency published its risk estimates for doses at or near background levels of exposure in a 1994 report,[9] which was reviewed by EPA's Science Advisory Board. These risk estimates are based on the linear non-threshold model.

Finally, one commenter stated that analyses of site-specific exposures at a facility in California shows that there is no significant radiation risk associated with bastnasite extraction and beneficiation, and that the State of California has accordingly declined to license the site for the purpose of radiation control. EPA discussed the matter with the California Department of Health Services (Radiologic Health Branch), which does not concur with the commenter's conclusions. The State is continuing to examine activities at the facility and is still evaluating the need to issue a nuclear materials license. A final decision will be based, in part, on a comprehensive Environmental Impact Report being prepared by San Bernardino County. Consequently, EPA cannot conclude that radiation risks at the subject facility are low and that a government response to radionuclide releases from the facility would be unwarranted. Also, the fact that one facility were well controlled would not support an exemption for an entire category of facilities.

4. Radon Releases

Three commenters argued that radon exposure is responsible for most of the public health risk associated with naturally occurring radionuclides. These commenters also concluded that the risk of radon from mines is low, based on past risk assessments of uranium mill tailings sites and surface uranium mines, which would tend to have higher risks than other kinds of mines. The commenters reasoned that these points taken together show that risks from the worst-case exposure pathway from worst-case mining activities are not significant, and that therefore a broad reporting exemption for all radionuclide releases from all mines is justified.

EPA does not agree with this reasoning. EPA recognizes that its Environmental Impact Statement (EIS) for Remedial Action Standards for Inactive Uranium Processing Sites, cited by commenters, shows that the risk at such sites from radon emissions dwarfs the risks associated with releases of other radionuclides and other pathways. Similarly, EPA acknowledges that the Nuclear Regulatory Commission's Generic EIS on Uranium Milling, also cited by commenters, concludes that "* * * radon is the greatest single contributor to risk." However, EPA does not believe either of these references provides a basis for concluding that only radon is of concern. Both reports show other radionuclides and other exposure pathways also can pose considerable risk. Both reports show that direct gamma radiation is a big contributor to risk at uranium mill tailings piles, especially to on-site workers and residents who may live or spend considerable time close to the piles.

This conclusion is supported by other documents placed in the public docket for this rule. For example, EPA's original risk assessment for coal and coal ash piles at boiler sites, which resemble piles of diffuse NORM at mine sites, found that the critical exposure pathway for workers was direct radiation.[10] The estimated risk to nearby residents from exposure to direct radiation was of the same order of magnitude as that from exposure to radon emissions. Similarly, a report submitted in public comments on this rule estimates that direct radiation is the critical exposure pathway for workers exposed to either uranium overburden or metal mine wastes.[11] The report also estimates that direct radiation is the critical exposure pathway for nearby residents exposed to metal mining waste. Finally, EPA analyses at the Bluewater Uranium Mine Sites in Prewitt, New Mexico, estimates that exposure to external gamma radiation and radionuclides by the soil ingestion pathway results in a greater than 10^{-4} lifetime cancer risk, which is a substantial risk.[12]

EPA does not believe, as commenters suggest, that previous risk assessment results for uranium mill tailings piles and surface uranium mines provide a basis for concluding that radon risks at all mines are low. Indeed, in enacting the Uranium Mill Tailings Radiation Control Act (UMTRCA), Congress found that uranium mill tailings may pose significant radiation health hazards to

[9] U.S. EPA, 1994, "Estimating Radiogenic Cancer Risks;" EPA 402–R–93–076, Office of Radiation and Indoor Air, Washington, D.C.

[10] U.S. EPA, 1989, "Technical Background Supplement in Support of Rulemaking Adjustment Activities for Reportable Quantities (RQ) of Radionuclides," Office of Radiation Programs, March.

[11] SENES Consultants Limited, 1993, "Review of Selected Issues Concerning EPA's Regulations: Reportable Quantities Adjustment—Radionuclides," Prepared for American Mining Congress and The Fertilizer Institute, January.

[12] U.S. EPA, 1992, "Removal Fact Sheet 1, Bluewater Uranium Mine Sites," Prewitt, New Mexico, Navajo Nation, November.

the public, and that every reasonable effort should be made to provide for their stabilization, disposal, and control in a safe and environmentally sound manner to prevent or minimize radon diffusion into the environment. Regulatory initiatives to control radon releases from uranium mill tailings piles have since included UMTRCA standards under 40 CFR part 192 as well as CAA NESHAPs under 40 CFR part 61. For example, in the radon risk assessment supporting the NESHAP for operating uranium mill tailings piles, EPA estimated that the lifetime fatal cancer risk to the most exposed individual is 3×10^{-5}, so long as the piles are mostly wet or covered with clay. However, the risks from mill tailings piles can increase dramatically, to as high as 3×10^{-3}, if the piles are allowed to be dry and uncovered. Based on this conclusion, EPA promulgated a standard limiting radon emissions to an average of 20 pCi/m²-sec (54 FR 51680, December 15, 1989). The risk assessments supporting other regulations on radon emissions from uranium mill tailings piles yield similar conclusions. These conclusions do not support a determination that radon releases from the non-exempt categories of mines are insignificant and warrant a reporting exemption.

EPA recognizes that its risk assessment for the 1989 NESHAP on surface uranium mines concluded that the maximum individual risk due to radon exposure is 5×10^{-5}, which was below the benchmark of 1×10^{-4} used to trigger the imposition of an emission limit. However, a risk of 5×10^{-5} is significant and might warrant response under CERCLA. Moreover, there is no technical basis for concluding that this risk estimate bounds the radon risk at other mine sites. Finally, as mentioned previously, the 1989 assessment did not consider radon risks to workers or radon risks associated with homes built on or around uranium-mining materials with elevated radionuclide concentrations. Therefore, even if the Agency were to accept the proposition that radon risks at other mines are lower than estimated for surface uranium mines, available risk results for surface uranium mines do not address all the potential exposure pathways and receptors that would have to be considered for a broader reporting exemption.

5. Feasibility of Response

Two commenters stated that it is highly unlikely the government could or would respond to reported radionuclide releases from the non-exempt mines. According to these commenters, there is little that could be done beyond covering radon-emitting ores and other materials with soil or water, which would defeat the purpose of mining.

The Agency believes that CERCLA responses are possible and feasible for non-exempt mines where materials have elevated concentrations of radionuclides. For example, responses could include covering overburden or waste piles, fencing to prevent access, monitoring nearby areas for potential radiation exposure, and establishing administrative controls governing the disposal and use of materials and future land uses of the site after closure.

In addition, it may be feasible or appropriate to take response action after mining operations cease. These could include actions to reclaim the land and prevent elevated radiation exposures in surrounding and encroaching communities. Examples of CERCLA responses targeted specifically to radiation exposures at abandoned mine sites include removal actions taken at the Bluewater Uranium Mine Sites in Prewitt, New Mexico.

6. Controls Under Other Programs

Nine commenters asserted that EPA has previously evaluated radiation risks at non-exempt extraction, beneficiation, and processing sites under other regulatory initiatives and has chosen to regulate those risks identified as potentially significant. Therefore, according to the commenters, CERCLA and EPCRA reporting should not be required for releases at these sites either because they are federally permitted or because they have been shown to pose low risk that does not warrant regulation.

As discussed in Section II.B.3 above, the two regulatory initiatives cited by the commenters as controlling radiation risks at mines—the radionuclide NESHAP under the CAA and the mining waste proceedings under RCRA—do not support a conclusion that the risks are necessarily low. Radiation risk at mines is still being evaluated as part of EPA's current study of diffuse NORM wastes, as well as under various state initiatives. In addition, at the request of Congress, the National Academy of Sciences is currently conducting a study for EPA on the scientific and technical basis of its radiation protection guidance for NORM; when that study is completed, EPA is to report to Congress its views on the need to revise guidelines for NORM in light of the Academy's report. Until these or other comparable studies are completed, and a regulatory change is warranted based on the results of such studies, the Agency will maintain the existing reporting requirements for non-exempt mines. Also, decisions whether to regulate releases under other programs do not always take adequate account of factors that are important in the CERCLA and EPCRA programs. For example, in making its decision not to regulate radionuclide emissions from mines under the CAA NESHAPs program in 1984, EPA considered a variety of factors, including cost and technological feasibility. These factors would be evaluated differently by government personnel deciding whether to take a response action under CERCLA.

One commenter believed applicable operations and materials produced at a rare earth separations facility in California are adequately considered and controlled within existing regulations, and that the facility should therefore be exempted. Existing controls include a license issued by the California Radiologic Health Branch that requires a radiological monitoring and safety plan to include the treatment, storage and transport of a lead/iron filter cake generated from site operations.

The fact that a facility is regulated by a State does not show that it or other facilities might not cause a release warranting a response. Also, EPA discussed this comment with the California Department of Health Services (Radiologic Health Branch), which clarified that the scope of the current nuclear materials license for this facility is limited to treatment and disposal of radioactively contaminated filter cake. The license currently does not address the separations process in general. The State is continuing to examine activities at the facility and is evaluating the need to issue a broad license to control other radioactive materials and wastes at the site. Therefore, EPA does not believe that this facility shows that the reporting exemptions should be broadened.

More broadly, beneficiation and processing are beyond the scope of the reporting exemptions, as mentioned in section II.B.1.b above. Therefore, controls under other programs for beneficiation and processing activities are irrelevant for the purpose of this rule.

7. Site-Specific Exemptions

Two commenters requested that EPA provide a means for facilities to seek a site-specific exemption based on radionuclide releases at the site, if land disturbance activities incidental to extraction activities at mines with elevated concentrations and beneficiation and processing operations are not included within the final reporting exemptions. In the interest of limiting burdens to both the regulated

community and the government, EPA decided to grant exemptions to categories of mines rather than site-specific exemptions. All of the facilities that would most likely seek a site-specific exemption would be eligible for the reduced reporting requirements under CERCLA for continuous releases. EPA believes that it would be much more burdensome for these facilities to prepare and submit information for a site-specific exemption than to comply with existing reporting requirements for continuous releases. The economic analysis supporting today's final rule ("Estimated Economic Effects of Final Administrative Reporting Exemptions for Certain Releases of Radionuclides," available for inspection in the docket) estimates that each facility spends eight hours per year complying with the continuous release reporting requirements. It would take many more hours for each facility to prepare a scientifically sound, site-specific risk assessment to support a reporting exemption.

C. Scope of Reporting Exemptions for Coal and Coal Ash

Four public commenters raised questions regarding the scope of the proposed reporting exemptions for coal and coal ash piles.

1. Types of Ash

One commenter asked if the exemption for coal ash applies to coal fly ash. EPA interprets the term "coal ash" in the final reporting exemptions to apply to fly ash, bottom ash, and boiler slags, as clarified in the final regulatory language. The radionuclide concentration data presented and examined in the Technical Background Document supporting the exemptions are for all three of these materials. Based on these data, EPA concluded that these materials typically contain radionuclide levels very close to the upper end of the range reported by Myrick *et al.* for surface soils (3.8 pCi/g of uranium-238 and 3.4 pCi/g of thorium-232). Accordingly, these materials were judged to have radionuclide concentrations that are at or near background and they are included within the scope of the reporting exemptions.

2. Beneficial Uses of Ash

Two commenters asked if the coal ash exemption applies to beneficial uses of the ash. Releases of radionuclides "from the dumping of coal ash" and "from piles of coal ash" at all sites—including sites that beneficially use the ash—are included within the scope of the reporting exemptions. The rationale and regulatory language for the coal ash dumping exemption logically extends to such coal ash uses that involve the land application of coal ash that has not been otherwise processed or altered, typically as a substitute for natural materials.

Other coal ash uses, however, are beyond the scope of the exemptions as proposed. They involve coal ash that has been placed into manufacturing operations and discrete product uses that are unlike the releases from diffuse sources contemplated for the exemptions. These include uses of coal ash as an ingredient in cement, concrete, asphalt, wallboard, blasting grits, roof granules, grouts, fire extinguishing slurries, and fillers in paints, undercoatings, and plastics. Because such uses were not originally part of the exemptions as proposed, but arose through commenters' suggestions, the Agency would need further study to determine whether the exemptions could properly be applied to manufactured product uses.

3. Coal Preparation and Transportation

One commenter asked if the reporting exemption for coal piles applies to coal preparation activities and the transportation of coal in open top railcars and other vehicles. The Agency has determined that the exemptions do not apply to coal preparation activities but do apply to coal transportation.

Today's rule exempts radionuclide releases to and from coal piles at all sites, including piles of raw and prepared coal at coal preparation plants. However, releases from coal preparation activities are outside the scope of the reporting exemptions for the same reasons advanced for beneficiation activities in the mining industry. Specifically, coal preparation involves processing operations and releases that are unlike diffuse releases to and from coal piles, as contemplated in the proposal. Coal preparation activities include, but are not limited to, size reduction, screening, cleaning, and dewatering.[13]

In addition, EPA notes that the concentration of radionuclides in materials handled during coal preparation would have to be generally within the range of typical background, in order to meet the first criterion for exemption outlined in the proposed rule. The Agency, however, has no data on the concentration of radionuclides in wastes and by-products generated during the coal preparation process (e.g., slimes, sludges, air emissions, and discarded piping and processing equipment). The commenter asserts that it is unlikely that radionuclide concentrations would be increased as a result of preparation activities, but provides no data showing that the levels in various wastes and by-products are indeed at or near background, as they are in coal.

The amount of waste generated during coal preparation has been estimated as roughly 30 tons for every 100 tons of raw coal.[14] Although limited information is available on the composition of this waste, washability studies do provide some information regarding the fate of radionuclides in the preparation process. These studies identify the phase (i.e., mineral matter or coal) in which an element remains after cleaning, indicating whether an element can be "washed out" of a given sample of coal. Thorium appears to be associated with the mineral material, and uranium with the coal, although "significant amounts of uranium may occur in accessory minerals and as secondary mineralization" in some coals.[15] Consequently, coal preparation waste might be lower in uranium, but higher in thorium than the raw coal. No quantitative data, however, are available to demonstrate the frequency and extent of these or any other differences, if they actually exist.

Preparation techniques and, therefore, the wastes generated during preparation may undergo significant changes in the near future. More stringent air pollution regulations are inducing industry to develop improved coal cleaning technologies which reduce impurities emitted when coal is burned. Based on the extremely limited data for the wastes, and the likelihood that their nature may change, EPA cannot prudently assume that they have, or will in the future have, radionuclide concentrations similar to typical background.

Further, to satisfy the Agency's second criterion for exemption, a CERCLA response to releases of radionuclides from coal preparation activities would have to be highly unlikely, and possibly infeasible, because the materials being handled have radionuclide concentrations similar to background and the releases are expected to be continuously low,

[13] The Technical Background Document supporting the final reporting exemption rule provides background information on the nature of coal preparation activities.

[14] U.S. Department of Energy, 1991, "Coal Data: A Reference," Energy Information Administration, DOE/EIA–0064(90).

[15] U.S. EPA, 1995, "Estimates of Health Risks Associated with Radionuclide Emissions from Fossil-Fueled Steam-Electric Generating Plants," Office of Radiation and Indoor Air, EPA 402/R–95–16.

spread over large areas, and widely dispersed in the environment. Coal preparation activities generally will not result in releases from a diffuse source like those exempted by today's final rule. On the contrary, a coal preparation plant is similar to an industrial facility which may have point source releases, as from an air vent. Responses to such releases would appear to be quite feasible. These responses could include the placement of emission controls, such as fabric filters, to capture particulates before they are released to the atmosphere.

Finally, releases from coal preparation and treatment activities would have to satisfy the last exemption criterion identified in the Agency's supplemental proposal, that is, individual release notifications would not be necessary for the government to assess whether a response action is needed, since the releases should be similarly low across all sites. However, preparation plants appear to differ in design according to the properties and composition of the coal used and other factors. Therefore, processes and releases cannot be generally characterized, and individual release reports may be required for the government to assess the necessity of a response action for a particular facility.

In summary, radionuclide releases from coal preparation and treatment are not analogous to those from coal piles. Like beneficiation in the mining industry, coal preparation activities are outside the scope of the reporting exemptions.

EPA interprets releases from coal transportation as falling within the scope of today's broader exemptions, which apply to releases of radionuclides "from the dumping of coal" and "from piles of coal" at all sites. This includes releases to and from coal piles at transportation storage yards as well as coal held in transportation vehicles. Therefore, fugitive emissions of radionuclides from coal in a moving open top railcar would be exempt. This interpretation is consistent with the scope of the exemption for land disturbance incidental to extraction, which includes transporting ores and other raw materials from certain kinds of mines. Such radionuclide releases during coal transport meet all of the exemption criteria in that the concentrations of radionuclides in the coal are at or near background, the releases are diffuse, and the releases should be similarly low in every case.

D. Requests for Other Exemptions

Two commenters requested that EPA consider other kinds of reporting exemptions. One asked EPA to consider an exemption for non-episodic releases of hazardous substances from waste sites already identified for remedial/corrective actions. The other asked EPA to consider an exemption for liquid or gaseous radionuclide releases from a nuclear power plant exceeding federally permitted release limits specified in the Nuclear Regulatory Commission's regulations in 10 CFR Part 50.

EPA is not, as part of this final rule, including either of these reporting exemptions because they are beyond the scope of the proposed exemptions. The scope of the exemptions is limited to naturally occurring radionuclide releases from undisturbed land holdings, from certain land disturbance activities (construction, farming, and most types of mining), and to or from coal and coal ash piles.

E. Interpretation of CERCLA Provisions

Nine commenters raised issues regarding the interpretation of two provisions of CERCLA as they pertain to the reporting exemptions: (1) The definition of "release into the environment," and (2) the focus on "substantial danger."

1. Release Into the Environment

All nine of these commenters addressed the ruling of the U.S. Court of Appeals for the District of Columbia in *TFI* v. *EPA*, 935 F.2d 1303 (D.C. Cir. 1991) that the placement of hazardous substances into an "unenclosed containment structure" does not necessarily constitute a release into the environment for the purpose of CERCLA reporting requirements. According to the commenters, placing radionuclides in stockpiles at mine sites, coal piles, or coal ash storage or disposal units qualifies as placement into an unenclosed containment structure under the court's ruling. As a consequence, they contend, such placement does not qualify as release into the environment and the reporting exemptions are not required.

In making its decision, the court in the *TFI* case considered CERCLA's reporting requirement in the context of an "unenclosed containment structure," defined by EPA as "any surface impoundment, lagoon, tank, or other holding device that has an open side with the contained materials directly exposed to the ambient environment." *TFI* at p. 1309. With such a structure in mind, the court reasoned that "a company could place a non-volatile substance into an open-air storage container and the consequences of the open-air storage would be no different from those that would occur if the company had placed the substance to a closed container." *TFI* at p. 1310. Therefore, according to the court, the company should not have to report the transfer of the substance to the container because the substance would merely be exposed to the environment, not released into the environment. *Id.*

There may be significant differences, however, between an "unenclosed containment structure" considered by the court in *TFI*, and the open-air stockpiles envisioned by the commenters. The court considered a container with an open side which nonetheless holds a substance. This may be different from a typical bulk-material storage or disposal pile. Placing a substance (e.g., radionuclides in coal) in a pile directly on the land surface clearly constitutes a release to the environment, as those terms are defined under CERCLA. EPA understands, however, that some units for storing or disposing of bulk materials, such as coal and coal ash, may qualify as unenclosed containment structures within the meaning of the court's ruling in the *TFI* case. Such a determination would have to be made on a case-by-case basis considering the actual level of containment provided by the storage or disposal unit.

2. Substantial Danger

Two commenters asserted that CERCLA section 102(a) limits reporting requirements to releases that "may present substantial danger to the public health or welfare or the environment. * * *" The commenters added that the "substantial danger" standard is consistently applied across the remainder of the CERCLA response scheme triggered by a release exceeding an RQ (including CERCLA sections 103, 104, and 105(a)). Considered as a whole, according to the commenters, these CERCLA provisions indicate that no relevant purpose is served by requiring reporting of releases not likely to pose the substantial danger at which CERCLA response action is aimed. This applies not only to the radionuclide releases EPA proposed to exempt but also to other radionuclide releases from mining and processing facilities.

RQs are reporting triggers intended to give government officials an opportunity to mount a timely response, if necessary, based on a determination of possible or potential harm. They do not signal a determination that a release presents substantial danger; nor are they a determination that releases of a particular amount of a hazardous substance necessarily will harm the public health or welfare or the environment. The quantity released is just one factor considered by the

government when assessing the need to respond to such a release. Other factors include, but are not limited to, the location of the release, its proximity to drinking water supplies or other valuable resources, and the likelihood of exposure or injury to nearby populations.

Contrary to the commenters' assertion, CERCLA section 102(a) does not limit reporting requirements to releases that "may present substantial danger." Instead, section 102(a) authorizes EPA to designate as hazardous substances, in addition to those referred to in section 101(14), other substances that "may present substantial danger" when released.

Today's administrative reporting exemption rulemaking is related to the release notification provisions of CERCLA section 103, not to the designation provisions of section 102, the response provisions of section 104, or the National Contingency Plan (NCP) provisions of section 105. EPA notes, however, that the commenters have incorrectly stated the role of "substantial danger" in the requirements of sections 104 and 105. Section 104(a)(1) authorizes a federal response to any release of a hazardous substance. In addition, the CERCLA section 105(a)(8)(A) requirement that the NCP consider risk at Superfund sites does not bear on the adjustment of RQs under section 102 or on release notification under section 103.

III. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. It does not have an annual effect on the economy of $100 million or more; nor does it fall within the other definitional criteria for a significant regulatory action described above.

This rule is deregulatory and the exemptions to reporting requirements will result in an estimated net cost savings to the regulated community of $489,000 annually, as demonstrated by an economic analysis ("Estimated Economic Effects of Final Administrative Reporting Exemptions for Certain Releases of Radionuclides") performed by the Agency, available for inspection in the U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202 [Docket Number 102RQ–RN–2].

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

This rule does not impose any new burdens on small entities. Since it provides relief from reporting requirements to certain sources of radionuclide releases, the impact is solely a cost savings. Therefore, the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and, therefore, that a Regulatory Flexibility Analysis is not necessary.

C. Paperwork Reduction Act

Because this rule provides an exemption from CERCLA section 103 and EPCRA section 304 reporting requirements for certain radionuclide releases, there are no reporting or recordkeeping provisions that require approval from OMB. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in 40 CFR 302 and 40 CFR 355 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0046.

This rule reduces the existing regulatory burden. The exemptions to reporting requirements will result in an estimated net cost savings to the regulated community of $489,000 annually. The Agency estimates that 1,785 facilities will benefit from the reporting exemptions included in this rule. This number includes mining sites engaged solely in extraction activities, as well as coal and coal ash sites and landfills that do not include industrial or utility coal-fired boilers, that might continuously release an RQ of nuclide. The Agency excluded those mining sites with reportable releases from adjoining beneficiation or processing facilities which must still meet CERCLA section 103 reporting requirements, and those still subject to reporting due to adjoining activities releasing an RQ or more of radionuclides. Applying Department of Labor hourly compensation rates for the appropriate labor categories, the cost saving per facility is $274. This results in total savings of $489,000. This economic analysis is explained more fully in EPA's "Estimated Economic Effects of Final Administrative Reporting Exemptions for Certain Releases of Radionuclides."

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed

in 40 CFR Part 9 and 48 CFR Chapter 15.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub .L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that would result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector because the rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

E. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemicals, Disaster assistance, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 19, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. Section 302.6 is amended by revising paragraph (c) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(c) The following categories of releases are exempt from the notification requirements of this section:

(1) Releases of those radionuclides that occur naturally in the soil from land holdings such as parks, golf courses, or other large tracts of land.

(2) Releases of naturally occurring radionuclides from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw materials; and replacing materials in mined-out areas as long as such materials have not been beneficiated or processed and do not contain elevated radionuclide concentrations (greater than 7.6 picocuries per gram or pCi/g of Uranium-238, 6.8 pCi/g of Thorium-232, or 8.4 pCi/g of Radium-226).

(3) Releases of radionuclides from the dumping and transportation of coal and coal ash (including fly ash, bottom ash, and boiler slags), including the dumping and land spreading operations that occur during coal ash uses.

(4) Releases of radionuclides from piles of coal and coal ash, including fly ash, bottom ash, and boiler slags.

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

3. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

4. Section 355.40 is amended by revising paragraph (a)(2)(vi) to read as follows:

§ 355.40 Emergency release notification.

(a) * * *

(2) * * *

(vi) Any radionuclide release which occurs:

(A) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land.

(B) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw materials; and replacing materials in mined-out areas as long as such materials have not been beneficiated or processed and do not contain elevated radionuclide concentrations (greater than 7.6 picocuries per gram or pCi/g of Uranium-238, 6.8 pCi/g of Thorium-232, or 8.4 pCi/g of Radium-226).

(C) From the dumping and transportation of coal and coal ash (including fly ash, bottom ash, and boiler slags), including the dumping and land spreading operations that occur during coal ash uses.

(D) From piles of coal and coal ash, including fly ash, bottom ash, and boiler slags.

* * * * *

[FR Doc. 98–4822 Filed 3–18–98; 8:45 am]

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Part III

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice of Availability of Funds

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 960205021–8062–07]

RIN 0660–ZA01

Public Telecommunications Facilities Program; Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. An announcement regarding the submission of applications for the Public Telecommunications Facilities Program (PTFP) which is also funded from this account, was published in the **Federal Register** on January 5, 1998.

Applicants for grants for the PEACESAT Program must file their applications on or before (30 days from publication). NTIA anticipates making the grant award by September 30, 1998. NTIA shall not be liable for any proposal preparation costs.

DATES: Applciations for the PEACESAT Program grant must be received on or before close of business on April 20, 1998.

ADDRESSES: To submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156.

SUPPLEMENTARY INFORMATION;

I. Application Forms and Requirements

Funding for the PEACESAT Program is provided pursuant to Pub. L. 105–119, "The Departments of Commerce, Justice, and State, and Related Agencies Appropriations Act, 1998." Pub. L. 105–119 provides that "notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds." The PEACESAT Program was authorized under Pub. L. 100–584 (102 Stat. 2970) and also Pub. L. 101–555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Pub. L. 105–119 appropriated $21 million for this account to be awarded for Public Telecommunications Facilities Program (PTFP) grants and for PEACESAT Program grants. The solicitation notice for the PTFP Program was published in the **Federal Register** on January 5, 1998 (63 Fed. Reg. 368.) Applications submitted in response to this solicitation for PEACESAT applications are not subject to the requirements of the January 5, 1998 Notice and are exempt from the PTFP regulations at 15 CFR Part 2301. NTIA anticipates making a single award for no more than $450,000 for the PEACESAT Program in FY 1998.

NTIA requests that each applicant for a PEACESAT Program grant supply one (1) original signed application and five (5) copies, unless doing so would present a financial hardship, in which case the applicant may submit one (1) original and two (2) copies of the application. The application form consists of the Standard Form 424 Application for Federal Assistance; Standard Form 424A Budget Information—Non-Construction Programs; Standard Form 424 B, Assurances; Standard Form CD–511 Certification; and Standard Form LLL, Disclosure of Lobbying Activities (if applicable). These requirements are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Applicants are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice.

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before April 20, 1998.

Applicants may be required to submit Name Check forms (Form CD–346) which may be used to ascertain background information on key individuals associated with potential grantees as part of the application, per Department Pre-Award Administrative Requirements and Policies.

All primary applicants must submit a completed From CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) *Drug Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-Wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applicants/bidders for grants, cooperative agreements, and

contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," (OMB Control Number 0348–0046) as required under 15 CFR Part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Recipients and subrecipients are subject to all Federal laws and Federal and Department policies, regulations, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they have received, there is no obligation on the part of the Department to cover preaward costs.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received, or (3) other arrangements satisfactory to the Department are made.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

II. Scope of Project and Eligible Costs

Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network.

Allowable costs incurred under approved projects shall be determined in accordance with applicable federal cost principles, i.e. OMB Circular A–21, A–87, A–122, or 48 CFR Part 31, as applicable. If included in the approved project budget, NTIA will allow costs for personnel, fringe benefits, travel, consultants and other contractual services, supplies, and other costs which are reasonable and necessary to manage the operation of a satellite communications network. Communications and computer equipment costs are eligible as necessary in order to provide communications services to meet the education, medical, and cultural needs of the Pacific Basin communities. The costs allowable under this Notice are not subject to the limitation on costs contained in the January 5, 1998 Notice regarding the PTFP Program.

The total dollar amount of indirect costs proposed in an application must not exceed the indirect costs rate negotiated and approved by a cognizant federal agency or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

III. Notice of Applications Received

NTIA will publish a notice in the Federal Register listing all applications received in response to this notice. Listing an application in such a notice merely acknowledges receipt of an application to compete for funding with other applications. Publication does not preclude subsequent return or disapproval of the application, nor does it assure that the application will be funded. The notice will also include a request for comments on the applications from any interested party.

IV. Evaluation Process

Each eligible application will be reviewed by a panel of outside reviewers who have demonstrated expertise in the programmatic and technological aspects of the application. The review panel will evaluate applications according to the following evaluation criteria and will provide written ratings of each application. The first three criteria, (1) Meeting the Purposes of the PEACESAT Program, (2) Extent of Need for the Project, and (3) Plan of Operation for the Project, are each worth 25 points. Criterion (4) Budget and Cost Effectiveness is worth 20 points and Criterion (5) Quality of Key Personnel is worth 5 points.

Criteria 1. Meeting the Purposes of the PEACESAT Program

(i) How well the proposal meets the objectives of the PEACESAT Program and (ii) How the objectives of the proposal further the purposes of the PEACESAT Program.

Criteria 2. Extent of Need for the Project

Determine the extent to which the project meets the needs of the PEACESAT Program, including consideration of: (i) The needs addressed by the project; (ii) How the applicant identified those needs; (iii) How those needs will be met by the project; and (iv) The benefits to be gained by meeting those needs.

Criteria 3. Plan of Operation for the Project, Including

(i) The quality of the design of the project; (ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project; (iii) How well the objects of the project relate to the purpose of the program; (iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and (v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Criteria 4. Budget and Cost Effectiveness

To determine the extent to which: (i) The budget is adequate to support the project; and (ii) Costs are reasonable in relation to the objectives of the project.

Criteria 5. Quality of Key Personnel

Applicant plans to use on the project, including: (I) The qualifications of the project director (if one is to be used); (ii) the qualifications of each of the other key personnel to be used in the project; (iii) The time that each person will commit to the project; and (iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition. In this section, qualifications refer to the experience and training in fields related to the objects of the project; and any other qualifications that pertain to the quality of the project.

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V. Selection Process

The program staff prepares summary recommendations for the Director of the Public Broadcasting Division. These recommendations include outside reviewers' ratings and will incorporate analysis based on the degree to which a proposed project meets the program purpose and cost eligibility as described in Section II of this Notice. Staff recommendations also consider (1) project impact, (2) the cost/benefit of a project and (3) whether review panels have consistently applied the evaluation criteria. The analysis of program staff will be provided to the Director of the Public Broadcasting Division in writing.

The Director will recommend the funding order of the applications for the PTFP and PEACESAT Programs taking into consideration the outside reviewers' ratings, the summary recommendations prepared by program staff, and the relative rating of the PEACESAT and PTFP applications. The Director will present recommendations to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. The Director recommends the funding order for applications in three categories: "Recommended for Funding," "Recommended for Funding if Funds Available," and "Not Recommended for Funding." The selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Telecommunications and Information for the PTFP Program are described in 15 CFR 2301.18. These sections factors will also be used, as applicable, for selection of applications for funding for the PEACESAT Program.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the outside reviewers rating, the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the PTFP and PEACESAT Program's stated purposes. These applications are negotiated between NTIA staff and the applicant. The negotiations are intended to resolve whatever differences might exist between the applicant's original request and what NTIA proposes to fund. During negotiations, some applications may be dropped from the proposed slate, due to lack of Federal Communications Commission licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. When the negotiations are completed, the Director recommends final selections to the NTIA Administrator applying the same factors as listed above. The Administrator then makes the final award selections from the negotiated applications taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the stated purposes for the PTFP Program in 15 CFR 2301.1(a) and (c) and for the PEACESAT Program.

VI. Project Period

Any project awarded pursuant to this notice will be for a one-year period.

Authority: P.L. 105–119, "The Departments of Commerce, Justice, and State, and Related Agencies Appropriations Act, 1998."

Dr. Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 98–7163 Filed 3–18–98; 8:45 am]

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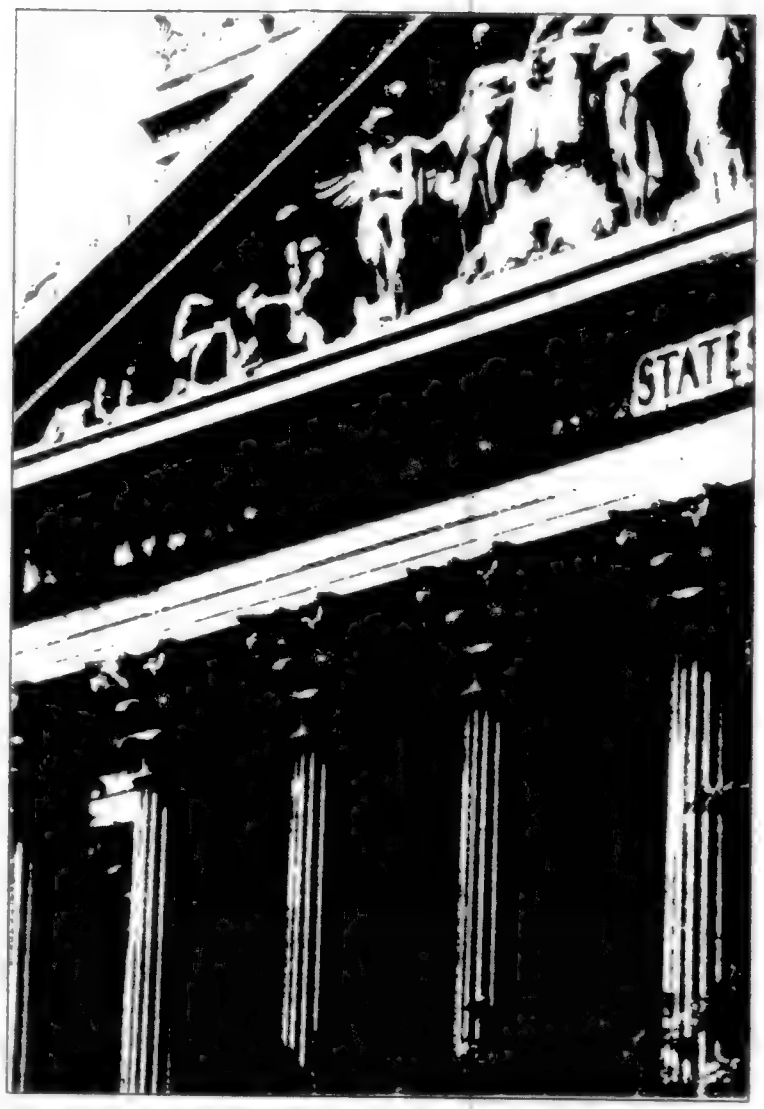

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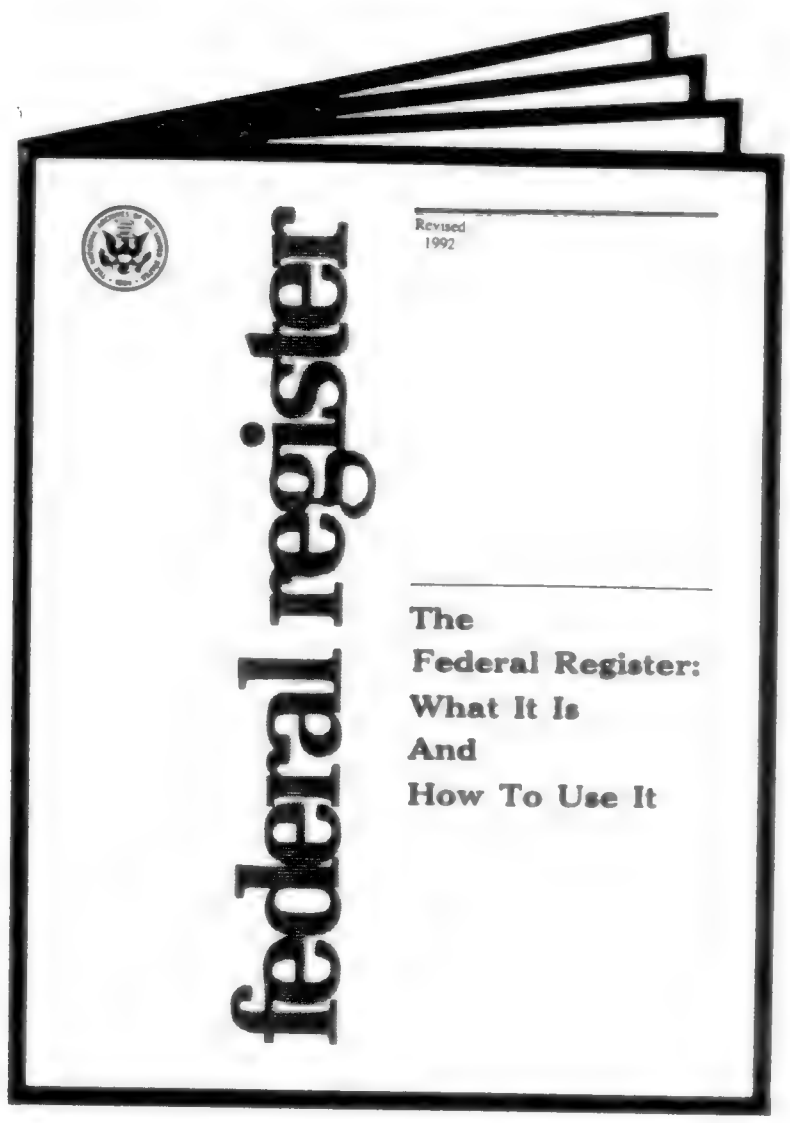

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.

ACTION: Determination on historical license reductions.

SUMMARY: The Department of Agriculture has determined that provisions of the Dairy Tariff-Rate Import Quota Licensing Regulation with respect to the issuance of reduced historical import licenses based on license surrenders of more than 50 percent will be suspended, in light of market conditions, and shall not apply for a period of five years.

DATES: Effective March 20, 1998, 7 CFR 6.25(b)(1)(i) and (b)(1)(ii) are suspended.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1029, Washington, DC 20250–1029 or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Determination: The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, 7 CFR 2.43, has determined pursuant to 7 CFR 6.25(b)(2), to suspend the historical license reduction provisions of 7 CFR 6.25(b)(1)(i) and 6.25(b)(1)(ii) for a five-year period, in light of U.S. import market conditions for cheese. At the end of the five-year suspension, beginning in quota year 2004, if more than 50 percent of a historical license is surrendered in each of the three prior quota years (i.e., 2001–2003), that license will be issued in an amount equal to the average amount entered in those years. Beginning in quota year 2006, if more than 50 percent of a historical license is surrendered in at least three of the five prior quota years (i.e., 2001–2005), that license will be issued in an amount equal to the average amount entered in those years. FAS has determined that a principal underlying cause of changing U.S. import market conditions is the European Union's (the EU's) progressive implementation of its Uruguay Round export subsidy reduction commitment which, in quota year 1997, began to have a direct impact on trade flows of EU cheese to the U.S. market resulting in reduced U.S. imports and increased historical license surrenders. FAS has further determined that a five-year suspension of the historical license reduction requirement, until the Uruguay Round export subsidy reductions are completed in the year 2000, is warranted under § 6.25(b)(2) to allow time for historical licensees to adjust to changing U.S. import market conditions.

Backgound

The Dairy Tariff-Rate Import Quota Licensing Regulation at 7 CFR 6.25(b)(2) provides that prior to 1999, the Secretary of Agriculture may determine that the requirements in §§ 6.25(b)(1)(i) and 6.25(b)(1)(ii) to reduce permanently the quantity of historical license based on license surrenders of more than 50 percent in three consecutive quota years or three out of five quota years, "shall not apply in light of market conditions." The Department requested public comments in a notice of proposed rulemaking published on October 15, 1997 (62 FR 53580–81 and 62 FR 55184), on possible options for the implementation of the historical license reduction requirement, including possible recision, suspension, or delay of this requirement, and requested comments on current dairy import market conditions that should be considered with respect to implementation of § 6.25(b)(2). Public comments were submitted by 37 entities during the comment period from October 15, 1997, to November 28, 1997.

Historical License Surrenders and Market Conditions: In 1997, surrenders of historical licenses for cheese, in which the quantity surrendered exceeded 50 percent of a license amount, reached 12,302 metric tons; compared to 1,980 metric tons in 1996, and 5,163 metric tons in 1995. Surrenders of historical licenses for EU cheese accounted for over 60 percent of 1997 historical license surrenders of 12,302 metric tons. In previous years, historical license surrenders were based, in part, on supply shortages and currency situations. However, the 1997 increase in historical license surrenders can be attributed principally to the EU's implementation of its Uruguay Round commitment to reduce the quantity of cheese exported under subsidy.

Under Uruguay Round export subsidy disciplines, the EU's export subsidy ceiling for cheese is scheduled to decrease each fiscal year (FY) from 426,500 tons in FY 1995 (July-June) to 321,300 tons in FY 2000. The EU administers its export subsidy reduction program by setting monthly export subsidy allocations equal to prorated amounts of the annual export subsidy ceiling, and issuing export licenses for subsidized cheese shipments by destination. In October 1997, to avoid exceeding its export subsidy limit, the EU adjusted subsidies for various cheeses and lowered subsidies by 20 percent for cheese exports destined for the United States. EU subsidy cuts during the 1997 quota year were sufficient to raise EU prices of various cheeses to levels that impeded EU cheese sales to U.S. historical licenses. In particular, prices of EU industrial-grade cheeses rose above U.S. prices for comparable cheese (i.e., domestic barrel Cheddar cheese), thereby removing the economic incentive to import. In addition to EU export subsidy reductions, the 1998 merger of the license allocations for Austria, Finland, and Sweden into an EU–15 allocation added approximately 21,000 metric tons of EU historical licenses for cheese.

In view of rapid and significant changes in U.S. import market conditions for EU cheeses beginning in 1997, FAS has determined that temporary suspension of the historical license reduction requirement is justified through the year 2000. The overriding purpose of the five-year suspension is to provide adequate time for historical licensees of EU cheeses to adjust to changing market conditions, to find alternative suppliers of cheese in the EU, and to develop new markets to enable importers to fully utilize their historical licenses for EU cheese. The suspension is consistent with the intent of the U.S.-EU Uruguay Round bilateral

agreement on maximizing utilization of U.S. licenses for EU cheese.

Summary of Public Comments: Comments, views, and recommendations were submitted by 32 importers holding historical licenses; three members of Congress; and two trade associations. Submissions by most historical licensees stressed that substantial business investments rely on historical import licenses, and permanent reductions can cause significant harm to employees, distributors, customers, and the survival of many businesses. Most historical licensees supported immediate elimination of the historical license reduction requirement. Certain other historical licensees supported either: (1) the permanent reduction and reallocation of historical licenses in order to provide new entrants and growing businesses a greater opportunity to import cheese; or (2) postponement of the historical license reduction requirement to provide time for adjustment to and analysis of changing market conditions. Comments submitted by the members of Congress and trade associations favored elimination of the historical license reduction requirement based on market conditions.

With respect to market conditions, the members of Congress stated that, under current circumstances, surrenders of historical licenses result from market conditions beyond an importer's control. Historical licensees and the trade associations identified the following market conditions as causes of historical license surrenders: (1) lack of exportable supply; (2) non-competitive foreign prices (resulting in some cases from foreign export administration decisions, and currency fluctuations); (3) low-quality or high-priced foreign products; and (4) foreign export monopolies which can affect license utilization through supply and price controls.

Signed at Washington, D.C. on March 13, 1998.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 98–7171 Filed 3–19–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 96–082–2]

Bamboo

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are consolidating the regulations pertaining to the importation of bamboo, contained in "Subpart—Bamboo Capable of Propagation," and the regulations pertaining to propagative material in general, contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." This change will simplify and clarify our regulations. We are also amending the regulations in "Subpart—Fruits and Vegetables" to add provisions allowing fresh bamboo shoots without leaves or roots to be imported into the United States from various countries for consumption. This action is based on assessments that indicate that bamboo shoots without leaves or roots may be imported into the United States from certain countries without a significant risk of introducing plant pests.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231, telephone (301) 734–6799; or e-mail jpdmange@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 7 CFR part 319 prohibit or restrict the importation of plants, plant parts, and related materials to prevent the introduction of foreign plant pests into the United States.

The importation into the United States of any variety of bamboo seed, bamboo plants, and bamboo cuttings capable of propagation, including all genera and species of the tribe *Bambuseae*, has been regulated under "Subpart— Bamboo Capable of Propagation," contained in 7 CFR 319.34. Section 319.34(a) provides that all varieties of bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation are prohibited importation into the United States unless they are imported: (1) For experimental or scientific purposes by the United States Department of Agriculture; (2) for export, or for transportation and exportation in bond, in accordance with 7 CFR part 352; or (3) into Guam, in accordance with § 319.37–4(b).

"Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (referred to below as "Subpart—Nursery Stock"), contained in 7 CFR 319.37 through 319.37–14, regulates the importation into the United States of most other propagative plant material. Regulated articles are designated as either prohibited or restricted.

On September 11, 1997, we published in the **Federal Register** (62 FR 47770–47772, Docket No. 96–082–1) a proposal to consolidate "Subpart—Bamboo Capable of Propagation" and "Subpart—Nursery Stock" by adding bamboo seed, bamboo plants, and bamboo cuttings capable of propagation, except those imported into Guam, to the list of prohibited articles in § 319.37(a). In conjunction with this action, we proposed to remove "Subpart—Bamboo Capable of Propagation" and all references to § 319.34 contained in part 319.

Under this proposal, bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation would have continued to be eligible for importation into Guam as restricted articles. (The term *restricted article* is defined in § 319.37–1 of "Subpart—Nursery Stock" as any class of nursery stock or other class of plant, root, bulb, seed, or other plant product for, or capable of, propagation, excluding any prohibited articles listed in § 319.37–2 (a) or (b) of "Subpart—Nursery Stock," and excluding any articles regulated under other subparts of part 319.)

The importation of bamboo seeds, bamboo plants, and bamboo cuttings for experimental or scientific purposes by the United States Department of Agriculture also would not have been affected by this change. In "Subpart—Nursery Stock," § 319.37–2(c) provides that any article listed as a prohibited article in § 319.37(a) may be imported for experimental or scientific purposes by the Department of Agriculture.

In addition, bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation would have continued to be eligible for movement through the United States for export, or for transportation and exportation in bond, in accordance with 7 CFR part 352. The regulations at 7 CFR part 352, "Plant Quarantine Safeguard Regulations," allow plants and plant parts that are not eligible for entry into the United States to move through the United States for export to other countries under safeguards intended to prevent the introduction of plant pests.

We also proposed to amend "Subpart—Fruits and Vegetables," contained in §§ 319.56 through 319.56–8, by adding provisions allowing fresh bamboo shoots without leaves or roots to be imported into the United States for consumption from China, the Dominican Republic, Japan, and Taiwan. We proposed to add bamboo shoots without leaves or roots to the list of fruits and vegetables in § 319.56–2t that may be imported from specified countries or places in accordance with § 319.56–6 and all other applicable provisions of the regulations. (Section 319.56–6, among other things, provides for inspection and, if necessary, disinfection of imported fruits and vegetables at the port of first arrival.) This proposed action was based on assessments that show that fresh bamboo shoots without leaves or roots may be imported from the countries listed into the United States for consumption without presenting a significant pest or plant disease risk.

We solicited comments concerning our proposal for 60 days ending November 10, 1997. We received six comments by that date. Two were from State government officials, and four were from representatives of the domestic bamboo industry. Five commenters asked that we consider amending one or more aspects of our proposal. One commenter expressed disapproval with our proposal. Their concerns are addressed below by topic.

Removal of the Prohibition on Importing Bamboo Nursery Stock

Comment: The prohibition on the importation of bamboc propagative material should be removed since our domestic bamboo industry needs more and better species if it is to become a viable industry. The present quarantine system is not suited for the growing bamboo industry, as it performs both the functions of keeping plant pests out, and keeping industry growth down. The prohibition on the importation of bamboo seeds and tissue-cultured embryos should be removed as well, because the pathogens that were the original basis for the regulations are not carried on the seeds, and therefore, the Animal and Plant Health Inspection Service should allow their importation along with shoots.

Response: Any change in the nursery stock regulations that would eliminate the prohibition on the importation of bamboo would need to be based on a pest risk assessment for each genus of bamboo to be imported. At present, we do not have the resources to complete such pest risk assessments in a timely fashion, as the tribe *Bambuseae* is made up of approximately 50–120 different genera. However, anyone wishing to import a specific genus may submit such a request to the Phytosanitary Issues Management Team at the address listed above in the FOR FURTHER INFORMATION CONTACT section of this rule, and we will conduct a pest risk assessment for that genus. We invite the submission of any pest risk information, preferably published data, with such a request to import bamboo.

Propagative Bamboo into Guam

Comment: The importation of bamboo nursery stock into Guam should be prohibited, since it is prohibited everywhere else in the United States. At present, there are no bamboo pests on Guam, and by continuing to allow the importation of bamboo by standard permit, such bamboo pests or diseases or other plant pests may be brought to Guam.

Response: We have decided to make the change requested in regard to the prohibition of the importation of bamboo nursery stock into Guam. Though the regulations currently allow bamboo nursery stock to be imported into Guam under permit, we have concluded for the reasons stated in the comment that bamboo nursery stock should not be imported into Guam unless a pest risk assessment is conducted that documents that the importation of bamboo nursery stock will not present a significant risk of introducing plant pests into Guam.

Bamboo Shoots

Comment: Mexico should be added to the list of countries eligible to export bamboo shoots to the United States.

Response: In order to add Mexico to the list, a pest risk assessment must be conducted and must indicate that the importation of bamboo shoots from Mexico will not present a significant risk of introducing plant pests into the United States. Anyone who is interested in importing bamboo shoots from Mexico or any other country for consumption should submit a request to the Phytosanitary Issues Management Team at the address listed above in the FOR FURTHER INFORMATION CONTACT section of this rule, and we will conduct a pest risk assessment on bamboo shoots from that particular country.

Comment: Bamboo shoots can and might be used for propagation, and thus may introduce new plant pests to the United States.

Response: We are adding edible bamboo shoots without leaves or roots to the list of acceptable imports in § 319.56–2t, which deals with nonpropagative material. We acknowledge that it is possible to propagate a plant from bamboo shoots, but bamboo shoots are allowed importation under § 319.56–2t for consumption only. We currently require prospective importers to state the purpose of their importation(s) on their application for an import permit. In this case, a permit is issued only for bamboo shoots that are without leaves or roots and that are intended for human consumption. If we have reason to believe that bamboo shoots are being imported for the purpose of planting, we have the authority to investigate and take enforcement action, which could include the revocation of an importer's permit, denial of future permits, and seizure of the propagated bamboo, as well as civil or criminal penalties. We do not believe, however, that propagation of shoots imported for consumption is likely, due to the fragile nature and decreased viability of imported bamboo shoots. It is our understanding that propagative bamboo plants that are imported under special scientific permits have limited survival rates even though such plants are packed and shipped individually with great care. When contrasted with packing and shipping procedures for bulk quantities of fresh bamboo shoots imported for consumption, it is clear that such shoots have a very limited potential to propagate themselves, even if planted. Under these circumstances, we continue to believe that the proposed importation of bamboo shoots for consumption would present a negligible pest risk and are, therefore, making no change in the rule in response to this comment.

Comment: The importation of bamboo shoots will hurt U.S. growers' business.

Response: We anticipate that less than 200 metric tons of fresh bamboo shoots will be imported into the United States under this rule. Data on imported bamboo shoots in general suggests that fresh bamboo shoots occupy a minimal part of the overall market for bamboo shoots in general (less than one percent of the overall market). In 1995, 8,632 metric tons of frozen bamboo shoots and 29,824 metric tons of canned bamboo shoots were imported into the United States. Though we could not determine the amount of domestic production of fresh bamboo shoots, we anticipate that, given the quantity of expected imports (200 metric tons) relative to the overall size of the market for imported bamboo shoots in general (over 38,000 metric tons), a large economic impact on the domestic industry is unlikely.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the

provisions of the proposal as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this final rule on small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This rule consolidates the regulations pertaining to the importation of bamboo, contained in "Subpart—Bamboo Capable of Propagation," and the regulations pertaining to propagative material in general, contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." This change is nonsubstantive, and will simplify and clarify our regulations.

This rule also amends the regulations in "Subpart—Fruits and Vegetables" by adding provisions that allow fresh bamboo shoots without leaves or roots to be imported into the United States from certain countries.

One commenter on the proposed rule expressed concern that the importation of fresh bamboo shoots would have a negative impact on domestic producers of bamboo shoots.

It is estimated that less than 200 metric tons of fresh bamboo shoots will be imported into the United States as a result of this rule. This is compared to imports of 8,632 metric tons of frozen bamboo shoots and imports of 29,824 metric tons of canned bamboo shoots in 1995. While we could not determine the amount of domestic production of fresh bamboo shoots, we anticipate that the imports would supply part of an expanding demand for fresh, rather than frozen or canned, bamboo shoots.

The additional information necessary to determine the impacts on U.S. growers, including estimates of domestic production, is not available. It is possible that this rule could lead to price effects that could affect producers. Although bamboo shoot growers do not constitute a separate category for classification of small entities by the Small Business Administration, it is likely that the majority of these growers would be considered small. Therefore, any economic impacts of this rule would affect small entities. However, given the quantity of expected imports of fresh bamboo shoots relative to the overall size of the market for imported bamboo shoots in general (over 38,000 metric tons), a large economic impact is unlikely.

Several alternatives to this rule were suggested in public comments on our proposed rule. Two commenters suggested that we remove the prohibition on the importation of bamboo nursery stock so as to facilitate the growing industry in its search for a better crop base. We did not adopt this alternative, based on a lack of scientific pest risk data on bamboo nursery stock. We also did not adopt another proposal to include Mexico on the list of regions we will import fresh bamboo shoots from, based on a similar lack of available data at this time. We did adopt a change suggested by two commenters from Guam who felt that Guam also should be subject to the same prohibition on the importation of bamboo nursery stock as the rest of the United States.

A final alternative to this rule was to make no changes in the regulations. However, we have done pest risk assessments which indicate that bamboo shoots without leaves or roots may be imported into the United States from certain countries without a significant risk of introducing plant pests. Further, we lack the pest risk assessment data needed to demonstrate that there is no significant pest risk associated with the importation of bamboo nursery stock into Guam. Therefore, we have adopted the provisions concerning bamboo shoots, as proposed, and the new provisions concerning bamboo nursery stock into Guam, as suggested by public comment.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and record keeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

Subpart—Bamboo Capable of Propagation [Removed]

2. Subpart—Bamboo Capable of Propagation, consisting of § 319.34, is removed.

§ 319.37–1 [Amended]

3. In § 319.37–1, the definition for *Restricted article* is amended by removing the reference to "319.34" and adding "319.24" in its place.

§ 319.37–2 [Amended]

4. In § 319.37–2(a), the table is amended as follows:

a. By adding, in alphabetical order, an entry for "Bambuseae," to read as set forth below.

b. By amending the entry for "Poaceae" by revising the text in the first column, to read as set forth below.

§ 319.37–2 Prohibited Articles

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
.	.	.
Bambuseae (seeds, plants, and cuttings).	All	Various plant diseases, including bamboo smut (*Ustilago shiraiana*)
.	.	.
Poaceae (vegetative parts of all grains and grasses, except species of Bambuseae).	. . .	. . .
.	.	.

* * * * *

§ 319.40–2 [Amended]

5. In § 319.40–2, paragraph (c) is amended by removing the words "; § 319.34, "Subpart—Bamboo Capable of Propagation";" and by adding in their place a comma immediately after the word "Diseases".

6. In § 319.56–2t, the table is amended by adding entries, in alphabetical order, to read as follows:

§ 319.56–2t Administrative instructions; conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
.	.	.	.
China	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.
.	.	.	.
Dominican Republic	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.
.	.	.	.
Japan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.
.	.	.	.
Taiwan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.
.	.	.	.

* * * * *

Done in Washington, DC, this 16th day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–7330 Filed 3–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Chapter 15

RIN 1990 AA25

Office of the Federal Inspector for the Alaska Natural Gas Transportation System

AGENCY: Office of Fossil Energy, DOE.

ACTION: Final rule.

SUMMARY: The Office of Fossil Energy, Department of Energy, is eliminating the regulations codified at 10 CFR chapter 15, entitled "Office of the Federal Inspector for the Alaska Natural Gas Transportation System."

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Ellett, Office of Fossil Energy, (202) 586–4669, or Diane Stubbs, Office of the General Counsel, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The regulations codified at 10 CFR chapter 15, entitled "Office of the Federal Inspector for the Alaska Natural Gas Transportation System," are being eliminated as contemplated by section 3012 of the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, 106 Stat. 2776, 3128 (1992).

The Office of the Federal Inspector (OFI) was established pursuant to the Alaska Natural Gas Transportation Act of 1976 (ANGTA), 15 U.S.C. 719; Reorganization Plan No. 1 of 1979, 44 FR 33663 (June 12, 1979); and Executive Order No. 12142, 44 FR 36927 (June 25, 1979), to oversee construction of the Alaska Natural Gas Transportation System (ANGTS). The ANGTS encompasses a 4,800-mile joint U.S.-Canadian overland pipeline project selected and approved for the delivery of Alaska natural gas from Prudhoe Bay to the lower 48 states. The first phase of the project, completed in the early 1980s, involved construction of facilities in the United States and southern Canada. Changing economic conditions and natural gas markets have not supported the second phase of construction, which would complete the Alaskan and northern Canadian portions of ANGTS.

In recognition of ANGTS construction inactivity, section 3012 of EPACT repealed section 7(a)(5) of ANGTA, which authorized the appointment of a Federal Inspector; abolished OFI and transferred all functions and authority vested in the Federal Inspector to the Secretary of Energy; and revoked the OFI regulations in 10 CFR chapter 15. This rule merely eliminates from the CFR regulations which have already

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been revoked by law. In the event of remobilization, the Department would promulgate those regulations determined to be necessary for its oversight of ANGTS construction activity.

A. Administrative Procedure Act

In accordance with 5 U.S.C. 553(b), the Administrative Procedure Act, DOE generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. However, 5 U.S.C. 553(b)(3)(B) provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is "impracticable, unnecessary, or contrary to the public interest."

Because the statutory authority for OFI has been repealed and its regulations have been revoked by EPACT, the Department finds that providing an opportunity for public comment prior to publication of this rule is not necessary and would be contrary to the public interest.

B. Review Under Executive Order 12866

Today's action does not constitute a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), and has not been reviewed by the Office of Management and Budget.

C. Review Under the Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 501 *et seq.*, are imposed by today's regulatory action.

D. Federalism

The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that there are no implications for federalism that would warrant the preparation of a Federalism Assessment.

E. National Environmental Policy Act

The regulations being amended have no current environmental effect and this rulemaking will not change that status quo. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking amending an existing regulation that does not change the environmental effect of the regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, directs agencies to prepare a regulatory flexibility analysis whenever an agency is required to publish a general notice of proposed rulemaking. As discussed above, the Department has determined that prior notice and opportunity for public comment is unnecessary and contrary to the public interest. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for today's rule.

H. Small Business Regulatory Enforcement Fairness Act

In accordance with section 801 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 801, DOE will report to Congress the promulgation of this rule prior to its effective date. The report will state that it has been determined that this rule is not a "major rule" as defined by 5 U.S.C. 804(a).

I. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3 of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to eliminate drafting errors and ambiguity; write regulations to minimize litigation; provide a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

List of Subjects in 10 CFR Chapter 15

10 CFR 1500

Alaska Natural Gas Transportation System, Office of Federal Inspector Organization and functions (Government agencies), Seals and insignia.

10 CFR 1502

Alaska Natural Gas Transportation System, Office of Federal Inspector, Organization and functions (Government agencies).

10 CFR 1504

Alaska Natural Gas Transportation System, Office of Federal Inspector, Confidential business information, Freedom of information.

10 CFR 1506

Alaska Natural Gas Transportation System, Office of Federal Inspector, Conflict of interests, Penalties.

10 CFR 1530

Administrative practice and procedure, Alaska, Alaska Natural Gas Transportation System, Office of Federal Inspector, Natural gas, Pipelines, Public lands-rights-of-way.

10 CFR 1534

Administrative practice and procedure, Alaska, Alaska Natural Gas Transportation System, Office of Federal Inspector, Civil rights, Equal employment opportunity, Natural gas, Pipelines.

10 CFR 1535

Administrative practice and procedure, Alaska Natural Gas Transportation System, Office of Federal Inspector, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

Issued in Washington, D.C. on March 16, 1998.

Robert S. Kripowicz,

Principal Deputy Assistant Secretary for Fossil Energy.

As set forth in the preamble, under the authority of section 3012 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776, 3128 (1992), title 10 of the Code of Federal Regulations is amended by removing chapter 15, consisting of parts 1500–1535.

[FR Doc. 98–7296 Filed 3–19–98; 8:45 am]
BILLING CODE 6450–01–P

UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–324–AD; Amendment 39–10402; AD 98–06–24]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires modification to reinforce the joints of certain fuselage frames. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fatigue cracking of the fuselage frames, which could result in reduced structural integrity of the airplane.

DATES: Effective April 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–324–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, during a full-scale fatigue test, a 4.5-millimeter crack developed in the fuselage after 31,717 simulated flight cycles. The crack was found at the lowest inboard bolt hole at the frame splice area and shear clip attachment on left fuselage frame (L FR) 48 at stringer 26. Similar damage was found at L FR 53 and right fuselage frame 52. Such fatigue cracking of fuselage frames, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–53–3015, dated November 24, 1995 (for Model A330 series airplanes), and A340–53–4023, Revision 2, dated May 15, 1996 (for Model A340 series airplanes). These service bulletins describe procedures for modifying the joints of fuselage frames 48 to 53. The modification involves adding two joint straps, replacing existing fasteners with new fasteners, and replacing the existing clips with machined clips. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 96–006–024(B) and 96–005–039(B), both dated January 3, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent fatigue cracking in the fuselage frames, which could result in reduced structural integrity of the airplane. This AD requires accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 208 work hours to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $30,765 per airplane. Based on these figures, the cost impact of this AD would be $43,245 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–324–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–24 Airbus: Amendment 39–10402. Docket 97–NM–324–AD.

Applicability: Model A330 and A340 series airplanes, on which Airbus Modification 42409 has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the fuselage frames, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Reinforce the joints for fuselage frames 53, 53.1, and 53.2, in accordance with Airbus Service Bulletin A330–53–3015, dated November 24, 1995 (for Model A330 series airplanes); or Airbus Service Bulletin A340–53–4023, Revision 2, dated May 15, 1996 (for Model A340 series airplanes), as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Airbus Model A330 series airplanes on which Airbus Modification 43475 has been accomplished, and for Airbus Model A340 series airplanes: Prior to the accumulation of 4,100 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For Airbus Model A330 series airplanes on which Airbus Modification 43475 has not been accomplished: Prior to the accumulation of 4,600 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(b) Reinforce the joints for fuselage frames 48 through 52 inclusive, in accordance with Airbus Service Bulletin A330–53–3015, dated November 24, 1995 (for Model A330 series airplanes); or Airbus Service Bulletin A340–53–4023, Revision 2, dated May 15, 1996 (for Model A340 series airplanes), as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For Airbus Model A330 series airplanes on which Airbus Modification 43475 has been accomplished, and for Airbus Model A340 series airplanes: Prior to the accumulation of 13,500 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For Airbus Model A330 series airplanes on which Airbus Modification 43475 has not been accomplished: Prior to the accumulation of 15,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Airbus Service Bulletin A330–53–3015, dated November 24, 1995, or Airbus Service Bulletin A340–53–4023, Revision 2, dated May 15, 1996; as applicable. Airbus Service Bulletin A340–53–4023, Revision 2, dated May 15, 1996, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, 3, 3a, 4, 4a, 5–7, 31–32, 83–87	2	May 15, 1996.
8–10, 12, 14–18, 20–29, 33–82	Original	November 24, 1995.
11, 13, 19, 30	1	February 22, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the

Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 96–006–024(B) and 96–005–039(B), both dated January 3, 1996.

(f) This amendment becomes effective on April 6, 1998.

Issued in Renton, Washington, on March 10, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6757 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–216–AD; Amendment 39–10398; AD 98–06–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires inspections to detect cracking of certain floor beams and side box-beams, and repair of cracks; and modification of the pressure floor. That AD was prompted by results of a full-scale fatigue test. This amendment adds a one-time inspection to verify proper clearance between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the main landing gear (MLG) and its associated tie rod attachment nut. This amendment also adds a requirement for a new improved modification of the pressure floor. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage, restricted operation of the MLG free-fall system and, consequently, reduced ability to use the MLG during an emergency.

DATES: Effective April 24, 1998.

The incorporation of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of April 24, 1998.

The incorporation by reference of Airbus Industrie Service Bulletin A320–53–1024, dated September 23, 1992, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 23, 1993 (58 FR 39440, July 23, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–14–04, amendment 39–8628 (58 FR 39440, July 23, 1993), which is applicable to certain Airbus Model A320 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 12, 1997 (62 FR 11388). The action proposed to continue to require inspections to detect cracking of the floor beams and the side box-beams, and repair of cracks. The action also proposed to add a one-time inspection to verify proper clearance between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the main landing gear (MLG) and its associated tie rod attachment nut. In addition, the action proposed to add a requirement for a new improved modification of the pressure floor.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requests that paragraph (c)(1)(ii) of the supplemental NPRM be revised to include an option to rework the bellcrank just like paragraph (c)(1)(iii)(B) of the supplemental NPRM. The commenter points out that the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has included this rework option in its revised French airworthiness directive (CN) 96–053–77(B)R1, dated June 5, 1996.

The FAA concurs. The FAA has reviewed the subject French airworthiness directive, and has revised paragraph (c)(1)(ii) of this final rule to include an option to rework the bellcrank lever and fasteners, and reinstall the reinforcement bracket fasteners, which is identical to the requirements of paragraph (c)(1)(iii)(B) of the AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 24 Airbus Model A320 series airplanes of U.S. registry that will be affected by this AD.

The inspections that are currently required by AD 93–14–04 take approximately 37 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $53,280, or $2,220 per airplane.

The new inspection that is required by this AD action will take approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection required by this AD on U.S. operators is estimated to be $15,840, or $660 per airplane.

The new modification that is required by this AD action will take approximately 142 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $204,480, or $8,520 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8628 (58 FR 39440, July 23, 1993), and by adding a new airworthiness directive (AD), amendment 39–10398, to read as follows:

98–06–20 Airbus Industrie: Amendment 39–10398. Docket 95–NM–216–AD. Supersedes AD 93–14–04, Amendment 39–8628.

Applicability: Model A320 series airplanes, manufacturer's serial numbers 002 through 008 inclusive, 010 through 078 inclusive, and 080 through 107 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, restricted operation of the main landing gear (MLG) free-fall system, and, consequently, reduced ability to use the MLG during an emergency, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or within 6 months after August 23, 1993 (the effective date of AD 93–14–04, amendment 39–8628), whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Service Bulletin A320–53–1024, dated September 23, 1992, or Revision 1, dated March 31, 1994. As of the effective date of this new AD, only Revision 1 of this service bulletin shall be used.

(1) Conduct an eddy current inspection to detect cracking around the fastener/bolt holes at the top horizontal flange of the floor beams and side box-beams, at the two sides of the pressure floor, and at the vertical integral stiffener of the side box-beams; and

(2) Conduct a detailed visual inspection to detect cracking around the fastener/bolt holes at the fillet radius and riveted area of the top outboard flange of the side box-beam, and at the flange-corner radius of the slanted inboard flange of the side box-beam and fittings.

(b) If any crack is detected during the inspections required by paragraph (a) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) For airplanes on which the modification specified in Airbus Service Bulletin A320–53–1023, dated September 23, 1992, as amended by Service Bulletin Change Notice 0A, dated January 20, 1993; Revision 1, dated March 23, 1993; Revision 2, dated October 22, 1993; Revision 3, dated March 18, 1994; Revision 4, dated September 30, 1994; Revision 5, dated February 28, 1995; or Revision 6, dated September 4, 1995; has been accomplished: Accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to the accumulation of 1,000 landings after the effective date of this AD, perform a one-time inspection to verify proper clearance between the fasteners of the reinforcement bracket and the bellcrank of the free-fall extension system of the MLG and its associated tie rod attachment nut, in accordance with Airbus All Operators Telex (AOT) 53–08, Revision 01, dated January 15, 1996.

(i) If the minimum clearance is greater than 3 mm (0.118 inch) and no evidence of interference is detected, within 60 months following accomplishment of the inspection required by paragraph (c)(1) of this AD, reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995.

(ii) If the minimum clearance is 3 mm (0.118 inch) or less, and no evidence of interference is detected, within 18 months following accomplishment of the inspection required by paragraph (c)(1) of this AD, accomplish either paragraph (c)(1)(ii)(A) or (c)(1)(ii)(B) of this AD.

(A) Reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995; or

(B) Rework the bellcrank lever and fasteners in accordance with Airbus AOT 53–08, Revision 01, dated January 15, 1996. Within 60 months following accomplishment of the rework, reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995.

(iii) If any interference is detected, prior to further flight, accomplish either paragraph (c)(1)(iii)(A) or (c)(1)(iii)(B) of this AD.

(A) Reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995; or

(B) Rework the bellcrank lever and fasteners in accordance with Airbus AOT 53–08, Revision 01, dated January 15, 1996. Within 60 months following accomplishment of the rework, reinstall the reinforcement bracket fasteners in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995.

(2) Prior to the accumulation of 24,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the pressure floor at section 15 of the fuselage in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995. Accomplishment of the modification terminates the requirements of this AD.

(d) For airplanes on which the modification specified in Airbus Service Bulletin A320–53–1023, dated September 23, 1992, as amended by Service Bulletin Change Notice 0A, dated January 20, 1993; Revision 1, dated March 23, 1993; Revision 2, dated October 22, 1993; Revision 3, dated March 18, 1994; Revision 4, dated September 30, 1994; Revision 5, dated February 28, 1995; or Revision 6, dated September 4, 1995; has not been accomplished: Prior to the accumulation of 18,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the pressure floor at section 15 of the fuselage in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995. Accomplishment of the modification terminates the requirements of this AD.

(e) Accomplishment of the modification of the pressure floor at section 15 of the fuselage in accordance with Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995, constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with Airbus Service Bulletin A320–53–1024, dated September 23, 1992; Airbus Service Bulletin A320–53–1024, Revision 1, dated March 31, 1994; Airbus All Operators Telex (AOT) 53–08, Revision 01, dated January 15, 1996; and Airbus Service Bulletin A320–53–1023, Revision 7, dated November 3, 1995; as applicable. Revision 7 of Airbus Service Bulletin A320–53–1023 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 15–55 ..	7	November 3, 1995.
2–14	6	September 4, 1995.

The incorporation by reference of Airbus Industrie Service Bulletin A320–53–1024, dated September 23, 1992, as listed in the regulations, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of August 23, 1993 (58 FR 39440, July 23, 1993). The incorporation by reference of the remainder of the service documents listed above is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives (CN's) 92–205–033(B)R1, dated June 22, 1994, and 96–053–077(B)R1, dated June 5, 1996.

(i) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 10, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6758 Filed 3–19–98;8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–68–AD; Amendment 39–10403; AD 98–06–25]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft Inc. Models SA226–AT, SA226–TC, SA227–AC, and SA227–AT Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Fairchild Aircraft Inc. (Fairchild) Models SA226–AT, SA226–TC, SA227–AC, and SA227–AT airplanes. This action would require inspecting the cargo door lower belt frames at the cargo latch receptacles for cracks in the belt frames, repairing any cracks, and reinforcing the cargo door lower belt frames by installing doublers. The AD is the result of a decompression incident during flight caused by fatigue at the bottom of the cargo door on a Fairchild Model SA226–TC. The actions specified by this AD are intended to prevent the failure of the cargo door in flight, which could cause decompression injuries to passengers and substantial structural damage to the airplane.

DATES: Effective April 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft Inc., P. O. Box 790490, San Antonio, Texas 78279–0490, telephone (210) 824–9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–CE–68–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Fairchild Models SA226–AT, SA226–TC, SA227–AC, and SA227–AT airplanes was published in the **Federal Register** on June 4, 1997 (62 FR 30483). The action proposed would require inspecting the lower belt frames at the cargo latch receptacles for cracks. If cracks are found, the proposed AD would require repairing the cracks, prior to further flight, using a repair scheme provided by the manufacturer through the Ft. Worth Airplane Certification Office. If no cracks are found, the proposed action would require reinforcing the cargo door lower belt frames by installing doublers.

Since Issuance of the Proposed AD

The proposed action required that if cracks were found, the owner/operator should contact the FAA for an approved repair scheme from Fairchild Aircraft Inc. Since the Notice of Proposed Rulemaking was published, Fairchild has developed an FAA-approved repair scheme for the cargo door belt frames. This repair scheme eliminates the need to contact the Ft. Worth Airplane Certification Office, which makes it easier for the owner to fix the airplanes with cracks without waiting for an approved repair scheme to be developed for each individual request. In addition to the availability of a repair, the FAA has clarified the instructions for the inspection of the cargo door belt frames by referencing certain fuselage stations to be inspected for cracks. Accomplishment of these actions would be in accordance with the following service information:

- Fairchild Aircraft Corporation SA227 Series Service Bulletin No. 227–53–003, Issued: January 29, 1986, Revised: February 13, 1986,
- Fairchild Aircraft Corporation SA226 Series Service Bulletin No. 226–53–007, Issued: May 7, 1981, Revised: February 17, 1992,
- Fairchild Aircraft SA226/SA227 Structural Repair Manual (SRM), section 53–90–20, pages 2, 101, 102, 103, and 104; Initial Issue: March 1, 1983, Revision 24, dated August 27, 1997, or
- Fairchild Aircraft Approved Repair Procedure (ARP) 53–30–9701, dated July 28, 1997.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments.

Obtaining Repair Approval

Several commenters express concern about access to a repair scheme and the ability of the FAA to provide a repair scheme outside normal business hours (8:00 a.m. to 4:30 p.m.). The commenters went on to say that in many cases, inspections and repairs are made overnight or on the weekends and waiting on the FAA to provide a repair scheme, on a case by case basis, could cause the commercial operators flight delays and cancellations. These commenters request that the FAA approve and make available a repair scheme prior to the effective date of the proposed AD. The FAA agrees and has approved a repair scheme developed by Fairchild Aircraft Inc. The final rule will be changed to reflect the name and number of these approved repair procedures.

Change of Compliance Time

One commenter requested a change to the compliance times referenced in paragraphs (a) and (c) of the NPRM. The compliance time proposed was 500 hours time-in-service (TIS) after the effective date of this AD for the initial inspection for cracks, and if no cracks were found within the next 500 hours TIS, installing a doubler to the cargo door belt frames. The commenter wants the initial inspection compliance time extended to 900 hours TIS after the effective date of this AD, to fit into the operators' scheduled maintenance to the cargo door belt frames. The FAA does not agree. The 500 hours TIS compliance time will assure that the affected airplanes are not flying with cracks in critical structure. Failure of the cargo door during flight would cause airplane decompression and possible injury to the passengers, as well as structural damage to the airplane. The 500 hours TIS initial inspection is imposed to assure that all the affected airplanes are checked for cracks in this area within a reasonable amount of time. The installation of the doubler to strengthen the cargo door belt frames is not required for another 500 hours TIS, in order to give the owners/operator an opportunity to schedule this "down-time" into their flight schedules. If no cracks are found in the affected area, the owners/operators essentially have 1,000 hours total TIS to schedule the installation of the doublers. The final rule will not change as a result of this comment.

Crack Limits

Two comments were received regarding the discussion in the NPRM preamble. The comments addressed the section directed to the differences between the manufacturer's service bulletin and the proposed action. The commenters said that the language in the preamble implied that the manufacturer's service bulletin allowed the operators to fly with cracks. Although it was not the intent of the FAA to suggest that the manufacturer allowed flying with cracks, the FAA agrees that the language in the preamble could be interpreted this way. The FAA was trying to point out that the compliance times in the service bulletin were different from those in the proposed action, and that the service bulletin referred the operator to the manufacturer for repairs, if cracks of one inch or larger were found. The service bulletin did not require the operator to contact the manufacturer for the repair scheme prior to further flight. This language is not repeated in the final rule, and since a repair scheme is now available directly from the manufacturer, the only difference between the manufacturer's service bulletin and the action required by this AD is the difference in compliance times. The compliance times required by this AD will take precedence over the compliance times in the Fairchild service bulletins. The final rule will reflect this change to the service and repair information in the body of the AD.

The FAA's Determination

After careful review of all available information, including the service information, related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these changes and corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 145 airplanes in the U.S. registry are affected by this AD, that it will take approximately 30 workhours per airplane to accomplish the initial inspection and installation of the reinforcing doubler, and that the average labor rate is approximately $60 an hour. Parts for the installation of the reinforcing doubler cost approximately $710 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $363,950 or $2,510 per airplane. The FAA has no way to determine the number of affected airplanes that may have already had this action accomplished.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–06–25 Fairchild Aircraft Inc.: Amendment 39–10403; Docket No. 96–CE–68–AD.

Applicability: The following models and serial numbered airplanes, certificated in any category.

Models	Serial numbers
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.

Models	Serial numbers
SA227–AC	AC406, AC415, AC416, AC420 through AC456, AC458 through AC469, and AC471 through AC478.
SA227–AT	AT423 through AT469.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated within the body of this AD, unless already accomplished.

To prevent failure of the cargo door in flight, which, if not corrected, could cause decompression injuries to passengers and substantial structural damage to the airplane, accomplish the following:

(a) Within the next 500 hours time-in-service (TIS) after the effective date of this AD, inspect the cargo door lower belt frames at the cargo latch receptacles for cracks in accordance with Part A of the *ACCOMPLISHMENT INSTRUCTIONS* section in Fairchild Aircraft SA226 Series Service Bulletin (SB) No. 226–53–007, Issued: May 7, 1981; Revised: February 17, 1992, or Fairchild Aircraft SA227 Series SB No. 227–53–003, Issued: January 29, 1986; Revised: February 13, 1986, whichever is applicable.

(b) If cracks are found during the inspection required in paragraph (a) of this AD, prior to further flight, accomplish the following:

(1) For belt frames located at Fuselage Station (F.S.) 438.060 and F.S. 491.060, repair the belt frame by installing angle part number (P/N) 27–22206–009 or P/N 27–22206–010, in accordance with the Fairchild Aircraft SA226/227 Structural Repair Manual (SRM), Section 53–90–20, pages 2, 101, 102, 103, and 104; Initial Issue: March 1, 1983, Revision 24, dated August 27, 1997; or, Fairchild Aircraft Approved Repair Procedure (ARP) 53–30–9701, dated July 28, 1997. The reinforcement doublers (P/N 27–22206–007 and –008) are also needed together with this repair.

(2) For belt frames located at F.S. 454.501, F.S. 455.726, F.S. 473.392, and F.S. 474.657, replace all four belt frames with new design frames, P/N 27–22207–008, 27–22208–005, 27–22208–005, and 27–22207–007, respectively, in accordance with the Fairchild Aircraft SA226/227 SRM, Section 53–90–20, pages 2, 101, 102, 103, and 104; Initial Issue: March 1, 1983, Revision 24, dated August 27, 1997; or, Fairchild Aircraft ARP 53–30–9701, dated July 28, 1997. No reinforcement doublers are needed for these four new design belt frames.

(c) If no cracks are found in all six belt frames during the inspection required by paragraph (a) of this AD, install reinforcement doublers in all six belt frames within 500 hours TIS from the initial inspection, in accordance with Part B of the *ACCOMPLISHMENT INSTRUCTIONS* of Fairchild Aircraft SA226 Series Service Bulletin (SB) No. 226–53–007, Issued: May 7, 1981; Revised: February 17, 1992, or Fairchild Aircraft SA227 Series SB No. 227–53–003, Issued: January 29, 1986; Revised: February 13, 1986, whichever is applicable.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Fort Worth Airplane Certification Office.

(f) The inspections and modifications required by this AD shall be done in accordance with the following service information:

- Fairchild Aircraft Corporation SA227 Series Service Bulletin No. 227–53–003, Issued: January 29, 1986, Revised: February 13, 1986.
- Fairchild Aircraft Corporation SA226 Series Service Bulletin No. 226–53–007, Issued: May 7, 1981, Revised: February 17, 1992,
- Fairchild Aircraft SA226/SA227 Structural Repair Manual (SRM) section 53–90–20, Initial Issue: March 1, 1983, Revision 24, dated August 27, 1997, and pages 2, 101, 102, 103, and 104;
- Fairchild Aircraft Approved Repair Procedure (ARP) 53–30–9701, dated July 28, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P. O. Box 790490, San Antonio, Texas 78279–0490, telephone (210) 824–9421. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment (39–10403) becomes effective on April 27, 1998.

Issued in Kansas City, Missouri, on March 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6767 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–230–AD; Amendment 39–10409; AD 98–06–31]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, that requires inspections to detect cracking of the aft door frame area, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracks in the aft door frame area, which could result in reduced structural integrity and rapid decompression of the airplane.

DATES: Effective April 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on November 26, 1997 (62 FR 63039). That action proposed to require inspections to detect cracking of the aft door frame area, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Request To Cite Latest Service Bulletins

One commenter requests that the proposed AD be revised to cite the latest revision of Airbus Service Bulletins A300–53–303, A310–53–2079, and A300–53–6056. The commenter states that the related French airworthiness directive (CN) 96–135–199(B) would be revised to include the wording, "SB . . . or any later approved revision." The commenter points out that the latest revisions of the service bulletins include a higher value for the acceptable cumulative crack length.

The FAA does not concur with the commenter's request to cite the latest service bulletin. As stated in the proposal, although the service bulletins, in certain circumstances, provide for continued flight without immediate repair of the damage area, this AD does not permit further flight with cracks detected in the aft door frame area. The FAA has determined that, due to safety implications and consequences associated with cracking in the aft door frame area, all locations in the aft door frame area that are found to be cracked must be repaired prior to further flight. In light of this, the FAA finds it unnecessary to revise this final rule to cite the latest revisions of the service bulletins to reference a higher value for crack length.

In addition, where a specific document is referenced in an AD, the use of the phrase, "or later FAA-approved revision," violates Office of the Federal Register regulations regarding approval of material that is incorporated by reference. However, affected operators may request to use a later revision of the referenced service bulletins as an alternative method of compliance, under the provisions of paragraph (d) of the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 49 Airbus Model A300 and A310 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required inspections on U.S. operators is estimated to be $73,500, or $1,500 per airplane.

The FAA estimates that 51 Airbus Model A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required inspections on U.S. operators of Model A300–600 series airplanes is estimated to be $55,080, or $1,080 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–31 Airbus Industrie: Amendment 39–10409. Docket 97–NM–230–AD.

Applicability: Model A300, A310, and A300–600 airplanes on which Airbus Modification 6924 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in the aft door frame area, which could result in reduced structural integrity and possible rapid decompression of the aircraft, accomplish the following:

(a) Prior to the accumulation of 10 years since date of manufacture, or within 12 months after the effective date of this AD, whichever occurs later: Except as provided by paragraphs (b) and (c) of this AD, accomplish a high frequency eddy current inspection to detect stress corrosion cracks in the aft door frame area, and perform the applicable corrective actions, in accordance with Airbus Service Bulletin A300–53–303, dated February 23, 1996 (for Model A300 series airplanes); A310–53–2079, dated February 23, 1996 (for Model A310 series airplanes); or A300–53–6056, dated February 23, 1996 (for Model A300–600 series airplanes); subsequently referred to as the applicable service bulletin. Thereafter, repeat the inspection at intervals not to exceed 5 years, in all areas not repaired permanently

in accordance with the applicable service bulletin.

(b) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies a compliance time other than "prior to further flight" for accomplishment of the repair: Accomplish the repair prior to further flight in accordance with the procedures specified in the applicable service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Airbus Service Bulletin A300–53–303; Airbus Service Bulletin A310–53–2079; or Airbus Service Bulletin A300–53–6056, all dated February 23, 1996; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 96–135–199(B), dated July 17, 1996.

(g) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6953 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–68–AD; Amendment 39–10408; AD 98–06–30]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400, 400A, 400T, MU–300, and MU–300–10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Raytheon (Beech) Model 400, 400A, 400T, MU–300, MU–300–10 airplanes, that currently requires replacement of outflow/safety valves with serviceable valves. This amendment revises the applicability of the existing AD to add an airplane model and to remove other airplanes, as well as to identify the serial numbers of affected airplanes. The actions specified by this AD are intended to prevent cracking and consequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane.

DATES: Effective April 24, 1998.

The incorporation by reference of Raytheon Service Bulletin No. 2476, Revision II, dated June 1997, as listed in the regulations, is approved by the Director of the Federal Register as of April 24, 1998.

The incorporation by reference of AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 24, 1996 (61 FR 42996, August 20, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170; or Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael D. Imbler, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4147; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–17–10, amendment 39–9719 (61 FR 42996, August 20, 1996), which is applicable to certain Raytheon (Beech) Model 400, 400A, MU–300–10, and 2000 series airplanes, and Model 200, B200, 300, and B300 series airplanes, was published in the **Federal Register** on July 30, 1997 (62 FR 40763). The action proposed to continue to require replacement of outflow/safety valves with serviceable valves. The action also proposed to revise the applicability of the existing AD to add an airplane model and to remove other airplanes, as well as to identify the serial numbers of affected airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Clarification of Applicability of This AD

The preamble of the proposed AD states that the applicability of AD 96–17–10 must be revised, in part, to reference Raytheon Service Bulletin No. 2476 as the appropriate source of service information for identifying the serial numbers of the affected airplanes. That statement is incorrect.

The applicability of the proposed AD did not specifically reference that service bulletin but, instead, listed the affected airplane models and serial numbers specified in the "Material" section of that service bulletin. Since the effectivity listing of Service Bulletin No. 2476 does not include the serial numbers of the affected airplanes, the FAA finds that referencing it in the applicability of this AD as the appropriate source of service information for identifying such serial numbers could be misleading to operators. No change to this final rule is necessary in this regard.

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Explanation of Changes to Proposal

The FAA finds that the compliance time specified in paragraph (a) of the proposed AD (i.e., 18 months after September 24, 1996) needs to be extended for the new airplanes (i.e., Model 400T and MU–300 series airplanes) added to the applicability of this AD. At the time of issuance of the NPRM, the FAA determined that operators of Model 400T and MU–300 series airplanes could accomplish the requirements of paragraph (a) of the proposed AD within a timely manner. However, due to delay in issuance of the final rule, the compliance time of March 24, 1998, will have passed when this final rule becomes effective. The FAA has determined that an 18-month compliance time for the subject airplanes is appropriate. Therefore, the FAA has revised paragraph (a) of the AD accordingly.

In addition, the proposed AD states that the replacement procedures described in Raytheon Service Bulletin No. 2476, Revision II, dated June 1997, are essentially identical to those described in AlliedSignal Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995 (which is referenced in AD 96–17–10 as one of two appropriate sources of service information). However, the FAA inadvertently did not include the Raytheon bulletin as an additional source of service information for the requirements of paragraph (a) of the proposed AD. Therefore, the FAA has revised paragraph (a) of the final rule accordingly.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 142 Raytheon (Beech) Model 400, 400A, 400T, MU–300, and MU–300–10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 110 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–17–10, and retained in this AD, take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $79,200, or $720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9719 (61 FR 42996, ugust 20, 1996), and by adding a new airworthiness directive (AD), to read as follows:

98–06–30 Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddley, *et al.*): Amendment 39–10408. Docket 97–NM–68–AD. Supersedes AD 96–17–10, Amendment 39–9719.

Applicability: The following models and series of airplanes, certificated in any category, equipped with AlliedSignal outflow/safety valves, as identified in AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995:

Model of airplane	Serial Nos.
400	RJ–1 through RJ–65 inclusive.
400A	RK–1 through RK–42 inclusive.
400T (military)	TT–4 and TT–19.
MU–300	S/N A001SA through A091SA inclusive.
MU–300–10	A1001SA through A1011SA inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and consequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane, accomplish the following:

(a) Replace the outflow/safety valve in accordance with AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995, or Raytheon Service Bulletin No. 2476, Revision II, dated June 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model 400, 400A, MU–300–10 series airplanes: Replace within 18 months after September 24, 1996 (the effective date of AD 96–17–10, amendment 39–9719).

(2) For Model 400T (military) and MU–300 series airplanes: Replace within 18 months after the effective date of AD.

(b) As of the effective date of this AD, no person shall install an outflow/safety valve, having a part number and serial number identified in AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995, on any airplane unless that valve is considered to be serviceable in accordance with the applicable service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995; or Raytheon Service Bulletin No. 2476, Revision II, dated June 1997.

(1) The incorporation by reference of Raytheon Service Bulletin No. 2476, Revision II, dated June 1997, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995, was approved previously by the Director of the Federal Register as of September 24, 1996 (61 FR 42996, August 20, 1996).

(3) Copies may be obtained from AlliedSignal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170; or Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6952 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–65–AD; Amendment 39–10407; AD 98–06–29]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley; and rerouting of wiring, and installing clamps and sleeves, if necessary. This amendment is prompted by reports of inadequate clearance between the galley power feeder wiring and passenger oxygen system tubing. The actions specified by this AD are intended to prevent such inadequate clearance, which could result in a fire in the ceiling area above the door 4 galley due to chafing of wiring on oxygen system tubing.

DATES: Effective April 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), ransport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2670; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64779). That action proposed to require a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley; and rerouting of wiring, and installing clamps and sleeves, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters support the rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 452 Boeing Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,320, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a

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substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–29 Boeing: Amendment 39–10407. Docket 97–NM–65–AD.

Applicability: Model 747–400 series airplanes; as listed in Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the galley power feeder and static ground wiring on passenger oxygen system tubing in the forward ceiling area above the Door 4 galley, which could result in a fire, accomplish the following:

(a) Within 18 months after the effective date of this AD: Perform a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley, in accordance with Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997. If the separation is outside the limits specified in the alert service bulletin, prior to further flight, reroute the wiring, and install clamps and sleeves, in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6951 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–202–AD; Amendment 39–10406; AD 98–06–28]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 31 and 35A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Learjet Model 31 and 35A airplanes, that currently requires replacement of two segments of 16 American Wire Gauge (AWG) wire with 8 AWG wire at the connector that is connected to the auxiliary cabin heater relay box. That AD was prompted by a report indicating that two segments of the 16 AWG wire in the auxiliary cabin heater, which were spliced during production, do not provide adequate current-carrying capacity. This amendment requires the installation of a new replacement wire assembly. The actions specified by this AD are intended to prevent electrical arcing and consequent fire hazard that could result from wiring with inadequate current-carrying capacity.

DATES: Effective April 24, 1998.

The incorporation by reference of Learjet Service Bulletin SB 31–21–10, Revision 1, dated May 17, 1996, and Learjet Service Bulletin SB 35–21–24, Revision 1, dated May 17, 1996, as listed in the regulations, is approved by the Director of the Federal Register as of April 24, 1998.

The incorporation by reference of Learjet Service Bulletin SB 31–21–10, dated August 11, 1995, and Learjet Service Bulletin SB 35–21–24, dated August 11, 1995, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 28, 1996 (61 FR 26090, May 24, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale Bleakney, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–11–07, amendment 39–9632 (61 FR 26090, May 24, 1996), which is applicable to certain Learjet Model 31 and 35A airplanes, was published in the **Federal Register** on October 28, 1996 (61 FR 55584). The action proposed to require the

installation of a new replacement wire assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 52 Learjet Model 31 and 35A airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–11–07, and retained in this AD, take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required actions on U.S. operators is estimated to be $10,560, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The FAA has been advised, however, that some operators already have installed equipment that is the equivalent to that which would be required by this AD. Therefore, the future economic cost impact of this proposed rule on U.S. operators is expected to be less than the cost impact figure indicated above.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9632 (61 FR 26090, May 24, 1996), and by adding a new airworthiness directive (AD), amendment 39–10406, to read as follows:

98–06–28 Learjet, Inc.: Amendment 39–10406. Docket 96–NM–202–AD. Supersedes AD 96–11–07, Amendment 39–9632.

Applicability: Model 31 airplanes having serial numbers 31–002 through 31–029 inclusive, and Model 35A airplanes having serial numbers 35–647 through 35–670 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing and consequent fire hazard, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace two segments of 16 American Wire Gauge (AWG) wire with 8 AWG wire at the P190 connector that is connected to the E33 auxiliary cabin heater relay box, in accordance with Learjet Service Bulletin SB 31–21–10, Revision 1, dated May 17, 1996 (for Model 31 airplanes), or Learjet Service Bulletin SB 35–21–24, Revision 1, dated May 17, 1996 (for Model 35A airplanes), as applicable.

Note 2: Accomplishment of the replacement in accordance with the procedures specified in Learjet Service Bulletin SB 31–21–10 or SB 35–21–24 (original issue), both dated August 11, 1995, but using equipment that is identical or equivalent to that of the applicable kit specified in Revision 1 of those service bulletins, is considered to be acceptable for compliance with the requirements of paragraph (a) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Learjet Service Bulletin SB 31–21–10, dated August 11, 1995, or Revision 1, dated May 17, 1996, or Learjet Service Bulletin SB 35–21–24, dated August 11, 1995, or Revision 1, dated May 17, 1996; as applicable.

(1) The incorporation by reference of Learjet Service Bulletin SB 31–21–10, Revision 1, dated May 17, 1996, and Learjet Service Bulletin SB 35–21–24, Revision 1, dated May 17, 1996, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Learjet Service Bulletins SB 31–21–10 dated August 11, 1995 and Learjet SB 35–21–24 dated August 11, 1995, was approved previously by the Director of the Federal Register as of June 28, 1996 (61 FR 26090, May 24, 1996).

(3) Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 24, 1998.

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Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6950 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–117–AD; Amendment 39–10405; AD 98–06–27]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires installation of additional "EXIT" signs at the overwing emergency exits. This amendment is prompted by a report indicating that the "EXIT" signs for the overwing emergency exits, as currently installed, would not be visible to passengers during an emergency evacuation when the emergency exit doors are open. The actions specified by this AD are intended to ensure the "EXIT" signs for overwing emergency exits are clearly visible during an evacuation.

DATES: Effective April 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 28, 1997 (62 FR 9113). That action proposed to require installation of additional "EXIT" signs at the overwing emergency exits, and proposed to expand the applicability of the original NPRM to include additional airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Supportive Comments

Two commenters support the proposed rule.

One commenter states that the proposed rule, if adopted, would not affect its fleet of airplanes.

Requests To Extend the Compliance Time

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the proposed compliance time be extended from 8 months to 14 months. The commenter states that, in order to accomplish the modification within the proposed 8-month compliance schedule, approximately 2 of the 40 affected airplanes in its fleet would require special visits in addition to the normal heavy check scheduled. The commenter notes that the additional aircraft downtime and manpower for the special visit would result in a significant additional cost. The commenter points out that an additional 6 months will allow all of its affected aircraft to be modified during heavy maintenance visits.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's and foreign airworthiness authority's recommendations as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required modification without compromising safety. Additionally, the commenter has not provided any data to substantiate why an extension of the compliance time would not compromise safety.

In consideration of all of these factors, and in consideration of the amount of time that has already elapsed since issuance of the supplemental NPRM, the FAA has determined that further delay of this AD is not appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Resolve Method of Compliance

The ATA, in response to the original NPRM and on behalf of one of its members, requests that the AD either be reworded to mandate compliance with the applicable certification requirements for the emergency exit signs rather than requiring accomplishment of the service bulletin, or that issuance of the AD be deferred until an understanding between Fokker and the ATA member is reached as to how the certification requirements should be satisfied. The commenter states that, since it appears that none of its 40 affected airplanes are in compliance, there is no advantage to meeting the applicable certification requirements for the emergency exit signs by accomplishing the service bulletin referenced in the NPRM. The commenter notes that it should be allowed to meet the applicable certification requirements by the most labor and cost effective way possible. The commenter also notes that it may want to design and install one exit sign rather than two exit signs, and that its design would meet the applicable certification requirements. The ATA adds that it is not productive to adopt a rule that does not reflect the actual installation that is ultimately approved. The ATA also suggests that the FAA contact Fokker before any rule is adopted to ensure that the referenced service bulletin is not in the process of being revised.

The FAA does not concur. The FAA has determined that accomplishment of the actions specified in the service bulletin referenced in this AD adequately addresses the identified unsafe condition. In response to comments to the original NPRM, the FAA noted that the 20 airplanes that were inadvertently omitted from the applicability were delivered from the

factory with provisions for the service bulletin modification. (The supplemental NPRM revised the applicability of the original NPRM to include the 20 additional airplanes.) In addition, the FAA has contacted Fokker and determined that Fokker has not and does not plan to revise the referenced service bulletin to change the method of compliance. Therefore, the FAA has determined that no change to the final rule is necessary. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for alternate methods of compliance if data are submitted to substantiate that such an alternate method of compliance would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 40 Fokker Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 71 work hours per airplane to accomplish the installation, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,600 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $234,400, or $5,860 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–27 Fokker: Amendment 39–10405. Docket 94–NM–117–AD.

Applicability: Model F28 Mark 0100 series airplanes, having the following serial numbers, certificated in any category:

Serial Numbers

11244,
11245,
11248 through 11256 inclusive,
11261,
11268 through 11283 inclusive,
11286,
11289,
11290,
11291,
11293,
11295 through 11297 inclusive,
11300,
11303,
11306 through 11308 inclusive,
11310 through 11315 inclusive,
11331,
11333,
11334,
11337,
11338,
11345,
11346,
11349,
11357,
11358,
11365,
11366,
11372,
11373,
11379,
11380,
11391,
11392,
11398, and
11399.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the "EXIT" signs for the overwing emergency exits are clearly visible during an evacuation, accomplish the following:

(a) Within 8 months after the effective date of this AD, install two additional "EXIT" signs, one above and between the left-hand overwing emergency exits, and one above and between the right-hand overwing emergency exits, in accordance with Fokker Service Bulletin SBF100–33–015, Revision 1, dated March 21, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Fokker Service Bulletin SBF100–33–015, Revision 1, dated March 21, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–4, 10–12	1	March 21, 1994.
5–9, 13–20	Original	October 7, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 93–147/2 (A), dated April 29, 1994.

(e) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6949 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–193–AD; Amendment 39–10404; AD 98–06–26]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires repetitive inspections to detect corrosion in the wheel axles of the main landing gear (MLG) sliding members; and rework of any corroded areas, an inspection to detect cracks in the wheel axles, and replacement of any cracked sliding member. This AD provides for interim actions that may be accomplished in lieu of the repetitive inspections. This AD also requires eventual modifications of the main wheel brake units and the MLG sliding members; when accomplished, these modifications terminate the repetitive inspections and interim actions. This amendment is prompted by a report of failure of an MLG wheel axle during push back of an in-service airplane from the terminal. The actions specified by this AD are intended to prevent failure of the MLG wheel axle due to problems associated with corrosion and cracking.

DATES: Effective April 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 9, 1996 (61 FR 47462). That supplemental NPRM proposed to require repetitive inspections to detect corrosion in the wheel axles of the main landing gear (MLG) sliding members; and rework of any corroded areas, an inspection to detect cracks in the wheel axles, and replacement of any cracked sliding member. That supplemental NPRM proposed to provide for interim actions that may be accomplished in lieu of the repetitive inspections. That supplemental NPRM also proposed to require eventual modifications of the main wheel brake units and the MLG sliding members; when accomplished, these modifications terminate the repetitive inspections and interim actions.

Consideration of Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Allow Terminating Action To Be Optional Rather Than Mandated

The Air Transport Association (ATA) of America, representing a member airline, requests that the terminating action of this AD be allowed as an option to the repetitive inspections rather than be mandated. This commenter states that the Dutch airworthiness directive does not mandate the modification as terminating action.

The FAA does not concur with this request and, as cited in the supplemental NPRM, the FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. However, under the provisions of paragraph (g) of the final rule, the FAA may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such an alternative method would provide an acceptable level of safety.

Request To Use Long-Term Inspections To Ensure Level of Safety

The ATA, on behalf of one member, states that the member does not agree with the FAA's statement (in the preamble of the NPRM) that "Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet." This commenter also states that the concept that inspections do not provide the degree of safety required runs contrary to established industry principles and FAA advisory material. In addition, the commenter states that the Certification Maintenance Requirements (CMR's) are an example whereby repetitive tasks are defined as operating limitations in order to detect latent failures that could lead to hazardous or catastrophic failure conditions. Further, the commenter states that damage tolerance concepts for structural elements similarly rely on a well-defined inspection program to maintain safety by ensuring that fatigue

cracking is detected before the critical crack length is reached.

The FAA does not concur that the statement regarding long-term inspections is inappropriate for inclusion in the final rule, although the FAA agrees that clarification of this statement may be necessary. The FAA requires CMR items and damage tolerance inspections to ensure compliance with the airworthiness standards for type certification. The FAA also maintains that the requirement for such inspections is a result of a design methodology, and these inspections are necessary for maintaining the type design in an airworthy condition. However, the FAA points out that the inspections required by this final rule result from in-service cracking in a known area, which could lead to an unsafe condition. For this reason, the FAA has determined that the statement that "long term inspections may not be providing the degree of safety assurance" is appropriately used in this case because an unsafe condition exists.

Request To Allow Operators To Revise Maintenance Inspection Programs

The ATA, representing two member airlines, requests adding a new provision to the final rule that would allow an alternative to the accomplishment of the inspection procedures required by this AD. This alternative action would specify that if operators revise their maintenance inspection programs to include the actions specified by this AD, then the AD would no longer be applicable and these operators could use an alternative recordkeeping method to that required by the AD. The ATA further recommends that the FAA not be involved in the continued oversight of the proposed inspection since it will likely continue for the life of the airplane. One operator states that the inspection procedure could be controlled more efficiently and allow more adaptability if it were included in each operator's FAA-approved maintenance program, which could be coordinated with each operator's FAA principal maintenance inspector (PMI). This operator also states that if a regulatory mandate is required by the FAA, a better option would be to incorporate the most recent inspection procedures as an Airworthiness Limitation through the F100 Maintenance Review Board (MRB) process rather than issuance of a new AD.

A second commenter maintains that its inspection program has provided the required level of safety and that no failures of MLG axles have occurred since the introduction of the inspection program in 1994. Another commenter states that industry principles and FAA advisory material accept inspection programs as a satisfactory means of monitoring structural integrity and that the adequacy of such programs has been demonstrated by in-service experience.

The FAA does not concur with the commenters' requests to revise their maintenance inspection programs to include the actions specified by this AD. The ATA's suggested alternative to accomplishment of the actions required by this AD would permit each operator to determine whether and how often these actions should be accomplished. In light of the identified unsafe condition, however, the FAA has determined that allowing this degree of operator discretion is not appropriate. Therefore, this AD is necessary to ensure that operators accomplish the required actions in a common manner and at common intervals.

Requests To Extend Compliance Periods for Modification of the MLG

The ATA, representing a member airline, states that the compliance time for accomplishment of the modification required by paragraph (e) of the proposal is too stringent and that a typical period for landing gear overhaul is in the range of 3 to 5 years. One commenter states that the timing of the mandated modification does not fit into any normal aircraft check period and, as such, will force carriers to take airplanes out of service and obtain otherwise unneeded landing gear assemblies. This commenter maintains that the delivery schedule for the number of airplanes that would be required to support the industry would make it impossible to comply with the proposed AD. The commenter states that any mandate to modify the MLG at any time that is not flexible enough to be accomplished during each carrier's established landing gear overhaul period also should be opposed.

These commenters request changing the proposed compliance time specified in paragraph (e) of the proposal from "At the next major gear overhaul, or within 4,400 landings after accomplishment of the initial inspection required by paragraph (a) of this AD, whichever occurs first. * * *" to "At the next major gear overhaul, or within 4 years after the effective date of the proposed rule, whichever occurs later. * * *" The FAA infers from these remarks that the commenters request an extension for accomplishment of the modification.

The FAA concurs partially with these requests. The FAA concurs with the requests to extend the compliance time for completion of the modification and considers that the repetitive inspections required by paragraphs (a) and (b) of this AD will provide an adequate level of safety until such modification is completed. The FAA has determined that extending the compliance time will provide operators additional time to complete the modification and, at the same time, allow sufficient time to adequately address the unsafe condition. However, the FAA does not concur with the request to change "whichever occurs first" to "whichever occurs later" because it has determined that "later" (which refers to the next scheduled maintenance) does not provide a definitive compliance time.

The FAA concurs with the request to change the compliance time specified in paragraph (e) of this final rule from "within 4,400 landings." However, the FAA does not concur with the request to change the number of landings to 4 years and, instead, has determined that 5 years is more appropriate because it corresponds more closely to most operators' "heavy" maintenance schedules. Paragraph (e) of the final rule is changed to read "At the next major gear overhaul, or within 5 years after the effective date of this AD, whichever occurs first. * * *"

Request To Revise the Cost Estimate To Include the Terminating Actions

Two commenters request a revision of the cost impact information, below, to more accurately reflect the cost associated with accomplishment of the terminating modification. These commenters state that accomplishment of the terminating action requires removal of the MLG from the airplane and rework in the shop, and that because this action will be outside the usual maintenance for the MLG, operators may incur additional cost due to the need for a loaner gear to support the shop repair cycle.

The FAA does not concur with these requests to revise the cost estimate. The FAA points out that the compliance time for accomplishment of the terminating action has been extended in this final rule. This extension will likely allow operators to accomplish the terminating action during a major gear overhaul. Therefore, there is no additional cost associated with the removal of the MLG outside regularly scheduled maintenance.

Conclusion

After careful review of the available data, including the comments noted

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above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 125 Fokker Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 14 work hours per airplane to accomplish the required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection of this AD on U.S. operators is estimated to be $105,000, or $840 per airplane.

It will take approximately 66 work hours per airplane to accomplish the required terminating modifications, at an average labor rate of $60 per work hour. Required parts will cost approximately $865 per airplane. Based on these figures, the cost impact of the required terminating modification of this AD on U.S. operators is estimated to be $603,125, or $4,825 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the repetitive visual inspections that would be provided by this AD action, it would take approximately 14 work hours to accomplish each repetitive inspection, at an average labor rate of $60 per work hour. The FAA estimates that these inspections would be accomplished four times per year. Based on these figures, the cost impact of the repetitive inspections on U.S. operators is estimated to be $3,360 per airplane, per year.

Should an operator elect to accomplish the interim actions that would be provided by this AD action, it would take approximately 26 work hours for the rework, and 26 work hours per airplane for the brake unit replacement. It would take between 28 to 168 work hours per year for the sampling program, depending on the size of an operator's fleet. The average labor rate is $60 per work hour. The cost for required parts would be approximately $865 per airplane. Additionally, once these interim actions are accomplished, the cost impact of the terminating modifications discussed previously would be reduced by $2,400 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–26 Fokker: Amendment 39–10404. Docket 93–NM–193–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Dowty Aerospace main landing gear (MLG) part number 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG wheel axle due to problems associated with corrosion and cracking, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the MLG wheels and brakes and perform a visual inspection to detect corrosion and cracking in the wheel axles of the MLG sliding members in accordance with Fokker Service Bulletin F100–32–079, Revision 1, dated October 4, 1993, and paragraph 2.A. of the Accomplishment Instructions of Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993.

(b) Following accomplishment of the inspection required by paragraph (a) of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3 months in accordance with Fokker Service Bulletin SBF100–32–080, dated October 4, 1993, and Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994, until the actions required by paragraph (e) of this AD are accomplished. Or

(2) Accomplish paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD at the times specified in those paragraphs in accordance with Fokker Service Bulletin SBF100–32–083, dated March 23, 1994.

(i) Within 3 months after the accomplishment of an inspection required by paragraph (a) or (b)(1) of this AD: Rework the axles in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Repeat this rework thereafter at intervals not to exceed 12 months or 2,200 landings, whichever occurs first. And

(ii) Prior to or concurrent with accomplishing the initial rework specified in paragraph (b)(2)(i) of this AD: Replace the main wheel brake units in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. And

(iii) Within 3 months after the first accomplishment of the rework required by paragraph (b)(2)(i) of this AD: Begin performing interim inspections ("sampling program") to detect corrosion and cracking in the wheel axles of the MLG sliding members, in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Perform these inspections at the intervals specified in the service bulletin until the actions required by paragraph (e) of this AD are accomplished.

(c) If any corrosion is found during any inspection required by this AD, prior to further flight, rework the affected area and

perform a non-destructive testing (NDT) inspection to detect cracks in the MLG wheel axles, in accordance with Appendix A of Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993 (if corrosion is found during the initial inspection required by this AD); or Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994 (if corrosion is found during a repetitive inspection required by this AD); as applicable. After rework, perform repetitive inspections of the affected area in accordance with paragraph (b)(1) of this AD until the actions required by paragraph (e) of this AD are accomplished.

(d) If any crack is found during any inspection required by this AD, prior to further flight, replace the affected sliding member with a serviceable sliding member in accordance with Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993 (if any crack is found during the initial inspection required by this AD); or Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994 (if any crack is found during a repetitive inspection required by this AD); as applicable. After replacement of the affected sliding member, perform the repetitive inspections in accordance with paragraph (b)(1) of this AD until the actions required by paragraph (e) of this AD are accomplished.

(e) At the next major gear overhaul, or within 5 years after the effective date of this AD, whichever occurs first: Rework the sliding member, and replace the main wheel brake units in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–081, dated March 23, 1994. Accomplishment of these actions constitutes terminating action for the repetitive inspections and the interim actions specified in paragraph (b) of this AD.

Note 2: Fokker Service Bulletin SBF100–32–081 refers to Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994, as an additional source of service information for accomplishment of the rework and replacement.

(f) As of the effective date of this AD, no person shall install a Dowty Aerospace MLG, part number 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016, on any airplane unless the requirements of this AD have been accomplished on that MLG. Following its installation, the repetitive inspections required by paragraph (b) of this AD shall be accomplished on that MLG.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with the following Fokker service bulletins or Dowty Aerospace service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Fokker SBF100–32–079, Revision 1, October 4, 1993	1–3	1	October 4, 1993.
	4	Original	August 2, 1993.
Fokker SBF100–32–080, October 4, 1993	1–4	Original	October 4, 1993.
Fokker SBF100–32–081, March 23, 1994	1–6	Original	March 23, 1994.
Fokker SBF100–32–083, March 23, 1994	1–6	Original	March 23, 1994.
Dowty Aerospace F100–32–63, Revision 2, September 23, 1993	1–3	2	September 23, 1993.
	4	Original	July 29, 1993.
Appendix A	1–2	Original	July 29, 1993
Appendix B	1	2	September 23, 1993.
Dowty Aerospace F100–32–64, Revision 1, February 18, 1994	1–6	1	February 18, 1994.
Appendix A	1–2	Original	September 23, 1993.
Appendix B	1	Original	September 23, 1993.
Appendix C	1	1	February 18, 1994.

The incorporation by reference of these documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 93–108/2 (A), dated November 1, 1993.

(j) This amendment becomes effective on April 24, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6948 Filed 3–19–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–109–AD; Amendment 39–10417; AD 98–06–38]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK–21 sailplanes that do not have a certain automatic elevator connection installed. This AD requires drilling a drainage hole in the elevator pushrod, inspecting the elevator pushrod for corrosion damage, and replacing any elevator pushrod if a certain amount of corrosion damage is found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the elevator pushrod caused by corrosion damage, which could result in loss of control of the sailplane.

DATES: Effective April 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920;

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facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–109–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASK–21 sailplanes that do not have a certain automatic elevator connection installed was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 19, 1997 (62 FR 66567). The NPRM proposed to require drilling a drainage hole in the elevator pushrod, inspecting the elevator pushrod for corrosion damage, and replacing any elevator pushrod if a certain amount of corrosion damage is found. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the sailplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, the compliance time is presented in calendar time instead of hours time-in-service (TIS).

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish this elevator pushrod drainage hole drilling and elevator pushrod inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,800, or $60 per sailplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–06–38 Alexander Schleicher Segelflugzeugbau: Amendment 39–10417; Docket No. 97–CE–109–AD.

Applicability: Model ASK–21 sailplanes, serial numbers 21 001 through 21 205, certificated in any category, that do not have an automatic elevator connection installed in accordance with Alexander Schleicher Technical Note No. 11, dated December 20, 1983.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the elevator pushrod caused by corrosion damage, which could result in loss of control of the sailplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, drill a drainage hole in the elevator pushrod in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993.

(b) Within the next 3 calendar months after the effective date of this AD, inspect the elevator pushrod for corrosion damage in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993.

(1) If no corrosion damage is found or corrosion damage is found that does not exceed the amount specified in the service bulletin, prior to further flight after the inspection required by paragraph (b) of this AD, apply a corrosion agent as described in the service bulletin.

(2) If corrosion damage is found that exceeds the amount specified in the service bulletin, prior to further flight after the inspection required by paragraph (b) of this AD, replace the elevator pushrod in accordance with the maintenance manual, and apply a corrosion agent as described in the service bulletin.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane

to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Alexander Schleicher Technical Note No. 26, dated July 1, 1993, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The inspection, drilling, and application required by this AD shall be done in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 93–186, dated September 15, 1993.

(g) This amendment (39–10417) becomes effective on April 28, 1998.

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7232 Filed 3–19–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–107–AD; Amendment 39–10416; AD 98–06–37]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK–21 sailplanes. This AD requires replacing any tow release cable assembly that does not have a swivel-type end with a cable assembly that does have a swivel-type end. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the inability to release the tow rope because of the design of the cable assembly, which could result in loss of control of the sailplane during towing operations.

DATES: Effective April 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–107–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Alexander Schleicher Model ASK–21 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 19, 1997 (62 FR 66560). The NPRM proposed to require replacing any tow release cable assembly that does not have a swivel-type end with a tow release cable assembly that does have a swivel-type end. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Alexander Schleicher Technical Note No. 10, dated October 10, 1983.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the loops that form in the cable assembly would only occur during flight over time and the bending loads are related to sailplane operation, the FAA has no basis to determine the approximate number of hours time-in-service (TIS) when the unsafe condition is likely to occur. For example, the loops could form in the tow release cable assembly on a sailplane with 10 hours TIS, but not form until 500 hours TIS on another sailplane. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per sailplane to

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accomplish this replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $20 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,200, or $140 per sailplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–06–37 Alexander Schleicher Segelflugzeugbau: Amendment 39–10416; Docket No. 97–CE–107–AD.

Applicability: Model ASK–21 sailplanes, serial numbers 21 001 through 21 196, certificated in any category, that are equipped with a tow release cable assembly that does not have a swivel-type end.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the inability to release the tow rope because of the design of the cable assembly, which could result in loss of control of the sailplane during towing operations, accomplish the following:

(a) Replace any tow release cable assembly that does not have a swivel-type end with a tow release cable assembly that does have a swivel-type end in accordance with Alexander Schleicher Technical Note No. 10, dated October 10, 1983.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 10, dated October 10, 1983, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The replacement required by this AD shall be done in accordance with Alexander Schleicher Technical Note No. 10, dated October 10, 1983. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 84–2, dated January 13, 1984.

(f) This amendment (39–10416) becomes effective on April 28, 1998.

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7249 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–22–AD; Amendment 39–10410]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111 series airplanes. This amendment requires repetitive inspections to detect cracking around the attachment holes for the access panels in the lower skin of the wing; and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct such cracking, which could result in reduced structural integrity of the airplane.

DATES: Effective June 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–

22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111 series airplanes. The DGAC advises that it has received a report of cracking detected during fatigue testing on a test article; the cracks were found around the attachment holes for the access panels in the lower skin of the wing, between ribs 13 and 22. Such cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1056, Revision 1, dated July 15, 1997, including Appendix 1, which describes procedures for repetitive high frequency eddy current inspections to detect cracking around the attachment holes for the access panels in the lower skin of the wing, between ribs 13 and 22 (skin panel number 2, left and right sides); and repair, if necessary. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97–083–096(B), dated March 12, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Rule and the Service Information

Operators should note that, although the previously described service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

Currently, there are approximately 118 Airbus Model A320–111 airplanes of U.S. registry. However, the FAA has determined that none of these U.S.-registered airplanes will be affected by this AD. Therefore, there is no future economic cost impact of this rule on U.S. operators.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $480 per airplane, per inspection cycle.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. The requirements of this direct final rule address and unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with 14 CFR 11.17, unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received; at that time, the AD number will be specified, and the date on which the final rule will become effective will be confirmed. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–22–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Amendment 39–10410. Docket 98–NM–22–AD.

Applicability: Model A320–111 series airplanes, as identified in Airbus Service Bulletin A320–57–1056, Revision 1, dated July 15, 1997, including Appendix 1; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking around the attachment holes for the access panels in the lower skin of the wing, between ribs 13 and 22 (skin panel number 2, left and right sides), which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection to detect cracking around the attachment holes for the access panels in the lower skin of the wing, between ribs 13 and 22; in accordance with Airbus Service Bulletin A320–57–1056, Revision 1, dated July 15, 1997, including Appendix 1. Thereafter, repeat the inspection at intervals not to exceed 15,000 flight cycles.

(b) If any crack is detected during any inspection required by this AD, and the applicable service bulletin specifies to contact the manufacturer for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–57–1056, Revision 1, dated July 15, 1997, including Appendix 1. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–083–096(B), dated March 12, 1997.

(f) This amendment becomes effective on June 18, 1998.

Issued in Renton, Washington, on March 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6947 Filed 3–19–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–66–AD; Amendment 39–10418; AD 98–06–39]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters. This action requires determining the thickness of the shim washers, inspecting certain cockpit door hinge tenons (hinge tenons) for cracks, and if a crack is found, replacing the hinge tenon with an airworthy hinge tenon. This amendment is prompted by several reports of cracked hinge tenons due to improper shimming. The actions specified in this AD are intended to detect cracks in the hinge tenons due to unintended loading of the improperly shimmed tenons caused by closing the door, which may lead to separation of the door from the helicopter, impact with the main rotor or tail rotor system, and subsequent loss of control of the helicopter.

DATES: Effective April 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–66–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L*Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, L, L1, and L2 helicopters. The DGAC advises that an inspection of the hinge tenons for cracks must be performed on helicopters that have washers of a certain thickness installed.

Eurocopter France has issued Eurocopter AS 332 Service Bulletin No. 01.00.50, dated August 5, 1997, which specifies an inspection of the hinge tenons for cracks on helicopters that have washers of a certain thickness installed. The DGAC classified this service bulletin as mandatory and issued AD 97–108–006(AB)R1 and AD 97–109–061(AB)R1, both dated April 23, 1997, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, L1, and L2 helicopters of the same type design registered in the United States, this AD is being issued to detect cracks in the hinge tenons due to unintended loading caused by improper shimming of the tenons upon closing the door, which may lead to separation of the door from the helicopter, impact with the main rotor or tail rotor system, and subsequent loss of control of the helicopter. The actions are required to be accomplished in accordance with the service bulletin described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, since the hinge tenons must be inspected and replaced prior to further flight if a crack is found, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 4 helicopters of U.S. registry will be affected by this proposed AD, that it will take approximately 4 work hours to accomplish the inspection and installation (if needed), and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,960.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–66–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–06–39 Eurocopter France: Amendment 39–10418. Docket No. 97–SW–66–AD.

Applicability: Model AS 332C, L, L1, and L2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered,

or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks in the cockpit door hinge tenons (hinge tenons) due to unintended loading of the improperly shimmed tenons caused by closing the door, which may lead to separation of the door from the helicopter, impact with the main rotor or tail rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS), inspect the thickness of the shim washers and perform the following in accordance with Eurocopter Service Bulletin No. 01.00.50, dated August 5, 1997:

(1) If the washers are equal to or less than 3 mm thick, perform the requirements of paragraph 2.B.1.1. and 2.B.2.

(2) If the washers are more than 3 mm thick and equal to or less than 3.5 mm thick, perform the requirement of paragraph 2.B.1.2. and 2.B.2.

(3) If the washers are more than 3.5 mm thick, perform a dye penetrant inspection for cracks on the hinge tenon as specified in paragraph 2.B.1.3.

(i) If a crack is found, before further flight, install an airworthy, zero hours TIS hinge tenon in accordance with the requirements of paragraph 2.B.1.3. and 2.B.2.

(ii) If the hinge tenon is determined to be airworthy and is reinstalled, remove and replace the reinstalled hinge tenon with an airworthy, zero hours TIS hinge tenon within 500 hours TIS, in accordance with paragraph 2.B.1.3. and 2.B.2.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspections and replacement shall be done in accordance with Eurocopter Service Bulletin No. 01.00.50, dated August 5, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 6, 1998.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–108–006(AB)R1 and AD 97–109–061(AB)R1, both dated August 27, 1997.

Issued in Fort Worth, Texas, on March 12, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–7230 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–51–AD; Amendment 39–10415; AD 98–06–36]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA341G and SA342J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA341G and SA342J helicopters. This action requires inspecting the tail gearbox support tripod (support tripod) for cracks. This amendment is prompted by reports of cracks that were discovered during routine maintenance inspections. The actions specified in this AD are intended to detect cracks at the welds of the tail gearbox support tripod, which could cause failure of one or more of the tripod arms, subsequent separation of the tail gearbox, and loss of control of the helicopter.

DATES: Effective April 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–51–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA341G and SA342J helicopters. The DGAC advises that cracks have been found in the welds of the support tripod, part number 341A23–1136–00 –01, or –02, and is mandating a visual inspection, and if the results of the visual inspection are inconclusive, a dye-penetrant inspection for cracks.

Eurocopter France has issued Eurocopter SA 341/342 Service Bulletin No. 05.32, dated July 17, 1997, which specifies visual inspections, and if there is any doubt about the results of the visual inspection, a dye-penetrant inspection, for cracks on the support tripod and replacement with an airworthy support tripod if a crack is found. The DGAC classified this service bulletin as mandatory and issued AD 97–144–038(B), dated July 2, 1997, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this

type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA341G and SA342J helicopters of the same type design registered in the United States, this AD is being issued to detect cracks at the welds of the tail gearbox support tripod, which could cause failure of one or more of the tripod arms, separation of the tail gearbox and subsequent loss of control of the helicopter. This AD requires, before further flight, and thereafter, prior to the first flight of each day, or at intervals not to exceed 10 hours time-in-service, whichever occurs first, visual inspections of the support tripod for cracks. If the visual inspections indicate potential cracks, a dye-penetrant inspection is required. If a crack is found, replacing the support tripod with an airworthy support tripod is required. The actions are required to be accomplished in accordance with the service bulletin described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the inspections for cracks are required prior to further flight, and this AD must be issued immediately.

The FAA estimates that 24 helicopters of U.S. registry would be affected by this AD, that it would take approximately one-half work hour to conduct the visual inspection and 9 work hours to replace the support tripod, and that the average labor rate is $60 per work hour. Required parts would cost approximately $203,304. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,892,976, if the support tripod is replaced in all of the U.S. fleet.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–51–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–06–36 Eurocopter France: Amendment 39–10415. Docket No. 97–SW–51–AD.

Applicability: Eurocopter France Model SA341G and SA342J helicopters, with tail gearbox support tripods, part number (P/N) 341A23–1136–00, –01 or –02, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks at the welds of the tail gearbox support tripod, which could cause failure of one or more of the tripod arms, separation of the tail gearbox, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, visually inspect the tail gearbox support tripod (support tripod), P/N 341A23–1136–00, –01 or –02, for cracks in accordance with the Accomplishment Instructions, paragraph 2(B)(1), of Eurocopter SA 341/342 Service Bulletin No. 05.32, dated July 17, 1997; thereafter, conduct this visual inspection prior to the first flight of each day, or at intervals not to exceed 10 hours time-in-service (TIS), whichever occurs first.

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(1) If there is any doubt as to whether there is a crack present, perform a dye-penetrant inspection in accordance with paragraph (2)(B)(1) of the service bulletin.

(2) If a crack is found, replace the support tripod with an airworthy support tripod.

Note 2: The FAA has requested the DGAC to contact the type certificate holder and solicit terminating action that would eliminate the recurring inspection requirement of this AD.

(b) Remove from service any support tripod, P/N 341A23–1136–00, –01, or –02, which has accumulated 9,000 or more hours TIS, and replace it with an airworthy support tripod.

(c) This AD revises the Limitation section of the maintenance manual by establishing a new retirement life for the support tripod, P/N 341A23–1136–00, –01, and –02, of 9,000 hours TIS.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacement, if necessary, shall be done in accordance with Eurocopter SA 341/342 Service Bulletin No. 05.32, dated July 17, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 6, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–144–038(B), dated July 2, 1997.

Issued in Fort Worth, Texas, on March 12, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–7247 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–31–AD; Amendment 39–10414; AD 98–06–35]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA–366G1 helicopters. This action requires initial and repetitive inspections of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar) for delaminations. This amendment is prompted by a report of delamination of a Kevlar tie-bar. The actions specified in this AD are intended to detect delaminations of the Kevlar tie-bar, that could result in loss of anti-torque function and subsequent loss of control of the helicopter.

DATES: Effective April 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–31–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Model SA–366G1 helicopters. The DGAC advises that delamination outside certain tolerance limits may occur on Kevlar tie-bars.

Eurocopter France has issued Eurocopter France Telex Service Bulletin No. 05.19, dated August 19, 1992, which specifies visually checking the condition of the Kevlar tie-bar assembly for delamination around the blade-to-hub attachment point within 10 flying hours, and if delamination exists that is outside certain tolerance limits, removing the tail rotor blade and replacing it with an airworthy blade. Eurocopter France also issued Eurocopter France SA 366 Service Bulletin No. 05.20, Revision 3, dated November 14, 1996, which specifies repetitive visual inspections of the Kevlar tie-bar for delamination, and if delamination exists that is outside certain tolerance limits, removing the tail rotor blade and replacing it with an airworthy tail rotor blade at intervals of 250 flying hours. The DGAC classified these service bulletins as mandatory and issued DGAC AD 92–186–014(B)R4, dated December 4, 1996, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

The FAA estimates that 91 helicopters of U.S. registry will be affected by this AD, that it will take 4 work hours per helicopter to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,000 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $294,840.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–366G1 helicopters of the same type design registered in the United States, this AD is being issued to detect delaminations of the Kevlar tie-bar, that could result in loss of anti-

torque function and subsequent loss of control of the helicopter. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, an initial inspection within 10 hours time-in-service is required and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–31–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–06–35 Eurocopter France: Amendment 39–10414. Docket No. 97–SW–31–AD.

Applicability: Model SA–366G1 helicopters, with tail rotor blades, part numbers (P/N) 365A12–0010–all dash numbers, 365A12–0020–01, 365A33–2131–all dash numbers, or 365A12–0020–03, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect delaminations of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar), that could result in loss of anti-torque function and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), inspect each Kevlar tie-bar in accordance with paragraph CC of Eurocopter France Telex Service Bulletin 05.19, dated August 19, 1992. This initial inspection is not required for blade P/N 365A12–0020–03.

Note 2: Twisting the Kevlar tie-bar slightly when inspecting will make it easier to identify any faults.

(b) Within 250 hours TIS, and thereafter at intervals not to exceed 250 hours TIS, inspect each Kevlar tie-bar in accordance with paragraph 2.B of Eurocopter France Service Bulletin 05.20, Revision 3, dated November 14, 1996.

(c) If any delamination is found during any of the inspections required by paragraphs (a) or (b) of this AD, remove the blade and replace it with an airworthy blade before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with Eurocopter France Telex SB 05.19, dated August 19, 1992 and Eurocopter France SB 05.20, Revision 3, dated November 14, 996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd.,

Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 6, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 92–186–014(B)R4, dated December 4, 1996.

Issued in Fort Worth, Texas, on March 12, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–7248 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 980313063–8063–01]

RIN 0625–AA51

Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Interim final rules; request for comments.

SUMMARY: The Department of Commerce ("the Department") hereby amends its regulations on antidumping and countervailing duty proceedings on an interim basis in order to implement certain provisions of the Uruguay Round Agreements Act ("URAA").

The regulations provide, in particular, for procedures for conducting five-year ("sunset") reviews of antidumping and countervailing duty orders and suspended investigations pursuant to the provisions of sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act").

DATES: Interim final regulations effective March 20, 1998. To be assured of consideration, written comments must be received not later than April 20, 1998. Rebuttal comments must be received not later than May 11, 1998.

ADDRESSES: A signed original and six copies of each set of comments, including reasons for any recommendation, along with a cover letter identifying the commenter's name and address, should be submitted to Robert S. LaRussa, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; Attention: Sunset Procedural Regulations.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, or Stacy J. Ettinger, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–4618.

SUPPLEMENTARY INFORMATION:

Background

The Uruguay Round Agreements Act ("URAA") fundamentally revised the Act by requiring that antidumping ("AD") and countervailing duty ("CVD") orders be revoked, and suspended investigations be terminated, after five years unless revocation would be likely to lead to a continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry. The URAA assigns to the Department the responsibility of determining whether revocation of an antidumping or countervailing duty order, or termination of a suspended investigation, would be likely to lead to a continuation or recurrence of dumping or a countervailable subsidy, and of providing to the International Trade Commission the magnitude of the margin of dumping or the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The URAA requires that the Department begin initiating sunset reviews in July 1998, that all sunset reviews of "transition orders"—those antidumping and countervailing duty orders and suspended investigations in effect on January 1, 1995, the effective date of the URAA—be initiated by December 31, 1999, and that all reviews of transition orders be completed by June 30, 2001. The URAA further requires that the Department initiate a sunset review of each order or suspended investigation that is not a "transition order" not later than 30 days before the fifth anniversary of publication of the order or suspension agreement in the **Federal Register**. Pursuant to section 751(c)(1) of the Act, initiation of sunset reviews is automatic. The Department intends to notify, in advance, all persons on the service list for each proceeding subject to a sunset review, of the approximate date of publication in the **Federal Register** of the automatic initiation of the sunset review.

The interim regulations described below address the procedures for participation in, and conduct of, sunset reviews consistent with the statute and with the legislative history's commitment to provide further guidance on procedures. These regulations are effective on their date of publication in the **Federal Register** and apply to sunset reviews initiated on or after July 1, 1998. These rules will remain in effect until the Department adopts final regulations after considering comments in response to this notice of interim final rules.

Request for Comment

The Department solicits comments pertaining to these interim final regulations concerning conduct of sunset reviews. Initial comments should be received by the Assistant Secretary not later than April 20, 1998. Any rebuttals to the initial comments should be received by the Assistant Secretary not later than May 11, 1998. Commenters should file a signed original and six copies of each set of initial and rebuttal comments. All comments will be available for public inspection and photocopying in the Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 am and 5:00 pm on business days.

Each person submitting a comment should include the commenter's name and address, and give reasons for any recommendations. To facilitate their consideration by the Department, initial and rebuttal comments should be submitted in the following format: (1) Number each comment in accordance with the number of the regulation being addressed; (2) begin each comment on a separate page; (3) provide a brief summary of the comment (a maximum of three sentences) and label this section "Summary of the Comment;" and (4) concisely state the issue identified and discussed in the comment and provide reasons for any recommendation.

To help simplify the processing and distribution of comments, the Department requests the submission of initial and rebuttal comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5" diskette in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Please make each comment a separate file on the diskette and name each separate file using the number of the regulation being addressed in the comment.

Comments received on diskette will be made available to the public on the Internet at the following address: "http://www.ita.doc.gov/import_admin/

records/". In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5" diskettes (at cost), with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, (202) 482–0866.

Classification

Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(b)(A), the Assistant Secretary for Import Administration waives the requirement to provide prior notice and an opportunity for public comment because this action is a rule of agency procedure. Section 751(c) and section 752 of the Tariff Act of 1930, as amended (19 U.S.C. 1675(c) and 1675a), and the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act (H.R. Doc. No. 103–316, vol. 1 (1994)) address the substantive methodological and analytical framework for sunset reviews, as well as procedures for conducting sunset reviews. This action only addresses the procedures for participation in, and conduct of, sunset reviews consistent with the statute and with the SAA's commitment to provide further guidance on procedures. This interim final rule is not subject to a 30-day delay in its effectiveness under 5 U.S.C. 553(d) as it is not a substantive rule. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 note) are inapplicable to this rulemaking because it is not one for which a Notice of Proposed Rulemaking is required under 5 U.S.C. 553 or any other statute.

Paperwork Reduction Act

This interim final rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Executive Order 12866

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 12612

This interim final rule does not contain federalism implications described in Executive Order 12612 warranting the preparation of a Federalism Assessment.

Explanation of Particular Provisions

Subpart A—Scope and Definitions

Subpart A sets forth the scope of part 351, definitions, and other general matters applicable to AD/CVD proceedings.

Section 351.102

Section 351.102 sets forth definitions of terms that are used throughout part 351. Most of the terms used in the new sunset regulations have been defined previously in the statute or regulations, and parties should refer to the relevant provisions for guidance. However, we added two new definitions.

Expedited sunset review is used in these regulations as a shorthand expression for the 120-day expedited sunset review conducted by the Department under section 751(c)(3)(B) of the Act. The Department will conduct an expedited sunset review when respondent interested parties provide inadequate responses to a Notice of Initiation under new § 351.218(e)(1)(ii).

Full sunset review is used in these regulations as a shorthand expression for the 240-day (or 330-day if fully extended) full sunset review conducted by the Department under section 751(c)(5) of the Act. The Department will conduct a full sunset review when both domestic interested parties and respondent interested parties provide adequate responses to a Notice of Initiation under section 751(c)(3)(B) of the Act and new §§ 351.218(e)(1)(i) and 351.218(e)(1)(ii).

Section 351.104

Section 351.104 defines what constitutes the official and public records of an AD/CVD proceeding.

Administrative record of proceedings. Although no changes have been made to § 351.104 by these regulations, in order to avoid any confusion that might arise from reporting and recordkeeping differences between the International Trade Commission and the Department with respect to grouped transition orders, we are clarifying that a sunset proceeding before the Department is subject merchandise- and country-specific (*i.e.*, order-specific). Therefore, consistent with § 351.104(a)(1), the Department will maintain in the Central Records Unit an official record of each sunset review of an order or suspended investigation, and a party must file separate submissions, consistent with the filing requirements of § 351.303, in each sunset review in which it participates.

Subpart B—Antidumping and Countervailing Duty Procedures

Subpart B deals with AD/CVD procedures.

Section 351.218

Section 351.218 deals with sunset reviews under section 751(c) of the Act. We removed paragraphs (d) and (e) and added new paragraphs (d), (e), and (f). These revisions are intended to streamline sunset reviews by providing guidance on participation in, and conduct of, sunset reviews. In addition, the Department believes that such guidance will allow both the Department and interested parties to begin preparing in advance, in particular, for the approximately 325 sunset reviews of transition orders scheduled to be initiated over an 18-month period beginning in July 1998.

Participation in sunset review. Paragraph (d) is new and sets forth the procedural requirements for participation in, or waiver of participation in, a sunset review.

Domestic interested party notification of intent to participate. Paragraph (d)(1) sets forth the procedure for domestic interested party participation in a sunset review. Paragraph (d)(1)(i) provides that a domestic interested party that intends to participate in a sunset review must file a Notice of Intent to Participate in a Sunset Review within 15 days of initiation of a sunset review. The requirement that domestic interested parties notify the Department of their intention to participate prior to the deadline for submission of substantive responses to both the Department and the International Trade Commission is intended to alleviate the burden on parties of having to prepare substantive responses in cases where there is no domestic party interest. This is because, where there is no domestic party interest in a particular case, the Department, pursuant to section 751(c)(3)(A) of the Act, automatically will revoke the order or terminate the suspended investigation, as applicable. The Notice of Intent procedure is intended to eliminate needless reviews and promote administrative efficiency, consistent with the explanation in the House Report (H.R. Rep. No. 103–826, pt. 1 (1994)) at 56. As set forth in paragraph (d)(1)(iii), therefore, where no domestic interested party files a Notice of Intent to Participate in the sunset review, the Department will issue a final determination revoking the order or terminating the suspended investigation within 90 days of initiation of the sunset review.

Paragraph (d)(1)(ii) sets forth the information required to be provided in a Notice of Intent to Participate in a Sunset Review. It is the Department's intention to make the Notice of Intent procedure as simple as possible and, as

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a result, the information required to be provided is minimal.

Waiver of response by a respondent interested party to a Notice of Initiation. Paragraph (d)(2) deals with the procedure for waiving participation in a sunset review before the Department, consistent with section 751(c)(4) of the Act. As the SAA at 881, and the House Report at 57, explain, allowing respondent interested parties, including foreign governments, to waive participation in a sunset review before the Department is intended to reduce the burden on all parties involved in a sunset review.

Paragraph (d)(2)(i) provides that a Statement of Waiver must be filed within 30 days of initiation of the sunset review, and, consistent with section 751(c)(4)(A) of the Act, clarifies that waiving participation in a sunset review before the Department does not affect a party's opportunity to participate in the sunset review conducted by the International Trade Commission.

Paragraph (d)(2)(iii) clarifies that failure to file a complete substantive response to a Notice of Initiation under paragraph (d)(3) also will be treated as a waiver of participation. It is the Department's intention to make the waiver process as simple as possible and, as reflected in paragraph (d)(2)(ii), the information required to be provided in a Statement of Waiver is minimal.

Paragraph (d)(2)(iv) indicates the effect of waiver by the foreign government in a CVD sunset review. Specifically, paragraph (d)(2)(iv) provides that where the foreign government waives participation in a CVD sunset review, either by filing a Statement of Waiver or by failing to file a complete substantive response to a Notice of Initiation, the Department will conduct an expedited sunset review under section 751(c)(3)(B) of the Act and, consistent with the SAA at 881, and the House Report at 57, normally will conclude that revocation of the order or termination of the suspended investigation would be likely to lead to continuation or recurrence of a countervailable subsidy for *all* respondent interested parties.

Substantive response to a Notice of Initiation. Section 751(c)(2) of the Act requires the Department to initiate sunset reviews automatically every five years. As part of the initiation, section 751(c)(2) of the Act authorizes the Department to request that interested parties submit certain information needed to conduct the review. Paragraph (d)(3) indicates the information that interested parties are required to submit in response to the Notice of Initiation of a sunset review, as well as optional information that may be submitted in response to the Notice of Initiation.

Paragraph (d)(3)(i) provides that a complete substantive response to a Notice of Initiation must be submitted to the Department within 30 days of initiation of the sunset review.

Paragraph (d)(3)(ii), consistent with section 751(c)(2) of the Act, indicates the information required to be filed by all interested parties in a sunset review, including a statement expressing the interested party's willingness to participate in the review by providing information requested by the Department, a statement regarding the likely effects of revocation of the order or termination of the suspended investigation, and, if applicable, a summary of the Department's findings regarding duty absorption.

Paragraph (d)(3)(iii) indicates the additional information required to be filed by respondent interested parties in a sunset review, including historical margin or rate information and export volume and value data. In particular, respondent interested parties are required to report their percentage of the total exports of subject merchandise to the United States; this information will be central to the Department's determination as to whether respondent interested parties provided adequate response to a notice of initiation under section 751(c)(3)(B) of the Act.

Paragraph (d)(3)(iv) indicates that parties also may submit information to show good cause for the Department to consider other factors under sections 752(b)(2) (CVD) or 752(c)(2) (AD) of the Act. Paragraph (d)(3)(iv) clarifies, however, that, if an interested party wants the Department to consider these other factors during the course of the sunset review, the party must submit evidence of good cause in its substantive response.

Substantive response from a foreign government in a CVD sunset review. Paragraph (d)(3)(v) indicates the information required to be filed by the foreign government in a CVD sunset review. This information is a subset of the information required to be filed by other respondent interested parties. However, where the sunset review involves a CVD order where the investigation was conducted on an aggregate basis, paragraph (d)(3)(v)(B) provides for additional information required to be filed by the foreign government. This additional information essentially is identical to the additional required information that normally would be filed by respondent companies. This is because, in an aggregate CVD proceeding, the foreign government normally is the only respondent.

Substantive responses from industrial users and consumers. Paragraph (d)(3)(vi) indicates the information required to be filed by industrial users and representative consumer organizations that intend to participate in a sunset review.

Rebuttal to substantive response to a Notice of Initiation. Paragraph (d)(4) allows parties that filed a substantive response to a Notice of Initiation to file rebuttals to other parties' substantive responses within five days. Paragraph (d)(4) also explicitly provides that the Department normally will not accept or consider any additional information from a party after the time for filing rebuttals has expired unless the Secretary requests additional information from parties after determining to proceed to a full sunset review.

Conduct of sunset review. Paragraph (e) is new and deals with the conduct of sunset reviews, including the determination of whether interested party responses are adequate.

Adequacy of response to a Notice of Initiation. The SAA at 880, provides that the determination of adequacy is committed to the Department's (and, separately, the International Trade Commission's) discretion. Paragraph (e)(1), therefore, sets forth the guidelines by which the Department will determine whether interested parties' substantive responses to a Notice of Initiation are adequate. Responses will be evaluated for adequacy on an individual basis, i.e., whether a party has timely submitted a complete substantive response to a Notice of Initiation. A complete substantive response is one which contains all of the information required under paragraph (d)(3). The Department may consider a substantive response that does not contain all of the information required under paragraph (d)(3) to be complete where a party is unable to report certain required information and provides a reasonable explanation as to why it is unable to provide such information. In addition, responses will be evaluated for adequacy on an aggregate basis. In assessing the adequacy of responses in the aggregate, the Department will consider only those responses that individually are considered adequate. The Department will determine separately the adequacy of responses of domestic interested parties and respondent interested parties. Consistent with the Senate Report at 46, the Department will make its determination of adequacy on a case-by-case basis.

Adequacy of response from domestic interested parties. Paragraph (e)(1)(i)(A) provides that the Department normally will conclude that domestic interested parties have provided adequate response where at least one domestic interested party files a complete substantive response. Paragraph (e)(1)(i)(B) provides that the Department may consider whether a domestic interested party is related to a foreign producer or exporter, or is an importer or related to an importer of the subject merchandise, in determining adequacy of response from domestic interested parties.

Paragraph (e)(1)(i)(C) clarifies that, where the Department disregards a response from a domestic interested party, either because the response is not complete or because of the domestic interested party's relationship with a foreign producer, foreign exporter, or importer, and where no other domestic interested party has responded to the Notice of Initiation, the Department will find no domestic interested party response under section 751(c)(3)(A) of the Act and issue final results revoking the order or terminating the suspended investigation within 90 days after initiation of the sunset review.

Adequacy of response from respondent interested parties. Paragraph (e)(1)(ii)(A) provides that the Department normally will conclude that respondent interested parties have provided adequate response where respondent interested party responses account for more than 50 percent, by volume, of the total exports of subject merchandise to the United States. Paragraph (e)(1)(ii)(C) provides that where respondent interested parties provide inadequate response, the Department will conduct an expedited sunset review under section 751(c)(3)(B) of the Act and issue final results of review based on the facts available. In addition, the Department will notify the International Trade Commission of its adequacy determination within 50 days of initiation of the sunset review.

Adequacy of response from a foreign government in a CVD sunset review. Consistent with the SAA at 880, and the Senate Report at 46, paragraph (e)(1)(ii)(B) provides that if the foreign government does not file a complete substantive response to a Notice of Initiation in a CVD sunset review, the Department will find inadequate response from *all* respondent interested parties under section 751(c)(3)(B) of the Act and will conduct an expedited sunset review.

Full sunset review upon adequate response from domestic and respondent interested parties. Paragraph (e)(2)(i) provides that where the Department receives adequate responses from both domestic and respondent interested parties, it normally will conduct a full sunset review. Consistent with the SAA at 891, and the House Report at 64, paragraph (e)(2)(i) also provides that only under the most extraordinary circumstances will the Department rely on a countervailing duty rate or dumping margin other than those it calculated and published in its prior determinations. As a result, paragraph (e)(2)(i) provides that the Department will not calculate a net countervailable subsidy or dumping margin for a new shipper in the context of a sunset review. Paragraph (e)(2)(ii) clarifies that the Department will consider other factors, if at all, normally only in the context of a full sunset review.

Time limits. Paragraph (f) is new and deals with time limits for verification, issuance of preliminary and final results of full sunset review, and issuance of the Department's determination to continue, revoke, or terminate an order or suspended investigation, as applicable, after the publication of the International Trade Commission's final determination concluding a sunset review.

Paragraph (f)(1) provides that the Department normally will issue its preliminary results of full sunset review not later than 110 days after initiation of the sunset review.

Paragraph (f)(2)(i) clarifies that the Department normally will conduct verification, if at all, only in a full sunset review. In addition, paragraph (f)(2)(i) provides that the Department will conduct verification normally only if, in its preliminary results, the Department determines that revocation of the order or termination of the suspended investigation is *not* likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), *and* the Department's determination is *not* based on countervailing duty rates or dumping margins from the original investigation or subsequent reviews. There may be other situations in which the Department would not need to conduct verification. Paragraph (f)(2)(ii) indicates that the Department normally will conduct verification, if at all, approximately 120 days after initiation of the sunset review, i.e., normally after the Department issues its preliminary results of review. Because the Department cannot anticipate the extent of its workload during the conduct of sunset reviews, particularly during the 18-month period in which the Department must begin conducting sunset reviews of approximately 325 transition orders, the Department may need to schedule verification either before or after the 120-day time frame. Paragraph (f)(2)(ii) allows for this type of flexibility in scheduling.

Paragraph (f)(3) provides that the Department normally will issue its final results of full sunset review not later than 240 days after initiation of the sunset review and may extend the period for issuing final results in an extraordinarily complicated sunset review by up to 90 days.

Paragraph (f)(4) provides that the Department normally will issue its determination to continue, revoke, or terminate an order or suspended investigation, as applicable, within seven days after the date of publication of the International Trade Commission's final determination concluding the sunset review, and subsequently publish notice of the Department's determination in the **Federal Register**.

Section 351.221

Section 351.221 deals with review procedures. We amended paragraph (c)(5)(i) to take into account changes in these regulations. Paragraph (c)(5)(i) provides, therefore, that the notice of initiation of a sunset review will contain a request for the information described in § 351.218(d).

Section 351.222

Section 351.222 deals with the revocation of orders and the termination of suspended investigations. We removed paragraph (i) and added new paragraph (i). These revisions are intended to clarify the circumstances under which the Department will revoke an order or terminate a suspended investigation and the effective date of revocation.

Circumstances under which the Secretary will revoke an order or terminate a suspended investigation. Paragraph (i)(1) is new and clarifies the circumstances under which the Department will revoke an order or terminate a suspended investigation. Paragraph (i)(1)(i) provides for revocation or termination within 90 days after initiation of the sunset review where no domestic interested party files a Notice of Intent to Participate in the sunset review or where the Department determines that domestic interested parties provided inadequate response to the Notice of Initiation. Paragraph (i)(1)(if) provides for revocation or termination within 240 days (or 330 days where a full sunset review is fully extended) after initiation of the sunset review where the Department determines that revocation or

termination is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping, as applicable. Finally, paragraph (i)(1)(iii) provides for revocation or termination within seven days after the date of publication of a final determination by the International Trade Commission that revocation or termination is not likely to lead to continuation or recurrence of material injury.

Effective date of revocation. Paragraph (i)(2) is new and clarifies the effective date of revocation. With respect to non-transition orders, paragraph (i)(2)(i) provides that revocation or termination will be effective on the fifth anniversary of the date of publication of the order or suspended investigation, as applicable. With respect to transition orders, paragraph (i)(2)(ii) provides that revocation or termination will be effective on January 1, 2000.

Subpart C—Information and Argument

Subpart C deals with collection of information and presentation of arguments to the Department.

Section 351.308

Section 351.308 deals with determinations on the basis of the facts available. We added new paragraph (f) to take into account changes in these regulations.

Use of facts available in a sunset review. Paragraph (f) is new and, consistent with the SAA at 879, provides that, where the Department determines to issue final results of review on the basis of the facts available, it normally will rely on calculated rates or margins, as applicable, from prior Department determinations and information contained in parties' substantive responses to the Notice of Initiation.

Section 351.309

Section 351.309 deals with written argument. We made minor changes to paragraphs (c)(1)(i) and (c)(1)(iii), and added new paragraph (e) to take into account changes in these regulations.

Case and rebuttal briefs. Paragraph (c)(1)(i) provides that case briefs for the final results of full sunset reviews may be filed 50 days after the date of publication of the preliminary results. Only an interested party (or industrial user or consumer organization) that filed a complete substantive response to the Notice of Initiation may submit a case brief. Paragraph (d)(1) (which is unchanged) provides that rebuttal briefs may be filed five days after the time limit for filing the case brief.

Comments on adequacy of response and appropriateness of expedited sunset review. Paragraph (e) is new and provides for filing of comments on adequacy of response and the appropriateness of conducting an expedited sunset review. Paragraph (e)(i) provides that, where the Secretary determines that respondent interested parties provided inadequate response to a Notice of Initiation and has notified the International Trade Commission as such, interested parties (and industrial users and consumer organizations) that submitted complete substantive responses to the Notice of Initiation may file comments on whether an expedited sunset review is appropriate based on the adequacy of response. Paragraph (e)(i) clarifies that the comments may not include any new factual information or evidence and are limited to five pages. Paragraph (e)(ii) provides that comments on adequacy and appropriateness of expedited sunset review may be filed within 70 days after initiation of the sunset review.

Section 351.310

Section 351.310 deals with matters related to hearings.

Hearings. Although no changes have been made to § 351.310 by these regulations, we are clarifying that the provisions of § 351.310 are applicable in a full sunset review.

Section 351.312

Section 351.312 clarifies the regulatory provisions under which industrial users and consumers are entitled to provide information and comments.

Opportunity for industrial users and consumer organizations to submit relevant information and argument. We have made minor changes to paragraph (b) to take into account changes in these regulations. Specifically, paragraph (b) has been amended to allow industrial users and consumers to file substantive responses to a Notice of Initiation and comments concerning adequacy of response and appropriateness of expedited review. All such submissions must be filed in accordance with § 351.303.

Annex VIII–A, –B, and –C

Schedule for sunset review. We have added new Annex VIII–A, –B, and –C, which provides the schedules for 90-day, expedited, and full sunset reviews, respectively.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirements.

Dated: March 13, 1998

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. Section 351.102 is amended by adding new definitions to read as follows:

§ 351.102 Definitions.

* * * * *

(b) * * *

Expedited sunset review. "Expedited sunset review" means an expedited sunset review conducted by the Department where respondent interested parties provide inadequate responses to a notice of initiation under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii).

* * * * *

Full sunset review. "Full sunset review" means a full sunset review conducted by the Department under section 751(c)(5) of the Act where both domestic interested parties and respondent interested parties provide adequate response to a notice of initiation under section 751(c)(3)(B) of the Act and §§ 351.218(e)(1)(i) and 351.218(e)(1)(ii).

* * * * *

Subpart B—Antidumping and Countervailing Duty Procedures

3. Section 351.218 is amended by revising paragraph (d) and (e) and adding paragraph (f) to read as follows:

§ 351.218 Sunset reviews under section 751(c) of the Act.

* * * * *

(d) *Participation in sunset review—*(1) *Domestic interested party notification of intent to participate—*(i) *Filing of notice of intent to participate.* Where a domestic interested party intends to participate in a sunset review, the interested party must, not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation, file a notice of intent to participate in a sunset review with the Secretary.

(ii) *Contents of notice of intent to participate.* Every notice of intent to participate in a sunset review must include a statement expressing the domestic interested party's intent to participate in the sunset review and the following information:

(A) The name, address, and phone number of the domestic interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) A statement indicating whether the domestic producer:

(1) Is related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(2) Is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act;

(C) The name, address, and phone number of legal counsel or other representative, if any;

(D) The subject merchandise and country subject to the sunset review; and

(E) The citation and date of publication in the **Federal Register** of the notice of initiation.

(iii) *Failure of domestic interested party to file notice of intent to participate in the sunset review.* (A) A domestic interested party that does not file a notice of Intent to participate in the sunset review will be considered not willing to participate in the review and the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review.

(B) If no domestic interested party files a notice of intent to participate in the sunset review, the Secretary will:

(1) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(2) Notify the International Trade Commission in writing as such normally not later than 20 days after the date of publication in the **Federal Register** of the notice of initiation; and

(3) Not later than 90 days after the date of publication in the **Federal Register** of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (*see* §§ 351.221(c)(5)(ii) and 351.222(i)).

(2) *Waiver of response by a respondent interested party to a notice of initiation*—(i) *Filing of statement of waiver.* A respondent interested party may waive participation in a sunset review before the Department under section 751(c)(4) of the Act by filing a statement of waiver with the Department, not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. If a respondent interested party waives participation in a sunset review before the Department, the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review. Waiving participation in a sunset review before the Department will not affect a party's opportunity to participate in the sunset review conducted by the International Trade Commission.

(ii) *Contents of statement of waiver.* Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department and the following information:

(A) The name, address, and phone number of the respondent interested party waiving participation in the sunset review before the Department;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review; and

(D) The citation and date of publication in the **Federal Register** of the notice of initiation.

(iii) *No response from a respondent interested party.* The Secretary will consider the failure by a respondent interested party to file a complete substantive response to a notice of initiation under paragraph (d)(3) of this section as a waiver of participation in a sunset review before the Department.

(iv) *Waiver of participation by a foreign government in a CVD sunset review.* Where a foreign government waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(A) Conclude that respondent interested parties have provided inadequate response to the notice of initiation under section 751(c)(3)(B) of the Act;

(B) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(C) Base the final results of review on the facts available in accordance with § 351.308(f), which normally will include a determination that revocation of the order or termination of the suspended investigation, as applicable, would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

(3) *Substantive response to a notice of initiation.*—(i) *e limit for substantive response to a notice of initiation.* A complete substantive response to a notice of initiation, filed under this section, must be submitted to the Department not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation.

(ii) *Required information to be filed by all interested parties in substantive response to a notice of initiation.* Except as provided in paragraph (d)(3)(v)(A) of this section, each interested party that intends to participate in a sunset review must file a submission with the Department containing the following:

(A) The name, address, and phone number of the interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review;

(D) The citation and date of publication in the **Federal Register** of the notice of initiation;

(E) A statement expressing the interested party's willingness to participate in the review by providing information requested by the Department, which must include a summary of that party's historical participation in any segment of the proceeding before the Department related to the subject merchandise;

(F) A statement regarding the likely effects of revocation of the order or termination of the suspended investigation under review, which must include any factual information, argument, and reason to support such statement;

(G) Factual information, argument, and reason concerning the dumping margin or countervailing duty rate, as applicable, that is likely to prevail if the Secretary revokes the order or terminates the suspended investigation, that the Department should select for a particular interested party(s);

(H) A summary of the Department's findings regarding duty absorption, if any, including a citation to the **Federal Register** notice in which the Department's findings are set forth; and

(I) A description of any relevant scope clarification or ruling, including a circumvention determination, or changed circumstances determination issued by the Department during the proceeding with respect to the subject merchandise.

(iii) *Additional required information to be filed by respondent interested*

parties in substantive response to a notice of initiation. Except as provided in paragraph (d)(3)(v)(A) of this section, the submission from each respondent interested party that intends to participate in a sunset review must also contain the following:

(A) That party's individual weighted average dumping margin or countervailing duty rate, as applicable, from the investigation and each subsequent completed administrative review, including the final margin or rate, as applicable, where such margin or rate was changed as a result of a final and conclusive court order;

(B) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(C) As applicable, for the calendar year (or fiscal year, if more appropriate) preceding the year of initiation of the dumping investigation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(D) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, on a volume basis (or value basis, if more appropriate), that party's percentage of the total exports of subject merchandise (defined in section 771(25) of the Act) to the United States; and

(E) For each of the three most recent years, including the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States during the two fiscal quarters as of the month preceding the month in which the notice of initiation was published.

(iv) *Optional information to be filed by interested parties in substantive response to a notice of initiation*—(A) *Showing good cause.* An interested party may submit information or evidence to show good cause for the Secretary to consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act and paragraph (e)(2)(ii) of this section. Such information or evidence must be submitted in the party's substantive response to the notice of initiation under paragraph (d)(3) of this section.

(B) *Other information.* A substantive response from an interested party under paragraph (d)(3) of this section also may contain any other relevant information or argument that the party would like the Secretary to consider.

(v) *Required information to be filed by a foreign government in substantive response to the notice of initiation in a CVD sunset review*—(A) *In general.* The foreign government of a country subject to a CVD sunset review (*see* section 771(9)(B) of the Act) that intends to participate in a CVD sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (E) of this section.

(B) *Additional required information to be filed by a foreign government in a CVD sunset review involving an order where the investigation was conducted on an aggregate basis.* The submission from the foreign government of a country subject to a CVD sunset review, involving an order where the investigation was conducted on an aggregate basis, must also contain:

(1) The information required under paragraphs (d)(3)(ii)(F), (d)(3)(ii)(G), and (d)(3)(ii)(I) of this section;

(2) The countervailing duty rate from the investigation and each subsequent completed administrative review, including the final rate where such rate was changed as a result of a final and conclusive court order; and

(3) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, the volume and value (normally on an FOB basis) of exports of subject merchandise to the United States.

(vi) *Substantive responses from industrial users and consumers.* An industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, that intends to participate in a sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (D) of this section and may submit other relevant information under paragraphs (d)(3)(ii) and (d)(3)(iv) of this section.

(4) *Rebuttal to substantive response to a notice of initiation.* Any interested party that files a substantive response to a notice of initiation under paragraph (d)(3) of this section may file a rebuttal to any other party's substantive response to a notice of initiation not later than five days after the date the substantive response is filed with the Department. Except as provided in § 351.309(e), the Secretary normally will not accept or consider any additional information from a party after the time for filing rebuttals has expired, unless the Secretary requests additional information from parties after determining to proceed to a full sunset review under paragraph (e)(2) of this section.

(e) *Conduct of sunset review.*—(1) Adequacy of response to a notice of initiation. (i) *Adequacy of response from domestic interested parties.*—(A) *In general.* The Secretary will make its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that domestic interested parties have provided adequate response to a notice of initiation where it receives a complete substantive response under paragraph (d)(3) of this section from at least one domestic interested party.

(B) *Disregarding response from a domestic interested party.* In making its determination concerning the adequacy of response from domestic interested parties under paragraph (e)(1)(i)(A) of this section, the Secretary may disregard a response from a domestic producer:

(1) Related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(2) That is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act (*see* paragraph (d)(1)(ii)(B) of this section).

(C) *Inadequate response from domestic interested parts.* Where the Secretary determines to disregard a response from a domestic interested party(s) under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section and no other domestic interested party has filed a complete substantive response to the notice of initiation under paragraph (d)(3) of this section, the Secretary will:

(1) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(2) Notify the International Trade Commission in writing as such normally not later than 40 days after the date of publication in the **Federal Register** of the Notice of Initiation; and

(3) Not later than 90 days after the date of publication in the **Federal Register** of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (see §§ 351.221(c)(5)(ii) and 351.222(i)).

(ii) *Adequacy of response from respondent interested parties.* (A) *In general.* The Secretary will makes its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses under paragraph (d)(3) of this section from respondent

interested parties accounting on average for more than 50 percent, on a volume basis (or value basis, if appropriate), of the total exports of subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation.

(B) *Failure of a foreign government to file a substantive response to a notice of initiation in a CVD sunset review.* If a foreign government fails to file a complete substantive response to a notice of initiation in a CVD sunset review under paragraph (d)(3)(v) of this section or waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(*1*) Conclude that respondent interested parties have provided inadequate response to the Notice of Initiation under section 751(c)(3)(B) of the Act;

(*2*) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(*3*) Base the final results of review on the facts available in accordance with § 351.308(f), which normally will include a determination that revocation of the order or termination of the suspended investigation, as applicable, would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

(C) *Inadequate response from respondent interested parties.* If the Secretary determines that respondent interested parties provided inadequate response to a notice of initiation under paragraph (d)(2)(iv), (e)(1)(ii)(A), or (e)(1)(ii)(B) of this section, the Secretary:

(*1*) Will notify the International Trade Commission in writing as such normally not later than 50 days after the date of publication in the **Federal Register** of the Notice of Initiation; and

(*2*) Normally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the **Federal Register** of the notice of initiation, issue, without further investigation, final results of review based on the facts available in accordance with § 351.308(f) (*see* section 751(c)(3)(B) of the Act and § 351.221(c)(5)(ii)).

(2) *Full sunset review upon adequate response from domestic and respondent interested parties.*—(i) *In general.* Normally, only where the Department receives adequate response to the notice of initiation from domestic interested parties under paragraph (e)(1)(i)(A) of this section and from respondent interested parties under paragraph (e)(1)(ii)(A) of this section, will the Department conduct a full sunset review. Even where the Department conducts a full sunset review, only under the most extraordinary circumstances will the Secretary rely on a countervailing duty rate or a dumping margin other than those it calculated and published in its prior determinations, and in no case will the Secretary calculate a net countervailable subsidy or a dumping margin for a new shipper in the context of a sunset review.

(iii) *Consideration of other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act.* The Secretary will consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act if the Secretary determines that good cause to consider such other factors exists. The Secretary normally will consider such other factors only where it conducts a full sunset review under paragraph (e)(2)(i) of this section.

(f) *Time limits.*—(1) *Preliminary results of full sunset review.* The Department normally will issue its preliminary results in a full sunset review not later than 110 days after the date of publication in the **Federal Register** of the notice of initiation.

(2) *Verification.*—(i) *In general.* The Department will verify factual information relied upon in making its final determination normally only in a full sunset review (*see* section 782(i)(2) of the Act and § 351.307(b)(1)(iii)) and only where needed. The Department will conduct verification normally only if, in its preliminary results, the Department determines that revocation of the order or termination of the suspended investigation, as applicable, is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), as applicable, and the Department's preliminary results are not based on countervailing duty rates or dumping margins, as applicable, determined in the investigation or subsequent reviews.

(ii) *Timing of verification.* The Department normally will conduct verification, under paragraph (f)(2)(i) of this section and § 351.307, approximately 120 days after the date of publication in the **Federal Register** of the notice of initiation.

(3) *Final results of full sunset review and notification to the International Trade Commission.*—(i) *Timing of final results of review and notification to the International Trade Commission.* The Department normally will issue its final results in a full sunset review and notify the International Trade Commission of its results of review not later than 240 days after the date of publication in the **Federal Register** of the notice of initiation (*see* section 751(c)(5)(A) of the Act).

(ii) *Extension of time limit.* If the Secretary determines that a full sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days (*see* section 751(c)(5)(B) of the Act).

(4) *Notice of continuation of an order or suspended investigation; notice of revocation of an order or termination of a suspended investigation.* Except as provided in paragraph (d)(1)(iii)(B)(*3*) of this section and § 351.222(i)(1)(i), the Department normally will issue its determination to continue an order or suspended investigation, or to revoke an order or terminate a suspended investigation, as applicable, not later than seven days after the date of publication in the **Federal Register** of the International Trade Commission's determination concluding the sunset review. The Department immediately thereafter will publish notice of its determination in the **Federal Register**.

4. Section 351.221(c)(5)(i) is revised to read as follows:

§ 351.221 Review procedures.

* * * * *

(c) * * *

(5) * * *

(i) The notice of initiation of a sunset review will contain a request for the information described in § 351.218(d); and

* * * * *

5. Section 351.222 is amended by revising paragraph (i) to read as follows:

§ 351.222 Revocation of orders; termination of suspended investigations.

* * * * *

(i) *Revocation or termination based on sunset review.*—(1) *Circumstances under which the Secretary will revoke an order or terminate a suspended investigation.* In the case of a sunset review under § 351.218, the Secretary will revoke an order or terminate a suspended investigation:

(i) Under section 751(c)(3)(A) of the Act, where no domestic interested party files a Notice of Intent to Participate in the sunset review under § 351.218(d)(1), or where the Secretary determines under § 351.218(e)(1)(i)(C) that domestic interested parties have provided inadequate response to the Notice of Initiation, not later than 90 days after the date of publication in the **Federal Register** of the notice of initiation;

(ii) Under section 751(d)(2) of the Act, where the Secretary determines that revocation or termination is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), as applicable, not later than 240 days (or 330 days where a full sunset review is fully extended) after the date of publication in the **Federal Register** of the notice of initiation; or

(iii) Under section 751(d)(2) of the Act, where the International Trade Commission makes a determination, under section 752(a) of the Act, that revocation or termination is not likely to lead to continuation or recurrence of material injury, not later than seven days after the date of publication in the **Federal Register** of the International Trade Commission's determination concluding the sunset review.

(2) *Effective date of revocation.*—(i) *In general.* Except as provided in paragraph (i)(2)(ii) of this section, where the Secretary revokes an order or terminates a suspended investigation, pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on the fifth anniversary of the date of publication in the **Federal Register** of the order or suspended investigation, as applicable. This paragraph also applies to subsequent sunset reviews of transition orders (*see* paragraph (i)(2)(ii) of this section and section 751(c)(6)(A)(iii) of the Act).

(ii) *Transition orders.* Where the Secretary revokes a transition order (defined in section 751(c)(6)(C) of the Act) pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on January 1, 2000. This paragraph does not apply to subsequent sunset reviews of transition orders (*see* section 751(c)(6)(A)(iii) of the Act).

Subpart C—Information and Argument

6. Section 351.308 is amended by adding new paragraph (f) to read as follows:

§ 351.308 Determinations on the basis of the facts available.

* * * * *

(f) *Use of facts available in a sunset review.* Where the Secretary determines to issue final results of sunset review on the basis of facts available, the Secretary normally will rely on:

(1) Calculated countervailing duty rates or dumping margins, as applicable, from prior Department determinations; and

(2) Information contained in parties' substantive responses to the Notice of Initiation filed under § 351.218(d)(3), consistent with section 752(b) or 752(c) of the Act, as applicable.

7. Section 351.309 is amended by revising paragraph (c)(1)(i), by revising paragraph (c)(1)(iii), and by adding new paragraph (e), to read as follows:

§ 351.309 Written argument.

* * * * *

(c) * * *

(1) * * *

(i) For a final determination in a countervailing duty investigation or antidumping investigation, or for the final results of a full sunset review, 50 days after the date of publication of the preliminary determination or results of review, as applicable, unless the Secretary alters the time limit;

* * * * *

(iii) For the final results of an expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

* * * * *

(e) *Comments on adequacy of response and appropriateness of expedited sunset review.* (i) *In general.* Where the Secretary determines that respondent interested parties provided inadequate response to a Notice of Initiation (*see* § 351.218(e)(1)(ii)) and has notified the International Trade Commission as such under § 351.218(e)(1)(ii)(C), interested parties (and industrial users and consumer organizations) that submitted a complete substantive response to the Notice of Initiation under § 351.218(d)(3) may file comments on whether an expedited sunset review under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii)(B) or 351.218(e)(1)(ii)(C) is appropriate based on the adequacy of response to the notice of initiation. These comments may not include any new factual information or evidence (such as supplementation of a substantive response to the notice of initiation) and are limited to five pages.

(ii) *Time limit for filing comments.* Comments on adequacy of response and appropriateness of expedited sunset review must be filed not later than 70 days after the date of publication in the **Federal Register** of the notice of initiation.

8. Section 351.312 is amended by revising paragraph (b) to read as follows:

§ 351.312 Industrial users and consumer organizations.

* * * * *

(b) *Opportunity to submit relevant information and argument.* In an antidumping or countervailing duty proceeding under title VII of the Act and this part, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, may submit relevant factual information and written argument to the Department under paragraphs, (d)(3)(ii), (d)(3)(vi), and (d)(4) of § 351.218, paragraphs (b), (c)(1), and (c)(3) of § 351.301, and paragraphs (c), (d), and (e) of § 351.309 concerning dumping or a countervailable subsidy. All such submissions must be filed in accordance with § 351.303.

* * * * *

9. New Annex VIII–A, –B, and –C is added after Annexes I–VII to read as follows:

ANNEX VIII–A—SCHEDULE FOR 90-DAY SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c).
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation).
20	Notification to the ITC that no domestic interested party has responded to the Notice of Initiation.	§ 351.218(d)(1)(iii)(B)(*2*) (normally not later than 20 days after the date of publication of the Notice of Initiation).
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation).
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department).

ANNEX VIII–A—SCHEDULE FOR 90-DAY SUNSET REVIEWS—Continued

Day [1]	Event	Regulation
40	Notification to the ITC that no domestic interested party has responded to the Notice of Initiation (based on inadequate response from domestic interested parties).	§ 351.218(e)(1)(i)(C)(2) (normally not later than 40 days after the date of publication of the Notice of Initiation).
90	Final determination revoking an order or terminating a suspended investigation where no domestic interested party responds to the Notice of Initiation.	§§ 351.218(d)(1)(iii)(B)(3) and 351.222(i)(1)(i) (not later than 90 days after the date of publication of the Notice of Initiation).

[1] Indicates the number of days from the date of publication in the **Federal Register** of the Notice of Initiation.

ANNEX VIII–B—SCHEDULE FOR EXPEDITED SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c).
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation).
30	Filing of Statement of Waiver by respondent interested parties.	§ 351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation).
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation).
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department).
50	Notification to the ITC that respondent interested parties provided inadequate response to the Notice of Initiation.	§ 351.218(e)(1)(ii)(C)(*1*) (normally not later than 50 days after the date of publication of the Notice of Initiation).
70	Comments on adequacy of response and appropriateness of expedited sunset review.	§ 351.309(e)(ii) (not later than 70 days after the date of publication of the Notice of Initiation).
120	Final results of expedited sunset review where respondent interested parties provide inadequate response to the Notice of Initiation.	§§ 351.218(e)(1)(ii)(B) and 351.218(e)(1)(ii)(C)(*2*) (not later than 120 days after the date of publication of the Notice of Initiation).

[1] Indicates the number of days from the date of publication in the **Federal Register** of the Notice of Initiation.

ANNEX VIII–C—SCHEDULE FOR FULL SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c).
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation).
30	Filing of Statement of Waiver by respondent interested parties.	§ 351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation).
50	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation).
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department).
110	Preliminary results of full sunset review	§ 351.218(f)(1) (normally not later than 110 days after the date of publication of the Notice of Initiation).
120	Verification in a full sunset review, where needed	§ 351.218(f)(2)(ii) (approximately 120 days after the date of publication of the Notice of Initiation).
160	Filing of case brief in full sunset review	§ 351.309(c)(1)(i) (50 days after the date of publication of the preliminary results of full sunset review).
165	Filing of rebuttal brief in full sunset review	§ 351.309(d)(1) (5 days after the time limit for filing a case brief).
167	Hearing in full sunset review if requested	§ 351.310(d)(i) (2 days after the time limit for filing a rebuttal brief).
240	Final results of full sunset review	§ 351.218(f)(3)(i) (not later than 240 days after the date of publication of the Notice of Initiation).
330	Final results of full sunset review if fully extended	§ 351.218(f)(3)(ii) (If full sunset review is extraordinarily complicated, period for issuing final results may be extended by not more than 90 days).

[1] Indicates the number of days from the date of publication in the **Federal Register** of the Notice of Initiation.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 94N–0355]

Drug Products Containing Quinine for the Treatment and/or Prevention of Malaria for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that over-the-counter (OTC) drug products containing quinine for the treatment and/or prevention of malaria are not generally recognized as safe and are misbranded. FDA is issuing this final rule after considering public comment on the agency's notice of proposed rulemaking and all data and information that have come to the agency's attention on the safety of quinine.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: John D. Lipnicki, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The agency's proposed rule for OTC drug products for the treatment and/or prevention of malaria was published in the **Federal Register** of April 19, 1995 (60 FR 19650). In that proposed rule, the agency summarized the history of quinine in the OTC drug review for use as an analgesic, antipyretic, and muscle relaxant (for the treatment and/or prevention of nocturnal leg muscle cramps). The agency also recognized that quinine has been marketed for decades, on both an OTC and a prescription basis, as an anti-infective agent for the treatment and/or prevention of malaria, a serious and potentially life-threatening disease that at one time was endemic in this country. However, data and information reviewed by the agency during the rulemaking for OTC drug products for the treatment and/or prevention of nocturnal leg muscle cramps raised serious safety concerns about the continued OTC availability of quinine for the treatment and/or prevention of malaria. The agency also discussed serious safety and efficacy concerns about the continued OTC availability of quinine for the self-treatment of malaria without the care and supervision of a doctor. Interested persons were invited to file comments by July 3, 1995.

For reasons discussed in this document, FDA is classifying OTC drug products containing quinine or any quinine salt (e.g., quinine sulfate) and labeled for the treatment and/or prevention of malaria as not generally recognized as safe, as misbranded, and as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, these products are considered misbranded under section 502 of the act (21 U.S.C. 352). The final rule is being incorporated into 21 CFR part 310, Subpart E—Requirements for Specific New Drugs or Devices, by adding new § 310.547.

As discussed in the preamble to the proposed rule for OTC drug products containing quinine for the treatment and/or prevention of malaria, the conditions under which the drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded would be effective 30 days after the date of publication of the final rule in the **Federal Register**. On or after April 20, 1998, no OTC drug product that is subject to the final rule may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce.

In response to the proposed rule, one comment from a drug distributor was submitted. The comment (Ref. 1) is on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

Reference

(1) Comment No. C1, Docket No. 94N–0355, Dockets Management Branch.

II. The Agency's Conclusion on the Comment

The comment contended that the agency had failed to distinguish between the safety of quinine used for malaria and quinine used for leg cramps. The comment contended that the agency appeared to commingle its safety concerns about quinine for these two uses. The comment noted the agency's discussion of adverse reaction reports on file for quinine: 110 reports over 22 years from 1969 through 1990. The comment noted that this was an average of only five cases per year. The comment added that only 26 of the 110 reports were identified as cases where it can be reasonably concluded that quinine was the causative agent and that only 5 of the 26 reports involved quinine products used for the treatment of malaria. The comment concluded that this is an extremely low incidence of adverse reaction reports for quinine used for malaria: On average, 0.25 reports per year from 1969 through 1990. The comment further noted an agency statement in the **Federal Register** of August 22, 1994 (59 FR 43234 at 43252), that approximately "two-thirds of these quinine-containing products are marketed for antimalarial use (with approximately one-third for the treatment and/or prevention of nocturnal leg muscle cramps)." The comment concluded that OTC quinine products are safe and effective for the treatment of malaria due to the very low incidence of reports of adverse reactions for quinine products used for the treatment of malaria and the two-thirds marketing of quinine products for malaria. The comment argued that these facts demonstrate a lack of scientific support for this proposed rule.

The agency does not agree with the comment. The Center for Disease Control and Prevention stated that approximately 1,000 cases of malaria are reported each year in the United States (60 FR 19650 at 19651). It is not known how many of these people might have used quinine as part of their treatment. As discussed in section III of this document, quinine is not the drug of choice for malaria. Although many quinine products are marketed for the treatment of malaria, many of these products may have been used to treat leg muscle cramps. In 1987, a U.S. manufacturer of quinine estimated (based on sales figures) that there are well over 1 million users of quinine for leg muscle cramps in the United States (Ref. 1). Based on the large number of people using quinine for leg muscle cramps, a larger number of adverse drug experiences would be expected to occur

in this population when compared with the much smaller number of people using the drug for malaria. However, the daily dosage of quinine for treating malaria (see below) is greater than the dosage used for leg muscle cramps. Therefore, one would expect a higher rate of adverse reactions in the population using the drug for malaria.

In addition, the agency believes that underreporting of adverse reactions for OTC drug products is substantial. In the **Federal Register** of August 22, 1994 (59 FR 43234 at 43241 and 43242), the agency stated:

> Underreporting of such reactions into the agency's spontaneous reporting system is believed to be very substantial for OTC drug products. This may be due to physicians (the principal reporters to the spontaneous reporting system) not becoming aware of reactions to OTC drugs, and because manufacturers and distributors are not generally required to transmit reports of serious adverse reactions involving OTC drugs to FDA.

The agency reviewed labeling from eight randomly selected OTC quinine drug products for malaria and found that the dosage recommendations ranged from 200 milligrams (mg) to 975 mg three times a day (for 6 to 12 days) (60 FR 19650 at 19653). The adverse event characteristics of quinine toxicity have been observed in clinical efficacy studies using typical doses for nocturnal leg cramps of 260 mg and 325 mg daily (59 FR 43234 at 43237). Given the much higher dosage recommended for malaria, it is reasonable to assume that these types of dose-related adverse reactions may increase with the malaria dosage. Finally, the agency is greatly concerned that if quinine remains available on an OTC basis labeled for the treatment and/or prevention of malaria, an extensive amount of such products would be sold OTC and used to treat and/or prevent leg muscle cramps, resulting in continued possible serious adverse reactions to OTC users of these products. Quinine was removed from the market for this use because of the lack of substantial evidence of effectiveness of quinine in this condition, along with evidence of quinine toxicity at the OTC doses employed for leg cramps in a proportion of the target population, and the potential for serious, life threatening, and fatal hypersensitivity reactions to quinine (59 FR 43234 at 43251).

Reference

(1) Levy, N. W., "Overview: Efficacy and Safety of Quinine Sulfate in the Treatment and/or Prevention of Nocturnal Leg Cramps," unpublished report in SUP00033, Docket No. 77N–0094, Dockets Management Branch.

III. The Agency's Final Conclusions on OTC Quinine Drug Products for the Treatment and/or Prevention of Malaria

Malaria is rare in the United States, but is a serious and potentially deadly disease. Diagnosis and treatment of malaria depend on such factors as the specie(s) of parasite involved, the density of parasites in the blood, the potential for possible exposure to drug-resistant parasites that are associated with malaria in humans, e.g., *Plasmodium falciparum* or *P. vivax*, and concomitant medical conditions. Malaria requires a medical diagnosis, both to confirm the disease and to determine the treatment of choice. Prompt and proper diagnosis, treatment, and monitoring of the therapeutic efficacy of the treatment used require laboratory analyses of blood samples and clinical assessments. Continuous physician monitoring is then necessary to determine if the selected drug therapy is effective and if the malarial parasites have been eradicated. Section 503(b)(1)(B) of the act (21 U.S.C. 353(b)(1)(B)) requires that a drug intended for use by man which, "* * * because of its toxicity or other potentiality for harmful effect, * * * or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug * * *," be limited to prescription use only. Quinine used for malaria has considerable potential for toxic or harmful effects, and its use requires substantial collateral measures to ensure safe and effective treatment.

There are serious safety concerns about the continued availability of quinine sulfate for OTC use, even at dosages much lower than those used for the treatment of malaria. Adverse events characteristic of quinine toxicity have been observed in healthy individuals at doses of 260 and 325 mg daily. These events included visual, auditory, and gastrointestinal symptoms, and fever. Studies of auditory, vestibular, and visual function in subjects given quinine confirm sensory disturbances at these and lower doses (59 FR 43234 at 43239). Altered pharmacokinetics with age result in a longer half-life of quinine in older people, which suggests that the frequency and severity of adverse effects could be greater in the elderly.

Adverse events associated with quinine toxicity are possible at the therapeutic doses of quinine used in the treatment of malaria (i.e., 600 to 650 mg three times daily for 3 to 7 days). A fatal dose of quinine for an adult is approximately 2,000 to 8,000 mg. Thus, in the treatment of malaria, a narrow margin of safety exists between a therapeutic dose and a toxic dose of quinine.

In addition to toxic effects, serious and unpredictable hypersensitivity reactions to quinine drug products can occur. Symptoms are often dramatic, leading people to seek medical treatment. Hospitalization may be required, and fatalities have been reported. Quinine is the only drug available OTC that has such a high association with thrombocytopenia, a serious adverse event. Because there are no known factors that predispose people to the development of hypersensitivity to quinine, which may occur after 1 week of exposure or after months or years of use, label warnings cannot be expected to protect consumers from idiosyncratic hypersensitivity reactions to quinine drug products.

In addition, unsupervised quinine therapy (allowing for incomplete or interrupted treatments due to poor compliance with dosing instructions) is a practice believed to promote proliferation of malarial parasites less sensitive to quinine. Furthermore, interrupted quinine therapy in persons with falciparum malaria may also predispose them to the serious complications of blackwater fever, including anemia, red blood cell destruction, and renal failure.

Current public health recommendations do not include the use of oral quinine in the prevention of malaria and limit its use in the treatment of the disease (primarily to uncomplicated, low-density, chloroquine-resistant falciparum malaria). Current treatments for malaria include the use of quinine only in combination therapies with prescription drugs or as part of an intensive therapy involving blood transfusions and parenteral drugs during hospitalization. Thus, any patient properly using quinine for malaria should be under the care and supervision of a doctor.

Based upon quinine's demonstrated toxic effects and potential for harm and the extensive collateral measures necessary to ensure a successful outcome for quinine therapy, the agency has determined that consumers cannot safely and effectively self-treat malaria. Accordingly, the agency concludes that quinine is not safe and effective for OTC use in the treatment of malaria.

This final rule requires that any OTC quinine drug product for the treatment and/or prevention of malaria have an approved application for continued marketing.

IV. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12866, was discussed in the proposed rule for OTC quinine drug products for the treatment and/or prevention of malaria (60 FR 19650 at 19654). No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The proposed rule that has led to the development of this final rule was already well into the publication cycle at the time the Unfunded Mandates Reform Act was enacted, publishing approximately 1 month later on April 19, 1995. The agency explains in this final rule that the final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

The agency believes that this final rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this final rule is to establish that OTC quinine drug products for the treatment and/or prevention of malaria are not generally recognized as safe and are misbranded. Quinine formulations for the treatment of malaria are currently marketed as both OTC and prescription drug products. There are a limited number of quinine products marketed at this time. The agency's Drug Listing System identifies approximately 22 products containing quinine sulfate in dosage unit strengths of 200 mg to 325 mg. These products are marketed by 14 different manufacturers, most of which are considered to be small entities, using the U.S. Small Business Administration designations for this industry (750 employees). The agency believes that any other unidentified manufacturer of these products is also likely to be a small entity.

Manufacturers will no longer be able to market OTC quinine drug products for the treatment and/or prevention of malaria after the effective date of this final rule. While the manufacturers will incur a loss of revenue from the sale of these products, the agency believes the economic impact will be minimal for several reasons. First, it appears that current use in the United States of oral OTC quinine for the treatment of malaria is minimal. Approximately 1,000 cases of malaria are reported each year in the United States (60 FR 19650 at 19651). However, current public health recommendations do not include the use of oral quinine in the prevention of malaria and limit its use in the treatment of the disease. The agency does not believe that any of the affected manufacturers have any considerable amount of sales of OTC quinine drug products that are used for the treatment of malaria. Second, when quinine is needed for treatment of malaria, this final rule does not affect the availability of quinine products by a doctor's prescription.

Manufacturers have known since April 1995 that if adequate data were not submitted to establish general recognition of the safety of quinine drug products for OTC use in the treatment and/or prevention of malaria, cessation of marketing of the current OTC drug products would be required when the final rule published. No data have been received. Further, the agency is concerned that if quinine remains available on an OTC basis labeled for the treatment and/or prevention of malaria, an extensive amount of such products would be sold and used to treat and/or prevent leg muscle cramps, resulting in continued possible adverse reactions to users of these products. Due to the safety concerns discussed in this document, manufacturers are required to comply with the provisions of this final rule 30 days after its date of publication in the **Federal Register**.

The agency considered but rejected several alternatives: (1) To allow continued marketing of OTC quinine drug products for the treatment of malaria, and (2) to allow a longer implementation period. FDA does not consider either of these approaches acceptable because the agency does not consider quinine to be safe for OTC drug use and because no new data concerning the safety of OTC quinine are forthcoming.

The analysis shows that this final rule is not economically significant under Executive Order 12866 and that the agency has considered the burden to small entities. The agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Finally, this analysis shows that the Unfunded Mandates Act does not apply to the final rule because it would not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.547 is added to subpart E to read as follows:

§ 310.547 Drug products containing quinine offered over-the-counter (OTC) for the treatment and/or prevention of malaria.

(a) Quinine and quinine salts have been used OTC for the treatment and/or prevention of malaria, a serious and potentially life-threatening disease. Quinine is no longer the drug of choice for the treatment and/or prevention of most types of malaria. In addition, there are serious and complicating aspects of the disease itself and some potentially serious and life-threatening risks associated with the use of quinine at doses employed for the treatment of malaria. There is a lack of adequate data to establish general recognition of the safety of quinine drug products for OTC

use in the treatment and/or prevention of malaria. Therefore, quinine or quinine salts cannot be safely and effectively used for the treatment and/or prevention of malaria except under the care and supervision of a doctor.

(b) Any OTC drug product containing quinine or quinine salts that is labeled, represented, or promoted for the treatment and/or prevention of malaria is regarded as a new drug within the meaning of section 201(p) of the act, for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use for the treatment and/or prevention of malaria is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After April 20, 1998, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: March 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7186 Filed 3–19–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–169–0065; FRL–5974–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. This action is an administrative change which revises the definitions in South Coast Air Quality Management District (SCAQMD or District) Rule 102, Definition of Terms. The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency with revised Federal and state definitions.

DATES: This action is effective on May 19, 1998 unless adverse or critical comments are received by April 20, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be submitted to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95814

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415–744–1189).

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is: SCAQMD Rule 102, Definition of Terms, submitted on March 26, 1996, by the California Air Resources Board.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included South Coast, see 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the South Coast AQMD portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). In response to the SIP call and other requirements, the SCAQMD submitted many rules which EPA approved into the SIP.

This document addresses EPA's direct-final action for the following SCAQMD rule: Rule 102, Definition of Terms. This rule was adopted by SCAQMD on November 17, 1995, and submitted by the State of California for incorporation into its SIP on March 26, 1996. This rule was found to be complete on August 6, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [1] and is being finalized for approval into the SIP. This rule was originally adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement.

The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements appears in various EPA policy guidance documents. [2]

EPA previously reviewed many rules from the SCAQMD and its predecessor agencies and incorporated them into the federally approved SIP pursuant to section 110(k)(3) of the CAA. Those rules that are being superseded by today's action are as follows:

- Los Angeles County Rule 2, Definitions (submitted 6/30/72)
- Orange County Rule 2, Definitions (submitted 6/30/72)
- Riverside County Rule 2, Definitions (submitted 2/21/72 and 6/30/72)
- San Bernardino County Rule 2, Definitions (submitted 2/21/72)
- South Coast Air Quality Management District Rule 102, Definition of Terms (submitted 2/10/77, 10/13/77, and 6/22/78)

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section (110)(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book)(notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

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EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 102, Definition of Terms, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 19, 1998 without further notice unless the Agency receives relevant adverse comments by April 20, 1998.

If the EPA received such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 19, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 13, 1998.

Laura Yoshii,

Acting Regional Administrator, EPA, Region IX.

Part 52, chapter I, title of 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(230)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(230) * * *

(i) * * *

(B) * * *

(2) Rule 102 amended on November 17, 1995.

* * * * *

[FR Doc. 98–7004 Filed 3–19–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KS 044–1044a; FRL–5979–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Kansas; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Kansas plan for implementing the Municipal Solid Waste (MSW) Landfill Emission Guideline (EG) at 40 CFR part 60, subpart Cc, which was required pursuant to section 111(d) of the Clean Air Act (Act). The state's plan was submitted to the EPA on December 1, 1997, in accordance with the requirements for adoption and submittal of state plans for designated facilities in 40 CFR part 60, subpart B. The plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This action is effective May 19, 1998, unless by April 20, 1998, relevant adverse comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Act, the EPA has established procedures whereby states submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards are set pursuant to sections 108 and 109 of the Act). As required by section 111(d) of the Act, the EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which states must follow in adopting and submitting a section 111(d) plan. Whenever the EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, the EPA establishes emissions guidelines (EG) in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a state's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, the EPA published an EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW landfills at 40 CFR part 60 subpart WWW (40 CFR 60.750 through 60.759). The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds, other organic compounds, methane, and hazardous air pollutants. To determine whether control is required, nonmethane organic compounds (NMOC) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), states were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG, or by December 12, 1996. If there were no designated facilities in the state, then the state was required to submit a negative declaration by December 12, 1996.

II. Analysis of State Submittal

The official procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B, §§ 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, compliance assurance and enforcement requirements, and cross references to the MSW landfill EG.

On December 1, 1997, the state of Kansas submitted its section 111(d) plan for MSW landfills for implementing the EPA's MSW landfill EG.

The Kansas plan includes documentation that all applicable subpart B requirements have been met. More detailed information on the requirements for an approvable plan and Kansas' submittal can be found in the Technical Support Document (TSD) accompanying this action, which is available on request.

The Kansas plan cross-referenced both the NSPS subpart WWW and EG subpart Cc to adopt the requirements of the Federal rule. The state has ensured, through this cross-reference process, that all the applicable requirements of the Federal rule have been adopted into the state plan. The emission limits, testing, monitoring, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted. Kansas rules K.A.R. 28–19–721 through K.A.R. 28–19–727 contain the applicable requirements.

Kansas demonstrated that it has the legal authority to implement and enforce the applicable requirements. The state provided evidence that it complied with the public notice and comment requirements of 40 CFR part 60, subpart B.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, the EPA is approving Kansas' December 1, 1997, submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills, except those located in Indian Country.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 19, 1998 without further notice unless the Agency receives relevant adverse comments by April 20, 1998.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a

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subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 19, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal state plan approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning state plans on such grounds. See Union electric Co. v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: February 24, 1998.

Diane K. Callier,

Acting Regional Administrator, Region VII.

Part 62, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

2. Subpart R is amended by adding § 62.4178 and an undesignated center heading to read as follows:

Air Emissions From Existing Municipal Solid Waste Landfills

§ 62.4178 Identification of plan.

(a) *Identification of plan.* Kansas plan for control of landfill gas emissions from existing municipal solid waste landfills and associated state regulations submitted on December 1, 1997.

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, and have design capacities greater than 2.5 million megagrams and nonmethane organic emissions greater than 50 megagrams per year, as described in 40 CFR part 60, subpart Cc.

(c) *Effective date.* The effective date of the plan for municipal solid waste landfills is May 19, 1998.

[FR Doc. 98–7134 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5976–3]

RIN 2060–AI00

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action revises monitoring, recordkeeping, and reporting requirements of the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries" which was issued as a final rule August 18, 1995. This rule is commonly known as the Petroleum Refineries NESHAP.

DATES: The direct final rule will be effective May 19, 1998 unless significant, adverse comments are received by April 20, 1998. If significant, adverse comments are timely received EPA will publish timely notice in the **Federal Register** withdrawing the final rule.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–48 (see docket section below), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Electronic Submittal of Comments

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–93–48. Electronic comments on the proposed rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5672.

SUPPLEMENTARY INFORMATION: On August 18, 1995, the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries" (the "Petroleum Refineries NESHAP"). The NESHAP regulates hazardous air pollutants (HAP) emitted from new and existing refineries that are major sources of HAP emissions. The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry ..	Petroleum Refineries (Standard Industrial Classification Code 2911).

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.640. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

A companion proposal to this direct final rule is being published in today's **Federal Register** and is identical to this direct final rule. Any comments on the revisions to the Petroleum Refineries NESHAP should address that proposal. If significant adverse comments are timely received by the date specified in the proposed rule, this direct final rule will be withdrawn and the comments will be addressed in a subsequent final rule based on the proposed rule. If no significant adverse comments are timely filed on any provision of this direct final rule then the entire direct final rule will become effective 60 days from today's **Federal Register** action and no further action will be taken on the companion proposal published today.

I. Background

On August 18, 1995 (60 FR 43243), EPA promulgated in the **Federal Register** national emission standards for hazardous air pollutants (NESHAP) for petroleum refineries. These regulations were promulgated as subpart CC of 40 CFR part 63. As stated in the preamble to the promulgated rule, EPA pledged to continue working with industry to reduce the recordkeeping and reporting burden associated with the Petroleum Refineries NESHAP. The petroleum refining industry submitted suggestions for revisions to monitoring, recordkeeping, and reporting requirements. The EPA reviewed these suggestions and determined those to be included in today's action using several criteria. Included in today's action are revisions that will reduce industry's monitoring, recordkeeping and reporting burden or provide clarification in cases where industry could interpret requirements in a way more burdensome than intended. EPA did not include suggested revisions that delete monitoring, reporting and recordkeeping requirements necessary to ensure compliance with control requirements of the rule or revisions that alter the applicability, stringency, or schedule of the Petroleum Refineries NESHAP or other rules.

Today's action also includes corrections to equations in the miscellaneous process vent provisions of the rule and corrections to typographical errors in references to Subpart Y National Emission Standards for Marine Tank Vessel Loading Operations.

II. Revisions

A. Deletion of Requirement to Report That Actions Are Consistent With Startup, Shutdown, Malfunction Plan

The Petroleum Refineries NESHAP requires that petroleum refineries develop and implement a plan that describes procedures for operating and maintaining the source during periods of startup, shutdown and malfunction, provides a program of corrective action for malfunctioning process and air pollution control equipment, and identifies all routine or otherwise predictable malfunctions of continuous monitoring systems (CMS). Currently, if a startup, shutdown or malfunction is experienced during a reporting period and the Startup, Shutdown, and Malfunction Plan (SSMP) is followed, the refinery is required to report that the SSMP was followed in the next periodic report. Similarly, if a CMS experiences a routine or otherwise predictable failure, as defined in the SSMP, it is to be repaired immediately and the action reported in the next periodic report. The EPA has determined that requiring refineries to report that the SSMP has been followed is inconsistent with the general approach of requiring periodic reporting only of information associated with periods of excess emissions. Actions consistent with the SSMP and immediate repair of CMS do not constitute violations of the Petroleum Refineries NESHAP. For this reason, today's action revises the requirement to report that the SSMP has been followed and immediate repairs to CMS have been made. Owners and operators will not be required to report when the SSMP is followed or when a CMS experiences a routine failure and is immediately repaired unless requested

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to do so by the permitting authority. To ensure that following the SSMP and immediate repairs to CMS are documented, the requirements are retained to record when periods of startup, shutdown or malfunction occur and the SSMP is followed and when CMS experience routine or otherwise predictable failures and are immediately repaired.

B. EFR Seal Gap Measurement Reporting Requirements

The current Petroleum Refineries NESHAP requires that if, during a seal gap measurement for an external floating roof tank, it is determined that a storage vessel does not meet the requirements of the rule, a refinery must provide, in the next periodic report, the date of the seal gap measurement, raw data from the seal gap measurement, calculations performed to determine that requirements were not met, the specific conditions that were not met, and the nature and date of repair or the date the storage vessel was emptied. By today's action, the requirement to provide raw data and calculations is deleted. This action reduces the reporting burden and provides consistency with the information required to be reported when a failure is detected during a storage vessel inspection. The requirements to report the date of inspection, the vessel, conditions not met, and date the storage vessel was repaired or emptied are retained. The requirement to keep a record of the raw data and calculations is retained.

C. Startup, Shutdown and Malfunction Plans (SSMP) for Wastewater

As requirements for wastewater stream management units, the Petroleum Refineries NESHAP references the Benzene Waste Operation NESHAP, which does not contain a requirement for a startup, shutdown and malfunction plan (SSMP). The Petroleum Refineries NESHAP also references the general provisions requirement for a refinery SSMP. Revisions included in today's action clarify that an SSMP is optional for wastewater operations. The EPA did not intend to add additional requirements for wastewater beyond the Benzene NESHAP. However, owners and operators may wish to prepare an SSMP because it may reduce reporting when malfunctions occur. If there is an SSMP and it is followed in periods of startup, shutdown and malfunction, the incident is not required to be reported.

Today's action includes a revision that will allow owners and operators with wastewater stream management units that are subject to both subpart CC and subpart G to comply with only subpart G. Subpart G requires an SSMP for wastewater stream management units. Today's action does not alter the requirement for an SSMP to be prepared for wastewater stream management units complying with subpart G.

D. Overlap of Subpart FF and Subpart G for Wastewater Stream Management Units

Currently, when a wastewater stream management unit receives streams subject to 40 CFR part 63, subpart CC (Petroleum Refineries NESHAP) and 40 CFR part 63, subpart G (the HON), the equipment is to be in compliance with the provisions of § 63.133 through § 63.137 of the HON, the requirements of § 63.143 and § 63.148 of the HON for monitoring, inspections, recordkeeping and reporting and all of the requirements of 40 CFR part 61, subpart FF National Emission Standards for Benzene Waste Operations except for § 61.355 and § 61.357, which include reporting and recordkeeping requirements.

The EPA recognizes that there is significant overlap between subparts FF and G. This issue was recently reviewed in revising parts of subpart G. It was determined that it is not possible to require only compliance with subpart FF as subpart FF was developed to control benzene emissions and compliance with subpart FF would not guarantee control of other HAPs. The selected alternative is to allow owners and operators the option to comply only with the requirements of subpart G. Requirements of subpart G were developed to control all HAP emissions and are as stringent as, if not more stringent than requirements of subpart FF. By today's action, the same approach is adopted for petroleum refineries. Today's action gives owners and operators of wastewater stream management units subject to the Petroleum Refineries NESHAP and subpart G the option to comply with only the requirements of subpart G.

E. Notification Requirements for Failure to Follow SSMP

Currently, refineries are required to report an action taken that is inconsistent with the startup, shutdown and malfunction plan (SSMP) to the Administrator within 2 days of commencing the action and within 7 days of completing the action. In addition to this requirement, refineries are to revise the SSMP if it is found to not address or inadequately address a startup, shutdown or malfunction. The revised SSMP is to be completed within 45 days of the event. The EPA has determined that it is not necessary for refineries to notify the Administrator of actions that are inconsistent with the SSMP within 2 days of commencing the action and within 7 days of completing the action for the Administrator to be able to evaluate the SSMP and request revisions if needed. Today's action deletes the requirement to notify the Administrator within 2 days of commencing an action that is inconsistent with the SSMP and within 7 days of completing that action and replaces it with a requirement to report actions taken that are inconsistent with the SSMP in the next periodic report.

F. Identification of Group 2 Process Vents and Storage Vessels in the Notification of Compliance Status

Currently, the Petroleum Refineries NESHAP requires owners and operators to identify Group 2 process vents and storage vessels in the Notification of Compliance Status (NCS). Group 2 emission points are subject to the NESHAP but are not subject to any control requirements. The EPA has determined that it is not necessary for refineries to provide an inventory of Group 2 emission points in the NCS. Because there are no control or reporting requirements associated with Group 2 emission points, it is not foreseen that the Administrator will require an inventory of Group 2 emission points for future reference. Additionally, an inventory of Group 2 emission points will be retained on-site. Today's action adds the requirement to submit the inventory to the permitting authority at the permitting authority's request. The requirement to keep a record of process vents and storage vessels and their group determination is not altered by today's action.

G. Clarification of Requirements for Installation and Calibration of Continuous Monitoring Systems (CMS)

According to the current Petroleum Refineries NESHAP, a continuous monitoring system (CMS) is to be installed and calibrated according to the manufacturer's specifications. Industry representatives have provided and EPA agrees that it is not always possible or desirable to install or calibrate equipment in exact accordance with the manufacturer's specifications. Minor adjustments must be made for most applications. Additionally, it may not be necessary to adhere to all the specifications provided by the manufacturer to ensure correct installation or calibration. By today's action, the directions for installing and calibrating CMS will be expanded to

allow for procedures to be followed other than those specified by the manufacturer.

H. Requirement to Record the Signature of Owner or Operator When Equipment Leak Repairs are Delayed

Under the promulgated petroleum refineries NESHAP, when an equipment leak is detected and it is determined that the leak cannot be repaired within 15 days, the facility is to record that the repair was delayed, the reason for the delay and the signature of the owner or operator (or designate) whose decision it was that the repair could not be affected without a process unit shutdown. By today's action, the requirement to record the signature of the owner or operator is revised to require the name of the person making the decision to be recorded. This revision will make the requirement compatible with electronic recordkeeping systems while maintaining the ability of the requirement to establish accountability.

I. Exemption of Secondary Seal From Requirements During Primary Seal Gap Measurements

The petroleum refineries NESHAP references a provision of the HON that allows secondary seals on external floating roof storage vessels to be exempt from seal gap requirements while the seal is temporarily pulled back during primary seal gap measurements. Subpart Kb of 40 CFR part 60 does not include such a provision. Today's action extends the provision exempting secondary seals from seal gap requirements during primary seal gap measurements to storage vessels subject to the Petroleum Refineries NESHAP that are to comply with subpart Kb. The EPA has determined the provision provides a necessary clarification that was not considered in development of subpart Kb. Today's action does not alter the stringency of control requirements of subpart Kb.

J. Documentation of Compliance

The Petroleum Refineries NESHAP requires that documentation of having achieved compliance be submitted in the Notification of Compliance Status (NCS) report, due within 150 days of the compliance date. A potential source of confusion is the lack of specific instructions regarding the NCS and gasoline loading racks. Refineries with co-located gasoline loading racks that are subject to the Petroleum Refineries NESHAP (subpart CC) are generally required by subpart CC to comply with the requirements of the Gasoline Distribution MACT. The Gasoline Distribution MACT references notification requirements of the General Provisions. It is not clear when the notification is required for gasoline loading racks at petroleum refineries. By today's action, it is clarified that any notifications of compliance status required by the Gasoline Distribution MACT for gasoline loading racks co-located at refineries is to be submitted within 150 days of the Petroleum Refinery NESHAP compliance date.

K. Revision of Notification of Compliance Status (NCS) Report Requirement for New Group 1 Emission Point

In the promulgated Petroleum Refineries NESHAP, facilities are required to provide a NCS report for a new Group 1 emission point within 150 days of the change or addition of that point. By today's action, the reporting requirements are amended to allow the NCS report to be provided in the periodic report for the reporting period in which the Group 1 emission point is added. Today's action will reduce the burden of reporting through consolidating reports.

Periodic reports are due semiannually, within 60 days of the end of each 6-month reporting period. Through this amendment, it will be possible for a NCS report to be submitted more than 150 days after the addition of a Group 1 emission point. At most, if a change or addition is made at the beginning of a reporting period, the NCS may not be provided for eight months, approximately three months more than if the requirement to provide the report within 150 days was retained unchanged. Alternately, this revision may require an owner or operator to submit an NCS in less than 150 days. If an addition or change is made at the end of a reporting period, the NCS must be submitted with the next periodic report no more than 60 days after the end of the reporting period. This amendment does not change the amount of time in which a Group 1 emission point must be in compliance with the standards of the Petroleum Refineries NESHAP.

L. Semiannual Reporting of Inspection Results

For storage vessels complying with the reporting requirements of the Petroleum Refineries NESHAP, if a failure is detected during an inspection, it is required to be reported in the next periodic report. For storage vessels complying with subpart Kb or subpart Ka, if a failure is detected during an inspection, a report is to be provided to the Administrator within 30 days or 60 days, respectively. By today's action, when a failure is detected during an inspection of a storage vessel subject to the Petroleum Refineries NESHAP that is to comply with subpart Kb or subpart Ka, the failure is to be reported in the next periodic report. This revision provides consistency for reporting requirements between storage vessels that are to comply with the NESHAP and storage vessels that are to comply with subpart Kb and subpart Ka, without altering the control requirements of subpart Kb or Ka.

M. Extensions for EFR Seal Gap Measurements

As discussed previously, storage vessels subject to the Petroleum Refineries NESHAP and a new source performance standard (40 CFR part 60, subpart K, Ka or Kb) are only required to comply with one of the standards. Procedures are specified for external floating roof storage vessels that must comply with the refinery MACT to allow seal gap measurements to be delayed if it is determined that it is unsafe to perform the measurement. Provisions allow the gap measurements to be delayed for 30 days while the unsafe conditions are corrected. If the unsafe conditions cannot be corrected within that time period, the vessel is to be emptied within 45 days of the determination that the roof is unsafe. The owner or operator may use up to two extensions of 30 days each to empty the tank. There are no such provisions in subpart Ka or Kb.

Today's action extends the provision to allow seal gap measurements to be delayed due to unsafe conditions to storage vessels subject to the Petroleum Refineries NESHAP that are to comply with subparts Ka and Kb. The EPA has determined that the extension provision provides necessary guidance for owners and operators in circumstances that were not considered in the development of subparts Ka and Kb. Today's action does not alter the stringency of control requirements of subpart Ka or Kb.

N. Extensions for Storage Vessel Repairs

In the Petroleum Refineries NESHAP, when an internal floating roof is discovered to not meet the requirements of the standard, it must be repaired or the associated storage vessel taken out of service and emptied within 45 days. If a storage vessel cannot be emptied or repaired within 45 days, the owner or operator may use up to two extensions of 30 days each. If an extension is utilized, the owner or operator must, in the next periodic report, identify the vessel, provide a description of the failure, document that alternate storage capacity is unavailable, and specify a

schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible. Subpart Kb does not include provisions to be followed in the event that a failure is detected during an inspection of a storage vessel control device and the storage vessel cannot be repaired or emptied within 45 days.

Today's action extends the provision to allow for delays in repairing or emptying a storage vessel found to be out of compliance to storage vessels subject to the Petroleum Refineries NESHAP that are to comply with subpart Kb. The EPA has determined that the provision provides necessary guidance for owners and operators in circumstances that were not considered in the development of subpart Kb. Today's action does not alter the stringency of control requirements of subpart Kb.

O. Definition of Gasoline

In the current Petroleum Refineries NESHAP, no definition is provided for gasoline although gasoline loading racks at affected facilities are subject to subpart CC. By today's action, a definition for gasoline is added to the definitions in subpart CC. The definition is taken from 40 CFR part 60, Subpart XX Standards of Performance for Bulk Gasoline Terminals.

P. Report of Determination of Applicability for Flexible Operation Units and for Distillation Columns and Storage Vessels for Which Use Varies

The Petroleum Refineries NESHAP requires a report of the determination of the applicability of subpart CC to process units designed and operated as flexible operation units, and storage vessels and distillation units for which use varies from year to year. For existing units, this report is to be submitted no later than 18 months prior to the compliance date. With the exception of reports required for emission points included in emissions averaging, no other reports are required prior to the compliance date. By today's action, the requirement is revised to allow applicability determinations for flexible operation units and distillation columns and storage vessels for which use varies to be reported in the initial Notification of Compliance Status report. This revision provides consistency between reporting requirements and reduces burden by consolidating reports. This revision does not alter the date by which existing units must be in compliance with the Petroleum Refineries NESHAP.

Q. Compliance of Agitators With Equipment Leaks Provisions

Currently, owners and operators of refineries can comply with the equipment leaks provisions of the NESHAP by complying with the equipment leaks provisions of subpart H. Some of the referenced provisions of subpart H refer to agitators in heavy liquid service. As stated on pages 8–3 of the background information document for the final rule (EPA–453/R–95–015b), the provisions of the Petroleum Refineries NESHAP are not intended to apply to agitators. It is possible that, due to the references to agitators in subpart H, subpart CC could be interpreted as applying to agitators. Today's action revises the Petroleum Refineries NESHAP to specifically state that owners and operators of facilities subject to subpart CC are not required to comply with subpart H for agitators in heavy liquid service.

R. Overlap of Subparts XX and R for Gasoline Loading Racks

The current Petroleum Refineries NESHAP requires gasoline loading racks located at refineries to be in compliance with the control requirements of 40 CFR part 63, Subpart R National Emission Standards for Gasoline Distribution Facilities. New gasoline loading racks are also subject to 40 CFR part 60, Subpart XX, the New Source Performance Standard (NSPS) for bulk gasoline terminals. It is currently possible for a gasoline loading rack at a petroleum refinery to be subject to both subparts R and XX. Today's action revises the Petroleum Refineries NESHAP to require petroleum refineries with gasoline loading racks subject to both subparts R and XX to comply with the control requirements of subpart R. This revision does not alter the stringency of the rule as the control requirements of subpart R are more stringent than the control requirements of subpart XX.

S. Corrections to Miscellaneous Process Vent Equations

Following promulgation of the Petroleum Refineries NESHAP, two errors were discovered in two equations to be used to calculate kilograms per day of volatile organic compounds (VOC) in miscellaneous process vent streams. If used as currently presented, the equations will cause facilities to underestimate kilograms per day of VOC by a factor of 24 or 1,000. Today's action corrects these equations. These corrections do not alter the monitoring, recordkeeping, or reporting requirements or control requirements of the rule as originally intended.

T. Revision of Notification of Compliance Status Report Requirement for Existing Group 1 Storage Vessels Brought Into Compliance After August 18, 1998

The Petroleum Refineries NESHAP allows floating roof storage vessels to be brought into compliance up to 10 years after August 18, 1998, the compliance date for other emission points. A Notification of Compliance Status (NCS) report is required to be submitted when these vessels are brought into compliance. Currently, it is not clear when the NCS report is to be submitted.

Today's revision will require a NCS report to be submitted for storage vessels brought into compliance after August 18, 1998 with the periodic report for the reporting period in which the vessel was brought into compliance. The report will include a list of Group 1 storage vessels and either the actual or anticipated date of compliance for each vessel.

This revision provides needed clarification and allows for the consolidation of reports.

III. Reduction in Burden

The revisions included in today's action are expected to reduce the annual recordkeeping and reporting burden associated with this NESHAP by 80 technical hours per refinery and 13,200 technical hours nationwide.

IV. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

V. Administrative

A. Paperwork Reduction Act

The information collection requirements in the promulgated Petroleum Refineries NESHAP rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned a control number 2060–0340. However, this approval has expired and the information collection request is currently in the reinstatement process. The information collection request has

been revised to reflect the revisions to monitoring, recordkeeping and reporting requirements made by today's action. The collection of information has an estimated annual reporting and recordkeeping burden averaging 3,000 hours per respondent. This estimate includes time for reviewing instructions; developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting existing ways to comply with any previously applicable instructions and requirements; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

The burden estimate reflects an annual reduction of 13,200 technical hours, as compared to the estimate at promulgation, resulting from the revisions made by today's action.

B. Executive Order 12866 Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs or the rights and obligations of recipients thereof; of

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because today's action decreases the burden of the Petroleum Refineries NESHAP without altering the stringency, applicability, or schedule of the NESHAP or other rules, this rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant negative economic impact on a substantial number of small entities. This direct final rule will not have a significant negative impact on a substantial number of small entities because it revises monitoring, recordkeeping, and reporting requirements and reduces the associated burden for all affected facilities, including small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

At the time of promulgation, EPA determined that the Petroleum Refineries NESHAP does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This determination is not altered by today's action, the purpose of which is to reduce the burden associated with monitoring, recordkeeping, and reporting requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Petroleum refineries, Reporting and recordkeeping requirements, Storage vessels.

Dated: March 4, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

2. Amend § 63.640 by revising paragraphs (k)(2)(vii), (n)(1), (n)(3), and (n)(6); by adding paragraphs (n)(8), (n)(9) and (r); and by revising paragraph (o)(2) to read as follows:

§ 63.640 Applicability and designation of affected source.

* * * * *

(k) * * *

(2) * * *

(vii) Reports and notifications required by §§ 63.565 and 63.567 of

subpart Y. These requirements are summarized in table 5 of this subpart.

* * * * *

(n) * * *

(1) After the compliance dates specified in paragraph (h) of this section, a Group 1 or Group 2 storage vessel that is part of an existing source and is also subject to the provisions of 40 CFR part 60, subpart Kb is required to comply only with the requirements of 40 CFR part 60, subpart Kb, except as provided in paragraph (n)(8) of this section.

* * * * *

(3) After the compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is part of a new source and is subject to the control requirements in § 60.112b of 40 CFR part 60, subpart Kb is required to comply only with 40 CFR part 60, subpart Kb except as provided in paragraph (n)(8) of this section.

* * * * *

(6) After compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is subject to the control requirements of 40 CFR part 60, subparts K or Ka is required to comply only with the provisions of 40 CFR part 60, subparts K or Ka, except as provided for in paragraph (n)(9) of this section.

* * * * *

(8) Storage vessels described by paragraphs (n)(1) and (n)(3) of this section are to comply with subpart Kb of 40 CFR part 60 except as provided for in paragraphs (n)(8)(i) through (n)(8)(vi) of this section.

(i) Storage vessels that are to comply with 40 CFR 60.112b(a)(2) of subpart Kb are exempt from the secondary seal requirements of 40 CFR 60.112b(a)(2)(i)(B), during the gap measurements for the primary seal required by 40 CFR 60.113b(b) of subpart Kb.

(ii) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in 40 CFR 60.113b(b) of subpart Kb or to inspect the vessel to determine compliance with 40 CFR 60.113b(a) of subpart Kb because the roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either § 63.120(b)(7)(i) or § 63.120(b)(7)(ii) of subpart G.

(iii) If a failure is detected during the inspections required by 40 CFR § 60.113b(a)(2) or during the seal gap measurements required by 40 CFR 60.113b(b)(1), and the vessel cannot be repaired within 45 days and the vessel cannot be emptied within 45 days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each. The owner or operator is not required to provide a request for the extension to the Administrator.

(iv) If an extension is utilized in accordance with paragraph (n)(8)(iii) of this section, the owner or operator shall, in the next periodic report, identify the vessel, provide the information listed in 40 CFR 60.113b(a)(2) or 60.113b(b)(4)(iii), and describe the nature and date of the repair made or provide the date the storage vessel was emptied.

(v) Owners and operators of storage vessels complying with subpart Kb of 40 CFR Part 60 may submit the inspection reports required by 40 CFR 60.115b(a)(3), (a)(4), and (b)(4) of Subpart Kb as part of the periodic reports required by this subpart, rather than within the 30-day period specified in 40 CFR 60.115b(a)(3), (a)(4), and (b)(4) of Subpart Kb.

(vi) The reports of rim seal inspections specified in 40 CFR 60.115b(b)(2) are not required if none of the measured gaps or calculated gap areas exceed the limitations specified in 40 CFR 60.113b(b)(4). Documentation of the inspections shall be recorded as specified in 40 CFR 60.115b(b)(3).

(9) Storage vessels described by paragraph (n)(6) of this section which are to comply with 40 CFR part 60, subpart Ka, are to comply with only 40 CFR part 60, subpart Ka, except as provided for in paragraphs (n)(9)(i) through (n)(9)(iv) of this section.

(i) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in 40 CFR 60.113a(a)(1) of subpart Ka because the floating roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either §§ 63.120(b)(7)(i) or (b)(7)(ii) of subpart G.

(ii) If a failure is detected during the seal gap measurements required by 40 CFR 60.113a(a)(1) of subpart Ka, and the vessel cannot be repaired within 45 days and the vessel cannot be emptied within 45 days, the owner or operator may utilize up to 2 extensions of up to 30 additional calendar days each.

(iii) If an extension is utilized in accordance with paragraph (n)(9)(ii) of this section, the owner or operator shall, in the next periodic report, identify the vessel, describe the nature and date of the repair made or provide the date the storage vessel was emptied. The owner or operator shall also provide documentation of the decision to utilize an extension including a description of the failure, documentation that alternate storage capacity is unavailable, a schedule of actions that will ensure that the control equipment will be repaired or the vessel emptied as soon as possible.

(iv) Owners and operators of storage vessels complying with subpart Ka of part 60 may submit the inspection reports required by 40 CFR 60.113a(a)(1)(i)(E) of subpart Ka as part of the periodic reports required by this subpart, rather than within the 60-day period specified in 40 CFR 60.113a(a)(1)(i)(E) of subpart Ka.

(o) * * *

(2) After the compliance dates specified in paragraph (h) of this section a Group 1 or Group 2 wastewater stream that is conveyed, stored, or treated in a wastewater stream management unit that also receives streams subject to the provisions of §§ 63.133 through 63.147 of subpart G wastewater provisions of this part shall comply as specified in paragraph (o)(2)(i) or (o)(2)(ii) of this section. Compliance with the provisions of paragraph (o)(2) of this section shall constitute compliance with the requirements of this subpart for that wastewater stream.

(i) Comply with paragraphs (o)(2)(i)(A) through (o)(2)(i)(C) of this section.

(A) The provisions in §§ 63.133 through 63.140 of subpart G for all equipment used in the storage and conveyance of the Group 1 or Group 2 wastewater stream.

(B) The provisions in both 40 CFR part 61, subpart FF, and in §§ 63.138 and 63.139 of subpart G for the treatment and control of the Group 1 or Group 2 wastewater stream.

(C) The provisions in §§ 63.143 through 63.148 of subpart G for monitoring and inspections of equipment and for recordkeeping and reporting requirements. The owner or operator is not required to comply with the monitoring, recordkeeping, and reporting requirements associated with the treatment and control requirements in 40 CFR part 61, subpart FF, §§ 61.355 through 61.357.

(ii) Comply with paragraphs (o)(2)(ii)(A) and (o)(2)(ii)(B) of this section.

(A) Comply with the provisions of §§ 63.133 through 63.148 and §§ 63.151 and 63.152 of subpart G

(B) For any Group 2 wastewater stream or organic stream whose benzene emissions are subject to control through the use of one or more treatment processes or waste management units under the provisions of 40 CFR part 61, subpart FF, on or after December 31, 1992, comply with the requirements of

§§ 63.133 through 63.147 of subpart G for Group 1 wastewater streams.

* * * * *

(r) Overlap of this subpart CC with other regulations for gasoline loading racks.

(1) After the compliance dates specified in paragraph (h) of this section, a Group 1 gasoline loading rack that is part of a source subject to subpart CC and also is subject to the provisions of 40 CFR part 60, subpart XX is required to comply only with this subpart.

(2) [Reserved]

3. Amend § 63.641 by adding in alphabetical order a definition for "gasoline" to read as follows:

§ 63.641 Definitions.

* * * * *

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

* * * * *

4. Amend § 63.644 by revising the last sentence of paragraph (a) introductory text to read as follows:

§ 63.644 Monitoring provisions for miscellaneous process vents.

(a) * * * All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment will monitor accurately.

* * * * *

5. Amend § 63.645 by revising the definition of "K_2" in paragraph (f)(4) and revising paragraph (f)(5) to read as follows:

* * * * *

§ 63.645 Test methods and procedures for miscellaneous process vents.

* * * * *

(f) * * *

(4) * * *

K_2=Constant, 5.986×10^{-5} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per day), where the standard temperature (standard cubic meter) is at 20 °C.

(5) If Method 25A is used the emission rate of TOC (ETOC) shall be calculated using the following equation:

$E = K_2 C_{TOC} M Q_s$

where:

E=Emission rate of TOC (minus methane and ethane) in the sample, kilograms per day.

K_2=Constant, 5.986×10^{-5} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per day), where the standard temperature (standard cubic meter) is at 20 °C.

C_{TOC}=Concentration of TOC on a dry basis in parts per million volume as measured by Method 25A of 40 CFR part 60, appendix A, as indicated in paragraph (f)(3) of this section.

M=Molecular weight of organic compound used to express units of C_{TOC}, gram per gram-mole.

Q_s=Vent stream flow rate, dry standard cubic meters per minute, at a temperature of 20 °C.

* * * * *

6. Amend § 63.648 by revising paragraph (e) to read as follows:

§ 63.648 Equipment leak standards.

* * * * *

(e) For reciprocating pumps in heavy liquid service, and agitators in heavy liquid service, owners and operators are not required to comply with the requirements in § 63.169 of subpart H.

* * * * *

7. Amend § 63.654 by revising the first sentence of paragraph (a); revising paragraphs (d)(1), (f) introductory text, (f)(1)(i)(A), (f)(1)(ii); adding paragraph (f)(6); revising the last sentence of paragraph (g)(3)(i) introductory text; removing paragraph (g)(3)(i)(B); redesignating paragraphs (g)(3)(i)(C) and (g)(3)(i)(D) as (g)(3)(i)(B) and (g)(3)(i)(C); revising paragraph (h)(1); revising the first two sentences of paragraph (h)(6) introductory text; and adding paragraph (i)(5).

* * * * *

§ 63.654 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to the wastewater provisions in § 63.647 shall comply with the recordkeeping and reporting provisions in 40 CFR 61.356 and 61.357 of subpart FF unless they are complying with the wastewater provisions specified in § 63.640(o)(2)(ii).

* * *

* * * * *

(d) * * *

(1) Sections 60.486 and 60.487 of subpart VV of 40 CFR part 60, except as specified in paragraph (d)(1)(i); or §§ 63.181 and 63.182 of subpart H of this part except for §§ 63.182 (b), (c)(2), and (c)(4).

(i) The signature of the owner or operator (or designate) whose decision it was that a repair could not be effected without a process shutdown is not required to be recorded. Instead, the name of the person whose decision it was that a repair could not be effected without a process shutdown shall be recorded and retained for 2 years.

(ii) [Reserved]

* * * * *

(f) Each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status report within 150 days after the compliance dates specified in § 63.640(h), with the exception of Notification of Compliance Status reports submitted to comply with § 63.640(l)(3) and for storage vessels subject to the compliance schedule specified in § 63.640(h)(4). Notification of Compliance Status reports required by § 63.640(l)(3) and for storage vessels subject to the compliance dates specified in § 63.640(h)(4) shall be submitted according to paragraph (f)(6) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination of the three. If the required information has been submitted before the date 150 days after the compliance date specified in § 63.640(h), a separate Notification of Compliance Status report is not required within 150 days after the compliance dates specified in § 63.640(h). If an owner or operator submits the information specified in paragraphs (f)(1) through (f)(5) of this section at different times, and/or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information. Each owner or operator of a gasoline loading rack classified under Standard Industrial Classification Code 2911 located within a contiguous area and under common control with a petroleum refinery subject to the standards of this subpart shall submit the Notification of Compliance Status report required by subpart R of this part within 150 days after the compliance dates specified in § 63.640(h) of this subpart.

(1) * * *

(i) * * *

(A) For each Group 1 storage vessel subject to this subpart, the information specified in paragraphs (f)(1)(i)(A)(*1*) through (f)(1)(i)(A)(*4*). This information is to be revised each time a Notification of Compliance Status report is submitted for a storage vessel subject to the compliance schedule specified in § 63.640(h)(4) or to comply with § 63.640(l)(3).

(*1*) Identification of each Group 1 storage vessel subject to this subpart. Group 2 storage vessels do not need to be identified unless included in an emissions average.

(*2*) For each Group 1 storage vessel complying with § 63.646 that is not

included in an emissions average, the method of compliance (i.e., internal floating roof, external floating roof, or closed vent system and control device).

(3) For storage vessels subject to the compliance schedule specified in § 63.640(h)(4) that are not complying with § 63.646, the anticipated compliance date.

(4) For storage vessels subject to the compliance schedule specified in § 63.640(h)(4) that are complying with § 63.646 and the Group 1 storage vessels described in § 63.640(l), the actual compliance date.

* * * * *

(ii) For miscellaneous process vents, identification of each Group 1 miscellaneous process vent subject to this subpart and the method of compliance for each Group 1 miscellaneous process vent that is not included in an emissions average (e.g., use of a flare or other control device meeting the requirements of § 63.643(a)). Group 2 miscellaneous process vents do not need to be identified in the Notification of Compliance Status report unless included in an emissions average.

* * * * *

(6) Notification of Compliance Status reports required by § 63.640(l)(3) and for storage vessels subject to the compliance dates specified in § 63.640(h)(4) shall be submitted no later than 60 days after the end of the 6-month period during which the change or addition was made that resulted in the Group 1 emission point or the existing Group 1 storage vessel was brought into compliance, and may be combined with the periodic report. Six-month periods shall be the same 6-month periods specified in paragraph (g) of this section. The Notification of Compliance Status report shall include the information specified in paragraphs (f)(1) through (f)(5) of this section. This information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, as part of the periodic report or in any combination of these four. If the required information has been submitted before the date 60 days after the end of the 6-month period in which the addition of the Group 1 emission point took place, a separate Notification of Compliance Status report is not required within 60 days after the end of the 6-month period. If an owner or operator submits the information specified in paragraphs (f)(1) through (f)(5) of this section at different times, and/or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the previously submitted information.

(g) * * *

(3) * * *

(i) * * * This documentation shall include the information specified in paragraphs (g)(3)(i)(A) through (g)(3)(i)(C) of this section.

* * * * *

(h) * * *

(1) Reports of startup, shutdown, and malfunction required by § 63.10(d)(5) as specified in table 6 of this subpart. Records and reports of startup, shutdown, and malfunction are not required if they pertain solely to Group 2 emission points, as defined in § 63.641, that are not included in an emissions average. The periodic reports of startup, shutdown, and malfunction specified in § 63.10(d)(5)(i) are not required if the actions taken by an owner or operator during a startup, shutdown, or malfunction are consistent with the source's startup, shutdown, and malfunction plan required by § 63.6(e)(3) unless requested by the permitting authority. The operator shall comply with the reporting requirements of § 63.10(d)(5)(ii) if the startup, shutdown, and malfunction plan is not followed, except as specified in table 6 of this subpart. For purposes of this paragraph, startup and shutdown shall have the meaning defined in § 63.641, and malfunction shall have the meaning defined in § 63.2;

* * * * *

(6) The owner or operator shall submit the information specified in paragraphs (h)(6)(i) through (h)(6)(iii) of this section, as applicable. For existing sources, this information shall be submitted in the initial Notification of Compliance Status report. * * *

* * * * *

(i) * * *

(5) In addition to the information reported under paragraphs (a) through (h) of this section, the information listed in paragraphs (i)(5)(i) and (i)(5)(ii) shall be retained on-site. The information listed in (i)(5)(i) shall be submitted upon the request of the permitting authority.

(i) A record identifying all Group 2 miscellaneous process vents.

(ii) A record identifying all Group 2 storage vessels, their dimensions and capacity.

8. In table 5 in the appendix of subpart CC, remove the entries for "63.566(a)" and "63.566(b)" and add two entries, in numerical order, to read as follows:

TABLE 5.—MARINE VESSEL LOADING AND UNLOADING OPERATIONS RECORDKEEPING AND REPORTING REQUIREMENTS [a]

Reference (section of subpart Y of this part)	Description	Comment
63.565(a)	Performance test/site test plan	The information required under this paragraph is to be submitted with the notification of compliance status report required under 40 CFR part 63 subpart CC.
63.565(b)	Performance test data requirements.	

[a] This table does not include all the requirements delineated under the sections. See referenced sections for specific requirements

9. In table 6 in the appendix of subpart CC, remove the entries for "63.6(e)", "63.8(c)(1)(i)", "63.8(c)(3)", "63.10(d)(5)(i)", and "63.10(d)(5)(ii)" and add five entries in numerical order, to read as follows:

TABLE 6.—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC[a]

Reference	Applies to subpart CC	Comment
. . . .	. . . .	. . .
§ 63.6(e)	Yes	Does not apply to Group 2 emission points.[b] The startup, shutdown, and malfunction plan specified in § 63.6(e)(3) is not required for wastewater operations that are not subject to subpart G of this part. Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the startup, shutdown, and malfunction plan do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
. . . .	. . . .	. . .
§ 63.8(c)(1)(i)	Yes	Except that if "routine" or otherwise predictable malfunctions, as defined in the source's startup, shutdown and malfunction plan, are immediately corrected, the source is not required to report the action in the semiannual startup, shutdown, and malfunction report required under § 63.10(d)(i) unless requested to do so by the permitting authority.
. . . .	. . . .	. . .
§ 63.8(c)(3)	Yes	Except that verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would monitor accurately.
. . . .	. . . .	. . .
§ 63.10(d)(5)(i)	Yes[b]	Except that reports are not required to be submitted unless they are requested by the permitting authority.
§ 63.10(d)(5)(ii)	Yes	Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the startup, shutdown, and malfunction plan do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
. . . .	. . . .	. . .

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.
[b] The plan, and any records or reports of startup, shutdown, and malfunction do not apply to Group 2 emission points.

[FR Doc. 98–6876 Filed 3–19–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300613; FRL–5769–8]

RIN 2070–AB78

Acephate; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is issuing a technical amendment to the acephate tolerances to add food additive regulations for use of acephate in food handling establishments.

DATES: This rule becomes effective March 20, 1998. Written objects and hearing requests must be received by May 19, 1998.

FOR FURTHER INFORMATION CONTACT: By mail, Jeffrey Morris, Special Review Branch (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: 3rd floor, Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300613], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300613], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300613]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 1998, (63 FR 2163) the Office of Pesticide Programs transferred certain of the pesticide food and feed additive regulations (FRL–5755–9) in parts 185 and 186 to part 180. The consolidation was necessary because, whereas in the past, tolerances for processed food and animal feeds regulated under section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq.) were placed under parts 185 and 186, as a matter of law all tolerances are now considered to be regulated under FFDCA section 408 as amended by the Food Quality Protection Act (Pub. L. 104–17), and therefore, are being placed under part 180. In the consolidation of § 185.100 with § 180.108, some of the text from § 185.100 was inadvertently removed instead of being transferred to § 180.108. This rule correctly revises § 180.108.

I. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300613] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

II. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

III. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 19, 1998.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.108 is revised to read as follows:

§ 180.108 Acephate; tolerances for residues.

(a) *General.* (1) Tolerances are established for combined residues of acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *O,S*-dimethylphosphura-midothioate in or on raw agricultural commodities as follows:

Commodity	Parts per million
Beans (succulent and dry form, of which no more than 1 ppm is *O,S*-dimethyl phosphoramidothioate)	3
Brussels sprouts (of which no more than 0.5 is *O, S*-dimethyl phosphoramido-thioate)	3.0
Cattle, fat	0.1
Cattle, mbyp	0.1
Cattle, meat	0.1
Cauliflower (of which no more than 0.5 is *O, S*-dimethyl phosphoramido-thioate)	2.0
Celery (of which no more than 1 ppm is *O,S*-dimethyl phosphoramidothioate)	10
Cottonseed	2
Cottonseed, hulls	4
Cottonseed, meal	[illegible]
Cranberries (of which no more than 0.1 ppm is *O,S*-dimethyl phosphoramidothioate)	0.5
Eggs	0.1
Goats, fat	0.1
Goats, mbyp	0.1
Goats, meat	0.1
Grass (pasture & range)	15
Grass hay	15
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, mbyp	0.1
Horses, meat	0.1
Lettuce (head, of which no more than 1 ppm is *O,S*-dimethyl phosphoramidothioate)	10
Milk	0.1

Commodity	Parts per million
Mint hay (of which no more than 1 ppm is *O,S*-dimethyl phosphoramidothioate)	15.0
Peanuts	0.2
Peppers (of which no more than 1 ppm is *O, S*-dimethyl phosphoroamidothioate)	4.0
Poultry, fat	0.1
Poultry, mbyp	0.1
Poultry, meat	0.1
Sheep, fat	0.1
Sheep, mbyp	0.1
Sheep, meat	0.1
Soybean, meal	4
Soybeans	1

(2) A food additive tolerance of 0.02 ppm is established for the combined residues of acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite, methamidophos as follows:

(i) In or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food handling establishments.

(ii) The acephate may be present as a residue from applications of acephate in food handling establishments, including food service, manufacturing and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries in accordance with the following prescribed conditions:

(A) Application shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are held, processed, prepared and served. Spray concentration shall be limited to a maximum of 1.0 percent active ingredient. For crack and crevice treatments, equipment capable of delivering a pin-stream of insecticide shall be used. For spot treatments, a coarse, low-pressure spray shall be used to avoid atomization or splashing of the spray. Contamination of food or food-contact surfaces shall be avoided.

(B) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registration.* Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of acephate and its cholinesterase-inhibiting metabolite in or on the following raw agricultural commodities:

Commodity	Parts per million
Macadamia nuts	0.05

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–7311 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7685]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

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PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Illinois: Maunie, village of, White County	170684	February 11, 1998	January 9, 1974.
Missouri: Willard, city of, Greene County	290653	.....do	November 5, 1976.
Minnesota: St. Anthony, city of, Hennepin and Ramsey Counties.	270716	February 26, 1998.	
New Eligibles—Regular Program			
California: [1] Los Banos, city of, Merced County	060747	February 3, 1998	August 2, 1995.
Iowa: Van Buren County, unincorporated areas	190265	February 11, 1998	October 2, 1997.
Missouri: St. Paul, city of, St. Charles County	290900	February 13, 1998	August 2, 1996.
Reinstatements			
Alabama: Vestavia Hills, city of, Jefferson County	010132	February 21, 1975 Emerg.; January 2, 1981, Reg.; January 2, 1981, Susp.; February 9, 1998, Rein.	Janaury 2, 1981.
Regular Program Conversions			
Region II			
New Jersey: Monroe, township of, Middlesex County	340269	February 4, 1998, Suspension Withdrawn	February 4, 1998.
Region IV			
South Carolina: Mullins, city of, Marion County	450143	.....do	Do.
Region V			
Wisconsin:			
Chetek, city of, Barron County	550012	.....do	Do.
Chippewa County, unincorporated areas	555549	.....do	Do.
Chippewa Falls, city of, Chippewa County	550044	.....do	Do.
Eau Claire, city of, Chippewa & Eau Claire Counties.	550128	.....do	Do.
Region VI			
Arkansas:			
Faulkner County, unincorporated areas	050431	.....do	Do.
Springdale, city of, Washington County	050219	.....do	Do.
Washington County, unincorporated areas	050212	.....do	Do.
Region VIII			
South Dakota: Montrose, city of, McCook County	460052	.....do	Do.
Region X			
Oregon: Curry County, unincorporated areas	410052	.....do	Do.
Region I			
Connecticut: Wilton, town of, Fairfield County	090020	February 18, 1998, Suspension Withdrawn	February 18, 1998.
Region III			
Pennsylvania:			
Landingville, borough of, Schuylkill County	420774	.....do	Do.
Port Clinton, borough of, Schuylkill County	420784	.....do	Do.
Virginia: Spotsylvania County, unincorporated areas.	510308	.....do	Do.
Region VI			
Arkansas: Cave City, city of, Sharp and Independence Counties.	050313	.....do	Do.
Texas:			
Hays County, unincorporated County	480321	.....do	Do.
Kyle, city of, Hays County	481108	.....do	Do.
San Marcos, city of, Hays County	485505	.....do	Do.
Woodcreek, city of, Hays County	481641	.....do	Do.
Region VII			
Missouri: Park Hills, city of, St. Francois County	290920	.....do	Do.
Region VIII			
Montana:			
Wibaux, town of, Wibaux County	300084	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Wibaux County, unincorporated areas	300173	.....do	Do.
South Dakota: Rapid City, city of, Pennington County	465420	.....do	Do.
Region IX			
Nevada: Eureka County, unincorporated areas	320028	.....do	Do.
Region X			
Oregon:			
Bandon, city of, Coos County	410043	.....do	Do.
Glendale, city of, Douglas County	410063	.....do	Do.
Riddle, city of, Douglas County	410066	.....do-	Do.

[1] The City of Los Banos has adopted the Merced County (CID # 060188) Flood Insurance Rate Map dated August 2, 1995.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: March 12, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–7292 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–176; RM–9141]

Radio Broadcasting Services; Roscoe, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 287A at Roscoe, South Dakota, as the community's first local aural transmission service. *See* 62 FR 44435, August 21, 1997. Channel 287A can be allotted to Roscoe in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 287A at Roscoe are North Latitude 45–27–00 and West Longitude 99–20–12 . With this action, this proceeding is terminated.

EFFECTIVE DATE: April 27, 1998. A filing window for Channel 287A at Roscoe, South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–176, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Roscoe, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7324 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–238; RM–9201]

Radio Broadcasting Services; Guymon, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Clear Channel Radio Licenses, Inc., allots Channel 258C1 to Guymon, OK, as the community's second local FM service. *See* 62 FR 66324, December 18, 1997. Channel 258C1 can be allotted to Guymon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–41–00 North Latitude; 101–29–06 West Longitude. With this action, this proceeding is terminated.

DATES: Effective April 27, 1998. A filing window for Channel 258C1 at Guymon, OK, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, 202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–238, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 258C1 at Guymon.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7323 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–175; RM–9138]

Radio Broadcasting Services; Presho, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 262A at Presho, South Dakota, as the community's first local aural transmission service. *See* 62 FR 44932, August 25, 1997. Channel 262A can be allotted to Presho in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 262A at Presho are North Latitude 43–54–24 and West Longitude 100–03–36. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 27, 1998. A filing window for Channel 262A at Presho, South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–175, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Presho, Channel 262A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7322 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–218; RM–9172]

Radio Broadcasting Services; Colchester, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gary G. Kidd, allots Channel 244A at Colchester, Illinois, as the community's second local FM transmission service. *See* 62 FR 58936, October 31, 1997. Channel 244A can be allotted to Colchester in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.2 kilometers (8.2 miles) southwest to avoid a short-spacing to the construction permit site of Station KRNQ(FM), Channel 242C2, Keokuk, Iowa. The coordinates for Channel 244A at Colchester are North Latitude 40–21–48 and West Longitude 90–55–41. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 27, 1998. A filing window for Channel 244A at Colchester, Illinois, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–218, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 244A at Colchester.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7321 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 87–268; FCC 98–24]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an MO&O addressing 231 petitions for reconsideration of the Sixth R&O. This MO&O generally affirms the DTV channel allotments and other technical rules and procedures with certain minor modifications, including changes in its DTV allotment standards, operating rules and specific DTV allotments. This action will facilitate the conversion of over-the-air television broadcasting from the existing analog system to the new digital system.

DATES: Effective April 20, 1998, except for § 73.622(f)(4)(iv) which contains new or modified paperwork requirements and which will become effective May 19, 1998, following approval by the Office of Management and Budget,

unless timely notice of withdrawal is published in the **Federal Register**.

ADDRESSES: Comments on the proposed and/or modified information collections described herein are to be filed with the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, DC 20554. A copy of any such comments should also be submitted to Judy Boley, at the above address or via the Internet at jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470), Alan Stillwell (202–418–2470) or Robert Eckert (202–428–2470), Office of Engineering and Technology. For additional information regarding information collections contained in the *Memorandum Opinion and Order*, contact Judy Boley (202–418–0214).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* (*MO&O*) in MM Docket No. 87–268, FCC 98–24, adopted February 17, 1998, and released February 23, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036 (202–857–3800).

Summary of the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order

1. In the *MO&O*, the Commission has affirmed, with some minor modifications, its April 3, 1997, *Sixth Report and Order* in the DTV proceeding that assigns each broadcaster a new channel for DTV operations and allows TV broadcasters to "replicate" their existing NTSC service in converting to DTV. This action is in response to 231 petitions for reconsideration of the *Sixth Report and Order*.

2. The Commission made a number of modifications to its allotment policies and rules and to the DTV Table of Allotments in this action. It first adopted a core spectrum of channels 2–51 for DTV. This new core will eliminate industry uncertainty about the status of VHF channels 2–6. The new core will also provide more flexibility to address new technical information on DTV adjacent channel performance. In this regard, the new core will ensure that there is sufficient spectrum to eliminate DTV-to-DTV adjacent channel interference situations. The new core will also provide more broadcasters with an in-core DTV channel and eliminate the need for second moves by many stations. In addition, the new core will help ease the impact of the transition on low power TV stations, which are small businesses that provided diverse programming and services to their communities. Further, it will promote diversity in services and television station ownership by increasing the opportunities for new entrants.

3. The Commission also adopted new measures to permit DTV stations to operate with increased power or take other measures to improve their coverage. DTV stations will be permitted to increase power, or modify their antenna height or transmitter location, where the requested change would not result in more than a *de minimis*, i.e., 2 percent, increase in interference to the population served by another station, unless the station already experienced interference to 10 percent or more of its population, or the change would result in the effected station receiving interference in excess of 10 percent of its population. In addition, UHF stations will be allowed to increase power within their service area up to 1000 kW by using antenna beam-tilting techniques, provided they meet the above standard for permissible interference.

4. The Commission next took steps to eliminate adjacent channel interference resulting from operation on DTV allotments. In particular, it changed 42 allotments to eliminate DTV-to-DTV adjacent channel situations where interference would occur, tightened the "emissions mask" that limits out-of-band emissions from DTV operation and provided flexibility in its administrative processes to encourage adjacent channel co-locations.

5. The Commission affirmed its decision to retain "secondary status" for low power television (LPTV) stations, but took additional steps to assist low power stations that may be displaced or otherwise impacted by DTV operations. In this regard, the Commission said it would consider LPTV or TV Translator stations eligible to seek a new channel without being subject to competing applications where they faced predicted interference either to or from any allotted full service DTV facility, and that such requests will be given priority over other low power applications. The Commission also used software developed by the Community Broadcasters Association to change 66 allotments in the DTV Table in order to avoid using a channel now used by one or more low power stations. These changes provide the affected full power broadcasters with a new DTV channel that is equivalent in service replication and interference. In addition, the Commission modified its technical rules to improve sharing between low power and full power stations.

6. The Commission said that at the end of the DTV transition period, it would, on its own motion, consider establishing additional DTV noncommercial reserved allotments for existing noncommercial reserved NTSC allotments that cannot be replaced at this time.

7. The Commission modified its rules to allow television licensees and permittees to negotiate exchanges of DTV allotments on an intra-community, intra-market or inter-market basis where such changes do not cause interference to other stations or where all affected stations agree to accept any additional interference that may result. The Commission also recognized broadcasters' interest in the establishment of an industry committee system for coordination of DTV allotment changes. It therefore stated that it intends to initiate a rule making proceeding in the near future to seek comment on whether it should adopt such a committee system and, if so, procedures for its operation.

8. It further made a number of minor adjustments to its technical methodologies and standards for DTV allotments and the operation of stations on those allotments.

9. Finally, the Commission modified 29 DTV allotments in response to individual station requests. Overall, with these changes and the changes to avoid adjacent channel interference and conflicts with low power stations indicated above, the Commission modified a total of 143 DTV allotments. The revised DTV Table and associated technical parameters for station operation are available for inspection on the internet at *www.fcc.gov* and at the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554 during regular business hours.

Procedural Matters

10. *Paperwork Reduction Act of 1995 Analysis.* This *Memorandum Opinion and Order* contains either a new or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this order, as required by the Paperwork Reduction Act of 1995, Public Law104–

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13. Public and agency comments are due May 19, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Written comments must be submitted on the proposed and/or modified information collections on or before May 19, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov. For additional information regarding information collections contained in the *Memorandum Opinion and Order* contact Judy Boley at 202–418–0214.

11. *Supplemental Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis was incorporated into the *Sixth Further Notice of Proposed Rule Making* in this proceeding,[2] and a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the subsequent *Sixth Report and Order*.[3] As described below, one Petition for Reconsideration of the *Sixth Report and Order* (62 FR 26684; May 14, 1997) raised an issue concerning the FRFA. The present *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* addresses that reconsideration petition, among others. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) also addresses that petition, and conforms to the RFA.[4]

A. Need for, and Objectives of, this Memorandum Opinion and Order

12. In the *Sixth Report and Order*, the Commission adopted policies, procedures and technical criteria for use in conjunction with broadcast digital television (DTV), adopted a DTV Table of Allotments, adopted a plan for the recovery of a portion of the spectrum currently allocated to TV broadcasting, and provided procedures for assigning DTV frequencies. In the present *Memorandum Opinion and Order*, the Commission addresses petitions for reconsideration of the *Sixth Report and Order*. Throughout this proceeding, we have sought to allot DTV channels in a manner that is most efficient for broadcasters and the public and least disruptive to broadcast television service during the period of transition from NTSC to DTV service. We wish to ensure that the spectrum is used efficiently and effectively through reliance on market forces, and ensure that the introduction of digital TV fully serves the public interest.

B. Summary of Significant Issues Raised by the Public In Response to the FRFA

13. One petition for reconsideration, that of Skinner Broadcasting, Inc. (Skinner),[5] raises various issues, one of which is in direct response to the FRFA contained in the *Sixth Report and Order*. Skinner states that the Commission conceded in the *Sixth Report and Order* that, as a result of its actions, many low power television (LPTV) and TV translator stations would be displaced. Nonetheless, argues Skinner, the Commission "made no proffer . . . of alternative digital channel allotment configurations" that might have reduced the number of such displacements.[6] Skinner notes that an *ex parte* presentation by Community Broadcasters Association (CBA) offered an alternative allotment table, and that alternative was not discussed in the *Sixth Report and Order* or its FRFA. Skinner states that the Commission was apparently satisfied that the interests of LPTV and TV translator stations deserved no further consideration, given that such operations are "secondary" under current licensing.[7] Skinner argues that "alternatives obviously exist[ed]" that might have avoided subsequent displacements, and requests that the Commission reconsider the allotment table adopted in the *Sixth Report and Order*.[8]

14. We disagree with the contention that the Commission failed to consider alternatives that could have further assisted LPTV stations, TV translator stations, and other possible small entities in the DTV transition process. As quoted by Skinner in a footnote in its reconsideration petition,[9] the previous FRFA specifically described the displacement issue, with reference to the text of the *Sixth Report and Order*, and noted that "[o]ne alternative to this approach would have been to permit existing LPTV and TV translator stations to remain on their incumbent channels; this approach was not chosen because it would have resulted in providing allotments for fewer than all full service licensees." Elsewhere in the FRFA, we stated that, in addition to the "secondary status" reason for the Commission's allotment decision, the decision was consistent with "the primary allotment objective . . . to develop a DTV Table of Allotments that provides a channel for all eligible broadcasters, consistent with the provisions of the 1996 Telecommunications Act regarding initial eligibility for DTV licenses."[10] Discussion at that point cross-referenced the lengthier discussions in the primary text of the *Sixth Report and Order* concerning LPTV and TV translator stations and the "secondary status" issue, including reference to case law.[11] In addition, both the Sixth Report and Order and its FRFA discussed alternative approaches,[12] although not the specific approach of CBA cited by Skinner. Last, as noted by Skinner, the FRFA discussed various policies adopted to mitigate the effects of displacement.

15. We note that the CBA *ex parte* presentation cited by Skinner was dated March 26, 1997, which would have been eight days prior to adoption of the *Sixth Report and Order*. In a proceeding as lengthy as this, that timing was unfortunate, but the Commission did consider other CBA positions submitted earlier. Also, we note that CBA has currently submitted another allocation proposal, which, in the present *Memorandum Opinion and Order*, we have adopted in part. This other proposal is also discussed later in this Supplemental FRFA, in Section E ("Steps Taken to Minimize Significant Economic Burdens on Small Entities, and Significant Alternatives Considered").

[1] *See* 5 U.S.C. §§ 603, 604. The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 1045–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 11 FCC Rcd 10968, 11060 (1996).

[3] 12 FCC Rcd 14588, 14768 (1997).

[4] *See* 5 U.S.C. § 604.

[5] Skinner Broadcasting, Inc., Petition for Reconsideration, filed June 13, 1997. The Skinner petition is also discussed in this context in the present *Memorandum Opinion and Order*, in Section III(F).

[6] *Id.* at 7.

[7] *Id.* at 7–8.

[8] *Id.* at 8.

[9] *Id.* at 8 n.5.

[10] FRFA, 12 FCC Rcd at 14769.

[11] *Id.* at 14769 n.8 (citing paragraphs 11 and 113–147 of the *Sixth Report and Order*).

[12] *Sixth Report and Order*, 12 FCC Rcd at 14593–95; FRFA, 12 FCC Rcd at 14768–69.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

16. As noted, a Final Regulatory Flexibility Analysis was incorporated into the *Sixth Report and Order*.[13] In that analysis, we described in detail the small entities that might be significantly affected by the rules adopted in the *Sixth Report and Order*.[14] Those entities included full service television stations, TV translator facilities, and LPTV stations. In addition, while we did not believe that television equipment manufacturers, manufacturers of television equipment used by consumers, and computer manufacturers constituted regulated entities for the purpose of that previous FRFA, we included them in the analysis of the FRFA because we thought that some rule changes and textual discussions in the *Sixth Report and Order* might ultimately have some affect on equipment compliance. In the present *Memorandum Opinion and Order* we address reconsideration petitions filed in response to the *Sixth Report and Order*. In this present Supplemental FRFA, we hereby incorporate by reference the description and estimate of the number of small entities from the previous FRFA in this proceeding.[15]

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. The rules adopted will result in one change in current reporting, Recordkeeping, or other compliance requirements: an application will be required to be filed for those entities wishing to increase station power within their service area through the use of beam tilting techniques.

E. Steps Taken to Minimize Significant Economic Burdens on Small Entities, and Significant Alternatives Considered

18. As noted in the previous FRFA, the DTV Table of Allotments will affect all of the commercial and noncommercial broadcast television stations eligible for a DTV channel in the transition period and a significant number of the LPTV and TV translator stations.[16] LPTV and TV translator stations, especially, are likely to be small entities. It is expected that the allotments will constitute the population of channels on which broadcasters will operate DTV service in the future. Affected stations will need to modify or obtain new transmission facilities and, to a varying extent, production equipment to operate on the new DTV channels. The actual cost of equipment is expected to vary in accordance with the degree to which the station becomes involved in DTV programming and origination.

19. As described in the present *Memorandum Opinion and Order*,[17] we continue to believe that the general principles and priorities used for the development of the DTV allotments/assignments remain appropriate. We reaffirm our approach to provide all eligible broadcasters with the temporary use of a second channel that, to the extent possible, will allow them to replicate the service areas of their existing NTSC operations. We continue to find that such an approach will promote the orderly transition of DTV by broadcasters and foster the provision of service to the public. Our actions represent a balancing of various factors.

20. In this regard, certain petitioners have suggested that certain "targeted and limited adjustments" to the DTV Table of Allotments are needed. Considering this and other information, we have determined to make a number of limited changes in the Table in order to prevent the loss of DTV service and to minimize the impact of DTV operations on existing NTSC service.[18] In this regard, for example, we have reviewed certain DTV-to-DTV adjacent channel situations and are modifying the DTV allotments to eliminate these situations in a number of instances. Specifically, we are making changes to 42 DTV allotments, to resolve cases where use of adjacent channels is no longer acceptable and would impact our service replication and interference goals. We also are making a number of modifications to our technical rules for DTV operation to further reduce the potential for interference between DTV stations that operate on adjacent channels in the same area. In addition, we are making 29 allotment changes to address requests by individual petitioners, for a total of 71 changes.

21. A number of parties representing low power interests argue that the plan for early recovery of channels 60–69 will adversely impact LPTV and TV translator stations.[19] Again balancing various interests, we have affirmed our basic plan to recover a portion of the existing television spectrum and our earlier decision to permit low power stations to continue to operate on channels 60–69 on a secondary basis through the transition process.[20] As set forth in the *Report and Order* in ET Docket No. 97–157, released January 6, 1998,[21] we have reallocated channels 60–69 for public safety and a broad range of other services, including broadcasting, in accordance with the requirements of the Balanced Budget Act of 1997. However, in that decision, we stated that low power stations will be allowed to operate on these channels, provided no interference is caused to primary users. We also encouraged, wherever possible, private negotiations between low power and new service providers to resolve interference problems in a manner which is acceptable and beneficial to both parties.

22. A number of petitioners have requested that we reconsider our decision to defer the determination of the final core spectrum, pending information on the suitability of channels 2–6 for DTV service. Some also request that we expand or amend the DTV core spectrum to include channels 2–6. In reconsidering this matter, we now believe that the most desirable course of action is to expand the core to include all channels 2–51.[22] While we recognize that this change will reduce the amount of spectrum to be recovered by 30 MHz, we believe that the benefits of expanding the core spectrum outweigh the need for recovery of either channels 2–6 or 47–51. In particular, the change will eliminate certain planning uncertainties, reduce the number of stations required to make second channel moves, increase the availability of channels and thereby promote competition and diversity, and help eliminate DTV-to-DTV adjacent channel interference situations. Importantly for small entities, this expansion of the core will reduce the impact of the transition on low power operations. In this regard, channels 2–6 and 47–51 now support a significant number of LPTV and TV translator stations. The low VHF channels, for example, have some of the highest concentration of low power stations. Expanding the core to include channels 2–6 may eliminate the eventual displacement of most of these stations. In addition, expanding the core will also provide low power stations with more channels and greater

[13] 12 FCC Rcd 14588, 14768(1997).

[14] See Section C of the previous Final Regulatory Flexibility analysis, "Description and Estimate of the Number of Small Entities to Which the Rules Will Apply," at 12 FCC Rcd at 14770–76.

[15] *Id.*

[16] 12 FCC Rcd at 14776.

[17] *Memorandum Opinion and Order* at Sections III (A) and (F).

[18] *Id.* at Section III(E)

[19] *Id.* at Section III(A).

[20] *Id.*

[21] Document No. FCC 97–421.

[22] *Memorandum Opinion and Order* at Section III(B).

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opportunities to start new stations and relocate existing stations.

23. Some licensees, including noncommercial stations, express concern regarding the additional burden that might be placed on stations that are provided transitional DTV channels outside the core spectrum. These parties generally state that because they will have relocate their DTV operations to channels within the core spectrum they will have to endure additional costs and be placed at a disadvantage with respect to their competitors. They state that the necessity of a "double move" (building facilities twice), if it comes to that, represents disparate treatment of similarly situated broadcasters. Recognizing these concerns, and as explained more fully in the *Memorandum Opinion and Order*,[23] we have attempted to minimize to the extent possible the number of out-of-core DTV allotments in developing the DTV Table. By expanding the core of channels, there will be only 189 stations with out-of-core DTV allotments. All but 12 of these stations have existing NTSC channels within the core spectrum to which they may relocate at the end of the transition period. In addition, to the extent that in-core channels become available during the transition, we will attempt to further reduce the number of out-of-core allotments in any future amendments to the Table of Allotments. We have not, however, determined to modify our "no interference criteria," because most out-of-core allotments occur in the most congested areas of the country where we have already permitted some interference in order to achieve our goal of full accommodation and to maximize the number of in-core allotments. We also do not find it practicable to require stations to choose now the channel they intend to keep following the transition. Regarding the special burdens perhaps placed on certain noncommercial public television licensees because of their reliance on federal, state and private contributions to raise funds, we are initiating a separate proceeding to seek comment on the ability of the licensees to use the DTV channel capacity for commercial purposes. In the interim, we are not adopting special provisions or priorities for PTV stations, but will consider their concerns on a case-by-case basis. Also on a case-by-case basis, we will consider requests by stations with both NTSC and DTV channels outside the core area to defer the construction of their DTV station beyond the current construction deadline, or to convert their operations directly to DTV at the end of the transition, where such stations can show that implementing DTV in accordance with our schedule will cause undue hardship to their operations.

24. In the *Sixth Report and Order*,[24] we allotted DTV channels using a "service replication/maximization" concept that was suggested by a variety of broadcast industry interests and representatives. Under this approach,, we specified for each DTV allotment a maximum permissible effective radiated power (ERP) and antenna height above average terrain (HAAT) that will, to the extent possible, provide for replication of the station's existing Grade B service area. Our actions were intended in part to reduce the disparity between existing UHF and VHF stations. We also provided rules and procedures for stations to "maximize," or increase, their service areas provided they do not cause interference to other stations. In response, some petitioners have raised concerns regarding difficulties that UHF stations may face under the service replication plan in providing DTV service within their core market or Grade A service areas and in competing with the higher-powered DTV service of existing VHF stations. Accordingly, to allow UHF stations to better serve their core market areas and to reduce the disparities that are inherent in the current service replication process, we have modified our rules to provide additional opportunities for stations to maximize their DTV coverage and service through increasing their power and/or making other changes in their facilities.[25] We are replacing the current standard that specifies that changes in DTV operations may not cause any new interference with a new *de minimis* standard along the lines suggested by certain petitioners. Under this new *de minimis* standard, stations will be permitted to increase power or make other changes in their operation, such as modification of their antenna height or transmitter location, where the requested change would not result in more than a 2 percent increase in interference to the population served by another station; provided, however, that no new interference may be caused to any station that already experiences interference to 10 percent or more of its population or that would result in a station receiving interference in excess of 10 percent of its population. In addition, we have adopted an approach that will allow stations to increase their power within their existing DTV service areas using beam tilting techniques.

25. In the *Memorandum Opinion and Order*, we have made a series of decisions concerning LPTV and TV translator stations, which stations, as we noted earlier, are especially likely to be small entities.[26] As we have stated before, we wish to ensure the viability and survivability of LPTV and TV translator stations in a digital world. At this juncture, some petitioners again raise displacement concerns, and one petitioner noted earlier in this present Supplemental FRFA, Community Broadcasters Association (CBA), offers an alternative allotment table. CBA has also proposed that we recognize a presumption favoring potentially displaced LPTV stations that file a request to amend the DTV Table of Allotments. Recognizing these concerns, we have utilized the software algorithm and approach recommended by CBA, and have been able to identify a limited number of cases in certain areas of the country where it is possible to avoid using a channel occupied by low power stations by providing full service stations with an equivalent alternative DTV channel.[27] In particular, we have found 66 instances in which a channel change can be made that would not affect the operations of full service stations, and we are therefore modifying the Table to reflect these 66 DTV channel changes. We are not granting requests by low power licensees to change the channels of individual full service DTV allotments in order to avoid displacement of low power stations, because to do so would adversely affect the ability of full service stations to replicate their existing service and would also lead to increased interference. We will, however, consider changing DTV allotments to protect low power stations where the affected full service station agrees to the change. In this regard, we encourage low power and full service licensees to work together to develop modifications to the DTV Table that will preserve the service of low power stations.

26. In response to petitions requesting clarification of our displacement relief policies, and to assist in making such relief available in an equitable manner to all affected low power stations, we will consider an LPTV or TV translator station eligible for such relief where interference is predicted either to or from any allotted DTV facility.[28] Stations eligible under this criterion may apply for relief as of the effective

[23] *Id.* at Section III(C).

[24] *Sixth Report and Order*, 12 FCC Rcd at 14605–07; FRFA, 12 FCC Rcd at 1478.

[25] *Memorandum Opinion and Order* at Section III(D).

[26] *Id.* at Section III(F).

[27] *Id.* at Section III(F)(1).

[28] *Id.* at Section III(F)(2).

date of this Memorandum Opinion and Order. All LPTV and TV translator licensees on channels 60 to 69 are also eligible to file such displacement relief applications at any time. In addition, and as suggested by CBA, we are affording displacement relief applications priority over new station applications or other requests for modification by low power stations, including any such applications and requests that may be pending at the time the displacement relief application is filed. We will also permit displaced stations to seek modifications other than channel changes, including, where necessary, increases in effective radiated power up to the maximum allowed values. We are not, however, providing any additional priority for urban LPTV stations or PTV low power and TV translator stations in the displacement relief process, as requested by some petitioners. We believe that treating all potentially displaced low power stations in a fair and equitable manner is the most appropriate course of action.

27. In this regard, we wish to note: low power licensees are advised that the channels considered as candidates for assignment to land mobile services in eight major markets under GEN Docket No. 85–172 are available at this time for low power use and may be requested in displacement relief applications.

28. Some petitioners request that we eliminate or modify the new DTV protection requirement in Section 73.623 of our rules, which requires that co-channel NTSC operations provide an additional 19 dB of protection to DTV service at the edge of a DTV station's noise-limited service area. It is argued that the rule is not needed to avoid interference and will greatly complicate the task of finding new channels for displaced LPTV stations. They also request that we require DTV stations that are co-located with a lower adjacent channel LPTV station to match the frequency offset of the LPTV station as a method of reducing interference, and require the DTV station in such cases to cooperate in making the necessary arrangements for maintaining an offset between the two signals, including cost arrangements. We have rejected these requests, because the protection standard is required to ensure protection of DTV service.[29] We are, however, amending the low power television rules to specify the D/U values as a function of S/N values to provide a transition from 21 dB to 2 dB D/U for NTSC-into-DTV, and from 15 dB to 23 dB D/U for DTV-into-DTV. These values are based on measurement data presented to our advisory committee. With regard to adjacent channel operation where a DTV station is immediately above an NTSC station, we agree that DTV stations that are co-located with a lower adjacent channel low power NTSC station should be required to cooperate and maintain the necessary offset to eliminate interference to the low power station. We note that the equipment necessary to lock to a common reference frequency is relatively inexpensive and should not be burdensome for a full power station. We believe that on balance the benefits of maintaining service from low power stations in such cases outweigh the relatively small incremental costs for full service stations. We therefore have amended the rules in this regard, which should benefit small entity stations.

29. Some petitioners have requested that low power stations be permitted to utilize digital operation immediately. While we recognize the desire of some low power operators to begin providing DTV service at the same time as full service stations, there are a number of issues in this context that still need to be addressed through a notice-and-comment rulemaking proceeding. We intend to initiate a separate proceeding on this, in the near future. As noted in the *Sixth Report and Order*,[30] for the time being we will consider requests by low power operators to operate DTV service on replacement channels on a case-by-case basis under our displacement relief policy.

30. Some petitioners request that we take steps to establish a permanent class of LPTV stations with primary allocation status. At this time, we are deferring consideration of this and similar issues. We will address these issues in a future action, when we address a similar petition for rulemaking submitted by CBA.[31]

31. Last, some petitioners request that we reconsider our previously stated intention to consider reimbursement for displaced low power stations in a separate proceeding. They argue that the issue of whether and how LPTV stations should be compensated is an integral part of the DTV allotment process and should not be deferred to a future proceeding. At this juncture, we do not believe that it is appropriate to require broadcasters to implement DTV and at the same time compensate secondary low power stations that are affected by this required implementation.[32] We also continue to believe that compensation with regard to reclaimed spectrum is best addressed in proceedings that specifically consider the reallocation of spectrum and rules for new services. We note that this is consistent with our recent decision in our *Report and Order* in the channel 60–69 reallocation proceeding. In that proceeding we stated, however, that we will consider whether there are other steps that may be of benefit to LPTV and TV translator stations as we develop service rules for the new commercial spectrum.

32. *Report to Congress*: The Commission will send a copy of the *Memorandum Opinion and Order*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Memorandum Opinion and Order*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

33. *Ordering Clauses*. In accordance with the actions described herein, it is ordered that part 73 of the Commission's rules is amended as set forth below. In addition, it is ordered that low power TV and TV translator stations eligible for displacement relief under the additional procedures adopted herein may apply for such relief at any time on or after the effective date of this *Memorandum Opinion and Order*. It is ordered that the rule amendments set forth herein shall be effective April 20, 1998. It is further ordered that the new or modified paperwork requirements contained in the new Section 73.622(f)(4)(iv) of the rules (which are subject to approval by the Office of Management and Budget) will become effective May 19, 1998, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. This action is taken pursuant to authority contained in sections 4(i), 7, 301, 302, 303, 307 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 301, 302, 303, 307 and 336.

List of Subjects in 47 CFR Parts 73 and 74

Television.

[29] *Id.* at Section III(F)(3).

[30] 12 FCC Rcd at 14653 n.263.

[31] CBA Petition for Rule Making, submitted Sept. 30, 1997.

[32] *Memorandum Opinion and Order* at Section III(F)(6).

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Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

Parts 73 and 74 of title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.622 is amended by revising paragraphs (b), (c), (d), (e), (f), (g) and (h) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(b) *DTV Table of Allotments.*

ALABAMA

Community	Channel No.
Anniston	58
Bessemer	18c
Birmingham	30, 36, 50, 52, *53
Demopolis	*19
Dothan	21, 36
Dozier	*59
Florence	14, 20, *22
Gadsden	26, 45c
Homewood	28
Huntsville	*24, 32c, 41, 49c, 59
Louisville	*44c
Mobile	9, 20, 27, *41, 47
Montgomery	*14, 16, 46c, 51, 57
Mount Cheaha	*56
Opelika	31
Ozark	33
Selma	55
Troy	48
Tuscaloosa	34c
Tuskegee	24

ALASKA

Community	Channel No.
Anchorage	18, 20, 22, *24, *26, 28, 30, 32
Bethel	*3
Dillingham	*9
Fairbanks	18, 22, *24, 26, 28
Juneau	*6, 11
Ketchikan	*8, 13
North Pole	20
Sitka	2

ARIZONA

Community	Channel No.
Flagstaff	18, 22, 27, 32
Green Valley	47c
Kingman	19
Lake Havasu City.	32

ARIZONA—Continued

Community	Channel No.
Mesa	36
Phoenix	17, 20, 24, 26, *29, 31, 34c, 49, 56
Prescott	25
Sierra Vista	44
Tolleson	52c
Tucson	19c, 23, 25, *28c, *30, 32, 35, 42
Yuma	16, 41

ARKANSAS

Community	Channel No.
Arkadelphia	*46
El Dorado	27
Fayetteville	15, *45
Fort Smith	18, 21, 27
Hot Springs	14
Jonesboro	9c, *20c, 49c
Little Rock	12c, 22, 30, 32, 43c, *47
Mountain View	*35
Newark	*27
Pine Bluff	24, 39c
Rogers	50
Springdale	39

CALIFORNIA

Community	Channel No.
Anaheim	32
Arcata	22
Bakersfield	10, 25, 33, 55
Barstow	44
Calipatria	50
Ceres	*15c
Chico	36, 43
Clovis	44c
Concord	63c
Corona	39c
Cotati	*23c
El Centro	22, 48
Eureka	*11, 16, 17, 28
Fort Bragg	15
Fresno	7, 9, 14, 16, *40
Hanford	20
Huntington Beach.	*48
Los Angeles	31c, 35c, 36, *41c, 42, 43, 53c, *59c, 60, 65c, 66
Merced	38
Modesto	18
Monterey	31, 32
Novato	47
Oakland	56
Ontario	47c
Oxnard	24
Palm Springs	46, 52
Paradise	20
Porterville	48c
Rancho Palos Verdes.	51c
Redding	14, *18
Riverside	58
Sacramento	21c, 35c, 48, *53c, 55c, 61
Salinas	13, 43c
San Bernardino	*26, 38, 61c
San Diego	18, 19, 25, *30, 40c, 55

CALIFORNIA—Continued

Community	Channel No.
San Francisco	19, 24, 27c, 29, *30, *33c, 39c, 45c, 51, 57
San Jose	12c, 41c, 49c, *50, 52
San Luis Obispo	15, 34c
San Mateo	*59
Sanger	36
Santa Ana	23c
Santa Barbara	21, 27
Santa Maria	19
Santa Rosa	54
Stockton	25, 46, 62
Twentynine Palms.	23
Vallejo	34
Ventura	49
Visalia	28, *50c
Watsonville	*58

COLORADO

Community	Channel No.
Boulder	15c
Broomfield	38
Castle Rock	46
Colorado Springs.	10, 22c, 24
Denver	16, 17, *18, 19, 32c, 34, 35, *40, 43, 51c
Durango	15
Fort Collins	21
Glenwood Springs.	23
Grand Junction	2, 7, 12c, 15, *17
Longmont	29
Montrose	13
Pueblo	*26, 42
Steamboat Springs.	10
Sterling	23

CONNECTICUT

Community	Channel No.
Bridgeport	42, *52c
Hartford	5, *32, 33, 46
New Britain	35
New Haven	6, 10, *39
New London	34
Norwich	*45
Waterbury	12

DELAWARE

Community	Channel No.
Seaford	*44
Wilmington	31, *55

DISTRICT OF COLUMBIA

Community	Channel No.
Washington	*27c, *33c, 34, 35, 36, 39, 48, 51c

FLORIDA

Community	Channel No.
Boca Raton	*44c
Bradenton	42
Cape Coral	35
Clearwater	21
Clermont	17
Cocoa	*30, 51
Daytona Beach	11, 49
Fort Lauderdale	52c
Fort Myers	15, *31c, 53
Fort Pierce	*38, 50
Fort Walton Beach.	25, 40, 49
Gainesville	16, *36
High Springs	21
Hollywood	47
Jacksonville	13c, 19, 32, 34, *38, 42, *44
Key West	3, 12
Lake Worth	36
Lakeland	19
Leesburg	40, *46c
Live Oak	14
Melbourne	20, 48
Miami	8c, 9, *18c, 19, *20, 22c, 24c, 26, 30, 32, 46c
Naples	41, 45
New Smyrna Beach.	*33
Ocala	*31
Orange Park	10
Orlando	14, 22, *23, 39, 41, 58
Palm Beach	49
Panama City	19, 29c, *38, 42
Panama City Beach.	47c
Pensacola	17, *31, 34c, 45c
Sarasota	52
St. Petersburg	24, 57, 59
Tallahassee	2, 22, *32
Tampa	7, 12, 29c, *34, 47, *54
Tequesta	16
Tice	33
Venice	25
West Palm Beach.	13c, *27, 28, 55

GEORGIA

Community	Channel No.
Albany	17, 30
Athens	*22, 48
Atlanta	10, 19, 20, *21, 25, 27, 39, *41, 43
Augusta	30, 31, 42, 51
Bainbridge	50c
Baxley	35c
Brunswick	24
Chatsworth	*33
Cochran	*7
Columbus	15, *23, 35, 47, 9
Cordele	51
Dalton	16
Dawson	*26c
Macon	16, 40, 45, 50
Monroe	44
Pelham	*20
Perry	32
Rome	51
Savannah	15, 23c, 39, *46
Thomasville	52

GEORGIA—Continued

Community	Channel No.
Toccoa	24
Valdosta	43
Waycross	*18
Wrens	*36

HAWAII

Community	Channel No.
Hilo	8, 18, *19, 21, 22, 23, *31, *39c
Honolulu	8, *18, 19, 22, 23, 27c, 31c, 33c, 35, *39c, 40, *43
Kailua Kona	25
Kaneohe	41
Lihue	*7c, *12, *28c, *45
Wailuku	16c, 20, 24, *28c, 29, *30, *34c, 36

IDAHO

Community	Channel No.
Boise	*21, 26, 28
Caldwell	10c
Coeur D'alene	*45
Filer	*18
Idaho Falls	9c, 36
Lewiston	32
Moscow	*35
Nampa	24, 44
Pocaello	*17, 23
Twin Falls	16, *22, 34

ILLINOIS

Community	Channel No.
Aurora	59
Bloomington	28
Carbondale	*40
Champaign	41, 48
Charleston	*50
Chicago	3c, 19c, *21c, 27c, 29, 31, 43c, 45c, *47, 52
Decatur	18c, 22
East St. Louis	47c
Freeport	41
Harrisburg	34
Jacksonville	*15c
Joliet	53
Lasalle	10
Macomb	*21
Marion	17
Moline	*23, 38
Mount Vernon	21
Olney	*19
Peoria	30, 39, 40, *46, 57
Quincy	32, *34, 54
Rock Island	58
Rockford	16c, 42, 54
Springfield	42, 44, 53
Urbana	26, *33

INDIANA

Community	Channel No.
Angola	12
Bloomington	*14, 27, 53, 56
Elkhart	54
Evansville	28, 45c, *54, 58, 59
Fort Wayne	4, 19, 24, 36, *40c
Gary	*17, 51c
Hammond	38
Indianapolis	9c, 16, *21c, 25, *44, 45, 46
Kokomo	54
Lafayette	11
Marion	32
Muncie	52
Richmond	39
Salem	51c
South Bend	30, *35c, 42, 48
Terre Haute	24, 36, 39c
Vincennes	*52

IOWA

Community	Channel No.
Ames	50
Burlington	41
Cedar Rapids	27, 47, 51, 52
Council Bluffs	*33c
Davenport	*34, 49, 56
Des Moines	16, 19, 26, 31, *50
Dubuque	43
Fort Dodge	*25
Iowa City	25, *45
Mason City	*18, 42
Ottumwa	14
Red Oak	*35
Sioux City	*28c, 30, 39, 41, 49
Waterloo	*35, 55

KANSAS

Community	Channel No.
Colby	17
Ensign	5
Fort Scott	40
Garden City	16, 18
Goodland	14
Great Bend	52
Hays	*16, 20
Hutchinson	19, *29, 35
Lakin	*23
Lawrence	56
Pittsburg	30
Salina	17
Topeka	*23, 28c, 44, 48
Wichita	21, 26, 31, 45

KENTUCKY

Community	Channel No.
Ashland	*26c, 44
Beattyville	7
Bowling Green	16, *18, 33, *48
Campbellsville	19
Covington	*24
Danville	4
Elizabethtown	*43
Harlan	51

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KENTUCKY—Continued

Community	Channel No.
Hazard	12, *16
Lexington	22, 40, *42, 59
Louisville	8, *17, 26, *38, 47, 49, 55
Madisonville	20c, *42
Morehead	*15, 21
Murray	*36
Newport	29
Owensboro	30
Owenton	*44
Paducah	32, 41, 50c
Pikeville	*24
Somerset	*14

LOUISIANA

Community	Channel No.
Alexandria	*26c, 32c, 35
Baton Rouge	*25, 34c, 42, 45c, 46
Columbia	57
Lafayette	16c, *23, 28, 56
Lake Charles	8c, *20, 30c
Monroe	*19, 55
New Orleans	*11, 14, 15, 29, 30, *31, 40, 43, 50c
Shreveport	17, *25c, 28, 34c, 44
Slidell	24
West Monroe	36, 38

MAINE

Community	Channel No.
Augusta	*17
Bangor	14, 19, 25
Biddeford	*45
Calais	*15
Lewiston	28
Orono	*22
Poland Spring	46
Portland	4, 38, 44
Presque Isle	16, *20

MARYLAND

Community	Channel No.
Annapolis	*42
Baltimore	*29, 38, 40, 41, 46c, 52, 59
Frederick	*28
Hagerstown	16, *44, 55
Oakland	*54
Salisbury	21, 53, *56

MASSACHUSETTS

Community	Channel No.
Adams	[illegible]
Boston	*19, 20, 30, 31, 32, 39c, 42, *43
Cambridge	41
Lawrence	18
Marlborough	23
New Bedford	22, 49
Norwell	[illegible]
Springfield	11, 55, *58c
Vineyard Haven	40

MASSACHUSETTS—Continued

Community	Channel No.
Worcester	29c, *47

MICHIGAN

Community	Channel No.
Alpena	13, *57
Ann Arbor	33
Bad Axe	*15
Battle Creek	20, 44c
Bay City	22
Cadillac	40, 47, *58
Calumet	18
Cheboygan	14
Detroit	14, 21c, 41, *43, 44, 45, [illegible]
East Lansing	*55c
Escanaba	[illegible]
Flint	16, 36, *52
Grand Rapids	7, *11, 19, 39
Iron Mountain	[illegible]
Jackson	34
Kalamazoo	2, *5, 45
Lansing	38, 51c, 59
Manistee	*17
Marquette	*33, 3
Mount Clemens	39c
Mount Pleasant	*56
Muskegon	24
Onondaga	57
Saginaw	30, 48
Sault Ste. Marie	49, 56
Traverse City	31, 50
University Center.	*18
Vanderbilt	[illegible]

MINNESOTA

Community	Channel No.
Alexandria	14, 24
Appleton	*31
Austin	*20, 33
Bemidji	*18
Brainerd	*28
Crookston	*16
Duluth	17, 33, *38, 43
Hibbing	36
Mankato	38
Minneapolis	21, 22, *26, 32, 35, *44
Redwood Falls	27
Rochester	36, 46
St. Cloud	40
St. Paul	*16, *34, 50
Thief River Falls	57
Walker	20
Worthington	*15

MISSISSIPPI

Community	Channel No.
Biloxi	*16, 39
Booneville	*55
Bude	*18c
Columbus	35
Greenville	17
Greenwood	*25, 54
Gulfport	[illegible]

MISSISSIPPI—Continued

Community	Channel No.
Hattiesburg	[illegible]
Holly Springs	41c
Jackson	*20, 21, 41c, 51, 52
Laurel	28
Meridian	26, 31c, *44, 49
Mississippi State	*38
Natchez	49c
Oxford	*36
Tupelo	57
West Point	16

MISSOURI

Community	Channel No.
Cape Girardeau	22, 57
Columbia	22, 36
Hannibal	[illegible]
Jefferson City	12, 20
Joplin	*25, 43, 46
Kansas City	14, *18, 24, 31, 34, 42c, 47, 51c
Kirksville	33
Poplar Bluff	18
Sedalia	15
Springfield	19, *23, 28c, 44, 52
St. Joseph	21, 53
St. Louis	14, 26, 31c, 35, *39, 43, 56

MONTANA

Community	Channel No.
Billings	11, 17, 18
Bozeman	16, *20
Butte	2, 15, 19c
Glendive	15
Great Falls	39, 44, 45
Hardin	22
Helena	14, 29
Kalispell	38
Miles City	13
Missoula	*27, 35, 36, 40

NEBRASKA

Community	Channel No.
Albion	23
Alliance	*24
Bassett	*15
Grand Island	19, 32
Hastings	*14, 21
Hayes Center	18
Kearney	36
Lexington	*26
Lincoln	25, 31, *40
McCook	12
Merriman	*17
Norfolk	*15
North Platte	*16, 22
Omaha	*17, 20, 22, 38, 43c, 45
Scottsbluff	20, 29
Superior	34

NEVADA

Community	Channel No.
Elko	5
Henderson	24
Las Vegas	2, 7, *11c, 16c, 17, 22c, 29
Paradise	40c
Reno	*15, 22c, 23, 26, 32, 34, 44
Winnemucca	12

NEW HAMPSHIRE

Community	Channel No.
Berlin	*15
Concord	33
Derry	35
Durham	*57
Keene	*49c
Littleton	*48
Manchester	59c
Merrimack	34

NEW JERSEY

Community	Channel No.
Atlantic City	46, 49
Burlington	27
Camden	*22
Linden	36
Montclair	*51c
New Brunswick	*18c
Newark	53c, 61
Newton	8c
Paterson	40
Secaucus	38
Trenton	*43
Vineland	56c
West Milford	*29
Wildwood	36

NEW MEXICO

Community	Channel No.
Albuquerque	16, *17, 21, 24c, *25, 26, 42c, 51c
Carlsbad	19
Clovis	20
Farmington	8, 17
Hobbs	16
Las Cruces	*23c, 36
Portales	*32
Roswell	28c, 35, 41
Santa Fe	10, 27, 29
Silver City	12

NEW YORK

Community	Channel No.
Albany	4, 15, 26
Amsterdam	50
Batavia	53
Binghamton	4, 7, 8, *42c
Buffalo	14, *32, 33, 34, 38, 39, *43
Carthage	35
Corning	50
Elmira	2, 55
Garden City	*22c

NEW YORK—Continued

Community	Channel No.
Jamestown	27c
Kingston	21
New York	*24, 28, 30, 33, 44, 45, 56c
North Pole	14
Norwood	*23
Plattsburgh	*38
Poughkeepsie	27
Riverhead	57
Rochester	*16, 28, 45, 58, 59
Schenectady	*34, 39, 43
Smithtown	23
Springville	46
Syracuse	17, 19c, *25c, 44c, 47, 54
Utica	27, 29, 30
Watertown	21c, *41

NORTH CAROLINA

Community	Channel No.
Asheville	*25, 45, 56, 57
Belmont	47c
Burlington	14
Chapel Hill	*59
Charlotte	22, 23, *24, 27, 34
Columbia	*20
Concord	*44
Durham	27, 52
Fayetteville	36, 38
Goldsboro	55
Greensboro	33, 43, 51
Greenville	10c, 21, *23
Hickory	40
High Point	35
Jacksonville	34, *44
Kannapolis	58
Lexington	19
Linville	*54
Lumberton	*25
Morehead City	24
New Bern	48
Raleigh	49, 53, 57
Roanoke Rapids	*39
Rocky Mount	15
Washington	32
Wilmington	*29, 30, 46, 54
Wilson	42
Winston-Salem	29, 31, *32

NORTH DAKOTA

Community	Channel No.
Bismarck	16, *22, 23, 31
Devils Lake	*25, 59
Dickinson	18, 19, *20
Ellendale	*20c
Fargo	19, 21, *23, 58
Grand Forks	*56
Jamestown	14
Minot	15c, 45, *57, 58
Pembina	15
Valley City	38
Williston	14, *51, 52

OHIO

Community	Channel No.
Akron	30, *50c, 59

OHIO—Continued

Community	Channel No.
Alliance	*46c
Athens	*27
Bowling Green	*56
Cambridge	*35
Canton	39, 47
Chillicothe	45
Cincinnati	10c, 31, 33, *34, 35
Cleveland	2, 15, *26c, 31, 34
Columbus	13, 14, 21, 36, *38
Dayton	30, 41, 50, 51, *58
Lima	20, 47
Lorain	28
Mansfield	12
Newark	24
Oxford	*28
Portsmouth	17, *43c
Sandusky	42c
Shaker Heights	10
Springfield	18
Steubenville	57
Toledo	5, 17, 19c, *29, 46, 49c
Youngstown	20c, 36, 41
Zanesville	40

OKLAHOMA

Community	Channel No.
Ada	26
Bartlesville	15
Cheyenne	*8
Claremore	*36c
Enid	18
Eufaula	*31
Lawton	23
Oklahoma City	15c, 16, 24, 27, *32, 33, 39, 42, 50, 51
Okmulgee	28
Shawnee	23
Tulsa	22, *38, 42c, 48c, 49, 55, 56, 58

OREGON

Community	Channel No.
Bend	*11, 18
Coos Bay	21, 22
Corvallis	*39
Eugene	14, 17c, 25, *29c, 31
Klamath Falls	29, *33, 40
La Grande	*5
Medford	15, 27c, 35, 38, *42
Pendleton	8
Portland	*27, 30, 40, 43, 45, 6
Roseburg	18, 19, 45
Salem	20, 33c

PENNSYLVANIA

Community	Channel No.
Allentown	46, *62c
Altoona	24c, 32, 46
Bethlehem	59c
Clearfield	*15
Erie	16, 22, *50, 52, 58
Greensburg	50
Harrisburg	4, *36, 57

PENNSYLVANIA—Continued

Community	Channel No.
Hazleton	9
Johnstown	29, 30, 34
Lancaster	23, 58
Philadelphia	26, 32, *34, 42, 54, 64c, 67
Pittsburgh	25c, *26c, *38, 42, 43, 48, 51
Reading	25
Red Lion	30
Scranton	13, 31, 32, *41, 49
Wilkes-Barre	11
Williamsport	29
York	47

RHODE ISLAND

Community	Channel No.
Block Island	17c
Providence	13c, *21, 51, 54c

SOUTH CAROLINA

Community	Channel No.
Allendale	*33
Anderson	14
Beaufort	*44
Charleston	35, 40, *49, 52, 53, 59
Columbia	8, 17, *32, 41, 48
Conway	*58
Florence	16c, 20, *45, 56
Greenville	*9, 35, 59
Greenwood	*18
Hardeeville	27
Myrtle Beach	18
Rock Hill	15, 39
Spartanburg	43, 53
Sumter	*28c, 38

SOUTH DAKOTA

Community	Channel No.
Aberdeen	*17c, 28
Brookings	*18
Eagle Butte	*25
Florence	25
Huron	22
Lead	29, 30
Lowry	*15
Martin	*23
Mitchell	26
Pierre	19, *21
Rapid City	16c, 18, 22, *26
Reliance	14
Sioux Falls	7, *24c, 29, 32, 40, 47c
Vermillion	*34

TENNESSEE

Community	Channel No.
Chattanooga	*29, 35, 40, 47, 55
Cleveland	42
Cookeville	36, *52
Crossville	50
Greeneville	38
Hendersonville	51c

TENNESSEE—Continued

Community	Channel No.
Jackson	39, 43
Jellico	23
Johnson City	50
Kingsport	27
Knoxville	*17, 26, 30, 31, 34
Lebanon	44
Lexington	*47
Memphis	25c, 28, *29c, 31c, 51c, 52, 53
Murfreesboro	58
Nashville	10, 15, 21, 23, 27, *46, 56
Sneedville	*41

TEXAS

Community	Channel No.
Abilene	24, 29
Alvin	35
Amarillo	9, 15c, 19, *21, 23
Arlington	42
Austin	21, *22, 33, 43c, 49, 56
Baytown	41
Beaumont	21, *33, 50
Belton	47c
Big Spring	33
Brownsville	24c
Bryan	29c, 59
College Station	*12
Conroe	5, 42
Corpus Christi	18, *23, 27, 47, 50
Dallas	9c, *14, 32, 35, 36, 40c, 45
Decatur	30c
Del Rio	49
Denton	*43
Eagle Pass	18
El Paso	15c, 16, 17, 18, 25, *30, *39c, 51
Fort Worth	18, 19, 41, 51
Galveston	*23c, 47
Garland	24c
Greenville	46
Harlingen	31, *34, 38
Houston	*9c, 19, *24, 27c, 31, 32, 35, 38, 44c
Irving	48
Jacksonville	22
Katy	52c
Kerrville	32
Killeen	23
Lake Dallas	54
Laredo	14, 15, 19
Llano	27
Longview	52c
Lubbock	25, 27, 35c, 38, *39, 43
Lufkin	43
McAllen	46
Midland	26
Nacogdoches	18
Odessa	15, *22, 23, 31, 43c
Port Arthur	40
Rio Grande City	20
Rosenberg	46c
San Angelo	11, 16, 19
San Antonio	*16, *20, 30c, 38, 39, 48, 55, 58
Sherman	20
Snyder	10
Sweetwater	20
Temple	50
Texarkana	15

TEXAS—Continued

Community	Channel No.
Tyler	38
Victoria	15, 34
Waco	*20, 26c, 53, 57
Weslaco	13
Wichita Falls	15, 22, 28

UTAH

Community	Channel No.
Cedar City	14
Ogden	29, *34
Provo	17c, *39
Salt Lake City	27, 28, 35, 38, 40, *42
St. George	9

VERMONT

Community	Channel No.
Burlington	16, *32, 43, 53
Hartford	25
Rutland	*56
St. Johnsbury	*18
Windsor	*24

VIRGINIA

Community	Channel No.
Arlington	15c
Ashland	47
Bristol	28
Charlottesville	*14, 32
Danville	41
Fairfax	*57c
Front Royal	*21
Goldvein	*30
Grundy	49
Hampton	41
Hampton-Norfolk.	*16c
Harrisonburg	40
Lynchburg	20, 56
Manassas	43c
Marion	*42
Norfolk	38, 46, 58
Norton	*32
Petersburg	22c
Portsmouth	19, 31
Richmond	*24c, 25, 26, *44, 54
Roanoke	*3, 17, 18, 30, 36
Staunton	*11
Virginia Beach	29

WASHINGTON

Community	Channel No.
Bellevue	32, 50
Bellingham	19, 35
Centralia	*19
Everett	31
Kennewick	44
Pasco	18
Pullman	*17
Richland	26c, *38
Seattle	25, 38, 39, *41, 44, 48

WASHINGTON—Continued

Community	Channel No.
Spokane	13, 15, 20, 30, 36, *39
Tacoma	14, 18, *27, 36, *42
Vancouver	48
Wenatchee	46c
Yakima	14, 16, *21, 33

WEST VIRGINIA

Community	Channel No.
Bluefield	14, 46
Charleston	19, 39, 41
Clarksburg	28, 52
Grandview	*53
Huntington	23, *34c, 54
Lewisburg	48
Martinsburg	12
Morgantown	*33
Oak Hill	50
Parkersburg	49
Weston	58
Wheeling	32

WISCONSIN

Community	Channel No.
Appleton	59
Chippewa Falls	49c
Eagle River	26
Eau Claire	15, 39
Fond Du Lac	44
Green Bay	23, 41, *42, 51, 56
Janesville	32
Kenosha	40
La Crosse	14, 17, *30, 53
Madison	11, 19, *20, 26, 50
Manitowoc	19
Mayville	43
Menomonie	*27
Milwaukee	*8, 22, 25c, 28, 33, 34, *35, 46, 61
Park Falls	*47
Racine	48
Rhinelander	16
Superior	19
Suring	21
Wausau	*24, 29, 40

WYOMING

Community	Channel No.
Casper	15c, 17, 18
Cheyenne	11, 28c, 30
Jackson	14
Lander	7, *8
Rawlins	9
Riverton	16
Rock Springs	21
Sheridan	21

GUAM

Community	Channel No.
Agana	2, 4, 5

GUAM—Continued

Community	Channel No.
Tamuning	17

PUERTO RICO

Community	Channel No.
Aguada	52
Aguadilla	17c, *34, 69
Arecibo	53, 61c
Bayamon	59c
Caguas	56, *57
Carolina	51
Fajardo	*16c, 33
Guayama	45
Humacao	49
Mayaguez	23c, 29c, 35c, 63
Naranjito	65c
Ponce	15c, 19, *25, 43c, 47, 66
San Juan	21, 27c, 28, 31c, 32, *55c
San Sebastian	39c
Yauco	41c

VIRGIN ISLANDS

Community	Channel No.
Charlotte Amalie	*44, 48, 50
Christiansted	5, 20

(c) *Availability of channels.* Applications may be filed to construct DTV broadcast stations only on the channels designated in the DTV Table of Allotments set forth in paragraph (b) of this section, and only in the communities listed therein. Applications that fail to comply with this requirement, whether or not accompanied by a petition to amend the DTV Table, will not be accepted for filing. However, applications specifying channels that accord with publicly announced FCC Orders changing the DTV Table of Allotments will be accepted for filing even if such applications are tendered before the effective dates of such channel change. An application for authority to construct a DTV station on an allotment in the initial DTV table may only be filed by the licensee or permittee of the analog TV station with which that initial allotment is paired, as set forth in Appendix B of the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket 87–268, FCC 98–24 (*Memorandum Opinion and Order*) adopted January 29, 1998. Copies of the *Memorandum Opinion and Order* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., N.W., Dockets Branch (Room 239), Washington, DC, 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov. Applications may also be filed to implement an exchange of channel allotments between two or more licensees or permittees of analog TV stations in the same community, the same market, or in adjacent markets provided, however, that the other requirements of this section and § 73.623 are met with respect to each such application.

(d) *Reference points and distance computations.*

(1) The reference coordinates of a DTV allotment included in the initial DTV Table of Allotments are the coordinates of the authorized transmitting antenna site of the associated analog TV station, as set forth in Appendix B of the *Memorandum Opinion and Order* (referenced above). An application for authority to construct or modify DTV facilities on such an allotment may specify an alternate location for the DTV transmitting antenna that is within 5 kilometers of the DTV allotment reference coordinates without consideration of electromagnetic interference to other DTV or analog TV broadcast stations, allotments or applications, provided the application complies with paragraph (f)(2) of this section. Location of the transmitting antenna of such a station at a site more than 5 kilometers from the DTV allotment reference coordinates must comply with the provisions of section 73.623(c). In the case where a DTV station has been granted authority to construct more than 5 kilometers from its reference coordinates pursuant to section 73.623(c), and its authorized coverage area extends in any azimuthal direction beyond the DTV coverage area determined for the DTV allotment reference facilities, then the coordinates of such authorized site are to be used in addition to the coordinates of the DTV allotment to determine protection from new DTV allotments pursuant to § 73.623(d) and from subsequent DTV applications filed pursuant to § 73.623(c).

(2) The reference coordinates of a DTV allotment not included in the initial DTV Table of Allotments shall be the authorized transmitter site, or, where such a transmitter site is not available for use as a reference point, the coordinates as designated in the FCC order modifying the DTV Table of Allotments.

(e) *DTV Service Areas.*

(1) The service area of a DTV station is the geographic area within the station's noise-limited F(50,90) contour where its signal strength is predicted to exceed the noise-limited service level. The noise-limited contour is the area in

which the predicted F(50,90) field strength of the stations's signal, in dB above 1 microvolt per meter (dBu) as determined using the method in section 73.625(d), exceeds the following levels (these are the levels at which reception of DTV service is limited by noise):

	dBu
Channels 2–6	28
Channels 7–13	36
Channels 14–69	41

Within this contour, service is considered available at locations where the station's signal strength, as predicted using the terrain dependent Longley-Rice point-to-point propagation model, exceeds the levels above. Guidance for evaluating coverage areas using the Longley-Rice methodology is provided in *OET Bulletin No. 69*. Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., N.W., Dockets Branch (Room 239), Washington, DC, 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov.

Note to paragraph (e)(1): During the transition, in cases where the assigned power of a UHF DTV station in the initial DTV Table is 1000 kW, the Grade B contour of the associated analog television station, as authorized on April 3, 1997, shall be used instead of the noise-limited contour of the DTV station in determining the DTV station's service area. In such cases, the DTV service area is the geographic area within the station's analog Grade B contour where its DTV signal strength is predicted to exceed the noise-limited service level, *i.e.* 41 dB, as determined using the Longley-Rice methodology.

(2) For purposes of determining whether interference is caused to a DTV station's service area, the maximum technical facilities, *i.e.*, antenna height above average terrain (antenna HAAT) and effective radiated power (ERP), specified for the station's allotment are to be used in determining its service area.

(f) DTV maximum power and antenna heights.

(1) The maximum, or reference, effective radiated power (ERP) and antenna height above average terrain (antenna HAAT) for an allotment included in the initial DTV Table of Allotments are set forth in Appendix B of the *Memorandum Opinion and Order* (referenced in paragraph (c) of this section). In each azimuthal direction, the reference ERP value is based on the antenna HAAT of the corresponding analog TV station and achieving predicted coverage equal to that analog TV station's predicted Grade B contour, as defined in section 73.683.

(2) An application for authority to construct or modify DTV facilities will not be subject to further consideration of electromagnetic interference to other DTV or analog TV broadcast stations, allotments or applications, provided that:

(i) The proposed ERP in each azimuthal direction is equal to or less than the reference ERP in that direction; and

(ii) The proposed antenna HAAT is equal to or less than the reference antenna HAAT or the proposed antenna HAAT exceeds the reference antenna HAAT by 10 meters or less and the reference ERP in paragraph (f)(2)(i) of this section is adjusted in accordance with paragraph (f)(3) of this section; and

(iii) The application complies with the location provisions in paragraph (d)(1) of this section.

(3)(i) A DTV station may increase its antenna HAAT by up to 10 meters from that specified in Appendix B if it reduces its DTV power to a level at or below the level of adjusted DTV power computed in the following formula:

ERP adjustment in dB = $20\log(H_1/H_2)$
Where H_1 = Reference antenna HAAT specified in the DTV Table, and H_2 = Actual antenna HAAT

(ii) Alternatively, a DTV application that specifies an antenna HAAT within 25 meters below that specified in Appendix B may adjust its power upward to a level at or below the adjusted DTV power in accordance with the formula in paragraph (f)(3)(i) of this section without an interference showing. For a proposed antenna more than 25 meters below the reference antenna HAAT, the DTV station may increase its ERP up to the level permitted for operation with an antenna that is 25 meters below the station's reference antenna HAAT.

(4) UHF DTV stations may request an increase in power, up to a maximum of 1000 kW ERP, to enhance service within their authorized service area through use of antenna beam tilting in excess of 1 degree, as follows:

(i) Field strengths at the outer edge of the station's service area shall be no greater than the levels that would exist if the station were operating at its assigned DTV power.

(ii) Where a station operates at higher power under the provisions of this paragraph, its field strengths at the edge of its service area are to be calculated assuming 1 dB of additional antenna gain over the antenna gain pattern specified by the manufacturer.

(iii) Where a first adjacent channel DTV station or allotment is located closer than 110 km or a first adjacent channel analog TV station is located closer than 106 km from the proposed transmitter site, the application must be accompanied by a technical showing that the proposed operation complies with the technical criteria in § 73.623(c) and thereby will not result in new interference exceeding the *de minimis* standard for new interference set forth in that section, or statements from affected stations agreeing to the proposed operation in accordance with § 73.623(f).

(iv) A licensee desiring to operate at higher power under these provisions shall submit, with its initial application for a DTV construction permit or subsequent application to modify its DTV facilities, an engineering analysis demonstrating that the predicted field strengths and predicted interference within its service area would comport with the requirements of this paragraph. The licensee also must notify, by certified mail, all stations that could potentially be affected by such operation at the time the station files its application for a construction permit or modification of facilities. Potentially affected stations to be notified include stations on co-channel and first-adjacent channel allotments that are located at distances less than the minimum geographic spacing requirements in § 73.623(d)(2). For example, in Zone I a co-channel DTV station within 196.3 km or a first-adjacent channel DTV station within 110 km must be notified. A station that believes that its service is being affected beyond the *de minimis* standard set forth in § 73.623(c) may file an informal objection with the Commission. Such an informal objection shall include an engineering analysis demonstrating that additional impermissible interference would occur. The Commission may condition grant of authority to operate at increased power pursuant to this provision on validation of actual performance through field measurements.

(5) Licensees and permittees assigned a DTV channel in the initial DTV Table of Allotments may request an increase in either ERP in some azimuthal direction or antenna HAAT, or both, that exceed the initial technical facilities specified for the allotment in Appendix B of the *Memorandum Opinion and Order* (referenced in paragraph (c) of this section), up to the maximum permissible limits on DTV power and antenna height set forth in paragraph (f)(6), (f)(7), or (f)(8) of this section, as appropriate, or up to that needed to provide the same geographic coverage area as the largest station within their market, whichever would

allow the largest service area. Such requests must be accompanied by a technical showing that the increase complies with the technical criteria in § 73.623(c), and thereby will not result in new interference exceeding the *de minimis* standard set forth in that section, or statements agreeing to the change from any co-channel or adjacent channel stations that might be affected by potential new interference, in accordance with § 73.623(f). In the case where a DTV station has been granted authority to construct pursuant to § 73.623(c), and its authorized coverage area extends in any azimuthal direction beyond the DTV coverage area determined for the DTV allotment reference facilities, then the authorized DTV facilities are to be used in addition to the assumed facilities of the initial DTV allotment to determine protection from new DTV allotments pursuant to § 73.623(d) and from subsequent DTV applications filed pursuant to § 73.623(c). The provisions of this paragraph regarding increases in the ERP or antenna height of DTV stations on channels in the initial DTV Table of Allotments shall also apply in cases where the licensee or permittee seeks to change the station's channel as well as alter its ERP and antenna HAAT. Licensees and permittees are advised that where a channel change is requested, it may, in fact, be necessary in specific cases for the station to operate with reduced power, a lower antenna, or a directional antenna to avoid causing new interference to another station.

(6) A DTV station that operates on a channel 2–6 allotment created subsequent to the initial DTV Table will be allowed a maximum ERP of 10 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 45 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III. A DTV station that operates on a channel 2–6 allotment included in the initial DTV Table of Allotments may request an increase in power and/or antenna HAAT up to these maximum levels, provided the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) At higher HAAT levels, such DTV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 2–6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	[illegible]
365	31
335	37
305	45

(ii) For DTV stations located in Zone I that operate on channels 2–6 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=92.57-33.24*\log_{10}(HAAT)$

(iii) For DTV stations located in Zone II or III that operate on channels 2–6 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=57.57-17.08*\log_{10}(HAAT)$

(7) A DTV station that operates on a channel 7–13 allotment created subsequent to the initial DTV Table will be allowed a maximum ERP of 30 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 160 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III. A DTV station that operates on a channel 7–13 allotment included in the initial DTV Table of Allotments may request an increase in power and/or antenna HAAT up to these maximum levels, provided the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) At higher HAAT levels, such DTV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS IN ZONES II OR III ON CHANNELS 7–13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	[illegible]
425	76
395	92
365	110
335	132
305	160

(ii) For DTV stations located in Zone I that operate on channels 7–13 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=97.35-33.24*\log_{10}(HAAT)$

(iii) For DTV stations located in Zone II or III that operate on channels 7–13 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=62.34-17.08*\log_{10}(HAAT)$

(8) A DTV station that operates on a channel 14–59 allotment created subsequent to the initial DTV Table will be allowed a maximum ERP of 1000 kW if their antenna HAAT is at or below 365 meters. A DTV station that operates on a channel 14–59 allotment included in the initial DTV Table of Allotments may request an increase in power and/or antenna HAAT up to these maximum levels, provided the increase also complies with the provisions of paragraph (f)(5) of this section.

(i) At higher HAAT levels, such DTV stations will be allowed to operates with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS ON CHANNELS 14–59, ALL ZONES

Antenna HAAT (meters)	ERP (kW)
610	316
580	350
550	400
520	460
490	540

MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR DTV STATIONS ON CHANNELS 14–59, ALL ZONES—Continued

Antenna HAAT (meters)	ERP (kW)
460	630
425	750
395	900
365	1000

(ii) For DTV stations located in Zone I, II or III that operate on channels 14–59 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max}=72.57-17.08*\log_{10}(HAAT)$

(g) *DTV stations operating on channels above an analog TV station.*

(1) DTV stations operating on a channel allotment designated with a "c" in paragraph (b) of this section must maintain the pilot carrier frequency of the DTV signal 5.082138 MHz above the visual carrier frequency of any analog TV broadcast station that operates on the lower adjacent channel and is located within 88 kilometers. This frequency difference must be maintained within a tolerance of ±3 Hz.

(2) Unless it conflicts with operation complying with paragraph (g)(1) of this section, where a low power television station or TV translator station is operating on the lower adjacent channel within 32 km of the DTV station and notifies the DTV station that it intends to minimize interference by precisely maintaining its carrier frequencies, the DTV station shall cooperate in locking its carrier frequency to a common reference frequency and shall be responsible for any costs relating to its own transmission system in complying with this provision.

(h)(1) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Attenuation in dB = $-11.5(\Delta f + 3.6)$;
Where: Δf = frequency difference in MHz from the edge of the channel.

(2)This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

3. Section 73.623 is amended by revising paragraphs (c), (d), (e) and (f) to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

* * * * *

(c) *Minimum technical criteria for modification of DTV allotments included in the initial DTV Table of Allotments and for applications filed pursuant to this section.* No petition to modify a channel allotment included in the initial DTV Table of Allotments or application for authority to construct or modify a DTV station assigned to such an allotment, filed pursuant to this section, will be accepted unless it shows compliance with the requirements of this paragraph.

(1) Requests filed pursuant to this paragraph must demonstrate compliance with the principal community coverage requirements of section 73.625(a).

(2) Requests filed pursuant to this paragraph must demonstrate that the requested change would not result in more than an additional 2 percent the population served by another station being subject to interference; provided, however, that no new interference may be caused to any station that already experiences interference to 10 percent or more of its population or that would result in a station receiving interference in excess of 10 percent of its population. The station population values for existing NTSC service and DTV service contained in Appendix B of the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87–268, FCC 98–24, adopted January 29, 1998, referenced in § 73.622(c), are to be used for the purposes of determining whether a power increase or other change is permissible under this de minimis standard. For evaluating compliance with this requirement, interference to populations served is to be predicted based on the procedure set forth in *OET Bulletin No. 69,* including population served within service areas determined in accordance with section 73.622(e), consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., N.W., Dockets Branch (Room 239), Washington, DC 20554. These documents are also available through the Internet on the *FCC Home Page* at http://www.fcc.gov. The threshold levels at which interference is considered to occur are:

	D/U Ratio
Co-channel:	
DTV-into-analog TV	+34
Analog TV-into-DTV	+2
DTV-into-DTV	+15
First Adjacent Channel:	
Lower DTV-into-analog TV	−14
Upper DTV-into-analog TV	−17
Lower analog TV-into-DTV	−48
Upper analog TV-into-DTV	−49
Lower DTV-into-DTV	−28
Upper DTV-into-DTV	−26
Other Adjacent Channel (Channels 14–69 only)	
DTV-into-analog TV, where N = analog TV channel and DTV Channel:	
N–2	−24
N+2	−28
N–3	−30
N+3	−34
N–4	−34
N+4	−25
N–7	−35
N+7	−43
N–8	−32
N+8	−43
N+14	−33
N+15	−31

(3) The values in paragraph (c)(2) of this section for co-channel interference to DTV service are only valid at locations where the signal-to-noise ratio is 28 dB or greater for interference from DTV and 25 dB or greater for interference from analog TV service. At the edge of the noise-limited service area, where the signal-to-noise (S/N) ratio is 16 dB, these values are 21 dB and 23 dB for interference from analog TV and DTV, respectively. At locations where the S/N ratio is greater than 16 dB but less than 28 dB, D/U values for co-channel interference to DTV are as follows:

(i) For DTV-to-DTV interference, the minimum D/U ratios are computed from the following formula:

$D/U = 15+10\log_{10}[1.0/(1.0-10^{-S/10})]$

Where x = S/N–15.19 (minimum signal to noise ratio)

(ii) For analog-to-DTV interference, the minimum D/U ratios are found from the following Table (for values between measured values, linear interpolation can be used):

Signal-to-noise ratio (dB)	Desired-to-undesired ratio (dB)
16.00	21.00
16.35	19.94
17.35	17.69
18.35	16.44
19.35	7.19
20.35	4.69
21.35	3.69
22.35	2.94
23.35	2.44
25.00	2.00

(4) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in paragraph (c)(2) of this section shall not be applicable to these pairs of channels (see § 73.603(a)).

(d) *Minimum geographic spacing requirements for DTV allotments not included in the initial DTV Table of Allotments.* No petition to add a new channel to the DTV Table of Allotments or modify an allotment not included in the initial DTV Table will be accepted unless it shows compliance with the requirements of this paragraph.

(1) Requests filed pursuant to this paragraph must demonstrate compliance with the principle community coverage requirements of section 73.625(a).

(2) Requests filed pursuant to this paragraph must meet the following requirements for geographic spacing with regard to all other DTV stations, DTV allotments and analog TV stations:

Channel relationship	Separation requirement
VHF Channels 2–13:	
Co-channel, DTV to DTV	Zone I: 244.6 km. Zones II & III: 273.6 km.
Co-channel, DTV to analog TV	Zone I: 244.6 km. Zone II & III: 273.6 km.
Adjacent Channel:	
DTV to DTV	No allotments permitted between: Zone I: 20 km and 110 km. Zones II & III: 23 km and 110 km.
DTV to analog TV	No allotments permitted between: Zone I: 9 km and 125 km. Zone II & III: 11 km and 125 km.
UHF Channels:	
Co-channel, DTV to DTV	Zone I: 196.3 km. Zone II & III: 223.7 km.
Co-channel, DTV to analog TV	Zone I: 217.3 km. Zone II & III: 244.6 km.
Adjacent Channel:	
DTV to DTV	No allotments permitted between: All Zones: 24 km and 110 km.
DTV to analog TV	No allotments permitted between: All Zones: 12 km and 106 km.
Taboo Channels, DTV to analog TV only (DTV channels +/–2, +/–3, +/–4, +/–7, +/–8, and 14 or 15 channels above the analog TV channel).	No allotments permitted between: Zone I: 24.1 km and 80.5 km. Zone II & III: 24.1 km and 96.6 km.

(3) Zones are defined in § 73.609. The minimum distance separation between a DTV station in one zone and an analog TV or DTV station in another zone shall be that of the zone requiring the lower separation.

(4) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum geographic spacing requirements specified in paragraph (d)(3) of this section shall not be applicable to these pairs of channels (§ 73.603(a)).

(e) *Protection of land mobile operations on channels 14–20.* The Commission will not accept petitions to amend the DTV Table of Allotments, applications for new DTV stations, or applications to change the channel or location of authorized DTV stations that would use channels 14–20 where the distance between the DTV reference point as defined in section 73.622(d), would be located less than 250 km from the city center of a co-channel land mobile operation or 176 km from the city center of an adjacent channel land mobile operation. Petitions to amend the DTV Table, applications for new DTV stations, or requests to modify the DTV Table that do not meet the minimum DTV-to-land mobile spacing standards will, however, be considered where all affected land mobile licensees consent to the requested action. Land mobile operations are authorized on these channels in the following markets:

City	Channels	Latitude	Longitude
Boston, MA	14, 16	42°21′24″	71°03′25″
Chicago, IL	14, 15	41°52′28″	87°38′22″
Dallas, TX	16	32°47′09″	96°47′37″
Houston, TX	17	29°45′26″	95°21′37″

City	Channels	Latitude	Longitude
Los Angeles, CA	14, 16, 20	34°03′15″	118°14′28″
Miami, FL	14	25°46′37″	80°11′32″
New York, NY	14, 15	40°45′06″	73°59′39″
Philadelphia, PA	19, 20	39°56′58″	75°09′21″
Pittsburgh, PA	14, 18	40°26′19″	80°00′00″
San Francisco, CA	16, 17	37°46′39″	122°24′40″
Washington, DC	17, 18	38°53′51″	77°00′33″

(f) *Negotiated agreements on interference.* Notwithstanding the minimum technical criteria for DTV allotments specified above, DTV stations operating on allotments that are included in the initial DTV Table may: operate with increased ERP and/or antenna HAAT that would result in additional interference to another DTV station or an analog TV station if that station agrees, in writing, to accept the additional interference; and/or implement an exchange of channel allotments between two or more licensees or permittees of TV stations in the same community, the same market, or in adjacent markets provided, however, that the other requirements of this section and of section 73.622 are met with respect to each such application. Such agreements must be submitted with the application for authority to construct or modify the affected DTV station or stations. The larger service area resulting from a negotiated change in ERP and/or antenna HAAT will be protected in accordance with the provisions of paragraph (c) of this section. Negotiated agreements under this paragraph can include the exchange of money or other considerations from one station to another, including payments to and from noncommercial television stations assigned reserved channels. Applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.

4. Section 73.625 is amended by adding paragraph (c)(5) to read as follows:

§ 73.625 DTV coverage of principal community and antenna system.

* * * * *

(c) * * *

* * * * *

(5) Applications proposing the use of electrical beam tilt pursuant to section 73.622(f)(4) must be accompanied by the following:

(i) Complete description of the proposed antenna system, including the manufacturer and model number. Vertical plane radiation patterns conforming with paragraphs (c)(3)(iv), (c)(3)(v) and (c)(3)(vi) of this section.

(ii) For at least 36 evenly spaced radials, including 0 degrees corresponding to true North, a determination of the depression angle between the transmitting antenna center of radiation and the radio horizon using the formula in paragraph (b)(2) of this section.

(iii) For each such radial direction, the ERP at the depression angle, taking into account the effect of the electrical beam tilt, mechanical beam tilt, if used, and directional antenna pattern if a directional antenna is specified.

(iv) The maximum ERP toward the radio horizon determined by this process must be clearly indicated. In addition, a tabulation of the relative fields representing the effective radiation pattern toward the radio horizon in the 36 radial directions must be submitted. A value of 1.0 should be used for the maximum radiation.

5. Section 73.3572 is amended by revising paragraph (a)(2) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, TV translator and TV booster applications.

(a) * * *

(2) However, if the proposed modification of facilities, other than a change in frequency, will not increase the signal range of the low power TV, TV translator or TV booster station in any horizontal direction, the modification will not be considered a major change.

(i) Provided that in the case of an authorized low power TV, TV translator or TV booster which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 or interference with broadcast or other services under § 74.703 or § 74.709, that an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1 km), will not be considered as an application for a major change in those facilities.

(ii) Provided further, that a low power TV, TV translator or TV booster station: authorized on a channel from channel 60 to 69, or which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized DTV station pursuant to § 74.706, or which is located within the distances specified below in paragraph (c) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates), may at any time file a displacement relief application for a change in output channel, together with any technical modifications which are necessary to avoid interference or continue serving the station's protected service area. Such an application will not be considered as an application for a major change in those facilities. Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications, priority will be afforded to the displacement application(s) to the exclusion of the other applications.

(iii)(A) The geographic separations to co-channel DTV facilities or allotment reference coordinates, as applicable, within which to qualify for displacement relief are the following:

(*1*) Stations on UHF channels: 265 km (162 miles)

(*2*) Stations on VHF channels 2–6: 280 km (171 miles)

(*3*) Stations on VHF channels 7–13: 260 km (159 miles)

(B) Engineering showings of predicted interference may also be submitted to justify the need for displacement relief.

(iv) Provided further, that the FCC may, within 15 days after acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of § 73.3580 of this section and § 1.1111 of this chapter pertaining to major changes.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

5. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C.154, 303, 336, and 554.

6. Section 74.706 is amended by revising paragraph (d) to read as follows:

§ 74.706 Digital TV (DTV) station protection.

* * * * *

(d) A low power TV, TV translator or TV booster station application will not be accepted if the ratio in dB of its field strength to that of the DTV station (L/D ratio) fails to meet the following:

(1) −2 dB or less for co-channel operations. This maximum L/D ratio for co-channel interference to DTV service is only valid at locations where the signal-to-noise (S/N) ratio is 25 dB or greater. At the edge of the noise-limited service area, where the S/N ratio is 16 dB, the maximum L/D ratio for co-channel interference from analog low power TV, TV translator or TV booster service into DTV service is −21 dB. At locations where the S/N ratio is greater than 16 dB but less than 25 dB, the maximum L/D field strength ratios are found from the following Table (for values between measured values, linear interpolation can be used):

Signal-to-Noise Ratio(dB)	Low Power-to-DTV Ratio(dB)
16.00	21.00
16.35	19.94
17.35	17.69
18.35	16.44
19.35	7.19
20.35	4.69
21.35	3.69
22.35	2.94
23.35	2.44
25.00	2.00

(2) + 48 dB for adjacent channel operations at:

(i) The DTV noise-limited perimeter if a low power TV, TV translator or TV booster station is located outside that perimeter.

(ii) At all points within the DTV noise-limited area if a low power TV or TV translator is located within the DTV noise-limited perimeter, as demonstrated by the applicant.

[FR Doc. 98–6827 Filed 3–19–98; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 031398D]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Maine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces the summer flounder commercial quota available to the State of Maine has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maine for the remainder of calendar year 1998, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this announcement to advise the State of Maine that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Maine.

DATES: Effective 0001 hours, March 20, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Warren, telephone (978) 281–9347.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in Maine is 0.04756 percent, or 5,284 lb (2,397 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In calendar year 1997, a total of 2,835 lb (1,286 kg) were landed in Maine, creating a 493 lb (224 kg) overage that was deducted from the amount allocated for landings in the State during 1998 (63 FR 3478, January 23, 1998). The resulting commercial quota for Maine in 1998 is 4,791 lb (2,173 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Maine has attained its quota for 1998.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours March 20, 1998, further landings of summer flounder in Maine by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the date above, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Maine for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7345 Filed 3–17–98; 2:45 pm]
BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 63, No. 54
Friday, March 20, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AD58

Statutory Bar to Appointment of Persons Who Fail To Register Under Selective Service Law

AGENCY: Office of Personnel Management.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing its proposal to revise the regulations on Selective Service registration (published April 29, 1988, 53 FR 15400), which would have permitted executive agencies to determine whether an individual's failure to register with the Selective Service System was knowing and willful. These determinations are currently made by OPM. Because we plan to make additional changes to these regulations, we will publish a revised proposal and invite new public comment.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole on (202) 606–0830.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–7208 Filed 3–19–98; 8:45 am]

BILLING CODE 6325–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AB71

Organization; Balloting and Stockholder Reconsideration Issues

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), proposes to amend its regulations concerning Farm Credit System (System or FCS) voting ballots and the effective dates for mergers, consolidations, or transfers of direct lending authority from a Farm Credit Bank (FCB) or agricultural credit bank (ACB) to a Federal land bank association (FLBA). The proposed amendments would allow the use of identity codes on ballots, as long as the votes are tabulated by an independent third party, and would conform the scope of the regulation to statutory requirements. The amendments would also reduce the earliest effective date of a merger, consolidation, or transfer of lending authority from 50 days to 35 days after stockholder notification, or 15 days after submission of documents to the FCA for final approval, whichever occurs later. The effects of the amendments are to provide more flexibility to institutions regarding the conduct of stockholder votes, to extend security and confidentiality requirements to all stockholder votes, and to accelerate the effective date of the above-described corporate actions.

DATES: Written comments must be received on or before April 20, 1998.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, 1501 Farm Credit Drive, McLean, VA, 22102–5090 or sent by facsimile transmission to (703) 734–5784. Comments may also be submitted via electronic mail to "reg-comm@fca.gov". Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479;
or
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The FCA is continuing its efforts to reduce regulatory burdens on System institutions and to retain only regulations that: (1) Implement or interpret the Farm Credit Act of 1971, as amended (Act); or (2) protect the safety and soundness of the System. See 58 FR 34003 (June 23, 1993); 60 FR 57913 (November 24, 1995). The FCA has previously deleted a number of unnecessary or obsolete regulations and has modified others to reduce the burden of compliance. This rule is proposed in response to requests by several System institutions to revise the secret ballot procedures and to accelerate the effective date of certain corporate actions, as more fully described below.

II. Maintaining Secrecy of Ballots

Three institutions have requested that the FCA amend § 611.330 to allow FCS institutions to use identity codes on election ballots. The commenters stated that, in some elections, many stockholders who were confused by the procedures for voting by mail or proxy sent back incomplete or improperly completed ballots or proxies. As a result, their votes were not counted. The associations stated that, if the forms had contained identity codes, the stockholders in question could have been contacted before the stockholders' meeting and permitted to submit properly completed ballots or proxies. The commenters asserted their belief that identity codes, printed names on ballots, or other means of identification would not violate a voter's right to a secret ballot under section 4.20(2) of the Act, if an FCS institution: (1) Ensures that members of an independent tellers' committee abide by confidentiality restrictions; and (2) establishes ballot custody requirements.

Section 4.20 of the Act, which was amended by the Agricultural Credit Act of 1987 (1987 Act), prohibits the use of signed ballots in connection with any election or merger vote or other proceeding subject to a stockholder vote. Section 4.20 also requires FCS institutions to implement measures to protect voters' rights to a secret ballot process. In 1988, the FCA published a final rule that, among other provisions, established standards for the election of directors to comply with section 4.20. See 53 FR 50381 (December 15, 1988). Section 611.330 of that rule requires System institutions to adopt policies and procedures that assure confidentiality in the election of board members and prohibits the use of ballots

or proxy ballots that must be signed or that contain an identifying character or mark that can be used to identify how an individual stockholder's vote is cast.

The FCA proposes to amend § 611.330(b) to allow System institutions to use identity codes on ballots, provided that an independent third party tabulates the votes. The proposed regulation would also require that, in all votes in which an independent third party tabulates the votes, the independent third party must certify in writing that no information regarding how or whether a particular stockholder has voted will be disclosed to any person. However, the independent third party would be required to disclose such information to the FCA, if requested, in the event a vote is contested or otherwise.

The Agency agrees with the commenters that the use of an independent third party to review and count the votes will carry out the purpose of section 4.20 of the Act to preserve the secrecy of stockholder votes in relation to the institution, its directors, employees, and other stockholders. Examples of such third parties are outside auditors, accounting firms, or outside counsel. Tellers' committees that include stockholders or employees would not qualify as independent third parties. This proposed change will provide institutions with the opportunity to address the problem of incorrect ballots.

The FCA also proposes to modify §§ 611.330 and 611.340 to extend the confidentiality and security requirements to all stockholder votes, not just director elections. These changes will conform the scope of the regulations to section 4.20 of the Act, as described above. A provision is added requiring a 5-year retention period for records related to a vote other than a director election. The existing regulation provides for the retention of director election records until the end of the term of office of the director.

In addition, the FCA proposes nonsubstantive changes to § 611.330 regarding the confidentiality of mail or proxy ballots. These changes would clarify that, in mail or proxy balloting, institution procedures must provide for a marked mail ballot or proxy ballot to be returned to the institution in a separate sealed envelope that is placed inside of another envelope for mailing. In proxy voting, the stockholder must return the proxy authorization form along with the sealed envelope containing the proxy ballot. In mail balloting, institutions may, but are not required to, provide for stockholders to verify their eligibility to vote, as long as such verification is not on the ballot or on the sealed envelope containing the ballot. The verification could, for example, be on a separate piece of paper placed in the outside envelope or could be on the outside envelope itself.

III. Change of Effective Date for Merger, Consolidation, or Transfer of Lending Authority

Two institutions suggested that the FCA amend § 611.1122, which establishes timing and disclosure requirements for mergers of FCS institutions. One of the institutions asserted that the regulation mandates excessive periods for review and unnecessarily delays the effective date of such mergers beyond the required stockholder reconsideration period. This institution suggested that the FCA develop new procedures to expedite effective dates of mergers of FCS institutions.

Section 7.9 of the Act, as amended by the 1987 Act, provides for stockholder reconsideration of mergers or consolidations, the transfer of direct lending authority from a bank to an FLBA, and terminations of FCS status. The statute provides that, if the FCA receives a stockholder petition from at least 15 percent of the stockholders for reconsideration of a vote in favor of any such action within 30 days of the date on which stockholders are notified of the results of the vote, the institution in question must call a special stockholders' meeting to vote again on the proposed action. If a petition that meets the statutory requirements is filed, the proposed action (if approved in the second vote) cannot take effect until the expiration of 60 days after the date on which stockholders were notified of the result of the first vote.

Sections 611.505(e) and 611.1122(k), promulgated in 1988 pursuant to section 7.9 of the Act, provide that, in the case of an association merger or a transfer of direct lending authority, the effective date of the merger or transfer must be at least 50 days after the date of mailing of the notification to stockholders of the first vote. In the preamble to those regulations, the FCA explained that the period of 50 days was specified to allow for: (1) A 5-day period for delivery of the notice to stockholders; (2) a 30-day period during which stockholders may file a petition for reconsideration; and (3) fifteen (15) days after the end of the reconsideration period for the FCA to receive and review the institution's documents for final approval. See 53 FR 50389 (December 15, 1988).

At the time of the promulgation of the regulation, the FCA was of the view that a 50-day period was necessary to ensure that the Agency had adequate time to process final approval documents. However, the FCA's experience in processing the final approval documents is that its review and approval can occur during the 30-day reconsideration period if the institutions timely submit such documents to the FCA. Therefore, the FCA proposes to eliminate the additional 15 days intended for Agency review following the end of the reconsideration period and to provide that the effective date of an association merger or a transfer of lending authority may be 35 days after stockholder notification, or 15 days after submission of final documents to the FCA, whichever occurs later.

The FCA also proposes, for purposes of clarification, to restate in §§ 611.505(e) and 611.1122(k) the provision in section 7.9(b)(3)(A) of the Act that, if a valid petition for reconsideration is timely filed with the FCA, the merger or transfer of lending authority cannot take effect until the expiration of 60 days after the date on which stockholders were notified of the final result of the first vote.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0—7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Subpart C is amended by revising the heading to read as follows:

Subpart C—Election of Directors and Other Voting Procedures

3. Section 611.330 is amended by removing the word "election" and adding in its place, the word "voting" in the first sentence of paragraph (a); by removing the words "an election" and adding in their place, the words "a vote" and by removing the comma after the word "contested" in the last sentence of paragraph (a); and by revising the section heading and paragraph (b) to read as follows:

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§ 611.330 Confidentiality in voting.

* * * * *

(b) Except as provided in this paragraph, System institutions shall not use ballots or proxy ballots that must be signed by the stockholder or that contain an identifying character or mark that can be used to identify how an individual stockholder's vote is cast.

(1) Institutions may use a form of identity code on the ballot if they also provide for tabulation of the votes by an independent third party.

(2) In mail balloting, institutions may adopt procedures that require the stockholders to sign or otherwise verify their eligibility to vote, so long as the marked ballot is in a separate sealed envelope that accompanies any document that identifies the stockholder.

(3) In proxy voting, an institution's procedures shall provide that the proxy ballot be returned in a separate sealed envelope, which envelope is accompanied by a signed proxy authorization form.

(4) Where the identity of the voting stockholders is necessary to determine the voting weight of ballots, the institution shall use a form of identity code on the ballot and shall require that the votes are tabulated by an independent third party.

(5) In a vote in which identity codes are used on the ballots, the independent third party that tabulates the votes shall certify in writing that such party will not disclose to any person (including the institution, the directors, stockholders, or employees) any information regarding how or whether any stockholder has voted. However, the independent third party shall disclose such information to the Farm Credit Administration, if requested, in the event a vote is contested or otherwise.

* * * * *

4. Section 611.340 is amended by removing the words "the election of directors" and adding in their place, the word "voting" in the heading; by removing the words "the election of board members" and adding in their place, the words "a stockholder vote" in paragraph (a); by removing the word "election" and adding in its place, the word "voting" the first and last place it appears in the first sentence of paragraph (d); by removing the words "an election" and adding in their place, the words "a stockholder vote" in the last sentence of paragraph (d); by removing the word "election" and adding in its place, the word "vote" the last place it appears in the last sentence of paragraph (d); and by revising paragraph (c) to read as follows:

§ 611.340 Security in voting.

* * * * *

(c) Ballots and proxy ballots shall be physically safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the banks and associations until disposal. In an election of directors, ballots, proxy ballots and election records shall be retained until the end of the term of office of the director and promptly destroyed thereafter. In other stockholder votes, ballots, proxy ballots, and records shall be retained for at least 5 years after the vote.

* * * * *

Subpart E—Transfer of Authorities

5. Section 611.505 is amended by revising paragraph (e) to read as follows:

§ 611.505 Farm Credit Administration review.

* * * * *

(e) The effective date of a transfer shall be not less than 35 days after mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of stockholder vote, the constituent institutions shall agree on a second effective date to be used in the event the transfer is approved on reconsideration. The second effective date shall be not less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

6. Section 611.1122 is amended by revising paragraph (k) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(k) The effective date of a merger or consolidation shall be a date which is not less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after mailing of the notification to stockholders of the results of the stockholder vote, the constituent institutions shall agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date shall be not less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Dated: March 17, 1998.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 98–7342 Filed 3–19–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–59–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require an inspection to determine the material type of the stop support fittings of the main entry doors. The proposed AD also would require repetitive visual inspections to detect cracks of certain stop support fittings of the main entry doors, and replacement of any cracked stop support fitting with a certain new stop support fitting. This proposal is prompted by reports that stress corrosion cracking was found on certain stop support fittings of the main entry doors. The actions specified by the proposed AD are intended to detect and correct such stress corrosion cracking, which could lead to failure of the stop support fittings. Failure of the stop support fittings could result in loss of a main entry door and consequent rapid decompression of the airplane.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–59–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–59–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–59–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports of cracks on the stop support fittings (made from either 7079–T651 or 7075–T651 material) of the numbers 1, 2, 3, and 4 main entry doors on Boeing Model 747 series airplanes. The cause of these cracks has been attributed to stress corrosion. The effects of such stress corrosion cracking, if not detected and corrected in a timely manner, could lead to failure of the stop support fittings. Failure of the stop support fittings could result in loss of a main entry door and consequent rapid decompression of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–53–2358, dated August 26, 1993, which describes procedures for performing a high frequency eddy current (HFEC) inspection to determine the material type of the stop support fittings of the main entry doors. The service bulletin also describes procedures for repetitive visual inspections to detect cracks of the stop support fitting (not made from 7075–T73 material) of the main entry doors, and replacement of any cracked fitting with a new fitting made from 7075–T73 material. In addition, the service bulletin describes procedures for optional replacement of the stop support fittings of the main entry doors with stop support fittings made from 7075–T73 material, which would eliminate the need for repetitive inspections. The new stop support fitting is less susceptible to stress corrosion cracking.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an HFEC inspection to determine the material type of the stop support fittings of the main entry doors. The proposed AD also would require repetitive visual inspections to detect cracks of the stop support fitting (not made from 7075–T73 material) of the main entry doors, and replacement of any cracked fitting with a new fitting made from 7075–T73 material. In addition, the proposed AD provides for an optional replacement of the stop support fittings of the main entry doors with stop support fittings made from 7075–T73 material, which would constitute terminating action for the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposal and the Relevant Service Information

Operators should note that the proposed compliance time of 18 months for the repetitive inspections differs from the compliance time recommended in the referenced service bulletin. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the susceptibility of the subject area to stress corrosion cracking. In addition, the FAA finds that a compliance time of 18 months will allow the inspection to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. In consideration of these items, the FAA finds that repetitive visual inspections conducted at the proposed compliance time of 18 months will better ensure that any detrimental effect associated with stress corrosion cracking will be identified and corrected prior to the time that it could adversely affect the stop support fittings of the main entry doors.

In addition, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in the stop support fittings. The FAA has determined that, due to the safety implications and consequences associated with such cracking, all stop support fittings that are found to be cracked must be replaced prior to further flight.

Furthermore, the FAA is not proposing to mandate the replacement of stop support fittings for several reasons:

1. Accessing the stop support fittings for inspection is easily accomplished.
2. The cracked stop support fittings are easily detectable by means of a visual inspection.
3. The visual inspection will preclude the occurrence of multiple failed stop support fittings, which could result in a catastrophic failure.

The FAA also is not including the option for inspection at an initial compliance time of 6 years since date of manufacture of the airplane, as recommended by the referenced service bulletin. The FAA has determined that all affected airplanes are older than 6 years since date of manufacture of the airplane.

Other Relevant Rulemaking

The FAA has previously issued AD 92–02–01, amendment 39–8137 (57 FR 5373, February 14, 1992), which addresses cracking of certain support fittings on Boeing Model 747 series airplanes having line numbers 001 through 113 inclusive. That AD currently requires repetitive inspections for cracking of the doorstop support fittings at the forward edge of the number 5 main entry door, and replacement, if necessary.

Cost Impact

There are approximately 515 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 164 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per door to accomplish the proposed HFEC inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the HFEC inspection proposed by this AD on U.S. operators is estimated to be $60 per door.

Should an operator be required to accomplish the proposed visual inspection, it would take approximately 2 work hours per door to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection proposed by this AD on U.S. operators is estimated to be $120 per door.

Should an operator elect to accomplish the optional terminating action that would be provided by this proposed AD action, the number of hours required to accomplish it would be approximately 124 work hours per door, at an average labor rate of $60 per work hour. Required parts would cost approximately $13,000 per door. Based on these figures, the cost impact of the optional terminating action on U.S. operators is estimated to be $20,440 per door.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 97–NM–59–AD.

Applicability: Model 747–100, –100B, –200, –200B, –200C, –300, –400, and 747SR series airplanes, having line numbers 1 through 830 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct stress corrosion cracking of the stop support fittings of the main entry doors and the resultant failure of the stop support fittings, which could result in loss of a main entry door and consequent rapid decompression of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a high frequency eddy current inspection to determine the material type of the stop support fittings of the main entry doors, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2358, dated August 26, 1993.

(1) If the fitting is made from 7075–T73 material, no further action is required by this AD.

(2) If the fitting is NOT made from 7075–T73 material, prior to further flight, perform a visual inspection to detect cracks of the stop support fitting of the main entry doors, in accordance with the service bulletin.

(i) If no crack is detected, repeat the visual inspection thereafter at intervals not to exceed 18 months.

(ii) If any crack is detected, prior to further flight, replace the fitting with a stop support fitting made from 7075–T73 material, in accordance with the service bulletin.

(b) Replacement of the stop support fitting of the main entry doors with a stop support fitting made from 7075–T73 material, in accordance with Boeing Service Bulletin 747–53–2358, dated August 26, 1993, constitutes terminating action for the repetitive inspection requirements of this AD for the replaced fitting.

(c) As of the effective date of this AD, no person shall install a stop support fitting made from either 7079–T651 or 7075–T651 material on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7228 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes, and Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–139–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the 14 in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved airplane flight manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power

levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 49 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,940, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 97–NM–139–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. This action may be accomplished by inserting a copy of this AD into the AFM.

(1) For Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, insert the following:

"Warning: Ground fine pitch must not be selected in flight. This may lead to loss of control from which recovery may not be possible."

(2) For Model F27 Mark 050 series airplanes, insert the following:

"Warning: Do not attempt to select ground idle in flight. In case of failure of the flight idle stop, this would lead to loss of control from which recovery may not be possible."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, tandardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7227 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–15–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require replacing certain toilet rinse valves with modified rinse valves. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent water contamination of the avionics computers, which could result in the display of erroneous or misleading information to the flightcrew, and consequent reduced controllability of the airplane.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that it has received a report indicating that water can leak from the rinse valve of the forward lavatory toilet bowl, and flow down into the flight compartment and possibly onto the avionics computers during nose-down maneuvers. The rinse valve can malfunction in such a way that it allows contaminated waste and corrosion to build up on the inside of the valve, which can allow water to overflow from the toilet bowl and onto the avionics computers. This condition, if not corrected, could result in the display of erroneous or misleading information to the flightcrew, and reduced consequent controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–38–1049, dated January 22, 1997, which describes procedures for replacing certain Monogram toilet rinse valves with modified rinse valves. The modification consists of installation of improved armature elbow assemblies in the rinse valves. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Airbus service bulletin references Monogram Sanitation Service Bulletin 15800–38–06A, Revision 2, dated July 7, 1997, as an additional source of service information.

The DGAC classified Airbus Service Bulletin A320–38–1049, dated January 22, 1997, as mandatory and issued French airworthiness directive 97–269–103(B), dated September 24, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified the Airbus service bulletin described previously.

Cost Impact

The FAA estimates that 16 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,760, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 98–NM–15–AD.

Applicability: Model A319, A320, and A321 series airplanes; equipped with Monogram rinse valves having part number (P/N) 15800–348, Revision C; and on which Airbus Modification 26145 (reference Airbus Service Bulletin A320–38–1049) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent water contamination of the avionics computers, which could result in the display of erroneous or misleading information to the flightcrew, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace all Monogram toilet rinse valves having P/N 15800–348, Revision C, with modified rinse valves in accordance with Airbus Service Bulletin A320–38–1049, dated January 22, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–269–103(B), dated September 24, 1997.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7224 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–17–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes. This proposal would require repetitive visual inspections to detect corrosion on the lower rim area of the fuselage rear pressure bulkhead; and follow-on actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion at the lower rim area of the fuselage rear pressure bulkhead, which could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–17–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The DGAC advises that, during routine maintenance, severe

corrosion was found in the lower rim area of the aft pressure bulkhead between stringer 27, on the left- and right-hand sides of the airplane. The corrosion was found in two separate areas: on the inner rim angle of the bulkhead in the area of the drainhole, and in the cleat profile splice at the airplane centerline. The corrosion on the inner rim angle of the bulkhead has been attributed to damage of the surface protection when cleaning the drainholes or during the modifications specified in Airbus Service Bulletin A310–53–2025 or A300–53–6006. The corrosion of the cleat profile splice has been attributed to clogged drainholes or incomplete adhesion of sealant during accomplishment of the modifications specified in the service bulletins. Such corrosion, if not detected and corrected in a timely manner, could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A310–53–2092 (for Model A310 series airplanes) and A300–53–6066 (for Model A300–600 series airplanes), both dated October 16, 1996. These service bulletins describe procedures for repetitive visual inspections to detect corrosion on the lower rim area of the fuselage rear pressure bulkhead; and follow-on corrective actions (which include removal of corrosion and repair), if necessary. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–061–212(B), dated February 26, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, unlike the procedures previously described in Airbus Service Bulletins A310–53–2092 (for Model A310 series airplanes) and A300–53–6066 (for Model A300–600 series airplanes), both dated October 16, 1996, this proposed AD would not permit further flight if corrosion is detected. The FAA has determined that, because of the safety implications and consequences associated with such corrosion, any subject part of the fuselage and aft pressure bulkhead that is found to have corrosion must be repaired prior to further flight.

Cost Impact

The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 62 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $334,800, or $3,720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AIRBUS: Docket 98–NM–17–AD.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modification 6788 has not been accomplished; certificated in any category.

NOTE 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion at the lower rim area of the fuselage rear pressure bulkhead, which could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin, accomplish the following:

(a) Within 18 months after the effective date of this AD: Except as provided by paragraph (b) of this AD, perform a visual inspection to detect corrosion of the lower rim area of the aft pressure bulkhead, in accordance with Airbus Service Bulletin A310–53–2092 (for Model A310 series

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airplanes) or Airbus Service Bulletin A300–53–6066 (for Model A300–600 series airplanes), both dated October 16, 1996, as applicable. If any discrepancy is found, prior to further flight, repair in accordance with the applicable service bulletin. Thereafter, repeat the inspection at the interval specified in paragraph (a)(1) or (a)(2), as applicable.

(1) For airplanes on which Airbus Service Bulletin A310–53–2036 or A300–53–6017 has not been accomplished: Repeat the inspection at intervals not to exceed 3 years.

(2) For airplanes on which Airbus Service Bulletin A310–53–2036 or A300–53–6017 has been accomplished: Repeat the inspection at intervals not to exceed 5 years.

(b) If any discrepancy is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–061–212(B), dated February 26, 1997.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7223 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–24–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–300 and –320, and Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–300 and –320, and Model ATR72 series airplanes. This proposal would require modification of the engine fuel drainage system. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fuel from overflowing into the engine nacelle, which could result in a fire in the nacelle.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–24–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–300 and –320, and Model ATR72 series airplanes. The DGAC advises that the existing design of the engine fuel drainage system could allow the drainage system to clog. If the engine fuel drainage system is clogged, fuel leakage from the nozzles or turbine may result in fuel overflowing into the engine nacelle. This condition, if not corrected, could result in a fire in the nacelle.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin ATR42–71–0010, Revision 4, dated October 23, 1996 (for Model ATR42 series airplanes), which describes procedures for modifying the engine fuel drainage system to allow improved drainage. This modification involves bypassing the manifold by disconnecting the drain pipe from the engine nozzle to the manifold, installing a plug on the manifold where the drain pipe was connected, and connecting a new drain hose from the engine nozzle drain point directly to the breather tube outlet.

Aerospatiale also has issued Service Bulletin ATR72–71–1006, Revision 1, dated October 21, 1996 (for Model ATR72 series airplanes), which describes procedures for modifying the engine fuel drainage system. This modification involves isolating the engine turbine drain pipe from the collector manifold by installing a new

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drain pipe, which bypasses the manifold.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 96–109–063 (B) and 96–110–030 (B), both dated June 5, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 145 airplanes of U.S. registry would be affected by this proposed AD.

For Model ATR42–300 and –320 series airplanes (106 airplanes), it would take approximately 8 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $50,880, or $480 per airplane.

For Model ATR72 series airplanes (39 airplanes), it would take approximately 15 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,499 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $93,561, or $2,399 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 98–NM–24–AD.

Applicability: Model ATR42–300 and –320 series airplanes, on which Aerospatiale Modification 1696 (reference Aerospatiale Service Bulletin ATR42–71–0010) has not been accomplished; and Model ATR72–101, –201, –102, –202, –211, and –212 series airplanes, on which Aerospatiale Modification 3742 (reference Aerospatiale Service Bulletin ATR72–71–1006) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel from overflowing into the engine nacelle, which could result in a fire in the nacelle, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the engine fuel drainage system, in accordance with Aerospatiale Service Bulletin ATR42–71–0010, Revision 4, dated October 23, 1996 (for Model ATR42 series airplanes), or Aerospatiale Service Bulletin ATR72–71–1006, Revision 1, dated October 21, 1996 (for Model ATR72 series airplanes), as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 96–109–063 (B) and 96–110–030 (B), both dated June 5, 1996.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7222 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–26–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require replacement of the existing mounting rack for the Digital Flight Data Recorder (DFDR) with a new rack having improved damping, and installation of a new bracket for re-routing the wiring harness. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the possible loss of data recorded on the DFDR as a result of vibrations and/or accelerations during flight.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, when using the standard LORAL Ground Support Equipment (GSE) for data retrieval, the data may not be successfully retrieved by the GSE when the data has been recorded under dynamic conditions (such as vibrations or accelerations) that may occur during airplane operation. This condition, if not corrected, could result in the loss of data recorded on the Digital Flight Data Recorder (DFDR).

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–31–1088, Revision 2, dated September 16, 1996, which describes procedures for replacement of the existing mounting rack for the DFDR with a new rack having improved capability for damping of vibration; and installation of a new bracket for re-routing the wiring harness of the DFDR. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–272–098(B)R1, dated January 2, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be furnished by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,920, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98–NM–26–AD.

Applicability: Model A320 series airplanes; equipped with a LORAL Digital Flight Data Recorder (DFDR), and on which Airbus Modification 24959 (Airbus Service Bulletin A320–31–1088, Revision 1, dated September 16, 1996) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possible loss of data recorded on the DFDR as a result of vibrations and/or accelerations during flight, accomplish the following:

(a) Within 15 months after the effective date of this AD, remove the existing DFDR vibration mounting rack, install a new rack having improved damping, and install a new bracket for re-routing of the cable harness, in accordance with Airbus Service Bulletin A320–31–1088, Revision 2, dated September 16, 1996.

(b) As of the effective date of this AD, no person shall install a DFDR rack having part number 404–050L1DPX2–1 or V2E2433L07F, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–272–098(B)R1, dated January 2, 1997.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7213 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–40–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require a one-time inspection of the double shuttle valve in the upper fuselage fairing for incorrectly labeled part numbers, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure replacement of the double shuttle valves when they have reached their maximum life limit; incorrectly labeled part numbers of the double shuttle valves that are not replaced could result in the failure of the roll control spoilers, and, consequently, lead to reduced controllability of the airplane.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be

considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–40–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–40-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received a report indicating that, during an inspection of an in-service airplane, the double shuttle valves in the upper fuselage fairing were found to have exceeded their maximum life limit due to the inability of maintenance personnel to identify the correct part numbers. If the double shuttle valves are not replaced in a timely manner, the roll control spoilers could fail, and, consequently, lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–27–236, Revision 1, dated November 5, 1997, which describes procedures for performing a one-time visual inspection of the double shuttle valve in the upper fuselage fairing for incorrectly labeled part numbers. The service bulletin also describes procedures for revising the valve identification label of incorrectly labeled double shuttle valves, and deleting any reference to operating pressure (i.e., BAR 205). In addition, the service bulletin describes procedures for verifying that incorrectly labeled double shuttle valves are within certain time limits, and replacing any double shuttle value that is outside that limit with a new part. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 1997–321/2, dated January 15, 1998, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GmbH: Docket 98–NM–40–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3086 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure replacement of the double shuttle valves when they have reached their maxmimum life limit, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection of the double shuttle valve in the upper fuselage fairing to determine if the part number of the valve is labeled correctly, in accordance with Dornier Service Bulletin SB–328–27–236, Revision 1, dated November 5, 1997.

(b) If the inspection required by paragraph (a) of this AD reveals that the installed double shuttle valve is labeled incorrectly, prior to further flight, accomplish paragraphs (b)(1) and (b)(2) of this AD, in accordance with Dornier Service Bulletin SB–328–27–236, Revision 1, dated November 5, 1997.

(1) Revise the valve identification label to correctly identify the part number of the double shuttle valve, and delete any reference to operating pressure (i.e., BAR 205).

(2) Verify that the installed valve is within the limits specified for that particular part number in accordance with the service bulletin. If the installed double shuttle valve is outside the limits, prior to further flight, replace the double shuttle valve with a new part.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directive 1997–321/2, dated January 15, 1998.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7212 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–20–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. This proposal would require repetitive inspections to detect fatigue cracking of certain fuselage skin panels, and repair, if necessary. For certain airplanes, the proposed AD also provides for an optional preventative modification, which, if accomplished, would terminate the repetitive inspections. This proposal is prompted by reports of fatigue cracking of certain fuselage skin panels. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the airplane, and consequent loss of pressurization.

DATES: Comments must be received by May 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–20–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, ept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90846; telephone (562) 627–5237; fax (562)–627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–20–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–20–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fatigue cracking of the fuselage skin has been detected on several McDonnell Douglas Model DC–9–30 series airplanes. The cracking was located along the line of attachments that secure the fuselage skin to longeron 22. The cracking emanated from multiple attachment holes at 45-degree angles. On one airplane, cracking extended for approximately 12 inches in length. Investigation and laboratory analysis of skin segments have revealed that the cracking was due to material fatigue. Furthermore, during repair of one airplane, additional damage was

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found on longerons 23L and 24L at station Y=200.000. The affected airplanes had accumulated between 44,618 and 74,043 flight hours, and 45,210 and 88,093 landings at the time of inspection. Fatigue cracking of certain fuselage skin panels, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane, and consequent loss of pressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas MD–80 Service Bulletin 53–253, dated March 31, 1994. The service bulletin describes procedures for performing repetitive high frequency eddy current (HFEC) inspections to detect fatigue cracking of the forward lower left fuselage skin panels between stations Y=160.000 and Y=200.000; and repair, if necessary. The service bulletin describes procedures for a permanent repair for cracking within certain limitations, which would eliminate the need for repetitive HFEC inspections. Additionally, the service bulletin describes procedures for an optional preventative modification for airplanes on which no cracking is detected. The preventative modification includes cold working holes and installing oversize fasteners, which would minimize the possibility of cracking. Accomplishment of the preventative modification would eliminate the need for the repetitive HFEC inspections.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive HFEC inspections to detect fatigue cracking of the forward lower left fuselage skin panels between station Y=160.000 and Y=200.000; and repair, if necessary. The proposed AD also provides for an optional preventative modification for airplanes on which no cracking is detected, which, if accomplished, would terminate the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between this Rule and the Relevant Service Bulletin

Operators should note that, although the service bulletin recommends contacting the manufacturer for any cracking that extends forward of frame station Y=160.000 or aft of station Y=200.000, this proposed AD requires that such cracking be repaired in accordance with a method approved by the FAA.

Cost Impact

There are approximately 1,200 McDonnell Douglas Model DC–9–80 and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 800 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $1,152,000, or $1,440 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 97–NM–20–AD.

Applicability: Model DC–9–80 series airplanes and Model MD–88 airplanes, as listed in McDonnell Douglas Service Bulletin 53–253, dated March 31, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of pressurization due to reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 44,500 total landings, or within 4,500 landings after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current (HFEC) inspection to detect fatigue cracking of the fuselage skin panels between stations Y=160.000 and Y=200.000 at the left side of longeron 22 below the airstair door cutout, in accordance with McDonnell Douglas Service Bulletin 53–253, dated March 31, 1994.

(b) If no cracking is detected, accomplish the actions specified in either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin 53–253, dated March 31, 1994, at the time specified.

(1) Perform the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 4,500 landings until the requirements of paragraph (b)(2) of this AD have been accomplished. Or,

(2) Prior to further flight, install the preventative modification in accordance with the service bulletin. Accomplishment of the preventative modification prior to detection of any cracking constitutes terminating action for the repetitive inspection requirements of this AD.

(c) If any cracking is detected within frame stations Y=160.000 and Y=200.000, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD, in

accordance with McDonnell Douglas Service Bulletin 53–253, dated March 31, 1994.

(1) Accomplish the actions specified in paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD at the times specified.

(i) Prior to further flight, install the temporary repair in accordance with the service bulletin.

(ii) Within 3,000 landings after installation of the temporary repair, and thereafter, at intervals not to exceed 3,000 landings, perform visual inspections to detect cracking of the repaired area, in accordance with the service bulletin.

(iii) Within 4,500 landings after installation of the temporary repair, and thereafter, at intervals not to exceed 4,500 landings, perform HFEC inspections to detect cracking of any area not covered by the temporary doubler repair, in accordance with the service bulletin.

(iv) Within 6,000 landings after installation of the temporary repair, accomplish the permanent repair in accordance with the service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspection requirements of this AD.

(2) Prior to further flight, accomplish the permanent repair in accordance with the service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspection requirements of this AD.

(d) If any cracking is detected that extends forward of station Y=160.000 or aft of station Y=200.000, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7229 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–500M Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–500M gliders. The proposed AD would require installing a rudder gap seal and modifying the cooling liquid reservoir mount. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent rudder vibrations caused by flow separation at the rudder gap, which could result in flutter with consequent loss of rudder control.

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–09–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Glaser-Dirks Model DG–500M gliders. The LBA reports that rudder vibrations could occur at high speeds. These vibrations are caused by flow separation at the rudder gap. This condition was detected during high speed flight tests.

These conditions, if not corrected, could result in flutter with consequent loss of rudder control.

Relevant Service Information

Glaser-Dirks has issued Technical Note (TN) No. 843/5, dated November 30, 1992, which specifies installing a rudder gap seal and modifying the cooling liquid reservoir mount. Procedures for installing the rudder gap seal are included in the applicable maintenance manual, and procedures for modifying the cooling liquid reservoir mount are included in Glaser-

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Dirks Working Instruction No. 1 for TN 843/5, dated November 5, 1992.

The LBA classified this service bulletin as mandatory and issued German AD 93–010 Glaser-Dirks, dated January 5, 1993, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Glaser-Dirks Model DG–500M gliders of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require installing a rudder gap seal and modifying the cooling liquid reservoir mount. Accomplishment of the proposed installation would be required in accordance with the maintenance manual. Accomplishment of the proposed modification would be required in accordance with Glaser-Dirks Working Instruction No. 1 for TN 843/5, dated November 5, 1992, as referenced in Glaser-Dirks TN No. 843/5, dated November 30, 1992.

Compliance Time of the Proposed AD

Although the rudder vibrations identified in this proposed AD occur during flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it is for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 5 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $40 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,400, or $280 per glider.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Glaser-Dirks Flugzeugbau GMBH: Docket No. 98–CE–09–AD.

Applicability: Model DG–500M gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent rudder vibrations caused by flow separation at the rudder gap, which could result in flutter with consequent loss of rudder control, accomplish the following:

(a) Install a rudder gap seal in accordance with the instructions in the maintenance manual, as referenced in Glaser-Dirks Technical Note (TN) No. 843/5, dated November 30, 1992.

(b) Modify the cooling liquid reservoir mount in accordance with Glaser-Dirks Working Instruction No. 1 for TN 843/5, dated November 5, 1992, as referenced in Glaser-Dirks TN No. 843/5, dated November 30, 1992.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Glaser-Dirks Technical Note No. 843/5, dated November 30, 1992, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 93–010, dated January 5, 1993.

Issued in Kansas City, Missouri, on March 11, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7250 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 858]

RIN 1512–AA07

Chiles Valley Viticultural Area (96F–111)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition for the establishment of a viticultural area in Napa County, California, to be known as "Chiles Valley." This proposal is the result of a petition submitted by Mr. Volker Eisele, owner of the Volker Eisele Vineyard and Winery.

DATES: Written comments must be received by May 19, 1998.

ADDRESSES: Send written comments to: Chief, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, D.C. 20091–0221 (Attn: Notice No. 858). Copies of the petition, the proposed regulation, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas B. Busey, Specialist, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, D.C. 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of part 9.

Section 4.25(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition from Mr. Volker Eisele, representing the Chiles Valley District Committee proposing to establish a new viticultural area in Napa County, California to be known as "Chiles Valley District." The proposed Chiles Valley District viticultural area is located entirely within the Napa Valley. The proposed viticultural area is located in the eastern portion of Napa Valley between and on the same latitude as St. Helena and Rutherford. It contains approximately 6,000 acres, of which 1,000 are planted to vineyards. Four wineries are currently active within the proposed viticultural area.

Evidence That the Name of the Area Is Locally or Nationally Known

An historical survey written by Charles Sullivan spells out the historical use of the name Chiles Valley and vineyard plantings dating back to the late 1800's. Numerous references exist indicating the general use of the name "Chiles Valley" to refer to the petitioned area. The petitioner included copies of title pages of various publications, guide and tour book references, public and private phone book listings and Federal and State agency maps, to illustrate the use of the name.

In the petitioner's original proposal, the term "district" was included as part of the viticultural area name (i.e., Chiles Valley District). Although the petitioner stated that there was no historical evidence for the use of the term "district" in conjunction with Chiles Valley, the committee felt that the use of this term was important to emphasize that the Chiles Valley was part of a larger valley, in this case the Napa Valley, which totally surrounds the proposed viticultural area. Under California state law an appellation that is totally surrounded by the Napa Valley appellation can only use the name conjunctively with the name Napa Valley on any wine label. ATF has permitted the addition of the term "District" to the proposed names of viticultural areas before. See Stag's Leap District, 27 CFR 9.117; San Ysidro District, 27 CFR 9.130; and, Spring Mountain District, 27 CFR 9.143. However, in each of these there was evidence submitted to justify the use of the term "district" as part of the viticultural area name.

ATF does not believe the petitioner has submitted sufficient evidence to support the use of the term "District" with Chiles Valley. Consequently, the name of the proposed viticultural area is being proposed as "Chiles Valley." However, ATF encourages the submission of any specific comments on the issue of whether the term "district" in the proposed name is appropriate.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, the boundaries establish a grape producing area with an identifiable character and quality, based on climate, topography, and historical tradition. The historical evidence can be dated to the mid 1800's with a land grant from the Mexican government to Joseph Ballinger Chiles, whose name the valley would later bear. The land grant was called Rancho Catacula and these lands all lie within the proposed appellation boundaries. The boundaries of the land grant are still recognized on U.S.G.S. maps of the area. A vineyard planting was one of the earliest agricultural operations conducted. For the most part the

boundaries of the proposed area use the land grant (Rancho line) boundary lines. This area includes virtually all lands that in any way might be used for agricultural purposes. Beyond the Rancho line are very steep slopes, which are mostly part of the serpentine chaparral soil formation. Historically it is also fairly clear the land grant boundaries were drawn to include usable land rather than the watershed, which, on all sides of the old Rancho Catacula is much further up the slopes. In sum, the petitioner believes the proposed boundaries encompass an area of remarkable uniformity with respect to soils, climate and elevation that produce a unique microclimate within the Napa Valley.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

According to the petitioner, the geographical features of the proposed viticultural area set it apart from the surrounding area in the Napa Valley and produce a unique microclimate.

The lands within the proposed boundaries generally lie between the 800 and 1000 feet altitudes above sea level. The valley runs northwest to southeast and is therefore an open funnel for the prevailing northwesterly winds. This fairly constant northwesterly flow produces substantial cooling during the day and, in combination with the altitude, relatively dry air. During the night, this drier air leads to more rapid cooling than in most of the Napa Valley. In addition, the narrow valley surrounded by the hills up to 2200 feet concentrates the cooler air flowing down the hillsides toward the valley floor where the vineyards are located.

Also, the relative distance from the San Pablo Bay and the Pacific Ocean allows the summer fog to move in much later than in the main Napa Valley. By the time the fog does reach the Chiles Valley the air temperatures have dropped much more dramatically than in the Napa Valley, thereby causing much lower temperatures during the night. Late fog ceiling, combined with low minimums, cause a very slow heat buildup during the day, again producing relatively cooler average temperature than is found in many places of the Napa Valley.

Available data indicates a "Region Two" according to the U.C. Davis climate classification. The growing season starts later than in the Napa Valley due to a more continental winter with temperatures dropping below 20 degrees F. The high incidence of spring frost is another indication of the generally cooler climate conditions.

In the areas immediately adjacent to the proposed boundaries, the microclimate changes significantly. As one moves up the hillsides on either side of Chiles Valley the summer fog blanket gets thinner and thinner and disappears altogether at approximately 1400 to 1500 feet elevation.

Since the cold air drains down into the Chiles Valley, the night time temperatures are quite a bit higher on the steep slopes than on the valley floor. In addition, the lack of fog allows a much faster temperature build up during the day, reaching the daily high two to three hours earlier than on the valley floor. Not only is the temperature drop at nightfall less, but also much more gradual so that during a 24 hour period the heat summation is substantially higher on the slopes than within the proposed boundaries. In winter, the situation is reversed. Strong winds tend to chill the uplands creating much more of a continental climate than on the valley floor. Snowfall above 1400 feet has been observed many times.

The microclimatic limitations combined with enormous steepness and very poor soil (serpentine, heavy sandstone formations, and shale out croppings) create an abrupt change from the proposed viticultural area to the areas surrounding it.

The petitioner believes that Pope Valley to the north of the proposed viticultural area is also significantly different. A combination of a lower elevation valley floor and substantially higher mountains on the western side causes the formation of inversion layers which result in substantially higher average temperatures during the growing season and significantly lower ones in the winter. In addition, the summer fog from the Pacific Ocean never reaches the Pope Valley.

The petitioner also states that the particular interplay between climate and soil make for unique growing conditions in the proposed area. The soils within the proposed appellation are uncommonly well drained and of medium fertility. The overall terrain gently slopes toward a series of creeks which act as natural drainage for surface as well as subterranean water. The petitioner believes this is a good basis for high quality grapes.

Uniform elevation and relatively uniform soil make the proposed viticultural area a clearly identifiable growing area. Almost all vineyards lie between 800 and 1000 feet elevation. As a general rule the soils in the Chiles Valley all belong to the Tehama Series: Nearly level to gently slopping, well drained Silt loams on flood plains and alluvial fans.

The total planted acreage in 1996 was roughly 1000 acres. The remaining plantable area does not exceed 500 acres. This small size illuminates the petitioner's goal of a well defined, specific appellation.

Proposed Boundaries

The boundaries of the proposed Chiles Valley viticultural area may be found on four 1:24,000 scale U.S.G.S. maps titled: St. Helena, CA (1960); Rutherford, CA (1968); Chiles Valley, CA (1980); and Yountville, CA (1968).

Public Participation-Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing data will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8½" x 11" in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from the region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this executive order.

Drafting Information

The principal author of this document is Thomas B. Busey, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27 Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.154 to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

§ 9.154 Chiles Valley

(a) *Name.* The name of the viticultural area described in this section is "Chiles Valley."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Chiles Valley viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) St. Helena, CA 1960 photorevised 1980

(2) Rutherford, CA 1951 photorevised 1968

(3) Chiles Valley, CA 1958 photorevised 1980

(4) Yountville, CA 1951 photorevised 1968

(c) *Boundary.* The Chiles Valley viticultural area is located in the State of California, entirely within the Napa Valley viticultural area. The boundaries of the Chiles Valley viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps follow. The local names of roads are identified by name.

(1) Beginning on the St. Helena, CA quadrangle map at the northernmost corner of Rancho Catacula in Section 34, Township 9 North (T9N), Range 5 West (R5W), Mount Diablo Base and Meridian (MDBM);

(2) Then in southwesterly direction along the Rancho Catacula boundary line to its intersection with the Rancho La Jota boundary line;

(3) Then in a south-southeasterly direction approximately 3,800 feet along the Rancho Catacula/Rancho La Jota boundary line to the point where the Rancho Catacula boundary separates from the common boundary with Rancho La Jota;

(4) Then in a southeasterly direction continuing along the Rancho Catacula boundary approximately 23,600 feet to a point of intersection, in the NE ¼ Sec. 19, T8N, R4W, on the Chiles Valley quadrangle map, with a county road known locally as Chiles and Pope Valley Road;

(5) Then in a southwesterly direction along Chiles and Pope Valley Road to a point where it first crosses an unnamed blueline stream in the SE ¼ Section 19, T8N, R4W;

(6) Then following the unnamed stream in generally southeast direction to its intersection with the 1200 foot contour;

(7) Then following the 1200 foot contour in a northeasterly direction to a point of intersection with the Rancho Catacula boundary in section 20, T8N, R4W;

(8) Then in a southeasterly direction along the Rancho Catcula boundary approximately 17,500 feet to the southwest corner of Rancho Catacula in section 34, T8N, R4W on the Yountville, CA, quadrangle map;

(9) Then in a northeasterly direction along the Rancho Catacula boundary approximately 650 feet to its intersection with the 1040 foot contour;

(10) Then along the 1040 foot contour in a generally east and northeast directfon to its intersection with the Rancho Catacula boundary;

(11) Then in a northeasterly direction along the Rancho Catacula boundary approximately 1100 feet to its intersection with the 1040 foot contour;

(12) Then along the 1040 foot contour in an easterly direction and then in a northwesterly direction to its intersection of the Rancho Catacula boundary;

(13) Then in a southwesterly direction along the Rancho Catacula boundary approximately 300 feet to a point of intersection with a line of high voltage power lines;

(14) Then in a westerly direction along the high voltage line approximately 650 feet to its intersection with the 1000 foot contour;

(15) Then continuing along the 1000 foot contour in a generally northwesterly direction to the point of intersection with the first unnamed blueline stream;

(16) Then along the unnamed stream in a northerly direction to its point of intersection with the 1200 foot contour;

(17) Then along the 1200 foot contour in a northwesterly direction to its points of intersection with the Rancho Catacula boundary in Section 35, T9N, R5W on the St. Helena, CA, quadrangle map;

(18) Then along the Rancho Catacula boundary in a northwesterly direction approximately 5,350 feet to a northernmost corner of Rancho Catacula, the beginning point on the St. Helena quadrangle map a the northernmost corner of Rancho Catacula in Section 34, T9N, R5W, MDBM.

Signed: February 20, 1998.

John W. Magaw,

Director.

[FR Doc. 98–7200 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–71–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Subchapter S

[CGD 97–066]

Federal Requirements for Education in Recreational Boating Safety

AGENCY: Coast Guard, DOT.

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ACTION: Proposed rule; request for comments; reopening of comment period.

SUMMARY: In a document published on October 23, 1997, the Coast Guard requested comments from interested people, groups, and businesses about the need for, and alternatives to, Federal requirements or incentives for boaters to take courses in boating safety. The Coast Guard will consider all comments, and consult with the National Boating Safety Advisory Council (NBSAC), in determining how best to reduce the number of deaths among boaters caused by a lack of boating safety training. This document reopens the comment period.

DATE: Comments must reach the Coast Guard on or before May 29, 1998.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 97–066], U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Moore, Project Manager, Office of Boating Safety, Program Development and Implementation Division, (202) 267–0577. You may obtain a copy of this Notice or of the original one by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read either on the Internet, at the Web Site for the office of Boating Safety, at URL address www.uscgboating.org.

SUPPLEMENTARY INFORMATION:

Background and Purpose

In a Notice published on October 23, 1997 (62 FR 55199), the Coast Guard set the original close of the comment period at February 2, 1998, to allow summarizing the comments received and providing the summaries to the members of NBSAC before the scheduled meeting on April 27, 1998. Because of reported delays in publication of that Notice in several recreational boating periodicals, the number of comments received just before and just after the close of the comment period, and a request by the Boat Owners Association of the United States, the Coast Guard is reopening the comment period to provide additional time for submission of public comment. All comments submitted in response to the original Notice are already in the docket. The Coast Guard will summarize all comments it receives during the comment period in response to this Notice and the original one, place a copy of the summary in the public docket, and provide copies to the members of NBSAC for them to consider at their meeting in October, 1998. (The Coast Guard will publish details of the exact time and place of the meeting in the **Federal Register** at a later date. The meeting will be open to the public.) It will itself consider all relevant comments in the formulation of any regulatory or nonregulatory measures that may follow from this notice.

Request for Comments

The Coast Guard encourages you to submit comments about the need for, and alternatives to, Federal requirements or incentives for boaters to participate in boating safety education. In particular, it encourages you to answer the specific questions about these requirements or incentives for taking courses in boating safety, which it developed in consultation with members of NBSAC at the meeting in April 1997. It also solicits comments from all segments of the boating community, State boating safety authorities, NBSAC, the national Association of State Boating Law Administrators (NASBLA), and other interested people, groups, and businesses on the economic and other impacts of Federal requirements or incentives for boating safety education.

Please include your name and address, identify this rulemaking [CGD 97–066] and the specific question or area of concern to which each comment applies, and give the reason(s) for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, to help us with copying and electronic filing. If you want us to acknowledge receipt of your comments, please enclose a stamped, self-addressed postcard or envelope.

Dated: March 12, 1998.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 98–7061 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[CGD 97–059]

Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; request for comments; reopening of comment period.

SUMMARY: In a document published on September 25, 1997, the Coast Guard requested comments from interested people, groups, and businesses about the need for, and alternatives to, Federal requirements or incentives for boaters to wear lifejackets. The Coast Guard will consider all comments, and consult with the National Boating Safety Advisory Council (NBSAC), in determining how best to reduce the number of boaters who drown. This document reopens the comment period.

DATES: Comments must reach the Coast Guard on or before May 29, 1998.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 97–059], U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Project Manager, Office of Boating Safety, Program Management Division, (202) 267–0979. You may obtain a copy of this Notice or of the original one by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read either on the Internet, at the Web Site for the Office of Boating Safety, at URL address www.uscgboating.org.

SUPPLEMENTARY INFORMATION:

Background and Purpose

In a Notice published on September 25, 1997 [62 FR 50280], the Coast Guard set the original close of the comment period at February 2, 1998, to allow summarizing the comments received

and providing the summaries to the members of NBSAC before the scheduled meeting on April 27, 1998. Because of reported delays in publication of that Notice in several recreational boating periodicals and the number of comments received just before and just after the close of the comment period, the Coast Guard is reopening the comment period to provide additional time for submission of public comment. All comments submitted in response to the original Notice are already in the docket. The Coast Guard will summarize all comments it receives during the comment period in response to this Notice and the original one, place a copy of the summary in the public docket, and provide copies to the members of NBSAC for them to consider at their meeting in October, 1998 (The Coast Guard will publish details of the exact time and place of the meeting in the **Federal Register** at a later date. The meeting will be open to the public.) It will itself consider all relevant comments in the formulation of any regulatory or nonregulatory measures that may follow from this notice.

Request for Comments

The Coast Guard encourages you to submit comments about the need for, and alternatives to, Federal requirements or incentives for boaters to wear lifejackets (personal flotation devices, or PFDs). In particular, it encourages you to answer the specific questions about these requirements or incentives for wearing lifejackets, which it developed in consultation with members of NBSAC at the meeting in April 1997. It also solicits comments from all segments of the boating community, State boating safety authorities, NBSAC, the National Association of State Boating Law Administrators (NASBLA), and other interested people, groups, and businesses on the economic and other impacts of Federal requirements or incentives for wearing PFDs.

Please include your name and address, identify this rulemaking [CGD 97–059] and the specific question or area of concern to which each comment applies, and give the reason(s) for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, to help us with copying and electronic filing. If you want us to acknowledge receipt of your comments, please enclose a stamped, self-addressed postcard or envelope.

Dated: March 12, 1998.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 98–7062 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–169–0065b; FRL–5979–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). This action is an administrative change which revised various definitions in South Coast Air Quality Management District (SCAQMD) Rule 102, Definition of Terms.

The intended effect of proposing approval of this action is to incorporate changes to the definitions for clarity and consistency with revised Federal and state definitions. EPA is proposing approval of this revision to be incorporated into the California SIP for the attainment of the National ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this administrative change as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 20, 1998.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule is available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revision is also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 102, Definition of Terms. This rule was submitted to EPA on March 26, 1996 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 13, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–7006 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–5976–4]

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to revise monitoring, recordkeeping, and reporting requirements and correct equations of the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries", which was issued as a final rule on August 18, 1995. This rule is commonly known as

the Petroleum Refineries NESHAP. Because the revisions reduce the burden of complying with the NESHAP without altering its applicability, stringency, or schedule, the Agency does not anticipate receiving adverse comments. Consequently the revisions are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: Comments. Comments must be received on or before April 20, 1998. Additionally, a hearing will be convened if requests to speak are received by April 6, 1998. If a hearing is held, it will take place on April 13, 1998 beginning at 10:00 a.m. and the record on the hearing will remain open for 30 days after the hearing to provide an opportunity for submission of rebuttal and supplementary information.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–48 (see docket section below), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Electronic Submittal of Comments

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–93–48. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671.

Docket. Docket No. A–93–48, containing the supporting information for the original NESHAP and this action, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5672.

SUPPLEMENTARY INFORMATION: On August 18, 1995, the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries" (the "Petroleum Refineries NESHAP"). The NEHSAP regulates hazardous air pollutants (HAP) emitted from new and existing refineries that are major sources of HAP emissions. The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry ..	Petroleum Refineries (Standard Industrial Classification Code 2911).

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.640. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are received the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule based on this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative Requirements

A. Executive Order 12866 Review

Under Executive Order 12866 [58 FR 51735, (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because today's action revises monitoring, recordkeeping, and reporting requirements without altering the stringency or schedule of the Petroleum Refineries NESHAP or the ability of regulating authorities to ensure compliance with NESHAP, this rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

B. Paperwork Reduction Act

The information collection requirements in the promulgated Petroleum Refineries NESHAP rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq and have been assigned a control number 2060–0340. However, this approval has expired and the information collection request is currently in the reinstatement process. The information collection request has been revised to reflect the revisions to monitoring, recordkeeping and reporting requirements made by today's action. The collection of information has an estimated annual reporting and recordkeeping burden averaging 3,000 hours per respondent. This estimate includes time for reviewing

instructions; developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting existing ways to comply with any previously applicable instructions and requirements; completing and reviewing the collection of information; and reviewing the collection of information; and transmitting or otherwise disclosing the information.

The burden estimate reflects an annual reduction of 13,200 technical hours, as compared to the estimate at promulgation, resulting from the revisions made by today's action.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it decreases monitoring, recordkeeping, and reporting requirements and reduces the associated burden for all affected facilities, including small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

At the time of promulgation, EPA determined that the petroleum refineries NESHAP does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This determination is not altered by today's action, the purpose of which is to reduce the burden associated with monitoring, recordkeeping, and reporting requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Petroleum refineries, Reporting and recordkeeping requirements, Storage vessels.

Dated: March 4, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–6872 Filed 3–19–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KS 044–1044b; FRL–5979–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Kansas; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Kansas state 111(d) plan for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of the Clean Air Act. The state plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

In the final rules section of the **Federal Register**, the EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 20, 1998.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 24, 1998.

Diane K. Callier,

Acting Regional Administrator, Region VII.

[FR Doc. 98–7135 Filed 3–19–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 421

[HCFA–7020–P]

RIN 0938–AI09

Medicare Program; Medicare Integrity Program, Intermediary and Carrier Functions, and Conflict of Interest Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 1893 of the Social Security Act (the Act) by establishing the Medicare integrity program (MIP) to carry out Medicare program integrity activities that are funded from the Medicare Trust Funds. Section 1893 expands our contracting authority to allow us to contract with "eligible entities" to perform Medicare program integrity activities. These activities include review of provider and supplier activities, including medical, fraud, and utilization review; cost report audits; Medicare secondary payer determinations; education of providers, suppliers, beneficiaries, and other persons regarding payment integrity and benefit quality assurance issues; and developing and updating a list of durable medical equipment items that are subject to prior authorization. This proposed rule would set forth the definition of eligible entities, services to be procured, competitive requirements based on Federal acquisition regulations and exceptions (guidelines for automatic renewal), procedures for identification, evaluation, and resolution of conflicts of interest, and limitations on contractor liability.

In addition, this proposed rule would bring certain sections of the Medicare regulations concerning fiscal intermediaries and carriers into conformity with the Act. The rule would distinguish between those functions that the statute requires be included in agreements with intermediaries and those that may be included in the agreements. It would also provide that some or all of the listed functions may be included in carrier contracts. Currently all these functions are mandatory for carrier contracts. These changes would give us the flexibility to transfer functions from one intermediary or carrier to another or to otherwise limit the functions an intermediary or carrier performs if we determine that to do so would result in more effective and efficient program administration.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 19, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–7020–P, P.O. Box 26676, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–7020–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Brenda Thew (410) 786–4889.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Medicare Contracting Environment

The current Medicare contracting authorities have been in place since the inception of the Medicare program in 1965. At that time, the health insurance and medical communities raised concerns that the enactment of Medicare could result in a large Federal presence in the provision of health care. In response, under sections 1816(a) and 1842(a) of the Social Security Act (the Act), Congress provided that public or private entities and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with us.

These Medicare contractors are known as intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act). With certain exceptions, intermediaries perform bill processing and benefit payment functions for Part A of the program (Hospital Insurance) and carriers perform claims processing and benefit payment functions for Part B of the program (Supplementary Medical Insurance).

(For the following discussion, the terms "provider" and "supplier" are used as those terms are defined in 42 CFR 400.202. That is, a provider is a hospital, rural care primary hospital, skilled nursing facility, home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement to furnish outpatient physical therapy or speech pathology services. Supplier is defined as a physician or other practitioner or an entity other than a "provider," that furnishes health care services under Medicare.)

Section 1842(a) of the Act authorizes us to contract with private entities (carriers) for the purpose of administering the Medicare Part B program. Medicare carriers determine payment amounts and make payments for services (including items) furnished by physicians and other suppliers such as nonphysician practitioners, laboratories, and durable medical equipment suppliers. In addition, carriers perform other functions required for the efficient and effective administration of the Part B program. Section 1842(f) of the Act provides that a carrier must be a "voluntary association, corporation, partnership, or other nongovernmental entity which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee entity." No entity may be considered for carrier contracts unless it can demonstrate that it meets this definition of carrier.

Section 1842(b) provides us with the discretion to enter into carrier contracts without regard to any provision of the law requiring competitive bidding. Other provisions of generally applicable Federal contract law and regulations, as well as HHS procurement regulations, remain in effect for carrier contracts.

Section 1816(a) of the Act authorizes us to enter into agreements with private agencies or entities (intermediaries) for the purpose of administering Medicare Part A. These entities are responsible for determining the amount of payment due to providers in consideration of services provided to beneficiaries and for making

these payments. We may enter into an agreement with an entity to serve as an intermediary if the entity has first been "nominated" by a group or association of providers to make Medicare payments to it. Other portions of section 1816 of the Act provide further details concerning the "nomination process" and assignment and reassignment of providers to intermediaries.

Our regulations at § 421.100 require that the agreement between us and an intermediary specify the functions the intermediary must perform. In addition to requiring any items specified by us in the agreement that are unique to that intermediary, our regulations require that all intermediaries perform activities relating to determining and making payments for covered Medicare services, fiscal management, provider audits, utilization patterns, resolution of cost report disputes, and reconsideration of determinations. Finally, our regulations require that all intermediaries furnish information and reports, perform certain functions with respect to provider-based home health agencies and provider-based hospices, and comply with all applicable laws and regulations and with any other terms and conditions included in their agreements.

Similarly, § 421.200 of our regulations, requires that the contract between us and a Part B carrier specify the functions the carrier must perform. In addition to requiring any items specified by us in the contract that are unique to that carrier, our regulations require that all Part B carriers perform activities relating to determining and making payments (on a cost or charge basis) for covered Medicare services, fiscal management, provider audits, utilization patterns, and Part B beneficiary hearings. In addition, § 421.200 requires that all carriers furnish information and reports, maintain and make available records, and comply with any other terms and conditions included in their contracts.

It is within the above context that Medicare intermediary and carrier contracts are significantly different from standard Federal Government contracts.

Specifically, the Medicare intermediary and carrier contracts are normally renewed automatically from year to year, in contrast to the typical Government contract that is recompeted at the conclusion of the contract term. Congress, in providing for the nomination process under section 1816 of the Act, and authorizing the automatic renewal of the carrier contracts in section 1842(b)(5) of the Act, contemplated a contracting process that would permit us to noncompetitively renew the Medicare contracts from year to year.

For both intermediaries and carriers, § 421.5 states that we have the authority not to renew a Part A agreement or a Part B contract when it expires. Section 421.126 provides for termination of the intermediary agreements in certain circumstances, and, similarly, § 421.205 provides for termination of carrier contracts.

Each year, Congress appropriates funds to support Medicare contractor activities. These funds are distributed to the contractors through an annual Budget Performance Requirements process, which allocates funds by program activity to each of the current 69 Medicare contractors. Historically, approximately one-half of the funds have been for payment for the processing of claims; one-quarter of the funds have been for "payment safeguard" activities to fund activities such as conducting medical review of claims to determine whether services are medically necessary and constitute an appropriate level of care, deterring and detecting Medicare fraud, auditing provider cost reports, and ensuring that Medicare acts as a secondary payer when a beneficiary has primary coverage through other insurance. The remainder of the funds have been allocated for beneficiary and provider/supplier services and for various productivity investments.

B. The Medicare Integrity Program

The Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) was enacted on August 21, 1996. Section 202 of Public Law 104–191 adds a new section 1893 to the Act establishing the Medicare integrity program (MIP). This program is funded from the Medicare Hospital Insurance Trust Fund for activities related to both Part A and Part B of Medicare. Specifically, section 1893 of the Act expands our contracting authority to allow us to contract with eligible entities to perform Medicare program integrity activities performed currently by intermediaries and carriers. These activities include medical, fraud, and utilization review; cost report audits; Medicare secondary payer determinations; overpayment recovery; education of providers, suppliers, beneficiaries, and other persons regarding payment integrity and benefit quality assurance issues; and developing and updating a list of durable medical equipment items that, under section 1834(a)(15) of the Act, are subject to prior authorization.

Section 1893(d) of the Act requires us to set forth, through regulations, procedures for entering into contracts for the performance of specific Medicare program integrity activities. These procedures are to include the following:

(1) A process for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

(2) Competitive procedures for entering into new contracts under section 1893 of the Act, a process for entering into contracts that may result in the elimination of responsibilities of an individual intermediary or carrier, and other procedures we deem appropriate.

(3) A process for renewing contracts entered into under section 1893 of the Act.

Section 1893(d) also provides that we may enter into these contracts without publication of final rules.

In addition, section 1893(e) of the Act requires us to set forth, through regulations, the limitation of a contractor's liability for actions taken to carry out a contract.

Congress established section 1893 of the Act to strengthen our ability to deter fraud and abuse in the Medicare program in a number of ways. First, it provides a separate and stable long-term funding mechanism for MIP activities. Historically, Medicare contractor budgets had been subject to wide fluctuations in funding levels from year to year. The variations in funding did not have anything to do with the underlying requirements for program integrity activities. This instability made it difficult for us to invest in innovative strategies to control fraud and abuse. Our contractors also found it difficult to attract, train, and retain qualified professional staff, including auditors and fraud investigators. A dependable funding source allows us the flexibility to invest in innovative strategies to combat fraud and abuse. It will help us shift emphasis from post-payment recoveries on fraudulent claims to prepayment strategies designed to ensure that more claims are paid correctly the first time.

Second, to allow us to more aggressively carry out the MIP functions and to require us to use procedures and technologies that exceed those currently being used, section 1893 greatly expands our contracting authority. Previously, we had a limited pool of entities with whom to contract. This limited our ability to maximize efforts to effectively carry out the MIP functions. Section 1893 now permits us to attract a variety of offerors with potentially new and different skill sets and will allow those offerors to propose

innovative approaches to implement MIP to deter fraud and abuse. By using competitive procedures, as established in the FAR, our ability to manage the MIP activities is greatly enhanced, and the Government can seek to obtain the best value for its contracted services.

Third, section 1893 requires us to address potential conflicts of interest among potential MIP contractors before entering into any contracting arrangements with them. By requiring offerors/contractors to report situations that may constitute conflicts of interest, we can minimize the number of situations where there is either an actual or an apparent conflict of interest. This is a concern particularly when intermediaries and carriers processing Medicare claims are also private health insurance companies.

From the inception of the Medicare program, intermediary and carrier contracts have contained provisions that have precluded contractors from using their Medicare contract to benefit their private lines of business. These conflicts of interest were rarely a problem in the early years of Medicare because these companies did only health insurance business within prescribed market areas. In recent years, however, Medicare intermediaries and carriers, like most health insuring organizations, have expanded their businesses and product lines to become large integrated health care delivery systems. Some organizations have diversified into corporations with many subsidiaries and a variety of arrangements. These range from overlapping ownership of other insurers, third party administrators, providers, and managed care entities to the marketing of management services and software products. This creates a conflict of interest when the contractor reviews claims, identifies Medicare secondary payer instances, and performs other payment safeguard activities for its own providers and suppliers as well as for its provider's and supplier's competitors.

We have been criticized for the lack of effective mechanisms to mitigate these conflicts of interest. Even when we are assured that proper mechanisms are in place, the appearance of a conflict remains in the eyes of competitors. An even more difficult problem arises with respect to program integrity activities. Medicare contractors exercise considerable discretion in their audit functions, the use of prepayment screens, the conduct of fraud investigations, and referrals to law enforcement agencies regarding incidences of fraud and abuse. These activities depend upon the ability of the contractor to conduct independent reviews, negotiate disputes, and to manipulate data with great sophistication to discover situations where providers and suppliers are engaged in fraudulent activity. These activities would be largely ineffective if contractor-owned providers and suppliers benefit from bias or forewarning.

When a Medicare contractor owns a provider or supplier, it necessarily finds itself in a situation in which potential conflicts of interest could arise. On the one hand, it has a fiduciary duty to its stockholders to use its best efforts to capture market share and to maximize profits. On the other hand, it has an obligation to Medicare and to the public not to take advantage of its position as a Medicare contractor. For example, the Medicare contractor—

- Has access to information about beneficiaries, providers, and suppliers that would be enormously useful in marketing and other business decisions, including provider/supplier information that is considered "proprietary."
- As the claims administrator for an area, it has extraordinary leverage over providers and suppliers. That leverage could be used, implicitly or explicitly, to persuade providers and suppliers to join a network or to agree to business arrangements that are favorable to the Medicare contractor.
- Has knowledge and experience as a Medicare claims administrator that would give it a competitive advantage in knowing how to submit claims to avoid payment screens and in having other information that is not available to other providers/suppliers that could assist in maximizing payments to its own providers/suppliers.
- May also offer other health insurance coverage that is primary or supplemental to Medicare. In this situation, there is always the temptation to let Medicare pay first, knowing that even if the mistaken Medicare payment is later discovered and reimbursed, the contractor has received a temporary interest free loan from the Government.

The MIP, however, allows us to separate payment safeguard functions from all of the functions now being performed by current intermediaries and carriers. This allows current contractors that are performing important functions such as beneficiary and provider/supplier services well to continue to do so, or possibly to review claims from providers/suppliers with which they have no financial relationship.

Conflict of interest situations can also occur when Medicare contractors own managed care entities, for example health maintenance organizations (HMOs). The mere ownership of an HMO by a Medicare contractor would seem to create no conflict of interest concerns since the HMO would be dealing directly with the Government. However, in the situation in which a physician both works for a contractor-owned HMO and maintains a fee-for-service practice, the contractor could give the physician a "bonus" by doing a less thorough review of his or her claims. Additionally, the contractor-owned HMO could use its Medicare beneficiary database to perform health screening of beneficiaries, or its utilization data, marketing information, etc. for its commercial benefit. It could also influence the HMO market by promoting itself as the local intermediary or carrier.

Medicare contractors also provide management services and develop software to facilitate the filing of claims and compliance with Medicare requirements. Since Medicare contractors have an intimate knowledge of Medicare claims systems and administration, they may derive an unfair competitive advantage if they were to sell information that is not generally available to the public. They may also shift development and training costs to Medicare for services they market to the public.

For all these reasons this legislation is providing us an opportunity to increase our ability to protect the Medicare program from instances of fraud and abuse by establishing procedures for identifying, evaluating, and resolving organizational conflicts of interest.

II. Provisions of the Proposed Rule

This regulation is part of our overall contracting strategy, which is designed to build on the strengths of the marketplace. We intend to implement the MIP incrementally in a manner that will provide a way to test alternatives and to transition integrity activities to MIP contractors. We are committed to conducting procurements using full and open competition that will provide opportunities for a wide range of contractors to participate in the program. We will continue to encourage new and innovative approaches in the marketplace to protect the Medicare Trust Funds.

A. The Medicare Integrity Program

1. Basis, Scope, and Applicability

In accordance with section 1893 of the Act, this proposed rule would amend part 421 by adding a new subpart D entitled, "Medicare Integrity Program Contractors". This subpart would define the types of entities

eligible to become MIP contractors; identify the program integrity functions a MIP contractor may perform; describe procedures for awarding and renewing contracts; establish procedures for identifying, evaluating, and resolving organizational conflicts of interest; prescribe responsibilities; and set forth limitations on MIP contractor liability. The provisions of this subpart supplement the Federal acquisition regulations set forth at 48 CFR chapter 1 and the Department's acquisition regulations at 48 CFR chapter 3. Subpart D would be applicable to entities that seek to compete for or receive award of a contract under section 1893 of the Act including entities that perform functions under this subpart emanating from the processing of claims for individuals entitled to benefits as qualified railroad retirement beneficiaries. We would set forth the basis, scope, and applicability of subpart D in § 421.300.

2. Definition of Eligible Entities

As discussed earlier, under sections 1816(a) and 1842(a) of the Act, public or private entities and agencies (Medicare intermediaries and carriers) participate in the administration of the Medicare program under agreements or contracts entered into with us (on the Secretary's behalf). Basically, the carrier must be a voluntary association, corporation, partnership, or other nongovernmental entity lawfully engaged in providing or paying for health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements. In general, the intermediary must be an entity that has an agreement with us and has been nominated by a provider to determine and make Medicare Part A payments and to perform other related functions. Current regulations at §§ 421.110 and 421.202 specify the eligibility requirements current Medicare contractors must meet before entering into or renewing an agreement or contract.

In accordance with section 1893(c) of the Act, proposed § 421.302 would provide that an entity is eligible to enter into a MIP contract if, in general, it demonstrates the capability to perform MIP contractor functions; it agrees to cooperate with the Office of Inspector General (OIG), the Attorney General, and other law enforcement agencies in the investigation and deterrence of fraud and abuse of the Medicare program, including making referrals; it complies with the conflict of interest standards in 48 CFR Chapters 1 and 3 and is not excluded under the conflict of interest provisions established by this rule; and it meets other requirements that we may impose. Also, in accordance with the undesignated paragraph following section 1893(c)(4) of the Act, we would specify that Medicare carriers are deemed to be eligible to perform the activity of developing and periodically updating a list of durable medical equipment items that are subject to prior authorization.

Note that, in accordance with section 1893(d) of the Act, we may continue to contract, for the performance of MIP activities, with intermediaries and carriers that had a contract with us on August 21, 1996 (the effective date of enactment of Public Law 104–191). However, in accordance with section 1816(l) or section 1842(c)(6) of the Act (both added by Public Law 104–191), they may not duplicate activities under both an intermediary agreement or carrier contract and a MIP contract, with one excepted activity. The exception permits a carrier to develop and update a list of items of durable medical equipment that are subject to prior authorization both under the MIP contract and its contract under section 1842 of the Act.

3. Definition of MIP Contractor

We propose to define "Medicare integrity program contractor," at § 400.202 (Definitions specific to Medicare), as an entity that has a contract with us under section 1893 of the Act to perform program integrity activities.

4. Services to be Procured

A MIP contractor may perform some or all of the MIP activities performed currently by intermediaries and carriers. Section 421.304 would state that the contract between HCFA and a MIP contractor specifies the functions the contractor performs. In accordance with section 1893(b) of the Act, proposed § 421.304 identifies the following as MIP activities.

a. Medical, utilization, and fraud review. Medical and utilization review includes the processes necessary to ensure both the appropriate utilization of services and that services meet the professionally recognized standards of care. These processes include review of claims, medical records, and medical necessity documentation and analysis of patterns of utilization to identify inappropriate utilization of services. This would include reviewing the activities of providers/suppliers and other individuals and entities (including health maintenance organizations, competitive medical plans, and health care prepayment plans). This function results in the identification of overpayments, prepayment denials, recommendations for changes in national coverage policy, changes in local medical review policies and payment screens, referrals for fraud and abuse, and the identification of the education needs of beneficiaries, providers, and suppliers.

Fraud review includes fraud prevention initiatives, responding to external customer complaints of alleged fraud, the development of strategies to detect potentially fraudulent activities that may result in improper Medicare payment, and the identification and development of fraud cases for referral to law enforcement. Each solicitation will specify when cases should be referred to the OIG. In general, however, identified overpayments exceeding a threshold amount set by the OIG, recurring acts of improper billing, and substantiated allegations of fraudulent activity will be promptly referred to a Regional Office of Investigation.

b. Cost report audits. Providers and managed care plans receiving Medicare payments are subject to audit for all payments applicable to services furnished to beneficiaries. The audit ensures that proper payments are made for covered services, provides verified financial information for making a final determination of allowable costs, identifies potential instances of fraud and abuse, and ensures the completion of special projects.

This functional area includes the receipt, processing, and settlement of cost reports based on reasonable costs, prospective payment, or any other basis, and the establishment or adjustment of the interim payment rate using cost report or other information.

c: Medicare secondary payer activities. The Medicare secondary payer function is a process developed as a payment safeguard to protect the Medicare program against mistaken primary payments. The focus of this process is to ensure that the Medicare program pays only to the extent required by statute. Entities under a MIP contract that includes Medicare secondary payer functions would be responsible for identifying Medicare secondary payer situations and/or pursuing recovery of mistaken payments from the appropriate entity or individual, depending on the specifics of the contract.

This functional area includes the processes performed to identify beneficiaries for whom there is coverage which is primary to Medicare. Through these processes, information may be acquired for subsequent use in

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beneficiary claims adjudication, recovery, and litigation.

d. Education. This functional area includes educating beneficiaries, providers, suppliers, and other individuals regarding payment integrity and benefit quality assurance issues.

e. Developing prior authorization lists. This functional area includes developing and periodically updating a list of durable medical equipment items that, in accordance with section 1834(a)(15) of the Act, are subject to prior authorization. Section 1834(a)(15) requires prior authorization to be performed on the following items of durable medical equipment: Items identified as subject to unnecessary utilization; items supplied by suppliers that have had a substantial number of claims denied under section 1862(a)(1) of the Act as not reasonable or necessary or for whom a pattern of overutilization has been identified; or a customized item if the beneficiary or supplier has requested an advance determination. Prior authorization is a determination that an item of durable medical equipment is covered prior to when the equipment is delivered to the Medicare beneficiary.

Application of MIP—It should be noted that the MIP functions are not limited to services furnished under fee-for-service payment methodologies. MIP functions are applicable to all types of claims. They are also applicable to all types of payment systems including, but not limited to, managed care and demonstration projects.

5. Competitive Requirements

We would specify, in § 421.306(a), that MIP contracts will be awarded in accordance with 48 CFR chapters 1 and 3, 42 CFR part 421 subpart D, and all other applicable laws and regulations. Further, in accordance with section 1893(d)(2) of the Act, we would specify that the procedures set forth in these authorities will be used: (1) When entering into new contracts; (2) when entering into contracts that may result in the elimination of responsibilities of an individual intermediary or carrier; and (3) at any other time we consider appropriate.

In proposed section 421.306(b), we would establish an exception to competition which allows a successor in interest to an intermediary agreement or carrier contract to be awarded a contract for MIP functions without competition, if its predecessor performed program integrity functions under the transferred agreement or contract and the resources, including personnel, which were involved in performing those functions, were transferred to the successor.

This proposal is made in anticipation that some intermediaries and carriers may engage in transactions under which the recognition of a successor in interest by means of a novation agreement may be appropriate, and the resources involved in the intermediary's or carrier's MIP activities are transferred along with its other Medicare-related resources to the successor in interest. For example, the intermediary or carrier may undergo a corporate reorganization under which the corporation's Medicare business is transferred entirely to a new subsidiary corporation. When all of a contractor's resources or the entire portion of the resources involved in performing a contract are transferred to a third party, HCFA may recognize the third party as the successor in interest to the contract through approval of a novation agreement. See 48 CFR 42.12.

If the intermediary or carrier were performing MIP activities under its contract on August 21, 1996, the date of the enactment of the MIP legislation, the statute permits HCFA to continue to contract with the intermediary or carrier for the performance of those activities without using competitive procedures. In the context of a corporate reorganization, under which all of the resources involved in performing the contract, including those involved in performing MIP activities, are transferred to a successor in interest, HCFA may determine that breaking out the MIP activities and competing them separately would not be in the best interest of the government.

Inherent in the requirement of section 1893(d) of the Act that the Secretary establish competitive procedures to be used when entering into contracts for MIP functions is the authority to establish exceptions to those procedures. See 48 CFR 6.3. Moreover, intermediary agreements and carrier contracts have, by statute, been noncompetitively awarded under sections 1816(a) and 1842(b)(1) of the Act. Furthermore, those agreements and contracts have in recent years prior to the enactment of the MIP legislation included program integrity activities, a fact that the Congress acknowledged in section 1893(d)(2) of the Act. We believe that creating an exception to the use of competition for cases in which the same resources, including the same personnel, continue to be used by a third party as successor in interest to an intermediary agreement or carrier contract is consistent with Congress' authorization to forgo competition when the contracting entity was carrying out the MIP functions on the date of enactment of the MIP legislation. Section 421.306(b) would provide an interim solution to permit continuity in the performance of the MIP functions until such time as we are prepared to procure MIP functions on the basis of full and open competition.

We would further specify, in § 421.306(c), that an entity must meet the eligibility requirements established in proposed § 421.302 to be eligible to be awarded a MIP contract.

We would state, in § 421.308(a), that we specify an initial contract term in the MIP contract and that contracts may contain renewal clauses. Contract renewal provides a mutual benefit to both parties. Renewing a contract, when appropriate, results in continuity both for us and the contractor and is in the best interest of the Medicare program. The benefits are realized through early communication of our intention whether to renew a contract, which permits both parties to plan for any necessary changes in the event of nonrenewal. Furthermore, as a prudent administrator of the Medicare program, we must ensure that we have sufficient time to transfer the MIP functions should a reassignment of the functions be necessary (either because the contractor has given notice of its intent to nonrenew or because we have determined that reassignment is in the best interest of the Medicare program). Therefore, in § 421.308(a), we would specify that we may renew a MIP contract, as we determine appropriate, by giving the contractor notice, within timeframes specified in the contract, of our intention to do so. (The solicitation document that resulted in the contract will contain further details regarding this provision.)

Based on section 1893(d)(3) of the Act, we would specify, in paragraph (b) of § 421.308, that we may renew a MIP contract without competition if the contractor continues to meet all the requirements of proposed subpart D of part 421, the contractor meets or exceeds all performance standards and requirements in the contract, and it is in the best interest of the Government.

We would provide, at § 421.308(c), that, if we do not renew the contract, the contract will end in accordance with its terms, and the contractor does not have a right to a hearing or judicial review regarding the nonrenewal. This is consistent with our longstanding policy with regard to intermediary and carrier contracts.

6. Conflict of Interest Rules

This proposed rule would establish the process for identifying, evaluating, and resolving conflicts of interest as required by section 1893(d)(1) of the Act. The process has been designed to

ensure that the more diversified business arrangements of potential contractors do not inhibit competition between providers/suppliers or in other types of businesses related to the insurance industry or have the potential for harming Government interests.

On December 6, 1996, we held an open forum discussion with certain organizations and groups that may, or whose members may, be directly affected by contracts awarded to perform functions under the MIP. During the forum, participants discussed whether certain examples were conflicts of interest and how the conflicts, when present, could be mitigated. In addition, the conflict of interest situations were made available for public review on our Internet home page.

In general, some of the participants had concerns that a MIP contractor could not perform audit or review functions on itself, its subsidiaries, its direct competitors, or its private sector clients without the presence of a potential conflict of interest. The conflicts of interest described could make it impossible for contractor personnel to be objective in performing contract work or to provide impartial assistance or advice to the Government or could give the contractor an unfair competitive advantage.

Some of the participants recommended that the conflict of interest standards we establish restrict a MIP contractor from having an ownership interest or contractual relationship with any provider it will be auditing or reviewing. Also, the participants generally agreed that requirements dictating disclosure of a contractor's financial interests would help mitigate conflicts of interest and that each contractor's situation should be considered on a case-by-case basis.

In developing the conflict of interest requirements, we had several options. We could refuse to contract with any entity if a conflict of interest situation either exists or is perceived to exist, or we could choose not to contract with any health-care related entities. We could try to develop a list of all potential situations where a conflict of interest could possibly arise.

We rejected all of these options and adopted a "process approach." While the process described below employs a greater test than generally prescribed in the Federal acquisition regulations for conflict of interest situations, we believe that the sensitive nature of the work to be performed under the contract, the need to preserve the public trust, and the history of fraud and abuse in the Medicare program merits these further requirements. The emphasis on process requires—

- Disclosure by the offeror or contractor via an Organizational Conflicts of Interest Certificate;
- The offeror or contractor to submit a plan to mitigate situations that could be considered potential conflicts of interest;
- The offeror to describe a program that it will establish, if awarded the contract, to monitor its compliance with any plans approved by us to resolve conflicts of interest; and
- The offeror to describe plans to have a compliance audit completed by an independent auditor.

Specifically, in § 421.310(b), we would state the general rule that, except as provided in § 421.310(d), we do not enter into a MIP contract with an offeror or contractor that we have determined has, or has the potential for, an unresolved organizational conflict of interest. Paragraph (d) of § 421.310 would provide that we may contract with an offeror or contractor that has an unresolved conflict if we determine that it is in the best interest of the Government to do so. We would define "organizational conflict of interest," at § 421.310(a), basing our definition on the definition of that term contained in the FAR at 48 CFR 9.501(d). That definition states that organizational conflict of interest means "that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage." To clarify how this definition would apply to the MIP contract, we would add that, for purposes of the MIP contract, the activities and relationships described include those of the offeror or contractor itself and other business related to it and those of its officers, directors (including medical directors), managers, and subcontractors.

In paragraph (c) of § 421.310, we would state that we determine that an offeror or contractor has an organizational conflict of interest, or a potential for the conflict exists, if the offeror or contractor either is, or has a present, or known future, direct or indirect financial relationship with, an entity we describe in § 421.310(c)(3), which is discussed later in this preamble. In paragraph (a) of § 421.310, we would define "financial relationship" as (1) a direct or indirect ownership or investment interest (including an option or nonvested interest) in any entity that exists through equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest, or (2) a compensation arrangement with an entity. This definition is similar to the definition at § 411.351, which is used for purposes of the provision which generally prohibits physicians from making referrals for Medicare services to entities with which the physician or a member of the physician's immediate family has a financial relationship. The definition at § 411.351 was based on section 1877(a)(2) of the Act as it read before January 1, 1995. To reflect the current reading of section 1877(a)(2), we have added, in our proposed definition, that an indirect interest can exist through multiple levels.

In paragraph (c)(2) of § 421.310, we would specify that a financial relationship may exist either through an offeror's or contractor's parent companies, subsidiaries, affiliates, subcontractors, or current clients. We would also specify that a financial relationship may exist from the activities and relationships of the officers, directors (including medical directors), or managers of the offeror or contractor and may be either direct or indirect. We would define an indirect financial relationship as an ownership or investment interest that is held in the name of another but provides benefits to the officer, director, or manager.

In § 421.310(c)(3), we would provide that an offeror or contractor has a conflict of interest, or a potential conflict of interest, if it is, or has a present or known future financial relationship with, an entity that—

- Provides, insures, or pays for health benefits, with the exception of health plans provided as the entity's employee fringe benefit;
- Conducts audits of health benefit payments or cost reports;
- Conducts statistical analysis of health benefit utilization;
- Would review or does review, under the contract, Medicare services furnished by a provider or supplier that is a direct competitor of the offeror or contractor;
- Prepared work or is under contract to prepare work that would be reviewed under the MIP contract; or
- Is affiliated, as that term is explained in 48 CFR 19.101, with a provider or supplier to be reviewed under the MIP contract. (Section 19.101 of 48 CFR states that—

* * * business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control

both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; provided, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss of failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located inside the United States.

Section 19.101 explains that control may exist through stock ownership, stock options, convertible debentures, voting trusts, common management, and contractual relationships.)

We would be interested in receiving comments as to how we might better identify those situations that create a conflict of interest. For example, we had originally considered including all entities that provide, insure, or pay for health benefits. We have, however, identified the situation in which an offeror or contractor provides health benefits as an employee fringe benefit as being one where the likelihood of a conflict would not exist. We would be interested in receiving comments as to whether it would be appropriate to create other exceptions.

In § 421.310(c)(4), we would specify that we may determine that an offeror or contractor has an organizational conflict of interest, or the potential for one exists, based on apparent organizational conflicts of interest or on other contracts and grants with the Federal Government. We would provide that an apparent conflict of interest exists if a prudent business person has cause to believe that the offeror or contractor would have a conflict of interest in performing the requirements of the MIP contract. We would further provide that no inappropriate action by the offeror or contractor is necessary for an apparent conflict to exist. We believe it is necessary to consider the offeror's or contractor's other contracts and grants with the Federal Government to determine whether the offeror's or contractor's financial dependence upon the Government could influence the likelihood that it would provide unbiased opinions, conclusions, and work products.

In paragraph (e) of § 421.310, we would specify that an offeror or contractor is responsible for determining whether an organizational conflict of interest exists in any of its proposed or actual subcontractors and consultants at any tier. We also would specify that the offeror or contractor is responsible for ensuring that its subcontractors and consultants have mitigated any conflicts or potential conflicts.

In paragraph (f) of § 421.310, we would state that we consider that a conflict of interest has occurred if, during the term of the contract, the contractor received any fee, compensation, gift, payment of expenses, or any other thing of value from an entity that is reviewed, audited, investigated, or contacted during the normal course of performing activities under the MIP contract. We have considered creating an exception for those compensations, fees, gifts, and other things of value that are in an amount that would not affect a contractor's impartiality or objectivity in carrying out its responsibilities under the MIP contract. We would be interested in receiving comments suggesting how we might determine an appropriate dollar amount for such an exception.

We would also specify in paragraph (f) of § 421.310 that a conflict of interest has occurred during the term of the contract if we determine that the contractor's activities are creating a conflict. In addition, we would specify that, if we determine that a conflict of interest exists, among other actions, we may, as we deem appropriate—

- Not renew the contract for an additional term;
- Modify the contract; or
- Terminate the contract.

In § 421.312(a), we would specify that offerors and MIP contractors must submit an Organizational Conflicts of Interest Certificate that contains the following information unless it has otherwise been provided in the proposal, in which case it must be referenced:

- A description of all business or contractual relationships or activities that may be viewed by a prudent business person as a conflict of interest.
- A description of the methods the offeror or contractor will apply to mitigate any situation listed in the Certificate that could be identified as a conflict of interest.
- A description of the offeror's or contractor's program to monitor its compliance and the compliance of its proposed and actual subcontractors and consultants with the conflict of interest requirements as identified in the relevant solicitation.
- A description of the offeror's or contractor's plans to contract for a compliance audit to be conducted by an independent auditor would be required for all MIP contractor procurements.
- An affirmation, using language that we may prescribe, signed by an official authorized to bind the offeror or contractor, that the offeror or contractor understands that we may consider any deception or omission in the Certificate grounds for nonconsideration for contract award in the procurement process, termination of the contract, or other contract action.
- Corporate and organizational structure.
- Financial interests in other entities, including the following:
  + Percentage of ownership in any other entity.
  + Income generated from other sources.
  + A list of current or known future contracts or arrangements, regardless of size, with any insurance organization; subcontractor of an insurance organization; or providers or suppliers furnishing services for which payment may be made under the Medicare program. This information is to include the dollar amount of the contracts or arrangements, the type of work performed, and the period of performance.
- Information regarding potential conflicts of interest and financial information regarding certain contracts for all of the offeror's or contractor's officers, directors (including medical directors), and managers who would be or are involved in the performance of the MIP contract. We may also require officers, directors (including medical directors) and managers to provide financial information regarding their ownership in other entities and their income from other sources.

We would also specify that the solicitation may require more detailed information than identified above. Our proposed provisions do not describe all of the information that may be required, or the level of detail that would be required, because we wish to have the flexibility to tailor the disclosure requirements to each specific procurement.

With regard to ownership, we invite public comments to establish the level of financial interest that could be considered a material interest in different situations. While we would not establish this level in the final rule, it may be included in solicitations for specific contract situations.

We intend to reduce the reporting and recordkeeping requirements as much as is feasible, while taking into consideration our need to have assurance that a conflict of interest does not exist in the MIP contractors.

By providing documentation of potential conflicts of interest and how the offeror plans to mitigate those conflicts in the Certificate, the offeror gives us enough information to determine on a case-by-case basis if conflicts of interest have been adequately mitigated or should preclude award of MIP contracts. The burden associated with providing the requested information is justified by the large expansion of competition the process allows.

We propose, in § 421.312(b) that the Organizational Conflicts of Interest Certificate be disclosed—

- With the offeror's proposal;
- When the HCFA Contracting Officer requests a revision in the Certificate;
- As part of a compliance audit by the independent auditor;
- Forty-five days before any change in the information submitted on the Certificate. In this case, only changed information must be submitted.

We would state, in § 421.312(c), that we evaluate organizational conflicts of interest and potential conflicts using the information provided in the Certificate.

Because potential offerors may have questions about whether information submitted in response to a solicitation, including the Organizational Conflicts of Interest Certificate, may be redisclosed under the Freedom of Information Act, we provide the following information.

To the extent that a proposal containing the Organizational Conflicts of Interest Certificate is submitted to us as a requirement of a competitive solicitation under 41 U.S.C. Chapter 4, Subchapter IV, we will withhold the proposal when requested under the Freedom of Information Act. This withholding is based upon 41 U.S.C. § 253b(m). However, there is one exception to this policy. It involves any proposal that is set forth or incorporated by reference in the contract awarded to the proposing bidder. Such a proposal may not receive categorical protection. Rather, we will withhold, under 5 U.S.C. 552(b)(4), information within the proposal (and Certificate) that is required to be submitted that constitutes trade secrets or commercial or financial information that is privileged or confidential provided the criteria established by *National Parks & Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir 1974), as applicable, are met. For any such proposal, we will follow pre-disclosure notification procedures set forth at 45 CFR 5.65(d). In addition, we will protect under 5 U.S.C. 552(b)(6) any information within the Certificate that is of a highly sensitive personal nature.

Any proposal containing the Organizational Conflicts of Interest Certificate submitted to us under an authority other than 41 U.S.C. Chapter 4, Subchapter IV, and any Certificate or information submitted independent of a proposal will be evaluated solely on the criteria established by *National Parks & Conservation Association* v. *Morton* and other appropriate authorities to determine if the proposal or Certificate in whole or in part contains trade secrets or commercial or financial information that is privileged or confidential and protected from disclosure under 5 U.S.C. 552(b)(4). Again, for any such proposal or Certificate, we will follow pre-disclosure notification procedures set forth at 45 CFR 5.65(d) and will also invoke 5 U.S.C. 552(b)(6) to protect information that is of a highly sensitive personal nature.

We already protect information we receive in the contracting process. However, to allay any fears potential offerors might have about disclosure, we propose to provide, at § 421.312(d), that we protect disclosed proprietary information as allowed under the Freedom of Information Act and that we require signed statements from our personnel with access to proprietary information that prohibit personal use during the procurement process and term of the contract.

In proposed § 421.314, we describe how conflicts of interest are resolved. We specify that we establish a Conflicts of Interest Review Board to resolve conflicts of interest and that we determine when the Board is convened. We would define resolution of an organizational conflict of interest as a determination that——

- The conflict has been mitigated;
- The conflict precludes award of a contract to the offeror;
- The conflict requires that we modify an existing contract;
- The conflict requires that we terminate an existing contract; or
- It is in the best interest of the Government to contract with the offeror or contractor even though the conflict exists.

Examples of methods an offeror or contractor may use to mitigate organizational conflicts of interest, including those created as a result of the financial relationships of individuals within the organization are shown below. These examples are not intended to be an exhaustive list of all the possible methods to mitigate conflicts of interest nor are we obligated to approve a mitigation method that uses one or more of these examples. An offeror's or contractor's method of mitigating conflicts of interest would be evaluated on a case-by-case basis.

- Divestiture of or reduction in the amount of the financial relationship the organization has in another organization to a level acceptable to us and appropriate for the situation.
- If shared responsibilities create the conflict, a plan, included in the Organizational Conflicts of Interest Certificate and approved by us, to separate lines of business and management or critical staff from work on the MIP contract.
- If the conflict exists because of the amount of financial dependence upon the Federal Government, negotiating a phasing out of other contracts or grants that continue in effect at the start of the MIP contract.
- If the conflict exists because of the financial relationships of individuals within the organization, divestiture of the relationships by the individual involved.
- If the conflict exists because of an individual's indirect interest, divestiture of the interest to levels acceptable to us or removal of the individual from the work under the MIP contract.

In the procurement process, we determine which proposals are in a "competitive range." The competitive range is based on cost or price and other factors that are stated in the solicitation and includes all proposals that have a reasonable chance for contract award. Using the process proposed in this regulation, offerors will not be excluded from the competitive range based solely on conflicts of interest. If we determine that an offeror in the competitive range has a conflict of interest that is not adequately mitigated, we would inform the offeror of the deficiency and give it an opportunity to submit a revised Certificate. At any time during the procurement process, we may convene the Conflict of Interest Review Board to evaluate and resolve conflicts of interest.

By providing a better process for the identification, evaluation, and resolution of conflicts of interest, we not only protect Government interests but help ensure that contractors will not restrict competition in their service areas by using their position as a MIP contractor.

7. Limitation on MIP Contractor Liability and Payment of Legal Expenses

As discussed earlier, contractors who perform activities under the MIP contract will be reviewing activities of providers and suppliers that provide services to Medicare beneficiaries. Their contracts will authorize them to evaluate the performance of providers,

suppliers, individuals, and other entities that may subsequently challenge their decisions. To reduce or eliminate a MIP contractor's exposure to possible legal action from those it reviews, section 1893(e) of the Act requires that we, by regulation, limit a MIP contractor's liability for actions taken in carrying out its contract. We must establish, to the extent we find appropriate, standards and other substantive and procedural provisions that are the same as, or comparable to, those contained in section 1157 of the Act.

Section 1157 of the Act limits liability and provides for the payment of legal expenses of an Utilization and Quality Control Peer Review Organization (PRO) that contracts to carry out functions under section 1154(e) of the Act. Specifically, section 1157 provides that PROs, their employees, fiduciaries, and anyone who furnishes professional services to a PRO are protected from civil and criminal liability in performing their duties under the Act or their contract, provided these duties are performed with due care. Following the mandate of section 1893(e), this proposed rule, at § 421.316(a), would protect MIP contractors from liability in the performance of their contracts provided they carry out their contractual duties with care.

In accordance with section 1893(e), we propose to employ the same standards for the payment of legal expenses as are contained in section 1157(d) of the Act. Therefore, § 421.316(b) will provide that we will make payment to MIP contractors, their members, employees, and anyone who provides them legal counsel or services for expenses incurred in the defense of any legal action related to the performance of a MIP contract. We propose that the payment be limited to the reasonable amount of expenses incurred, as determined by us, provided funds are available and that the payment is otherwise allowable under the terms of the contract.

In drafting § 421.316(2), we considered employing a standard for the limitation of liability other than the due care standard. For example, we considered whether it would be appropriate to provide that a contractor would not be criminally or civilly liable by reason of the performance of any duty, function, or activity under its contract provided the contractor was not grossly negligent in that performance. However, section 1893(e) requires that we employ the same or comparable standards and provisions as are contained in section 1157 of the Act. We do not believe that it would be appropriate to expand the scope of immunity to a standard of gross negligence, as it would not be a comparable standard to that set forth in section 1157(b) of the Act.

We also considered indemnifying MIP contractors employing provisions similar to those contained in the current Medicare intermediary agreements and carrier contracts. Generally, intermediaries and carriers are indemnified for any liability arising from the performance of contract functions provided the intermediary's or carrier's conduct was not grossly negligent, fraudulent, or criminal. However, we may indemnify a MIP contractor only to the extent we have specific statutory authority to do so. Section 1893(e) does not provide that authority. In addition, § 421.316(a) provides for immunity from liability in connection with the performance of a MIP contract provided the contractor exercised due care. Indemnification is not necessary since the MIP contractors will have immunity from liability under § 421.316(a).

B. Intermediary and Carrier Functions

Section 1816(a) of the Act, which provides that providers may nominate an intermediary, requires only that nominated intermediaries perform the functions of determining payment amounts and making payment, and section 1842(a) of the Act requires only that carriers perform "some or all" of the functions cited in that section. Our requirements at §§ 421.100 and 421.200 concerning functions to be included in intermediary agreements and carrier contracts far exceed those of the statute. Therefore, on February 22, 1994, we published a proposed rule (59 FR 8446) that would distinguish between those functions that the statute requires be included in agreements with intermediaries and those functions, which although not required to be performed by intermediaries, may be included in intermediary agreements at our discretion. We also proposed that any functions included in carrier contracts would be included at our discretion. In addition, we proposed to add payment on a fee schedule basis as a new function that may be performed by carriers.

In light of the expansion of our contracting authority by section 1893 of the Act to allow us to contract with eligible entities to perform Medicare program integrity activities performed currently by intermediaries and carriers, we have decided not to finalize the February 1994 proposed rule. Instead, in this proposed rule we are setting forth a new proposal to bring those sections of the regulations that concern the functions Medicare intermediaries and carriers perform into conformity with the provisions of sections 1816(a), 1842(a), and 1893(b) of the Act.

As noted in section I.A. of this preamble, our regulations at § 421.100 specify a list of functions that must, at a minimum, be included in all intermediary agreements. Similarly, § 421.200 specifies a list of functions that must, at a minimum, be included in all carrier contracts. These requirements far exceed those of the statute.

Section 1816(a) of the Act requires only that an intermediary agreement provide for determination of the amount of payments to be made to providers and for the making of the payments. Section 1816(a) permits, but does not require, an intermediary agreement to include provisions for the intermediary to provide consultative services to providers to enable them to establish and maintain fiscal records or to otherwise qualify as providers. It also provides that, for those providers to which the intermediary makes payments, the intermediary may serve as a channel of communications between us and the providers, may make audits of the records of the providers, and may perform other functions as are necessary.

We believe that section 1816(a) mandates only that an intermediary make payment determinations and make payments and that, because of the nomination provision of section 1816(a), these functions must remain with intermediaries. We believe that section 1816(a) does not require that the other functions set forth at § 421.100 (c) through (i) be included in all intermediary agreements. Further, section 1893 of the Act permits the performance of functions related to Medicare program integrity by other entities. Thus, § 421.100 needs to be revised to be consistent with section 1893 and the implementing regulation. We also believe that mandatory inclusion of all functions in all agreements limits our ability to efficiently and effectively administer the Medicare program. For example, if an otherwise competent intermediary performs a single function poorly, it would be efficient and effective to have that function transferred to another contractor that could carry it out in a satisfactory manner. The alternative is to not renew or to terminate the agreement of that intermediary and to transfer all functions to a new contractor that may not have had an ongoing relationship with the local provider community.

Therefore, we would revise § 421.100 to specify that an agreement between us and an intermediary specifies the functions to be performed by the intermediary and that these must include determining the amount of payments to be made to providers for covered services furnished to Medicare beneficiaries and making the payments and may include any or all of the following functions:

- Any or all of the MIP functions identified in proposed § 421.304, provided that they are continuing to be performed under an agreement entered into under section 1816 of the Act that was in effect on August 21, 1996, and they do not duplicate work being performed under a MIP contract.
- Undertaking to adjust overpayments and underpayments and to recover overpayments when it has been determined that an overpayment has been made.
- Furnishing to us timely information and reports that we request in order to carry out our responsibilities in the administration of the Medicare program.
- Establishing and maintaining procedures that we approve for the review and reconsideration of payment determinations.
- Maintaining records and making available to us the records necessary for verification of payments and for other related purposes.
- Upon inquiry, assisting individuals with respect to matters pertaining to an intermediary contract.
- Serving as a channel of communication to and from us of information, instructions, and other material as necessary for the effective and efficient performance of an intermediary contract.
- Undertaking other functions as mutually agreed to by us and the intermediary.

In § 421.100(c), we would specify that, with respect to the responsibility for services to a provider-based HHA or a provider-based hospice, when different intermediaries serve the HHA or hospice and its parent provider under § 421.117, the designated regional intermediary determines the amount of payment and makes payments to the HHA or hospice. The intermediary and/or MIP contractor serving the parent provider performs fiscal functions, including audits and settlement of the Medicare cost reports and the HHA and hospice supplement worksheets.

Section 1842(a), which pertains to carrier contracts, requires that the contract provide for some or all of the functions listed in that paragraph, but does not specify any functions that must be included in a carrier contract. As in the case of intermediary agreements, our experience has been that mandatory inclusion of a long list of functions in all contracts restricts our ability to administer the carrier contracts with optimum efficiency and effectiveness. We believe that the requirements of the regulations for both intermediaries and carriers should be brought into conformity with the statutory requirements. Therefore, we would revise existing § 421.200, "Carrier functions," to make it consistent with section 1893 of the Act and the implementing regulations. We would provide that a contract between HCFA and a carrier specifies the functions to be performed by the carrier, which may include the following:

- Any or all of the MIP functions described in § 421.304 if the following conditions are met: (1) The carrier is continuing those functions under a contract entered into under section 1842 of the Act that was in effect on August 21, 1996; and (2) they do not duplicate work being performed under a MIP contract, except that the function related to developing and maintaining a list of durable medical equipment may be performed under both a carrier contract and a MIP contract.
- Receiving, disbursing, and accounting for funds in making payments for services furnished to eligible individuals within the jurisdiction of the carrier.
- Determining the amount of payment for services furnished to an eligible individual.
- Undertaking to adjust incorrect payments and recover overpayments when it has been determined that an overpayment has been made.
- Furnishing to us timely information and reports that we request in order to carry out our responsibilities in the administration of the Medicare program.
- Maintaining records and making available to us the records necessary for verification of payments and for other related purposes.
- Establishing and maintaining procedures under which an individual enrolled under Part B will be granted an opportunity for a fair hearing.
- Upon inquiry, assisting individuals with matters pertaining to a carrier contract.
- Serving as a channel of communication to and from us of information, instructions, and other material as necessary for the effective and efficient performance of a carrier contract.
- Undertaking other functions as mutually agreed to by us and the carrier.

C. Technical and Editorial Changes

Because we propose to add a new subpart D to part 421 that would apply to MIP contractors, we propose to change the title of part 421 from "Intermediaries and Carriers" to "Medicare Contracting". We also propose to revise § 421.1, which sets forth the basis, scope, and applicability of part 421. We would revise this section to add section 1893 of the Act to the list of provisions upon which the part is based. We would also make editorial and other changes (such as reorganizing the contents of the section and providing headings) that improve the readability of the section without affecting its substance.

In addition, numerous sections of our regulations specifically refer to an action being taken by an intermediary or a carrier. If the action being described may now be performed by a MIP contractor that is not an intermediary or a carrier, we would revise those sections to indicate that this is the case. As an example, § 424.11, which sets forth the responsibilities of a provider, specifies, in paragraph (a)(2), that the provider must keep certification and recertification statements on file for verification by the intermediary. A MIP contractor now may also perform the verification. Therefore, we would revise § 424.11(a)(2) to specify that the provider must keep certification and recertification statements on file for verification by the intermediary or MIP contractor. Because our regulations are continuously being revised and sections redesignated, we have not identified all such sections that will have technical changes in this rule, but we will do so in the final rule. If we determine that substantive changes to our regulations are necessary, we will make those changes through separate rulemaking.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a

collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of the issues for sections §§ 421.310 and 421.312 of this document, which contain information collection requirements.

Section 421.310 Conflict of Interest Identification

Section 421.310(e) requires offerors to determine if an organizational conflict of interest exists in any of its proposed or actual subcontractors at any tier and to ensure that the subcontractors have mitigated any conflict of interest or potential conflict of interest. As discussed below, the information collection requirements for § 421.312 also require an offeror to list in an Organizational Conflicts of Interest Certificate situations that could be identified as conflicts of interest and to describe methods it would apply to mitigate those situations. Based on our best estimate, we believe that the requirement will impose a burden of 80 hours on each offeror with respect to information it provides for its own organization. It is assumed that offerors will impose the same or similar disclosure requirements on their proposed or actual subcontractors as imposed by us on offerors, with the understanding that we would not expect them to require that independent auditors perform compliance audits on subcontractors. Based on this assumption, an offeror's burden with respect to its subcontractors is estimated to be one-half the burden imposed on an offeror with respect to its own organization.

We expect 15 offerors for each type of MIP contract. We estimate that the requirement of this provision will impose a burden of 40 hours per subcontractor on each offeror to identify and mitigate any organizational conflicts of interest for its subcontractors at any tier. We believe that, on average, each offeror will need to evaluate three subcontractors. The total burden referenced in § 421.310(e) with respect to an offeror's subcontractors is 1,800 burden hours.

Section 421.312 Conflict of Interest Evaluation

Section 421.312 requires offerors that wish to be eligible for the award of a contract under this subpart and MIP contractors to submit an Organizational Conflicts of Interest Certificate for pre- and post-award purposes.

Based on comments provided by the public on possible methods we could use to identify, evaluate, and resolve potential conflicts of interest, we found that only by imposing the information collection requirements referenced in this section could competition remain open to all interested parties regardless of their current lines of business and, at the same time provide us with enough information to determine on a case-by-case basis if conflicts of interest have been properly identified and adequately mitigated. Only by imposing these information collection requirements can we determine whether an offeror should be awarded a MIP contract.

Below is a summary of the proposed Organizational Conflict of Interest Certificate disclosure requirements and related burden required with the offeror's proposal. The items of information described below will be required for all MIP contractor procurements, unless the information is otherwise provided in the proposal, in which case it must be referenced. The last item identifies some information that officers, directors, and managers will be required to provide in all MIP procurements and some information that they may be required to provide in a MIP procurement.

- *A description of all business or contractual relationships or activities that a prudent business person may view as a conflict of interest.*

We have received comments from the insurance industry and affiliated sources that some situations that we may not readily identify as conflicts nonetheless appear to create conflicts of interest. If a prudent business person could believe a conflict of interest exists in a situation, the entity is required to report the situation even if we have not created a "classification" for the situation. We would use this information to evaluate the situation and to determine if it is adequately mitigated or requires no mitigation. In addition, we would use this information to adapt to changing environments and to modify the conflict of interest requirements.

- *A description of the methods the offeror/contractor will apply to mitigate any situations listed in the Certification that could be identified as conflicts of interest.*

We would use the description of the methods the offeror/contractor will apply to mitigate any situations listed in the Certification that could be identified as conflicts of interest to determine if conflicts would be neutralized effectively by the methods described. Generally, we consider a conflict of interest to exist when a contractor's ability to make impartial decisions or perform its work under its contract objectively has been or may be compromised. The offeror/contractor could propose to mitigate a conflict of interest by using methods such as divestiture or reduction of a conflicting financial interest, reassignment of work responsibilities to exclude individuals with conflicting interests from performing work under the contract, or separating lines of business. We would assess the effectiveness of the mitigation method using the information disclosed regarding an offeror's/contractor's organizational structure, financial interests, or other relationships as may be required in a solicitation as discussed below.

- *A description of the offeror's/contractor's program to monitor its compliance and the compliance of its proposed and actual subcontractors with the conflict of interest requirements as identified in the relevant solicitation.*

We would evaluate the proposed compliance program to determine if the program would enable an offeror/contractor to effectively monitor its compliance and its subcontractors' compliance with conflict of interest requirements specific to the contract. This requirement is integrally connected with an entity's description of its method to mitigate conflicts. Once conflicts are mitigated at the inception of a contract, an entity must be vigilant to ensure that the methods are followed and that new conflicts of interest that arise during the term of the contract are identified and mitigated. We would use the compliance program to ensure we award contracts only to offerors that will follow proposed methods for mitigation of conflicts and that offerors establish an administrative mechanism for disclosure of changing situations that may require contract modifications.

- *An affirmation, using language that we may prescribe, that the offeror/contractor understands that we may consider any deception or omission in the Certificate grounds for nonconsideration in the procurement*

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process, termination of the contract, or other contract action.

The affirmation places a higher degree of accountability on the entity for the accuracy of the information disclosed than would otherwise be afforded. By signing the affirmation, the offeror/contractor will be put on notice of the consequences for any false statement or omission of information regarding conflicts of interest. The person signing the affirmation will be put on notice of the offeror's/contractor's responsibility for ensuring the veracity of the information disclosed. We would consider the provision of false or deceptive information in the affirmation as possible grounds for elimination of an offeror from consideration in the procurement process or taking other appropriate contract or legal action.

• *A description of the offeror's/contractor's plans to contract with an independent auditor to conduct a compliance audit.*

We would use this information to ensure that the offeror has an arrangement with an independent source that will verify compliance with conflict of interest requirements.

• *Corporate and organizational structure.*

We would require this information to determine if legal entities are connected through partnerships, joint ventures, or other legal arrangements. We would assess the types of relationships, evaluate an offeror's/contractor's mitigation methods, and determine if the conflicts of interest based on an offeror's/contractor's relationships have been resolved as part of the procurement process. This information would also be used during the term of the contract to evaluate the mitigation of conflicts when structures change.

• *Financial interests in other entities, including the following:*

+ *Percentage of ownership in any other entity.*

We would use the percentage of ownership interest and the dollar value of financial interests to evaluate reported conflicts of interest and the adequacy of an offeror's/contractor's mitigation methods. Both these measures were suggested by the participants in the 1996 open forum discussion as appropriate considerations in evaluating conflicts of interest. We would perform the evaluation on a case-by-case basis.

• *Income generated from other sources.*

We would use this information to determine if the offeror/contractor could be unduly influenced by other financial relationships it may have with possible customers, competitors, or other parties interested in influencing the performance of the MIP contractor. Income can be generated in a variety of ways, for example, as fees, salaries, reimbursements, or stock options. This information would enable us to evaluate the adequacy of an offeror's/contractor's proposed mitigation methods for conflicts of interest that arise from financial dependence on other entities.

• *A list of current or known future contracts or arrangements, regardless of size, with any insurance organization; subcontractor of an insurance organization; or provider or supplier furnishing services for which payment may be made under the Medicare program. This information is to include the dollar amount of the contracts or arrangements, the type of work performed, and the period of performance.*

We would use this information to evaluate an offeror's/contractor's conflicts that are based on contractual arrangements and to assess the adequacy of its mitigation method. The offeror/contractor would be required to disclose future contracts so that we can assess whether mitigation methods address conflicts that will develop during the procurement process or during the term of the contract.

• *Information regarding potential conflicts of interest and financial information regarding certain contracts for all of the offeror's/contractor's officers, directors (including medical directors), and managers who would be or are involved in the performance of the MIP contract.*

We would evaluate this information to determine if individuals who can control the outcome of work performed under a MIP contract may be unduly influenced by their own or their close relatives' business relationships or contracts. We need the information to protect the monies disbursed for both program and administrative services and to ensure that an offeror's/contractor's mitigation methods adequately eliminate any conflicts that exist due to relationships of an offeror's/contractor's officers, directors, or managers.

Private sector participants at the December 6, 1996 open forum discussion expressed the opinion that full disclosure of all of an offeror's/contractor's relationships would ameliorate conflicts of interest. We considered that, while this might be appropriate in some MIP contractor procurements, it would be unduly burdensome and unnecessary as a blanket requirement in all MIP procurements. Instead, we identified information, described above, that we believe to be essential to the process and require this information to be disclosed in MIP procurements.

The amount of burden associated with these requirements will generally decrease as the size of the offeror/contractor decreases. Smaller offerors/contractors and those not involved in the insurance industry may have no potential conflicts of interest to report if they do not participate in other lines of business and/or if they do not participate in lines of business related to the insurance, health, and health management and consulting industries that are likely to have potential conflicts of interest.

Therefore, based on comments provided by the public and our prior experience, we expect the Certificate and supporting materials will take approximately 80 hours to prepare by each offeror/contractor for its own organization. This estimate is based on the fact that the majority of these disclosure requirements will be compiled using existing data, which an offeror/contractor uses to satisfy other business needs, and the assumption that approximately one-third of the offerors will not have any potential conflicts of interest to report. We expect 15 offerors for each MIP contract. The total burden referenced in this section is 1,200 burden hours.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attn: John Burke, Attn: HCFA–7020–P, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer

V. Regulatory Impact Statement

A. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and,

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when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Intermediaries and carriers are not considered to be small entities.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

B. Summary of the Proposed Rule

As discussed in detail above, this rule implements section 1893 of the Act, which encourages proactive measures to combat waste, fraud, and abuse and to protect the integrity of the Medicare program. The objective of the proposed regulation is to provide a procurement procedure to supplement the requirements of the FAR and specifically address contracts to perform MIP functions identified in the law.

As part of their existing contractual duties, both intermediaries and carriers must perform certain program integrity activities or payment safeguard activities. These activities include, but are not limited to, conducting review of claims to determine whether services were reasonable and necessary, deterring and detecting Medicare fraud, auditing provider cost reports, and ensuring that Medicare pays the appropriate amount when a beneficiary has other health insurance. This rule provides that these functions, as specified below, will be performed under new MIP contracts:

- Review of provider activities such as medical review, utilization review, and fraud review.
- Audit of cost reports.
- Medicare secondary payer review and payment recovery.
- Provider and beneficiary education on payment integrity and benefit quality assurance issues.
- Developing and updating lists of durable medical equipment items that are to be subject to prior approval provisions.

C. Discussion of Impact

We expect that this rule will have a positive impact on the Medicare program, Medicare beneficiaries, providers, suppliers, and entities that have not previously contracted with us. It is possible that some providers and suppliers may experience a slight increase in administrative costs as their claims are subjected to closer review. Current intermediaries and carriers that seek award of MIP contracts may incur costs in complying with new requirements set forth in the rule, but the effect is not expected to be material. To the extent that small entities could be affected by the rule, and because the rule raises certain policy issues with respect to conflict of interest standards, we provide an impact analysis for those entities we believe will be most heavily affected by the rule.

We believe that this rule will have an impact, although not a significant one, in five general areas. The Medicare program and Health Insurance Trust Funds, Medicare beneficiaries and taxpayers, entities that have not previously contracted with us, and Medicare providers and suppliers would benefit from the rule. Current intermediaries and carriers may experience a somewhat negative impact, although the effect on these organization should be tempered by the benefits the new rule will confer.

1. The Medicare Program and Health Insurance Trust Funds

In recent years, sizable cuts in intermediaries' and carriers' budgets for program safeguards have diminished efforts to thwart improper billing practices. The Health Insurance Portability and Accountability Act provides for a direct apportionment from the Health Insurance Trust Funds for carrying out the MIP. Appropriations totaled $440 million for FY 1998 and $500 million for FY 1998. By FY 2003, appropriations are expected to grow to $720 million.

Creating a separate and dependable long-term funding source for MIP will allow us the flexibility to invest in innovative strategies to combat the fraud and abuse drain on the Trust Funds. By shifting emphasis from post-payment recoveries on incorrectly paid claims to pre-payment strategies, most claims will be paid correctly the first time.

Improper billing and health care fraud are difficult to quantify because of their hidden nature. However, a General Accounting Office (GAO) report on Medicare (GAO/HR–91–10, February 1997) suggests that by reducing unnecessary or inappropriate payments, the Federal Government would realize large savings and help slow the growth in Medicare costs. In this report, the GAO states that estimates of "the costs of fraud and abuse ranging from 3 to 10 percent have been cited for health expenditures nationwide, so applying this range to Medicare suggests that such losses in fiscal year 1996 could have been from $6 billion to as much as $20 billion."

The savings realized from our payment safeguard activities for FYs 1988–1996 were as follows:

Year	Total cost *	Total savings *	Return on investment
FY1988	$313.6	$3,654.1	12:1
FY1989	376.3	3,961.6	11:1
FY1990	348.7	5,234.4	15:1
FY1991	360.7	5,703.4	16:1
FY1992	350.7	5,153.2	15:1
FY1993	406.3	6,506.6	16:1
FY1994	412.4	5,412.7	13:1
FY1995	428.3	6,314.9	15:1
FY1996	441.1	6,190.4	14:1

* Dollars in millions.

In our Justification of Estimates for Appropriations Committees for fiscal year 1998, we projected the return on investment for various payment safeguard activities under MIP. Overall, we expect that every dollar expended in fiscal year 1998 to perform integrity functions will save $12 for the Medicare program. We estimate that medical review and utilization review performed under MIP will produce a return on investment of 8:1 for Part A claims and 14:1 for Part B claims. Every dollar spent on audit functions under MIP is expected to save $6 for the Medicare program. For Medicare secondary payer functions, we project a 50:1 return on investment for Part A claims and a 9:1 return for Part B claims. The overall return for Medicare secondary payer functions performed under MIP is estimated to be 26:1.

In addition to these economic advantages, the Medicare program will benefit in a qualitative way. MIP, as this proposed rule would implement it, gives us a tool to better administer the Medicare program and accomplish our mission of providing access to quality health care for Medicare beneficiaries. Under this rule, program integrity activities will be performed under specialized contracts that are subject to more stringent conflict of interest standards than were previously employed. In addition, for the first time we will be able to use competitive procedures to separately contract for the performance of integrity functions. In general, economic theory postulates that competition results in a better price for the consumer who, in this instance, is HCFA on behalf of Medicare beneficiaries and taxpayers. Competition should also encourage the use of innovative techniques to perform integrity functions that will, in turn, result in more efficient and effective safeguards for the Trust Funds.

2. Medicare Beneficiaries and Taxpayers

We expect that overall this rule would have a positive effect on Medicare beneficiaries and taxpayers. Beneficiaries pay deductibles and Part B Medicare premiums. Taxpayers, including those who are not yet eligible for Medicare, contribute part of their earnings to the Part A Trust Fund. Taxpayers and beneficiaries contribute indirectly to the Part B Trust Funds because it is funded, in part, from general tax revenues. Consistent performance of program integrity activities will ensure that less money is wasted on inappropriate treatment or unnecessary services. As a result, current and future beneficiaries will obtain more value for every Medicare dollar spent.

Medicare contractors estimate that of the 130,000 calls they receive yearly concerning potential fraud and abuse, 94,000 are from beneficiaries, many of whom call to question the propriety of claims made on their behalf. Beneficiary education monies, especially when used to provide more Medicare "scam alerts," will enhance a beneficiary's attention to detail and increase savings.

Beneficiaries may experience higher denial rates due to the more stringent claims review. It is expected, however, that most of the potential increase in denials will result from a determination that the services provided were not reasonable and necessary under Medicare authorities and guidelines. There are established limitations on beneficiary liability when claims are denied on this basis; thus the impact on beneficiaries will be minimized.

3. Current Intermediaries and Carriers

Although intermediaries and carriers are not considered small entities for purposes of the RFA, we are providing the following analysis. There are currently 43 Medicare intermediaries and 27 Medicare carriers plus 4 durable medical equipment regional contractors. All but 13 of these contractors are Blue Cross/Blue Shield plans. Presently, all contractors perform payment safeguard activities, and, in FY 1996, approximately 28 percent of the total contractor budget was dedicated to program integrity.

We considered prohibiting current intermediaries and carriers from entering into MIP contracts. We also considered entering into contracts with new organizations to perform all functions while simultaneously removing all payment safeguard functions from current contractors. Neither of these options appeared viable because the effect on the Medicare program would have been unduly disruptive. We do, however, expect to reduce the number of contractors when we shift and consolidate the integrity functions to MIP contractors, but the exact number cannot be determined until we begin implementing the program. The reduction in the number of contractors performing integrity functions does not mean that local contractor presence will be eliminated. Medical directors would continue to play an important role in benefit integrity activities, and we intend to retain locally-based medical directors to continue our relationship with local physicians by using groups like Carrier Advisory Committees. Locally-based fraud investigators and auditors are also likely to be used. Review policies will be coordinated across contractors to ensure consistency, but local practice will be incorporated where appropriate.

This rule may have a negative impact on current intermediaries and carriers in some respects. Current contractors will lose a portion of their Medicare business as payment safeguard functions are transferred to MIP contractors. Although their workload will be reduced, the effect on current contractors will be gradual because we have a long-term strategy for the implementation of MIP. As discussed above, we believe that it would be too disruptive to the Medicare program to make a sudden, across-the-board change in contractors. The change will be made over time, in an incremental fashion, as MIP contracts are awarded; therefore, we cannot quantify the effect.

On the other hand, current contractors would benefit from this proposed rule because, under its provisions, they are eligible to compete for MIP contracts as long as they comply with all conflict of interest and other requirements. (Current contractors may not receive payment for performing the same program integrity activities under both a MIP contract and their existing contract.) We considered proposing rules that identified specific conflict of interest situations that would prohibit the award of a MIP contract. We also considered prohibiting a MIP contractor whose contract was completed or terminated from competing for another MIP contract for a certain period. Instead, the proposed rule would establish a process for evaluating, on a case-by-case basis, situations that may constitute conflicts of interest. It permits current contractors to position themselves to be eligible for a MIP contract by mitigating any conflicts of interest they may have in order to compete. The economic impact on intermediaries and carriers is lessened by the proposed approach when compared to the alternatives we considered.

The current contractors who are awarded MIP contracts will also benefit from the consistent funding provided by the law for program integrity activities. This stable, long-term funding mechanism will allow Medicare contractors to attract, train, and retain qualified professional staff to perform claims review and audit, to identify and refer fraud cases to law enforcement agencies and to support the ongoing development of these cases for prosecution by the Department of Justice.

There will be an economic impact on current contractors that propose to

perform MIP contracts using subcontractors. MIP contractors would be required to determine if any of their subcontractors, at any tier, have conflicts of interest and to ensure that any conflicts are mitigated. A MIP contractor would apply to its subcontractors the same conflict of interest standard to which it must adhere. It is impossible to assess the precise economic impact of this portion of the proposed rule because a MIP contractor is free to contract with any subcontractor. A MIP contractor may seek out subcontractors that are conflict free, which would reduce or eliminate the time expended monitoring conflict of interest situations.

4. New Contracting Entities

Entities that have not previously performed Medicare payment safeguard activities will experience a positive effect from this rule. Integrity functions such as audit, medical review, and fraud investigation may be consolidated in a MIP contract to allow suspect claims to be identified and investigated from all angles. Contractors may subcontract for these specific integrity functions, thus creating new markets and opportunities for small, small disadvantaged, and woman-owned businesses.

Use of full and open competition to award MIP contracts may encourage innovation and the creation of new technology. Historically, cutting edge technologies and analytical methodologies created for the Medicare program have benefitted the private insurance arena.

This proposed rule, however, could also have an adverse economic impact on newly-contracting entities. They, like existing contractors, will be required to absorb the cost of mitigating conflicts of interest and complying with conflict of interest requirements.

5. Providers and Suppliers

There could be some burden imposed on providers and suppliers that are small businesses or not-for-profit organizations by the need to deal with a new set of contractors. There are approximately 1 million health care providers and suppliers (depending on how group practices and multiple locations are counted) that bill independently. The proposed rule does not necessarily impose any action on the part of these providers and suppliers. It is possible that some of them would have to devote more effort in responding to MIP contractors' inquiries generated by more stringent claims review and that they could incur a modest increase in administrative costs. In our analysis of possible administrative costs to providers and suppliers, we assumed that a contractor would make two follow-up inquiries to a provider or supplier for each potential recovery of an incorrect payment. Assuming that the response to each inquiry would require a provider or supplier to expend 30 minutes of clerical time, at $10 per hour, and 15 minutes of professional time, at $100 per hour, we estimate that the average response to an inquiry would cost $30. The resulting added cost to providers and suppliers would be under $10 million annually.

Most Medicare contractors do not maintain toll-free lines for providers or suppliers. A provider's or supplier's telephone bill could increase if it must contact a MIP contractor that is out of its calling area. However, it is possible that a provider's or supplier's intermediary or carrier may also be its MIP contractor. We believe that the centralization of certain functions would result in more consistent policy and lessen the need for a provider or supplier to communicate with its contractor. Since we plan to phase-in the transfer of the MIP activities, we do not anticipate a significant annual impact on telephone bills.

Overall, we expect that providers and suppliers will benefit qualitatively from this proposed rule. Many providers and suppliers perceive that their reputations are tarnished by the few dishonest providers and suppliers that take advantage of the Medicare program. The media often focus on the most egregious cases of Medicare fraud and abuse, leaving the public with the perception that physicians and other health care practitioners routinely make improper claims. This rule would allow us to take a more effective and wider ranging approach to identifying, stopping, and recovering from unscrupulous providers and suppliers. As the number of dishonest providers and suppliers and improper claims diminishes, ethical providers and suppliers will benefit.

This proposed rule could be considered to have a negative impact on any provider or supplier that routinely submits questionable claims and would impact those that have been receiving inappropriate payments. Since the objective of this proposed rule is to eliminate improper payments, we will not analyze the effect the rule may have on unscrupulous providers or suppliers. We do not believe that this rule will reduce a provider's or supplier's legitimate income from Medicare. As claims are more closely and systematically reviewed, providers and suppliers may experience an increase in the number of claims denied. This slight negative impact should decrease as providers become more knowledgeable regarding what claims are appropriate.

D. Conclusion

We conclude that money would be saved and the solvency of the Trust Funds extended as a result of this proposed rule. The dynamic nature of fraud and abuse is illustrated by the fact that wrongdoers continue to find ways to evade safeguards. This supports the need for constant vigilance and increasingly sophisticated ways to protect against "gaming" of the system. We solicit public comments as well as data on the extent to which any of the affected entities would be significantly economically affected by this proposed rule. However, based on the above analysis, we have determined, and certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities. We also have determined, and certify, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals. In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as follows:

A. Part 400

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.202 is amended by adding the following definition in alphabetical order, to read as follows:

§ 400.202 Definitions specific to Medicare.

* * * * * *

Medicare integrity program contractor means an entity that has a contract with

HCFA under section 1893 of the Act to perform program integrity activities.

* * * * *

B. Part 421

PART 421—MEDICARE CONTRACTING

1. The part heading is revised to read as set forth above.

2. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

3. Section 421.1 is revised to read as follows:

§ 421.1 Basis, applicability, and scope.

(a) *Basis.* This part is based on the indicated provisions of the following sections of the Act:

1124—Requirements for disclosure of certain information.

1816 and 1842—Use of organizations and agencies in making Medicare payments to providers and suppliers of services.

1893—Requirements for protecting the integrity of the Medicare program.

(b) *Additional basis.* Section 421.118 is also based on 42 U.S.C. 1395(b)–1(a)(1)(F), which authorizes demonstration projects involving intermediary agreements and carrier contracts.

(c) *Applicability.* The provisions of this part apply to agreements with Part A (Hospital Insurance) intermediaries, contracts with Part B (Supplementary Medical Insurance) carriers, and contracts with Medicare integrity program contractors that perform program integrity functions.

(d) *Scope.* The provisions of this part state that HCFA may perform certain functions directly or by contract. They specify criteria and standards HCFA uses in selecting intermediaries and evaluating their performance, in assigning or reassigning a provider or providers to particular intermediaries, and in designating regional or national intermediaries for certain classes of providers. The provisions provide the opportunity for a hearing for intermediaries and carriers affected by certain adverse actions. They also provide adversely affected intermediaries an opportunity for judicial review of certain hearing decisions. They also set forth requirements related to contracts with Medicare integrity program contractors.

4. Section 421.100 is revised to read as follows:

§ 421.100 Intermediary functions.

An agreement between HCFA and an intermediary specifies the functions to be performed by the intermediary.

(a) *Mandatory functions.* The contract must include the following functions:

(1) Determining the amount of payments to be made to providers for covered services furnished to Medicare beneficiaries.

(2) Making the payments.

(b) *Additional functions.* The contract may include any or all of the following functions:

(1) Any or all of the program integrity functions described in § 421.304, provided the intermediary is continuing those functions under an agreement entered into under section 1816 of the Act that was in effect on August 21, 1996, and they do not duplicate work being performed under a Medicare integrity program contract.

(2) Undertaking to adjust incorrect payments and recover overpayments when it has been determined that an overpayment has been made.

(3) Furnishing to HCFA timely information and reports that HCFA requests in order to carry out its responsibilities in the administration of the Medicare program.

(4) Establishing and maintaining procedures as approved by HCFA for the review and reconsideration of payment determinations.

(5) Maintaining records and making available to HCFA the records necessary for verification of payments and for other related purposes.

(6) Upon inquiry, assisting individuals with respect to matters pertaining to an intermediary contract.

(7) Serving as a channel of communication to and from HCFA of information, instructions, and other material as necessary for the effective and efficient performance of an intermediary agreement.

(8) Undertaking other functions as mutually agreed to by HCFA and the intermediary.

(c) *Dual intermediary responsibilities.* With respect to the responsibility for services to a provider-based HHA or a provider-based hospice, when different intermediaries serve the HHA or hospice and its parent provider under § 421.117, the designated regional intermediary determines the amount of payment and makes payments to the HHA or hospice. The intermediary and/or Medicare integrity program contractor serving the parent provider performs fiscal functions, including audits and settlement of the Medicare cost reports and the HHA and hospice supplement worksheets.

5. Section 421.200 is revised to read as follows:

§ 421.200 Carrier functions.

A contract between HCFA and a carrier specifies the functions to be performed by the carrier. The contract may include any or all of the following functions:

(a) Any or all of the program integrity functions described in § 421.304 provided—

(1) The carrier is continuing those functions under a contract entered into under section 1842 of the Act that was in effect on August 21, 1996; and

(2) The functions do not duplicate work being performed under a Medicare integrity program contract, except that the function related to developing and maintaining a list of durable medical equipment may be performed under both a carrier contract and a Medicare integrity program contract.

(b) Receiving, disbursing, and accounting for funds in making payments for services furnished to eligible individuals within the jurisdiction of the carrier.

(c) Determining the amount of payment for services furnished to an eligible individual.

(d) Undertaking to adjust incorrect payments and recover overpayments when it has been determined that an overpayment has been made.

(e) Furnishing to HCFA timely information and reports that HCFA requests in order to carry out its responsibilities in the administration of the Medicare program.

(f) Maintaining records and making available to HCFA the records necessary for verification of payments and for other related purposes.

(g) Establishing and maintaining procedures under which an individual enrolled under Part B will be granted an opportunity for a fair hearing.

(h) Upon inquiry, assisting individuals with matters pertaining to a carrier contract.

(i) Serving as a channel of communication to and from HCFA of information, instructions, and other material as necessary for the effective and efficient performance of a carrier contract.

(j) Undertaking other functions as mutually agreed to by HCFA and the carrier.

6. A new subpart D is added to part 421 to read as follows:

Subpart D—Medicare Integrity Program Contractors

Sec.

421.300 Basis, applicability, and scope.
421.302 Eligibility requirements for Medicare integrity program contractors.
421.304 Medicare integrity program contractor functions.
421.306 Awarding of a contract.
421.308 Renewal of a contract.
421.310 Conflict of interest identification.
421.312 Conflict of interest evaluation.

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421.314 Conflict of interest resolution.
421.316 Limitation on Medicare integrity program contractor liability.

Subpart D—Medicare Integrity Program Contractors

§ 421.300 Basis, applicability, and scope.

(a) *Basis.* This subpart implements section 1893 of the Act, which requires HCFA to protect the integrity of the Medicare program by entering into contracts with eligible entities to carry out Medicare integrity program functions.

(b) *Applicability.* This subpart applies to entities that seek to compete or receive award of a contract under section 1893 of the Act including entities that perform functions under this subpart emanating from the processing of claims for individuals entitled to benefits as qualified railroad retirement beneficiaries.

(c) *Scope.* This subpart defines the types of entities eligible to become Medicare integrity program contractors; identifies the program integrity functions a Medicare integrity program contractor performs; describes procedures for awarding and renewing contracts; establishes procedures for identifying, evaluating, and resolving organizational conflicts of interest; prescribes responsibilities; and sets forth limitations on contractor liability. The provisions of this subpart are based on the acquisition regulations set forth at 48 CFR Chapters 1 and 3.

§ 421.302 Eligibility requirements for Medicare integrity program contractors.

If an entity meets the following conditions, HCFA may enter into a contract with it to perform the functions described in § 421.304:

(a) Demonstrates the ability to perform the Medicare integrity program contractor functions described in § 421.304. For purposes of developing and periodically updating a list of DME under § 421.304(e), an entity is deemed to be eligible to enter into a contract under the Medicare integrity program to perform the function if the entity is a carrier with a contract in effect under section 1842 of the Act.

(b) Agrees to cooperate with the OIG, the Attorney General, and other law enforcement agencies, as appropriate, including making referrals, in the investigation and deterrence of fraud and abuse of the Medicare program.

(c) Complies with conflict of interest provisions in 48 CFR Chapters 1 and 3 and is not excluded under the conflict of interest provision at § 421.310.

(d) Meets other requirements that HCFA establishes.

§ 421.304 Medicare integrity program contractor functions.

The contract between HCFA and a Medicare integrity program contractor specifies the functions the contractor performs. The contract may include any or all of the following functions:

(a) Conducting medical reviews, utilization reviews, and fraud reviews related to the activities of providers of services and other individuals and entities (including entities contracting with HCFA under part 417 of this chapter) furnishing services for Medicare payment. These reviews include medical, utilization, and fraud reviews.

(b) Auditing cost reports of providers of services, or other individuals or entities (including entities contracting with HCFA under part 417 of this chapter), as necessary to ensure proper Medicare payment.

(c) Determining appropriate Medicare payment to be made for services, as specified in section 1862(b) of the Act, and taking action to recover inappropriate payments.

(d) Educating providers, suppliers, beneficiaries, and other persons regarding payment integrity and benefit quality assurance issues.

(e) Developing, and periodically updating, a list of items of durable medical equipment that are frequently subject to unnecessary utilization throughout the contractor's entire service area or a portion of the area, in accordance with section 1834(a)(15)(A) of the Act.

§ 421.306 Awarding of a contract.

(a) HCFA awards Medicare integrity program contracts in accordance with acquisition regulations set forth at 48 CFR chapters 1 and 3, this subpart, and all other applicable laws and regulations. These requirements for awarding Medicare integrity program contracts are used—

(1) When entering into new contracts;

(2) When entering into contracts that may result in the elimination of responsibilities of an individual intermediary or carrier under section 1816(l) or section 1842(c) of the Act, respectively; and

(3) At any other time HCFA considers appropriate.

(b) HCFA may award an entity a Medicare integrity program contract without competition if—

(1) Through approval of a novation agreement, HCFA recognizes the entity as the successor in interest to an intermediary agreement or carrier contract under which the intermediary or carrier was performing activities described in section 1893(b) of the Act on August 21, 1996;

(2) The intermediary or carrier has transferred to the entity all of the resources, including personnel, that were involved in performance under the intermediary agreement or carrier contract and performance of Medicare integrity program activities; and

(3) The intermediary or carrier continued to perform Medicare integrity program activities until transferring the resources to the entity.

(c) An entity is eligible to be awarded a Medicare integrity program contract only if it meets the eligibility requirements established in § 421.302.

§ 421.308 Renewal of a contract.

(a) HCFA specifies an initial contract term in the Medicare integrity program contract. Contracts under this subpart may contain renewal clauses. HCFA may renew the Medicare integrity program contract, without regard to any provision of law requiring competition, as it determines to be appropriate, by giving the contractor notice, within timeframes specified in the contract, of its intent to do so.

(b) HCFA may renew a Medicare integrity program contract without competition if—

(1) The Medicare integrity program contractor continues to meet the requirements established in this subpart;

(2) The Medicare integrity program contractor meets or exceeds all of the performance requirements established in its current contract; and

(3) It is in the best interest of the Government.

(c) If HCFA does not renew a contract, the contract will end in accordance with its terms, and the contractor does not have the right to a hearing or judicial review of the nonrenewal decision.

§ 421.310 Conflict of interest identification.

(a) *Definitions.* As used in this subpart, the following definitions apply:

Financial relationship means—

(1) A direct or indirect ownership or investment interest (including an option or nonvested interest) in any entity that exists through equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest; or

(2) A compensation arrangement with an entity.

Organizational conflict of interest has the meaning given at 48 CFR 9.501, except that, for purposes of this subpart, the activities and relationships described include those of the offeror or contractor itself and other business

related to it and those of its officers, directors (including medical directors), managers, and subcontractors.

(b) *General.* Except as provided in paragraph (d) of this section, HCFA does not enter into a contract under this subpart with an offeror or contractor that HCFA determines has, or has the potential for, an unresolved organizational conflict of interest.

(c) *Identification of conflict.* (1) HCFA determines that an offeror or contractor has an organizational conflict of interest, or the potential for the conflict exists, if—

(i) The offeror or contractor is an entity described in paragraph (c)(3) of this section; or

(ii) The offeror or contractor has a present, or known future, direct or indirect financial relationship with an entity described in paragraph (c)(3) of this section.

(2) A financial relationship may exist either—

(i) Through an offeror's or contractor's parent companies, subsidiaries, affiliates, subcontractors, or current clients; or

(ii) From the activities and relationships of the officers, directors (including medical directors), or managers of the offeror or contractor and may be either direct or indirect. An officer, director, or manager has an indirect financial relationship if an ownership or investment interest is held in the name of another but provides benefits to the officer, director, or manager. Examples of indirect financial relationships are holdings in the name of a spouse or dependent child of the officer, director, or manager and holdings of other relatives who reside with the officer, director, or manager.

(3) For purposes of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, the entity is one that—

(i) Provides, insures, or pays for health benefits, with the exception of health plans provided as the entity's employee fringe benefit;

(ii) Conducts audits of health benefit payments or cost reports;

(iii) Conducts statistical analysis of health benefit utilization;

(iv) Would review or does review, under the contract, Medicare services furnished by a provider or supplier that is a direct competitor of the offeror or contractor;

(v) Prepared work or is under contract to prepare work that would be reviewed under the Medicare program integrity contract;

(vi) Is affiliated, as that term is explained in 48 CFR 19.101, with a provider or supplier to be reviewed under the contract.

(4) HCFA may determine that an offeror or contractor has an organizational conflict of interest, or the potential for a conflict exists, based on the following:

(i) Apparent organizational conflicts of interest. An apparent organizational conflict of interest exists if a prudent business person has cause to believe that the offeror or contractor would have a conflict of interest in performing the requirements of a contract under this subpart. No inappropriate action by the offeror or contractor is necessary for an apparent organizational conflict of interest to exist.

(ii) Other contracts and grants with the Federal Government.

(d) *Exception.* HCFA may contract with an offeror or contractor that has an unresolved conflict of interest if HCFA determines that it is in the best interest of the Government to do so.

(e) *Offeror's or contractor's responsibility with regard to subcontractors.* An offeror or contractor is responsible for determining whether an organizational conflict of interest exists in any of its proposed or actual subcontractors at any tier and is responsible for ensuring that the subcontractors have mitigated any conflict of interest or potential conflict of interest.

(f) *Post-award conflicts of interest.* (1) In addition to the conflicts identified in paragraph (c) of this section, HCFA considers that a conflict of interest has occurred if during the term of the contract—

(i) The contractor receives any fee, compensation, gift, payment of expenses, or any other thing of value from any entity that is reviewed, audited, investigated, or contacted during the normal course of performing activities under the Medicare integrity program contract; or

(ii) HCFA determines that the contractor's activities are creating a conflict of interest.

(2) In the event HCFA determines that a conflict of interest exists during the term of the contract, among other actions, it may, as it deems appropriate—

(i) Not renew the contract for an additional term;

(ii) Modify the contract; or

(iii) Terminate the contract.

§ 421.312 Conflict of interest evaluation.

(a) *Disclosure.* Offerors that wish to be eligible for the award of a contract under this subpart and Medicare integrity program contractors must submit, at times specified in paragraph (b) of this section, an Organizational Conflicts of Interest Certificate. The Certificate must contain the information specified in paragraphs (a)(1) through (a)(8) of this section, unless the information has otherwise been provided in the proposal, in which case it must be referenced. Each solicitation issued for a contract under this subpart contains the requirements for disclosure for pre- and post-award purposes. The solicitation may require more detailed information than identified in this section.

(1) A description of all business or contractual relationships or activities that may be viewed by a prudent business person as a conflict of interest.

(2) A description of the methods the offeror or contractor will apply to mitigate any situations listed in the Certificate that could be identified as a conflict of interest.

(3) A description of the offeror's or contractor's program to monitor its compliance and the compliance of its proposed and actual subcontractors with the conflict of interest requirements as identified in the relevant solicitation.

(4) A description of the offeror's or contractor's plans to contract with an independent auditor to conduct a compliance audit.

(5) An affirmation, using language that HCFA may prescribe, signed by an official authorized to bind the contractor, that the offeror or contractor understands that HCFA may consider any deception or omission in the Certificate grounds for nonconsideration for contract award in the procurement process, termination of the contract, or other contract or legal action.

(6) Corporate and organizational structure.

(7) Financial interests in other entities, including the following:

(i) Percentage of ownership in any other entity.

(ii) Income generated from other sources.

(iii) A list of current or known future contracts or arrangements, regardless of size, with any—

(A) Insurance organization or subcontractor of an insurance organization; or

(B) Providers or suppliers furnishing health services for which payment may be made under the Medicare program.

(iv) In the case of contracts or arrangements identified in accordance with paragraph (a)(7)(iii) of this section, the dollar amount of the contracts or arrangements, the type of work performed, and the period of performance.

(8) The following information for all of the offeror's or contractor's officers, directors (including medical directors),

and managers who would be or are involved with the performance of the Medicare integrity program contract:

(i) The information required under paragraphs (a)(1), (a)(7)(iii), and (a)(7)(iv) of this section.

(ii) If required by the solicitation, the information specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this section.

(b) *When disclosure is made.* The Organizational Conflicts of Interest Certificate is submitted—

(1) With the offeror's proposal;

(2) When the HCFA Contracting Officer requests a revision in the Certificate;

(3) As part of a compliance audit by an independent auditor; and

(4) 45 days before any change in the information submitted in accordance with paragraph (a) or paragraph (b) of this section. Only changed information must be submitted.

(c) *Evaluation.* HCFA evaluates organizational conflicts of interest and potential conflicts, using the information provided in the Organizational Conflicts of Interest Certificate, in order to promote the effective and efficient administration of the Medicare program.

(d) *Protection of proprietary information disclosed.* (1) HCFA protects disclosed proprietary information as allowed under the Freedom of Information Act (5 U.S.C. 552).

(2) HCFA requires signed statements from HCFA personnel with access to proprietary information that prohibit personal use during the procurement process and term of the contract.

§ 421.314 Conflict of interest resolution.

(a) *Review Board.* HCFA establishes a Conflicts of Interest Review Board to resolve organizational conflicts of interest and determines when the Board is convened.

(b) *Resolution.* Resolution of an organizational conflict of interest is a determination that—

(1) The conflict has been mitigated;

(2) The conflict precludes award of a contract to the offeror;

(3) The conflict requires that HCFA modify an existing contract;

(4) The conflict requires that HCFA terminate an existing contract; or

(5) It is in the best interest of the Government to contract with the offeror or contractor even though the conflict exists.

§ 421.316 Limitation on Medicare integrity program contractor liability.

(a) None of the following will be held by reason of the performance of any duty, function, or activity required or authorized under this subpart or under a valid contract entered into under this subpart to have violated any criminal law or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in that performance:

(1) An entity having a contract with HCFA under this subpart (that is, a contractor under this subpart).

(2) A person employed by or who has a fiduciary relationship with or who furnishes professional services to a contractor under this subpart.

(b) HCFA makes payment, to a contractor under this subpart, or to a member or employee of the contractor, or to any person who furnishes legal counsel or services to the contractor, of an amount equal to the reasonable amount of the expenses incurred in connection with the defense of a suit, action, or proceeding, as determined by HCFA, if—

(1) The suit, action, or proceeding was brought against the contractor, or a member or employee of the contractor, by a third party and relates to the performance by the contractor, member, or employee of any duty, function, or activity under a contract entered into with HCFA under this subpart;

(2) The funds are available; and

(3) The expenses are otherwise allowable under the terms of the contract.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 5, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 16, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–7190 Filed 3–16–98; 5:00 pm]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4200

[WO–130–1820–00–24 1A]

RIN 1004–AC70

Grazing Administration: Alaska; Livestock

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to remove the regulations which implement the livestock grazing program on BLM lands in Alaska because they are obsolete. There are currently no livestock grazing operations under BLM's program, and we do not anticipate receiving any more applications. Due to Native and State of Alaska land selections, the amount of BLM lands suitable for livestock grazing has decreased dramatically. If applicants wish to apply to graze livestock other than reindeer, BLM may still issue special use permits.

DATES: BLM must receive your comments at the address below on or before May 19, 1998. BLM will not necessarily consider any comments received after the above date during its decision on the proposed rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240. You may also comment via the Internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "attn: AC70" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030. Finally, you may hand-deliver comments to BLM at 1620 L Street, N.W., Room 401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Peggy Fox, Alaska State Office, Bureau of Land Management, U.S. Department of the Interior, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599; Telephone: 907–271–3346 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the

Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

II. Background

The current part 4200 regulations were written in order to carry into effect the provisions of the Act of March 4, 1927 (the Alaska Livestock Grazing Act, or the Act). The Alaska Livestock Grazing Act declared that it is Congressional policy to:

- Promote the conservation of the natural resources of Alaska;
- Provide for the protection and development of forage plants; and
- Provide for the beneficial use of the land for grazing by livestock.

The Act authorized the Secretary of the Interior to lease the grazing privileges on the grazing districts established to qualified applicants. The Act states that the use of Federal lands in Alaska for grazing must be subordinated to the following uses:

- Development of the mineral resources;
- Protection, development and use of forests;
- Protection, development, and use of water resources;
- Agriculture; and
- Protection, development and use of other resources that may be of greater benefit to the public.

There are currently no lease holders under BLM's livestock grazing program in Alaska, and BLM does not anticipate receiving more applications. Due to Native and State of Alaska land selections, the amount of BLM lands suitable for livestock grazing has decreased dramatically. The regulations at part 4200 are therefore unnecessary. Any new applicants who wish to graze livestock may apply to BLM, and BLM could issue special use permits. The part 4200 regulations are specific to Alaska. Their removal would have no effect on any grazing regulations elsewhere in the United States.

III. Discussion of Proposed Rule

The proposed rule would remove the current regulations, but BLM's authorization to issue grazing leases would remain. If, for some reason, new applicants wanted to apply for a lease, the Act still authorizes BLM to issue leases at its discretion. Even more unlikely, if BLM were to acquire more land and needed regulations to administer the program, it could promulgate new regulations.

The proposed rule would remove the present regulations at part 4200, and replace them with the following:

The Bureau of Land Management (BLM) is authorized under the Alaska Livestock Grazing Act (The Act of March 4, 1927, 43 U.S.C. 316, 316a–316o) to lease the grazing privileges on the grazing districts established in Alaska to qualified applicants. BLM previously had regulations governing this program [See Code of Federal Regulations (CFR) for 43 CFR Part 4200, revised as of October 1, 1996]. Due to a lack of interest in the program, BLM removed these regulations. For applicants wishing to apply for permits to graze livestock other than reindeer, BLM may issue special use permits.

IV. Procedural Matters

National Environmental Policy Act

BLM has determined that the action of removing the Alaska livestock grazing regulations will have no measurable effect on the human environment. As explained above, there are currently no lease holders under BLM's livestock grazing program. BLM considers the proposed rule an administrative action to remove unnecessary regulations for a program that is no longer used. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule contains no information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the discussion contained in this preamble above, the rule will not affect the public, because there are no lease holders at present. Any new applicants would have an opportunity to graze livestock under BLM-issued special use permits. Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Removal of 43 CFR part 4200 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule would not cause a taking of private property or require further discussion of

takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Frank Burno, Bureau of Land Management, Regulatory Affairs Group, Room 401LS, 1849 C. Street, N.W., Washington, D.C. 20240; Telephone: 202–452–0352 (Commercial or FTS).

List of Subjects in 43 CFR Part 4200

Administrative practice and procedure, Alaska, Grazing lands, Livestock, Range management.

Dated: February 18, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set forth above, and under the authority of 43 U.S.C. 316n, BLM proposes to revise part 4200, Group 4200, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations to read as follows:

PART 4200—GRAZING ADMINISTRATION; ALASKA; LIVESTOCK

Authority: 43 U.S.C. 316, 316a–316o; 43 U.S.C. 1701 *et seq.*

§ 4200.1 The Bureau of Land Management (BLM) is authorized under the Alaska Livestock Grazing Act (The Act of March 4, 1927, 43 U.S.C. 316, 316a–316o) to lease the grazing privileges on the grazing districts established in Alaska to qualified applicants. BLM previously had regulations governing this program [See Code of Federal Regulations (CFR), 43 CFR Parts 1000 to End, revised as of October 1, 1997]. Due to a lack of interest in the program, BLM removed these regulations. For applicants wishing to apply for permits to graze livestock other than reindeer, BLM may issue special use permits.

[FR Doc. 98–7328 Filed 3–19–98; 8:45 am]
BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket 97–182; DA No. 98–458]

Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities

AGENCY: Federal Communications Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The Commission has received a petition from the National Audubon Society ("Audubon") requesting the preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act, in connection with the Commission's *Notice of Proposed Rule Making* in the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities. By this Public Notice, interested parties are invited to file comments as to whether the rule proposed would have a significant environmental impact and what that impact would be.

DATES: Comments must be filed on or before April 14, 1998, Reply Comments must be filed on or before April 29, 1998.

ADDRESSES: All comments should be addressed to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Amy Nathan or Susanna Zwerling, Policy and Rules Division, Mass Media Bureau (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a summary of the Mass Media Bureau's Public Notice. Also included in this notice is the Initial Regulatory Flexibility Analysis for the NPRM. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street N.W., Washington, D.C. The complete text of this Notice may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of Notice

The Commission has received a petition from Audubon requesting the preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4332, in connection with the Commission's *Notice of Proposed Rule Making* In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities (FCC No. 97–296, MM Docket No. 97–182) ("NPRM"). Pursuant to 47 CFR 1.1307(c), Audubon is entitled to file such petition, and the Mass Media Bureau is required to "review the petition and consider the environmental concerns that have been raised." This Public Notice addresses only the environmental issues raised by Audubon's petition, and represents just one part of the Commission's ongoing proceeding in MM Docket No. 97–182.

The NPRM requested comment on whether and in what circumstances the Commission should preempt certain state and local actions on zoning and land use ordinances which present an obstacle to the rapid implementation of digital television service. The Commission released the NPRM on August 19, 1997 published September 2, 1997 (62 FR 46241), comments were due October 30, 1997, and reply comments were due December 1, 1997.

Audubon filed its petition on December 1, 1997, requesting that the Commission prepare an Environmental Impact Statement ("EIS") and solicit public comment on that EIS. Audubon alleges that the rule proposed by the NPRM constitutes a major federal action affecting the environment, and therefore requiring the preparation of an EIS pursuant to NEPA. In addition, Audubon alleges that the Commission's regulations require an environmental analysis of any action that may affect a listed species or may lead to construction in wetlands. 47 CFR 1.1307(c)

By this Public Notice, we seek comment as to first, whether the proposal contained in the NPRM would have a significant environmental effect such that an EIS should be prepared; and second, what would be the environmental effect of the proposal.

The initiation of this proceeding is not intended to affect in any way the expeditious processing of digital television construction permit applications. This proceeding also will not affect the current requirement that licensees represent that their applications meet the requirements of NEPA. The Mass Media Bureau takes very seriously the responsibilities conferred by NEPA to evaluate the effects of its actions on the quality of the environment. The Bureau continues to review applicants' representations of

compliance with section 1.1307 and with NEPA.

Comments on this Public Notice must be filed on or before April 14, 1998, and reply comments must be filed by April 29, 1998. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. All comments should reference FCC Docket No. 97–296 and MM Docket No. 97–182 and should be addressed to: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

Initial Regulatory Flexibility Analysis

The **Federal Register** notice for the NPRM, released August 19, 1997, omitted the Initial Regulatory Flexibility Analysis ("IRFA") connected with the NPRM. A synopsis of that IRFA follows.

As required by section 603 of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, the Commission is incorporating an IRFA of the expected impact on small entities of the policies and proposals in the NRPM. Written public comments concerning the effect of the proposals in the NRPM including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Office of Public Affairs shall send a copy of the NPRM, including the IRA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

Reasons Why Agency Action is Being Considered

In its *Fifth Report and Order* in its digital television proceeding (MM Docket No. 87–268) the Commission adopted an accelerated roll-out schedule for digital television stations. That schedule requires the top four network affiliates in the top ten television markets to construct their digital television facility and begin emitting signals by May 1, 1999. Affiliates of these four networks in markets 11–30 must be on the air by November 1, 1999. All other commercial stations will have to construct their DTV facilities by May 1, 2002, and noncommercial stations by May 1, 2003. The Commission found this accelerated schedule necessary to promote the success of DTV and allow for spectrum recovery, a goal shared by Congress. In a rule making petition filed by the National Association of Broadcasters and the Association of Maximum Service Television the Petitioners claim that state and local zoning and land use laws, ordinances, and procedures may have a delaying effect on the siting, placement and construction of new television towers that will be needed for DTV. Additionally, they contend, the antennas of many FM radio stations will need to be displaced from existing towers to enable them to support new DTV antenna arrays and these FM stations will have to build new towers to enable them to continue to serve the public. Accordingly, they ask the Commission to adopt a rule preempting state and local laws, ordinances and procedures that could work to delay the inauguration of DTV service. The Commission believes the prompt deployment of DTV is essential to several goals, and that compliance with such local requirements may, at least in some cases, both make compliance with both these procedures *and* the roll-out schedule impossible. Additionally, it believes that some of these state and local regulations may stand as obstacles to the accomplishment of the rapid transition to DTV service and the spectrum recovery that it will permit. This recovery is also an important congressional purpose as evidenced by its 1996 adoption of 47 U.S.C. 336.

Need for and Objectives of the Proposed Rule Changes

Petitioners have demonstrated that at least some state and local zoning and land use laws, ordinances and procedures may, unless preempted by the Commission, prevent television broadcasters from meeting the construction schedule for DTV stations established by the Commission, retarding the recovery of frequency spectrum by the government for reallotment and delaying digital service to the public. Additionally, in some cases they may result in discontinuation of FM radio service to the public should displaced FM antennas be unable to relocate to new antenna towers.

Legal Basis

Authority for the actions proposed in this NPRM may be found in sections 4(i), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 336. Recording, Recordkeeping, and Other Compliance Requirements The Commission is not proposing any new or modified recordkeeping or information collection requirements in this proceeding. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules: The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply: Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA generally defines the term small business as having the same meaning as the term small business concern under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." The proposed rules and policies will apply to television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,558 operating television broadcasting stations in the nation as of May 31, 1997. For 1992 the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.

Additionally, the Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs

by radio to the public. Included in this industry are commercial religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of May 31, 1997, official Commission records indicate that 12,156 radio stations were operating, of which 7,342 were FM stations.

Thus, the proposed rules will affect many of the approximately 1,558 television stations; approximately 1,200 of those stations are considered small businesses. Additionally, the proposed rules will affect some of the 12,156 radio stations, approximately 11,670 of which are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies.

In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item.

The number of entities that may seek to obtain a television or radio broadcast license is unknown. We invite comment on this number.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

This NPRM solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. The Commission believes that the proposed rules and policies may be necessary to promote the speedy deployment of digital television service and the prompt recovery of broadcast frequency spectrum for reallotment. We seek comment on this belief.

Report to Small Business Administration

The Commission shall send a copy of this Initial Regulatory Flexibility Analysis along with this Notice to the Small Business Administration pursuant to the RFA.

List of Subjects in 47 CFR Part 1

Television, Radio broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 98–6861 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–33; RM–9232]

Radio Broadcasting Services; Richwood, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by J&B Broadcasting, Inc., proposing the allotment of Channel 288A at Richwood, West Virginia, as the community's first local FM transmission service. Channel 288A can be allotted to Richwood in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 288A at Richwood are North Latitude 38–13–42 and West Longitude 80–31–48.

DATES: Comments must be filed on or before May 4, 1998, and reply comments on or before May 19, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Timothy E. Welch, Esq., Hill & Welch, 1330 New Hampshire, Ave., NW., Suite 113, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–33, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7320 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–95, RM–8787; RM–8838]

Radio Broadcasting Services; Plattsmouth and Papillion, NE, and Osceola, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order to show cause.

SUMMARY: The Commission, in response to a counterproposal filed by LifeStyle Communications Corporation, proposes the allotment of Channel 295A to Papillion, Nebraska, as the community's first local aural transmission service, and the substitution of Channel 299A for Channel 295A at Plattsmouth, Nebraska. An Order to Show Cause is directed to Platte Broadcasting Company, Inc., licensee of Station KOTD–FM, as to why its license should not be modified to specify the alternate Class A channel. Channel 299A can be allotted at Plattsmouth at Station KOTD–FM's licensed transmitter site, at coordinates 41–05–28 North Latitude and 95–48–15 West Longitude. Channel 295A can be allotted to Papillion with a site restriction of 11.5 kilometers (7.1 miles) northeast, at coordinates 41–12–08; 95–55–35, to avoid a short-spacing to Stations KEZG, Channel 297C1, Lincoln, Nebraska, KEXL, Channel

294C, Norfolk, Nebraska, and KEFM, Channel 241C, Omaha, Nebraska.

DATES: Comments must be filed on or before May 4, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order to Show Cause, MM Docket No. 96–95, March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7319 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–P

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Notices

Federal Register
Vol. 63, No. 54
Friday, March 20, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–020–1]

Fruit Fly Cooperative Eradication Program Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement for the Fruit Fly Cooperative Eradication Program. The environmental impact statement will analyze the potential environmental impacts of programs to eradicate various fruit fly species from the United States mainland. We are seeking comments from the public, as well as government agencies and private industry, concerning issues that should be addressed in the environmental impact statement. Our request for comments is the first step in the development of an environmental impact statement.

DATES: Consideration will be given only to comments received on or before April 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Mr. Harold Smith, Environmental Protection Officer, Environmental Analysis and Documentation, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1237. Please state that your comments refer to Docket No. 98–020–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Smith, Environmental Protection Officer, Environmental Analysis and Documentation, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1237; (301) 734–8565.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) has authority and responsibility for the interdiction, detection, and eradication of various exotic agricultural pests, including fruit flies that are not native to the United States. Many of these species are found now in other parts of the world, including Africa, the Mediterranean, Europe, Oceania, South America, and Central America. Some have managed to establish footholds in Hawaii. If these pests became established on the United States mainland, agricultural losses and resulting costs to the consumer would be devastating.

One such pest, the Mediterranean fruit fly (Medfly), has been introduced to the United States mainland intermittently since its initial introduction in 1929; however, eradication programs have prevented it from becoming established. Medfly eradication programs have taken place in California, Florida, and Texas, and have been conducted as cooperative efforts between the United States Department of Agriculture and State departments of agriculture. Cooperative eradication programs have taken place also for the Mexican fruit fly, Oriental fruit fly, and others. Although some of the programs may use the same or similar control methods, the same control methods are not adaptable to all of the fruit fly species of concern.

The magnitude of these programs, their sometimes controversial natures, and the evolution of new exclusion, detection, and eradication strategies have prompted APHIS to develop, or cooperate in the development of, a programmatic environmental impact statement (EIS) that will review and analyze the potential environmental effects of these Cooperative Fruit Fly Eradication Programs. Also, because many of the programs must be implemented in an emergency manner, it is imperative that APHIS and cooperating government entities prepare in advance an EIS that accurately predicts and comprehensively analyzes the range of environmental effects that may be expected from program activities. Pursuant to section 1501.7 of the Council on Environmental Quality regulations (40 CFR 1501.7), we are issuing this notice of intent to prepare such an EIS.

Scoping Process

The initial step in the process of EIS development is scoping. Scoping includes solicitation of public comments and the evaluation of those comments. This process is used for determining the scope of issues to be addressed. We are, therefore, asking for written comments that identify significant environmental issues that should be analyzed in the EIS. We invite comments from the interested public, from Federal, State, and local agencies that have an interest in the Fruit Fly Cooperative Eradication Program, and from Federal and State agencies that have jurisdiction either by law or special expertise regarding any national program issue or environmental impact that should be discussed in the EIS. We will review any comments that are received, taking them into account in the development of the draft EIS.

Alternatives

We will consider all reasonable and realistic action alternatives recommended in the comments we receive. The following alternatives have been identified already for comprehensive analysis in the EIS:

(1) Exclusion,
(2) Detection,
(3) Control, and
(4) No action.

Major Issues

It is APHIS' intent to examine the Cooperative Fruit Fly Eradication Program for the primary purpose of reducing risk to public health and to the environment. Following are some of the major issues that will be discussed in the EIS:

(1) Improving risk reduction strategies,
(2) Emergency communication strategies,
(3) Selection of program control components,
(4) Exploitation of new or evolving technologies,

(5) Environmental justice considerations, and
(6) Environmental monitoring.

Preparation of the EIS

Following scoping, we will prepare a draft EIS for the Fruit Fly Cooperative Eradication Program. A notice published in the **Federal Register** will announce that the draft EIS is available for review and will announce the dates and locations of public meetings to review the draft EIS.

Done in Washington, DC, this 16th day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–7331 Filed 3–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

Farmland Protection Program

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, United States Department of Agriculture (USDA).

ACTION: Notice of request for proposals (RFP).

SUMMARY: Section 388 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) established the Farmland Protection Program (FPP). The FPP is administered under the supervision of the Chief of the Natural Resources Conservation Service (NRCS) who is a Vice President of the Commodity Credit Corporation (CCC). CCC is requesting proposals from States, Tribes, and units of local government to cooperate in the acquisition of conservation easements or other interests in prime, unique, or other productive soil that is subject to a pending offer from a State, Tribal, or local government for the purpose of limiting conversion to nonagricultural uses of that land.

DATES: Proposals must be received in the NRCS State Office by June 18, 1998.

ADDRESSES: Proposals are to be sent to the appropriate State Conservationist, Natural Resources Conservation Service, United States Department of Agriculture. The telephone numbers and addresses of the NRCS State Conservationists are attached in the appendix of this notice.

FOR FURTHER INFORMATION CONTACT: Humberto Hernandez, Director, Community Assistance and Rural Development Division, Natural Resources Conservation Service, phone: (202) 720–2847; fax: (202) 690–0639; e-mail: cardd.nrcs@usda.gov. Subject: 98FPP.

SUPPLEMENTARY INFORMATION:

Background

According to the 1987 Census of Agriculture, one-third of the Nation's agricultural products are produced in metropolitan counties adjacent to large cities. Another one-fourth of these agricultural products are produced in counties adjacent to significant urban populations. Historically, American settlements were located in areas where the land was the most productive. Consequently, some of the Nation's most valuable and productive farmland is located in urban and developing areas. Nearly 85 percent of domestic fruit and vegetable production and 80 percent of our dairy products come from urban-influenced areas.

These areas are continually threatened by rapid development and urban sprawl. Several social and economic changes over the past three decades have influenced the rate at which land is converted to urban and industrial uses. Population growth, shifts in age distribution, inexpensive energy cost, transportation, and economic development have contributed to increases in agricultural land conversion rates. Urban development has been a major cause of farmland conversion. Since 1960, farmland has been converted to other uses at a rate of approximately 1.5 million acres per year.

The gross acreage of farmland converted to urban development is not necessarily the most troubling concern. A greater cause for concern is the quality and the pattern of farmland being converted. In most States, prime farmland is being converted at 2 to 4 times the rate of other less-productive land. Most urbanization takes place as sprawl instead of orderly growth management. In addition, remaining farmland is placed under greater environmental, economic, and social strain as agrarian and urbanizing interests compete. For the agricultural producer, increased costs of production and liability risks are negative side effects of urban development. Agricultural producers are also induced by the development pressure to farm the remaining acreage more intensively, thus, generating adverse impacts on water quality and soil health. For urban dwellers, the loss of open space, and issues related to agricultural production such as pesticide overspray, animal nutrient odors, dust, and noise are conflicting concerns.

There is, therefore, an important national interest in the protection of farmland. Once developed, productive farmland with rich topsoil is lost forever, placing future food security for the Nation at risk. In addition, agricultural lands are important components of environmental quality, historic landscapes, and are equally important simply for their scenic beauty.

In fiscal years 1996 and 1997, the CCC signed cooperative agreements with 41 State and local government entities in 18 States and obligated $16.2 million in funds to partner in acquiring conservation easements or other interests in land to limit conversion to nonagricultural uses of the land. Once acquisitions of the pending easement offers are completed, approximately 80,000 acres of valuable farmland on about 230 farms with an estimated easement value of $134 million will be protected in part with Federal funds.

Availability of Funding in Fiscal Year (FY) 1998

Effective on the date of publication of this notice, the CCC is announcing the availability of up to $17.28 million for the FPP for FY 1998. Selection will be based on the FPP criteria established in this notice. Government entities responding to this RFP must have an existing farmland protection program, have pending offers, and be able to provide funds for at least 50 percent of the fair market value of the pending offers. CCC will evaluate the merits of the requests for participation utilizing the FPP criteria described in this notice and will enter into cooperative agreements with the States, Tribes, or units of local government that have proposals that CCC determines will effectively meet the objectives of the FPP. CCC must receive proposals for participation by June 18, 1998.

Overview of the Farmland Protection Program

CCC will accept proposals submitted to the NRCS State Offices from States, Tribes, and units of local government that have pending offers with landowners for the acquisition of conservation easements or other interests in lands that contain prime, unique, or other productive soils. The pending offers must be for the primary purpose of protecting topsoil by limiting conversion to nonagricultural uses of the land. Reference information regarding the FPP can be found in the Catalog of Federal Domestic Assistance #10.913.

A pending offer is a bid, contract, or option extended to a landowner by a State, Tribe, or local government entity to acquire a conservation easement or other interests in land to limit nonagricultural uses of the land before the legal title to these rights has been conveyed. The pending offer must be made as of the date when the cooperative agreement is signed.

Government entities must work with the appropriate NRCS State Conservationist to develop proposals and to develop operating agreements once selected. The State Conservationist may consult with the State Technical Committee (established pursuant to 16 U.S.C. 3861) to evaluate the technical merits of proposals submitted in that State. All requests must be submitted to the appropriate NRCS State Conservationist by June 18, 1998.

The NRCS State Conservationist will review and evaluate the requests for participation for consistency with USDA criteria based on the State, Tribal, or local program eligibility and the land eligibility. If received more than one proposal, the NRCS State Conservationist may consolidate proposals and determine the priority of the pending offers for selection using a ranking system described in this notice, such as: (1) The quality of the land considering the soils, economic viability, size, and product sales; (2) other factors including the scale of the contiguous track, historical, scenic, and environmental qualities; and (3) the likelihood of conversion considering developmental pressure, zoning, utility availability, and other related factors. If received only one proposal, the NRCS State Conservationist has the option of accepting the submitting entity's priority ranking provided that the lands are eligible for participation in the FPP.

The State Conservationist will submit a cover letter with a recommended list of the prioritized proposals that meet the criteria established in this notice to the appropriate NRCS Regional Conservationist by July 20, 1998. The NRCS Regional Conservationist will then forward proposals submitted from the region to the NRCS National Office in Washington, D.C. by August 3, 1998. Proposals will not be accepted by the NRCS National Office without having gone through the NRCS State and Regional Conservationists. Proposals sent to the NRCS National Office without having been sent through the NRCS State and regional offices will be returned to the submitting entity.

Once all proposals for participation are received in the NRCS National Office, the Chief of NRCS, who is a Vice President of the CCC, will authorize cooperative agreements to be developed and signed by September 30, 1998, with specific terms of the FPP for each proposal accepted. An equitable allocation of the funds to the successful cooperating entities will be made by considering such factors as: The capability of each entity to fund at least half of the fair market easement cost of each of the pending offers selected for funding; the economic and environmental value of such offers; the probability of integrating other Federal, State, Tribal, or local conservation efforts; and the total number of eligible acres included in the offers.

To be selected for participation in the FPP, a pending offer must provide for the acquisition by a State, Tribe, local government unit, or other entity approved by the NRCS, of an easement or other interests in land for a minimum duration of 30 years, with priority given to those offers providing permanent protection. If a pending offer is selected for participation in the FPP, the conveyance document used by the State, tribal, or local government entity will need to be reviewed and approved by the NRCS National office. A strong preference will be given to reserved interest easements. If title to the easement is held by an entity other than the United States, the conveyance document will contain a reversionary clause that all rights conveyed by the landowner under the document will become vested in the United States, should the State, tribal, or local government entity abandon, terminate, or abrogate the exercise of the rights so acquired. As a condition for participation, all lands enrolled shall be encompassed by a conservation plan developed and implemented according to the NRCS Field Office Technical Guide.

Eligible State, Tribal, or Local Farmland Protection Programs

To be eligible, a State, Tribe, or unit of local government must have a farmland protection program that provides for the purchase of agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to nonagricultural uses of land. A program must also have pending offers when submitting the proposal. A State, Tribal, or local government entity may apply for participation as a cooperating entity by submitting responses to the RFP to the appropriate NRCS State Conservationist.

The NRCS State Conservationist will evaluate the State, Tribal, or local program based on the conservation benefits derived from such farmland protection efforts. An eligible State, Tribal, or local government entity must have a farmland protection program that: (1) Demonstrates a commitment to long-term conservation of agricultural lands through legal devices, such as right-to-farm laws, agricultural districts, zoning, or land use plans; (2) uses voluntary easements or other legal devices to protect farmland from conversion to nonagricultural uses; (3) demonstrates a capability to acquire, manage, and enforce easements and other interests in land; and (4) demonstrates that funds equal to at least 50 percent of the total fair market value of the easement are available.

Proposals

In addition to meeting program eligibility requirements, a prospective cooperating entity must submit a proposal that has: (1) An overview of the program, including components described in the section of "Eligible State, Tribal, or Local Farmland Protection Programs"; (2) a map showing the existing protected area; (3) the amount and source of funds currently available for easement acquisition; (4) the criteria used to set the acquisition priorities; and (5) a listing of the pending offers including the (a) priority of the offer; (b) name(s) of the landowner(s); (c) location identified on the map; (d) size of the parcel in acres for the FPP easement or other interests; (e) acres of the prime, unique, or other productive soil in the parcel for the FPP easement or other interests; (f) area participating in or its relative proximity to parcels participating in other conservation efforts identified on the map; (g) estimated costs of the easement or other interests; (h) type of the FPP easement or other interests to be used; (i) indication of the accessibility to markets; (j) indication of an existing agricultural infrastructure and other support system; (k) level of threat from urban development; (l) other factors from an evaluation and assessment system used for setting priorities for easement acquisition by the entity; and (m) other information that may be relevant.

To avoid double counting, local and county programs must coordinate their proposals with each other and the State program if particular parcels are subject to pending offers under multiple programs.

Eligible Land

Once program eligibility and the merits of each proposal have been evaluated, NRCS shall determine whether the farmland is eligible for enrollment and whether the lands may

be included in the FPP. The following land, if subject to a pending offer by a State, Tribe, or unit of local government, is eligible for enrollment in the FPP: (1) Land with prime, unique, or other productive soil; and (2) other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, NRCS determines that the inclusion of such land would significantly augment the protection of the associated farmland.

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses. It includes cropland, pasture land, rangeland, and forest land. Unique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops, such as nuts, citrus, olives, cranberries, fruits, vegetables, and herbs. Other productive soil refers to farmland of statewide or local importance for the production of food, feed, fiber, forage, and oil seed crops. Additional information on the definition of prime, unique, or other productive soil can be found in section 1540(c)(1) of the Farmland Protection Policy Act (Pub. L. 97–98, 1981, 7 U.S.C. 4201).

NRCS will only consider enrolling eligible land in the program that is configured in a size and with boundaries that allow for the efficient management of the area or for establishing a buffer zone for the purposes of the FPP. The land must have access to markets for its products and an infrastructure appropriate for agricultural production. NRCS will not enroll land in the FPP that is owned in fee title by an agency of the United States, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use. NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by the FPP would not be effective because of on-site or off-site conditions.

Ranking Considerations

Pending offers by a State, Tribe, or unit of local government must be for the acquisition of an easement or other interest in land for a minimum duration of 30 years. NRCS shall place a priority on acquiring easements or other interests in lands that provide the longest period of protection from conversion to nonagricultural use. NRCS will place a higher priority on lands and locations that help create a large track of protected area for viable agricultural production or buffer zones. NRCS will place a higher priority on lands and locations that link to other Federal, State, Tribal, or local conservation efforts with complementary farmland protection objectives. NRCS may place a higher priority on lands that provide special social, economic, and environmental benefits to the region. A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve national, State, and regional goals and objectives, or enhance existing government or private conservation projects.

Cooperative Agreements

The CCC will use a cooperative agreement with a selected State, Tribe, or unit of local government as the mechanism for participation in the FPP. The cooperative agreement will address the following: (1) The interests in land to be acquired, including the form of the easements to be used and terms and conditions; (2) the management and enforcement of the rights acquired; (3) the technical assistance that may be provided by the NRCS; (4) the holder of the easement or other interests in the land enrolled in the FPP; and (5) other requirements deemed necessary by the CCC to protect the interests of the United States. The cooperative agreement will also include an attachment that lists the pending offers accepted in the FPP, landowners' names, addresses, locations, and other relevant information.

Signed at Washington, DC, on March 16, 1998.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.

State Conservationists

AL—Ronnie D. Murphy, 3381 Skyway Drive, Auburn, AL 36830, Phone: 334/887–4500, Fax: 334/887–4551, (E) rmurphy@al.nrcs.usda.gov

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–004N]

Ground Beef Processing Guidance Material

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Availability of material and public meeting notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) announces that it is making available for public comment a guidance document intended to assist processors of ground beef, especially small processors, in developing procedures to minimize the risk of *E. coli* 0157:H7 and other pathogens in ground beef products produced in their establishments. FSIS plans to hold a public meeting to discuss this document on April 22, 1998. FSIS is aware that other organizations also are developing guidance materials for the production of ground beef and encourages their presentation and discussion at the public meeting. These presentations will be scheduled, and appropriate time will be allotted. FSIS will make available any such materials submitted to the Agency prior to the meeting. FSIS

is open to the idea of a collaboratively produced guidance document should that prove useful and practicable. In addition to discussing the draft guidance documents, FSIS also would be interested in comments on how best to ensure that the guidance materials that result from this process receive the broadest possible distribution.

DATES: Written comments must be received on or before May 19, 1998. The meeting will be held on April 22, 1998, from 8:30 a.m. to 5 p.m.

ADDRESSES: An electronic version of the FSIS guidance document is available online at FSIS' homepage at http://www.usda.gov/fsis. Guidance materials made available to FSIS prior to the meeting also will be available at this address. Hard copies of the FSIS document are available from the FSIS Docket Clerk in the FSIS Docket Room, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700 from 8:30 a.m. to 4:30 p.m., Monday through Friday. The public meeting will be held at the Arlington Hilton and Towers, 950 North Stafford Street, Arlington, VA; telephone (703) 528–6000. The hotel is located next to the Ballston Metro station. To register for the meeting, contact Ms. Mary Gioglio at (202) 501–7244 or 501–7136 or FAX to 501–7642. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Gioglio by April 15, 1998.

COMMENTS: Send comments on the FSIS guidance document to FSIS Docket Clerk, Docket No. 98–004N, at the above address. Comments will be available for public inspection in the FSIS Docket Room during the above-stated hours.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Hudnall, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, at (202) 205–0495.

SUPPLEMENTARY INFORMATION: As a result of recent product recalls involving *E. coli* 0157:H7, FSIS has prepared guidance material to help beef grinding operations minimize the risk of, and potential effects associated with, *E. coli* 0157:H7 and other microbial pathogens in raw ground beef and other raw products. This material should prove particularly useful to small establishments developing Hazard Analysis and Critical Control Point (HACCP) plans during the next 2 years.

The guidance material includes recommendations for receiving raw product; storing raw product; the grinding process, including rework and risk-based product separation; packaging, cooling, and storage; shipping, handling, and distribution; recordkeeping; and food safety education. FSIS also solicits comments on how best to ensure that the guidance materials that result from this process receive as broad distribution as possible.

Done at Washington, DC, on March 12, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–7192 Filed 3–19–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Interior Columbia Basin Ecosystem Management Project, Northern, Intermountain, and Pacific Northwest Regions

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID918–1610–00–UCRB]

Interior Columbia Basin Ecosystem Management Project, States of Oregon, Washington, Idaho, Montana, Wyoming, Utah and Nevada

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of extension of comment period for draft environmental impact statements (EISs).

SUMMARY: On June 12, 1997, the Forest Service and the Bureau of Land Management published a notice of availability of two draft EISs in the **Federal Register** (62 FR 320786). That notice stated that a 120-day comment period was provided for the Eastside Draft EIS and for the Upper Columbia River Basin Draft EIS. On September 5, 1997, a second notice (62 FR 46941) extended the comment period to February 6, 1998. On January 23, 1998, a third notice (6 FR 3533) extended the comment period to April 6, 1998. This notice is to inform interested parties that the comment period has been extended again to provide additional time for public review of, and comment on, an economic and social report prepared in response to a requirement of the Department of the Interior and Related Agencies Appropriations Act of 1998.

DATES: Comments on the two draft EISs and on the economic and social report must now be submitted or postmarked no later than May 6, 1998.

ADDRESSES: Copies of the economic and social report were mailed the second week of March to everyone on the mailing list for the Eastside and Upper Columbia River Basin Draft EISs. Interested parties not on the mailing list can obtain a copy from ICBEMP, 112 E. Poplar Street, Walla Walla, WA 99362 or by calling (509) 522–4030 or from ICBEMP, 304 N. 8th Street, Room 250, Boise ID 83702 or by calling (208) 334–1770, ext. 120. The economic and social report will also be available via the internet (http://www.icbemp.gov).

Comments on the Eastside draft EIS, including the economic and social report, should be submitted in writing to ICBEMP, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362. Comments on the Upper Columbia River Basin draft EIS, including the economic and social report, should be submitted in writing to ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702. If your comments are in regard to both draft EISs, they may be sent to either office. Comments may also be made electronically by accessing the Project home page (http://www.icbemp.gov), where a comment form is available. If you have already submitted your comments, you may now submit more comments on the draft EIS, including your comments regarding the economic and social report.

FOR FURTHER INFORMATION CONTACT: EIS Team Leader Jeff Walter, 304 N. 8th Street, Room 250, Boise, ID 83702, telephone (208) 334–1770 or EIS Deputy Team Leader Cathy Humphrey, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362, telephone (509) 522–4030.

SUPPLEMENTARY INFORMATION: In Section 323 of the Department of the Interior and Related Agencies Appropriations Act of 1998 Pub. L. 105–83), the United States Congress directed the following: "Using all research information available from the area encompassed by the Project, the Secretaries [of Agriculture and the Interior], to the extent practicable, shall analyze the economic and social conditions, and culture and customs, of the communities at the sub-basin level within the Project area and the impacts the alternatives in the draft EISs will have on those communities. This analysis shall be published on a schedule that will allow a reasonable period of time for public comment thereon prior to the close of the comment periods on the draft EIS. The analysis, together with the response * * * to the public comment, shall be incorporated in the final EISs and * * * subsequent decisions related thereto."

The required analysis has been prepared. It is a report on the existing economic and social conditions at the community level within the Interior

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Columbia Basin Ecosystem Management Project area and, to the extent practicable, an analysis of the effects of the alternatives described in the draft EISs upon communities. This report has been distributed to the public, providing approximately eights weeks for review and comment before the comment period closes May 6, 1998.

Dated: March 12, 1998.

J. David Brunner,

Acting State Director Bureau of Land Management.

Dated: March 12, 1998.

Robert W. Williams,

Regional Forester, U.S. Forest Service.

[FR Doc. 98–7270 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pilgrim Environment Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, Tahoe National Forest has modified the scope of this Environmental Impact Statement. The EIS will now address vegetation management projects and directly connected actions such as: Fuels treatment and reduction projects, timber harvesting, and road construction and reconstruction. The design of the new proposal incorporates and addresses all issue previously identified. In addition, the Environmental Impact Statement will address entry into an area previously identified as the Middle Yuba Roadless (RARE I) area, which was not recommended for wilderness or roadless status. The Forest Service now anticipates issuing a Draft EIS in the second quarter of 1998, and filing the Final EIS in the third quarter of 1998.

FOR FURTHER INFORMATION CONTACT: Questions concerning this analysis should be directed by Gary Fildes, EIS Team Leader, Downieville Ranger District, 15924 Highway 49, Camptonville, CA 95959, (503) 288–3231.

SUPPLEMENTARY INFORMATION: On May 22, 1997 a Notice of Intent to prepare an EIS was published in the **Federal Register** (Vol 62, Number 99, Pages 28002–28003).

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 16 and 30, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 2659 and 4624) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Frame, Mattress, Wooden
- 7210–00–NSH–0012 (37½"×74")
- 7210–00–NSH–0013 (35½"×74")
- 7210–00–NSH–0014 (37½"×79")
- 7210–00–NSH–0015 (52½"×79")
- 7210–00–NSH–0016 (59½"×79")
- 7210–00–NSH–0017 (52½"×79")
- 7210–00–NSH–0018 (35½"×79")

(Requirements for the Federal Prison Industries, Washington, DC)

Services

Food Service
Naval Nuclear Power Training Command
Naval Weapons Station Charleston
Goose Creek, South Carolina

Grounds Maintenance, Aliamanu Military Reservation, Oahu, Hawaii

Janitorial/Custodial for the Following Locations:

Schroeder Hall U.S. Army Reserve Center, 3800 Willow Street, Long Beach, California

Patton Hall U.S. Army Reserve Center, 5340 Bandini Boulevard, Bell, California

Janitorial/Custodial for the Following Locations:

U.S. Army Reserve Center, 296 E. 3rd Street, San Bernadino, CA

U.S. Army Reserve Center, 1284 E. 7th Street, Upland, California

Janitorial/Custodial

U.S. Coast Guard, CGC Eagle (WIX–327), 15 Mohegan Avenue, New London, Connecticut

Janitorial/Grounds Maintenance

Pactola Harney Ranger District Recreation Areas, Black Hills National Forest, Custer, South Dakota.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–7343 Filed 3–19–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 20, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agencies listed: Food Service, Postwide, Fort Hood, Texas, NPA: Physically Challenged Service Industries, Inc., San Antonio, Texas, The RC Foundation, Corpus Christi, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–7344 Filed 3–19–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Notification of Commercial Invoices That Do Not Contain a Destination Control Statement.

Agency Form Number: None.

OMB Approval Number: 0694–0038.

Type of Request: Extension of a currently approved collection of information.

Burden: 21 hours.

Average Time Per Response: 31 minutes—30 minutes for reporting and 1 minute for recordkeeping.

Number of Respondents: 40 respondents.

Needs and Uses: Commercial invoices, bills of lading, and other shipping documentation contain destination control statements that indicate the appropriate disposition of the goods or technical data. These statements are used by the Customs bureau to ensure that U.S. exports are shipped to legally authorized destinations. When a forwarding agent finds the documentation lacks the appropriate destination control statement, then he is required to notify the exporter of the problem. The exporter must provide a written assurance that all copies have been corrected.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dennis Marvich (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent on or before April 20, 1998 to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: March 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7334 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–805]

Certain Cut-to-Length Carbon Steel Plate From Belgium; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On January 20, 1998, the Department of Commerce (the Department) published the final results of its 1995–96 administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Belgium (63 FR 2959). This review covers one manufacturer/exporter of the subject merchandise, Fabrique de Fer de Charleroi, S.A. (FAFER), and its subsidiary, Charleroi (USA) for the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 353 (April 1, 1997).

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Scope of the Order

The products covered by this administrative review constitute one class or kind of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coasted with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling) for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Ministerial Error in Final Results of Review

In the course of reviewing the content of the final results of review of the antidumping duty order on certain cut-to-length carbon steel plate from Belgium for the period August 1, 1995 through July 31, 1996, the Department realized that it had inadvertently published the incorrect "all others" rate. Therefore, we are correcting the "all others" cash deposit rate to be 6.84 percent, the rate established in the less-than-fair-value (LTFV) investigation (*see* Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Belgium, 58 FR 44164 (August 19, 1993)). This correction of the "all others" rate does not change Fabrique de Fer de Charleroi's margin of 13.75 percent, published in the final results of the 1995–96 administrative review on January 20, 1998.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of certain cut-to-length carbon steel plate from Belgium within the scope of the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate of 6.84 percent, the "all others" rate, established in the LTFV investigation, shall remain in effect.

We will calculate importer-specific duty assessment rates on an ad valorem basis against the entered value of each entry of subject merchandise during the period of review (POR).

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

This administrative review and notice are in accordance with Section 751(a)(1) of the Tariff Act 19 U.S.C. 1675(a)(1)).

Dated: March 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7353 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 10, 1997, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on stainless steel bar from India. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

This review covers one producer/exporter of stainless steel bar to the United States during the period February 1, 1996, through January 31, 1997. The review indicates the existence of dumping margins during the review period.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Zak Smith, Import Administration, AD/CVD Enforcement Group I, Office 1, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–1778 or 482–1279, respectively.

Applicable Statute and Regulations

The Department of Commerce is conducting this administrative review

in accordance with section 751 of the Tariff Act of 1930, as amended. Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1997, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India (62 FR 10540) ("preliminary results"). The manufacturer/exporter in this review is Mukand Limited ("Mukand" or "respondent"). We received comments from the respondent and rebuttal comments from the petitioners (Al Tech Specialty Steel Corp., Carpenter Technology Corp., Crucible Specialty Metals Division, Crucible Materials Corp., Electralloy Corp., Republic Engineered Steels, Slater Steels Corp., Talley Metals Technology, Inc. and the United Steelworkers of America (AFL–CIO/CLC)).

In their December 18, 1997, rebuttal comments, petitioners argue that the respondent's case brief should be removed from the record because it failed to comply with the Department's requirements for obtaining extensions. Specifically, the petitioners claim that the respondent's letter requesting the extension did not present sufficient specificity regarding the rationale for the extension in order to meet the Department's "good cause" standard for extension.

We have determined that respondent sufficiently justified its extension request. Therefore, we did not reject the respondent's brief as untimely. We agree that the respondent's original letter requesting the extension lacked extensive explanation of the reasons for the request. However, the Department requested and received a more extensive explanation from the respondent before deciding to accept the respondent's brief (see December 12, 1997, Memorandum from Craig W. Matney to File). We also note that the petitioners did not file a case brief by the original deadline and were offered the opportunity to file a case brief by the extended deadline; thus their position was not prejudiced by the respondent's delayed filing.

Scope of the Review

For purposes of this administrative review, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness or if 4.75 mm or more in thickness have a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this administrative review is currently classifiable under subheadings 7222.11.0005, 7222.11.0050, 7222.19.0005, 7222.19.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Interested Party Comments

In accordance with 19 CFR 353.38, we invited interested parties to comment on our preliminary results. We received written comments from the petitioners and the respondent. Based on our analysis of the comments received, we have made certain corrections that changed our results (see Comments 2 and 5).

Comment 1: Department's Correction of Home Market Sales Data

The respondent contends that the Department incorrectly increased the gross unit price on several home market sales used in the margin calculation. According to the respondent, the warehousing customer surcharge, which was purportedly the Department's reason for the increase, was already included in the gross price for the sales in question because they occurred after November 1, 1996. The respondent states that, for consignment sales after this date, warehousing charges were included in the gross price, rather than invoiced as a separate charge as was the previous practice. Mukand argues that the Department verified that there were no separate warehouse charges for these sales because they did not appear on the invoices which the Department examined (see November 20, 1997, Verification Report, Exhibit 7) and Mukand did not add these charges to gross unit price in Mukand's changes to its sales listing which it provided at the beginning of verification (see Verification Exhibit 1).

The petitioners state that the Department found at verification that Mukand failed to include the warehouse charge on the sales and, thus, properly adjusted its calculations in the preliminary results. The petitioners state that a comparison of Mukand's June 4, 1997, home market sales submission with its September 22, 1997, home market sales submission shows that Mukand failed to increase gross unit price for the amount shown in the earlier submission's warehouse expense field for these sales.

Department's Position. In these final results, we have continued to increase the gross unit price for several specific sales by the warehouse charge that had been listed in the warehousing expense field (DISWARH) in Mukand's earlier submission because we find Mukand's argument to be inconsistent with the explanation the company provided at verification.

Mukand listed an amount in the DISWARH field in its questionnaire response for the sales in question. At verification, Mukand explained that it had listed income received from the warehousing surcharge erroneously as an expense in the DISWARH field and it would correct this by removing the amount from the DISWARH field and adding it to the gross unit price in its post-verification data submission. However, in its post-verification submission it did not list the amounts in question either in the DISWARH field or as an addition to gross unit price for the sales in question even though, at verification, Mukand had explained that it had added an amount to the gross unit price. As a result, for our preliminary results, we added the amount to gross unit price.

In its case brief Mukand stated, for the first time, that it had changed its

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invoicing policy which affected sales after November 1, 1996. Identifying this change at such a late stage of the review does not give the Department the opportunity to analyze and verify the position Mukand is now advocating with respect to the above-referenced sales. Therefore, we have not changed our calculation of normal value from that in our preliminary results.

Comment 2: Addition of Interest Revenue to Home Market Price in Calculating CV Profit

The respondent claims that the addition of interest revenue earned from late payments to its home market prices when calculating constructed value ("CV") profit is erroneous because the sale revenue and the interest revenue are two separate transactions. Furthermore, Mukand maintains, if the Department includes such interest revenue in the profit calculation, the rate Mukand charges for late payment should be offset by its short-term cost of borrowing. The respondent also argues that the revenue from late payment charges is included in its net interest costs and, thus, by including this charge in total revenue, the Department double-counted interest earned from late payments. Finally, respondent states that comparing U.S. sales, where its customers pay within the stated payment terms, to a CV that includes interest for late payments is not an "apples-to-apples" comparison.

The petitioners counter that the interest revenue Mukand earned from late payments originate from the same transaction as the revenue from the sale and thus should be included in the total sales revenue used to calculated CV profit. The petitioners assert that revenues from late-payment charges are actually reflected in the respondent's accounting records, while imputed credit expenses are not. The petitioners contest the respondent's claim that the interest it earned from late payments was double-counted. They state that interest revenue was included in the calculation only as an offset to interest expenses. Lastly, the petitioners state that CV is the model-specific cost of the U.S. product as if it were sold in the home market, and thus the payment patterns of Mukand's U.S. customers are irrelevant.

Department's Position. Mukand's financial statements support its assertion that it subtracted interest which it earned from the late payments from its reported interest expense. Thus we have accounted for such interest in Mukand's costs when calculating CV profit. Therefore, we agree with the respondent that we double-counted this interest in our preliminary results by including it in revenue when calculating CV profit. We have adjusted our calculations accordingly.

Comment 3: Sales Used in Calculating CV Profit

The respondent claims that the Department improperly excluded below-cost sales in the home market profit margin calculation it used to determine CV profit. In support of this assertion the respondent cites *Torrington* v. *U.S.*, 19 ITRD 1673, 1676 (Fed. Cir. October 15, 1997), which states that below-cost sales can only be excluded from foreign market value if they are deemed outside the ordinary course of trade, and, according to the respondent, sales below-cost are not, on their face, outside the ordinary course of trade.

The petitioners respond that the Department correctly excluded below-cost sales from the calculation of CV profit in accordance with Section 771(15)(A) of the Act, which states that below-cost sales are to be considered outside the ordinary course of trade. Furthermore, the petitioners cite the preamble to the Department's new regulations which clarifies that, unlike old-law practice, all below-cost sales are to be excluded from the calculation of CV profit (*see* 52 FR 27296, 27359 (May 19, 1997)). The petitioners also state that exclusion of below-cost sales in the calculation of CV profit is consistent with recent Department practice.

Department's Position. We agree with the petitioners that Section 771(15)(A) of the Act defines below-cost sales as out of the ordinary course of trade. Therefore, it is appropriate to exclude them from the CV profit calculation in accordance with section 773(e)(2) of the Act. See, also, Section 773(b)(1) of the Act. The case cited by the respondent is an old-law case and thus is not applicable to the instant case. Therefore, we have continued to exclude below-cost sales in our calculation of profit for CV.

Comment 4: CV Profit at Different Levels of Trade

Citing Antifriction Bearings from France, 62 FR 54043, 54063, the respondent states that CV profit should be calculated on a level-of-trade-specific basis. Citing the Department's preliminary results (*see* 62 FR 60482, 60483), the petitioners assert that the the respondent has admitted and the Department verified that there is no difference in the level of trade between the U.S. and home market and, thus, a single CV profit ratio should be calculated.

Department's Position. The respondent did not claim and we did not find a difference in the level of trade between the two markets (*see* preliminary results at 60483). Thus, we have continued to use a single CV profit rate calculated based on all foreign like products at the single level of trade we found in the home market.

Comment 5: Reduction of CV Interest Expense

The respondent alleges that the Department double-counted its interest expense by failing to remove the actual interest expenses associated with its accounts receivable assets from the CV interest factor while accounting for these expenses as a reduction from U.S. price through an imputed credit deduction. The respondent states that the Department should reduce the CV interest factor to account for the percentage of total assets accounted for by accounts receivable. The respondent claims that this is the Department's standard practice and that the questionnaire erroneously neglected to inform the respondent to make this adjustment.

The petitioners respond that the adjustment requested by the respondent is inconsistent with the Department's policy as expressed in the questionnaire.

Department's Position. We no longer allow a reduction to interest expense to account for the percentage of total assets accounted for by accounts receivable because we no longer include an amount for imputed credit in the CV. However, we note that we did make an error in making our circumstance-of-sale adjustments by not deducting home market imputed expenses before adding U.S. imputed expenses and have adjusted the calculations accordingly. See, e.g., Certain Stainless Steel Wire Rods from France, 62 FR 7206, 7209 (February 18, 1997).

Comment 6: Duty Drawback

The respondent asserts that the Department, in Certain Welded Carbon Standard Steel Pipes and Tubes from India (62 FR 47632 (September 10, 1997)) ("Pipes and Tubes"), found that the Indian Passbook Scheme is a proper drawback program. Therefore, according to the respondent, the only remaining question is whether the Passbook Scheme credits it received were rebates for import duties on the raw material used to produce bar for export. The respondent claims that they were and, thus, the Department should have made an upward adjustment to the U.S. price. Citing to the Department's verification report, Mukand states that the

Department verified that its input costs were inclusive of import duties. As an alternate drawback claim, Mukand provides a calculation for the annual average per metric ton amount of duty paid on nickel, chrome, and scrap and implies that the Department could use this as its adjustment.

The petitioners maintain that Mukand has failed the Department's two-part test for drawback claims because the respondent failed to demonstrate that there is a direct link between the duties imposed and those rebated or that it imported a sufficient amount of raw materials to account for the drawback received. With regard to Mukand's alternate claim, the petitioners state that Mukand has calculated this claim based on trial balance amounts that include customs duties and "other" amounts; thus, according to petitioners, there is no way for the Department to know the exact duties paid. Furthermore, the petitioners contend, there is no way to determine whether these imports were used for domestic or export production. Petitioners state that the Department's denial of Mukand's drawback claim in the preliminary results is consistent with the previous administrative review of this order, citing Stainless Steel Bar from India: Preliminary Results of Antidumping Administrative Review, 62 FR 10540, 10541 (March 7, 1997) ("Stainless Steel Bar"), which explains the Department's policy for granting such claims. Finally, the petitioners assert that the Department found at verification that the drawback claim was based not on Mukand's actual imports but rather on a theoretical amount of imported billets. For all of these reasons petitioners contend that the Department should not accept respondent's duty-drawback claim.

Department's Position. We disagree with Mukand that the Passbook Scheme credits it received necessarily represent the duties imposed on the imported raw material it used to produce bar for export. In fact, Mukand did not calculate the credits it received based on the raw materials it actually imported (i.e., nickel, chrome, and scrap) but, rather, on a theoretical amount of a different product (i.e., stainless steel billets) contained in the subject merchandise. See Verification Report at 9 on the public record in room B–099 of the main Commerce Department building. Because the credit was not calculated based on the product actually imported, the import duty actally paid and the rebate received are not directly linked. Therefore, Mukand has not met the first part of the Department's test for making an upward adjustment to U.S. price for duty-drawback.

When evaluating a duty-drawback program, the Department considers whether the import duty and rebate are directly linked to, and dependent upon, one another and whether the company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product. Pipes and Tubes, 47634. The Court of International Trade has upheld this test. *See, e.g., Federal-Mogul Corp. v. United States*, 862 F. Supp. 384, 409 (CIT 1994). While in Pipes and Tubes we did find that the link between the import duties paid and the rebate was sufficient, as noted above, such a link does not exist in the instant case. Because we have not found a direct link in the instant case, we have not considered whether Mukand met the second part of our standard.

Comment 7: Differing Selling Costs

The respondent suggests that, if the Department does not make a duty-drawback adjustment for the Passbook Scheme, it should make an adjustment for the different costs of selling due to the scheme. The respondent claims that the Passbook Scheme lowers its input costs on exports, thereby allowing it to charge a lower price on export sales. The petitioners counter that the adjustment claimed by the respondent has no basis in law and that there is no evidence on the record to demonstrate that Mukand's inputs cost less for exports due to the Passbook Scheme. The petitioners further assert that the Department made a circumstance-of-sale adjustment for differences in selling costs in the preliminary results and that no further adjustments are necessary.

Department's Position. We agree with the petitioners. The statute requires circumstance-of-sale adjustments for differences in selling expenses. The adjustment requested by the respondent is for differences in input costs, not selling expenses. We note that we include the revenue Mukand received from the Passbook Scheme in the calculation of CV as an offset to input costs.

Comment 8: Indirect Selling Expenses Deduction

The respondent claims that the Department incorrectly reduced U.S. price by indirect selling expenses incurred outside of the United States. The respondent states that this U.S. price reduction was not in accordance with either Section 772(d)(1) of the Act or Department practice as stated in Cold-Rolled Carbon Steel Flat Products from the Netherlands, 62 FR 47418, 47419 (1997).

The respondent also asserts that the Department stated in its preliminary results that the U.S. price should be reduced for indirect selling expenses up to the amount of home market commissions less the warehouse expenses incurred by Mukand's commissionaires. However, the respondent claims, the Department stated that it did not have adequate information to subtract the warehouse expenses from home market commissions. The respondent asserts that the Department does have adequate information to make this adjustment.

The petitioners state that the Department did not deduct indirect selling expenses from U.S. price but, rather, calculated a commission offset in accordance with section 353.56(c) of the Department's regulations. The petitioners state that such an offset is consistent with Department practice when commissions are paid on home market sales but not on U.S. sales. In addition, the petitioners state that the Department, in fact, has not stated on the record of this case that the warehouse expenses incurred by Mukand's commissionaires should be subtracted from home market commissions.

Department's Position. We calculated a commission offset in accordance with section 353.56(b)(1) of the our regulations and our practice. The section of the Act cited by the respondent, 772(d)(1), applies to constructed export price calculations. In the instant case, all of the transactions are export price sales; therefore this section is not applicable.

With respect to the respondent's second point, that the home market commissions should be reduced by an amount for the commissionaire's warehousing expenses, the Department did not state in the preliminary results that it lacked information to calculate such an offset. Furthermore, no persuasive argument has been made that such an adjustment is warranted. Thus, in these final results, we have not made any adjustment to the commission offset for such charges.

Final Results of Review

As a result of this review, we determine that Mukand's weighted-average dumping margin is 5.53 percent for the period February 1, 1996, through January 31, 1997.

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future deposits of estimated duties for the manufacturer/exporter subject to this review. We have calculated an importer-

specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the period of review ("POR") to the total value of subject merchandise entered during the POR. Mukand did not provide entered value for these export price sales. In order to estimate the entered value, we subtracted international movement expenses (e.g., international freight) from the gross sales value. This importer-specific rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Mukand will be 5.53 percent; (2) for companies not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be the "all others" rate of 12.45 percent established in the final determination of sales at less than fair value (59 FR 66915, December 28, 1994).

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7351 Filed 3–19–98; 8:45 am]

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DEPARTMENT OF COMMERCE

[C–508–605]

Industrial Phosphoric Acid From Israel: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 10, 1997, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on industrial phosphoric acid from Israel for the period January 1, 1995 through December 31, 1995 (62 FR 47645). The Department of Commerce has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (Rotem). This review also covers the period January 1, 1995 through December 31, 1995.

Since the publication of the preliminary results on September 10, 1997, (*Preliminary Results*), the following events have occurred. Pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended, we extended the final results to no later than March 9, 1998. *See Industrial Phosphoric Acid From Israel; Extension of Time Limit for Countervailing Duty Administrative Review*, 63 FR 1441 (January 9, 1998). On October 10, 1997, a case brief was submitted by the Government of Israel (GOI) and Rotem, producer/exporter of industrial phosphoric acid (IPA) to the United States during the review period (respondents). On October 17, 1997, a rebuttal brief was submitted by counsel for the FMC Corporation and Albright & Wilson Americas Inc. (petitioners). On January 26, 1998, we provided petitioners and respondents the opportunity to address the grant calculation methodology followed in the *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997) (*Wire Rod from Venezuela*). That methodology has direct relevance in this proceeding and the final determination in that case was published after the preliminary results in this proceeding were completed. Accordingly, on February 3, 1998, comments were submitted by respondents and petitioners. On February 6, 1996, rebuttal comments were submitted by respondents and petitioners.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department of Commerce (the Department) is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff*

Schedule (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the GOI and Rotem. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Subsidies Valuation Information

Period of Review

The period for which we are measuring subsidies (the POR) is calendar year 1995.

Allocation Period

In *British Steel plc.* v. *United States*, 879 F.Supp. 1254, 1289 (February 9, 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix*, appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) (*GIA*). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*). Accordingly, the Department has applied this method to those non-recurring subsidies that have not yet been countervailed.

For non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not reasonable or practicable to reallocate those subsidies over a different period of time. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each nonrecurring subsidy received prior to the POR. This conforms with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997). For additional discussion of this issue, see *Department's Position* on "*Comment 6:* Grants Previously Allocated According to the U.S. IRS Depreciation Schedules, Should be Allocated Over Rotem's Actual AUL", below.

For non-recurring subsidies received during the POR, Rotem submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. Rotem's AUL was derived by adding depreciation charges for ten years, and dividing these charges by the sum of average gross book value of depreciable fixed assets for the related periods. We found this calculation to be reasonable and consistent with our company-specific AUL objective. Rotem's calculation resulted in an AUL of 24 years, and we have used this calculated figure for the allocation period for non-recurring subsidies which have not been previously allocated.

Privatization

(I) Background

Israeli Chemicals Limited (ICL), the parent company which owns 100 percent of Rotem's shares, was partially privatized in 1992, 1993 and 1994. In this administrative review, the GOI and Rotem reported that additional shares of ICL were sold in 1995. We have previously determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest. *See Final Results of Countervailing Duty Administrative Reviews; Industrial Phosphoric Acid from Israel*, 61 FR 53351, 53352 (October 11, 1996) (*1994 Final Results*).

In this review and prior reviews of this order, the Department has found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations. Further, the Department has found that a portion of the price paid by a private party for all or part of a government-owned company represents partial repayment of prior subsidies. *See GIA*, 58 FR at 37262. Therefore, in the 1992 and 1993 reviews, we calculated the portion of the purchase price paid for ICL's shares that is attributable to repayment of prior subsidies. In the 1994 review, respondents reported that the GOI sold less than 0.5 percent of its shares in ICL. Because this percentage of shares privatized was so small, the percentage of subsidies potentially repaid through this privatization could have no measurable impact on Rotem's overall net subsidy rate. Therefore, we did not apply our repayment methodology to the 1994 partial privatization. *See 1994 Final Results*, 61 FR at 53352. However, we are applying this methodology to the 1995 partial privatization of ICL during the POR because 24.9 percent of ICL's shares were sold. This approach is consistent with our findings in the *GIA* and Department precedent under the URAA. *See e.g., GIA*, 58 FR at 37259; *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377 (November 14, 1996); and *Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288 (June 14, 1996).

(II) Modification of the Privatization Calculation Methodology

As noted above, in the 1992 and 1993 administrative reviews of this order, we determined that the partial privatization of ICL, Rotem's parent company, represented partial privatization of Rotem. Therefore, in each of those reviews, we calculated the portion of the purchase price paid for ICL's shares that was attributable to the repayment of prior subsidies. Under this methodology, to determine the amount of subsidies that are extinguished due to privatization, we calculate the net present value (NPV) of the remaining allocable subsidies at the time of privatization. For example, if the privatization took place in 1993, the NPV calculation for that transaction would be the remaining benefit from all unamortized subsidies in 1993. However, in past cases involving privatization or changes in ownership we recalculated the NPV in subsequent review periods by including only the remaining benefit from unamortized subsidies affecting that subsequent review period. For example, if we calculated the NPV for a privatization that took place in 1993, in the next administrative review, 1994, we would recalculate the NPV using only those subsidies still allocable to 1994, *i.e.*, the remaining unamortized subsidies still benefitting the company in 1994.

We revisited that methodology in the 1995 countervailing duty administrative review of lead and bismuth carbon steel products from the United Kingdom. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 62 FR 53306 (October 14, 1997). In that review, we determined that it is

not appropriate to modify the calculation of the NPV of the subsidies existing at the time of sale. The change in ownership of a company is a fixed event at a particular point in time. Thus, the percentage of subsidies that may be extinguished due to privatization or reallocated due to a change in ownership in a given year is also fixed at that same point in time and does not change. Therefore, the pass-through percentage will no longer be altered once it has initially been determined in an investigation or administrative review. We have modified the ICL privatization calculations in this administrative review to reflect the change outlined above.

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

1. *Encouragement of Capital Investments Law (ECIL) Grants.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for this program. In particular, we followed the methodology set forth in *Wire Rod from Venezuela* to calculate the benefit from these non-recurring grants. Under this methodology, we converted the grant amount into U.S. dollars on the date of receipt of the grant. The benefit in the POR was then calculated using our standard grant allocation methodology. For a detailed discussion of the changes to the calculation methodology for this program, *see* the *Department's Position* on *"Comment 9: Inflation Adjustment for Non-Recurring Grants,"* below; *see also* the Calculation Memorandum to the File, dated March 9, 1998 (public version on file in the Central Records Unit of the Department of Commerce) ("Calculation Memo"). Accordingly, the net subsidies for this program have changed and are as follows:

Manufacturer/exporter	Rate (percent)
Rotem Amfert Negev	8.85

2. *Long-term Industrial Development Loans.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Rotem Amfert Negev	<0.005

3. *Encouragement of Industrial Research and Development Grants (EIRD).* In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Rotem Amfert Negev	0.08

II. Programs Found To Be Not Used

In the preliminary results, we found that the producer/exporter of the subject merchandise did not apply for or receive benefits under the following programs:

A. Reduced Tax Rates under ECIL;
B. ECIL Section 24 loans;
C. Dividends and Interest Tax Benefits under Section 46 of the ECIL; and
D. ECIL Preferential Accelerated Depreciation.
E. Exchange Rate Risk Insurance Scheme.

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Denominator for ECIL Grants Allocable to IPA, MKP and Fertilizers

Respondents argue that the denominator used to calculate the *ad valorem* rate from ECIL grants allocable to IPA, monopotassium phosphate (MKP) and fertilizers is understated, because it does not include Rotem's direct sales of green acid, which is also a fertilizer. The correct denominator for these ECIL benefits should be taken from page two of Rotem's May 27, 1997, questionnaire response, and should include Rotem's sales of fertilizers, IPA, and MKP. The fertilizer sales amount includes direct sales of green acid.

Petitioners contend that the Department used the correct denominator in the benefit calculations. According to petitioners, the Department's preliminary calculation reflects commercial realities because green acid is sold and accounted for as green acid and not as fertilizer.

Department's Position. We agree with respondents. In the preliminary results, we incorrectly excluded direct sales of green acid from the *ad valorem* rate calculation for ECIL grants allocable to IPA, MKP and fertilizers. The funding for the grant projects in question, projects 9, 11, and 15, was for the expansion and debottlenecking of Rotem's green acid facilities. In the preliminary results, we determined that it was appropriate to attribute ECIL grants tied to a particular unit over the sales of the product produced by that unit plus the sales of all products into which that product may be incorporated. We also noted that green acid produced at plant 30 and 31 can be incorporated into the production of all of the company's downstream products. Therefore, in these final results, we have included sales of fertilizers, including direct sales of green acid, as well as sales of IPA and MKP, in calculating the *ad valorem* rate from ECIL grants 9, 11, and 15 .

Comment 2: Attribution of ECIL Grants to Inputs Used in the Production of IPA

Respondents contend that the Department should return to the attribution approach followed in the investigation of this case and in the five subsequent administrative reviews. According to respondents, departing from a long-standing methodology is unwarranted, in particular, as respondents claim here, when the earlier approach was more accurate. Under that earlier approach, ECIL grants to inputs, such as phosphate rock and green acid, were apportioned to IPA according to the consumption of each input product in IPA production. Respondents state that in the preliminary results, the Department incorrectly attributed these ECIL grants to the direct sales of the inputs and the sales of all downstream products that potentially incorporate the input.

Respondents assert that it is the Department's practice not to disturb established methodologies in the absence of any new evidence or without new and compelling arguments. For example, respondents note that in the certain steel investigations, the Department rejected an argument made

by parties in that case to change the long-standing grant amortization methodology, stating that "before a change is made in established policy there should be evidence to show that the change is warranted." *GIA*, 58 FR at 37229. Further, in a 1996 antidumping proceeding, the Department refused to alter the existing model match methodology "unless compelling reasons exist" to do so. *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 37177, 35181 (July 5, 1996) *(Strip from ROK)*. Respondents also state that the U.S. Court of International Trade (CIT) has found that changes to long-standing methodologies, even if those changes result in greater accuracy, are not warranted because these methodologies become "the law of these proceedings," and "[p]rinciples of fairness prevent Commerce from changing its methodology." *Shikoko Chemicals Corp.* v. *United States*, 795 F. Supp. 417, 421–22 (CIT 1992) *(Shikoko)*.

Respondents acknowledge that the CIT has permitted the Department to depart from a verified methodology developed in an investigation if a "different methodology permits a more accurate assessment of current margins." *Hussey Copper, Ltd.* v. *United States*, 834 F. Supp. 413, 425 (CIT 1993) (*Hussey*). In this case, however, respondents contend that the Department acted contrary to law by opting for a methodology that provides a less accurate assessment than the one followed in all but the last two proceedings. For example, in *British Steel II*, 929 F. Supp. at 426, the CIT stated that "Commerce is required to allocate subsidies over products that have benefitted from the subsidies * * * in a manner that reasonably reflects the extent to which the products have benefitted from the subsidies." Moreover, respondents note that the *Hussey* Court required the Department to implement "the basic purpose of the statute—determining current margins as accurately as possible." *Hussey*, 834 F. Supp. at 425, *citing Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

In light of this precedent, respondents argue that the Department should return to the original methodology, which allocates the grants as accurately as possible to the subject merchandise. Any other result is less accurate, contrary to law and punitive.

Petitioners argue that the Department has reasonably determined that this new methodology more precisely allocates the subsidy benefits. The change in the methodology, petitioners state, was clearly within the Department's legal authority. According to petitioners, having made this determination, the Department should not return to the discarded methodology advocated by respondents.

Department's Position. Contrary to respondents' assertions, the attribution approach for ECIL subsidies adopted in this administrative review, which departs from the approach followed until the final results in the 1993 administrative review of this case (61 FR 2884), accurately measures the benefit conferred from the countervailable ECIL grants and is consistent with the countervailing duty statute. Moreover, this approach is consistent with the Department's attribution principles concerning subsidies to inputs where the same corporate entity produces the inputs and the subject merchandise, as well as other downstream products.

As a preliminary matter, we disagree with respondents' contention that the Department is irrevocably tied to long-standing methodologies merely because those methodologies have become accepted practice in a proceeding. Under respondents' logic, the Department could never change a methodology it had applied in the past. This conclusion is not supported by the countervailing duty statute, or administrative and legal precedent. Rather, administrative precedent is rarely binding because agencies must be given the opportunity to develop agency law on a case-by-case basis over time; otherwise they would be hindered in clarifying unsettled law and from adapting their practice to new interpretations and factual situations. Not being able to do so would force them to maintain positions that were no longer relevant. *See NLRB* v. *J. Weingarten, Inc.*, 420 U.S. 251, 265–66 (1975) ("The use by an administrative agency of the evolutionary approach is particularly fitting."). In fact, administrative agencies are given broad leeway to depart from prior administrative precedent, provided that such departure is adequately explained. *See Ipsco, Inc.* v. *United States*, 678 F. Supp. 633, 639 (CIT 1988) (agency needn't explain its rationale at length, as long as the "path of ITA's reasoning is discernible from the record").

Respondents' reliance on *Shikoku* for the proposition that changes in long-standing methodologies are not warranted is also not persuasive. Aside from having little precedential value, the facts in *Shikoku* are clearly distinguishable from those in this case. In *Shikoku*, the court found that the plaintiff, respondent Shikoku, had reasonably relied upon the Department's continued application of a case-specific antidumping calculation method applied in four previous reviews, and that by so doing, Shikoku was attempting to comply with U.S. antidumping law. However, the Department's departure from its past methodology resulted in a continuation of the antidumping order, which otherwise would have been revoked. This resulted in substantial harm to Shikoku. By contrast, in this case, Rotem has not demonstrated reliance upon the Department's prior methodology because such reliance could only be evidenced by refusing to accept subsidies.

Respondents also incorrectly imply that the Department changed its methodology without considering whether that change was warranted on the basis of new information or changes in Department policy. In fact, in the 1994 administrative review of this case we conformed our attribution approach to the methodology articulated in the countervailing duty investigation of pasta from Italy. *See Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30288, 30304–305 (June 14, 1996) (*Pasta From Italy*). In *Pasta From Italy*, the Department reasoned that where subsidies for semolina production, a primary input into pasta, were provided to the same corporate entity that milled semolina and produced pasta, the production was sufficiently integrated that subsidies bestowed upon the production of semolina, which is an input into pasta, would necessarily flow down to the production of subject merchandise. In that circumstance, it was deemed unnecessary to conduct an upstream subsidy investigation to examine whether a competitive benefit had been bestowed on subject merchandise by the semolina subsidization. Therefore, the Department attributed subsidies provided to semolina to the company's total sales of pasta and semolina, including sales of the subject merchandise. The Department stated that "for those companies where the mill is not incorporated separately from the producer of the subject merchandise, we have included subsidies for the milling operations in our calculation." *Pasta From Italy*, 62 FR at 30289.

Respondents' complaint that the Department acted contrary to law by adopting a methodology that is not precise and accurate is also without merit. As a preliminary matter, the Department has broad discretion in

adopting specific methods to identify and value subsidies, the only requirement being that the method be reasonable and in accord with the law. *See Inland Steel Industries, Inc.* v. *United States*, Slip-Op. 97–71 (CIT 1997) ("so long as Commerce's methodology is a reasonable means to carry out the statute, it needn't be the most precise method"); *Chevron U.S.A.* v. *United States*, 467 U.S. 837, 844 (1984).

The attribution approach adopted in this review recognizes that the ECIL subsidies provided to the Arad, Zin and Oron mines, as well as to Rotem's green acid facilities, benefitted not only the inputs for which the subsidies were received, but also production of other downstream products, including IPA. Rotem officials confirmed this at verification, stating that "every [phosphate] rock can be used in every product," and green acid from both green acid facilities could be used in all downstream products. *See* the August 22, 1997, Memorandum to Barbara E. Tillman, Verification of Rotem's Questionnaire Responses (public version on file in the Central Records Unit, Room B–099) (*Rotem VR*). Thus, by allocating the ECIL grants to inputs over sales of that input and sales of downstream products incorporating that input, the Department more accurately assessed the benefit attributable to IPA from the government's subsidization of inputs. The subsidized inputs (phosphate rock and green acid) benefit all of Rotem's downstream products. Moreover, as we established in prior reviews, phosphate rock inputs have in fact been incorporated into Rotem's downstream products, including IPA. Therefore, the Department appropriately attributed ECIL subsidies to inputs over Rotem's direct sales of these inputs and the sales of all downstream products, because those end products incorporate the inputs. Again, in order to make an apples-to-apples comparison, it is imperative that both the numerator (the countervailable benefit) and denominator (the universe of sales to which the benefit applies) used in the Department's calculation of a subsidy reflect the same universe of goods. Otherwise, the rate calculated will either over or understate the subsidy attributable to subject merchandise. The attribution method adopted in the preliminary results more accurately captures the apples-to-apples comparison outlined above. Accordingly, we have not altered that approach in these final results.

Comment 3: ECIL Grants to Projects that Did Not Provide Inputs to IPA During the POR

According to respondents, the Department exceeded its statutory authority when it attributed to IPA subsidies under ECIL projects 1, 3, 4, 7, and 15, because Department officials verified that inputs from the facilities that benefitted from these grants were not used in the production of IPA during the POR. Under such circumstances, respondents state, the Department's longstanding practice mandates that if a subsidy is not "tied" to the subject merchandise and the equipment or plant procured with the subsidy are not used to produce the subject merchandise, then the subsidy is not countervailable and cannot be attributable to the subject merchandise. Respondents state that the 1997 proposed rules reaffirm this approach, stating that "subsidies should be attributed, to the extent possible, to those products for which costs are reduced (or revenues increased)," and that "if a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." *1997 Proposed Rules*, 62 FR at 8845, 8855.

According to respondents, the fact that the input products could "potentially" be incorporated in all products produced by Rotem or that they "may" be incorporated into IPA, the Department's rationale for countervailing these grants, is not relevant. Respondents contend that the *1997 Proposed Rules* do not speak of "potential" input products, only "actual" inputs and that an input that merely "could" be an input does not fall within this provision. Similarly, respondents note that in *British Steel II*, the CIT observed that the Department must, after determining which products benefitted from countervailable subsidies, "allocate countervailing duties over such products in a manner that reasonably reflects the extent to which the products have benefitted from the subsidies." 929 F. Supp. at 453. Thus, respondents state that the Department should find no benefit from these subsidies in 1995.

According to petitioners, the Department acted correctly in calculating the benefit from ECIL projects to facilities that provided no inputs into the production of IPA during the POR (projects 1, 3, 4, 7, and 15). Petitioners state that the issue with respect to these indirect benefits is not whether the particular inputs were used to produce IPA during a limited time period, such as the POR, but whether they could have been used, or in fact have been used in the past for that purpose. Petitioners further argue that by enhancing the facilities that produce inputs necessary for IPA production, these ECIL grants indirectly benefitted IPA, because to the extent that inputs are fungible, it is logical to consider enhanced production capability as an indirect benefit to IPA. Such a determination is, petitioners state, consistent with the Department's approach to subsidies to input products provided to a single corporate entity.

Department's Position. Respondents' argument that ECIL subsidies under projects 1, 3, 4, 7, and 15 are "tied" to products other than the subject merchandise, and that these subsidies should therefore not be attributed to Rotem's sales of subject merchandise, is incorrect. In this review, we have correctly determined that, regardless of whether any of the inputs (phosphate rock and green acid) receiving subsidies were actually fed into IPA production during the POR, all of these products are inputs into IPA. We have thus departed from our past practice of attempting to determine the precise amount of inputs that were actually used in IPA production from each ECIL project during the relevant period and then apportioning the subsidies provided to those inputs accordingly. Consequently, we have fully brought our method of attributing ECIL grants into harmony with *Pasta From Italy*.

The record in this case establishes that ECIL grants received by Rotem for Projects 1, 3, 4, and 7 were for Rotem's Arad, Zin and Oron mines, and grants received for Project 15 were for Rotem's new green acid facility. The mines and green acid facility are not separately incorporated entities. The Arad, Zin and Oron mines each produce phosphate rock, the main input of IPA and Rotem's other downstream products. Green acid is also an input into the production of IPA and other end products produced by Rotem. However, respondents attempt to argue that because inputs benefiting from Projects 1, 3, 4, 7, and 15 have not been used in the production of IPA during the POR, these subsidies are 'tied' to products other than the subject merchandise.

Our position on the tying of benefits is that "a subsidy is "tied" when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy." *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium*, 47

FR 39304 (September 7, 1982).[1] When we determine that a benefit is "tied" to a product, there is an implicit assumption that the benefit is intended to affect only that product. *See Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review*, 52 FR 833 (January 9, 1987). In this case, however, respondents have failed to provide any evidence on the record demonstrating that ECIL grants 1, 3, 4, 7, and 15 were intended to affect only the inputs that received the subsidy, and only the end products that incorporated these inputs only during the POR. Rather, ECIL subsidies are provided to inputs that are also incorporated into other downstream products produced by the same integrated company. Therefore, to the extent that ECIL grants are tied to phosphate rock and green acid, they are also tied to the sales of all other merchandise incorporating those inputs.

It is also important to note that attribution is established at the point the subsidy is bestowed, not the point at which it is used. Otherwise, the subsidy is apportioned on a pro-rata basis in each administrative review. Such a pro-rata apportionment contravenes our policy of not examining the use of the subsidy to determine whether it is countervailable. As stated in the *GIA*, "nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance * * * nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect." 58 FR at 37260; *see also British Steel* v. *United States*, 879 F. Supp. 1254, 1298 (CIT 1995) (*British Steel*), *appeals docketed*, Nos. 96–1401 to –06 (Fed. Cir. June 21, 1996); *British Steel Corp* v. *United States*, 605 F. Supp. 286, 294–95 (1985) ("[I]t is unnecessary to trace the use" of funds), citing *Michelin Tire Corp.* v. *United States*, 4 CIT 252, 255 (1982), vacated on agreed statement of facts, 9 CIT 38 (1985). Such an interpretation is also supported by the statute, as amended by the URAA. Specifically, § 771(5)(C) of the Act states that the Department "is not required to consider the effect of the subsidy in determining whether a subsidy exists." The SAA further elaborates, noting that the "definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review." SAA at 256; H.R. Rep. No. 826, 103d Cong., 2d Sess., vol. 1 at 926 (1994) (SAA). As such, adoption of the attribution approach set out in *Pasta From Italy* was reasonable because Rotem is also an integrated producer, as are the pasta producers who own semolina production facilities. In such cases, subsidies to inputs will be attributed to the inputs and the downstream products that incorporate the inputs.

Finally, we note that for subsidies "tied" to non-subject merchandise, *i.e.*, products that could not be inputs into IPA, such as grants tied to fertilizers under Project 13, we did not include that ECIL grant in calculating the subsidy rate. For the reasons set forth above, for the purposes of these final results, the Department will continue to allocate ECIL grants from Projects 1, 3, 4 and 7, and 15 over the sales of the inputs (phosphate rock and green acid) and the downstream products made by Rotem during the POR (IPA, MKP, and fertilizers).

Comment 4: ECIL Grants to Project 15

According to respondents, the input product produced by the Rotem II facility, the plant that benefited from ECIL grant project 15, was never intended as an input into IPA. Respondents claim that the Department countervailed grants from project 15 on the basis of statements by Rotem officials at verification that green acid from the plant could chemically be used for IPA. According to respondents, however, the relevant fact is that it is not economical to use this green acid in the production of IPA. Therefore, respondents state, the Department should find that grants to project 15 did not benefit IPA during the POR.

Respondents further note that because the plant that benefited from project 15 did not start operations until 1996, no benefit could possibly have accrued to IPA in 1995 from these grants. This is especially the case, since the grants to this facility were not intended to be used in IPA production. Rather, the inputs were to be directed to another product, not yet produced in 1995.

According to petitioners, respondents' argument that project 15 grants should not be countervailed because the facilities that benefited from the grants were not in operation in 1995 is irrelevant. Petitioners state that it is the potential use of the input that is important, and not its actual use.

Department's Position. We disagree with respondents. Rotem II produces green acid, which is an input into IPA as well as other downstream products produced by Rotem. Respondents do not dispute that green acid from Rotem II can be used in the production of all downstream products, including the subject merchandise. In fact, respondents confirmed that green acid from Rotem II could be incorporated into IPA and Rotem's other end products. *See Rotem VR*. Therefore, as explained in detail under in the *Department's Position* on "*Comment 3*, ECIL Grants to Projects that Did Not Provide Inputs to IPA During the POR," above, consistent with our policy concerning corporate entities that produce both the inputs and the subject merchandise, we appropriately attributed the grants provided to Rotem II to the direct sales of green acid and all downstream products that can be produced from green acid. Such an attribution approach is consistent with the countervailing duty statute, and is in accordance with the attribution approach followed in *Pasta From Italy*.

Respondents' argument that the Rotem II facility was not operational in 1995 is also without merit. In light of our policy concerning integrated producers, this fact is irrelevant. Under the countervailing duty statute, the Department will find a countervailable subsidy when a financial contribution has been provided and that financial contribution has conferred a benefit upon the recipient. While respondents may assert that green acid from Rotem II was directed to another product not yet produced, there is no information on the record of this proceeding indicating that green acid from Rotem II cannot be an input into the production of IPA, or that the ECIL grants to that facility are "tied" to the production of specific downstream products. Therefore, we have appropriately attributed these grants to Rotem's sales of green acid and to the sales of the company's downstream products that incorporate green acid.

Comment 5: Rate of Inflation and Interest Rate To Be Used for ECIL Grant Calculations for 1994 and 1995

Respondents contend that the interest rate used by the Department to calculate the benefit during the POR from grants received in 1994 and 1995 under ECIL project 15 was incorrect. The interest rate in 1995 was calculated by adding the rate of inflation in 1994 to the real interest on CPI-indexed bonds in 1995. According to respondents, the rate of

[1] This position is also reflected in the Department's 1989 *Proposed Rules*, which define tied benefits as "a benefit bestowed specifically to promote the production of a particular product." *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Rules*).

inflation in 1995, not 1994 should have been added to that bond rate.

Respondents further argue that the Department selected an incorrect inflation rate for 1995 from the Bank of Israel (BOI) Annual Report. The Department has consistently used the average change in the rate of inflation in its non-recurring grant benefit calculations. In 1995, this figure was 10.0 percent. According to respondents, this is not the actual rate of inflation during the year but the average change from the prior year. The actual change during the period, respondents state, was 8.1 percent, as noted in the BOI annual report.

Petitioners contend that the Department has consistently used the average CPI change for the year in calculating the interest rate to be used in the ECIL benefit calculations. Therefore, the Department should not use a different CPI statistic in this administrative review, merely because the new rate would be helpful to Rotem. Petitioners point out that in 1994, the CPI change during the period was 14.5 percent, while the average change was 12.3 percent. In that review, respondents did not argue that the Department modify the CPI.

Department's Position. As explained in the *Department's Position* on "*Comment 9: Inflation Adjustment for Non-Recurring Grants,*" below, we have modified the calculation methodology for ECIL grants. The new approach does not require the use of NIS linked interest rates or the Israeli CPI index. Therefore, this issue is now moot.

Comment 6: Grants Previously Allocated According to the U.S. IRS Depreciation Schedules, Should Be Allocated Over Rotem's Actual AUL

Respondents argue that the Department correctly allocated non-recurring grants received by Rotem over the company's average useful life of assets (AUL) of 24 years. However, respondents note that the Department erred in not applying that allocation period to all of Rotem's non-recurring grants, including those received prior to the POR and which had been previously allocated according to the U.S. Internal Revenue Service depreciation schedules. According to respondents, the benefit from these earlier grants is, therefore, overstated, and will continue to be overstated if the allocation is not changed to reflect Rotem's AUL. Respondents state this correction can be achieved by taking the remaining balance in 1995 of previously allocated grants and reallocating that amount over the number of years left in a 24-year benefit stream that begins in the year the grant was received. This approach avoids the possibility of over-countervailing or under-countervailing the subsidy, because the entire benefit will be countervailed over the 24 year period. Respondents further note that if the Department found it reasonable to revise the ECIL grant calculations prior to the POR with respect to the inflation adjustment, it should also be reasonable and practicable to do so for the AUL correction.

Petitioners contend that the CIT's decision in *British Steel* does not require the Department to use a company-specific allocation period for all subsidies. Rather, petitioners state that the Department decided not to recalculate the AUL for subsidies received prior to the POR because such a change could distort the allocation of the actual benefits is fair and within the mandate of *British Steel*. Petitioners further argue that nothing in *British Steel* or in any other decision requires the Department to accept respondents' proposed method for recalculating the allocation period for earlier grants. In fact, petitioners note that the Department did not disturb previously established allocation periods in administrative reviews of other countervailing duty orders. *See, e.g., Certain Carbon Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16551, 16552 (April 7, 1997), and *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549, 16550 (April 7, 1997). Accordingly, petitioners argue that the Department's allocation of prior subsidies should remain unchanged.

Department's Position. Petitioners correctly note that in prior cases we have not disturbed allocation periods established in prior proceedings. This approach is reasonable and, as noted by petitioners, is not in conflict with the CIT's decision in *British Steel*, which does not require the Department to allocate non-recurring subsidies over a company's AUL. Furthermore, maintaining established allocation periods is both fair and practical, and modifying the allocation stream for previously allocated subsidies can produce unfair results. For example, it is conceivable that a company-specific AUL would yield a shorter allocation period. In that case, it is possible that the subsidy may be under-countervailed, in particular for subsidies that have reached the point in the allocation stream beyond the total number of years in the company-specific AUL. For these reasons, Rotem's 24-year company-specific AUL will only be adopted for ECIL grants that have not been previously allocated.

Comment 7: Grants Not Previously Considered in Subsidy Calculations Should Be Allocated Over Rotem's Actual AUL

According to respondents, the Department has determined to countervail certain grants in this administrative review that have not been countervailed in prior reviews. Among these are grants received prior to the POR. For these grants, respondents argue that the Department should allocate these grants over Rotem's company-specific AUL of 24 years, because these grants have not already been allocated in past administrative reviews.

Department's Position. Grants from ECIL project 15, received in 1994, were not countervailed in the 1994 administrative review and therefore have not previously been allocated. Therefore, we concur with respondents that it is appropriate to allocate these grants over Rotem's company-specific 24-year allocation period. However, we disagree with respondents that there are "numerous grants countervailed this time that have not been countervailed in the past." In the 1994 administrative review, the Department countervailed grants from projects that benefitted inputs that were not used in the production of IPA during 1994. Moreover, in past administrative reviews, ECIL grant projects to each of Rotem's phosphate rock and green acid facilities had been countervailed. This includes grants to the Arad and Zin mines, which Rotem claims in this review did not benefit production of IPA. Accordingly, the allocation period for these grants will not change in these final results.

Comment 8: The Denominator for Grants to Projects Not Tied Directly to IPA

Respondents contend that the Department should not deviate from the practice followed in the 1994 review of attributing grants not tied to IPA over Rotem's total sales. This approach was modified in the preliminary results of this review so that grants to Rotem's green acid facilities were attributed to Rotem's total sales minus direct sales of phosphate rock. (Grants tied to Rotem's phosphate rock facilities were attributed to the company's total sales.) According to respondents, this change is not justified by the Department's regulations.

Respondents state that the rationale for this change is found in the tying provision of the *1997 Proposed Rules*.

However, respondents note that these rules, while they provide guidance, are not controlling in this review and are therefore not applicable. Respondents further argue that this provision should only be invoked for grants to an input that is essential to the production of the downstream product. This is not the case with green acid, which, while it has been an input into IPA, is not required for IPA production.

Respondents further claim that under section 355.47 of the *1989 Proposed Rules*, the Department is directed to attribute subsidies either to total sales or to products to which the benefit is tied. Therefore, if a grant is tied to several products, the Department will allocate that grant over the sales of only those products. However, respondents contend that where the subsidy is given to an input into the subject merchandise, rather than directly to the subject merchandise or several products including the merchandise under investigation, the denominator should be the company's total sales. Therefore, respondents argue that in the final results, the Department should allocate all grants not tied directly to the subject merchandise over Rotem's total sales.

Petitioners state that the Department is permitted to change its methodologies and that the approach followed in this review is a refinement of the methodology adopted in the 1994 proceeding. The Department has determined that the approach with respect to ECIL subsidies to Rotem's green acid facilities is a more precise measurement of the benefit bestowed. According to petitioners, the Department reasonably determined that because green acid is not an input into phosphate rock, sales of phosphate rock cannot benefit from a subsidy provided to Rotem's green acid facilities. Therefore, petitioners argue, the Department's modification is a logical and reasonable refinement of the new "single-corporate-entity-input" methodology.

Department's Position. Our determination that ECIL subsidies provided to Rotem's green acid facilities are not attributable to direct sales of phosphate rock is, as petitioners note, a logical refinement of the attribution approach followed in the 1994 administrative review. During the course of this proceeding, we learned that Rotem's total sales statistics include direct sales of phosphate rock and direct sales of green acid. These are the principal inputs for Rotem's end products. Under the approach first adopted in the 1994 final results of this order, we determined that subsidies to inputs are appropriately attributable to the sales of the input and the sales of downstream products that can incorporate that input. Therefore, we excluded Rotem's direct sales of phosphate rock in calculating the subsidy rate from ECIL grants for the green acid facilities. This is logical given that phosphate rock is an input into green acid, but green acid is only a downstream product of phosphate rock, and, therefore, this approach accurately captures the universe of sales to which the benefit applies. Subsidies to green acid production cannot benefit the production of phosphate rock, and attributing such subsidies to phosphate rock will understate the subsidy to green acid and the end products that incorporate green acid.

Respondents' contention that the provision with respect to inputs in the *1997 Proposed Rules* should only be invoked for grants to an input that is "essential to the production of the downstream product" is incorrect. The plain language of the proposed rules states that "a subsidy which is tied to the input product will be attributed to the input and downstream products produced by that corporation." *See 1997 Proposed Rules*, § 351.524(b)(5)(ii), 62-FR at 8855. Nothing in the 1997 proposed rules speaks of inputs that are "essential to the production of the downstream product." Nor do respondents provide any justification for the rationale that subsidies tied to inputs that are not "essential to the production of the downstream product," be attributed to a company's total production, including upstream products. Rather, as the plain language of the proposed rules suggests, such subsidies can *only* be attributed to production of the input and the downstream products. Attributing such subsidies to upstream products would, as noted above, understate the subsidy and attribute the subsidy to products that did not benefit from the subsidy.

Respondents' reliance on the *1989 Proposed Rules* for the proposition that the Department is directed to attribute subsidies either by total sales or by products to which the benefit is tied is misguided. As a preliminary matter, we fail to see how this argument reconciles with respondents' earlier claim that subsidies to Rotem's green acid facilities provide competitive benefits only to green acid and to downstream products, but only according to the exact proportion that they were used to produce the downstream products. If this were the case, respondents have failed to explain how these same subsidies to green acid may also benefit a firm's total production, including upstream production. Thus, respondents are incorrect on both accounts. As outlined above, in order to make an apples-to-apples comparison, it is imperative that both the numerator (the countervailable benefit) and denominator (the universe of sales to which the benefit applies) used in the Department's calculation of a subsidy reflect the same universe of goods. Accordingly, this approach will remain unchanged in these final results.

Comment 9: Inflation Adjustment for Non-Recurring Grants

Respondents argue that the inflation adjustment used by the Department in the preliminary results to calculate the benefit from non-recurring ECIL grants significantly overstates the benefit from these grants. According to respondents, the Department should "dollarize" the grants, which would have the same effect as indexing the grants for inflation. This approach would comport with Rotem's actual business practices because most of the company's financing is in U.S. dollars, and the company's financial statements are expressed in U.S. dollars. Respondents further claim that converting the grant amount into dollars would be consistent with the approach followed in *Wire Rod from Venezuela*. Respondents suggest that the Department use Rotem's long-term cost of U.S. dollar-denominated borrowing in 1995 to calculate the benefit from the ECIL grants converted into dollars.

Respondents state that if the Department chooses not to dollarize, then it should index the principal grant amounts and use a real interest rate in the benefit calculation. In the preliminary results, respondents argue, the Department incorrectly used a nominal interest rate. This approach double counts inflation, once by adjusting the principal by the inflation index, and again by accounting for inflation in the calculation of the interest component of the benefit. Short of making either of these adjustments, respondents contend the Department should return to the original methodology followed in the 1994 administrative review.

According to petitioners, the Department correctly followed the methodology adopted for the preliminary determination in *Wire Rod from Venezuela*. Petitioners also reject respondents' argument that because inflation was not as high as in Venezuela, the Department should return to its original methodology to account for inflation if it does not accept respondents' proposed methodology. Petitioners note that respondents' own analysis identifies Israel as a high

inflation country. Moreover, petitioners point out that Israeli companies have adjusted their financial statements throughout the allocation period.

With respect to the methodology adopted in *Wire Rod from Venezuela*, petitioners state that dollarization can be used in this case if the Department applies exchange rates and interest rates that correctly account for inflation. Accordingly, petitioners argue that the Department should use a long-term, dollar-denominated interest rate as a discount rate in the grant calculations. In particular, if the Department is unable to locate a long-term fixed rate dollar-denominated rate in Israel, petitioners contend that it is appropriate to use the average long-term variable rate in dollars available to ICL, Rotem's parent company, from private lenders during the POR. A long-term rate, petitioners claim, reflects the economic benefit that Rotem received from the subsidies. Petitioners reject respondents' argument that the Department should use Rotem's long-term cost of borrowing during the POR, because at least some of those loans are financed by ICL and may, therefore, reflect below market interest rates.

Department's Position. We have modified the calculation methodology for ECIL grants to conform with the approach followed in the final determination of *Wire Rod from Venezuela*. This approach aligns with respondents' proposed methodology to dollarize the grants at the time they were received.

With respect to the discount rate to be applied to the grants, we agree with petitioners that an interest rate reflecting the long-term, U.S. dollar-denominated cost of borrowing to Israeli firms is most appropriate. However, we have been unable to find such rates. While Rotem's 1995 financial statements show the company's long-term cost of borrowing in U.S. dollars, we are unable to segregate long-term interest charged by Rotem's parent company, ICL, from the long-term interest rate charged by financial institutions. As such, we have turned to ICL's long-term cost of borrowing denominated in U.S. dollars in each year from 1985 through 1995 as the most appropriate discount rate. ICL's rates are shown in the notes to the company's financial statements, which are public documents that have been placed on the record of this proceeding. *See* "Calculation Memorandum." For 1983 and 1984, we used the interest rate on short-term euro-dollar financing because we were unable to locate an appropriate long-term dollar-denominated interest rate for those years. *See* "Calculation Memorandum." In converting the ECIL grants into dollars, we used the shekel/U.S. dollar exchange rates prevailing on the day the grants were received by Rotem. This information is available from the Bank of Israel. *See* the "Calculation Memorandum" for additional discussion of this issue.

Comment 10: Timing of Inflation Adjustments for Non-Recurring Subsidies

According to respondents, in the preliminary results, the Department incorrectly adjusted the ECIL subsidies to take into account inflation for all grants dating back to 1986, the beginning of the relevant period. Respondents argue that it is "not appropriate to adjust those grants that have already been adjusted by virtue of the inflated interest, since adjusting both interest and principal for inflation leads to a total subsidy greater than actually received." Therefore, respondents claim that the inflation adjustment should begin in 1995, as "inflation has already been captured in the interest rate formula used for the grants prior to that year," and adjusting those grants now double counts the effects of inflation.

Petitioners contend that dollarization should apply only to the period marked by high inflation in Israel, *i.e.*, between 1983 and 1986, when inflation exceeded 30 percent. Petitioners state that this conforms with the approach taken in *Wire Rod from Venezuela*. Starting in 1987, petitioners argue, the remaining principal of the grants should be reconverted into shekels and interest on the remaining amount should be calculated using the rate of return on CPI-indexed commercial bonds. Petitioners reject respondents' argument that adjusting the principal of the grants received prior to 1995 would double count the effect of inflation. According to petitioners, in previous years the Department countervailed only the portion of the grants allocated to a particular POR, while no allocation has been made for the portion that will be countervailed in this review.

Department's Position. Respondents' argument that inflation has already been captured for the grants in years prior to 1995 is incorrect. The purpose of adjusting non-recurring grants for inflation is to capture the impact of inflation on the nominal grant amounts. This merely accounts for the fact that, when inflation is consistently high, the value of non-monetary assets increases, and the value of the subsidy that benefits the non-monetary assets also increases. By converting the subsidy into dollars at the beginning of a high inflation period, we are taking into account the real value of the subsidy. To accurately capture that real value, we must adjust the nominal value from the time that inflation has a measurable impact. In this case, inflation was significant from the beginning of the allocation stream, with annual inflation at over 100 percent. If the adjustment is not made at the beginning of the allocation stream, in particular during the high inflation period of 1983 through 1986; the real value of the grant principal is eroded significantly. Therefore, it is essential that the ECIL grants are dollarized from the beginning of the allocation stream to preserve the real value of the grant and the real benefit from those grants to Rotem. Further, Rotem converts and maintains all of its financial records in U.S. dollars. Thus, dollarization conforms with Rotem's own business practices. It is also consistent with the approach followed in *Wire Rod from Venezuela* (62 FR at 55014).

Respondents' claim that adjusting for inflation for years prior to 1995 overstates the countervailable benefit because the adjustment has already been captured in prior reviews, is also without merit. As explained above, the real benefit in 1995 will be significantly understated if the adjustment is not made from the beginning of the allocation stream. Further, the inflation adjustment used in prior administrative reviews of this order added the rate of inflation to the discount rate. This approach treats inflation as a benefit in each year. However, as explained above, inflation increases the real value of non-monetary assets, such as machinery, over time, and is not a benefit in each year. Therefore, if anything, the impact of inflation was underestimated in prior reviews because inflation was only accounted for in the interest component of the benefit, while the principal amount remained in constant terms during the entire allocation period. Furthermore, petitioners correctly note that no allocation has yet been made for the portion that will be countervailed in this review, and therefore, the 1995 benefit has not yet been adjusted and is not overstated. For these reasons, we determine that dollarization is the most appropriate approach to capture the impact of inflation on ECIL grants received by Rotem. As noted above, we also determine that the grants should be dollarized throughout the entire allocation period.

Comment 11: Privatization of ICL

Respondents allege that the Department's privatization methodology

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is flawed. First, respondents state that each partial privatization of ICL between 1992 and 1995 was at fair value, and that the privatization process was highly competitive. Therefore, the stock price of ICL at the time of privatization reflected all publically available information about the company, including the fair value of the subsidies bestowed upon Rotem up to privatization. This means that investors who form expectations about ICL's projected cash flows would include the full benefits of the subsidies Rotem received. Accordingly, respondents argue that because the privatization price reflected the fair value of ICL, including the fair value of Rotem's subsidies, those subsidies are fully repaid to GOI with the sale of the company. Respondents further claim that while ICL was only partially privatized (51.48 percent of the company has been sold), the private party that purchased ICL has gained control over the company, including control over Rotem's business decisions. Thus, the effect on the pricing of Rotem's products is "as if none of the subsidies awarded to Rotem prior to the privatization remain countervailable after the privatization."

Petitioners dispute respondents' claim that market forces have adjusted the selling price of ICL to reflect the full value of Rotem's subsidies. Even if this were the case, petitioners state that in 1995, only 24.9 percent of ICL's stock was sold, and therefore, only a portion of the subsidies could have been reflected in the sale price. Petitioners also dispute respondents' contention that the issue of control is a relevant factor in the privatization analysis. Again, even if control were germane, petitioners note that the GOI still enjoys "special rights" to make business decisions, including (1) sales of company assets, (2) structural changes such as voluntary liquidation, reorganizations, or mergers that would impair the GOI's special rights, and (3) investments or holding in shares of subsidiaries. Moreover, the GOI retains over 48 percent ownership in the ICL.

Department's Position. The issue of whether a fair market value privatization eliminates previous subsidies has already been addressed by the Department. Respondents in the certain steel investigations made similar arguments, stating that, since the fair market price of a government-owned company must include any remaining economic benefit from the subsidies, privatization extinguishes all remaining unamortized subsidies. At the time, we disputed this assertion because it rests on the assumption that subsidies must confer a demonstrated benefit on production in order to be countervailable. As we stated,

> [T]his is contrary to the CVD law, in which is embedded the irrebuttable presumption that nonrecurring subsidies benefit merchandise produced by the recipient over time. In sum, the countervailable subsidy (and the amount of the subsidy to be allocated over time) is fixed at the time the government provides the subsidy. The privatization of a government-owned company, per se, does not and cannot eliminate this countervailability.

GIA, 58 FR at 37263. This conclusion is also permitted under the change in ownership provision of the Act, as amended by the URAA. The SAA specifically states that the Department retains "the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable susidies." SAA at 258. This is the conclusion we reached in a recent countervailing duty proceeding, where we noted that the Act "purposely leaves the Department with the discretion to determine the impact of a change in ownership on the countervailability of past subsidies." *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 61 FR 58377, 58379 (November 14, 1996).

We also disagree with respondents contention that, while ICL was only partially privatized, by virtue of the private party's control over the company, all of Rotem's prior subsidies are extinguished. As a preliminary matter, the Department has always applied it's privatization methodology to changes in ownership which resulted in the transfer of control from one party to another. *See e.g., Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom*, 58 FR 37393 (July 9, 1993) and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago*, 62 FR 55003 (October 22, 1997).

Furthermore, respondents claim that the transfer of control has an effect on the pricing of Rotem's products, so that none of the subsidies awarded to Rotem prior to the privatization remain countervailable after the privatization, is also without merit. As we noted in the GIA, the Department does not, and is not permitted to undertake an analysis of the effect of subsidies. In particular, we stated " the Department does not take account of subsequent developments that may reduce any initial cost savings or increase in output from a subsidy." *GIA*, 58 FR at 37261; see *also*, SAA at 256. Therefore, whether and to what extent the pricing of Rotem's products changes as a result of ICL's partial privatization is irrelevant for determining whether Rotem's previously bestowed subsidies remain countervailable. In any case, the Department's determination that previously bestowed subsidies may continue to benefit the privatized company during an arm's length transaction, has been upheld by the Court of Appeals of the Federal Circuit. *See Saarstahl AG* v. *United States*, 78 F.3d 1539, 1544 (Fed. Cir. 1996). For these reasons, our preliminary finding with respect to ICL's partial privatization will remain unchanged in these final results.

Comment 12: The Privatization Methodology

According to respondents, the Department's gamma methodology is flawed. In particular, respondents state that the gamma is incorrectly based on the average ratio of annual subsidies to Rotem's net worth. Therefore, the Department is considering the annual flow of subsidies to Rotem. However, the net worth in a given year reflects the accumulated value of Rotem's equity. According to respondents, this results in an undervalued gamma ratio. Therefore, respondents contend the gamma calculation should consider the stock of countervailable subsidies at the time of the privatization. This would be done by dividing the total bestowed subsidies accumulated up to the privatization by Rotem's equity capital just prior to ICL's privatization.

Respondents also contend that the Department's gamma percentage is understated because the denominators used in the gamma calculation are expressed in adjusted U.S. dollars while the numerators are nominal Shekel values. According to respondents, because the denominators (the net worth amounts) are expressed in adjusted U.S. dollars, they reflect inflation, while the grant amounts, the numerators, are expressed in nominal terms. Therefore, respondents suggest the Department use Rotem nominal net worth amounts submitted in the case brief. Alternatively, respondents assert that the Department should convert the ECIL grants into dollars at the exchange rate on the day of receipt of the grants.

Petitioners argue that the Department's gamma calculation used Rotem's audited financial statements, which are an accurate tool for this calculation. Petitioners further state that Rotem should not be permitted to submit new net worth figures, after the Department has conducted verification.

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Department's Position. The gamma calculation attempts to derive a reasonable historic surrogate for the percent that subsidies constitute of the company's net worth in the year prior to privatization. Respondents' proposed modification of the gamma calculation is flawed because it incorrectly compares the value of Rotem's accumulated subsidies in the year before privatization to the company's net worth in that year. Such a comparison overstates the value of the subsidies in relationship to the company's net worth because it assumes that a company's net worth increases in direct proportion to the value of the subsidies received by that firm. However, this is not the case, as those values are depreciating from year to year. Simply stated, respondents comparison ignores the fact that the value of subsidies is eroding over time, i.e., a subsidy received in 1986 does not have the same relative value as a subsidy received in 1994. Therefore, respondents' approach overvalues the subsidies and thus grossly overstates the ratio of Rotem's subsidies to net worth in the year prior to privatization.

Although we also disagree with respondents' argument that the gamma percentage is understated because the denominator is expressed in adjusted U.S. dollars and the numerator in nominal shekels, this issue is now moot because we have dollarized the ECIL grants.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1995 through December 31, 1995, we determine the net subsidy for Rotem to be 8.93 percent *ad valorem*.

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See* 61 FR 28841. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7352 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Participation in Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions: Telecommunications Trade Mission to Spain and Portugal, Madrid and Lisbon, May 3–8, 1998, Recruitment closes April 3, 1998.

FOR FURTHER INFORMATION CONTACT:
Myles Denny-Brown, Tel: 202–482–0398, Fax: 202–482–5834

Environmental Technologies Trade Mission Spain and Portugal, Madrid and Lisbon, June 24–July 3, 1998, Recruitment closes May 22, 1998

FOR FURTHER INFORMATION CONTACT:
Ann Novak, Tel: 202–482–8178, Fax: 202–482–5665

Professional Services Trade Mission to Brazil, San Paulo, Belo Horizonte, Rio de Janeiro, September 28–October 2, 1998, Recruitment closes August 1, 1998

FOR FURTHER INFORMATION CONTACT:
Richard Boll, Tel: 202–482–1135, Fax: 202–482–2669.

FOR FURTHER INFORMATION CONTACT:
Reginald Beckham, Department of Commerce, Tel: 202–482–5478, Fax: 202–482–1999.

Dated: March 16, 1998.

Tom Nisbet,

Director, Office of Trade Promotion Coordination.

[FR Doc. 98–7226 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Narrative Reporting Requirements

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites other Federal agencies and the general public to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Juanita E. Berry, Department of Commerce, Minority Business Development Agency (MBDA), Room 5084, 14th and Constitution Avenue, NW, Washington, DC 20230, or call (202) 482–0404.

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with OMB Circular A–110, the Minority Business Development Agency requires its programs to periodically report their performance status. Narrative performance reports are needed to evaluate individual project and overall program performance by comparing accomplishments against planned performance, and to evaluate overall results of the Agency-funded programs. MBDA requires this information to monitor, evaluate, and plan Agency programs to enhance the development of minority business.

II. Method of Collection

Quarterly electronic submission of the report.

III. Data

OMB Number: 0640–0007.
Agency Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Affected Public: State or local governments, individuals, and profit and non-profit institutions.
Estimated Number of Responses: 240 (approximately 60 respondents with numerous responses).
Estimated Time Per Response: 8 hours.
Estimated Total Annual Burden Hours: 1,920.
Estimated Total Annual Cost: $2,240 per respondent.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7335 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Performance Database (Formerly the Business Development Report (BDR) System)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites other Federal agencies and the general public to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Juanita E. Berry, Department of Commerce, Minority Business Development Agency (MBDA), Room 5084, 14th or Constitution Avenue, NW, Washington, DC 20230, or call (202) 482–0404.

SUPPLEMENTARY INFORMATION:

1. Abstract

The Performance Database (formerly Business Development Report (BDR)) identifies minority business clients receiving Agency-sponsored business development services in the form of management and technical assistance, the kind of assistance each receives, and the impact of that assistance on the growth and profitability of the client firms. MBDA requires this information to monitor, evaluate, and plan Agency programs which effectively enhance the development of the minority business sector.

II. Method of Collection

Electronic transfer of performance data.

III. Data

OMB Number: 0640–0005.
Agency Form Number: N/A.
Type of Review: Reinstatement with revision to a previously approved collection.
Affected Public: State or local governments, individuals, and profit and non-profit institutions.
Estimated Number of Responses: 240 (approximately 60 respondents with numerous responses).
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 60.
Estimated Total Annual Cost. $0 (software package is provided by MBDA).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: March 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7336 Filed 3–19–98; 8:45 am]

BILLING CODE: 3510–21–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030498C]

Magnuson-Stevens Act Provisions; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for EFPs; request for comments.

SUMMARY: NMFS announces the receipt of four applications for EFPs. If granted, these EFPs would authorize, over a period of 1 year, collections for public display of a limited number of sharks from the large coastal and prohibited species groups from Federal waters in the Atlantic Ocean.

DATES: Written comments on the applications must be received on or before April 6, 1998. Applications for EFPs must be received on or before April 29, 1998.

ADDRESSES: Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The applications and related documents and copies of the regulations under which exempted fishing permits are subject may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Margo Schulze, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: These EFPs are requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

South Carolina Aquarium, in Charleston, SC, intends to collect no more than 12 sharks from the large coastal and/or prohibited species management units for public display by using buoy gear, rod and reel, and longlines of approximately 35–40 hooks. Fishing will occur in the Atlantic Ocean from North Carolina south to the the middle Florida Keys. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also requested that the EFP authorize collection of sharks from the small coastal and pelagic management units; however, as the commercial seasons for small coastal sharks or pelagic sharks have not closed to date, these species may be possessed legally by obtaining a Federal commercial shark permit and an EFP is not required.

Ripley's Aquarium, in Myrtle Beach, SC, intends to collect 25 sand tiger sharks, 8 sandbar sharks, 8 blacktip sharks, 4 tiger sharks, 4 scalloped hammerhead sharks, and 4 great hammerhead sharks for public display by using hook and line and longlines consisting of no more than 30 hooks. Fishing will occur in the Atlantic Ocean off New Jersey, Delaware, Virginia, North Carolina, South Carolina, and Florida. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also requested that the EFP authorize collection of 25 bonnethead sharks; however, as the commercial season for small coastal sharks has not closed to date, this species may be possessed legally by obtaining a Federal commercial shark permit and an EFP is not required.

Florida Aquarium, in Tampa, FL, intends to collect three sand tiger sharks for public display by using authorized Florida recreational marine fishing gear. Fishing will occur in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea (Florida area). Issuance of an EFP is necessary, according to the applicant, because possession of sand tiger sharks is prohibited.

Aquarium of the Americas, in New Orleans, LA, intends to collect eight sand tiger sharks for public display and research by using hook and line, longlines consisting of approximately 90 hooks, and/or single hook Block set-lines. Fishing will occur in the Atlantic Ocean off Cocodrie, LA, from April through May and off Delaware Bay from June through August. Issuance of an EFP is necessary, according to the applicant, because possession of sand tiger sharks is prohibited.

The proposed collections for public display involve activities otherwise prohibited by regulations implementing the Fishery Management Plan for Sharks of the Atlantic Ocean. The applicants require authorization to fish for and to possess large coastal sharks outside the Federal commercial seasons and to fish for and to possess prohibited species.

Based on a preliminary review, NMFS finds that these applications warrant further consideration. A final decision on issuance of EFPs will depend on the submission of all required information and on NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 1998 .

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7347 Filed 3–19–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to the Price Limit and Trading Halt Provisions in Domestic Stock Index Futures Contracts

AGENCY: Commodity Futures Trading Commission

ACTION: Notice of availability of proposed amendments to the price limit and trading halt provisions in domestic stock index futures contracts listed on the Chicago Mercantile Exchange, Chicago Board of Trade, Kansas City Board of Trade, and New York Futures Exchange.

SUMMARY: The Chicago Mercantile Exchange (CME), Chicago Board of Trade (CBOT), Kansas City Board of Trade (KCBT), and New York Futures Exchange (NYFE) have submitted proposals to modify existing "circuit breaker" and related price limit provisions in those exchanges' domestic stock index futures contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 6, 1998.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the price limit and trading halt provisions of domestic stock index futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581, telephone 202–418–5279. Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov.

SUPPLEMENTARY INFORMATION: The CME, CBOT, KCBT and NYFE proposed changes to the price limit and trading halt provisions, including circuit breaker trigger levels, for their domestic stock index futures contracts. The submissions were made to coordinate with the proposal from the New York Stock Exchange (NYSE) to revise its circuit breaker rules. The NYSE proposal would establish three "circuit breaker" trading halt triggers that will be reset quarterly such that the levels are equivalent to 10%, 20%, and 30% of the average closing level of the Dow Jones Industrial Average (DJIA) for the calendar month preceding that quarter. These triggers would replace the current fixed 350-point and 550-point DJIA triggers. The NYSE also proposes to increase the duration of each circuit breaker trading halt.[1] The NYSE proposal is currently under review by the Securities and Exchange Commission (SEC). Notice of that proposal was given in the **Federal Register** on February 23, 1998 (63 FR 9034).

The CME proposes that, for each of its domestic stock index contracts, there be circuit breaker trading halts coordinated with the NYSE trading halts. Consistent with the quarterly adjustment method proposed by the NYSE, beginning on the first day of each quarter, the CME will reset its circuit breaker price limits to 10% and 20% of the average daily closing price in the current primary futures contract during the preceding calendar month. The 10% limit will be rounded down to the nearest multiple of 10 Index points, and the 20% limit will be twice the 10% limit.[2] Following each of the two circuit breaker trading halts, trading on the CME would resume after the NYSE reopens and 50% of the stocks in the S&P 500 (measured by capitalization) have begun to trade. The price limit at the 20% circuit breaker level will remain in effect when trading resumes following a 20% circuit breaker trading halt.

The CME further proposes that, on the day after futures trading either ended limit-offered or was halted at the 20% circuit breaker limit, the 10% price decline limit on that next day would be treated as a "speed bump" (discussed below) rather than a circuit breaker price limit. This is because the S&P 500 futures price could be up to 10 percentage points above the cash index which, as noted, could have declined as much as 30 percent under proposed NYSE rules. Under this proposal, on such next day, the futures contracts would be halted if the NYSE halted, and reopened as described above, with the 20% limit in place after such reopening.

The CME also proposes to increase its intermediate price decline limits (speed bumps), generally to 2.5% and 5% of the underlying index, from the current fixed point levels.[3] Those speed bump levels will be calculated quarterly. Intermediate price decline limits are in effect for ten minutes after the primary futures contract is limit offered. If the futures is limit offered at the end of that 10 minute period, there would be a two minute trading halt, after which the next price limit would be in effect. The 2.5% price decline limit also will be the price limit for the overnight Globex session, both above and below the regular trading hours settlement price.

Finally, the CME proposes to eliminate rule 831 which provides that daily variation payments are based on the implied market price when the cash index is lower than the futures price due to price limits on the futures contract.

The KCBT proposes circuit breaker and price limit rules to its stock index contracts that generally are coordinated with the proposed NYSE rules and generally are similar to those of the CME. However, under that proposal, the KCBT would calculate, on a daily basis, speed bump price limits of 2.5% and 5.0% of the previous day's settlement price, and circuit breaker price limits of 10% and 20% of the previous day's settlement price. Trading would halt whenever either of the two lead futures contract months is locked limit down and trading halts on the NYSE. The CBOT proposes price limits and trading halts for its DJIA futures contract at the same trigger levels as proposed by the NYSE. Consistent with current CBOT rules, the CBOT's proposal does not include speed bump price limits prior to the first circuit breaker price limit. The NYFE proposes circuit breaker and price limit rules for its domestic stock index contracts at the same trigger levels as proposed by the NYSE. In addition, the NYFE proposes to delete its speed bump price limits prior to the first circuit breaker price limit.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME, CBOT, KCBT, and NYFE in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME, CBOT, KCBT, and NYFE should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

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[1] Under current NYSE rules, the 350-point trading halt generally lasts one half hour and the 550-point trading halt generally lasts one hour or until the end of the trading day.

Under the NYSE proposal, the halt for a 10% decline generally will be one hour. However, if the 10% trigger value is reached at or after 2:00 p.m. but before 2:30 p.m., the halt would be one half hour, while if it occurs at or after 2:30 p.m. a 10% decline would not trigger a halt. The halt for a 20% decline generally will be two hours. However, if the 20% trigger value is reached at or after 1:00 p.m. but before 2:00 p.m., the halt would be one hour, while if it occurs at or after 2:00 p.m., trading would halt for the rest of the day. Finally, if the market declines by 30% at any time, trading will be halted for the remainder of the day.

[2] Using this calculation method, the CME's circuit breaker levels typically will be slightly more restrictive than the comparable circuit breaker trigger levels on the NYSE which are based on the DJIA.

[3] The current speed bumps for the actively traded S&P 500 futures contract are 15 and 30 points or about 1.5% and 3.0% of the S&P 500 index.

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Issued in Washington, DC, on March 12, 1998.

John Mielke,

Acting Director.

[FR Doc. 98–7244 Filed 3–19–98; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Concept Release Concerning the Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on Concept Release.

SUMMARY: The Commodity Futures Trading Commission has issued a Concept Release concerning the regulation of noncompetitive transactions executed on or subject to the rules of a contract market. The Commission has solicited comments on a broad range of questions concerning the oversight of transactions involving (i) the exchange of futures contracts for, or in connection with, cash commodities, (ii) other noncompetitive transactions, and (iii) the use of execution facilities for noncompetitive transactions. The Concept Release was initially published for comment on January 26, 1998 (63 FR 3708) with comments on the release due by March 27, 1998. In response to a request from the Coffee, Sugar and Cocoa Exchange, Inc., the Commission has determined to extend the comment period on this release for an additional 30 days. The extended deadline for comments on the Concept Release is April 27, 1998.

Any person interested in submitting written data, views, or arguments on the Concept Release should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

DATES: Comments must be received on or before April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Rebecca Creed, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1150 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5493.

Issued in Washington, D.C., on this 13th day of March, 1998, by the Commodity Futures Trading Commission.

Edward W. Colbert,

Deputy Secretary of the Commission.

[FR Doc. 98–7243 Filed 3–19–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 19, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Finance Deputate, ATTN: Mr. Faafiti Malufau, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Faafiti Malufau, 703–607–5061.

Title, Associated Form, and OMB Number: Application for Former Spouse Payments From Retired Pay (DD Form 2293).

Needs and Uses: Under 10 U.S.C. 1408, state courts may divide military retired pay as property or order alimony and child support payments from the retired pay. The former spouse may apply to the Defense Finance and Accounting Service (DFAS) for direct payment of these monies by using the DD Form 2293. This information collection is needed to provide DFAS the basic data needed to process the request.

Affected Public: Individuals or households

Annual Burden Hours: 5130 hours

Number of Respondents: 20,520

Responses Per Respondent: 1

Average Burden Per Response: 15 minutes

Frequency: On occasion

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The respondents of this information collection are spouses or former spouses of military members. The applicant submits a DD Form 2293 to the Defense Finance and Accounting Service (DFAS). The information from the DD Form 2293 is used by DFAS in processing the applicant's request as authorized under 10 U.S.C. 1408. The DD Form 2293 was devised to standardize applications for payment under the Act. Information on the form is also used to determine the applicant's current status and contains statutory required certifications the applicant/former spouse must make when applying for payments.

Dated: March 16, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7211 Filed 3–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0137]

Proposed Collection; Comment Request Entitled Simplified Acquisition Procedures/FACNET

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 34), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve

an extension of a currently approved information collection requirement concerning Simplified Acquisition Procedures/FACNET. The clearance currently expires on April 30, 1998.

DATES: Comments may be submitted on or before May 19, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Federal Acquisition Policy Division, GSA (202) 501–1900.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0137, Simplified Acquisition Procedures/ FACNET, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title IX of the Federal Acquisition Streamlining Act of 1994 (the Act) amended the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*) by adding new sections regarding the establishment of a program for the development and implementation of a Federal Acquisition Computer Network (hereinafter referred to as FACNET) which allows electronic interchange of procurement information between the private sector and the Federal Government and among Federal agencies. Specific functions of FACNET are set forth under Section 30 of the Act.

Regulatory coverage of FACNET is included under FAR Subpart 4.5—Electronic Commerce in Contracting. FAR section 4.503 requires contractors to provide registration information to the Central Contractor Registration in order to conduct business through electronic commerce (EC) with the Federal Government. Contractor registration information is collected electronically as a prerequisite for conducting EC with the Federal Government. The process for collection of contractor information uses the Federal Implementation Conventions ANSI X12, Trading Partner Profile, in accordance with the Federal Information Processing Standards 161 (FIPS). These standards are published by the National Institute for Standards and Technology (NIST). The information required to be submitted as part of contractor registration is the same as that currently provided by the SF 129, Solicitation Mailing List Application; the SF 3881, ACH vendor/ Miscellaneous Payment Enrollment Form for paper transactions. In addition, information pertaining to a contractor assignment of commercial and Government entity (CAGE) code (where applicable); electronic data interchange (EDI) capabilities, including ANSI X12 transaction set and version number status for production, testing, sending and receiving; and the registrant's value added network (VAN) or value added service (VAS) electronic communications number also needs to be provided as part of the registration process. Requiring information consistent with the existing forms that Government contractors are familiar with simplifies the process of gathering current, factual data to input into the Registration System. The additional information is information contractors should have readily available when they have established EC/EDI capability.

The information submitted by contractors will permit the Central Contractor Registration to establish a central repository for all vendors doing business with the Federal Government, information that is accessible by all Government contracting activities.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *100,000;* responses per respondent, *1;* total annual responses, *100,00;* preparation hours per response, *.25;* and total response burden hours, *25,000.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *100,000;* hours per recordkeeper, .25; and total recordkeeping burden hours, *25,000.*

Obtaining Copies of Proposals: Requester may obtain a copy the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0137, Simplified Acquisition Procedures/FACNET, in all correspondence.

Dated: March 16, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–7105 Filed 3–18–98; 10:50 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 7 April 1998 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: March 16, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7210 Filed 3–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendments are needed to update the current notice.

DATES: The amendment will be effective on April 20, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records

Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: March 16, 1998.

L. M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 07

SYSTEM NAME:

Defense Medical Information System (DMIS) *(October 3, 1997, 62 FR 51833).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Corporate Executive Information System Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201'.

* * * * *

RECORD SOURCE CATEGORIES:

Add to the entry 'the National Mail Order Pharmacy, Defense Supply Center, Philadelphia, PA'.

* * * * *

DHA 07

SYSTEM NAME:

Defense Medical Information System (DMIS).

SYSTEM LOCATION:

Primary location: Directorate of Information Management, Building 1422, Fort Detrick, MD 21702–5000 with Region-specific information being kept at each Office of the Assistant Secretary of Defense (Health Affairs) designated regional medical location. A complete listing of all regional addresses may be obtained from the system manager.

Secondary location: Service Medical Treatment Facility Medical Centers and Hospitals, and Uniformed Services Treatment Facilities. For a complete listing of all facility addresses write to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive medical care at one or more of DoD's medical treatment facilities (MTFs), or one or more of the Uniformed Services Treatment Facilities (USTFs), or who have care provided under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Selected data elements extracted from the DEERS beneficiary and enrollment records. Electronic files containing beneficiary identifier, date of birth, gender, sponsor status (active duty or retired), relationship of patient to sponsor, pay grade of sponsor, state or country, zip code, and enrollment and eligibility status.

Individual patient hospital discharge records. Electronic files containing patient ID, date of birth, gender, sponsor status (active duty or retired), relationship to sponsor, pay grade of sponsor, state or country, zip code, health care dates and services, provider, service status, health status, billed amount, allowed amount, amount paid by beneficiary, amount applied to deductible, and amount paid by government.

Selected data elements extracted from the CHAMPUS, National Mail Order Pharmacy, or other purchased care medical claims records. Electronic files containing patient ID, date of birth, gender, sponsor status (active duty or retired), relationship to sponsor, pay grade of sponsor, state or country, zip code, health care dates and services, provider, service status, health status, billed amount, allowed amount, amount paid by beneficiary, amount applied to deductible, and amount paid by government.

Data elements extracted from the DEERS electronic Non-availability Statement application. Records containing beneficiary ID, date and types of health care services not covered by the issuing entity (MTFs, etc.), along with other demographic and issuing entity information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C., Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

DMIS collects data from multiple DoD electronic medical systems and processes and integrates the data in a manner that permits health management policy analysts to study, evaluate, and recommend changes to DoD health care programs. Analysis of beneficiary utilization of military medical and other program resources is possible using DMIS. Statistical and trend analysis permits changes in response to health care demand and treatment patterns. The system permits the projection of future Medical Health Services System (MHSS) beneficiary population, utilization requirements, and program costs to enable health care management concepts and programs to be responsive and up to date.

The detailed patient level data at the foundation of DMIS permits analysis of virtually any aspect of the military health care system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Health Care Finance Administration for conducting demographic and financial analytical studies.

To the Congressional Budget Office for projecting costs and workloads associated with DoD Medical benefits.

To the Department of Veterans Affairs (DVA) for coordinating cost sharing activities between the DoD and DVA.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on optical and magnetic media.

RETRIEVABILITY:

Records may be retrieved by individual's Social Security Number, sponsor's Social Security Number, Beneficiary ID (sponsor's ID, patient's name, patient's DOB, and family member prefix or DEERS dependent suffix).

SAFEGUARDS:

Automated records are maintained in controlled areas accessible only to

authorized personnel. Entry to these areas is restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a cipher lock. Back-up data maintained at each location is stored in a locked room.

Access to DMIS records is restricted to individuals who require the data in the performance of official duties. Access is controlled through use of passwords.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Corporate Executive Information System Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Corporate Executive Information System Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies), and fiscal year(s) of interest.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to Corporate Executive Information System Program Office, Six Skyline Place, Suite 809, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies) that have provided care, and fiscal year(s) of interest.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual data records that are assembled to form the DMIS data base are submitted by the Military Departments, the Defense Enrollment Eligibility Reporting System, the Office of the Civilian Health and Medical Program for the Uniformed Services, the Uniformed Service Treatment Facility Managed Care System, the Health Care Finance Administration, and the National Mail Order Pharmacy, Defense Supply Center, Philadelphia, PA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–7209 Filed 3–19–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the BRAC 95 Realignment of Personnel and Functions to Fort Wainwright, AK

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Pub. L. 101–510, the Defense Base Realignment and Closure (BRAC) Commission recommended the realignment of the Northern Warfare Training Center (NWTC) and the Cold Regions Test Center (CRTC) from Fort Greely, Alaska, to Fort Wainwright, Alaska. The action could begin no earlier than July 1997 and is to be completed no earlier than July 2001.

The EA analyzed the environmental and socioeconomic realignment effects to Fort Wainwright and the adjacent Fairbanks area. In addition to the directed moves, discretionary moves of such units as the Aviation Detachment and Law Enforcement Command are planned. These units will be absorbed into similar activities at Fort Wainwright. A total of approximately 92 military and 47 civilian positions would be relocated from Fort Greely to Fort Wainwright.

BRAC-funded projects at Fort Wainwright are analyzed. These include two military construction projects—a Missile Test Facility to support the CRTC and four 5-bedroom housing units. Existing facilities will also be renovated for use as office space.

The EA considered five alternatives for effecting the realignment from Fort Greely to Fort Wainwright. These were: (1) constructing four 5-bedroom units for additional housing and upgrading existing on-post facilities for office space, (2) using off-base housing to meet housing needs and upgrading existing on-post facilities for office space, (3) constructing four 5-bedroom units for additional housing and constructing new on-post office facilities, (4) using off-base housing to meet housing needs and constructing new on-post office facilities, and (5) no action, *i.e.*, continuation of existing conditions of the affected environment, without implementing the proposed action. Alternative 1 is the preferred alternative.

The Army has concluded that the realignment of the NWTC and the CRTC from Fort Greely to Fort Wainwright does not constitute a major Federal action significantly affecting the quality of the natural or human environment. Because no significant impacts would result from implementing the proposed action, an environmental impact statement is not required and will not be prepared.

DATES: Public comments must be submitted on or before April 20, 1998.

ADDRESSES: Copies of the EA and FNSI may be obtained by writing or inquiring to the U.S. Army Corps of Engineers, ATTN: CENPA–EN–CW–ER (Mr. Guy McConnell), P.O. Box 898, Anchorage, Alaska 99506–0898, or by telefax at (907) 753–2625. The EA is also available for review at the Environmental Office, Building 3023, Fort Wainwright, Alaska. Please contact Mr. Ken Spiers at (907) 353–6323.

Dated: March 18, 1998.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98–7468 Filed 3–19–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend. Less than fifteen day notice is given because of administrative misunderstandings regarding the Executive Board's meeting guidelines.

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DATES AND TIMES: Friday, April 3, 1998, 9 a.m.–5 p.m. (pst) and Saturday, April 4, 1998, 9 a.m.–4:30 p.m. (pst).

ADDRESSES: The meeting will be held at Pitzer College of The Claremont Colleges; 1050 N. Mills Avenue; Claremont, CA 91711–6101. On Friday, April 3, 1998, the Commission will convene at the Gold Student Center, 2nd Floor, Rapaport Room 204–206. On Saturday, April 4, 1998, the meeting continue at the Broad Center, 1st Floor, Broad Center Performance Space Building.

FOR FURTHER INFORMATION CONTACT: Edmundo DeLeon, Special Assistant, White House Initiative on Educational Excellence for Hispanic Americans (Initiative) at 202–401–1411 (telephone), 202–401–8377 (FAX), ed__deleon@ed.gov (e-mail) or mail: U.S. Department of Education, 600 Independence Ave. SW., room 2115; Washington, DC 20202–3601.

SUMMARY INFORMATION: The Commission was established under Executive Order 12900 (February 22, 1994) to provide the President and the Secretary of Education with advice on (1) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (2) the development, monitoring, and education for Hispanic Americans; (3) ways to increase, State, county, private sector and community involvement in improving education; and (4) ways to expand and complement Federal education initiatives.

The Commission will report the progress to date since its September 1997 meeting. This will include the decisions reached by the Executive Board at its January 1998 meeting, as well as the work of the five Commission committees (Children-Family-Community, K–12, Higher Education, Public Policy, and Foundations-Corporations-Public Affairs). Finally, the Commission will review and discuss bilingual education in California and the potential effects of the proposed Unz initiative. Public testimony is scheduled for Saturday, April 4, 1998 at 10 a.m.

Records are kept of all Commission proceedings and are available for public inspection at the Initiative, U.S. Department of Education, 600 Independence Ave., SW., Room 2145, Washington, DC from 9 a.m. to 5 p.m. (est).

Dated: March 16, 1998.

G. Mario Moreno,

Assistant Secretary.

[FR Doc. 98–7203 Filed 3–19–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–270–000]

ANR Pipeline Company; Notice of Application

March 16, 1998.

Take notice that on March 9, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–270–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale a subsea side valve assembly (Interconnection) at West Cameron Area Block 601, offshore Louisiana, to Tennessee Gas Pipeline Company (Tennessee) and Columbia Gulf Transmission Company (Columbia Gulf), all as more fully set forth in the application on file with the Commission and open to pubic inspection.

ANR states that the Interconnection, which was certificated in Docket No. CP81–281–000 along with other facilities, ties into pipeline facilities owned by Tennessee and Columbia Gulf. ANR also states that after the facilities authorized in Docket No. CP81–281–000 were placed in service, Samedan Oil Corporation (Samedan) tied its facilities into ANR's Interconnection. ANR states that the sale/abandonment of the Interconnection would allow Samedan to connect directly to Tennessee's and Columbia Gulf's facilities rather than indirectly through ANR.

ANR states that the proposed abandonment by sale will not result in any termination of service, and will not otherwise change the authorizations granted ANR in Docket No. CP98–281–000. ANR also states that the sale price will be the lesser of the net book value or $243,680.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided or, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7255 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No PR98–8–000]

Arkansas Western Gas Company; Notice of Petition for Rate Approval

March 16, 1998.

Take notice that on March 3, 1998, Arkansas Western Gas Company (AWG) filed an application pursuant to Sections 284.224 and 284.123(b)(2) of the Commission's Rules of Practice and Procedure and the Commission's Order Issued November 9, 1995, for approval of rates as fair and equitable. AWG proposes to decrease its maximum rate for interruptible transportation from $0.1596 per MMBtu to $0.1024 per MMBtu and to increase the rate for compressor fuel and lost and unaccounted for gas from 3.1 percent to 3.43 percent.

Any person desiring to participate in this rate proceeding must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 383.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before April 1, 1998. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to must file a motion to intervene. Copies of the petition are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7260 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–269–000]

Arkansas Western Pipeline Company and Arkansas Western Pipeline L.L.C.; Notice of Application

March 16, 1998.

Take notice that on March 6, 1998, Arkansas Western Pipeline Company (AWP) and Arkansas Western Pipeline, L.L.C. (AWP, LLC) (collectively the Applicants) filed an application under Section 7(c) of the Natural Gas Act (NGA), requesting that the Commission approve a transaction whereby AWP, LLC would succeed AWP as the owner of facilities and holder certificates of public convenience and necessity related to those facilities and services previously authorized by this Commission, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, AWP requests permission and approval under NGA 7(b) to abandon by transfer to AWP, LLC pipeline and appurtenant facilities currently dedicated to interstate service as well as the various certificates of public convenience and necessity which AWP currently holds. It is stated that for its part, AWP, LLC requests issuance under NGA Section 7(c) of certificates of public convenience and necessity identical to those abandoned by AWP, under which AWP, LLC will operate the facilities and render the services previously operated and performed by its predecessor, AWP. In addition, AWP and AWP, LLC request approval under Part 154 of this Commission's Regulations to make minor modifications to AWP's existing FERC Gas Tariff necessary to reflect AWP, LLC's succession to AWP's currently effective tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1998, file with Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein or if the Commission on its own review of the matter finds that a grant of the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7252 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–203–000]

Columbia Gas Transmission Corporation; Notice of Application

March 16, 1998.

Take notice that on January 27, 1998, as supplemented on March 13, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed a request with the Commission in Docket No. CP98–203–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate six delivery points in West Virginia to serve existing customers, all as more fully set forth in the application which is open to the public for inspection.

Columbia proposed to construct and operate six delivery points in Cabell, Lewis, Roane, and Wayne counties to serve one commercial and five residential customers of Mountaineer Gas Company (MGC). Columbia states that it would deliver a total of up to 9 dekatherms equivalent of natural gas per day and up to 900 dekatherms equivalent of natural gas annually at the six proposed delivery points for the account of MGC under its blanket certificate issued in Docket No. CP86–240–000. Columbia also states that MGC has not requested an increase in its peak day entitlements in conjunction with this request for the herein proposed six new delivery points. Columbia further states that it would treat the estimated $900 total construction cost for this proposal as an operational and maintenance expense.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7253 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–7–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 16, 1998.

Take notice that on March 10, 1998, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of April 1, 1998.

ESNG states that the purpose of the instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) and Columbia Gas Transmission Corporation (Columbia). The storage services purchased from Transco are under its Rate Schedules GSS and LSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedule GSS and LSS. The storage service purchased from Columbia is under its Rate Schedule SST and FSS, the costs of which comprise the rates and charges under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS, LSS, and CFSS, respectively.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7262 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Enogex Interstate Transmission L.L.C. and Ozark Gas Transmission, L.L.C.; Notice of Application

March 16, 1998.

Take notice that on March 5, 1998, Enogex Interstate Transmission L.L.C. (Enogex Interstate) and Ozark Gas Transmission, L.L.C. (Applicants) filed an abbreviated application under Section 7(c) of the Natural Gas Act, requesting that the Commission grant to Enogex Interstate certificate authorization to acquire the assets of Ozark Gas Transmission System (Ozark), an existing interstate natural gas pipeline subject to the Commission's jurisdiction under the Natural Gas Act. Applicants further seek authorization to dedicate to interstate service the assets of NOARK Pipeline System, Limited Partnership (NOARK), an existing intrastate pipeline operating within the state of Arkansas, and to integrate the Ozark and NOARK systems into a single interstate pipeline system. Applicants propose, and seek authorization to, operate the integrated pipeline system as a single interstate pipeline, providing open access transportation services pursuant to Part 284 of the Commission's Regulations, and to perform all services currently performed by Ozark, subject to the terms and conditions, including the maximum rates, set forth in Ozark's currently effective FERC Gas Tariff. To this end, Applicants propose to adopt Ozark's existing FERC Gas Tariff, First Revised Volume No. 1, as revised in certain minor respects, pursuant to Part 154, Subpart G of the Commission's Regulations, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that in order to effectuate the integration of the Ozark and NOARK systems, Applicants request certificate authorization to construct new facilities necessary to interconnect the existing Ozark system with the intrastate pipeline and related facilities of NOARK. Applicants also propose to construct certain minor facilities in order to expand capacity at a point located in Latimer County, Oklahoma (known as the Boiling Springs interconnect) at which the existing Ozark system currently receives gas from Enogex Inc., an Oklahoma interstate pipeline which provides interstate transportation service under Section 311 of the Natural Gas Policy Act of 1978.

The Applicants request an advance determination that rolled-in treatment of the costs associated with Enogex Interstate's acquisition of the NOARK system and its construction of the facilities required to interconnect the Ozark and NOARK systems is appropriate under the Commission's Pricing Policy Statement.

Applicants also request blanket certificates under Part 284 of the Commission's Regulations to provide open access service and Part 157 to engage in routine construction activities.

Applicants state that, immediately following Enogex Interstate's acceptance of certificate authorization relating to its acquisition of Ozark and the consummation of the contemplated purchase and sale transaction, Enogex Interstate intends, and therefore requests authorization from this Commission, to change its name (and thus the name of the certificate holder) from Enogex Interstate Transmission L.L.C. to Ozark Gas Transmission, L.L.C.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1998, file with Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rule.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the

time required herein or if the Commission on its own review of the matter finds that a grant of the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7254 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–10–000]

Helmerich & Payne, Inc.; Notice of Petition for Adjustment

March 16, 1998.

Take notice that on March 3, 1998, Helmerich & Payne, Inc. (H&P), filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures [15 U.S.C. 3142(c) (1982)] with respect to H&P's Kansas ad valorem tax refund liability.

The Commission's September 10, 1997 order on remand from the D.C. Circuit Court of Appeals,[1] in Docket No. RP97–369–000 *et al.*,[2] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its *Order Clarifying Procedures* [82 FERC ¶ 61,059 (1998)], stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

H&P requests a 1-year deferral of payment, to the relevant Pipelines [Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, KN Interstate Gas Transmission Company, and Colorado Interstate Gas Company], of the principal and interest refunds attributable to royalties until March 9, 1999. In addition, H&P requests that it be allowed to place into an escrow account certain portions of the remaining refunds allegedly due to Pipelines. H&P asserts that these procedures are needed to ensure that it pays only that which is legitimately owed, and to ensure that it can recover the overpayment, if it is subsequently determined that its refund liability was less than that originally claimed by the Pipelines. H&P states that a 1-year deferral in the obligation to make royalty refunds is necessary in order to allow it to confirm the refund amounts due, to locate the prior royalty owners, and to seek recovery of such amounts from the proper royalty owners.

On or before March 9, 1999, H&P proposes to file with the Commission documentation of those royalties which were not collectible and disburse to Pipelines those royalty refunds which were recovered (principal only), except for refunds attributable to pre-October 3, 1983, production. At that time, H&P proposes to place the interest from royalty refunds which was recovered in its escrow account to protect the royalty owners. In addition, H&P asserts that its proposal for an escrow account is necessary to protect its property and that of its royalty owners. H&P also proposes to place the following amounts into that escrow account:

(1) The principal amount of refunds and interest thereon attributable to royalty refunds (during the 1-year deferral period);

(2) The principal and interest amount of refunds attributable to production prior to October 3, 1983 (excluding royalties attributable thereto during the 1-year deferral period); and

(3) The interest due on principal refunds other than royalty refunds (during the 1-year deferral period) and pre-October 3, 1983, production refunds.

H&P requests the 1-year deferral and the authorization to place such monies into an escrow account pursuant to the Commission's January 28, 1998, *Order Clarifying Procedures.*

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7263 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[2] See 890 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–7–000]

Midcoast Interstate Transmission, Inc.; Notice of Filing

March 16, 1998.

Take notice that on March 5, 1998, Midcoast Interstate Transmission, Inc. (Midcoast) filed standards of conduct in response to a February 5, 1998 order from the Director, Office of Pipeline Regulation, requiring that Midcoast revise its standards of conduct to reflect the relocation of the offices of its marketing affiliate.[1]

Midcoast states that it has served copies of its revised standards of conduct upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 31, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7258 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 82 FERC ¶ 62,074 (1998).

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–3–25–005]

Mississippi River Transmission Corporation; Notice of Refund Report

March 16, 1998.

Take notice that on February 17, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing its refund report associated with the January 16, 1998 distribution of refunds, including interest, for its Miscellaneous Revenue Flowthrough Adjustment balance applicable to the period November 1, 1995 through August 31, 1996.

MRT states that based on inquiries from several customers, MRT has discovered that several FTS customers were inadvertently excluded from the refund distribution. MRT states that attached to the filing are revised exhibits for the corrected distribution of refunds to MRT's FTS customers.

MRT states that copies of the filing is being mailed to each of MRT's affected customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7265 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–11–000]

Mull Drilling Company, Inc.; Notice of Petition for Adjustment

March 16, 1998.

Take notice that on March 5, 1998, Mull Drilling Company, Inc. (MDC), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) [15 U.S.C. 3142(c) (1982)], requesting an order from the Commission determining: (1) that a Termination Agreement between MDC and Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company, (Williams) absolves MDC of its liability to make Kansas ad valorem tax refunds under those terminated contracts; (2) that MDC is only responsible for Kansas ad valorem tax refund amounts attributable to its working interest; (3) that the payment of Kansas ad valorem tax refunds will create a special hardship for MDC and, therefore, that MDC should be permitted to amortize its refunds over a reasonable period of time; and (4) that MDC's liability for Kansas ad valorem tax refunds attributable to the Clarke and Zundle leases should be waived, on the basis that MDC can no longer recoup any refunds from the owners of those leases.[1] Absent adjustment relief, the Kansas ad valorem tax refunds are required by the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*[2] MDC's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. That order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

MDC states that it was a party to certain gas purchase contracts entered into with Cities Service Gas Company (Williams' predecessor in interest). MDC explains that, as the operator, of the leases dedicated under those contracts, MDC acted on behalf of itself and, in some cases, third-party working interest owners. MDC adds that it passed along the funds, including the Kansas ad valorem tax reimbursement funds, to the other working interest owners, and only retained those funds attributable to its own working interest. In addition, MDC states that all but two of the contracts with Williams were terminated on March 31, 1993, and that the Termination Agreement with Williams contained broad release and indemnity provisions under which the parties agreed that all existing claims on the effective date of the Termination Agreement, arising from the rights and obligations under the subject contracts, would be forever "released and discharged."

MDC asserts that, because Williams did not exclude the Kansas ad valorem tax refund liability from the terms of the Termination Agreement, MDC should not owe any refunds to Williams for the Kansas ad valorem tax reimbursements that Williams made (to MDC) under those contracts.[4]

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7264 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

[1] MDC states that the Clarke and Zundle leases were each dedicated to a Williams contract, and that the leases were sold to a third party some years ago. In view of this, MDC asserts that it has no ability to recoup refunds from future production of these two leases.

[2] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[3] *Public Service Company of Colorado* versus, *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

[4] MDC's adjustment petition identifies its Williams contracts and the leases under those contracts, but does not specify which two contracts were not covered by the 1993 Termination Agreement.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–265–000]

Ozark Gas Transmission System; Notice of Application

March 16, 1998.

Take notice that on March 5, 1998, Ozark Gas Transmission System (Ozark) filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Regulations of the Federal Energy Regulatory Commission (Commission) thereunder, for a certificate of public convenience and necessity authorizing

the abandonment by sale to Enogex Interstate Transmission L.L.C. (Enogex Interstate) of all its pipeline facilities and services provided under the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark has requested that the Commission expedite its review of the abandonment application and issue an order approving the transfer of the Ozark system to Enogex Interstate no later than July 1, 1998. Ozark states that it has entered into a Purchase and Sale Agreement wherein Ozark has agreed, subject to necessary Commission authorizations, to sell to Enogex Interstate all of Ozark's pipeline and appurtenant facilities that provide service under Ozark's FERC Gas Tariff and the Commission's jurisdiction under the Natural Gas Act. Ozark states that Enogex Interstate is simultaneously filing an application under Section 7(c) of the NGA seeking authority to own and operate, without interruption, the Ozark system.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1998, file with Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction of the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA, and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that abandonment by sale of the facilities is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Ozark to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7251 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–17–002]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

March 16, 1998.

Take notice that on March 11, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, certain tariff sheets filed in compliance with the Commission's February 24, 1998 Letter Order in this Docket. PG&E GT–NW states that this compliance filing corrects certain pagination and formatting errors identified by the Commission.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7257 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–276–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

March 16, 1998.

Take notice that on March 9, 1998, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP98–276–000 a request pursuant to Sections 157.205, and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a delivery point under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to construct and operate a delivery point for Protein Technologies, Inc. (Protein Technologies) in Shelby County, Tennessee. Protein Technologies has requested that Texas Gas construct the delivery point and will reimburse Texas Gas in full for the cost of the facilities which is estimated to be $121,500. Protein Technologies is requesting up to 12,000 MMBtu of natural gas per day of interruptible transportation service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7256 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–159–000]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Cash-Out Report

March 16, 1998.

Take notice that on March 11, 1998, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing, pursuant to Article 9.7(d) of the General Terms and Conditions of its FERC Gas Tariff, its report to net revenue received from cash-outs. Williams proposes to make the refund upon Commission approval of its calculation method as set out in this report.

Williams states that pursuant to the cash-out mechanism in Article 9.7(a)(iv) of its FERC Gas Tariff, Shippers were given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing-out such imbalances at 100% of the spot market price applicable to Williams as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which were not resolved by the end of the second month following the month in which the imbalance occurred and which exceeded the tolerance specified in Article 9.7(b) were cashed-out at a premium or discount from the spot price according to the schedules set forth in Article 9.7(c). Williams is herewith filing its report of net revenue (sales less purchase cost) received from cash-outs.

Williams states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7261 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–54–000, et al.]

Boston Edison Company, et al., Electronic Rate and Corporate Regulation Filings

March 13, 1998.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. DR98–54–000]

Take notice that on February 26, 1998, Boston Edison Company, filed a request for approval of changes in depreciation rates for distribution plant from 2.38% to 2.98%, for accounting purposes only, pursuant to Section 302 of the Federal Power Act. The proposed changes were approved for retail purposes by the Massachusetts Department of Telecommunications and Energy.

Comment date: April 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Delhi Energy Services, Inc.

[Docket No. ER95–940–011]

Take notice that on March 10, 1998, Delhi Energy Services, Inc., tendered for filing quarterly report for the quarter ending December 31, 1997.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. VTEC Energy, Inc.

[Docket No. ER95–1855–009]

Take notice that on March 9, 1998, VTEC Energy, Inc., tendered for filing quarterly sales report, reporting no sales for the fourth quarter of 1997.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Megan-Racine Associates, Inc.

[Docket Nos. ER96–1477–002, EL95–40–002, EL95–47–003, and QF89–58–007]

Take notice that, on March 9, 1998, Megan-Racine Associates, Inc., Niagara Mohawk Power Corporation and the Federal Deposit Insurance Corporation, as Receiver for New Bank of New England, N.A., filed a Joint Motion to withdraw certain pleadings now pending before the Commission in the above-referenced proceedings and to terminate these proceedings with prejudice. This Joint Motion implements the terms and conditions of a Liquidating Plan of Reorganization involving Megan-Racine Associates, Inc.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER98–1855–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), amended its filing in this docket by submitting a superseding Meter Service Agreement for Scheduling Coordinators between the ISO and Illinova Energy Partners, Inc., for filing and acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER98–1857–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), amended its filing in this docket by submitting a superseding Meter Service Agreement for Scheduling Coordinators between the ISO and Salt River project Agricultural Improvement and Power District for filing and acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER98–2114–000]

Take notice that on March 6, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and the California Department of Water Resources for Acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–

19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER98–2122–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and the California Department of Water Resources for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER98–2124–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement Between the ISO and the California Department of Water Resources for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power

[Docket No. ER98–2130–000]

Take notice that on March 10, 1998, Washington Water Power tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Research Energy Services, Inc. WWP requests waiver of the prior notice requirement and requests an effective date of February 23, 1998.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Energy, Inc.

[Docket No. ER98–2131–000]

Take notice that on March 10, 1998, Puget Sound Energy, Inc., tendered for filing a revised Governing Agreement of the Northwest Regional Transmission Association. A copy of the filing was served upon all Parties to the Agreement.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. The Dayton Power and Light Company

[Docket No. ER98–2132–000]

Take notice that on March 9, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Griffin Energy Marketing, L.L.C., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Griffen Energy Marketing, L.L.C., and the Public Utilities Commission of Ohio.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER98–2133–000]

Take notice that on March 10, 1998, Commonwealth Electric Company (Commonwealth), and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers):

PG&E Energy Trading-Power, L.P.
Fitchburg Gas and Electric Light Company

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). Theses Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Co.

[Docket No. ER98–2134–000]

Take notice that on March 10, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Cargill Energy Division under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the open Access Transmission Tariff.

Copies of the filing were served upon Cargill Energy Division, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Dayton Power and Light Company

[Docket No. ER98–2135–000]

Take notice that on March 10, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Amoco Energy Trading Corporation, Strategic Energy Ltd., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the this filing were served upon Amoco Energy Trading Corporation, Strategic Energy Ltd., and the Public Utilities Commission of Ohio.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. The Dayton Power and Light Company

[Docket No. ER98–2136–000]

Take notice that on March 9, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Amoco Energy Trading Corporation, Strategic Energy Ltd., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the

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Commission's notice requirements. Copies of the this filing were served upon Amoco Energy Trading Corporation, Strategic Energy Ltd., and the Public Utilities Commission of Ohio.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER98–2137–000]

Take notice that PacifiCorp, on March 10, 1998, tendered for filing in accordance with 18 CFR 35.28 of the Commission's Rules and Regulations, an amendment to its filing of an unexecuted contract entitled Amendment No. 1, to the AC Intertie Agreement between PacifiCorp and Bonneville Power Administration (Bonneville).

Copies of this filing were supplied to Bonneville, the Public Utility Commission of Oregon, Public Service Commission of Utah, and the Washington Utilities and Transportation Commission.

PacifiCorp renews its requests the an effective date of January 3, 1997, be assigned to the Agreement.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, a bits, no parity, 1 stop bit).

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER98–2138–000]

Take notice that PacifiCorp, on March 10, 1998, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Service Agreement with Commonwealth Energy Corporation under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER98–2139–000]

Take notice that on March 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff entered into between Cinergy and Duke Power, a division of Duke Energy Corporation (Duke Power).

Cinergy and Duke Power are requesting an effective date of February 15, 1998.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER98–2140–000]

Take notice that on March 5, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and PacifiCorp Marketing, Inc., (PacifiCorp).

Cinergy and PacifiCorp are requesting an effective date of February 16, 1998.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER98–2141–000]

Take notice that on March 5, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Duke Power, a division of Duke Energy Corporation (Duke Power).

Cinergy and Duke Power are requesting an effective date of February 15, 1998.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER89–2142–000]

Take notice that on March 10, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Cargill Energy Division under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Cargill Energy Division, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Desert Generation & Transmission

[Docket No. ER98–2143–000]

Take notice that Desert Generation & Transmission Cooperation on March 10, 1998, tendered for filing an executed umbrella non-firm point-to-point service agreement with Aquila Power Corporation under its open access transmission tariff. Desert requests a waiver of the Commission's notice requirements for an effective date of March 10, 1998. Desert's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Acquila Power Corporation has been provided a copy of this filing.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Maine Public Service Company

[Docket No. ER98–2144–000]

Take notice that on March 10, 1998, Maine Public Service Company submitted Amendments to Agreements for full requirements wholesale power with both Van Buren Light and Power Company, and with Eastern Maine Electric Cooperative.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Pacific Gas and Electric Company

[Docket No. ER98–2145–000]

Take notice that on March 6, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing errata to the amendments to its Master Must-Run Agreements with the California Independent System Operator (ISO), filed on January 29, 1998. The errata correct proposed modifications to the billing, settlement and payment procedures in these agreements.

PG&E has served this filing on all parties listed on the official service list in Docket Nos. ER98–495–000 and ER98–495–001, including the California Public Utilities Commission.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Corporation

[Docket No. ER97–2146–000]

Take notice that on March 10, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), filed Service Agreements for transmission and wholesale requirements services in conjucntion with an electric retail access pilot program that are established by the New York Public Service Commission effective November 1, 1997. The Service Agreements for

transmission services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; as modified by an Order of the Commission in this proceeding dated November 7, 1997. The Service Agreements for wholesale requirements services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Energetix, Inc.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Otter Tail Power Company

[Docket No. ER97–2147–000]

Take notice that Otter Tail Power Company (OTP), on March 10, 1998, tendered for filing a transmission service agreement between itself and PECO Energy. The agreement establishes PECO Energy as a customer under OTP's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

OTP respectfully requests an effective date sixty days after filing. OTP is authorized to state that PECO Energy joins in the requested effective date.

Copies of the filing have been served on PECO Energy, Pennsylvania Public Utility Commission, Minnesota Public Utilities Commission, North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas And Electric Company

[Docket No. ER98–2148–000]

Take notice that on February 27, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Tenaska Power Services Company under LG&E's Open Access Transmission Tariff.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Louisville Gas and Electric Company

[Docket No. ER98–2149–000]

Take notice that on February 27, 1998 Louisville Gas and Electric Company (LG&E), tendered for filling a Consent to Assignment form between LG&E and Cargill–IEC, LLC, assigning its Purchase and Sales Agreement with Heartland Energy Services dated April 1, 1996 and filed with the Commission in Docket No. ER96–2001–000 to Cargill–IEC, LLC.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Company of New Mexico

[Docket No. ER98–2152–000]

Take notice that on March 10, 1998, Public Service Company of New Mexico (PNM), filed as an amendment to the San Juan Project Operating Agreement (Operating Agreement), an Interim Invoicing Agreement with respect to invoicing for coal deliveries from San Juan Coal Company among PNM, Tucson Electric Power Company (TEP), and the other owners of interests in the San Juan Generating Station. This interim agreement effectively modifies Modification 8 to the Operating Agreement for an interim period from January 1, 1998 through December 31, 1998.

PNM requests waiver of the Commission's notice requirements in order to allow the Interim Invoicing Agreement to be effective as of January 1, 1998.

Copies of this filing have been served upon the New Mexico Public Utility Commission, TEP and each of the owners of an interest in the San juan Generating Station.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Androscogging Energy LLC

[Docket No. QF96–114–001]

Take notice that on March 10, 1998, Androscoggin Energy LLC (Applicant), tendered for filing a supplement to its filings of October 27, 1997, and February 18, 1998, in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the owners' stream of benefits from the cogeneration facility.

Comment date: April 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7236 Filed 3–19–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1377–001, et al.]

New Century Operating Companies, et al.; Electric Rate and Corporate Regulation Filings

March 12, 1998

Take notice that the following filings have been made with the Commission:

1. New Century Operating Companies

[Docket No. ER98–1377–001]

Take notice that on March 9, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company submitted an amendment to the original filing in this docket.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Oklahoma Gas and Electric Company

[Docket No. ER98–2107–000]

Take notice that on March 9, 1998, Oklahoma Gas and Electric Company (OG&E), revised it's Open Access Tariff to provide Point-To-Point Transmission Service under the Southwest Power Pool, Inc. (SPP), Regional Tariff.

Copies of this filing have been served on the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Energy Company

[Docket No. ER98–2112–000]

Take notice that on March 9, 1998, Consumers Energy Company (CECo), tendered for filing a Service Agreement for Network Integration Service and a Network Operating Agreement for the Keebler Company. This filing was made pursuant to CECo's Open Access Transmission Tariff and the Michigan Public Service Commission's retail direct access program. CECo requests an

effective date of December 22, 1997. Copies of the filing were served on the Keebler Company and the Michigan Public Service Commission.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. DTE Energy Trading, Inc.

[Docket No. ER98–2117–000]

Take notice that on March 9, 1998, DTE Energy Trading, Inc., tendered for filing a Master Agreement for Power Sales Tariff between DTE Energy Trading, Inc., and Northern Indiana Public Service Company, dated as of February 27, 1998. DTE Energy Trading, Inc., requests that the Master Agreement be made effective as of February 27, 1998.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER98–2121–000]

Take notice that PacifiCorp, on March 9, 1998, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Service Agreement with American Electric Power Co., Inc. (AEP), under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12 and AEP's Certificate of Concurrence.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Central Louisiana Electric Company, Inc.

[Docket No. ER98–2123–000]

Take notice that on March 9, 1998, Central Louisiana Electric Company, Inc., (LECO), tendered for filing two service agreements under which CLECO will provide non-firm and short term firm point-to-point transmission services to Merchant Energy Group of the Americas, Inc., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Merchant Energy Group of the Americas, Inc.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER98–2125–000]

Take notice that on March 9, 1998, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and ConAgra Energy Services, Inc., and Western Resources and EnerZ Corporation. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective March 3, 1998, and March 2, 1998, respectively.

Copies of the filing were served upon ConAgra Energy Services, Inc., EnerZ Corporation, and the Kansas Corporation Commission.

Comment date: March 27, 1998, in accordance with Standard paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER98–2126–000]

Take notice that on March 9, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 2, 1998, between KCPL and Cargill-Alliant, LLC. KCPL proposes an effective date of March 2, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: March 27, 1998, in accordance with Standard paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER98–2127–000]

Take notice that on March 9, 1998, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for firm point-to-point transmission service to Municipal Electric Authority of Georgia (MEAG), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on March 10, 1998.

Comment date: March 27, 1998, in accordance with Standard paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER98–2128–000]

Take notice that on March 9, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date March 13, 1998. Wisconsin Electric is authorized to state that Columbia Power Marketing Corporation joins in the requested effective date.

Copies of the filing have been served on Columbia Power Marketing Corporation, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 27, 1998, in accordance with Standard paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER98–2129–000]

Take notice that on March 9, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Scana Energy Marketing will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1998.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7233 Filed 3–19–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–19–000m et al.]

Ogden Energy China (Delta) Ltd., Electric Rate and Corporate Regulation Filings

March 10, 1998.

Take notice that the following filings have been made with the Commission:

1. Ogden Energy China (Delta) Ltd.

[Docket No. EG98–19–000]

Take notice that, on March 3, 1998, Ogden Energy China (Delta) Ltd. (OECD), filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations..

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Citizens Power LLC and Peabody Investments, Inc.

[Docket Nos. EC98–30–000, ER94–1685–019, ER95–393–018, ER95–892–019, and ER96–2652–009]

Take notice that on March 6, 1998, Citizens Power LLC and Peabody Investments, Inc., filed an application for an order authorizing the proposed sale and transfers of control over their power marketing affiliates and subsidiaries (Citizens Power Sales; Hartford Power Sales, L.L.C.; CL Power Sales One, L.L.C.; CL Power Sales Two, L.L.C.; CL Power Sales Three, L.L.C.; CL Power Sales Four, L.L.C.; CL Power Sales Five, L.L.C.; CL Power Sales Six, L.L.C.; CL Power Sales Seven, L.L.C.; CL Power Sales Eight, L.L.C.; CL Power Sales Nine, L.L.C.; and CL Power Sales Ten, L.L.C.) to P&L Coal Holdings Corporation. Applicants request that the Commission approve the application by April 15, 1998. The application also constitutes a notice of change in status for each of the power marketing affiliates and subsidiaries.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Merilectrica I S.A. & Cia, S.C.A. E.S.P.

[Docket No. EG98–48–000]

On March 2, 1998, Merilectrica I S.A. & Cia, S.C.A. E.S.P., a Colombia corporation (Merilectrica), c/o Prospeccion S.A., A.A. 12203, Medellin, Colombia, S.A., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Merilectrica is a company established for the purpose of operating the Termomerilectrica Project for the generation and sales of wholesale electric power to utilities and retail electric power to industrial end users in Colombia. The sponsors of the Merilectrica and their respective interests are as follows: Conoco Global Energy Company (Conoco) (36.3825%); Wing Colombia, L.L.C. (Wing) (36.3825%); Merilectrica Colombia Partners I, Limited Partnership (MCP) (1.48499%); Compania Suramericana de Construcciones S.A. (Suramericana) (4.85099%); Compania de Investigaciones Economicas Prospección S.A. (Prospección) (0.495%); Merilectrica I S.A. (1.0%) (General Partner); Compania de Cemento Argos, S.A. (Cemento Argos) (4.85099%); Compania Nacional de Chocolates S.A. (Chocolates) (4.85099%); Corporation Financiere Nacional y Suramericana S.A. (Financiere) (4.85099%); and Reasegurado do Colombia S.A. (Reaseguarado) (4.85099%). A 160 MW single-cycle gas-fired electric generating plant will be installed in Barrancabermeja, Santander, Colombia and owned by Applicant excepting the equipment installed in such plant which will be owned by TLC International LDC.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TLC International LDC

[Docket No. EG98–49–000]

On March 2, 1998, TLC International LDC (TLC), a Cayman Islands limited duration company, c/o Prospeccion S.A., A.A. 12203, Medellin, Colombia, S.A., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

TLC is a company established for the purpose of owning the Termomerilectrica Project for the generation and sales of wholesale electric power to utilities and retail electric power to industrial end users in Colombia. A 160 MW single-cycle gas-fired electric generating plant will be installed in Barrancabermeja, Santander, Colombia and owned by Merilectrica I S.A. & Cia, S.C.A. E.S.P. excepting the equipment in such plant will be owned by TLC International LDC. Merilectrica I S.A. & Cia, S.C.A. E.S.P. will lease the equipment from the owner.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. California Power Exchange Corporation

[Docket Nos. ER98–210–000 and ER98–1729–000 *et al.*]

Take notice that the California Power Exchange Corporation (PX), on March 5, 1998, filed the following substitute tariff sheets to be effective on March 31, 1998, pursuant to Section 205 of the Federal Power Act:

Substitute First Revised Sheet No. 207
Substitute First Revised Sheet No. 298

On January 30, 1998, the PX filed an amended rate filing. Subsequent to that time, the PX discovered three errors in two of its tariff sheets that were filed in the January 30 amended rate filing. The PX submits that its filing corrects such errors.

The PX seeks any waivers necessary to allow this tariff sheet to go into effect on March 31, 1998.

Copies of the filing were served upon all persons included on the service list compiled in Docket Nos. ER98–210–000 and ER98–1729–000.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER98–1759–000]

Take notice that on March 5, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreements to provide Non-Firm Point-To-Point Transmission Service to the Williams Energy Services Company under the NU System Companies Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Williams Energy Services Company.

NUSCO requests that the Service Agreement become effective February 2, 1998.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER98–2028–000]

Take notice that on March 5, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy

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Arkansas, Inc. (EAI), (formerly Arkansas Power & Light Company), tendered for filing an amendment in the above-referenced docket.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas And Electric Company

[Docket No. ER98–2088–000]

Take notice that on February 27, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Tenaska Power Services Company under LG&E's Open Access Transmission Tariff.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER98–2089–000]

Take notice that on March 5, 1998, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Amoco Energy Trading Corporation (2 agreements, dated February 26, 1998, for Non-Firm and Firm Service), and ConAgra Energy Services, Inc. (1 agreement, dated March 3, 1998, for Non-Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER98–2090–000]

Take notice that on March 5, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 2, 1998, with Tractebel Energy Marketing, Inc. (Tractebel), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Tractebel as an eligible customer under the Tariff.

PP&L requests an effective date of March 5, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Tractebel and to the Pennsylvania Public Utility Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER98–2091–000]

Take notice that on March 5, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between ASC and Public Service Electric and Gas Company (PSE&G). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to PSE&G pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER98–2092–000]

Take notice that on March 5, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated March 1, 1998, with Griffin Energy Marketing, L.L.C., entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of March 1, 1998, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Griffin Energy Marketing, L.L.C., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER98–2093–000]

Take notice that on February 27, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Illinois Power Company under LG&E's Open Access Transmission Tariff.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER98–2094–000]

Take notice that on March 5, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing a change in rates for Economic Development Power (EDP), service under FERC Rate Schedule No. 179.

NYSEG requests waiver of the Commission's 60 day notice requirements and an effective date of October 9, 1997, for the rate change. NYSEG has served copies of the filing on the New York State Public Service Commission, the New York Power Authority, and affected EDP customers.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Washington Water Power

[Docket No. ER98–2097–000]

Take notice that on March 5, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed a Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with City of Burbank California, which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER97–1252–000, Service Agreement No. 27, effective December 15, 1996.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER98–2098–000]

Take notice that on March 5, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and VTEC Energy, Inc., under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to VTEC Energy, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of March 5, 1998, for the Service Agreement.

Copies of the filing were served upon VTEC Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. San Diego Gas & Electric Company

[Docket No. ER98–2096–000]

Take notice that on March 4, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.13, a

Service Agreement with Public Service Company of New Mexico for Point-To-Point Transmission Service under SDG&E's Open Access Transmission Tariff (Tariff), in compliance with FERC Order No. 888A.

SDG&E filed the executed Service Agreement with the Commission in compliance with applicable Commission Regulations. SDG&E also provided Sheet No. 114 (Attachment E) to the Tariff, which is a list of current subscribers. SDG&E requests waiver of the Commission's notice requirement to permit an effective date of March 30, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2099–000]

Take notice that on March 5, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a revised tariff sheet amending Con Edison's Electric Rate Schedule No. 3, for the Wholesale Sale of Electricity to Implement Retail Access in New York City and Westchester County. The filing would modify the price for in-city capacity sales by Con Edison under that rate schedule. The price for such sales will remain subject to cost-based maximum and minimum rates.

Con Edison states that a copy of this filing has been served by mail upon The New York State Public Service Commission and upon parties to Con Edison's service restructuring proceeding before the New York State Department of Public Service.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Western Resources, Inc.

[Docket No. ER98–2100–000]

Take notice that on March 5, 1998, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and Engage Energy US, L.P. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective March 2, 1998.

Copies of the filing were served upon Engage Energy US, L.P., and the Kansas Corporation Commission.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PacifiCorp

[Docket No. ER98–2101–000]

Take notice that PacifiCorp, on March 5, 1998, tendered for filing, in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Exhibit A (Revision No. 20, effective September 30, 1997), to the February 25, 1976, Transmission Agreement (PacifiCorp Rate Schedule FERC No. 123) between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State), and Supplement and Amendment No. 5 to the Transmission Agreement.

Copies of this filing were supplied to Tri-State, the Wyoming Public Service Commission, the Public Utility Commission of Oregon and the Washington Utilities and Transmission Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7234 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–50–000, et al.]

Zhengzhou Dengwei Power Company Ltd., et al.; Electric Rate and Corporate Regulation Filings

March 11, 1998.

Take notice that the following filings have been made with the Commission:

1. Zhengzhou Dengwei Power Company Ltd.

[Docket No. EG98–50–000]

Take notice on March 2, 1998, Zhengzhou Dengwei Power Company Ltd. (Dengwei), a Chinese cooperative joint venture, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Dengwei is a company established for the purpose of owning the 55 MW coal-fired power project in Dengfeng City, Henan Province (Project), for the generation and sales of wholesale electric power to utilities and retail electric power to industrial end users in China. The sponsors of the Project and their respective interests are as follows: Henan Dengfeng Power Group Company Limited (Power Group) (51%) and Western Resources International Limited (49%).

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Tucson Electric Power Company

[Docket No. ER98–856–000]

Take notice that on February 17, 1998, Tucson Electric Power Company (TEP), tendered for filing its response to the deficiency letter issued by the Director, Division of Rate Applications, Office of Electric Power Regulation in the above referenced docket on January 15, 1998.

Comment date: April 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Texas Utilities Electric Company

[Docket No. ER98–1202–000]

Take notice that on March 6, 1998, Texas Utilities Electric Company (TU Electric), tendered for filing its compliance filing of certain revised unexecuted Transmission Service Agreements (TSA's) with Central Power & Light Company (CPL), and West Texas

Utilities Company (WTU), for service from TU Electric pursuant to TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections (TFO Tariff), pursuant to the Commission's Order issued February 20, 1998.

Copies of the compliance filing were served on Central Power & Light Company and West Texas Utilities Company, as well as the Public Utility Commission of Texas.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–2102–000]

Take notice that on March 6, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a service agreement with Columbia Power Marketing Corporation under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER98–2103–000]

Take notice that on March 6, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated February 23, 1998, with the City of Carlisle, IA (Carlisle) entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff), and a Wholesale Full Requirements Power Sales Agreement dated February 23, 1998, with the City of Carlisle, IA, entered into pursuant to the Service Agreement and the Tariff.

MidAmerican requests an effective date of February 23, 1998, for these Agreements, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Carlisle, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER98–2104–000]

Take notice that on March 6, 1998, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Long-Term Point-to-Point Transmission Service with Enron Power Marketing, Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective March 1, 1998.

A copy of this filing was caused to be served upon Enron Power Marketing, Inc., as noted in the filing letter.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Light Company

[Docket No. ER98–2105–000]

Take notice that Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, on March 6, 1998, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Tennessee Valley Authority.

CILCO requested an effective date of February 25, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No.ER98–2106–000]

Take notice that on March 6, 1998, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term and Non-Firm Point-to-Point Transmission Service with Amoco Energy Trading Company.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreements to become effective March 1, 1998.

A copy of this filing was caused to be served upon Amoco Energy Trading Company as noted in the filing letter.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Carolina Power & Light Company

[Docket No. ER98–2108–000]

Take notice that on March 6, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: Amoco Energy Trading Corporation and Merchant Energy Group of the Americas, Inc.; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Merchant Energy Group of the Americas, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Pool

[Docket No. ER98–2109–000]

Take notice that on March 6, 1998, the New England Power Pool (NEPOOL), Executive Committee filed a service agreement for Through or Out Service or Other Point-to-Point Transmission Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of this Service Agreement will permit NEPOOL to provide transmission service to New York State Electric & Gas Corporation in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented, under the above-referenced dockets. NEPOOL requests a retroactive effective date of February 15, 1998 for commencement of transmission service. Copies of this filing were sent to all NEPOOL members, the New England Public Utility Commissioners and all parties to the transaction.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER98–2110–000]

Take notice that on March 6, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated February 20, 1998, with Ontario Hydro (Ontario), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Ontario as an eligible customer under the Tariff.

PP&L requests an effective date of March 6, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Ontario and to the Pennsylvania Public Utility Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER98–2111–000]

Take notice that Cinergy Services, Inc. (Cinergy), on March 4, 1998, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated December 15, 1997, between Cinergy, CG&E, PSI and City of Springfield, Illinois, City Water, Light and Power (Springfield CWL&P).

The Interchange Agreement provides for the following service between Cinergy and Springfield CWL&P:

1. Exhibit A—Power Sales by Cinergy
2. Exhibit B—Transaction Confirmation Letter

Cinergy and Springfield CWL&P have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Springfield, Illinois, City Water, Light and Power, the Illinois Commerce Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. El Paso Electric Company

[Docket No. ER98–2116–000]

Take notice that on March 6, 1998, El Paso Electric Company (EPE), tendered for filing a Certificate of Concurrence in the Southwest Reserve Sharing Group Participation Agreement that was previously filed in FERC Docket No. ER98–917–000.

Comment date: March 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. The Toledo Edison Company

[Docket No. ER98–2120–000]

Take notice that on March 6, 1998, Toledo Edison Company (TE), tendered for filing a revised tariff under which it is proposing to sell power at market-based rates (the TE Market Based Rate Tariff). TE states that the TE Market Based Rate Tariff incorporates changes to the existing tariff under which TE engages in the sale of electricity at market-based rates that are consistent which changes to be made to similar tariffs of certain affiliated entities if an Offer of Settlement in Docket Nos. ER95–1295–000 and ER96–371–000 is approved by the FERC. TE has proposed to make the TE Market Based Rate Tariff effective on the date on which the corresponding changes to the tariffs of its affiliated entities become effective.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Baltimore Gas and Electric Company; Central Illinois Public Service Co.; Union Electric Company; Duke Power Company; Nantahala Power and Light Company; Long Island Lighting Co.; Portland General Electric Company; South Carolina Electric and Gas Co.; Southern Company Services Alabama Power Company; Georgia Power Company; Gulf Power Company; Mississippi Power Company; Savannah Electric and Power Co.; Southern Indiana Gas and Electric Company; Tampa Electric Company; Tucson Electric Power Company

[Docket Nos. OA97–456–001; OA97–271–001; and OA97–271–001; OA97–450–001; OA97–427–001; OA97–276–001; OA97–416–001; OA97–398–001; OA97–308–001; OA97–461–001 and OA97–436–001]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct [1] under Order No. 889, *et seq.*[2]

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

[1] The revised standards of conduct were submitted between February 27 and March 5, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 § 31,035 (April 24, 1996), Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 (November 25, 1997).

Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7235 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1933–011 and 2198–007]

Southern California Edison Company; Notice of Availability of Final Environmental Assessment

March 16, 1998.

A final environmental assessment (EA) is available for public review. The final EA analyzes the environmental impacts of an application by Southern California Edison Company (licensee) to relocate project facilities. The licensee proposes constructing a new penstock to replace part of the existing flowline for the Santa Ana River (SAR) 1 and 2 Hydroelectric Project No. 1933–011 and all of the flowline for the SAR 3 Hydroelectric Project No. 2198–007. The licensee proposes to construct a new powerhouse to replace both the SAR 2 and SAR 3 powerhouses. The U.S. Army Corps of Engineers is building a new flood control dam in the Santa Ana River Canyon below the SAR 1 and 2 Project. The Seven Oaks Dam will inundate and destroy the SAR 2 powerhouse and the SAR 3 flowline rendering both projects inoperable. The licensee's proposed construction would allow it to continue to operate the projects. Both projects are on the Santa Ana River and its tributaries in San Bernardino County, California.

The final EA finds that the application to relocate project facilities would not constitute a major federal action significantly affecting the quality of the human environment. The final EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission in cooperation with the U.S. Department of Agriculture—Forest Service, San Bernardino National Forest, Big Bear Ranger District. Copies of the final EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7284 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

March 16, 1998.

a. *Type of Application*: Transfer of License.

b. *Project No.*: 8535–029.

c. *Date filed*: February 4, 1998.

d. *Applicants*: Greenwood Ironworks and Virginia Hydrogeneration & Historical Society, L.C.

e. *Name of Project*: Battersea Dam.

f. *Location*: On the Appomattox River in Chesterfield and Dinwiddie Counties, Virginia.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact*: C.D.L. Perkins, General Manager, Virginia Hydrogeneration & Historical Society, L.C., 5001 Falmouth Street, Richmond, VA 23230, (804) 673–9667.

i. *FERC Contact*: Ahmad Mushtaq, (202) 212–2672.

j. *Comment Date*: April 20, 1998.

k. *Description of the Request*: Greenwood Ironworks, licensee, and the Virginia Hydrogeneration & Historical Society, L.C. (VHHS) jointly request that the license for the Battersea Dam Project be transferred from Greenwood Ironworks to VHHS.

l. This notice also consists of the following standard paragraph: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.201, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7259 Filed 3–19–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5984–3]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of an Application for Certification of Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agency approval of an application for equipment certification.

SUMMARY: The Agency received a notification of intent to certify urban bus retrofit/rebuild equipment for 4-stroke petroleum fueled diesel engines pursuant to 40 CFR part 85, subpart O from Engelhard Corporation (Engelhard). Pursuant to § 85.1407(a)(7), a June 16, 1997 **Federal Register** notice summarized the notification and announced that the notification would be available for public review and comment, and initiated a 45-day period during which comments could be submitted. In the notice the Agency stated it would review this notification of intent to certify, as well as comments received, to determine whether the equipment should be certified. EPA has completed its review of this application and the Director of the Engine Program & Compliance Division (EPCD) has determined that it meets the requirements for certification. Accordingly, EPA certifies this equipment effective March 20, 1998.

The Agency received an application dated October 18, 1996 from Engelhard with principal place of business at 101 Wood Ave, South Iselin, New Jersey 08830–0770 for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR Sections 85.1401–85.1415. On June 16, 1997 EPA published notification that the application had been received and made the application available for public review and comment for a period of 45 days (62 FR 32599). Testing documentation presented to the Agency demonstrates a reduction in particulate matter (PM) of at least 25% for 1992–1993 Cummins electronically controlled L–10 petroleum fueled diesel engines that were not originally equipped with an aftertreatment device. The equipment meets the life-cycle cost requirements of the urban bus retrofit/rebuild program for certification. As such, it triggers the requirements for operators choosing to comply with compliance program 1 for the applicable engines. It may also be used by operators utilizing program 2 to achieve target fleet emission levels.

DATES: The date of this notice March 20, 1998, is the effective date of certification for the equipment.

ADDRESSES: The application, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42 (Category XVII–A), entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Compliance Programs Group, Engine Programs & Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 564–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On October 18, 1996 Engelhard applied for certification of a kit, for use on 4-cycle petroleum fueled diesel Cummins L–10 urban bus engines that were originally manufactured prior to and including the 1993 model year. The notification of intent to certify stated that the candidate equipment would reduce PM emissions by 25% or more on engines that have been rebuilt to Cummins specifications. The test engine

was a 1992 280 HP Cummins L–10 EC engine model. Two tests were performed, one test was performed on the engine without the CMX and a second test was performed on the same engine after retrofit with the CMX. The test data show a PM level of 0.105 g/bhp-hr for the base engine without the CMX, and a PM level of 0.073 g/bhp-hr with the candidate equipment installed. This represents a PM reduction of 30% with the candidate equipment installed. The test data also show that hydrocarbon (HC), carbon monoxide (CO) and oxides of nitrogen (NO_X) are less than applicable standards. Fuel consumption is not affected when the candidate equipment is installed based on comparison of the test results. Engelhard presented smoke emission measurements for the engine demonstrating compliance with applicable standards.

Pricing information was submitted indicating that the equipment will be offered to all affected operators for less than the incremental life-cycle cost ceiling ($2,000 in 1992 dollars). Therefore, certification of this equipment triggers the 25% reduction standard for the applicable engines.

The equipment being certified is a "catalytic Converter Muffler" or CMX™, that is a muffler containing an oxidation catalyst. The CMX is intended to replace the standard muffler previously installed in the engine exhaust system. The CMX is intended to be maintenance free, requiring no service for the full in-use compliance period. The engine fuel to be used with this equipment is diesel fuel with a maximum sulfur content of 0.05 wt.% sulfur.

Engelhard had requested approval for all Cummins L–10 engines manufactured prior to and including 1993 based on exhaust emission data from testing a 1992 280 HP Cummins L–10 EC (electronic control) engine. In the notice of June 16, 1997 EPA noted that this certification would only be applicable to the 1992–1993 L–10 EC model, based on the testing performed on a 1992 model year engine. Engelhard indicated that it planned to supply additional testing data on another engine in order to extend this certification to additional models. EPA indicated that it would consider such information and provide the opportunity for public comment upon receipt. However, sufficient additional information has not been received from Engelhard to alter the applicability of this application. In view of the delay being caused while the additional information is gathered, Engelhard requested that EPA proceed with this action with the applicability of this certification being limited to the 1992–1993 Cummins L–10 EC model at this time. Table A. below provides the emission levels that apply to this certification.

TABLE A.—ENGELHARD RETROFIT/REBUILD CERTIFICATION LEVELS FOR CUMMINS ENGINES

Cummins engine model	Model year	PM certification level with CMX (g/bhp-hr)
L–10 EC	1992–1993	0.19

Under program 1, all rebuilds or replacements of applicable engines performed 6 months following the effective date of this certification must use this certified Engelhard equipment (or other equipment certified to reduce PM by at least 25 percent). This requirement will continue for such engines until such time as it is superseded by equipment that is certified to trigger the 0.10 g/bhp-hr emission standard for less than a life-cycle cost of $7,940 (in 1992 dollars). Engelhard has certified this equipment to a post-rebuild PM certification level of 0.19 g/bhp-hr. Urban bus operators who choose to comply with program 2 and use this equipment will use this PM emission value from Table A. when calculating their average fleet PM level.

II. Summary and Analysis of Comments

EPA received comments from two parties on the Engelhard application during the comment period. The Chicago Transit Authority commented that, while it had no specific comments relative to the Engelhard application, durability testing should be performed with all catalytic converters and expressed a concern over increased backpressure and possible negative effects as the catalytic converter accumulates mileage in service. Engine Control Systems, Ltd.(ECS) commented that this application should only apply to the 1992–1993 L–10 EC model. ECS also asked if the muffler system for which certification is requested by Engelhard will include a removable catalyst section or be fully sealed.

In regard to concerns expressed relative to the need for durability testing, the retrofit/rebuild regulation does not require durability testing. However, while the regulation does not require durability testing, it does require that the certifier supply a defect warranty over the initial 100,000 mile period of use of a certified system. Accordingly, the certifier is required to replace any defective part that is included in the certified kit during the 100,000 mile warranty period. With regard to the issue of backpressure increase and concern over negative effects on the engine, no specific information was provided by the CTA relative to the certification being discussed herein. Therefore, EPA does not find reason to deny this certification based on these concerns. However, should operators experience backpressure increase during use and negative engine effects, such information should be provided to EPA so that this issue may be reviewed in greater detail.

ECS commented that this application should only apply to the 1992–1993 L–10 EC model. EPA has determined that it is appropriate to limit this certification to apply to the 1992–1993 Cummins L–10 EC model based on the test data provided. In the future, Engelhard may supply additional information to extend the applicability of this certification to other models. If this occurs, EPA will provide the opportunity for public comment. ECS also asked if the muffler system for which certification is requested by Engelhard will include a removable catalyst section or be fully sealed. In a letter dated September 29, 1997, Engelhard states that each muffler is specifically designed to fit a specific bus, engine and exhaust configuration. These designs may or may not include a removable center body. However, if at all possible it is Engelhard's practice to utilize the removable center body technology in its muffler designs.

III. Certification Approval

The Agency has reviewed this application, along with comments received from interested parties, and finds that this equipment reduces particulate matter emissions without causing urban bus engines to fail to meet other applicable Federal emission requirements. Additionally, EPA finds that installation of this equipment will not cause or contribute to an unreasonable risk to the public health, welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the engine manufacturer's emission related part. The application meets the requirements for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR 85.1401 and 85.1415).

IV. Operator Requirements and Responsibilities

This equipment may be used immediately by urban bus operators who have chosen to comply with either program 1 or program 2. Operators having certain engines who have chosen to comply with program 1 must use equipment certified within cost limitations to reduce PM emissions by 25 percent or more when those engines are rebuilt or replaced. Today's **Federal Register** notice certifies the above-described Engelhard equipment as meeting the PM reduction and cost limitation requirement. Urban bus operators choosing to comply with program 1 must use the certified Engelhard equipment (or other equipment that is certified in the meantime to reduce PM by at least 25%) for any engine that is listed in Table A that undergo rebuild on or after September 21, 1998, until such time as the 0.10 g/bhp-hr standard is triggered for the applicable engines.

Operators who choose to comply with program 2 and use the Engelhard equipment will use the appropriate PM emission level from Table A. when calculating their fleet level attained (FLA).

As stated in the regulations, operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements, beginning January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Dated: March 12, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–7308 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5984–4]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Detroit Diesel Corporation (DDC) has submitted to the Agency a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O. The notification, with cover letter dated December 8, 1997 describes equipment intended to comply with the 0.10 g/bhp-hr particulate matter (PM) standard.

The candidate equipment is applicable to all 1985 through 1993 model year federal and California certified 6V92TA DDEC engines manufactured by Detroit Diesel Corporation (DDC). This includes all DDEC II engines, DDEC I engines (1985 through 1987), and methanol-fueled engines (manufactured from 1991 through 1993).

The equipment utilizes components from DDC's certified engine upgrade kit, modified fuel injectors, conversion from DDEC II to DDEC III engine control system, and a converter/muffler (previously certified to reduce particulate matter by 25 percent and manufactured by either Engine Control System Ltd, Engelhard Corporation, or Nelson Industries).

Both the federal and California exhaust emissions standards for NOx were lowered to 5.0 g/bhp-hr beginning with the 1991 model year. The emissions data provided with DDC's notification indicate that engines equipped with the candidate equipment can meet the 5.0 g/bhp-hr NO_x standard. Therefore, if certified, the equipment could be used for all applicable engines, including those in California.

No life cycle costs information has been submitted by DDC. If certified, no new requirements would be placed on operators, and no operator would be required to purchase this equipment as a result of the certification.

Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted.

The Agency will review this notification of intent to certify, as well as any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XXIV of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located at the address listed below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category XXIV, at the address below, and an identical copy should be submitted to William Rutledge, also at the address below.

DATES: Comments must be submitted on or before May 4, 1998.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XXIV), Room M–1500, 401 M Street SW., Washington, DC 20460.
2. William Rutledge, Engine Programs and Compliance Division (6403J), 401 "M" Street SW., Washington, DC 20460.

The DDC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 564–9297.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the

affected buses must use equipment which has been certified by the Agency. Requirements under either of the two compliance options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving at least a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent To Certify

By a notification of intent to certify, DDC applied for certification of equipment applicable to all of its federal and California certified 6V92TA model engines having electronically controlled fuel injection (Detroit Diesel Electronic Control—DDEC) that were originally manufactured between 1985 through December 31, 1994. The notification, with cover letter dated December 8, 1997, signed with the erroneous date of December 12, 1998, and labeled with an "Issued" date of November 19, 1997, describes equipment that is intended to comply with the 0.10 g/bhp-hr standard and is applicable to 6V92TA DDEC engines of model years 1985—1993. DDEC I engines (1985 through 1987) and methanol-fueled engines (manufactured from 1991 through 1993) may also utilize this kit.

The equipment utilizes components from DDC's certified engine upgrade kit, modified fuel injectors, conversion from DDEC II to DDEC III engine control system, and a converter/muffler (previously certified to reduce particulate matter by 25 percent and manufactured by either Engine Control Systems Ltd, Engelhard Corporation, or Nelson Industries).

The equipment to be certified is included in three constituent kits. The three constituent kits included in this submission are as follows:

Engine Rebuild Kit—Newly Manufactured Parts: This kit is comprised of newly manufactured parts and consist of a gasket kit, air inlet hose, blower drive gear (2.05 to 1), blower by-pass valve assembly, cylinder kits (piston assemblies and cylinder liners), new electronic unit fuel injectors and DDEC II to DDEC III conversion kits.

Engine Rebuild Kit—Reliabilt® Parts: This kit includes Reliabilt® remanufactured parts, including camshafts, blower assembly, turbocharger and head assemblies.

Converter/Muffler Kits: In order to provide the greatest flexibility to transit operators by providing several converter/muffler options, DDC plans to include the converter/mufflers provided by three suppliers: Engelhard Corporation, Engine Control Systems Ltd, and Nelson Industries. Transit operators will be able to select a converter/muffler from any one of the suppliers which will be packaged as a direct replacement for the vehicle muffler and which will accommodate the installation requirements of the various engine/vehicle combinations. Certification of the Engelhard CMX™ converter/muffler is described in a **Federal Register** notice of May 31, 1995 (60 FR 28402. The Engine Control Systems' converter/muffler is described in a **Federal Register** notice of January 6, 1997 (62 FR 746). Nelson Industries' converter/muffler is described in a **Federal Register** notice of November 26, 1997 (62 FR 63159).

One of each type of constituent kit is required for the rebuild of an engine. The engine rebuild kit usage is based on the required engine power rating (253 and 277 horsepower is available), engine rotation direction and orientation (43 degree tilt, 15 degree tilt, and upright). The notification includes parts lists. The converter/muffler kit usage is based on the operator's choice of converter supplier and the engine/vehicle combination.

DDC states that standard procedures, as described in the service manual of 92 Series engines, are to be used when rebuilding the base engine using the candidate kit. No unique rebuild procedures are required. Additionally, there are no differences in service intervals or maintenance practices for the base engine associated with the installation of the kit. The converter/muffler requires no regularly scheduled maintenance, only an occasional cleaning if the maximum back pressure of the exhaust system is exceeded.

DDC presents exhaust emission data that were developed for the engine configuration rated at 277 horsepower. Testing of the candidate kit was conducted using each of the three converter/mufflers with the upgraded engine configuration. The test data indicate that the emissions of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_x), and smoke measurements for the engine equipped with the candidate equipment are less than exhaust emissions standards applicable to 1993 model year urban buses. The data is shown in the table below.

EXHAUST EMISSIONS FROM 6V92TA DDEC II (277 HP)

Gaseous and particulate (g/bhp-hr)					Smoke (percent opacity)			Comment
HC	CO	NO_x	PM	BSFC[a]	ACC	LUG	Peak	
1.3	15.5	5.0	0.10[b]	.....	20	15	50	1993 Urban Bus Standards.
0.3	1.0	4.8	0.08	0.516	1.7	1.2	3.0	Converter/Muffler A.
0.1	0.2	4.7	0.08	0.506	2.2	1.9	2.9	Converter/Muffler B.
0.2	0.5	4.9	0.095	0.517	1.6	1.3	2.7	Converter/Muffler C.

[a] Brake specific fuel consumption in units of pounds of fuel per brake-horsepower-hour.
[b] Non-compliance penalties are available up to 0.25 g/bhp-hr.

No life cycle costs information has been submitted by DDC. DDC does not intend certification of this equipment to trigger program requirements for the applicable engines.

Even if ultimately certified by EPA, the equipment described in DDC's notification may require additional review by the California Air Resources Board (CARB) before use in California. EPA recognizes that special situations

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may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the federal urban bus program apply to several metropolitan areas in California, EPA understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Those interested in additional information should contact the Aftermarket Part Section of CARB, at (818) 575–6848.

Certification of the candidate DDC equipment would affect operators as follows. EPA has not yet certified equipment, for the applicable DDEC engines, to comply with the 0.10 g/bhp-hr standard and as being available for less that the applicable life cycle cost. Therefore, the 0.10 g/bhp-hr PM standard has not been triggered for the applicable engines. If the candidate equipment is certified, then no new requirements would be placed on operators and no operator would be required to purchase this equipment as a result of certification.

If the DDC kit is certified, then it would be available to be used in full compliance with urban bus program requirements. Certification of CMX™ converter/muffler manufactured by the Engelhard Corporation (60 FR 28402; May 31, 1995) triggered the requirement for the applicable engines, when rebuilt or replaced, to reduce PM by at least 25 percent. Until such time that the 0.10 g/bhp-hr standard is triggered, the certification of the CMX™ means that operators who elect to use compliance program 1 must use equipment certified to reduce PM emissions by at least 25 percent, when rebuilding or replacing the applicable engines. If certified, the DDC kit would meet, and exceed, this requirement. The DDC kit could also be used in full compliance when the program requirement to use equipment certified to the 0.10 g/bhp-hr standard is triggered.

If the Agency certifies the candidate equipment, then operators who choose to comply with Program 2 and install this equipment, would use the 0.10 g/bhp-hr certification level in their calculations for fleet level attained (FLA) as specified in the program regulations.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge relevant to: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the DDC notification of intent to certify should be certified pursuant to the Urban Bus Rebuild Requirements. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket. These documents will also be available for public review and comment.

Dated: March 12, 1998.

Richard D. Wilson,

Acting Assistant Administrator, Air and Radiation.

[FR Doc. 98–7309 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5439–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed March 09, 1998 Through March 13, 1998 Pursuant to 40 CFR 1506.9

EIS No. 980070, FINAL EIS, NPS, ME, Saint Croix Island International Historic Site, General Management Plan, Implementation, Calais, Washington County, ME, Due: April 20, 1998, Contact: David Clark (207) 288–5472.

EIS No. 980071, DRAFT EIS, IBR, UT, Narrows Dam and Reservoir Project, Construction of Supplemental Water Supply for Agricultural and Municipal Water Use, Gooseberry Creek, Sanpete and Carbon Counties, UT, Due: May 04, 1998, Contact: Kerry Schwartz (801) 379–1167.

EIS No. 980072, FINAL EIS, NRC, ADOPTION—NAT, Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs, Implementation, Due: April 20, 1998, Contact: Dr. Edward Y. Shum (301) 415–8545. The U.S. Nuclear Regulatory Commission's has adopted the US Department of Energy's FEIS #950163 filed with the U.S. Environmental Protection Agency on 04–21–95, NRC was not a Cooperating Agency on this project. Recirculation of the document is necessary under Section 1506.3(b) of the Council on Environmental Quality Regulations

EIS No. 980073, DRAFT SUPPLEMENT, FHW, PA, Marshalls Creek Traffic Study, Construction, New and Updated Information, Connector between PA–209, Business 209 and PA–402, COE Section 404 and NPDES Permits, Middle Smithfield and Smithfield Townships, Monroe County, PA, Due: May 04, 1998, Contact: Ronald W. Carmichael (712) 221–3461.

EIS No. 980074, DRAFT EIS, AFS, MT, Stillwater Mine Revised Waste Management Plan and Hertzler Tailings Impoundment, Construction and Operation, Plan-of-Operation, and COE Section 404 Permit, Custer National Forest, Stillwater County, MT, Due: May 19, 1998, Contact: Pat Pierson (406) 446–2103.

EIS No. 980075, DRAFT SUPPLEMENT, COE, NY, NJ, Arthur Kill Channel—Howland Hook Marine Terminal, Deepening and Realignment, Limited Reevaluation Report (LRR) Port of New York and New Jersey, NY and NJ, Due: May 04, 1998, Contact: Mark H. Burlas (212) 264–4663.

EIS No. 980076, FINAL EIS, FHW, MO, MO–60, Transportation Improvements, Connecting the Van Buren to Poplar Bluff (Job No. J9P0455Z), COE Section 404 Permit, Butter and Carter Counties, Mo, Due: April 20, 1998, Contact: Donald Neumann (573) 636–7104.

EIS No. 980077, DRAFT EIS, BOP, DC, District of Columbia, Department of Corrections (DCDC), Felony Inmate Population, Implementation, Contracting Private Correctional Facilities for Housing of Inmate Population, United States Capitol, City of Washington, D.C., Due: May

05, 1998, Contact: David J. Dorworth (202) 514–6470.

EIS No. 980078, FINAL EIS, USN, FL, SC, VA, NC, Cecil Field Naval Air Station, Realignment of F/A–18 Aircraft and Operational Functions, to Other East Coast Installations; NAS Oceana, VA; MCAS Beaufort, SC and MCAS Cherry Point, NC, Implementation, COE Section 404 Permit, FL, SC, NC and VA, Due: April 20, 1998, Contact: J. Daniel Cecchini (703) 604–5469.

EIS No. 980079, DRAFT EIS, IBR, CA, Programmatic—CALFED Bay-Delta Program, Long-Term Comprehensive Plan to Restore Ecosystem Health and Improve Water Management, Implementation, San Francisco Bay—Sacramento/San Joaquin River Bay-Delta, CA, Due: June 01, 1998, Contact: Rick Brietenbach (916) 657–2666.

EIS No. 980080, DRAFT EIS, IBR, CA, NV, CA, NV, Truckee River Operating Agreement (TROA, Modify Operation and Selected Non-Federal Reservoirs, Implementation, Truckee River Basin, EL Dorado, Nevada, Placer and Sierra Counties, CA and Douglas, Lyon, Storey and Washoe Counties, NV, Due: June 19, 1998, Contact: David Overvold (702) 884–8367.

EIS No. 980081, DRAFT EIS, NOA, AK, Kachemak Bay National Estuarine Research Reserve (KBNERR) Management Plan, Operations and Development, Southcentral, AK, Due: May 04, 1998, Contact: Stephanie Thornton (301) 713–3125.

EIS No. 980082, FINAL EIS, AFS, MT, Poorman Project, Implementation, Harvesting and Road Construction, Helena National Forest, Lincoln Ranger District, Lewis and Clark County, MT, Due: April 20, 1998, Contact: Thomas J. Andersen (406) 449–5201 ext. 277.

EIS No. 980083, FINAL EIS, MMS, AK, Beaufort Sea Planning Area Outer Continental Shelf Oil and Gas Lease Sale 170 (1997) Lease Offering, Offshore Marine, Beaufort Sea Coastal Plain, North Slope Borough of Alaska, Due: April 20, 1998, Contact: George Valiulis (703) 787–1662.

EIS No. 980084, FINAL EIS, FHW, RI, Newport Marine Facilities Project, To Develop the Marine Mode of the Intermodal Gateway Transportation Center, Selected siting in various locations within the City of Newport, Towns of Middletown and Portsmouth, Funding, COE Section 404 Permit and US Coast Guard Permit, Aquidreck Island, RI, Due: April 20, 1998, Contact: Daniel Berman (401) 528–4541.

EIS No. 980085, FINAL EIS, AFS, CA, Liberty Forest Health Improvement Project, Implementation, Tahoe National Forests, Sierraville Ranger District, Sierra and Nevada Counties, CA, Due: April 20, 1998, Contact: John Kennedy (530) 994–3401.

Amended Notices

EIS No. 980018, DRAFT EIS, AFS, AK, Crane and Rowan Mountain Timber Sales, Implementation, Tongass National Forest, Stikine Area, Kuiu Island, AK, Due: March 30, 1998, Contact: Everett Kissenger (907) 772–3841.

Published FR 02–06–98—Review Period extended.

EIS No. 970500, DRAFT SUPPLEMENT EIS, AFS, MT, Asarco Rock Creek Copper and Silver Mining Construction and Operation Project, Plan of Operations Approval, Special Use Permit (s), Road Use Permit, Mineral Material Permit, Timber Sale Contract and COE Section 404 Permit Issuance, Kootenai National Forest, Sanders County, MT, Due: 04–10–98, Contact: Paul Kaiser, (406) 293–6211.

Published FR 01–09–98—Review Period extended.

Dated: March 17, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–7355 Filed 3–19–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5490–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 02, 1998 Through March 06, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–COE–E30039–FL Rating EC2, Sunny Isles (North Miami) Proposed Modification to a segment of the Dade County Beach Erosion Control and Hurricane Protection Project, Dade County, FL.

Summary: EPA expressed environmental concerns regarding unavoidable losses of biotic resources and how effectively they will be mitigated.

ERP No. D–COE–K30030–CA Rating EO2, Unocal Avila Beach Cleanup Project, Petroleum Hydrocarbon Contamination, Approval and Implementation, US Army COE Section 10 and 404 Permits Issuance, San Luis Obispo County, CA.

Summary: EPA expressed environmental objections that the DEIS did not adequately address the environmental consequences of implementing the "No-Action" alternative in Area 7 despite data in the DEIS which indicates that Area 7 is extensively contaminated with hydrocarbons which may be adversely affecting shellfish and other aquatic species. EPA commented that it is unclear whether the preferred "No-Action" alternative for Area 7 is consistent with Federal and State environmental laws. EPA also indicated that there was insufficient discussion in the DEIS to determine the extent to which existing contamination in the intertidal zone Area 7 may be affecting the environment and human health and whether a "No-Action" decision in Area 7 would exacerbate those impacts.

ERP No. D–COE–K39046–AZ Rating EC2, Rio Salado Environmental Restoration of two Sites along the Salt River: (1) Phoenix Reach and (2) Tempe Reach, Feasibility Report, in the Cities of Phoenix and Tempe, Maricopa County, AZ.

Summary: EPA expressed environmental concerns that the project's recreational and interpretive aspects received a higher value than potential wildlife and aquatic-related functions. EPA expressed concerns about the potential relationship of this project with several sand and gravel mining operations in the area, in particular, whether mitigation implemented by the sand and gravel operators may be adversely affected by the Salado project.

Final EISs

ERP No. F–COE–K67020–CA, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, Construction, Mining-Use-Permit and COE Section 404 Permit, City of Healdsburg, Sonoma County, CA.

Summary: EPA continued to have environmental objections with the Supplemental DEIS. EPA requested that the Record of Decision reflect the

mitigation measures contained in the FEIS.

ERP No. F-FHW-E40747-NC, Fayetteville Outer Loop Project, US 401 to I–95 at the existing US 13 Interchange, Funding and USCOE Section 10 and 404 Permit Issuance, City of Fayetteville, Cumberland County, NC.

Summary: EPA continued to have environmental concerns about the project's impact despite the deletion of the segment west of US 401. Eighty-two acres of wetlands would be lost by the 7-mile long project. Alternatives to the Eastern terminus were not addressed in the document, as EPA requested.

ERP No. F–FHW–E40758–NC, US–17/ Wilmington Bypass TransportationImprovement Program, Updated Information, TIP R–2633C, Construction from I–40 to US 421, Funding, NPDES and US Coast Guard and COE Section 10 and 404 Permits, New Hanover County, NC.

Summary: EPA continued to have environmental concerns about this segment of the proposed bypass, because of expected impacts to wetlands. EPA is pleased with the new Center Alternative, now preferred by NCDOT, because it minimizes several impacts. Other bypass segments, however, have significant issues yet to be resolved.

ERP No. F–FHW–E40760–NC, Sunset Beach Bridge No. 198 on Secondary Road NC–1172 Replacement, Over the Atlantic Intracoastal Waterway, Funding, COE Section 10 and 404 Permit, Brunswick County, NC.

Summary: EPA continued to have environmental preference to the mid-level bascule bridge alternative, our comments on the DEIS have been responded to satisfactorily.

ERP No. F–IBR–K39043–CA, American River Water Resources Investigation, Implementation, Placer, Suter, EL Dorado, Sacramento and San Joaquin Counties, CA.

Summary: EPA continued to express environmental objections to the Auburn Dam alternative, and noted that if the Auburn Dam proposal is carried forward as the preferred alternative without correcting its unacceptable impacts, it will be considered a candidate for referral to CEQ. EPA also noted that Reclamation has not identified a Federal role at this program level or a Federal preferred alternative. EPA urged Reclamation and other program sponsors to reject the Auburn Dam alternative and pursue "conjunctive use" solutions to water management in the study area.

EPA believed a balanced combination of demand management, water reclamation, transfers, and new facilities can meet area water supply needs while preserving water quality and flows needed instream for aquatic resources.

Dated: March 17, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–7356 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5984–5]

STEJ Grants Program Request for Applications Guidance FY 1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this document is to solicit applications from eligible candidates under the State and Tribal Environmental Justice (STEJ) Grants Program, sponsored by the U.S. Environmental Protection Agency, Office of Environmental Justice.

For FY 1998, EPA expects to award a total of $500,000 to states and tribes to demonstrate how to effectively address environmental justice issues. A maximum of $100,000 will be awarded to each recipient, contingent upon the availability of funds. A total of five grants are expected to be awarded. The standard project and budget periods are for one year. The grantee can request that the project and budget periods be extended up to three years, with the total budget of $100,000 provided during the first year. This guidance outlines the purpose, authorities, eligibility, and general procedures for application and award of the FY 1998 STEJ Grants.

The application must be postmarked no later than Friday, May 29, 1998.

Grants Program Overview

The State and Tribal Environmental Justice (STEJ) Grants Program was created to provide financial assistance to state and tribal environmental departments that are working to address environmental justice issues. With the increased interest in Title VI of the Civil Rights Act of 1964, EPA is seeking, through this assistance program, to support individual state's and tribe's efforts to effectively comply with Title VI in their environmental programs and/or establish an environmental justice program.

A. Program Goals

The STEJ Grants Program is intended to assist states and tribes in ultimately achieving the following environmental justice goals and objectives:

- Enhance the state or tribal government's effectiveness in complying with Title VI of the Civil Rights Act of 1964.
- Reduce or prevent disproportionately high and adverse human health or environmental effects on low-income communities and/or minority communities.
- Integrate environmental justice goals into a state's or tribe's policies, programs, and activities.
- Provide financial and technical resources to develop an enabling infrastructure at the state/local community level and tribal/tribal community level.
- Set up model programs to address enforcement and compliance issues in affected environmental justice (EJ) communities.
- Integrate measurable EJ goals within the annual Performance Partnership Agreements (PPAs) and Memorandums of Understandings (MOUs) between a state and EPA, or integrate measurable EJ goals within the Tribal Environmental Agreements (TEAs).
- Improve public participation in the decision-making processes (e.g. permitting processes, development of regulations and policies)

B. Background on Environmental Justice

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, or income with respect to the development, implementation, enforcement and compliance of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies.

Environmental justice has focused attention on the need to ensure environmental protection for all, and to empower those most often disenfranchised from the decision-making process, the low-income and/or minority communities. On February 11, 1994, President Clinton issued Executive Order (EO) 12898, AFederal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations@ (Appendix A).

C. Background on Title VI

Title VI states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Presidential memorandum accompanying EO 12898 directs Federal agencies to ensure compliance with the nondiscrimination requirements of Title VI for all Federally-funded programs and activities that affect human health or the environment.

Title VI itself prohibits intentional discrimination. The Supreme Court has ruled, however, that Title VI authorizes Federal agencies, including EPA, to adopt implementing regulations that prohibit discriminatory *effects*. Frequently, discrimination results from policies and practices that are neutral on their face, but have the *effect* of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative. (See Appendix B for additional information on Title VI).

Eligible Applicants and Activities

D. Who May Submit an Application?

Any state or tribal agency that manages, or is eligible to manage, an EPA program, which has an expressed interest in working with community-based grassroots organizations and other environmental justice stakeholders to address environmental justice concerns in communities. EPA requests that only one application be submitted from each state or tribe interested in receiving assistance. The project can be a partnership involving more than one state department, or if from a tribe, more than one tribal department. The degree of support provided by top government officials from either the state or tribe will be an important factor in the selection process.

E. May an Individual or Organization Apply?

No. Only a state or federally-recognized tribal government may apply. However, the applying states or tribes should work with community-based grassroots organizations when developing their proposals. Preference may be given to the states or tribes who involve community-based grassroots organizations in the development of their proposals.

F. What Types of Projects Are Eligible for Funding?

Funds are to be used for activities authorized by the appropriate statutory provisions listed in paragraph G below, to accomplish one or both of the following:

1. The development or enhancement of a program to work directly with communities to improve the state's or tribe's compliance with Title VI of the Civil Rights Act of 1964 in the development and implementation of environmental programs.

Example 1: Create a review team to analyze the state's or tribe's future conduct or action to help ensure its environmental programs have no discriminatory environmental or human health effects based on race, color, or national origin.

Example 2: Demonstrate how to establish an appropriate enforcement program for disproportionately affected communities; and create meaningful community participation opportunities throughout enforcement & compliance activities [e.g. from the time of initial Notice of Violations to final agency enforcement decisions.]

2. The development of a model state or tribal environmental justice executive order, strategic plan, and/or conduct studies, analyses, and training in the development of a state or tribal environmental justice program.

Preferences

Preference may be given to each state or tribe which include the following in their application:

(1) A description of how environmental justice/community-based grassroots organizations were involved in the development of the proposal, and

(2) Identification of the matching or cost sharing funds to be provided by the state or tribe for the project.

G. What are the Statutory Authorities for the Grants?

The State and Tribal Environmental Justice Grants are for multimedia environmental justice activities. For this reason, each project must include activities which are authorized by two or more of the following environmental statutes.

a. Clean Water Act, Section 104(b)(3): Conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

b. Safe Drinking Water Act, Sections 1442(c)(3): Develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

c. Solid Waste Disposal Act, Section 8001(a): Conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste management and hazardous waste management.

d. Clean Air Act, Section 103(b)(3): Conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

e. Toxic Substances Control Act, Section 10(a): Conduct research, development, and monitoring activities on toxic substances.

f. Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(A): Conduct research on pesticides.

g. Comprehensive Environmental Response, Compensation, and Liability Act, Section 311(c): Conduct research related to the detection, assessment, and evaluation of the effects on, and risks to, human health from hazardous substances.

h. Marine Protection, Research, and Sanctuaries Act, Section 203: Conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

H. What Regulations Apply to These Grants?

The STEJ Grants will be governed by 40 CFR part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments, and OMB Circular A–87. Note, in particular, that there are restrictions on the use of grant funds for lobbying and that grant funds may not be use for intervention in federal regulatory or adjudicatory proceedings.

Funding

I. Are Matching Funds Required?

Matching funds are not required, but are encouraged. EPA may give preference to those states or tribes which provide matching funds, since this would demonstrate a greater commitment.

Application Requirements

J. What Is Required for Applications?

In order to be considered for funding under this program, proposals must have the following:

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1. Application for Federal Assistance (SF 424) the official form required for all federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application, and three copies, signed by a person duly authorized.

2. Federal Standard Form (SF 424A) and budget detail, which reflects the total budget for the entire duration of the project. Budget figures/projections should support your work plan/narrative. The EPA portion of these grants will not exceed $100,000, therefore your budget should reflect this upper limit on federal funds.

3. Signed "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" form, and "Certification Regarding Lobbying" form, which can be found in Appendix C.

4. Narrative/work plan of the proposal. A narrative/work plan describes the applicant's proposed project. The pages of the work plan must be letter size 8½" x 11"), with normal type size (12 cpi), and at least 1" margins. The narrative/work plan should be no more than five pages.

The narrative/work plan must describe how the proposed project will meet the Program Goals, as described in Section A, and whether one or both of the Eligible Projects, as defined in Section E, are being proposed. In addition, the work plan must describe how the project addresses issues related to at least two of environmental statutes listed in Section G. Lastly, the work plan must: (a) Discuss how the project will be evaluated, (b) discuss what will be the measures of success, and (c) describe how the project/program will be sustained.

5. A letter of commitment from the department head or government head (e.g. governor, president, chairperson, chief)

6. State and Tribal applicants should establish working relationships with local community-based organizations in developing their proposals.* A list of the organizations who participated in the development of the grant proposal, along with contact names and numbers, is required.

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* Many community-based organizations across the nation have already begun implementing environmental justice programs at the local level, which states and tribes may want to use as examples to help build their environmental justice programs. By asking those who are most impacted by environmental injustices to participate in building the state's or tribe's environmental justice program, the states and tribes will be more likely to obtain broad support for the concept and the partnership it reflects.

K. When and Where Must Applications Be Submitted?

The applicant must submit one signed original application with the required attachments and three copies to the primary contact of the appropriate EPA regional office (see page 8 and Appendix D). The application must be postmarked no later than Friday, May 29, 1998.

Process for Awarding Grants

Proposals are to be developed by states or tribes (EPA encourages the involvement of community-based/grassroots organizations) and submitted to their respective EPA Regional Offices. The initial review will be conducted by each Region through a Regional panel, which will select the top proposals for submission to EPA Headquarters, for final review and selection. The grants will be processed for award and managed by the Regions. The plan is to fund the five best State and/or Tribal Environmental Justice project proposals.

March 27–May 29—States and Tribes Develop Proposals and Submit to EPA Regions
June 1–June 26—EPA Regions Review Proposals and Provide Recommendations to Headquarters
June 22–July 24—OEJ Headquarters Convenes Review Panel, Receives Recommendations, Completes Selections and Submits Final Selections to Grants Office
July 27–September 1—EPA Regional Grants Management Offices Process Applications and Award Grants
September 11—National Announcement on Awards

Reporting

State and Tribal agencies that are awarded the State and Tribal Environmental Justice (STEJ) grants will be required to submit semi-annual reports, in accordance with 40 CFR 31.40 and 31.41, to the appropriate Regional Environmental Justice Coordinator and Project Officer. Reports will include, but not be limited to, information on:

- Funds expended
- Tasks accomplished
- Issues/problems encountered and method of resolution
- Results achieved

A final summary report is required by 40 CFR 31.40(b) at the end of the project period. This final report should include a discussion on the continuation and institutionalization of the state's and/or tribe's efforts to comply with Title VI and provide for environmental justice.

If you have any questions regarding the interpretation of this guidance, please call your regional contact listed below, or Daniel Gogal, STEJ Grants Manager, Office of Environmental Justice, at (202) 564–2576 or 1–800–962–6215.

Regional Contact Names and Addresses

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Primary Contact: Rhona Julien (617) 565–9454, USEPA Region 1 (RAA), John F. Kennedy Federal Building, Boston, MA 02203
Secondary Contact: Pat O'Leary (617) 565–3834

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Primary Contact: Melva Hayden (212) 637–5027, USEPA Region II, 290 Broadway, 26th Floor, New York, NY 10007
Secondary Contact: Natalie Loney (212) 637–3639

Region III—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Primary Contact: Reginald Harris (215) 566–2988, USEPA Region III (3DA00), 841 Chestnut Building, Philadelphia, PA 19107
Secondary Contact: Mary Zielinski (215) 566–5415

Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Primary Contact: Connie Raines (404) 562–9671, USEPA Region IV, 61 Forsyth Street, Atlanta, GA 30303
Secondary Contact: Deborah Carter (404) 562–9668

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Primary Contact: Ethel Crisp (312) 353–1442, USEPA Region V, 77 West Jackson Boulevard (DR–7J), Chicago, IL 60604–3507
Secondary Contact: Karla Johnson (312) 886–5993

Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Primary Contact: Shirley Augurson (214) 665–7401, USEPA Region VI (6E–N), 1445 Ross Avenue, 12th Floor, Dallas, TX 75202–2733

Region VII—Iowa, Kansas, Missouri, Nebraska

Primary Contact: Althea Moses (913) 551–7649 or 1–800–223–0425, USEPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101
Secondary Contact: Kim Olson (913) 551–7539

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Primary Contact: Marcella Devargas (303) 312–6161, USEPA Region VIII (8ENF–EJ), 999 18th Street, Suite 500, Denver, CO 80202–2466
Secondary Contact: Elisabeth Evans (303) 312–6053

Region IX—Arizona, California, Hawaii, Nevada, American Samoa, Guam

Primary Contact: Katy Wilcoxen (415) 744–1565, USEPA Region IX (CMD–6), 75 Hawthorne Street, San Francisco, CA 94105
Secondary Contact: Willard Chin (415) 744–1204

Region X—Alaska, Idaho, Oregon, Washington

Primary Contact: Susan Morales (206) 553–8580, USEPA Region X (OI–085), 1200 Sixth Avenue, Seattle, WA 98101
Secondary Contact: Joyce Kelly (206) 553–4029

Robert J. Knox,

Acting Director, Office of Environmental Justice.

[FR Doc. 98–7310 Filed 3–19–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5980–6]

Proposed De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, Hayford Bridge Road Groundwater Superfund Site, St. Charles County, MO

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into a de minimis administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). This settlement is intended to resolve the liability of the following parties for response costs incurred and to be incurred at the Hayford Bridge Road Groundwater Superfund Site, St. Charles County, Missouri: AlliedSignal, Inc.; United States Department of Energy; Borden, Inc.; Campbell Soup Company; Cargill, Incorporated; Cooper Industries; Hoechst Celanese Corporation; Chemtech Industries, Inc.; The Dow Chemical Company; E.I. du Pont de Nemours & Company; Ford Motor Company; General Electric Company; Hager, C. & Sons Hinge Manufacturing Company, Inc.; Intalco Aluminum Corporation; Nilok Chemicals, Incorporated; PPG Industries, Inc.; Reichhold Chemicals, Inc.; Rohr Inc.; St. Claire Die Casting Company; Union Camp Corporation; and Westinghouse Electric Corporation. The proposed settlement consent order was signed by the Environmental Protection Agency (EPA) on September 23, 1997, and approved by the United States Department of Justice on February 25, 1998.

DATES: Written comments must be provided on or before April 20, 1998.

ADDRESSES: Comments should be addressed to Baerbel Schiller, Senior Counsel, Superfund Division, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: *In the matter of Hayford Bridge Road Groundwater Site*, EPA Docket No. VII–97–F–0017.

The proposed administrative consent order may be examined in person at the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. To request a copy of the administrative consent order, write to the address shown above and refer to the matter by name and docket number.

SUPPLEMENTARY INFORMATION: The proposed administrative settlement concerns the Hayford Bridge Road Groundwater Superfund Site which is located in the east central portion of Missouri just north of the City of St. Charles in St. Charles County, Missouri. The Findett Corporation has operated a recycling business at the Site since 1962. Between 1962 and 1973, about 80% of Findett's business involved the reclamation of heat transfer fluids, hydraulic fluids, solvents and catalysts. Through these reclamation processes, wastes containing polychlorinated biphenyls (PCBs) and volatile organic chemicals (VOCs) were disposed at the Site resulting in contamination of the soils and groundwater.

EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") at the Site and the RI/FS Report was completed in 1988. The decision by EPA on the remedial action to be implemented at the Site was embodied in a Record of Decision ("ROD"), executed on December 28, 1988. In May 1995, EPA issued an amendment to the 1988 ROD. In 1989, EPA and the Findett Corporation signed a consent decree which obligated Findett to implement the ROD. Findett is currently implementing the groundwater remedy and is expected to commence soil bioremediation on its property in the near future. Between May 1997 and August 1997, the de minimis parties signed the administrative consent order, agreeing to reimburse EPA $250,535 for a portion of the Agency's past and future response costs in exchange for the United States' covenant not to sue the parties pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, subject to certain reservations of rights by the United States.

Dated: March 9, 1998.

Baerbel Schiller,

Acting Director, Superfund Division, EPA Region VII.

[FR Doc. 98–7304 Filed 3–19–98; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2263]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

March 16, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed April 6, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands (ET Docket No. 95–183, RM–8553).

Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 and 38.6–40.0 GHz (PP Docket No. 93–253)

Number of Petitions Filed: 12.

Subject: Amendment of 73–202(b), Table of Allotments, FM Broadcast Station (Wellington, Texas) (MM Docket No. 97–104, RM–9048).

Number of Petitions Filed: 1.

Subject: Reallocation of Television Channels 60–69, the 746–806 MHz Band (ET Docket No. 97–157).

Number of Petitions Filed: 4.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–7325 Filed 3–19–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, March 24, 1998, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum re: Executive Management Report for the Year-Ending December 31, 1997.

Memorandum and resolution re: Final Amendments to Part 337—Expanded Examination Cycle for Certain Small Insured Institutions.

Memorandum and resolution re: Final Amendments to Part 309–E–FOIA.

Discussion Agenda:

Memorandum and resolution re: Federal Financial Institutions Examination Council, Supervisory Policy Statement on Investment Securities and End-User Derivative Activities.

Memorandum and resolution re: Final Amendments to Parts 303, 325, 326, 327, 346, 347, 351, and 362 of the FDIC's Rules and Regulations—International Banking.

Memorandum and resolution re: General Counsel's Opinion No. 10 which interprets charges constituting "interest" for purposes of section 27 of the Federal Deposit Insurance Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 17, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–7416 Filed 3–18–98; 10:26 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, March 17, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) reports of the Office of Inspector General and (2) matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Director Joseph H. Neely (Appointive), concurred in by Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)((9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: March 17, 1998.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 98–7417 Filed 3–18–98; 10:26 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1208–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1208–DR), dated March 9, 1998, and related determinations.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 9, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe storms and flooding beginning on March 7, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster: Coffee, Dale, Escambia, Geneva, and Houston Counties for Individual Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–7294 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Manatee County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7288 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Broward, Flagler, and St. Johns Counties for Individual Assistance.

Nassau County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7289 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 11, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Liberty County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7290 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 6, 1998.

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FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Clay County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7291 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1193–DR]

Government of Guam; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for Government of Guam (FEMA–1193-DR), dated December 17, 1997, and related determinations.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the cost share arrangement under FEMA–1193-DR is adjusted at 90 percent Federal funding for eligible costs for the Individual and Family Grant Program and the Public Assistance and Hazard Mitigation Grant Programs. This cost share adjustment is subject to the conditions set forth in the FEMA/Government of Guam Agreement addressing floodplain management measures.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–7287 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1207–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1207-DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from a severe winter storm on February 4–6, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act").

I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster: Bath, Estill, Jackson, Laurel, Lewis, McCreary, Powell, Rockcastle, and Wayne Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–7295 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1206–DR]

State of New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1206-DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery

Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Jersey, resulting from a severe winter coastal storm, high winds, and flooding on February 4–9, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joseph Picciano of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared major disaster: Atlantic and Cape May Counties for Individual Assistance and Public Assistance.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–7293 Filed 3–19–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 203–011075–043.

Title: Central America Discussion Agreement.

Parties: Concorde Shipping, Inc., Dole Fresh Fruit, King Ocean Central America, S.A., Crowley American Transport, Inc., Seaboard Marine, Ltd., A.P. Moller-Maersk Line, Sea-Land Service, Inc.

Synopsis: The proposed Amendment revises Article 7(k) of the Agreement to provide that the amount of the required security is $5,000, or one-half of the total estimated operating expenses of the Agreement in the year immediately preceding the calendar year in which the new member joins the Agreement.

By Order of the Federal Maritime Commission.

Dated: March 16, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–7273 Filed 3–19–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Community Trust Bancorp, Inc., Pikeville, Kentucky; to acquire 100 percent of the voting shares of Community Trust Bank of West Virginia, Williamson, West Virginia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Northern Trust Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of TrustBank Financial Corporation, Denver, Colorado, and thereby indirectly acquire Trust Bank of Colorado, Denver, Colorado.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of CBT Corporation, Paducah, Kentucky, and thereby indirectly acquire Citizens Bank & Trust Company of Paducah, Paducah, Kentucky; Bank of Marshall County, Benton, Kentucky; Graves County Bank, Inc., Mayfield, Kentucky; Pennyrile Citizens Bank and Trust Company, Hopkinsville, Kentucky.

In connection with this application, Applicant also has applied to acquire United Commonwealth Bank, FSB, Murray, Kentucky, and thereby engage in operating a savings association pursuant to § 228.28(b)(4) of the Board's Regulation Y. **Comments regarding this**

notice should be received not later than April 3, 1998.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. South Tulsa Financial Corporation, Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Bank South, N.A., Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, March 16, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7245 Filed 3–19–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee, and its second tier subsidiary, Union Planters Holding Corporation, Memphis, Tennessee, to acquire Capital Savings Bancorp, Inc., Jefferson City, Missouri, and thereby indirectly acquire Capital Savings Bank, FSB, Jefferson City, Missouri, and thereby engage in operating a thrift, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 16, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7246 Filed 3–19–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, March 25, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets NW, Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7419 Filed 3–18–98; 10:33 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Workshop

Name: Workshop on Public and Occupational Health Concerns at Los Alamos National Laboratory.

Dates: March 24, 1998.

Times: 2 p.m.–9:30 p.m.

Place: Northern New Mexico Community College, 921 Paseo De Onate, Espanola, New Mexico 87532

Tel: 505/747–2100.

Dates: March 26, 1998.

Times: 4p.m.–10 p.m.

Place: Fuller Lodge, 321 Central Avenue, Los Alamos, New Mexico 87545.

Tel: 505/622–8403.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 100 people.

Purpose: The purpose of the Workshop is to provide guidance to public health researchers on community participation in the planning, conduct, and application of research. History has demonstrated that the quality of medical and public health science is enhanced when it is planned and conducted in the social context of its work. This includes planning and conducting research that involves and impacts communities. This workshop will provide a unique opportunity to open dialogue among government, American Indian Tribes, labor, communities, and researchers. This dialogue is expected to lead to a proposed framework through which CDC promotes public health, advances democratic principles, establishes an ethical basis for community-based research, enhances scientific credibility, and provides mechanisms for building public trust while advancing the science of public health.

Matters to be Discussed: Agenda items will include presentations on ongoing projects by the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, the Agency for Toxic Substances and Disease Registry, and the New Mexico Department of Public Health. Time will be set aside for public comments and discussions with Agency staff, followed by the workshop being divided into two breakout sessions: (1) Environmental Health Issues; and (2) Occupational Health Issues.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Sage, Deputy Chief, Radiation Studies Branch (RSB), or Carolyn M. Hart, RSB, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: March 17, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–7403 Filed 3–19–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F-0165]

Edward S. Josephson; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Edward S. Josephson has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ionizing radiation for the reduction of salmonella in fresh shell eggs.

FOR FURTHER INFORMATION CONTACT: William J. Trotter, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3088.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8M4584) has been filed by Edward S. Josephson, University of Rhode Island, Food Science and Nutrition Research Center, 530 Liberty Lane, West Kingston, RI 02892-1802. The petition proposes that the food additive regulations in part 179 Irradiation in the Production, Processing and Handling of Food (21 CFR part 179) be amended to provide for the safe use of ionizing radiation for the reduction of salmonella in fresh shell eggs.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: March 4, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–7187 Filed 3–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on April 15, 1998, 8 a.m. to 5:30 p.m., and April 16, 1998, 8 a.m. to 6 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 15, 1998, the committee will: (1) Discuss and make recommendations regarding the safety of tallow and tallow derivatives used in pharmaceuticals, cosmetics, and other FDA-regulated products; and (2) discuss U.S. and global issues on edible and nonedible tallow. On April 16, 1998, the committee will discuss gelatin and dura mater products as a followup to the April 1997 and October 1997 committee meetings.

Procedure: On April 15, 1998, from 8 a.m. to 5:30 p.m., and on April 16, 1998, from 8 a.m. to 4:45 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 12, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m on April 15, 1998, and between approximately 10:50 a.m. and 11:20 a.m. and between approximately 2:45 p.m. and 3 p.m. on April 16, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 12, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On April 16, 1998, from 4:45 p.m. to 6 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this material.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 13, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–7354 Filed 3–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0143]

"Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)." The guidance document provides recommendations for donor screening and further testing for antibody to HCV, notification of consignees, transfusion recipient tracing and notification, and counseling by physicians regarding transfusion with

blood components at increased risk for transmitting HCV. This guidance is being issued in response to the recommendations of the Public Health Service Advisory Committee on Blood Safety and Availability (PHS Advisory Committee). This guidance supplements the July 19, 1996, guidance document entitled "Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and Human T–Lymphotropic Virus Type I (HTLV–I)" (the July 1996 document).

DATES: Written comments may be submitted at any time; however, comments should be submitted by May 19, 1998, to ensure their adequate consideration in preparation of any revision of the document.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)," to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

For technical/scientific questions contact Robin M. Biswas, Center for Biologics Evaluation and Research (HFM–325), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3011 or by FAX at 301–496–0338.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Donor Test Results for Antibody to Hepatitis C Virus (Anti-HCV)." The guidance document provides recommendations for the following: Further testing of donors who are repeatedly reactive for antibody to HCV, quarantine of prior collections from such donors and notification of consignees, recordkeeping, retrospective review of records of donor testing following the implementation of a licensed multi-antigen screening test for antibody to HCV, actions to be taken following indeterminate test results, actions to be taken for donors testing repeatedly reactive for antibody to HCV with no record of additional testing for HCV, and transfusion recipient notification and counseling by physicians. This guidance document supplements the July 1996 document, which provided recommendations for consignee notification for the purpose of product quarantine and disposition of prior collections from a donor who subsequently tests repeatedly reactive for antibody to HCV. The July 1996 document did not provide recommendations for the notification of recipients of such donations because no clear consensus on the public health benefit had emerged at that time.

The guidance is issued in response to recommendations from the PHS Advisory Committee. The PHS Advisory Committee met on April 24 and 25, 1997, and August 11 and 12, 1997. Topics of discussion included the improvements in the treatment and management of HCV infection, the improvements in testing for antibody to HCV, and the public health benefits of notification of transfusion recipients receiving prior collections from a donor who subsequently tests repeatedly reactive for antibody to HCV.

This guidance document represents the agency's current thinking with regard to donor screening and further testing for antibody to HCV, notification of consignees, transfusion recipient tracing and notification, and counseling by physicians regarding transfusion with blood components potentially contaminated with HCV. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements. This guidance document may contain collections of information that require OMB clearance under the Paperwork Reduction Act of 1995. FDA will seek such approval and provide an opportunity for public comment as appropriate.

II. Comments

This document is being distributed for comment purposes and for implementation at this time. FDA has determined that under its good guidance practices, that although this is a level 1 guidance document, it should be implemented while comments are obtained due to the recommendations providing further safeguards to the public health and as recommended by the PHS Advisory Committee. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Written comments may be submitted at any time, however, comments should be submitted by May 19, 1998, to ensure adequate consideration in preparation of any revision of the document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments and requests for copies should be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at http://www.fda.gov/cber/guidelines.htm".

Dated: March 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7184 Filed 3–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1998 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) announce the availability of FY 1998 funds for grants and cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activities; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available (millions)	Estiamted number of awards	Project period (years)
Action Grants with Hispanic Priority	05/27/98	$3.5	25–30	1
Women and Violence	05/27/98	$7.5	13	2–5

Note: SAMHSA also published notices of available funding opportunities in FY 1998 in the **Federal Register** on January 6, 1998, January 20, 1998, and on February 26, 1998.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1998 funds for activities discussed in this announcement were appropriated by the Congress under Pub. L. 105–78. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission

Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines

The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline
- Purpose
- Priorities
- Eligible Applicants
- Grants/Cooperative Agreements/Amounts
- Catalog of Federal Domestic Assistance Number
- Contacts
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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1998 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1998 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include: Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1998 SAMHSA Activities

4.1 Grants

4.1.1 Community Action Grants For Service Systems Change (GFA No. SM 98–003)

Application Deadline: May 27, 1998.

Purpose: The Center for Mental Health Services (CMHS) announces the continuation of its *basic program*—Community Action Grants for Service Change. CMHS is making FY 1998 funds available to communities to support the adoption of exemplary service delivery practices related to the delivery and/or organization of services or supports for children with serious emotional disturbances and adults with serious mental illness. The adult population may also have co-occurring disorders.

In addition to the "Basic Program" sponsored by CMHS, SAMHSA's Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) have joined CMHS in making FY 1998 funds available for a priority initiative for Hispanic communities to support exemplary practices for Hispanic adults and adolescents with mental health and/or substance abuse problems. This priority initiative offers the same grant vehicle as the Basic Program to Hispanic communities to address mental health and/or substance abuse problems.

This program is intended to stimulate the adoption of exemplary practices through convening partners, building consensus, aiding in eliminating barriers, decision-support and adaptation of service models to meet local needs. Grants will not support direct funding of services themselves. Projects will be successful if a grantee can develop consensus among key decision makers to adopt an exemplary practice.

Priorities: Hispanic Initiative.

Eligible Applicants: Applications may be submitted by units of State or local governments and by domestic private nonprofit and for-profit organizations such as community-based organizations, universities, colleges, and hospitals. SAMHSA encourages applications from consumer and family organizations.

Applications for the Hispanic Priority Initiative must target Hispanics, identify

an exemplary practice specific to the needs of Hispanic Americans and demonstrate the involvement of Hispanic community leadership.

Applicants must demonstrate that they are in a position to engage all the key stakeholders in the proposed consensus building/decision making process.

Grants/Amounts: It is estimated that approximately $2.75 million will be available under the Basic Program to support approximately 20 awards in FY 1998. The average award is expected to range from $50,000 to $150,000 in total costs.

In addition to the estimated $2.75 million available under the Basic Program, an additional $750,000 will be made available to support 5 to 10 awards under the Hispanic Priority Initiative in FY 1998. The average award under this initiative is expected to range from $50,000 to not more than $150,000 in total costs.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contacts: For programmatic or technical information regarding Adult Serious Mentally Ill Populations, contact: Santo (Buddy) Ruiz, Community Support Programs Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Service Administration, Parklawn Building, Room 11C–22, (301) 443–3653.

For programmatic or technical information regarding Homeless Populations, contact: Michael Hutner, PhD., Homeless Program Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Service Administration, Parklawn Building, Room 11C–05, (301) 443–3706.

For programmatic or technical information regarding Children and Adolescents with Serious Emotional Disorders and their Families, contact: Michele Herman, Child, Adolescents and Family Services Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Service Administration, Parklawn Building, Room 18–49, (301) 443–1333.

For programmatic or technical information regarding Substance Abuse Treatment, contact: David C. Thompson, Division of Practice and Systems Development, Clinical Interventions Branch, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II Building, Suite 740, (301) 443–6523.

For programmatic or technical information regarding Substance Abuse Prevention, contact: Addie Key, Division of State and Community Systems Development, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II Building, Suite 940, (301) 443–9438.

For grants management assistance, contact: Stephen J. Hudak, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 15C–05, (301) 443–4456.

The mailing address for the individuals listed above is: 5600 Fishers Lane, Rockville, MD 20857.

Application Kits: Application kits are available from: Center for Mental Health Services Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015. Voice: (800) 789–2647; TTY: (301) 443–9006; FAX: (301) 984–8796

4.2 Cooperative Agreements

A major activity for a SAMHSA cooperative agreement program is discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.2.1 Cooperative Agreements to Study Women with Alcohol, Drug Abuse, and Mental Health (ADM) Disorders Who Have Histories of Violence (Short Title: Women and Violence Study—GFA No. TI 98–004)

Application Deadline: May 27, 1998.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the availability of cooperative agreements to support the first of a two-phase study on women, ADM disorders and violence: PHASE ONE—Developing an Integrated System of Care with Services Intervention Models, Implementing the Qualitative Phase One Evaluation, and Developing Evaluation Protocols for Phase Two; and PHASE TWO—Full Scale Implementation of Integrated strategies, Services Intervention Models and Outcome Evaluation. There is a possibility of a PHASE THREE—long-term evaluation, depending on Phase Two outcome and availability of funds. This Knowledge Development and Application (KDA) program is a result of a partnership among SAMHSA and its three centers—the Center for Substance Abuse Treatment (CSAT), the Center for Substance Abuse Prevention (CSAP) and the Center for Mental Health Services (CMHS).

The goal of Phase One is the generation of new knowledge in response to two questions: (1) What constitutes an integrated system of care for women with co-occurring disorders who are victims of violence, and for their children; and (2) what are the most promising services integration models for this population and what is the rationale for their selection.

SAMHSA requests applications for cooperative agreements to conduct Phase One of the study. This phase includes: (1) the development and implementation of an integrated system of care as a vehicle for delivering effective services intervention models (also to be developed in Phase One) for women with co-occurring substance abuse and mental health disorders who are victims of physical and/or sexual abuse, and for delivering services for their children who have been impacted as a result of these problems; (2) the development and implementation of Phase One's qualitative evaluation; and (3) the development of evaluation protocols for Phase Two of the study.

Applications are being solicited for up to twelve study sites and a Coordinating Center to provide programmatic and evaluation assistance to the study sites.

Priorities: None.

Eligible Applicants: Applications may be submitted by units of State or local governments and by domestic private nonprofit and for-profit organization such as community-based organizations, universities, colleges, and hospitals.

Applicants for study sites must provide evidence of having at least two years demonstrated experience working in the field of women, ADM disorders and violence.

Applicants for the Coordinating Center must provide evidence of having at least one year of demonstrated experience working in the field of women, ADM disorders and violence, at the treatment or research level.

Note: Applicants may apply for both a study site and Coordinating Center award; however, a separate application for each must be submitted. If an organization chooses to apply for multiple awards, there should be no overlap in research/evaluation and support personnel.

Cooperative Agreement/Amounts: It is estimated that approximately $7.5 million (total costs, i.e., direct and indirect costs) will be available to support up to twelve study site awards and one Coordinating Center under this GFA in FY 1998.

Catalog of Domestic Federal Assistance Number: 93.230.

Program Contact: For programmatic or technical assistance contact:

Linda White Young, Division of Practice and Systems Development, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, (301) 443–8392.

Susan Salasin, Division of Knowledge Development and Systems Change, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 11C–26, (301) 443–3653.

Jeanette Bevitt-Mills, Division of Knowledge Development and Evaluation, enter for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 1075, (301) 443–4564.

For grants management assistance, contact: Ms. Peggy Jones, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 360, (301) 443–9666.

The mailing address for the individuals listed above is: 5600 Fishers Lane, Rockville, MD 20857.

Application Kits: Application kits are available from: National Clearinghouse for Alcohol and Drug Information, PO Box 2345, Rockville, Maryland 20847–2345. 1–800–729–6686, 1–800–487–4889; via Internet: http://www.samhsa.gov.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard Form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1998 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to all FY 1998 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 15, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–7280 Filed 3–19–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–02]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT:

Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 12, 1998.

Fred Karnas, Jr.

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–6912 Filed 3–19–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–840307

Applicant: James Clinton Nalley, Clemson University, Clemson, South Carolina.

The applicant requests authorization to take (harass during surveys) the endangered red-cockaded woodpecker, Picoides borealis, throughout the species range in Georgetown County, South Carolina, for the purpose of enhancement of survival of the species.

PRT–840384

Applicant: Brian W. Keeley, Bat Conservation, International, Inc., Austin, Texas.

The applicant requests authorization to take (harass during surveys) the endangered gray bat, Myotis grisescens, Indiana bat, Myotis sodalis, and Ozark big-eared bat, Plecotus townsendii ingens, from throughout the species' ranges in Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Kentucky, Illinois, Tennessee, Arkansas, Missouri, and Oklahoma for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by April 20, 1998.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: March 16, 1998.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 98–7274 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[HE–952–9911–24 1A; OMB Approval Number 1004–NEW]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 29, 1997, BLM published a notice in the **Federal Register** (62 FR 45867) requesting comments on this proposed collection. The comment period ended October 28, 1997. No comments were received from the public in response to this notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration of your comments, suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for BLM's proper functioning, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: In-Kind Crude Helium Contract.

OMB Approval Number: 1004–NEW.

Abstract: BLM is seeking OMB approval to collect information under a revised helium distribution contract, called. The Helium Privatization Act of 1996 altered the method by which private firms can acquire Federal helium gas. This required revising the contract. Two reporting formats are attached to the contract. One requests information about deliveries of refined helium to a Federal agency or Federal agency contractor. The other requests information about the sales of refined helium. Deliveries are reported quarterly; sales are reported annually.

Bureau Form Number: Part of contract, 1004–NEW (to be supplied when OMB attaches an approval number.)

Frequency of Collection: Annually for sales, quarterly for deliveries.

Description of Respondents: Respondents are holders of approved helium distribution contracts. These contracts allow qualified entities to receive Federal crude helium gas according to the amount of refined helium supplied to Federal agencies and their contractors. Estimated completion time: 15 minutes, four times a year, for reporting deliveries; 30 minutes, once a year, for reporting sales; plus record keeping time of 5 minutes four times per year.

Annual Respondents: 14.

Annual Responses: 70.

Annual Burden Hours: 26.8, including record keeping.

Information Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: March 5, 1998.

Carole Smith,

BLM Information Clearance Officer.

[FR Doc. 98–7231 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–08–1610–00]

Proposed South Coast Resource Management Plan Amendment, Palm Springs-South Coast Field Office, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.2), notice is hereby given that the Bureau of Land Management (BLM) will prepare an environmental assessment and proposed

South Coast Resource Management Plan amendment affecting public lands within the Palm Springs-South Coast Field Office management area. The proposed plan amendment would consist of three separate amendments. Amendment One would change the disposal categories of two parcels of BLM public land from R for retention to P for protective disposal. Amendment Two proposes to designate three existing Stephens' Kangaroo Rat core reserves in western Riverside County as Areas of Critical Environmental Concern (ACEC). Amendment Three proposes to adjust the boundary of the Santa Ana River Wash ACEC from 755 to 595 acres.

DATES: Citizens are requested to help identify significant issues or concerns related to the proposed plan amendments. Recommendations from citizens regarding additional plan amendments may also be considered, for example, new ACECs or changing land use designations. Comments must be submitted no later than April 20, 1998.

ADDRESSES: Please submit your comments in writing to the following address: Ms. Julia Dougan, Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, P.O. Box 1260, North Palm Springs, CA 92258–1260. Citizens submitting comments will automatically be included in the mailing list to receive a copy of the Proposed Plan Amendments and Environmental Assessment when available.

FOR FURTHER INFORMATION CONTACT: Ms. Elena Misquez, Planning and Environmental Coordinator, Bureau of Land Management, Palm Springs-South Coast Field Office, telephone (760) 251–4800.

SUPPLEMENTARY INFORMATION: The affected public land parcels in Amendment One are located in Township 5 South, Range 4 West, Section 22 (19.8 acres; BLM parcel No. 176–221), and in portions of Sections 29, 31, 32, Township 8 South, Range 2 West and part of Section 6, Township 9 South, Range 2 West (970.94 acres; BLM parcel No. 219–291). The BLM is proposing to change the disposal category of these two parcels from R for retention to P for protective disposal, in which these lands would be made available for disposal from BLM stewardship provided the new land owner will compensate or protect any sensitive resources contained on those lands. If the proposed amendment is approved, these lands would then be transferred to the Bureau of Indian Affairs by Act of Congress for the benefit of the Pechanga Band of Luiseno Mission Indians.

Amendment Two. In 1996, the U.S. Fish and Wildlife Service granted a Section 10(a) permit to the Riverside County Habitat Conservation Agency (RCHCA) which allowed take of the federally-listed-as-endangered Stephens' kangaroo rat (SKR) thereby facilitating new construction in western Riverside County. To compensate for the loss of the SKR, seven core reserves were established by the RCHCA for the protection of SKR habitat. Negotiations are in progress such that BLM may take responsibility for managing three of these core reserves. To be consistent with the management objectives for which the SKR reserves were established, BLM proposes to designate the three core reserves as Areas of Critical Environmental Concern. The three core reserves are located as follows: (1) Estelle Mountain Reserve in portions of Sections 13, 14, 22–24, Township 4 South, Range 6 West; in portions of Sections 18–20, 29–33 Township 4 South and 5 West; in portions of Sections 4–8, Township 5 South, Range 5 West; (2) Badlands Core Reserve in portions of Sections 2, 4 and 10, Township 3 South, Range 2 West; (3) Steele Peak Reserve in portions of Sections 4, 9, 20, Township 5 South, Range 4 West, and portions of Sections 27, 32, Township 4 South, Range 4 West.

Amendment Three. The Santa Ana River Wash ACEC contains an illegally created pit in the NE ¼ of Section 10, Township 1 South, Range 3 West. This quarter section (160 acres) does not contain pristine Alluvial Sage Scrub habitat. The BLM proposes to drop this quarter section from the ACEC and to make this land available for exchange to acquire more biologically viable areas.

Nothing in this Proposed Plan shall have the effect of terminating any validly issued rights-of-way or customary operation, maintenance, repair, and replacement activities in such rights-of-way in accordance with Sections 509(a) and 701(a) of the Federal Land Policy Management Act of 1976.

Dated: March 13, 1998.

Julia Dougan,

Field Manager.

[FR Doc. 98–7332 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–1430–01; CACAAA 160265]

Opening Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice opens 4,607.87 acres of public lands to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The lands were withdrawn by the Act of Congress of March 3, 1927 (44 Stat. 1359) for the Bureau of Land Management's Cow Mountain Recreation Area. The Act also authorized the Secretary of the Interior to restore any of the lands, withdrawn by that Act, to the operation of the public land laws if he or she deemed that action to be in the public interest. The Act did not withdraw the lands from either the mining or the mineral leasing laws. This opening order is necessary to facilitate the completion of a pending land exchange and other pending conveyances. The withdrawal no longer serves a needed purpose as to the lands and it is in the public interest to complete the pending lands actions.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825–0451; telephone number 916–978–4675.

SUPPLEMENTARY INFORMATION: The Act of Congress of March 3, 1927 (44 Stat. 1359) withdrew the following public lands for the Bureau of Land Management's Cow Mountain Recreation Area. The lands are withdrawn from the operation of the public lands laws, but not the mining or mineral leasing laws. The lands are described as follows:

Mount Diablo Meridian

T. 13 N., R. 10 W.,
  Sec. 9, S½SW¼, SW¼SE¼.
T. 16 N., R. 10 W.,
  Sec. 7, SE¼;
  Sec. 17, SE¼NW¼, SW¼SE¼;
  Sec. 18, E½NE¼, SE¼NW¼, NE¼SW¼;
  Sec. 19, lots 3–6, inclusive, NE¼, E½NW¼;
  Sec. 20, W½NE¼, SE¼NE¼, NE¼NW¼, S½NW¼, NW¼SW¼, SE¼SW¼, NE¼SE¼;
  Sec. 28, N½NE¼, NE¼NW¼;
  Sec. 29, SW¼;
  Sec. 30, lots 9, 11, 12, and 16;
  Sec. 31, lots 5, 10–16, inclusive.
T. 13 N., R. 11 W.,

Sec. 13, NE¼.
T. 16 N., R. 11 W.,
Sec. 13, SW¼, SW¼SE¼;
Sec. 14, S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 15, NW¼NW¼, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 22, SE¼NW¼, SW¼SW¼, E½SW¼, SE¼;
Sec. 23, NE¼, S½ SW¼, N½SE¼, SW¼SE¼;
Sec. 24, lots 5 and 6, W½NE¼, NW¼, N½SW¼, SW¼SE¼, W½SE¼;
Sec. 25, lots 5 and 6;
Sec. 26, N½NW¼;
Sec. 27, lot 1, NE¼NE¼.

The areas described aggregate 4,607.87 acres in Lake and Mendocino Counties.

The Act of Congress of March 3, 1927 (44 Stat. 1359, 1361) authorized the Secretary of the Interior to restore any of the lands, withdrawn by that Act, to the operation of the public land laws if he or she deemed that action to be in the public interest. The regulations contained in 43 CFR 2091.5–6(b) authorize the Secretary of the Interior to publish in the **Federal Register** an opening order specifying to what extent lands will be opened and when, if the withdrawing Act of Congress does not so specify.

At 10 a.m. on April 20, 1998, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on April 20, 1998 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: March 13, 1998.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 98–7268 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The purpose of this notice is to inform the public and interested state and local governments of the filing of plats of survey in Idaho.

The supplemental plat prepared to create lot 6 in section 18, and lots 5 and 6 in section 19, T. 39 N., R 2E., Boise Meridian, Idaho, was accepted and officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m. February 2, 1998.

The plats representing the corrective dependent resurvey of a portion of the northerly boundary of the Boise Barracks Military Reservation, T. 34 N., R. 2 E., Boise Meridian, Idaho, Group 981, was accepted and officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m. February 9, 1998.

The plat representing the dependent resurvey of a portion of Homestead Entry Survey Nos. 123 and 124, and the survey of tract 38, partially surveyed T. 5 N., R. 17 E., Boise Meridian, Idaho, Group 968, was accepted on March 9, 1998, and will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 20, 1998.

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, effective 9 a.m. March 9, 1998:

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 10, T. 10 S., R. 12 E., Boise Meridian, Idaho, Group 1009, was accepted March 9, 1998. The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 25, 26, and 27, T. 10 S., R. 34 E., Boise Meridian, Idaho, Group 1002, was accepted March 9, 1998.

The supplemental plat, in two sheets, prepared to lot small parcels of federal lands in section 20, created by two one-quarter section corners of sections 17 and 20, T. 56 N., R. 2 E., Boise Meridian, Idaho, was accepted March 9, 1998.

The protraction diagram for partially surveyed T. 26 N., R. 10 E., Boise Meridian, Idaho, was accepted March 9, 1998.

All inquiries concerning the surveys of the above described lands must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: March 9, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–7205 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–08–1420–00]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior

ACTION: Notice

SUMMARY: The plats of the amended protraction diagrams accepted March 9, 1998, of the following described lands are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication. Included in this notice are the plats of the amended protraction diagrams accepted and filed during 1996.

Principal Meridian, Montana

Tps. 16 N., Rs. 7, 8, and 9 W.

The plat, representing the Amended Protraction Diagram 25 Index of unsurveyed Townships 16 North, Ranges 7, 8, and 9 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 7 W.

The plat, representing the Amended Protraction Diagram 25 of unsurveyed Township 16 North, Range 7 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 8 W.

The plat, representing the Amended Protraction Diagram 25 of unsurveyed Township 16 North, Range 8 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 25 of unsurveyed Township 16 North, Range 9 West, Principal Meridian, Montana, was accepted March 9, 1998.

Tps. 16 N., Rs. 10 and 11 W.

The plat, representing the Amended Protraction Diagram 24 Index of unsurveyed Townships 16 North, Ranges 10 and 11 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 24 of unsurveyed Township 16 North, Range 10 West, Principal Meridian, Montana, was accepted March 9, 1998.

T. 16 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 24 of unsurveyed Township 16 North, Range 11 West, Principal Meridian, Montana, was accepted March 9, 1998.

Tps. 11 and 12 N., Rs. 17, 18, 19, and 20 E.

The plat, representing the Amended Protraction Diagram 12 Index of unsurveyed Townships 11 and 12 North, Ranges 17, 18, 19, and 20 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 11 N., R. 18 E.

The plat, representing the Amended Protraction Diagram 12 of a portion of unsurveyed Township 11 North, Range 18 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 12 N., R. 17 E.

The plat, representing the Amended Protraction Diagram 12 of a portion of

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unsurveyed Township 12 North, Range 17 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 12 N., R. 18 E.

The plat, representing the Amended Protraction Diagram 12 of unsurveyed Township 12 North, Range 18 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 12 N., R. 19 E.

The plat, representing the Amended Protraction Diagram 12 of unsurveyed Township 12 North, Range 19 East, Principal Meridian, Montana, was accepted July 29, 1996.

T. 12 N., R. 20 E.

The plat, representing the Amended Protraction Diagram of a portion of unsurveyed Township 12 North, Range 20 East, Principal Meridian, Montana, was accepted July 29, 1996.

Tps. 29, 30, 31, and 32 N., Rs. 10, 11, 12, and 13 W.

The plat, representing the Amended Protraction Diagram 44 Index of unsurveyed Townships 29, 30, 31, and 32 North, Ranges 10, 11, 12, and 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 29 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 29 North, Range 10 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 29 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 29 North, Range 11 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 29 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 44 of unsurveyed Township 29 North, Range 12 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 29 N., R. 13 W.

The plat, representing the Amended Protraction Diagram 44 of unsurveyed Township 29 North, Range 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 30 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 30 North, Range 11 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 30 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 30 North, Range 12 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 30 N., R. 13 W.

The plat, representing the Amended Protraction Diagram 44 of unsurveyed Township 30 North, Range 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 31 N., R. 13 W.

The plat, representing the Amended Protraction Diagram 44 of unsurveyed Township 31 North, Range 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

T. 32 N., R. 13 W.

The plat, representing the Amended Protraction Diagram 44 of a portion of unsurveyed Township 32 North, Range 13 West, Principal Meridian, Montana, was accepted August 28, 1996.

Tps. 25, 26, 27, and 28 N., Rs. 9, 10, 11, and 12 W.

The plat, representing the Amended Protraction Diagram 36 Index of unsurveyed Townships 25, 26, 27, and 28 North, Ranges 9, 10, 11, and 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 25 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 25 North, Range 9 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 26 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 26 North, Range 9 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 25 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 25 North, Range 10 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 26 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 26 North, Range 10 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 27 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 27 North, Range 10 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 28 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 36 of a portion of unsurveyed Township 28 North, Range 10 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 25 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 25 North, Range 11 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 26 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 26 North, Range 11 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 27 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 27 North, Range 11 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 28 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 28 North, Range 11 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 25 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 25 North, Range 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 26 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 26 North, Range 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 27 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 27 North, Range 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

T. 28 N., R. 12 W.

The plat, representing the Amended Protraction Diagram 36 of unsurveyed Township 28 North, Range 12 West, Principal Meridian, Montana, was accepted August 29, 1996.

Tps. 21, 22, 23, and 24 N., Rs. 9, 10, and 12 W.

The plat, representing the Amended Protraction Diagram 35 Index of unsurveyed Townships 21, 22, 23, and 24 North, Ranges 9, 10, and 12 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 21 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 35 of a portion of unsurveyed Township 21 North, Range 9 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 22 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 22 North, Range 9 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 23 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 23 North, Range 9 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 24 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 24 North, Range 9 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 21 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 21 North, Range 10 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 22 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 35 of a portion of

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unsurveyed Township 22 North, Range 10 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 23 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 23 North, Range 10 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 24 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 24 North, Range 10 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 21 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 21 North, Range 11 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 22 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 22 North, Range 11 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 23 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 23 North, Range 11 West, Principal Meridian, Montana, was accepted September 3, 1996.

T. 24 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 35 of unsurveyed Township 24 North, Range 11 West, Principal Meridian, Montana, was accepted September 3, 1996.

Tps. 17, 18, 19, and 20 N., Rs. 7, 8, 9, 10, and 11 W.

The plat, representing the Amended Protraction Diagram 26 Index of unsurveyed Townships 17, 18, 19, and 20 North, Ranges 7, 8, 9, 10, and 11 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 17 N., R. 7 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 17 North, Range 7 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 17 N., R. 8 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 17 North, Range 8 West, Principal Meridian, Montana, was September 11, 1996.

T. 18 N., R. 8 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 18 North, Range 8 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 17 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 17 North, Range 9 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 18 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 18 North, Range 9 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 19 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 19 North, Range 9 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 20 N., R. 9 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 20 North, Range 9 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 17 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 17 North, Range 10 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 18 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 18 North, Range 10 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 19 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 19 North, Range 10 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 20 N., R. 10 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 20 North, Range 10 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 18 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 26 of a portion of unsurveyed Township 18 North, Range 11 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 19 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 19 North, Range 11 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 20 N., R. 11 W.

The plat, representing the Amended Protraction Diagram 26 of unsurveyed Township 20 North, Range 11 West, Principal Meridian, Montana, was accepted September 11, 1996.

T. 16 N., R. 4 E.

The plat, representing the Amended Protraction Diagram 11-A of a portion of unsurveyed Township 16 North, Range 4 East, Principal Meridian, Montana, was accepted September 25, 1996.

T. 19 N., R. 8 E.

The plat, representing the Amended Protraction Diagram 11-B of a portion of unsurveyed Township 19 North, Range 8 East, Principal Meridian, Montana, was accepted September 25, 1996.

Tps. 13, 14, and 15 N., Rs. 7, 7½, 8, 9, and 10 E.

The plat, representing the Amended Protraction Diagram 11 Index of unsurveyed Townships 13, 14, and 15 North, Ranges 7, 7½, 8, 9, and 10 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 13 N., R. 7 E.

The plat, representing the Amended Protraction Diagram 11 of unsurveyed Township 13 North, Range 7 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 13 N., R. 7½ E.

The plat, representing the Amended Protraction Diagram 11 of unsurveyed Township 13 North, Range 7½ East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 13 N., R. 8 E.

The plat, representing the Amended Protraction Diagram 11 of a portion of unsurveyed Township 13 North, Range 8 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 14 N., R. 7 E.

The plat, representing the Amended Protraction Diagram 11 of a portion of unsurveyed Township 14 North, Range 7 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 14 N., R. 8 E.

The plat, representing the Amended Protraction Diagram of a portion of unsurveyed Township 14 North, Range 8 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 15 N. R. 8 E.

The plat, representing the Amended Protraction Diagram 11 of unsurveyed Township 15 North, Range 8 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 15 N., R. 9 E.

The plat, representing the Amended Protraction Diagram of a portion of unsurveyed Township 15 North, Range 9 East, Principal Meridian, Montana, was accepted November 5, 1996.

T. 15 N., R. 10 E.

The plat, representing the Amended Protraction Diagram of a portion of unsurveyed Township 15 North, Range 10 East, Principal Meridian, Montana, was accepted November 5, 1996.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams accepted March 9, 1998, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted March 9, 1998, as shown on these plats, is received prior to the date of the official

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filings, the filings will be stayed pending consideration of the protests. These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: March 12, 1998.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98–7198 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30550 et al.]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed applications to withdraw 2,981.95 acres of National Forest System lands to protect Alto Pit OHV Area, Camp Anytown, Camp Patterdell Pines, Camp Pearlstein, Camp Wamotochick, Granite Basin Recreation Area, Lynx Creek Recreation Area, Miller Creek Summer Home Area, Pine Summit Camp, and Williamson Valley Trailhead. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATE: Comments and requests for a meeting should be received on or before June 18, 1998.

ADDRESS: Comments and meeting requests should be sent to the Forest Supervisor, Prescott National Forest, 344 S. Cortez Street, Prescott, Arizona 86303.

FOR FURTHER INFORMATION CONTACT: Beverley Everson or Doug Franch, Prescott National Forest, 520–445–7253.

SUPPLEMENTARY INFORMATION: The Forest Service has filed applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Prescott National Forest

Alto Pit OHV Area

T. 14 N., R. 3 W.,
Sec. 15, lots 1 to 5, inclusive, S½N½, N½SW¼, and NE¼SW¼SW¼;
Sec. 16, E½SE¼NE¼ and NE¼NE¼SE¼.

The area described contains 434.04 acres in Yavapai County.

Camp Anytown

T. 14 N., R. 3 W.,
Sec. 24, N½NW¼NW¼ and N½NE¼NW¼.

The area described contains 40 acres in Yavapai County.

Camp Patterdell Pines

T. 13 N., R. 2 W.,
Sec. 28, lots 9, 14, and 15.

The area described contains 120.50 acres in Yavapai County.

Camp Pearlstein

T. 13 N., R. 3 W.,
Sec. 12, lot 5;
Sec. 13, lot 2.

The area described contains 38.84 acres in Yavapai County.

Camp Wamotochick

T. 13 N., R 2 W.,
Sec. 35, lots 12 and 13.

The area described contains 86.56 acres in Yavapai County.

Granite Basin Recreation Area

T. 14 N., R. 3 W.,
Sec. 1, SW¼SW¼;
Sec. 2, E½SE¼NW¼, SW¼NE¼, SE¼, E½NW¼SE¼SW¼, NE¼SE¼SW¼, N½SE¼SE¼SW¼, E½NE¼SW¼, NW¼NE¼SW¼, and E½SW¼NE¼SW¼;
Sec. 3, W½NE¼SE¼, NE¼NE¼SE¼, W½SE¼NE¼SE¼, E½NW¼SE¼SE¼, W½NE¼SE¼SE¼, and W½SW¼SE¼SE¼ (except the Granite Mountain Wilderness Area);
Sec. 10, E½NE¼NE¼NE¼, W½NW¼NE¼NE¼, SE¼NE¼, S½NE¼NE¼, and E½SE¼;
Sec. 11, lots 11 to 17, inclusive, E½NE¼, W½NW¼, SW¼SW¼, and SE¼;
Sec. 12, W½ and SW¼NE¼;
Sec. 13, W½NW¼ and SW¼;
Sec. 14, lots 1 to 6, inclusive, E½NE¼, and NE¼NE¼SE¼;
Sec. 15, NE¼NE¼;
Sec. 24, lots 1, 3, and 4, S½NE¼NW¼, and S½NW¼NW¼.

The area described contains 1,588.29 acres in Yavapai County.

Lynx Creek Recreation Area Expansion

T. 13 N., R. 1 W.,
Sec. 5, lots 10 and 11, S½NW¼, and W½SW¼ (except the lands withdrawn by Public Land Order No. 5058);
Sec. 6, lot 8 and SE¼NE¼ (except the lands withdrawn by Public Land Order No. 5058);
Sec. 8, N½NW¼NW¼ and NE¼NW¼ (except the lands withdrawn by Public Land Order No. 5058).

The area described contains 260 acres in Yavapai County.

Miller Creek Summer Home Area

T. 14 N., R. 3 W.,
Sec. 35, NW¼SE¼SW¼ and W½NE¼SE¼SW¼.

The area described contains 15 acres in Yavapai County.

Pine Summit Camp

T. 13 N., R. 2 W.,
Sec. 34, lots 9 (except the patented portion of MS 4226), 10 (except the patented portion of MS 4226), 11, 12, and 18;
Sec. 35, lots 14 and 15.

The area described contains 247 acres in Yavapai County.

Williamson Valley Trailhead

T. 15 N., R. 2 W.,
Sec. 19, lot 4;
Sec. 30, lot 1.
T. 15 N., R. 3 W.,
Sec. 24, SE¼SE¼SE¼SE¼;
Sec. 25, NE¼NE¼NE¼NE¼;.

The area described contains 81.07 acres in Yavapai County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Forest Supervisor, Prescott National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Prescott National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: March 11, 1998.

W. Cliff Yardley,

Acting Deputy State Director, Resources Division.

[FR Doc. 98–7199 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; SDM 87066]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The National Park Service proposes to withdraw .25 acre of national Forest System land in Custer County for construction of temporary quarters for summer seasonal employees. The National Park Service would have administrative jurisdiction of this area. This notice closes the land for up to 2 years from surface entry and mining. The land has been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by June 18, 1998.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406–255–2949.

SUPPLEMENTARY INFORMATION: On February 17, 1998, a petition was approved allowing the National Park Service to file an application to withdraw the following described National Forests System land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The land is described as follows:

Black Hills Meridian

T. 3 S., R. 4 E.,
Sec. 23, portion of the S½ of lot 19.

The area described contains .25 acre in Custer County.

The purpose of the proposed withdrawal is to enable construction of temporary quarters for summer seasonal employees.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period, the Forest Service will continue to manage this land.

Dated: March 12, 1998.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 98–7312 Filed 3–19–98; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–27]

Anant N. Mauskar, M.D.; Grant of Restricted Registration

On March 27, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anant N. Mauskar, M.D. (Respondent), of Houston, Texas, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that he is without authority to handle controlled substances in the State of Texas, and that his registration would be inconsistent with the public interest.

By letter dated April 15, 1996, Respondent, through counsel, filed a request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. During prehearing procedures, the Government filed a Motion for Summary Disposition alleging that Respondent was not entitled to a DEA registration in the State of Texas since he was without authority to handle controlled substances in the State. However, on May 29, 1996, the Texas Department of Public Safety reissued Respondent's Department of Public Safety Registration Certificate enabling him to handle controlled substances in Texas. As a result, Judge Bittner denied the Government's Motion for Summary Disposition on July 25, 1996.

A hearing was then held on November 13, 1996, in San Antonio, Texas on the remaining issue raised in the Order to Show Cause. At the hearing, Respondent testified on his own behalf and both parties introduced documentary evidence. After the hearing, the Government submitted proposed findings of fact, conclusions of law and argument. Respondent did not submit a posthearing filing. On January 13, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration should be granted in Schedules II through V, excluding Schedule II narcotic controlled substances, subject to the maintenance of a log of his handling of controlled substances. Neither party filed exceptions to the Opinion and Recommended Ruling of Judge Bittner, and on February 17, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact of law.

The Acting Deputy Administrator finds that Respondent attended medical school in Pune, India, and as of the date of the hearing had been practicing family medicine in Harris County, Texas for 16 years. Respondent previously possessed DEA Certificate of Registration AM9760338.

On June 18, 1992, an Order to Show Cause was issued to Respondent proposing to revoke his previous DEA Certificate of Registration, alleging that his continued registration would be inconsistent with the public interest. Following a hearing before Administrative Law Judge Paul A. Tenney, the then-Administrator revoked Respondent's DEA registration effective November 1, 1993. See, *Anant N. Mauskar, M.D.*, 58 FR 51,385 (October 1, 1993).

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In the prior proceeding, the then-Administrator found that on December 5, 1990, July 22, 1991, and August 29, 1991, Respondent issued prescriptions for the Schedule III controlled substance Tylenol #4 with codeine (Tylenol #4), and the Schedule IV controlled substance Xanax to an undercover law enforcement officer for no legitimate medical purpose. The undercover officer indicated that the Tylenol #4 made him feel good, yet on two occasions, Respondent falsified the patient record indicating that the "patient" was suffering from pain, even though the undercover officer made no such complaint.

Based upon these findings, the then-Administrator concluded that Respondent's continued registration would be inconsistent with the public interest, and revoked Respondent's previous DEA Certificate of Registration. *Id.* Subsequently, Respondent filed a petition for review of the then-Administrator's final order revoking his DEA registration. On August 25, 1994, the United States Court of Appeals for the Fifth Circuit found that the then-Administrator's findings of fact were supported by substantial evidence and affirmed his final order. *Mauskar* v. *Drug Enforcement Administration*, No. 93–5437, slip op. (5th Cir. Aug. 25, 1994).

On October 21, 1994, Respondent submitted an application for a new DEA registration in Schedules II through V. That application is the subject of these proceedings. At the hearing in this matter, Respondent argued that he should be allowed to relitigate the underlying facts which led to the revocation of his previous DEA registration, since he did not testify at the previous proceeding because there were pending criminal charges against him. Respondent presented evidence that sometime after February 1993, Respondent was found not guilty of some unspecified charge following a bench trial in the 183rd District Court of Harris County, Texas. Also, in June 1995, Respondent was again found not guilty following a July trial on an unspecified charge based on the same facts as those which were addressed in the previous administrative proceeding.

The Administrative Law Judge found however, that the then-Administrator's final order published in the **Federal Register** on October 1, 1993, regarding Respondent is *res judicata* for purposes of this proceeding. See, *Liberty Discount Drugs, Inc.*, 57 FR 2788 (1992) (where the findings in a previous revocation proceeding were held to be *res judicata* in a subsequent administrative proceeding.) The Acting Deputy Administrator agrees with Judge Bittner. The then-Administrator's determination of the facts relating to the previous revocation of the Respondent's DEA registration is conclusive. Accordingly, the Acting Deputy Administrator adopts the then-Administrator's 1993 final order in its entirety. The Acting Deputy Administrator concludes that the critical issue in this proceeding is whether the circumstances, which existed at the time of the prior proceeding, have changed sufficiently to support a conclusion that Respondent's registration would be in the public interest.

At the hearing before Judge Bittner, Respondent maintained that he never prescribed controlled substances for other than legitimate medical purposes, including those prescribed for the undercover officer. Respondent asserted that he is able to identify persons addicted to controlled substances because they "look different," usually ask directly for a controlled substance but do not want to submit to a physical examination, and appear to be in a hurry.

Respondent testified that since the previous proceeding, he has taken various courses to maintain his continuing medical education requirements, including courses in pain management which addressed the proper handling of controlled substances. Respondent testified that these courses instruct physicians, "[d]on't be scared of DEA," and "be very aggressive in treating the pain." However, Respondent stated that if granted a DEA registration, he does not intend to prescribe controlled substances very often, because there are now effective non-controlled pain relievers.

The Government argues that it has presented a prima facie case for the denial of Respondent's application for registration based upon the previous revocation of his DEA registration and the fact that he has not taken responsibility for the acts which led to the revocation. Nevertheless, the Government notes that Respondent's wrongdoing was limited to three instances of misprescribing in 1990 and 1991, and therefore, it may be appropriate to grant him a restricted registration. Respondent asserts that if granted a DEA registration, he would not prescribe controlled substances very often.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, the Acting Deputy Administrator notes that Respondent was without authority to handle controlled substances in the State of Texas for a period of time. However, it appears that the state took action against Respondent's Texas registration to handle controlled substances in light of the revocation of his previous DEA registration. On May 29, 1996, the Texas Department of Public Safety reissued Respondent his state controlled substance privileges in Schedules II nonnarcotic, III, IV and V. However, as Judge Bittner noted, "inasmuch as state licensure is a necessary but not sufficient condition for DEA registration, * * * this factor is not dispositive."

As to factors two and four, Respondent's experience in dispensing controlled substances and his compliance with controlled substance laws, it was found in the previous proceeding that Respondent prescribed controlled substance on three occasions in 1990 and 1991 to an undercover officer for no legitimate medical purpose, and therefore violated 21 CFR 1306.04. The Acting Deputy Administrator finds it troubling that Respondent continues to maintain that he did nothing wrong, and as the Government notes, this "calls into question his commitment to comply with controlled substance laws in the future." Respondent testified that since the revocation of his previous DEA registration, he has taken courses that have dealt with the handling of controlled substances. Yet, as Judge Bittner notes, "(it appears that these)

courses did not emphasize regulatory requirements and how to ensure that one's practices comply with them." Instead, Respondent testified that the courses encouraged doctors to not be scared of DEA and to take an aggressive approach to pain management. Nevertheless, Respondent testified that if granted a DEA registration, he would not prescribe controlled substances very often since safer noncontrolled substances are now available.

The Acting Deputy Administrator finds that there was no evidence presented relevant to factor three or factor five.

The Acting Deputy Administrator concludes that in light of Respondent's prescribing of controlled substances for no legitimate medical purpose and his failure to accept responsibility for his actions, the Government has established a prima facie case for the denial of Respondent's application for registration. However, as both Government counsel and Judge Bittner note, Respondent's wrongdoing is limited to three instances of prescribing controlled substances without a valid medical purpose in 1990 and 1991. Therefore, Judge Bittner recommended that Respondent be granted a restricted DEA Certificate of Registration. But, while Respondent has applied for a DEA registration in Schedules II through V, DEA has consistently held that it can only register a practitioner to handle controlled substances to the extent that he is authorized by the state. See, e.g., *Romeo J. Perez. M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.* 58 FR 51,104 (1993). Since the record indicates that Texas has not issued Respondent privileges in Schedule II narcotic, Respondent is not entitled to a DEA registration in Schedule II narcotic. Judge Bittner further recommended that Respondent be required to "submit quarterly logs of all his handling of controlled substances to the appropriate DEA Special Agent in Charge or his designee, for the term of his registration."

The Acting Deputy Administrator agrees that a restricted registration is appropriate under the facts and circumstances of this case. While Respondent's wrongdoing occurred a number of years ago and was limited in nature, it is in the public interest to monitor Respondent's handling of controlled substances, in light of his failure to acknowledge responsibility for his actions. Therefore, the Acting Deputy Administrator finds it in the public interest to grant Respondent a DEA registration in Schedules II through V, excluding Schedule II narcotic, subject to the following condition:

For three years from the date of issuance of the DEA Certificate of Registration, Respondent shall maintain a log of all controlled substances that he prescribes, administers or dispenses. At a minimum, the log shall indicate the date that the controlled substance was prescribed, administered or dispensed, the name of the patient, and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. The log shall be submitted on a quarterly basis to the Special Agent in Charge of the DEA Houston Field Division, or his designee. Should Respondent not prescribe, administer or dispense any controlled substances during a given quarter, he shall so indicate to the Special Agent in Charge of the DEA Houston Field Division, or his designee.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application dated October 2, 1994, submitted by Anant N. Mauskar, M.D., be, and it hereby is, granted in Schedules II through V, excluding Schedule II narcotic, subject to the above described restriction. This order is effective April 20, 1998.

Dated: March 6, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–7188 Filed 3–19–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Service (CJIS) Advisory Policy Board; Meeting

The Criminal Justice Information Services (CJIS) Advisory Policy Board will meet on June 16–17, 1998, from 9 a.m., until 5 p.m., at the Swissôtel, One Avenue de Lafayette, Boston, Massachusetts, telephone 617–422–5528, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI), on the security, policy, and operation of the National Crime Information Center (NCIC), NCIC 2000, the Integrated Automated Fingerprint Identification System (IAFIS), and the Uniform Crime Reporting and National Incident Based Reporting System programs.

The topics to be discussed will include the progress of the NCIC 2000 and IAFIS projects, and other topics related to the operation of the FBI's criminal information systems.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the FBI CJIS Division programs or related matters with the Board. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, facsimile, or a hand-delivered note. It should contain the requestor's name, corporate designation, consumer affiliation, or Government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. A non-member requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specifically approved by the Chairman of the Board.

Inquiries may be addressed to the Designated Federal Employee, Mr. Demery R. Bishop, Section Chief, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone 304–625–2740, facsimile 304–625–5090.

Dated: March 9, 1997.

Demery R. Bishop,

Section Chief, Programs Development Section, Federal Bureau of Investigation, Designated Federal Employee.

[FR Doc. 98–7202 Filed 3–19–98; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 17, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC

20503 ((202) 395–7316), on or before April 20, 1998.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Labor Standards for the Registration of Apprenticeship—29 CFR Part 29.

OMB Number: 1205–0223 (Extension).

Form Number: ETA 671.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, or local governments.

Section	Frequency	Respondents	Average time per respondent
29.3 (Apprentice)	One-Time	94,041	15 minutes.
29.6 (Apprentice)	One-Time	602,940	50 minutes.
29.5 (Sponsor)	One-Time	1,271	2 hours.
29.5 (SAC)	One-Time	635	2 hours.
29.7 (Sponsor)	One-Time	40	50 minutes.
29.12	One-Time	30	2 hours.

Total Burden Hours: 32,630.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Title 29 CFR Part 29 sets forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by prescribing policies and procedures concerning registration of apprenticeship programs.

Agency: Employment and Training Administration.

Title: Dislocated Worker Special Project Report.

OMB Number: 1205–0318 (Extension).

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Form No.	Respondents	Frequency	Average time per response (hours)
NRA Projects:			
Section I	90	Quarterly	4
Final Project	90	One-time	1
Recordkeeping	90	Quarterly	1.5
Clean Air Projects:			
Section I	15	Quarterly	4
Section II	15	Annually	97
Section III	15	Annually	1
Recordkeeping	15	Quarterly	1.5
Recordkeeping	15	1 Quarter	2.5
Defense Diversification:			
Section I	10	Annually	4
Section II	10	One-time	97
Section III	10	One-time	1
Recordkeeping:.			
Section I	10	One-time	1.5
Section II	10	One-time	2.5
Section III	10	One-time	1.5

Total Burden Hours: 4,968.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The information will be used to assess Defense, Clean Air and Title III National Reserve projects. Participant and financial data will be used to monitor program performance, and to prepare reports and budget requests.

Agency: Employment and Training Administration.

Title: Equal Employment Opportunity in Apprenticeship and Training Title 29 CFR Part 30.

OMB Number: 1205–0224 (extension).

Form Number: ETA 9039.

Frequency: One-Time.

Section No.	Affected public	Number of respondents	Average time per respondent
30.3	Apprenticeship Sponsors	1,024	30 minutes.
30.4	Apprenticeship Sponsors	247	1 hour.
30.5	Apprenticeship Sponsors	3,662	30 minutes.
30.6	Apprenticeship Sponsors	50	5 hours.
30.8	Apprenticeship Sponsors	35,848	1 minute.
30.8	Apprenticeship Programs	17,924	5 minutes.
ETA 9039	Apprentices	50	30 minutes.

Total Burden Hours: 4,959.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: Title 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State apprenticeship agencies.

Agency: Employment and Training Administration.
Title: NAFTA Confidential Report.
OMB Number: 1205–0339 (extension).
Form Number: ETA 9043.

Form No.	Affected public	Respondents	Frequency	Average time per response (hours)
Questionnaire	Respondent	1,000	On Occasion	3
Questionnaire	State Review	1,000	On Occasion	4.5

Total Burden Hours: 7,500.
*Total annualized capital/startup costs:*0.
*Total annual costs (operating/maintaining systems or purchasing services):*0.
Description: Statutory requirements under amendments to the Trade Act of 1974 by the North American Free Trade Agreement Implementation Act, adding Subchapter D requires business confidential data in order to make timely determinations as to whether imports have contributed to workers separations and thus eligible to apply for NAFTA Adjustment Assistance.

Agency: Employment and Training Administration.
Title: JTPA Indian and Native American Reporting Revisions for Program Years 1995.
OMB Number: 1205–0308 (Reinstatement).
Affected Public: Federally and State-recognized Indian tribes, bands and groups; Alaska Native entities; Hawaiian Native entities; private non-profit organizations; State agencies; consortia of any and/or all of the above.

Required activity (JTPA title IV–A)	DINAP form No.	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hours
Planning Narrative		170	1	170	12	2,040
Budget Information Summary	ETA 8600	170	1	170	17.5	2,975
Program Planning Summary	ETA 8601	170	1	170	17.5	2,975
Recordkeeping		170		18,720	3	56,160
Reporting (Financial Status Report)	ETA 8602	170	1	170	7.75	1,317.5
Program Status Summary	ETA 8603	170	1	170	9.67	1,643.9
Annual Status Report	ETA 8604	170	1	170	22.5	3,825
Totals			6	19,740	[illegible]	70,936.4

Required activity (JTPA title II–B)	DINAP Form No.	Number of Respondents	Responses per year	Total responses	Hours per response	Total burden hours
Planning Narrative		126	1	126	6	756
Budget Information Summary	ETA 8600	126	1	126	8	1,024
Program Planning Summary	ETA 8601	126	1	126	8	1,024
Recordkeeping		126		10,000	2	20,000
Reporting (Financial Status Report)	ETA 8602	126	1	126	7.75	976.5
Program Status Summary	ETA 8603	126	1	126	9.67	1,218.42
Totals			5	10,630	41.42	24,998.92

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Total annualized capital/startup costs: 0.

Total annual costs operating/maintaining systems or purchasing services: $1,142,400.

Description: This request is for approval of a reinstatement of the planning and reporting forms previously approved and in use for the JTPA section 401 program which provides employment and training services for Indians and Native Americans. Burden estimates do not include the tribes currently participating in the demonstration project under Public Law 102–477, but do include estimates for those tribal entities which also receive funding under title II–B of JTPA.

Agency: Occupational Safety and Health Administration.

Title: Hazard Communication Program.

OMB Number: 1218–0072 (extension).

Frequency: On occasion.

Affected Public: Business and other for-profit, Federal and State government, Local or Tribal governments.

Total Respondents: 5,041,918.

Estimated Time Per Respondent: Time per response ranges from 12 seconds to affix labels to in-plant containers containing hazardous chemicals to 5 hours to develop a hazard communication program.

Total Burden Hours: 7,301,762.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The purpose of the Hazard Communication Standard and its information collection requirements is to ensure that the hazards of all chemical produced or imported are evaluated and that information concerning their hazards is transmitted to employees and downstream employers. The standard requires chemical manufacturers and importers to evaluate chemicals they produce or import to determine if they are hazardous; for those chemicals determined to be hazardous, material safety data sheets and warning labels must be developed. Employers are required to establish hazard communication programs, to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs. Implementation of these collection of information requirements will ensure all employees have the "right-to-know" the hazards and identities of the chemicals they work with and will reduce the incidence of chemically-related occupational illnesses and injuries.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–7341 Filed 3–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA980001 (Feb. 13, 1998)
MA980002 (Feb. 13, 1998)
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MA980007 (Feb. 13, 1998)
MA980012 (Feb. 13, 1998)
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MA980018 (Feb. 13, 1998)
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New Jersey
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FL980

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Illinois
IL980
IL980
IL980
IL980
IL980
Michiga
MI980
Minneso
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MN98
MN98
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PA980008 (Feb. 13, 1998)
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IL980069 (Feb. 13, 1998)
Michigan
MI980033 (Feb. 13 1998)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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Signed at Washington, D.C., this 13th day of March, 1998.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–6981 Filed 3–19–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10421, et al.]

Proposed Exemptions; Tyson Foods, Incorporated Employee Profit Sharing Plan and Trust (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Tyson Foods, Incorporated, Employee Profit Sharing Plan and Trust (the Plan), Located in Springdale, Arkansas

[Application No. D–10421]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan of certain hatcheries, a freezer facility and an office complex (collectively, the Properties), all located in Arkansas, to Tyson Foods, Incorporated (the Company), a party in interest with respect to the Plan, provided that the following conditions were satisfied:

(A) All terms of the transactions were at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The sale was a one-time transaction for cash;

(C) The Plan paid no commissions nor other expenses relating to the sale;

(D) The purchase price was the greater of: (1) the fair market value of each of the Properties as determined by a qualified, independent appraiser, or (2) the Plan's original acquisition cost; and

(E) Prior to the sale, an independent fiduciary reviewed the transactions and determined that the transactions described herein, were appropriate and in the best interests of the Plan and its participants and beneficiaries.

EFFECTIVE DATE: If granted, this exemption will be effective May 23, 1997.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 4,934 participants and beneficiaries and total assets of $80,648,308 as of March 31, 1996. The Plan is sponsored by Tyson Foods, Incorporated (the Company), a Delaware corporation, with its principal operations in Arkansas. The Company is primarily engaged in the business of producing and selling chicken-based food products. The Company is in the process of terminating the Plan. The trustees of the Plan are: John Tyson, Gerard Dowd, Lois S. Brottomley, William W. Lovette, and Dennis Leatherby (together, the Trustees). The Company represents that the Trustees are all currently employees of the Company and that they make investment decisions for the Plan.

2. Among the assets of the Plan, prior to May 23, 1997, were the Properties, consisting of four chicken hatcheries, a corporate office complex and a freezer facility. The Properties were all acquired by the Plan, from the Company in various transactions between 1966 and 1992. After each of the Properties was acquired by the Plan, the Plan leased the Properties to the Company.[1] On May 23, 1997, the Properties were sold by the Plan back to the Company. The percentage of the Plan's total assets invested in the Properties was 32%, based on fair market values of the Properties reported on the 1995 Form 5500.

3. The Trustees determined it was necessary to sell the Properties in order to convert illiquid real estate investments into liquid assets so that the Plan can make final terminating distributions to participants and beneficiaries under the terms of the Plan. The Board of Directors of the Company approved resolutions terminating the Plan. The Company represents that the Board of Directors also authorized the Company to purchase the Properties[2], if an independent fiduciary for the Plan, determined that the sale of the Properties to the Company was in the best interest of the Plan and its participants and beneficiaries.

4. On February 17, 1997, the Company engaged Arthur Andersen LLP (Arthur Andersen), of Atlanta, Georgia, to act as independent fiduciary on behalf of the Plan. Arthur Andersen is a major accounting and consulting firm which has extensive experience in the business of commercial real estate consulting and appraisal. Arthur Andersen represents that the scope of its engagement was to determine whether: (1) The Plan would receive adequate consideration for the Properties as determined by a qualified independent appraiser approved by Arthur Andersen; and (2) the sale of the Properties was appropriate and in the best interests of the Plan and its participants and beneficiaries. In addition, Arthur Andersen's duties included making a determination as to whether the Plan should sell the Properties to the Company.

5. Arthur Andersen represents, in its written report prepared for the Trustees and for review by the Department, that in its opinion, the sale of the Properties to the Company for $33,032,000 in cash was in the best interest of the Plan and its participants and beneficiaries. Arthur Andersen further states that the $33,032,000 aggregate sales price for the Properties represents the greater of (1) the fair market value of the Properties, or (2) the Plan's original acquisition cost for each of the Properties, on a property by property basis.

6. In order to determine that the sale of the Properties by the Plan to the Company, was in the best interests of the Plan and its participants and beneficiaries, Arthur Andersen sought current real estate appraisals for the Properties. The Trustees selected Reed & Associates, Inc. (Reed & Associates), a real estate appraisal firm in Springdale, Arkansas. After interviewing Reed & Associates, Arthur Andersen approved of the Trustees selection. Tom Reed, an MAI appraiser, along with another licenced appraiser employed by Reed & Associates, appraised the Properties between March 25 and May 16, 1997.

Reed & Associates opined that the fair market value of each of the four chicken hatcheries had declined, and that the corporate office complex and freezer facilities had both appreciated in value since they were acquired by the Plan. Reed & Associates assigned specific values for each of the Properties, as discussed below.

7. Arthur Andersen, in its capacity as independent fiduciary for the Plan, reviewed and evaluated the appraisals of the Properties performed by Reed & Associates. Arthur Andersen determined that (1) the appraisals were accurate, (2) the appraisals established the fair market value of each of the Properties, and (3) it was appropriate to rely upon such appraisals for the purpose of determining the sales price of the Properties.

8. Among the Properties are four chicken hatcheries. Three of the four hatcheries are located in Washington County, Arkansas. These hatcheries are known as: the Lincoln Hatchery, Johnson Road Hatchery and Randall Road Hatchery. The fourth hatchery is the Nashville Hatchery which is located in Howard County, Arkansas.

9. The Lincoln Hatchery is located on a 12.89 acre parcel of land and was

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[1] The Department is not providing relief herein with respect to any transactions involving the Properties other than the sale of the Properties by the Plan to the Company. In this regard, the Department is referring the other transactions involving the Properties to the Internal Revenue Service for the imposition of any applicable excise taxes arising under section 4975 of the Code which may be due.

[2] Pursuant to the Company's offer to purchase the Properties, the Company agreed to pay all costs and expenses associated with its purchase of the Properties, including but not limited to, appraisals, commissions and taxes, and the costs of seeking the prohibited transaction exemption, proposed herein.

acquired by the Plan in 1973 for $1,173,000. The Plan received net rentals of $2,567,331 from April 1, 1986 to the date of sale. Reed & Associates determined that the fair market value of the Lincoln Hatchery was $710,000 as of March 31, 1997. The Company purchased the Lincoln Hatchery for $1,173,000.

The Johnson Road Hatchery is located on a four acre parcel of land and was acquired by the Plan in 1966 for $546,000. The Plan received net rentals of $747,663 from April 1, 1986 to the date of sale. Reed & Associates determined that the fair market value of the Johnson Road Hatchery was $485,000 as of April 2, 1997. The Company purchased the Johnson Road Hatchery for $546,000.

The Randall Road Hatchery is located on a 15.3 acre parcel of land and was acquired by the Plan in 1960 for $813,000. The Plan received net rentals of $1,178,070 from April 1, 1986 to the date of sale. Reed & Associates determined that the fair market value of Randall Road Hatchery was $725,000 on March 25, 1997. The Company purchased the Randall Road Hatchery for $813,000.

The Nashville Hatchery is located on a 2.76 acre parcel of land and it was acquired by the Plan in 1973 for $460,000. The Plan received net rentals of $666,543 from April 1, 1986 to the date of sale. Reed & Associates determined that the fair market value of the Nashville Hatchery was $290,000 as of April 4, 1997. The Company purchased the Nashville Hatchery for $460,000.

11. The corporate office complex (Corporate Office Complex), located in Washington County, Arkansas, is comprised of four buildings that were purchased in four separate transactions occurring, respectively, in 1969, 1987, 1991, and 1992. The Plan's original acquisition cost of the four buildings, in the aggregate, was $15,549,946. Between April 1, 1986 and the date of sale, the Corporate Office Complex produced net rental income for the Plan totaling $21,969,230. Reed & Associates determined that the fair market value of the Corporate Office Complex on May 9, 1997, was $18,850,000. The Company purchased the Corporate Office Complex for $18,850,000.

12. The freezer facility (Tyson Valley Freezer Facility) was acquired by the Plan in 1989, at an original acquisition cost of $6,023,457. The Tyson Valley Freezer Facility consisted of a ground lease in property and the freezer facility located thereon. From the date of acquisition, through the date sale, the Plan collected net rental income totaling $5,922,906. The Company, at its own expense, made improvements to the Tyson Valley Freezer Facility while it was owned by the Plan.

Arthur Andersen represents, that after reviewing the appraisal provided by Reed & Associates and considering the advice of legal counsel regarding the ownership of the improvements, it, in its capacity as independent fiduciary for the Plan, determined that the fair market value of the Tyson Valley Freezer Facility was $11,190,000. The Company purchased the Tyson Valley Freezer Facility for $11,190,000.

13. As to all the sales, Arthur Andersen concluded that the sale of each of the Properties to the Company was in the best interests of the Plan and its participants and beneficiaries. In addition, Arthur Andersen represents that the Company paid the greater of (1) the fair market value, or (2) and the original acquisition cost to the Plan, for each of the Properties, on a property by property basis. As a result of the sale of the Properties to the Company, the Plan received a total of $33,032,000 in cash, at closing.

14. Mr. Reed, of Reed & Associates, represents that in his capacity as appraiser, he reviewed the past rental rates paid on each of the Properties, from April 1, 1991, to the date of sale, and that the rental rates paid by the Company to the Plan for each of the Properties constituted fair market rental value.

The Company prepared an analysis of the rents received for each of the Properties from 1986 to the date of sale. The analysis shows that the annualized rates of return ranged from 12% to 24.27%, with most annualized returns in the 12% to 13% range.

15. Arthur Andersen represents, that in its opinion, the sale of the Properties to the Company was appropriate and in the best interests of the Plan and its participants and beneficiaries. Further, Arthur Andersen states that its review of the Plan's records confirm that the Plan has been terminated and that the Properties needed to be sold to permit the assets of the Plan to be distributed to the participants and beneficiaries in accordance with the terms of the Plan.

16. In summary, the applicant represents that the proposed transaction satisfies the 408(a) of the Act for the following reasons: (a) Prior to the sale, an independent fiduciary determined that the transaction was in the best interest of the Plan and its participants and beneficiaries; (b) the sale will enable the Plan to make distributions to participants and beneficiaries; (c) as of the date of sale, the Plan received cash for each of the Properties which was the greater of (1) the fair market value of the Properties, or (2) the Plan's original acquisition cost for each of the Properties, on a property by property basis; and (d) the sale was a one-time cash transaction and the Plan did not incur any expenses related to the sale.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change

after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 17th day of March, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–7272 Filed 3–19–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Cross-Trades of Securities by Investment Managers

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice.

SUMMARY: This document announces that the Department has under consideration certain applications for exemptions relating to cross-trades of securities by investment managers with respect to any account, portfolio or fund holding "plan assets" [1] subject to the fiduciary responsibility provisions of Part 4 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The Department requests information to assist it in determining upon what standards and safeguards exemptive relief should be conditioned.

DATES: Responses must be received on or before May 19, 1998.

ADDRESSES: Responses (preferably, at least three copies) should be addressed to: Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, 200 Constitution Ave., NW., Washington, DC 20210. Attention: "Cross-Trades of Securities".

FOR FURTHER INFORMATION CONTACT: Louis J. Campagna or E.F. Williams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8883 or 219–8194 (not toll-free numbers); or Michael Schloss, Plan Benefits Security Division, Office of the Solicitor, (202) 219–4600 ext. 138 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

[1] See 29 CFR 2510.3–101, Definition of "plan assets"—plan investments.

A. Background

There are generally two types of securities cross-trading transactions: (i) Direct cross-trades, and (ii) brokered cross-trades.

Direct cross-trades occur whenever an investment manager causes the purchase and sale of a particular security to be made directly between two or more accounts under its management without a broker acting as intermediary. Under this practice, the manager executes a securities transaction between its managed accounts without going into the "open market"—such as a national securities exchange (*e.g.*, the New York Stock Exchange ("NYSE") or an automated broker-dealer quotation system (*e.g.*, the National Association of Securities Dealers Automated Quotation National Market System ("NASDAQ").

Brokered cross-trades occur whenever an investment manager places simultaneous purchase and sale orders for the same security with an independent broker-dealer under an arrangement whereby such broker-dealer's normal commission costs are reduced. In such instances, brokers are often willing to accept a lower commission because the transaction will be easier to execute where there are shares already available to complete the order for both the buyer and the seller.[2]

Cross-trading transactions could result in violations of one or more provisions of Part 4 of Title I of ERISA. Section 406(b)(2) provides that an ERISA fiduciary may not act in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Where an investment manager has investment discretion with respect to both sides of a cross-trade of securities and at least one side is an employee benefit plan account, the Department has previously taken the position that a violation of section 406(b)(2) of ERISA would occur.[3] The Department has also taken the position that by representing the buyer on one side and the seller on the other in a cross-trade, a fiduciary acts on behalf of parties that have adverse interests to each other.[4] Moreover, the prohibitions embodied in section 406(b)(2) of ERISA are per se in nature. Merely representing both sides of a transaction presents an adversity of interests that violates section 406(b)(2) even absent fiduciary misconduct reflecting harm to a plan's beneficiaries.[5]

In addition, violations of section 403 and 404 could also arise where the investment manager represents both sides in a cross-trade. Section 404(a)(1)(A) of ERISA requires, in part, that a plan fiduciary must discharge its duties solely in the interests of the participants and beneficiaries of that plan and "for the exclusive purpose" of providing benefits to participants and beneficiaries and defraying reasonable plan expenses. Similarly, section 403(c)(1) of ERISA requires, in part, that the assets of a plan must be "* * *held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan."

The Department has granted a number of individual exemptions from the prohibitions of section 406(b)(2) of ERISA for cross-trades of securities by investment managers on behalf of employee benefit plan accounts or pooled funds which contain "plan assets" subject to ERISA.[6] These individual exemptions generally have focused on direct cross-trading transactions. The individual exemptions granted have not provided relief for any violations of section 406(b)(1) or (b)(3) of the Act [7] which may occur as a result

[2] This notice assumes that cross-trades, including brokered cross-trades, are not performed on the market as "wash sales" (in which the same party is the buyer and seller) or as "matched orders" (in which confederates simultaneously enter offsetting purchase and sale orders). These and similar types of trades may be used to manipulate stock prices and may raise other issues under ERISA.

[3] *Reich* v. *Strong Capital Management Inc.*, No. 96–C–0669, USDC E.D. Wis. (June 6, 1996).

[4] See *Strong Capital Management Inc.*, supra.

[5] See, *Cutaiar* v. *Marshall*, 590 F.2d 523 (3d Cir. 1979). In *Cutaiar*, the court held that, "* * * when identical trustees of two employee benefit plans whose participants and beneficiaries are not identical effect a loan between the plans without a section 408 exemption, a per se violation of ERISA exists." *Cutaiar*, 590 F.2d at 529.

[6] In this regard, see the following Prohibited Transaction Exemptions (PTEs): PTE 95–83, Mercury Asset Management (60 FR 47610, September 13, 1995); PTE 95–66, BlackRock Financial Management L.P., (60 FR 39012, July 31, 1995); PTE 95–56, Mellon Bank, N.A. (60 FR 35933, July 12, 1995); PTE 94–61, Batterymarch Financial Management (59 FR 42309, August 17, 1994); PTE 94–47, Bank of America National Trust and Savings Association (59 FR 32021, June 21, 1994); PTE 94–43, Fidelity Management Trust Company (59 FR 30041, June 10, 1994); PTE 94–36, The Northern Trust Company (59 FR 19249, April 22, 1994); PTE 92–11, Wells Fargo Bank, N.A. (57 FR 7801, March 4, 1992)—which replaced PTE 87–51 noted below; PTE 89–116, Capital Guardian Trust Company (54 FR 53397, December 28, 1989); PTE 89–9, State Street Bank and Trust Company (54 FR 8018, February 24, 1989); PTE 87–51, Wells Fargo Bank, N.A. (52 FR 22558, June 12, 1987); and PTE 82–133, Chase Manhattan Bank, N.A. (47 FR 35375, August 13, 1982).

[7] Section 406(b)(1) of ERISA prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account. Section 406(b)(3) prohibits a plan fiduciary from receiving

of cross-trades where an investment manager has discretion for both sides of the trade. In this regard, the Department notes that the individual exemptions cannot provide exemptive relief for such managers from the provisions contained in sections 403 and 404. Thus, even when proceeding under an individual exemption, an investment manager remains fully liable under sections 403 and 404 of ERISA for the investment decision relating to a cross-trade.

The Department has also granted a class exemption which provides relief for, among other things, certain agency cross-trades of securities where an investment manager has discretion for, and/or provides investment advice to, either the seller or the buyer, but not both, or where the investment manager does not have discretion for, and/or provide investment advice to, any plan involved in the transaction (see PTE 86–128 (51 FR 41686, November 18, 1986)). Such cross-trades do not require individual exemptive relief if the conditions of PTE 86–128 are met.

The Department currently has under consideration a number of individual exemption applications which request relief for cross-trading programs that involve purchases and sales of securities by employee benefit plans.[8]

In the exemption applications, the applicants have represented to the Department that cross-trading provides certain benefits to employee benefit plans. For example, if a plan needs to sell certain securities, the potential negative impact that such transaction may have on the price of the security if the transaction had been executed in the open market may be avoided through the use of a cross-trade. In addition, both the buyer and seller save the transaction costs (e.g., brokerage commissions or the bid-offer spread) that would otherwise have been paid to a broker-dealer for executing the transaction as an agent. Finally, both parties to the cross-trade benefit by avoiding the uncertainty of whether they will be able to find a counter-party for a proposed trade.

Applicants have also represented to the Department that cross-trade opportunities may be triggered by a number of events. For example, the investment guidelines or objectives for one account may dictate that certain securities should be sold, but those same securities may be on the investment manager's "buy list" for other accounts. Thus, one account or fund may be selling a particular security at the same time that another account or fund may need to buy that security. For instance, one account may need additional liquidity while another account has excess cash that needs to be invested. Similarly, one account may be too heavily invested in a particular security while another account may have a need for that security.

While recognizing the advantages of cross-trading to plans, the Department has particular concerns where managers have investment discretion over both sides of a cross-trade transaction. The conditions contained in the Department's prior individual exemptions were intended to address these concerns and to safeguard plans against the inherent conflict of interest which exists when there is a common investment manager for both sides of a transaction. In this regard, the conditions incorporated into these exemptions were designed to protect plans against the potential that an investment manager may exercise discretion to favor one account over another; e.g., in the pricing of a particular cross-trade, in the decision to either buy and/or sell particular securities for an ERISA account, or to allocate securities among accounts including ERISA accounts.

Specifically, the Department's concerns are illustrated by, among other things, the potential for an investment manager to:

(i) Place relatively illiquid securities into ERISA accounts in order to, among other reasons, shift anticipated losses away from, or provide artificial liquidity and price stability for, favored accounts;

(ii) Use ERISA accounts as buyers or sellers of securities at particular times in order to promote the interests of more favored client accounts;

(iii) Allocate favorable cross-trade opportunities, and the transaction cost savings associated with such trades, to favored client accounts, such as those that have a performance-based fee arrangement with the manager in order to either increase the manager's fees or demonstrate superior investment performance;

(iv) Allow cross-trade opportunities to affect the underlying investment management decision as to which securities to buy or sell for particular ERISA accounts; and

(v) Use cross-trades to avoid the potential market impact of large trades on certain accounts where such trades may not be in the best interests of all accounts involved or may not result in the best execution for the acquisition or sale of such securities.

Types of Individual Exemptions Granted by the Department

The individual exemptions that the Department has granted in the past for cross-trading fall into two categories: (1) Those for Index and Model-Driven Funds; and (2) those for actively-managed or discretionary asset management arrangements.

In the Index Fund programs, trading decisions are "passive" or "process-driven" because the investment manager has been hired to invest money in a formulaic way that, for example, tracks the rate of return of an independently maintained index by either replicating the entire portfolio of the index or by investing in a representative sample of such portfolio. Model-Driven funds are based upon formulas by which an "optimal" portfolio is created to implement some specific investment strategy (e.g., hedge funds). While these "process-driven" programs ostensibly may be implemented only by investment in an index replicating portfolio (in the case of index funds) or some set "optimum" portfolio (in the case of model-driven funds), as noted below, selection of individual securities for such "process-driven" strategies may involve a more subtle exercise of discretion by an investment manager than the Department previously believed.

In actively-managed programs, trading decisions are made by individuals that have been hired to select particular securities as professional investment managers for "actively-managed" accounts.

The conditions for both types of exemptions are summarized below.

Index and Model-Driven Funds

1. The index used by the funds or accounts is established and maintained by an independent organization which is in the business of providing financial information to institutional clients.

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any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

The Department notes that some of the individual exemptions have provided, and some of the current exemption applications also request, relief from the prohibitions of section 406(a)(1)(A) of ERISA. Section 406(a)(1)(A) states, in pertinent part, that a fiduciary of a plan shall not cause the plan to engage in a transaction which constitutes a sale, exchange, or leasing of any property between the plan and a party in interest. Relief from this section was provided in certain of the cross-trading exemptions in response to the applicants' representations that some plans may be parties in interest to other plans participating in the cross-trading program.

[8] These exemption requests include the following: D–9584, Wells Fargo Bank, N.A.; D–10107, Bankers Trust Company of New York; D–10210 and D–10211, Rowe Price Fleming International, Inc., and T. Rowe Price Associates, Inc.; D–10290, State Street Bank and Trust Company; D–10322, Brinson Partners; D–10370, Putnam Advisory Company, Inc.; and D–10507, ANB Investment Management and Trust Company.

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2. Discretion of the manager is limited because only certain "triggering events" effecting the composition or weighting of securities included in the index or model will give rise to a cross-trade opportunity.

3. The triggering events are generally outside the control of the manager and will "automatically" cause the buy or sell decision to occur.

4. Specific triggering events in the Index and Model-Driven Fund exemptions include:

(a) Changes in the composition or weighting of the index or model underlying the Fund by the third party who maintains the index;

(b) Changes in the composition or weighting of a portfolio used for a Model-Driven Fund resulting from an independent fiduciary's decision to exclude certain stocks from the Fund;

(c) Changes in the overall investment in a Fund due to investments and withdrawals; and

(d) Accumulations of cash in a Fund.

5. Cross-trades must take place within three (3) days of a triggering event.

6. Only large plans (i.e., over $50 million in assets) may cross-trade with an Index or Model-Driven Fund in connection with specific portfolio restructuring programs conducted by the manager which have been authorized in advance by an independent plan fiduciary.

7. The price of equity securities involved in a cross-trade must be the closing price of the security on the date of the trade.

Actively-Managed Funds

1. An independent plan fiduciary must specifically authorize in advance a plan's participation in the cross-trade program.

2. Cross-trade opportunities arise at the discretion of the investment manager but must be disclosed to, and authorized in advance by, an independent plan fiduciary prior to the execution of the proposed cross-trade. The authorization is effective for three (3) business days.

3. Written confirmation of the terms and price of the cross-trade must be provided within 10 days of the trade.

4. Equity securities are priced at the closing price as of the date of the cross-trade. As a further limitation, the cross-trade must take place at a price which is within 10 percent of the closing price for the security on the day before the manager receives authorization to engage in a cross-trade.

5. Unless the condition is specifically waived by the independent fiduciary, the cross-trade must involve less than 5 percent of the aggregate average daily trading volume for the security for the week immediately preceding the authorization of the transaction.

Other pertinent conditions applicable to both Index and Model-Driven Funds as well as Actively-Managed Funds.

1. Securities involved in a cross-trade must be securities for which there is a generally recognized market.

2. The investment manager must not charge or receive any commissions or other fees in connection with the cross-trade.

3. The price for any debt security involved in a cross-trade must be determined in accordance with objective and reputable market sources which are independent of the investment manager (e.g., the methodology described under rules promulgated by the Securities and Exchange Commission (SEC) for mutual funds, as discussed further below).

4. A fair system for allocating cross-trade opportunities among managed accounts has been required, with such allocation being made on an objective basis (e.g., pro rata) among buying and selling client accounts.

Issues and Developments

Through the development of cross-trading exemptions and enforcement proceedings the Department has become aware of new issues that have the potential to impact or change exemption policy involving cross-trading transactions. The Department recognizes that it is important to retain the flexibility to review our exemption policy in the context of changed circumstances or new facts that may be brought to our attention. Thus, one of the primary objectives of this notice is to request information from interested persons, e.g., plan fiduciaries, investment management firms, securities industry representatives and securities exchanges that may be affected by the Department's exemption policy for cross-trades of securities by employee benefit plans.

In the "process-driven" context, it has been represented to the Department that investment managers who maintain accounts or pooled funds often attempt to track the rate of return of an independently maintained third party index (e.g., the Standard & Poors 500 Composite Stock Price Index a/k/a the S&P 500 Index, the Wilshire 5000 Index, the Russell 2000 Index). These pooled funds are often collective investment funds established and trusteed by large banks that manage money for institutional investors, including employee benefit plans. Under the Department's individual exemptions, such funds usually cross-trade pursuant to certain narrowly-defined "triggering events" that were represented to involve little, if any, discretion on the part of the investment manager.

In the past, various applicants represented to the Department that the investment strategy of most Index Funds was to merely replicate the capitalization-weighted composition of a particular index. However, the Department now understands that the process of replication of an index may be more subtle since many, if not most, Index Funds do not totally replicate the exact portfolio of the index that is being tracked. In many instances, the manager maintains some discretion to select particular securities to track the rate of return of the overall index without actually holding all of the securities included in the index. In addition, some Index Funds are designed to exceed the rate of return of the index by altering the composition or weighting of the portfolio designated by the organization that maintains the index. These "enhanced" Index Funds often have strategies that resemble actively-managed accounts.

Model-Driven Funds, on the other hand, are portfolios that apply specific investment philosophies and criteria in formulaic fashion to create a specialized portfolio. Model-Driven Funds come in many different forms (e.g., hedge, sector, contra, etc). Some Model-Driven Funds seek to transform the capitalization-weighted or other specified composition of an index in order to accomplish certain goals. Such goals vary from client-initiated instructions to delete certain stocks to mathematical formulae designed to focus on certain investment criteria (e.g., price-earnings ratios) at certain times to achieve a rate of return for the portfolio that exceeds that of the index. Thus, some Model-Driven Funds merely appear to be a more sophisticated type of "enhanced" Index Fund.

There are also indications that, in many cross-trading programs for Index and Model-Driven Funds, the manager may retain a degree of discretion in selecting securities for the Funds' portfolios. Further, it appears that, in weighting a particular tracking factor for an index or model, the manager can produce desired cross-trade opportunities. For example, by factoring in the liquidity or the availability of a security within the control of the manager, the manager can produce more cross-trading opportunities for that particular security by the accounts within the control of the manager. Thus, the process of replicating an independently maintained index or model may not be as automatic as

previously described to the Department in the relevant exemption applications. At this point, the Department is uncertain as to the degree of discretion utilized in Index and Model-Driven Funds and believes it would be helpful to obtain further information on this matter.

A number of interested persons have suggested to the Department that, in developing standards and safeguards in individual exemptions involving cross-trade transactions, particularly those involving actively-managed accounts, the Department should adopt the methodology approved by the SEC for cross-trades of equity or debt securities by mutual funds. In this regard, the SEC permits cross-trading of securities if the transactions are accomplished in accordance with SEC Rule 17a–7 (Rule 17a–7 or the Rule).[9]

Rule 17a–7 is an exemption from the prohibited transaction provisions of section 17(a) of the Investment Company Act of 1940, which prohibit, among other things, transactions between an investment company and its investment adviser or affiliates of its investment adviser. Thus, Rule 17a–7 permits transactions between mutual funds and other accounts that use the same or affiliated investment advisers, subject to certain conditions that are designed to assure fair valuation of the assets involved in the transaction and fair treatment of both parties to the transaction.[10] Even so, the requirements of Rule 17a–7 are only applicable to transactions and entities regulated under the Investment Company Act of 1940, and such requirements are not otherwise applicable to other entities—such as employee benefit plans.[11]

An essential requirement of Rule 17a–7 is that the transaction be effected at the independent current market price for the security involved. In this regard, the "current market price" for specific types of securities is determined as follows:

(1) If the security is a "reported security" as that term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (17 CFR 240.11Aa3–1), the last sale price with respect to such security reported in the consolidated transaction reporting system ("consolidated system") or the average of the highest current independent bid and lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the Securities and Exchange Act of 1934 (17 CFR 240.11Ac1–1)) if there are no reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or the average of the highest current independent bid and lowest current independent offer on such exchange if there are no reported transactions on such exchange that day; or

(3) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or

(4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry.[12]

It is our understanding that proponents advocating the adoption of a similar exemptive standard for cross-trading by plans argue that, by pricing a cross-trade pursuant to the procedures described in Rule 17a–7, employee benefit plans will be protected from the concerns embodied in ERISA because one plan cannot be favored over another by the common fiduciary determining the appropriate value of the cross-traded security. This argument assumes that if both sides of a cross-trade transaction receive a fair and objectively determined price for a security, there should not be any concern about potential fiduciary abuses under ERISA in connection with the transaction.

The Department believes that this assumption may reflect a misunderstanding of the purposes underlying ERISA. ERISA's fiduciary responsibility and prohibited transaction provisions are designed to help assure that the fiduciary's decisions are made in the best interest of the plan and not colored by self-interest. These provisions require that a plan fiduciary act with an "eye single" to the interests of the plan involved in the transaction.[13] Therefore, the Department is not convinced that reliance upon an objective fair price alone will ameliorate the conflicts described above, such as the potential for "cherry picking" or "dumping" of securities or allocating investment opportunities among client accounts in a manner designed to favor one account over the other.

Further, the Department notes that, even where cross-trades take place at an appropriate market price or, when no market price is available, at a price set through use of the methodology described in Rule 17a–7, a per se violation of section 406(b)(2) of ERISA may occur even if the result is favorable to the plans involved.[14] Moreover, the mechanism employed under Rule 17a–7 to set the price of a security for a cross-trade may not take into account the transacting plan's specific interest in using its position to affect the transaction price in its favor on the open market. Setting a transaction price pursuant to this rule appears to presume that the trade itself cannot impact the market price and, therefore, that neither party has an interest in performing the trade on (or off) the market. More likely, however, a potential purchaser of securities would find lower prices in the marketplace if there were more sellers than purchasers in the marketplace at the time of the cross-trade. Similarly, a seller would find higher prices in a marketplace populated by more purchasers at the time of the cross-trade. When an investment manager decides to engage in an off-market transaction, particularly with thinly-traded securities, the result is that the effect of the transaction itself on the marketplace may be removed.

The Department notes further that Rule 17a–7 allows certain securities to be priced based on the last sale price for such securities on the exchange.[15] If a manager anticipates a drop in stock prices, such manager could decide to favor a buying client by waiting during the day for the stock price to drop before engaging in a cross-trade where the seller could be an ERISA account. The ability of the Department to address these issues would be lacking under any approach which focuses primarily upon ensuring that there is a fair and objective price for a cross-traded security under the requirements of Rule 17a–7.

Therefore, the Department has thus far been unable to conclude that

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[9] 17 CFR 270.17a–7.

[10] Among the conditions of Rule 17a–7 are the following requirements: (a) The transaction must be consistent with the investment objectives and policies of the mutual fund, as described in its registration statement; (b) the security that is the subject of the transaction must be one for which market quotations are readily available; (c) no brokerage commissions or other remuneration (other than customary transfer fees) may be paid in connection with the transaction; and (d) the mutual fund's board of directors (i.e., those directors who are independent of the fund's investment adviser) must adopt procedures to ensure that the requirements of Rule 17a–7 are followed, and determine no less frequently than quarterly that the transactions during the preceding quarter were in compliance with such procedures.

[11] 17 CFR 270.17a–7.

[12] 17 CFR 270.17a–7(b)(1)–(4).

[13] See "*Donovan* v. *Bierwirth*", 680 F.2d 263, 271 (2d. Cir.), *cert. denied* 104 S.Ct. 488 (1982).

[14] See, *Cutaiar*, supra.

[15] 17 CFR 270.17a–7(b)(1) and (2).

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reliance solely on Rule 17a–7 would adequately protect employee benefit plans in situations where an investment manager exercises discretion for both sides of a cross-trade.[16] However, in recognition of the interest in the approach under Rule 17a–7, the Department specifically invites responses from interested persons on the protections afforded to plans by this Rule.

B. Issues Under Consideration

The Department is issuing this notice to provide interested persons with an opportunity to submit information and responses which will be considered by the Department in developing exemptions for transactions involving cross-trades of securities by investment managers.

In order to assist interested parties in responding, this notice contains a list of specific questions designed to elicit information that the Department believes would be especially helpful in developing additional exemptions. The following questions may not address all issues relevant to the development of standards and safeguards for cross-trades. Therefore, the Department further invites interested persons to submit responses on other issues that they believe are pertinent to the Department's consideration of this matter.

Specific Questions

1. Would the development of a class exemption which covers all types, or any type, of cross-trading programs be in the interests and protective of employee benefit plan investors?

2. Should the Department develop separate class exemptions for cross-trades of securities by (i) actively-managed accounts, and (ii) "process-driven" accounts?

3. Should the Department develop consistent conditions in individual exemptions which would then facilitate the use of PTE 96–62?[17]

4. What effect, if any, will each of the following have on cross-trading programs?

a. The move to decimalization of stock quote spreads,

b. The emergence of electronic proprietary trading systems (e.g., Reuters' Instinet, London's Seaq International, Investment Technology Group's Posit, and AZX's Arizona Stock Exchange),

c. The growth of block trading in the so-called "upstairs market" on the NYSE or other national securities exchanges, and

d. Other market developments.

5. Will the development of proprietary trading systems impact on the requirements for an exemption permitting cross-trading of securities by plans with the same investment manager?

6. Are there real savings to plans from cross-trading when other market options are available?

7. What are the "costs" associated with doing a transaction off-market?

8. Will trading by other investors on securities exchanges be affected by the widespread use of cross-trading programs for securities transactions by employee benefit plans?

9. Are cross-trades beneficial only when the securities involved represent a significant percentage of the average daily trading volume of such securities?

10. How does an investment manager who is a fiduciary of a plan with discretion in a cross-trade, who also has discretion for other accounts in the same cross-trade, act "solely in the interest of" the plan account?

11. Does a cross-trade which avoids "adverse market impact" for one side of a transaction truly benefit both sides of that transaction?

12. In order to act in an employee benefit plan's best interest, should an investment manager attempt to negotiate a better price for a security before engaging in a cross-trade?

13. Would it ever be in an employee benefit plan's best interest to purchase a security through a cross-trade that the plan would not have otherwise purchased?

14. Where an investment manager has performed an analysis of a range of securities, would it ever be in a plan's best interest to purchase a security through a cross-trade that was not otherwise the superior security as indicated by the investment manager's analytics?

15. If an employee benefit plan purchased a security through a cross-trade that was not the most appropriate security for the plan at the time of the transaction pursuant to an investment manager's model or index, could such a transaction be viewed as being in the plan's best interests if the plan was adequately compensated for providing an accommodation to the selling entity? If so, how could the market value of such an accommodation be determined by the investment manager?

16. Do cross-trade programs tend to benefit larger accounts over smaller ones?

17. What is the best way to establish a price for cross-traded securities? (e.g., the "current market price" under SEC Rule 17a–7, the closing price for stocks traded on a nationally recognized securities exchange, the "volume weighted average price" for equity securities traded on an exchange,[18] the average between the current "bid" and "ask" quotations from reputable independent dealers and market-makers—particularly for debt securities where no exchange prices are available, etc.)

18. Given the variety of methods for trading of equity securities and the fact that many trades are conducted after a particular exchange has closed for the day, what is the current understanding of the meaning of the term "closing price," as utilized as a condition in the Department's current individual exemptions?

19. Will volume restrictions on the number of shares of a particular security that can be cross-traded ameliorate the potential for abuse that may occur? If so:

a. What should the volume restrictions be?

b. If particular cross-trades would exceed these limits, should the manager be able to engage in the transaction if certain disclosures are made to an independent plan fiduciary?

20. Are the computer models which "drive" portfolio selections made by a manager for an index or model-driven fund capable of being manipulated by such managers in order to produce more cross-trade opportunities for a particular fund?

21. What degree of discretion is provided to investment managers of index or model-driven funds to affect more or less cross-trade opportunities? To the extent that investment managers have such discretion:

a. Could the exercise of such discretion only become apparent upon a detailed examination of the mathematical assumptions used in each computer model and, if not, how else could such actions be discovered?

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[16] See also PTE 86–128, 51 FR 41686, 41692 (Nov. 18, 1986).

[17] PTE 96–62 (61 FR 39988, July 31, 1996) is a class exemption granted by the Department which permits certain authorized transactions between plans and parties in interest. The class exemption applies to prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department as having terms, conditions and representations which are substantially similar to two or more individual exemptions previously granted by the Department within the 60-month period prior to the written submission filed in accordance with such class exemption.

[18] The "volume weighted average price" calculates the average price, weighted by the volume of each trade during the course of the day and, according to some market analysts, provides a more refined view of the market behavior of a specific security, with time, size and exchange filters.

b. Could the exercise of such discretion create "false liquidity" or "false price stability" for a particular security and, if so, would that create future problems for the portfolio when large amounts of such security must be sold in the open market?

22. Could exemptions for cross-trading programs involving employee benefit plans provide a commercial advantage to investment managers with larger amounts of assets under management and, if so, to what extent?

23. Could an efficient cross-trading program provide an investment manager with commercial advantages over competitors who do not choose to have, or are unable to implement, such programs and, if so, to what extent?

24. Where an investment manager has discretion on both sides of a transaction, can cross-trading of securities be utilized to:

a. "Dump" particular securities on less favored accounts to promote the interests of more favored accounts,

b. "Cherry-pick" particular securities from less favored accounts to promote the interests of more favored accounts,

c. Promote "front-running",

d. Allocate favorable cross-trade opportunities to certain client accounts to benefit the manager's ultimate compensation, and

e. Otherwise provide a benefit to the investment manager, another client of the investment manager or any other person or entity at an employee benefit plan's expense?

25. What new terms or conditions could the Department impose in an exemption to protect any plans involved in cross-trading from potential abuses, such as those listed in question 24?

All submitted responses will be made a part of the record of the proceeding referred to herein and will be available for public disclosure.

Signed at Washington, D.C., this 16th day of March, 1998.

Alan D. Lebowitz,

Deputy Assistant Secretary of Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–7271 Filed 3–19–98; 8:45 am]

BILLING CODE 7708–01–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is requesting a second one-year extension of approval of its optional appeal form, Optional Form 283 (Rev. 10/94) from the Office of Management and Budget (OMB) under section 3506 of the Paperwork Reduction Act of 1995. The appeal form is currently displayed in 5 CFR Part 1201, Appendix 1, and on the MSPB Web Site at http://www.mspb.gov/merit009.html. In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	9,000	1	9,000	.5	4,500

In addition, the MSPB invited comments on (1) whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

DATES: Comments must be received on or before May 19, 1998.

ADDRESSES: Copies of the appeal form may be downloaded from the MSPB Web Site at http://www.mspb.gov/merit009.html, or by writing the Office of the Clerk, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419, or by calling the Clerk's office at (202) 653–7200. Comments concerning the paperwork burden should be addressed to the Office of the Clerk, attention Mr. Arlin Winefordner, at the above address. The fax number is (202) 652–7130, and the E-mail is Winefordner@MSPB.gov.

Dated: March 17, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–7340 Filed 3–19–98; 8:45 am]

BILLING CODE 7406–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: April 6, 1998; 8:45 a.m.–5:00 p.m., April 7, 1998; 8:45 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Tel. No.: (703) 306–1400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: FY 1999 Budget and Science Opportunities Discussion.

Dated: March 16, 1998.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 98–7237 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

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NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the month of April 1998, the Special Emphasis Panel will be holding a Professional Opportunities for Women in Research and Education (POWRE) Panel Meeting to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Name: Special Emphasis Panel in Chemical and Transport Systems.

Date and Time: April 6, 1998, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1371.

Type of Meeting: Closed.

Contact: Dr. Ashley F. Emery, Program Director, Thermal Transport & Thermal Processing, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Thermal Transport & Thermal Processing as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7239 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Cognitive, Psychological and Language Sciences (#1757).

Date & Time: April 15–17, 1998; 9:00 a.m.–6:00 p.m. (PST)

Place: University of California, UCLA Guest House, 330 Circle Dr. East, Los Angeles, CA 90095.

Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: To review and evaluate linguistics proposals as part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7241 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date & Time: April 6–8, 1998; 8:30 AM–5:00 PM.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Global Ocean Ecosystems Dynamics Program (Globec) proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: March 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7238 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Graduate Education; Notice of Meeting

Name: Special Emphasis Panel in Graduate Education (57).

Date: April 9–10, 1998; 8:00 a.m. to 5:00 p.m.

Place: NSF, Room 320, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Sonia Ortega, Program Director, PFSMETE, Room 907N, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. 22230, telephone (703) 306–1697.

Purpose of Meeting: To provide advice and recommendations concerning Postdoctoral Fellowships in Science, Mathematics, Engineering and Technology Education (PFSMETE) proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF Postdoctoral Fellowships in Science, Mathematics, Engineering and Technology Education program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7252 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following 4 meetings.

1. Name: Special Emphasis Panel for Social, Behavior & Economic Sciences (#1766).

Date & Time: April 8–9–10, 1998; 8:30 a.m.–5 p.m.

Room: 340.

Contact Person: Bonney Sheahan, Program Director for Cross Disciplinary Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1733.

Agenda: To review and evaluate Professional Opportunities for Women in Research & Education (POWRE) proposals as part of the selection process for awards.

2. Name: Advisory Panel for Infrastructure, Methods & Science Studies (#1760).

Date & Time: April 30–May 1, 1998; 8:30 a.m.–5 p.m.

Room: 330.

Contact Person: Dr. Rachelle Hollander, Program Director for SDEST, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Arlington, VA 22230. Telephone: (703) 306–1743.

Agenda: To review and evaluate Societal Dimensions of Engineering, Science & Technology proposals as part of the education process for awards.

3. Name: Advisory Panel for Infrastructure, Methods & Science Studies (#1760.

Date & Time: May 1–2, 1998; 8:30 a.m.–5 p.m.

Room: 365.

Contact Person: Dr. Edward J. Hackett, Program Director for Science & Technology Studies, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1742.

Agenda: To review and evaluate Science & Technology Studies proposals as part of the selection process for awards.

4. Name: Advisory Panel for Infrastructure, Methods & Science Studies (#1760).

Date & Time: May 4–5, 1998; 8:30 a.m.–5 p.m.

Room: 320.

Contact Person: Dr. Cheryl L. Eavey, Program Director for Methods, Measurement & Statistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1729.

Agenda: To review and evaluate Methodology, Measurement & Statistics proposal as part of the selection process for awards.

Place: National Science Foundation, Stafford Place, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7242 Filed 3–19–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 21, "Reporting of Defects and Noncompliance.

2. *Current OMB approval number:* 3150–0035.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying basic components and safety related design, analysis, testing, inspection, and consulting services to NRC licensed facilities or activities.

5. *The number of annual respondents:* 100 annually.

6. *The number of hours needed annually to complete the requirement or request:* 17,093 (13,480 reporting hours and 3,613 recordkeeping hours).

7. *Abstract:* 10 CFR Part 21 implements Section 206 of the Energy Reorganization Act of 1974, as amended. It requires directors and responsible officers of firms and organizations building, operating, owning, or supplying basic components to NRC licensed facilities or activities to report defects and noncompliances that could create a substantial safety hazard at NRC licensed facilities or activities. Organizations subject to 10 CFR Part 21 are also required to maintain such records as may be required to assure compliance with this regulation.

The NRC staff reviews 10 CFR Part 21 reports to determine whether the reported defects in basic components and related services and failures to comply at NRC licensed facilities or activities are potentially generic safety problems.

Submit, by May 19, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 13th day of March, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–7277 Filed 3–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its December 14, 1994, application for proposed amendment to Facility Operating License No. 49 for the Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

The proposed amendment would have (1) increased the upper bound of the overall containment integrated leakage rate required by Technical Specification (TS) 3.6.1.2.a from 0.3 wt.% per day to 0.65 wt.% per day of the containment air per 24 hours at design basis pressure, (2) revised TS 4.6.6.1.d.3 by providing more margin with respect to the drawdown time for secondary containment vacuum, and (3) revised the applicable Bases section.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in

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the **Federal Register** on February 15, 1995 (60 FR 8750). However, by letter dated February 26, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 14, 1994, and the licensee's letter dated February 26, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 11th day of March 1998.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7278 Filed 3–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Northern States Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License No. DPR–22 Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–263]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22 issued to Northern States Power Company (the licensee) for operation of the Monticello Nuclear Generating Plant, Unit 1, located in Wright County, Minnesota.

The proposed amendment would revise Section 2.1.A of the Technical Specifications (TS), Appendix A of the Operating License for the Monticello Nuclear Generating Plant, to change the safety limit minimum critical power ratio (SLMCPR) values from 1.08 to 1.10 for two recirculation pump operation, and from 1.09 to 1.11 for single loop operation. The amendment would also revise pages 6 and 249b of the TS to indicate that the revised SLMCPR values are applicable only to operating cycle 19.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

SLMCPR [safety limit minimum critical power ratio] calculations are based on ensuring that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. Proposed SLMCPRs preserve existing margin to transition boiling and fuel damage in the event of a postulated transient. Fuel licensing acceptance criteria for SLMCPR calculations apply to Monticello Cycle 19 in the same manner as previously applied. The probability of fuel damage is not increased.

Therefore, the proposed TS [technical specification] changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

SLMCPR is a TS numerical value designed to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core during the limiting postulated transient. A change in SLMCPR cannot create the possibility of any new type of accident. SLMCPR values for the new fuel cycle are calculated using previously transmitted methodology. Additionally, the Operating Limit MCPR [minimum critical power ratio] value for the QFAs [qualification fuel assemblies] in the core monitoring computer databank will be increased by 0.02 to ensure that the prior SPC [Siemens Power Corporation] review results are bounded.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Fuel licensing acceptance criteria for SLMCPR calculations apply to Monticello Cycle 19 in the same manner as previously applied. SLMCPRs prepared by GE [General Electric] using methodology previously transmitted to the NRC ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving fuel cladding integrity.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by close of business within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 20, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 13, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 18th day of March 1998.

For the Nuclear Regulatory Commission

Tae Kim,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7424 Filed 3–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, 50–423]

Northwest Utilities Millstone Nuclear Power Station, Units 1, 2, and 3 Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that on February 2, 1998, Ms. Deborah Katz, Ms. Rosemary Bassilakis, and Mr. Paul Gunter (Petitioners) filed a Petition, pursuant to 10 CFR 2.206, on behalf of the Citizens Awareness Network and the Nuclear Information and Resources Service. The Petition requests immediate action to:

1. Revoke Northeast Utilities' (NU's, the licensee's) license to operate Millstone Units 1, 2, and 3 as the result of ongoing intimidation and harassment of its workforce by NU management.

2. Revoke NU's license to operate Millstone Units 1, 2, and 3 as the result of persistent licensee defiance to adherence of NRC regulations and

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directives to create a "questioning attitude" for its workers to challenge management on nuclear safety issues without fear of harassment, intimidation, or reprisals by NU.

3. Refer the Nuclear Oversight Focus 98 List and the reported NU management attempt to destroy the list to the Department of Justice for investigation of a potential coverup.

As a basis for the Petitioners' request to revoke the Millstone licenses, the Petition states that an NU document (Nuclear Oversight's Focus 98 List dated January 11, 1998) directs the group to address areas needing improvement by focusing on the "inability to isolate cynics from the group culture" and "pockets of negativism." The Petition further states that the list demonstrates the sustained and unrelenting policy of NU's senior management to undermine a safety-conscious workplace at Millstone and that despite 2 years of increased regulatory scrutiny of the managerial mistreatment of its workers and the corporation's mismanagement of its employees' safety concerns program, a "chilled atmosphere" remains intact and entrenched.

As a basis for the Petitioners' request for a Department of Justice investigation, the Petition makes the following statement: "Since it has been reported that NU management employees attempted to destroy the list, NRC has a duty to refer this apparent deliberate attempt to evade the otherwise lawful exercise of authority by NRC to the Department of Justice for complete investigation. This alleged attempt to cover up wrong doing by NRC's licensee is a potential obstruction of justice that should be fully and fairly investigated."

The NRC staff is also concerned about the issues the Petitioners raised in their Petition. As a result, the staff issued a letter dated February 10, 1998, to the licensee requesting more information on this issue. The NRC staff will consider the licensee's response to the staff's request for additional information before the Commission allows restart of any Millstone unit. To this extent, the Petitioners' request for immediate action is partially granted. The Petitioners' specific requests to immediately revoke the operating licenses and refer the incident to the Department of Justice are denied because immediate action is not required to protect public health and safety while additional information is obtained from the licensee.

The issues in the Petition are being treated pursuant to 10 CFR 2.206 of the Commission's regulations and have been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action with regard to these issues will be taken in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the temporary local public document room located at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 11th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7276 Filed 3–19–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: Form RI 25–37

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. Form RI 25–37, Evidence to Prove Dependency of a Child, is designed to collect sufficient information for the OPM to be able to determine whether the surviving child of a deceased Federal employee is eligible to receive benefits as a dependent child.

Approximately 250 forms are completed annually. We estimate it takes approximately 60 minutes to assemble the needed documentation. The annual burden is 250 hours.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before May 19, 1998.

ADDRESS: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–7207 Filed 3–19–98; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on November 24, 1997 (62 FR 62648). Individual authorities established or revoked under Schedules A and B and established under Schedule C between October 1, 1997, and January 31, 1998, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during October 1997.

One Schedule A authority was established during November 1997:

Department of Agriculture

Alternative Agricultural Research and Commercialization Corporation. Executive Director. Effective November 19, 1997.

The following Schedule A Authority was established during December 1997:

Chemical Safety and Hazard Investigation Board

Up to 30 positions established to create the Chemical Safety and Hazard Investigation Board. No new appointments may be made under this authority after December 31, 1998. Effective December 3, 1997.

No Schedule A Authorities were established during January 1998.

No Schedule A authorities were revoked during October or November 1997.

The following single-agency Schedule A exceptions were revoked effective December 31, 1997, because the positions are now covered under Governmentwide Schedule A authorities:

Department of the Army

Five hundred Medical and Dental Intern, Resident and Fellow positions whose incumbents are paid stipends, not to exceed 4 years.

Department of Defense

Positions at GS–3/12 when filled by National Security Education Program scholarship or fellowship recipients, not to exceed 4 years.

Defense Contract Audit Agency

Two positions of Auditor, GS–511–14, under an Accounting Fellowship Program, not to exceed 2 years.

General Services Administration

Twenty-five positions at grades GS–14/15 in order to bring current industry experience into the agency, not to exceed 2 years.

Law Clerk positions in the Board of Contract Appeals' Law Clerk Fellows Program, not to exceed 2 years.

Department of Health and Human Services

Ten positions, GS–9/14, under the Policy Research Associate Program, not to exceed 2 years.

Public Health Service

Five positions of Medical Technologist Resident, GS–644–7, in the National Institutes of Health, not to exceed 1 year.

Medical and dental interns, externs, residents, and student nurses.

Positions of a scientific, professional or technical nature filled by students who are paid stipends, when the work performed is used as a basis for completing academic requirements.

Twelve positions of Therapeutic Radiologic Technician Trainee in the National Cancer Institute filled by individuals who are paid stipends.

Pharmacy Resident positions, GS–7/9, in the National Institutes of Health, not to exceed 12 months pending licensure.

Hospital Administration Resident positions, GS–9, in the National Institutes of Health, not to exceed 1 year.

Thirty positions, GS–11/13, associated with the postdoctoral training program for interdisciplinary toxicologists, National Institutes of Health, Research Triangle Park, North Carolina.

Health Care Financing Administration

Ten professional positions, GS–9/15, filled under a Professional Exchange Program, not to exceed 1 year.

Department of the Navy

Positions of Student Pharmacist whose incumbents are paid stipends.

Fifty positions of resident-in-training whose incumbents are paid stipends.

Student Operating Room Technician positions whose incumbents are paid stipends.

Student Social Worker positions whose incumbents are paid stipends.

Student Practical Nurse positions filled by trainees enrolled in a non-Federal institution who are paid stipends.

Medical Technology Intern positions filled by students enrolled in non-Federal training programs who are paid stipends.

Medical Intern positions filled by persons serving in non-Federal hospitals who are paid stipends.

Student Speech Pathologist positions filled by persons enrolled in non-Federal institutions who are paid stipends.

Student Dental Assistant positions filled by persons enrolled in non-Federal institutions who are paid stipends.

Securities and Exchange Commission

Seven positions of Accountant and Auditor, GS–13/15, filled under the Accounting Fellow Program, not to exceed 2 years.

Two positions of Accountant and Auditor, GS–13/15, to provide a period of transition between Accounting Fellow Program fellowships.

Positions of Economist, GS–13/15, under the Economic Fellow Program, not to exceed 2 years.

Ten positions, GS–12/15, of Accounting Fellows for the Full Disclosure Program, not to exceed 2 years.

Four positions, GS–14/15, of Accounting Fellows for the Capital Markets Risk Assessment Program, not to exceed 2 years.

Department of the Treasury

Office of the Comptroller of the Currency

Positions under the Professional Accounting Fellow Program, not to exceed 2 years.

No Schedule A authorities were revoked during January 1998.

Schedule B

No Schedule B authorities were established during October, November and December 1997 or during January 1998.

No Schedule B authorities were revoked during October 1997.

The following Schedule B authority was revoked during November 1997:

U.S. Information Agency

Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern. Effective November 28, 1997.

The following single-agency Schedule B exceptions were revoked effective December 31, 1997 because the positions are now covered under a Governmentwide Schedule A authority:

Department of the Army

Four Medical Officer (Surgery) positions at the Brooke Army Medical Center, Fort Sam Houston, Texas.

Department of Defense

Positions at GS–11/15 under Defense Policy Science and Engineering Fellowship Program, not to exceed 2 years.

Department of Energy

Three Exceptions and Appeals Analyst positions under a fellowship program in the Office of Hearings and Appeals, not to exceed 3 years.

Department of Health and Human Services

Ten positions of Librarian, GS–9, under a Library Associate Training Program in the National Library of Medicine, not to exceed 1 year.

Department of State

Four Physical Science Administration Officer positions at GS–11/13 under a Science, Engineering and Diplomacy Fellowship Program, not to exceed 2½ years.

No Schedule B exceptions were revoked during January 1998.

Schedule C

The following Schedule C authorities were established during October, November, December 1997 and January 1998:

Agency for International Development

Congressional Liaison Officer to the Chief of Legislative and Public Affairs, Congressional Liaison Division. Effective October 31, 1997.

Legislative Affairs Specialist to the Deputy Assistant Administrator. Effective November 14, 1997.

Public Affairs Specialist to the Chief, Legislative and Public Affairs, Public Liaison Division. Effective November 14, 1997.

Commission on Civil Rights

Special Assistant to the Commissioner. Effective October 30, 1997.

Special Assistant to the Staff Director, Office of the Staff Director. Effective January 28, 1998.

Department of Agriculture

Confidential Assistant to the Administrator, Food and Consumer Service. Effective October 9, 1997.

Confidential Assistant to the Director, Office of Communications. Effective October 9, 1997.

Special Assistant for Nutrition Education to the Administrator, Food and Consumer Service. Effective October 21, 1997.

Special Assistant to the Administrator, Agricultural Marketing Service. Effective October 21, 1997.

Speech Writer to the Director, Office of Communications. Effective October 21, 1997.

Special Assistant to the Administrator for Food and Consumer Service. Effective October 30, 1997.

Confidential Assistant to the Administrator, Agricultural Research Service. Effective October 30, 1997.

Staff Assistant to the Administrator, Foreign Agricultural Service. Effective October 30, 1997.

Director, Intergovernmental Affairs to the Assistant Secretary for Congressional Relations. Effective November 12, 1997.

Confidential Assistant to the Administrator, Risk Management Agency. Effective November 12, 1997.

Special Assistant to the Administrator, Foreign Agricultural Service. Effective November 19, 1997.

Confidential Assistant to the Director, Tobacco and Peanuts Division, Farm Service Agency. Effective November 19, 1997.

Special Assistant to the Administrator, Foreign Agricultural Service. Effective November 20, 1997.

Confidential Assistant to the Deputy Administrator, Rural Business Service. Effective November 20, 1997.

Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective November 21, 1997.

Special Assistant to the Administrator, Risk Management Agency. Effective December 2, 1997.

Director, Community Outreach Division to the Deputy Administrator, Community Development. Effective December 3, 1997.

Special Assistant to the Associate Administrator, Rural Business Service. Effective December 4, 1997.

Special Assistant to the Administrator, Cooperative State Research, Education and Extension Service. Effective December 4, 1997.

Confidential Assistant to the Administrator, Animal and Plant Inspection Service. Effective December 8, 1997.

Staff Assistant to the Deputy Administrator, Community Development. Effective December 11, 1997.

Director, Legislative Affairs Staff to the Administrator, Foreign Agricultural Service. Effective January 8, 1998.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective January 28, 1998.

Confidential Assistant to the Special Assistant to the Secretary. Effective January 30, 1998.

Department of Commerce

Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs, Office of Legislative and Intergovernmental Affairs. Effective October 9, 1997.

Special Assistant to the Director, Office of Public Affairs. Effective October 17, 1997.

Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 17, 1997.

Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 17, 1997.

Special Assistant to the Under Secretary for Export Administration, Bureau of Export Administration. Effective October 17, 1997.

Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 17, 1997.

Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 17, 1997.

Special Assistant to the Under Secretary for International Trade. Effective October 21, 1997.

Director of Advance to the Director, Office of External Affairs. Effective October 21, 1997.

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 30, 1997.

Deputy Director of Advance to the Director, Office of External Affairs. Effective October 30, 1997.

Director of Congressional Affairs to the Assistant Secretary and Commissioner of Patent and Trademarks. Effective October 31, 1997.

Confidential Assistant to the Director, Office of External Affairs. Effective November 6, 1997.

Confidential Assistant to the Director, Office of External Affairs. Effective November 21, 1997.

Special Assistant to the Chief of Staff. Effective November 21, 1997.

Special Assistant to the Deputy Secretary of Commerce. Effective November 21, 1997.

Special Assistant to the Director of Public Affairs. Effective December 3, 1997.

Special Assistant to the Director, Office of Business Liaison. Effective December 16, 1997.

Special Assistant to the Deputy Secretary. Effective December 23, 1997.

Department of Defense

Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness. Effective October 1, 1997.

Confidential Assistant to the Deputy Secretary of Defense. Effective October 1, 1997.

Confidential Assistant to the Under Secretary (Acquisition and Technology). Effective October 7, 1997.

Director for Community Relations and Communications Strategy to the Assistant Secretary for Public Relations. Effective October 24, 1997.

Staff Specialist to the Assistant Secretary of Defense for Public Affairs. Effective October 24, 1997.

Special Assistant to the Assistant Secretary of Defense for Legislative Affairs. Effective October 27, 1997.

Staff Specialist to the Director, NATO Policy. Effective October 30, 1997.

Director of Public Services to the Assistant Secretary of Defense (Reserve Affairs). Effective November 19, 1997.

Civilian Executive Assistant to the Chairman, Joint Chiefs of Staff. Effective November 21, 1997.

Personal and Confidential Assistant to the Director, Operational Test and Evaluation. Effective December 8, 1997.

Director of Protocol to the Chief of Staff. Effective December 11, 1997.

Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller). Effective December 11, 1997.

Special Assistant for Health Affairs to the Assistant Secretary for Legislative Affairs. Effective January 7, 1998.

Department of Education

Press Assistant to the Director, Office of Public Affairs. Effective October 9, 1997.

Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services. Effective October 16, 1997.

Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education. Effective October 16, 1997.

Special Assistant to the Assistant Secretary for Postsecondary Education. Effective October 24, 1997.

Special Assistant to the Assistant Secretary of Special Education and Rehabilitative Services. Effective November 20, 1997.

Special Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective November 21, 1997.

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective January 5, 1998.

Confidential Assistant to the Advisor to the Secretary (Director, America Reads Challenge). Effective January 5, 1998.

Director, White House Initiatives on Tribal Colleges and Universities to the Assistant Secretary, Office of Vocational and Adult Education. Effective January 21, 1998.

Special Assistant to the Deputy Secretary. Effective January 23, 1998.

Confidential Assistant to the Special Assistant to the Secretary. Effective January 30, 1998.

Department of Energy

Staff Assistant to the Director, Scheduling and Advance. Effective November 14, 1997.

Staff Assistant to the Director, Office of Scheduling and Advance. Effective November 21, 1997.

Confidential Assistant to the Director, Office of Economic Impact and Diversity. Effective December 11, 1997.

Special Assistant to the Secretary of Energy. Effective December 11, 1997.

White House Liaison to the Secretary of Energy. Effective December 11, 1997.

Special Assistant for Management Reform to the Secretary of Energy. Effective December 19, 1997.

Senior Program Advisor to the Associate Deputy Secretary for Field Management. Effective January 5, 1998.

Confidential Assistant to the Director of Energy Research. Effective January 7, 1998.

Department of Health and Human Services

Confidential Assistant to the Assistant Secretary for Public Affairs. Effective October 3, 1997.

Senior Advisor to the Director, Indian Health Service. Effective October 24, 1997.

Director, Division of Intergovernmental Affairs to the Assistant Secretary for the Administration for Children and Families. Effective October 24, 1997.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective November 21, 1997.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective November 21, 1997.

Confidential Assistant to the Executive Secretary. Effective December 31, 1997.

Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective January 13, 1998.

Department of Housing and Urban Development

Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective October 3, 1997.

Staff Assistant to the Director of Special Actions. Effective October 3, 1997.

Special Assistant to the Director, Office of the Executive Secretariat. Effective October 27, 1997.

Director of Executive Secretariat (DAS for Administrative Services) to the Chief of Staff for Operations. Effective October 29, 1997.

Staff Assistant to the Director, Office of Executive Scheduling. Effective November 4, 1997.

Special Assistant to the Assistant Secretary for Administration. Effective November 6, 1997.

Special Assistant to the Assistant Secretary for Federal Housing and Equal Opportunity. Effective November 24, 1997.

Special Assistant to the Deputy Assistant Secretary for Community Empowerment. Effective November 24, 1997.

Briefing Coordinator to the Director, Executive Scheduling. Effective December 2, 1997.

General Deputy Assistant Secretary to the Assistant Secretary for Public and Indian Housing. Effective December 2, 1997.

Counselor to the Assistant Secretary for Housing. Effective December 3, 1997.

Special Assistant to the Assistant Secretary for Administration. Effective December 22, 1997.

Deputy Assistant Secretary for Legislation to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 23, 1997.

Intergovernmental Relations Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective December 23, 1997.

Special Assistant to the Deputy Assistant Secretary for Public Affairs. Effective January 5, 1998.

Scheduling Assistant to the Director of Executive Scheduling. Effective January 21, 1998.

Deputy Assistant Secretary for Research to the Deputy Assistant Secretary for Policy Development. Effective January 27, 1998.

Department of the Interior

Special Assistant to the Chief Biologist. Effective October 21, 1997.

Communications Director to the Deputy Secretary of Interior. Effective October 24, 1997.

Special Assistant to the Deputy Director, Bureau of Land Management. Effective November 7, 1997.

Special Assistant to the Assistant Director for External Affairs, U.S. Fish and Wildlife Service. Effective November 26, 1997.

Deputy Scheduler to the Deputy Chief of Staff, Office of the Secretary. Effective January 7, 1998.

Special Assistant and Counselor to the Assistant Secretary for Indian Affairs. Effective January 26, 1998.

Special Assistant to the Assistant Secretary for Land and Minerals Management. Effective January 29, 1998.

Department of Justice

Special Assistant to the Director, Violence Against Women Program Officer. Effective October 10, 1997.

Assistant to the Attorney General. Effective November 21, 1997.

Special Assistant to the Assistant Attorney General. Effective January 8, 1998.

Special Assistant to the Deputy Attorney General. Effective January 14, 1998.

Department of Labor

Secretary's Representative to the Associate Director, Congressional and Intergovernmental Affairs. Effective October 1, 1997.

Special Assistant to the Chief of Staff. Effective October 9, 1997.

Special Assistant to the Assistant Secretary, Employment Standards Administration. Effective October 21, 1997.

Senior Public Affairs Advisor to the Assistant Secretary for Public Affairs. Effective October 21, 1997.

Staff Assistant (Scheduling) to the Director, Scheduling and Advance. Effective October 30, 1997.

Special Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective November 21, 1997.

Attorney-Advisor (Labor) (Counsel to the Solicitor) to the Solicitor of Labor. Effective December 2, 1997.

Speech Writer to the Assistant Secretary for Public Affairs. Effective December 8, 1997.

Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective December 17, 1997.

Special Assistant to the Secretary to the Deputy Chief of Staff. Effective December 18, 1997.

Senior Advisor to the Secretary of Labor. Effective December 23, 1997.

Director of Public Liaison to the Secretary of Labor. Effective December 23, 1997.

Deputy Counselor to the Secretary of Labor. Effective December 23, 1997.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 8, 1998.

Special Assistant to the Director of Scheduling and Advance. Effective January 8, 1998.

Legislative Assistant to the Assistant Secretary for Employment and Training. Effective January 21, 1998.

Special Assistant to the Chief of Staff. Effective January 26, 1998.

Executive Assistant to the Assistant Secretary, Veterans Employment and Training. Effective January 28, 1998.

Department of State

Staff Assistant to the Under Secretary for Global Affairs. Effective October 3, 1997.

Foreign Affairs Officer to the Deputy Director. Effective October 3, 1997.

Special Assistant to the Under Secretary for Economics, Business and Agricultural Affairs. Effective October 3, 1997.

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective November 25, 1997.

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective November 25, 1997.

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective November 25, 1997.

Special Assistant to the Assistant Secretary, Bureau of Public Affairs. Effective December 4, 1997.

Staff Assistant to the Deputy Assistant Secretary, Bureau of Legislative Affairs. Effective December 4, 1997.

Staff Assistant to the Director of White House Liaison Staff, Office of the Under Secretary for Management. Effective December 4, 1997.

Staff Assistant to the Chief of Staff, Office of the Secretary. Effective December 4, 1997.

Special Assistant to the Assistant Secretary, Bureau of African Affairs. Effective January 22, 1998.

Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor. Effective January 22, 1998.

Department of Transportation

Special Assistant to the Director, Office of Scheduling and Advance. Effective October 17, 1997.

Scheduling/Advance Assistant to the Director for Scheduling and Advance, Office of the Secretary. Effective October 30, 1997.

Director, Office of Public and Consumer Affairs to the Deputy Administrator, National Highway Traffic Safety Administration. Effective November 20, 1997.

Special Projects Director to the Administrator, Research and Special Programs Administration. Effective December 16, 1997.

Senior Advisor to the Administrator, Federal Railroad Administration. Effective December 17, 1997.

Special Assistant to the Associate Deputy Secretary. Effective January 5, 1998.

Special Assistant to the Secretary of Transportation. Effective January 26, 1998.

Department of the Treasury

Deputy Director for Advance to the Director of Scheduling and Advance. Effective October 3, 1997.

Attorney-Advisor to the General Counsel. Effective October 23, 1997.

Executive Secretary to the Chief of Staff. Effective November 5, 1997.

Deputy Executive Secretary for Policy Analysis to the Executive Secretary. Effective November 28, 1997.

Staff Assistant to the Under Secretary (Enforcement). Effective November 28, 1997.

Deputy Executive Secretary for Policy Coordination to the Executive Secretary. Effective December 9, 1997.

Director, Office of Public and Business Liaison to the Deputy Assistant Secretary (Public Liaison). Effective December 11, 1997.

Director, Public and Business Liaison to the Deputy Assistant Secretary for Public Liaison. Effective December 18, 1997.

Senior Deputy to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective January 8, 1998.

Department of Veterans Affairs

Executive Assistant to the Deputy Assistant Secretary for Veterans Affairs. Effective December 17, 1997.

Special Assistant to the Secretary of Veterans Affairs. Effective January 16, 1998.

Environmental Protection Agency

Congressional Liaison Specialist to the Director, Office of Congressional Affairs. Effective October 3, 1997.

Attorney-Advisor to the Associate General Counsel. Effective October 9, 1997.

Special Assistant to the Administrator, Office of the Administrator. Effective October 16, 1997.

Deputy Associate Administrator to the Associate Administrator, Congressional and Intergovernmental Relations. Effective December 17, 1997.

Federal Emergency Management Agency

Assistant to the Director for Special Events to the Director, Federal Emergency Management Agency. Effective December 19, 1997.

Federal Energy Regulatory Commission

Attorney-Advisor (Public Utilities) to the General Counsel. Effective November 28, 1997.

Confidential Assistant to a Member. Effective December 17, 1997.

Technical Advisor to a Member of the Commission. Effective January 21, 1998.

Confidential Assistant to a Member of the Commission. Effective January 21, 1998.

Federal Maritime Commission

Executive Assistant to the Chairman. Effective October 30, 1997.

Federal Trade Commission

Special Assistant to a Commissioner. Effective January 5, 1998.

General Services Administration

Supervisory External Affairs Specialist to the Commissioner, Public Buildings Service. Effective January 26, 1998.

National Aeronautics and Space Administration

State, Local and Intergovernmental Affairs Specialist to the Associate Administrator for Policy and Plans. Effective October 3, 1997.

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Staff Assistant to the White House Liaison Officer. Effective October 29, 1997.

National Credit Union Administration

Executive Assistant to the Board Member. Effective November 17, 1997.

Office of National Drug Control Policy

Staff Assistant to the Director, Office of National Drug Control Policy. Effective December 2, 1997.

Office of Personnel Management

Special Assistant to the Senior Advisor to the Director. Effective January 16, 1998.

Overseas Private Investment Corporation

Confidential Assistant to the President and Chief Executive Officer. Effective October 9, 1997.

Special Assistant for Congressional and Intergovernmental Affairs to the Managing Director, Congressional and Intergovernmental Affairs. Effective October 16, 1997.

Director, Protocol and Special Initiatives to the Vice President, Investment Development Department. Effective November 3, 1997.

Securities and Exchange Commission

Writer-Editor to the Chairman. Effective October 10, 1997.

Confidential Assistant to a Commissioner. Effective November 21, 1997.

Selective Service System

Confidential Assistant to the Director of Selective Service. Effective January 5, 1998.

Small Business Administration

Special Assistant to the Chief of Staff. Effective October 21, 1997.

Director of External Affairs to the Associate Administrator for Communications and Public Liaison. Effective November 5, 1997.

Special Assistant to the Senior Advisor to the Administrator. Effective November 21, 1997.

Special Assistant to the Associate Administrator for Communications and Public Liaison. Effective December 18, 1997.

Deputy Scheduler to the Chief of Staff. Effective January 5, 1998.

U.S. Arms Control and Disarmament Agency

Congressional Affairs Specialist to the Director of Congressional Affairs. Effective December 8, 1997.

United States Information Agency

Media Relations Advisor to the Director, Office of Public Liaison. Effective November 12, 1997.

Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs. Effective December 3, 1997.

Public Affairs Specialist to the Director, New York Foreign Press Center, New York, NY. Effective December 18, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–7189 Filed 3–19–98; 8:45 am]

BILLING CODE 6325–01–U

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 10:00 a.m. every weekday beginning April 13, 1998, through May 8, 1998.

PLACE: Commission Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. R97–1.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6820.

Dated: March 18, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–7477 Filed 3–18–98; 2:03 pm]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Certification Regarding Rights to Unemployment Benefits; OMB 3220–0079.

Under Section 4 of the Railroad Unemployment Insurance Act (RUIA), an employee who leaves work voluntarily is disqualified for unemployment benefits unless the employee left work for good cause and is not qualified for unemployment benefits under any other law. RRB Form UI–45, Claimant's Statement—Voluntary Leaving of Work, is used by the RRB to obtain additional information needed to investigate a claim for unemployment benefits when the claimant indicates on RRB Form UI–1, Application for Unemployment Benefits and Employment Service (OMB 3220–0022) that he has voluntarily left work. Completion of Form UI–45 is required to obtain or retain benefits. One response is received from each respondent.

RRB Form UI–45 is being revised to include language required by the Paperwork Reduction Act of 1995. Non burden-impacting reformatting and editorial changes are also being proposed. The completion time for the UI–45 is estimated at 15 minutes per response. The RRB estimates that approximately 2,900 responses are received annually.

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–7197 Filed 3–19–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26842]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 13, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 6, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation, et al. (70–9091)

Central and South West Corporation ("CSW"), a registered holding company, its nonutility subsidiary companies CSW Energy, Inc. ("Energy"), and CSW International, Inc. ("CSWI") (collectively, "Applicants"), all located at 1616 Woodall Rodgers Freeway, P.O. Box 660789, Dallas,Texas 75202, have filed a declaration under section 13(b) of the Act, and rules 83, 87(b)(1), 90 and 91 under the Act.

By orders dated September 28, 1990, November 22, 1991, December 31, 1992 and November 28, 1995 (HCAR Nos. 25162, 25414, 25728 and 26417, respectively) and certain other orders, the Commission authorized CSW, directly or through Energy, to engage in development activities to conduct preliminary studies of, to investigate, research, develop, consult with respect to, and to agree to construct (the construction subject to further Commission authorization), qualifying facilities ("QF"), as defined under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), and independent power facilities, including exempt wholesale generators, as defined in section 32 of the Act ("EWG").

By additional orders dated November 3, 1994, September 27, 1995 and January 24, 1997 (HCAR Nos. 26156, 26383 and 26531, respectively), the Commission authorized CSW, directly or through CSWI, to engage in development and investment activities in EWGs and foreign utility companies, as defined in section 33 of the Act ("FUCO") (collectively, EWGs and FUCOs "Exempt Projects"), and is authorized to provide design, construction, engineering, operation, maintenance, management, administration, employment, tax, accounting, economic, financial, fuel, environmental communications, energy conservation, demand side management, overhead efficiency, utility performance and electronic data processing services and software development and support services in connection therewith to Exempt Projects and (except for operation services) to foreign electric utility enterprises that are not Exempt Projects.

The Applicants and any of their subsidiaries other than CSW's domestic operating utility subsidiaries (collectively, the "Operating Companies"), now request authorization to enter into agreements to provide energy-related services to associate companies at fair market prices. The Applicants request an exemption pursuant to section 13(b) from the requirements of rules 90 and 91 as applicable to transactions in any case in which any one or more of the following circumstances will exist: (1) An associate company is a FUCO, or is an EWG, that derives no part of its income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale within the United States; (2) an associate company is an EWG that sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC") or the appropriate state public utility commission, provided that the purchaser of energy produced by such associate company is not an Operating Company; (3) services rendered to an associate company in respect of a QF that sells electricity exclusively at rate negotiated at arm's length to one or more industrial or commercial customers purchasing the electricity for their use not for resale, or to an electric utility company, other than an Operating Company, at the purchaser's "avoided cost" determined in accordance with the regulations promulgated by FERC under PURPA or at such other rates negotiated at arm's length with such electric utility company; and (4) an associate company is an EWG or a QF that sells electricity at rates approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of such electricity produced by such associate company is not an Operating Company.

The Applicants also request an exemption from section 13(b) of the Act if: (i) An associate company is a subsidiary of an Applicant, the sole business of which is developing, owning and/or operating Exempt Projects or QFs described in clauses (1), (2), (3) or (4) above; or (ii) an associate company is a subsidiary of an applicant, which subsidiary does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States. None of the associate companies specified in clauses (i) or (ii) above that acquire services at market-based rates under the authority sought in this declaration will sell, or offer to sell, services to any Operating Company without additional Commission authority.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7283 Filed 3–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39747; File No. SR–MBSCC–97–10]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Relating to Modifications to MBSCC's Liquidation Rules

March 13, 1998.

On November 13, 1997, the MFS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MBSCC–97–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On January 30, 1998,

[1] 15 U.S.C. 78s(b)(1).

MBSCC filed an amendment to its proposed rule change. Notice of the proposal was published in the **Federal Register** on February 17, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies MBSCC's rules governing the liquidation of open trades when MBSCC ceases to act for a participant. The modifications to Section 5 of Rule 3 of Article III of MBSCC's rules, which governs the disposition of a former participant's open commitments, are as follows.

MBSCC's rules now provide that participants authorize MBSCC to obtain, if necessary, immediate disclosure of the settlement status of any trade from depository institutions or clearing banks. Any liquidation of a former participant's open trades will occur on a net basis as determined by MBSCC and as reflected on the open commitment report.[3] However, transactions will be liquidated on a net basis only if the contraside participants and trade terms are eligible for netting. Any open trade of the former participant that contains a specified pool will be disposed of as if it did not contain such specified pool (*i.e.*, the trade is disposed of based on its generic trade terms such as agency, product, coupon rate, and maturity) unless otherwise determined by MBSCC.

MBSCC's rules now provide that in a liquidation situation MBSCC may temporarily delay settlement balance order market differential ("SBOMD") credits due to original contrasides (*i.e.*, the participants with whom the former participant contracted) until the completion of the liquidation of the former participant's open trades.[4] In addition, MBSCC is able to apply SBOMD credits due to original contrasides of the former participant to offset any assessment against such original contrasides pursuant to MBSCC's liquidation rules.

The proposed rule change makes explicit that MBSCC does not allow claims for variance pursuant to The Bond Market Association's guidelines relating to a former participant's open trades that have not completed SBO netting or that have a trade-for-trade status.[5] Claims will be allowed for cash adjustments relating to a former participant's open trades that have completed SBO netting if such claims are reasonable as determined solely by MBSCC. In addition, the proposed rule change clarifies that original contrasides are reasonable for prorated cash adjustments of the former participant if the amount available from the former participant is insufficient to cover its obligations.

MBSCC generally gives priority to claims by contrasides that were matched with the former participant through MBSCC's netting process provided that the contraside was not the original contraside to the trade ("SBO contrasides") before claims by original contrasides in the event that the amount available from the former participant is insufficient to cover its obligations. The proposed rule change creates an additional priority that gives claims for losses by original contrasides relating to unmargined trades a lesser priority than claims for losses by original contrasides relating to previously margined trades if the amount available from the former participant is insufficient to cover its obligations. As a result of this modification, MBSCC's priority structure is (1) SBO contrasides, (2) original contrasides for previously margined trades,[6] and (3) original contrasides for unmargined trades.

II. Discussion

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of MBSCC or for which it is responsible. The Commission believes that MBSCC's proposed rule change is consistent with its obligation under the Act because the proposal should enhance MBSCC's ability to provide appropriate risk protection to its members in the case of a liquidation situation.

Many of the modifications are designed to reduce the amount of time needed for liquidation. For example, immediate disclosure of the settlement status of any trade from depository institutions or clearing banks reduces MBSCC's reliance on independent contraside verification and, therefore, the time required to identify and to liquidate a former participant's open trades. Liquidation of trades on a net basis should reduce the number of trades requiring liquidation. Similarly, disposition of trades without regard to whether they contain specified pools should simplify and expedite the liquidation process. By shortening the time required to liquidate a former member's positions, these changes reduce the risk that a participant's open positions will decrease in value and thus reduces the potential liability to which MBSCC is subject.

Other amendments will enhance MBSCC's liquidity and reduce its risk of loss. For example, the delay in payment of SBOMD credits to original contrasides and the ability to apply such payments against amounts owed may strengthen MBSCC's cash flow position. The limitation on claims for variances and cash adjustments may reduce the amount of claims that could be made against MBSCC in a liquidation. Therefore, the Commission believes that the proposed rule change is consistent with MBSCC's obligation to safeguard funds and securities in its custody or control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–97–10) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7204 Filed 3–19–98; 8:45 am]

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[2] Securities Exchange Act Release No. 39633 (February 9, 1998), 63 FR 7844.

[3] MBSCC's open commitment report is a daily report that shows a participant's open compared trades and is used to identify a former participant's open commitments in a liquidation situation.

[4] SBOMD represents the cash difference between the contract price of a transaction and the settlement price as a result of SBO netting. MBSCC typically pays SBOMD credits to participants on settlement date.

[5] Sellers in the mortgage-backed securities market are typically permitted to deliver securities that vary by a certain percentage from the originally traded face value pursuant to The Bond Market Association's guidelines for mortgage-backed securities (*i.e.*, a variance). MBSCC calculates a cash adjustment for its participants that includes variance only for trades that have gone through the netting process.

[6] In this instance, original contrasides could include an original party to the trade which was again matched against the former participant through the netting process or an original contraside to a trade that has been margined but has not yet been through the netting process.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before April 20, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Request for Counseling.
Form No's: 641, 641A.
Frequency: Monthly.
Description of Respondents: Individuals requesting management counseling from SBA.
Annual Responses: 600,000.
Annual Burden: 150,000.

Dated: March 13, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–7314 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before April 20, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3RD Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Client's Report of 7(J)Task Order Service Received.
Form No: 1540.
Frequency: On Occasion.
Description of Respondents: 7(J) Participants.
Annual Responses: 1,000.
Annual Burden: 100.

Dated: March 16, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–7315 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0233]

SBC Equity Partners, Inc.; Notice of Issuance of a Small Business Investment Company License

On September 24, 1997, an application was filed by SBC Equity Partners, Inc., at One South Wacker Drive, 14th Floor, Chicago, Illinois 60606, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0233 on February 26, 1998, to SBC Equity Partners, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 10, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–7286 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Western States Regional Fairness Board; Public Hearing

The Western States Regional Fairness Board Public Hearing, to be held on April 6, 1998, starting 10:00 am at the San Jose Silicon Valley Chamber of Commerce, located at 180 S. Market Street, 2nd Floor, San Jose, California, in cooperation with the Hispanic Chamber of Commerce, to receive comments from small businesses concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information contact Gary P. Peele on (312) 353–0880.

Shirl Thomas,

Director, National Advisory Council.

[FR Doc. 98–7316 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Rocky Mountain States Regional Fairness Board; Public Meeting

The Rocky Mountain States Regional Fairness Board hearing, to be held on April 20, 1998, starting at 10:00am at the Salt Lake Area Chamber of Commerce, 175 East 400 South, Suite 600, Salt Lake City, Utah, to receive comments from small businesses concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information contact Gary P. Peele, telephone (312) 353–0880.

Shirl Thomas,

Director, National Advisory Council.

[FR Doc. 98–7317 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Southern States Regional Fairness Board; Public Hearing

The Southern States Regional Fairness Board hearing, to be held on May 1, 1998, starting at 10:00am at the Rogers University Auditorium, 700 N. Greenwood Avenue, Tulsa, Oklahoma, in space being provided by Rogers University in cooperation with the Tulsa Chamber of Commerce, to receive comments from small businesses concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information contact Gary P. Peele, telephone (312) 353–0880.

Shirl Thomas,

Director, National Advisory Council.

[FR Doc. 98–7318 Filed 3–19–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Vendor List

AGENCY: Social Security Administration.

ACTION: Notice of intent.

SUMMARY: The Social Security Administration (SSA) is developing for publication a list of vendors who prepare magnetic media or electronic filing of Annual Wage Reports (forms W–3/W–2) for submission to SSA.

DATES: The vendor list will be updated annually and all additions/changes should be submitted by July 1 of each year.

ADDRESSES: Vendors can mail their information to SSA at the following address: Social Security Administration, Office of Senior Financial Executive, attn: Vendor List, Room 451 Altmeyer Building, 6401 Security Blvd., Baltimore, MD. 21235; or information can be faxed to SSA at the following number: (410) 966–8753, attn: Vendor List.

FOR FURTHER INFORMATION CONTACT: Norman Goldstein, Social Security Administration, Office of Senior Financial Executive, 451 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (410) 965–1970.

SUPPLEMENTARY INFORMATION: The vendor list which SSA plans to compile and publish annually will contain the names of: (1) Service bureaus that can produce annual wage reports on prescribed types of magnetic media or can electronically file annual wage reports, and (2) vendors that provide software packages for employers or third-party practitioners who wish to produce annual wage reports on magnetic tapes, cartridges, diskettes or electronic files for transmission to SSA. The Agency will provide this listing as a courtesy to employers. The listing in no way implies SSA approval or endorsement of the listed service bureaus or vendors.

To obtain a copy of the vendor listing, an employer may contact SSA via telephone at 1–800–772–1213 or by mail to the following address: Social Security Administration, Office of Senior Financial Executive, Attention: Vendor List, Room 451 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. This vendor listing will also be available from the SSA Employer Information Bulletin Board Service at (410) 965–1133 or the SSA Internet home page at WWW.SSA.GOV. Vendor names will not be provided over the telephone.

A service bureau or vendor, which would like to be included on the list, must submit a written request to SSA. Requests should be submitted by July 1 of each year, and must include the following:

a. Company name
b. Address (include city, state, and ZIP Code)
c. Telephone number (include area code)
d. Contact person
e. Type(s) of service provided (e.g., service bureau and/or software)
f. Type(s) of media offered (e.g., magnetic tape or tape cartridge, 5¼- or 3½-inch diskettes, or electronic filing)
g. Signature by Principal of company

Dated: March 10, 1998.

Norm Goldstein,

Senior Financial Executive.

[FR Doc. 98–7279 Filed 3–19–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice #2770]

Extension of the Restriction on the Use of United States Passports for Travel to, in or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restriction on the ground that such exemptions were in the national interest. The restriction has been extended for additional one year periods since then, and was last extended on March 20, 1997.

Conditions in Iraq remain unsettled and hazardous. Despite the recently concluded U.N. Memorandum of Understanding with Iraq, tensions remain high. The government of Iraq continues to mount a virulent public campaign in which the United States is blamed for maintenance of U.N. sanctions. In southern Iraq, military repression of the Shia communities is severe, rendering conditions unsafe. There is a risk of conflict between Kurdish groups. Iraq's economy was severely damaged during the Gulf War and continues to be affected by the U.N. economic sanctions and the Government of Iraq's refusal to fully implement the U.N.'s Oil for Food program. Basic modern medical care and medicines may not be available to our citizens in case of emergency. U.S. citizens and other foreigners working inside Kuwait near the Iraqi borders have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for alleged illegal entry into the country. Although our interests are represented by the Embassy of Poland in Bagdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate. In light of these circumstances, I have determined that Iraq continues to be a country " * * * where there is imminent danger to the public health or physical safety of United States travelers".

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991 who continue to reside there, or to American professional reporters or journalists on assignment there.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of

one year unless sooner extended or revoked by Public Notice.

Dated: March 16, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–7297 Filed 3–19–98; 8:45 am]

BILLING CODE 4710–10–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Acting Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Acting Agency Clearance Officer no later than May 19, 1998.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend without revision a currently approved collection of information (OMB control number 3316–0019).

Title of Information Collection: Customer Input Card for TVA Recreation Areas.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1,000.

Estimated Total Annual Burden Hours: 50.

Estimated Average Burden Hours Per Response: .05.

Need For and Use of Information: This information collection asks visitors to selected TVA public use areas to provide feedback on the condition of the facilities they used and the services they received. The information collected will be used to evaluate current maintenance, facility, and service practices and policies and to identify new opportunities for improvements.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 98–7348 Filed 3–19–98; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1502).

TIME AND DATE: 9:30 a.m. (CST), March 24, 1998.

PLACE: Arab High School Auditorium, 511 Arabian Drive, Arab, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on February 20, 1998.

New Business

C—Energy

C1. Delegation of authority to the Vice President, Fuel Supply and Engineering, to award 11 coal contracts with varying terms under Requisition 36 and to supplement an existing rail transportation coal contract.

B—Purchase Award

B1. Supplement to Contract No. TV–92582V with Fitzgerald & Company for the continuation of advertising support.

B. Contract with Chattanooga Printing and Engraving for offset printing services to supplement TVA's in-house print shop.

B3. Contract with BOC Gases for industrial gases and cylinder, tube trailer, and bulk storage management for all TVA locations.

E—Real Property Transactions

E1. Public auction sale of approximately 2.52 acres of land on the Ocoee No. 1 Reservation in Polk County, Tennessee (Tract Nos. XOCR–11 and –12).

E2. Sale of a permanent easement to the State of Tennessee for a highway improvement project affecting 0.22 acre of the Lonsdale substation property in Knox County, Tennessee (Tract No. XLONSS–6H, Parcels 1, 2, 3, and 4).

E3. Sale of two noncommercial, nonexclusive permanent recreation easements affecting 0.77 acre of Tellico Lake shoreline in Loudon and Monroe Counties, Tennessee (Tract Nos. XTELR–203RE and XTELR–196RE).

E4. Approval of a sale by the U.S. Department of Agriculture, Forest Service, of 0.36 acre of former TVA land on Fontana Lake in Graham County, North Carolina (Tract No. XTFR–2).

E5. Public auction sale of approximately 5.66 acres of land on Pickwick Lake for Industrial development purposes in Tishomingo County, Mississippi (Tract No. XYECR–12).

E6. Modifications of a grant of easement affecting approximately 0.07 acre of former TVA land on Chickamauga Lake in Meigs County, Tennessee (Tract No. XCR–221).

E7. Sale of a nonexclusive permanent easement to Red Creek Ranch, Inc., for an access road affecting approximately 0.11 acre of land on Cherokee Lake in Hawkins County, Tennessee (Tract No. XCK–578AR).

E8. Modification of deed restrictions in two deeds affecting approximately 4.2 acres of former TVA land (portions of Tract Nos. XWBR–446 and –447), and sale of a permanent commercial recreation easement affecting approximately 22.2 acres of TVA land (Tract No. XWBR–709RE) on Watts Bar Lake in Roane County, Tennessee.

Unclassified

F1. Approval to file condemnation cases in connection with permanent easements and rights-of-way for a natural gas pipeline to the Gallatin Fossil Plant, easements and rights-of-way for an electric power transmission line, and the right to remove and dispose of danger trees along a transmission line. The gas line easement is in Wilson County, Tennessee, and the affected transmission lines are Wolf Creek-Summer Shade Tap to West Tompkinsville, Monroe County, Kentucky; and Portland-Westmoreland, Sumner County, Tennessee.

Information Items

1. Termination of the Bulk Power Sales Incentive Compensation Plan.

2. Approval to file condemnation cases for the following transmission lines: New Albany-Holly Springs Tap to Martintown, Union County, Mississippi; Portland-Westmoreland, Summer County, Tennessee; and Carriage House-Madison West Section, Madison County, Tennessee.

3. Amendments to the Rules and Regulations of the TVA Retirement System and the provisions of the TVA Savings and Deferral Retirement Plan. For Fiscal Year 1998, many employees

received lump-sum payments but no salary increase in base salary. The Retirement System Board has responded favorably to requests from its members and from TVA in finding a way that credit for TVA Retirement System purposes can be given for these specific lump-sum payments of up to 3 percent of regular salary or wages made in fiscal year 1998.

4. Approval of an agreement between TVA and Entergy Mississippi, Inc., for TVA's Freeport-Miller 161-kV Transmission Line Project which includes shared use by each party of land and easements and rights-of-way held by the other and delegation of authority to the Executive Vice President, Transmission/Power Supply Group, or a designated representative, to conclude final contract negotiations with Entergy and to enter into, execute, deliver, and accept on TVA's behalf the agreement and the documents providing for the shared use of land and easements and rights-of-way.

5. Approval for the sale of Tennessee Valley Authority Power Bonds.

6. Abandonment of easement rights over portions of the Bull Run-Solway and the Bull Run-Solway No. 2 transmission lines in Know County, Tennessee (Tract Nos. BRSW–36, –37, –38, and –39 and BAST–27, –28, –29, and –30.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: March 17, 1998.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 98–7412 Filed 3–18–98; 11:52 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Allocation of the 200,000 Metric Ton Increase in the Amount Available Under the Raw Cane Sugar Tariff-Rate Quota

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the allocation among supplying countries and customs areas for the 200,000 metric ton increase in the amount available under the current raw cane sugar tariff-rate quota triggered by the fact that the stocks-to-use ratio for sugar reported in the U.S. Department of Agriculture's World Agricultural Supply and Demand Estimates on March 12, 1998, was 14.5 percent.

EFFECTIVE DATE: March 20, 1998.

ADDRESSES: Inquiries may be mailed or delivered to Audrae Erickson, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Audrae Erickson, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of raw cane sugar. On September 17, 1997, the Secretary of Agriculture announced the in-quota quantity for the tariff-rate quota for raw cane sugar for the period October 1, 1997—September 30, 1998, and announced an administrative plan under which the quantity available would be increased by 200,000 metric tons, raw value, if the stocks-to-use ratio reported in the March 1998 U.S. Department of Agriculture's World Agricultural Supply and Demand Estimates (WASDE) is less than or equal to 15.5 percent. On March 12, 1998, the WASDE reported a stocks-to-use ratio of 14.5 percent, thereby triggering a 200,000 metric ton increase in the quantity available under the tariff-rate quota.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007). Additional U.S. Note 5(b)(i) to chapter 17 of the HTS also provides that the quota amounts established under that note may be allocated among supplying countries and areas by the United States Trade Representative.

Raw Cane Sugar Allocation

Accordingly, USTR is allocating the 200,000 metric ton increase in the amount available under the raw cane sugar tariff-rate quota to the following countries or areas in metric tons, raw value. This allocation is based on the countries' historical trade to the United States:

Country	Current FY 1998 allocation	Additional allocation	New FY 1998 allocation
Agentina	48,101	8,731	56,832
Australia	92,846	16,853	109,699
Barbados	7,830	0	7,830
Belize	12,305	2,234	14,538
Bolivia	8,949	1,624	10,573
Brazil	162,201	29,442	191,642
Colombia	26,847	4,873	31,720
Congo	7,258	0	7,258
Cote d'Ivoire	7,258	0	7,258
Costa Rica	16,779	3,046	19,825
Dominican Republic	196,878	35,736	232,614
Ecuador	12,305	2,234	14,538
El Salvador	29,084	5,279	34,363
Fiji	10,068	1,827	11,895
Gabon	7,258	0	7,258
Guatemala	53,694	9,746	63,440
Guyana	13,424	2,437	15,860
Haiti	7,258	0	7,258
Honduras	11,186	2,030	13,217
India	8,949	1,624	10,573

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Country	Current FY 1998 allocation	Additional allocation	New FY 1998 allocation
Jamaica	12,305	2,234	14,538
Madagascar	7,258	0	7,258
Malawi	11,186	2,030	13,217
Mauritius	13,424	2,437	15,860
Mexico	25,000	0	25,000
Mozambique	14,542	2,640	17,182
Nicaragua	23,491	4,264	27,755
Panama	32,440	5,888	38,328
Papua New Guinea	7,258	0	7,258
Paraguay	7,258	0	7,258
Peru	45,864	8,325	54,189
Philippines	151,015	27,411	178,426
South Africa	25,728	4,670	30,398
St. Kitts & Nevis	7,258	0	7,258
Swaziland	17,898	3,249	21,147
Taiwan	13,424	2,437	15,860
Thailand	15,661	2,843	18,503
Trinidad-Tobago	7,830	1,421	9,252
Uruguay	7,258	0	7,258
Zimbabwe	13,424	2,437	15,860
Total	1,200,000	200,000	1,400,000

Each allocation to a country that is a net importer of sugar is conditioned on compliance with the requirements of section 902(c)(1) of the Food Security Act of 1985 (7 U.S.C. 1446g note).

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 98–7266 Filed 3–19–98; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–110]

Termination of Section 302 Investigation: Practices of the Government of Brazil Regarding Trade and Investment in the Auto Sector

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination and monitoring.

SUMMARY: On October 11, 1996, the Acting United States Trade Representative (USTR) initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of Brazil concerning the grant of tariff-reduction benefits contingent on satisfying certain export performance and domestic content requirements. Following consultations with the United States under the auspices of the World Trade Organization (WTO), Brazil has agreed that it will not extend its automotive trade-related investment measures beyond December 31, 1999. Having reached a satisfactory resolution of the issues under investigation, the USTR has determined to terminate this section 302 investigation and monitor implementation of the agreement under section 306 of the Trade Act.

DATES: This investigation was terminated on March 16, 1998.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Deputy Assistant U.S. Trade Representative for the Western Hemisphere, (202) 395–5190, or Amelia Porges, Senior Counsel for Dispute Settlement, (202) 395–7305.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the USTR initiated an investigation under Section 302(b)(1) of the Trade Act (19 U.S.C. 2412(b)(1)) with respect to whether certain acts, policies or practices of Brazil concerning trade and investment in the auto sector are inconsistent with certain provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Trade-Related Investment Measures (TRIMS Agreement), and the Agreement on Subsidies and Countervailing Measures (SCM Agreement), each administered by the World Trade Organization (WTO) (61 FR 54485 of October 11, 1996). In particular, Brazil has adopted since December 1995 a series of decrees, including Law 9449, that provide that manufacturers of automobiles may get reductions in duties on imports of inputs and assembled vehicles if they maintain a specified level of local content, export an offsetting amount of finished vehicles and parts, and maintain specified ratios of imported to domestic capital goods and imported to domestic inputs. As Brazil agreed to enter into intensive talks with the United States, the USTR pursuant to section 303(b)(1)(A) of the Trade Act decided, pending the outcome of these talks, to delay for up to 90 days requesting the consultations required under section 303(a) of the Trade Act for the purpose of ensuring an adequate basis for such consultations. Pursuant to section 303(b)(1)(B) of the Trade Act the time limitations for making the determinations required by section 304 of the Trade Act were extended for the period of the delay. When the talks were not successful, pursuant to section 303(a) of the Trade Act, the USTR requested on January 10, 1997 consultations with the Government of Brazil under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

Resolution of Dispute

Following extensive consultations, the Government of Brazil and the Government of the United States reached an agreement on March 16, 1998, concerning trade measures in the automotive sector. In that agreement the Government of Brazil committed not to extend its automotive trade-related investment measures beyond December 31, 1999—the date by which all notified performance requirements were to be eliminated under the WTO Agreement on Trade Related Investment Measures. In addition, in order to further limit the impact of the measures, the Government

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of Brazil agreed to accelerate the deadline for the filing of new applications under the regime, moving up the deadline for auto assemblers by eighteen months and for parts manufacturers by one year. It also agreed to make adjustments to certain of the calculations made under the regime.

On the basis of the agreement Brazil has agreed to enter into in order to provide a satisfactory resolution to the matter under investigation, the USTR has decided to terminate this section 302 investigation. Pursuant to section 306 of the Trade Act, the USTR will monitor Brazil's implementation of the agreement concerning trade measures in the automotive sector.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 98–7357 Filed 3–19–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection(ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 30, 1997, (62 FR 51175).

DATES: Comments must be submitted on or before April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification and Operations, 14 CFR part 125.

OMB Control Number: 2120–0085.

Type of Request: Extension of currently approved collection.

Affected Public: Business or other for profit organizations.

Form(s): N/A.

Abstract: The FAA is authorized to issue Air Carrier Operation Certificates. 14 CFR part 125 prescribes requirements for leased aircraft, Aviation Service Firms and Air Travel Clubs.

Information collected shows compliance and applicant's eligibility.

Annual Estimated Burden Hours: The current burden is estimated at 29,445 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are Invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it on or before April 20, 1998.

Issued in Washington, D.C. on March 16, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–7206 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending March 16, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3594
Date Filed: March 9, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 Telex Mail Vote 912
Amend fares from Thailand to Middle East
Telexes—Amending Mail Vote/ Declaring Mail Vote Adopted
r1–045m r2–055m r3–065m r4–084k r5–070q
Intended effective date: amended to April 1, 1998.

Docket Number: OST–98–3596
Date Filed: March 10, 1998
Parties: Members of the International Air Transport Association
Subject: Request of the International Air Transport Association, pursuant to 49 U.S.C. Sections 41308 and 41309, and Parts 303.03, 303.05 and 303.30, on behalf of member airlines of the International Air Transport Association (IATA) that the Department approve and confer antitrust immunity on IATA's revised Articles of Association, as shown in attachment A.

Docket Number: OST–98–3620
Date Filed: March 13, 1998
Parties: Members of the International Air Transport Association
Subject: PTC12 Telex Mail Vote 916 South Atlantic-Sarajevo Reso 010s Intended effective date: March 29, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–7337 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 16, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3601
Date Filed: March 11, 1998
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 8, 1998
Description: Application of Transair International Linhas Aereas Ltda., pursuant to 49 U.S.C. 40109 and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing Transair to perform passenger charter service between Brazil and the United States, and Fifth Freedom passenger charters as specifically authorized by

the Department in accordance with it's Rules and Regulations.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–7338 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of location and change in time of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a change in time for a special meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee (63 FR 8315, February 19, 1998).

DATES: The meeting to be held on April 9, 1998, will begin at 10 a.m.

ADDRESS: The meeting will be held at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 3200–3204, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

Issued in Washington, DC, on March 14, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–7327 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA) / Joint Planning Advisory Group (JPAG) (63 FR 4687)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of February 10–12, 1998 Meeting with VISA Participants.

On February 10–12, 1998, the Maritime Administration (MARAD) and the United States Transportation Command (USTRANSCOM) co-hosted a meeting of the Voluntary Intermodal Sealift Agreement (VISA) Joint Planning Advisory Group (JPAG) at the MARAD Emergency Operations Center, U.S. Department of Transportation, Washington, D.C.

Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 23 U.S.-flag carrier corporate participants enrolled in VISA at the time of the meeting, 18 were represented, as well as representatives from the Department of Defense (DoD) and the Department of Transportation (DOT).

Following opening remarks by Mr. John E. Graykowski, Acting Maritime Administrator, Government representatives provided briefings to VISA participants on military operation plans and VISA activation procedures. VISA carriers then convened in separate work groups with Government analysts to discuss the strategic lift requirements and to review draft VISA concepts of operations (CONOPS) for future refinement and validation. These VISA CONOPS will be used to model intermodal sealift capacity planning for the upcoming TURBO CHALLENGE 98 VISA JPAG exercise scheduled for April 1998.

Only one stated goal of the February 1998 VISA JPAG was not accomplished. This was the development of VISA carrier draft capacity commitment levels for VISA Stages I & II. However, VISA Stage III capacity commitments of 50% of each participant's militarily useful U.S.-flag capacity (100% of capacity for Maritime Security Program [MSP] ships) has been adopted. VISA Stage I & II commitment levels as a percentage of each VISA participant's militarily useful U.S.-flag fleet total capacity will be determined following the successful completion of the VISA Rate Methodology Working Group (RMWG) analysis.

The full text of the VISA program is published in 62 FR 6837–6845, dated February 13, 1997. One of the program requirements is that MARAD periodically publish a list of VISA participants in the **Federal Register**. As of March 10, 1998, the following commercial U.S.-flag vessel operators are enrolled in VISA with MARAD: Alaska Cargo Transport, Inc., American Auto Carriers, Inc., American Automar, Inc., American President Lines, Ltd., American Ship Management, LLC, Central Gulf Lines, Inc., Crowley Maritime Corporation, Falgout Brothers, Inc., Farrell Lines Incorporated, First American Bulk Carrier Corp., Lykes Lines Limited, L.L.C., Maersk Line Limited, Matson Navigation Company, Inc., Moby Marine Corporation, NPR, Inc., OSG Car Carriers, Inc., RR & VO L.L.C., Sealift, Inc., Sea-Land Service, Inc., Smith Maritime, Totem Ocean Trailer Express, Inc., Trailer Bridge, Inc., Van Ommeren Shipping (USA) LLC, and Waterman Steamship Corporation.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Raymond R. Barberesi, Director, Office of Sealift Support, (202) 366–2323.

Dated: March 17, 1998.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 98–7333 Filed 3–19–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33563]

Texas Rock Crusher Railway Company, Acquisition and Operation Exemption, The Burlington Northern and Santa Fe Railway Company

Texas Rock Crusher Railway Company (TXRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and to operate two disconnected lines of railroad (subject lines).[1] The first of these lines, known as the Camp Bowie Industrial Spur, extends between mainline milepost 349.01, on BNSF's Clovis, NM, to Houston, TX, mainline, and the end of track (no milepost), at the Camp Bowie Industrial Park in Brownwood, TX, a distance of 4.4 miles. The second of these lines, known as the Rock Crusher Spur, extends from mainline milepost 349.3 on BNSF's above-described mainline to end of line (no milepost), in Brownwood, TX, a distance of 1.25 miles. In addition, BNSF will grant TXRC incidental overhead freight trackage rights for ten 99-year terms between milepost 348.6 and milepost 349.4, near Brownwood, TX, including the use of the wye, to allow traffic originating on the Rock Crusher Spur to have access to BNSF's Brownwood Yard for interchange. BNSF will also grant TXRC incidental trackage rights over BNSF's Brownwood Yard trackage between milepost 345.5 and milepost 349.4 for switching and interchange and to allow movement to

[1] The parties state that TNW Corporation (TNW), TXRC's corporate parent, entered into an agreement on February 11, 1998, with BNSF for the purchase of the subject lines. TNW subsequently assigned that agreement to TXRC.

and from the Camp Bowie Industrial Spur and the Rock Crusher Spur.

The earliest the transaction could be consummated was March 6, 1998, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to STB Finance Docket No. 33564, *TNW Corporation—Continuance in Control Exemption—Texas Rock Crusher Railway Company*, wherein TNW has concurrently filed a verified notice to continue in control of TXRC upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33563, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Decided: March 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7119 Filed 3–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33564]

TNW Corporation—Continuance in Control Exemption—Texas Rock Crusher Railway Company

TNW Corporation (TNW), a noncarrier shortline railroad holding company, has filed a notice of exemption to continue in control of Texas Rock Crusher Railway Company (TXRC), upon TXRC's becoming a carrier. TNW owns all of the outstanding stock of TXRC.

The earliest the transaction could be consummated was March 6, 1998, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to STB Finance Docket No. 33563, *Texas Rock Crusher Railway Company—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein TXRC seeks to acquire and operate two adjacent but disconnected lines from The Burlington Northern and Santa Fe Railway Company.

TNW owns and controls three existing Class III rail carriers: Texas North Western Railway Company, operating in the State of Texas; Texas, Gonzales & Northern Railway Company, operating in the State of Texas; and Nebraska Northeastern Railway Company, operating in the State of Nebraska.

TNW states that: (i) the railroads will not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the four railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33564, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Decided: March 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7120 Filed 3–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 559X)]

CSX Transportation, Inc.—Abandonment Exemption—In Atlanta, Fulton County, GA

On March 2, 1998, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its Atlanta Service Lane, Atlanta Terminal Subdivision, extending from milepost 4.87 at Memorial Drive, to milepost 5.22 at Wylie Street, a distance of 0.35 miles, in Atlanta, Fulton County, GA. The line traverses U.S. Postal Service ZIP Code 30318. CSXT indicates that there are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.— Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 19, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is set at $1,000, as of March 20, 1998. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 9, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 559X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public

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Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: March 13, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7285 Filed 3–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 16, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1219.

Form Number: IRS Form 8038–T.

Type of Review: Extension.

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Description: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Respondents: State, Local or Tribal Governments.

Estimated Number of Respondents/Recordkeepers: 2,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—11 hours, 0 minutes
Learning about the law or the form—6 hours, 34 minutes
Preparing, copying, assembling, and sending the form to the IRS–7 hours, 1 minute

Frequency of Response: Other (at least once every five years).

Estimated Total Reporting/Recordkeeping Burden: 61,450 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–7193 Filed 3–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 12, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1579.

Notice Number: Notice 98–1.

Type of Review: Extension.

Title: Nondiscrimination Testing.

Description: This notice provides guidance for discrimination testing under section 401(k) and (m) of the Internal Revenue Code as amended by section 1433(c) and (d) of the Small Business Job Protection Act of 1996. The guidance is directed to employers maintaining retirement plans subject to these Code sections.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Recordkeepers: 147,000.

Estimated Burden Hours Per Recordkeeper: 20 minutes.

Estimated Total Recordkeeping Burden: 49,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–7194 Filed 3–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 12, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

Departmental Offices/Community Development Institutions (CDFI) Fund

OMB Number: 1505–0154.

Form Number: Forms CDFI–0001, CDFI–0005 and CDFI–0006.

Type of Review: Extension.

Title: Community Development Financial Institutions Program:

1. Application Form (CDFI–0001);

2. Application for Certification (CDFI–0005); and

3. Technical Assistant Component Application Form (CDFI–0006)

Description: The purpose of the Community Development Banking and Financial Institutions Act of 1994 (Act) is to create the Fund to promote economic revitalization and community development through investment in and

assistance to Community Development Financial Institutions (CDFIs). The investment by the Program is intended to facilitate the creation of a national network of financial institutions that is dedicated to community development.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 450.

Estimated Burden Hours Per Respondent/Recordkeepers:

Form/application	Response time
Application Form (CDFI–0001)	100
Application for Certification (CDFI–0005)	15
Technical Assistance Component Application Form (CDFI–0006)	50

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 43,100 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–7195 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 11, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0525.

Form Number: ATF F 5300.38.

Type of Review: Extension.

Title: Application for an Amended Federal Firearms License.

Description: This form is used when a Federal firearms licensee makes application to change the location of the firearms business premises. The applicant must certify that the proposed new business premises will be in compliance with State and local law for that location, and forward a copy of the application to the chief law enforcement officer having jurisdiction over the new premises.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 18,000.

Estimated Burden Hours Per Respondent: 1 hour, 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 22,500 hours.

OMB Number: 1512–0526.

Form Number: None.

Type of Review: Extension.

Title: Implementation of Pub. L. 103–322, The Violent Crime Control and Law Enforcement Act of 1994.

Description: These regulations implement the provisions of Pub. L. 103–322 by restricting the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices. The collections of information in this temporary rule are in 27 CFR 178.40(c), 178.40a(c), 178.129(e), 178.132, and 178.133.

Respondents: Business or other for-profit, Business of other for-profit.

Estimated Number of Respondents/ Recordkeepers: 2,107,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Reporting—6 minutes.

Recordkeeping—2 hours, 25 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 458,942 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–7196 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Çustomer Satisfaction Survey.

DATES: Written comments should be received on or before May 19, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Satisfaction Survey to Implement Executive Order 12862.

OMB Number: 1535–0122.

Abstract: The information from the survey will be used to improve customer service.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 7,000.

Estimated Total Annual Burden Hours: 876.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 16, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–7267 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–39–P

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Corrections

Federal Register

Vol. 63, No. 54

Friday, March 20, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of March 6, 1998

Correction

In notice document 98–6703, appearing on page 12855, in the issue of Monday, March 16, 1998, the heading should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 6, 1998

Correction

In notice document 98–6704, beginning on page 12855, in the issue of Monday, March 16, 1998, the heading should appear as set forth above.

BILLING CODE 1505-01-D

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Federal Register

Friday
March 20, 1998

Part II

Department of the Treasury

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Core and Technical Assistance Components; Notices

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

[No. 981–0154]

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Core Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) (hereafter referred to as the "Act") authorizes the Community Development Financial Institutions Fund (hereafter referred to as "the Fund") of the U.S. Department of the Treasury to select and provide financial and technical assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. The interim rule (12 CFR part 1805), which was published in the **Federal Register** on April 4, 1997 (62 FR 16444), provides guidance on the contents of the necessary application materials and program requirements. Subject to funding availability, the Fund intends to award up to $40 million in appropriated funds pursuant to this NOFA and expects to issue approximately 50 to 60 awards. The Fund reserves the right to award in excess of $40 million in appropriated funds pursuant to this NOFA provided that the funds are available and the Fund deems it appropriate. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this notice.

This NOFA is in connection with the core component of the CDFI Program. The core component provides direct assistance to CDFIs that serve their target markets through loans, investments and other activities. (These primary activities do not include the financing of other CDFIs. In the previous round of the CDFI Program a separate NOFA was published in the **Federal Register** (62 FR 16461) in connection with the intermediary component of the CDFI Program. The intermediary component provides financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. At this time the Fund is only making funds available for the core component; however, the Fund may issue a NOFA for the intermediary component at a later date.)

DATES: Applications may be submitted at any time following March 20, 1998. The deadline for receipt of an application is 6 p.m. EDT on June 12, 1998. Applications received after that date and time will not be accepted and will be returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Awards Manager, the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program contact the CDFI Program Manager. Should you wish to request an application package or have questions regarding application procedures contact the CDFI Awards Manager. They may be reached by phone on (202) 622–8662, by facsimile on (202) 622–7754 or by mail at CDFI, 601 13th Street, NW., Suite 200 South, Washington, D.C. 20005. Allow at least one to two weeks for the receipt of the application package.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients in creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program is fostering the creation of a national network of financial institutions that are specifically dedicated to funding and to supporting community development. This strategy will build strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act, which implements this vision authorizes the Fund to select entities to receive financial and technical assistance. Institutions in operation at the time of application are eligible to receive assistance to expand their activities. New institutions are eligible to receive start-up assistance. This NOFA invites applications from eligible organizations for financial assistance, technical assistance, or both, for the purpose of promoting community development activities and revitalization.

The Program connected with this NOFA constitutes the core component of the CDFI Program, involving direct financial and technical assistance to CDFIs that serve their target markets through loans, investments and other activities. This NOFA will not support CDFIs that primarily are funding other CDFIs. Under this core component NOFA, the Fund has an anticipated maximum award of $2 million per applicant. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of the anticipated maximum award amount if the Fund deems it appropriate.

Elsewhere in this issue of the **Federal Register**, the Fund is publishing a separate NOFA for the first round of the technical assistance (TA) component of the CDFI Program. The TA component NOFA is specially tailored to award TA grants to eligible applicants demonstrating unmet capacity needs, that if addressed would potentially generate significant community development impact. Under the TA component NOFA, applicants may only apply for TA, and the anticipated maximum TA award per applicant is $50,000. All applications for TA under the TA component NOFA will be evaluated separate and apart from the applications for TA, financial assistance or both under this core component NOFA, because the application requirements and the selection criteria in the TA component NOFA differ from those contained herein. However, eligible applicants may apply for TA under both the TA component NOFA and this core component NOFA. It is unlikely that an organization will receive support under both NOFAs.

II. Eligibility

The Act and the interim rule specify the eligibility requirements that each applicant must meet in order to be eligible to apply for financial assistance, TA, or both under this core component NOFA. Specifically, an entity must meet, or propose to meet, the CDFI certification requirements. In general, a CDFI must have a primary mission of promoting community development, provide lending or investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a non-government entity. At the time an entity submits its application, the entity must be duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or otherwise established, and is (or within 30 days of the Fund's receipt of their application will be) authorized to do business in any jurisdiction in which it proposes to undertake the activities specified in its application. The details regarding these

requirements and other program requirements are described in the application packet and the interim rule.

III. Types of Assistance

An applicant may submit an application for financial assistance, TA, or both under this core component NOFA. Financial assistance may be provided through an equity investment, a grant, a loan, deposits, credit union shares, or any combination thereof. Applicants for financial assistance shall indicate the dollar amount, form, terms, and conditions of assistance requested. Applicants for TA under this NOFA shall describe the types of TA requested, the provider(s) of the TA, the cost of the TA, and a narrative justification of its needs for the TA.

IV. Application Packet

Except as described hereafter, an applicant under this NOFA, whether applying for financial assistance, TA, or both, shall submit the materials described in § 1805.701 and the application packet.

If an applicant is currently certified as a CDFI by the Fund, it may submit a copy of the Fund's letter of certification and the Certification of Material Changes form, a copy of which is contained in the application packet, in lieu of the information described in §§ 1805.701(b)(1)–(8). However, an applicant should include information in its application that it believes is relevant to the Fund's substantive review of the application under § 1805.802(b).

V. Matching Funds

Applicants responding to this NOFA must provide matching funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar provided by the Fund. Such matching funds shall be at least comparable in form and value to assistance provided by the Fund. Non-Federal funds obtained or legally committed on or after January 1, 1997, may be considered when determining matching funds availability. Applicants selected to receive assistance under this NOFA must have firm commitments for the matching funds required pursuant to § 1805.600 by no later than August 31, 1998. The Fund may recapture and reprogram funds if an applicant fails to raise the required match by such date. The Fund reserves the right to grant an extension of such matching funds deadline for specific applicants selected for assistance if the Fund deems it appropriate. Funds used by an applicant as matching funds for a previous award under the CDFI Program cannot be used to satisfy the § 1805.600 matching funds requirement.

VI. Evaluation Factors

Applications will be evaluated on a competitive basis in accordance with criteria described in § 1805.802. Special emphasis is expected to be placed on:

(1) The applicant's track record, financial strength, and current operations;

(2) The capacity, skills, and experience of the management team;

(3) The quality of the applicant's comprehensive business plan;

(4) The extent and nature of the potential community development impact that would be catalyzed by the Fund's assistance, relative to the amount of such assistance to be provided; and

(5) The likelihood that the applicant will be able to raise the required matching funds.

The applicant's track record, financial strength and current operations are important to the extent they may be suggestive about the prospects for success in the future. In the case of a young or start-up institution with no, or a limited, track record, extra emphasis will be placed on the capacity, skills, and experience of the applicant's management team and the quality of its comprehensive business plan.

While previous awardees are eligible to apply pursuant to this NOFA, such applicants should be aware that success in a previous round should not be considered indicative of the likelihood of success under this NOFA. At the same time, organizations will not be penalized for having received awards in previous rounds.

The anticipated maximum award per applicant under this NOFA is $2 million. However, the Fund, in its sole discretion, reserves the right to make individual award amounts in excess of $2 million if it deems it appropriate. The Fund reserves that right to award, in whole or in part, any, all, or none of the applications submitted in response to this notice.

VII. Workshops

The Fund expects to host workshops to disseminate information to organizations interested in applying for assistance pursuant to this NOFA. If you wish to be on a mailing list to receive information about such workshops, please fax your request to the Fund.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, and 4717; 12 CFR part 1805.

Dated: March 16, 1998.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 98–7152 Filed 3–19–98; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

[No. 982–0154]

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Technical Assistance Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) (hereafter referred to as the "Act") authorizes the Community Development Financial Institutions Fund (hereafter referred to as "the Fund") to select and provide assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. Such assistance may include financial assistance and technical assistance. Technical assistance ("TA") may be used for activities that enhance the capacity of both CDFIs and entities proposing to become CDFIs, such as the training of management and other personnel, the development of programs, loan or investment products, improving financial management and internal operations, enhancing a CDFI's community impact, or other activities deemed appropriate by the Fund. Since the advent of the CDFI Program, the Fund has issued NOFAs inviting applications for both TA and financial assistance. However, the Fund recognizes that a key ingredient to enhancing the CDFI industry is the provision of TA, and the Fund has decided to expand the tools that it utilizes to increase the availability of TA to CDFIs. Specifically, the Fund is issuing this NOFA for a TA only component of the CDFI Program to better address the unmet capacity needs of CDFIs and entities proposing to become CDFIs. This NOFA is intended to award grants to eligible applicants that have demonstrated capacity needs and have significant potential for increasing their community development impact relative to the

amount of TA provided. This NOFA provides guidance on the contents of the necessary application materials and program requirements. Subject to funding availability, the Fund intends to award up to $5 million in appropriated funds pursuant to this NOFA. The Fund reserves the right to award in excess of $5 million in appropriated funds pursuant to this NOFA provided that the funds are available and the Fund deems it appropriate.

DATES: The original and three copies of the application may be submitted at any time following March 20, 1998. The deadline for receipt of the original and three copies of an application is 6 p.m. EDT on May 29, 1998. Applications received after that date and time will not be accepted and will be returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Awards Manager, the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th St. NW., Suite 200 South, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: The Technical Assistance Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th St. NW., Suite 200 South, Washington, D.C. 20005, (202) 622–8662. (This is not a toll-free number.) If you have any questions about this NOFA or the application packet, you may call or write to the Technical Assistance Program Manager at the above telephone number or address, or you may send questions by facsimile to (202) 622–7754. To request an application packet, please send by facsimile to (202) 622–7754 a written request which includes the name of the requester, organization, mailing address, telephone number, facsimile number, and name of the program for which an application is being requested.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients in creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the Fund's CDFI Program facilitates the creation of a national network of financial institutions that are specifically dedicated to community development. CDFIs make loans, investments and provide development services to economically distressed investment areas and disadvantaged targeted populations. In order to facilitate the development of a national network of CDFIs, the Fund is seeking to support the efforts of such entities to build their organizational capacity to make loans and investments and provide development services. In order to use the TA funds strategically, it is the Fund's intention to target such funds to CDFIs and entities proposing to become CDFIs that have demonstrated capacity needs and possess significant potential for increasing their community development impact with the assistance of a limited amount of TA. The anticipated maximum award per applicant under this NOFA is $50,000. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $50,000 if an applicant demonstrates to the satisfaction of the Fund the need for such additional amounts and the added potential community development impact resulting from such additional amounts.

Elsewhere in this issue of the **Federal Register**, the Fund is publishing an NOFA for financial assistance and TA under the CDFI Program core component. That separate NOFA is a continuation of the approach used in the first two rounds of the CDFI Program. In the separate core component NOFA, the Fund is making available up to $40 million in appropriated funds. Applicants under that core component NOFA may apply for both financial assistance and TA, and such applicants for TA are not limited to $50,000 in TA funds. However, all applications for financial assistance, TA or both under the core component will be evaluated separate and apart from the applications under this TA component. Moreover, the application requirements and the selection criteria under the core component NOFA differ from those contained in this TA component NOFA, because the TA component NOFA is singularly focused on providing TA to enhance the capacity of CDFIs and entities proposing to become CDFIs. Interested applicants are encouraged to apply for TA under one NOFA or the other; however, applicants are not prohibited from applying for TA under both NOFAs.

II. Eligibility

The Act and the interim rule governing the CDFI Program (12 CFR part 1805), which was published in the **Federal Register** on April 4, 1997 (62 FR 16444), specify the requirements that each applicant must meet to be eligible to apply for TA. Specifically, an entity at the time it submits its application must meet or propose to meet the CDFI certification requirements under § 1805.200. In general, a CDFI must have a primary mission of promoting community development, provide lending or investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a nongovernment entity. At the time an entity submits its application, the entity must be duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or otherwise established, and is (or within 30 days will be) authorized to do business in any jurisdiction in which it proposes to undertake activities specified in its application. The details regarding these requirements and other program requirements are described in the interim rule and the application packet.

III. Form of Assistance

An applicant under this NOFA may only submit an application for a TA grant.

IV. Application Packet

Section 1805.701 provides that unless otherwise specified in an applicable NOFA, each application must contain the information specified in the application packet, including the items described in §§ 1805.701(a)–(j). For purposes of this NOFA, the Fund is specially tailoring the collection of information requirements. Specifically, applicants are only required to submit the information required by the TA component application packet. The TA component application packet requires the submission of the following information:

(a) *Applicant Information.* The applicant's name, address and name and telephone number of the applicant's authorized representative and contact person.

(b) *Award Request.* The dollar amount of the TA grant requested by the applicant.

(c) *Eligibility Verification.* If the Fund has not certified an applicant as a CDFI and an applicant does not have an application for certification pending with the Fund, the applicant shall provide information necessary to establish that it is, or will be, a CDFI. An applicant shall demonstrate whether it meets the CDFI eligibility requirements by providing the information described in §§ 1805.701(b)(1)–(8). If an applicant is currently certified by the Fund as a CDFI, it may submit a copy of the Fund's letter of certification and the Certification of Material Changes form

contained within the application in lieu of the information described in §§ 1805.701(b)(1)–(8). However, an applicant should include in its application for a TA grant information that it believes is otherwise relevant to the Fund's evaluation of the application under the criteria set forth in this NOFA. An entity that proposes to become a CDFI is eligible to apply for a TA grant if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in §§ 1805.200(b)–(h) within two years of entering into an Assistance Agreement with the Fund.

(d) *Comprehensive Business Plan.* An applicant shall submit an abbreviated five-year Comprehensive Business Plan that addresses the items described in this paragraph (d). The Comprehensive Business Plan should, to the maximum extent practicable, be limited to ten pages or less (applicants may provide attachments, including supplemental documents, as appropriate, on items referenced in the Comprehensive Business Plan).

(1) *Management capacity.* An applicant shall provide a narrative description of its current management capacity, including detailed information on the background and capacity of the applicant's management team, key personnel and governing board members as appropriate.

(2) *Track Record and Historical Financial Performance.* An applicant shall provide information on its historical and current financial condition, including a copy of audited financial statements, financial statements that have been reviewed by a certified public accountant, or financial statements that have been reviewed by the applicant's Appropriate Federal Banking Agency for the last three completed fiscal years, and the most recent internal financial statements since the beginning of the applicant's current fiscal year. The applicant shall also provide information on its loans and Development Investments for the three most recent fiscal years, including information on the total number and dollar amount of such loans and Development Investments during each fiscal year during this time frame. If an applicant has been in operation for less than three years, the applicant shall describe such activities for each fiscal year since inception. The applicant shall provide information necessary to assess trends in its financial and operating performance (e.g., portfolio delinquencies, defaults and charge-offs).

(3) *Market Analysis and Strategy.* An applicant shall provide an analysis of its target markets, including a description of the needs of the Investment Area(s) and Targeted Population(s), as applicable. An applicant shall also describe its five-year strategy for meeting the demand for loans or Development Investments generated by the needs of its target market(s) through its products and services. The strategy description may include plans for growth of lending volume and lending products, expansion of Development Services, staffing and management appropriate to meet such growth and growth of the operating budget. Projected changes in overall capital structure (asset and liability composition) may also be described. The narrative discussion may be supplemented with quantitative projections.

(4) *Coordination Strategy.* An applicant shall describe:

(i) Its plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs and private sector resources;

(ii) How its proposed activities are consistent with existing economic, community, and housing development plans adopted for an Investment Area(s) or Targeted Population(s); and

(iii) How it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) which will provide loans, equity investments, secondary markets, or other services to an Investment Area(s) or a Targeted Population(s).

(5) *Funding Sources.* An applicant shall provide information:

(i) On its current and projected sources of capital and other financial support. Such projections should relate to and be consistent with the strategy description provided under paragraph (3); and

(ii) To demonstrate that it has a plan for achieving or maintaining financial viability within the five-year period. Such information shall demonstrate that the applicant will not be dependent upon future awards of assistance from the Fund for its continued viability.

(6) *Community Partnership.* In the case of an applicant submitting an application with a Community Partner, the applicant shall include in its application the information described in § 1805.701(d)(12).

(e) *Technical Assistance Proposal.* An applicant shall provide a Technical Assistance Proposal ("TAP") that includes information on the TA needed to enhance the capacity of the organization to carry out its Comprehensive Business Plan. Such information shall include the items described in this paragraph (e). The TAP should, to the maximum extent practicable, be limited to ten pages or less (applicants may provide attachments, including supplemental documents, as appropriate, on items referenced in the TAP). An applicant shall provide:

(1) An evaluation of its capacity needs (this may be a self-evaluation);

(2) A detailed description of the type(s) of TA needed to meet the identified capacity needs;

(3) A detailed description of the strategy for obtaining such TA, including its proposed providers of TA and their qualifications. If an applicant cannot identify specific providers of TA in its application, it shall identify the requisite qualifications that it will seek for such TA providers;

(4) An estimate of the cost to obtain the TA for each year that will include use of TA funds. This cost estimate shall include expense projections for each of the specific activities to be funded with TA funds; and

(5) A projection of the benefits expected to be created within its Investment Area(s) or Targeted Population(s) with the enhanced capacity resulting from the TA.

(f) *Conflict of Interest.* An applicant shall submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.906.

(g) *Lobbying Disclosure Act of 1995.* An applicant shall identify whether or not the Internal Revenue Service (IRS) has recognized it as exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

(h) *Miscellaneous.* An applicant shall indicate and describe the circumstances underlying any back taxes due to the IRS, any delinquent debts owed to Federal, State or local governments, and whether it has ever filed for bankruptcy.

(i) *Environmental Information.* An applicant shall review and complete the Environmental Review Form contained within the application.

(j) *Applicant Certification.* An applicant and Community Partner (if applicable) shall review and complete the assurances and certifications form contained in Appendix A of the application.

(k) *Previous Awardees.* In the case of an applicant that has previously received assistance under the CDFI Program, the applicant shall demonstrate that it:

(1) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

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(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(l) *Previous History.* In the case of an applicant with a prior history of serving Investment Area(s) or Targeted Population(s), the applicant shall demonstrate that it:

(1) Has a record of success in serving Investment Area(s) or Targeted Population(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

V. Evaluation and Selection

In evaluating and selecting applicants, the Fund will utilize the evaluation criteria found in § 1805.802(b), except that the Fund will not consider the evaluation criteria relating to matching funds in §§ 1805.802(b)(2)(i), (ii), and (iv). Under the Act, the Fund has express authority to consider evaluation criteria in addition to those set forth in 12 U.S.C. § 4706 and § 1805.802(b). The Fund also has broad discretion in evaluating the relative importance of each such criterion. For purposes of this TA component NOFA, the Fund is adding as a new evaluation criterion the extent of the applicant's demonstrated capacity needs. In selecting applicants for TA grant awards, the Fund will accord predominant weight to the following two evaluation criteria:

(a) The extent of the applicant's demonstrated capacity needs; and

(b) The extent and nature of the potential community development impact that will be achieved by the Fund's TA, relative to the amount of the TA to be provided.

The Fund will continue to evaluate applications using the remaining applicable criteria set forth in § 1805.802(b); however, such evaluation criteria will be of secondary importance to the two criteria set forth above.

In assessing the extent of a demonstrated capacity need, the Fund will consider the extent of funding previously awarded by the Fund to the applicant. While previous awardees are eligible to apply pursuant to this NOFA, given the focus on applicants with demonstrated unmet capacity building needs, it is the current expectation of the Fund that a substantial majority of the funds awarded pursuant to this NOFA will be to applicants that are not previous awardees. On the other hand, success in a previous funding round will not prevent an applicant from receiving a TA grant under this NOFA provided that such a grant is consistent with the Act and the interim rule governing the CDFI Program (12 CFR part 1805).

The Fund has sole discretion in the selection of applications for assistance. The anticipated maximum award per applicant under this NOFA is $50,000. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $50,000 if appropriate.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717, 4718; 12 CFR part 1805.

Dated: March 16, 1998.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 98–7153 Filed 3–19–98; 8:45 am]

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federal register

Friday
March 20, 1998

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 198
Aviation Insurance; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 198

[Docket No. 28893; Amdt. No. 198–4]

RIN 2120–AF23

Aviation Insurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises Title 14, Code of Federal Regulations (CFR), part 198, to reflect statutory authority to issue non-premium insurance for certain types of flight operations and ground support activities essential to such flights; explain when insurance policies are in force and when they are in standby status; revise the process for amending insurance policies; increase the amount of the binder for non-premium insurance coverage; clarify that consistent with commercial aviation insurance practice, not only aircraft, but other insurable items may be insured; and clarify that the Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing Presidential approval of the interagency indemnification agreement.

The intent of this final rule is to improve the efficiency of FAA's Aviation Insurance Program (Program); explain Program procedures; conform certain Program procedures to commercial aviation insurance industry practice; and offset incurred administration costs resulting from the increased frequency of utilization of the Program. The changes allow the Program to be more responsive to the aviation industry when commercial coverage cannot be obtained on reasonable terms, and the insurance coverage may be provided by the Program.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Eleanor Eilenberg, Office of Aviation Policy and Plans, APO–3, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3090.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–FAA–ARAC).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register** webpage at http://www.access.gpo.gov/NARA/index.html for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 1–800–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

In 1951, Congress amended the Civil Aeronautics Act of 1938 by adding a new Title XIII which authorized the Secretary of Commerce, with the approval of the President, to provide aviation war risk insurance adequate to meet the needs of U.S. air commerce and the federal government. This insurance could only be issued when the Secretary of Commerce found that war risk insurance was commercially unavailable on reasonable terms and conditions.

The war risk insurance program was established to provide the insurance necessary to enable air commerce to continue in the event of war. This was needed because of several factors: commercial war risk insurance policies contained automatic cancellation clauses in the even of major war; the geographical coverage of commercial war risk insurance could be restricted upon reasonable notice to air carriers; and rates for commercial war risk insurance could be raised without limit upon reasonable notice to air carriers.

The Aviation Insurance Program was incorporated into Title XIII of the Federal Aviation Act of 1958. Statutory responsibility for the Program was subsequently transferred to the Department of Transportation (DOT), at the time of its creation in 1967. The Secretary of Transportation (Secretary) later delegated this authority to the Administrator of the FAA (49 CFR 1.47(b)).

The definition of war risk in Title XIII was that traditionally employed by commercial underwriters and, as a matter of policy, the FAA had always conservatively interpreted the definition. In the early 1970's, this definition led to uncertainty about the extent of the Administrator's statutory authority to provide insurance against loss or damage arising from, for example, undeclared wars, hijackings, and terrorist acts. Because of a combination of the progressive exclusion of these new risks from commercial all risk policies, and the failure of the traditional definition of war risk to cover these risks, a potential gap in insurance coverage occurred, with the possibility of abrupt termination of important air services in emergency situations.

In recognition of the fact that the Administrator needed broad insurance authority in extraordinary circumstances to insure air services determined to be in the national interest, Congress amended Title XIII on November 9, 1997. These amendments, included in Public Law (Pub. L.) 95–163, removed from Title XIII all references to risk categories. They authorized the Administrator to provide insurance against loss or damage due to any risk arising from operations of aircraft in foreign air commerce or between two points outside the United States deemed by the President to be in the foreign policy interests of the United States. However, such insurance could only be issued if commercial insurance for those operations was not available on reasonable terms and conditions. The January 15, 1986 amendment to part 198

reflected the 1997 amendments to Title XIII.

Between 1975 and 1990 there was little use of the insurance authority. In 1983 and 1984, the FAA insured, without premium, about 50 military charter flights from the United States to Central America. Otherwise, commercial insurance for flights to most areas of the world was available. Since 1990, the Aviation Insurance Program has been used much more than in the 1975–1990 period, but air carriers can usually still obtain commercial insurance.

Since 1990, the Aviation Insurance Program has been mostly used to provide insurance for civil aircraft chartered by the military. The Department of Defense (DOD) under the National Airlift Policy relies on civil air carriers to meet its airlift requirements. Under the Civil Reserve Air Fleet (CRAF) program, the DOD contractually obligates airlines to provide aircraft and flight crews to meet mobilization transport requirements in exchange for shares of peacetime DOD transport business. This saves the DOD the expense of purchasing, operating, and maintaining a large standby transport aircraft fleet. Although the CRAF program is available, the DOD usually can meet its transport requirements with aircraft and crews volunteered by the CRAF airlines, without formal activation of the program; and, in fact, the CRAF has been activated only once in its history—the partial CRAF activation of 1990–91, during Operation Desert Shield/Storm.

Gaps between the FAA and commercial insurance coverage were highlighted during Operation Desert Shield/Storm as a result of the CRAF activation and the long post-Vietnam hiatus in Aviation Insurance Program activity. Two such gaps could not be closed without new legislation. The more significant was the inability to cover domestic CRAF flight segments. Most of the airlines' commercial hull or liability war risk insurance policies excluded coverage of all CRAF flights; while, by law, FAA-issued, non-premium insurance could cover only international flight segments. Thus, the airlines had to rely on direct indemnification from the DOD for coverage of CRAF domestic flight segments (e.g., ferry flights to a military base to pick up troops and supplies destined for the theater of operations). In addition, flights transporting armed forces and military materiel on behalf of, and pursuant to an agreement between, the U.S. Government and a foreign government, but not operated under a U.S. Government contract, could not be covered by non-premium insurance. Title IV of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Pub. L. 102–581, gave the FAA the authority to provide non-premium insurance coverage for these two previously uncoverable categories of flights, as well as for goods and services (e.g., spares support, refueling) in direct support of such flights. The FAA filled other coverage gaps by adopting new procedures and policies involving the revision of its insurance policies to cover, e.g., the costs of search and rescue attempts for an aircraft; and the development of endorsements to these policies to meet the specific needs of DOD contract carriers.

In 1994, Congress recodified the Federal Aviation Act, including the Aviation Insurance Program's provisions, without substantive change, into Title 49, United States Code. The Program's provisions were incorporated into Chapter 443 of that Title.

In 1997, Congress reauthorized the Aviation Insurance Program and amended Chapter 443. The insurance amendments, included in the Aviation Insurance Reauthorization Act of 1997, Pub. L. 105–137, stated that aircraft hull may be insured for reasonable value as determined by the Secretary in accordance with reasonable commercial aviation insurance business practice. They also stated that the Presidential approval of the standing interagency indemnification agreement between the DOT and other U.S. Government agencies, constitutes the necessary determination, for non-premium insurance, that continuation of the aircraft operation is necessary to carry out U.S. foreign policy. The amendments also authorized the Secretary to use binding arbitration of claims, and pay awards under such arbitration; and extended the Program's authorization until December 31, 1998.

Aviation Insurance Program

Chapter 443 authorizes the Secretary of Transportation, subject to approval by the President, to provide aviation insurance coverage for American aircraft or foreign-flag aircraft operations, deemed necessary to carry out the foreign policy of the United States, for which commercial insurance is unavailable on reasonable terms. This is a discretionary program. Insurance may be issued in two forms—non-premium and premium.

Non-premium insurance has been issued for American aircraft under contract to any U.S. Government department or agency which has an indemnity agreement with the DOT. Applicants currently pay a one-time binder fee of $200 per aircraft for non-premium insurance. This fee has not been adjusted since 1975.

The FAA's historical interpretation of Chapter 443, confirmed by the 1997 legislative authority, has been that the Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing Presidential approval of the indemnity agreement between the DOT and the other U.S. Government agencies.

In order to minimize the time needed to provide non-premium insurance coverage, upon receipt of the application from the carrier, the FAA issues the carrier a standby non-premium policy which lists that carrier's registered aircraft. Actual coverage for operations of these aircraft commences upon formal activation notice from the FAA which details the conditions and limits of the activated policy.

Premium insuance has been issued for American aircraft or foreign-flag aircraft for regular commercial scheduled or charter service. The U.S. Government assumes the financial liability for claims in exchange for a premium. The Presidential approval required for premium insurance must be separately obtained for a period of not more than 60 days. The Presidential approval may be renewed for additional 60 days periods if so approved before each additional period. Under certain circumstances, this renewal authority has been and may be delegated to the Secretary. As a general policy, premium insurance will not be issued for a U.S. Government department or agency; whereas such a department or agency may request non-premium insurance.

Non-premium insurance and premium insurance do not necessarily differ in risks covered for any given flight. The differences are in the categories of flights which may be covered and in the approval process. As noted earlier in this document, wholly domestic flights may be covered byr non-premium insurance, whereas premium insurance may cover only flights between a U.S. point and a foreign point or between two foreign points. Presidential approval is specific to flights within the scope of each request for premium insurance; it is generic to all non-premium flights for agencies which have completed an indemnification agreement with the DOT.

Two basic types of coverage are offered under the FAA's Aviation Insurance Program—hull and liability.

Hull insurance covers the loss of or damage to an aircraft hull. Under the 1997 legislative authority, coverage may not exceed the reasonable value of the aircraft as determined by the Secretary in accordance with reasonable commercial aviation insurance business practice.

Liability insurance covers bodily injury or death; personal injury; damage to or loss of property, including cargo, baggage, and personal effects. Coverage may not exceed the registered limits of liability on file with the FAA or the corresponding commercial coverage in effect on the date of loss.

The NPRM

The FAA published Notice No. 97–5, on April 17, 1997 (62 FR 19008) and a correction notice on April 22, 1997 (62 FR 19530) requesting comments. The NPRM contained an overview of the recent experience of the FAA's Aviation Insurance Program. In sum, during Operation Desert Shield/Storm, the FAA issued non-premium war risk insurance for over 5,000 flights, and premium war risk insurance for 36 flights. The FAA has also issued non-premium insurance for flights supporting recent humanitarian and peacekeeping operations, including 1992–94 flights to and from Somalia, 1994 flights into Haiti, and, starting in April 1996, troop rotation flights between Tuzla, Bosnia, and Germany.

Coverage gaps and the air carriers' dependence on FAA-issued insurance caused Congress, the air carrier industry, and the FAA to review the Program's statutory authority, in 1992. Title IV of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Pub. L. 102–581, gave the FAA the expanded authority to issue non-premium insurance for two previously uncoverable categories of flights, as well as for goods and services in direct support of such flights.

The FAA has addressed other coverage gaps by adopting new procedures and policies, including revising the FAA insurance policies and developing new endorsements for those policies.

As more fully described later in this document, this final rule improves the Program's efficiency, explains Program procedures, reflects the expanded statutory authority to insure certain flights, increases the amount of the binder fee to offset incurred administration costs resulting from increased frequency of utilization of the Program in the last five years, and conforms Program practice to the commercial practice of insuring other insurable items. This final rule does not compromise the basic premise that the FAA has broad discretion and judgment to determine the acceptable level of risk to be insured against under a given set of circumstances, and the policies and procedures to be followed in the administration of the Aviation Insurance Program.

Discussion of Comments

On April 17, 1997 the FAA published an NPRM. Two commenters responded to the NPRM—the National Air Carrier Association (NACA) and American Airlines, Inc. (American).

NACA concurred with all the changes that the FAA proposed to part 198. However, NACA suggested that the rulemaking be delayed until Congress reauthorizes chapter 443, on the theory that potential amendments to Chapter 443 would require additional changes to part 198. Because a related suggesion was among the comments made by American, the FAA addresses the NACA suggestion in the response to American's comments, below.

American's first comment is a suggestion that section 198.3 should contain clarifying language indicating that Chapter 443 coverage is effective for the entire period of activation. This suggestion is related to subsequent comments that the section's deactivation provisions are overbroad, and should be deleted or modified according to language that American proposes. The FAA addresses these comments together.

American proposes that section 198.3, paragraph (b), should be revised to reflect the language "have been [met] at the time of issuance," so that it is clear that the conditions listed in (b)(1) through (3) for issuance of a non-premium standby policy are conditions precedent to issuance, not ongoing conditions. Thus, American asserts, a change in any of such conditions would not invalidate insurance coverage-especially in mid-flight-until formal deactivation procedures have been followed or the carrier completes the flight or series of flights to which the activated coverage applies. American has also proposed detailed, modifying language for paragraphs (c) through a new (e), to limit the alleged overbroadness of the deactivation provisions; alternately, it suggests that paragraphs (b) through (d) should be deleted and included in the FAA policies.

The FAA does not agree with the majority of these comments. If the Administrator were to find, subsequent to activation, that commercial insurance had become available on reasonable terms, activated insurance coverage would not be in compliance with a statutory condition. However, the FAA would not deactivate such coverage without written notice to the operator. It should be noted that the regulation provides, in paragraph (d), for written deactivation notification by the FAA to the aircraft operator; and that the details of such notice of deactivation/termination are articulated in the FAA policies. In addition, to address the concern that coverage not be invalidated in mid-flight, the FAA is willing to add an appropriate provision in the policies. That provision will state that coverage will remain in force until the insured aircraft has completed the contracted flight by making a safe return at an airfield not excluded by the geographical limits of the operator's commercial policy. The FAA believes that such specific language belongs in the FAA policies, not in the regulations.

In light of the foregoing, this final rule does not adopt the above-described proposed addition to section 198.3(b), nor the additional modifying details relating to paragraphs (c) through proposed new (e). The FAA also does not adopt the alternate suggestion to delete paragraphs (b) through (d) from the regulation; nor does the FAA adopt, in full, in the FAA policies, American's modifying language for these paragraphs.

However, the FAA agrees with comments that paragraphs (a) and (b) of section 198.3 should refer to an insurance policy's being "issued," not its being "made available"; and that paragraph (a) should be modified to clarify, with regard to premium insurance, which of the requirements of section 198.1 must be met. This final rule reflects these changes. In addition to changes recommended by American, the FAA has added conforming language to section 198.3(c)(2).

American's second comment is that the FAA should withdraw the clarifying language in section 198.3(b)(2), regarding the Presidential approval required for issuance of non-premium insurance, because the GAO has disagreed with the FAA's interpretation in a recent reauthorization hearing, and recent history shows a Presidential determination was made for 1994 humanitarian relief air services to Haiti. American acknowledges that Congress may ratify the FAA's interpretation by amending Chapter 443 in accordance with the FAA's approach.

The FAA does not accept American's suggestion to withdraw the referenced language because Congress has confirmed the FAA's historical interpretation that the Presidential

approval required for the issuance of non-premium insurance is demonstrated by the standing approval of the interagency indemnification agreement.

American's third comment is threefold. First, American suggests that the FAA should delete the section 198.3 (b)(3) requirement for carriers to submit current and updated commercial policies, because the requirement implies an ongoing condition which could invalidate activated insurance. Next, American suggests that the requirement is unnecessary, all the FAA needs is the amount of a carriers's commercial insurance, and the fact that the requirement does not apply to premium insurance highlights the FAA's lack of need for the actual policies. Third, American questions the regulations' lack of an assurance of confidentiality to protect a carrier's proprietary or competitive interests; and suggests that the FAA only require the carrier to provide confidentially the amount of its commercial insurance.

It is not the FAA's intent that the requirement to submit commercial policies and endorsements to the FAA constitute a continuing condition that could invalidate activated coverage. It should be noted that section 198.3 (c)(2) does not reference submission of the commercial policies and endorsements.

The FAA disagrees with the comment that submission of the commercial policies and endorsements is unnecessary. The FAA needs such documents in order to verify the commercial coverages that an air carrier had in place prior to insurance becoming unavailable. It should also be noted that the CRAF or Airlift Services Contract between the DOD and each air carrier requires the carrier to supply the FAA with a complete copy of its current hull and comprehensive liability commercial insurance policies. In addition, one of the GAO's recommendations to the Secretary of Transportation, in the 1994 Report to Congress, "Aviation Insurance: Federal Insurance Program Needs Improvements to Ensure Success," was that the FAA should require airlines to submit copies of their current commercial war-risk policies and any subsequent revisions, as a condition for obtaining non-premium (and premium) insurance; and periodically verify the information submitted by the airlines. Finally, as to the requirement's applicability to premium insurance, the FAA notes that when a request for premium insurance is made, the FAA requires very specific information from the operator, which would normally include submission of the commercial policy. However, because of the unique nature of premium requests, the FAA's specific information needs cannot be catalogued, in advance in this rulemaking.

In light of the foregoing, the FAA does not adopt the suggestion to only require submission of the amount of a carrier's commercial insurance. However, the FAA notes that 5 U.S.C. 552(b)(4) allows an agency to not release to the public matters obtained from a person that are confidential commercial or financial information. To the extent that the commercial policies and endorsements qualify for such protection, the FAA will protect them to the fullest extent of the law.

American's fourth comment is a suggested revision of paragraph (c) of section 198.9, limiting the evidence carriers are required to submit to the FAA that commercial insurance is not available on reasonable terms, only to evidence requested by the FAA. The FAA does not believe that the revision would hinder the FAA's ability to obtain the need information, and therefore adopts the suggestion. This final rule incorporates language similar to American's suggested language, but does not adopt the word "reasonable" (as in "upon reasonable request by the FAA"). By statute and delegation, the FAA has both the authority and responsibility to administer the Aviation Insurance Program. The FAA has the discretion to determine the pertinent information required in the particular circumstances presented. The FAA is also concerned that a debate over the "reasonableness" of the request would delay the issuance or activation of insurance.

American's fifth comment is a suggested revision that the FAA also accepts, to replace the ten-day notice requirement in section 198.11 with language which better reflects business needs and practices. This final rule incorporates this change.

American's sixth and final comment is twofold. First, American suggests that it is advisable for the FAA to postpone adopting a final regulation until Congress has reauthorized Chapter 443, as the reauthorization legislation may warrant further changes to the regulation. Second, the FAA should also revise the proposed rule based on the comments on Notice No. 97–5, and issue a new notice of proposed rulemaking for further comment. NACA has made a similar suggestion to American's point on delaying until the reauthorization of Chapter 443 is finalized. These comments are addressed together, below.

The FAA does not agree that the proposed regulation needs further changes based on the reauthorization legislation. As previously noted in this document, that legislation contains four amendments to Chapter 443: (1) Authority that aircraft hull may be insured for reasonable value as determined by the Secretary in accordance with reasonable commercial aviation insurance business practice; (2) authority that Presidential approval of the standing interagency indemnification agreement constitutes the necessary Presidential determination for non-premium insurance; (3) authorization for the Secretary to use binding arbitration of claims, and pay awards under such arbitration; and (4) an extension of the Program until December 31, 1998.

These provisions do not conflict, nor are they inconsistent, with this final rule. First, the FAA notes that binding arbitration is not a subject of this rulemaking. Second, the Presidential determination authority, as discussed above, confirms the FAA's historical interpretation. Third, the FAA does not believe that section 198.7 conflicts, or is inconsistent, with the legislative authority on insuring aircraft hull. This is so because section 198.7 permits the FAA to determine that an aircraft is insured at its reasonable value in accordance with reasonable commercial aviation insurance business practice, which is the legislative authority.

The FAA also does not agree that it needs to issue a new notice of proposed rulemaking for further comment. The FAA has revised the regulation in response to the comments on Notice No. 97–5.

Analysis of the Rule as Adopted

Section 198.1

Section 198.1 sets forth editorial changes reflecting language used in the 1994 recodification of the Federal Aviation Act.

Section 198.1(b) is amended to reflect the expanded operations covered under the Aviation Insurance Program. This amendment includes, as eligible operations, those in domestic air commerce, if non-premium insurance is sought.

Section 198.3

Section 198.3(b) is amended to reflect the expanded authority to cover flights operated pursuant to an agreement between the United States and a foreign government. The section also reflects the FAA's historical interpretation of Chapter 443 that the Presidential approval required for the issuance of non-premium insurance is demonstrated by the standing

Presidential approval of the indemnity agreement between DOT and another U.S. Government department or agency. In addition, the section contains a requirement for that aircraft operator to place on file with the FAA a current copy of its commercial insurance policy or policies as well as policy endorsements. This section also explains when FAA policies are in standby status and when they are in force.

Section 198.5

Section 198.5 sets forth editorial changes reflecting language used in the 1994 recodification of the Federal Aviation Act, and also clarifies that any other insurable item may be insured if eligible for insurance under Section 198.1.

Section 198.7

Section 198.7 sets forth editorial changes reflecting language used in the 1994 recodification of the Federal Aviation Act; and deletes previous language requiring the agency on whose behalf contract air services are to be performed to approve revisions of the non-premium policy.

Section 198.9

Section 198.9 is revised in order to provide flexibility to applicants for insurance. It provides for the FAA office administering the Aviation Insurance Program to give guidance and necessary forms to applicants for insurance, and removes Appendix A from the regulations. It also adds a requirement that an applicant for premium or non-premium insurance must, upon request by the FAA, provide evidence to the FAA of the unavailability of commercial insurance, as well as contains a provision specifying that the standby non-premium policy only provides actual coverage when formally activated by the FAA.

Section 198.11

Section 198.11 reflects editorial changes, the inclusion of language relating to other insurable items, and the replacement of the 10-day notice requirement with language reflecting commercial business needs and practices.

Section 198.13

Section 198.13 is revised to reflect the FAA's current administrative payment procedures, and reflects generic instructions that add greater flexibility to this section.

Section 198.15

Section 198.15 revises the current $200 binder for non-premium insurance, established in 1975, and updates it for the effects of inflation by using the annual cumulative Consumer Price Index (CPI) rounded to the nearest $25. For example, using the latest annual cumulative CPI available (2.851 for 1996), the binder would be $575 (calculation: $200 × 2.851, rounded to the nearest $25) per aircraft or other insurable item. In the future, the binder amount will be adjusted annually for newly registered aircraft and other insurable items, to reflect future increases in the CPI, rounded to the nearest $25. The binder will continue to be a one-time charge, so that once an aircraft operator registers an aircraft or other insurable item no additional binder charge will be due while the operator continues to operate that aircraft or other insurable item. After publication of the final rule, the binder set forth in the final rule will be adjusted not more frequently than annually, based on changes in the Consumer Price Index of All Urban Consumers (CPI) published by the Secretary of Labor. The adjusted binders will also be published in the "Notice" section of the **Federal Register**. This procedure will permit binder adjustments in a timely manner. However, in no event will an adjusted binder exceed the FAA's cost for providing a service. The adjusted binders will become effective in accordance with the notice which sets forth the adjusted binders. The increased binder will apply only to each insured carrier's aircraft and other insurable items registered after the effective date of this final rule.

Section 198.15(d) has been added to state the FAA's longstanding policy that when an operator acquires an aircraft previously covered under another operator's policy, the new operator must register it in the same manner as an aircraft not previously covered. The insurance registrations are not transferable.

Section 198.17

Section 198.17 is added to reflect the expanded authority to cover goods and services provided in direct support of aircraft operations.

Appendix A to Part 198—Form of Application Named in Section 198.9

Appendix A is removed in order to simplify the administration of the Aviation Insurance Program. The FAA office administering the Program will provide forms upon request.

Paperwork Reduction Act

Information collection requirements in this final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0514.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations (JAR)

The FAA has determined that a review of the ICAO Standards and Recommended Practices and JAR's is not warranted because there are no existing comparable rules.

Regulatory Evaluation Summary

Executive Order 12866 (issued October 4, 1993) established the requirement that each agency shall assess both the costs and benefits of every regulation and propose or adjust a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act, an international trade impact assessment, and an unfunded mandates determination. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this rule.)

The final rule will not impose significant additional costs on affected air carriers. Through the changes, the FAA will attempt to recover from the beneficiaries some of the costs of providing the current services. The total cost of administering the program amounted to about $375,000 for the 1997 fiscal year (FY97) ending September 1997. Updating the $200 1975 binder by the latest annual CPI increases for 1996 and adjusted to the nearest $25 results in a binder of $575. This $575 multiplied by the number of aircraft newly registered per annum (estimated at 80), will yield $46,000 after the rule is amended. This amounts to 12.3% of FY97 administrative costs.

Principal benefits of the rule are clarifications of the existing program authorities to issue aviation insurance as restated in the recodification of the Federal Aviation Act, P.L. 103–272, the expansion of the program to include

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provisions of nonpremium insurance to certain domestic segments, and to cover operations involving international agreements between the U.S. Government and foreign countries or organizations. The expansions in program scope reflect new authority created by Congress based on requirements identified during the Gulf War. The purpose of this legislative change embodied in the current rule is to increase the efficiency and flexibility of the program to respond to Defense Department requirements for air transportation between points within the United States and foreign countries.

The increase in the binder fee being instituted by the rule reflects the real cost of administration as adjusted for inflation. In the absence of this change, these administrative costs would be derived from the existing Aviation Insurance Revolving Fund to the ultimate detriment of current program participants as a whole. The FAA believes that the non-premium binder is equitable and justified in that it charges individual program participants for administrative costs associated with enrolling their aircraft in the program.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to consider the impact of rules on small entities, that is, small businesses, nonprofit organizations, and local governments. If there is a significant impact on a substantial number of small entities, the Agency must prepare a Regulatory Flexibility Analysis.

This proposal will affect Part 121 scheduled operators as well as unscheduled operators. Applying the 1996 CPI to the $200 1975 binder, the extent of the costs imposed by this rule is a one time cost of $575 per aircraft for registration. There are 23 small air carriers affected by this program with fewer than 1,500 employees. The FAA has determined that this binder, to utilize Chapter 443 insurance, will not have a substantial adverse economic impact on these entities. Rather, the binder costs facilitate program efficiency in general to the benefit of participating airlines, including airlines considered small entities. All of these air carriers need some form of insurance, because of the terms of their contracts with commercial lenders and lessors, to participate in the Chapter 443 Aviation Insurance Program and conduct certain DOD and DOS contract flights. Without the insurance availability, they could not benefit from the DOD and DOS business they otherwise obtain.

International Trade Impact

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. The rule will not have any impact on international trade as the registration fee will be the same for all carriers, foreign as well as domestic.

Unfunded Mandates Determination

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates or private sector mandates.

Significance

The FAA has determined that this regulation will not be significant under Executive Order 12866, Regulatory Planning and Review, issued October 4, 1993. This rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 16, 1979) and DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, May 22, 1980. A regulatory evaluation of this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket.

List of Subjects in 14 CFR Part 198

Aircraft, Freight, Reporting and recordkeeping requirements, War risk insurance.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration revises 14 CFR part 198 as set forth below:

PART 198—AVIATION INSURANCE

Sec.

198.1 Eligibility of aircraft operation for insurance.
198.3 Basis of insurance.
198.5 Types of insurance coverage available.
198.7 Amount of insurance coverage available.
198.9 Application for insurance.
198.11 Change in status of aircraft.
198.13 Premium insurance—payment of premiums.
198.15 Non–premium insurance—payment of registration binders.
198.17 Ground support and other coverage.

Authority: 49 U.S.C. 106(g), 40113, 44301–44310; 49 CFR 1.47(b).

§ 198.1 Eligibility of aircraft operation for insurance.

An aircraft operation is eligible for insurance if—

(a) The President of the United States has determined that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States;

(b) The aircraft operation is—

(1) In foreign air commerce or between two or more places all of which are outside the United States if insurance with premium is south; or

(2) In domestic or foreign air commerce, or between two or more places all of which are outside the United States if insurance without premium is sought; and

(c) The Administrator finds that commercial insurance against loss or damage arising out of any risk from the aircraft operation cannot be obtained on reasonable terms from an insurance carrier.

§ 198.3 Basis of insurance.

(a) Premium insurance may be issued by the FAA is the requirements of § 198.1(a), (b)(1) and (c) are met.

(b) Subject to § 198.9(c), standby insurance without premium may be issued by the FAA if all of the following conditions have been met:

(1) A department, agency, or instrumentality of the U.S. Government seeks performance of air services

operations, pursuant to a contract of the department, agency, or instrumentality; or transportation of military forces or materiel on behalf of the United States, pursuant to an agreement between the United States and a foreign government.

(2) Such department, agency, or instrumentality of the U.S. Government has agreed in writing to indemnify the Secretary of Transportation against all losses covered by such insurance. Such an agreement, when countersigned by the President, constitutes a determination that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States.

(3) A current copy of the aircraft operator's applicable commercial insurance policy or policies is on file with the FAA, including every endorsement making a material change to the policy. Updated copies of these policies must be provided upon each renewal of the commercial policy. Every subsequent material change by endorsement must be promptly provided to the FAA.

(c) Insurance is activated, placing the insurance in full force, as specified by the FAA's written notification to the operator and remains in force until such time as either of the following occurs:

(1) The requirements in § 198.1 are no longer met; or

(2) In the case of non-premium insurance, an aircraft operation is no longer performed under contract to a department, agency, or instrumentality of the U.S. Government; or pursuant to an agreement between the United States and a foreign government; or the Administrator finds that commercial insurance can now be obtained on reasonable terms.

(d) Insurance policies revert to standby status upon written notification by the FAA to the aircraft operator. A policy will remain in standby status until either—

(1) The insurance is activated by written notice; or

(2) The policy is canceled.

§ 198.5 Types of insurance coverage available.

Application may be made for insurance against loss or damage to the following persons, property, or interests:

(a) Aircraft, or insurable items of an aircraft, engaged in eligible operations under § 198.1.

(b) Any individual employed or transported on the aircraft referred to in paragraph (a) of this section.

(c) The baggage of persons referred to in paragraph (b) of this section.

(d) Property transported, or to be transported, on the aircraft referred to in paragraph (a) of this section.

(e) Statutory or contractual obligations, or any other liability, of the aircraft referred to in paragraph (a) of this section or of its owner or operator, of the nature customarily covered by insurance.

§ 198.7 Amount of insurance coverage available.

(a) For each aircraft or insurable item, the amount insured may not exceed the amount for which the applicant has otherwise insured or self-insured the aircraft or insurable item against damage or liability arising from any risk. In the case of hull insurance, the amount insured may not exceed the reasonable value of the aircraft as determined by the FAA or its designated agent.

(b) Policies issued without premium may be revised from time to time by the FAA with notice to the insured, to add aircraft or insurable items or to amend amounts of coverage if the insured has changed the amount by which it has otherwise insured or self-insured the aircraft or itself.

§ 198.9 Applicant for insurance.

(a) Application for premium or non-premium insurance must be made in accordance with the applicable form supplied by the FAA.

(b) Each applicant for insurance with the premium under this part must submit to the FAA with its application a letter describing in detail the operations in which the aircraft is or will be engaged and stating the type of insurance coverage being sought and the reason it is being sought. The applicant must also submit any other information deemed pertinent by the FAA.

(c) Each applicant for premium or non-premium insurance must, upon request by the FAA, submit to the FAA evidence that commercial insurance is not available on reasonable terms for each flight or ground operation for which insurance is sought. Each aircraft operator who has a standby non-premium insurance policy must, upon request by the FAA, submit evidence to the FAA that commercial insurance is not available on reasonable terms before the FAA activates that policy. The adequacy of the evidence submitted is determined solely by the FAA.

(d) The standby non-premium policy issued to the aircraft operator does not provide actual coverage until formally activated by the FAA.

§ 198.11 Change in status of aircraft.

In the event of sale, lease, confiscation, requisition, total loss, or other change in the status of an aircraft or insurable items covered by insurance under this part, the insured party must notify the office administering the Aviation Insurance Program before, or as soon as practicable after, the change in status.

§ 198.13 Premium insurance—payment of premiums.

The insured must pay the premium for insurance issued under this part within the stated period after receipt of notice that premium payment is due and in accordance with the provisions of the applicable FAA insurance policy. Premiums must be sent to the FAA, and made payable to the FAA.

§ 198.15 Non-premium insurance—payment of registration binders.

(a) The binder for initial registration is $575 for each aircraft or insurable item. This binder is adjusted not more frequently than annually based on changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(b) An application for non-premium insurance must be accompanied by the proper binder, payable to the FAA. A binder is not returnable unless the application is rejected.

(c) Requests made after issuance of a non-premium policy for the addition of an aircraft or insurable item must be accompanied by the binder for each aircraft and insurable item.

(d) When an operator acquires an aircraft or insurable item that was previously covered under an active or standby policy, the new operator must register that aircraft or item on its policy and pay the binder for each aircraft and insurable item.

§ 198.17 Ground support and other coverage.

An aircraft operator may apply for insurance to cover any risks arising from the provision of goods or services directly supporting the operation of an aircraft that meets the requirements of § 198.3(b).

Issued in Washington, DC, March 13, 1998.

Jane F. Garvey.

[FR Doc. 98–7275 Filed 3–19–98; 8:45 am]

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Federal Register
Friday
March 20, 1998

Part IV

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

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ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51880; FRL–5768–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from October 20, 1997 to October 24, 1997.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51880]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51880]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51880]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 8 Premanufacture Notices Received From: 10/20/97 to 10/24/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0048	10/20/97	01/18/98	CBI	(G) Processing aid	(G) Polyglycerol ester of a fatty acid
P–98–0051	10/21/97	01/19/98	Unichema North America	(S) Reactive raw material for production of prolyurethanes	(G) Polyester diol
P–98–0052	10/20/97	01/18/98	CBI	(G) Petroleum	
P–98–0054	10/21/97	01/19/98	CBI	(G) Ink component	(G) Metal phenate-sulfonate complex
P–98–0055	10/21/97	01/19/98	CBI	(G) Ink component	(G) Cycloakdienes polymer with substituted phenol, formaldehyde, alkyldioic acid and alkenedioic acid
P–98–0056	10/21/97	01/19/98	CBI	(G) Ink component	(G) Cycloakdienes polymer with substituted phenol, formaldehyde, alkyldioic acid and alkenedioic acid
P–98–0057	10/21/97	01/19/98	CBI	(G) Ink component	(G) Cycloakdienes polymer with substituted phenol, formaldehyde, alkyldioic acid and alkenedioic acid
P–98–0058	10/21/97	01/19/98	CBI	(G) Ink component	(G) Cycloakdienes polymer with substituted phenol, formaldehyde, alkyldioic acid and alkenedioic acid

II. 7 Notices of Commencement Received From: 10/20/97 to 10/24/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–0331	10/22/97	05/22/97	(G) Alkanoic acid salt
P–97–0676	10/24/97	10/09/97	(G) Oxidizing alkyd resin
P–97–0712	10/24/97	09/25/97	(G) Acrylic acid containing polyester resin
P–97–0800	10/24/97	10/13/97	(G) Polyolefin derivative
P–98–0801	10/24/97	10/13/97	(G) Polyolefin derivative
P–97–0807	10/20/97	10/20/97	(G) Terpolymer of substituted aromatic olefin and aliphatic ester
P–97–0861	10/21/97	10/15/97	(G) Polyester urethane aqueous dispersion

List of Subjects

Environmental protection, Premanufacture notices.

Dated: March 6, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–7298 Filed 3–19–98; 8:45 am]
BILLING CODE 6560–50–F

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ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51881; FRL–5771–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from October 27, 1997 to October 31, 1997.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51881]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51881]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51881]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

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For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 27 Premanufacture Notices Received From: 10/27/97 to 10/31/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0062	10/27/97	01/25/98	Condea Vista Company	(S) Surfactants for household laundry detergents (pmn substances a&b); surfactants for wash deinking of recycled paper (pmn substances c&d)	(S) Poly(oxy-1,2-(ethanediyl), alpha-hydro-omega-hydroxy, monoethers with lauryl alc. distn. lights
P–98–0063	10/27/97	01/25/98	Condea Vista Company	(S) Surfactants for household laundry detergents (pmn substances a&b); surfactants for wash deinking of recycled paper (pmn substances c&d)	(S) Poly(oxy-1,2-(ethanediyl), alpha-hydro-omega-hydroxy, monoethers with myristyl alc. distn. lights
P–98–0064	10/27/97	01/25/98	Condea Vista Company	(S) Surfactants for household laundry detergents (pmn substances a&b); surfactants for wash deinking of recycled paper (pmn substances c&d)	(S) Poly(oxy-1,2-(ethanediyl), alpha-hydro-omega-hydroxy, monoethers with cetyl alc. distn. lights
P–98–0065	10/27/97	01/25/98	Condea Vista Company	(S) Surfactants for household laundry detergents (pmn substances a&b); surfactants for wash deinking of recycled paper (pmn substances c&d)	(S) Poly(oxy-1,2-(ethanediyl), alpha-hydro-omega-hydroxy, monoethers with stearyl alc. distn. lights
P–98–0066	10/27/97	01/25/98	Condea Vista Company	(G) Intermediates for the production of ethoxylates and polymer esterification	(S) 1-Dodecanol, manufacture of, distn. lights
P–98–0067	10/27/97	01/25/98	Condea Vista Company	(G) Intermediates for the production of ethoxylates and polymer esterification	(S) 1-Tetradecanol, manufacture of distn. lights
P–98–0068	10/27/97	01/25/98	Condea Vista Company	(G) Intermediates for the production of ethoxylates and polymer esterification	(S) 1-Hexadecanol, manufacture of, distn. lights
P–98–0069	10/27/97	01/25/98	Condea Vista Company	(G) Intermediates for the production of ethoxylates and polymer esterification	(S) 1-Ooctadecanol, manufacture of, distn. lights
P–98–0082	10/27/97	01/25/98	CBI	(S) Binder for uv or electron beam curable coatings for wood, paper and plastics	(G) Reactive acrylate
P–98–0083	10/27/97	01/25/98	CBI	(S) Binder for uv or electron beam curable coatings for wood, paper and plastics	(G) Reactive acrylate
P–98–0084	10/27/97	01/25/98	CBI	(S) Binder for uv or electron beam curable coatings for wood, paper and plastics	(G) Reactive acrylate
P–98–0085	10/28/97	01/26/98	CBI	(G) Coatings binder component	(G) Urethane oligomer
P–98–0091	10/28/97	01/26/98	CBI	(G) Colorant for thermal printing	(G) Pyrazolone azomethine dye
P–98–0093	10/28/97	01/26/98	CBI	(G) Open, non-dispersive	(G) Polyester resin
P–98–0094	10/29/97	01/27/98	CBI	(G) Coating component	(G) Poly (bisphenol acrylate ester/alicyclic ketone)
P–98–0095	10/29/97	01/27/98	CBI	(S) A polymeric retanning agent for leather	(G) Sodium salt of 2-butenedioic acid, polymer with alkenes
P–98–0097	10/27/97	01/25/98	CBI	(G) Oprn, non-dispersive use in a coating application	(G) Polymerized blocked aliphatic isocyanate
P–98–0098	10/27/97	01/25/98	CBI	(S) Adhesive promoter for polyvinyl chloride based plastisols	(G) Blocked urethane prepolymer
P–98–0103	10/29/97	01/27/98	CBI	(S) Binder for UV or electron beam curable coatings for wood, paper and plastics	(G) Polyether acrylate
P–98–0104	10/27/97	01/25/98	Engelhard Corporation	(G) Plastic & rubber additive	(G) Surface modified clay
P–98–0105	10/30/97	01/28/98	CBI	(G) Resin coating	(G) Cycloaliphatic epoxy resin
P–98–0106	10/30/97	01/28/98	CBI	(S) Urethane foam surfactant intermediate	(G) Allyl-polyalkylene oxide, acetal-capped
P–98–0107	10/30/97	01/28/98	CBI	(S) Urethane foam surfactant intermediate	(G) Allyl-polyalkylene oxide, acetal-capped

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I. 27 Premanufacture Notices Received From: 10/27/97 to 10/31/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0108	10/30/97	01/28/98	3M Company	(G) Deck coating	(G) Polyurethane prepolymer
P–98–0109	10/30/97	01/28/98	CBI	(G) Urethane coating component	(G) Polymer of aliphatic diisocyanate with polyether triol
P–98–0110	10/30/97	01/28/98	CBI	(G) Open, non-dispesive use	(G) Acrylic resin

II. 7 Notice of Commencement/Import Received 10/27/97 to 10/31/97

Case No.	Received Date	Commencement/ Import	Chemical
P–96–1428	10/30/97	09/29/97	(G) Modified polyisocyanate
P–96–1687	10/27/97	10/08/97	(G) Epoxy functional alkylsiloxane
P–96–1690	10/27/97	10/01/97	(G) Alkoxylated substituted aromatic aldehyde
P–96–1691	10/27/97	10/03/97	(G) Chromophore substituted polyoxyalkylene
P–97–0205	10/31/97	10/03/97	(S) Polymer of: C_{9-11} alcohol ethoxylate; oxygen
P–97–0609	10/29/97	10/09/97	(G) Polycarboxylic acid ester A
P–97–0860	10/29/97	10/13/97	(G) Polyester urethane aqueous dispersion

List of Subjects

Environmental protection, Premanufacture notices.

Dated: March 3, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–7299 Filed 3–19–98; 8:45 am]

BILLING CODE 6560–50–F

federal register

Friday
March 20, 1998

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1998–1999 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Seasons; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE93

Migratory Bird Hunting; Proposed 1998–1999 Migratory Game Bird Hunting Regulations (Preliminary) with Requests for Indian Tribal Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish annual hunting regulations for certain migratory game birds. The Service also requests proposals from Indian tribes that wish to establish special migratory bird hunting regulations. The establishment of these regulations will permit the taking of the designated species during the 1998–99 hunting season. The Service annually prescribes outside limits (frameworks) within which States may select hunting seasons. The Service has also employed guidelines to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. These seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and are designed to permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: Tribes should submit proposals and related comments by June 2, 1998. The comment period for proposed early-season frameworks will end on July 27, 1998; and for proposed late-season frameworks on September 7, 1998. The Service will hold a public hearing for early-season frameworks on June 25, 1998, at 9 a.m. and late-season frameworks on August 6, 1998, at 9 a.m.

ADDRESSES: The Service will hold both public hearings in the Auditorium, Department of the Interior Building, 1849 C Street NW., Washington, DC. The public may submit written comments on the proposals and notice of intention to testify at either hearing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. The public may inspect comments received during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: For administrative purposes, this document consolidates the notice of intent and request for tribal proposals with the preliminary proposals for the annual regulations-development process. The Service will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, please contact the following personnel.

—Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

—Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

—Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 725–3737.

—Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

—Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

—Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

—Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Notice of Intent to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1998–1999 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

"Migratory game birds" are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR Part 10) in the aforementioned conventions may not be hunted. For the 1998–99 hunting season, the Service will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1998–99 Migratory Game Bird Hunting Regulations (Preliminary) in this document. Definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, were published in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 1998–1999

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. The Service will make proposals relating to the harvest of migratory game birds initiated after publication of this proposed rulemaking available for public review in supplemental proposed rulemakings published in the **Federal Register**. Also, the Service will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, the Service anticipates that comment periods on some proposals will be necessarily abbreviated. Special circumstances limit the amount of time which the Service can allow for public comment on these regulations. Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules at a time early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the hunting seasons and, on the other hand, the lack of current data on the status of most migratory game birds until later in the summer.

Because the process is strongly influenced by the times when information is available for consideration, the overall regulations process is divided into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about

October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1998–1999 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

Sections of this and subsequent documents which outline hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring attention. Therefore, we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

Public Hearings

Two public hearings pertaining to 1998–1999 migratory game bird hunting regulations are scheduled. The Service will conduct both hearings in accordance with 455 DM 1 of the Departmental Manual. On June 25, the Service will hold a public hearing at 9 a.m. in the Auditorium of the Department of the Interior Building, 1849 C Street NW., Washington, DC. This hearing will review the status of migratory shore and upland game birds and discuss proposed hunting regulations for these species plus regulations for migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; extended falconry seasons; and proposed regulatory alternatives for the 1998–99 duck hunting season. On August 6, the Service will hold a public hearing at 9 a.m. in the Auditorium of the Department of the Interior Building, address above. This hearing will review the status and proposed regulations for waterfowl not previously discussed at the June 25 public hearing. The public is invited to participate in both hearings. Persons wishing to make a statement at these hearings should write to the address indicated under the caption **ADDRESSES**.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, the Service has employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The Service developed these guidelines in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) on-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines would have to be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to put forward a request for consultation as a result of the proposal being published in the **Federal Register**. The Service will not presume to make a determination, without being advised by a tribe or a State, that any issue is/is not worthy of formal consultation.

One of the guidelines provides for the continuation of harvest of migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, the Service has reached annual agreement with tribes for hunting by tribal members on their lands or on lands where they have reserved hunting rights. The Service will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

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Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1998–99 hunting season must submit a proposal that includes:

(1) the requested hunting season dates and other details regarding regulations to be observed;

(2) harvest anticipated under the requested regulations;

(3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and

(5) tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

The Service will publish pertinent details in tribal proposals for public review in later **Federal Register** documents. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1998–99 hunting season should submit their proposals as soon as possible, but no later than June 2, 1998. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption **SUPPLEMENTARY INFORMATION**. Tribes that request special hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed regulations. Promulgation of final migratory game bird hunting regulations will take into consideration all comments received by the Service. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

The public may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, the Service will establish specific comment periods. The Service will consider, but possibly may not respond in detail to, each comment. As in the past, the Service will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will be present at the following winter meetings of the various Flyway Councils:

DATE: March 19 and 20, 1998
—Central Flyway Council, 8:00 a.m.
DATE: March 19 and 23, 1998
—National Waterfowl Council, 1:00 p.m.
DATE: March 20, 1998
—Atlantic Flyway Council, 8:00 a.m.
—Mississippi Flyway Council, 10:30 a.m.
DATE: March 21 and 22, 1998
—Pacific Flyway Council, 3:00 p.m. and 9:30 a.m., respectively

The Council meetings will be held at the Omni Rosen Hotel, 9840 International Drive, Orlando, Florida 32819–8122.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with the Environmental Protection Agency on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 1998–99 migratory game bird hunting regulations, the Service will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause the Service to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The economic impacts of the annual hunting regulations on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1996. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1991 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996.

Copies of the Analysis are available upon request from the Office of Migratory Bird Management. The address is indicated under the caption **ADDRESSES**.

Paperwork Reduction Act

The Department examined these regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements.

Unfunded Mandates

The Service has determined and certifies, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1998–99 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a—j.

Dated: March 4, 1998

Donald Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 1998–1999 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, specific framework proposals (including opening and closing dates, seasons lengths, and bag limits) may be deferred. Unless otherwise specified, no change from the final 1997–98 frameworks of August 20 and September 26, 1997, (62 FR 44229 and 50660) is proposed. Specific preliminary proposals that vary from the 1997–98 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

A. Harvest Strategy Considerations

Adaptive harvest management (AHM) was introduced in 1995 to help managers better understand the impacts of regulations on waterfowl harvest and population levels. In addition, AHM is intended to provide: (1) a more objective, better informed, and less contentious decision-making process; (2) an explicitly defined role for monitoring programs in setting regulations; and (3) a formal and coherent framework for addressing controversial harvest-management issues.

Since 1995, the AHM process has focused primarily on midcontinent mallards. However, there continues to be considerable interest in accounting for mallards breeding eastward and westward of the midcontinent region. The ultimate goal is to develop Flyway-specific harvest strategies, which represent an average of optimal strategies for each mallard breeding stock, weighted by the relative contribution of each stock to the respective Flyways. The Service and States also have expressed interest in extending the AHM protocol to other important species such as pintails, teal, and black ducks.

Harvest strategies that account for important biological differences in duck stocks are expected to yield the highest management benefits, but also are characterized by relatively high monitoring and assessment costs. Thus, the Service believes objective assessments of the tradeoff in costs and benefits are necessary for deciding when the AHM protocol should be extended to various duck stocks. Preliminary investigations using the tools of decision-theory suggest that management benefits may be less sensitive to biological differences in duck stocks than commonly believed. If so, cost considerations will motivate managers to implement AHM strategies based explicitly on just a few stocks (e.g., western, midcontinent, and eastern mallards).

Determining the degree to which AHM strategies should account for important sources of biological variation is an incredibly difficult challenge, and one that will require considerable effort and focus by the AHM Working Group. The AHM Working Group is comprised of representatives from the U.S. Fish and Wildlife Service, the four Flyway Councils, and the Canadian Wildlife Service and was established in 1992 to assist with implementation of AHM. The working group continues to meet at least once a year to pursue AHM conceptual development and to consider technical and communication issues for the current regulatory cycle.

The Service believes requests for further changes to the set of regulatory alternatives established in 1997 likely would delay extension of AHM to stocks other than midcontinent mallards. Therefore, future proposals to change the regulatory alternatives will be viewed critically and reasons for change should be compelling. This means that proposals should enjoy broad-based support and should be accompanied by strong rationale, including a recognition of impacts on both harvest and learning rates, as well as on other AHM priorities.

B. Framework dates

During 1997 the Service attempted to address concerns about the set of regulatory alternatives that had been used for AHM since the 1995 hunting season. Based on extensive input from the Flyway Councils and others, the regulatory alternatives considered for the 1997 season were modified to include: (1) a "very restrictive" alternative; (2) additional days and a higher total-duck daily bag limit in the "moderate" and "liberal" alternatives; and (3) an increase in the bag limit of hen mallards in the "moderate" and "liberal" alternatives. No changes were made to the traditional framework dates of roughly October 1 to January 20.

The Service received extensive public comment both supporting and opposing extensions of traditional framework dates. By August of last year, the issue had became highly divisive and politically-charged. Ultimately, the Service was directed by the U.S. Congress to review existing information on framework extensions and to consult further with the States and International Association of Fish & Wildlife Agencies.

Following the guidance provided by Congress, the Service has prepared a summary of the effects of framework extensions in Mississippi and Iowa, and of predicted impacts of large-scale framework extensions on the regulation of mallard harvests. Available data generally reflect increases in the harvest of most duck species due to framework extensions in Mississippi and Iowa, although the magnitude of the increases could not be estimated precisely. Based on these results, large-scale extensions of framework dates could decrease the frequency of years with liberal regulations from 70 to 15 percent, while increasing the frequency of years with restrictive regulations from 11 to 42 percent. The Service's report is now available to the Flyway Councils, States, and public for further consultation.

G. Special Seasons/Species Management

i. Canvasbacks

The Service continues to support the canvasback harvest strategy adopted in 1994. Last year, the Service noted its intent to review recent data and assess how well observed harvests and population abundance were predicted by the strategy (62 FR 50662). The assessment is nearing completion, and will be available for review by the Flyway Technical Sections at their meetings during February and March, 1998.

ii. September Teal/Wood Duck Seasons

These experimental seasons have been held in Florida, Kentucky, and Tennessee since 1981. The Service has consistently stated that continuation of September wood duck seasons is contingent on the development of regional wood duck population monitoring programs, as well as evaluation and decision criteria for these seasons. The final report of the

"Wood Duck Population Monitoring Initiative" (Initiative) completed in July 1997 indicated that monitoring programs at geographic scales below the flyway level are not meeting requisite sample sizes. Therefore, harvest management strategies aimed at scales below the flyway level likely is not feasible.

An evaluation of September wood duck seasons was recently completed and a draft report will be made available to the Atlantic and Mississippi Flyway Councils for their review during February 1998. Results from the evaluation indicate that estimates of population parameters for individual states are usually imprecise, which often precludes drawing meaningful conclusions. In light of these results, as well as those from the Initiative, the Service may propose suspension of September wood duck seasons this year.

2. Sea Ducks

A. Special Sea Duck Seasons in the Atlantic Flyway

At the request of the Atlantic Flyway Council, the Service has investigated the effects of bag limit restrictions on scoters that were initiated in the Atlantic Flyway in 1993. In addition, the Service has reviewed other features of this special season and the biological status of sea ducks in eastern North America. A draft report, titled "Status of Sea Ducks in Eastern North America and a Review of the Special Sea Duck Season in the Atlantic Flyway" will be available from the Office of Migratory Bird Management by late-February, 1998. This report recommends consideration of several changes to sea duck hunting seasons in the Atlantic Flyway, including changes to sea duck hunting zones, bag limits, and season lengths. The Service seeks from the Atlantic Flyway Council and others comments on the draft report, consideration of changes to sea duck seasons in 1998 in the Atlantic Flyway, and progress toward development of management goals for sea ducks.

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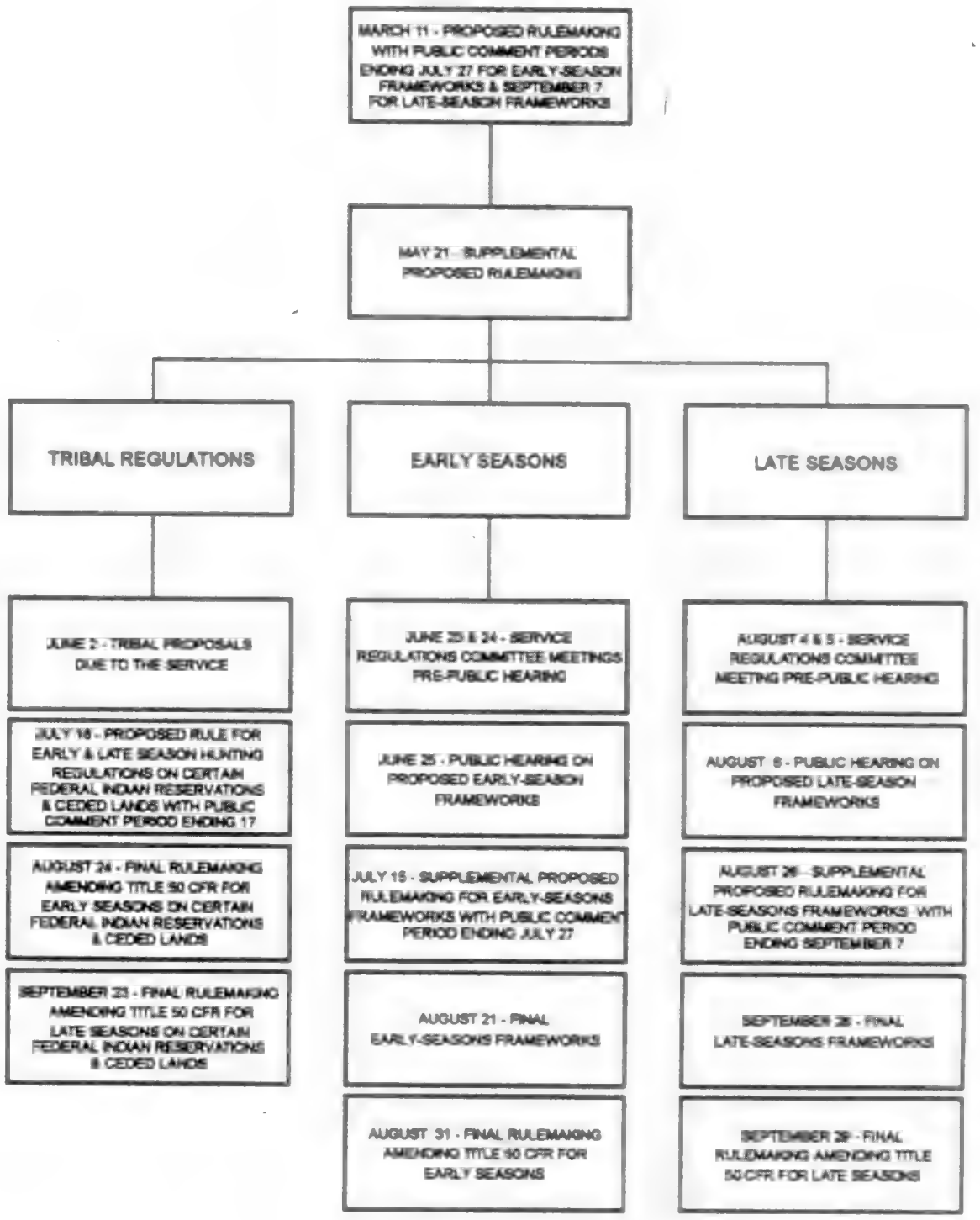
1998 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION OF FEDERAL REGISTER DOCUMENTS ARE TARGET DATES

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Part VI

Department of Labor

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens; Researchers Employed by Colleges and Universities, College and University Operated Federally Funded Research and Development Centers, and Certain Federal Agencies; Final Rule

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205–AB11

Labor Certification Process for the Permanent Employment of Aliens; Researchers Employed by Colleges and Universities, College and University Operated Federally Funded Research and Development Centers, and Certain Federal Agencies

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is publishing a final rule relating to labor certification for permanent employment of immigrant aliens in the United States. The amendments change the way prevailing wage determinations are made for researchers employed by colleges and universities, Federally Funded Research and Development Centers (FFRDC's) operated by colleges and universities, and Federal research agencies. The final rule also changes the way prevailing wages are determined for colleges and universities, FFRDC's operated by colleges and universities, and Federal research agencies filing H–1B labor condition applications on behalf of researchers, since the regulations governing prevailing wage determinations for the permanent program are followed by State Employment Security Agencies (SESA's or State agencies) in determining prevailing wages for the H–1B program.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION: Contact Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 22, 1996, ETA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing to amend ETA's regulations at 20 CFR part 656 to permit prevailing wage determinations for researchers employed by colleges and universities to be based solely on the wages paid by such institutions. 61 FR 17610. In addition to inviting comments on that proposal, commenters were invited to submit comments about extending the proposed rule to researchers in other employment, such as Federal nonprofit research agencies and their affiliated nonprofit research institutions. Comments were invited from interested persons through May 22, 1996. This document adopts final regulations based upon the April 22, 1996, NPRM and the comments received.

II. Permanent Alien Employment Certification Process

Before the Department of State (DOS) and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor (Secretary) first must certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of such aliens will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(5)(A).

If the Secretary, through ETA, determines that there are no able, willing, qualified, and available U.S. workers, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to the INS and to the DOS by issuing a permanent alien labor certification.

If DOL cannot make either of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make either of the two required findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps prescribed in 20 CFR part 656.

These recruitment requirements and procedural steps are designed to test the labor market for available U.S. workers. They include providing notice of the job opportunity to the bargaining representative (if any) or posting of the job opportunity on the employer's premises, placing an advertisement in an appropriate publication, and placing a job order for 30 days with the appropriate local public employment service office.

(b) The employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA) (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of attempts to obtain qualified, willing, able, and available U.S. workers and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers. With respect to the burden of proof, section 291 of the INA states, in pertinent part, that:

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible for such visa or such document, or is not subject to exclusion under any provision of (the INA) * * *.

III. Department of Labor Regulations

The Department has promulgated regulations, at 20 CFR part 656, governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated pursuant to section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

These regulations set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. They describe the potential of the nationwide system of public employment service offices to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the primary basis of developing information for the certification determinations. See also 20 CFR parts 651–658; and the Wagner-Peyser Act (29 U.S.C. Chapter 4B).

Part 656 sets forth the responsibilities of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service System, and by other specified means. The purpose is to assure an adequate test of the availability of qualified, willing, and able U.S. workers to perform the work, and to ensure that aliens are not employed under conditions that would adversely affect the wages and working conditions of similarly employed U.S. workers.

IV. Prevailing Wages and Researchers

Employers seeking a permanent labor certification must recruit for U.S. workers at prevailing wages. The

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SESA's survey prevailing wage rates on behalf of DOL. The permanent labor certification regulations at § 656.40 specify how State agencies are to calculate prevailing wages. The prevailing wage methodology set forth is used not only in determining prevailing wages for the permanent labor certification program, but is also followed in determining prevailing wages for the H–2B temporary nonagricultural certification program, the H–1B labor condition application (LCA) program, and the (expired) F–1 student off-campus employment program. See 20 CFR part 655, subparts A, H, and J, respectively. In each of these programs, the applicable legislative and/or regulatory history requires that prevailing wages be determined in accordance with the requirements of the permanent labor certification regulations at 20 CFR 656.40.

Section 656.40 of the permanent labor certification regulations requires that in the absence of a wage determination issued under the Davis-Bacon Act, the Service Contract Act, or a collective bargaining agreement, the prevailing wage shall be the weighted average rate of wages paid to workers similarly employed in the area of intended employment, *i.e.*, "the rate of wages [is] to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers." Section 656.40(b) further provides that "similarly employed" is defined as having substantially comparable jobs in the occupational category in the area of intended employment.

The INA requires that the wages paid to an H–1B professional worker be the higher of the actual wage paid to workers in the occupation by the employer or the prevailing wage for the occupational classification in the area of employment. The H–1B regulations incorporate the language of 20 CFR 656.40 (as suggested by H.R. Conference Report, No. 101–955, October 26, 1990, page 122) and provide employers filing applications the option of obtaining a prevailing wage determination from the SESA, using an independent authoritative source or other legitimate source, as provided by § 655.731(a)(2)(iii)(B) and (C) of the H–1B regulations. Thus, this final rule applies to the H–1B program as well.

V. Effects of Hathaway Children's Services on Prevailing Wages

In accordance with the *en banc* decision of the Board of Alien Labor Certification Appeals (BALCA or Board) in *Hathaway Children's Services* (91–INA–388, February 4, 1994), prevailing wages are calculated by using wage data obtained by surveying employers across industries in the occupation in the area of intended employment. In *Hathaway*, the BALCA overruled its decision in *Tuskegee University* (87–INA–561, Feb. 23, 1988, *en banc*), which had interpreted § 656.40 to permit an examination of the nature of the employer's business in ascertaining the appropriate prevailing wage. 87–INA–561 at 4. In Tuskegee, the Board had said, in relevant part:

> Thus to be "similarly employed" for purposes of a prevailing wage determination, it is not enough that the jobs being compared are in the same occupational category; they must also be "substantially comparable." Accordingly, it is wrong to focus only on the job title or duties; the totality of the job opportunity must be examined * * *.
>
> It is clear that it is not only the job titles, but the nature of the business or institution where the jobs are located—for example, public or private, secular or religious, profit or non-profit (sic), multinational corporation or individual proprietorship—which must be evaluated in determining whether the jobs are "substantially comparable."

In *Hathaway*, the Board declined to make an exception for maintenance repairers employed by nonprofit institutions, analogous to the exception it had made in *Tuskegee*. The employer in *Hathaway*, a nonprofit United Way affiliate, urged that the Board's decision in *Tuskegee* should be dispositive. The employer argued that the rationale in *Tuskegee* necessarily extends to nonprofit employers, thereby differentiating them from for-profit employers.

The Board stated in *Hathaway* that its holding in *Tuskegee* was ill-advised and explicitly overruled it. The Board went on to say that:

> The underlying purpose of establishing a prevailing wage rate is to establish a minimum level of wages for workers employed in jobs requiring similar skills and knowledge levels in a particular locality. It follows that the term "similarly employed" does not refer to the nature of the Employer's business as such; on the contrary, it must be determined on the basis of similarity of the skills and knowledge required for performance of the job offered * * *.

In accordance with the holding in *Hathaway*, SESA's were instructed to survey all employers, without regard to the nature of the employer, in the area of intended employment in determining prevailing wages for an occupation.

It was subsequently asserted that implementation of this policy resulted in considerably higher prevailing wage determinations for research positions in colleges and universities. The higher education community maintained that this policy jeopardized its ability to recruit foreign researchers with talents and skills not readily available in the U.S. Further, following the decision in *Hathaway*, the Department received comments and inquiries from Congress and other Federal agencies and organizations, such as the Council of Economic Advisors (CEA); National Science Foundation (NSF); Department of Defense, Defense Research and Engineering (DRE); Office of Science and Technology Policy (OSTP); National Institutes of Health (NIH); National Aeronautics and Space Administration (NASA); United States Department of Agriculture (USDA); United States Geological Survey (USGS), Department of Energy (DOE), and Department of Transportation (DOT), expressing concern about the Department's change of policy in determining prevailing wages for researchers employed by universities.

VI. Bases for Proposed Rule

The Department believed there were substantial policy reasons to propose an exception to the current rule.

Among the bases of the proposed rule were:

- *The nonproprietary nature of academic research as articulated by the American Association of Universities.* The Department specifically requested comments on whether there are attributes of academic research that distinguish it from research conducted by private, for-profit employers. This was a factor in determining that such workers are not similarly employed.
- *Other Federal agencies.* Other Federal agencies and organizations with an interest in the research talent, knowledge, skills and abilities available to the U.S. academic community expressed concerns that the *Hathaway* decision could interfere with the ability of institutions of higher education to obtain the services of talented foreign scholars and researchers.
- *The belief of the academic community and others that intangible, non-pecuniary factors that are incentives for working in an academic environment should be considered in determining prevailing wages for researchers employed by institutions of higher education.* The Department stated that it was interested in comments specifying the nature of these intangible benefits and how they are unique to higher education.

The Department also invited comments with respect to extending the concept discussed in the proposed rule to prevailing wages in other employment, such as instances in which

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researchers are employed by Federal research agencies and their affiliated nonprofit research institutions engaged in research, in which postdoctoral fellows and visiting scientists may be employed in a manner similar in certain respects to colleges and universities.

In sum, the proposal reflected a determination that consideration of all of the above factors supported a conclusion that researchers employed by colleges and universities may not be similarly employed to researchers employed by private, for-profit employers.

One also should note that in the context of college and university employment there is precedent, albeit statutory, for treating workers attached to the academic process differently than those outside the academic community. As stated in section 212(a)(5)(A) of the INA, certification of employment of aliens shall be denied on the basis of availability of "qualified" U.S. workers who are able and willing, that is, those who possess the minimum qualifications necessary to perform the job, even if they are less qualified than the alien beneficiary. By contrast, the statute states in the same subparagraph that for job opportunities as college and university teachers, certification of employment of aliens generally may be denied on the basis of availability of "*equally* qualified" (emphasis added) U.S. workers who are able and willing, that is, only those equally or more qualified than the alien beneficiary.

While differentiation of treatment of college and universities in this statutory provision certainly is not dispositive of issues discussed in this rulemaking, it does supplement the concept that it is legitimate to examine the differences between college and university employment and the broader employment market.

VII. Comments on Proposed Rule and Analysis of Comments

Seventy-five comments were received on the April 22, 1996, proposed rule. The largest number of comments were received from independent research institutes. Thirty-four comments were received from research institutes such as the Howard Hughes Medical Institute, the Scripps Research Institute, and the National Biomedical Foundation of Georgetown University.

The next largest group of comments was received from colleges and universities. Twenty-one comments were received from colleges and universities. Colleges and universities represented by these comments included such institutions as Princeton, University of Chicago, Yale, Harvard, Massachusetts Institute of Technology, Johns Hopkins, and Stanford.

Seven comments were received from Federal agencies. The agencies submitting comments were OSTP, NIH, NSF, DRE, the Smithsonian Institution, and the USDA which submitted comments from two different subcomponents.

Seven comments were also received from various associations. These associations included the Association of American Universities (AAU), American Immigration Lawyers Association (AILA), Council of Graduate Schools, and NAFSA Association of International Educators.

Two comments were received from State Employment Security Agencies. The SESA's submitting comments were the Arizona Department of Economic Security and the Wyoming Department of Employment.

One comment was received from each of the following: Congressman Lamar Smith, Massachusetts General Hospital, one international human rights group, and a senior economist employed by an association of universities.

Seventy-two of the comments were in favor of the proposed rule and the majority were in favor of extending the rule to include nonprofit research institutes. Only three commenters opposed the rule. The commenters opposed to the rule were the two SESA's and the senior economist employed by Oak Ridge Associated Universities.

A. Comments About the Proposal to Adopt the Rule as Proposed for Colleges and Universities

All of the 21 comments received from colleges and universities supported the proposed rule. The NPRM was also supported by the Association of American Universities (AAU), Council of Graduate Schools, NAFSA Association of International Educators (NAFSA), several Federal agencies, AILA, and nonprofit research institutes.

In addition to supporting DOL's finding that such employees are not "similarly employed" to commercial researchers, the colleges and universities and some other commenters advanced public policy arguments to the effect that the NPRM would eliminate perceived anomalies and economic hardship caused by the post-*Hathaway* policy of determining prevailing wages by surveying across industries. Perceived problems caused by the post-*Hathaway* policy that would be eliminated by the proposed rule, noted by one or more of the colleges or universities in their comments, included the following:

- Much higher prevailing wage determinations as a result of the post-*Hathaway* policy.
- Higher wages have precluded many universities from using the permanent labor certification program and the H–1B labor condition application program and have disrupted important university-based research programs.
- Need to increase the wage of the H–1B employee or terminate employment of the researcher.
- Some granting agencies, such as the National Institutes of Health, specify the amount to be paid to each researcher; even without such restrictions, it is often not possible to find the additional money needed to increase the salary of a researcher needed to meet the prevailing wage.
- Alien researchers may be paid more than U.S. citizens for performing similar duties and responsibilities.
- Requiring higher salaries to be paid to foreign researchers and foreign scholars who are in lower positions than, for example, Assistant Professors.
- Permanent labor certification applications and H–1B labor condition applications have been withdrawn because of the higher prevailing wages required by the post-*Hathaway* policy.

1. Department's Analysis of Comments

After consideration of all comments, the Department has concluded that the proposed rule should be adopted for colleges and universities and expanded as set forth below. The comments and the Department's analysis are discussed below in greater depth.

a. *Academic Researchers are not Similarly Employed to Commercial Researchers.* In the preamble to the NPRM, the Department specifically requested comments as to whether there are attributes of academic research that distinguish it from research conducted by private, for-profit employers (see 61 FR at 17613). About half of the comments from colleges and universities asserted that there were substantial differences between academic researchers and researchers working in a for-profit environment. A few commenters attached the AAU position on this issue previously submitted to the Department,[1] and

[1] In the preamble to the NPRM, the AAU's comment was quoted, in part, as follows:

Teaching is a primary mission of universities and occurs in all university settings. Teaching and research are inextricably intermingled in universities, with research extending into undergraduate education, and teaching extending into postdoctoral education. Academic research scientists are expected to operate as teachers as well as researchers. University teaching includes a wide range of activities beyond the traditional classroom lecture, such as seminars, advising and other forms

others addressed this issue directly. Having considered these comments, the Department has determined that different treatment of researchers employed by colleges and universities is justified, in part, by the close relationship of research to teaching in the academic environment. Research positions at colleges and universities are often related to teaching (faculty) positions and often involve teaching duties, albeit not in a classroom setting. See footnote 1.

With one exception, all of the comments that addressed this issue agreed with the view of the AAU. The one commenter that disagreed with this position pointed out that according to the 1993 National Science Foundation survey of doctorate recipients, of those postdoctorates reporting that their primary work activity was research, only 5.3 percent indicated that teaching was their secondary activity. The commenter went on to state that "all highly educated workers play a teaching role by helping to show new employees the ropes in their work environment, but in this regard doctorates in universities who do not teach courses are not substantially different from doctorates in industry or in government."

The preamble to the proposed rule made clear that AAU was not speaking with respect to teaching in a classroom setting conducted by faculty members. In the Department's view, the relationship described by AAU and quoted above, as well as in the NPRM's preamble, goes substantially beyond showing new employees the "ropes in their new environment."

Based on the comments received, the Department is persuaded that teaching, as described by the AAU, is an important function often performed by college and university researchers. This is not as true for non-academic researchers.

Other commenters, such as independent nonprofit research institutes and Federal agencies, were also in agreement that there were significant differences between research conducted by academic institutions and research conducted by private, for-profit employers. These comments provide further amplification and support for the AAU position summarized in the preamble to the NPRM, 61 FR at 17613, that research in academic institutions is nonproprietary as opposed to research conducted in a private, for-profit research organizations. The research product delivered by researchers in private, for-profit organizations is proprietary in nature and can be appropriated by the employing institution for commercial purposes. 61 FR at 17613. Examples of the points made by the colleges and universities include the following:

- Academic research is for the public good and advancement of knowledge, as opposed to having a profit motive.
- Researchers in academia, unlike researchers in for-profit organizations, are expected to publish promptly and widely in peer-reviewed journals; commercial scientists apply research results to product development within the company, often withholding the publication of research.
- Academic research is independently initiated and sustained with the intention of transmitting bodies of knowledge to succeeding generations of researchers, public and private; commercial research priorities are set by company goals for developing marketable products.

Two of the three commenters opposing the rule asserted that the same skills are required on the part of researchers who are employed in a university setting as are required of those employed in a private, for-profit research organization. One of these two commenters acknowledged that university research tends to focus on issues of basic research while private sector research tends to focus on the applied end of the spectrum. However, this commenter indicated that the degree to which an academic institution is engaged in applied and basic research across a variety of disciplines is a function of the extent to which the institution's research is leveraged by private sector or Federal agency contracts.

The third commenter opposing the rule indicated that the dichotomy between university and industry research cited by the AAU is exaggerated. Industry funding of academic research has been growing rapidly, and many universities have been applying for patents of their own in promising new fields such as biotechnology, human genome research, and exotic materials.

These comments in opposition to the rule presently are unpersuasive, for the following reasons.

(1) Skill Requirements

Differences in the skills and knowledge required of researchers to work in an academic environment compared to the skills and knowledge in a private, for-profit organization was not one of the policy reasons for issuing the NPRM. The differences articulated in the proposed rule discussed such factors as the wide dissemination of research results in peer-reviewed scientific journals, the expected application of research results to producing marketable products within commercial organizations, the expansion of the frontiers of knowledge by academic researchers conducting fundamental research programs, and the nonproprietary nature of research performed in an academic setting as opposed to that performed in a private, for-profit setting. 61 FR at 17613.

(2) Differences Between Academic and Commercial Researchers

The Department has carefully considered the issues raised concerning the differences between academic and commercial research and has found that, at present, sufficient distinctions exist between the two to support separate treatment of researchers in the two venues.

Despite trends regarding sources and uses of research funds in colleges and universities, the overwhelming majority of R&D the $21.6 billion spent for R&D at U.S. academic institutions in 1995 appears to be nonproprietary in nature. This conclusion is supported by the following:

- Funds from the commercial sector during the past two decades grew faster than funds from any other source. Funding from the commercial sector, however, constituted a relatively small proportion (6.9 percent) of academic R&D funding in 1995. *Science & Engineering Indicators 1996*, National Science Board Subcommittee, National Science Foundation, at 5–8 and 5–9.
- Although patents awarded to universities have grown rapidly over the past two decades and universities are increasingly negotiating royalty and licensing arrangements based on their patents, income from these licensing arrangements are modest when compared with total R&D expenditures. In 1993, gross revenues received by U.S. universities from licensing arrangements amounted to $242 million. *Ibid.* at 5–42 and 5–43.
- The nonproprietary nature of academic research and the fact that academic researchers are expected to publish widely in peer-reviewed journals is also supported by the fact

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of mentoring. Some of the most effective teaching *about* research is carried out by *doing* research, and university research personnel often operate as student and teacher at the same time in the same setting: a postdoctoral fellow is instructed by the faculty researchers with whom he or she is working at the same time he or she serves as a teacher for graduate and undergraduate students working in the same lab. (Emphasis in original.)

61 FR at 17613.

that in 1993, as in previous years, the United States contributed the largest fraction—34 percent—of 414,000 articles published in refereed journals worldwide. About 70 percent of the U.S. articles had academic authors. Further, in virtually all nations' journals, U.S. articles are cited more heavily than articles appearing in domestic publications. *Ibid.* at 5–4, 5–30, 5–31, and 5–40.

In view of the trends regarding sources and uses of academic R&D funds, the Department plans to monitor such trends in promulgating a rule establishing an exception to the results of the *Hathaway* decision that would permit prevailing wage determinations for researchers in colleges and universities to be based solely on the wages paid by such institutions. If the current trends relative to the performance of research by colleges and universities were to continue long enough, one or more of the bases for concluding that researchers employed by colleges and universities are not similarly employed to nonacademic researchers may no longer be valid.

b. *Non-pecuniary Factors.* In the preamble to the proposed rule, the Department asked for comments that specify the nature of the intangible, non-pecuniary incentives to working in an academic environment and how they are unique to higher education. Several of the colleges and universities addressed this issue. These comments provide further amplification of and support for the nature of the intangible, non-pecuniary incentives to working in an academic environment advanced by the Council of Economic Advisors and cited in the NPRM (see 61 FR 17614). Other commenters, such as independent nonprofit research institutes and Federal agencies, were also in agreement that there were significant non-pecuniary incentives to working in an academic environment. Examples of these comments included the following:

- Intellectual freedom to determine one's own research direction is relatively unhindered by direction from management or by a profit motivation.
- The opportunity exists to interact with a large number of people with similar goals and interests.
- Academic research, unlike commercial research, is characterized by a great diversity of research interests and activities.

One commenter maintained that although "tenured professors appreciate the autonomy they have in research universities and that this permits the universities to compete in the labor market without paying wages and benefits equal to those in industry," it is not clear that this applies to non-tenure track, temporary research appointments. The commenter observed that employees on temporary research appointments do not enjoy the autonomy experienced by tenure and tenure-tack faculty who are principal investigators on research projects. In particular, postdoctoral appointees and research associates do not have faculty status and enjoy few if any of the non-pecuniary incentives alluded to by the CEA.

Nonetheless, autonomy in choice of research projects is not the only intangible benefit associated with working in an academic environment. The Department believes, based on the comments, that postdoctorates are also significantly motivated by other non-pecuniary factors, such as working with leaders in their chosen field and generally working with colleagues and other scholars. The Department also believes that working on nonproprietary research issues adds an important qualitative dimension to the non-pecuniary incentives that is not readily duplicated in other work environments.

2. Additional Issues Raised by Commenters Opposing Rule; DOL Analysis

Additionally, the three commenters opposing the rule raised issues that were not addressed in the preamble to the NPRM. Those comments and the Department's analysis of them are provided below.

a. *Wage Differentials.* One commenter took issue with the claim that there is a great wage differential between researchers in private industry and in colleges and universities. According to this commenter, the wage differentials cited in the preamble to the proposed rule between industry and colleges and universities for researches are grossly exaggerated. According to the commenter, a "true national average which included industry wages would almost certainly be less than 20 percent higher than a national average which included only colleges and universities." According to the commenter, such a differential was 23 percent in 1989. The commenter also maintained that implementation of the rule would reduce costs on research projects by an average of much less than 10 percent compared to the prevailing wage methodology required by the current regulation.

Economic hardship to employers due to wage differentials, by itself, would not be a basis for promulgating an exception to the decision in *Hathaway.* However, the Department is convinced that the wage differentials are significant and, in combination with the other factors—differences between academic and commercial research and the value of non-pecuniary benefits and incentives—constitute sufficient reason to conclude that researchers employed by colleges and universities and researchers employed by for-profit commercial employers are not "similarly employed".

Most employers would find wage differentials of 23 percent, as cited by the commenter, to be significant. Further comments received prior to the issuance and subsequent to the issuance of the NPRM suggest that the national wage differential could be greater than 23 percent. On a localized level, some commenters report differentials much greater than 23 percent. The Department is convinced that enough of a national differential exists, in combination with the other bases for the rule, discussed above, to justify the conclusion that DOL's regulations should recognize that researchers employed by colleges and universities and researchers employed by for-profit commercial employers are not similarly employed.

b. *General Labor Market Conditions.* Two commenters expressed concern about the general labor market impact of the proposed rule. These comments, in large measure, misconstrue the nature of the rulemaking. The Department's mandate under the permanent labor certification program is to prevent the entry of foreign immigrant workers from adversely affecting the wages or working conditions of similarly employed U.S. workers. The wage protection component of this requirement is effectuated by regulations which require that the employers seeking labor certification must offer at least the prevailing wage paid to similarly employed U.S. workers in the area of intended employment. The proposed rule was not intended to alter this basic structure and it does not do so. The rule addresses only the narrow issue of how the phrase "similarly employed" should be defined. Whether the use of foreign researchers, in and of itself, has some negative impact on the domestic labor market is simply beyond the scope of this rulemaking. The determination as to whether academic researchers and researchers in the for-profit sector are or are not similarly employed is not impacted by considerations of potential adverse effect on labor market conditions among researchers. If, as the Department has now concluded, academic researchers are not similarly employed to their colleagues outside academe, the adverse effect is addressed by requiring the payment of the prevailing wage among similarly

employed academic researchers. To the extent there are economic factors limiting the employment potential of researchers, they are outside the scope of this rulemaking.

Nevertheless, the Department is concerned about the possible adverse effect on U.S. researchers as a result of this rulemaking and has considered the comments submitted in this regard. As a result of the comments indicating that adverse effect may arise from this rule and trends regarding sources and uses of academic R&D funds discussed above, the Department plans to study the effects of this rulemaking over the next 5 years.

One SESA's comments were, on balance, against the proposed rule because of perceived adverse effects on U.S. researchers. The Arizona SESA pointed out that one published survey it used until recently to make prevailing wage determinations for researchers showed, based on a universe of employers that did not include colleges and universities, a wage level that was more than 30 percent higher than the universities' salary schedules. According to the SESA, many U.S. workers majoring or obtaining degrees in the Sciences, quickly go on to employment opportunities in private industry because of the higher wage scale. The SESA was of the opinion that many foreign workers are willing to work for universities at low wages because the opportunity to stay in the United States, either permanently or temporarily, is a big enticement. According to the SESA, many foreign workers know that if they can get permanent employment with a college or university, the opportunity to adjust to permanent residence status increases because of the INA's "equally qualified" provision which provides the basis for the special handling procedures for college and university teachers in the permanent labor certification regulations. See 8 U.S.C. 1182(a)(5)(A)(I)(I) and (a)(5)(A)(ii); 20 CFR 656.21a; and 61 FR at 17612. The SESA, in addition, expressed the view that grant funding restrictions and other established practices do not justify basing prevailing wage determinations for researchers employed by colleges and universities solely on the wages paid by such institutions if it discourages U.S. workers from applying for such positions.

This SESA in its comments indicated, however, that it may be appropriate to consider academic researchers as not similarly employed to researchers employed in the private sector and to base prevailing wage determinations solely on the wages paid by colleges and universities. Specifically, the SESA stated in the course of its comments that:

> The research positions at the universities and in the private sector are not totally comparable, since researchers are not "similarly employed" as the current regulation determines. The researcher at the university may also be teaching, writing articles for scientific journals, working on basic, fundamental or theoretical research. If they are performing other duties then they should be given a different job title and code (presumably from private sector researchers).

The Department has concluded that, currently, there are ample bases to conclude that researchers employed by colleges and universities and researchers employed by for-profit commercial employers are not similarly employed. The observations of the Arizona SESA concerning the general labor market effects of foreign doctorates in the labor force are discussed below along with those of another commenter who submitted comments expressing concern about the effect of foreign doctorates on the general labor market for doctorate recipients employed as researchers.

The senior economist employed by an association of universities offered a number of reasons for not promulgating a final rule that would allow prevailing wage determinations for researchers employed by colleges and universities to be based solely on the wages paid by such institutions. The reasons advanced by this commenter concerned general labor market factors affecting the supply and demand for researchers and the policy bases articulated for issuing the NPRM.

The comments concerning general labor market conditions are summarized and discussed below.

(1) Unemployment Rate

A commenter asserted that unemployment and underemployment, as measured by the NSF, are higher now for doctorate scientists and engineers than they have been in many years. Such concerns, however, are not relevant to this rulemaking, which is implementing the statutory protection against adverse effect on wages and working conditions of similarly employed U.S. workers, due to the importation of foreign workers. Further, in the permanent alien labor certification program, high levels of unemployment should have a self-correcting effect, since more U.S. workers will be available for the jobs for which certification is sought. In the H–1B program, to which this rule also will be applied, Congress has determined that no labor market test is necessary.

Nevertheless, available information indicates that, generally, job prospects for recent Ph.D. recipients remain strong. According to the NSF, in April 1993, the overall unemployment rate for recent science and engineering (S&E) doctorate recipients stood at 1.7 percent, while the NSF states that the unemployment rate for the entire U.S. labor force for the comparable period—1993—was 6.8 percent.[2] *Ibid.* at 3–5.

According to the NSF, concerns expressed about labor market prospects by recent S&E doctorate recipients have less to do with their ability to find a job than with their ability to get full-time jobs that use their training. In 1993, the "involuntary out-of-field" (IOF) rate for all recent S&E doctorate recipients was 3.6 percent. Individuals were considered involuntarily out of their Ph.D. field if they stated in an NSF survey that they were either working part-time solely because a full-time job was not available or that one reason they were working outside of their Ph.D. field was because a job in their field was not available. Unfortunately, it is not possible to compare the IOF rate for 1993 with previous years because of the lack of comparable data. *Ibid.* at 3–6. However, another measure reported by the NSF indicates that foreign doctorate recipients have not had a significant impact on the overall labor market for recent doctorate recipients. Self-assessment by recent S&E doctorate recipients as to whether their primary jobs in 1993 are closely related to their Ph.D. fields shows very similar patterns to the information pertaining to then-recent doctorate recipients in 1988. *Ibid.* at 3–8 and 3–9.

(2) Effect on Recent Doctorate Recipients in Universities

Two commenters maintained that the wage levels of recent U.S. doctorate recipients employed in colleges and universities have been held in check by the hiring of foreign researchers. One commenter maintained that the rule as proposed, in conjunction with the hiring of foreign researchers, increased immigration levels, and the elimination of the growth in research and development funding will have unfavorable consequences for U.S. researchers.

It does not appear that the number of foreign doctoral recipients who remain in the United States after graduating are numerous enough to have any appreciable affect on general wage

[2] The Bureau of Labor Statistics, in its "Labor Force Statistics from the Current Population Survey" reports that for September 1996, the seasonally adjusted civilian unemployment rate was 5.2 percent.

levels. About 30 percent of the 8,000 foreign students earning S&E doctoral degrees received firm offers to stay in the United States in 1993. (This overall percentage has been stable over the past several years.) The firm offers were from three primary sources:

- About 400, or 5 percent, received firm offers for academic employment.
- Almost 500, or 6 percent, received firm offers for commercial employment.
- A larger group, almost 1,500, or 18 percent, obtained a postdoctoral research position for 1 year.

Ibid. at 2–28 and 2–29.

Not all foreign students who receive a firm offer to stay in the United States do so. A number of factors influence foreign doctoral recipients' decisions to return home. Further, as emerging countries expand their capacity to educate at the doctoral level, the NSF expects that fewer foreign students will come to the United States to be educated. *Ibid.* at 2–29. The number of foreign students studying S&E fields in the United States seems to have peaked in 1992. *Ibid.* at 2–33.

With respect to the comment concerning flattened growth in R&D funding, a look at overall R&D spending presents a rather complex picture. Overall R&D spending in the 1990's generally has not kept pace with inflation. The decline, in real terms (largely related to the Defense downsizing), has been modest—2 percent. In nominal terms, R&D funding reached an all time high of $171 billion in 1995. It is important to note, however, that of the three major R&D performing sectors—industry, the Federal Government, and academia—academic is the only one to have registered a real increase in R&D performance since 1990. *Ibid.* at 4–2. A more detailed examination of the trends reveals that the annual rate of increase in academic R&D performance has been falling fairly steadily since the late 1980's. On the other hand, the Federal Government, which supplies about three-fifths of all funds used to perform R&D on campus, has been increasing its support of academic research continuously since 1982. *Ibid.* at 4–2. This suggests that job opportunities involving research in academia have been growing rather than declining, albeit at a slow rate over the last several years.

If foreign doctorate recipients have an adverse effect on any part of the labor market segment, it is most likely to be on the market for postdoctoral appointments. However, the wage data included in the comments of the individual opposing the rule do not indicate that foreign doctorate recipients have had an adverse effect on the market for postdoctoral appointments. This commenter asserted that the wage gap between academe and industry for recent doctorate recipients with less than 6 years of work experience has been steadily declining. According to information furnished by the commenter, the percentage gap between non-academic and academic salaries of doctorates with less than 6 years of experience declined from 32 percent in 1981 to 23 percent, as indicated above, in 1989. And this trend, according to the commenter, continued through 1993—the year of last available data.

DOL is not convinced, for the reasons cited above, that the admission of foreign academic researchers, at current levels, is at such an extent as to diminish or stagnate the wage levels of doctoral recipients doing academic research nationwide. While foreign worker penetration of the job market for postdoctoral positions is greater, DOL has reached the same conclusion for those job opportunities. The Department, however, plans to study over the next 5 years whether pervasive hiring of foreign workers has taken place and whether adverse effect has occurred on a scale broader than individual job opportunities or individual localities.

(3) Discourages U.S. Workers From Obtaining Doctorates

One commenter expressed the belief that declining labor market conditions for young researchers will discourage talented young Americans from choosing to make investments in S&E graduate education in the near future, and that the United States will suffer as a result. These concerns appear to be overstated in light of the supply and demand projections for S&E personnel discussed in *Science & Engineering Indicators 1996*.

According to the NSF-reported "mid-growth scenario" of the demand for S&E workers, overall demand for S&E will slightly exceed supply by the year 2005 by a small amount—4 percent. Most of this excess demand occurs in the last 3 years of the forecast; until 2002, the S&E labor market appears to be in balance. This should not be a problem, since the NSF indicates that even if the "high-growth scenario" were to materialize there would be sufficient time for the labor market to respond to the new higher demands. *Ibid.* at 3–21. In any event, these models suggest that concerns that foreign researchers are shutting U.S. researchers out of the labor market are not a problem over the long term.

The Department, based on the above, is not convinced at this time that foreign recipients of doctoral degrees have had an appreciable impact on the general market for recent doctorate recipients or on the market for postdoctoral recipients. However, the impact of foreign labor on the ability of recent U.S. recipients of doctorates to obtain employment generally and to obtain postdoctoral appointments in particular has not been definitively determined. Therefore, the Department cannot dismiss those related issues raised by the commenters in view of its statutory responsibility to protect wages and working conditions of similarly employed U.S. workers under section 212(a)(5)(A) of the INA. The Department, therefore, plans to study the impact of the final rule over the next 5 years.

3. Conclusion

The Department is convinced that a set of unique factors lead to the conclusion that, at this time, researchers in academe and researchers employed by for-profit commercial employers are not similarly employed and that the proposed rule should be adopted for colleges and universities. The Department, however, plans to study the impact of the final rule over the next 5 years, and determine whether the bases for promulgating the rule continue to hold.

B. Other Issues Relating to Colleges and Universities

Commenters submitting comments on the NPRM also raised other issues relating to colleges and universities that are discussed below.

1. Definition of "College and University"

Nine commenters, including six universities, two academic associations and one Congressman recommended that the term "institutions of higher education as defined in section 1201(a) of the Higher Education Act of 1965" be used instead of the term "colleges and universities" in any final rule promulgated by the Department. The Department has reviewed the definition of institutions of higher education in section 1201(a) of the Higher Education Act and has determined that it is not appropriate for the labor certification program. The definition proposed by commenters is not consistent with the definition of "college or university" that has been used for many years in administering the special handling provisions in the regulations established for college and university teachers. Unlike the definition of "colleges and

universities" used in administering the permanent labor certification program, section 1201(a) of the Higher Education Act includes business and vocational schools and is limited to public or other nonprofit institutions. A directive dated January 13, 1984, from Bryan T. Keilty, then ETA's Acting Administrator for Regional Management, to all regional administrators, in relevant part, defined "college or university" as follows:

"College or university" means an educational institution: (A) which admits as regular students only individuals having a certificate or diploma of graduation from high school, or the recognized equivalent of such a certificate or diploma; (B) which is legally authorized by the Federal and/or State Government(s) to provide a program of education beyond high school; and (C) which provides an educational program for which it awards a baccalaureate (bachelor's) or higher degree, or provides a program which is acceptable for such a degree. This would include those junior or community colleges which award associate degrees, but which teach courses which can be credited toward a baccalaureate degree at another college or university.

The Department has concluded it cannot change the definition of "college or university" used for the past 14 years in administering the permanent labor certification program without complying with the notice and comment requirements of the Administrative Procedure Act.

2. Extension of Proposed Amendment to H–1B Labor Condition Application (LCA) Program

Many commenters, including several colleges and universities, independent nonprofit research institutes, various associations, the American Immigration Lawyers Association, Federal agencies and one member of Congress, indicated that the H–1B regulations dealing with prevailing wages, at 20 CFR 655.731(a)(2)(iv), should be modified to clarify that the proposed changes would also apply to the H–1B program. Amendment of the H–1B regulations at 20 CFR 655.731(a)(2)(iv) would require the initiation of a separate NPRM to modify that regulation, but such a rulemaking is unnecessary for the reasons discussed below.

There are sufficient bases to apply the methodology required by this final rule to the H–1B program. The Department clearly expressed in the preamble to the proposed rule that the change proposed for § 656.40(b) would be followed in determining prevailing wage for the H–1B LCA program, as well as the permanent labor certification program. The preamble stated that the "proposed rule would also change the way prevailing wages are determined for colleges and universities filing H–1B labor condition applications on behalf of researchers, since the regulations governing prevailing wage determinations for the permanent program are followed by State Employment Security Agencies in determining prevailing wages for the H–1B program." The preamble also noted that the H–1B regulations incorporate the language of 20 CFR 656.40 (as suggested by H.R. Conf. Rep. No. 101–955 (October 26, 1990), page 122). Specifically, the conference report at page 122 stated that the prevailing wage to which an H–1B visa petitioner "must attest is expected to be interpreted by the Department of Labor in a like manner as regulations currently guiding section 212(a)(14)" (now section 212(a)(5)(A) of the Immigration and Nationality Act).

It should also be noted that the H–1B regulations at § 655.731(a)(2)(iv) define "similarly employed" as it is defined in the current permanent labor certification rule. Section 655.731(a)(2)(iii)(A) provides, in relevant part, that "(w)here the prevailing wage is not immediately available, the SESA will conduct a prevailing wage survey using the methods outlined at 20 CFR 656.40 and other administrative guidelines or regulations issued by ETA." On May 18, 1995, ETA issued General Administrative Letter (GAL) No. 4–95 to All State Employment Security Agencies, Subject: *Interim Prevailing Wage Policy for Nonagricultural Immigration Programs*. That GAL provided, in relevant part, that "(i)n determining prevailing wages for the permanent and temporary labor certification programs, the H–1B program, and the F–1 student attestation program, the regulatory scheme at 20 CFR 656.40 must be strictly followed." [3]

3. Extension of the Proposed Amendment to Research Institutes Affiliated with Colleges and Universities

Some commenters expressed the view that institutions "affiliated" with colleges and universities should be included in the exception to the Department's general prevailing wage methodology crafted for colleges and universities. The Department is not including institutions affiliated with colleges and universities because it requires additional information as to whether researchers employed by such affiliated institutions are sufficiently similar to college and university researchers to warrant similar treatment, and if so, how to define affiliated research institutes and what institutions should be included in wage surveys to determine prevailing wages for such institutions.

4. Including an Express Provision to Permit Consideration of Wage Differences by Discipline

The AILA recommended that the rule should explicitly provide for consideration of wage differentials among researchers working in different disciplines. The Department does not believe such an express provision is necessary. According to the *Dictionary of Occupational Titles* (DOT), researchers are classified according to field of specialization. Consequently, the Department currently makes prevailing wage determinations for researchers by discipline.

C. Extension of Rule to Nonprofit Research Institutes

As indicated above, commenters also were invited in the preamble to the NPRM to submit comments with respect to extending the proposed rule change to researchers in other employment. All of the comments submitted by apparently nonprofit, independent research institutes were in favor of extending the scope of the proposed rule to cover independent research institutes. The overwhelming majority of the comments received from independent research institutes included the reasons discussed below for extending the rule to cover such research institutes.

1. Competitive Factors

The commenters maintained that researchers at independent research institutes across the Nation compete for Federal grants and publish research results in the same manner as universities. According to the commenters, the only difference between institutes and universities is that most institutes are not degree-granting institutions.

The Department did not receive sufficient information to evaluate to what extent the independent research institutes compete for Federal grants and publish research results in the same manner as universities. However, an issue more important to this rulemaking would be the extent to which researchers at independent research institutes are or are not "similarly employed" to researchers in private industry. The extent to which the

[3] General Administrative Letter 2–98, issued on October 31, 1997, which superseded GAL 4–95, provides that the regulatory scheme at 20 CFR 656.40 must be followed in determining prevailing wages for the permanent and temporary H–2B labor certification programs and the H–1B program.

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nonprofit research institutes perform nonproprietary research as opposed to proprietary research and development would, for example, be an important factor in making this determination. The commenters did not submit sufficient information with respect to competitive factors and the "similarly employed" issue to determine that such concerns could be used as a basis for making an exception in the prevailing wage methodology for researchers employed by nonprofit research institutes.

2. Prevailing Wage Methodology for Researchers

The research institutes asserted that prior to *Hathaway*, researchers in independent research institutes were included with researchers at colleges and universities in determining prevailing wages. The commenters stated that inclusion of independent research institutes would not be an extension of the proposed rule—it would be a restoration of the pre-*Hathaway* practice. It was stated in the preamble to the NPRM that prior to *Hathaway*, SESA's, in conducting prevailing wage surveys for researchers employed by colleges and universities, consistently limited prevailing wage surveys to colleges and universities, and DOL was not aware of any other situation in which a similar practice was followed in determining prevailing wages for an occupation found in a variety of industries.

Further investigation of sampling practices by SESA's subsequent to the receipt of comments on the NPRM, however, indicates that there was greater variation in sampling practices for colleges and universities than indicated in the NPRM. Not all SESA's limited surveys only to researchers employed by colleges and universities. Some surveyed a variety of industries in making such determinations. Some SESA's included nonprofit research institutes in the sample used in determining prevailing wages for colleges and universities. Some sampled nonprofit research institutions separately in the course of making prevailing wage determinations for researchers employed by such institutions. Some SESA's pointed out that they would not have known prior to the *Hathaway* decision whether the employer was profit or nonprofit, and included profit and nonprofit institutes in the same sample when responding to prevailing wage requests. Because SESA's were inconsistent in their sampling practices, their practices in this regard cannot be considered as a basis for the NPRM or the final rule.

3. Pending Legislation to Change Prevailing Wage Methodology for Researchers

Many commenters stated that Congress has acknowledged the similarities between researchers in academic settings and those at nonprofit, independent research institutes by providing legislative language in immigration bills that would require prevailing wage determinations for employees employed by colleges and universities and research institutes to be based solely on the wages paid by such institutions. Unenacted legislation is, however, outside the scope of this rulemaking and to consider it in the rulemaking would be speculative.

4. Additional Reasons Advanced for Extending the Proposed Rule to Nonprofit Research Institutes

One or more commenters offered additional reasons for extending the proposed rule to nonprofit, independent research institutes. Their comments and the Department's response to them are provided below.

a. *Anomalies of Staff Doing the Same Work Being Paid at Dissimilar Rates.* Some commenters pointed out that there are many situations where staff from the university and nonprofit research institutes work side-by-side. One commenter expressed the opinion that it would make little sense for institute employees on H–1B visas to be subject to a different wage structure than everyone else on the university campus.

Such anomalies are not prohibited under the H–1B program, as a result of amendments made to the INA by the Miscellaneous and Technical Immigration Amendments of 1991 (MTINA), Pub. L. 102–232, 105 Stat. 1733 (December 12, 1991). The anomalies are not a function of DOL prevailing wage methodologies and policies. The INA, as amended by the Immigration Act of 1990 (IMMACT), Pub. L. 101–649, 104 Stat. 4978, provided that employers did not have to pay similarly employed U.S. workers the same wage as must be paid to H–1B workers. Under IMMACT prior to MTINA, the employer was required to pay the higher of the actual or prevailing wage for an occupation to both H–1B nonimmigrant and "to other individuals employed in the occupational classification and in the area of employment. . . ." MTINA amended the INA/IMMACT wage requirements, in relevant part, so that the obligation that the employer pay the prevailing wage applied only to its H–1B nonimmigrant workers and not to the "other individuals employed in the occupational classification. . . ." Thus, subsequent to MTINA, not all workers in the U.S. labor market receive prevailing wage protections, even when they have foreign co-workers. It is, therefore, not illegal under this program to have workers working side-by-side being paid disparate wages. This possible disparity in wages between U.S. workers and H–1B nonimmigrant workers is not unique to colleges and universities, Federal research agencies, nonprofit research institutes, or even for-profit entities.

In the Department's view, disparities in wages paid to researchers with similar duties working side-by-side does not justify establishing an exception to the prevailing wage determination methodology currently followed in situations involving employers other than colleges and universities. More fundamentally, wage disparity among workers is not germane to the question of whether the workers are similarly employed.

b. *Source of Funding Should be Considered.* One commenter pointed out that research projects are funded by many different government agencies, and it is a waste of taxpayers' money to require payment of artificially high salaries to temporary foreign and immigrant employees.

The Department has consistently taken the view that sources of funding are not factors to be taken into consideration in prevailing wage determinations. Had source of funding been a determinant, the broad protection against adverse effect in the INA would have made an exception for government-funded employment—but it does not do so. Further, in the Department's view, such a position furthers its statutory mission to protect the wages and working conditions of U.S. worker, rather than constituting a waste.

However, the Department recognizes that source of funding may be a factor for determining similarity of employment, to the extent it supports nonproprietary research, as opposed to proprietary research and development. Since nonproprietary research currently dominates academic research performance in large measure, it is one determinant that distinguishes academic research from commercial research. The rulemaking record does not establish to the satisfaction of the Department that nonprofit research institutes perform nonproprietary research in relative or absolute terms to the same extent as colleges and universities.

c. *Non-pecuniary Motivations.* Some commenters asserted that non-pecuniary motivations of researchers working in nonprofit research institutes are similar to those working in academia. This may be true, but unlike academe, research in nonprofit institutions does not appear to be "inextricably intermingled" with teaching in an academic setting as it is in colleges and universities. Nor is there any firm information as to the relative significance of performing research with the attributes that distinguish that research from research in a for-profit setting, to the total research and development effort. The Department believes that the amount of nonproprietary research performed by an institution is not only important in terms of the attributes that distinguish it from commercial research, but that it adds an important dimension to the non-pecuniary incentives to working in a research environment.

d. *Worker Displacement.* At least one commenter maintained that foreign researchers do not displace immigrant or citizen researchers, but rather complement their efforts. As previously indicated, available information does not indicate that displacement of domestic doctorate recipients by foreign labor is significant. In any event, as indicated above, this rule addresses only the narrow issue of how the phrase "similarly employed" should be defined.

5. Overly Broad Implementation of Hathaway

The AILA was strongly in favor of the NPRM, but was of the opinion that DOL's implementation of *Hathaway* was overly broad and incorrect, and did not require conducting wage surveys across industries to determine prevailing wages for researchers employed by colleges and universities. The Department does not believe these comments are germane to the rulemaking. Assuming that the recognition of a separate wage system for college and university researchers was achievable under the existing regulations, a proposition that the Department does not accept, that conclusion would not preclude the Department from addressing the matter through a regulatory change. Given the interest expressed and the need to assure consistent treatment of the issue, the Department concluded that rulemaking was the appropriate course. Whether the *Hathaway* precedent is being applied improperly in occupations other than academic researchers is both beyond the scope of this rulemaking and is a matter that can and should be addressed to the BALCA in an appropriate case.

D. Other Requests to Extend the Rule

In response to the proposed rule, comments also were received from Federally Funded Research and Development Centers (FFRDC's) and Federal agencies urging that they be included within the scope of the rule. The comments received from the FFRDC's and the Federal agencies are discussed below.

1. Federal Research Centers

The Department has concluded that it is appropriate to include FFRDC's administered by academic institutions within the scope of the final rule. The Department believes that research conducted by FFRDC's administered by academic institutions are an extension of the research environment existing in the colleges and universities and the research performed in such FFRDC's has the same attributes as research performed by colleges and universities; i.e., nonproprietary in nature, inextricably intermingled with teaching, and offers significant intangible, nonpecuniary incentives.

Comments to support this conclusion were received from the National Laboratory Immigration Forum (NLIF) which represents the 10 most well known of the FFRDC's often referred to as the national laboratories. The comments of the NLIF relevant to the scope of this rule were similar to those made by the colleges and universities and the independent research institutes. The main points made by the NLIF were:

- National laboratories are involved in far-ranging collaborative efforts with the academic community and many researchers have joint appointments with both a laboratory and a university, which involve teaching as well as research.
- Most funding for the operation of the national laboratory complex comes through the Federal Government and is subject to many of the same salary limitations that universities are subject to under non-DOE Federal research grants.
- Research conducted by the national laboratories is largely nonproprietary in nature. Research results are expected to be disseminated through publication in peer-reviewed scientific journals.
- Non-pecuniary factors are a substantial motivator for researchers seeking employment in the national laboratories.
- Some areas of research are well beyond the scope of normal domestic research and may call for expertise in disciplines that are not readily available in the United States.

The above comments are consistent with the comments of the colleges and universities urging that the national laboratories be included within the scope of the proposed rule.

The Department believes the above factors apply in large measure to all of the FFRDC's administered by colleges and universities, and has therefore, concluded that FFRDC's administered by academic institutions should be included within the final rule. The Department, however, does not believe the FFRDC's managed by non-academic institutions should be included in the final rule establishing an exception to the way prevailing wage determinations are made for researchers employed by colleges and universities. The Department is not convinced that the attributes of academic research which distinguish it from commercial research are as pronounced in those FFRDC's managed by nonacademic institutions as they are in the FFRDC's administered by colleges and universities. Further, the Department is concerned that researchers from other countries coming to work for the FFRDC's managed by nonacademic entities may be used to a greater extent to perform research of a proprietary nature in those FFRDC's that are not managed by academic institutions. Therefore, the Department is extending the final rule to include only those FFRDC's managed by colleges and universities.

2. Federal Agencies

All Federal agencies that submitted comments were in favor of the thrust of the proposed rule, but generally indicated that it was too narrow and should be extended to Federal agencies and laboratories; federally-affiliated, nonprofit institutions; and other nonprofit institutions affiliated with universities and colleges. Reasons offered for supporting the rule were similar to those advanced by many of the other commenters. The major points made by one or more of the agencies with respect to extending the proposed rule to cover Federal agencies were:

- Post-*Hathaway* policies impact negatively on the ability to recruit foreign scientists and result in such anomalies as foreign staff being paid more than U.S. workers.
- The proposed rule is too narrow. It should be extended to Federal agencies and laboratories, federally-affiliated nonprofit institutions, and other nonprofit institutions affiliated with universities and colleges.
- Research by Federal agencies is nonproprietary in nature.

• Non-pecuniary factors similar to those in colleges and universities motivate individuals to work for Federal research agencies and federally affiliated nonprofit institutions.

• The Federal pay scale should be accepted by DOL as a "legitimate source" of prevailing wage data for federally sponsored employment. Alternatively, a rule should be promulgated recognizing that postdoctoral fellows, visiting scientists and other scholars employed by Federal agencies in H–1B status will necessarily be paid according to the pay practices of the research entity, and this fact satisfies prevailing wage concerns.

Although the comments advocating inclusion of the Federal research agencies did not provide sufficient information to draft a final rule excluding all Federal research agencies as a class from the effects of *Hathaway Children's Services* on the Department's prevailing wage methodology, the Department is convinced that some Federal agencies may be able to satisfy the necessary criteria in order to be provided such an exception. These criteria are: (1) A close relationship between research and teaching; (2) a primary engagement in nonproprietary research; and (3) significant, intangible nonpecuniary factors that motivate researchers to work for the Federal research agency. Federal research agencies, by virtue of the fact that they are Government institutions, can presumptively satisfy the criterion of being primarily performers of nonproprietary research. Therefore, the final rule provides that Federal research agencies may petition the Director, U.S. Employment Service, to submit evidence that shows they meet the other two criteria necessary to obtain an exception to the prevailing wage methodology required by the issuance of *Hathaway Children's Services*. The rule also provides that if a petition is denied, a request for review of the denial may be made to the Board of Alien Labor Certification Appeals.

The procedures that will have to be followed and the documentation that will have to be supplied by the Federal research agencies to obtain an exception from the general prevailing wage methodology that requires prevailing wages to be determined by surveying employers across industries in the occupation in the area of intended employment will be developed and issued by ETA within 45 days of publication of the final rule. Prevailing wages for the research agencies that are granted an exception from the general prevailing wage methodology will be determined by considering only the wages paid to researchers by Federal research agencies, colleges and universities, and FFRDC's administered by colleges and universities.

ETA believes that to meet the criteria contemplated by this rule requires a relatively large organization. The research agency must be rather large before it can have researchers significantly and substantially involved in teaching as well as research and offer significant, intangible nonpecuniary incentives similar to those offered by colleges and universities. Therefore, a Federal research agency is defined for the purpose of this rule as:

> [A] major organizational component of a Federal cabinet level agency or other agency operating with appropriated funds that has as its primary purpose the performance of scientific research. Federal research agencies are presumed to be doing nonproprietary research. To be considered a major organizational component of a cabinet level agency or other agency operating with appropriated funds for the purpose of this part, the organizational component or other agency must be administered by a person who is no lower than Level V (or the equivalent) of the Executive Schedule (see 5 U.S.C. 5316).

ETA is not establishing a similar petitioning process for other members of the research community, such as nonprofit research institutes. Since such entities are private organizations, it cannot be presumed that the research they perform is of a nonproprietary nature. Since they are private entities, they can engage in either proprietary or nonproprietary research. Although the entity may be accorded a nonprofit status under the Internal Revenue Code, they can contract to perform research that has a commercial application for private, for-profit entities. The ETA cannot be expected to sort out in this rulemaking process the extent to which non-profit research organizations are or are not performing research that has commercial applications for a for-profit entity.

Executive Order 12866

The Department has determined that this proposed rule is not an "economically significant regulatory action" within the meaning of Executive Order 12866, in that it will not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

While it is not economically significant, the Office of Management and Budget reviewed the final rule because of the novel legal and policy issues raised by the rulemaking.

Regulatory Flexibility Act

When the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant impact on a substantial number of small entities. The Chief Counsel did not submit a comment.

Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a "major rule" pursuant to the Small Business Enforcement Regulatory Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Paperwork Reduction Act

This final rule will create no collection of information requirements. The petitioning process for Federal agencies requests information from current Federal employees acting in their official capacity.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.203. "Certification for Immigrant Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Employment and training, Enforcement, Fraud, Guam, Immigration, Labor, Longshore work, Unemployment, Wages, and Working conditions.

Final Rule

Accordingly, part 656 of Chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 656—[AMENDED]

1. The authority citation for part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A); 29 U.S.C. 49 *et seq.*; section 122, Pub. L. 101–649, 109 Stat. 4978.

2. Section 656.3 is amended as follows:

a. A definition of "Federal research agency" is added in alphabetical order as follows:

§ 656.3 Definitions for the purpose of this part, of terms used in this part.

* * * * *

Federal research agency means a major organizational component of a Federal cabinet level agency or other agency operating with appropriated funds that has as its primary purpose the performance of scientific research. Federal research agencies are presumed to be doing nonproprietary research. To be considered a major organizational component of a cabinet level agency or other agency operating with appropriated funds for the purpose of this part the organizational component or other agency must be administered by a person who is no lower than Level V (or the equivalent) of the Executive Schedule (see 5 U.S.C. 5316).

* * * * *

3. Section 656.40 is amended as follows:

a. In the introductory language in paragraph (b), the phrase "except as provided in paragraph (c) of this section," is added immediately after the phrase "For purposes of this section,".

b. Paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 656.40 Determination of prevailing wage for labor certification purposes.

* * * * *

(c) For purposes of this section, *similarly employed* in the case of researchers employed by colleges and universities, Federally Funded Research and Development Centers (FFRDC's) administered by colleges and universities or Federal research agencies, means researchers employed by colleges and universities, FFRDC's administered by colleges and universities, and Federal research agencies in the area of intended employment." If no researchers are employed by colleges and universities, FFRDC's administered by colleges and universities, and Federal research agencies other than the employer applicant, researchers employed by colleges and universities, FFRDC's administered by colleges and universities, and Federal research agencies outside the area of intended employment shall be considered "similarly employed."

* * * * *

4. Subpart E is added to read as follows:

Subpart E—Petitioning Process for Federal Research Agencies

§ 656.50 Petitioning Process.

(a) Federal research agencies seeking to have prevailing wages determined in accordance with § 656.40(c)(2) shall file a petition with the Director, U.S. Employment Service.

(b) The procedures and information to be included in the petition shall be in accordance with administrative directives issued by ETA that will specify the procedures to be followed and information that shall be filed in support of the petition by the requesting agency.

(c) The Director shall make a determination either to grant or deny the petition on the basis of whether the petitioning agency is a Federal research agency, whether most researchers at the petitioning agency have a close relationship with teaching as well as research, and whether the employment environment for researchers at the petitioning agency provides significant intangible and nonpecuniary incentives of the nature found at colleges and universities.

(d) Denials of agency petitions may be appealed to the Board of Alien Labor Certification Appeals.

(1) The request for review shall be in writing and shall be mailed by certified mail to the Director, U.S. Employment Service, within 35 calendar days of the date of the determination, that is by the date specified in the Director's determination; shall set forth the particular grounds for the request; and shall include all the documents which accompanied the Director's determination.

(2) Failure to file a request for review in a timely manner shall constitute a failure to exhaust available administrative remedies.

(e) Upon a request for review, the Director shall immediately assemble an indexed Appeal File.

(1) The Appeal File shall be in chronological order, shall have the index on top followed by the most recent document. The Appeal File shall contain the request for review, the complete petition file, and copies of all the written material upon which the denial was based.

(2) The Director shall send the Appeal File to the Board of Alien Labor Certification Appeals.

(f) In considering requests for review of denied petitions, the Board of Alien Labor Certification Appeals shall be guided by § 656.27.

Signed at Washington, DC, this 17th day of March, 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 98–7339 Filed 3–19–98; 8:45 am]

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March 20, 1998

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 31 and 46
Federal Acquisition Regulations; Mandatory Government Source Inspection; Civil Defense Costs; Proposed Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 46

[FAR Case 97–027]

RIN 9000–AH94

Federal Acquisition Regulation; Mandatory Government Source Inspection

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to facilitate the elimination of unnecessary Government contract quality assurance requirements at source. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before May 19, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: farcase.97–027@gsa.gov. Please cite FAR case 97–027 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 97–027.

SUPPLEMENTARY INFORMATION:

A. Background

The Acting Under Secretary of Defense (Acquisition and Technology), by memorandum dated March 20, 1997, tasked the Commander, Defense Contract Management Command, to establish a process action team (PAT) that would, in part, review and recommend steps to eliminate unnecessary Government source inspections for commercial and non-commercial item micro-purchases. The Under Secretary of Defense (Comptroller/Chief Financial Officer), by memorandum dated May 29, 1997, requested that the scope of the review be expanded to reassess all source acceptance policies and procedures, including a full accounting of all Government steps and costs in the source acceptance process; a comparison with alternate methods; and a determination of whether or not the existing 1.8 million stock items requiring source acceptance still merit that designation.

The PAT's initial review found that contributors of unnecessary Government contract quality assurance at source are FAR 46.402(e), which requires mandatory contract quality assurance at source when higher-level quality requirements are invoked, and 46.402(g), which appears to discourage destination acceptance for overseas shipments. The proposed rule amends FAR 46.402 to delete these paragraphs.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because both large and small entities will see a reduction in the administrative burden caused by the Government's in-plant presence to perform quality assurance at source when higher-level quality requirements have been included in Government contracts or when supplies requiring inspection are destined for points of embarkation for overseas shipment. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The IRFA is summarized as follows:

There is no statistical data to support an estimate of the dollar value related to the reduction in the administrative burden associated with this rule. However, DOD administers the contracts of approximately 10,129 large and 18,329 small entities. Approximately 30 percent have contracts that contain the clause at FAR 52.246–11, Higher-Level Contract Quality Requirement (Government Specification). It is anticipated that the proposed rule's reduction in the administrative burden may serve to motivate more small entities to do business with the Government. This rule imposes no additional reporting, recordkeeping, or compliance requirements on offerors or contractors. This rule does not duplicate, overlap, or conflict with any other Federal rules. Consideration was given to not making the revision to the FAR. It was determined that not making these revisions would be unacceptable because of the adverse impact on an efficient and effective acquisition process. Consideration also was given to making all of the requirements at FAR 46.402 discretionary, but it was decided that this would be premature since the PAT has not completed its review and made its final recommendations.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 97–027), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: March 17, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 46 amended as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

46.402 [Amended]

2. Section 46.402 is amended by removing paragraphs (e) and (g); redesignating paragraphs (f) and (h) as (e) and (f), respectively; and by adding "or" to the end of the newly designated paragraph (e).

[FR Doc. 98–7350 Filed 3–19–98; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 97–036]

RIN 9000–AH95

Federal Acquisition Regulation; Civil Defense Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to delete the civil defense cost principle. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before May 19, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: farcase.97–036@gsa.gov. Please cite FAR case 97–036 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 97–036.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends FAR Part 31 to delete the cost principle at FAR 31.205–5, Civil defense costs. With the end of the Cold War, the special guidance provided in this cost principle is no longer deemed necessary. The acceptability of this type of costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–036), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do no impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: March 17, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.205–5 [Removed and Reserved]

2. Section 31.205–5 is removed and reserved.

[FR Doc. 98–7349 Filed 3–19–98; 8:45 am]

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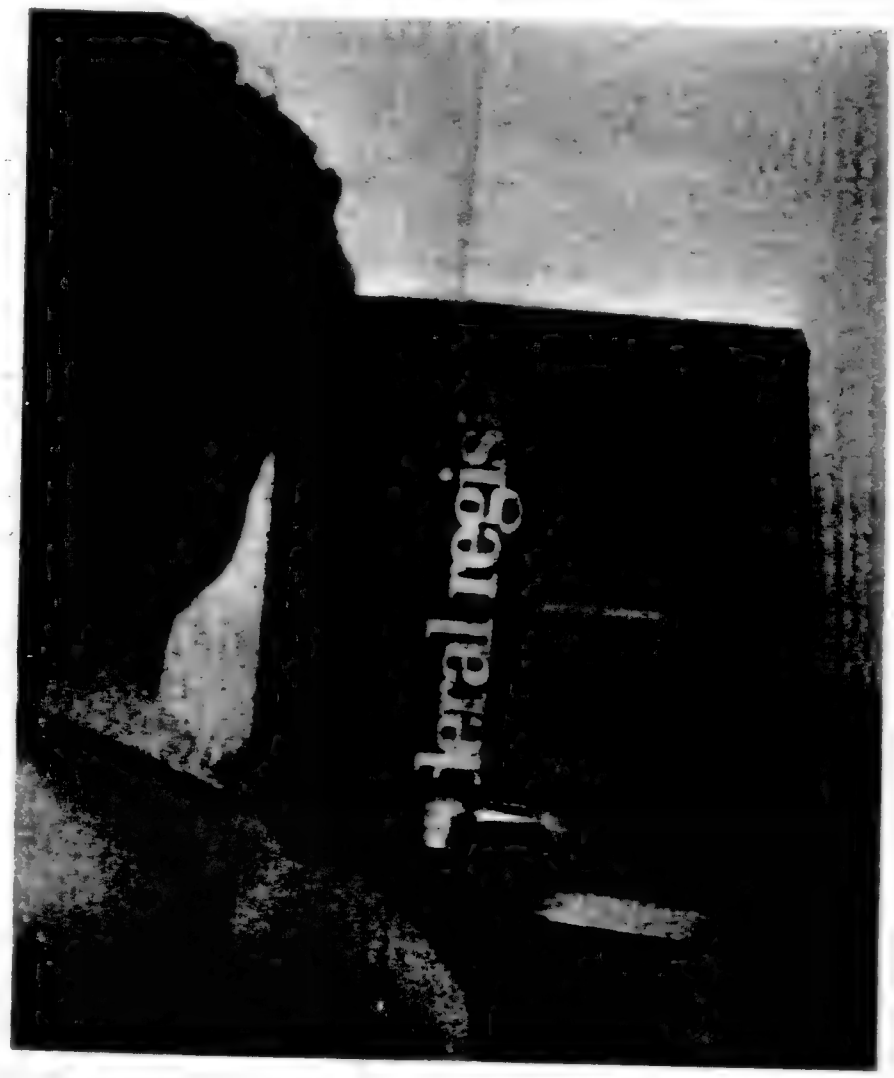

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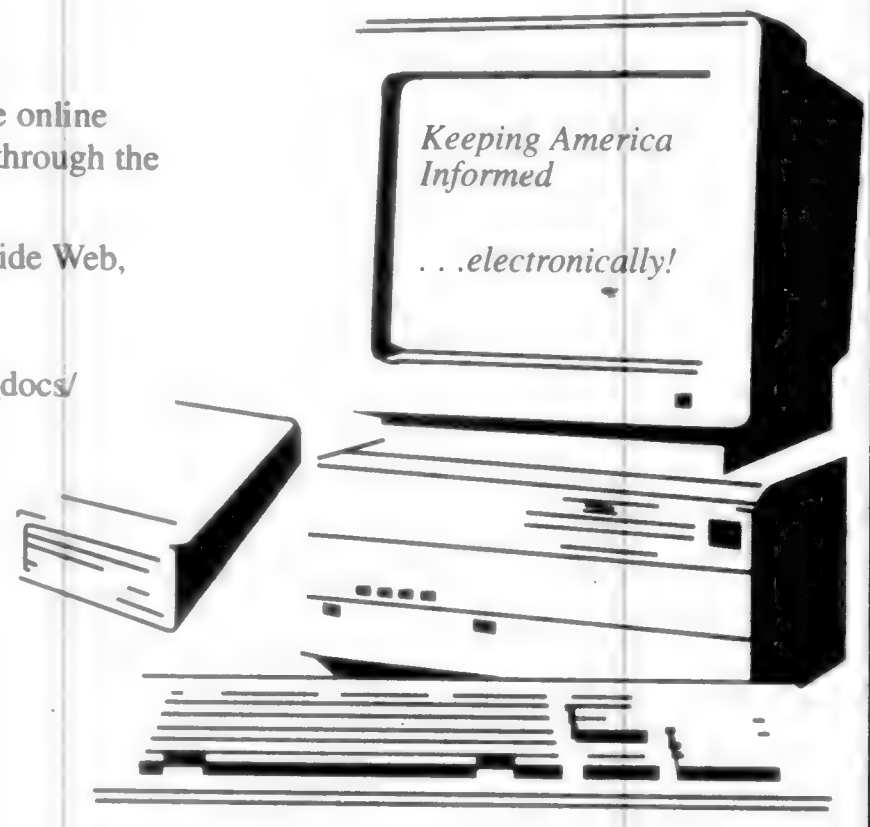

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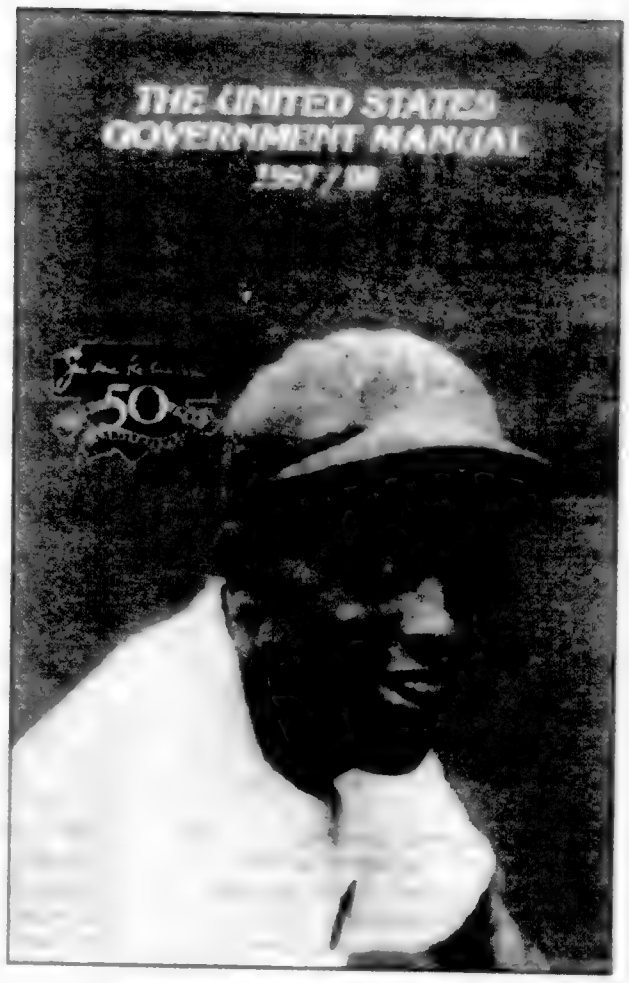

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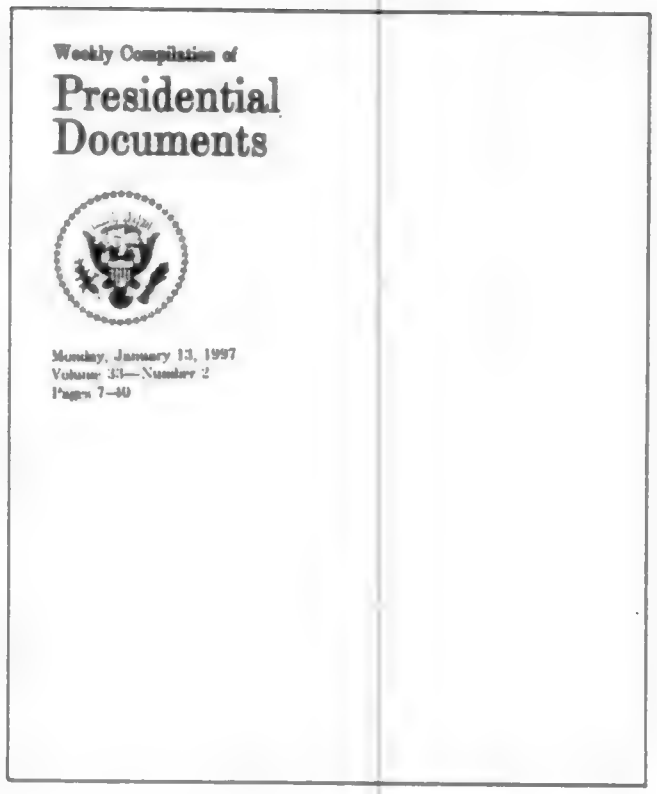

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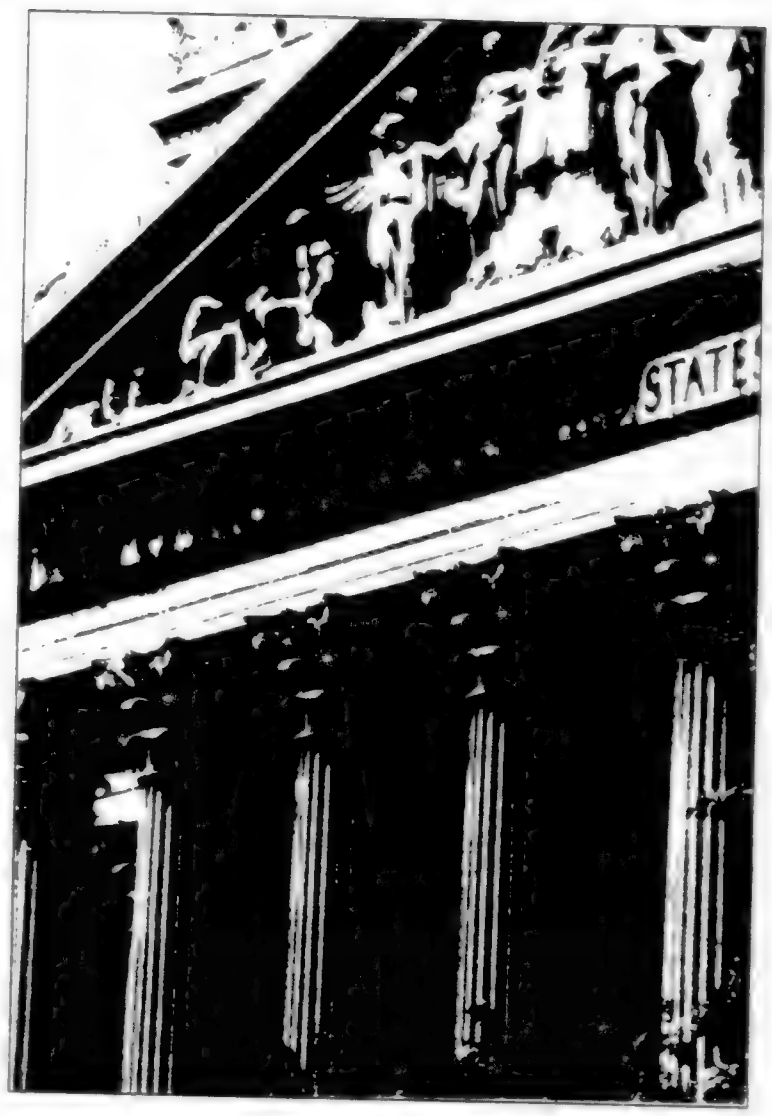

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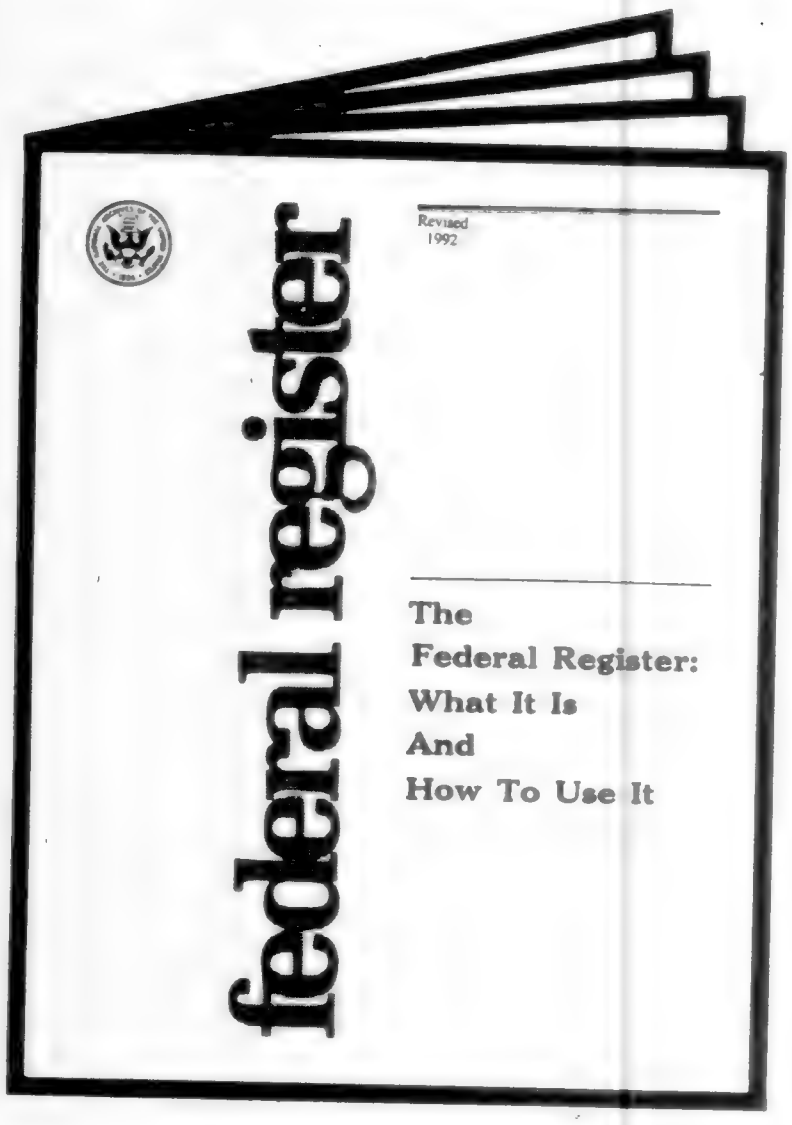

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Rules and Regulations

Federal Register

Vol. 63, No. 55

Monday, March 23, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150

RIN 3150–AF35

Deliberate Misconduct by Unlicensed Persons; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 13, 1998 (63 FR 1890). This action is necessary to correct an erroneous citation.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555-0001, telephone 301–415–7162, e-mail dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION:

On page 1890, in the third column, in the 16th line from the top, "71.az" is corrected to read "71.7(a)."

Dated at Rockville, Maryland, this 17th day of March 1998.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 98–7426 Filed 3–20–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM146; Special Conditions No. 25–136–SC]

Special Conditions: McDonnell Douglas DC–10–10,–30 Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for McDonnell Douglas DC–10–10,–30 airplanes modified by Innovative Solutions & Support, Inc. (IS&S). These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 9, 1998. Comments must be received on or before May 7, 1998.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM146, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM146. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM146." The postcard will be date stamped and returned to the commenter.

Background

On July 15, 1997, Innovative Solutions & Support, Inc. applied for a supplemental type certificate (STC) to modify McDonnell Douglas DC–10–10,–30 airplanes listed on Type Certificate A22WE. The modification incorporates the installation of a digital electronic altimeter for display of critical flight parameters (altitude) to the crew. These displays can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Innovative Solutions & Support, Inc. must show that the McDonnell Douglas DC–10–10,–30 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type certificate No. A22WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly

referred to as the "original type certification basis." The certification basis for the modified McDonnell Douglas DC–10–10,–30 airplane includes 14 CFR part 25, dated February 1, 1965, with Amendments 1 through 22 "Airworthiness Standards: Transport Category Airplanes", § 25.471 of Amendment 25–23, part 36 "Noise Standards: Aircraft Type Certification," Special Conditions No. 25–18–WE–7 dated January 7, 1970, Special Condition No. 25–18–WE–7, Amendment No. 1, dated July 9, 1971, and Special Condition No. 25–46–WE–14 dated October 26, 1972.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the McDonnell Douglas DC–10–10,–30 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR § 11.49 after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Innovative Solutions & Support, Inc. apply at a later date for design change approval to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified McDonnell Douglas DC–10–10,–30 will incorporate a new electronic altimeter system that performs critical functions. This system may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the McDonnell Douglas DC–10–10,–30, which require that new electrical and electronic systems, such as the EFIS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1, or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz—100 KHz	50	50
100 KHz—500 KHz	60	60
500 KHz—2 MHz	70	70
2 MHz—30 MHz	200	200
30 MHz—100 MHz	30	30
100 MHz—200 MHz	150	33
200 MHz—400 MHz	70	70
400 MHz—700 MHz	4,020	935
700 MHz—1 GHz	1,700	170
1 GHz—2 GHz	5,000	990
2 GHz—4 GHz	6,680	840
4 GHz—6 GHz	6,850	310
6 GHz—8 GHz	3,600	670
8 GHz—12 GHz	3,500	1,270
12 GHz—18 GHz	3,500	360
18 GHz—40 GHz	2,100	750

Applicability

As discussed above, these special conditions are applicable to McDonnell Douglas DC–10–10,–30 airplanes modified by Innovative Solutions & Support. Should Innovative Solutions & Support, Inc. apply at a later date for design change approval to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on McDonnell Douglas DC–10–10,–30 airplanes modified by Innovative Solutions & Support, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for McDonnell Douglas DC–10–10,–30 airplanes modified by Innovative Solutions & Support, Inc. (IS&S).

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is

exposed to high intensity radiated fields.

For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–7381 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–176–AD; Amendment 39–10412; AD 98–06–33]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 1000 Through 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 1000 through 4000 series airplanes, that requires replacing certain flexible hydraulic hoses that connect to the UP-port of the actuator of each main landing gear (MLG) with certain new flexible hoses that have built-in restrictor check-valves. This amendment is prompted by results of tests, which indicate that, for airplanes on which restrictor check-valves are not installed, sudden movement of the actuator of the MLG, which could occur under extreme inward sideload conditions (such as touching down at a large crab angle), may pressurize the downlock-actuator and lift the MLG toggle-links. The actions specified by this AD are intended to prevent such pressurization of the downlock-actuator and consequent lifting of the toggle-links, which could result in collapse of the MLG and reduced controllability of the airplane during landing.

DATES: Effective April 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 1000 through 4000 series airplanes was published in the **Federal Register** on June 10, 1997 (62 FR 31536). That action proposed to require replacing certain flexible hydraulic hoses that connect to the UP-port of the actuator of each main landing gear (MLG) with certain new flexible hoses that have built-in restrictor check-valves.

Comments

Interested persons were afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Shorten Compliance Time

One commenter supports the proposed AD, but believes the compliance period should be less than 12 months. In addition, the commenter believes that, in the event the proposed compliance time cannot be changed, it would be beneficial to advise pilots operating the affected airplanes to be particularly cautious about landing with a crab angle. The commenter notes that since the proposed AD fails to define what is meant by "significant crab angle," pilots are uncertain as to whether the crab angle they choose to use is above or below the safe threshold.

The FAA does not concur with the commenter's request to shorten the compliance time. The primary concern in developing the proposed compliance time was the degree of urgency of the unsafe condition. Other practical considerations were also taken into account. Those include the availability of the required parts and the time needed for the majority of the affected operators to install the required modification within a time interval coinciding with normal scheduled maintenance. In addition, the proposed compliance time is consistent with the parallel document issued by the airworthiness authority of the state of design of the airplane, Dutch airworthiness directive 94–095(A), dated July 15, 1995, and with the manufacturer's recommendations. A compliance time of 12 months is, therefore, adopted as proposed.

The incident that precipitated this AD action, the collapse of a main landing gear on a similar Fokker Model F28 Mark 0100 airplane, occurred due to touchdown at a relatively large "crab" angle. Following subsequent investigation, it was concluded that a failure of this nature could only occur under extreme inward side-load conditions that are rarely encountered in service. Currently, no crab angle limitations have been established for the affected airplanes. Because of considerations other than structural integrity of the main landing gear, there are, however, existing limitations concerning landing in cross winds. The FAA concludes that, since normal cross wind landing technique involves adjusting the airplane heading at touchdown as necessary to reduce or eliminate the crab angle, no further limitation or cautionary information is needed in this regard.

Request to Withdraw the Proposal

The Air Transport Association (ATA) of America, on behalf of one of its members, states that its member does not object to the proposed AD, but believes that it is unnecessary. According to the commenter, the changes that would be required were accomplished during production of each of its affected airplanes.

The FAA infers from these remarks that the commenter requests the proposed AD be withdrawn. The FAA does not concur with this request. Since this AD states that compliance is "required as indicated, unless accomplished previously," no further action would be required for any airplane that already incorporates the required change. Nevertheless, the AD must be issued because there may be other airplanes of these models in service in this country or imported into this country that have not incorporated the required change.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 37 Fokker Model F28 Mark 1000 through 4000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,554 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $140,378, or $3,794 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–33 Fokker: Amendment 39–10412. Docket 96–NM–176–AD.

Applicability: Fokker Model F28 Mark 1000 through 4000 series airplanes, equipped with flexible hydraulic hoses, part number (P/N) A71462–401; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent pressurization of the downlock-actuator during extreme inward sideload conditions (such as touching down at a large crab angle) and consequent lifting of the toggle-links of the main landing gear (MLG), which could result in the collapse of the MLG and reduced controllability of the airplane during landing, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the flexible hydraulic hoses, P/N A71462–401, that connect to the UP-port of the actuator of the MLG with new flexible hoses, P/N 97867–1, that have built-in restrictor check-valves, in accordance with Fokker Service Bulletin F28/32–123, Revision 1, dated June 30, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Fokker Service Bulletin F28/32–123, Revision 1, dated June 30, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 94–095 (A), dated July 15, 1994.

(e) This amendment becomes effective on April 27, 1998.

Issued in Renton, Washington, on March 12, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7093 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–212–AD; Amendment 39–10419; AD 98–07–01]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable. This amendment also provides for optional modification of the engine power control cable pulley assembly. This amendment is prompted by a report of failure of an engine power cable, which could cause loss of function of the power control levers on the console. The actions specified by this AD are intended to prevent loss of function of the power control levers on the console, and subsequent loss of normal control of engine power.

DATES: Effective April 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of April 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on September 13, 1995 (60 FR 47501). That action proposed to require inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Actions Since Issuance of Proposal

Since the issuance of the proposal, the manufacturer has issued British Aerospace Service Bulletin ATP–76–18, dated June 21, 1995, which describes procedures for the modification of the engine power control cable pulley assembly. The modification involves increasing the diameter of the pulley of the engine power control quadrant's lower pulley group between stations 398FS to 408FS from 1.5 inches to 2.36 inches, and repositioning of the lower pulley group slightly forward and upward. The service bulletin specifies that, if accomplished, this modification would extend the fatigue life of the engine power control cables, and would allow the repetitive inspection interval to be increased from 1,000 landings to 5,000 landings. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as optional.

The FAA has revised this final rule to add accomplishment of this modification as an option to permit extension of the repetitive inspection interval specified in this AD. Additionally, the cost impact information, below, has been revised to specify the number of work hours that would be required to accomplish the optional modification.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,200, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional modification provided by this AD, it would take approximately 80 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this optional modification is estimated to be $4,800 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–07–01 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10419. Docket 94–NM–212–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of function of the power control levers on the console, and subsequent loss of normal control of engine power due to failure of the engine power cables, accomplish the following:

(a) Perform a detailed visual inspection and tests for damage of the engine power cables, in accordance with Jetstream Service Bulletin ATP–76–16, dated October 14, 1994.

at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter repeat this inspection and tests at intervals not to exceed 1,000 landings.

(1) Prior to the accumulation of 1,000 total landings on the engine power cable, or within 200 landings after the effective date of this AD, whichever occurs later.

(2) Within 75 days after the effective date of this AD.

(b) If any damaged engine power cable is found, prior to further flight, replace the damaged engine power cable with a new cable in accordance with Jetstream Service Bulletin ATP–76–16, dated October 14, 1994. Except as provided by paragraph (c) of this AD, repeat the inspection and tests required by paragraph (a) of this AD thereafter at intervals not to exceed 1,000 landings.

(c) Modification of the engine power control cable pulley assembly in accordance with British Aerospace Service Bulletin ATP–76–18, dated June 21, 1995, allows the interval for accomplishment of the repetitive inspection and tests required by paragraph (a) of this AD to be increased to 5,000 landings.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection, tests, and replacement shall be done in accordance with Jetstream Service Bulletin ATP–76–16, dated October 14, 1994. The modification, if accomplished, shall be done in accordance with Jetstream Service Bulletin ATP–76–18, dated June 21, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 27, 1998.

Issued in Renton, Washington, on March 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7365 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–61]

Modification of Class D Airspace; Minot AFB, ND; and Class E Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Minot Air Force Base (AFB), ND, and Class E airspace at Minot, ND. A review of the Instrument Landing System (ILS) 1 or Tactical Air Navigation (TACAN) Runway 29 Standard Instrument Approach Procedure (SIAP), the Instrument Landing System/Distance Measuring Equipment (ILS/DME) 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP for Minot AFB necessitates these modifications. Controlled airspace extending upward from the surface, controlled airspace extending upward from 700 feet above ground level (AGL), and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing these approaches. This proposal would increase the radius and remove the extensions to the Class D airspace for Minot AFB, ND, and would increase the radius and add a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 22, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace at Minot AFB, ND, and Class E airspace at Minot, ND (62 FR 66838). A recent joint FAA/Air Force review of the controlled airspace for Minot AFB revealed a need to reinstate controlled airspace inadvertently dropped during the 1993 United States airspace reclassification. This action was completed by Final Rule on November 5, 1997 (97–AGL–59, 62 FR 59783). Further review of the current instrument approach procedures for Minot AFB, including the ILS 1 or TACAN Runway 29 SIAP, the ILS/DME 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP, indicated the need to modify the existing controlled airspace. The proposal was to increase the radius and remove the extensions to the Class D airspace for Minot AFB, ND, and to increase the radius and add a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace at Minot AFB, ND and Class E airspace at Minot, ND, to accommodate aircraft executing the ILS 1 or TACAN Runway 29 SIAP, the ILS/DME 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP, and IFR operations at Cooperstown Municipal Airport by increasing the radius and removing the extensions to the Class D airspace for Minot AFB, ND, and by increasing the radius and adding a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AGL ND D Minot AFB, ND [Revised]

Minot AFB, ND
(Lat. 48°24'56" N, long. 101°21'28" W)

That airspace extending upward from the surface to and including 4,200 feet MSL and within a 5.3-mile radius of Minot AFB. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL ND E5 Minot, ND [Revised]

Minot AFB, ND
(Lat. 48°24'56" N, long. 101°21'28" W)
Deering TACAN
(Lat. 48°24'55" N, long. 101°21'58" W)
Minot International Airport, ND
(Lat. 48°15'34" N, long. 101°16'52" W)
Minot VORTAC
(Lat. 48°15'37" N, long. 101°17'14" W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Minot AFB and within 1.5 miles each side of the Deering TACAN 292 deg. radial extending from the 7.1-mile radius to 9.3 miles northwest of the airport and that airspace within a 7.0-mile radius of Minot International Airport and within 4.8 miles each side of the Minot VORTAC 138 deg. radial extending from the 7.0-mile radius to 12.1 miles southeast of the VORTAC and that airspace extending upward from 1,200 feet above the surface within a 47-mile radius of Minot AFB, excluding the area north of latitude 49 deg.00'00"N.

* * * * *

Issued in Des Plaines, Illinois on March 12, 1998.

Maureen Woods,

Manager, Air Traffic Division

[FR Doc. 98–7405 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–18]

Amendment of Class E Airspace; Sheridan, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The direct final rule published on January 29, 1998 (63 FR 4391) changes the Sheridan, WY, Class E airspace legal description from part-time to continuous. A review of the airspace for Sheridan Airport reveals a need for continuous use as indicated in the Airport/Facility Directory (A/F D).

EFFECTIVE DATE: The direct final rule published at 63 FR 4391 is effective 0901 UTC, April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the **Federal Register** on January 29, 1998 (63 FR 4391). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The comment period ended March 2, 1998. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 29, 1998. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Seattle, Washington, on March 12, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–7409 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–06]

Amendment of Class E Airspace; Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action changes the name of the VORTAC navigational aid in the Colorado Springs, CO, Class E3 airspace legal description from Colorado Springs VORTAC to Black Forest VORTAC. The name change for the VORTAC is for safety reasons and does not affect the existing boundaries of the airspace.

DATES: Effective 0901 UTC, June 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 4, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ANM–520, Federal Aviation Administration, Docket Number 98–ANM–06, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No.

98–ANM–06, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the name of the VORTAC navigational aid in the Colorado Springs, CO, Class E3 airspace legal description from Colorado Springs VORTAC to Black Forest VORTAC. The Colorado Springs VORTAC is located 9 miles north of the City of Colorado Springs Municipal Airport. The VORTAC name is inconsistent with current standards which require the off airport navigation aids not have the airport name for aeronautical safety reasons. The actual VORTAC name change to Black Forest will be effective April 23, 1998. This action updates the name in the legal description. The dimensions and operating requirements of the airspace remain the same.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket area based on North American Datum 83. Class E airspace designated as an extension to a Class C surface area are published in Paragraph 6003 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive within the comment period an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESS.** All communications received on or before the closing date for comments will be considered. This rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions are extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date, for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 98–ANM–06." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6003 Class E Airspace designated as an extension to a Class C surface area.

* * * * *

ANM CO E3 Colorado Springs, CO [Revised]

City of Colorado Springs Municipal Airport, CO
(Lat. 38°48′21″ N, long. 104°42′01″ W)
Black Forest VORTAC
(Lat. 38°56′24″ N, long. 104°38′00″ W)

That airspace extending upward from the surface within 1.8 miles of each side of the Black Forest VORTAC 205° radial extending from the 5-mile radius of the City of Colorado Springs Municipal Airport to the VORTAC and within 1.4 miles each side of the Colorado Springs Runway 17 ILS localizer course extending from the 5-mile radius of the airport to 7.7 miles north of the airport.

* * * * *

Issued in Seattle, Washington, on March 12, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–7408 Filed 3–20–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–033–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment; removal of required amendments.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to the Maryland regulations pertaining to excess spoil disposal, conditions of surety and collateral bonds, and procedures for release of general bonds. The amendment is intended to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned unreclaimed area outside of the permit area, and to revise the Maryland program regarding conditions and procedures for collateral bonds and release of bonds to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, **Federal Register** (47 FR 7217). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15 and 920.16.

II. Description of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding placement of excess spoil on adjacent abandoned mine lands on March 11, 1994. OSM completed its reviews of the informal amendment and requested a formal proposal from Maryland in a letter dated August 6, 1996. By letter dated January 7, 1997 (Administrative Record No. MD–576–00), Maryland submitted a proposed amendment to its program pursuant to SMCRA at OSM's request, and to comply with the required amendment identified at 30 CFR 920.16(o).

Additionally, by letter dated January 14, 1997 (Administrative Record No. MD–552–13), Maryland submitted proposed amendments to its program pursuant to SMCRA. These amendments pertain to conditions of collateral bonds, and procedures for release of general bonds, and are intended to comply with required program amendments identified in 30 CFR 920.16 (k) and (m). By letter dated February 4, 1997 (Administrative Record No. MD–552–16), Maryland clarified certain provisions of the proposed amendment. Because the information in this letter only reverted part of the proposed amendment to its previous form, it did not constitute a major revision of the original submission. Therefore, OSM did not reopen the comment period at that time.

OSM announced receipt of the proposed amendments in the January 30, 1997, **Federal Register** (62 FR 4502), and in the same document opened the public comment period and provided an opportunity for public hearing on the adequacy of the proposed amendment. The public period closed on March 3, 1997. OSM's review of the proposed amendment determined that several items contained in the proposed amendments required clarification. As a result, a letter requesting clarification on four items was sent to Maryland dated June 13, 1997 (Administrative Record No. MD–576–05). Maryland responded in its letter dated June 27, 1997, (Administrative Record No. MD 576–06), by requesting a meeting with OSM and stating that additional information would not be available until after that meeting. A meeting was held on August 14, 1997, and a response was received from Maryland in its letter dated December 8, 1997 (Administrative Record No. MD–576–07). Because of the clarifications provided by Maryland, OSM announced a reopening of the public comment period until February 4, 1998, in the January 20, 1998, **Federal Register** (63 FR 2919).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern nonsubstantive wording changes and paragraph notations to reflect organizational changes resulting from this amendment.

1. COMAR 26.20.26, Excess Spoil Disposal

Specifically, Maryland proposes to add new regulation .05 entitled "Placement of Excess Spoil on Abandoned Mine Land" to Chapter 26, Excess Spoil Disposal as follows:

a. New subparagraph A and items (1) through (5) state that excess spoil from a permitted coal mining operation may be placed on abandoned mine land outside of the permit area if Maryland Department of the Environment, the regulatory authority in Maryland (Department) determines that the abandoned mine land is eligible for funding under Environment Article, Title 15, Subtitle 11, Annotated Code of Maryland; the abandoned mine land is referenced in the permit application and identified on the permit map; the plan for the placement of such spoil meets the design requirements of Maryland's approved program; the legal right to enter upon the abandoned mine land and to place excess spoil on the area has been obtained from the surface owner; and the excess spoil will be placed in accordance with the provisions of a contract executed between the Department and the permittee for reclamation of the abandoned mine land. In its letter of clarification dated December 8, 1997 (Administrative Record No. MD–576–07), Maryland stated that as an additional safeguard any default by the operator on a contract or a failure to perform reclamation could be funded by specially earmarking a portion of Maryland's AML grant funds to complete the reclamation.

b. New subparagraph B, entitled "Reclamation Standards", and items (1) through (4), are added to require that excess spoil beyond the amount required to restore the abandoned mine land to its original contour may not be placed on the abandoned mine land; the final configuration of the excess spoil that is placed on the abandoned mine land area outside of the permit area shall be compatible with the natural surroundings and be suitable for the

intended land use; valley, head of hollow, or durable rock fills may not be constructed on the abandoned mine land; and that placement of excess spoil from a permit area on abandoned mine land shall be planned and implemented in accordance with the requirements of Maryland's approved program.

c. New subparagraph C and items (1) through (5) provide that placement of excess spoil from a permit area on abandoned mine land outside of a permit area may not be approved unless the Department finds in writing, on the basis of information set forth in the plan or otherwise available, that: placement of the excess spoil and reclamation of the abandoned mine land can be feasibly accomplished in accordance with the plan submitted by the operator; the excess spoil placement operation has been designed to prevent damage to the hydrologic balance outside of the abandoned mine land; the excess spoil placement operation will not adversely affect any publicly owned parks or places included in the National Register of Historic Places, unless approved by the appropriate jurisdictional agency; the applicant has submitted documentation establishing a legal right to enter and conduct the proposed reclamation of the abandoned mine land; and the proposed activities will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act.

d. New subparagraph D and items (1) through (3) state that placement of excess spoil from a permitted coal mining operation on abandoned mine land outside of the permit area shall be accomplished in accordance with a contract between the Department and the permittee that contains conditions that document the method of placement of the excess spoil and reclamation on the area; require the operator to permit and bond the abandoned mine land area in the event the operator defaults on the contract; and authorize the Department to issue a cessation order to cease all mining operations on the adjacent permit area until the operator submits an application for a permit and the required amount of bond for the abandoned mine land area in the event the operator defaults on the contract. In its December 8, 1997, letter (Administrative Record No. MD–0576–07), Maryland further stated that a field review during the application review process would verify conditions at the AML site and will determine which requirements are necessary to ensure that the excess spoil is placed in an environmentally sound manner.

e. New subparagraph E is added to state that the Department will monitor the placement of the excess spoil and the reclamation of the abandoned mine land area to ensure that the work is performed in accordance with the contract. In the event the operator fails to meet the terms of the contract, the Department shall issue a cessation order to stop the work on the area until the failure has been corrected.

In telephone conversations with OSM representatives, a Maryland regulatory program official stated that the operator would be required to submit a reclamation plan for each abandoned site proposed to be used for excess spoil placement. Each site will have a reclamation plan. Additionally, for existing permits where an operator decides to use an abandoned site for excess spoil disposal, the operator must apply for and receive approval of a permit revision. This permit revision process includes public participation. In its December 8, 1997, letter (Administrative Record No. MD–576–07), Maryland stated that environmental reviews and public participation for these sites will be handled through the State's Title V surface mining regulatory program.

Placement of excess spoil on adjacent abandoned mine land has been addressed previously in other rulemaking. Specifically, in his July 9, 1991, letter to Ohio, (Administrative Record No. MD–576–09) the Director of OSM clarified OSM's position concerning the standards and requirements which apply to the usage of excess spoil for reclamation of abandoned mine land sites. SM focused on the parameters for excess spoil disposal outside the permit area as established, in part, in several final rules approving such a provision in the West Virginia program (45 FR 69254–69255, October 20, 1980; 46 FR 5919, January 21, 1981); and 55 FR 21328–21329, May 23, 1990).

In the January 21, 1981, **Federal Register** announcing approval of the West Virginia program (46 FR 5919), the Secretary found that, for purposes of excess spoil disposal, a reclamation contract governing work to be performed on a Federal AML reclamation grant project is the equivalent of permit and bond under Title V of SMCRA. In the May 23, 1990, **Federal Register** (55 FR 21329), OSM found that disposal of excess spoil on a Federally funded AML reclamation project is approvable provided the spoil is not necessary to restore approximate original contour (AOC) on or otherwise reclaim the active mine. In addition, as stated in the May 23, 1990, **Federal Register**, fills are not to be created on AML reclamation projects. Spoil deposited on such sites may be used only to complete reclamation and to return the site to its AOC. OSM restricted eligibility for such spoil deposition to AML reclamation projects funded through the Federal AML grant process. The May 23, 1990, finding, however, did not prohibit the possibility that "no-cost reclamation" contracts, which allow spoil disposal on AML sites not included in Federally funded grants, could be approved in the future. In order to gain OSM approval, however, "no-cost reclamation" amendments would have to contain meaningful performance incentives or safeguards to ensure that spoil is placed only where it is needed to restore AOC and where it will not destroy or degrade features of environmental value. In addition, the amendments must require that spoil be placed in an environmentally and technically sound fashion. See OSM Director's July 9, 1991, letter to Ohio (Administrative Record No. MD–576–09). In short, "no cost reclamation" amendments must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project. The Director finds that Maryland's proposed regulations, at COMAR 26.20.26.05, meet these requirements, for the reasons set forth below.

First, Maryland's proposed regulations require that the amount of excess spoil placed on an abandoned site will not exceed that required to restore that site to AOC. Moreover, valley, head of hollow and durable rock fills may not be constructed on abandoned, unpermitted sites. (COMAR 26.20.26.05 B(1), (3)).

Second, the proposed regulations require that the plan for excess spoil placement meet the design requirements of Maryland's approved program, and that the actual placement of excess spoil be implemented in accordance with the approved program. (COMAR 26.20.26.05 A(3), B(4)). The approved Maryland regulatory program already contains backfilling requirements for permitted and bonded areas which ensure that spoil is placed in an environmentally sound fashion, and that such placement will not destroy or degrade features of environmental value. See, for example, COMAR 26.20.28 (backfilling).

Third, and finally, the Director finds that the proposal contains sufficient performance incentives to require compliance with all applicable requirements, since the permittee risks

issuance of a cessation order if it defaults on the contract for excess spoil placement. Because this cessation order would stop all mining on the active permit, and could, presumably, lead to permit revocation and bond forfeiture if the abandoned mine land area is not subsequently permitted, bonded and reclaimed adequately, the operator should have ample incentive to comply with the contract.

Essentially, Maryland will apply its Title V regulatory program performance standards, public participation and enforcement provisions to these abandoned, excess spoil disposal sites, even though the sites will not be permitted or bonded. In addition, Maryland has provided performance incentives to ensure compliance with these Title V requirements, and, finally, has indicated that Abandoned Mine Land grant funds will be available to reclaim these sites in the event that the operator defaults on the terms of its contract. Based upon all of the above considerations, the Director is approving COMAR 26.20.26.05 to the extent that Maryland requires that the placement of excess spoil on abandoned sites comply with the provisions of its approved regulatory program pertaining to spoil placement, including the requirements pertaining to backfilling. The Director also finds that the required amendment at 30 CFR 920.16(o) has been satisfied and it is, therefore, removed.

2. COMAR 26.20.14.06, Conditions of Bonds

a. Subparagraph (B)(3) is amended to state that certificates of deposit be made payable to the Bureau in writing and upon the books of the bank issuing these certificates. This paragraph formerly stated that such certificates of deposit shall be assigned to the Bureau in writing and upon the books of the bank issuing these certificates.

b. Subparagraph (B)(4) is amended by changing the maximum acceptable amount of an individual certificate of deposit from $40,000 to $100,000.

c. New subparagraph (8) is added to require that the bank give prompt notice to the Bureau and the permittee of any notice received or action filed alleging the insolvency or bankruptcy of the bank or the permittee, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business.

The Director finds that the proposed changes in 2.a, b., and c. are substantively identical to the Federal regulations at 30 CFR 800.21(a)(3) and (a)(4), and 30 CFR 800.16(e)(1), respectively. The Director also finds that the required amendment at 30 CFR 920.16(k) has been satisfied and it is, therefore, removed.

3. COMAR 26.20.14.09, Procedures for Release of General Bonds

a. Subparagraph (B)(2)(b) is revised by substituting the word "identify" for "show" and by adding the requirement to identify the approval date of the permit.

b. Subparagraphs (B)(2)(c) and (d) are revised by substituting the word "identify" for "show" and (d) is further revised by adding the requirement to identify the type and amount of bond filed on the permit.

c. Subparagraph (B)(2)(e) is revised by requiring that the type and appropriate dates of the work performed be summarized.

The Director finds that the proposed changes in 3.a, b., and c. are substantively identical to the Federal regulations at 30 CFR 800.40(a)(2). The Director also finds that the required amendment at 30 CFR 920.16(m) has been satisfied and it is, therefore, removed.

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), The Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. The Mine Safety and Heath Administration responded that no action was anticipated on the amendment. No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Also, EPA did not respond to OSM's request for comments.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendments as submitted by Maryland on January 7, 1997, January 14, 1997, revised on February 4, 1997 and clarified on December 8, 1997. In particular, the Director is approving COMAR 26.20.26.05 to the extent that Maryland requires that the placement of excess spoil on abandoned sites comply with the provisions of its approved regulatory program pertaining to spoil placement, including the requirements pertaining to backfilling. The Director is approving the proposed regulations with the understanding that they be promulgated in a form identical to that submitted to OSM including the clarifications. Any differences between these regulations and the State's final regulations will be processed as a separate amendment subject to public review at a later date. The Director is also removing the required amendments at 30 CFR 920.16 (k), (m), and (o) because the Maryland program will now include those requirements at paragraph B(8) of COMAR 26.20.14.06, paragraph B(2) of COMAR 26.20.14.90, and COMAR 26.20.26.05, respectively. The required amendments were initially included in the December 5, 1991, **Federal Register** (56 FR 63660), and in the December 30, 1992, **Federal Register** (57 FR 62220).

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendments process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such

program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
January 7, 1997	March 23, 1998	COMAR 26.20.26.05 A (1) through (5), B (1) through (4), C (1) through (5), D (1) through (3), E, 26.20.14.06 B(3), B(4), B(8), 26.20.14.09 B(2) (b), (c), (d), and (e).

§ 920.16 [Amended]

3. Section 920.16 is amended by removing and reserving paragraphs (k), (m) and (o).

[FR Doc. 98–7415 Filed 3–20–98; 8:45 am]
BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL167–1a; FRL–5978–8]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On May 5, 1995, and May 26, 1995, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the EPA regarding rules for controlling Volatile Organic Material (VOM) emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor processes and distillation operations in the Chicago and Metro East (East St. Louis) areas. VOM, as defined by the State of Illinois, is identical to "Volatile Organic Compounds" (VOC), as defined by EPA. VOC is an air pollutant which combines with nitrogen oxides in the atmosphere to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. This plan was submitted to meet the Clean Air Act (Act) requirement for States to adopt Reasonably Available Control Technology (RACT) rules for sources that are covered by Control Techniques Guideline (CTG) documents. This rulemaking action approves, through direct final, the Illinois SIP revision request.

DATES: The "direct final" approval is effective on May 22, 1998, unless EPA receives adverse or critical written comments by April 22, 1998. If the effective date is delayed timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(2) of the Act requires all moderate and above ozone

nonattainment areas to adopt RACT rules for sources covered by CTG documents, such as SOCMI reactor processes and distillation operations. In Illinois, the Chicago area is classified as "severe" nonattainment for ozone, while the Metro East area is classified as "moderate" nonattainment. See 40 CFR 81.314.

The Illinois Environmental Protection Agency (IEPA) held public hearings on the SOCMI rules on November 4, 1994, December 2, 1994, and December 16, 1994. The rules, which require compliance by March 15, 1996, were published in the *Illinois Register* on May 19, 1995. The rules became effective at the State level on May 9, 1995. The IEPA formally submitted the SOCMI rules to EPA on May 5, 1995, and May 26, 1995, as a revision to the Illinois SIP for ozone. The submittal amends 35 Illinois Administrative Code (Ill.Adm.Code) Parts 211, 218 and 219, to include control measures for SOCMI reactor processes and distillation operations.

The submittal includes the following new or revised rules:

Part 211: Definitions and General Provisions

Subpart B: Definitions

211.980 Chemical Manufacturing Process Unit
211.1780 Distillation Unit
211.2365 Flexible Operation Unit
211.5065 Primary Product

Part 218: Organic Material Emission Standards and Limitations for the Chicago Area

Subpart Q: Synthetic Organic Chemical and Polymer Manufacturing Plant

218.431 Applicability
218.432 Control Requirements
218.433 Performance and Testing Requirements
218.434 Monitoring Requirements
218.435 Recordkeeping and Reporting Requirements
218.436 Compliance Date

Appendix G: TRE Index Measurement for SOCMI Reactors and Distillation Units

Part 219: Organic Material Emission Standards and Limitations for the Metro East Area

Subpart Q: Synthetic Organic Chemical and Polymer Manufacturing Plant

219.431 Applicability
219.432 Control Requirements
219.433 Performance and Testing Requirements
219.434 Monitoring Requirements
219.435 Recordkeeping and Reporting Requirements
219.436 Compliance Date

Appendix G: TRE Index Measurement for SOCMI Reactors and Distillation Units

The SOCMI rules contained in Part 218 are identical to those in Part 219 except for the areas of applicability. Part 218 applies to the Chicago Area, while Part 219 applies to the Metro East area.

Illinois' SOCMI rules are based largely on EPA's final CTG for control of VOCs from SOCMI reactor processes and distillation operations, which was issued on November 15, 1993 (58 FR 60197). This document contains the recommended presumptive norm for RACT for these sources.

The applicability measure for RACT is dependent upon the facilities' calculated Total Resource Effectiveness (TRE) index. The TRE index is a measure of the cost per unit of VOC emission reduction and is normalized so that the decision point has a defined value of 1.0. It considers variables such as the emission stream characteristics (i.e., heat value, flow rate, VOC emission rate) and a maximum cost effectiveness. A TRE index value of less than or equal to 1.0, as calculated by using the specific stream characteristics, ensures that the stream could be effectively controlled further by a combustion device without an unreasonable cost burden. The use of the TRE index applicability measure provides an incentive for pollution prevention by letting a facility consider alternatives to installing add-on control devices. Facilities can choose to improve product recovery so that the calculated TRE index falls above the cutoff value of 1.0.

The technology underlying RACT for SOCMI reactor processes and distillation operations is combustion via either thermal incineration or flaring. These control techniques generally achieve the highest emission reduction among demonstrated VOC technologies. The EPA believes that a thermal incinerator that is well operated and maintained according to manufacturer's specifications can achieve at least 98 percent control efficiency, by weight. Likewise, flares that conform with the design and operating specifications set forth in 40 CFR 60.18, can achieve at least 98 percent control, by weight, of VOC emissions.

II. Analysis of State Submittal

The Illinois SOCMI rules affect vent streams associated with reactor processes and distillation operations that manufacture a SOCMI chemical which is both listed in Appendix A of Illinois' Rules and Regulations for Air Pollution Control (35 Ill.Adm.Code 218 and 219) and qualifies as a "primary product" under the rules. The rules exclude any reactor or distillation unit that (1) is part of a polymer manufacturing operation, (2) is included in a batch operation, (3) has a total design capacity of less than 1,100 tons per year for the primary product, (4) has a primary product not listed in Appendix A, (5) has a vent stream VOC concentration of less than 500 parts per million by volume or a flow rate of less than 0.0085 standard cubic meter per minute, or (6) is included in the hazardous air pollutants early reduction program, as specified in 40 CFR Part 63 and published at 50 FR 60970 on October 22, 1993. Any other process vent stream from a reactor process or distillation operation in SOCMI that does not satisfy the above exclusion criteria must perform a TRE determination. If the TRE index value, calculated at a point immediately after the associated recovery device, is less than or equal to 1.0, then VOC emissions (less methane and ethane) must be reduced by 98 percent by weight or to 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen. The compliance date in the Illinois rules is March 15, 1996.

Illinois' SOCMI rules were reviewed against EPA's August 1993 CTG for SOCMI distillation and reactors. Based on the CTG, Illinois' SOCMI reactor and distillation rules require RACT level control efficiencies. However, the State rules' applicability criteria is different than the applicability criteria recommended by the CTG. Under the States' rules, a reactor or distillation unit has the requisite total design capacity to trigger applicability when it produces (1) at least 1,100 tons per year of primary product, and (2) the primary product falls under a list of SOCMI chemicals under Appendix A, the same list used for applicability purposes under the State's SOCMI leaks rule (see 35 Ill.Adm.Code 218/219, Subpart Q and Appendix A, approved by EPA September 9, 1994, 59 FR 46562). In contrast, the CTG recommends that applicability be based on whether a unit produces at least 1,100 tons per year of one or more final or intermediate products which fall under the CTG's list of SOCMI chemicals, a list that includes more chemicals than Appendix A.

RACT rule applicability provisions may vary from State to State dependent upon what sources are in the State's nonattainment area(s). In the case of Illinois, the differences in applicability criteria between the State rules and the CTG is insignificant because the State has only two affected sources in the States' nonattainment areas, both of which meet the applicability criteria of the CTG and the States' rules.

To demonstrate that the State rules are essentially equivalent to the CTG in

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terms of applicability, the IEPA submitted documentation on November 8, 1996, regarding its search for potentially affected facilities applicable to the SOCMI CTG. First, the IEPA searched the State's Emission Inventory System (EIS) database to establish a list of SOCMI continuous distillation operations or reactor processes in the Chicago or Metro East nonattainment areas (SOCMI batch facilities were excluded from the search because they are exempt from the rules). The IEPA evaluated air permit information for these units and eliminated from the list those units which are not producing any chemical found on the SOCMI CTG list. IEPA further eliminated from the list those units which are specifically excluded from the SOCMI CTG, including facilities involved in polymer manufacturing operations or covered under the State's SOCMI air oxidation rules.

After this complete review, the SOCMI facilities that remained containing emission units applicable to the CTG were Stepan Company's Millsdale facility (Stepan), and Monsanto Chemical Group's Sauget facility (Monsanto). The Illinois SOCMI reactor and distillation rules as they apply to Stepan has already been approved on June 17, 1997, (62 FR 32694), and the approval of the rules as they apply to Monsanto has been signed by the Regional Administrator on February 24, 1998, and is awaiting publication in the **Federal Register**.

Based on IEPA's documentation, all SOCMI reactor and distillation units in the Chicago and Metro East areas which are required to meet RACT under the SOCMI CTG are covered by the Illinois rule. Therefore, there is no environmental benefit to be gained by requiring Illinois to revise its SOCMI rule to mirror the CTG's applicability provisions. Because the State rules are, for practical purposes, as stringent as the CTG in respect to SOCMI distillation and reactor units existing in the Chicago and Metro East areas, EPA is approving the State rules. However, if a new SOCMI distillation or reactor unit is constructed in the Chicago or Metro East nonattainment areas which is required to meet RACT under the CTG and is not subject to the New Source Performance Standards (NSPS) for SOCMI distillation operations (40 CFR part 60, subpart NNN), the NSPS for SOCMI reactor processes (40 CFR part 60, subpart RRR), or the State rules, then the State will be required to revise its rules so that the new unit is subject to RACT.

III. Final Rulemaking Action

The EPA approves the plan revision submitted to EPA by the State of Illinois on May 5, 1995, and May 26, 1995, for SOCMI reactor processes and distillation operations. While the limits contained in the rules are generally of RACT stringency, the rules' applicability provisions do not match the applicability criteria specified by the SOCMI CTG. Illinois has shown, however, that the State rules apply to all existing SOCMI facilities in the Chicago and Metro East ozone nonattainment areas which are required to meet RACT under the CTG. Thus, the rules are approvable. The EPA has already taken action on the Illinois rules as they apply to Stepan Company's Millsdale facility (June 17, 1997, 62 FR 32694), and the rules as they apply to Monsanto Chemical Group's Sauget facility have been approved by the Regional Administrator on February 24, 1998, and the approval is awaiting publication in the **Federal Register**.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical written comments be filed. This action will become effective without further notice unless the Agency receives relevant adverse written comment on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by April 22, 1998. Should the Agency receive such comments, it will publish a final rule informing the public that this action did not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 22, 1998.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 5, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(142)to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(142) On May 5, 1995, and May 26, 1995, the State of Illinois submitted State Implementation Plan revision requests for reactor processes and distillation operations in the Synthetic Organic Chemical Manufacturing Industry as part of the State's control measures for Volatile Organic Material emissions for the Chicago and Metro-East (East St. Louis) areas. This plan was submitted to meet the Clean Air Act requirement for States to adopt Reasonably Available Control Technology rules for sources that are covered by Control Techniques Guideline documents.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 211: Definitions and General Provisions, Subpart B; Definitions, 211.980 Chemical Manufacturing Process Unit, 211.1780 Distillation Unit, 211.2365 Flexible Operation Unit, 211.5065 Primary Product, amended at 19 Ill. Reg. 6823, effective May 9, 1995.

(B) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart Q: Synthetic Organic Chemical and Polymer Manufacturing Plant, Sections 218.431 Applicability, 218.432 Control Requirements, 218.433 Performance and Testing Requirements, 218.434 Monitoring Requirements, 218.435 Recordkeeping and Reporting Requirements, 218.436 Compliance Date, 218.Appendix G, TRE Index Measurement for SOCMI Reactors and Distillation Units, amended at 19 Ill. Reg. 6848, effective May 9, 1995.

(C) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart Q: Synthetic Organic Chemical and Polymer Manufacturing Plant, Sections 219.431 Applicability, 219.432 Control Requirements, 219.433 Performance and Testing Requirements, 219.434 Monitoring Requirements, 219.435 Recordkeeping and Reporting Requirements, 219.436 Compliance Date, 219.Appendix G, TRE Index Measurement for SOCMI Reactors and Distillation Units, amended at 19 Ill. Reg. 6958, effective May 9, 1995.

[FR Doc. 98–7128 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH112–1a; FRL–5976–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving an August 1, 1997 requested revision to the Ohio State Implementation Plan (SIP) incorporating revised emission statement reporting requirements which were previously approved for the purpose of implementing an emissions statement program for stationary sources within the State's ozone nonattainment areas classified as marginal or above. In this action, USEPA is approving the State's finding that emission statement requirements are no longer applicable to areas redesignated as attaining the national ambient air quality standards (NAAQS) for ozone through a "direct final" rulemaking; the rationale for this approval is set forth below. Elsewhere in this **Federal Register**, USEPA is proposing approval and soliciting comment on this direct final action; should USEPA receive such comment, it will publish an action informing the public that this rule did not take effect; otherwise, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective May 22, 1998 unless written adverse comments not previously addressed by the State or USEPA are received by April 22, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Ohio submittal are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(a)(3)(B) of Title I of the Clean Air Act (CAA) requires states with areas designated nonattainment of the NAAQS for ozone to establish regulations for reporting of actual emissions by stationary sources that emit volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in ozone nonattainment areas.

On March 22, 1994, the State of Ohio submitted a SIP revision outlining a program to require emission statements from those stationary sources that emit more than 25 tons of VOCs or NO_X per any calendar year and that are located in counties designated nonattainment for the NAAQS for ozone. The following twenty four counties were designated nonattainment for the NAAQS for ozone at the time of that submittal and stationary sources in those counties were required to submit emission

statements: Ashtabula, Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Lake, Licking, Lorain, Lucas, Mahoning, Medina, Miami, Montgomery, Portage, Stark, Summit, Turnbull, Warren and Wood counties. USEPA fully approved that requested SIP revision on October 13, 1994 (59 FR 51863). For a more detailed description of the Ohio emission statement program see Ohio Administrative Rule 3145–24–04, paragraphs (A) through (G), or the final rule listed above.

Only four of the original 24 counties remain designated nonattainment of the NAAQS for ozone: Warren, Butler, Clermont, and Hamilton Counties in the Cincinnati-Hamilton nonattainment area. Consequently, on August 1, 1997, the State of Ohio submitted a request to USEPA to revise its SIP by modifying Ohio Administrative Code rule 3745–24–02, entitled Applicability. The revision would delete the reporting requirements for the counties in areas redesignated from nonattainment to attainment of the NAAQS for ozone. The revision also deletes the requirement to submit an emissions statement for the calendar year in which an area is redesignated to attainment.

II. Summary of State Submittals and Previous USEPA Rulemakings

Discussions of the State of Ohio submittals concerning emission statement requirements and USEPA's rulemakings concerning redesignation of areas in Ohio can be found in the September 29, 1997 Technical Support Document which is available from the Region 5 address above.

III. Revised Emission Statement Requirements

Approval of this requested SIP submittal will delete the emissions statement reporting requirements for sources located in areas redesignated from nonattainment to attainment for the NAAQS for ozone. The exemptions from the emission statement reporting requirements would be effective upon redesignation. Approval of the State's request would also remove these newly redesignated areas from the applicability section of the Ohio Administrative Code, Section 3745–24–02.

Specifically, the old rule required sources in the Toledo and Dayton areas (all redesignated to attainment in 1995), Cleveland-Akron-Lorain, Columbus, Canton and Youngstown areas (all redesignated to attainment in calender year 1996) to submit emissions statements by November 15, 1997, providing their VOC and NO_x emissions for 1996. Under the new rule, these sources would not have to report their emissions for 1996 and later years.

The USEPA approval of the State's request would reduce the number of counties subject to the emission statement reporting requirements from 24 to 4. Sources in Butler, Clermont, Hamilton and Warren Counties all located in the Cincinnati-Hamilton ozone nonattainment area would still be required to submit emission statements.

IV. Rationale for Approval

The following counties in Ohio have been redesignated to attainment for the NAAQS for ozone: Ashtabula, Clark, Cuyahoga, Delaware, Franklin, Geauga, Greene, Lake, Licking, Lorain, Lucas, Mahoning, Medina, Miami, Montgomery, Portage, Stark, Summit, Trumbull, and Wood counties. Section 182 (a)(3)(B) of title I of the CAA only requires States to establish regulations for the reporting of actual emissions by stationary sources that emit VOCs and NO_x in ozone nonattainment areas. Therefore, USEPA is approving the SIP revision request from the State of Ohio to delete the reporting requirements for sources in those areas which have been redesignated to attainment of the NAAQS for ozone and to remove the provision in the rules that extends the emissions reporting requirements for the calender year in which they are redesignated.

V. USEPA Rulemaking Action

USEPA is approving, through final rulemaking action, a revision to the Ohio State Implementation Plan limiting emission statement reporting requirements to stationary sources located within the State's marginal and above ozone nonattainment areas.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should specified written adverse comments be filed.

This rule will become effective without further notice unless USEPA receives relevant adverse written comment on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by April 22, 1998. Should USEPA receive such comments, it will publish a final rule informing the public that this rule did not take effect. Any party interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.* USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under State law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70–3745.73 of the Ohio Revised Code). The USEPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the CAA. The USEPA will take appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, Federal approval for the CAA program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 20, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(117) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(117) On August 1, 1997 the Ohio Environmental Protection Agency submitted a requested revision to the Ohio State Implementation Plan. This revision constituted amendments to the emissions statement reporting regulations approved on October 13, 1994 and codified in paragraph (c)(100) of this section. The revision is intended to limit the applicability of these rules to stationary sources located within the State's marginal and above ozone nonattainment areas.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–24–02 Applicability. Effective July 31, 1997.

[FR Doc. 98–7131 Filed 3–20–98; 8:45 am]

BILLING CODE [illegible]-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 041–4069; FRL–5977–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Conditional Limited Approval of the Pennsylvania VOC and NO_X RACT Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting conditional limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the implementation of reasonably available control technology (RACT) on all major sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The intended effect of this action is to grant conditional limited approval to this Pennsylvania RACT regulation.

EFFECTIVE DATE: This final rule is effective on April 22, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 566–2180, at the above EPA Region III address.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1997 (62 FR 43134), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed conditional limited approval of the Pennsylvania RACT regulation for NO_X and VOC sources. (Pennsylvania Chapters 129.91 through 129.95). The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection (PA DEP, then known as the Pennsylvania Department of Environmental Resources) on February 4, 1994. This submittal was amended with a revision on May 3, 1994 correcting and clarifying the presumptive NO_X RACT requirements under Chapter 129.93(b)(4). The submittal was again amended on September 18, 1995 by the withdrawal from EPA consideration of provisions 129.93(c)(6) and (7) pertaining to best available control technology (BACT) and lowest achievable emission rate (LAER). A description of Pennsylvania's SIP revision and EPA's rationale for granting it conditional limited approval were provided in the NPR and shall not be restated here.

Comments Received on EPA's Proposed Action

In response to the August 12, 1997 proposed action, EPA received comments from PADEP. The PADEP comments were the only ones received. The comments relevant to the rulemaking and EPA's responses follow below. A more detailed discussion can be found in the Technical Support Document (TSD) prepared on this rulemaking. A copy of the TSD may be obtained from the EPA Regional Office listed in the **ADDRESSES** section of this document.

Comment 1

Pennsylvania states that the Clean Air Act (the Act) RACT requirements do not specify that "upfront" emission limitations for each source or source category must be included in a RACT SIP. The Pennsylvania RACT regulation requires the submission of RACT plans, sets forth a requirement to perform a top-down RACT analysis and requires implementation of RACT by no later than May 31, 1995.

Response 1

The Act requires the State to submit RACT rules for major sources not covered by a control techniques guideline (CTG) by November, 15, 1992 and for sources to implement RACT by May 31, 1995. Implementation of RACT would require that specific requirements are set forth, including appropriate emission limitation requirements and monitoring and recordkeeping requirements. The Pennsylvania RACT regulation, while strengthening the SIP by establishing the requirement for sources to submit RACT plans, general procedures to determine RACT, and a schedule, does not provide the necessary specific requirements for each subject source so that RACT can be implemented by May 31, 1995. Nor does it provide the certainty in terms of emission reductions that will be achieved to enable the State to perform the analyses required for an attainment demonstration.

Without certainty as to the control requirements that would apply to sources, EPA cannot determine at this point in time whether all major non-CTG sources are subject to appropriate and enforceable RACT requirements. For that reason, EPA has long taken the position that RACT rules may not merely be procedural rules that require the source and the State to later agree to an appropriate level of control; rather the rules submitted to meet the RACT requirement of the Act must identify the appropriate level of control for source categories or for individual sources. EPA does not believe that it can fully approve the Commonwealth's plan as providing for RACT in accordance with section 182(b) unless and until the Agency can review the State-adopted control requirements to determine whether such controls are "reasonably available." EPA was upheld on this interpretation of RACT in *State of Michigan* v. *Thomas*, 805 F.2d 176 (6th Cir. 1986) (interpreting the RACT requirement in section 172 of the pre-amended CAA). However, although EPA does not believe that this procedural rule, standing alone, meets the RACT requirements of section 182(b), EPA does believe that it will help the State achieve healthier air by requiring sources to identify and implement control requirements. Therefore, while EPA cannot fully approve this rule as meeting the section 182(b) RACT requirement, the Agency does believe that it can and should be approved into the SIP. Consequently, EPA is granting limited approval to the Pennsylvania RACT regulation on the basis that it strengthens the SIP.

Comment 2

Pennsylvania states that by accepting the Pennsylvania RACT regulation as complete, EPA has determined that the case-by-case process contained within that regulation meets the requirements of the Act. Pennsylvania further states that the completeness criteria include a requirement for numeric emission limitations so that if EPA believes that emission limitations were appropriate for any of the RACT source categories, it should have found the Pennsylvania RACT submittal incomplete. By not finding the Pennsylvania submittal incomplete, EPA has accepted the Pennsylvania regulation as not needing numeric emission limitations.

Response 2

The completeness review and the approvability determination are two separate processes as explicitly recognized in the Clean Air Act. The completeness criteria in 40 CFR Part 51, Appendix V (adopted pursuant to section 110(k)(1)(A)) provide the means to ensure that the administrative requirements of SIP submittals are met and that all the information necessary to judge approvability of the SIP submittal is included in the submittal. The Act provides that after EPA determines a submission is complete or it is deemed complete, then it provides for EPA to approve or disapprove the submission (section 110(k)(2) and (3)). Consequently, a determination of completeness does not presume approvability. The criteria used to judge approvability of the Pennsylvania RACT regulation are not the same as the completeness criteria. EPA's determination of completeness regarding the Pennsylvania RACT regulation simply meant that EPA had the materials necessary to make a decision as to approvability of the regulation. In the August 12, 1997 proposed rulemaking notice EPA provided the rationale for its proposed decision regarding the approvability of the Pennsylvania RACT regulation.

Theoretically, EPA could have found the Pennsylvania RACT SIP submittal incomplete because the Part 51 Appendix V completeness criteria at 2.2(g) states that the submittal should contain evidence of emission limitations, among other elements. There are two compelling reasons why EPA did not make such a finding and why such a rigid interpretation of the completeness criteria is counterproductive. First, the completeness criteria in Appendix V must be applied to all SIP submittals where numeric emission limitations are not expected or required. Such SIP submittals include air quality plans (attainment demonstrations, rate of progress plans) and the maintenance plans that must accompany requests to redesignate areas. The rigid interpretation of the completeness criteria could warrant finding these types of SIP submittals incomplete. It is not the intent of the Appendix V completeness criteria to reject as incomplete all SIPs that do not contain numeric emission limitations. Second, it is possible that RACT for certain sources and source categories could consist of requirements that do not specifically include numeric emission limitations, but instead have other kinds of emission limitations. For instance, RACT can consist of operational requirements therefore, EPA did not apply the completeness criteria rigidly to exclude from consideration any RACT submittal that did not contain numeric emission limitations for every subject source. Furthermore, even if EPA was in error finding the Pennsylvania submission incomplete, EPA would not be precluded from finding a deficiency in the submittal package in the approval process.

Comment 3

Pennsylvania states that section 182 of the Act requires provisions to provide for RACT, but not specifically for numeric emission limitations. Furthermore, section 110 provides for numeric emission limitations where

necessary, indicating that there are times when emission limitations are not necessary.

Response 3

Numeric emission limitations are not a requirement for every SIP submittal. For SIPs such as emission inventory SIPs or maintenance plans, emission limitations do not make sense and are not required. This, however, does not preclude finding that emission limitations are appropriate and necessary for certain SIPs such as those establishing RACT requirements for certain source categories.

Comment 4

EPA's definition and interpretation of RACT expressly authorizes case-by-case RACT determinations. If EPA has changed its position, it has an obligation to revoke all prior inconsistent SIP approvals, issue SIP deficiency notices and subject all other states to the same rules as being applied in Pennsylvania.

Response 4

EPA's RACT definition recognizes that RACT may be determined on a case-by-case basis. However, under the Act, EPA is required to issue CTGs, which establish presumptive RACT requirements for various source categories. States generally use the CTGs to adopt RACT regulations that apply based on source categories but may choose to develop source-specific RACT rules if compelling reasons exist. For source categories not covered by a CTG, States may develop a general RACT requirement or they can develop RACT on a source-by-source basis. EPA's acknowledgment of the appropriateness of case-by-case RACT determinations does not mean that process-oriented RACT regulations, such as Pennsylvania's, meet the section 182(b)(2) requirements of the Act. Rather, for the reasons provided in response 1, above, EPA believes that the case-by-case RACT submissions must be submitted and approved in order to determine that the State has met the RACT requirement.

Comment 5

EPA states in its proposal that the Section 129.93 presumptive requirements for large coal-fired combustion units constitutes RACT for this source category. Therefore, EPA has accepted a control technology requirement alone as RACT and Pennsylvania should receive full approval for submission of RACT for this source category.

Response 5

EPA has stated, and Pennsylvania acknowledged in its September 23, 1996 letter, that even those sources subject to the presumptive requirement in Pennsylvania's Chapter 129.93 must submit RACT proposals to EPA for SIP approval. Pennsylvania Chapter 129.93 contains a presumptive requirement of low-NO_X burners with separate overfired air for coal-fired boilers with rated heat inputs of equal to or greater than 100 mmBTU/hr, but does not provide any numeric emission limitations. The condition that Pennsylvania must meet in submitting all sources subject to the Chapter 129.93 low-NO_X burner and separate overfired air control technology requirement reflects EPA's consistent position that control technology alone for these kinds of sources is not RACT. The submittal of these source RACTs as case-by-case RACT determinations using the procedures contained in Pennsylvania's RACT regulation (Chapter 129.91 and 129.92), in conjunction with EPA approval of these RACT proposals, will satisfy the section 182 RACT requirements of the Act for this group of sources. EPA and the Pennsylvania regulations define RACT as "the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility" (December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to EPA Regional Adminstrators and 25 Pa. Code, Subpart C Article III, Chapter 121). Installation of control technology alone does not ensure that the lowest emission limits are being achieved. Consequently, in the ideal case, RACT for all sources would include numeric emission limitations and a control technology requirement. The practical approach, however, warrants obtaining numeric emission limitations only where technically and economically feasible. Numeric emission limitations are necessary and appropriate for coal-fired boilers rated ≥ 100 mmBTU/hr. As a source category, these coal-fired boilers, almost exclusively utility boilers, are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States. Establishment of numeric emission limitations at emission sources where operating and maintenance conditions can significantly affect the amount of emissions is prudent. Large coal-fired combustion units ≥ 100 mmBTU/hr, even with emission controls, can emit NO_X at significantly different emission rates if operation and maintenance of the units is not closely monitored. Since methods to accurately measure NO_X emissions from these large combustion units exist, compliance with numeric emission limitations is feasible. The operating circumstances, size and impact of these large boilers, together with the ability to accurately measure emissions, warrants the use of numeric emission limitations. Smaller combustion sources generally do not impact NO_X emissions to as large an extent as the large coal-fired combustion units. Numeric emission limitations on smaller units would be ideal, although requiring such numeric emission limitations on small combustion units is generally difficult because of the lack of accurate monitoring methods. Consequently, numeric emission limitations are appropriate to include in the RACT requirements for some sources, but are potentially infeasible as RACT for other types of sources. Pennsylvania's Chapter 129.93 (b) does not contain additional requirements that EPA has determined are appropriate for this source category, including numeric emission limitations. In the proposed rulemaking notice EPA clearly identified this deficiency in Section 129.93 (62 FR 43134). As EPA stated in the proposal, a technology requirement alone for this source category does not constitute RACT. EPA's conditional limited approval is based on the determination that Pennsylvania's process-oriented SIP does not fully satisfy the section 182(b)(2) RACT requirement of the Act.

Comment 6

Pennsylvania's large combustion units using continuous emission monitoring systems will be evaluated by the Department and will have their emission limitations submitted to EPA and implemented through the state operating permit program or through the Title V permit program, making these emission limitations federally enforceable. EPA and the public will have an opportunity to comment on those emission limitations at that time.

Response 6

EPA is required to determine through the SIP approval process whether the state has established emission limitations and other applicable requirements that meet RACT. The EPA review procedures, under the permitting process for the state operating permit program or the Title V program, provide for the federal enforceability of emission limitations. They are not a substitute for the kind of EPA approval required by Title I for establishing initial requirements for SIPs. Opportunity for

EPA to comment on a permit with a limited time period for veto are not sufficient for EPA to fulfill its statutory obligation to determine whether applicable requirements meet the RACT requirements of the Act. The Title V program is a means to incorporate all of the applicable requirements and not a mechanism to establish initial requirements. Process-oriented SIPs such as Pennsylvania's do not contain the necessary underlying RACT control requirements.

Comment 7

Pennsylvania states that it has submitted RACT proposals to EPA for all sources subject to the Pennsylvania regulation section 129.93(b)(1) requirement as of September 23, 1996. Pennsylvania further states that EPA agreed that if the sources are located in Allegheny or Philadelphia Counties, the respective local air regulatory agencies are responsible for these RACT proposals and that EPA would limit the applicability of Clean Air Act sanctions to those jurisdictions. Pennsylvania states that if EPA grants conditional as opposed to full approval of the RACT SIP, then this rulemaking action should reflect the agreements regarding Philadelphia and Allegheny County.

Response 7

As an initial matter, Pennsylvania is mistaken in its assertion that it had submitted RACT proposals for all sources subject to section 129.93(b)(1) by September 23, 1996. Section 129.93 (b)(1) pertains to those coal-fired combustion units rated at greater than or equal to 100 million BTU/hr. Since September 23, 1996, PADEP has made SIP submittals to EPA for sources subject to section 129.93(b)(1). Further, EPA is aware that there remain sources in Pennsylvania subject to 129.93(b)(1) for which PADEP still has not submitted RACT proposals to EPA.

EPA's regulation for the automatic imposition of sanctions pursuant to section 179(a) of the Act provides that sanctions will be applied in the "affected area." 40 CFR 52.31; *see* 59 FR 39832, 39854 (Aug. 4, 1994). The affected area is defined as the geographic area subject to the relevant Act requirement. 40 CFR 52.31(b)(3). Under section 182(b), the relevant Act requirement at issue, Pennsylvania must submit RACT rules for each nonattainment area. Therefore, it is the nonattainment area as a whole that is the area subject to the relevant Act requirement. Consequently, if PA DEP fails to complete its SIP commitments for any portion of the Philadelphia or Pittsburgh nonattainment areas, EPA must apply section 179 sanctions to the entire affected nonattainment area.

Comment 8

Pennsylvania disagrees with EPA's proposed de minimis methodology for purposes of determining when the Pennsylvania RACT regulation can be converted to a full approval action. Pennsylvania states that many sources have been added to the 1990 emission inventory since 1990 and that EPA should allow the Department to use either 1990 or a more recent inventory for this de minimis calculation.

Response 8

EPA formulated its policy for de minimis (as the term relates to the conversion of a generic RACT rule to full SIP approval) based on the 1990 emission inventory because this inventory is public, required to go through public notice and comment before changes are made to it, and represents the baseline of emissions used for air quality planning purposes. The Act specifies the use of the 1990 emission inventory for air quality planning purposes in order to provide for an established baseline from which emission reductions can be determined. If Pennsylvania has discovered additional sources or other inaccuracies in the 1990 emission inventory, it should correct those omissions and inaccuracies through the processes required to change the 1990 emission inventory. Using a later calendar year for the de minimis calculation raises issues related to the accessibility, verifiability, and consistency of the data. For purposes of determining whether a de minimis amount of emissions remain to be covered by specific SIP approved RACT requirements in converting the rulemaking action from conditional to limited approval and from limited approval to full approval, and in order allow for consistent comparison, the baseline of emissions that is used must be public, verifiable, and consistent.

Comment 9

Pennsylvania states that EPA's failure to address comments submitted to the January 12, 1995 proposed rulemaking is inappropriate.

Response 9

The August 12, 1997 proposed rulemaking for the Pennsylvania generic VOC and NO_x RACT regulation withdraws the January 12, 1995 proposal and proposes conditional limited approval for the Pennsylvania RACT regulation. The August 1997 proposal completely replaces the January 1995 proposal. In the August 1997 notice, EPA stated that comments made to the January 1995 proposal would not be addressed and invited all interested parties to submit comments on the August 1997 proposal. Only Pennsylvania submitted comments on the August 1997 proposal. In addition, the January 1995 proposed rulemaking actions were different from the August 1997 rulemaking action. EPA could not presume that comments made for one type of rulemaking action would be appropriate for another rulemaking action. If interested parties that commented on the January 1995 proposal believed that the same comments applied to the August 1997 proposal, the comments should have been resubmitted in response to the August 1997 proposal. There is no statutory obligation for EPA to respond to comments on a proposed rule where EPA has withdrawn the proposed rule and is not, therefore, taking final action on that proposal.

Comment 10

Pennsylvania believes that EPA should fully and unconditionally approve the Pennsylvania RACT regulation. In the alternative, EPA should grant conditional approval based on Pennsylvania meeting the conditions of its September 23, 1996 commitment letter to EPA.

Response 10

For the reasons provided in response to the previous comments, EPA believes it cannot fully approve Pennsylvania submission nor can it grant a conditional approval. Sections 182(b)(2) and 184(b)(4) of the Act require that Pennsylvania implement RACT for all major stationary sources. EPA believes, however, as stated in a November 7, 1996 policy memo, that it is possible to eventually fully approve the state generic RACT regulations like Pennsylvania's provided certain criteria are met. These criteria are described in detail in the August 12, 1997 proposed rulemaking notice (62 FR 43134) and summarized below in the Terms of Conditional Approval and Conversion of Limited Approval to Full Approval sections. This policy provides that such approval does not exempt any major source from RACT requirements but instead provides for a de minimis deferral of RACT. EPA fully expects every major VOC and NO_x source to implement RACT as required under sections 182 and 184 of the Act and for the state to submit those rules for approval into the SIP. Specifically, the November 7, 1996 EPA policy memorandum from Sally Shaver,

Director, Air Quality Strategies and Standards Division, to all Regional Air Division Directors, sets forth the methods for determining whether all but a de minimis amount of emissions are covered by a RACT rule. For VOC sources subject to the generic RACT regulation under consideration (i.e., non-CTG VOC sources), the state would need to submit, and then EPA must approve, the RACT requirements for all but a de minimis amount of VOC source emissions. The method used to determine whether a state has met the VOC de minimis deferral level is to compare the baseline of 1990 non-CTG VOC emissions with those non-CTG VOC emissions that have yet to have RACT approved into the SIP. Generally, EPA does not expect to defer more than 5% of the emissions calculated in the above manner in order to fully approve a state generic VOC RACT regulation. For NO_X sources, the de minimis deferral level is determined by using the 1990 NO_X emissions, excluding the utility [1] NO_X emissions. The remaining 1990 non-utility emissions are then compared with the amount of non-utility NO_X emissions that have yet to have RACT approved into the SIP. Generally, EPA expects all utility RACTs to be approved prior to application of this de minimis deferral policy and possible conversion of the generic RACT conditional approval to full approval. As with VOC source RACT, EPA does not expect to defer more than 5% of the emissions calculated in this manner in order to fully approve a state generic NO_X RACT regulation. States that have used a de minimis argument to exempt certain NO_X sources or groups of NO_X sources from RACT requirements, or from making a demonstration that what is being required is RACT, cannot again apply the use of a de minimis rationale with respect to conversion of their generic RACT rules to full approval. For these states, conversion of the generic RACT rule to full approval requires submittal and approval of all the remaining RACT subject sources. EPA continues to believe that the November 1996 policy is appropriate for addressing rulemaking options for process-oriented SIPs. Consequently, through this rule EPA is requiring that to receive full approval of its generic NO_X RACT regulation Pennsylvania will need to have had all utility RACT determinations approved by EPA and all but a de minimis level of non-utility RACT determinations approved into the SIP. Full approval of Pennsylvania's generic RACT regulation in accordance with this policy does not change Pennsylvania's statutory obligation to implement RACT for all major sources. No major VOC or NO_X source is being exempted from RACT requirements through today's rulemaking.

[1] "Utility" is defined as in 40 C.F.R. Part 72.2 (Acid Rain Program General Provisions—Definitions).

Terms of the Conditional Approval

The Commonwealth's September 23, 1996 commitment letter includes the following conditions: Case-by-case RACT proposals for all major VOC and NO_X sources must be submitted as case-by-case SIP revisions including those sources covered by 25 Pa. Code § 129.93(b)(1) by no later than [INSERT date 12 months after the effective date of EPA final conditional approval]. Furthermore, by no later than [INSERT date 12 months after the effective date of EPA final conditional approval], Pennsylvania will: (1) certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to PADEP; or (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in this rulemaking document.

Once EPA has determined that the Commonwealth has satisfied this condition, EPA shall remove the conditional nature of this approval and the Pennsylvania VOC and NO_X regulations SIP revision will, at that time, retain limited approval status. Should the Commonwealth fail to meet the condition specified above, the final conditional limited approval of the Pennsylvania VOC and NO_X RACT regulation SIP revision shall convert to a disapproval.

Conversion From Limited Approval to Full Approval

Conversion of the Pennsylvania VOC and NO_X RACT regulation to full approval will occur when EPA has approved all of the case-by-case RACT proposals as SIP revisions.

As indicated previously, other specific requirements of and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. Further details are contained in the TSD which may be obtained from the EPA Region III office listed in the **ADDRESSES** section above.

Final Action

EPA is granting conditional limited approval to the Pennsylvania VOC and NO_X RACT regulation as a revision to the Pennsylvania SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals and conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k)(3), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that a conversion of this action to a disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor

does it substitute a new federal requirement.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the conditional limited approval of the Pennsylvania VOC and NO_x RACT regulation, must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the conditional limited approval of the Pennsylvania generic VOC and NO_x RACT regulation may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 4, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(129) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(129) Limited approval of revisions to the Pennsylvania Regulations, Chapter 129.91 through 129.95, pertaining to VOC and NO_x RACT submitted on February 4, 1994 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection):

(i) Incorporation by reference.

(A) Letter of February 4, 1994 from the Pennsylvania Department of Enviromental Resources transmitting Pennsylvania VOC and NO_x RACT regulations, Chapter 129.91 through 129.95.

(B) Pennsylvania Reasonably Available Control Technology Requirements for Major Stationary Sources of Volatile Organic Compounds and Oxides of Nitrogen regulation, Chapter 129.91 through 129.95, effective on January 15, 1994, except for Chapter 129.93(b)(4).

(C) Letter of May 3, 1994 from the Pennsylvania Department of Environmental Resources amending the Pennsylvania regulation, Chapter 129.93 (b)(4).

(D) Pennsylvania Reasonably Available Control Technology Requirements for Major Stationary Sources of Volatile Organic Compounds and Oxides of Nitrogen regulation, Chapter 129.93 (b)(4), effective April 23, 1994.

(E) Letter for September 18, 1995 from the Pennsylvania Department of Environmental Protection amending Pennsylvania's February 4, 1994 submittal to EPA by withdrawing Chapter 129.93(c)(6) and (7) from EPA consideration.

(ii) Additional material.

(A) Remainder of February 4, 1994 State submittal.

(B) Letter of September 23, 1996 from Pennsylvania Department of Environmental Protection agreeing to meet certain conditions by no later than 12 months after the publication of the final conditional rulemaking. These conditions are:

(1) Pennsylvania certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements (including those subject to 25 Pa. Code section 129.93(b)(1)) currently known to PADEP; or

(2) Demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in the final rulemaking.

3. Section 52.2023 is amended by adding paragraph (k) to read as follows:

§ 52.2023 Approval status.

* * * * * *

(k) Conditional limited approval of revisions to the Pennsylvania Regulations, Chapter 129.91 through 129.95, pertaining to VOC and NO_x RACT submitted on February 4, 1994 and amended on May 3, 1994 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection).

4. Section 52.2026 is amended by adding paragraph (e) to read as follows:

§ 52.2026 Conditional approval.

* * * * * *

(e) Revisions to the Pennsylvania Regulations, Chapter 129.91 through 129.95, pertaining to VOC and NO_x RACT submitted on February 4, 1994 and amended on May 3, 1994 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection) is conditionally approved. Pennsylvania must meet the following conditions by no later than 12 months after the

publication of the final conditional rulemaking. These conditions are:

(1) Pennsylvania certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements (including those subject to 25 Pa. Code section 129.93(b)(1)) currently known to PADEP; or

(2) Demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in the final rulemaking.

[FR Doc. 98–7306 Filed 3–20–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA025–5033; FRL–5977–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Commonwealth of Virginia's State Implementation Plan (SIP) under which the Commonwealth will be implementing the Prevention of Significant Deterioration of Air Quality program (PSD program) pursuant to its own SIP regulations. The Commonwealth had been implementing the PSD program under the terms of an EPA delegation to the Commonwealth of the authority to implement the Federal PSD regulations. Under the PSD program those constructing new major sources of a criteria air pollutant in areas that are attainment for the National Ambient Air Quality Standards (NAAQS) set for that pollutant, or constructing major modifications to such sources in such areas, must demonstrate that emissions from those sources will not cause violations of the NAAQS, or significantly deteriorate air quality beyond specified ambient increments, and that the emissions will be controlled by Best Available Control Technology (BACT). Additional provisions relevant to Class I areas may also apply.

EFFECTIVE DATE: This final rule is effective on April 22, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, U.S. EPA Region III, Air Protection Division, Permits & Technology Assessment Section (3AP11), 841 Chestnut Building, Philadelphia, PA. Phone: (215) 566–2061. Internet: "Chalmers.Ray@epamail.epa.gov".

SUPPLEMENTARY INFORMATION:

I. Background

In a series of submittals, the Virginia Department of Air Pollution Control (DAPC), now known as the Department of Environmental Quality (VDEQ), submitted the elements for a revision to its State Implementation Plan (SIP) that would establish a program for the prevention of significant deterioration of air quality (PSD) for the review and permitting of new major sources and major modifications (the PSD program). On January 24, 1996, EPA proposed to disapprove or, in the alternative, to conditionally approve Virginia's PSD SIP revision. (61 FR 1880). EPA proposed disapproval because, in the agency's view, the Commonwealth's limitation of access to state judicial appeal (also known as standing) of permitting actions was inconsistent with the agency's interpretation that existing law and regulations require an opportunity for state judicial review under approved PSD SIPs by permit applicants and affected members of the public. In EPA's proposed rule, comment was solicited on the agency's view that a limited judicial review did not meet the minimum requirements for standing required for PSD SIP programs under the Clean Air Act (CAA) and EPA's implementing regulations.

Alternatively, if the agency determined after reviewing public comment that provisions for judicial standing were unnecessary, EPA proposed to conditionally approve Virginia's PSD SIP. EPA determined that Virginia was still required to amend the Commonwealth's PSD regulations that existed at the time of the proposed rule to include revised increments for particulate matter (PM) as promulgated by EPA on June 3, 1993, and EPA's revised "Guidelines for Air Quality Models", promulgated on July 20, 1993. More detailed information on EPA's proposed rulemaking actions and an analysis of Virginia's PSD regulations can be found in the proposed rule published on January 24, 1996 (61 FR 1880) and the Technical Support Document for the proposed rule.

II. Analysis

Subsequent to the publication of EPA's proposed rule on Virginia's PSD program, the deficiencies noted above were corrected. Regarding judicial standing in Virginia, EPA published a December 5, 1994, final rule in which EPA disapproved Virginia's Title V operating permits program for, among other things, the failure to provide adequate judicial standing. (59 FR 62324). Virginia appealed this decision before the Fourth Circuit Court of Appeals, which affirmed EPA's disapproval, 80 F.3d 869 (1996), and Virginia subsequently appealed its case to the U.S. Supreme Court. On January 21, 1997, the Supreme Court decided not to hear Virginia's case. In preparation for this eventuality, Virginia had previously adopted revised and acceptable judicial standing provisions, at sections 10.1–1318, 10.1–1457, and 62.1–44.29 of the Code of Virginia, but specified that the revised provisions would become effective only if Virginia's suit against EPA was unsuccessful. The Supreme Court's refusal to take Virginia's appeal has caused Virginia's revised judicial standing provisions to become effective, and Virginia's standing provisions are now fully acceptable. Virginia's revised standing law now provides judicial standing to any person who "meets the standard for judicial review of a case or controversy pursuant to Article III of the United States Constitution." It further provides that "a person shall be deemed to meet such standard if: (i) Such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court." This new standard is consistent with the standard for Article III standing articulated by the Supreme Court in *Lujan* v. *Defenders of Wildlife*, 112 S. Ct. 2130 (1992). Consequently, EPA has determined that Virginia's standing provisions meet the requirements of the CAA and 40 CFR 51.166.

On February 6, 1997 Virginia submitted to EPA an Attorney General's Opinion affirming that the revised standing law would go into effect on

February 15, 1997. This action on the part of the Commonwealth corrects any deficiency in standing that might have been determined by EPA as a result of reviewing public comment on this issue. The Commonwealth also submitted revised regulations on March 20, 1997 that corrected the deficiencies identified with the proposed conditional approval. Since the deficiencies identified in EPA's proposed rule no longer exist, EPA is taking action to fully approve Virginia's PSD program as a SIP revision.

After making its original PSD submittal to EPA on December 17, 1992, in 1995 Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code § 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On December 29, 1997, the Office of the Attorney General provided a legal opinion that states, with regard to the Privilege law, that the Commonwealth is "required by Federal law to have full authority to enforce" the PSD program, "both civilly and criminally," therefore, "all aspects of Virginia's environmental laws and regulations that are necessary to implement and enforce its PSD program in a manner that is no less stringent than its Federal counterpart are necessarily "required by law." Thus, "[r]egarding § 10.1–1198, documents or information needed for civil or criminal enforcement under the PSD program could not be privileged * * *"

Virginia's Immunity law, Va. Code § 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's December 29, 1997 opinion states that the quoted language renders this statute inapplicable to PSD enforcement.

Thus, EPA has determined that Virginia's Privilege and Immunity legislation will not preclude the Commonwealth from enforcing its PSD program consistent with the CAA's requirements.

III. Response to Comments

EPA received comments supporting EPA's proposed disapproval of the Commonwealth's PSD SIP from environmental, public interest, and legal action organizations, and from private citizens. Each of these groups and citizens stressed that EPA should not approve Virginia's PSD SIP because Virginia had not provided all interested and qualified parties with the legal standing to challenge PSD permitting actions in State courts or through administrative appeal. EPA also received adverse comment related to the proposed disapproval from the Commonwealth of Virginia and several groups representing business and industrial sources. The latter alternatively indicated their support of the proposed conditional approval.

Although EPA solicited comment on whether or not legal standing should be grounds for disapproving Virginia's PSD program, Virginia's adoption of revised standing provisions, as noted above, eliminates the need to consider this issue prior to taking a final rulemaking action on the PSD SIP. Therefore, EPA is not commenting or otherwise announcing a decision on this matter at this time.

One environmental group commented in favor of EPA's disapproval of the Commonwealth's PSD SIP because it believed that the Commonwealth's Air Board was "* * * unprepared to assume responsibility for implementation of the state's PSD program in the absence of a large EPA presence * * *" 40 CFR part 51 and section 110 of the Clean Air Act establish criteria by which EPA is to evaluate and approve a State Implementation Plan. EPA has determined that the Commonwealth has met the requirements of section 110 and 40 CFR part 51 and has the resources and necessary authority to carry out a PSD program. In fact, the Commonwealth has been implementing the Federal PSD program since 1981 under an EPA delegation of authority. Should EPA identify deficiencies in the Commonwealth's PSD program whereby the Commonwealth can no longer demonstrate that its program meets the criteria established under section 110 of the Clean Air Act and the regulations in part 51, EPA has the authority to withdraw its approval.

In addition, while EPA is approving the Commonwealth's PSD SIP, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of the Commonwealth's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Virginia are consistent with the requirements of the CAA, EPA regulations, and the SIP. EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of Title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by states. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to Title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is "not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan."

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or

both, EPA cannot intervene unless the state decision fails to comply with applicable requirements. Thus, EPA may not intrude upon the significant discretion granted to states under new source review programs, and will not "second guess" state decisions. Rather, in determining whether a Title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the operating permit.

IV. Today's Action

EPA is approving a SIP revision submitted by the Commonwealth of Virginia establishing a preconstruction permitting program for the prevention of significant deterioration as required by section 110 of the Clean Air Act. EPA is amending 40 CFR 52.2420 to incorporate this revision into Virginia's SIP. At the same time, EPA is withdrawing from Virginia's SIP the Federal PSD requirements which EPA incorporated into Virginia's SIP on August 7, 1980, and is withdrawing the Commonwealth's authority to implement these Federal PSD program requirements, an authority which EPA delegated to the Commonwealth on June 3, 1981. Accordingly, after the effective date of this final rule the Commonwealth will issue PSD permits under the authority of its SIP-approved program. The PSD permits which the Commonwealth issued prior to this rule under its delegated authority to implement the Federal PSD requirements continue in effect.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C.603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric* Co. v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action approving the Commonwealth of Virginia—s PSD SIP must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule approving the Commonwealth of Virginia's PSD SIP does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth of Virginia's PSD SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: February 27, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(123) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(123) Revisions to the Virginia Regulations for the Prevention of Significant Deterioration submitted on March 20, 1997 by the Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of March 20, 1997 from the Department of Environmental Quality transmitting a SIP revision for regulations for the Prevention Significant Deterioration.

(B) Letter of February 18, 1993 from the Department of Air Pollution Control transmitting a SIP revision for regulations defining the prevention of significant deterioration areas.

(C) Letter of January 13, 1998 from the Depart of Environmental Quality transmitting a SIP revisions to the Virginia Administrative Code numbering system.

(D) The following provisions of the Virginia Regulations for the Control and Abatement of Air Pollution:

(*1*) Regulations for Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas, 9 VAC 5–80–1700 through 9 VAC 5–80–1970, published in the Virginia Register of Regulations on November 25, 1996, effective January 1, 1997.

(*2*) Appendix L to VR 120–01, renumbered as 9 VAC 5–20–205, Prevention of Significant Deterioration Areas, published in the Virginia Register of Regulations on December 2, 1991, effective January 1, 1992.

(ii) Additional material.

(A) Remainder of March 20, 1997 State submittal.

3. Section 52.2451 is revised to read as follows:

§ 52.2451 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are met since the plan includes approvable procedures for the Prevention of Significant Air Quality Deterioration.

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21(b) through (w) are hereby removed from the applicable state plan for the Commonwealth of Virginia.

[FR Doc. 98–7305 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 97–248]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communication Commission.

ACTION: Final Rule; establishment of effective date.

SUMMARY: The Commission's revised its rule on Subscriber Carrier Selection Changes. Section 64.1150(e)(4) and 64.1150(g) contained information collection requirements which shall become effective March 23, 1998.

EFFECTIVE DATE: The amendments to 47 CFR 64.1150(e)(4) and 64.1150(g) shall become effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Anita Cheng, Common Carrier Bureau, (202) 418–0960.

SUPPLEMENTARY INFORMATION: On July 14, 1997, the Commission adopted an order revising its subscriber carrier selection change rules, a summary of which was published in the **Federal Register**. *See* 62 FR 43477, August 14, 1997. Because the amendment to 47 CFR 64.1150(e)(4) and 64.1150(g) impose new or modified information collection requirements, they could not become effective until approved by the Office of Management and Budget ("OMB"). OMB approved these rule changes on January 27, 1998. The **Federal Register** summary stated that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval. This statement suggests that further action by the Commission is necessary to establish the effective date, notwithstanding the preceding statement in the summary that the rule changes imposing new or modified information collection requirements would become effective upon OMB approval. *See* 62 FR 43477, August 14, 1997. In order to resolve this matter in a manner that most appropriately provides interested parties with proper notice, the amendments to 47 CFR §§ 641150(e)(4) and 641150(g) shall become effective March 23, 1998. This publication satisfies the statement that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval.

List of subjects in 47 CFR Part 64

Communications common carriers, consumer protection, telecommunications, Federal Communications Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–6982 Filed 3–20–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 031398B]

Fisheries of the Exclusive Economic Zone Off Alaska; At-Sea Scales Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of program implementation.

SUMMARY: NMFS issues this notice of implementation of the At-Sea Scales Program for the groundfish fisheries off Alaska. The purpose of this action is to announce the dates on which NMFS will begin to accept requests from scale manufacturers that a model of scale be placed on the list of eligible at-sea scales and requests from vessel owners for a scale inspection.

DATES: Effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION:

On February 4, 1998, NMFS implemented the At-Sea Scales Program (63 FR 5835, February 4, 1998) establishing the requirements for scales approved by NMFS to weigh catch at sea. At the time the final rule was published, NMFS did not set a specific date to begin accepting requests that a scale be placed on the list of eligible at-sea scales under § 679.28(b)(1) and requests for a scale inspection under § 679.28(b)(2) because no vessels currently are required to weigh catch on scales approved under this program and because of uncertainty about the timing of staff and budget resources to

implement the program. However, in order to respond to requests for scale inspections on vessels currently installing scales voluntarily for commercial or research fisheries and in anticipation of possible scale requirements in the near future, NMFS announces full implementation of the At-Sea Scales Program. On April 1, 1998, and thereafter, scale manufacturers may submit the information described at § 679.28(b)(1), which is required in order for a model of scale to be placed on NMFS's list of eligible at-sea scales.

On June 1, 1998, and thereafter, vessel owners may request inspections of scales installed on vessels from inspectors authorized by NMFS under § 679.28(b)(2). Scale inspections will be conducted within 10 working days of receipt of a request for a scale inspection by the inspectors authorized by NMFS.

Dated: March 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7463 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 63, No. 55
Monday, March 23, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–330–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–301, –311, –314, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–301, –311, –314, and –315 series airplanes. This proposal would require installation of additional wiring and new electrical connectors for the lights in the forward end of the passenger overhead compartments. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent severe overheating of the electrical connectors for hte lights in the forward end of the passenger overhead compartments, which could result in smoke and fire in the passenger cabin.

DATES: Comments must be received by April 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–330–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7511; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–330–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person any obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–330–AD, 1601 Lnid Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8, –301, –311, –314, and –315 series airplanes. TCA advises, that, on two occasions, the electrical connectors for the lights in the forward end of the passenger cabin overheated on certain airplanes on which the Heath Techna Interior is installed. The overheated connectors produced an odor followed by visible smoke. Such overheating may have been caused by connectors having insufficient electrical load capacity. This condition, if not corrected, could result in smoke and fire in the passenger cabin.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin S.B. A8–33–39, Revision 'A,' dated October 24, 1997, which describe procedures for installation of additional wiring and new electrical connectors for the lights in the forward end of the passenger overhead compartments. The new connectors provide a higher electrical load capacity than those installed previously. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. TCA classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–97–17, dated September 26, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are

certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $122 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,620, or $962 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amendment]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 97–NM–330–AD.

Applicability: Model DHC–8–301, –311, –314, and –315 series airplane; serial numbers 100, and 202 through 433 inclusive; excluding serial numbers 271 and 408; certificated in any category.

Note 1: This Ad applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe overheating of the electrical connectors for the lights in the forward end of the passenger overhead compartments, which could result in smoke and fire in the passenger cabin, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, install additional wiring and new electrical connectors for the lights in the forward end of the passenger overhead compartments in accordance with Bombardier Alert Service Bulletin S.B. A8–33–39, Revision 'A,' date October 24, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–17, dated September 26, 1997.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7225 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–43–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes. This proposal would require modification of certain fastener holes of the center wing. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking in this area, which could result in reduced structural integrity of the wing.

DATES: Comments must be received by April 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–43–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on certain CASA Model CN–235 series airplanes. The DGAC advises that cracks have been found around several fastener holes in the structural joints of the center wing structure of the CASA Model CN–235 fatigue test article. Fatigue cracking in this area, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

Explanation of Relevant Service Information

CASA has issued Service Bulletins SB–235–57–14, Revision 1, dated June 21, 1996, and SB–235–57–05, Revision 2, dated June 21, 1996, which both describe procedures for modification of the fastener holes of the center wing. The modification entails a rototest inspection to detect cracking of certain fastener holes of the center wing; removal of cracking; and cold working the fastener holes of the center wing to increase the expected fatigue life to the design objective for the airplane. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The DGAC classified these service bulletins as mandatory and issued Spanish airworthiness directive 04/94, dated August 1994, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Foreign AD

Operators should note that, although the parallel Spanish airworthiness directive does not mandate the accomplishment of required actions for CASA Model CN–235 series airplane, serial number C–011, the applicability of this proposed AD would include that airplane. Although that airplane was not certificated for civilian operation by the DGAC, the FAA has certificated it as such. The FAA has determined that the unsafe condition addressed in this AD may also exist or develop on that airplane.

Differences Between Proposed Rule and Related Service Bulletins

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repairs, this proposal would require that any repair, other than those specifically identified in the service bulletins, be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that the actions specified in CASA Service Bulletin SB–235–57–14 would be required to be accomplished on one airplane of U.S. registry. These proposed actions would take approximately 220 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $719 per airplane. Based on these figures, the cost impact of this proposed inspection on the single U.S. operator is estimated to be $13,919.

For CASA Model CN–235 series airplane, serial number C–011, on which the actions specified in CASA Service Bulletin SB–235–57–05 would be required to be accomplished, those proposed actions would take approximately 1,900 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $11,330 per airplane. Based on these figures, the cost impact of the proposed actions for that airplane is estimated to be $125,330.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A. (CASA): Docket 97–NM–43–AD.

Applicability: Model CN–235 series airplanes; as listed in CASA Service Bulletins SB–235–57–14, Revision 1, dated June 21, 1996; and SB–235–57–05, Revision 2, dated June 21, 1996; and Model CN–235 having serial number C–011; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the fastener holes of the center wing, which could result in reduced structural integrity of the wing, accomplish the following:

(a) For airplanes listed in CASA Service Bulletins SB–235–57–14, Revision 1, dated June 21, 1996; and SB–235–57–05, Revision 2, dated June 21, 1996: Perform a rototest inspection of the fastener holes of the center wing to detect cracking, in accordance with the applicable service bulletin, at the time specified in paragraph (c) of this AD.

(1) If no crack is found, prior to further flight, cold work the fastener holes in accordance with the applicable service bulletin.

(2) If any crack is found, prior to further flight, remove it in accordance with the service bulletin; repeat the rototest inspection to detect cracking; and cold work the fastener holes, in accordance with the applicable service bulletin. If any crack is found that cannot be removed using the procedures specified in the applicable service bulletin, prior to further flight, repair it in accordance with a method approved by the Manager, nternational Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) For airplane serial number C–011: Perform a rototest inspection of the fastener holes of the center wing to detect cracking, in accordance with CASA Service Bulletin SB–235–57–05, Revision 2, dated June 21, 1996, at the time specified in paragraph (c) of this AD.

(1) If no crack is found, prior to further flight, cold work the fastener holes in accordance with the service bulletin.

(2) If any crack is found, prior to further flight, remove it in accordance with the service bulletin; repeat the rototest inspection to detect cracking; and cold work the fastener holes, in accordance with the service bulletin. If any crack is found that cannot be removed using the procedures specified in the service bulletin, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) Accomplish the inspection required by paragraph (a) or (b) of this AD, as applicable, at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to the accumulation of 17,000 total flight cycles or 37,400 total flight hours, whichever occurs first.

(2) Within 6 months after the effective date of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 04/94, dated August 1994.

Issued in Renton, Washington, on March 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7366 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–18]

Proposed establishment of Class E Airspace; Rush City, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Rush City, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 34, and a Nondirectional Beacon SIAP to Rwy 34, have been developed for Rush City Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action would create controlled airspace with a southwest extension for Rush City Municipal Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–18, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division,

Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Rush City, MN, to accommodate aircraft executing the proposed GPS Rwy 34 SIAP, and the NDB Rwy 34 SIAP, at Rush City Municipal Airport by creating controlled airspace with a southwest extension for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Rush City, MN [New]

Rush City Municipal Airport, MN
(Lat. 45°41′53″ N, Long. 92°57′11″ W)
Rush City NDB
Lat. 45°41′48″ N, Long. 92°57′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Rush City Municipal Airport and within 2.5 miles each side of the 150° bearing from the Rush City NDB, extending from the 6.5-mile radius to 7.5 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,
Manager, Air Traffic Division.

[FR Doc. 98–7380 Filed 3–20–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–19]

Proposed Modification of Class E Airspace; Wooster, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Wooster, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28, Amendment 1, has been developed for Wayne County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would increase the radius of the controlled airspace for Wayne County Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the

Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT:

Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Wooster, OH, to accommodate aircraft executing the proposed GPS Rwy 28 SIAP, Amendment 1, at Wayne County Airpot by increasing the radius of the controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Wooster, OH [Revised]

Wooster, Wayne County Airports, OH
(Lat. 40°52′30″ N, Long. 81°53′18″ W)
Smithville NDB
(Lat. 40°52′30″ N, Long. 81°49′59″ W)

That airspace extending upward from 700 fee above the surface within a 6.5-mile radius of Wayne County Airport and within 3.1 miles each side of the 090° bearing from the Smithville NDB, extending from the 6.5-mile radius to 10.0 miles east of the NDB, excluding that airspace within the Akron, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7379 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–17]

Proposed Modification of Class E Airspace; Madison, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Madison, SD. A Global Positioning System (GPS) Standard Instrument Approach

Procedure (SIAP) to Runway (Rwy) 33, and a VHF Omnidirectional Range/ Distance Measuring Equipment-A (VOR/ DME–A) SIAP, have been developed for Madison Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for Madison Municipal Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Planies, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–17." The postcard will be date/ time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Madison, SD, to accommodate aircraft executing the proposed GPS Rwy 33 SIAP, and the VOR/DME–A SIAP, at Madison Municipal Airport by increasing the radius of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Madison, SD [Revised]

Madison Municipal Airport, SD
(Lat. 44°00'58" N, long. 97°05'09" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Madison Municipal Airport and within 3.0 miles each side of the 341° bearing from the airport, extending from the 6.5-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7378 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–13]

Proposed Modification of Class E Airspace; Rugby, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Rugby, ND. A review of the controlled airspace within the State of North Dakota has indicated a small portion of Class G uncontrolled airspace in the vicinity of Rugby, ND. Controlled airspace extending upward from 1,200 feet above ground level (AGL) is needed to allow the FAA to provide safe and efficient air traffic control services for aircraft executing enroute and terminal instrument procedures. This small portion of uncontrolled airspace causes confusion for both pilots and controllers and does not allow for consistent application of instrument flight rules in a critical area near the Rugby Municipal Airport. This action would eliminate the small portion of uncontrolled airspace approximately 11 nautical miles to the southeast of Rugby, ND.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–13, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to identify Class E airspace at Rugby, ND, to accommodate aircraft executing instrument procedures at and nearby Rugby Municipal Airport. A small portion of uncontrolled airspace to the southeast of the airport would be eliminated. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Rugby, ND [Revised]

Rugby Municipal Airport, ND

(Lat. 48°23'25" N., long. 100°01'27" W.)
Rugby NDB
(Lat. 48°23'16" N., long. 100°01'37" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Rugby Municipal Airport and that airspace extending upward from 1,200 feet above the surface within a 13.0-mile radius of the Rugby Municipal Airport and within 8.3 miles north and 4.0 miles south of the 115° bearing from the Rugby NDB extending from the NDB to 16.1 miles east of the NDB, and within 8.3 miles south and 4.0 miles north of the 314° bearing from the Rugby NDB extending from the NDB to 16.1 miles northwest of the NDB, excluding that airspace within the Minot, ND, and Rolla, ND, Class E airspace areas, and excluding all Federal Airways.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7377 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–16]

Proposed Modification of Class E Airspace; Traverse City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Traverse City, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 36, has been developed for Cherry Capital Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to enlarge the extension to the south of the existing controlled airspace for Cherry Capital Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–16, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 1300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted to triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Traverse City, MI, to accommodate aircraft executing the proposed GPS Rwy 36 SIAP, at Cherry Capital Airport by enlarging the extension to the south of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Traverse City, MI [Revised]

Traverse City, Cherry Capital Airport, MI
(Lat. 44°44'27"N, long. 85°34'57"W)
Traverse City VORTAC
(Lat. 44°40'05"N, long. 85°33'00"W)
Point in Space Coordinates
(Lat. 44°39'08"N, long. 85°35'17"W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Cherry Capital Airport and within 4.0 miles west and 8.0 miles east of the Traverse City VORTAC 158° radial, extending from the 7.7-mile radius to 14.4 miles south of the airport and within 3.2 miles west of the 169° bearing from a point in space extending from the 7.7-mile radius to 9.0 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7376 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–20]

Proposed Modification of Class E Airspace; Marion, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Marion, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 24, has been developed for Marion Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would increase the radius of the controlled airspace for Marion Municipal Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Marion, OH, to accommodate aircraft executing the proposed GPS Rwy 24 SIAP, at Marion Municipal Airport by increasing the radius of the controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Marion, OH [Revised]

Marion Municipal Airport, OH
(Lat. 40°36′59″ N, long. 83°03′49″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Marion Municipal Airport, excluding that airspace within the Buckyrus, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7375 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL167–1b; FRL–5978–9]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the May 5, 1995, and May 26, 1995, Illinois State Implementation Plan (SIP) revision requests regarding Synthetic Organic Chemical Manufacturing Industry reactor and distillation rules applicable to the Chicago and Metro-East ozone nonattainment areas. In the final rules section of this **Federal Register**, the EPA is approving the State's requests as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this proposed rule by April 22, 1998. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before April 22, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: March 5, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–7129 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH112–1b; FRL–5977–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve an August 1, 1997 requested revision to the Ohio State Implementation Plan (SIP) incorporating revised emission statement reporting requirements previously approved for the purpose of implementing an emissions statement program for stationary sources within the State's ozone nonattainment areas classified as marginal or above. In this action, USEPA is proposing to approve the State's finding that emission statement requirements are no longer applicable to areas redesignated as attaining the national ambient air quality standards for ozone. In the final rules section of this **Federal Register**, the USEPA is approving the State's requests as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. This direct final rule will become effective without further notice unless USEPA receives relevant adverse written comment on the this proposed rule by April 22, 1998. Should USEPA receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that rule and no further action will be taken on this proposed rule. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before April 22, 1998.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief,

Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Ohio Environmental Protection Agency may be examined during normal business hours at the following locations:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Ohio Environmental Protection Agency, Division of Air Pollution Control, 1800 Watermark Drive, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312) 886–6036.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 19, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

[FR Doc. 98–7130 Filed 3–20–98; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–022–5022; FRL–5984–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; New Source Review in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia to revise its new source review (NSR) regulations for nonattainment areas to bring them into conformance with the Clean Air Act (CAA) amendments adopted in 1990, and to make other changes desired by the Commonwealth. Virginia's NSR regulations for nonattainment areas require persons to meet certain requirements before constructing a new major source to be located in a nonattainment area, or constructing a major modification in such an area, if that source or modification is or would be major for the pollutant for which the area is nonattainment. The requirements include the installation of air pollution control technology capable of achieving the Lowest Achievable Emission Rate (LAER), and offsetting the increase in emissions from the new source or modification with decreases in emissions from other sources.

DATES: Comments must be received on or before April 22, 1998.

ADDRESSES: Comments may be mailed to Kathleen Henry, Chief, Permit Programs Section, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, 3AT23, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566–2061. E-mail address: chalmers.ray@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Description of CAA NSR Requirements

The CAA requires that certain NSR requirements be met by any person seeking to construct a new major source to be located in a nonattainment area, or to construct a major modification in such an area, if the source or modification is or would be major for the pollutant for which the area is designated as nonattainment. The requirements which such persons must meet include installing LAER technology and obtaining emission offsets. Sections 172(c)(5) and 173 of the CAA require States to adopt NSR permitting regulations and to establish NSR permitting programs to implement these requirements. When Congress revised the CAA in 1990, it modified certain NSR requirements, and directed States to revise their NSR regulations to incorporate these modifications.

II. General Description of Virginia's NSR Submittal

As the CAA requires, Virginia's SIP includes a NSR regulation, entitled "Permits—Major Stationary Sources and Major Modifications Locating in Nonattainment Areas," which specifies that new major sources or major modifications constructed in nonattainment areas must apply LAER and obtain emission offsets. This regulation is found in Virginia's Regulations for the Control and Abatement of Air Pollution at section 120–08–03. In response to the CAA revisions adopted in 1990, Virginia submitted, on November 9, 1992, a revision to this NSR regulation intended to update the requirements of the regulation.

The revised regulation contains, among other things, a provision allowing the crediting of emission reductions from preapplication shutdowns or curtailments which occurred on or after January 1, 1991, and which are permanent, quantifiable, and federally and state enforceable. This provision is the reason EPA is proposing only limited approval of Virginia's revised NSR regulation, because it allows credits for emission reductions resulting from shutting down an existing source or curtailing production or operating hours below baseline levels in all nonattainment areas, even those for which EPA has not approved an attainment demonstration. This issue is discussed in more detail later in this notice in the *EPA Analysis* section.

Virginia has one ozone nonattainment area, That area is Virginia's portion of the Metropolitan Washington DC serious ozone nonattainment area. At the time of its NSR SIP submittal, the Richmond area was classified as moderate ozone nonattainment area, and part of the Virginia portion of the Metropolitan Washington, D.C. area (Alexandria City and Arlington County) was designated as nonattainment for carbon monoxide. These two areas have since been redesignated to attainment. The remainder of Virginia is designated as attainment and/or unclassifiable with respect to all other criteria pollutant standards.

Under the CAA, and the Commonwealth's NSR regulation, sources of VOC or NO_X located in Virginia's serious ozone nonattainment area are considered major if they have the potential to emit 50 TPY or more of volatile organic compounds (VOC) or nitrogen oxides (NO_X).

III. CAA's Specific NSR Requirements

According to section 172(c)(5) of the CAA, SIPs must require that certain NSR requirements be met by any person seeking to construct a new major source to be located in a nonattainment area, or to make a major modification to a major source in such an area, if the source or modification is or would be major for the pollutant for which the area is designated as nonattainment. There are also special statutory permit requirements for ozone nonattainment areas, which are generally contained in revised section 173, and in subpart 2 of part D.

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On July 23, 1996, EPA published in the **Federal Register** a comprehensive rulemaking which proposed significant changes to both the current nonattainment NSR and the current Prevention of Significant Deterioration (PSD) requirements. See 61 FR 38311. Upon EPA promulgation of the final rulemaking at a later date, all states, including Virginia, will be expected to evaluate their new source review regulations in accordance with the new requirements and to revise such regulations accordingly.

Important CAA requirements for new sources in nonattainment areas are found under sections 172, 173, 182, and 184 of the CAA, and are summarized below:

1. According to section 173(a)(1), the state regulation must assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of reasonable further progress (RFP) towards attainment.

2. According to section 173(c)(1), the state regulation may include provisions which allow offsets to be obtained in another nonattainment area if that area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a National Ambient Air Quality Standard (NAAQS) violation in the area in which the source would construct.

3. According to section 173(c)(1), the state regulation must provide that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation. This statutory condition for offsets augments the existing requirement under section 173 that provides that offsets must be federally-enforceable before permit issuance, although the required emissions reductions need not occur until the date on which the new or modified source commences operations.

4. According to section 173(c)(1), provisions of the state NSR regulation must assure that emissions increases from new or modified sources will be offset by real reductions in actual emissions. EPA's initial guidance interpreting general sections of the CAA is contained in the Title I General Preamble published in the **Federal Register** on April 16, 1992 (57 FR 13498). In the General Preamble, EPA reiterated that emission increases and decreases for netting are to be determined consistent with EPA's current new source rules and the December 4, 1986 emissions trading policy statement (51 FR 43823). EPA's new source rules state that a decrease in emissions is only creditable if, among other requirements, the decrease has not been relied upon by the state for any permit, attainment demonstration, or reasonable further progress. Therefore, emission reductions made because of reasonably available control technology (RACT) or other requirements that have been taken into account in the state's demonstration of reasonable further progress or attainment demonstration are not creditable for netting purposes.

5. According to section 173(c)(2), the state regulation must prevent emission reductions otherwise required by the CAA from being credited for purposes of satisfying part D offset requirements.

6. According to section 173(a)(5), the state regulation must require that prior to any part D permit being issued there be an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

7. According to section 328, the state regulation must assure that sources located on the Outer Continental Shelf (OCS) are subject to the same requirements applicable if the source were located in the corresponding onshore area.

8. Section 173(a)(3) requires that the state regulation must assure that owners or operators of each proposed new or modified major stationary source demonstrate that all of their other major stationary sources in the state are in compliance.

9. The state regulation must define major new and major modified sources in accordance with the area's nonattainment classification under section 181 for ozone.

10. The state regulation must require emission offsets for major new and major modified sources in accordance with the area's nonattainment classification under section 181 for ozone.

11. As discussed in Section 184 of the CAA, the state regulation must require all applicable new source requirements to be met by sources locating in the ozone transport region (OTR). These provisions must also ensure that new or modified major stationary sources obtain VOC and, presumptively, NO_X offsets at a ratio of at least 1.15 to 1 in order to obtain a NSR permit. Higher offset ratios apply in areas classified as serious or above.

12. The state regulation must ensure that any new or modified major stationary source of NOx satisfies the requirements applicable to any new or modified major stationary source of VOC, unless a special NOx exemption is granted by the Administrator under CAA section 182(f).

13. State plans must, for serious and severe ozone nonattainment areas, implement sections 182(c)(6), (7) and (8) with regard to modifications.

IV. Summary of Regulatory Revisions

EPA discusses below the major changes by which Virginia has amended its NSR regulation. These changes include changes necessary to bring Virginia's NSR regulation into conformity with federal requirements and other changes not required by federal mandate. Because new subsections have been added, this SIP revision includes changes in the manner in which the regulation is codified. Listed below are the subsections in Virginia's regulation and the major proposed changes:

Section 120–08–03 A—Applicability (Amended)

Virginia has modified this subsection by including a provision to deter a company from constructing or modifying a facility in increments to avoid permit requirements. The provision states that where a source is constructed or modified in contemporaneous increments which individually are not subject to approval and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining applicability. It further states that an incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

Section 120 08 03 B—Definitions (Amended)

Virginia has modified many of the definitions found in this subsection. Key changes in the definitions are discussed below:

1. *Allowable Emissions*—Virginia modified this definition to indicate that any limits on emissions used when calculating allowable emissions must always be federally enforceable.

2. *Building, structure, facility, or installation*—Virginia modified its former definition of "building, structure, or facility" by now making this a definition of "building, structure, facility, or *installation*. (Emphasis

added). In conjunction with this change, Virginia deleted its former separate definition of "installation."

3. *Federally enforceable*—Virginia modified this definition to include permits issued under an EPA approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

4. *Major Modification*—Virginia made several modifications to this definition to indicate that certain provisions or changes must always be federally enforceable. In particular, the definition now states that any "physical change or change in the method of operation" shall not include "[u]se of an alternative or raw material which a source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally *and* state enforceable permit condition * * *" (emphasis added). In addition the definition now says that such a change shall not include "[a]n increase in the hours of operation or the production rate, unless the change in the hours of operation or the production rate would be prohibited under any federally *and* state enforceable permit condition * * *" Virginia also deleted several items from its listing of items which do not qualify as physical changes or changes in method of operation.

5. *Major Stationary Source*—Virginia revised this definition to make its major source thresholds for sources located in ozone nonattainment areas consistent with EPA's requirements. Virginia specifies that a major stationary source includes not only sources which emit, or have the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the CAA, but also sources which emit "50 tons per year or more of volatile organic compounds or nitrogen oxides in nonattainment areas classified as serious in Appendix K," or "25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in Appendix K." Virginia also added to this definition a listing of the source categories from which fugitive emissions must be considered when determining if a source is major.

6. *Net emissions increase*—Virginia modified this definition to specify when increases or decreases in actual emissions are contemporaneous and when they are creditable.

7. *Nonattainment pollutant*—In this definition Virginia modified the statement "For ozone nonattainment areas, the nonattainment pollutant shall be volatile organic compounds (including hydrocarbons)" by adding "and nitrogen oxides."

8. *Potential to Emit*—In this definition Virginia now requires limits on potential to emit to be federally enforceable.

9. *Reconstruction*—In this definition Virginia removed a provision which stated that the assessment of whether or not a reconstructed stationary source is subject to a new source performance standard had to take into account any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

10. *Significant*—Virginia includes a new provision indicating that in serious or severe ozone nonattainment areas a 25 ton per year increase in volatile organic compound or nitrogen oxide emissions would be considered a significant emissions increase.

Section 120–06–03 C—General (Amended)

Virginia modified the general subsection by adding a provision stating that it may combine in one permit the requirements for emissions units subject to more than one of Virginia's regulatory requirements applicable to permitting, and that Virginia may also require a combined application for such emissions units. The permitting requirements for which such combined permits and applications may be required include those of Virginia's NSR regulation for sources locating in nonattainment areas and those of two other Virginia regulations, entitled, "Permits—New and Modified Sources," and "Permits—Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas."

Section 120–08–03 D—Applications (Amended)

Virginia modified the applications subsection by revising its specification of the scope of permit applications. Virginia also added provisions defining who must sign permit applications and requiring the signer to certify that "the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

Section 120–08–03 F—Standards/ Conditions for Granting Permits (Amended)

Virginia made several changes in the standards and conditions subsection, which establishes the requirements which must be met before a permit can be issued. One major changed requirement pertains to offsets. Virginia now requires that a permit applicant demonstrate that "By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained * * * such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this section, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the State Implementation Plan) reasonable further progress * * *" The only exception involves areas identified as zones where economic development should be targeted, in which emissions of a pollutant "resulting from the proposed new or modified stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the State Implementation Plan." Virginia also added a provision requiring that any emission reductions required as a precondition of the issuance of a NSR permit "shall be state and federally enforceable before such permit may be issued." Virginia also modified its provision requiring applicants to demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source, that the benefits of the proposed source would significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 120–08–03 G—Action on Permit Application (Amended)

Virginia amended this subsection to specify that Virginia must notify applicants in writing of deficiencies in their permit applications. Virginia also (1) deleted certain public participation provisions from this section which it now includes in a separate section of the regulation; and (2) revised its description of permit processing steps by including in the description a reference to public participation requirements found elsewhere in the regulation.

Section 120–08–03 H—Public Participation (Added)

Virginia added a new subsection detailing public participation requirements. This subsection requires the applicant to provide the public with notice of its application for a permit and then, within 30 to 60 days, to provide

a public briefing. In addition, the subsection provides that Virginia must provide a public comment period of at least 30 days, and hold a public hearing, before it makes a decision on a permit application. The Commonwealth's Board has the option of providing a public briefing prior to the public comment period. In all cases, the public must be provided with the opportunity to review relevant information.

Section 120–08–03 I—Compliance Determination and Verification by Performance Testing (Amended, Formerly Designated as Section 120–08–03 H, This Section Replaces the Original Section 120–08–03 I, Which Was Deleted)

Virginia modified this subsection by specifying that source owners are responsible for conducting tests if any such tests are required.

Section 120–08–03 J—Application Review and Analysis (Formerly Designated as Section 120–08–03 K, This Section Replaces the Original Section 120–08–03 J, Which Was Deleted)

Virginia made no changes to this subsection.

Section 120–08–03 K—Circumvention (Formerly Designated as Section 120–08–03 L)

Virginia made no changes to this subsection.

Section 120–08–03 L—Interstate Pollution Abatement (Formerly Designated as Section 120–08–03 M)

Virginia made no changes to this subsection.

Section 120–08–03 M—Offsets (Amended, Formerly Designated as Section 120–08–03 N)

Virginia allows the crediting of emission reductions resulting from shutting down an existing source or curtailing production or operating hours below baseline levels if the shutdown or curtailment is in effect, if it occurred on or after January 1, 1991, and if it is permanent, quantifiable, and federally and state enforceable. Virginia requires that the increased emissions of the air pollutant(s) from the new or modified source must be offset by an equal or greater reduction in the actual emissions of such air pollutant(s) from the same or other sources. In the case of sources emitting ozone precursors (VOC and NO_x), the emission reductions must be greater than the increases by certain specified ratios, which are highest in the areas with the worst designated air quality levels. In most cases the reductions must be obtained from the same source or from other sources in the same nonattainment area. However, Virginia may allow reductions in ozone precursor emissions to be obtained from sources outside the nonattainment area if the other area has an equal or greater nonattainment designation than the area where the source is located and the emissions from the other area contribute to a violation of the ambient air quality standard(s) in the area where the new or modified source is to be located. Virginia allows reductions to be credited only if they are not otherwise required by its regulations. Virginia does allow incidental emission reductions to be credited, provided they are not required by regulation and meet certain other requirements. In this section Virginia also includes a special provision allowing increases in emissions from rocket engine and motor firing to be offset by alternative or innovative means.

Section 120–08–03 N—De Minimis Increases and Stationary Source Modification Alternatives for Ozone Nonattainment Areas Classified as Serious or Severe (Added)

Virginia specifies in this new subsection that VOC emissions increases resulting from modifications at sources in serious or severe ozone nonattainment areas can not be considered de minimis unless the increase in net emissions does not exceed 25 TPY when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

Section 120–08–03 Q—Reactivation and Permanent Shutdown (Added)

Virginia specifies in this new subsection that a source which is reopened after having been determined to be shutdown must obtain a permit. Virginia also sets forth criteria by which sources are formally determined to be shutdown.

Section 120–08–03 R—Transfer of Permits (Added)

Virginia establishes in this new subsection provisions pertaining to transfer of permits.

Section 120–08–03 S—Permit Invalidation, Revocation, and Enforcement (Added)

Virginia sets forth in this new subsection the conditions under which owners of sources subject to permitting requirements may be subject to enforcement action and when permits may be invalidated or revoked.

Section 120–08–03 T—Existence of Permit No Defense (Added)

Virginia specifies in this new subsection that the existence of a permit under this section shall not constitute a defense to a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

V. EPA Analysis

EPA's has determined that the amendments to Virginia's NSR regulations are consistent with the CAA and currently promulgated federal NSR regulations with one exception. Virginia's NSR regulation allows persons who intend to build or modify a major source in a nonattainment area to take credit for emission reductions obtained from shutdowns or curtailments of production or operating hours which took place prior to the source's application for a new source review permit (prior shutdown or curtailment credits) even if EPA has not approved an attainment plan for the nonattainment area. Current EPA regulations, developed prior to the CAA Amendments of 1990, provide that States having nonattainment areas without EPA approved attainment demonstrations may allow persons intending to build or modify sources located in those areas to take credit for emission reductions resulting from shutdowns or curtailments of production or operating hours only if: (1) The reductions occurred on or after the date the new proposed source or modification files a permit application, or, (2) if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source. See 40 CFR 51.165 (a)(3)(ii)(C)(2). Thus, under current EPA regulations, states are prohibited from crediting emission reductions which occurred prior to the date the new proposed source or modification files a permit application (prior shutdown or curtailment credits) unless EPA has approved an attainment demonstration for the area. It is important to note that Virginia's current SIP regulations do not contain this so-called "shutdown prohibition."

Virginia's revised NSR regulation affirmatively allows persons seeking to build new major sources or major modifications to take credit for emission reductions resulting from shutdowns or

curtailments of production or operating hours if those shutdowns or curtailments occurred after January 1, 1991. Because Virginia's regulation allows persons seeking to construct new major sources or major modifications in a nonattainment area for which EPA has not approved an attainment plan to take credit for shutdowns or curtailments which occurred prior to the date they filed their permit application, Virginia's NSR regulation appears not to conform with the existing EPA prohibition on the use of prior shutdown or curtailment credits in nonattainment areas for which EPA has not approved an attainment demonstration. This prohibition is found at 40 CFR 51.165(a)(3)(ii)(C)(2).

However, on July 23, 1996, EPA published in the **Federal Register** a comprehensive rulemaking which proposed significant changes to the current PSD and nonattainment NSR rules. This proposed rulemaking is hereinafter referred to as the "NSR Reform Rulemaking." See 61 FR 38311. The NSR Reform Rulemaking proposes to revise regulations for the approval and promulgation of SIPs and the requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by Parts C and D of Title I of the CAA. Specifically, Section VII.A of EPA's NSR Reform Rulemaking, entitled "Emissions Credits Resulting From Source Shutdowns and Curtailments," proposes to eliminate the current restrictions on crediting of emissions reductions from source shutdowns and curtailments that occurred after 1990. In the NSR Reform Rulemaking, EPA proposes two different alternatives for eliminating the prior shutdown prohibition. The second of these alternatives, entitled "Shutdown Alternative 2", generally lifts the current offset restriction applicable to emissions reductions from source shutdowns and source curtailments for all nonattainment areas and all pollutants where such reductions occur after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of Part D of the CAA. See proposed § 51.165(a)(3)(ii)(C)(5) [Alternative 2], 61 FR 38314. Under this alternative, States could allow pre-application emission reductions from source shutdowns or curtailments to be used as offsets in all nonattainment areas and for all pollutants provided such reductions occurred after the base year of the emissions inventory used by the State to meet the applicable provisions of Part D of the CAA.

As explained above, Virginia's NSR rule allows sources to take credit for emissions reductions from shutdowns or curtailments of production or operating hours which occurred after January 1, 1991. This is consistent with Alternative 2 of EPA's NSR Reform Rulemaking, which credits only those emissions reductions from source shutdowns and curtailments occurring after 1990, i.e., the base year of the emissions inventory used to meet the applicable provisions of Part D of the CAA. Thus, EPA believes that Virginia's NSR regulation is generally consistent with "Shutdown Alternative 2" as described in EPA's proposed NSR Reform Rulemaking, because both Virginia's rule and Alternative 2 allow sources to take credit only from emission reductions or curtailments occurring after January 1, 1991.

Because Virginia's NSR regulation is generally consistent with Alternative 2 of EPA's proposed NSR Reform Rulemaking (as discussed above), and because approval of the revised version of Virginia's NSR regulation submitted on November 9, 1992 would strengthen the SIP to be consistent with the CAA's provisions for NSR, EPA believes that Virginia's revised NSR regulation warrants limited approval. If EPA promulgates Alternative 2, this limited approval of Virginia's NSR regulations would convert to a full approval.

The alternative shutdown related provision set forth in EPA's NSR Reform Rulemaking proposal is entitled "Shutdown Alternative 1." This alternative proposes, for ozone nonattainment areas, to lift the current offset restriction applicable to emissions reductions from source shutdowns and curtailments in such areas without EPA-approved attainment demonstrations, provided the emissions reductions occur after November 15, 1990 and the area has kept current with the CAA's scheduled Part D ozone nonattainment planning requirements. See proposed § 51.165(a)(3)(ii)(C)(5) and (6) [Alternative 1].

EPA acknowledges that either Alternative 1 or 2 may be eventually incorporated into the final NSR Reform Rulemaking upon its final promulgation. It is also noted that while EPA is with this rulemaking proposing to grant limited approval of Virginia's NSR regulation based on the rule's consistency with Shutdown Alternative 2 in EPA's NSR Reform rulemaking, the Commonwealth may need to amend its NSR regulation if Shutdown Alternative 1 rather than Shutdown Alternative 2 is promulgated. If Alternative 1 is promulgated, EPA would determine the status of Virginia's conformance with Part D ozone planning requirements for any nonattainment area. If Virginia's SIP were not current with the Part D ozone planning requirements for any nonattainment area, EPA would make a SIP call for Virginia to amend its NSR rule to conform with Alternative 1 as provided in EPA's final NSR Reform Rulemaking.

Virginia's regulation does not state that any emission reductions must also have occurred after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of Part D of the CAA. If an area in Virginia is designated as a new nonattainment area in the future, the baseline year of the inventory used in the attainment demonstration for that area would likely be after the January 1, 1991 baseline year used for areas designated as nonattainment at the time of the 1990 CAA amendments. Because Virginia does not state in its NSR regulation that any emission reductions must also have occurred after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of Part D of the CAA, Virginia would have to modify its NSR rule if, in the future, Virginia is required to do a new attainment demonstration because a new area in Virginia is designated as nonattainment or a current nonattainment area fails to meet its statutory attainment deadline.

After making its NSR submittal to EPA on November 9, 1992, in 1995 Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code section 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that

demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On December 29, 1997, the Office of the Attorney General provided a legal opinion that states, with regard to the Privilege law: Virginia's Immunity law, Va. Code section 10.1–1199, provides that "*[t]o the extent consistent with requirements imposed by federal law,*" (emphasis added) any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. Thus, EPA has determined that Virginia's Privilege and Immunity legislation will not preclude the Commonwealth from enforcing its NSR program consistent with the CAA's requirements.

VI. Proposed Action

EPA is proposing limited approval of the revisions to the Virginia SIP NSR regulations submitted on November 9, 1992 because such approval would strengthen the SIP so that it meets the NSR requirements of the CAA as discussed herein. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove Virginia's NSR SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 9, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–7489 Filed 3–20–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5984–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Anaconda Aluminum/Milgo Electronics Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Anaconda Aluminum/Milgo Electronics Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before: April 22, 1998.

ADDRESSES: Comments may be mailed to: Richard D. Green, Acting Director, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 100 Alabama Street S.W., Atlanta, Georgia 30303–3104.

Comprehensive information on this Site is available through the Region 4 public docket, which is available for viewing at the Anaconda Aluminum/Milgo Electronics Site information

repositories at two locations. Locations, contacts, phone numbers and viewing hours are:

U.S. EPA Record Center; attn: Phyllis Craig, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303–3104, Phone: (404) 562–8881, Hours: 8:00 a.m. to 4:00 p.m., Monday through Friday, By Appointment Only

North Central Library, 10750 SW 211th Street, Miami, Florida 33189, Phone: (305) 693–4541, Hours: 1:00 a.m. to 6:00 p.m., Monday, 9:30 a.m. to 6:00 p.m., Tuesday and Wednesday, 11:30 a.m. to 8:00 p.m., Thursday, 8:30 a.m. to 5 p.m., Saturday

FOR FURTHER INFORMATION CONTACT: John Zimmerman, U.S. EPA Region 4, Mail Code: WD–SSMB, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303–3104, (404) 562–8936.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The EPA Region 4 announces its intent to delete the Anaconda Aluminum/Milgo Electronics Site, Miami, Florida, from the NPL, which constitutes Appendix B of the NCP, 40 CFR Part 300, and requests comments on this deletion. EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA proposes to delete the Anaconda Aluminum/Milgo Electronics Site located on the 3600 block of N.W. 76th Street, in Miami, Dade County, Florida from the NPL.

EPA will accept comments concerning this Site for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how this Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from, or re-categorized on, the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

CERCLA Section 121(c), 42 U.S.C. 9621(c), provides in pertinent part that:

> If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the Site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented* * *.

EPA policy interprets this provision to apply only to those sites where any remaining hazardous substances are below the minimum levels that will allow for unlimited use and unrestricted exposure while continuing to be protective of public health and the environment. On that basis, for reasons set forth below, the statutory requirement has been satisfied at this Site, and five year reviews and operation and maintenance activities are not required. However, in the event new information is discovered which indicates a need for further action, EPA may initiate appropriate remedial actions. In addition, whenever there is a significant release from a site previously deleted from the NPL, that site may be restored to the NPL without application of the Hazardous Ranking System. Accordingly, the Site is qualified for deletion from the NPL.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision on deletion. The following procedures were used for the intended deletion of the Site:

1. FDEP has concurred with the deletion decision;

2. Concurrently with this Notice of Intent, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on the proposed deletion from the NPL; and

3. The Region has made all relevant documents available at the information repositories.

The Region will respond to significant comments, if any, submitted during the comment period.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect any deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary, if any, will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

The Anaconda Aluminum/Milgo Electronics Site in Dade County is approximately three acres of land along the north and south sides of N.W. 76th Street in the 3600 block. The portion on the north is the Milgo property and the portion on the south is the Anaconda Aluminum property.

Anaconda Aluminum Company operated an aluminum anodizing facility on the Anaconda property from approximately 1957 to 1977. The Atlantic Richfield Company acquired the Anaconda Aluminum Company in 1977 and operated the facility until February 1982, when all processes ended and the Anaconda property was sold to the current owner, Dade Metals Corporation in October 1983. The property was used for storing lumber and rebar by a tenant, JRD Forming Company. JRD is no longer a tenant and the property is currently not in use. The aluminum anodizing operations utilized an electrochemical processing acid and a caustic base to produce a film of protective oxide on aluminum. Wastewater from the process was discharged into an onsite percolation pit, permitted by the Metropolitan Dade County Department of Environmental Resources Management. The percolation pit was filled in when the facility ceased operations.

Milgo Electronics, producers of communications and data processing equipment, conducted electroplating, manufacturing, painting, and packaging operations at the Milgo property from 1961 until 1984. Wastewater from

chemical rinses, metal plating, and spray coating were treated onsite in a treatment system designed to precipitate dissolved metals from the wastewater. The precipitated sediment was removed by a tank truck and the remaining liquid was discharged to a drainfield on the property. Racal-Datacom, Inc. became the successor to Milgo Electronics Corporation. The Milgo facility was closed in 1984 and 1985 in accordance with a closure plan approved by the Florida Department of Environmental Regulation (renamed the Florida Department of Environmental Protection). As part of the closure, the drainfield, batch waste holding tank, and all process vessels were drained and their contents disposed of at approved sites.

Preliminary and expanded site investigations determined that there was potential impact to the environment by inorganic contaminants, in particular chromium, lead, and aluminum. The Site was placed on the NPL in August of 1990. An Administrative Order by Consent for the Remedial Investigation/Feasibility Study (RI/FS) was signed on July 31, 1992 and later amended in November of 1992. Additional sampling was conducted prior to the RI/FS and based upon these results, a removal action was conducted in 1993 to remove a significant portion of the contamination at the Site. The removal activities addressed soil and treatment structures known to contain elevated levels of metals and organics and included; removal of liquids and sludge from the settling tank, drainfield, batch tank, and underground circular structure and sump with the liquid and sludge being pumped into 55 gallon drums for disposal at an approved offsite location, the testing of the sump (no leakage was observed other than the exit pipe), decontamination and removal/filling of structures with cement slurry, and finally excavation of the drainfield to a 6–7 foot depth below land surface in a 50 foot long by 7 foot wide trench. Post-removal sampling results indicated that the removal was successful.

In 1993, a Remedial Investigation was performed mainly on the remaining areas of potential contamination not addressed during the removal action. Over 100 samples of soil, groundwater, and sediment were collected. A Baseline Risk Assessment was conducted as part of this RI to evaluate the public health and environmental problems that could result if the Site were not remediated.

The results of the RI and the Risk Assessment indicated that the 1993 removal of contaminated soils at the Anaconda Aluminum/Milgo Electronics Site reduced the risk from exposure to Site-related contaminants in the soils to levels which are protective of human health and the environment. Groundwater contaminants which could be directly attributed to the Site were below concentrations which exceeded health-based levels. Two volatile organic compounds (VOCs) that were found during the RI in the deep wells have been cited as an area-wide groundwater condition.

On November 22, 1994, EPA signed a Record of Decision (ROD) for the Anaconda Aluminum/Milgo Electronics Site. The ROD called for No Further Action at the Site. However, to verify that the VOCs detected in the groundwater are not indicative of a Site-related release, EPA required that four post-RI supplemental sampling events would take place. This post-RI sampling, which was completed last year, confirmed that no significant risk to public health or the environment is posed by the Site. In three out of the four sampling events, the contaminants found during the RI were no longer present at levels above drinking water standards.

Due to the removal of contaminated soils, hazardous substances have been removed from the Site so as to allow for unlimited use and unrestricted exposures within the Site, the Site is protective of public health and the environment, and no further remedial action is needed at the Site. Accordingly, EPA will not conduct operation and maintenance activities or five-year reviews at this Site.

EPA, with concurrence of FDEP, has determined that all appropriate actions at the Anaconda Aluminum/Milgo Electronics Site have been completed, and that no further remedial action is necessary. Therefore, EPA is proposing deletion of the Site from the NPL.

Dated: March 16, 1998.

John H. Hankinson, Jr.,

Regional Administrator, USEPA Region 4.

[FR Doc. 98–7307 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–34; RM–9233]

Radio Broadcasting Services; Buckhannon, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by J&K Broadcasting, Inc., proposing the allotment of Channel 238A at Buckhannon, West Virginia, as the community's third local commercial FM transmission service. Channel 238A can be allotted to Buckhannon in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 238A at Buckhannon are North Latitude 38–59–30 and West Longitude 80–13–48.

DATES: Comments must be filed on or before May 4, 1998, and reply comments on or before May 19, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Timothy E. Welch, Esq., Hill & Welch, 1330 New Hampshire Ave., NW., Suite 113, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–34, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7360 Filed 3–20–98; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE75

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Fritillaria Gentneri (Gentner's fritillary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant, *Fritillaria gentneri* (Gentner's fritillary (=Mission-bells)). It is endemic to Oregon and only found in two counties, Jackson and Josephine. This taxa is threatened by residential development, agricultural activities, silvicultural activities, road and trail improvement, off-road vehicle use, collection for gardens, and increased risk of extinction due to small numbers. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this plant. The Service seeks data and comment from the public on this proposal.

DATES: Comments from all interested parties received by May 22, 1998 will be considered by the Service. Public hearing requests must be received by May 7, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Oregon State Office, U.S. Fish and Wildlife Service, 2600 SE 98th Ave. Suite 100, Portland, OR 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew F. Robinson Jr., Botantist, (see ADDRESSES section) (telephone 503/231–6179; facsimile 503/231–6179).

SUPPLEMENTARY INFORMATION:

Background

Fritillaria gentneri was discovered by the Gentner family and was first named by Helen M. Gilkey (1951). The original location was in the vicinity of Jacksonville, Jackson County, Oregon. It was previously considered a form of *Fritillaria recurva* but Guerrant (1992) identified *Fritillaria gentneri* as a separate species.

Fritillaria gentneri is in the family Liliaceae. It has a fleshy bulb, robust stem, is 5 to 7 decimeters (dm) (19.7 to 27.6 inches (in)) high, glaucous (having a coating of bluish caste), and sometimes purple mottled. The leaves are lanceolate (arrow shaped), sometimes linear, 7 to 15 centimeters (cm) (2.8 to 5.9 in) long, 0.7 to 1.5 cm (0.3 to 0.6 in) wide at the base, and they are often whorled. The flowers are solitary or in bracted racemes (simply branched flower stem with a small simple leaf at the base of each branch), one to five on long pedicels (the stalk supporting a single flower). The campanulate (bell shaped) corolla is 3.5 to 4 cm (1.4 to 1.6 in) long and is reddish purple with pale yellow streaks (Gilkey 1951, Peck 1961, Meinke 1982).

Fritillaria gentneri (Gentner's fritillary) is endemic to Oregon and known only from scattered localities in southwestern Oregon, along the Rogue and Illinois River drainages in Josephine and Jackson counties. *Fritillaria gentneri* occurs in rather dry open woodlands of fir or oak at elevations below approximately 1,360 meters (m) (4,450 feet (ft)). The species is highly localized in a 48 kilometer (km) (30 mile (mi)) radius of Jacksonville Cemetery. Seventy-three percent of the population of *Fritillaria gentneri* is distributed as a central cluster of individuals located within an 11 km (7 mi) radius of the Jacksonville Cemetery. The remaining plants occur as outliers of single individuals or occasional clusters of individuals sparsely distributed across the landscape.

To analyze the species' trend and status given this sparse distribution, *Fritillaria gentneri* has been documented within 53 macro plots, which cover all known occurrences within the species range. The macro plot grid is based on dividing the landscape up into blocks starting initially with the 7.5′ quadrangle map grid developed by the U.S. Geological Survey (USGS). Each 7.5′ quadrangle map is further divided up into 225 blocks that are 0.5 by 0.5 minutes of latitude and longitude and approximately 64 hectares (ha) (157 acres (ac)) in size. Each of the 64 ha blocks are further subdivided into 25 cells (macro plots) that are 6 by 6 seconds of latitude and longitude (0.1 minute of latitude or longitude or approximately 0.1 mi (2.56 ha (6.3 ac) each). Each of the macro plots gets a unique code based on its latitude and longitude locations. Part of the code is based on USGS Ohio coding system for quadrangle maps. The rest of the code for identifying each of the 5,625 macro plots found within each USGS quadrangle map was developed by Dr. Andrew F. Robinson Jr. This system can be used any place in the United States to determine the macro plot code for a collection point based on the collection's point latitude and longitude. *Fritillaria gentneri* has been reported from all 53 of the identified macro plots but is extant in only 85 percent (45) of the macro plots. It has been extirpated from 2 of the 40 macro plots found within the central cluster, and nearly half (6) of the 13 occurrences outside of the central cluster of the species.

Thirteen of the macro plots are on lands managed by the Medford District of the Bureau of Land Management (BLM); 2 plots are on an Oregon State Highway right-of-way, District 8; 3 plots are on lands managed by Southern Oregon University; 7 plots are on lands managed by the City of Jacksonville; and the other 25 plots are on lands under private ownership. Approximately half of the species' current distribution (20 out of 45 macro plots) is on private lands.

Plant number estimates from the 45 extant sampling units varied from a low of 1 to a high of 100 (Pelton Road) individual plants within a macro plot. Estimated species population size from the 45 macro plots is 340 flowering plants, with 12 of the macro plots having only one plant each. The amount of habitat occupied within the macro plot varied from 1 square meter (10.75 square feet) to 1.2 hectares (3 ac).

Fritillaria gentneri ranges from approximately 180 to 1,360 m (600 to 4,450 ft) in elevation. *Fritillaria gentneri* is found in three habitat types: oak woodlands that are dominated by Oregon white oak (*Quercus garryana*); a mixed hardwood forest type dominated by California black oak (*Quercus kelloggii*), Oregon white oak, and madrone (*Arbutus menziesii*); and coniferous forested areas dominated by madrone and Douglas-fir (*Pseudotsuga menziesii*) (J. Kagan, Oregon Natural Heritage Program, Portland, Oregon, pers. comm. 1997).

Fritillaria gentneri typically grows in or on the edge of open woodlands with Oregon white oak and madrone as the most common overstory plants. Western yellow pine (*Pinus ponderosa*) and Douglas-fir are also frequently present. White-leaved manzanita (*Arctostaphylos viscida*), buckbrush

(*Ceanothus cuneatus*), snowbrush (*C. velutinus*), plume tree (*Cercocarpus betuloides*), Sadler oak (*Quercus sadleriana*), and poison oak (*Rhus diversiloba*) are commonly encountered understory shrub species. Herb and forb layers are typical of those found in the Rogue Valley foothills: ashy rock cress (*Arabis subpinnatifida*), Rouge River milkvetch (*Astragalus accidens hendersoni*), fringed brome (*Bromus ciliatus*), Henderson's shootingstar (*Dodecatheon hendersoni*), California fescue (*Festuca californica*), Idaho fescue (*F. idahoensis*), woods strawberry (*Fragaria vesca bracteata*), mission bells (*Fritillaria lanceolata*), scarlet fritillaria (*F. recurva*), lewisia (*Lewisia* spp.), fineleaf biscuit-root (*Lomatium utriculatum*), Sandberg's bluegrass (*Poa sandbergii*), western buttercup (*Ranunculus occidentalis*), Suksdorf's romanzoffia (*Romanzoffia suksdorfii*), groundsel (*Senecio spp.*), checker-mallow (*Sidalcea* spp.), Lemmon's needle grass (*Stipa lemmonii*), and American vetch (*Vicia americana*). *Fritillaria gentneri* can also grow in open chaparral/grassland habitat, which is often found within or adjacent to the mixed hardwood forest type, but always where some wind or sun protection is provided by other shrubs. It does not grow on extremely droughty sites. For unknown reasons, much apparently suitable habitat within the species range is unoccupied.

Rolle (1988e) stated that *Fritillaria gentneri* often grows in places that have experienced human disturbance and eventually became revegetated (e.g., old road cuts, alongside trails, bulldozer routes, old mounds left from past mining or other earth moving activities). At least 50 percent of the sites Rolle (1988e) has seen exhibited signs of previous disturbance. Earth-moving activity could spread bulblets and increase populations, but this has not been documented. The species seems to require some infrequent but regular level of disturbance such as would have occurred under the historic pattern of fire frequency in the Rogue and Illinois River valleys. *Fritillaria gentneri* is not an early colonizer of these sites but eventually takes advantage of the opening or edge effect created. It appears to be a mid-successional species in that it establishes in areas after other plants have colonized a disturbed area, but before taller more mature vegetation types become established and shade it out.

Fritillaria gentneri is a perennial species that reproduces asexually by bulblets. The bulblets break off and form other plants. *Fritillaria gentneri* can reproduce sexually as well (Guerrant, Berry Botanic Garden Portland, Oregon, pers. comm. 1997). Guerrant believes that the pollinators are hummingbirds or bumble bees. Guerrant (1992) sampled eight clusters and found a few plants that had seeds but there were not any obvious embryos. He stated that *Fritillaria gentneri* may possibly be sterile, that the plant is largely reproducing asexually, and that the sexual reproduction of the plant needs to be better documented.

Previous Federal Action

Federal government actions on *Fritillaria gentneri* began as a result of section 12 of the Endangered Species Act of 1973, (Act) as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Fritillaria gentneri* as a threatened species. The Service published a notice on July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein.

Fritillaria gentneri was initially included as a Category 2 candidate in a Notice of Review published by the Service on December 15, 1980 (45 FR 82510). Category 2 candidate species were taxa for which data in the Service's possession indicated listing may be appropriate, but for which additional data on biological vulnerability and threats were needed to support a proposed rule. On September 30, 1993 (58 FR 51166), the Service published a Notice of Review upgrading this species to a Category 1 status. Category 1 candidates were those for which the Service had sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. Upon publication of the February 28, 1996 notice of review (61 FR 7596), the Service ceased using category designations and included *Fritillaria gentneri* as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. *Fritillaria gentneri* was retained as a candidate species in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398).

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 6, 1996 (61 FR 64475) and extended on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals. This proposed rule constitutes a Tier 3 action.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Fritillaria gentneri are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The term "development" used here includes housing construction, such as driveway placement, lots for sale, cemetery expansion, trail maintenance, road widening, power line maintenance, water system construction, and agricultural conversions.

Fritillaria gentneri is found only in the rural foothills of the Rogue and Illinois River valleys in Jackson and Josephine counties, Oregon. Within this range, the plant occurs as lone individuals or small clusters of individuals sparsely distributed across the landscape which together are thought to form one single population of approximately 340 plants. This species was originally documented to occur in 53 locations (referenced as "macro plots" in the BACKGROUND section of this notice). Between 1941 and today, the plant has been lost from eight of these sites. Three locations, Grants Pass, Medford, and Murphy, were vague locations and have never been relocated since the original collections by Gentner (1941, 1948–50) and Gilkey (1951). Those locations were probably destroyed by development. However, since 1982, Kagan and Rolle documented losses due to construction for homes and schools, associated roads, driveways, and agricultural conversions

which destroyed all the plants occurring within the following five locations: Lyman Mountain (Kagan 1982g and pers. comm. 1997; Rolle 1988f), Merlin (Kagan 1982a and pers. comm. 1997), Ramsey Road (Kagan 1982f and pers. comm. 1997), State Highway 238 (Gentner 1948, Kagan 1982c and pers. comm. 1997), and Winona (Kagan 1982b and pers. comm. 1997).

Habitat loss due to ongoing or future development threatens the central core area of this species. Habitat loss may occur in 42 percent (19) of the occupied sites (macro plots) within the foreseeable future. Ongoing development accounts for 13 percent (6 sites) of the anticipated habitat loss, while future development may include loss of habitat for the other 29 percent (13) of the occupied sites; most development will occur within the central core area.

Ongoing development is threatening populations of *Fritillaria gentneri* that occur in six locations. Rolle (1988b) noted that at Pelton Road, outside the core area, destruction of the habitat was taking place as he was sampling the cluster. On that site visit, Rolle (1988b) reported 60 flowering plants and 200 non-flowering plants, noting that it was the best example of *Fritillaria gentneri* that he had seen. During his observation, he noted that brush was being piled upon the plants for a road widening project. Of the 48 plants flagged, 23 individuals were missing when Rolle (1988d) returned to collect seeds. In 1990, Guerrant (1990) reported only 50 to 100 plants at the Pelton Road site. According to Rolle (U.S. Forest Service, Ashland, Oregon, pers. comm. 1997) one-quarter of the cluster has been destroyed as a result of road widening. It is not known what happened to the other missing plants. Within the core area, at the Jackson County Landfill, at least half of the *Fritillaria gentneri* plants in one of the five sites that occur at the dump was bulldozed as a result of road construction and dump expansion in 1988 (Rolle 1988d). Near the entrance to Jackson County Landfill, Rolle (1988a) reported four plants present. In 1988, Rolle (1988d) flagged three of these plants and reported that two of the plants were bulldozed. Guerrant (pers. comm. 1997) reported that the dump is still expanding and heading toward other *Fritillaria gentneri* plants, but destruction has stopped just short of destroying the rest of the plants.

Future development may include loss of about 29 percent (13 locations) of the species from the central core area that include plants growing in the Bellinger Hill, Britt Grounds, Jacksonville Cemetery, Placer Hill Drive, and Sterling Creek Road. Rolle (pers. comm. 1997) stated that part of the Bellinger Hill plants occurred in a private individuals' backyard. At the time of the sighting, that section of the backyard was not maintained, therefore allowing *Fritillaria gentneri* to grow. The other plants were in an area where housing development was occurring (Rolle pers. comm. 1997). On Britt Grounds, 110 plants of *Fritillaria gentneri* were documented in 1993 (Tomlins 1993) on 39 hectares (97 ac) of land managed by BLM or Southern Oregon University. Trail construction and construction of the city water line threaten the Britt Grounds plants. Maxxon (1985) reported that there were approximately 50 plants in the Jacksonville Cemetery area with approximately half of the cluster (18–24 plants) on private land east of the northeast corner of the cemetery property. Kagan (pers. comm. 1997) reported that the city is currently developed up to the eastern side of the cemetery, and probably those 18 to 24 plants have been lost. Within the cemetery proper, Maxxon (1985) mapped the location of 12 plants that occur on the cemetery lots. As the cemetery fills up, additional plants may be destroyed during the excavation; at least eight plants mapped by Maxxon (1985) currently grow on unused burial lots. West and uphill from the cemetery, Rolle (1988g) documented that there were 15 or so plants at scattered stations along the trail system. Any additional trail construction may destroy some of these plants. In 1988, Rolle (1988g) found six flowering plants of *Fritillaria gentneri* along Placer Hill Drive and flagged five of the plants. On returning, he discovered that a new driveway was scheduled to be constructed which would go through the Placer Hill Drive location (Rolle 1988d). In 1992, some plants remained on the site (Guerrant 1992), but today the property is for sale (Rolle, pers. comm. 1997, & Guerrant, pers. comm. 1997). Similarly, Rolle (pers. comm. 1997) reported that the Sterling Creek plants occur on 40.4 square meters (less than .01 acre) and that this area is threatened by development. The most threatened areas are on private lands where development poses an immediate threat to the population. Of the 45 extant locations, 25 occur on private lands and are unlikely to remain over the long term.

The threat of habitat loss to *Fritillaria gentneri* is evident when both the size and the state of the scattered clusters throughout the species range are examined. Cluster sizes range from 1 plant to 100. Of the 45 macro plots currently occupied by *Fritillaria gentneri*, only 8 had occupied habitat that was equal to or greater than 0.4 ha (1 ac). Many are smaller than 0.04 ha (0.1 ac). With such limited area, a small amount of disturbance could extirpate all of the plants in a local area.

Activities that remove desirable habitat on public lands are still occurring. Joan Seevers (BLM, Medford, Oregon, pers. comm. 1997) confirmed that of the 13 sites containing plants on BLM lands, 7 were threatened with logging. Tomlins (1993) stated that salvage logging had disturbed some of the plants at Britt Grounds. Seevers (pers. comm. 1997) also reported that Britt Grounds and Sterling Mine ditch had trails near the cluster of plants. Hikers, bikers, and horseback riders use the trails and threaten the site by picking and trampling of *Fritillaria gentneri* . At Antioch Road 2, Henshel (1994c) noted that the plants were located on either side of a dirt bike trail.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

According to Gilkey (1951), *Fritillaria gentneri* was successfully grown in a garden and used in flower arrangements. Therefore, collection of the species is a concern. This native lily is an attractive plant which makes it noticeable and more likely to be collected. Its noted rarity also makes it susceptible to collection from horticulturists seeking to cultivate rare species. Furthermore, *Fritillaria gentneri* has a very poor viable seed set and much of the capsule is eaten by wildlife prior to seed maturation (Rolle 1988d). Thus, there is even greater pressure to dig the bulbs by collectors, since seed collection & germination may not be a feasible option. Twenty-two (43 percent) of the known sites had 3 or fewer individuals. Because the species occurs in small, isolated clusters, a collector could decimate an entire clump in one gathering, extirpating the plant from that area. Kagan (1982d), Rolle (1988c, pers. comm.1997), and Guerrant (pers. comm. 1997) documented that 40 percent of the total estimated number of plants (136) have a good potential for roadside collection. The plants are visible from the road at Logtown Cemetery, Paradise Ranch Road, Pelton Road, Placer Hill Drive, Poorman's Gulch, Sailor Gulch, Sterling Creek Road, and Wagon Trail Drive and when flowering, could attract some attention (Guerrant pers. comm. 1997). Collecting has been documented in Britt Grounds (Tomlins 1993, Joan Seever pers. comm. 1997) along the trails.

C. Disease or Predation

Disease and predation occur in *Fritillaria gentneri* plants, reducing their numbers and productivity. Secondary fungal infections were present at the Cady Road, Jacksonville Cemetery, Jackson County Dump, Pelton Road, Placer Hill Drive, and Wagon Trail Drive sites (Rolle 1988d). Many of the plants that were tagged for seed collection by Rolle had the capsules eaten by wildlife before the seed capsules matured (Rolle 1988d): of the 14 plants tagged at Wagon Trail Drive, 9 plants had no capsules; at Cady Road 4 of 4 flagged plants had the capsules bitten off; at the Jacksonville Cemetery 6 of 6 flagged plants had no mature capsules found on any part of the plant; at Pelton Road 19 of 48 flagged plants were knocked down, eaten or did not develop; and at Placer Hill Drive 1 of 5 flagged plants had the capsules bitten off.

D. The Inadequacy of Existing Regulatory Mechanisms

In 1963, the protection of Oregon's natural botanical resources was initiated with the passage of the Oregon Wildflower Law (ORS 564.010–564.040). This law was designed to protect showy botanical groups such as lilies, shooting stars, orchids, and rhododendrons from collection by horticulturists interested in these species' domestication. The Oregon Wildflower Law prohibits the collection of wildflowers within 60.9 m (200 ft) of a State highway. Although protective in spirit, the Oregon Wildflower Law carries minimal penalties and is rarely enforced. As a means of protecting *Fritillaria gentneri*, it has minimal effectiveness.

In 1987, Oregon Senate Bill 533 (ORS 564.100) was passed to augment the legislative actions available for the protection of the State's threatened and endangered species, both plant and animal. This bill, known as the Oregon Endangered Species Act, mandated responsibility for threatened and endangered plant species in Oregon to the Oregon Department of Agriculture (ODA).

The Oregon Endangered Species Act directs the ODA to maintain a strong program to conserve and protect native plant species threatened or endangered with extinction. *Fritillaria gentneri* is State-listed as endangered, receiving protection on State-managed lands under the Oregon Endangered Species Act. Although the ODA is able to regulate the import, export, or trafficking of State-listed plant species (under ORS 564.120), their ability to protect plant populations is limited to State-owned or State-leased lands. Private owners are not required to protect State-listed species. As a result, occurrences of *Fritillaria gentneri* on private lands receive no protection from their State status as endangered. Plants growing at the Log Town Cemetery are on an Oregon Department of Transportation right-of-way and this is the only site that falls under protection of the Oregon Endangered Species Act.

Fritillaria gentneri is classified by the Oregon Natural Heritage Program as a G1 category, which identifies taxa that are threatened with extinction throughout their entire range. This species category recognizes globally rare species, but provides no protection.

The primary inadequacy in the existing regulations pertains to plant sites located on private lands that currently receive no protection from threats to their existence. Privately-held sites constitute a significant portion of this species' range and play a substantial role in their continued existence.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Succession caused by fire suppression is allowing *Fritillaria gentneri*'s preferred open oak woodland habitat to close in and exclude the species, while the increase of homes in the area makes prescribed burning difficult. According to Rolle (pers. comm. 1997) and Kagan (pers. comm. 1997), *Fritillaria gentneri* grows best in forest openings and closure of the canopy due to successional occurrence can result in shading of the plants. The closure of the forest canopy by the encroachment of Douglas fir and madrone at the Wagon Trail site is currently occurring and threatens the continued occupancy of this macro plot by the 14 *Fritillaria gentneri* plants (Rolle, pers. comm. 1997).

The oak woodland habitat requires a frequent, low intensity fire management regime to maintain the open canopy. Southeastern Oregon averages 500 dry lightening strikes a month during drought conditions in the summer, creating a natural fire frequency of every 12 to 15 years. When the area became developed, 50 to 60 years of fire suppression began. This suppression essentially transformed the traditional oak woodlands with a grassy understory to oak woodlands with a shrub understory. With the current trend toward rural development, it has now become increasingly difficult to restore fire to the habitat. Therefore, although much of the species' habitat has not been developed, it has changed to densely closed woodland with a dry shrub understory. However, prescribed fire would be a good tool in managing for *Fritillaria gentneri* on BLM lands. Given that fire suppression will likely continue, the effects of succession pose a threat to *Fritillaria gentneri* on both private and BLM lands.

Another threat to *Fritillaria gentneri* is the possibility of decreased vigor and viability due to the sparsely distributed clusters ranging from 1 plant to 100 plants. Small numbers and disjunct individuals increase the risk of stochastic loss through genetic or demographic factors. Small clusters may be genetically depauperate as a result of changes in gene frequencies, owing to founder effects or inbreeding. If a population suffers from inbreeding depression, then its short-term viability may be compromised. The effects of inbreeding in populations have been used to recommend a general effective minimal viable population (MVP) of 50 individuals (Falk and Hoslinger 1991). For long-term evolutionary flexibility a MVP of 500 is suggested. That means that any population below 50 is subject to genetic depression over the short-term and any population under 500 will suffer over the long-term. Even though the size at which a population begins to face severe genetic depression is still contested, the negative genetic effects of this to a small population of 340 plants become difficult to ignore.

With 44 of the 45 sites containing so few individuals of *Fritillaria gentneri* plants, the threat of extinction due to demographic and naturally occurring events can play a significant role in the viability of the species as a whole. Four of the sites had 11 to 34 flowering plants and only 1 had 100 flowering plants. The rest had 10 flowering plants or fewer. Due to the small area occupied by the majority of *Fritillaria gentneri*, naturally occurring environmental events could play a role in extirpation. Small clusters can disappear with one environmental event. The sites are small and isolated from each other due to habitat fragmentation. This isolation could inhibit re-colonization to other suitable areas and could result in a permanent loss of localized occurrences once they fall below a critical level.

Herbicide spraying could play an important role in extirpation of small, localized occurrences that are found along roadsides. Approximately 29 percent (13) of the plant occurrences are reported along roadsides and could be affected or potentially extirpated by spraying or other roadside maintenance activities.

The Service has carefully assessed the best scientific and commercial information available regarding the past,

present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the Service proposes to list the *Fritillaria gentneri* as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring the species to the point at which the measures provided pursuant to the Act are no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be threatened or endangered. The Service proposes to find that designation of critical habitat is not prudent for *Fritillaria gentneri*. Service regulations (50 CFR 424.12 (a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species.

There would be little if any additional conservation benefit to the species from a critical habitat designation covering the 25 sites that occur on private lands, even if sometime in the future there is additional Federal involvement through permitting or funding, such as through Federal Department of Housing and Urban Development or the Federal Highway Administration. Federal involvement, where it does occur, can be identified without the designation of critical habitat because interagency coordination requirements as required by section 7 of the Act are already in place. The Fish and Wildlife Coordination Act (FWCA) for example, requires that any federally funded or permitted water resource development proposal or project be consulted on with the Service and State conservation agencies. Designating critical habitat would not create a management plan for the plant, or establish numerical population goals for long-term survival of the species nor directly affect areas not designated as critical habitat.

There would be no benefit from critical habitat designation for those sites on BLM (i.e. Federal) land as BLM is currently aware of the plant's occurrence and would be subject to section 7 consultation as a result of the listing for any activity it authorized, funded, or carried out. The designation would not increase their commitment or management efforts. Protection of *Fritillaria gentneri* will most effectively be addressed through the recovery process and the section 7 consultation process.

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, fundéd or carried out by such agency (agency action). This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations (50 CFR part 402.02) define "jeopardize the continuing existence of" and "destruction or adverse modification of" in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification of habitat means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. In the case of adverse modification of critical habitat, the survival and recovery of the species has been appreciably diminished by reducing the value to the species' designated critical habitat. An action resulting in adverse modification also would jeopardize the continued existence of the species concerned.

The Service acknowledges that critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit a species by alerting permitting agencies to potential sites for reintroduction and allow them the opportunity to evaluate proposals that may affect these areas. However, in this case, the existing sites of *Fritillaria gentneri* are either currently known by the BLM and private landowners, or the appropriate landowners will be notified prior to publication of the proposed rule. If future management actions include unoccupied habitat, any benefit provided by designation of such habitat as critical will be accomplished more effectively and efficiently with the current coordination process.

Designation of critical habitat for this species would substantially increase the threat of collection. *Fritillaria gentneri* is a lily, which is attractive and noticeable and likely to be collected. Gilkey has documented that *Fritillaria gentneri* was successfully collected and grown in a garden and used in flower arrangements. More recent collection of this species on Britt Grounds, which is BLM land, also has been documented (Tomlins 1993, Joan Seever pers. comm. 1997). Hitchcock (1971) noted that *Fritillaria* species are rather attractive in the native garden but that digging of the bulbs should be discouraged as the species are fast disappearing from much of their range. The North American Rock Garden Society (NARGS 1998) publishes a seed list on the Internet which lists a multitude of *Fritillaria* species seed available for sale (both wild and garden collected). Although *Fritillaria gentneri* is not specifically on the list, the list demonstrates the demand for this genus by collectors. In addition, whether showy or not, a species' rarity also makes it susceptible to collection from horticulturists seeking to cultivate rare species (Mariah Steenson pers. comm. 1997). Disseminating specific, sensitive location records can encourage illegal collection (M. Bosch, U.S. Forest Service, in litt. 1997). The accessibility of this plant on public and private lands makes it susceptible to indiscriminate collection by rare plant enthusiasts and researchers. Plants, unlike most animal species protected under the Act, are particularly vulnerable to trespass because of their inability to escape when collectors arrive.

With the increased publicity of listed species, small roadside occurrences could face a higher incidence of vandalism and/or removal. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would expose these sites to over-collection and loss of individuals, and subsequently loss of isolated populations, resulting in the further decline of the species. Due to their low

numbers, specifically 22 of the 45 known sites having three or fewer individuals, isolated clusters of *Fritillaria gentneri* could be severely threatened by taking, negatively affecting the species as a whole. Since this species has a very poor viable seed set and is predominantly reproducing asexually by bulblets (Guerrant 1992 and Rolle 1988d), collection of the bulbs could effectively eliminate the population at the collection site. Publication of critical habitat descriptions and maps would make *Fritillaria gentneri* more vulnerable to illegal collection and would increase enforcement problems.

The minimal benefit of designating critical habitat would be far outweighed by the increased threats to the species that would result from identification of critical habitat. All parties and principal landowners involved in the recovery of *Fritillaria gentneri* will be notified of the location and importance of protecting these species and their habitats prior to publication of the proposed rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm of animals and certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into a formal consultation with the Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 for endangered plants also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Oregon State Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 NE 11th Ave., Portland, Oregon 97232–4181 (503/231–6241). Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild.

The Service adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is proposed for listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service has determined, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, land use activities that would significantly modify the species' habitat, wetland and riparian habitat modification, flood and erosion control, housing development, recreational trail development, road and dam construction and maintenance, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility line crossing suitable habitat, and logging) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act; or when such activity does not occur in habitats suitable for the survival and recovery of *Fritillaria gentneri* and does not alter the hydrology or habitat supporting the plant.

(2) Activities on private lands (without Federal funding or involvement), such as grazing management, agricultural conversions, wetland and riparian habitat modification (not including filling of wetlands), flood and erosion control, housing development, road and dam construction, cemetery maintenance or expansion, pesticide/herbicide application, pipelines or utility line crossing suitable habitat, and routine residential landscape maintenance including the clearing of vegetation as a fire break around one's personal residence.

The Service has determined that the actions listed below may potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of herbicides violating label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Service's Oregon State Office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other

concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) the location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) additional information concerning the range, distribution, and population size of this species; and

(4) current or planned activities in the subject area and their possible impacts on *Fritillaria gentneri*.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section).

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4 (a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References

A complete list of all references cited herein, as well as others, is available upon request from the Oregon State Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Andrew F. Robinson Jr. (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Fritillaria gentneri	Gentner's fritillary	USA (OR)	Liliaceae	E	.....	NA	NA
.	.	.	.	.	.	.	.

Dated: March 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–7481 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE84

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Northern Idaho Ground Squirrel

AGENCY: Fish and Wildlife Service, Interior

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) as a threatened species throughout its range in western Idaho pursuant to the Endangered Species Act of 1973, as amended (Act). This subspecies is known from 21 sites in Adams and Valley Counties, Idaho. It is primarily threatened by habitat loss due to seral forest encroachment into former suitable meadow habitats. Seral forest encroachment results in habitat fragmentation, isolating northern Idaho ground squirrel colonies. The subspecies is also threatened by competition from the larger Columbian ground squirrel (*Spermophilus columbianus*), land use changes, recreational shooting and naturally occurring events. This proposal, if made final, would extend Federal protection provisions provided by the Act for the northern Idaho ground squirrel.

DATES: Comments from all interested parties must be received by May 22, 1998. The Service will hold a public hearing on the proposal in Council, Idaho on May 5, 1998, from 6:00–8:00 p.m., at the Council Elementary School Multi Purpose Room, 202 Highway 95.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the above address or (208) 378–5243.

SUPPLEMENTARY INFORMATION:

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Background

The northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) has the most restricted geographical range of any *Spermophilus* taxa and one of the smallest ranges among North American mainland mammals (Gill and Yensen 1992). The first specimens, collected by L. E. Wyman in 1913, were described by A. H. Howell as *Citellus townsendii brunneus*, a subspecies of the Washington ground squirrel (*Spermophilus washingtoni*) (Howell 1938). In 1938, Howell subsequently classified the Idaho ground squirrel as a full species, *Citellus brunneus*. *Spermophilus* is the generic name that was used by Hershkovitz (1949) to correctly establish this genus. Yensen (1991) described the southern Idaho ground squirrel (*Spermophilus brunneus endemicus*) as taxonomically distinct, based on morphology, pelage, and apparent life history differences including biogeographical evidence of separation.

Both the northern and southern Idaho ground squirrels are found only in western Idaho. Of the two subspecies, the northern Idaho ground squirrel is the rarest (Yensen 1991). A relatively small member of the genus *Spermophilus*, the mean length of northern Idaho ground squirrel males and females is 233 millimeters (mm) (9.25 inches (in)) and 225 mm (8.9 in), respectively. In comparison, the mean length of southern Idaho ground squirrel males is 240 mm (9.5 in) and 233 mm (9.25 in) for females (Yensen 1991). Pelage in northern Idaho ground squirrel differs from the southern Idaho ground squirrel in its mid-dorsal area which consists of long, dark guard hairs and shorter, dark guard hairs with one paler-colored band on the shield (Yensen 1991). Most northern Idaho ground squirrels are found in areas with shallow reddish parent soils of basaltic origin, while the southern Idaho ground squirrel lives on lower elevation, paler colored soils formed by granitic sands and clays from the Boise Mountains (Yensen 1985, 1991). Marked differences in pelage coloration between the disjunct subspecies are related to soil color.

The baculum (penis bone) of northern Idaho ground squirrel is also generally smaller than that of the southern Idaho ground squirrel. A principal-component analysis indicated a striking difference among bacula of the two subspecies that forms a cluster well separated in character space (Yensen 1991). Genetic differentiation between the two subspecies has also been confirmed using enzyme restriction analysis, blood allozyme analyses and DNA protein sequencing (Gill and Yensen 1992; Sherman and Yensen 1994).

The northern Idaho ground squirrel emerges in late March or early April and remains active above ground until late July or early August (Yensen 1991). It occurs at 1,150 to 1,580 meters (m) (3,800 to 5,200 feet (ft)) elevation in Adams and Valley Counties of western Idaho. In contrast the southern Idaho ground squirrel occurs at elevations of 670 to 975 m (2,200 to 3,200 ft) in the low rolling hills and valleys along the Payette River in Gem, Payette, and Washington Counties of western Idaho (Yensen 1991). The southern subspecies emerges in late January or early February, where snow melt begins 1 to 2 months earlier in spring, and ceases above-ground activity in late June or early July. The emergence of the northern Idaho ground squirrel in late March or early April begins with adult males, followed by adult females, then yearlings.

The northern Idaho ground squirrel becomes reproductively active within the first 2 weeks of emergence (Yensen 1991). Females that survive the first winter live, on average, nearly twice as long as males (3.2 years for females and 1.7 years for males). Individual females have lived for 8 years. Males normally die at a younger age due to behavior associated with reproductive activity. During the mating period, males move considerable distances in search of receptive females and often fight with other males for copulations, thereby exposing themselves to predation by raptors including prairie falcon (*Falco mexicanus*), goshawk (*Accipiter gentilis*) and red-tailed hawk (*Buteo jamaicensis*). Significantly more males die or disappear during the 2 week mating period than during the rest of the 12 to 14 week period of above ground activity (Sherman and Yensen 1994). Seasonal torpor generally occurs in early to mid July for males and females, and late July to early August for juveniles.

In 1985, the total northern Idaho ground squirrel population in 18 known colonies was approximately 5,000 squirrels (Fish and Wildlife Service 1985). Subsequent surveys were conducted on an annual basis. While new active colonies were found during these surveys, previously active colonies became extirpated (P. Sherman, Cornell University, pers. comm., 1997). For example, one colony located on BLM lands was active through 1988, but since then has not been occupied by northern Idaho ground squirrels (J. La Rocco, BLM, pers. comm., 1997). In 1996, the total population had declined to fewer than 1,000 individuals distributed through 19 colonies (Sherman and Gavin 1997). Only one of these colonies contained greater than 60 animals. In 1997, three additional colonies were found for a total of 21 active colonies. Still the total population estimate remains at less than 1,000 individuals. Of the 21 known active colonies, 11 occur on public lands and 10 occur on private lands. The numbers of squirrels in many of the active colonies have been trending downward for over 10 years (Yensen 1980; Fish and Wildlife Service 1985; Yensen 1985; Sherman and Yensen 1994; Sherman and Gavin 1997).

Soil texture and depth can be a primary factor in determining species distribution for most *Spermophilus* (Brown and Harney 1993). The northern Idaho ground squirrel often digs burrows under logs, rocks, or other objects (Sherman and Yensen 1994). Dry vegetation sites with shallow soil horizons of less than 50 centimeters (19.5 in) depth above basalt bedrock to develop burrow systems are preferred (Yensen *et al.* 1991). Burrows associated with shallow soils are called auxiliary burrows. Nesting burrows are found in deeper soil pockets that are greater than 1 m (3 ft) deep, usually located near the tops of slopes. Although Columbian ground squirrels (*Spermophilus columbianus*) overlap in distribution with the northern Idaho ground squirrel (Dyni and Yensen 1996), Columbian ground squirrels prefer moister areas with deeper soils. Sherman and Yensen (1994) report that the lack of extensive use of the same areas by the two species is due to competitive exclusion, rather than to each species having different habitat requirements.

Nearly all of the meadow habitats utilized by northern Idaho ground squirrels are bordered by coniferous forests of *Pinus ponderosa* (ponderosa pine) and/or *Pseudotsuga menziesii* (Douglas fir). However, this ground squirrel is not abundant in meadows that contain high densities of small trees (Sherman and Yensen 1994).

The northern Idaho ground squirrel is primarily granivorous, similar to the Columbian ground squirrel (Dyni and Yensen 1996), and ingests large amounts of *Poa* sp. and other grass seeds to store energy for the winter. The northern Idaho ground squirrel consumes 45 to 50 different plant species but prefers *Poa* sp., *Stipa* sp., *Microseris* sp. and *Cryptantha* sp. seeds. Roots, bulbs, leaf stems and flower heads are minor components of the diet. The Columbian ground squirrel often inhabits areas with denser vegetation than the northern Idaho ground squirrel (Dyni

and Yensen 1996). Such areas contain more abundant food resources than habitats occupied by northern Idaho ground squirrel (Belovsky and Schmitz 1994).

The northern Idaho ground squirrel is found on lands administered by the U.S. Forest Service, Idaho State Department of Lands, Boise Cascade Corporation, and other private properties.

Previous Federal Action

In a notice of review published January 6, 1989, the Service determined that the northern Idaho ground squirrel was a category 1 candidate (54 FR 562). Category 1 candidates were those taxa for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In a notice of review published on November 21, 1991 (56 FR 58804), the taxon was again included in category 1. On November 15, 1994, the Service published a revised notice of review in which the northern Idaho ground squirrel was included in category 2 (59 FR 58982). Category 2 species were those for which the Service had information indicating that listing may be warranted but for which it lacked sufficient information on status and threats to support issuance of listing rules. Upon publication of the February 28, 1996, notice of review (61 FR 7596), the Service ceased using category designations and included the northern Idaho ground squirrel as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. Candidate status for this animal was continued in the September 19, 1997, notice of review (62 FR 49398)

As a result of long-standing litigation with the Fund For Animals, a lawsuit settlement of January 21, 1997, directed the Service to make a decision (i.e. prepare a proposed rule to list or remove from Federal candidacy) concerning the northern Idaho ground squirrel on or before April 1, 1998. This proposed rule constitutes the finding that listing of the northern Idaho ground squirrel as a threatened species is warranted.

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475) and extended in October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals, and fourth priority (Tier 4) to processing critical habitat determinations and delisting or reclassifications. This proposed rule constitutes a Tier 3 action.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4 (a)(1). These factors and their application to the northern Idaho ground squirrel are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Little is known about the historic range of the northern Idaho ground squirrel, however, it is thought that this subspecies was always uncommon within a limited habitat, but in the past was much more abundant than at present (Forest Service 1997). All remaining habitat sites for the northern Idaho ground squirrel are small in relation to those of other ground squirrels, ranging in size from 1.2 to 16 hectares (3 to 40 acres), and are imminently threatened by one or more of the following—land conversion to agriculture; residential construction; development of recreational facilities such as campgrounds; and road construction and maintenance.

Agricultural conversion and rural housing developments from the communities of Round Valley, north to New Meadows, and south to Council, Idaho, during the past 40 years have fragmented habitat that was formerly occupied by the northern Idaho ground squirrel. These types of developments continue to threaten remaining colonies in both Adams and Valley Counties. Occupied ground squirrel habitat near New Meadows was converted to a golf course and associated housing development (Yensen 1985), resulting in the eradication of northern Idaho ground squirrels at the site.

A 51.6 kilometer (km) (32 mile (mi)) gravel road from Council to Cuprum, Idaho is scheduled to be paved by the year 2000. Approximately 6.5 km (4 mi) of this project runs through historic and currently occupied habitat of the northern Idaho ground squirrel. The project will improve and seasonally extend vehicle access to four nearby northern Idaho ground squirrel colonies. Four existing colonies will be subject to increased mortality risk from vehicles, and possibly recreational shooting (U. S. Forest Service 1997a).

A mitigation plan (Plan) has been developed for the Council to Cuprum Road paving project in cooperation with the Federal Highway Administration (Forest Service 1997a). The Plan identifies mitigation actions to attract northern Idaho ground squirrels away from the paved highway to adjacent but suitable habitat to avoid passing vehicles. Funding for this Plan, if approved, would allow for monitoring the mitigation measures for a 3-year period after the road improvements have been made, which will occur between 1998–2000. At this time, it is uncertain whether proposed mitigation measures will be successful in protecting colonies in the vicinity of the project.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Some, in the general public, consider ground squirrels as varmints and, as such, recreational shooting contributes to the decline of northern Idaho ground squirrel colonies (Yensen 1991). Colonies adjacent to housing developments, towns, or farms, in particular, are subject to a high rate of recreational shooting. Scientific collection of ground squirrels could also adversely impact this species, however, to date, no known mortality has occurred through handling or marking over 1,100 squirrels (Sherman and Yensen 1994).

C. *Disease or predation.* The significance of disease as a threat to this subspecies is unknown. The parasitic nematode, *Pelodera strongyloides,* infects the eyes of the northern Idaho ground squirrel (Sherman and Yensen 1994; Yensen *et al.* 1996). This eye worm is not currently known to be a cause of mortality or to affect the population structure within existing colonies (Yensen *et al.* 1996). Although plague, (*Yersina pestis*), a contagious bacterial disease in rodents, has not been found in any northern Idaho ground squirrel colonies, the disease, once established, could decimate these colonies (Yensen *et al.* 1996).

The primary predators of the northern Idaho ground squirrel include badger (*Taxidea taxus*), goshawk (*Accipiter gentilis*), prairie falcon (*Falco mexicanus*) and occasionally red-tailed hawk (*Buteo jamaicensis*). In particular, predators threaten the smaller more isolated colonies of northern Idaho

ground squirrel. Males are particularly subject to increased predation risk during the mating period (Sherman and Yensen 1994).

D. *The inadequacy of existing regulatory mechanisms.* The State of Idaho recognizes the northern Idaho ground squirrel as a "Species of Special Concern" (Idaho Department of Fish and Game 1994). Because of this status, the northern Idaho ground squirrel is, by law, protected from taking (shooting, trapping, poisoning) or possession. To date, however, protection from recreational shooting has not been adequately enforced by the State and the northern Idaho ground squirrel remains vulnerable to this activity (Yensen 1985).

Local land use ordinances and other regulations are inadequate to protect this subspecies. For example, the Adams County land use regulations, where 99 percent of northern Idaho ground squirrel colonies are found, allow for single and multiple housing developments under a permit system. There is no consideration under the permit system for impacts that may result from building housing or recreation developments in or adjacent to habitat occupied by the northern Idaho ground squirrel. With no limitations on development of northern Idaho ground squirrel habitat, it is anticipated that human population growth and development in the foreseeable future will continue to impact ground squirrel colonies where the two overlap.

Under the present status as a candidate species, there is no requirement for Federal agencies to consult with the Service under section 7 of the Endangered Species Act. When this proposed rule to list the northern Idaho ground squirrel is published in the **Federal Register**, conferencing (which is equivalent to section 7 consultation) by other Federal agencies will be required when their actions may jeopardize the species. Until this step has been completed, only the voluntary conservation agreement between the Payette National Forest and the Service provides responsible management to reduce threats to the northern Idaho ground squirrel.

E. *Other natural or manmade factors affecting its continued existence.* The primary threat to the northern Idaho ground squirrel is meadow invasion by conifers (Sherman and Yensen 1994). Fire suppression and the dense regrowth of conifers resulting from past logging activities have significantly reduced meadow habitats suitable for northern Idaho ground squirrels. As the extent of meadow habitat on public and private lands was reduced over the past 40 years, northern Idaho ground squirrel dispersal corridors have been reduced or eliminated, further constricting the species into smaller isolated habitat areas (Truksa and Yensen 1990). The loss of dispersal corridors has caused at least some isolated colonies to become extirpated (Sherman and Yensen 1994: Fish and Wildlife Service 1996). Small populations at several remaining colony sites are likely to become extirpated as well (Sherman and Yensen 1994; Mangel and Tier 1994).

The fragmented distribution of the northern Idaho ground squirrel is the remnant of what may once have been a more continuous distribution from Round Valley, Idaho in Valley County north to New Meadows and then southwest to Council in Adams County, and the existing colonies on private and public lands northwest of Council. Because of logging and fire suppression, forest structure has changed markedly over the past century, resulting in much denser, more even-aged younger stands of trees with thinner and less heterogeneous under-story plant communities (Burns and Zborowski 1996). Fire suppression has allowed conifers to invade areas that were once meadows, thereby shrinking the size of forb/grass meadows or closing open grassy corridors entirely to each of these meadow sites. These changes have isolated the dry meadows with shallow soils where the northern Idaho ground squirrel finds refuge from the Columbian ground squirrel, which also eliminates phenotypic exchange between northern Idaho ground squirrel colonies. Those dry meadow habitats where colonies still are extant are now being invaded in most areas by small trees, further constricting the preferred forage and fossorial habitat of this species. Habitat dissection and reduced opportunities for dispersal among habitats prevents gene flow and results in considerable population differentiation (Sherman and Yensen 1994).

Habitat and resource competition with the Columbian ground squirrel is another factor affecting the survival of the northern Idaho ground squirrel. The northern Idaho ground squirrel may have been forced into areas containing shallower soils due to competition from Columbian ground squirrels (Sherman and Yensen 1994). The Columbian ground squirrel is larger and prefers deeper soil areas with soils that provide better over-winter protection and higher nutrients. Competition from Columbian ground squirrel could be an important factor in population decline of the northern Idaho ground squirrel (Dyni and Yensen 1996). Where both species occur, the northern Idaho ground squirrel tends to occupy the shallower soils but requires deeper soils less than 1 m (3.2 ft) for nests (Yensen et al. 1991). The Columbian ground squirrel is not restricted by soil depth. Typically their burrow systems are associated with degree of slope, well drained soils, and number of native forbs (Weddell 1989).

Winter mortality may be a contributing factor for northern Idaho ground squirrel decline, especially when juvenile squirrels enter torpor without sufficient fat reserves and snow levels are below average (Paul Sherman, pers. comm., 1997). Soils tend to freeze to greater depths where snow levels are shallow. When this occurs ground squirrels are unable to thermoregulate or maintain sufficient fat reserves. Although the relationship between ground squirrels and weather is complex (Yensen *et al.* 1992) colonies may have been adversely affected by drought and over winter mortality in the early 1990's.

As a result of the factors discussed above and due to the small population sizes of remaining colonies and the small total number of individuals, the northern Idaho ground squirrel may have little resilience to respond to naturally occurring events (Gavin *et al.* 1993). Small animal populations are often highly vulnerable to natural climatic fluctuations as well as catastrophic events (Mangel and Tier 1994). Gavin *et al.* (1993) ran a computer population viability simulation program (VORTEX), using natality and mortality values recorded over 8 years from an intensively studied northern Idaho ground squirrel colony (Sherman and Yensen 1994). Variables in the model included no natural immigration, and began the population viability analysis using 50 individuals, a figure that was 30 individuals lower than the actual population size of 80 individuals (Sherman and Yensen 1994). The model calculated that all but 1 of 100 populations would become extinct in less than 20 years.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the northern Idaho ground squirrel in determining to propose this rule. Based on this evaluation, the preferred action is to list the northern Idaho ground squirrel as threatened. The subspecies has declined from approximately 5,000 animals in 1985 to fewer than 1,000 animals in 1997. While the northern Idaho ground squirrel is not in immediate danger of extinction because

of ongoing conservation and recovery efforts, the subspecies could become endangered in the foreseeable future if remaining colony populations decline further.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service believes critical habitat designation is not prudent for the northern Idaho ground squirrel because both of the above described situations exist. The northern Idaho ground squirrel has been studied for 17 years (Yensen 1980; Yensen 1985; Sherman and Yensen 1994; Sherman and Gavin 1997), and the locations of active and historic colonies are well documented and known within the scientific community. However, publication of detailed critical habitat maps and descriptions, as required, would make this information more readily available to the general public and serve as an advertisement for casual/recreational visits to the habitat areas, thereby increasing the risk of elimination of northern Idaho ground squirrels or their habitat. Eliminating a colony or destroying the squirrel's habitat serves to create the false sense that it is no longer a problem. Publishing maps of critical habitat may also serve as rally areas for the shooting public to use and destroy ground squirrels directly or indirectly (R. Howard, Fish and Wildlife Service, pers. comm., 1997). In light of the vulnerability of this species to vandalism or the intentional destruction of its habitat, critical habitat designation would reasonably be expected to increase the degree of threat to the species, increase the enforcement difficulties, and further contribute to the decline of the northern Idaho ground squirrel.

Additionally, designation of critical habitat would not be beneficial to the northern Idaho ground squirrel. Critical habitat designation provides protection only on Federal lands or on private or State lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. Eleven of the remaining sites are located on Federal lands administered by the U.S. Forest Service and the Bureau of Land Management. These agencies are aware of the species occurrence at these sites and the requirement to consult with the Service under section 7(a)(2) to ensure that any actions federally authorized, funded or carried out is not likely to jeopardize the continued existence of an endangered or threatened species. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded or carried out by such agency, does not jeopardize the continued existence of a federally listed species. Consultation is most likely to occur with the Bureau of Land Management and the Forest Service concerning timber harvest activities, recreational use permits, and management of grazing allotments. The consequence of critical habitat designation is that Federal agencies must also ensure that their actions do not result in destruction or adverse modification of critical habitat. The adverse modification standard would not address seral forest encroachment which is considered a principal factor causing northern Idaho ground squirrel declines. Therefore, in this case, the prohibition on adverse modification would likely provide no additional benefit to conservation of the subspecies than that provided by the prohibition on jeopardy.

The Service acknowledges that critical habitat designation may provide some benefits to a species by identifying areas important to a species conservation and calling attention to those areas in special need of protection. A critical habitat designation contributes to species conservation primarily by highlighting important habitat areas and by describing the features within those areas that are essential to the species. However, in this case, this information can be disseminated more effectively through alternative means and the primary threat (plant succession) would not be addressed by critical habitat designation.

The northern Idaho ground squirrel is not well known to the general public because of its rarity and limited distribution. As a consequence, all involved parties and landowners have been notified of the importance of the northern Idaho ground squirrel habitat. The Service is directly working with Federal land management agencies to develop a coordinated management plan including vegetation control and translocation to reestablish or augment populations of the northern Idaho ground squirrel. Appropriate consultation and coordination with other Federal agencies, such as the Forest Service and Bureau of Land Management, will also occur once any specific federally supported activity that could affect the northern Idaho ground squirrel is proposed. These conservation actions for the Idaho ground squirrel would not be enhanced by designation of critical habitat.

Therefore, the Service finds that designation of critical habitat for this species is not prudent, for such designation would increase the degree of threat from vandalism, shooting, or intentional destruction of habitat and would provide no additional benefit to the species.

The Service will continue in its efforts to obtain more information on the northern Idaho ground squirrel's biology and ecology, including essential habitat characteristics, and existing and potential sites that can contribute to conservation of the species. The information resulting from this effort will be used to identify measures needed to achieve conservation of the species, as defined under the Act. Such measures could include, but are not limited to, development of additional conservation agreements with the State, other Federal agencies, local governments, and private landowners and organizations, and implementation of those agreements already in effect.

Available Conservation Measures

Ongoing conservation activities for this species include prelisting actions and conservation efforts on Federal and private lands. The remaining active northern Idaho ground squirrel colonies occur on private and Payette National Forest lands. A management agreement between The Nature Conservancy and

one private landowner protects northern Idaho ground squirrels on this property.

A conservation agreement (Agreement) was finalized in July of 1996 between the Service and the Payette National Forest (Fish and Wildlife Service 1996). Duration of the Agreement is 5 years. The Agreement identifies conservation and land management actions that will provide habitat favorable to the northern Idaho ground squirrel. These actions, some already in the implementation phase, include: controlled burning of selected meadows to reduce over-story and to improve forage preferred by the northern Idaho ground squirrel; timber harvest in select areas to open meadows where active colonies are found; and, timber harvest to provide dispersal corridors for improved connectivity between colonies. For example, 3.3 million board feet of timber is proposed for harvest in the Lick Creek drainage in 1998 (Forest Service 1997b). The sale is designed to reconnect an active colony with other nearby colonies. It will also open 12 meadow habitats on Federal lands that are favorable to recolonization by the northern Idaho ground squirrel.

A relocation plan developed by scientists from Cornell University, Ithaca, New York, and Albertson College, Caldwell, Idaho, was initiated in the spring of 1997. A total of 49 of squirrels were transplanted to two sites (15 and 34 respectively) that had been treated through burning and or timber harvest (P. Sherman, pers. comm., 1997). Both treated sites are on lands managed by the U.S. Forest Service and were selected because both have recently supported northern Idaho ground squirrels. One site still supports a small population of animals while squirrels were found until 1996 at the other site. Initial results indicate that some translocated females were lactating and juveniles were observed at both sites (P. Sherman, pers. comm., 1997). More definitive results of the translocation will not be known until monitoring efforts are completed in the spring of 1998. Whether long-term benefits to ground squirrel recovery result from these actions may be unknown for several years.

These ongoing conservation efforts for the northern Idaho ground squirrel address threats that have likely contributed to the species' past decline. The Service will continue to work with private and Federal land owners to restore and maintain suitable habitat and dispersal corridors for the species and to address other limiting factors.

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act requires the appropriate land management agencies to evaluate potential impacts to the species that may result from activities they authorize or permit. Consultation under section 7 of the Act is required for activities on Federal, State, County, or private lands, that may impact the survival and recovery of the northern Idaho ground squirrel, if such activities are funded, authorized, carried out, or permitted by Federal agencies. Federal agencies that may be involved in activities affecting this species include the Forest Service, Federal Highways Administration, Bureau of Land Management, Office of Surface Mining and Natural Resources Conservation Service. Section 7 requires these agencies to consider potential impacts to the northern Idaho ground squirrel prior to approval of any activity authorized or permitted by them.

Federal agency actions that may require consultation include removing, thinning or altering vegetation; construction of roads or camping sites in the vicinity of active and historical colonies, recreational home developments, permitting off-road vehicle use areas, and development of gravel or sand mining activities, campground construction, mining permits and expansion, highway construction, timber harvest, etc.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. (Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 10180–0094.)

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is proposed for listing, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service believes that, based upon the best available information, the following action will not result in a violation of section 9:

Activities authorized, funded, or carried out by Federal agencies (e.g., logging, flood and erosion control, mineral and housing development, off road permitting or park development,

recreational trail and campground development, road construction, prescribed burns, pest control activities, utility lines or pipeline construction) when such activity is conducted in accordance with any incidental take statement prepared by the Service in accordance with section 7 of the Act.

Activities that the Service believes could potentially result in a violation of section 9 include but are not limited to:

(1) Unauthorized or unpermitted collecting, handling, harassing, or taking (such as recreational shooting) of the subspecies;

(2) Activities that directly or indirectly result in the actual death or injury of the northern Idaho ground squirrel, or that modify the known habitat of the subspecies by significantly modifying essential behavior patterns (e.g., plowing, conversion to cropland, residential or recreational uses; road and trail construction; water development and impoundment; mineral extraction or processing; off-road vehicle use; and unauthorized application of herbicides or pesticides).

(3) Activities within the northern Idaho ground squirrel hibernating period (mid July through early April), and near burrow areas that include controlled burns, mowing, road, pipeline or utility construction, herbicide application or other activities that would alter the burrow systems and food sources of the northern Idaho ground squirrel.

Questions regarding whether specific activities will constitute a violation of section 9 or to obtain guidance for activities within northern Idaho ground squirrel habitat should be directed to the U.S. Fish and Wildlife Service, Snake River Basin Office, Boise, Idaho (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies;

(2) The location of any additional populations of this subspecies and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this subspecies;

(4) Biological or physical elements that best describe this subspecies' habitat, that could be considered critical for the conservation of the subspecies (e.g., colonies, hibernation, vegetation, food, topography);

(5) Current or planned activities in the subject area and their possible impacts on this subspecies;

(6) Possible alternative recreational and logging practices, or road right-of-way development and maintenance activities that will reduce or eliminate the take of northern Idaho ground squirrel or their habitats; and

(7) Other management strategies that will conserve the subspecies throughout its range.

Final promulgation of the regulations on this subspecies will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. The Service has scheduled a public hearing in Council, Idaho (see **DATES** section).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collection of information that requires approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Snake River Basin Office (see **ADDRESSES** above).

Author: The primary author of this proposed rule is Richard Howard, U.S. Fish and Wildlife Service, Snake River Basin Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
.	.	.	.	.	.	.	
Squirrel, northern Idaho ground.	*Spermophilus brunneus brunneus.*	U.S.A. (ID)	NA	T		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.

Dated: March 6, 1998.
Jamie Rappaport Clark,
Director, U.S. Fish and Wildlife Service
[FR Doc. 98–7480 Filed 3–20–98; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[I.D. 022498E]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Sea-run Cutthroat Trout and Designate Critical Habitat Throughout Its Range In California, Oregon, and Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of finding and request for information.

SUMMARY: NMFS has received a petition to list coastal sea-run cutthroat trout (*Oncorhynchus clarki clarki*) and designate critical habitat throughout its range in California, Oregon, and Washington under the Endangered Species Act (ESA). NMFS determines the petition presents substantial scientific information indicating that the petitioned action may be warranted. NMFS previously commenced a status review for this species and will continue to evaluate the status of this species on the West Coast. NMFS solicits from the public information, comments, and seeks suggestions from the public for peer reviewers for NMFS' review of the petitioned action.

DATES: Information and comments on the action must be received by June 22, 1998.

ADDRESSES: Information and comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231–2005 or Joe Blum, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

In a Notice dated September 12, 1994, NMFS announced its intent to conduct comprehensive status reviews for five species of Pacific salmonids, including sea-run cutthroat trout (59 FR 46808). These were in addition to two ongoing status reviews for west coast coho salmon (*Oncorhynchus kisutch*) and steelhead (*Oncorhynchus mykiss*). NMFS completed coastwide status reviews for coho salmon and steelhead on July 25, 1995, and August 9, 1996, respectively (60 FR 38011; 61 FR 41541). On October 4, 1995, NMFS completed its status review of west coast pink salmon (*Oncorhynchus gorbuscha*) (60 FR 51928). Furthermore, on February 26, 1998, NMFS completed its status reviews of west coast sockeye (*Oncorhynchus nerka*), chum (*Oncorhynchus keta*), and chinook salmon (*Oncorhynchus tshawytscha*). NMFS is currently reviewing the status of west coast sea-run cutthroat trout.

On December 18, 1997, the Secretary of Commerce (Secretary) received a petition from Oregon Natural Resources Council to list and designate critical habitat for sea-run cutthroat trout in the States of Washington, Oregon, and California. Copies of this petition are available. (See **ADDRESSES**).

Analysis of Petition

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary to list species under the ESA. Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. Section 424.14(b)(1) of NMFS' ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (See 50 CFR 424.14). Section 424.14(b)(2) of these regulations contains factors the Secretary considers in evaluating a petitioned action.

After reviewing the information contained in the petition, the Secretary determines that the petition presents substantial scientific information indicating the petitioned action may be warranted. In accordance with section 4(b)(3)(B) of the ESA, the Secretary will make his determination within 12 months from the date the petition was received (December 18, 1998), whether the petitioned action is warranted.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered based on any of the following factors: (1) The present or threatened destruction, modification, or curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species continuing existence. Listing determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species.

Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS solicits information and comments concerning the status of sea-run cutthroat trout (see **DATES** and **ADDRESSES** above). NMFS specifically requests the following information: (1) Biological or other relevant data that may help identify "distinct populations" of cutthroat trout (e.g., age structure, genetics, migratory patterns, morphology) (see NMFS' policy on applying the definition of species under the ESA to Pacific salmon (56 FR 58612, November 20, 1991); (2) the range, distribution, and size of cutthroat populations in Washington, Oregon, and California; (3) current or planned activities and their possible impact on this species (e.g., hatchery, harvest, and habitat actions); (4) information concerning the relationship of resident,

anadromous, and potamodromous cutthroat trout; (5) information that may aid in distinguishing native, naturally spawned cutthroat trout from nonnative stocks or rainbow trout/cutthroat trout hybrids; and (6) efforts being made to protect naturally spawned populations of sea-run cutthroat trout in Washington, Oregon, and California.

NMFS also requests quantitative evaluations describing the quality and extent of freshwater and marine habitats for juvenile and adult cutthroat trout, as well as information on areas that may qualify as critical habitat in Washington, Oregon, and California. Areas that include the physical and biological features essential to the recovery of the species should be identified. Essential features include, but are not limited to the following: (1) habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS requests information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. NMFS now solicits the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers will be selected from the academic and scientific community, Tribal and other native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 18, 1998.

Patricia Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7464 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 031298A]

Fisheries Off West Coast States and in the Western Pacific; Northern Anchovy Fishery; Intent to Prepare an Environmental Impact Statement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for written comments.

SUMMARY: NMFS announces its intent to prepare an EIS to assess the impact on the natural and human environment of amending the Northern Anchovy Fishery Management Plan (FMP) to include the management of other coastal pelagic species. This NOI requests written comments on issues that NMFS should consider in preparing the EIS. The EIS will examine alternatives available to NMFS to manage coastal pelagic species, including northern anchovy, Pacific sardine, Pacific mackerel, jack mackerel, and market squid to allow a productive fishery while preventing overfishing and recognizing the value to the ecosystem of coastal pelagic species as forage for other fish, marine mammals, and birds.

DATES: Comments must be submitted by April 22, 1998.

ADDRESSES: Comments should be sent to William T. Hogarth, Ph.D., Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: James J. Morgan or Svein Fougner, (562) 980–4030.

SUPPLEMENTARY INFORMATION: At its June 23–25, 1997, meeting, the Pacific Fishery Management Council (Council) directed its Coastal Pelagics Development Team (Team) to begin work on an amendment to the northern anchovy FMP to (1) add Pacific sardine, Pacific mackerel, jack mackerel, and market squid; (2) develop management strategies for these species that meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); and (3) present options for limited access to the fisheries. A previous amendment was disapproved by NMFS in 1996; however, the Council pointed out that recent events increased the need for Federal management. The biomass of Pacific sardine continues to grow by approximately 30 percent per year, with commercial fisheries operating off Mexico, United States, and Canada. In the 1930s, the fishery for Pacific sardine was the largest in the western hemisphere, but the resource declined precipitously in the 1950s. With changing environmental conditions off the coast of California, abundance is now increasing. A major issue of the FMP will be how to responsibly manage these resources in accordance with the provisions of the Magnuson-Stevens Act while recognizing their importance as forage for other species, given that coastal pelagic species fluctuate widely even in the absence of a fishery.

A series of public meetings of the Team and Coastal Pelagics Advisory Subpanel (Subpanel) were held in 1997 to determine how to approach limited entry and harvest strategy (62 FR 38068, July 16, 1997). The Council reviewed progress of the FMP amendment, at its September 9–12, 1997, meeting, and additional meetings of the Team and Subpanel were held in the latter part of 1997 and early 1998 (62 FR 58941, October 31, 1997). An advance notice of proposed rulemaking notifying the public that the Council was preparing an amendment to the FMP and was considering a control date for the development of options for limited entry was published in the **Federal Register** on December 17, 1997 (62 FR 66049). Additional public meetings will be announced in the **Federal Register**. The draft FMP amendment is expected to be completed by June 1998, with the Council making final decisions on the document in September 1998.

NMFS has determined that the preparation of an EIS is appropriate because of the potentially significant impact of regulations on the human environment. At this stage of development, the general effect of Federal regulations will be to limit the

vessels that can participate in the fishery, to prevent overfishing; and to set harvest limits for resources that greatly extend their range at high biomass levels and contract their range dramatically when biomass levels are low.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: March 17, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7460 Filed 3–20–98; 8:45 am]

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Notices

Federal Register
Vol. 63, No. 55
Monday, March 23, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agricultural Service.

ACTION: Notice of determination of termination of existence of price conditions necessary for imposition of temporary duty on frozen concentrated orange juice from Mexico.

SUMMARY: Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act of 1993 ("NAFTA Implementation Act"), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified amounts before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive business days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term "daily price" means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary of Agriculture (the "Exchange"), for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term "business day" means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange.

The term "trigger price" means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price. Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the **Federal Register** of the determination that the price conditions have ceased to exist shall be the lower of—(1) the column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term "entered" means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

In accordance with Section 309(a) of the NAFTA Implementation Act, it has been determined that for the period February 25–March 3, 1998, the daily price for frozen concentrated orange juice has exceeded the trigger price.

Issued at Washington, D.C. the 17th day of March 1998.

Christopher E. Goldthwait,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 98–7438 Filed 3–20–98; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Trade Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 22, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Ronald L. Piencykoski, Bureau of the Census, Room 2626-FOB 3, Washington, D.C. 20233–6500, (301) 457–2713.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Trade Survey (ATS) provides a sound statistical basis for the formation of policy by other government agencies. It provides continuing and timely national statistics on wholesale trade augmenting the period between economic censuses, and is a continuation of similar wholesale trade surveys conducted each year since 1978. The data that the Bureau collects with the ATS, annual sales, end-of-year inventories, and purchases, are applicable to a variety of public and

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business needs. The Census Bureau collects these annual data from firms reporting in the Monthly Wholesale Trade Survey (MWTS)as well as additional firms selected specifically for the annual survey. The annual collection is mandatory, whereas response to the monthly is voluntary. Estimates developed in the ATS are used to benchmark the monthly sales and inventories series and the firms canvassed in this survey are not required to maintain additional records since carefully prepared estimates are acceptable if book figures are not available.

II. Method of Collection

We will collect this information by mail, FAX and telephone follow-up.

III. Data

OMB Number: 0607–0195.

Form Number: B–450, and B–451.

Type of Review: Regular Submission.

Affected Public: Wholesale Businesses.

Estimated Number of Respondents: 5,750.

Estimated Time Per Response: .3863 hrs (23 minutes).

Estimated Total Annual Burden Hours: 2,221 hours.

Estimated Total Annual Cost: The cost to the respondent is estimated to be $30,317 based on an annual response burden of 2,221 hours and a rate of $13.65 per hour to complete the form.

Respondent's Obligation: mandatory.

Legal Authority: Title 13, United States Code, Section 182, 24, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7367 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation 1996 Panel Wave 8.

Form Number(s): SIPP 16805(L) Director's Letter, CAPI Instrument.

Agency Approval Number: 0607–0813.

Type of Request: Revision of a currently approved collection.

Burden: 117,800 hours.

Number of Respondents: 77,700.

Avg Hours Per Response: half an hour.

Needs and Uses: The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to collect information from a sample of households concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture. The SIPP is a longitudinal survey, in that households in the panel are interviewed 12 times at 4 month intervals or waves over the life of the panel, making the duration of the panel about 4 years. The next panel of households will be introduced in the year 2000.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of a panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules to be asked during Wave 8 of the 1996 Panel. The core questions have already been cleared. Topical modules for waves 9 through 12 will be cleared later. The topical modules for Wave 8 are: (1) Adult Well-Being and (2) Welfare Reform. Wave 8 interviews will be conducted from August through November 1998.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7465 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 956]

Grant of Authority; Establishment of a Foreign-Trade Zone Guilford, Forsyth, Davidson and Surry Counties, NC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Piedmont Triad Partnership (the Grantee), a North Carolina non-profit corporation, has made application to the Board (FTZ Docket 21–97, 62 FR 15460, 4/1/97;

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amended, 62 FR 44642, 8/22/97), requesting the establishment of a foreign-trade zone at sites in Guilford, Forsyth, Davidson and Surry Counties, North Carolina, adjacent to the Winston-Salem Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register**; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 230, at the sites described in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 11th day of March 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7484 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 965]

Designation of New Grantee for Foreign-Trade Zone 181, Akron-Canton, OH; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the request (Docket 77–97) with supporting documents from the Akron-Canton Regional Airport Authority, grantee of Foreign-Trade Zone 181, Akron-Canton, Ohio, for reissuance of the grant of authority for said zone to the Northeast Ohio Trade & Economic Consortium (NEOTEC), an Ohio public corporation, which has accepted such reissuance subject to approval of the FTZ Board, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes NEOTEC as the new grantee of Foreign-Trade Zone 181.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7482 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 964]

Expansion of Foreign-Trade Zone 183 Austin, Texas Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Foreign-Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone No. 183, for authority to expand Site 3 of its general-purpose zone in the Austin, Texas, area, adjacent to the Austin Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on April 11, 1997 (Docket 30–97, 62 FR 19547, 4/11/97);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 16th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7483 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulation's we are initiating those administrative reviews.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates.

Initiative of Reviews

In accordance with section 19 CFR 351.211(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 1999.

	Period to be reviewed
Antidumping Duty Proceedings	
India: Stainless Steel Bar, A–533–810	2/1/97–1/31/98
Bhansali Bright Bars Pvt. Ltd.	
Venus Wire Industries Limited	
Indonesia: Melamine Institutional Dinnerware, A–560–801	8/22/96–1/31/98
P.T. Mayer Crocodile	
P.T. Multi Raya Indah Abah	
Japan: Stainless Steel Bar, A–588–833	2/1/97–1/31/98
Aichi Steel Works, Ltd.	
The People's Republic of China: Axes/adzes,* A–570–803	2/1/97–1/31/98
Shandong Machinery Import & Export Corp.	
Fuijian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
The People's Republic of China: Bars/wedges,* A–570–803	2/1/97–1/31/98
Shandong Machinery Import & Export Corp.	
Fuijian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
The People's Republic of China: Hammers/sledges,* A–570–803	2/1/97–1/31/98
Shandong Machinery Import & Export Corp.	
Fuijian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
The People's Republic of China: Picks/mattocks,* A–570–803	2/1/97–1/31/98
Shandong Machinery Import & Export Corp.	
Fuijian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
*If one of the above named companies does not qualify for a separate rate, all other exporters of certain heavy forged hand tools form the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.	
The People's Republic of China: Paint Brushes,* A–570–501	2/1/97–1/31/98
Hunan Provincial Native Produce and Animal By-Products Import and Export Corporation	
*If the above named company does not qualify for a separate rate, all other exporters of paint brushes from the People's Republic of China who have not qualified for separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.	
The People's Republic of China: Managanese Metal,* A–570–501	2/1/97–1/31/98
China National Electronics Import & Export Hunan Co.	
China Human International Economic Development (Group) Corporation	
China Metallurgical Import & Export Hunan Corporation and Hunan Nonferrous Metals Import & Export Assoc. Co.	
Minmetals Precious & Rare Minerals Import & Export Co.	
*If the above named company does not qualify for a separate rate, all other exporters of manganese metal from the People's Republic of China who have not qualified for separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.	

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must subject applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 17, 1998.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–7485 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031198B]

Incidental Take of Marine Mammals; Taking of Ringed Seals Incidental to On-Ice Seismic Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended and with implementing regulations, notification is hereby given that letters of authorization to take ringed and bearded seals incidental to on-ice seismic operations in the Beaufort Sea off Alaska were issued on March 16, 1998, to BP Exploration, Western Geophysical, and Northern Geophysical of America, all of Anchorage, AK.

DATES: These letters of authorization are effective from March 16, 1998, through May 31, 1998.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055 or Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of ringed and bearded seals incidental to on-ice seismic surveys were published on February 2, 1998 (63 FR 5277), and remain in effect until December 31, 2002.

Summary of Request

NMFS received requests for letters of authorization on February 24, 1998, from Northern Geophysical; February 26, 1998, from BP Exploration (Alaska); and May 20, 1997 (as amended on December 22, 1997, and March 3, 1998), from Western Geophysical. These letters requested a take by harassment of a small number of ringed and bearded seals incidental to the described activity.

Issuance of these letters of authorization are based on findings that the total takings by this activity will have a negligible impact on the ringed and bearded seal stocks of the Western Beaufort Sea and that the applicants have met the requirements contained in the implementing regulations.

Dated: March 16, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7458 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of two public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has cancelled the public meeting of the Special Crustacean Stock Assessment Panel (SAP) that was scheduled for Monday, March 30, 1998, through Wednesday, April 1, 1998. The Council has also cancelled the public meeting of the Finfish SAP that was scheduled for Monday, April 6, 1998, through Thursday, April 9, 1998. The meetings were announced in the **Federal Register** on March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The initial notice published on March 16, 1998 (63 FR 12784). The purpose of these meetings was for the SAPs to develop alternatives for the overfishing criteria as required by the Sustainable Fisheries Act. These alternative and recommendations would be provided to the Council. The meetings will be rescheduled at a future date after NMFS has published the guidelines for National Standard 1 which will define criteria for setting the overfishing thresholds.

Dated: March 17, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7459 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031698A]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council, and its advisory entities will meet during the week of April 5–10, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Doubletree Hotel, Columbia River, 1401 N. Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–2111.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The Council meeting will begin on Monday,

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April 6, at 1 p.m. with a closed session to discuss litigation and personnel matters. The open session begins at 1:30 p.m. The Council will reconvene Tuesday, April 7 through Friday, April 10, at 8 a.m. in open session. The Council will meet as late as necessary each day to complete its scheduled business.

The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call;
2. Approve Agenda; and
3. Approve November 1997 and March 1998 Meeting Minutes;

B. Salmon Management

1. Tentative Adoption of 1998 Ocean Salmon Measures for Analysis;
2. Clarify Council Direction, If Necessary;
3. Review of Draft Plan Amendments;
4. Methodology Reviews for 1998;
5. Identification of Stocks Not Meeting Escapement Goals for three Consecutive Years; and
6. Final Action on 1998 Measures;

C. Habitat Issues - Report of the Steering Group

D. Coastal Pelagic Species Management

1. Review of Draft Plan Amendments;

E. Groundfish Management

1. NMFS Report on Regulations, Research Projects, etc.;
2. Status of Fisheries and Inseason Adjustments;
3. Comprehensive Observer Program;
4. Review of Draft Plan Amendments;
5. Lingcod and Rockfish Allocation;
6. Capacity Reduction Program; and
7. Groundfish Management Team, Staff, and NMFS Workload;

F. Pacific Halibut Management

1. Area 2A Bycatch Calculation; and

G. Administrative and Other Matters

1. Scoping Session on Marine Protected Areas;
2. Research and Data Needs;
3. Update on Dungeness Crab and Other Legislation;
4. Report of the Budget Committee;
5. Appointments to Advisory Entities; and
6. Draft June 1998 Agenda.

Advisory Meetings

The Salmon Technical Team will meet as necessary Monday through Friday, April 6–10, 1998, to address salmon management items on the Council agenda.

The Habitat Steering Group meets at 10 a.m. on Monday, April 6, to address issues and actions affecting habitat of fish species managed by the Council.

The Salmon Advisory Subpanel will convene on Monday, April 6, at 9 a.m., and will continue to meet throughout the week as necessary to address salmon management items on the Council agenda.

The Scientific and Statistical Committee will convene on Monday, April 6, at 8 a.m., and on Tuesday, April 7, at 8 a.m.

The Groundfish Management Team will convene on Sunday, April 5, at 2 p.m., and on Monday, April 6, at 8 a.m., and will continue to meet throughout the week as necessary to address groundfish management items on the Council agenda.

The Groundfish Advisory Subpanel will convene on Monday, April 6, at 1 p.m., and on Tuesday, April 7, at 8 a.m., and will continue to meet throughout the week as necessary to address groundfish management items on the Council agenda.

The Buyback Committee will convene on Monday, April 6 at 8 a.m., to address capacity reduction items on the Council agenda.

The Enforcement Consultants meet at 7 p.m. on Tuesday, April 7, to address enforcement issues relating to Council agenda items.

The Budget Committee meets on Monday, April 6, at 11 a.m., to review the status of the 1998 Council budget.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 17, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7462 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031698B]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Council will hold its 95th meeting in Pago Pago, American Samoa.

DATES: The Council's Standing Committees will meet on April 14, 1998. The full Council will meet on April 15–16, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The 95th Council meeting will be held at the American Samoa Legislature, Fono Guest House, Pago Pago, American Samoa; telephone: (684) 633–4456.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The meetings are as follows:

Tuesday, April 14, 1998

7:30 a.m. to 9:00 a.m.—Enforcement;

8:00 a.m. to 10:00 a.m.—Crustaceans;

9:00 a.m. to 10:30 a.m.—Vessel Monitoring System (VMS);

10:30 a.m. to 12:30 p.m.—Pelagics and Bottomfish;

1:30 p.m. to 3:00 p.m.—Indigenous Fishing Rights and Ecosystem & Habitat;

3:00 p.m. to 5:00 p.m.—Precious Corals and Executive/Budget & Programming.

The full Council will meet on April 15–16, 1998, from 9:00 a.m. to 5:00 p.m., each day.

The full Council will address the agenda items below. The order in which agenda items will be addressed may change. The Council will meet as late as necessary to complete its scheduled business.

Wednesday, April 15, 1998

A. Call to order, opening remarks, introductions

1. Approval of Agenda and 94th Council Minutes; and
2. Guest Speaker: Ueta Fasili, Assistant Director Dept. of Agriculture, Forests & Fisheries, Samoa

B. Reports from the Islands, American Samoa, Guam, Hawaii, and Northern Mariana Islands (NMI)

C. Enforcement

1. Reports from the U.S. Coast Guard, NMFS Office of Enforcement, and NOAA General Counsel for Enforcement Southwest;

2. Report on Multilateral High Level Conference second intersessional meeting on monitoring, control, & surveillance;

3. Draft cooperative agreement for Guam and NMI;

4. Standing Committee recommendations; and

5. Public comment

D. VMS

1. Status of NMFS Industry Advisory Panel and National VMS Policy;

2. Report on the Hawaii VMS program; and

3. Standing Committee recommendations

E. Pelagics

1. Fourth quarter report for longline fisheries in Hawaii & American Samoa in 1997;

2. Draft amendment for new measure for an area closure for large pelagic vessels in the American Samoa exclusive economic zone (EEZ) (second meeting);

3. Reports on international workshops and meetings;

4. Protected species interactions: albatross, turtles, and sharks;

5. Western Pacific Shark Fishery project;

6. Fishing activity and data issues in the Council EEZ;

7. Status of fishing activities at Midway and Palmyra;

8. Recreational fishing initiatives;

9. Socio-cultural study of pelagic fishing in American Samoa;

10. Scientific and Statistical Committee and Standing Committee recommendations; and

11. Public comment/hearing

F. Crustaceans

1. Lobster annual report (1997 summary);

2. Status of the Northwestern Hawaiian Islands (NWHI) lobster stocks and research;

3. 1998 NWHI lobster harvest guideline determination, consideration of establishment of separate area or bank quotas under the framework procedure, Plan for data collection program;

4. Framework amendment for regulatory changes to the Fishery Management Plan (FMP);

5. Addition of new areas (Commonwealth of the Northern Mariana Islands (CNMI) and U.S. Possessions) to Permit Area 3; Marine Conservation Plans (by island area);

6. Consideration of regulatory measures for the lobster fishing around American Samoa under the FMPs framework procedure;

7. Plan Team/Advisory Panel, SSC, and Standing Committee recommendations; and

8. Public comment/hearing

G. Fishermen's Forum

Thursday, April 16, 1998

A. Guest Speaker: Paul Dalzell, Western Pacific Fishery Council: Unconventional data sources for fisheries management in the Pacific Islands; and

B. Reports from Fishery Agencies and Organizations, including: Department of Commerce NMFS Southwest Region, Southwest Fisheries Science Center, and NOAA Southwest Regional Counsel; Department of the Interior Fish and Wildlife Service;

C. Precious Corals

1. Status of the fishery;

2. Status of amendment to add a framework process to the FMP;

3. Consistency between state and federal regulations;

4. SSC and Standing Committee recommendations; and

5. Public hearing

D. Bottomfish

1. 1997 draft annual report modules from American Samoa, Guam, Hawaii and NMI, including improvement to the modules and region-wide recommendations;

2. "Overfished" Main Hawaiian Islands onaga and ehu (& "stressed" hauupuu), including, research activities, status of Department of Land and Natural Resources' draft management plan and Federal management plan including alternatives (draft amendment);

3. Draft amendment for Mau Zone limited access program and report from the Bottomfish Task Force;

4. Plan Team, SSC and Standing Committee recommendations; and

5. Public comment

E. Native Rights and Indigenous Fishing Issues

1. Review of Marine Conservation Plans from American Samoa, Guam, and NMI;

2. Western Pacific Sustainable Fisheries Fund;

3. Community Development Program Eligibility Criteria;

4. Report on NMFS Vessel Buy-Back Program;

5. Advisory Panel Appointments;

6. Standing Committee recommendations and;

7. Public hearing

F. Ecosystems and Habitat

1. Draft outline and concept for Coral Reef Ecosystem FMP;

2. EIS on Farallon de Mendinilla . bombing issue (if available);

3. Advisory Panel, SSC and Standing Committee recommendations; and

4. Public comment

G. Program Planning

1. Review of draft comprehensive Sustainable Fisheries Act Amendment (SFA) (Magnuson-Stevens Act requirement);

2. SFA definitions, provisions, and possible management actions, including, bycatch, fishing sectors, fishing communities, overfishing;

3. Draft Essential Fish Habitat (EFH) amendment, including, description of habitat by Management Unit Species life stage (by FMP), identification and distribution of EFH/Geographic Information System maps (by FMP), review of existing management measures, environmental impacts of fishing and non-fishing activities/ National Environmental Policy Act, identification of possible future habitat conservation and enhancement measures, social/economic impacts of management actions, data and research needs for habitat information;

4. National Vessel Registration and Fisheries Information System;

5. Report on Western Pacific Fisheries Information Network;

6. Revision of Council milestones;

7. Advisory Panel, Plan Teams, SSC and Standing Committee recommendations; and

8. Public comment/hearing

H. Administrative Matters

1. Statement of Organization, Practices, and Procedures revision;

2. Administrative reports;

3. Appointments to the Coral Reef Ecosystem Plan Team and Precious Corals Plan Team;

4. Reports on meetings, workshops, and proposed 96th Council meeting on July 27–29, 1998, in Kailua-Kona;

5. Standing Committees recommendations; and

6. Public comment; and

I. Other Business

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids

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should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 17, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7461 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Change to the DoD 6055.9–STD, "Department of Defense Ammunition and Explosives Safety Standards"

AGENCY: Department of Defense.

ACTION: Notice of change.

SUMMARY: The Department of Defense Explosives Safety Board (DDESB) is announcing Board-approved changes to DoD 6055.9–STD, dated August 1997.

The DDESB is taking this action pursuant to its statutory authority as set forth in Title 10, United States Code, Section 172 (10 U.S.C. 172) and DoD Directive 6055.9, "Explosives Safety Board (DDESB) and DoD Component Explosives Safety Responsibilities," July 1996. The Standard is applicable to the Office of the Secretary of the Defense, the Military Departments (including the Army and Air Force National Guards), the Defense Special Weapons Agency, the Defense Logistics Agency, the Coast Guard (when under DoD control) and other parties who produce or manage ammunition or explosives under contract to the DoD. Through DoD 6055.9–STD, the DDESB establishes minimum explosives safety requirements for storing and handling ammunition and explosives. Copies of the Standard may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 27161. The change will also be available at the NTIS when approved by the Washington Headquarters Services for publication. The Board-approved change, which includes requirements for storage of waste military munitions, will also be available at the NTIS when published. Since the change can not be published as part of this Notice and in order to relay the change to the States as soon as possible, the Department of Defense has made the Board-approved change available at the following Web address: http://www.acq.osd.mil/ens/esb/decision.html. For more detailed information on specific aspects of this change, contact Ray Sawyer by calling (703) 325–8625 or by writing to Department of Defense Explosives Safety Board, 2461 Eisenhower Avenue, Room 856–C, Alexandria, VA 22331–0600.

SUPPLEMENTARY INFORMATION: Dating back to 1928 when Congress directed the Secretaries of the military departments to establish a joint board officers to "keep informed on stored supplies of ammunition and components thereof * * *, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations," The DDESB has periodically revised or updated the Standard based on new scientific or technical information and explosive safety experience. The implementation of a change in DoD 6055.9–STD does not depend on formal publication of the change. The change to the Standard is effective when adopted by the Board, or as the Board may otherwise direct. In order to ensure compliance, the Services and Defense Agencies modify their Service or Agency implementing procedures and standards accordingly. This change to the August 1997 version of DoD 6055.9–STD incorporates decisions the DDESB made at its 315th meeting held on January 21–22, 1998 and by DDESB memorandum dated January 13, 1998.

The changes included herein address the following:

Expands and clarifies the criteria for the location of barricades between exposed sites and potential explosion sites for protection from fragments and overpressure.

Clarifies requirements for waivers and exemptions.

Reduces the minimum fragment distance for Maritime Prepositioning Ships.

Includes the requirement that installation quantity-distance maps be reconciled with installation master planning documents.

Modifies the explosive equivalency of liquid oxygen (LO2)/liquid hydrogen (LH2) for siting launch vehicles.

Address storage of waste munitions, that are included in a new Chapter 14, additions to Chapter 8, "Hazard Identification for Fire Fighting' and Chapter 12, "Real Property Contaminated With Explosives or Chemical Agents," and new definitions added to Appendix A.

Dated: March 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7363 Filed 3–20–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0126]

Submission for OMB Review; Comment Request Entitled Electric Service Territory Compliance Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0126).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (CMB) a request to review and approve an extension of a currently approved information collection requirement concerning Electric Service Territory Compliance Representation. A request for public comments was published at 63 FR 2218, January 14, 1998. No comments were received.

DATES: Comments may be submitted on or before April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0126, Electric Service Territory Compliance Representation, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The representation at 52.241–1, Electric Service Territory Compliance Representation, is required when proposed alternatives of electric utility

suppliers are being solicited. The representation and legal and factual rationale, if requested by the contracting officer, is necessary to ensure Government compliance with Pub. L. 100–202.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.45* hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. In many cases, the offeror's representation will be the only information required.

The annual reporting burden is estimated as follows: Respondents, *200*; responses per respondent, *2.5*; total annual responses, *500*; preparation hours per response, *.45*; and total response burden hours, *225*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0126, Electric Service Territory Compliance Representation, in all correspondence.

Dated: March 18, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–7400 Filed 3–20–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Departmnet of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 14 and 15 April 1998 (800am to 1600pm)

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: March 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7361 Filed 3–20–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 15 and 16 April 1998 (800 a.m to 1600 p.m.)

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: March 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–7362 Filed 3–20–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 22, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the

need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 17, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: Revision.

Title: America Reads Pilot Sites Letter, and Request for Information from America Reads Federal Work Study and President's Coalition Members.

Frequency: One time.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,142.

Burden Hours: 2,284.

Abstract: Improving the teaching and learning of reading is one of the Department of Education's seven priorities. This summer, the Department will sponsor America Reads pilot sites to offer extended learning time opportunities for children to practice and further develop their reading skills. The letter to literacy leaders will assist the Department in developing and planning quality summer pilot sites. It will be sent to at least one literacy coalition in every state with priority given to those sites in Enterprise Zones and Empowerment Communities, as well as those communities that have signed on to the proposed Voluntary National Test. The voluntary request for information from the America Reads Federal Work Study programs and the President's Coalition for the America Reads Challenge members will be posted on the web to allow pilot sites to be able to utilize their resources.

[FR Doc. 98–7891 Filed 3–20–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 98–04–NG, et al.]

PG&E Energy Trading Company, et al.; Orders Granting and Amending Blanket Authorizations To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders granting and amending various natural gas import and export authorizations. These Orders are summarized in the appendix that follows.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on March 17, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX—IMPORT/EXPORT BLANKET AUTHORIZATIONS GRANTED AND AMENDED

[DOE/FE authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1356	02/02/98	PG&E Energy Trading Company 98–04–NG.	100 Bcf	100 Bcf	Import and export from and to Mexico beginning on date of first delivery.
1357	02/03/98	ProLiance Energy, LLC 98–06–NG	500 Bcf		Import and export up to a combined total from and to Canada and Mexico beginning on the date of first import or export delivery.
1358	02/03/98	Questar Energy Trading Company 98–03–NG.	50 Bcf	50 Bcf	Import and export from and to Canada beginning on February 28, 1998, through February 27, 2000.
863–C	02/06/98	PG&E Energy Trading Corporation (Formerly Energy Source, Inc.) 93–82–NG.			Name change.
1359	02/09/98	Salmon Resources LTD. 98–09–NG	100 Bcf		Import from Canada beginning on February 15, 1998, through February 14, 2000.
1360	02/09/98	AEP Energy Services, Inc. 98–11–NG	146 Bcf 146 Bcf	146 Bcf 146 Bcf	Import and export from and to Canada AND import and export from and to Mexico beginning on the date of first import or export delivery.
595–A	02/10/98	HPL Resources Company (Formerly Natural Gas Marketing & Storage Company) 91–107–NG.			Name change.
1362	02/20/98	Canadian Natural Resources 98–15–NG.	50 Bcf		Import from Canada beginning on the date first of delivery.
1363	02/24/98	Anadarko Energy Services Company (Formerly Anadarko Trading Company) 98–13–NG.	108 Bcf	108 Bcf	Import and export from and to Mexico beginning on the date of first import or export delivery.
1364	02/27/98	CoEnergy Trading Company 98–16–NG.		100 Bcf	Export to Mexico beginning on March 1, 1998, and expiring February 29, 2000.

[FR Doc. 98–7467 Filed 3–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–272–000]

ANR Pipeline Company; Notice of Application

March 17, 1998.

Take notice that on March 10, 1998, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–272–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, in place, by sale to Chevron U.S.A., Inc. (Chevron) for $100,000. Approximately 1.3 miles of 8-inch pipeline known as West Cameron 48 Lateral (WC 48), all as more fully set forth in the application of file with the Commission and open to public inspection.

The WC 48 is located in the West Cameron offshore area of Louisiana, extending from West Cameron Block 48, to West Cameron Block 18. ANR states the WC 48 is a portion of the facilities that it constructed to attach natural gas reserves in West Cameron Block 17 (WC 17). It is averred that Chevron ceased delivering gas through the lateral because its WC 48 dehydration facility needed extensive repairs, and its gas could not meet ANR's gas quality specifications. It is indicated that Chevron is drilling a new well in the WC 18 field and wants to acquire the WC 48 Lateral to flow reserves from this field to its production platform on WC 48. ANR states the last gas purchase contract for deliveries from this field expired on August 1, 1992, and states that such contract was with Chevron.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 7, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7384 Filed 3–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1911–000]

California Independent System Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Meter service Agreement for ISO Metered Entities, dated February 26, 1998, between Long Beach Generation LLC and the ISO for acceptance by the Commission.

The ISO states that the enclosed Meter Service Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7388 Filed 3–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1910–000]

California Independent System Operator Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated February 12, 1998, between Mountain Vista Power Generation, L.L.C., and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7389 Filed 3–20–98; 8:45 am]
BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–1913–000]

California Independent System Operator Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Meter Service Agreement for ISO Metered Entities, dated February 26, 1998, between El Segundo Power, LLC and the ISO for acceptance by the Commission.

The ISO states that the enclosed Meter Service Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.14). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7390 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1930–000]

California Independent System Operator Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated February 12, 1998, between Alta Power Generation, L.L.C., and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7392 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1931–000]

California Independent System Operator Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated February 12, 1998, between Ocean Vista Power Generation, L.L.C., and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7393 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1935–000]

California Independent System Corporation; Notice of Filing

March 17, 1998.

On March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated February 12, 1998, between Oeste Power Generation, L.L.C., and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7394 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1722–000]

Great Western Power Cooperatives Company; Notice of Issuance of Order

March 17, 1998.

Great Western Power Cooperatives Company (Great Western) submitted a rate schedule under which Great Western will engage in wholesale power and energy transactions as a marketer. Great Western also requested waiver of various Commission regulations. In particular, Great Western requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Great Western.

On March 9, 1998, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Great Western should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Great Western is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Great Western's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 8, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7387 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–12–000]

Estate of J.A. Mull, Jr.; Notice of Petition for Adjustment

March 17, 1998.

Take notice that on March 5, 1998, the Estate of J.A. Mull, Jr. (Mull Estate) filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 [15 U.S.C. § 3142(c) (1982)], requesting that the Commission issue an order determining that the Kansas ad valorem tax refunds required by the Commission's September 10, 1997 order (in Docket No. RP97–369–000 *et al.*[1]) on remand from the D.C. Circuit Court of Appeals,[2] are barred by operation of law. The subject refunds have been sought by Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company (Williams), in response to the Commission's September 10 order. Mull Estate's petition is on file with the Commission and open to public inspection.

Mull Estate explains that J.A. Mull is deceased, and that his estate is now closed. Mull Estate adds that Williams was notified that, although the estate was open and in probate, the estate was in the process of closing. Mull Estate further explains that, despite such notification, Williams did not protect its rights by establishing a claim with respect to the Kansas ad valorem tax reimbursements that Williams previously paid under Williams Contract Nos. 1518 and 1573. Since Mr. Mull's estate is now closed, the assets of the estate have passed to Mr. Mull's heirs.

In view of the above, Mull Estate contends that the Commission should find that Williams' refund claim against the estate is barred by operation of law, specifically, by Kansas' K.S.A. 55–2239, nonclaim statute. Mull Estate contends that this Kansas statute establishes a statute of limitations and an absolute bar against claims against a deceased individual which are not properly asserted during the pendency of the probate proceedings.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105 and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7398 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2307–043]

Alaska Electric Light and Power Company; Notice of Availability of Environmental Assessment

March 17, 1998.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the Salmon Creek Hydroelectric Project. The application is to decommission the Upper Salmon Creek powerplant because the newer lower powerplant renders the upper powerhouse uneconomical. In addition, the licensee will remove the two miles of primary transmission and communication lines. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Salmon Creek Project is located on Lower Salmon Creek, near the town of Juneau, Alaska.

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[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

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The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street NE., Washington, DC.

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7396 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Lease of Project Lands

March 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Lease of Project Lands.

b. *Project No:* 2221–022.

c. *Date Filed:* June 25, 1997.

d. *Applicant:* The Empire District Electric Company.

e. *Name of Project:* Ozark Beach Hydroelectric Project.

f. *Project location:* Teney County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Ms. Christine Grant, The Empire District Electric Co., 602 Joplin Street, P.O. Box 127, Joplin, MO 64802, (417) 625–5100.

i. *FERC Contact:* Patti Pakkala, (202) 219–0025.

j. *Comment Date:* May 11, 1998.

k. *Description of Project:* The Empire District Electric Company, licensee for the Ozark Beach Hydroelectric Project, has filed a request to issue a 99-year lease to the City of Rockaway Beach. The lease will be for a public park to be located on approximately 23 acres of land within the boundary of the Ozark Beach Project. The park will provide such facilities as picnic tables, trails, a softball field, and pavilion space.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7395 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of surrender of Exemption (Conduit)

March 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption (Conduit).

b. *Project No:* 5890–003.

c. *Date Filed:* January 22, 1998.

d. *Applicant:* Whale Rock Commission.

e. *Name of Project:* Whale Rock.

f. *Location:* On Old Creek, in San Luis Obispo County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:*

Bob Hamilton,
Water Supply Supervisor, Whale Rock Division,
City of San Luis Obispo,
955 Morro Street,
San Luis Obispo, CA 93401,
(805) 995–3701.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* April 27, 1998.

k. *Description of Proposed Action:* The exemptee is requesting surrender because the design of the facility has been changed to allow power generation only infrequently and the project has not operated for the past six years. The exemptee proposes to remove the six-inch supply conduit and regulating valve, and install a blind flange on the supply tap.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application my be obtained by agencies directly from the Applicant. If an agency does

not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7397 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

March 18, 1998.

The following Notice of Meeting is published pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 25, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: AGENDA: * Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

CONSENT AGENDA—HYDRO, 695TH MEETING—MARCH 25, 1998, REGULAR MEETING, (10:00 a.m.)

CAH–1.
DOCKET# DI97–1, 001, ALASKA POWER COMPANY

CAH–2.
DOCKET# P–2187, 005, PUBLIC SERVICE COMPANY OF COLORADO

CAH–3.
DOCKET# P–2833, 049, PUBLIC UTILITY DISTRICT NO. 1 OF LEWIS COUNTY, WASHINGTON

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER98–1613, 000, CENTRAL VERMONT PUBLIC SERVICE CORPORATION

CAE–2. OMITTED

CAE–3.
DOCKET# ER98–1682, 000, SAN DIEGO GAS & ELECTRIC COMPANY
OTHER#S ER97–2355, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER97–2355, 001, SOUTHERN CALIFORNIA EDISON COMPANY
ER97–2358, 000, PACIFIC GAS AND ELECTRIC COMPANY
ER97–2358, 001, PACIFIC GAS AND ELECTRIC COMPANY
ER97–2364, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER97–2364, 001, SAN DIEGO GAS & ELECTRIC COMPANY
ER97–4235, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER97–4235, 001, SAN DIEGO GAS & ELECTRIC COMPANY
ER98–210, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–497, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER98–497, 001, SAN DIEGO GAS & ELECTRIC COMPANY
ER98–1685, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER98–1729, 000, CALIFORNIA POWER EXCHANGE CORPORATION

CAE–4.
DOCKET# ER98–1796, 000, LONG BEACH GENERATION LLC

CAE–5.
DOCKET# EC96–19, 014, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S EC96–19, 015, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
EC96–19, 016, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663, 015, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663, 016, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663, 017, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–6. OMITTED

CAE–7.
DOCKET# ER98–1734, 000, COMMONWEALTH EDISON COMPANY

CAE–8.
DOCKET# ER98–1717, 000, OCEAN STATE POWER
OTHER#S ER98–1718, 000, OCEAN STATE POWER II

CAE–9.
DOCKET# ER98–443, 000, INDIANA MICHIGAN POWER COMPANY
OTHER#S ER98–444, 000, INDIANA MICHIGAN POWER COMPANY

CAE–10.
DOCKET# ER98–1522, 000, CAMBRIDGE ELECTRIC LIGHT COMPANY

CAE–11.
DOCKET# ER98–1649, 000, PJM INTERCONNECTION, L.L.C.

CAE–12.
DOCKET# ER98–1767, 000, TENASKA FRONTIER PARTNERS, LTD.

CAE–13.
DOCKET# ER98–1605, 000, ROCHESTER GAS AND ELECTRIC CORPORATION

CAE–14.
DOCKET# ER98–1632, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
OTHER#S ER98–1646, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1647, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1652, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1653, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1654, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1655, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY

CAE–15.
DOCKET# EC98–2, 000, LOUISVILLE GAS AND ELECTRIC COMPANY, LG&E ENERGY MARKETING INC. AND KENTUCKY UTILITIES COMPANY
OTHER#S ER92–533, 004, LOUISVILLE GAS AND ELECTRIC COMPANY
ER94–1188, 018, LG&E ENERGY MARKETING INC.
ER98–111, 000, LOUISVILLE GAS AND ELECTRIC COMPANY, LG&E ENERGY MARKETING INC. AND KENTUCKY UTILITIES COMPANY
ER98–114, 000, LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY

CAE–16.
DOCKET# ER98–1033, 000, AUTOMATED POWER EXCHANGE, INC.

CAE–17. OMITTED

CAE–18.
DOCKET# ER97–1907, 000, ENTERGY ARKANSAS, INC.

CAE–19.
DOCKET# OA96–189, 000, MAINE ELECTRIC POWER COMPANY

CAE–20.
DOCKET# EC98–16, 000, BOSTON EDISON COMPANY
CAE–21.
DOCKET# ER96–705, 000, SOUTHERN INDIANA GAS & ELECTRIC COMPANY
CAE–22.
DOCKET# ER97–2353; 002, NEW YORK STATE ELECTRIC & GAS CORPORATION
CAE–23.
DOCKET# ER98–504, 001, NEW WEST ENERGY CORPORATION
CAE–24.
DOCKET# ER98–901, 001, SIERRA PACIFIC POWER COMPANY
CAE–25. OMITTED
CAE–26.
DOCKET# ER98–559, 001, PACIFICORP
CAE–27.
DOCKET# EL97–2, 000, NEW ENERGY VENTURES, INC. V. SOUTHERN CALIFORNIA EDISON COMPANY AND EDISON SOURCE
CAE–28.
DOCKET# EL98–10, 000, SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT V. PACIFIC GAS AND ELECTRIC COMPANY AND CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–29.
DOCKET# NJ97–9, 001, COLORADO SPRINGS UTILITIES
OTHER# S NJ97–2, 002, OMAHA PUBLIC POWER DISTRICT
NJ97–8, 000, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY
NJ97–8, 001, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY
NJ97–10, 000, NEW YORK POWER AUTHORITY
NJ97–13, 000, ORLANDO UTILITIES COMMISSION
NJ97–14, 000, EAST KENTUCKY POWER COOPERATIVE, INC.

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP98–137, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–2.
DOCKET# RP98–140, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–3., OMITTED
CAG–4., OMITTED
CAG–5.
DOCKET# RP98–151, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–6.
DOCKET# RP98–155, 000, GRANITE STATE GAS TRANSMISSION, INC.
OTHER# S TM98–3–4, 000, GRANITE STATE GAS TRANSMISSION, INC.
CAG–7., OMITTED
CAG–8.
DOCKET# TM98–9–29, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–9.
DOCKET# RP97–287, 015, EL PASO NATURAL GAS COMPANY
CAG–10.
DOCKET# RP98–131, 000, SUMAS INTERNATIONAL PIPELINE, INC.
CAG–11.
DOCKET# RP98–145, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–12.
DOCKET# RP98–146, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–13.
DOCKET# RP98–147, 000, NORAM GAS TRANSMISSION COMPANY
OTHER# S RP98–147, 001, NORAM GAS TRANSMISSION COMPANY
CAG–14.
DOCKET# RP98–148, 000, NORTHERN NATURAL GAS COMPANY
CAG–15.
DOCKET# RP98–153, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER# S RP98–153, 001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–16.
DOCKET# TM98–2–37, 000, NORTHWEST PIPELINE CORPORATION
CAG–17.
DOCKET# TM98–2–82, 000, VIKING GAS TRANSMISSION COMPANY
CAG–18., OMITTED
CAG–19., OMITTED
CAG–20.
DOCKET# PR97–11, 000, PANENERGY TEXAS INTRASTATE PIPELINE COMPANY
OTHER# S PR97–11, 001, PANENERGY TEXAS INTRASTATE PIPELINE COMPANY
CAG–21.
DOCKET# RP91–229 ET AL. 000, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER# S RP92–166 ET AL. 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–22.
DOCKET# RP98–129, 000, NORTHWEST PIPELINE CORPORATION
CAG–23.
DOCKET# TM97–3–25, 004, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER# S TM97–3–25, 005, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–24.
DOCKET# RP98–105, 001, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER# S RP89–183, 076, WILLIAMS GAS PIPELINES CENTRAL, INC.
RP89–183, 077, WILLIAMS GAS PIPELINES CENTRAL, INC.
RP98–105, 003, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–25.
DOCKET# RP97–301, 000, OVERTHRUST PIPELINE COMPANY
OTHER# S RP97–301, 001, OVERTHRUST PIPELINE COMPANY
CAG–26.
DOCKET# RP97–232, 001, AMOCO PRODUCTION COMPANY AND AMOCO ENERGY TRADING CORPORATION V. NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER# S IN98–1, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP97–232, 002, AMOCO PRODUCTION COMPANY AND AMOCO ENERGY TRADING CORPORATION V. NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–27.
DOCKET# RP97–431, 003, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER# S RP97–431, 002, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–28.
DOCKET# RP97–82, 002, GPM GAS CORPORATION V. EL PASO NATURAL GAS COMPANY
CAG–29.
DOCKET# RP96–367, 007, NORTHWEST PIPELINE CORPORATION
CAG–30.
DOCKET# RP98–42, 002, ANR PIPELINE COMPANY
CAG–31.
DOCKET# RP94–149, 007, PG&E TRANSMISSION, NORTHWEST CORPORATION
OTHER# S RP94–145, 006, PG&E TRANSMISSION, NORTHWEST CORPORATION
RP95–141, 004, PG&E TRANSMISSION, NORTHWEST CORPORATION
CAG–32.
DOCKET# RP96–184, 003, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–33.

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DOCKET# RP98–56, 002, TENNESSEE GAS PIPELINE COMPANY
CAG–34.
DOCKET# OR89–2, 012, TRANS ALASKA PIPELINE SYSTEM
OTHER# S OR96–14, 000, EXXON COMPANY, U.S.A. V. AMERADA HESS PIPELINE CORPORATION, ET AL.
CAG–35.
DOCKET# CP94–183, 005, EL PASO NATURAL GAS COMPANY
CAG–36.
DOCKET# CP97–517, 000, NORAM GAS TRANSMISSION COMPANY
CAG–37.
DOCKET# CP97–755, 000, NORTHERN NATURAL GAS COMPANY
CAG–38.
DOCKET# CP97–761, 000, VENICE GATHERING SYSTEM, L.L.C.
CAG–39.
DOCKET# CP98–66, 000, QUESTAR PIPELINE COMPANY
CAG–40.
DOCKET# CP98–40, 000, EAST TENNESSEE NATURAL GAS COMPANY
CAG–41.
DOCKET# CP97–256, 001, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
OTHER# S CP97–256, 002, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–42.
DOCKET# RP98–25, 003, WEST TEXAS GAS, INC.
CAG–43.
DOCKET# RP98–141, 000, SOUTHERN NATURAL GAS COMPANY
CAG–44.
DOCKET# RP98–152, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–45.
DOCKET# TM98–2–21, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–46.
DOCKET# IS98–12, 001, AMOCO PIPELINE COMPANY

HYDRO AGENDA

H–1. OMITTED

ELECTRIC AGENDA

E–1.
DOCKET# RM98–4, 000, REVISED FILING REQUIREMENTS UNDER PART 33 OF THE COMMISSION'S REGULATIONS
NOTICE OF PROPOSED RULEMAKING.

OIL AND GAS AGENDA

I. PIPELINE RATE MATTERS PR–1. RESERVED
II. PIPELINE CERTIFICATE MATTERS PC–1. RESERVED

David P. Boergers,
Acting Secretary.
[FR Doc. 98–7585 Filed 3–19–98; 11:12 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5985–2]

Proposed Settlement Agreement; Ozone Nonattainment Areas; 15% VOC FIP for Washington, D.C.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed modification to settlement agreement.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), as amended, 42 U.S.C. 7413(g), notification is hereby given of a proposed modification to a settlement agreement concerning litigation instituted against the Environmental Protection Agency ("EPA") by the Sierra Club Legal Defense fund, *et. al.* The lawsuit concerns EPA's alleged failure to perform a nondiscretionary duty with respect to promulgating a federal implementation plan ("FIP") to reduce volatile organic compound ("VOC") emissions by fifteen percent [15%] from 1990 levels, under Act section 182(b)(1), in the Washington, D.C. ozone nonattainment area. The parties have agreed to modify the settlement agreement to allow a short period of time for EPA to take action on a recent submission by the District of Columbia of a revised State Implementation Plan providing for 15% VOC reductions in the Washington, D.C. nonattainment area.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the modified settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7606.Written comments should be sent to Sara Schneeberg at the above address and must be submitted on or before April 22, 1998.

Dated: March 16, 1998.
Scott C. Fulton,
Acting General Counsel.
[FR Doc. 98–7487 Filed 3–20–98; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00473D; FRL–5776–8]

Antimicrobial Stakeholder Meeting; Change of Location

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: The Antimicrobials Division (AD) of the Office of Pesticide Programs of EPA is continuing its series of stakeholder meetings to discuss general administrative and policy issues, including those related to the antimicrobial rule that is being developed. The rule is being revised in accordance with principles set forth in the Food Quality Protection Act of 1996 (Public Law 104–170). To ensure that all interested parties can obtain information about antimicrobials activities, EPA, in its discretion, has opened a docket. This docket includes, but is not limited to, a summary of major discussions at stakeholder meetings, as well as copies of any documents distributed at these meetings. This notice is announcing a change of location for the meeting which was previously published in the **Federal Register** of January 26, 1998 (63 FR 3686).

DATES: The next stakeholder meeting will take place on Thursday, March 26, 1998, from 2 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, in Regency C and D. The room is located two levels down from the main entrance, behind the escalator.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Mandula, Antimicrobials Division (7510W), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, (703) 308–7378, fax: (703) 308–8481; e-mail: mandula.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces a change in location of a public meeting, held to ensure that all parties interested in administrative and policy issues related to

antimicrobials, including development of the antimicrobial rule, can obtain information about relevant activities. The meeting which was previously published in the **Federal Register** of January 26, 1998, (63 FR 3686) (FRL 5767–3), will now take place at the location under "ADDRESSES". Additionally, a public record has been established under docket number "OPP–00473." The docket is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Copies of EPA documents may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

List of Subjects

Environmental protection, Antimicrobial pesticides.

Dated: March 16, 1998

Frank T. Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 98–7491 Filed 3–18–98; 3:15 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5985–1]

Notice of Second Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of meeting.

SUMMARY: Second Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

Time and Date: 1:00–5:00 p.m., April 8; and 8:00 a.m.–2:00 p.m., April 9, 1998.

Place: The Pontchartrain Hotel, 2031 St. Charles Ave., New Orleans, LA; (504) 524–0581.

Status: Open to the public, limited only by the space available. The room accommodates approximately 100 people.

Purpose: A Task Force consisting of Federal, State, and Tribal members, will lead an effort to coordinate and support nutrient management and hypoxia related activities in the Mississippi River and Gulf of Mexico watersheds. The purpose of this second meeting, done in coordination with the U.S. Army Corps of Engineers, is to have interactive discussions with stakeholders in the Gulf of Mexico area and with State officials actively involved in nutrient management activities.

Matters To Be Discussed: Agenda items include: Panel discussions with stakeholders considering the environmental, agriculture, and academic/social perspectives concerning hypoxia in the Gulf of Mexico and nutrient management; panel discussions with State officials concerning nutrient management efforts state and basin-wide; discussion on nutrient enrichment modeling; and the development of nutrient management goals from a Chesapeake Bay State perspective. The public will be afforded an opportunity to provide comments on these issues during open discussion periods.

Contact Person for More Information: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, S.W. (4503F), Washington, D.C. 20460, telephone 202/260–7061; Internet: belefski.mary@epamail.epa.gov.

Dated: March 16, 1998.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 98–7490 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency invites the general public and other Federal agencies to comment on a proposed continuing information collection which has been submitted to the Office of Management and Budget for review and clearance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning collection of State Administrative Plans. These plans provide the basis for awards of Federal financial contributions to the States for necessary and essential State and local emergency preparedness personnel and administrative expenses.

SUPPLEMENTARY INFORMATION: This information collection is required by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121 *et seq.*, Section 613. FEMA manages the requirement in accordance with 44 CFR 13.11, FEMA's implementation of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Additional background information may be found in 44 CFR 302.2(u) and 44 CFR 302.3(a). The Federal contributions for State and local emergency preparedness personnel and administrative expenses to which this requirement is related are now delivered through FEMA's Emergency Management—State and Local Assistance program, Catalog of Federal Domestic Assistance Number 83.534.

Collection of Information

Title: State Administrative Plan.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0138.

Abstract: The State Administrative Plan is a formal description of the participating State's emergency preparedness program and related State and local laws, executive directives, rules, plans, and procedures. It documents and certifies the State's compliance with requirements of the authorizing statute. The plan is a one-time submission with annual updates to keep it current. Plans and updates are submitted to the FEMA Regional Offices along with the annual applications for assistance under emergency management programs. FEMA uses the information to determine whether a State legally qualifies for Federal contributions for State and local emergency preparedness personnel and administrative expenses.

Affected Public: State and Local or Tribal Governments.

Estimated Total Annual Burden Hours: 1,120.

	Number of Respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
	56		20	1,120
Total	56		20	1,120

Estimated Cost: $2,240.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson. FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: C. Dwight Poe, Program Analyst. Preparedness, Training and Exercises Directorate at (202) 646–3492 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 16, 1998.

Muriel B. Anderson,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–7446 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning The United States Fire Administration's National Fire Academy Long Term Course Evaluation Forms.

SUPPLEMENTARY INFORMATION: The National Fire Academy is congressionally mandated to provide training and education to the Nation's fire service and emergency response personnel. The state-of-the-art programs offered by the NFA serve as models of excellence for state and local fire service agencies. Such agencies often develop or revise their courses based on the NEA offerings. To maintain the high standards of these programs, it is critical that course be evaluated after students have had the opportunity to apply the knowledge and skills gained. The long term course evaluation forms will serve as the instruments through which students and their supervisors can provide feedback on whether courses have met the needs of the fire and emergency services professional community.

Collection of Information.

Title: National Fire Academy Long Term Evaluation Forms.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0260.

Form Numbers: F–8872–NETC, Long-Term Evaluation Form for Supervisors, and F–8873–NETC, Long Term Evaluation Form for Students.

Abstract. The National Fire Academy's long-term evaluation forms will obtain course specific feedback from students and their supervisors regarding impact of course content on job performance. This information is needed to improve instruction and content. Demographic data are needed to identify differential in course impact.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 375 hours.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
Student	750	1	.33	247.50
Supervisors	750	1	.17	127.50
Total	1500		[1] 15	375

[1] In minutes.

Estimated Cost: $100,000.00.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

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ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Polly Barnett-Birdsall, Instructional Systems Specialist, U.S. Fire Administration, National Fire Academy, (301) 447–1275 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 16, 1998

Muriel B. Anderson,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–7447 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1208–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1208-DR), dated March 9, 1998, and related determinations.

EFFECTIVE DATE: March 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 9, 1998:

Covington County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7441 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1203–DR]

State of California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1203–DR), dated February 9, 1998, and related determinations.

EFFECTIVE DATE: March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1998:

Los Angeles, Orange, Stanislaus, and Trinity Counties for Categories C through G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program and Individual Assistance).

Kern, Riverside, San Bernardino, San Diego, and Tulare Counties for Individual Assistance and Public Assistance.

Del Norte County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7443 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Calhoun, Collier, Escambia, Franklin, Gadsden Glades, Gulf, Jackson, Okeechobee, Santa Rosa, Walton, and Washington Counties for Individual Assistance.

Okaloosa County for Individual Assistance and Public Assistance.

Holmes and Sarasota Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–7440 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 12, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Coffee, Crisp, Lee, and Mitchell Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–7445 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1206–DR]

New Jersey; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey, (FEMA–1206–DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: March 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Jersey, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 1998:

Ocean County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7442 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1192–DR]

Commonwealth of the Northern Mariana Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for Commonwealth of the Northern Mariana Islands (FEMA–1192–DR), dated December 8, 1997, and related determinations.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in a letter dated March 3, 1998, the President amended the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that damage in certain areas of the Commonwealth of the Northern Mariana Islands (CNMI), resulting from Super Typhoon Keith on November 2–3, 1997, is of sufficient severity and magnitude to warrant special cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act").

Therefore, I amend my previous declaration to authorize Federal funds for the Individual and Family Grant Program and the Public Assistance and Hazard Mitigation Grant Programs at 90 percent of total eligible costs.

Please notify the Governor of the Commonwealth of the Northern Mariana Islands and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–7439 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998:

Jefferson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7444 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Submission for OMB Review and Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the information collection requests abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and approval. The submissions to OMB request continued approval (extensions with no changes) for OMB No. 3072–0055 (Tariffs and Service Contracts), OMB No. 3072–0045 (Agreements), and OMB No. 3072–0001 (Admission to Practice). Previously, comments were solicited by notice published on December 24, 1997 (62 FR 67367–67368). The FMC did not receive any comments in response to that notice.

DATES: Comments must be submitted on or before April 22, 1998.

ADDRESSES: Send comments to:.

Edward P. Walsh, Managing Director, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (Telephone: (202) 523–5800)

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Ed Clarke, Desk Officer for FMC, 725 17th Street, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION:

Send requests for copies of the current OMB clearances to: George D. Bowers, Director, Office of Information Resources Management, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (Telephone: (202) 523–5834).

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3072–0055 Expires May 31, 1998.

Abstract: Section 8 of the Shipping Act of 1984, 46 U.S.C. app. § 1707, requires common carriers and conferences of such common carriers to file with the Commission and keep open for public inspection, tariffs showing all rates, charges, classifications, rules and practices for transportation of cargo between the U.S. and foreign ports. Section 8(c) of the Act also provides for the filing of service contracts and statements of the contracts' essential terms with the Commission. 46 CFR 514 establishes the requirements, format and user charges for the electronic publication, filing and retrieval of tariffs of carriers and terminal operators, as well as service contracts and their essential terms, covering the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984.

Needs and Uses: In order to effectively discharge its statutorily-assigned duties, the Commission uses filed tariff and service contract data for surveillance and investigatory purposes, and, in its proceedings, adjudicates related issues raised by private parties.

Type of Respondents: Common carriers are persons who hold themselves out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation, who assume the responsibility for the transportation from origin to destination and use a vessel operating on the high seas or the Great Lakes between a U.S. port and a foreign country. Terminal operators are persons who carry on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with common carries operating in the U.S. foreign commerce.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 3,267. This number varies as persons file tariffs.

Estimated time per response: The average time for preparing and filing tariffs and service contracts is estimated at 122 person hours. Estimated time per respondent for recordkeeping requirements is estimated at 6 person hours.

Total Annual Burden: The Commission estimates the manhour burden to file foreign tariffs, service contracts and essential terms at 399,829; recordkeeping requirements are estimated at 12,080 person hours.

OMB Approval Number: 3072–0045 (Expires May 31, 1998).

Abstract: The Shipping Act of 1984, 46 U.S.C. app. § 1701 et seq., requires certain classes of agreements between and among ocean common carriers and marine terminal operators to be filed with the Commission, specifies the content of those agreements, and defines the Commission's authorities and responsibilities in overseeing these agreements. 46 CFR 572 establishes the form and manner for filing agreements and for the underlying commercial data necessary to evaluate agreements.

Needs and Uses: Under its pre-effective review process, the Commission reviews agreements filings to determine statutory and regulatory compliance, as well as to assess their anticompetitive impact. After agreements become effective, the Commission monitors agreement activities to ensure continued statutory and regulatory compliance. To accomplish this, the Commission continually gathers, reviews, and interprets commercial data regarding the impact of agreements on competition, prices, and service in the U.S. foreign commerce.

Frequency: The Commission has no control over how frequently agreements are entered into; this is solely a matter between the negotiating parties. When parties do reach an agreement that falls under the jurisdiction of the 1984 Shipping Act, that agreement must be filed with the Commission. Ongoing surveillance of agreement activities is conducted through the review of minutes and quarterly monitoring reports filed by the more anticompetitive agreements.

Type of Respondents: Parties that enter into agreements subject to the Commission's oversight are ocean common carriers and marine terminal operators operating in the foreign oceanborne commerce of the United States.

Number of Annual Respondents: Potentially, there are 1,655 respondents. Over the last five years the Commission has averaged 358 agreement filings a year from an estimated potential universe of 764 regulated entities. Starting in mid-1996, certain agreements are required to file quarterly monitoring reports under these regulations. The number of annual respondents under this program will vary according to the number of agreements subject to the reporting obligation. Last year, 235 agreements were subject; they filed 940 monitoring reports.

Estimated Time Per Response: The time for preparing and filing an agreement can range anywhere from as little as three staff-hours to as much 150 staff-hours. The estimated average burden per respondent is 90 staff-hours. Time required for preparing monitoring reports varies according to the complexity of the filing obligation. Class C agreements have the least burden, and it is estimated to be about 20 staff-hours. Class A/B agreements require more specific data and hence a greater

burden. It is estimated that Class B monitoring reports require about 120 staff-hours, and Class A reports about 160 staff-hours. Estimated time per respondent under the record-keeping obligations of the regulation is five staff-hours.

Total Annual Burden: The total annual burden on respondents is estimated at 115,000 staff-hours, 110,000 staff-hours as the filing burden, and 5,000 staff-hours as the record-keeping burden. These estimates are based on anticipated filings over the next year.

OMB Approval Number: 3072–0001 (Expires May 31, 1998).

Abstract: Qualified persons who desire to practice before the Commission must complete and file Form FMC–12 (Application for Admission to Practice before the Federal Maritime Commission) with the Commission.

Needs and Uses: The Commission uses data contained in the application to determine whether applicants have the necessary qualifications to enable them to represent others in matters before the Commission.

Frequency: The collection of the information is on a one-time only basis.

Type of Respondents: Persons desiring to practice before the Commission in quasi-judicial hearings.

Number of annual respondents: The Commission estimates there are approximately 10 respondents annually for this one-time response.

Estimated Time per response: Approximately one hour.

Total Annual Burden: Ten manhours per year.

Send comments regarding the burden estimate, or any other aspect of the information collections, including suggestions for reducing the burden, to the addresses shown above.

Joseph C. Polking,

Secretary.

[FR Doc. 98–7466 Filed 3–20–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 7, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. First National Corporation Employee Stock Ownership Plan, Grand Forks, North Dakota; to acquire additional voting shares of First National Corporation North Dakota, Grand Forks, North Dakota, and thereby indirectly acquire voting shares of First National Bank North Dakota, Grand Forks, North Dakota.

Board of Governors of the Federal Reserve System, March 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7469 Filed 3–20–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Anson Bancorp, Inc., Wadesboro, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Anson Savings Bank, SSB, Wadesboro, North Carolina.

2. BB&T Corporation, Winston-Salem, North Carolina; and BB&T Financial Corporation of Virginia, Virginia Beach, Virginia; to acquire 100 percent of the voting shares of Franklin Bancorporation, Inc., Washington, D.C., and thereby indirectly acquire Franklin National Bank of Washington, D.C., Washington, D.C.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. Capitol Bancorp, Ltd., Lansing, Michigan; and Sun Community Bancorp Limited, Phoenix, Arizona; to acquire 51 percent of the voting shares of Southern Arizona Community Bank, Tuscon, Arizona, a *de novo* bank, and Biltmore Community Bank, Phoenix, Arizona, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. CountryBanc Holding Company, Edmond, Oklahoma; to acquire 99.4 percent of the voting shares of Home State Bank, Hobart, Oklahoma.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Greater Bay Bancorp, Palo Alto, California; to merge with Pacific Rim Bancorporation, San Francisco, California, and thereby indirectly acquire Golden Gate Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, March 17, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7364 Filed 3–20–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. FLAG Financial Corporation, LaGrange, Georgia; to merge with Three Rivers Bancshares, Inc., Milan, Georgia, and thereby indirectly acquire Bank of Milan, Milan, Georgia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Wilber Co., Wilber, Nebraska; to acquire 23.34 percent of the voting shares of NebraskaLand National Bank, North Platte, Nebraska, a *de novo*, institution.

Board of Governors of the Federal Reserve System, March 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7470 Filed 3–20–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Building Service; Notice of Availability of Finding of No Significant Impact (FONSI) for a New U.S. Courthouse in Riverside, CA

The United States General Services Administration (GSA) announces its decision to acquire a build-to-suite Courthouse of 42,000 square feet for use by the U.S. District Court in downtown Riverside, California.

In accordance with the National Environmental Policy Act (NEPA) and the Regulations issued by the Council on Environmental Quality, November 29, 1978, the General Services Administration has prepared a FONSI for the proposed project and has determined that no Environmental Impact Statement (EIS) will be required.

Copies of the FONSI are available and can be obtained from Mr. Javad Soltani, GSA, Portfolio Management (9PT), Public Buildings Services, 450 Golden Gate Avenue, San Francisco, CA 94102, at (415) 522–3493.

Ken Schreiber,

Portfolio Management (9PT), PBS, GSA, Pacific Rim Region.

[FR Doc. 98–7420 Filed 3–20–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and health Statistics (NCVHS), Subcommittee on Population-Specific Issues.

Times And Dates: 9:00 a.m. - 5:00 p.m., April 14, 1998; 9:00 a.m. - 4:00 p.m., April 15, 1998.

Place: Conference Room E–275C, Low Rise, John F. Kennedy Federal Building, 100 Cambridge Street, Boston, Massachusetts 02203.

Status: Open.

Purpose: The Subcommittee is in the process of examining a number of data needs and issues associated with Medicaid managed care. The purpose of this site visit is to examine the experience of Massachusetts in implementing, evaluating and monitoring the State's Medicaid Managed Care program with special attention to data needs, data systems, data uses and data issues. Presentations are planned involving representatives of State agencies, providers, plans, and patient advocacy groups who will describe their data needs and issues relating to Medicaid managed care.

Contact Person for More Information: Substantive program information as well as a roster of committee members may be obtained from Carolyn Rimes, lead Subcommittee staff, health Care Financing Administration, DHHS, 7500 Security Boulevard, C–3–21–06, Baltimore, Maryland 21244–1850, telephone (410)786–6620, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301–436–7050. Additional information about the full Committee is available on the NCVHS website, where the tentative agenda for the Subcommittee meeting will also be posted when available: http://aspe.os.dhhs.gov/ncvhs.

Dated: March 13, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–7359 Filed 3–20–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration, authorities vested in the Secretary of Health and Human Services under Section 211 of the HHS Appropriation Act for FY 1998. This authority may be redelegated.

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I hereby ratify and affirm all actions taken by you or your subordinates which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: March 17, 1998.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–7430 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. 1999 and 2001 National School-Based Youth Risk Behavior Surveys—The purpose of this request is to renew OMB clearance for a biennial, national, youth risk behavior survey. This ongoing biennial survey is administered to students attending regular public, private, and Catholic schools in grades 9–12. The survey addresses priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and adults in the U.S. Previous OMB clearance for these surveys expired in October of 1997 (OMB No. 1920–0258, expiration 10/97). OMB clearance for a similar survey conducted among alternative school students will expire in December of 1998 (OMB No. 0920–0416, expiration 12/31/98). Data on the health risk behaviors of adolescents is the focus of at least 26 national health objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions*. This survey will provide end-of-decade data to help measure these objectives as well as baseline data to measure many new national health objectives proposed for 2010. No other national source of data exists for most of the proposed 2010 objectives that address behaviors of adolescents. The data also will have significant implications for policy and program development for school health programs nationwide. The total estimated cost to respondents is $47,250 assuming a minimum wage of $5.25 for the 1997–1998 school year.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Alternative school students	12,000	1	0.75	9,000

2. Multistate Case-Control Study of Childhood Brain Cancers—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and its 1986 Amendments, the Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. Scientific knowledge is lacking concerning the reasons for the apparent rise in childhood brain cancer incidence during the last two decades in the U.S. and for explanations of childhood brain cancer in general. To date, most epidemiologic studies exploring the causes of childhood brain cancer have suffered from lack of statistical power due to the small numbers of cases available for the study. By combining recent childhood brain cancer data from multiple states, this study will help to better understand what environmental factors may be associated with childhood brain cancer, and therefore to possibly develop well-focused prevention measures.

This study will examine the association between environmental exposures and risk of childhood brain cancers, by employing a population based case-control study of childhood brain cancer. Information to be collected includes proximity of parental residence to hazardous waste sites and other known or suspected risk factors. Other known or purported risk factors identified from the literature will include both environmental and host factors during the prenatal as well as postnatal periods: parental occupation, parents' and child's dietary habits, parental history of smoking and drinking, mother's and child's exposure to radiation through medical care, residential use of pesticides or herbicides, mother's and child's history of viral infection, and family history of cancer and neurological disorders. This request is for a 3-year OMB approval.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Parent/Child questionnaire	1200	1	0.75	[illegible]
Blood sample collection	[illegible]00	1	0.5	100
Total				1000

Charles Gollmar,
Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–7413 Filed 3–20–98; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory (INEEL) Health Effects Subcommittee.

Times and Dates: 8:30 a.m.–5:30 p.m., April 7, 1998; 7 p.m.–8 p.m., April 7, 1998; 7:30 a.m.–4 p.m., April 8, 1998.

Place: DoubleTree Hotel, 2900 Chinden Boulevard, Boise, Idaho 83714, telephone 208/343–1871, fax 208/344–1079.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose

This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed

Agenda items include presentations from the CDC and the U.S. Department of Energy on national priorities and research agendas; the National Institute for Occupational Safety and Health will provide updates on the progress of current studies; the National Cancer Institute (NCI) will update the NCI study, and Fallout and Thyroid Cancer; the Radiological Assessments Corporation will provide updates on the Status of Chemical Screening and Radionuclide Screening; and committee deliberations and working group discussions. On April 7, at 7 p.m., the meeting will continue in order to allow more time for public input and comment.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Arthur J. Robinson, Jr., or Sharona Woodley, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: March 17, 1998.

Carolyn J. Russell,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–7404 Filed 3–20–98; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application and program reporting requirements for the Children's Justice Act authorized by the Child Abuse Prevention and Treatment Act (as amended).

OMB No.: 0980–0196.

Description: Application information is required when a State wishes to be considered for a Children's justice Act grant award. Program reports are used by Children's Bureau and the States as a mechanism for monitoring, evaluating and measuring State achievements in addressing the problems of child abuse and neglect. State reports also provide information for the Congress.

Respondents: Individuals and Households; Not-for-Profit Institutions; and State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Performance Report	52	1	20	1,040

Estimated Total Annual Burden Hours: 3,120

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management

Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: March 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–7358 Filed 3–20–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0157]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions in FDA's food labeling regulations.

DATES: Submit written comments on the collection of information by May 22, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling Regulations (21 CFR Parts 101, 102, 104, and 105)

FDA regulations require food producers to disclose to consumers and others specific information about themselves or their products on the label or labeling of their products. Related regulations require that food producers retain records establishing the basis for the information contained in the label or labeling of their products and provide those records to regulatory officials. Finally, certain regulations provide for the submission of food labeling petitions to FDA. FDA's food labeling regulations in parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) were issued under the authority of sections 4, 5, and 6 of the Fair Packaging and Labeling Act (the FPLA) (15 U.S.C. 1453, 1454, and 1455) and of sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the act and the FPLA. The purpose of this notice is to consolidate all of the information collection provisions in these regulations into one notice for public comment under the PRA.

Section 101.3 of FDA's food labeling regulations requires that the label of a food product in packaged form bear a statement of identity (i.e., the name of the product), including, as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes requirements for the declaration of ingredients on the label or labeling of food products in packaged form. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. Section 101.9(g)(9) also provides for the submission to FDA of requests for alternative approaches to nutrition labeling. Finally, § 101.9(j)(18) provides for the submission to FDA of notices from firms claiming the small business exemption from nutrition labeling.

Section 101.10 requires that restaurants provide nutrition information, upon request, for any food or meal for which a nutrient content claim or health claim is made. Section 101.12(e) provides that a manufacturer that adjusts the reference amount customarily consumed (RACC) of an aerated food for the difference in density of the aerated food relative to the density of the appropriate nonaerated reference food must be prepared to show FDA detailed protocols and records of all data that were used to determine the density-adjusted RACC. Section 101.12(g)

requires that the label or labeling of a food product disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC. Section 101.12(h) provides for the submission of petitions to FDA to request changes in the reference amounts defined by regulation.

Section 101.13 requires that nutrition information be provided in accordance with § 101.9 for any food product for which a nutrient content claim is made. Under some circumstances, § 101.13 also requires the disclosure of other types of information as a condition for the use of a nutrient content claim. For example, under § 101.13(j), if the claim compares the level of a nutrient in the food with the level of the same nutrient in another "reference" food, the claim must also disclose the identity of the reference food, the amount of the nutrient in each food, and the percentage or fractional amount by which the amount of the nutrient in the labeled food differs from the amount of the nutrient in the reference food. Section 101.13(q)(5) requires that restaurants document and provide to appropriate regulatory officials, upon request, the basis for any nutrient content claims they have made for the foods they sell.

Section 101.14 provides for the disclosure of nutrition information in accordance with § 101.9 and, under some circumstances, certain other information as a condition for making a health claim for a food product. Section 101.15 provides that, if the label of a food product contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in both the foreign language and in English. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives in food products. Section 101.22(i)(4) sets forth reporting and recordkeeping requirements pertaining to certifications for flavors designated as containing no artificial flavor. Section 101.30 specifies the conditions under which a beverage that purports to contain any fruit or vegetable juice must declare the percentage of juice present in the beverage and the manner in which the declaration is to be made.

Section 101.36 requires that nutrition information be provided for dietary supplements offered for sale, unless an exemption in § 101.36(h) applies. Section 101.36(f)(2) cross references the provisions in § 101.9(g)(9) for the submission to FDA of requests for alternative approaches to nutrition labeling. Also, § 101.36(h)(2) cross references the provisions in § 101.9(j)(18) for the submission of small business exemption notices.

Section 101.42 requests that food retailers voluntarily provide nutrition information for raw fruits, vegetables, and fish at the point of purchase, and § 101.45 contains guidelines for providing such information. Also, § 101.45(c) provides for the submission of nutrient data bases and proposed nutrition labeling values for raw fruit, vegetables, and fish to FDA for review and approval.

Sections 101.54, 101.56, 101.60, 101.61, and 101.62 specify information that must be disclosed as a condition for making particular nutrient content claims. Section 101.67 cross references requirements in other regulations for ingredient declaration (§ 101.4) and disclosure of information concerning performance characteristics (§ 101.13(d)). Section 101.69 provides for the submission of a petition requesting that FDA authorize a particular nutrient content claim by regulation. Section 101.70 provides for the submission of a petition requesting that FDA authorize a particular health claim by regulation. Section 101.77(c)(2)(ii)(D) requires the disclosure of the amount of soluble fiber per serving in the nutrition labeling of a food bearing a health claim about the relationship between soluble fiber and a reduced risk of coronary heart disease. Section 101.79(c)(2)(iv) requires the disclosure of the amount of folate per serving in the nutrition labeling of a food bearing a health claim about the relationship between folate and a reduced risk of neural tube defects.

Section 101.100(d) provides that any agreement that forms the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the act be in writing and that a copy of the agreement be made available to FDA upon request. Section 101.100 also contains reporting and disclosure requirements as conditions for claiming certain labeling exemptions.

Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form and prescribes conditions under which a food whose label does not accurately reflect the actual quantity of contents may be sold, with appropriate disclosures, to an institution operated by Federal, State or local government. Section 101.108 provides for the submission to FDA of a written proposal requesting a temporary exemption from certain requirements of §§ 101.9 and 105.66 for the purpose of conducting food labeling experiments with FDA's authorization.

Regulations in part 102 define the information that must be included as part of the statement of identity for particular foods and prescribe related labeling requirements for some of these foods. For example, § 102.22 requires that the name of a protein hydrolysate shall include the identity of the food source from which the protein was derived.

Part 104, which pertains to nutritional quality guidelines for foods, cross references several labeling provisions in part 101 but contains no separate information collection requirements.

Part 105 contains special labeling requirements for hypoallergenic foods, infant foods, and certain foods represented as useful in reducing or maintaining body weight.

The disclosure and other information collection requirements in the above regulations are placed primarily upon manufacturers, packers, and distributors of food products. Because of the existence of exemptions and exceptions, not all of the requirements apply to all food producers or to all of their products. Some of the regulations affect food retailers, such as supermarkets and restaurants.

The purpose of the food labeling requirements is to allow consumers to be knowledgeable about the foods they purchase. Nutrition labeling provides information for use by consumers in selecting a nutritious diet. Other information enables a consumer to comparison shop. Ingredient information also enables consumers to avoid substances to which they may be sensitive. Petitions or other requests submitted to FDA provide the basis for the agency to permit new labeling statements or to grant exemptions from certain labeling requirements. Recordkeeping requirements enable FDA to monitor the basis upon which certain label statements are made for food products and whether those statements are in compliance with the requirements of the act or the FPLA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section/Part	No. of Respondents	Total Annual Responses	Hours per Response	Total Hours	Total Operating, Capital, or Maintenance Costs
§§ 101.3, 101.22, parts 102 and 104	17,000	17,500	0.5	8,750	0
§§ 101.4, 101.22, 101.100, parts 102, 104, and 105	17,000	17,500	1	17,500	0
§ 101.5	17,000	17,500	0.25	4,375	0
§§ 101.9, 101.13(n), 101.14(d)(3), 101.62, and part 104	17,000	17,500	4	70,000	$1,000,000
§§ 101.9(g)(9) and 101.36(f)(2)	12	12	4	48	0
§§ 101.9(j)(18) and 101.36(h)(2)	8,600	8,600	8	68,800	0
§ 101.10	265,000	397,500	0.25	99,375	0
§ 101.12(e)	25	25	1	25	0
§ 101.12(g)	5,000	5,000	1	5,000	0
§ 101.12(h)	5	5	80	400	$400,000
§§ 101.13(d)(1) and 101.67	200	200	1	200	0
§§ 101.13(j)(2), 101.13(k), 101.54, 101.56, 101.60, 101.61, and 101.62	2,500	2,500	1	2,500	0
§ 101.13(q)(5)	265,000	397,500	0.75	298,125	0
§ 101.14(d)(2)	265,000	397,500	0.75	298,125	0
§ 101.15	160	1,600	8	12,800	0
§ 101.22(i)(4)	25	25	1	25	0
§§ 101.30 and 102.33	1,500	5,000	1	5,000	0
§ 101.36	3000	12,000	4	48,000	$15,000,000
§§ 101.42 and 101.45	72,270	72,270	0.50	36,135	0
§ 101.45(c)	5	20	4	80	0
§ 101.69	3	3	25	75	0
§ 101.70	3	3	80	240	$400,000
§ 101.77(c)(2)(ii)(D)	1,000	1,000	0.25	250	0
§ 101.79(c)(2)(iv)	100	100	0.25	25	0
§ 101.100(d)	1,000	1,000	1	1,000	0
§§ 101.105 and 101.100(h)	17,000	17,500	0.5	8,750	0
§ 101.108	0	0	40	0	0
Total Burden Hours				985,603	16,800,000

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating, Capital, or Maintenance Costs
101.12(e)	25	25	1	25	0
101.13(q)(5)	265,000	397,500	0.75	298,125	0
101.14(d)(2)	265,000	397,500	0.75	298,125	0
101.22(i)(4)	25	25	1	25	0
101.100(d)(2)	1,000	1,000	1	1,000	0
101.105(t)	100	100	1	100	0
Total Burden Hours				597,400	0

These estimates are based on FDA's "Regulatory Impact Analysis of the Final Rules to Amend the Food Labeling Regulations," the agency's most recent comprehensive review of food labeling costs that published in the **Federal Register** of January 6, 1993 (58 FR 2927); agency communications with industry; and FDA's knowledge of and experience with food labeling and the submission of petitions and requests to the agency. Where an agency regulation implements an information collection requirement in the act or the FPLA, only any additional burden attributable to the regulation has been included in FDA's burden estimate.

No burden has been estimated for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, no burden has been estimated for information that is disclosed to third parties as a usual and customary part of a food producer's normal business activities. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7472 Filed 3–20–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0487]

Agency Information Collection Activities; Patent and Exclusivity Provisions; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by April 22, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions; 21 CFR 314.50(i), 314.50(j), 314.52, 314.53, 314.54(a)(1)(vii), 314.70(f), 314.94(a)(12), 314.95, and 314.107(c)(4), (e)(2)(iv), (f)(2), and (f)(3)—(OMB Control Number 0910–0305)—Extension

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) requires patent owners to submit to FDA information about patents that cover approved drugs. Generic copies of these drugs may be approved when the patents expire or if a generic company certifies that the patent is invalid or will not be infringed. In such cases, the generic company must notify the patent owner about the certification, and approval of the drug may not be made effective until after the court decides the patent infringement suit or a period of 36 months, whichever occurs first. In addition, section 505 of the act, provides several periods of marketing exclusivity ranging from 3 to 10 years (depending primarily on the nature of the innovation). If a drug product receives marketing exclusivity, FDA will not approve (or, in limited cases not receive) an abbreviated new drug application (ANDA) for the drug product.

Under the authority found in sections 505 and 701 of the act (21 U.S.C. 371), FDA issued regulations governing patent and exclusivity provisions in part 314 (21 CFR part 314). The regulations provide instructions for new drug application (NDA) applicants (including section 505(b)(2) of the act applicants) and ANDA applicants on how to file patent information and request marketing exclusivity; require patent certification information for section 505(b)(2) applications and ANDA's; require information for requests for marketing exclusivity for NDA's (including section 505(b)(2) applications and certain NDA supplements); and require patent information for NDA's.

The specific reporting requirements that are the subject of this information collection are as follows: (1) Section 314.50(i) requires patent certification as part of a section 505(b)(2) of the act application; (2) § 314.50(j) requires an NDA applicant to submit information if seeking marketing exclusivity; (3) § 314.52 requires section 505(b)(2) applicants to provide notice of certification of noninfringement of patent or invalidity to patent holders and NDA holders; (4) § 314.53 requires submission of patent information as part of an NDA or supplement; (5) § 314.54(a)(1)(vii) requires applicants to submit a statement if a section 505(b)(2) applicant is seeking marketing exclusivity for changes to a listed drug; (6) § 314.70(f) requires a statement if an applicant is seeking marketing exclusivity for a supplement; (7) § 314.94(a)(12) requires an applicant to submit patent information as part of an ANDA; (8) § 314.95 requires ANDA applicants to provide notice of certification of noninfringement of patent or invalidity to patent holders and NDA holders; (9) § 314.107(c)(4), (e)(2)(iv), (f)(2), and (f)(3) require notice to FDA by ANDA or section 505(b)(2) application holders of any legal action concerning patent infringement.

Applicants must provide information on patents to FDA to enable the agency to determine whether a product is covered by a patent or whether approval of a proposed drug product would result in patent infringement. The agency lists the patent information as a reference of potential applicants. If an applicant believes a patent is invalid or would not be infringed, Federal law also requires it to notify the patent holder. FDA approval, in such cases, is affected should there be any patent litigation. Failure to provide this information would result in an incomplete application and constitute grounds for refusing to approve the application.

Applicants submitting NDA's are required under the act to provide information on certain patents that cover their drug products. The agency lists this patent information in its publication entitled "List of Approved Drug Products With Therapeutic Equivalence Evaluations." To promote product innovation, the act also gives NDA applicants several periods of "market exclusivity" ranging from 3 to 10 years (depending primarily on the nature of the innovation). If a drug product receives marketing exclusivity, FDA will not approve (or, in limited cases, even receive) an ANDA for the drug product during that time period.

In the **Federal Register** of December 12, 1997 (62 FR 65431), the agency requested comments on the proposed collection of information. No comments were received.

Respondents to this collection of information are new drug and abbreviated new drug applicants.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.50(i)	8	1	8	2	16
314.50(j)	50	1	50	2	100
314.52	8	1	8	8	64
314.53	200	1	200	1	200
314.54(a)(1)(vii)	8	1	8	1	8

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.70(f)	43	1	43	1	43
314.94(a)(12)	395	1	395	2	790
314.95	30	1	30	16	480
314.107(c)(4), (e)(2)(iv), (f)(2); and (f)(3)	30	1	30	1	30
Total					1,731

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on FDA's experience over the last 3 years in receiving this information, and the familiarity by FDA reviewers with the amount of time it takes to prepare and submit the information to FDA.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7474 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0488]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by April 22, 1998.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC, 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Year 1998 and 2000 Continuation of National Surveys of Prescription Drug Information Provided to Patients—(OMB Control Number 0910–0279—Reinstatement)

FDA implements the provisions of the Federal Food, Drug, and Cosmetic Act (the act), designed to assure the adequate labeling of prescription (Rx) drugs. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug product is misbranded if its labeling is false or misleading in any particular, and under section 201(n) of the act (21 U.S.C. 321(n)), a drug's labeling is misleading if its labeling or advertising fails to reveal material facts. FDA also has the authority to collect this information under Title VI of Pub. L. 104–180 (Related Agencies and Food and Drug Administration) section 601 (Effective Medication Guides), which directs the development of "a mechanism to assess periodically * * * the frequency with which the [oral and written prescription] information is provided to consumers."

To assure that Rx drugs are not misbranded, FDA has historically asserted that adequate labeling requires certain information be provided to patients. In 1982, when FDA revoked a planned initiative to require mandatory patient package inserts for all Rx drugs in favor of private sector initiatives in this area, the agency indicated that it will periodically conduct surveys to evaluate the availability of adequate patient information on a nationwide basis. Surveys of consumers about their receipt of Rx drug information were carried out in 1982, 1984, 1992, 1994, and 1996. This notice is in regard to continuing the survey in years 1998 and 2000.

The survey is conducted by telephone on a national random sample of adults age 18 and over who received a new prescription for themselves or a household member within the past 4 weeks. The interview assesses the extent to which oral and written information was received from the doctor, the pharmacist, and other sources. Survey respondents are also asked attitudinal questions, and demographic and other background characteristics are also obtained. The survey enables FDA to determine the frequency with which such information is provided to consumers. Without this information, the agency would be unable to assure that adequate Rx labeling and information is provided.

Respondents to this collection of information are adults (18 years or older), in the continental United States who have obtained one or more new (nonrefill) prescriptions at a pharmacy for themselves or a member of their household in the last 4 weeks.

In the **Federal Register** of December 11, 1997 (62 FR 65273), the agency invited comments on the collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN: SCREENER[1]

Year	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1998	11,044	1	11,044	.03	331
1999	0	0	0	0	0
2000	11,044	1	11,044	.03	331
Annual average	7,363		7,363		221

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ANNUAL REPORTING BURDEN: SURVEY[1]

Year	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1998	1,000	1	1,000	.32	320
1999	0	0	0	0	0
2000	1,000	1	1,000	.32	320
Annual average	667		667		213

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate of 434 total annual burden hours is based on the 1996 survey administration, in which 11,044 potential respondents were contacted to obtain 1,000 interviews.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7475 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0486]

Agency Information Collection Activities; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by April 22, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution (21 CFR Part 207)—(OMB Control Number 0910–0045)

Under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360), FDA is authorized to establish a system for registration of producers of drugs and for listing of drugs in commercial distribution. To implement section 510 of the act, FDA issued part 207 (21 CFR part 207). The regulations require an initial listing of products and a twice-yearly update. In addition, all registered drug firms are required to re-register annually between January and July. The penalties for failure to register or drug list are potential seizure and injunctions, as well as criminal enforcement actions.

The following are the specific reporting requirements under part 207: (1) Section 207.20 requires that owners and operators of all drug establishments that engage in the manufacture, preparation, propagation, or processing of drugs must register and use Form FDA 2656 (Registration of Drug Establishment) and Form FDA 2658 (Registered Establishments' Report of Private Label Distributors) to submit drug listing information or to request a Labeler Code, or both. (2) Section 207.21 requires that owners and operators must register an establishment within 5 days of beginning operations and shall complete Form FDA 2656e (Annual Registration of Drug Establishment) each year between January and July. Annual registration forms are mailed by FDA in each calendar year according to a schedule based on the establishment parent company's name and must be completed within 30 days of the receipt. (3) Section 207.22(a) requires that Form FDA 2656 must be submitted when an establishment registers the first time. An establishment whose drug registration is validated under § 207.35(a) is required to make subsequent annual registrations as described in § 207.21(a). (4) Section 207.22(b) requires that Form FDA 2657 must be submitted for the first listing of drugs and subsequent June and December updates. (5) Section 207.25 specifies the information required in the establishment registration and drug listing. (6) Section 207.25(c) specifies the information about the drug that is required to be submitted (name, active ingredients, dosage strength, NDC number, manufacturer or distributor, size, shape, color, code imprint). (7) Section 207.26 specifies the information required in the amendments to the establishment registration. (8) Section 207.30 specifies the information required for updating the drug listing. (9) Section 207.31 specifies additional drug listing information that may be needed beyond that required in §§ 207.25 and 207.30.

The information obtained from the establishment registration forms FDA 2656 and FDA 2656(e) is used by FDA and other government agencies to keep an accurate and current list of all human and animal drug manufacturers, repackers, relabelers, and other drug processors located in this country. This list is used by FDA for inspectional

purposes as required by the act. In addition, the data is used by the public and private sector as a listing of the names and locations of drug firms. The information obtained from the listing forms FDA–2657 and FDA–2658 is used, through assignment of the National Drug Code numbers, for third party reimbursement payment in Medicare and Medicaid as well as other health care insurance firms.

Respondents to this collection of information are all owners and operators that engage in the manufacture, preparation, propagation, compounding, or processing of drugs and that are not exempt under section 510(g) of the act or subpart D of 21 CFR part 207.

In the **Federal Register** of December 11, 1997 (62 FR 65274), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Form FDA–2656 Registration of Drug Establishment	207.20 207.22 207.25 207.26	2,500	1	2,500	.5	1,250
Form FDA–2656(e) Annual Registration of Drug Establishments	207.21 207.25 207.26	9,000	1	9,000	.5	4,500
Form FDA–2657 Drug Product Listing Form	207.22 207.30 207.31	45,000	1	45,000	.5	22,500
Form FDA–2658 Registered Establishment's Report of Private Label Distribution	207.20 207.21 207.25 207.26	6,200	1	6,200	.5	3,100
	207.25(c)	1,500	12.04	18,066	.5	9,033
Total						40,383

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's Center for Drug Evaluation and Research, Product Information Management Branch, and its data and information on drug listing and establishment registration of manufacturers, repackers, relabelers, and other drug processors.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7476 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0433]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Additives: Threshold of Regulation for Substances Used in Food-Contact Articles" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1998 (63 FR 233), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0298. The approval expires on March 31, 2001.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7471 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0512]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Use of Impact-Resistant Lenses in

Eyeglasses and Sunglasses" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1998 (63 FR 231), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0182. The approval expires on March 31, 2001.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7473 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4351–N–01]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: May 22, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Harold R. Holzman, Office of Policy Development and Research; telephone (202) 708–3700 extension 5709. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Case Studies of the Conversion of Development-Based Assistance to Household-Based Assistance.

Description of the need from the information and proposed use: The Department of Housing and Urban Development has contracted with Abt Associates Inc. to conduct an exploratory study of housing developments that have converted from development-based Section 8 rental assistance to household-based assistance (1) when property owners "opt-out" of the development-based program at contract expiration and (2) when property owners prepay mortgages in the case of Section 236 and 221 (d)(3) BMIR developments. This exploratory research on these privately-owned developments will enable HUD to understand (1) the factors that influence households' decisions to move or stay when offered vouchers; (2) the outcomes of moving or remaining in place; and (3) the financial and physical characteristics of developments that convert.

The study will address the conversion process through case studies of approximately twelve assisted properties in four cities. The case studies will draw on information from numerous sources, including a survey of households that have received vouchers as part of the conversion process. The survey will provide information on tenant experiences and outcomes including the decision to move or stay, the housing search process, relocation counseling, and housing and neighborhood characteristics and satisfaction.

Findings from the study will inform ongoing programmatic and policy decisions by HUD and the Congress regarding treatment of the FHA multifamily portfolio. This work has important implications for HUD as it proceeds with the conversion process, because the ability of such tenants to find suitable housing will be an important concern.

Members of affected public: The survey will involve approximately 420 households in twelve housing developments that have converted from project-based Section 8 rental assistance to tenant-based assistance in the form of Section 8 vouchers. These developments will be located in four cities throughout the country. The respondent in each household will be the person in whose name the voucher has been issued.

Estimate Burden: The survey will involve 420 respondents, all of whom resided in the twelve assisted developments at notification. Information will be collected through a one-time telephone interview that will take an average of 15 minutes to complete. The survey process will require a total of 105 hours of respondents' time (15 minutes times 420 respondents divided by 60).

Status of the proposed information collection: New Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 13, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 98–7450 Filed 3–20–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–08]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 22, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Date: March 17, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Performance Funding System Data Collection Forms.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0029.

Description of the Need for the Information and its Proposed Use: Housing Agencies (HAs) use this information in budget submissions which are reviewed and approved by HUD Field Offices as the basis for obligating operating subsidies. This information is necessary to calculate the eligibility for operating subsidies under the PFS regulation.

Form Number: HUD–52720A, 52720B, 52720C, 52721, 52722A, 52722B, and 52723.

Respondents: State, Local or Tribal Governments.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	3,200		7		.85		19,028

Total Estimated Burden Hours: 19,028.

Status: Reinstatement with change, of a previously approved collection, for which approval has expired.

Contact: Joan DeWitt, HUD, (202) 708–1872 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 17, 1998.

[FR Doc. 98–7448 Filed 3–20–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–07]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 22, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 17, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: National Survey of Dust Lead Hazards in Housing.

Office: Office of Lead Hazard Control.

OMB Approval Number: 2539–XXXX.

Description of the Need for the Information and its Proposed Use: The survey will be a scientific descriptive study of lead levels in dust, soil, and paint in the Nation's housing, collecting information about lead and related data regarding occupants and their residential environment.

Form Number: N/A.

Respondents: Individuals or Households.

Frequency of Submission: One-Time Submission.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
1,000		1		2.05		2,500

Total Estimated Burden Hours: 2500.

Status: New Collection.

Contact: Warren Friedman, Ph.D., HUD (202) 755–1785 x159 Joseph F. Lackey, Jr., OMB (202) 395–7316

Dated: March 17, 1998.

[FR Doc. 98–7449 Filed 3–20–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Availability of Grant Application Instructions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the document, U.S. North American Wetlands Conservation Act Grant Application Instructions, is available.

DATES: Proposals may be submitted at any time. Due dates continue to be the first Friday in April and August. FY 1999 proposals will be accepted through August 7, 1998.

ADDRESSES: Copies of the document can be obtained by contacting the Fish and Wildlife Service, Publications Unit, c/o National Conservation Training Center, Route 1, Box 166, Shepherd Grade Road, Shepherdstown, WV 25443 during normal business hours in writing or by phone (304) 876–7203.

FOR FURTHER INFORMATION CONTACT: North American Wetlands Conservation Council Coordinator at (703) 358–1784 or R9ARW__NAWWO@MAIL.FWS.GOV.

SUPPLEMENTARY INFORMATION: The North American Wetlands Conservation Council has two similar U.S. grants programs, one for Small Grants up to $50,000 and one for larger grants up to $1,000,000. The focus of this notice is the larger grants program (a separate notice is issued for Small Grants). The subject document provides the schedules, review criteria, definitions, description of information required in the proposal, and a format for proposals for Fiscal Year 1999 funding.

Major changes since last year are: (1) Proposals must show a real connection between money spent and long-term wetland benefits. Proposals that minimize administrative and overhead expenses tend to be more competitive; (2) The grant program encourages proposals that attract new monies and partners; (3) Applicants are urged to contact a Joint Venture Coordinator prior to proposal submission and to send a copy of the proposal to them; (4) Plans should be referenced that justify the need for the proposal and the link between the proposal and migratory bird and wetlands conservation plans; (5) For contributions of lands, conservation easements or donated land values, provide by tract types of land, migratory bird values, how monetary value was determined, conditions of easements, and location on a map; (6) Justification is required for large differences between per acre value of land (including easements) used as match and land (including easements) to be acquired with grant funds; (7) Milestones Schedule should include work that has already been completed and is being used as match, as well as work yet to be done (total of 4 years); (8) Colored maps are preferred. All maps must be no larger than 8.5 x 11 inches; (9) Technical Assessment Question 7 is no longer optional and must be answered by each applicant; (10) Changes to Eligible and Ineligible Activities list *are only pro-rates cost of equipment is eligible as match, "contingencies" is not an eligible cost category for grant or match funds, "evaluation" is not an eligible cost for grant funds, and the use of grant funds for overhead and vegetation control is discouraged.*

This document was prepared to comply with the "North American Wetlands Conservation Act." The Act established a North American Wetlands Conservation Council. This Federal-State-Private body annually recommends wetland acquisition, restoration, and enhancement conservation projects to the Migratory Bird Conservation Commission. Project recommendations are selected from proposals made in accordance with this document. The Council requires that proposals contain a minimum of 50 percent non-Federal matching funds.

Dated: March 14, 1998.

John G. Rogers,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–7478 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–640–1820–00 24 1A]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of resource advisory council call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for each of the Bureau of Land Management (BLM) Resource Advisory Councils (RACs) that have member terms expiring this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas. Public nominations will be considered for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC members appointed to the RAC must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

Category One—Holders of federal grazing permits and representatives of

energy and mining development, timber industry, off-road vehicle use, and developed recreation;

Category Two—Representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups;

Category Three—Representatives of State, county and local government, Native American tribes, academicians involved in natural sciences, and the public at large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State. Nominations for RACs should be sent to the appropriate BLM offices listed below.

California

Central California RAC
Larry Mercer, Bakersfield Field Officer, BLM, 3801 Pegasus Avenue, Bakersfield, California 93308, (805) 391–6000
Northeastern California RAC
Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456
Northwestern California RAC
Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456

Colorado

Front Range RAC; Southwest RAC; Northwest RAC
Sheri Bell, Colorado State Office, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, (303) 239–3671

Idaho

Upper Columbia RAC; Upper Snake RAC; Lower Snake RAC
Glenda Hawkins, Idaho State Office, BLM, 1387 Vinnell Way, Boise, Idaho 83709–2500, (208) 373–4013

Montana and Dakotas

Butte RAC; Dakotas RAC; Lewistown RAC; Miles City RAC
Jody Weil, Montana State Office, BLM, Granite Tower, 222 N. 32nd Street, Billings, Montana 59107–6800, (406) 255–2913

Nevada

Mojave-Southern RAC; Northeastern Great Basin RAC; Sierra Front Northwestern RAC
Daniel Rathbun, Nevada State Office, BLM, 850 Harvard Way, Reno, Nevada 89520–0006, (702) 785–6767

New Mexico

New Mexico RAC
Kitty Mulkey, New Mexico State Office, BLM, P.O. Box 27115 Sante Fe, New Mexico 87502–0115, (505) 438–7511

Oregon/Washington

Eastern Washington RAC; John Day/Snake RAC; Southeast Oregon RAC
Brenda Lincoln, Oregon State Office, BLM, 1515 S.W. 5th Avenue Portland, Oregon 97208–2965, (503) 952–6437

Utah

Utah RAC
Sherry Foot, Utah State Office, BLM, 324 South State Street, Suite 301, P.O. Box 45155, Salt Lake City, Utah 84145–0155, (801) 539–4195

DATES: All nominations should be received by the appropriate BLM State Office by May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, U.S. Department of the Interior, Bureau of Land Management, Intergovernmental Affairs, MS–LS–406, Washington, D.C., 20240; 202–452–0377.

Dated: March 16, 1998.

Pat Shea,

Director, Bureau of Land Management.

[FR Doc. 98–7401 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 14, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by April 7, 1998.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Maricopa County

Manistee Ranch, 5127 W. Northern Ave., Glendale, 98000322

GEORGIA

Lamar County

Redbone Community House, Community House Rd., Jct. with Sappington Rd., Barnesville vicinity, 98000323

KANSAS

Doniphan County

St. Benedict's Church, 5 mi. SW of Bendena, Bendena vicinity, 98000324

KENTUCKY

Boyle County

Aliceton Camp Meeting Ground (Boyle MPS), 657 Ward's Branch Rd., Gravel Switch vicinity, 98000329
Cincinnati Southern Railroad Culvert—CSRR (Boyle MPS), Crossing of Norfolk Southern RR and Mocks Branch, Danville vicinity, 98000327
Durham House (Boyle MPS), 2481 Webster Rd., Danville vicinity, 98000330
First Christian Church (Boyle MPS), Jct. of Shelby and Cemetery Sts., Junction City, 98000331
Guthrie—May—Raley House (Boyle MPS), N of Jct. of KY 37 and KY 243, Gravel Switch vicinity, 98000336
Junction City Municipal Building (Boyle MPS), Jct. of Shelby and Lucas Sts., Junction City vicinity, 98000328
Mitchellsburg Louisville and Nashville Railroad Culvert (Boyle MPS), L and N RR grade over Buck Cr., Mitchellsburg vicinity, 98000332
Robinson, James, House (Boyle MPS), KY 1856, 1.5 mi. N of KY 34, Mitchellsburg vicinity, 98000333
Stone Bridge at Chaplin Creek (Boyle MPS), Jct. of Cash Rd. and Old Mitchellsburg Rd., Parksville vicinity, 98000335
Tank Pond Railroad Underpass (Boyle MPS), Jct. of Tank Pond Rd. and KY 34, Mitchellsburg vicinity, 98000334

Owen County

Brown, Mason, House, 1200.5 mi. E of end of Brown's Bottom Rd., Gratz vicinity, 98000325

Rowan County

Brushy Voting House No. 6 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Jct. of KY 32 and Spruce St., Morehead, 98000340
Cranston Voting House No. 12 (Kentucky WPA Stone Voting Houses in Rowan

County MPS), Jct. of Clear Fork Rd. and KY 377, Morehead, 98000344
Farmers Voting House No. 2 (Kentucky WPA Stone Voting Houses in Rowan County MPS), KY 801, 0.1 S of Farmers, Morehead, 98000337
Haldeman Voting House No. 8 (Kentucky WPA Stone Voting Houses in Rowan County MPS), KY 174, Morehead, 98000342
Hayes Voting House No. 16 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Little Perry Rd., near Jct. with KY 60, Morehead, 98000346
Hogtown Voting House No. 4 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Williamstown Rd., Morehead, 98000338
Lewis Voting House No.17 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Seas Branch Rd., near Jct. with KY 32, Morehead, 98000347
Morehead Voting House No. 7 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Clearfield St., Morehead, 98000341
Morehead Voting House No. 10 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Jct. of Knapp and W. 2nd St., Morehead, 98000343
Pine Grove Meeting House No. 5 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Rock Fork Rd., 0.5 mi. N of KY 377, Morehead, 98000339
Plank Voting House No. 15 (Kentucky WPA Stone Voting Houses in Rowan County MPS), 815 Plank Chapel Rd., Morehead, 98000345

Woodford County

Clifton—McCracken Pikes Rural Historic District, Roughly along Clifton and McCraken Pikes, and Steele Rd., Versailles vicinity, 98000326

MASSACHUSETTS

Berkshire County

Mount Greylock Summit Historic District, Jct. of Notch, Rockwell, and Summit Rds., Adams, 98000349

MICHIGAN

Delta County

Delta Hotel, 624 Ludington St., Escanaba, 98000350

NEW JERSEY

Essex County

Riverbank Park, Roughly bounded by Van Buren, Market, and Somme Sts., and Passaic R., Newark vicinity, 98000351

NEW YORK

Nassau County

Haviland—Davison Grist Mill, Jct. of Wood and Denton Aves., East Rockaway, 98000352

Tioga County

Owego Central Historic District (Boundary Increase), Roughly bounded by William St., Central Ave., Chestnut St., Fifth Ave., and Susquehanna R.,
Owego, 98000353

TEXAS

Bosque County

Lumpkin Building, 101 Main St., Meridian, 98000355

Goliad County

Chilton, Dr. L.W. and Martha E.S., House, 242 N. Chilton St., Goliad, 98000354

Correction

A Correction is hereby made: This nomination was inadvertently listed as Pending.

FLORIDA

Clay County

St. Margaret's Episcopal Church and Cemetery, 6874 Old Church Rd., Green Cove Springs, 98000296

Request for Name Change

A request for a name change has been received for:

From:

FLORIDA

Clay County

St. Margaret's Episcopal Church, 6874 Old Church Rd., Green Cove Springs, 73000570

To:

FLORIDA

Clay County

St. Margaret's Episcopal Church and Cemetery, 6874 Old Church Rd., Green Cove Springs, 73000570

[FR Doc. 98–7399 Filed 3–20–98; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–373 (Final) and 731–TA–769–775 (Final)]

Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–373 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–769–775 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan of stainless steel wire rod, provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Italy of stainless steel wire rod, and that such products from Germany, Italy, Japan,

[1] For purposes of these investigations, Commerce has defined the subject merchandise as articles of stainless steel that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons, or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. Stainless steel wire rod is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. It is manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, is normally sold in coiled form, and is of solid cross-section. Most stainless steel wire rod sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for stainless steel wire rod is 5.5 millimeters or 0.217 inch in diameter. The range of stainless steel wire rod sizes normally sold in the United States is between 0.20 inch (5.08 millimeters) and 1.312 inches (33.32 millimeters) in diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the investigations.

Korea, Spain, Sweden, and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on July 30, 1997, by Al Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Massillon, OH; Talley Metals Technology, Inc., Hartsville, SC; and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigations and Public Service list

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on July 9, 1998, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 22, 1998, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 15, 1998. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 17, 1998, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 16, 1998. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 29, 1998; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 29, 1998. On August 18, 1998, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 20, 1998, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: March 17, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–7423 Filed 3–20–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 751–TA–17 through 20]

Titanium Sponge From Japan, Kazakstan, Russia, and Ukraine

AGENCY: United States International Trade Commission (Commission).

ACTION: Institution and scheduling of review investigations concerning the U.S. Tariff Commission's affirmative determination in investigation No. AA1921–51, Titanium Sponge from the U.S.S.R., and the Commission's affirmative determination in investigation No. 731–TA–161 (Final), Titanium Sponge from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted investigations pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) to review the determination of the U.S. Tariff Commission (predecessor agency to the Commission) in investigation No. AA1921–51, Titanium Sponge from the U.S.S.R., to the extent that determination applies to imports from Kazakstan, Russia, and Ukraine, and its own determination in investigation No. 731–TA–161 (Final), Titanium Sponge from Japan. The purpose of the investigations is to determine whether revocation of the orders covering imports from Japan, Kazakstan, Russia, and Ukraine is likely to lead to continuation or recurrence of material injury to an industry in the United States. Titanium sponge is provided for in subheading 8108.10.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, C, D, and E (19 CFR part 207).

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On April 19, 1968, the Department of the Treasury (Treasury) determined that imports of titanium sponge from the U.S.S.R. were being sold in the United States at less than fair value (LTFV) within the meaning of section 201(a) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(a)) (33 FR 6377, Apr. 26, 1968); and on July 23, 1968 the U.S. Tariff Commission determined that an industry in the United States was materially injured by reason of imports of such LTFV merchandise (33 FR 10769, July 27, 1968). Accordingly, Treasury ordered that dumping duties be imposed on such imports (33 FR 12138, Aug. 28, 1968).[1]

Further, on September 24, 1984, Commerce determined that imports of titanium sponge from Japan were being sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673) (49 FR 38684, Oct. 1, 1984); and on November 7, 1984 the Commission determined, pursuant to section 735(b)(1) of the Act (19 U.S.C. 1673d(b)(1)), that an industry in the United States was threatened with material injury by reason of imports of such LTFV merchandise. Accordingly, Commerce ordered that dumping duties be imposed on such imports (49 FR 47053, Nov. 30, 1984).

On December 9, 1997, the Commission received a request to review its affirmative determination in investigation No. AA1921–51, as it applied to imports from Russia, pursuant to section 751(b) of the Act (19 U.S.C. 1675(b)). The request was filed by counsel on behalf of TMC Trading International, Ltd., an Irish trading company involved in the distribution of titanium sponge from Russia, and TMC USA, Inc., its U.S. affiliate. On December 31, 1997, the Commission requested written comments in the **Federal Register** (62 FR 68300) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant institution of review investigations.[2] After reviewing comments received in response to that request, the Commission determines that certain of the alleged changed circumstances are sufficient to warrant review investigations.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on May 22, 1998, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 8, 1998, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 29, 1998. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 1, 1998, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 1, 1998. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 15, 1998; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 15, 1998. On July 2, 1998, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 7, 1998, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6,

[1] In 1992, the Department of Commerce (Commerce), in response to the division of the former Soviet Union into 15 independent states, changed the original antidumping finding against the U.S.S.R. to 15 separate antidumping orders covering the Baltic states and the republics of the former Soviet Union (57 FR 36070 (1992)). Commerce has since revoked all of the orders except those on imports from Kazakstan, Russia, and Ukraine.

[2] The Commission also invited comment on whether it should institute, on its own initiative, review investigations covering imports of titanium sponge from Japan, Kazakstan, and Ukraine.

207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.45 of the Commission's rules.

Issued: March 11, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–7421 Filed 3–20–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated October 22, 1997, and published in the **Federal Register** on November 4, 1997, (62 FR 59735), Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture cocaine as a final intermediate for the production of dopascan injection. Cocaine derivative are Schedule II controlled substances in the cocaine basic class.

DEA has considered the factors in Title 21, United States Code, Section 823(a), as well as information provided by other bulk manufacturers, and determined that the registration of Guilford Pharmaceuticals, Inc. to manufacturer cocaine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 10, 1998.

John H. King,

Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration.

[FR Doc. 98–7383 Filed 3–20–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1916–98]

Notice of Modification of Fingerprint Process for Asylum Applicants Facing One-Year Deadline

AGENCY: Immigration and Naturalization Service (INS), Justice.

ACTION: Notice.

SUMMARY: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) added a provision to the Immigration and Nationality Act (Act) which requires that an asylum applicant must file an application for asylum within 1 year after the date of his or her arrival in the United States. Persons who arrived in the United States on or before April 1, 1997, must file asylum applications on or before April 1, 1998. The deadline to file an asylum application by an individual arriving in the United States after April 1, 1997 is 1 year after the date of arrival. Asylum applications filed after the deadline will not be adjudicated unless an asylum officer or an Immigration Judge determines the applicant qualifies for an exception due to changed conditions or extraordinary circumstances. The public is also reminded that this filing deadline applies only to applications for asylum. Form I–589, Application for Asylum and for Withholding of Removal, is an application for both asylum and withholding of removal, and the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) adjudicators will process withholding of removal claims whether or not the asylum claim is timely. This notice also discusses modifications to the process of submitting fingerprints for asylum applicants who have not yet had fingerprints taken. Applicants are encouraged to submit fingerprints with their application if they can, but an applicant can submit his or her application without fingerprints. The applicant will then be instructed where and when to report to be fingerprinted. Finally, this notice informs the public that the April 1, 1997 or the new 1998 version of Form I–589 must be used until July 1, 1998. Beginning July 1, 1998, the new 1998 version of the I–589 must be used.

FOR FURTHER INFORMATION CONTACT: Marta Rothwarf, Office of International Affairs, Asylum Division, Immigration and Naturalization Service, 425 I Street, NW., Third Floor ULLICO Bldg., Washington, DC 20536, (202) 305–2900.

SUPPLEMENTARY INFORMATION: IIRIRA added a provision to the Act requiring that an alien must file an asylum application within 1 year after the alien's date of arrival in the United States in order to be eligible for asylum. This provision of IIRIRA came into effect on April 1, 1997. An alien who arrived in the United States on or before April 1, 1997, must file an asylum application no later than April 1, 1998, in order for the application to be timely. An alien who arrived in the United States after April 1, 1997, must file an application within 1 year of the date of arrival in order for the application to be timely.

An alien who has not filed an asylum application within the 1-year filing deadline is not eligible to apply for asylum unless the alien can demonstrate to the asylum officer or Immigration Judge changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing the application within the time limit. In accordance with 8 CFR 208.4(a)(4), changed circumstances can include changes in conditions in the applicant's country. In accordance with 8 CFR 208.4(a)(5), extraordinary circumstances can include events or factors beyond the applicant's control that caused the late filing.

Some asylum applicants may be having difficulty obtaining the necessary fingerprints. Asylum applicants are encouraged to submit fingerprints with their applications, but, beginning immediately, an applicant can submit his or her asylum application without fingerprints. All other requirements for filing an asylum application remain in effect. The Service will notify each asylum applicant who files without submitting fingerprints where and when to report to have fingerprints taken. Fingerprints must be taken before an asylum application can be adjudicated, and failure to report for a fingerprinting appointment may lead to dismissal of asylum application or referral to an Immigration Judge.

Asylum applications are filed on Form I–589, Application for Asylum and for Withholding of Removal. Beginning April 1, 1998, applicants

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must file either the April 1, 1997, or the new 1998 version of the Form I–589. Beginning July 1, 1998, asylum applicants must use the new 1998 version of the Form I–589. Form I–589 is an application for both asylum and withholding of removal. There is no 1-year time limit for filing for withholding of removal, so an application that is untimely as to asylum may nevertheless be adjudicated for withholding of removal.

Dated: March 13, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

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Appendix—Clarifying Instructions for Form I-589

U.S. Department of Justice
Immigration and Naturalization Service

Clarifying Instructions for Form I-589

Clarifying Instructions for I-589 Application for Asylum and for Withholding of Removal

STOP!! READ THESE INSTRUCTIONS FIRST !!

FORM TO BE FILED WITH IMMIGRATION AND NATURALIZATION SERVICE (INS) OR EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR):

- If you file for asylum between April 2, 1998 and June 30, 1998, you MUST submit your asylum application using either the **April 1, 1997 or the new 1998 version** of Form I-589, Application for Asylum and for Withholding of Removal .

- If you file for asylum on or after July 1, 1998, you MUST submit your asylum application using the **1998 version** of Form I-589, Application for Asylum and for Withholding of Removal.

FILING DEADLINE:

- The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009 (1996), added a provision that requires that applicants for asylum must file an application for asylum within one year after their date of arrival in the United States.

- **April 1, 1998** is the deadline to file an asylum application by an individual who arrived in the United States **on or before April 1, 1997**. The deadline to file an asylum application by an individual arriving in the United States **after** April 1, 1997, is **1 year** after the date of arrival. Asylum claims filed after the deadline **will not be adjudicated** unless an asylum officer or an Immigration Judge determines the applicant qualifies for an exception due to changed conditions or extraordinary circumstances. Note: The filing deadline does not apply to applications for withholding of removal. The Form I-589 is an application for both asylum and withholding of removal.

FINGERPRINTS:

- The requirement to submit fingerprints with an asylum application has been waived.

- Applicants for asylum (and their dependents over the age of fourteen (14) who are listed in the application) who file without the required fingerprints will be notified of the time and location where they must go to have their fingerprints taken. Failure to appear for scheduled fingerprinting may delay eligibility for work authorization and/or result in an asylum officer dismissing the asylum application or referring it to an Immigration Judge. For applicants before an Immigration Judge, such failure will make the applicant ineligible for asylum and may delay eligibility for work authorization.

EFFECT OF WITHDRAWAL OF APPLICATION:

- Any information provided with an asylum application may be used as evidence in removal proceedings, even if the asylum application is withdrawn.

FC-015 (3-98)

[FR Doc. 98–7269 Filed 3–20–98; 8:45 am]
BILLING CODE 4410–10–C

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1886–97]

Expansion of the Direct Mail Program for the Honolulu, Phoenix and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno and Tucson Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to include the Honolulu, Phoenix, and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno, and Tucson Suboffices on the current list of direct mail sites for filing Form N–400, Application for Naturalization. Applicants residing within these districts and suboffices will mail their Form N–400 directly to the designated INS service center for processing. This expansion is intended to improve INS service to the public by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION: Under the Direct Mail Program, certain applicants and petitioners for immigration benefits mail their applications and petitions directly to an INS service center for processing instead of submitting them to a local INS office. The purposes and strategy of the Direct Mail Program have been discussed in detail in previous rulemaking and notices (see, e.g., 59 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program, as applied to Form N–400, by adding the Honolulu, Phoenix, and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno, and Tucson Suboffices as Direct Mail sites.

Where To File

Effective March 23, 1998 applicants for naturalization residing within the jurisdiction of the Honolulu, Phoenix, and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno, and Tucson Suboffices must mail the Form N–400, Application for Naturalization, directly to the California Service Center at the following address: USINS California Service Center, Attention: N–400 Unit, P.O. Box 10400, Laguna Niguel, California 92607–0400.

Transition

During the first 60 days following the effective date of this notice, the Honolulu, Phoenix, and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno, and Tucson Suboffices will forward in a timely fashion to the California Service Center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective District or Suboffice. Applicants will be provided a notice at the time of filing at the District or Suboffice advising them that their application is being forwarded to the service center for initial processing. The applicant will receive written notification from their respective District or Suboffice of the date, place, and time of their interview for naturalization. When applications are forwarded from the District or Suboffices, they will be receipted and filed when they arrive at the service center. After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the California Service Center for processing.

Dated: March 16, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–7368 Filed 3–20–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of he Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat hereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,139; Trelleborg YSH, Inc., South Haven, MI
TA–W–34,141; Mascotech, Industrial Components Division, Duffield, VA
TA–W–34,174; United Technologies Automotive, Columbus, MS

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,091; Globelle, Inc., Berlin, NJ
TA–W–34,211; Alta Genetics USA, Inc., Hughson, CA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,257; Weyerhaeuser Co., Coos Bay Timberlands, North Bend, OR
TA–W–34,188; Badger Paper Mills, Inc., Peshtigo, WI
TA–W–34,167; The Stanley Works, Stanley Tools Div., York, PA
TA–W–34,254; American National Can Co., Mt. Vernon, OH
TA–W–34,269; Erickson Air-Crane Co. L.L. C., Central Point, OR
TA–W–33,979; Cytec Industries, Inc., Warners Plant, Linden, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,152; Lorraine Wardy Enterprises, El Paso, TX

The investigation revealed criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company

name and location of each determination references the impact date for all workers of such determination.

TA–W–34,054; Identify Headwear, Maysville, MO: November 20, 1996.
TA–W–34,232; Verona Fashions, Inc., Hoboken, NJ: January 20, 1997.
TA–W–34,191; Calgon Carbon Corp., Advanced Oxidation Technologies, Tucson, AZ: January 19, 1997.
TA–W–34,132; Burgess Machine & Tool, Inc, St. Clair, MI: December 18, 1996.
TA–W–34,250; New Ponce Shirt Co., Inc., Ponce DeLeon, FL: February 17, 1997.
TA–W–34,258; New America Wood Products, Wincock, WA: February 10, 1997.
TA–W–34,108; Breed Technologies, Inc., Air Bag & Seat Belt Div., St. Clair Shores, MI: December 9, 1996.
TA–W–34,244; Glenbrook Nickel Co., Riddle, OR: January 30, 1997.
TA–W–34,170; Scientific Atlanta, Tempe, AZ and Devau Resources Working at Scientific Atlanta, Tempe, AZ: January 16, 1997.
TA–W–34,097; Criterion Plastics, Inc., Kingsville, TX Including Leased Workers of Manpower Temporary Services, Corpus Christie, Texas and Kingsville, Texas: December 5, 1996.
WA–W–33,391; Asher Company, Fitchburg, MA: March 12, 1996.
TA–W–34,016; Paradox Fabrics, Inc., New York, NY: November 4, 1996.
TA–W–34,123; General Electric Co., Medium Transformer Operation, Rome, GA: June 26, 1997.
TA–W–34,197: Pro-Am Corp., Long Island City, NY: January 12, 1997.
TA–W–34,070 & A, B & C; The American Fabrics Co., Tylertown, MS, Picayune, MS, Bogulusa, LA and Cliffside Park, NJ: November 18, 1996.
TA–W–34,243 & A, B; Cooper Sportswear, Newark, NJ, Cleve Tenn Industries, Newark, NJ, and Niemor Contractors, Newark, NJ: January 12, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02198; Warner Manufacturing Co., Akeley, MN
NAFTA–TAA–02117; Shelby Die Casting Co., Fayette, AL
NAFTA–TAA–012148; Sangamon, Inc., Taylorville, IL
NAFTA–TAA–02191; Cooper Industries, Hand Tools Div., Micholson File Plant, Cullman, AL
NAFTA–TAA–02204; Interwest Mining Glenrock Coal, Glenrock, WY
NAFTA–TAA–02199; KAO Information Systems, Plymouth, MA
NAFTA–TAA–02112; Mascotech, Industrial Components Div., Duffield, VA
NAFTA–TAA–02061; Frankfort Plastics, a/k/a/ Jones Plastic & Engineering Corp., Frankfort, KY
NAFTA–TAA–02192; Erickson Air-Crane Co., L.L. C., Central Point, OR
NAFTA–TAA–02175; Glenbrook Nickel Co., Riddle, OR
NAFTA–TAA–02110 & A, B; Pacific Lumber & Shipping Co., Packwood Lumber Co., Packwood, WA, Cowlitz Stud Co., Morton, WA and Cowlitz Stud Co., Randle, WA
NAFTA–TAA–02140; Badger Paper Mills, Inc., Preshtigo, WI
NAFTA–TAA–02190; Weyerhaeuser Co., Coos Bay Timberlands, North Bend, OR

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02100; Globelle, Inc., Berlin, NJ
NAFTA–TAA–02146; Alta Genetics USA, Inc., Hughson, CA
NAFTA–TAA–02211; Swiss Re Life and Health America, Inc., Life Administration Div., New York, NY

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(à) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02101; Westwood Lighting, Inc., El Paso, TX: December 31, 1996.
NAFTA–TAA–02169; BTR Automotive Sealing Systems, West Unity, OH: January 27, 1997.
NAFTA–TAA–02203; Master Lick Co., Door Hardware Div., Auburn, AL: February 17, 1997.
NAFTA–TAA–02077; Corning Inc., Science Products Div., Big Flats, New York: December 10, 1996.
NAFTA–TAA–02105; Dixie Mfg. Co., York, SC: January 5, 1997.
NAFTA–TAA–02168; Pro-Am Corp., Long Island City, NY: January 13, 1997.
NAFTA–TAA–02181; Breed Technologies, Inc., Air Bag & Seat Belt Div., St. Clair Shores, MI: December 9, 1996.
NAFTA–TAA–02124; Specialty Manufacturers, Inc., Bristol, TN: January 14, 1997.
NAFTA–TAA–02108; Burgess Machine & Tool, Inc., St. Clair, MI: December 18, 1996.
NAFTA–TAA–02025; Louisiana-Pacific Corp., Northern Regional Office, Hayden Lake, ID (Headquarters): November 11, 1996.
NAFTA–TAA–02044; American Metal Products, LaFollette, TN: December 1, 1996.

I hereby certify that the aforementioned determinations were issued during the month of March 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 13, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7434 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,035]

Garfield Sportswear Garfield, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 1997, in response to a worker petition which was filed on behalf of workers at Garfield Sportswear, Garfield, New Jersey.

This case is being terminated because no information is available from the petitioners nor company officials to complete the necessary investigation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 5th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7436 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitioners have been filed with the Secretary of Labor under Section 211(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 2, 1998.

The petitioners filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 03/09/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,286	Hasbro Manufacturing Serv (Comp)	Amsterdam, NY	02/19/98	Toys.
34,287	Foster Electric (USA) (Wrks)	Schumburg, IL	02/16/98	Automobile Speakers.
34,288	Valerie Sportswear (UNITE)	New York, NY	02/13/98	Ladies' Sportswear.
34,289	Leon Levin Sons, Inc (UNITE)	Long Island Cty, NY	02/18/98	Ladies' Blouses.
34,290	Western Mobile (Wrks)	Boulder, CO	02/24/98	Asphalt, Aggregate and Concrete.
34,291	Hafer Logging, Inc (Wrks)	LaGrande, OR	02/20/98	Logs.
34,292	Fashion Development (Comp)	El Paso, TX	02/04/98	Apparel Consulting.
34,293	Ideal Reel Co., Inc (Comp)	Paducah, KY	02/24/98	Electrical Wire.
34,294	EEX Corporation (Comp)	Dallas, TX	02/17/98	Crude Oil, Natural Gas.
34,295	Spirax Sarco, Inc (Wrks)	Allentown, PA	02/19/98	Engineered Steam Systems.
34,296	Harvard Industries (UAW)	Toledo, OH	02/26/98	Castings.
34,297	Dresser-Rand Co (Wrks)	Corning, NY	02/23/98	Certrifugal and Reciprocating Compressor.
34,298	Warner Manufacturing (Wrks)	Akeley, MN	02/17/98	Wall Paper Tools, Brushes, etc.
34,299	Capstar Corp (Wrks)	Stateville, NC	02/19/98	Men's, Ladies', Boys' Sportswear.
34,300	Frank Ix and Sons, Inc (Comp)	Lexington, NC	02/23/98	Weave Fabrics for Apparel Industry.
34,301	Tultex Corp (Comp)	Chilhowie, VA	02/18/98	Fleece Activewear.
34,302	Sharp Manufacturing, Inc (Wrks)	R. Cucamunga, CA	02/19/98	Sports Vehicle Covers.
34,303	Young Morgan Lumber (Comp)	Mill City, OR	02/19/98	Lumber.
34,304	General Motors-Electro. (USA)	Commerce, CA	02/23/98	Re-manufacture Locomotive Engines.
34,305	Sara Lee Underwear (Wrks)	Winston Salem, NC	02/19/98	Underwear.
34,306	DAA Draexlmaier Auto. (Comp)	Duncan, SC	02/23/98	Wire Harnesses-Automobile.
34,307	Wulfrath Refractories (USWA)	Tarentum, PA	02/25/98	Refractory Bricks.
34,308	MIJA Industries, Inc (Comp)	Plymouth, PA	02/26/98	Pressure Gauges—Fire Extinguishers.
34,309	Litton Poly-Scientific (Comp)	Murphy, NC	02/25/98	Transmitters, Resolvers.
34,310	Molycorp, Inc (Comp)	Mountain Pass, CA	02/02/98	Rate Earth Lanthanides.
34,311	Cover Corp (Wrks)	Rancho Domingue, CA	02/20/98	Baseball Hats.
34,312	Ertl Company (The) (UAW)	Dyersville, IA	02/27/98	Plastic Toy Products.
34,313	Lady Ester Lingerie Corp (Wrks)	Berwick, PA	02/24/98	Lingerie.
34,314	Hewlett Packard Co (Wrks)	Vancouver, WA	02/24/98	Printers.

[FR Doc. 98–7433 Filed 3–20–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Indian and Native American Welfare-to-Work Grant Program

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the continuation of the currently-approved reporting system for the Indian and Native American Welfare-to-Work (INA WtW) Grant Program for three more years (August 1, 1998 to June 30, 2001), or until the expiration of the program if sooner. A copy of the currently-approved information collection request (ICR), especially the reporting forms and completion instructions, can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 22, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Thomas M. Dowd, Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–8502 ext 119(VOICE) or (202) 219–6338(FAX) (these are not toll-free numbers) or INTERNET: DOWDT@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration of the Department of Labor is requesting continuation of its currently-approved reporting system for the Indian and Native American Welfare-to-Work Grant Program for three more years (August 1, 1998 to June 30, 2001), or until the program expires. Current authorization for the INA WtW program expires on September 30, 1999, but grantees can continue to expend funds for up to three years "after the date the funds are so provided". As this package was just approved by OMB on February 10, 1998, the Department has decided that the system does not require any changes at this time. This position is reached in part because there have as yet not been any reports submitted under the current clearance authority, so no grantee experience is available for review and consideration.

II. Current Actions

The proposed ICR will be a continuation of the currently-approved system that will be used by approximately 80 INA WtW grantees as the primary reporting vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and wage data, as well as detailed financial data on program expenditures. Current paperwork burdens are covered under OMB Clearance No. 1205–0386 (expiration date 7/31/98), and have been included in the following burden estimates. For ease of analysis, the following burden estimate is broken down into the two main components of INA WtW program operation: (1) Recordkeeping; and (2) reporting.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Reporting system for Indian and Native American Welfare-to-Work Grant Program.

OMB Number: 1205–0386.

Catalog of Federal Domestic Assistance Number: 17.254.

Recordkeeping Requirements: Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question (29 CFR 97.42 and/or 29 CFR 95.53).

Affected Public: Federally-recognized tribes, Alaska Native regional non-profit corporations, and/or consortia of any of the above.

Total Estimated Burden: 5,760 hours (reporting); 36,000 hours (recordkeeping).

Detailed breakdown of the above-estimated burden hour requirements for the INA WtW program are as follows:

Required activity	INA WtW Form No.	Number of Respondents	Responses per year	Total responses	Hours per response	Total burden hours
Participant Recordkeeping	.....	[illegible]	.....	12,000	3.00	36,000
(Reporting) Financial Status Report	ETA 9069–1	[illegible]	4	320	[illegible]	2,880
Participation and Characteristics Rpt.	ETA 9069	[illegible]	4	320	9	2,880
Totals	.....	80	8	12,640	21	41,760

Note: Recordkeeping estimates are based on the estimated PY 1998 INA WtW caseload times an estimated average of 3.00 hours per participant record. There is currently no experience with actual INA WtW performance. Also, this burden estimate does

not include those INA WtW grantees participating in the demonstration under Public Law 102–477. Any INA WtW burden estimate(s) for "477 grantees" would be included under OMB Clearance Number 1076–0135.

The individual time per response (whether plan, record, or report) varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each fiscal year. If the grantee has a fully-developed and automated MIS, the response time is limited to one-time programming plus processing time for each response. It is the Department's desire to see as many INA WtW grantees as possible become computerized, so that response time for planning and reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

Estimated Grantee Burden Costs: (There are no capital/start-up costs involved in any INA WtW activities)

Recordkeeping: 36,000 hours times an estimated cost per grantee hour of $20.00 (including fringes) = $720,000.

Reporting: 5,760 hours times $20.00 = $115,200 per year.

Total estimated burden costs: $835,200 (nationwide).

As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms.

All costs associated with the required submissions outlined above, whether for recordkeeping or reporting purposes, are allowable grant expenses.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget continuation of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 17th day of March 1998.

Anna W. Goddard,

Director, Office of Special Targeted Programs.

[FR Doc. 98–7437 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–2200]

Charles Navasky & Co., Inc., Philipsburg, Pennsylvania; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on February 19, 1998 in response to a petition filed on behalf of workers at Charles Navasky & Co., Inc., Philipsburg, Pennsylvania.

This case is being terminated because the petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 12th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7431 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–001914]

Forsyth Sales Company Greensboro, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on September 5, 1997 in response to a petition filed on behalf of workers at the Forsyth Sales Company, Greensboro, North Carolina.

The petitioner, who was also an official of Forsyth Sales Company, was not responsive to requests by the Department for information necessary for the completion of the investigation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 9th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7435 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02131]

Hamilton Sportswear, Inc., Hamilton, AL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on January 15, 1998, in response to a petition signed on January 12, 1998, and filed on behalf of workers at Hamilton Sportswear, Inc., Hamilton, Alabama.

In accordance with Section 223(b) of the Act, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before one year prior to the date of the petition.

Since the closure of the company in May of 1996 was more than one year prior to the date of the petition, further investigation in this case would serve no purpose, and the investigation may be terminated.

Signed at Washington, D.C., this 12th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7432 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–20644–civP, ASLBP No. 98–737–02–CivP]

Power Inspection Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.205,

2.700, 2.702, 2.714, 2.714a, 2.717, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Power Inspection, Inc.

Order Imposing Civil Monetary Penalty

This Board is being established pursuant to the request of Power Inspection, Inc. for an enforcement hearing. The hearing request was made in response to an Order issued by the Director, Office of Enforcement, dated February 3, 1998, entitled "Order Imposing Civil Monetary Penalty" (63 FR 6967, February 11, 1998).

The Board is comprised of the following administrative judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 17th day of March 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–7418 Filed 3–20–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–53 and DPR–69, issued to Baltimore Gas and Electric Company (BGE or the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated December 4, 1996, as supplemented by letters dated March 27, June 9, June 18, July 21, August 14, August 19, September 10, October 6, October 20, October 23, November 5, 1997, and January 12 and January 28, 1998. The proposed amendment will replace the Current Technical Specifications (CTS) in their entirety with Improved Technical Specifications (ITS) based on Revision 1 to NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants" dated October 9, 1996, and the CTS for Calvert Cliffs.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of technical specifications (TSs). The Commission's "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," 52 FR 3788 (February 6, 1987), and later the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," 58 FR 39132 (July 22, 1993), recognized this benefit. This formed the basis for a recent revision to 10 CFR 50.36 (60 FR 36953), which codified the criteria for determining the content of TSs. To facilitate the development of individual improved TS, each reactor vendor owners group (OG) and the NRC staff developed standard TS (STS). The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion to the STS by operating plants. For plants designed by Combustion Engineering, Inc., the STS are published as NUREG–1432, and this document was the basis for the new Calvert Cliffs ITS.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1432 and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1432, portions of the existing TS were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters were discussed with the OG.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Every section of the Calvert Cliffs TS has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1432 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which includes items that were in the existing Calvert Cliffs TS. The TS that are being relocated to licensee-controlled documents are not required to be in the TS under 10 CFR 50.36 and do not meet any of the four criteria in the Commission's Final Policy Statement for inclusion in the TS. They are not needed to obviate the possibility that an abnormal situation or event will give rise to an immediate threat to the public health and safety. The NRC staff has concluded that appropriate controls have been established for all of the current specifications, information, and requirements that are being moved to licensee-controlled documents. In general, the proposed relocation of items in the current Calvert Cliffs TS to the Final Safety Analysis Report (FSAR), appropriate plant-specific programs, procedures and ITS Bases follows the guidance of the Combustion STS (NUREG–1432). Once the items have been relocated by removing them from the CTS to licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms, which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed Calvert Cliffs ITS items that are either more conservative than corresponding requirements in the existing Calvert Cliffs TS, or are additional restrictions that are not in the existing Calvert Cliffs TS but are contained in NUREG–1432. Examples of more restrictive requirements include: placing a Limiting Condition for Operation (LCO) on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing Calvert Cliffs TS that provide little or no safety benefit and place unnecessary burdens on the licensee. These relaxations were the result of generic NRC actions or other analyses. They have been justified on a case-by-case basis for Calvert Cliffs as will be described in the staff's Safety Evaluation to be issued with the license amendment which will be noticed in the **Federal Register**.

In addition to the changes described above, the licensee proposed certain changes to the existing TS that deviated from the STS in NUREG–1432. These additional proposed changes are described in the licensee's application and in the staff's Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing (62 FR 4816). Where these changes represent a change to the current licensing basis for Calvert Cliffs, they have been justified on a case-by-case basis and will be described in the staff's Safety Evaluation to be issued with the license amendment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

Changes that are administrative in nature have been found to have no effect on the technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1432 and the Final Policy Statement, and, therefore, are acceptable.

Changes involving more restrictive requirements have been found to be acceptable and are likely to enhance the safety of plant operations.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or place unnecessary burdens on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for Calvert Cliffs. Generic relaxations contained in NUREG–1432 as well as proposed deviations from NUREG–1432 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TS was found to provide control of plant operations such that reasonable assurance will be provided so that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the request for the amendment. Denial of the application would result in no change in current environmental impacts. Such action would not reduce the environmental impacts of plant operations. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated April 1973, for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on March 16, 1998, the staff consulted with the Maryland State official, Richard J. McLean, of the Maryland Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated December 4, 1996, as supplemented by letters dated March 27, June 9, June 18, July 21, August 14, August 19, September 10, October 6, October 20, October 23, November 5, 1997, and January 12 and 28, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 17th day of March 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7425 Filed 3–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation Seabrook Station, Unit No. 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has taken action with regard to a Petition dated December 18, 1997, submitted by Ms. Jane Doughty on behalf of The Seacoast Anti-Pollution League. The Petition requests that the operating license for Seabrook Station be suspended until such time as a thorough root cause analysis of the reasons underlying the development of leaks in piping of the "B" train of the

residual heat removal (RHR) system is conducted. The leakage was reported by North Atlantic Energy Services Corporation, the Licensee for Seabrook Station, on December 5, 1997. The Petition asserts that there have been past allegations of improper welding practices and documentation, and installation of substandard piping at Seabrook Station and requests that the investigations of the RHR system pipe leakage include findings related to these past allegations.

The Director of NRR has denied the Petitioner's request to suspend the operating license of the Seabrook Station. In the Director's Decision Pursuant to 10 CFR 2.206 (DD–98–03), the staff of the U.S. Nuclear Regulatory Commission has discussed each of the concerns raised by the Petitioner and found that the cause of the leaks in the piping in the "B" train of the RHR system was the result of service-induced degradation. There were no deficiencies identified in the fabrication of the original piping or welds that would have generic implications for other plant systems and that would require the operating license of the facility to be suspended. The complete text of the Decision follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance, unless the Commission, on its own motion, institutes a review of the decision in that time.

Dated at Rockville, Maryland, this 17th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Pursuant to 10 CFR 2.206

I. Introduction

On December 18, 1997, Ms. Jane Doughty submitted a Petition to the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) on behalf of The Seacoast Anti-Pollution League requesting that the operating license for Seabrook Station be suspended until such time as a thorough root cause analysis of the reasons underlying the development of leaks in piping of the "B" train of the residual heat removal (RHR) system is conducted. The leakage was reported by North Atlantic Energy Service Corporation, the Licensee for Seabrook Station, on December 5, 1997.

The Petition requested that the restart of the Seabrook Station following repairs to the RHR system piping be delayed until all such actions requested by the Petition are taken. On January 15, 1998, the NRC informed the Petitioner in an acknowledgment letter that on the basis of the Licensee's preliminary analysis of the cause of the pipe leakage, the NRC staff found no reason to prevent the plant from restarting. The acknowledgment letter further informed the Petitioner that her Petition had been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206 for preparation of a Director's Decision and that action would be taken within a reasonable time regarding the specific concerns raised in the Petition.

II. Discussion

The Petition requests, in part, "that the operating license for the Seabrook Station Nuclear Power Plant [Seabrook Station] be suspended until such time as a thorough root cause analysis of the reasons underlying the development of leaks. . .in piping in the "B" train of the Residual Heat Removal (RHR) system is conducted, including but not limited to a review of documentation associated with welds in the area of the leakage and their associated inspection documentation, a review of the qualification of the piping involved, and a review of the procedures for ongoing assurance of weld and piping quality at the plant." The Petition asserts that there have been past allegations of improper welding practices and documentation, and installation of substandard piping at Seabrook Station and requests that the investigations of the RHR system pipe leakage include findings related to these past allegations and the implications of this incident for other plant systems. Each of these concerns is addressed below.

A. Root Cause Analysis

The Licensee has concluded that the cause of the RHR piping leak was chloride-induced transgranular stress-corrosion cracking initiated from the outside diameter of the pipe. The stress-corrosion cracking was the result of repeated wettings and dryings of a protective covering attached to the pipe with red duct tape during construction of the facility. The covering was installed to prevent other welding activities from damaging the pipe after it was installed and should have been removed prior to placing the RHR system in service. After being wetted the protective covering and tape leached chlorides, allowing the chlorides to concentrate on the outer surface of the pipe over time. The chlorides provided an agent to initiate stress-corrosion cracking of the stainless steel pipe material. The Licensee has conducted an inspection of accessible areas both inside and outside containment for similar instances of unapproved materials being attached to stainless steel piping and none were found.

The NRC staff has reviewed the Licensee's conclusions, including observations of the failed pipe section and a review of the relevant metallurgical and chemistry reports. The NRC staff found that the metallurgical and chemistry reports provide an adequate basis for the Licensee's conclusion that the leaks were the result of stress-corrosion cracking initiated from the outside diameter of the pipe that progressed through the pipe wall to the inside surface. The NRC staff's findings are documented in Inspection Report 50/443/97–08.

B. Review of Weld Documentation

The Licensee conducted a review of the original radiographs of the affected welds and found no anomalies in the weld or the base metal. This finding indicates that the cause of the leakage was the result of service-induced conditions and not a weld or piping defect originating from the original construction.

The NRC staff's review of the radiographs confirmed that there were no adverse construction weld quality problems, such as cracks, porosity, or weld slag shown on the pipe weld radiographs in the vicinity of the leaks or on the similar welds on the "A" train of the RHR system. No defective welds were found. The NRC staff's findings are documented in Inspection Report 50–443/97–08.

C. Review of Pipe Qualification

The Licensee reviewed the original material test reports and purchase specification documentation for the affected piping sections. Chemical analysis of the removed piping sections confirmed that the material met the specification for SA312 Type 304 stainless steel pipe.

The NRC staff's review of the chemistry analysis and photomicrographs showed the pipe material to be Type 304 stainless steel. The NRC staff's findings are

documented in Inspection Report 50–443/97–08.

D. Review of the Procedures for Ongoing Assurance of Weld and Pipe Quality

In conjunction with the most recent refueling outage at Seabrook Station, the NRC staff conducted a review of the Licensee's American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Section XI inservice inspection program plan for ensuring structural and leaktight integrity of systems important to safety. The NRC inspector found the implementation of all elements of the program to be on schedule and in accordance with the rules of Section XI of the ASME Code.

The NRC inspector observed and/or reviewed the results of inservice inspections conducted by the Licensee on plant equipment, including several piping welds. The NRC inspector found that the inspections were performed in accordance with the rules of Section XI of the ASME Code and NRC regulations. The NRC staff's findings are documented in Inspection Report 50–443/97–03.

E. Review of Past Allegations of Improper Welding Practices

On March 27, 1990, the NRC's Executive Director for Operations established an independent review team to conduct an assessment of the adequacy of the construction welding and nondestructive examination (NDE) practices at Seabrook Station. The team's findings are documented in NUREG–1425, "Welding and Nondestructive Examination Issues at Seabrook Nuclear Station." The independent review team concluded that the pipe welding and NDE programs were generally consistent with applicable codes and NRC requirements and resulted in technically acceptable pipe welds.

In investigating the leaks in the "B" train of the RHR system reported on December 5, 1997, the NRC staff did not identify any factors that would provide a basis for disagreeing with the Licensee's conclusion that the cause of the leakage was the result of service-induced conditions and not a weld or piping defect originating from the original construction. Likewise, the investigation of this issue did not provide any information that would question the validity of NUREG–1425. Therefore, no further action by the NRC staff is warranted with respect to the past allegations of improper welding practices and substandard quality piping in response to the Petitioner's request.

F. Implications for Other Plant Systems

The Licensee has concluded that the cause of the leakage in the "B" train of the RHR system reported on December 5, 1997, was the result of a service-induced condition and not a defect originating from the original construction. The NRC staff has reviewed the Licensee's activities related to the root cause analysis and subsequent repair in response to the RHR system pipe leakage. The NRC staff found no evidence of improper welding practices or substandard piping that contributed to the RHR system pipe leakage and that would result in generic implications to other plant systems.

III. Conclusion

The NRC staff has reviewed the information submitted by the Petitioner, and the Petitioner's request to suspend the operating license of the Seabrook Station is denied. As described above, the NRC staff has found that the cause of the leaks in the piping in the "B" train of the RHR system was the result of service-induced degradation. There were no deficiencies identified in the fabrication of the original piping or welds that would have generic implications for other plant systems and that would require the operating license of the facility to be suspended.

As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 17th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7427 Filed 3–20–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 15Ba2–1, SEC File No. 270–88, OMB Control No. 3235–0083

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing the following summary of collection for public comment. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15Ba2–1 under the Securities Exchange Act of 1934 provides that an application for registration with the Commission by a bank municipal securities dealer must be filed on Form MSD.

The staff estimates that approximately 40 respondents will utilize this application procedure annually, with a total burden of 60 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 15Ba2–1 is 1.5 hours. The average cost per hour is approximately $40. Therefore, the total cost of compliance for the respondents is $2,400.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: March 13, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7371 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension: Rule 15g–9, SEC File No. 270–325, OMB Control No. 3235–0385.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 15g–9, Sales Practice Requirements for Certain Low-Priced Securities.

Section 15(c)(2) of the Securities Exchange Act of 1934 (the "Exchange Act") authorizes the Commission to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative practices in connection with over-the-counter ("OTC") securities transactions. Pursuant to this authority, the Commission in 1989 adopted Rule 15a–6 (the "Rule"), which was subsequently redesignated as Rule 15g–9, 17 CFR 240.15g–9. The Rule requires broker-dealers to produce a written suitability determination for, and to obtain a written customer agreement to, certain recommended transactions in low-priced stocks that are not registered on a national securities exchange or authorized for trading on NASDAQ, and whose issuers do not meet certain minimum financial standards. The Rule is intended to prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell low-priced securities to unsophisticated customers. The staff estimates that approximately 270 broker-dealers incur an average burden of 78 hours per year to comply with this rule. Thus, the total burden hours to comply with the Rule is estimated at 21,060 hours (270 × 78).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 16, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7428 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23067; 813–172]

Morgan Stanley Capital Investors, L.P. and Morgan Stanley, Dean Witter, Discover & Co.; Notice of Application

March 17, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and limited liability companies ("Partnerships") formed for the benefit of key employees of Morgan Stanley, Dean Witter, Discover & Co. ("MSDWD") and certain of its affiliates from certain provisions of the Act. Each Partnership will be an "employees' securities company" as defined in section 2(a)(13) of the Act.[1]

APPLICANTS: Morgan Stanley Capital Investors, L.P. (the "Initial Partnership") and MSDWD, on behalf of other Partnerships which have been or may in the future be formed.

FILING DATES: The application was filed on July 28, 1997 and amended on March 13, 1998.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 13, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1221 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney Advisor, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee by writing the SEC's Public Reference Branch at 450 Fifth Street, N.W., Washington, D.C. 20549, tel. (202) 942–8090.

Applicants' Representations

1. MSDWD is a diversified financial services company engaged in three primary businesses—securities, asset management, and credit cards. Morgan Stanley & Co. Incorporated ("MS&Co."), a wholly-owned subsidiary of MSDWD, is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act") and an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). MSDWD and its affiliates, as defined in rule 12b–2 under the Exchange Act, ("Affiliates") are referred to in this notice collectively as "MS" and individually as an "MS entity."

2. MS offers various investment programs for the benefit of certain key employees. These programs may be structured as different Partnerships, or as separate plans within a Partnership. Each Partnership will be a limited partnership or limited liability company formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will

[1] The requested order would supersede two prior orders. *Morgan Stanley Capital Investors, L.P.*, Investment Company Act Release Nos. 20838 (January 13, 1995) (notice) and 20892 (February 9, 1995) (order); *Morgan Stanley Venture Investors, L.P.*, Investment Company Act Release Nos. 20206 (April 8, 1994) (notice) and 20276 (May 4, 1994) (ordered).

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operate as a closed-end, non-diversified, management investment company. The Partnerships will be established primarily for the benefit of highly compensated employees of MS as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. MSCP III, L.P., a Delaware limited partnership, will act as the general partner of the Initial Partnership (together with any Affiliate that is controlling, controlled by, or under common control with MSDWD and that acts as a Partnership's general partner, the "General Partner"). An MS entity will act as the investment adviser to a Partnership and will be registered as an investment adviser under the Advisers Act. The General Partner will manage, operate, and control each of the Partnerships. However, the General Partner will be authorized to delegate management responsibility to MS or to a committee of MS employees.

4. Limited partner interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act") or similar exemption and will be sold only to "Eligible Employees" and "Qualified Participants" (collectively, "Participants"). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that an Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is (i) an individual who is a current or former employee, officer, director, or "Consultant" of MS and, except for certain individuals who manage the day-to-day affairs of the Partnership in question ("Managing Employees"), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act, or (ii) an entity that is a current or former "Consultant" of MS and meets the standards of an accredited investor under rule 501(a) of Regulation D.[2] Eligible Employees will be experienced professionals in the investment banking and securities, investment management or credit card businesses, or in the related administrative, financial, accounting, legal, or operational activities.

5. Managing Employees will have primary responsibility for operating the Partnership. These responsibilities will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the limited partners of the Partnership, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions by the General Partner. Each Managing Employee will (a) be closely involved with, and knowledgeable with respect to, the Partnership's affairs and the status of the Partnership's investments, (b) be an officer or employee of MS and (c) have reportable income from all sources (including any profit shares and bonuses) in the calendar year immediately preceding the Employee's participation in the Partnership in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which the Employee invests in a Partnership.

6. A Qualified Participant (i) is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee, and, (ii) if the individual or entity is purchasing an Interest from a Partner or directly from the Partnership, comes within one of the categories of an "accredited investor" under rule 501(a) of Regulation D. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A "Qualified Entity" is (i) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (ii) a partnership, corporation, or other entity controlled by an Eligible Employee; [3] or (iii) a trust or other entity established for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, reductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or an MS entity. No sales load will be charged in connection with the sale of a limited partnership interest.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if: (i) The Eligible Employee's relationship with MS is terminated for cause; (ii) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of MS; or (iii) the Eligible Employee voluntarily resigns from employment with MS. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (i) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), and (ii) the fair market value of the Interest as determined at the time of repurchase by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable Limited Partnership Agreement, a Partnership will be permitted to enter into transactions involving (i) an MS entity, (ii) a portfolio company, (iii) any Partner or any person or entity affiliated with a Partner, (iv) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with MS and over which an MS entity will exercise investment discretion (a "Third Party Fund"), or (v) any partner or other investor of a Third Party Fund that is not affiliated with MS (a "Third Party Investor"). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any MS entity or Third Party Fund, acting as principal. Prior to entering into these transactions,

[2] A "Consultant" is a person or entity whom MS has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or a business or legal adviser and who shares a community of interest with MS and MS employees.

[3] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of "Qualified Entities" is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between MS and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an "accredited investor" under rule 501(a)(6) of Regulation D and who will have access to the General Partner or MS.

the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. An MS entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership or a portfolio company in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are "usual and customary." Fees or other compensation will be deemed "usual and customary" only if (i) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (ii) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (iii) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the Unaffiliated third parties, including Third Party Funds. MS entities (including the General Partner) also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities that conflict with the interests of the Partnerships.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to (i) permit an MS entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (ii) permit any Partnership to invest in or engage in any transaction with any MS entity, acting as principal, (a) in which the Partnership, any company controlled by the Partnership, or any MS entity or Third Party Fund has invested or will invest or (b) with which the Partnership, any company controlled by the Partnership, or any MS entity or Third Party Fund will become affiliated; and (iii) permit a Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with MS. Applicants also state that, as professionals employed in the investment banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and MS will provide the best protection against any risk of abuse.

5. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with MS. MS's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of Eligible Employees as an incentive for them to remain with MS and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with MS are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of MS enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by MS will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants

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state that the concern that permitting co-investments by MS and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the community of interest among MS and the Participants, and the fact that senior officers and directors of MS entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any affiliate of such person) made a similar investment. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, an MS entity.

8. Co-investments with Third Party Funds, or by an MS entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that MS invest its own capital in Third party Fund investments, and that the MS investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to MS. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by MS in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships via-a-vis a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit an MS entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation are deemed "usual and customary." Applicants state that for the purposes of the application, fees or other compensation that are charged or received by an MS entity will be deemed "usual and customary" only if (i) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (ii) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (iii) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because MS does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to an MS entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the Partnership take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit MS to act as custodian of Partnership asserts without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the asserts held by the custodian. Applicants believe that, because of the community of interest between MS and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and given certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants content that the forms prescribed by the

SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the "Section 17 Transaction") will be effected only if the General Partner determines that: (i) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of the Partnership and do not involve overreaching of the Partnership or its Participants on the part of any person concerned; and (ii) the transaction is consistent with the interests of the Participants in the Partnership, and the Partnership's organizational documents and reports to its Participants. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[4]

2. In conneciton with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the Transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of the affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a "Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are Participants, unless the Co-Investor, prior to disposing of all or part of its investment, (i) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (ii) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" with respect to any Partnership means any person who is: (i) An "affiliated person" (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (ii) MS; (iii) an officer or director of MS; or (iv) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (i) To its direct or direct wholly-owned subsidiary, to any company (a "Parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (ii) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any immediate family member; (iii) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (iv) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; or (v) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintained and preserve, for the life of the Partnership and at least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis of the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to Participants, and agree that these records will be subject to examination by the SEC and its staff.[5]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by an MS director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 98–7374 Filed 3–20–98; 8:45 am]

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[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26843]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 16, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 9, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Power and Light Co., et al. (70–9073)

Central Power and Light Company, 539 North Carancahua Street, Corpus Christi, Texas, 78401–2802; Public Service Company of Oklahoma, 212 East Sixth Street, Tulsa, Oklahoma, 74119–1212; Southwestern Electric Power Company, 428 Travis Street, Shreveport, Louisiana, 71156–0001; and West Texas Utilities Company, 301 Cypress Street, Abilene, Texas, 79601–5820 ("Utilities"), all public utility subsidiary companies of Central and South West Corporation ("CSW"), a registered holding company, and Central and South West Services, Inc. ("Services"), Williams Tower 2, 2 West 2nd Street, Tulsa, Oklahoma, 74103, a CSW subsidiary service company, have filed an application, as amended, under sections 9(a) and 10 of the Act and rule 54 under the Act.

The Utilities and Services seek authorization to market the mortgage services of PHH Mortgage Services Corporation ("PHH Mortgage"), the relocation services of PHH Real Estate Services Corporation ("PHH Real Estate"), and the mortgage and relocation services of other companies with comparable services and benefits ("Other Companies").

The Utilities, directly or through Services, propose to market to their customers a mortgage incentive program called the Better Choices Home Mortgage Program ("Better Choices Program").

The Better Choices Program is designed to promote efficient energy use and environmental conservation by customers of the Utilities. Under the Better Choices Program, customers will be able to obtain mortgages with enhanced benefits on homes qualified for a Good Cents Home Certification or a Good Cents Environmental Home Certification.

The Good Cents Environmental Home Certification Standards have been submitted to the Edison Electric Institute for certification that those standards are consistent with its program to promote efficient energy use and environmental conservation. The utilities will attest to PHH Mortgage, or to the Other Companies, that the homes meet the standards for a Good Cents Home Certification or a Good Cents Environmental Home Certification and will list the features under which those homes are qualified for such certification.

Based on such certification, customers will be offered various benefits that may permit them to acquire mortgages that are 15% to 20% over conventional mortgages available to them. The increased mortgages are made possible through, for example, mortgages for 100% of the cost of home features for efficient energy use and environmental conservation features and through income calculated to be available to service mortgages on the basis of reduced utility bills. In addition, customers will be offered other inducements like reduced points and interest rates.

The services offered by PHH Mortgage are integrated with the relocation services offered by PHH Real Estate, which maintains a network of residential real estate agents who can help customers sell homes, buy new homes and, with PHH Mortgage, acquire new mortgages under the Better Choices Program if they move within the service territories of the Utilities. In addition to the benefits of the relocation services, customers would, where lawful, be paid portions of the referral fees received by PHH Real Estate from real estate agents.

The Utilities would not provide relocation services to customers. In addition, the Utilities would not attest to PHH Mortgage that homes meet the standards for a Good Cents Home Certification or a Good Cents Environmental Home Certification for customers that move out of the service territories of the Utilities.

The Utilities, directly or through Services, would market the Better Choices Program through direct mail programs, articles, promotional literature, advertisements and mail inserts. Mail inserts would utilize excess bill space in the bills sent by the Utilities to their customers. Mail inserts would not result in additional postage.

The Utilities would be compensated for their services by payment to them, where lawful, of a portion of the referral fee received by PHH Real Estate (or Other Companies) from real estate agents. The Utilities would also be compensated for their services by the payment to them, where lawful, of fees based on mortgages closed by PHH Mortgage.

Conectiv, Inc. (70–9155)

Conectiv, Inc. ("Conectiv"), 800 King Street, Wilmington, Delaware 19899, a Delaware corporation that will register as a holding company under the Act, has filed an application declaration under sections 6(a), 7, 9(a), 10 and 12 (c) of the Act and rules 42 and 46 under the Act.

By order dated February 20, 1998 (HCAR No. 26828), the Commission authorized the acquisition ("Merger") by Conectiv of all of the outstanding voting securities of Delmarva Power & Light Company and Atlantic City Electric Company, each a public utility company.

Conectiv intends to present a stockholder rights plan ("Plan") to its Board of Directors ("Board") for consideration, and requests authority to implement the Plan upon Board approval. The Plan is designed, among other things, to give Conectiv shareholders adequate time to assess a takeover bid without undue pressure. Under the Plan, the Board would declare a dividend distribution of one right ("Right") for each outstanding share of Conectiv common stock ("Common Stock"), and for each outstanding share of Conectiv Class A common stock ("Class A Common Stock'). These distributions would be made a stockholders of record at the close of business on a record date ("Record Date") yet to be established.

Terms of the Rights

Each Right issued to a registered holder of Common Stock would, after the Right becomes exercisable, entitle the holder to purchase from Conectiv one one-hundredth of one share ("Unit") of a serious of junior participating preferred stock, ("Series 1 Preferred Stock"). Each Right issued to a registered holder of Class A Common Stock would, after the Rights becomes exercisable, entitle the holder to purchase from Conectiv one Unit of another series of junior participating preferred stock ("Series 2 Preferred Stock" and together, "Preferred Stock").[1] The purchase price for a share of either series of Preferred Stock ("Purchase Price") will be determined by the Board as representing the long-term value of Conectiv, reflecting a premium consistent with those used by other companies in setting the purchase price for similar rights.[2]

The Rights will be exercisable upon the earlier to occur ("Distribution Date") of two dates. One date occurs ten days following the date of the public announcement that a person or group ("Acquiring Person") has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of voting securities of Conectiv. The other date occurs ten business days (unless delayed by the Board) after a person or group commences a tender offer or exchange offer that would result in the offeror becoming a Acquiring Person.

Until the Distribution Date, the Rights will be transferred only with the Common Stock or Class Common Stock, and the Rights will be evidenced by the Common Stock or Class A Common Stock certificate. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights will be mailed to holders of record of Common Stock or Class A Common Stock, as the case may be, as of the close of business on the Distribution Date. Following the distribution of these certificates, the Rights will trade independently of the Common Stock and the Class A Common Stock.

[1] Under certain circumstances, the Class A Common Stock may be convertible to Common Stock. If a conversion occurs before the Rights become exercisable, those Rights attached to the shares of Class A Common Stock will be converted to Rights to purchase Series 1 Preferred Stock. The number of these Rights will be based on the conversion ratio used for converting the Class A Common Stock to Common Stock.

[2] The Purchase Prices, and the number of Units of Preferred Stock (or other securities, as the case may be) issuable upon exercise of the Rights, are subject to adjustment from time to time to prevent dilution.

Exercise of and Exchange of Rights

The value of one Unit of the Preferred Stock received upon exercise of a Right will be twice the Purchase Price paid for that Preferred Stock. The Rights of any Acquiring Person and certain of its transferees will be null and void. If Conectiv is acquired in a business combination transaction or 50% or more of its consolidated assets or earning power is sold or transferred, exercise of a Right will entitle its holder to receive common stock or other equity of the acquiring company also having a value equal to twice the Purchase Price then in effect.

In addition, the Plan will also provide that under certain circumstances the Board may exchange a Right, in whole or in part, for one Unit of Preferred Stock (subject to adjustment), or for other securities or assets. These circumstances include any time before an Acquiring Person (other than Conectiv and certain related entities) acquires 50% or more of the total voting power of all shares of voting stock in Conectiv then outstanding.

Redemption and Termination of Rights

The Plan will provide that Conectiv may redeem all of the Rights at a price of $.01 per Right at any time before any person or group becomes an Acquiring Person, subject to adjustment ("Redemption Price"). Immediately upon the action of the Board electing to redeem the Rights, the only right of the holders of Rights will be to receive the Redemption Price. Under the Plan, the Rights will expire at the close of business on the 10 year anniversary of the Record Date, unless earlier redeemed, exchanged or exercised.

Amendments to the Provisions of the Rights Agreement

If the Board adopts the Plan the terms of the Rights will be described in an agreement ("Agreement") between Conectiv and Conectiv Resource Partners, Inc. ("Resources"), as Rights agent ("Rights Agent"). Any of the provisions of the Agreement may be amended by the Board without the consent of the holders of the Rights. However, the Agreement may not be amended on or after the Distribution Date in any manner that would adversely affect the interests of holders of Rights (other than the interests of an Acquiring Person and certain of its transferees).

Terms of the Preferred Stock

The Preferred Stock will rank junior to all other series of Conectiv's preferred stock with respect to payment of dividends and as to distribution of assets in liquidation. The value of each Unit of Series 1 Preferred Stock is intended to approximate the value of one share of the Common Stock and the value of each Unit of a share of Series 2 Preferred Stock is intended to approximate the value of one share of Class A Common Stock. Accordingly, each share of Preferred Stock will generally have a quarterly dividend rate equal to the greater of $1.00 or 100 times the per share amount of cash dividends declared on the related voting securities.

The Series 1 Preferred Stock will not be redeemable. Units of Series 2 Preferred Stock will be redeemable in certain instances upon substantially the same terms and conditions that shares of Class A Common Stock may be redeemed, in accordance with Conectiv's restated certificate of incorporation. In the event of liquidation, each share of the Preferred Stock generally will entitle its holder to receive an amount equal to the greater of $1.00 plus accrued and unpaid dividends or 100 times the payment to be made for a share of the related voting security. Generally, each share of Preferred Stock will vote together with the Common Stock, the Class A Common Stock, and any other series of preferred stock entitled to vote in a manner and will be entitled to 100 votes. In the event of any merger or other transaction in which shares of the Common Stock and/or Class A Common Stock are exchanged for or changed into other property, each share of Preferred Stock will be entitled to receive 100 times the amount of the property received on the related voting security.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7369 Filed 3–20–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39761; File No. SR–DTC–97–09]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Regarding the Custody Service for Securities That Are Not Depository Eligible

March 16, 1998.

On June 4, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change

(File No. SR–DTC–97–09) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on September 19, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC currently operates a custody service which offers custodian, transaction, and related processing services to participants in connection with certain securities that are not depository eligible (*e.g.*, securities with certain transfer restrictions).[3] The rule change permits DTC to enter into contracts with individual participants to provide customized processing services under the custody service. Under the rule change, DTC will not be obligated to enter into any such contracts with participants or to offer the same terms under any such contracts to all participants. DTC has advised the Commission that it will charge fees for customization of custody service based on a consistently applied methodology.

II. Discussion

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under Section 17A of the Act because the rule change will allow DTC participants to remove certain certificates that are not depository eligible from their vaults and to deposit them into DTC's custody service. Depositing certificates into the custody service along with use of the custody service's securities processing services should help to reduce the costs, inefficiencies, and risks associated with the physical safekeeping of securities outside of DTC and thereby should promote the prompt and accurate clearance and settlement of transactions in securities. Moreover, the Commission believes that the proposal is consistent with DTC's obligations to safeguard securities and funds under its control because securities deposited into the custody services will be under DTC's usual procedures for the safekeeping of securities.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7429 Filed 3–20–98; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39071 (September 12, 1997), 62 FR 49279.

[3] For a more detailed description of DTC's custody service, refer to Securities Exchange Act Release Nos. 38561 (April 30, 1997), 62 FR 25008 [File No. SR–DTC–97–01] (order approving proposed rule change implementing the dividend processing phase of DTC's custody service) and 37314 (June 14, 1996) 61 FR 31989 [File No. SR–DTC–96–08] (order approving proposed rule change establishing DTC's custody service).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39760; File No. SR–NASD–98–21]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealer, Inc., Relating to an Expansion of the NASD's Rule Permitting Market Makers To Display Their Actual Quotation Size

March 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(a)(1)(C) to allow permanently market makers to quote their actual size by reducing the minimum quotation size requirement for market makers in all securities listed on Nasdaq to one normal unit of trading ("Actual Size Rule"). As discussed below, the Actual Size Rule presently applies to a group of 150 Nasdaq securities on a pilot basis. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed).

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NASD Rule 4613 Character of Quotations

(a) Two-Sided Quotations.

(1) No change.

(A)–(B) No change.

(C) [As part of a pilot program implemented by The Nasdaq Stock Market, during the period January 20, 1997 through at least March 27, 1998, a] *A* registered market maker in a security listed on The Nasdaq Stock Market [that became subject to mandatory compliance with SEC Rule 11Ac1–4 on January 20, 1997 or identified by Nasdaq as being otherwise subject to the pilot program as expanded and approved by the Commission,] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Summary of Proposal

Currently, quotations in most Nasdaq securities are required to be displayed in a minimum size of 1,000 shares (200 or 500 shares for less active stocks). The

requirement is different from that of any of the stock exchanges, which require only the display of actual size of at least 100 shares. This difference results from the requirements of the Small Order Execution System ("SOES"), which was originally conceived and developed to provide individual investors with a fast, efficient, and cost-effective means of executing small orders in Nasdaq securities in a quote-based dealer market.

On August 29, 1996, the SEC promulgated a new rule and adopted amendments to other SEC rules that are designed to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (these rules are collectively referred to hereafter as the "Order Handling Rules").[3] The Order Handling Rules have changed Nasdaq's market structure to a more order-driven hybrid market, which include quotes from investors (in the form of displayed limit orders), market makers, and Electronic Communications Networks ("ECNs"). The implementation of these rules has enhanced market quality and benefited investors significantly by substantially reducing Nasdaq quoted spreads, without evidence of a material reduction of liquidity or increased volatility. In connection with these changes, Nasdaq implemented the Actual Size Rule pilot program (originally including 50 Nasdaq stocks, but subsequently expanded to 150 stocks) to allow market makers to display their actual, freely-determined quotation size when not displaying a customer order.

Given the changes brought about by the Order Handling Rules, the economic theory suggesting several long-term benefits of the Actual Size Rule, and the empirical research indicating no adverse impact on investors or the Nasdaq market, the NASD has concluded that artificial minimum quotation sizes are no longer necessary and should be removed for all Nasdaq stock. Specifically, the Actual Size Rule affords market makers more flexibility to manage risk and quote prices that are more favorable for small retail orders. In addition, requiring a minimum commitment of market maker capital while allowing the display of customer and ECN orders without a similar commitment could severely impair the ability of market makers to set competive quotations. The adoption of sixteenths could heighten the debilitating effect of the quote size minimum, as could future reduction in Nasdaq's minimum quote price invement if the minimum size increment is not equivalent reduced. Moreover, rigorous empirical analysis of the original pilot program and the pilot as expanded, including a study of the extreme market conditions of October 27 and 28, 1997, demonstrate that the Actual Size Rule has not materially affected Nasdaq market quality, as measured by spread, volatility, quoted depth, and liquidity, and that investors continue to have substantial access to a reasonable amount of market maker capital in pilot stocks.

2. Background

a. SEC Order Handling Rules. With respect to securities listed on Nasdaq, the Order Handling Rules were implemented according to a phased-in implementation schedule: 50 Nasdaq securities became subject to the rules on January 20, 1997 ("First Fifty"); fifty more became subject to the rules on February 10, 1997 ("Second Fifty"), and an additional fifty became subject to the rules on February 24, 1997. The remaining Nasdaq securities were phased in pursuant to a specified time table established by the Commission, with the last remaining securities phased in on October 13, 1997.[4]

In particular, the SEC adopted Rule 11Ac1–4, ("Limit Order Display Rule"), which requires the display of customer limit orders: (1) That are priced better than a market maker's quote;[5] or (2) that add to the size associated with a market maker's quote when the market maker is at the best price in the market.[6] By virtue of the Limit Order Display Rule, investors now have the ability to directly advertise their trading interest to the marketplace, thereby allowing them to compete with market maker quotations and affect the size of bid-ask spreads.[7] The other rule changes adopted by the SEC involve amendments to SEC's firm quote rule, Rule 11Ac1–1. The most significant change requires market makers to display in their quote any better priced orders that the market maker places into an electronic communications network such as SelectNet or Instinet ("ECN Rule"). Alternatively, instead of updating its quote to reflect better priced orders entered into an ECN, a market maker may comply with the display requirements of the ECN Rule through the ECN itself, provided the ECN: (1) ensures that the best priced orders entered by market makers into the ECN are communicated to Nasdaq for public dissemination; and (2) provides brokers and dealers access to orders entered by market makers into the ECN, so that brokers and dealers who do not subscribe to the ECN can trade with those orders.

b. Actual Size Rule Pilot for First Fifty Stocks. In order to facilitate implementation of the SEC's Order Handling Rules and reflect the more order-driven nature of the Nasdaq market that was brought about by implementation of these rules, on January 10, 1997, the Commission approved a variety of amendments to NASD rules and Nasdaq's SOES and SelectNet Service.[8] In particular, one of the NASD rule changes approved by the Commission provides that Nasdaq market makers in the First Fifty stocks subject to the Commission's Limit Order Display Rule are required to display a minimum quotation size of one normal unit of trading when quoting solely for their own proprietary account (*i.e.*, the Actual Size Rule).[9] For Nasdaq stocks outside of the First Fifty, the minimum quotation size requirements remained the same.[10]

The NASD submitted the proposal for the Actual Size Rule because it believed,

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[3] See Exchange Act Release No. 37619A (September 6, 1996) 61 FR 48290 (September 12, 1996) ("Order Handling Rules Adopting Release").

[4] See Exchange Act Release No. 38870 (July 24, 1997) 62 FR 40732 (July 30, 1997), corrected in 62 FR 45289.

[5] For example, if a market maker's quote in stock ABCD is 10–10⅛ (1,000 × 1,000) and the market maker receives a customer limit order to buy 200 shares at 10⅛, the market maker must update its quote to 10⅛–10¼ (200 × 1,000).

[6] For example, if a market maker receives a limit order to buy 200 shares of ABCD at 10 when its quote in ABCD is 10–10¼ (1,000 × 1,000) and the NBBO for ABCD is 10–10⅛, the market maker must update its quote to 10–10¼ (1,200 × 1,000).

[7] There are seven exceptions to the Limit Order Display Rule: customer limit orders that are (1) executed upon-receipt; (2) placed by customers who expressly request that they not be displayed; (3) odd-lots; (4) block size orders (10,000 shares or $200,000), unless the customer requests that the order be displayed; (5) delivered immediately upon receipt to an exchange or association-sponsored system, or an ECN that complies with Rule 11Ac1–1(c)(5)(ii) with respect to that order; (6) delivered immediately upon receipt to another exchange member or OTC market maker that complies with Rule 11Ac1–4 with respect to that order; or (7) all-or-none orders. See 17 CFR 240.11Ac–1–4(c).

[8] See Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order partially approving SR–NASD–96–43) ("Actual Size Rule Approval Order").

[9] Thus, the Actual Size Rule does not affect a market maker's obligation to display the full size of a customer limit order. If a market maker is required to display a customer limit order for 200 shares or more, it must display a quote size of at least 200 shares absent an exemption from the Limit Order Display Rule.

[10] In particular, NASD Rule 4613(a)(2) requires each market maker in a Nasdaq issue other than those in the First Fifty to enter and maintain two-sided quotations with a minimum size equal to or greater than the applicable SOES tier size for the security (*e.g.*, 1,000 500, or 200 shares for Nasdaq National Market issues and 500 or 100 shares for Nasdaq SmallCap Market issues).

and continues to believe, that the new and more order-driven nature of Nasdaq brought about by the Limit Order Display Rule obviates the regulatory justification for minimum quote size requirements. In particular, while the NASD believed it was once desirable and appropriate to impose the mandatory quote size requirements to ensure an acceptable level of market liquidity and depth in an environment where Nasdaq market makers were the only market participants who could impact quotation prices, the Limit Order Display Rule now permits investors to directly impact quoted prices. As a result, the NASD believes that it is no longer necessary to subject market makers to minimum quote size requirements when they are not representing customer orders. In addition, economic theory indicates that permitting dealers to quote in size commensurate with their true trading interest could further narrow quoted spreads and enhance the pricing efficiency of the Nasdaq marketplace.

Furthermore, Nasdaq believes that a disincentive for some market makers would be removed, thus attracting additional liquidity and pricing efficiency in the Nasdaq market. Indeed, the Commission noted in its approval of the Actual Size Rule pilot that "the 1,000 share minimum quote size represents a barrier to entry for market making. Lowering this barrier to entry could attract more market makers, thereby increasing liquidity and competition across the market." [11] This is especially important for smaller market making firms, which may otherwise have difficulty competing on a price basis in an environment with minimum quote size requirements.

In sum, with the successful implementation of the SEC's Order Handling Rules, the NASD believes that mandatory quote size requirements impose unnecessary regulatory burdens on market makers that are not consistent with the Exchange Act.

At the same time, the NASD does not believe that implementation of the Actual Size Rule in an environment where limit orders are displayed has or will compromise the quality of the Nasdaq market. First, the display of customer limit orders enhances the depth, liquidity, and stability of the market and contributes to narrower quoted spreads, thereby mitigating the effects of the loss of displayed trading interest, if any, by market makers. Second, removing artificial quote size requirements may lead to narrower market maker spreads, thereby reducing investors' transaction costs. Third, permitting market makers to quote in size commensurate with their own freely-determined trading interest will enhance the pricing efficiency of the Nasdaq market and the independence and competitiveness of dealers' quotations. Fourth, removing quotation size requirements will facilitate greater quote size changes, thereby increasing the information content of market maker quotes by facilitating different quote sizes from dealers who have a substantial interest in the stock at a particular time and those who do not.

Indeed, in its order approving the Actual Size Rule, the Commission noted that it "preliminarily believes that the proposal will not adversely affect market quality and liquidity" [12] and that it "believes there are substantial reasons * * * to expect that reducing market makers' proprietary quotation size requirements in light of the shift to a more order-driven market would be beneficial to investors." [13] In addition, the Commission stated that, "based on its experience with the markets and discussions with market participants, [it] believes that decreasing the required quote size will not result in a reduction in liquidity that will hurt investors." [14]

Nevertheless, in light of concerns raised by commentators opposed to the Actual Size Rule regarding the potential adverse impacts of the rule on market liquidity and volatility, the Commission determined to approve the rule on a three-month pilot basis to afford the Commission, the NASD and Nasdaq an opportunity to gain practical experience with the rule and evaluate its effects. [15] The factors identified by the Commission to be considered in this evaluation include, among others, the impact of reduced quotation sizes on liquidity, volatility and quotation spreads. [16]

c. Findings of NASD Economic Research and Proposal to Expand Actual Size Rule Pilot to 150 Stocks. On April 11, 1997, the NASD filed with the Commission Filing No. SR–NASD–97–26 to extend and expand the Actual Size Rule. [17] Specifically, the NASD proposed to extend the pilot until at least December 19, 1997, and to expand the number of stocks to include the next 100 stocks subject to the Order Handling Rules. The filing was subsequently amended to change the extension date from December 19, 1997, to March 27, 1998, and to change the selection methodology for the next group of 100 stocks to be subject to the pilot, discussed further below.

This finding cited findings of research concerning the implementation of the Order Handling Rules and the Actual Size Rule pilot. Specifically, the NASD found that implementation of the Order Handling Rules had significantly improved the quality of the Nasdaq market by creating a market structure where customer limit orders provide liquidity and compete effectively with market maker quotations. In this type of environment, the NASD stated its belief that the regulatory necessity for the mandatory quote size requirements no longer exists. Accordingly, the NASD proposed to both extend and expand the rule.

In particular, the research conducted by the NASD's Economic Research Department in early 1997 indicated three general findings concerning implementation of the Order Handling Rules and the Actual Size Rule: (1) The Order Handling Rules have dramatically improved the quality of the Nasdaq market, particularly with respect to the narrowing of quoted spreads; (2) among those securities subject to the Order Handling Rules, there is no appreciable difference in market quality between those stocks subject to the Actual Size Rule and those stocks subject to mandatory quote size requirements; [18]

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[11] See Actual Size Rule Approval Order, *supra*, note 8, at 2425.

[12] *Id.*

[13] *Id.* at 2423.

[14] *Id.* at 2424.

[15] See Actual Size Rule Approval Order, *supra* note 8.

[16] Specifically, the Commission stated that the NASD's study should include an analysis of (1) The number of market makers in each of the 50 securities, and any change in the number over time; (2) the average aggregate dealer and inside spread by stock over time; (3) the average spread for each market maker by stock; (4) the average depth by market maker (including limit orders), and any change in the depth over time; (5) the fraction of volume executed by a market maker who is at the inside quote by stock; and (6) a measure of volume required to move the price of each security one increment (to determine the overall liquidity and volatility in the market for each stock). The Commission also stated its expectation that these factors should be contrasted over the time period immediately preceding the pilot and after the beginning of the pilot. In addition, the Commission stated that the NASD should compare the First Fifty stocks (to which the Rule applied) with the Second Fifty stocks (stocks subject to the SEC's Order Handling Rules but not the Actual Size Rule).

[17] See Exchange Act Release No. 38513 (April 15, 1997) 62 FR 19369 (April 21, 1997) ("Notice of Proposal to Expand Actual Size Rule to 150 Stocks").

[18] The First Fifty stocks include Nasdaq's top ten issues by dollar volume plus 40 issues chosen from Nasdaq's top 500 issues; 8 ranked between 11 and 100; 8 ranked between 101 and 200; 8 ranked between 401 and 300; 8 ranked between 401 and 500. The "second fifty" stocks include the ten Nasdaq stocks ranked between 11 and 20 by dollar volume plus 40 stocks chosen from Nasdaq's top 500 stocks in the same manner explained above. Because the ten largest Nasdaq stocks have no comparable peer group among Nasdaq stocks and the next ten largest Nasdaq stocks included in the

and (3) implementation of the Actual Size Rule has not resulted in any significant diminution of the ability of investors to receive automated executions through SOES, SelectNet, or proprietary systems operated by broker-dealers. The specific findings of this analysis were published in the original notice of filing SR–NASD–97–26.[19]

On June 3, 1997, the NASD supplemented its proposal to extend and expand the Actual Size Rule by submitting to the SEC a study entitled "Effects of the Removal of Minimum Sizes for Proprietary Quotes in The Nasdaq Stock Market, Inc." ("June 1997 Study"). The June 1997 Study, which provides greater detail of the NASD's analysis, became a part of the NASD filing with the Commission and was made available to the public through Nasdaq's web site. The June 1997 Study presented a thorough empirical analysis that produced no evidence that the implementation of the Actual Size Rule had affected the market quality of pilot stocks. This study analyzed standard measures of market quality, including spread, volatility, and depth. In addition, the study reflected an examination of the ability of investors to access market maker capital through SOES and proprietary autoexecution systems and calculated the normalized effective depth, a measure of market liquidity. The study revealed that for stocks subject to the Actual Size Rule, investors continued to have reasonable and substantial access to market maker capital through automatic execution systems.

To provide the public with an opportunity to review and comment on the June 1997 Study, the Commission extended the comment period on Filing No. SR–NASD–97–26 until July 3, 1997.[20] On July 17, 1997, the NASD amended the filing at the Commission's request to extend the pilot until March 27, 1998, to provide the Commission with additional time to evaluate economic studies on the proposal and to review comments on the June 1997 Study.[21]

Notwithstanding the results of the June 1997 Study, commenters expressed concerns on the proposal to expand the Actual Size Rule. In particular, it was noted that the pilot had been limited to only 50 Nasdaq securities. Further, these securities generally represent the most liquid Nasdaq stocks. In addition, the proposed expansion of the Actual Size Rule would apply to the 100 stocks that were next to be phased in under the Order Handling Rules. These stocks were also drawn from the most liquid Nasdaq stocks. Thus, it was argued, even an expanded pilot would still be skewed toward larger, more active issues.

In response to these concerns expressed by SEC staff and commenters,[22] the NASD amended the proposed rule change on September 15, 1997, to change the selection methodology for the next group of securities to be subject to the pilot to provide an enhanced sample more representative of the entire Nasdaq market.[23] Specifically, the remaining Nasdaq National Market issues were divided into deciles based on average daily dollar volume, and 110 stocks were chosen by randomly selecting approximately the same number from each decile.[24] Thus, as expanded, the pilot would provide the Commission, NASD, and market participants with additional data across a range of securities, thereby allowing a more enhanced evaluation of the effects of the rule.

d. SEC Approval to Expand Actual Size Rule Pilot to 150 Stocks. On October 29, 1997, the Commission approved the NASD proposal to expand the Actual Size Rule pilot to include 150 stocks, as amended to provide for a sample more representative of the entire Nasdaq market.[25] The pilot also was extended until at least March 27, 1998. In approving the proposal, the Commission stated its belief that the data preliminarily indicates that the pilot has not resulted in any degradation to Nasdaq market quality, and that the Actual Size Rule appears to be a reasonable means to provide market making obligations that reflect the new market dynamics produced by the Order Handling Rules.[26] Nonetheless, the Commission decided that it would be appropriate to gather further data using the more representative sample of Nasdaq stocks before reaching a final decision as to whether or not to extend the Actual Size Rule to the entire Nasdaq market.

The Commission requested that the NASD continue to evaluate the effects of the Actual Size Rule and identified several areas of analysis to be covered.[27] The Commission also requested that the NASD compare data among deciles, focusing attention on active versus inactive stocks. In response, the NASD conducted an additional study of the effects of the Actual Size Rule, as expanded ("January 1998 Study")

3. January 1998 Study

Summary results of the January 1998 Study are described below. The complete study is attached as Exhibit 2 to this filing and will be available through Nasdaq's web site.

a. Methodology of January 1998 Study. To assess the effect of the expansion of the pilot, this study compared measures of market quality for a group of stocks that joined the pilot (the "Next 103") to a control group of peer stocks (the "Non-ASR 3,207") that remained subject to mandatory minimum quote sizes.[28] Similar to the June 1997 Study, a thorough analysis reveals the Actual Size Rule has had no material effect on Nasdaq market quality.

Importantly, it should be noted that the January 1998 Study may be viewed as a more straightforward analysis of the Actual Size Rule. This is because in the June 1997 Study, the analysis was complicated by the fact that, with respect to the First 40 stocks presented therein, the Order Handling Rules were implemented at the same time as the Actual Size Rule. Thus, the pre-Actual Size Rule implementation period of review for those stocks did not reflect the impact of the Order Handling Rules. In contrast, in the January 1998 Study,

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Second Fifty (*i.e.*, Nasdaq stocks ranked 11–20 in size) are not comparable to the "bottom 40" of either the First Fifty or Second Fifty, those stocks have been excluded from the analysis comparing the First Fifty and the Second Fifty. Accordingly, the "first forty" stocks are the "bottom 40" stocks within the First Fifty stocks and the "second forty" stocks are the "bottom 40" stocks within the "second forty" stocks.

[19] See Notice of Proposal to Expand Actual Size Rule to 150 Stocks, at note 15.

[20] See Exchange Act Release No. 38720 (June 5, 1997) 62 FR 31856 (June 11, 1997).

[21] See Exchange Act Release No. 38872 (July 24, 1997) 62 FR 40879 (July 30, 1997).

[22] See *e.g.*, letter from David K. Whitcomb, Professor of Finance, Rutgers University, to Jonathan Katz, Secretary, SEC, dated July 3, 1997.

[23] See letter from Robert E. Aber, Vice President and General Counsel, to Katherine A. England, Assistant Director, Market Regulation, dated September 15, 1997.

[24] 110 stocks were chosen to make up for four of the original stocks that were delisted, and as reserves in case any others delist in the interim. This ensured that a total of 150 stocks were available under an expanded Actual Size Rule.

[25] See Exchange Act Release No. 39285 (October 29, 1997) 62 FR 59932 (November 5, 1997) ("Actual Size Rule Expansion Approval Order").

[26] Actual Size Rule Expansion Approval Order, at [illegible]

[27] In particular: (1) The number and composition of the market makers in each stock; (2) the average aggregate dealer and inside spread; (3) the average spread of each market maker by stock; (5) the fraction of volume executed by a market maker who is at the inside quote per stock; and (6) a measure of volume required to move the price of each security one increment.

[28] The study reviews data for 18 trading days between October 13 and November 7 (October 27 and 28 are excluded and analyzed separately) and compares it to 20 trading days between November 10 and December 9.

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the pre-Actual Size Rule implementation period of review did reflect the Order Handling Rules, which were fully phased in by October 13, 1997. In other words, the January 1998 Study assessed only one significant policy change for the subject securities, that being the implementation of the Actual Size Rule. Furthermore, as indicated above in Section A.3., the NASD amended Filing No. SR–97–26 to change the sample design to a more representative cross section of Nasdaq securities.

b. Actual Size Rule Has No Material Effect on Nasdaq Market Quality. Several measures of market quality were analyzed in the January 1998 Study: spread, volatility, depth, and liquidity. Each of these measures are discussed below.

i. Spread Measures. The quoted dollar spread [29] of the Next 103 fell 3.8% post implementation, while the quoted spread for the control group Non-ASR 3,207 similarly fell 4.8%. Multivariate regression analysis, which is used to control for stock-specific changes in volume, price, and interday volatility, shows that this differential is immaterial. Thus, there is no statistically significant evidence of a differential change in quoted spreads associated with implementation of the Actual Size Rule.

The effective spread [30] (for trades of all sizes) of the Next 103 fell 2.6% post implementation, while the effective spread for the control group Non-ASR 3,207 fell 5.7%. Multivariate regression analysis shows that, consistent with the effect on quoted dollar spreads, effective spreads have not changed materially for either group. Thus, there is no statistically significant evidence of a differential change in effective spreads associated with implementation of the Actual Size Rule.

ii. Volatility. Volatility [31] decreased slightly between the pre- and post-implementation periods for both the Next 103 and the Non-ASR 3,207. For the Next 103, mean volatility fell 5.8%, while volatility for the Non-ASR 3,207 fell 3.4%. Again, based on multivariate regression analysis, the differential cannot be attributed to implementation of the Actual Size Rule.

iii. Depth. Mean aggregate depth [32] provided by market makers at the inside market dropped by 5.2% for the Next 103, and 5.8% for the Non-ASR 3,207. When ECNs are included, aggregate depth fell by 2.0% for the Next 103 and 2.7% for the Non-ASR 3.207. Again, based on Multivariate regression analysis, these differentials are not statistically significant. Thus, implementation of the Actual Size Rule is not associated with a change in aggregate quote depth.

Furthermore, neither (1) the mean number of market makers, nor (2) the mean number of market makers at the inside changed significantly for either stock group after implementation.

iv. Liquidity. While liquidity is an important market quality concept, it is difficult to measure empirically. One such measure of liquidity is "effective depth," and a refinement called "normalized effective depth" that makes the measure more robust across varying stock prices. These measures integrate the spread, or price, and depth components of the liquidity concept using trading activity in place of quoted depth. These measures are described fully in the study, which indicate that there was no statistically significant association between effective depth and the Actual Size Rule.

c. Actual Size Rule Does Not Impair Ability of SOES to Provide Access to Market Maker Capital. An analysis of measures of market maker accessibility via Nasdaq's SOES system or proprietary systems shows that the implementation of the Actual Size Rule has not impacted the operation of these systems. Specifically, 98.5% of SOES orders in Next 103 stocks were fully executed after these stocks became subject to the Actual Size Rule. Indeed, the average size of a SOES trade in Next 103 stocks fell only 18 shares after the expansion of the pilot program. Clearly, the effect of the Actual Size Rule on the ability of investors to achieve executions via SOES has been minimal.

The extreme market conditions of October 27 and 28, 1997 provided another test of the effect of the Actual Size Rule on the Nasdaq marketplace. This study includes a comparison of both the market quality and SOES accessibility of a group of the original pilot stocks (the First 36) to a group of peer stocks subject to minimum quote size requirements (the Second 36). There is no significant evidence that the Actual Size Rule impacted either market quality or SOES accessibility during these periods of market stress.

4. Conclusion and Proposal To Expand the Actual Size Rule to All Nasdaq Stocks on a Permanent Basis

The implementation of the Order Handling Rules, which have moved Nasdaq toward a more order-driven market by integrating customer and ECN limit orders into the marketplace, called into question the propriety of requiring market makers to post a minimum depth for proprietary quotes. No other equity market requires such a minimum.

The NASD believes that the Actual Size Rule will have a positive impact on market quality. First, removing artificial quote size requirements may lead to narrower market maker spreads, thereby reducing investors' transaction costs. This could result because market makers would be afforded more flexibility to manage risk and quote prices that are more favorable for small retail orders. Second, permitting market makers to quote in size commensurate with their own freely-determined trading interest should enhance the pricing efficiency of the Nasdaq marketplace and the independence and competitiveness of dealer quotations. Third, removing quotation size requirements will facilitate greater quote size variability, which would increase the information content of market maker quotes by facilitating different quote sizes from dealers who have a substantial interest in the stock at a particular time and those who do not. In addition, removal of minimum quote size requirements may also eliminate a barrier to entry into the market for smaller market making firms, thus attracting more firms into the market, increasing both price competition and liquidity, thereby benefiting investors.

Furthermore, requiring a minimum commitment of market maker capital while allowing customer and ECN orders entry without a similar commitment could severely impair the ability of market makers to set competitive quotations. The adoption of quotation increments of sixteenths could have heightened the debilitating effect of the quote size minimum, as could future reductions in Nasdaq's minimum quote price increment if the minimum size increment is not equivalently reduced.

Finally, while economic theory suggests there may be several long term benefits derived from the removal of minimum quotation size, empirical research indicates that removal of the

[29] Quoted dollar spread is the difference between the inside ask and inside bid. Individual dollar spreads are weighted by the amount of time each spread was in effect for the day, *i.e.*, the spread's duration.

[30] Effective spread is a trade-based measures defined as twice the absolute difference between the trade price and the bid-ask midpoint ("BAM"). Thus, effective spread accounts for trades executed at prices inside the spread.

[31] Intraday volatility is measured using the standard deviation of the logarithm of the BAM.

[32] Quoted depth is the size of a market maker quote, or the number of shares at the quote that a market maker is required to transact under the Firm Quote Rule. Aggregated quoted depth is the sum of the quoted depths of all market makers quoting at the prevailing inside market.

regulatory minimum has not had any adverse impact on investors or the Nasdaq market. In the absence of a compelling reason to the contrary, economic theory clearly indicates that the imposition of a potentially damaging regulatory constraints, such as the minimum quote size, on the market is inadvisable. This position is consistent with Section 15A of the Exchange Act, which prohibits the NASD from imposing "any burden on competition not necessary or appropriate" in furtherance of the purposes of the Exchange Act. This Section, among others within the Exchange Act, codifies a Congressional intent that the U.S. securities markets be free from competitive restraints to the furthest extent possible consistent with the other goals of the Exchange Act.[33] Accordingly, the NASD believes that these minimums should be removed via the implementation of the Actual Size Rule for all Nasdaq securities on a permanent basis.

5. Statutory Basis

For the reasons noted above, the NASD believes the proposed rule change is consistent with Sections 11A(a)(1)(C), 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Exchange Act. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Section 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate to furtherance of the purposes of the Exchange Act. Section 15A(b)(11) requires the NASD, as a registered securities association, among other things, to formulate rules designed to produce fair and informative quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–21 and should be submitted by April 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7372 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39762; File No. SR–NASD–98–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Small Order Execution System Tier Size Classifications

March 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 9, 1998, the National Association of Securities Dealers ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s ("Nasdaq") periodic reclassification of Nasdaq National Market ("NNM") securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System ("SOES"). Specifically, under the proposal, 547 NNM securities will be reclassified into a different SOES tier size effective April 1, 1998. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the

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[33] See Senate Comm. on Banking, Housing & Urban Affairs, Report to Accompany S.249, S.Rep. No. 94–75, 94th Cong., 1st Sess. 7, 13, reprinted in 1975 U.S. Code Cong. & Admin. News 179.

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of December 31, 1997, pursuant to the following established criteria:[2]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market markers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and two or more market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 547 NNM securities will be reclassified effective April 1, 1998. These 547 NNM securities are set out in the NASD's Notice to Members 98–29 (March, 1998).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes that the reassignment of NNM securities within SOES tier size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[3] and subparagraph (e)(1) of Rule 19b–4 thereunder.[4]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, located at the above address. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–22 and should be submitted by April 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7373 Filed 3–20–98; 8:45 am]

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[2] The classification criteria are set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(e)(1).

[5] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39754; File No. SR–Phlx–97–53]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amending Its Floor Procedure Advice A–1 Regarding Displaying Best Bids and Offers

March 13, 1998.

I. Introduction

On November 3, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its floor procedure Advice A–1 regarding displaying best bids and offers. On December 23, 1997, and January 20, 1998, respectively, the Exchange filed Amendments 1 and 2 to the proposal with the Commission.[3]

The proposed rule change and Amendments 1 and 2 thereto were published for comment in the **Federal Register** on January 29, 1998.[4] No comments were received on the proposal. This order approves the proposal as amended.

II. Description of the Proposal

The Phlx is proposing to amend its Advice A–1, regarding Displaying Best Bids and Offers to require Floor Brokers and Registered Options Traders ("ROTs") to immediately remove stale bids/offers. Currently, Advice A–1 requires that Specialists use due diligence to ensure that the best available bid and offer is displayed for those option series in which s/he is assigned. Under Advice A–1, bids and offers for the Specialist's own account, bids and offers on the book, and bids and offers established in the crowd are deemed to be available for display purposes. The Phlx proposes: (1) To designate the foregoing provisions from the current advice as a paragraph (a) of Advice A–1 and (2) to create new paragraph (b), to govern situations where a member of the trading crowd is no longer bidding and offering. In the latter situations, under the proposal, the Floor Broker or ROT would be required to use due diligence to inform the Specialist when s/he is no longer bidding/offering at that price. Under the proposal, the Floor Broker or ROT must immediately inform the Specialist when s/he is "out" of that bid/offer, including due to an execution or departure from the crowd.

New paragraph (b) is being proposed to address situations where members have been "out" of a bid/offer, yet failed to inform the Specialist. Often, that member is no longer present in the trading crowd. In that instance, if a trade occurs because someone accepted the stale bid/offer, either the member who initiated the bid/offer, the Specialist or the other members of the trading crowd will be required to honor the trade. Regardless of who honors the trade, the intent of this proposal is to deter these occurrences by imposing fines for such conduct. The proposed language refers to being "out" of a market for reasons including (but not limited to) an execution or a departure from the crowd. Other reasons may also apply, but the Exchange determined that an exhaustive list is neither possible, nor necessary, and, therefore, the violation involves the general failure to inform the Specialist, regardless of the particular reason for being "out."

A member that fails to meet the obligations imposed upon it by new paragraph (b) will be subject to a fine.[5] Under the proposal, fines would be imposed by Option Floor Officials who would determine whether a member should be fined based upon whether a stale quote was caused by a Specialist not using due diligence to ensure that the best available bid and offer is displayed pursuant to paragraph (a) or whether it was caused by a Floor Broker or ROT not using due diligence to inform the Specialist that it was no longer bidding/offering at that price, pursuant to paragraph (b) of the Advice. The Exchange believes that violations of proposed new paragraph (b) of the Advice involving a failure to notify the Specialist when a Floor Broker or ROT is "out" of a market are within the purview of Phlx Rule 970, concerning minor rule violations, and are otherwise designed to be easily verifiable and objective. The Exchange notes that the proposed fines are comparable to those in other advices, such as Advices A–2 (Types of Orders to be Accepted onto the Specialist's Book), B–4 (PHLX ROTs Entering Orders from On-Floor and Off-Floor for Execution on the Exchange) and B–5 (Agency-Principal Restrictions).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The proposal is also consistent with the Section 6(b)(6)[8] requirement that the rules of an exchange provide that its members and persons associated with those members be appropriately disciplined for violations of an exchange's rules and the Act.[9]

The proposal is consistent with Exchange Act Section 6(b)(5) because it should help to discourage Floor Brokers and ROTs from walking away from quotes that they have posted. The proposal also is consistent with Exchange Act Section 6(b)(6) in that it provides for an appropriate penalty to be assessed against those who violate the advice.

Maintaining accurate option quotes is integral to the Specialist's role in the marketplace. Although a member posting a bid/offer is generally not held to that market after leaving the trading crowd, the purpose of the proposed rule change is to discourage stale markets by giving the Exchange the ability to impose fines for failure to remove such a bid/offer. Failure to remove a bid/offer may cause the member making the bid/offer or other crowd participants to have to honor an incorrectly disseminated

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to David Sieradzki, Attorney, Division of Market Regulation ("Division"), Commission dated December 18, 1997 and letter from J. Keith Kessel, Phlx, to David Sieradzki, Attorney, Division, Commission dated January 16, 1998. Amendments 1 and 2 made several changes to clarify the purpose section of the filing.

[4] Securities Exchange Act Release No. 39571 (January 22, 1998), 63 FR 4515 (January 29, 1998).

[5] The fine schedule applicable to proposed new paragraph (b) of the Advice will be as follows:

1st Occurrence: $250.00.

2nd Occurrence: $500.00

3rd and Thereafter: Sanction is discretionary with Business Conduct Committee.

The fine schedule applicable to specialists, which will remain unchanged, is as follows:

1st Occurrence: $50.00.

2nd Occurrence: $100.00.

3rd Occurrence: $250.00.

4th and Thereafter: Sanction is discretionary with Business Conduct Committee.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(6).

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

quote that may have attracted order flow, including Phlx Automatic Execution System orders. To avoid this result, the Commission believes that it is appropriate for the Phlx to require Floor Brokers and ROTs to use due diligence to inform the Specialist when they are "out" of a bid/offer.

The Commission notes that the proposed rule is similar to a Chicago Board Options Exchange rule, requiring Floor Brokers, Designated Primary Market-Makers and Order Book Officials causing a bid/offer to be disseminated to be responsible for having the bid/offer removed once the order is filled or canceled.[10]

The Exchange has represented that this rule will be enforced under Exchange Rule 970, which is the Exchange's minor rule violation enforcement and reporting plan ("MRP").[11] The Commission believes that enforcing Floor Procedure Advice A–1, paragraph (b) under the Exchange's MRP is consistent with Section 6(b)(6) of the Act. The purpose of the Exchange's MRP is to provide a response to a violation of the Exchange's rules when a meaningful sanction is needed but when initiation of a disciplinary proceeding pursuant to Exchange Rule 960.2[12] is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the nature of the violation. Violations of Floor Procedure Advice A–1, paragraph (b) can be appropriately handled through expedited proceedings because they are objective in nature and easily verifiable. Noncompliance with the provisions may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings.

Finally, the Commission finds that the imposition of the recommended fines for violations of Floor Procedure Advice A–1, paragraph (b) should result in appropriate discipline of members in a manner that is proportionate to the nature of such violations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–97–53) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98–7370 Filed 3–20–98; 8:45 am]
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SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. Statement of Agricultural Employer (Years prior to 1988); Statement of Agricultural Employer (1988 and Later)—0960–0036. The information on Forms SSA–1002 and SSA–1003 is used by the Social Security Administration (SSA) to resolve discrepancies when farm workers have alleged that their employers did not report their wages or reported them incorrectly. The respondents are agricultural employers.

	SSA–1002	SSA–1003
Number of Respondents	75,000	50,000.
Frequency of Response	1	1.
Average Burden Per Response (in minutes)	10	30.
Estimated Annual Burden (in hours)	12,500	25,000.

2. Beneficiary Recontact Report—0960–0502. The information on Form SSA–1588–OCR–SM is used by SSA to recontact mothers, fathers or children ages 15–17, who receive their benefits directly, to determine if they are still entitled to benefits. The respondents are beneficiaries who are in the "high risk" area and, therefore, are most prone to overpayments.

Number of Respondents: 163,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 13,583 hours.

3. Information About Joint Checking/Savings Account—0960–0461. The information collected on Form SSA–2574 is used by SSA to determine whether a joint bank account should be counted as a resource of a Supplemental Security Income (SSI) claimant or applicant in determining eligibility for SSI. The respondents are applicants for and recipients of SSI payments and individuals who are joint owners of financial accounts with SSI applicants/recipients.

Number of Respondents: 200,000.
Frequency of Response: 1.
Average Burden Per Response: 7 minutes.
Estimated Annual Burden: 23,333 hours.

4. Agency/Employer GPO Questionnaire—0960–0470. The information on Form SSA–4163 is used by SSA to determine the need for and the amount of any offset of benefits for certain individuals receiving Government pensions and receiving or applying for Social Security benefits. The respondents are State governments or their political subdivisions.

Number of Respondents: 1,000.
Frequency of Response: 1.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden: 50 hours.

5. Authorization for the Social Security Administration to Obtain Records from a Financial Institution and Request for Records—0960–0293. The information on Form SSA–4641 is used by SSA to determine whether an applicant meets the resource eligibility requirements for SSI and Aid to Families with Dependent Children (AFDC). This information is only used as part of the quality review of the AFDC program. The respondents are financial institutions.

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[10] See CBOE Rule 8.51, Commentary .02

[11] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices, such as Advice A–1, along with the accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorizes national securities exchanges and other self-regulatory organizations ("SRO"s) to adopt minor rule violation plans for summary discipline and abbreviated reporting. Rule 19d–1(c)(1) under the Act requires that SROs promptly file notice with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 where the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the SRO with respect to the matter are deemed not final for purposes of Rule 19d–1(c)(1), thereby permitting periodic, as opposed to immediate, reporting. See Phlx Rule 970 and 17 CFR 240.19d–1(c).

[12] Phlx Rule 960.2 governs the initiation of disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

Number of Respondents: 500,000.
Frequency of Response: 1.
Average Burden Per Response: 6 minutes.
Estimated Annual Burden: 50,000 hours.

6. Statement of Household Expenses and Contributions—0960–0456. The information on Form SSA–8011–F3 is used by SSA to obtain or corroborate contributions made by the claimant/recipient toward household expenses. SSA uses the information to correctly determine the amount of unearned income received by the claimant/recipient in order to determine the individual's eligibility and payment amount under the SSI program. The respondents are household members of SSI claimants/recipients.

Number of Respondents: 400,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 100,000 hours.

7. Wage Reports and Pension Information—0960–0547. The information obtained through Regulation OR–418P, found in 20 CFR, section 422.122(b), is used by SSA to identify the requester of pension plan information and to confirm that the individual is entitled to the data we provide. The respondents are requesters of pension plan information.

Number of Respondents: 1,211.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 606 hours.

8. RSI/DI Quality Review Case Analysis-Sampled Number Holder; RSI/DI Quality Review Case Analysis-Auxiliaries/Survivors; RSI/DI Quality Review Case Analysis-Parent; RSI/DI Quality Review Case Analysis-Annual Earnings Test (AET)—0960–0555. The information on Forms SSA–2930, SSA–2931 and SSA–2932 is used by SSA to establish a national payment accuracy rate for all cases in payment status and to serve as a source of information regarding problem areas in the Retirement and Survivors Insurance (RSI) and Disability Insurance (DI) programs. The information is also used to measure the accuracy rate for newly adjudicated RSI/DI cases. SSA uses the information on Form SSA–4659 to evaluate the annual earnings test in order to determine its effectiveness. The results will be used to develop ongoing improvements in the process. The respondents are RSI and DI beneficiaries.

	SSA–2930	SSA–2931	SSA–2932	SSA–4659
Number of Respondents	6,500	3,300	1,580	740
Frequency of Response	1	1	1	1
Average Burden Per Response (minutes)	20	30	30	10
Estimated Annual Burden (hours)	2,167	1,650	790	123

Written comments and recommendations regarding the information collection(s) should be sent on or before May 22, 1998, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: March 17, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–7402 Filed 3–20–98; 8:45 am]

BILLING CODE 4190–25–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 1998–3600]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of the Office of Management and Budget (OMB) of the renewal of three Information Collection Requests (ICR). These ICR's include the: 1. Vessel Documentation; 2. Alternate Compliance-International/Inland Navigation Rules; and 3. Inflatable Personal Flotation Devices for Recreational Vessels. Before submitting the ICR's to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before May 22, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–1998–3600), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this document. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete Information Collection Request are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106, (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: For questions on this document, contact Barbara Davis, Office of Information Management, 202–267–2326. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting

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comments should include their names and addresses, identify this document (CGD 1998–3600) and the specific Information Collection Request (ICR) to which each comment applies, and give the reasons for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Vessel Documentation.
OMB Control Number: 2115–0110.
Summary: The information collected will be used to establish the eligibility of a vessel to: (a) be documented as a "vessel of the United States," (b) engage in a particular trade, and/or (c) become the object of a preferred ship's mortgage. The information collected concerns citizenship of owner/applicant and build, tonnage and markings of a vessel.
Need: 46 U.S.C. Chapters 121, 123, 125 and 313 requires the documentation of vessels. A Certificate of Documentation is required for the operation of a vessel in certain trades, serves as evidence of vessel nationality and permits a vessel to be subject to preferred mortgages.
Respondents: Owners/builders of yachts and commercial vessels at least 5 net tons.
Frequency: Annually.
Burden Estimates: The estimated burden is 50,092 hours.
2. *Title :* Alternate Compliance—International/Inland Navigation Rules.
OMB Control Number: 2115–0073.
Summary: The information collected provides an opportunity for those with unique vessels to present their reasons why the vessel cannot comply with existing regulations and how alternate compliance can be achieved.
Need: Certain vessels cannot comply with the International Regulations (33 U.S.C. 1601) and Inland Navigation Rules (33 U.S.C. 2001). the Coast Guard thus provides an opportunity for alternate compliance. However, it is not possible to determine whether alternate compliance is appropriate or what kind of alternative procedures might be necessary without this collection.
Respondents: Vessel owners, operators, builders and agents.
Frequency: One-time application.
Burden Estimate: The estimated burden is 135 hours annually.
3. *Title:* Inflatable Personal Flotation Devices (PFDs) for Recreational Vessels.
OMB Control Number: 2115–0619.
Summary: The information collected concerns the labeling and preparation of manuals for inflatable PFDs. In keeping with this requirement the Coast Guard has established a system for approval of PFDs for use on such vessels? To facilitate the approval and inspection process, the Coast Guard requires that manufacturers label their devices and publish users manuals to help the end user.
Need: Title 46 U.S.C. 4302(a) prescribes regulations to: (a) establish minimum safety standards for recreational vessels, (b) require the installation and carrying or use of associated equipment and require or permit the display of seals, labels, plates, insignia or other devices for certifying or evidencing compliance with safety regulations. The labels are important for a number of reasons. First, they are essential to the user; they indicate the chest size of the PFD and also display printed and pictographic instructions for proper use and care of the PFD. Secondly, because they include a specific product number and the manufacturer's name they are central to the Coast Guard's mission of identifying faulty equipment and then notifying the responsible producer. The manuals also serve a dual purpose. On the one hand they give the user information they will need to properly use and maintain the device, and on the other they keep the Coast Guard informed as to the specifications and design of new PFDs.
Respondents: PFD manufacturers.
Frequency: On occasion.
Burden Estimate: The estimated burden is 503.33 hours annually.

Dated: March 13, 1998.

S.A. Richardson,

Acting Director, Information and Technology, U.S. Coast Guard.

[FR Doc. 98–7451 Filed 3–20–98; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3634]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.
ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). CTAC provides advice and makes recommendations to the Coast Guard on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S. flag vessels and barges in U.S. ports and waterways.

DATES: Applications and any supporting information must be received on or before May 29, 1998.

ADDRESSES: Application forms may be obtained from the Internet through this docket (USCG–1998–) at http://dms.dot.gov, or by writing Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling (202) 267–1217/0081; or by faxing (202) 267–4570. Completed application forms must be submitted to the same address by mail. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Kevin S. Cook, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone (202) 267–1217/0081, fax (202) 267–4570. For questions on the docket, contact Carol Kelly, Coast Guard Dockets team leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee (CTAC) is a Federal advisory committee constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S. flag vessels and barges in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating the United States' position on hazardous material transportation issues prior to meetings of the International Maritime Organization.

CTAC meets at least once a year at Coast Guard Headquarters in Washington, DC. It may also meet more often than once a year for extraordinary purposes. CTAC's subcommittees and working groups may meet during the year to consider specific problems as required.

The Coast Guard will consider applications for eight positions that expire or become vacant in July 1998. To be eligible, applicants should have experience in chemical manufacturing, marine transportation of chemicals, occupational safety and health, or environmental protection issues associated with chemical transportation. Each member serves for a term of 3 years and is eligible to be re-appointed to a second term of office. However, not more than 50 percent of the members

with expiring terms may be re-appointed. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the Department of Transportation's policy on ethnic and gender diversity, the Coast Guard is especially seeking applications from qualified women and minority group members.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

Dated: March 12, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–7452 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3635]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boat occupant protection, navigation lights, and personal flotation device-life saving index will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Monday and Tuesday, April 27 and 28, 1998, from 8:30 a.m. to 5 p.m. The Personal Flotation Device-Life Saving Index and Navigation Light Subcommittees will meet on Saturday, April 25, 1998, from 1:30 p.m. to 5 p.m. The Boat Occupant Protection Subcommittee will meet on Sunday, April 26, 1998, from 9:00 a.m. to noon. Written material and requests to make oral presentations should reach the Coast Guard on or before April 15, 1998. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before April 10, 1998.

ADDRESSES: NBSAC will meet at the Adam's Mark Hotel-Tulsa, 100 East 2nd Street, Tulsa, Oklahoma. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org/or at the Web Site for the Documentary Services Division at http://dms.dot.gov.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

National Boating Safety Advisory Council (NBSAC)

The agenda includes the following:
(1) Executive Director's report.
(2) Chairman's session.
(3) Personal Flotation Device-Life Saving Index Subcommittee report.
(4) Navigation Light subcommittee report.
(5) Boat Occupant Protection Subcommittee report.
(6) Recreational Boating Safety Program report.
(7) NBSAC recreational boating safety Federal regulations review status report.
(8) Status report regarding Federal Register requests for comments on Federal requirements for wearing personal flotation devices and education in recreational boating safety.
(9) Industry presentation on inflatable personal flotation device approval.
(10) Waterborne risk management assessment and overview.
(11) Recreational boating safety outreach update and discussion.
(12) Hull Identification Number rulemaking update.
(13) Presentation on Department of Transportation waterway transportation management initiative.

Boat Occupant Protection Subcommittee

The agenda includes the following:
(1) Review and discuss boat occupant protection research study results and issues.
(2) Discuss risk avoidance alternatives.
(3) Discuss horsepower, weight and persons capacity standards.
(4) Discuss proposals regarding requirements to wear a helmet on personal watercraft (PWC), and for installation of a shroud on PWC extending from the engine cowling.

Navigation Light Subcommittee

The agenda includes the following:

(1) Review and discuss status of rulemaking to place navigation lights under regulatory control.

(2) Discuss a study to improve the visibility and display of navigation lights focusing on hardware issues.

(3) Review any new standards which address design, construction, and installation of navigation lights applicable to recreational boats.

Personal Flotation Device-Life Saving Index Subcommittee

The agenda includes the following:

(1) Discuss issues associated with the development of a consensus standard for application of the life saving index to various types of personal flotation devices.

(2) Discuss personal flotation device (PFD) conspicuity issues.

(3) Discuss the status of inflatable PFD inflation systems, and approval of automatic inflating PFDs.

Procedural

All meetings are open to the public. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than April 15, 1998. Written material for distribution at a meeting should reach the Coast Guard no later than April 15, 1998. If you would like a copy of your material distributed to each member of the committee or subcommittees in advance of a meeting, please submit 25 copies to the Executive Director no later than April 10, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 16, 1998.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 98–7453 Filed 3–20–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 187–2, Aircraft Certification Service Fees for Providing Production Certification-Related Services Outside the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circulas (AC) 187–2, Aircraft Certification Service Fees for Providing Production Certification-Related Services Outside the United States. This AC provides information concerning applications and fees for production certification-related services provided outside the United States by Federal Aviation Administration Aircraft Certification Service personnel. This AC provides a means, but not the only means, of compliance with Title 14 Code of Federal Regulation part 187, Fees, Appendix C, Fees for Production Certification-Related Services Performed Outside the United States.

ADDRESSES: Copies of AC 187–2 can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785.

FOR FURTHER INFORMATION CONTACT: A member of the Production and Airworthiness Certificaton Division, Air–200, 800 Independence Avenue, Sw., Washington, DC 20591, (202) 267–8361.

Issued in Washington, DC on March 16, 1998.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Certification Division.

[FR Doc. 98–7406 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Scottsdale Airport, Scottsdale, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on a new Noise Compatibility Program for Scottsdale Airport, submitted by the City of Scottsdale, Arizona, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non federal responsibilities in Senate Report No. 96–52 (1980). On June 5, 1996, the FAA determined that the Noise Exposure Maps, submitted by the City of Scottsdale under 14 CFR Part 150, were in compliance with applicable requirements. On February 13, 1998, the Associate Administrator for Airports approved the new Noise Compatibility Program for Scottsdale Airport. This new study revised and updated the existing Noise Compatibility Program that was approved by the FAA on December 19, 1986.

EFFECTIVE DATE: The effective date of the FAA's approval of the new Noise Compatibility Program for Scottsdale Airport is February 13, 1998.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Environmental Protection Specialist, Airports Division, AWP–611.2, Western-Pacific Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 310/725–3615. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting the FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to a new Noise compatibility Program for Scottsdale Airport, effective February 13, 1998. This new study revises and updates an existing Noise Compatibility Program approved by the FAA on December 19, 1986. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (herein after referred to as the "Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non compatible land uses and prevention of additional non compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations.

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional non compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government and;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of navigable airspace and air traffic control responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State or local law. Approval does not, by itself, constitute an FAA implementation action. A request for Federal action or approval to implement specific Noise Compatibility Measures may be required and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The city of Scottsdale, Arizona submitted to the FAA on December 18, 1995, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January

1995 through November 1996. The Scottsdale Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 5, 1996. Notice of this determination was published in the **Federal Register** on June 19, 1996.

The Scottsdale Airport study contained a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on August 20, 1997 and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such program.

The submitted program contained 12 proposed actions for noise mitigation, 11 land Use management and five program management measures for both on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Associate Administrator for Airports, effective February 13, 1998.

Outright approval was granted for all 28 specific program measures. The approved measures included such items as: Encouraging non-Stage 3 aircraft to use Runway 21 for landing and Runway 3 for takeoff; Continuance of right turns as soon as practical when departing Runway 21; Request use of (National Business Aircraft Association (NBAA) standard noise abatement departure procedures for jets; Continue requiring maintenance run-ups to be performed at the north end of Kilo Ramp and continue prohibition of maintenance run-ups between 10:00 p.m. and 7:00 a.m.; Continue prohibition of stop-and-go operations, intersection, formation and simulated single engine takeoffs by multi-engine aircraft from Runway 21; Discourage straight out and left turns after departure on Runway 21; On Runway 3, discourage right downwind and right base pattern entry; Continue prohibition on touch-and-go and stop-and-go operations between 9:30 a.m. and 6:00 p.m.; Continue preferential use of Runway 3; Discourage descents below 2,500 feet MSL for practice instrument approaches; Encourage use of (Aircraft Owners and Pilots Association (AOPA) Noise Awareness Steps by light single engine aircraft; Request aircraft on approach to Runway 21 to avoid overflying residential land uses. Land use management measures: Establish an Airport Influence Area; Preserve general plan designation for compatible land uses; Retain existing compatible land uses within the Airport Influence Area; Amend the city of Scottsdale General Plan; Rezone certain parcels consistent with the City's General Plan; Adopt airport noise overlay zoning within the Airport Influence Area; Prohibit introduction of new noise sensitive land uses within the 65 DNL contour; and require fair disclosure agreements within the Airport Influence Area; Program management measures: Maintain a complaint response system; Monitor, review and update Noise Exposure Maps and the Noise Compatibility Program, as necessary; Broadcast noise abatement information on the Automatic Terminal Information System (ATIS), and purchase three portable noise monitors.

These determinations are set forth in detail in the Record of Approval endorsed by the Associate Administrator for Airports on February 13, 1998. The Record of Approval, as well as other evaluation materials, and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the Scottsdale Airport, Scottsdale, Arizona.

Issued in Hawthorne, California on March 10, 1998.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 98–7407 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–4]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory regulations. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 8, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11)

Issued in Washington, D.C., on March 16, 1998.

Gary Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29117
Petitioner: Professional Aviation Maintenance Association
Sections of the FAR Affected: 14 CFR 65.92(a)
Description of Relief Sought: To permit PAMA members who attend an 8-hour training course at the April 1 through 3, 1998, PAMA Technical Symposium and Trade Show to renew their inspection authorization by April 15, 1998.

Docket No.: 29138
Petitioner: Washington State Department of Transportation

Sections of the FAR Affected: 14 CFR 61.197(a)(2)(iii)
Description of Relief Sought: To permit graduates of WDOT's Federal Aviation Administration (FAA)-approved flight instructor refresher courses to renew their flight instructor certificates more than 90 days before the certificates expire.

Dispositions of Petitions

Docket No.: 28561
Petitioner: Scenic Airlines, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Scenic Airlines to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed.
Grant, February 24, 1998, Exemption No. 6471A

Docket No.: 27136
Petitioner: Kenai Air Alaska, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit KAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed.
Grant, February 24, 1998, Exemption No. 5699B

Docket No.: 23290
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.391(d)
Description of Relief Sought/ Disposition: To permit ATA member airlines' and other similarly situated part 121 certificate holders' required flight attendants to be located at the mid-cabin flight attendant station during takeoff and landing on Boeing 767 airplanes.
Grant, February 24, 1998, Exemption No. 4298G

Docket No: 27153
Petitioner: Kachina Aviation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Kachina to operate without a TSO–C112 (Mode S) transponder installed in its aircraft operating under the provisions of part 135.
Grant, February 24, 1998, Exemption No. 5701B

Docket No.: 27490
Petitioner: C.A.E., Inc.
Section of the FAR Affected: 14 CFR 121.411(a)(2), and (3), and (b)(2); 121.413(b), (c), and (d); and appendix H to part 121
Description of Relief Sought/ Disposition: To permit certain pilot and flight engineer (FE) instructors and check airmen employed by CAE and listed in an air carrier certificate holder's approved training program to act as simulator instructors and check airmen for an air carrier certificate holder under part 121 without those instructors or check airmen having received ground and flight training in accordance with a training program approved under subpart N of part 121. That exemption has permitted simulator instructors and check airmen employed by CAE and listed in an air carrier certificate holder's approved training program to serve in advanced simulators without being employed by the air carrier certificate holder for 1 year.
Grant, February 24, 1998, Exemption No. 5870B

Docket No.: 28520
Petitioner: P&N Flight and Charter
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit P&N to operate its aircraft (Registration No. N4921J, Serial No. 28R–30642) without a TSO–C112 (Mode S) transponder installed.
Grant, February 24, 1998, Exemption No. 6448A

Docket No.: 29118
Petitioner: Homestead Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit HHI to operate its Robinson R44 helicopter (Registration No. N8372H, Serial No. 0387) without a TSO–C112 (Mode S) transponder installed.
Grant, February 24, 1998, Exemption No. 6733

Docket No.: 28118
Petitioner: King Airelines
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit King to operate without a TSO–C112 (Mode S) transponder installed in its aircraft operating under the provisions of part 135.
Grant, March 3, 1998, Exemption No. 6093A

Docket No.: 26160
Petitioner: Massachusetts Institute of Technology
Sections of the FAR Affected: 14 CFR 91.319(c)
Description of Relief Sought/ Disposition: To permit MIT to operate certain aircraft having experimental airworthiness certificates in a congested airway or over densely populated areas. In your letter, you include a revised list of aircraft to be covered by the extension.
Grant, March 3, 1998, Exemption No. 5210D

Docket No.: 29116
Petitioner: Taconite Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit TAI to operate four aircraft without a TSO–C112 (Mode S) transponder installed.
Grant, March 3, 1998, Exemption No. 6735

Docket No.: 29125
Petitioner: Moore's Flying Service
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Moore's to operate its Bell 206–L4 helicopter (Registration No. N595CC, Serial No. 52129) without a TSO–C112 (Mode S) transponder installed.
Grant, March 3, 1998, Exemption No. 673

Docket No.: 22822
Petitioner: T.B.M., Inc., and Butler Aircraft Co.
Sections of the FAR Affected: 14 CFR 91.611
Description of Relief Sought/ Disposition: To permit TBM and BAC to conduct ferry flights with one engine inoperative on their McDonnell Douglas DC–6 and DC–7 airplanes without obtaining a special flight permit for each flight.
Grant, March 3, 1998, Exemption No. 5204D

Docket No.: 28414
Petitioner: Zebra Air, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Zebra Air to operate its aircraft under the provisions of part 135 without a TSO–C112 transponder installed. In your letter you include a revised list of Zebra Air aircraft to be covered by the extension.
Grant, March 3, 1998, Exemption No. 6407A

Docket No.: 27118
Petitioner: Air Logistics, L.L.C.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit ALG to operate under the provisions of part 135 without having a TSO–C112 (Mode S) transponder installed in its aircraft.
Grant, March 3, 1998, Exemption No. 6736

Docket No.: 27388
Petitioner: Boeing North American, Inc.

Sections of the FAR Affected: 14 CFR 21.195(a)
Description of Relief Sought/ Disposition: To permit Boeing North American, Inc., to obtain an experimental certificate for its two prototype Model DASA FR–06 Ranger 2000 airplanes, S/N –001 and –002, for the purpose of conducting market surveys, sales demonstrations, or customer crew training.
Grant, March 3, 1998, Exemption No. 5849C

Docket No.: 29100
Petitioner: Bombardier Inc. Canadair
Sections of the FAR Affected: 14 CFR 25.571(e)(1)
Description of Relief Sought/ Disposition: To permit certification of the Bombardier Inc. Canadair BD–700–1A10 airplane using V_c at sea level or 0.85 V_c at 8,000 ft., which ever is greater.
Grant, March 3, 1998, Exemption No. 6731

Docket No.: 29098
Petitioner: Simmons Airlines
Sections of the FAR Affected: 14 CFR 25.562(c)(5) and 25.785(a)
Description of Relief Sought/ Disposition: To permit Simmons Airlines exemption from the head impact criterion requirements of 25.562(c)(5) and 25.785(a) for front row and exit row seats on Embracer EMB–145 airplanes.
Denial, February 3, 1998, Exemption No. 6732

[FR Doc. 98–7326 Filed 3–20–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3630]

Notice of Receipt of Petition for Decision That Nonconforming 1993–1998 Kawasaki ZZR1100 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993–1998 Kawasaki ZZR1100 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993–1998 Kawasaki ZZR1100 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 22, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 10 am to 5 pm)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1993–1998 Kawasaki ZZR1100 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1993–1998 Kawasaki ZX1100 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1993–1998 Kawasaki ZZR1100 motorcycles to 1993–1998 Kawasaki ZX1100 motorcycles, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1993–1998 Kawasaki ZZR1100 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1993–1998 Kawasaki ZX1100 motorcycles, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1993–1998 Kawasaki ZZR1100 motorcycles are identical to 1993–1998 Kawasaki ZX1100 motorcycles with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles Other Than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR part 565 will be affixed to 1993–1998 Kawasaki ZZR1100 motorcycles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition

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will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–7454 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3628]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Mercedes-Benz C220 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Mercedes-Benz C220 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1994 Mercedes-Benz C220 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 22, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Bayway Auto of Newark, New Jersey ("Bayway") (Registered Importer 98–166) has petitioned NHTSA to decide whether 1994 Mercedes-Benz C220 passenger cars are eligible for importation into the United States. The vehicle which Bayway believes is substantially similar is the 1994 Mercedes-Benz C220 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1994 Mercedes-Benz C220 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Bayway submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Mercedes-Benz C220, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Mercedes-Benz C220 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1994 Mercedes-Benz C220 complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model sealed beam headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the convex passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door lock buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicle is equipped with combination lap and

shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Additionally, the petitioner states that an alarm system identical to that found on U.S.-certified models will be installed on each 1994 Mercedes-Benz C220 prior to importation so that the vehicle meets the Theft Prevention Standard found at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–7455 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3627]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for a decision that nonconforming 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 22, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Bayway Auto of Newark, New Jersey (Bayway) (Registered Importer No. R–98–166) has petitioned NHTSA to decide whether 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 passenger cars are eligible for importation into the United States. The vehicles which Bayway believes are substantially similar are 1990–1993 Mercedes-Benz 300E and 1994–1995 E300 passenger cars. Bayway has submitted information indicating that Daimler Benz, A.G., the company that manufactured the 1990–1993 Mercedes-Benz 300E and 1994–1995 E300, certified those vehicles as conforming to all applicable Federal motor vehicle safety standards and offered them for sale in the United States.

The petitioner contends that it carefully compared the 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 to the 1990–1993 Mercedes-Benz 300E and 1994–1995 E300, and found those models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1990–1993 Mercedes-Benz 250E and 1994–1995 E250, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as the 1990–1993 Mercedes-Benz 300E and 1994–1995 E300 that were offered for sale in the United States, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 are identical to the certified 1990–1993 Mercedes-Benz 300E and 1994–1995 E300 with respect to compliance with Standards Nos. 102 *Transmission Shift Lever*

*Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies which incorporate headlamps with a DOT marking; (b) installation of U.S.-model front and rear sidemarker/reflector taillamp assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: replacement of the passenger side rear view mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and locking buttons with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that 1990–1993 models are equipped with driver's side air bags and knee bolsters and that 1994–1995 models are equipped with both driver's and passenger's side air bags and knee bolsters. The petitioner further states that all models are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR part 565.

Additionally, the petitioner states that an alarm system identical to that found on U.S.-certified models will be installed on each 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 prior to importation so that the vehicle meets the Theft Prevention Standard found at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98- 7456 Filed 3–20–98; 8:45 am]

BILLING CODE: 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3629]

Decision That Nonconforming 1974–1975 Volkswagen Type 181 ("The Thing") Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1974–1975 Volkswagen Type 181 ("The Thing") multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1974–1975 Volkswagen Type 181 ("The Thing") MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of 1974–1975 Volkswagen Type 181 ("The Thing") MPVs), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) petitioned NHTSA to decide whether 1973–1975 Volkswagen Type 181 ("The Thing") MPVs are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. NHTSA 97–3156 on December 1, 1997 (62 FR 63599) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Volkswagen AG, the vehicle's manufacturer. In this comment, Volkswagen stated that the petitioner had identified, at a minimum, the standards to which non-U.S. certified 1973–1975 Volkswagen Type 181 ("The Thing") MPVs would have to be conformed to be eligible for importation. In addition, Volkswagen contended that some of those vehicles would have to be equipped with laminated windshields to meet Standard No. 205, *Glazing Materials*. Noting that its analysis of the vehicle identification number (VIN) for the vehicle that is the subject of the petition revealed that vehicle to have been manufactured for the German Army and not for consumer use, Volkswagen observed that the vehicle may not comply with Standard Nos. 124, *Accelerator Control Systems*, and 302 *Flammability of Interior Materials*. In addition, Volkswagen noted that the vehicle may have to be altered to comply with Standard No. 104, *Windshield Wiping and Washing Systems*.

NHTSA accorded Wallace an opportunity to respond to Volkswagen's comments. In its response, Wallace asserted that all of the issues raised by Volkswagen concern minor alterations that would not render the vehicle ineligible for importation. Additionally, Wallace stated that if NHTSA decides to grant import eligibility to non-U.S. certified 1973–1975 Volkswagen Type 181 ("The Thing") MPVs, it will inspect every vehicle it imports under that decision to assure compliance with each of the standards addressed in Volkswagen's comments.

NHTSA believes that Wallace's response adequately addresses the issues that Volkswagen has raised regarding the petition. NHTSA further notes that the modifications described by Wallace, which have been performed with relative ease on thousands of motor vehicles imported over the years, would not preclude non-U.S. certified 1973–1975 Volkswagen Type 181 ("The Thing") MPVs from being found "capable of being readily altered to comply with applicable motor vehicle safety standards."

NHTSA has accordingly decided to grant the petition. Although the petition requested NHTSA to decide that 1973–1975 Volkswagen Type 181 ("The Thing") MPVs are eligible for importation, the agency is limiting this decision to 1974 and 1975 models alone. NHTSA regards all 1973 models as motor vehicles that are "at least 25 years old," within the meaning of 49 U.S.C. 30112(b)(9), which permits them to be imported and sold regardless of whether they complied with all applicable Federal motor vehicle safety standards in effect on their date of manufacture.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–239 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1974–1975 Volkswagen Type 181 ("The Thing") MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1974–1975 Volkswagen Type 181 ("The Thing") MPVs originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–7457 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–59–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors Meeting.

TIME AND DATE: 8:00 a.m., Wednesday, March 25, 1998.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The Board meeting will be closed to the public.

MATTER TO BE CONSIDERED:

- Review of commercial, operational and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Joseph Tomkowicz, 301–564–3345.

Dated: March 18, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–7574 Filed 3–19–98; 10:23 am]

BILLING CODE 8720–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW,

Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0262."

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Designation of Certifying Official, VA Form 22–8794.

OMB Control Number: 2900–0262.

Type of Review: Extension of a currently approved collection.

Abstract: The law requires specific certifications from an educational institution or job training establishment that provides approved training for veterans and other eligible persons. VA Form 22–8794 serves as the report from the school or job training establishment as to those persons authorized to submit these certifications. VBA uses the information to ensure that VA educational benefits are not made improperly based on a report from someone other than a designated certifying official. Without the information, VA could improperly pay benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 27, 1997 at page 55672.

Affected Public: Business or other for-profit, Not for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0262" in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7385 Filed 3–20–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0406]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0406."

SUPPLEMENTARY INFORMATION:

Title: Verification of VA Benefit-Related Indebtedness, VA Form 26–8937.

OMB Control Number: 2900–0406.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Since March of 1992, and a result of OMB's approval of VA's Debt Collection Plan, lenders authorized to make VA-guaranteed home or manufactured home loans on the automatic basis have been required to determine through VA Finance Officers whether any benefits-related debts exist in the veteran-borrower's name prior to the closing of any automatic loan. VA Form 26–8937 is designed to assist lenders and VA in the completion of debt checks in a uniform manner.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 27, 1997 at page 55672.

Affected Public: Individual or households.

Estimated Annual Burden: 25,000 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0406" in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7386 Filed 3–20–98; 8:45 am]

BILLING CODE 8320–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 11677, March 10, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Thursday, March 19, 1998.

CHANGE IN THE MEETING: The closed session of the Meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070

Dated: March 19, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–7606 Filed 3–19–98; 11:32 am]

BILLING CODE 6750–06–M

Federal Register

Monday
March 23, 1998

Part II

Securities and Exchange Commission

17 CFR Parts 230, et al.

Registration Form Used by Open-End Management Investment Companies; New Disclosure Option for Open-End Management Investment Companies; Final Rules

Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Life Insurance Policies; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 270, and 274

[Release Nos. 33–7512; 34–39748; IC–23064; File No. S7–10–97]

RIN 3235–AE46

Registration Form Used by Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission is adopting amendments to Form N–1A, the form used by mutual funds to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933. The amendments are intended to improve fund prospectus disclosure and to promote more effective communication of information about funds to investors. The amendments focus the disclosure in a fund's prospectus on essential information about the fund that will assist investors in deciding whether to invest in the fund. The amendments also minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds.

DATES:

Effective Date: June 1, 1998.

Compliance Dates:

1. *Initial Compliance Date:* All new registration statements filed on or after December 1, 1998 must comply with the amendments to Form N–1A.

2. *Final Compliance Date:* All funds with effective registration statements must comply with the amendments to Form N–1A for post-effective amendments filed to update their registration statements on or after December 1, 1998, and no later than December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Clarke, Assistant Director, Markian M.W. Melnyk, Deputy Chief, George J. Zornada, Team Leader, Jonathan F. Cayne, Senior Counsel, John M. Ganley, Senior Counsel, Doretha M. VanSlyke, Attorney, (202) 942–0721, Office of Disclosure Regulation, or Anthony A. Vertuno, Senior Special Counsel, (202) 942–0591, Office of the Associate Director (Legal and Disclosure), Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009. Contact the Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, at (202) 942–0659, 450 5th Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009 for additional information, including interpretive guidance, about this release or Form N–1A, as amended, and related rules.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting amendments to Form N–1A [17 CFR 274.11A], the registration form used by open-end management investment companies ("funds") to register under the Investment Company Act of 1940 [15 U.S.C. 80a–1, *et seq.*] ("Investment Company Act") and to offer their shares under the Securities Act of 1933 [15 U.S.C. 77a, *et seq.*] ("Securities Act"). The Commission also is adopting technical amendments to rules 483, 485, 495, and 497 under the Securities Act [17 CFR 230.483, 230.485, 230.495, and 230.497]. In a companion release, the Commission is adopting new rule 498 [17 CFR 230.498] under the Securities Act and the Investment Company Act that permits a fund to provide investors with a new short-form document, called a "profile," which summarizes key information about the fund. If a fund makes a profile available, an investor would have the option of purchasing the fund's shares after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information about the fund) before making a decision about investing in the fund. An investor deciding to purchase a fund's shares based on a profile will receive a copy of the fund's prospectus with the purchase confirmation.[1]

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[1] Investment Company Act Release No. 23065 (Mar. 13, 1998) ("Profile Adopting Release").

I. Introduction and Background

Over the last decade, the mutual fund industry has grown enormously both in total assets and in the number of funds.[2] Today, fund assets exceed the deposits of commercial banks.[3] Coincident with the explosive growth of fund investments, the business operations of many funds have become increasingly complex as funds offer new investment options and a wider variety of shareholder services. These factors, combined with new and more sophisticated fund investments, have resulted in fund prospectuses that often include long and complicated disclosure, as funds explain their operations, investments, and services to investors.

Many have criticized fund prospectuses, finding them unintelligible, tedious, and legalistic.[4]

[2] See Investment Company Institute ("ICI"), Mutual Fund Fact Book 16–23 (37th ed. 1997) ("ICI Fact Book") and ICI, Trends in Mutual Fund Investing: September 1997, at 3 (Oct. 30, 1997) (ICI News No. 97–93) ("ICI Trends") (between 1990 and 1997, fund assets increased from $1.1 trillion to $4.4 trillion and the number of funds increased from 3,105 to 6,666).

[3] Compare ICI Trends at 1 (fund net assets exceeded $4.4 trillion as of Sept. 1997) with Federal Reserve Bank Statistical Release H.8: Assets and Liabilities of Commercial Banks in the United States (Nov. 7, 1997) (commercial bank deposits were approximately $3.0 trillion as of Oct. 1997).

[4] See, *e.g.*, The Investment Company Act Amendments of 1995: Hearings Before the Subcomm. on Telecommunications and Finance of

Although the prospectus remains the most complete source of information about a fund, technical and unnecessarily long prospectus disclosure often obscures important information about a fund investment and does not serve the informational needs of the majority of fund investors.[5] The millions of investors who turn to funds as their investment vehicle of choice[6] need clear and comprehensible information to help them evaluate and compare fund investments.

New Disclosure Initiatives

In seeking to improve the quality and usefulness of fund disclosure, the Commission proposed two major disclosure initiatives on February 27, 1997.[7] First, the Commission issued for public comment a release (the "Form N–1A Proposing Release") that proposed significant amendments to the prospectus disclosure requirements for funds (the "Proposed Amendments").[8] Second, the Commission proposed, in a companion release, new rule 498 under the Securities Act and the Investment Company Act that would allow a fund to offer investors the option to purchase its shares after reviewing the information in the fund's profile or after requesting and reviewing the fund's prospectus (and other information about the fund) before making a decision about investing in the fund.[9] As proposed, the profile (the "Proposed Profile") would summarize key information about a fund, including the fund's investment objectives, strategies, risks, performance, and fees. Under proposed rule 498, a fund would be required to send investors the fund's prospectus and certain other information within 3 business days of a request, and any investor purchasing the fund's shares on the basis of a profile would receive the prospectus with the purchase confirmation.

The Commission's disclosure initiatives were intended to: improve fund disclosure by requiring prospectuses to focus on information central to investment decisions; provide new disclosure options for investors; and enhance the comparability of information about funds. Taken together, these initiatives are designed to promote more effective communication of information about funds to investors without reducing the amount of information provided to investors. The Proposed Amendments reflected the Commission's strong belief that the primary purpose of the disclosure in a fund's prospectus is to help an investor make a decision about investing in the fund.[10] Consistent with this belief, the objective of the Proposed Amendments was to provide investors with prospectus disclosure that presents clear, concise, and understandable information about an investment in a fund.

Commenters expressed overwhelming support for the Commission's disclosure initiatives.[11] Commenters believed that the Commission's disclosure initiatives would enhance the quality of disclosure that funds provide to investors. Some commenters emphasized that improved disclosure about funds was long overdue and would substantially benefit investors. In particular, commenters strongly supported the Proposed Amendments as effective steps toward improving fund prospectuses. Commenters also provided numerous additional suggestions to improve prospectus disclosure. The Commission is adopting the initiatives substantially as proposed.

Prior Commission Disclosure Initiatives

The amendments to the prospectus disclosure requirements adopted today are another important step in the Commission's ongoing efforts to improve disclosure about funds. In 1983, the Commission introduced an innovative approach to prospectus disclosure by adopting a two-part disclosure format that permitted a fund to provide investors with a simplified prospectus containing essential information about the fund and to place more detailed information in a companion document called the "Statement of Additional Information" ("SAI"), which investors could obtain upon request.[12] The Commission intended that, under this format, a fund's prospectus would include essential information about the fund that would be most useful to typical or average investors in making an investment decision about the fund. The Commission contemplated that more detailed discussions of matters geared to the needs of more sophisticated investors would be available in the SAI, which all fund investors could obtain upon request. In adopting this new format, the Commission's goal was to provide investors with more useful information in "a prospectus that is substantially shorter and simpler, so that the prospectus clearly discloses the

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the House Comm. on Commerce, 104th Cong., 1st Sess. 56, 58 (1995) (statement of Don Powell, President and CEO of Van Kampen American Capital, Inc.) (noting the frequent complaint that prospectuses are too long, cumbersome, and legalistic); J. Bogle, Bogle on Mutual Funds 147 (1994); Rothchild, The War on Gobbledygook, Time, Oct. 31, 1994, at 51; Savage, SEC Doesn't Want 1987's Painful Lessons Forgotten, Chicago Sun-Times, Oct. 26, 1997, at 53; Sloan, Selling Attitude, Newsweek, June 17, 1996, at 52; Skrzycki, Prospectuses to be in English, Donkeys to Fly Tomorrow, Wash. Post, Oct. 21, 1994, at B1; "Taking the Mystery Out of Mutual Funds," Remarks by Arthur Levitt, Chairman, SEC, before the Boston Citizens Seminar, Boston, MA (Feb. 25, 1997); "Fulfilling the Promise of Disclosure," Remarks by Arthur Levitt, Chairman, SEC, before the American Savings Education Council, New York, NY (July 23, 1997).

[5] Levitt, Plain English in Prospectuses, N.Y. St. B. J., Nov. 1997, at 37 ("Levitt Article") ("[D]isclosure is not disclosure if it doesn't communicate."). See also Report on the OCC/SEC Survey of Mutual Fund Investors 12–13 (June 26, 1996) (although fund investors surveyed consulted the prospectus more than any other source of information about the fund they bought, they considered the prospectus only the fifth-best source of information, behind employer-provided written materials, financial publications, family or friends, and brokers); ICI, The Profile Prospectus: An Assessment by Mutual Fund Shareholders 4 (1996) ("ICI Profile Survey") (about half of fund shareholders surveyed had not consulted a prospectus before making a fund investment).

[6] U.S. households own 74.2% of the mutual fund industry's assets. ICI Fact Book, *supra* note 2, at 35.

[7] As part of these disclosure initiatives, the Securities and Exchange Commission (the "Commission") also proposed a new rule that would address investment company names that are likely to mislead investors about the investments and risks of an investment company. Investment Company Act Release No. 22530 (Feb. 27, 1997) [62 FR 10955], correction [62 FR 24161]. This proposed rule would require, among other things, funds and other registered investment companies with names suggesting a specific investment emphasis to invest at least 80% of their assets in the type of investment suggested by their name. The Commission received a number of substantive comments on the proposed rule, many of which asserted that the proposal had flaws that the Commission should address. The Commission's Division of Investment Management (the "Division") is analyzing the comments and expects to recommend a final rule for Commission consideration in the near future.

[8] Investment Company Act Release No. 22528 (Feb. 27, 1997) [62 FR 10896], correction [62 FR 24160] ("Form N–1A Proposing Release").

[9] See Investment Company Act Release No. 22529 (Feb. 27, 1997) [62 FR 10943], correction [62 FR 24160] ("Profile Proposing Release").

[10] The Commission is adopting the amendments to Form N–1A under its authority in section 10(a) of the Securities Act [15 U.S.C. 77j(a)] based on its determination that certain disclosure requirements result in information that, while useful to some investors, is not necessary in the public interest or for the protection of investors to be included in the prospectus.

[11] Eighty-seven percent of the commenters supported the Proposed Amendments. The Commission received 78 comment letters on the Proposed Amendments, over half of which were from individual investors (44 letters or 57%). The Commission also received comment letters from 8 professional and trade associations, 13 fund groups, 4 law firms, 2 broker-dealers/investment advisers, and 7 other interested organizations. The comment letters, as well as a comment summary prepared by the Commission's staff, are available for public inspection and copying at the Commission's Public Reference Room in File No. S7–10–97. The Commission received 256 comment letters on the fund profile, a large number of which were from individual investors (226 letters or 88%). *See* Profile Adopting Release, *supra* note 1.

[12] Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928] ("1983 Form N–1A Adopting Release").

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fundamental characteristics of the particular investment company * * *."[13]

Since 1983, the Commission has implemented a number of other initiatives to improve fund prospectus disclosure, including a uniform fee table[14] and a requirement that a fund's management discuss the fund's performance over the past year in its prospectus or annual report to shareholders (the management's discussion of fund performance ("MDFP")).[15] While these changes have provided investors with clear and helpful information about fund expenses and performance, they were not intended to address the overall effectiveness of Form N–1A's prospectus disclosure requirements. The Proposed Amendments and Form N–1A, as amended, reflect the Commission's view that current prospectus disclosure must be considered on a comprehensive basis to ensure that the prospectus, as a whole, meets the information needs of investors.

Reassessment of Fund Disclosure

The Commission's recent efforts to improve disclosure began with an evaluation of the use of a standardized, summary disclosure document that highlights key information about a fund. The Commission, with the cooperation of the Investment Company Institute ("ICI") and several large fund groups, conducted a pilot program permitting funds to use profile-like summaries ("Pilot Profiles") together with their prospectuses.[16] The program's purpose was to determine whether investors found the Pilot Profiles, which summarize important information about a fund, helpful in making investment decisions. Focus groups conducted on the Commission's behalf, and fund investors participating in a survey sponsored by the ICI, responded very positively to the profile concept.[17]

In considering fund disclosure issues, the Commission also has evaluated over 3,700 letters submitted in response to a release requesting comment on ways to improve risk disclosure in fund prospectuses, as well as the comparability of fund risk levels ("Risk Concept Release").[18] The commenters, mostly individual investors, confirmed the importance of risk disclosure in evaluating and comparing funds and emphasized the need to improve prospectus disclosure of fund risks. In particular, commenters indicated that current risk disclosure is difficult to understand and does not fully convey to investors the risks associated with an investment in a fund.

Plain English Initiatives

The fund disclosure initiatives being adopted today are part of the Commission's broad undertaking to bring sweeping revisions to prospectus disclosure for all public companies.[19] As part of its commitment to make all prospectuses simpler, clearer, and more useful, and to eliminate jargon and boilerplate, the Commission recently adopted rule amendments to require the use of plain English principles in drafting prospectuses and to provide other guidance on improving the readability of prospectuses.[20] The Commission's plain English principles reflect fundamentals of clear communication and contemplate disclosure documents that:

—Present information in an easily readable format;
—Use everyday language that investors can easily understand; and
—Eliminate repetition of disclosure that lengthens a document and overwhelms the investor.

Improved Fund Disclosure

As one commenter on the disclosure initiatives pointed out, the Commission's proposals reflect an unprecedented number and variety of public comments and expert views, the results of Commission and other research, and broad investor input. The Commission agrees with the commenter's further observation that the Commission has never had a more detailed, comprehensive, and compelling basis for a rulemaking than that developed for the fund disclosure initiatives. Through focus groups and written comments on the initiatives, investors have confirmed that they concur strongly with the Commission's view that fund disclosure documents will be useful only if they communicate information effectively. The Commission has designed both the fund prospectus and profile initiatives to meet this goal. The amendments to Form N–1A seek to make the prospectus, which will remain a fund's primary disclosure document, a more effective tool by focusing its contents on information that is essential to an investment in the fund. The profile responds to investors' strongly expressed desire for a new, concise disclosure document that summarizes key fund information and helps investors evaluate and compare funds more easily.

To encourage the use of disclosure that communicates effectively, the Commission's fund disclosure initiatives include a number of important innovations:

—The initiatives provide for a standardized risk/return summary at the beginning of every fund prospectus and in the profile that:[21]
—Concisely summarizes information in a specific sequence about a fund's investment objectives, strategies, risks and performance, and fees;
—Discusses the risks of a fund's portfolio taken as a whole and minimizes detailed and technical descriptions of the risks associated with specific portfolio securities potentially held by the fund; and
—Provides a graphic presentation of a fund's annual returns over a 10-year period in a bar chart that illustrates the variability of the fund's returns and gives investors some idea of the risks of an investment in the fund. To help investors evaluate a fund's risks and returns relative to "the market," a table accompanying the bar chart compares the fund's average annual returns for 1, 5, and 10 years with that of a broad-based securities market index.
—The initiatives require a fund to prepare disclosure documents using plain English disclosure, which is designed to give investors

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[13] Investment Company Act Release No. 12927 (Dec. 27, 1982) [48 FR 813, 814] ("1982 Form N–1A Proposing Release").

[14] See Item 3 of current Form N–1A; Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192] ("Fee Table Adopting Release").

[15] Item 5A of current Form N–1A; Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050] ("MDFP Adopting Release").

[16] See Investment Company Institute (pub. avail. July 31, 1995) ("1995 Profile Letter"); Investment Company Institute (pub. avail. July 29, 1996) ("1996 Profile Letter"). The Division permitted the pilot program to continue pending the adoption of proposed rule 498. Investment Company Institute (pub. avail. July 16, 1997) ("1997 Profile Letter"). After the effective date of new rule 498, a fund could continue to use a Pilot Profile as supplemental sales literature. See Profile Adopting Release, *supra* note 1.

[17] See ICI Profile Survey, *supra* note 5, at 31–32.

[18] See Investment Company Act Release No. 20974 (Mar. 29, 1995) [60 FR 17172] ("Risk Concept Release").

[19] See Levitt Article, *supra* note 5, at 36.

[20] Rule 421 under the Securities Act [17 CFR 230.421]. See Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370] ("Plain English Release") and discussion *infra* Section II.D.2. As part of the plain English initiatives, the Commission plans to issue A Handbook on Plain English: How to Create Clear SEC Disclosure Documents, prepared by the Commission's Office of Investor Education and Assistance.

[21] These improvements are based in large part on comments received in response to the Risk Concept Release. See Risk Concept Release, *supra* note 18. The Commission also considered other information about fund risk disclosure, including the results of an investor survey sponsored by the ICI. See ICI, Shareholder Assessment of Risk Disclosure Methods (1996) ("ICI Risk Survey").

understandable disclosure documents.

—The initiatives eliminate prospectus clutter that obscures other information helpful to investors when making a decision about an investment in a fund. Specifically, the amendments to prospectus disclosure requirements:

—Move certain disclosure about fund organization and legal requirements from the prospectus to the SAI;

—Permit a fund that is offered as an investment alternative in a participant-directed defined contribution plan (or certain other tax- advantaged arrangements) to tailor its prospectus for the plan (or other arrangement);

—Update and incorporate certain staff interpretive positions into Form N–1A; [22] and

—Simplify current disclosure instructions to provide clearer guidance for preparing and filing fund registration statements.

Disclosure Principles

The Commission believes that, in revising Form N–1A and in providing for the use of profiles, it has laid the foundation for the development of fund disclosure documents of a significantly higher quality than those often used today, which have drawn the consistent criticism of fund investors and others. If the initiatives are to have their intended effect, however, all those who participate in the preparation and review of those documents—funds, their legal counsels and other advisors, the Commission and its staff, and other regulators and their staffs—should act consistently with the basic disclosure principles that serve as the cornerstones of the initiatives. These principles, which are referred to throughout this release, include the following:

—Funds should design disclosure documents, particularly their prospectuses, first and foremost, to communicate information to investors effectively. Funds should present information in prospectuses following the principles of plain English, using language that is concise, straightforward, and easy to understand.

—A fund's prospectus principally should include essential information about the fundamental characteristics of, and risks of investing in, the fund. Whenever possible, a fund should present this information in a manner that:

—Assists investors in comparing and contrasting the fund with other funds;

—Avoids simply restating legal or regulatory requirements to which funds generally are subject; and

—Avoids a disproportionate emphasis on possible investments or activities of the fund that are not a significant part of the fund's investment operations.

—Funds should limit disclosure in prospectuses generally to information that is necessary for an average or typical investor to make an investment decision. Detailed or highly technical discussions, as well as information that may be helpful to more sophisticated investors, dilute the effect of necessary prospectus disclosure and should be placed in the SAI.

—Prospectus disclosure requirements should not lead to lengthy disclosure that discourages investors from reading the prospectus or obscures essential information about an investment in a fund.

The Commission has instructed its staff to use these principles consistently in administering the requirements of both amended Form N–1A and new rule 498 and strongly encourages all other participants in the development of fund disclosure documents to apply these principles in preparing their prospectuses and profiles. [23]

II. Discussion

A. Part A—Information in the Prospectus

Form N–1A, as amended, retains the overall structure of current Form N–1A. The most significant changes to Form N–1A adopted today are the new risk/return summary at the beginning of the prospectus and improved disclosure about the risks of investing in a fund. This release first addresses these changes and then discusses other changes to substantive prospectus disclosure requirements in Part A of Form N–1A. [24] Following this discussion, the release describes revisions to requirements for information on the front and back cover pages of the prospectus, the General Instructions to Form N–1A, which have been updated and revised to make them easier to use, and other technical revisions to Form N–1A's requirements. [25]

1. Risk/Return Summary: Investments, Risks, and Performance (Item 2)

The Commission proposed to require a risk/return summary at the beginning of every prospectus that would provide key information about a fund's investment objectives, principal strategies, risks, performance, and fees. The risk/return summary, also included in the Proposed Profile, was intended to respond to investors' strong preference for summary information about the fund in a standardized format. [26] The proposed risk/return summary in a fund's prospectus would provide investors with a type of "executive summary" of key information about the fund in a standardized, easily accessible place that investors could use to evaluate and compare the fund to others, regardless of whether the fund uses a profile.

While most commenters supported the proposed risk/return summary, several questioned whether it was necessary in a prospectus. These commenters argued that the summary could repeat other information in the prospectus and that it would undermine the Commission's goal of making prospectus disclosure clear and concise.

The Commission is of the view that the prospectus risk/return summary will not undermine, but further, the goal of making prospectuses more useful for investors. The Commission believes that

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[22] The amendments contemplate further that the Division will consolidate its interpretive positions under the Investment Company Act relating to, among other things, fund operations in a new "Investment Company Registration Guide" ("Registration Guide"). The Registration Guide is discussed *infra* Section II.D.6. Form N–1A, as amended, incorporates certain staff disclosure requirements to identify those requirements that would apply to all funds regardless of their particular circumstances. Among other things, this approach addresses disclosure requirements that have been developed in connection with an issue presented by a specific fund, but applied to all funds regardless of their particular circumstances.

[23] The Commission expects that these disclosure principles also will provide useful guidance in resolving disclosure issues relating to funds under the federal securities laws as these issues arise from time to time. See discussion of administration of Form N–1A, *infra* Section II.F.

[24] A chart in Appendix A to this release compares the revised Items in Form N–1A, as amended, to the current Items in Form N–1A.

[25] Form N–1A, as amended, incorporates certain disclosure requirements from the Guidelines to current Form N–1A (the "Guides") and the Generic Comment Letters ("GCLs") that have been issued over time by the Division. See Letters to Registrants (Jan. 11, 1990) ("1990 GCL"); (Jan 3, 1991) ("1991 GCL"); (Jan. 17, 1992) ("1992 GCL"); (Feb. 22, 1993) ("1993 GCL"); (Feb. 25, 1994) ("1994 GCL"); (Feb. 3, 1995) ("1995 GCL"); (Feb. 16, 1996) ("1996 GCL"). For a discussion of the Guides and the GCLs, see *infra* notes 209–215 and accompanying text.

[26] Participants in focus groups conducted on the Commission's behalf ("Focus Groups"), for example, expressed strong support for summary information in a standardized format. Many individuals in commenting on the profile initiative have confirmed the need for concise, summary information relating to a fund. See also Ice Six-Pack: Public Favors Profile Plan, Fund Action, Oct. 1997, at 9; Profile Prospectuses: An Idea Whose Time Has Come, Mutual Funds Magazine, Aug. 1996, at 11.

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the disclosure in the risk/return summary need not generally repeat other information in the prospectus; much of the summary consists of information that Form N–1A would not require to be disclosed elsewhere in the prospectus, such as the bar chart, performance table, and fee table. The Commission has concluded that the possibility that the risk/return summary could repeat some information appearing elsewhere in the prospectus is outweighed by the benefits of providing investors with standardized and comparable fund information at the beginning of every prospectus and in the profile. Thus, the Commission is adopting the requirement that every prospectus and profile contain a risk/return summary.[27]

The Commission proposed to require that the risk/return information in the prospectus, like that in the Proposed Profile, appear in a specific sequence and in a question-and-answer format. Many commenters objected to the question-and-answer format, stating, among other things, that rigid adherence to the format would not necessarily result in effective communication of information to investors.[28] To allow funds to design effective disclosure documents, the Commission has determined not to require this format in the prospectus or the profile. Any fund that chose to do so could use a question-and-answer format in its prospectus, profile, or in both documents.

a. Investment Objectives and Principal Strategies. The Proposed Amendments would require a fund to disclose its investment objectives in the risk/return summary and to summarize, based on the information provided in its prospectus, how the fund intends to achieve those objectives. The purpose of the proposed disclosure was to provide a summary of the fund's principal investment strategies, including the specific types of securities in which the fund principally invests or will invest, and any policy of the fund to concentrate its investments in an industry or group of industries.[29] The Commission is adopting this requirement as proposed.[30]

The information contained in the risk/return summary about a fund's investment objectives and principal strategies is intended to meet the needs of an average or typical fund investor. Recognizing that disclosure about a fund's specific portfolio holdings may be important to some investors, the Proposed Amendments would require a fund to inform investors in its prospectus risk/return summary that additional information about the fund's investments is available in the fund's shareholder reports.[31] While supporting the proposed disclosure, most commenters suggested placing statements about how investors can obtain a fund's SAI, shareholder reports, and other information about the fund on the back cover page of the prospectus. According to these commenters, this disclosure would be easier for investors to find if it were located in one place rather than in different places in the prospectus. The Commission agrees with the commenters that typical fund investors may find a single reference to the availability of additional information helpful. Therefore, Form N–1A, as amended, requires all disclosure about the availability of additional information to appear on the back cover page of the prospectus.[32] The Commission is adopting the disclosure as proposed, with minor adjustments to the language to ensure that the disclosure clearly explains the availability of additional information about a fund to a typical investor.[33]

b. Risks. Summary Risk Disclosure. The Proposed Amendments would require the risk/return summary to include a discussion of the principal risks of investing in a fund that summarizes information about those risks set out in the fund's prospectus. Reflecting the Commission's proposed new approach to risk disclosure, this discussion was intended to summarize the risks of a fund's anticipated portfolio holdings as a whole, and the circumstances reasonably likely to affect adversely the fund's net asset value, yield, and total return. Commenters generally supported the summary risk disclosure contemplated by the Proposed Amendments, agreeing that it would be specific and brief and would assist investors in identifying the principal risks of investing in a particular fund. The Commission is adopting this disclosure requirement with modifications to reflect certain commenters' suggestions.[34]

Several commenters asked the Commission to clarify the scope of the proposed summary risk disclosure, arguing that the requirement would not serve its purpose if the risk disclosure simply repeated information from other sections of the prospectus. In the Commission's view, the purpose of the summary risk disclosure in a fund's prospectus is to identify briefly the principal risks of investing in the particular fund and to emphasize those risks reasonably likely to affect the fund's performance. In light of this purpose, the Commission expects a fund, in meeting this requirement, to present only a succinct summary of the principal risks of investing in the fund and not to repeat the fuller discussion of these risks required elsewhere in the prospectus.[35] On the other hand, the Commission believes that it generally would be inconsistent with the summary risk requirement for a fund to include a "laundry list" of generic risk factors that may apply to any fund and

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[27] Items 2 and 3. Consistent with the goal of providing key information in a standardized summary, General Instruction C.3(b) to Form N–1A, as amended, precludes a fund from including information in the prospectus risk/return summary that is not required or otherwise permitted by Items 2 and 3. Form N–1A, as amended, does not require a fund to include any risk disclosure elsewhere in the prospectus if the requirements of Item 4 of Form N–1A are met by the disclosure in the fund's risk/return summary (*i.e.*, if a fund is able to describe its risks, as required by Item 4, in its risk/return summary, the fund would not need to describe those risks elsewhere in its prospectus).

[28] See Profile Adopting Release, *supra* note 1 (discussing commenters' critiques of the question-and-answer format).

[29] See *infra* notes 91–101 and accompanying text (discussing the criteria for determining whether a particular strategy is a principal strategy and disclosure about concentration policies).

[30] Items 2 (a) and (b).

[31] The Commission proposed that the prospectus risk summary refer to fund shareholder reports. A fund's reports to its shareholders typically contain a discussion by the fund's management of the fund's performance ("MDFP"). The Commission believes that the information in a fund's MDFP, including the discussion of the fund's performance during its most recent fiscal year, could be useful to some investors considering an investment in the fund.

The Proposed Amendments would require the risk/return summary to provide disclosure to the following effect:

Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In particular, the fund's annual report discusses the relevant market conditions and investment strategies used by the fund's investment adviser that materially affected the fund's performance during the last fiscal year. You may obtain these reports at no cost by calling _____.

[32] Item 1(b). Rule 498, as adopted, requires this disclosure to appear in the profile risk/return summary. See Profile Adopting Release, *supra* note 1.

[33] The Commission has made a few revisions to the disclosure about the availability of additional information to make it clearer and more understandable for investors. Item 1(b)(1) of Form N–1A, as amended, requires a fund (other than a new fund) to include disclosure to the following effect on the back cover page of its prospectus:

Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In the fund's annual report, you will find a discussion of the market conditions and investment strategies that significantly affected the fund's performance during its last fiscal year.

[34] Item 2(c).

[35] See discussion of risk disclosure, *infra* Section II.A.3.b.

that does not identify the risks of investing in the fund.

The Commission proposed to require that the prospectus risk summary identify the types of investors for whom the fund may be an appropriate or inappropriate investment.[36] Commenters either opposed or raised significant concerns about this provision, arguing that it could be viewed as requiring a fund to determine whether its shares, among other things, are a suitable investment for a particular investor.[37] Commenters also stated that the disclosure would tend to be generic and not meaningful or useful for investors.

The Commission is persuaded by commenters that disclosure about the appropriateness of funds for particular investors should not be required in all fund prospectuses and has deleted this requirement from the prospectus risk summary. The Commission believes, however, that disclosure indicating whether a fund is appropriate for specific types of investors or is consistent with certain investment goals, even if generic in nature, may be useful for some investors and may provide a means for the fund to distinguish itself from other investment alternatives.[38] Therefore, Form N–1A, as amended, permits, but does not require, a fund to include disclosure in the narrative risk summary about the types of investors for whom the fund is intended or the types of investment goals that may be consistent with an investment in the fund.[39]

Under the Proposed Amendments, a fund could choose to discuss the potential rewards of investing in the fund in the risk summary as long as the discussion provided a balanced presentation of the fund's risks and rewards. One commenter strongly questioned this provision of the proposal, asserting that it would detract from a clear presentation of risks in the risk summary. The Commission has reconsidered this disclosure in light of the intended standardized and summary nature of the risk summary and has concluded that the disclosure should focus solely on the risks of investing in a fund. Thus, the Commission has determined to eliminate the option to describe the rewards of investing in a fund in the risk summary. A fund desiring to add this disclosure elsewhere in its prospectus can do so subject to Form N–1A's general rule with respect to information that is not required to be in a prospectus. Under this general rule, a fund can disclose this information, so long as it is not incomplete or misleading and would not obscure or impede understanding of the information that is required to be in the prospectus.[40]

Special Risk Disclosure Requirements. The Proposed Amendments were intended to simplify the prospectus cover page and to avoid repeating information on the cover page and in the risk summary discussion. In seeking to meet this goal, the Commission proposed to move certain cover page disclosure requirements relating to the risks associated with specific types of funds to the risk summary where, the Commission believed, it would be more meaningful to investors.

Form N–1A currently requires that each money market fund [41] disclose on the cover page of its prospectus that an investment in the fund is neither insured nor guaranteed by the U.S. Government and that there can be no assurance that the fund will be able to maintain a stable net asset value of $1.00 per share. This required disclosure is intended to alert investors that investing in a money market fund is not without risk.[42] In addition to moving this disclosure to the risk summary, the Proposed Amendments would simplify the technical disclosure that a money market fund may not be able to maintain a stable net asset value.[43] Commenters supported the proposed disclosure for money market funds, and the Commission is adopting it as proposed.[44]

Form N–1A currently requires specific prospectus cover page disclosure for a tax-exempt money market fund that concentrates its investments in a particular state (a "single state money market fund"). Each such fund is required to disclose that it may invest a significant percentage of its assets in a single issuer and that investing in the fund may be riskier than investing in other types of money market funds. This disclosure was intended to make investors aware of special risks that could be associated with an investment in a single state money market fund.[45] In the Form N–1A Proposing Release, the Commission asked whether it should continue to require this disclosure in prospectuses. The Commission noted that this disclosure may exaggerate the risk of investing in a single state money market fund. As the Form N–1A Proposing Release pointed out, although these funds are subject to less stringent issuer diversification provisions under Commission rules than other money market funds, they are subject to credit quality and maturity investment restrictions that are comparable to other money market funds.[46]

In response to the Commission's question regarding single state money market funds, commenters indicated that the special disclosure now required

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[36] As discussed in the Form N–1A Proposing Release, *supra* note 8, at 10902, the purpose of this disclosure was to help investors evaluate and compare funds based on their investment goals and individual circumstances.

[37] As several commenters pointed out, applicable regulatory rules for brokers and other investment professionals require that these determinations be made on the basis of a review of information about the unique circumstances of an individual investor. See, *e.g.*, rule 2310(a) of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules, NASD Manual (CCH) 4261 (suitability of recommendations to customers) and rule 405 of the New York Stock Exchange, 2 N.Y.S.E. Guide (CCH) ¶2403 (the "know your customer" rule).

[38] In a recent review of fund prospectuses, the Division found many examples of this type of disclosure, which was usually included in a fund's discussion of the risks associated with an investment in the fund. For example, one fund disclosed that it was not an appropriate investment for investors seeking either preservation of capital or high current income or for those investors unable to assume the increased risks of higher price volatility and currency fluctuations associated with investments in international equities traded in non-U.S. currencies. Another fund urged investors to remember that the fund was an aggressive capital appreciation fund designed for long-term investors for a portion of their investments and was not designed for investors seeking income or conservation of capital. Tax-exempt funds frequently stated that an investment in the fund is not appropriate for Individual Retirement Accounts or other tax-advantaged accounts.

[39] Instruction to Item 2(c)(1)(i).

[40] See General Instruction C.3(b).

[41] For these purposes, a money market fund is defined as a fund that holds itself out to investors as a money market fund and meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of rule 2a–7 under the Investment Company Act [17 CFR 270.2a–7]. General Instruction A.

[42] See Investment Company Act Release Nos. 17589 (July 17, 1990) [55 FR 30239, 30247] and 18005 (Feb. 20, 1991) [56 FR 8113, 8123] (proposing and adopting revisions to rule 2a–7 for money market funds).

[43] The Proposed Amendments would require the following disclosure:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

[44] Item 2(c)(1)(ii).

[45] Form N–1A currently does not require this disclosure if, with respect to 100% of its assets, a fund limits its investments in a single issuer to no more than 5% of its assets.

[46] See Form N–1A Proposing Release, *supra* note 8, at 10904. Under rule 2a–7, a "national" tax-exempt money market fund generally is limited to investing no more than 5% of its assets in the securities of a single issuer. For a single state money market fund, the 5% single issuer limitation applies with respect to 75% of the fund's assets. This limitation recognizes that single state money market funds concentrate their investments in debt securities issued by a single state (or issuers located within that state), making diversification more difficult to achieve. See Investment Company Act Release Nos. 21837 (Mar. 31, 1996) [61 FR 13956] and 22921 (Dec. 2, 1997) [62 FR 64968].

on the cover page of fund prospectuses overstates the risks of investing in single state money market funds, particularly in view of the minimal risk that commenters asserted is associated with these funds. The Commission is persuaded by these comments and has determined not to require the disclosure in Form N–1A.

Form N–1A currently requires a fund that is advised by or sold through a bank to disclose on the cover page of its prospectus that the fund's shares are not deposits or obligations of, nor guaranteed or endorsed by, the bank, and that the shares are not insured by the Federal Deposit Insurance Corporation ("FDIC") or any other government agency.[47] This disclosure is intended to alert investors that funds advised by or sold through banks are not federally insured.[48] The Commission proposed to move this disclosure to the prospectus risk summary and to simplify the wording of the current disclosure required for funds advised by or sold through banks.[49] Commenters supported the revised disclosure requirements for bank-sold funds, and the Commission is adopting them substantially as proposed.[50]

[47] 1994 GCL, *supra* note 25; Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management, SEC (May 13, 1993) ("Division Bank Letter").

[48] See Division Bank Letter, *supra* note 47. See also Testimony of Ricki Helfer, Chairman, Federal Deposit Insurance Corporation ("FDIC"), on FDIC Survey of Nondeposit Investment Sales at FDIC-Insured Institutions Before the Subcomm. on Capital Markets, Securities, and Government Sponsored Enterprises of the House Comm. on Banking and Financial Services, 104th Cong., 2d Sess. (June 26, 1996) (citing surveys in October 1995 and April 1996 indicating that approximately one-third of bank customers either thought that, or did not know whether, funds sold through banks were insured).

[49] The Proposed Amendments would require a fund that is not a money market fund but is advised by or sold through a bank to disclose that its shares are not federally insured as follows:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

[50] Item 2(c)(1)(iii). Some commenters asserted that the proposed disclosure was inconsistent with that required by bank regulators in the Interagency Statement on Retail Sales of Nondeposit Investment Products. See Board of Governors of the Federal Reserve System, FDIC, Office of the Comptroller of the Currency, and Office of Thrift Supervision, Interagency Statement on Retail Sales of Nondeposit Products, 6 Fed. Banking L. Rep. (CCH) ¶ 70–113, at 82,598 (Feb. 15, 1994) ("Interagency Statement") (requiring disclosure that the fund is not a deposit or other obligation of the bank). The Commission has confirmed with these bank regulators that no such inconsistency exists, because the disclosure required by the Interagency Statement applies to sales material and not to fund prospectuses. In response to suggestions from the bank regulators, the Commission has revised the legend required for funds that are advised by or sold through banks, to read as follows:

An investment in the Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

The requirement, as amended in this way, is consistent with the requirement now in effect.

Risk/Return Bar Chart and Table. The Proposed Amendments would require a fund's risk/return summary to include a bar chart showing the fund's annual returns for each of the last 10 calendar years and a table comparing the fund's average annual returns for the last 1-, 5-, and 10-fiscal years to those of a broad-based securities market index. Commenters generally supported the proposed bar chart and performance table, but had a number of suggestions about the content and presentation of the information in both. The Commission is adopting the proposed bar chart and table requirements with modifications to reflect suggestions of commenters.[51]

The bar chart reflects the Commission's determination that investors need improved disclosure about the risks of investing in a fund. The bar chart is intended to illustrate graphically the variability of a fund's returns (*e.g.*, whether a fund's returns for a 10-year period have changed significantly from year to year or were relatively even over the period) and thus provide investors with some idea of the risk of an investment in the fund.[52] The average annual return information in the table should enable investors to evaluate a fund's performance and risks relative to "the market."

In the Form N–1A Proposing Release, the Commission requested comment about alternative presentations that could improve fund risk disclosure.[53] In particular, the Commission expressed interest in disclosure that would show a fund's highest and lowest returns (or "range" of returns) for annual or other periods as an alternative, or in addition, to the bar chart. The Commission suggested that a fund could present the information in a separate table or could include it in the performance table.

In response to the Commission's request, some commenters suggested including in a fund's bar chart one or more indexes or other benchmarks (such as 3-month Treasury returns or the rate of inflation) to help investors evaluate the fund's returns by comparisons to other measures of market performance or economic factors.[54] Most commenters, however, opposed requiring additional information in the bar chart, asserting that it could complicate and reduce the effectiveness of the bar chart.

Several commenters supported the inclusion of return information in the bar chart on a quarterly or semi-annual rather than an annual basis. They argued that this change to the bar chart would respond to concerns that investors may not sufficiently appreciate that an investment in a fund may be subject to the risk of a short-term decline in value. This risk, commenters asserted, may not be apparent from the annual returns proposed to be shown in the bar chart. One commenter recommended that the Commission require quarterly returns in the bar chart so that investors would have more information about returns over shorter periods to use in assessing the variability reflected in a fund's past returns. The commenter argued that including returns on an annual basis in the bar chart may not show a significant amount of shorter-term price fluctuation.

The Commission acknowledges that a fund's returns may vary significantly and could decrease in value over short periods and that the annual returns in the bar chart will not necessarily reflect this pattern. On the other hand, the Commission is concerned that requiring quarterly returns over a 10-year period would make the bar chart more complex and less useful in communicating information to investors. In balancing the desire to make typical fund investors aware that fund shares may

[51] Item 2(c)(2). An example of the bar chart and performance table is attached as Appendix B to this release.

[52] In adopting the bar chart requirement, the Commission does not mean to suggest that all, or even a significant portion of all, fund investors equate variability in a fund's returns with the risks of investing in the fund. As discussed below, the Commission acknowledges that investors have a wide range of ideas of what "risk" means. See infra Section II.A.3. Nonetheless, the Commission's bar chart proposal was supported by many investors who expressed strong interest in seeing prospectuses include a version of the bar chart. Focus group participants, for instance, found the bar chart helpful in evaluating and comparing fund investments. Over 75% of individual investors responding to the Risk Concept Release favored a bar chart presentation of fund volatility. Risk Concept Release, *supra* note 18. See also ICI, Understanding Shareholders' Use of Information and Advisers (1997) ("ICI Shareholder Use Study") at 20 and 30 (discussing investors' interest in receiving and understanding fund risk information) and ICI Risk Survey, *supra* note 21. In addition, all commenters responding to the Commission's initiative to simplify money market fund prospectuses supported the proposal to replace the financial highlights information in money market fund prospectuses with a 10-year bar chart reflecting a money market fund's yield. *See* Summary of Comment Letters on Proposed Amendments to the Rules Regulating Money Market Fund Prospectuses Made in Response to Investment Company Act Release No. 21216, at 2 (File No. S7–21–95).

[53] See Form N–1A Proposing Release, *supra* note 8, at 10907.

[54] Form N–1A, as amended, permits a fund to use other indexes in the presentation of the average annual return information in the table accompanying the bar chart. Instruction 2(b) to Item 2(c)(2).

experience fluctuations over shorter periods with its underlying goal that fund documents communicate information in as straightforward and uncomplicated a manner as possible, the Commission has determined to require a fund to disclose, in addition to the bar chart, its best and worst returns for a quarter during the 10-year (or other) period reflected in the bar chart.[55] The Commission believes that this information will assist investors in understanding the variability of a fund's returns and the risks of investing in the fund by illustrating, without adding unwarranted complexity to the bar chart, that the fund's shares may be subject to short-term price fluctuations.

Presentation of Return Information. The Proposed Amendments would require a fund to include the bar chart and table in the risk section of the prospectus risk/return summary under a separate sub-heading that referred to both risk and performance. Several commenters argued that the separate sub-heading requirement was unnecessary and suggested that a fund should be able to choose whether to include any sub-heading. Consistent with the objective of encouraging funds to develop disclosure formats that are most helpful to investors, Form N–1A, as amended, does not require the sub-heading included in the Proposed Amendments.[56] To help investors use the information in the bar chart and table, Form N–1A, as amended, however, does require a fund to provide a brief narrative explanation of how the information illustrates the variability of the fund's returns.[57]

Bar Chart Return Information. The Proposed Amendments would require that a fund's prospectus bar chart show the fund's annual returns for the last 10 calendar years of the fund's existence. The purpose of the calendar year requirement was to facilitate the comparison of annual returns among funds, which typically have fiscal periods that do not correspond to the calendar year.[58] Unlike the proposed bar chart, the proposed performance table required disclosure of a fund's returns for fiscal year periods. In requiring this disclosure to be made for fiscal year periods, the proposal was consistent with existing disclosure requirements for the presentation of other financial information included in a fund's prospectus.

Several commenters argued that using different time periods for the proposed bar chart and performance table would confuse investors and urged the Commission to minimize potential investor confusion by adopting consistent time periods for this information. The Commission is persuaded by these comments and believes that requiring both the bar chart and the performance table to be based on calendar year periods will promote understandable information in fund prospectuses. Therefore, Form N–1A, as amended, requires calendar year periods for both the bar chart and table.[59] Rule 498, as adopted, also requires the bar chart and table in the profile to show calendar year data so that both the profile and the prospectus of a fund will have virtually the same risk/return information.[60]

The Commission is adopting, as proposed, the requirement that a fund calculate the annual returns in the bar chart using the same method required for calculating annual returns in the financial highlights information included in fund prospectuses.[61] The bar chart does not reflect sales loads assessed upon the sale of a fund's shares. although the average annual return information for the fund in the table would reflect the payment of any sales loads.[62] Commenters generally supported this presentation of annual return information. The Commission believes that, in light of the different types of sales loads that may be charged on funds shares, it would be difficult for funds to compute annual returns for the purposes of the bar chart and to communicate the information effectively to investors.[63] In addition, the Commission has concluded that more precise return information is not necessary for the bar chart to serve the purpose of graphically showing fund annual returns and illustrating the variability of an investment in a fund over a 10-year period.

Bar Chart Presentation. The Proposed Amendments would allow a single bar chart to include return information for more than one fund. Most commenters supported the proposal, agreeing that it would give funds the appropriate amount of flexibility to present the information in the bar chart in a manner designed to assist investors in making investment decisions. Under Form N–1A, as amended, the bar chart may include returns for more than one fund, subject to the general requirement that the information presented in the bar chart appear in a clear and understandable manner.[64]

Multiple Class Funds. Although the Commission proposed to permit return information for more than one fund to be included in a single bar chart, the Proposed Amendments would require a fund offering more than one class of its shares in a prospectus to limit the information in the fund's bar chart to one class. Commenters uniformly supported this approach, and the Commission is adopting it as proposed.[65] Unlike individual funds, classes of a fund represent interests in the same portfolio of securities, and the returns of each class differ only to the extent the classes do not have the same expenses. The Commission believes that including return information for all classes offered through a fund's prospectus is not necessary to provide some indication of the risks of investing in the fund. In addition, the table accompanying such a fund's bar chart would provide return information for each class offered in the prospectus so that investors would be able to identify and compare the performance of each class.[66]

The Proposed Amendments would require the bar chart of a fund offering more than one class of shares through a prospectus to reflect annual return

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[55] Item 2(c)(2)(ii).

[56] General Instruction C.1(a) to Form N–1A, as amended, encourages funds to use document design techniques that promote effective communication.

[57] Item 2(c)(2)(i).

[58] The Commission understands that funds increasingly organize themselves as series companies and tend to stagger the financial periods of their series so that audits and financial reporting periods are spread over an entire calendar year.

[59] Item 2(c)(2). Form N–1A, as amended, requires a fund to have at least one calendar year of returns before including the bar chart and requires a fund to modify the narrative explanation accompanying the bar chart and table if the fund does not include the bar chart (*e.g.*, by stating that the information gives some indication of the risks of an investment in the fund by comparing the fund's performance with a broad measure of market performance). Form N–1A, as amended, also requires the bar chart of a fund in operation for fewer than 10 years to include calendar year returns for the life of the fund.

[60] Rule 498(c)(2)(iii). Unlike Form N–1A, as amended, rule 498, as adopted, requires average annual return information in the performance table in the profile to be as of the most recent calendar quarter and updated as soon as practicable after each quarter of a calendar year. See Profile Adopting Release, *supra* note 1. A fund would update the average annual return information included in its prospectus when filing the annual update of its registration statement required by section 10(a)(3) of the Securities Act.

[61] Instruction 1(a) to Item 2(c)(2). Form N–1A, as amended, requires a fund to present the corresponding numerical return adjacent to each bar. Item 2(c)(2)(ii).

[62] Instruction 2(a) to Item 2(c)(2). Form N–1A, as amended, requires a fund whose shares are sold subject to a sales load to disclose that the load is not reflected in the bar chart and that, if it were included, returns would be less than those shown. Instruction 1(a) to Item 2(c)(2).

[63] In contrast, sales loads can be accurately and fairly reflected in annual return information of the type contained in the table by deducting sales loads at the beginning (or end) of particular periods from a hypothetical initial fund investment.

[64] See General Instruction C.3(c).

[65] Instruction 3(a) to Item 2(c)(2).

[66] Instruction 3(c) to Item 2(c)(2).

information for the class offered in the prospectus that had the longest performance history over the last 10 years. When two or more classes have returns for at least 10 years, or returns for the same period but fewer than 10 years, the Proposed Amendments would require annual returns for the class with the greatest net assets as of the end of the most recent calendar year. Most commenters addressing the issue opposed this approach. They argued that, if all classes had existed for the same amount of time, the largest class could change from year to year, thus requiring a fund to change the class reflected in the bar chart. According to the commenters, changes in the information each year could be confusing for investors and result in unwarranted administrative burdens for funds. Commenters suggested that the Commission permit a fund having classes with performance histories extending over the same period of time to include the performance of any existing class in the bar chart, maintaining that the effect of expenses on the returns for different classes of shares is not significant.[67] The Commission is persuaded that allowing a multiple class fund in such a case to choose the class reflected in the fund's bar chart will simplify compliance with Form N–1A's requirements and provide investors with sufficient information to evaluate the variability of returns for any class of the fund. Therefore, Form N–1A, as amended, permits a fund to choose the class to be reflected in the bar chart, subject to certain limitations.[68] Under Form N–1A, as amended, the bar chart must reflect the performance of any class that has returns for at least 10 years (*e.g.*, a fund could not present a class in the bar chart with 2 years of returns when another class has returns for at least 10 years). In addition, if two or more classes offered in the prospectus have returns for different periods shorter than 10 years, the bar chart must reflect returns for the class that has returns for the longest period.

Tabular Presentation of Fund and Index Returns. The Proposed Amendments would require a table accompanying a fund's bar chart to present the fund's average annual returns for the last 1-, 5-, and 10-fiscal years (or for the life of the fund, if shorter) and to compare that information to the returns of a broad-based securities market index for the same periods. The purpose of including return information for a broad-based securities market index was to provide investors with a basis for evaluating a fund's performance and risks relative to the market. The proposed approach also was consistent with the line graph presentation of fund performance required in MDFP disclosure.[69]

Commenters generally supported the proposed performance table, but had several technical suggestions. The Commission is adopting the performance table with revisions to clarify the disclosure requirements for the table.[70]

One commenter suggested that the Commission allow funds that have existed for more than 10 years to include average annual returns for the life of the fund in the performance table. The Commission agrees that this information could be helpful for typical investors in such a fund. Form N–1A, as amended, permits, but does not require, a fund to include performance information in the table for the life of the fund if it exceeds 10 years.[71]

The Proposed Amendments would require a money market fund, in meeting the proposed performance table requirement, to provide its 7-day yield as of the end of its most recent fiscal year. One commenter questioned this requirement, arguing that it would result in money market funds giving outdated information to investors and suggested that disclosure describing how an investor can obtain the fund's current 7-day yield would be preferable. As amended, Form N–1A gives a money market fund the option of providing in its performance table its 7-day yield ending on the date of its most recent calendar year or disclosing a toll-free (or collect) telephone number that an investor can use to contact the fund to obtain its current 7-day yield.[72]

2. Risk/Return Summary: Fee Table (Item 3)

The Proposed Amendments would continue to require a fee table in the prospectus that summarizes the sales charges and fund operating expenses associated with an investment in a fund. Proposed rule 498 also incorporates the fee table requirement in the risk/return summary included in the profile. Including the fee table in both the prospectus and the profile reflects the Commission's strongly held belief in the importance of fees and expenses in a typical investor's decision to invest in a fund. The fee table is designed to help investors understand the costs of investing in a fund and to compare those costs with the costs of other funds. Commenters generally supported the fee table disclosure, and the Commission is adopting it substantially as proposed.

The Commission proposed certain amendments designed to improve communication of the information in the fee table. The Commission proposed to require a narrative explanation of the purpose of the "Example" that accompanies the fee table.[73] Recognizing the trend that the typical fund investment is increasing in size,[74] the Proposed Amendments would increase the initial hypothetical investment included in the Example from $1,000 to $10,000.

Several commenters criticized the Example, arguing that, because it is an arbitrary approximation of a fund's actual expenses, the Example is not helpful to investors. These commenters recommended that the Commission eliminate the Example from the fee table disclosure.

The Commission recognizes that any example necessarily has limitations. On balance, however, the Commission believes that the Example provides

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[67] In making this argument, commenters cited rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3], which provides that a class of shares may have different expenses for shareholder service fees, distribution fees, or other expenses actually incurred in a different amount by the class. The rule does not permit expenses for advisory or custodial fees, or other management fees, to vary among classes.

[68] Instruction 3(a) to Item 2(c)(2).

[69] See MDFP Adopting Release, *supra* note 15, at 19054.

[70] Item 2(c)(2)(ii). Consistent with the Proposed Amendments, Form N–1A, as amended, requires a fund to calculate average annual returns using the same method required to calculate fund performance included in advertisements, which reflects the payment of sales loads and recurring shareholder account fees. Instruction 2(a) to Item 2(c)(2) (incorporating the requirements of Item 21).

[71] Item 2(c)(2)(iii). Form N–1A, as amended, permits a fund that has not had the same adviser for the last 10 years to begin the bar chart and performance information in the table on the date the new adviser began to provide advisory services to the fund, so long as certain conditions are met. Instruction 4 to Item 2(c)(2). Form N–1A, as amended, also requires a fund that changes the index shown in the table to explain the reasons for the change and provide information for both the newly selected and the former index. Instruction 2(c) to Item 2(c)(2). Each of these provisions is consistent with the requirement applicable to the MDFP line graph. Instructions 7 and 11 to Item 5(b).

[72] Item 2(c)(2)(iii).

[73] The Example currently discloses the cumulative amount of fund expenses over 1, 3, 5, and 10 years based on a hypothetical investment of $1,000 and an annual 5% return. The Commission proposed to require funds to include a narrative explanation to the following effect:

This Example is intended to help you compare the cost of investing in the fund to the cost of investing in other mutual funds.

[74] See Letter from John C. Bogle, Chairman of the Board, The Vanguard Group, to Barry P. Barbash, Director, Division of Investment Management, SEC (Sept. 16, 1996) (suggesting that few investors have as little as $1,000 invested in a given fund, and that the average fund investment typically amounts to $10,000 to 25,000, with the median investment probably in the range of $6,000 to 7,000).

useful information that helps a typical investor understand and compare the expenses of different funds.[75] The Example is a relatively straightforward means of illustrating the effect of costs in investing in a fund over time. Expressing expense amounts solely as a percentage amount, as is done in the fee table, may not give the average investor enough information to assess the likely effect of a fund's expenses on a dollar amount of an investment in the fund. The addition of a clear narrative explanation of the purpose of the Example should increase its effectiveness in assisting investors' understanding of the Example, and the Commission is adopting this disclosure requirement as proposed.[76]

To ensure that all account fees (*e.g.*, administrative fees charged to maintain an account) paid directly by shareholders are disclosed, the Proposed Amendments would require a new line item in the shareholder transaction section of the fee table describing account fees charged by a fund. The Commission is adopting this requirement as proposed.[77] In response to comments on the Proposed Amendments, Form N–1A, as amended, clarifies that the table should include account fees that affect a typical investor in a fund and not miscellaneous fees that apply to only a limited number of shareholders based on their particular circumstances.[78]

The Commission proposed to modify some of the captions in the fee table relating to fees and expenses. The revisions were intended to result in fee tables referring consistently to different types of expenses as "fees." In particular, the Proposed Amendments would change the captions for "sales loads" to "sales fees (loads)." The Proposed Amendments also would revise the caption "12b–1 Fees" to read "Marketing (12b–1) Fees." Commenters generally criticized these changes. They maintained that the caption sales fees (loads) was not typically used by the industry or industry commentators and could be confusing to investors. The commenters recommended that the caption in the fee table refer to "sales charges." Commenters also recommended that the caption "Distribution (and/or Service) (12b–1) Fees" would better describe these fees than the term "Marketing (12b–1) Fees." Commenters said that the types of fees that can be paid in accordance with rule 12b–1 under the Investment Company Act extend beyond marketing fees so that referring to rule 12b–1 fees as marketing fees would be inaccurate.

The Commission believes that the terms suggested by commenters are commonly used by the industry and by the press in covering the industry and may be more easily understood by investors than those proposed. Form N–1A, as amended, modifies the caption for sales fees (loads) to refer to sales charges (loads).[79] The Commission is retaining the reference to loads because many investors are familiar with this term. Form N–1A, as amended, also requires funds to use the captions suggested by the commenters in referring to distribution fees in the fee table.

The Commission proposed to continue to require a fund to reflect in the fee table its operating expenses for the most recent fiscal year, taking into account expense reimbursements and fee waiver arrangements.[80] As required by current Form N–1A, a footnote to the fee table would disclose the amount of expenses that would have been incurred had there been no waiver or reimbursement. One commenter expressed strong opposition to showing expenses in the fee table that are reduced by reimbursements or fee waivers. The commenter asserted that investors would interpret the disclosure to mean that the net fee disclosed in the table is what they can expect for the life of their investment in the fund, which may not be the case.

The Commission believes that typical investors need clear disclosure of information about fees charged by funds.[81] Reflecting its continuing concern about the quality of disclosure about fees, the Commission has reconsidered the disclosure of expense reimbursement and fee waiver arrangements. The Commission believes that typical investors may tend to overlook or disregard information about a fund's fee structure if it is included in a footnote. Moreover, requiring the fee table to show fees that a fund will charge under its contractual arrangement with its investment adviser, without regard to temporary arrangements that may decrease these fees, is consistent with other Form N–1A requirements.[82]

In view of its desire to improve the quality of fee disclosure, the Commission has revised Form N–1A to require a fund to disclose in the fee table its operating expenses, not taking into account expense reimbursements and fee waiver arrangements.[83] To ensure that investors have current information about a fund's expenses, however, Form N–1A, as amended, permits a fund to disclose its operating expenses net of reimbursements and waivers in a footnote to the fee table.[84] The Commission believes that the fee table disclosure of fund expenses, as amended, will give an investor clearer information about the long-term costs of an investment in a fund, while at the same time allowing the fund to provide current information about its operating expenses.

3. Investment Strategies and Risk Disclosure (Item 4)

In the Form N–1A Proposing Release, the Commission discussed its concerns about disclosure of fund investments

[75] See Fee Table Adopting Release, *supra* note 14, at 3194.

[76] Item 3.

[77] Form N–1A, as amended, clarifies that a fund should disclose only fees charged by or on behalf of the fund, not fees charged by unrelated third parties. Instruction 1(c) to Item 3.

[78] Instruction 2(d) to Item 3. For example, Form N–1A would not require a fund to include in the fee table a fee charged to accounts with small balances (*e.g.*, $10 annual fee on accounts less than $2,500).

[79] Item 3.

[80] In an expense reimbursement arrangement, the adviser reimburses the fund for any expenses that exceed a predetermined amount. Under a fee waiver arrangement, the adviser agrees to waive a portion of its fees in order to limit fund expenses to a predetermined amount.

[81] See, e.g., Testimony of Arthur Levitt, Chairman, SEC, before the Subcomm. on Finance and Hazardous Materials of the House Comm. on Commerce (Mar. 6, 1997) (explaining the Commission's concern about investor confusion with fund fees); Remarks by Steven M.H. Wallman, Commissioner, SEC, before the ICI's 1995 Investment Company Directors Conference and New Directors Workshop, Washington, D.C. (Sept. 22, 1995) (noting investors' confusion about the assessment of advisory fees).

[82] See, e.g., Instruction 2(a)(i) to Item 3 (requiring funds to disclose deferred sales charges even though they apply only to investors leaving the fund). See also "From Security to Self-Reliance: American Investors in the 1990s," Remarks by Arthur Levitt, Chairman, SEC, before the ICI's General Membership Meeting at the Washington Hilton Hotel, Washington, D.C. (May 22, 1996) (citing a survey by the Investor Protection Trust that found that 2 out of 3 investors believed that no-load mutual funds involve no sales charges or fees, as an example of why the Commission should be concerned about the quality of disclosure of fees charged by funds); Testimony of Barry P. Barbash, Director, Division of Investment Management, SEC, Before the Subcomm. on Capital Markets, Securities, and Government Sponsored Enterprises of the House Comm. on Banking and Financial Services, 104th Cong., 2d Sess. (June 26, 1996) (citing a 1994 survey by the American Association of Retired Persons, the Consumer Federation of America, and the North American Securities Administrators, Inc. that found that the vast majority of American bank customers who hold shares of mutual funds are unaware of the risks and fees involved in the sale of mutual funds).

[83] Instructions 3(d)(i) and 5(a) to Item 3.

[84] Instructions 3(e) and 5(b) to Item 3. A fund also must disclose the period for which the expense reimbursement or fee waiver is expected to continue, or whether it can be terminated at any time at the option of the fund. The Commission expects that, in the latter case, a fund would provide adequate notice to investors and fund shareholders in advance of the termination of the arrangement.

and risks typically found in many fund prospectuses.[85] This disclosure generally consists of descriptions of the types of securities in which a fund may invest and the risks associated with each of those securities.[86] In the Commission's view, disclosing information about all of the securities in which a fund might invest does not help a typical fund investor evaluate how the fund's portfolio will be managed or the overall risks of investing in the fund. The disclosure also adds substantial length and complexity to fund prospectuses, which discourages investors from reading them.

The Commission has concluded that prospectus disclosure would be more useful to a typical fund investor if it emphasized the principal investment strategies of a fund and the principal risks of investing in the fund, rather than the characteristics and risks of each type of instrument in which the fund may invest.[87] The Commission believes that funds are appropriately viewed as a means through which a professional money manager provides its services to investors[88] and that, for that reason, the focus of disclosure about a fund's prospective investments should center on the fund's investment objectives and the principal means used by the fund's adviser to achieve those objectives. Consistent with this view, the Proposed Amendments would require prospectus disclosure that is designed to help investors understand how a particular fund's portfolio will be managed. The purpose of the Proposed Amendments was to implement more effectively the Commission's original goal in adopting Form N–1A that the prospectus should describe a fund's "fundamental characteristics."[89] Commenters generally supported the proposed approach to disclosure of the fund's investment operations and attendant risks, and the Commission is adopting it substantially as proposed.

a. Principal Investment Strategies, Investment Objectives, and Implementation of Investment Objectives. To assist investors in determining whether a fund meets their investment needs, Form N–1A, as amended, continues to require prospectus disclosure of a fund's investment objectives.[90] The Commission proposed to shift the focus of disclosure about how a fund intends to achieve its investment objectives away from the current practice of listing all types of securities in which a fund may invest to a discussion of the fund's overall portfolio management.[91] The Commission proposed to require a fund to disclose in its prospectus the principal strategies that it used to achieve its investment objectives, which would include the particular type or types of securities in which the fund will invest principally. This approach was designed to focus disclosure on a fund's anticipated investment operations rather than on investments that the fund might make.

The Commission continues to believe that a clear, concise, and straightforward discussion of investment objectives and strategies is central to effective prospectus disclosure. Therefore, the Commission is adopting the requirement for a fund to disclose how it intends to achieve its investment goals as proposed.[92]

Under Form N–1A, as amended, whether a particular investment strategy (including a strategy to invest in a particular type of security) is a principal investment strategy depends upon the strategy's anticipated importance in achieving the fund's investment objectives and how the strategy affects the fund's potential risks and returns.[93] The Commission believes that a fund should disclose those strategies that are expected to be the most important means of achieving the fund's objectives and that the fund anticipates will have a significant effect on its performance. Form N–1A, as amended, requires a fund, when determining whether a strategy is a principal investment strategy, to consider, among other things, the portion of assets that it expects to commit to the strategy, the portion of assets that it expects to place at risk by the strategy, and the likelihood that it will lose some or all of those assets in implementing the strategy.[94]

The Commission intends that focusing disclosure on a fund's principal investment strategies[95] will improve the fund's prospectus by eliminating discussions of securities and strategies that do not have a significant role in achieving the fund's investment objectives. Under Form N–1A, as amended, for example, it generally will be unnecessary for a fund (other than, for example, a money market fund) to disclose in its prospectus its cash management practices (*e.g.*, entering into overnight repurchase agreements), because these

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[85] See Form N–1A Proposing Release, *supra* note 6, at 10909.

[86] The investments described often include instruments, such as illiquid securities, repurchase agreements, and options and futures contracts, that do not have a significant role in achieving a fund's investment objectives.

[87] The ICI has supported prospectus disclosure that focuses primarily on a fund's broad investment objectives, practices, and associated risks, and not on particular types of securities in which the fund may invest. See, e.g., Letter from Paul Schott Stevens, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, at 5 (Apr. 8, 1996); Letter from Paul Schott Stevens, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, at 4–6 (July 28, 1995) ("1995 ICI Risk Comment Letter"); Letter from Amy B.R. Lancellotta, Associate Counsel, ICI, to C. Gladwyn Goins, Associate Director, Division of Investment Management, SEC, at 7 (Mar. 7, 1995).

[88] See "Can We Make Donkeys Fly?," Remarks by Barry P. Barbash, Director, Division of Investment Management, SEC, before the Business Law Section of the ABA, Washington, D.C., at 13 (Nov. 11, 1994); see also 1 T. Lemke, G. Lins & A.T. Smith III, Regulation of Investment Companies § 1.01, at 1–1 (1997).

[89] See 1982 Form N–1A Proposing Release, *supra* note 13, at 815; 1983 Form N–1A Adopting Release, *supra* note 12, at 39729.

[90] Item 4(a). A fund may refer to its investment objectives as investment goals or any other term that clearly communicates the principal investment design of the fund. Form N–1A, as amended, continues to require a fund to disclose in its prospectus when it may change its investment objectives without a shareholder vote. *Id.* Under current practice, some funds disclose in their prospectuses when a shareholder vote *is* required to change its investment objectives. The Commission believes that disclosure of this sort is of limited significance to the typical fund investor. In the Commission's view, most investors typically would not expect the investment objectives of their funds to change without their approval. Consistent with this view, Form N–1A, as amended, requires a fund to disclose in its SAI, and not in its prospectus, when a shareholder vote is required to change its investment objectives. Item 12(c)(1)(vii).

[91] Form N–1A currently requires a fund to disclose the types of securities in which it invests or will invest principally, as well as any "special investment practices and techniques" that the fund will use in connection with investing in those securities. Form N–1A also requires disclosure, subject to certain limitations, about "significant investment policies or techniques" that a fund intends to use. One of those limitations directs a fund to limit prospectus disclosure about practices that place no more than 5% of the fund's assets at risk. Many funds disclose in their prospectuses information about securities and investment practices that do not, and may not ever, place more than 5% of the fund's assets at risk, often to retain the flexibility to exceed the 5% threshold in the future. The Commission proposed to eliminate the 5% standard. Form N–1A Proposing Release, *supra* note 8, at 10909. The standard has been deleted in Form N–1A, as amended.

[92] Item 4(b). Instruction 1 to Item 4(b)(1) defines a strategy to include any policy, practice, or technique used to achieve a fund's investment objectives.

[93] Instruction 2 to Item 4(b)(1). Form N–1A currently directs a fund not to disclose so-called "negative" practices (*i.e.*, practices in which a fund may not or does not intend to engage). Instruction 3 to Item 4(b)(1) retains this limitation by providing that a negative strategy is not a principal investment strategy. Avoiding disclosure about negative strategies is intended to ensure that prospectus disclosure states what the fund will do to achieve its investment objectives, rather than what the fund will not do.

[94] Instruction 2 to Item 4(b)(1). As amended, Form N–1A requires a fund to disclose strategies that are not principal strategies in the SAI. Item 12(b).

[95] A bond fund, for example, typically would discuss generally the maturities, durations, ratings, and types of issuers of the bonds in which the fund invests principally.

practices are not typically among the principal investment strategies that a fund uses to achieve its investment objectives.[96]

The Proposed Amendments would require a fund, in discussing its principal investment strategies in its prospectus, to explain in general terms how the fund's adviser decides what securities to buy and sell. This requirement sought to provide investors with essential information about the fund's investment approach and how the fund's portfolio would be managed. One commenter questioned this requirement, arguing that it could place undue emphasis on a fund's decisions to invest in or sell particular securities and result in boilerplate disclosure. The Commission continues to believe that a general discussion of the methods of analysis and investment strategies that a fund's adviser will use in managing the fund will provide typical investors with information that will help them in deciding whether to invest in a fund. Therefore, the Commission is adopting the proposed disclosure requirement regarding the manner in which the investment adviser determines to buy and sell securities.[97]

Concentration. The Commission proposed to continue to require a fund to disclose in its prospectus any policy to concentrate its investments in any industry or group of industries. This requirement reflects the view that such a policy is likely to be central to a fund's ability to achieve its investment objectives,[98] and that a fund that concentrates its investments will be subject to greater risks than funds that do not follow the policy. The Commission's staff has taken the position for purposes of the concentration disclosure requirement that a fund investing more than 25% of its assets in an industry is concentrating in that industry.[99] The Proposed Amendments incorporated this percentage test into Form N–1A.

Commenters supported requiring a fund to disclose in its prospectus its policies on industry concentration,[100] and the Commission continues to believe that 25% is an appropriate benchmark to gauge the level of investment concentration that could expose investors to additional risk. Therefore, the Commission is adopting this disclosure requirement as proposed.[101]

Temporary Defensive Positions. The Proposed Amendments would require disclosure about a fund's policy that permits the fund to take "temporary defensive positions" to respond to adverse market, economic, political, or other conditions. The purpose of the requirement was to make investors aware of potential changes in a fund's investments that are not generally contemplated by, or are otherwise inconsistent with, a fund's principal investment objectives and policies. In particular, the Proposed Amendments would require a fund to disclose the percentage of its assets that may be committed to temporary defensive positions (*e.g.*, up to 100% of the fund's assets), the risks, if any, associated with the positions, and the likely effect of these positions on the fund's performance. Although commenters generally supported disclosure that a fund may take temporary defensive positions, they found problematic disclosure of the percentage of assets that may be committed to temporary defensive positions and the likely effect of these positions on the fund's performance. Commenters argued that, to maintain flexibility, a fund typically would disclose that all of its assets could be committed to temporary positions. The commenters maintained that such disclosure was boilerplate and would not be meaningful to investors. In addition, commenters asserted that funds would find it difficult to predict the likely effect of temporary defensive positions on their performance.

The Commission believes that a typical fund investor would want to know about investment positions that a fund can take from time to time that are inconsistent with the fund's central investment focus. On the other hand, the Commission is aware that, in practice, the disclosure about temporary investment positions currently appearing in some fund prospectuses is so lengthy and detailed as to suggest incorrectly that a fund's temporary investment policies are more important than the fund's investment objectives and the principal investment strategies used to achieve them. The Commission believes that disclosure of this sort, which discusses possible but not probable investments of funds, is inconsistent with the fundamental disclosure principles underlying Form N–1A. In the Commission's view, however, disclosure that a fund may take temporary defensive positions to respond to market conditions will alert investors to the possibility that a fund may vary its investments on a temporary basis. Therefore, Form N–1A, as amended, requires a fund to disclose, if applicable, that in response to unfavorable market conditions it may make temporary investments that are not consistent with its principal investment objectives and policies.[102]

Portfolio Turnover. Form N–1A currently requires all funds to state their portfolio turnover rates in their financial highlights tables included in their

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[96] Under the disclosure principles incorporated into Item 4 of Form N–1A, as amended, a fund that has a principal investment strategy of allocating its assets among stocks, bonds, and money market instruments also would need to disclose its use of cash equivalents. Whether a fund needs to include disclosure in its prospectus about matters such as holding or trading stock futures and option contracts, engaging in securities lending, purchasing securities on a "when-issued" basis, or investing in illiquid or restricted securities will depend on the extent to which these instruments or practices have a significant role in achieving the fund's investment objectives. A fund generally would not need to include disclosure about restricted securities in its prospectus because investments in this type of security usually would not be so significant as to constitute a principal investment strategy of the fund. Whether a fund's use of stock futures, option contracts, or other derivatives would need to be disclosed in the fund's prospectus would depend in large part on whether the strategy poses the risk of substantial gains or losses for the fund.

[97] Item 4(b)(2). In meeting this requirement, an equity fund could describe, for example, whether it emphasizes value or growth, or blends the two approaches. A value-oriented fund might state that the fund's adviser selects stocks that it considers to be undervalued by recognized measures of economic value such as earnings, cash flow, and book value. Other types of disclosure about a fund's investment philosophy might include whether the fund invests in stocks based on a "top-down" analysis of economic trends or a "bottom-up" analysis based on the financial condition and competitiveness of individual companies.

[98] That such a policy can be central to a fund's meeting its investment objective is suggested by section 8(b)(1) of the Investment Company Act [15 U.S.C. 80a–8(b)(1)], which requires a fund to disclose in its registration statement any policy to concentrate its investments in a particular industry or group of industries. Under section 13(a)(3) [15 U.S.C. 80a–13(a)(3)], a fund must obtain shareholder approval to change a policy to concentrate its investments.

[99] Guide 19 to Form N–1A.

[100] Some commenters questioned an existing position of the Commission's staff regarding the ability of a fund to adopt a policy of shifting between concentrated and non-concentrated status. One commenter requested reconsideration of the staff's long-standing position that a fund cannot, consistent with the provisions of sections 8(b)(1) and 13(a)(3), have an investment policy permitting the fund to concentrate or not concentrate its investments as determined by the fund's board in its discretion. The commenter argued that this position was too rigid and that a fund's board of directors should have the flexibility to shift the fund's concentration policy, subject to making appropriate disclosure to fund shareholders. The Commission recognizes that fund investment practices have changed as a result of the growth of securities markets and assets invested in funds. The Commission believes that it may be appropriate to reconsider the issue raised by the commenter, but has concluded that the issue should not be reconsidered in the context of the revisions of Form N–1A being adopted today. The Commission has requested that the Division review its positions on concentration, consulting with industry representatives as appropriate, with a view toward allowing funds a greater degree of flexibility in establishing concentration policies.

[101] Instruction 4 to Item 4(b)(1).

[102] Instruction 6 to Item 4(b)(1).

prospectuses.[103] Under the Proposed Amendments, a fund would be required to supplement the information in its financial highlights table by disclosing certain information about its portfolio turnover rate if it anticipated having a turnover rate of 100% or more in the coming year.[104] The disclosure would be required to include an explanation of the tax consequences and effect of increased trading costs on the fund's performance.[105] Most commenters questioned or opposed the proposed disclosure about portfolio turnover rate. Some commenters suggested that the Commission move this disclosure to the SAI or require it in the MDFP in fund shareholder reports. Other commenters argued that a fund's portfolio turnover rate may reflect the fund's response to particular market events, or special circumstances affecting the fund's investments, that are difficult to predict. These commenters argued further that the unpredictable nature of fund portfolio turnover rates would lead to generic or boilerplate disclosure that would not be meaningful to investors in assessing various funds. The commenters suggested that Form N–1A should instead require disclosure about portfolio turnover rates as part of a discussion of a fund's principal investment strategies when a fund's investment approach is expected to include active and frequent trading (as opposed to, *e.g.*, a "buy and hold" strategy).

The Commission continues to believe that a discussion about a fund's portfolio turnover in some cases is relevant to typical fund investors. The Commission notes, for instance, that increased portfolio turnover can on some occasions result in tax consequences that can be significant to investors and that can be viewed as a cost to an investor of holding fund shares. Moreover, investors may find information about portfolio turnover particularly relevant in light of recent changes to the tax laws that reduce the tax rate on capital gains.[106] The Commission agrees with commenters, however, that disclosure about portfolio turnover and its consequences should be made only if an increased portfolio turnover rate is likely to result from the fund's investment objectives and principal investment strategies and would have a significant effect on a fund's returns. Therefore, Form N–1A, as amended, requires a fund to discuss the consequences of its portfolio turnover rate if the fund anticipates that active and frequent trading of portfolio securities will be a likely result of implementing its principal investment strategies.[107]

Classification and Policies. The Commission proposed to move to the SAI disclosure about a fund's legal status as an open-end management company,[108] as well as disclosure relating to certain policies identified under the Investment Company Act, such as borrowing money, issuing senior securities, underwriting securities issued by other persons, investing in real estate or commodities, and making loans.[109] Commenters supported moving this disclosure, agreeing that it is not likely to be significant to a typical fund investor. Form N–1A, as amended, requires the disclosure to appear in the SAI.[110]

b. Risk Disclosure. Risk disclosure in fund prospectuses typically consists of detailed, and often technical, descriptions of the risks associated with particular securities in which a fund may invest. Just as disclosure about each type of security in which a fund may invest does not appear to communicate effectively to investors how the fund's portfolio will be managed, disclosure about the risks associated with each type of security in which the fund may invest does not effectively communicate to them the overall risks of investing in the fund. In the Commission's view, disclosing the risks of each possible portfolio investment, rather than the overall risks of investing in a fund, does not help investors evaluate a particular fund or compare the risks of the fund with those of other funds.

The Commission proposed, consistent with its conclusion that mere inventories of potential portfolio securities do not assist typical investors in selecting among funds, to modify prospectus disclosure requirements in Form N–1A about the risks associated with specific securities. The Proposed Amendments would require a fund to disclose the risks to which the fund's particular portfolio as a whole is expected to be subject and to discuss the circumstances that are reasonably likely to affect adversely the fund's net asset value, yield, or total return. Commenters generally supported the proposed approach to the disclosure of risk, and the Commission is adopting it as proposed.[111]

The Commission notes that a fund could meet the risk disclosure requirements of Form N–1A, as amended, by including in its prospectus a discussion of the risks of the asset class or classes that the fund expects to hold principally, together with a discussion of the risks to the fund of holding specific types of securities within the asset class or classes. Under such an approach, a fund investing in the equity securities of companies with small market capitalizations, for example, would discuss market risk as a general risk of holding equity securities, as well as the specific risks associated with investing in small capitalization companies (*e.g.*, that these stocks may be more volatile and have returns that vary, sometimes

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[103] Item 3 of Form N–1A. Form N–1A, as amended, retains this requirement. Item 9.

[104] See Form N–1A Proposing Release, *supra* note 8, at 10910.

[105] The Proposed Amendments would require a fund to disclose its anticipated portfolio turnover rate and what that rate means (*e.g.*, that a portfolio turnover rate of 200% is equivalent to the fund buying and selling all of the securities in its portfolio twice in the course of a year). The Proposed Amendments also would require a fund to explain the tax consequences to shareholders of the fund's high portfolio turnover rate. In addition, the Proposed Amendments would require a fund to explain how trading costs associated with the fund's high portfolio turnover may affect the fund's performance.

[106] See *infra* note 164.

[107] Instruction 7 to Item 4(b)(1).

[108] As explained in the Form N–1A Proposing Release, this information is technical in nature and repetitive of other information required to be disclosed elsewhere in a fund's prospectus. All funds that register on Form N–1A must be classified as management companies under section 4 of the Investment Company Act and subclassified as open-end companies under section 5. 15 U.S.C. 80a–4, –5. Funds may be further subclassified as diversified or non-diversified under section 5.

[109] Section 8 of the Investment Company Act requires a fund to disclose these policies in its registration statement. Section 8 also requires a fund to disclose in its registration statement its policies on concentration and portfolio turnover, see *supra* notes 100 and 105 and accompanying text, and any other policies that the fund deems fundamental or that may not be changed without shareholder approval. Although they are not required to do so, some funds disclose in their prospectuses their policies with respect to the practices identified in section 8. As noted in the Form N–1A Proposing Release, *supra* note 8, at 10911, the Proposed Amendments sought to provide a clearer directive to disclose these policies in the SAI. To the extent it is a principal investment strategy of a fund within the meaning of Item 4(b)(1) of Form N–1A, as amended, however, a practice identified in section 8 would be required to be disclosed in the fund's prospectus.

[110] Items 12(a) and (c). Form N–1A, as amended, continues to require a non-diversified fund to disclose its non-diversified status in the prospectus. See Item 2(c)(iv). In particular, the Form requires a non-diversified fund to describe the effects of non-diversification (*e.g.*, by indicating that, compared to diversified funds, the fund may invest a greater percentage of its assets in a particular issuer) and to disclose the risks of investing in the fund.

[111] Item 4(c). The requirement that a fund disclose the risks to which its particular portfolio as a whole is subject is intended to elicit risk disclosure specific to that fund. In meeting this requirement, a growth fund, for example, would be required to disclose the risks of the types of growth stocks in which the fund invests or expects to invest, as opposed to describing the general risks of equity securities.

significantly, from the overall stock market).[112]

The Commission did not propose to require a fund to disclose information designed to quantify its expected risk levels, citing, among other things, the lack of a broad consensus as to what measure of risk would best serve fund investors.[113] Comments submitted in response to the Commission's Risk Concept Release asserted that investors have too wide a range of investment goals and ideas of what "risk" means to be well served by a single quantitative risk measure. In addition, commenters argued that, if the Commission mandated a risk measure, investors might rely on it as a definitive standard despite the lack of general agreement on how to measure risk.

As adopted, the prospectus risk/return summary and amendments to the general risk disclosure requirements of Form N–1A are designed to improve fund risk disclosure without raising the concerns associated with Commission-mandated quantitative information. While it is not adopting specific quantitative risk disclosure requirements, the Commission believes that new approaches to measuring risk are emerging and that quantitative risk information may be useful to some investors.[114] The Commission notes that a fund may include quantitative risk disclosure in its prospectus if the information is presented in a manner consistent with the guidelines on the inclusion of information not required by Form N–1A.[115]

4. Management's Discussion of Fund Performance (Item 5)

The Proposed Amendments would continue to require a fund to provide its MDFP and the related line graph comparing the fund's returns to a broad-based securities market index in either its prospectus or its annual report. The Commission is adopting the MDFP as proposed with minor changes.[116] The Commission notes in support of this decision that a review of MDFP disclosure by the Commission's Division of Investment Management ("Division") indicates that the discussion of fund performance and the line graph have generally provided fund shareholders with useful, comparative information about a fund's performance.

As discussed in the Proposed Amendments, funds typically choose to include the MDFP in their annual reports, rather than in their prospectuses. This choice may be explained, in part, by the relevance of the MDFP to other current financial information appearing in annual reports.[117] As a result of recent amendments to the Investment Company Act, the Commission has the authority to require additional disclosure in annual and semi-annual reports as necessary or appropriate in the public interest or for the protection of investors.[118] Several commenters recommended that the Commission exercise this authority and require the MDFP to appear in fund annual reports, asserting, among other things, that shareholders read these reports more frequently than prospectuses. Commenters also suggested that, like other information contained in an annual report, the MDFP analyzes a fund's past performance rather than the fund's anticipated future course of action, which is the central focus of a fund's prospectus.

Although it acknowledges that a fund's annual report may be the preferred location for the MDFP disclosure, the Commission is deferring consideration of its requirements as to the placement of the MDFP discussion. The Commission has concluded that MDFP disclosure should be considered as part of a comprehensive reassessment of the Commission's existing rules specifying the disclosure to be included in fund reports to shareholders. The Commission believes that such an initiative would be an important future step in improving the quality of fund disclosure documents and has directed the Division to begin work on proposed amendments to fund periodic reporting requirements. The Commission has asked that, in connection with such a proposal, the Division consider whether certain disclosure required by Form N–1A would be more useful to investors in shareholder reports. In this regard, the Commission notes its preliminary view that an "integrated" approach to registration and reporting requirements could improve the overall information about a fund available to investors.[119]

5. Management, Organization, and Capital Structure (Item 6)

a. Management and Organization. The Commission proposed to abbreviate disclosure in the prospectus about a fund's management and organization and move certain of this information to the SAI. Commenters generally supported the Proposed Amendments, and the Commission is adopting them as proposed with modifications to reflect suggestions of commenters.

Management Disclosure. Under existing Form N–1A, all funds must disclose the rate of fees that they pay their investment advisers in their fee tables. As stated above, the Commission has retained this requirement, which the Commission believes is among the core requirements of the Form. The Proposed Amendments would continue to require, in addition to the disclosure contained in the fee table, prospectus disclosure about investment advisory services provided to, and investment advisory fees paid by, a fund. Some commenters recommended eliminating disclosure about the investment advisory fees, which they argued is merely duplicative of the information in the fee table. The Commission disagrees with this argument. The Commission believes that a concise and straightforward description of the services that an investment adviser provides to a fund along with disclosure

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[112] The Commission emphasizes that this approach is one way, but not the only way, that a fund can seek to use in meeting the risk disclosure requirements of Form N–1A, as amended.

[113] See Form N–1A Proposing Release, *supra* note 8, at 10911. The Risk Concept Release requested comment whether quantitative risk measures, such as standard deviation, beta, and duration, would help investors evaluate and compare fund risks. Risk Concept Release, *supra* note 18, at 17176. While more than half of the individual commenters and some industry members expressed a desire for some form of quantitative risk information, commenters did not broadly support any one risk measure. In addition, a number of commenters strongly criticized requiring disclosure of quantitative risk information. *See, e.g.*, 1995 ICI Risk Comment Letter, *supra* note 87, at 10–16 (questioning, among other things, the feasibility of developing a single, all-encompassing measure of fund risk and whether quantitative information would be understood and accurately used by fund investors).

[114] See, *e.g.*, Walbert, What's the Risk?, Institutional Investor, June 1997, at 188; Whitford, Why Risk Matters, Fortune, Dec. 29, 1997, at 147.

[115] See General Instruction C.3(b).

[116] Item 5.

[117] See Form N–1A Proposing Release, *supra* note 8, at 10912.

[118] National Securities Markets Improvement Act of 1996, Pub. L. 104–290 (1996) ("Improvements Act"), section 206(f) (amending section 30 of the Investment Company Act [15 U.S.C. 80a–29] to add new paragraph (f)).

[119] In the past, the concept of "integrated" disclosure for funds has addressed eliminating duplicative registration requirements under the Investment Company Act and the Securities Act. See Investment Company Act Release No. 10378 (Aug. 28, 1978) [43 FR 39548] (adopting integrated registration statements for funds and closed-end investment companies by replacing separate registration statement forms under the Investment Company Act and Securities Act). New disclosure initiatives for funds could expand the concept of integrated disclosure to include an approach similar to that adopted for corporate issuers, which integrates registration statement disclosure requirements with periodic reports. See Securities Act Release Nos. 6235 (Sept. 2, 1980) [45 FR 63693] and 6383 (Mar. 3, 1982) [47 FR 11386] (proposing and adopting new forms for the offering of securities under the Securities Act). At least one commenter has cited potential benefits to fund shareholders of an integrated approach to fund disclosure. T. Lemke, Mutual Fund Disclosure Revisited, Investment Companies 1989 (Practising Law Institute's Corporate Law and Practice Course Handbook Series No. 605).

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of the investment advisory fee rate for a recent fiscal year, as well as providing this information in a single place in a prospectus, can help a typical investor understand the management of the fund. Therefore, the Commission is adopting the disclosure requirements as proposed.[120]

In the Form N–1A Proposing Release, the Commission requested comment whether information about the amount of fees paid to a sub-adviser or sub-advisers of a fund helps investors evaluate and compare the fund to other funds. The Commission also asked whether this type of disclosure obscures the aggregate investment advisory fee paid by a particular fund.[121] Most commenters supported disclosure of the aggregate fee only, maintaining that information about individual sub-advisory fees is not relevant to investors because it does not help them compare the fees charged by different funds. The Commission is persuaded that information about sub-advisory fees is not necessary for a typical fund investor, but may be of interest to some investors. Therefore, Form N–1A, as amended, requires prospectus disclosure of the aggregate advisory fees paid by a fund and disclosure in the SAI of the amount of sub-advisory fees paid by the fund.[122]

Portfolio Manager. The Proposed Amendments would continue to require prospectus disclosure indicating the person or persons responsible for the day-to-day management of a fund's portfolio. Under the Proposed Amendments, and as currently permitted by instructions to Form N–1A, a fund could, in meeting this requirement, indicate that a committee was responsible for a fund's portfolio management if, under the organizational arrangements of the fund (or its investment adviser), no one person was responsible for making recommendations to the committee.

One commenter criticized the proposed portfolio manager disclosure requirement, arguing that it may have the effect of creating the false impression that the identity of the individual portfolio manager of a fund is paramount to the fund's performance. According to the commenter, the collective experience, resources, personnel, and reputation of a fund's investment adviser often are of greater importance to the fund's performance than the fund's portfolio manager. The commenter recommended that, to enable funds to describe their management structures more accurately than they can under Form N–1A's existing provisions, the Commission require disclosure of the identity of a fund's portfolio manager only when a change in the identity of the manager would be material to investors (e.g., when a fund group promotes the identity of individual portfolio managers). The commenter suggested that the Commission, in the alternative, clarify the disclosure obligations of a fund for which the day-to-day responsibilities for the fund's portfolio investments are shared by a committee and certain individuals.

The Commission is not persuaded that it should adopt the commenter's recommendation that the Commission tie portfolio manager disclosure to a fund group's marketing efforts. Such a recommendation is substantially similar to proposals considered and rejected by the Commission when it adopted Form N–1A's existing portfolio manager disclosure requirement.[123] The Commission believes that typical investors in a fund should have clear and succinct information about the individuals who significantly affect the fund's investment operations. In the Commission's experience, Form N–1A's existing requirement appropriately serves this purpose and should not be changed significantly. To the Commission's knowledge, the requirement has not generally resulted in funds inaccurately describing the individuals responsible for their management.

Although the Commission believes that Form N–1A's portfolio manager disclosure requirements should not be changed significantly, the Commission has concluded that it is appropriate to provide additional guidance in Form N–1A as to the disclosure obligations of a fund for which day-to-day management responsibilities are shared. New instructions to Form N–1A's portfolio manager disclosure requirements have been added for this purpose.[124]

Legal Proceedings. The Proposed Amendments would continue to require prospectus disclosure of any material pending legal proceedings involving a fund, its investment adviser, or principal underwriter. The Commission also proposed to expand Form N–1A's legal proceedings disclosure requirement to cover those proceedings contemplated by a governmental authority. In proposing this change, the Commission sought to conform Form N–1A's requirements to those included in other Commission forms applying to other types of issuers.[125]

Some commenters questioned the requirement that a fund disclose contemplated proceedings, arguing that a fund would find it difficult to assess whether proceedings of a governmental entity are in fact contemplated. The Commission is not persuaded by this argument and has adopted the legal proceedings requirement as proposed.[126] In support of its decision, the Commission notes that issuers that have been subject to the requirement appear not to have experienced significant difficulty in complying with it.

Board of Directors. Form N–1A currently requires a fund to include in its prospectus a brief description of the responsibilities of the fund's board of directors under the applicable laws of the jurisdiction in which the fund is organized. Recognizing that the disclosure provided by a fund in response to this item typically recites the substance of specific legal requirements, the Commission proposed to move this disclosure to the SAI. Commenters supported disclosing the director information in the SAI, arguing that the information does not help a typical investor make a decision to invest in a fund. Form N–1A, as amended, requires a fund to disclose this information in the SAI.[127]

The Commission requested comment in the Form N–1A Proposing Release whether a fund's prospectus should include the names, experience, and compensation of a fund's directors, as well as information, such as addresses and telephone numbers, indicating how a shareholder could contact the directors.[128] The Commission also requested comment whether this information, if required, should be given only for a fund's independent directors, accompanied by disclosure of the number of independent directors in comparison to the number of directors on the fund's board.[129]

Most commenters strongly opposed additional disclosure about directors in

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[120] Item 6(a).

[121] See Form N–1A Proposing Release, *supra* note 8, at 10912.

[122] Instruction 3 to Item 6(a)(1) and Item 15(a)(3).

[123] See MDFP Adopting Release, *supra* note 15, at 19051–52.

[124] Instructions to Item 6(a)(2).

[125] See Item 12 of Form N–2 [17 CFR 274.11a–1] for closed-end investment companies; Item 103 of Regulation S–K [17 CFR 229.103] for non-investment company issuers. See also Investment Company Act Release No. 19155 (Nov. 30, 1992) [57 FR 56862] (modifying Form N–2 to conform to Item 103).

[126] Item 6(a)(3).

[127] Item 13(a).

[128] Form N–1A Proposing Release, *supra* note 8, at 10912.

[129] The Investment Company Act contains a number of requirements relating to the composition of a fund's board. See, *e.g.*, sections 10(a) and 15(f) of the Investment Company Act [15 U.S.C. 80a–10(a), –15(f)].

the prospectus. While a few commenters supported identifying the directors in the prospectus, most argued that this information is not essential to a typical investor in making a decision about investing in a fund and would only serve to lengthen the prospectus. The commenters recommended that the SAI or annual report to shareholders would be a better place for disclosing the identity of directors.

Commenters addressing the issue uniformly opposed requiring a fund to disclose directors' compensation in the prospectus, arguing that these fees are only a small part of total fund expenses and are not relevant to a typical investor in a making a decision to invest in a fund. The commenters also noted that director compensation is disclosed in a fund's SAI, where it can be used by those investors interested in the information, and in a fund's proxy statement, where it can be assessed by all shareholders of the fund in the context of an election of directors.[130]

All commenters addressing the issue emphatically opposed the disclosure of information in either the prospectus or the SAI indicating how shareholders can contact directors. Commenters, particularly independent directors of funds, argued that this information would result in an unwarranted loss of privacy for board members and numerous calls to directors to which they would be ill-equipped to respond. Commenters also argued that disclosure of this information would serve as a disincentive for qualified individuals to serve as directors and that all investor comments regarding a fund should be directed to representatives of the fund's management, and not to its directors.

The Commission believes that mandating more information about fund directors than is available under its existing disclosure rules may be appropriate in light of independent directors' role as "watchdogs" of fund shareholders as contemplated by the Investment Company Act.[131] The Commission, however, is not convinced, particularly in light of the overwhelmingly negative comment on this issue, that the prospectus is the appropriate document for this disclosure. Therefore, Form N–1A, as amended, does not require additional information of the sort described in the Proposed Amendments to be provided about a fund's directors. The Commission, however, has directed the Division to consider director disclosure issues as part of an initiative to improve shareholder reports.[132]

Management and Organization. The Commission proposed to move to the SAI two items of disclosure about a fund's management and organization that the Commission believes are only of minimal importance to typical fund investors. The Proposed Amendments would no longer require a fund to disclose in its prospectus the name of any person that controls the fund's investment adviser and the name of any person that controls the fund.[133] The Proposed Amendments also would no longer require a fund to state in its prospectus, if applicable, that the fund engages in brokerage transactions with affiliated persons and allocates brokerage transactions based on the sale of fund shares.[134] The information called for in response to these two items typically results in generic disclosure that restates applicable legal requirements and does not appear to assist investors in deciding whether to invest in a particular fund. Commenters generally supported placing this information in the SAI. Form N–1A, as amended, requires a fund to disclose information in the SAI regarding controlling persons of the investment adviser and brokerage transactions with affiliated persons.[135]

The Commission proposed to move to the SAI disclosure about a fund's form of organization along with the date and state of the fund's incorporation. Because most funds are organized in one of a few states as corporations or business trusts, disclosure about a fund's organization does not appear to help investors evaluate a particular fund or compare the fund to other funds. For that reason, the Commission is adopting its proposal to move information about a fund's organization to the SAI.[136]

The Proposed Amendments would not include the disclosure about a fund's expenses currently required by Form N–1A in the discussion of the fund's management. This information is included in the fee table and the financial highlights table. Additional information about fund expenses also is available in a fund's SAI. Eliminating repetitive information is one of the basic objectives of the Commission's efforts to improve fund disclosure documents. Consistent with this goal, Form N–1A, as amended, does not require this additional information about fund expenses in disclosure about a fund's management.

b. Capital Structure. The Proposed Amendments would continue to require prospectus disclosure about any limits on the transferability of, and material obligations or potential liabilities associated with, a fund's shares. One commenter suggested that disclosure should appear in the SAI rather than in the prospectus, asserting that the information is technical and generally does not vary among funds. The commenter recommended that the Commission instead limit disclosure in a fund's prospectus to unusual provisions that may pose special risks to the fund's shareholders. The Commission agrees that descriptions of all potential restrictions and possible consequences of holding fund shares are of only marginal significance to typical investors in selecting among funds. Form N–1A, as amended, thus requires prospectus disclosure of only unique or unusual restrictions or potential liabilities associated with holding a fund's shares (other than investment risks) that may expose an investor in the

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[130] Item 13(d); Item 22(b)(6) of Schedule 14A [17 CFR 240.14a–101].

[131] These responsibilities of directors include, among other things: (i) Evaluating and approving the fund's investment advisory and principal underwriting contracts (sections 15(a), (c) [15 U.S.C. 80a–15(a), (c)]) and the use of fund assets to pay for the distribution of fund shares (rule 12b–1); (ii) selecting the fund's independent public accountants (section 32(a)(1) [15 U.S.C. 80a–31(a)(1)]); and (iii) reviewing and approving transactions with affiliates under various rules (*e.g.*, rule 10f–3 [17 CFR 270.10f–3]; rule 17a–7 [17 CFR 270.17a–7]; rule 17e–1 [17 CFR 270.17e–1]). Directors have fiduciary duties to the fund and its shareholders under section 36(a) of the Investment Company Act [15 U.S.C. 80a–35(a)] and under state law. See 3 W. Fletcher, Cyclopedia of the Law of Private Corporations section 838 (rev. perm. ed. 1994); *Hanson Trust PLC* v. *ML SCM Acquisition, Inc.*, 781 F.2d 264, 275 (2d Cir. 1986). See also *Burks* v. *Lasker*, 441 U.S. 471 (1979) (upholding the authority of independent directors to take actions under state law to the extent not inconsistent with the policies of the Investment Company Act and the Investment Advisers Act of 1940 [15 U.S.C. 80b–1, *et seq.*] (the "Advisers Act")).

[132] See *supra* note 119 and accompanying text.

[133] Transactions between controlling persons and a fund are subject to restrictions under the Investment Company Act. *See, e.g.*, section 17 [15 U.S.C. 80a–17] and rules 17a–6 and 17d–1 [17 CFR 270.17a–6, .17d–1].

[134] Payment of commissions to affiliated brokers is governed by section 17(e) of the Investment Company Act [15 U.S.C. 80a–17(e)] and rule 17e–1 [17 CFR 270.17e–1].

[135] Items 15(a) and 16(b)(1).

[136] Item 11(a). The Commission proposed to continue to require a fund to disclose its form of organization and place of incorporation in the prospectus if a fund is organized outside the United States and registered under section 7(d) of the Investment Company Act [15 U.S.C. 80a–7(d)]. Although this type of organization is permitted by the Investment Company Act, only a limited number of funds that are organized and incorporated outside of the United States have registered under the Act. A fund organized in this manner would be subject to certain legal requirements under the Investment Company Act, regardless of whether those requirements were described in the fund's prospectus. Following one of Form N–1A's underlying principles to avoid prospectus disclosure that simply restates applicable legal provisions, the Commission has determined to incorporate this disclosure requirement in Item 11(a) of the SAI.

fund to significant risks.[137] Under Form N–1A, as amended, a fund would be required to discuss in its SAI generally applicable legal provisions relating to holding fund shares.[138]

The Proposed Amendments would move disclosure about shareholder voting rights to the SAI. In explaining this decision, the Commission stated that the Investment Company Act sets out specific rights of fund shareholders,[139] which typically results in this disclosure being generic in nature and of little consequence to investors in evaluating and comparing funds. Commenters generally supported including this information in the SAI, agreeing that it is not essential to an investment decision. Form N–1A, as amended, requires this disclosure in the SAI.[140]

Form N–1A currently requires a fund to describe in its prospectus any class of senior securities issued by the fund, and any "other class" of its shares that is outstanding. In the Commission's experience, disclosure in fund prospectuses made in response to this requirement merely restates legal requirements in the Investment Company Act and its rules, which limit a fund's ability to issue certain classes of shares or senior securities.[141] The Commission concluded that disclosure of this sort is only of minimal significance to a typical investor in deciding whether to invest in a fund, and proposed to delete it from fund prospectuses.[142] Commenters agreed with the Commission's conclusion, and Form N–1A, as amended, does not require prospectus disclosure of information about other classes of fund shares (including senior securities).[143] The SAI would continue to require a fund to disclose the rights of any authorized securities of the fund other than capital stock.[144]

6. Shareholder Information (Item 7)

a. General Purchase and Sale Information. The Proposed Amendments would retain most of the disclosure requirements concerning a fund's purchase and redemption procedures, dividends, and distributions currently required by Form N–1A. The Commission believes that the required information is relevant to a typical investor contemplating an investment in a fund. In the Form N–1A Proposing Release, the Commission acknowledged that disclosure about purchase and redemption procedures is often quite lengthy and may contribute to the perception that prospectuses are too long and complicated and not worth reading.[145] The Commission also observed, however, that much of the purchase and redemption disclosure typically contained in fund prospectuses is not required by Form N–1A, but is included by funds for marketing or other business purposes. The Commission believes that it is appropriate for a fund to have the option to add disclosure to its prospectus for these purposes, and thus the Commission did not propose to limit prospectus disclosure of funds' purchase and sale procedures to that expressly required by Form N–1A. The Commission is adopting the requirements to disclose purchase, redemption, and other shareholder information substantially as proposed with modifications to reflect commenters' suggestions.[146]

Several commenters on the Form N–1A Proposing Release suggested that the Commission specifically acknowledge as consistent with its rules the ability of a fund at its option to place certain information about purchase and redemption procedures in a separate document that would be delivered to an investor no later than with the confirmation of the investor's purchase of the fund's shares. According to the commenters, this separate document, or "owner's manual," can help streamline prospectus disclosure and provide an efficient means for a fund group to provide disclosure about purchase and redemption procedures that is common to all funds in the group. The Commission believes that this sort of disclosure document is consistent with the disclosure principles underlying the revisions to Form N–1A and that investors may find it easier and less confusing to consult and retain a separate document describing certain procedures relating to purchasing and redeeming fund shares, which are typically mechanical in nature. In the Commission's view, as long as the purchase and sale information in a fund's prospectus is not reduced below the minimum required by Form N–1A, the fund would be able to create and use

[137] Item 6(b). The prospectuses of funds organized as business trusts under Massachusetts law sometimes include disclosure that, under Massachusetts law, fund shareholders may be held personally liable as partners for the fund's obligations under certain limited circumstances. In adopting Form N–1A in 1983, the Commission stated that disclosure of possible contingent shareholder liability under this form of organization should not be required if a fund believes that, because of arrangements to protect shareholders, the likelihood of loss or expense to shareholders is remote. 1983 Form N–1A Adopting Release, *supra* note 12, at 37933–34. See 3 T. Frankel, The Regulation of Money Managers 79 (1980) (for funds organized as Massachusetts business trusts, personal liability generally is considered remote). In connection with the Proposed Amendments, the staff undertook a review of fund prospectus disclosure. The review indicated, among other things, that certain funds continue to include disclosure about Massachusetts business trusts and state that shareholder liability is remote. In the Commission's view, this disclosure appears to be unwarranted, and the Commission encourages funds to re-evaluate whether this disclosure is necessary in light of the Commission's goal to minimize the disclosure of events that have only a remote possibility of affecting an investor's investment in a fund. See Form N–1A Proposing Release, *supra* note 8, at 10913.

[138] Item 17(a).

[139] The Investment Company Act requires all fund shares to have equal voting rights and prescribes the vote required for certain significant matters. See, e.g., section 18(i) [15 U.S.C. 80a–18(i)] (equal voting rights); section 15(a) [15 U.S.C. 80a–15(a)] (approval of investment advisory contract); section 16(a) [15 U.S.C. 80a–16(a)] (election of directors); section 13(a) [15 U.S.C. 80a–13(a)] (changes in fundamental investment policies). See also section 2(a)(42) [15 U.S.C. 80a–2(a)(42)] (defining "voting security" and a "vote of a majority of the outstanding voting securities" for purposes of the Investment Company Act); rules 18f–2, 18f–3 [17 CFR 270.18f–2, –3] (specifying certain voting rights with respect to series funds and multiple class funds, respectively).

[140] Item 17(a).

[141] Under section 18(f) of the Investment Company Act, a fund generally is prohibited from issuing senior securities. By its terms, however, this prohibition does not preclude a fund from borrowing from any bank, so long as the borrowing is undertaken in accordance with the requirements of the Investment Company Act. See section 18(f)(1) (a fund must have asset coverage of at least 300 percent of all borrowings). In addition, the Commission has taken the position that certain types of portfolio transactions that involve leverage engaged in by a fund would not be deemed senior securities if the fund establishes a segregated account with liquid assets that collateralize 100% of the market value of the obligations under these transactions. See Investment Company Act Release No. 10666 (Apr. 18, 1979) [44 FR 25128]; see also Merrill Lynch Asset Management, L.P. (pub. avail. July 2, 1996) (staff no-action letter). Series funds and multiple class funds, each of which may raise issues under section 18(f), are expressly contemplated by section 18(f)(2) of the Investment Company Act and related rules 18f–2 and 18f–3.

[142] Under the proposal, a fund, however, would be required to disclose information in its prospectus about any series or class of the fund offered in the prospectus. Form N–1A, as amended, adopts this requirement. See, *e.g.*, Item 8(c).

[143] Form N–1A, as amended, does not require disclosure in the prospectus of any measures taken by a fund (*e.g.*, formation and maintenance of segregated accounts) to ensure that certain instruments that it holds are not deemed senior securities for purposes of the Investment Company Act's limitations. Form N–1A, as amended, would continue to require a fund that has a fundamental policy to borrow monies or that employs leverage to include disclosure about these practices in its prospectus. See *supra* Section II.A.3.a (discussing required disclosure of principal investment strategies).

[144] Item 17(b).

[145] See Form N–1A Proposing Release, *supra* note 8, at 10914.

[146] Item 7. The Commission also is adopting, as proposed, the requirement that a fund disclose in its SAI, and not in its prospectus, information about the fund's principal underwriter and service providers. Item 15. Requiring the information in the SAI does not preclude a fund from including it in the prospectus (*e.g.*, for marketing and other business purposes).

a separate purchase and sale disclosure document as supplemental sales literature.

A second way in which a fund could create a separate purchase and sale disclosure document would be for the fund to include in its SAI the information to be contained in the document. A fund could set out this information in a separate section of the SAI and make it available, as a separate document, to investors upon request. To accommodate this option, the Commission is revising Form N–1A to include an instruction in the SAI that permits a fund to provide a separate document with additional purchase and sale information that can be made available to fund investors, along with the SAI or as a stand-alone document, in response to investor requests.[147]

Form N–1A, as amended, provides a third means for developing a purchase and sale manual. As amended, the Form permits a fund to remove all information regarding its purchase and sale procedures from its prospectus and place the information in a separate document. The use of the separate document in this manner, however, would mean that required prospectus disclosure would appear only in the owner's manual. Therefore, the use of this kind of separate document is conditioned on incorporating it by reference into the fund's prospectus and providing it to investors with the prospectus.[148]

b. Valuation of Fund Shares and Net Asset Value. Valuation. The Commission proposed to eliminate an existing requirement of Form N–1A that a fund disclose in its prospectus that the price at which investors' purchase and redemption requests are effected is calculated on the basis of the fund's current net asset value and that the fund identify the methods used to value its portfolio securities (*e.g.*, market price or fair value).[149] The Commission proposed to take this action principally because, in meeting the requirement, funds typically go beyond the required identification of the methods used and repeat the substance of rules under the Investment Company Act specifying the way in which the net asset value of a fund must be calculated. In addition, the information presented by a fund usually repeats information required to be included in the SAI. This disclosure has tended to be lengthy and technical and, as discussed below, appears not to have been very informative for investors.

The Commission has re-evaluated the disclosure of information in fund prospectuses about the calculation of net asset value in light of numerous complaints from investors that the Commission received recently regarding the manner in which some funds determined their net asset value. In response to volatility in various markets, some funds recently valued certain of their securities on the basis of fair value rather than on the basis of the last market quotations for the securities.[150] In taking this action, the funds appear to have relied on a long-standing position of the Commission's staff that a fund may (but is not required to) value portfolio securities traded on a foreign exchange using fair value, rather than the closing price of the securities on the exchange, when an event occurs after the close of the exchange that is likely to have changed the value of the securities.[151] Many investors complained that they were unaware that their funds could use fair value pricing in such a situation. In response to these complaints, the Division undertook a review of the disclosure documents of funds using such fair value pricing and found that, although the funds disclosed the practice in their prospectuses, the funds' discussions of their pricing procedures would have been enhanced if they had followed the principles of plain English.[152] Investors' recent questions about fund pricing procedures confirm the general importance of this information to at least some investors. Thus, the Commission has determined to continue to require that funds identify the methods used to value their assets in their prospectuses.[153] The Commission is, however, adding an instruction in Form N–1A that will encourage funds to discontinue the use of boilerplate disclosure of the technical aspects of valuation and require them to include a statement about the effect of the fund's use of fair value net asset calculation.

Time and Frequency of Calculation of Net Asset Value. As proposed, Form N–1A would continue to require a fund to state in its prospectus when calculations of its net asset value are made and to indicate that the fund uses a forward pricing procedure contemplating that the price at which a purchase or redemption order is effected is based on the next calculation of net asset value after the order is placed.[154] In addition, the Proposed Amendments would continue to require a fund to disclose those days on which the fund prices its shares and the holidays on which shares would not be priced. Commenters supported these disclosure requirements, and the Commission is adopting them as proposed.[155]

Meaning of Net Asset Value. In the Form N–1A Proposing Release, the Commission noted that many funds now define the term "net asset value" in their prospectuses (*e.g.*, net asset value means fund assets minus liabilities divided by the number of outstanding shares).[156] The Commission requested comment whether this disclosure should be required in all fund prospectuses. Commenters on this issue were evenly divided between those who

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[147] Instruction to Item 18(a).

[148] Item 7(f).

[149] Under the Investment Company Act and its rules, funds generally are required to use market quotations to value portfolio securities. If market quotations are not readily available, the fund must value the securities at "fair value as determined in good faith by the board of directors." Section 2(a)(41) [15 U.S.C. 80a–2(a)(41)]; rule 2a–4 [17 CFR 270.2a–4].

[150] These funds took this action under circumstances in which stock markets in Asia had closed 13 to 14 hours before the pricing of fund shares in the United States. In that time, several funds identified events that indicated a significant change in the price of securities traded on these markets since the last market quotations. On the basis of this assessment, the funds valued their securities using fair value rather than the market price of the securities. See Barnhart, Asia Aficionados Found Profit in Times of Turmoil, Chicago Tribune, Nov. 23, 1997 at C3; Smith, Funds: A Hidden Trick Investors Should Know About, Business Week, Nov. 17, 1997 at 41; Authers, Now The Funds Are Coming Under Fire, Financial Times, Nov. 8, 1997 at 2; Wyatt, The Market Turmoil: Funds; Fidelity Invokes Fine Print and Angers Some Customers, The New York Times, Oct. 31, 1997 at D6; Gasparino, Pricing System Trips Fidelity, Angers Clients, Wall Street Journal, Oct. 30, 1997 at C1.

[151] See Putnam Growth Fund (pub. avail. Feb. 23, 1981). Fair value pricing in this context is designed to protect the long-term value of fund shares from the actions of short-term investors who might buy or redeem fund shares in an attempt to profit from short-term market movements.

[152] See "Remembering the Past: Mutual Funds and the Lessons of the Wonder Years," Barry P. Barbash, Director, Division of Investment Management, SEC, at the 1997 ICI Securities Law Procedures Conference, Washington, D.C. (Dec. 4, 1997).

[153] Item 7(a). An instruction to this Item, as adopted, requires a fund to provide a brief explanation of specific policies of the fund concerning use of the fair value method of pricing fund shares. Form N–1A, as amended, requires a fuller explanation of fair value pricing policies in the SAI. Item 18(c).

[154] Rule 22c-1 under the Investment Company Act [17 CFR 270.22c-1] requires a fund to adopt "forward pricing" procedures. Under such procedures, a fund must fill an order to buy or redeem its shares based on the net asset value of the shares next calculated after receipt of the order.

[155] Item 7(a) (2) and (3). Form N–1A, as amended, allows a fund to identify the days on which the fund will not price its shares through the use of a list of specific days or any other means that effectively communicates the information (*e.g.*, explaining that shares will not be priced on the days on which the New York Stock Exchange is closed for trading).

[156] See Form N–1A Proposing Release, *supra* note 8, at 10914.

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believed that the information would be helpful to investors and those who believed the definition of net asset value would not assist investors in making a decision about investing in a fund. While some investors may find information about the meaning of the term net asset value helpful, the Commission is not persuaded that the information is necessary for most investors. Therefore, the Commission is not adopting a requirement that a fund explain the meaning of net asset value in its prospectus. A fund would continue to have the option of including this information in its prospectus or SAI if the fund concluded that such information would be useful to potential investors in the fund.

c. Restrictions on Portability. At the time that the Commission issued the Form N–1A Proposing Release, the Commission's staff was considering a number of complaints received from fund investors about restrictions on the "portability" of their fund shares. To better understand the issues raised by these investors, the staff consulted with, among others, a number of industry trade groups and other industry participants.[157] On the basis of the information compiled by the staff, the Commission understands that, in certain cases, an investor who purchases shares of a fund through a broker-dealer or other financial intermediary may be unable to transfer fund shares held in a brokerage account to an account established at another broker-dealer.[158] In their responses to the staff, industry representatives indicated that the lack of portability of an investor's shares in a fund may be attributed to several factors, including limitations on the transfer of shares sold by broker-dealers affiliated with the investment adviser of the fund, the lack of participation by the fund in a computerized transfer system, and the absence of reciprocal agreements between the fund and broker-dealers. The industry participants, however, supported efforts to increase the portability of fund shares.

The Commission understands that some progress has occurred in eliminating portability restrictions. To the extent that restrictions continue to exist, however, the Commission believes that disclosure of the limits on portability of a fund's shares may be of importance to a typical investor. The Commission notes that this type of disclosure would seem to address the relationship between a broker-dealer or other intermediary and a fund shareholder, rather than the relationship between the fund and the shareholder. For that reason, the Commission is not convinced that the disclosure should be required in fund prospectuses.[159] The Commission has asked its staff to continue discussions with the staff of the National Association of Securities Dealers, Inc. ("NASD") to consider means other than the prospectus to alert investors who purchase shares of funds through broker-dealers of restrictions on portability.[160]

d. Tax Consequences. The Proposed Amendments would revise the tax disclosure required in a fund's prospectus to focus that disclosure on the likely tax consequences to the fund and its shareholders if the fund operates as described in the prospectus. In general, the Proposed Amendments were designed to elicit tax disclosure that is far less complicated than that typically included in fund prospectuses today.[161] Commenters strongly agreed with the goal of the proposed provisions relating to prospectus tax disclosure, which the Commission has determined to adopt substantially as proposed. The Commission notes its strong desire that, in revising their documents to comply with Form N–1A, as amended, all funds pay particular attention to simplifying their existing tax disclosures, which the Commission believes are too complicated and discourage the use of fund prospectuses.

The Commission proposed to move disclosure about a fund's qualification under Subchapter M of the Internal Revenue Code[162] to the SAI, unless the fund does not expect to qualify for Subchapter M treatment. Commenters supported moving this disclosure to the SAI, agreeing that it does not help investors decide whether to invest in a fund. The Commission is adopting this disclosure requirement as proposed.[163]

The Commission proposed to require a description of the tax consequences to shareholders of buying, holding, exchanging, and selling a fund's shares designed to highlight the tax consequences of investing in the fund. The Proposed Amendments would require a fund to state, as applicable, that the fund intends to make distributions to shareholders that may be taxed as ordinary income or capital gains. Under the Proposed Amendments, a fund that expects that its investment objectives or strategies will result in its distributions primarily consisting of ordinary income (or certain short-term capital gains) or long-term capital gains would be required to provide disclosure to that effect.

Commenters generally supported the proposed tax disclosure, and the Commission is adopting it as proposed with one modification to reflect recent changes to the tax laws.[164] In light of these changes, Form N–1A, as amended, requires a fund to disclose that capital gains may be taxable at different rates depending upon the length of time that the fund holds its assets.[165]

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[157] See Letter from Jack W. Murphy, Associate Director, Division of Investment Management, SEC, to Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, Thomas M. Selman, Director, Advertising/Investment Companies Regulation, NASD Regulation, Inc., and Paul Schott Stevens, Senior Vice President and General Counsel, ICI (Dec. 18, 1996).

[158] An investor may seek to transfer such an account, for example, when the registered representative or account executive through which the investor purchased the shares becomes affiliated with a new firm.

[159] Such disclosure would appear to be inconsistent with the fundamental principle underlying Form N–1A that a fund's prospectus should focus on information about the fund.

[160] See discussion *infra* Section II.G about other disclosure issues that the Commission is addressing with the NASD.

[161] Existing tax-related prospectus disclosure typically includes lengthy and overly technical information about the tax treatment of a fund, and, in some cases, the treatment of specific securities held by a fund. Many prospectuses, for example, include information about the conditions that a fund must meet to qualify for pass-through tax treatment under Subchapter M of the Internal Revenue Code, as well as information about the tax treatment of private activity bonds, foreign currency contracts, and other fund investments. In addition, tax disclosure frequently includes technical jargon in referring, for example, to a fund's status as a "regulated investment company" and the fund's payment of "spillback distributions" and "net investment income." Use of these terms in fund prospectuses would continue to be discouraged. See General Instruction C.1(c), which would continue to instruct a fund not to use technical or legal terminology in its prospectus.

[162] I.R.C. 851, *et seq.*

[163] Item 19(a). Item 7(e)(3) of Form N–1A, as amended, requires a fund that does not expect to qualify for pass-through tax treatment under Subchapter M to explain in its prospectus the tax consequences of not qualifying (*e.g.*, by disclosing that income and gains realized by the fund would be subject to double taxation—that is, both the fund and shareholders could be subject to tax liability). This disclosure would distinguish the fund from other funds and help investors appreciate the tax consequences of investing in the fund. Similarly, a fund that expects to pay an excise tax under the Internal Revenue Code with respect to its distributions is required to disclose in its prospectus the consequences of paying the tax. See I.R.C. 4982.

[164] Item 7(e). Funds subject to this requirement would include, for example, those often described as "tax-managed," "tax-sensitive," or "tax-advantaged," which have investment strategies to maximize long-term capital gains and minimize ordinary income. A fund that has a principal investment objective or strategy to achieve tax-managed results (*e.g.*, to maximize long-term capital gains and minimize ordinary income) would need to provide disclosure to that effect in its prospectus risk/return summary. Item 4.

[165] Recent changes to the tax laws reduce the maximum rate on the long-term net capital gains on the sale of securities from 28% to 20%, but increase

The Proposed Amendments would require a fund to state that it will provide each shareholder by a specified date (typically, January 31 of each year) with information about the amount of ordinary income and capital gains, if any, distributed to the shareholder during the prior calendar year. One commenter questioned the need for this requirement, citing that a fund must send this information to investors by a particular date under Internal Revenue Service regulations.[166] The Commission agrees that, in light of these regulations, indicating in a prospectus the date by which a fund will deliver certain tax information is unnecessary. Therefore, Form N–1A, as amended, does not adopt this provision of the Proposed Amendments.

The Proposed Amendments would require a tax-exempt fund to inform investors of the special tax consequences associated with the fund. Commenters supported the proposed disclosure, and the Commission is adopting it substantially as proposed.[167]

7. Distribution Arrangements (Item 8)

The Commission proposed changes to Form N–1A to require that all information about a fund's distribution arrangements appear in one section of the fund's prospectus. The Proposed Amendments would require that section to discuss, among other things, sales loads, fees paid under rule 12b–1 plans, and the details of multiple class and master-feeder fund arrangements. The Commission also proposed changes designed to make fund discussions of distribution arrangements less legalistic and more helpful to investors in evaluating and comparing funds.[168] Commenters generally supported the Commission's conclusion that information about distribution arrangements is particularly important to fund investors, and the Commission is adopting the disclosure requirements relating to those arrangements substantially as proposed.

Rule 12b–1 Plans. The Commission proposed to modify Form N–1A's requirements pertaining to plans designed to meet the requirements of rule 12b–1 under the Investment Company Act to focus prospectus disclosure on the amount of fees paid under the plans and to move detailed, technical disclosure about these plans to the SAI. The Commission proposed to require a fund with a rule 12b–1 plan to state the amount of the fee and to disclose that the plan allows the fund to pay fees for the sale and distribution of its shares. The Commission also proposed an additional requirement designed to result in prospectuses that explain more effectively to shareholders that distribution fees are continuous in nature and that these fees, over time, cumulatively may exceed other types of sales loads.[169] The Proposed Amendments would require a fund to add to its prospectus disclosure to the effect that, because distribution fees are paid out of the fund's assets on an ongoing basis, the fees may, over time, increase the cost of an investment in a fund and cost investors more than other types of sales loads.

Most commenters supported the proposed disclosure concerning rule 12b–1 plans, although some commenters maintained that disclosure of the amount of rule 12b–1 fees merely duplicated information appearing in the prospectus fee table. The Commission believes that disclosing the amount of the rule 12b–1 fee in connection with other disclosure about the nature of the fees will provide a typical investor with a complete and useful picture of the amounts paid by the fund for distribution. Therefore, the Commission is adopting the disclosure concerning rule 12b–1 fees as proposed.[170]

Sales Loads. The Proposed Amendments would continue to require disclosure of the amount of any sales load charged on an investment in a fund and disclosure indicating when a sales load may be reduced or eliminated (*e.g.*, for larger investments). The Commission proposed to move other technical disclosure about sales loads to the SAI, including disclosure about dealer reallowances, sales load waivers, and breakpoints applicable to the sale of a fund's shares. The Commission believes that this detailed and technical information tends to obscure information about the amount of sales loads charged by a fund and does not help investors evaluate and compare funds. The Commission also proposed to eliminate disclosure about fees charged by third parties (i.e., banks, broker-dealers, or other persons) in connection with the purchase of a fund's shares.[171] Commenters generally supported the proposed approach to disclosure about sales loads, and the Commission is adopting the amendments as proposed.[172]

Multiple Class and Master-Feeder Fund Arrangements. The Commission proposed to combine, in one place in the prospectus, disclosure about the distribution and service arrangements of multiple class and master-feeder funds. Commenters generally supported this treatment of these arrangements, which the Commission is adopting substantially as proposed, with modifications to reflect commenters' suggestions.

The Commission proposed to eliminate the requirement that a feeder fund discuss the possibility and

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the asset holding period from 12 months to 18 months (except for sales made after May 6, 1997 and before July 29, 1997, which retain long-term gain status). Taxpayer Relief Act of 1997, Pub. L. 105–34 (1997). The new laws also classify capital assets held for a period of one year, but less than 18 months, as "mid-term" gains, which are subject to a maximum rate of 28%.

[166] The requirement is set forth in I.R.C. 852(b)(3)(c).

[167] Item 7(e)(2). Form N–1A, as amended, requires a fund to disclose, if applicable, that: (i) The fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax; (ii) income exempt from federal income tax may be subject to state and local income tax; and (iii) any capital gains distributed by the fund may be taxable. The Commission also proposed that a fund disclose that a portion of the tax-exempt income that it distributes may be treated as tax preference items for purposes of determining whether the shareholder is subject to the federal alternative minimum tax. Form N–1A, as amended, does not require disclosure about the preference items in the prospectus. This disclosure is technical in nature and applies only in limited circumstances, and would not appear to help a typical investor make a decision about investing in a fund.

[168] Typical fund shareholders appear to regard information about fees paid by funds under various distribution arrangements as important information in making investment decisions. See ICI Shareholder Use Study, *supra* note 52, at 21 (1997) (over 70% of survey respondents considered sales charge and fee information before making their most recent purchase).

[169] The Commission's proposed disclosure would replace similar disclosure required by the rules of the NASD. Rule 2830(d)(4) of the NASD Conduct Rules, *supra* note 37, at 4624 (requiring a fund with a rule 12b–1 plan to disclose adjacent to the fee table that long-term shareholders may pay more than the maximum front-end sales charge allowed by the NASD). In light of the revisions to Form N–1A contemplated by the Proposed Amendments, the NASD has proposed to eliminate its similar disclosure. NASD Notice to Members 97–48, at 393 (Aug. 1997).

[170] Item 8(b); Item 15(g). The Proposed Amendments also would require a fund that pays a service fee outside of a rule 12b–1 plan to disclose the amount and purpose of the fee in the section of its prospectus describing sales loads and rule 12b–1 fees charged by the fund. One commenter questioned the need for this disclosure, asserting that this type of service fee is not appropriately characterized as a distribution fee and would be disclosed in the fee table. The Commission is persuaded that additional disclosure of these fees is unnecessary, and Form N–1A, as amended, does not require prospectus disclosure of them. A fund would disclose service fees paid outside a rule 12b–1 plan in the fee table and in the SAI. Instruction 3(b) to Item 3; Item 20(c).

[171] See also Interagency Statement, *supra* note 50; rule 2230 of the NASD Conduct Rules, *supra* note 37, at 4213–14; rule 204–3(a) under the Advisers Act [17 CFR 275.204–3(a)]; Item 1 of Form ADV, Part II [17 CFR 279.1] for fee disclosure requirements applicable to banks, broker-dealers and investment advisers, respectively.

[172] Item 8(a); Item 13(e) (sales load arrangements for affiliated persons); and Item 15(f) (dealer reallowances).

consequences of its no longer investing in the master fund. It is the Commission's understanding that distribution arrangements currently used by many funds contemplate feeder funds having the authority to change the master funds in which they are invested. In recognition of this development, the Commission is modifying Form N–1A to require such a feeder fund to describe briefly the circumstances under which it may change its investment in a master fund.[173]

One commenter suggested additional changes to streamline prospectus disclosure about multiple class funds and master-feeder funds. The commenter recommended that the Commission eliminate existing requirements for a fund to disclose information in its prospectus about additional classes or feeders that are not offered in the same prospectus. The commenter also recommended that the Commission modify the proposed disclosure about conversions or exchanges from one class to another to require disclosure only if the conversion or exchange is mandatory or automatic. The Commission agrees that the disclosure about multiple class funds or master-feeder funds in a prospectus should focus on the class or fund offered in that prospectus. Form N–1A, as amended, reflects this position.[174]

8. Financial Highlights Information (Item 9)

Condensed Financial Information. The Proposed Amendments would continue to require a fund to include in its prospectus a summary of certain financial information. To provide funds with greater ability to present prospectus disclosure in a format that conveys information effectively to investors, the Proposed Amendments would permit this information to be disclosed anywhere in the prospectus, rather than on a particular page of the prospectus, as currently required. The Commission also proposed changes to the financial highlights table to assist investors in understanding the information contained in it. Commenters supported the Proposed Amendments and endorsed in particular the proposal to permit a fund to choose the location in its prospectus for the financial highlights table. The Commission is adopting revisions to the financial highlights table requirement substantially as proposed.

In the Form N–1A Proposing Release, the Commission acknowledged that additional changes could improve the financial highlights information and stated that it intended to revisit fund financial disclosure in a separate future rulemaking initiative addressing financial statement requirements generally.[175] For the purposes of its evaluation of the financial highlights information, the Commission requested comment on simplifying and updating this information. This request elicited a number of suggestions ranging from support for the table to recommendations that it be moved to the SAI or eliminated. The Commission will consider these comments as part of its financial statement initiative.

The Commission is, however, adopting some of the commenters' recommendations that would simplify the financial highlights table. One commenter recommended that the Commission change the period covered by the financial highlights table from 10 to 5 years to parallel the period covered by financial information currently required to be in fund annual reports. The Commission has adopted this recommendation[176] because it believes that financial information for a 5-year period will help investors evaluate a fund and, at the same time, respond to concerns that the current table complicates the prospectus and is confusing to investors. Investors interested in historical return information about a fund beyond that contained in the amended financial highlights table can look to the bar chart that the Commission is requiring to be included in prospectuses, which shows the fund's returns over a 10-year period.[177]

One commenter urged the Commission to eliminate the requirement that a fund disclose its average commission rates in the financial highlights table, arguing that these rates are technical information that typical investors are unable to understand. Industry analysts support this view and have informed the Commission staff of their conclusion that the average commission rate information in the table is only of marginal benefit to them and typical fund investors.

At this time, the Commission believes that there continues to be some merit in ensuring that information about the average commission rates paid by funds is publicly available. The Commission believes, however, that a fund prospectus appears not to be the most appropriate document through which to make this information public. Therefore, Form N–1A, as amended, does not require disclosure of average commission rates in the financial highlights table. The Commission will consider adding such a requirement to Form N–SAR, which funds file with the Commission semi-annually to report information on their current operations.[178]

Calculation of Performance Data. The Commission proposed to eliminate the Form N–1A requirement that a fund that includes performance information in certain of its advertisements include a brief explanation in its prospectus of how it calculates its performance. This disclosure requirement is intended to facilitate funds using advertisements in accordance with rule 482 under the Securities Act; such an advertisement is an omitting prospectus under section 10(b) of the Securities Act and, as an omitting prospectus, is required to contain information "the substance of which" is contained in the prospectus. Recent legislation added section 24(g) to the Investment Company Act, which authorizes the Commission to adopt rules permitting a fund to use a summary or omitting prospectus that includes information the substance of which is not required to be included in the prospectus.[179] With this new authority, the Commission intends to re-evaluate fund advertising rules with the goal of, among other things, proposing to amend rule 482 to eliminate the "substance of which" requirement.

Consistent with the Proposed Amendments, Form N–1A, as amended, does not require a fund to duplicate in its prospectus the explanation of how it calculates its performance required to appear in the fund's SAI.[180] So long as the SAI is incorporated by reference in

[173] Item 8(c)(4). A feeder fund that does not have the authority to change its master fund would not need to discuss in its prospectus the possibility and consequences of its no longer investing in the master fund. Instruction to Item 8(c)(4).

[174] Item 8(c).

[175] See Form N–1A Proposing Release, *supra* note 8, at 10918.

[176] Instruction 1(a) to Item 9(a).

[177] Item 2(c)(2). Form N–1A permits a fund to incorporate by reference the financial highlights information into its annual report if it is delivered with the prospectus. Item 9(b). One commenter recommended that the Commission eliminate total return information from the financial highlights table because the bar chart shows a fund's returns. The Commission has not followed this recommendation because returns in the financial highlights table will be reflected for a fund's fiscal year periods, which may not be the same as the calendar year periods reflected in the bar chart. The Commission also notes that including returns in the financial highlights table will enable a fund to satisfy the updating requirements of section 10(a)(3) under the Securities Act.

[178] 17 CFR 274.101. The Division expects to submit recommendations to the Commission on revising Form N–SAR in the near future.

[179] See Improvements Act, supra note 118, at section 204.

[180] Item 21.

the prospectus, the rule 482 "substance of which" requirement will be satisfied for this information or any other information that a fund may wish to include in a rule 482 advertisement.

9. Front and Back Cover Pages (Item 1)

The Commission proposed to simplify the disclosure currently required on the front cover page of the prospectus. The Proposed Amendments would require only three items of cover-page disclosure: a fund's name; the date of the prospectus; and the standard Commission disclaimer about the securities offered in the prospectus.[181] To unclutter the front cover page and avoid repeating information contained in the proposed risk/return summary at the beginning of the prospectus, the Proposed Amendments would no longer continue to require a fund to include on the front cover a brief statement of the fund's investment objectives, a statement that the prospectus sets forth concise information that the investor should know before investing, and a statement that the prospectus should be retained for future reference.[182] Commenters generally supported the proposed front cover page disclosure requirements, and the Commission is adopting them with revisions reflecting the suggestions of commenters.

Several commenters maintained that the Commission should allow a fund to include certain information on the front cover page of its prospectus, such as its investment objectives or a brief (*e.g.*, one sentence) description of its operations. The Commission agrees, and Form N–1A, as amended, permits, but does not require, a fund to include additional information on the front cover page, subject to the Form's general rule covering the presentation of information not otherwise required to be included in the prospectus.[183]

Several commenters criticized the Commission's standard disclaimer regarding the securities offered by a prospectus and questioned other disclosure that is required on the front cover page of a fund prospectus.[184] The commenters recommended that the Commission eliminate the legend, maintaining that it is not meaningful to a typical investor and is not essential to such an investor's decision to invest in a fund.

The Commission has not adopted this recommendation because it believes that every prospectus should clearly alert investors that a registration statement filed with and made effective by the Commission does not represent approval by the Commission of the securities described in the prospectus. This view is reflected in the requirement that all issuers filing registration statements under the Securities Act include the disclaimer legend on their prospectuses.[185] The Commission recognizes that the disclaimer used to date is technical in nature and may be difficult to understand. In its recent plain English initiatives, the Commission adopted amendments to simplify the legend, which apply to fund prospectuses.[186]

The Commission proposed to consolidate disclosure regarding the availability of additional information about a fund on the back cover page of its prospectus.[187] The Proposed Amendments would require the back cover page to state that the SAI includes additional information about the fund that is available without charge upon request, and to explain how shareholder inquiries regarding the fund can be made. Under the proposal, the back cover page would also include a statement whether and from where information is incorporated by reference into the prospectus. Commenters generally supported these amendments, and the Commission is adopting the back cover page requirements as proposed, with modifications to reflect commenters' suggestions.[188]

To ensure prompt delivery of a requested SAI, the Proposed Amendments would require a fund to send its SAI to requesting investors within 3 business days of a request. Those commenters addressing this requirement generally supported it, although one commenter argued that, to provide funds some leeway in responding to unforeseen circumstances, funds should be subject to a "reasonably prompt" mailing standard, which would be deemed normally to be within 3 days of request. The Commission believes that prompt mailing of the SAI is essential to the disclosure format contemplated by Form N–1A and is adopting the 3-business day mailing requirement as proposed.[189]

Several commenters raised concerns about requests for additional information about a fund when the fund's shares are sold through financial intermediaries, such as broker-dealers or banks. Commenters recommended that Form N–1A permit funds to indicate in their prospectuses that investors may contact an intermediary to obtain the SAI and other additional information. The Commission acknowledges that many funds use intermediaries in distributing or servicing their shares and that investors may look to these intermediaries for information about the funds. Thus, the Commission has revised Form N–1A to permit a fund to state on the back cover of its prospectus that additional information about the fund is available from a financial intermediary.[190] The Commission notes, however, that such a fund retains the obligation to ensure that information is sent to investors within 3 business days of an investor request. The Commission expects that funds will fulfill this obligation through contractual

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[181] This disclaimer is required by rule 481(b)(1) under the Securities Act [17 CFR 230.481(b)(1)].

[182] See Form N–1A Proposing Release, *supra* note 8. See also SEC, Report of the Task Force on Disclosure Simplification (1996) (recommending that many legal warnings be eliminated to make the cover page more inviting and that any necessary legal warnings be set out in a more readable style and format); Plain English Release, *supra* note 20, at 6372.

[183] Instruction to Item 1(a); see also General Instruction C.3(b). Form N–1A currently requires special disclosure on the front cover page of a feeder fund prospectus describing the master-feeder fund structure and explaining how it differs from a traditional mutual fund. 1993 GCL, *supra* note 25, at II.H(a). Consistent with simplifying cover page disclosure, Form N–1A, as amended, does not require this disclosure on the front cover page, but does require disclosure about a fund's master-feeder structure in the body of the fund's prospectus in response to Item 8(c).

[184] Rule 481(b)(1) (requiring disclosure that indicates that neither the Commission nor any state securities commission has approved the securities or passed on the adequacy of disclosure in the prospectus).

[185] Item 501 of Regulation S–K [17 CFR 229.501].

[186] See Plain English Release, *supra* note 20, at 6372 (revising Item 501(b) of Regulation S–K and making conforming changes to rule 481(b)(1)).

[187] The Proposed Amendments also would require a fund to include on the back cover page of its prospectus a statement that information about the fund is available at the Commission's Public Reference Room and on the Commission's Internet site. Some commenters questioned this proposal, asserting that the information is not essential to making a decision to invest in a fund and would clutter the back page of prospectuses. The Commission is not persuaded by these arguments and has adopted this requirement as proposed. Item 1(b)(3). The Commission notes that the requirement is consistent with those imposed on all registrants filing registration statements under the Securities Act and reflects recent changes adopted in the Plain English Release, *supra* note 20, at 6381 (amending Item 101(e)(2) of Regulation S–K under the Securities Act [17 CFR 229.101(e)(2)]).

[188] Item 1(b). The Commission proposed to require disclosure in a fund's discussion of risk in the prospectus risk/return summary that additional information about a fund's investments is available in the fund's shareholder reports. In response to commenters' suggestions, the Commission is requiring that this disclosure be made on the back cover page of a fund's prospectus together with other references to the availability of additional information about the fund. Item 1(b)(1). See *supra* Section II.A.1.

[189] Instruction 3 to Item 1(b)(1). The Commission's Office of Compliance Inspections and Examinations will, as a part of its routine periodic inspections of a fund's operations, examine the fund's compliance with the 3-business day mailing requirement. Failure to comply with the requirement could result in action by the Commission to ensure compliance, including an enforcement action in an appropriate case.

[190] Instruction 2 to Item 1(b)(1).

arrangements with broker-dealers, banks, or other financial intermediaries.

Some commenters had suggestions about certain technical disclosure information that the Commission proposed to include on the back cover page of the prospectus. The Proposed Amendments, for example, would move the requirement to disclose the date of the SAI to the back cover page of the prospectus. Several commenters criticized this requirement, asserting that the date of the SAI is not essential to an investor's decision to invest in a fund and that requiring the SAI date on the back cover of a prospectus would necessitate the reprinting of prospectuses of funds that share a common SAI whenever a new fund is added to the group covered by the SAI. In light of these comments and the obligation imposed on funds to send investors who request an SAI the most current version of the document, the Commission has deleted from Form N–1A, as amended, the requirement to show the date of a fund's SAI on the back cover of the fund's prospectus.[191]

B. Part B—Statement of Additional Information

The Commission proposed a number of technical and conforming revisions to the SAI disclosure requirements to reflect the proposed changes in the prospectus disclosure requirements. The Commission is adopting these revisions as proposed. As discussed in the Form N–1A Proposing Release, the Commission intends to consider the SAI requirements as part of a future initiative and propose amendments to simplify and update SAI disclosure following the same disclosure principles underlying the revisions to Form N–1A being adopted today.

C. Part C—Other Information

The Commission proposed amendments to Part C of Form N–1A to eliminate certain filing requirements no longer deemed necessary. Commenters supported the proposed amendments, and the Commission is adopting them as proposed with certain modifications to reflect the suggestions of commenters.[192]

The Proposed Amendments would continue to require newly organized funds to file updated financial statements within 4 to 6 months of the effective date of the registration statement. The Commission asked for comment whether the requirement should be retained. All commenters responding to the request said that the Commission should eliminate this requirement. Commenters argued that the information is of little value to investors in a new fund because it covers a fund's operations for a short start-up period that does not usually reflect the fund's expected operations. Commenters also argued that the cost of providing this information places a heavy burden on new funds, which typically have smaller amounts of assets under management than larger funds. According to the commenters, these costs can have a significant and disproportionate effect on a small fund's expense ratio.

The Commission believes that financial statements for the initial operations of a fund may not provide information that is significant to a typical fund investor. In addition, an investor interested in financial information about a fund's initial operations can obtain the information by requesting the fund's most recent shareholder report, which is generally available 6 to 8 months after the fund commences operations and begins selling shares to investors. For these reasons, the Commission has concluded that the costs associated with the 4 to 6 month update are not outweighed by the benefits that the information may provide to some investors. Therefore, Form N–1A, as amended, does not require the filing of updated financial statements for a newly organized fund.

D. General Instructions

1. Reorganizing and Simplifying the Instructions

The General Instructions to Form N–1A currently provide guidance on the use and content of the Form. The Proposed Amendments were intended to update and reorganize the General Instructions to make the Instructions easier to use. Commenters generally supported these revisions, which the Commission is adopting substantially as proposed. As adopted, the General Instructions consist of the following topics: (A) Definitions; (B) Filing and Use of Form N–1A; (C) Preparation of the Registration Statement; and (D) Incorporation by Reference.

The Proposed Amendments added several definitions to standardize certain terms as used in Form N–1A. Under the proposal, the term "Fund" would be defined as a registrant or a series of the registrant. The Proposed Amendments also included definitions of the terms "Registrant" and "Series" as used in Form N–1A. The Commission is adopting all three definitions as proposed.[193]

Proposed General Instruction B incorporated a more user-friendly, question-and-answer format regarding the filing and use of Form N–1A and replaced current Instructions A through D and F. The Commission is adopting General Instruction B as proposed.

General Instruction C to Form N–1A, as proposed, would set out the requirements for preparing the registration statement in an understandable format and would replace existing Instruction G to the Form. As proposed, the new Instruction emphasized the need to provide clear and concise prospectus disclosure and permitted a fund to include in its prospectus or SAI information not otherwise required by Form N–1A, so long as the information is not misleading and does not, because of its nature, quantity, or manner of presentation, obscure the information required to be included.[194] The Commission is adopting Instruction C substantially as proposed.[195]

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[191] To enable the Commission's staff to respond efficiently to investor inquiries, the Proposed Amendments would require a fund to disclose the fund's name, Commission file number and, if the fund is a series of a registrant, the registrant's name on the back cover page. Some commenters maintained that the information presented in meeting this requirement could be confusing to investors and is not relevant to a typical investor in considering whether to invest in a fund. The Commission is modifying the requirement so that a fund will only need to disclose its Commission file number in small print (*e.g.*, 8-point modern type) at the bottom of the back cover page of its prospectus. Item 1(b)(4).

[192] Form N–1A, as amended, does not require the filing of (i) model retirement plans that are used to offer fund shares; (ii) schedules showing the calculation of performance information; and (iii) voting trust agreements. One commenter suggested additional changes to the Part C requirements, asserting that much of the information in this part of the registration statement does not serve any important purpose and imposes administrative burdens on funds. The commenter recommended, among other things, that the Commission no longer require a fund to include a table showing the number of holders of each class of a fund's shares in its registration statement. In support of its recommendation, the commenter pointed out that this information is required to be filed by funds on their Forms N–SAR. The Commission is persuaded by this argument and has amended Form N–1A to delete the requirement that a fund's registration statement include a table of holders of fund shares.

[193] See General Instruction A.

[194] See Form N–1A Proposing Release, *supra* note 8, at 10918.

[195] The Commission is deleting other instructions to the current Form N–1A, which permit information to be added to the prospectus and SAI. See, *e.g.*, Item 1(b) of the current Form N–1A (permitting other information to be included on the cover page of the prospectus). Instruction C of Form N–1A, as amended, provides this guidance for purposes of all fund disclosure. The Commission also is deleting specific Instructions in current Part A that call for brief and concise prospectus disclosure, because Instruction C includes this

2. Plain English Disclosure

The Commission is adopting amendments to General Instruction C clarifying that funds must comply with rule 421 under the Securities Act, which sets out the Commission's recently adopted plain English requirements.[196] Rule 421(b) sets out general requirements that the entire prospectus be clear, concise, and understandable and provides guidance on how to draft prospectuses that meet this standard.

Under Form N–1A, as amended, a fund would need to draft the front and back cover pages and the risk/return summary of a fund prospectus in accordance with the provisions of rule 421(d).[197] In meeting these requirements, a fund will need to use plain English principles in the organization, language, and design of these sections of their prospectuses. Funds also will comply substantially with the following six principles of clear writing:

—Short sentences;
—Definite, concrete, everyday language;
—Active voice;
—Tabular presentation or bullet lists for complex material, wherever possible;
—No legal jargon or highly technical business terms; and
—No multiple negatives.

The compliance dates for rule 421(d) and Form N–1A, as amended, will be the same. Therefore, when a fund files a new or amended registration statement in order to comply with Form N–1A, as amended, it must also comply with the plain English rule.[198]

3. Disclosure Guidelines

The Commission has revised General Instruction C to reflect clearly the basic disclosure principles underlying the Commission's initiatives being adopted today. The Commission believes that applying these principles consistently in developing fund disclosure documents will result in high quality documents that effectively communicate information to investors.

General Instruction C, as amended, includes a set of drafting guidelines that are designed to improve prospectus disclosure. The Instruction encourages funds to avoid cross-references in their prospectuses to their SAIs or shareholder reports. Repeated cross-references to the SAI and shareholder reports can add unnecessary length and complexity to fund prospectuses and often preclude prospectuses from disclosing information effectively to investors.

General Instruction C provides guidance on the use of Form N–1A by more than one fund and by a multiple class fund. Fund prospectuses frequently contain information for multiple series and classes that offer investors different investment alternatives and distribution arrangements. When information in them is presented clearly, prospectuses offering more than one fund may make it easier for investors to compare funds and may be more efficient for funds and investors by eliminating the need to provide investors with multiple prospectuses containing repetitive information. Instruction C generally enables a fund to organize information about multiple funds and classes in a format of its choice that is consistent with the goal of communicating information to investors effectively.[199]

4. Modified Prospectuses for Certain Funds

Proposed Instruction C would permit a fund that is offered as an investment alternative in a participant-directed defined contribution plan to modify its prospectus for use by participants in the plan. Under the Proposed Amendments, a prospectus used to offer fund shares to plan participants could omit certain information required by proposed Items 7 (shareholder information) and 8 (distribution arrangements). This prospectus disclosure would largely be irrelevant to plan participants; investments that can be made by participants, and the distributions participants receive (including the tax consequences of distributions), are governed by statutory requirements and by the terms of individual plans.[200] Commenters generally supported permitting prospectuses to be modified for plan participants, asserting that it would allow funds to provide meaningful disclosure specifically designed for plan participants who invest in funds. The Commission is adopting the provisions in Instruction C relating to prospectuses for plan participants with modifications to reflect suggestions of commenters.

Instruction C, as proposed, would permit funds to tailor disclosure for prospectuses to be used for investments in defined contribution plans qualified under the Internal Revenue Code. One commenter suggested that the Commission permit funds that serve as investment options for variable insurance contracts to use modified prospectuses that set out purchase and sale procedures, distributions, and tax consequences applicable to these funds. In response to the commenter's suggestions, the Commission is permitting prospectuses to be tailored for funds offered through variable insurance contracts in furthering its goal of providing investors with more useful disclosure documents.[201]

5. Incorporation By Reference

Proposed General Instruction D would replace an existing instruction to Form N–1A that addresses incorporation by reference in a fund's prospectus of information in the fund's SAI. When the Commission adopted the two-part disclosure format for Form N–1A, the Commission intended that Part A of the registration statement provide investors with a simplified prospectus that, standing alone, would meet the requirements of section 10(a) of the Securities Act.[202] Part B, the SAI (which is available to investors upon request), includes additional information that the Commission has determined may be useful to some investors and should be available to all investors, but is not necessary in the public interest or for the protection of investors to be in the

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requirement for purposes of all prospectus disclosure.

[196] General Instruction C.1(e).

[197] Items 1(a) (Front Cover Page), 1(b) (Back Cover Page), 2 (Risk/Return Summary: Investments, Risks, and Performance), and 3 (Risk/Return Summary: Fee Table).

[198] See infra Section II.H for a discussion of the effective and compliance dates for Form N–1A, as amended. The compliance date for investment companies other than funds is October 1, 1998. See Plain English Release, *supra* note 20, at 6370. Unit investment trusts and closed-end investment companies must comply with the plain English rule only for new registration statements. Variable annuity issuers filing on Forms N–3 and N–4, and variable life insurance issuers filing on Forms N–8B–2 and S–6 must comply with rule 421(d) for new and updated registration statements. The Commission also has proposed new Form N–6 for variable life insurance issuers that incorporates the Commission's plain English requirements. Investment Company Act Release No. 23066 (Mar. 13, 1998).

[199] General Instruction C.3(c). A fund, for example, may decide that using a horizontal rather than vertical presentation for the fee table would present the required fee information most effectively. A fund may find that using different formats in its prospectus risk/return summary would communicate the required information effectively. Depending on the number and type of funds offered in the prospectus, for example, a fund may find it useful to group the required information for all funds together under each caption or to present the information sequentially for each fund. See John Hancock Funds, Inc. (pub. avail. June 28, 1998) (using a two-page disclosure format for each of 7 funds offered in a single prospectus).

[200] In addition to plans under rule 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], these plans include those under section 403(b) [26 U.S.C. 403(b)] (available to employees of certain tax-exempt organizations and public educational systems) and section 457 [26 U.S.C. 457] (available to employees of state and local governments and other tax-exempt employers).

[201] General Instruction C.3(d).

[202] 1983 Form N–1A Adopting Release, *supra* note 12, at 37930.

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prospectus.[203] Form N–1A currently permits, but does not require, a fund to incorporate the SAI by reference into the prospectus. The two-part disclosure format has been widely used by funds, and the Commission has found that the current approach to incorporation by reference is consistent with the intended purpose of Form N–1A and should be retained.[204]

Proposed Instruction D would continue to permit, but not require, a fund to incorporate the SAI by reference into the prospectus. Commenters supported this approach to incorporation by reference, and the Commission is adopting Instruction D substantially as proposed.[205] The revised Instruction clarifies that incorporating information by reference from the SAI is not permitted as a response to an item of Form N–1A requiring information to be included in the prospectus. Permitting the SAI to be incorporated by reference into the prospectus was meant to allow funds to add material that the Commission determined not to require in the prospectus, not to permit funds to delete required information from the prospectus and place it in the SAI. Form N–1A, as amended, provides funds with clearer directions for allocating disclosure between the prospectus and the SAI. Funds can discuss items of information required to appear in the prospectus in greater detail in the SAI, which may be incorporated by reference into the prospectus.

The Commission notes that section 19(a) of the Securities Act[206] and section 38(c) of the Investment Company Act[207] protect a fund from liability under these Acts for actions taken in good faith in conformity with any rule of the Commission. The amendments to Form N–1A are designed to provide better guidance to funds as to what information should be in the prospectus and the SAI to assist funds seeking to act in good faith in conformity with Form N–1A.[208]

6. Form N–1A Guidelines and Related Staff Positions

The Guidelines to current Form N–1A (the "Guides") were prepared by the Division and published by the Commission when it adopted the Form in 1983.[209] The Guides, which generally restate Division positions that may affect fund disclosure, were intended to assist funds in preparing and filing their registration statements. Additional Division positions on disclosure matters have been included from time to time in Generic Comment Letters prepared by the Division ("GCLs").[210]

Although certain Guides have been revised and new ones added in connection with the adoption of various rules, the Guides collectively have not been reviewed since 1983. Certain Division positions in the Guides and GCLs have become outdated.[211] Other Guides and GCLs explain or restate legal requirements and may encourage generic disclosure about fund operations that does not appear to help investors evaluate and compare funds.[212] In addition, the presentation of information in 35 Guides and 7 GCLs is not organized in the most useful or effective manner.

To address these issues, Form N–1A, as amended, incorporates certain disclosure requirements from the Guides and GCLs. Other disclosure requirements in the Guides and the GCLs have not been incorporated in Form N–1A because, among other things, they are outdated or result in disclosure about technical, legal, and operational matters generally common to all funds. In addition, Form N–1A does not incorporate certain requirements calling for specific disclosure about certain types of fund investments because these requirements have tended to standardize disclosure about certain securities without regard to how a particular fund intends to use the securities in achieving its investment objectives. Generalized disclosure of this sort is inconsistent with the goal of the amendments to prospectus disclosure being adopted today to provide investors with information about how a particular fund's portfolio will be managed and elicit disclosure tailored to a fund's particular investment objectives and strategies.[213]

Information in the Guides and GCLs about legal requirements (including information about fund organization and operations), interpretive positions, and descriptions of filing procedures will be updated and reorganized in a new Investment Company Registration Guide ("Registration Guide").[214] The Commission has instructed the Division to make the Registration Guide available as soon as practicable. While the Commission believes that the Registration Guide will be a useful tool for funds in preparing their filings, Form N–1A, as amended, includes all of the requirements necessary for funds to prepare new or amend existing registration statements.[215]

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[203] *Id.* See *White* v. *Melton*, 757 F. Supp. 267 (S.D.N.Y. 1991) (citing the 1983 Form N–1A Adopting Release, *supra* note 12, as authority for the principle that certain matters are required to appear in the prospectus and that others may be appropriately disclosed in the SAI, which may be incorporated by reference into the prospectus).

[204] See Form N–1A Proposing Release, *supra* note 8, at 10920 (citing the 1982 Form N–1A Proposing Release as suggesting that prohibiting incorporation by reference of the SAI into the prospectus or, alternatively, requiring delivery of the SAI with the prospectus, would "vitiate the Commission's attempt to provide shorter, simpler prospectuses").

[205] General Instruction D, as adopted, includes technical revisions to simplify its requirements. The specific instruction regarding incorporation by reference of condensed financial information from reports to shareholders in existing General Instruction E has been incorporated in Item 9 of Form N–1A, as amended (financial highlights table). The existing instruction allowing incorporation of financial information in response to Item 23 of Form N–1A from reports to shareholders has been deleted as unnecessary because the Form does not limit incorporation of information into the SAI. The requirement that a shareholder report incorporated by reference into the SAI be delivered with the SAI has been added in Item 10(a)(iv).

[206] 15 U.S.C. 77q(a).

[207] 15 U.S.C. 80a–38(c).

[208] See 1983 Form N–1A Adopting Release, *supra* note 12, at 37930.

[209] 1983 Form N–1A Adopting Release, *supra* note 12, at 37938 (stating that publication of the Guides was not intended to elevate their status beyond that of staff guidance). The Commission initially adopted guidelines in 1972 to assist funds in preparing and filing registration statements. Investment Company Act Release Nos. 7220, 7221 (June 9, 1972) [37 FR 12790] ("Guides Releases").

[210] See 1993 GCL and 1994 GCL, *supra* note 25.

[211] See, *e.g.*, Guide 9 (Short Sales) (a new interpretive position of the Commission's staff as to limits under the Investment Company Act on short sales entered into by funds was set out in Robertson Stephens Investment Trust (pub. avail. Aug. 24, 1995)); Guide 30 (Tax Consequences) (each series is now treated as a separate entity for tax purposes and may not, as suggested by the Guide, offset gains of one series against losses of another); 1990 GCL, *supra* note 25, at I.B (undertakings); 1991 GCL, *supra* note 25, at II.A.2 (country, international, and global funds); and 1992 GCL, *supra* note 25, at II.F (segregated accounts).

[212] See, *e.g.*, Guides 8 (Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements), 9 (Short Sales), 15 (Qualification for Treatment Under Subchapter M of the Internal Revenue Code), and 28 (Valuation of Securities Being Offered); 1994 GCL, *supra* note 25, at III.C (redemption fees); and 1995 GCL, *supra* note 25, at II.A (MDFP disclosure).

[213] See *supra* Section II.A.3.

[214] The Guides have not been republished with Form N–1A, as amended. Neither the Guides nor the GCLs will apply to registration statements prepared on the amended Form. The Commission also is rescinding the Guides Releases, *supra* note 105.

[215] The Registration Guide will address topics discussed in the GCLs relating to closed-end investment companies and unit investment trusts, and other matters not relevant to Form N–1A (*e.g.*, proxy disclosure). Information traditionally addressed in the GCLs will be considered when the Registration Guide is updated, unless the nature of the information warrants immediate dissemination. The Registration Guide will serve as a "small entity compliance guide," which the Commission is required to publish under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C.S. 601 note (Supp. July 1996)).

E. Technical Rule Amendments

When it proposed to amend Form N–1A, the Commission proposed several technical rule amendments. These rule amendments generally were intended to implement the recommendations of the Commission's Task Force on Disclosure Simplification that apply to funds.[216] The Commission is adopting these amendments substantially as proposed.[217] The Commission also is adopting conforming amendments to several rules and a form to correct references to items in Form N–1A that have been redesignated or reorganized in Form N–1A, as amended.[218]

F. Administration of Form N–1A

While generally praising the Proposed Amendments and their goals, some commenters voiced concern that, unless administered appropriately, Form N–1A, as amended, would not lead to more useful and understandable disclosure documents for fund investors. Some commenters argued that, over time, the Commission's staff has interpreted Form N–1A's existing requirements so narrowly as to prevent funds from adopting formats in which information could be effectively communicated to investors. Other commenters asserted that the Commission's staff, in interpreting the provisions of existing Form N–1A, has consistently required lengthy and complex disclosure that may discourage investors from reading fund prospectuses.[219]

The Commission acknowledges that some interpretations relating to Form N–1A disclosure taken by the staff in the past have contributed to fund prospectuses becoming dense and less inviting to read by shareholders.[220] The Commission believes, however, that funds, their counsels and other advisors also have contributed to this result. In seeking to minimize potential liabilities under the federal securities laws, many funds appear to have made the use of clear formats and concise and understandable language in fund prospectuses only a secondary concern, at best. Funds also appear to have added material to their prospectuses not otherwise required by Form N–1A to facilitate marketing or other business objectives.

The Commission firmly believes that achieving the goals underlying the amendments to Form N–1A being adopted today necessitates discipline on the part of the Commission and its staff, as well as on the part of funds and their advisors. In exercising discipline, all parties involved in the disclosure process should look not only to the Form N–1A disclosure requirements, as amended, but also to the disclosure principles reflected in the Form. The Commission has instructed its staff to adhere to those principles closely when providing comments on registration statements filed on Form N–1A and in interpreting provisions of the Form.[221] The Commission strongly encourages funds and their advisors to follow closely the principles in drafting language and designing formats for use in fund prospectuses.

Throughout the period during which the Form N–1A and profile initiatives were developed, the Commission staff worked with numerous fund groups to create innovative disclosure materials and new and improved prospectuses.[222] The results of these efforts have been commended by many as achieving a significant improvement over existing disclosure documents.[223] Many of the efforts were furthered by the willingness of the staff to interpret Commission disclosure requirements in a manner consistent with the goal of enabling funds to communicate more effectively to investors information essential in considering an investment in a fund.[224] The Commission's staff will continue to exercise this approach in interpreting the provisions of Form N–1A, as amended, and in reviewing fund filings under the revised disclosure requirements.[225]

G. Coordination With the NASD

As discussed in the Form N–1A Proposing Release, some rules of the NASD restrict the ability of NASD members to engage in various activities relating to funds unless certain disclosures are made in fund prospectuses.[226] NASD Conduct Rule 2830, for example, generally does not allow underwriters to pay compensation to broker-dealers for selling shares of a fund, unless the compensation arrangements are disclosed in the fund's prospectus.[227] Certain commenters

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[216] SEC, Report of the Task Force on Disclosure Simplification (1996).

[217] The Commission is amending rules 495 and 497 [17 CFR 230.495 and .497] to eliminate their cross-reference sheet requirements. The Commission also is amending rule 8b–11 [17 CFR 270. 8b–11] to modify signature requirements to provide more flexibility for issuers filing on paper. The Commission adopted amendments to rule 481, which is applicable to funds, in the Plain English Release, *supra* note 20.

[218] See amendments to rules 483, 485, 304, 14a–101 [17 CFR 230.483, :485, 232.304, 240.14a–101] and Form N–14 [referenced in 17 CFR 239.23].

[219] Several commenters referred to this aspect of staff disclosure interpretations as resulting in "disclosure creep." According to these commenters, the disclosure that proved problematic typically related to complex instruments in which some funds invested such as options, futures, and junk bonds. The commenters said that, in response to difficulties experienced by funds investing in these instruments, the staff often required all funds holding these instruments to amend their prospectuses to add lengthy and overly technical discussions of the instruments.

[220] See Levitt Article, *supra* note 5, at 37 ("We recognize that we share responsibility for the state of the modern prospectus. Our passion for full disclosure has resulted in fact-bloated reports, and prospectuses that are more redundant than revealing.").

[221] The Commission has also generally instructed the staff to avoid as much as possible using disclosure requirements as a means of regulating the conduct of funds, which are subject to extensive substantive regulation under the Investment Company Act.

[222] See, *e.g.*, Levitt Article, *supra* note 5 (discussing various Commission initiatives to work with mutual funds and other corporate issuers to improve prospectus disclosure); Connors, Mutual Fund Prospectus Simplification: The Time Has Come, The Investment Lawyer, Vol. 3, No. 8, Aug. 1997, at 14 (describing the Commission's role in the development of the simplified John Hancock prospectus).

[223] See, *e.g.*, Dow Jones Newswires, State Street Rewrites Prospectuses to Help Ease Investors' Task, The Wall Street Journal, Nov. 14, 1997, at 1B (commenting on State Street's new plain English prospectus); Kelley, John Hancock Builds a Better Mousetrap, Morningstar Mutual Funds, Sept. 13, 1996, at 52 (commenting on the improvements in John Hancock's new prospectus); McTague, Simply Beautiful: Shorn of Legalese, Even Prospectuses Make Sense, Barron's, Oct. 7, 1996, at F10 (concerning the recent efforts of the John Hancock funds and other fund groups to simplify their prospectuses); Morcau, Prospectuses are Getting Easier to Read, Investor's Business Daily, Dec. 15, 1997, at B1 (noting improvements in the prospectuses from Vanguard, State Street, Dreyfus, and other fund groups); Williamson, State Street Launches Redesigned Prospectus, Pensions & Investments, Dec. 8, 1997, at 36 (commenting on State Street's simplified and redesigned prospectus); Zweig, Our 1997 Mutual Fund Awards: Picks, Pans and Some Tips Too, Money, Vol. 26, No. 13, 1997, at 35 (commending USAA and State Street for producing prospectuses in clear, simple English).

[224] See John Hancock Funds, Inc., *supra* note 199; see also 1997 Profile Letter, 1996 Profile Letter, and 1995 Profile Letter, *supra* note 16; National Association for Variable Annuities (pub. avail. June 4, 1996); Fidelity Institutional Retirement Services Company, Inc. (pub. avail. Apr. 5, 1995).

[225] The Commission recognizes that, in interpreting these provisions, the staff will have to balance the goal of furthering the effective communication of information to investors with the goal of presenting prospectuses in formats designed to permit investors to compare the operations of one fund to those of other funds.

[226] See Form N–1A Proposing Release, *supra* note 8, at 10916–17.

[227] See, *e.g.*, rule 2830(*l*)(1)(C) of the NASD Conduct Rules, *supra* note 37, at 4627 (prohibiting the offer, payment, or arrangement of "concessions" in connection with retail sales of investment company securities unless the arrangement is disclosed in the investment company's prospectus). The NASD has proposed to eliminate the provision in Conduct Rule 2830 that necessitates prospectus disclosure concerning these non-cash arrangements. See Securities Exchange Act Release No. 38993 (Sept. 5, 1997) [62 FR 47080]. Moreover, the NASD staff has assured the Commission's staff that the NASD staff will reconsider the appropriateness of requiring prospectus disclosure concerning cash compensation, in light of the Commission's Form

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expressed concern that these and other NASD prospectus disclosure requirements appear to be inconsistent with the Commission's broad initiatives to improve fund disclosure, and encouraged the Commission to coordinate its regulatory efforts with the NASD.

The Commission believes that it is of the utmost importance that all disclosure contained in fund prospectuses conforms to the principles of effective communication reflected in Form N–1A, as amended. The Commission has discussed these principles with the NASD staff, which has agreed to evaluate all of the NASD's existing requirements for consistency with these principles and to propose to the Commission that those rules be changed as necessary to achieve greater consistency. In addition, to the extent that it imposes prospectus disclosure requirements in the future, the NASD will seek to do so in accordance with the Commission's disclosure principles.[228]

H. Effective Dates and Transition Period

As discussed in the Form N–1A Proposing Release,[229] the Commission is providing for a transition period after the effective date of the amendments to Form N–1A that gives funds sufficient time to update their prospectuses or to prepare new registration statements under the revised Form N–1A requirements. All new registration statements or post-effective amendments that are annual updates to effective registration statements filed on or after December 1, 1998 must comply with the amendments to Form N–1A.[230] The final compliance date for filing amendments to effective registration statements to conform with the new Form N–1A requirements is December 1, 1999. The same compliance dates apply to the new plain English disclosure requirements for fund prospectuses. A fund may, at its option, prepare documents in accordance with the requirements of Form N–1A, as amended, at any time after the effective date of the amendments.

III. Cost/Benefit Analysis and Effects on Competition, Efficiency, and Capital Formation

Section 2(c) of the Investment Company Act provides that whenever the Commission engages in rulemaking requiring the Commission to consider whether its action is in the public interest, the Commission also must consider whether the action will promote efficiency, competition, and capital formation.[231] For the reasons stated in the cost/benefit analysis below, as well as the reasons discussed elsewhere in this release, the Commission has concluded that the amendments to Form N–1A protect investors and promote efficiency, competition, and capital formation.

The central goal of the amendments to Form N–1A is to promote fund disclosure documents that effectively communicate essential information to investors. The amendments seek to meet this goal by focusing prospectus disclosure on information that will help investors decide whether to invest in a fund. The amendments seek to organize the prospectus in a more efficient manner, which increases the effectiveness of the information in the prospectus. For example, the amendments minimize required disclosure in a fund's prospectus about matters that generally are common to all funds and focus the disclosure on matters about the fund. Changes such as the addition to Form N–1A of a standardized risk/return summary also allow investors to use prospectus information efficiently to compare one fund to others before investing. Well-informed investors may invest more of their resources and allocate their investments carefully, which in turn would tend to promote competition among funds.

The Commission did not receive any comments addressing the costs associated with the amendments to Form N–1A. While it is difficult to quantify costs and benefits related to Form N–1A, the Commission notes that commenters strongly favored the amendments. As discussed in the Commission's Paperwork Reduction Act submission in conjunction with the Form N–1A Proposing Release, the Commission estimated that there are approximately 7,500 registrants on Form N–1A. The total annual cost to the industry of preparing, filing, and updating current Form N–1A is approximately $175 million.[232] The Commission does not believe that these amendments will result in a significant cost increase over time because the amendments do not require that funds disclose a significant amount of new information. Rather than increase the reporting burden, the amendments primarily clarify instructions, reorganize the prospectus, and require new formats for certain information.

The Commission's estimate of the total annual cost to the industry identified above reflects the burden of initial Form N–1A filings, which the Commission has sought to minimize. It is likely that an initial expense from the revisions would be offset by future savings such as lower printing and distribution costs from a shorter prospectus. For example, the amendments eliminate the requirement that newly organized funds file updated financial statements within 4 to 6 months after the effective date of the registration statement. The costs of filing these updated financial statements may have a disproportionate effect on small funds and the Commission estimates that the elimination of the requirement will produce an approximate savings of $1.8 million annually based on an estimate of 180 filings of Form N–1A per year by newly organized funds. The elimination of this requirement also promotes competition and capital formation by decreasing cost-related barriers to entry. On balance, the Commission believes that the amendments to Form N–1A benefit investors, foster efficiency, and tend to promote competition and capital formation.

IV. Paperwork Reduction Act

As explained in the Form N–1A Proposing Release, the amendments to Form N–1A contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[233] The collection of information requirements in this release were submitted to the Office of Management and Budget ("OMB") for review under section 3507(d) of the PRA. OMB approved the collection of information under the title "Form N–1A Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Open-End Management Investment Companies" and assigned it a control number of 3235–0307. The collection of information contained in the release is in accordance with the clearance requirements of 44 U.S.C. 3507. An

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N–1A initiatives. *Id.* at 47086. In addition, the NASD has proposed to eliminate certain prospectus disclosure concerning the effects of asset-based sales charges. See *supra* note 169.

[228] The Commission also encourages the NASD to follow as much as possible the disclosure principles underlying the Form N–1A in considering and proposing disclosure requirements under NASD rules that apply to fund advertisements.

[229] See Form N–1A Proposing Release, *supra* note 8, at 10921.

[230] To simplify compliance with the revised prospectus disclosure requirements, the Commission is specifying the effective date as June 1, 1998.

[231] 15 U.S.C. 80a–2(c). See also section 2(b) of the Investment Company Act. 15 U.S.C. 77b(b).

[232] Form N–1A Proposing Release, *supra* note 8.

[233] 44 U.S.C. 3501, *et seq.*

agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the agency displays a valid OMB control number.

Funds use Form N–1A to register under the Investment Company Act and to register the offer for sale of their shares under the Securities Act. The amendments to Form N–1A seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and focus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund. The filing of Form N–1A is mandatory. Responses to the disclosure requirements of Form N–1A will not be kept confidential.

The Commission solicited public comment on the collection of information requirements contained in the Form N–1A Proposing Release and received no comments on the PRA portion of the release. The estimated total burden, purpose, use and necessity of the collection of information will be the same as detailed in the Form N–1A Proposing Release.

V. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 regarding the amendments to Form N–1A. The FRFA explains that the amendments will revise disclosure requirements for fund prospectuses to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and focus prospectus disclosure on essential information about a particular fund that will assist investors in deciding whether to invest in that fund. The FRFA also explains that the amendments are intended to improve fund prospectuses and to promote more effective communication of information about funds.

The Commission requested comment with respect to the Initial Regulatory Flexibility Analysis ("IRFA") contained in Form N–1A Proposing Release. The Commission did not receive any comments with respect to the IRFA.

The Commission estimates that approximately 2,700 registered open-end management investment companies are subject to the requirements of Form N–1A. Of these, approximately 620 (23%) are funds that meet the Commission's definition of small entity for the purposes of the Securities Act and the Investment Company Act—an investment company with net assets of $50 million or less as of the end of its most recent fiscal year [17 CFR 230.157(b) and 270.0–10].

The FRFA explains that Form N–1A, as amended, will not impose any substantial additional burdens for small entities because most of the changes do not require the development of new information. Initially, however, the changes will require funds to amend the format in which they present information in their prospectuses. The amendments primarily will clarify and simplify the instructions for completing Form N–1A, shift information from the prospectus to the SAI, and require new formats for certain information. A fund's initial update under Form N–1A, as amended, may take longer than preparing a current prospectus due to a lack of familiarity with the new format. On balance, however, the Commission believes that preparing and updating the revised Form should take the same amount of time (or possibly less time) as preparing and updating the current Form.

As stated in the FRFA, the Commission considered several alternatives to the amendments, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the rule. Because the amendments to Form N–1A are intended to improve prospectus disclosure for all investors, whether they invest in funds that are small entities or others, the Commission believes that separate treatment for small entities is inconsistent with the protection of investors. A copy of the FRFA may be obtained by contacting Markian M.W. Melnyk, Deputy Chief, Office of Disclosure Regulation, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009.

VI. Statutory Authority

The Commission is amending rules and forms pursuant to sections 5, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)], and sections 8, 22, 24(g), 30 and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–22, 80a–24(g), 80a–29, and 80a–37]. The authority citations for the amendments to the rules and forms precede the text of the amendments.

Text of Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 232, 239, 240, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission amends Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Revise the note immediately preceding § 230.480 to read as follows:

Note: The rules in this section of Regulation C (§§ 230.480 to 230.488 and §§ 230.495 to 230.498) apply only to investment companies and business development companies. Section 230.489 applies to certain entities excepted from the definition of investment company by rules under the Investment Company Act of 1940. The rules in the rest of Regulation C (§§ 230.400 to 230.479 and §§ 230.490 to 230.494), unless the context specifically indicates otherwise, also apply to investment companies and business development companies. *See* § 230.400.

§ 230.483 [Amended]

3. Amend § 230.483 to remove all references to "3(a)" under the heading "Form N–1A" in the table following paragraph (e)(4) and add, in their place, "9", and to remove the references to "3(b)" and the corresponding item descriptions under the heading "Form N–1A" in the table following paragraph (e)(4).

§ 230.485 [Amended]

4. Amend § 230.485 to correct the reference "paragraph (b)(1)(v)" in the introductory text of paragraph (b) to read "paragraph (b)(1)(iii)", and to revise the reference "Items 5(c) or 5A" in paragraph (b)(1)(iv) to read "Items 5 or 6(a)(2)".

§ 230.495 [Amended]

5. Amend § 230.495 to remove the words "cross-reference sheet;" from paragraph (a).

§ 230.497 [Amended]

6. Amend § 230.497 to remove the words ", together with 5 copies of a cross reference sheet similar to that previously filed, if changed" from paragraph (d) and ", together with five copies of a cross-reference sheet similar to that previously filed, if changed" from paragraph (e).

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

7. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

8. Amend § 232.304 to revise the reference to "Item 5A" in paragraph (d) to read "Item 5".

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

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10. Amend Form N–14 (referenced in § 239.23) to revise the reference "Item 2 of Form N–1A" in Item 3(a) to read "Item 3 of Form N–1A", to revise the reference "Items 10 through 23 of Form N–1A" in Item 12(a) to read "Items 10 through 22 of Form N–1A", and to revise the reference "Items 10 through 14 and 16 through 23 of Form N–1A" in Item 13(a) to read "Items 10 through 13 and 15 through 22 of Form N–1A," and revise paragraph (a) of Item 5 to read as follows:

Note: Form N–14 does not and these amendments will not appear in the *Code of Federal Regulations*.

Form N–14

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Item 5.

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(a) If the registrant is an open-end management investment company, furnish the information required by Items 2, 3, 4(a) and (b), and 5–9 of Form N–1A under the 1940 Act; *provided, however,* that the information required by Item 5 may be omitted if the prospectus is accompanied by an annual report to shareholders containing the information otherwise required by Item 5;

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

11. The general authority citation for Part 240 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78*f*, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.14a–101 [Amended]

12. Amend § 240.14a–101 to revise the reference "Item 5" in paragraph (a)(1)(i) of Item 22 to read "Item 15(h)", the reference "Item 2" in paragraph (a)(3)(iv) of Item 22 to read "Item 3", and the reference "Item 2(a)(ii)" in Instruction 4 to paragraph (a)(3)(iv) of Item 22 to read "Item 3".

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

13. The authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1, *et seq.*, 80a–34(b)(1), 80a–37, 80a–39 unless otherwise noted:

* * * * *

14. Amend § 270.8b–11 to remove the word "manually" from paragraph (c) and to revise paragraph (e) to read as follows:

§ 270.8b–11 Number of copies; signatures; binding.

* * * * *

(e) *Signatures.* Where the Act or the rules thereunder, including paragraph (c) of this section, require a document filed with or furnished to the Commission to be signed, the document should be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. When typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing. Execute each such document before or at the time the filing is made and retain for a period of five years. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

15. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

16. Revise Form N–1A (referenced in §§ 239.15A and 274.11A) (including the Guidelines to the Form) to read as follows:

Note: The text of Form N–1A does not and this amendment will not appear in the Code of Federal Regulations.

OMB Approval
OMB Number:
Expires:
Estimated average burden hours per response

Securities and Exchange Commission

Washington, D.C. 20549

Form N–1A

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 [ ]
Pre-Effective Amendment No. _____ [ ]
Post-Effective Amendment No. _____ [ ]
and/or
REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940 [ ]
Amendment No. _____ [ ]
(Check appropriate box or boxes.)

_____
(Exact Name of Registrant as Specified in Charter)

_____
(Address of Principal Executive Offices)

_____
(Zip Code)

Registrant's Telephone Number, including Area Code _____

_____
(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering _____

It is proposed that this filing will become effective (check appropriate box)

[ ] Immediately upon filing pursuant to paragraph (b)
[ ] on (date) pursuant to paragraph (b)
[ ] 60 days after filing pursuant to paragraph (a)(1)
[ ] On (date) pursuant to paragraph (a)(1)
[ ] 75 days after filing pursuant to paragraph (a)(2)
[ ] On (date) pursuant to paragraph (a)(2) of rule 485.

If appropriate, check the following box:

[ ] This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" only when shares are being registered under the Securities Act of 1933.

Form N–1A is to be used by open-end management investment companies, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933. The Commission has designed Form N–1A to provide investors with information that will assist them in making a decision about investing in an investment company eligible to use the Form. The Commission also may use the information provided on Form N–1A in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N–1A, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–1A unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–6009. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

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GENERAL INSTRUCTIONS

A. Definitions

References to sections and rules in this Form N–1A are to the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N–1A have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N–1A, the terms set out below have the following meanings:

"Class" means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f–3 [17 CFR 270.18f–3] or under an order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) [15 U.S.C. 80a–18(f), 18(g), and 18(i)].

"Fund" means the Registrant or a separate Series of the Registrant. When an item of Form N–1A specifically applies to a Registrant or a Series, those terms will be used.

"Master-Feeder Fund" means a two-tiered arrangement in which one or more Funds (each a "Feeder Fund") holds shares of a single Fund (the "Master Fund") in accordance with section 12(d)(1)(E) [15 U.S.C. 80a–12(d)(1)(E)].

"Money Market Fund" means a Fund that holds itself out as money market fund and meets the maturity, quality, and diversification requirements of rule 2a–7 [17 CFR 270.2a–7].

"Multiple Class Fund" means a Fund that has more than one Class.

"Registrant" means an open-end management investment company registered under the Investment Company Act.

"SAI" means the Statement of Additional Information required by Part B of this Form.

"Securities Act" means the Securities Act of 1933 [15 U.S.C. 77a *et seq.*].

"Securities Exchange Act" means the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*].

"Series" means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f–2(a) [17 CFR 270.18f–2(a)].

B. Filing and Use of Form N–1A

1. What is Form N–1A Used for?

Form N–1A is used by Funds, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to file:

(a) An initial registration statement under the Investment Company Act and amendments to the registration statement, including amendments required by rule 8b–16 [17 CFR 270.8b–16];

(b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or

(c) Any combination of the filings in paragraph (a) or (b).

2. What Is Included in the Registration Statement?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.

(b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, 5, and 9), B, and C (except Items 23(e) and (i)–(k)), and the required signatures.

3. What Are the Fees for Form N–1A?

No registration fees are required with the filing of Form N–1A to register as an investment company under the Investment Company Act or to register securities under the Securities Act. See section 24(f) [15 U.S.C. 80a–24f–2] and related rule 24f–2 [17 CFR 270.24f–2].

4. What Rules Apply to the Filing of a Registration Statement on Form N–1A?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act [17 CFR 230.400–230.497] apply to the filing of Form N–1A. Specific requirements concerning Funds appear in rules 480–485 and 495–497 of Regulation C.

(b) For registration statements and amendments filed only under the Investment Company Act, the general provisions in rules 8b–1—8b–32 [17 CFR 270.8b–1—270.8b–32] apply to the filing of Form N–1A.

(c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N–1A.

(d) Regulation S–T [17 CFR 232.10—232.903] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").

C. Preparation of the Registration Statement

1. Administration of the Form N–1A Requirements

(a) The requirements of Form N–1A are intended to promote effective communication between the Fund and prospective investors. A Fund's prospectus should clearly disclose the fundamental characteristics and investment risks of the Fund, using concise, straightforward, and easy to understand language. A Fund should use document design techniques that promote effective communication. The prospectus should emphasize the Fund's overall investment approach and strategy.

(b) The prospectus disclosure requirements in Form N–1A are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Fund by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting the Fund with other funds.

(c) Responses to the Items in Form N–1A should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Fund. The prospectus should avoid: including lengthy legal and technical discussions; simply restating legal or regulatory requirements to which Funds generally are subject; and disproportionately emphasizing possible investments or activities of the Fund that are not a significant part of the Fund's investment operations. Brevity is especially important in describing the practices or aspects of the Fund's operations that do not differ materially from those of other investment companies. Avoid excessive detail, technical or legal terminology, and complex language. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for many investors to understand and detract from its usefulness.

(d) The requirements for prospectuses included in Form N–1A will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N–1A.

2. Form N–1A is Divided Into Three Parts

(a) *Part A.* Part A includes the information required in a Fund's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Fund in a way that will help investors to make informed decisions about whether to purchase the Fund's shares described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI or shareholder reports. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.

(b) *Part B.* Part B includes the information required in a Fund's SAI. The purpose of the SAI is to provide additional information about the Fund that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of

investors to be in the prospectus, but that some investors may find useful. Part B affords the Fund an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Fund believes may be of interest to some investors. The Fund should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.

(c) *Part C.* Part C includes other information required in a Fund's registration statement.

3. Additional Matters

(a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Disclose the information required by Items 2 and 3 (the Risk/Return Summary) in numerical order at the front of the prospectus. Do not precede these Items with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act. If the discussion in the Risk/Return Summary also responds to the disclosure requirements in Item 4, a Fund need not include additional disclosure in the prospectus responding to Item 4. Disclose the information required by Item 8 (Distribution Arrangements) in one place in the prospectus.

(b) *Other Information.* A Fund may include, except in the Risk/Return Summary, information in the prospectus or the SAI that is not otherwise required. For example, a Fund may include charts, graphs or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. The Risk/Return Summary may not include disclosure other than that required or permitted by Items 2 and 3.

(c) *Use of Form N–1A by More Than One Registrant, Series or Class.* Form N–1A may be used by one or more Registrants, Series, or Classes.

(i) When disclosure is provided for more than one Fund or Class, the disclosure should be presented in a format designed to communicate the information effectively. Funds may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Funds or Classes. Funds are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Funds or Classes.

(ii) Paragraph (a) requires Funds to disclose the information required by Items 2 and 3 in numerical order at the front of the prospectus and not to precede the Items with other information. As a general matter, multiple Funds or Multiple Class Funds may depart from the requirement of paragraph (a) as necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same). For example, the prospectus may present all of the Item 2 information for several Funds followed by all of the Item 3 information for the Funds, or may present Items 2 and 3 for each of several Funds sequentially. Other presentations also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 and 3 in a standard order at the beginning of the prospectus.

(d) *Modified Prospectuses for Certain Funds.*

(i) A Fund may modify or omit, if inapplicable, the information required by Items 7(b)–(d) and 8(a)(2) for funds used as investment options for:

(A) A defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k));

(B) A tax-deferred arrangement under sections 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) and 457); and

(C) A variable contract as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)), if covered in a separate account prospectus.

(ii) A Fund that uses a modified prospectus under Instruction (d)(i) may:

(A) Alter the legend required on the back cover page by Item 1(b)(1) to state, as applicable, that the prospectus is intended for use in connection with a defined contribution plan, tax-deferred arrangement, or variable contract; and

(B) Modify other disclosure in the prospectus consistent with offering the Fund as a specific investment option for a defined contribution plan, tax-deferred arrangement, or variable contract.

(e) *Dates.* Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

(f) *Sales Literature.* A Fund may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.

D. Incorporation by Reference

1. Specific Rules for Incorporation by Reference in Form N–1A

(a) A Fund may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Fund may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

(c) A Fund may incorporate by reference into the SAI or its response to Part C, information that Parts B and C require to be included in the Fund's registration statement.

2. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 10(d) of Regulation S–K under the Securities Act [17 CFR 229.10(d)] (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rules 0–4, 8b–23 and 8b–32 [17 CFR 270.0–4, 270.8b–23 and 270.8b–32] (additional rules on incorporation by reference for Funds).

Part A: Information Required in a Prospectus

Item 1. Front and Back Cover Pages

(a) *Front Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside front cover page of the prospectus:

(1) The Fund's name.

(2) The date of the prospectus.

(3) The statement required by rule 481(b)(1) under the Securities Act.

Instruction. A Fund may include on the front cover page a statement of its investment objectives, a brief (*e.g.*, one sentence) description of its operations, or any additional information, subject to the requirement set out in General Instruction C.3(b).

(b) *Back Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Fund, and a statement to the following effect:

Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders. In the Fund's annual report, you will find a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during its last fiscal year.

Explain that the SAI and the Fund's annual and semi-annual reports are available, without charge, upon request, and explain how shareholders in the Fund may make inquiries to the Fund. Provide a toll-free (or collect) telephone number for investors to call: to request the SAI; to request the Fund's annual report, if required by Item 5; to request the Fund's semi-annual report; to request other information about the Fund; and to make shareholder inquiries.

Instructions.

1. A Fund may indicate, if applicable, that the SAI and other information are available on its Internet site and/or by E-mail request.

2. A Fund may indicate, if applicable, that the SAI and other information are available from a financial intermediary (such as a broker-dealer or bank) through which shares of the Fund may be purchased or sold.

3. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the SAI, the annual report, or the semi-annual report, the Fund (or financial intermediary) must send the requested document within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

4. A Fund that has not yet been required to deliver an annual or semi-annual report to shareholders under rule 30d-1 [17 CFR 270.30d-1] may omit the statements required by this paragraph regarding the reports.

5. A Fund that provides the information required by Item 5 (Management's Discussion of Fund Performance) in its prospectus (and not in its annual report), or a Money Market Fund, may omit the sentence indicating that a reader will find in the Fund's annual report a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during its last fiscal year.

6. A Fund that provides a separate disclosure document to investors under Item 7(f) must include the statement required by Item 7(f)(3).

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Fund will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Fund may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) A statement that information about the Fund (including the SAI) can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C. Also state that information on the operation of the public reference room may be obtained by calling the Commission at 1–800-SEC-0330. State that reports and other information about the Fund are available on the Commission's Internet site at http://www.sec.gov and that copies of this information may be obtained, upon payment of a duplicating fee, by writing the Public Reference Section of the Commission, Washington, D.C. 20549–6009.

(4) The Fund's Investment Company Act file number on the bottom of the back cover page in type size smaller than that generally used in the prospectus (e.g., 8-point modern type).

Item 2. Risk/Return Summary: Investments, Risks, and Performance

Include the following information, in plain English under rule 421(d) under the Securities Act, in the order and subject matter indicated:

(a) *Fund investment objectives/goals.*

Disclose the Fund's investment objectives or goals. A Fund also may identify its type or category (*e.g.*, that it is a Money Market Fund or a balanced fund).

(b) *Principal investment strategies of the Fund.*

Based on the information given in response to Item 4(b), summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries.

(c) *Principal risks of investing in the Fund.*

(1) *Narrative Risk Disclosure.*

(i) Based on the information given in response to Item 4(c), summarize the principal risks of investing in the Fund, including the risks to which the Fund's portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, and total return. Unless the Fund is a Money Market Fund, disclose that loss of money is a risk of investing in the Fund.

Instruction. A Fund may, in responding to this Item, describe the types of investors for whom the Fund is intended or the types of investment goals that may be consistent with an investment in the Fund.

(ii) If the Fund is a Money Market Fund, state that:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

(iii) If the Fund is advised by or sold through an insured depository institution, state that:

An investment in the Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

Instruction. A Money Market Fund that is advised by or sold through an insured depository institution should combine the disclosure required by Items 2(c)(1)(ii) and (iii) in a single statement.

(iv) If applicable, state that the Fund is non-diversified, describe the effect of non-diversification (*e.g.*, disclose that, compared with other funds, the Fund may invest a greater percentage of its assets in a particular issuer), and summarize the risks of investing in a non-diversified fund.

(2) *Risk/Return Bar Chart and Table.*

(i) Include the bar chart and table required by paragraphs (c)(2)(ii) and (iii) of this section. Provide a brief explanation of how the information illustrates the variability of the Fund's returns (*e.g.*, by stating that the information provides some indication of the risks of investing in the Fund by showing changes in the Fund's performance from year to year and by showing how the Fund's average annual returns for 1, 5, and 10 years compare with those of a broad measure of market performance). Provide a statement to the effect that how the Fund has performed in the past is not necessarily an indication of how the Fund will perform in the future.

(ii) If the Fund has annual returns for at least one calendar year, provide a bar chart showing the Fund's annual total returns for each of the last 10 calendar years (or for the life of the Fund if less than 10 years), but only for periods subsequent to the effective date of the Fund's registration statement. Present the corresponding numerical return adjacent to each bar. If the Fund's fiscal year is other than a calendar year, include the year-to-date return information as of the end of the most recent quarter in

a footnote to the bar chart. Following the bar chart, disclose the Fund's highest and lowest return for a quarter during the 10 years or other period of the bar chart.

(iii) If the Fund has annual returns for at least one calendar year, provide a table showing the Fund's average annual total returns for 1, 5, and 10 calendar year periods ending on the date of the most recently completed calendar year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement, and the returns of an appropriate broad-based securities market index as defined in Instruction 5 to Item 5(b) for the same periods. A Fund that has been in existence for more than 10 years also may include average annual returns for the life of the fund. A Money Market Fund may provide the Fund's 7-day yield ending on the date of the most recent calendar year or disclose a toll-free (or collect) telephone number that investors can use to obtain the Fund's current 7-day yield.

Instructions.

1. *Bar Chart.*

(a) Provide annual total returns beginning with the earliest calendar year. Calculate annual returns using the Instructions to Item 9(a), except that the calculations should be based on calendar years. If a Fund's shares are sold subject to a sales load or account fees, state that sales loads or account fees are not reflected in the bar chart and that, if these amounts were reflected, returns would be less than those shown.

(b) For a Fund that provides annual total returns for only one calendar year or for a Fund that does not include the bar chart because it does not have annual returns for a full calendar year, modify, as appropriate, the narrative explanation required by paragraph (c)(2)(i) (*e.g.*, by stating that the information gives some indication of the risks of an investment in the Fund by comparing the Fund's performance with a broad measure of market performance).

2. *Table.*

(a) Calculate the Fund's average annual total returns under Item 21(b)(1) and a Money Market Fund's 7-day yield under Item 21(a).

(b) A Fund may include, in addition to the required broad-based securities market index, information for one or more other indexes as permitted by Instruction 6 to Item 5(b). If an additional index is included, disclose information about the additional index in the narrative explanation accompanying the bar chart and table (*e.g.*, by stating that the information shows how the Fund's performance compares with the returns of an index of funds with similar investment objectives).

(c) If the Fund selects an index that is different from the index used in a table for the immediately preceding period, explain the reason(s) for the selection of a different index and provide information for both the newly selected and the former index.

(d) A Fund (other than a Money Market Fund) may include the Fund's yield calculated under Item 21(b)(2). Any Fund may include its tax-equivalent yield calculated under Item 21. If a Fund's yield is included, provide a toll-free (or collect) telephone number that investors can use to obtain current yield information.

3. *Multiple Class Funds.*

(a) When a Multiple Class Fund offers more than one Class in the prospectus, provide annual total returns in the bar chart for only one of those Classes. The Fund can select which Class to include (*e.g.*, the oldest Class, the Class with the greatest net assets) if the Fund:

(i) Selects the Class offered in the prospectus with 10 or more years of annual returns if other Classes have fewer than 10 years of annual returns;

(ii) Selects the Class with the longest period of annual returns when the Classes offered in the prospectus all have fewer than 10 years of returns; and

(iii) If the Fund provides annual total returns in the bar chart for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the bar chart the reasons for the selection of a different Class.

(b) When a Multiple Class Fund offering one or more Classes offers a new Class in a prospectus that does not offer the shares of any other Class, include the bar chart with annual total returns for any other existing Class for the first year that the Class is offered. Explain in a footnote that the returns are for a Class that is not offered in the prospectus that would have substantially similar annual returns because the shares are invested in the same portfolio of securities and the annual returns would differ only to the extent that the Classes do not have the same expenses. Include return information for the other Class reflected in the bar chart in the performance table.

(c) Provide average annual total returns in the table for each Class offered in the prospectus.

(d) If a Multiple Class Fund offers a Class in the prospectus that converts into another Class after a stated period, compute average annual total returns in the table by using the returns of the other Class for the period after conversion.

4. *Change in Investment Adviser.* If the Fund has not had the same investment adviser during the last 10 calendar years, the Fund may begin the bar chart and the performance information in the table on the date that the current adviser began to provide advisory services to the Fund subject to the conditions in Instruction 11 of Item 5(b).

Item 3. Risk/Return Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act, after Item 2 (unless the Fund offers its shares exclusively to one or more separate accounts):

FEES AND EXPENSES OF THE FUND

[This table describes the fees and expenses that you may pay if you buy and hold shares of the Fund.]

Shareholder Fees (fees paid directly from your investment):		
Maximum Sales Charge (Load) Imposed on Purchases (as a percentage of offering price)		%
Maximum Deferred Sales Charge (Load) (as a percentage of)		%
Maximum Sales Charge (Load) Imposed on Reinvested Dividends [and other Distributions] (as a percentage of)		%
Redemption Fee (as a percentage of amount redeemed, if applicable)		%
Exchange Fee		%
Maximum Account Fee		%
Annual Fund Operating Expenses (expenses that are deducted from Fund assets):		
Management Fees		%
Distribution [and/or Service] (12b–1) Fees		%
Other Expenses		%
_____	%	
_____	%	
_____	%	
Total Annual Fund Operating Expenses		%

Example

This Example is intended to help you compare the cost of investing in the Fund with the cost of investing in other mutual funds.

The Example assumes that you invest $10,000 in the Fund for the time periods indicated and then redeem all of your shares at the end of those periods. The Example also assumes that your investment has a 5% return each year and that the Fund's operating expenses remain the same. Although your actual costs may be higher or lower, based on these assumptions your costs would be:

1 year	3 years	5 years	10 years
$	$	$	$

You would pay the following expenses if you did not redeem your shares:

1 year	3 years	5 years	10 years
$	$	$	$

The Example does not reflect sales charges (loads) on reinvested dividends [and other distributions]. If these sales charges (loads) were included, your costs would be higher.

Instructions.

1. *General.*

(a) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown.

(c) Include the caption "Maximum Account Fees" only if the Fund charges these fees. A Fund may omit other captions if the Fund does not charge the fees or expenses covered by the captions.

(d)(i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in a single fee table using the captions provided. In a footnote to the fee table, state that the table and Example reflect the expenses of both the Feeder and Master Funds.

(ii) If the prospectus offers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate response for each Class or Feeder Fund.

2. *Shareholder Fees.*

(a)(i) "Maximum Deferred Sales Charge (Load)" includes the maximum total deferred sales charge (load) payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 8(a), except that, for a sales charge (load) based on net asset value at the time of purchase, show the sales charge (load) as a percentage of the *offering price* at the time of purchase. A Fund may include in a footnote to the table, if applicable, a tabular presentation showing the amount of deferred sales charges (loads) over time or a narrative explanation of the sales charges (loads) (*e.g.*, ——% in the first year after purchase, declining to ——% in the —— year and eliminated thereafter).

(ii) If more than one type of sales charge (load) is imposed (*e.g.*, a deferred sales charge (load) and a front-end sales charge (load)), the first caption in the table should read "Maximum Sales Charge (Load)" and show the maximum cumulative percentage. Show the percentage amounts and the terms of each sales charge (load) comprising that figure on separate lines below.

(iii) If a sales charge (load) is imposed on shares purchased with reinvested capital gains distributions or returns of capital, include the bracketed words in the third caption.

(b) "Redemption Fee" includes a fee charged for any redemption of the Fund's shares, but does not include a deferred sales charge (load) imposed upon redemption.

(c) "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Fund to another fund. The Fund may include in a footnote to the table, if applicable, a tabular presentation of the range of exchange fees or a narrative explanation of the fees.

(d) "Maximum Account Fees." Disclose account fees that may be charged to a typical investor in the Fund; fees that apply to only a limited number of shareholders based on their particular circumstances need not be disclosed. Include a caption describing the maximum account fee (*e.g.*, "Maximum Account Maintenance Fee" or "Maximum Cash Management Fee"). State the maximum annual account fee as either a fixed dollar amount or a percentage of assets. Include in a parenthetical to the caption the basis on which any percentage is calculated. If an account fee is charged only to accounts that do not meet a certain threshold (e.g., accounts under $5,000), the Fund may include the threshold in a parenthetical to the caption or footnote to the table. The Fund may include an explanation of any non-recurring account fee in a parenthetical to the caption or in a footnote to the table.

3. *Annual Fund Operating Expenses.*

(a) "Management Fees" include investment advisory fees (including any fees based on the Fund's performance), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates that are not included as "Other Expenses."

(b) "Distribution [and/or Service] (12b–1) Fees" include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b–1 [17 CFR 270.12b–1]. Under an appropriate caption or a subcaption of "Other Expenses," disclose the amount of any distribution or similar expenses deducted from the Fund's assets other than pursuant to a rule 12b–1 plan.

(c)(i) "Other Expenses" include all expenses not otherwise disclosed in the table that are deducted from the Fund's assets or charged to all shareholder accounts. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]).

(ii) "Other Expenses" do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Fund's "Other Expenses," disclose in a footnote to the table what "Other Expenses" would have been had the extraordinary expenses been included.

(iii) The Fund may subdivide this caption into no more than three subcaptions that identify the largest expense or expenses comprising "Other Expenses," but must include a total of all "Other Expenses." Alternatively, the Fund may include the components of "Other Expenses" in a parenthetical to the caption.

(d)(i) Base the percentages of "Annual Fund Operating Expenses" on amounts incurred during the Fund's most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If the Fund has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Annual Fund Operating Expenses."

(ii) If there have been any changes in "Annual Fund Operating Expenses" that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in "Annual Fund Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in "Annual Fund Operating Expenses" does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(e) The Fund may reflect actual operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of the Fund.

4. *Example.*

(a) Assume that the percentage amounts listed under "Annual Fund Operating Expenses" remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses.

(b) For any breakpoint in any fee, assume that the amount of the Fund's assets remains constant as of the level at the end of the most recently completed fiscal year.

(c) Assume reinvestment of all dividends and distributions.

(d) Reflect recurring and non-recurring fees charged to all investors other than any exchange fees or any sales charges (loads) on shares purchased with reinvested dividends or other distributions. If sales charges (loads) are imposed on reinvested dividends or other distributions, include the narrative explanation following the Example and include the bracketed words when sales charges (loads) are charged on reinvested capital gains distributions or returns of capital. Reflect any shareholder account fees collected by more than one Fund by dividing the total amount of the fees collected during the most recent fiscal year for all Funds whose shareholders are subject to the fees by the total average net assets of the Funds. Add the resulting percentage to "Annual Fund Operating Expenses" and assume that it remains the same in each of the 1-, 3-, 5-, and 10-year periods. A Fund that charges account fees based on a minimum account requirement exceeding $10,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(e) Reflect any deferred sales charge (load) by assuming redemption of the entire account at the end of the year in which the sales charge (load) is due. In the case of a deferred sales charge (load) that is based on the Fund's net asset value at the time of payment, assume that the net asset value at the end of each year includes the 5% annual return for that and each preceding year.

(f) Include the second 1-, 3-, 5-, and 10-year periods and related narrative explanation only if a sales charge (load) or other fee is charged upon redemption.

5. *New Funds.* For purposes of this Item, a "New Fund" is a Fund that does not include in Form N–1A financial statements reporting operating results or that includes financial statements for the Fund's initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Funds.

(a) Base the percentages expressed in "Annual Fund Operating Expenses" on payments that will be made, but include in expenses, amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of "Other Expenses." Disclose in a footnote to the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

(b) The New Fund may reflect expense reimbursement or fee waiver arrangements that are expected to reduce any Fund operating expense or the estimate of "Other Expenses" (regardless of whether the arrangement has been guaranteed) in a footnote to the table. If the New Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of the Fund.

(c) Complete only the 1-and 3-year period portions of the Example and estimate any shareholder account fees collected.

Item 4. Investment Objectives, Principal Investment Strategies, and Related Risks

(a) *Investment Objectives.* State the Fund's investment objectives and, if applicable, state that those objectives may be changed without shareholder approval.

(b) *Implementation of Investment Objectives.* Describe how the Fund intends to achieve its investment objectives. In the discussion:

(1) Describe the Fund's principal investment strategies, including the particular type or types of securities in which the Fund principally invests or will invest.

Instructions.

1. A strategy includes any policy, practice, or technique used by the Fund to achieve its investment objectives.

2. Whether a particular strategy, including a strategy to invest in a particular type of security, is a principal investment strategy depends on the strategy's anticipated importance in achieving the Fund's investment objectives, and how the strategy affects the Fund's potential risks and returns. In determining what is a principal investment strategy, consider, among other things, the amount of the Fund's assets expected to be committed to the strategy, the amount of the Fund's assets expected to be placed at risk by the strategy, and the likelihood of the Fund's losing some or all of those assets from implementing the strategy.

3. A negative strategy (*e.g.*, a strategy not to invest in a particular type of security or not to borrow money) is not a principal investment strategy.

4. Disclose any policy to concentrate in securities of issuers in a particular industry or group of industries (*i.e.*, investing more than 25% of a Fund's net assets in a particular industry or group of industries).

5. Disclose any other policy specified in Item 12(c)(1) that is a principal investment strategy of the Fund.

6. Disclose, if applicable, that the Fund may, from time to time, take temporary defensive positions that are inconsistent with the Fund's principal investment strategies in attempting to respond to adverse market, economic, political, or other conditions. Also disclose the effect of taking such a temporary defensive position (*e.g.*, that the Fund may not achieve its investment objective).

7. Disclose whether the Fund (if not a Money Market Fund) may engage in active and frequent trading of portfolio securities to achieve its principal investment strategies. If so, explain the tax consequences to shareholders of increased portfolio turnover, and how the tax consequences of, or trading costs associated with, a Fund's portfolio turnover may affect the Fund's performance.

(2) Explain in general terms how the Fund's adviser decides which securities to buy and sell (*e.g.*, for an equity fund, discuss, if applicable, whether the Fund emphasizes value or growth or blends the two approaches).

(c) *Risks.* Disclose the principal risks of investing in the Fund, including the risks to which the Fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, or total return.

Item 5. Management's Discussion of Fund Performance

Disclose the following information unless the Fund is a Money Market Fund or the information is included in the Fund's latest annual report to shareholders under rule 30d–1 [17 CFR 270.30d–1] and the Fund provides a copy of the annual report, upon request and without charge, to each person to whom a prospectus is delivered:

(a) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

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(b)(1) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(2) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year computed in accordance with Item 21(b)(1). Include a statement accompanying the graph to the effect that past performance does not predict future performance.

Instructions.

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and redemption was at the price last calculated on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.*, assume that the maximum sales load, and other charges deducted from payments, is deducted from the initial $10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume that the deduction of the maximum deferred sales load (or other charges) that would apply for a complete redemption that received the price last calculated on the last business day of the most recent fiscal year. For any other deferred sales load, assume that the deduction in the amount(s) and at the time(s) that the sales load actually would have been deducted.

3. *Dividends and Distributions.* Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

4. *Account Fees.* Reflect recurring fees that are charged to all accounts.

(a) For any account fees that vary with the size of the account, assume a $10,000 account size.

(b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Appropriate Index.* For purposes of this Item, an "appropriate broad-based securities market index" is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

6. *Additional Indexes.* A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.*, the Consumer Price Index), so long as the comparison is not misleading.

7. *Change in Index.* If the Fund uses an index that is different from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

8. *Other Periods.* The line graph may cover earlier fiscal years and may compare the ending values of interim periods (*e.g.*, monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

9. *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

10. *New Funds.* A New Fund (as defined in Instruction 5 to Item 3) is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N–1A (or the annual report) contains audited financial statements covering a period of at least 6 months.

11. *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in "control" of the previous adviser under section 2(a)(9) [15 U.S.C. 80a-2(a)(9)];

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(d) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

Item 6. Management, Organization, and Capital Structure

(a) *Management.*

(1) *Investment Adviser.*

(i) Provide the name and address of each investment adviser of the Fund. Describe the investment adviser's experience as an investment adviser and the advisory services that it provides to the Fund.

(ii) Describe the compensation of each investment adviser of the Fund as follows:

(A) If the Fund has operated for a full fiscal year, state the aggregate fee paid to the adviser for the most recent fiscal year as a percentage of average net assets. If the Fund has not operated for a full fiscal year, state what the adviser's fee is as a percentage of average net assets, including any breakpoints.

(B) If the adviser's fee is not based on a percentage of average net assets (*e.g.*, the adviser receives a performance-based fee), describe the basis of the adviser's compensation.

Instructions.

1. If the Fund changed advisers during the fiscal year, describe the compensation and the dates of service for each adviser.

2. Explain any changes in the basis of computing the adviser's compensation during the fiscal year.

3. If a Fund has more than one investment adviser, disclose the aggregate fee paid to all of the advisers, rather than the fees paid to each adviser, in response to this Item.

(2) *Portfolio Manager.* State the name, title, and length of service of the person or persons employed by or associated with an investment adviser of the Fund (or the Fund), if any, who are primarily responsible for the day-to-day management of the Fund's portfolio. Also state each person's business experience during the past 5 years.

Instructions.

1. This requirement does not apply to a Money Market Fund or to a Fund that has an investment objective to replicate the performance of an index.

2. If a committee, team or other group of persons associated with an investment adviser of the Fund ("Adviser Group") is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, provide disclosure to the effect that the Fund's investments are managed by the Adviser Group; the names of the members of the Adviser Group need not be provided.

3. If the role of the Adviser Group is generally limited to overseeing, approving or ratifying the decisions of an individual(s) who is primarily responsible for the day-to-day management of the Fund, information in response to this Item is required only about the individual(s).

4. If an Adviser Group and an individual(s) share day-to-day responsibility with respect to the Fund, provide disclosure to the effect that the Fund's investments are managed jointly by the Adviser Group and an individual(s) associated with the Fund's adviser; disclosure about the individual(s) contemplated by this Item need be provided only if the individual(s) is primarily responsible for implementing a principal investment strategy of the Fund as that term is defined in the Instruction to Item 4. For example, assume that a Fund has an investment strategy of investing in certain industry sectors, and that the Fund considers the selection of specific investments within those sectors generally not determinative in achieving the Fund's objective. If an Adviser Group was responsible for selecting the sectors in which the Fund invests and an individual was responsible for selecting the Fund's investments within the sectors, the Fund would not be required to disclose the information contemplated by this Item about the individual. If, however, the selection of companies within a certain sector or sectors was central to the Fund's achieving its investment objective, and an individual was responsible for selecting the Fund's investments within the sector or sectors, the Fund would be required to provide the information contemplated by this Item for that individual.

(3) *Legal Proceedings.* Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Fund or the Fund's investment adviser or principal underwriter is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any legal proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Fund or the ability of the investment adviser or principal underwriter to perform its contract with the Fund.

(b) *Capital Stock.* Disclose any unique or unusual restrictions on the right freely to retain or dispose of the Fund's shares or material obligations or potential liabilities associated with holding the Fund's shares (not including investment risks) that may expose investors to significant risks.

Item 7. Shareholder Information

(a) *Pricing of Fund Shares.* Describe the procedures for pricing the Fund's shares, including:

(1) An explanation that the price of Fund shares is based on the Fund's net asset value and the method used to value Fund shares (market price, fair value, or amortized cost).

Instruction. If a Fund has a policy that contemplates using fair value pricing under special circumstances (*e.g.*, when an event occurs after the close of the exchange on which the Fund's portfolio securities are principally traded that is likely to have changed the value of the securities), provide a brief explanation of the circumstances and the effects of this policy. If the Fund's policy is to use fair value pricing only when market prices are unavailable, it need not explain the circumstances and the effects of the policy.

(2) A statement as to when calculations of net asset value are made and that the price at which a purchase or redemption is effected is based on the next calculation of net asset value after the order is placed.

(3) A statement identifying in a general manner any national holidays when shares will not be priced and specifying any additional local or regional holidays when the Fund shares will not be priced.

Instructions.

1. In responding to this Item, a Fund may use a list of specific days or any other means that effectively communicates the information (*e.g.*, explaining that shares will not be priced on the days on which the New York Stock Exchange is closed for trading).

2. If the Fund has portfolio securities that are primarily listed on foreign exchanges that trade on weekends or other days when the Fund does not price its shares, disclose that the net asset value of the Fund's shares may change on days when shareholders will not be able to purchase or redeem the Fund's shares.

(b) *Purchase of Fund Shares.* Describe the procedures for purchasing the Fund's shares, including any minimum initial or subsequent investment requirements.

(c) *Redemption of Fund Shares.* Describe the procedures for redeeming the Fund's shares, including:

(1) Any restrictions on redemptions.

(2) Any redemption charges, including how these charges will be collected and under what circumstances the charges will be waived.

(3) If the Fund has reserved the right to redeem in kind.

(4) Any procedure that a shareholder can use to sell the Fund's shares to the Fund or its underwriter through a broker-dealer, noting any charges that may be imposed for such service.

Instruction. The specific fees paid through the broker-dealer for such service need not be disclosed.

(5) The circumstances, if any, under which the Fund may redeem shares automatically without action by the shareholder in accounts below a certain number or value of shares.

(6) The circumstances, if any, under which the Fund may delay honoring a request for redemption for a certain time after a shareholder's investment (e.g., whether a Fund does not process redemptions until clearance of the check for the initial investment).

(7) Any restrictions on, or costs associated with, transferring shares held in street name accounts.

(d) *Dividends and Distributions.* Describe the Fund's policy with respect to dividends and distributions, including any options that shareholders may have as to the receipt of dividends and distributions.

(e) *Tax Consequences.*

(1) Describe the tax consequences to shareholders of buying, holding, exchanging and selling the Fund's shares, including, as applicable, that:

(i) The Fund intends to make distributions that may be taxed as ordinary income and capital gains (which may be taxable at different rates depending on the length of time the Fund holds its assets). If the Fund expects that its distributions, as a result of its investment objectives or strategies, will consist primarily of ordinary income or capital gains, provide disclosure to that effect.

(ii) The Fund's distributions, whether received in cash or reinvested in additional shares of the Fund, may be subject to federal income tax.

(iii) An exchange of the Fund's shares for shares of another fund will be treated as a sale of the Fund's shares and any gain on the transaction may be subject to federal income tax.

(2) For a Fund that holds itself out as investing in securities generating tax-exempt income:

(i) Modify the disclosure required by paragraph (e)(1) to reflect that the Fund intends to distribute tax-exempt income.

(ii) Also disclose, as applicable, that:

(A) The Fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax;

(B) Income exempt from federal tax may be subject to state and local income tax; and

(C) Any capital gains distributed by the Fund may be taxable.

(3) If the Fund does not expect to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code [I.R.C. 851 *et seq.*], explain the tax consequences. If the Fund expects to pay an excise tax under the Internal Revenue Code [I.R.C. 4982] with respect to its distributions, explain the tax consequences.

(f) *Separate Disclosure Document.* A Fund may omit from the prospectus information about purchase and redemption procedures required by Items 7(b)–(d) and 8(a)(2) and provide it in a separate document if the Fund:

(1) Incorporates the separate purchase and redemption document into the prospectus by reference and files the document with Part A of Form N–1A;

(2) Includes a legend on the front cover page of the separate document explaining that the information disclosed is part of, and incorporated in, the prospectus;

(3) Includes a statement on the outside back cover page of the prospectus that the purchase and sale information is provided in a separate document that is incorporated by reference into the prospectus; and

(4) Delivers the separate purchase and redemption document with the prospectus.

Instruction. When delivering multiple prospectuses, all of which incorporate the same separate purchase and sale document by reference, a Fund may deliver a single separate document.

Item 8. Distribution Arrangements

(a) Sales Loads.

(1) Describe any sales loads, including deferred sales loads, applied to purchases of the Fund's shares. Include in a table any front-end sales load (and each breakpoint in the sales load, if any) as a percentage of both the offering price and the net amount invested.

Instructions.

1. If the Fund's shares are sold subject to a front-end sales load, explain that the term "offering price" includes the front-end sales load.

2. Disclose, if applicable, that sales loads are imposed on shares, or amounts representing shares, that are purchased with reinvested dividends or other distributions.

3. Discuss, if applicable, how deferred sales loads are imposed and calculated, including:

(a) Whether the specified percentage of the sales load is based on the offering price, or the lesser of the offering price or net asset value at the time the sales load is paid.

(b) The amount of the sales load as a percentage of both the offering price and the net amount invested.

(c) A description of how the sales load is calculated (*e.g.*, in the case of a partial redemption, whether or not the sales load is calculated as if shares or amounts representing shares not subject to a sales load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased).

(d) If applicable, the method of paying an installment sales load (*e.g.*, by withholding of dividend payments, involuntary redemptions, or separate billing of a shareholder's account).

(2) Unless disclosed in response to paragraph (a)(1), in the SAI, or in a separate disclosure document under Item 7(f), describe any other arrangements that result in breakpoints in, or elimination of, sales loads (*e.g.*, letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, and redemption reinvestment plans). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the amount invested.

(b) *Rule 12b–1 Fees.* If the Fund has adopted a plan under rule 12b–1, state the amount of the distribution fee payable under the plan and provide disclosure to the following effect:

(1) The Fund has adopted a plan under rule 12b–1 that allows the Fund to pay distribution fees for the sale and distribution of its shares; and

(2) Because these fees are paid out of the Fund's assets on an on-going basis, over time these fees will increase the cost of your investment and may cost you more than paying other types of sales charges.

Instructions. If the Fund pays service fees under its rule 12b–1 plan, modify this disclosure to reflect the payment of these fees (*e.g.*, by indicating that the Fund pays distribution and other fees for the sale of its shares and for services provided to shareholders). For purposes of this paragraph, service fees have the same meaning given that term under rule 2830(b)(9) of the NASD Conduct Rules [NASD Manual (CCH) 4622].

(c) *Multiple Class and Master-Feeder Funds.*

(1) Describe the main features of the structure of the Multiple Class Fund or Master-Feeder Fund.

(2) If more than one Class of a Multiple Class Fund is offered in the prospectus, provide the information required by paragraphs (a) and (b) for each of those Classes.

(3) If a Multiple Class Fund offers in the prospectus shares that provide for mandatory or automatic conversions or exchanges from one Class to another Class, provide the information required by paragraphs (a) and (b) for both the shares offered and the Class into which the shares may be converted or exchanged.

(4) If a Feeder Fund has the ability to change the Master Fund in which it invests, describe briefly the circumstances under which the Feeder Fund can do so.

Instruction. A Feeder Fund that does not have the authority to change its Master Fund need not disclose the possibility and consequences of its no longer investing in the Master Fund.

Item 9. Financial Highlights Information

(a) Provide the following information for the Fund, or for the Fund and its subsidiaries, audited for at least the latest 5 years and consolidated as required in Regulation S–X [17 CFR 210].

Financial Highlights

The financial highlights table is intended to help you understand the Fund's financial performance for the past 5 years [or, if shorter, the period of the Fund's operations]. Certain information reflects financial results for a single Fund share. The total returns in the table represent the rate that an investor would have earned [or lost] on an investment in the Fund (assuming reinvestment of all dividends and distributions). This information has been audited by _____, whose report, along with the Fund's financial statements, are included in [the SAI or annual report], which is available upon request.

Net Asset Value, Beginning of Period
Income From Investment Operations
Net Investment Income
Net Gains or Losses on Securities (both realized and unrealized)

Total From Investment Operations
Less Distributions
Dividends (from net investment income)
Distributions (from capital gains)
Returns of Capital
Total Distributions
Net Asset Value, End of Period
Total Return

Ratios/Supplemental Data
Net Assets, End of Period
Ratio of Expenses to Average Net Assets
Ratio of Net Income to Average Net Assets
Portfolio Turnover Rate

Instructions.

1. *General.*

(a) Present the information in comparative columnar form for each of the last 5 fiscal years of the Fund (or for such shorter period as the Fund has been in operation), but only for periods subsequent to the effective date of the Fund's registration statement. Also present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. When a period in the table is for less than a full fiscal year, a Fund may annualize ratios in the table and disclose that the ratios are annualized in a note to the table.

(b) List per share amounts at least to the nearest cent. If the offering price is expressed in tenths of a cent or more, then state the amounts in the table in tenths of a cent. Present the information using a consistent number of decimal places.

(c) Include the narrative explanation before the financial information. A Fund may modify the explanation if the explanation contains comparable information to that shown.

2. *Per Share Operating Performance.*

(a) Derive net investment income data by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) per share may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods of computing net investment income may be acceptable. Provide an explanation in a note to the table of any other method used to compute net investment income.

(b) The amount shown at the Net Gains or Losses on Securities caption is the balancing figure derived from the other amounts in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of the Fund's shares in relation to fluctuating market values for the portfolio.

(c) For any distributions made from sources other than net investment income and capital gains, state the per share amounts separately at the Returns of Capital caption and note the nature of the distributions.

3. *Total Return.*

(a) Assume an initial investment made at the net asset value calculated on the last business day before the first day of each period shown.

(b) Do not reflect sales loads or account fees in the initial investment, but, if sales loads or account fees are imposed, note that they are not reflected in total return.

(c) Reflect any sales load assessed upon reinvestment of dividends or distributions.

(d) Assume a redemption at the price calculated on the last business day of each period shown.

(e) For a period less than a full fiscal year, state the total return for the period and disclose that total return is not annualized in a note to the table.

4. *Ratios/Supplemental Data.*

(a) Calculate "average net assets" based on the value of the net assets determined no less frequently than the end of each month.

(b) Calculate the Ratio of Expenses to Average Net Assets using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal period, including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X and reductions resulting from complying with paragraphs 2(a) and (f) of rule 6–07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for periods ending after September 1, 1995.

(c) A Fund that is a Money Market Fund may omit the Portfolio Turnover Rate.

(d) Calculate the Portfolio Turnover Rate as follows:

(i) Divide the lesser of amounts of purchases or sales of portfolio securities for the fiscal year by the monthly average of the value of the portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding 11 months and dividing the sum by 13.

(ii) Exclude from both the numerator and the denominator amounts relating to all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. Include all long-term securities, including long-term U.S. Government securities. Purchases include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights and warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

(iii) If the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares during the fiscal year in a purchase-of-assets transaction, exclude the value of securities acquired from purchases and securities sold from sales to realign the Fund's portfolio. Adjust the denominator of the portfolio turnover computation to reflect these excluded purchases and sales and disclose them in a footnote.

(iv) Include in purchases and sales any short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of the portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of the portfolio securities sold during the period.

(b) A Fund may incorporate by reference the Financial Highlights Information from a report to shareholders under rule 30d–1 into the prospectus in response to this Item if the Fund delivers the shareholder report with the prospectus or, if the report has been previously delivered (*e.g.*, to a current shareholder), the Fund includes the statement required by Item 1(b)(1).

Part B: Information Required in a Statement of Additional Information:

Item 10. Cover Page and Table of Contents

(a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

(1) The Fund's name and, if the Fund is a Series, also provide the Registrant's name.
(2) A statement or statements:
(i) That the SAI is not a prospectus;
(ii) How the prospectus may be obtained; and
(iii) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI unless the information has been previously delivered in a shareholder report (*e.g.*, to a current shareholder), and the Fund states that the shareholder report is available, without charge, upon request. Provide a toll-free (or collect) telephone number to call to request the report.

(3) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents.* Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 11. Fund History

(a) Provide the date and form of organization of the Fund and the name of the state or other jurisdiction in which the Fund is organized.

(b) If the Fund has engaged in a business other than that of an investment company during the past 5 years, state the nature of the other business and give the approximate date on which the Fund commenced business as an investment company. If the Fund's name was changed during that period, state its former name and the approximate date on which it was changed. Briefly describe the nature and results of any change in the Fund's business or name that occurred in connection with any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment or succession.

Item 12. Description of the Fund and Its Investments and Risks

(a) *Classification.* State that the Fund is an open-end, management investment company and indicate, if applicable, that the Fund is diversified.

(b) *Investment Strategies and Risks.* Describe any investment strategies, including a strategy to invest in a particular type of security, used by an investment adviser of the Fund in managing the Fund that are not principal strategies and the risks of those strategies.

(c) *Fund Policies.*
(1) Describe the Fund's policy with respect to each of the following:
(i) Issuing senior securities;
(ii) Borrowing money, including the purpose for which the proceeds will be used;
(iii) Underwriting securities of other issuers;
(iv) Concentrating investments in a particular industry or group of industries;
(v) Purchasing or selling real estate or commodities;
(vi) Making loans; and
(vii) Any other policy that the Fund deems fundamental or that may not be changed without shareholder approval, including, if applicable, the Fund's investment objectives.

Instruction. If the Fund reserves freedom of action with respect to any practice specified in paragraph (c)(1), state the maximum percentage of assets to be devoted to the practice and disclose the risks of the practice.

(2) State whether shareholder approval is necessary to change any policy specified in paragraph (c)(1). If so, describe the vote required to obtain this approval.

(d) *Temporary Defensive Position.* Disclose, if applicable, the types of investments that a Fund may make while assuming a temporary defensive position described in response to Item 4(b).

(e) *Portfolio Turnover.* Explain any significant variation in the Fund's portfolio turnover rates over the two most recently completed fiscal years or any anticipated variation in the portfolio turnover rate from that reported for the last fiscal year in response to Item 9.

Instruction. This paragraph does not apply to a Money Market Fund.

Item 13. Management of the Fund

(a) *Board of Directors.* Briefly describe the responsibilities of the board of directors with respect to the Fund's management.

Instruction. A Fund may respond to this paragraph by providing a general statement as to the responsibilities of the board of directors with respect to the Fund's management under the applicable laws of the state or other jurisdiction in which the Fund is organized.

(b) *Management Information.* Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, for each member of the board. Explain in a footnote to the table any family relationship between persons listed.

(1) Name, address, and age	(2) Position(s) held with fund	(3) Principal occupation(s) during past 5 years

Instructions.

1. For purposes of this paragraph, the term "officer" means the president, vice-president, secretary, treasurer, controller, and any other officers who perform policy-making functions for the Fund. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.
2. State the principal business of any corporation or other organization listed under column (3) unless the principal business is implicit in its name.
3. Identify members of any executive or investment committee, and provide a concise statement of the duties and functions of each committee.
4. Indicate with an asterisk the directors who are interested persons.

(c) For each individual listed in column (1) of the table required by paragraph (b), describe any positions held with affiliated persons or principal underwriters of the Fund.

Instruction. When an individual holds the same position(s) with two or more registered investment companies that are part of a "Fund Complex" as that term is defined in Item 22(a) of Schedule 14A under the Securities Exchange Act [17 CFR 240.14a–101], the Fund may, rather than listing each investment company, identify the Fund Complex and provide the number of positions held.

(d) *Compensation.* For all directors of the Fund and for all members of any advisory board who receive compensation from the Fund, and for each of the three highest paid executive officers or any affiliated person of the Fund who received aggregate compensation from the Fund for the most recently completed fiscal year exceeding $60,000 ("Compensated Persons"):

(1) Provide the information required by the following table:

COMPENSATION TABLE

(1) Name of person, position	(2) Aggregate compensation from fund	(3) Pension or retirement benefits accrued as part of fund expenses	(4) Estimated annual benefits upon retirement	(5) Total compensation from fund and fund complex paid to directors

Instructions.

1. For column (1), indicate, as necessary, the capacity in which the remuneration is received.
For Compensated Persons who are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, provide the information for the current fiscal year, estimating future payments that would be made under an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is given.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether under a plan established under section 401(k) of the Internal Revenue Code [I.R.C. 401(k)] or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund, any of its subsidiaries, or other investment companies in the Fund Complex. Omit column (4) when retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of any other investment companies.

(2) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement, other than fee arrangements disclosed in paragraph (d)(1), under which the Compensated Persons are or may be compensated for services provided, including amounts paid, if any, to the Compensated Person under these arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payment under the plan, and whether the payment of benefits is secured or funded by the Fund.

(e) *Sales Loads.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads for directors and other affiliated persons of the Fund. Identify each class of individuals and transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested of the Fund's shares. Explain, as applicable, the reasons for the difference in the price at which securities are offered generally to the public, and the prices at which securities are offered to directors and other affiliated persons of the Fund.

Item 14. Control Persons and Principal Holders of Securities

Provide the following information as of a specified date no more than 30 days prior to the date of filing the registration statement or an amendment.

(a) *Control Persons.* State the name and address of each person who controls the Fund and explain the effect of that control on the voting rights of other security holders. For each control person, state the percentage of the Fund's voting securities owned or any other basis of control. If the control person is a company, give the jurisdiction under the laws of which it is organized. List all parents of the control person.

Instruction. For purposes of this paragraph, "control" means (i) the beneficial ownership, either directly or through one or more controlled companies, of more than 25% of the voting securities of a company; (ii) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (iii) an adjudication under section 2(a)(9), which has become final, that control exists.

(b) *Principal Holders.* State the name, address, and percentage of ownership of each person who owns of record or is known by the Fund to own beneficially 5% or more of any Class of the Fund's outstanding equity securities.

Instructions.

1. Calculate the percentages based on the amount of securities outstanding.

2. If securities are being registered under or in connection with a plan of acquisition, reorganization, readjustment or succession, indicate, as far as practicable, the ownership that would result from consummation of the plan based on present holdings and commitments.

3. Indicate whether the securities are owned of record, beneficially, or both. Show the respective percentage owned in each manner.

(c) *Management Ownership.* State the percentage of the Fund's equity securities owned by all officers, directors, and members of any advisory board of the Fund as a group. If the amount owned by directors and officers as a group is less than 1% of the Class, provide a statement to that effect.

Item 15. Investment Advisory and Other Services

(a) *Investment Advisers.* Disclose the following information with respect to each investment adviser:

(1) The name of any person who controls the adviser, the basis of the person's control, and the general nature of the person's business. Also disclose, if material, the business history of any organization that controls the adviser.

(2) The name of any affiliated person of the Fund who also is an affiliated person of the adviser, and a list of all capacities in which the person is affiliated with the Fund and with the adviser.

Instruction. If an affiliated person of the Fund alone or together with others controls the adviser, state that fact. It is not necessary to provide the amount or percentage of the outstanding voting securities owned by the controlling person.

(3) The method of calculating the advisory fee payable by the Fund including:

(i) The total dollar amounts that the Fund paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years;

(ii) If applicable, any credits that reduced the advisory fee for any of the last three fiscal years; and
(iii) Any expense limitation provision.

Instructions.

1. If the advisory fee payable by the Fund varies depending on the Fund's investment performance in relation to a standard, describe the standard along with a fee schedule in tabular form. The Fund may include examples showing the fees that the adviser would earn at various levels of performance as long as the examples include calculations showing the maximum and minimum fee percentages that could be earned under the contract.
2. State separately each type of credit or offset.
3. When a Fund is subject to more than one expense limitation provision, describe only the most restrictive provision.
4. For a Registrant with more than one Series, or a Multiple Class Fund, describe the methods of allocation and payment of advisory fees for each Series or Class.

(b) *Principal Underwriter.* State the name and principal business address of any principal underwriter for the Fund. Disclose, if applicable, that an affiliated person of the Fund is an affiliated person of the principal underwriter and identify the affiliated person.

(c) *Services Provided by Each Investment Adviser and Fund Expenses Paid by Third Parties.*

(1) Describe all services performed for or on behalf of the Fund supplied or paid for wholly or in substantial part by each investment adviser.

(2) Describe all fees, expenses, and costs of the Fund that are to be paid by persons other than an investment adviser or the Fund, and identify those persons.

(d) *Service Agreements.* Summarize the substantive provisions of any other management-related service contract that may be of interest to a purchaser of the Fund's shares, under which services are provided to the Fund, indicating the parties to the contract, and the total dollars paid and by whom for the past three years.

Instructions.

1. The term "management-related service contract" includes any contract with the Fund to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Fund, but does not include the following:
(a) Any contract with the Fund to provide investment advice;
(b) Any agreement with the Fund to perform as custodian, transfer agent, or dividend-paying agent for the Fund; and
(c) Any contract with the Fund for outside legal or auditing services, or contract for personal employment entered into with the Fund in the ordinary course of business.
2. No information need be given in response to this paragraph with respect to the service of mailing proxies or periodic reports to the Fund's shareholders.
3. In summarizing the substantive provisions of any management-related service contract, include the following:
(a) The name of the person providing the service;
(b) The direct or indirect relationships, if any, of the person with the Fund, an investment adviser of the Fund or the Fund's principal underwriter; and
(c) The nature of the services provided, and the basis of the compensation paid for the services for the last three fiscal years.

(e) *Other Investment Advice.* If any person (other than a director, officer, member of an advisory board, employee, or investment adviser of the Fund), through any understanding, whether formal or informal, regularly advises the Fund or the Fund's investment adviser with respect to the Fund's investing in, purchasing, or selling securities or other property, or has the authority to determine what securities or other property should be purchased or sold by the Fund, and receives direct or indirect remuneration, provide the following information:
(1) The person's name;
(2) A description of the nature of the arrangement, and the advice or information provided; and
(3) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Fund's portfolio securities) paid for the advice or information, and a statement as to how the remuneration was paid and by whom it was paid for the last three fiscal years.

Instruction. Do not include information for the following:
(a) Persons who advised the investment adviser or the Fund solely through uniform publications distributed to subscribers;
(b) Persons who provided the investment adviser or the Fund with only statistical and other factual information, advice about economic factors and trends, or advice as to occasional transactions in specific securities, but without generally advising about the purchase or sale of securities by the Fund;
(c) A company that is excluded from the definition of "investment adviser" of an investment company under section 2(a)(20)(iii) [15 U.S.C. 80a–2(a)(20)(iii)];
(d) Any person the character and amount of whose compensation for these services must be approved by a court; or
(e) Other persons as the Commission has by rule or order determined not to be an "investment adviser" of an investment company.

(f) *Dealer Reallowances.* Disclose any front-end sales load reallowed to dealers as a percentage of the offering price of the Fund's shares.

(g) *Rule 12b–1 Plans.* If the Fund has adopted a plan under rule 12b–1, describe the material aspects of the plan, and any agreements relating to the implementation of the plan, including:
(1) A list of the principal types of activities for which payments are or will be made, including the dollar amount and the manner in which amounts paid by the Fund under the plan during the last fiscal year were spent on:
(i) Advertising;
(ii) Printing and mailing of prospectuses to other than current shareholders;
(iii) Compensation to underwriters;
(iv) Compensation to broker-dealers;
(v) Compensation to sales personnel;
(vi) Interest, carrying, or other financing charges; and
(vii) Other (specify).
(2) The relationship between amounts paid to the distributor and the expenses that it incurs (*e.g.*, whether the plan reimburses the distributor only for expenses incurred or compensates the distributor regardless of its expenses).
(3) The amount of any unreimbursed expenses incurred under the plan in a previous year and carried over to future years, in dollars and as a percentage of the Fund's net assets on the last day of the previous year.
(4) Whether the Fund participates in any joint distribution activities with another Series or investment company. If so, disclose, if applicable, that fees paid under the Fund's rule 12b–1 plan may be used to finance the distribution of the shares of another Series or investment company, and state the method of allocating distribution costs (*e.g.*, relative net asset size, number of shareholder accounts).
(5) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:
(i) Any interested person of the Fund; or
(ii) Any director of the Fund who is not an interested person of the Fund.
(6) The anticipated benefits to the Fund that may result from the plan.

(h) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (d), identify any person who provides significant administrative or business affairs management services for the Fund (*e.g.*, an "administrator"), describe the services provided, and the compensation paid for the services.
(2) State the name and principal business address of the Fund's transfer agent and the dividend-paying agent.
(3) State the name and principal business address of the Fund's custodian and independent public accountant and describe generally the services performed by each. If the Fund's portfolio securities are held by a person other than a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person or persons.
(4) If an affiliated person of the Fund, or an affiliated person of the affiliated person, acts as custodian, transfer agent, or dividend-paying agent for the Fund, describe the services that the person performs and the basis for remuneration.

Item 16. Brokerage Allocation and Other Practices

(a) *Brokerage Transactions.* Describe how transactions in portfolio securities are effected, including a general statement about brokerage commissions, markups, and markdowns on principal transactions and the aggregate amount of any brokerage commissions paid by the Fund during its three most recent fiscal years. If, during either of the two years preceding the Fund's most recent fiscal year, the aggregate dollar amount of brokerage commissions paid by the Fund differed materially from the amount paid during the most recent fiscal year, state the reason(s) for the difference(s).
(b) *Commissions.*
(1) Identify, disclose the relationship, and state the aggregate dollar amount of brokerage commissions paid by the Fund during its three most recent fiscal years to any broker:
(i) That is an affiliated person of the Fund or an affiliated person of that person; or
(ii) An affiliated person of which is an affiliated person of the Fund, its investment adviser, or principal underwriter.
(2) For each broker identified in response to paragraph (b)(1), state:
(i) The percentage of the Fund's aggregate brokerage commissions paid to the broker during the most recent fiscal year; and
(ii) The percentage of the Fund's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.
(3) State the reasons for any material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, a broker disclosed in response to paragraph (b)(1).
(c) *Brokerage Selection.* Describe how the Fund will select brokers to effect securities transactions for the Fund and how the Fund will evaluate the overall reasonableness of brokerage commissions paid, including the factors that the Fund will consider in making these determinations.
Instructions.
1. If the Fund will consider the receipt of products or services other than brokerage or research services in selecting brokers, specify those products and services.
2. If the Fund will consider the receipt of research services in selecting brokers, identify the nature of those research services.
3. State whether persons acting on the Fund's behalf are authorized to pay a broker a higher brokerage commission than another broker might have charged for the same transaction in recognition of the value of (a) brokerage or (b) research services provided by the broker.
4. If applicable, explain that research services provided by brokers through which the Fund effects securities transactions may be used by the Fund's investment adviser in servicing all of its accounts and that not all of these services may be used by the adviser in connection with the Fund. If other policies or practices are applicable to the Fund with respect to the allocation of research services provided by brokers, explain those policies and practices.
(d) *Directed Brokerage.* If, during the last fiscal year, the Fund or its investment adviser, through an agreement or understanding with a broker, or otherwise through an internal allocation procedure, directed the Fund's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.
(e) *Regular Broker-Dealers.* If the Fund has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b–1 [17 CFR 270.10b–1] or of their parents, identify those brokers or dealers and state the value of the Fund's aggregate holdings of the securities of each issuer as of the close of the Fund's most recent fiscal year.
Instruction. The Fund need only disclose information about an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year.

Item 17. Capital Stock and Other Securities

(a) *Capital Stock.* For each class of capital stock of the Fund, provide:
(1) The title of each class; and
(2) A full discussion of the following provisions or characteristics of each class, if applicable:
(i) Restrictions on the right freely to retain or dispose of the Fund's shares;
(ii) Material obligations or potential liabilities associated with owning the Fund's shares (not including investment risks);
(iii) Dividend rights;
(iv) Voting rights (including whether the rights of shareholders can be modified by other than a majority vote);
(v) Liquidation rights;
(vi) Preemptive rights;
(vii) Conversion rights;
(viii) Redemption provisions;
(ix) Sinking fund provisions; and
(x) Liability to further calls or to assessment by the Fund.
Instructions.
1. If any class described in response to this paragraph possesses cumulative voting rights, disclose the existence of those rights and explain the operation of cumulative voting.
2. If the rights evidenced by any class described in response to this paragraph are materially limited or qualified by the rights of any other class, explain those limitations or qualifications.
(b) *Other Securities.* Describe the rights of any authorized securities of the Fund other than capital stock. If the securities are subscription warrants or rights, state the title and amount of securities called for, and the period during which and the prices at which the warrants or rights are exercisable.

Item 18. Purchase, Redemption, and Pricing of Shares

(a) *Purchase of Shares.* Describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumulation plans, withdrawal plans, exchange privileges, and services in connection with retirement plans.
Instruction. A Fund may incorporate the information required by Item 18(a) into the SAI by reference to a separate disclosure document that may be provided to investors with the SAI or separately, in response to investor requests. File the separate document, if any, with Part B of Form N–1A.
(b) *Fund Reorganizations.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads in connection with the terms of a merger, acquisition, or exchange offer made under a plan of reorganization. Identify each class of individuals

to which the arrangements apply and state each different sales load available as a percentage of both the offering price and the net amount invested.

(c) *Offering Price.* Describe the method followed or to be followed by the Fund in determining the total offering price at which its shares may be offered to the public and the method(s) used to value the Fund's assets.

Instructions.

1. Describe the valuation procedure(s) that the Fund uses in determining the net asset value and public offering price of its shares.

2. Explain how the excess of the offering price over the net amount invested is distributed among the Fund's principal underwriters or others and the basis for determining the total offering price.

3. Explain the reasons for any difference in the price at which securities are offered generally to the public, and the prices at which securities are offered for any class of transactions or to any class of individuals.

4. Unless provided as a continuation of the balance sheet in response to Item 22, include a specimen price-make-up sheet showing how the Fund calculates the total offering price per unit. Base the calculation on the value of the Fund's portfolio securities and other assets and its outstanding securities as of the date of the balance sheet filed by the Fund.

(d) *Redemption in Kind.* If the Fund has received an order of exemption from section 18(f) or has filed a notice of election under rule 18f-1 that has not been withdrawn, describe the nature, extent, and effect of the exemptive relief or notice.

Item 19. Taxation of the Fund

(a) If applicable, state that the Fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code. Disclose the consequences to the Fund if it does not qualify under Subchapter M.

(b) Disclose any special or unusual tax aspects of the Fund, such as taxation resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Fund may be entitled.

Item 20. Underwriters

(a) *Distribution of Securities.* For each principal underwriter distributing securities of the Fund, state:

(1) The nature of the obligation to distribute the Fund's securities;

(2) Whether the offering is continuous; and

(3) The aggregate dollar amount of underwriting commissions and the amount retained by the principal underwriter for each of the Fund's last three fiscal years.

(b) *Compensation.* Provide the information required by the following table with respect to all commissions and other compensation received by each principal underwriter, who is an affiliated person of the Fund or an affiliated person of that affiliated person, directly or indirectly, from the Fund during the Fund's most recent fiscal year:

(1) Name of principal underwriter	(2) Net underwriting discounts and commissions	(3) Compensation on redemptions and repurchases	(4) Brokerage commissions	(5) Other compensation

Instruction. Disclose in a footnote to the table the type of services rendered in consideration for the compensation listed under column (5).

(c) *Other Payments.* With respect to any payments made by the Fund to an underwriter or dealer in the Fund's shares during the Fund's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Fund. Do not include information about:

(1) Payments made through deduction from the offering price at the time of sale of securities issued by the Fund;

(2) Payments representing the purchase price of portfolio securities acquired by the Fund;

(3) Commissions on any purchase or sale of portfolio securities by the Fund; or

(4) Payments for investment advisory services under an investment advisory contract.

Instructions.

1. Do not include in response to this paragraph information provided in response to paragraph (b) or with respect to service fees under the Instruction to Item 8(b)(2). Do not include any payment for a service excluded by Instructions 1 and 2 to Item 15(d) or by Instruction 2 to Item 30.

2. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

Item 21. Calculation of Performance Data

(a) *Money Market Funds.* If a Money Market Fund advertises a yield quotation(s), disclose, as applicable, the yield quotation(s) calculated according to paragraphs (a)(1)–(4). Use the same calculations for a yield quotation(s) included in the prospectus.

(1) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(2) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

$$\text{EFFECTIVE YIELD} = [(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1.$$

(3) *Tax Equivalent Current Yield Quotation.* Calculate the Fund's tax equivalent current yield by dividing that portion of the Fund's yield (as calculated under paragraph (a)(1)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Tax Equivalent Effective Yield Quotation.* Calculate the Fund's tax equivalent effective yield by dividing that portion of the Fund's effective yield (as calculated under paragraph (a)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's effective yield that is not tax-exempt.

(5) State:
(i) The length of and the last day in the base period used in calculating the quotation(s);
(ii) A description of the method(s) by which the yield quotation(s) is calculated; and
(iii) The income tax rate used in the calculation, if applicable.

Instructions.

1. When calculating yield or effective yield quotations, the calculation of net change in account value must include:
(a) The value of additional shares purchased with dividends from the original share and dividends declared on both the original shares and additional shares; and
(b) All fees, other than nonrecurring account or sales charges, that are imposed on all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.
2. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield. Exclude income other than investment income.
3. Disclose the amount or specific rate of any nonrecurring account or sales charges not included in the calculation of the yield.
4. If the Fund holds itself out as distributing income that is exempt from federal, state, or local income taxation, in calculating yield and effective yield (but not tax equivalent yield or tax equivalent effective yield), reduce the yield quoted by the effect of any income taxes on the shareholder receiving dividends, using the maximum rate for individual income taxation. For example, if the Fund holds itself out as distributing income exempt from federal taxation and the income taxes of State A, but invests in some securities of State B, it must reduce its yield by the effect of state income taxes that must be paid by the residents of State A on that portion of the income attributable to the securities of State B.

(b) *Other Funds.* If the Fund advertises performance data, disclose, as applicable, the performance information calculated according to paragraphs (b)(1)–(4). Use the same calculations for performance information included in the prospectus.

(1) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$P(1+T)^n = ERV$

Where:

P = a hypothetical initial payment of $1,000.
T = average annual total return.
n = number of years.
ERV = ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

Instructions.

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.
2. Assume all dividends and distributions by the Fund are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.
3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.
4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period.
5. State the total return quotation to the nearest hundredth of one percent.
6. Total return information in the prospectus need only be current to the end of the Fund's most recent fiscal year.

(2) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by dividing the net investment income per share earned during the period by the maximum offering price per share on the last day of the period, according to the following formula:

$$YIELD = 2\left[\left(\frac{a-b}{cd}+1\right)^6 - 1\right]$$

Where:

a = dividends and interest earned during the period.
b = expenses accrued for the period (net of reimbursements).
c = the average daily number of shares outstanding during the period that were entitled to receive dividends.
d = the maximum offering price per share on the last day of the period.

Instructions.

1. To calculate interest earned on debt obligations for purposes of "a" above:
(a) Calculate the yield to maturity of each obligation held by the Fund based on the market value of the obligation (including actual accrued interest) at the close of business on the last business day of each month or, with respect to obligations purchased during the month, the purchase price (plus actual accrued interest). The maturity of an obligation with a call provision(s) is the next call date on which the obligation reasonably may be expected to be called, or if none, the maturity date.
(b) Divide the yield to maturity by 360 and multiply the quotient by the market value of the obligation (including actual accrued interest) to determine the interest income on the obligation for each day of the subsequent month that the obligation is in the portfolio. Assume that each month has 30 days.
(c) Total the interest earned on all debt obligations and all dividends accrued on all equity securities during the 30-day (or one month) period. Although the period for calculating interest earned is based on calendar months, a 30-day yield may be calculated by aggregating the daily interest on the portfolio from portions of 2 months. In addition, a Fund may recalculate daily interest income on the portfolio more than once a month.
(d) For a tax-exempt obligation issued without original issue discount and having a current market discount, use the coupon rate of interest in lieu of the yield to maturity. For a tax-exempt obligation with original issue discount in which the discount is based on the current market value and exceeds the then-remaining portion of original issue discount (market discount), base the yield to maturity on the imputed rate of the original issue discount calculation. For a tax-exempt obligation with original issue discount, where the discount based on the current market value is less than the then-remaining portion of original issue discount (market premium), base the yield to maturity on the market value.

2. For discount and premium on mortgage or other receivables-backed obligations that are expected to be subject to monthly payments of principal and interest ("paydowns"):

(a) Account for gain or loss attributable to actual monthly paydowns as an increase or decrease to interest income during the period; and

(b) The Fund may elect:

(i) To amortize the discount and premium on the remaining securities, based on the cost of the securities, to the weighted average maturity date, if the information is available, or to the remaining term of the securities, if the weighted average maturity date is not available; or

(ii) Not to amortize the discount or premium on the remaining securities.

3. Solely for the purpose of calculating yield, recognize dividend income by accruing 1/360 of the stated dividend rate of the security each day that the security is in the portfolio.

4. Do not use equalization accounting in calculating yield.

5. Include expenses accrued under a plan adopted under rule 12b–1 in the expenses accrued for the period. Reimbursement accrued under the plan may reduce the accrued expenses, but only to the extent the reimbursement does not exceed expenses accrued for the period.

6. Include in the expenses accrued for the period all recurring fees that are charged to all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

7. If a broker-dealer or an affiliate of the broker-dealer [as defined in rule 1–02(b) of Regulation S–X [17 CFR 210.1–02(b)]] has, in connection with directing the Fund's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Fund (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Fund had paid for the services directly in an arm's length transaction.

8. Undeclared earned income, calculated in accordance with generally accepted accounting principles, may be subtracted from the maximum offering price. Undeclared earned income is the net investment income that, at the end of the base period, has not been declared as a dividend, but is reasonably expected to be and is declared as a dividend shortly thereafter.

9. Disclose the amount or specific rate of any nonrecurring account or sales charges.

10. If, in connection with the sale of the Fund's shares, a deferred sales load payable in installments is imposed, the "maximum public offering price" includes the aggregate amount of the installments ("installment load amount").

(3) *Tax Equivalent Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's tax equivalent yield by dividing that portion of the Fund's yield [as calculated under paragraph (b)(2)] that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Non-Standardized Performance Quotation.* A Fund may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

(5) State:

(i) The length of and the last day in the base period used in calculating the quotation(s);

(ii) A description of the method(s) by which the performance data is calculated; and

(iii) The income tax rate used in the calculation, if applicable.

Item 22. Financial Statements

(a) *Registration Statement.* Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S–X. The specimen price-make-up sheet required by Instruction 4 to Item 18(c) may be provided as a continuation of the balance sheet specified by Regulation S–X.

Instructions.

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S–X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3–18 of Regulation S–X [17 CFR 210.3–18], any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited) necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

(b) *Annual Report.* Every annual report to shareholders required under rule 30d–1 must contain the following:

(1) The audited financial statements required, and for the periods specified, by Regulation S–X.

(2) The condensed financial information required by Item 9(a) with at least the most recent fiscal year audited.

(3) Unless shown elsewhere in the report as part of the financial statements required by paragraph (b)(1), the aggregate remuneration paid by the Fund during the period covered by the report to:

(i) All directors and all members of any advisory board for regular compensation;

(ii) Each director and each member of an advisory board for special compensation;

(iii) All officers; and

(iv) Each person of whom any officer or director of the Fund is an affiliated person.

(4) The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K [17 CFR 229.304].

(c) *Semi-Annual Report.* Every semi-annual report to shareholders required by rule 30d–1 must contain the following information (which need not be audited):

(1) The financial statements required by Regulation S–X for the period commencing either with:

(i) The beginning of the Fund's fiscal year (or date of organization, if newly organized); or

(ii) A date not later than the date after the close of the period included in the last report under rule 30d–1 and the most recent preceding fiscal year.

(2) The condensed financial information required by Item 9(a), for the period of the report as specified by paragraph (c)(1), and the most recent preceding fiscal year.

(3) Unless shown elsewhere in the report as part of the financial statements required by paragraph (c)(1), the aggregate remuneration paid by the Fund during the period covered by the report to the persons specified under paragraph (b)(3).

(4) The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K.

Part C: Other Information

Item 23. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file

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copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Articles of Incorporation.* The Fund's current articles of incorporation, charter, declaration of trust or corresponding instruments and any related amendment.

(b) *By-laws.* The Fund's current by-laws or corresponding instruments and any related amendment.

(c) *Instruments Defining Rights of Security Holders.* Instruments defining the rights of holders of the securities being registered, including the relevant portion of the Fund's articles of incorporation or by-laws.

(d) *Investment Advisory Contracts.* Investment advisory contracts relating to the management of the Fund's assets.

(e) *Underwriting Contracts.* Underwriting or distribution contracts between the Fund and a principal underwriter, and agreements between principal underwriters and dealers.

(f) *Bonus or Profit Sharing Contracts.* Bonus, profit sharing, pension, or similar contracts or arrangements in whole or in part for the benefit of the Fund's directors or officers in their official capacity. Describe in detail any plan not included in a formal document.

(g) *Custodian Agreements.* Custodian agreements and depository contracts under section 17(f) [15 U.S.C. 80a–17(f)] concerning the Fund's securities and similar investments, including the schedule of remuneration.

(h) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(i) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued, fully paid, and nonassessable.

(j) *Other Opinions.* Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].

(k) *Omitted Financial Statements.* Financial statements omitted from Item 22.

(l) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Fund, the underwriter, adviser, promoter or initial shareholders and written assurances from promoters or initial shareholders that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(m) *Rule 12b–1 Plan.* Any plan entered into by the Fund under rule 12b–1 and any agreements with any person relating to the plan's implementation.

(n) *Financial Data Schedule.* A Financial Data Schedule meeting the requirements of rule 483 under the Securities Act.

(o) *Rule 18f–3 Plan.* Any plan entered into by the Fund under rule 18f–3, any agreement with any person relating to the plan's implementation, and any amendment to the plan or an agreement.

Item 24. Persons Controlled by or Under Common Control With the Fund

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Fund. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions.

1. Include the Fund in the list or diagram and show the relationship of each company to the Fund and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 25. Indemnification

State the general effect of any contract, arrangements or statute under which any director, officer, underwriter or affiliated person of the Fund is insured or indemnified against any liability incurred in their official capacity, other than insurance provided by any director, officer, affiliated person, or underwriter for their own protection.

Item 26. Business and Other Connections of the Investment Adviser

Describe any other business, profession, vocation or employment of a substantial nature that each investment adviser, and each director, officer or partner of the adviser, is or has been engaged within the last two fiscal years for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

Instructions.

1. Disclose the name and principal business address of any company for which a person listed above serves in the capacity of director, officer, employee, partner, or trustee, and the nature of the relationship.

2. The names of investment advisory clients need not be given in answering this Item.

Item 27. Principal Underwriters

(a) State the name of each investment company (other than the Fund) for which each principal underwriter currently distributing the Fund's securities also acts as a principal underwriter, depositor, or investment adviser.

(b) Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 20:

(1) Name and principal business address	(2) Positions and offices with underwriter	(3) Positions and offices with fund

(c) Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Fund during the last fiscal year by each principal underwriter who is *not* an affiliated person of the Fund or any affiliated person of an affiliated person:

(1) Name of principal underwriter	(2) Net underwriting discounts and commissions	(3) Compensation on redemption and repurchases	(4) Brokerage commissions	(5) Other compensation

Instructions.
1. Disclose the type of services rendered in consideration for the compensation listed under column (5).
2. Instruction 1 to Item 20(c) also applies to this Item.

Item 28. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) [15 U.S.C. 80a–30(a)] and the rules under that section.

Item 29. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the Fund's last three fiscal years.

Instructions.
1. The instructions to Item 15 also apply to this Item.
2. Exclude information about any service provided for payments totaling less than $5,000 during each of the last three fiscal years.

Item 30. Undertakings

In initial registration statements filed under the Securities Act, provide an undertaking to file an amendment to the registration statement with certified financial statements showing the initial capital received before accepting subscriptions from more than 25 persons if the Fund intends to raise its initial capital under section 14(a)(3) [15 U.S.C. 80a–14(a)(3)].

Signatures

Pursuant to the requirements of (the Securities Act and) the Investment Company Act, the Fund (certifies that it meets all of the requirement for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of _____, and State of _____ on the day of _____, _____ (year)

Fund _____

By _____
(Signature and Title)

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the date(s) indicated.

_____
(Signature)

_____
(Title)

_____
(Date)

Dated: March 13, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[**Note:** Appendix A and Appendix B to the preamble will not appear in *the Code of Federal Regulations.*]

APPENDIX A—ANALYSIS OF FORM N–1A ITEMS, AS AMENDED

Form N–1A, as amended	Source of form N–1A items
Facing Sheet	Facing Sheet—revised.
General Instructions:	
A. Definitions	New.
B. Filing and Use of Form N–1A	Revised General Instructions A, B, C, and F.
C. Preparation of the Registration Statement	Revised General Instructions G and I.
D. Incorporation by Reference	Revised General Instruction E.
Part A	
Item 1. Front and Back Cover Pages:	
(a) Front cover page	Revised Item 1.
(b) Back cover page.	New.
Item 2. Risk/Return Summary: Investments, Risks, and Performance:	
(a) Fund investment objectives/goals	New.
(b) Principal investment strategies of the fund	New.
(c) Principal risks of investing in the fund	New.
(1) Narrative risk disclosure	New.
(2) Risk/Return Bar Chart and Table	New.
Item 3. Risk/Return Summary: Fee Table	Revised Item 2.
Item 4. Investment Objectives, Principal Strategies, and Related Risks:	
(a) Investment Objectives	Revised Item 4(a)(ii).
(b) Implementation of Investment Objectives	Revised Item 4(a)(ii)(B).
(c) Risks	Revised Item 4(c).
Item 5. Management's Discussion of Fund Performance	Item 5A.
Item 6. Management, Organization, and Capital Structure:	

APPENDIX A—ANALYSIS OF FORM N–1A ITEMS, AS AMENDED—Continued

Form N–1A, as amended	Source of form N–1A items
(a) Management	
(1) Investment adviser	Revised Item 5(b).
(2) Portfolio manager	Revised Item 5(c).
(3) Legal proceedings	Revised Item 9.
(b) Capital stock	Revised Item 6(a).
Item 7. Shareholder Information:	
(a) Pricing of Fund Shares	Revised Items 7(b)(i) and (ii).
(b) Purchase of Fund Shares	Revised Items 7 (introductory sentence) and 7(d).
(c) Redemption of Fund Shares	Revised Item 8.
(d) Dividends and Distributions	Revised Item 6(f).
(e) Tax Consequences	Revised Item 6(g).
(f) Separate Disclosure Document	New.
Item 8. Distribution Arrangements:	
(a) Sales Loads	Revised Items 7(b)(iii), (c) and (g).
(b) Rule 12b–1 Fees	Revised Items 7 (e) and (f).
(c) Multiple Class and Master-Feeder Funds	Revised General Instruction I and Item 6(h).
Item 9. Financial Highlights Information:	
(a) Financial Highlights	Revised Item 3(a).
(b) Shareholder Reports	Revised Item 3(d).
Part B	
Item 10. Cover Page and Table of Contents:	
(a) Front Cover Page	Revised Item 10.
(b) Table of Contents	Item 11.
Item 11. Fund History:	
(a) Date and Form of Organization	Item 4(a)(i)(A).
(b) Prior Businesses of Fund	Item 12.
Item 12. Description of the Fund and Its Investments and Risks:	
(a) Classification	Revised Item 4(a)(i)(B).
(b) Investments Strategies and Risks	Revised Items 4(b) and 13(c).
(c) Fund Policies	Revised Items 13(a) and (b).
(d) Temporary Defensive Position	New.
(e) Portfolio Turnover	Revised Item 13(d).
Item 13. Management of the Fund:	
(a) Board of Directors	Revised Item 5(a).
(b) Management Information	Item 14(a).
(c) Affiliated Positions Held	Item 14(b).
(d) Compensation	Item 14(c).
(e) Sales Loads	Revised Item 7(c).
Item 14. Control Persons and Principal Holders of Securities:	
(a) Control Persons	Revised Items 6(b) and 15(a).
(b) Principal Holders	Revised Item 15(b).
(c) Management Ownership	Item 15(c).
Item 15. Investment Advisory and Other Services:	
(a) Investment Advisers	Revised Item 16(a).
(b) Principal Underwriter	Revised Item 7(a).
(c) Services Provided by Each Investment Adviser and Fund Expenses Paid by Third Parties.	Revised Items 5(b)(ii) and 16(c).
(d) Service Agreements	Item 16(d).
(e) Other Investment Advice	Item 16(e).
(f) Dealer Reallowances	Item 7(b)(iv).
(g) Rule 12b–1 Plans	Revised Items 7(f) and 16(f).
(h) Other Service Providers:	
(1) Administrator	Item 5(d).
(2) Dividend-paying agent/transfer agent	Item 5(e).
(3) Custodian/accountant	Revised Items 16(g) and (h).
(4) Affiliated persons	Item 16(i).
Item 16. Brokerage Allocation and Other Practices	Revised Items 5(g) and 17.
Item 17. Capital Stock and Other Securities:	
(a) Capital Stock	Revised Items 6(a), 6(c), and 18(a).
(b) Other Securities	Item 18(b).
Item 18. Purchase, Redemption and Pricing of Shares:	
(a) Purchase of Shares	Revised Item 19(a).
(b) Fund Reorganizations	Revised Item 7(c).
(c) Offering Price	Revised Item 19(b).
(d) Redemptions in Kind	Revised Item 19(c).
Item 19. Taxation of the Fund	Revised Item 20.
Item 20. Underwriters	Revised Item 21.
Item 21. Calculation of Performance Data	Revised Item 22.
Item 22. Financial Statements	Revised Item 23.
Part C	
Item 23. Exhibits	Revised Item 24.

APPENDIX A—ANALYSIS OF FORM N–1A ITEMS, AS AMENDED—Continued

Form N–1A, as amended	Source of form N–1A items
Item 24. Persons Controlled by or Under Common Control with the Fund	Item 25.
Item 25. Indemnification	Revised Item 27.
Item 26. Business and Other Connections of the Investment Adviser	Item 28.
Item 27. Principal Underwriters	Item 29.
Item 28. Location of Accounts and Records	Item 30.
Item 29. Management Services	Item 31.
Item 30. Undertakings	Revised Item 32.

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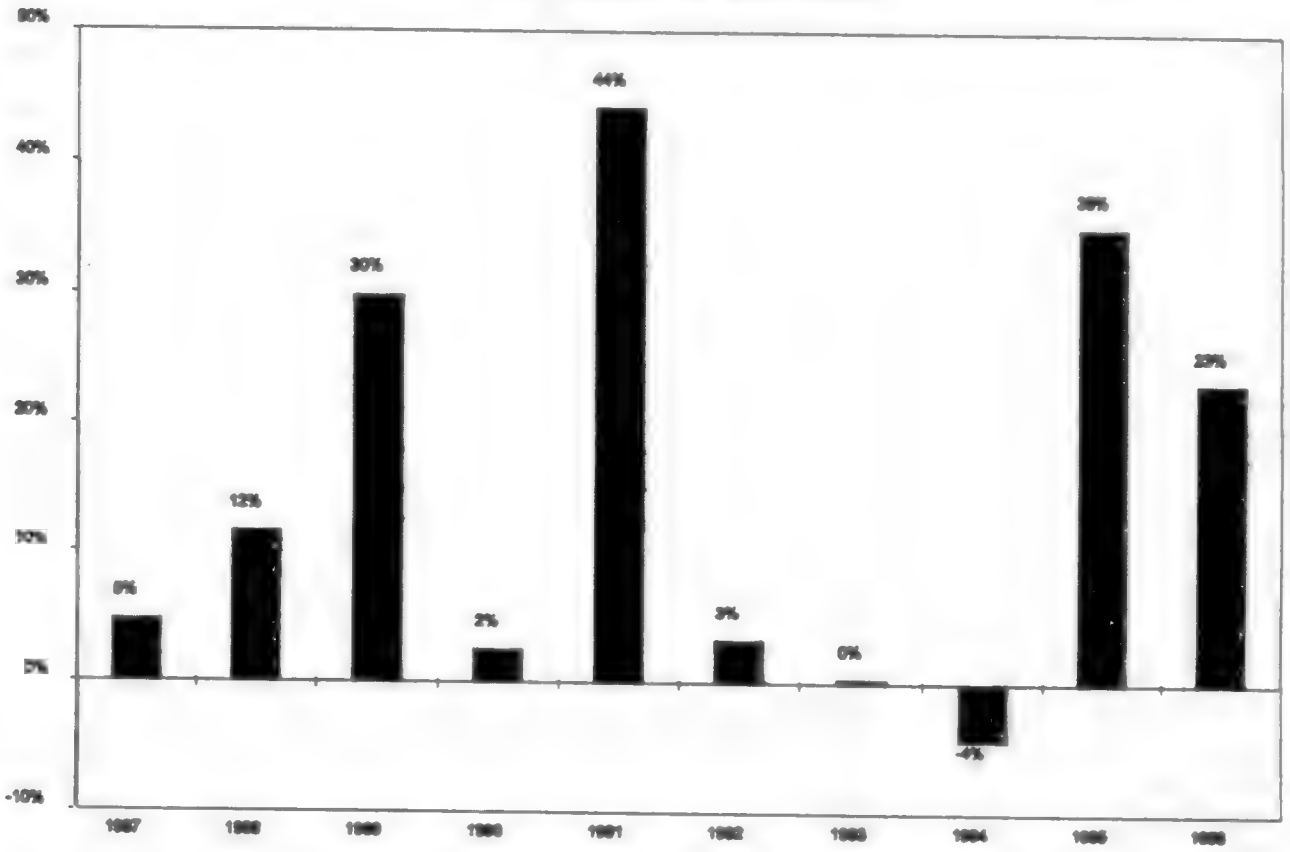
APPENDIX B

BAR CHART AND PERFORMANCE TABLE

The bar chart and table shown below provide an indication of the risks of investing in the XYZ Stock Fund by showing changes in the Fund's performance from year to year over a 10-year period and by showing how the Fund's average annual returns for one, five, and ten years compare to those of a broad-based securities market index. How the Fund has performed in the past is not necessarily an indication of how the Fund will perform in the future.



During the 10-year period shown in the bar chart, the highest return for a quarter was 25.3% (quarter ending Sept. 30, 1995) and the lowest return for a quarter was -13.6% (quarter ending June 30, 1989).

Average Annual Total Returns (for the periods ending December 31, 1996)	Past One Year	Past 5 Years	Past 10 Years
XYZ Stock Fund	23.2%	11.5%	15%
S & P 500*	20.26%	12.87%	12.58%

* The S & P 500® is the Standard & Poor's Composite Index of 500 Stocks, a widely recognized, unmanaged index of common stock prices.

[FR Doc. 98–7070 Filed 3–20–98; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 270

[Release Nos. 33–7513; IC–23065; File No. S7–18–96]

RIN 3235–AH03

New Disclosure Option for Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission

ACTION: Final rule

SUMMARY: The Securities and Exchange Commission is adopting a new rule that would permit a mutual fund to offer investors a new disclosure document called a "Aprofile," which summarizes key information about the fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. A fund that offers a profile will be able to give investors a choice of the amount of information that they wish to consider before making a decision about investing in the fund; investors will have the option of purchasing the fund's shares after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information). An investor deciding to purchase fund shares based on the information in a profile will receive the fund's prospectus with the confirmation of purchase.

DATES: Effective on June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Clarke, Assistant Director, George J. Zornada, Team Leader, or Laura J. Riegel, Attorney, (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009. Contact the Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, at (202) 942–0659 or 450 Fifth Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009 for additional information, including interpretive guidance, relating to this release or the profile.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today is adopting new rule 498 [17 CFR 230.498] under the Securities Act of 1933 [15 U.S.C. 77a, *et seq.*] ("Securities Act") and the Investment Company Act of 1940 [15 U.S.C. 80a-1, *et seq.*] ("Investment Company Act"). Rule 498 permits an open-end management investment company that registers on Form N–1A [17 CFR 274.11A] (a "fund") to provide to investors a disclosure document called a "profile," which summarizes key information about the fund and gives investors the option of purchasing the fund's shares based on the information in the profile. The Commission also is adopting amendments to rule 497 under the Securities Act [17 CFR 230.497] to require a fund to file a profile with the Commission at least 30 days prior to the profile's first use. In a companion release, the Commission is adopting revisions to the prospectus disclosure requirements in Form N–1A, the registration statement used by funds.[1] These revisions seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and to focus prospectus disclosure on essential information about a particular fund that would assist an investor in making a decision about investing in that fund.

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I. Introduction and Background

Over the last decade, the fund industry has grown tremendously. Over 6,000 funds are now available to investors and close to 40 million American households own funds.[2] Today, fund assets exceed the deposits of commercial banks.[3]

As more investors turn to funds for professional management of current and retirement savings, funds have introduced new investment options and shareholder services to meet the needs of investors. While benefiting from these developments, investors also face an increasingly difficult task in choosing among different fund investments. The Commission, fund investors, and others have recognized the need to improve fund disclosure documents to help investors evaluate and compare funds.[4] In the Commission's view, the growth of the fund industry and the diversity of fund investors warrant a new approach to fund disclosure that will offer more choices in the format and amount of information available about fund investments.[5]

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[1] Investment Company Act Release No. 23064 (Mar. 13, 1998) ("Form N–1A Release").

[2] See INVESTMENT COMPANY INSTITUTE ("ICI"), Trends in Mutual Fund Investing: September 1997 at 3 (Oct. 30, 1997) (ICI News No. 97–93) ("ICI Trends") (as of Sept. 1997, there were 6,666 funds) and ICI, Mutual Fund Ownership in the U.S., FUNDAMENTALS, Dec. 1996, at 1 (approximately 36.8 million households owned mutual funds either directly or through a retirement plan as of April 1996).

[3] Compare ICI Trends at 1 (fund net assets exceeded $4.4 trillion as of Sept. 1997) with Federal Reserve Bank Statistical Release H.8: Assets and Liabilities of Commercial Banks in the United States (Nov. 7, 1997) (commercial bank deposits were approximately $3.0 trillion as of Oct. 1997).

[4] See, *e.g.*, "Fulfilling the Promise of Disclosure," Remarks by Arthur Levitt, Chairman, SEC, before the American Savings Education Council, New York, NY (July 23, 1997); Remarks by Steven M.H. Wallman, Commissioner, SEC, before the ICI's 1995 Investment Company Directors Conference and New Directors Workshop, Wash., D.C. (Sept. 22, 1995); "Mutual Funds and the International Marketplace: "A Regulatory Challenge," Remarks by Isaac C. Hunt, Jr., Commissioner, SEC, before the Sixth Annual Conference on International Issues, The University of Tulsa, Tulsa, Okla. (Mar. 6, 1997). See also McTague, Simply Beautiful: Shorn of Legalese, Even Prospectuses Make Sense, BARRON'S, Oct. 7, 1996, at F10 (concerning the recent efforts of the John Hancock funds and other fund groups to simplify their prospectuses).

[5] The Commission has demonstrated an on-going commitment to improve the information provided in fund disclosure documents to meet changes in the fund industry and investors' needs. The Commission has taken a number of steps in recent years to meet this goal. See Investment Company Act Release No. 20974 [Mar. 29, 1995] [60 FR 17172] (requesting comment on ways to improve risk disclosure and comparability of fund risk levels) ("Risk Concept Release"); Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050] (simplifying financial highlights information and requiring management's discussion of fund performance ("MDFP")); Investment Company Act Release No. 16245 (Feb. 2, 1988) [53 FR 3868] ("Fund Performance Release") (adopting a uniform formula for calculating fund performance); Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3182] (adopting a uniform fee table in fund prospectuses). See also SEC, REPORT OF THE ADVISORY COMMITTEE ON THE CAPITAL FORMATION AND REGULATORY PROCESSES (July 24, 1996); SEC, REPORT OF THE TASK FORCE ON DISCLOSURE SIMPLIFICATION (1996) (recommending specific improvements in the disclosure provided by corporate issuers).

In seeking to meet this goal, the Commission proposed, on February 27, 1997, new rule 498, which would permit a fund to provide investors with a profile (the "Proposed Profile").[6] The Proposed Profile would summarize key information about a fund, including the fund's investment objectives, strategies, risks, performance, fees, investment adviser and portfolio manager, purchase and redemption procedures, distributions, and the services available to the fund's investors. The Proposed Profile was designed to provide summary information about a fund that would assist an investor in deciding whether to invest in a fund or to request additional information about the fund before deciding whether to buy shares in that fund. Proposed rule 498 would require a fund to mail the prospectus and other information to the requesting investor within 3 business days of a request. An investor deciding to purchase fund shares based on the Proposed Profile would receive the fund's prospectus with the purchase confirmation.

On the same day that it proposed rule 498 for comment, the Commission published a release in which it proposed major changes to the prospectus disclosure requirements in Form N–1A ("Form N–1A Proposing Release").[7] The proposed amendments to Form N–1A were designed to focus prospectus disclosure on essential information about a particular fund that would assist an investor in making a decision about investing in that fund. The proposed amendments reflected the Commission's strongly-held belief that a prospectus, as the primary disclosure document contemplated under the federal securities laws, should present clear, concise, and understandable information about an investment in a fund.

The Proposed Profile was based on a number of initiatives undertaken by the Commission to assess options for improving fund disclosure documents. One of these initiatives was a pilot program conducted by the Commission, with participation by the Investment Company Institute ("ICI") and several large fund groups, in which the funds used profile-like summaries ("Pilot Profiles") with their prospectuses.[8] The Pilot Profiles, like the profile adopted today, summarized important information about funds. The purpose of the pilot program was to assess whether investors found the Pilot Profiles helpful in making investment decisions. Focus groups conducted on the Commission's behalf ("Focus Groups") responded positively to the profile concept, indicating that a disclosure document such as the Pilot Profile would assist them in making investment decisions. Fund investors participating in a survey sponsored by the ICI also strongly supported the Pilot Profiles.[9]

The Commission received 256 comment letters on the Proposed Profile, a large percentage of which were from individual investors (226 letters or 88%).[10] Commenters expressed strong support for the Proposed Profile.[11] Many commenters cited the advantages of a document that is less technical and easier to read. Commenters believed that the Proposed Profile would assist investors in selecting a fund in which to invest. Many of those commenting on the Proposed Profile, particularly individual investors, endorsed the Proposed Profile's goal of providing standardized, summary information about a fund.[12]

The Commission is adopting rule 498 with modifications that reflect the Commission's consideration of commenters' suggestions. Rule 498 permits a fund to provide investors with a new disclosure option in the form of a profile that summarizes key information about the fund.[13] A fund that makes a profile available will be able to offer an investor the option of purchasing the fund's shares after reviewing the information in the profile or of requesting and reviewing the fund's prospectus (and other information) before making an investment decision. An investor deciding to purchase fund shares based on the profile will receive the fund's prospectus with the purchase confirmation.

Under rule 498, as adopted, the profile will include:

—*Standardized Fund Summaries.* The profile includes concise disclosure of 9 items of key information about a fund in a specific sequence.

—*Improved Risk Disclosure.* A risk/return summary (also required at the beginning of a fund's prospectus) provides information about a fund's investment objectives, principal strategies, risks, performance, and fees.

—*Graphic Disclosure of Variability of Returns.* The risk/return summary provides a bar chart of a fund's annual returns over a 10-year period that illustrates the variability of those returns and gives investors some idea of the risks of an investment in the fund. To help investors evaluate a fund's risks and returns relative to "the market," a table accompanying the bar chart compares the fund's average annual returns for 1-, 5-, and 10-year periods to that of a broad-based securities market index.

—*Other Fund Information.* The profile includes information on the fund's investment adviser and portfolio manager, purchase and redemption procedures, tax considerations, and shareholder services.

—*Plain English Disclosure.* The Commission's recently adopted plain English disclosure requirements, which are designed to give investors understandable disclosure documents, will apply to the profile.[14] The Commission's plain English rule requires the use of plain English writing principles, including short sentences, everyday language, active voice, tabular presentation of complex

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[6] Investment Company Act Release No. 22529 (Feb. 27, 1997) [62 FR 10943], correction [62 FR 24160] ("Profile Proposing Release").

[7] Investment Company Act Release No. 22528 (Feb. 27, 1997) [62 FR 10898], correction [62 FR 24160] ("Form N–1A Proposing Release").

[8] See Investment Company Institute (pub. avail. July 31, 1995) ("1995 Profile Letter"); Investment Company Institute (pub. avail. July 29, 1996) ("1996 Profile Letter"). The Division of Investment Management ("Division") has permitted the pilot program to continue until adoption of proposed rule 498. See Investment Company Institute (pub. avail. July 16, 1997) ("1997 Profile Letter").

[9] Letter from Paul Schott Stevens, Senior Vice President and General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC, at 5–6 (May 20, 1996) ("ICI Survey Letter") (enclosing Investment Company Institute, The Profile Prospectus: An Assessment by Mutual Fund Shareholders (1996) (survey of over 1,000 fund investors) ("ICI Profile Survey")).

[10] In addition to the comment letters from individuals, the Commission received comment letters from 6 broker-dealers and investment advisers, 8 funds, 3 law firms, 1 rating agency, 4 trade associations, and 8 other interested organizations. The comment letters, as well as a comment summary prepared by the Commission's staff, are available for public inspection and copying at the Commission's public reference room in File No. S7–18–96.

[11] Of the comment letters received by the Commission, 88% supported the Proposed Profile.

[12] See also Middleton, Cure on the Way for * * * Prospectusphobia, Mutual Funds Magazine, June 1997, at 58; Fosback, Profiles—A Valuable New Tool for Investors, Mutual Funds Magazine, May 1997, at 10; Profile Prospectuses: An Idea Whose Time Has Come, Mutual Funds Magazine, Aug. 1996, at 11.

[13] The ICI recently conducted a survey to assess information that investors considered before making a fund purchase. The results indicated that investors considered fund risk levels, total returns, and investment goals most frequently (listed respectively as first, second, and fourth). ICI, Understanding Shareholders' Use of Information and Advisers at 4 (1997) ("ICI Shareholder Survey").

[14] See Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370] ("Plain English Release") (adopting amendments to rule 421 under the Securities Act [17 CFR 230.421] requiring the use of plain English disclosure principles).

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material, no legal or business jargon, and no multiple negatives.[15]

Rule 498, as adopted, also permits a fund that serves as an investment option for a participant-directed defined contribution plan (or for certain other tax-deferred arrangements) to provide investors with a profile that includes disclosure that is tailored for the plan (or other arrangement). Profiles tailored for such use can exclude information relating to the purchase and sale of fund shares, fund distributions, tax consequences, and fund services otherwise required in a profile.

The Commission has determined to adopt rule 498 and permit funds to use summary disclosure documents in accordance with the rule under the authority of section 10(b) of the Securities Act[16] and other provisions of the federal securities laws.[17] Section 10(b) gives the Commission the authority to adopt rules allowing the use of a summary prospectus if the Commission determines that doing so is "necessary or appropriate in the public interest and for the protection of investors."[18] In making this determination about profiles, the Commission considered, among other things: An extensive analysis of fund disclosure issues it recently conducted; its assessment of funds' use of Pilot Profiles; its assessment of certain other disclosure initiatives; and its substantial experience gained in administering the two-part disclosure format adopted in 1983 permitting a fund to provide investors with a simplified prospectus containing essential information about the fund and to place more detailed information about the fund in a Statement of Additional Information ("SAI"), which investors can obtain upon request.[19] The Commission believes, and the broad support for the Proposed Profile confirms its belief, that rule 498 will benefit investors and promote effective communication of information about funds.

Today, the Commission also is adopting the proposed amendments to Form N–1A.[20] As they did with the Proposed Profile, commenters strongly supported the revised prospectus disclosure requirements. Taken together, these two disclosure initiatives are intended to allow funds flexibility to respond to the diverse information needs of investors and to improve fund disclosure.[21]

II. DISCUSSION

A. General

1. Overview of Comments

The vast majority of commenters on the Proposed Profile expressed strong support for the profile and specifically supported the concept of giving investors the option of purchasing shares of a fund on the basis of information contained in a summary disclosure document.[22] A small number of commenters, however, questioned whether providing investors with this option was in the best interests of fund investors. These commenters asserted that investors may not appreciate the significance of an investment in a fund if they purchase its shares based on a summary document rather than the prospectus. These commenters also were concerned that widespread use of a profile could cause fewer investors to read the prospectus and asserted that the Commission would be better advised to direct its efforts to improving the prospectus.

Implicit in these comments would seem to be the view that all investors should use a longer document—the prospectus—rather than a shorter document—the profile—in making a decision about investing in a fund. Such a view appears to be inconsistent with the sentiments of fund investors. The Commission and others, in seeking to identify ways to improve the disclosure of information about mutual funds to investors, have collected data about investors. This data demonstrates that different investors desire and use different types and amounts of materials in determining whether to invest in funds.[23] The Commission believes that the data supports its conclusion to allow funds the option of offering their shares through the profile with delivery of a prospectus with the confirmation of purchase.

The Commission's strongly held belief is that the principal goal of fund disclosure, whether it takes the form of a long or short document, should be to provide investors with useful and relevant information. Each of the disclosure initiatives that the Commission is adopting today has this goal, which the Commission believes complements the themes underlying the recently adopted plain English rule.[24] To further this goal, the Commission encourages all funds that decide to use profiles to take the steps necessary to ensure that their prospectuses effectively communicate information to investors. The Commission believes that funds need to take this action if the initiatives adopted today are to achieve their objectives.

2. Liability

In its release proposing new rule 498 ("the Profile Proposing Release"), the Commission discussed the protections

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[15] Rule 421(d).

[16] 15 U.S.C. 77j(b). Section 10(b) of the Securities Act of 1933 ("Securities Act") permits the use of a summary prospectus (which provides information the substance of which is included in the prospectus) to communicate information for purposes of an offer under section 5(b)(1) of the Securities Act [15 U.S.C. 77e(b)(1)]. Section 5(b)(2) of the Securities Act [15 U.S.C. 77e(b)(2)] requires, as a condition of selling a security, the delivery to investors of a prospectus that meets the requirements of section 10(a) of the Securities Act [15 U.S.C. 77j(a)].

[17] Congress recently confirmed the authority of the Commission to permit the use of a summary prospectus by adding new section 24(g) to the Investment Company Act [15 U.S.C. 80a-24(g)]. National Securities Markets Improvement Act of 1996, Pub. L. 104–290 (1996) ("Improvements Act"), section 204 (amending section 24 to add new paragraph (g)). While the profile, as adopted, will include a summary of information that is required in the prospectus, the Commission may adopt other rules under section 24(g) allowing a fund to use a summary prospectus that includes information the substance of which is not included in the prospectus.

[18] See supra note 16.

[19] Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928] ("1983 Form N–1A Adopting Release"). See also supra note 5.

[20] See Form N–1A Release, *supra note 1.*

[21] The Commission also proposed as part of these disclosure initiatives a new rule to address investment company names that are likely to mislead investors about the investments and risks of an investment company. Investment Company Act Release No. 22530 (Feb. 27, 1997) [62 FR 10955], correction [62 FR 24161]. The proposed rule would require, among other things, funds and other registered investment companies with names suggesting a specific investment emphasis to invest at least 80% of their assets in the type of investment suggested by their name. The Commission received a number of substantive comments on the proposed rule, many of which asserted that the proposal had flaws that the Commission should address. The Division is analyzing the comments and expects to recommend a final rule for Commission consideration in the near future.

[22] The Commission has long encouraged summary prospectuses under section 10(b) of the Securities Act to provide investors with a condensed statement of important information included in the prospectus. In 1956, the Commission adopted a rule permitting the use of a summary prospectus under section 10(b), which was extended to investment companies in 1972. See Securities Act Release No. 3722 (Nov. 23, 1956) [adopting rule 434A [17 CFR 230.434A] to permit the use of a summary prospectus); Securities Act Release No. 5248 (May 9, 1972) [37 FR 10071] (extending rule 434A to investment companies); Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380] (renumbering rule 434A as rule 431) [17 CFR 230.431]. The profile permitted by rule 498 is intended to replace the summary prospectuses that funds are currently permitted to use by rule 431 under the Securities Act, and the Commission is amending rule 431 to clarify that the rule no longer applies to funds. The Commission also is eliminating the "Instructions as to Summary Prospectuses" that now accompany Form N–1A. See Form N–1A Release, supra note 1.

[23] As noted above, Focus Groups responded very positively to the profile option. A number of individual investors also have written to the Commission and expressed strong support for the profile. *See* Profile Proposing Release, supra note 6, at 10944. See also ICI Profile Survey, *supra* note 9, at 22, 26; ICI Shareholder Survey, *supra* note 13, at 4.

[24] See Plain English Release, *supra* note 14.

afforded investors under the federal securities laws for false and misleading statements in a profile.[25] These protections include the provisions of sections 12(a)(2) and 17(a) of the Securities Act, which impose civil and criminal liability upon any person who offers or sells securities using an untrue statement of material fact or who omits to state a material fact necessary in order to make a statement, in light of the circumstances under which it was made, not misleading.[26] Investor protections applicable to a profile also include the antifraud provisions of section 10(b) of the Securities Exchange Act of 1934 and rule 10b-5 under that Act.[27]

When it gave the Commission the authority to permit the use of a summary prospectus under section 10(b) of the Securities Act, Congress provided a specific exception from strict liability for misleading statements and omissions imposed under section 11 of the Securities Act[28] for these type of disclosure documents. The purpose of the exception was to encourage the use of a summary prospectus while maintaining investor protection by requiring delivery of a section 10(a) prospectus at or before the time that the investor receives the confirmation of the purchase of the security described in the summary prospectus.[29]

The Commission believes that the profile fits squarely within the statutory framework contemplated by Congress for the offering and sale of securities under the federal securities laws. The profile of a fund will be a summary prospectus under section 10(b) of the Securities Act, but the fund's section 10(a) prospectus will remain the primary disclosure document under the federal securities laws. To inform investors about the availability of the prospectus, a profile includes a legend on the cover page (or at the beginning of the profile) explaining that the profile is a summary document and stating that more information about the fund is available in the prospectus.[30]

While most commenters strongly favored the profile, several commenters expressed concern that a fund using a profile could face increased liability under the federal securities laws. These commenters argued in particular that a fund's use of a profile could result in claims under section 12(a)(2) of the Securities Act alleging that the profile is misleading because it omits information disclosed in the fund's prospectus.[31]

To address this concern, several commenters urged the Commission to permit funds to incorporate by reference the prospectus into the profile to provide funds with a defense against unwarranted claims that a profile omits material information. As stated in the Profile Proposing Release, however, the Commission believes that allowing funds to incorporate by reference the prospectus into the profile would be inconsistent with the purpose of the profile and not in the public interest.[32] The profile is designed to provide summary information about a fund in a self-contained format that will assist an investor in deciding to invest in, or in deciding to request additional information about, the fund. Permitting a fund to incorporate by reference the prospectus into the profile would result in the prospectus being considered a part of the profile and would be inconsistent with the profile being a self-contained document.[33]

On the basis of, among other things, its prior experience with summary documents, such as advertisements designed to meet the requirements of rule 482 under the Securities Act,[34] the Commission does not agree with commenters' claims that the use of profiles will lead to significant potential liabilities under the federal securities laws. In the Commission's view, a fund using a profile generally should not face liability for omitting information included in the fund's prospectus if the profile includes the information required or permitted by rule 498; potential liability would arise only if a profile contains a material misstatement or omits a statement necessary to make the disclosure in the profile not materially misleading. The mere omission of information from the profile that is required or permitted in the prospectus should not, in the Commission's view, give rise to liability under the federal securities laws.[35]

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[25] See Profile Proposing Release, *supra* note 6, at 10950.

[26] 15 U.S.C. 77l(a)(2); 15 U.S.C. 77q(a).

[27] 15 U.S.C. 78j(b); 17 CFR 240.10b-5. In addition, the Commission has the authority under section 10(b) of the Securities Act to suspend the use of a profile, as a summary prospectus, if the profile includes a false or misleading statement or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading. This authority supplements the Commission's authority under section 8(b) of the Securities Act [15 U.S.C. 77h(b)] to issue an order to stop the sale of securities by means of a materially inaccurate or incomplete section 10(a) prospectus.

[28] 15 U.S.C. 77k.

[29] See I LOSS & SELIGMAN, SECURITIES REGULATION 480 and n.214 (3d ed. 1989) (citing S. Rep. 1036, 83d Cong., 2d Sess. 17–18 (1954) and H.R. Rep. 1542, 83d Cong., 2d Sess. 26 (1954)). Although section 11 liability would not apply to the profile, section 11 liability would apply to the sale of a fund's securities if a misleading statement is included in both the profile and the prospectus.

[30] The legend also indicates that other information about the fund is available in addition to the prospectus. See *infra* Section II.B.1 for a discussion of the profile legend.

[31] Section 12(a)(2) imposes liability for material misstatements or omissions when the seller cannot demonstrate the exercise of "reasonable care." An action under section 12(a)(2) does not require proof of scienter (*i.e.*, intent to mislead investors), *e.g.*, *Wigand* v. *Flo-Tek, Inc.*, 609 F.2d 1028, 1034 (2d Cir. 1979), or investor reliance on a misleading statement or omission, *e.g.*, *MidAmerica Fed. S. & L. Assoc.* v. *Shearson/American Express, Inc.*, 886 F.2d 1249, 1256 (10th Cir. 1989); *Sanders* v. *John Nuveen & Co.*, 619 F.2d 1222, 1225 (7th Cir. 1980), *cert. denied*, 450 U.S. 1005 (1981). In contrast, claims by private plaintiffs under the antifraud provisions of section 10(b) of the Securities Exchange Act of 1934 ("Securities Exchange Act") require proof of scienter and investor reliance. Under either type of claim, however, it must be established that the misrepresentation or omission was "material," which generally means that a substantial likelihood exists that a reasonable investor would consider the information important in making an investment decision. *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976); *Basic, Inc.* v. *Levinson*, 485 U.S. 224, 231–32 (1988). Commenters cited several cases as examples of the claims funds may face under section 12(a)(2) for alleged nondisclosures in profiles. See, *e.g.*, *In re TCW/DW North Am. Gov. Income Trust Secs. Litigation*, 941 F. Supp. 326, 337–38 (S.D.N.Y. 1996) (dismissing certain allegations that fund misstated and omitted information regarding risks of international investing on the basis that a reasonable investor would not have been misled); *In Re Alliance North Am. Gov. Income Trust, Inc. Secs. Litigation*, 1996 U.S. Dist. LEXIS 14209 (S.D.N.Y. 1996) (same); *Tabankin* v. *Kemper Short-Term Global Income Fund*, 1994 U.S. Dist. LEXIS 965 (N.D.Ill. 1994) (dismissing allegations that fund failed to disclose adequately the risks of investment).

[32] Profile Proposing Release, *supra* note 6, at 10950. One commenter suggested as an alternative to incorporation by reference that the Commission create a liability "safe harbor" for funds using profiles. Under such a provision, a fund using a profile meeting the requirements of rule 498 would be deemed to have disclosed all material information about a fund for purposes of the profile if the fund's prospectus contained all material information. Such a provision, in effect, would amount to incorporation by reference and, in the Commission's view, would be inconsistent with the purpose of the profile.

[33] See *White* v. *Melton*, 757 F. Supp. 267, 271–72 (S.D.N.Y. 1991). See also 1983 Form N–1A Adopting Release, *supra* note 19, at 37930.

[34] In 1979, the Commission adopted rule 434d under the Securities Act [17 CFR 230.434d], subsequently redesignated rule 482 [17 CFR 230.482], which permits investment companies to use advertisements that are designed to be omitting prospectuses of the type contemplated by section 10(b) of the Securities Act. Securities Act Release No. 6116 (Aug. 31, 1979) [44 FR 52816].

[35] Like those commenting on the Proposed Profile, commenters on proposed rule 434d argued that a fund using an advertisement under the rule would be subject to potential liability under section 12(a)(2) if the advertisement did not contain all of the information included in the fund's prospectus. In adopting rule 434d, the Commission stated its belief that a fund should not be liable under section 12(a)(2) merely because information included in the fund's section 10(a) prospectus was not included in the advertisement. 44 FR at 52817. The Commission is not aware of any lawsuits brought since the adoption of rule 434d in which a fund was found liable for an advertisement meeting the requirements of the rule on the basis that the

Continued

The Commission believes that the intended purpose of a profile as a summary disclosure document supports the view that a fund using a profile should not be subject to liability under the federal securities laws for omitting information from the profile that is included in the fund's prospectus. Rule 498 specifies the information that can or must be included in a fund's profile and requires the fund to state that the profile contains a summary of certain information in the fund's prospectus. The Commission's goal in adopting rule 498, which is to facilitate the use of a short, summary disclosure document that investors can use to evaluate and compare funds, would not be met unless rule 498 is read as limiting the information required to be included in the profile.

Commenters on the Proposed Profile requested that the Commission provide guidance about the applicability of section 19(a) of the Securities Act to a fund that uses a profile under new rule 498. By its terms, section 19(a) protects a defendant from liability for actions taken in good faith in conformity with any rule of the Commission.[36] The Commission believes that a fund that provides investors with a profile in good faith compliance with rule 498 would be able to rely on section 19(a) against a claim that its profile did not include information that is disclosed in the fund's prospectus.

3. Plain English Disclosure

In seeking to encourage all issuers, including funds, to provide disclosure materials required under the federal securities laws that are simpler, clearer, and more useful to investors, the Commission recently adopted initiatives that would require the use of plain English in drafting those materials.[37] These initiatives contemplate disclosure documents using plain English writing principles including short sentences, everyday language, active voice, tabular presentation of complex material, no legal or business jargon, and no multiple negatives. The Commission strongly believes that, by drafting profiles in strict compliance with plain English principles, funds can provide improved disclosure to investors. Rule 498, as adopted, reflects this belief. The rule requires that funds disclose the information in the profile using the plain English writing principles set out in the Commission's plain English rule.[38]

4. Use of the Profile by Other Types of Investment Companies

The Commission proposed to permit funds to use profiles, but did not propose to permit other types of investment companies, such as closed-end investment companies, unit investment trusts, and separate accounts that offer variable annuities, to rely on rule 498. Several commenters disagreed with the Commission's decision and urged the Commission to allow other types of investment companies to use profiles. The Commission is not persuaded at this time by these commenters, and rule 498, as adopted, is available only to funds. Although it recognizes that a short, summary disclosure document such as the profile could potentially benefit investors in other types of investment companies, the Commission has concluded that it should assess the use of profiles by funds over a period of time before considering a rule that would allow other types of investment companies to use similar summary documents. As the Commission gains experience with funds' use of the profile and analyzes the results of other pilot profile programs that are underway,[39] it will consider expanding use of the concept to other types of investment companies.[40]

5. Standardized Format

The Proposed Profile required disclosure of 9 items of key information presented in a specific sequence following a question-and-answer format. The purpose of standardizing the order of the items was to help investors locate similar information in the profiles of different funds and compare the funds. The proposed question-and-answer format, frequently used by many funds in their prospectuses, was intended to help communicate the required information effectively. Most commenters supported a standardized presentation in profiles, but several commenters criticized the prescribed question-and-answer format, suggesting that funds should be able to choose other formats to set out the information required in a profile. The Commission is adopting the standardized presentation requirement as proposed because it believes that requiring the profile items in a specific sequence will substantially assist investors in locating information and comparing funds. Consistent with the goal of allowing funds to design effective disclosure documents, however, rule 498 does not limit the presentation of the required information to a question-and-answer format.[41] Any fund that chose to do so could use a question-and-answer format in its profile.

6. Additional Disclosure Items

Several commenters suggested that additional disclosure items would be useful in a profile, including:

—a fund's top ten portfolio holdings;
—an investment style box;
—additional measures of risk; and
—financial highlights.

The Commission acknowledges that the disclosure suggested by the commenters could be useful to some fund investors and could generally enhance the information available about funds. Nonetheless, the Commission has concluded that none of these items should be required by rule 498 at this time.

In considering fund disclosure requirements, the Commission must balance many factors, including, among other things, the amount of information that is consistent with the purpose of a particular disclosure document. The purpose of the profile is to provide investors with a short, standardized disclosure document containing summary information about a fund. In the Commission's view, the additional items suggested by commenters could be of interest to some fund investors but are not necessarily essential information for the average or typical investor. The Commission believes that some of the

advertisement failed to include information contained in the fund's prospectus.

[36] 15 U.S.C. 77s(a). See also section 38(c) of the Investment Company Act [15 U.S.C. 80a–37(c)].

[37] See Plain English Release, *supra* note 14. As part of the plain English initiatives, the Commission plans to issue A Handbook on Plain English: How to Create Clear SEC Disclosure Documents, prepared by the Commission's Office of Investor Education and Assistance.

[38] Instruction 2 to rule 498(b) (requiring funds to use the plain English writing principles set out in rule 421(d) in drafting the disclosure in the profile). See *supra* note 14 and accompanying text.

[39] See National Association for Variable Annuities (pub. avail. June 4, 1996) (staff no-action letter allowing pilot program for variable annuity profiles). The Division has permitted this program to continue pending its taking any further action with respect to variable annuity profiles. National Association for Variable Annuities (pub. avail. May 30, 1997) (staff no-action letter).

[40] The Proposed Profile refined the prototype profile used in the pilot program, which allowed the Commission to evaluate use of the profile concept for funds. See *supra* note 8 and accompanying text. The Commission believes that further initiatives to adapt the profile concept for other types of investment companies should follow a similar approach that includes a review of existing prospectus disclosure requirements and an assessment of investor responses to a different disclosure format.

[41] The profile is, however, subject to certain other format requirements. Under rule 498, as adopted, profiles must meet requirements with respect to font size and legibility set out in rule 420 under the Securities Act [17 CFR 230.420]. Rule 420 requires, among other things, that prospectuses be in roman type at least as large and as legible as 10-point modern type.

types of information cited by commenters may be more helpful in connection with a fund's discussion of its current investment activities that is presently included in fund shareholder reports.[42] The Commission has directed the Division of Investment Management ("Division") to begin work on a comprehensive assessment of the Commission's existing rules specifying the disclosure to be included in fund reports to shareholders to assess whether other types of information should be added to those reports.[43]

7. Eligibility

In the Profile Proposing Release, the Commission suggested that certain funds might not be eligible to use a profile. In particular, the Commission stated that, if material information about a fund exists but is not addressed by the 9 items of disclosure required to be in a profile, the fund might not appropriately use a profile.[44] Several commenters strongly objected to this assertion. They argued that it is inconsistent with the premise underlying the profile initiative that a typical fund investor would have enough information to make an investment decision about a fund using a summary disclosure document containing the 9 required items accompanied by a statement about the availability of additional information in the fund's prospectus and other documents. One commenter suggested that the Commission address the eligibility issue by requiring the profile to provide additional summary information about other items of disclosure that are required in prospectuses. Another commenter suggested that, as an alternative, the Commission provide for a tenth item in the profile in response to which a fund could include at its option any other information that the fund believed was material to an investor's consideration of an investment in the fund. Several other commenters, however, argued that such an item was not consistent with the Commission's purpose in developing the Proposed Profile as a short, standardized, self-contained disclosure document.

After consideration of these comments, the Commission has determined to adopt rule 498 to require funds to include only the information specified by the 9 items in the rule and to delete any suggestion that certain funds may be ineligible to use profiles.[45] The Commission has selected these items because it believes that they fulfill the goal of providing investors with a short, summary disclosure document on the basis of which investors can make decisions about investing in a fund. Under rule 498, as adopted, an investor who believes that he or she needs more information before making such a decision has the option of obtaining additional information by requesting the fund's prospectus or other disclosure materials.[46]

8. Number of Funds Described in a Profile

Rule 498, as proposed, would permit a profile to describe more than one fund. As discussed in the Profile Proposing Release, the Commission concluded, on the basis of the Pilot Program and Focus Group responses, that a profile that describes more than one fund can be consistent with the goal of a summary disclosure document that assists investors in evaluating and comparing funds. Describing more than one fund or class in a profile, for example, could be a useful means of providing investors with information about related investment alternatives offered by a fund group (*e.g.*, a range of tax-exempt funds or different types of money market funds) or about the classes of a multiple class fund.

Recognizing that too much information could make the profile lengthy, complex, and difficult to understand, the Commission requested comment whether use of a profile should be limited to one fund or to some other number of funds. Most commenters supported the proposal to allow a profile to describe more than one fund. One commenter expressed concerns about the proposal and suggested that funds instead be allowed to bind separate profiles together.

The Commission believes that the ability to describe different investment options in one summary document will enable funds to develop profiles that help investors compare investment alternatives offered by a fund group. Therefore, the Commission is adopting rule 498, as proposed, with no express limitation on the number of funds that can be described in a profile. Information about multiple funds in a single profile, however, would need to be set out in a concise and summary manner in a format designed to communicate the information effectively.[47]

B. Profile Disclosure

1. Cover Page

Proposed rule 498 would require the cover page of a fund's profile to include certain basic information about the fund

[42] See section 30(d) of the Investment Company Act [15 U.S.C. 80a–29(d)] and rule 30d–1 [17 CFR 270.30d–1] (requiring funds to provide investors with semi-annual reports about a fund's current operations).

[43] See Form N–1A Release, *supra* note 1. In proposing changes to improve the disclosure in fund prospectuses, the Commission recognized that revisions to shareholder report requirements could enhance the disclosure provided to investors. See Form N–1A Proposing Release, *supra* note 7, at 10912. Recent legislation gives the Commission greater authority to specify the content of annual reports and to require additional disclosure in annual and semi-annual reports as necessary or appropriate in the public interest or for the protection of investors. Improvements Act, *supra* note 16, section 206(f) (amending section 30 of the Investment Company Act [15 U.S.C. 80a–29] to add new paragraph (f)). The Commission notes its preliminary view that an "integrated" approach to registration and reporting requirements applicable to funds could improve the overall information about funds available to investors. See Form N–1A Release, *supra* note 1.

[44] See Profile Proposing Release, *supra* note 6, at 10945.

[45] Rule 498(b). The profile generally will provide a summary of certain items in the prospectus, while the prospectus will provide a fuller description of each of these items. The prospectus, for example, discloses the amount of any rule 12b–1 fees charged by a fund in the fee table and includes a narrative discussion about the fund's rule 12b–1 fees. In contrast, the profile as a summary disclosure document discloses the amount of the fund's rule 12b–1 fees as part of the fee table disclosure. Similarly, a prospectus identifies each investment adviser of a fund, including a sub-adviser of the fund, while, in certain cases, a profile could disclose the number of sub-advisers managing the fund's portfolio without identifying each sub-adviser. See Form N–1A Release, *supra* note 1, and *infra* notes 90 and 93–94 and accompanying text.

[46] Proposed rule 498 provided that a fund could not use footnotes or include cross-references within the profile or to information appearing in another of the fund's disclosure documents, unless specifically required or permitted in the rule. See Profile Proposing Release, *supra* note 6, at 10945 n.22. The Commission believes that footnotes and cross-references should generally be unnecessary in a summary document such as a profile. The Commission acknowledges, however, that circumstances may exist under which footnotes or cross-references within the profile may result in better disclosure. Thus, the Commission is revising rule 498 to discourage, but not to preclude, the use of footnotes or cross-references within a profile; under the rule, a fund may use footnotes or cross-references within a profile if their use promotes a better understanding of the information about the fund contained in the profile. Instruction 1 to rule 498(b). Rule 498, as adopted, continues to preclude use of cross-references to information appearing in another of the fund's disclosure documents. Such cross-references would be inconsistent with the purpose that the profile be a self-contained document. For purposes of the profile only, a hyperlink to a fund's prospectus from the fund's profile when both documents are available electronically would not be deemed a cross-reference. See *infra* note 120 (describing and explaining the use of hyperlinks in a profile).

[47] Instruction 2 to rule 498(b). A fund must use plain English writing principles in drafting disclosure in the profile. See *supra* note 37. In response to a comment, the Commission is modifying rule 498 to clarify that information that is common to all funds or classes described in a profile need be stated only once and not repeated for each fund or class. Instruction 4 to rule 498(b). Rule 498, as adopted, does not preclude binding separate profiles for different funds together in one document.

and to disclose that the profile is a summary disclosure document. As proposed, the cover page would identify the disclosure document as a "profile," would include a legend explaining the profile's purpose, and would include the fund's name. A fund also could describe its investment objectives or its type or category (*e.g.*, that the fund is a growth fund or invests its assets in a particular country). Proposed rule 498 also would require the cover page to state the approximate date of the profile's first use and, if applicable, the date of the most recent updated performance information included in the profile.

The Commission is adopting the proposed cover page requirements with modifications to reflect the suggestions of various commenters.[48] Some commenters questioned the proposed requirement to state on a profile's cover page the date of the most recent performance information included in the profile, asserting that this requirement would necessitate a fund's reprinting its profile frequently to reflect updated performance information. These commenters suggested that, as an alternative, the Commission permit the date of the most recent performance information to accompany that information in the body of the profile. The Commission has concluded that the date of performance information included in a profile can be communicated to investors effectively if the date accompanies the disclosure of performance information. Rule 498, as adopted, reflects this conclusion.[49]

Proposed rule 498 would require funds to identify the document on the cover page as a "profile" without using the term "prospectus."[50] Several commenters asserted that funds should be able to refer to the profile as a prospectus because a profile is a summary prospectus under the federal securities laws.[51] When proposing the profile as an optional disclosure document, the Commission made it clear that the profile was not intended to supersede the section 10(a) prospectus as the primary disclosure document for funds under the federal securities laws.[52] In restricting funds from referring to the profile as a prospectus, the Commission intended to avoid investor confusion by distinguishing between the two documents. The Commission believes that, if a profile is labeled a prospectus, investors may not understand the difference between the two documents. In the Commission's view, the technical legal status of the profile as a summary prospectus should not be determinative of the appropriate label for the document. The Commission believes that investors will benefit from clear identification of the disclosure documents and is adopting rule 498, as proposed, with the restriction on the use of the term "prospectus."[53]

The Commission proposed that the cover page of the profile include a legend designed to alert an investor to the summary nature of a fund's profile and to inform the investor that he or she can obtain the fund's prospectus and other disclosure materials of the fund before making a decision about investing in the fund. In considering an appropriate profile legend, the Commission sought a concise, clear statement that minimized technical or legal jargon; provided investors with a description of a fund's profile; and informed them about the availability of other information about the fund. The Profile Proposing Release set out two alternative legends about which a number of commenters expressed strong views.[54]

The primary difference between the two legends proposed by the Commission was the reference to information in the prospectus. The first legend, which was similar to that used in the Pilot Profile, stated that the profile summarizes key information in the prospectus.[55] The second legend added a statement that the prospectus includes additional material information about the fund.[56]

No commenters expressed support for the first proposed legend, and the comments on the second were mixed. Many commenters believed that the second legend would clearly inform investors that the profile contains summary disclosure of key information about a fund and that additional important information about the fund is available in the prospectus. Several of these commenters, however, strongly urged the Commission to delete the word *material* from the legend. They asserted that the use of that term would imply incorrectly that a fund's profile may be legally deficient simply because it did not contain all of the information contained in the fund's prospectus. Several commenters suggested that both of the proposed legends were insufficient and should be strengthened to alert investors more clearly about the summary nature of the profile and the availability of additional information in the prospectus.

The Commission believes that the profile legend serves an important purpose and that the numerous comments that it received on the proposed legends clearly indicate that commenters share this belief. To ensure that the legend sufficiently serves its purpose of informing investors of the summary nature of the profile, the Commission has determined to strengthen the legend and include specific language offered by commenters. As adopted, rule 498 requires the following legend on the cover page, or at the beginning, of a profile:

> This profile summarizes key information about a Fund that is included in the Fund's prospectus. The Fund's prospectus includes additional information about the Fund, including a more detailed description of the risks associated with investing in the Fund that you may want to consider before you invest. You may obtain the prospectus and other information about the Fund at no cost by calling _____.[57]

To ensure that fund investors who, after reviewing a profile, request other information about a fund receive that

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[48] One commenter requested clarification whether a profile must include a separate cover page. Rule 498, as adopted, clarifies that a profile need not have a separate cover page so long as the specified cover page disclosure is included as introductory information at the beginning of the profile. The proposed cover page requirements were intended to identify introductory information that should appear at the beginning of a profile.

[49] Rule 498(c)(2)(iii). Rule 498 permits a fund to reflect updated performance information in a "sticker" or similar means to avoid requiring frequent reprinting of the profile to change this section of the profile. Instruction to rule 498(c)(2)(iii).

[50] Proposed rule 498(c)(1)(ii).

[51] See *supra* note 16.

[52] See Profile Proposing Release, supra note 6, at 10950. See also *supra* Section II.A.2.

[53] Rule 498(c)(1)(ii).

[54] See Profile Proposing Release, *supra* note 6, at 10946.

[55] See id. The first proposed legend read as follows:

> This Profile summarizes key information about the Fund that is included in the Fund's prospectus. If you would like more information before you invest, you may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.

[56] See id. The second proposed legend read as follows:

> This Profile summarizes key information about the Fund that is included in the Fund's prospectus. The prospectus includes additional material information about the Fund that you may want to consider before you invest. You may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.

[57] Rule 498(c)(1)(iv). A fund will be required to provide a toll-free or collect telephone number for investors to request the prospectus or other information. A fund also may, if applicable, indicate that the prospectus is available on its Internet web site or by E-mail. Rule 498(c)(1)(v). Rule 498 requires that an application to purchase shares of a fund that accompanies the fund's profile present with equal prominence the option to invest in the fund based on the information included in the profile or to request the prospectus and other information before making an investment decision. Rule 498(c)(3). See *infra* note 104 and accompanying text.

information promptly, the Commission proposed to require a fund to send its prospectus to the requesting investors within 3 business days of a request. Those commenters addressing this requirement generally supported it, although one commenter maintained that revising the requirement to state that mailings need to be made "reasonably promptly," which the commenter stated should normally be deemed to be within 3 business days of a request, would protect funds against claims that they failed to meet the requirements as a result of unforeseen circumstances. The Commission continues to believe, as discussed in the Profile Proposing Release, that prompt mailing of the prospectus to investors who request it is an essential component of the profile initiative and the goal of promoting effective communication of information about funds.[58] Therefore, the Commission is adopting the 3-business day mailing requirement as proposed.[59]

Some commenters requested clarification from the Commission about the procedure that a fund should follow in responding to requests for additional information when its shares are sold through financial intermediaries, such as broker-dealers or banks. Commenters recommended that the Commission revise rule 498 to permit the legend to state that additional information in such a case may be obtained from financial intermediaries. The Commission acknowledges that many funds use intermediaries in distributing or servicing their shares and that investors may look to these intermediaries for information about the funds. Thus, rule 498, as adopted, allows funds to state that additional information about a fund is available from a financial intermediary.[60] A fund whose information is available through another entity, however, retains the obligation to ensure that information is sent to investors within 3 business days of an investor's request. The Commission expects that funds will fulfill this obligation through contractual arrangements with broker-dealers, banks, or other financial intermediaries.

2. Risk/Return Summary

The Commission proposed that the first 4 items of the profile elicit information that would be substantially identical to the proposed risk/return summary at the beginning of every prospectus. Most commenters supported the risk/return summary in the profile, and the Commission is adopting it generally as proposed. The Form N–1A Release discusses in detail the prospectus risk/return summary.[61] The risk/return summary required in the profile by rule 498, as adopted, will incorporate substantially all of the requirements for the summary in Form N–1A, as amended. The following discussion summarizes the main features of the risk/return summary required by Form N–1A and discusses specific disclosure required in the profile.

—Fund Investment Objectives/Goals

To assist investors in identifying funds that meet their general investment needs, the proposed risk/return summary would require a fund to disclose its investment objectives or goals. The Commission is adopting this disclosure requirement in rule 498 as proposed.[62]

—Principal Investment Strategies

The proposed risk/return summary would require a fund to summarize, based on the information provided in its prospectus, how the fund intends to achieve its investment objectives. The purpose of the proposed disclosure was to provide a summary of the fund's principal investment strategies, including the specific types of securities in which the fund invests or will invest principally, and any policy of the fund to concentrate its investments in an industry or group of industries. The Commission is adopting this requirement in rule 498 as proposed.[63]

In seeking to supplement the information about a fund's principal investment strategies set out in a profile, the Commission proposed to require that a fund's risk summary inform investors about the availability in the fund's shareholder reports of additional information about the fund's investments.[64] Some commenters questioned the proposed placement of this disclosure, arguing that the disclosure should appear together with the legend on the cover page of the profile, while other commenters supported requiring the disclosure in the profile's risk/return summary. The Commission believes that requiring this disclosure on the cover page of the profile would result in too much information on the cover page. Therefore, the Commission is adopting the proposal requiring a fund's profile to indicate in its risk summary that additional information about a fund's investments is available in its shareholder reports.[65]

—Principal Risks of Investing in the Fund

Summary Risk Disclosure. The proposed risk/return summary would require a fund to summarize the information contained in the fund's prospectus about the principal risks of investing in the fund. Reflecting the Commission's proposed new approach to risk disclosure described in the Form N–1A Proposing Release, the profile disclosure was intended to summarize the risks of a fund's anticipated portfolio holdings as a whole, and the circumstances reasonably likely to affect adversely the fund's net asset value, yield, and total return.[66] Commenters generally supported the summary risk disclosure contemplated by proposed rule 498, agreeing that it would be focused and brief and would assist investors in identifying the principal risks of investing in a particular fund. The Commission is adopting this disclosure requirement with modifications to reflect certain commenters' suggestions.[67]

The Commission proposed to require that the risk summary identify the types

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[58] See Profile Proposing Release, *supra* note 6, at 10946.

[59] Instruction to rule 498(c)(1)(v). The Commission's Office of Compliance Inspections and Examinations will, as a part of its routine periodic inspections of a fund's operations, examine a fund's compliance with the 3-business day mailing requirement. In addition to the 3-business day mailing requirement for prospectuses, rule 498 requires a fund to send within 3 business days of a request its annual or semi-annual shareholder report and Statement of Additional Information ("SAI"). *Id.* The Commission staff also will examine a fund's compliance with this requirement. Failure to comply with either requirement could result in action by the Commission to ensure compliance, including an enforcement action in an appropriate case.

[60] Instruction to Rule 498(c)(1)(v).

[61] See Form N–1A Release, *supra* note 1.

[62] Rule 498(c)(2)(i).

[63] Rule 498(c)(2)(ii).

[64] A fund's annual report to its shareholders typically contains a MDFP. The Commission believes that the information in a fund's MDFP, including the discussion of the fund's performance during its most recent fiscal year, could be useful to some investors considering an investment in the fund.

[65] Rule 498(c)(2)(ii). This provision requires a fund (other than a new fund) to include disclosure in the risk/return summary to the following effect:

> Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In the fund's annual report you will find a discussion of the market conditions and investment strategies that significantly affected the fund's performance during the last fiscal year. You may obtain either or both of these reports at no cost by calling _____.

Unlike rule 498, as adopted, Form N–1A, as amended, requires that the statement about the availability of a fund's shareholder reports appear together with disclosure about the availability of the fund's SAI and other information about the fund on the back cover page of the fund's prospectus. Item 1(b)(1) of Form N–1A.

[66] See Form N–1A Proposing Release, *supra* note 7 (regarding fund risk disclosure required in the prospectus).

[67] Rule 498(c)(2)(iii) (incorporating Item 2(c)(1)(i) of Form N–1A).

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of investors for whom the fund may be an appropriate or inappropriate investment. Commenters either opposed or raised significant concerns about this provision, arguing that it could be viewed as requiring a fund to determine whether its shares, among other things, are an investment suitable for a particular investor.[68] Commenters also stated that the disclosure would tend to be generic and not meaningful or useful for investors.

The Commission is persuaded by commenters that disclosure about the appropriateness of funds for particular investors should not be required in all profiles and has deleted this requirement from the risk summary. The Commission believes, however, that disclosure indicating whether a fund is appropriate for specific types of investors or is consistent with certain investment goals, even if generic in nature, may be useful for some investors and may provide a means for the fund to distinguish itself from other investment alternatives. Therefore, the risk summary requirement, as adopted, will give a fund the option to include disclosure in its profile about the types of investors for whom the fund is intended and the types of investment goals that may be consistent with an investment in the fund.[69]

Under the proposed risk/return summary, a fund could at its option discuss the potential rewards of investing in the fund in the risk summary as long as the discussion provided a balanced presentation of the fund's risks and rewards. One commenter strongly questioned this provision of the proposal, asserting that it would detract from a clear presentation of risks in the summary. The Commission has reconsidered this disclosure in light of the intended standardized and summary nature of the risk summary and has concluded that the disclosure there should focus solely on the risks of investing in the fund. Thus, the Commission has determined to eliminate the option to describe the rewards of investing in a fund in the risk summary.[70]

[68] As several commenters pointed out, applicable regulatory rules for brokers and other investment professionals require that these determinations be made on the basis of a review of information about the unique circumstances of an individual investor. See, *e.g.*, rule 2310(a) of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules. NASD Manual (CCH) ¶4261 (suitability of recommendations); rule 405 of the New York Stock Exchange, 2 N.Y.S.E. Guide (CCH) ¶2403 (the "know your customer rule").

[69] Rule 498(c)(2)(iii) (incorporating Item 2(c)(1)(i) of Form N–1A).

[70] In keeping with the disclosure flexibility provided to funds under Form N–1A, as amended, a fund could discuss the potential rewards of investing in the fund elsewhere in its prospectus as long as the information is not incomplete, inaccurate, or misleading. See Form N–1A Release, *supra* note 1.

Special Risk Disclosure Requirements. The Commission proposed to require special disclosure in the risk summary for money market funds[71] and for funds advised by or sold through banks. Commenters supported the proposed disclosure requirements, and the Commission is adopting them substantially as proposed.[72]

The Commission proposed to require a tax-exempt money market fund that concentrates its investments in a particular state (a "single state money market fund") to include specific disclosure in its profile risk summary describing certain risks associated with an investment in such a fund.[73] In the Form N–1A Proposing Release, the Commission asked, however, whether it should continue to require this disclosure in prospectuses.[74] The Commission noted that this disclosure may exaggerate the risk of investing in single state money market funds. As the Form N–1A Proposing Release pointed out, although these funds are subject to less stringent issuer diversification provisions under Commission rules than other money market funds, they are subject to credit quality and maturity investment restrictions that are comparable to other money market funds.

In response to the Commission's question regarding single state money market funds, commenters indicated that the special disclosure now required in fund prospectuses overstates the risks of investing in single state money market funds, particularly in view of the minimal risk that commenters asserted is associated with these funds. The Commission is persuaded by these commenters and has determined not to require the disclosure in either the profile or the prospectus.[75]

Risk/Return Bar Chart and Table. The proposed risk/return summary would require a fund's profile to include a bar chart showing the fund's annual returns for each of the last 10 calendar years and a table comparing the fund's average annual returns for the last 1-, 5-, and 10-fiscal years to those of a broad-based securities market index. The bar chart reflects the Commission's determination that investors need improved disclosure about the risks of investing in a fund. The bar chart is intended to illustrate graphically the variability of a fund's returns (*e.g.*, whether a fund's annual returns for a 10-year period have varied significantly from year to year or were relatively even over the period). Presenting return information in this format was designed to give investors some indication of the variability of a fund's annual returns and thus some idea of the risk of an investment in the fund. The average annual return information in the table would assist investors in evaluating a fund's performance and risks relative to "the market." Commenters generally supported the proposed bar chart and performance table, and the Commission is adopting these requirements with

[71] For these purposes, a money market fund is a fund that holds itself out to investors as a money market fund and meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of rule 2a–7 under the Investment Company Act [17 CFR 270.2a–7].

[72] Rule 498(c)(2)(iii) (incorporating Item 2(c)(1)(ii) of Form N–1A). This provision, as adopted, requires the following disclosure by a money market fund in the risk summary of its profile:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

A fund advised by or sold though a bank would disclose in the risk summary of its profile:

An investment in the Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

Some commenters asserted that the proposed disclosure was inconsistent with that required by bank regulators in the Interagency Statement on Retail Sales of Nondeposit Investment Products. See Board of Governors of the Federal Reserve System, FDIC, Office of the Comptroller of the Currency, and Office of Thrift Supervision, Interagency Statement on Retail Sales of Nondeposit Products, 6 Fed. Banking L. Rep. (CCH) ¶70–113, at 82,598 (Feb. 15, 1994) ("Interagency Statement") (requiring disclosure that the fund is not a deposit or other obligation of the bank). The Commission has confirmed with these bank regulators that no such inconsistency exists, because the disclosure required by the Interagency Statement applies to sales material and not to fund prospectuses. In response to suggestions from bank regulators, the Commission has revised the required disclosure to add language indicating that an investment in a fund advised by or sold through a bank is not a deposit of the bank. The requirement, as amended in this way, is consistent with the requirement now in effect.

The Commission is making conforming amendments to the disclosure requirement contained in rule 482(a)(7) for advertisements by money market funds. The Commission also is amending rule 482(d) under the Securities Act and rule 34b–1 under the Investment Company Act [17 CFR 270.34b–1] to conform to changes made in Item 21 of Form N–1A, as amended. See Form N–1A Release, *supra* note 1.

[73] Proposed rule 498 would require a single state money market fund to make disclosure similar to that Form N–1A currently requires such a fund to disclose in its prospectus. Existing Form N–1A requires a single state money market fund to disclose that it may invest a significant percentage of its assets in a single issuer and that investing in it may be riskier than investing in other types of money market funds. See Form N–1A Proposing Release, *supra* note 7, at 10903.

[74] See Form N–1A Proposing Release, *supra* note 7, at 10904.

[75] See Form N–1A Release, *supra* note 1.

modifications to reflect suggestions of commenters.[76]

In the Form N–1A Proposing Release, the Commission requested comment about alternative presentations that could improve fund risk disclosure.[77] In particular, the Commission expressed interest in disclosure that would show a fund's highest and lowest returns (or "range" of returns) for annual or other periods as an alternative, or in addition, to the bar chart. The Commission suggested that this information could be presented in a separate table or included in the performance table.

In response to the Commission's request, some commenters suggested including in a fund's bar chart one or more indexes or other benchmarks (such as 3-month Treasury returns or the rate of inflation) to help investors evaluate the fund's returns by comparisons to other measures of market performance or economic factors.[78] Most commenters, however, opposed requiring additional information in the bar chart, asserting that it could complicate and reduce the effectiveness of the bar chart.

Several commenters supported the inclusion of annual return information in the bar chart on a quarterly or semi-annual rather than an annual basis. They argued that this change to the bar chart would respond to concerns that fund investors may not sufficiently appreciate that an investment in a fund may be subject to the risk of a short-term decline in value. This risk, commenters asserted, may not be apparent from the annual returns proposed to be shown in the bar chart.

The Commission acknowledges that a fund's returns may vary significantly and could decrease in value over short periods and that the annual returns in the bar chart, as proposed, would not necessarily reflect this pattern. On the other hand, the Commission is concerned that requiring quarterly returns over a 10-year period would make the bar chart more complex and less useful in communicating information to investors. In balancing the desire to make typical fund investors aware that fund shares may experience price fluctuations over shorter periods with its underlying goal that fund documents communicate information in as straightforward and uncomplicated a manner as possible, the Commission has determined to require a fund to disclose, in addition to the bar chart, its best and worst returns for a quarter during the 10-year (or other) period reflected in the bar chart.[79] The Commission believes that this information will assist investors in understanding the variability of a fund's returns and the risks of investing in the fund by illustrating, without adding unwarranted complexity to the bar chart, that the fund's shares may be subject to short-term price fluctuations.

Presentation of Return Information. The proposed risk/return summary would require a fund to include the bar chart and table under a separate sub-heading that referred to both risk and performance. Several commenters argued that the separate sub-heading requirement was unnecessary and suggested that a fund should be able to choose whether to include any sub-heading. Consistent with the objective of encouraging funds to develop disclosure formats that are most helpful to investors, the profile risk/return summary, as adopted, does not require the sub-heading including the proposed risk/return summary. To help investors use the information in the bar chart and table, the profile risk/return summary, as adopted, however, does require a fund to provide a brief narrative explanation of how the information illustrates the variability of the fund's returns.[80]

Bar Chart Return Information. The Commission proposed to require that a fund's bar chart show the fund's annual returns for the last 10-calendar years of the fund's existence. The purpose of the calendar-year requirement was to facilitate the comparison of the annual returns among funds, which typically have fiscal periods that do not correspond to the calendar year.[81] Unlike the proposed bar chart, the proposed performance table required disclosure of a fund's returns for fiscal year periods. In requiring this disclosure to be made for fiscal year periods, the proposal was consistent with existing disclosure requirements for the presentation of other financial information included in a fund's prospectus.

Several commenters argued that using different time periods for the proposed bar chart and performance table would confuse investors and urged the Commission to minimize potential investor confusion by adopting consistent time periods for this information. The Commission is persuaded by these comments and believes that requiring both the bar chart and the performance table to be based on calendar periods will promote understandable information in the profile. Therefore, the risk/return summary, as adopted, requires calendar-year periods for both the bar chart and table.[82] Under rule 498, as adopted, the average annual return information in the table in a fund's profile risk/return summary must be as of the most recent calendar quarter and updated quarterly.[83]

The proposed bar chart would not reflect sales loads assessed upon the sale of a fund's shares, although the average annual return information for the fund in the table would reflect the payment of any sales loads. Commenters generally supported this presentation of annual return information. The Commission believes that, in light of the different types of sales loads that may be charged on fund shares, it would be difficult for funds to compute annual returns for the purpose of the bar chart and to communicate the information effectively to investors.[84] In addition, the Commission has concluded that more precise return information is not necessary for the bar chart to serve the purposes of graphically showing a fund's annual returns and illustrating

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[76] Rule 498(c)(2)(iii) (incorporating Item 2(c)(2) of Form N–1A). This provision requires a fund to have at least one calendar year of returns before including the bar chart and requires a fund whose profile does not include a bar chart because the fund does not have annual returns for a full calendar year to modify the narrative explanation to refer only to information presented in the table. The provision also requires the bar chart of a fund in operation for fewer than 10 years to include annual returns for the life of the fund.

In adopting the bar chart requirement, the Commission does not mean to suggest that all, or even a significant portion of all fund investors equate the variation in a fund's returns to the risk of investing in the fund. As it indicated in the Form N–1A Release, the Commission acknowledges that investors have a wide range of ideas of what "risk" means. See Form N–1A Release, *supra* note 1.

[77] See Form N–1A Proposing Release, *supra* note 7, at 10907.

[78] Rule 498, as adopted, in incorporating the requirements of Form N–1A, as amended, permits a fund to use other indexes in the presentation of the average annual return information in the table accompanying the bar chart. Rule 498(c)(2)(iii) (incorporating Instruction 2(b) to Item 2(c)(2) of Form N–1A).

[79] Rule 498(c)(2)(iii) (incorporating Item 2(c)(2)(ii) of Form N–1A).

[80] Rule 498(c)(2)(iii) (incorporating Item 2(c)(2)(i) of Form N–1A).

[81] The Commission understands that funds increasingly organize themselves as series companies and tend to stagger the financial periods of their series to spread audits and financial reporting periods over an entire calendar year.

[82] Rule 498(c)(2)(iii) (incorporating Item 2(c)(2) of Form N–1A).

[83] Rule 498(c)(2)(iii). Unlike rule 498, as adopted, Form N–1A, as amended, requires the fund's prospectus risk/return summary to reflect average annual return information as of the end of a fund's most recent calendar year. Item 2(c)(2) of Form N–1A, as amended. A fund would update the information in the prospectus in connection with the filing of an annual post-effective amendment to update a fund's registration statement.

[84] In contrast, sales loads can be accurately and fairly reflected in return information of the type contained in the table by deducting sales loads at the beginning (or end) of particular periods from a hypothetical initial fund investment.

the variability of an investment in the fund over a 10-year period. Therefore, the bar chart, as adopted, is not required to show returns adjusted for sales loads.

Bar Chart Presentation. Consistent with the bar chart as proposed, the bar chart, as adopted, may include return information for more than one fund.[85] In contrast, the risk/return summary, as adopted, would require a fund offering more than one class of shares in a profile to include annual return information in its bar chart for only one class.[86] Unlike individual funds, classes of funds represent interests in the same portfolio of securities and the returns of each class differ only to the extent that the classes do not have the same expenses. The Commission believes that including return information for all classes offered through a fund's profile is not necessary to provide an indication of the risks of investing in the fund. In addition, the table accompanying such a fund's bar chart would provide return information for each class offered in the profile so that investors will be able to identify and compare the performance of each class.[87]

The proposed risk/return summary would require the bar chart of a fund offering more than one class of shares through a profile to reflect annual return information for the class offered in the profile that had the longest performance history over the last 10 years. Most commenters considering the issue suggested that the Commission instead permit such a fund to include the performance of any existing class in the bar chart, maintaining that the effect of expenses on the returns for different classes of shares is not significant.[88] The Commission is persuaded that allowing a multiple class fund in such a case to choose the class reflected in the fund's bar chart will simplify compliance with the bar chart requirement and provide investors with sufficient information to evaluate the variability of returns for any class of the fund. Therefore, the profile risk/return summary, as adopted, permits a fund to choose the class to be reflected in the bar chart, subject to certain limitations.[89]

—Fees and Expenses of the Fund

The proposed risk/return summary would require a table accompanying a fund's bar chart showing the fund's fees and expenses, including any sales loads charged in connection with an investment in the fund. Including the fee table in both the profile and the prospectus reflects the Commission's strongly held belief in the importance of fees and expenses in a typical investor's decision to invest in a fund. The fee table is designed to help investors understand the costs of investing in a fund and to compare those costs with the costs of other funds. The Commission is adopting the requirement for a fee table with modifications incorporating suggestions from commenters.[90]

3. Other Disclosure Requirements

The Commission proposed to require the profile of a fund to include not only the risk/return summary, but also disclosure about other key aspects of investing in the fund. Commenters generally supported these disclosure requirements, which are summarized below, and the Commission is adopting them substantially as proposed.

—Investment Adviser and Portfolio Manager of the Fund

Proposed rule 498 would generally require a fund to identify in its profile its investment adviser and the person or persons primarily responsible for the day-to-day management of the fund's portfolio ("portfolio manager"). The proposed disclosure in the profile about portfolio managers also would require a fund to indicate the length of time that a portfolio manager has managed the fund and to summarize the portfolio manager's business experience for the last 5 years. Proposed rule 498 contemplated that a fund for which a committee or other group shared day-to-day management of its portfolio would disclose that it was managed in this fashion and not identify any individual portfolio manager. Commenters supported all of these proposed requirements, which the Commission has determined to adopt.[91]

In seeking to meet its goal that profile disclosure be clear, concise, and summary in nature, the Commission proposed that, subject to one exception, a fund having 3 or more portfolio managers, each with responsibility over a portion of the fund's portfolio, could choose to disclose the number, and not the names, of its portfolio managers. Under the proposed exception, a fund would be required to disclose the identity of a portfolio manager who was responsible for managing 40% or more of its portfolio.[92] One commenter questioned the operation of these provisions and suggested that the Commission instead adopt a requirement that a fund disclose the name and experience of only those portfolio managers having responsibility over the day-to-day management of a significant portion of the fund's investments. The commenter suggested further that 30 to 40% of a fund's portfolio should be deemed significant for this purpose.

The Commission believes that the commenter's suggestions are consistent with the goal underlying the profile and could result in better disclosure than that contemplated by the Commission's proposal. Thus, under rule 498, as adopted, a fund with 3 or more portfolio managers need not identify each of the managers, except that the fund must identify any manager who is (or is reasonably expected to be) responsible for the management of a significant portion of the fund's assets.[93] Under rule 498, as adopted, a portfolio manager of 30% or more of a fund's net assets generally would be deemed to be responsible for the management of a

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[85] While rule 498 does not limit the number of funds whose return information may be included in a bar chart, the presentation of the bar chart is subject to the general requirement that disclosure should be presented in a format designed to communicate information effectively. Instruction 2 to rule 498(b).

[86] Rule 498(c)(2)(iii) (incorporating Instruction 3(a) to Item 2(c)(2) of form N–1A).

[87] Rule 498(c)(2)(iii) (incorporating Instruction 3(b) to Item 2(c)(2) of form N–1A).

[88] In making this argument, commenters cited rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3], which provides that a class of shares may have different expenses for shareholder services, distribution fees, or other expenses actually incurred in a different amount by the class. The rule does not permit expenses for advisory or custodial fees, or other management fees, to vary among classes.

[89] Rule 498(c)(2)(iii) (incorporating Instruction 3(a) to Item 2(c)(2) of Form N–1A). The bar chart must reflect the performance of any class that has returns for at least 10 years (*e.g.*, a fund could not present a class in the bar chart with 2 years of returns when another class has returns for at least 10 years). In addition, if two or more classes offered in the profile have returns for less than 10 years, the bar chart must reflect returns for the class that has returns for the longest period.

[90] Rule 498(c)(2)(iv) (incorporating Item 3 of Form. N–A). The modifications adopted by the Commission are discussed in Form N–1A Release, *supra* note 1.

[91] Rule 498(c)(2)(v). Item 6(a)(2) of Form N–1A sets out the disclosure requirements for Form N–1A covering this information. As discussed in the Form N–1A Release, the Commission has provided additional guidance in Form N–1A regarding the prospectus disclosure obligations of a fund for which day-to-day management responsibilities are shared. *See* Form N–1A Release, *supra* note 1 (Instructions to Item 6(a)(2)).

[92] Under the 1996 Profile Letter, *supra* note 8, at 3, a fund could disclose that 3 or more persons managed the fund's portfolio, without regard to the percentage of the portfolio managed by any one person.

[93] Rule 498(c)(2)(v)(C). In tying this disclosure to the portion of a fund's net assets over which a person has day-to-day responsibility, the Commission intends to provide funds with a standard way of determining whether a person has responsibility over a significant portion of a fund's portfolio. Like Form N–1A, as amended, rule 498, as adopted, does not require disclosure about the portfolio manager of a money market fund or an index fund.

significant portion of the fund's net assets.[94]

Proposed rule 498 generally would require a fund to identify in its profile any person or entity serving as a sub-adviser of the fund.[95] Under the proposal, a fund would not need to identify a sub-adviser whose sole responsibility for the fund is limited to managing the fund's cash positions on a day-to-day basis.[96] Commenters supported, and the Commission has adopted, this provision, with a clarification that recognizes that responsibility for cash management generally is incidental to a fund's investment objectives and unlikely to affect the fund's overall portfolio management and risks.[97]

Under rule 498, as proposed, a fund with 3 or more sub-advisers, each of which manages a portion of the fund's portfolio, could choose to disclose the number, and not the identity, of its sub-advisers, subject to one exception. Under the exception, a fund would be required to identify any sub-adviser that manages 40% or more of its net assets. Consistent with the modification to the disclosure requirement for portfolio managers, rule 498, as adopted, requires a fund to identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the fund's net assets. The rule defines a significant portion of the fund's net assets for this purpose generally to be 30% or more of the fund's net assets.[98]

—Purchase and Sale of Fund Shares

The Commission proposed to require a fund to describe in its profile how to purchase its shares under one caption and how to redeem its shares under another caption. Proposed rule 498 would require, under the purchase caption, information about the fund's minimum investment requirements (*e.g.*, initial and minimum account balances) and, when applicable, any breakpoints in or waivers of sales loads.

Several commenters criticized the generic nature of the information on purchases and sales of fund shares contemplated by proposed rule 498. They argued that without some guidance as to the specific kinds of information relating to purchases and sales of fund shares that the Commission believes is of importance to investors, funds would include an excessive amount of information in their profiles. The Commission believes that such a result would be inconsistent with the profile's intended purpose as a summary disclosure document and has revised rule 498 to specify in greater detail the information about a fund's purchase and sale procedures that funds must include in a profile. Under rule 498, as adopted, a fund must disclose the minimum initial or subsequent investment requirements, the initial sales load (or other loads), and, if applicable, the initial sales load breakpoints or waivers.[99] Rule 498 also requires a fund to state that its shares are redeemable, to identify the procedures for redeeming shares (*e.g.*, on any business day by written request, telephone, or wire transfer), and to identify any charges or sales loads that may be assessed upon redemption (including, if applicable, the existence of waivers of these charges).[100]

—Fund Distributions and Tax Information

The Commission is adopting the proposed requirement that a fund disclose information in its profile about the terms and conditions under which it makes distributions, as well as the expected tax treatment of those distributions.[101] Rule 498, as adopted, requires a fund's profile to describe how frequently the fund intends to make distributions and what reinvestment options for distributions (if any) are available to investors in the fund. Rule 498 also requires a fund to disclose whether its distributions to shareholders may be taxed as ordinary income or capital gains and that the rates shareholders pay on capital gains will depend on the length of time that the fund holds its assets.[102] Rule 498 requires a tax-exempt fund to state that it intends to distribute tax-exempt income and to disclose, as applicable, that a portion of its distributions may be taxable.

—Other Services Provided by the Fund

Recognizing that funds often seek to distinguish themselves by the services that they offer investors and that investors often select funds for the services that they provide, the Commission proposed to require a fund to summarize or list in its profile the services available to its investors, including, for example, any exchange privileges or automated information services. One commenter expressed concern about the open-ended nature of this item and suggested that the Commission clarify that a fund need not respond to the item by disclosing all of its services available to all investors. This clarification, according to the commenter, would ensure that the profile serves its intended purpose as a summary document that includes information of use to a typical fund investor. The Commission agrees, and as adopted, rule 498 requires only that a fund's profile provide a summary of services available to typical investors in the fund.[103]

4. Application to Purchase Shares

The Commission proposed to permit a fund to include in its profile an application to purchase its shares.[104] To ensure that investors are informed of the

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[94] Rule 498, as adopted, requires disclosure about a portfolio manager of a fund who is, or who is reasonably expected to be, responsible for the management rather than one who "manages" a significant portion of the fund's portfolio. The revised language recognizes that the portion of a fund's portfolio over which a manager has responsibility may change from time to time.

[95] See section 2(a)(20) of the Investment Company Act [15 U.S.C. 80a–2(a)(20)] (defining "investment adviser" broadly so as to include a sub-adviser).

[96] In contrast the 1996 Profile Letter, *supra* note 8, at 3, required disclosure about a sub-adviser only if it managed a material portion of a fund's portfolio.

[97] Rule 498(c)(2)(v). As adopted, this exception does not apply to any sub-adviser for a money market fund because the primary investment objective for such a fund can be viewed as cash management. The exception also does not apply to any other type of fund with a principal strategy of regularly holding cash or cash equivalent instruments. A fund, for example, with a principal strategy of allocating its assets among cash equivalents, equity securities, and income securities, and which employed different sub-advisers to manage each of these asset categories, would need to identify all of the sub-advisers.

[98] Rule 498(c)(2)(v)(B)(2).

[99] Rule 498(c)(2)(vi).

[100] Rule 498(c)(2)(vii).

[101] Rule 498(c)(2)(viii).

[102] If a fund expects that its distributions, as a result of its investment objectives or strategies, primarily will consist of ordinary income or capital gains, the fund must provide disclosure to that effect in responding to rule 498(c)(2)(viii). Funds subject to this requirement would include, for example, those often described as "tax-managed," "tax-sensitive," or "tax-advantaged," which have investment strategies to maximize long-term capital gains and minimize ordinary income. To the extent that a fund has a principal investment objective or strategy to achieve tax-managed results (*e.g.*, to maximize long-term gains and minimize ordinary income), the fund would be required under rule 498 to provide disclosure to that effect in the discussion of its investment objectives. Rule 498(c)(2)(ii).

[103] Rule 498(c)(2)(ix).

[104] Proposed rule 498(c)(3). Rule 482 under the Securities Act prohibits a fund from including an application to purchase its shares in an advertisement. This prohibition was based on concerns that an application would be inconsistent with the purpose of rule 482, which was to provide a limited amount of information about a fund and a means of requesting a fund's prospectus. See Fund Performance Release, *supra*, note 5. In 1993, the Commission proposed to amend rule 482 to permit a fund to include in an advertisement a purchase application if the advertisement included certain information about a fund. Investment Company Act Release No. 19342 (Mar. 5, 1993) [58 FR 16141]. In lieu of adopting the proposed revisions to rule 482, the Commission is adopting rule 498. The Commission is amending rule 482 in a number of respects to reflect the adoption of rule 498. In addition, the Commission is adopting revisions to rule 482 to permit letters or other materials permitted under the rule to accompany a profile. See *infra note 123 and accompanying text.*

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availability of a fund's prospectus, which can be reviewed by an investor before investing in the fund, proposed rule 498 would require the application to note with equal prominence that an investor has the option of purchasing shares of the fund after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information).

Commenters generally supported permitting a fund to include an application in its profile, and the Commission is adopting rule 498 as proposed. One commenter questioned why an application needed to be included within a profile and suggested that it should be sufficient for an application to accompany the profile. The Commission recognizes that allowing funds to separate purchase applications from profiles may facilitate the printing and distribution of profiles and make it easier for funds to administer and process investors' applications. The Commission is concerned, however, that separating the application from the profile may cause investors to overlook the information provided in the profile. Balancing these concerns with a desire to ease the administrative burden on funds, the Commission has revised rule 498 to permit a fund to provide an application for purchase of fund shares either in the profile, or together with the profile in a manner reasonably designed to alert investors that the application is to be considered along with the information about the fund disclosed in the profile.[105]

C. Filing Requirements

The Commission proposed to require a fund to file its profile with the Commission at least 30 days before its first use.[106] Proposed rule 498 would require a fund to file any profile containing substantive changes to a previously filed profile 30 days before use. The proposed rule would not require a fund to re-file a previously filed profile that has been revised only to update return information about the fund's past performance included in the risk/return summary. Commenters generally supported the proposed filing requirement, although some commenters suggested that it was unnecessary to require the subsequent re-filing of a profile with substantive changes 30 days before use. Commenters recommended that, if the Commission believes that such a filing requirement is necessary, the period before an amended profile can be used should be shortened to 5 days. Other commenters requested clarification about the kinds of changes made to a profile in use that would trigger a second filing requirement.

The Commission has determined to adopt the proposed filing requirements with modifications to address commenters' concerns.[107] As discussed in the Profile Proposing Release, requiring profiles to be filed prior to their first use will allow the Commission's staff to monitor the document's compliance with the provisions of rule 498 and other provisions under the federal securities laws.[108] The Commission believes that the 30-day filing requirement for a new profile will provide the staff with sufficient time to review the profile.[109] The subsequent filing of an amended profile was intended to enable the Commission to continue to monitor and assess the use of profiles by funds. Because substantive changes to the profile, particularly the risk/return summary, will be reflected in amended prospectus filed with the Commission that can be reviewed by the Division, the Commission believes that a subsequent filing of amendments to a profile before its use is not necessary. Therefore, the Commission has revised the procedures under which profiles are filed to require that a fund file its amended profile within 5-business days after its use.[110]

Funds would be required to submit profiles electronically on the Commission's electronic data gathering analysis and retrieval ("EDGAR") system.[111] Because filings on the EDGAR system currently are text-only, do not reflect formatting, and do not reproduce graphic images (such as the bar chart required to be in the profile), the Commission proposed to require a fund to submit 2 copies of the profile in the primary form intended to be distributed to investors (*e.g.*, paper or electronic media) with its electronically-filed profile. The purpose of this requirement was to allow the Commission to assess how funds present information in the profile.[112] Pointing out that all funds are now required to file their disclosure documents required under the federal securities laws electronically and are no longer permitted to file paper copies, one commenter argued that it would be burdensome to require an additional paper submission of a profile and that the paper filing was not necessary to review the content of the profile. The commenter suggested that, if the Commission determines that a paper (or other distributed form of) filing is necessary, the Commission should require that the first filing of the profile be in its primary format and allow subsequent filings to be made electronically on EDGAR only. The Commission believes that review of profiles in the form in which they will be distributed to investors will allow its staff to evaluate the effectiveness of the profile and will be helpful in assessing whether the Commission should permit other types of investment companies to use a form of profile.[113] To avoid unnecessary administrative burdens on funds, which file most forms required by the Commission electronically, however, the Commission is revising the additional profile filing requirement. Under these revisions, the first profile filing must be accompanied by the submission of a profile in the format in which it will be distributed to investors.[114] Subsequent filings will not require the additional formatted profile.

D. Dissemination of Profiles

The Commission believes, on the basis of its own research and studies

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[105] Instruction to rule 498(c)(3).

[106] Proposed rule 498 would require a fund to file the profile under rule 497, which sets out general filing requirements for fund prospectuses. The Commission proposed to include the profile requirement in new paragraph (k) to rule 497.

[107] The Commission has determined that it is not necessary or appropriate in the public interest or for the protection of investors to require that a fund's profile be filed as part of the fund's registration statement on Form N–1A. Filing the profile as part of a registration statement would not add to the Commission's ability to monitor the disclosure in the profile, would provide no additional protection to investors, and would impose unnecessary administrative burdens on funds.

[108] See Profile Proposing Release, *supra* note 6, at 10950. Under rule 498, as adopted, a profile can be used by a fund only with an effective registration statement and a current prospectus.

[109] Rule 497, as amended, requires a fund to file a definitive form of any profile required to be filed with the Commission within 5 days after it is used.

[110] Rule 497(k)(1)(ii). Rule 497(k) separates filings of amended profiles into those that contain a material change to the investment objectives/goals, strategies, or risks of investing in the fund (changes to the information in, respectively, paragraphs (c)(2)(i)–(iii) of rule 498) and those that do not. Rule 497(k)(1)(iii) (A) and (B). As with any profile filing, rule 497 requires that a fund filing an amended profile designate under which paragraph and sub-paragraph of rule 497 the fund is filing the amended profile. Rule 497(k)(2)(i). This requirement will assist the staff of the Division in determining whether an amended profile contains substantive changes to the information in the risk/return summary.

[111] The Commission requires most other filings to be made in the same manner. Rule 101(a)(1)(i) of Regulation S–T [17 CFR 232.101(a)(1)(i)], for example requires prospectuses filed pursuant to the Securities Act to be submitted in electronic format.

[112] See Profile Proposing Release, *supra* note 6, at 10951 nn. 86–88 and accompanying text.

[113] See *supra* Section II.A.4 (discussion of use of profile by other investment companies).

[114] Rule 497(k)(2)(ii). If a fund intends to disseminate its profile electronically, the supplemental submission need only include the Internet web site electronic address ("URL").

undertaken by others, that the profile has the potential to be used by a significant number of fund investors. To facilitate use of the profile, the Commission proposed to permit profiles to be distributed to investors through any form of media.[115] Commenters generally supported this approach, although one commenter urged the Commission to limit distribution of the profile to mass print media, arguing that the use of electronic media or direct mail to distribute a profile could promote fraud. The Commission believes that the profile's filing requirements and its staff's periodic regular review of fund operations through its inspections program provide important safeguards against the fraudulent use of the profile. In addition, the Commission has determined that it is in the interest of fund investors to provide them with different means to access sources of information about funds. Therefore, the Commission has decided not to restrict the means that funds may use to distribute profiles.

• Notwithstanding its decision to permit funds to use all media to distribute profiles, the Commission acknowledges that some media may have limitations that make communicating information in a profile difficult or that raise issues about whether investors have adequate opportunity to consider the information conveyed by that form of media.[116] Regardless of how it is distributed (*e.g.*, through electronic means or in paper format), a profile must contain all of the information contemplated by rule 498.[117] In addition, while a fund's profile may be delivered without the fund's prospectus, the profile, if accompanied by supplemental sales literature, cannot be delivered without the prospectus.[118]

As discussed in the Profile Proposing Release, electronic media, such as the Internet, may be particularly well suited for the delivery of the profile to investors.[119] Including the profile together with the prospectus (and other information) on a fund's Internet web site may be an efficient method for the fund to disseminate, and for investors to receive, disclosure documents. Electronic availability of both the profile and prospectus would allow investors to access the fund's prospectus for more information contemporaneously with deciding to make an investment in the fund.[120]

Several commenters pointed out that funds could decide to send profiles to prospective investors with cover letters designed to be "omitting prospectuses" within the meaning of rule 482 under the Securities Act.[121] Noting that rule 482 materials are designed for a purpose different from that of the profile and are required to contain a legend that is inconsistent with the legend in the profile, the commenters requested that the Commission clarify the circumstances under which these materials could be used with a profile. The commenters suggested specifically that the statement required by rule 482, that a prospectus is available from a fund and that the investor should read it carefully before investing, could confuse investors who receive rule 482 materials with a profile that contains an application to purchase shares of the fund. To avoid this type of confusion, the Commission is revising rule 482 so that a fund can indicate in a letter or other rule 482 material accompanying the fund's profile that information about the fund, and the procedures for investing in the fund, are available in the accompanying profile.[122] The Commission also is revising rule 482 to provide that a profile containing, or accompanied by, an application can be used with rule 482 materials.[123]

E. Modified Profiles for Certain Funds

The Commission proposed to permit a fund to tailor a profile for use by investors in participant-directed defined contribution plans ("plans"). The Commission believes that plan participants may find a profile helpful in evaluating and comparing the funds offered as investment alternatives in a plan.[124] In proposing rule 498, the Commission recognized that certain information of importance to typical fund investors is of little importance to participants in plans. Thus, proposed rule 498 would permit a fund offered through a plan to omit information relating to the purchase and sale of fund

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[115] For example, a fund could make a profile available through direct mail and mass print (*e.g.*, magazines and newspapers), broadcast, and electronic media, such as electronic bulletin boards, E-mail, facsimiles, Internet web sites, audiotapes. *See e.g.*, Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458, 53458 n.9] ("Electronic Distribution Release"). A fund may find that posting both its profile and its prospectus (and other information) on its Internet web site may disseminate disclosure documents to investors more efficiently than other ways.

The Commission has encouraged the electronic dissemination of information by allowing funds and other types of companies significant choice in selecting and using distribution media. See, *e.g.*, *id.* at 53460 n.20 (providing guidance on the electronic delivery of documents including prospectuses, shareholder reports, and proxies, under the Securities Act, the Securities Exchange Act, and the Investment Company Act); Investment Company Act Release No. 21945 (May 9, 1996) [61 FR 24644] (addressing the use of electronic media by broker-dealers, transfer agents, and investment advisers); Investment Company Act Release No. 21946 (May 9, 1996) [61 FR 24652] ("Release 21946") (adopting technical amendments to rules premised on the delivery of paper documents).

[116] The Commission noted the same point generally in the Electronic Distribution Release, *supra* note 115, at 53460 & n.20. For example, broadcast media may be more difficult to use for disseminating the profile because they may not communicate the profile information effectively (*e.g.*, the bar chart may not be effectively conveyed by a radio broadcast) or provide a meaningful opportunity for retaining the information (*e.g.*, a short television commercial).

[117] Release 21946, *supra* note 115, at 24653. The Commission has taken the position generally that any document contemplated by the federal securities laws, whether delivered electronically or on paper, must contain all required information and, if the order of information has been specified by the Commission, must present the information in substantially the prescribed order. Electronic Distribution Release, *supra* note 115, at 53460 n.20.

[118] Profiles may be accompanied by material deemed to be an omitting prospectus within the meaning of rule 482 under the Securities Act. The conclusion that a profile accompanied by supplemental sales literature cannot be delivered to investors without the prospectus is based on section 2(a)(10) of the Securities Act [15 U.S.C. 77b(a)(10)], which excludes sales literature from the definition of a "prospectus" (and from the filing requirements under the Securities Act) if a section 10(a) prospectus (but not a summary prospectus under section 10(b)) precedes or accompanies the sales literature. For a discussion of the use of a profile with rule 482 materials, see *infra* notes 121 and 122 and accompanying text. See also Electronic Distribution Release, *supra* note 115, at 53463 and 53465 (examples 15 and 35).

[119] See Profile Proposing Release, *supra* note 6, at 10951.

[120] A fund could provide a hyperlink to its prospectus from its profile. A hyperlink in a document (which, for example, may be an underlined word or phrase) permits a viewer to move to another document (or part of the same document) with a computer command. The words "investment strategies" in the profile, for example, could be set up as a hyperlink to the discussion of investment strategies in the prospectus. Using hyperlinks could facilitate the profile's serving as a means through which fund investors can obtain additional information in the prospectus and other documents. An investor's use of an electronic profile application contemplated by rule 498 would create the inference of delivery of the prospectus if both the profile and the prospectus are available at the same electronic site. *Cf.* Electronic Distribution Release, *supra* note 115, at 43565–66 (example (39)) ("If the fund can identify the application form as coming from the electronic system that contains both the application and the prospectus, electronic delivery of the prospectus can be inferred."). A fund that does not electronically disseminate the profile and prospectus together could not rely on this presumption and generally would be required to provide a copy of the prospectus with the purchase confirmation.

[121] See *supra* note 104.

[122] Rule 482(a)(3).

[123] Rule 482(a)(5).

[124] The Division has taken the view that certain informational materials about a fund offered as an investment option in a defined contribution plan can be deemed an omitting prospectus within the meaning of rule 482. Fidelity Institutional Retirement Services Company, Inc. (pub. avail. Apr. 5, 1995) (staff no-action letter). None of the initiatives being adopted by the Commission today is intended to supersede this position of the Division.

shares, fund distributions, and tax consequences.[125]

Commenters generally supported allowing funds to develop profiles containing disclosure of particular relevance for plan participants who invest in funds. The Commission is adopting the special provisions for profiles used for plans as proposed with modifications to reflect suggestions of the commenters.[126]

Under rule 498, as adopted, funds can tailor disclosure for profiles to be used for investments in defined contribution plans qualified under the Internal Revenue Code.[127] One commenter suggested that the Commission also permit funds that serve as investment options for variable insurance contracts to modify profiles to take into account specialized purchase and sale procedures and tax consequences applicable to these funds.[128] In response to the commenter's suggestions, the Commission is revising rule 498 to permit the profile to be tailored for funds offered through variable insurance contracts. The Commission believes that this revision will help to ensure that profiles contain information that investors will find meaningful and useful. Rule 498, as adopted, permits a profile for a fund offered as an investment option for a plan to include, or be accompanied by, an enrollment form for the plan.[129] An application or enrollment form for a variable insurance contract may accompany the profile for the funds that serve as investment options, however, only if the form also is accompanied by a full prospectus for the contract.[130]

Some commenters suggested that rule 498 permit other modifications to the disclosure in fund profiles used in connection with plans, such as including information about purchases and sales of the fund's shares, taxation, or transfer of participant accounts under the plan or describing from whom this information can be obtained. Commenters also suggested that rule 498 permit such a fund to alter the legend in its profile used by plans to distinguish clearly that profile from another profile of the same fund. Consistent with the goal of providing meaningful and useful information that is effectively communicated to investors, rule 498, as adopted, permits funds to modify the legend and other disclosure in profiles intended for use in connection with defined contribution plans, other tax-deferred arrangements described in the rule, and variable insurance contracts.

III. Effective Date

The Commission proposed a transition period after the effective date of revised Form N–1A to give funds sufficient time to prepare their registration statements under the proposed amendments.[131] One commenter suggested that, in light of the significant overlap of information in fund prospectuses and profiles, funds would revise their prospectuses and develop profiles concurrently, and requested that the transition period be the same for both rule 498 and Form N–1A, as amended. The commenter also requested that the Commission continue to permit funds to use Pilot Profiles during the transition period.[132] The Commission expects that the practical result of the adoption of rule 498 and revisions to prospectus disclosure requirements may be that funds begin using both documents at the same time. In light of the profile's purpose to provide investors with a new source of clear, concise information about funds, the Commission believes that funds should have the option to use the profile as soon as possible and is making rule 498 effective on June 1, 1998.[133] The amendments to Form N–1A will become effective on the same date.[134] Although existing funds will have until December 1, 1999 to comply with the Form N–1A amendments, a fund may, at its option, prepare documents in accordance with the requirements of the amended Form at any time after the effective date of the amendments.

IV. Cost/Benefit Analysis and Effects on Competition, Efficiency, and Capital Formation

Section 2(b) of the Securities Act provides that whenever the Commission engages in rulemaking requiring it to consider whether its action is in the public interest, the Commission also must consider whether the action will promote efficiency, competition, and capital formation.[135] For the reasons stated in the cost/benefit analysis below, as well as the reasons discussed elsewhere in this adopting release, the Commission has concluded that rule 498 will protect investors and will promote efficiency, competition, and capital formation.

Evaluating and comparing funds has become an increasingly difficult task for investors as the number of funds has grown. The Commission has designed the profile to allow funds to use different offering documents to meet the diverse information needs of investors. The Commission believes that rule 498 allows funds to provide investors with a profile that conveys information to investors efficiently, to the benefit of investors and funds. For example, funds may include profiles in various media, such as magazines, and may use profiles specifically tailored for investors in defined contribution plans, certain other tax-deferred arrangements, and variable insurance contracts. The profile, by providing investors with a concise, standardized information option, also may enable investors to use information

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[125] Proposed rule 498(c)(4). The proposed rule also would permit funds to exclude information about some fund services (*e.g.*, exchange privileges) that may not apply to plan participants. In addition, the proposed rule acknowledged that a plan typically effects purchases and sales of a fund's shares on behalf of plan participants and would permit the fund's profile to include the plan's enrollment form in lieu of the application form.

[126] Rule 498(d). General Instruction C.3.(d) of Form N–1A includes similar provisions enabling funds to omit certain information from their prospectuses that are used in connection with plans. Form N–1A Release, *supra* note 1.

[127] In addition to plans under rule 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], these plans include those under section 403(b) [26 U.S.C. 403(b)] (available to employees of certain tax-exempt organizations and public educational systems) and section 457 [26 U.S.C. 457] (available to employees of state and local governments and other tax-exempt employers).

[128] The prospectus for a variable insurance contract discloses the purchase and sale procedures and tax consequences of investing in the contract and is provided to investors in addition to prospectuses for one or more funds that are offered as investment options under the contract. Use of a profile for the available investment options could make it easier for investors in variable contracts to compare and select from the investment alternatives available under the contract.

[129] Rule 498(d)(3).

[130] The Commission is currently considering whether it should extend the profile to variable annuity contracts. See *supra* note 39 and accompanying text. The staff of the Division has indicated that, for variable annuity contracts used to fund employee retirement plans, summaries of the contract and fund prospectuses, accompanied by payroll deduction and allocation forms, could be treated as satisfying the requirements of rule 482 under certain circumstances. See Aetna Life Insurance and Annuity Co. (pub. avail. Jan. 6, 1997) (staff no-action letter). A profile could be used as a summary of a fund prospectus for these purposes.

[131] See Form N–1A Proposing Release, *supra* note 7, at 10921.

[132] In the 1977 Profile Letter, *supra* note 8, the Division stated that the Commission would address the transition from use of a Pilot Profile in connection with the adoption of proposed rule 498.

[133] After the effective date of rule 498, funds could continue to use a Pilot Profile as supplemental sales literature.

[134] To simplify compliance with rule 498 and the revised prospectus disclosure requirements, the Commission is specifying the same effective date for both as June 1, 1998. All new registration statements or post-effective amendments that are annual updates to effective registration statements filed after December 1, 1998 must comply with the amendments to Form N–1A. The final compliance date for filing amendments to effective registration statements to conform with the new Form N–1A requirements is December 1, 1999. See Form N–1A Release, *supra* note 1.

[135] 15 U.S.C. 77b(b). See also section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)].

efficiently by making it easier to compare funds before investing. This result will promote competition among funds and better enable investors to select an investment that is appropriate and consistent with their investment goals.

The Commission did not receive any comments addressing specifically the cost associated with rule 498. Acknowledging that it is difficult to quantify costs and benefits related to the use of a profile, the Commission notes that commenters strongly favored the proposal. A fund's use of a profile under rule 498 is voluntary and not every fund will choose to prepare a profile. Developing a profile consistent with rule 498, however, would not be burdensome, because a fund that chooses to use a profile is likely to have developed much of the information required to appear in a profile as a part of its registration statement on Form N–1A. As discussed in the Commission's Paperwork Reduction Act submission in conjunction with the Profile Proposing Release, the Commission estimated that approximately 2,500 funds, or one third of eligible funds, will prepare profiles, and that the average profile will describe 2 funds. The Commission estimated that the annual cost to the industry of preparing and filing updated profiles would be approximately $5,600,000.[136]

The Commission anticipates that the use of profiles may cause funds to restructure their expenditures on advertising. It is difficult, however, to determine how the use of profiles will affect aggregate expenditures on advertising. Expenditures on profiles may be offset by reductions in other advertising costs, resulting in no net cost increase.

The Commission has taken steps to minimize the costs associated with the use of a profile, such as designing the required risk/return summary to allow funds to update return information without necessitating the reprinting of the entire profile. The ability to provide better information to investors and encourage investments in a fund may offset any additional costs to funds created by the development of a profile. Profiles also may lead to lower printing and distribution costs for funds that mail fewer prospectuses. On balance, the Commission believes that rule 498 fosters efficiency and tends to promote competition and capital formation without imposing significant costs on funds.

[136] Profile Proposing Release, *supra* note 6.

V. Paperwork Reduction Act

As set forth in the Profile Proposing Release, this rulemaking contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[137] The collection of information requirements in the Profile Proposing Release were submitted to the Office of Management and Budget ("OMB") for review under section 3507(d) of the PRA. OMB approved the collection of information under the title "Profiles for Open-End Management Investment Companies" and assigned it control number 3235–0488. The collection of information contained in the Profile Proposing Release is in accordance with the clearance requirements of 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless an agency displays a valid OMB control number.

Rule 498 permits funds to provide investors with a profile that contains a summary of key information about a fund. A fund that chooses to make a profile available would give investors the option of purchasing the fund's shares after reviewing the information contained in the profile or after requesting and reviewing the fund's prospectus (and other information about the fund). Under rule 498, use of the profile by a fund is voluntary, but compliance with the rule is mandatory for any fund that decides to use a profile. Responses to the collection of information will not be confidential.

The Profile Proposing Release solicited public comment on the collection of information requirements contained in that release. The Commission received no comments on the PRA portion of the release. The estimated total reporting burden, purpose, use and necessity of the collection of information, as detailed in the Profile Proposing Release, remains the same.

VI. Summary of Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis ("Analysis"), which was prepared in accordance with the Regulatory Flexibility Act, 5 U.S.C. 603, was published in the Profile Proposing Release. The Commission received no comments on the Analysis. The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604. The FRFA explains that a profile would include a summary of key information about a fund in a concise, standardized format designed to help investors evaluate and compare funds. The FRFA also explains that, if a fund makes a profile available, investors will have the option to purchase the fund's shares after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information about the fund). An investor deciding to purchase fund shares based on the information in the profile would receive the fund's propsectus no later than with the confirmation of the purchase.

The FRFA discusses the effect of rule 498 on small entity investment companies, which are defined, for the purposes of the Securities Act and Investment Company Act, as investment companies with net assets of $50 million or less as of the end of the most recent fiscal year [17 CFR 230.157(b) and 270.0–10]. The Commission estimates that there are approximately 620 small entity investment companies and that approximately one-third (207) could choose to use proposed rule 498. As explained in more detail in the FRFA, the Commission estimates that the total hour burden on small entities to prepare, file, and update the profile annually would be approximately 2,420 hours. While the profile would include a summary of key information about the fund that is included in the prospectus, the disclosure requirements for the profile and the prospectus are designed for different purposes.

The FRFA explains that rule 498 would not be significantly burdensome for small entity investment companies because use of the profile is optional, and the information to be included in a fund's profile will typically be drawn from information required to be disclosed in the fund's prospectus. In addition, some investors may use profiles instead of prospectuses to narrow their choices among funds, which would reduce a fund's printing and distribution costs. Lower printing and distribution costs could benefit small entities as much as or more than it could for large funds.

As stated in the FRFA, the Commission considered several alternatives to rule 498, including establishing different compliance or reporting requirements for small entity investment companies or exempting them from all or part of the rule. Because use of the profile would be optional, and, if used, profiles of all funds would be subject to the same disclosure requirements, the Commission believes that the rule would not impose additional burdens

[137] 44 U.S.C. 3501, *et seq.*

on small entity investment companies. Separate treatment for small entity investment companies would be inconsistent with the protection of investors.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting George J. Zornada, Team Leader, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–6, Washington, DC 20549–6009.

VII. Statutory Authority

The Commission is adopting rule 498 under sections 5, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)] and sections 8, 22, 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–22, 80a–24(g), 80a–29, and 80a–37]. The authority citations for the rule precede the text of the amendments.

List of Subjects in 17 CFR Parts 230 and 270

Investment companies, Reporting and recordkeeping requirement, Securities.

Text of Rule

For the reasons set out in the preamble, the Commission amends chapter II, title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for part 230 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.431 to revise the introductory text of paragraph (a) to read as follows:

§ 230.431 Summary prospectuses.

(a) A summary prospectus prepared and filed (except a summary prospectus filed by an open-end management investment company registered under the Investment Company Act of 1940) as part of a registration statement in accordance with this section shall be deemed to be a prospectus permitted under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)) if the form used for registration of the securities to be offered provides for the use of a summary prospectus and the following conditions are met:

* * * * *

3. Amend § 230.482 to revise the introductory text of paragraph (a), paragraphs (a)(3), (a)(5), and (a)(7), and in paragraph (d) remove the period at the end of paragraph (d)(1)(ii) and add in its place "; or" and add paragraph (d)(1)(iii) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) An advertisement or other sales material that is not a prospectus, or an advertisement or sales material excluded from the definition of prospectus by section 2(10) of the Act (15 U.S.C. 77b(10)) and related § 230.134, will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), if:

* * * * *

(3) It includes a conspicuous statement that:

(i) Identifies a source from which an investor may obtain a prospectus containing more complete information about the investment company, which should be read carefully before investing; or

(ii) If used with a profile under § 230.498 ("Profile"), indicates that information is available in the Profile about the investment company, the procedures for investing in the investment company, and the availability of the investment company's prospectus.

Note to Paragraph (a)(3). The fact that the statements included in the advertisement are included in the section 10(a) prospectus does not relieve the issuer, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading.

* * * * *

(5) It does not contain and is not accompanied by any application by which a prospective investor may invest in the investment company, except that:

(i) A prospectus meeting the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) by which a unit investment trust offers periodic payment plan certificates may contain a contract application although the prospectus includes another prospectus that, pursuant to this section, omits certain information required by section 10(a) of the Act, regarding investment companies in which the unit investment trusts invests; and

(ii) It may be used with a Profile that includes, or is accompanied by, an application to purchase shares of the investment company as permitted under § 230.498.

* * * * *

(7)(i) In the case of an investment company that holds itself out to be a money market fund, it includes the following statement:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

(ii) A money market fund that does not hold itself out as maintaining a stable net asset value may omit the second sentence of the statement in (a)(7)(i) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) A quotation or quotations of tax equivalent yield or tax equivalent effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to the same base period as the quotation of current yield, is presented with equal prominence, and states the income tax rate used in the calculation.

* * * * *

4. Amend § 230.497 to revise paragraph (a) and to add paragraph (k) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

(a) Five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement that varies from the form or forms of prospectus included in the registration statement filed pursuant to § 230.402(a) shall be filed as part of the registration statement not later than the date that form of prospectus is first sent or given to any person, except that:

(1) An investment company advertisement under § 230.482 shall be filed under this paragraph (a) (but not as part of the registration statement) unless filed under paragraph (i) of this section; and

(2) A profile under § 230.498 shall be filed in accordance with paragraph (k) of this section and not as part of the registration statement.

* * * * *

(k)(1) *Profile filing requirements.* A form of profile under § 230.498 shall not be used unless:

(i) The form of profile that has not been previously filed with the Commission is filed at least 30 days before the date that it is first sent or given to any person.

(A) No additional filing is required during the 30-day period for changes (material or otherwise) to a form of

profile filed under this paragraph if the changes are included in the definitive profile that is filed with the Commission under paragraph (k)(2)(ii) of this section.

(B) The form of profile filed under this paragraph (k)(1)(i) can be used on the later of 30 days after the date of filing or, if the profile is filed in connection with an initial registration statement or a post-effective amendment that adds a series of an investment company to a registration statement, or reflects changes to a prospectus included in a post-effective amendment filed to update a registration statement under § 230.485, the date that the registration statement or post-effective amendment becomes effective.

(ii) A definitive form of a profile filed under paragraph (k)(1)(i) of this section is filed with the Commission no later than the fifth business day after the date that it is used.

(iii) A form of profile that differs from any definitive form of profile that was filed under this paragraph (k) is filed with the Commission in definitive form no later than the fifth business day after the date that it is first used. This filing shall be made under one of the following according to the character of the change contained in the form of profile:

(A) A form of profile that contains a material change to the information disclosed under § 230.498 (c)(2)(i)–(iii); and

(B) A form of profile that does not contain a material change to the information under § 230.498 (c)(2)(i)–(iii).

(2) *Filing procedures.* (i) Designate, at the top of the first page of any form of profile that is filed under this paragraph (k), the paragraph and sub-paragraph under which the profile is filed.

(ii) Send two additional copies of the first definitive form of profile filed electronically under paragraph (k)(1)(ii) of this section to the Commission, in the primary form intended to be used for distribution to investors (*e.g.*, paper, electronic media), by mail or other means reasonable calculated to result in receipt by the Commission, no late than the fifth business day after the date the profile is first sent or given to any person. Send copies to the following address: Office of Disclosure and Review, Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth St., N.W., Mail Stop 5–6, Washington, D.C. 20549–6009. Note prominently that the submission is made in accordance with § 230.497(k)(2) of Regulation C under the Securities Act. If the profile is distributed primarily on the Internet, supply, in lieu of copies, the electronic address ("URL") of the profile page(s) in an exhibit to the electronic filing under this paragraph (k). This additional requirement will expire on June 1, 2000.

5. Add § 230.498 under the undesignated center heading "Regulation C–Registration" to read as follows:

§ 230.498 Profiles for certain open-end management investment companies.

(a) *Definitions.* (1) A *Fund* means an open-end management investment company, or any series of such a company, that has, or is included in, an effective registration statement on Form N–1A (§§ 274.11A and 239.15A of this chapter) and that has a current prospectus under section 10(a) of the Act (15 U.S.C. 77j(a)).

(2) A *Profile* means a summary prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a–24(g) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(b) *General requirements.* A Fund may provide a Profile to investors, which may include, or be accompanied by, and application that investors may use to purchase the Fund's shares, if the Profile contains the information required or not precluded by paragraph (c) of this section and does not incorporate any information by reference to another document.

Instructions to paragraph (b).

1. The Profile is intended to be a standardized summary of key information in the Fund's prospectus under section 10(b) of the Act. Additional information is available in the Fund's prospectus under section 10(a) of the Act, in the Fund's Statement of Additional Information under Form N–1A, and in the Fund's annual and semi-annual shareholder reports prepared in accordance with § 270.30d–1. Funds may not use cross-references in the Profile to other Fund disclosure documents unless required or permitted by this rule. Funds should minimize cross-reference and the use of footnotes within the Profile; cross-references and footnotes should generally be used only to promote a better understanding of the information about the Fund contained in the Profile.

2. Provide clear and concise information in the Profile in a format designed to communicate the information effectively. Avoid excessive detail, technical or legal terms, and long sentences and paragraphs. Provide the information in the Profile using the plain English writing principles in § 230.421(d).

3. A Fund may use document design techniques intended to promote effective communication of the information in the Profile unless inconsistent with the requirements of this section.

4. A Profile may describe more than one Fund or class of a Fund. A Profile that offers the securities of more than one Fund or class of a Fund does not need to repeat information that is the same for each Fund or class of Fund described in the Profile.

5. File the Profile with the Commission as required by § 230.497(k).

(c) *Specific requirements.* (1) Include on the cover page of the Profile or at the beginning of the Profile:

(i) The Fund's name and, at the Fund's option, the Fund's investment objective or the type of fund or class offered, or both;

(ii) A statement identifying the document as a "Profile," without using the term "prospectus";

(iii) The approximate date of the Profile's first use;

(iv) The following legend:

This Profile summarizes key information about the Fund that is included in the Fund's prospectus. The Fund's prospectus includes additional information about the Fund, including a more detailed description of the risks associated with investing in the Fund that you may want to consider before you invest. You may obtain the prospectus and other information about the Fund at no cost by calling _____.

(v) Provide a toll-free (or collect) telephone number that investors can use to obtain the prospectus and other information. The Fund may indicate, as applicable, that the prospectus and other information is available on the Fund's Internet site or by E-mail request. The Fund also may indicate, if applicable, that the prospectus and other information is available from a financial intermediary (such as a broker-dealer or bank) through which shares of the Fund may be purchased or sold.

Instruction to Paragraph (c)(1)(v). When the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's prospectus, the Fund's Statement of Additional Information, or the Fund's annual or semi-annual report, the Fund (or financial intermediary) must send the requested document within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery. Funds are encouraged to send other information requested by shareholders within the same period.

(2) Provide the information required by paragraphs (c)(2) (i) through (ix) of this section in the order indicated:

(i) *Fund objectives/goals.* Provide the information about the Fund's investment objectives or goals required by Item 2(a) of Form N–1A.

(ii) *Principal investment strategies of the Fund.* Provide the information about the Fund's principal investment strategies required by Item 2(b) of Form N–1A. In addition, a Fund (other than a Fund that has not yet been required to deliver a semi-annual or annual

report under § 270.30d–1 of this chapter) must provide disclosure to the following effect:

Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders. In the Fund's annual report you will find a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during the last fiscal year. You may obtain either or both of these reports at no cost by calling _____.

(iii) *Principal risks of investing in the Fund.* Provide the narrative disclosure, bar chart, and table required by Item 2(c) of Form N–1A. Provide in the table the Fund's average annual total returns and, if applicable, yield as of the end of the most recent calendar quarter prior to the Profile's first use. Update the return information as of the end of each succeeding calendar quarter as soon as practicable after the completion of the quarter. Disclose the date of the return information adjacent to the table.

Instruction to Paragraph (c)(2)(iii). A Fund may reflect the updated performance information in this section of the profile by affixing a label or sticker, or by other reasonable means.

(iv) *Fees and expenses of the Fund.* Include the fee table required by Item 3 of Form N–1A.

(v) *Investment adviser, sub-adviser(s) and portfolio manager(s) of the Fund.* (A) Identify the Fund's investment adviser.

(B) Identify the Fund's sub-adviser(s) (if any) except that:

(*1*) A Fund need not identify a sub-adviser(s) whose sole responsibility for the Fund is limited to day-to-day management of the Fund's holdings of cash and cash equivalent instruments, unless the Fund is a money market fund or other Fund with a principal investment strategy of regularly holding cash and cash equivalent instruments.

(*2*) A Fund having three or more sub-advisers, each of which manages a portion of the Fund's portfolio, need not identify each such sub-adviser, except that the Fund must identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the Fund's net assets. For purposes of this paragraph (c)(2)(v)(B)(*2*), a significant portion of a Fund's net assets generally will be deemed to be 30% or more of the fund's net assets.

(C) State the name and length of service of the person or persons employed by or associated with the Fund's investment adviser (or the Fund) who are primarily responsible for the day-to-day management of the Fund's portfolio and summarize each person's business experience for the last five years in accordance with the Instructions to Item 6(a)(2) of Form N–1A. A Fund with three or more such persons, each of whom is (or is reasonably expected to be) responsible for the management of a portion of the Fund's portfolio, need not identify each person, except that a Fund must identify and summarize the business experience for the last five years of each person who is (or is reasonably expected to be) responsible for the management of a significant portion of the Fund's net assets. For purposes of this paragraph (c)(2)(v)(C), a significant portion of a Fund's net assets generally will be deemed to be 30% or more of the Fund's net assets.

(vi) *Purchase of Fund shares.* Disclose the Fund's minimum initial or subsequent investment requirements, the initial sales load (or other loads) to which the Fund's shares are subject, and, if applicable, the initial sales load breakpoints or waivers.

(vii) *Sale of Fund shares.* Disclose that the Fund's shares are redeemable, identify the procedures for redeeming shares (*e.g.*, on any business day by written request, telephone, or wire transfer), and identify any charges or sales loads that may be assessed upon redemption (including, if applicable, the existence of waivers of these charges).

(viii) *Fund distributions and tax information.* Describe how frequently the Fund intends to make distributions and what options for reinvestment of distributions (if any) are available to investors. State, as applicable, that the Fund intends to make distributions that may be taxed as ordinary income or capital gains (which may be taxable at different rates depending on the length of time that the Fund holds its assets) or that the Fund intends to distribute tax-exempt income. If a Fund expects that its distributions, as a result of its investment objectives or strategies, primarily will consist of ordinary income or capital gains, provide disclosure to that effect. For a Fund that holds itself out as investing in securities generating tax-exempt income, provide, as applicable, a general statement to the effect that a portion of the Fund's distributions may be subject to federal income tax.

(ix) *Other services are available from the Fund.* Provide a brief summary of services available to the Fund's shareholders (*e.g.*, any exchange privileges or automated information services), unless otherwise disclosed in response to paragraphs (c)(2)(vi) through (viii) of this section.

Instruction to Paragraph (c)(2)(ix). A Fund should disclose only those services that generally are available to typical investors in the Fund.

(3) The Profile may include an application that a prospective investor can use to purchase the Fund's shares as long as the application explains with equal prominence that an investor has the option of purchasing shares of the Fund after reviewing the information in the Profile or after requesting and reviewing the Fund's prospectus (and other information) before making a decision about investing in the Fund.

Instruction to Paragraph (c)(3). a Fund may include the application in a Profile or otherwise provide an application together with a Profile in any manner reasonably designed to alert investors that the application is to be considered along with the information about the Fund disclosed in the Profile.

(d) *Modified Profile for certain funds.* (1) A Fund may modify or omit the information required by paragraphs (c)(2)(vi) through (ix) of this section for a Profile to be used for a Fund that is offered as an investment option for:

(i) A defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k));

(ii) A tax-deferred arrangement under section 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) and 457); and

(iii) Variable contracts as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)).

(2) A Fund that uses a Profile permitted under paragraph (d)(1) of this section may:

(i) Alter the legend required by paragraph (c)(1)(iv) of this section to include a statement to the effect that the Profile is intended for use in connection with a defined contribution plan, another tax-deferred arrangement, or a variable contract, as applicable, and is not intended for use by other investors; and

(ii) Modify other disclosure in a Profile consistent with offering the Fund as a specific investment option for a defined contribution plan, tax-deferred arrangement, or variable contract.

(3) A Profile used under paragraph (d)(1)(i) or (ii), but not paragraph (d)(1)(iii), of this section may include, or be accompanied by, an enrollment form for the plan or arrangement. The enrollment form does not need to be filed with the Profile under § 230.497.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

6. The general authority citation for part 270 is revised to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

7. Amend § 270.34b–1 to revise paragraph (b)(1)(ii)(B) to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(b)(1) * * *

(ii) * * *

(B) Accompany any quotation of the money market fund's tax equivalent yield or tax equivalent effective yield with a quotation of current yield as specified in § 230.482(d)(1)(iii) of this chapter; and

* * * * *

Dated: March 13, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7071 Filed 3–20–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33–7514; IC–23066; File No. S7–9–98]

RIN 3235–AG37

Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing a new Form N–6 for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. The form would be used by these separate accounts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. For these registrants, the proposed form would replace Form N–8B–2, currently used by all unit investment trusts to register under the Investment Company Act, and Form S–6, currently used by all unit investment trusts to offer their securities under the Securities Act. The proposed form would focus prospectus disclosure on essential information that would assist an investor in deciding whether to invest in a particular variable life insurance policy. The proposed form also would minimize prospectus disclosure about technical and legal matters, improve disclosure of fees and charges, and streamline the registration process by replacing two forms that were not specifically designed for variable life insurance policies with a single form tailored to these products.

DATES: Comments must be received on or before July 1, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–9–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Electronically submitted comments also will be posted on the Commission's Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, Ethan D. Corey, Senior Counsel, Megan L. Dunphy, Attorney, Michael B. Koffler, Attorney, Susan M. Olson, Attorney, Kevin M. Kirchoff, Branch Chief, Cindy J. Rose, Chief Financial Analyst, or Susan Nash, Assistant Director, (202) 942–0670, Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment a new Form N–6 [17 CFR 239.17c; 17 CFR 274.11d] for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. The form would be used by these separate accounts to register under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Investment Company Act") and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act"). For these registrants, the proposed form would replace Forms N–8B–2 [17 CFR 274.12] and S–6 [17 CFR 239.16], currently used by all unit investment trusts to register under the Investment Company Act and to offer their securities under the Securities Act. The Commission also is proposing technical amendments to rules 134b, 430, 430A, 495, 496, and 497 under the Securities Act [17 CFR 230.134b, 230.430, 230.430A, 230.495, 230.496, 230.497]; rules 8b–11 and 8b–12 under the Investment Company Act [17 CFR 270.8b–11, 270.8b–12]; and Form N–8B–2 [17 CFR 274.12]. Finally, the Commission is requesting comment on whether it should rescind Form N–1 [17 CFR 274.11], the registration form used by insurance company separate accounts that are registered as open-end management investment companies and that offer variable life insurance policies.

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I. Introduction and Executive Summary

Variable Life Insurance

Variable life insurance is similar to traditional life insurance, except that the cash value and/or death benefit vary based on the investment performance of the assets in which the premium payments are invested. Under a traditional life insurance policy, premium payments are allocated to an insurer's general account and invested, consistent with state law requirements, to enable the insurer to meet its death benefit and cash value guarantees. The investment return on assets in the general account has little or no direct effect on the cash value or the death benefit received.

Premium payments under a variable life policy, in contrast, are invested in an insurance company separate account, which generally is not subject to state law investment restrictions. A variable life policyholder typically is offered a variety of investment options (*e.g.*, equity, bond, and money market mutual funds). Death benefits and cash values are directly related to performance of the separate account, although typically there is a guaranteed minimum death benefit.

Variable life insurance was introduced in the early 1970s. During the years from the end of World War II to the late 1960s, there was a significant decline in the share of savings dollars invested with life insurance companies. In an effort to counteract this trend, insurers began to offer a greater variety of products, including equity-based products such as variable life

insurance.[1] In recent years, variable life insurance has become an increasingly important segment of the insurance industry. By the end of 1996, variable life insurance accounted for almost one quarter of U.S. life insurance sales, up from 6% four years earlier.[2] Throughout the 1990s, assets in variable life products have grown steadily, from $4.3 billion in 1990 to more than $33 billion in December 1997.[3]

Current Forms for Variable Life Insurance Registration

A separate account funding a variable life insurance policy most commonly is registered as a unit investment trust under the Investment Company Act.[4] Separate accounts registered as unit investment trusts are divided into sub-accounts, each of which invests in a different open-end management investment company, or mutual fund ("Portfolio Company").[5]

Both separate account unit investment trusts and the Portfolio Companies in which they invest are registered as investment companies under the Investment Company Act, and their securities are registered under the Securities Act. Investors in variable life insurance policies receive the prospectuses for both the separate account unit investment trust and the Portfolio Companies. Portfolio Companies, as mutual funds, use Form N–1A to register under the Investment Company Act and to register their shares under the Securities Act.[6] Variable life separate accounts, as unit investment trusts, register under the Investment Company Act on Form N–8B–2 and register their securities under the Securities Act on Form S–6.

Forms N–8B–2 and S–6 were designed for non-separate account unit investment trusts and were adopted before the establishment of the first separate account to fund variable life insurance policies. While much of their required disclosure is useful, the forms request some information that is not typically of consequence to a buyer of variable life insurance. More importantly, many matters that would be significant to a buyer of a variable life insurance policy are not addressed at all by the forms. Over time, the Commission staff has sought to deal with these shortcomings on a piecemeal basis by developing disclosure standards that require a description of the important features of the variable life insurance policy and the separate account. The Commission believes that these standards should be codified in a more appropriately designed form.

Another shortcoming of Forms N–8B2 and S–6 is that they do not reflect fundamental improvements that the Commission has made to other investment company registration forms, such as Form N–4 for variable annuities and Form N–1A for mutual funds, which facilitate clearer and more concise disclosure to investors.[7] As a result, variable life insurance prospectuses are often unnecessarily lengthy and complex.

When Form N–4 was considered in the 1980s, the Commission indicated that it did not expect to propose separate registration forms for variable life insurance registrants until it had acquired more experience with variable life insurance policies.[8] The Commission now believes that the benefits of its prospectus improvement initiatives should be extended to unit investment trust separate accounts that offer variable life insurance policies. These benefits include a two-part registration form, consisting of a simplified prospectus designed to contain essential information that assists an investor in making an investment decision, and a "Statement of Additional Information" ("SAI"), containing more extensive information and detailed discussion of matters included in the prospectus that investors could obtain upon request. They also include the use of a single integrated form for both Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.[9]

Improved Communication to Investors

The Commission is committed to improving the disclosure provided to variable life insurance investors. Toward that end, the Commission has developed Form N–6, which it proposes today for public comment. Unlike the current forms, proposed Form N–6 is specifically tailored to variable life insurance. The proposed requirements of the form focus on information that is essential to a decision to invest in a particular variable life insurance policy, and the form is intended to enhance the comparability of information about variable life insurance policies. The proposal seeks to promote more effective communication of information about variable life insurance policies.

Today's proposal is the latest Commission action in its continuing effort and long-standing commitment to improve the quality of disclosure available to investment company investors. In 1983, the Commission introduced the innovative two-part disclosure format for mutual funds.[10] This format was extended to variable annuities in 1985.[11] Subsequently, the Commission adopted a number of other initiatives to improve investment company disclosure, including uniform fee tables for mutual funds and variable annuities.[12]

In the past few years, the Commission has taken significant steps to improve investment company disclosure. In 1995, the Commission issued a release requesting comment on ways to improve risk disclosure and comparability of mutual fund risk levels.[13] Today, the Commission is adopting a comprehensive revision of Form N–1A,

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[1] SEC, Division of Investment Management, Variable Life Insurance and the Petition for the Issuance and Amendment of Exemptive Rules at 1–2 (Jan. 1973).

[2] Rybka, The Variable Life Revolution, NAVA Outlook, July/Aug. 1997, at 1.

[3] Lipper Variable Insurance Products Performance Analysis Service, Vol. I, at 190–91 (Jan. 1998).

[4] Section 4(2) of the Investment Company Act defines "unit investment trust" as "an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust." 15 U.S.C. 80a–4(2).

[5] An open-end management investment company is an investment company, other than a unit investment trust or face amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. Section 4(3) of the Investment Company Act [15 U.S.C. 80a–4(3)]; Section 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–5(a)(1)]. As an alternative to the structure described in the text, a variable life insurance separate account can be organized in a single-tier structure, as an open-end management investment company. Today, this structure is used by few, if any, variable life insurance registrants.

[6] 17 CFR 274.11A.

[7] Form N–1A [17 CFR 274.11A]; Form N–4 [17 CFR 274.11c]; Investment Company Act Release No. 13689 (Dec. 23, 1983) [49 FR 614] ("N–4 Proposing Release"); Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 26145] ("N–4 Adopting Release"); Investment Company Act Release No. 12927 (Dec. 27, 1982) [48 FR 813] ("1982 N–1A Proposing Release"); Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928] ("1983 N–1A Adopting Release"); Investment Company Act Release No. 22528 (Feb. 27, 1997) [62 FR 10898], correction [62 FR 24160] ("1997 N–1A Proposing Release"); Investment Company Act Release No. 23064 (Mar. 13, 1998) ("1998 N–1A Adopting Release").

[8] N–4 Proposing Release, supra note 7, at 615, note 6.

[9] See Investment Company Release No. 10378 (Aug. 28, 1978) [43 FR 39548] (integration of Investment Company Act and Securities Act reporting and disclosure requirements in adoption of Form N–1).

[10] 1983 N–1A Adopting Release, *supra* note 7.

[11] N–4 Adopting Release, *supra* note 7.

[12] Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192] ("N–1A Fee Table Adopting Release"); Investment Company Act Release No. 16766 (Jan. 23, 1989) [54 FR 4772] ("N–4 Fee Table Adopting Release").

[13] Investment Company Act Release No. 20974 (Mar. 29, 1995) [60 FR 17172] ("Risk Concept Release").

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the mutual fund disclosure form, to provide a standardized risk/return summary at the beginning of every mutual fund prospectus, require mutual funds to prepare disclosure documents using plain English, and eliminate prospectus clutter that obscures information that is helpful to investors making an investment decision.[14] The Commission also is adopting a new rule to permit mutual funds to provide investors with a "profile," a disclosure document summarizing key information about a fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. A fund that makes a profile available will be able to offer investors a choice of the amount of information that they wish to consider before making an investment decision.[15]

The Commission's investment company disclosure initiatives are part of its broad undertaking to bring sweeping revisions to prospectus disclosure for all public companies.[16] The Commission is committed to making all prospectuses simpler, clearer, and more useful, and to eliminating jargon and boilerplate. As part of its commitment, the Commission recently adopted rule amendments to require the use of plain English principles in drafting prospectuses and to provide other guidance on improving the readability of prospectuses.[17] The Commission's plain English principles reflect fundamentals of clear communication and contemplate disclosure documents that:

- Present information in an easily readable format;
- Use everyday language that investors can easily understand; and
- Eliminate repetition of disclosure that lengthens a document and overwhelms the investor.

[14] 1998 N–1A Adopting Release, *supra* note 7.

[15] Rule 498 under the Securities Act [17 CFR 230.498]; Investment Company Act Release No. 23065 (Mar. 13, 1998) ("Profile Adopting Release").

[16] See Levitt, Plain English in Prospectuses, N.Y. ST. B.J., Nov. 1997, at 36.

[17] See Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370]("Plain English Adopting Release"). The Commission adopted a plain English rule that sets out six basic principles of clear writing. Rule 421(d) under the Securities Act [17 CFR 230.421(d)]. The six principles specified in the rule are: (i) Active voice; (ii) short sentences; (iii) definite, concrete everyday words; (iv) tabular presentation or "bullet" lists for complex material, whenever possible; (v) no legal jargon, or highly technical business terms; and (vi) no multiple negatives. As part of the plain English initiatives, the Commission plans to issue A Handbook on Plain English: How to Create Clear SEC Disclosure Documents, prepared by the Commission's Office of Investor Education and Assistance.

Goals of Proposed Form N–6

The proposed Form N–6 is another significant step to improve disclosure to investment company investors. If adopted, Form N–6 would have the following benefits.

- *Tailored Registration Form.* Proposed Form N–6 would eliminate requirements in the current registration forms that are not relevant to variable life insurance.[18] Proposed Form N–6 also would include items that are specifically addressed to variable life insurance products, such as descriptions of contractual provisions relating to premiums, death benefits, cash values, surrenders and withdrawals, and loans.[19]
- *Plain English.* The Commission's recently adopted plain English rule would apply to the front and back cover pages and the risk/benefit summary in the variable life insurance prospectus.[20] This should result in better, clearer disclosure to investors.
- *Reducing Complex and Lengthy Prospectus Disclosure.* Proposed Form N–6 would streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information that assists an investor in making an investment decision, and an SAI, containing more extensive information and detailed discussion of matters included in the prospectus that investors could obtain upon request.
- *Standardized Fee Information.* Mutual funds and variable annuities are required to provide a uniform, tabular presentation of fees and charges that is intended to improve investor understanding of fees and charges and increase comparability. Proposed Form N–6 would impose a similar requirement on variable life insurance registrants, in order to improve the disclosure to investors of the often complex charges associated with variable life insurance policies and increase, to the greatest extent possible, the comparability of charges among policies.
- *Integrated Disclosure Document.* Proposed Form N–6 would provide variable life insurance registrants with an integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.

[18] For example, Item 33 of Form N–8B–2 requires extensive disclosure about compensation of the insurer's employees.

[19] Proposed Items 7 (premiums), 8 (death benefits and cash values), 9 (surrenders and withdrawals), and 10 (loans).

[20] Rule 421(d) under the Securities Act [17 CFR 230.421(d)].

Proposed Form N–6 is designed to promote more effective communication of information about variable life insurance policies. The proposal would advance Commission efforts to improve investment company prospectus disclosure beginning with the adoption of the two-part disclosure format for mutual funds in 1983. Proposed Form N–6, if adopted, would represent a significant step toward the Commission's goal of better, clearer, more concise disclosure for all investors.

II. Discussion

To make the requirements of proposed Form N–6 easy to follow, this release addresses items in the order in which they appear in the form:

A. General Instructions

The proposed General Instructions to Form N–6 provide guidance on the use and content of the form. They are similar to the General Instructions to Forms N–4 and N–1A. The General Instructions to Form N–6 would consist of: (i) Definitions; (ii) Filing and Use of Form N–6; (iii) Preparation of the Registration Statement; and (iv) Incorporation by Reference. They reflect the recent amendments to Form N–1A that updated and reorganized the General Instructions to make them easier to use.[21]

Proposed General Instruction A would define certain terms used throughout Form N–6, providing clarity and avoiding repeated references throughout the form. Proposed General Instruction B on the filing and use of Form N–6 would incorporate the user-friendly, question-and-answer format of Form N–1A.[22]

Proposed General Instruction C would provide streamlined instructions for preparing the registration statement. Like the comparable Instructions in Forms N–4 and N–1A, General Instruction C would emphasize the need to provide clear and concise prospectus disclosure.[23] It would permit a registrant to include in its prospectus or SAI information that is not otherwise required by Form N–6, as long as the information is not misleading and does not, because of its nature, quantity, or manner of presentation, obscure required disclosures.

Like the comparable instruction in Form N–1A, Proposed General Instruction C includes a statement of the

[21] General Instructions to Form N–1A; 1998 N–1A Adopting Release, *supra* note 7; 1997 N–1A Proposing Release, *supra* note 7, at 10919–20.

[22] General Instruction B of Form N–1A.

[23] General Instruction C.1(a) of Form N–1A; General Instruction I of Form N–4.

basic disclosure principles that underlie today's proposal.[24] The Commission believes that applying these principles consistently when preparing variable life insurance disclosure documents will result in high quality documents that effectively communicate information to investors.

General Instruction C includes a set of drafting guidelines that are designed to improve prospectus disclosure. The proposed Instruction would encourage registrants to avoid cross-references in the prospectus to the SAI. Repeated cross-references to the SAI add unnecessary length and complexity to prospectuses and often preclude prospectuses from disclosing information effectively to investors.

Proposed General Instruction C would clarify that the recently adopted plain English requirements of rule 421 under the Securities Act apply to a prospectus prepared on Form N–6.[25] Rule 421(b) sets out general requirements that the entire prospectus be clear, concise, and understandable and provides guidance on how to draft prospectuses that meet this standard.

Under proposed Form N–6, a registrant would need to draft the front and back cover pages and the risk/benefit summary of a variable life insurance prospectus in accordance with the provisions of rule 421(d).[26] In meeting these requirements, a registrant would need to use plain English principles in the organization, language, and design of these sections of its prospectus. Registrants also would be required to comply substantially with the following six principles of clear writing:

- Short sentences;
- Definite, concrete, everyday language;
- Active voice;
- Tabular presentation or bullet lists for complex material, whenever possible;
- No legal jargon or highly technical business terms; and
- No multiple negatives.

Proposed General Instruction C would address the manner in which information should be presented when a single prospectus is used for more than one variable life insurance policy or for a policy that is sold in both the group and individual markets. Generally, registrants would be given flexibility to present the information in a format designed to communicate the information effectively. The Commission notes, however, that a single prospectus should be used for more than one variable life insurance policy, or for a policy that is sold in both the group and individual markets, only when the disclosure can be presented clearly, concisely, and in a manner that is understandable to investors.

Proposed General Instruction D would address incorporation by reference in a manner similar to Form N–1A.[27] The proposed Instruction would permit, but not require, a registrant to incorporate the SAI by reference into the prospectus. The Instruction clarifies that incorporating information by reference from the SAI is not permitted as a response to information required to be included in the prospectus.

Form N–4 contains an instruction permitting the form to be used for registration under the Securities Act of variable annuity contracts funded by separate accounts that would be required to be registered under the Investment Company Act as unit investment trusts except for the exclusion in Section 3(c)(11) of the Act.[28] Proposed Form N–6 does not contain a comparable instruction because the Commission is not aware of any variable life insurance policies that are funded by separate accounts that are not registered under the Investment Company Act. Comment is requested on whether such an instruction should be included in Form N–6.

B. Part A—Information in the Prospectus

1. Item 1—Front and Back Cover Pages

Proposed Item 1 contains requirements for the outside front and back cover pages of the prospectus similar to those in Form N–1A.[29] The proposed requirements are intended to prevent "cluttering" the prospectus cover page and avoid repeating information contained within the prospectus.

The front cover page would be required to include the names of the registrant and depositor. In addition, the registrant would be required to indicate the types of variable life insurance policies offered by the prospectus (*e.g.*, group, individual, scheduled premium, flexible premium) and the date of the prospectus. Finally, the form would require the disclaimer pursuant to rule 481 under the Securities Act that the Commission has not approved the securities being offered or the accuracy or adequacy of the prospectus.[30]

Unlike Form N–4, the cover page would not be required to state the names of the Portfolio Companies or to disclose limitations on the class or classes of purchasers to whom the policy is being offered.[31] This disclosure would be repetitive because registrants would be required to provide the same information within the prospectus.[32]

The proposal would consolidate disclosure about the availability of additional information on the back cover page of the prospectus. As in Form N–1A, the back cover page would include a statement that the SAI is available, without charge, on request and a telephone number that investors could use to obtain the SAI as well as other information. Registrants would be required to send the SAI within three days of receipt of a request. Registrants also would be required to indicate whether information is incorporated by reference into the prospectus and, unless the information is delivered with the prospectus, explain that it will be provided, without charge, on request. Finally, the proposal would require that the back cover page include disclosure that information about the registrant is available from the Commission and how that information may be obtained.[33]

2. Item 2—Risk/Benefit Summary: Benefits and Risks

Proposed Form N–6 would require at the beginning of every prospectus a risk/benefit summary that would provide key information about a policy's risks, benefits, and fees. This information would be required to appear in a specific sequence. The risk/benefit summary is intended to respond to investors' strong preference for summary information in a standardized format.[34] It would provide all investors

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[24] 1998 N–1A Adopting Release, *supra* note 7.

[25] 17 CFR 230.421; Proposed General Instruction C.1.(e).

[26] 17 CFR 230.421(d); Proposed Items 1, 2, and 3.

[27] General Instruction D of Form N–1A.

[28] General Instruction A of Form N–4; N–4 Adopting Release, *supra* note 7, at 26148; N–4 Proposing Release, *supra* note 7, at 619. Section 3(c)(11) of the Investment Company Act excludes from the definition of investment company "any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of the Internal Revenue Code of 1986 or the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act of 1933 by section 3(a)(2)(C) of such Act, and (C) advances made by an insurance company in connection with the operation of such separate account." 15 U.S.C. 80a–3(c)(11).

[29] Item 1 of Form N–1A; 1998 N–1A Adopting Release, *supra* note 7; 1997 N–1A Proposing Release, *supra* note 7, at 10902.

[30] Proposed Item 1(a).

[31] Items 1(a) (iv) and (viii) of Form N–4.

[32] Proposed Items 4(c) and 6(f).

[33] Proposed Item 1(b).

[34] Participants in focus groups conducted on behalf of the Commission, for example, expressed

Continued

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with key information about a policy in a standardized, easily accessible place. This would help investors to evaluate and compare variable life insurance policies. The proposed risk/benefit summary is consistent with the approach taken in today's amendments to Form N–1A and the release adopting the plain English rule.[35] The Commission requests comment on the sequence requirement and whether any particular format should be required for the risk/benefit summary.

Risks associated with Portfolio Companies would be addressed in the Portfolio Companies' prospectuses and profiles, not the variable life insurance prospectus. Policies frequently offer 10 or more Portfolio Companies, and the Commission believes that a variable life insurance prospectus may become too long and complex if it includes risk information specific to each Portfolio Company. The Commission believes that investors are better served by consulting the Portfolio Company prospectus or profile for risk information relating to Portfolio Companies in which they are interested.

The risk/benefit summary, however, would require a registrant to present narrative information concerning the benefits available under the policy; the allocation of premium payments to insurance coverage, investments, and charges; and the risks of purchasing a policy in a single location in the variable life prospectus. Risks to be covered would include the risks of poor investment performance, the unsuitability of variable life insurance policies as short-term savings vehicles, the risks of policy lapse, limitations on access to cash value through withdrawals, and the possibility of adverse tax consequences. Variable life insurance prospectuses generally disclose this information, particularly risk information, in the context of long, often complex descriptions of the policy. The Commission believes that the proposed narrative summary will help achieve more effective communication of risks.[36]

The Commission requests comment on the proposed narrative summary of policy benefits, allocation of premiums, and risks. Is this narrative summary necessary or helpful for variable life insurance prospectuses? Are the particular items included useful, and should other items be included? Should the risks of particular Portfolio Companies be described in the variable life insurance prospectus?

3. Item 3—Risk/Benefit Summary: Fee Table

Purpose of Fee Table. Along with investment performance, fees and charges are a crucial element in determining the return that an investor will realize from any investment company. For that reason, the Commission has required a fee table in the prospectuses of both mutual funds and variable annuities.[37] Through the fee tables, the Commission has sought to provide uniformity, simplicity, and comparability in fee disclosure.[38] The Commission believes that clear, understandable disclosure of fees and charges is equally important to investors considering the purchase of variable life insurance and, for that reason, Item 3 of Proposed Form N–6 would extend a fee table requirement to variable life insurance.

The fees and charges associated with variable life insurance products often are quite complex for several reasons. First, the structure of fees often differs from one policy to another, making comparisons among products difficult. Second, fees typically are imposed at several levels within a variable life insurance policy, making it difficult to assess the aggregate effect of charges. For example, management and other expenses may be deducted at the Portfolio Company level, asset-based charges such as a mortality and expense risk charge may be deducted against separate account assets, and other charges, such as cost of insurance, may be assessed against a policyholder's individual cash value. Third, some variable life charges, particularly cost of insurance (i.e., the charge imposed for death benefit coverage), vary based upon the individual characteristics of the purchaser and change over the life of a policy.

The complexity of variable life insurance fees and charges makes it more difficult to prescribe a standardized disclosure format than for mutual funds or variable annuities. The Commission believes, however, that this complexity also makes it particularly important that investors receive clear, understandable disclosure about this essential aspect of the investment decision. The importance of this disclosure has been heightened since the passage of the National Securities Markets Improvement Act of 1996 ("NSMIA"). NSMIA amended Sections 26 and 27 of the Investment Company Act to replace specific limits on the amount, type, and timing of charges that applied to variable insurance contracts with a requirement that aggregate charges be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.[39] The increased flexibility to structure variable life insurance charges given to insurers by NSMIA increases the need for clear, understandable disclosure of charges.[40] Proposed Item 3 is intended to facilitate uniformity, simplicity, and comparability of variable life insurance fees and charges, while permitting flexibility when the nature of the product requires it.

Variable life insurance prospectuses typically have included hypothetical illustrations that reflect the effect of charges under specified assumptions and thereby serve some of the purposes of a fee table.[41] The Commission is concerned, however, that the illustration of one or a limited number of scenarios that demonstrate the effect of policy charges on particular policyholders with particular premium payment patterns is not an adequate substitute for clear, tabular disclosure of

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strong support for summary information about mutual funds in a standardized format. In addition, in connection with an initiative to permit mutual funds to use profiles summarizing key information, many individual investors have written to the Commission about the need for concise, summary information relating to a fund. In keeping with the goal of providing key information in a standardized summary, proposed General Instruction C.3.(b) would not permit a registrant to include in the risk/benefit summary information that is not required or otherwise permitted by the items prescribing the risk/benefit summary.

[35] 1998 Form N–1A Adopting Release, *supra* note 7; Plain English Adopting Release, *supra* note 17, at 6373.

[36] In 1995, the Commission issued a release requesting comment on ways to improve risk disclosure and comparability of investment company risk levels. Risk Concept Release, *supra* note 13. More than 75% of the individual investors commenting on the Risk Concept Release specifically favored requiring a risk summary in mutual fund prospectuses.

[37] Item 3 of Form N–1A; Item 3 of Form N–4.

[38] N–1A Fee Table Adopting Release, *supra* note 12, at 3194; Investment Company Act Release No. 15932 (Aug. 18, 1987) [52 FR 32018, 32019] ("N–1A Fee Table Proposing Release").

[39] 15 U.S.C. 80a–26; 15 U.S.C. 80a–27; National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290 (1996), Section 205; S. Rep. No. 293, 104th Cong., 2d Sess. 22 (1996) ("Senate Report"); H. Rep. No. 622, 104th Cong., 2d Sess. 45–46 (1996) ("House Report").

[40] In addition, in light of NSMIA, the National Association of Securities Dealers, Inc. ("NASD") recently filed with the Commission a proposed rule change that would eliminate the maximum sales charge limitations applicable to variable insurance contracts. SR–NASD–98–14 (filed Feb. 17, 1998) (available in the Commission's Public Reference Room).

[41] See N–1A Fee Table Adopting Release, *supra* note 12, at 3194; N–4 Fee Table Adopting Release, *supra* note 12, at 4775.

the level of each charge imposed by a policy.[42]

Further, in recent years, the Commission has observed that a number of variable life insurance registrants, on their own initiative, have added relatively simple, tabular presentations of fees and charges to their prospectuses. The Commission believes that these efforts represent a significant step toward enhanced communication with investors about fees and charges and that it is appropriate, at this time, to extend these voluntary efforts to the industry as a whole. Commenters are requested to discuss the relative merits of hypothetical illustrations and fee tables in communicating charges to investors in a manner that is clear and understandable and that facilitates comparisons from one policy to another.

Fee Table Format. The proposed fee table consists of three separate sections. The first section shows policyholder transaction fees, such as sales loads, surrender charges, and transfer fees. The second section shows annual charges, excluding annual Portfolio Company operating expenses. The third section shows annual Portfolio Company operating expenses, including management fees, distribution fees, and other expenses. Comment is requested on the proposed organization of the fee table and whether it would facilitate investor understanding of fees and charges. Is some other organization preferable? Should registrants have greater flexibility to organize the presentation of charges?

For each charge, the proposed table would use a four-column format to require a registrant to identify the charge, when the charge is deducted, the amount of the charge, and whether the charge is deducted from all policies or only certain policies. This format differs from that of the fee tables in Form N–1A and Form N–4, which simply require identification of the charge, with a parenthetical statement of the basis on which it is imposed, and specification of the amount of the charge.

The proposed format is intended to recognize the complexity of variable life insurance charges, help investors to locate information about charges readily, and provide flexibility to registrants to describe policy charges completely. The "Amount Deducted" column, for example, will provide an opportunity for registrants to describe the level of a particular charge and the basis on which it is deducted, *e.g.*, percentage of premiums, cost per $1,000 of face amount, percentage of average daily net assets. The "Policies from Which Charge is Deducted" column will permit registrants to identify clearly charges that apply to all policies and those that do not, *e.g.*, charges that apply only to policyholders with a certain account value or that elect a particular death benefit option or optional rider.

The Commission requests comment on the four-column format of the table. Should the information required by each of the columns be included in a variable life fee table? Is the four-column format the best means for providing this information or are there better ways for communicating this information to investors?

Fee Table Requirements. The proposed fee table would require registrants to disclose all fees and charges, whether or not a specific caption is provided for a charge in the proposed fee table.[43] The Commission believes that complete disclosure of fees and charges is appropriate. At the same time, the Commission is concerned that disclosure of fees and charges that apply to a very small proportion of policyholders could potentially overwhelm investors with information of limited relevance. The Commission therefore requests comment on whether there should be any limitations on the charges required to be disclosed in the fee table. For example, should charges be disclosed only if they apply to some minimum number or percentage of policyholders? Should all charges for optional riders, e.g., accidental death benefit, children's insurance, or guaranteed insurability, be disclosed? Should the instructions provide additional guidance on the fees that are required to be disclosed?

Disclosure of the maximum charge for each item is required unless a specific instruction directs otherwise.[44] For cost of insurance, registrants are required to disclose the minimum and maximum charges. Cost of insurance generally is a significant expense item for variable life insurance policyholders.[45] For that reason, the Commission believes that it is important for investors to receive information about the level of this charge. The Commission recognizes, however, that this charge varies from policyholder to policyholder, based on individual characteristics such as age, sex, and risk classification, so that the charge does not readily lend itself to quantification in a table that applies to all policyholders. The Commission has proposed disclosure of the range of this charge, which could be accompanied by brief explanatory material, such as the factors that affect the level of the charge.

The Commission requests comment on the possible approaches to disclosure of the cost of insurance, including the range of the charge, the maximum charge, the average charge for existing policyholders, the level of the charge for a policyholder with characteristics that are fairly representative of purchasers of the policy, and line item narrative disclosure that the charge is imposed and the factors on which it is based. Commenters also are requested to address whether charges other than the cost of insurance may be quantified in the manner that would be required by the proposed fee table.

If a registrant invests in multiple Portfolio Companies, the proposed fee table would require disclosure of the range of expenses for all of the Portfolio Companies.[46] This approach is different from Form N–4, which requires separate disclosure of the expenses of each Portfolio Company.[47] Because variable life fees and charges are complex, and because policies frequently offer 10 or more Portfolio Companies, the Commission believes that investors could be overwhelmed by information of limited relevance if the fees and charges for each Portfolio Company were separately stated in the fee table.[48] The Commission requests comment on how Portfolio Company fees and charges should be disclosed in Form N–6. Should a range be used, as proposed; should the fees and charges for each

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[42] See discussion of illustrations *infra* Section II.C.3.

[43] Instructions 2(c) and 3(e) to proposed Item 3.

[44] Instruction 1(e) to proposed Item 3.

[45] See Blease, Costs Count: A Best's Policy Reports Survey Examines the Costs Incurred with the Life Insurance Portion of Variable Universal Life Policies, BEST'S REVIEW—LIFE-HEALTH INSURANCE EDITION, Jan. 1997, at 37.

[46] Instruction 4(b) to proposed Item 3. Portfolio Company operating expenses would be required to be disclosed before expense reimbursements and fee waiver arrangements. Registrants would be permitted to disclose expenses after reimbursement or waiver in a footnote. *See* Instructions 4(f)(i) and (g) to proposed Item 3. This approach mirrors the approach recently adopted by the Commission in Form N–1A. Item 3 of Form N–1A; 1998 Form N–1A Adopting Release, *supra* note 7; 1997 Form N–1A Proposing Release, *supra* note 7, at 10908.

[47] Item 3 of Form N–4; Investment Company Act Release No. 16482 (July 15, 1988) [53 FR 27872, 27873–74] ("N–4 Fee Table Proposing Release").

[48] This is less of a concern in the case of Form N–4 because the simpler, more uniform nature of variable annuity charges results in a less complex fee table. The Commission notes, however, that, in recent years, the number of investment options that is typically available in variable annuity contracts has expanded. See O'Brian and Fitzsimmons, Variable Annuities Put More Eggs In The Basket, THE WALL STREET JOURNAL, Sept. 29, 1997, at C22. For that reason, the Commission expects to reconsider the appropriate disclosure of Portfolio Company fees and charges in a variable annuity prospectus as part of a broader consideration of ways to improve communication of information to variable annuity investors.

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Portfolio Company be separately stated; or should some other approach be adopted?

Form N–1A does not require a mutual fund that offers its shares exclusively as investment options for variable annuity and variable life insurance contracts to include the fee table in its prospectus.[49] The Commission intends to amend Form N–1A to require the prospectus of a mutual fund that offers its shares as investment options for variable life insurance policies to include a fee table if the Form N–6, as adopted, does not require separate disclosure of the operating expenses of each Portfolio Company. This would ensure that variable life insurance investors have access to complete information about Portfolio Company fees and expenses. The Commission requests comment on whether the exemption from the fee table requirement in Form N–1A should be eliminated for mutual funds that offer their shares as investment options for variable life insurance policies. The Commission also requests comment on whether the exemption from the fee table requirement in Form N–1A should be eliminated for mutual funds that offer their shares as investment options for variable annuity contracts if the exemption is eliminated for mutual funds that offer their shares as investment options for variable life insurance policies.

Fee Table Example. Proposed Item 3 would not require an example of the expenses that would be incurred by an investor over specified periods. This is different from the fee tables of Form N–1A and Form N–4, both of which require such an example.[50] Because of the individualized nature of fees and charges associated with variable life insurance, particularly the cost of insurance, the Commission believes that it would be difficult to design a single example or small number of examples that would provide a useful comparison tool for investors considering different variable life insurance policies.

In amending Form N–1A, the Commission today is reiterating its belief that the fee table example provides useful information that helps a typical mutual fund investor understand and compare the expenses of different funds.[51] The Commission concluded that expressing expense amounts solely as a percentage, as is done in the fee table, may not give the average mutual fund investor enough information to assess the likely effect of a fund's expenses on an investment in the fund. Mutual fund fees, which typically are less individualized than the fees of variable life insurance policies, may be easier to reflect in an example that has broad application. The Commission requests comment on whether a fee table example should be required by Form N–6 and, if so, what should be required by the example.

4. Item 4—General Description of Registrant, Depositor, and Portfolio Companies

Proposed Item 4 would require a concise discussion of the organization and operation of the registrant, including the name and address of the depositor and a brief description of the registrant. This requirement is similar to, but more streamlined than, Item 5 of Form N–4. For example, Item 5 of Form N–4 requires registrants to disclose the general nature of the depositor's business, the date and form of organization of the depositor and the state in which it is organized, the name of any ultimate controlling person of the depositor and the general nature of its business, and the date and form of organization of the registrant and its classification under the Investment Company Act. Proposed Form N–6 would include this information in the SAI because it is technical information that does not appear to be essential to an investor when evaluating a particular variable life insurance policy or comparing different variable life insurance policies.[52] The Commission requests comment on appropriate disclosure of matters relating to the general description of the registrant and depositor. For example, is any information omitted from proposed Item 4 that is essential to an investment decision? Is any information included in Item 4 that is not essential to an investment decision?

Proposed Item 4 also would require that the prospectus briefly describe each Portfolio Company, including (i) its name; (ii) its type (*e.g.*, money market fund, bond fund, balanced fund) or a brief statement concerning its investment objectives; and (iii) its investment adviser and any sub-adviser. Registrants would be required to state how investors may obtain a prospectus and, if available, a profile for the Portfolio Companies. Item 4 also would require a discussion of the rights of policyholders to instruct the depositor on the voting of Portfolio Company shares.

Over time, many registrants have included the investment objectives of Portfolio Companies along with additional information about the investment advisers and the risks associated with the Portfolio Companies in variable life prospectuses, as well as in the Portfolio Company prospectuses. The Commission believes that including detailed information about Portfolio Companies in a variable life prospectus is redundant and conflicts with the Commission's efforts to eliminate prospectus clutter that tends to obscure information that could help an investor make a decision about purchasing a variable life insurance policy.[53] Instruction 2 therefore would clarify that detailed Portfolio Company information is not required in the variable life insurance prospectus. In addition, if a Portfolio Company's name describes its type, the prospectus would not be required to include the Portfolio Company's type or a statement concerning its investment objectives.[54] Commenters are asked to address whether proposed Item 4 requires sufficient information about Portfolio Companies or whether additional information should be included.

5. Item 5—Charges

Proposed Item 5 would require registrants to describe briefly all charges deducted from premiums, cash value, assets of the registrant, or any other source. These charges include sales loads, premium and other taxes, administrative and transaction charges, risk charges, contract loan charges, cost of insurance, and rider charges. Registrants would be required to indicate the source from which each charge will be deducted, and specify the amount of the charge as a percentage or dollar figure and the frequency of its deduction. Registrants also would be required to identify the recipient of any amount deducted and the consideration provided for any charge, and explain the extent to which the charge can be modified.

The cost of insurance charge represents a significant expense associated with a variable life insurance policy. Instruction 2 to Item 5(a) would require a registrant to identify the factors upon which the cost of insurance

[49] Item 3 of Form N–1A.

[50] Item 3 of Form N–1A; Item 3(a) of Form N–4.

[51] 1998 Form N–1A Adopting Release, *supra* note 7.

[52] Proposed Item 16. *Cf.* 1998 Form N–1A Adopting Release, *supra* note 7 (moves to SAI disclosure about a fund's form and date of organization and state of incorporation).

[53] See, *e.g.*, 1998 Form N–1A Adopting Release, *supra* note 7; 1997 Form N–1A Proposing Release, *supra* note 7, at 10900.

[54] *Cf.* Cova Financial Services Life Ins. Co. (pub. avail. Apr. 15, 1996) (clarifying that variable annuity separate account prospectuses need not include detailed information about Portfolio Companies).

charge will be based, including the insurer's amount at risk and the expected longevity of the insureds. A registrant would be required to identify the factors reflected in the rate scale, and specify whether the mortality charges guaranteed in the contracts differ from the current charges. A registrant also would be required to identify the factors that affect the amount at risk, including investment performance, payment of premiums, and charges. If the insurer intends to use simplified underwriting or other underwriting methods that would cause healthy individuals to pay higher cost of insurance charges than they would pay if the insurance company used conventional underwriting methods, a registrant would be required to state that the cost of insurance charges are higher for healthy individuals when this method of underwriting is used.

Proposed Item 5 also would require registrants to state that there are charges deducted from and expenses paid out of the assets of the Portfolio Companies that are described in the prospectuses for those companies and to disclose, if applicable, that charges will be deducted for incidental insurance benefits offered with the policy. The item also would require a statement about the registrant's expenses. If the organizational expenses of the registrant are to be paid out of its assets, the registrant would be required to disclose, if applicable, how the expenses will be amortized and the period of amortization.

6. Item 6—General Description of Contracts

Proposed Item 6 would require registrants to identify all persons who have material rights under the variable life insurance policies and the nature of those rights. The item also would require a brief description of any provisions for allocation of premiums among sub-accounts of the registrant, transfer of cash value between sub-accounts, and conversion or exchange of policies for other life insurance or annuity contracts.

The item also would require a brief description of the changes that can be made in the policies or the operations of the registrant by the registrant or its depositor, including (i) why a change may be made, (ii) who must approve any change, and (iii) who must be notified of any change. The instruction to Proposed Item 6(c) specifically restricts the information that must be provided to changes that would be material to a purchaser of the policies, such as a reservation of the right to deregister the registrant under the Investment Company Act. The item would require a registrant to identify any other material incidental benefits in the policies. Finally, the item would require disclosure of any limitations on the class of purchasers to whom the policies are being offered.

7. Item 7—Premiums

Proposed Item 7 would require registrants to describe how to purchase a variable life insurance policy and the provisions of the policy relating to premiums. Registrants would be required to disclose the minimum initial and subsequent premiums required, any limits on the amount and frequency of premiums that will be accepted, how long investors must continue to pay premiums, and whether investors can prevent a policy from lapsing by paying a certain level of premiums. The item also would require registrants to discuss any circumstances in which (i) premiums may be required to prevent lapse and how the amount of additional premiums will be determined; (ii) a policy will not lapse if an investor does not pay a required premium; (iii) an investor may pay more in premiums than the policy requires; and (iv) the level of a policy's required premiums may change, and, if so, how the amount of the change will be determined. The item also would require disclosure of the factors that determine the amount of any required premiums, such as face amount, death benefit option, and charges and expenses.

The item would require registrants to identify the premium payment plans available. Registrants would be required to include the available payment frequencies, payment mechanisms such as payroll deduction plans and preauthorized checking arrangements, and any special billing arrangements. Registrants would be required to indicate whether the premium payment plan or schedule may be changed.

Registrants also would be required to explain the policy's provisions regarding premium due dates and how any grace period operates. The item would require registrants to describe any circumstances under which required premiums may be paid by means of an automatic premium loan.

Finally, proposed Item 7 would require registrants to describe when sub-account assets are valued and when required premiums and additional premiums are credited to cash value. Registrants would be required to explain the basis on which premiums are credited. Registrants would be instructed to describe where premiums are held during any time period (e.g., a "free-look" period) in which the crediting of premiums to sub-accounts is delayed.

8. Item 8—Death Benefits and Contract Values

Proposed Item 8 would require registrants to describe briefly the death benefits available under the variable life insurance policy. The prospectus would be required to disclose when insurance coverage is effective, when the death benefit is calculated and payable, how the death benefit is calculated, what forms of death benefit are available, who may choose the form of death benefit and how, what the default death benefit is, and whether the policy guarantees a minimum death benefit. Registrants also would be required to describe if and how a policyholder may increase or decrease the face amount. The item also would require registrants to explain how the investment performance of the Portfolio Companies and expenses and charges affect policy values and death benefits.

9. Item 9—Surrenders, Partial Surrenders, and Partial Withdrawals

Proposed Item 9 would require registrants to describe briefly how a policyholder may surrender a policy. Registrants would be required to disclose any limits on the ability to surrender, how surrender proceeds are calculated, and when proceeds are payable. The item also would require registrants to disclose whether and under what circumstances partial surrenders and partial withdrawals are available under a policy, including the minimum and maximum amounts that may be surrendered or withdrawn and any limits on the availability of partial surrenders or partial withdrawals. The item also would require registrants to describe whether partial surrenders or partial withdrawals will affect a policy's cash value or death benefit, whether any charges will apply, and the manner in which partial surrenders and partial withdrawals will be allocated among sub-accounts.

Finally, the item would require registrants to describe briefly any revocation rights (*e.g.*, free-look provisions). Registrants would be required to describe how the amount refunded is determined, the method for crediting earnings to premiums during the free-look period, and whether investment options are limited during the free-look period (e.g., premiums must be allocated to the money market sub-account).

10. Item 10—Loans

Proposed Item 10 would require registrants to describe the policy

provisions governing loans of a policy's cash value and any limits on loan availability. Registrants would be required to state the amount of interest charged on a loan and the amount of interest credited to the policy in connection with the loan. A description of loan procedures would be required, including how and when amounts borrowed are transferred out of the registrant and how and when amounts repaid are credited to the registrant. A registrant would be required to explain briefly that amounts borrowed do not participate in the registrant's investment experience and that loans can affect the policy's cash value and death benefit regardless of whether the loan is repaid. Registrants also would be required to explain that the cash surrender value and the proceeds payable on death will be reduced by the amount of any outstanding loan plus accrued interest.

11. Item 11—Lapse and Reinstatement

Proposed Item 11 would require registrants to state when a policy will lapse and under what circumstances a lapsed policy may be reinstated. Registrants would be required to explain any requirements for reinstatement, including payments of charges and outstanding loans and presentation of evidence of insurability. Registrants also would be required to describe briefly any lapse options available, indicate whether any of those options is subject to limits on availability, and indicate which options will not apply unless elected and which options are default options. Registrants would be required to describe briefly the factors that will determine the amount of insurance coverage provided under the available lapse options. Registrants would be required to describe concisely how the cash value, surrender value, and death benefit will be determined upon lapse.

12. Item 12—Taxes

Proposed Item 12 would require registrants to describe the material tax consequences to the policyholder and beneficiary of buying, holding, exchanging, or exercising rights under the policy. Registrants would be required to discuss the taxation of death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the policy, as well as tax benefits accorded the policy.

Proposed Item 12 is intended to focus tax disclosure on the likely tax consequences to policyholders of purchasing a variable life insurance policy. The proposal is intended to elicit disclosure that is not overly lengthy or technical and that does not use jargon that is difficult for the average or typical investor to understand.

13. Item 13—Legal Proceedings

Proposed Item 13 would require a registrant to describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant, the registrant's principal underwriter, or the depositor is a party. Registrants also would be required to include information as to legal proceedings contemplated by a governmental authority. For purposes of this item, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the registrant, the ability of the principal underwriter to perform its contract with the registrant, or the ability of the depositor to perform its obligations under the policies. Proposed Item 13 would require information comparable to that required by Form N–1A and Commission forms that apply to other issuers.[55]

14. Item 14—Financial Statements

Proposed Form N–6, like Form N–4, would not require financial statements of the registrant and the depositor to be included in the prospectus. Item 14, however, would require the registrant to state in the prospectus where the financial statements may be found and explain how any financial statements not in the SAI may be obtained. This requirement is similar to Item 4(c) of Form N–4.

Unlike Form N–4 and Form N–1A, proposed Form N–6 would not require a registrant to include summary financial information in its prospectus.[56] Form N–4 requires a registrant to disclose, for the last ten fiscal years and for each sub-account, the accumulation unit value at the beginning and end of each period and the number of accumulation units outstanding at the end of each period. For variable annuity contracts, the change in accumulation unit value provides a measure of performance of the registrant's sub-accounts. Because of the individual nature of variable life insurance charges, such as the cost of insurance, there does not appear to be a comparable measure of performance that is applicable to all holders of a particular variable life insurance policy.[57] Each Portfolio Company, however, would continue to provide its own summary financial information in its prospectus.[58]

The Commission requests comment on the appropriate location for registrant and depositor financial statements. The Commission also requests comment on whether variable life insurance registrants should be required to include summary financial information in their prospectuses. Can sub-account performance be meaningfully measured in a manner that is applicable to all holders of a particular variable life insurance policy, *e.g.*, by reflecting Portfolio Company fees and expenses and any other charges that are uniformly applied to all policyholders? Should summary financial information of the Portfolio Companies be required to be included in the Form N–6 prospectus?

C. Part B—Statement of Additional Information

The SAI would provide a more detailed discussion of matters described in the prospectus as well as additional information about a fund.[59] Many of the items are similar to the items in Part B of Forms N–4 and N–1A and therefore are not discussed in this release. Three items, however, merit separate attention.

1. Item 24—Financial Statements

The financial statements of the registrant required by proposed Item 24 are the same as the financial statements required by Item 23 of Form N–4. The full financial statements of the registrant would be in the SAI. The only financial information for the depositor required to be in the SAI would be comparative balance sheets for the last two fiscal years and, in certain cases, a more current interim balance sheet. As with Form N–4, the other financial statements of the depositor (e.g., statement of operations and statement of changes) would be required to be included in the registration statement, but could be included in Part C rather than the SAI. These financial statements would be required to be made available to investors upon request, free of charge. The Commission believes that this would allow a shorter SAI, while still providing investors with adequate information about the solvency of the depositor.

[55] See Item 6(a)(3) of Form N–1A; Item 12 of Form N–2 [17 CFR 274.11a–1] (closed-end investment companies); Item 103 of Regulation S-K [17 CFR 229.103] (non-investment company issuers). See also Investment Company Act Release No. 19155 (Nov. 30, 1992) [57 FR 56862] (modifying Form N–2 to conform to Item 103).

[56] See Item 4(a) of Form N–4; Item 9 of Form N–1A.

[57] See discussion of performance data infra Section II.C.2.

[58] See Item 9 of Form N–1A.

[59] See proposed General Instruction C.2.(b).

Instruction 1 to proposed Item 24, like Instruction 1 to Item 23 of Form N–4, would provide that a depositor's financial statements may be prepared in accordance with statutory requirements if the depositor would not have to prepare financial statements in accordance with generally accepted accounting principles ("GAAP") except for use in a registration statement filed on Form N–3, N–4, or N–6.[60] In recent years, increasing numbers of depositors have elected to prepare financial statements in accordance with GAAP for use in business transactions.[61] In addition, when a depositor's parent company prepares financial statements on a GAAP basis, the depositor typically prepares either partial GAAP financial statements or a GAAP reporting package to be used by the parent in its consolidated financial statements. In these circumstances, Form N–6 would require full GAAP financial statements of the depositor. In those limited circumstances when GAAP financial statements are not prepared for either the depositor or its parent, or the depositor's accounts are immaterial to its parent's consolidated financial statements and, therefore, neither partial GAAP financial statements nor a GAAP reporting package is prepared by the depositor, statutory financial statements could be used in Form N–6.

Instruction 3 to proposed Item 24, like Instruction 3 to Item 23 of Form N–4, would provide that the financial statements of the depositor need not be more current than as of the end of the most recent fiscal year of the depositor. In addition, Instruction 3 would provide that if the anticipated effective date of a registration statement is within 90 days of the end of the depositor's fiscal year and audited financial statements for the fiscal year are unavailable, the financial statements of the depositor need not be more current than the close of the third quarter of the previous fiscal year.[62] This instruction would extend to depositors of variable life insurance separate accounts the relief that is generally provided by Regulation S-X when the anticipated effective date of a filing falls within 46 to 90 days of the end of a registrant's fiscal year.[63] The instruction codifies relief that the Commission staff has informally provided to variable annuity and variable life insurance registrants.

The Commission requests comment on the requirements concerning the use of financial statements prepared in accordance with GAAP and financial statements prepared in accordance with statutory requirements. The Commission also requests comment on the requirements concerning the age of financial statements.

2. Item 25—Performance Data

Proposed Item 25 would require the registrant to include in the SAI an explanation of how it calculates performance data used in advertising, including how charges are reflected in the data. Registrants also would be required to provide a quotation of performance for each sub-account for which performance data is advertised.

Proposed Form N–6 would not require disclosure of any historical performance information. The Commission believes that, at the present time, no method of measuring variable life insurance performance has been devised that is useful enough that its disclosure should be required.

Variable life insurance performance is difficult to measure because of the complexity of the product and because policy charges and values are linked to individual characteristics of a particular investor. In addition, variable life policies provide cash value and death benefits, and both of these may be affected over time, in different ways, by policy charges and earnings.

Three types of performance information are sometimes included in variable life insurance registration statements, but each has the limitations noted.

• *Portfolio Company performance.* This measure is net of investment management fees and other Portfolio Company fees and expenses, but unadjusted for fees and expenses imposed on the separate account or individual policyholders. It may be useful as a measure of Portfolio Company performance, but it significantly overstates the performance policyholders will receive after deductions for all charges.

• *Portfolio Company performance adjusted for separate account asset-based charges.* This is a hybrid measure that is net of investment management fees, other Portfolio Company fees and expenses, and separate account asset-based charges. This form of performance does not measure either Portfolio Company performance (because of the deduction of separate account asset-based charges) or the performance a policyholder will receive (because of the failure to deduct charges imposed on the individual policyholder).

• *Illustrations of cash values and death benefits.* These illustrations are based on actual investment performance of a Portfolio Company and specified assumptions about premiums and the insured individual (*e.g.*, sex, age, rating classification). This form of performance does not have the defects of the other two, because it reflects all of the fees and charges at the Portfolio Company, separate account, and individual policyholder levels. It has very limited usefulness, however, to the many prospective investors whose proposed

[60] GAAP is an accounting term that encompasses the conventions, rules, and practices that define accepted accounting at a particular time issued by various authoritative bodies including the Financial Accounting Standards Board ("FASB") and the American Institute of Certified Public Accountants ("AICPA"). See Codification of Financial Reporting Policies of the SEC, Section 101. Financial statements prepared in accordance with statutory requirements, which may vary from state to state, differ from those prepared in accordance with GAAP. Statutory requirements are the basis of accounting that insurance companies use to comply with the financial reporting requirements of state insurance regulations. Regulation S-X permits financial statements for mutual life insurance companies and wholly owned stock insurance company subsidiaries of mutual life insurance companies to be prepared in accordance with statutory requirements, except when the applicable registration forms specifically provide otherwise. 17 CFR 210.1–01(a); 17 CFR 210.7–02(b).

[61] Prior to the 1993 issuance of Interpretation 40 ("IN 40") by FASB, many mutual life insurance companies prepared financial statements solely on a statutory basis. The FASB became aware that financial statements prepared in accordance with statutory accounting practices were often described as having been prepared in accordance with GAAP. IN 40 clarified that companies, including mutual life insurance companies, that issue financial statements described as prepared in conformity with GAAP must apply all applicable authoritative accounting pronouncements in preparing those statements. FASB Interpretation No. 40, Applicability of Generally Accepted Accounting Principles to Mutual Life Insurance and Other Enterprises (Apr. 1993). See also Financial Accounting Standards Board, Statement on Financial Accounting Standards No. 120, Accounting and Reporting by Mutual Life Insurance Enterprises and by Insurance Enterprises for Certain Long-Duration Participation Contracts (Jan. 1995) ("SFAS 120") (deferring the effective date of IN 40 and stating that mutual life insurance companies that prepare financial statements based on statutory accounting practices that differ from GAAP and distribute those financial statements to regulators should not describe the financial statements as prepared in accordance with GAAP). As a result of SFAS 120, if insurance company financial statements are not prepared in accordance with GAAP, the financial statements must include either an adverse or qualified audit opinion as to conformity with GAAP. Codification on Statements on Auditing Standards, AU Section 544 (AICPA).

[62] Third quarter financial statements would not need to be audited in these circumstances. Rule 10–01(a)(1) of Regulation S-X [17 CFR 210.10–01].

[63] See Rule 3–12(b) of Regulation S-X [17 CFR 210.3–12] (when anticipated effective date of filing falls within 90 days subsequent to the fiscal year, the filing need not include financial statements more current than as of the end of the third fiscal quarter, unless the audited financial statements of such fiscal year are available, or the anticipated effective date falls after 45 days subsequent to the end of the fiscal year and the registrant does not meet the conditions of Rule 3–01(c)). The relief provided in Rule 3–12(b) is not available to mutual insurance companies, when the anticipated effective date falls within 46 to 90 days subsequent to the fiscal year end, because those companies do not file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, which is a condition of Rule 3–01(c).

premium payment patterns and individual characteristics diverge from those assumed.

Proposed Form N–6 would not require performance information in the prospectus. Nothing in the proposal, however, would preclude the inclusion of historical performance information, including Portfolio Company performance information, provided that the information is not incomplete, inaccurate, or misleading and does not obscure or impede understanding of the information that is required to be included.[64] The Commission believes, however, that Portfolio Company performance information is most appropriately included in the Portfolio Company's prospectus, where it can be considered along with the risks of investing in the Portfolio Company.[65] Registrants should bear this in mind in determining whether it is appropriate to include Portfolio Company performance information in a Form N–6 prospectus.

The Commission requests that commenters discuss the advantages and disadvantages of various forms of variable life insurance performance information. Should any form of historical performance information be required by Form N–6? What forms of performance information should be permitted by Form N–6? Should any types of performance information be prohibited by Form N–6?

3. Item 26—Illustrations

Permitted Use of Hypothetical Illustrations. Proposed Item 26 would permit, but not require, registrants to include hypothetical illustrations of a variable life insurance policy in either the prospectus or the SAI. These are tabular presentations of numbers that demonstrate how the cash value, cash surrender value, and death benefit under a policy change over time based on (i) assumed gross rates of return of the Portfolio Companies; and (ii) deduction of fees and charges for a hypothetical policyholder (*e.g.*, a 40-year old, non-smoking male) with a specified policy face amount and premium payment pattern. Currently, variable life insurance prospectuses commonly include hypothetical illustrations using several different gross rates of return (*e.g.*, 0%, 6%, and 12%), two different expense levels (current charges and guaranteed maximum charges), and multiple death benefit options.

The Commission believes that hypothetical illustrations can enhance an investor's understanding of the mechanics of a variable life insurance policy. Illustrations of varying rates of investment return, with other elements (*e.g.*, policy face amount, premium payment pattern, expenses, rating classification) held constant, can provide general information about the relationship among death benefits, cash values, and investment returns. Similarly, illustrations reflecting varying expense levels, with other elements held constant, can provide general information about how a policy would perform under different expense scenarios.

The Commission believes, however, that there are some limits on the usefulness of hypothetical illustrations. Any particular illustration has limited relevance for most investors, because it is based on a hypothetical investor with unique characteristics of age, sex, rating classification, policy face amount, and premium payments that is different from most investors. Further, it is probably impractical to provide enough hypothetical illustrations in a variable life insurance prospectus to permit comparison shopping among variable life insurance policies by a broad range of investors, each with unique characteristics. Because of the individualized nature of variable life insurance policies and associated charges, comparison of illustrations could show one product to be more advantageous than another, but a change in the assumptions used in the illustrations could have the opposite result. Finally, hypothetical illustrations are fairly extensive tables of numbers that add complexity to a prospectus and can be difficult to understand.

In light of the limited nature of hypothetical illustrations and the complexity that they can add to variable life insurance prospectuses, proposed Form N–6 would not require hypothetical illustrations. The Commission believes, however, that hypothetical illustrations can be useful tools to improve investor understanding of a variable life insurance policy when they are presented clearly and in a manner designed to help investors understand both the information presented and the limited nature of that information. For that reason, proposed Form N–6 would give a registrant the flexibility to include hypothetical illustrations in the prospectus or SAI when it believes that they would be helpful to investors. The Commission requests comment on whether hypothetical illustrations should be permitted, required, or prohibited in a variable life insurance prospectus or SAI.

Requirements for Hypothetical Illustrations. Proposed Item 26 would impose requirements for any hypothetical illustrations included in the prospectus or SAI. The proposed requirements are not intended to standardize illustrations in order to permit comparison shopping because, as noted above, the Commission believes that this goal may be impractical within the bounds of a prospectus. Rather, the requirements are intended to place reasonable limits on the assumptions that may be used and discourage the presentation of misleading illustrations. Registrants would, however, remain responsible for ensuring that the illustrations are not incomplete, inaccurate, or misleading and do not, because of their nature, quantity, or manner of presentation, obscure or impede understanding of information required to be included.[66]

Consistent with the Commission's commitment to the principles of plain English, illustrations would be required to be preceded by a clear and concise explanation.[67] Similarly, headings for the illustrations would be required to contain the information necessary to identify clearly the scenario illustrated, including sex, age, rating classification, premium amount and payment schedule, face amount, and death benefit option.[68]

Premium amounts used in the illustrations should not be unduly larger or smaller than the actual or expected average policy size, and ages used should be representative of actual or expected policy sales.[69] The proposal would require that illustrations be shown for the rating classification with the greatest number of outstanding policies.[70]

Proposed Item 26 would require illustrated values to be provided for policy years one through ten, for every five years beyond the tenth policy year, and for the year of policy maturity.[71] Registrants using illustrations would be required to illustrate death benefits and cash surrender values and could also illustrate cash values. Illustrated values would be determined as of the end of the policy year.[72]

Proposed Item 26 would require registrants to use gross rates of return of 0% and one other rate not exceeding

[64] Proposed General Instruction C.3.(b).

[65] See 1998 Form N–1A Adopting Release, *supra* note 7; 1997 Form N–1A Proposing Release, *supra* note 7, at 10902.

[66] Proposed General Instruction C.3.(b).

[67] Proposed Item 26(a).

[68] Proposed Item 26(b).

[69] Proposed Item 26(c).

[70] Proposed Item 26(d).

[71] Proposed Item 26(e).

[72] Proposed Item 26(f).

10%. Additional gross rates of return not greater than 10% would be permitted.[73] Currently, variable life insurance prospectuses typically use rates of 0%, 6%, and 12% in illustrations.[74] The Commission believes that the use of two rates of return is necessary to fulfill a basic purpose of illustrations, demonstrating the effect of changing investment returns. The Commission does not believe, however, that it would be helpful to require registrants using illustrations to use more than two rates of return because of the potential for overwhelming investors with excessive quantitative information that is of limited relevance to their particular circumstances. Notwithstanding current practice, which permits illustrations at rates up to 12%, the proposal would cap the maximum permissible rate at 10%. This reflects the Commission's concern that rates above 10% may have a significant tendency to invite unrealistic investor expectations because long-term stock market returns have averaged approximately 10–11% per year and long-term returns on other asset classes have been lower. Moreover, investors may give undue weight to a 12% illustration because they may discount a 0% illustration as unrealistically low.

The Commission invites comment on the number of rates of return that should be required for registrants using illustrations. The Commission also invites comment on the appropriate minimum and maximum rates to be used for hypothetical illustrations.

Proposed Item 26 would require that Portfolio Company management fees and other Portfolio Company charges and expenses be reflected using the arithmetic average of those charges and expenses for all available Portfolio Companies. The average would be based on Portfolio Company charges and expenses incurred during the most recent fiscal year or any materially greater amount expected to be incurred during the current fiscal year.[75] The Commission requests comment on how Portfolio Company charges and expenses should be reflected in illustrations.

Proposed Item 26 would require that illustrations reflect both current and guaranteed maximum charges for charges not attributable to the Portfolio Companies. The proposal would require that illustrations reflect all charges deducted under the policy, as well as the timing of those charges.[76] The Commission believes that requiring illustrations of both current and maximum guaranteed charges would be useful to investors in comparing the interaction of different rates of return and different charge levels. Commenters are requested to address how charges not attributable to the Portfolio Companies should be reflected in illustrations, including whether both current and guaranteed maximum charges should be required.

Finally, proposed Item 26 would permit additional information to be included in illustrations, provided that it is consistent with the standards of Item 26.[77] The Commission believes this flexibility is important to permit registrants to design illustrations that are useful to investors. Comment is requested on this approach.

Commenters are requested to address the proposed requirements for the optional hypothetical illustrations. Is each of these requirements appropriate and, if not, how should it be modified? Should any of the requirements be eliminated or should others be added? Is it possible to standardize hypothetical illustrations in a manner that would facilitate comparison shopping among variable life insurance policies? Commenters who believe that hypothetical illustrations should be required, rather than permitted, also should address the criteria that they believe would be appropriate for required hypothetical illustrations.

Hypothetical Illustrations Based on Historical Rates of Return. The Commission also is seeking comment on the use of hypothetical illustrations constructed using historical rates of return for the Portfolio Companies ("hypothetical historical illustrations") rather than assumed rates of return (*e.g.*, 0% and 10%). Some variable life insurance registrants currently include these illustrations in their prospectuses, although this practice is not widespread. Proposed Form N–6 does not specifically address hypothetical historical illustrations.

The Commission has some concerns about the use of hypothetical historical illustrations. Hypothetical historical illustrations share all of the limitations of other hypothetical illustrations. They are of limited relevance to investors having characteristics other than those illustrated, they are not useful for comparison shopping, and they add complexity to the prospectus. Further, hypothetical illustrations that show a pattern of assumed returns, *e.g.*, 0%, 5%, and 10%, can help investors understand how different rates of return affect policy performance. The actual historical rates of return illustrated in hypothetical historical illustrations, however, will not have a pattern and therefore are not useful to an investor attempting to understand how a particular change in rates might affect policy values.

In addition, hypothetical historical illustrations are not a useful means for presenting past performance because they depend on the particular hypothetical policyholder, face amount, and premium payment pattern selected.[78] Hypothetical historical illustrations also tend to invite prospective investors to assume that the cash values and death benefits presented represent the values that they can expect and may be misconstrued as projections. Finally, if a prospectus were to include a hypothetical historical illustration for each Portfolio Company, this could entail many pages of complex data. On the other hand, creating a single hypothetical historical illustration with a composite rate of return earned by all available Portfolio Companies would render the illustration of still more limited relevance to an investor who did not intend to allocate his or her investment in the manner used to determine the composite rate of return.

The Commission requests comment on hypothetical historical illustrations and whether they should be required, permitted, or prohibited by Form N–6. If hypothetical historical illustrations should be required or permitted, should the Commission specify any standards for their use?

Personalized Illustrations. Personalized illustrations are frequently provided by insurers to prospective variable life insurance investors at the point of sale. These illustrations reflect the investor's particular circumstances, including age, sex, risk classification, proposed face amount, and expected premium payment pattern. The Commission believes that such illustrations can be a highly useful tool for investors. Unlike hypothetical prospectus illustrations, they reflect policy values based on an individual's unique characteristics and therefore can provide more relevant information for a particular investor. Further, personalized illustrations are a

[73] Proposed Item 26(g).

[74] The Commission staff has required registrants using illustrations to include a 0% illustration and has prohibited rates greater than 12%. See also NASD Conduct Rules, "Communications with the Public About Variable Life Insurance and Variable Annuities," IM–2210–2(b)(3)(A)(ii) (requiring variable life insurance illustrations used for advertising and sales literature to use a rate of 0% and any other rates not greater than 12%).

[75] Proposed Item 26(h).

[76] Proposed Item 26(i)

[77] Proposed Item 26(j).

[78] See discussion of performance data *supra* Section II.C.2.

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potentially useful comparison shopping tool, enabling a particular investor to compare how different variable life insurance policies would operate in the investor's particular circumstances.

Proposed Form N–6 does not address personalized illustrations because these are customized for individual investors, delivered at the point of sale, and not susceptible to inclusion in a prospectus. Absent Commission action, insurers may use personalized illustrations in sales literature subject to the antifraud provisions of the federal securities laws and rule 156 under the Securities Act, as long as the sales literature is preceded or accompanied by the prospectus.[79] The antifraud provisions make it unlawful to use materially misleading sales literature in connection with the purchase or sale of investment company securities.

Although personalized illustrations do not appear in a variable life insurance prospectus, these illustrations can be a very important part of the information communicated to prospective variable life insurance investors. For that reason, the Commission is requesting comment on personalized illustrations. Should the prospectus be required to state whether or not personalized illustrations are available? Should the Commission require variable life insurance registrants to deliver personalized illustrations to prospective investors? If not, should the Commission nonetheless prescribe requirements governing personalized illustrations for registrants that elect to use them? What, if any, requirements should the Commission prescribe for registrants using personalized illustrations? Should they be the same criteria as those that apply to hypothetical illustrations in proposed Form N–6, or should there be other requirements? The Commission also seeks comment regarding the use of Portfolio Company historical rates of return in personalized illustrations. Should the Commission address this area and, if so, how?

The Commission understands that some insurers are using personalized illustrations that reflect assumed rates of return, together with the fees and charges of a single Portfolio Company rather than the arithmetic average of fees and charges for all available Portfolio Companies. In some cases, the chosen Portfolio Company may have fees and charges that are lower than the arithmetic average for all available Portfolio Companies. For example, personalized illustrations might be based on the relatively low expenses of a money market fund.

As discussed above, proposed Form N–6 would require that hypothetical prospectus illustrations reflect the arithmetic average of fees and charges for all available Portfolio Companies. The proposal incorporates the Commission's view that it may be misleading to market a variable life insurance policy based on illustrations that reflect assumed rates of return and the fees and charges of a single Portfolio Company when those fees and charges are less than the arithmetic average of fees and charges for all available Portfolio Companies. For that reason, the Commission is concerned about the practice of using a single Portfolio Company's fees and charges in personalized illustrations. The Commission has directed its examinations staff to give heightened scrutiny to this issue in inspections of variable life insurance registrants. The Commission also has discussed this matter with the staff of the National Association of Securities Dealers Regulation, Inc., ("NASD Regulation") and requested that the NASD Regulation staff consider this issue in its review of variable life insurance sales literature. Comment is requested on whether Form N–6 should address the use of personalized illustrations that reflect the fees and charges of a single available Portfolio Company.

D. Part C—Other Information

Part C of proposed Form N–6 would contain information in support of a variable life insurance registration statement that is not included in the prospectus or the SAI. Part C of proposed Form N–6 is based on Part C of Form N–4 and Form N–1A, modified as appropriate to variable life insurance. Certain exhibits required under proposed Item 27; proposed Item 34, the fee representation; and an undertaking required by Form N–4 but not proposed Form N–6 merit separate attention.

1. Item 27—Exhibits

If illustrations are included in the registration statement as permitted by proposed Item 26, an opinion of an actuarial officer of the depositor would be required by Item 27(l). The actuarial opinion would be required to indicate that: (i) The values illustrated are consistent with the provisions of the policy and the depositor's administrative procedures; (ii) the rate structure of the policy, and the assumptions selected for the illustrations, do not result in an illustration of the relationship between premiums and benefits that is materially more favorable than for a substantial majority of other prospective policyholders; and (iii) the illustrations are based on a commonly used rating classification and premium amounts and ages appropriate for the markets in which the policy is sold.

Proposed Item 27(l) would require the opinion to indicate that the rate structure and selected assumptions do not, in fact, have certain results. As an alternative, the Commission considered whether the actuary should be required to opine only that the rate structure and the selected assumptions were not intended or designed to have certain results. The Commission rejected the "intent or design" test because it would permit illustrations that, in fact, distort the relationship between premiums and benefits for a policy. Comment is requested on the actuarial opinion requirement, including the "in fact" and "intent or design" tests and other tests that could be used. Commenters are requested to address the "substantial majority of other prospective policyholders" standard in the second prong of the opinion. Should this standard be stricter (*e.g.*, all policyholders) or less strict (*e.g.*, majority of policyholders)?

Proposed Item 27(m) would require registrants that include illustrations in their registration statements to provide one sample calculation for each item illustrated, showing how the illustrated values for the fifth policy year have been calculated. The calculation would be required to demonstrate how the annual investment returns of the sub-accounts were derived from the hypothetical gross rates of return, how charges against sub-account assets were deducted from the returns of the sub-accounts, and how the periodic deductions for policy charges were made. Finally, the exhibit would be required to describe how the calculation would differ for other years.

Consistent with the approach previously announced by the Commission staff in connection with Form N–4, proposed Form N–6 would not require submission of a financial data schedule meeting the requirements of rule 483 under the Securities Act.[80] In addition, the staff currently does not require financial data schedules in connection with filings on Form S–6 by

[79] Section 17(a) of the Securities Act [15 U.S.C. 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b–5 thereunder [17 CFR 240.10b–5]; Rule 156 under the Securities Act [17 CFR 230.156]; Section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)]; Section 2(a)(10)(a) of the Securities Act [15 U.S.C 77b(a)(10)(a)].

[80] **Sec Edgar News**, Third Quarter 1996, at 3.

separate accounts offering variable life insurance policies.

2. Item 34—Fee Representation

NSMIA amended Sections 26 and 27 of the Investment Company Act, replacing specific limits on the amount, type, and timing of charges that applied to variable insurance contracts with a requirement that aggregate charges be reasonable.[81] Section 26(e) of the Investment Company Act, added by NSMIA, requires that fees and charges deducted under variable insurance contracts, in the aggregate, be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company. Section 26(e) also requires insurance companies to represent in variable insurance registration statements that the reasonableness standard of Section 26(e) is satisfied. Proposed Item 34 requests the representation required by Section 26(e).

3. Undertaking to Update Prospectus

Section 10(a)(3) of the Securities Act requires an issuer that is engaging in a continuous offering to update the information in its registration statement, so that the information is not more than 16 months old.[82] Form N–4 requires a separate account registered as a unit investment trust that offers variable annuity contracts to include in Part C of its registration statement an undertaking to maintain a current prospectus for so long as payments may be accepted under the contracts.[83] Proposed Form N–6 would not require a similar undertaking. This reflects the Commission's view that issuers of variable life insurance policies, like issuers of variable annuity contracts, are required by Section 10(a)(3) of the Securities Act to maintain a current prospectus for so long as payments may be accepted under the policies, regardless of whether new policies are being sold. The Commission believes that it is unnecessary to include in proposed Form N–6 a requirement for an undertaking similar to that in Form N–4, because this undertaking simply restates an issuer's obligation under the Securities Act.

E. Technical Rule Amendments

The Commission is proposing technical amendments to several rules under the Securities Act and Investment Company Act to accommodate proposed Form N–6. The Commission is proposing to amend rules 134b, 430, 430A, 495, 496, and 497 under the Securities Act and rules 8b–11 and 8b–12 under the Investment Company Act to add Form N–6 to the list of forms referenced in those rules.[84] The Commission also is proposing new rules prescribing the use of Form N–6 to register insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies under the Investment Company Act and to register their securities under the Securities Act.[85] Finally, the Commission proposes to amend Form N–8B–2 to clarify that Form N–8B–2 is not the proper form for Investment Company Act registration of insurance company separate accounts registered as unit investment trusts.[86]

F. Transition Period

If the Commission adopts proposed Form N–6, it would replace current Forms S–6 and N–8B–2 for registration of unit investment trust separate accounts funding variable life insurance policies. The Commission expects to provide for a transition period after the effective date of Form N–6 to give registrants sufficient time to update their registration statements or to prepare new registration statements on Form N–6. All new registration statements and post-effective amendments that are annual updates to effective registration statements filed 6 months after the effective date of Form N–6 would be required to comply with its requirements. The final compliance date for filing amendments to effective registration statements to conform with the Form N–6 requirements would be 18 months after the effective date of the form. At its option, a registrant could comply with the requirements of Form N–6 at any time after the effective date of the form. The Commission requests comment on the proposed transition period.

G. Form N–1

The Commission previously prescribed Form N–1 as the registration form to be used by open-end management investment companies that are separate accounts of insurance companies for registering under the Investment Company Act and for registering their securities under the Securities Act.[87] In 1985, Form N–1 was superseded by Form N–3 for open-end management investment companies that are separate accounts of insurance companies issuing variable annuity contracts.[88] Currently, Form N–1 would be used only by an open-end management investment company that is a separate account of an insurance company offering variable life insurance policies.[89] Today, virtually all separate accounts issuing variable life insurance policies are organized as unit investment trusts. For that reason, few, if any, registrants continue to use Form N–1.

The Commission requests comment on whether Form N–1 should be rescinded as obsolete and whether there is any continuing need for the form. Would any registrants, including any variable annuity or variable life registrants no longer offering contracts to new purchasers and using Form N–1, be affected by the rescission of Form N–1? If Form N–1 is rescinded, should the Commission prescribe another registration form for use by open-end management investment companies that are separate accounts of insurance companies issuing variable life insurance policies? If so, what form should be used for this purpose and what changes should be made to the suggested form to adapt it for this category of registrants?

III. General Request for Comments

The Commission requests that any interested persons submit comments on the proposed Form N–6, suggest changes (including changes to related provisions of rules and forms that the Commission is not proposing to amend), or submit comments on other matters that might affect the proposed form. Commenters suggesting alternative approaches are encouraged to submit proposed rule or form text. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 [5 U.S.C. 801 *et seq.*], the Commission also is requesting information regarding the

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[81] See Senate Report, *supra* note 39, at 22; House Report, *supra* note 39, at 12, 17.

[82] 15 U.S.C. 77j(a)(3).

[83] Item 32(a) of Form N–4. See also N–4 Adopting Release, *supra* note 7, at 26155.

[84] 17 CFR 230.134b, 230.430, 230.430A, 230.495, 230.496, and 230.497; 17 CFR 270.8b–11 and 270.8b–12.

[85] Proposed 17 CFR 239.17c; Proposed 17 CFR 274.11d.

[86] See proposed amendments to Form N–8B–2 and 17 CFR 274.12 (prescribing Form N–8B–2). The Commission is not proposing to amend Form S–6 or 17 CFR 239.16 (prescribing Form S–6) because the form and the rule state that Form S–6 is to be used to register the securities of unit investment trusts registered on Form N–8B–2.

[87] 17 CFR 274.11; General Instruction A of Form N–1; Investment Company Act Release No. 14084 [49 FR 32058] (Aug. 7, 1984).

[88] 17 CFR 274.11b; N–4 Adopting Release, *supra* note 7, at 26156; N–4 Proposing Release, supra note 7, at 620.

[89] When Form N–3 was implemented, separate accounts funding variable annuity contracts were permitted to continue to use Form N–1 if they no longer offered the contracts to new purchasers. N–4 Adopting Release, *supra* note 7 , at 26156. The Commission is not aware of any such variable annuity registrants that continue to use Form N–1.

potential effect of proposed Form N–6 on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

Proposed Form N–6 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act") [44 U.S.C. 3501 *et seq.*], and the Commission has submitted the amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Form N–6 Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Variable Life Insurance Separate Accounts Registered as Unit Investment Trusts."

A registration statement on proposed Form N–6 would be required to contain information the Commission has determined to be necessary or appropriate in the public interest or for the protection of investors. Forms S–6 and N–8B–2 were not designed for variable life insurance registrants and do not reflect fundamental improvements that the Commission has made to other investment company registration forms, including Forms N–1A and N–4, which facilitate clearer and more concise disclosure. If adopted, proposed Form N–6 would:

- Eliminate requirements in the current registration forms that are not relevant to variable life insurance and include items that are specifically addressed to variable life insurance;
- Streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information, and an SAI, containing more extensive information that investors could obtain upon request; and
- Provide variable life insurance separate accounts a single, integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.[90]

For purposes of the Paperwork Reduction Act, the Commission has estimated the hour burden and the cost burden that proposed Form N–6 would impose on variable life insurance registrants. The hour burden is the number of hours of staff time a variable life insurance registrant will use annually to comply with the requirements of proposed Form N–6. The cost burden is the annual cost of services purchased to prepare and update proposed Form N–6, such as the cost of independent auditors and outside counsel. The cost burden does not include the wages, salaries, or fees paid for the hour burden. Each of the hour burden and the cost burden are calculated for both initial registration statements on proposed Form N–6 and post-effective amendments to the form.

The Commission estimates that there are approximately 200 separate accounts registered as unit investment trusts and offering variable life insurance policies that would file registration statements on proposed Form N–6. The Commission estimates that there will be as many as 50 initial registration statements on proposed Form N–6 filed annually. The Commission estimates, therefore, that approximately 250 registration statements (200 post-effective amendments plus 50 initial registration statements) will be filed on Form N–6 annually.

The Commission estimates that the hour burden for preparing and filing a post-effective amendment on proposed Form N–6 will be 100 hours. Thus, the total annual hour burden for preparing and filing post-effective amendments would be 20,000 hours (200 post-effective amendments annually times 100 hours per amendment). The Commission estimates that the hour burden for preparing and filing an initial registration statement on proposed Form N–6 will be 800 hours. Thus, the annual hour burden for preparing and filing initial registration statements would be 40,000 hours (50 initial registration statements annually times 800 hours per registration statement). The total annual hour burden for proposed Form N–6, therefore, is estimated to be 60,000 hours (20,000 hours for post-effective amendments plus 40,000 hours for initial registration statements).

The Commission estimates that the cost burden for preparing and filing a post-effective amendment on proposed Form N–6 will be $7,500. Thus, the total annual cost burden for preparing and filing post-effective amendments would be $1,500,000 (200 post-effective amendments annually times $7,500 per amendment). The Commission estimates that the cost burden for preparing and filing an initial registration statement on proposed Form N–6 will be $20,000. Thus, the annual cost burden for preparing and filing initial registration statements would be $1,000,000 (50 initial registration statements annually times $20,000 per registration statement). The total annual cost burden for proposed Form N–6, therefore, is estimated to be $2,500,000 ($1,500,000 for post-effective amendments plus $1,000,000 for initial registration statements).

The number of post-effective amendments is estimated based on the Commission's records and industry statistics. The number of initial registration statements is estimated based on the Commission's records for the past year. The hour and cost burdens are estimated on the basis of comparison of proposed Form N–6 with other forms that are used for registration under both the Investment Company Act and the Securities Act.

The hour and cost burdens would be offset by a decrease in the burdens attributable to Forms N–8B–2 and S–6 because separate accounts registering on Form N–6 would no longer be required to register on Forms N–8B–2 and S–6. The Commission expects that the aggregate burden imposed by Forms N–6, S–6, and N–8B–2 after Form N–6 is adopted will be no greater, and may be less, than the burden currently imposed by Forms S–6 and N–8B–2.

The information collection requirements that would be imposed by Form N–6 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Under 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission also requests comment on whether the burden imposed on registrants using proposed Form N–6 will be less than that currently imposed on these registrants by Forms S–6 and N–8B–2

Those who want to submit comments on the collection of information requirements should direct their comments to OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange

[90] See *supra* Section I.

Commission, 450 5th Street, N.W., Washington, D.C. 20549–6009 with reference to File No. S7–9–98. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost/Benefit Analysis

The Commission believes that proposed Form N–6 would facilitate improved disclosure to investors; be simpler to use than the registration forms that it would replace, Forms S–6 and N–8B–2; and eliminate unnecessary paperwork and reporting. Specifically, proposed Form N–6, if adopted, would:

- Eliminate requirements in the current registration forms that are not relevant to variable life insurance and include items that are specifically addressed to variable life insurance products;
- Streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information, and an SAI, containing more extensive information; and
- Provide an integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.[91]

The Commission believes that proposed Form N–6 would not impose greater costs on variable life insurance registrants than the forms that it would replace, Forms S–6 and N–8B–2. The Commission believes that proposed Form N–6 may impose lesser costs on variable life insurance registrants than Forms S–6 and N–8B–2. The Commission requests comment on this cost/benefit analysis. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed form.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that proposed Form N–6 would not, if adopted, have a significant economic impact on a substantial number of small entities. Few, if any, small entities would be affected by Form N–6. The Chairman's certification is attached to this release as Appendix A. The Commission encourages written comment on the certification. Commenters are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Authority

The amendments to the Commission's rules and forms are being proposed pursuant to sections 5, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)] and sections 8, 22, 24(g), 26(e), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-22, 80a-24(g), 80a-26(e), 80a-29, and 80a-37]. The authority citations for the amendments to the rules and forms precede the text of the amendments.

Text of Proposed Amendments

List of Subjects in 17 CFR Parts 230, 239, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Revise § 230.134b to read as follows:

§ 230.134b Statements of additional information.

For the purpose only of Section 5(b) of the Act (15 U.S.C. 77e(b)), the term "prospectus" as defined in Section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) does not include a Statement of Additional Information filed as part of a registration statement on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter) transmitted prior to the effective date of the registration statement if it is accompanied or preceded by a preliminary prospectus meeting the requirements of § 230.430.

3. Amend § 230.430 to revise the introductory text of paragraph (b) to read as follows:

§ 230.430 Prospectus for use prior to effective date.

* * * * *

(b) A form of prospectus filed as part of a registration statement on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter) shall be deemed to meet the requirements of Section 10 of the Act (15 U.S.C. 77j) for the purpose of Section 5(b)(1) thereof (15 U.S.C. 77e(b)(1)) prior to the effective date of the registration statement, provided that:

* * * * *

4. Amend § 230.430A to revise paragraph (e) before the Note to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

(e) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), the references to "form of prospectus" in paragraphs (a) and (b) of this section and the accompanying Note shall be deemed also to refer to the form of Statement of Additional Information filed as part of such a registration statement.

* * * * *

5. Amend § 230.495 to revise paragraphs (a), (c), and (d) to read as follows:

§ 230.495 Preparation of registration statement.

(a) A registration statement on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), shall consist of the facing sheet of the applicable form; a prospectus containing the information called for by such form; the information, list of exhibits, undertakings and signatures required to be set forth in such form; financial statements and schedules; exhibits; and other information or documents filed as part of the registration statement; and all documents or information incorporated

[91] See supra Section I.

by reference in the foregoing (whether or not required to be filed).

* * * * *

(c) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), Parts A and B shall contain the information called for by each of the items of the applicable Part, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item may be omitted. Copies of Parts A and B may be filed as part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever such copies are filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from Parts A and B, except to the extent provided in paragraph (d) of the section.

(d) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), where any item of those forms calls for information not required to be included in Parts A and B (generally Part C of such form), the text of such items, including the numbers and captions thereof, together with the answers thereto, shall be filed with Parts A or B under cover of the facing sheet of the form as part of the registration statement. However, the text of such items may be omitted, provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto is in the negative, a statement to that effect shall be made. Any financial statements not required to be included in Parts A and B shall also be filed as part of the registration statement proper, unless incorporated by reference pursuant to § 230.411.

* * * * *

6. Revise § 230.496 to read as follows:

§ 230.496 Contents of prospectus and statement of additional information used after nine months.

In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), there may be omitted from any prospectus or Statement of Additional Information used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus or the Statement of Additional Information insofar as later information covering the same subjects, including the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus or the Statement of Additional Information is contained therein.

7. Amend § 230.497 to revise paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(c) For investment companies filing on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, ten copies of each form of prospectus and form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used.

* * * * *

(e) For investment companies filing on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Act (15 U.S.C. 77j) or Statement of Additional Information that varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (c) of this section shall be used until five copies thereof have been filed with, or mailed for filing to the Commission.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u-5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

9. Add § 239.17c to read as follows:

§ 239.17c Form N–6, registration statement for separate accounts organized as unit investment trusts that offer variable life insurance policies.

Form N–6 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable life insurance policies and that register under the Investment Company Act of 1940 as unit investment trusts. This form is also to be used for the registration statement of such separate accounts pursuant to section 8(b) of the Investment Company Act of 1940 (§ 274.11d of this chapter).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1, *et seq.*, 80a-34(d), 80a-37, 80a-39 unless otherwise noted;

* * * * *

11. Amend § 270.8b-11 to revise paragraph (b) to read as follows:

§ 270.8b-11 Number of copies; signatures; binding.

* * * * *

(b) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), three complete copies of each part of the registration statement (including, if applicable, exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.

* * * * *

12. Amend § 270.8b-12 to revise paragraph (b) to read as follows:

§ 270.8b-12 Requirements as to paper, printing and language.

* * * * *

(b) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and

§ 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8 1/2 x 11 inches in size, insofar as practicable. The prospectus and, if applicable, the Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

13. The general authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

14. Add § 274.11d to read as follows:

OMB Approval
OMB Number:
Expires:
Estimated average burden hours per response

§ 274.11d Form N–6, registration statement of separate accounts organized as unit investment trusts that offer variable life insurance policies.

Form N–6 shall be used as the registration statement to be filed pursuant to section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable life insurance policies to register as unit investment trusts. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17c of this chapter).

15. Revise § 274.12 to read as follows:

§ 274.12 Form N–8B–2, registration statement of unit investment trusts that are currently issuing securities.

This form shall be used as the registration statement to be filed, pursuant to section 8(b) of the Investment Company Act of 1940, by unit investment trusts other than separate accounts that are currently issuing securities, including unit investment trusts that are issuers of periodic payment plan certificates.

16. Revise General Instruction 1 of Form N–8B–2 (referenced in § 274.12) to read as follows:

Note: The text of Form N–8B–2 does not and this amendment will not appear in the *Code of Federal Regulations.*

Form N–8B–2

* * * * *

General Instructions for Form N–8B–2.

* * * * *

1. Rule as to Use of Form

This form shall be used as the form for registration statements to be filed, pursuant to Section 8(b) of the Investment Company Act of 1940, by unit investment trusts other than separate accounts that are currently issuing securities, including unit investment trusts that are issuers of periodic payment plan certificates and unit investment trusts of which a management investment company is the sponsor or depositor.

* * * * *

17. Add Form N–6 (referenced in § 239.17c and § 274.11d) to read as follows:

Note: The text of Form N–6 will not appear in the *Code of Federal Regulations.*

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form N–6

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 [ ]
Pre-Effective Amendment No. _____ [ ]
Post-Effective Amendment No. _____ [ ]
and/or
REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940 [ ]
Amendment No. _____ [ ]
(Check appropriate box or boxes)

_____
(Exact Name of Registrant)

_____
(Name of Depositor)

_____
(Address of Depositor's Principal Executive Offices)

_____
(Zip Code)

Depositor's Telephone Number, including Area Code _____

_____
(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering _____

It is proposed that this filing will become effective (check appropriate box)

[ ] Immediately upon filing pursuant to paragraph (b)
[ ] On (date) pursuant to paragraph (b)
[ ] 60 days after filing pursuant to paragraph (a)(1)
[ ] On (date) pursuant to paragraph (a)(1) of Rule 485.

If appropriate, check the following box:

[ ] This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Omit from the facing sheet reference to the other Act if the registration statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" only where securities are being registered under the Securities Act of 1933.

Form N–6 is to be used by separate accounts that are unit investment trusts that offer variable life insurance contracts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. The Commission has designed Form N–6 to provide investors with information that will assist them in making a decision about investing in a variable life insurance contract. The Commission also may use the information provided in Form N–6 in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N–6, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–6 unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–6009. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

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General Instructions

A. Definitions

References to sections and rules in this Form N–6 are to the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N–6 have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N–6, the terms set out below have the following meanings:

"Depositor" means the person primarily responsible for the organization of the Registrant and the person, other than the trustee or custodian, who has continuing functions or responsibilities for the administration of the affairs of the Registrant. "Depositor" includes the sponsoring insurance company that establishes and maintains the Registrant. If there is more than one Depositor, the information called for in this Form about the Depositor must be provided for each Depositor.

"Portfolio Company" means any company in which the Registrant invests.

"Registrant" means the separate account (as defined in section 2(a)(37) of the Investment Company Act [15 U.S.C. 80a-2(a)(37)]) that offers the Variable Life Insurance Contracts.

"SAI" means the Statement of Additional Information required by Part B of this Form.

"Securities Act" means the Securities Act of 1933 [15 U.S.C. 77a *et seq.*].

"Securities Exchange Act" means the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*].

"Variable Life Insurance Contract" or "Contract" means a life insurance contract that provides for death benefits and cash values that may vary with the investment experience of any separate account. Unless the context otherwise requires, "Variable Life Insurance Contract" or "Contract" refers to the Variable Life Insurance Contracts being offered pursuant to the registration statement prepared on this Form.

B. Filing and Use of Form N–6

1. What is Form N–6 Used for?

Form N–6 is used by all separate accounts that are registered under the Investment Company Act as unit investment trusts and offering Variable Life Insurance Contracts to file:

(a) An initial registration statement under the Investment Company Act and amendments to the registration statement;
(b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or
(c) Any combination of the filings in paragraph (a) or (b).

2. What is Included in the Registration Statement?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.
(b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, and 14), B, and C (except Items 27 (c), (k), (l), (n), and (o)), and the required signatures.

3. What Are the Fees for Form N–6?

No registration fees are required with the filing of Form N–6 to register as an investment company under the Investment Company Act or to register securities under the Securities Act. If Form N–6 is filed to register securities under the Securities Act and securities are sold to the public, registration fees must be paid on an ongoing basis after the end of the Registrant's fiscal year. *See* section 24(f) [15 U.S.C. 80a–24f–2] and related rule 24f–2 [17 CFR 270.24f–2].

4. What Rules Apply to the Filing of a Registration Statement on Form N–6?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act [17 CFR 230.400–230.497] apply to the filing of Form N–6. Specific requirements concerning investment companies appear in rules 480–485 and 495–497 of Regulation C.
(b) For registration statements and amendments filed only under the Investment Company Act, the general provisions in rules 8b–1–8b–32 [17 CFR 270.8b–1–270.8b–32] apply to the filing of Form N–6.
(c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N–6.
(d) Regulation S-T [17 CFR 232.10–232.903] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").

C. Preparation of the Registration Statement

1. Administration of the Form N–6 Requirements

(a) The requirements of Form N–6 are intended to promote effective communication between the Registrant and prospective investors. A Registrant's prospectus should clearly disclose the fundamental features and risks of the Variable Life Insurance Contracts, using concise, straightforward, and easy to understand language. A Registrant should use document design techniques that promote effective communication.
(b) The prospectus disclosure requirements in Form N–6 are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Variable Life Insurance Contract by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting a Variable Life Insurance Contract with other Contracts.
(c) Responses to the Items in Form N–6 should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Variable Life Insurance Contracts. The prospectus should avoid including lengthy legal and technical discussions and simply restating legal or regulatory requirements to which Contracts generally are subject. Brevity is especially important in describing the practices or aspects of the Registrant's operations that do not differ materially from those of other separate accounts. Avoid excessive detail, technical or legal terminology, and complex language. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for many investors to understand and detract from its usefulness.
(d) The requirements for prospectuses included in Form N–6 will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N–6.

2. Form N–6 is Divided Into Three Parts:

(a) *Part A.* Part A includes the information required in a Registrant's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Registrant and the Variable Life Insurance Contracts in a way that will help investors to make informed decisions about whether to purchase the securities described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.
(b) *Part B.* Part B includes the information required in a Registrant's SAI. The purpose of the SAI is to provide additional information about the Registrant and the Variable Life Insurance Contracts that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Registrant an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Registrant believes may be of interest to some investors. The Registrant should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.
(c) *Part C.* Part C includes other information required in a Registrant's registration statement.

3. Additional Matters

(a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Disclose the information required by Items 2 and 3 (the Risk/Benefit Summary) in numerical order at the front of the prospectus. Do not precede these Items with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act [17 CFR 230.481(c)].
(b) *Other Information.* A Registrant may include, except in the Risk/Benefit Summary, information in the prospectus or the SAI that is not otherwise required. For example, a Registrant may include charts, graphs, or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. Specifically, Registrants are free to include in the prospectus financial statements required to be in the SAI, and may include in the SAI financial statements that may be placed in Part C. The Risk/Benefit Summary may not include disclosure other than that required or permitted by Items 2 and 3.
(c) *Use of Form N–6 to Register Multiple Contracts or Contracts Sold in Both the Group and Individual Markets.*

(i) When disclosure is provided in a single prospectus for more than one Variable Life Insurance Contract, or for a Contract that is sold in both the group and individual markets, the disclosure should be presented in a format designed to communicate the information effectively. Registrants may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Registrants or Variable Life Insurance Contracts. Registrants are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Variable Life Insurance Contracts or for Contracts sold in both the group and individual markets.

(ii) Paragraph (a) requires Registrants to disclose the information required by Items 2 and 3 in numerical order at the front of the prospectus and not to precede the Items with other information. As a general matter, Registrants providing disclosure in a single prospectus for more than one Variable Life Insurance Contract, or for Contracts sold in both the group and individual markets, may depart from the requirement of paragraph (a) as necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same). For example, the prospectus may present all of the Item 2 information for several Variable Life Insurance Contracts followed by all of the Item 3 information for the Contracts, or may present Items 2 and 3 for each of several Contracts sequentially. Other presentations also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 and 3 in a standard order at the beginning of the prospectus.

(d) *Dates.* Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

(e) *Sales Literature.* A Registrant may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.

D. Incorporation by Reference

1. Specific Rules for Incorporation by Reference in Form N–6

(a) A Registrant may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Registrant may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

(c) A Registrant may incorporate by reference into the SAI or its response to Part C information that Parts B and C require to be included in the Registrant's registration statement.

2. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 10(d) of Regulation S–K under the Securities Act [17 CFR 229.10(d)] (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rules 0–4, 8b–23, and 8b–32 [17 CFR 270.0–4, 270.8b–23, and 270.8b–32] (additional rules on incorporation by reference for investment companies).

Part A: Information Required in a Prospectus

Item 1. Front and Back Cover Pages

(a) *Front Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], on the outside front cover page of the prospectus:

(1) The Registrant's name.

(2) The Depositor's name.

(3) The types of Variable Life Insurance Contracts offered by the prospectus (*e.g.*, group, individual, scheduled premium, flexible premium).

(4) The date of the prospectus.

(5) The statement required by rule 481(b)(1) under the Securities Act.

Instruction. A Registrant may include on the front cover page any additional information, subject to the requirement set out in General Instruction C.3.(b).

(b) *Back Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Registrant. Explain that the SAI is available, without charge, upon request, and explain how contractowners may make inquiries about their Contracts. Provide a toll-free (or collect) telephone number for investors to call: to request the SAI; to request other information about the Contracts; and to make contractowner inquiries.

Instructions.

1. A Registrant may indicate, if applicable, that the SAI and other information are available on its Internet site and/or by E-mail request.

2. A Registrant may indicate, if applicable, that the SAI and other information are available from an insurance agent or financial intermediary (such as a broker-dealer or bank) through which the Contracts may be purchased or sold.

3. When a Registrant (or an insurance agent or financial intermediary through which Contracts may be purchased or sold) receives a request for the SAI, the Registrant (or insurance agent or financial intermediary) must send the SAI within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Registrant will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Registrant may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) A statement that information about the Registrant (including the SAI) can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C. Also state that information on the operation of the public reference room may be obtained by calling the Commission at 1–800–SEC–0330. State that reports and other information about the Registrant are available on the Commission's Internet site at http://www.sec.gov and that copies of this information may be obtained, upon payment of a duplicating fee, by writing the Public Reference Section of the Commission, Washington, D.C. 20549–6009.

(4) The Registrant's Investment Company Act file number on the bottom of the back cover page in type size smaller than that generally used in the prospectus (*e.g.*, 8-point modern type).

Item 2. Risk/Benefit Summary: Benefits and Risks

Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], in the order indicated:

(a) *Contract Benefits.* Summarize the benefits available under the Contract, including death benefits, withdrawal and surrender benefits, and loans.

(b) *Use of Premiums.* Disclose that part of the premium is allocated to insurance coverage, part of the premium is invested and part of the premium payment is used to pay sales loads and other charges.

(c) *Contract Risks.* Summarize the principal risks of purchasing a Contract, including the risks of poor investment performance, that Contracts are unsuitable as short-term savings vehicles, the risks of Contract lapse, limitations on access to cash value through withdrawals, and the possibility of adverse tax consequences.

Item 3. Risk/Benefit Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], after Item 2:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the Policy. The first table describes the fees and expenses that you will pay at the time that you buy the Policy, surrender the Policy, or transfer cash value between investment options.

Transaction fees			
Charge	When charge is deducted	Amount deducted	Policies from which charge is deducted
Maximum Sales Charge Imposed on Premiums (Load).			
Premium Taxes			
Maximum Deferred Sales Charge (Load).			
Other Surrender Fees			
Transfer Fees			

The next table describes the fees and expenses that you will pay periodically during the time that you own the Policy, not including [Portfolio Company] fees and expenses.

Annual charges other than [portfolio company] operating expenses			
Charge	When charge is deducted	Amount deducted	Policies from which charge is deducted
Cost of Insurance			
Annual Maintenance Fee			
Mortality and Expense Risk Fees			
Administrative Fees			

The next table describes the [Portfolio Company] fees and expenses that you will pay periodically during the time that you own the Policy. The table shows the minimum and maximum fees and expenses charged by any of the [Portfolio Companies]. More detail concerning each [Portfolio Company's] fees and expenses is contained in the prospectus for each [Portfolio Company].

Annual [portfolio company] operating expenses			
Charge	When charge is deducted	Amount deducted	Policies from which charge is deducted
Management Fees			
Distribution [and/or Service] (12b-1) Fees.			
Other Expenses			
Total [Portfolio Company] Annual Expenses.			

Instructions.

1. *General.*

(a) Include the narrative explanations in the order indicated. A Registrant may modify a narrative explanation if the explanation contains comparable information to that shown.

(b) A Registrant may omit captions if the Registrant does not charge the fees or expenses covered by the captions.

(c) If a Registrant uses one prospectus to offer a Contract in both the group and individual variable life markets, the Registrant may include narrative disclosure in a footnote or following the tables identifying markets where certain fees are either inapplicable or waived or lower fees are charged. In the alternative, a Registrant may present the information for group and individual contracts in another format consistent with General Instruction C.3.(c).

(d) The "When Charge is Deducted" column must be used to show when a charge is deducted, *e.g.*, upon purchase, surrender or partial surrender, policy anniversary, monthly, or daily.

(e) Under the "Amount Deducted" column, the Registrant must disclose the maximum charge unless a specific instruction directs otherwise. The Registrant should include the basis on which the charge is imposed (*e.g.*, 0.95% of average daily net assets, $5 per exchange, $5 per thousand dollars of face amount). In addition, the Registrant may include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in the charge. For example, if deferred sales charges decline over time, the Registrant may include in a footnote a presentation regarding the scheduled reductions in the deferred sales charges. Charges assessed on the basis of the face amount should be disclosed as the charge per $1000 of face amount. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(f) If a charge is deducted from all Contracts, the word "All" should be placed in the "Policies from Which Charge is Deducted" column. Otherwise, Registrant should specify the Contracts from which the charge is deducted.

2. *Transaction Fees.*

(a) "Other Surrender Fees" include any fees charged for surrender or partial surrender, other than sales charges imposed upon surrender or partial surrender.

(b) "Transfer Fees" include any fees charged for any transfer or exchange of cash value from the Registrant to another investment company, from one sub-account of the Registrant to another sub-account or the Depositor's general account, or from the Depositor's general account to the Registrant.

(c) If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and complete the other columns of the table for that fee.

3. *Annual Charges Other Than [Portfolio Company] Operating Expenses.*

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) For "Cost of Insurance," the Registrant should disclose the minimum and maximum charges that may be imposed for a Contract.

(c) "[Annual] Maintenance Fee" includes any Contract, account, or similar fee imposed on any recurring basis. Any non-recurring Contract, account, or similar fee should be included in the "Transaction Fees" table.

(d) "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

(e) If the Registrant (or any other party pursuant to an agreement with the Registrant) imposes any other recurring charge other than annual Portfolio Company Operating Expenses, add another caption describing it and complete the other columns of the table for that charge.

4. *Annual [Portfolio Company] Operating Expenses.*

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) If a Registrant has multiple sub-accounts, it should disclose the minimum and maximum expenses of any Portfolio Companies for each line item. For example, if a Registrant has five sub-accounts with management fees of 0.50%, 0.70%, 1.00%, 1.10%, and 1.25%, respectively, it should disclose that management fees range from 0.50% to 1.25%. The minimum and maximum amounts disclosed for "Total [Portfolio Company] Annual Expenses" should be the minimum and maximum "Total [Portfolio Company] Annual Expenses" for any Portfolio Company, and not the sum of the minimum and maximum amounts disclosed for the individual line items. For example, assume a Registrant has three sub-accounts. Sub-account 1 has management fees of 0.50%, 12b-1 fees of 0.25%, and other expenses of 0.30%; sub-account 2 has management fees of 0.90%, 12b-1 fees of 0.00%, and other expenses of 0.25%; and sub-account 3 has management fees of 1.00%, 12b-1 fees of 0.00%, and other expenses of 0.25%. The minimum and maximum amounts to be disclosed in the table are: management fees—0.50%-1.00%; 12b-1 fees: 0.00%-0.25%; other expenses—0.25%-0.30%; total [Portfolio Company] annual expenses—1.05%-1.25%. The total [Portfolio Company] annual expenses are the expenses of sub-accounts 1 and 3, respectively, not the sum of the minimum and maximum amounts disclosed for the individual line items, which would be 0.75%-1.55%.

(c) "Management Fees" include investment advisory fees (including any fees based on a Portfolio Company's performance), any other management fees payable to a Portfolio Company's investment adviser or its affiliates, and administrative fees payable to a Portfolio Company's investment adviser or its affiliates that are not included as "Other Expenses."

(d) "Distribution [and/or Service] (12b-1) Fees" include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b-1 [17 CFR 270.12b-1]. Under an appropriate caption or subcaption of "Other Expenses," disclose the amount of any distribution or similar expenses deducted from a Portfolio Company's assets other than pursuant to a rule 12b-1 plan.

(e)(i) "Other Expenses" include all expenses not otherwise disclosed in the table that are deducted from a Portfolio Company's assets. The amount of expenses deducted from a Portfolio Company's assets are the amounts shown as expenses in the Portfolio Company's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]).

(ii) "Other Expenses" do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred by any Portfolio Company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum "Other Expenses" would have been had the extraordinary expenses been included.

(f)(i) Base the percentages of "Annual [Portfolio Company] Operating Expenses" on amounts incurred during the most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If a Portfolio Company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the Portfolio Company. If the Registrant or a Portfolio Company has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Annual [Portfolio Company] Operating Expenses."

(ii) If there have been any changes in "Annual [Portfolio Company] Operating Expenses" that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in "Annual [Portfolio Company] Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in "Annual [Portfolio Company] Operating Expenses" does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in a Portfolio Company's assets.

(g) A Registrant may reflect minimum and maximum actual [Portfolio Company] operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

5. *New Registrants.* For purposes of this Item, a "New Registrant" is a Registrant (or sub-account of the Registrant) that does not include in Form N–6 financial statements reporting operating results or that includes financial statements for the Registrant's (or sub-account's) initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Registrants.

(a) Base the percentages in "Annual [Portfolio Company] Operating Expenses" on payments that will be made, but include in expenses amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of "Other Expenses." Disclose in a footnote to the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

(b) A New Registrant may reflect in a footnote to the table expense reimbursement or fee waiver arrangements that are expected to reduce any minimum or maximum [Portfolio Company] operating expense or the estimate of minimum or maximum "Other Expenses" (regardless of whether the arrangement has been guaranteed). If the New Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

Item 4. General Description of Registrant, Depositor, and Portfolio Companies

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below:

(a) *Depositor.* Provide the name and address of the Depositor.

(b) *Registrant.* Briefly describe the Registrant. Include a statement indicating that:

(1) income, gains, and losses credited to, or charged against, the Registrant reflect the Registrant's own investment experience and not the investment experience of the Depositor's other assets;

(2) the assets of the Registrant may not be used to pay any liabilities of the Depositor other than those arising from the Contracts; and

(3) the Depositor is obligated to pay all amounts promised to Contractowners under the Contracts.

(c) *Portfolio Companies.* Briefly describe the Registrant's sub-accounts and each Portfolio Company. For each Portfolio Company, include:

(1) its name;

(2) its type (*e.g.*, money market fund, bond fund, balanced fund, etc.) or a brief statement concerning its investment objectives; and

(3) its investment adviser and any sub-investment adviser.

Instructions.

1. Do not describe sub-accounts that fund obligations of the Depositor under contracts that are not offered by this prospectus.

2. Registrants are not required to include detailed information about Portfolio Companies in the prospectus. If a Portfolio Company's name describes its type, a Registrant need not separately provide the Portfolio Company's type or a statement concerning its investment objectives.

(d) *Portfolio Company Prospectus.* State conspicuously how investors may obtain a prospectus and, if available, a fund profile, containing more complete information on each Portfolio Company.

(e) *Voting.* Concisely discuss the rights of Contractowners to instruct the Depositor on the voting of shares of the Portfolio Companies, including the manner in which votes will be allocated.

Item 5. Charges

(a) *Description.* Briefly describe all charges deducted from premiums, cash value, assets of the Registrant, or any other source (*e.g.*, sales loads, premium and other taxes, administrative and transaction charges, risk charges, contract loan charges, cost of insurance, and rider charges). Indicate whether each charge will be deducted from premium payments, cash value, the Registrant's assets, the proceeds of withdrawals or surrenders, or some other source. When possible, specify the amount of any charge as a percentage or dollar figure (*e.g.*, 0.95% of average daily net assets, $5 per exchange, $5 per thousand dollars of face amount). For recurring charges, specify the frequency of the deduction (*e.g.*, daily, monthly, annually). Identify the person who receives the amount deducted, briefly explain what is provided in consideration for each charge, and explain the extent to which the charge can be modified.

Instructions.

1. Describe the sales loads applicable to the Contract and how sales loads are charged and calculated, including the factors affecting the computation of the amount of the sales load. If the Contract has a front-end sales load, describe the sales load as a percentage of the applicable measure of premium payments (*e.g.*, actual premiums paid, target or guideline premiums). For Contracts with a deferred sales load, describe the sales load as a percentage of the applicable measure of premium payments (or other basis) that the deferred sales load may represent. Percentages should be shown in a table. Identify any events on which a deferred sales load is deducted (*e.g.*, surrender, partial surrender, increase or decrease in face amount). The description of any deferred sales load should include how the deduction will be allocated among sub-accounts of the Registrant and when, if ever, the sales load will be waived (*e.g.*, if the Contract provides a free withdrawal amount).

2. Identify the factors upon which the cost of insurance charge will be based, including the insurer's amount at risk and the expected longevity of the insureds. Identify the factors reflected in the rate scale, and specify whether the mortality charges guaranteed in the contracts differ from the current charges. Identify the factors that affect the amount at risk, including investment performance, payment of premiums, and charges. If the Depositor intends to use simplified underwriting or other underwriting methods that would cause healthy individuals to pay higher cost of insurance charges than they would pay if the insurance company used conventional underwriting methods, state that the cost of insurance charges are higher for healthy individuals when this method of underwriting is used.

3. If the Contract's charge for premium or other taxes varies according to jurisdiction, identification of the range of current premium or other taxes is sufficient.

4. Identify charges that may be different in amount or method of computation when imposed in connection with, or subsequent to, increases in face amount of a Contract and briefly describe the differences.

(b) *Portfolio Company Charges.* State that charges are deducted from and expenses paid out of the assets of the Portfolio Companies that are described in the prospectuses for those companies.

(c) *Incidental Insurance Charges.* If incidental insurance benefits (as defined in Rules 6e-2 and 6e-3(T) [17 CFR 270.6e-2, 17 CFR 270.6e-3(T)]) are offered along with the Contract, state that charges also will be made for those benefits.

(d) *Operating and Organizational Expenses.* Describe the type of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and identify the period over which the amortization will occur.

Item 6. General Description of Contracts

(a) *Contract Rights.* Identify the person or persons (*e.g.*, the Contract owner, insured, or beneficiary) who have material rights under the Contracts, and the nature of those rights.

(b) *Contract Limitations.* Briefly describe any provisions for and limitations on:

(1) allocation of premiums among sub-accounts of the Registrant;

(2) transfer of Contract values between sub-accounts of the Registrant; and

(3) conversion or exchange of Contracts for another contract, including a fixed or variable annuity or life insurance contract.

Instruction. In discussing conversion or exchange of Contracts, the Registrant should include any time limits on conversion or exchange, the name of the company issuing the other contract and whether that company is affiliated with the issuer of the Contract, and how the cash value of the Contract will be affected by the conversion or exchange.

(c) *Contract or Registrant Changes.* Briefly describe the changes that can be made in the Contracts or the operations of the Registrant by the Registrant or the Depositor, including:

(1) why a change may be made (*e.g.*, changes in applicable law or interpretations of law);

(2) who, if anyone, must approve any change (*e.g.*, the Contract owner or the Commission); and

(3) who, if anyone, must be notified of any change.

Instruction. Describe only those changes that would be material to a purchaser of the Contracts, such as a reservation of the right to deregister the Registrant under the Investment Company Act. Do not describe possible non-material changes, such as changing the time of day at which Contract values are determined.

(d) *Other Benefits.* Identify any other material incidental benefits in the Contracts.

(e) *Class of Purchasers.* Disclose any limitations on the class or classes of purchasers to whom the Contracts are being offered.

Item 7. Premiums

(a) *Purchase Procedures.* Describe the provisions of the Contract that relate to premiums and the procedures for purchasing a Contract, including:

(1) the minimum initial and subsequent premiums required and any limitations on the amount and the frequency of premiums that will be accepted. If there are separate limits for each sub-account, state these limits;

(2) whether required premiums, if any, are payable for the life of the Contract or some other term;

(3) whether payment of certain levels of premiums will guarantee that the Contract will not lapse regardless of the Contract's cash value;

(4) if applicable, under what circumstances premiums may be required in order to avoid lapse and how the amount of the additional premiums will be determined;

(5) if applicable, under what circumstances nonpayment of a required premium will not cause the Contract to lapse;

(6) if applicable, under what circumstances premiums in addition to the required premiums will be permitted; and

(7) if applicable, whether the level of the Contract's required premiums may change and, if so, how the amount of the change will be determined.

(b) *Premium Amount.* Briefly describe the factors that determine the amount of any required premiums (*e.g.*, face amount, death benefit option, and charges and expenses).

(c) *Premium Payment Plans.* Identify the premium payment plans available. Include the available payment frequencies, payment facilities such as employee payroll deduction plans and preauthorized checking arrangements, and any special billing arrangements. Indicate whether the premium payment plan or schedule may be changed.

(d) *Premium Due Dates.* Briefly explain the provisions of the Contract that relate to premium due dates and the operation of any grace period, including the effect of the insured's death during the grace period.

(e) *Automatic Premium Loans.* If applicable, briefly describe the circumstances under which required premiums may be paid by means of an automatic premium loan.

(f) *Sub-Account Valuation.* Describe the procedures for valuing sub-account assets, including:

(1) an explanation of when the required premiums and additional premiums are credited to the Contract's cash value in the sub-accounts, and the basis (*e.g.*, accumulation unit value) on which premiums are credited;

(2) an explanation, to the extent applicable, that premiums are credited to the Contract's cash value on the basis of the sub-account valuation next determined after receipt of a premium;

Instruction. If, in any case, a delay occurs between the receipt of premiums and the crediting of premiums to the sub-accounts (*e.g.*, a delay during the "free-look" period), describe where the premiums are held in the interim.

(3) an explanation of when valuations of the assets of the sub-accounts are made; and

(4) a statement identifying in a general manner any national holidays when sub-account assets will not be valued and specifying any additional local or regional holidays when sub-account assets will not be valued.

Instruction. In responding to this paragraph, a Registrant may use a list of specific days or any other means that effectively communicates the information (*e.g.*, explaining that sub-account assets will not be valued on the days on which the New York Stock Exchange is closed for trading).

Item 8. Death Benefits and Contract Values

(a) *Death Benefits.* Briefly describe the death benefits available under the Contract.

Instruction. Include:

(i) when insurance coverage is effective;

(ii) when the death benefit is calculated and payable;

(iii) how the death benefit is calculated;

(iv) who has the right to choose the form of benefit and the procedure for choosing the form of benefit, including when the choice is made and whether the choice is revocable;

(v) the forms the benefit may take and the form of benefit that will be provided if a particular form has not been elected; and

(vi) whether there is a minimum death benefit guarantee associated with the Contract.

Also describe if and how a Contract owner may increase or decrease the face amount, including the minimum and the maximum amounts, any requirement of additional evidence of insurability, and whether charges, including sales load, are affected.

(b) *Charges and Contract Values.* Explain how the investment performance of the Portfolio Companies, expenses, and deduction of charges affect Contract values and death benefits.

Item 9. Surrenders, Partial Surrenders, and Partial Withdrawals

(a) *Surrender.* Briefly describe how a Contract owner can surrender a Contract, including any limits on the ability to surrender, how the proceeds are calculated, and when they are payable.

(b) *Partial Surrender and Withdrawal.* Indicate generally whether and under what circumstances partial surrenders and partial withdrawals are available under a Contract, including the minimum and maximum amounts that may be surrendered or withdrawn, any limits on their availability, how the proceeds are calculated, and when the proceeds are payable.

(c) *Effect of Partial Surrender and Withdrawal* Briefly describe whether partial surrenders or partial withdrawals will affect a Contract's cash value or death benefit and whether any charge(s) will apply.

(d) *Sub-Account Allocation.* Describe how partial surrenders and partial withdrawals will be allocated among the sub-accounts.

Instruction The Registrant should generally describe the terms and conditions that apply to these transactions. Technical information regarding the determination of amounts available to be surrendered or withdrawn should be included in the SAI.

(e) *Revocation Rights* Briefly describe any revocation rights (*e.g.*, "free-look" provisions), including a description of how the amount refunded is determined, the method for crediting earnings to premiums during the free-look period, and whether investment options are limited during the free look period.

Item 10. Loans

Briefly describe the loan provisions of the Contract, including any of the following that are applicable.

(a) *Availability of Loans.* A brief statement that a portion of the Contract's cash surrender value may be borrowed.

(b) *Limitations.* Any limits on availability of loans (*e.g.*, a prohibition on loans during the first contract year).

(c) *Interest* A statement of the amount of interest charged on the loan and the amount of interest credited to the Contract in connection with the loaned amount

(d) *Effect on Cash Value and Death Benefit.* A brief explanation that amounts borrowed under a Contract do not participate in a Registrant's investment experience and that loans, therefore, can affect the Contract's cash value and death benefit whether or not the loan is repaid. Also, a brief explanation that the cash surrender value and the death proceeds payable will be reduced by the amount of any outstanding Contract loan plus accrued interest.

(e) *Procedures.* The loan procedures, including how and when amounts borrowed are transferred out of the Registrant and how and when amounts repaid are credited to the Registrant.

Item 11. Lapse and Reinstatement

(a) *Lapse.* State when and under what circumstances a Contract will lapse.

(b) *Lapse Options.* Describe briefly any lapse options available. Indicate those that will not apply unless they are elected and those that will apply in the absence of an election. Indicate whether the availability of any of the lapse options is limited.

(c) *Effect of Lapse.* Describe briefly the factors that will determine the amount of insurance coverage provided under the available lapse options. Describe concisely how the cash value, surrender value, and death benefit will be determined. If these values and benefits will be determined in the same manner as prior to lapse, a statement to that effect is sufficient.

(d) *Reinstatement.* State under what circumstances a Contract may be reinstated. Explain any requirements for reinstatement, including charges to be paid by the Contractowner, outstanding loan repayments, and evidence of insurability.

Item 12. Taxes

(a) *Tax Consequences.* Describe the material tax consequences to the Contractowner and beneficiary of buying, holding, exchanging, or exercising rights under the Contract.

Instruction. Discuss the taxation of death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the Contract, as well as the tax benefits accorded the Contract and other material tax consequences. Describe, if applicable, whether the tax consequences vary with different uses of the Contract.

(b) *Effect.* Describe the effect, if any, of taxation on the determination of cash values or sub-account values.

Item 13. Legal Proceedings

Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, the Registrant's principal underwriter, or the Depositor is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any legal proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Registrant, the ability of the principal underwriter to perform its contract with the Registrant, or the ability of the Depositor to meet its obligations under the Contracts.

Item 14. Financial Statements

If all of the required financial statements of the Registrant and the Depositor (see Item 24) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how investors may obtain any financial statements not in the Statement of Additional Information.

Part B: Information Required in a Statement of Additional Information

Item 15. Cover Page and Table of Contents

(a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

(1) The Registrant's name.

(2) The Depositor's name.

(3) A statement or statements:

(A) That the SAI is not a prospectus;

(B) How the prospectus may be obtained; and

(C) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI.

(4) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents.* Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 16. General Information and History

(a) *Depositor.* Provide the date and form of organization of the Depositor, the name of the state or other jurisdiction in which the Depositor is organized, and a description of the general nature of the Depositor's business.

Instruction. The description of the Depositor's business should be short and need not list all of the businesses in which the Depositor engages or identify the jurisdictions in which it does business if a general description (e.g., "life insurance" or "reinsurance") is provided.

(b) *Registrant.* Provide the date and form of organization of the Registrant and the Registrant's classification pursuant to Section 4 [15 U.S.C. 80a–4] (i.e., a separate account and a unit investment trust).

(c) *History of Depositor and Registrant.* If the Depositor's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registrant have been suspended at any time, or if sales of contracts offered by the Depositor have been suspended during the past five years, briefly describe the reasons for and results of the suspension. Briefly describe the nature and results of any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment, or succession of Depositor during the past five years.

(d) *Ownership of Sub-Account Assets.* If 10 percent or more of the assets of any sub-account are not attributable to Contracts or to accumulated deductions or reserves (*e.g.*, initial capital contributed by the Depositor), state what percentage those assets are of the total assets of the Registrant. If the Depositor, or any other person controlling the assets, has any present intention of removing the assets from the sub-account, so state.

(e) *Control of Depositor.* State the name of each person who controls the Depositor and the nature of its business.

Instruction. If the Depositor is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 17. Services

(a) *Expenses Paid by Third Parties.* Describe all fees, expenses, and costs of the Registrant that are to be paid by persons other than the Depositor or the Registrant, and identify those persons.

(b) *Service Agreements.* Summarize the substantive provisions of any management-related service contract that may be of interest to a purchaser of the Registrant's securities, under which services are provided to the Registrant, unless the contract is described in response to some other item of this form. Indicate the parties to the contract, and the total dollars paid and by whom for each of the past three years.

Instructions.

1. The term "management-related service contract" includes any contract with the Registrant to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Registrant, but does not include the following:

(a) Any agreement with the Registrant to act as custodian or agent to administer purchases and redemptions under the Contracts; and

(b) Any contract with the Registrant for outside legal or auditing services, or contract for personal employment entered into with the Registrant in the ordinary course of business.

2. In summarizing the substantive provisions of any management-related service contract, include the following:

(a) The name of the person providing the service;

(b) The direct or indirect relationships, if any, of the person with the Registrant, its Depositor, or its principal underwriter; and

(c) The nature of the services provided, and the basis of the compensation paid for the services for the Registrant's last three fiscal years.

(c) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (b) or another item of this form, identify and state the principal business address of any person who provides significant administrative or business affairs management services for the Registrant (*e.g.*, an "Administrator," "Sub-Administrator," "Servicing Agent"), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Registrant's custodian and independent public accountant and describe generally the services performed by each.

(3) If the Registrant's assets are held by a person other than the Depositor, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person.

(4) If an affiliated person of the Registrant or the Depositor, or an affiliated person of the affiliated person, acts as administrative or servicing agent for the Registrant, describe the services the person performs and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction. No disclosure need be given in response to paragraph (c)(4) of this item for an administrative or servicing agent who is also the Depositor.

(5) If the Depositor is the principal underwriter of the Contracts, so state.

Item 18. Premiums

(a) *Administrative Procedures.* Discuss generally the Registrant's administrative rules applicable to premium payments, to the extent that they are not discussed in the prospectus.

Instruction. Examples include information regarding any condition applicable to changes in premium payment schedules, any limitations on prepayments of premiums, any relevant rules for classifying payments made other than in response to a bill or in an amount other than the amount billed for, etc.

(b) *Automatic Premium Loans.* If the contract provides an automatic premium loan option, describe the option, including the circumstances under which it will be used to pay a required premium and whether, and how, interest will be charged on the loan. Describe any effect not described in the prospectus that an automatic premium loan could have on the Contract (*e.g.*, how automatic premium loans affect cash value).

Item 19. Additional Information About Operation of Contracts and Registrant

(a) *Incidental Benefits.* To the extent not described in the prospectus, explain the manner in which the purchase or operation of other incidental benefits affects the exercise of rights and the determination of benefits under the Contract such as whether the Contract or any rider provides for a change of insured or for all or a portion of the death benefit to be paid while the insured is still alive.

(b) *Surrender and Withdrawal.* To the extent not described in the prospectus, explain the Contract's surrender and withdrawal provisions.

(c) *Material Contracts Relating to the Registrant.* Disclose any material contract relating to the operation or administration of the Registrant.

Item 20. Underwriters

(a) *Identification.* Identify each principal underwriter (other than the Depositor) of the Contracts, and state its principal business address. If the principal underwriter is affiliated with the Registrant, the Depositor, or any affiliated person of the Registrant or the Depositor, identify how they are affiliated (*e.g.*, the principal underwriter is controlled by the Depositor).

(b) *Offering and Commissions.* For each principal underwriter distributing Contracts of the Registrant, state:

(1) whether the offering is continuous; and

(2) the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the Registrant's last three fiscal years.

(c) *Other Payments.* With respect to any payments made by the Registrant to an underwriter of or dealer in the Contracts during the Registrant's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Registrant. Do not include information about:

(1) Payments made through deduction from premiums paid at the time of sale of the Contracts; or

(2) Payments made from cash values upon full or partial surrender of the Contracts or from an increase or decrease in the face amount of the Contracts.

Instructions.

1. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the Registrant's last three fiscal years.

3. Information need not be given about payments made under any contract to act as administrative or servicing agent.

4. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

(d) *Commissions to Dealers.* State the commissions paid to dealers as a percentage of premiums.

Item 21. Additional Information About Charges

(a) *Sales Load.* Describe the method that will be used to determine the sales load on the Contracts offered by the Registrant.

(b) *Special Purchase Plans.* Describe any special purchase plans (*e.g.*, group life insurance plans) or methods that reflect scheduled variations in, or elimination of, any applicable charges (*e.g.*, group discounts, waiver of deferred sales loads for a specified percentage of cash value, investment of proceeds from another Contract, exchange privileges, employee benefit plans, or the terms of a merger, acquisition, or exchange offer made pursuant to a plan of reorganization). Identify each class of individuals or transactions to which the plans or methods apply, including officers, directors, members of the board of managers, or employees of the Depositor, underwriter, Portfolio Companies, or investment adviser to Portfolio Companies, and the amount of the reductions, and state from whom additional information may be obtained. For special purchase plans or methods that reflect variations in, or elimination of, charges other than according to a fixed schedule, describe the basis for the variation or elimination (*e.g.*, the size of the purchaser, a prior existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).

(c) *Underwriting Procedures.* Briefly identify underwriting procedures used in connection with the Contract and any effect of different types of underwriting on the charges in the Contract. Specify the basis of the mortality charges guaranteed in the Contracts.

(d) *Increases in Face Amount.* Describe in more detail the charges assessed on increases in face amount, including the procedures used following an increase in face amount to allocate cash values and premium payments between the original Contract and incremental Contracts.

Item 22. Lapse and Reinstatement

To the extent that the prospectus does not do so, describe the lapse and reinstatement provisions of the Contract. Include a discussion of any time limits that apply, how the charge to reinstate is determined, and any other conditions that apply to reinstatement. Describe the features of any lapse options not described in the prospectus, including any factors that will determine the amount or duration of the insurance coverage, and the limitations and conditions on availability of each lapse option. Identify which contract transactions (e.g., loans, partial withdrawals and surrenders, transfers) are available while the Contract is continued under a lapse option. Indicate when limits on contract transactions are different from those that apply prior to lapse.

Item 23. Loans

(a) *Loan Provisions.* To the extent that the prospectus does not do so, explain the loan provisions of the Contract.

(b) *Amount Available.* State how the amount available for a policy loan is calculated.

(c) *Effect on Cash Value and Sub-Accounts.* Describe how loans and loan repayments affect cash value and how they are allocated among the sub-accounts.

(d) *Interest.* Describe how interest accrues on the loan, when it is payable, and how interest is treated if not paid. Explain how interest earned on the loaned amount is credited to the Contract and allocated to the sub-accounts.

(e) *Other Effects.* Describe any other effect not already described in the prospectus that a loan could have on the Contract (*e.g.*, the effect of a Contract loan in excess of cash value).

Item 24. Financial Statements

(a) *Registrant.* Provide financial statements of the Registrant.

Instruction. Include, in a separate section, the financial statements and schedules required by Regulation S–X [17 CFR 210]. Financial statements of the Registrant may be limited to:

(i) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(ii) An audited statement of operations for the most recent fiscal year conforming to the requirements of Rule 6–07 of Regulation S–X [17 CFR 210.6–07];

(iii) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles; and

(iv) Audited statements of changes in net assets conforming to the requirements of Rule 6–09 of Regulation S–X [17 CFR 210.6–09] for the two most recent fiscal years.

(b) *Depositor.* Provide financial statements of the Depositor.

Instructions.

1. Include, in a separate section, the financial statements and schedules of the Depositor required by Regulation S–X. If the Depositor would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Forms N–3, N–4, or N–6, its financial statements may be prepared in accordance with statutory requirements. The Depositor's financial statements must be prepared in accordance with generally accepted accounting principles if the Depositor prepares financial information in accordance with generally accepted accounting principles for use by Depositor's parent.

2. All statements and schedules of the Depositor required by Regulation S–X, except for the consolidated balance sheets described in Rule 3–01 of Regulation S–X [17 CFR 210.3–01], and any notes to these statements or schedules, may be omitted from Part B and instead included in Part C of the registration statement. If any of this information is omitted from Part B and included in Part C, the consolidated balance sheets included in Part B should be accompanied by a statement that additional financial information about the Depositor is available, without charge, upon request. When a request for the additional financial information is received, the Registrant should send the information within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. Notwithstanding Rule 3–12 of Regulation S–X [17 CFR 210.3–12], the financial statements of the Depositor need not be more current than as of the end of the most recent fiscal year of the Depositor. In addition, when the anticipated effective date of a registration statement falls within 90 days subsequent to the end of the fiscal year of the Depositor, the registration statement need not include financial statements of the Depositor more current than as of the end of the third fiscal quarter of the most recently completed fiscal year of the Depositor unless the audited financial statements for such fiscal year are available. The exceptions to Rule 3–12 of Regulation S–X contained in this Instruction 3 do not apply when:

(i) The Depositor's financial statements have never been included in an effective registration statement under the Securities Act of a separate account that offers variable annuity contracts or variable life insurance contracts; or

(ii) The balance sheet of the Depositor at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000; or

(iii) The balance sheet of the Depositor at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the Securities Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the Investment Company Act) would show a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000. If two fiscal quarters end within the 135 day period, the Depositor may choose either for purposes of this test.

4. Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

Item 25. Performance Data

(a) *Calculation.* If the Registrant advertises any performance data, include an explanation of how performance is calculated, whether the data reflects all charges, the nature of any charges that are not reflected in the data, and the effect on performance of excluding those charges. If the Registrant advertises its performance calculated in more than one manner, briefly explain the material differences between the calculations.

(b) *Quotation.* For each sub-account for which the Registrant advertises any performance data, furnish:

(1) a quotation of performance, computed by each of the methods used in advertising; and

(2) the length of and the last day in the period used in computing the quotation.

Item 26. Illustrations

The Registrant may, but is not required to, include a table of hypothetical illustrations of death benefits, cash surrender values, and cash values in either the prospectus or the SAI. The following standards should be used to prepare any table of hypothetical illustrations that is included in the prospectus or the SAI:

(a) *Narrative Information.* A clear and concise explanation of the illustrations should precede the illustrations.

(b) *Headings.* The headings should contain the following information: sex, age, rating classification (*e.g.*, nonsmoker, smoker, preferred, or standard), premium amount and payment schedule, face amount, and death benefit option.

(c) *Premiums, Ages.* Premium amounts used in the illustrations should not be unduly larger or smaller than the actual or expected average Contract size. Ages used in the illustrations should be representative of actual or expected Contract sales.

(d) *Rating Classifications.* Illustrations should be shown for the rating classification with the greatest number of outstanding Contracts (or expected Contracts in the case of a new Contract).

(e) *Years.* Illustrated values should be provided for Contract years one through ten, for every five years beyond the tenth Contract year, and for the year of Contract maturity.

(f) *Illustrated Values.* Death benefits and cash surrender values should be illustrated at two rates of return and two levels of charges (described in paragraphs (g) and (i)). The Registrant may also illustrate cash values, but cash values must be accompanied by corresponding cash surrender values. All illustrated values should be determined as of the end of the Contract year.

(g) *Rates of Return.* The Registrant should use gross rates of return of 0% and one other rate not greater than 10%. Additional gross rates of return no greater than 10% may be used. Explain that the gross rates of return used in the illustrations do not reflect the deductions of the charges and expenses of the Portfolio Companies.

(h) *Portfolio Company Charges.* Portfolio Company management fees and other Portfolio Company charges and expenses should be reflected using the arithmetic average of those charges and expenses incurred during the most recent fiscal year for all of the available Portfolio Companies or any materially greater amount expected to be incurred during the current fiscal year. In determining charges and expenses incurred during the most recent fiscal year or expected to be incurred during the current fiscal year, include amounts that would have been incurred absent expense reimbursement or fee waiver arrangements.

(i) *Other Charges.* Values should be illustrated using both current and guaranteed maximum charges at both the 0% rate of return and one other rate of return no greater than 10%. Illustrated values should accurately reflect all charges deducted under the Contract (*e.g.*, mortality and expense risk, administrative, cost of insurance) as well as the actual timing of the deduction of those charges (*e.g.*, daily, monthly, annually). For example, for a Contract with a mortality and expense risk charge that is deducted from sub-account assets at a given annual rate, the illustrated values will be lower if the charge is deducted from assets on a daily basis rather than on a monthly or annual basis.

(j) *Additional Information.* Subject to the requirement set out in General Instruction C.3.(b), additional information may be shown as part of the illustrations, provided that it is consistent with the standards of this Item 26.

Part C: Other Information

Item 27. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Board of Directors Resolution.* The resolution of the board of directors of the Depositor authorizing the establishment of the Registrant.

(b) *Custodian Agreements.* All agreements for custody of securities and similar investments of the Registrant, including the schedule of remuneration.

(c) *Underwriting Contracts.* Underwriting or distribution contracts between the Registrant or Depositor and a principal underwriter and agreements between principal underwriters or the Depositor and dealers.

(d) *Contracts.* The form of each Contract, including any riders or endorsements.

(e) *Applications.* The form of application used with any Contract provided in response to (d) above.

(f) *Depositor's Certificate of Incorporation and By-Laws.* The Depositor's current certificate of incorporation or other instrument of organization and by-laws and any related amendment.

(g) *Reinsurance Contracts.* Any contract of reinsurance related to a Contract.

(h) *Participation Agreements.* Any participation agreement or other contract relating to the investment by the Registrant in a Portfolio Company.

(i) *Administrative Contracts.* Any contract relating to the performance of administrative services in connection with administering a Contract.

(j) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(k) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued and represent binding obligations of the Depositor.

(l) *Actuarial Opinion.* If illustrations are included in the registration statement as permitted by Item 26, an opinion of an actuarial officer of the Depositor as to those illustrations indicating that:

(1) the illustrations of cash surrender values, cash values, death benefits, and/or any other values illustrated are consistent with the provisions of the Contract and the Depositor's administrative procedures;

(2) the rate structure of the Contract, and the assumptions selected for the illustrations (including sex, age, rating classification, and premium amount and payment schedule), do not result in the relationship between premiums and benefits, as shown in the illustrations, being materially more favorable than for a substantial majority of other prospective Contractowners; and

(3) the illustrations are based on a commonly used rating classification and premium amounts and ages appropriate for the markets in which the Contract is sold.

(m) *Calculation.* If illustrations are included in the registration statement as permitted by Item 26, one sample calculation for each item illustrated, *e.g.*, cash surrender value, cash value, and death benefits, showing how the illustrated values for the fifth Contract year have been calculated. Demonstrate how the annual investment returns of the sub-accounts were derived from the hypothetical gross rates of return, how charges against sub-account assets were deducted from the annual investment returns of the sub-accounts, and how the periodic deductions for cost of insurance and other Contract charges were made to arrive at the illustrated values. Describe how the calculation would differ for other years.

(n) *Other Opinions.* Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].

(o) *Omitted Financial Statements.* Financial statements omitted from Item 24.

(p) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, Depositor, underwriter, or initial Contractowners and written assurances from the Depositor or initial Contractowners that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(q) *Redeemability Exemption.* Disclosure (if not provided elsewhere in the registration statement) of insurance procedures for which the Registrant and Depositor claim any exemption pursuant to rule 6e–2(b)(12)(ii) or rule 6e–3(T)(b)(12)(iii) under the Investment Company Act.

Item 28. Directors and Officers of the Depositor

Provide the following information about each director or officer of the Depositor:

(1) Name and principal business address	(2) Positions and offices with depositor

Instruction. Registrants are required to provide the above information only for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the Contracts, and for executive officers including the Depositor's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

Item 29. Persons Controlled by or Under Common Control with the Depositor or the Registrant

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Depositor or the Registrant. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions:

1. Include the Registrant and the Depositor in the list or diagram and show the relationship of each company to the Registrant and Depositor and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 30. Indemnification

State the general effect of any contract, arrangements, or statute under which any underwriter or affiliated person of the Registrant is insured or indemnified against any liability incurred in his or her official capacity, other than insurance provided by any underwriter or affiliated person for his or her own protection.

Item 31. Principal Underwriters

(a) *Other Activity.* State the name of each investment company (other than the Registrant) for which each principal underwriter currently distributing the Registrant's securities also acts as a principal underwriter, depositor, sponsor, or investment adviser.

(b) *Management.* Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 20:

(1) Name and principal business address	(2) Positions and offices with depositor

Instruction. If a principal underwriter is the Depositor or an affiliate of the Depositor, and is also an insurance company, the above information for officers or directors need only be provided for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the Contracts, and for executive officers including the Depositor's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

(c) *Compensation From the Registrant.* Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Registrant during the Registrant's last fiscal year by each principal underwriter:

(1) Name of principal underwriter	(2) Net underwriting discounts and commissions	(3) Compensation on events occasioning the deduction of a deferred sales load	(4) Brokerage commissions	(5) Other compensation

Instructions.

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).

2. Exclude information about bona fide contracts with the Registrant or its Depositor for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registrant or its Depositor in the ordinary course of business.

3. Exclude information about any service for which total payments of less than $5,000 were made during each of the Registrant's last three fiscal years.

4. Exclude information about payments made under any agreement whereby another person contracts with the Registrant or its Depositor to perform as custodian or administrative or servicing agent.

Item 32. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) [15 U.S.C. 80a-30(a)] and the rules under that section.

Item 33. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the Registrant's last three fiscal years.

Instructions.

1. The instructions to Item 17 also apply to this Item.

2. Exclude information about any service provided for payments totaling less than $5,000 during each of the Registrant's last three fiscal years.

Item 34. Fee Representation

Provide a representation of the Depositor that the fees and charges deducted under the Contracts, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Depositor.

SIGNATURES

Pursuant to the requirements of (the Securities Act and) the Investment Company Act, the Registrant (certifies that it meets all of the requirements for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of _____ and State of _____ on the day of _____

_____
Registrant

By _____
(Signature and Title)

By _____
(Depositor)

By _____
(Name of officer of Depositor)

00 _____
(Title)

Instruction. If the registration statement is being filed only under the Securities Act or under both the Securities Act and the Investment Company Act, it should be signed by both the Registrant and the Depositor. If the registration statement is being filed only under the Investment Company Act, it should be signed only by the Registrant.

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

_____
(Signature)

(Title)

_____
(Date)

Dated: March 13, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

Appendix A

20[**Note:** Appendix A to the preamble will not appear in the *Code of Federal Regulations*.]

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed Form N–6, if adopted, would not have a significant economic impact on a substantial number of small entities. Form N–6 would be used by insurance company separate accounts registered as unit investment trusts that offer variable life insurance policies for registration under the Investment Company Act of 1940 and offer securities under the Securities Act of 1933.

Proposed Form N–6 generally would not have a significant economic impact on small entities. Few, if any, registered insurance company separate accounts have assets of less than $50,000,000, when separate account assets are aggregated with the assets of the sponsoring insurance company. As a result, few, if any, small entities within the definitions contained in rule 0–10 under the Investment Company Act and rule 157 under the Securities Act would be affected by proposed Form N–6.

Dated: March 2, 1998.

Arthur Levitt,

Chairman.

[FR Doc. 98–7072 Filed 3–20–98; 8:45 am]

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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The President

Presidential Determination No. 98–19 of March 13, 1998

Military Drawdown for Jordan

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the laws and Constitution of the United States, including Title III (Military Assistance) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118) ("Title III"), I hereby direct the drawdown of defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training of an aggregate value of $25,000,000 under the authority of the fifth proviso under the heading "Foreign Military Financing Program" in Title III for Jordan for the purposes of part II of the Foreign Assistance Act of 1961.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, March 13, 1998.

[FR Doc. 98–7802
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–1 FIR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Assessment Rate and Establishment of Late Payment and Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with modifications, the provisions of an interim final rule that established an assessment rate for the 1997–98 and subsequent fiscal periods to cover expenses incurred by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930. That rule also established an interest rate and late payment charge on delinquent assessments owed by handlers under the tart cherry marketing order. The Board is responsible for local administration of the marketing order. Authorization to assess tart cherry handlers will enable the Board to incur expenses that are reasonable and necessary to administer the program. The interest rate and late payment charges will contribute to the efficient operation of the program by ensuring adequate funds are available to cover budgeted expenses incurred under the marketing order. The 1997–98 fiscal period covers the period July 1, through June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone:(202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The tart cherry marketing order in section 930.31 provides that one of the duties of the Board is to submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period. The recommendations concerning the proposed assessment rate are discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

At its meeting on January 8 and 9, 1997, the Board unanimously recommended expenditures of $650,000, and an assessment rate of $0.0025 per pound of tart cherries handled during the 1997–1998 crop year and subsequent crop years. The recommended expenditure figure covers expenses for the 1997–98 fiscal period, as well as expenses incurred in connection with the start-up of the program beginning on January 1, 1997, when the first public meeting of the newly formed Board took place. The tart cherry marketing order became effective on September 25, 1996. The Department has approved the Board's 1997–98 budget of expenses.

The Board assessed handlers after the effective date of the interim final rule concerning assessments, and all assessments were due to the Board office by November 30, 1997, for this season only. Future assessment payments will be due to the Board office by October 1 of each crop year. Major expenditures recommended by the Board for the 1997–98 fiscal period, ending June 30, 1998, and expenditures for the prior six months, are $25,000 for interest, $175,000 for Board meeting expenses, $150,000 for salaries, $100,000 for administration, and $200,000 for compliance. For the six month period from January 1, 1997, through June 30, 1997, the expenses were $59,000.

The order provides that when an assessment rate based on the number of

pounds of cherries handled is established it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one half that rate.

This rule continues an assessment rate for the 1997–98 and subsequent fiscal periods at $0.0025 per pound of tart cherries used in the production of tart cherry products other than juice, juice concentrate and puree, and $0.00125 per pound for cherries used for juice, juice concentrate and puree. The Department inadvertently stated in the preamble of the interim final rule and in the regulatory text itself that the assessment rate for cherries used for juice, juice concentrate and puree shall be $0.0125. Such rate should be one half of $0.0025 which is $0.00125. Such error has been corrected in this rule.

Data from the National Agricultural Statistics Service (NASS) states that for 1996, tart cherry utilization for juice, wine or brined uses was 8.0 million pounds for all districts covered under the marketing order. The total processed amount of tart cherries for the 1996 crop year was 256.1 million pounds. Juice, wine, or brined represents about 3 percent of the total processed crop. Data for this season (1997–98) is not available at this time. However, based on the data from the previous season, it seems that juice, juice concentrate and puree represent a very small percentage of the crop. Therefore, a reduced assessment rate for cherries used in such products should have an insignificant effect on the monies collected for assessments this season.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of tart cherries. Tart cherry shipments for the 1997–98 crop year were estimated at 260 million pounds and were projected to provide $650,000 in assessment income which, along with interest income, should have been adequate to cover budgeted expenses. At this time, actual production figures are available. Crop production for the 1997–98 season is now projected at 278,989,653 pounds. Assessment income, based on this crop, will be adequate to cover this year's expenses. Funds in any reserve will be kept within the current approximately one year's operational expenses permitted by the order (§ 930.42(a)).

Section 930.41 also provides that if a handler does not pay an assessment within the time prescribed by the Board, the assessment may be made subject to an interest or late payment charge, or both.

This final rule continues an interest rate of 1 percent per month and a late payment charge equal to 10 percent of the unpaid balance of the assessment amount due. The interest rate will be applied to any assessment not paid by the October 1 due date. For the 1997–98 crop year only, the assessment due date was November 30. Any interest charge for late assessment payments accrued 30 days after the November 30 due date and any late fee accrued 90 days after that date. The late payment fees on an unpaid assessment balance by a handler will be assessed 90 days after the October 1 due date for future seasons.

Section 930.41(a) of the marketing order provides for the payment by handlers of a pro-rata share of the cost of administering the program under the order. The payment is in the form of a uniform assessment rate applied to each handler's cherry acquisitions. In addition, section 930.41(f) provides that assessments will be calculated on the basis of pounds handled provided that the formula adopted by the Board and approved by the Secretary for determining the rate of assessment will compensate for differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products.

Assessments are the main source of funds to pay Board expenses. The failure of handlers to pay assessment obligations promptly results in added expense and operational problems for the Board. Authority was placed in the order to levy interest and late payment charges on delinquent assessments. The interest rate and late payment charges in this final rule are similar to those established under other marketing orders. In collecting delinquent assessments, the Board would incur the added expense of sending out additional invoices and contacting each delinquent handler by phone, in person, or by fax. Nonpayment or late payment of assessments hampers the operation of the Board.

Any amount paid by the handler will be credited upon receipt in the Board office. Interest and late payment charges will provide incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. They will not impose any costs on handlers who pay their assessments on time, and will contribute to the efficient administration of the program.

In its deliberations, the Board discussed lower rates when recommending the interest rate and late payment charge but decided that prompt payment of assessments by handlers was crucial to the operation of the program. Therefore, the Board recommended an interest rate and late payment charge deemed to be sufficient to serve as an incentive to handlers to be prompt with their payment of assessments.

A proposed rule concerning this action was published in the **Federal Register** on July 3, 1997 (62 FR 36020). An interim final rule was issued by the Department on October 17, 1997, and published in the **Federal Register** on Thursday, October 23, 1997 (62 FR 55146). The rule addressed the comments concerning the proposed rule and was made available through the Internet by the Office of the Federal Register. A 60-day comment period, which ended on December 22, 1997, was provided to allow interested persons to respond to a modification of the proposed rule. The modification provided a different rate of assessment for cherries used for juice, juice concentrate, or puree.

One comment was received during the comment period in response to the interim final rule. That comment is discussed later in this rule.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that the small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the

Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,220 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

This rule continues an assessment rate for the 1997–98 and subsequent fiscal periods to cover expenses of the Board at $0.0025 per pound of tart cherries used in the production of tart cherry products other than juice, juice concentrate and puree, and $0.00125 per pound for cherries used in the production of juice, juice concentrate and puree.

The Board unanimously recommended expenditures of $650,000 for expenses incurred during the 1997–98 fiscal period as well as for those incurred during the start-up period beginning January 1, 1997. From January 1, 1997, through June 30, 1997, the expenses for this six month period was $59,000. The expenses for the 1997–98 fiscal period are projected at $591,000. Tart cherry shipments for the year were estimated at 260 million pounds, which would have provided $650,000 in assessment income (260,000,000 pounds at $0.0025 per pound) and would have been adequate to cover this year's expenses. At this time, actual production figures are available. Crop production for the 1997–98 season is 278,989,653 pounds, which, even with the reduced assessment rate for cherries used in juice, juice concentrate, and puree, will provide adequate assessment income to cover this year's expenses. Funds in any reserve will be kept within the current approximately one year's operational expenses permitted by the order (§ 930.42(a)).

The Board discussed alternatives when recommending the interest rate and late payment charge. The Board discussed lower rates, but decided that prompt payment of assessments by handlers is crucial to the operation of the program. Therefore, the Board recommended an interest rate and late payment charge deemed to be sufficient to serve as an incentive to handlers to be prompt with their payment of assessments.

Major expenditures recommended for the 18-month period ending in June 30, 1998, include $25,000 for interest, $175,000 for Board meeting expenses, $150,000 for salaries, $100,000 for administration, and $200,000 for program compliance. The $200,000 for compliance was deemed necessary in the event volume control regulations are implemented during the 1997–98 season. The Board discussed setting an assessment rate that would allow for sufficient operation of a volume control program for the upcoming season. With regards to alternatives, this rate may be adjusted by the Secretary, if necessary. Accordingly, the Department believes that since the assessments are necessary to make funds available to cover the initial costs of implementing the new order, including operation of a volume control program for this season, the assessment rate will be as recommended by the Board, and modified by the Department.

This action will not impose any additional reporting or recordkeeping on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The forms for the operation of the order have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0177.

The interest and late payment charges were also discussed at a public meeting. The Board believes the interest charge is reasonable. The late payment charge is high enough to discourage late payments and encourage the timely payment of assessments by handlers.

This final rule continues to provide an incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It will not impose any costs on handlers who pay their assessments on time, and will contribute to the efficient administration of the program.

Handlers who do not pay their assessments on time would be able to reap the benefits of Board programs at the expense of others. In addition, they would be able to utilize funds for their own use that will otherwise be paid to the Board to finance Board programs. In effect, this would provide handlers with an interest free loan.

Continuation of the interest and late payment charges will provide an incentive for handlers to pay assessments on time, which will improve compliance with the order. It should help minimize actions taken against handlers who fail to pay assessments on time through administrative remedies or the Federal courts. This final rule will remove any economic advantage gained by those handlers who do not pay on time, thus helping to ensure a program that is equitable to all. This is also consistent with standard business practices.

While this final rule will impose some costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 8 and 9, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on these issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this final rule on small businesses, and none were received on this issue.

The Board discussed alternatives when recommending the interest rate and late payment charge. The Board discussed lower rates, but decided that prompt payment of assessments by handlers is crucial to the operation of the program. Therefore, the Board recommended an interest rate and late payment charge deemed to be sufficient to serve as an incentive to handlers to be prompt with their payment of assessments. The assessment rate, interest rate and late payment charge established in this final rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rate, interest rate and late payment charge will be effective for an indefinite period, the Board will continue to meet prior to or

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during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment and interest rates and late payment charge. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment or interest rates or late payment charge is needed. Further rulemaking would be undertaken as necessary. The Board's 1997–98 budget has already been approved by the Department to allow the Board to expend funds that they have borrowed. Budgets for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

One comment concerning the interim final rule was received. The commenter urged the Department to not assess cherries used in juice, juice concentrate, or puree at a different rate. The commenter stated that the Board considered the differences in the number of pounds of cherries utilized for various cherry products and the relative market value of such cherry products in its recommendation. The Board unanimously recommended that because raw product values for the past years have been relatively equal for most product uses the assessments should be based on a single assessment rate for all raw products delivered. The commenter also stated that the Board considered the appropriate factors when it needed to consider the recommended assessment rate, and recommended that a dual assessment rate should not be imposed.

The commenter further stated that the proponent's original proposal for a tart cherry marketing order contained provisions for storage assessments. According to the commenter, the discussion in the record of the administrative proceeding to formulate the order concerning dual assessments relates to high and low value fruit as a consequence of these different costs of storage. The Department, during the promulgation process, concluded that a collection of a storage assessment would not be equitable to the industry as a whole and therefore such assessment was not included in the order since nonregulated districts would not incur storage expenses. Therefore, the commenter stated that the discussion on high and low value fruit is no longer relevant and it is improper and inconsistent for the Department to rely on such testimony to require a dual assessment rate.

The Department issued the rule to reflect the intent of § 930.41 of the order which states that assessments will be calculated on the basis of pounds of cherries handled. The order further states that the formula adopted by the Board and approved by the Secretary for determining the rate of assessment will compensate for differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products. The proponents of the order testified during promulgation of the order that there should be different assessment rates by providing exhibits of how such assessment rates would work based on the relative market value of products. Therefore, this part of the comment is denied.

The commenter also stated that no grace period was recommended under the interest and late payment charge provision. The Department included a 30-day grace period which would allow assessments due on October 1 to be paid as late as October 31 without incurring interest and late payment charges. The commenter stated that handlers' financial officers would clearly take advantage of this 30-day grace period and not pay assessments until October 31. However, the Board's period of heaviest expense is the summer months when harvest is underway and compliance activities are at their peak. If reserves are not available, the Board would have to borrow money to operate. It is therefore important that assessments be paid on the October 1 date as recommended by the Board.

Based on this comment, the Department is modifying the date when the interest rate begins to accrue by excluding the 30-day grace period. Therefore, starting with the 1998-99 crop year, assessments will be due on October 1 and interest will begin to accrue after October 1 on any unpaid assessment balance.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 62 FR 55146 on October 23, 1997, is adopted as a final rule with the following changes:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR Part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.141 is amended by revising paragraph (a) and by removing and reserving paragaph (b) to read as follows:

§ 930.141 Delinquent assessments.

(a) Pursuant to § 930.41, the Board shall impose an interest charge on any handler whose assessment payment has not been received by October 1 of each crop year. The interest rate shall be a rate of one percent per month and shall be applied to the unpaid assessment balance not paid by the October 1 due date. In addition to the interest charge, the Board shall impose a late payment charge on any handler whose assessment payment has not been received within 90 days from the due date of October 1. The late payment charge shall be 10 percent of the unpaid balance.

3. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after the effective date of this rule, the assessment rate imposed on handlers shall be $0.0025 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for tart cherries utilized in the production of juice, juice concentrate, and puree products shall be $0.00125 per pound. The assessment due date shall be October 1 of each crop year.

Dated: March 18, 1998.

Robert C. Kenney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–7512 Filed 3–23–98; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 724

Organization and Operation of Federal Credit Unions; Trustees and Custodians of Pension Plans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: On February 20, 1998, NCUA issued a letter to federally insured credit unions regarding share insurance coverage on member accounts established as Education IRAs, Roth IRAs, Savings Incentive Match Plan for Employees and Medical Savings Accounts. Although these accounts can be established in federal credit unions, the letter noted that federal credit unions cannot act as trustees or custodians for these types of accounts. The basis for that statement was the current wording of NCUA regulations, which references specific provisions of the Internal Revenue Code. This interim rule corrects that part by including additional specific references to Internal Revenue Code provisions for certain of these accounts. It also makes a conforming amendment to the rule regarding retirement benefits for federal credit union employees.

DATES: Effective March 24, 1998. Comments must be received on or before May 20, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

NCUA recently issued a Letter to Credit Unions (Letter No. 98–CU–5, February 20, 1998) to advise all federally insured credit unions of share insurance coverage on several new types of member accounts: Education IRAs, Roth IRAs, Savings Incentive Match Plan for Employees (SIMPLE) accounts and Medical Savings Accounts (MSAs). While these accounts could be established in federal credit unions, the letter noted that federal credit unions could not act as trustees or custodians of such accounts. This has caused considerable confusion because federal credit unions have been serving as traditional IRA trustees or custodians since 1975. (12 CFR Part 721—Incidental Powers, § 721.4. 40 FR 25582, June 17, 1975.) Currently, however, because part 724 specifically references only Internal Revenue Code (IRC) sections 401(d) and 408, it unintentionally limits federal credit union involvement in the newer accounts established under different IRC provisions. The purpose of this interim rule is to correct this problem immediately with respect to Roth IRAs and Education IRAs and to request comment on additional changes that may be needed for these accounts as well as for MSAs and similar accounts.

The Letter to Credit Unions was issued in response to recent amendments to the IRC whereby Congress created new types of accounts that receive special tax treatment. Congress specified the types of organizations that could serve as fiduciaries for these accounts. Congress included federally insured credit unions in the list of qualified organizations by including them in a special definition of "bank" contained in the current IRC section 408(n). This definition has been used in IRC section 401(f)(2)—for 401(d) plans (Keogh Accounts)—and in IRC section 408(a)(2) for traditional IRAs established under IRC section 408. Part 724 references both 401(d) and 408 plans. Congress has now used this same definition for MSAs, IRC section 220(d)(1)(B), and Education IRAs, IRC section 530(b)(1)(B). For a Roth IRA, Congress provided in IRC section 408A(a) that such an account is to be treated as an individual retirement plan, unless otherwise noted. An individual retirement plan includes an IRA under 408. IRC section 7701(a)(37). Thus, federal credit unions, being federally insured, are qualified to be fiduciaries of all of these types of accounts.

A fiduciary, either a trustee or custodian, of these newer types of accounts performs essentially the same types of duties as a fiduciary of a traditional Keogh or IRA. In the case of a federal credit union, the funds are invested in insured share accounts. As a fiduciary, a federal credit union maintains accounting records similar to those for any savings account and sends the member and the IRS tax information. In the case of self-directed plans, a federal credit union follows a member's instructions and facilitates the transfer to other investments in accordance with § 724.2. For some types of accounts, a federal credit union would also withhold income tax and compute periodic payment amounts. In general, the highest administrative burden is on fiduciaries of traditional IRAs and Keogh accounts because these accounts are subject to complex distribution requirements.

Federal credit unions have been providing IRA trustee and custodial services for almost 23 years. In its examination and supervision of federal credit unions during this period of time, NCUA has seen no indication of regulatory problems arising from this activity. This historical performance provides ample evidence that federal credit unions can provide the same services for the new types of accounts. However, this interim rule will only address the Roth and Education IRAs. The provisions regarding these accounts became effective January 1, 1998, and it is the Board's understanding that these are the types of accounts that federal credit union members are now most interested in establishing. There is no public interest served by delaying immediate action on these accounts.

Amendments

1. Part 701

Federal credit unions are authorized to provide reasonable retirement benefits for their employees under § 701.19. If a federal credit union is to be a trustee or custodian, the retirement plan must be an IRA maintained in accordance with part 724. To conform to the changes in part 724, this section is being amended by deleting the phrase "an individual retirement account." Section 701.19 will now require that the plan be "authorized and" maintained in accordance with part 724.

2. Part 724

Part 724 is being amended only with regard to Roth IRAs and Education IRAs. This is accomplished by adding references to IRC sections 408A, for Roth IRAs, and 530, for Education IRAs, in § 724.1. There is no need for a specific amendment to cover SIMPLE Retirement Accounts (SRAs) because those accounts are already covered under IRC section 408, specifically section 408(p), and thus already covered by § 724.1.

Request for Comments

The Board is requesting comments on the changes made by this interim final rule concerning Roth IRAs and Education IRAs. As noted above, the Board is not amending or proposing any specific amendments regarding MSAs. To do so now would require more extensive modification to part 724, or

possibly a completely new rule, and would only delay the much needed IRA revisions.

Further, MSAs are a pilot program and the Board is not aware of any particular urgency to address these types of accounts immediately.

The Board expects to issue shortly a request for comments or advanced notice of proposed rulemaking to solicit comments on MSAs and will evaluate the need for regulatory changes after receipt of comments. That notice will likely solicit comments as well regarding whether other regulatory changes are needed to address IRC section 401(k) plans, including SIMPLE 401(k) plans, and Simplified Employee Pension (SEP) plans.

Regulatory Procedures

Regulatory Flexibility Act

This interim final rule conforms the current regulation to recent changes in the federal tax law and does not expand upon the nature of the activity authorized for a federal credit union. The Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This interim rule does not impose any paperwork requirements.

Executive Order 12612

This interim rule only applies to federal credit unions. It has no affect on the regulation of state-chartered credit unions.

List of Subjects

12 CFR Part 701

Credit unions.

12 CFR Part 724

Credit unions, Pensions, Reporting and recordkeeping requirements, Trusts and trustees.

By the National Credit Union Administration Board, this 13th day of March, 1998.

Becky Baker,

Secretary, NCUA Board.

For the reasons stated in the preamble, NCUA amends 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701. 31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Revise the second sentence of § 701.19(a) to read as follows:

§ 701.19 Retirement benefits for employees of Federal credit unions.

(a) * * * In those cases where a Federal credit union is to be a plan trustee or custodian, the plan must be authorized and maintained in accordance with the provisions of part 724 of this chapter. * * *

* * * * *

PART 724—TRUSTEES AND CUSTODIANS OF PENSION PLANS

3. The authority citation for part 724 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1765, 1766 and 1787.

4. In § 724.1, revise the section heading and first sentence to read as follows:

§ 724.1 Federal credit unions acting as trustees and custodians of pension and retirement plans.

A federal credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension or retirement plan which qualifies or qualified for specific tax treatment under sections 401(d), 408, 408A and 530 of the Internal Revenue Code (26 U.S.C. 401(d), 408, 408A and 530), for its members or groups of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the Federal credit union. * * *

[FR Doc. 98–7346 Filed 3–23–98; 8:45 am]

BILLING CODE 7535–01–p

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–58–AD; Amendment 39–10421; AD 98–07–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 412 Helicopters and Agusta S.p.A. Model AB412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (Bell) Model 412 helicopters and Agusta S.p.A. (Agusta) Model AB412 helicopters. This action requires a temporary reduction of the never-exceed velocity (Vne) limitation until an inspection of the tail rotor yoke (yoke) assembly for fatigue damage and installation of a redesigned yoke flapping stop are accomplished. Recurring periodic and special inspections to detect occurrences of yoke overload are also required. This amendment is prompted by laboratory tests and engineering analyses that indicated that the yoke assembly is susceptible to fatigue damage due to unforeseen static and dynamic loading of the tail rotor against the original flapping stop. The actions specified in this AD are intended to prevent fatigue failure of the yoke that could result in loss of control of the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective April 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–58–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466 for the Bell Model 412 helicopters; and

Agusta S.p.A., 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595 for the Agusta Model AB412 helicopters. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on Agusta Model AB412 helicopters, and since the Bell Model 412 helicopters are of similar type design, a similar unsafe condition could exist on those models. The RAI advises installing a temporary airspeed placard, inspecting the yoke assembly, and installing a redesigned tail rotor flapping stop.

Bell has issued Bell Helicopter Textron Alert Service Bulletin (ASB) 412–96–89, Revision A, dated October 17, 1997 and Bell Helicopter Textron ASB 412CF–96–01, dated September 3, 1996, for the Bell Model 412 helicopters; and Agusta has issued Agusta Bolletino Tecnico (Technical Bulletin) No. 412–65, dated December 2, 1996 for the Agusta Model AB412 helicopters. Both service bulletins and the technical bulletin specify an immediate temporary reduction in the maximum airspeed, installing a cockpit placard for this limitation, and incorporating a temporary flight manual supplement until the yoke historical records are researched for previous damage history; until an x-ray diffraction inspection is performed on the yoke to detect fatigue damage; and until a frangible tail rotor flapping stop/yield indicator, P/N 212–011–713–103, is installed. A repetitive 25-hours time-in-service inspection to detect damaging tail rotor flapping stop contact due to a hard landing, sudden stoppage, or miscellaneous power on/off incidents has been added. The RAI classified the Agusta technical bulletin as mandatory and issued AD 97–223 in order to assure the continued airworthiness of these helicopters in Italy.

The Bell Model 412 helicopters are manufactured in the U.S. and are type certificated for operation in the United States under the provisions of § 21.21 of the Federal Aviation Regulations (14 CFR 21.21). The Agusta Model AB412 helicopters are manufactured in Italy and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Bell Model 412 and Agusta Model AB412 helicopters of the same type designs registered or eligible for registration in the United States, this AD is being issued to prevent fatigue failure of the yoke that could result in loss of control of the helicopter. This AD requires a temporary reduction of the Vne limitation until an inspection of the yoke assembly for fatigue damage and installation of a redesigned yoke flapping stop is accomplished, and includes additional periodic and special inspections to detect occurrences of yoke overload.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, a temporary reduction in Vne is required prior to further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 124 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6.5 hours per helicopter to accomplish the installation of a placard, the inspection, and the installation of the yoke. Required parts will cost approximately $511 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $111,724.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–58–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–07–03 Bell Helicopter Textron, Inc. and Agusta S.p.A.: Amendment 39–10421. Docket No. 97–SW–58–AD.

Applicability: Bell Helicopter Textron, Inc. Model 412 helicopters, serial numbers (S/N) 33001 through 33213, 34001 through 34024, 36001 through 36121, 46400 through 46434, 46437, and Agusta S.p.A. Model AB412 helicopters, S/N prior to and including S/N 25806, and S/N 25901; certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the tail rotor yoke (yoke), that could result in loss of control of the helicopter, accomplish the following:

(a) Before further flight, review the historical records of the yoke assembly, part number (P/N) 212–011–702-all dash numbers, for any static or dynamic incident history, other than normal usage, that could have imposed a bending load on the yoke, but did not require yoke assembly replacement; for example, an incident in which a damaged tail rotor blade was replaced due to a blade strike. If such a history exists, replace the yoke with an airworthy yoke.

(b) Before further flight, unless paragraph (c) of this AD has been accomplished previously:

(1) Install a Never Exceed Velocity (Vne) red line at 120 knots indicated airspeed (KIAS) on the pilot and copilot airspeed indicators using red tape or paint, and a slippage indicator on the instrument case and glass.

(2) Install a placard made of material that is not easily erased, disfigured, or obscured on the instrument panel in clear view of the pilot and copilot: "Observe temporary Maximum Never Exceed (Vne) airspeed red line (marked at 120 knots indicated airspeed (KIAS)). Vne is 20 KIAS less than the value presented on the airspeed limitation placard for each ambient condition."

(3) Insert the applicable Bell Helicopter Textron 412 Temporary Revision, dated August 16, 1996, into the Model 412 Rotorcraft Flight Manual (RFM), or Agusta AB412EP Temporary Revision No. 2 into the Model AB412 RFM.

(c) Within 180 calendar days:

(1) Remove yoke assembly, P/N 212–011–702-all dash numbers, and replace it with an airworthy yoke assembly, P/N 212–011–702-all dash numbers, with zero hours time-in-service (TIS), or an airworthy yoke (regardless of TIS) that has passed a one-time x-ray diffraction inspection in accordance with Bell Helicopter Textron ASB 412–96–89, Revision A, dated October 17, 1997; Bell Helicopter Textron ASB 412CF–96–01, dated September 3, 1996; or, Agusta Bolletino Tecnico (Technical Bulletin) No. 412–65, dated December 2, 1996, whichever is applicable.

(2) Install an airworthy tail rotor flapping stop, P/N 212–011–713–103.

(3) If requirements are accomplished in accordance with paragraphs (c)(1) and (c)(2) of this AD, remove the 120 KIAS redline from the pilot and copilot airspeed indicators; remove the Vne airspeed restriction placard; and remove the Bell Helicopter Textron 412 Temporary Revision, dated August 16, 1996, or Agusta AB Temporary Revision No. 2, as applicable, from the RFM.

(d) After accomplishing paragraph (c) of this AD, thereafter inspect the yoke assembly and tail rotor flapping stop at intervals not to exceed 25 hours TIS in accordance with Part III, Recurring 25-Hour Special Inspection and Conditional Inspection Requirement, of Bell Helicopter Textron ASB 412–96–89, Revision A, dated October 17, 1996; Bell Helicopter Textron ASB 412CF–96–01, dated September 3, 1996; or Agusta Bolletino Tecnico (Technical Bulletin) No. 412–65, dated December 2, 1996, as applicable.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter at airspeeds not to exceed 120 KIAS to a location where the requirements of this AD can be accomplished.

(g) The inspections and installations shall be done in accordance with Bell ASB 412–96–89, Revision A, dated October 17, 1997; Bell Helicopter Textron ASB 412CF–96–01, dated September 3, 1996; or Agusta Technical Bulletin No. 412–65, dated December 2, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466; or Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 8, 1998.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 97–223, dated January 8, 1997.

Issued in Fort Worth, Texas, on March 16, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–7414 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770 and 774

[Docket No. 980219044–8044–01]

RIN 0694–AB66

Revision To ECCN 1C350 (Mixtures): Removal of Solvent Free Basis Calculation Requirement and Trace Quantity Exemption

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Chemicals capable of being used as precursors for chemical weapons agents are controlled for export on the Commerce Control List under Export Control Classification Number 1C350. Note 2 of the License Requirement Notes section of ECCN

1C350 describes the three tier *de minimis* exemption for mixtures that contain these controlled chemicals. The *de minimis* exemption is based on the weight percentage (0%, 10%, and 25%) of these controlled chemicals within the mixture calculated on a "solvent free basis". This rule removes the requirement to calculate the weight percentage on a "solvent free basis." Therefore, the *de minimis* exemption for mixtures will now be based on the weight percentage of controlled chemicals calculated on the absolute (total) weight of the mixture.

The removal of the "solvent free basis" calculation requirement eliminates the necessity of the "trace quantity" exemption. The trace quantity exemption permitted exports of mixtures of concentrations of no more than 10,000 parts by weight per million of certain controlled chemicals. Therefore, the "trace quantity" exemption is removed.

Although the EAA expired on August 20, 1994, the President, invoking the International Emergency Powers Act (IEEPA), continued in effect the export control system in place under the provisions of the Act and the Export Administration Regulations, to the extent permitted by law (Executive Order 12924 of August 19, 1994 and Notices of August 15, 1995, August 14, 1996 and August 13, 1997).

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, contact Mr. Jim Seevaratnam, Office of Chemical and Biological Controls and Treaty Compliance, at (202) 482–3343 or facsimile (202) 482–0751.

For questions of a general nature, call Sharron Cook, Regulatory Policy Division, at (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

The Australia Group (AG) recently held its annual consultations on ways to prevent the proliferation of chemical and biological weapons.

The AG, an informal arrangement between 30 countries and the European Commission, was initiated by Australia in 1985, after the United Nations discovered that chemical weapons had been used in the Iran-Iraq war. The AG's participants include: Argentina, Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, the European Commission, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (the Republic of), Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, United Kingdom and the United States.

In 1994, in accordance with AG policy, BXA revised Note 2 to former ECCN 1C60 (currently 1C350) to establish a three-tiered approach to requiring licenses for mixtures containing controlled chemicals (59 FR 52685 October 19, 1994). That revision permitted export and reexports without a license when the amount of a controlled chemical in the mixture did not exceed a specified weight percentage (0% for tier 1, 10% for tier 2, 25% for tier 3). The calculation was done on a "solvent free basis", meaning that the amount of the solvent had to be subtracted before the weight percentage of the controlled chemical could be determined. This method of calculation proved difficult to implement for both exporters and other AG member governments. At the October 1997 session, the AG decided to change the method of calculation from "solvent free basis" to "absolute weight." This change will simplify calculation and improve the coordination of the mixtures policy among AG members, while not compromising our nonproliferation objectives.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0086,'Sample Shipment quarterly report," which carries a burden hour estimate of 35 minutes per submission; and 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 52.5 minutes per submission. There will be a decrease of approximately 100 Multi-Purpose Applications per year as a result of the revisions in this rule. Send comments on burden, or any other aspect of these collections of information to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: BXA Desk Officer).

3. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

4. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects

15 CFR Part 770

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR Part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 3 CFR, 1996 Comp. 298 (1997); Notice of August 13, 1997 (62 FR 43629, August 15, 1997).

2. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C.

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2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 3 CFR, 1996 Comp. 298 (1997); Notice of August 13, 1997 (62 FR 43629, August 15, 1997).

PART 770—[AMENDED]

§ 770.4 [Removed]

3. Part 770 is amended by removing § 770.4, "Interpretations related to chemical mixtures—*de minimis* exceptions examples."

PART 774—[AMENDED]

4. Supplement No. 1 to part 774 (Commerce Control List), Category 1 (Materials, Chemicals, "Microorganisms", & "Toxins"), is amended by revising the License Requirements section of ECCN 1C350, to read as follows:

Supplement No. 1 to Part 774—the Commerce Control List

* * * * *

Category 1—Materials, Chemicals, "Microorganisms", & "Toxins"

* * * * *

C. Materials

* * * * *

1C350 Chemicals that may be used as precursors for toxic chemical agents, as follows (see List of Items Controlled).

License Requirements

Reason for Control: CB, AT

Control(s)	Country chart
CB applies to entire entry ..	CB Column 2.
AT applies to entire entry ..	AT Column 1.

License Requirement Notes:

1. *SAMPLE SHIPMENTS:* Certain sample shipments of chemicals controlled under ECCN 1C350 may be made without a license, as provided by the following:

a. Chemicals Not Eligible: The following chemicals are *not* eligible for sample shipments: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), and Methylphosphonyl difluoride (C.A.S. #676–99–3).

b. Countries Not Eligible: The following countries are *not* eligible to receive sample shipments: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria.

c. Sample Shipments: A license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of each chemical to any one consignee per calendar year. Multiple sample shipments, in any quantity, not exceeding the cumulative totals indicated in this paragraph may be exported without a license, in accordance with the provisions of this Note 1. A consignee that receives a sample shipment under this exclusion may not resell, transfer or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons. However, a sample shipment received under this exclusion remains subject to all General Prohibitions including the end-use restriction described in § 744.4 of the EAR.

d. The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled "Report of Sample Shipments of Chemical Precursors" at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Export Administration, P.O. Box 273, Washington, DC 20044, Attn: "Report of Sample Shipments of Chemical Precursors".

2. *MIXTURES:* Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following licensing requirements:

a. A license is required, regardless of the concentrations in the mixture, for the following chemicals: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S.#57856–11–8), Ethylphosphonyl difluoride (C.A.S.#753–98–0) and Methylphosphonyl difluoride (C.A.S.#676–99–3);

b. A license is required when at least one of the following chemicals constitutes more than 10 percent of the weight of the mixture: Arsenic trichloride (C.A.S.#7784–34–1), Benzilic acid (C.A.S.#76–93–7), Diethyl ethylphosphonate (C.A.S.#78–38–6), Diethyl methylphosphonite (C.A.S.#15715–41–0), Diethyl-N,N-dimethylphosphoroamidate (C.A.S.#2404–03–7), N,N-Diisopropyl-beta-aminoethane thiol (C.A.S.#5842–07–9), N,N-Diisopropyl-2-aminoethyl chloride hydrochloride (C.A.S.#4261–68–1), N,N-Diisopropyl-beta-aminoethanol (C.A.S.#96–80–0), N,N-Diisopropyl-beta-aminoethyl chloride (C.A.S.#96–79–7), Dimethyl ethylphosphonate (C.A.S.#6163–75–3), Dimethyl methylphosphonate (C.A.S.#756–79–6), Ethylphosphonous dichloride [Ethylphosphinyl dichloride] (C.A.S.#1498–40–4), Ethylphosphonus difluoride [Ethylphosphinyl difluoride] (C.A.S.#430–78–4), Ethylphosphonyl dichloride (C.A.S.#1066–50–8), Methylphosphonous dichloride [Methylphosphinyl dicloride] (C.A.S.#676–83–5), Methylphosphonous difluoride [Methylphosphinyl difluoride] (C.A.S.#753–59–3), Methylphosphonyl dichloride (C.A.S.#676–97–1), Pinacolyl alcohol (C.A.S.#464–07–3), 3-Quinuclidinol (C.A.S.#1619–34–7), and Thiodiglycol (C.A.S.#111–48–8) (Related ECCN: 1C995);

c. A license is required when at least one of all other chemicals in the List of Items Controlled constitutes more than 25 percent of the weight of the mixture(related ECCN: 1C995); and

d. A license is not required under this entry for mixtures when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are controlled by ECCN EAR99.

Note to Mixtures: Calculation of concentrations of AG-controlled chemicals:

a. Exclusion. No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. Absolute Weight Calculation. When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents;

c. Example.

11% chemical listed in paragraph b. of Note 2

39% chemical not listed in Note 2

50% Solvent

100% Mixture

11/100 = 11% chemical listed in paragraph b. of Note 2.

In this example, a license is required because a chemical listed in paragraph b. of Note 2 constitutes more than 10 percent of the weight of the mixture.

3. *COMPOUNDS:* A license is not required under this entry for chemical compounds created with any chemicals identified in this ECCN 1C350, unless those compounds are also identified in this entry.

Technical Notes: 1. For purposes of this entry, a "mixture" is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

2. The scope of this control applicable to Hydrogen Fluoride (Item 25 in List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

* * * * *

Dated: March 17, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–7493 Filed 3–23–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 644

[Docket No. 980305056–8056–01; I.D. 020398B]

RIN 0648–AK88

Atlantic Billfishes; Atlantic Blue Marlin and Atlantic White Marlin Size Limits; Billfish Tournament Notification Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule increases the minimum size limits for Atlantic blue marlin (BUM) and Atlantic white marlin (WHM) to 96 inches (244 cm) lower jaw-fork length (LJFL) and 66 inches (168 cm) LJFL, respectively, and specifies requirements to notify NMFS of tournaments involving any Atlantic billfish at least 4 weeks prior to commencement. NMFS invites public comments on the increase in minimum size limits. Public hearings on this issue will be announced in the **Federal Register** at a later date. The intended effect of this interim rule is to reduce overfishing of BUM and WHM, and to implement a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: This interim rule is effective March 27, 1998 through September 23, 1998. Comments must be received not later than May 22, 1998.

ADDRESSES: Comments on this interim rule should be mailed to, and copies of documents supporting this action may be obtained from, the Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the collection-of-information requirement contained in this interim rule should be sent to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Buck Sutter, 813–570–5447; fax: 813–570–5364; or Jill Stevenson, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: Atlantic BUM and Atlantic WHM are managed under the Fishery Management Plan (FMP) for Atlantic Billfish and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 50 CFR part 644. In addition, BUM and WHM are managed throughout the Atlantic Ocean by ICCAT, of which the United States is a member. The Secretary of Commerce has the responsibility, under the Atlantic Tunas Convention Act (ATCA), to implement ICCAT recommendations. In 1997, ICCAT recommended a reduction of BUM and WHM landings by at least 25 percent from 1996 levels, starting in 1998, to be accomplished by 1999. The 1997 ICCAT recommendation also included provisions to promote the voluntary release of live BUM and WHM, and to improve current monitoring, data collection and reporting procedures in fisheries landing BUM and WHM.

Stock assessments for BUM and WHM were completed most recently in 1996 by ICCAT's Standing Committee on Research and Statistics (SCRS). NMFS has identified both BUM and WHM as overfished; ICCAT considers both species to be over-exploited. Historically, both species have been considered separately as North and South Atlantic stocks (dividing line at 5° N. lat.). Recent genetic and tag and recapture information indicates that an entire Atlantic stock may be more appropriate; however, available information from the South Atlantic makes a total Atlantic Ocean assessment problematic. Accordingly, assessments preformed by ICCAT's SCRS include both a North Atlantic and a total Atlantic Ocean evaluation. The biomass of BUM for the total Atlantic Ocean and North Atlantic in 1996 was estimated to be about 24 and 61 percent, respectively, of the biomass needed to produce maximum sustainable yield (MSY); biomass levels for WHM were estimated to be about 23 and 32 percent, respectively, of levels need to produce MSY.

In 1996, Congress reauthorized the Magnuson-Stevens Act by passing the Sustainable Fisheries Act (SFA), which included several provisions that directly impacted the management of highly migratory species (HMS). One of the new provisions requires NMFS to notify Congress each year on the status of U.S. fisheries. In September, 1997, NMFS submitted the first report, entitled "Report to Congress: Status of Fisheries in the United States," which listed both BUM and WHM as overfished. Under the Magnuson-Stevens Act, NMFS is required to submit a draft FMP to the Secretary of Commerce, by September 30, 1998, that includes a rebuilding plan for BUM and WHM. Another new provision included in the SFA (Section 302(g)(1)) was the establishment of Advisory Panels (APs) to assist in the preparation of FMPs or FMP amendments involving HMS. Consequently, NMFS established a Billfish AP, with membership consisting of representatives from commercial and recreational fisheries, environmental, state management, and scientific entities, as well as members of the five affected fishery management councils with management jurisdiction along the U.S. Atlantic Ocean, Gulf of Mexico and Caribbean coasts.

At the January 1998 AP meeting, NMFS provided background information on landings and recent stock assessments in consideration of an amendment to the Billfish FMP, in light of the 1997 ICCAT recommendations. Currently, only recreational landings of Atlantic billfish are allowable for U.S. fishermen; no Atlantic billfish may be purchased, bartered, traded, sold, or offered for sale in any state. Recreational landings for 1996 (ICCAT's target year for catch reduction) were 74,737 lb (34.9 mt) of BUM and 7,275 lb (3.3 mt) of WHM. Beginning in 1998, the United States is bound by ICCAT to immediately begin to reduce annual BUM and WHM landings to ensure that 1999 landings are at least 25 percent below 1996 levels. The Billfish AP considered various management options to accomplish this goal, and reached consensus to increase the minimum legal landing size of BUM from 86 inches LJFL/197 lb (219 cm/89 kg) to 96 inches LJFL/286 lb (244 cm/130 kg), and increase WHM from 62 inches LJFL/47.6 lb (157.4 cm/22 kg) to 66 inches LJFL/57.5 lb (168 cm/26 kg). The increases in the size limits were based on the 1994 to 1996 size distribution and landings and were calculated to reduce BUM and WHM landings by number and weight during 1998 to provide an adequate time frame to determine if these size measures are an effective means to meet U.S. billfish landing limits by the end of 1999. The increases in the minimum size limits are estimated to result in a reduction in landings of 46 percent by number and 39 percent by weight of BUM, and a reduction of 53 percent by number and weight of WHM from 1996 levels.

The Billfish AP also considered the ICCAT recommendation to promote the voluntary release of live BUM and WHM, and to improve current monitoring, data collection, and reporting procedures in all their fisheries. The United States already has a mandatory 100 percent release requirement for BUM and WHM caught by commercial vessels, and the recreational fishery is voluntarily releasing approximately 90 percent of all billfish caught. To ensure that the new size limits are widely communicated, that accurate data are collected, and that the release of live billfish is encouraged, in consideration of the recommendations of the Billfish AP, this interim rule requires all tournaments involving BUM and/or WHM to provide notification to NMFS of the purpose, dates and location of any tournament involving score keeping or awards for the capture of Atlantic billfish, at least 4 weeks prior to commencement. This requirement is necessary to provide NMFS with a complete data set of all active billfish

tournaments, thereby allowing statistically appropriate levels of data collection to enhance monitoring of BUM and WHM landings. The information collection requirement for tournaments previously listed under 50 CFR 644.5, is restated as 50 CFR 644.10.

The 4-week notification requirement for tournaments involving Atlantic billfish was included in the proposed rule consolidating regulations for Atlantic Migratory Species Fisheries (61 FR 57361, November 6, 1996). Five public hearings were held to receive oral comments on the proposed consolidated rule. Additionally, numerous written comments were received by mail and fax. The following summarizes and responds only to comments addressing billfish tournament requirements.

Comment: South Carolina Department of Natural Resources (SCDNR) comments that unless HMS tournaments are required to secure a Federal license, and NMFS specifically monitors competitive events and levies fines for violations, the program will not provide good data. They requested clarification on the tournament selection process and expressed concern that if only the largest, most visible events are chosen it would not accurately reflect true catch and effort for HMS. SCDNR also expressed concern that South Carolina tournaments would be targeted at a higher rate because the State has made the effort to identify these events and that the proposed action would require extensive funding and manpower, neither of which are available.

Response: Directors of HMS tournaments are required to register with the Science Director and NMFS will develop a statistically based sampling program. Under such a program, states with a higher proportion of tournaments will likely be selected more often. However, the burden is minimal since the report largely consists of information readily available to tournament directors.

Comment: The North Carolina Fisheries Association, Inc., comments that it is unclear why only tournaments selected by NMFS are required to report landings, since small tournaments (<200 boats) can have substantial landings of HMS.

Response: The tournament reporting program will comprise a statistically based sample drawn from all tournaments registered with the Science Director.

Comment: The National Fisheries Institute (NFI) suggests that NMFS require landing and fishing effort reports for all recreational HMS tournaments.

Response: In order to reduce the potential burden on NMFS and tournament directors, a statistically based sample of tournaments will be selected for reporting.

Comment: The Government of the Virgin Islands samples recreational catches using a non-uniform probability sampling program and voluntary use of fishery logbooks. The Division of Fish and Wildlife serves as weigh masters for all but one fishing tournament. Instead of imposing new reporting requirements, the Government of the Virgin Islands and NMFS should explore means of supplying data to ICCAT, while not adding to the burden of fishermen. This could be accomplished through better communication with the HMS Management Division and the Office of Sustainable Fisheries, NMFS, and the Virgin Island's Division of Fish and Wildlife.

Response: NMFS agrees that cooperative efforts could improve data collection while reducing the administrative burden; however, a uniform data collection system is needed to provide statistically reliable information for monitoring of billfish landings throughout U.S. waters, including the Caribbean Sea.

At their January, 1998 meeting, the Billfish AP urged NMFS to implement these measures (recommended by ICCAT in November 1997) before the start of billfish tournament season (March 1998). NMFS agrees that it is necessary to implement the 1997 ICCAT recommendation as soon as possible to assess the effects of these measures throughout the entire billfish fishing season, and to be in compliance with the ICCAT recommendation.

While the focus of the ICCAT recommendation is on landings, the greatest source of billfish mortality in the United States is from dead discards in the longline fishery. These are closely monitored through observer and logbook data, and fully reported to ICCAT. NMFS will continue to monitor this source of mortality and will work with the Billfish AP to consider measures to reduce longline dead discards.

NMFS has determined that the measures recommended by the Billfish AP are based on the best available scientific information to prevent further overfishing, and to implement ICCAT recommendations. Given the overfished status of both BUM and WHM as described in the 1997 "Report to Congress: Status of Fisheries in the United States," NMFS is implementing these measures under section 305(c) of the Magnuson-Stevens Act. The interim measure is needed to meet U.S. obligations under ICCAT, and to initiate measures to prevent further overfishing.

In summary, this interim rule implements the reporting requirement proposed in 61 FR 57361 (November 6, 1996). That is, all persons conducting a fishing tournament involving scorekeeping or awards for the capture of Atlantic billfish, regardless of whether those fish are retained, from a port in an Atlantic, Gulf of Mexico, or Caribbean state must notify the Science Director at the Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149, in writing, at least 4 weeks prior to the commencement of the tournament. This interim rule also increases minimum size limits for the retention of BUM (96 inches (244 cm) LJFL) and WHM (66 inches (168 cm) LJFL).

On July 28, 1997, NMFS received a petition for rulemaking from NFI. NMFS announced receipt of the petition in a **Federal Register** notice on August 28, 1997 (62 FR 45614) and made copies available to interested parties, including members of the Billfish AP. This interim rule directly responds to one of the points made in the petition, which recommends mandatory registrations and reporting for all billfish tournaments. Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

NMFS issues this interim rule, effective for 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This interim rule may be extended for an additional 180 days provided the public has had an opportunity to comment on the interim rule and, at the time of extension, a plan amendment or proposed regulations to address the overfishing on a permanent basis is being actively pursued. Public comments on this interim rule will be considered in determining whether to maintain or extend this interim rule to address overfishing of BUM and WHM. Responses to comments will be provided if the interim rule is revoked, modified, or extended.

As required in the Magnuson-Stevens Act, an amendment to the Billfish FMP addressing the overfished nature of these species must be prepared, and submitted to the Secretary of Commerce by September 30, 1998. NMFS is currently preparing an amendment to the Billfish FMP outlining a rebuilding

plan and concomitant management strategies. The amendment is being developed using the best possible science, the Billfish AP, and various outreach forums to ensure public input into this process.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this interim rule is necessary to reduce overfishing of BUM and WHM, and will also serve to implement 1997 ICCAT recommendations. The interim rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The actions set forth in this interim rule respond to the over-exploitation of these resources in the Atlantic Ocean, and the need to improve current monitoring, data collection, and reporting procedures, as well as promote the release of live billfish. The United States is also obligated, under ATCA, to implement ICCAT recommendations for 1998. Failure to implement these actions in a timely manner now might result in failure to meet ICCAT obligations and increase the need for more severe restrictions in the future.

Accordingly, pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest. Further, the measures have been discussed publicly; the AP meeting during which these measures were recommended in January 1998 was open to the public. Since the billfish tournament season begins in March 1998, the need to implement these measures in a timely manner to address the overfishing of BUM and WHM constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. NMFS makes this rule effective March 27, 1998. To ensure wide distribution of the increase in minimum size limits for BUM and WHM and new tournament notification requirements, NMFS will work with the Billfish AP, recreational fishing organizations, sportfishing media, and fishing tournaments known to involve billfish, to notify affected entities of the interim measures as quickly as practicable. In addition, notice will be provided through the HMS FAX network.

This interim rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget Control Number. This interim rule contains a collection-of-information requirement subject to the PRA. Fishing tournament registration and selective reporting in § 644.10 have been approved by OMB under control number 0648–0323 and is estimated at 10 minutes per report. Send comments regarding this burden estimate or any other aspect of this collection-of-information requirement including suggestions on how to reduce or eliminate this burden to NMFS and OMB (see **ADDRESSES**).

Because prior notice and an opportunity for public comment are not required to be provided for this interim rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 18, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by adding in numerical order, the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirements is located	Current OMB control number (all numbers begin with 0648)
. . . . .	
50 CFR	
. . . . .	
644.10	–0323
. . . . .	

50 CFR Chapter VI

PART 644—ATLANTIC BILLFISHES

3. The authority citation for part 644 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In part 644, § 644.5 is suspended and § 644.10 is added, effective from March 27, 1998 through September 23, 1998, to read as follows:

§ 644.10 Recordkeeping and reporting.

A person conducting a fishing tournament involving score keeping or awards for the capture of Atlantic billfish, regardless of whether retained, from a port in an Atlantic, Gulf of Mexico, or Caribbean state must notify the Science Director of the purpose, dates, and location of the tournament by letter postmarked, or fax dated, at least 4 weeks prior to commencement. If selected in writing by the Science Director for reporting, that person must maintain and submit a fishing record on forms available from the Science Director for each day of fishing in the tournament. Completed forms must be submitted to the Science Director postmarked not later than the seventh day after the conclusion of the tournament and must be accompanied by a copy of the tournament rules.

(a) The following information must be included on each form:

(1) Tournament name.

(2) Recorder's name and telephone number.

(3) Date for which the information is recorded.

(4) Hours fished (time from first line in the water to last line out of the water).

(5) Name of each vessel fishing that day.

(6) For each vessel listed, the species of each billfish boated or released.

(7) The weight and length of each billfish brought ashore.

(8) The name, address, and signature of the tournament director.

(9) The date signed.

(b) In addition to the information required to be reported by paragraph (a) of this section, the following information is desired, but is not mandatory:

(1) Prevailing weather conditions on the day reported, such as wind speed and direction, and sea height and direction.

(2) Whether a tag was attached before the billfish was released.

5. Section 644.21 is amended by suspending paragraphs (a) and (d) and adding paragraph (e) effective from March 27, 1998 through September 23, 1998, to read as follows:

§ 644.21 Size limits.

* * * * *

(e) The following minimum size limits, expressed in terms of lower jaw-fork length (LJFL), apply for the possession of billfish shoreward of the outer boundary of the EEZ, regardless of where caught:

(1) Blue marlin—96 inches (244 cm)
(2) White marlin—66 inches (168 cm)
(3) Sailfish—57 inches (145 cm)

[FR Doc. 98–7629 Filed 3–23–98; 8:45 am]
BILLING CODE 3510–22–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Notice of continuing effect.

SUMMARY: The Federal Trade Commission ("Commission") announces that the current, 1995 ranges of comparability for refrigerators, refrigerator-freezers, and freezers will remain in effect until new ranges of comparability are published for these products. The Commission also announces that manufacturers must continue to base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for refrigerators, refrigerator-freezers, and freezers on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kilowatt-hour) that was published by the Department of Energy ("DOE") on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9295).

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule ("Rule") was issued by the Commission in 1979 (44 FR 66466 (Nov. 19, 1979)) in response to a directive in the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6294).[1] The Rule covers eight categories of major household appliances: Refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditions. The Rule also covers pool heaters (59 FR 49556 (Sept. 28, 1994)) and contains requirements that pertain to fluorescent lamp ballasts (54 FR 28031 (July 5, 1989)), certain plumbing products (58 FR 54955 (Oct. 25, 1993)), and certain lighting products (59 FR 25176 (May 13, 1994, eff. May 15, 1995)).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report annually (by specified dates for each product type [2]) the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures.

[1] The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under § 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect until new ranges of comparability are published.

The annual submissions of data for refrigerators, refrigerator-freezers, and freezers have been made and have been analyzed by the Commission. The ranges of comparability for these products have not changed by more than 15% from the current ranges for refrigerators, refrigerator-freezers, and freezers, which were published on November 13, 1995, and became effective on February 12, 1996 (60 FR 56945). Therefore, the current ranges will remain in effect until new ranges of comparability are published for refrigerators, refrigerator-freezers, and freezers. As of the effective date of the current ranges (February 12, 1996), the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for refrigerators, refrigerator-freezers, and freezers must be based on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kilowatt-hour) that was published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9295). Because the current ranges will remain in effect until new ranges are published, this requirement to use the 1995 DOE cost for electricity (8.67 cents per kilowatt-hour) also will remain in effect until new ranges of comparability are published for refrigerators, refrigerator-freezers, and freezers.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority

The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–7596 Filed 3–23–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 528

New Animal Drugs For Use in Animal Feeds; Monensin; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations for monensin by removing the duplicate assay limits that appear in the regulations. This action is necessary to ensure the accuracy and consistency of the regulations.

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1739.

SUPPLEMENTARY INFORMATION: In the animal drug regulations, provisions for the assay limits for monensin liquid feeds were established in the regulations for medicated feed applications in § 558.4(d) (21 CFR 558.4(d)) in the Category I table and in the monensin regulation in § 558.355(c) (21 CFR 558.355(c)). In issuing the medicated feed regulations, assay limits were relegated to § 558.4(d) in the **Federal Register** of March 3, 1986 (51 FR 7382 at 7393). Inadvertently, the monensin liquid feed assay limits were also established in § 558.355(c). At this time, those limits in § 558.355(c) are removed and the paragraph reserved.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended by removing and reserving paragraph (c).

Dated: March 12, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–7495 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

Change of Name and Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the name and address for the Association of Official Analytical Chemists International (AOAC). This action is editorial in nature, and is intended to provide accuracy and clarity to the agency's regulations.

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR parts 101, 102, 106, 114, 130, 131, 133, 135, 136, 137, 139, 145, 146, 150, 155, 156, 160, 161, 163, 164, 166, 168, and 169 to reflect a change in the name and address for AOAC. The current name and address listed in certain of FDA's regulations for AOAC is Association of Official Analytical Chemists, 2300 Wilson Blvd., suite 400, Arlington, VA 22201–3301. The new name and address is Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

1. Parts 101, 102, 106, 114, 130, 131, 133, 135, 136, 137, 139, 145, 146, 150, 155, 156, 160, 161, 163, 164, 166, 168, and 169 are amended by removing "Association of Official Analytical Chemists, 2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301" wherever it appears and by adding in its place "Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504."

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7494 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 524 and 556

Animal Drugs, Feeds, and Related Products; Moxidectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Animal Health. The NADA provides for topical use of a 0.5 percent solution of moxidectin on cattle for treatment and control of infections and infestations of certain internal and external parasites.

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, P.O. Box 400, Princeton, NJ 08543–0400, filed NADA 141–099 that provides for use of Cydectin® moxidectin 0.5 percent pour-on for beef and non-lactating dairy cattle at 500 micrograms moxidectin per kilogram of body weight for treatment and control of infections and infestations of certain gastrointestinal roundworms, lungworms, cattle grubs, mites, lice, and horn flies. The NADA is approved as of January 28, 1998, and the regulations are amended by adding § 524.1451 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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In addition, a tolerance for residues of moxidectin in edible tissues of cattle has not been previously established. At this time, a tolerance for moxidectin in edible cattle tissues is established in new section § 556.426.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act, this approval qualifies for 3 years of marketing exclusivity beginning January 28, 1998, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the application and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 524

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 524 and 556 are amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.1451 is added to read as follows:

§ 524.1451 Moxidectin.

(a) *Specifications.* Each milliliter contains 5 milligrams of moxidectin (0.5 percent solution).

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.426 of this chapter.

(d) *Conditions of use.* (1) *Amount.* 0.5 milligrams moxidectin per kilogram (2.2 pounds) of body weight.

(2) *Indications for use.* Beef and non-lactating dairy cattle for treatment and control of internal and external parasites: gastrointestinal roundworms (*Ostertagia ostertagi* (adult and L4, including inhibited larvae), *Haemonchus placei* (adult), *Trichostrongylus axei* (adult and L4), *T. colubriformis* (adult), *Cooperia oncophora* (adult), *C. punctata* (adult), *Bunostomum phlebotomum* (adult), *Oesophagostomum radiatum* (adult), *Nematodirus helvetianus* (adult)); lungworms (*Dictyocaulus viviparus*, adult and L4); cattle grubs (*Hypoderma bovis, H. lineatum*); mites (*Chorioptes bovis, Psoroptes ovis* (*P. Communis* var. *bovis*)); lice (*Linognathus vituli, Haematopinus eurysternus, Solenopotes capillatus, Damalinia bovis*); and horn flies (*Haematobia irritans*). To control infections and to protect from reinfection with *O. ostertagi* for 28 days after treatment and with *D. viviparus* for 42 days after treatment.

(3) *Limitations.* Apply topically along the top of the back from the withers to the tailhead. Because a withdrawal time for milk has not been established, do not use on female dairy cattle of breeding age. A withdrawal period has not been established for this product on preruminating calves. Do not use on calves to be processed for veal. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

PART 556—TOLERANCES FOR RESIDUES OF NEW NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.426 is added to read as follows:

§ 556.426 Moxidectin.

An acceptable daily intake (ADI) of 4 micrograms per kilogram per day in tissue is established. A tolerance is established for parent moxidectin in edible tissues of cattle of 50 parts per billion in muscle and 200 parts per billion in liver.

Dated: March 13, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–7504 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–016]

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations for the 19th Annual Safety at Sea Seminar, an annual marine event to be held March 28, 1998, on Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic in the vicinity of the U.S. Naval Academy due to the confined nature of the waterway and expected vessel congestion during the fireworks display and helicopter rescue demonstration. The effect will be to restrict general navigation in the regulated area for the safety of spectators, event participants, and other vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.511 is effective from 11:30 a.m. to 3 p.m. on March 28, 1998.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R.L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy Sailing Squadron will sponsor the 19th Annual Safety at Sea Seminar on the Severn River, near the U.S. Naval Academy, Annapolis, Maryland. Waterborne activities will include demonstrations of life rafts, pyrotechnics, man overboard procedures, and a helicopter rescue.

In order to ensure the safety of participants and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a

navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: March 6, 1998.

J.S. Carmichael,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–7633 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–011]

Drawbridge Operating Regulation; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the L&N bascule drawbridge across the Inner Harbor Navigation Canal, mile 2.9 at New Orleans, Orleans Parish, Louisiana. This deviation allows the bridge to remain closed to navigation from 8 a.m. to noon; and from 1 p.m. to 5 p.m. on Wednesday April 1, 1998 and Thursday April 2, 1998. Presently, the draw is required to open on signal. This temporary deviation is issued to allow for the repairs to the handrails and sidewalk stringers damaged in a recent allision.

DATES: This deviation is effective from 8 a.m. on April 1, 1998 through 5 p.m. on April 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The L&N bascule drawbridge across the Inner Harbor Navigation Canal, mile 2.9, in New Orleans, Orleans Parish, Louisiana, has a vertical clearance of one foot above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with small ships, tows, fishing vessels, sailing vessels, and other recreational craft. The Board of Commissioners of the Port of New Orleans sent a letter to the Coast Guard requesting a temporary deviation from the normal operation of the bridge in order to accommodate the maintenance work. The maintenance work involves removing, repairing, and replacing the handrails and stringers damaged in a recent allision. This work is essential for the continued safe operation of the draw span.

This deviation allows the draw of the L&N bascule bridge to remain in the closed-to-navigation position from 8 a.m. to noon and from 1 p.m. to 5 p.m. on April 1 and April 2. The bridge will open for the passage of vessels from noon to 1 p.m. on April 1 and April 2. The bridge will also open for the passage of vessels from 5 p.m. on April 1 until 8 a.m. on April 2. With the draw in the closed-to-navigation position, vessels requiring vertical clearances of greater than one foot above high water will be delayed a maximum of four hours.

This deviation will be effective from 8 a.m. April 1, 1998, through 5 p.m. April 2, 1998. Presently, the draw opens on signal at any time, as required by 33 CFR 117.5.

Dated: March 13, 1998.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 98–7635 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI50

Veterans Education: Reduction in Required Reports

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefits regulations of the Department of Veterans Affairs (VA). It changes the nature of the information to be reported by veterans and servicemembers receiving educational assistance under the Montgomery GI Bill—Active Duty program and the number of reports required of educational institutions in which these veterans and servicemembers are enrolled. These changes will streamline the operation of this program, and reduce the information collection burden for this program, while maintaining the program's integrity.

DATES: Effective Date: April 23, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on September 18, 1997 (62 FR 48969), VA proposed to amend the "All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)" regulations set forth at 38 CFR part 21, subpart K. We proposed to reduce the number of reports required of a veteran pursuing a program of education under the Montgomery GI Bill—Active Duty (MGIB), and also to reduce the number of reports that an educational institution has to make to VA if it has veterans enrolled under the MGIB. In summary, a veteran would no longer have to submit a monthly verification of pursuit of a program of education if he or she either received an advance payment covering that month or received a lump sum payment for that month. In addition, neither the veteran nor the educational institution would have to report to VA if the veteran is enrolled as a full-time student for a standard term, and either increases or decreases the number of credit hours being pursued without changing his or her full-time student status.

Interested persons were given 60 days to submit comments. No comments were received. Based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule.

Paperwork Reduction Act of 1995

Information collection and recordkeeping requirements associated with this final rule concerning requirements that in certain instances a veteran pursuing a program of education under the MGIB must verify pursuit monthly, in 38 CFR 21.7154 and 21.7156(a), have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0465.

Furthermore, information collection and recordkeeping requirements associated with this final rule concerning requirements for reporting changes in enrollment, which require that in most instances both veterans and educational institutions must report to VA without delay interruptions, terminations, or changes in hours of credit or attendance, in 38 CFR 21.7156(b), have been approved by OMB under the provisions of the Paperwork Reduction Act and have been assigned OMB control number 2900–0156.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a

person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to each collection of information in this final rule is displayed at the end of each affected section of the regulations.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will have only minuscule effects on the activity of any educational institution. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 17, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set out above, 38 CFR part 21 (subpart K) is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7154, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively; newly redesignated paragraph (b)(2)(i) is amended by removing "payment," and adding, in its place, "payment;"; newly redesignated paragraph (b)(2)(ii) is amended by removing "period, and" and adding, in its place, "period; and"; paragraph (a) is added, a parenthetical at the end of the section is added, and the introductory text for the section, the paragraph heading for newly redesignated paragraph (b), and newly redesignated paragraph (b)(1) are revised, to read as follows:

§ 21.7154 Pursuit and absences.

Except as provided in this section, an individual must submit a verification to VA each month of his or her enrollment during the period for which the individual is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) *Exceptions to the monthly verification requirement.* An individual does not have to submit a monthly verification as described in the introductory text of this section when the individual—

(1) Is enrolled in a correspondence course;

(2) Has received a lump-sum payment for the training completed during a month; or

(3) Has received an advance payment for the training completed during a month.

(Authority: 38 U.S.C. 3034, 3684)

(b) *Items to be reported on all monthly verifications.* (1) The monthly verification for all veterans and servicemembers will include a report on the following items when applicable:

(i) Continued enrollment in and actual pursuit of the course;

(ii) The individual's unsatisfactory conduct, progress, or attendance;

(iii) The date of interruption or termination of training;

(iv) Changes in the number of credit hours or in the number of clock hours of attendance other than those described in § 21.7156(a);

(v) Nonpunitive grades; and

(vi) Any other changes or modifications in the course as certified at enrollment.

* * * * *

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0465.)

3. In § 21.7156, the introductory text and paragraph (a) introductory text are removed; paragraphs (a)(1), (a)(2), (a)(3), (b), and (c) are redesignated as paragraphs (b)(3), (b)(4), (b)(5), (c), and (d), respectively; newly redesignated paragraph (c)(2) is amended by removing "(b)(1)" and adding, in its place, "(c)(1)"; and the section heading is revised, paragraphs (a), (b)(1), and (b)(2) are added, a parenthetical at the end of the section is added, and newly redesignated paragraph (b)(3) is revised, to read as follows:

§ 21.7156 Other required reports.

(a) *Reports from veterans and servicemembers.* (1) A veteran or servicemember enrolled full time in a program of education for a standard term, quarter, or semester must report without delay to VA:

(i) A change in his or her credit hours or clock hours of attendance if that change would result in less than full-time enrollment;

(ii) Any change in his or her pursuit that would result in less than full-time enrollment; and

(iii) Any interruption or termination of his or her attendance.

(2) A veteran or servicemember not described in paragraph (a)(1) of this section must report without delay to VA:

(i) Any change in his or her credit hours or clock hours of attendance;

(ii) Any change in his or her pursuit; and

(iii) Any interruption or termination of his or her attendance.

(Authority: 38 U.S.C. 3680(g))

(b) *Interruptions, terminations, or changes in hours of credit or attendance.* (1) Except as provided in paragraph (b)(2) of this section, an educational institution must report without delay to VA each time a veteran or servicemember:

(i) Interrupts or terminates his or her training for any reason; or

(ii) Changes his or her credit hours or clock hours of attendance.

(2) An educational institution does not need to report a change in a veteran's or servicemember's hours of credit or attendance when:

(i) The veteran or servicemember is enrolled full time in a program of education for a standard term, quarter, or semester before the change;

(ii) The veteran or servicemember continues to be enrolled full time after the change; and

(iii) The tuition and fees charged to the servicemember have not been adjusted as a result of the change.

(Authority: 38 U.S.C. 3034, 3684)

(3) If the change in status or change in number of credit hours or clock hours of attendance occurs on a day other than one indicated by paragraph (b)(4) or (b)(5) of this section, the educational institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs.

* * * * *

(The information collection requirements in paragraphs (a) and (b) of this section have

been approved by the Office of Management and Budget under control numbers 2900–0465 and 2900–0156, respectively.)

[FR Doc. 98–7648 Filed 3–23–98; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 94–148 and CC Docket No. 93–2; DA 98–349]

Conditional Authorization Authority to Common Carrier and Private Operational Fixed Microwave Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects portions of the Supplementary Information that was published in the **Federal Register** of March 5, 1998 (63 FR 10778).

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Shaun Maher of the Commission's Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending § 101.31(e) of the Commission's rules to provide for conditional authorization in the 10.6–10.68 GHz band ("10 GHz band") under certain circumstances in the **Federal Register** of March 5, 1998, (63 FR 10778). This document corrects the Supplementary Information to give a brief statement of the reasons for expediting the effective date of § 101.31(e). In FR Doc. 98–5465, published on March 5, 1998, (63 FR 10778) make the following correction:

On page 10779, a new paragraph 5 is added and paragraphs 5 and 6 are redesignated as 6 and 7 to read as follows:

5. We believe that the public interest will be served by permitting microwave licensees in the 10 GHz band to avail themselves of conditional authorization authority at the earliest opportunity. Our decision here will allow for more rapid delivery of 10 GHz band microwave services to the marketplace. Because this rule modification will make the authorization process less restrictive, we, for good cause find that public notice and comment are unnecessary and contrary to the public interest. We also believe that 30-day advance publication of this amendment is likewise unnecessary and contrary to the public interest. Thus, we shall make this amendment effective upon publication of this Order in the **Federal Register**. In addition, entities with 10 GHz band applications pending when this Order becomes effective may implement conditional authorization authority in accordance with Section 101.31 as amended herein.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio.

Federal Communications Commission.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

Richard M. Smith,

Chief, Office of Engineering and Technology.

[FR Doc. 98–7511 Filed 3–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–297; FCC 98–15]

Reconsideration of the Rules and Policies for Local Multipoint Distribution Service; Correction.

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission published in the **Federal Register** on February 25, 1998, a Third Order on Reconsideration (Third Reconsideration Order) in the Local Multipoint Distribution Service (LMDS) proceeding. The final rules included a date by which certain dismissed applications are permitted to be refiled. The date inadvertently was miscalculated and was misstated in various sections of the rules. This document corrects the date in the final rules.

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler or Jay Whaley, 202–418–1310.

SUPPLEMENTARY INFORMATION: The Commission published a Third Reconsideration Order in the **Federal Register** on February 25, 1998 (63 FR 9443, FR Doc. 98–4750), to be effective on April 27, 1998. The final rules included a date by which certain dismissed applications are permitted to be refiled under the terms and conditions of the Third Reconsideration Order. The date inadvertently was calculated as of 60 days from publication in the **Federal Register**, rather than 60 days from the effective date of the Third Reconsideration Order, which was the date adopted by the Commission in the Third Reconsideration Order. The incorrect date was published in several sections of the final rules. This document corrects the final rules to conform the date with the Third Reconsideration Order, thereby changing the date from April 27, 1998, to June 26, 1998.

On page 9448, in the final rules, correct the references to April 27, 1998, to read June 26, 1998, as follows:

1. Column 1, § 101.57, paragraph (a)(1)(ii)(B), line 4.
2. Column 2, § 101.103, paragraph (b)(3), line 4.
3. Column 2, § 101.107, paragraph (a), footnote 8, line 5.
4. Column 2, § 101.113, paragraph (a), footnote 8, line 5.
5. Column 3, § 101.147, paragraph (a), footnote 16, line 5.
6. Column 3, § 101.147, introductory text of paragraph (u), line 10.
7. Column 3, § 101.803, paragraph (a), footnote 7, lines 5 and 11.
8. Column 3, § 101.803, paragraph (d), footnote 9, lines 5 and 11.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–7510 Filed 3–23–98; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1832 and 1852

Contract Financing

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule revises several subparts in NASA's Federal Acquisition Regulation Supplement (NFS). This rule updates the designated points of responsibility to reflect the transfer of the finance policy function within the Headquarters Office of Procurement. This rule also provides clarification to ease the use of the NFS and reflects the extension of certain Agency class deviations.

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

The NASA Office of Procurement has undergone reorganization, resulting in the transfer of the policy responsibility

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for contract financing from the Analysis Division (HC) to the Contract Management Division (HK). This rule revises the NFS to reflect this transfer of responsibility. Also, the coverage at 1832.412 concerning the FAR Advance Payments clause was found to be difficult to follow. The revision of that section and the creation of NASA clause 1852.232–70 are aimed at providing greater clarity as to the modifications that should be made to the FAR clause. That clause also clarifies that Standard Form 272 and 272–A are to be submitted with the other information enumerated in the FAR 52.232–12 clause and its Alternate V, and that those forms are not just the means by which that information is to be submitted. In addition, the Small Business Technology Transfer (STTR) program was extended by Congress through September 30, 2001. This rule reflects the extension of the advance payments and incremental funding class deviations for that program to coincide with the period of Congress' extension.

Impact

NASA certifies that this proposed regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et.seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1832 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR 1832 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1832 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1832—CONTRACT FINANCING

1832.402 [Amended]

2. In section 1832.402, paragraph (e)(1) is revised to read as follows:

1832.402 General. (NASA supplements paragraph (e))

(e)(1) The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is $25,000,000 or less, and for all increases to such contracts over $25,000,000 previously approved by the Headquarters Office of Procurement as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(a) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I contracts. A class deviation has been signed, effective through September 30, 2000 (for SBIRs) and September 30, 2001 (for STTRs), authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement (Code HK).

(b) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorizes advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

* * * * *

1832.412 [Amended]

3. Section 1832.412 is revised to read as follows:

1832.412 Contract clause. (NASA supplement paragraphs (e) and (f))

(e) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs.

(f) See 1832.412(e).

1832.412–70 [Added]

4. Section 1832.412–70 is added to read as follows:

1832.412–70 NASA Contract clauses.

When the clause at FAR 52.232–12 or its Alternates II or V are used, insert the clause at 1852.232–70, NASA Modification of FAR 52.232–12.

1832.501–2 [Amended]

5. Section 1832.501–2 is revised to read as follows:

1832.501–2 Unusual progress payments.

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the use of unusual progress payments.

1832.502–2 [Amended]

6. Section 1832.502–2 is revised to read as follows:

1832.502–2 Contract finance office clearance.

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the actions at FAR 32.502–2, except the Associate Administrator for Procurement (Code HK) is the approval authority for any deviations addressed in FAR 32.502–2(b).

1832.702–70 [Amended]

7. In section 1832.702–70, paragraph (e) is revised to read as follows:

1832.702–70 NASA policy.

* * * * *

(e) A class deviation from the conditions set forth in paragraphs 1832.702–70 (a), (b) and (c) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) Program (through September 30, 2000) and Phase II of the Small Business Technology Transfer (STTR) program (through September 30, 2001). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.232–70 [Added]

8. Section 1852.232–70 is added to read as follows:

1852.232–70 NASA Modification of FAR 52.232–12.

As prescribed at 1832.412–70, make the following modifications:

NASA Modification of FAR 52.232–12, March 1998

(a) Basic Clause. (1) In paragraph (e), Maximum Payment, in the sentence that begins "When the sum of," change the word "When" to lower case and insert before it: "Unliquidated advance payments shall not exceed $____ at any time outstanding. In addition. * * *."

(2) In paragraph (m)(1), delete "in the form prescribed by the administering office" and substitute "and Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272–A, Federal Cash Transactions Report Continuation."

(b) Alternate II (if incorporated in the contract). In paragraph (e), Maximum Payment, in the sentence that begins "When the sum of," change the word "When" to lower case and insert before it: "Unliquidated advance payments shall not exceed $____ at any time outstanding. In addition. * * *."

(c) Alternate V (if incorporated in the contract). (1) Substitute the following for

paragraph (b): "(b) Use of funds. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, indirect costs, or such other costs approved in writing by the administering contracting office. Payments are subject to any restrictions in other clauses of this contract. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation, other applicable regulations referenced in Part 31, or subpart 1831.2."

(2) In paragraph (d), Maximum Payment, in the sentence that begins "When the sum of," change the word "When" to lower case and insert before it: "Unliquidated advance payments shall not exceed $____ at any time outstanding. In addition, * * *."

(3) In paragraph (j)(1), insert between "statements," and "and" "together with Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272–A, Federal Cash Transactions Report Continuation"

(4) If this is a Phase I contract awarded under the SBIR or STTR programs, delete paragraph (a) and substitute the following: "(a) Requirements for payment. Advance payments will be made under this contract upon receipt of invoices from the Contractor. Invoices should be clearly marked "Small Business Innovation Research Contract" or "Small Business Technology Transfer Contract," as appropriate, to expedite payment prpcessing. One-third of the total contract price will be available to be advanced to the contractor immediately after award, another one-third will be advanced three months after award, and the final one-third will be paid upon acceptance by NASA of the Contractor's final report. By law, full payment must be made no later than 12 months after the date that contract requirements are completed. The Contractor shall flow down the terms of this clause to any subcontractor requiring advance payments."

(End of clause)

[FR Doc. 98–7595 Filed 3–23–98; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1833

vision to the NASA FAR Supplement Coverage on Alternative Dispute Resolution

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to provide a cross-reference to NASA policy on Alternative Dispute Resolution (ADR).

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Dave Beck, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

FAR subpart 33.2 discusses the use of ADR. NASA Policy Directive (NPD) 2010.2, establishes policy on use of ADR techniques by NASA personnel. This rule adds NFS 1833.210 in order to cross-reference NPD 2010.2, which is available at the following internet site: http://nodis.hq.nasa.gov/Library/Directives/NASA–WIDE/Policies/Legal__Policies/N__PD__2010__2A.html.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because use of alternative dispute resolution procedures is voluntary. Their use is in addition to the traditional dispute resolution procedures which are not changed by this rule. This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1833

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement

Accordingly, 48 CFR Part 1833 is amended as follows:

1. The authority citation for 48 CFR Part 1833 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.2—Disputes and Appeals

1833.210 [Added]

2. Section 1833.210 is added to read as follows:

1833.210 Contracting officer's authority.

See NASA Policy Directive 2010.2 on use of Alternative Dispute Resolution.

[FR Doc. 98–7594 Filed 3–23–98; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS–102; Amendment 199–16]

RIN 2137–AC67

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Confirmation of effective date of direct final rule.

SUMMARY: This document confirms the effective date of the direct final rule that amends the "Scope and Compliance" section of the Drug Testing Rules to revise the applicability requirement with respect to any operator whose employees are located outside the territory of the United States.

DATES: This document confirms April 15, 1998, as the effective date of the direct final rule published on December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Catrina Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–6199, Fax: (202) 366–4566, e-mail: catrina.pavlik@RSPA.dot.gov. Information is also available on the Office of Pipeline Safety's intenet home page at OPS.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 24, 1997, RSPA published a direct final rule (62 FR 67293), titled "Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations." In that publication, RSPA stated that if it did not receive adverse comments by February 23, 1998, it would publish a confirmation notice in the **Federal Register** by March 16, 1998. RSPA received no adverse comments. Therefore, this document confirms that the direct final rule cited above will become effective on April 15, 1998.

Issued in Washington, D.C. on March 16, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–7556 Filed 3–23–98; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 980129023–8023–01; I.D. 121997B]

RIN: 0648–AJ74

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Interim Prohibition on Certain Vessels Landing Lobster in Excess of Specified Limits; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments; correction.

SUMMARY: This document contains corrections to the interim final rule pertaining to the Atlantic Coastal Fisheries Cooperative Management Act Provisions published in the **Federal Register** on March 2, 1998.

DATES: This action becomes effective March 24, 1998.

ADDRESSES: Comments on the rule should be sent to Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, Telephone 301–427–2014

SUPPLEMENTARY INFORMATION:

Background

An interim final rule was published in the **Federal Register** on March 2, 1998, that placed a prohibition on certain vessels landing lobster in excess of specified limits (63 FR 10154). That document contained two typographical errors.

Need for Correction

As published, an incorrect section heading was listed twice on page 10155 of the March 2, 1998, edition of the **Federal Register**. In the third column under the heading "§ 697.6 Definitions." instruction number 3. should read "In § 697.7, paragraph (c) is added to read as follows." Immediately following instruction number 3, the section heading should read "§ 697.7 Prohibitions." NMFS is correcting this error and is making no substantive change to the document in this action.

Dated: March 18, 1998.

David L. Evans,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7630 Filed 3–23–98; 8:45 am]

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[Docket N

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AGENCY:
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ACTION:
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SUMMARY
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Proposed Rules

Federal Register
Vol. 63, No. 56
Tuesday, March 24, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes that incorporate an executive cabin layout. The proposed AD would require modifying the lavatory wall and passenger seat configuration. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent head injuries during an airplane crash because the lavatory wall and passenger seat configuration do not meet current head injury criteria regulations.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–38–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–38–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–38–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on Pilatus Models PC–12 and PC–12/45 airplanes that incorporate an executive cabin layout. The FOCA of Switzerland reports that the current executive cabin layout of the above-referenced airplanes, in particular the lavatory wall and passenger seat configuration, do not meet the head injury criteria (HIC) requirements of section 23.562 of the Federal Aviation Regulations (14 CFR 23.562).

These conditions, if not corrected in a timely manner, could result in head injuries during an airplane crash because the lavatory wall and passenger seat configuration do not meet current head injury criteria regulations.

The FAA issued a temporary exemption to allow Pilatus time to accomplish HIC testing in order to determine what is necessary to meet the requirements of section 23.562 of the Federal Aviation Regulations (14 CFR 23.562). This testing is complete and the service information that is presented below includes procedures for the modifications necessary to comply with the current regulations.

Relevant Service Information

Pilatus has issued Service Bulletin No. 25–003, dated May 7, 1997, which specifies procedures for modifying the lavatory wall and passenger seat configuration.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss AD HB 97–249, dated May 31, 1997, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

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Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying the lavatory wall and passenger seat configuration. Accomplishment of the proposed installation would be in accordance with the service information previously referenced.

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 15 workhours to accomplish the proposed actions, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $36,000, or $900 per airplane. These figures are based on the presumption that no affected airplane has the proposed modifications incorporated.

Pilatus has informed the FAA that all 40 airplanes in the U.S. registry have the proposed modifications incorporated. With this in mind, the proposed AD imposes no cost impact upon the public.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 97–CE–38–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, serial numbers MSN 101 through 180, certificated in any category, that incorporate an executive cabin layout.

Note 1: Models PC–12 and PC–12/45 airplanes that incorporate a corporate-utility cabin layout are not affected by this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent head injuries during an airplane crash because the lavatory wall and passenger seat configuration do not meet current head injury criteria regulations, accomplish the following:

(a) Modify the lavatory wall and passenger seat configuration in accordance with Pilatus Service Bulletin No. 25–003, dated May 7, 1997.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Pilatus Service Bulletin No. 25–003, dated May 7, 1997, should be directed to Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Swiss AD HB 97–249, dated May 31, 1997.

Issued in Kansas City, Missouri, on March 17, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7520 Filed 3–23–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–341–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require repetitive inspections to detect corrosion and cracks on the bottom area of the wing skin, and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion and cracks on the bottom area of the wing skin, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by April 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–341–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–341–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–341–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that it has received reports of corrosion on the lower wing root joint, on the bottom wing skin, inboard and outboard of the external lower surface splice. Most of the corrosion was found in the area aft of frame 43, and around fasteners, starting from the edges of the countersinks. Such corrosion could lead to cracking in this area. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–57–0204, dated December 4, 1995 (for Model A300 series airplanes); A310–57–2061, dated December 4, 1995 (for Model A310 series airplanes); and A300–57–6047, Revision 01, dated October 16, 1996, as revised by Change Notice 1.A., dated February 24, 1997 (for Model A300–600 series airplanes). These service bulletins describe procedures for repetitive detailed visual inspections to detect corrosion and cracks of the bottom wing skin area, inboard and outboard of the rib 1 external lower surface splice, between frame 40 and frame 47. The service bulletins also describe procedures for removal of any corrosion found, application of protective treatment, and non-destructive inspection for cracks, if necessary.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–006–210(B), dated January 2, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposal and the Related Service Bulletins

The proposed rule would differ from the Airbus service bulletins described previously in that, unlike the compliance time threshold and intervals provided in the service bulletins, this proposed AD would reference tables that provide compliance time thresholds and intervals in flight cycles and corresponding flight hours for each airplane model. The thresholds and intervals defined in the service bulletins are based on an Average Flight Time (AFT) for each airplane model. For those airplanes that are operated with a flight duration different from the AFT, an adjustment must be made to the thresholds and intervals. To provide clarification of the appropriate thresholds and intervals, Tables 1, 2, 3, 4, and 5 have been included in the proposed AD to provide specific thresholds and intervals, and to eliminate the need for operators to calculate differing adjustments for various AFT's.

Operators also should note that the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions. However, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 49 Model A300 and A310 series airplanes, and 51 Model A300–600 series airplanes, of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per inspection cycle to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $48,000, or $480 per airplane, per inspection cycle.

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The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 97–NM–341–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracks on the bottom wing skin area, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) At the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable: Except as required by paragraphs (b) and (c) of this AD, perform an inspection for corrosion and cracks on the bottom wing skin area, and accomplish follow-on corrective actions, in accordance with Airbus Service Bulletin A300–57–0204, dated December 4, 1995 (for Model A300 series airplanes); A310–57–2061, dated December 4, 1995 (for Model A310 series airplanes); or A300–57–6047, Revision 01, dated October 16, 1996, as revised by Change Notice 1.A., dated February 24, 1997 (for Model A300–600 series airplanes); as applicable; subsequently referred to in this AD as the "applicable" service bulletins. Thereafter, repeat the inspection at intervals not to exceed 5 years.

(1) For airplanes with 5 years or less since date of manufacture: Prior to the accumulation of 5 years since date of manufacture or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes with more than 5 years, but less than 15 years since date of manufacture: Within 18 months after the effective date of this AD.

(3) For airplanes with more than 15 years, but less than 20 years since date of manufacture: Within 12 months after the effective date of this AD.

(4) For airplanes with more than 20 years since date of manufacture: Within 6 months after the effective date of this AD.

(b) If any corrosion or crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to refer to Table B, Figure 4, of the service bulletin to determine the fatigue inspection threshold and interval: Use Table 1, 2, 3, 4, or 5, of this AD, as applicable, to determine the fatigue inspection threshold and interval in flight cycles (FC) or flight hours (FH).

TABLE 1.—AIRBUS SERVICE BULLETIN A300–57–204 (MODEL A300 B2) FATIGUE INSPECTION

Area	Threshold (FC or FH, whichever occurs first)	Detailed visual interval (FC or FH, whichever occurs first)	NDT (HFEC) interval (FC or FH, whichever occurs first)
1, 2, 3a [1]	10,400 FC or 15,800 FH	10,400 FC or 15,800 FH	10,400 FC or 15,800 FH.
3b, 4a [2]	7,200 FC or 11,000 FH	2,500 FC or 3,800 FH	6,300 FC or 9,600 FH.
4b	10,400 FC or 15,800 FH	10,400 FC or 15,800 FH	10,400 FC or 15,800 FH.
5, 6	9,900 FC or 15,100 FH	8,700 FC or 13,200 FH	9,900 FC or 15,100 FH.
7, 8	6,600 FC or 10,000 FH	5,000 FC or 7,700 FH	6,400 FC or 9,700 FH.

[1] Area 3, as defined by Table B, Table 4, of SB A300–57–0204, has been split into areas 3a and 3b with a borderline between stiffener 43.2 and lattice flange 44 for Tables 1, 2, and 3 of this AD.

[2] Area 4, as defined by Table B, Table 4, of SB A300–57–0204, has been split into areas 4a and 4b with a borderline between lattice flange 44 and stiffener 44.1 for Tables 1, 2, and 3 of this AD.

TABLE 2.—AIRBUS SERVICE BULLETIN A300–57–204 (MODEL A300 B4–100) FATIGUE INSPECTION

Area	Threshold (FC or FH, whichever occurs first)	Detailed visual interval (FC or FH, whichever occurs first)	NDT (HFEC) interval (FC or FH, whichever occurs first)
1, 2, 3a	9,500 FC or 15,600 FH	8,600 FC or 14,200 FH	9,500 FC or 15,600 FH.

TABLE 2.—AIRBUS SERVICE BULLETIN A300–57–204 (MODEL A300 B4–100) FATIGUE INSPECTION—Continued

Area	Threshold (FC or FH, whichever occurs first)	Detailed visual interval (FC or FH, whichever occurs first)	NDT (HFEC) interval (FC or FH, whichever occurs first)
3b, 4a	6,700 FC or 12,000 FH	2,000 FC or 3,300 FH	5,000 FC or 8,200 FH.
4b	9,500 FC or 15,600 FH	8,600 FC or 14,200 FH	9,500 FC or 15,600 FH.
5, 6	8,200 FC or 13,400 FH	7,200 FC or 11,900 FH	8,200 FC or 13,400 FH.
7, 8	4,600 FC or 7,600 FH	3,600 FC or 5,900 FH	4,500 FC or 7,400 FH

TABLE 3.—AIRBUS SERVICE BULLETIN A300–57–204 (MODEL A300B4–200) FATIGUE INSPECTION

Area	Threshold (FC or FH, whichever occurs first)	Detailed visual interval (FC or FH, whichever occurs first)	NDT (HFEC) interval (FC or FH, whichever occurs first)
1, 2, 3a	9,900 FC or 21,100 FH	9,000 FC or 19,200 FH	9,900 FC or 12,100 FH.
3b, 4a	7,000 FC or 14,900 FH	2,100 FC or 4,500 FH	5,200 FC or 11,100 FH.
4b	9,900 FC or 21,100 FH	9,000 FC or 19,200 FH	9,900 FC or 21,100 FH.
5, 6	8,500 FC or 18,100 FH	7,500 FC or 16,000 FH	8,500 FC or 18,100 FH.
7, 8	4,800 FC or 10,200 FH	3,700 FC or 7,900 FH	4,700 FC or 10,000 FH.

TABLE 4.—AIRBUS SERVICE BULLETIN A310–57–2061 (MODEL A310–200 AND A310–300) FATIGUE INSPECTION

Area	Threshold (FC or FH, whichever occurs first)	Detailed visual interval (FC or FH, whichever occurs first)	NDT (HFEC) interval (FC or FH, whichever occurs first)
1	12,800 FC or 36,600 FH	10,500 FC or 29,900 FH	12,800 FC or 36,600 FH.
2	5,700 FC or 16,300 FH	4,600 FC or 13,100 FH	5,700 FC or 16,300 FH.
3, 5	5,100 FC or 14,700 FH	4,100 FC or 11,800 FH	5,100 FC or 14,700 FH.
4	4,500 FC or 12,800 FH	1,800 FC or 5,100 FH	4,500 FC or 12,800 FH.
6	19,400 FC or 55,300 FH	16,500 FC or 47,000 FH	19,400 FC or 55,300 FH.
7	16,300 FC or 46,500 FH	13,800 FC or 39,500 FH	16,300 FC or 46,500 FH.

TABLE 5.—AIRBUS SERVICE BULLETIN A300–57–6047 (MODEL A300–600) FATIGUE INSPECTION

Area	Threshold (FC or FH, whichever occurs first)	Detailed visual interval (FC or FH, whichever occurs first)	NDT (HFEC) interval (FC or FH, whichever occurs first)
1, 2	13,600 FC or 42,900 FH	11,800 FC or 37,000 FH	15,500 FC or 48,800 FH.
3	6,500 FC or 20,400 FH	5,800 FC or 18,400 FH	6,900 FC or 21,600 FH.
4, 6	4,800 FC or 15,100 FH	4,500 FC or 14,200 FH	5,000 FC or 15,700 FH.
5	2,100 FC or 6,500 FH	900 FC or 3,000 FH	2,100 FC or 6,500 FH.
7	5,700 FC or 18,100 FH	5,500 FC or 17,200 FH	6,300 FC or 19,800 FH.
8	2,400 FC or 7,400 FH	2,100 FC or 6,500 FH	2,400 FC or 7,400 FH.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–006–210(B), dated January 2, 1997.

Issued in Renton, Washington, on March 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7525 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–21–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes. This proposal would require a one-time visual inspection to detect fatigue cracking of the lower left nose of certain longerons and the attaching frames; repair, if necessary; and installation of a preventive modification. The proposal also would require installation of a preventive modification. This proposal is prompted by several reports of fatigue cracking of certain longerons and the attaching frames. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane.

DATES: Comments must be received by May 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–21–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L; FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–21–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–21–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that cracking of the fuselage longerons-to-frame attachment holes occurred on three McDonnell Douglas Model DC–9 series airplanes. The cracking of the longeron segments has been attributed to fatigue. The fatigue cracking was found between longerons 22 though 26 on the left side at stations Y=160.000 and Y=200.000. These airplanes had accumulated between 59,110 and 74,445 total flight cycles. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane.

Similar Airplanes

The fuselage longerons-to-frame attachments of Model DC–9 series airplanes are similar to those of McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes; therefore, these models also may be subject to this same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993, and Revision 1, dated November 29, 1994 (for Model DC–9 series airplanes), and MD–80 Service Bulletin 53–265, dated June 13, 1994 (for Model DC–9–80 series airplanes and MD–88 airplanes). These service bulletins describe procedures for a one-time visual inspection to detect cracking of the lower left nose of longerons 22 through 26 and the attaching frames at stations Y=160.000 and Y=200.000. The service bulletins also provide procedures for a preventive modification (installation of clips and doublers under longeron flanges and shims longeron) to relieve preloads. Additionally, the service bulletins reference the applicable Structural Repair Manual for repairs, if necessary.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection to detect cracking of the lower left nose of longerons 22 through 26 and the attaching frames at stations Y=160.000 and Y=200.000. The proposed rule also would require accomplishment of a preventive modification, and repair of any cracking detected. The actions would be required to be accomplished in accordance with the applicable service bulletin described previously.

Cost Impact

There are approximately 2,000 Model DC–9, Model DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,200 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 25 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,800,000, or $1,500 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 97–NM–21–AD.

Applicability: Model DC–9–10, –20, –30, –40, –50 and C–9 (military) series airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 53–256, Revision 1, dated November 29, 1994; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes and MD–88 airplanes, as listed in McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of longerons 22 through 26 and the attaching frames, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane; accomplish the following:

(a) Prior to the accumulation of 40,000 total landings, or within 6,000 landings after the effective date of this AD, whichever occurs later: Perform a visual inspection to detect cracking of the left lower nose of longerons 22 through 26 (inclusive) and the respective attaching frames at station frames Y=160.000 and Y=200.000; in accordance with McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993, or Revision 1, dated November 29, 1994 [for Models DC–9, –10, –20, –30, –40, –50, and C–9 (military) series airplanes]; or McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994 (for Model DC–9–81, –82, –83, and –87 series airplanes, and MD–88 airplanes); as applicable.

(1) If no cracking is detected: Prior to further flight, install clips and doublers under the longeron flanges and shim the longerons in accordance with the applicable service bulletin.

(2) If any cracking is detected: Prior to further flight, repair the cracks and install clips and doublers under the longeron flanges and shim the longerons in accordance with the applicable service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7524 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–121–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. The proposed AD would require accomplishing a leakage check of all lavatory water tube/hose connections, and correcting the installation of these connections if leakage is found. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent water leakage from the lavatory water duct system, which could collect in the fuselage, freeze in cold weather conditions, and cause the rudder control system to jam.

DATES: Comments must be received on or before April 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy.This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

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written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–121–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on certain I.A.M. Model Piaggio P–180 airplanes. The R.A.I. reports an incident where water leakage from the lavatory system collected in the bottom of the fuselage between frames 5792 and 6000. This water then rose up to the height of the rudder control cable and froze during flight, which caused the rudder control system to jam.

Relevant Service Information

I.A.M. has issued Piaggio Service Bulletin No. SB–80–0096, dated January 31, 1997, which specifies procedures for accomplishing a leakage check of all lavatory water tube/hose connections, and correcting the installation of these connections if leakage is found.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD No. 97–022, dated March 2, 1997, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other I.A.M. Model Piaggio P–180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require accomplishing a leakage check of all lavatory water tube/hose connections, and correcting the installation of these connections if leakage is found. Accomplishment of the proposed installation would be in accordance with the previously referenced service information.

Compliance Time of the Proposed AD

Although the potential of the rudder control system to jam because of water freezing will only be unsafe while the airplane is in flight, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it is for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed Ad in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $600, or $120 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Industrie Aeronautiche E Meccaniche: Docket No. 98–CE–21–AD.

Applicability: Model Piaggio P–180 airplanes, serial numbers 1002, 1004, 1006 through 1017, 1019, and 1021 through 1030, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent water leakage from the lavatory water duct system, which could collect in the fuselage, freeze in cold weather conditions, and cause the rudder control system to jam, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish a leakage check of all lavatory water tube/hose connections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997. If leakage is found, prior to further flight, correct the installation of these connections in accordance with the above-referenced service bulletin.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Piaggio Service Bulletin (Mandatory) No. SB–80–0096, dated January 31, 1997, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 97–022, dated March 2, 1997.

Issued in Kansas City, Missouri, on March 17, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7523 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Maule Aerospace Technology Corp. M–4, M–5, M–6, M–7, MX–7, and MXT–7 Series Airplanes and Models MT–7–235 and M–8–235 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 95–26–18, which currently requires inspecting (one-time) certain wing lift struts for internal corrosion on Maule Aerospace Technology Corp. (Maule) M–4, M–5, M–6, M–7, MX–7, and MXT–7 series airplanes and Models MT–7–235 and M–8–235 airplanes, and replacing any wing lift strut where corrosion is found. That AD was the result of a report of an accident where the wing separated from one of the affected airplanes. The proposed AD would retain the initial inspection and possible replacement requirements of AD 95–26–18, would require the inspections to be repetitive, and would provide the option of using ultrasonic procedures to accomplish the inspection requirements. The actions specified by the proposed AD are intended to prevent failure of the wing lift struts caused by corrosion damage, which could eventually result in the wing separating from the airplane.

DATES: Comments must be received on or before May 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–01–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Maule Aerospace Technology Inc., 2099 GA. Highway, 133 South, Moultrie, Georgia 31768; telephone: (912) 985–2045; facsimile: (912) 890–2402. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submittee in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–01–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 95–26–18, Amendment 39–9476 (61 FR 623, January 9, 1996), currently requires the following on Maule Aerospace Technology Corp. (Maule) M–4, M–5, M–6, M–7, MX–7, and MXT–7 series airplanes and Models MT–7–235 and M–8–235 airplanes that are equipped with part number (P/N) 2079E rear wing lift struts and P/N 2080E front wing lift struts: inspecting (one-time) the wing lift struts for internal corrosion, and replacing any wing lift strut where corrosion is found. Accomplishment of the actions required by AD 95–26–18 is in accordance with

Maule Service Bulletin (SB) No. 11, Issued: October 30, 1995.

That AD was the result of a report of an accident where the wing separated from one of the affected airplanes.

The reason the FAA only included a one-time inspection requirement in AD 95–26–18 rather than a repetitive inspection requirement is that the nature of the unsafe condition did not allow the FAA to solicit public comment prior to the issuance of the rule. The Administrative Procedure Act (APA) requires that each requirement of an AD action be analyzed separately to determine whether prior public notice is necessary. Since the repetitive inspections would have been at 2 year intervals, the FAA could not make an independent finding of "impractability" for bypassing prior public comment on the repetitive inspections; only for the initial inspection and possible replacement required by AD 95–26–18.

The FAA has approved alternative methods of compliance (AMOC) to the inspection requirement of AD 95–26–18. The approved AMOC's allow the inspection to be accomplished using ultrasonic, X-ray, and borescope procedures.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined the following:

- That the wing lift strut inspection required by AD 95–26–18 should be repetitive;
- That the option of using ultrasonic procedures to accomplish the inspection requirements should be provided; and
- That AD action should be taken to prevent failure of the wing lift struts caused by corrosion damage, which could eventually result in the wing separating from the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Maule M–4, M–5, M–6, M–7, MX–7, and MXT–7 series and Models MT–7–235 and M–8–235 airplanes of the same type design that are equipped with P/N 2079E (or FAA-approved equivalent part number) rear wing lift struts or P/N 2080E front wing lift struts (or FAA-approved equivalent part number), the FAA is proposing an AD to supersede AD 95–26–18. The proposed AD:

- Would retain the initial inspection and possible replacement requirements of AD 95–26–18;
- Would require the inspections to be repetitive; and
- Would provide the option of using ultrasonic procedures to accomplish the inspection requirements.

The airplanes affected by the proposed AD could have wing lift struts installed that have Parts Manufacture Approval (PMA). For those airplanes having PMA parts that are equivalent (PMA by equivalency) to those referenced in the proposed AD, the phrase "or FAA-approved equivalent part number" means that the proposed AD applies to airplanes with PMA by equivalency wing lift struts installed.

Compliance Time of the Proposed AD

The compliance time of the proposed AD is presented in calendar time instead of hours time-in-service. The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described in the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service.

Cost Impact

The FAA estimates that 1,196 airplanes in the U.S. registry would be affected by the proposed AD, that it would take 11 workhours per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Parts to accomplish the proposed initial inspection cost approximately $40 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $837,200. This figure only takes into account the cost of the proposed initial inspection and does not take into account the cost of the proposed repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator of the affected airplanes would incur.

In addition, these figures are based upon the presumption that no affected airplane operator has accomplished the proposed inspection, and does not take into account the cost for replacement if corrosion is found on a wing lift strut. The FAA has no way of determining the number of wing lift struts that may need to be replaced based upon the results of the proposed inspections.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 95–26–18, Amendment 39–9476, and by adding a new AD to read as follows:

Maule Aerospace Technology Corp.: Docket No. 98–CE–01–AD; Supersedes AD 95–26–18, Amendment 39–9476.

Applicability: The following airplane models, all serial numbers, certificated in any category; that are equipped with part number (P/N) 2079E (or FAA-approved equivalent part number) rear wing lift struts or P/N 2080E (or FAA-approved equivalent part number) front wing lift struts:

Bee Dee M–4	M–4	M–4C	M–4S
M–4T	M–4–180C	M–4–180S	M–4–180T

M–4–210	M–4–210C	M–4–210S	M–4–210T
M–4–220	M–4–220C	M–4–220S	M–4–220T
M–5–180C	M–5–200	M–5–210C	M–5–210TC
M–5–220C	M–5–235C	M–6–180	M–6–235
M–7–235	MX–7–235	MX–7–180	MX–7–420
MXT–7–180	MT–7–235	M–8–235	MX–7–160
MXT–7–160	MX–7–180A	MXT–7–180A	MX–7–180B
MXT–7–420	M–7–235B	M–7–235A	M–7–235C

Note 1: The airplanes affected by this AD could have wing lift struts installed that have Parts Manufacture Approval (PMA). For those airplanes having PMA parts that are equivalent (PMA by equivalency) to those referenced in this AD, the phrase "or FAA-approved equivalent part number" means that this AD applies to airplanes with PMA by equivalency wing lift struts installed.

Note 2: This AD does not apply to airplanes equipped with four Maule sealed lift struts, P/N 2200E and P/N 2201E. These sealed lift struts are identified by two raised weld spots on the upper end of the strut just below the serial number plate. Removal of the upper cuff is needed to locate the weld spots.

Note 3: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the wing lift struts caused by corrosion damage, which could eventually result in the wing separating from the airplane, accomplish the following:

Note 4: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Upon accumulating 2 years on a lift strut affected by this AD; within 3 calendar months after the effective date of this AD; or within 2 years after the last inspection accomplished in accordance with AD 95–26–18 (superseded by this action), whichever occurs later, remove the wing lift struts in accordance with the INSTRUCTIONS section of Maule Service Bulletin (SB) No. 11, Issued: October 30, 1995, and accomplish one of the following (the actions in either paragraph (a)(1), (a)(2), (a)(3), or (a)(4), including all subparagraphs; of this AD):

(1) Inspect the wing lift struts for corrosion in accordance with the INSPECTION PROCEDURE section of Maule SB No. 11, Issued: October 30, 1995.

(i) If no perceptible dents (as defined in the above SB) are found in the wing lift strut and no corrosion is externally visible, apply corrosion inhibitor to each strut in accordance with Maule SB No. 11, Issued: October 30, 1995. Reinspect the wing lift struts at intervals not to exceed 24 calendar months provided no perceptible dents or external corrosion is found.

(ii) If a perceptible dent (as defined in the above SB) is found in the wing lift strut or external corrosion is found, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3) and (a)(4) of this AD.

(2) Inspect the wing lift struts for corrosion in accordance with the Appendix to this AD. The inspection procedures in this Appendix must be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Non-destructive Testing, or MIL–STD–410.

(i) If no external corrosion is found and all requirements in the Appendix to this AD are met, prior to further flight, apply corrosion inhibitor to each strut in accordance with Maule SB No. 11, Issued: October 30, 1995. Reinspect the lift struts at intervals not to exceed 24 calendar months provided no external corrosion is found and all of the requirements included in the Appendix of this AD are met.

(ii) If external corrosion is found or if any of the requirements in the Appendix of this AD are not met, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3) and (a)(4) of this AD.

(3) Install original equipment manufacturer (OEM) part number wing lift struts (or FAA-approved equivalent part numbers) that have been inspected in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD, and are found to be airworthy according to the inspection requirements included in these paragraphs. Thereafter, inspect these wing lift struts at intervals not to exceed 24 calendar months in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD.

(4) Install new Maule sealed wing lift struts, P/N 2200E or P/N 2201E, as applicable (or FAA-approved equivalent part numbers) on each wing as specified in the INSTRUCTIONS section in Part II of Maule SB No. 11, Issued: October 30, 1995.

(b) If holes are drilled into the sealed wing lift strut assemblies installed as specified in paragraph (a)(4) of this AD in order to attach cuffs, door clips, or other hardware, inspect the wing lift struts at intervals not to exceed 24 calendar months using the procedures specified in paragraphs (a)(1) and (a)(2), including all subparagraphs, of this AD.

(c) The repetitive inspections required by this AD may be terminated after installing new wing lift strut assemblies as specified in paragraph (a)(4) of this AD provided no holes are drilled in these strut assemblies as specified in paragraph (b) of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.197 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 95–26–18 are considered approved as alternative methods of compliance for this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Maule Aerospace Technology, Inc., 2099 GA Hwy., 133 South, Moultrie, Georgia 31768; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 95–26–18, mendment 39–9476.

Appendix to Docket No. 98–CE–01–AD

Procedures and Requirements for Ultrasonic Inspection of Maule Wing Lift Struts

Equipment Requirements

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001 inch and an A-trace waveform display will be needed to accomplish this inspection.

2. An ultrasonic probe with the following specifications will be needed to accomplish this inspection: 10 MHz (or higher), 0.283 inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020 inch. An accuracy of +/ −0.002 inch throughout a 0.020 inch to

0.050 inch thickness range while calibrating shall be the criteria for acceptance.

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to accomplish this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020 inch, one shall be greater than or equal to 0.050 inch and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

Note: Couplant is defined as "a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface."

Note: If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

Instrument Setup

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, i.e. single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231 inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the Equipment Requirements. Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to "ring" the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. "Ring" the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and "ring" the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/-0.002 inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

Inspection Procedure

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the EQUIPMENT REQUIREMENTS section.

2. Using a flexible ruler, draw a 1/4-inch grid on the surface of the first 11 inches from the lower end of the strut as shown in Piper Service Bulletin No. 528D or 910A, as applicable. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every 1/4 inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first 1/4-inch mark on the ruler and "ring" the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at 1/4-inch increments along the ruler and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

Note: A reading shall not exceed .041 inch. If a reading exceeds .041 inch, repeat steps 13 and 14 of the INSTRUMENT SETUP section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the Instrument Setup section before proceeding further.

7. In areas where obstructions are present, take a data point as close to the correct area as possible.

Note: The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024 inch or less shall require replacement of the strut prior to further flight.

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than

0.020 inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule "Fabric Tester" as specified in Piper Service Bulletin No. 528D or 910A.

10. Record the lift strut inspection in the aircraft log book.

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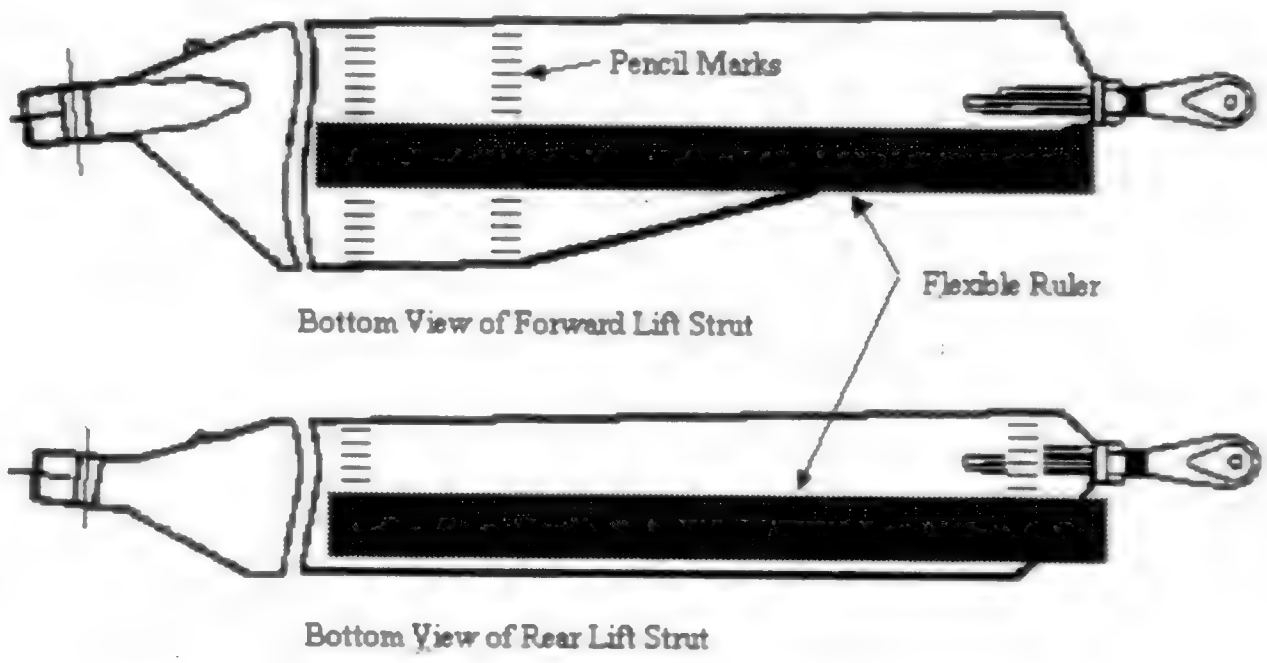

Figure 1

Issued in Kansas City, Missouri, on March 17, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7522 Filed 3–23–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–02–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney PW4000 series turbofan engines. This proposal would require fluorescent penetrant and eddy current inspections of 2nd stage high pressure turbine (HPT) rotating airseals for cracks, removal from service of cracked parts, incorporation of improved 2nd stage HPT rotating airseals, and modification of 2nd stage ring segments and vane clusters to increase cooling flow and reduce stress as terminating action to the inspection requirements. This proposal is prompted by reports of 2nd stage HPT rotating airseal cracking. The actions specified by the proposed AD are intended to prevent 2nd stage HPT rotating airseal cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by May 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–02–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications

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should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–02–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of 2nd stage high pressure turbine (HPT) rotating airseal cracking on Pratt & Whitney (PW) Models PW4052, PW4056, PW4060, PW4060A, PW4062, PW4152, PW4156A, PW4158, PW4460, PW4462, PW4164, and PW4168 turbofan engines. These reports of rotating air seal cracking led to the issuance of PW Alert Service Bulletin (ASBs) that describe procedures for inspecting airseals on uninstalled engines. Results of these inspections revealed a widespread cracking problem affecting all of these engine models. Further investigation revealed that the HPT airseals crack due to low cycle fatigue in at least three distinct locations. The causes of these cracks are a combination of excessive thermal and mechanical loading. This condition, if not corrected, could result in HPT airseal cracking, which could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of PW ASBs No. PW4ENG A72–628, Revision 1, dated February 17, 1998, and No. PW4G–100–A72–80, Revision 1, dated February 17, 1998, that describe procedures for fluorescent penetrant inspections (FPI) and eddy current inspections (ECI) of HPT airseals for cracks; and PW Service Bulletins (SBs) No. PW4ENG 72–636, dated May 16, 1997, No. PW4G–100–72–93, dated May 22, 1997, No. PW4ENG 72–637, dated May 16, 1997, and No. PW4G–100–72–94, dated May 22, 1997, that describe procedures for modification of 2nd stage ring segments and vane clusters, and incorporation of improved HPT airseals.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, at the next hot section shop visit and all subsequent hot section shop visits after the effective date of this AD, FPI and ECI of HPT airseals for cracks, and removal from service of cracked parts. Within 6 years after the effective date of this AD, this AD would require modification of 2nd stage ring segments and vane clusters, and incorporation of improved HPT airseals, as terminating action to the inspection requirements. The calendar end-date was determined based upon risk analysis, review of service data, industry capability and parts availability. The actions would be required to be accomplished in accordance with the service documents described previously.

There are approximately 1,720 engines of the affected design in the worldwide fleet. The FAA estimates that 350 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that it would take no additional time to accomplish the proposed actions. Required parts would cost approximately $57,200 per engine. In addition, these parts will have consumed some portion of their life limits at the time of their removal, so this full cost burden will not be realized. Based on these figures, assuming an average part removal time of 7,000 cycles, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,677,333. Pratt & Whitney has advised the FAA that it has an Industry Support Program that will reimburse operators for unconsumed life in parts that are retired early for cracking. This should eliminate the majority of the financial burden to the operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 98–ANE–02–AD.

Applicability: Pratt & Whitney Models PW4052, PW4056, W4060, PW4060A, PW4062, PW4152, PW4156A, PW4158, PW4460, W4462, PW4164, and PW4168 turbofan engines, with 2nd stage high pressure turbine (HPT) rotating airseals, Part Numbers (P/N) 50L156 or 50L195, installed. These engines are installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas MD–11 series, and Airbus Industrie A300, A310, and A330 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of

this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent 2nd stage HPT rotating airseal cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) At the next hot section shop visit after the effective date of this AD, and at each subsequent hot section shop visit, fluorescent penetrant inspect and eddy current inspect 2nd stage HPT rotating airseals for cracks, remove from service cracked airseals, and replace with serviceable parts, in accordance with Pratt & Whitney Alert Service Bulletins No. PW4ENG A72–628, Revision 1, dated February 17, 1998, and No. PW4G–100–A72–80, Revision 1, dated February 17, 1998.

(b) For the purpose of this AD, a hot section shop visit is defined as any time the HPT module is disassembled.

(c) Within 6 years after the effective date of this AD, modify 2nd stage ring segments and vane clusters, and install improved 2nd stage HPT rotating airseals in accordance with Pratt & Whitney Service Bulletins No. PW4ENG 72–636, dated May 16, 1997, No. PW4G–100–72–93, dated May 22, 1997, No. PW4ENG 72–637, dated May 16, 1997, and No. PW4G–100–72–94, dated May 22, 1997. Performance of these modifications and installation of the improved 2nd stage HPT rotating airseal constitutes terminating action to the inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on March 17, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–7559 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Supplementary Proposed rule; notice of extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a supplementary proposed rule, which was published in the **Federal Register** on February 6, 1998, (63 FR 6113). The proposed rule amends the royalty valuation regulations for crude oil produced from Federal leases. In response to requests for additional time, MMS will extend the comment period from March 23, 1998, to April 7, 1998.

DATES: Comments must be submitted on or before April 7, 1998.

ADDRESSES: Mail comments, suggestions, or objections about this supplementary proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165. Courier address is Building 85, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone number (303) 231–3432, fax number (303) 231–3385, e-mail RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION: MMS received requests from industry representatives to extend the comment period of this supplementary proposed rule. This time extension is in response to those requests in order to provide commentors with adequate time to provide detailed comments that MMS can use to proceed in the rulemaking.

Dated: March 17, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–7548 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–013]

RIN 2115–AE46

Special Local Regulations; River Race Augusta, Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the River Race Augusta, which will be held annually on the third Friday, Saturday and Sunday of May, between 7 a.m. and 5 p.m. Eastern Daylight Time (EDT) each day. Historically, there have been approximately sixty participants racing 16 to 18 foot outboard power boats on that portion of the Savannah River at Augusta, GA, between mile markers 199 and 197. These proposed regulations are necessary to provide for the safety of life on navigable waters during the event, as the nature of the event and the closure of the Savannah River creates an extra or unusual hazard in the navigable waters.

DATES: Comments must be received on or before April 23, 1998.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tadd Street, Charleston, SC 29401, or may be delivered to the operations office at the same address between 7:30 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (803) 724–7621. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: LTJG A.L. Cooper, Coast Guard Group Charleston at (803) 720–7748.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07–98–013) and the specific section of this proposal to which their comments apply and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by

writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity to make oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

These proposed regulations are intended to provide for the safety of life and to promote safe navigation on the waters off Augusta on the Savannah River during the River Race Augusta by controlling the traffic entering, exiting and traveling within these waters. Historically, the concentration of spectator and participant vessels associated with the River Race has posed safety concerns, which are added in this proposed special local regulation. The proposed regulation would not permit the entry or movement of spectator vessels and other non-participating vessel traffic in the area downstream from the U.S. Highway 1 Bridge on the Savannah River between mile markers 199 and 197, annually from 7 a.m. to 5 p.m. each day, on the third Friday, Saturday and Sunday of May. These proposed regulations would permit the movement of spectator vessels and other non-participants after the termination of the race each day and during intervals between scheduled events at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. These proposed regulations would last for only 10 hours each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and government jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 606(b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for ten hours in a limited area of the Savannah River for three days each year. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2. of Commandant Instruction M16475.1C. In accordance with that section, this proposed action has been environmentally assessed (EA completed) and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact have been prepared and are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Tile 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—(Amended)

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.732 is added to read as follows:

§ 100.732 Annual River Race Augusta; Savannah River, Augusta GA.

(a) *Definitions:* (1) *Regulated area.* The regulated area is formed by a line drawn directly across the Savannah River at the U.S. Highway 1 Bridge at mile marker 199 and directly across the Savannah River at mile market 197. The regulated area would encompass the width of the Savannah River between these two lines.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, South Carolina.

(b) *Special local regulations.* (1) Entry into the regulated area is prohibited to all non-participants.

(2) After termination of the River Race Augusta each day, and during intervals between scheduled events, at the direction of the Coast Guard Patrol Commander, all vessels may resume normal operations.

(3) The Captain of the Port Charleston will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the special local regulations and the restrictions imposed.

(c) *Dates.* This section becomes effective annually from 7 a.m. to 5 p..m. EDT each day, on the third Friday, Saturday and Sunday of May, unless otherwise specified in the notice to mariners.

Dated: March 6, 1998.

Captain R. Olsen, Jr.,

U.S. Coast Guard, 7th Coast Guard District, Commander Acting.

[FR Doc. 98–7634 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

45 CFR Part 60

RIN: 0906–AA42

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Charge for Self-Queries

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes an amendment to the existing regulations implementing the Health Care Quality Improvement Act of 1986, which established the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the Data Bank). The proposed regulations would amend the existing fee structure so that the Data Bank can fully recover its costs, as required by law. This proposed rule would give the Data Bank the authority to charge for self-queries and, therefore, assess costs in an equitable manner.

The data Bank will continue its current practice of sending a copy—automatically, without a request, and free of charge—of every record to the practitioner, in whose name it was submitted, for purposes of verification and dispute resolution.

DATES: Comments on this proposed rule are invited. To be considered, comments must be received by May 26, 1998.

ADDRESSES: Written comments should be addressed to Neil Sampson, Acting Associate Administrator, Bureau of Health Professions (BHPr), Health Resources and Services Administration Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Research and Planning, BHPr, Room 8–67, Parklawn Building, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas C. Croft, Director, Division of Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–2300.

SUPPLEMENTARY INFORMATION: The Health Care Quality Improvement Act of 1986 (the Act), Title IV of Pub. L. 99–660, enacted November 14, 1986, authorized the establishment of the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the Data Bank). Regulations implementing the Data Bank are codified at 45 CFR part 60.

Section 426(b)(4) of the Act, as amended, authorizes the Secretary to charge fees for disclosure of information (user fees). The Department of Health and Human Services Appropriations Act, 1997, Title II of Pub. L. 104–863, enacted September 30, 1996, gives the Data Bank the authority to recover its full cost of operations through user fees. No taxpayer funds are used to operate the Data Bank. Title II of Pub. L. 104–863 states:

> That in addition to fees authorized by section 427(b) of the Health Care Quality Improvement Act of 1986, fees shall be collected for the full disclosure of information under the Act sufficient to recover the full costs of operating the National Practitioner Data Bank, and shall remain available until expended to carry out that Act: * * *

Section 60.12(a) of the regulations, entitled "*Fees applicable to requests for information.*", cover the Data Bank's authority to charge a fee for all requests for information other than those by individual health care practitioners requesting information concerning themselves (self-queries). Section 60.12(a) states:

> (a) *Policy on Fees.* The fees described in this section apply to all requests for information from the Data Bank, other than those of individuals for information concerning themselves.

During 1996, the volume of self-queries has dramatically increased. The Data Bank is currently processing 1,500 self-queries a week, with no cost to the practitioners requesting the information. The volume of self-queries is expected to remain at this level or increase even further. It is estimated that the cost of processing self-queries last year exceeded $500,000. When the current regulations exempted self-queries from the Data Bank's fee structure, the large volume of self-queries and the associated processing costs were not anticipated.

A review by the Department indicates that many organizations which are not mandated by law to query the Data Bank (e.g., State Boards and other entities) are requiring practitioners to self-query and submit the results along with their applications for licensure/re-licensure, or membership. The Department recognizes that the purpose of these self-queries is not about practitioners' exercising their Privacy Act rights to access to information about themselves. Based on conversations with practitioners who call for self-query assistance, few, if any, are exercising their Privacy Act rights. Instead they are acting under duress and in response to demands from licensing bodies, and other entities. At the same time, they also expect to benefit by obtaining licenses to practice, membership or malpractice insurance. In fact, it has always been the policy and practice of the Data Bank to proactively provide a copy—free of charge—of every record to the practitioner, in whose name it was submitted, for purposes of verification and dispute resolution.

The Department recognizes and supports its obligations under the Privacy Act and its own fair information practice policies to continue to proactively provide a copy of every report it receives to the subject of the report (the practitioner) at no charge. However, if the practitioner wants the additional feature of a copy of his or her entire Data Bank file in one package, this proposed rule change would not deny the practitioner that right; it would simply charge a fee, based on cost-recovery, of providing such information.

Therefore the Department proposes to amend paragraph (a) of § 60.12 by deleting the phrase "other than those of individuals for information concerning themselves" in the first sentence. This change is intended to give the Data Bank the authority to charge practitioners a reasonable fee when they request information about themselves.

Upon issuance of the Final Rule, the Department will announce the fee for self-queries and the effective date of the change in the **Federal Register**. As with other changes, this fee will be subject to change as further costs may warrant.

Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department believes that the resources required to implement the requirement in these regulations are minimal. Therefore, in accordance with the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant

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impact on a substantial number of small entities. For the same reasons, the Secretary has also determined that this is not a "significant" rule under Executive Order 12866.

Paperwork Reduction Act of 1995

The National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners regulation contains information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned control number 0915–0126. These proposed amendments do not affect the recordkeeping or reporting requirements in the existing regulations.

List of Subjects in 45 CFR Part 60

Claims, Fraud, Health maintenance organizations (HMOs), Health professions, Hospitals, Insurance companies, Malpractice.

Dated: May 20, 1997.

Claude E. Fox,

Acting Administrator, Health Resources and Services Administration.

Approved: December 15, 1997.

Donna E. Shalala,

Secretary.

Accordingly, 45 CFR part 60 is proposed to be amended as set forth below:

PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

1. The authority citation for 45 CFR part 60 continues to read as follows:

Authority: Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by sec. 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

2. Section 60.12, is amended by revising the first sentence in paragraph (a) to read as follows:

§ 60.12 Fees applicable to requests for information.

(a) *Policy on fees.* The fees described in this section apply to all requests for information from the Data Bank. * * * * * * * * * * *

[FR Doc. 98–7505 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE87

Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for the Plant Gaura Neomexicana ssp. Coloradensis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to list the plant *Gaura neomexicana* ssp. *coloradensis* (Colorado butterfly plant) as a threatened species pursuant to the Endangered Species Act of 1973, as amended. *Gaura neomexicana* ssp. *coloradensis* is a short-lived, perennial herb endemic to moist soils in mesic or wet meadows of floodplain areas in southeastern Wyoming, northcentral Colorado, and extreme western Nebraska. This early to mid-seral stage species occurs primarily in habitats created and maintained by streams active within their floodplains with vegetation that is relatively open and not overly dense or overgrown. The conversion of areas with native grasses in riparian areas to agriculture, water diversions, channelization, and urban development threaten *Gaura neomexicana* ssp. *coloradensis* by changing habitat significantly enough to preclude survival of viable populations.

DATES: Comments from all interested parties must be received by May 26, 1998. Public hearing requests must be received by May 8, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 4000 Morrie Avenue, Cheyenne, Wyoming 82001. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), (telephone 307/772–2374; facsimile 307/772–2358).

SUPPLEMENTARY INFORMATION:

Background

Gaura neomexicana ssp. *coloradensis* was initially described as *Gaura coloradensis* by Rydberg (1904) based on material collected near Fort Collins, Colorado in 1895. Munz (1938) transferred *Gaura coloradensis* to *Gaura neomexicana* and reduced it to variety *coloradensis*. This taxon is now recognized as *Gaura neomexicana* ssp. *coloradensis* (Raven and Gregory 1972).

Little is known about the historical distribution of *G. n.* ssp. *coloradensis*. Prior to 1984, no extensive documentation of the plants' range had been conducted. The plant was known from several historical (and presumably extirpated) locations in southeastern Wyoming and at least four historical (and presumably extirpated) locations in northern Colorado; and from three extant populations in Laramie County, Wyoming, and Weld County, Colorado. The total known population size was estimated in the low hundreds (Dorn 1979).

Intensive range-wide surveys from 1984–1986 resulted in the discovery or relocation of 22 populations in Wyoming, Colorado, and Nebraska containing approximately 20,000 flowering individuals (Marriott 1987). Additional surveys since 1992 have resulted in the discovery of at least two additional populations in Wyoming and Colorado (Fertig 1994; Floyd 1995b). However, at least two known populations in Wyoming and Colorado have not been relocated in recent years and may no longer be extant (Fertig 1994). The plant is currently known from 22 populations with a total population as low as 26,000 individuals; however, several of the populations may no longer exist. All known populations are within a small area in southeastern Wyoming, western Nebraska, and north-central Colorado. Two of the populations occur on F.E. Warren Air Force Base; the remaining 20 populations occur on private or State lands.

Gaura neomexicana ssp. *coloradensis* is a short-lived, monocarpic (flowering and bearing fruit only once), perennial herb with one or a few reddish, pubescent stems that are 50–80 centimeters (2–3 feet) tall. The lower leaves are lance-shaped with smooth or wavy-toothed margins and average 5–15 cm (2–6 inches) long, while those on the stem are smaller and reduced in number. Flowers are arranged in a branched, elongate inflorescence above the leaves.

Only a few flowers are open at any one time and these are located below the rounded buds and above the mature fruits. Individual flowers are 5–14 millimeters (.25–.5 inches) long with four reddish sepals and four white petals that turn pink or red with age. The hard, nutlike fruits are 4-angled and sessile (stalkless and attached directly at the base). Nonflowering plants consist of a stemless, basal rosette of oblong,

hairless leaves 3–18 cm (1–7 inches) long (Marriott 1987; Fertig 1994; Fertig *et al.* 1994).

Gaura neomexicana ssp. *coloradensis* occurs on subirrigated, alluvial soils on level or slightly sloping floodplains and drainage bottoms at elevations of 1,524–1,951 meters (5,000–6,400 feet). Colonies are often found in low depressions or along bends in wide, active, meandering stream channels a short distance upslope of the actual channel. The plant requires early to mid-seral riparian habitats. It commonly occurs in communities dominated by *Agrostis stolonifera* (redtop) and *Poa pratensis* (Kentucky bluegrass) on wetter sites and *Glycyrrhiza lepidota* (wild licorice), *Cirsium flodmanii* (Flodman's thistle), *Grindelia squarrosa* (curlytop gumweed), and *Equisetum laevigatum* (smooth scouring rush) on drier sites. These areas are usually intermediate in moisture between wet, streamside communities dominated by sedges, rushes, and cattails, and dry, upland shortgrass prairie. Typical *G. n.* ssp. *coloradensis* habitat is relatively open without dense or overgrown vegetation. *Salix exugua* (sandbar willow) and *Cirsium arvense* (Canada thistle) may become dominant in areas of *G. n.* ssp. *coloradensis* habitat that are not periodically flooded or otherwise disturbed. *Gaura neomexicana* ssp. *coloradensis* typically occurs on soils derived from conglomerates, sandstones, and tuffaceous (compacted volcanic ash) mudstones and siltstones of the Tertiary White River, Arikaree, and Oglalla Formations (Love and Christiansen 1985). This type of habitat is not unusual in eastern Colorado and Wyoming.

Gaura neomexicana ssp. *coloradensis* is an early successional species (although probably not a pioneer) adapted to utilize stream channel sites that are periodically disturbed. Historically, flooding was probably the main cause of disturbances in the plant's habitat, although wildfire and grazing also may have been important. Although flowering and fruiting stems may exhibit increased mortality because of these events, vegetative rosettes appear to be little affected (Mountain West Environmental Services 1985). The establishment and survival of seedlings appears to be enhanced at sites where tall and dense vegetation has been removed by some form of disturbance. In the absence of occasional disturbance, the plant's habitat can become choked out by dense growth of willows, grasses, and exotic plants, preventing new seedlings from becoming established to replace plants that have died (Floyd 1995a; Fertig 1996).

Previous Federal Action

The January 9, 1975, report of the Secretary of the Smithsonian Institution (House Document No. 94–51) contained lists of over 3,000 United States vascular plant taxa (including *G. n.* ssp. *coloradensis*) considered candidates for the list of endangered and threatened species provided for by the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). On July 1, 1975, the Service published a Notice of Review in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act. On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523) which included *G. n.* ssp. *coloradensis;* however, a final rule for this action was not published. The December 15, 1980, Notice of Review for Plants (45 FR 82479) included *G. n.* ssp. *coloradensis* as a Category 1 candidate species and retained that status in subsequent notice of review, published in the **Federal Register** on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). This species was mistakenly left out of the notice of review published November 28, 1983 (48 FR 53640). On February 28, 1996, the Service published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the use of different categories of candidate species. Candidate species are those species for which the Service has sufficient information on file detailing biological vulnerability and threats that would support issuance of a proposed rule, but issuance of the proposed rule is precluded by other listing actions. *Gaura neomexicana* ssp. *coloradensis* was included as a candidate in the February, 1996, notice of review and retained that status in the subsequent notice of review, published in the **Federal Register** on September 19, 1997 (62 FR 49384). Processing of this proposal is a Tier 3 activity under the current listing priority guidance (61 FR 64480, December 5, 1996). The listing priority assigned to the species in the latter two notices of review was a 3. This proposal is being published ahead of other species with a higher listing priority that Region 6 has the lead for because *G. n.* ssp. *coloradensis* is part of the settlement agreement in the Fund for Animals *et al.* v. Lujan *et al.* case (D.D.C. Civ. No. 92–800).

Two populations of *G. n.* ssp. *coloradensis* occur on F.E. Warren Air Force Base, Cheyenne, Wyoming. On January 18, 1982, a Memorandum of Understanding between the Service and the Base was signed to assure continued survival of the populations occurring on the Base. The agreement has been updated and signed several times since 1982. In 1990 a Research Natural Area was established to include all the known naturally occurring populations on the Base. The most recent Memorandum of Understanding between the Base, The Nature Conservancy, and the Service was signed on March 3, 1992. The agreement supported demographic studies of the *G. n.* ssp. *coloradensis* populations on the Base and provided for ongoing protective efforts. However, the agreement's duration was 5 years and it has not been revised or renewed. Discussions between the Service and the Base regarding renewal of the agreement are ongoing.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *G. n.* Woot. ssp. *coloradensis* (Rydb.) Raven and Gregory (Colorado butterfly plant) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All but two of the currently known populations of *G. n.* ssp. *coloradensis* occur on private or State lands (mostly private) managed primarily for agriculture. Haying and mowing, water development, land conversion for cultivation, competition from exotic plants, and loss of habitat to urban growth are the main threats to the plant on these lands (Marriott 1987; Fertig 1994). On some sites, including F.E. Warren Air Force Base, habitat degradation resulting from plant succession and competition is the main threat to the long-term survival of populations. High recreational use by campers, motorists, and fishermen is a threat to populations on State park lands in Nebraska.

Conversion of moist, native grasslands to commercial croplands has been widespread throughout southeastern Wyoming and northeastern Colorado (Compton and Hugie 1993). Since many of the agricultural lands are irrigated

hay fields, mowing of *G. n.* ssp. *coloradensis* habitat for hay production has been suggested as a potential threat (Jennings *et al.* 1997). This threat can be significant if cutting occurs before the plant's fruits have ripened.

Construction of stock ponds and reservoirs has inundated and made unsuitable some *G. n.* ssp. *coloradensis* habitat. The development of irrigation canals to move water to croplands may remove moisture from occupied or potentially suitable habitat, leaving it in a drier, unsuitable condition. Additionally, the management of water resources for domestic and commercial uses, coupled with encroaching agricultural land use, has had a tendency to channelize and isolate water resources and fragment, realign, and reduce riparian and moist lowland habitat (Compton and Hugie 1993) that could otherwise serve as potential *G. n.* ssp. *coloradensis* habitat.

Residential and urban development around the cities of Cheyenne and Fort Collins has converted areas of formerly suitable *G. n.* ssp. *coloradensis* habitat. The high rate of development occurring from Colorado Springs, Colorado, to Cheyenne, Wyoming, has been cited as a continuing threat to remaining populations of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), a proposed endangered species that also occurs in riparian habitats and whose historic range overlaps much of that of *G. n.* ssp. *coloradensis* (62 FR 14093, March 25, 1997).

In nonagricultural, undeveloped areas, a significant threat to *G. n.* ssp. *coloradensis* populations is from habitat changes resulting from natural succession of the plant community. Without periodic disturbance events, the semi-open habitats preferred by this species can become choked by tall and dense growth of willows, graminoids (grasses), and exotic weeds (Fertig 1994). Natural disturbances, such as flooding, fire, and ungulate grazing, have been sufficient in the past to create favorable habitat conditions for the plant. The natural flooding regime within the species floodplain habitat has been altered by construction of flood control structures and by irrigation and channelization practices. In the absence of such natural disturbances today, managed disturbance may be necessary to maintain and create areas of habitat (Fertig 1994; 1996). However, many Federal programs, such as those administered by the Natural Resources Conservation Service, focus on enhancing/protecting riparian areas by removing the types of disturbance the plant needs and pushing the habitat into later successional stages.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Gaura neomexicana ssp. *coloradensis* is vulnerable to overcollecting conducted for scientific or educational purposes. However, no known commercial or recreational threats exist at this time.

C. Disease or Predation

There are no known diseases affecting *G. n.* ssp. *coloradensis* populations, although the species is occasionally affected by insect galls. *Gaura neomexicana* ssp. *coloradensis* is highly palatable to a variety of insect and mammalian herbivores (cattle, horses, antelope (*Antilocapra americana*), etc.), but appears to compensate for herbivory by increasing branch and fruit production. Livestock grazing can be a threat at some sites, especially when animals are not rotated or use is concentrated during the summer flowering period. Additionally, plants are occasionally uprooted or trampled by livestock and wildlife grazing in the vicinity. In at least one location where a population of *G. n.* ssp. *coloradensis* is divided by a fence, the heavily grazed side of the fence had no plants (James L. Miller, U.S. Fish and Wildlife Service, *in litt.* 1987). Observations have shown that the plant can persist and thrive in habitats that are winter grazed or managed on a short-term rotation cycle (Jennings *et al.* 1997). Although the butterfly plant itself may be grazed (it appears quite palatable to a wide range of herbivores), the reduction of competing vegetative cover allows seedlings to become more readily established.

D. The Inadequacy of Existing Regulatory Mechanisms

No Federal or State laws or regulations directly protect *G. n.* ssp. *coloradensis* or its habitat. *Gaura neomexicana* ssp. *coloradensis* is listed as Sensitive by the U.S. Forest Service, although no populations are currently known from Forest Service lands (D. Hazlett, Plants and People Consulting, pers. comm., 1994).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The most serious threat on agricultural lands is indiscriminate use of broadleaf herbicides for the control of Canada thistle, leafy spurge (*Euphorbia esula*), and other exotic plants (Marriott 1987). The noxious weed problem in Laramie county, Wyoming, is particularly evident on F.E. Warren Air Force Base. Although competition from these species may have serious negative implications for populations of *G. n.* ssp. *coloradensis*, observations have indicated that the plant is highly susceptible to commonly used herbicides when they are applied indiscriminately. In 1983 nearly one-half of the mapped populations on F.E. Warren Air Force Base were inadvertently destroyed when sprayed with Tordon, a persistent herbicide. Additionally, herbicide use along road crossings in and adjacent to *G. n.* ssp. *coloradensis* populations has also been noted (James L. Miller, U.S. Fish and Wildlife Service, *in litt.* 1987). Biological control agents have been used at F.E. Warren Air Force Base, but have not been effective in controlling Canada thistle or leafy spurge.

In order for a population to sustain itself, there must be enough reproducing individuals and appropriate habitats to ensure its survival. It is not known if the scattered populations of *G. n.* ssp. *coloradensis* contain sufficient individuals and diversity to ensure their continued existence over the long term.

The most recent survey information for the known populations of *G. n.* ssp. *coloradensis* shows that only four large populations (with at least 3,000 or more individuals) currently exist. Only one of these occur on Federal lands. Eight populations (one of them occurring on Federal lands) are moderately sized, containing between 500 and 1,200 individuals. The remaining 10 populations are smaller, with six of these having less than 100 individuals. The danger to these small populations is from a reduction in vigor and fecundity (often evidenced by reduced seed set) as random genetic changes occur and genetic variability is lost as a result of inbreeding which is inevitable in small populations (Ehrlich 1981; Ledig 1986). Because of the small, isolated nature of the populations and the few individuals present in most of them, *G. n.* ssp. *coloradensis* also is more susceptible to random events, such as fires, insect, or disease outbreaks or other random events that can more easily cause the extirpation of a small population.

Although the plant evolved with and even depended upon the disturbance associated with these events, natural events, such as floods and fire, may now pose a threat to *G. n.* ssp. *coloradensis*. Individual plants may not survive such events, and because of low numbers and the now highly restricted range of the species, such events do pose a threat. A flood in 1983 along Crow Creek destroyed several populations and experimental seed plots established in

1981 (U.S. Fish and Wildlife Service, *in litt.* 1984.)

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *G. n.* ssp. *coloradensis* in determining to issue this proposed rule. Based on this evaluation, the preferred action is to list *G. n.* ssp. *coloradensis* as threatened. While not in immediate danger of extinction, *G. n.* ssp. *coloradensis* is likely to become an endangered species in the foreseeable future if the present threats and declines continue. Federal listing under authority of the Act is the only mechanism the Service can presently identify that ensures protection to *G. n.* ssp. *coloradensis* throughout its limited range. Although destruction or modification of its habitat is a significant threat to *G. n.* ssp. *coloradensis*, the Service has found critical habitat is not prudent (see CRITICAL HABITAT section).

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for *G. n.* ssp. *coloradensis*.

Designation of critical habitat would not benefit *G. n.* ssp. *coloradensis* because all but two of the known populations occur on non-Federal lands where Federal involvement in land-use activities does not generally occur. Federal activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. Prohibitions of adverse modification to critical habitat would only be realized if a Federal nexus existed, situations anticipated to be rare in the range of *G. n.* ssp. *coloradensis*. Any Federal action which would destroy or adversely modify the habitat of the few remaining populations of the species would also likely jeopardize its continued existence. Therefore, habitat protection from Federal actions can be accomplished through the section 7 jeopardy standard.

Additionally, the publication of critical habitat descriptions and maps required in a proposal for critical habitat could increase the degree of threat from possible take or vandalism and, therefore, contribute to the species' decline. Populations exist in small areas and are vulnerable to stochastic extinction. The listing of this plant as threatened publicizes the rarity of the taxa and can make it attractive to researchers, curiosity seekers, or collectors of rare plants. The Service determines that any potential benefits beyond those afforded by listing, when weighted against the negative impacts of disclosing site-specific population locations, does not yield an overall benefit and is, therefore, not prudent. The overall habitat protection and conservation of this species would be best implemented by the recovery process and section 7 provisions of the Act (see AVAILABLE CONSERVATION MEASURES section).

Available Conservation Measures

The Nebraska State Arboretum is currently maintaining a seed bank of *G. n.* ssp. *coloradensis* collected from sites along Lodgepole Creek in Nebraska (J. Locklear, Nebraska State Arboretum, pers. comm.). Additional seed has been collected by the Natural Resources Conservation Service for deposit at the Bridger Plant Materials Center in Montana.

Habitat along Crow and Diamond Creeks on F.E. Warren Air Force Base has been designated as the Colorado Butterfly Plant Research Natural Area dedicated to the protection of the largest known population of *G. n.* ssp. *coloradensis*, and a management plan has been developed (Marriott and Jones 1988). Two large populations of *G. n.* ssp. *coloradensis* occur within the Colorado Butterfly Plant Research Natural Area. Under various memoranda of understanding and cooperative agreements with the Service and The Nature Conservancy, the Air Force has been conducting conservation activities to this species since 1982. However, the most recent Memorandum of Understanding with the Base expired in March 1997. Additionally, all agreements with the Base regarding the plant can be unilaterally terminated by the Air Force at any time for reasons of national defense. The Base is currently developing a weed-control program to improve and maintain *G. n.* ssp. *coloradensis* habitat in cooperation with scientists from The Nature Conservancy and the University of Wyoming.

In 1983 a population of *G. n.* ssp. *coloradensis* was introduced on the Chambers Preserve near Boulder, Colorado. Although several private landowners with natural populations of the plant have expressed interest in pursuing conservation projects, none are currently in place.

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued

existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or species purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because the species is not in cultivation or common in the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (telephone 303/236–7400, Facsimile 303/236–0027). Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.22.

The Service adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is proposed for listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, land use activities that would significantly modify the species' habitat, wetland and riparian habitat modification, flood and erosion control, housing development, recreational trail development, road and dam construction, pesticide/herbicide application, pipelines or utility line crossing suitable habitat and military maneuvers and training) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act; or when such activity does not alter the hydrology or habitat supporting the plant.

(2) Casual, dispersed human activities on foot or horseback (e.g., waterfowl hunting, bird watching, sightseeing, photography, camping and hiking).

(3) Activities on private lands (without Federal funding or involvement), such as grazing management, agricultural conversions, wetland and riparian habitat modification (not including filling of wetlands), flood and erosion control, housing development, road and dam construction, pesticide/herbicide application, pipelines or utility line crossing suitable habitat.

The Service believes that the actions listed below might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of herbicides violating label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Wyoming Field Supervisor (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size or trend of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species;

(5) Biological or physical elements that best describe *G. n.* ssp. *coloradensis* habitat that could be essential for the conservation of the species;

(6) Information regarding genetic differences and similarities within and between populations of *G. n.* ssp. *coloradensis*;

(7) Possible alternative noxious weed control, grazing, farming, and water management practices that will reduce or eliminate impacts to *G. n.* ssp. *coloradensis*; and,

(8) Other management strategies that will conserve the species throughout its range.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Wyoming Field Supervisor, see **ADDRESSES** section.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be

prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the OMB under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Wyoming Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Mary Jennings of the Wyoming Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Gaura neomexicana ssp. *coloradensis.*	Colorado butterfly plant.	USA (CO,NE,WY) ...	Onagraceae	T	.....	NA	NA
.	.	.	.	.	.	.	.

Dated: March 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–7479 Filed 3–23–98; 8:45 am]

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Notices

Federal Register
Vol. 63, No. 56
Tuesday, March 24, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Open Road and Open Motorized Trail Analysis, Targhee National Forest, Bonneville, Butte, Clark, Fremont, Jefferson, Lemhi, Madison and Teton Counties, Idaho; Lincoln and Teton Counties, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Supplemental Environmental Impact Statement.

SUMMARY: The Targhee National Forest will prepare a Supplemental Environmental Impact Statement (SEIS) to document the Analysis and disclose the environmental impacts of a open motorized road and trail network for the Targhee National Forest.

In this decision, the Targhee National Forest would designate which roads and trails are open for motorized use.

COMMENTS: Written scoping comments concerning the proposed project and analysis are encouraged and should be postmarked on or before April 23, 1998. Mail comments to Alan Silker, Targhee National Forest, 420 N. Bridge Street, St. Anthony, ID 83445; telephone, (208) 624–3151. Further information can be obtained at the same location. No scoping meetings are planned at this time.

SUPPLEMENTARY INFORMATION: The Revised Targhee National Forest Land Management and Resource Plan (Revised Plan) was approved in April, 1997. The management prescriptions adopted in the Revised Plan include standards for the miles of open roads and motorized trails allowed per square mile. Standards are also established for cross country motorized use by prescription area.

In August of 1997, the Targhee National Forest issued a Record of Decision for the Open Road and Open Motorized Trail Travel Plan. Over 1200 appeals were filed on this decision. On January 14, 1998, the Appeal Deciding Officer from the Intermountain Regional Office reversed the Responsible Official's August 1997 decision. In order to assure compliance with the Biological Opinion and the Revised Forest Plan, interim direction was issued.

The Forest Service is seeking information and scoping comments from Federal. State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions related to the proposal. Information received will be used in preparation of the draft Supplemental EIS and final Supplemental EIS. For the most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**.

The comment period on the Draft Supplemental Environmental Impact Statement will be 45 days from the date the Environmental Protecting Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Supplemental Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft Supplemental Environmental Impact Statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the Draft Supplemental Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Supplemental Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Jerry Reese, Forest Supervisor, Targhee National Forest, 420 N. Bridge Street, St. Anthony, ID 83445.

Jerry B. Reese,

Targhee Forest Supervisor.

[FR Doc. 98–7519 Filed 3–23–98; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–843]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Japan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: David Genovese, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0498.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references

to 19 CFR part 351 (62 FR 27296 (May 19, 1997)).

Amended Preliminary Determination

We are amending the preliminary determination of sales at less than fair value for stainless steel wire rod (SSWR) from Japan to reflect the correction of a ministerial error made in a margin calculation in that determination. We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Case History

On February 25, 1998, the Department preliminarily determined that SSWR from Japan is being, or is likely to be, sold in the United States at less than fair value (63 FR 10854 (March 5, 1998)). On February 27, 1998, we disclosed our calculations for the preliminary determination to counsel for Daido Steel Company, Ltd., Hitachi Metals, Ltd. (Hitachi), and Nippon Steel Corporation. On March 5, 1998, we disclosed our calculations for the preliminary determination to counsel for the petitioner.

On March 2 and 4, 1998, we received submissions, timely filed pursuant to 19 CFR 351.224(c)(2), from Hitachi, alleging ministerial errors in the Department's preliminary determination. In its submissions, Hitachi requested that these errors be corrected and an amended preliminary determination be issued reflecting these changes. We did not receive comments from any other respondent or from the petitioner.

Amendment of Preliminary Determination

The Department's regulations provide that the Department will correct any significant ministerial error by amending the preliminary determination. *See* 19 CFR 351.224(e). A significant ministerial error is an error the correction of which, either singly or in combination with other errors:

(1) Would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or

(2) Would result in a difference between a weighted-average dumping margin of zero (or *de minimis*) and a weighted-average dumping margin of greater than *de minimis*, or vice versa. *See* 19 CFR 351.224(g).

After analyzing Hitachi's submissions, we have determined that a ministerial error was made in the margin calculation for Hitachi in the preliminary determination. Specifically, we inadvertently failed to convert the constructed value unit cost information from a per-kilogram basis to a per-pound basis, which is the basis on which the U.S. sales of further manufactured products were reported. *See* Memorandum To Louis Apple From The Team, dated March 13, 1998, for a detailed discussion of Hitachi's ministerial error and the Department's analysis.

Because the correction of this ministerial error results in a zero margin for Hitachi, the Department hereby amends its preliminary determination to correct this error. In addition, because section 735(c)(5)(A) of the Act directs the Department to exclude zero margins from the calculation of the "All Others Rate," we have recalculated the "All Others Rate." The revised weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Hitachi Metals, Ltd	0.00
Daido Steel Co., Ltd	31.38
Nippon Steel Corp	24.41
Sanyo Special Steel Co., Ltd	31.38
Sumitomo Electric Industries, Ltd	31.38
All Others	20.59

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to require a cash deposit or posting of bond on all entries of subject merchandise from Japan—excepted those produced and exported by Hitachi—at the rates indicated above, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice. The revised company-specific rate for Hitachi and the "All Others" rate, as well as those rates which have not changed are listed above.

International Trade Commission Notification

In accordance with section 773(f) of the Act, we have notified the International Trade Commission of the amended preliminary determination.

This amended preliminary determination is published pursuant to section 777(i) of the Act.

Dated: March 18, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7638 Filed 3–23–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Fisheries Finance Program Applications; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 26, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, Maryland 20910, (301) 713–2396.

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents will be commercial fishing industry individuals, partnerships, or corporations which want to obtain Federal financing or refinancing of commercial fishing vessels, fisheries shoreside or aquacultural facilities, or individual fishing quotas, or obtain payment for surrendering their fishing permits and/or vessels under a fishing capacity reduction program. The information collected from applicants will be used to determine their eligibility for financial assistance under the Fisheries Finance Program pursuant to 50 CFR part 253.

II. Method of Collection

The collection of information will be collected on the Fisheries Finance Program Application Form.

III. Data

OMB Number: 0648–0012.

Form Number: NOAA FORM 88–1.

Type of Review: Regular Submission.

Affected Public: Businesses and other for profit organizations—commercial fishermen, partnerships, and corporations applying for financing or buyback funds.

Estimated Number of Respondents: 1650.

Estimated Time Per Response: 6.3 hours.

Estimated Total Annual Burden Hours: 10,400.

Estimated Total Annual Cost to Public: No capital, operations, or maintenance costs are expected.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7669 Filed 3–23–98; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031898C]

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Spring Species Working Group Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to ICCAT announces its Spring Meeting with its Species Working Groups on April 6–8, 1998.

DATES: The open sessions of the Committee will be held on April 6, 1998, from 3 p.m. to 5 p.m.; on April 7, 1998, from 8 a.m. to approximately 9:30 a.m.; and on April 8, 1998, from 10 a.m. to 3 p.m. Closed meetings of the Species Working Groups will be held on April 7, 1998, from approximately 9:30 a.m. to 6 p.m. and on April 8, 1998, from 8:30 a.m. to 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jonathon Krieger (301) 713-2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to discuss (1) the U.S. implementation of ICCAT recommendations; (2) research and monitoring activities; (3) the results of the Committee's Species Working Groups meetings; and (4) other matters relating to the international management of ICCAT species, including possible special presentations by individual speakers. While the public will have access to the open sessions of the meeting, there will be no opportunity for public comment. Sessions of the Advisory Committee's Species Working Groups will not be open to the public, but the results of those discussions will be reported to the full Advisory Committee during the Committee's open session on April 8. In addition, the Advisory Committee will meet in closed session the morning of April 8 to discuss internal operational matters. Accordingly, the determination has been made that the committee shall go into executive session at that time.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jonathon Krieger at (301) 713–2276 at least five days prior to the meeting date.

Dated: March 19, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7625 Filed 3–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031898A]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Coastal Migratory Committee (Committee) and Atlantic States Marine Fisheries Commission's Bluefish Board (Board) will hold a public meeting.

DATES: The meeting will be held on Wednesday, April 8, 1998, from 1:00 p.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Adam's Mark Hotel, City Avenue and Monument Road, Philadelphia, PA; telephone: 215–581–5000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review the recommendations of the Council's Scientific and Statistical Committee regarding the status of the bluefish stock. The Committee and Board may recommend management measures compatible with the new assessment information.

Although other issues not contained in this agenda may come before the Committee and Board for discussion, in accordance with the Magnuson Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 18, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7628 Filed 3–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031898D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of Groundfish Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on April 8, 1998 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, (Route 1) Peabody, MA 01960; telephone: (978) 535–4600.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the development of comments on alternative measures to address the overfished condition of Gulf of Maine cod; identification of issues and options, and a review of proposals to meet the stock rebuilding objectives necessary to bring the Northeast Multispecies Fishery Management Plan into compliance with the requirements of the Sustainable Fisheries Act; discussion of other tasks as assigned by the Groundfish Oversight Committee.

Although other issues not contained in these agendas may come before this Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (781) 231–0422. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 19, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7626 Filed 3–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098F]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of revision of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) has rescheduled the public meeting of the Whiting Committee (Committee) that was scheduled for Tuesday, April 7, 1998, at 10:00 a.m. The meeting was announced in the **Federal Register** on March 17, 1998. See **SUPPLEMENTARY INFORMATION** for revisions.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, (Route 1), Peabody, MA 01960; telephone: (978) 535–4600.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION: The initial notice published on March 17, 1998 (63 FR 13034). The original notice stated that only the Whiting Committee would meet on Tuesday, April 7, 1998. The meeting has been rescheduled to meet on Wednesday, April 8, 1998, and will now be a joint meeting of the Whiting Committee, Whiting Advisory Panel, and Whiting Plan Development Team. The Whiting Committee will reconvene by itself on April 9, if necessary. The April 9 meeting may be cancelled if the Committee feels that the April 8 meeting will be sufficient to develop management measures for public hearings. Recommendation from these groups will be brought to the full Council for formal consideration and action, if appropriate. The agenda is as follows:

Wednesday, April 8, 1998, 10:00 a.m.—Joint Whiting Committee, Advisory Panel, and Plan Development Team meeting

Agenda: Discussion of appropriate trip limits, mesh restrictions, and other measures to end and prevent overfishing on silver hake (whiting) and red hake stocks and to provide basic protection for offshore hake; discussion and development of management measures for public hearings.

Thursday, April 9, 1998, 9:00 a.m.—Whiting Committee meeting

Agenda: Final development of management measures for public hearings.

All other information previously published remains unchanged.

Dated: March 19, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7627 Filed 3–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031698C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research/enhancement permits (1128, 1129) and modifications to scientific research permits (900, 946, 1056). Issuance of scientific research permit #1113.

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife at La Grande, OR (ODFW) (1128) and the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) (1129) have applied in due form for permits and that the Fish Ecology Division of the Northwest Fisheries Science Center at Seattle, WA (NWFSC) has applied in due form for modifications to permits (900, 946, 1056) that would authorize takes of endangered and threatened anadromous

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fish species for the purpose of scientific research. Notice is also given that NMFS issued Research Permit number 1113 to Dr. Sylvia Galloway, Laboratory Director of the National Ocean Service - Marine Forensics Laboratory for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on these requests must be received on or before April 23, 1998.

ADDRESSES: The application, permit, and related documents are available for review by appointment in the following offices:

For permits 900, 946, 1056, 1128, and 1129: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents are available for review by appointment in the Endangered Species Division; Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 900, 946, 1056, 1128, and 1129: Robert Koch, PRD (503–230–5424).

For Permit 1113: Terri Jordan, Endangered Species Division, Office of Protected Resources, (301–713–1401).

SUPPLEMENTARY INFORMATION: Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the following application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Issuance of these permits, modifications, and amendments, as required by the ESA, was based on a finding that such permits, modifications, and amendments: (1) Were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits, modifications, and amendments were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

To date, protective regulations for threatened Snake River steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting a take of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of Snake River steelhead. The initiation of a 30-day public comment period on the application, including its proposed take of Snake River steelhead, does not presuppose the contents of the eventual protective regulations.

Applications Received

ODFW (1128) requests a five-year permit that would authorize an annual direct take of adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation program at the Imnaha River and Lookingglass Creek Hatcheries. The new permit is proposed to replace permit 847, which is due to expire on June 30, 1998. The objectives of ODFW's program are to: (1) Restore natural populations of chinook salmon in the basin to ESA delisting levels, (2) reestablish traditional tribal and recreational fisheries for chinook salmon, (3) maintain the genetic and life history characteristics of the endemic wild population while pursuing mitigation goals and management objectives, and (4) operate the hatchery program to ensure that the genetic and life history characteristics of the hatchery fish mimic the wild fish. ESA-listed adult salmon that return to the watershed each year are proposed to be captured at the Imnaha River weir, marked, and inoculated for diseases. ODFW proposes to retain a percentage of the ESA-listed adult salmon that return to the weir each year for hatchery broodstock and to release all of the ESA-listed adult salmon not retained for broodstock above the weir to spawn naturally. In a given year, if more hatchery-origin adult salmon are available than are needed to release above the weir or to keep for broodstock, ODFW proposes to transport the excess hatchery-origin adults to Big Sheep and/or Lick Creeks and outplant them for natural spawning. ESA-listed adult salmon retained for broodstock are proposed to be transported to the hatcheries and spawned. The resulting progeny are proposed to be reared in the hatcheries, tagged with coded-wires and passive integrated transponders, and released when ready to outmigrate to the ocean. An annual incidental take of ESA-listed species associated with juvenile fish releases is also requested.

WDFW (1129) requests a five-year permit that would authorize an annual direct take of adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon associated with a supplementation program at the Tucannon River and Lyons Ferry Fish Hatcheries. The new permit is proposed to replace part of permit 848, which is due to expire on June 30, 1998. The objectives of WDFW's supplementation program are to: (1) Enhance the number of potential spawners in the natural environment; (2) preserve the genetic integrity of the stock to prevent extinction; and (3) stop the decline in run sizes and eventually, to rebuild the natural population over time. ESA-listed adult salmon that return to the watershed each year are proposed to be captured at the Tucannon River weir, marked, and innoculated for diseases. WDFW proposes to retain a percentage of the ESA-listed adult salmon that return to the weir each year for hatchery broodstock and to release all of the ESA-listed adult salmon not retained for broodstock above the weir to spawn naturally. ESA-listed adult salmon retained for broodstock are proposed to be transported to the hatcheries and spawned. The resulting progeny are proposed to be reared in the hatcheries, tagged with coded-wires and passive integrated transponders, and released when ready to outmigrate to the ocean. An annual incidental take of ESA-listed species associated with juvenile fish releases is requested. In addition, WDFW requests an annual direct take of adult, threatened, Snake River steelhead (*Oncorhynchus mykiss*) associated with a research/monitoring program at the Tucannon River adult trap. WDFW proposes to monitor ESA-listed adult steelhead returns to the Tucannon River watershed annually in anticipation of the need to initiate a supplementation program, using locally-adapted populations, in the future. ESA-listed adult steelhead are proposed to be captured, enumerated, and released. ESA-listed adult steelhead indirect mortalities associated with research/monitoring activities are requested.

NWFSC requests modification 5 to permit 900. Permit 900 authorizes NWFSC annual takes of juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*); juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); and juvenile, threatened, Snake River fall

chinook salmon (*Oncorhynchus tshawytscha*) associated with three studies designed to determine the relative survival of migrating juvenile salmonids at hydropower dams and reservoirs on the Snake and Columbia Rivers in the Pacific Northwest. For modification 5, NWFSC requests an increase in the takes of ESA-listed juvenile fish associated with the studies, and annual takes of juvenile, endangered, naturally-produced and artificially-propagated, upper Columbia River steelhead (*Oncorhynchus mykiss*); juvenile, threatened, Snake River steelhead (*Oncorhynchus mykiss*); and juvenile, threatened, lower Columbia River steelhead (*Oncorhynchus mykiss*) associated with the research. ESA-listed juvenile fish are proposed to be captured, handled, and released or captured, tagged with passive integrated transponders (PIT) or radio transmitters, and released. ESA-listed juvenile fish indirect mortalities are requested. Modification 5 is requested to be valid for the duration of the permit which expires on December 31, 1999.

NWFSC requests modification 4 to permit 946. Permit 946 authorizes NWFSC annual takes of juvenile, endangered, Snake River sockeye salmon; adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon; and juvenile, threatened, Snake River fall chinook salmon associated with two scientific research studies. Study 1 is designed to compare the survival to adulthood of spring/summer chinook salmon smolts transported by barge to below Bonneville Dam with the survival to adulthood of smolts migrating volitionally under prevailing river conditions. Study 2 is designed to assess the migration timing and relative survival of transported and inriver juvenile chinook salmon migrating volitionally from Bonneville Dam to the mouth of the Columbia River. For modification 4, NWFSC requests an increase in the takes of ESA-listed juvenile fish associated with the studies. Also for modification 4, NWFSC requests annual takes of juvenile, endangered, naturally-produced and artificially-propagated, upper Columbia River steelhead; juvenile, threatened, Snake River steelhead; and juvenile, threatened, lower Columbia River steelhead associated with the research. ESA-listed juvenile fish indirect mortalities are requested. Modification 4 is requested to be valid for the duration of the permit which expires on December 31, 1999.

NWFSC requests modification 1 to permit 1056. Permit 1056 authorizes NWFSC annual takes of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon associated with two scientific research studies. The objectives of Study 1 is to characterize the run-timing of wild fish over a period of years to determine if consistent patterns are apparent and to use this information for real-time management decisions regarding water allocation during the smolt outmigrations. The objectives of Study 2 are to monitor the nature and extent of genetic change over time in supplemented and unsupplemented populations, to correlate the genetic changes with measures of productivity, and to provide information on population structure and effective population size. For modification 1, NWFSC requests annual takes of juvenile, threatened, Snake River steelhead associated with the research. ESA-listed juvenile steelhead are proposed to be captured, handled, and released or captured, handled, PIT-tagged, and released or lethally taken. ESA-listed juvenile steelhead indirect mortalities are requested. Modification 1 is requested to be valid for the duration of the permit which expires on December 31, 2001.

Permits Issued

Notice was published on December 31, 1997 (62 FR 68260) that an application had been filed by Dr. Sylvia Galloway, Laboratory Director of the National Ocean Service - Marine Forensics Laberatory,requests authorization to possess and conduct research on listed, non-marine mammal, non-reptilian species using tissue samples (fin clips, barbels, blood, muscle, skin) to provide technical support that is responsive to NOAA goals involving protected and endangered species, via law enforcement. The application requests the ability to maintain samples of non-marine mammal, or reptile listed species obtained from permitted individuals and by Federal, state or local law enforcement agents for the purposes of archival as authorized by the ESA.

The permit holder is not authorized to conduct any field collection exercises to obtain the samples. All of the samples must be obtained from previously authorized sources (permitted researchers, law enforcement authorities). All tissue samples will be maintained in a laboratory at the National Ocean Service - Marine Forensics Laboratory, Charleston, South Carolina.

Dated: March 18, 1998.

Joseph R. Blum,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7631 Filed 3–23–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Temporary Amendment to the Requirements for Participating in the Special Access Progam for Caribbean Basin Countries

March 20, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending amendment of requirements for participation in the Special Access Program for a temporary period.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice and letter to the Commissioner of Customs published in the **Federal Register** on September 19, 1997 (62 FR 49206) announced the temporary amendment to the foreign origin exception for findings and trimmings under the Special Access Program. By date of export, the foreign origin exception for findings and trimmings, including elastic strips of less than one inch in width, under the Special Access Program were temporarily amended to include non-U.S. formed, U.S. cut interlinings for the period September 23, 1997 through March 22, 1998 for men's and boys' suit jackets and suit-type jackets in Categories 433, 443, 633 and 643. In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article. This amendment is being extended for a six-month period beginning on March 23, 1998 and extending through September 22, 1998 for men's and boys' suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 entered under the Special Access Program (9802.00.8015)

provided they are cut in the United States and are of a type described below:

(1) A chest type plate, "hymo" piece or "sleeve header" of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of men's or boys' tailored suit jackets and suit-type jackets;

(2) A weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

(3) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 20, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends but does not cancel the directive issued to you on September 15, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns the foreign origin exception for findings and trimmings under the Special Access Program.

Effective on March 23, 1998, by date of export, you are directed to extend, for the six-month period March 23, 1998 through September 22, 1998, the amendment to treat non-U.S. formed, U.S.-cut interlinings, further described below, for men's and boys' wool and man-made fiber suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 as qualifying for the exception for findings and trimmings, including elastic strips less than one inch in width, created under the Special Access Program established effective September 1, 1986 (see 51 FR 21208). In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article.

The amendment implemented by this directive shall be of a temporary nature. The amendment will terminate on September 22, 1998, by date of export.

As described above, non-U.S. formed, U.S.-cut interlinings may be used in imports of men's or boys' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and of a type described below:

(1) A chest plate, "hymo" piece or "sleeve header" of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of men's or boys' tailored suit jackets and suit-type jackets;

(2) A weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

(3) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–7722 Filed 3–23–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of 20 Department of Defense Advisory Committees

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the following 20 DoD advisory committees have been determined to be in the public interest and have been renewed:

A. Air University Board of Visitors
B. Community College of the Air Force Board of Visitors
C. U.S. Air Force Scientific Advisory Board
D. Armed Forces Epidemiological Board
E. Army Science Board
F. Chief of Engineers Environmental Advisory Board
G. Scientific Advisory Board of the Armed Force Institute of Pathology
H. Army Education Advisory Committee
I. Board of Advisors to the President, Naval War College
J. Board of Advisors to the Superintendent, Naval Postgraduate School
K. Chief of Naval Operations Executive Panel Advisory Committee
L. Naval Research Advisory Committee
M. Advisory Group on Electron Devices
N. Board of Visitors, National Defense University
O. Defense Science Board
P. Defense Advisory Committee on Military Personnel Testing
Q. Defense Advisory Committee on Women in the Services
R. DoD Wage Committee
S. Strategic Advisory Group for the U.S. Strategic Command
T. National Security Agency Scientific Advisory Board

These committees provide necessary and valuable advice to the Secretary of Defense and other senior officials in the DoD in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education and training, and various technical program areas.

It is a continuing DoD policy to make every effort to achieve a balanced membership in DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure that a high degree of balance is obtained.

EFFECTIVE DATE: February 28, 1998.

FOR FURTHER INFORMATION: Jennifer Spaeth, 703–695–4281.

Dated: March 18, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7509 Filed 3–23–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Spring 1998 Conference Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Pub. L. 92–463, as amended, notice is hereby given of a forthcoming semi-annual conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Spring 1998 DACOWITS Conference is to assist the Secretary of Defense on matters relating to women in the Services. Conferences sessions will be held daily and will be open to the public, unless otherwise noted below.

DATES: April 22–26, 1998.

ADDRESSES: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 22091; telephone: (703) 620–9000 or 1–(800) 392–7666.

FOR FURTHER INFORMATION CONTACT: Major Sandy Lewis, ARNG, or GySgt Brenad L. Warren, USMC, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122 or E-Mail: warrenb@pr.osd.mil.

SUPPLEMENTARY INFORMATION: The following rules will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the OSD Luncheon, OSD Reception and Dinner and Conference Field Trip.

(2) The Opening Session, General Session, all Subcommittee Sessions, Tri-Committee Review, Final Review and the Voting Session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than April 10, 1998.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral presentations by members of the public will be permitted only on Sunday, April 26, 1998, before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office with one (1) copy of the presentation by April 10, 1998 and bring 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one (1) copy of the statement by the close of the conference on Sunday, April 26, 1998.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Military Director, DACOWITS and Military Women Matters, for consideration.

(10) Members of the public will not be permitted to enter oral discussions conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) After the official participants have asked questions and/or made comments to the scheduled speakers, members of the public will be permitted to ask questions if recognized by the Chair and if time allows.

(12) Non-social agenda events that are not open to the public are for administrative matters unrelated to substantive advice provided to the Department of Defense and do not involve DACOWITS deliberations or decision-making issues before the Committee. Conference sessions will be conducted according to the following agenda:

Wednesday, April 22, 1998

Conference Registration

Military Representatives Meeting (Senior Military Representatives Only)

Executive Committee Rules and Procedures Meeting (DACOWITS Members Only)

Thursday, April 23, 1998

Opening Session and General Session (Open to Public)

Luncheon (Paid Registered Conference Participants Only)

Subcommittee Session (Open to Public)

Friday, April 24, 1998

Subcommittee Session (Open to Public)

OSD Luncheon (Invited Guests Only)

Subcommittee Session (Open to Public)

Executive Committee Rules and Procedures Meeting (DACOWITS Members Only)

OSD Reception and Diner (Invited Guests Only)

Saturday, April 25, 1998

Subcommittee Session (Open to Public)

Tri-Committee Review (Open to Public)

Subcommittee Session (Open to Public)

Field Trip (DACOWITS Members and Senior Military Representatives Only)

Executive Committee Rules and Procedures Meeting (DACOWITS Members Only)

Sunday, April 26, 1998

Final Review (Open to Public)

Voting Session (Open to Public)

Dated: March 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7508 Filed 3–23–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Environmental Impact Statement for Pilot Testing of Neutralization/ Biotreatment of Mustard Agent at Aberdeen Proving Ground, Maryland

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability (NOA).

SUMMARY: This announces the availability of the Draft Environmental Impact Statement (DEIS) which assesses the potential environmental impacts of the design, construction, systemization and operation of a facility to pilot test the neutralization/biotreatment process of mustard agent using water at Aberdeen Proving Ground (APG), Maryland. The proposed facility will be used to demonstrate, as part of a research and development program, the feasibility of adopting the neutralization process using water, followed by biotreatment, to destroy mustard agent currently stored in two containers at APG.

The alternatives considered in this DEIS are no action (i.e., continued storage of mustard agent at APG) and locating the pilot facility at one of two potential sites within APG. Although the no action alternative is not viable under Public Law 99–145, the Department of Defense Authorization Act of 1986, it was analyzed to provide a comparison with the proposed action. In addition, the no action alternative is considered to be deferral of research and development of the neutralization process as an alternative technology.

DATES: The public comment period for the DEIS will end 45 days after publication of the NAO in the Federal Register by the U.S. Environmental Protection Agency. Public comments received on the DEIS will be considered and addressed in the final EIS and considered by the Army in its Record of Decision.

ADDRESSES: To obtain copies of the DEIS, contact Ms. Nancy Hoffman at Edgewood Community Outreach Office at (410) 676–6800 or write to: Woodbridge Station, 1011 Woodbridge Center Way, Edgewood, Maryland 21040.

FOR FURTHER INFORMATION CONTACT: Office of the Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–P (Ms. Catherine Herlinger), Building E4585, Aberdeen Proving Ground, Maryland 21010–5401; telephone: (800) 488–0648 or (410) 671–1479; e-mail: cherling@cdra.apgea.army.mil.

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SUPPLEMENTARY INFORMATION: The DEIS concludes that mustard stored in bulk containers can be pilot tested at APG using the neutralization (hydrolysis) process with water, followed by biotreatment, in a safe and environmentally acceptable manner. At one time, the option of sending the hydrolysate to an off-site biotreatment facility was under consideration by the Army. However, the Army has been unable to identify a suitable off-site biotreatment facility that would accept the neutralization hydrolysate, and also conform to the safety and environmental protection requirements of the proposed action. Therefore, off-site biotreatment is not addressed further in this DEIS.

Dated: March 18, 1998.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98–7597 Filed 3–23–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 24 March 1998.

Time of Meeting: 0800–1700.

Place: MIT Lincoln Laboratory—Lexington, MA.

Agenda: The Army Science Board's (ASB) Independent Assessment Panel on "Hit-to-Kill Interceptor Lethality—Phase II" will meet to receive briefings on biological defense from the staff of the Lincoln Laboratory of the Massachusetts Institute of Technology. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and Title 5, U.S.C., Appendix 2, subsection10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–7637 Filed 3–23–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the New York and New Jersey Harbor Navigation Study: Feasibility Phase

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The New York District of the U.S. Army Corps of Engineers is preparing a Draft Environmental Impact Statement (DEIS) to ascertain compliance with and lead to production of a National Environmental Policy Act (NEPA) document in accordance with the President's Council of Environmental Quality (CEQ) Rules and Regulations, as defined and amended in 40 Code of Federal Regulations (CFR) Parts 1500–1508, Corps' Principles and Guidelines as defined in Engineering Regulation (ER) 1105–2–100 and ER 1105–1–200 and other applicable Federal and State environmental laws for the proposed deepening and navigation improvements to the New York and New Jersey Harbor.

The study area includes the Federal Navigation waterways Ambrose and Anchorage Channels; New York and New Jersey Channels (the Kill Van Kull and Arthur Kill to Gulfport); Newark Bay Channel (from the Kill Van Kull to Elizabeth Channel); Bay Ridge and Red Hook Channel; Buttermilk Channel; and the Stapleton, Red Hook and Gravesend Anchorages; and the non-federal Port Jersey and Claremont Channels.

FOR FURTHER INFORMATION CONTACT: Jenine Gallo, Project Biologist at (212) 264–4740 (4559), Planning Division, Corps of Engineers, New York District, 25 Federal Plaza, New York, New York 10278–0090.

SUPPLEMENTARY INFORMATION: This study is authorized by Section 435 of the Water Resources Development Act of 1996 which reads: "The Secretary shall conduct a comprehensive study of navigation needs at the Port of New York-New Jersey (including the South Brooklyn Marine and Red Hook Container Terminals, Staten Island, and adjacent areas) to address improvements, including deepening of existing channels to depths of 50 feet or greater, that are required to provide economically efficient and environmentally sound navigation to meet current and future requirements".

The study area is the Harbor of New York/New Jersey (hereinafter, the Harbor) which contains the largest port on the east coast, the port of New York and New Jersey, and is among the largest in the United States in terms of volume of commerce. Thirty billion gallons of petroleum are handled by the Port each year and make it the largest petroleum port in the country. The Port is also the third largest container port in the United States and the largest on the east coast of North America. The Port provides more than 166,000 port-related jobs, $20 billion in economic activity, and serves more than 17 million consumers in the States of New York and New Jersey. The Port handles this large volume of commerce despite the fact that it lacks sufficient depth to serve fully loaded ships of the latest designs to enter service.

1. The study area, located in the western Atlantic Ocean, consists of existing Federal Channels and Anchorages. Channels are: Ambrose; Bay Ridge; Red Hook; Buttermilk; Kill Van Kull; Claremont; Port Jersey; Newark Bay (including Port Newark and Elizabeth Channels); and Arthur Kill. Anchorages are Stapleton, Bay Ridge and Gravesend.

The Port of New York and New Jersey is also included in the study area. The study area has been divided into six "paths," having the Ambrose and Anchorage channels as common elements: the Kill Van Kull/Newark Bay to Port Newark and Elizabeth; the Kill Van Kull and Arthur Kill to Howland Hook; the remaining Arthur Kill path and Arthur Kill to Howland Hook; the remaining Arthur Kill path from Howland Hook to Gulfport; the Stapleton, Bay Ridge, Red Hook and Buttermilk channels; the Port Jersey Channel and Claremont Terminal channels; and the Red Hook, Stapleton and Gravesend Anchorages.

2. Areas to be analyzed include the navigation channels and anchorages, and water areas adjacent to navigation channels and anchorages. A National Economic Development (NED) Plan will be developed to support container and petroleum facilities. Various depth alternatives will be evaluated for each channel and design vessel depths in excess of 50 feet of petroleum reaches will be analyzed and estimated quantities of material to be removed will be developed for each channel. The study assumes that the Arthur Kill Channel/Howland Hook Project, the Kill Van Kull Project, and the Port Jersey Project will have been dredged to –41, –45, and –41 feet MLW respectively prior to the construction of the Harbor Deepening project.

Three types of environmental analyses will be conducted; impacts

associated with Land-Based Facility Improvements, impacts associated with Navigation Improvements, and analyses required for mitigation planning purposes.

3. Public scoping meetings are expected to be scheduled in April/May 1998. Six meetings will be held in Brooklyn, Staten Island, Manhattan and New Jersey. Results from the public scoping meetings with the District and the Environmental Work Group (EWG), and federal, state and local agency coordination will be addressed in the DEIS. Parties interested in receiving notices of public scoping meetings or copies of the Scoping Document should contact: Jenine Gallo, USACE, New York District, 26 Federal Plaza, New York, NY 10278–0090.

4. Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to Colonel Gary Thomas, District Engineer at the above address.

5. Estimated Date of the DEIS availability: September 1999.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7621 Filed 3–23–98; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.287]

21st Century Community Learning Centers Program; Notice of Extension of Application Deadline Date

SUMMARY: The Assistant Secretary extends the deadline date for the submission of applications for new awards for fiscal year 1998 under the 21st Century Community Learning Centers program. The Assistant Secretary also revises the deadline for Intergovernmental review under the requirements of Executive Order 12372 (Intergovernmental review of Federal programs). The Assistant Secretary takes this action to allow more time for the submission of applications by potential applicants adversely affected by severe weather conditions in various areas of the Nation. The extension is intended to help these potential applicants compete fairly with other applicants under this program.

NEW DEADLINE DATE FOR TRANSMITTAL OF APPLICATIONS: March 27, 1998.

NEW DEADLINE DATE FOR INTERGOVERNMENTAL REVIEW: May 26, 1998.

ADDRESSES: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA 84.287, 600 Independence Avenue, SW., Washington, DC 20202–4725. An application must show proof of mailing consisting of one of the following: (1) a legibly dated U.S. Postal Service postmark, (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, General Services Administration National Capital Region, Seventh and D Streets, SW., Washington, DC 20202–4725. The Application Control Center will accept deliveries between 8:00 a.m. and 4:30 p.m. daily, except Saturdays, Sundays, and Federal holidays.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Amanda Clyburn, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue., NW, Room 506b, Washington, DC 20208–5644. Telephone: 202–219–2180. Inquiries may also be sent by e-mail to <amanda__clyburn@ed.gov>.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also by contacting Amanda Clyburn. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

SUPPLEMENTARY INFORMATION: On December 2, the Assistant Secretary published a notice inviting applications for new awards. In that notice, the Assistant Secretary established a deadline date of March 9, by which all applications must have been hand-delivered or mailed. Because of adverse weather conditions in various sections of the country on and around this date, some potential applicants were unable to transmit applications on time. To enable these potential applicants to participate in this competition, the Assistant Secretary has determined to extend this deadline. Because of the difficulty in identifying the specific geographic areas that were affected, the Assistant Secretary has decided to extend the deadline to all potential applicants. By extending this deadline by three days, the Assistant Secretary emphasizes that the limited purpose of this extension is to enable potential applicants who completed their applications, but were unable to mail them on time due to adverse weather conditions, an opportunity to submit completed applications.

ELECTRONIC ACCESS TO THIS DOCUMENT: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8241–8246.

Dated: March 20, 1998.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 98–7697 Filed 3–20–98; 11:04 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.177A]

Independent Living Services for Older Individuals Who Are Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: This program supports projects that—

(a) provide independent living services to older individuals who are blind;

(b) conduct activities that will improve or expand services for these individuals; and

(c) conduct activities to help improve public understanding of the problems of these individuals.

Eligible Applicants: Any designated State agency (DSA) that does not currently have a project funded under this program and is authorized to provide rehabilitation services to individuals who are blind is eligible for an award under this notice.

Deadline for Transmittal of Applications: May 15, 1998.

Deadline for Intergovernmental Review: July 14, 1998.

Applications Available: March 25, 1998.

Available Funds: $40,000.

Estimated Range of Awards: $40,000.

Estimated Average Size of Award: $40,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 367.

Priority: The priority in the notice of final priority for this program, published in the **Federal Register** on December 27, 1994 (59 FR 66616), applies to this competition.

For Applications or Information Contact: Raymond Melhoff, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3327 Switzer Building, Washington, D.C. 20202–2741. Telephone: (202) 205–9320. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8243.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 796f.

Dated: March 19, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–7576 Filed 3–23–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–55–000]

Lee Banks, D.B.A. Banks Oil Company; Notice of Petition for Adjustment and Relief

March 18, 1998.

Take notice that on March 9, 1998, Lee Banks, D.B.A. Banks Oil Company (Banks), filed a petition for relief of all the refund requests covering his well included in the Northern Natural Gas Company, Colorado Interstate Gas Company and Panhandle Eastern Pipe Line Company (Companies) statement of Refunds Due, with the Exception of the Loewen "C" well (Panhandle). It is stated that this request is being based on hardship privileges as referenced in an Order Denying Rehearing and an Order clarifying Procedure wherein denial of relief would cause the applicant special hardship, inequity, or unfair distribution of burden (NGPA Section 502(c) and 385.1104 of the Commission's Regulations).

Banks states that he has pursued adjustment with each pipeline company and has put in escrow $34,154.12, as the disputed amount covering his working and royalty interest on the Loewen "C" well which is the only well remaining of all wells which can justify any payment and would take years to recover. It is also stated that the three remaining well are marginal wells along with ten well which are either plugged, or will be plugged, or have been lost to the Department of Interior. Banks also states that he has unsuccessfully attempted to contact and advise other royalty owners of their respective obligations.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boerger,

Acting Secretary.

[FR Doc. 98–7545 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–24–000]

Cabot Oil & Gas Corporation; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 9, 1998, Cabot Oil & Gas Corporation (Cabot) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting an extension of the March 9, 1998, deadline established for first sellers to remit refunds of Kansas ad valorem taxes ("Tax" or "Taxes") to their pipeline purchasers, as required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] Cabot's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

Cabot (as well as a predecessor-in-interest) has received Statements of Refunds Due ("Statements") from two of its then pipeline purchasers for Tax reimbursements received in conjunction with sales of Kansas natural gas for the period October 3, 1983 through June 28, 1988. Cabot is in the process of reviewing such Statements to determine their accuracy, as well as to address various other issues concerning whether Cabot, in fact, owes all or only a portion of such Tax refunds. Cabot's review includes whether such refund amounts are "uncollectible" pursuant to the standard set forth by the Commission. To date, Cabot has not completed its review of the Statements.

Cabot also is aware that numerous issues are either pending rehearing before the Commission, or for which appellate review has been sought. Cabot believes that these issues could, depending on their ultimate disposition, directly impact, and possibly significantly decrease, Cabot's Tax refund obligation.

Accordingly,to ensure that Cabot does not pay the Statements before their accuracy is verified and prior to these issues that are pending rehearing or appeal are finally resolved, Cabot is placing in escrow all invoiced amounts, together with interest, set forth in the Statements. Cabot also is requesting that the Commission grant Cabot an extension beyond March 9, 1998, to determine the accuracy of the Statements and what, if any, involved amounts are, in fact, uncollectible or otherwise improperly or unlawfully invoiced.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7539 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

[4] 82 FERC ¶ 61,059 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–256–000]

Clear Creek Storage Company, L.L.C.; Notice of application

March 18, 1998.

Take notice that on March 2, 1998, Clear Creek Storage Company, L.L.C. (Clear Creek), 180 East 100 South, P.O. Box 45601, Salt Lake City, Utah 84145-0601, filed in Docket No. CP98–256–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing Clear Creek to construct and operate facilities necessary to convert a depleted gas production reservoir in Uinta County, Utah into a storage facility, all as more fully set forth in application which is on file with the Commission and open to public inspection.

Clear Creek states that it is a limited liability corporation owned by two gas marketers, Questar Trading Company (QTC) and Montana Power Ventures Inc. (MPV) which own 75% and 25% of Clear Creek, respectively.

Clear Creek anticipates that the planned storage field will have approximately 4 bcf of working gas, 2 to 4 bcf of cushion gas, and projects injection and withdrawal rates of 35 Mmcf per day and 50 Mmcf per day, respectively. To convert the production field, Clear Creek proposes to install two 2,100 hp compressors, a liquid removal plant, and certain natural gas liquid and water tanks. Clear Creek also proposes to reinsulate and install heat tracing on an existing pipeline that connects the planned injection/withdrawal well to the compressors.

Clear Creek proposes to operate the storage field solely for the use of the two owners, QTC and MPV. The owners would use the storage capacity of the field to buy and market natural gas and manage their individual portfolios of natural gas supplies and customer demands. Because Clear Creek does not propose to offer open access service it is not requesting a blanket transportation certificate. Therefor, to the extent necessary, Clear Creek requests a waiver of any applicable open access requirement.

Any person desiring to be heard or making any protest with reference to said application should on or before April 8, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all

other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Clear Creek to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7529 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–32–000]

Devon Energy Corporation; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 9, 1998, Devon Energy Corporation (Devon) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to pay Kansas ad valorem tax refunds, as required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000[2] to Panhandle Eastern Pipe Line Company solely with respect to amounts which are attributable to the holders of working interests and royalty interests who Devon cannot identify or locate or from whom Devon cannot recoup such amounts. Devon's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest could continue to accrue on any outstanding balance.

Devon states that it would be inequitable and cause an unfair distribution of burdens for it to be held liable for amounts collected on behalf of, and distributed to, other parties. Devon proposes to file by September 1, 1998, a report with the Commission detailing its efforts to recover Kansas ad valorem tax amounts paid to third-parties which Devon has been unable to recoup.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7541 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[3] *Public Service Company of Colorado v. FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–24–000 and RP98–161–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

March 18, 1998.

Take notice that on March 13, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of April 1, 1998:

Eleventh Revised Sheet No. 6
Fourth Revised Sheet No. 264
Third Revised Sheet No. 265
Third Revised Sheet No. 266
Fourth Revised Sheet No. 267

Equitrans states that it is proposing to make a change in the method of charging shippers for gas processing service. Equitrans states that the filing constitutes Equitrans' annual products extraction rate adjustment filing under Section 32 of the General Terms and Conditions of its FERC Gas Tariff.

Equitrans states that is contracts for gas processing services from Gulf Energy Gathering and Processing Company (Gulf Energy), and that Gulf Energy has made a contractual election, beginning in January, 1998, to "keep whole" Equitrans for the processing services it provides under the contracts. Based on this contractual change, Equitrans proposes to eliminate its currently effective $0.2004/Dth products extraction charge. No extraction charge will be recovered from shippers prospectively. In addition, Equitrans will provide a monetary credit to these shippers for the shrinkage of their gas which occurs due to processing operations as these credits are received monthly from Gulf Energy.

Equitrans states that the credits will be calculated on a unit basis using the same tariff mechanism in Section 32 of the General Terms and Conditions which was previously used for the crediting of liquid revenues. The proposed method of charging Equitrans' West Virginia shippers for gas processing services will result in a significant reduction in processing costs to these shippers. Equitrans requests any waivers which are necessary to make the proposed tariff sheets effective beginning April 1, 1998.

Equitrans states that copies of this rate filing were served on Equitrans' jurisdictions customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7546 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA87–43–000]

Leo Helzel; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 9, 1998, Leo Helzel (First Seller), filed a petition for adjustment under section 502(c) of the Natural Gas Policy act of 1978 (NGPA), requesting 1) an extension of 90 days to allow First Seller and Williams Natural Gas Company (Pipeline) to resolve any dispute as to the proper amount of the refund liability of first Seller for the Kansas ad valroem tax reimbursements set forth in the Statement of Refunds Due (SRD) addressed to Benson Mineral Group, Inc. (BMG), the operator, or to submit such dispute to FERC for resolution if the parties cannot resolve it within such time, and 2) in order to stop the accrual of interest pending resolution of disputes and legal issues, grant an adjustment to its procedures to allow First Seller to place into escrow not only any disputed amount of the refund amount calculated by Pipeline but also principal and interest on amounts attributable to production prior to October 4, 1983, and interest on all other amounts claimed to be due under the SRD.

The procedures applicable to the conduct of this adjustment proceeding are in subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7544 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–31–000]

Kaiser-Francis Oil Company; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 9, 1998, Kaiser-Francis Oil Company (Kaiser-Francis) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting adjustment relief from refund procedures, as required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] concerning Northern Natural Gas Company. Kaiser-Francis' petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Kaiser-Francis requests that the Commission: (1) grant an adjustment to its procedures to allow Kaiser-Francis to defer payment of principal and interest attributable to royalties for one year until March 9, 1999; and (2) grant an adjustment to the Commission's procedures to allow Kaiser-Francis to place into an escrow account in a federally-insured financial institution: (i) amounts attributable to royalty refunds which have not been collected from the royalty owner (principal and interest), (ii) principal and interest on amounts attributable to production prior to October 4, 1983; (iii) interest on royalty amounts which have been recovered from the royalty owners (the principal of which was refunded); and (iv) interest on the total amount of refunds allegedly due (excluding royalties, disputed amounts, and pre-October 4th production).

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7540 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997). (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–38–000]

John W. LeBosquet; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 9, 1998, John W. LeBosquet (LeBosquet), and other working interest owners for whom LeBosquet operated, (Dorchester) filed a

petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting that the refund procedures in the Commission's September 10, 1997 order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP7–5–000,[2] be altered with respect to LeBosquet's Kansas ad valorem tax refund liability.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

LeBosquet request that the Commission pursuant to the Commission's January 28 Order, (1) grant an extension of 90 days to make refunds to allow first sellers and Northern to resolve any dispute as to the proper amount of the refund liability of first sellers for the Kansas ad valorem tax reimbursements set forth in the State of Refunds Due (SRD) addressed to the John R. LeBosquet Trust, or to submit such dispute to the Commission for resolution if the parties cannot resolve it within such time; (2) to grant an adjustment to its procedures to allow to defer payment to Northern Natural Gas Company of principal and interest refunds attributable to unrecovered royalties for one year until March 9, 1999, and (3) to grant an adjustment to its procedures to allow first sellers to place into an escrow account during the requested 1-year deferral period, not only the disputed amount of the refund but also (i) an amount equal to the principal and interest on royalty refunds which have been collected from royalty owners and (ii) principal and interest on amounts attributable to production prior to October 4, 1983, and (iii) interest on all other principal amounts claimed to be due under the SRD.

On or before March 9, 1999, LeBosquet proposes to file documentation with the Commission, of these royalties which were not collectible and disburse out of escrow funds those royalty refunds which were recovered.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7543 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[4] 82 FERC ¶ 61,059 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–16–000]

Midgard Energy Company; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 6, 1998, Midgard Energy Company ((Midgard), formerly known as Oleum, Inc., Diamond Shamrock Exploration Company and Maxus Exploration Company), filed a petition for adjustment relief from refund procedures under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] seeking authorization from the Commission to place interest on its refunds for reimbursement of Kansas ad valorem taxes, as otherwise required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000,[2] to Northern Natural Gas Company (Northern), into an escrow account. Midgard's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Specifically, Midgard requests authorization to place interests on its refunds, with respect to production from four wells (Pfeifer Nos. 2, 4 and 5, and Randall No. 3), to Northern into an escrow account. In its Petition, Midgard avers that Northern, in its filed Statement of Refunds Due (Statement), included amounts attributable to other working interest owners in the same properties and royalty amounts. Midgard states that it notified Northern that there were discrepancies in the Statement of Refunds Due and requested that Northern file a corrected Statement. Midgard further states that Northern declined to correct its Statement, although not specifically disputing any of Midgard's arguments.

Thus, argues Midgard, it seeks to establish this procedure to ensure: (a) that it pays only that which is legitimately owed; and (b) that if it is subsequently determined that it has no refund liability for interest, it can recover the overpayment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20425, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing

[1] 15 U.S.C. 3142(C)(1982).

[2] See 80 FERC ¶ 61,264 (1997); under denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7536 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–8–005 and RP96–199–014]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 18, 1998.

Take notice that on March 13, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective January 1, 1998:

Third Substitute Twenty-Seventh Revised Sheet No. 5
Third Substitute Twenty-Eighth Revised Sheet No. 5
Third Substitute Twenty-Seventh Revised Sheet No. 6
Third Substitute Twenty-Eighth Revised Sheet No. 6
Third Substitute Twenty-Fourth Revised Sheet No. 7
Second Substitute Twenty-Fifth Revised Sheet No. 7

An addition, MRT tendered for filing the following revised tariff sheets to be effective February 12, 1998:

Second Substitute Twenty-Ninth Revised Sheet No. 5
Second Substitute Twenty-Ninth Revised Sheet No. 6
Second Substitute Twenty-Sixth Revised Sheet No. 7

MRT states that the purpose of this filing is to amend its March 2, 1998 filing to correct surcharge column headings and to identify the GRI surcharge for the authorized overrun rate on the SCT and IT rate schedules.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7532 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–392–002]

National Fuel Gas Supply Corporation; Notice of Proposed changes in FERC Gas Tariff

March 18, 1998.

Take notice that on March 13, 1997 National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 10, to proposed to become effective March 31, 1998.

On August 11, 1997, National filed in compliance with a July 10, 1997 Order, a tariff sheet proposing a revised title transfer fee applicable to in-place storage title transfers. National states that this filing is made in compliance with the Commission's order of February 27, 1998 rejecting National's suspended August 11, 1997 compliance filing. The proposed tariff sheet reflects the Commission recommended in-place storage title transfer rate of $3.86 per party per transaction ($7.72 total).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7533 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–121–001]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

March 18, 1998.

Take notice that on March 13, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective March 1, 1998:

Sub Second Revised Sheet No. 102
Original Sheet No. 102A
Sub First Revised Sheet No. 103
Sub First Revised Sheet No. 104

Panhandle states that the purpose of this filing is to comply with the Commission's order issued February 26, 1998 in Docket No. RP98–121–000, 82 FERC ¶ 61,188 (1998).

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7534 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–33–000]

Pioneer Natural Resources USA, Inc.; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 9, 1998, Pioneer Natural Resources USA, Inc. (Pioneer) filed a petition for adjustment under section 502(c) of the Natural Gas

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Policy Act of 1978 (NGPA),[1] requesting that the Commission grant a procedural adjustment in connection with its potential refund liability for reimbursement of Kansas ad valorem taxes otherwise required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] Pioneer's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interests, for the period from 1983 to 1988. The Commission clarified the refund procedures in its "Order Clarifying Procedures" in Northern Natural Gas Company, *et al.*,[4] stating therein that it would grant extension of the refund due date for royalty refunds if a producer requests such an extension. In addition, the Commission indicated in the January 28 order that it would consider adjustment requests as to the refund amounts and the refund procedures.

Pioneer requests authorization to defer payment to Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, ANR Pipeline Company, Williams Natural Gas Company, KN Interstate Gas Transmission Co., and Colorado Interstate Gas Company (Pipelines) of principal and interest refunds attributable to royalties for one year until March 9, 1999. In addition, Pioneer requests that it be allowed to place into an escrow account certain portions of the remaining refunds allegedly due to Pipelines. Pioneer argues that it seeks to establish these procedures to ensure: (a) that it pays only that which is legitimately owed; and (b) that if it is subsequently determined that its refund liability was less than that originally claimed by Pipelines, it can recover the overpayment.

Pioneer states that a one-year deferral in the obligation to make royalty refunds is necessary in order to allow it to confirm the appropriate refund amounts due, to attempt to locate the prior royalty owners, and to seek recovery of such amounts from the proper royalty owners. On or before March 9, 1999, Pioneer proposes to file with the Commission documentation of those royalties which were not collectible and disburse to Pipelines those royalty refunds which were recovered (principal only), except for refunds attributable to pre-October 3, 1983, production (which is covered below). At that time, Pioneer proposes to place the interest from royalty refunds which was recovered in its escrow account to protect the royalty owners. In addition, Pioneer argues that its proposal for an escrow account is necessary to protect its property and that of its royalty owners. Pioneer also proposes to place the following amounts into that escrow account: (a) the principal amount of refunds and interest thereon attributable to royalty refunds [during the one-year deferral period]; (b) the principal and interest amount of refunds attributable to production prior to October 3, 1983 (excluding royalties attributable thereto during the one-year deferral period); and (c) the interest due on principal refunds other than royalty refunds (during the one-year deferral period) and pre-October 3, 1983, production refunds. Pioneer requests the one-year deferral and the authorization to place such monies into an escrow account pursuant to the Commission's January 28, 1998, Order Clarifying Procedures.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7542 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(C)(1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

[4] 82 FERC ¶ 61,059 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–18–000]

Riviera Drilling & Exploration Company; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 6, 1998, Riviera Drilling & Exploration Company (Riviera) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to pay Kansas ad valorem tax refunds, as required by the Commission's September 10, 1997, order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000 and RP97–369–000.[2] Riviera's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interests would continue to accrue on any outstanding balance.

Riviera states that in the early 1980's, its became and continues to be the operator of the Pope Haxelton #1–21 and Pope Adamson #1–16 wells, located in the State of Kansas. Riviera states that these wells were determined to be Section 103 natural gas category wells in late 1982. Riviera further states that in 1983, the working interest on these two wells was owned by R.H. Zwicky (90%), R&P Investment (5%) and Lavon Arbogast (5%). In 1984, the working interest was owned by R.H. Zwicky (67.50%), tomar, Inc. (22.50%), R&P Investment (5%) and Lavon Arbogast (5%). Riviera maintains that it merely remained the operator of the two wells and, as operator, acted as agent for all of the working interest and royalty interest owners. Riviera states that as operator, Riviera received ad valorem checks from Northern Natural Gas Company (Northern) on behalf of the working interest and royalty interest

[1] 15 U.S.C. 3142(c) (1982).

[2] *See* 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

owners and distributed such amounts to the working interest owners by crediting each owner's respective share against then existing expenses.

Riviera states that subsequent to the September 10 order, Northern contacted Riviera seeking refund of $183,276.83, the entire amount of funds reimbursed to Riviera on behalf of the working interest and royalty interest owners. However, this amount was later adjusted to $91,931.92 to reflect the Section 103 well determination.

Riviera asserts that while it may have received refund checks from Northern on behalf of the non-operators, these refunds were disbursed 100% to the working interest and royalty interest owners. Riviera maintains that no such refunds were retained by Riviera.

In view of the above, Riviera requests to be relieved of its obligation to make the Kansas ad valorem tax refunds to Northern because Riviera is not a first seller of natural gas and therefore not responsible for the refund obligation. In the alternative, if the Commission does not grant the relief requested, Riviera requests that it be authorized to present a full hardship argument, and as a second alternative, Riviera requests that it be authorized to present an installment period argument.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7537 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–19–000]

Dale Schwarzhoff; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 9, 1998, Dale Schwarzhoff (Schwarzhoff) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting a 90-day extension to allow Schwarzhoff and Williams Natural Gas Company (WNG) to resolve any dispute as to the proper amount of the refund liability of Schwarzhoff for the Kansas ad valorem tax refunds,as required by the Commission's September 10, 1997, order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000 and RP97–369–000,[2] and set forth in the Statement of Refunds Due (SRD) addressed to Benson Mineral Group, Inc. (BMG), the operator, or to submit such dispute to FERC for resolution if the parties cannot resolve it within such time, and (2) in order to stop the accrual of interest pending resolution of disputes and legal issues, grant an adjustment to its procedures to allow Schwarzhoff to place into an escrow account not only any disputed amount of the refund amount, but also principal and interest on amounts attributable to production prior to October 4, 1983, and interest on all other amounts claimed to be due under the SRD. Schwarzhoff's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

It is stated that the SRD submitted to BMG includes tax reimbursements in the amount of $49,243.49, for the Barngrover #1–#3 well. Schwarzhoff states that this well is classified as a Section 102 well under the NGPA, which was deregulated as of January 1, 1985. Schwarzhoff further states that it disputes the obligation to refund the tax reimbursements paid by WNG and received by BMG in 1985 and 1986 attributable to the Barngrover #1–#3 well that had been deregulated by that time and for which there was no maximum lawful price. In order to stop the continued accrual of interest; however, pending resolution of disputes and legal issues, Schwarzhoff states that it will place in escrow the amount of $503.65, representing what Schwarzhoff believes in good faith, after an exhaustive review of the prices received, to be the greatest potential liability attributable to the working interest of Schwarzhoff claimed under the SRD. Alternatively, if retaining these funds in escrow is not permitted, Schwarzhoff requests that WNG be required to repay to Schwarzhoff, with interest, any of the amounts paid to WNG from escrow which subsequently are determined not to have been a part of Schwarzhoff's refund obligation.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7538 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] *See* 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert, denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, may 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–9–000]

Tekas Pipeline, L.L.C.; Notice of Petition for Rate Approval

March 18, 1998.

Take notice that on March 4, 1998, Tekas Pipeline L.L.C. (Tekas) filed a

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petition for rate approval pursuant to Section 284.123(b)(2) of the Commission's regulations, and pursuant to the Commission's order issued March 4, 1996 in Docket No. PR95–7–000. In its petition, Tekas requests the Commission to approve a system-wide maximum rate of $0.1465 per Mcf (plus a pro rata share of fuel and lost and unaccounted for gas). Tekas states that the rate will be applicable to its transportation services provided under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA), effective August 1, 1998.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions or protests must be filed with the Secretary of the Commission on or before April 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of the petition are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7531 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–14–000]

Albert A. Thornbrough; Notice of Petition for Adjustment

March 18, 1998.

Take notice that on March 6, 1998, Albert A. Thornbrough (Thornbrough) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] seeking Commission intervention to resolve a dispute between himself and Colorado Interstate Gas Company (CIG) concerning ad valorem taxes for years 1982 through 1986. Thornbrough requests that he be relieved of his obligation to pay Kansas ad valorem tax refunds, as required by the Commission's September 10, 1997 order, in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] Thornbrough's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

As of March 9, 1998, CIG claims that Thornbrough owes CIG $108,883.73 in principal and $156,621.88 in interest. Thornbrough disputes CIG's claim entirely. If the Commission determines that Thornbrough is required to pay some or all of the disputed amount to CIG, Thornbrough seeks a staff adjustment pursuant to Section 502(c) of the NGPA, abating all of the disputed amount. If the Commission subsequently determines that Thornbrough is required to pay some or all of the disputed amount to CIG, Thornbrough seeks permission to amortize the required sum over a five-year period commencing on march 9, 1999 such that the first installment would be equal to one-fifth of the total principal and interest owing as of that date; the second installment equal to ¼ of the remaining total; the third installment equal to ⅓ of the remaining balance; the fourth installment equal to ½ of the remaining amount; and the fifth installment would be equal to the balance of all principal and interest owing as of March 9, 2003.

Thornbrough, as operator, claims that the production and his working and revenue interests therein, as well as the royalty interest owners, of the following wells are the subject of this dispute:

Well name	Location	Gross work interest (percent)	Net revenue interest (percent)
Lindsay #1	Section 25	100	76.56
McDonald #1	Section 13	50	43.75
McDonald #2	Section 13	31.25	27.31
Thornbrough #1	Section 24	100	82.31
Thornbrough #2	Section 24	62.5	51.26

All of these wells are located at T25S–R39W in Hamilton County, Kansas. Thornbrough also claims that its request for relief from its Kansas ad valorem taxes for the years 1982–1986 is based on a May 1, 1989 Settlement Agreement with CIG where the only mention of these types of taxes, to which Thornbrough may be liable for making a refund, is for the years 1987 and 1988.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7535 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–279–000]

Williams Gas Pipelines Central Inc.; Notice of Request Under Blanket Authorization

March 18, 1998.

Take note that on March 11, 1998, Williams Gas Pipelines Central, Inc. (formerly named Williams Natural Gas Company) (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–279–000, a request, pursuant to Sections 157.205, 157.208(b), and 157.212(a) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, and 157.212), for authorization to utilize facilities, both acquired and constructed, for the delivery of NGPA Section 311 transportation gas to Kansas City Power & Light (KCPL) for the Hawthorn power plant in Jackson County, Missouri, for purposes other than NGPA Section 311 transportation, under Williams' blanket certificate authorization issued in Docket No. CP82–479–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams asserts that it seeks to utilize existing NGPA Section 311 transportation facilities for other deliveries of gas to KCPL so that KCPL will have the opportunity to transport not only NGPA Section 311 gas, but capacity release and Section 284 gas as well.

Wiliams says it began flowing gas to KCPL for the Hawthorn plant on August 11, 1997. Williams reports that the on-behalf-of party for the transportation agreement is Enogex, Inc., an intrastate pipeline company. Williams indicates that according to KCPL, the projected annual volume of delivery is estimated to be approximately 1.8 to 1.9 Bcf with a peak day volume of 50,800 Dth. Williams reports that the total project cost was approximately $17,701,7814, which will be recouped through a new firm transportation agreement with KCPL.

Williams states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers. Williams says it has sent a copy of this request to the Missouri Public Service Commission.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7530 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2115–000, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

March 18, 1998.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket No. ER98–2115–000]

Take notice that on March 6, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and the California Department of Water Resources for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Salem Electric, Inc.

[Docket No. ER98–2175–000]

Take notice that on March 1, 1997, Salem Electric, Inc. (Salem Electric) petitioned the Commission for acceptance of Salem Electric Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Salem Electric intend to engage in wholesale electric power and energy purchases and sales as a marketer. Salem Electric is not in the business of generating or transmitting electric power.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER98–2176–000]

Take notice that on March 13, 1998, Florida Power & Light Company (FPL) tendered for filing a proposed notice of cancellation of an umbrella service agreement with Coastal Electric Services Company for non-firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on April 1, 1998.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER98–2177–000]

Take notice that on March 13, 1998, Florida Power & Light Company (FPL) tendered for filing proposed service agreements with Engage Energy US, L.P. for short-term firm and non-firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on April 1, 1998.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER98–2178–000]

Take notice that on March 13, 1998, Florida Power & Light Company (FPL) tendered for filing proposed service agreements with Municipal Electric Authority of Georgia for short-term firm and non-firm transmission service

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under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on April 1, 1998.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Northwestern Wisconsin Electric Company

[Docket No. ER98–2180–000]

Take notice that on March 13, 1998, Northwestern Wisconsin Electric Company tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. The proposed changes would increase revenues from jurisdictional sales by $15,773.50 based on the 12 month period ending April 30, 1998. Northwestern Wisconsin Electric Company is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. The service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1.

Northwestern Wisconsin Electric Company requests this Rate Schedule Change become effective May 1, 1998.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Power-Link Systems, Ltd. d/b/a First Choice Energy

[Docket No. ER98–2181–000]

Take notice that on March 13, 1998 Power-Link Systems, Ltd., d/b/a First Choice Energy (First Choice) petitioned the Commission for acceptance of First Choice Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

First Choice intends to engage in wholesale electric power and energy purchases and sales as a marketer. First Choice is not in the business of generating or transmitting electric power. First Choice is not involved in any energy concern at present, is not a subsidiary of any corporation and is in no way affiliated with any other business in any utility field.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER98–2182–000]

Take notice that on March 13, 1998, Florida Power Corporation (Florida Power) filed to amend its Market-Based Wholesale Power Sales Tariff (MR–1). Florida Power requests an effective date of 30 days after this filing.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER98–2183–000]

Take notice that on March 13, 1998, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a notification indicating its consent to the assignment of rights and obligations under electric service agreements under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) as requested by the customers. Wisconsin Electric respectfully requests effective June 1, 1997, Service Agreement No. 35 with Coastal Electric Services Company is assigned to Engage Energy US, L.P. (Engage). Effective November 1, 1997, Service Agreement No. 2 with Heartland Energy Services is assigned to Cargill-IEC, LLC who has since changed its name to Cargill-Alliant, LLC (Cargill-Alliant). Effective January 1, 1998, Service Agreement No. 45 with Southern Energy Trading & Marketing is assigned to Southern Company Energy Marketing L.P. (SCEM).

Wisconsin Electric requests waiver of any applicable regulation to allow for the effective dates as requested above. Copies of the filing have been served on Engage, Cargill-Alliant, SCEM, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. AES Huntington Beach, L.L.C.

[Docket No. ER98–2184–000]

Take notice that on March 13, 1998, AES Huntington Beach, L.L.C., a limited liability subsidiary of The AES Corporation, tendered for filing pursuant to Rule 205, 18 CFR 285.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the later of the date AES Huntington Beach, L.L.C. acquires a generating facility or the operations date of the California Independent System Operator.

AES Huntington Beach, L.L.C. intends to sell electric capacity and energy at wholesale, and it proposes to make such sales subject to rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of capacity and energy at agreed prices.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. AES Alamitos, L.L.C.

[Docket No. ER98–2185–000]

Take notice that on March 13, 1998, AES Alamitos, L.L.C., a limited liability subsidiary of The AES Corporation, tendered for filing pursuant to Rule 205, 18 CFR 285.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the later of the date that AES Alamitos, L.L.C. acquires a generating facility or the operations date of the California Independent System Operator.

AES Alamitos, L.L.C. intends to sell electric capacity and energy at wholesale, and it proposes to make such sales subject to rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of capacity and energy at agreed prices.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. AES Redondo Beach, L.L.C.

[Docket No. ER98–2186–000]

Take notice that on March 18, 1998, AES Redondo Beach, L.L.C., a limited liability subsidiary of The AES Corporation, tendered for filing pursuant to Rule 205, 18 CFR 285.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the later of the date AES Redondo Beach, L.L.C. acquires a generating facility or the operations date of the California Independent System Operator.

AES Redondo Beach, L.L.C. intends to sell electric capacity and energy at wholesale, and it proposes to make such sales subject to rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of capacity and energy at agreed prices.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Texas-New Mexico Power Company

[Docket No. ER98–2187–000]

Take notice that on March 13, 1998, Texas-New Mexico Power Company (TNMP) tendered for filing an Umbrella Service Agreement For Short-Term Nonfirm Energy Transactions of One Year or Less, between TNMP, as seller, and Duke Energy Trading & Marketing, purchaser.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER98–2188–000]

Take notice that on March 13, 1998, Arizona Public Service Company (APS) tendered for filing Umbrella Service Agreements to provide Firm Transmission Service to Amoco Energy Trading Corporation and Non-Firm Point-to-Point Transmission Service to ConAgra Energy Services, Inc. under APS' Open Access Transmission Tariff.

A copy of this filing has been served on ConAgra Energy Services, Inc., Amoco Energy Trading Corporation and the Arizona Corporation Commission.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER98–2189–000]

Take notice that on March 13, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a service agreement dated February 20, 1998, between KCPL and Engage Energy US, L.P.. KCPL proposes an effective date of March 3, 1998, and requests waiver of the Commission's notice requirement. This agreement provides for the rates and charges for non-firm transmission service.

In its filing, KCPL states that the rates included in the above-mentioned service agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER98–2190–000]

Take notice that on March 13, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a service agreement dated February 17, 1998, between KCPL and Merchant Energy Group of the Americas. KCPL proposes an effective date of March 5, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This agreement provides for the rates and charges for short-term firm transmission service.

In its filing, KCPL states that the rates included in the above-mentioned service agreement are KCPL's rates and charges in the compliance filing to FERC Order 888-A in Docket No. OA97–636-000.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Kansas City Power & Light Company

[Docket No. ER98–2191–000]

Take notice that on March 13, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a service agreement dated February 17, 1998, between KCPL and Merchant Energy Group of the Americas. KCPL proposes an effective date of March 5, 1998, and requests waiver of the Commission's notice requirement. This agreement provides for the rates and charges for non-firm transmission service.

In its filing, KCPL states that the rates included in the above-mentioned service agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7584 Filed 3–23–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Proposed Rates, Public Forums, and Opportunities for Public Review and Comment for Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed rate adjustment.

SUMMARY: Southeastern Power Administration (Southeastern) proposes to revise existing schedules of rates and charges applicable to the sale of power from the Georgia-Alabama-South Carolina System of Projects effective for a 5-year period, October 1, 1998, through September 30, 2003. Additionally, opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES AND ADDRESSES: Written comments are due on or before June 22, 1998. Public information and comment forums will be held in College Park, Georgia, on April 29, 1998 and in Columbia, South Carolina on April 30, 1998. Persons desiring to speak at a forum should notify Southeastern at least 3 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits. Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia, 30635. The public information and comment forums will begin at 10:00 A.M. on April 29, 1998 at the Georgia International Convention Center, 1902 Sullivan Road, College Park Georgia, 30337, (770) 907–3566, and at 10:00 A.M. on April 30, 1998 at the Embassy Suite Greystone, 200 Stoneridge Drive, Columbia, South Carolina 29210, (803) 252–8700.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia, 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) by order issued March 18, 1994, in Docket No. EF93–3011–000, confirmed and approved Wholesale

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Power Rate Schedules GA–1–D, GA–2–D, GA–3–C, GU–1–D, ALA–1–H, ALA–3–D, MISS–1–H, MISS–2–D, SC–3–C, SC–4–B, CAR–3–C, SCE–2–C, and GAMF–3–B applicable to Georgia-Alabama-South Carolina System of Projects' power for a period ending September 30, 1998.

Discussion

Existing rate schedules are predicated upon a June 1993 repayment study and other supporting data contained in FERC Docket No. EF93–3011–000. The current repayment study dated February 1998 shows that existing rates are not adequate to recover all costs required by present repayment criteria. Southeastern is proposing to establish rates that will recoup these unrecovered costs.

A revised repayment study with a revenue increase of $14.6 million in FY 1999 and future years over the current repayment study shows that all costs are repaid within their service life. Therefore, Southeastern is proposing to revise the existing rates to generate this additional revenue. The increase is primarily due to increasing Corps O&M expenses, SEPA marketing expenses, retirement and pension benefit expenses not previously recovered, and the interest on and repayment of the capital investment associated with rehabilitation of projects in the Georgia-Alabama-South Carolina System.

An additional study dated February 1998 that includes costs related to the pumping units at the Richard B. Russell Project, which are expected to be declared commercially operable July of 1998, shows that the proposed rates in the revised repayment study discussed in the preceding paragraph will not be adequate to recover these costs. Southeastern is proposing alternate new rates that will recover these costs. These rates are to become effective October 1, 1998, if the pump storage units are declared commercially operable from the date of this notice to September 30, 1998. If the pump storage units are not declared commercially operable on or before September 30, 1998, these rates will not apply. Southeastern is proposing two versions of these alternate rates. In the first version, the entire adjustment due to the Russell pump storage units would go into effect October 1, 1998. In the second version, the rate adjustment would be phased-in over a five-year period.

A revised repayment study with rates designed to produce an annual revenue increase of $38.8 million in FY 1999 and all future years over the revised repayment study discussed above shows that all costs, including costs associated with the pump storage units at the Richard B. Russell Project, are repaid within their repayment life. Therefore, Southeastern is proposing these rates to go into effect October 1, 1998, if the Richard B. Russell Pump Storage Units are declared commercially operable on or before September 30, 1998. Southeastern is also proposing and requesting comments on a second version of these rates that phases in the adjustment of five year period from October 1, 1998, to October 1, 2002.

Proposed Unit Rates

Southeastern is proposing the following rate schedules to be effective for the period from October 1, 1998 through September 30, 2003.

Rate Schedule SOCO-1

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida to whom power may be wheeled and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated.

Rate Schedule SOCO-2

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida to whom power may be wheeled pursuant to contracts between the Government and Southern Company Services, Incorporated. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule SOCO-3

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated. The customer is responsible for providing a transmission arrangement.

Rate Schedule SOCO-4

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule ALA–1–I

Available to the Alabama Electric Cooperative, Incorporated.

Rate Schedule MISS–1–I

Available to the South Mississippi Electric Power Association to whom power may be wheeled pursuant to contract between the Government and Alabama Electric Cooperative, Inc.

Rate Schedule Duke-1

Available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and Duke Power Company.

Rate Schedule Duke-2

Available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be wheeled pursuant to contracts between the Government and Duke Power Company. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule Duke-3

Available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Power Company. The customer is responsible for providing a transmission arrangement.

Rate Schedule Duke-4

Available to public bodies and cooperatives in North Carolina and South Carolina served through the transmission facilities of Duke Power Company. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule Santee-1

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Public Service Authority.

Rate Schedule Santee-2

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule Santee-3

Available to public bodies and cooperatives in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority. The customer is responsible for providing a transmission arrangement.

Rate Schedule Santee-4

Available to public bodies and cooperatives in South Carolina served

through the transmission facilities of South Carolina Public Service Authority. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule SCE&G–1

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Electric & Gas Company.

Rate Schedule SCE&G–2

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Electric & Gas Company. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule SCE&G–3

Available to public bodies and cooperatives in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Electric & Gas Company. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule SCE&G–4

Available to public bodies and cooperatives in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule Pump-1

Available to all customers of the Georgia-Alabama-South Carolina System and applicable to energy from pumping operations at the Carters Project.

Rate Schedule Pump-2

Available to all customers of the Georgia-Alabama-South Carolina System and applicable to energy from pumping operations at the Richard B. Russell Project.

The proposed rates, provided the pumping units at the Richard B. Russell are not declared commercially operable on or before September 30, 1998, for capacity, energy, and generation services are as follows:

Capacity: $3.08 per kW per month .
Energy: 7.73 mills per kWh
Generation Services: $0.09 per kW per month.

The rates for transmission, scheduling, reactive supply, and regulation and frequency response are illustrated in Table 1. [1]

TABLE 1.—SOUTHEASTERN POWER ADMINISTRATION PROPOSED RATES FOR TRANSMISSION SCHEDULING, REACTIVE, AND REGULATION CHARGES

Rate schedule	Transmission charge $/KW/month	Scheduling charge $/KW/month	Reactive charge $/KW/month	Regulation charge $/KW/month
SOCO–1	1.70	.07658	.16627	.24714
SOCO–2	1.70	.07658	.16627	N/A
SOCO–3	N/A	.07658	N/A	.24714
SOCO–4	N/A	.07658	N/A	N/A
ALA–1–I	N/A	.07658	N/A	N/A
MISS–1–I	1.83	N/A	N/A	N/A
Duke-1	1.15	N/A	N/A	N/A
Duke-2	1.15	N/A	N/A	N/A
Duke-3	N/A	N/A	N/A	N/A
Duke-4	N/A	N/A	N/A	N/A
Santee-1	1.53	N/A	N/A	N/A
Santee-2	1.53	N/A	N/A	N/A
Santee-3	N/A	N/A	N/A	N/A
Santee-4	N/A	N/A	N/A	N/A
SCE&G–1	2.22	N/A	N/A	N/A
SCE&G–2	2.22	N/A	N/A	N/A
SCE&G–3	N/A	N/A	N/A	N/A
SCE&G–4	N/A	N/A	N/A	N/A
Pump-1	N/A	N/A	N/A	N/A
Pump-2	N/A	N/A	N/A	N/A

Should the pump storage units at the Richard B. Russell Project be declared commercially operable on or before September 30, 1998, Southeastern is proposing and requesting comments on two versions of capacity and energy rates that would apply. In either version, the rate for Generation Services remains $0.09 per kW per month. The rates for Transmission, Scheduling, Reactive, and Regulation Services remain unchanged from the rates shown in Table 1. In the first version, rates for capacity and energy for the period from October 1, 1998, to September 30, 2003, are as follows:

Capacity: $3.57 per kw per month
Energy: 10.14 mills per kWh.

In the second version, the rates for capacity and energy are as follows:

Period	Capacity ($kw/month)	Energy (mills/kWh)
October 1, 1998 to September 30, 1999	3.20	8.33
October 1, 1999 to September 30, 2000	3.33	8.94
October 1, 2000 to September 30, 2001	3.45	9.54
October 1, 2001 to September 30, 2002	3.57	10.14

[1] The transmission, scheduling, reactive, and regulation charges for each schedule are the rates charged for these services by the appropriate facilitator. All transmission, scheduling, reactive, and regulation rates in this notice are based on the current rates as of the date of this notice and are subject to revision.

Period	Capacity ($kw/month)	Energy (mills/kWh)
October 1, 2002 to September 30, 2003	3.65	10.35

The referenced repayment studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635. Proposed Rate Schedules SOCO–1, SOCO–2, SOCO–3, SOCO–4, ALA–1–I, MISS–1–I, Duke-1, Duke-2, Duke-3, Duke-4, Santee-1, Santee-2, Santee-3, Santee-4, SCE&G–1, SCE&G–2, SCE&G–3, SCE&G–4, Pump-1, and Pump-2, are also available.

Dated: March 16, 1998.

Charles A. Borchardt,

Administrator.

[FR Doc. 98–7607 Filed 3–23–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5984–6; Docket No. A–97–21]

RIN 2060–ZA01

Determination of Adequacy of Section 112 Authorities and Determination of Need for Additional Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determinations.

SUMMARY: Today's notice provides EPA's determination that the legal authorities contained in the provisions of section 112 of the 1990 Amendments to the Clean Air Act (Act) are adequate to prevent serious adverse public health effects and serious or widespread environmental effects associated with atmospheric deposition of hazardous air pollutants (HAP) to the Great Lakes, the Chesapeake Bay, Lake Champlain, and certain coastal waters (the Great Waters). Today's notice also provides EPA's determination that further emission standards or control measures under section 112(m)(6), beyond those that can otherwise be adopted under section 112, are not necessary and appropriate to prevent such effects. Note that these determinations are not a conclusion that EPA has taken full advantage of the statutory authorities under section 112, but that these authorities exist and are adequate, based on the information available now, to prevent serious adverse effects to public health and serious or widespread environmental effects associated with atmospheric deposition of HAP to the Great Waters. The two draft determinations were published on July 7, 1997, and a public comment period during which interested persons could submit written comments in response to the draft determinations ran through August 6, 1997. These determinations are being made pursuant to section 112(m)(6) of the Act, as amended in 1990.

ADDRESSES: Supporting information used in developing the draft and final determinations is contained in Docket No. A-97–21 at the Air Docket, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. This docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dale Evarts, Office of Air Quality Planning and Standards (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5535.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The official record for this notice, as well as the public version, has been established for this notice under Docket No. A–97–21 (including comments and data submitted electronically as described below). A public version of this official record, including printed, paper versions of electronic comments, which do not include any information claimed as confidential business information (CBI), is available for inspection at the address in **ADDRESSES** at the beginning of this document, and electronically at the following address: http://www.epa.gov/ttn/oarpg/

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I. Background and Overview

Pursuant to the requirements of section 112(m)(6) of the Act, 42 U.S.C. 7412(m)(6), EPA is issuing its determination that the legal authorities contained in the other provisions of section 112 of the Act are adequate to

prevent serious adverse effects to public health and serious or widespread environmental effects (hereinafter referred to as "adverse effects"), including such effects resulting from indirect exposure pathways, associated with atmospheric deposition of HAP and their atmospheric transformation products to the Great Waters. The EPA is also issuing its determination that, at this time, further emission standards or control measures under section 112(m)(6), beyond those that can otherwise be adopted under the other provisions of section 112, are not necessary and appropriate to prevent such effects, including the effects due to bioaccumulation and indirect exposure pathways. The notice discusses the bases for the Agency's two draft determinations published on July 7, 1997 (62 FR 36436), the comments received in response to the draft determinations, EPA's responses to those comments, and the bases for the determinations are discussed in today's notice.

Section 112(m)(6) of the Act requires EPA to determine whether the other provisions of section 112 provide adequate authority to prevent serious adverse effects to public health and serious or widespread environmental effects associated with atmospheric deposition of HAP to the Great Waters. If EPA finds the other provisions of section 112 to be inadequate for this purpose, section 112(m)(6) then requires the Agency to promulgate, as necessary and appropriate, further regulations in accordance with section 112 to prevent those effects.[1] While, under the Act, EPA could have unilaterally issued its determinations in the second Report to Congress required by section 112(m)(5), the Agency chose to conduct its analysis of the provisions of section 112 in a more public forum that allowed interested citizens to provide comments on EPA's preliminary views. This approach was reflected in the consent decree entered in *Sierra Club* v. *Browner*, 96–1680 (D.D.C.). The EPA issued its two draft determinations in conjunction with issuing its "Second Report to Congress on Deposition of Air Pollutants to the Great Waters" (EPA–453/R–97–011, June 1997), which summarized the draft determinations. Today's notice serves as a supplement to that Report.

[1] The EPA interprets this latter requirement to mandate that EPA determine, in the first instance, whether additional regulations are necessary and appropriate, rather than to absolutely require the Agency to promulgate some further regulations. See, e.g., *Environmental Defense Fund* v. *Thomas*, 870 F.2d 892, 896–900 (2nd Cir. 1989).

The first draft determination pertained to the authority within the other provisions of section 112 to take appropriate actions to address the effects enumerated in section 112(m)(6), rather than to the efficacy of any prior or future administrative actions under those provisions. In addition, the scope of the draft determination focused on the authority within section 112 to address those pollutants and sources that can be regulated under section 112. Consequently, pollutants that are not listed as HAP pursuant to section 112(b), and source categories that could not be listed pursuant to section 112(c), were not included within its scope. The EPA did note, however, that some unlisted pollutants that are pollutants of concern for the Great Waters are regulated by other sections of the Act (e.g., emissions of oxides of nitrogen (NO_X) are regulated pursuant to sections 108, 109, 202 and 407). Moreover, some source categories that were outside the scope of section 112 and the determination can be regulated under other Act provisions (e.g., mobile sources regulated under title II of the Act). While this determination only applies to the adequacy of section 112 to address HAP of concern to the Great Waters emitted from stationary sources, other authorities under the Act operate in concert with section 112 to reduce, for instance, toxic emissions from mobile sources, NO_X emissions from both mobile and stationary sources, and particulate matter (some of which may be toxic).

Section 112 establishes a statutory framework by which EPA identifies HAP by whether an air pollutant may cause or contribute to adverse effects to public health or the environment, and then develops performance standards for the control of emissions from stationary sources of HAP. The EPA can then adjust these control requirements as needed to address any residual risk that may be presented by sources even after adoption of the emission standards (section 112(f); see footnote 3 below). The types of adverse environmental effects to be prevented are defined in the Act and are broad in scope. An adverse environmental effect is defined by section 112(a)(7) as "* * * any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas." (42 U.S.C. 7412(a)(7)).

Authorities provided by section 112 that may be particularly relevant to the Great Waters pollutants and sources include authority to:

—Identify and list any air pollutant that may present through inhalation or other routes of exposure a threat of adverse human health effects or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise (section 112(b)).

—Establish test methods and analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of HAP (section 112(b)(5)).

—Identify and list any source category or source subcategory that emits HAP, including sources of seven specific HAP that are of particular concern for the Great Waters to assure at least 90 percent of emissions of each of these seven HAP are subject to national emission standards (section 112(c)).

—Promulgate performance standards for major sources and listed area sources of HAP. These standards are to reflect the maximum degree of emission reduction that is achievable, taking into consideration the cost of achieving such reduction, non-air quality health and environmental impacts, and energy requirements (i.e., "maximum achievable control technology," or MACT). In addition, these standards are to apply pollution prevention measures, processes, methods systems or techniques which reduce the volume of or eliminate emissions through process changes, substitution of materials, enclosure of systems or processes, and other measures (section 112(d)).

—Establish lesser quantity emission rates for determining what is a major source of a HAP, based on several factors including potency of the HAP, persistence in the environment, the potential to bioaccumulate, other characteristics of the HAP, or other relevant factors (section 112(a)).

—Require additional controls as necessary to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. This authority applies not only to sources regulated under section 112(d) performance based controls, but also to certain other source categories regulated under sections 111 and 129 of the Act (section 112(f)).

Based on available information and EPA's analysis, and guided by the Agency's interpretation of the statutory authorities of section 112, EPA is determining that the provisions of

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section 112 are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects associated with atmospheric deposition of HAP emissions to the Great Waters. Consequently, EPA is determining that, at this time, no further emission standards or control measures under section 112(m)(6), beyond those that can otherwise be adopted under section 112, are necessary and appropriate to prevent those effects. In addition, due to the state of current scientific information concerning factors such as the relative contribution of air emissions to adverse effects in the Great Waters, as discussed in the first and second Reports to Congress, EPA could not conclude confidently that such supplementary regulatory action under section 112(m)(6) would be necessary and appropriate.

This does not mean, however, that actions under the other provisions of section 112 or other authorities that reduce any impacts from deposition of air pollution are not warranted, or that EPA is concluding that air deposition of HAP does not currently cause or contribute to adverse effects to public health or the environment. In fact, EPA has taken and is continuing to take several actions that the Agency expects will reduce these impacts (e.g., EPA's Nitrogen Oxides Emission Reduction Program final rule, 61 FR 67112 (Dec. 19, 1996). In recent years, considerable progress has been made in quantifying emissions inventories, monitoring concentrations in air and precipitation, and modeling total atmospheric deposition to a water body. Studies are improving the ability to relate deposition to source categories, and examinations are under way for viewing the total picture relating HAP to single water bodies. Therefore, EPA reserves its right to reconsider these determinations if future events or additional information indicate that they are incorrect and to promulgate any necessary and appropriate regulations under section 112(m)(6). Such events or information could include, for example, a judicial ruling that overrules EPA's interpretation of how a particular provision of section 112 can be employed in the effort to prevent adverse effects from HAP deposition, or the Agency's discovery through implementation of a section 112 provision that the authority EPA previously believed was available to prevent such effects could not be adequately used for this purpose.

The EPA is committed to continuing its analyses, research and assessments of all aspects of atmospheric transport, deposition, fate and effects of HAP emitted by section 112 sources, and to faithfully implementing the provisions of section 112 and other authorities in order to minimize unreasonable threats to humans and to the environment as a result of exposure to air pollutants, whether exposure results directly from emissions into the air, through introduction to watersheds or water bodies, or through other pathways. The EPA will continue to work cooperatively with the National Oceanic Atmospheric Administration (NOAA) and the scientific community to refine methods for measuring and estimating atmospheric transport and deposition of HAP in order to more reliably characterize and quantify the significance of atmospheric deposition to environmental quality.

II. Statutory Framework of the Clean Air Act Great Waters Program

In the 1990 Amendments to the Clean Air Act (Pub. L. 101–549), Congress added a new program targeted at assessing and controlling atmospheric deposition of HAP to the Great Waters. Section 112(m) of the Act, as amended in 1990, 42 U.S.C. 7401 *et seq.*, established the Great Waters program under which EPA has ongoing responsibilities to identify and assess the extent of atmospheric deposition of HAP to the Great Waters. As part of this program, EPA is to monitor for atmospheric deposition of HAP in the Great Waters, investigate the sources of HAP deposition, research the relative contribution of atmospheric pollutants to total loadings in the Great Waters, evaluate adverse effects to public health or the environment caused by HAP deposition, assess the contribution of HAP deposition to violations of water quality or drinking water standards, and sample for HAP in biota, fish, and wildlife of the Great Waters (42 U.S.C. 7412(m)(1)).

Section 112(m) then requires EPA to establish a monitoring network for the Great Waters. Under section 112(m)(2), the Agency is to monitor atmospheric deposition of HAP (and other pollutants in the Administrator's discretion) to the Great Lakes, establishing at least one facility in each of the Great Lakes capable of monitoring deposition of HAP in both dry and wet conditions. The EPA is to use the data provided by the network to identify and track movement of HAP through the Great Lakes, to determine the portion of water pollution loadings attributable to HAP deposition, and to support remedial plans as required by the Great Lakes Water Quality Agreement. The EPA is to assure that such data are compatible with databases sponsored by the International Joint Commission, Canada, and the several States of the Great Lakes region (42 U.S.C. 7412(m)(2)). Section 112(m)(3) then directs EPA to establish monitoring stations to assess deposition of HAP (and other pollutants in EPA's discretion) within the Chesapeake Bay and Lake Champlain watersheds, determine the role of air deposition in the pollutant loadings of these two water bodies, investigate the sources of air pollutants deposited in their watersheds, and conduct evaluative and sampling functions as necessary to characterize health and environmental effects of such loadings (42 U.S.C. 7412(m)(3)). Section 112(m)(4) requires EPA to design and deploy deposition monitoring networks for coastal waters and their watersheds and make any information collected through them publicly available (42 U.S.C. 7412(m)(4)).

In addition, pursuant to section 112(m)(5), EPA is to provide periodic, updated Reports to Congress describing the results of any monitoring, studies, and investigations conducted under the Great Waters program, addressing the same issues mentioned above and describing any revisions to the requirements, standards, and limitations under the Act or other Federal laws that are necessary to protect human health and the environment from atmospheric deposition of HAP (42 U.S.C. 7412(m)(5)). The Agency's implementation of the Great Waters program up through the summer of 1997 is discussed in the first two Reports to Congress issued under section 112(m)(5), respectively entitled, "Deposition of Air Pollutants to the Great Waters: First Report to Congress," EPA–453/R–93–055 (May 1994); and "Deposition of Air Pollutants to the Great Waters: Second Report to Congress," EPA–453/R–97–011 (June 1997). Copies of these reports can be obtained, as supplies permit, from the Library Services Offices (MD–35), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27771, or, for a nominal fee, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone: 1–800–553–NTIS or 703–487–4650.

Finally, section 112(m)(6) requires EPA to determine, as part of the Report to Congress, whether the other provisions of section 112 are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including effects resulting from indirect exposure pathways, associated with deposition of HAP (and their atmospheric

transformation products) to the Great Waters. In making this determination, EPA is to take into consideration the tendency of certain HAP to bioaccumulate. If EPA determines that the other provisions of section 112 are not adequate for this purpose, section 112(m)(6) then provides that EPA must promulgate, in accordance with section 112, such additional emission standards or control measures as EPA determines may be necessary and appropriate to prevent those effects (42 U.S.C. 7412(m)(6)).

The EPA issued its first Report to Congress under the Great Waters program in May 1994. When the Agency had not issued the second report by 2 years after that date, three environmental groups, the Sierra Club, the Chesapeake Bay Foundation, and the National Wildlife Federation, filed suit in U.S. District Court for the District of Columbia to compel EPA to take three distinct actions: (1) Issue the second Report to Congress; (2) determine whether the other provisions of section 112 are adequate to prevent the effects described in section 112(m)(6) and (3) promulgate further emissions standards or control measures under section 112(m)(6) (see Complaint for Declaratory and Injunctive Relief, *Sierra Club, et. al.* v. *Browner*, Civ. No. 96–1680 (D.D.C.)). In May 1997, the court entered a consent decree containing a schedule for several actions as agreed upon by the parties. First, under the decree, the Agency was required to issue the second Report to Congress and proposed determinations regarding the adequacy of section 112 and the need for further regulations as described in section 112(m)(6) by June 30, 1997. Second, final determinations were due by March 15, 1998. Third, if EPA determines, pursuant to section 112(m)(6), that further emission standards or control measures are necessary and appropriate, EPA is to issue proposed regulations by March 15, 2000, with final regulations due by November 15, 2000. The Agency met the first set of the consent decree's requirements when it issued the second report and the draft determinations. Today's notice fulfills the second set of requirements under the decree.

III. EPA's Draft Determinations

In the notice publishing the Agency's draft determinations, EPA set out its statutory analysis of the scope of the section 112(m)(6) analytical mandate, the authority under the other provisions of section 112 relative to that mandate, and its draft conclusions regarding the adequacy of section 112 and the need for further regulations beyond those that can otherwise be adopted under section 112 (62 FR 36438–46, July 7, 1997). The Agency's analysis as presented in the draft determinations notice is summarized below. The public comments to that analysis are summarized later, as are EPA's responses to the points raised by commenters and EPA's conclusions.

A. Scope of Analysis

Section 112(m)(6) charges EPA to assess the adequacy of "the other provisions of this section (112)" to prevent the specified effects. If EPA finds those other provisions could not prevent those effects, section 112(m)(6) directs the Agency to adopt additional rules "in accordance with this section (112)" not otherwise specifically mandated or authorized by the other provisions, as needed to meet the section 112(m)(6) protective mandate. Any such additional regulations, having to be "in accordance with this section (112)," would, by the terms of section 112(m)(6), have to be limited to rules that apply to the air pollutants and source types that are within the Agency's scope of authority to address under section 112 (i.e., stationary sources of HAP).

Section 112(m)(6) does not, in contrast, direct EPA to evaluate the individual effectiveness of the particular regulatory actions that have been taken or that are being taken under those other statutory provisions. The EPA interprets the statutory language as calling for an analysis of the regulatory authority EPA has for proceeding under the provisions of section 112 to prevent the enumerated health and environmental effects (62 FR 36436, 36438–36439, July 7, 1997). In other words, for purposes of conducting the required statutory analysis, EPA must presume that the provisions would be implemented in a manner which fully meets the substantive objectives of the relevant provisions of section 112, rather than speculate about what actual degree of emission control might ultimately result from any specific regulation that has been adopted (or will be adopted), and what remaining risks will be presented after application of those regulations.[2] This interpretation is supported by the dates by which Congress directed EPA to make this determination and promulgate any further necessary and appropriate regulations under section 112(m)(6), compared to the deadlines section 112 sets forth for full implementation of the HAP program. The first Report to Congress was due on November 15, 1993. Further regulations based on the Agency's determinations under section 112(m)(6) were then due on November 15, 1995. In contrast, many of the regulations EPA is required by the 1990 Amendments to section 112 to promulgate are not due until much later, and would not be expected to be completed by the date specified in section 112(m)(6). Some regulations, for example the residual risk standards and 10-year MACT standards, would have been in such early stages of development that EPA could not have begun to assess their effectiveness. Even established regulations would not yet, at that time, have demonstrated success or failure at preventing adverse effects. Thus, Congress could not have expected EPA to have gathered sufficient information, at the time the adequacy determination and decision regarding the need for further regulations were due, to judge the scientific or technical "adequacy" of recently adopted or future regulatory actions. Rather, EPA interprets section 112(m)(6) as charging the Agency to identify and plug any gaps in authority found based on the conclusion that those other provisions of section 112, when eventually implemented, could not possibly prevent the enumerated effects from HAP deposition from stationary sources.

The EPA also considered the extent to which the adequacy determination must encompass all sources of HAP, rather than just domestic stationary sources that are within the scope of section 112. Atmospheric deposition of some HAP partially results from mobile sources, as well as transport of emissions from foreign sources. Moreover, some HAP are continually being recycled in the environment, long after they have been emitted or discharged by the original source. The EPA believes that section 112(m)(6) does not direct EPA to consider these sources in making its determination. If the other provisions of section 112 are found inadequate, EPA is to establish further regulations under section 112 applicable to sources that it could regulate under section 112. Since non-section 112 sources, such as mobile sources and foreign sources, are outside the regulatory scope of EPA's remedial authority under section 112(m)(6), EPA does not believe that Congress asked EPA to evaluate the adequacy of section 112 authorities to apply to those sources. On the contrary, the most reasonable interpretation is that Congress asked EPA to assess the adequacy of the complicated provisions added by the 1990 Amendments to section 112 applicable to sources that

[2] This latter task is required to be taken in assessing residual risk under section 112(f).

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are within EPA's jurisdiction under section 112.

B. Definitions of Major Source and Adverse Environmental Effect

The EPA's first step in the statutory analysis in the draft determination was to assess the relevant definitional provisions of section 112 (62 FR 36440–36441, July 7, 1997). Section 112(a)(1) defines the term "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP (42 U.S.C. 7412(a)(1)). That definition functions in part to establish the types of sources that will be subjected to the most stringent performance-based controls under section 112(d). The Agency explained that the provision also explicitly allows EPA to set lower emissions thresholds for determining whether a source is major, which would result in more source types being subject to the more stringent performance-based controls, based on consideration of factors that are especially relevant for the Great Waters, including potency and persistence of the particular HAP being emitted by the source category and the potential of the HAP to bioaccumulate. This means that the authority in section 112(a)(1) can be used in conjunction with other provisions of section 112 (particularly the provisions of section 112(d) and 112(f)) to impose controls that could help prevent the effects enumerated in section 112(m)(6). For example, the factors set forth in section 112(a)(1) could be relevant to EPA's decisions regarding the presence of residual risks under section 112(f).[3]

The EPA then analyzed the definition of the term "adverse environmental effect" contained in section 112(a)(7).[4] The EPA recognized that the language in the section 112(a)(1) definition of "adverse environmental effect" does not literally match the language describing the environmental effects in section 112(m)(6). Where the definition covers "significant and widespread adverse effect(s)," section 112(m)(6) addresses "serious or widespread environmental effects." However, EPA stated that it does not believe these differences impose meaningfully different standards. The Agency argued that the standard imposed under section 112(a)(7) is substantially the same as that in section 112(m)(6), for purposes of the adequacy determination. First, the legislative history of section 112(m) suggests that Congress understood the language in section 112(m)(6) to have the same meaning as that used elsewhere in section 112 to describe "adverse" environmental effects. Second, it seemed most reasonable to interpret the ambiguous literal differences in the two sections consistently in order to avoid the result of concluding that Congress had charged EPA under section 112(m)(6) to prevent environmental effects that are not actually "adverse." Third, other language in section 112(m) itself indicates that the language should be interpreted consistently in directing EPA to establish the Great Waters program in order to evaluate "adverse effects to public health or the environment caused by (HAP) deposition including effects resulting from indirect exposure pathways" (42 U.S.C. 7412(m)(1)(D)). Finally, EPA stated that the use of the word "widespread" as a necessary prerequisite in section 112(a)(7), while it is just one of two possible prerequisites under a literal reading of section 112(m)(6), does not mean that in all cases "adverse environmental effects" would have to occur in multiple geographic areas, or that impacts experienced only in, for example, the Great Lakes, the Chesapeake Bay, another Great Waters water body, or a significant portion of such a water body would have to be excluded. This view was partly based on how the Agency has interpreted the term "widespread" in other contexts to apply to economic impacts affecting a single community, and on the fact that section 112(a)(7) itself provides as an example of "adverse environmental effects" impacts on populations of endangered species, which are often likely to occur in only limited geographic areas. Ultimately, EPA stated that it believes that the "widespread" criterion would not exclude impacts that might occur in one of the Great Lakes, the Chesapeake Bay, another Great Waters water body, or a significant portion of such a water body. For example, EPA believes that it could, in appropriate cases, employ its section 112 authorities to address adverse environmental effects in concert with its efforts to establish total maximum daily loads (TMDL) under the Clean Water Act. As a result, EPA stated its belief that the other provisions of section 112 that can be used to prevent "adverse environmental effects" are especially useful for addressing Great Waters program concerns.

C. Listing of Pollutants and Sources

The EPA then discussed the provisions of section 112(b) and 112(c) governing the listing of air pollutants as HAP and the source categories to be regulated under section 112 (62 FR 36441–42, July 7, 1997). In addition to the list of HAP established by Congress in section 112(b)(1),[5] EPA is authorized under Act section 112(b)(2) to revise the list, by rule, to add new pollutants which may present, through inhalation or other routes of exposure, a threat of adverse human health effects or adverse environmental effects whether, through ambient concentrations, bioaccumulation, deposition, or otherwise (42 U.S.C. 7412(b)(2)). In addition, under section 112(b)(3), EPA is required to add substances to the list upon a showing by outside petitioners or on the Agency's own determination that "* * * the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to public health or adverse environmental effects." (42 U.S.C. 7412(b)(3)). Moreover, section 112(b)(5) specifically allows EPA to establish test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of listed HAP (42 U.S.C. 7412(b)(5)). The Agency stated its belief that these provisions of section 112 provide adequate authority to identify and formally list any HAP which has the potential for causing the effects enumerated in section 112(m)(6) due to atmospheric deposition.

The EPA then described its authority to list categories and subcategories of major sources and area sources of HAP under section 112(c)(1), the section 112(c)(2) requirement that EPA establish emission standards under section 112(d)

[3] The Agency is directed to consider several factors in establishing standards to prevent adverse environmental effects. In relevant part section 112(f)(2)(A) provides: "Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before the date of enactment of the Clean Air Act Amendments of 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect."

[4] 42 U.S.C. 7412(a)(7) provides: The term "adverse environmental effect" means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

[5] The list now contains 188 HAP, as a result of EPA's final decision to remove the compound caprolactum from the section 112(b) list (61 FR 30816 (June 18, 1996), codified at 40 CFR 63.60).

for listed source categories, and the provisions of this subsection that provide particular authority relevant to the Great Waters program. The Agency noted that section 112(c)(6) requires that EPA identify and list for regulation sources to assure that at least 90 percent of the aggregate emissions of each of seven pollutants of concern to the Great Waters are subject to section 112(d) standards (42 U.S.C. 7412(c)(6)), and that section 112(c)(5) provides broad authority to list additional categories and subcategories of area sources of HAP any time EPA finds they present a threat of adverse effects to human health or the environment (42 U.S.C. 7412(c)(5)). Finally, EPA discussed the requirements under section 112(c)(3) that the Agency first list each category or subcategory of area sources which EPA finds present a threat of adverse effects to human health or the environment warranting regulation under section 112, and second, list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 HAP that present the greatest threat to public health in the largest number of urban areas are subject to regulation under section 112 (42 U.S.C. 7412(c)(3)). The EPA recognized that under the provisions of section 112(c), it may list only stationary sources for regulation under section 112, and that the provision does not reach mobile sources such as motor vehicles, aircraft, nonroad engines, or locomotives. The EPA explained, however, that other Act authorities exist that provide for regulation of those other types of sources, and that under the section 112(c) provisions, there would not be any basis by which a category of stationary sources of HAP emissions of concern for the Great Waters could evade listing for regulation under section 112.

D. Regulations to Control Emissions of HAP

The EPA then analyzed the provisions of section 112 addressing control of HAP emissions from listed source categories (62 FR 36442–44, July 7, 1997). There are two broad approaches available under section 112: Performance-based MACT and generally achievable control technology (GACT) standards under section 112(d), and health-based and environmental quality-based residual risk standards under section 112(f).

1. MACT and GACT Standards

After listing pollutants and source categories, EPA is required by section 112(d)(2) to promulgate emission standards requiring the maximum degree of HAP emissions reduction that is achievable, taking into consideration costs and other factors (42 U.S.C. 7412(d)(2)). These so-called "MACT" standards are required by section 112(d)(3) to meet certain stringency criteria based on the best controlled sources in the source category, depending on whether sources are new or existing sources (42 U.S.C. 7412(d)(3)). The EPA noted that the Act allows the Agency to focus these MACT standards on major sources, and that area sources may be subject to less stringent GACT standards under section 112(d)(5). However, EPA retains the discretion both to subject area sources to MACT standards (e.g., 60 FR 4948, 4953, January 25, 1995) where it is appropriate to do so, and to establish lesser quantity emissions rates (LQER) for determining whether a source is major based on a HAP's potency, persistence, potential to bioaccumulate, or other factors. Finally, in implementing the section 112(d) MACT and GACT programs, section 112(e) requires that all emission standards for listed categories be promulgated by November 15, 2000, and that EPA consider known or anticipated effects of HAP on public health and the environment when determining priorities for promulgating section 112(d) standards (42 U.S.C. 7412(e)).

2. Residual Risk Standards

The EPA further explained that while the vast majority of reductions in HAP emissions should be obtained through section 112(d) programs, MACT and GACT standards are not required to achieve health-based or environmental quality-based results. However, the provisions of section 112 do provide another mechanism by which to protect public health and prevent adverse environmental effects, if necessary, after the application of MACT and GACT: the section 112(f) residual risk program (62 FR 36443–44, July 7, 1997). Under this authority, EPA is to adopt more stringent standards within 8 years after adoption of MACT (and has discretion to do so after adoption of GACT), if necessary to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect (42 U.S.C. 7412(f)(2)). The Agency stated that it believes the residual risk provisions of section 112, which also apply to sources regulated under the solid waste incineration provisions of sections 111 and 129, allow EPA to take necessary action to prevent any adverse environmental effect, including any of the enumerated effects in section 112(m)(6). In setting a section 112(f) standard to provide an ample margin of safety to protect public health, EPA would use a two-step process (54 FR 38083, September 14, 1989). First, the Agency would determine a "safe" or "acceptable" risk level, based solely on health factors. Then, EPA would set the standard at a level—which may be equal to or more stringent, but not less stringent than the "safe" or "acceptable" level—that protects the public health with an ample margin of safety. In determining the ample margin of safety, the Agency would again consider all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control would also be considered, including costs and economic impacts of controls, technological feasibility uncertainties, and any other relevant factors. Considering all of these factors, the Agency would establish the standard at a level that provides an ample margin of safety to protect public health. Finally, in setting a more stringent section 112(f)(2) standard to prevent an adverse environmental effect, EPA would consider costs, energy, safety, and other relevant factors. The EPA could even tailor residual risk standards so that the regulations address effects that are presented by a limited number of sources over a limited geographical or situational range. For example, EPA believes it could use its authority under the residual risk provisions to address adverse environmental effects to Great Waters water bodies, or other water bodies, associated with deposition of HAP emitted by particular sources. This authority, especially, was the key to the Agency's draft determination that the other provisions of section 112 are adequate to prevent the effects set forth in section 112(m)(6).

E. Other Relevant Provisions of Section 112

The EPA also discussed the urban area source program required by the provisions of section 112(k) (which is conducted in concert with the previously discussed section 112(c) source category listing program), the section 112(n) provisions requiring EPA to study and report on mercury and other HAP emissions from electric utilities and other units, and the solid waste incineration units program under sections 111 and 129 of the Act (which is subject to the section 112(f) residual risk program) (62 FR 36444–45, July 7, 1997). These provisions, EPA stated, provide further authority to prevent the effects enumerated in section 112(m)(6).

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For example, the urban area source program could result in significant reduction of polycyclic organic matter (POM), one of the pollutants of concern for the Great Waters, if POM is identified as one of the 30 most hazardous air pollutants emitted by area sources. Moreover, the application of the section 112(f) residual risk program to the solid waste incineration unit program (which by itself will result in significant reductions in emissions of Great Waters pollutants of concern, particularly lead, cadmium, mercury, dioxins and dibenzofurans) allows EPA to target particular sources whose emissions contribute to deposition-associated adverse effects.

F. Draft Conclusions

The EPA, therefore, stated its draft determinations that: (1) the other provisions of section 112 are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects associated with the deposition of HAP which are emitted by stationary sources for which EPA has authority and jurisdiction to regulate; and, (2) as a result, no further emission standards or control measures under section 112(m)(6), beyond those that can otherwise be adopted under the other provisions of section 112, are necessary and appropriate at this time to prevent such effects. The EPA further stated that even if the other provisions of section 112 were found to be inadequate under section 112(m)(6), the Agency did not believe it could conclude confidently that further emission standards or control measures beyond those otherwise authorized by section 112 are now necessary and appropriate, due to a continuing lack of adequate scientific information regarding the relative contribution of air emissions to adverse effects in the Great Waters.

IV. Public Comments Received and EPA Responses

The EPA received over 450 written public comments on the draft determinations from environmental advocacy organizations, industry trade groups or individual companies, State governmental representatives, members of Congress, and private citizens. The arguments contained in these comments are organized below according to their themes.

A. Current Air Pollution Controls Are Inadequate, and EPA Should Institute New Controls to Control HAP Emissions that Harm the Great Waters

1. Summary of the Comments

A majority of the comments from private citizens and environmental advocacy groups asserted that current air pollution controls (i.e., current Federal and State regulatory programs) of HAP emissions are not adequate to prevent the effects specified in section 112(m)(6). Many of these comments seem to interpret EPA's notice as stating that no further regulatory action "at all" under section 112 is needed, beyond that which EPA has already taken. The comments argue that adverse public health and environmental effects in the Great Waters have occurred and continue to occur as a result of atmospheric deposition of HAP, and that, therefore, existing controls cannot be adequate to prevent them. Many of the comments request EPA to take specific actions such as the following: (1) Reduce mercury emissions from coal-burning power plants; (2) cut back on dioxin emissions from incinerators; (3) reduce HAP emissions from steel mills; (4) eliminate non-industrial sources of HAP such as automobiles and polluted sediments; (5) direct hospitals and municipalities to increase source reduction and recycling; (6) add more chemicals (such as atrazine) to the list of Great Waters pollutants of concern; (7) curtail air pollution from lead smelters, chemical plants, and petroleum refineries; (8) seek greater authority to safeguard the environment from HAP emissions released in other countries; (9) take into account background levels of HAP that have been already released; (10) shield the public from pesticides that evaporate from fields; (11) pursue additional scientific information on atmospheric transport of persistent HAP and their contribution to loadings in the Great Waters and to known and perceived impacts; (12) support legislation that makes it economically beneficial for industries to reduce emissions; (13) fund campaigns to inform the public as to which companies are the worst HAP polluters and which are looking for alternatives; (14) regulate the use of uncovered lagoons on hog farms that contribute nitrogen to the atmosphere; and (15) control HAP emissions from off-road vehicles such as snowmobiles and jet skis and all terrain vehicles (ATV).

2. EPA's Response

The EPA wishes to clarify the scope and purpose of the draft determinations. Many of the commenters interpreted the draft determinations to amount to a decision on the Agency's part to maintain the "status quo" regarding control of HAP emissions that are deposited into the Great Waters and that no further action, under any legal authority, is needed in order to prevent adverse impacts associated with HAP deposition. This was not what EPA intended. Rather, EPA's draft determinations reflect: (1) The Agency's assessment of the strength of its existing statutory authority under Act section 112 enabling EPA to take action to prevent those effects; and, (2) whether regulatory action under its remedial authority in section 112(m)(6), in addition to that which EPA can otherwise take under section 112, is necessary and appropriate to prevent those effects. Since EPA believes the legal authority provided by the other provisions of section 112 is strong enough to allow the Agency to prevent those effects, it also believes that specific remedial regulations beyond those that can be issued under the other provisions of section 112 are not needed at this time. This does not mean that EPA believes that the status quo should be maintained and that continued regulatory action under section 112 and other legal authorities should not be taken.

While not determinative of the issue of whether the other provisions of section 112 are legally "adequate" under section 112(m)(6), in response to the many commenters' requests for specific action, EPA wishes to point out that since the passage of the 1990 Amendments to the Clean Air Act, the Agency has taken and continues to take many actions under section 112 that are designed and intended to achieve many of the results the commenters' requested. For example, EPA has issued several regulations that are currently being implemented and phased in that will substantially reduce HAP emissions and deposition to water bodies. The Synthetic Organic Chemical Manufacturing Industry rule (HON), is near full implementation and reduces HAP emitted by this industry by approximately 90 per cent (510,000 tons) from 1994 levels.[6] The Municipal Waste Combustors rule, which

[6] 59 FR 19402(April 22, 1994), 59 FR 29196(June 6, 1994), 59 FR 48175(September 20, 1994), 59 FR 53359(October 24, 1994), 59 FR 54131(October 28, 1994), 59 FR 54154(October 28, 1994), 60 FR 5320(January 27, 1995), 60 FR 18020(April 10, 1995), 60 FR 18071(April 10, 1995), 60 FR 63624(December 12, 1995), 61 FR 31435(June 20, 1996), 61 FR 7716(February 29, 1996), 61 FR 64572(December 5, 1996), 62 FR 62722(January 17, 1997).

addresses sources that account for over 60 per cent of the total estimated 1990 national dioxin emissions and almost 19 per cent of the estimated 1990 national anthropogenic mercury emissions, is expected to reduce dioxin emissions by 99 percent and mercury emissions by 90 percent from 1990 levels for these sources when fully implemented by December 2000.[7] Similarly, the final standards for Hospital/Medical Infectious Waste Incinerators (62 FR 48348, September 15, 1997), when implemented by September 2002, are expected to reduce dioxin and mercury by 94 percent and 95 percent, respectively, from subject sources. These sources account for approximately 10 per cent of the estimated 1990 national mercury emissions to the air and 11 per cent of the estimated 1990 national dioxin emissions. The Primary Aluminum Industry MACT rule (62 FR 52384, October 7, 1997) is expected to reduce POM emitted by this industry by 50 percent, or 2000 tons per year.

Section 112 also requires EPA to conduct a study to evaluate the public health impacts of emissions of HAP, including mercury and dioxins, from power plants (section 112(n)(1)(A)). The report, released in early 1998, provides an assessment of the health effects of HAP emitted from power plants. Under section 112(f)(1), EPA will also issue, in 1998, a report on the methods and significance of risks to public health and the environment which may remain after application of standards to sources subject to regulation under section 112(d). In addition, EPA expects to finalize, in 1998, emission standards for hazardous waste combustors, which includes incinerators and cement kilns, and accounts for over 4 per cent of the estimated total national mercury emissions (1990 baseline).

The EPA, through international organizations such as the International Joint Commission and the United Nations Economic Commission for Europe (UN/ECE), has taken a lead role in international strategies to reduce HAP of concern to the Great Waters. For example, EPA is participating in the current negotiations on international protocols for persistent organic pollutants (which include chlordane, DDT, dioxins and furans, dieldrin, hexachlorobenzene, hexachlorocyclohexane (primarily lindane), and polychlorinated biphenyls (PCB)) and for heavy metals (i.e., mercury, lead, and cadmium) under the auspices of the Long Range Transboundary Air Pollution working groups of the UN/ECE. In addition, on April 7, 1997, the United States and Canada signed the Great Lakes Binational Toxics Strategy (Binational Strategy), initiating a coordinated effort to reduce toxic substances affecting the Great Lakes Basin. This strategy targets several of the Great Waters pollutants (e.g., dieldrin, chlordane, DDT, hexachlorobenzene, alkyl-lead, PCBs, dioxins and furans, toxaphene, and mercury and mercury compounds) and includes the goal of a 50 per cent reduction in the deliberate use of mercury and a 50 per cent reduction in the release of mercury caused by human activity by 2006.

Building on the binational strategy, EPA is developing a multimedia, agency wide strategy for addressing priority persistent, bioaccumulative, and toxic (PBT) chemicals. Through this effort, EPA is developing action plans for priority substances, namely "Level 1" substances found in the Binational Strategy, emphasizing pollution prevention and enlisting the participation and involvement of all interested stakeholders to effect reductions. This effort takes an innovative, pollution prevention approach toward reducing persistent, toxic substances. This effort envisages working with all the Regions to reach all interested stakeholders (e.g., industry, environmental groups, States, Tribes and the public) to build partnerships and to work on voluntary reduction projects. Although pollution prevention and voluntary approaches are the preferred method of targeting substances, the Agency will use its full complement of regulatory and non-regulatory tools to achieve reductions.

Furthermore, EPA is taking advantage of opportunities to reduce multimedia contamination, such as through the pulp and paper "cluster" of rules developed jointly by EPA's Air and Water Offices.[8] These rules are expected to result in a 74 per cent reduction from a 1995 baseline in dioxin releases from these sources to water when fully implemented in 3 to 6 years.

While nitrogen compounds are not listed as HAP, under the discretionary authority provided to the Administrator under section 112(m), these compounds have been identified as pollutants of concern in both Great Waters Reports to Congress. The EPA has taken or is currently engaged in a number of other Act activities which will reduce deposition of nitrogen pollution to Great Waters. For instance, EPA recently issued a proposed rule that would significantly reduce regional transport of NO_x in the Eastern States, which if adopted and implemented would reduce nitrogen deposition associated with NO_x emissions during the summer season (May–September), and subsequent impacts on the Chesapeake Bay and other coastal estuaries (62 FR 60318, November 7, 1997). In addition, title IV of the Act reduces nitrogen deposition by establishing a 2 million ton reduction target in NO_x emissions nationwide, in combination with other provisions of the Act (42 U.S.C. 7651(b); 61 FR 67112, 67116 (December 19, 1996)). A recent ruling was issued upholding EPA's emission limits and January 1, 2000 compliance date for coal-fired electric utility boilers (*Appalachian Power Co.* v. *EPA*, No. 96–1497 (D.C. Cir., February 13, 1998)). This ruling supports using multiple public health and environmental benefits as justification for regulatory actions under the Act. Also, implementation of EPA's recently issued revised national ambient air quality standards (NAAQS) for ozone and particulate matter will reduce nitrogen deposition (in the form of NO_x) to the Great Waters. One EPA estimate of the impact of the Act activities projects up to a 30 per cent reduction of annual nitrogen deposition to the Chesapeake Bay (U.S. EPA, (1997), Regulatory Impact Analysis for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule; Office of Air Quality Planning and Standards; Washington, DC; docket A–95–58, item #IV–A–13).

Furthermore, the recently issued "Clean Water Action Plan," is an aggressive plan to, among other things, reduce toxic contaminants in our water and fish (document #EPA–840-R–98–001 (Feb.14, 1998)). The plan identifies several key actions of EPA and other Federal agencies that address the Great Waters pollutants:

—The EPA will evaluate the linkage of air emissions to water quality impacts to help determine appropriate reduction actions in the context of the "Total Maximum Daily Load" program which directs States to identify all sources of pollutants to an impaired water body and to develop a plan to remedy the impairment.

—The EPA and NOAA will conduct a national survey of mercury and other contaminant levels in fish and

[7] 60 FR 65387(December 19, 1995), 55 FR 5488(February 11, 1991), 60 FR 65382(December 19, 1995), 61 FR 18260(April 25, 1996), 61 FR 18260(April 25, 1996), 62 FR 45116(August 25, 1997), 62 FR 45124(August 25, 1997).

[8] See 61 FR 36835, July 15, 1996, for the proposed water rule and 61 FR 9383, March 8, 1996 for the proposed air rule. Expected promulgation for "cluster" is March 1998.

shellfish throughout the country during the period 1998–2000. This effort will be coordinated with State and tribal efforts to maximize geographic coverage.

—The EPA is considering changing the reporting requirements for mercury and other Great Waters pollution under the Toxic Release Inventory which could result in additional reporting of releases of the Great Waters pollutants.

—The EPA will work with NOAA and other Federal agencies, States, Tribes, and other interested parties to adopt, by December 1999, nationally consistent processes for monitoring water quality and fish tissue, and review EPA guidelines for decision-making on issuance of fish consumption advisories. The EPA will support State actions, and, after consultation with the State, will issue fish consumption advisories if a State fails to do so.

—The EPA will release the Contaminated Sediment Strategy that will coordinate its programs to address the following goals: (1) Preventing the volume of contaminated sediment from increasing; (2) reducing the volume of existing contaminated sediment; (3) ensuring that sediment dredging and disposal are managed in an environmentally sound manner consistent with the needs of waterborne commerce; and (4) developing scientifically sound sediment management tools for use in pollution prevention, source control, remediation, and dredged material management.

—In 1998, EPA will initiate place-based contaminated sediment recovery demonstration projects in five watersheds selected from those identified in EPA's National Inventory of Sediment Quality as being of the greatest concern. Remediation efforts will be coordinated with Federal natural resource trustees.

—With regard to mercury, the Clean Water Action Plan states that: "A balanced strategy which integrates end-of-pipe control technologies with material substitution and separation, design-for-environment, and fundamental process change approaches is needed." The plan calls for the following actions with respect to mercury, in addition to those noted above:

—The EPA will publish new analytical methods for mercury, expand compliance and enforcement activities for direct and indirect dischargers of mercury into surface waters, expand outreach to publicly owned treatment works about preventing mercury pollution in sewage discharges, and revise water quality criteria development plans, as appropriate.

—The EPA will seek reductions in uses of mercury. These use reduction measures will reduce the levels of mercury in waste streams, as well as the danger of accidental releases. Generally, EPA will look to voluntary rather than regulatory approaches to reduce mercury use.

The EPA stresses that its continued development and implementation of the MACT program and other programs under section 112 will significantly reduce HAP emissions, and that today's determinations should in no way be viewed as EPA's conclusion that no further work under section 112, or elsewhere under the Act, needs to be done. As EPA implements section 112 programs and other programs which address Great Waters pollutants of concern, it will take under advisement the many useful suggestions provided by the commenters.

B. Timing of Determinations under Section 112(m)(6)

1. Summary of the Comments

A State regulatory agency and an environmental group submitted separate comments questioning the appropriateness of the timing of the draft determinations, and requesting that final determinations be deferred until after further implementation of the other provisions of section 112. The commenters argued that it is not possible for EPA to have made a proper determination of its regulatory success at this point, since development of the MACT program will occur up through the year 2000. The commenters feared that making a determination solely regarding statutory authorities may preclude EPA from ever promulgating remedial standards in the future.

2. EPA's Response

The EPA continues to believe that the more reasonable interpretation of both the language of section 112(m)(6) and the subsection's deadlines for action is as a mandate that EPA evaluate the underlying statutory authority provided by the other provisions of section 112 to prevent the enumerated effects, rather than an assessment of the actual success of implementing measures to prevent them. While the commenters are correct that any assessment of the success of the implementation of section 112 could not occur prior to full development of the program, EPA does not believe that this fact prevents the Agency from fulfilling its obligations under section 112(m)(6). As stated in the draft determination notice, if, subsequent to issuing these final determinations, it becomes apparent through implementation of the other provisions of section 112 or other events that the Agency was incorrect in its initial assessment of its legal authorities, EPA could revisit and reverse them and, if necessary and appropriate, promulgate further regulations under section 112(m)(6). In addition, EPA's ability to accommodate the commenters' requests at this time is significantly constrained by the consent decree entered in *Sierra Club, et al* v. *Browner*, Civ. No. 96–1680 (D.C.C.). The schedule for EPA actions agreed to by the parties in settlement of that case requires EPA to issue the determinations by March 15, 1998. This date is well in advance of full implementation of the MACT program and the statutory deadlines for the residual risk program, and, therefore, makes it impossible to evaluate the regulatory actions EPA is taking under section 112 in these determinations.

C. Scope of Analysis

1. Summary of the Comments

Numerous comments were submitted in response to the draft determination's discussion of the scope of the analysis required by section 112(m)(6). The first area commenters addressed regarded EPA's view that section 112(m)(6) charges the Agency to assess the underlying statutory authorities of section 112, rather than the regulatory programs EPA has established pursuant to those provisions. The second area regarded EPA's focus on the ability of the Agency to use section 112 to address emissions from just domestic stationary sources of HAP, rather than either foreign, mobile, and/or non-HAP sources.

a. Statutory Authorities. State, environmental group, and congressional commenters questioned whether EPA's focus on the underlying statutory provisions of section 112, rather than on the regulatory programs that implement section 112, was appropriate and consistent with congressional intent. They argued that an assessment of statutory authorities serves little purpose to control HAP emissions if not accompanied by an analysis of the adequacy of the implementation of the regulations adopted under those authorities. Some asserted that the statutory deadline Congress imposed for making the determination, and the directive that the determination be made as part of the Report to Congress, shows EPA's statutory analysis was to

be melded with a factual inquiry into what effects are occurring and what measures are needed to prevent them. Some also argued that the statutory 1995 deadline for further measures, if any, under section 112(m)(6), means that EPA was not free to defer the control of HAP deposition to other section 112 rules that will not be in place until later years, and that any section 112 provisions that provide discretionary authority to act cannot be relied upon to support the adequacy of section 112 in light of the directive language in section 112(m)(6). Some then objected to EPA's view that section 112(m)(6), rather than imposing an absolute requirement to promulgate further regulations, establishes a duty to determine whether any further emission standards or control measures are necessary and appropriate.

In support of these arguments, environmental group commenters made several assertions. First, they stated that EPA cannot substitute its own interpretation for the plain words of the statute, and that an agency can neither enlarge upon nor narrow the terms of a statute. Second, they argued that the legislative history to section 112 shows that EPA must consider the effectiveness of regulations adopted under section 112 in the determinations. For example, one commenter cited the House Report's statement that "[t]his subsection is intended to provide the Administrator with the responsibility and authority to promptly evaluate the sufficiency of the regulatory structure provided under section 112 * * *, giving special emphasis to the effects associated with the bioaccumulation of hazardous air pollutants" (H.Rep. 101–490, p. 3360), and other statements that the commenter interprets as showing Congress assumed EPA would be in a position, by 1995, to evaluate a regulatory structure that had not yet been established. Third, the commenters argued that the Act required EPA to have already implemented "the highest priority provisions" of section 112 by November 15, 1995, and that EPA could have in fact evaluated the effectiveness of their subsequent implementation by 1995. Fourth, some commenters argued that the Act required EPA to regulate pursuant to section 112(m)(6) in advance of developing the broader section 112 program. Finally, the commenters infer that the timing of actions required under section 112 is just as much an "adequacy" issue as is the Agency's ability to regulate at all.

In addition, several members of Congress sent a joint letter to EPA objecting to the draft determinations[9] (letter to Carol Browner dated October 3, 1997, docket item #IV–G–474). An assessment of EPA's statutory authority under the Act is not sufficient, in their view, since EPA may never exercise some of that authority or may do so under a protracted time frame which may not be acceptable to their constituents.

b. Stationary Sources of HAP. State and environmental group commenters argued that EPA should have included a discussion of all sources of HAP emissions that deposit to the Great Waters in the adequacy determination. By excluding mobile sources, foreign sources, and contaminated sediments, since they cannot be regulated under section 112, EPA cannot make a proper analysis of section 112 authorities that apply to major and area stationary sources, they argued. Some of these commenters disagreed with EPA's view that section 112 authorities can be applied only to domestic stationary sources, and with EPA's reading of the section 112(m)(6) remedy to adopt further emission standards or control measures "in accordance with" section 112 as meaning that such measures must be limited to domestic stationary sources of HAP.

One commenter presented a lengthy argument that the determination should not be limited to HAP, but should also include non-HAP pollutants of concern for the Great Waters, such as NO_X. This view was based on the fact that EPA has the discretion to include non-HAP in its ongoing implementation of the Great Waters program and is directed in the section 112(m)(5) provisions regarding Reports to Congress to focus on the effects of any air-deposited pollution into the Great Waters. This latter provision, the commenter pointed out, broadly requires EPA to describe any revisions to Federal statutes as are necessary to assure protection of human health and the environment. The commenter then claimed that since EPA has exercised its discretion to address deposition-related impacts from NO_X in its Great Waters monitoring work and ongoing implementation of sections 112(m)(1)–(5), the Agency cannot exclude NO_X from the section 112(m)(6) determination of whether section 112 is adequate. This commenter suggested that by not importing the section 112(m)(5) duty to report on the need for any revisions to any Federal statutes into the more specific section 112(m)(6) determination of the adequacy of section 112, EPA was violating not only section 112(m) but also the consent decree in *Sierra Club* v. *Browner*.

2. EPA's Response

a. Statutory Authorities. The EPA stands by its view that section 112(m)(6) mandates that the Agency evaluate the underlying statutory authority provided by section 112, rather than the success of regulations adopted in implementation of the Act, in making the adequacy determination. The EPA appreciates the comments that presented concerns regarding the "practicality" of the adequacy determination, but EPA continues to believe that the statutory language of section 112(m)(6) supports the Agency's approach. The introductory language of section 112(m)(6) requires the Administrator to determine whether "the other provisions of this section" are adequate to prevent the enumerated effects (emphasis added). This is an explicit reference to the other statutory subsections and paragraphs of section 112, rather than to administrative regulations adopted pursuant to the Act. The EPA believes that this language in the introduction of section 112(m)(6) means that the Agency was directed to determine whether the provisions of section 112 itself provide sufficient authority to prevent the effects specified in section 112(m)(6). If Congress had intended EPA to take another meaning from this language, it would have established the mandate in such a manner as to clearly refer to subsequent regulatory actions as being the focus of the determination, in addition to establishing a deadline for such a determination after that regulatory program had been established.

Moreover, even if EPA is incorrect in its interpretation of the introductory phrase "other provisions of this section," or if the language is ambiguous and susceptible to more than one meaning, EPA continues to believe that the rest of section 112(m)(6) supports EPA's interpretation of the introductory phrase of this ambiguous statutory paragraph, which is somewhat grammatically and syntactically awkward (e.g., *Appalachian Power Co.* v. *EPA*, No. 96–1497 (D.C. Cir., February 13, 1998)). The subsection requires EPA to have made the determination at a point in time before full development of the section 112 regulatory program. The Agency's view is also supported by the fact that the 1990 Amendments represented a fundamental overhaul of the approach to regulating air toxics,

[9] This letter was signed by Senators John Glenn, Jim Jeffords, Carol Moseley-Braun, Carl Levin, Herb Kohl, and Daniel P. Moynihan, and by Representatives Steven LaTourette, Lane Evans, Sander Levin, Louise M. Slaughter, John Conyers, Maurice Hinchey, James Oberstar, Sherrod Brown, Lynn N. Rivers, Bart Stupak, and Louis Stokes.

and it was reasonable for Congress to have been uncertain as to whether the new fleet of provisions in section 112 were sufficient to address HAP deposition. For this reason, EPA disagrees with assertions that an assessment of the legal authority granted by the other provisions of section 112 serves little purpose. As stated in the draft determination, section 112(m)(6) directed EPA to do an early, pre-full implementation analysis of the new legal authority provided by the substantial and complex revisions to section 112 enacted in the 1990 Amendments. If the Agency concluded those new provisions could not be employed to prevent the enumerated effects, EPA interprets the Act as directing it to take necessary and appropriate further regulatory action that was not otherwise contemplated by those other provisions to fill the identified gap by November 15, 1995. The schedule for this analysis and the establishment of gap-filling further regulations under section 112 ensures that if EPA concluded that the substantial rewrite of section 112 was not sufficient to protect the Great Waters from HAP deposition from stationary sources, EPA would be able to take administrative action to meet this environmental objective without having to return to Congress to seek further statutory authority.

The EPA believes that the first two Reports to Congress do reflect a substantial factual inquiry into the effects of HAP deposition to the Great Waters, and EPA's assessment of its legal authority under the other provisions of section 112 was influenced by that inquiry. But EPA disagrees with the commenters who read the regulatory deadline in section 112(m)(6) as meaning that EPA may not rely upon either later-in-time or discretionary authority under section 112 in support of the section's adequacy. The language in section 112(m)(6) in no way puts discretionary authority under section 112 off limits for purposes of the adequacy determination. It does not follow that simply because such action can be taken after November 15, 1995, that Congress either excluded those provisions from the scope of the adequacy determination or required EPA to conduct an assessment other than of the statutory provisions of section 112. Moreover, while section 112(m)(6) establishes a duty to determine whether it is necessary and appropriate to take further action to prevent adverse effects from HAP deposition to the Great Waters,[10] the deadline for promulgation of any further regulations does not imply a deadline for either achieving that protection or for source compliance with further measures.

The EPA does not find the legislative history cited by the commenters to conflict with EPA's reading. While the quoted language in the House Report could be interpreted as the commenter suggests, EPA notes that the discussion in the House Report also assumed that EPA would be issuing the report and determination within 2 years after passage of the 1990 Amendments, and after an opportunity for public comment (H.Rep. 101–490, p. 336). This even more abbreviated schedule would have compounded the impossibility of assessing the adequacy of a not-yet-adopted regulatory program, and EPA doubts that the Congress as a whole, or even the entire House of Representatives, interpreted section 112(m)(6) consistently with the commenter's reading. The other passages cited by the commenter reiterate that if EPA finds the Act does not adequately prevent adverse effects of HAP deposition, EPA is to take further necessary and appropriate action—but, again, it is the adequacy of section 112 itself and the existence of adverse effects that are at issue and discussed in these passages, rather than the post-enactment development of regulatory programs under the Act.

While some of the deadlines for some regulatory actions under section 112(e) did fall before November 15, 1995, promulgation alone of a standard under section 112(d) may not yield the information needed to assess its success in actually preventing certain effects that the standard may have been expected to achieve at promulgation. This is because, under section 112(i), varying deadlines for compliance with promulgated standards apply, based on whether a source is new or existing, whether it achieves early reductions of HAP emissions, whether additional time to install controls is needed, and other factors as specified, for example, in sections 112(i)(1)–(8).[11] If EPA were to perform an analysis of the actual effectiveness of its regulations in preventing effects, it would presumably be more possible to do so after the Agency had an opportunity to assess progress made as a result of source compliance with the standards. Thus, even though some of the standards under section 112(e) may have been due before, at the same time as, or soon after 1995, the factual information needed to evaluate the actual effectiveness of the developing regulatory programs would not be available for several years after the deadline for the determination.

Congress clearly understood that by prescribing a schedule in which EPA would promulgate standards over no less than 10 years, full control of HAP emissions from covered stationary sources could not be achieved immediately. Section 112 does not impose any barriers on EPA which prevent it from taking actions in advance of statutorily prescribed deadlines in those instances where the Agency believes that early action is necessary to achieve the purpose of the section. Thus, EPA believes that it cannot determine that the authorities available to it under section 112 are inadequate based on possible concerns about whether the schedule prescribed by Congress is sufficiently rapid. To do so would implicitly raise the question as to why Congress also directed the Agency to make the adequacy determination in section 112(m)(6).

The EPA also disagrees with commenters who argued that EPA was directed to assess the particular authority added by section 112(m)(6) and implement it first, before development of the broader section 112 program. Such a reading renders the duty to assess the adequacy of the "other provisions" of section 112 meaningless. As mentioned above, the statute and the legislative history show that EPA is to first determine whether the other provisions of section 112 are adequate and whether further regulations as provided by section 112(m)(6) are needed, before issuing any such regulations. This basic structure is reflected in the consent decree.

Finally, EPA respectfully disagrees with the members of Congress who commented that EPA's approach is based on a "technicality" in the language of section 112(m)(6). As stated above, EPA does not agree that section 112(m)(6) is appropriately interpreted as

[10] One commenter misinterprets the point of EPA's citation to *Environmental Defense Fund* v. *Thomas*, 870 F.2d 892, 898–900 (2nd Cir. 1989). The EPA cited this case in support of the proposition that section 112(m)(6), rather than establishing an absolute requirement to promulgate further emission standards and control measures, requires EPA to initially determine whether such measures are necessary and appropriate. The EPA did not mean to imply that EPA's action to make this determination could not be compelled under Act section 304. However, EPA does not agree with the commenter that EPA's determinations under section 112(m)(6)are reviewable final actions under section 307 of the Act.

[11] For example, note that section 112(i)(3) provides that existing sources may have up to 3 years to comply with new standards, and that this period may be extended in certain cases.

excluding discretionary authority provided by section 112 from the scope of the adequacy determination, since the broad, unqualified phrase "other provisions of this section" does not imply that EPA must assess only the provisions that EPA may be compelled to implement. The EPA disagrees with the argument, which some commenters made, that only the mandatory provisions under section 112 be included in the adequacy determination. This is because the discretionary provisions provide specific authority to address adverse effects and because section 112(m)(6) itself allows EPA to exercise some discretion in determining whether any further regulations are necessary and appropriate, even if the other provisions of section 112 are not adequate. Therefore, EPA continues to believe the scope of the draft determination was correct in evaluating the statutory authorities provided by section 112, rather than the regulatory actions taken under the section, and EPA continues to rely on its analysis (62 FR 36438–39, July 7, 1997).

In addition, EPA notes that interpreting section 112(m)(6) to require an assessment of the success of EPA's regulations implementing section 112 could frustrate the jurisdictional scheme established in the Act for judicial review of EPA's substantive actions. Standards under section 112 are subject to judicial review in the Court of Appeals under section 307(b)(1) of the Act. A petition for review must be filed within 60 days from the date notice of the final action appears in the **Federal Register**. This short window of opportunity to challenge final regulations is time limited in part so that standards do not become the subject of review in subsequent implementation, such as in enforcement actions or in applicability determinations, with possibly disastrous and inconsistent programmatic consequences. If today's action were to be treated as a referendum on EPA's individual regulatory actions, amounting to a wholesale reopening of the regulations themselves, the goals of section 307(b) of ensuring the "finality" of EPA's actions and of circumscribing the methods by which those actions can be reviewed, could be circumvented.[12]

[12] As noted above, EPA does not believe that today's notice, in that it is a supplement to the second Report to Congress, is a judicially reviewable final action under Act section 307(b). But if a reviewing court were to find it had jurisdiction to review the contents of the determination, and the determination regarded the adequacy of regulatory final actions, the statute of limitations provided by section 307(b) could be undermined.

The Agency believes that Congress could not have intended this result, especially in light of the fact that the determination was due under the statute in advance of the majority of EPA's final actions under section 112 being taken and implemented.

b. Stationary Sources of HAP. The EPA continues to believe that the proper focus in assessing the adequacy of section 112 under section 112(m)(6) is on HAP emissions from sources that are within EPA's jurisdiction to regulate under section 112. This means that EPA is not required to determine whether the provisions of section 112 are adequate to control HAP emissions from mobile sources, HAP emissions from non-domestic sources, recycling of HAP historically introduced to the environment that cannot be controlled though regulation of stationary sources, or non-HAP emissions from all sources. The EPA believes this interpretation is clear from the statutory language directing EPA, in the case of an "inadequacy" determination, to issue necessary and appropriate further regulations in accordance with section 112, and from the fact that section 112(m)(6) directed EPA to assess the adequacy of section 112 rather than that of the Clean Air Act as a whole. The EPA disagrees with assertions that a proper analysis of section 112 provisions applicable to major and area stationary sources cannot be performed without considering emissions from non-section 112 sources, and with the view that the section 112(m)(6) remedy may apply to sources other than domestic stationary sources of HAP. In contrast, including non-section 112 sources within the scope of the assessment of whether section 112 is adequate might arguably force an "inadequacy" determination, since it goes without saying that section 112 cannot be used to regulate HAP emissions from such sources. This could then result in the confounding situation that if HAP emissions from those non-section 112 sources cause section 112 to be inadequate, EPA would be required to establish further controls applicable only to section 112 sources in order to remedy the deficiency, even if doing so could not achieve the desired result. Moreover, section 112(m)(6) provides authority to establish further regulations only "in accordance with" section 112, and does not itself enable EPA to adopt regulations applicable to sources covered by other titles in the Act (or not covered at all by the Act). Therefore, EPA believes that the more reasonable reading of the mandate of section 112(m)(6) that the regulatory remedy be "in accordance with" section 112 is as a limitation on the sources of HAP that EPA is to include within the scope of the determination. Under EPA's reading, the scope of Congress's question regarding the adequacy of section 112, and the scope of the remedy Congress allowed EPA to establish if section 112 is inadequate, are consistent, and the further regulations adopted under section 112(m)(6) could be crafted to address whatever deficiency EPA would have found in the other provisions of section 112 itself. If Congress had intended EPA to include non-section 112 sources within the scope of the determination, in order to allow EPA to apply the section 112(m)(6) remedy to the deficiency caused by the failure of section 112 to extend to such sources, Congress would not have limited its scope to further regulations under section 112.

The EPA disagrees with arguments that Congress intended that EPA could use section 112-like procedures to list other types of sources and establish section 112 controls for them. The Clean Air Act establishes a distinct separation of the stationary source and mobile source programs, under which single sources are to be regulated under either the mobile source or stationary source programs.[13] This separation is due to the fundamental differences in approach of the two programs. The stationary source program generally applies to owners and operators of stationary sources, while the mobile source program generally applies to manufacturers of engines and vehicles that are sold in United States commerce (without generally regulating operation of those mobile sources). Under the commenter's reading, this separation would fall. The EPA also believes section 112(m)(6) could not possibly be interpreted as conferring jurisdiction to regulate sources that are outside the scope of the Clean Air Act entirely (e.g., foreign sources) or activities that do not fit within either of the basic regulatory approaches of the Act (e.g., background concentrations of HAP in the

[13] See, e.g., section 111(a)(3), defines "stationary source" for purposes of section 112: "The term 'stationary source' means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in title II of this Act relating to nonroad engines shall be construed to apply to stationary internal combustion engines." 42 U.S.C. 7411(a)(3), 7412(a)(3). See also section 216(11), defining "nonroad engine" as "an internal combustion engine * * * that is not subject to standards promulgated under section 111 * * *." 42 U.S.C. 7550(11).

environment that do not constitute either stationary or mobile sources).

The EPA also disagrees with commenters who argued that the adequacy determination should cover pollutants that are not listed as HAP. While the other paragraphs in section 112(m) allow EPA to exercise discretion to study and report on the impacts of deposition of non-HAP such as nitrogen compounds, section 112(m)(6) is explicit in stating that EPA is to determine whether section 112 is adequate to prevent effects associated with HAP deposition, and does not require EPA to include within the scope of the determination other pollutants the Agency has chosen to address under other aspects of the Great Waters program. The EPA, having exercised its discretion to address NO_X under section 112(m)(1)–(4), is required under section 112(m)(5) to report to Congress on the results of any monitoring, studies, and investigations regarding NO_X conducted under section 112(m). That report is required to include, among other things, a description of any revisions to existing Federal law EPA identifies as necessary to assure protection of human health and the environment (42 U.S.C. 7412(m)(5)(E)). However, the separate and distinct requirement in section 112(m)(6) that EPA determine the adequacy of section 112 refers only to deposition of HAP, without the reference to the discretionary authority to study non-HAP under the other provisions of section 112(m). Moreover, as discussed above, the remedy for an inadequacy determination is further regulation under section 112, which can only address pollutants that have been listed as HAP.[14] Since the rulemaking procedures and criteria for listing a pollutant are clearly set forth in section 112(b), EPA does not believe it would have the legal authority to grant HAP status to a pollutant merely by exercise of its discretion to include a non-HAP within the scope of its monitoring and studying functions under the Great Waters program. For a nitrogen compound, e.g., NO_X, to come within the scope of the section 112(m)(6) determination and possible remedy, it would first have to be listed as a HAP pursuant to section 112(b). Further, EPA disagrees with assertions that by excluding NO_X from the scope of the adequacy determination, it is violating the consent decree in *Sierra Club* v. *Browner*. The consent decree does nothing to extend the language of section 112(m)(6) to cover non-HAP pollutants.

Therefore, EPA continues to believe that the approach taken in the draft determinations to focus on only domestic stationary sources of HAP was correct. Today's section 112(m)(6) determinations consequently are limited to consideration of the adequacy of the other provisions of section 112 to prevent the enumerated effects associated with HAP emissions from sources that are within the scope of EPA's section 112 regulatory authority (62 FR 36438–39, July 7, 1997).

D. Definition of Adverse Environmental Effect

1. Summary of the Comments

Environmental group commenters objected to EPA's interpretation that the language in the section 112(a)(7) definition of "adverse environmental effect" applies to as broad a set of environmental impacts as does the language in section 112(m)(6) addressing "serious or widespread environmental effects" associated with HAP deposition. They did not agree with EPA that the language in the two subsections functions interchangeably, primarily because section 112(m)(6) uses the word "or" to link "serious" with "widespread" environmental effects, rather than the word "and." (In contrast, section 112(a)(7) defines "adverse environmental effect" to mean "any significant and widespread adverse effect, which may be reasonably anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.") The commenters argued that an environmental impact could qualify under the former test while not under the latter, meaning that the universe of effects under the definition of adverse environmental effect is necessarily narrower than the universe of effects section 112(m)(6) addresses. The commenters asserted that under EPA's interpretation, EPA could not, for example, prevent effects of mercury deposition in the Everglades on alligators or protect a particular ecosystem such as one of the Great Lakes or even the Great Lakes ecosystem as a whole. The commenters cited legislative history that they believe supports the view that Congress deliberately used the disjunctive "or" in section 112(m)(6), and argue that EPA improperly relies upon case law in support of the proposition that the use of "or" should not automatically render it as applying differently than the definition of "adverse environmental effect."

2. EPA's Response

The EPA continues to believe that the scope of the term "adverse environmental effect" defined in section 112(a)(7) applies just as broadly as the language in section 112(m)(6) directing EPA to address "serious or widespread environmental effects." The Agency recognizes that the language of the two sections is literally different. But EPA also urges that the presence of that difference reveals a substantial degree of ambiguity in the statutory language that EPA, in implementing section 112(m)(6), must reasonably interpret (*Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837 (1984)).

The EPA does not agree that the use of "or" in section 112(m)(6), combined with the subsection's explicit reference to indirect exposure pathways and bioaccumulation, means that it must be interpreted as specifically providing EPA more authority to address impacts from HAP deposition than is provided otherwise under section 112. The EPA does not believe that impacts resulting from indirect exposure pathways or bioaccumulation are excluded from the scope of the definition of "adverse environmental effect." This is partly because several other provisions of section 112 reveal Congress' broader concerns with these aspects of HAP emissions, such as the section 112(a)(1) definition of "major source,"[15] the section 112(b)(2) criteria for adding pollutants to the HAP list,[16] and the section 112(m)(1)(D) directive that EPA assess adverse effects to the environment from HAP deposition.[17] Since EPA is clearly empowered to consider these factors when implementing the broader section 112 program, the fact that section 112(m)(6) also explicitly refers to them does not mean that it provides greater authority than section 112 otherwise does in allowing EPA to prevent "adverse environmental effects." In fact, the broader language in section 112(a)(7) referring to "any" enumerated effect

[14] This does not imply, however, that EPA may not assess the need to pursue any future revisions to existing Federal law necessary to assure protection of human health and the environment from NO_X emissions.

[15] As mentioned above, section 112(a)(1) allows EPA to establish LQER for determining whether a source is major, based on such factors as persistence, potential for bioaccumulation, or other relevant factors.

[16] Sections 112(b) (2) and (3) require evaluation and revision of the list based on factors such as exposure pathways other than inhalation, bioaccumulation, deposition.

[17] Section 112(m)(1)(D) includes as an example of "adverse effects to public health or the environment" effects that result "from indirect exposure pathways."

"which may be reasonably anticipated" evinces congressional intent to not restrict the scope of that term to only certain specific impacts.

For similar reasons, EPA disagrees that the sentence construction in section 112(a)(7) and 112(m)(6) force a conclusion that the scope of environmental effects in the latter is broader than that in the former (and that the other provisions of section 112 are therefore inadequate). In interpreting the ambiguous language of section 112(m)(6), the Agency has discovered clear evidence of congressional intent for the two phrases to have the same meaning. First, in the provision of section 112(m) initially establishing the Great Waters program, section 112(m)(1) charges EPA to "evaluate any adverse effects to public health or the environment caused by (HAP) deposition (including effects resulting from indirect exposure pathways)." This use of a variant of the language in the definition of "adverse environmental effect," as inclusive of the same types on non-direct exposure routes as that mentioned in section 112(m)(6), suggests Congress' use of different language in section 112(m)(6) than is used elsewhere in section 112 may have been inadvertent.

Second, the legislative history suggests that the members of Congress championing section 112(m)(6) understood its language to encompass the same scope as adverse environmental effects. For example, in describing the amendment to add section 112(m)(6), Congressman Levine stated, "If the EPA finds that the Clean Air Act does not protect human health or the environment from airborne depositions, the EPA would be required to develop regulations to prevent such adverse effects." [18]

Third, EPA disagrees that the language of section 112(a)(7) defining adverse environmental effect must be so narrowly construed as to prevent the Agency from being able to use its various section 112 authorities to address significant impacts that occur, for example, in only a single Great Lake (or the Great Lakes collectively) or such a substantial water body as the Everglades. In the section 112(a)(7) reference to "any" enumerated effect in the singular clearly contemplates impacts of limited geographic scope, suggesting that the "widespread" criterion does not present a particularly difficult threshold to cross. This is further supported by the fact that section 112(a)(7) provides as an example of adverse environmental effects, adverse impacts on populations of endangered or threatened species, which as reflective of their imperiled status are especially likely to exist in limited geographic areas. Moreover, EPA has in other contexts interpreted "widespread" to have a very localized meaning: e.g., EPA interpreted "widespread" economic impacts as being those that applied to a single community.[19] Ultimately, EPA believes that the "widespread" criterion would not exclude impacts that might occur in one of the Great Lakes, the Chesapeake Bay, another Great Waters water body, or a significant portion of such a water body. For example, EPA believes that it could, in appropriate cases, employ its section 112 authorities to address adverse environmental effects in concert with its efforts to establish total maximum daily loads under the Clean Water Act.

Fourth, EPA continues to believe the case law cited in the draft determination, in addition to more recent case law, is supportive of the Agency's approach (e.g., *De Sylva* v. *Ballentine*, 351 U.S. 570 (1956) ("the word 'or' is often used as a careless substitute for the word 'and,' that is, it is often used in phrases where 'and' would express greater clarity"); *Bell Atlantic Telephone Co.* v. *FCC*, No. 97–1432 (D.C. Cir. Dec. 23, 1997); *Alarm Industry Communications Committee* v. *FCC*, No. 97–1218 (D.C. Cir. Dec. 30, 1997); *U.S.* v. *Moore*, 613 F.2d 1029 (D.C. Cir. 1979); *U.S.* v. *One Rolls Royce*, 43 F.3d 794 (3rd Cir. 1994); *Kelly* v. *Wauconda Park Dist.*, 801 F.2d 269 (7th Cir. 1986); *U.S.* v. *Smeathers*, 884 F.2d 363 (8th Cir. 1989)). The EPA does not believe it is necessary to read the literal differences in the language of section 112(a)(7) and 112(m)(6) as being determinative of the adequacy of section 112. As shown by the legislative history, Congress did not appear to assume it was requiring EPA to do so. The use of language similar to that in section 112(a)(7) in establishing the general Great Waters program shows Congress expected the scope of environmental effects addressed by the Great Waters program to be the same as those that would qualify as adverse under section 112. If the literally different language absolutely forced a difference in real meaning, the need for Congress to have asked EPA to assess the adequacy of the other provisions of section 112 would not be apparent, since as a definitional matter, it would have been impossible for section 112 to be "adequate" for purposes of section 112(m)(6).

The EPA also believes other considerations argue against making too much of the language differences of the two subsections. Read literally, it is not necessarily the case that section 112(m)(6) would reach a broader universe of impacts than does section 112(a)(7). This is because section 112(a)(7) could be interpreted as allowing EPA to address a singular impact that may merely be reasonably anticipated (i.e., a lone impact that does not yet exist but that could be rationally expected to occur), whereas section 112(m)(6) could be interpreted to address only presently occurring impacts that exist in the plural. In addition, while under a literal reading of section 112(m)(6), a qualifying effect could be one that is merely "widespread" but not "serious," the fact that an impact might not be serious could complicate the Agency's practical ability to address it in a regulatory context, whereas under section 112(a)(7) that "widespread" impact would only need to be "significant" in order to be plainly within the definition.[20] As a result, EPA believes that it is reasonable to reconcile the differences in the statutory language of section 112(a)(7) and 112(m)(6) in a manner that makes them most consistent and seems to give greatest effect to Congress' apparent intended meaning and purpose (*Bell Atlantic Telephone Co.s* v. *FCC*, No. 97–1432 (D.C. Cir. Dec. 23, 1997)). The Agency continues to rely on the rationale contained in the draft determination for this approach (62 FR 36440–41, July 7, 1997).

[18] Remarks of Mr. Levine, House Debate 5–21–90, reprinted in "A Legislative History of the Clean Air Act Amendments of 1990," at 2633. See also, Remarks of Mr. Bilirakis, House Debate 5–23–90, *id.*, at 2941 ("The amendment further grants authority to EPA to regulate such substances should it find that the amended Clean Air Act is inadequate to prevent serious adverse effects on human health and the environment."); Remarks of Mr. Lagomarsino, *id.*, at 2946 ("If the EPA finds that other provisions of the Clean Air Act do not adequately prevent depositions, the EPA would be authorized to develop regulations to prevent such adverse effects."); Remarks of Mr. Levine, *id.*, at 2938 ("In the event that the EPA found that other provisions of the Clean Air Act did not adequately prevent serious adverse impacts, the EPA would be required to develop regulations to prevent such adverse impacts with regard to the Pacific, Arctic, Atlantic, and eastern gulf coasts."; Remarks of Mrs. Lowey, *id.*, at 2939 ("Under the Amendment, if EPA finds that the Clean Air Act does not adequately minimize dangers to human health and the environment from toxic depositions, EPA is authorized to develop regulations to prevent such adverse effects.").

[19] See Final Rule, Water Quality Standards Regulation, 48 FR 51400, 51401 (November 8, 1983), codified at 40 CFR 131.10(g)(6).

[20] See the dictionary definitions of "serious" as "having important or dangerous possible consequences," and "significant" as "having or likely to have influence or effect ' Webster's Ninth New Collegiate Dictionary (Merriam-Webster Inc., Springfield, MA: 1986).

E. Regulations to Control Emissions of Pollutants

The EPA also received comments questioning the ability of the provisions of section 112 relating to emission standards to control HAP and prevent adverse impacts from deposition. Some of these comments raised distinct questions about whether certain provisions could be used to address the effects enumerated in section 112(m)(6), while others focused on the timing the Act provides for implementing these provisions, even assuming they can prevent the enumerated effects.

1. Summary of the Comments

a. Utility of Section 112 Emission Control Provisions. State and environmental groups commented that even where airborne deposition of HAP has serious adverse effects to public health and the environment, EPA's ability to control emissions of those HAP under the section 112(d) MACT and GACT programs is still constrained by what current technology can achieve. The commenters requested that EPA describe how MACT standards will in fact be developed to prevent adverse effects. They then argued that even though the section 112(f) residual risk authority allows more stringent post-MACT or -GACT standards based on environmental needs, since section 112(f) requires EPA to consider factors such as "costs, energy, safety, and other relevant factors" in setting residual risk standards to prevent an adverse environmental effect and does not explicitly address indirect exposure pathways, it is ambiguous how much legal flexibility EPA has to actually achieve environmental quality-based goals. Since section 112(m)(6) does not specify these factors but does refer to indirect exposure pathways, they argued, it must provide greater authority. Some argued that EPA's regulatory authority contains a gap simply by virtue of the fact that mobile sources and foreign sources emit HAP that deposit in the Great Waters, while section 112 can only reach domestic stationary sources, and that section 112 is inadequate to control other human activities or other causes of HAP deposition, such as pesticide application and revolatilization.

b. Timing of Implementation of Section 112 Provisions to Control HAP Emissions. State and environmental groups observed that EPA is still in the process of establishing initial MACT standards, and that EPA may wait up to 8 more years after promulgation of MACT before setting environment-based residual risk standards after MACT has been established for a source category. They noted that these standards would then likely be subject to litigation, especially due to the requirement that EPA consider the several aforementioned factors in setting residual risk standards. They then argued that the fact that EPA has already missed several statutory deadlines under section 112 suggests the timing of EPA's implementation of the program may be too protracted. Since some argued that the determination was due in 1993 and was to address the new regulatory program, with further regulations required if EPA found section 112 to be inadequate, those further remedial regulations were due to be established and successfully implemented long before then.

The members of Congress who objected to the draft adequacy determination were troubled by the lack of focus on the amount of time that it would take to achieve the Great Waters goals under the other provisions of section 112 (letter to Carol Browner, dated October 3, 1997, docket item #IV–G–474). Those members asked EPA to inform Congress of the Agency's specific plan and time frame for using section 112, and stated that if the required protection can be provided but not in a "timely fashion," section 112 is not adequate.

2. EPA's Responses

a. Utility of Section 112 Emission Control Provisions. The Agency recognizes that MACT and GACT standards promulgated pursuant to the provisions of section 112(d) are not required to achieve specified health-based results or to prevent specified environmental effects. However, section 112(d)(2) does contemplate that EPA would take into account measures that are consistent with "pollution prevention" principles when setting standards. For example, the introductory language to section 112(d)(2) directs EPA to establish standards that, where achievable, prohibit emissions of HAP, and paragraph (A) of that subsection anticipates that MACT will either reduce or "eliminate" such emissions.

In addition, EPA disagrees that the factors EPA is required to consider in setting health- or environment-based residual risk standards under section 112(f) would limit EPA's ability to prevent adverse effects resulting from HAP deposition to any greater degree than would be the case if EPA were to adopt standards under section 112(m)(6). As explained in the draft determinations, EPA has substantial discretion in determining how to evaluate those factors and what weight to give them, and need not value any single factor above the others or above the need to prevent an adverse environmental effect.[21] While section 112(m)(6) does not refer to factors such as those specified in section 112(f)(2), under the Great Waters provision, the Agency is directed to establish such further regulations "as may be necessary and appropriate to prevent" adverse effects from HAP deposition to the Great Waters. Congress' use of such language indicates that EPA is expected to weigh considerations in addition to the need to prevent adverse effects when establishing regulations under section 112(m)(6). Such further regulations would need to be both "necessary" and "appropriate" to achieve their purpose, and the factors that EPA traditionally considers when establishing binding regulations (e.g., costs, technological feasibility, lead time, safety, energy) would naturally come into play. The EPA also disagrees with the assertion that residual risk regulations could only be developed in consideration of direct exposure pathways. Nothing in the statutory language of section 112(f) implies such a limitation on the utility of the residual risk program. And, in light of the fact that other provisions of section 112 such as the definition of major source at section 112(a)(1) and the section 112(b) HAP listing provisions permit EPA to consider indirect exposure pathways, consideration of such effects would not be precluded under the residual risk program.

The EPA also disagrees that section 112, simply due to its limited reach of applying only to domestic stationary sources, is inadequate. Congress could not have assumed that the adequacy question could be answered so easily, since it was common knowledge that the section 112 authorities could only apply to stationary sources. The commenters have not identified any inadequacies in the provisions of section 112 themselves that would prevent EPA from addressing adverse impacts from deposition of HAP emitted by domestic stationary sources, and therefore EPA disagrees that section 112 contains a gap in authority. In sum, EPA continues to believe it has sufficient legal authority through the implementation of section 112(d) and

[21] *New York* v. *Reilly*, 969 F.2d 1147, 1150 (D.C. Cir. 1992) (citing *Center for Auto Safety* v. *Peck*, 751 F.2d 1336, 1342 (D.C. Cir. 1985), *Weyerhauser Co.* v. *Costle*, 590 F.2d 1011, 1045 (D.C. Cir. 1978) (Congress "left EPA with discretion to decide how to account for the consideration of factors, and how much weight to give each factor."); *Appalachian Power Co.* v. *EPA*, No. 96–1497 (D.C. Cir., February 13, 1998).

112(f) to achieve the preventative mandate of section 112(m)(6), and continues to rely upon the rationale contained in the draft determinations (62 FR 36442–44, July 7, 1997).

In addition, EPA wishes to point out two additional provisions of section 112 that support the Agency's conclusion that it is adequate under section 112(m)(6). First, section 112(d)(4) provides that, with respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under section 112(d)(42 U.S.C. 7412(d)(4)). If EPA invokes this provision, it must assure that any emission standards would not only result in ambient concentrations that would protect the public health with an ample margin of safety, but that the standards would also be sufficient to protect against the threat of adverse environmental effects (62 FR 33631, June 20, 1997). Second, under section 112(l), states may develop and submit to EPA for approval their own programs for implementation and enforcement of emission standards for HAPs (42 U.S.C. 7412(l)(1)). The EPA has previously stated its view that section 112(l) provides authority to approve state programs that contain elements for controlling the potential-to-emit (PTE) of source HAP emissions (61 FR 36295, 36296–7, July 10, 1996). Under such a program, a state could, for example, issue a prohibitory rule applicable to source HAP emissions, or a federally enforceable state operating permit applicable to a specific source to control its HAP PTE.

b. Timing of Implementation of Section 112 Provisions to Control HAP Emissions. The fact that EPA has missed some of the statutory deadlines established in the Act is not relevant to the subject of the adequacy of section 112 to prevent adverse effects from HAP deposition. If anything, the Clean Air Act's provision of a mechanism under section 304 by which citizens can enforce these statutory deadlines and seek to compel EPA to implement the provisions of section 112 (a failure which is only "temporary" in that it does not preclude ultimate implementation of the underlying statutory authority) supports EPA's confidence in the substantive utility of section 112. The EPA also disagrees with the interpretation that the November 15, 1995 deadline in section 112(m)(6) for establishing any necessary and appropriate further regulations compels a conclusion that the other provisions of section 112 that provide later deadlines are either inadequate or are irrelevant for purposes of the determination. Nowhere in section 112(m)(6) does it specify at what point in time sources would be required to comply with such further regulations, or at what point the environmental goals of section 112(m)(6) would have to be achieved (e.g, *Appalachian Power Co.* v. *EPA*, No. 96–1497 (D.C. Cir., February 13, 1998)). It is certain that Congress, in enacting the complicated provisions of section 112 in the 1990 Amendments, understood that full development of the HAP program would take a significant amount of time, and that, in addition, full source compliance with the new program would not occur immediately upon the establishment of the program. The schedules for development and compliance contained in section 112(e) and 112(i), for example, are clear evidence of this understanding. In light of this, if Congress had in fact intended that any regulations adopted under section 112(m)(6) would be immediately implemented and enforced, with successful results, upon their promulgation, it would have been unnecessary to ask whether the other provisions of section 112 that employed the more detailed and longer implementation schedules are adequate, since they clearly could not have been. Rather, EPA believes that the specific timetables for implementation of the other section 112 provisions, contrasted with the bare deadline in section 112(m)(6) for promulgating any necessary and appropriate further regulations, actually do more to assure timely achievement of the intended results, as a statutory matter, than does section 112(m)(6). Therefore, EPA rejects the reading that section 112(m)(6) requires the actual prevention of adverse effects from HAP deposition to be achieved in advance of when the other provisions of section 112 could be employed to prevent them.

The EPA recognizes that the time frame for implementation of section 112 is also a concern of the members of Congress who objected to the draft adequacy determination, and who requested EPA to set forth the Agency's specific plan and schedule for implementing section 112. In response, EPA first refers attention to section 112(c)–(f), which establishes several deadlines for EPA action.[22] In addition, there have been several consent decrees entered by the district courts establishing new deadlines in cases where EPA has missed the statutory deadlines.[23] Finally, EPA has included in the docket for today's notice a document that sets forth in detail EPA's most up-to-date expected schedule for implementation of the general section 112 program which has also been forwarded, along with a copy of this notice, to the individual members of Congress who signed the letter commenting on the draft determination.

F. Mercury and Electric Utilities Reports to Congress

1. Summary of the Comments

In comments supporting the discussion of the section 112(n) provisions governing reports to Congress on mercury emissions and emissions from electric utilities in the draft determinations, an industry commenter stated that attempting to regulate electric utility steam generating units under section 112(m)(6)(assuming the Agency concluded that the other provisions of section 112 are inadequate) would thwart Congress' intent that regulation of such units under section 112 could occur only if EPA had found under section 112(n)(1)(A) that regulating these sources is necessary and appropriate. Especially if regulation under section 112(m)(6) were attempted in advance of the completion of the section 112(n)(1)(A) utility study, they argued, section 112(n)(1)(A) would be rendered irrelevant.

An environmental group commenter, on the other hand, argued that since at the time of the draft determinations neither the mercury nor the utility reports were completed, and EPA had not made any decision regarding whether it is necessary and appropriate to regulate HAP emissions (particularly mercury) from electric utility steam generating units, EPA is obligated under section 112(m)(6) to "immediately" promulgate further regulations to reduce mercury emissions from coal-burning power plants. In the alternative, they

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[22] In summary, section 112(c)(3) in concert with section 112(k)(3)(B) requires EPA by November 15, 1995, to have listed categories and subcategories of area sources sufficient to ensure that 90 percent of area source emissions of the 30 HAP that present the greatest threat to public health in large urban areas are subject to regulations promulgated by November 15, 2000; the same deadlines apply under section 112(c)(6) for listing and regulating sources of emissions of seven specified HAP that are pollutants of concern for the Great Waters Program; section 112(d)(2) provides a detailed schedule for the regulation of coke ovens; section 112(e)(1) establishes deadlines for promulgation of MACT and GACT standards ranging from November 15, 1992, though November 15, 2000; section 112(f)(2) provides the deadlines for establishing residual risk standards after promulgation of standards under section 112(d); and section 112(i) sets forth the detailed schedules for when certain types of sources are required to comply with promulgated standards.

[23] Docket number A–97–21; item II–B–2 for 2 year and 4 year MACT schedules.

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demanded that EPA immediately complete the mercury and utility reports and promulgate measures to reduce mercury from power plants such that adverse health effects from mercury in the Great Waters, and resulting fish consumption advisories, are eliminated.

2. EPA's Response

The EPA agrees that section 112(n)(1)(A) is the primary provision of section 112 pursuant to which the Agency could determine whether it is appropriate to regulate HAP emissions from electric utilities. The EPA will be making the determination of whether it is appropriate and necessary to regulate such emissions in the context of fulfilling the Agency's responsibilities under section 112(n)(1). If EPA concludes that such regulation is necessary and appropriate, the full range of authority contained in section 112 would be available to address HAP emitted by electric utilities.

The EPA disagrees that the then-pending status of the mercury and utility reports established an immediate duty for EPA to regulate mercury emissions from electric utilities under section 112(m)(6). The environmental group's position is based on its view that section 112(m)(6) requires EPA to regulate all HAP emissions under that provision pending development of the broader regulatory program under the other provisions of section 112. The EPA does not believe that section 112(m)(6) trumps the statutory schedule for development of the section 112 program. The EPA also notes that the demand that EPA "immediately" promulgate controls under section 112(m)(6) for mercury emissions from utilities conflicts with the schedule reflected in the consent decree entered in *Sierra Club, et al* v. *Browner*, under which any further emissions standards would not be due until November 15, 2000.

G. Solid Waste Incineration Units

1. Summary of the Comments

An environmental group commented regarding EPA's discussion of its authority under section 112(f) and 129 to regulate HAP emissions (and emissions of other pollutants) from solid waste incineration units such as medical and municipal waste incinerators. In essence, these comments object to the standards EPA has already developed under section 129 for controlling emissions from these sources, and demand that EPA explain exactly how the Agency will implement the residual risk program to address any remaining impacts that may exist. They list several specific things that the commenter believes revised standards under section 129 must achieve or incorporate. These include setting a goal of zero discharge of dioxin for all medical waste incinerators, and other such regulatory actions to achieve the preventative goals of section 112(m)(6).

2. EPA's Response

The comments objecting to the stringency of the current section 129 standards for medical and municipal waste incinerators are not within the scope of today's determination of whether the statutory authorities provided by section 112 are adequate. These regulations were adopted pursuant to the procedural requirements of section 307(d) of the Act. The proper forum for challenging the sufficiency of a particular regulation is either: (1) The rulemaking action establishing the standard itself (either in comments on the proposed regulation or in a petition for review of the final action rulemaking action under section 307(b)); or, (2) a petition for reconsideration of the final rule (and possible petition for review of the Agency's final action in response to the petition). Today's notice is not the appropriate place to address comments objecting to the substance of the regulations adopted pursuant to section 129. Rather, EPA notes that the commenter does not dispute EPA's view that the section 112(f) residual risk authority applicable to sources regulated under section 129 provides a valuable statutory tool for preventing adverse effects from HAP emissions depositing into the Great Waters.

H. Other Comments Regarding the Adequacy of Section 112

1. Summary of the Comments

Several other miscellaneous comments regarding the adequacy of section 112 to prevent adverse effects from HAP deposition were submitted. Some argued that section 112 cannot be adequate in light of the fact that EPA recently signed the Great Lakes Binational Toxics Strategy (Canada/U.S.—April 7, 1997). Similarly, some argued that initiatives such as the Great Lakes Water Quality Guidance indicate that additional legal authorities beyond section 112 are needed to protect public health and the environment. Others commented that while NO_X is not a listed HAP and thus not within the scope of the section 112 regulatory reach of the section 112(m)(6) remedy, there is mounting evidence that NO_X and sulfur dioxide (SO_2), precursors to acid rain, may act synergistically to exacerbate the problems caused by certain HAP, such as mercury by lowering the alkalinity of receiving waters. Since EPA has no authority under section 112 at all to regulate pollutants other than HAP, the commenter argued, and since a comprehensive approach to remedying adverse impacts from deposition of mercury may arguably require additional regulation of NO_X and SO_2 emissions, section 112 cannot be adequate. Another commenter demanded that EPA's action to issue the determinations serve as a vehicle for particular substantive actions, such as reducing ongoing emissions of PCB emitted by utilities and landfills, creating an inventory of pesticide use in the United States, developing a Great Lakes pesticide initiative, and preventing air revolatilization of HAP in implementing the Assessment and Remediation of Contaminated Sediments program. This commenter stated that EPA did not explicitly address whether section 112 is adequate to prevent adverse effects to especially sensitive segments of the populations, such as children, and why, if adequate authority exists, the Agency has allegedly not applied it to eliminate the "environmental injustice" of these effects. The commenter noted that fish consumption presents more acute risks for people especially vulnerable to toxics, such as nursing women and unborn children, and then observed that EPA in the first Report to Congress stated that since certain sub-populations such as Native Americans are more likely to consume greater amounts of Great Lakes fish and, therefore, be more exposed to toxic chemicals, their effects need to be considered in decision making on toxic substances control. The commenter asserts that since the draft determinations did not separately or explicitly address environmental justice issues, EPA is in violation of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." Another commenter argued that additional pollutants, particularly dieldrin, a Great Waters pollutant of concern, must be listed as a HAP under section 112(b), due to its effects as discussed in the second report. Since dieldrin is not currently listed, the commenter notes, EPA cannot currently regulate it under section 112 and address its deposition impacts.

2. EPA's Response

The EPA disagrees that the fact that EPA has entered into the Binational Toxics Strategy and other such initiatives demonstrates that section 112 is inadequate to prevent adverse effects

from HAP deposition of domestic stationary source emissions. The EPA has never in any such action insinuated that its underlying statutory authority to control emissions from these sources is wanting, and there is no basis for concluding that EPA's determinations regarding the adequacy of section 112 are in conflict with the Agency's participation in these initiatives. On the contrary, EPA has used and will continue to use its authority under section 112 to further the goals of strategies such as the Binational Toxics Strategy. The EPA also disagrees that the exacerbating effects NO_X and SO_2 may have on HAP deposition impacts compels an inadequacy determination. The EPA can still use its section 112 authority to address the HAP emission component of such impacts, and while unlisted pollutants such as SO_2 and NO_X may not be regulated under section 112, there are ongoing efforts under the Clean Air Act to control non-HAP emissions. The EPA referred to this authority in the draft determination partly in order to highlight the fact that while certain pollutants cannot be controlled under section 112, that does not automatically render section 112 inadequate to control emissions of pollutants that are HAP. The EPA sees no restriction in section 112 that would preclude the Agency from preventing impacts caused by HAP that are enhanced by the presence of other pollutants. The comments that request EPA to take particular actions are not directly relevant to the question of whether the other provisions of section 112 are adequate to prevent adverse effects from HAP deposition. Moreover, charges that EPA has failed to comply with Executive Order 12898 because the draft determination did not explicitly discuss effects on particularly sensitive segments of the population do not recognize that EPA stated it believes that section 112 is adequate to prevent any of the enumerated adverse effects from HAP deposition. This necessarily includes qualifying adverse effects that are experienced by sensitive population segments, such as children and nursing mothers, and those experienced by segments of the population that experience greater exposure to environmental toxics, such as Native Americans. The EPA's assessment of its legal authority under section 112 was not limited to whether the Agency can act to prevent adverse effects experienced only by a "majority" of citizens. Indeed, the definition of adverse environmental effect in section 112(a)(7), and the relevant provisions of section 112(f)(2) directing EPA to protect the public health with an ample margin of safety, are in no way so limiting. Finally, EPA notes that the Executive Order applies to EPA's implementation of section 112 and to the regulatory actions EPA takes under its provisions, thus ensuring that environmental justice issues will be taken into consideration as the various section 112 programs are developed. In response to the request that dieldrin be listed as a HAP, EPA notes that interested citizens may petition the Agency to add substances to the section 112(b) HAP list, and the commenter is welcome to do so. Today's notice would not be a proper forum for conducting this rulemaking exercise.

I. Comments Regarding the Need for Further Regulations under Section 112(m)(6)

Many comments objected to EPA's draft determination that, since EPA believes the other provisions of section 112 are adequate, no further regulations under section 112(m)(6), beyond those that can otherwise be adopted under section 112, are necessary and appropriate at this time. These objections flow from the objections to the draft adequacy determination. In addition, several comments were submitted concerning the issue of the need for further regulations under section 112(m)(6), notwithstanding the issue of the adequacy of section 112.

1. Summary of the Comments

An environmental group specifically objected to EPA's statement that even if section 112 were found to be inadequate under section 112(m)(6), further regulations under that subsection are not necessary and appropriate at this time in light of the fact that much scientific information is still lacking concerning issues such as the relative contribution of air emissions of HAP to adverse effects in the Great Waters. The commenter argued that the Agency's Report to Congress under the Great Waters program, as well as information gathered in support of EPA's actions implementing section 112, show the need to act under section 112(m)(6) and indicate which sources are responsible for adverse impacts. Moreover, the commenter argued that EPA should have set forth data and analysis in support of its draft determination that further regulations under section 112 are not necessary and appropriate at this time. The commenter claimed that EPA has failed to fulfill its duties under administrative law to provide the public with sufficient information upon which to comment meaningfully.

On the other hand, industry commenters interpreted the second report as indicating that the science does not yet exist to connect air deposition of HAP to actual environmental or public health effects, or to connect air deposition of HAP to individual facilities. As a result, they argued, EPA does not have an adequate technical basis for imposing further regulations under section 112(m)(6) to address HAP deposition. In addition, they argued, since water quality in the Great Waters is improving, further measures under section 112(m)(6) are not needed. They also argued that current data are limited and unclear, and that there is too much uncertainty regarding several scientific issues for EPA to be able to support further regulations.

2. EPA's Response

Since EPA is determining that the other provisions of section 112 are adequate under section 112(m)(6), it therefore follows that further regulations under section 112(m)(6), beyond those that can otherwise be adopted under section 112, are not necessary and appropriate. However, EPA does wish to respond to the points raised above in order to clear up any confusion caused by the Agency's statement in the draft determinations. In response to comments concerning the factual basis for today's determinations, EPA's statement should not be interpreted as meaning that EPA concludes that adverse effects associated with HAP deposition are not presently occurring or that further research and action is not necessary. In fact, EPA believes that the first and second reports clearly indicate that atmospheric deposition of toxic and other pollutants is often an important factor affecting the environmental conditions of the Great Waters and can contribute to adverse ecological and human health effects. As the industry groups observed, water quality does appear to be generally improving. However, the rate of improvement in recent years is declining, and therefore EPA's continued implementation of its section 112 authorities is necessary to ensure continued improvements in water quality.

While EPA believes that it has sufficient authority under section 112, it is true that EPA's technical information base is such that the Agency is not presently in a position to conclude confidently that further, unique regulations under section 112(m)(6), beyond those that can be adopted under the other provisions of section 112, would be appropriate. The EPA is not presently able to determine what

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additional types of regulations beyond those authorized by section 112, and what domestic stationary sources they would apply to, would be necessary and appropriate to prevent adverse effects from HAP deposition. The EPA's understanding of these issues is, however, improving. For example, in recent years, considerable progress has been made in quantifying emission inventories, monitoring concentrations in ambient air and deposition, and modeling total atmospheric deposition to a waterbody. Studies are improving the ability to relate deposition to source categories, and these techniques are being refined in order to better link effects to individual sources of pollution. Examinations are under way for the total picture relating HAP to a single waterbody (e.g., air deposition, waterborne and sediment inputs, comparing current sources, historic deposits, and natural sources, and tracking cycling among components of the system). Such examinations are expected to contribute to EPA's ability to obtain more focused information on the impacts of individual sources. The EPA is currently drafting the Report to Congress, under section 112(f)(1), on the methods and significance of risks to public health and the environment which may remain after application of standards to sources subject to regulation under section 112(d). As these risk evaluations are developed, they can be applied to sources and pollutants to determine the appropriate additional actions that may be needed.

The EPA's air, water, solid waste, pesticides, and research offices, working with State agencies, universities and others are moving forward on several fronts to better characterize multimedia movements and effects of pollutants. Several projects are under way and will produce data-sets and analyses within the next 1 to 6 years. An extensive emissions inventory of individual sources which release air toxics is nearing completion in the eight Great Lakes States and the Province of Ontario and is expected to be publicly available in the summer of 1998. The USA and Canada cooperative monitoring network for air quality around the Great Lakes is completing its review of the first 6 years and is defining an active program for the next 6 years. The Lake Michigan Mass Balance project has obtained several years of air-monitoring data, which are expected to be released this year, and has begun using advanced computer models of air, water, watershed, sediment, and biota to characterize movements and fates of four selected pollutants in the ecosystem. Large scale modeling to calculate "airsheds" where emissions significantly impact each estuary has begun for the Atlantic and Gulf of Mexico estuaries. A 6-year study of "urban plumes" in Lake Michigan and Chesapeake Bay is just being completed to quantitatively evaluate the impacts of cities on nearby large water bodies via air transport. Research projects are under way to improve scientific understanding of air and water exchanges of pollutant metals and organic compounds at the air-water boundary.

Finally, in response to the criticism that the draft determination did not provide sufficient opportunity for meaningful public comment, thereby allegedly causing the Agency to fail to meet its responsibilities under administrative law, the Agency was not required by the Administrative Procedure Act (APA) or by section 307(d) of the Act to make these determinations through a notice and comment process, and these determinations are not rulemakings that establish new binding requirements. The EPA could have made the determinations unilaterally and without public input in its Report to Congress, but chose instead to invite public participation by first issuing the determinations in draft and then supplementing the report with today's notice. The EPA provided a full opportunity for review and comment on the draft determinations at the time EPA released the second Report to Congress. Moreover, having done so does not make the APA and provisions of the Act regarding procedural requirements or judicial review applicable to the determinations or to other aspects of the second report. In any event, EPA believes that the factual bases for EPA's conclusion that it is not at this time necessary and appropriate to establish further regulations under section 112(m)(6) are fully presented in the report itself.

J. Comments Regarding the Second Report to Congress

The EPA received numerous comments addressing aspects of the second report apart from the section 112(m)(6) draft determinations. Many of these related to specific technical or scientific issues, or to the Agency's method of addressing the elements of section 112(m)(5). Since today's notice concerns only the determinations under section 112(m)(6), it has focused on the points raised in comments regarding the draft determinations discussed in the July 7, 1997, notice. While today's notice of determinations supplements the second report, the Agency is not otherwise using this notice to update or revise the second report. Rather, the methods for achieving these purposes are the periodic reports themselves, and EPA will be considering public comments submitted on its second report in the third report due in June 1999. However, EPA does summarize some of the comments received on the second report in the Response to Comments Document contained in the docket for today's notice and presents some preliminary responses.

V. Determinations of Adequacy of Section 112 and of Need for Further Regulations Under Section 112(m)(6)

Based on available information, the analyses contained in the first and second Reports to Congress and the draft determinations published at 62 FR 36436 (July 7, 1997), and guided by EPA's interpretation of the statutory requirements of section 112(m) of the Act, EPA determines that the other provisions of section 112 are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects associated with the deposition of HAP to the Great Waters. As a result of this determination, EPA determines that, based on information available to the Agency, no further emission standards or control measures under section 112(m)(6), beyond those that can otherwise be adopted under the other provisions of section 112, are necessary and appropriate to prevent such effects. Due to the state of current scientific information concerning factors such as the relative contribution of air emissions to adverse effects in the Great Waters, as discussed in the first and second Reports to Congress, EPA could not conclude confidently that unique further regulatory actions to reduce HAP under the remedial authority of section 112(m)(6) would be necessary and appropriate. As discussed earlier in this notice, this does not mean that actions under the other provisions of section 112 or other authorities that reduce any impacts from deposition of air pollution are not warranted, or that EPA is concluding that air deposition of HAP does not currently cause or contribute to adverse effects to public health or the environment. If future events or additional information indicate that the determinations are not correct, EPA retains its discretion to promulgate any necessary and appropriate regulations under section 112(m)(6).

VI. Administrative Procedures

A. Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) requires agencies to determine whether regulatory actions are "significant" and therefore subject to Office of Management and Budget (OMB) review. It has been determined that today's notice of determinations is not a "significant" regulatory action, since it does not establish new requirements or lead to likely regulatory requirements (and therefore is not a regulatory action) and is a supplement to the second Report to Congress under the Great Waters program. A draft of this notice was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these determinations since they are not rules of general applicability for which EPA is required to publish a notice of proposed rulemaking under the Administrative Procedure Act or any other statute. Moreover, these determinations that section 112 is adequate to prevent adverse effects from HAP deposition and that, therefore, no further regulations under section 112(m)(6) are necessary and appropriate, could not by their nature impose any direct or binding requirements on any person, and, therefore, could not impose any economic impacts on the regulated community or small entities.

C. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3). Today's notice serves as a supplement to EPA's second Report to Congress under the Great Waters program and does not establish any binding rules of general applicability. Pursuant to the consent decree entered in *Sierra Club* v. *Browner*, Civ. No. 96–1680 (D.D.C.), EPA shall deliver to Congress a copy of the notice as a supplement to the second Report.

D. Unfunded Mandates

Today's determinations establish no Federal mandates. That is, they impose no enforceable duties on State, local or tribal governments, or on the private sector, since they do not establish binding regulations. Therefore, the requirements of the Unfunded Mandates Reform Act of 1995 do not apply to today's notice.

Dated: March 13, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–7488 Filed 3–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Department of Agriculture

[FRL–5985–6]

Clean Water Act; Clean Water Action Plan

AGENCY: Environmental Protection Agency and Department of Agriculture.

ACTION: Notice of availability of clean water action plan.

SUMMARY: In his 1998 State of the Union Address, President Clinton announced a major new Clean Water Initiative to speed the restoration of the nation's rivers, lakes, and coastal waters. This new initiative aims to achieve clean water by strengthening public health protection, targeting community-based watershed protection efforts at high priority areas, and providing communities with new resources to control polluted runoff.

On October 18, 1997, the 25th anniversary of the Clean Water Act, Vice President Gore directed the Department of Agriculture (USDA) and the Environmental Protection Agency (EPA) to work with other Federal agencies and the public to prepare an aggressive Action Plan to meet the promise of clean, safe water for all Americans. The Action Plan forms the core of President Clinton's Clean Water Initiative in which he proposed $568 million in new resources in his Fiscal Year 1999 budget to carry it out. The Action Plan builds on the solid foundation of existing clean water programs and proposes new actions to strengthen efforts to restore and protect water resources.

In implementing the Action Plan, the federal government will: support locally led partnerships that include a broad array of watershed partners, including federal and state agencies, tribes, communities, businesses, and citizens to meet clean water and public health goals; increase financial and technical assistance to states, tribes, local governments, farmers, and others; and help states and tribes restore and sustain the health of aquatic systems on a watershed basis.

ADDRESSES: The Clean Water Action Plan is available for viewing on the Internet at

http://www.nhq.nrcs.usda.gov/cleanwater/ or

http://www.epa.gov/cleanwater/.

Copies of the Clean Water Action Plan may be obtained from EPA's National Center for Environmental Publications and Information, 1–800–490–9198 (toll free), P.O. Box 42419, Cincinnati, OH 45242; (513) 489–8695 (fax). Ask for EPA–840–R–98–001. Copies may also be obtained from Douglas Wilson, USDA–NRCS, Conservation Communications Staff, Room 0054—South Building, P.O. Box 2890, Washington, D.C. 20013–2890, or by fax at (202) 720–6009.

FOR FURTHER INFORMATION CONTACT: Ben Ficks, U.S. EPA, Office of Wetlands, Oceans, and Watersheds, 401 M Street, S.W. (4501F), Washington, D.C. 20460; fax: 202–260–2529; email ficks.ben@epamail.epa.gov; or Douglas Wilson, USDA–NRCS Conservation Communications Staff, Room 0054—South Building P.O. Box 2890, Washington, D.C. 20013–2890; fax: 202–720–6009.

SUPPLEMENTARY INFORMATION:

Clean Water Action Plan Overview

I. Clean Water—The Road Ahead

Over the past quarter century, America has made tremendous strides in cleaning up its rivers, lakes, and coastal waters. In 1972, the Potomac River was too dirty to swim in, Lake Erie was dying, and the Cuyahoga River was so polluted it burst into flames. Many rivers and beaches were little more than open sewers. The improvement in the health of the nation's waters is a direct result of a concerted effort to enhance stewardship of natural resources and to implement the environmental provisions of federal, state, tribal and local laws. In particular, the Clean Water Act has stopped billions of pounds of pollution from fouling the nation's water, doubling the number of waterways safe for fishing and swimming. Today, rivers, lakes, and coasts are thriving centers of healthy communities.

Despite tremendous progress, 40 percent of the nation's waterways assessed by states are still unsafe for fishing and swimming. Pollution from factories and sewage treatment plants, soil erosion, and wetland losses have been dramatically reduced. But runoff from city streets, rural areas, and other sources continues to degrade the environment and puts drinking water at risk. Fish in many waters still contain dangerous levels of mercury,

polychlorinated biphenyls (PCBs), and other toxic contaminants.

After 25 years of progress, the nation's clean water program is at a crossroads. Implementation of the existing programs will not stop serious new threats to public health, living resources, and the nation's waterways, particularly from polluted runoff. These programs lack the strength, resources and framework to finish the job of restoring rivers, lakes and coastal areas. To fulfill the original goal of the Clean Water Act—"fishable and swimmable" water for every American—the nation must chart a new course to address the pollution problems of the next generation.

In his 1998 State of the Union Address, President Clinton announced a major new Clean Water initiative to speed the restoration of the nation's precious waterways. This new initiative aims to achieve clean water by strengthening public health protection, targeting community-based watershed protection efforts at high priority areas, and providing communities with new resources to control polluted runoff.

On October 18, 1997, the 25th anniversary of the Clean Water Act, Vice-President Gore directed USDA and EPA to work with other federal agencies and the public to prepare an aggressive Action Plan to meet the promise of clean, safe water for all Americans. This Action Plan forms the core of President Clinton's Clean Water Initiative in which he proposed $568 million in new resources in his FY 1999 budget to carry it out. The Action Plan builds on the solid foundation of existing clean water programs and proposes new action to strengthen efforts to restore and protect water resources. In implementing the Action Plan, the federal government will support locally led partnerships that include a broad array of federal agencies, states, tribes, communities, businesses, and citizens to meet clean water and public health goals; increase financial and technical assistance to states, tribes, local governments, farmers and others; and help states and tribes restore and sustain the health of aquatic systems on a watershed basis.

II. Four Tools for Clean Water

Federal, state, tribal, and local governments have many tools they can use to clean up and protect water resources. Regulation, economic incentives, technical assistance research, education, and accurate information all have a role to play in meeting clean water goals. The Action Plan is built around four key tools to achieve clean water goals.

A Watershed Approach

The Action Plan envisions a new, collaborative effort by federal, state, tribal, and local governments; the public; and the private sector to restore and sustain the health of watersheds in the nation. The watershed approach is the key to setting priorities and taking action to clean up rivers, lakes, and coastal waters.

Strong Federal and State Standards

The Action Plan calls for federal, state, and tribal agencies to revise standards where needed and make existing programs more effective. Effective standards are key to protecting public health, preventing polluted runoff, and ensuring accountability.

Natural Resource Stewardship

Most of the land in the nation's watersheds is cropland, pasture, rangeland, or forests, and most of the water that ends up in rivers, lakes, and coastal waters falls on these lands first. Clean water depends on the conservation and stewardship of these natural resources. The Action Plan calls on federal natural resource and conservation agencies to apply their collective resources and technical expertise to state and local watershed restoration and protection.

Informed Citizens and Officials

Clear, accurate, and timely information is the foundation of a sound and accountable water quality program. Informed citizens and officials make better decisions about their watersheds. The Action Plan calls on federal agencies to improve the information available to the public, governments, and others about the health of their watersheds and the safety of their beaches, drinking water, and fish.

A. A Watershed Approach—The Key to the Future

The Action Plan proposes a new collaborative effort by state, tribal, federal, and local governments, the private sector and the public to restore those watersheds not meeting clean water, natural resource, and public health goals and to sustain healthy conditions in other watersheds.

For the past 25 years, most water pollution control efforts relied on broadly applied national programs that reduced water pollution from individual sources, such as discharges from sewage treatment plants and factories, and from polluted runoff. Today, there is growing recognition that clean water strategies built on this foundation and tailored to specific watershed conditions are the key to the future.

Why Watersheds?

Clean water is the product of a healthy watershed—a watershed in which urban, agricultural, rangelands, forest lands, and all other parts of the landscape are well-managed to prevent pollution. Focusing on the whole watershed helps strike the best balance among efforts to control point source pollution and polluted runoff, and protect drinking water sources and sensitive natural resources such as wetlands. A watershed focus also helps identify the most cost-effective pollution control strategies to meet clean water goals.

Working at the watershed level encourages the public to get involved in efforts to restore and protect their water resources and is the foundation for building strong clean water partnerships. The watershed approach is the best way to bring state, tribal, federal, and local programs together to more effectively and efficiently clean up and protect waters. It is also the key to greater accountability and progress toward clean water goals.

Key Elements of the Watershed Approach

The Action Plan proposes a watershed approach built on several key elements.

1. *Unified Watershed Assessments.* States, tribes, and other federal agencies currently set priorities for watershed action in many different ways. For example, state water quality agencies are developing lists of impaired water bodies, defining source water protection areas for drinking water, identifying coastal protection priorities, and defining priority areas for agricultural assistance programs. Similarly, federal, state and tribal natural resource agencies set their priorities for watershed restoration and protection in various ways to meet their mandates for natural resource conservation. These processes are designed to meet valid objectives, but too often opportunities to work together to meet common goals are overlooked.

The Action Plan creates a strategic opportunity for states and tribes, in cooperation with federal land and resource managers on federal lands to take the lead in unifying these various existing efforts and leveraging scarce resources to advance the pace of progress toward clean water. As a number of states and tribes have demonstrated, they can meet existing requirements efficiently and develop more coordinated and comprehensive priorities on a watershed basis.

Unified watershed assessments are a vehicle to identify: watersheds that will

be targeted to receive significant new resources from the President's FY 1999 budget and beyond to clean up waters that are not meeting water quality goals; pristine or sensitive watersheds on federal lands where core federal and state programs can be brought together to prevent degradation of water quality; and threatened watersheds that need an extra measure of protection and attention.

2. *Watershed Restoration Action Strategies.* The Action Plan encourages states and tribes to work with local communities, the public, and federal environmental, natural resource, and land management agencies to develop strategies to restore watersheds that are not meeting clean water and natural resource goals. Watershed Restoration Action Strategies will spell out the most important causes of water pollution and resource degradation, detail the actions that all parties need to take to solve those problems, and set milestones by which to measure progress. Funds made available to federal agencies through the FY 1999 Clean Water and Watershed Restoration Budget Initiative will be used to help states implement these strategies.

3. *Watershed Pollution Prevention.* Protecting pristine or sensitive waters and taking preventive action when clean water is threatened by new activities in the watershed can be the most cost-effective approach to meeting clean water goals. The Action Plan encourages states, tribal, and federal agencies to bring core programs and existing resources together to support watershed pollution prevention strategies to keep clean waters clean.

4. *Watershed Assistance Grants.* Federal agencies will provide small grants to local organizations that want to take a leadership role in building local efforts to restore and protect watersheds. These grants will ensure that local communities and stakeholders can effectively engage in the process of setting goals and devising solutions to restore their watersheds.

B. Strong Federal and State Standards

The Action Plan calls on federal, state, and tribal governments to strengthen existing programs to support an accelerated effort to attack the nation's remaining water quality problems. Federal, state, and tribal standards for water quality and polluted runoff are key tools for protecting public health, preventing polluted runoff, and ensuring accountability. Some of the specific actions called for in the Action Plan are identified below.

1. *Improve Assurance that Fish and Shellfish are Safe to Eat.* Federal agencies will work with states and tribes to expand programs to reduce contaminants that can make locally caught fish and shellfish unsafe to eat, particularly mercury and other persistent, bio-accumulative toxic pollutants, and to ensure that the public gets clear notice of fish consumption risks.

2. *Ensure Safe Beaches.* Federal, state, and local governments will work to improve the capacity to monitor water quality at beaches, develop new standards, and use new technologies such as the Internet to report public health risks to recreational swimmers.

3. *Expand Control of Storm Water Runoff.* EPA will publish final Phase II storm water regulations for smaller cities and construction sites in 1999. EPA will also work with its partners to make sure that existing storm water control requirements for large urban and industrial areas are implemented.

4. *Improve State and Tribal Enforceable Authorities to Address Polluted Runoff.* Federal agencies will work with states and tribes to promote the establishment of state and tribal enforceable authorities to ensure the implementation of polluted runoff controls by the year 2000.

5. *Define Nutrient Reduction Goals.* EPA will establish by the year 2000 numeric criteria for nutrients (i.e., nitrogen and phosphorus) that reflect the different types of water bodies (e.g., lakes, rivers, and estuaries) and different ecoregions of the country and will assist states and tribes in adopting numeric water quality standards based on these criteria.

6. *Reduce Pollution from Animal Feeding Operations.* EPA will publish and, after public comment, implement an Animal Feeding Operation Strategy for important and necessary actions on standards and permits. In addition, by November 1998, EPA and USDA will jointly develop a broad, unified national strategy to minimize the environmental and public health impacts of Animal Feeding Operations.

C. Natural Resource Stewardship

Nearly 70 percent of the United States, exclusive of Alaska, is held in private ownership by millions of individuals. Fifty percent, or 907 million acres, is owned by farmers, ranchers, and their families. Another 400 million acres are federal lands. Most of the rainfall in the country falls on these lands before it enters rivers, lakes and coastal waters. Effective management of these croplands, pastures, forests, wetlands, rangelands, and other resources is key to keeping clean water clean and restoring watersheds where water quality is impaired.

The Action Plan commits all federal natural resource conservation and environmental agencies to focus their expertise and resources to support the watershed approach described above. In addition, these agencies will work with states, tribes, and others to enhance critical natural resources essential to clean water.

1. *Federal Land Stewardship.* More than 800 million acres of the United States, including Alaska, is federal land. These lands contain an immense diversity and wealth of natural resources, including significant sources of drinking water and public recreation opportunities.

By 1999, the U.S. Department of the Interior (DOI) and USDA will take the lead in developing a Unified Federal Policy to enhance watershed management for the protection of water quality and the health of aquatic systems on federal lands and for federal resource management. Federal land managers will improve water quality protection for over 2,000 miles of roads and trails each year through 2005 and decommission 5,000 miles each year by 2002. Federal land managers will also accelerate the cleanup rate of watersheds affected by abandoned mines and will implement an accelerated riparian stewardship program to improve or restore 25,000 miles of stream corridors by 2005.

2. *Protect and Restore Wetlands.* The Action Plan sets a goal of attaining a net increase of 100,000 wetland acres per year by the year 2005. This goal will be achieved by ensuring that existing wetland programs continue to slow the rate of wetland losses, improving federal restoration programs, and by expanding incentives to landowners to restore wetlands.

3. *Protect Coastal Waters.* Federal agencies, led by the National Oceanic and Atmospheric Administration (NOAA), will work in partnership to improve the monitoring of coastal waters, expand research of emerging problems like Pfiesteria, amend Fishery Management Plans to address water quality issues, and ensure the implementation of strong programs to reduce polluted runoff to coastal waters.

4. *Provide Incentives for Private Land Stewardship.* The Action Plan relies on a substantial increase in the technical and financial assistance available to private landowners as the primary means of accelerating progress toward reducing polluted runoff from agricultural, range, and forest lands.

USDA, working with federal, state, tribal, and private partners, will

establish by 2002 two million miles of conservation buffers to reduce polluted runoff and protect watersheds, direct new funding for the Environmental Quality Incentives Program to support watershed restoration, and develop as many new agreements with states as practicable to use the Conservation Reserve Enhancement Program to improve watersheds. The Plan also envisions new and innovative methods to provide incentives for private landowners to implement pollution prevention plans, including risk management protection for adoption of new pollution prevention technologies and market recognition for producers that meet environmental goals.

In addition, DOI will expand its existing Partners for Wildlife Program, which restores degraded fish and wildlife habitats and improves water quality through partnerships with landowners. The program provides technical and financial assistance, and gives priority to threatened and endangered species.

D. Informed Citizens and Officials

Effective management of water resources requires reliable information about water quality conditions and new tools to communicate information to the public. Federal agencies, led by the U.S. Geological Survey (USGS), will work with states and tribes to improve monitoring and assessment of water quality, focusing on nutrients and related pollutants. Federal agencies will also work with states and tribes to develop and use state-of-the-art systems, such as EPA's Index of Watershed Indicators on the Internet, to communicate meaningful information to the public about water quality conditions in their communities.

III. Clean Water and Watershed Restoration Budget Initiative

To support the new and expanded efforts to restore and protect the nation's waters as proposed in the Clean Water Action Plan, the President's FY 1999 budget proposes a Clean Water and Watershed Restoration Budget Initiative. The funding provided in this budget initiative will dramatically increase federal financial support for clean water programs in FY 1999 and beyond. Specifically, the Clean Water and Watershed Restoration Budget Initiative will: increase direct support to states and tribes to carry out a watershed approach to clean water; increase technical and financial assistance to farmers, ranchers, and foresters to reduce polluted runoff and enhance the natural resources on their lands; fund watershed assistance programs and grants to engage local communities and citizens in leadership roles in restoring their watersheds; accelerate progress in addressing critical water quality problems on federal lands, including those related to roads, abandoned mines, riparian areas, and rangelands; expand and coordinate water quality monitoring programs; and increase efforts to restore nationally significant watersheds, such as the Florida Everglades and the San Francisco Bay-Delta.

IV. A Continuing Commitment to Clean Water

The publication of the Action Plan is just the beginning of a long-term effort. Many of the proposed actions will provide for later public review and comment and federal agencies are committed to working closely with states, tribes, and others to ensure successful implementation of specific actions.

In addition, regular reports will keep the public apprised of progress and remaining challenges. By the end of the year 2000 and periodically thereafter, status reports on progress in implementing watershed restoration plans and related programs will be provided to the President, the nation's governors, tribal leaders, and the public.

Dated: March 18, 1998.

Robert Perciasepe,

Assistant Administrator, Office of Water, Environmental Protection Agency.

James R. Lyons,

Under Secretary, Natural Resources and Environment, Department of Agriculture.

[FR Doc. 98–7641 Filed 3–23–98; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5985–5]

Science Advisory Board

Notification of Public Advisory Committee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notification is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Environmental Economics Advisory Committee (EEAC)

The Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board (SAB), will meet on April 9, 1998, from 9 am to no later than 4 pm in Room 1103 West Tower, US EPA, 401 M Street SW, Washington, DC 20460. The purpose of the meeting will be to plan Committee activities for the next twelve months. Topics to be discussed include the mission of the EEAC, economic analysis at the US EPA, and economics research planning.

FOR FURTHER INFORMATION CONTACT: Single copies of the information provided to the Committee can be obtained from Ms. Diana Pozun, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), U.S. EPA, 401 M Street SW., Washington DC 20460, telephone (202) 260–8414, fax (202) 260–7118, or via Email at: pozun.diana@epa.gov. Anyone wishing to make an oral presentation at the meeting must contact Mr. Thomas Miller, the Designated Federal Officer for the Environmental Economics Advisory Committee, *in writing* no later than 4 pm, April 3, 1998, at the above address, via fax (202) 260–7118, or via Email at: miller.tom@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 260–5886.

2. The Integrated Risk Project (IRP) Steering Committee (IRP–SC)

The Integrated Risk Project (IRP) Steering Committee, an *ad hoc* committee established by the Executive Committee of the Science Advisory Board (SAB), will meet on April 13–14, 1998 at the Quality Hotel, 1200 North Courthouse Road, Arlington, VA, telephone (703) 524–4000. The meeting will begin at 8:30 am on April 13, and end no later than 5:30 pm on April 14, 1998. The purpose of the meeting is to review and reach closure on two draft reports that are being developed as part of the Integrated Risk Project. The

reports include a short overview document and a longer detailed document which describes the approach for integrated environmental decision-making that has been developed by the Committee.

Background on the Integrated Risk Project (IRP)

In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: (a) Develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; (b) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; (c) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and (d) identify the uncertainties and data quality issues associated with the relative rankings. The project is being conducted by several SAB panels, working at the direction of an *ad hoc* Steering Committee established by the SAB Executive Committee.

• Single copies of Reducing Risk, the report of the previous relative risk ranking effort of the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Wanda Fields, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–8414, fax at (202) 260–7118, or via Email at: fields.wanda@epa.gov.

Anyone wishing to make a brief oral presentation at the IRP meeting must contact Mr. Thomas O. Miller, Designated Federal Officer, no later than 4:00 pm on April 3, 1998, at fax: (202) 260–7118 or via the Internet at miller.tom@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. For further information, you may also reach Mr. Miller by phone on (202) 260–5886. See below for additional information on providing comments to the SAB.

3. Executive Committee

The Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public meeting on Wednesday, April 15, 1998 and Thursday, April 16, 1998. The meeting will convene each day at 8:30 am, in the Administrator's Conference Room 1103 West Tower of the U.S. Environmental Protection Agency Headquarters Building, 401 M Street, SW, Washington, DC 20460, and will adjourn no later than 5:30 pm on each day.

At this meeting, among the topics to be addressed by the Executive Committee are the following: (a) Consideration of updates from its committees; (b) Review of any reports that are available for Executive Committee action; (c) Discussion of possible "strategic-oriented" projects that could be undertaken by the Board; (d) Discussion with Agency leaders on the role and impact of science at EPA; and (e) Discussion of other issues that may arise.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information concerning the meeting or who wish to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–4126; fax (202) 260–9232; or via Email at: barnes.don@epa.gov. Copies of the draft meeting agenda and available draft reports listed above can be obtained from Ms. Priscilla Tillery-Gadson on (202) 260–8414; fax (202) 260–7118; or via Email at: tillery.priscilla@epa.gov. An updated agenda will be mounted on the SAB Website [http://www.epa.gov/sab] no later than one week prior to the meeting.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1997 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Home Page at: http://www.epa.gov/sab.

Dated: March 18, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–7643 Filed 3–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30440A; FRL–5778–6]

BioSafe Systems; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product ZeroTol, containing an active ingredient involving a change use pattern of the product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Anne Ball, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8717; e-mail: ball.anne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

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EPA issued a notice, published in the **Federal Register** of September 19, 1997 (62 FR 49223)(FRL–5743–5), which announced that BioSafe Systems Inc., 45 E. Woodthrush Trail, Medford, NJ 08055, had submitted an application to register the pesticide product ZeroTol, an algaecide/fungicide (EPA File Symbol 70299–R), containing the active ingredient hydrogen dioxide at 24.00 percent, an active ingredient which is involves a change use pattern of the product.

The application was approved on February 11, 1998, as ZeroTol, a broad spectrum algaecide/fungicide, to include in its presently registered use, a new use for the prevention and control of horticultural diseases in commercial greenhouses, garden centers, landscapes, nurseries, and interiorscapes (EPA Registration Number 70299–1).

The Agency has considered all required data on risks associated with the proposed use of hydrogen dioxide, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of hydrogen dioxide when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on hydrogen dioxide.

A copy of the fact sheets, which provide a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 16, 1998

Janet L. Andersen

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–7644 Filed 3–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30451; FRL–5780–3]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by April 23, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30451] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Denise Greenway	5th Floor, CS1 #2, 703–308–8263, e-mail: greenway.denise@epamail.epa.gov.	2800 Crystal Drive, Arlington, VA 22202
John Tice	Rm. 5-W43, CS #2, 703–308–8295, e-mail: tice.john@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 70724–R. Applicant: Agrium U.S. Inc., South Ulster St., Suite 1400, Denver, CO 80237. Product Name: FTG™. Microbial pest control agent. Active ingredient: *Burkholderia cepacia* strain Ral-3 at 1.96 percent. Proposed classification/Use: General. For commercial application to seed and/or seedlings of conifers and deciduous

trees, also intended for indoor use only. (D. Greenway)

2. File Symbol: 4822–UOO. Applicant: S.C. Johnson and Son, Inc., 5125 Howe St., Racine, WI 53403–2236. Product Name: Granola 97. Manufacturing Use Product. Active ingredient: p-Methane-3,8-diol at 99.0 percent. Proposed classification/Use: General. For manufacturing of insect repellent products. (J. Tice)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30451] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30451]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: March 16, 1998

Janet L. Andersen

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–7645 Filed 3–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5985–7]

Risk Assessment Guidance for Superfund: Volume I—Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments) (RAGS Part D)

AGENCY: Environmental Protection.

ACTION: Notice of availability of RAGS Part D.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has developed Risk Assessment Guidance for Superfund: Volume I—Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments) RAGS Part D), which is now available. This guidance is intended to assist remedial project managers (RPMs), risk assessors, site engineers, and others in standardizing risk assessment planning, reporting, and review at Comprehensive, Environmental Response Compensation and Liability Act (CERCLA) sites.

This guidance is the fourth part (Part D) in the series Risk Assessment Guidance for Superfund: Volume I—Human Health Evaluation Manual (RAGS/HHEM). *Part A* describes how to conduct a site-specific baseline risk assessment and provides the necessary background for Part D. *Part B* provides guidance for calculating risk-based concentrations that may be used, along with applicable or relevant and appropriate requirements (ARARs) and other information, to develop preliminary remediation goals (PRGs) during project scoping. The analyses in *Part C* utilize PRGs (and final remediation levels set in the Record of Decision [ROD]) to assist in evaluating the human health risks of remedial alternative. *Part D* complements the guidance provided in Parts A, B, and C, and presents approaches to standardize risk assessment planning, reporting, and review. Part D guidance spans the CERCLA remedial process from project scoping to periodic review of the implemented remedial action.

DATES: RAGS Part D was conveyed to EPA Superfund National Managers by memorandum from Stephen D. Luftig (Director, Office of Emergency and Remedial Response) and Barry Breen (Director, Office of Site Remediation Enforcement) on December 17, 1997, and is now being published by National Technical Information Service (NTIS).

ADDRESSES: Copies of RAGS Part D can be downloaded from the Internet immediately by going to the RAGS Part D website, located at http://www.epa.gov/superfund/oerr/techres/ragsd/ragsd.html. In approximately three weeks, a hard copy of the document can be obtained by contacting NTIS at (703) 487–4650. Members of the public are invited to inspect the docket developed to support the RAGS Part D guidance at the Superfund Docket, U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Arlington, Virginia. [Docket Number RAGS Part D]. The docket is available for inspection between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling (703) 603–9232. The public may copy a maximum of 266 pages from the docket at no charge; each page thereafter will cost 15 cents, plus a $25 administrative fee.

In addition to the guidance document, the Part D guidance and corresponding information may be accessed electronically on the RAGS Part D website. Updates to Part D will also appear on the website along with an index of the current version of each Chapter or Appendix.

Questions or comments regarding Part D usage should be directed to an EPA regional risk assessor or to the EPA RAGS Part D Workgroup through the RAGS Part D website. Questions or comments received through the website will be considered by the Workgroup and a response will be developed and forwarded via telephone or E—mail as appropriate. Frequently asked questions will be assembled and displayed on the website with corresponding responses.

FOR FURTHER INFORMATION CONTACT: Contact the RCRA/Superfund Hotline at (800) 424–9346; from the Washington, D.C. metropolitan area call (703) 412–9810. The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 553–7672; from the Washington, D.C. metropolitan area the number is (703) 412–3323. You may also contact the Senior Process Manager for Risk, RAGS Part D, Office of Emergency and Remedial Response (5202G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

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SUPPLEMENTARY INFORMATION:

Background

The March 21, 1995 memorandum on Risk Characterization Policy and Guidance from Administrator Browner directed improvement in the transparency, clarity, consistency, and reasonableness of risk assessments at EPA. EPA, over the years, has identified opportunities for improvement in presentation of Superfund risk assessments. Furthermore, the General Accounting Office (GAO), members of Congress, and others have called for betterment of Superfund risk assessments. The October 1995 Superfund Administrative Reform #6A directed EPA to: Establish National Criteria to Plan, Report, and Review Superfund Risk Assessments. EPA has developed an approach to respond to these challenges, which is presented in RAGS Part D.

An Agency workgroup of regional and headquarters risk assessors (the RAGS Part D Workgroup) has been active since the second quarter of FY 96 developing Standard Tools and other approaches to support standardization. Preliminary draft Standard Tools developed by the Workgroup in 1996 were tested and subjected to regional and state review in the fourth quarter of FY 96. Additional developing and testing were performed by the Workgroup in FY 97, and a second regional review occurred in fourth quarter FY 97. The Workgroup also coordinated extensively with the development team for the National Superfund Database (CERCLIS 3) during FY 97, concurrent with CERCLIS 3 development and testing efforts. The Standard Tools in RAGS Part D (Technical Approach for Risk Assessment, Standard Tables, and Instructions for the Standard Tables) reflect the results of continued development, testing, and CERCLIS 3 interaction, and are now available for use immediately.

Elements for Part D Approach

Today's **Federal Register** notice announces the availability of Risk Assessment Guidance for Superfund: Volume I—Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments) (RAGS Part D). The RAGS Part D approach consists of three elements: Use of Standard Tools, Continuous Involvement of EPA Risk Assessors, and Electronic Data Transfer to a National Superfund Database:

- Use of Standard Tools—The Standard Tools developed by the EPA RAGS Part D Workgroup and refined through regional review include a Technical Approach for Risk Assessment (TARA), Standard Tables, and Instructions for the Standard Tables.
  - TARA is a road map for incorporating continuous involvement of the EPA risk assessor throughout the CERCLA remedial process for a particular site. Addressed are risk-related activities starting with project scoping and problem formulation, extending through collection and analysis of risk-related data, and supporting risk management decision making and remedial design/remedial action issues.
  - The Standard Tables have been developed to clearly and consistently document important parameters, data, calculations, and conclusions from all stages of human health risk assessment development. Electronic templates for the Standard Tables are available in LOTUS® and EXCEL®.
  - Instructions for the Standard Tables have been prepared to ensure standardization in the preparation and/or review of Standard Tables for each site-specific human health risk assessment.
- Continuous Involvement of EPA Risk Assessors—Early and continuous involvement by the EPA risk assessor is critical in the CERCLA remedial process, from scoping through completion of remedial activities. EPA risk assessors support reasonable and consistent risk analysis and risk-based decision making. Their up-front involvement should include scoping, work plan review, and customization of the TARA for each site to identify all risk-related requirements. The EPA risk assessors will review Interim Deliverables and identify corrections needed prior to preparation of the Draft and Final Baseline Risk Assessment Reports. Participation of the EPA risk assessors in all other phases of the CERCLA remedial process will ensure human health risk issues are appropriately incorporated in the remedy selection and implementation processes.
- Electronic Data Transfer to a National Superfund Database—Summary-level site-specific risk information will be stored in a National Superfund database (CERCLIS 3) to provide data access and data management capabilities to all EPA staff. The CERCLIS 3 risk-related data represent a subset of the data presented in the Standard Tables.

RAGS Part D is organized into five chapters and three appendices as follows:

- Chapter 1: Introduction;
- Chapter 2: Risk Considerations During Project Scoping;
- Chapter 3: Risk Assessment Data Needs and Tasks During the Remedial Investigation;
- Chapter 4: Risk Evaluations During the Feasibility Study;
- Chapter 5: Risk Evaluations After the Feasibility Study;
- Appendix A: Standard Tables;
- Appendix B: Instructions for Completion of the Standard Tables; and
- Appendix C: Data Useability Worksheet.

In addition, other useful information is presented in highlight boxes placed throughout the document.

This guidance will be updated periodically in response to user comments and suggestions and to address new human health risk assessment guidance, as appropriate. A RAGS Part D mailing list will be compiled. By using the card found at the back of the Part D package, interested parties can add their names to the list for automatic notification regarding future updates.

Goals

The RAGS Part D approach provides numerous advantages over current risk assessment practices in the Superfund program at both the site level and the overall program level.

The use of Standard Tools will facilitate planning with TARA, reporting with Standard Table formats, and reviewing of Interim Deliverables. The Standard Tools will provide consistent content and clarity of data, parameters, and assumptions. Transparency will be improved by the Standard Tables, making it easier for the public and other interested parties to understand the risk assessment, and review will be facilitated because the basis for conclusions will be clear. Because Interim Deliverables are integral parts of the baseline risk assessment, their early review and resolution by EPA risk assessors will minimize rework and may reduce project schedules and budgets while improving quality of the final product.

Continuous involvement of the EPA risk assessor throughout the CERCLA remedial process will result in holistic consideration of risk issues during scoping and will ensure that appropriate and adequate data are collected. At later stages of the project, continuous involvement of the EPA risk assessor will promote reasonableness and consistency in risk management decision making by clearly providing risk managers with the information they need.

Through submission of electronic Standard Tables, CERCLIS 3 risk data reporting requirements will be met electronically. Submission of the risk data to CERCLIS 3 will also fulfill the review objectives of Superfund Administrative Reform #6A by providing the public and other interested parties access to risk data. Use of the data by EPA risk assessors will improve consistency in future risk assessments.

Dated: March 17, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 98–7639 Filed 3–23–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1208–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1208-DR), dated March 9, 1998, and related determinations.

EFFECTIVE DATE: March 17, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 9, 1998:

Barbour, Butler, Conecuh, Crenshaw, Henry, and Randolph Counties for Individual Assistance and Public Assistance.

Coffee, Covington, Dale, Escambia, Geneva, and Houston Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7610 Filed 3–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Calhoun and Gulf Counties for Public Assistance (already designated for Individual Assistance)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7608 Filed 3–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 17, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Jackson County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7609 Filed 3–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209-DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 17, 1998.

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FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

DeCatur and Mitchell Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7611 Filed 3–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 11, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 11, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from severe storms and flooding beginning on March 7, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

Baker, Dougherty, Irwin, Miller, Montgomery, and Seminole Counties Individual Assistance.

All counties within the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–7612 Filed 3–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209-DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 14, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

DeCatur and Monroe Counties for Individual Assistance.

Baker, Coffee, Crisp, Dougherty, Irwin, Lee, Miller, and Montgomery Counties for Public Assistance (already designated for Individual Assistance).

Appling, Atkinson, Ben Hill, Berrien, Bleckley, Brooks, Burke, Calhoun, Candler, Clay, Colquitt, Cook, Dodge, Dooly, Douglas, Early, Emanuel, Heard, Jefferson, Johnson, Jenkins, Laurens, McIntosh, Pike, Pulaski, Quitman, Randolph, Screven, Stewart, Sumter, Talbot, Telfair, Terrell, Thomas, Toombs, Treutlen, Webster, Wheeler, Wilcox, and Worth Counties for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7613 Filed 3–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Bacon, Crawford, Haralson, Jeff Davis, Macon, and Tift for Individual Assistance and Public Assistance.

Ware County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7614 Filed 3–23–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-6914) published on page 13256 of the issue for Wednesday, March 18, 1998.

Under the Federal Reserve Bank of San Francisco heading, the entry for Security Bank Holding Company Employee Stock Ownership Plan, Coos Bay, Oregon, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Security Bank Holding Company Stock Ownership Plan, and Security Bank Holding Company, both of Coos Bay, Oregon; to acquire 100 percent of the voting shares of Family Security Bank, Brookings, Oregon (in organization).

Comments on this application must be received by April 10, 1998.

Board of Governors of the Federal Reserve System, March 19, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7650 Filed 3–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Mainline Bancorp, Ebensburg, Pennsylvania; to acquire 100 percent of the voting shares of First National Bank of Spangler, Spangler, Pennsylvania.

Board of Governors of the Federal Reserve System, March 19, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7649 Filed 3–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, March 30, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7838 Filed 3–20–98; 3:21 pm]

BILLING CODE 6210–01–P

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will hold its Spring 1998 meeting on Monday, April 20, 1998, through Thursday, April 23, 1998, in Arlington, Virginia. The meeting sessions will take place from 8:30 a.m.

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until 5 p.m. on Monday, Tuesday, Wednesday and from 8:30 a.m. until 12 noon on Thursday. The sessions will be held at the Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Washington National Airport Hilton for anyone needing hotel accommodations. Telephone: 800–HILTONS, 703–418–6800; FAX: 703–418–3763. Please specify the Depository Library Council when you contact the hotel. Room cost per night is $124.

Michael F. DiMario,

Public Printer.

[FR Doc. 98–7615 Filed 3–23–98; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee Meeting

The National Vaccine Program Office of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: National Vaccine Advisory Committee (NVAC) Immunization Registries Workgroup on Privacy and Confidentiality.

Time and Date: 9 a.m.–5:30 p.m., April 6, 1998.

Place: The Hilton at Riverside, 2 Poydras at the Mississippi River, New Orleans, Louisiana 70140, telephone 504/561–0500.

Status: Open to the public, limited only by space available. The meeting room accommodates approximately 400 people.

Purpose: During a White House ceremony on July 23, 1997, the President directed the Secretary of Health and Human Services (HHS) to work with the States on integrated immunization registries. As a result, NVAC has formed a workgroup, staffed by the National Immunization Program (NIP) which will gather information for development of a National Plan of Action for Immunization Registries.

To assist in the formulation of this work plan, a series of public meetings, relating to (1) privacy and confidentiality; (2) resource issues; (3) technology and operations; and (4) ensuring provider participation, will be held throughout the Nation. These meetings will provide an opportunity for input from all partners and stakeholders which include state and local public health agencies, professional organizations of private health agencies, managed care organizations, employer-funded health care plans, vaccine manufacturers and developers, vendors and developers of medical information systems, information standards development organizations, parents, social welfare agencies, law enforcement agencies, legislators, privacy and consumer interest groups and other representatives of the public at large.

Based on the outcome of these meetings, a National Immunization Registry Plan of Action will be developed and proposed to NVAC for their deliberation and approval. This plan will identify registry barriers and solutions; strategies to build a registry network, resource requirements and commitments, and a target date for network completion.

Matters to be Discussed: Agenda items will include an overview of the Initiative on Immunization Registries and current immunization registry efforts and discussions by organizational representatives on privacy and confidentiality issues relevant to immunization registries.

Agenda items are subject to change as priorities dictate.

Terminology: Privacy—The right of an individual to limit access by others to some aspect of the person. Confidentiality—The treatment of information that an individual has disclosed in a relationship of trust and with the expectation that it will not be divulged to others in ways that are inconsistent with the understanding of the original disclosure. Individually identifiable information—Information that can reasonably be used to identify an individual (by name or by inference).

Questions To Be Considered

1. Should immunization data have different privacy requirements than the rest of the medical record?
2. How can the disclosure and re-disclosure of immunization information be controlled through policies, procedures, and legislation?
3. Should consent to participate be implied or required? In what form?
4. Should different levels of disclosure be possible? What levels should be available to what groups?
5. Who should have access to immunization registry data?
6. What information should be disclosed to an immunization registry?
7. What other uses can immunization registry data have?
8. Would ability to produce a legal record be a desirable function for the registry?
9. What fair information practices should be implemented (e.g., ability to correct the record, notice of being put in registry to parent)?
10. How long should information be kept in a registry?
11. How will privacy issues affect the following groups: parents, immigrants, religious groups, HIV-positive and other immunocompromised health conditions, law enforcement, victims of domestic violence, and custodial parents?
12. How should registries ensure that privacy policies are followed?
13. Do you have any comment or recommendation for NVAC/CDC/HHS related to the implementation of the network of state and community based registries and do you have any concerns?
14. Do you feel that there is a need for the Federal Government to provide leadership in developing state and community based immunization registries? What should the role of the Federal Government be in this effort?
15. Given the mandate of Health Insurance Portability and Accountability Act (HIPPA) to create a unique health identifier, how should that goal be achieved while minimizing the probability of inappropriate use of the identifier?
16. What steps can be taken to prevent unauthorized re-disclosure of information already provided to an organization or person?
17. What data capture technology (e.g., bar codes, voice recognition, etc.) can minimize the negative impact on workflow?
18. What techniques (e.g., standard knowledge representation such as Arden Syntax) can be used to disseminate vaccination guidelines to individual registries quickly and with a minimum of new programming required to update automated reminder/recall and forecasting based on the guidelines?
19. What legal barriers exist that prevent data sharing by MCOs and how can they be obviated?
20. What mechanism should be available to allow parents to opt out of the registry?
21. What agency/organization should be responsible for maintaining registry information?
22. How should consent for inclusion in an immunization registry be obtained? Should it be implicit or explicit?
23. What information should be included in an immunization registry?
24. Should registries include (and release) information on contraindications, adverse events, etc.?
25. Who should have access to immunization registry data and how can restricted access be assured?
26. What information should be available to persons other than the client/patient and the direct health care provider (e.g., schools)?
27. What is the best way to protect privacy and ensure confidentiality within a registry?
28. How should individuals/parents have access to registry information on themselves/their children?
29. Should data maintained in a state and community based immunization registry be considered public information?
30. Would national privacy and confidentiality standards help ensure that data maintained in an immunization registry is protected?

Contact Person for More Information: Robb Linkins, Ph.D., Chief, Systems Development Branch, Data Management Division, NIP, CDC, 1600 Clifton Road, NE, M/S E–62, Atlanta, Georgia 30333, telephone 404/639–8728, e-mail address: rxl3@cdc.gov.

Dated: March 19, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–7694 Filed 3–23–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of the HRSA Competitive Grants Preview; Correction

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction of deadline date.

SUMMARY: In notice FR Doc. 97–26645, in the issue of Thursday, October 9, 1997, make the following corrections:

In the table on page 52893, in the section HIV/AIDS Programs, under "Ryan White Title IV Coordinated HIV Services and Access to Research-Geographic Areas with Currently Funded Title IV Projects" and "Ryan White Title IV Coordinated HIV Services and Access to Research-New Geographic Areas," the deadline dates are corrected to read "April 13, 1998."

On page 52897, in column 2, in the twentieth line, the deadline date is corrected to read "April 13, 1998."

On page 52898, in column 1, in the twentieth line, the deadline date is corrected to read "April 13, 1998."

Dated: March 16, 1998.

James J. Corrigan,

Acting Associate Administrator for Management and Program Support.

[FR Doc. 98–7497 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of the HRSA Competitive Grants Preview; Correction

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction of deadline date.

SUMMARY: In notice FR Doc. 97–26645, in the issue of Thursday, October 9, 1997, make the following corrections:

In the table on page 52893, in the section HIV/AIDS Programs, under "Ryan White Title III HIV Planning Grants," the deadline dates is corrected to read "June 15, 1998."

On page 52896, in column 3, in the fifty-sixth line, the deadline date is corrected to read "June 15, 1998."

Dated: March 16, 1998.

James J. Corrigan,

Acting Associate Administrator for Management and Program Support.

[FR Doc. 98–7498 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of the HRSA Competitive Grants Preview; Cancellation for Ryan White HIV Service Delivery Models

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Cancellation of notice of availability of funds.

SUMMARY: This notice rescinds the Notice of Availability of funds in notice FR Doc. 97–26645, in the issue of Thursday, October 9, 1997 on the following pages:

In the table on page 52893, in the section HIV/AIDS Programs, under "Ryan White HIV Service Delivery Models."

On page 52898, in column 2, line eighteen, "Ryan White HIV Service Delivery Models."

Dated: March 16, 1998.

James J. Corrigan,

Acting Associate Administrator for Management and Program Support.

[FR Doc. 98–7499 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; New System of Records

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notification of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Health Resources and Services Administration (HRSA) is publishing notice of a proposal to add a new system of records 09–15–0060, Minority/Disadvantaged Health Professions Programs, Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions. HRSA proposes to add names and social security numbers (SSN) of participants in the health professions programs of Title VII of the Public Health Service Act, in sections 739 Centers of Excellence, and 740 Educational Assistance Regarding Undergraduates. This new system of records is used for program evaluation to effectively track program participants through the health professions pathway to a health professions practice outcome. Participants will be advised that the provision of SSNs is voluntary.

DATES: HRSA invites interested parties to submit comments on the proposed new use of existing record on or before May 4, 1998. HRSA has sent a Report of New System of Records to the Congress and to the Office of Management and Budget (OMB) on March 2, 1998. The New System of Records will be effective 40 days from the date submitted to OMB unless HRSA receives comments which would result in a contrary determination.

ADDRESS: Please address comments to Richard E. Henrichsen, the Health Resources and Services Administration (HRSA) Privacy Act Officer, Department of Health and Human Services, 5600 Fishers Lane, Room 14A–20, Rockville; Maryland 20857; telephone (301) 443–3780. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Director, Division of Disadvantaged Assistance, Room 8A–09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–2100. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration (HRSA) proposes to establish a new system of records: 09–15–0060, "Minority/Disadvantaged Health Professions Programs, HHS/HRSA/BHPr." This program awards grants to schools of allopathic medicine, osteopathic medicine, dentistry, optometry, pharmacy, public health, allied health, podiatric and chiropractic medicine, veterinary medicine, public and non-profit private schools which offer graduate programs in clinical psychology, and other public or private non-profit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from these schools. Grants are also awarded to health professions schools for the purpose of assisting them in supporting programs of excellence in health professions education for minority individuals.

The purposes of the records maintained in this system are to: (1) Maintain information relative to the activities and participants of programs of institutions and organizations awarded grants under this program; (2) to monitor grantees' performance outcomes and progress in meeting stated objectives; (3) to track individual program participants using aggregate

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data base identifiers with other aggregate data bases from various sources in order to assess program effectiveness and outcomes; and (4) to compile and generate managerial and statistical reports.

HRSA will permit disclosure of the records to third parties pursuant to a routine use as follows. The first routine use permits disclosure to a congressional office to allow subject individuals to obtain assistance from their representatives in Congress, if they so desire. The second routine use allows disclosure to the Department of Justice or a court, in the event of litigation. The third routine use allows disclosure of records to contractors for the purposes of data analysis and record systems processing and refinement.

For monitoring of this program and determining its outcomes and effectiveness, grantees will be asked to provide the names of participants in their programs.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the alteration becomes effective.

Dated: March 2, 1998.

Claude Earl Fox,

Acting Administrator.

09–15–0060

SYSTEM NAME:

Minority/Disadvantaged Health Professions Programs, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Institutional grantees, student and faculty participants in the Health Careers Opportunity Program, and Centers of Excellence Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of the institutional grantee, grant number, type of grantee institution, budget information, project dates, amount of grant award, program participants by name, date of birth, social security number, race ethnicity and gender, current educational pathway or practice status of participants, outcomes of program participation for participants, and programmatic results for the grantee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Programs are authorized by Title VII, sections 739 Center of Excellence and 740 Educational Assistance Regarding Undergraduates of the Public Health Service Act, as amended by Pub. L. 102–408.

PURPOSE(S):

1. To maintain information relative to the activities and participants of programs conducted by institutions and organizations awarded grants under this program.

2. To monitor grantees' performance outcomes and progress in meeting stated objectives.

3. To track individual student program participants in order to evaluate program effectiveness and outcomes.

4. To compile and generate statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual participant or institutional grantee, in response to an inquiry from the congressional office made at the request of the student or the institution.

2. Disclosure may be made to the Department of Justice, or to a court or other tribunal, from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof, where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in such case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. HRSA may disclose records to Department contractors and subcontractors for the purposes of conducting data analysis for program evaluations, compiling managerial and statistical reports, and record systems processing and refinement.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on computer hard drives and/or disk packs.

RETRIEVABILITY:

Retrieval will be by grantee name or by grant number or programs' participant name and/or social security number.

SAFEGUARDS:

1. *Assign Responsibility for Security:* Assign responsibility for security to a management official knowledgeable in the nature of the information and process supported by the application and in the management, personnel, operational, and technical controls used to protect it.

2. *Develop Application Security Plan:* Plan for the adequate security of the application, taking into account the security of all systems in which the application will operate. Application security plans shall address application rules, training on use of the system, personnel security, contingency planning, technical controls, information sharing, public access controls.

3. *Review Application Controls:* Perform an independent review or audit of the security control in the application at least every 3 years.

4. *Authorize Processing:* Ensure that a management official authorizes in writing use of the application by confirming that its security plan as implemented adequately secures the application. The application must be authorized prior to operating and reauthorized at least every 3 years thereafter. Management authorization implies accepting the risk of each system used by the application.

5. *Implementation Guidelines:* DHHS Chapter 45–13 and supplementary

Chapter PHS.H:45–13 of the General Administration Manual; the DHHS Automated Information Systems Security Program Handbook; and Appendix III to OMB Circular No. A–130.

RETENTION AND DISPOSAL:

Records will be retained for 6 years after the grant is closed, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager.

Requests in person: An individual who appears at the site where records are stored seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of identification such as driver's license, passport, voter registration card, or union card. Identification with a current photograph is preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the records and that provided by the individual requesting access to the records. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure that may have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager at the address specified above and reasonably identify the record, specify the information being contested, and state the corrective action and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Institutions and organizations awarded grants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98 7496 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Health Resources and Services Administration, (HRSA), HHS.

ACTION: Publication of minor changes to system-of-records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," HRSA is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: HRSA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and changes in the system location of records, or the addresses of systems managers. A major alteration was made to system-of-records notice 09–15–0054, "National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr," 62 FR 12653–12656, March 17, 1997.

Dated: March 3, 1998.

James J. Corrigan,

Acting Associate Administrator for Management and Program Support.

Table of Contents

The following table of contents lists all currently active Privacy Act systems of records maintained by the Health Resources and Services Administration:

09–15–0001 Division of Federal Occupational Health (FOH) Health Records, HHS/HRSA/BPHC.
09–15–0002 Record of Patients' Personal Valuables and Monies, HHS/HRSA/BPHC.
09–15–0003 Contract Physicians and Consultants, HHS/HRSA/BPHC.
09–15–0004 Federal Employee Occupational Health Data System, HHS/HRSA/BPHC.
09–15–0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BPHC.
09–15–0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BPHC.
09–15–0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship/Loan Repayment Participant Records System, HHS/HRSA/BPHC.
09–15–0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHPr.
09–15–0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.
09–15–0042 Physician Shortage Area Scholarship Program, HRSA/HRSA/BPHC.
09–15–0044 Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.
09–15–0046 Health Professions Planning and Evaluation, HHS/HRSA/OA.
09–15–0054 National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr.
09–15–0055 Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/OSP.
09–15–0056 National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.
09–15–0057 Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr.
09–15–0058 Faculty Loan Repayment Program, HHS/HRSA/BHPr.
09–15–0059 Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OMPS.

Changes

09–15–0001

SYSTEM NAME:

Division of Federal Occupational Health (FOH) Health Records, HHS/HRSA/BPHC.

Minor changes have been made to this system-of-records notice. The following category should be revised:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4530 East West

Highway, 3rd Floor, Bethesda, MD 20814.

* * * * *

09–15–0007

SYSTEM NAME:

Patients Medical Record System PHS Hospitals/Clinics, HHS/HRSA/BPHC.

Minor changes have been made to this system-of-records notice. The following category should be revised:

* * * * *

Appendix 2—Federal Records Centers

Federal Archives and Records Center, 380 Trapelo Road, Waltham, Massachusetts 02154. Area served: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Federal Archives and Records Center, Military Ocean Terminal, Building 22, Bayonne, New Jersey 07002 (Closing in Spring of 1998). Area served: New York, New Jersey, Puerto Rico, the Virgin Islands, and the Panama Canal Zone.

Federal Records Center, Central Plains Region, 200 Space Center Drive, Lee's Summit, Missouri 64064 (Replacing Bayonne, New Jersey, center.

Federal Archives and Records Center, 5000 Wissahickon Avenue, Philadelphia, Pennsylvania 19144. Area served: Delaware and Pennsylvania east of Lancaster.

Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409. Area served: District of Columbia, Maryland, Virginia, and West Virginia.

Federal Archives and Records Center, GSA, 1557 St. Joseph Avenue, East Point, Georgia 30344. Area served: North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, and Kentucky.

Federal Archives and Records Center, GSA, 7358 South Pulaski Road, Chicago, Illinois 60629. Area served: Illinois, Wisconsin, and Minnesota.

Federal Records Center, 3150 Springbro Road, Dayton, Ohio 45439. Area served: Indiana, Michigan, and Ohio.

National Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, Missouri 63118. Area served: Greater St. Louis Area.

Federal Archives and Records Center, Post Office Box 6216, Fort Worth, Texas 76115. Area served: Texas, Oklahoma, Arkansas, Louisiana, and New Mexico.

Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, California 94066. Area served: Nevada (except Clark County), California (except Southern California), and American Samoa.

Federal Archives and Records Center, Post Office Box 6719, Laguna Niguel, California 92677. Area served: Clark County, Nevada; Southern California (Counties of San Luis Obispo, Kern, San Bernadino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial, Inyo, and San Diego); and Arizona.

Federal Archives and Records Center, 6125 Sand Point Way, Seattle, Washington 98115. Area served: Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean area (except American Samoa).

* * * * *

09–15–0038

SYSTEM NAME:

Disability Claims of the Nursing Student Loan Program, HRSA/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following category should be revised:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Associate Division Director, Office for Campus Based Programs, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, MD 20857.

* * * * *

09–15–0039

SYSTEM NAME:

Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following category should be revised:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Associate Division Director, Office for Campus Based Programs, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, MD 20857.

* * * * *

09–15–0046

SYSTEM NAME:

Health Professions Planning and Evaluation, HHS/HRSA/OA.

A minor change has been made to this system-of-record notice. The following category should be revised:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority is found in the following sections of the Public Health Service Act: Title III, Part D, Primary Health Care (42 U.S.C. 254b); Title VII, Health Research and Training Facilities and Training of Professional Health Personnel (42 U.S.C. 292); Title VIII, Nurse Education (42 U.S.C. 296k); Title XXVI (42 U.S.C. 300ff–11); section 241 (42 U.S.C. 238j); and section 301 (42 U.S.C. 241).

Authority is also found in section 401 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 note).

* * * * *

09–15–0055

SYSTEM NAME:

Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/OSP.

Minor changes have been made to this system-of-records notice. The following categories should be revised:

* * * * *

SAFEGUARDS:

1. *Authorized users:* Access is limited to authorized Health Resources and Services Administration (HRSA) and contract personnel responsible for administering the program. Authorized personnel include the System Manager and Project Officer, and the HRSA Automated Information System (AIS) Systems Security Officer; and the program managers who have responsibilities for implementing the program. Both HRSA and the contractor shall maintain current lists of authorized users

2. *Physical safeguards:* Magnetic tapes, disc packs, computer equipment, and hard-copy files are stored in areas where fire and life safety codes are strictly enforced. All automated and nonautomated documents are protected on a 24-hour basis in locked storage areas. Security guards perform random checks on the physical security of the records storage area. The contractor is required to maintain off site a complete copy of the system and all necessary files to run the computer organ donor-recipient match and update software.

3. *Procedural safeguards:* A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. All authorized users must sign a nondisclosure statement. Access to records is limited to those staff members trained in accordance with the Privacy Act and Automated Data Processing (ADP) security procedures. The contractor is required to assure that the confidentiality safeguards of these records will be employed and that it complies with all provisions of the Privacy Act. All individuals who have access to these records must have the appropriate ADP security clearances. Privacy Act and ADP system security requirements are included in the contract. The HRSA Project Officer and the System Manager oversee compliance with these requirements. The HRSA authorized users will make visits to the

contractor's facilities to assure security and Privacy Act compliance.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operations and Analysis Branch, Division of Organ Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–18, Rockville, MD 20857.

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09–15–0056

SYSTEM NAME:

National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following categories should be revised:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Petition for compensation, including petitioner's name and name of person vaccinated if different from petitioner and all relevant medical records (including autopsy reports and slides, radiological films, and home videos, if any), appropriate assessments, evaluations, prognoses, and such other records and documents as are reasonably necessary for the determination of eligibility for and the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USER AND THE PURPOSES OF SUCH USES:

1. Disclosures may be made to a Congressional office from the record of an individual, in response to an inquiry from the Congressional office made at the written request of the individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice (DOJ) has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have risen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the DOJ to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. HRSA will contract with expert medical consultants for the purpose of obtaining advice on petitioner's eligibility for compensation. Relevant records may be disclosed to such consultants. The consultants shall be required to maintain Privacy Act safeguards with respect to such records and return all records to HRSA.

4. HRSA will release the petitioner's complete medical file and may release consultants' report to the DOJ and the Special Master of the U.S. Court of Federal Claims for adjudication of the compensation claim.

5. HRSA will disclose for publication in the **Federal Register** the name of the petitioner, the name of the person vaccinated, if not the petitioner, the city and State where the vaccine was administered and the U.S. Court of Federal Claims' Docket Number as required by the National Childhood Vaccine Injury Act.

6. Records may be disclosed to organizations deemed qualified by the Secretary for the purpose of evaluating the administration, process, or outcomes of the National Vaccine Injury Compensation Program (as required by Congress). The purpose of the disclosure is to document the extent to which the National Vaccine Compensation Program is satisfying the goals and objectives of its authorizing legislation, i.e., maintaining a system for compensating those who have been injured by a vaccine that is fair and expeditious. Organizations to which information is disclosed for this use shall be required to maintain Privacy Act safeguards with respect to such records.

* * * * *

RETRIEVABILITY:

Retrieval is by (1) docket number assigned by the U.S. Court of Federal Claims, (2) the petitioner and/or name of person vaccinated, and (3) Social Security Number.

SAFEGUARDS:

1. *Authorized users:* Access is limited to the System Manager and authorized HRSA/BHPr personnel responsible for administering the program. HRSA/BHPr will maintain a current list of authorized users.

2. *Physical safeguards:* All files are stored in an electronic carriage filing system which can be locked and secured during non-work hours; disk packs and computer equipment are retained in areas where fire and safety codes are strictly enforced. All automated and non-automated documents are protected on a 24-hour basis in security areas. Security guards perform random checks of the physical security of the record storage area.

3. *Procedural safeguards:* HRSA/BHPr has established stringent safeguards in line with the sensitivity of the records. These include: Transmitting records to consultants by Federal Express, United Parcel Service, or other courier service to ensure that a signature is required upon receipt of the records; escorting visitors into areas where records are maintained; utilizing passwords for computer access; and securing areas where records are stored. A password is required to access the terminal and the data set name controls the release of data only to authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office.

RETENTION AND DISPOSAL:

The records shall be disposed of by shredding twenty-five years after the termination of all administrative and judicial proceedings, determined by a final adjudication. Upon written notification to the Government, the petitioner shall have the right to reclaim the original medical records submitted to the Government, after the final adjudication.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager at the above address.

Request in person: A subject individual who appears in person seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as a driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the records and that provided by the individual requesting access to the record. No

verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: To determine if a record exist about you, write to the System Manager. The request must contain the name and address of the individual, assigned court docket number (if known), and a written statement that the requester is the person he/she claims to be and that he/she understands that the request or acquisition of records pertaining to another individual, under false pretenses, is a criminal offense subject to a $5000 fine.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

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09–15–0057

SYSTEM NAME:

Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following categories should be revised:

* * * * *

PURPOSE(S):

1. To maintain all information relative to the application for an awarding of scholarship(s) to an individual.

2. To monitor recipient's continued eligibility.

3. To monitor recipient's employment in nursing shortage areas in fulfillment of recipient's service obligations.

4. To monitor all repayment actions until the repayment obligation is satisfied.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Associate Division Director, Office for Campus Based Programs, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, MD 20857.

* * * * *

09–15–0058

SYSTEM NAME:

Faculty Loan Repayment Program, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-record notice. The following categories should be revised:

* * * * *

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8A–09, Rockville, MD 20857.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, as amended, section 738 (42 U.S.C. 294cc). This section authorizes the establishment of a program for entering into contract with individuals from disadvantaged backgrounds for repayment of educational loans in exchange for teaching services.

SAFEGUARDS:

1. *Authorized users:* Personnel of the Division of Student Assistance and other components of the Health Resources and Services Administration.

2. *Physical safeguards:* Magnetic tapes, microfilms, disk packs, computer equipment, and hard copy files are stored in areas where fire and life safety codes are strictly enforced. Twenty-four hour, seven-day security guards perform random checks on the physical security of the data. All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. *Procedural and technical safeguards:* A password is required to access the terminal, and a software security system controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. *Implementation guidelines:* DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and the Department's Information Systems Security Handbook.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8A–09, Rockville, MD 20857.

* * * * *

09–15–0059

SYSTEM NAME:

Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OMPS.

Minor changes have been made to this system-of-records notice. The following categories should be revised:

* * * * *

SYSTEM LOCATION:

Executive Secretariat, Division of Policy Review and Coordination, Office of Management and Program Support, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 14A–08, Rockville, MD 20857.

Office of Program Support, Bureau of Health Professions, HRSA, 5600 Fishers Lane, Room 8–15, Rockville, MD 20857.

Executive Secretariat, Office of Program Support, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–08, Rockville, MD 20857.

Office of Program and Policy Development, Bureau of Primary Health Care, HRSA, 4350 East West Highway, Room 7–2B3, Bethesda, MD 20814.

Office of the Director, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18–05, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Policy Coordinator: Director, Division of Policy Review and Coordination, Office of Management and Program Support, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 14A–08, Rockville, MD 20857.

System Manager: Chief, Executive Secretariat, Division of Policy Review and Coordination, Office of Management and Program Support, HRSA, 5600 Fishers Lane, Room 14A–08, Rockville, MD 20857.

System Manager: Executive Secretariat, Office of Program Support, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–08, Rockville, MD 20857.

System Manager: Information Systems Specialist, Office of Program and Policy Development, Bureau of Primary Health Care, HRSA, 4350 East West Highway, Room 7–2B3, Bethesda, MD 20814.

System Manager: Correspondence Coordinator, Office of the Director, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18–05, Rockville, MD 20857.

* * * * *

[FR Doc. 98–7500 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: International Cooperative Biodiversity Groups.

Date: April 14–16, 1998.

Time: April 14—9:00 a.m. to Recess, April 15—9:00 a.m. to Recess, April 16—9:00 a.m. to Adjournment.

Place: Double Tree Hotel—Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lalita Palekar, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7575.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: March 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7550 Filed 3–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Minority-Based Community Clinical Oncology Program.

Date: April 16, 1998.

Time: 9:00 a.m. to Adjournment.

Place: Ramada Inn—Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 636B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–3428.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: March 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7552 Filed 3–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Oncogene Deregulation and Tumor Suppressor Gene Loss of Function in CLL.

Date: April 13–15, 1998.

Time: April 13—7:00 p.m. to Recess, April 14—8:00 a.m. to Recess, April 15—8:00 a.m. to Adjournment.

Place: The Latham Hotel, 135 South Seventeenth Street, Philadelphia, Pennsylvania 19103.

Contact Person: Kevin Ryder, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611D, 6130 Executive Boulevard, MSC 7403, Bethesda, MD 20892–7403, Telephone: 301/402–2785.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Application and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: March 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7553 Filed 3–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Prevention of Weight Gain and "Premier" Lifestyle Interventions for Blood Pressure Control—Clinical Trial.

Date: April 3, 1998.

Time: 8:00 a.m.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Valerie L. Prenger, Ph.D., Two Rockledge Center, Room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.

Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Retrovirus Epidemiology, Donor Study (REDS) (Telephone Conference Call).

Date: April 8, 1998.

Time: 1:00 p.m.

Place: Rockledge Building, Room 7204, 6701 Rockledge Drive, Bethesda, MD 20892–7924.

Contract Person: Eric H. Brown, Ph.D., Two Rockledge Center, Room 7204, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0299.

Purpose/Agenda: To review and evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade

secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93–839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 17, 1998.

LaVerne Y. Springfield,

Committee Management Officer, NIH.

[FR Doc. 98–7551 Filed 3–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–8 M2.
Date: April 13–15, 1998.
Time: 5:00 PM.
Place: Marriott Residence Inn, 8901 Gilman Drive, LaJolla, California 92037, Telephone: (619) 587–1770.
Contact: Roberta J. Haber, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8898.
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7554 Filed 3–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: March 24, 1998.
Time: 4:40 p.m.
Place: NIH, Rockledge 2, Room 4216, Telephone Conference.
Contact Person: Dr. Harold Davidson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4216, Bethesda, Maryland 20892, (303) 435–1776.

Name of SEP: Biological and Physiological Sciences.
Date: March 26–27, 1998.
Time: 7:00 p.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Sherry Dupere, Scientific Review Administrator, 6701 Rockledge Drive, Room 5136, Bethesda, Maryland 20892, (303) 435–1021.
Name of SEP: Biological and Physiological Sciences.
Date: March 30, 1998.
Time: 9:00 a.m.
Place: NIH, Rockledge 2, Room 5204, Telephone conference.
Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, Maryland 20892, (303) 435–1259.

Name of SEP: Clinical Sciences.
Date: April 1, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Biological and Physiological Sciences.
Date: April 2–3, 1998.
Time: 7:30 p.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1045.

Name of SEP: Biological and Physiological Sciences.
Date: April 3, 1998.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4144, Telephone Conference.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Clinical Sciences.
Date: April 3, 1998.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4216, Telephone Conference.
Contact Person: Dr. Harold Davidson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4216, Bethesda, Maryland 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 6, 1998.
Time: 12:30 p.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Clinical Sciences.
Date: April 8, 1998.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 4218, Telephone Conference.
Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Biological and Physiological Sciences.
Date: April 8, 1998.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 5202, Telephone Conference.
Contact Person: Dr. Anita Miller Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Clinical Sciences.
Date: April 9, 1998.
Time: 2:00 p.m.
Place: NIH, Rockledge 2 Room 4100, Telephone Conference.
Contact Person: Dr. Jeanne Ketley, Scientific Review Administrator, 6701 Rockledge Drive, Room 4100, Bethesda, Maryland 20892, (301) 435–1789.

Name of SEP: Clinical Sciences.
Date: April 13, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4128 Telephone Conference.
Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435–1210.

Name of SEP: Biological and Physiological Sciences.
Date: Arpil 16–17, 1998.
Time: 8:30 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701 Rockledge Drive, Room 4204, Bethesda, Maryland 20892, (301) 435–1221.

Name of SEP: Biological and Physiological Sciences.
Date: April 29, 1998.
Time: 2:30 p.m.

Place: NIH, Rockledge 2, Room 5196, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Biological and Physiological Sciences.

Date: June 12, 1998.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Sandy Warren, Scientific Review Administrator, 6701 Rockledge Drive, Room 5134, Bethesda, Maryland 20892, (301) 435–1019.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Behavioral and Neurosciences.

Date: April 10, 1998.

Time: 8:30 a.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Multidisciplinary Sciences.

Date: June 29–30, 1998.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435–1174.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7555 Filed 3–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA) Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in April 1998.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Program Planning and Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: April 1, 1998.

Place: Conference Room 12–94, Parklawn Building, 600 Fishers Lane, Rockville, MD 20857.

Closed: April 1, 1998 10:30 a.m.—adjournment.

Contact: Joan Harrison, Room 17–89, Parklawn Building, Telephone: (301) 594–2811 and FAX: (301) 443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: March 18, 1998.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 98–7582 Filed 3–23–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA); Notice of Meeting

Pursuant to Pub. Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in May 1998.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: May 18–19, 1998.

Place: Residence Inn, Missouri Room, 335 Wisconsin Avenue, Bethesda, MD 20815.

Closed: May 18, 1998 9:00 a.m.—5:00 p.m.; May 19, 1998 9:00 a.m.—adjournment.

Panel: Center for Mental Health Services State Reform Grants.

Contact: Marcus A. Hairstone, Ph.D., Room 17–89, Parklawn Building, Telephone: 301–443–9919 and FAX: 301–443–3437.

Dated: March 18, 1998.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 98–7583 Filed 3–23–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area, California, for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the Draft Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area, California. This recovery plan includes 28 species, of which 14 species are federally listed as endangered or threatened. The draft plan includes recovery criteria and recommended management actions for the plants—San Mateo thornmint (*Acanthomintha obovata* ssp. *duttonii*), Tiburon mariposa lily (*Calochortus tiburonensis*), Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*), coyote thistle (*Ceanothus ferrisae*), fountain thistle (*Cirsium fontinale* var. *fontinale*), Presidio clarkia (*Clarkia franciscana*), Pennell's birds-beak (*Cordylanthus tenuis* ssp. *capillaris*), Santa Clara Valley dudleya (*Dudleya setchellii*), San Mateo woolly sunflower (*Eriophyllum latilobum*), Marin dwarf flax

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(*Hesperolinon congestum*), white-rayed pentachaeta (*Pentachaeta bellidiflora*), Metcalf canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), Tiburon jewelflower (*Streptanthus niger*), and the bay checkerspot butterfly (*Euphydryas editha bayensis*); and an additional six species of plants, one species of moth, and seven harvestman (spider) species that are considered to be species of concern are addressed in the draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before June 22, 1998.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California (telephone (916) 979–2725). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Wayne S. White, Field Supervisor, Ecological Services, at the above Sacramento address.

FOR FURTHER INFORMATION CONTACT: Karen Miller, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The 28 species of plants and animals covered in the draft recovery plan are primarily restricted to serpentine soils habitat in the San Francisco Bay area of California. Conversion of habitat to urban and industrial uses has extirpated the listed species and species of concern from the majority of their historic ranges. The remaining natural communities are highly fragmented, and many are marginal habitats in which these species may not persist during catastrophic events, such as fire or persistent drought. Natural communities also have been altered permanently by the introduction of aggressive, nonnative plants, which now dominate in many of the remaining undeveloped areas.

The objectives of this recovery plan are two-fold: (1) to delist the plants San Mateo thornmint, Tiburon mariposa lily, Tiburon paintbrush, coyote thistle, fountain thistle, Presidio clarkia, Pennell's birds-beak, Santa Clara Valley dudleya, San Mateo woolly sunflower, Marin dwarf flax, white-rayed pentachaeta, Metcalf canyon jewelflower, Tiburon jewelflower, and the bay checkerspot butterfly by protecting, enhancing, restoring, and appropriately managing their habitat; and (2) to ensure the long-term conservation of the 14 species of concern that occur in the same serpentine habitats with the listed species.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 13, 1998.

Don Weathers,

Acting Regional Director, Region 1.

[FR Doc. 98–7575 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Pursuant to 25 CFR 83.9(a) notice is hereby given that: The Nehantic Tribe and Nation, Inc., 231 West Main Street, Chester, Connecticut 06412, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on September 5, 1997, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) of the Federal regulations, third parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427—MIB, 1849 C Street, NW., Washington, DC 20240, (202) 208–3592.

Dated: March 11, 1998.

Hilda Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 98–7549 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(NV–020–1430–01; N–62361)

Notice of Realty Action for Proposed Agricultural Lease of Public Lands, Nevada.

AGENCY: Bureau of Land Management, Interior.

ACTION: The proposed leasing of public land for agricultural purposes to resolve the unintentional, unauthorized use by the applicant.

The United States shall reserve the right to issue compatible rights-of-way or use permits over the lease lands. Such uses, however, shall not unduly impair the use of the lands for authorized purposes nor damage authorized improvements therein. The United States shall also reserve all of the coal, oil, gas, and other mineral deposits in the leased land together with the right to enter upon and prospect for, mine, and remove such minerals.

The proposed action is in conformance with the Paradise-Denio Management Framework Plan, dated July 9, 1982.

The parcel proposed for leasing under provisions of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920 is described as follows:

Mount Diablo Meridian, Nevada

T. 38 N., R. 32 E.,
Sec. 1: Lot 3.

The proposal would encumber approximately 39.660 acres of public land.

The parcel affected by the proposed lease is located near Willow Creek Ranch on the east side of the Jackson Mountain Range. The lands are currently under cultivation, so no additional surface disturbance of the area would occur as a result of this lease.

No other proposals will be accepted. The proposed parcel is currently being farmed by the applicant, and the pending lease would be issued to resolve the unintentional unauthorized use by the applicant, until a determination is made by the Bureau of Land Management on whether it is in the publics interests to sell the lands to the applicant for agricultural purposes, or terminate the agricultural use of the public lands. Use of the parcel by the applicant's family has occurred over three (3) generations, in belief that it was part of their deeded property. Therefore, no other proposals would be acceptable.

The proposal would be authorized by a lease for a term of 10 years. The lease could be renewed at the discretion of the authorized officer.

The proposed parcel has not been appraised at this time, so no estimate of rent is available. However, rent will not be less than the appraised fair market value.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445. In the absence of adverse comments, an application for the proposed use will be processed in accordance with proper application procedures.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada; 89445, or call (702) 623–1500.

Ron Wenker,

District Manager, Winnemucca, Nevada.

[FR Doc. 98–7528 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty Computation on Phosphate Production on Western Public Lands

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed revision of method for determining value used to compute royalty payments on phosphate ore mined on western public lands.

SUMMARY: The Minerals Management Service (MMS) is soliciting comments on a proposal to adopt a new method for determining the value of production used to compute royalties on phosphate ore produced from Federal leases in the State of Idaho.

DATES: Submit comments on or before April 23, 1998.

ADDRESSES: Send your written comments to David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, PO Box 25165, MS 3021, Denver, Colorado 80225–0165; or e-Mail RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Herbert B. Wincentsen, Chief, Solid Minerals Valuation and Reporting Branch, Minerals Management Service, PO Box 25165, Mail Stop 3153, Denver, Colorado 80225–0165, telephone (303) 275–7210.

SUPPLEMENTARY INFORMATION: On October 16, 1997, the Secretary of the Interior (Secretary) approved an April 16, 1997, recommendation from the Royalty Policy Committee (RPC) to revise the current method of adjusting the value used to compute royalty payments on Federal phosphate production.

RPC is a committee of the MMS Advisory Board (Board). The Board was created under the authority of the Federal Advisory Committee Act. The Board's purpose includes, in relevant part, providing advice to the Secretary, the Director, MMS, and other Department of the Interior (Department) officials on royalty management of Federal and Indian leases. RPC includes representatives of States which share in mineral revenues from Federal lands; Indian tribes and allottees whose mineral revenues MMS collects in trust; and oil and gas and solid minerals producing industries who pay royalties; and the public.

RPC Recommendations

RPC made the following recommendations concerning phosphate valuation which were approved by the Secretary:

1. The current indexing procedure, which utilizes the Gross Domestic Product—Implicit Price Deflator (GDP–IPD) to annually adjust the phosphate value for royalty calculation purposes, should be discontinued.

2. The phosphate value should be determined using a weighted composite index methodology having the following indices and weights:

- The Chemical and Fertilizer Minerals Mining Index (Standard Industry Code (SIC) 147), weighted at 50 percent.
- The Phosphate Rock Index (SIC 1475), weighted at 25 percent.
- The Phosphatic Fertilizers Index (SIC 2874), weighted at 25 percent.

The phosphate unit value would be recalculated annually, as under the existing indexing procedure.

3. This recommended methodology should continue for 5 years, at which time the methodology and the values determined thereunder will be examined to assure there is a continued relationship to the marketplace.

4. The valuation methodology applies only to Federal phosphate production; there is no Indian phosphate production. State or fee phosphate leases are also unaffected unless the parties to a State or fee lease elect to use the Federal valuation methodology.

5. The recommended composite indexing method will not be retroactive. The methodology will become effective if and when approved by the Department.

Problems Identified in RPC Report

RPC identified the following problems with the current phosphate valuation method:

1. There is a lack of open market (arm's-length) sales of phosphate ore, the product on which the value for royalty purposes is based. The Western phosphate industry has been, and continues to be, characterized by vertically integrated companies. These companies consume virtually all phosphate ore production internally, to make a variety of downstream refined phosphate based fertilizers and elemental phosphorus.

2. About 16 years have elapsed since the Department adopted an indexed valuation adjustment method using GDP–IPD. As expected, the P_2O_5 unit value has steadily increased each year, consistent with the use of a broad-based measure of price changes such as the GDP–IPD.

3. Comparison of the Federal GDP–IPD indexed-valuation methodology to the market shows that its use has failed to accurately track the relative rise and fall of a single product or market such as that for phosphate rock; therefore, a valuation problem currently exists.

4. The valuation problem will grow with continued use of the GDP–IPD. The continued use of the GDP–IPD will increase the P_2O_5 unit value at the same rate as the IPD deflates the GDP. This is not a true reflection of changes in the phosphate marketplace because it does not take into consideration the changing phosphate product consumption pattern and the ancillary price impacts on phosphate ore.

Background of Phosphate Ore Valuation

Valuation Before 1975

Before 1975, phosphate royalty payments were based on a lease-imposed minimum rate of $0.25 per ton. Federal phosphate leases have historically carried lease terms requiring royalty to be paid on the greater of either $0.25 per ton or 5 percent of the gross value. Under this term, the 5 percent rate applies whenever the gross value exceeds $5 per ton. Before 1975, the value was assumed to be less than $5 per ton and thus the royalty rate remained fixed at $0.25 per ton.

Valuation From 1975 to 1981

In the early 1970's phosphate rock prices rapidly increased, surpassing the $5 per ton benchmark price for application of the 5-percent royalty rate. In 1974, an audit by the Department (the Office of Audit and Investigation) concluded that the Federal Government was not following its statutory mandate to collect not less than 5 percent of the gross value.

However, required use of the ad valorem royalty rate introduced a new problem. The Western phosphate industry is, for the most part, a vertically integrated industry internally consuming phosphate lease ore production in either electric furnaces to make elemental phosphorus or in wet acid plants to make a variety of phosphate-based fertilizers. The absence of significant quantities of open market sales was problematic since the ad valorem royalty was based on the unit sale or contract price obtained under bona fide arm's-length sales, as specified by regulations at 30 CFR 206.301 (1997).

Following extensive analysis over several years, then Secretary Thomas S. Kleppe decided on May 13, 1976, to use a net back valuation methodology where in open market (arm's-length) sales of beneficiated phosphate rock would be adjusted for beneficiation and related costs to arrive at the gross value of mine output, which is phosphate ore. This "Kleppe Method" valuation procedure was made retroactive to January 1, 1975.

The Kleppe Method was difficult to administer. In an advance notice published in the **Federal Register** (45 FR 74065, November 7, 1980), the Department stated that there were two problems related to the continued use of the Kleppe formula:

> During the period 1975 through 1979, arm's-length sales, both long-term sales and spot sales, were of sufficient magnitude to establish a realistic product value. In 1980, however, arm's-length sales diminished to less than 1 percent of total mine production in the western phosphate region...
>
> Also, this method was cumbersome, as it required the phosphate lessees to submit all their cost and sales data. These data, in turn, were audited by the Department and, after several months, a gross value was established. In most years, the royalty assessment was not determined until after the mining year was completed.

To overcome these problems, the Department recommended adoption of an index adjustment methodology; however, no specific index was recommended. The Department also solicited proposals on other methods for valuing phosphate ore.

Valuation From 1981 to the Present

Effective January 1, 1981, the Department adopted the index-based adjustment for P205 unit value determination in a **Federal Register** release (46 FR 9210, January 28, 1981). The index selected was the GDP–IPD, as published by the U.S. Department of Commerce, Bureau of Economic Analysis. In selecting that index, the Department left open the question of future valuation procedures, stating:

> If a better method is developed that more accurately reflects the value of phosphate rock, it will be considered at that time.

MMS has routinely recalculated each year's value and provided that value to industry. By 1995, MMS recognized that the GDP–IPD adjustment mechanism was developing values that did not appear to correlate with phosphate market changes. Moreover, if allowed to continue, the GDP–IPD adjusted phosphate value would eventually become completely unrelated to the marketplace. Operating under the RPC, the Phosphate Study Group and later, the Phosphate Valuation Subcommittee, was formed to examine whether an alternative valuation methodology could be agreed upon to replace the GDP–IPD index.

Chronology of Meetings

In March 1995, MMS contacted the State of Idaho, industry, and the Bureau of Land Management (BLM) asking for expressions of interest to form a study group to examine the Federal phosphate royalty valuation issue. All parties contacted agreed to meet to discuss the Federal phosphate valuation issue and, on June 22, 1995, these parties met with MMS representatives at BLM's Pocatello office. MMS representatives briefed the parties on (1) the phosphate valuation issue, (2) the Federal Advisory Committee Act, and (3) the relationships of the RPC and the various subcommittees.

In 1995, when RPC was initially formed, a subcommittee named the Phosphate and Other Leasable Solid Minerals Subcommittee was formed. This subcommittee was intended not only to address the phosphate valuation issue but perhaps other, not yet specified issues for other solid minerals. However, no additional meetings of this subcommittee occurred subsequent to its formation.

In a letter dated February 2, 1996, the RPC Chair notified the Chair of the Phosphate and Other Leasable Solid Minerals Subcommittee of his decision to segregate the phosphate valuation issue. In doing so, the Phosphate Subcommittee was created.

The Phosphate Subcommittee initially met on April 25, 1996, at J.R. Simplot's office in Pocatello, Idaho. Rules for

conducting the meeting and for approving recommendations were established. The composition of the Phosphate Subcommittee was modified, with the Caribou County Treasurer substituting for the representative from the Idaho State Treasurer's office. The final composition of the Phosphate Subcommittee included industry representatives, the Caribou County Treasurer, a representative from the Idaho State Lands, and a member of the public. MMS facilitators and BLM representatives also attended the meetings, providing background material, detailed analysis of the issue, and guiding the discussion. The Phosphate Subcommittee agreed to address the following issues:

1. Has the phosphate market changed in the last 15 years? If so, how has it impacted valuation?

2. Is the index adjustments using the GDP–IPD accurate or is there a more accurate method of valuing phosphate ore that should replace the GDP–IPD adjustment method?

3. Is the value accurate or should it be adjusted?

The Phosphate Subcommittee agreed not to reconvene until a proposal had been made. In the interim, MMS representatives and Idaho BLM representatives met on July 23 and 24, 1996, with a Washington Office BLM official for briefing on the purpose of the Phosphate Subcommittee.

The Phosphate Subcommittee reconvened on November 19, 1996, at BLM's Pocatello office to discuss an October 31 proposal to use a weighted-average composite index to adjust the annual unit value for phosphate valuation. The members agreed to review the proposal and reconvene in January 1997.

The Phosphate Subcommittee reconvened on January 22, 1997, at BLM's Pocatello office. Industry concurred with the proposal. The State and County officials, while agreeing that a valuation problem existed under the present methodology, were unable to recommend adoption of an alternative methodology that might impact royalty revenue streams that benefit the school system and county infrastructure.

The nonconsensus recommendation was presented to the RPC for consideration on April 16, 1997. RPC approved the recommendation under its voting rules, with 9 votes in favor, 1 opposed, and 4 abstentions.

Later, in a letter dated June 4, 1997, the Idaho State Treasurer wrote to the Chair, RPC, endorsing the RPC recommendation and asking that the Secretary accept and implement the recommendation.

On October 16, 1997, the Secretary approved the RPC recommendation for revising the methodology used to compute the value used for Federal phosphate production royalty payments.

Principal Provisions of the Proposed Valuation Revision

The following constitute the principal provisions of the proposed valuation revisions:

1. Use Producer Price Indexes (PPI) because PPI:

- Measures average changes in selling prices received by domestic producers (import prices are excluded);
- Emphasizes the reporting of realistic transaction prices, including discounts, premiums, rebates, allowances, etc., rather than list or book prices. No "futures markets" are used; and
- Reflects "point of production" prices exclusive of transportation.

2. No single index best represents the western phosphate industry. However, a composite of PPI's that are closely related to the phosphate mining industry provide a measurement that is better than the existing GDP–IPD index:

- The *Phosphatic Fertilizers Index* emphasizes price movements of downstream phosphate-based fertilizers that were manufactured from phosphate rock. All phosphate producers do not make fertilizers. Some are elemental phosphorus producers whose downstream refined products are not used in the fertilizer industry. Therefore, this index, in itself, does not represent downstream price changes for all phosphate producers.
- The *Chemical and Fertilizer Minerals Mining Index* represents the output of basic mining for phosphate, sodium, borates, and potash. This is the principal index for measuring mining output, excluding nonfuel and nonmetals. Also, these minerals are produced extensively in the western United States; therefore, this index is responsive to changes in western mine production.
- *The Phosphate Rock Index* represents beneficiated rock prices, nationwide. The nationwide output of phosphate rock is dominated by Florida's production; therefore, even though this index would seem to be most closely allied with the western phosphate producers, it cannot represent the single best indicator of Idaho production, particularly since almost all of the Idaho phosphate production is not sold on the open market.

The weighted composite index methodology is shown in Table 1 below:

TABLE 1.—COMPOSITE INDEX METHODOLOGY FOR FEDERAL PHOSPHATE VALUATION

Year	Phosphatic fertilizer index	Fertilizer mining index	Rock price index	Composite index	Index unit value
1988	127.30	99.60	81.30	101.95	$0.5310
1989	126.00	104.70	85.20	105.90	0.5516
1990	115.70	106.70	93.80	105.73	0.5507
1991	117.90	108.50	96.50	107.93	0.5621
1992	107.60	108.30	103.70	106.98	0.5572
1993	97.50	104.30	97.40	100.88	0.5254
1994	118.60	102.10	94.60	104.35	0.5435
1995	139.10	104.20	96.00	111.38	0.5801
1996	150.40	108.60	101.80	117.35	0.6112
Weight Factor (percent)	25	50	25	.....	.....
Base Year 1987	110.90	96.40	83.20	96.73	0.5038

As under the existing methodology, the unit value of phosphate ore is determined with reference to the prior year's index value compared to the base year value. For example:

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Existing Methodology

$$\text{1996 Phosphate Unit Value} = \text{1979 Base Year Unit Value} \times \frac{\text{1995 GDP-IPD}}{\text{1979 GDP-IPD}}$$

$$\text{1996 Phosphate Unit Value} = \$0.337/\text{Unit} \times \frac{107.5}{55.3} = \$0.6551/\text{Unit}$$

Revised Methodology

$$\text{1996 Phosphate Unit Value} = \text{1987 Base Year Unit Value} \times \frac{\text{1995 Composite Index}}{\text{1987 Composite Index}}$$

$$\text{1996 Phosphate Unit Value} = \$0.5038 \times \frac{111.38}{96.73} = \$0.5801/\text{Unit}$$

The revised methodology would not be applied retroactively. However, the weighted composite index calculated value would be compared retroactively to the GDP-IPD based value to form a basis for correcting for actual phosphate market trends. Using this comparison technique, 1987 forms a new base value year, when the GDP-IPD indexed value and the composite indexed (market based) value coalesced.

No attempt would be made to apply a one-time Kleppe Formula (net back) to determine actual industry production costs and revenues for the same reasons that were acknowledged by the Department in 1980:

- There is a continued lack of bona fide open market sales from which to base overall revenues and prices.
- The process takes too long and is cumbersome, entailing extensive data collection and consuming audit resources.

The phosphate value computed under the revised methodology would be examined through a market analysis every 5 years, to ensure that the new valuation methodology is, in fact, reflecting changes in the western phosphate industry. Since the analysis that was part of the Phosphate Subcommittee's work occurred in 1996, the values computed for phosphate ore will be examined and compared to market data in 2001.

Potential Revenue Impact

The revenue impact associated with this proposed revision to the value adjustment methodology is difficult to predict because the selected indexes are relatively more volatile than the GDP–IPD and they will follow market trends. Had this index been adopted for 1996 the impact would have been an annual reduction in royalty of about $444,000, or about 10.6 percent. However, royalty revenue is also impacted by the level of production from Federal leases as well as the unit value. Thus, royalty could either increase or decrease based solely on changes to the level of production even without any change to the valuation methodology.

Dated: March 17, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–7547 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-day Notice of Intention to Request Clearance of Collection of Information; Opportunity for Public Comment.

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the NPS invites public comments on (1) the need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The request is for revision of an existing information collection requirement approved by OMB and assigned clearance No. 1024–0037. Copies of the request and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below.

DATES: Public comments will be accepted on or before May 26, 1998.

SEND COMMENTS TO: Diane M. Cooke, Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service, 1849 C Street N.W., Room 3317, Washington, D.C. 20240, phone 202/208–3933.

FOR FURTHER INFORMATION CONTACT: Dr. Francis P. McManamon, Manager, Archeology and Ethnography Program, National Park Service, 1849 C Street N.W., Room NC210, Washington, D.C. 20240, phone: 202/343–4101.

SUPPLEMENTARY INFORMATION:

Title: Application for and issuance of Federal permits under the Archaeological Resources Protection Act and the Antiquities Act.

Departmental Form Numbers: DI–1926 (permit application), DI–1991 (permit form).

OMB Number: 1024–0037.

Expiration date: 7/31/98

Type of request: Renewal of clearance.

Description of need: Information collected responds to statutory requirements that Federal agencies (1) issue permits to qualified individuals and institutions desiring to excavate or remove archeological resources from public or Indian lands, and (2) specify terms and conditions, including reporting requirements, in permits. The information collected is reported annually to Congress and is used for land management purposes.

Automated data collection: At the present time, there is no automated way to gather this information.

Description of Respondents: Individuals, businesses, academic institutions, tribes or tribal members, Federal agencies and other parties wishing to excavate or remove archeological resources from public or Indian lands.

Estimated average number of respondents: 1050.

Estimated average burden hours per response: 1 hour.

Estimated annual reporting burden: 1050.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–7602 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service; and 4 units of the National Park System.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) Visitor Services Project and four parks (The Netherlands Carillon/The U.S. Marine Corps War memorial—Iwo Jima (part of the George Washington Memorial Parkway), the National Monuments and Memorials (National Mall), Klondike Gold Rush National Historical Park (Skagway, Alaska), and Whiskeytown National Recreation Area) propose to conduct visitor surveys to learn about visitor demographics and visitor opinions about services and facilities in these four parks. The results of the surveys will be used by park managers to improve the services they provide to visitors while better protecting park natural and cultural resources. Study packages that include the proposed survey questionnaires for these four proposed park studies have been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on these four proposed information collection requests (ICR). Comments are invited on: (1) the need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The purpose of the four proposed ICRs is to document the demographics of visitors to the four parks, to learn about the motivations and expectations these visitors have for their park visits, and to obtain their opinions regarding services provided by the four parks and the suitability of the visitor facilities maintained in the four parks. This information will be used by park planners and managers to plan, develop, and operate visitor services and facilities in ways that maximize use of limited park financial and personnel resources to meet the expectations and desires of park visitors.

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information collection for these four surveys.

DATES: Public comments will be accepted on or before April 23, 1998.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to: Margaret Littlejohn; Cooperative Park Studies Unit; Department of Forest Resources; College of Forestry, Wildlife and Range Sciences; University of Idaho; Moscow, ID 83844–1133.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGES SUBMITTED FOR OMB REVIEW, CONTACT: Margaret Littlejohn, phone: 208–885–7863, fax: 208–885–4261, or email: littlej@uidaho.edu.

SUPPLEMENTARY INFORMATION:

Title: National Park Service (NPS) Visitor Services Project Visitor Surveys at Four Parks.

Form: Not applicable.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information concerning visitor demographics and visitor opinions about the services and facilities that the National Park Service provides in each of these four parks. The proposed information to be collected regarding visitors in these four parks is not available from existing records, sources, or observation.

Automated Data Collection: At the present time, there is no automated way to gather this information, since it includes asking visitors to evaluate services and facilities that they used during their park visit. The intrusion on visitors to the parks is minimized by only contacting visitors during one 7–9 day period at each park.

Description of Respondents: A sample of visitors to each of these four parks.

Estimated Average Number of Respondents: 800 at The Netherlands Carillon/The U.S. Marine Corps War memorial—Iwo Jima, 800 at the National Monuments and Memorials (National Mall), 480 at Klondike Gold Rush National Historical Park (Skagway, Alaska), and 864 at Whiskeytown National Recreation Area.

Estimated Average Number of Responses: Each respondents will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated Average Burden Hours Per Response: 12 minutes.

Frequency of Response: One time per respondent.

Estimated Annual Reporting Burden: 160 hours at The Netherlands Carillon/ The U.S. Marine Corps War memorial—Iwo Jima, 1600 hours at the National Monuments and Memorials (National Mall), 96 hours at Klondike Gold Rush National Historical Park (Skagway, Alaska), and 173 hours at Whiskeytown National Recreation Area.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administration Program Center, National Park Service.

[FR Doc. 98–7603 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Issue a Prospectus for Operation of a Photographic and Art Studio Within Yosemite National Park

SUMMARY: The National Park Service will be releasing a concession Prospectus authorizing continued operation of a photographic and art business for the visiting public within Yosemite National Park. The operation is located in Yosemite Valley in close proximity to the park's Visitor Center. The operation consists of the sale of photographic and art supplies and equipment, works of art, publications and handicraft items. The operation is year-round with the peak season during the summer months. The average visitation to the park is approximately 4 million annually. The annual gross receipts over the last 5 years has averaged about $2 million. Staffing for the operation is 12–20 people. Limited employee housing is available on site. The new contract will be for five (5) years beginning October 1,1998. There is an existing concessioner which has operated satisfactorily under the existing contract and has a right of preference in renewal.

SUPPLEMENTARY INFORMATION: The cost for purchasing a Prospectus is $30.00.

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Parties interested in obtaining a copy should send a check (NO CASH) made payable to "National Park Service" to the following address: National Park Service, Pacific Great Basin Support Office, Office of Concession Program Management, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372. A Tax Identification Number (TIN) OR Social Security Number (SSN) MUST be provided on all checks. The front of the envelope should be marked "Attention: Office of Concession Program Management—Mail Room Do Not Open". Please include in your request a mailing address indicating where to send the Prospectus. Inquiries may be directed to Ms. Teresa Jackson, Office of Concession Program Management at (415) 427–1369.

Dates: March 12, 1998.

Holly Bundock,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–7598 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park and Preserve announce a forthcoming meeting of the Gates of the Arctic National Park and Preserve Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.

(2) Roll call.

(3) Approval of summary of minutes from January 14–15, 1998 meeting.

(4) Review agenda.

(5) Superintendent's introduction of guests and staff and review of Commission function and purpose.

(6) Superintendent's management/research reports.

a. Administration and management.

b. Park operations.

c. Resource management.

d. Subsistence program.

(7) Public and agency comments.

(8) Old business.

a. Correspondence.

b. Subsistence Management Plan work session.

c. Review traditional use area analysis.

(9) New business.

a. Hunting plan work session.

(10) Set time and place of next Subsistence Resource Commission meeting.

(11) Adjournment.

DATES: The meeting dates are:

The meeting will begin at 7 p.m. on Tuesday, April 7, 1998, and conclude at approximately 9 p.m. The meeting will reconvene at 8:30 a.m. on Wednesday, April 8, 1998, and conclude at 5 p.m. The meeting will reconvene at 8:30 a.m. on Thursday, April 9, 1998 and adjourn at approximately 12 p.m.

ADDRESSES: The meeting location is: National Park Service/United States Fish and Wildlife Service Building in Bettles, Alaska.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Superintendent, Gates of the Arctic National Park and Preserve, 201 First Avenue, Doyon Building, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Robert D. Barbee,

Regional Director.

[FR Doc. 98–7599 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, April 10, 1998. The meeting will convene at 7:00PM in the St. John Valley Regional Vocational Technical Center, in Frenchville, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

* The development and implementation of an interpretive program of Acadian culture in the state of Maine;

* The selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review of February 6, 1998 summary report.

2. Speaker: Sylvain Godin of the Village Historique Acadien on "The Changing Interpretation of Acadian Culture."

3. Report of the National Park Service project staff.

4. Opportunity for public comment.

5. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Dated: March 12, 1998.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 98–7601 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Trail of Tears National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held April 28, 1998 at 8:00 a.m., in Wagoner, Oklahoma at the Western Hills Guest Ranch State Park (between Tulsa and Tahlequah).

The Trail of Tears National Historic Trail Advisory Council was established pursuant to Pub. L. 100–192 establishing the Trail of Tears National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—Plan Implementation Status
—Trail Association Status
—Cooperative Agreements Negotiation
—Trail Route

The meeting will be open to the public. However, facilities and space for accommodating members of the public

are limited; and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Superintendent, Long Distance Trails Group Office—Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection at the office of the Superintendent, located in Room 205, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: March 12, 1998.

David M. Gaines,

Superintendent.

[FR Doc. 98–7600 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from New Mexico in the Possession of the Arizona State Museum, The University of Arizona, Tucson, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Arizona State Museum which meet the definition of "object of cultural patrimony" under Section 2 of the Act.

The cultural items are: four carved wooden birds, four wooden snakes, four wooden god heads, four unpainted wooden rods, and a ceremonial screen. Together, these items are collectively referred to as *Na'at'oye jish*, Lightning Way paraphernalia.

In 1927 or 1928, these items were removed from a cave in the Lukachukai Mountains by John Hands during University of Arizona summer expedition surveys of the Vandal Cave area of the Lukachukai Mountains under the direction of Byron Cummings of the Arizona State Museum/Department of Archeology. In 1931, John Hands donated this Lightning Way *jish* to the Arizona State Museum.

Consultation evidence presented by representatives of the Navajo Nation indicate that the Lightning Way is one of twelve major chants still performed in the Navajo Nation. Bundles for these Ways should only be in the possession of a qualified *Hataalii* (chanter, singer, or medicine person) capable of understanding the *jish*. In Navajo tradition, *jish* is only cared for or possess by a human being, it is not "property" capable of being "owned" in the Western meanings of the words.

Officials of the Arizona State Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these 16 cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Arizona State Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Navajo Nation.

This notice has been sent to officials of the Navajo Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dr. Gwinn Vivian, Acting Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721; telephone (520) 621–4500 before April 23, 1998. Repatriation of these objects to the Navajo Nation may begin after that date if no additional claimants come forward.

Dated: March 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–7581 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Plymouth, MA in the Possession of Plimoth Plantation, Inc., Plymouth, MA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Plymouth, MA in the possession of the Plimoth Plantation, Inc., Plymouth, MA.

A detailed assessment of the human remains was made by Plimoth Plantation professional staff in consultation with representatives of the Wampanoag Confederation on behalf of the Gay Head Tribe of Wampanoag Indians, a Federally-recognized Indian tribe; and the Mashpee Wampanoag, the Assonet Wampanoag, two Indian groups.

Between 1936 and 1945, human remains representing one individual were recovered from the Brown site on the Eel River in Plymouth, MA as part of an amateur excavation/surface collection by Harry Hornblower II. In 1987, Mr. Hornblower's estate donated his collections from the Brown site to Plimoth Plantation. No known individual was identified. No associated funerary objects are present.

Historical documents from the 17th and early 18th centuries [including the 1606 Champlain Map of Port St. Louis (Plymouth)] indicate the Brown site is located within Wampanoag historic homelands and corresponds to Wampanoag settlements along the Eel River during this period. Cultural material recovered at this site, including ceramics, points, and a gun flint indicate continuous occupation from the late Woodland into the early contact period. Archeological and ethnographic sources further indicate continuities of material culture and language between 17th century Wampanoag of the Eel River area and tribe and communities represented by the Wampanoag Confederation.

Based on the above mentioned information, officials of Plimoth Plantation, Inc. have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of Plimoth Plantation, Inc. have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Wampanoag Confederation.

This notice has been sent to officials of the Wampanoag Confederation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Karin Goldstein, Curator of Original Collections, Plimoth Plantation, P.O. Box 1620, Plymouth, MA 02362; telephone: (508) 746–1622, ext. 379, before April 23, 1998. Repatriation of the human remains to the Wampanoag Confederation may

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begin after that date if no additional claimants come forward.

Dated: March 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–7580 Filed 3–23–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy which meets the definition of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

The item is a clan mask made of buffalo hide, including an arm decoration with tin tinklers.

In November of 1938, this clan mask was bought from a member of the Pueblo of Jemez through Frank C. Hibben and E.F. Goad of the University of New Mexico on behalf of Douglas S. Byers, Director of the Robert S. Peabody Museum.

The cultural affiliation of this clan mask with the Pueblo of Jemez is clear. The mask is known by the religious leaders of the Pueblo of Jemez, and museum documentation indicates it is from the Pueblo of Jemez. Museum documentation further indicates that the Museum staff were aware at the time of acquisition this mask's importance to the clan it originated from and of its active role in the religious life of the community. Consultation evidence presented by representative of the Pueblo of Jemez indicates it is needed by traditional religious leaders for the practice of traditional Native American religion by present-day adherents. Further, representatives of the Pueblo of Jemez have stated that this mask was not and is not an object which can be alientated by any individual.

Based on the above-mentioned information, officials of the Robert S. Peabody Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Robert S. Peabody Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Robert S. Peabody Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Pueblo of Jemez.

This notice has been sent to officials of the Pueblo of Jemez. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact James W. Bradley, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490 before April 23, 1998. Repatriation of this object to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: March 16, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–7503 Filed 3–23–98 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Employment and Training Administration

JTPA Section 402 Migrant and Seasonal Farmworker Standardized Participant Information Reporting (SPIR) System; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Standardized Participant Information Reporting system (SPIR). A copy of the proposed information collection request (ICR) may be obtained by contacting the addressee listed below.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 26, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submissions of responses).

ADDRESSES: Anna Goddard, Director, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–5500 (VOICE) (this is not a toll-free number) or INTERNET: GODDARD@doleta.gov

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration of the Department of Labor is seeking an extension of its approved JTPA, Title IV, Section 402 Migrant and Seasonal Farmworker Standardized Participant Information Reporting (SPIR) system for a period of three program years (July 1, 1998 to June 30, 2001). This decision stems from favorable experience during both the pilot test year (ending June 30, 1995 with 19 grantees participating) and two consecutive program years (ending June 30, 1997). DOL is currently reviewing

the performance standards and reporting system for this program in an effort to enhance program accountability and improve reporting. As a result, future changes to the reporting format and instructions may be necessary. However, for the purpose of this approval, only minor modifications have been made in reporting due to cross-program changes in the **Federal Register** Notice to the definition of Race/Ethnicity and all references from AFDC to TANF.

II. Current Actions

The proposed ICR will be a continuation of an existing system currently in place and used by all Section 402 grantees as the primary reporting vehicle for individuals enrolled and terminated from the program, their demographic characteristics, training and services provided and outcomes including job placement and employability enhancements. This is a request for an extension of an existing collection from a previously approved ICR.

Type of Review: Extension.

Agency: Employment & Training Administration.

Title: Standardized Participant Information Reporting system for the JTPA Section 402 Migrant and Seasonal Farmworker Programs OMB Number: 1205–0350.

Recordkeeping: Grantees shall retain supporting and other documents necessary for the compilation and submission of the SPIR for three consecutive years.

Affected Public: Not-for-profit organizations.

Cite/Reference/Form/etc: The collection instrument is the Standardized Participant Information Record (SPIR) and Instructions. A SPIR Form is provided for optional use in gathering information at the grantee field office level. The SPIR itself is a computer file in a specified form which is submitted by grantees via diskette, modem or INTERNET.

Total Respondents: 53.

Frequency: Quarterly and One-Time Report.

Total Responses: 265 (53 times 5) (There are four quarterly submissions per year plus a fifth submission which includes the 13-week follow-up data obtained for individuals terminating in the last quarter of the program year.

Average Time per Response: 3.6 additional burden hours. The average time per response varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each program year. If the grantee has a fully developed MIS, the response time is limited to one-time programming plus processing time for each response. All efforts are being directed towards this end, so that response time for reporting will eventually sift down to an irreducible minimum with little human intervention. Currently, it is estimated at 3.6 hours per response.

Estimated Total Burden Hours: 954 hours. (53 respondents times 5 submissions times 3.6 hours each = 954 total hours)

Total Burden Cost (capital/startup): No additional Burden Cost for capital/startup as all grantees are currently reporting using the SPIR.

Total Burden Cost (operating/maintaining): DOL's estimated annual burden cost for maintaining a centralized SPIR database system for JTPA Title IV–B programs is $265,000 (53 grantees times $5,000). The cost for programs who maintain and operate their own data systems will vary widely among grantees, from nearly no additional cost to some higher figure depending on the state of automation attained by each grantee. However, the majority of grantees use DOL's statistical support contractor SPR Associates for data management. Therefore, there is no extra burden cost to grantees unless they purchase new automated equipment.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 18, 1998.

Anna Goddard,

Director, Office of National Programs.

[FR Doc. 98–7624 Filed 3–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

SUMMARY: Notice is hereby given that the Advisory Committee on Construction Safety and Health (ACCSH) will meet April 8–9, 1998, at the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC. This meeting is open to the public. Among items on the agenda at this meeting, OSHA will consult with ACCSH regarding any construction-specific considerations raised by a proposed standard on employer responsibility to pay for personal protective equipment.

DATES: Meetings will be held on April 8th and 9th, 1998 as described further in the body of this document.

FOR FURTHER INFORMATION CONTACT: Theresa Berry, Office of Public Affairs, Room N–3647, Telephone 202–219–8615 Ext. 106, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210.

SUPPLEMENTARY INFORMATION: ACCSH was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656). An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, Telephone 202–219–7894. All ACCSH meetings and those of its workgroups are open to the public. Individuals with disabilities requiring appropriate accommodations should contact Theresa Berry no later than April 3 at the address above.

ACCSH will meet on Wednesday, April 8 from 9 a.m. to 4:30 p.m., and on Thursday, April 9 from 9 a.m. to 1:00 p.m. in Room N–3437 B, C and D. The following items will be discussed at the meeting. On April 8, ACCSH and OSHA will discuss:

- A proposed standard regarding employer responsibility to pay for personal protective equipment;
- An historical overview of activities of previous ACCSH Work Groups, including Training, Safety and Health Programs, Women in Construction, Washing Facilities, Confined Space Entry, Scaffolding, and Sanitation and Decontamination;
- OSHA rulemaking activities regarding the construction industry, including Steel Erection (Subpart R), Fall Protection (Subpart M), and Respiratory Protection; and
- OSHA Link—OSHA's Computer Information System.

On April 9, ACCSH and OSHA will discuss:

- General activities of the Directorate of Construction (DOC), including a report on OSHA Special Emphasis Programs in Construction, residential construction grants, construction industry statistics;
- Special Recognition Programs for Construction.

Also on April 9, NIOSH will brief ACCSH on its construction research projects.

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Interested persons may submit written data, views or comments, preferably with 20 copies, to Theresa Berry, at the address above. Those submissions received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Interested persons may also request to make an oral presentation by notifying Theresa Berry before the meeting. The request must state the amount of time desired, the interest that the person represents, and a brief outline of the presentation. ACCSH may grant requests, as time permits, at the discretion of the Chair of ACCSH.

Signed at Washington, DC this 18th day of March, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–7623 Filed 3–23–98; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on April 5, 1998. The meeting will begin at 3:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Hyatt Regency Phoenix, 122 N. Second Street, Phoenix, AZ 85004, (602) 252–1234.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the committee meeting of Feb. 6, 1998.
3. Review of consolidated operating budget and expenses through Feb. 28, 1998.
4. Review the Finance Committee timetable for 1998.
5. Public comment.
6. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Jean Edwards at (202) 336–8811.

Dated: March 19, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–7728 Filed 3–20–98; 12:25 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on April 5, 1998. The meeting will begin at 8:00 a.m. and continue until the committee concludes its agenda.

LOCATION: Hyatt Regency Phoenix, 122 N. Second Street, Phoenix, AZ 85004, (602) 252–1234.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the committee's meeting of Feb. 6, 1998.
3. Consider and act on proposed revisions to 45 CFR Part 1623, Procedures for Suspension of Financial Assistance.
4. Consider and act on proposed revisions to 45 CFR Part 1606, Termination and Debarment Procedures; Recompetition.
5. Consider and act on proposed removal of 45 CFR Part 1625, Denial of Refunding.
6. Consider public comment and act on final rule 45 CFR Part 1644, Disclosure of Case Information.
7. Consider and act on proposed rule 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors
8. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Jean Edwards at (202) 336–8811.

Dated: March 19, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–7729 Filed 3–20–98; 12:25 p.m.]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on April 5, 1998. The meeting will begin at 8:00 a.m. and continue until the committee concludes its agenda.

LOCATION: Hyatt Regency Phoenix, 122 N. Second Street, Phoenix, AZ 85004, (602) 252–1234.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the committee's meeting of Feb. 6, 1998.
3. Consider and act on proposed revisions to 45 CFR Part 1623, Procedures for Suspension of Financial Assistance.
4. Consider and act on proposed revisions to 45 CFR Part 1606, Termination and Debarment Procedures; Recompetition.
5. Consider and act on proposed removal of 45 CFR Part 1625, Denial of Refunding.
6. Consider public comment and act on final rule 45 CFR Part 1644, Disclosure of Case Information.
7. Consider and act on proposed rule 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors
8. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Jean Edwards at (202) 336–8811.

Dated: March 19, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–7730 Filed 3–20–98; 12:25 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors 1997 Annual Performance Reviews Committee

TIME AND DATE: The 1997 Annual Performance Reviews Committee of the Legal Services Corporation Board of Directors will meet on April 6, 1998. The meeting will begin at 11:00 a.m. and continue until conclusion of the committee's agenda.

LOCATION: Hyatt Regency Phoenix, 122 N. Second Street, Phoenix, AZ 85004, (602) 252–1234.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the committee's meeting of Feb. 6, 1998.
3. Continue and complete the committee's performance appraisal of the President of the Corporation.
4. Continue and complete the committee's performance appraisal of the Inspector General of the Corporation.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Jean Edwards at (202) 336–8811.

Dated: March 19, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–7731 Filed 3–20–98; 12:25 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on April 6, 1998. The meeting will begin at 1:00 p.m. and continue until conclusion of the Board's agenda.

LOCATION: Hyatt Regency Phoenix, 122 North Second Street, Phoenix, AZ 85004, (602) 252–1234.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of Feb. 7, 1998.
3. Approval of minutes of the Board's executive session of Feb. 7, 1998.
4. Chairman's and Members' Reports.
5. President's Report.
6. Remarks by elected officials and special guests.
7. Consider and act on the report of the Board's Operations and Regulations Committee.

a. Consider and act on final rule, 45 CFR Part 1644, Disclosure of Case Information.

8. Consider and act on the report of the Board's Finance Committee.
9. Consider and act on the report of the Board's Provision for the Delivery of Legal Services Committee.
10. Consider and act on the report of the Board's 1997 Annual Performance Reviews Committee.
11. Inspector General's Report.

Closed Session

12. Briefing [1] by the Inspector General on the activities of the OIG.
13. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

14. Public comment.
15. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Jean Edwards at (202) 336–8811.

Dated: March 19, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–7732 Filed 3–20–98; 12:25 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket No. 98–042]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Dal Bon, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (650) 604–0887, fax (650) 604–1592.

NASA Case No. ARC–14206–1SB: Method And Apparatus for Assessing the Visibility of Differences Between Two Image Sequences;

NASA Case No. ARC–14189–1SB: Surface Imaging Skin Friction Instrument;

NASA Case No. ARC–14205–1SB: Automated Traffic Management System and Method;

NASA Case No. ARC–14120–1GE: Chemical Vapor Deposition for Thin Films for Waterproofing;

NASA Case No. ARC–12070–1GE: Aerogel-Loaded Tile Composite Material;

NASA Case No. ARC–14231–1GE: Multimodality Instrument for Tissue Characterization;

NASA Case No. ARC–14176–1LE: Evaporative Cooling Membrane Device.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–7507 Filed 3–23–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Work Group; Notice of Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA will hold a public meeting of the Electronic Records Work Group with its external consultants on April 7, 1998, to discuss the preliminary options for replacing NARA's General Records Schedule (GRS) 20 for Electronic Records, and the comments received on the options paper. Members of the public are invited to observe the meeting. If time permits, the Work Group will accept questions and comments from observers at the end of the day. The Electronic Records Work Group, with members drawn from NARA and other Federal agencies, has been charged with identifying workable alternatives to the disposition practices currently authorized under GRS 20. Additional information about the Electronic Records Work Group is available on NARA's GRS 20 Internet Web page at <http://www.nara.gov/records/grs20/>.

DATES: The meeting will be held on April 7, 1998, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Auditorium of the Office of Thrift

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR §§ 1622.2 & 1622.3.

Supervision, 17th and G Streets, NW, Washington, DC. Persons wishing to attend the meeting should enter the building through the East Lobby entrance on 17th Street, and must be prepared to show a photo identification. The closest METRO station is Farragut West, using the 17th Street exit.

FOR FURTHER INFORMATION CONTACT: Lisa Haralampus at 301–713–6677, extension 266.

SUPPLEMENTARY INFORMATION: In the March 19, 1998, **Federal Register** (63 FR 13436) NARA published a notice of availability of the options paper for comment and asked for public comment by March 31, 1998. At the public meeting on April 7, 1998, the members of the Electronic Records Work Group will discuss the comments and issues raised on the options paper with consultants to the Work Group who are experts having experience with governmental and private sector electronic records. NARA intends to hold additional public meetings on alternatives for scheduling electronic records that are developed as a result of the options paper.

Dated: March 20, 1998.

Michael Miller,

Director, Modern Records Programs.

[FR Doc. 98–7715 Filed 3–23–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Request Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a request to modify a permit issued to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95–541; Code of Federal Regulations Title 45, Part 670).

DATES: Intested parties are invited to submit written data, comments, or views with respect to the permit modification on or before April 23, 1998. The permit modification request may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko or Nadene G. Kennedy at the above address or (703) 306–1030.

DESCRIPTION OF PERMIT MODIFICATION REQUESTED: On September 29, 1994, the National Science Foundation issued a permit (95WM1–NSFA/ASA) to the U.S. Naval Support Force, Antarctica (NSFA) and Antarctic Support Associates (ASA) jointly, for waste management activities at all U.S. Antarctic Program facilities in Antarctica. Significant changes in the United States Antarctic Program (USAP) are in progress which make modification of the permit necessary. Specifically, one of the permit holders, NSFA, is being disestablished and will no longer be a participant in the USAP. The functions performed by NSFA are being redistributed among ASA, the Air National Guard (ANG) and SPAWARSYSCEN Aviation Technical Services (ATS). As part of the transition, ASA will become the sole entity responsible for shipment, inventory management, and issue of Antarctic Conservation Act (ACA) designated pollutants. In this capacity, ASA will be able to meet the regulatory requirements of 45 CFR 671 to identify the types and volumes of designated pollutants and to designate the nature and timing of the use of these designated pollutants for all operations in support of the USAP.

Approval of the modification requested will still ensure that waste management and regulatory requirements are met while providing a streamlined approach to waste management. The duration of the requested modification is coincident with the current permit which expires on September 30, 1999.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 98–7622 Filed 3–23–98; 8:45 am]

BILLING CODE 7555–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and issues relating to the price regulation.

DATES: The meeting is scheduled for March 31, 1998 commencing at 10:00 a.m. to adjournment.

ADDRESSES: The meeting will be held at the Tuck Library Building, 1st Floor Auditorium of the NH Historical Society at 30 Park Street, Concord, New Hampshire (exit 14 off Interstate 93).

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Northeast Dairy Compact Commission will hold its regularly scheduled monthly meeting. The Commission will consider administration matters and issues relating to milk production in the Compact region and supplied to the Compact region.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agriculture Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress; Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997. (b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996.)

Daniel Smith,

Executive Director.

[FR Doc. 98–7572 Filed 3–23–98; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Duquesne Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–66 and NPF–73, issued to Duquesne Light Company, et al. (the licensee), for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) located in Beaver County, Pennsylvania.

The proposed amendment would add a new Limiting Condition for Operation (LCO) 3.0.6 to technical specification (TS) Section 3/4.0, "APPLICABILITY." The new LCO 3.0.6 would provide specific guidance for returning equipment to service under administrative control for the sole purpose of performing testing to demonstrate OPERABILITY.

The proposed amendment is requested to be processed as an exigent TS change in accordance with 10 CFR 50.91(a)(6). Exigent processing is being requested for both BVPS–1 and BVPS–2. Both units are currently in cold shutdown (Mode 5) and cannot be restarted until the proposed amendments have been issued.

Action statements within the TSs provide guidance for compensatory actions and other restrictions to be taken when the requirements of an LCO cannot be met. When equipment has been out of service it is necessary to demonstrate that it can perform its required function before it can be returned to an OPERABLE condition. Some action statements require that components be placed in a condition which prohibits the functional testing necessary to return components and/or associated systems to OPERABLE status. In these cases, the proposed change provides guidance for returning equipment to service for the sole purpose of demonstrating OPERABILITY. Two examples are provided below.

As a prudent measure, a decision was made to repair all three BVPS–2 Power-Operated Relief Valves (PORVs), 2RCS–PCV455C, 455D, and 456, which were leaking, prior to startup from the current BVPS–2 outage. When the repair work was completed, a Temporary Operating Procedure (TOP) was written to ensure all administrative controls would be in place before pressurizing the plant for a post maintenance test. For this test, the PORVs must have pressure in order to be stroke tested. During the review of the TOP, the Onsite Safety Committee (OSC) identified that TS 3.0.1 did not allow the Reactor Coolant System (RCS) to be repressurized with all three PORVs inoperable (i.e., without normal overpressure protection system operable). The current TS creates a dilemma in that BVPS–2 cannot be pressurized without the PORVs operable and the PORVs cannot be tested to demonstrate operability without pressurizing the plant. The current TS (unlike the Improved Standard Technical Specifications of NUREG–1431, Revision 1) does not allow changing plant conditions under administrative control to support returning equipment to service.

A second example of this problem with TS 3.0.1 is TS 3.1.3.3, "Position Indication System—Shutdown." TS 3.1.3.3 requires that the group demand position indicators be OPERABLE and capable of determining within ±2 steps, the demand position for each shutdown or control rod not fully inserted. This specification is applicable in MODES 3, 4, and 5 when the reactor trip system breakers are in the closed position. The action statement requires opening of the reactor trip system breakers. TS 4.1.3.3 requires that at least once per 31 days, certain control rods be moved at least 10 steps in any one direction when the reactor coolant system pressure is greater than 400 psig.

If TS 4.1.3.3 has not been completed within the last 31 days due to an extended plant shutdown, plant startup will not be possible since the ACTION statement of TS 3.1.3.3 will not permit closing of the reactor trip breakers to perform the necessary testing to demonstrate equipment operability. Therefore, the application of TS 3.0.6 is necessary in this situation to allow the required testing of the group demand position indicators to support plant restart. BSPS–1 is in this condition at the present time.

It was only during an extensive review of the TS surveillance requirements during the current outages that the licensee recognized that the current TSs do not allow changing plant conditions under administrative control to permit testing necessary to demonstrate equipment operability. When it was recognized that a TS change was necessary to resolve this issue, a license amendment request was prepared in a timely manner.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not affect the operation or design of the plant in any way. Operation of plant equipment under this change will not differ in any way from its normal operational mode. The normal operation of plant equipment is not a precursor to any accident. The purpose of tests performed using this change is to demonstrate that required automatic actions are carried out. Equipment will be operated under administrative control for only a short period of time. If it should be required, personnel will be immediately available to take appropriate manual action. Therefore, operation of equipment under this change is not expected to increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed testing allowance will not change the physical plant or the modes of plant operation defined in the operating license. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Equipment will be operated under administrative control for only a short period of time. If it should be required, personnel will be immediately available to take appropriate manual action. The purpose of the testing is to restore required equipment to an OPERABLE state which increases the automatic protection available and reduces the reliance on the compensatory measures provided by ACTION statements. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 23, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 16, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 18th day of March 1998.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7651 Filed 3–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of March 23, 30, April 6, and 13, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 23

Monday, March 23

2:30 p.m.—Briefing by Executive Branch (Closed—Ex. 1)

Thursday, March 26

11:00 a.m.—Briefing by Executive Branch (Closed—Ex. 1)
2:00 p.m.—Affirmation Session (Public Meeting) (if needed)

Week of March 30—Tentative

Monday, March 30

2:00 p.m.—Briefing by Nuclear Waste Technical Review Board (NWTRB) (Public Meeting)

Tuesday, March 31

10:00 a.m.—Briefing on Fire Protection (Public Meeting) (Contact: Tad Marsh, 301–415–2873)
3:00 p.m.—Briefing by Organization of Agreement States and Status of IMPEP Program (Public Meeting) (Contact: Richard Bangart, 301–415–3340)

Thursday, April 2

1:00 p.m.—Meeting with Advisory Committee on Reactor Safeguard (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)
2:30 p.m.—Briefing on Improvements to the Senior Management Meeting Process (Public Meeting) (Contact: Bill Borchard, 301–415–1257)

Friday, April 3

9:00 p.m.—Briefing on MOX Fuel Fabrication Facility Licensing (Public Meeting) (Contact: Ted Sherr, 301–415–7218)
11:30 a.m.—Affirmation Session (Public Meeting)

Week of April 6—Tentative

There are no meetings the week of April 6.

Week of April 13—Tentative

There are no meetings the week of April 13.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

SECY, Tracking Officer, Office of the Secretary.

[FR Doc. 98–7806 Filed 3–20–98; 2:38pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39767; File No. SR–AMEX–97–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The American Stock Exchange, Inc., Relating to Professional Hearing Officers, Executive Committee Review of Appeals From Disciplinary Panel Decisions and Indemnification of Persons Serving on Disciplinary Panels and Exchange Officials

March 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 11, 1997,[2] the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

i. Professional Hearing Officers

Article V, Section 1(b) of the Exchange Constitution and the Exchange's Rules of Procedure Applicable to Exchange Disciplinary Proceedings currently require the Exchange to draw members of disciplinary panels exclusively from the ranks of practicing securities industry professionals. These rules also generally require the Chairmen of Disciplinary Panels to be Exchange Officials. The current system for selecting Disciplinary Panels has worked well for many years, and Panel members have performed an invaluable service to the Exchange on a voluntary basis.

While the current system for constituting Disciplinary Panels has worked well, the Exchange has noted a trend toward increasing complexity in the legal issues confronting Disciplinary Panels. Frequently, Panels face complicated legal questions that must be resolved promptly to ensure the timely resolution of enforcement matters. While the Exchange provides Disciplinary Panels with an assistant, this staff person has a non-substantive role in enforcement proceedings and, therefore, is unable to fully participate

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[1] 15 U.S.C. 78s(b)(1).

[2] On September 11, 1997, the Amex submitted an amendment reflecting editorial corrections to the text of Exhibit A. *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Legal & Regulatory Policy Division, American Stock Exchange, Inc., to Katherine A. England, Esq., Assistant Director, Market Supervision, Division of Market Regulation, SEC, dated September 11, 1997.

On February 26, 1998, the Amex submitted an amendment clarifying, among other things, perceived discrepancies in the disciplinary system, recusal procedures, and vague terminology. *See* letter from Janice M. Stroughter, Director of Hearings and Special Counsel, Legal & Regulatory Policy, American Stock Exchange, Inc., to Katherine England, Esq., Assistant Director, Market Supervision, SEC, dated February 25, 1998 ("Amendment No. 2")

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with the Panel in evaluating important legal, evidentiary and procedural questions.

The Exchange, accordingly, is proposing to amend its Constitution and Rules to provide for professional hearing officers to serve as chairmen and voting members of Exchange Disciplinary Panels.[3] The remaining members of Disciplinary Panels would continue to be drawn from the ranks of practicing securities industry professionals as currently provided for in the Exchange's Constitution and Rules.

ii. Indemnification of Persons Serving on Disciplinary Panels and Exchange Officials

The Exchange has noted that the indemnification provision of the Exchange's Constitution does not specifically mention persons serving on Disciplinary Panels and Exchange Officials. While the Exchange believes that there are sound arguments for concluding that persons serving on Disciplinary Panels and Exchange Officials already are covered by the Exchange's indemnity provision, the Exchange is proposing to amend the Constitution to make this coverage explicit in order to help ensure that the Exchange can continue to attract and retain the services of qualified persons to serve in these capacities.

iii. Board Review of Disciplinary Panel Decisions

Disciplinary appeals are heard by the Executive Committee of the Board under delegated authority from the Board of Governors as authorized by Article V, Section 1(b) of the Constitution in all instances except where a member or member organization is expelled or suspended for a period of one year or more. In such instance, a review by the full Board is required. It is proposed that the Executive Committee be the delegated authority to hear *all* appeals (including matters the Board calls for review) regardless of the nature of the respondent or the penalty. This would make the appeal process less cumbersome, while at the same time eliminating a special review privilege (*i.e.*, full Board review) that exists for members and member organizations, but not for their employees. The full Board would retain authority to review disciplinary decisions when such review is deemed appropriate.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[4] of the Act in general and furthers the objectives of Section 6(b)(7)[5] in particular, in that the proposed rule change provides for a fair procedure for the disciplining of Exchange members and persons associated with its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by April 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7517 Filed 3–23–98; 8:45 am]

BILLING CODE 8010-01-M

[3] The Amex expects that the "professional hearing officer will be an individual who is a lawyer who has had litigation experience in the securities area. It is possible that such individual, or his firm, may provide advice or services to the Exchange on matters that do not relate to the investigation or preparation of disciplinary matters." *See* Amendment No. 2 at p. 2.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(7).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39766; International Series Release No. 1123; File No. SR–CBOE–97–64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 by the Chicago Board Options Exchange, Incorpo rated, Relating to the Listing and Trading of Warrants on the Asia Tiger 100 Index

March 17, 1998.

I. Introduction

On December 5, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] the proposed rule change to list and trade warrants on the Asia Tiger 100 Index ("Asia 100" or "Index"). Notice of the filing appeared in the **Federal Register** on February 4, 1998.[3] No comments were received concerning the proposed rule change. On February 24, 1998 and March 13, 1998 the Exchange filed Amendment Nos. 1 and 2, respectively, to the proposed rule change.[4] This order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37584 (January 27, 1998) 63 FR 5825.

[4] See letters from Timothy Thompson, Senior Attorney, CBOE to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC dated February 24, 1998 ("Amendment No. 1") and March 13, 1998 ("Amendment No. 2"). Amendment No. 1 sets forth maintenance standards for the Index and provides information regarding the calculation and dissemination of the Index

approves the CBOE's proposal, as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade warrants based on the Index.

A. Design of the Index

The Exchange represents that the Index is comprised of the 100 highest capitalized stocks from eight major Asian markets.[5] The stocks were selected for their market capitalization and liquidity. The CBOE believes that they are representatives of the composition of the broader equity markets in each of the eight countries. The component securities represent several industry groups including: Airlines; financial institutions; high technology; real estate; telecommunications; and utilities.

The total capitalization of the component securities in the Index on February 11, 1998 was approximately $549 billion.[6] The average capitalization on that date was approximately $5.49 billion. The individual market capitalization of these component securities ranged from approximately $682 million to $46 billion on February 11, 1998. The component securities had average U.S. dollar volume per day for 1997 that ranged from $146 million to $38 billion. As of February 11, 1998, the highest weighted component security (HSBC Holdings, PLC of Hong Kong) comprised approximately 6.00% of the Index weight while the lowest weighted component security (Hang Lung Development, Co. of Hong Kong) comprised approximately 0.15% of the Index weight. The five highest weighted securities comprised approximately 21.54% of the Index weight.[7]

The CBOE represents that the Asia 100 is a modified capitalization-weighted index. The Index will be adjusted annually to ensure that each represented country's stocks are capitalization-weighted and reflected in a manner that ensures the weighting of each stock is based on its market value in relation to the market value of the other stocks from that country. Separately, each country is weighted based on the relative size of its stock market in relation to that of other Asia 100 countries. The CBOE believes this design gives the Index significant coverage of the countries' largest and most liquid stocks and a proxy for the stock portfolios held by foreign investors in these countries. The CBOE also believes that warrants on the Index will provide investors with a low-cost means of participating in the performance of the Asian economy and hedging against the risk of investing in those economies.

Country weights will be based upon the relative size of each country's stock market at the time the Index is established. Country weights will be rounded to the nearest 2% based on the International Federation of Stock Exchange month-end market values used in the country rebalancing. For example, a country with an Asia 100 market share of 28.68% will have a country weight of 28%. Once a country's weight is determined, the individual stocks within a country will be selected based on the Stock Selection Criteria, as defined below.

When required to make the country weights sum up to 100% due to rounding, the country whose weight would normally be rounded up (down) will be rounded down (up) if the weight is the closest to the midpoint between two weights. Country weights are capped at 40% for the largest country and at 15% for a country with which there is not a comprehensive surveillance sharing agreement ("CSSA"), as defined below.

B. Initial Listing and Maintenance Criteria and Rebalancing

To be included and maintained in the Index, a stock must meet the following minimum Stock Selection Criteria: (1) The minimum market value of the company during the past year must have been greater than $200 million; (2) the minimum dollar trading value of turnover of the stock must have been $100 million in the past year;[8] (3) the minimum monthly trading value of the stock in any month during the past year must have been greater than $5 million,[9] (4) the stock must have traded on at least 95% of the country's trading days; and (5) at least 20% of a company's common stock (measured by outstanding shares) must be available to foreign investors. In addition to the five maintenance criteria discussed above, the CBOE will notify the Commission prior to: adding a country to, or deleting a country from, the Index; or reducing the number of component securities below 95 securities.[10]

The country weights will be rebalanced annually (most likely in March) to address, among other things, a country's stock market expansion or contraction in relation to the markets of the other countries represented in the Index. There will be a 4% limit on the change that will be made to a country's weight at the rebalancing so that a single year aberration for a particular market does not improperly affect the Index. The weights of other countries will be adjusted accordingly. A country's whose weight falls below 1% may be retained in the Index based on the Exchange's determination of foreign investment in the country and other factors. CBOE staff may determine to retain a country's weight in the Asia 100 Index at no more than the maximum 2% level after its weight has fallen below 1% of the market value of the countries represented in the Index. Weights of the other countries will be adjusted accordingly.

In addition, stock weights within a country will be rebalanced semi-annually (most likely in March and September) according to the five criteria listed above and based on the capitalization of stocks and the country weights determined at the annual country weighting rebalancing as of the last business day of the previous. year.[11] Each stock's price on the day of the rebalancing will be multiplied by the

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value. Amendment No. 2 provides technical clarifications to the Index maintenance standards and rebalancing procedures.

[5] The eight Asian markets included in the index are: Hong Kong; Indonesia; Malaysia; the Philippines; Singapore; South Korea; Taiwan; and Thailand.

[6] All values are express in U.S. dollars at the prevailing rates on February 11, 1998.

[7] The text of the proposed rule change and Amendment No. 1 contains a list of the component securities including the countries they represent, the individual component security weights, the country Index weights, average daily trading value for each security and country and market capitalization for each security and country.

[8] To calculate this figure, the CBOE staff takes the following steps: first, an average daily volume ("ADV") is obtained for each component security for the previous year from Bloomberg; second, each component security's ADV is multiplied by the number of trading days in the year for the relevant country; and third, the turnover value is converted to U.S. dollars using Bloomberg's calculation of the average exchange rate in the previous year for the relevant country. See Amendment No. 1, supra note 4.

[9] To calculate this figure, the CBOE staff multiplies the average daily price by the total monthly trading volume. See letter from Amendment No. 2, supra note 4.

[10] The Commission notes that if the Index fails to meet the established maintenance or notification criteria, CBOE may be required to: re-classify the Index as narrow-based; remove certain securities from the Index; or discontinue listing new series of Index warrants. In addition, if the composition of the Index was to substantially change, the Commission's decision regarding the appropriateness of the Index's current maintenance standards would be reevaluated and additional approval under Section 19(b) of the Act may be necessary to continue to list Index products. In addition, the Commission notes that the CBOE has inquired whether it would be required to submit to a Section 19(b) filing in order to list equity linked notes overlying the Index. The staff does not believe that a new filing is warranted provided that the requirements of CBOE Rule 31.5(F) are met.

[11] See Amendment No. 1, supra note 4.

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number of shares (rounded to the fourth decimal place) so that the stock weight in the Index represents its share of the market value of the stocks selected within the country. Stock weights will be capped such that the weight of the largest stock in a country may not be greater than 50% of that country's weight at rebalancing. Weights of the other stocks of the country will be adjusted accordingly. For example, if a stock represents 60% of the market value within a country, its weight within the country will be adjusted down to 50%. The weights of the remaining component securities from that country will be increased proportionally, in the aggregate 10%, by their pre-adjustment weights. Further, if the stock represents 30% of the market value in a country with an Asia 100 country weight of 28%, the stock's weight in the entire Asia 100 Index will be 8.4%, *i.e.*, 30% share within the country × 28% country weight = 8.4%. The weight of each selected stock will remain constant until the next stock rebalancing, except for adjustments due to circumstances described below.

Stocks in the Asia 100 Index may need to be replaced between rebalancings due to corporate, governmental or regulatory actions or when the stock no longer meets the Stock Selection Criteria. Eligible stocks will be ranked in a replacement list by market capitalization on the date of the rebalancing. In these cases, Exchange staff will replace the stock with a stock from the replacement list. If the highest capitalized replacement stock has low trading volume or would cause an uncovered country to exceed 15% of the Index, the Exchange staff would choose the next succeeding replacement stock. Also, the Exchange staff will, where the circumstances permit, endeavor to provide at least three business days notice prior to making such changes. To maintain continuity of the Index, the divisor of the Index will be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, spin-offs, certain rights issuances, mergers and acquisitions.

C. Trading of the Index Warrants (Exercise and Settlement)

The proposed warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index value has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index value has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The procedures for determining the cash settlement value for the warrants have not yet been determined by the CBOE. Once those procedures have been determined by the CBOE, they will be fully set forth in the prospectus and in the Information Circular distributed by the Exchange to its membership prior to the commencement of trading the warrant.[12]

D. Calculation and Dissemination of the Value of the Index

The CBOE asserts that the methodology used to calculate the value of the Index is similar to the methodology used to calculate the value of other stock indices. The Index base value was established at 200 on November 17, 1997. The level of the Index reflects the total market value of all 100 component stocks relative to a particular base period. The daily calculation of the Asia 100 Index is computed by dividing the total market value of the 100 companies in the Index by the Index divisor. The divisor keeps the Index comparable over time and is adjusted periodically to maintain the Index. Similar to other stock index values based on Asian markets, the value of the Index will be calculated by CBOE and disseminated once per day prior to the opening in the U.S. via the Options Price Reporting Authority or the Consolidated Tape Association.[13]

In the event that a security does not trade on a given day, the previous day's last sale price is used for purposes of calculating the Index. Prices used to value the stocks will be based upon the closing prices for the stocks at the primary exchanges for the respective stocks. Primary and backup pricing sources, including Bloomberg, will be used to obtain the closing prices for the stocks.[14] Stocks in the Asia 100 Index will be valued in U.S. dollars using each country's cross-rate to the U.S. dollar. Bloomberg's Composite New York rates, or comparable rates, quoted at 7:00 a.m. Chicago time will be used to convert the stock prices from the respective countries to U.S. dollars. If there are several quotes at 7:00 a.m. for the currency, the first quoted rate in that minute will be used to calculate the Asia 100 Index. In the event that there is no Bloomberg exchange rate for a country's currency at 7:00 a.m., stocks will be valued at the first U.S. dollar cross-rate quoted prior to 7:00 a.m.

E. Warrant Listing Standards and Customer Safeguards

The CBOE proposes to list the warrants on the Asia 100 pursuant to its stock index warrant listing standards in CBOE Rule 31.5(E).[15] The CBOE proposes that the Index be deemed broad-based for purposes of determining applicable position limits and margin treatment. As discussed further below in the *Surveillance* section, the Asia 100 warrants will comply with all aspects of CBOE Rule 31.5(E) except paragraph (7) which states that foreign country securities or ADRs that are not subject to a CSSA and have less than 50% of their global trading volume in dollar value in the United States, cannot, in the aggregate, represent more than 20% of the weight of an index.

Sales practice rules applicable to the trading of Index warrants are provided for in Exchange Rule 30.50 and to the extent provided by Rule 30.52 they are also contained in Chapter IX of the Exchange's Rules. Rule 30.50 governs, among other things, communications with the public. Rule 30.52 subjects the transaction of customer business in stock index warrants to many of the requirements of Chapter IX of the Exchange's rules dealing with public customer business, including suitability. For example, no member organization may accept an order from a customer to purchase a stock index warrant unless that customer's account has been approved for options transactions. The listing and trading of warrants on the Asia 100 Index will be subject to these guidelines and rules.

The margin requirement for a short Index warrant will be 100% of the premium plus 15% of the underlying value, less out-of-the-money dollar amount, if any, to a minimum of 10% of the Index value. A long Index warrant position must be paid for in full. Straddles will be permitted for call and put Index warrants covering the same underlying value. The margin

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[12] Phone conversation between Timothy Thompson, Senior Attorney, CBOE and Marianne H. Duffy, Special Counsel, Division of Market Regulation, Commission on January 22, 1998.

[13] None of the Asian markets represented in the Index are open for trading during U.S. market trading hours.

[14] CBOE represents that the data provided by Bloomberg comes directly from the stock exchanges of the various countries. See Amendment No. 1, supra note 4.

[15] *See* Amendment No. 2, supra note 4.

requirements are provided for under Exchange Rules 30.53 and 12.3.

The applicable position and exercise limits will be determined pursuant to Exchange Rule 30.35(a). Pursuant to Exchange Rules 4.13(a) and 30.35(e) each member will be required to file a report with the Department of Market Regulation of the Exchange identifying those customer accounts with an aggregate position in excess of 100,000 Index warrants.

F. Surveillance

The CBOE entered into a CSSA with the Stock Exchange of Hong Kong ("HKSE") on October 1, 1992, pursuant to which the CBOE will be able to obtain market surveillance information from the HKSE. The CBOE also entered into a CSSA with the Taiwan Stock Exchange ("TSE") in October 1997. Moreover, the CBOE entered into an information sharing agreement with the Kuala Lumpur (Malaysia) Stock Exchange which is currently being reviewed by the Commission to determine its effectiveness. In addition, the CBOE notes that no single uncovered country in the Index may represent more than 15% of the Index weight.

As of February 1, 1998, stocks from Hong Kong (32% Index weight) and Taiwan (22% Index weight) represent 54% of the Index weight. Therefore, a majority of the weight of the Index is currently composed of stocks traded on marketplaces with which the CBOE has a CSSA. No single uncovered country represents more than 14% (Malaysia) of the Index weight and no two uncovered countries represent more than 26% (Malaysia and Singapore) of the Index weight. As previously stated, the Asia 100 does not comply fully with CBOE Rule 31.5(E)(7), which states that foreign country securities or ADRs that are not subject to a CSSA and have less than 50% of their global trading volume in dollar value in the United States, cannot, in the aggregate, represent more than 20% of the weight of an index. The CBOE believes, however, that its existing CSSAs, along with the fact that the Index contains 100 component securities from eight countries, effectively eliminates the possibility of manipulation.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change by the Exchange is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.[16] Specifically, the Commission finds that the listing and trading of warrants based on the Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the Asian equity markets[17] and promote efficiency, competition, and capital formation.[18]

Nevertheless, the trading of warrants on the Index raises several concerns related to the design and maintenance of the Index, customer protection, surveillance and market impact. The Commission believes, however, for the reasons discussed below, that the CBOE has adequately addressed these concerns.

A. Design and Maintenance of the Index

The Commission finds that it is appropriate and consistent with the Act for the CBOE to apply its broad-based index warrant listing standards and trading rules to the Index. First, the Index is composed of 100 companies from several industry groups including: Airlines; financial institutions; high technology; real estate; telecommunications; and utilities. Second, no particular stock or group of stocks dominates the Index. Specifically, as of February 11, 1998, the highest weighted component security (HSBC Holdings, PLC of Hong Kong) comprised approximately 6.00% of the Index weight while the lowest weighted component security (Hang Lung Development, Co. of Hong Kong) comprised approximately 0.15% of the Index weight. The five highest weighted securities comprised approximately 21.54% of the Index weight. Accordingly, the Commission believes that it is appropriate for the CBOE to apply its broad-based index warrant listing standards and trading rules, including those for position limits and margin requirements, to the Index.

The Commission notes that with respect to the maintenance of the Index, the CBOE has implemented several safeguards in connection with the listing and trading of Index warrants that will serve to ensure that the Index component securities are relatively highly capitalized, diversified and actively traded. In this regard, CBOE will maintain the Index so that: (1) The minimum market value of the company during the past year must have been greater than $200 million; (2) the minimum dollar trading value of turnover of the stock must have been $100 million in the past year;[19] (3) the minimum monthly trading volume of the stock in any month during the past year must have been greater than $5 million; (4) the stock must have traded on at least 95% of the country's trading days; and (5) at least 20% of a company's stock must be available to foreign investors. In addition to the five maintenance criteria discussed above, the CBOE will notify the Commission prior to: adding a country to, or deleting a country from, the Index; or reducing the number of component securities below 95 securities.[20]

B. Customer Protection

The Commission notes that the rules and procedures of the Exchange adequately address the special concerns attendant to the trading of Index warrants. Specifically, the applicable suitability, account approval, disclosure and compliance requirements of the CBOE warrant listing standards satisfactorily address potential public concerns. Moreover, the CBOE plans to distribute a circular to its membership calling attention to specific risks associated with warrants on the Index. Pursuant to the Exchange's listing guidelines, only companies capable of meeting the CBOE's index warrant issuer standards will be eligible to issue Index warrants.

C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation. It is for this reason that the Commission requires that there be a CSSA in place between an exchange listing or trading a derivative product and the exchanges trading the stocks underlying the derivative contract that specifically enables officials to survey trading in the derivative product and its underlying

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[16] 15 U.S.C. 78f(b)(5).

[17] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[18] 15 U.S.C. 78c(f).

[19] See note 8, *supra*.

[20] See note 10, *supra*.

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stocks.[21] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In order to address the above concerns, the Commission notes that the CBOE has entered into a CSSA with the HKSE on October 1, 1992, pursuant to which the CBOE will be able to obtain market surveillance information from the HKSE. The CBOE also entered into a CSSA with the TSE in October 1997. In addition, the CBOE entered into an information sharing agreement with the Kuala Lumpur (Malaysia) Stock Exchange on January 6, 1995 which is currently being reviewed by the Commission to determine its effectiveness.

Based upon calculations made on February 11, 1998, stocks from Hong Kong (32% Index weight) and Taiwan (22% Index weight) represent 54% of the Index weight. Therefore, a majority of the weight of the Index is currently composed of stocks traded on marketplaces with which the CBOE has a CSSA. No single uncovered country represents more than 14% (Malaysia) of the Index weight and no two uncovered countries represent more than 26% (Malaysia and Singapore) of the Index weight. The Asia 100 does not comply fully with CBOE Rule 31.5(E)(7), which states that foreign country securities or ADRs that are not subject to a CSSA and have less than 50% of their global trading volume in dollar value in the United States, cannot, in the aggregate, represent more than 20% of the weight of the an index.[22]

The Commission has considered the adequacy of surveillance sharing arrangements in the context of numerous types of derivative products, including derivative products based on stock indices composed of component securities from several countries. In such cases, the Commission traditionally has considered multiple factors in evaluating whether the subject instruments are readily susceptible to manipulation. In many cases, without CSSA's, the Commission would be unable to approve the proposed product. The Commission, however, recognizes that the construction of an index can mitigate against the need to require that CSSA's be concluded with all the markets whose securities underlie an index. Specifically, an index composed of a large number of relatively highly capitalized and liquid securities, traded across multiple markets, should be difficult to manipulate because there will be greater execution costs and timing difficulties associated with coordinating trades on multiple markets. Indeed, the Commission has approved or commented favorably upon deriative products based on the Eurotrack 200, the Eurotop 100, the International Market Index ("IMI"), and the Europe, Australia and Far East ("EAFE") Index, even though all of the stocks comprising these indices were not covered by a CSSA.[23] In these cases, stocks from countries with a major index weighting were covered by CSSAs and no single uncovered country's securities accounted for more than a small percentage of the indices' weight.

The Commission believes that this is also the case with the Asia 100 even though the Asia 100 does not comply fully with CBOE Rule 31.5(e)(7). The Commission believes that the CBOE has established sufficient CSSAs, representing a majority of the Index weight, to assist in the policing of the Index warrants. In addition, the Commission believes that the unique design of the Index, including the required maintenance and notification criteria, justifies approval of the Index for warrant trading. Specifically, the large number of component securities and countries, relatively highly capitalized and actively traded component securities and the requirement that no single uncovered country represent more than 15% of the Index weight sufficiently reduces the likelihood that the Index could be manipulated. Nonetheless, the Commission encourages the CBOE to continue its efforts in securing CSSAs with additional countries in the Index.

D. Market Impact

The Commission believes that the listing and trading of Index warrants on the CBOE should not adversely impact the securities markets in the U.S. or Asia. First, the existing index warrant listing standards and customer safeguard rules of the CBOE will apply to warrants based on the Index. Second, the Commission notes that the Index is diversified and includes relatively highly capitalized securities that are actively traded in their home markets. Accordingly, the Commission does not believe that the introduction of Index warrants on the CBOE will have a significant effect on the underlying Asian securities markets.

The Commission finds good cause to approve Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 provides, among other things: that the minimum market value of a component company during the past year must have been greater than $200 million; that no single country uncovered by a CSSA may represent more than 15% of the Index weight; and that the CBOE will notify the Commission prior to adding a country to, or deleting a country from, the Index; or reducing the number of component securities below 95 securities.[24] Amendment No. 2 provides, among other things, technical clarifications regarding the Index rebalancing replacement of component securities. The Commission notes that no comments were received when the original notice of the proposed rule change was published and that no new regulatory issues are presented in Amendment Nos. 1 and 2.

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)[25] of the Act, to find good

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[21] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a CSSA. A CSSA should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a CSSA require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identity. See Securities Exchange Act Release No. 31529 (November 27, 1992).

[22] As previously stated, as of February 11, 1998, stocks from countries with CSSAs represent 54% of the Index weight. Additionally, the CBOE has entered into an agreement with the Kuala Lumpur (Malaysia) Stock Exchange representing 14% of the Index weight which is currently being reviewed by the Commission to determine its effectiveness.

[23] See Securities Exchange Act Release No. 30462 (March 11, 1992) 57 FR 9290 (order approving the listing and trading of warrants on the Eurotrack 200 on the CBOE and the New York Stock Exchange, Inc. and the listing and trading of options on the Eurotrack 200 on the CBOE); Securities and Exchange Act Release No. 30463 (March 11, 1992) 57 FR 9284 (order approving the listing and trading of warrants and options on the Eurotop 100 on the American Stock Exchange, Inc. ("Amex")); Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705) (order approving the listing and trading of options on the IMI on the Amex); and letter from Jonathan G. Katz, Secretary, SEC to Dr. Paula Tosini, Director, Division of Economic Analysis, Commodity Futures Trading Commission, dated October 11, 1988 (letter not objecting to the designation of the Chicago Merchantile Exchange as a contract market to trade EAFE index futures).

[24] See note 10, *supra*.

[25] 15 U.S.C. 78s(b)(2).

cause exists to approve Amendments No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–97–64 and should be submitted by April 14, 1998.

For the foregoing reasons, the Commission finds that the CBOE's proposal to list and trade warrants based on the Asia Tiger 100 Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–97–64), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7514 Filed 3–23–98; 8:45 am]

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[26] 17 CFR 200.30–3(a)(12) (1994).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39763; File No. SR–CBOE–98–04]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Clarifying the Application of Exchange Rules 8.7 and 8.51 to the Activities of Market-Makers on the CBOE

March 16, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 6, 1998, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Change

CBOE proposes to amend certain of its rules pertaining to the obligations of market-makers. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify the application of Exchange Rules 8.7 and 8.51 to the activities of market-makers on CBOE by amending or adopting interpretations and policies under those Rules. Rule 8.7 requires, among other things, that market-makers on CBOE "compete with other Market-Makers to improve markets in all series of options classes at the station where a Market-Maker is present." Rule 8.51 imposes firm quotation obligations on trading crowds. Ordinarily, in meeting these obligations, each market-maker makes his or her own independent decision concerning what market to quote at any given time, and does not attempt to discuss or agree with other market-makers concerning what the market ought to be. However, there are circumstances where, in order to make fair and orderly markets that are competitive with other markets and responsive to the legitimate needs of investors, some coordination among market-makers is necessary. These circumstances arise (1) in connection with the establishment of parameters used by the automated quotation updating system (which is generally the Exchange's Auto Quote system) to automatically generate options quotations in response to changes in the market for the underlying security or index; (2) in responding to requests for markets in size, such that the coordinated efforts of more than one market-maker are called for in order to be able to fill any resulting order to buy or sell options; and (3) whenever a trading crowd, in order to be competitive with other markets, determines collectively to honor its disseminated quotations in a size greater than the six (ordinarily 10 contracts) called for under the Exchange's firm quotation rule (Rule 8.51). As described below, the purpose of this filing is to describe the nature and extent of coordination among market-makers that is permitted under each of these circumstances.

Auto Quote Formulas

Automated quotation updating systems, which are relied upon by all trading crowds to provide immediately updated quotations in options series traded by the crowd, utilize option valuation formulas in order to generate options quotations based on changes in any one of a number of variables. Among other things, these formulas require assumed volatility factors to be established for each underlying interest. The quotations that are generated and displayed by these systems translate into obligations of the trading crowd to buy or sell options at the quoted prices. For this reason, all members of the trading crowd participate in the decisions concerning the components of the automated quotation updating system formula applicable to each class of options traded by the crowd. Proposed Interpretation and Policy 8.8.07 reflects this by providing expressly that the formula used in each

[1] 15 U.S.C. 78s(b)(1).

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trading crowd to generate automatically updated market quotations shall be as agreed upon by the trading crowd. This is made subject to the exception that in those trading crowds where a Designated Primary Market-Maker ("DPM") has been appointed, the DPM has the primary responsibility for determining the variables of the formula used to generate automatically updated market quotations. The DPM is required to disclose the components used in that formula to any member of the trading crowd immediately upon request, provided that the MTS Committee will have the discretion to exempt DPMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems.

Joint Responses to Requests for Markets

When a request for a market to buy or sell a large number of options is submitted to a trading crowd, it is usually the case that the customer on whose behalf the request is made wants to know promptly at what single price all of the options represented by the request can be bought or sold. A unitary specialist at another competing market is better equipped to provide this kind of response. In order to compete effectively, the collective members of a market maker trading crowd must also provide a response to this kind of request. Interpretation and Policy 8.7.09 expressly permits the collective response to a group of members.

A Crowd's Agreeing to Honor its Market at a Greater Than Required Size

CBOE's firm quote rule (Rule 8.51) generally obligates each trading crowd to honor disseminated quotations for ten contracts. In some cases, especially for classes of options traded in more than one market, trading crowds on CBOE may be required by competitive and other business considerations to honor disseminated quotations for more than the required ten contracts. CBOE believes this necessarily requires agreement among the market-makers in the trading crowd before it can be announced. Interpretation and Policy 8.51.09 expressly contemplates such an agreement among the members of a trading crowd.

By enhancing the ability of CBOE to make competitive, fair and orderly markets in options, the proposed rule change is consistent with, and in furtherance of, the objectives of Section 11A(a)(1)(C)(ii)[2] of the Act to assure fair competition among markets, and the objectives of Section 6(b)(5)[3] of the Act to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule

Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publciation of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such timing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–98–04 and should be submitted by April 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7515 Filed 3–23–98; 8:45 am]

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[2] 15 U.S.C. 78k-1(a)(1)(C)(ii).

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39769; File No. JR–CBOE–98–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change By the Chicago Board Options Exchange, Inc., Relating to Electronic Filing of FOCUS Reports

March 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] notice is hereby given that on February 20, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to require members who are required to compute net capital under Exchange Act Rule 15c3–1 ("net capital computing members") to file their FOCUS reports electronically using the WinJammer™ system.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] On March 16, 1998, the CBOE made a technical amendment to the proposal clarifying the implementation schedule for the electronic filing requirement contained therein. Telephone conversation between Timothy Thompson, Senior Attorney, Exchange, and Kenneth Rosen, Attorney, Division of Market Regulation, Commission (March 16, 1998).

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rule 15.5 requires members to file financial reports in a manner prescribed by the Exchange. Pursuant to Rule 15.5, the Exchange will now require that net capital computing members file electronically their required monthly/quarterly FOCUS reports [3] using the WinJammer system. The Exchange will add Interpretation .02 to Rule 15.5 to set forth this requirement in its Rules. By requiring net capital computing firms to file their FOCUS reports electronically, the Exchange will be making its requirements consistent with those of the New York Stock Exchange and the National Association of Securities Dealers.

The use of WinJammer to collect FOCUS information ensures that the Exchange receives FOCUS reports from members without the risk of filings being lost. Additionally, because of the rigorous edit checks in the WinJammer system, the FOCUS data received will more likely be accurate and complete. Electronic receipt of FOCUS data also means that Exchange staff and outside vendors will no longer have to re-key the information; thus, freeing up Exchange resources for more important tasks. The Exchange will provide members with copies of the WinJammer software.

By requiring net capital computing firms to file electronically, the Exchange will help to reduce errors and save resources. The filing, therefore, is consistent with and furthers the objectives of Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

[3] "FOCUS reports" are the Financial and Operational Combined Uniform Single Report which most broker-dealers are required to file with their designated examining authority pursuant to Exchange Act Rule 17a–5.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [4] and subparagraph (e)(1) of Rule 19b–4 thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange.[5] Notwithstanding that this rule change is effective immediately upon filing, the CBOE will not require the filing of the electronic FOCUS reports until June 1998. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–98–08 and should be submitted by April 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7516 Filed 3–23–98; 8:45 am]

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[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(e)(1). In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39759; File No. SR–CHX–97–36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to the Structure and Composition of the Board of Governors

March 6, 1998.

I. Introduction

On December 16, 1997, The Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] In this filing the Exchange proposed amendments to the structure and composition of its Board of Governors ("Board") to include greater participation and oversight by individuals who are not affiliated with the Exchange or registered brokers or dealers.[3] The filing was amended on January 16, 1998, to revise certain Board

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Specifically, the CHX proposed amendment to Articles III, IV and V of its Constitution and Article IV, Rules 7, 8 and 10 of its Rules. The revised text of the Constitution and Rules accompany this Order in the Addendum hereto and are incorporated herein.

For purposes of this Order, "affiliated" refers to a member of the Board of Governors or a committee who is either a member of the Exchange or affiliated with a broker or dealer in securities, and includes all Member Governors and CHX committee members. Non-affiliated and Non-Industry both refer to a CHX Board or committee member who is neither a member of the Exchange nor affiliated with a broker or dealer. Finally CHX *Public* Governors and committee members, a subset of the Non-Affiliated or Non-Industry category, are those who have no material business relationship with the Exchange, a broker or a dealer.

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and committee membership qualifications.[4] Notice of the proposed rule change, as amended, was published in the **Federal Register** on February 5, 1998.[5] The Commission did not receive any comment letters on the proposal.

II. Background

The Exchange is a non-stock membership corporation registered in the State of Delaware. Its corporate structure is defined in its Certificate of Incorporation and its By-laws. The Certificate of Incorporation includes general parameters of corporate governance, while the By-laws, composed of the Constitution and the Rules, contains the specific requirements for constitution of the Board, its committees and the daily operation of the Exchange. The submitted filing proposes changes to the By-laws only. Within the By-laws, the structure of the Board, the Executive Committee and the Nominating Committee are set forth in the Constitution, while the Audit Committee and Compensation Committee requirements are included in the Rules.[6]

The current Board of Governors has twenty-seven voting members, including the Vice-Chair of the Board (who must be a member of the Exchange active on its trading floor) ("Vice-Chair"), the president of the CHX (who is an Exchange employee appointed by the Board) (the "President") and twenty-five elected Governors. The Chair of the Board (who, as a matter of practice, is not a member of the Exchange active on its trading floor) ("Chair") is appointed by the full Board from among the elected Governors. The twenty-five governors include sixteen affiliated with the CHX or with a registered broker or dealer (known as Member Governors), and nine without such affiliations (known as Non-Member Governors).[7] Of the affiliated Governors, nine must be from Chicago, and the remaining seven from outside the metropolitan area. Moreover, the affiliated Governors cannot serve more than two consecutive Board terms.

The current Executive Committee consists of seven or more members, who are appointed by the Vice-Chair of the Board. The Chair and the President serve as ex-officio members with full voting power. The Chair of the Board also serves as chair of the Executive Committee. A majority of members (including the ex-officio) constitute a quorum for transaction of business. All committee members must be Governors, but there are no other compositional requirements.[8] Notwithstanding this, the members of the Executive Committee are currently balanced between affiliated and non-affiliated members.[9]

The current Nominating Committee has five members, who hold no other positions with the Exchange.[10] The members of the Nominating Committee must include at least two affiliated persons; one who is active on the trading floor of the Exchange, and one who is not. Two non-affiliated committee members are also required by the Constitution.[11]

The current Audit Committee is composed of at least three Governors, plus the Chair of the Board. The majority of voting committee members cannot be affiliated individuals active on the trading floor of the Exchange. In addition, the Rules suggest inclusion of at least two non-affiliated participants, when the Audit Committee has five or more voting members.[12] While inclusion of non-affiliated persons is not required, the Audit Committee currently operates with a balance of affiliated and non-affiliated members.[13]

The current Compensation Committee consists of the Chair and at least one affiliated and one non-affiliated Governor. The Chair of the Compensation Committee must be a non-affiliated Governor. The majority of the voting members of the Compensation Committee cannot be active on the trading floor of the exchange, and if the committee has five or more voting members, the Rules suggest inclusion of at least two non-affiliated participants.[14] Consistent with this approach, and similar to the practices of the Audit Committee and the Executive Committee, the Compensation Committee currently contains a balance of affiliated and non-affiliated committee members without being positively required to do so.[15]

Finally, there currently does not exist either Public representation requirements of the type included in the proposal or quorum provisions related to compositional structure on either the Board or the four committees.[16]

III. Description of the Proposal

The Exchange's proposal will change the structure and composition of the Board and the Executive, Nominating, Audit and Compensation Committees by imposing an enhanced non-industry and public participation requirement similar to those recently adopted by certain other self-regulatory organizations ("SROs").[17] The proposed changes are based upon recommendations made by the Exchange's Governance Committee, who is responsible for general oversight of the CHX's corporate governance matters.[18] The changes represent the

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[4] See Letter Amendment No. 1 from Joseph M. Klauke, Foley & Lardner to Katherine A. England, Division of Market Regulation, Commission, dated January 16, 1998.

[5] See Securities Exchange Act Release No. 39603 (January 30, 1998), 63 FR 5982 (File No. SR–CHX–97–36). To allow time for approval of the proposal by its members, the Exchange agreed to extension of the time period specified in Section 19(b)(2) of the Act. See letter from Joseph M. Klauke, Foley & Lardner to Katherine A. England, Division of Market Regulation, Commission, dated December 30, 1997. A technical amendment to the filing memorializing member approval of the proposal was submitted on February 12, 1998. See Letter Amendment No. 2 from Joseph M. Klauke, Foley & Lardner to Katherine A. England, Division of Market Regulation, Commission, dated February 12, 1998. This technical amendment, which served to notify the Commission that the CHX complied with its internal procedures, did not require notice and comment, as it did not affect the substance of the rule filing.

[6] Collectively, these four committees are referred to as the "Committees."

[7] See current Article III, Sec. 2 "Members of the Board of Governors" of the Constitution. See also, supra note 3, defining "affiliated" and "non-affiliated" Governors and Committee members.

[8] See current Article V, Sec. 4 "Membership of Executive Committee" of the Constitution.

[9] Telephone call between Joseph M. Klauke, Foley & Lardner and Mandy Cohen, Division of Market Regulation, Office of Market Supervision dated March 5, 1998.

[10] For instance, a single individual cannot be both member of the Board and member of the Nominating Committee. See current Article IV, Sec. 3 "Nominating Committee" of the Constitution.

[11] See *id.*

[12] See current Article IV, Rule 8 "Audit Committee" of the Rules.

[13] Telephone call between Joseph M. Klauke, Foley & Lardner and Mandy Cohen, Division of Market Regulation, Office of Market Supervision dated March 5, 1998.

[14] See current Article IV, Rule 7 "Compensation Committee" of the Rules.

[15] Telephone call between Joseph M. Klauke, Foley & Lardner and Mandy Cohen, Division of Market Regulation, Office of Market Supervision dated March 5, 1998.

[16] See current Article IV Rule 10 "Committee Quorum" of the Rules (Audit and Compensation Committees); see also current Article III, Sec 7 "Quorum" (Board) and current Article V, Sec. 4 "Membership of the Executive Committee" (Executive Committee) of the Constitution. There is no particular quorum for the Nominating Committee set for in the current By-laws; therefore, a majority of the members is required. Delaware Gen. Corp L Section 141.

[17] Securities Exchange Act Release No. 39608 (February 2, 1998), 63 FR 6249 (February 6, 1998) (File No. SR–Philadep–97–06); Securities Exchange Act Release No. 39609 (February 2, 1998), 63 FR 6250 (February 6, 1998) (File No. SR–SCCP–97–06); Securities Exchange Act Release No. 39326 (November 11, 1997), 62 FR 62385 (November 21, 1997) (File No. SR–NASD–97–71); and Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997) (File No. SR–PHLX–97–31).

[18] See current Article IV, Rule 9 "Committee on Organization and Governance" of the Rules; see also Securities Exchange Act Release No. 31633 (December 22, 1992), 57 FR 62402 (December 30,

latest in a continuing series of amendments to the corporate governance structure of the CHX over the past two decades.[19]

A. Board Composition and Size

The first portion of the proposal calls for reduction in the number of Governors and modification of Board membership standards to include greater participation and supervision by individuals without securities industry affiliation. Under the proposal, the current members of the Board will be reduced from twenty-seven to twenty-four and the number of Governors affiliated with Exchange or registered brokers or dealers from sixteen to ten.[20] At the same time, the number of non-affiliated Governors will rise from nine to twelve.[21]

The amendments, as proposed, will result in Exchange management balanced between non-affiliated individuals and CHX members. Moreover, the non-affiliated Governors, termed Non-Industry, will include a mandatory subset of five Public Board members, who should truly enhance the public interest in CHX operations. The Non-Industry Governor positions will be filled by individuals who are not presently, and have not been involved in the securities industry for an extended period of time, whether directly, as an employee of, or provider of professional services to, the Exchange or a broker or dealer, or indirectly, through management or ownership of a securities industry participant. Non-Industry may, however, include employees and other associates of issuers exclusively listed on the CHX. Public Governors positions, however, will be open only to those individuals who have no material business relationship with a registered broker or dealer or the Exchange.[22]

The affiliated Board members will be split between On-Floor and Off-Floor Member Governors, reflecting the different types of Exchange members.[23] Under the proposal, an On-Floor Member Governor is one who is, or is associated with, a member of the CHX that is primarily engaged in business on the Exchange trading floor. The proposed definition of Off-Floor Member Governors includes all other CHX members (sometimes referred to as up-stairs members), or their associates.[24] The changes will also codify the current practice of selecting a Chair who is not active on the trading floor of the Exchange.

B. Committee Composition

The second portion of the proposed amendments address the compositional requirements of the Executive, Nominating, Audit and Compensation Committees. The Executive, Audit and Compensation Committees are made up of Governors appointed by the Board, while the Nominating Committee is made up of Non-Industry participants appointed by the Board, and Member participants elected by the Membership.[25] The definitions of Non-Industry, Public On-Floor, Off-Floor and Member Governors apply equally to members of these four committees. As proposed, not less than fifty percent of the members of the Executive Committee, the Compensation Committee and the Audit Committee must be Non-Industry (including at least one Public Governor on the Compensation and Audit Committees), and the Nominating Committee will be composed of fifty percent Non-Industry and fifty percent Member representatives.[26] Currently, the Audit, Executive, and Compensation Committees have this balance, although it is not specifically required.[27] The Nominating Committee currently has five members, two of which are Non-Industry.[28]

C. Quorum Requirements

The third portion of the proposal addresses quorum requirements. Currently there are no quorum provisions in the Exchange's Constitution or Rules related to compositional structure.[29]

Under the proposed amendments, a quorum for the transaction of business on the Board of Governors will require participation by one-half of the number of Governors then in office.[30] The Executive and Nominating Committees will require a majority of members to be present, while the Audit and Compensation Committees will need at least half of their members to satisfy their quorum requirements.[31]

In addition, not less than fifty percent of the Non-Industry participants on both the committees and the Board must be present to fulfill quorum committee requirements.[32] Notwithstanding this, an informed waiver of attendance by Non-Industry Board or Committee members will satisfy the compositional quorum requirements. Thus, if at least fifty percent of the Non-Industry Board or Committee members are either present at a meeting or have waived their attendance for the meeting after receiving notice of, and an agenda for, such meeting, then the compositional portion of the quorum requirements will be deemed satisfied.[33]

1992) (File Nos. SR–MSE–92–12 and SR–MSE–92–13) (formalizing the duties of the Committee on Organization and Governance).

[19] See, *e.g.*, Securities Exchange Act Release No. 34563 (August 19, 1994), 59 FR 44207 (August 26, 1994) (File No. SR–CHX–94–15) (increasing Board membership to accommodate operation of Exchange and its clearance, settlement and securities depository subsidiaries as a single entity); Securities Exchange Act Release No. 33901 (April 12, 1994), 59 FR 18586 (April 19, 1994) (File No. SR–CHX–93–28) (including changes to the Executive and Finance Committees, voting powers of President and Chair and adding definition of Non-Member Governor); Securities Exchange Act Release No. 32488 (June 18, 1993), 58 FR 34284 (June 24, 1993) (File No. SR–MSE–93–13) (changing name from Midwest Stock Exchange, Inc. to Chicago Stock Exchange, Inc.); Release No. 34–31633, *supra* note 18 at page 6 (transferring duties from Chair to President and making Chair part-time, requiring Vice-Chair to be an On-Floor member, formalizing various standing Board committees, *etc.*); Securities Exchange Act Release No. 30844 (June 19, 1992), 57 FR 29106 (June 30, 1992) (File No. SR–MSE–92–07) (conforming certificate of incorporation to previous by-laws and rule changes); Securities Exchange Act Release Nos. 16468 and 16468A (January 4, 1980, as corrected January 16, 1980) (File No. SR–MSE–79–22, as corrected to reference SR–MSE–79–25).

[20] See proposed Article III, Sec. 2 "Members of the Board of Governors" of the Constitution.

[21] See *id.* The current rules also impose residence requirements on a portion of the affiliated governors. The proposed amendments will eliminate the distinction.

[22] See proposed Article III, Sec. 2 "Members of the Board of Governors" of the Constitution.

[23] The proposed amendments will require a minimum of four On-Floor Member Governor positions and four Off-Floor Member Governor positions.

[24] The current Constitution and Rules refer to those persons who are "active on the [trading] floor of the Exchange" as floor Governors, although a specific definition is not included. These persons have been interpreted to include floor members acting as, *i.e.*, floor brokers, market makers or specialists. The definition of On-Floor is somewhat broader in scope, and will include all persons associated with On-Floor members under the current interpretation.

[25] See proposed Article IV, Section 3 "Nominating Committee" of the Constitution.

[26] See proposed Article V, Sec. 4 (Executive Committee) and proposed Article IV, Sec. 3 (Nominating Committee) of the Constitution; see also proposed Article IV, Rule 7 (Compensation Committee) and proposed Article IV, Rule 8 (Audit Committee).

[27] See *supra* notes 8 through 14, pp. 3–4.

[28] See *id.* The change to require balanced committees will be effective upon approval of the proposed rule change for these committees, except the Nominating Committee. One additional Non-Industry person will be added to the Nominating Committee to achieve balance in conjunction with the 1999 Annual Election.

[29] See *supra* note 16, p. 5 and accompanying text.

[30] See proposed Article III, Sec. 7 "Quorum" of the Constitution.

[31] See proposed Article V, Sec. 4 "Membership of the Executive Committee" of the Constitution (Executive Committee); see also proposed Article IV, Rule 10 "Committee Quorum" of the Rules (Audit and Compensation Committees).

[32] See *Id.*

[33] See *id.*

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D. Term Limits, Attendance at Board Meetings and Recusal Provisions

The next several portions of the proposal revises gubernatorial term limits, impose an attendance requirement on Board members and expand the recusal provisions for interested Governors. The current term limits on Board service affect only affiliated Governors.[34] The proposed changes impose a three term limit on all elected Board members, regardless of affiliation, and partial terms will not count. After serving three complete terms, a minimum of two years must elapse before a former Governor can again serve on the Board.[35]

The proposed rule changes will also recognize failure to attend at least seventy-five percent of all full Board meetings annually as cause for removal from the Board.[36] The CHX has represented that this removal power will not be implemented in an arbitrary fashion.[37]

Finally, the proposal includes changes to those provisions of the Constitution related to disqualification of Governors due to personal interest in a matter. The text of these provisions will be amended to refer to "determination" of matters rather than just "adjudication" (as currently worded). Member Governors will not, however, be precluded from participating in decisions that affect members or classes of members in general, on the grounds of personal interest.[38]

E. Technical Amendments

In addition to the foregoing, the last portion of the proposal includes certain technical changes to the Constitution and rules, for organizational or accuracy purposes. These include those changes necessary throughout the Constitution and Rules to reflect the use of the terms Non-Industry and On-Floor.[39] In addition, a number of revisions of the term "member" are included. For example, use of the word member in connection with operation of the Nominating Committee, is being changed to person (or otherwise modified) whenever necessary to prevent confusion.[40] Similarly, the reference to member used in the context of voting designees is being clarified to specifically refer to a member of the Exchange.[41]

IV. Discussion

As discussed below, the Commission has determined at this time to approve the Exchange's proposal. The Commission must approve a proposed rule change if its finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the Exchange. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act.[42] In addition, Section 6 of the Act establishes specific standards for Exchange rules against which the Commission must measure CHX's proposal.[43] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[44] In particular, the Commission believes that the proposal is consistent with Sections 6(b)(1), (3), (5), and (8) of the Act.[45] Section 6(b)(1) requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b)(3) of the Act requires, among other things, that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed, in general, to protect investors and the public interest. Finally, Section 6(b)(8) requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the federal securities laws.

The Commission believes that the proposals to diversify the composition of the CHX's Board, Executive Nominating, Compensation and Audit Committees[46] should increase non-partisan participation on these governing bodies and provide adequate representation of On-Floor members, "upstairs firms" and investors. The changes to the structure of the Board and Committees are a positive step to ensure that no one group will be able to dominate the governance of the Exchange. The Commission believes that these bodies, as revised, should be more responsive to the interests of the Exchange and its various constituencies, including the public, and thus are consistent with both the fair representation requirements of Section 6(b)(3) of the Act and the protection of investors and the public interest pursuant to Section 6(b)(5) of the Act. Moreover, the changes should result in the more efficient operation of the Exchange generally, and therefore do not impose any unnecessary or inappropriate burdens on competition.

The CHX Board of Governors is responsible for oversight of all aspects of Exchange and SRO operations. Over the past ten years, these operations have changed in various ways, and the Board has been adjusted to reflect these changes.[47] As suggested by this filing, the CHX believes that the recent sale of its clearance and settlement and securities depository subsidiaries requires readjustment of Board structure. The Exchange submits that the governors added to the Board when the subsidiaries were consolidated into Exchange operations are no longer necessary, and that a smaller Board will make deliberations more efficient and manageable.

The Commission agrees that given the Exchange's downsizing, a smaller Board may be appropriate. Moreover, as the remaining number of Governors (twenty-four) is substantial, and since the present restructuring includes an increase in the proportion of non-affiliated Governors, the Commission believes that reduction of the number of Board members should improve the Exchange's ability to perform its SRO responsibilities, conduct its business, provide fair representation to its members, and adequately protect investors.

The restructuring of the Board and the Committees, to include a greater proportion of non-affiliated members,

[34] See current Article IV, Sec. 5 "Limitation on Service" of the Constitution.

[35] See proposed Article IV, Sec. 5 "Limitation on Service" of the Constitution.

[36] See proposed Article III, Sec. 1 "The Board of Governors" of the Constitution.

[37] Telephone call between Craig Long, Foley & Lardner and Mandy Cohen, Division of Market Regulation, Commission dated February 26, 1998.

[38] See proposed Article III, Sec. 3 "Participation in Meeting, Action or Proceeding" of the Constitution.

[39] See, *e.g.*, Article IV, Rules 7 and 8 of the Rules (regarding the Compensation Committee and the Audit Committee).

[40] See, *e.g.*, proposed Article IV, Sections 3 "Nominating Committee" of the Constitution.

[41] See *e.g.*, proposed Article IV, Section 14 "Term 'Member' includes Voting Designee" of the Constitution.

[42] 15 U.S.C. 78s(b).

[43] 15 U.S.C. 78o–3.

[44] 15 U.S.C. 78f(b).

[45] 15 U.S.C. 78f(1), (3), (5) and (8).

[46] See *supra*, text accompanying notes 19 to 32.

[47] See Securities Exchange Act Release No. 34563 (August 19, 1994), 59 FR 44207 (August 26, 1994) (File No. SR–CHX–94–15) (increasing the number of Board members upon consolidation of the Exchange and its subsidiaries under one management structure).

and the redefinition of Public, Non-Industry and Member Governors and committee members reflect recent trends in SRO corporate governance generally, and ease concerns previously raised by the Commission. In approving earlier changes to the Board and its committees, the Commission expressed concerns about domination by Governors active on the trading floor of the Exchange.[48] By supplementing the non-affiliated representation on these governing bodies, and imposing compositionally-based quorums, the current proposal should have the effect of countering the influence of On-Floor members, and increasing the influence of unbiased Board and committee members. Recognizing a distinction between Public and Non-Industry individuals advances this, and requiring Public participation in critical areas should enhance the non-partisan oversight of Exchange operations. Inclusion of compositionally-based quorums, requiring diversity between Non-Industry and Member participants, further protects such oversight.[49] The Commission retains some concerns that the categories of permissible Board members do not include securities industry individuals who are not members of the CHX. The increased participation by Non-Industry and Public individuals, however, should provide the balance necessary for unbiased oversight by the Board and the Committees as a whole.

The proposal's remaining changes should similarly ease and improve the operations of the Board and the Committees. Eliminating the geographical distinction for Member Governors should provide the Nominating Committee with more flexibility in its choice of potential Governors and should eliminate an inappropriate arbitrary distinction given CHX's current national constituency. Imposing term limits on all Governors should foster a healthy influx of fresh perspectives on the Board. Setting attendance requirements should promote attendance and thus enhance participation in Board meetings. Allowing removal for failure to attend Board meetings should allow replacement of Board members who are not performing their required duties. Extending the recusal provisions to include all determinations by Board members more appropriately reflects the kind of activities that Governors become involved in.

Taken as a whole, the changes brought about by the proposed amendments will have a beneficial impact on the Board, the Committees and the Exchange. The Commission believes that the changes will benefit members of the Exchange and investors particularly and the public interest generally, are consistent with the provisions of the Act, and appropriate for approval at this time.[50]

V. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposal is consistent with the requirements of Section 19(b)(2) of the Act[51] and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–CHX–97–36), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[53]

Margaret H. McFarland,
Deputy Secretary.

Addendum

Additions are *italicized*; deletions are [bracketed].

Constitution

Article III

Government and Administration

Powers of the Board of Governors

SEC. 1. The business of the Exchange shall be managed by its Board of Governors which shall be vested with all powers necessary for the government of the Exchange, the regulation of the business conduct of members and member organizations, and the promotion of the welfare, objects and purposes of the Exchange. Without limiting the generality of the foregoing: The Board of Governors may establish Rules governing the qualifications for membership, the requirements for remaining a member in good standing and the circumstances under which a membership owned by a person or organization not in good standing may be sold by the President. It may fix fees and compensation to be paid Governors, members of committees and officers. It may fix dues, fees, assessments and other charges to be paid by members and member organizations. It may, for cause, remove any Governor or officer of the Exchange. *"Cause" shall include, but not be limited to, failure by a Governor to attend at least seventy-five percent of the Board meetings held in a calendar year.* It may fill vacancies in the Board of Governors or the office of Vice Chairman who shall serve until the next annual meeting, and the office of Chairman, President, or Non-[Member] *Industry* [Committee] committee members of the Nominating Committee who shall serve until the expiration of their term, and shall approve all appointments to Committees (other than the Nominating Committee) made by the Vice Chairman. It may determine the manner in which its own proceedings and the proceedings of any committee of the Exchange shall be conducted. It shall have power to interpret the Constitution and Rules of the Exchange and any interpretation thereof made by it shall be final and conclusive.

The foregoing specification of the powers and authority of the Board of Governors is in furtherance of and not by way of limitation of the power and authority of the Board of Governors to do all things necessary for the government and administration of the Exchange, including all such things which are not by statute, by the Certificate of Incorporation or by the Constitution directed or required to be done by the members.

Members of the Board of Governors

SEC. 2. The Board of Governors shall be composed of the Vice Chairman of the Board, the President and [25] *22* Governors (one of which shall be appointed Chairman of the Board as hereinafter provided). The Vice Chairman of the Board shall be a member, general partner in a member firm, or officer of a member corporation [and shall be active on the floor of the Exchange] *who is On-Floor*. [Sixteen] *Ten* of the [25] *22* Governors shall be [members, general partners of member firms or officers of member corporations (such Governors sometimes hereinafter referred to as "member Governors")] *Member Governors, of whom at lease 4 shall be On-Floor and at lease 4 shall be Off-Floor*, and [nine] *twelve* Governors shall be [unaffiliated with the Exchange or any broker or dealer in securities (such Governors sometimes hereinafter referred to as "non-member Governors")] *Non-Industry, of whom at least 5 shall be Public*. The Chairman of the Board shall be appointed by the Board of Governors [from among the 25] *and shall be one of the elected* Governors *that is not On-Floor*. The President shall be appointed by the Board of Governors to serve at its pleasure. The Chairman and the Vice Chairman shall each serve a two-year term in such capacities. [The initial term of the Chairman shall end at the first meeting of the Board held after the 1994 annual election meeting of the Exchange.] The members of the Board of Governors (other than the Vice Chairman of the Board and the President) shall be divided into classes; there shall be [eight] *seven* Governors in Class I, [nine]

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[48] See Release No. 34–31633.

[49] In conversations with the Commission concerning the compositional quorum requirements, the Exchange expressed concerns about the potential for disruption in operations caused by the absence of the non-affiliated members (due to the part-time nature of their service) at various meetings. The informed waiver of participation by Non-Industry Governors and Committee members (which allows non-affiliated members to review the agenda before a meeting to determine the nature of the matters to be discussed) addresses this concern, without sacrificing the benefits of the non-affiliate's non-partisan oversight. By viewing the agenda, the non-affiliate member will be able to judge the import of the subjects to be discussed and, if necessary, will be able to allocate his or her time to the most important issues.

[50] See 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78s(b)(2).

[52] *Id.*

[53] 17 CFR 200.30–3(a)(12).

seven Governors in Class II and eight Governors in Class III. [Three] *Four* members of *each of* Class I, Class II and Class III shall be [non-member] *Non-Industry* Governors. At each annual meeting of the Exchange, Governors shall be elected to succeed those whose terms then expire. The Governors so elected shall be identified as being of the same class as the Governors they succeed and shall be elected for a term expiring at the third succeeding annual election meeting of the Exchange or until their respective successors in each case are thereafter elected and qualified.

Anything in this Section 2 to the contrary notwithstanding, *(1)* any Governor that is a general partner or officer of a participant of the Midwest Clearing Corporation or Midwest Securities Trust Company ("Participant Governor") and is acting as a Participant Governor as of November 1, 1995 may continue to serve the remainder of his or her term[, even if doing so causes the total number of Governors to exceed twenty-five.]; *and (2) the transition to a Board of Governors as comprised in accordance with this Section 2, from the Board of Governors as comprised as of September 24, 1997, shall be implemented as follows. At the 1998 annual election, Class I shall be reduced by two Member Governors. At the 1999 annual election, Class II shall be reduced by four Member Governors. At the 2000 annual election, Class III shall be reduced by one Member Governor and Class II shall be increased by one Member Governor. The Board of Governors shall be increased by three Non-Industry Governors by the 1999 annual election to serve for staggered terms so as to balance the Classes as determined by the Nominating Committee.*

Participation in Meeting, Action or Proceeding

SEC. 3. No Governor shall be disqualified from participating in any meeting, action or proceeding of the Board of Governors by reason of having, either personally or as a member of any committee, made prior inquiry, examination or investigation of the subject under consideration, nor shall any member of any such committee be disqualified from acting as a Governor upon any appeal from a decision of any committee. But no [person] *Governor* shall participate in the [adjudication] *determination* of any matter in which [he] *such Governor* is personally interested. *Notwithstanding the foregoing, Member Governors shall not be deemed to be personally interested in the determination of matters that may effect the members as a whole or certain classes of members, and Member Governors shall not be prohibited from participating in such determinations in the normal course of conducting Exchange business.*

Quorum

SEC. 7. At all meetings of the Board of Governors, one-half of the number of Governors then in office *(including not less than 50 percent of the Non-Industry Governors)* shall constitute a quorum for the transaction of business and the act of a majority of the Governors present at any meeting at which there is a quorum shall be the act of the Board of Governors except as may be otherwise specifically provided by statute, the Certificate of Incorporation, the Constitution or Rules. *If at least 50 percent of the Non-Industry Governors are (i) present at or (ii) have waived their attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry Governors be present to constitute the quorum shall be deemed satisfied.* If a quorum shall not be present at any meeting of the Board of Governors, a majority of the Governors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Definitions

SEC. 10. The following terms as used anywhere in the Constitution or the Rules, unless the context indicates otherwise, have the meanings herein specified:

(a) "Non-Industry" means a Governor or committee member (excluding the Chief Executive Officer of the Exchange) who is:

(i) a Public Governor or committee member;

(ii) an officer or employee of an issuer of securities listed exclusively on the Exchange; or

(iii) any other individual who:

(A) is not, or has not served in the prior three years (or such lesser period as deemed appropriate by the Exchange, in its discretion, but not less than one year), as an officer, director, or employee of a broker or dealer and has not had (within the same time period specified above) an ownership interest in a broker or dealer that permits him or her to be engaged in the day-to-day management of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer;

(B) is not an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity;

(C) does not own more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers do not exceed ten percent of his or her net worth, or whose ownership interest does not otherwise permit him or her to be engaged in the day-to-day management of a broker or dealer;

(D) does not provide and whose firm or partnership does not provide professional services to brokers or dealers that constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership;

(E) does not provide and whose firm or partnership does not provide professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; and

(F) does not have a consulting or employment relationship with or provide professional services to the Exchange and has not had any such relationship or provided any such services at any time within the prior three years.

(b) "Public" means a Governor or committee member who has no material business relationship with a broker or dealer or the Exchange.

(c) "On-Floor" when used in the context of Governors and committee members means members who are primarily engaged in business on the Exchange's trading floor or persons associated with member organizations primarily engaged in business on the Exchange's trading floor.

(d) "Off-Floor" when used in the context of Governors and committee members means members and persons associated with member organizations who are not "On-Floor."

(e) "Member Governor" means a Governor who is a member, general partner of a member firm or officer of a member corporation.

Article IV

Meetings of Members, Nominations and Elections

Nominating Committee

SEC. 3. There shall be a Nominating Committee composed of five (*six to act in conjunction with the 1999 Annual Election and thereafter*) [members] *persons*. Three [members] *persons* shall be elected at each annual election meeting of the Exchange from among members, general partners of member firms and officers of member corporations who do not hold any other office in the Exchange ("Member Committee members"). At least one Member Committee member shall be [active on the floor of the Exchange] *On-Floor* and at least one Member Committee member shall [not be active on the floor of the Exchange] *be Off-Floor*. Two [members other than Member Committee members] *other persons on the Committee (three to act in conjunction with the 1999 Annual Election and thereafter)* shall be [unaffiliated with any broker or dealer in securities] *Non-Industry* and shall be appointed annually by the Board of Governors at its first meeting held after the annual election meeting of the Exchange [("Non-member Committee members")]. Any vacancy in Member Committee members [upon] *on* the Nominating Committee shall be filed by the remaining [member of] *persons on* the Nominating Committee from among persons who would have been eligible for election to such position at the preceding annual election meeting. Any vacancy in Non-[member] *Industry* [Committee] committee members shall be filled by the Board of Governors. No [member of] *person on* the Nominating Committee in any year shall be eligible for election to any office or position in the Exchange for the ensuing year nor shall [he] *such person* serve [as a member of] *on* the Nominating Committee for two successive years. *At all meetings of the Nominating Committee, a quorum for the*

transaction of business shall consist of a majority of the committee members, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving notice of such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be deemed satisfied.

Reporting of Nominating Committee

SEC. 4(a). After consulting with the President and the Chairman of the Board with respect to the current developments and needs of the Exchange which should be considered in connection with nominations and not later than 30 days preceding each annual election meeting, the Nominating Committee shall report to the Secretary nominations to be voted on at the annual election meeting as follows:

(i) A Vice Chairman of the Board to serve for two years if his term is then expiring or until the end of the unexpired term if the office had been filled by the Board as a result of a vacancy.

(ii) [Eight] *Subject to the transition provisions of Article III, Sec. 2, seven* Governors [five] *three* of whom shall be [member] *Member* Governors and [three] *four* of whom shall be [non-member] *Non-Industry* Govenors to serve for a term of three years, if the Governors whose terms are expiring are [members of] *in* either Class I or Class [III] *II*, or [nine] *eight* Governors, [six] *four* of whom shall be [member] *Member* Governors and [three] *four* whom shall be [non-member] *Non-Industry* Governors to serve a term of three years, if the Governors whose terms are expiring are [members of] *in* Class [II] *III*.

(iii) That number of Governors required to fill any vacancies on the Board of Governors to serve for any unexpired terms. Any person nominated to fill a vacancy on the Board of Governors shall be of the same category ([from the Chicago area or elsewhere, member] *Member* or [non-member] *Non-Industry)* as the Governor he is nominated to succeed;

(iv) Three Member Committee members of the Nominating Committee to act in connection with the next following annual election meeting;

(b) [The] *Subject to the transition provisions of Article III, Sec. 2,* Nominating Committee shall make its nominations so as to accomplish the following:

(i) [Having] *Of* the [16] *10* [member] *Member* Governors [in Classes I, II and III consist of nine from the Chicago area (at least three of whom shall be active on the Floor of the Exchange) and seven from elsewhere in the United States or Canada, selected with a view to providing, over time, representation on the Board to all geographical areas in which there are member organizations which support and significantly contribute to the strength and growth of the Exchange]*at least 4 must be On-Floor and at least 4 must be Off-Floor, and, of the 12 Non-Industry Governors, at least 5 must be Public.*

(ii) Having a Vice Chairman of the Board and [member] *Member* Governors who, if affiliated with member organizations, occupy senior management positions having substantial responsibility in such member organizations.

(iii) Having persons on the Board of Governors and the Nominating Committee who are interested in and knowledgeable about the various aspects of Exchange operations and of the securities business and the activities of the subsidiaries of the Exchange.

Limitation on Service

SEC. 5. No [member] *Member or Non-Industry* Governor[, nor the Chairman nor the Vice Chairman of the Board] who has served all [or part] of [two] *three* consecutive terms in such capacity [(excluding terms expiring at the first annual meeting of the Exchange)] shall be eligible for election [or appointment] in such capacity except after an interval of at least [one year] *two years. Notwithstanding the foregoing (1) No person who was elected as a Member Governor, whose term expires in either 1998 or 1999 and who will have served all or part of two consecutive terms in such capacity by the annual election meeting in 1998 or 1999, respectively, shall then be eligible for election in such capacity except after an interval of at least two years; and (2) any Non-Industry Governor whose term expires in either 1998 or 1999 and who will have served all of three or more consecutive terms in such capacity by the annual election meeting in 1998 or 1999, respectively, shall be eligible for election for one additional term. Neither the Chairman nor the Vice Chairman of the Board who has served all or part of two consecutive terms in such capacity shall be eligible for election or appointment in such capacity except after an interval of at least one year.* No [non-member]*Non-Industry* Governor shall be eligible for election or reelection as a Governor of the Exchange upon reaching the age of 71; however, having been elected or re-elected prior to reaching the age of 71 such [non-member] *Non-Industry* Governor shall be entitled to complete the term during which he or she reached the age of 71.

Nominations by Members

SEC. 7. Members may nominate other candidates for the same office or offices as the candidates nominated by the Nominating Committee. Such nominations shall be by written petition which shall designate the candidate by name and office and shall be signed by the members so nominating. The petition must be filed with the Secretary at least 20 days prior to the annual election meeting. A petition shall not be valid unless signed by not less than 10 members. No member may endorse more than one candidate for the same office, excepting candidates for members of the Board of Governors and of the Nominating Committee, in which case as many candidates as there are offices to be filled may be endorsed. In case of any nomination of a candidate or candidates for election to the Board of Governors pursuant to this Section 7, the election of [member] *Member* Governors [from the Chicago area, member Governors from elsewhere in the United States or Canada] and [non-member] *Non-Industry* Governors shall be separate so that the candidate or candidates so nominated will be opposing only the candidate or candidates of the same category nominated by the Nominating Committee.

Term "Member" Includes Voting Designee

SEC. 14. The word "member" wherever used in this Article IV *in the context of a member of the Exchange* shall include and also mean the "voting designee" of a member organization but shall not include or mean the "nominee" of a member organization.

Article V

Committees

Membership of Executive Committee

SEC. 4. The Executive Committee shall consist of not less than seven member of the Board of Governors, plus the Chairman of the Board and the President as ex-officio members with full voting powers. *Not less than 50 percent of the committee members shall be Non-Industry.* The Chairman of the Board shall be the Chairman of the Executive Committee. Appointments to the Executive Committee shall be made by the Vice Chairman of the Board with the approval of the Board of Governors. Such appointments shall be made with a view to providing, over time, representation on the Committee to all geographical areas in which there are member organizations which support and significantly contribute to the strength and growth of the Exchange and with a view to having persons on the Executive Committee who are interested in the knowledgeable about the various aspects of Exchange operations and of the securities business and the activities of the subsidiaries of the Exchange. Any Governor may be appointed a temporary member of the Executive Committee by the Vice Chairman of the Board during the absence or inability to act of a regular member of the Committee. Such temporary appointee shall have all the rights, powers, authority, duties and obligations of the regular committeeman until the later returns or is again able to act. A majority of members of the Executive Committee *(including not less than 50 percent of the Non-Industry committee members)*, which may include ex-officio members, shall constitute a quorum. *If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be deemed satisfied.*

Rules

Article IV

Committees

Compensation Committee

RULE. 7. There shall be a Compensation Committee which shall consist of the Chairman of the Board with full voting powers, and not less than two other Governors[,]. [at] [least one of whom] *Not less than 50 percent of the committee members* shall be [a non-member[*Non-Industry Governors (including at least one Public*

Governor). [(Throughout the Rules, the term non-member governor shall mean a Governor who is unaffiliated with the Exchange or any broker or dealer in Securities, as defined in Article III, Section 2 of the Exchange's Constitution).] It shall have the responsibility of establishing the compensation of the President and of coordinating with the President to determine a comprehensive corporate compensation and benefits policy. The comprehensive corporate policy shall include the structure and the administration of the determined compensation policy, the advisability and use of outside consultants, and a periodic review of the manner in which the determined policy is being administered.

Audit Committee

RULE 8. There shall be an Audit Committee which shall have not less than three members, all of whom shall be Governors, in addition to the Chairman of the Board. [The majority of the voting members of the Committee shall not be active on the floor of the Exchange. In the event that the Committee is appointed with five or more voting members, two such members shall be, if practicable, non-member] *Not less then 50 percent of the committee members shall be Non-Industry* Governors *(including at least one Public Governor).* The Chairman of the Committee shall be a [non-member] *Non-Industry* Governor. The Committee shall have the responsibility to annually review with the independent auditors, the scope of their examination and the cost thereof. It shall periodically review with the independent auditors and the internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. It shall review the annual "management letter" and other reports submitted by the independent auditors, and take such action with respect thereto as it may deep appropriate. The Committee shall also annually recommend to the Board of Governors independent public accountants for appointment as auditors of the books, records and accounts of the Exchange and its subsidiaries.

Committee Quorum

RULE 10. One-half of its members, including the ex-officio ones, shall constitute a quorum of each committee provided for in this Article, except for the Committee on Specialist Assignment and Evaluation, *the Compensation Committee and the Audit Committee.* For [such] *the* Committee *on Specialist Assignment and Evaluation,* one-half of its members, not counting ex-officio members, shall constitute the number of committee members required for a quorum. Ex-officio members may be included for purposes of determining a quorum, provided that at least one-half of those members present are no ex-officio ones. *For the Compensation Committee and the Audit Committee, a quorum for the transaction of business shall consist of one-half of the committee members, including not less than 50 percent of the Non-Industry members of such committees. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be deemed satisfied.*

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39768; File No. SR–MSRB–98–3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–36

March 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (SR–MSRB–98–3). The proposed rule change is described in Items I and II below, which Items have been prepared by the Board. The Board has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b–4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of an amendment to section (c)(iii) of Rule G–36, on delivery of official statements, advance refunding documents, and Forms G–36(OS) and G–36(ARD) to the Board. The proposed rule change will become operative on April 9, 1998.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule G–36 requires that a broker, dealer or municipal securities dealer acting as underwriter in a primary offering of municipal securities (with certain limited exceptions) send to the Board copies of the official statement and completed Form G–36(OS). The rule was adopted by the Board for the purpose of creating a repository for official statements that would function much like a public library that stores, indexes and provides copies of official statements.[5] This library[6] was intended to serve as a central source for information regarding municipal securities trading in the primary and secondary markets. As originally adopted by the Board and approved by the Commission, Rule G–36 did not apply to any primary offering that qualified for an exemption under current section (d)(1) of Rule 15c2–12 under the Act, including, among other things, commercial paper that qualified for the exemption set forth in paragraph (ii) of Rule 15c2–12(d)(1).[7] In 1992, Rule G–36 was amended to make commercial paper and certain other categories of municipal securities subject to the rule if an official statement in final form had been prepared by or on behalf of the issuer, thereby extending the reach of Rule G–36 beyond the scope of Rule

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 4, 1998, pursuant to Rule 19b–4(e)(b)(iii), the Board provided the required five day advance notice to the Commission of its intent to file this proposed rule change. In this notice, the Board has represented that this proposed rule change: (1) Will not significantly affect the protection of investors; (2) will not impose any significant burden on competition; and (3) will not become operative for thirty days after the date of this filing. *See* letter from Ernesto A. Lanza, Assistant General Counsel, MSRB, to Katherine A. England, Esq., Assistant Director, Division of Market Regulation, SEC, dated March 2, 1998.

[4] *Id.*

[5] *See* Securities Exchange Act Rel. No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990).

[6] The library is now known as the Municipal Securities Information Library® (MSIL®) system. Municipal Securities Information Library and MSIL are registered trademarks of the Board.

[7] Prior to Rule 15c2–12 amendments adopted by the Commission on November 10, 1994, this section was labeled "(c)(2)." *See* Securities Exchange Act Rel. No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) (Adopting Release for Rule 15c2–12).

15c2–12.[8] the 1992 amendment was adopted because the Board believed there existed an interest among market participants in obtaining official statements relating to such municipal securities. By expanding the scope of the rule to include such offerings, the Board believed a more complete collection of disclosure documents would result and the overall integrity, efficiency and liquidity of the municipal securities market would be increased.

Rule G–36(c)(i) currently requires that the underwriter in a primary offering of commercial paper send to the Board a copy of the official statement, if any, prepared by or on behalf of the issuer within one business day of the bond closing.[9] Some concern has been expressed that each roll-over under a commercial paper program may technically constitute a primary offering that might trigger the rule's official statement submission requirement if there exists an official statement in final form prepared by or on behalf of the issuer, even if such official statement has previously been submitted to the Board in connection with the initial sale of commercial paper under the commercial paper program. Such a conclusion is not consistent with the intent of the Board in adopting Rule G–36. The Board had sought to build a library that included a substantially complete set of official statements rather than to impose, for reasons unrelated to the central purpose of building such library, a filing requirement in connection with each primary offering.[10] No purpose is served under these circumstances by having the same official statement submitted to the Board repeatedly.[11]

The Board proposed the rule change to clarify that underwriters of commercial paper issues are required to submit to the Board the official statement in final form, if any, prepared by or on behalf of the issuer only once rather than each time outstanding commercial paper is rolled-over. Under the amendment, once the official statement for a commercial paper issue has been submitted to the Board, such official statement would not be required to be submitted in connection with future roll-overs or issuances of new tranches of commercial paper, even if it is used in connection with such offering, so long as the official statement has not been modified from the form previously submitted to the Board. If the official statement is revised or otherwise modified (*e.g.*, a periodic revision or a modification due to the occurrence of a material event), then the revised or modified official statement would be subject to the rule's submission requirement the first time it is used in connection with a primary offering of the commercial paper, such as a roll-over or issuance of a new tranche. Such revised or modified official statement would thereafter qualify for the submission exemption until it is again revised or modified.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[12] The Board believes that the proposed rule change will provide greater clarity to brokers, dealers and municipal securities dealers in complying with Rule G–36.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers and would reduce the burden of complying with Rule G–36 for brokers, dealers and municipal securities dealers that underwrite commercial paper programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative for 30 days from the date of its filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder and will become operative on April 9, 1998.[13]

In particular, the Commission believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at

[8] Thus, only primary offerings that qualified for the limited placement exemption from Rule 15c2–12 under current paragraph (i) of section (d)(1) (formerly section (c)(1)) remained exempt from Rule G–36. *See* Securities Exchange Act Rel. No. 32086 (March 31, 1993), 58 FR 16290 (April 8, 1993) (order approving SR–MSRB–92–7).

[9] The official statement for a commercial paper issue is often referred to as an offering memorandum.

[10] Form G–36(OS) is also used to assist the Board in invoicing underwriters for underwriting assessments that are due under Rule A–13 in connection with primary offerings. However, as commercial paper issues fall within the exemption from the underwriting assessment set forth in Rule A–13(a)(ii), this function is not served by requiring that Form G–36(OS) be submitted in connection with each primary offering of commercial paper.

[11] In contrast, in certain situations where different underwriters or syndicates have underwritten different portions of the securities offered in a single official statement, separate submissions of Form G–36(OS) and of the official statement (thereby causing multiple copies of the official statement to be filed with the Board) serve the purpose of ensuring that underwriting assessments are invoiced to the applicable underwriters in the appropriate amounts.

[12] Section 15B(b)(2)(C) states in pertinent part that the rules of the Board "shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."

[13] *See supra* note 3.

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the Board's principal offices. All submissions should refer to File No. SR–MSRB–98–3 and should be submitted by April 14, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7518 Filed 3–23–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39764; File No. SR–PCX–98–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Change in the Lead Market Marker Staffing Charges

March 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to modify its staffing charge that is currently applicable to Lead Market Makers ("LMMs") who participate in the Exchange's LMM Book Pilot Program. The text of the proposed rule change is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 11, 1996, the Commission approved an Exchange proposal to adopt the LMM Book Pilot Program under which a limited number of LMMs would be permitted to assume operational responsibility for the options public limit order book ("Book") in a limited number of issues ("LMM Book Pilot Program" or "Program").[4] On October 28, 1996, the Commission approved an Exchange proposal to establish a staffing charge to LMMs who participate in the LMM Book Pilot Program.[5] This charge is currently set at $0.50 per contract for each contract executed by the Book under the LMM Book Pilot Program, subject to a minimum monthly charge of $200 and a maximum monthly charge of $16,000.

The Exchange is now proposing to eliminate the current staffing charge and to replace it with a tiered rate structure. As with the existing staffing charge, the new charge will apply individually to each LMM who is participating in the Program. It will also continue to apply to all option contracts executed by the Book per month in all option issues collectively traded by an LMM under the Program. The new rates are as follows. For up to and including the first 15,000 option contracts executed by the Book in Program issues traded by an LMM per trade month, the charge will be $0.10 per contract. For the next tier, covering from 15,001 to 30,000 contracts, the charge will be $0.20 per contract. For the next tier, covering from 30,001 to 55,000 contracts, the charge will be $0.30 per contract. For the final tier, covering all contracts over 55,000 contracts, the charge will be $0.20 per contract.

For example, assume an LMM trades five option issues under the Program, and during the month of December, the Book executed a total of 25,000 contracts in those five issues. The Exchange would assess the LMM a staffing charge of $1,500 for contracts executed under the first tier (15,000 × $0.10), plus $2,000 for contracts executed under the second tier (10,000 × $0.20), for a total staffing charge for December of $3,500.

The staffing charge is intended to cover the Exchange's cost of providing staff to assist the LMM in operating the Book. The Exchange is modifying the current charge in order to encourage additional LMMs to participate in the LMM Book Pilot Program.[6] By expanding participation in the program, the Exchange will improve its competitive posture by giving its LMM participants the ability to lower transaction costs to the customer and thus to heighten competition with other options exchanges for order flow in issues included in the Program.

The proposal is consistent with Section 6(b) of the Act, in general and Section 6(b)(4), in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act and subparagraph (e) of Rule 19b–4 thereunder because it constitutes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 12, 1998, PCX submitted Amendment No. 1, which made a technical correction and clarification to the filing. *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marie Ito, Special Counsel, Division of Market Regulation, Commission, dated March 11, 1998.

[4] *See* Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996).

[5] *See* Exchange Act Release No. 37874 (October 28, 1996), 61 FR 56597 (November 1, 1996).

[6] Under the terms of the LMM Book Pilot Program, no more than nine LMMs are permitted to participate in the program. Currently, there are three LMMs participating in the program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–03 and should be submitted by April 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Pacific Exchange, Inc.

Additions are italicized; deletions are bracketed.

Schedule of Fees and Charges for Exchange Services

* * * * *

PSE Options: Trade-Related Charges

* * * * *

BOOK EXECUTION CHARGE

Charge per contract		
Premium	1st 10 contracts	11th contract and above
No change	No change	No change.

This charge does not apply to option contracts that are subject to the LMM Book Pilot Program.

LMM Book [Pilot]

Program Staffing Charge

[$0.50 per contract, subject to a minimum monthly charge of $200 and a maximum monthly charge of $16,000.]

LMM monthly book contracts	Charge per book contract	Maximum charge per rate
First 15,000	*$0.10*	*$1,500.00.*
Next 15,000	*0.20*	*$3,000.00.*
Next 25,000	*0.30*	*$7,500.00*
All contracts above 55,000	*0.20*	*No maximum.*

Book staffing charge is applied to the monthly total of all book contracts in all option issues collectively traded by an LMM under the program.

[FR Doc. 98–7593 Filed 3–23–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3066]

State of Alabama

As a result of the President's major disaster declaration on March 9, 1998, and an amendment thereto on March 10, I find that Coffee, Covington, Dale, Escambia, Geneva, and Houston Counties in the State of Alabama constitute a disaster area due to damages caused by severe storms and flooding beginning on March 7, 1998 and continuing. Applications for loans for physical damages may be filed until the close of business on May 8, 1998, and for loans for economic injury until the close of business on December 9, 1998 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Baldwin, Barbour, Butler, Conecuh, Crenshaw, Henry, Monroe, and Pike Counties in Alabama; Escambia, Holmes, Jackson, Okaloosa, Santa Rosa, and Walton Counties in Florida; and Early and Seminole Counties in Georgia.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.250
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.625
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 306606. For economic injury the numbers are 976000 for Alabama, 976100 for Florida, and 976200 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 13, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–7587 Filed 3–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3057: State of California (Amendment #3)

In accordance with a notice from the Federal Emergency Management Agency dated March 6, 1998, the above-numbered Declaration is hereby amended to include Kern, Riverside, San Bernardino, San Diego, and Tulare Counties in the State of California as a disaster area due to damages caused by severe winter storms and flooding beginning on February 2, 1998 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Imperial in California; Clark in Nevada, and LaPaz and Mohave in Arizona may

[7] 17 CFR 200.30–3(a)(12).

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be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is April 10, 1998 and for economic injury the termination date is November 9, 1998.

The economic injury number for Nevada is 976300 and for Arizona the number is 976400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: March 10, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–7590 Filed 3–23–98; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3045]

State of Florida; (Amendment #5)

In accordance with a notice from the Federal Emergency Management Agency dated March 9, 1998, the above-numbered Declaration is hereby amended to include Broward, Flagler, Nassau, and St. Johns Counties in the State of Florida as a disaster area due to damages caused by severe storms, high winds, tornadoes, and flooding beginning on December 25, 1997 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Collier, Dade, Hendry, and Palm Beach in the State of Florida, and Camden County in the State of Georgia may be filed until the specified date at the previously designated location. Any counties contiguous to the above-name primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is April 6, 1998 and for economic injury the termination date is October 6, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 10, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–7592 Filed 3–23–98; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3067]

State of Mississippi and Contiguous Parishes in Louisiana

Adams County and the contiguous Counties of Franklin, Jefferson, and Wilkinson in the State of Mississippi and the contiguous Parishes of Concordia and Tensas in the State of Louisiana constitute a disaster area as a result of damages caused by tornadoes and severe storms that occurred on February 26, 1998. Applications for loans for physical damage disaster as a result of this disaster may be filed until the close of business on May 11, 1998 and for economic injury until the close of business on December 14, 1998 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.250
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.625
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damage are 306712 for Mississippi and 306812 for Louisiana. For economic injury the numbers are 976500 for Mississippi and 976600 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 12, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–7588 Filed 3–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3070]

State of South Carolina and Contiguous Counties in North Carolina

Horry County and the contiguous Counties of Dillon, Georgetown, and Marion in the State of South Carolina and Brunswick, Columbus, and Robeson Counties in the State of North Carolina constitute a disaster area as a result of damages caused by severe storms and flooding that occurred January 27–29, 1998. Applications for loans for physical damage disaster as a result of this disaster may be filed until the close of business on May 15, 1998 and for economic injury until the close of business on December 16, 1998 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.250
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.625
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damage are 307006 for South Carolina and 307106 for North Carolina. For economic injury the numbers are 976900 for South Carolina and 977000 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 16, 1998.

John T. Spotila,

Acting Administrator.

[FR Doc. 98–7589 Filed 3–23–98; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3065]

Texas

San Augustine and Polk Counties and the contiguous Counties of Angelina, Hardin, Jasper, Liberty, Nacogdoches, Sabine, San Jacinto, Shelby, Trinity, and Tyler in the State of Texas constitute a disaster area as a result of damages caused by tornadoes and high winds that occurred on February 10, 1998. Applications for loans for physical damage as a direct result of this disaster may be filed until the close of business on May 11, 1998 and for economic injury until the close of business on December 10, 1998 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.250
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.625
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 306512 for physical damage and 975900 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 10, 1998

Aida Alvarez,

Administrator.

[FR Doc. 98–7591 Filed 3–23–98; 8:45 am]

BILLING CODE 8025–01–U

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Altered System of Records and Report of New Routine Use

AGENCY: Social Security Administration (SSA).

ACTION: Altered system of records and new routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to alter an existing system of records and establish a new routine use, both in the 09–60–0058—Master Files of Social Security Number (SSN) Holders and SSN Applications, SSA/OSR, system of records. (For convenience, we will refer to this system of records as the SSN System.) The proposed alteration and new routine use will allow SSA to obtain the SSNs of the parents on applications for SSNs for individuals who have not attained the age of 18 and to share that information with the Secretary of the Treasury for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children. We are also making non-substantive housekeeping changes in the notice.

We invite public comment on this publication.

DATES: We filed a report of an altered system of records and proposed new routine use with the Chairman, Committee on Government Reform and Oversight of the House of Representatives; the Chairman, Committee on Governmental Affairs of the Senate; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on March 9, 1998. The routine use will become effective as proposed, without further notice May 4, 1998, unless we receive comments on or before that date that result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. Comments may be faxed to (410) 966–0869. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Walker, Social Insurance Specialist, Office of Disclosure Policy, Social Security Administration, 3–C–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–8525.

SUPPLEMENTARY INFORMATION:

A. Discussion of the Alteration and the Proposed New Routine Use

Section 1090(b) of the Taxpayer Relief Act of 1997, Pub. L. 105–34, amends section 205(c)(2)(B)(ii) of the Social Security Act, which imposes a duty on the Commissioner of Social Security to require of applicants for an SSN such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants. "Such evidence", for applications for SSNs for individuals who have not attained the age of 18, "shall include the information described in" section 205(c)(2)(C)(ii). That information is the SSNs of the parents.

In addition, section 205(c)(2)(C)(ii) requires each parent to furnish to a State (or political subdivision) the parent's SSN (or SSNs if there is more than one) for the purpose of issuing a birth certificate, unless the State, in accordance with regulations issued by the Commissioner of Social Security, finds good cause for not requiring the parents to furnish their SSNs. Section 1090(b) requires the States to make those parents' SSNs available to the Commissioner of Social Security. The Commissioner is required to share the parents SSNs, obtained under sections 205(c)(2)(B)(ii) and (C)(ii), with the Secretary of the Treasury for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

Categories of records currently collected in the SSN system include name, date and place of birth, sex, both parents' names, and race/ethnic data but does not include the SSNs of parents provided on applications of individuals who have not attained the age of 18. In response to the requirements of the Taxpayer Relief Act of 1997, we propose to alter the categories of records in the system to include the SSNs of parents provided on applications for SSNs of individuals who have not attained the age of 18.

We are also altering our statement of purpose for the collection of information to recognize that we collect the parents' SSNs for two reasons:

1. As evidence with respect to an application for an SSN for an individual who has not attained the age of 18, and
2. In order to share parents' SSNs with the Secretary of the Treasury for use in administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

We are also proposing to add a routine use to the SSN system of records allowing disclosure of the SSNs of parents provided on applications for SSNs of individuals who have not attained the age of 18 to the Secretary of the Treasury for the purpose of administering those sections of the

Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children. The routine use will read that disclosures will be made:

8(c) To the Secretary of the Treasury for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children. (As required by section 1090(b) of the Taxpayer Relief Act of 1997, Pub. L. 105–34, this routine use applies specifically to SSNs of parents shown on an application for an SSN for an individual who has not attained the age of 18.

A notice of the SSN system, to which the routine use will apply, was last published in the **Federal Register** at 61 FR 33791, June 28, 1996.

B. Compatibility of Proposed Routine Use

We are proposing the new routine use discussed above in accordance with the Privacy Act (5 U.S.C. 552a(a)(7), (b)(3), (e)(4) and (e)(11)) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., where the information will be used for a purpose that is compatible with the purpose for which we collected the information. Consistent with the Privacy Act, under 20 CFR 401.150 we may disclose information under a routine use for administering our programs, or for administering similar programs of other agencies. In addition, our regulation at 20 CFR 401.120, provides that we disclose information when a law specifically requires it. The Taxpayer Relief Act of 1997, Pub. L. 105–34, specifically requires disclosure of the information at issue to the Secretary of the Treasury. Therefore, we find that disclosing the SSNs of parents of applicants for SSNs who have not attained the age of 18 serves purposes that are deemed to be compatible with purposes for which SSA collects the information and meets the criteria of the Privacy Act and the regulation for establishment of a routine use.

C. Effect of the Proposal on Individual Rights

As discussed above, the proposed system alterations and new routine use will permit SSA to disclose the parents' SSNs at issue to the Secretary of the Treasury for administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

While disclosure will have some impact on the privacy of individuals, (the SSNs of the parents will be known to the Social Security Administration and the Department of the Treasury) the Treasury will be better able to administer certain parts of the tax code. SSA will follow all statutory and regulatory requirements for disclosure. Thus, we do not anticipate that the disclosure will have any unwarranted effect on the privacy or other rights of individuals.

Dated: March 9, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

09–60–0058

SYSTEM NAME:

Master Files of Social Security Number (SSN) Holders and SSN Applications, SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Telecommunications and Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Central Records Operations, 300 N. Greene Street, Baltimore, MD 21201

Records may also be maintained at contractor sites (contact the system manager at the address below to obtain contractor addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains a record of each individual who has applied for and been assigned an SSN. Also, each individual who applied for an SSN, but was not assigned one due to the following:

- His/her application was supported by documents which are suspected to be fraudulent and are being verified with the issuing agency, or have been determined to be fraudulent, or
- Fraud is not suspected, but further verification of information on his/her application or additional supporting documents are needed, or
- None of the above applies, but processing of the application has not yet been completed.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all of the information received on applications for SSNs (e.g., name, date and place of birth, sex, both parents' names, and race/ethnic data)(and, in the case of an application for an SSN for an individual who has not attained the age of 18, the SSNs of the parents), and any changes in the information on the applications that are submitted by the SSN holders. It also contains information from applications supported by evidence suspected or determined to be fraudulent, along with the mailing addresses of the individuals who filed such applications and descriptions of the documentation which they submitted. Cross-references may be noted where multiple numbers have been issued to the same individual and an indication may be shown that a benefit claim has been made under a particular SSN(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act (the Act) (42 U.S.C. §§ 405(a) and 405(c)(2)).

PURPOSE(S):

Information in this system is used by the Social Security Administration (SSA) to assign SSNs. The information also is used for a number of administrative purposes, such as:

- By SSA components for various Old Age, Survivors and Disability Insurance, Supplemental Security Income, and Medicare/Medicaid claims purposes including usage of the SSN itself as a case control number and a secondary beneficiary cross-reference control number for enforcement purposes and use of the SSN record data for verification of claimant identity factors and for other claims purposes related to establishing benefit entitlement;
- By SSA as a basic control for retained earnings information;
- By SSA as a basic control and data source to prevent issuance of multiple SSNs;
- As the means to identify reported names or SSNs on earnings reports;
- For resolution of earnings discrepancy cases;
- For statistical studies;
- By the Office of the Inspector General, Office of Audit Services, for auditing benefit payments under Social Security programs;
- By the Department of Health and Human Services (DHHS) Office of Child Support Enforcement for locating parents who owe child support;
- By the National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Safety and Health Act of 1974;
- By the DHHS Office of Refugee Resettlement for administering Cuban refugee assistance payments; and
- By the DHHS Health Care Financing Administration for administering Title XVIII claims.
- By the Secretary of the Treasury for use in administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on

support or residence of children. (Applies specifically to SSNs of parents provided on applications for SSNs for individuals who have not attained the age of 18.)

Information in this system is also used by SSA to prevent the processing of an SSN card application for an individual whose application is identified as having been supported by evidence that either:

- Is suspect and being verified, or
- Has been determined to be fraudulent.

With this system in place, clerical investigation and intervention is required. Social Security offices are alerted when an applicant attempting to obtain an SSN card visits other offices in an attempt to find one which might unwittingly accept fraudulent documentation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Employers are notified of the SSNs of employees in order to complete their records for reporting wages to SSA pursuant to the Federal Insurance Contributions Act and section 218 of the Act.

2. To Federal, State and local entities for the purpose of administering income-maintenance and health-maintenance programs, where such use of the SSN is authorized by Federal statute.

3. To the Department of Justice (DOJ), Federal Bureau of Investigation and United States Attorneys Offices, and to the Department of the Treasury, United States Secret Service, for investigating and prosecuting violations of the Act.

4. To the DOJ, Immigration and Naturalization Service, for the identification and location of aliens in the United States pursuant to requests received under section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Railroad Retirement Board for:

(a) Administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment; and

(b) Administering the Railroad Unemployment Insurance Act.

7. To the Department of Energy for its study of the long-term effects of low-level radiation exposure.

8. To the Department of the Treasury for:

(a) Tax administration as defined in section 6103 of the Internal Revenue Code (IRC) (26 U.S.C. 6103); and

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks.

(c) Administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children. (As required by section 1090(b) of the Taxpayer Relief Act of 1997, Pub. L. No. 105–34, this routine use applies specifically to SSNs of parents shown on an application for an SSN for an individual who has not attained the age of 18.

9. To a congressional office in response to an inquiry from the office made at the request of the subject of a record.

10. To the Department of State for administering the Act in foreign countries through facilities and services of that agency.

11. To the American Institute of Taiwan for administering the Act on Taiwan through facilities and services of that agency.

12. To the Department of Veterans Affairs (VA), Philippines Regional Office, for administering the Act in the Philippines through facilities and services of that agency.

13. To the Department of the Interior for administering the Act in the Trust Territory of the Pacific Islands through facilities and services of that agency.

14. To the Department of Labor for:

(a) Administering provisions of the Black Lung Benefits Act; and

(b) Conducting studies of the effectiveness of training programs to combat poverty.

15. To VA for the following purposes:

(a) For the purpose of validating SSNs of compensation recipients/pensioners in order to provide the release of accurate pension/compensation data by VA to SSA for Social Security program purposes; and

(b) Upon request, for purposes of determining eligibility for or amount of VA benefits, or verifying other information with respect thereto.

16. To Federal agencies which use the SSN as a numerical identifier in their recordkeeping systems, for the purpose of validating SSNs.

17. To the DOJ, to a court, to another tribunal, or to another party before such tribunal, when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the tribunal, or other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information that is subject to disclosure provisions of the IRC will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

18. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

19. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Act.

20. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Act).

21. To third party contacts when the party to be contacted has, or is expected to have, information which will verify documents when SSA is unable to determine if such documents are authentic.

22. Upon request, information on the identity and location of aliens may be disclosed to the DOJ, Criminal Division, Office of Special Investigations, for the purpose of detecting, investigating, and, when appropriate, taking legal action against suspected Nazi war criminals in the United States.

23. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub. L. 97–86).

24. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a

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third party to assist in accomplishing an agency function relating to this system of records.

25. Validated SSN information may be disclosed to organizations or agencies such as prison systems that are required by law to furnish SSA with SSN information.

26. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

27. Disclosure of SSNs and dates of birth may be made to VA or third parties under contract to that agency for the purpose of conducting VA medical research and epidemiological studies.

28. SSN information may be disclosed to the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), when OPM needs the information in administering its pension program for retired Federal Civil Service employees.

29. Upon request by the Department of Education, SSNs which are provided by students to postsecondary educational institutions may be verified as required by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1091).

30. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

31. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

32. Corrections to information that resulted in erroneous inclusion of individuals in the Death Master File (DMF) may be disclosed to recipients of erroneous DMF information.

33. To State vital records and statistics agencies, the SSNs of newborn children for administering public health and income maintenance programs, including conducting statistical studies and evaluation projects.

34. Personal identification data (i.e., name, SSN, and date of birth) concerning individuals who apply for, or are issued, drivers' licenses or other identification documents may be verified for State motor vehicle agencies (MVA) that issue such licenses or documents. In performing such "verification," SSA may indicate whether the identifying data furnished by a State MVA concerning an individual match or do not match data maintained in this system of records, and SSA may identify the particular data elements that do not match. SSA will not disclose information from this system of records which does not match the information furnished by the State MVA.

35. Information as to whether an individual is alive or deceased may be disclosed pursuant to section 1106(d) of the Social Security Act (42 U.S.C. 1306(d)), upon request, for purposes of an epidemiological or similar research project, provided that:

(a) SSA determines in consultation with the DHHS, that the research may reasonably be expected to contribute to a national health interest;

(b) The requester agrees to reimburse SSA for the costs of providing the information; and

(c) The requester agrees to comply with any safeguards and limitations specified by SSA regarding rerelease or redisclosure of the information.

36. In connection with a pilot program, conducted with the Immigration and Naturalization Service under 8 U.S.C. 1324a(d)(4) to test methods of verifying that individuals are authorized to work in the United States, SSA will inform an employer participating in such pilot program that the identifying data SSN, name and date of birth) furnished by an employer concerning a particular employee match, or do not match, the data maintained in this system of records, and when there is such a match, that information in this systems of records indicates that the employee is, or is not, a citizen of the United States.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in paper form (e.g., Forms SS–5 (Application for an SSN card), and system generated forms); magnetic media (e.g., magnetic tape and disc with on-line access); in microfilm and microfiche form and on electronic files (e.g., NUMIDENT and Alpha-Index).

RETRIEVABILITY:

Records of SSN holders are indexed by both SSN and name. Records of applications that have been denied because the applicant submitted fraudulent evidence, or that are being verified because the evidence is suspected to be fraudulent, are indexed either by the applicant's name plus month and year of birth, or by the applicant's name plus the eleven-digit reference number of the disallowed application.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the Systems Security Handbook. This includes maintaining the magnetic tapes and discs within a secured enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and Field Office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm, microfiche, and paper files are accessible only by authorized personnel who have a need for the records in the performance of their official duties.

Expansion and improvement of SSA telecommunications systems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit the identification of terminal users.

RETENTION AND DISPOSAL:

All paper forms are retained for five years after they have been filmed or entered on tape and the accuracy has been verified. They then are destroyed by shredding. Electronic, as well as updated microfilm and microfiche records are retained indefinitely. All tape, discs, microfilm and microfiche files are updated periodically. Out-of-date magnetic tapes and discs are erased. Out-of-date microfiches are disposed of by applying heat.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Data Support and Enumeration, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record with information pertaining to him/her by providing his/her name, signature, and SSN to the address shown under "System manager and address" above. (Furnishing the SSN is voluntary, but it makes searching for an individual's record easier and avoids delay.) If the SSN is unknown or no SSN has been assigned because the evidence presented with the application is being verified or has been determined to be fraudulent, the individual should provide name, signature, date and place of birth, sex, mother's birth name, and father's name, and evidence of identity. Information in this system of records is available to the subjects of the records.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents which they are seeking.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, requesters should reasonably identify the record, specify the information which they are contesting, and state the corrective action sought and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from SSN applicants (or individuals acting on their behalf). The SSN itself is assigned to the individual as a result of internal processes of this system.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–7579 Filed 3–23–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice #2771]

United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector (ITAC–R): Notice of Meetings

The Department of State announces that a meeting of the National Committee of the Radiocommunciation Sector of the U.S. International Telecommunication Advisory Committee will be held April 2, 1998, 1:30 PM–4 PM, in Room 1406 of the Department of State, 2201 "C" Street, N.W., Washington, D.C. The purpose of the National Committee is to advise the Department on policy, technical and operational matters with respect to international radiocommunciations issues. A related meeting of the ITAC CITEL Permanent Consultative Committee III—Radiocommunications will be held April 2, 1998 at 9:30–11:30 AM, in Room 1406.

The National Committee meeting will consider the preparatory process for ITU Radiocommunication meetings, review radiocommunication matters requiring decision at the International Telecommunication Union Administrative Council meeting May 20–29, 1998, and review Study Group and CPM activities.

The PCC III preparatory meeting will review the results of the CITEL Assembly and consider U.S. preparations for the PCC III meeting June 8–12, 1998 in Sao Paulo.

Members of the General Public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled.

Persons intending to attend the meeting should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the 'C' Street Main Lobby.

Dated: March 18, 1998.

Richard E. Shrum,

Executive Director, U.S. ITAC.

Draft Agenda—ITAC–R National Committee, April 2, 1998, 1:30–4 pm, Room 1406

1. Opening Remarks and Introduction
2. Review and Approval of Agenda
3. Review of ITAC Activities
   - Plenipotentiary preparations
   - Free Flow of Information
   - Council Preparations
4. Report on Radiocommunication Advisory Group (January 12–16, 1998)
5. Preparatory process for ITU Radiocommunication Meetings
6. Report of Study Group and Conference Preparatory Meeting Activities
7. Recommendations for Administrative Council (May 20–29, 1998)
   - Financial resources for post WRC 97 work
   - Scheduling of WRC 99
   - Unfunded agenda items for WRC 99
   - Cost recovery
8. Future Meetings
9. Other Business

Draft Agenda—CITEL PCC III—Radiocommunications Preparatory Meeting, April 2, 1998, 9:30–11:30 am, Room 1406

1. Opening Remarks and Introduction
2. Review and Approval of Agenda
3. Report of CITEL Assembly (March 2–6, 1998)
4. Preparations for PCC III Meeting (June 8–12, 1998)
5. Future Meetings
6. Other Business

[FR Doc. 98–7684 Filed 3–20–98; 10:51 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 17, 1997 [62 FR 66172].

DATES: Comments must be submitted on or before April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Barsanti, Office of Research and Development, Federal Highway Administration, U.S. Department of Transportation, 6300 Georgetown Pike, McLean, VA, 22101–2296, (703) 285–2102 or (703) 285–2443. Office hours are from 7:30 a.m. to 4:00 p.m., E.T., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Nationwide Survey of Public Roads Readers.

OMB Number: 2125–0562.

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Type of Request: Extension of a currently approved collection.

Affected Public: Paid and complementary subscribers to Public Roads magazine.

Abstract: This study is pursuant to President Clinton's Executive Order 12862, which requires all agencies to identify their customers, survey their satisfaction with current services, set standards for service and measure results against them. In addition, a nationwide census of readers was conducted in 1995 to gauge the overall satisfaction of readers and to measure, in particular, reader satisfaction with significant changes that had been made in the magazine's design and content, subject scope, and audience. Now, it is time to survey a sample of the readership and compare the results to the benchmark established in 1995. Also, the results of this survey will form the basis of a major, direct-mail campaign to increase the number of paid subscribers.

Estimated Annual Burden Hours: 375 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it 30 days after publication.

Issued in Washington, DC, on March 12, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–7557 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 21, 1997 [62 FR 62398].

DATES: Comments must be submitted on or before April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Wasley, Office of Engineering, 202–366–4658, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Preparation and execution of the Project Agreement and Modifications.

OMB Number: 2125–0529.

Type of Request: Extension of a currently approved collection.

Form(s): PR–2, PR–2–1, PR–2A.

Affected Public: State highway agencies.

Abstract: Under the provisions of 23 U.S.C. 110, a formal agreement between the State highway agency and the FHWA is required for Federal-aid highway projects. This agreement, referred to as the "project agreement," is in essence a written contract between the State and the Federal government defining the extent of the work to be undertaken and commitments made concerning the project.

The requirements covering project agreements are contained in 23 CFR part 630, subpart C.

Estimated Annual Burden Hours: 12,040 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on March 18, 1998.

Phillip A. Leach,

Clearance Officer, Department of Transportation.

[FR Doc. 98–7558 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–98–010]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of subcommittee meetings.

SUMMARY: The two Subcommittees (Waterways and Navigation) of the Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. Both meetings will be open to the public.

DATES: The meeting of the Waterways Subcommittee will be held on Thursday, April 16, 1998, at 9:30 a.m. and immediately following, the Navigation Subcommittee will meet. Members of the public may present written or oral statements at the meetings.

ADDRESSES: The subcommittee meetings will be held at the Houston Yacht Club, 3620 Miramar, La Porte, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Kevin Eldridge, Executive Director of HOGANSAC, telephone (713) 671–5199, or Commander Paula Carroll, Executive Secretary of HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Subcommittee on Waterways. The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future, including aids to navigation knockdown discrepancies, Galveston anchorages update, and the potential blockage of the Clear Lake Entrance Channel.

(2) Review and discuss the work completed by each work group.

Subcommittee on Navigation. The tentative agenda includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future, including ACOE dredging projects, current meters, National Weather Service and Baytown Tunnel removal.

(2) Review and discuss the work completed by each work group.

Procedural

All meetings are open to the public. Members of the public may make oral presentations during the meetings.

Information on Service for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 11, 1998.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–7636 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3605]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. Both meetings will be open to the public.

DATES: TSAC will meet on Wednesday, April 8, 1998, from 9:00 a.m. to 1 p.m. The working groups will meet on Tuesday, April 7, 1998, from 9 a.m. to 3 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before March 20, 1998. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before March 20, 1998.

ADDRESSES: Both meetings will be held at the Channel Inn Hotel, 650 Water Street SW., Washington, DC. Send written material and requests to make oral presentations to Lieutenant Lionel Mew, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lionel Mew, Assistant Executive Director of TSAC, telephone 202–267–0218, fax 202–267–4570. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Towing Safety Advisory Committee (TSAC). The agenda includes the following:

(1) Introduction.

(2) Progress report from the working group on Voyage Planning.

(3) Progress report from the working group on the Tank Barge Streamlined Inspection Program.

(4) Briefing on Work Vest Snag Hazard Concerns.

(5) Status report on the Towing Vessel Safety Rule.

Procedural

Both meetings are open to the public. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than March 20, 1998. Written material for distribution at a meeting should reach the Coast Guard no later than March 20, 1998. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than March 20, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: March 18, 1998.

Joseph S. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–7632 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine issues.

DATES: The meeting will be held on April 9, 1998 from 8:00 a.m. Arrange for oral presentations by April 2, 1998.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW, Room 3200, Washington, DC 20590. Enter the building through the SW lobby located at Seventh and E Streets, SW.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9692.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held April 9, 1998 at the U.S. Department of Transportation, 400 Seventh Street, SW, Room 3200, Washington, DC.

The agenda for the meeting will include:

Thursday, April 9, 1998

- Opening Remarks.
- Structures Harmonization Working Group Vote.
- Review and Accept Ice Protection Working Plan.
- Review Status of Approval for New Terms of Reference.
- Review Future Meeting Schedule and Set Next Meeting.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 2, 1998 to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by providing copies at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as listening devices, if requested 10 calendar days before the meeting.

The Structures Harmonization Working Group is requesting a vote to accept a draft notice of proposed rulemaking (NPRM), regulatory evaluation, and advisory circular concerning Revised Material Strength Properties and Design Values for Transport Airplanes. Also, the Ice Protection Harmonization Working Group is requesting a vote to accept a Statement of Work to develop and recommend appropriate changes to the Federal Aviation Regulations, Joint Aviation Authorities Regulations, and any associated advisory material related to ice protection features in transport category airplanes.

Arrangements may be made to present statements, request sign, oral interpretation, or listening devices, and request copies of the documents to be voted upon by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on March 18, 1998.

Jean Casciano,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–7604 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–97–3224; Notice 12]

Pipeline Safety: Shell Pipe Line Corporation Approved for Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of risk demonstration project approval and finding of no significant impact.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) has issued a Risk Management Demonstration Project Order authorizing Shell Pipe Line Corporation (SPLC) to participate in the Pipeline Risk Management Demonstration Program. OPS has also made a finding that SPLC's demonstration project will have no significant impacts on the environment.

ADDRESSES: Comments on this or any other demonstration project will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–97–3224. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this document. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION:

Project Authorization

On March 18, 1998, OPS, pursuant to 49 U.S.C. 60126, issued SPLC a Risk Management Demonstration Project Order authorizing SPLC to conduct a risk management project on two segments of the SPLC-operated pipeline system. OPS has determined, after a comprehensive review of SPLC's demonstration project, that the project is expected to provide superior safety.

More detailed descriptions of all aspects of the SPLC demonstration project, including the OPS rationale for approving the project, are available in the following documents:

(1) 62 FR 67932, "Pipeline Safety: Intent To Approve Shell Pipe Line Corporation for the Pipeline Risk Management Demonstration Program", December 30, 1997.

(2) "Demonstration Project Prospectus: Shell Pipe Line Corporation", available by contacting Elizabeth M. Callsen at 202–366–4572. Includes maps of the demonstration segments.

(3) "Shell Pipe Line Corporation—Application for DOT–OPS Risk Management Demonstration Program", available in Docket No. RSPA–97–3224 at the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–5046.

(4) 63 FR 7500, "Pipeline Safety: Environmental Assessment for Risk Management Demonstration Project—Shell Pipe Line Corporation", February 13, 1998.

(5) "OPS Project Review Team Evaluation of Shell Demonstration Project".

(6) "Risk Management Demonstration Project Order" for Shell Pipe Line Corporation, March 18, 1998.

These documents and other information pertaining to the SPLC project are accessible to the public via the Pipeline Risk Management Information System (PRIMIS), at http://www.cycla.com/opsdemo.

Finding of No Significant Impact (FONSI)

OPS has reviewed SPLC's project for conformity with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality implementing regulations (40 CFR 1500–1508), and Department of Transportation Order 5610.1c, Procedures for Considering Environmental Impacts. OPS conducted an Environmental Assessment of SPLC's project (63 FR 7500, "Pipeline Safety: Environmental Assessment for Risk Management Demonstration Project—Shell Pipe Line Corporation," February 13, 1998).

OPS received no public comment on the Environmental Assessment.

Based on the analysis and conclusions reached in the Environmental Assessment and the analyses conducted in the above-listed documents, OPS has found that there are no significant impacts on the environment associated with this action. The Environmental Assessment and the other above-listed documents are incorporated by reference into this FONSI. To summarize, the reasons that the project will not have a significant effect on the human environment are:

(1) The portfolio of activities SPLC will undertake to prevent pipeline releases from the demonstration segments provide superior protection by appropriately addressing the greatest risks. The company will conduct state-of-the-art inspections to decide if there is past, unknown third party damage, while simultaneously carrying out an aggressive damage prevention program to prevent future damage. Also included are community involvement activities which include spill modeling and emergency response drills.

(2) The commodities transported by the two

demonstration segments (carbon dioxide and ethylene) can have little impact on the human environment, should a release occur. These reasons are further discussed in the Environmental Assessment referenced above.

Issued in Washington, DC on March 19, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–7605 Filed 3–23–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33520]

Consolidated Rail Corporation—Trackage Rights Exemption—The Wheeling and Lake Erie Railway Company

The Wheeling and Lake Erie Railway Company (W&LE) has agreed to grant local trackage rights to Consolidated Rail Corporation (Conrail) over certain railroad trackage, being a portion of W&LE's River Line, and more particularly described as follows: (1) initial rights for a period of 6 months from the date Conrail begins operations under the trackage rights agreement, or for such extensions of time as may be mutually agreed, shall begin at the connection between Conrail and W&LE at Shannon Run, OH, in the vicinity of W&LE milepost R–1.5±, and shall extend to the American Electric Power (AEP) Cardinal Plant at Brilliant, OH, in the vicinity of W&LE R–5.0±; and (2) permanent rights, after the term of the initial rights, shall begin at a new connection to be constructed between Conrail's River Line at milepost 26.40± and W&LE's River Branch at milepost R–3.0±, thence extending on W&LE's River Branch to the AEP Cardinal Plant at Brilliant, OH, in the vicinity of W&LE milepost R–5.0±.

The trackage rights exemption will be effective on March 19, 1998. The actual commencement of operations by Conrail pursuant to the trackage rights will depend upon Conrail's commercial arrangements with AEP, but will not take place before the March 19, 1998 effective date.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33520, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, 2001 Market Street, 16A, Philadelphia, PA 19101–1416.

Decided: March 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7617 Filed 3–23–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33553]

Ventura County Transportation Commission—Acquisition Exemption—Southern Pacific Transportation Company

Ventura County Transportation Commission (VCTC), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 31.73 miles of rail line from Southern Pacific Transportation Company (SP) between milepost 435.07 and milepost 403.34 at Montalvo Station near Ventura, CA, where the line connects with the SP Coast Line (the Santa Paula Branch Line).[1]

VCTC entered into an agreement with SP to purchase the line, and consummated the transaction on October 27, 1995, apparently without appropriate authority from the Board. Under the agreement, SP retained the right to continue to provide freight common carrier service over a portion of the line, but, according to VCTC, VCTC became a carrier at the time of the purchase in 1995. VCTC did not file its verified notice of exemption, as amended, with the Board until February 27, 1998. VCTC has acknowledged that the effective date of the exemption was March 6, 1998 (7 days after the amended notice of exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33553, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Charles A. Spitulnik, Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006.

Decided: March 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7618 Filed 3–23–98; 8:45 am]

BILLING CODE 4915–00–P

[1] This notice of exemption amends and supersedes the earlier notice of exemption that VCTC had filed, pursuant to 49 CFR 1150.31, on February 10, 1998.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 119X)]

Union Pacific Railroad Company—Abandonment Exemption—In Rock, Green and Dane Counties, WI

On March 4, 1998, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon and discontinue service on a line of railroad known as the Harvard Subdivision, extending from railroad milepost 119.0 near Evansville to railroad milepost 134.0 near "MX" (a crossing of Wisconsin & Southern Railroad Company near Madison), a distance of 15.0 miles in Rock, Green and Dane Counties, WI. The line traverses U.S. Postal Service Zip Codes 53536, 53575 and Area 537 (near Madison), and includes the non-agency rail station of Oregon at milepost 128.1.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding

pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 22, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. An offer may be filed at any time after the filing of the petition for exemption. For offers filed before March 20, 1998, the offer must have been accompanied by a $900 filing fee. For offers filed on or after March 20, 1998, the offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25) and *Regulations Governing Fees for Service Performed in Connection with Licensing and Related Services—1998 Update,* STB Ex Parte No. 542 (Sub–No. 2) (STB served Feb. 18, 1998).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 13, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 119X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Joseph D. Anthofer, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: March 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7616 Filed 3–23–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 17, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before April 23, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1572.

Regulation Project Number: REG–120200–97 NPRM, Temporary and Final.

Type of Review: Extension.

Title: Election Not to Apply Look-Back Method in De Minimis Cases.

Description: The temporary and proposed regulations provides rules for electing the benefits of section 460(b)(6) regarding not applying the look-back method to long-term contracts de minimis cases.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1545–1584.

Form Number: IRS Form 8859.

Type of Review: Revision.

Title: District of Columbia First-Time Homebuyer Credit.

Description: Form 8859 is used to claim the District of Columbia First-Time Homebuyer Credit. The information collected will be used to verify that the credit was computed correctly.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,900.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—20 minutes;

Learning about the law or the form—5 minutes.

Preparing the form—25 minutes.

Copying, assembling, and sending the form to the IRS—20 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting/Recordkeeping Burden: 2,242 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–7526 Filed 3–23–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 17, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before April 23, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1574.

Form Number: IRS Form 1098–T.

Type of Review: Extension.

Title: Tuition Payments Statements.

Description: Section 6050S of the Internal Revenue Code requires eligible education institutions to report certain information to the IRS and to students. Form 1098–T has been developed to meet this requirement.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 7,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 7 minutes.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 2,420,000 hours.
OMB Number: 1545–1576.
Form Number: IRS Form 1098–E.
Type of Review: Extension.
Title: Student Loan Interest Statement.
Description: Section 6050S(b)(2) of the Internal Revenue Code requires persons (financial institutions, governmental units, etc.) to report $600 or more of interest paid on student loans to the IRS and the students.
Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 200,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 750,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 98–7527 Filed 3–23–98; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: AXA Global Risks US Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35548.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, on page 35553 to reflect this addition: *AXA Global Risks US Insurance Company.* BUSINESS ADDRESS: 199 Water Street, New York, NY 10038 PHONE: (212) 412–0700. UNDERWRITING LIMITATION *b/*: $7,512,000. SURETY LICENSES *c/*: AK, AZ, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00509–8.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: March 10, 1998.

Charles F. Schwan III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 98–7663 Filed 3–23–98; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Heart of America Fire and Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35548.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, on page 35563 to reflect this addition: *Heart of America Fire and Casualty Company.* BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438–7223. UNDERWRITING LIMITATION *b/*: $568,000. SURETY LICENSES *c/*: AL, AK, AR, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, MO, MT, NM, OH, OR, SC, SD, TX, UT, WI, WY. INCORPORATED IN: Missouri.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00509–8.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: March 10, 1998.

Charles F. Schwan III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 98–7661 Filed 3–23–98; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Service Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

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SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35548.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, on page 35574 to reflect this addition: *Service Insurance Company.* BUSINESS ADDRESS: P.O. Box 9729, Bradenton, FL, 34206–9729. PHONE: (941) 746–4107. UNDERWRITING LIMITATION *b/*: $528,000. SURETY LICENSES *c/*: AL, FL, GA, SC, TN. INCORPORATED IN: Florida.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html) through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00509–8.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: March 11, 1998.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 98–7662 Filed 3–23–98; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0143]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the credit statement and rental offer executed by prospective tenants of properties owned by VA.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0143" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–5079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Offer to Rent on Month-To-Month Basis and Credit Statement of Prospective Tenant, VA Form 26–6725.

OMB Control Number: 2900–0143.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to establish the landlord-tenant relationship when properties acquired by VA, through operation of the guaranteed and direct home loan programs, are rented. VA Form 26–6725 states the responsibilities of the parties, provides evidence of tender and acceptance of rental payments, and provides credit information for evaluating the prospective tenant's ability to meet rental payments. Without this form, VA would have to prepare individual leases.

Affected Public: Individuals or households—Business or other for-profit.

Estimated Annual Burden: 33 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 100.

Dated: March 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7653 Filed 3–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0032]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved

collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the report and certification of guaranteed or insured loan disbursements.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0032" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–5079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report and Certification of Loan Disbursement, VA Form 26–1820.

OMB Control Number: 2900–0032.

Type of Review: Extension of a currently approved collection.

Abstract: The form is completed by lenders closing VA guaranteed and insured loans under the automatic or prior approval procedures. Such loans are not subject to prior approval of VA. Lenders are required to submit with VA Form 26–1820 a copy of the loan application (showing income, assets, and obligations) which the lender requires the borrower to execute when applying for the loan; original employment and income verifications obtained from the borrower's place of employment; original verification of assets; and original credit report. VA Form 26–1820 provides VA with the necessary information on the loan and property sufficient for loan examination determinations and verification of compliance with Title 38 U.S.C. Chapter 37.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 130,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time per loan disbursement.

Estimated Number of Respondents: 260,000.

Dated: March 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7654 Filed 3–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0020]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to designate a beneficiary and select an optional settlement to be used when the insurance matures by death.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0020" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Designation of Beneficiary, VA Form 29–336.

OMB Control Number: 2900–0020.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used by the insured to designate a beneficiary and select an optional settlement to be used when the insurance matures by death. The information is used by VA to determine who is eligible to receive the proceeds of the insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 13,917 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 83,500.

Dated: March 5, 1998.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7655 Filed 3–23–98; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—NEW (VR&C)]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information that will be collected by a vocational rehabilitation and counseling survey.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–NEW (VR&C)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Vocational Rehabilitation and Counseling (VR&C) Service Program Outcome Survey, VA Form 28–0317.

OMB Control Number: 2900–NEW (VR&C).

Type of Review: New collection.

Abstract: VBA plans to conduct a study to assess program outcomes for its Vocational Rehabilitation and Counseling (VR&C) Program. VBA has identified a need for direct input from former program customers, including reactions to VR&C's program offerings, processes, quality of services, and outcomes achieved by veterans who participated in the program. The information collected will be used to identify program outcomes and opportunities for improving VR&C program performance. Specifically, the information will be used to assess whether the services provided under the program meets veterans needs, are provided in a manner that encourages participation by eligible recipients, and promotes successful achievement of rehabilitation and related objectives.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,650 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,000.

Dated: March 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7656 Filed 3–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0159]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the disposition of proceeds of a matured endowment policy.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0159" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Matured Endowment Notification, VA Form 29–5767.

OMB Control Number: 2900–0159.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to notify the insured that his/her endowment policy has matured and to solicit the disposition of the proceeds. The information is used by VA to process the insured's request.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,867 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 8,600.

Dated: March 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7657 Filed 3–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to complete the compliance inspection report for purchase or construction of residential property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0041" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–5079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Compliance Inspection Report, VA Form 26–1839.

OMB Control Number: 2900–0041.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by fee compliance inspectors to report acceptability of residential construction and conformity with standards prescribed for new housing proposed as security for loans guaranty. The information is used by VA to determine whether completion of all onsite and offsite improvements are completed in accordance with plans and specifications used in the appraisal of the property.

Affected Public: Individuals or households.

Estimated Annual Burden: 1 hour is being requested since the compliance inspection report is common to the industry.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 225,000.

Dated: March 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7658 Filed 3–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0144]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed on the residential loan application.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0144" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–5079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: HUD/VA Addendum to Uniform Residential Loan Application, VA Form 26–1802a, and Freddie Mac 65/Fannie Mae Form 1003, Uniform Residential Loan Application.

OMB Control Number: 2900–0144.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 2–1802a serves as a joint loan application for both VA and the Department of Housing and Urban Development (HUD). Lenders and veterans use the form to apply for guaranty of home loans.

Affected Public: Individuals or households—Business or other for-profit.

Estimated Annual Burden: 25,898 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 258,975.

Dated: March 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7659 Filed 3–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0153]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to report conditions to continue disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0153" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Disability Benefits Questionnaire, VA Forms 29–8313 and 29–8313–1.

OMB Control Number: 2900–0153.

Type of Review: Extension of a currently approved collection.

Abstract: The forms are used by the policyholder to report conditions needed to continue disability insurance benefits. The information is used by VA to determine the insured's continuous entitlement to disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 60,000.

Dated: March 5, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7660 Filed 3–23–98; 8:45 am]

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federal register

Tuesday
March 24, 1998

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutants Emissions for the Portland Cement Manufacturing Industry; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL–64–2–5807; FRL–5978–2]

RIN 2060–AE78

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutants Emissions for the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in portland cement manufacturing plants. Exposure to the hazardous air pollutants (HAPs) in these emissions may be associated with a wide variety of effects, including carcinogenic, respiratory, nervous system, dermal, developmental, and/or reproductive health effects. Implementation of the proposed requirements would reduce emissions of several HAPs.

The standards are proposed under the authority of section 112(d) of the Clean Air Act as amended (the Act) and are based on the Administrator's determination that portland cement manufacturing plants may reasonably be anticipated to emit several of the HAPs listed in section 112(b) of the Act from the various process operations found within the industry. The proposed NESHAP would provide protection to the public by requiring all portland cement plants which are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Comments.* The EPA will accept comments on the proposed rule until May 26, 1998.

Public Hearing. If anyone contacts the Agency requesting to speak at a public hearing, the hearing will be held at the Agency's Office of Administration Auditorium, Research Triangle Park, North Carolina on April 23, 1998 beginning at 10:00 a.m. Persons wishing to present oral testimony must contact the Agency by April 14, 1998.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–92–53, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below (Mr. Joseph Wood). Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No confidential business information (CBI) should be submitted through electronic mail.

Public Hearing. Persons wishing to present oral testimony or to inquire as to whether or not a hearing is to be held should notify Ms. Cathy Coats, Minerals and Inorganic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5422. Additional information regarding the public hearing is given in the **SUPPLEMENTARY INFORMATION** section.

Docket. The official record for this rulemaking, as well as the public version, has been established under Docket No. A–92–53 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking docket is located at the address in the **ADDRESSES** section above. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5446; electronic mail address wood.joe@epamail.epa.gov. For information about the proposed test methods contact Ms. Rima Dishakjian, Emission Measurement Center, Emissions, Monitoring and Analysis Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–0443.

SUPPLEMENTARY INFORMATION: *Electronic filing.* Electronic comments can be sent directly to the EPA at a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–53. Electronic comments may be filed online at many Federal Depository Libraries.

Implementation of the proposed requirements would achieve an emission reduction from existing and projected new sources estimated at 82 megagrams per year (Mg/yr) (90 tons per year [tpy]) of HAPs and 4,900 Mg/yr (5,400 tpy) of other pollutants (volatile organic compounds [VOC] and particulate matter [PM]). The EPA is also proposing to require portland cement plants that are area sources to meet emission standards for dioxins and furans reflecting the application of MACT.

The EPA is also proposing Methods 320, 321, and 322 with the standards for addition to 40 CFR part 63, appendix A. These methods may be used to assist in determining the applicability of the proposed emission limitations.

Public Hearing. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

Confidential Business Information. Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Joseph Wood, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Information Manager, OAQPS (MD–13); Research Triangle Park, NC 27711. Information covered by such claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the submission may be made available to the public without further notice to the commenter.

Regulated entities. Entities potentially regulated by this action are those who have the potential to emit HAPs listed in section 112(b) of the Act in the regulated categories and entities shown in Table 1.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1340 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section of this preamble.

TABLE 1.—REGULATED ENTITIES

Category	Examples of regulated entities
Industry	Owners or operators of portland cement manufacturing plants.
State	Owners or operators of portland cement manufacturing plants.
Tribal associations	Owners or operators of portland cement manufacturing plants.
Federal agencies	None.

Technology Transfer Network. The proposed regulatory text is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 BPS modem. The TTN is also accessible through the Internet (world wide web) at http://www.epa.gov/ttn/. If more information on the TTN is needed, call the HELP line at (919) 541–5384. The help desk is staffed from 11 a.m. to 5 p.m.; a voice menu is available at other times.

Outline. The information in this preamble is organized as shown below.

I. Statutory Authority
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VI. Public Participation
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A. Docket
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C. Executive Order 12866
D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
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F. Regulatory Flexibility Act
G. Paperwork Reduction Act
H. Clean Air Act

I. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, 183(f) and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7511(f) and 7601).

II. Introduction

A. Background

Nationwide baseline HAP emissions from portland cement manufacturing plants are estimated to be 260 Mg/yr (290 tpy) at the current level of control. The HAPs released from kiln systems include acetaldehyde, arsenic, benzene, cadmium, chromium, chlorobenzene, dibenzofurans, formaldehyde, hexane, hydrogen chloride, lead, manganese, mercury, naphthalene, nickel, phenol, polycyclic organic matter, selenium, styrene, 2,3,7,8-tetrachlorodibenzo-p-dioxin, toluene, and xylenes. The HAPs released from raw material dryers should be similar to those from the kiln. The HAPs released from clinker coolers, raw mills, finish mills, storage bins, conveying system transfer points, bagging systems and bulk loading and unloading systems include arsenic, cadmium, chromium, lead, manganese, mercury, nickel, and selenium. Implementing MACT-level controls is expected to decrease emissions of these HAPs from existing and projected new sources by approximately 82 Mg/yr (90 tpy). Plants can achieve this reduction by upgrading or installing fabric filters (FF), also known as baghouses, and electrostatic precipitators (ESP) to decrease HAP metals; limiting temperatures at the particulate matter control device (PMCD) inlet to decrease dioxin and furan (D/F) emissions; and selecting suitable feed materials to decrease organic HAP emissions.

The overall effect of these standards would be to improve the control performance of the industry to the level achieved by the best performing plants. In addition to the health and environmental benefits associated with HAP emission reductions, benefits of this action include a decrease in site-specific emission levels of PM and VOC and lowered occupational exposure levels for employees.

The nationwide capital and annualized costs of the proposed NESHAP, including emission controls and associated monitoring equipment, are estimated at $88 million and $27 million/yr, respectively. The economic impacts are predicted to increase prices of portland cement by an average of 1.1 percent.

To minimize adverse impacts, the Agency has proposed controls at the MACT-floor level, tailored the requirements to allow less-costly testing and monitoring by using surrogates for HAP emissions and provided choice in methods of control. The proposed rule

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is "user friendly," with language that is easy to understand by all of the regulated community. The EPA also proposes to allow existing facilities up to 3 years to comply. And, as allowed under section 112(i)(3)(B) of the Act, the Administrator or delegated regulatory authority also may grant 1 additional year if necessary for the installation of controls.

B. NESHAP for Source Categories

Section 112 of the Act as amended specifically directs the EPA to develop a list of all categories of major sources and such area sources as appropriate that emit one or more of the HAPs listed in the Act. The EPA is further directed to develop NESHAP to control emissions of HAPs from both existing and new major sources, where a major source is defined as a source that emits or has the potential to emit 9.1 Mg/yr (10 tpy) or more of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAPs. The statute requires the standards to reflect the maximum degree of reduction in HAP emissions that is achievable, taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT.

The control of HAPs is achieved through the promulgation of technology-based emission standards under sections 112(d) and 112(f) and work practice standards under 112(h) for categories of sources that emit HAPs. Emission reductions may be accomplished through the application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h); or (5) a combination of the above. [See section 112(d)(2) of the Act.] The EPA may promulgate more stringent regulations to address residual risk that remains after the imposition of controls at a later date.

C. Health Effects of Pollutants

The Clean Air Act was created in part to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. [See section 101(b)(1).] In the 1990 Amendments to the Clean Air Act, Congress specified that each standard for major sources must require the maximum reduction in emissions of HAPs that EPA determines is achievable considering cost, health and environmental impacts, and energy requirements. Title III of the Act establishes a control technology-based program to reduce stationary source emissions of HAPs. The goal of section 112(d) (in Title III) is to apply such control technology to reduce emissions and thereby reduce the hazard of HAPs emitted from stationary sources.

Section 112(b) of the Act lists HAPs believed to cause adverse health or environmental effects. The EPA recognizes that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon: (1) The ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency of and duration of exposures; (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle) which vary significantly with the population; and (4) pollutant-specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence). In essence, these MACT standards would ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this approach provides a level economic playing field, ensuring that facilities that employ cleaner processes and good emissions controls are not disadvantaged relative to competitors with poorer controls.

Available emission data, collected in conjunction with the development of this NESHAP, show that non-volatile HAP metals, mercury, organic HAPs and hydrogen chloride are the predominant HAPs emitted from portland cement manufacturing plants. These pollutants (except mercury and hydrogen chloride) have the potential to be reduced by implementation of the proposed emission limits. In addition to the HAPs, the portland cement manufacturing NESHAP would also control some of the pollutants whose emissions are controlled under the National Ambient Air Quality Standards (NAAQS). These pollutants include PM, VOC, and lead. The following is a summary of the potential health effects associated with exposures, at some level, to pollutants that would be reduced by the standard.

Almost all metals appearing on the section 112(b) list are emitted from portland cement manufacturing affected sources. There is a wide range of targets of toxicity for these metals. Effects include skin irritation, mucous membrane irritation (e.g., lung irritation), gastrointestinal effects, nervous system effects (including cognitive effects, tremor, and numbness), increased blood pressure, and reproductive and developmental effects. Additionally, several of the metals accumulate in the environment and in the human body. Cadmium, for example, is a cumulative pollutant which causes kidney effects after the cessation of exposure. Similarly, the onset of effects from beryllium exposure may be delayed by months to years. Many of the metal compounds are also known (arsenic, chromium (VI)) or probable (cadmium, nickel carbonyl, lead, and beryllium) human carcinogens.

Organic compounds which will potentially be decreased by the proposed standard include but are not limited to acetaldehyde, benzene, chlorobenzene, formaldehyde, D/F, hexane, naphthalene, phenol, polycyclic organic matter, styrene, toluene, and xylenes. Each of these organic compounds has a range of potential health effects associated with exposure at some level. Some of the effects associated with short-term inhalation exposure to these pollutants are similar and include irritation of the eyes, skin, and respiratory tract in humans; central nervous system effects (e.g., drowsiness, dizziness, headaches, depression, nausea, irregular heartbeat); reproductive and developmental effects; and, neurological effects. Exposure to benzene at extremely high concentrations may even lead to respiratory paralysis, coma, or death.

Health effects associated with long-term inhalation exposure in humans to the organic compounds which will potentially be decreased by the proposed standard may include mild symptoms such as nausea, headache, weakness, insomnia, intestinal pain, and burning eyes; effects on the central nervous system; disorders of the blood; toxicity to the immune system; reproductive disorders in women (e.g., increased risk of spontaneous abortion); developmental effects; gastrointestinal irritation; liver injury; and muscular effects.

In addition to the non-cancer effects described above, some of the organic HAPs that would be controlled under this proposed standard are either known (benzene) or probable (formaldehyde and D/F) human carcinogens.

Hydrogen chloride (HCl) is highly corrosive to the eyes, skin, and mucous membranes. Short-term inhalation of HCl by humans may cause coughing, hoarseness, inflammation and ulceration of the respiratory tract, as well as chest pain and pulmonary edema. Long-term occupational exposure of humans to HCl has been reported to cause inflammation of the stomach, skin, and lungs, and photosensitization.

The health effects of PM, lead, and VOC that would be reduced by this standard are described in EPA's Criteria Documents, which support the NAAQS. Briefly, PM emissions have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Depending on the degree of exposure, lead can cause subtle effects on behavior and cognition, increased blood pressure, reproductive effects, seizures, and even death.

Volatile organic compounds are precursors to the formation of ozone in the ambient air. At ambient levels, ozone has been shown in human laboratory and community studies to be responsible for the reduction of lung function, respiratory symptoms (e.g., cough, chest pain, throat and nose irritation), increased hospital admissions for respiratory causes, and increased lung inflammation. Animal studies have shown increased susceptibility to respiratory infection and lung structure changes. Exposure to ozone has also been linked to harmful effects on agricultural crops and forests.

D. Portland Cement Manufacturing Industry Profile

Portland cement is a fine powder, usually gray in color, that consists of a mixture of the minerals dicalcium silicate, tricalcium silicate, tricalcium aluminate, and tetracalcium aluminoferrite, to which one or more forms of calcium sulfate have been added (docket item II–I–43, p. 746). The primary end use of portland cement is as the key ingredient in portland cement concrete, which is used in almost all construction applications.

In 1993, 44 companies operated 118 portland cement plants located in 37 states. The manufacture of portland cement is covered by SIC code 3241 for hydraulic cements. According to U.S. Small Business Administration size standards, companies owning portland cement plants are categorized as small if the total number of employees at the company is less than 750. Otherwise the company is classified as large. A total of 7 companies are categorized as small, while the remaining 37 companies are in the large category (docket item II–D–200).

Few new plants are predicted to be constructed during the next 5 years. The EPA estimates that two to four existing plants will undergo reconstruction in the next 5 years.

All existing kilns and alkali bypasses have PM control devices. Some existing cement manufacturing plants are required to meet new source performance standards (NSPS) for PM (40 CFR part 60, subpart F). The affected facilities to which the NSPS apply are the kiln, kiln gas alkali bypass, clinker cooler, raw material dryer, and materials handling processes.

III. Summary of Proposed Standards

A. Applicability

The proposed standards apply to each existing, reconstructed, and newly constructed portland cement manufacturing plant at any facility which is a major source or an area source, with the following exception. Some portland cement plants fire hazardous wastes in the kiln to provide part or all of the fuel requirement for clinker production. Portland cement kilns and in-line kiln/raw mills subject to the NESHAP for hazardous waste combustors [1] (HWC) are not subject to this standard; however other affected sources at portland cement plants where hazardous waste is burned in the kiln are subject to this standard.

For portland cement plants with on-site non-metallic minerals processing facilities, the first affected source in the sequence of materials handling operations subject to this proposed NESHAP is the raw material storage, which is just prior to the raw mill. The primary and secondary crushers and any other equipment in the non-metallic minerals processing plant, which precede the raw material storage are not affected sources under the proposed NESHAP. Furthermore, the first conveyor system transfer point subject to the proposed NESHAP is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill. Conveyor system transfer points prior to this conveyor are not affected sources under this proposed NESHAP (docket item II–B–53).

This regulation does not apply to the emissions from cement kiln dust (CKD) storage facilities (i.e., CKD piles or landfills). A separate rulemaking will be forthcoming from EPA's Office of Solid Waste (OSW) that will apply to air emissions associated with CKD management and disposal facilities.

Except for hazardous waste burning (HW) cement kilns and HW in-line kiln/raw mills, EPA is proposing to apply these standards to all cement kilns and in-line kiln/raw mills regardless of the material being combusted in the kiln. This proposal, however, does not preclude EPA from determining that cement kilns combusting solid waste materials should be regulated under section 129 of the Clean Air Act, 42 U.S.C. 7429, and to revise the applicability section of these regulations accordingly at the time section 129 regulations applicable to cement kilns are promulgated.

The EPA believes that applying this regulation to all non-hazardous waste burning (NHW) cement kilns regardless of the material combusted in the kiln is necessary at this time due to the Court of Appeals for the District of Columbia's recent decision in *Davis County Solid Waste Management District* v. *Environmental Protection Agency*, 101 F.3d 1395 (D.C. Cir. 1996) (petition to review municipal waste combustor ("MWC") regulations promulgated on December 19, 1995 pursuant to section 129 of the Act, 60 FR 65387). In the applicability section of the MWC regulations, EPA applied the standards to all solid waste incineration units combusting more than 30-percent municipal solid waste. Two owners and operators of MWC units with capacity less than 250 tons/day filed petitions for review on the grounds that EPA improperly had included their units in the large category. The Cement Kiln Recycling Coalition ("CKRC") also filed a petition for review on the grounds that the standards should not apply to cement kilns. In its opinion dated December 6, 1996, the Court indicated its intent to vacate the standards in their entirety on the grounds raised by the two petitioners who own and operate MWC units; as a result, the Court did not reach the issue raised by CKRC. Accordingly, EPA believes that it is appropriate to apply these regulations as a gap-filling measure to control emissions from NHW cement kilns and in-line kiln/raw mills regardless of the material combusted in the kiln (except for hazardous waste) until EPA determines whether regulations applicable to cement kilns combusting solid waste materials should be re-promulgated under section 129. To

[1] The EPA proposed regulations for subpart EEE of 40 CFR part 63 on April 19, 1996 at 61 FR 17358.

decide otherwise would have the potential effect of allowing cement kiln owners and operators to avoid regulation by adding some solid waste material to the cement kiln.

As background, section 129(a)(1)(A) requires the Administrator to establish performance standards and other requirements pursuant to section 111 and section 129 of the Act for each category of solid waste incineration units [42 U.S.C. 7429(a)(1)(A)]. Whereas section 112(c) of the Act requires EPA to determine major and area sources of the 188 hazardous air pollutants (HAPs) listed in section 112(b), Congress specifically listed in section 129 various categories of solid waste incineration units that EPA must regulate, including solid waste incineration units combusting municipal solid waste [sections 129(a)(1)(B) and (C)], solid waste incineration units combusting hospital waste, medical waste, and infectious waste [section 129(a)(1)(C)], solid waste incineration units combusting commercial or industrial waste [section 129(a)(1)(D)], and "other categories of solid waste incineration units" which are to be defined by EPA [42 U.S.C. 7429(a)(1)].

Section 129(g)(1) of the Act broadly defines a solid waste incineration unit ("SWIU") as "a distinct operating unit of *any* facility which combusts *any* solid waste material from commercial or industrial establishments or the general public * * *." 42 U.S.C. 7429(g)(1) (emphasis added). Section 129(g)(1) expressly states that "incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act, 42 U.S.C. 6925" shall not be considered a SWIU. That section also expressly excludes from the definition of SWIU the following units:

> (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in section 769(17)(C) of Title 16, or qualifying cogeneration facilities as defined in section 796(18)(B) of Title 16, which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogenous waste for the production of electric energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

42 U.S.C. 7429(g)(1). Accordingly, with the exception of those solid waste incineration units that are expressly excluded from regulation by section 129(g)(1), Congress intended EPA to establish regulations for all SWIU's under section 129. This includes cement kilns that combust solid waste materials, including refuse-derived fuel.

Section 129 is similar to section 112 of the Act in that both require EPA to establish performance standards that are based upon the performance of maximum achievable control technology (MACT). Section 112(b), however, lists 188 hazardous air pollutants (HAPs) for potential regulation, and section 112(c)(6) requires EPA to establish performance standards under section 112(d) for categories of sources emitting seven specific pollutants, including the following HAPs emitted by cement kilns: mercury and dioxins/dibenzofurans [42 U.S.C. 7412]. By comparison, section 129 expressly *requires* EPA to regulate emissions of the following criteria pollutants and HAPs—particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, nitrogen oxides, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans [42 U.S.C. 7429(a)(4)]. Section 129 also gives EPA the *discretion* to promulgate emission limitations or provide for the monitoring of postcombustion concentrations of surrogate substances or any other pollutant not expressly listed for regulation in section 129(a)(4). [See 42 U.S.C. 7429(a)(4).] In addition, section 129 contains other requirements not contained in section 112, such as operator training requirements. [See 42 U.S.C. 7429(d).]

As stated previously, the regulations being proposed today are pursuant to section 112 of the Act and apply to all cement kilns except portland cement kilns and in-line kiln/raw mills that would be subject to the NESHAP for hazardous waste combustors. In today's notice, the EPA is proposing to establish emission limitations for particulate matter (as a surrogate for metals, except mercury), dioxins/furans, and total hydrocarbons (as a surrogate for organic HAPs) regardless of the material being combusted in the cement kiln. If EPA determines that additional regulations are required under section 129 for cement kilns that combust solid waste materials (*e.g.*, cement kilns combusting materials containing more than 30-percent municipal solid waste or cement kilns combusting medical waste), then such regulations will be promulgated under section 129 and EPA will state clearly in the applicability section of those regulations when those standards apply and revise the applicability section of these regulations accordingly.

At no time, will a cement kiln be expected to comply simultaneously with regulations promulgated pursuant to section 112 and regulations promulgated pursuant to section 129. Section 129(h)(1) expressly states that no solid waste incineration unit subject to performance standards under section 129 and section 111 shall be subject to standards under section 112(d) of the Act [42 U.S.C. 7429(h)(1)]. The EPA reads this provision to mean that for emissions potentially subject to section 129, the Agency must elect whether to cover such emissions under that section, or under section 112. If EPA elects to cover emissions under section 129, those emissions must be excluded from regulation under section 112. For example, if a cement kiln combusts only fossil fuels, it would have to comply with the regulations being proposed today. If the kiln combusts a mixture of 50% coal and 50% non-hazardous solid waste, it would continue to comply with the regulations being proposed today until EPA promulgates regulations applicable to such kilns under section 129 of the Act. At that time, if the kiln is burning the 50% coal and 50% solid waste mixture, it would have to comply with the section 129 regulations as long as it continued to combust solid waste material. Thus, in the same way that installation of a particular type of combustion device determines which regulation is applicable, combustion of certain materials in that combustion device would determine whether the section 112 regulation or section 129 regulation is applicable.

The EPA does not believe that this approach will subject cement kiln owners to duplicative regulations. As noted earlier, regulations under section 112 and section 129 are based on MACT. If EPA determines that additional regulations under section 129 are appropriate because cement kilns are combusting solid waste material, EPA would be required to promulgate *additional* MACT standards for the following pollutants pursuant to section 129(a)(4): opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, carbon monoxide, lead, cadmium, and mercury. The EPA also would determine whether the standards for particulate matter, total hydrocarbon, and dioxins/furans should be revised for kilns combusting solid waste materials [42 U.S.C. 7429(a)(4)].

B. Emission Limits and Requirements

The proposed NESHAP for portland cement manufacturing would apply to both major and area sources of HAPs.

The affected sources for which emission limits are proposed include the kiln, in-line kiln/raw mill, clinker cooler, raw material dryer, and materials handling processes that include the raw mill, finish mill, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems (hereafter referred to as materials handling processes).

The proposed NESHAP would limit emissions of HAPs from non-hazardous waste (NHW) portland cement kilns, NHW in-line kiln/raw mills, and NHW kiln alkali bypasses. Kiln emission limits would not apply to kilns or in-line kiln/raw mills that will be subject to the NESHAP for various hazardous waste combustor (HWC) types, including cement kilns which burn hazardous waste.[2]

The kiln emission limits would apply to the kiln and in-line kiln/raw mill gases and to kiln alkali bypass gases (which may or may not be discharged through a separate stack).

The proposed rule would limit emissions of HAPs from raw material dryers, clinker coolers and materials handling processes, regardless of the type of fuel burned in the kiln. The proposed rule would limit PM (surrogate for non-volatile HAP metals) emissions from new and existing NHW kilns, NHW in-line kiln/raw mills, and clinker coolers at portland cement plants which are major sources. Particulate matter emitted from portland cement manufacturing contains quantities of metal HAPs such as compounds of arsenic, cadmium, chromium, lead, manganese, mercury, nickel, and selenium. Controlling PM emissions would also control emissions of HAP metals. A surrogate approach is used for particulate metal HAPs in the proposed NESHAP to allow easier and less expensive measurement, analysis, and monitoring requirements, and because the control techniques for non-volatile metal HAPs are the same as the control techniques for PM. Although trace amounts of mercury may be found in the particulate matter, it is generally considered a volatile metal, and appreciable reductions of mercury emissions are not expected through the use of PM controls. Opacity limits would also apply to NHW kilns, NHW in-line kiln/raw mills, clinker coolers, raw material dryers, and materials handling processes.

The proposed rule also would limit D/F emissions from new and existing NHW kilns and NHW in-line kiln/raw mills located at portland cement plants which are major or area sources of HAPs. In addition, the rule would limit total hydrocarbon (THC) as a surrogate for organic HAP emissions from new NHW kilns, new NHW in-line kiln/raw mills, and new raw material dryers at portland cement plants which are major sources. Kiln, in-line kiln/raw mill, and raw material dryer organic emissions contain various organic HAPs including, but not limited to, acetaldehyde, benzene, formaldehyde, hexane, naphthalene, styrene, toluene, and xylenes. Tables 2 and 3 present a summary of the proposed emission limits for new and existing portland cement affected sources.

TABLE 2.—SUMMARY OF PROPOSED EMISSION LIMITS[a] FOR AFFECTED SOURCES AT PORTLAND CEMENT PLANTS

[Metric units]

Affected source and pollutant	Emission limit for existing sources	Emission limit for new sources
NHW kiln and NHW in-line kiln/raw mill[b] PM	0.15 kg/Mg dry feed[d] and opacity level[b] no greater than 20 percent.	0.15 kg/Mg dry feed[d] and opacity level[b] no greater than 20 percent.
NHW kiln and NHW in-line kiln/raw mill D/F[b,c]	0.2 ng TEQ/dscm or 0.4 ng TEQ/dscm with PM control device operated at ≤204°C.	0.2 ng TEQ/dscm or 0.4 ng TEQ/dscm with PM control device operated at ≤204°C.
NHW kiln and NHW in-line kiln/raw mill THC	None	50 ppmvd (as propane).
Clinker cooler PM	0.05 kg/Mg dry feed and opacity level no greater than 10 percent.	0.05 kg/Mg dry feed and opacity level no greater than 10 percent.
Raw material dryer and materials handling processes (raw mill system, finish mill system, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems) PM.	10 percent opacity	10 percent opacity.
Raw material dryer THC	None	50 ppmvd (as propane).

[a] All concentration limits at 7 percent oxygen.
[b] Includes main and alkali bypass stacks.
[c] Applies to both major and area source portland cement plants.
[d] If there is an alkali bypass stack associated with the kiln or in-line kiln/raw mill, the combined PM emission from the kiln or in-line kiln/raw mill and the alkali bypass must be less than 0.15 kg/Mg dry feed.

TABLE 3.—SUMMARY OF PROPOSED EMISSION LIMITS[a] FOR AFFECTED SOURCES AT PORTLAND CEMENT PLANTS

[English Units]

Affected source and pollutant	Emission limit for existing sources	Emission limit for new sources
NHW kiln and NHW in-line kiln/raw mill[b] PM	0.30 lb/ton dry feed[d] and opacity level[b] no greater than 20 percent.	0.30 lb/ton dry feed[d] and opacity level[b] no greater than 20 percent.
NHW kiln and NHW in-line kiln/raw mill D/F[b,c]	8.7×10^{-11} gr TEQ/dscf or 1.7×10^{-10} gr TEQ/dscf with PM control device operated at ≤400 °F.	8.7×10^{-11} gr TEQ/dscf or 1.7×10^{-10} gr TEQ/dscf with PM control device operated at ≤400 °F.
NHW kiln and NHW in-line kiln/raw mill THC	None	50 ppmvd (as propane).
Clinker cooler PM	0.10 lb/ton dry feed and opacity level no greater than 10 percent.	0.10 lb/ton dry feed and opacity level no greater than 10 percent.

[2] The EPA proposed regulations for subpart EEE of 40 CFR part 63 on April 19, 1996 at 61 FR 17358.

TABLE 3.—SUMMARY OF PROPOSED EMISSION LIMITS [a] FOR AFFECTED SOURCES AT PORTLAND CEMENT PLANTS—Continued

[English Units]

Affected source and pollutant	Emission limit for existing sources	Emission limit for new sources
Raw material dryer and materials handling processes (raw mill system, finish mill system, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems) PM.	10 percent opacity	10 percent opacity.
Raw material dryer THC	None	50 ppmvd (as propane).

[a] All concentration limits at 7 percent oxygen.
[b] Includes main and alkali bypass stacks.
[c] Applies to both major and area source portland cement plants.
[d] If there is an alkali bypass stack associated with the kiln or in-line kiln/raw mill, the combined PM emission from the kiln or in-line kiln/raw mill and the alkali bypass must be less than 0.30 lb/ton dry feed.

C. Performance Test and Compliance Provisions

A performance test would be required to demonstrate initial compliance with each applicable numerical limit. Under the proposed standard, the owner or operator would use EPA Method 5, "Determination of Particulate Emissions from Stationary Sources" to measure PM emissions from kilns, in-line kiln/raw mills and clinker coolers. These tests would be repeated every 5 years. Kilns and in-line kiln/raw mills equipped with alkali bypasses would be required to meet the particulate standard based on combined emissions from the kiln exhaust and the alkali bypass. Owners or operators of in-line kiln/raw mills would be required to conduct a Method 5 performance test while the raw mill is operating and a separate Method 5 performance test while the raw mill is not operating. In conducting the Method 5 tests, a determination of the particulate matter collected in the impingers ("back half") of the particulate sampling train would not be required.

The opacity exhibited during the period of the initial Method 5 performance test would be determined, if feasible, through the use of a continuous opacity monitor (COM). Where the control device exhausts through a monovent or where the use of a COM in accordance with the installation specifications of EPA Performance Specification (PS)–1 of appendix B to 40 CFR part 60, is not feasible, EPA Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources" would be used. Where the control device discharges through a FF with multiple stacks or an ESP with multiple stacks, the owner or operator would have the option of conducting an opacity test in accordance with Method 9, in lieu of installing a COM.

Under the proposed standard, the owner or operator would use EPA Method 23, "Determination of Polychlorinated Dibenzo-p-dioxins and Polychlorinated Dibenzofurans from Stationary Sources" to measure D/F emissions from kilns and in-line kiln/raw mills. These tests would be repeated every 5 years. The temperature at the inlet to the PMCD during the period of the Method 23 performance test would be continuously recorded. If carbon injection is used for D/F control the carbon injection rate during the period of the Method 23 performance test would be monitored. Owners or operators of in-line kiln/raw mills would be required to conduct a Method 23 performance test, and monitor the temperature at the inlet to the PMCD while the raw mill is operating, and a separate Method 23 performance test and inlet temperature monitoring while the raw mill is not operating. If applicable, the carbon injection rate would be monitored during both performance tests. Where applicable, the exhausts from both the kiln or in-line kiln/raw mill and the alkali bypass would be required to meet the D/F standard.

Under the proposed standard, the owner or operator would use a THC continuous emission monitor (CEM) to continuously measure THC emissions from new or reconstructed kilns, new or reconstructed in-line kiln/raw mills, and new raw material dryers. Owners or operators of new or reconstructed in-line kiln/raw mills would be required to demonstrate initial compliance by measuring THC emissions while the raw mill is operating and while the raw mill is not operating. The proposed standard for THC does not apply to the exhaust from the alkali bypass of kilns or in-line kiln/raw mills. Each THC CEM would be required to be designed, installed, and operated in accordance with EPA Performance Specification (PS)–8A of 40 CFR part 60, appendix B. [3]

Under the proposed standard, the owner or operator would use EPA Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources" to measure the opacity of gases discharged from raw mills, finish mills, raw material dryers and materials handling processes. These tests would be repeated every five years. A summary of proposed compliance and monitoring options is given in Table 4.

TABLE 4.—SUMMARY OF PROPOSED COMPLIANCE DEMONSTRATION AND MONITORING REQUIREMENTS

Affected source and pollutant	Compliance demonstration	Monitoring requirement
New and existing NHW kiln and NHW in-line kiln/raw mill [b, c] PM.	EPA Method 5 [a]	COM if feasible [d, e] or daily EPA Method 9 visual opacity readings.
New and existing NHW kiln and NHW in-line kiln/raw mill [b, c, h, i] D/F.	EPA Method 23 [a]	Monitor temperature at inlet to PM control device [f] and minimum carbon injection rate if activated carbon injection is used.

[3] The EPA proposed amendments to appendix B of 40 CFR part 60 on April 19, 1996 at 61 FR 17358.

TABLE 4.—SUMMARY OF PROPOSED COMPLIANCE DEMONSTRATION AND MONITORING REQUIREMENTS—Continued

Affected source and pollutant	Compliance demonstration	Monitoring requirement
New NHW kiln and NHW in-line kiln/raw mill THC.	THC CEM (EPA PS–8A)[j]	THC CEM (EPA PS–8A)[j]
New and existing clinker cooler PM	EPA Method 5[a]	COM[d,g] or daily EPA Method 9 visual opacity readings.
New and existing raw and finish mill PM	EPA Method 9[a,g]	Daily EPA Method 22 visual opacity readings or operation of bag break detectors.
New and existing raw material dryer and materials handling processes (raw mill system, finish mill system, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems) PM.	EPA Method 9[a,g]	None.
New raw material dryer THC	THC CEM (EPA PS–8A)[j]	THC CEM (EPA PS–8A)[j]

[a] Required initially and every 5 years thereafter.
[b] Includes main exhaust and alkali bypass.
[c] In-line kiln/raw mill to be tested with and without raw mill in operation.
[d] Must meet COM performance specification criteria. If the fabric filter or electrostatic precipitator has multiple stacks, daily EPA Method 9 visual opacity readings may be taken instead of using a COM.
[e] Opacity limit is 20 percent. Corrective action trigger is 15 percent.
[f] Site-specific temperature limit at APCD inlet is established during successful D/F emissions testing.
[g] Opacity limit is 10 percent.
[h] Alkali bypass is tested with the raw mill on.
[i] Temperature parameters determined separately with and without the raw mill operating.
[j] EPA Performance Specification (PS)–8A. Proposed on April 19, 1996 at 61 FR 17358.

D. Monitoring Requirements

The proposed rule requires owners or operators to monitor the opacity of gases discharged from kilns, in-line kiln/raw mills, alkali bypasses and clinker coolers using a COM, if a COM can be feasibly installed in accordance with PS–1 of appendix B to 40 CFR part 60. Where it is not feasible to install a COM, e.g., where the control device discharges through a monovent, the owner or operator would be required to monitor emissions by conducting daily Method 9 tests. Where the control device discharges through an FF with multiple stacks or an ESP with multiple stacks, the owner or operator would have the option of conducting daily tests in accordance with Method 9, in lieu of installing a COM. The duration of the Method 9 tests would be 30 minutes. Owners or operators would also be required to determine kiln or in-line kiln/raw mill feed rate.

The opacity limit for kilns and in-line kiln/raw mills would be 20 percent. Any 30-minute average opacity reading greater than 20 percent determined by the COM or daily Method 9 test would be a violation of the standard. Any ten consecutive 30-minute average COM readings exceeding 15 percent, or any single 30-minute average Method 9 reading exceeding 15 percent would trigger a site-specific operating and maintenance plan, incorporated within the owner or operator's part 70 permit. The owner or operator would be required to initiate the site-specific operating and maintenance plan within one hour. If the opacity exceeds 15 percent for five percent of the operating time as determined by 30-minute average COM readings, or if the 30-minute average readings exceed 15 percent during five percent of the daily Method 9 tests, during any 180 day reporting period, the owner or operator would be required to develop and implement a quality improvement plan (QIP) consistent with subpart D of the draft approach to compliance assurance monitoring.[4] The owner or operator would be required to implement the QIP as expeditiously as possible but in no case would the period for completing the implementation of the plan exceed 180 days. If the owner or operator determined that more than 180 days was required to complete the appropriate improvements, the owner or operator would be required to notify the permitting authority and obtain a site-specific resolution subject to the approval of the permitting authority.

The opacity limit for clinker coolers would be 10 percent, based on any 30-minute average COM or Method 9 reading.

The proposed rule requires the owner or operator to monitor D/F emissions from kilns and in-line kiln/raw mill systems and to maintain the temperature at the inlet to the PMCD at a level no greater than either: (1) the higher of 400 °F or the level established during the successful Method 23 performance test plus five percent (not to exceed 25 °F) of the temperature measured in °F during the successful compliance test, if D/F emissions were determined to be no greater than 0.15 ng toxic equivalent (TEQ)/dscm (6.5×10^{-11} gr/dscf); (2) the higher of 400 °F or the level established during the successful Method 23 performance test, if D/F emissions were determined to be greater than 0.15 ng TEQ/dscm (6.5×10^{-11} gr/dscf) but less than 0.2 ng TEQ/dscm (8.7×10^{-11} gr/dscf); or (3) 400 °F if D/F emissions were greater than 0.2 ng TEQ/dscm (8.7×10^{-11} gr/dscf) but less than or equal to 0.4 ng TEQ/dscm (1.7×10^{-10} gr/dscf).

Owners or operators of in-line kiln/raw mills would be required to establish separate PMCD inlet temperatures applicable to periods when the raw mill is operating and periods when the raw mill is not operating. The appropriate "raw mill operating status dependent" PMCD inlet temperature could not be exceeded. Owners or operators of kilns or in-line kiln/raw mills equipped with alkali bypasses would be required to establish separate temperatures for the inlet to the kiln or in-line kiln raw mill exhaust PMCD and the kiln or in-line kiln alkali bypass PMCD.

If carbon injection is used for D/F control, the carbon injection rate would be monitored, and maintained at a level equaling or exceeding the rate which existed during the successful Method 23 performance test.

The proposed rule requires the owner or operator to monitor THC emissions from the main exhaust of new and reconstructed kilns; the main exhaust of new and reconstructed in-line kiln/raw mills; and new and reconstructed raw

[4] The EPA announced its intention to propose subpart D of 40 CFR part 64 on August 13, 1996 at 61 FR 41991.

material dryers using a CEM installed in accordance with PS–8A in 40 CFR part 60, appendix B.[5]

The proposed rule requires the owner or operator to monitor the opacity from raw mills and finish mills either by conducting a daily six-minute test in accordance with Method 22, "Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares", or by installing, calibrating, operating and maintaining a bag break detection system. In the event that fugitive emissions are observed during the Method 22 test, the owner or operator would be required to conduct a 30-minute Method 9 test commencing within 24 hours of the end of the Method 22 test. In addition, the owner or operator would be required to initiate, within one hour, a site-specific operating and maintenance plan developed as part of the application for a part 70 permit.

In the event that the bag break detection system alarm were triggered, the owner or operator would be required to initiate, within one hour, a site-specific operating and maintenance plan developed as part of the application for a part 70 permit.

As required by the NESHAP general provisions (40 CFR part 63, subpart A), the owner or operator also must develop and implement a startup, shutdown, and malfunction plan.

E. Notification, Recordkeeping, and Reporting Requirements

All notification, recordkeeping, and reporting requirements in the general provisions (40 CFR part 63, subpart A) would apply to portland cement manufacturing plants. These include: (1) Initial notification(s) of applicability, notification of performance test, and notification of compliance status; (2) a report of performance test results; (3) a startup, shutdown, and malfunction plan with semiannual reports of reportable events (if they occur); and (4) semiannual reports of excess emissions. If excess emissions are reported, the owner or operator would report quarterly until a request to return the reporting frequency to semiannual is approved.

Owners and operators would also be required to prepare an operation and maintenance plan for kiln, in-line kiln/raw mill, raw mill and finish mill APCDs consistent with subpart D of the draft approach to compliance assurance monitoring (CAM).[6] The operation and maintenance plan would become part of their operating permit required by 40 CFR part 70.

Under circumstances described in section III. D. of this preamble, kiln and in-line kiln/raw mill monitoring may trigger a requirement to prepare and implement a site-specific Quality Improvement Program (QIP), that will also be consistent with the draft CAM rule.[7] Owners or operators would be required to report if a QIP were required, and to notify the permitting authority if a required QIP would take more than 180 days to implement.

The NESHAP general provisions (40 CFR part 63, subpart A) require that records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records onsite for at least 2 years but may retain the records offsite the remaining 3 years. The files may be retained on microfilm, microfiche, on a computer disk, or on magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

IV. Impacts of Proposed Standards

A. Applicability

The EPA estimates that there are currently 118 portland cement plants in the United States. All portland cement plants would be subject to the proposed standards. The following sources would be affected when located at a portland cement plant that is a major source:

(1) New, reconstructed, and existing NHW kilns and NHW in-line kiln/raw mills including alkali bypasses that are not subject to the HWC NESHAP[8] would be subject to emission limits for PM, D/F, and opacity;

(2) New and reconstructed NHW kiln main exhausts and new and reconstructed NHW in-line kiln/raw mills main exhausts, that are not subject to the HWC NESHAP,[9] would be subject to an emission limit for THC;

(3) New and reconstructed raw material dryers would be subject to an emission limit for THC;

(4) New, reconstructed, and existing clinker coolers would be subject to emission limits for PM and opacity; and

(5) New, reconstructed, and existing raw material dryers, raw and finish mills, and material handling processes would be subject to an opacity limit.

The following sources would be affected when located at a portland cement plant that is an area source: new, reconstructed, and existing NHW kilns and NHW in-line kiln/raw mills, including alkali bypasses, that are not subject to the HWC NESHAP,[10] would be subject to emission limits for D/F.

B. Air Quality Impacts

Nationwide baseline HAP emissions from portland cement manufacturing plants are estimated to be 260 Mg/yr (290 tpy) at the current level of control. The proposed standards would reduce emissions of HAPs by 82 Mg/yr (90 tpy) from baseline levels. Estimates of annual emissions of HAPs and expected reductions from implementation of the proposed standards are given in metric and English units in Tables 5 and 6 (docket item II–B–76, docket item II–B–77). The following text reviews the information provided in Tables 5 and 6.

TABLE 5.—NATIONWIDE ANNUAL EMISSIONS OF HAPS AND OTHER POLLUTANTS FROM PORTLAND CEMENT MANUFACTURING PLANTS

[Metric units]

Source	Pollutant	Baseline emissions (Mg/yr)	Emission reduction (Mg/yr)
Kilns, in-line kiln/raw mills, and alkali bypasses	HAP Metals[a]	150	35.
	PM[a]	14,000	3,400.
	D/F (TEQ)[b]	44 g/yr	16 g/yr.
	Organic HAPs[c]	120	47.
	THC[c]	530	200.

[5] The EPA proposed amendments to appendix B of 40 CFR part 60 on April 19, 1996 at 61 FR 17358.

[6] The EPA announced its intention to propose subpart D of 40 CFR part 64 on August 13, 1996 at 61 FR 41991.

[7] The EPA announced its intention to propose subpart D of 40 CFR 64 on August 13, 1996 at 61 FR 41991.

[8] The EPA proposed regulations for subpart EEE of 40 CFR part 63 on April 19, 1996 at 61 FR 17358.

[9] The EPA proposed regulations for subpart EEE of 40 CFR part 63 on April 19, 1996 at 61 FR 17358.

[10] The EPA proposed regulations for subpart EEE of 40 CFR part 63 on April 19, 1996 at 61 FR 17358.

TABLE 5.—NATIONWIDE ANNUAL EMISSIONS OF HAPS AND OTHER POLLUTANTS FROM PORTLAND CEMENT MANUFACTURING PLANTS—Continued

[Metric units]

Source	Pollutant	Baseline emissions (Mg/yr)	Emission reduction (Mg/yr)
Clinker coolers	HAP Metals [a]	1.1	0.18.
	PM [a]	8,100	1,300.

[a] These numbers pertain to existing sources only.
[b] These numbers pertain to both new and existing NHW kilns.
[c] These numbers pertain to new NHW kilns only.

TABLE 6.—NATIONWIDE ANNUAL EMISSIONS OF HAPS AND OTHER POLLUTANTS FROM PORTLAND CEMENT MANUFACTURING PLANTS

[English units]

Source	Pollutant	Baseline emissions (tpy)	Emission reduction (tpy)
Kilns, in-line kiln/raw mills, and alkali bypasses	HAP Metals [a]	160	38.
	PM [a]	16,000	3,800.
	D/F (TEQ) [b]	0.096 lbs/yr	0.035 lbs/yr.
	Organic HAPs [c]	130	52.
	THC [c]	580	220.
Clinker coolers	HAP Metals [a]	1.2	0.2.
	PM [a]	8,800	1,400.

[a] These numbers pertain to existing sources only.
[b] These numbers pertain to both new and existing NHW kilns.
[c] These numbers pertain to new NHW kilns only.

The proposed MACT standards would reduce PM emissions from the existing NHW cement kilns and in-line kiln/raw mills by 3,400 Mg/yr (3,800 tpy) from the baseline level, a reduction of 24 percent. Emissions of HAP metals from the affected existing NHW cement kilns and in-line kiln/raw mills would be reduced by 35 Mg/yr (38 tpy), a reduction of 24 percent from the baseline level. Emissions of D/F TEQ would be reduced by 15 grams (g)/yr (0.033 lb/yr), a reduction of 36 percent from the baseline level, at existing NHW cement kiln and in-line kiln/raw mills.

For new NHW cement kilns and in-line kiln/raw mills, the MACT standards are projected to reduce emissions of D/F TEQ by an average of 0.6 g/yr (0.001 lb/yr) over the next 5 years (from major and area sources), a 36 percent reduction from projected baseline emissions. For new kilns, the proposed standards would also reduce projected emissions of THC by an average of 200 Mg/yr (220 tpy) and organic HAPs by an average of 47 Mg/yr (52 tpy) over the next 5 years, an emissions reduction for each of 39 percent from corresponding estimated nationwide baseline emissions (docket item II–B–76).

The proposed MACT standards would reduce PM emissions from 35 percent of the existing clinker coolers by 1,300 Mg/yr (1,400 tpy) from the baseline level, a reduction of 16 percent. Emissions of HAP metals from the affected existing clinker coolers would be decreased by 0.18 Mg/yr (0.2 tpy), a reduction of 16 percent from the baseline level.

Additional reductions of THC and organic HAPs will result from the MACT standards for new raw material dryers. However, information on THC emission rates from raw material dryers and the number of such affected sources is not currently available, so nationwide reductions cannot be estimated.

The MACT standards would also reduce PM emissions from raw material dryers, and other material handling processes. However, no impacts were estimated for these affected sources because there is no available information on typical PM emissions from the affected sources that do not meet the NSPS, and no information on the number of sources potentially affected by this MACT standard.

C. Water Impacts

Control of D/F emissions using water injection for temperature reduction would result in an estimated increased water consumption (evaporated into the kiln exhaust gas for cooling) of 190 million gallons per year for existing NHW kilns and NHW in-line kiln/raw mills of 8 million gallons per year for new NHW kilns and NHW in-line kiln/raw mills (docket item II–B–77).

D. Solid Waste Impacts

The amount of solid waste from existing NHW kilns, in-line kiln/raw mills, and clinker coolers (located at major sources) would increase by an estimated 4,700 Mg/yr (5,200 tpy) due to the proposed standard for PM control (docket item II–B–77).

E. Energy Impacts

For existing NHW kilns and NHW in-line kiln/raw mills the proposed MACT standards for PM and D/F would increase energy consumption by an estimated 11 million kilowatt hours (KWh)/yr [38 billion British thermal units (Btu)/yr]. For new NHW kilns and NHW in-line kiln/raw mills the proposed MACT standards for D/F would increase energy consumption by an estimated (docket item II–B–77) 10,600 KWh/yr (36 million Btu/yr).

F. Nonair Health and Environmental Impacts

The reduction in HAP emissions would have a beneficial effect on nonair health and environment impacts. D/F and HAP metals have been found in the Great Lakes and have been listed as pollutants of concern due to their persistence in the environment, potential to bioaccumulate, and toxicity to humans and the environment (docket item II–A–31, pp. 18 to 21). Implementation of the proposed

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NESHAP would aid in reducing aerial deposition of these emissions.

Occupational exposure limits under 29 CFR part 1910 are in place for some of the regulated HAPs (and surrogates) except D/F. The National Institute for Occupational Safety and Health recommends an exposure level for D/F at the lowest feasible concentration (docket item II–I–45, p. 124). The proposed NESHAP would reduce emissions, and consequently, occupational exposure levels for plant employees.

G. Cost Impacts

For existing NHW kilns, NHW in-line kilns/raw mills, clinker coolers, raw and finish mills, and materials handling facilities, the projected total capital costs (including estimated monitoring costs) of the proposed standard for controlling emissions of PM and D/F are $87 million. The projected annual costs (including monitoring costs) for these controls are $27 million. For new NHW kilns and NHW in-line kiln/raw mills, the projected total capital and annual costs of the MACT standard for D/F are $390,000 and $89,000, respectively. No capital and annual costs are projected for new and reconstructed NHW kilns, NHW in-line kilns/raw mills, and clinker coolers as a result of the proposed standard for PM because these sources will be required to comply with the existing NSPS for portland cement plants (40 CFR part 60, subpart F). The proposed THC emissions limit for new NHW kilns and NHW in-line kiln/raw mills can be met by processing materials with typical levels of organic content, without installing and operating add-on pollution control systems that would be relatively costly. Feed materials that have sufficiently low levels of organic matter are widespread across the U.S., and the siting of new kilns is not expected to be significantly limited by the proposed emission limit. Information is not available to quantify the costs of excluding deposits of feed materials with the highest levels of organic constituents as the primary feed for new kilns. Owners/operators of the few existing cement plants that process feed materials containing relatively high levels of organic material, and who desire to expand production through the addition of a new kiln, would need to blend their existing feed materials with lower THC materials from offsite, or selectively process lower organic portions of the feed materials from the onsite mine or quarry in the new kiln. Regarding the costs of monitoring, for new NHW kilns and in-line kiln/raw mills, the projected fifth-year national capital and annual costs of monitoring THC with a continuous emission monitor at an estimated four new kilns are $576,000 and $340,000, respectively (docket item II–B–77).

H. Economic Impacts

An economic analysis of the proposed NESHAP was conducted. The EPA estimates that regional market price increases would be between 0.6 and 2.0 percent. The national average price increase is estimated to be 1.1 percent. The related decreases in quantity demanded are estimated to range from 0.5 to 1.8 percent, with a national average of 0.9 percent. Domestic production is estimated to decrease more than consumption (1.7 percent compared to 0.9 percent nationally because imports are estimated to increase by 6.3 percent). The decreases in domestic production may lead to the loss of approximately 230 jobs. No plants are expected to close; two kilns are expected to cease operating (docket item II–A–46).

V. Selection of Proposed Standards

A. Selection of Source Category

Section 112(c) of the Act directs the Agency to list each category of major and area sources, as appropriate, that emits one or more of the HAPs listed in section 112(b) of the Act. The EPA published an initial list of source categories on July 16, 1992 (57 FR 31576), and revised the list on June 4, 1996 (61 FR 28197). "Portland Cement Manufacturing" is one of the 174 categories of sources on the initial list. As defined in the EPA report, "Documentation for Developing the Initial Source Category List" (docket item II-A–18), the Portland Cement Manufacturing source category includes any facility engaged in manufacturing portland cement by either the wet or dry process. The category as described for the listing includes but is not limited to the following process facilities: kiln, clinker cooler, raw mill system, finish mill system, raw material dryer, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems.

The term "major source" is defined under section 112(a)(1) of the Act and in the EPA general provisions (40 CFR 63.2) as:

> * * * any stationary source or group of stationary sources located within a contiguous area under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants * * *

This definition of major source has been upheld in a recent decision, *National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995). In this case, the Court also concluded that "EPA may require the inclusion of fugitive emissions in a site's aggregate emissions without conducting any special rule making" for the purpose of determining whether a source is major.

The listing of the portland cement major source category was based on the Administrator's determination that some portland cement plants would be major sources of particulate HAPs, including but not limited to compounds of arsenic, cadmium, chromium, lead, manganese, mercury, nickel, and selenium. Information and data have been compiled by the EPA characterizing the portland cement manufacturing process and its associated emission sources. There are three main steps to manufacturing portland cement: (1) kiln feed preparation (i.e., crushing and grinding), (2) firing the raw mix in a rotary kiln to produce clinker (including fuel handling), and (3) clinker grinding to produce cement. The responses received from the information collection request (ICR) that was sent to every company in the industry indicated that HAP emissions have been identified from all steps in the manufacturing process. The kiln feed preparation and clinker grinding operations all produce particulate emissions, a fraction of which are metal HAPs. The responses also showed that HAPs are emitted from the clinker production step; the kiln exhaust gases contain metal HAPs, organic HAPs, and HCl.

All kiln exhaust gases are controlled at the existing plants by either FFs or ESPs to limit PM emissions. Based on currently available data, there are no plants that would be defined as major sources according to section 112(a) of the Act on the basis of the mass of metal HAPs emitted from kilns. That is, the reported emissions, considering controls, did not exceed 9.1 Mg/yr (10 tpy) of a single metal HAP or greater than 22.7 Mg/yr (25 tpy) of a combination of metal HAPs from a cement kiln. However, operators of portland cement plants must include HAP emissions from fugitive sources in determining whether their facility is a major source of HAP emissions. Fugitive sources may emit enough HAP metals to make a plant a major source (when fugitive emissions are combined with all other HAP emissions at the site).

ICR responses for individual plants did show quantities of hydrogen chloride (HCl) and chlorine each being emitted in excess of 9.1 Mg/yr (10 tpy).

Most HCl emissions (reported in the ICR responses) were measured by EPA Method 26, a method that may underestimate HCl emissions by a factor of 2 to 25 (docket item II–I–121). Results of Fourier Transform Infrared (FTIR) spectroscopy emissions tests suggest that most plants may be major sources of HCl. Hydrochloric acid concentrations of two wet process portland cement kiln exhaust gases (docket item II–A–20, docket item II–A–40) determined by FTIR spectroscopy ranged from 11 parts per million by volume (ppmv) to 110 ppmv (dry basis corrected to 7 percent oxygen). Assuming an average HCl emission of 50 ppmv (dry basis, corrected to 7 percent oxygen), a wet kiln producing 600,000 tpy of clinker would emit approximately 150 tpy of HCl.

Some plants reported formaldehyde, benzene, and toluene emissions each to be in excess of 9.1 Mg/yr (10 tpy). One plant injects activated carbon into the kiln exhaust to reduce the plume opacity thought to be caused by hydrocarbons in the feed (docket item II–B–35). Various organic HAPs were detected in its kiln exhaust using FTIR spectroscopy (docket item II–A–41). Based on the kiln operating 330 d/yr, 24 hr/d, kiln emissions were estimated at 331 Mg/yr (365 tpy) of hexane, 29 Mg/yr (32 tpy) of benzene, 27 Mg/yr (30 tpy) of toluene, 15 Mg/yr (16 tpy) of naphthalene, and 12 Mg/yr (13 tpy) chlorobenzene (docket item II–A–41, docket item II–B–76).

Based on ICR responses, acetaldehyde, acrylonitrile, arsenic compounds, lead compounds, manganese compounds, mercury compounds, naphthalene, phosphorus, styrene, and xylenes were emitted at rates of one tpy or greater from at least one portland cement kiln (docket item II–B–69). The analysis of HAP emissions data from portland cement manufacturing plants summarized above indicates that most if not all cement plants are major sources of HAP emissions.

Consideration of subcategories or classes. Section 112(d)(1) of the Act provides that the Administrator may distinguish among classes, types and sizes of sources within a category or subcategory in establishing standards. The EPA reviewed the listed source category to determine if different classes were warranted. All portland cement is manufactured in direct-fired, rotating kilns. In 1993, 210 kilns at 118 plants were in operation throughout the nation and Puerto Rico (docket item II–I–101).

There are two main portland cement manufacturing processes differentiated on the basis of feed preparation: wet process and dry process. Approximately one-third of the kilns in operation use a wet process; the other two-thirds use a dry process. The trend in the industry for new kilns is toward the dry process because it is more energy efficient than the wet process. Within the dry process there are three variations: long kiln dry process, preheater process, and preheater/precalciner process. The wet process kilns and all variations of the dry process kilns use the same raw materials and use the same types of pollution controls for PM emissions (docket item II–C–94, attachment chapters 2 and 3). Based on ICR responses and test data the use of these pollution controls to meet the NSPS for PM is feasible for wet kilns and all types of dry kilns. Likewise test data show that lowering kiln exhaust gas temperature to 400° F at the APCD inlet, MACT for reducing D/F concentrations, is feasible for wet and all types of dry kilns. In any event, if classes were defined based on process type, the MACT floor technology would be identical (docket item II–B–73). For this reason, the EPA does not propose classes based on process type.

The EPA OSW has recently proposed NESHAPs for various HWC types, including cement kilns which burn hazardous waste.[11] The proposal is consistent with the terms of the 1993 settlement agreement between the Agency and a number of groups that challenged EPA's final RCRA rule entitled "Burning of Hazardous Waste in Boilers and Industrial Furnaces" (56 FR 7134, February 21, 1991) and with the Agency's Hazardous Waste Minimization and Combustion Strategy that was first announced in May 1993. Hazardous waste burning cement kilns are included in the portland cement manufacturing source category, but are subject to different regulations than the NHW kilns. This proposed NESHAP for portland cement manufacturing covers only NHW kilns and NHW in-line kiln/raw mills. However, this proposed NESHAP does cover the other affected sources (including clinker coolers, raw material dryers, and materials handling processes) located at manufacturing plants regardless of whether the plant has hazardous waste-burning cement kilns.

Decision to regulate portland cement area sources. Section 112(c)(6) of the Act states that by November 15, 2000, EPA must list and promulgate section 112(d)(2) or (d)(4) standards (i.e., standards reflecting MACT) for categories (and subcategories) of sources emitting seven specific pollutants, including the following HAPs emitted by cement kilns: mercury, 2,3,7–8 tetrachlorodibenzofuran, and 2,3,7–8 tetrachlorodibenzo-p-dioxin. (Although other 112(c)(6) HAPs have been found in cement kiln exhaust, the majority of the emissions data and concern for NHW cement kiln 112(c)(6) HAPs is for mercury and dioxin/furans.) The EPA must assure that source categories accounting for not less than 90 percent of the aggregated emissions of each enumerated pollutant are subject to MACT standards. Congress (docket item II–I–13, p. 155 to 156) singled out the HAPs enumerated in section 112(c)(6) as being of "specific concern" not just because of their toxicity but because of their propensity to cause substantial harm to human health and the environment via indirect exposure pathways (i.e., from the air through other media, such as water, soil, food uptake, etc.). Furthermore, these pollutants have exhibited special potential to bioaccumulate, causing pervasive environmental harm in biota (and, ultimately, human health risks).

The EPA estimates that approximately five tons of mercury are emitted annually in aggregate from NHW cement kilns at portland cement plants in the U.S. (docket item II–B–65). Also, it is estimated that NHW kilns emit in aggregate approximately 22 lb of D/F (or about 0.10 lb TEQ per year (docket item II–B–57, docket item II–B–76). To assure that these pollutants are subject to MACT, EPA is proposing to add the portland cement manufacturing area source category to the list of source categories and subcategories listed pursuant to section 112(c)(6). [See 62 FR 33625, 33637–38; June 20, 1997.] The EPA is doing so because area and major source cement kilns emit these HAPs in roughly equal quantities, because the dioxins and furans emitted by area sources are equally toxic as those emitted by major sources (i.e., the distribution of dioxin and furan isomers is the same for both area and major sources), and because these are particularly toxic HAPs. In addition, EPA is already counting on control of these pollutants from cement kiln area sources through the MACT process in assuring that sources accounting for at least 90 percent of the emissions of these HAPs are subject to standards under section 112(c)(6). [See 62 FR at 33635, 33636; June 20, 1997.]

The EPA notes, however, as it did in the June 20th notice, that although the section 112(c)(6) listing process makes sources subject to standards under subsection (d)(2) or (d)(4), the language of section 112(c)(6) does not specify

[11] The EPA proposed regulations for subpart EEE of 40 CFR part 63 on April 19, 1996 at 61 FR 17358.

either a particular degree of emissions control or a reduction in these specific pollutants emissions to be achieved by such regulations. Rather, the specific control requirements will result from determining the appropriate level of control under MACT [section 112(d)(2), or section 112(d)(4)], and this interpretation will be made during the section 112(d) rulemakings affecting the particular source category, not as part of the section 112(c)(6) listing process. [See 62 FR at 33631; June 20, 1997.]

As noted above, EPA is interpreting section 112(c)(6) to require the Agency to establish standards under section 112(d)(2) or 112(d)(4) for all sources listed pursuant to section 112(c)(6), whether such sources are major or area sources. This interpretation reflects the express language of section 112(c)(6) that sources * * * of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) and is in accord with the function of section 112(c)(6):

> To assure that sources emitting significant amounts of the most dangerous HAPs are subject to the rigorous MACT standard-setting process.

[See S. Rep. No. 228, 101st Cong. 1st Sess., pp. 155, 166.]

The EPA has in fact already adopted this interpretation in the proposed rule for hazardous waste combustion sources.

[See 61 FR at 17365; April 19, 1996.]

Under an alternative interpretation of section 112(c)(6), the Agency might also establish standards pursuant to section 112(d)(5)—based on generally available control technology (GACT)—for area sources listed under section 112(c)(6). Section 112(d)(5) states that for categories and subcategories of area sources listed pursuant to subsection 112(c), the Administrator may establish standards pursuant to GACT rather than MACT. Although the reference to listing area sources may have been intended to refer to the area source listing process in section 112(c)(3), it arguably extends to listing under section 112(c)(6) as well. The Agency requests comment on the use of this alternative approach to standard-setting for area sources listed under section 112(c)(6).

In addition, the EPA is interpreting section 112(c)(6) to require that, for sources listed under section 112(c)(6), MACT [or section 112(d)(4)] controls apply only to the section 112(c)(6) HAPs emitted by the source. Thus, in this proposed rule, only mercury, D/F, and POM (using THC as a surrogate) emitted by cement kiln area sources would be subject to the MACT standards. The EPA is aware that it proposed a different interpretation in the hazardous waste combustion NESHAP (see 61 FR at 17365–66), but now believes that section 112(c)(6) is better read to apply only to particular HAPs rather than to the entire source. (Since the language of section 112(c)(6) is ambiguous as to whether the entire source must comply with MACT, or just for the HAPs enumerated in section 112(c)(6), [see 61 FR at 17365 n. 12], either interpretation is legally permissible.) Applying the provision to the entire source could result in applying MACT to all HAPs emitted by area sources under circumstances where control would not otherwise be warranted.

B. Selection of Emission Sources

The portland cement manufacturing process consists of the following unit operations:

(1) Grinding the carefully proportioned raw materials to a high degree of fineness;

(2) firing the raw mix in a rotary kiln to produce clinker;

(3) grinding the resulting clinker to a fine powder and mixing with gypsum to produce cement; and

(4) raw and finished materials handling.

The following sections include descriptions of the affected sources in the portland cement manufacturing source category, the origin of emissions from these affected sources, and factors affecting the emissions. The affected sources for which MACT standards are being proposed include the kiln, in-line kiln/raw mills, clinker cooler, raw and finish mills, raw material dryer, and materials handling processes.

1. Feed Preparation Processes (Grinding, Conveying)

Oxides of calcium, silicon, aluminum, and iron comprise the basic ingredients of cement. The calcareous raw materials include limestone, chalk, marl, sea shells, aragonite, and an impure limestone known in the industry as natural cement rock. The requisite silica and alumina may be derived from clay or shale from a limestone quarry. Such materials usually contain some of the required iron oxide, but many plants need to supplement the iron with mill scale, pyrite cinders, or iron ore. Silica is supplemented, if necessary by adding sand to the raw mix; alumina may be supplemented by adding bauxite or alumina-rich flint clays to the raw mix (docket item II–I–5, p. 180).

Industrial by-products and wastes are becoming more widely used as feed materials for cement production, e.g., slags contain carbonate-free lime, as well as substantial levels of silica and alumina. Fly ash from coal-fired boilers can often be a suitable feed component, since it is already finely dispersed and provides silica and alumina (docket item II–I–5, p. 180).

Ball mills are used to grind the feed material to the required fineness for both the wet and dry processes. In the wet-kiln process, the raw materials are ground with water to produce a well-homogenized slurry. In the dry-kiln process, raw materials are ground in closed-circuit ball mills with air separators.

Emissions from the grinding and conveying operations are essentially particulate emissions (e.g., dust from limestone, clay, bauxite ore) which contain HAP metals. Particulate matter control devices (FFs and ESPs) serve as HAP control devices. The quantity of emissions of HAP metals from raw materials handling processes are site specific and depend on dust control practices and weather conditions.

2. Feed Preparation Processes (Drying, Blending, Storage)

Drying of kiln feed materials can be carried out in separate units that are gas- or coal-fired. However, to improve the process energy efficiency, waste heat can be utilized directly in the mill by routing the kiln gases through the raw mill. The catch from the APCDs that follow the raw mill is returned to the process and therefore, the APCD is also part of the process (docket item II–I–109, chapter 11.6). Where kiln gases are routed through the raw mill, emissions from the combined in-line kiln/raw mills must be controlled for the same pollutants and to the same extent as kiln gases.

The more energy efficient preheater and preheater/ precalciner kilns usually route the exhaust gas from the preheater to a raw mill to dry the material in suspension in the mill. The gas stream exits the raw mill heavily laden with kiln raw material and is exhausted to an APCD to recover the raw material and any material entrained from the kiln preheater system. The raw material is collected and fed to a blending system to provide the kiln with a homogenous raw feed. Dry process blending is usually accomplished in a silo with compressed air [docket item II–I–5, p. 183).

If the raw material dryer uses heat from a separate combustion source (fuel-fired raw material dryer), exhaust gases may contain trace quantities of products of incomplete combustion (PICs), HCl, and metals from the fuel. In addition, if the feed materials contain organic matter, this material may volatilize in the raw material dryer (regardless of the

source of the heat) and the dryer exhaust may contain organic HAPs. Under the NSPS, emissions from the raw material dryer and the feed preparation materials handling processes (raw mill system, raw material storage, and conveyor transfer points) are currently subject to a limit of 10 percent opacity.

3. Kiln

The high temperature processing required to produce portland cement takes place in the rotary kiln. The rotary kiln consists of a refractory-brick-lined cylindrical steel shell that is rotated by an electrical drive. It is a countercurrent heating device slightly inclined so that material fed into the cooler, upper end travels slowly by gravity to be discharged onto the clinker cooler from the hotter, lower discharge end. The burners at the firing end, i.e., the lower or discharge end, produce a current of hot gases that heats the clinker and the calcined and raw materials in succession as the gases pass toward the feed end. As has been mentioned, a kiln can be classified as wet (in which the kiln feed is a slurry) or dry. Dry process kilns include the older-style, long dry process kiln with a single firing point; the preheater/kiln system; and the preheater/precalciner kiln system. In the preheater/precalciner system, a second burner is used to carry out calcination in a separate vessel interposed between the preheater and the kiln. The precalciner uses preheated combustion air drawn from the clinker cooler and the kiln exit gases and is equipped with an oil or coal burner that burns 50 to 60 percent of the total kiln fuel input. The precalciner system permits the use of smaller kilns since only the actual clinkering process is carried out in the rotary kiln.

The kiln exhaust contains a wide variety of HAPs and other air pollutants that originate from the fuel combustion and from the feed material. In 1991, about 87 percent of the total U.S. kiln capacity used coal, coke, or a combination of coal and coke as the primary fuel (docket item II–I–42, p. 20). Only 3.5 percent of the kiln capacity is fired with natural gas alone (not in combination with other fuels) and oil as a primary fuel represented an insignificant fraction of the total kiln capacity. Plants firing waste-derived fuels account for the balance of the total capacity. The most common waste fuels used in cement kilns are RCRA hazardous waste, tires and tire-derived fuel. To a lesser extent, MSW, medical waste, and used motor oil are fired.

Feed materials are a source of gaseous organic HAP emissions. Some feed materials contain organic carbon such as petroleum or kerogens. The organic carbon can volatilize in the kiln and appear at the stack exit as a "blue haze" which may contain organic HAPs. During one EPA-sponsored test at a cement kiln using feed material with a high organic matter content, significant levels of benzene (32 tpy) were detected in the kiln exhaust (docket item II–A–41, docket item II–B–76). Organic HAP emissions were found to vary with THC emissions during this test.

Chlorine entering the kiln system (from raw materials and also from fuels) may react with the organic compounds present in the raw materials or with PICs, to form chlorinated hydrocarbons or D/F in the kiln stack exhaust. Approximately 20 percent of the HAPs listed in section 112 of the Act are chlorinated organic compounds.

In the wet process and in the long kiln dry process, the emission point for the kiln gases is typically the APCD discharge stack. In the more complex preheater and precalciner process designs, the kiln gases are routed through other pieces of process equipment, such as the raw mill. In-line kiln/raw mills vent kiln gases through the raw mill. In these systems the gases discharged from the APCD on the raw mill, are in fact kiln exhaust gases.

The kiln alkali bypass stack is an additional emission point for kiln gases which is sometimes found with preheater and precalciner processes. The alkali bypass gas streams are kiln gases that have not contacted the incoming feed material. The kiln gases that are drawn out of the kiln prior to contact with the precalciner and preheater sections pass through a separate APCD and may be discharged to the atmosphere through a separate stack. In other process arrangements, the treated alkali bypass gases are combined with the main kiln exhaust gases and are discharged through a common stack. It is expected that the same HAPs found in the main kiln stack are found in the alkali bypass stack.

Kiln PM/HAP metals. All HAP metals have been identified in kiln exhaust PM at various levels. Based on analysis of emissions test reports, the total average HAP metal content of kiln exhaust PM is approximately one weight percent (docket item II–B–36). Mass emission rates of metal HAPs from the kiln depend on the concentration of metals in the PM and the emission rates of PM. Analyses of emissions data (docket item II–B–62) have shown that ESP-controlled PM emissions for six NHW kilns ranged from 0.009 to 0.20 gr/dscf (corrected to seven percent oxygen), with an average of 0.045 gr/dscf for 14 data points. Fabric filter-controlled PM emissions for five NHW kilns ranged from 0.002 to 0.29 gr/dscf (corrected to seven percent oxygen), with an average of 0.014 gr/dscf for 10 data points. For a 600,000 ton of clinker/year kiln (this represents the capacity of a mid-sized kiln), the range of kiln PM emissions (0.002 gr/dscf to 0.29 gr/dscf) corresponds to 9 tpy to 1,360 tpy (docket item II–B–76). Based on an average kiln PM emission of 0.03 gr/dscf, and assuming HAP metal emissions are one percent by weight of PM emissions, HAP metal emissions are approximately 1.4 tpy for a 600,000 ton of clinker/year kiln (docket item II–B–76). Based on ICR responses, at least one plant reported kiln emissions of over one tpy for one or more of the following metal HAPs: chromium, lead, arsenic, mercury, antimony, and manganese. However, no plant reported kiln emissions of more than 10 tpy of any single metal HAP (docket item II–B–69).

Kiln mercury. Mercury may be emitted in the kiln exhaust as either a particulate or a gas. A summary was compiled of all currently available mercury emission data for HW and NHW kilns (docket item II–B–65). There are 8 data points for 7 NHW kilns, and 19 data points from 21 HW kilns (two sets of kilns shared a stack). The HW kiln data were adjusted to remove mercury in the HW fuel and any mercury spikes. By removing the portion of emissions attributed to test method spiking and HW fuel mercury inputs, corrected emission data that are comparable with data from NHW kilns were developed.

For a 600,000 ton of clinker/year kiln, the range of the mercury emissions data [0.6 to 83 micrograms (μg)/dscm at 7 percent oxygen] corresponds to 0.0012 tpy to 0.17 tpy (docket item II–B–76), while the average mercury emission (24 μg/dscm) corresponds to approximately 0.05 tpy (docket item II–B–76). One plant responding to the ICR reported mercury emissions of over one ton per year.

Kiln D/F. For the purposes of analysis of the data, concentrations of dioxin and furan congeners (specifically the tetra, hepta, hexa, and octa congeners) were converted to a concentration that was equivalent to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin. Determination of TEQ concentrations was performed according to the international method (docket item II–A–8).

An analysis of all available D/F emission data from 15 NHW kilns showed that concentrations of D/F TEQ emitted in the kiln exhaust gas measured downstream of the PMCD

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ranged from 0.001 ng TEQ/dscm to over 1.2 TEQ ng/dscm with an average of 0.20 ng TEQ/dscm (all concentrations at 7 percent oxygen)[D/F test data are shown in Table 8 in Section V.D.2]. For a 600,000 ton of clinker/year kiln, the range of the D/F TEQ concentrations (0.001 to 1.2 ng/dscm) corresponds to 0.0018 g/yr to 2.2 g/yr (docket item II–B–76), while the average concentration (0.20 ng TEQ/dscm) corresponds to an emission of 0.4 g TEQ/year (docket item II–B–76).

The predominant factor affecting D/F emissions is the temperature of gases at the inlet to the PMCD (docket item II–I–81, docket item II–I–82). Test data collected from both HW and NHW kilns show a trend of decreasing D/F gas stream concentrations with decreasing temperature at the inlet to the PMCD. In tests conducted on individual cement kilns where the gas stream temperature was varied in the range of 350 to 500°F, reductions in D/F TEQ concentrations by factors of 5 to 10 were observed when gas temperatures entering the PMCD were lowered from the upper to lower end of the temperature range (docket item II–I–81, docket item II–I–82).

Kiln THC/organic HAPs. The THC and organic HAP concentrations and emission levels from kilns vary widely, depending primarily on the feed materials (docket item II–I–66, docket item II–I–67, docket item II–I–68). Some feed materials contain organic carbon such as petroleum or kerogens. One kiln operator has conducted an extensive study of the source of high THC and carbon monoxide (CO) emissions from the kiln (docket item II–I–107). Higher than normal emissions from this kiln were attributed to the shale used in the raw materials. Replacing the shale with fire clay in the raw mix resulted in a dramatic reduction of THC and CO emissions.

Another NHW kiln operator has determined that the raw materials are the source of the majority of the observed benzene emissions (docket item II–D–112). Kiln stack gas and preheater gas stream analyses before and after switching fuel from a combination of coal and petroleum coke to 100 percent natural gas showed little effect on benzene emissions. These test data suggest that benzene emissions derived from the raw materials (docket item II–I–41).

Fourier transform infrared spectroscopy was used to determine organic HAP emissions at a NHW kiln. Estimated organic HAP emissions (based on average concentrations measured in the kiln exhaust and 7,920 hr/yr of operation) showed that the kiln was a major source based on organic HAP emissions. Organic HAP emission rates were estimated at 381 Mg/yr (365 tpy) hexane, 27 Mg/yr (30 tpy) toluene, 29 Mg/yr (32 tpy) benzene, 14.5 Mg/yr (16 tpy) naphthalene, and 12 Mg/yr (13.2 tpy) chlorobenzene (docket item II–A–41, docket item II–B–76).

In the ICR responses, many organic HAPs were reported as being emitted in the kiln exhaust gas. Organic HAPs for which there was at least one report of emissions of at least 0.91 Mg/yr (1.0 tpy) include benzene, naphthalene, toluene, formaldehyde, xylenes, styrene, and acetaldehyde. One facility reported more than 9.1 Mg/yr (10 tpy) each of benzene and toluene emissions (docket item II–B–69).

Stack concentrations of THC were available for 16 NHW kilns (docket item II–B–75). The concentrations were expressed in ppmv as propane on a dry basis (ppmvd) at seven percent oxygen. For a 600,000 ton of clinker/year kiln, the range of kiln THC emissions (0.4 ppmvd to 224 ppmvd as propane) corresponds to 1.5 tpy to 840 tpy (docket item II–B–76), while the average kiln THC emissions (35 ppmvd as propane) corresponds to 131 tpy (docket item II–B–76). Organic HAP concentrations, as a percentage of THC for these data, ranged from 0 to 98 percent (docket item II–B–75). With an average of 23 percent of the THC emissions being organic HAPs a 600,000 ton of clinker/year kiln would emit from 0.3 tpy to 190 tpy of organic HAPs, based on the range of THC stack concentrations.

The emissions from kiln alkali bypasses are expected to be the result of incomplete combustion of fuel in the kiln, since this exhaust gas stream does not contact incoming kiln feed materials. Alkali bypass concentrations of THC were available for two kilns operating under NHW conditions. The concentrations were expressed as ppmvd (as propane) at seven percent oxygen, and averaged 3.4 ppmvd and 27 ppmvd, respectively (docket item II–B–75). For typical alkali bypass gas flow rates at a 600,000 ton of clinker/year kiln, this range corresponds to approximately 2.4 tpy to 19 tpy of THC, while the average kiln bypass THC concentration (15 ppmvd) corresponds to 10.5 tpy of THC (docket item II–B–76). Assuming that 5 percent of the THC emissions from alkali bypasses are organic HAPs (docket item II–B–75), a 600,000 ton of clinker/year kiln would emit from 0.3 tpy to 6 tpy of organic HAPs, based on the range of THC alkali bypass stack concentrations.

Kiln HCl. The currently available HCl emission data obtained from a total of 46 NHW and HW kilns range from 0.2 ppmvd to 157 ppmvd and the average is 27 ppmvd for 72 data points (docket item II–B–62). (All concentrations were corrected to seven percent oxygen.) For a 600,000 ton of clinker/year kiln, the range of kiln HCl emissions corresponds to 0.6 tpy to 490 tpy, while the average HCl emission (27 ppmvd) corresponds to 84 tpy (docket item II–B–76). Based on analyses of test reports and ICR responses, HCl emissions range from less than 0.91 Mg/yr (1 tpy) to over 272 Mg/yr (300 tpy). Ten plants responding to the ICR reported emissions of HCl greater than 9.1 Mg/yr (10 tpy) from each of 15 different kilns (docket item II–B–69).

The EPA notes that with the exception of three kilns that were measured by FTIR, all of the HCl emission measurements included in the analysis were obtained using EPA Method 26. A recently completed study that compared the results of a draft test protocol using the gas filter correlation infrared (GFCIR) instrumental method (proposed EPA Method 322) and EPA Method 26 found that HCl measured by GFCIR was typically much higher than that measured by Method 26 (docket item II–I–121). Concentrations of HCl measured by GFCIR ranged from 1.5 to 4.5 times the concentrations measured by Method 26 for wet kilns and up to 30 times the concentrations measured by Method 26 for a dry kiln. Subsequent laboratory recovery efficiency analyses suggested that Method 26 is biased significantly low due to a scrubbing effect in the front half of the sampling train. Therefore, it is likely that currently available HCl emission data are understated.

4. Clinker Cooler

It is desirable to cool the clinker rapidly as it leaves the burning zone of the kiln. Heat recovery, preheating of kiln combustion air, and fast clinker cooling are achieved by clinker coolers of the traveling-grate, planetary, rotary, or shaft type. Most commonly used are grate coolers where the clinker is conveyed along the grate and subjected to cooling by ambient air, which passes through the clinker bed in cross-current heat exchange.

A portion of the clinker cooler exhaust serves as secondary combustion air in the kiln. The remainder of the clinker cooler exhaust is discharged to the atmosphere separately from the kiln exhaust gas through a PM emission control device. Clinker cooler gases are also sometimes routed through other pieces of process equipment, such as the coal or raw mill, as a source of warm,

dry air prior to being reused as combustion air.

Since clinker coolers are not combustion devices, the only HAP expected to be emitted are the metal HAPs associated with the clinker cooler particulate, i.e., clinker dust. HAP metals that have been detected in clinker include chromium, lead, nickel, arsenic, beryllium, antimony, selenium, and mercury. In one study conducted by the Portland Cement Association (docket item II–I–44, p. 4), the average concentration of metal HAPs that has been detected in clinker is 555 parts per million by weight (ppmw). In an earlier study, cited by EPA OSW the average HAP metal content in clinker was found to be 138 ppmw (docket item II–A–24, pp. 3–62 to 3–65). Under the existing NSPS, emissions of PM from clinker cooler gases are limited to 0.05 kg/Mg feed (dry basis) (0.10 lb/ton). A plant producing 600,000 tpy of clinker, emitting PM from the clinker cooler at the NSPS limit, would emit 6 kg (14 lb) of HAP metals per year, assuming a 140 ppmw HAP metal content in the PM (docket item II–B–76).

5. Finish Grinding/Conversion of Clinker to Portland Cement

The cooled clinker is conveyed to clinker storage or mixed with gypsum and introduced directly into the finish mills. The finish mills are large, rotating steel cylinders containing a charge of steel balls. The clinker and gypsum are ground to a fine, homogeneous powder. Two different types of mill systems may be used. In open-circuit milling, the material passes directly through the mill without any separation of fine and coarse particles. In closed-circuit grinding, the mill product is carried to a cyclonic air separator in which the coarse particles are rejected from the product and returned to the mill for further grinding.

The finished portland cement is conveyed to bulk storage silos from which it is dispensed for shipping. Portland cement is often loaded in bulk into hopper trucks or rail cars. It may also be packaged in "tote bins" or in 80 lb or 94 lb kraft paper bags. The bags are loaded onto pallets for handling, warehousing, and shipping.

The only HAPs expected to be emitted from clinker/cement handling processes are the metal HAPs associated with clinker and cement dust. As was noted above, clinker dust is estimated to contain 555 ppmw of metal HAPs. The HAP metals that have been identified in portland cement include chromium, nickel, arsenic, lead, antimony, selenium, beryllium, cadmium, and mercury. In cement (as opposed to clinker), the concentrations of individual HAP metals range from an average of 0.014 ppmw mercury to an average of 76 ppmw chromium. The total average concentration of metal HAPs in portland cement is 143 ppmw (docket item II–I–44).

Total nationwide emissions of HAPs, PM, and VOCs from the above emission sources in portland cement plants are estimated at 23,300 Mg/yr (25,700 tpy). Over 260 Mg/yr (290 tpy) of these emissions are HAPs. Emissions of PM and VOCs are estimated at 23,000 Mg/yr (25,400 tpy).

Given that these processes release significant quantities of HAPs and the availability of emission control systems, the Agency selected to develop and propose NESHAP for the following emission sources: NHW kilns and NHW in-line kiln/raw mills; NHW kiln alkali bypasses; clinker coolers; raw material dryers; feed preparation and materials handling processes including raw mills, finish mills, storage bins (raw material, clinker, finished product), conveying system transfer points, bagging system, and bulk loading and unloading systems. Additional information on the operations in portland cement plants selected for regulation, and other operations, is included in the docket.

C. Selection of Pollutants

The proposed standards would limit emissions of metal HAPs [almost all metals appearing in section 112(b) have been detected in portland cement plant emissions] and organic HAPs (including D/F) from portland cement manufacturing facilities. (Pollutant health effects were discussed in section II.C.) These HAPs are emitted in significant quantities from portland cement plant sources. The standards being proposed to address metal and organic HAP emissions establish limits for surrogate pollutants rather than for individual HAP compounds (a separate emission limit is established for D/F). The reasons for using surrogate pollutants are discussed below.

Controlling PM emissions will control the emissions of non-volatile metal HAPs (and also the condensed organic HAPs including D/F which are adsorbed on particulates). The available technologies used in the cement manufacturing industry for the control of non-volatile HAP metals are the same technologies (FFs and ESPs) as the proposed MACT floor technologies for control of PM. Metal HAPs are estimated to constitute about 1 percent by weight of kiln PM emissions from portland cement manufacturing and about 0.06 percent by weight of clinker cooler PM emissions. In addition, the use of PM as a surrogate for non-volatile metal HAP emissions reduces the costs associated with compliance testing and monitoring.

The proposed standards establish an emission limit for THC as a surrogate for organic HAPs from new or reconstructed NHW kilns for the following reasons. Methods used in the cement manufacturing industry for the control of organic HAP emissions would be the same methods used to control THC emissions. These emission control methods include using feed materials with relatively low levels of organic matter and achieving good combustion (docket item II–B–47, docket item II–B–48). Standards limiting emissions of THC will also result in decreases in organic HAP emissions (with the additional benefit of decreasing VOC emissions).

Establishing emission limits for specific organic HAPs (with the exception of D/F) would be impractical and costly. Total hydrocarbon, which is less expensive to test for and monitor, can be used as a surrogate for organic HAPs. Based on available data, organic HAPs range from 0 to 98 percent of THC and are estimated to account for approximately 23 percent on average of THC emissions from portland cement manufacturing (docket item II–B–75). The Agency recognizes that the level and distribution of organic HAPs associated with THC emissions from cement kilns will vary from kiln to kiln. Limiting THC as a surrogate for organic HAPs will eliminate costs associated with speciating numerous compounds.

The proposed standards establish separate emission limits for D/F because of the high toxicity associated with even low masses of these compounds. In addition, data available to EPA establish the existence of a separate MACT floor technology for D/F control.

The proposed regulation does not establish a limit for HCl emissions from cement kilns because no MACT floor technology has been identified. An HCl emission limit based on a beyond-the-floor control option was determined not to be justified as discussed in section V.D.2 of this document.

The proposed regulation does not establish limits for mercury emissions from cement kilns because no MACT floor control technology has been identified. A mercury emission limit based on a beyond-the-floor control option was determined not to be justified as discussed in section V.D.2.

D. Selection of Proposed Standards for Existing and New Sources

1. Background

After the EPA has identified the specific source categories or subcategories of sources to regulate under section 112, it must develop MACT standards for each category or subcategory. Section 112 establishes a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. [See section 112(d)(3)]. The standards for existing sources may be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the average of the best-performing 5 sources for categories or subcategories with fewer than 30 sources.

After the floor has been determined for a new or existing source in a source category or subcategory, the Administrator must set MACT standards that are technically achievable and no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate emission limits may be established for new and existing sources.

The EPA also may consider an alternative "beyond the floor." Here, EPA considers the achievable reductions in emissions of HAPs (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other nonair environmental impacts. The objective is to achieve the maximum degree of emission reduction without unreasonable economic, energy or secondary environmental impacts.

2. MACT Floor Technology, Emission Limits, and Format

The EPA conducted separate MACT determinations for PM (the surrogate for HAP metals), D/F, mercury, THC (the surrogate for organic HAPs), and HCl emissions from kilns and inline kiln/raw mills; for PM emissions from clinker coolers; for PM and THC emissions from raw material dryers; and for PM emissions from materials handling facilities. For each combination of pollutant and affected source, MACT floor technologies and beyond-the-floor control options were evaluated.

Several formats are available for establishing the emission limits based on MACT. These include mass concentration (mass per unit volume), volume concentration (volume per unit volume), mass emission rate (mass per unit time), process emission rate (mass per unit of production or other process parameter), and percent reduction.

For the portland cement manufacturing source category, EPA is proposing numerical emission standards expressed as a process emission rate and opacity limits for PM emissions from kilns; as mass per volume of exhaust gas for D/F emissions from kilns; as volume per volume of exhaust gas for THC emissions from kilns and raw material dryers; as a process emission rate and opacity limit for clinker cooler PM emissions; and as an opacity limit for materials handling facilities PM emissions.

The following sections present a discussion of the rationale for selecting the MACT technologies, emission limits, and format of the standard for each affected source and associated pollutant.

Kiln and in-line kiln/raw mill PM HAP emissions. Well-designed and properly operated FFs or ESPs are the PM control technologies presently in use by the best performing 12 percent of existing kilns and in-line kiln/raw mills. In the portland cement manufacturing industry, it is estimated that at least 30 percent (docket item II–A–4) of existing kilns are subject to the requirements of the NSPS for cement plants (40 CFR part 60, subpart F).

Table 7 lists the type of control device used with, and available PM emissions data from, kilns and in-line kiln/raw mills subject to the NSPS. The emission levels shown in Table 7 all meet the NSPS emission limit and were all achieved with FFs and ESPs designed to meet the NSPS. This represents the MACT floor technology for control of PM from kilns and in-line kiln/raw mills.

TABLE 7.—PARTICULATE EMISSIONS FROM NSPS KILNS

[Docket Item II–A–4, Docket Item II–A–43, Docket Item II–B–62]

Kiln type	APCD type	PM (kg/Mg dry feed)	Location
PH	FF	0.0011	Southdown—Kosmosdale, KY.
PC	FF	[a] 0.0039	Boxcrow Cement—Midlothian, TX.
PH	ESP	[b] 0.0075	Ash Grove—Durkee, OR.
DRY	FF	[a] 0.0090	Southdown #1—Fairborn, OH.
PC	ESP	[c] 0.015	RMC Lone Star—Davenport, CA.
PC	FF	0.015	Kaiser Cement—Cupertino, CA.
PH	ESP	0.015	Roanoke Cement—Cloverdale, VA.
PC	FF	0.020	Moore McCormack—Knoxville, TN.
PH	FF	0.029	Moore McCormack—Brooksville, FL.
PC	FF	0.033	Kaiser Cement—Lucerne Valley, CA.
PC	FF	0.035	Calif Portland—Mojave, CA.
PC	FF	0.04	Martin Marietta—Leamington, UT.
PC	ESP	0.044	Kaiser—San Antonio, TX.
PC	FF	0.048	Martin Marietta—Lyons, CO.
PH/PC	ESP	[b] 0.051	Lone Star—Cape Girardeau, MO.
WET	ESP	0.056	Monolith Portland—Laramie, WY.
DRY	FF	0.056	Lone Star—Pryor, OK.
DRY	ESP	[d] 0.058	Ash Grove #2—Louisville, NE.
PC	ESP	0.065	General Portland—New Braunfels, TX.
PC	FF	0.068	Davenport Industries—Buffalo, IA.
PH	FF	0.070	Ideal Basic—La Porte, CO.
PH	FF	0.074	Southwestern Portland—Odessa, TX.
DRY	ESP	0.11	Ash Grove #1—Louisville, NE.

TABLE 7.—PARTICULATE EMISSIONS FROM NSPS KILNS—Continued

[Docket Item II–A–4, Docket Item II–A–43, Docket Item II–B–62]

Kiln type	APCD type	PM (kg/Mg dry feed)	Location
PC	ESP	0.12	Texas Industries—Hunter, TX.
PC	ESP	0.13	Lehigh—Mason City, IA.
WET	ESP	0.15	Genstar—San Andreas, CA.
WET	FF	0.15	Lone Star—Salt Lake City, UT.

PC = precalciner.
PH = preheater.
a = average of four tests.
b = average of three tests.
c = average of two tests.
d = average of five tests.

The data in Table 7 were obtained from EPA Method 5 compliance tests on new kilns subject to the NSPS [0.15 kg/Mg dry feed (0.30 lb/ton dry feed)]. These tests measure the performance of PM APCDs associated with new kilns over a relatively short period (typically three 1-hour test runs). These data show that PM emissions from ESPs and FFs designed to meet the NSPS and operated and maintained to demonstrate initial compliance with the NSPS under Method 5 test conditions varied within a range of 0.0011 kg/Mg dry feed (0.0022 lb/ton dry feed) to 0.15 kg/Mg dry feed (0.3 lb/ton dry feed). The data in Table 7 show equivalent performance can be expected from FFs and ESPs, and that neither technology offers a clear advantage. Due to the fact that the best performing kilns and in-line kiln/raw mills use FFs and ESPs designed to meet the NSPS and because of the variability in performance of well-designed, well-maintained and properly operated FFs and ESPs, the emission limit represented by the MACT floor technology is equivalent to the NSPS of 0.15 kg/Mg dry feed (0.30 lb/ton dry feed).

No technologies were identified for existing or new kilns or in-line kilns/raw mills that would consistently achieve lower emission levels of PM than the NSPS limit. Consequently, there is no beyond-the-floor technology that has been shown to consistently achieve lower emissions. Therefore the PM emission limit proposed for new and existing kilns and in-line kiln/raw mills is 0.15 kg/Mg dry feed (0.30 lb/ton dry feed), which is equivalent to the NSPS limit.

The NSPS establishes an opacity limit, and an opacity limit is also being proposed under this standard. The maximum 6-minute average opacity level may not exceed 20 percent opacity, as is the case for the NSPS.

The production-based emission limit format was chosen for kiln and in-line kiln/raw mill PM emissions. The units for this emission standard are kg of PM per Mg of dry feed (lb PM per ton of dry feed). This format (mass per unit of production) and associated opacity limit are consistent with the format of the portland cement plant NSPS (40 CFR part 60, subpart F). At least 30 percent of the kilns in the industry are subject to the NSPS (docket item II–A–4) and these plants are already monitoring the production-based emission rate and the opacity.

A concentration format (*e.g.*, g/dscm [gr/dscf]) was considered for the kiln and in-line kiln/raw mill PM emission limit. One reason that this format was not chosen was that it would be inconsistent with the NSPS PM emission limit format. However, there are other considerations. A concentration format would penalize more energy efficient kilns, which burn less fuel and produce less kiln exhaust gas per megagram of dry feed. This is because with a concentration based standard the more energy-efficient kilns would be restricted to a lower level of PM emitted per unit of production.

Kiln and in-line kiln/raw mill D/F emissions. The EPA has identified two technologies for control of D/F emissions. One technology achieves low D/F emissions by a combination of proper kiln operation, proper combustion, proper control device operation, and a reduction in the kiln gas temperature at the inlet to the PMCD. The other technology is activated carbon injected into the kiln exhaust gas.

The discussion in this section refers to D/F emissions in units of TEQ. Toxic equivalent refers to the international method of expressing toxicity equivalents for dioxins and furans as defined in EPA report, "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs) and 1989 Update" (docket item II–A–8).

Dioxin/furan emissions data were obtained from testing that was conducted at NHW kilns, with NHW fuels at kilns that normally burn HW, and under worst-case conditions at kilns that burn HW (as part of Certificate of Compliance [COC] testing). Based on the test results for both NHW and HW kilns, the predominant factor affecting D/F emissions is the temperature of gases at the inlet to the PMCD (docket item II–A–42; docket item II–B–78; docket item II–I–81, pp. 127 to 133; docket item II–I–82, pp. 135 to 175). The highest D/F emissions (near 40 ng TEQ/dscm) occurred at the highest gas temperatures (between 500 °F and 700 °F) while the lowest emissions (near 0.02 ng TEQ/dscm) occurred at the lowest temperature (at approximately 210 °F). [The emission 0.02 ng TEQ/dscm is the average of the four NHW D/F test results that were measured at gas temperatures less than 230 °F, as shown in Table 8.]

Dioxin/furan TEQ emissions data and stack temperatures from kilns firing NHW fuels are listed in Table 8. The data are listed in order of ascending stack temperature. Fourteen NHW data points were obtained during normal kiln operation, three points were obtained as NHW baseline runs prior to HW COC testing, one data point (at the 518 °F stack temperature) was obtained at maximum combustion temperature, and one point was obtained under unknown test conditions. Stack temperatures are presented, since inlet PMCD temperature data are not typically recorded during stack emissions testing. It is acknowledged that stack temperatures will be lower than inlet PMCD temperatures.

TABLE 8.—AVERAGE DIOXIN/FURAN TOXIC EQUIVALENT EMISSIONS (AT 7 PERCENT OXYGEN) AND AVERAGE STACK GAS TEMPERATURES FOR NHW CEMENT KILNS AND KILNS TESTED UNDER NHW CONDITIONS

[Docket Item II–B–78]

Kiln type	APCD type	Kiln fuel	Avg Gas T (°F)	Avg TEQ ng/dscm	Kiln location
PH/PC	FF	Natural gas; main stack tested	183	0.011	Capital Aggregates—San Antonio TX.
PC	FF	Coal,tires, pulp/paper mill sludge	220 →	0.0063	Calaveras Cement—Redding CA.
PH/PC	FF	Natural gas; raw mill on	221	0.042	Ash Grove—Seattle WA (kiln/in-line mill).
PH/PC	ESP	Not reported	226	0.00087	RMC Lonestar—Davenport CA.
PC	FF	Coal & tires	233 →	0.21	Calaveras Cement—Redding, CA.
PH/PC	FF	Natural gas; bypass stack tested	299	0.054	Capital Aggregates—San Antonio TX.
WET	ESP	Coal	305	0.0024	Holnam—Florence CO.
WET	ESP	Coal & natural gas	315	0.072	Ash Grove—Montana City MT.
WET	ESP	Coal	346 ⇨	0.37	Lehigh—Union Bridge MD.
WET	ESP	coal & tires	358 ⇨	1.2	Lehigh—Union Bridge MD.
WET	ESP	Coal/coke	366	0.032	Holnam kiln #1—Holly Hill SC.
DRY	FF	Coal, gas, tire derived fuel	396	0.0035	Riverside—Oro Grande CA.
WET	ESP	Natural gas	397	0.020	Capital Aggregates—San Antonio TX.
DRY	FF	Coal & natural gas	403	0.0084	Riverside—Oro Grande CA.
WET	ESP	Coal	417	0.12	Lone Star—Greencastle IN.
WET	ESP	Coal/coke	418	0.04	Holnam kiln #2—Holly Hill SC.
DRY	ESP	Coal, coke, & tires	450	0.074	Lone Star—Oglesby IL.
WET	ESP	Coal	482	0.55	Continental Cement—Hannibal MO.
WET	ESP	Coal	518	1.0	Holnam—Clarksville MO.

Abbreviations:
PH/PC = preheater/precalciner.
ESP = electrostatic precipitator.
PC = precalciner.
FF = fabric filter.
Note: Entries flagged with → and ⇨ are listed in Table 9 and discussed in the text.

The data in Table 8 show that all NHW D/F emissions were less than 0.2 ng TEQ/dscm at stack temperatures below 340 °F, except for one data point which is discussed below. The stack temperature of 340 °F corresponds to an estimated inlet PMCD temperature of approximately 400 °F after accounting for cooling in the ductwork. The EPA estimates that approximately 50 percent of existing PMCDs used at both wet-and dry-type NHW kilns operate with a maximum inlet PMCD temperature of approximately 400 °F (docket item II–B–73). Since the MACT floor is based on the technology in use by the best performing 12 percent of the affected sources, the MACT floor for existing kilns corresponds to reduction of kiln exhaust gas stream temperature at the PMCD inlet to 400 °F.

One demonstrated method of temperature reduction is injection of water to provide rapid cooling of kiln exhaust gases upstream of the inlet to the PMCD. Rapid cooling reduces D/F formation that occurs within the temperature window 232 °C (450 °F) to 343 °C (650 °F).

As shown in Table 8, D/F emissions from 3 of the 13 tests conducted at stack temperatures below 400 °F exceeded 0.2 ng TEQ/dscm. For discussion purposes, the three data points are listed in Table 9 with the corresponding stack temperature. The Calaveras kiln that emitted 0.21 ng TEQ/dscm when tested at a stack temperature of 233 °F emitted 97 percent less D/F at a slightly lower stack temperature and with a different mixture of fuels, demonstrating that the kiln could achieve 0.2 ng/dscm through proper kiln combustion.

TABLE 9.—DATA FROM KILNS AT WHICH DIOXIN/FURAN TEQ EMISSIONS EXCEEDED 0.2 NG/DSCM

Average stack gas temperature (°F)	Average D/F TEQ (ng/dscm at 7% O_2)	Kiln location
233	0.21	Calaveras—Redding CA.
346	0.37	Lehigh—Union Bridge MD.
358	1.2	Lehigh—Union Bridge MD.

The Lehigh kiln emitted 0.37 ng TEQ/dscm at a stack temperature of 346 °F during coal combustion and 1.2 ng TEQ/dscm at a stack temperature of 358 °F during coal and tire combustion. The EPA concluded that the high emission (of 1.2 ng TEQ/dscm) resulted from poorly controlled tire combustion/kiln operation, since (as shown in Table 8) three other NHW kilns emitted less than 0.2 ng TEQ/dscm when tested while burning tires. In the absence of detailed information on kiln and APCD operating conditions, fuel firing and combustion control, the Lehigh emission level of 0.37 ng TEQ/dscm at a stack temperature of 346 °F cannot be explained.

Temperature reduction to 400 °F, in conjunction with proper control of kiln and PMCD operation and efficient combustion will limit D/F emissions to 0.2 ng TEQ/dscm in most (if not all) cases, and the proposed D/F standard for existing kilns is set at this level. The EPA recognizes that the available emissions data show that one kiln (as illustrated by the Lehigh data in Table 9) cannot achieve 0.2 ng TEQ/dscm at an inlet temperature to the PMCD below 400 °F, and that parameters consistent with proper equipment operation have not been precisely specified. The proposed standards therefore provide that kilns that cannot meet the 0.2 ng TEQ/dscm limit would be required to maintain the temperature at the inlet to the PMCD at no more than 400 °F and to limit the D/F emissions to 0.4 ng

TEQ/dscm. This limit of 0.4 ng TEQ/dscm is consistent with the emissions from the Lehigh kiln during coal combustion with an estimated PMCD inlet gas temperature of 400 °F.

The Agency has considered whether and how to account for emissions variability in establishing the alternative TEQ limit of 0.4 ng/dscm in conjunction with the 400 °F temperature limit at the PMCD. As discussed in this section, available emissions data indicate that most kilns will be able to achieve an emission level of 0.2 ng TEQ/dscm or lower when operating the PMCD at or below 400 °F. Even though the Lehigh kiln's emissions were 0.37 ng TEQ/dscm at 346 °F (when not burning tires), we believe that a TEQ limit of 0.4 ng/dscm is appropriate given the preponderance of emissions data at or below 0.2 ng TEQ/dscm. These data (given the strong indications that all units will meet the 0.4 ng TEQ/dscm limit at temperatures of 400 °F or below) suggest that using a more specific approach for variability is not needed for this proposed standard. The Agency invites comments on other approaches for accommodating variability in D/F emissions for NHW cement kilns.

Thus, the proposed standard requires that the temperature at the inlet to the PMCD be maintained at a level no greater than either: (1) the higher of 400 °F or the temperature established during the successful Method 23 performance test plus five percent (not to exceed 25 °F) of the temperature measured in °F during the successful compliance test, if D/F emissions were determined to be no greater than 0.15 ng toxic equivalent (TEQ)/dscm (6.5×10^{-11} gr/dscf); (2) the higher of 400 °F or the temperature established during the successful Method 23 performance test, if D/F emissions were determined to be greater than 0.15 ng toxic equivalent (TEQ)/dscm (6.5×10^{-11} gr/dscf) but less than 0.2 ng toxic equivalent (TEQ)/dscm (8.7×10^{-11} gr/dscf);, or (3) 400 °F if D/F emissions were greater than 0.2 ng TEQ/dscm (8.7×10^{-11} gr/dscf) but less than or equal to 0.4 ng TEQ/dscm (1.7×10^{-10} gr/dscf).

Activated carbon injection (ACI) was investigated as a potential beyond-the-MACT-floor option for existing cement kilns. Activated carbon injection is used at one cement plant on two NHW kilns for the purpose of reducing plume opacity. The total capital cost of an ACI system is estimated to range from $680,000 to $4.9 million per kiln. The total annual costs of an ACI system are estimated to range from $426,000 to $3.3 million per kiln. These costs include the carbon injection system and an additional baghouse to collect the carbon separately from the existing primary particulate collector (docket item II–B–67). Based on these costs, and considering the level of D/F emissions achievable at the floor level of control, the Administrator has determined that this beyond-the-floor (BTF) option for D/F MACT for existing kilns may not be justified. Therefore the Agency is not proposing a BTF standard. Notwithstanding these costs and the limited emissions reductions that a BTF standard would achieve, the Agency solicits comment on whether a BTF standard would be appropriate given the Agency's and the Congress' special concern about D/F. D/F are some of the most toxic compounds known due to their bioaccumulation potential and wide range of health effects at exceedingly low doses, including carcinogenesis. Exposure via indirect pathways was in fact a chief reason that Congress singled out D/F for priority MACT control in section 112(c)(6) of the Act [see S. Rep. No. 128, 101st Cong. 1st Sess. at 154–155 (1989)]. Thus costs to reduce dioxin emissions are frequently justified by the benefits of removing this very toxic HAP. [See 61 FR at 17382, 17392, and 17403 (April 19, 1996) (The EPA proposes BTF standards for D/F emissions from hazardous waste combustion sources).] The EPA is influenced here by the fact that most sources appear to be able to achieve the 0.2 ng TEQ/dscm BTF option through the use of the floor technology alone, i.e. solely through the use of temperature control. Thus, the floor standard (which facially allows the option of 0.4 ng TEQ/dscm) in reality may be virtually equivalent to the BTF level.

Activated carbon injection was also considered as a candidate MACT for new cement kilns. Since no D/F performance data are available on the existing cement kiln ACI system installed to reduce opacity, EPA considered the performance of ACI on other potentially similar sources. Experience with ACI on municipal waste combustors (MWCs) and medical waste incinerators (MWIs) has led EPA to develop emission limits for D/F for these sources in the range of 0.26 to 2.5 ng TEQ/dscm (docket item II–J–3, docket item II–J–7). Assuming the performance level of ACI on MWIs or MWCs to be similar to that of a cement kiln, the D/F emissions levels achieved with ACI are expected to be about the same level that can be achieved with temperature reduction. Therefore, considering the level of D/F emissions achievable by PMCD inlet temperature reduction alone, the Administrator has determined that the temperature reduction plus ACI option for D/F MACT for new kilns may not be justified, and the Agency is not proposing a standard based on ACI. Notwithstanding the limited emissions reduction that such a standard would achieve, the Agency solicits comment on whether or not such a standard would be appropriate, given the Agency's and the Congress' special concern about D/F. The EPA is influenced here, similarly to the situation for existing kilns, by the fact that most new sources appear to be able to achieve a 0.2 ng TEQ/dscm emission level solely through the use of temperature control. Thus the proposed standards (which facially allow a 0.4 ng TEQ/dscm emission level where the implementation of temperature reduction may not achieve a 0.2 ng TEQ/dscm emission level) in reality may be virtually equivalent to a 0.2 ng TEQ/dscm emission level.

For the kiln and in-line kiln/raw mill D/F emission standard, a mass per volume concentration emission limit format was chosen. The specific units of the emission limit are ng of D/F TEQ/dscm, referenced to seven percent oxygen. This emission limit format has historically been used by EPA for many air emission standards. This format is consistent with the format of the OSW MACT standard for HW cement kilns.[12] The concentration is corrected to seven percent oxygen to put concentrations measured in stacks with different oxygen concentrations on a common basis. Also, the typical range of oxygen concentrations in cement kiln stack gas is from five to 10 percent oxygen; therefore, seven percent is representative.

A mass per volume concentration emission limit based on total D/F congeners rather than TEQ was also considered. However, the TEQ format was chosen in order to maintain consistency with the rule for cement kilns which burn hazardous waste.

Kiln and in-line kiln/raw mill mercury emissions. Activated carbon injection (ACI) was considered a potential control technology for mercury MACT for cement kilns, since a form of this technology has been demonstrated on medical waste incinerators and municipal waste combustors (docket item II–A–36, pp. 98 to 99 and B–7 to B–8; docket item II–A–11; docket item II–A–19; docket item II–A–23), and is being used at one cement plant on two NHW kilns to reduce the opacity (docket item II–B–35). In these

[12] The EPA proposed regulations for subpart EEE of 40 CFR part 63 on April 19, 1996 at 61 FR 17358.

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applications, the activated carbon (AC) is injected into the uncontrolled exhaust gas stream ahead of the kiln PMCD.

In cement kiln applications for mercury control, the AC would need to be injected downstream from the kiln PMCD and subsequently collected in a separate PMCD, e.g., a baghouse. This is because the PM collected from the kiln exhaust, i.e., cement kiln dust (CKD), is typically recycled from the kiln PMCD back to the kiln, and in some cases may constitute as much as 50 percent of the feed material input to the kiln. If the AC is not injected downstream of the kiln PMCD, and then collected in a separate PMCD downstream of the kiln PMCD, the AC would also be recycled back to the kiln along with the adsorbed mercury. This recycling of mercury back to the cement kiln via the AC would result in the revaporization of the mercury in the kiln gas and ultimately the mercury would be emitted to the atmosphere. The two cement kiln ACI systems cannot be considered as controls for mercury for cement kilns because they do not include provisions for injecting the AC downstream of the kiln PMCD nor do they have the additional PMCD necessary to remove the injected carbon from the exhaust gas stream for disposal, but instead include the AC with the CKD that is recycled to the kiln. Therefore there is no mercury MACT floor for new or existing kilns.

Activated carbon injection (with an additional PMCD) was investigated as a potential beyond-the-MACT-floor option for mercury for new and existing cement kilns. The total capital cost of an ACI system is estimated to range from $680,000 to $4.9 million per kiln. The total annual costs of an ACI system are estimated to range from $430,000 to $3.3 million per kiln. These costs include the carbon injection system and an additional baghouse necessary to collect the carbon separately from the CKD (docket item II–B–67). The cost-effectiveness of ACI applied to cement kilns ranges from $20,000,000 to $50,000,000 per ton of mercury.

It is noted that the Agency has proposed a mercury emissions limit for hazardous waste burning (HW) cement kilns (61 FR 17358), based on the beyond-the-MACT-floor option of ACI. However, mercury levels in hazardous waste fuels per million BTU of heat input are generally higher than mercury levels in coal that is fired in non-hazardous waste burning (NHW) cement kilns. Thus, HW cement kilns generally have higher mercury emissions than NWH cement kilns. Further, the available data indicate that existing mercury emissions from essentially all individual NHW cement kilns are lower than the beyond-the-MACT-floor emission limit that is now being considered by the Agency to be promulgated for HW cement kilns. Based on the relatively low levels of existing mercury emissions from individual NHW cement kilns, and the costs of reducing these emissions by ACI, the Administrator has determined that this beyond-the-MACT-floor option for reducing mercury from new and existing NHW kilns may not be justified. Thus, the Agency is not proposing a mercury standard for new and existing NHW cement kilns.

Notwithstanding the reasons for not proposing a mercury standard for NHW cement kilns, the Agency solicits comment on whether a BTF standard would be appropriate given the Agency's and Congress' special concern about mercury. Mercury is one of the more toxic metals known due to its bioaccumulation potential and the adverse neurological health effects at low concentrations especially to the most sensitive populations at risk (*i.e.* unborn children, infants and young children). In addition, as with D/F, Congress has singled out mercury in section 112(c)(6) of the Act for prioritized control. Furthermore, the amount of mercury emitted by these sources is not inconsequential, roughly 10,000 pounds annually (or about 60 pounds per kiln annually) making NHW cement kilns a significant source of mercury emissions that may warrant attention under section 112(c)(6) of the Act depending on what other opportunities for controlling mercury from other significant sources are available.

It is EPA's tentative conclusion, however, that concerns as to health risks from mercury emissions from these sources may be appropriately addressed pursuant to the timetable set out in the Act, namely through the residual risk determination process set out in section 112(f) of the Act. A more accelerated determination may be warranted, however, for other mercury-emitting sources, in particular hazardous waste combustion sources, where there are special considerations of immediately protective rules imposed by the Resource Conservation and Recovery Act. [See 61 FR at 17369–17370 (April 19, 1996).]

Kiln and in-line kiln/raw mill THC main exhaust emissions. Based on data from 31 tests conducted at 16 NHW kilns (docket item II–B–75), THC emissions varied between 0.4 ppmvd and 224 ppmvd (as propane, corrected to seven percent oxygen). With the exception of two kilns which employ a precalciner system with no preheater, no add-on air pollution control technologies are presently in use that decrease emissions of THC (the surrogate for organic HAPs) from NHW cement kilns. On this basis the MACT floor for THC emissions from existing kilns and in-line kiln/raw mills is no control.

The precalciner/no preheater system was considered as a possible beyond-the-floor technology for existing kilns and as a possible MACT floor for new kilns (docket item II–B–47, docket item II–B–48). The precalciner/no preheater technology acts like an afterburner to combust organic material in the feed. However, it was found to increase fuel consumption 79 percent relative to the preheater/precalciner designs (docket item II–B–48, docket item II–D–199). The EPA estimates that precalciner/no preheater kilns would emit six times as much SO_2 (at 3.7 lb SO_2/ton clinker), two and one half times as much NO_X (at 9.8 lb NO_X/ton clinker), and 1.2 times as much CO_2 (at 2,086 lb CO_2/ton clinker) as a preheater/precalciner kiln of equivalent clinker capacity (docket item II–B–48). For a 600,000 ton clinker/year kiln, increased emissions for a flash precalciner relative to a preheater/precalciner are: 930 tpy SO_2, 1,740 tpy NO_X, and 109,000 tpy CO_2 (docket item II–B–76, docket item II–D–199).

One THC control method available is feed material selection. Total hydrocarbon emissions from kilns can be limited by avoiding feed materials which have excessive organic contents (docket item II–I–66, docket item II–I–67, docket item II–I–68). A few existing kilns have employed this method, but not enough to constitute a MACT floor for existing kilns. Also, this method is not available for existing kilns in that facilities are generally tied to existing raw materials sources in close proximity to the facility. Raw material proximity (transportation cost) is usually a major factor in plant site selection. Feed material selection can be employed in the siting process for new kilns, and to a limited extent at existing kilns.

The precalciner/no preheater technology was also considered as a MACT floor for new sources but, when NO_X, SO_2, and CO_2 emissions and energy penalties are considered, the Administrator has determined that it does not represent the MACT floor for new sources, since the kilns employing this technology cannot be considered to be the best controlled similar source. The combination of feed material selection, site location and feed material blending was determined to be MACT for new sources, in that this method has been used at some existing sources and that site selection based on availability

of acceptable raw material hydrocarbon content is feasible.

The numerical emission limit proposed for THC from the main exhaust of new kilns and new in-line kiln/raw mills is 50 ppmvd (as propane, corrected to seven percent oxygen). This represents a level which is consistently achievable, as shown by tests across a broad spectrum of feed material compositions, when feeds with high organic contents are avoided. Based on the available THC main exhaust concentration data for existing NHW kilns, approximately 62 percent of the tested NHW kilns could meet the 50 ppmvd limit (docket item II–B–75).

For the new kiln and in-line kiln/raw mill main exhaust THC emission standard, a volume per volume concentration emission limit format was chosen. The specific units of the emission limit are ppmvd (as propane, corrected to seven percent oxygen). This emission limit format has historically been used by EPA for many air emission standards. This format is consistent with the format of the OSW MACT standard for HW cement kilns.[13] The concentration is corrected to seven percent oxygen to put concentrations measured in stacks with different oxygen concentrations on a common basis, and because the typical range of oxygen concentrations in cement kiln stack gas is from five to 10 percent oxygen; therefore, seven percent is representative. The THC concentration can be monitored directly with the CEM required by this standard. The reference or calibration gas for the THC CEM is propane, and the data analyzed in the development of this standard were referenced to propane, therefore propane is the appropriate reference compound for concentration data.

Kiln and in-line kiln/raw mill HCl emissions. No technologies that control HCl emissions have been identified that are currently being used by more than six percent of the cement kilns in the U.S. For this reason, there is no MACT floor for existing kilns. One technology considered as potential MACT for new kilns was an alkaline scrubber, since two kilns in the U.S. operate scrubbers to control SO_2 emissions. However, these SO_2 scrubbers are operated only intermittently (docket item II–D–196) and thus cannot be considered best controlled similar source. For this reason there is no MACT floor for new kilns.

Alkaline scrubbers were considered as a beyond-the-floor option for HCl control. Based on engineering assessment of HCl scrubbers used in MWC and MWI applications and transfer of similar technology to the cement industry and on vendor design information (docket item II–D–36), an alkaline scrubber could achieve 15 ppmv HCl outlet concentration at low inlet HCl loadings or at least 90 percent removal with an inlet HCl level of 100 ppmv or greater. Based on this estimated performance, annual emission reduction estimates range from 12 tpy of HCl and 27 tpy of SO_2 to 200 tpy of HCl and 600 tpy of SO_2 per kiln (docket item II–B–67). The total capital cost of installing an alkaline scrubber on an existing kiln is estimated to range from $980,000 to $4.6 million. The total annual cost is estimated to range from $300,000 to $1.5 million per kiln (docket item II–B–67).

Based on the costs of control and the emissions reductions that would be achieved, the Administrator has determined that beyond-the-floor controls are not warranted. Therefore, there is no proposed emission limit for HCl from new and existing NHW kilns and NHW in-line kiln/raw mills. Analyses indicate that the ambient concentrations of HCl produced by emissions from existing NHW kilns and in-line kiln/raw mills are below the health effects reference concentration for HCl (docket item II–B–71).

Clinker cooler PM HAP emissions. Particulate emissions from clinker coolers are typically controlled by FFs (docket item II–B–69). In the portland cement manufacturing industry, it is estimated that at least 54 existing clinker coolers (docket item II–A–4) are subject to the requirements of the NSPS for cement plants (40 CFR part 60, subpart F). This number represents about 25 percent of clinker coolers and, therefore, the NSPS represents the MACT floor. The NSPS level of control is being achieved through the use of well-designed and well-operated FFs. Typical design parameters for pulse jet cleaned fabric filters applied to clinker coolers are air-to-cloth ratios in the range of 0.02 cubic meters per second per square meter (m^3/sec)/m^2 [4 actual cubic feet per minute per square foot (acfm/ft^2)] to 0.046 (m^3/sec)/m^2 (9 acfm/ft^2).

Table 10 lists plants and the results of emission tests performed on FFs applied to clinker coolers from the May 1985 NSPS review report (docket item II–A–4).

TABLE 10.—FABRIC FILTER-CONTROLLED CLINKER COOLER TEST RESULTS

[Docket Item II–A–4]

PM stack emissions (kg/Mg dry feed)	Plant and location
0.0041	Kaiser Cement—Cupertino, CA.
0.004	Moore McCormack—Knoxville, TN.
0.022	Moore McCormack—Brooksville, FL.
0.003[a]	Kaiser Cement—Lucerne Valley, CA.
0.02	California Portland—Mojave, CA.
0.017	Martin Marietta—Leamington, UT
0.025	Kaiser—San Antonio, TX.
0.03[b]	Lone Star—Cape Girardeau, MO.
0.002	Monolith Portland—Laramie, WY.
0.024	Ash Grove—Louisville, NE.
0.09552[b]	Ideal Basic—La Porte, CO.
0.0117	Texas Industries—Hunter, TX
0.0245	Lone Star—Salt Lake City, UT.

[a] Includes alkali bypass emissions.
[b] Include raw mill emissions.

The data shown are short-term performance measurements at cement plants that became subject to the NSPS subsequent to the 1979 NSPS review. The data in Table 10 served as the basis for the decision on the 1985 NSPS review to keep the emission limit established by the original NSPS for clinker cooler PM emissions at 0.05 kg/Mg of dry feed (.1 lb/ton of dry feed). Because no other PM data on clinker coolers became available as a result of this rule development, the Agency is relying on these same data (and interpretation thereof) in establishing the MACT floor for clinker coolers. The results for FFs serving only clinker coolers ranged from 0.002 to 0.025 kg/Mg of dry feed, all of which were in compliance with the NSPS. These data represent the performance level achieved by FFs designed to meet the NSPS level of control. No technologies were identified for existing or new sources that would achieve significant additional reductions in PM or metal HAP emissions; consequently, there is no beyond-the-floor technology and the MACT for new clinker coolers is also the NSPS level. Therefore the PM emission limit proposed for new and existing clinker coolers is 0.05 kg/Mg dry feed (0.10 lb/ton dry feed), which is equivalent to the NSPS limit. An opacity limit of 10 percent (which is required under the NSPS) is also being proposed.

The production-based emission limit format was chosen for clinker cooler PM emissions. The units for this emission standard are kg of PM per Mg of dry feed (lb PM per ton of dry feed). This

[13] The EPA proposed regulations for subpart EEE of 40 CFR Part 63 on April 19, 1996 at 61 FR 17358.

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format (mass per unit of production) and associated opacity limit is consistent with the format of the portland cement plant NSPS (40 CFR part 60, subpart F).

Raw material dryer and materials handling processes opacity. Particulate matter emissions from raw material dryers and materials handling processes at portland cement plants are typically captured by enclosures (total or partial) and/or hooding of transfer points. In most cases, the exhaust gases are directed to FF systems. At least 31 portland cement plants (docket item II–A–4) have some affected sources that are subject to the requirements of the NSPS for portland cement plants (40 CFR part 60, subpart F). No technologies which are more efficient than FFs are in use for these affected sources. State agency personnel indicated that none of the facilities had problems meeting the NSPS opacity limit of 10 percent (docket item II–A–4, docket item II–B–71). The design characteristics of FFs applied to these emission sources include air-to-cloth ratios ranging from 0.02 (m^3/sec) /m^2 (4 acfm/ft^2) to 0.041 (m^3/ sec) /m^2 (8 acfm/ft^2) at pulse-jet and pulsed-plenum cleaning systems in installations subject to the NSPS since the 1979 NSPS review (docket item II–A–4, II–I–43). Therefore, the MACT floor technology for control of PM emissions from portland cement materials handling processes and raw material dryers is a combination of total enclosures, partial enclosures, or hooding with FF systems. No beyond-the-floor technologies for control of PM from raw material dryers and materials handling processes were identified.

The emission limit established by the NSPS for raw material dryers and materials handling process PM emissions (surrogate for HAP metals) is an opacity limit of 10 percent. Given that no more effective technologies were identified, the emission limit corresponding to the MACT floor, which is the NSPS, is being proposed as MACT for PM emissions from new and existing portland cement materials handling processes and raw material dryers.

The proposed standard for PM emissions from new and existing materials handling systems and raw material dryers is an opacity limit of 10 percent. An opacity limit format was chosen for these affected sources because it is consistent with the NSPS format for these facilities.

Raw material dryer THC. Some plants may dry their raw materials in separate dryers prior to or during grinding (docket item II–I–43, p.750). This drying process can potentially lead to organic HAP and THC emissions in a manner analogous to the release of organic HAPs and THC emissions from kilns when hot kiln gas contacts incoming feed materials. The method available for reducing THC emissions (and organic HAPs) is the same technology described for reducing THC emissions from kilns and in-line kiln/raw mills. Therefore, the combination of feed material selection, site location and feed material blending was determined to be MACT for new sources. The numerical emission limit proposed for THC from new raw material dryers is 50 ppmvd reported as propane, corrected to seven percent oxygen. This represents a level which is consistently achievable when feeds with high organic contents are avoided.

E. Selection of Testing and Monitoring Requirements

Testing requirements are being proposed for demonstrating compliance with all standards. Initial performance tests for all affected sources/pollutant combinations would demonstrate compliance with emission limits. These tests would be repeated every 5 years for PM from NHW kilns (including alkali bypasses), NHW in-line kiln/raw mills (including alkali bypasses), clinker coolers, raw material dryers and materials handling processes, and for D/F from kilns and in-line kiln/raw mills. Site-specific monitoring parameters would be established during the initial and subsequent performance tests for D/F from kilns and in-line kiln/raw mill systems. A PMCD inlet temperature parameter would be used to ensure continuous compliance with the D/F emission limit. The following paragraphs present the rationale for the selection of the proposed testing, test methods, and monitoring requirements for each affected source and associated pollutant.

1. Kiln and In-line Kiln Raw Mill PM Emissions

The proposed standards would require the owner or operator of an affected NHW kiln or NHW in-line kiln/raw mill to conduct initial and periodic (every 5 years) performance tests using appropriate existing EPA reference methods in 40 CFR part 60, appendix A. Method 5 would be used to demonstrate compliance with the NHW kiln and NHW in-line kiln/raw mill PM emission limits. (A determination of the particulate matter collected in the impingers [the "back half"] of the Method 5 particulate sampling train would not be required.) Method 5 is the long-standing EPA method for making PM determinations from stationary sources. Each performance test would consist of three runs conducted under representative operating conditions. Each run would have a minimum sampling volume of 0.85 dscm (30 dscf) and a minimum duration of 1 hour. The average of the three runs would be used to determine compliance. Method 5, as proposed, is currently required to demonstrate compliance with the NSPS.

If the kiln is equipped with a separate alkali bypass, PM emissions from the alkali bypass would be determined by a simultaneous Method 5 test and the combined emissions from the main exhaust and the alkali bypass would be subject to the PM emission limit.

Owners or operators of in-line kiln/raw mills would be required to conduct a compliance demonstration with the raw mill in operation and a separate compliance demonstration when the raw mill is not in operation, since emissions may vary depending on the operating status of the raw mill.

A COM would be required to ensure continuous compliance with the standard. During the initial Method 5 performance test, the owner or operator would use a COM to demonstrate compliance with the kiln and in-line kiln/raw mill opacity limit. If there is an alkali bypass, a COM would be required for the alkali bypass and compliance with the opacity limit would also be demonstrated for the alkali bypass during the initial Method 5 performance test.

If the PM control device exhausts through a monovent, or if the use of a COM in accordance with the installation specifications of PS–1 of 40 CFR part 60, appendix B were not feasible, a test in accordance with Method 9 of appendix A to 40 CFR part 60 would be conducted at the same time as the Method 5 performance test. If the control device exhausts through multiple stacks, the owner or operator would have the option of conducting a Method 9 test in lieu of installing COMs.

The opacity limit would be 20 percent and would apply to both main and alkali bypass stacks. Exceedance of the kiln or in-line kiln/raw mill opacity limit, or the alkali bypass opacity limit, for any 30-minute average would constitute a violation of the kiln or in-line kiln/raw mill PM emission limit. Owners or operators of in-line kiln/raw mills would demonstrate compliance with the opacity limits during initial performance tests to be conducted while the raw mill is operating and while the raw mill is not operating.

If the 30-minute average opacity exceeded 15 percent for any ten consecutive 30-minute periods as

determined by the COM, or if any 30-minute average opacity exceeded 15 percent as determined by a daily Method 9 test, the owner or operator would be required to initiate a site-specific operating and maintenance (O and M) plan within one hour. The O and M plan would be required as part of the permit application submitted in accordance with part 70 of this chapter, and would address procedures for proper operation and maintenance of the affected source and the APCD and the corrective action to be taken.

If the 30-minute average opacity exceeded 15 percent for five percent or more of the kiln operating time as determined by COM, or if the 30-minute average opacity reading exceeded 15 percent during five percent or more of the daily Method 9 readings in any 6-month reporting period, the owner or operator would be required to notify the permitting authority within 48 hours and to develop and implement a quality improvement plan (QIP) within 180 days. The QIP would address improved maintenance practices, process operation changes, appropriate improvements in control methods, other appropriate steps to improve performance and more frequent or improved monitoring. If the owner or operator determined that more than 180 days will be necessary to complete the appropriate improvements, the owner or operator would be required to notify the permitting authority and obtain a site-specific resolution subject to the approval of the permitting authority.

Each COM would be required to be designed, installed, and operated in accordance with PS–1. The use of COMs would provide a timely and direct indication of increased emissions. A COM gives an immediate indication of an exceedance, and provides for timely action that will minimize the duration and, therefore, the emissions of an upset. A COM can also signal the long-term gradual deterioration of performance of a control device. Failure of any 30-minute average reading to meet the opacity limit would constitute a violation of the NHW kiln and NHW in-line kiln/raw mill PM emission limit.

Where the use of a COM is not feasible (or at the option of the owner or operator when the exhaust is discharged through multiple stacks), the proposed standards would require daily visual observations using Method 9. The duration of the Method 9 test would be 30 minutes. Method 9 is the established EPA method for visual determinations of opacity from stationary sources. Method 9 procedures for making visual observations and reducing the data would be followed. Failure of any 30-minute average reading during the daily test to meet the opacity limit would constitute a violation of the NHW kiln and NHW in-line kiln/raw mill PM emission limit.

The EPA proposed that HW cement kilns [and other hazardous waste combusters (HWCs)] maintain continuous compliance with the PM standard through the use of a PM continuous emissions monitoring system (CEMS). [See 61 FR at 17358 (April 19, 1996).] As discussed in the proposed HWC rule [14] PM CEMS are commercially available and currently in use in Europe. For example, PM CEMS are installed for compliance assurance purposes in the European Union (EU) for the EU HWC PM standard.

The proposal to require HWCs to install a PM CEMS is predicated on a successful vendor (with EPA oversight) demonstration test program on a hazardous waste incinerator. The purpose of the demonstration test program is to verify that at least one PM CEMS can meet the proposed performance specifications. The testing program consists of a demonstration test and a long term endurance test. The demonstration test involves installing the CEMS and carrying out all of the tests prescribed in the performance specifications. The long term endurance test will involve evaluating (at least one) CEMS for a minimum of six months. The purpose of this test is to evaluate the PM CEMS for accuracy, daily drift, availability (i. e. up time), ruggedness, and maintenance over an extended period. The demonstration test program began in 1996 and it is anticipated that the program will conclude in 1997. The Agency will notice the results and conclusions of the demonstration test program in the docket for the hazardous waste combustor rule. Considering the outcome of the demonstration test program and other relevant information received or developed by EPA, the Agency will reevaluate the monitoring requirements for NHW cement kilns. The EPA intends to include a requirement for PM CEMs in the final rule, unless the analysis of existing or newly acquired data and information shows this type of monitoring is not appropriate. The Agency will notice the results of this reevaluation in the docket for the NHW cement kiln rule.

2. Kiln D/F Emissions

The proposed standards would require the owner or operator of an affected kiln or in-line kiln/raw mill to conduct initial and periodic (every five years) performance tests using appropriate existing EPA methods in 40 CFR part 60, appendix A. Method 23 is the established method for determining D/F concentration. Each performance test would consist of three runs conducted under representative operating conditions. Each run must be at least 3 hours duration with a minimum sampling volume of 2.5 dscm. The average of the three runs would be used to determine compliance.

If the kiln is equipped with an alkali bypass, D/F emissions from the alkali bypass would also be subject to Method 23 testing requirements and the emissions from the alkali bypass would be subject to the D/F emission limit. Furthermore, in-line kiln/raw mills would be required to conduct a compliance demonstration with the raw mill in operation and a separate compliance demonstration when the raw mill is not in operation. However, if an in-line kiln/raw mill has an alkali bypass, a compliance demonstration for the alkali bypass would only be required when the raw mill is operating.

There is no CEM available for D/F emissions and no suitable surrogate pollutant that could be monitored continuously. Therefore, for D/F emissions from an affected NHW kiln or NHW in-line kiln/raw mill, the proposed standards would require continuous monitoring and recording of the kiln exhaust gas temperature at the inlet to the kiln PMCD. If the kiln is equipped with an alkali bypass the proposed standards would also require continuous monitoring and recording of the gas temperature at the inlet to the alkali bypass PMCD.

A kiln-specific maximum temperature limit would be established during the performance test. The temperature would be continually measured during the D/F performance test. The average temperature for each of the three runs would be determined, and the average of these three averages would, in some cases, be used to establish the kiln-specific temperature limit. When the D/F performance test emissions were 0.15 ng TEQ/dscm or less (corrected to seven percent oxygen), the kiln-specific maximum temperature would be the higher of 400° F or the average temperature of the performance test plus five percent (not to exceed 25° F) of the temperature measured in °F. When the D/F performance test emissions (corrected to seven percent oxygen) were greater than 0.15 ng TEQ/dscm but did not exceed 0.20 ng TEQ/dscm, the kiln-specific maximum temperature would be the higher of 400° F or the average temperature of the performance test. If D/F emissions (corrected to seven

[14] The EPA proposed regulations for subpart EEE of 40 CFR part 63 on April 19, 1996 at 61 FR 17358.

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percent oxygen) are greater than 0.2 ng/dscm TEQ but less than 0.4 ng/dscm TEQ during the performance test, then the kiln specific temperature limit would be set at 400° F. (If D/F emissions exceed 0.4 ng/dscm, corrected to seven percent oxygen, the performance test would be unsuccessful and the kiln or in-line kiln/raw mill would not be in compliance with the standard.) The temperature would provide a direct indication of D/F emissions from the kiln or in-line kiln/raw mill and would be directly enforceable for compliance determinations.

Owners or operators of kilns and in-line kiln/raw mills equipped with alkali bypasses would establish a separate alkali bypass PMCD inlet temperature limit for the alkali bypass during the performance test. This limit would be based on the temperature at the inlet to the alkali bypass PMCD and would be established in the same manner as the kiln specific temperature limit. Owners or operators of in-line kiln/raw mills equipped with alkali bypasses would establish the temperature limit for the alkali bypass PMCD inlet during the performance test with the raw mill operating.

The proposed averaging period for inlet temperature to the PMCD is 9 hours, because the compliance test for D/F consists of 3-three hour manual tests which are averaged. Thus the inlet temperature limit is established as the average temperature level achieved over the three D/F runs in a performance test.

The Agency specifically requests comment on whether a 9-hour block average site-specific temperature limit is sufficient to ensure compliance with the D/F standard. Because EPA is concerned that D/F emissions emitted during high temperature episodes may not correspondingly be offset by low emissions during lower temperature episodes due to the non-linear relationship between dioxin formation and temperature, a 9-hour block average may not be adequate to ensure compliance with the D/F standard in some instances. The Agency addressed this concern in the proposal for HW combustion sources (cement kilns) [61 FR at 17424, (April 19, 1996)]. There, EPA proposed a site-specific ten-minute rolling average to control perturbations in temperature and a site-specific, one-hour rolling average to control average inlet PMCD temperatures. The ten-minute average was proposed to address the concern that short-term perturbations above the limit may result in D/F emissions that may not be offset by lower emissions at lower temperatures. The one-hour averaging period was proposed to limit average temperatures. Thus, in today's proposal, the Agency requests comment on whether a shorter-term block or rolling average limit (i. e., less than 9 hours) is more appropriate than the one proposed, or whether a short-term limit in conjunction with the proposed 9-hour block average is needed to properly ensure compliance with the D/F standard. The EPA further notes that it may also take these comments into account in considering what averaging time to adopt for hazardous waste combustion sources.

If carbon injection is used for D/F control, a kiln-specific (and where applicable, an alkali bypass-specific) carbon injection rate for each run would be established during the performance test. The average carbon injection rate for the three runs would be calculated. This carbon injection rate would serve as an additional monitoring limit and would be required to be maintained or exceeded for every 9-hour period of kiln operation. The carbon injection rate would provide a direct indication of D/F emissions from the kiln and would be directly enforceable for compliance determinations.

3. Kiln and Raw Material Dryer THC Emissions

The proposed standards applicable to new NHW kiln main exhausts, new NHW in-line kiln/raw mill main exhausts and new raw material dryers would require the owner or operator to conduct an initial performance test of THC emissions from an affected source using a THC CEM and to demonstrate continuous compliance with the THC concentration limit of 50 ppmvd reported as propane (corrected to 7 percent oxygen), through operation of a THC CEM. The use of THC CEMs was selected as the monitoring method because these instruments are available, accurate and reliable, and when calibrated with propane provide an output which is consistent with the THC standard. Each THC CEM would be required to be designed, installed, and operated in accordance with PS–8A of 40 CFR part 60, appendix B [15]. The performance test would be of 3 hours duration. To determine compliance with the THC emission concentration limit, a 30-day block averaging period would be used. Any exceedance of the THC emission concentration limit over any 30-day block averaging period would constitute a violation of the new NHW kiln and in-line kiln/raw mill THC standard, or the new raw material dryer THC standard.

The rationale for the 30-day block averaging time is that the organic content of the feed material may vary with quarry or mine location. Once raw material storage bins are filled with high organic content feed material and an excursion is experienced, it may take a considerable amount of time to consume these already stored feed materials and locate/obtain feed materials with lower organic content.

4. Clinker Cooler PM Emissions

As in the case with NHW kiln and NHW in-line kiln/raw mill PM emissions, the proposed standards would require the owner or operator of an affected clinker cooler to conduct initial and periodic (every 5 years) performance tests using EPA Method 5 of 40 CFR part 60, appendix A. Method 5 is the long-standing method for making PM determinations from stationary sources. (A determination of the particulate matter collected in the impingers ["back half"] of the Method 5 particulate sampling train would not be required.) Each performance test would consist of three runs conducted under representative operating conditions. Each run would have a minimum sampling volume of 0.85 dscm (30 dscf) and a minimum duration of 1-hour. The average of the three runs would be used to determine compliance with the PM limit. Method 5 is currently required to demonstrate compliance with the NSPS.

The opacity limit for clinker coolers is 10 percent. The proposed clinker cooler emissions monitoring requirements are the same as the proposed requirements for affected NHW kilns and NHW in-line kilns/raw mills. A COM would be required to ensure continuous compliance with the standard. During the initial Method 5 performance test, the owner or operator would use a COM to demonstrate initial compliance with the opacity limit.

If the control device exhausts through a monovent, or if the use of a COM in accordance with the installation specifications of PS–1 of 40 CFR part 60, appendix B were not feasible, a Method 9 test would be conducted at the same time as the Method 5 performance test. If the control device exhausts through multiple stacks, the owner or operator would have the option of conducting a Method 9 test in lieu of installing COMs. Exceedance of the clinker cooler opacity limit for any 30-minute average would constitute a violation of the clinker cooler PM emission standard.

Each COM would be required to be designed, installed, and operated in accordance with PS–1. The use of COMs

[15] The EPA proposed amendments to appendix B of 40 CFR part 60 on April 19, 1996, at 61 FR 17358.

would provide a timely and direct indication of increased emissions. A COM gives an immediate indication of an exceedance, and provides for timely action that will minimize the duration and, therefore, the emissions of an upset. A COM can also signal the long-term gradual deterioration of performance of a control device. Failure of any 30-minute average reading to meet the clinker cooler opacity limit would constitute a violation of the clinker cooler PM emission standard.

Where the use of a COM is not feasible (or at the option of the owner or operator when the exhaust is discharged through multiple stacks), the proposed standards would require daily visual observations using Method 9. The duration of the Method 9 test would be 30 minutes. Method 9 is the established EPA method for visual determinations of opacity from stationary sources. Method 9 procedures for making visual observations and reducing the data would be followed. Failure of any daily reading to meet the 10 percent opacity limit would constitute a violation of the clinker cooler PM emission limit.

5. Raw and Finish Mill PM Emissions

The proposed standards would require the owner or operator of raw and finish mills to conduct initial and periodic (every five years) compliance tests using Method 9, and to either install, calibrate, maintain and operate a bag leak detection system or to conduct daily visual observations using Method 22 to ensure compliance with the opacity standard. The opacity limit for raw and finish mills is 10 percent. The duration of the Method 9 tests is 3-hours and the duration of the daily Method 22 tests is six minutes. The duration of the Method 9 test can be reduced to one hour if during the first hour of the test, there are no individual readings greater than 10 percent and there are no more than three individual readings of 10 percent.

If visible emissions are detected during any daily Method 22 test, the owner or operator must begin a 30-minute Method 9 test within 24 hours and initiate a site specific operating and maintenance plan within one hour. If the bag leak detection system alarm is triggered, the owner or operator must initiate a site specific operating and maintenance plan within one hour. Failure to conduct a Method 9 test as required, failure to initiate a site-specific operating and maintenance plan as required, or observation of any 30-minute average opacity in excess of 10 percent during the Method 9 test shall constitute a violation of the raw mill and finish mill opacity standard.

6. Raw Material Dryer and Materials Handling Processes PM Emissions

The proposed standards would require the owner or operator of raw material dryers and materials handling processes to conduct initial and periodic (every five years) performance tests of visual emissions. Particulate matter emissions from these sources are much lower than those from kilns, clinker coolers, and raw and finish mills, therefore, continuous opacity monitoring, and more frequent visual opacity measurements are not being proposed. Method 9 of 40 CFR part 60, appendix A is the proposed method for the visual opacity measurements. As previously noted, Method 9 is the established method for opacity determinations for stationary sources, and provides a directly enforceable opacity reading for compliance determinations.

Section 63.6(h)(5)(ii) of the NESHAP general provisions (40 CFR part 63, subpart A) requires 3 hours (30 6-minute averages) of Method 9 observations for determining compliance for fugitive emission sources. However, due to the potentially large number of affected materials handling sources at portland cement plants, the costs for observations from these sources are considered overly burdensome. Furthermore, data from similar facilities in non-metallic mineral processing plants (docket item II–J–10) show that the opacity readings for the first hour are typically the same as the readings for the second and third hours. Therefore EPA is proposing a reduction in Method 9 testing duration for these facilities to one hour (ten 6-minute averages), provided that no individual reading exceeds 10 percent and that no more than three individual readings of ten percent are observed during the first hour of the test. Exceedance of the 10-percent opacity limit for any 30-minute average reading would constitute a violation of the proposed opacity standard.

7. General Monitoring Requirements

The general provisions in 40 CFR part 63, subpart A require each owner or operator to develop and implement a startup, shutdown, and malfunction plan. The proposed NESHAP requires the owner or operator to include procedures to be followed in the event that a CEM, COM or temperature monitor indicates that emissions exceed the applicable standards. Block averages are proposed for opacity, D/F, and THC monitoring required by the standard.

Owners or operators are also required to develop site specific operating and maintenance plans as part of the part 70 permit application process. Such plans are applicable to the operation and maintenance of kilns, in-line kiln/raw mills, raw mills and finish mills and the PM APCDs associated with these affected sources.

F. Selection of Notification, Recordkeeping, and Reporting Requirements

The proposed NESHAP would require portland cement manufacturing plants to comply with all applicable requirements in the NESHAP general provisions (40 CFR part 63, subpart A), including recordkeeping, notification, and reporting requirements. General recordkeeping requirements would include relevant records for each affected source of: (1) The occurrence and duration of each startup, shutdown, or malfunction of operation of process equipment, (2) the occurrence and duration of each malfunction of the air pollution control equipment, (3) all maintenance performed on the air pollution control equipment, (4) actions taken during startup, shutdown and malfunction that are different from the procedures specified in the source's startup, shutdown, and malfunction plan, (5) all information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan when the plan procedures are followed, (6) each period during which a CMS is malfunctioning or inoperative (including out-of-control periods), (7) all required measurements needed to demonstrate compliance with the standards, (8) all results of performance tests, CMS performance evaluations, and opacity and visible emissions observations, (9) all measurements as may be necessary to determine the conditions of performance tests and performance evaluations, (10) all CMS calibration checks, (11) all adjustments and maintenance performed on CMS, (12) any information demonstrating whether a source is meeting the requirements for a waiver of record keeping or reporting requirements, (13) all emission levels relative to the criterion for obtaining permission to use an alternative to the relative accuracy test, (14) all records or any bag leak detection system alarm, and (15) all documentation supporting initial notifications and notifications of compliance status. Records would also be required of applicability determinations that the source is not subject to the requirements of the NESHAP and of CMS measurements, operation, and malfunctions.

General Provisions notification requirements would include: (1) initial

notifications, (2) notification of performance test, (3) notification of opacity and visible emission observations, (4) additional notifications required for sources with CMS and (5) notification of compliance status. Notifications of the requirement to develop and implement a QIP, and if applicable, notifications of the inability to implement a required QIP within 180 days would also be required by this subpart. Reporting requirements would include (1) a report of performance test results, (2) a report of results of opacity or visible emission observations done concurrently with performance test, (3) progress reports if required as a condition of receiving an extension of compliance, (4) periodic and immediate startup, shutdown, and malfunction reports, and (5) summary excess emissions and performance monitoring reports.

VI. Public Participation

The EPA seeks full public participation in arriving at its final decisions and encourages comments on all aspects of this proposal from all interested parties. Full supporting data and detailed analyses should be submitted with comments to allow EPA to make maximum use of the comments. All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–92–53 (see **ADDRESSES**). Comments on this notice must be submitted on or before the date specified in **DATES**.

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments and clearly label it "Confidential Business Information" (CBI). Submissions containing such proprietary information should be sent directly to the Emission Standards Division CBI Office, U.S. Environmental Protection Agency (MD–13), Research Triangle Park, North Carolina 27711, with a copy of the cover letter directed to the contact person listed above. Confidential business information should not be sent to the public docket. Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. [See section 307(d)(7)(A) of the Act.]

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentations on the proposed standards should contact EPA (see **ADDRESSES**). If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement on or before May 26, 1998. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**), and refer to Docket No. A–92–53. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center (see **ADDRESSES**).

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the projected annual costs (including monitoring) for this NESHAP are $27 million a regulatory impact analysis has not been prepared. However this action is considered a "significant regulatory action" within the meaning of Executive Order 12866, and the proposed regulation presented in this notice was submitted to the OMB for review. Any written comments are included in the docket listed at the beginning of today's notice under **ADDRESSES**. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, EPA has involved State and local regulatory experts in the development of this proposed rule. One tribal government and one State government is believed to be affected by this proposed rule. Local governments, and State governments other than the one State which operates a portland cement plant are not directly impacted by the rule, i.e., they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule; e.g., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the burden of implementing the rule. Comments have been solicited from States and from local air pollution control agency representatives and these comments have been carefully considered in the rule development process. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the development of the final rule.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995 (109

Stat. 48), requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the UMRA, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative for State, local, and tribal governments and the private sector that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because this proposed rule, if promulgated, is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

F. Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, Federal agencies are required to assess the economic impact of Federal regulations on small entities. The Regulatory Flexibility Act specifies that Federal agencies must prepare an initial Regulatory Flexibility Analysis (RFA) if a proposed regulation will have a significant economic impact on a substantial number of small entities. For the purposes of the Agency's implementation of the Act, the EPA's guidelines define a "substantial number" as 100 or more firms.

The manufacture of portland cement is covered by SIC code 3241 for hydraulic cements. According to Small Business Administration size standards, firms owning portland cement plants are categorized as small if the total number of employees at the firm is less than 750. Otherwise the firm is classified as large. A total of 7 firms are categorized as small, while the remaining 37 firms are large. Because a substantial number of small firms are not affected, and the EPA does not project a significant impact on small firms, the rule does not require an RFA.

I certify that the rule will not have a significant economic impact on a substantial number of small entities. This is because the rule has a control cost share of revenue of less than one percent for all of the seven cement plants which are considered small entities. [Refer to section IV.H. (Economic Impacts) for more details on the cost and estimated price increases.]

Although the rule will not have a significant impact on a substantial number of small entities, nevertheless the Agency has worked with portland cement small entities throughout the rulemaking process. Meetings were held on a regular basis with the Portland Cement Association (PCA) and industry representatives, including both small and large firms, to discuss the development of the rule, exchange information and data, solicit comments on draft rule requirements, and provide a list of the small firms. In addition, some cement industry representatives formed a group called the "Small Cement Company MACT Coalition", which was represented by counsel during meetings held with the PCA and industry representatives during the later stages of the proposal development process. Finally, the Small Cement Company MACT Coalition designated the PCA as its representative in future meetings with the EPA concerning the rulemaking for the portland cement industry.

To minimize adverse impacts on the small entities, the Agency has proposed controls at the MACT-floor level and tailored the requirements to permit less costly testing and monitoring by using surrogates for HAP emissions and provided choice in methods of demonstrating compliance. The Agency has also tried to make the rule "user friendly," with language that is easy to understand by all of the regulated community. To minimize capital availability problems EPA also proposes to allow affected firms up to 3 years from the effective date of the final rule to comply. An extra year may be granted by the Administrator or delegated regulatory authority if necessary to install controls.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1801.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW., Washington, DC 20460, or by calling (202) 260–2740.

The proposed information requirements include the notification, recordkeeping, and reporting requirements of the NESHAP general provisions (40 CFR part 63, subpart A), authorized under section 114 of the Act, which are mandatory for all owners or operators subject to national emission standards. All information submitted to EPA for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. The proposed rule does not require any notifications or reports beyond those required by the general provisions. These information requirements are necessary to determine compliance with the standard.

The annual public reporting and recordkeeping burden for this collection is estimated at 77,000 labor hours per year at a total annual cost of $2,470,000 over the three-year period. This corresponds to an estimated burden of approximately 2000 hours per year for an estimated 39 respondents. This estimate includes performance tests and reports (with repeat tests where needed); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event where the procedures in the plan were not followed; semiannual excess emissions reports; notifications; and recordkeeping. Total annualized capital costs associated with monitoring requirements over the three-year period of the ICR is estimated at $194,000; this estimate includes the capital and startup costs associated with installation of required continuous monitoring equipment for those affected subject to the standard. The total operation and maintenance cost is estimated at $191,000 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any

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previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 24, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by April 23, 1998. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. Clean Air Act

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This regulation will be reviewed eight years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Portland cement manufacturing, Reporting and recordkeeping requirements.

Dated: March 9, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 183(f) and 301 of the Clean Air Act as amended (42 U.S.C. *et seq*).

2. Part 63 is amended by adding a new subpart LLL consisting of §§ 63.1340 through 63.1359 to read as follows:

Subpart LLL—National Emission Standards for the Portland Cement Manufacturing Industry

Sec.

63.1340 Applicability and designation of affected sources.
63.1341 Definitions.
63.1342 Standards: General.
63.1343 Standards for kilns and in-line kiln/raw mills.
63.1344 Standards for clinker coolers.
63.1345 Standards for new and reconstructed raw material dryers.
63.1346 Standards for affected sources other than kilns, in-line kiln raw mills, clinker coolers, and new and reconstructed raw material dryers.
63.1347 Compliance dates.
63.1348 Initial compliance demonstration.
63.1349 Monitoring requirements.
63.1350 Additional test methods.
63.1351 Notification requirements.
63.1352 Reporting requirements.
63.1353 Recordkeeping requirements.
63.1354 Delegation of authority.
63.1355–63.1359 [Reserved]

Table 1 to Subpart LLL—Applicability of General Provisions

Subpart LLL—National Emission Standards for the Portland Cement Manufacturing Industry

§ 63.1340 Applicability and designation of affected sources.

(a) Except as specified in paragraphs (b) and (c) of this section, the provisions of this subpart apply to each new and existing portland cement plant which is a major source or an area source as defined in § 63.2 of this part.

(b) The affected sources subject to this subpart are:

(1) Each kiln and each in-line kiln/raw mill at any major or area source, including alkali bypasses, except for kilns and in-line kiln/raw mills that burn hazardous waste and are subject to and regulated under subpart EEE of this part.[1]

(2) Each clinker cooler at any portland cement plant which is a major source;

(3) Each raw mill at any portland cement plant which is a major source;

(4) Each finish mill at any portland cement plant which is a major source;

(5) Each raw material dryer at any portland cement plant which is a major source;

(6) Each raw material, clinker, or finished product storage bin at any portland cement plant which is a major source;

(7) Each conveying system transfer point at any portland cement plant which is a major source;

(8) Each bagging system at any portland cement plant which is a major source; and

(9) Each bulk loading or unloading system at any portland cement plant which is a major source.

(c) For portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. The primary and secondary crushers and any other equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.

(d) The owner or operator of any affected source subject to the provisions of this subpart is subject to title V permitting requirements.

§ 63.1341 Definitions.

All terms used in this subpart that are not defined below have the meaning given to them in the CAA and in subpart A of this part.

Alkali bypass means a duct between the feed end of the kiln and the preheater tower through which a portion of the kiln exit gas stream is withdrawn and quickly cooled by air or water to avoid excessive buildup of alkali and sulfur on the raw feed.

Bag leak detection system means a monitoring system for a fabric filter that identifies an increase in particulate emissions resulting from a broken filter bag or other malfunction and sounds an alarm.

Bagging system means the equipment which fills bags with portland cement.

[1] The EPA proposed regulations for subpart EEE of 40 CFR part 63 on April 19, 1996 at 61 FR 17358.

Clinker cooler means equipment into which clinker product leaving the kiln is placed to be cooled by air supplied by a forced draft or natural draft supply system.

Conveying system means a device for transporting materials from one piece of equipment or location to another location within a facility. Conveying systems include but are not limited to the following: feeders, belt conveyors, bucket elevators and pneumatic systems.

Conveying system transfer point means a point where any material including but not limited to feed material, fuel, clinker or product, is transferred to or from a conveying system, or between separate parts of a conveying system.

Dioxins and furans (D/F) means tetra-, penta-, hexa-, hepta-, and octa-chlorinated dibenzo dioxins and furans.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

Feed means the prepared and mixed materials, which include but are not limited to materials such as limestone, clay, shale, sand, iron ore, mill scale, and flyash, that are fed to the kiln and become part of the clinker product. Feed does not include the fuels used in the kiln to produce heat to form the clinker product.

Finish mill means a roll crusher, ball and tube mill or other size reduction equipment used to grind clinker to a fine powder. Gypsum and other materials may be added to and blended with clinker in a finish mill. The finish mill also includes the air separator associated with the finish mill.

Hazardous waste is defined in § 261.3 of this chapter.

In-line kiln/raw mill means a system in a portland cement production process where a dry kiln system is integrated with the raw mill so that all or a portion of the kiln exhaust gases are used to perform the drying operation of the raw mill, with no auxiliary heat source used. In this system the kiln is capable of operating without the raw mill operating, but the raw mill cannot operate without the kiln gases, and consequently, the raw mill does not generate a separate exhaust gas stream.

Kiln means a device, including any associated preheater or precalciner devices, that produces clinker by heating limestone and other materials for subsequent production of cement.

Monovent means an exhaust configuration of a building or emission control device (e. g. positive pressure fabric filter) that extends the length of the structure and has a width very small in relation to its length (i.e., length to width ratio is typically greater than 5:1). The exhaust may be an open vent with or without a roof, louvered vents, or a combination of such features.

Portland cement plant means any facility manufacturing portland cement.

Raw material dryer means an impact dryer, drum dryer, paddle-equipped rapid dryer, air separator, or other equipment used to reduce the moisture content of feed materials.

Raw mill means a ball and tube mill, vertical roller mill or other size reduction equipment, that is not part of an in-line kiln/raw mill, used to grind feed to the appropriate size. Moisture may be added or removed from the feed during the grinding operation. If the raw mill is used to remove moisture from feed materials, it is also, by definition, a raw material dryer. The raw mill also includes the air separator associated with the raw mill.

TEO means the international method of expressing toxicity equivalents for dioxins and furans as defined in U.S. EPA, Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs) and 1989 Update, March 1989.

§ 63.1342 Standards: General.

Table 1 to this subpart provides cross references to the 40 CFR part 63, subpart A, general provisions, indicating the applicability of the general provisions requirements to subpart LLL.

§ 63.1343 Standards for kilns and in-line kiln/raw mills.

(a) The provisions in this section apply to each kiln, each in-line kiln/raw mill, and any alkali bypass associated with that kiln or in-line kiln/raw mill.

(b) No owner or operator of an existing kiln or in-line kiln/raw mill at a facility that is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources, any gases which:

(1) Contain particulate matter in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln. When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the combined particulate matter emissions from the kiln or in-line kiln/raw mill and the alkali bypass are subject to this emission limit.

(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf)(TEQ) corrected to seven percent oxygen; or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf)(TEQ) corrected to seven percent oxygen, when the temperature at the inlet to the particulate matter air pollution control device is 204 °C (400°(F) or less.

(c) No owner or operator that commences construction of a new kiln or new inline kiln/raw mill, or commences reconstruction of a kiln or in-line kiln/raw mill at a facility which is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain particulate matter in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln. When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the combined particulate matter emissions from the kiln or in-line kiln/raw mill and the bypass stack are subject to this emission limit.

(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ) corrected to seven percent oxygen; or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) corrected to seven percent oxygen, when the temperature at the inlet to the particulate matter air pollution control device is 204 °C (400 °F) or less.

(4) Contain total hydrocarbon (THC), from the main exhaust of the kiln or in-line kiln/raw mill, in excess of 50 ppmvd as propane, corrected to seven percent oxygen.

(d) No owner or operator of a new or existing kiln or in-line kiln/raw mill at a facility that is an area source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources any gases which contain D/F in excess of:

(1) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ) corrected to seven percent oxygen; or

(2) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) corrected to seven percent oxygen, when the temperature at the inlet to the particulate matter air pollution control device is 204 °C (400 °F) or less.

§ 63.1344 Standards for clinker coolers.

(a) No owner or operator of a new or existing clinker cooler at a facility which is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from the clinker cooler any gases which:

(1) Contain particulate matter in excess of 0.050 kg per Mg (0.10 lb per ton) of feed (dry basis) to the kiln.

(2) Exhibit opacity greater than ten percent.

(b) [Reserved]

§ 63.1345 Standards for new and reconstructed raw material dryers.

(a) No owner or operator of a new or reconstructed raw material dryer at a facility which is a major source subject to this subpart shall cause to be discharged into the atmosphere from the new or reconstructed raw material dryer any gases which:

(1) Contain THC in excess of 50 ppmvd, reported as propane, corrected to seven percent oxygen.

(2) Exhibit opacity greater than ten percent.

(b) [Reserved]

§ 63.1346 Standards for affected sources other than kilns, in-line kiln/raw mills, clinker coolers, and new and reconstructed raw material dryers.

The owner or operator of each new or existing raw mill; finish mill; raw material, clinker, or finished product storage bin; conveying system transfer point; bagging system; and bulk loading or unloading system; and each existing raw material dryer, at a facility which is a major source subject to the provisions of this subpart shall not cause to be discharged any gases from these affected sources which exhibit opacity in excess of ten percent.

§ 63.1347 Compliance dates.

(a) The compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is no later than 36 months after publication of the final rule.

(b) The compliance date for an owner or operator of an affected source subject to the provisions of this subpart that commences new construction or reconstruction after March 24, 1998 is the date of publication of the final rule or immediately upon startup of operations, whichever is later.

§ 63.1348 Initial compliance demonstration.

(a) The owner or operator of an affected source subject to this subpart shall demonstrate initial compliance with the emission limits of §§ 63.1343–63.1346 using the test methods and procedures in paragraph (b) of this section and § 63.7. Performance test results shall be documented in complete test reports that contain the information required by paragraphs (a)(1) through (a)(10) of this section, as well as all other relevant information. The plan to be followed during testing shall be made available to the Administrator prior to testing, if requested.

(1) A brief description of the process and the air pollution control system;

(2) Sampling location description(s);

(3) A description of sampling and analytical procedures and any modifications to standard procedures;

(4) Test results;

(5) Quality assurance procedures and results;

(6) Records of operating conditions during the test, preparation of standards, and calibration procedures;

(7) Raw data sheets for field sampling and field and laboratory analyses;

(8) Documentation of calculations;

(9) All data recorded and used to establish parameters for compliance monitoring; and

(10) Any other information required by the test method.

(b) Performance tests to demonstrate initial compliance with this subpart shall be conducted as specified in paragraphs (b)(1) through (b)(5) of this section.

(1) The owner or operator of a kiln subject to limitations on particulate matter emissions shall demonstrate initial compliance by conducting a performance test as specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests as specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating. The owner or operator of a clinker cooler subject to limitations on particulate matter emissions shall demonstrate initial compliance by conducting a performance test as specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section. The opacity exhibited during the period of the Method 5 performance tests required by paragraph (b)(1)(i) of this section shall be determined as required in paragraphs (b)(1)(v) through (vi) of this section.

(i) EPA Method 5 of appendix A to part 60 of this chapter shall be used to determine PM emissions. Each performance test shall consist of three separate runs under the conditions that exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. Each run shall be conducted for at least one hour, and the minimum sample volume shall be 0.85 dscm (30 dscf). The average of the three runs shall be used to determine compliance. A determination of the particulate matter collected in the impingers ("back half") of the Method 5 particulate sampling train is not required.

(ii) Suitable methods shall be used to determine the kiln or inline kiln/raw mill feed rate, except for fuels, for each run.

(iii) The emission rate, E, of PM shall be computed for each run using equation 1:

$$E = (c_s Q_{sd}) / P$$

Where:

E = emission rate of particulate matter, kg/Mg of kiln feed.

c_s = concentration of PM, kg/dscm.

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr.

P = total kiln feed (dry basis), Mg/hr.

(iv) When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the main exhaust and alkali bypass of the kiln or in-line kiln/raw mill shall be tested simultaneously and the combined emission rate of particulate matter from the kiln or in-line kiln/raw mill and alkali bypass shall be computed for each run using equation 2,

$$E_c = (c_{sk}Q_{sdk} + c_{sb}Q_{sdb})/P$$

Where:

E_c = the combined emission rate of particulate matter from the kiln or in-line kiln/raw mill and bypass stack, kg/Mg of kiln feed,

c_{sk} = concentration of particulate matter in the kiln or in-line kiln/raw mill effluent, kg/dscm,

Q_{sdk} = volumetric flow rate of kiln or in-line kiln/raw mill effluent, dscm/hr,

c_{sb} = concentration of particulate matter in the alkali bypass gas, kg/dscm,

Q_{sdb} = volumetric flow rate of alkali bypass gas, dscm/hr, and P = total kiln feed (dry basis), Mg/hr.

(v) Except as provided in paragraph (b)(1)(vi) of this section the opacity exhibited during the period of the Method 5 performance tests required by paragraph (b)(1)(i) of this section shall be determined through the use of a continuous opacity monitor (COM). The maximum six-minute average opacity during the three Method 5 test runs shall be determined during each Method 5 test run, and used to demonstrate initial compliance with the applicable opacity limits of §§ 63.1343(b)(2), 63.1343(c)(2), or 63.1344(a)(2) of this subpart.

(vi) Each owner or operator of a kiln, in-line kiln/raw mill, or clinker cooler subject to the provisions of this subpart using a fabric filter with multiple stacks or an electrostatic precipitator with multiple stacks may, in lieu of installing the continuous opacity monitoring system required by paragraph (b)(1)(v) of this section, conduct an opacity test in accordance with Method 9 of appendix A to part 60 of this chapter

during each Method 5 performance test required by paragraph (b)(1)(i) of this section. If the control device exhausts through a monovent, or if the use of a COM in accordance with the installation specifications of Performance Specification 1 (PS–1) of appendix B to part 60 of this chapter is not feasible, a test shall be conducted in accordance with Method 9 of appendix A to part 60 of this chapter during each Method 5 performance test required by paragraph (b)(1)(i) of this section. The maximum six-minute average opacity shall be determined during the three Method 5 test runs, and used to demonstrate initial compliance with the applicable opacity limits of §§ 63.1343(b)(2), 63.1343(c)(2), or 63.1344(a)(2) of this subpart.

(2) The owner or operator of a raw mill or finish mill subject to limitations on opacity under this subpart shall demonstrate initial compliance with the raw mill and finish mill opacity limit by conducting a performance test in accordance with Method 9 of appendix A to part 60 of this chapter. The performance test shall be conducted under the conditions that exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. The maximum six-minute average opacity exhibited during the performance test shall be used to determine whether the affected source is in initial compliance with the standard. The duration of the Method 9 performance test shall be 3-hours (30 6-minute averages), except that the duration of the Method 9 performance test may be reduced to 1-hour if the conditions of paragraphs (b)(2)(i) through (ii) of the section apply:

(i) There are no individual readings greater than 10 percent opacity;

(ii) There are no more than three readings of 10 percent for the first 1-hour period.

(3) The owner or operator of any affected source subject to limitations on opacity under this subpart that is not subject to § 63.1348(b)(1) through (2) shall demonstrate initial compliance with the affected source opacity limit by conducting a test in accordance with Method 9 of appendix A to part 60 of this chapter. The maximum six-minute average opacity exhibited during the test period shall be used to determine whether the affected source is in initial compliance with the standard. The duration of the Method 9 performance test shall be 3-hours (30 6-minute averages), except that the duration of the Method 9 performance test may be reduced to 1-hour if the conditions of paragraphs (b)(3)(i) through (ii) of the section apply:

(i) There are no individual readings greater than 10 percent opacity;

(ii) There are no more than three readings of 10 percent for the first 1-hour period.

(4) The owner or operator of an affected source subject to limitations on D/F emissions shall demonstrate initial compliance with the D/F emission limit by conducting a performance test using Method 23 of appendix A to part 60 of this chapter. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating. The owner or operator of a kiln or in-line kiln/raw mill equipped[4] with an alkali bypass shall conduct simultaneous performance tests of the kiln or in-line kiln/raw mill exhaust and the alkali bypass, however the owner or operator of an in-line kiln/raw mill is not required to conduct a performance test of the alkali bypass exhaust when the raw mill of the in-line kiln/raw mill is not operating.

(i) Each performance test shall consist of three separate runs; each run shall be conducted under the conditions that exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. The duration of each run shall be at least three hours and the sample volume for each run shall be at least 2.5 dscm (90 dscf). The arithmetic average concentration measured during each of the three runs shall be used to determine compliance.

(ii) The temperature at the inlet to the kiln or in-line kiln/raw mill PM APCD, and where applicable, the temperature at the inlet to the alkali bypass PM APCD, must be continuously recorded during the period of the Method 23 test, and the continuous temperature record(s) must be included in the performance test report. The arithmetic average temperature must be determined for each run. The arithmetic average of the averages for the three runs must be calculated and included in the performance test report and will determine the applicable temperature limit in accordance with § 63.1349(d)(4) of this subpart.

(iii) If carbon injection is used for D/F control, the carbon injection rate must be measured during the period of each run. The average carbon injection rate measured for the three runs shall be determined and included in the test report, and shall be used for compliance purposes in accordance with § 63.1349(e) of this subpart.

(5) The owner or operator of an affected source subject to limitations on emissions of THC shall demonstrate initial compliance with the THC limit by operating a continuous emission monitor in accordance with Performance Specification 8A of appendix B to part 60 of this chapter.[2] The duration of the performance test shall be three hours, and the average THC concentration during the three hour performance test shall be calculated. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating.

(c) Performance tests required under paragraphs (b)(1) through (4) of this section shall be repeated every five years, except that the owner or operator of a kiln, in-line kiln/raw mill or clinker cooler is not required to repeat the initial performance test of opacity.

§ 63.1349 Monitoring requirements.

(a) The owner or operator of a kiln or in-line kiln/raw mill shall demonstrate continuous compliance with the opacity standard at each point where emissions are vented from these affected sources including alkali bypasses in accordance with paragraphs (a)(1) through (a)(5) of this section.

(1) Except as provided in paragraph (a)(2) of this section, the owner or operator shall install, calibrate, maintain, and continuously operate a continuous opacity monitor (COM) located at the outlet of the PM control device to continuously monitor the opacity. The COM shall be installed, maintained, calibrated, and operated as required by subpart A, general provisions of this part, and according to PS–1 of appendix B to part 60 of this chapter.

(2) The owner or operator of a kiln or in-line kiln/raw mill subject to the provisions of this subpart using a fabric filter with multiple stacks or an electrostatic precipitator with multiple stacks may, in lieu of installing the continuous opacity monitoring system required by paragraph (a)(1) of this section, monitor opacity in accordance with paragraphs (a)(2)(i) through (ii) of this section. If the control device exhausts through a monovent, or if the use of a COM in accordance with the installation specifications of PS–1 of appendix B to part 60 of this chapter is not feasible, the owner or operator must

[2] The EPA proposed amendments to appendix B to 40 CFR part 60 on April 19, 1996 at 61 FR 17358.

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monitor opacity in accordance with paragraphs (a)(2)(i) through (ii) of this section.

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A of part 60 of this chapter. The duration of the Method 9 test shall be at least 30 minutes each day.

(ii) Use the Method 9 procedures to monitor and record the average opacity for each six-minute period during the test.

(3) To remain in compliance, the opacity must be maintained such that the average of the 6-minute average opacities for any 30-minute period does not exceed 20 percent. If the average of the six-minute average opacities for any 30-minute period exceeds 20 percent, this shall constitute a violation of the standard.

(4) If the average opacity as determined in accordance with paragraph (a)(1) of this section exceeds 15 percent for any ten consecutive 30-minute periods, or if the average opacity as determined in accordance with paragraphs (a)(2)(i) through (ii) of this section exceeds 15 percent for any 30-minute period, the owner or operator shall initiate a site-specific operating and maintenance plan within one hour. The site-specific operating and maintenance plan shall be developed in accordance with paragraph (g) of this section. Failure to initiate the site-specific operating and maintenance plan within one hour shall constitute a violation of the standard.

(5) If the average 30-minute opacity as determined in accordance with paragraph (a)(1) of this section exceeds 15 percent for five percent or more of the kiln operating time in any six-month reporting period, or if the 30-minute average opacity reading as determined in accordance with paragraphs (a)(2)(i) through (ii) of this section exceeds 15 percent during five percent or more of the daily readings in any six-month reporting period, the owner or operator shall notify the permitting authority within 48 hours and shall develop and implement a quality improvement plan (QIP) within 180 days. The QIP shall be developed in accordance with paragraph (h) of this section. Failure to notify the permitting authority within 48 hours shall constitute a violation of the standard. Failure to develop and implement a QIP within 180 days shall constitute a violation of the standard.

(b) The owner or operator of a clinker cooler shall demonstrate continuous compliance with the opacity standard at each point where emissions are vented from the clinker cooler in accordance with paragraphs (b)(1) through (b)(3) of this section.

(1) Except as provided in paragraph (b)(2) of this section, the owner or operator shall install, calibrate, maintain, and continuously operate a COM located at the outlet of the clinker cooler PM control device to continuously monitor the opacity. The COM shall be installed, maintained, calibrated, and operated as required by subpart A, general provisions of this part, and according to PS–1 of appendix B to part 60 of this chapter.

(2) The owner or operator of a clinker cooler subject to the provisions of this subpart using a fabric filter with multiple stacks or an electrostatic precipitator with multiple stacks may, in lieu of installing the continuous opacity monitoring system required by paragraph (b)(1) of this section, monitor opacity in accordance with paragraphs (b)(2)(i) through (ii) of this section. If the control device exhausts through a monovent, or if the use of a COM in accordance with the installation specifications of PS–1 of appendix B to part 60 of this chapter is not feasible, the owner or operator must monitor opacity in accordance with paragraphs (b)(2)(i) through (ii) of this section.

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A of part 60 of this chapter. The duration of the Method 9 test shall be at least 30 minutes each day.

(ii) Use the Method 9 procedures to monitor and record the average opacity for each six-minute period during the test.

(3) To remain in compliance, the opacity must be maintained such that the average of the 6-minute average opacities for any 30-minute period does not exceed 10 percent. If the average of the six-minute average opacities for any 30-minute period exceeds 10 percent, this shall constitute a violation of the standard.

(c) The owner or operator of a raw mill or finish mill shall demonstrate continuous compliance with the opacity standard either by conducting visual emissions observations in accordance with paragraph (c)(1) of this section or through the use of a bag leak detection system in accordance with paragraphs (c)(2)(i) through (vii) of this section.

(1) An owner or operator may demonstrate compliance by performing daily visual emissions observations in accordance with the procedures of Method 22 of appendix A of part 60 of this chapter. The duration of the Method 22 test shall be six-minutes. If no visual emissions are observed at any time within the six-minute test, the source is in compliance.

(2) An owner or operator may demonstrate compliance by installing, calibrating, maintaining, and continuously operating a bag leak detection system in accordance with paragraphs (c)(2)(i) through (vii) of this section.

(i) The bag leak detection system must be capable of detecting PM emissions at concentrations of 1.0 mg per actual cubic meter (0.00044 grains per actual cubic foot) and greater.

(ii) The bag leak detection system sensor must provide output of relative or absolute PM emissions.

(iii) The bag leak detection system must be equipped with an alarm system that will sound when an increase in PM emissions is detected.

(iv) For positive pressure baghouses, a bag leak detector must be installed in each baghouse compartment. If a negative pressure or induced air baghouse is used, the bag leak detector must be installed downstream of the baghouse. Where multiple detectors are required (for either type of baghouse), the system instrumentation and alarm may be shared among detectors.

(v) The bag leak detection system shall be installed, operated, calibrated, and maintained in a manner consistent with available guidance from the U. S. Environmental Protection Agency or, in the absence of such guidance, the manufacturer's written specifications and recommendations.

(vi) Calibration of the system shall, at minimum, consist of establishing the relative baseline output level by adjusting the sensitivity and averaging period of the device and establishing the alarm set points and the alarm delay time.

(vii) The owner or operator shall not adjust the sensitivity, averaging period, alarm set points, or alarm delay time after the initial performance test unless a subsequent performance test is performed.

(3) If, in accordance with paragraph (c)(1) of this section visual emissions are observed the owner or operator shall follow the procedures of paragraphs (c)(3)(i) through (ii) of this section. If, in accordance with paragraphs (c)(2)(i) through (vii) of this section, the bag leak detection system alarm is triggered, the owner or operator shall follow the procedure of paragraphs (c)(3)(i) of this section.

(i) Initiate, within one-hour, a site specific operating and maintenance plan developed in accordance with paragraph (g) of this section. If a site specific operating and maintenance plan is not initiated within one hour, this

shall constitute a violation of the standard.

(ii) Conduct a visual opacity observation of each stack from which visible emissions were observed in accordance with the procedures of Method 9 of appendix A of part 60 of this chapter. The owner or operator must begin the Method 9 test within 24 hours of the end of the Method 22 test in which visible emissions were observed. The duration of the Method 9 test shall be thirty-minutes. If the average of the six-minute average opacities recorded during the Method 9 test exceeds 10 percent, this shall constitute a violation of the standard. If the owner or operator fails to begin the Method 9 test within 24 hours of the end of the Method 22 test in which visible emissions were observed, this shall constitute a violation of the standard.

(d) The owner or operator of an affected source subject to a limitation on D/F emissions shall comply with the following monitoring requirements to demonstrate continuous compliance with the D/F emission standard:

(1) The owner or operator shall install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the exhaust gases from the kiln, in-line kiln/raw mill and alkali bypass, if applicable, at the inlet to the kiln, in-line kiln/raw mill and/or alkali bypass PM control devices consistent with the requirements for continuous monitoring systems in subpart A, general provisions. The device shall have an accuracy of ±2 degrees Fahrenheit or ±1 percent of the temperature measured in degrees Fahrenheit.

(2) The owner or operator shall monitor and continuously record the temperature of the exhaust gases from the kiln, in-line kiln/raw mill and alkali bypass, if applicable, at the inlet to the kiln, in-line kiln/raw mill and/or alkali bypass PM control device.

(3) To remain in compliance with the D/F emission limit, the owner or operator of a kiln must maintain the temperature of the gas at the inlet to the kiln PM control device and alkali bypass PM control device, if applicable, such that the applicable temperature limits specified in paragraph (d)(4) of this section are never exceeded for any nine-hour block averaging period. If any nine-hour average temperature exceeds these temperature limits, this shall constitute a violation of the standard. To remain in compliance with the D/F emission limit, the owner or operator of an in-line kiln/raw mill must maintain the temperature of the gas at the inlet to the in-line kiln/raw mill PM control device and in-line kiln/raw mill alkali bypass PM control device, if applicable, such that,

(i) When the raw mill of the in-line kiln/raw mill is operating, the applicable temperature limit(s) specified in paragraph (d)(4) of this section and established during the performance test when the raw mill was operating is (are) never exceeded for any nine-hour average. If any nine-hour average temperature exceeds the applicable temperature limit, this shall constitute a violation of the standard, and

(ii) When the raw mill of the in-line kiln/raw mill is not operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (d)(4) of this section and established during the performance test when the raw mill was not operating, is never exceeded for any nine-hour block averaging period. If any nine-hour average temperature exceeds the applicable temperature limit, this shall constitute a violation of the standard, and

(iii) If the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass, specified in paragraph (d)(4) of this section and established during the performance test when the raw mill was operating, is never exceeded for any nine-hour block averaging period. If any nine-hour average temperature exceeds the applicable temperature limit, this shall constitute a violation of the standard.

(4) The temperature limit for affected sources meeting the limits of §§ 63.1343(b)(3)(ii), 63.1343(c)(3)(ii) and 63.1343(d)(2) of this subpart is 204 degrees C (400 degrees F). The temperature limits(s) for affected sources meeting the limits of §§ 63.1343(b)(3)(i), 63.1343(c)(3)(i) and 63.1343(d)(1) is (are) determined according to paragraphs (d)(4)(i) through (iii) of this section.

(i) Except as provided in paragraph (d)(4)(iii) of this section, if the D/F emissions determined by the most recent performance test conducted in accordance with § 63.1348(b)(4) of this subpart do not exceed 0.15 ng TEQ/dscm (6.5×10^{-11} gr/dscf), the temperature limit(s) is (are) the average temperature(s) recorded during the performance test plus five percent of the temperature expressed in degrees Fahrenheit, or the average temperature(s) recorded during the performance test plus 25° F, whichever is lower.

(ii) Except as provided in paragraph (d)(4)(iii) of this section, if the D/F emissions determined by the most recent performance test conducted in accordance with § 63.1348(b)(4) of this subpart is (are) between 0.15 ng TEQ/dscm (6.5×10^{-11} gr TEQ/dscf) and 0.20 ng TEQ/dscm (8.7×10^{-11} gr TEQ/dscf), the temperature limit(s) is (are) the average temperature(s) recorded during the performance test.

(iii) No temperature limit established under this section shall be less than 204 °C (400 °F).

(5) The calibration of all thermocouples and other temperature sensors shall be verified every three months.

(e) The owner or operator of an affected source subject to a limitation on D/F emissions that employs carbon injection as an emission control technique shall comply with the monitoring requirements of paragraphs (d)(1) through (d)(5) and (e)(1) through (e)(2) of this section to demonstrate continuous compliance with the D/F emission standard:

(1) Measure the mass of carbon injected for every nine-hour period.

(2) If the carbon injection rate averaged over any nine-hour period is less than the average of the carbon injection rates for the three runs of the performance test conducted in accordance with § 63.1348(b)(4) of this subpart, this shall constitute a violation of the standard.

(f) The owner or operator of an affected source subject to a limitation on THC emissions under this subpart shall comply with the monitoring requirements of paragraphs (f)(1) and (f)(2) of this section to demonstrate continuous compliance with the THC emission standard:

(1) The owner or operator shall install, operate and maintain a THC continuous emission monitoring system in accordance with Performance Specification 8A, of appendix B to part 60 of this chapter [3] and comply with all of the requirements for continuous monitoring systems found in subpart A, general provisions of this part.

(2) Any thirty-day block average THC concentration in any gas discharged from a new or reconstructed raw material dryer, a new or reconstructed kiln, or a new or reconstructed in-line kiln/raw mill, exceeding 50 ppmvd, reported as propane, corrected to seven percent oxygen, is a violation of the standard.

(g) The owner or operator of each portland cement plant shall prepare for each kiln, in-line kiln raw mill, raw mill and finish mill which is an affected source subject to the provisions of this subpart, a written operations and maintenance plan. The plan shall be

[3] Ibid.

submitted to the Administrator for review and approval as part of the application for a part 70 permit and shall include the following information:

(1) Procedures for proper operation and maintenance of the affected source and APCDs in order to meet the emission limits of § 63.1343 of this subpart for kilns and in-line kiln raw mills and § 63.1346 of this subpart for raw mills and finish mills, and

(2) Corrective actions to be taken when required by paragraphs (a)(4) or (c)(3)(i) of this section.

(h) If required under paragraph (a)(5) of this section, an owner or operator shall implement a QIP in accordance with paragraphs (h)(1) through (h)(4) of this section.

(1) A QIP shall be a written plan.

(2) An initial QIP shall include procedures that are adequate for evaluating the control performance problems monitored under paragraph (a)(5) of this section.

(3) Based on the results of the evaluation procedures, the QIP shall be modified to include procedures for conducting one or more of the actions described in paragraphs (h)(3)(i) through (v) of this section:

(i) Improved preventive maintenance practices,

(ii) Process operation changes,

(iii) Appropriate improvements in control methods,

(iv) Other steps appropriate to correct control performance, and

(v) More frequent or improved monitoring in conjunction with one or more steps under paragraphs (h)(3)(i) through (iv) of this section.

(4) The owner or operator shall act to develop and implement a QIP as expeditiously as practicable but in no case shall the period for completing implementation of the QIP exceed 180 days from the date on which notice of the need to implement the QIP must be provided to the permitting authority under paragraph (a)(5) of this section. If the owner or operator determines that more than 180 days will be necessary to complete the appropriate improvements, the owner or operator shall notify the permitting authority and obtain a site-specific resolution subject to the approval of the permitting authority. Where appropriate, the QIP may rely on procedures and corrective actions specified in an existing plan developed to satisfy a separate applicable requirement (such as a startup, shutdown, and malfunction plan or an operations and maintenance plan).

63.1350 Additional test methods.

(a) Owners or operators conducting tests to determine the rates of emission of hydrogen chloride (HCl) from kilns, in-line kiln/raw mills and associated bypass stacks at portland cement manufacturing facilities, for use in applicability determinations under § 63.1340 of this subpart are permitted to use Method 321 or Method 322 of appendix A to this part.

(b) Owners or operators conducting tests to determine the rates of emission of HCl from kilns, in-line kiln/raw mills and associated bypass stacks at portland cement manufacturing facilities, for use in applicability determinations under § 63.1340 of this subpart are permitted to use Method 26 of appendix A to part 60 of this chapter, provided that the conditions of paragraphs (b)(1) through (b)(3) of this section are met:

(1) Method 321 or Method 322 of appendix A to this part is used to validate Method 26 of appendix A to part 60 of this chapter in accordance with section 6.1 of Method 301 of appendix A to this part.

(2) If a dry kiln or in-line kiln/raw mill is tested by Method 26, the Method 301 validation is conducted on a dry kiln or in-line kiln/raw mill.

(3) If a wet kiln is tested by Method 26, the Method 301 validation is conducted on a wet kiln.

(c) Owners or operators conducting tests to determine the rates of emission of HCl from kilns, in-line kiln/raw mills and associated bypass stacks at portland cement manufacturing facilities, for use in applicability determinations under § 63.1340 of this subpart are permitted to use Method 26A of appendix A to part 60 of this chapter, provided that the conditions of paragraphs (c)(1) through (c)(3) of this section are met:

(1) Method 321 or Method 322 of appendix A to this part is used to validate Method 26A of appendix A to part 60 of this chapter in accordance with section 6.1 of Method 301 of appendix A to this part.

(2) If a dry kiln or in-line kiln/raw mill is tested by Method 26A, the Method 301 validation is conducted on a dry kiln or in-line kiln/raw mill.

(3) If a wet kiln is tested by Method 26A, the Method 301 validation is conducted on a wet kiln.

(d) Owners or operators conducting tests to determine the rates of emission of specific organic HAP from raw material dryers, kilns and in-line kiln/raw mills at portland cement manufacturing facilities, for use in applicability determinations under § 63.1340 of this subpart are permitted to use Method 320 of appendix A to this part, or Method 18 of appendix A to part 60 of this chapter.

§ 63.1351 Notification requirements.

(a) The notification provisions of 40 CFR part 63, subpart A that apply and those that do not apply to owners and operators of affected sources subject to this subpart are listed in Table 1 of this subpart. If any State requires a notice that contains all of the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.

(b) Each owner or operator subject to the requirements of this subpart shall comply with the notification requirements in § 63.9 of this part as follows:

(1) Initial notifications as required by § 63.9(b) through (d) of this part. For the purposes of this subpart, a Title V or part 70 permit application may be used in lieu of the initial notification required under § 63.9(b), provided the same information is contained in the permit application as required by § 63.9(b), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA. Permit applications shall be submitted by the same due dates as those specified for the initial notification.

(2) Notification of performance tests, as required by §§ 63.7 and 63.9(e) of this part.

(3) Notification of opacity and visible emission observations required by § 63.1348(b)(1) through (3) in accordance with §§ 63.6(h)(5) and 63.9(f) of this part.

(4) Notification, as required by § 63.9(g) of this part, of the date that the continuous emission monitor performance evaluation required by § 63.8(e) of this part is scheduled to begin.

(5) Notification of compliance status, as required by § 63.9(h) of this part.

(c) Each owner or operator subject to the requirements of this subpart that is required to implement a QIP shall submit notifications as follows:

(1) Notification, as required by § 63.1349(a)(5) of this subpart, of the requirement to implement a QIP.

(2) Notification, as required by § 63.1349(h)(4) of this subpart, if applicable, that more than 180 days will be required to complete the appropriate improvements.

§ 63.1352 Reporting requirements.

(a) The reporting provisions of 40 CFR part 63, subpart A that apply and those that do not apply to owners or operators

of affected sources subject to this subpart are listed in Table 1 of this subpart. If any State requires a report that contains all of the information required in a report listed in this section, the owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

(b) The owner or operator of an affected source shall comply with the reporting requirements specified in § 63.10 of the general provisions to part 63, subpart A as follows:

(1) As required by § 63.10(d)(2) of this part, the owner or operator shall report the results of performance tests as part of the notification of compliance status.

(2) As required by § 63.10(d)(3) of this part, the owner or operator of an affected source shall report the opacity or visible emission results from tests required by § 63.1348(b)(1)–(3) of this subpart along with the results of the performance test required under § 63.7 of this part.

(3) As required by § 63.10(d)(4) of this part, the owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under § 63.6(i) of this part shall submit such reports by the dates specified in the written extension of compliance.

(4) As required by § 63.10(d)(5) of this part, if actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan specified in § 63.6(e)(3) of this part, the owner or operator shall state such information in a semiannual report. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report may be submitted simultaneously with the excess emissions and continuous monitoring system performance reports; and

(5) Any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures in the startup, shutdown, and malfunction plan, the owner or operator shall make an immediate report of the actions taken for that event within 2 working days, by telephone call or facsimile (FAX) transmission. The immediate report shall be followed by a letter, certified by the owner or operator or other responsible official, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred.

(6) As required by § 63.10(e)(2) of this part, the owner or operator shall submit a written report of the results of the performance evaluation for the continuous monitoring system required by § 63.8(e) of this part. The owner or operator shall submit the report simultaneously with the results of the performance test.

(7) As required by § 63.10(e)(2) of this part, the owner or operator of an affected source using a continuous opacity monitoring system to determine opacity compliance during any performance test required under § 63.7 of this part and described in § 63.6(d)(6) of this part shall report the results of the continuous opacity monitoring system performance evaluation conducted under § 63.8(e) of this part.

(8) As required by § 63.10(e)(3) of this part, the owner or operator of an affected source equipped with a continuous emission monitor shall submit an excess emissions and continuous monitoring system performance report for any event when the continuous monitoring system data indicate the source is not in compliance with the applicable emission limitation or operating parameter limit.

(9) The owner or operator shall submit a summary report semiannually which contains the information specified in § 63.10(e)(3)(vi) of this part. In addition, the summary report shall include:

(i) All exceedences of maximum control device inlet gas temperature limits determined under § 63.1349(d)(4) of this subpart,

(ii) All failures to calibrate thermocouples and other temperature sensors as required under § 63.1349(d)(5) of this subpart, and

(iii) All exceedences in carbon injection rate as required under § 63.1349(e)(2) of this subpart.

(10) If the total continuous monitoring system downtime for any CEM or any continuous monitoring system (CMS) for the reporting period is five percent or greater of the total operating time for the reporting period, the owner or operator shall submit an excess emissions and continuous monitoring system performance report along with the summary report.

§ 63.1353 Recordkeeping requirements.

(a) The owner or operator shall maintain files of all information (including all reports and notifications) required by this section recorded in a form suitable and readily available for inspection and review as required by § 63.10(b)(1). The files shall be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent two years of data shall be retained on site. The remaining three years of data may be retained off site. The files may be maintained on microfilm, on a computer, on floppy disks, on magnetic tape, or on microfiche.

(b) The owner or operator shall maintain records for each affected source as required by § 63.10(b)(2) and (b)(3) of this part, and

(1) All documentation supporting initial notifications and notifications of compliance status under § 63.9 of this part.

(2) All records of applicability determination, including supporting analyses, and

(3) If the owner or operator has been granted a waiver under § 63.8(f)(6) of this part, any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements.

(c) In addition to the recordkeeping requirements in paragraph (b) of this section, the owner or operator of an affected source equipped with a continuous monitoring system shall maintain all records required by § 63.10(c) of this part.

(d) In addition to the recordkeeping requirements in paragraph (b) of this section, the owner or operator of an affected source equipped with a bag leak detection system shall maintain records of any bag leak detection system alarm, including the date and time of the alarm and the date and time that corrective action was initiated, with a brief explanation of the cause of the alarm and the corrective action taken.

§ 63.1354 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under subpart E of this part, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States: § 63.1348(b), approval of alternate test methods for particulate matter determination; approval of alternate test methods for opacity; approval of alternate test methods for D/F; § 63.1350, approval of alternate test methods for Hcl.

§§ 63.1355–63.1359 [Reserved]

TABLE 1 TO SUBPART LLL—APPLICABILITY OF GENERAL PROVISIONS

General provisions citation	Requirement	Applies to subpart LLL	Comment
63.1(a)(1)–(4)	Applicability	Yes	
63.1(a)(5)		No	[Reserved].
63.1(a)(6)–(a)(8)	Applicability	Yes	
63.1(a)(9)		No	[Reserved].
63.1(a)(10)–(14)	Applicability	Yes	
63.1(b)(1)	Initial Applicability Determination	No	§63.1340 specifies applicability.
63.1(b)(2)–(3)	Initial Applicability Determination	Yes	
63.1(c)(1)	Applicability After Standard Established.	Yes	
63.1(c)(2)	Permit Requirements	Yes	Area sources must obtain Title V permits.
63.1(c)(3)		No	[Reserved].
63.1(c)(4)–(5)	Extensions, Notifications	Yes	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program	Yes	
63.2	Definitions	Yes	Additional definitions in §63.1341.
63.3(a)–(c)	Units and Abbreviations	Yes	
63.4(a)(1)–(a)(3)	Prohibited Activities	Yes	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)	Compliance date	Yes	
63.4(b)–(c)	Circumvention, Severability	Yes	
63.5(a)(1)–(2)	Construction/Reconstruction	Yes	
63.5(b)(1)	Compliance Dates	Yes	
63.5(b)(2)		No	[Reserved].
63.5(b)(3)–(6)	Construction Approval, Applicability	Yes	
63.5(c)		No	[Reserved].
63.5(d)(1)–(4)	Approval of Construction/Reconstruction.	Yes	
63.5(e)	Approval of Construction/Reconstruction.	Yes	
63.5(f)(1)–(2)	Approval of Construction/Reconstruction.	Yes	
63.6(a)	Compliance for Standards and Maintenance.	Yes	
63.6(b)(1)–(5)	Compliance Dates	Yes	
63.6(b)(6)		No	[Reserved].
63.6(b)(7)	Compliance Dates	Yes	
63.6(c)(1)–(2)	Compliance Dates	Yes	
63.6(c)(3)–(c)(4)		No	[Reserved].
63.6(c)(5)	Compliance Dates	Yes	
63.6(d)		No	[Reserved].
63.6(e)(1)–(e)(2)	Operation & Maintenance	Yes	
63.6(e)(3)	Startup, Shutdown Malfunction Plan	Yes	
63.6(f)(1)–(3)	Compliance with Emission Standards.	Yes	
63.6(g)(1)–(g)(3)	Alternative Standard	Yes	
63.6(h)(1)–(2)	Opacity/VE Standards	Yes	
63.6(h)(3)		No	Reserved
63.6(h)(4)–(h)(5)(i)	Opacity/VE Standards	Yes	
63.6(h)(5)(ii)–(iv)	Opacity/VE Standards	No	Test duration specified in Subpart LLL
63.6(h)(6)	Opacity/VE Standards	Yes	
63.6(i)(1)–(i)(14)	Extension of Compliance	Yes	
63.6(i)(15)		No	[Reserved].
63.6(i)(16)	Extension of Compliance	Yes	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)(1)–(a)(3)	Performance Testing Requirements	Yes	§63.1348 has specific requirements.
63.7(b)	Notification	Yes	
63.7(c)	Quality Assurance/Test Plan	Yes	
63.7(d)	Testing Facilities	Yes	
63.7(e)(1)–(4)	Conduct of Tests	Yes	
63.7(f)	Alternative Test Method	Yes	
63.7(g)	Data Analysis	Yes	
63.7(h)	Waiver of Tests	Yes	
63.8(a)(1)	Monitoring Requirements	Yes	
63.8(a)(2)	Monitoring	No	§63.1349 includes CEM requirements.
63.8(a)(3)		No	[Reserved].
63.8(a)(4)	Monitoring	No	Flares not applicable.
63.8(b)(1)–(3)	Conduct of Monitoring	Yes	
63.8(c)(1)–(8)	CMS Operation/ Maintenance	Yes	
63.8(d)	Quality Control	Yes	

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TABLE 1 TO SUBPART LLL.—APPLICABILITY OF GENERAL PROVISIONS—Continued

General provisions citation	Requirement	Applies to subpart LLL	Comment
63.8(e)	Performance Evaluation for CMS	Yes	
63.8(f)(1)–(f)(5)	Alternative Monitoring Method	Yes	
63.8(f)(6)	Alternative to RATA Test	Yes	
63.8(g)	Data Reduction	Yes	
63.9(a)	Notification Requirements	Yes	Additional notification requirements in §363.1351 (c).
63.9(b)(1)–(5)	Initial Notifications	Yes	
63.9(c)	Request for Compliance Extension	Yes	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes	
63.9(e)	Notification of Performance Test	Yes	
63.9(f)	Notification of VE/Opacity Test	Yes	Notification not required for VE/opacity test under §63.1349.
63.9(g)	Additional CMS Notifications	Yes	
63.9(h)(1)–(h)(3)	Notification of Compliance Status	Yes	
63.9(h)(4)		No	[Reserved].
63.9(h)(5)–(h)(6)	Notification of Compliance Status	Yes	
63.9(i)	Adjustment of Deadlines	Yes	
63.9(j)	Change in Previous Information	Yes	
63.10(a)	Recordkeeping/Reporting	Yes	
63.10(b)	General Requirements	Yes	
63.10(c)(1)	Additional CMS Recordkeeping	Yes	
63.10(c)(2)–(c)(4)		No	[Reserved].
63.10(c)(5)–(c)(8)	Additional CMS Recordkeeping	Yes	
63.10(c)(9)		No	[Reserved].
63.10(c)(10)–(15)	Additional CMS Recordkeeping	Yes	
63.10(d)(1)	General Reporting Requirements	Yes	
63.10(d)(2)	Performance Test Results	Yes	
63.10(d)(3)	Opacity or VE Observations	Yes	
63.10(d)(4)	Progress Reports	Yes	
63.10(d)(5)	Startup, Shutdown, Malfunction Reports.	Yes	
63.10(e)(1)–(e)(2)	Additional CMS Reports	Yes	
63.10(e)(3)	Excess Emissions and CMS Performance Reports.	Yes	Exceedences are defined in §63.1349.
63.10(f)	Waiver for Recordkeeping/Reporting	Yes	
63.11(a)–(b)	Control Device Requirements	No	Flares not applicable.
63.12(a)–(c)	State Authority and Delegations	Yes	
63.13(a)–(c)	State/Regional Addresses	Yes	
63.14(a)–(b)	Incorporation by Reference	Yes	
63.15(a)–(b)	Availability of Information	Yes	

3. Appendix A of part 63 is amended by adding, in numerical order, Methods 320, 321, and 322 to read as follows:

Appendix A to Part 63-Test Methods

* * * * *

METHOD 320

Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy

1.0 Introduction.

Persons unfamiliar with basic elements of FTIR spectroscopy should not attempt to use this method. This method describes sampling and analytical procedures for extractive emission measurements using Fourier transform infrared (FTIR) spectroscopy. Detailed analytical procedures for interpreting infrared spectra are described in the "Protocol for the Use of Extractive Fourier Transform Infrared (FTIR) Spectrometry in Analyses of Gaseous Emissions from Stationary Sources," hereafter referred to as the "Protocol." Definitions not given in this method are given in appendix A of the Protocol. References to specific sections in the Protocol are made throughout this Method. For additional information refer to references 1 and 2, and other EPA reports, which describe the use of FTIR spectrometry in specific field measurement applications and validation tests. The sampling procedure described here is extractive. Flue gas is extracted through a heated gas transport and handling system. For some sources, sample conditioning systems may be applicable. Some examples are given in this method. (Note: sample conditioning systems may be used providing the method validation requirements in Sections 9.2 and 13.0 of this method are met.)

1.1 Scope and Applicability.

1.1.1 Analytes. Analytes include hazardous air pollutants (HAPs) for which EPA reference spectra have been developed. Other compounds can also be measured with this method if reference spectra are prepared according to section 4.6 of the protocol.

1.1.2 Applicability. This method applies to the analysis of vapor phase organic or inorganic compounds which absorb energy in the mid-infrared spectral region, about 400 to 4000 cm^{-1} (25 to 2.5 μm). This method is used to determine compound-specific concentrations in a multi-component vapor phase sample, which is contained in a closed-path gas cell. Spectra of samples are collected using double beam infrared absorption spectroscopy. A computer program is used to analyze spectra and report compound concentrations.

1.2 Method Range and Sensitivity. Analytical range and sensitivity depend on the frequency-dependent analyte absorptivity, instrument configuration, data collection parameters, and gas stream composition. Instrument factors include: (a) spectral resolution, (b) interferometer signal averaging time, (c) detector sensitivity and response, and (d) absorption path length.

1.2.1 For any optical configuration the analytical range is between the absorbance values of about .01 (infrared transmittance relative to the background = 0.98) and 1.0 (T = 0.1). (For absorbance > 1.0 the relation between absorbance and concentration may not be linear.)

1.2.2 The concentrations associated with this absorbance range depend primarily on the cell path length and the sample temperature. An analyte absorbance greater than 1.0, can be lowered by decreasing the

optical path length. Analyte absorbance increases with a longer path length. Analyte detection also depends on the presence of other species exhibiting absorbance in the same analytical region. Additionally, the estimated lower absorbance (A) limit (A = 0.01) depends on the root mean square deviation (RMSD) noise in the analytical region.

1.2.3 The concentration range of this method is determined by the choice of optical configuration.

1.2.3.1 The absorbance for a given concentration can be decreased by decreasing the path length or by diluting the sample. There is no practical upper limit to the measurement range.

1.2.3.2 The analyte absorbance for a given concentration may be increased by increasing the cell path length or (to some extent) using a higher resolution. Both modifications also cause a corresponding increased absorbance for all compounds in the sample, and a decrease in the signal throughput. For this reason the practical lower detection range (quantitation limit) usually depends on sample characteristics such as moisture content of the gas, the presence of other interferants, and losses in the sampling system.

1.3 Sensitivity. The limit of sensitivity for an optical configuration and integration time is determined using appendix D of the Protocol: Minimum Analyte Uncertainty, (MAU). The MAU depends on the RMSD noise in an analytical region, and on the absorptivity of the analyte in the same region.

1.4 Data Quality. Data quality shall be determined by executing Protocol pre-test procedures in appendices B to H of the protocol and post-test procedures in appendices I and J of the protocol.

1.4.1 Measurement objectives shall be established by the choice of detection limit (DL_i) and analytical uncertainty (AU_i) for each analyte.

1.4.2 An instrumental configuration shall be selected. An estimate of gas composition shall be made based on previous test data, data from a similar source or information gathered in a pre-test site survey. Spectral interferants shall be identified using the selected DL_i and AU_i and band areas from reference spectra and interferant spectra. The baseline noise of the system shall be measured in each analytical region to determine the MAU of the instrument configuration for each analyte and interferant (MIU_i).

1.4.3 Data quality for the application shall be determined, in part, by measuring the RMS (root mean square) noise level in each analytical spectral region (appendix C of the Protocol). The RMS noise is defined as the RMSD of the absorbance values in an analytical region from the mean absorbance value in the region.

1.4.4 The MAU is the minimum analyte concentration for which the AU_i can be maintained; if the measured analyte concentration is less than MAU_i, then data quality are unacceptable.

2.0 Summary of Method.

2.1 Principle. References 4 through 7 provide background material on infrared spectroscopy and quantitative analysis. A summary is given in this section.

2.1.1 Infrared absorption spectroscopy is performed by directing an infrared beam through a sample to a detector. The frequency-dependent infrared absorbance of the sample is measured by comparing this detector signal (single beam spectrum) to a signal obtained without a sample in the beam path (background).

2.1.2 Most molecules absorb infrared radiation and the absorbance occurs in a characteristic and reproducible pattern. The infrared spectrum measures fundamental molecular properties and a compound can be identified from its infrared spectrum alone.

2.1.3 Within constraints, there is a linear relationship between infrared absorption and compound concentration. If this frequency dependent relationship (absorptivity) is known (measured), it can be used to determine compound concentration in a sample mixture.

2.1.4 Absorptivity is measured by preparing, in the laboratory, standard samples of compounds at known concentrations and measuring the FTIR "reference spectra" of these standard samples. These "reference spectra" are then used in sample analysis: (1) compounds are detected by matching sample absorbance bands with bands in reference spectra, and (2) concentrations are measured by comparing sample band intensities with reference band intensities.

2.1.5 This method is self-validating provided that the results meet the performance requirement of the QA spike in sections 9.0 and 8.6.2 of this method, and results from a previous method validation study support the use of this method in the application.

2.2 Sampling and Analysis. In extractive sampling a probe assembly and pump are used to extract gas from the exhaust of the affected source and transport the sample to the FTIR gas cell. Typically, the sampling apparatus is similar to that used for single-component continuous emission monitor (CEM) measurements.

2.2.1 The digitized infrared spectrum of the sample in the FTIR gas cell is measured and stored on a computer. Absorbance band intensities in the spectrum are related to sample concentrations by what is commonly referred to as Beer's Law.

$$A_i = a_i b c_i \quad \text{(Eq. 320–1)}$$

Where:

A_i = absorbance at a given frequency of the ith sample component.
a_i = absorption coefficient (absorptivity) of the ith sample component.
b = path length of the cell.
c_i = concentration of the ith sample component.

2.2.2 Analyte spiking is used for quality assurance (QA). In this procedure (section 8.6.2 of this method) an analyte is spiked into the gas stream at the back end of the sample probe. Analyte concentrations in the spiked samples are compared to analyte concentrations in unspiked samples. Since the concentration of the spike is known, this procedure can be used to determine if the sampling system is removing the spiked analyte(s) from the sample stream.

2.3 Reference Spectra Availability. Reference spectra of over 100 HAPs are available in the EPA FTIR spectral library on the EMTIC (Emission Measurement Technical Information Center) computer bulletin board service and at internet address http://info.arnold.af.mil/epa/welcome.htm. Reference spectra for HAPs, or other analytes, may also be prepared according to section 4.6 of the Protocol.

2.4 Operator Requirements. The FTIR analyst shall be trained in setting up the instrumentation, verifying the instrument is functioning properly, and performing routine maintenance. The analyst must evaluate the initial sample spectra to determine if the sample matrix is consistent with pre-test assumptions and if the instrument configuration is suitable. The analyst must be able to modify the instrument configuration, if necessary.

2.4.1 The spectral analysis shall be supervised by someone familiar with EPA FTIR Protocol procedures.

2.4.2 A technician trained in CEM test methods is qualified to install and operate the sampling system. This includes installing the probe and heated line assembly, operating the analyte spike system, and performing moisture and flow measurements.

3.0 Definitions.

See appendix A of the Protocol for definitions relating to infrared spectroscopy. Additional definitions are given below.

3.1 Analyte. A compound that this method is used to measure. The term "target analyte" is also used. This method is multi-component and a number of analytes can be targeted for a test.

3.2 Reference Spectrum. Infrared spectrum of an analyte prepared under controlled, documented, and reproducible laboratory conditions according to procedures in section 4.6 of the Protocol. A library of reference spectra is used to measure analytes in gas samples.

3.3 Standard Spectrum. A spectrum that has been prepared from a reference spectrum through a (documented) mathematical operation. A common example is de-resolving of reference spectra to lower-resolution standard spectra (Protocol, appendix K). Standard spectra, prepared by approved, and documented, procedures can be used as reference spectra for analysis.

3.4 Concentration. In this method concentration is expressed as a molar concentration, in ppm-meters, or in (ppm-meters)/K, where K is the absolute temperature (Kelvin). The latter units allow the direct comparison of concentrations from systems using different optical configurations or sampling temperatures.

3.5 Interferant. A compound in the sample matrix whose infrared spectrum overlaps with part of an analyte spectrum. The most accurate analyte measurements are achieved when reference spectra of interferants are used in the quantitative analysis with the analyte reference spectra.

The presence of an interferant can increase the analytical uncertainty in the measured analyte concentration.

3.6 Gas Cell. A gas containment cell that can be evacuated. It is equipped with the

optical components to pass the infrared beam through the sample to the detector. Important cell features include: path length (or range if variable), temperature range, materials of construction, and total gas volume.

3.7 Sampling System. Equipment used to extract the sample from the test location and transport the sample gas to the FTIR analyzer. This includes sample conditioning systems.

3.8 Sample Analysis. The process of interpreting the infrared spectra to obtain sample analyte concentrations. This process is usually automated using a software routine employing a classical least squares (cls), partial least squares (pls), or K- or P- matrix method.

3.9 One hundred percent line. A double beam transmittance spectrum obtained by combining two background single beam spectra. Ideally, this line is equal to 100 percent transmittance (or zero absorbance) at every frequency in the spectrum. Practically, a zero absorbance line is used to measure the baseline noise in the spectrum.

3.10 Background Deviation. A deviation from 100 percent transmittance in any region of the 100 percent line. Deviations greater than ±5 percent in an analytical region are unacceptable (absorbance of 0.021 to −0.022). Such deviations indicate a change in the instrument throughput relative to the background single beam.

3.11 Batch Sampling. A procedure where spectra of discreet, static samples are collected. The gas cell is filled with sample and the cell is isolated. The spectrum is collected. Finally, the cell is evacuated to prepare for the next sample.

3.12 Continuous Sampling. A procedure where spectra are collected while sample gas is flowing through the cell at a measured rate.

3.13 Sampling resolution. The spectral resolution used to collect sample spectra.

3.14 Truncation. Limiting the number of interferogram data points by deleting points farthest from the center burst (zero path difference, ZPD).

3.15 Zero filling. The addition of points to the interferogram. The position of each added point is interpolated from neighboring real data points. Zero filling adds no information to the interferogram, but affects line shapes in the absorbance spectrum (and possibly analytical results).

3.16 Reference CTS. Calibration Transfer Standard spectra that were collected with reference spectra.

3.17 CTS Standard. CTS spectrum produced by applying a de-resolution procedure to a reference CTS.

3.18 Test CTS. CTS spectra collected at the sampling resolution using the same optical configuration as for sample spectra. Test spectra help verify the resolution, temperature and path length of the FTIR system.

3.19 RMSD. Root Mean Square Difference, defined in EPA FTIR Protocol, appendix A.

3.20 Sensitivity. The noise-limited compound-dependent detection limit for the FTIR system configuration. This is estimated by the MAU. It depends on the RMSD in an analytical region of a zero absorbance line.

3.21 Quantitation Limit. The lower limit of detection for the FTIR system configuration in the sample spectra. This is estimated by mathematically subtracting scaled reference spectra of analytes and interferences from sample spectra, then measuring the RMSD in an analytical region of the subtracted spectrum. Since the noise in subtracted sample spectra may be much greater than in a zero absorbance spectrum, the quantitation limit is generally much higher than the sensitivity. Removing spectral interferences from the sample or improving the spectral subtraction can lower the quantitation limit toward (but not below) the sensitivity.

3.22 Independent Sample. A unique volume of sample gas; there is no mixing of gas between two consecutive independent samples. In continuous sampling two independent samples are separated by at least 5 cell volumes. The interval between independent measurements depends on the cell volume and the sample flow rate (through the cell).

3.23 Measurement. A single spectrum of flue gas contained in the FTIR cell.

3.24 Run. A run consists of a series of measurements. At a minimum a run includes 8 independent measurements spaced over 1 hour.

3.25 Validation. Validation of FTIR measurements is described in sections 13.0 through 13.4 of this method. Validation is used to verify the test procedures for measuring specific analytes at a source. Validation provides proof that the method works under certain test conditions.

3.26 Validation Run. A validation run consists of at least 24 measurements of independent samples. Half of the samples are spiked and half are not spiked. The length of the run is determined by the interval between independent samples.

3.27 Screening. Screening is used when there is little or no available information about a source. The purpose of screening is to determine what analytes are emitted and to obtain information about important sample characteristics such as moisture, temperature, and interferences. Screening results are semi-quantitative (estimated concentrations) or qualitative (identification only). Various optical and sampling configurations may be used. Sample conditioning systems may be evaluated for their effectiveness in removing interferences. It is unnecessary to perform a complete run under any set of sampling conditions. Spiking is not necessary, but spiking can be a useful screening tool for evaluating the sampling system, especially if a reactive or soluble analyte is used for the spike.

3.28 Emissions Test. An FTIR emissions test is performed according specific sampling and analytical procedures. These procedures, for the target analytes and the source, are based on previous screening and validation results. Emission results are quantitative. A QA spike (sections 8.6.2 and 9.2 of this method) is performed under each set of sampling conditions using a representative analyte. Flow, gas temperature and diluent data are recorded concurrently with the FTIR measurements to provide mass emission rates for detected compounds.

3.29 Surrogate. A surrogate is a compound that is used in a QA spike procedure (section 8.6.2 of this method) to represent other compounds. The chemical and physical properties of a surrogate shall be similar to the compounds it is chosen to represent. Under given sampling conditions, usually a single sampling factor is of primary concern for measuring the target analytes: for example, the surrogate spike results can be representative for analytes that are more reactive, more soluble, have a lower absorptivity, or have a lower vapor pressure than the surrogate itself.

4.0 Interferences.

Interferences are divided into two classifications: analytical and sampling.

4.1 Analytical Interferences. An analytical interference is a spectral feature that complicates (in extreme cases may prevent) the analysis of an analyte. Analytical interferences are classified as background or spectral interference.

4.1.1 Background Interference. This results from a change in throughput relative to the single beam background. It is corrected by collecting a new background and proceeding with the test. In severe instances the cause must be identified and corrected. Potential causes include: (1) deposits on reflective surfaces or transmitting windows, (2) changes in detector sensitivity, (3) a change in the infrared source output, or (4) failure in the instrument electronics. In routine sampling throughput may degrade over several hours. Periodically a new background must be collected, but no other corrective action will be required.

4.1.2 Spectral Interference. This results from the presence of interfering compound(s) (interferant) in the sample. Interferant spectral features overlap analyte spectral features. Any compound with an infrared spectrum, including analytes, can potentially be an interferant. The Protocol measures absorbance band overlap in each analytical region to determine if potential interferants shall be classified as known interferants (FTIR Protocol, section 4.9 and appendix B). Water vapor and CO_2 are common spectral interferants. Both of these compounds have strong infrared spectra and are present in many sample matrices at high concentrations relative to analytes. The extent of interference depends on the (1) interferant concentration, (2) analyte concentration, and (3) the degree of band overlap. Choosing an alternate analytical region can minimize or avoid the spectral interference. For example, CO_2 interferes with the analysis of the 670 cm^{-1} benzene band. However, benzene can also be measured near 3000 cm^{-1} (with less sensitivity).

4.2 Sampling System Interferences. These prevent analytes from reaching the instrument. The analyte spike procedure is designed to measure sampling system interference, if any.

4.2.1 Temperature. A temperature that is too low causes condensation of analytes or water vapor. The materials of the sampling system and the FTIR gas cell usually set the upper limit of temperature.

4.2.2 Reactive Species. Anything that reacts with analytes. Some analytes, like formaldehyde, polymerize at lower temperatures.

4.2.3 Materials. Poor choice of material for probe, or sampling line may remove some analytes. For example, HF reacts with glass components.

4.2.4 Moisture. In addition to being a spectral interferant, condensed moisture removes soluble compounds.

5.0 Safety.

The hazards of performing this method are those associated with any stack sampling method and the same precautions shall be followed. Many HAPs are suspected carcinogens or present other serious health risks. Exposure to these compounds should be avoided in all circumstances. For instructions on the safe handling of any particular compound, refer to its material safety data sheet. When using analyte standards, always ensure that gases are properly vented and that the gas handling system is leak free. (Always perform a leak check with the system under maximum vacuum and, again, with the system at greater than ambient pressure.) Refer to section 8.2 of this method for leak check procedures. This method does not address all of the potential safety risks associated with its use. Anyone performing this method must follow safety and health practices consistent with applicable legal requirements and with prudent practice for each application.

6.0 Equipment and Supplies.

Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

The equipment and supplies are based on the schematic of a sampling system shown in Figure 1. Either the batch or continuous sampling procedures may be used with this sampling system. Alternative sampling configurations may also be used, provided that the data quality objectives are met as determined in the post-analysis evaluation. Other equipment or supplies may be necessary, depending on the design of the sampling system or the specific target analytes.

6.1 Sampling Probe. Glass, stainless steel, or other appropriate material of sufficient length and physical integrity to sustain heating, prevent adsorption of analytes, and to transport analytes to the infrared gas cell. Special materials or configurations may be required in some applications. For instance, high stack sample temperatures may require special steel or cooling the probe. For very high moisture sources it may be desirable to use a dilution probe.

6.2 Particulate Filters. A glass wool plug (optional) inserted at the probe tip (for large particulate removal) and a filter (required) rated for 99 percent removal efficiency at 1-micron (e.g., Balston™) connected at the outlet of the heated probe.

6.3 Sampling Line/Heating System. Heated (sufficient to prevent condensation) stainless steel, polytetrafluoroethane, or other material inert to the analytes.

6.4 Gas Distribution Manifold. A heated manifold allowing the operator to control flows of gas standards and samples directly to the FTIR system or through sample conditioning systems. Usually includes heated flow meter, heated valve for selecting and sending sample to the analyzer, and a by-pass vent. This is typically constructed of stainless steel tubing and fittings, and high-temperature valves.

6.5 Stainless Steel Tubing. Type 316, appropriate diameter (e.g., ⅜ in.) and length for heated connections. Higher grade stainless may be desirable in some applications.

6.6 Calibration/Analyte Spike Assembly. A three way valve assembly (or equivalent) to introduce analyte or surrogate spikes into the sampling system at the outlet of the probe upstream of the out-of-stack particulate filter and the FTIR analytical system.

6.7 Mass Flow Meter (MFM). These are used for measuring analyte spike flow. The MFM shall be calibrated in the range of 0 to 5 L/min and be accurate to ±2 percent (or better) of the flow meter span.

6.8 Gas Regulators. Appropriate for individual gas standards.

6.9 Polytetrafluoroethane Tubing. Diameter (e.g., ⅜ in.) and length suitable to connect cylinder regulators to gas standard manifold.

6.10 Sample Pump. A leak-free pump (e.g., KNF™), with by-pass valve, capable of producing a sample flow rate of at least 10 L/min through 100 ft of sample line. If the pump is positioned upstream of the distribution manifold and FTIR system, use a heated pump that is constructed from materials non-reactive to the analytes. If the pump is located downstream of the FTIR system, the gas cell sample pressure will be lower than ambient pressure and it must be recorded at regular intervals.

6.11 Gas Sample Manifold. Secondary manifold to control sample flow at the inlet to the FTIR manifold. This is optional, but includes a by-pass vent and heated rotameter.

6.12 Rotameter. A 0 to 20 L/min rotameter. This meter need not be calibrated.

6.13 FTIR Analytical System. Spectrometer and detector, capable of measuring the analytes to the chosen detection limit. The system shall include a personal computer with compatible software allowing automated collection of spectra.

6.14 FTIR Cell Pump. Required for the batch sampling technique, capable of evacuating the FTIR cell volume within 2 minutes. The pumping speed shall allow the operator to obtain 8 sample spectra in 1 hour.

6.15 Absolute Pressure Gauge. Capable of measuring pressure from 0 to 1000 mmHg to within ± 2.5 mmHg (e.g., Baratron™).

6.16 Temperature Gauge. Capable of measuring the cell temperature to within ± 2°C.

6.17 Sample Conditioning. One option is a condenser system, which is used for moisture removal. This can be helpful in the measurement of some analytes. Other sample conditioning procedures may be devised for the removal of moisture or other interfering species.

6.17.1 The analyte spike procedure of section 9.2 of this method, the QA spike procedure of section 8.6.2 of this method, and the validation procedure of section 13 of this method demonstrate whether the sample conditioning affects analyte concentrations. Alternatively, measurements can be made with two parallel FTIR systems; one measuring conditioned sample, the other measuring unconditioned sample.

6.17.2 Another option is sample dilution. The dilution factor measurement must be documented and accounted for in the reported concentrations. An alternative to dilution is to lower the sensitivity of the FTIR system by decreasing the cell path length, or to use a short-path cell in conjunction with a long path cell to measure more than one concentration range.

7.0 Reagents and Standards.

7.1 Analyte(s) and Tracer Gas. Obtain a certified gas cylinder mixture containing all of the analyte(s) at concentrations within ±2 percent of the emission source levels (expressed in ppm-meter/K). If practical, the analyte standard cylinder shall also contain the tracer gas at a concentration which gives a measurable absorbance at a dilution factor of at least 10:1. Two ppm SF_6 is sufficient for a path length of 22 meters at 250 °F.

7.2 Calibration Transfer Standard(s). Select the calibration transfer standards (CTS) according to section 4.5 of the FTIR Protocol. Obtain a National Institute of Standards and Technology (NIST) traceable gravimetric standard of the CTS (±2 percent).

7.3 Reference Spectra. Obtain reference spectra for each analyte, interferant, surrogate, CTS, and tracer. If EPA reference spectra are not available, use reference spectra prepared according to procedures in section 4.6 of the EPA FTIR Protocol.

8.0 Sampling and Analysis Procedure.

Three types of testing can be performed: (1) screening, (2) emissions test, and (3) validation. Each is defined in section 3 of this method. Determine the purpose(s) of the FTIR test. Test requirements include: (a) AU_I, DL_I, overall fractional uncertainty, OFU_I, maximum expected concentration ($CMAX_I$), and t_{AN} for each, (b) potential interferants, (c) sampling system factors, e.g., minimum absolute cell pressure, (P_{MIN}), FTIR cell volume (V_{SS}), estimated sample absorption pathlength, L_S', estimated sample pressure, P_S', T_S', signal integration time (t_{SS}), minimum instrumental linewidth, MIL, fractional error, and (d) analytical regions, e.g., m = 1 to M, lower wavenumber position, FL_M, center wavenumber position, FC_M, and upper wavenumber position, FU_M, plus interferants, upper wavenumber position of the CTS absorption band, FFU_M, lower wavenumber position of the CTS absorption band, FFL_M, wavenumber range FNU to FNL. If necessary, sample and acquire an initial spectrum. From analysis of this preliminary spectrum determine a suitable operational path length. Set up the sampling train as shown in Figure 1 or use an appropriate alternative configuration. Sections 8.1 through 8.11 of this method provide guidance on pre-test calculations in the EPA protocol, sampling and analytical procedures, and post-test protocol calculations.

8.1 Pretest Preparations and Evaluations. Using the procedure in section 4.0 of the FTIR Protocol, determine the optimum sampling system configuration for measuring the target analytes. Use available information to make reasonable assumptions about moisture content and other interferences.

8.1.1 Analytes. Select the required detection limit (DL_i) and the maximum permissible analytical uncertainty (AU_i) for each analyte (labeled from 1 to i). Estimate, if possible, the maximum expected concentration for each analyte, $CMAX_i$. The expected measurement range is fixed by DL_i and $CMAX_i$ for each analyte (i).

8.1.2 Potential Interferants. List the potential interferants. This usually includes water vapor and CO_2, but may also include some analytes and other compounds.

8.1.3 Optical Configuration. Choose an optical configuration that can measure all of the analytes within the absorbance range of .01 to 1.0 (this may require more than one path length). Use Protocol sections 4.3 to 4.8 for guidance in choosing a configuration and measuring CTS.

8.1.4 Fractional Reproducibility Uncertainty (FRU_i). The FRU is determined for each analyte by comparing CTS spectra taken before and after the reference spectra were measured. The EPA para-xylene reference spectra were collected on 10/31/91 and 11/01/91 with corresponding CTS spectra "cts1031a," and "cts1101b." The CTS spectra are used to estimate the reproducibility (FRU) in the system that was used to collect the references. The FRU must be < AU. Appendix E of the protocol is used to calculate the FRU from CTS spectra. Figure 2 plots results for 0.25 cm^{-1} CTS spectra in EPA reference library: S_3 [cts1101b—cts1031a), and S_4 [(cts1101b + cts1031a)/2]. The RMSD (SRMS) is calculated in the subtracted baseline, S_3, in the corresponding CTS region from 850 to 1065 cm^{-1}. The area (BAV) is calculated in the same region of the averaged CTS spectrum, S_4.

8.1.5 Known Interferants. Use appendix B of the EPA FTIR Protocol.

8.1.6 Calculate the Minimum Analyte Uncertainty, MAU (section 1.3 of this method discusses MAU and protocol appendix D gives the MAU procedure). The MAU for each analyte, i, and each analytical region, m, depends on the RMS noise.

8.1.7 Analytical Program. See FTIR Protocol, section 4.10. Prepare computer program based on the chosen analytical technique. Use as input reference spectra of all target analytes and expected interferants. Reference spectra of additional compounds shall also be included in the program if their presence (even if transient) in the samples is considered possible. The program output shall be in ppm (or ppb) and shall be corrected for differences between the reference path length, L_R, temperature, T_R, and pressure, P_R, and the conditions used for collecting the sample spectra. If sampling is performed at ambient pressure, then any pressure correction is usually small relative to corrections for path length and temperature, and may be neglected.

8.2 Leak-check.

8.2.1 Sampling System. A typical FTIR extractive sampling train is shown in Figure 1. Leak check from the probe tip to pump outlet as follows: Connect a 0- to 250-mL/min rate meter (rotameter or bubble meter) to the outlet of the pump. Close off the inlet to the probe, and record the leak rate. The leak rate shall be ≤ 200 mL/min.

8.2.2 Analytical System Leak check. Leak check the FTIR cell under vacuum and under pressure (greater than ambient). Leak check connecting tubing and inlet manifold under pressure.

8.2.2.1 For the evacuated sample technique, close the valve to the FTIR cell, and evacuate the absorption cell to the minimum absolute pressure P_{min}. Close the valve to the pump, and determine the change in pressure ΔP_v after 2 minutes.

8.2.2.2 For both the evacuated sample and purging techniques, pressurize the system to about 100 mmHg above atmospheric pressure. Isolate the pump and determine the change in pressure ΔP_p after 2 minutes.

8.2.2.3 Measure the barometric pressure, P_b in mmHg.

8.2.2.4 Determine the percent leak volume $\%V_L$ for the signal integration time t_{ss} and for ΔP_{max}, i.e., the larger of ΔP_v or ΔP_p, as follows:

$$\%V_L = 50 t_{ss} \frac{\Delta P_{max}}{P_{ss}} \qquad \text{(Eq. 320-2)}$$

Where 50=100% divided by the leak-check time of 2 minutes.

8.2.2.5 Leak volumes in excess of 4 percent of the FTIR system volume V_{ss} are unacceptable.

8.3 Detector Linearity. Once an optical configuration is chosen, use one of the procedures of sections 8.3.1 through 8.3.3 to verify that the detector response is linear. If the detector response is not linear, decrease the aperture, or attenuate the infrared beam. After a change in the instrument configuration perform a linearity check until it is demonstrated that the detector response is linear.

8.3.1 Vary the power incident on the detector by modifying the aperture setting. Measure the background and CTS at three instrument aperture settings: (1) at the aperture setting to be used in the testing, (2) at one half this aperture and (3) at twice the proposed testing aperture. Compare the three CTS spectra. CTS band areas shall agree to within the uncertainty of the cylinder standard and the RMSD noise in the system. If test aperture is the maximum aperture, collect CTS spectrum at maximum aperture, then close the aperture to reduce the IR throughput by half. Collect a second background and CTS at the smaller aperture setting and compare the spectra again.

8.3.2 Use neutral density filters to attenuate the infrared beam. Set up the FTIR system as it will be used in the test measurements. Collect a CTS spectrum. Use a neutral density filter to attenuate the infrared beam (either immediately after the source or the interferometer) to approximately ½ its original intensity. Collect a second CTS spectrum. Use another filter to attenuate the infrared beam to approximately ¼ its original intensity. Collect a third background and CTS spectrum. Compare the CTS spectra. CTS band areas shall agree to within the uncertainty of the cylinder standard and the RMSD noise in the system.

8.3.3 Observe the single beam instrument response in a frequency region where the detector response is known to be zero. Verify that the detector response is "flat" and equal to zero in these regions.

8.4 Data Storage Requirements. All field test spectra shall be stored on a computer disk and a second backup copy must stored on a separate disk. The stored information includes sample interferograms, processed absorbance spectra, background interferograms, CTS sample interferograms and CTS absorbance spectra. Additionally, documentation of all sample conditions, instrument settings, and test records must be recorded on hard copy or on computer medium. Table 1 to this method gives a sample presentation of documentation.

8.5 Background Spectrum. Evacuate the gas cell to ≤ 5 mmHg, and fill with dry nitrogen gas to ambient pressure (or purge the cell with 10 volumes of dry nitrogen). Verify that no significant amounts of absorbing species (for example water vapor and CO_2) are present. Collect a background spectrum, using a signal averaging period equal to or greater than the averaging period for the sample spectra. Assign a unique file name to the background spectrum. Store two copies of the background interferogram and processed single-beam spectrum on separate computer disks (one copy is the back-up).

8.5.1 Interference Spectra. If possible, collect spectra of known and suspected major interferences using the same optical system that will be used in the field measurements. This can be done on-site or earlier. A number of gases, e.g. CO_2, SO_2, CO, NH_3, are readily available from cylinder gas suppliers.

8.5.2 Water vapor spectra can be prepared by the following procedure. Fill a sample tube with distilled water. Evacuate above the sample and remove dissolved gasses by alternately freezing and thawing the water while evacuating. Allow water vapor into the FTIR cell, then dilute to atmospheric pressure with nitrogen or dry air. If quantitative water spectra are required, follow the reference spectrum procedure for neat samples (protocol, section 4.6). Often, interference spectra need not be quantitative, but for best results the absorbance must be comparable to the interference absorbance in the sample spectra.

8.6 Pre-Test Calibrations

8.6.1 Calibration Transfer Standard. Evacuate the gas cell to ≤ 5 mmHg absolute pressure, and fill the FTIR cell to atmospheric pressure with the CTS gas. Alternatively, purge the cell with 10 cell volumes of CTS gas. (If purge is used, verify that the CTS concentration in the cell is stable by collecting two spectra 2 minutes apart as the CTS gas continues to flow. If the absorbance in the second spectrum is no greater than in the first, within the uncertainty of the gas standard, then this can be used as the CTS spectrum.) Record the spectrum.

8.6.2 QA Spike. This procedure assumes that the method has been validated for at least some of the target analytes at the source. For emissions testing perform a QA spike. Use a certified standard, if possible, of an analyte, which has been validated at the source. One analyte standard can serve as a QA surrogate for other analytes which are less reactive or less soluble than the

standard. Perform the spike procedure of section 9.2 of this method. Record spectra of at least three independent (section 3.22 of this method) spiked samples. Calculate the spiked component of the analyte concentration. If the average spiked concentration is within 0.7 to 1.3 times the expected concentration, then proceed with the testing. If applicable, apply the correction factor from the Method 301 of this appendix validation test (not the result from the QA spike).

8.7 Sampling. If analyte concentrations vary rapidly with time, CEM sampling is preferable using the smallest cell volume, fastest sampling rate and fastest spectra collection rate possible. CEM sampling requires the least operator intervention even without an automated sampling system. For continuous monitoring at one location over long periods, CEM sampling is preferred. Batch sampling and continuous static sampling are used for screening and performing test runs of finite duration. Either technique is preferred for sampling several locations in a matter of days. Batch sampling gives reasonably good time resolution and ensures that each spectrum measures a discreet (and unique) sample volume. Continuous static (and CEM) sampling provide a very stable background over long periods. Like batch sampling, continuous static sampling also ensures that each spectrum measures a unique sample volume. It is essential that the leak check procedure under vacuum (section 8.2 of this method) is passed if the batch sampling procedure is used. It is essential that the leak check procedure under positive pressure is passed if the continuous static or CEM sampling procedures are used. The sampling techniques are described in sections 8.7.1 through 8.7.2 of this method.

8.7.1 Batch Sampling. Evacuate the absorbance cell to ≤ 5 mmHg absolute pressure. Fill the cell with exhaust gas to ambient pressure, isolate the cell, and record the spectrum. Before taking the next sample, evacuate the cell until no spectral evidence of sample absorption remains. Repeat this procedure to collect eight spectra of separate samples in 1 hour.

8.7.2 Continuous Static Sampling. Purge the FTIR cell with 10 cell volumes of sample gas. Isolate the cell, collect the spectrum of the static sample and record the pressure. Before measuring the next sample, purge the cell with 10 more cell volumes of sample gas.

8.8 Sampling QA and Reporting.

8.8.1 Sample integration times shall be sufficient to achieve the required signal-to-noise ratio. Obtain an absorbance spectrum by filling the cell with N_2. Measure the RMSD in each analytical region in this absorbance spectrum. Verify that the number of scans used is sufficient to achieve the target MAU.

8.8.2 Assign a unique file name to each spectrum.

8.8.3 Store two copies of sample interferograms and processed spectra on separate computer disks.

8.8.4 For each sample spectrum, document the sampling conditions, the sampling time (while the cell was being filled), the time the spectrum was recorded, the instrumental conditions (path length, temperature, pressure, resolution, signal integration time), and the spectral file name. Keep a hard copy of these data sheets.

8.9 Signal Transmittance. While sampling, monitor the signal transmittance. If signal transmittance (relative to the background) changes by 5 percent or more (absorbance = | −.02 to .02) in any analytical spectral region, obtain a new background spectrum.

8.10 Post-test CTS. After the sampling run, record another CTS spectrum.

8.11 Post-test QA.

8.11.1 Inspect the sample spectra immediately after the run to verify that the gas matrix composition was close to the expected (assumed) gas matrix.

8.11.2 Verify that the sampling and instrumental parameters were appropriate for the conditions encountered. For example, if the moisture is much greater than anticipated, it may be necessary to use a shorter path length or dilute the sample.

8.11.3 Compare the pre- and post-test CTS spectra. The peak absorbance in pre- and post-test CTS must be ± 5 percent of the mean value. See appendix E of the FTIR Protocol.

9.0 Quality Control.

Use analyte spiking (sections 8.6.2, 9.2 and 13.0 of this method) to verify that the sampling system can transport the analytes from the probe to the FTIR system.

9.1 Spike Materials. Use a certified standard (accurate to ± 2 percent) of the target analyte, if one can be obtained. If a certified standard cannot be obtained, follow the procedures in section 4.6.2.2 of the FTIR Protocol.

9.2 Spiking Procedure. QA spiking (section 8.6.2 of this method) is a calibration procedure used before testing. QA spiking involves following the spike procedure of sections 9.2.1 through 9.2.3 of this method to obtain at least three spiked samples. The analyte concentrations in the spiked samples shall be compared to the expected spike concentration to verify that the sampling system is working properly. Usually, when QA spiking is used, the method has already been validated at a similar source for the analyte in question. The QA spike demonstrates that the validated sampling conditions are being duplicated. If the QA spike fails then the sampling system shall be repaired before testing proceeds. The method validation procedure (section 13.0 of this method) involves a more extensive use of the analyte spike procedure of sections 9.2.1 through 9.2.3 of this method. Spectra of at least 12 independent spiked and 12 independent unspiked samples are recorded. The concentration results are analyzed statistically to determine if there is a systematic bias in the method for measuring a particular analyte. If there is a systematic bias, within the limits allowed by Method 301 of this appendix, then a correction factor shall be applied to the analytical results. If the systematic bias is greater than the allowed limits, this method is not valid and cannot be used.

9.2.1 Introduce the spike/tracer gas at a constant flow rate of ≤ 10 percent of the total sample flow. (*Note:* Use the rotameter at the end of the sampling train to estimate the required spike/tracer gas flow rate.) Use a flow device, e.g., mass flow meter (± 2 percent), to monitor the spike flow rate. Record the spike flow rate every 10 minutes.

9.2.2 Determine the response time (RT) of the system by continuously collecting spectra of the spiked effluent until the spectrum of the spiked component is constant for 5 minutes. The RT is the interval from the first measurement until the spike becomes constant. Wait for twice the duration of the RT, then collect spectra of two independent spiked gas samples. Duplicate analyses of the spiked concentration shall be within 5 percent of the mean of the two measurements.

9.2.3 Calculate the dilution ratio using the tracer gas as follows:

$$DF = \frac{SF_{6(dir)}}{SF_{6(spk)}} \qquad \text{(Eq. 320-3)}$$

Where:

$$CS = \frac{Spike_{dir}}{DF} \qquad \text{(Eq. 320-4)}$$

DF = Dilution factor of the spike gas; this value shall be ≥10.

$SF_{6(dir)}$ = SF_6 (or tracer gas) concentration measured directly in undiluted spike gas.

$SF_{6(spk)}$ = Diluted SF_6 (or tracer gas) concentration measured in a spiked sample.

$Spike_{dir}$ = Concentration of the analyte in the spike standard measured by filling the FTIR cell directly.

CS = Expected concentration of the spiked samples.

10.0 Calibration and Standardization.

10.1 Signal-to-Noise Ratio (S/N). The RMSD in the noise must be less than one tenth of the minimum analyte peak absorbance in each analytical region. For example if the minimum peak absorbance is 0.01 at the required DL, then RMSD measured over the entire analytical region must be ≤ 0.001.

10.2 Absorbance Path length. Verify the absorbance path length by comparing reference CTS spectra to test CTS spectra. See appendix E of the FTIR Protocol.

10.3 Instrument Resolution. Measure the line width of appropriate test CTS band(s) to verify instrument resolution. Alternatively, compare CTS spectra to a reference CTS spectrum, if available, measured at the nominal resolution.

10.4 Apodization Function. In transforming the sample interferograms to absorbance spectra use the same apodization function that was used in transforming the reference spectra.

10.5 FTIR Cell Volume. Evacuate the cell to ≤ 5 mmHg. Measure the initial absolute temperature (T_i) and absolute pressure (P_i). Connect a wet test meter (or a calibrated dry gas meter), and slowly draw room air into the cell. Measure the meter volume (V_m), meter absolute temperature (T_m), and meter absolute pressure (P_m); and the cell final absolute temperature (T_f) and absolute

pressure (P_f). Calculate the FTIR cell volume V_{ss}, including that of the connecting tubing, as follows:

$$V_{ss} = \frac{V_m \frac{P_m}{T_m}}{\left[\frac{P_f}{T_f} - \frac{P_i}{T_i}\right]} \quad \text{(Eq. 320-5)}$$

11.0 Data Analysis and Calculations.

Analyte concentrations shall be measured using reference spectra from the EPA FTIR spectral library. When EPA library spectra are not available, the procedures in section 4.6 of the Protocol shall be followed to prepare reference spectra of all the target analytes. 11.1 Spectral De-resolution. Reference spectra can be converted to lower resolution standard spectra (section 3.3 of this method) by truncating the original reference sample and background interferograms. Appendix K of the FTIR Protocol gives specific deresolution procedures. Deresolved spectra shall be transformed using the same apodization function and level of zero filling as the sample spectra. Additionally, pre-test FTIR protocol calculations (e.g., FRU, MAU, FCU) shall be performed using the de-resolved standard spectra.

11.2 Data Analysis. Various analytical programs are available for relating sample absorbance to a concentration standard. Calculated concentrations shall be verified by analyzing residual baselines after mathematically subtracting scaled reference spectra from the sample spectra. A full description of the data analysis and calculations is contained in the FTIR Protocol (sections 4.0, 5.0, 6.0 and appendices). Correct the calculated concentrations in the sample spectra for differences in absorption path length and temperature between the reference and sample spectra using equation 6,

$$C_{corr} = \left(\frac{L_r}{L_s}\right)\left(\frac{T_s}{T_r}\right)C_{calc} \quad \text{(Eq. 320-6)}$$

Where:

C_{corr} = Concentration, corrected for path length.

C_{calc} = Concentration, initial calculation (output of the analytical program designed for the compound).

L_r = Reference spectra path length.

L_s = Sample spectra path length.

T_s = Absolute temperature of the sample gas, K.

T_r = Absolute gas temperature of reference spectra, K.

12.0 Method Performance.

12.1 Spectral Quality. Refer to the FTIR Protocol appendices for analytical requirements, evaluation of data quality, and analysis of uncertainty.

12.2 Sampling QA/QC. The analyte spike procedure of section 9 of this method, the QA spike of section 8.6.2 of this method, and the validation procedure of section 13 of this method are used to evaluate the performance of the sampling system and to quantify sampling system effects, if any, on the measured concentrations. This method is self-validating provided that the results meet the performance requirement of the QA spike in sections 9.0 and 8.6.2 of this method and results from a previous method validation study support the use of this method in the application. Several factors can contribute to uncertainty in the measurement of spiked samples. Factors which can be controlled to provide better accuracy in the spiking procedure are listed in sections 12.2.1 through 12.2.4 of this method.

12.2.1 Flow meter. An accurate mass flow meter is accurate to ± 1 percent of its span. If a flow of 1 L/min is monitored with such a MFM, which is calibrated in the range of 0–5 L/min, the flow measurement has an uncertainty of 5 percent. This may be improved by re-calibrating the meter at the specific flow rate to be used.

12.2.2 Calibration gas. Usually the calibration standard is certified to within ± 2 percent. With reactive analytes, such as HCl, the certified accuracy in a commercially available standard may be no better than ± 5 percent.

12.2.3 Temperature. Temperature measurements of the cell shall be quite accurate. If practical, it is preferable to measure sample temperature directly, by inserting a thermocouple into the cell chamber instead of monitoring the cell outer wall temperature.

12.2.4 Pressure. Accuracy depends on the accuracy of the barometer, but fluctuations in pressure throughout a day may be as much as 2.5 percent due to weather variations.

13.0 Method Validation Procedure.

This validation procedure, which is based on EPA Method 301 (40 CFR part 63, appendix A), may be used to validate this method for the analytes in a gas matrix. Validation at one source may also apply to another type of source, if it can be shown that the exhaust gas characteristics are similar at both sources.

13.1 Section 5.3 of Method 301 (40 CFR part 63, appendix A), the Analyte Spike procedure, is used with these modifications. The statistical analysis of the results follows section 6.3 of EPA Method 301. Section 3 of this method defines terms that are not defined in Method 301.

13.1.1 The analyte spike is performed dynamically. This means the spike flow is continuous and constant as spiked samples are measured.

13.1.2 The spike gas is introduced at the back of the sample probe.

13.1.3 Spiked effluent is carried through all sampling components downstream of the probe.

13.1.4 A single FTIR system (or more) may be used to collect and analyze spectra (not quadruplicate integrated sampling trains).

13.1.5 All of the validation measurements are performed sequentially in a single "run" (section 3.26 of this method).

13.1.6 The measurements analyzed statistically are each independent (section 3.22 of this method).

13.1.7 A validation data set can consist of more than 12 spiked and 12 unspiked measurements.

13.2 Batch Sampling. The procedure in sections 13.2.1 through 13.2.2 may be used for stable processes. If process emissions are highly variable, the procedure in section 13.2.3 shall be used.

13.2.1 With a single FTIR instrument and sampling system, begin by collecting spectra of two unspiked samples. Introduce the spike flow into the sampling system and allow 10 cell volumes to purge the sampling system and FTIR cell. Collect spectra of two spiked samples. Turn off the spike and allow 10 cell volumes of unspiked sample to purge the FTIR cell. Repeat this procedure until the 24 (or more) samples are collected.

13.2.2 In batch sampling, collect spectra of 24 distinct samples. (Each distinct sample consists of filling the cell to ambient pressure after the cell has been evacuated.)

13.2.3 Alternatively, a separate probe assembly, line, and sample pump can be used for spiked sample. Verify and document that sampling conditions are the same in both the spiked and the unspiked sampling systems. This can be done by wrapping both sample lines in the same heated bundle. Keep the same flow rate in both sample lines. Measure samples in sequence in pairs. After two spiked samples are measured, evacuate the FTIR cell, and turn the manifold valve so that spiked sample flows to the FTIR cell. Allow the connecting line from the manifold to the FTIR cell to purge thoroughly (the time depends on the line length and flow rate). Collect a pair of spiked samples. Repeat the procedure until at least 24 measurements are completed.

13.3 Simultaneous Measurements With Two FTIR Systems. If unspiked effluent concentrations of the target analyte(s) vary significantly with time, it may be desirable to perform synchronized measurements of spiked and unspiked sample. Use two FTIR systems, each with its own cell and sampling system to perform simultaneous spiked and unspiked measurements. The optical configurations shall be similar, if possible. The sampling configurations shall be the same. One sampling system and FTIR analyzer shall be used to measure spiked effluent. The other sampling system and FTIR analyzer shall be used to measure unspiked flue gas. Both systems shall use the same sampling procedure (i.e., batch or continuous).

13.3.1 If batch sampling is used, synchronize the cell evacuation, cell filling, and collection of spectra. Fill both cells at the same rate (in cell volumes per unit time).

13.3.2 If continuous sampling is used, adjust the sample flow through each gas cell so that the same number of cell volumes pass through each cell in a given time (i.e. $TC_1 = TC_2$).

13.4 Statistical Treatment. The statistical procedure of EPA Method 301 of this appendix, section 6.3 is used to evaluate the bias and precision. For FTIR testing a validation "run" is defined as spectra of 24 independent samples, 12 of which are spiked with the analyte(s) and 12 of which are not spiked.

13.4.1 Bias. Determine the bias (defined by EPA Method 301 of this appendix, section 6.3.2) using equation 7:

$$B = S_m - M_m - CS \quad \text{(Eq. 320–7)}$$

Where:

B = Bias at spike level.

S_m = Mean concentration of the analyte spiked samples.
M_m = Mean concentration of the unspiked samples.
CS = Expected concentration of the spiked samples.

13.4.2 Correction Factor. Use section 6.3.2.2 of Method 301 of this appendix to evaluate the statistical significance of the bias. If it is determined that the bias is significant, then use section 6.3.3 of Method 301 to calculate a correction factor (CF). Analytical results of the test method are multiplied by the correction factor, if $0.7 \leq CF \leq 1.3$. If it is determined that the bias is significant and CF > ± 30 percent, then the test method is considered to be "not valid."

13.4.3 If measurements do not pass validation, evaluate the sampling system, instrument configuration, and analytical system to determine if improper set-up or a malfunction was the cause. If so, repair the system and repeat the validation.

14.0 Pollution Prevention.

The extracted sample gas is vented outside the enclosure containing the FTIR system and gas manifold after the analysis. In typical method applications the vented sample volume is a small fraction of the source volumetric flow and its composition is identical to that emitted from the source. When analyte spiking is used, spiked pollutants are vented with the extracted sample gas. Approximately 1.6×10^{-4} to 3.2×10^{-4} lbs of a single HAP may be vented to the atmosphere in a typical validation run of 3 hours. (This assumes a molar mass of 50 to 100 g, spike rate of 1.0 L/min, and a standard concentration of 100 ppm). Minimize emissions by keeping the spike flow off when not in use.

15.0 Waste Management.

Small volumes of laboratory gas standards can be vented through a laboratory hood. Neat samples must be packed and disposed according to applicable regulations. Surplus materials may be returned to supplier for disposal.

16.0 References.

1. "Field Validation Test Using Fourier Transform Infrared (FTIR) Spectrometry To Measure Formaldehyde, Phenol and Methanol at a Wool Fiberglass Production Facility." Draft. U.S. Environmental Protection Agency Report, EPA Contract No. 68D20163, Work Assignment I–32, September 1994.

2. "FTIR Method Validation at a Coal-Fired Boiler". Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. Publication No.: EPA–454/R95–004, NTIS No.: PB95–193199. July, 1993.

3. "Method 301—Field Validation of Pollutant Measurement Methods from Various Waste Media," 40 CFR part 63, appendix A.

4. "Molecular Vibrations; The Theory of Infrared and Raman Vibrational Spectra," E. Bright Wilson, J.C. Decius, and P.C. Cross, Dover Publications, Inc., 1980. For a less intensive treatment of molecular rotational-vibrational spectra see, for example, "Physical Chemistry," G.M. Barrow, chapters 12, 13, and 14, McGraw Hill, Inc., 1979.

5. "Fourier Transform Infrared Spectrometry," Peter R. Griffiths and James de Haseth, Chemical Analysis, 83, 16–25, (1986), P.J. Elving, J.D. Winefordner and I.M. Kolthoff (ed.), John Wiley and Sons.

6. "Computer-Assisted Quantitative Infrared Spectroscopy," Gregory L. McClure (ed.), ASTM Special Publication 934 (ASTM), 1987.

7. "Multivariate Least-Squares Methods Applied to the Quantitative Spectral Analysis of Multicomponent Mixtures," Applied Spectroscopy, 39(10), 73–84, 1985.

TABLE 1.—EXAMPLE PRESENTATION OF SAMPLING DOCUMENTATION

Sample time	Spectrum file name	Background file name	Sample conditioning	Process condition

Sample time	Spectrum file	Interferogram	Resolution	Scans	Apodization	Gain	CTS spectrum

BILLING CODE 6560–50–P

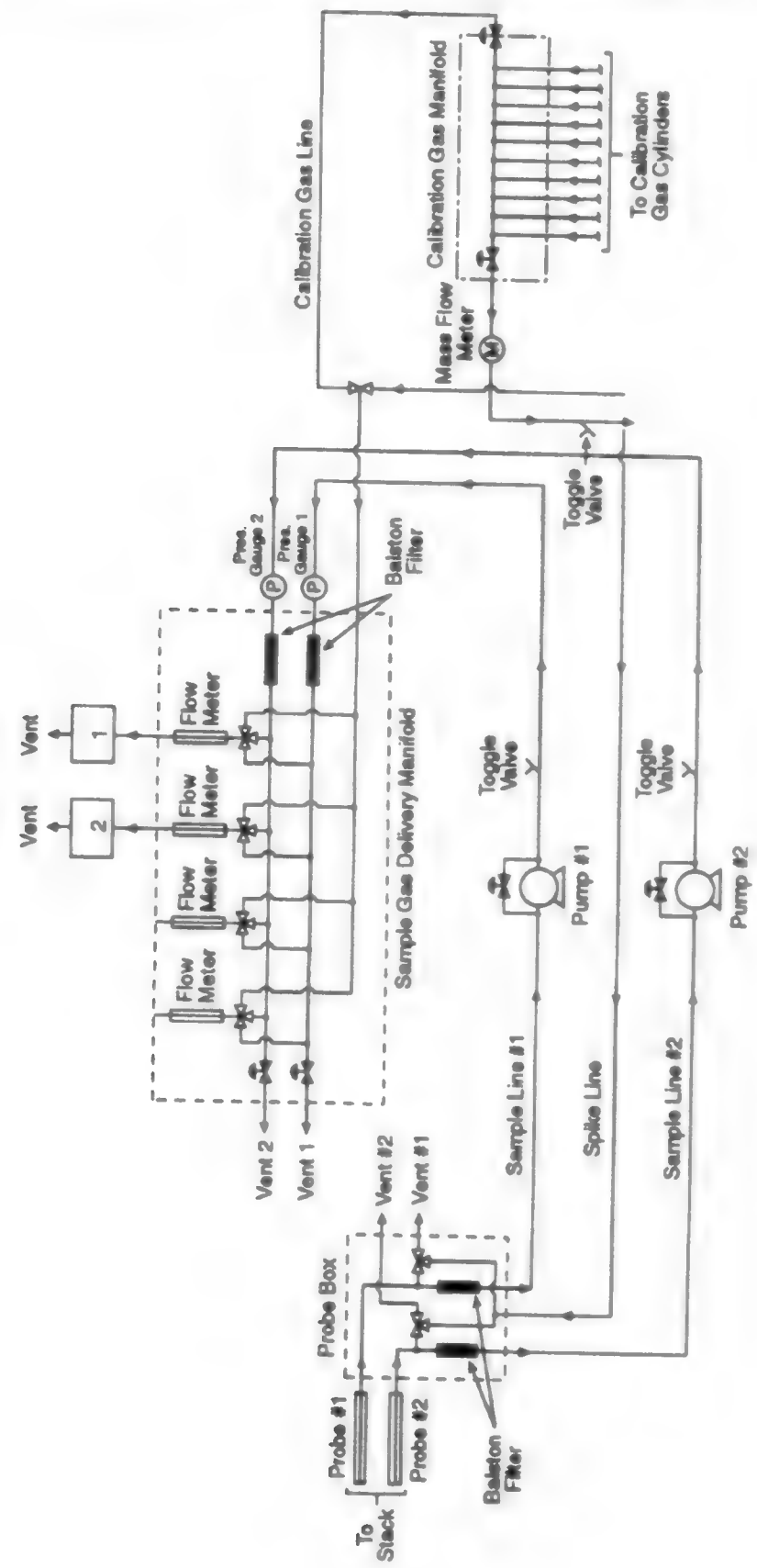

Figure 1. Extractive FTIR sampling system.

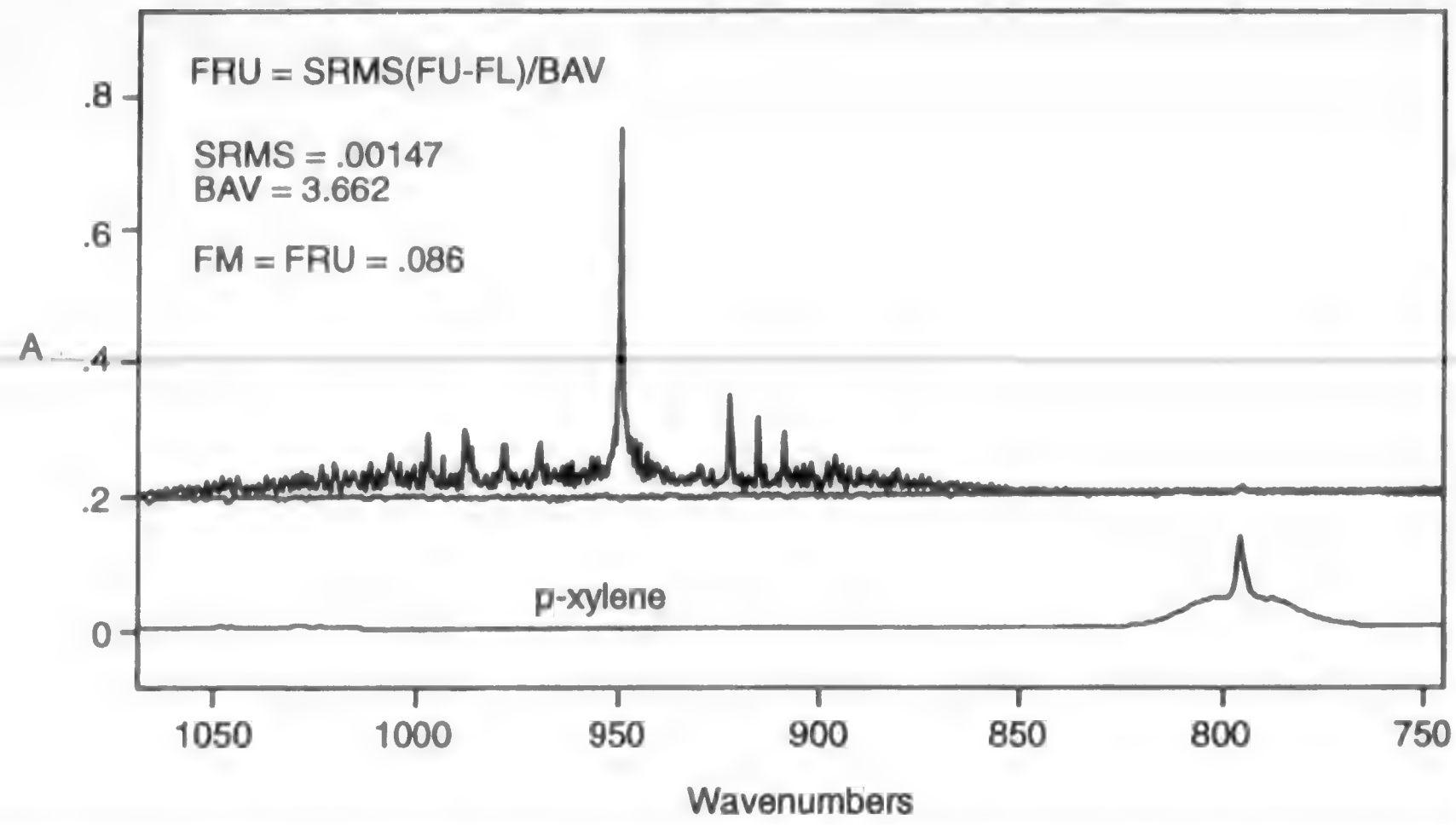

Figure 2. Fractional Reproducibility. Top: average of cts1031a and cts1101b. Bottom: Reference spectrum of p-xylene.

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Addendum to Method 320—Protocol for the Use of Extractive Fourier Transform Infrared (FTIR) Spectrometry for the Analyses of Gaseous Emissions From Stationary Sources

1.0 Introduction

The purpose of this addendum is to set general guidelines for the use of modern FTIR spectroscopic methods for the analysis of gas samples extracted from the effluent of stationary emission sources. This addendum outlines techniques for developing and evaluating such methods and sets basic requirements for reporting and quality assurance procedures.

1.1 Nomenclature

1.1.1 Attachment A to this addendum lists definitions of the symbols and terms used in this Protocol, many of which have been taken directly from American Society for Testing and Materials (ASTM) publication E 131–90a, entitled "Terminology Relating to Molecular Spectroscopy."

1.1.2 Except in the case of background spectra or where otherwise noted, the term "spectrum" refers to a double-beam spectrum in units of absorbance vs. wavenumber (cm^{-1}).

1.1.3 The term "Study" in this addendum refers to a publication that has been subjected to EPA- or peer-review.

2.0 Applicability and Analytical Principle

2.1 Applicability. This Protocol applies to the determination of compound-specific concentrations in single- and multiple-component gas phase samples using double-beam absorption spectroscopy in the mid-infrared band. It does not specifically address other FTIR applications, such as single-beam spectroscopy, analysis of open-path (non-enclosed) samples, and continuous measurement techniques. If multiple spectrometers, absorption cells, or instrumental linewidths are used in such analyses, each distinct operational configuration of the system must be evaluated separately according to this Protocol.

2.2 Analytical Principle.

2.2.1 In the mid-infrared band, most molecules exhibit characteristic gas phase absorption spectra that may be recorded by FTIR systems. Such systems consist of a source of mid-infrared radiation, an interferometer, an enclosed sample cell of known absorption pathlength, an infrared detector, optical elements for the transfer of infrared radiation between components, and gas flow control and measurement components. Adjunct and integral computer systems are used for controlling the instrument, processing the signal, and for performing both Fourier transforms and quantitative analyses of spectral data.

2.2.2 The absorption spectra of pure gases and of mixtures of gases are described by a linear absorbance theory referred to as Beer's Law. Using this law, modern FTIR systems use computerized analytical programs to quantify compounds by comparing the absorption spectra of known (reference) gas samples to the absorption spectrum of the sample gas. Some standard mathematical techniques used for comparisons are classical least squares, inverse least squares, cross-correlation, factor analysis, and partial least squares. Reference A describes several of these techniques, as well as additional techniques, such as differentiation methods, linear baseline corrections, and non-linear absorbance corrections.

3.0 General Principles of Protocol Requirements

The characteristics that distinguish FTIR systems from gas analyzers used in instrumental gas analysis methods (e.g., Methods 6C and 7E of appendix A to part 60 of this chapter) are: (1) Computers are necessary to obtain and analyze data; (2) chemical concentrations can be quantified using previously recorded infrared reference spectra; and (3) analytical assumptions and results, including possible effects of interfering compounds, can be evaluated after the quantitative analysis. The following general principles and requirements of this Protocol are based on these characteristics.

3.1 Verifiability and Reproducibility of Results. Store all data and document data analysis techniques sufficient to allow an independent agent to reproduce the analytical results from the raw interferometric data.

3.2 Transfer of Reference Spectra. To determine whether reference spectra recorded under one set of conditions (e.g., optical bench, instrumental linewidth, absorption pathlength, detector performance, pressure, and temperature) can be used to analyze sample spectra taken under a different set of conditions, quantitatively compare "calibration transfer standards" (CTS) and reference spectra as described in this Protocol. (*Note:* The CTS may, but need not, include analytes of interest). To effect this, record the absorption spectra of the CTS (a) immediately before and immediately after recording reference spectra and (b) immediately after recording sample spectra.

3.3 Evaluation of FTIR Analyses. The applicability, accuracy, and precision of FTIR measurements are influenced by a number of interrelated factors, which may be divided into two classes:

3.3.1 Sample-Independent Factors. Examples are system configuration and performance (e.g., detector sensitivity and infrared source output), quality and applicability of reference absorption spectra, and type of mathematical analyses of the spectra. These factors define the fundamental limitations of FTIR measurements for a given system configuration. These limitations may be estimated from evaluations of the system before samples are available.

For example, the detection limit for the absorbing compound under a given set of conditions may be estimated from the system noise level and the strength of a particular absorption band. Similarly, the accuracy of measurements may be estimated from the analysis of the reference spectra.

3.3.2 Sample-Dependent Factors. Examples are spectral interferants (e.g., water vapor and CO_2) or the overlap of spectral features of different compounds and contamination deposits on reflective surfaces or transmitting windows. To maximize the effectiveness of the mathematical techniques used in spectral analysis, identification of interferants (a standard initial step) and analysis of samples (includes effect of other analytical errors) are necessary. Thus, the Protocol requires post-analysis calculation of measurement concentration uncertainties for the detection of these potential sources of measurement error.

4.0 Pre-Test Preparations and Evaluations

Before testing, demonstrate the suitability of FTIR spectrometry for the desired application according to the procedures of this section.

4.1 Identify Test Requirements. Identify and record the test requirements described in sections 4.1.1 through 4.1.4 of this addendum. These values set the desired or required goals of the proposed analysis; the description of methods for determining whether these goals are actually met during the analysis comprises the majority of this Protocol.

4.1.1 Analytes (specific chemical species) of interest. Label the analytes from i = 1 to I.

4.1.2 Analytical uncertainty limit (AU_i). The AU_i is the maximum permissible fractional uncertainty of analysis for the i^{th} analyte concentration, expressed as a fraction of the analyte concentration in the sample.

4.1.3 Required detection limit for each analyte (DL_i, ppm). The detection limit is the lowest concentration of an analyte for which its overall fractional uncertainty (OFU_i) is required to be less than its analytical uncertainty limit (AU_i).

4.1.4 Maximum expected concentration of each analyte ($CMAX_i$, ppm).

4.2 Identify Potential Interferants. Considering the chemistry of the process or results of previous studies, identify potential interferants, i.e., the major effluent constituents and any relatively minor effluent constituents that possess either strong absorption characteristics or strong structural similarities to any analyte of interest. Label them 1 through N_j, where the subscript "j" pertains to potential interferants. Estimate the concentrations of these compounds in the effluent ($CPOT_j$, ppm).

4.3 Select and Evaluate the Sampling System. Considering the source, e.g., temperature and pressure profiles, moisture content, analyte characteristics, and particulate concentration, select the equipment for extracting gas samples. Recommended are a particulate filter, heating system to maintain sample temperature above the dew point for all sample constituents at all points within the sampling system (including the filter), and sample conditioning system (e.g., coolers, water-permeable membranes that remove water or other compounds from the sample, and dilution devices) to remove spectral interferants or to protect the sampling and analytical components. Determine the minimum absolute sample system pressure (P_{min}, mmHg) and the infrared absorption cell volume (V_{ss}, liter). Select the techniques and/or equipment for the measurement of sample pressures and temperatures.

4.4 Select Spectroscopic System. Select a spectroscopic configuration for the

application. Approximate the absorption pathlength (L_S', meter), sample pressure (P_S', kPa), absolute sample temperature T_S', and signal integration period (t_{SS}, seconds) for the analysis. Specify the nominal minimum instrumental linewidth (MIL) of the system. Verify that the fractional error at the approximate values P_S' and T_S' is less than one half the smallest value AU_i (see section 4.1.2 of this addendum).

4.5 Select Calibration Transfer Standards (CTS's). Select CTS's that meet the criteria listed in sections 4.5.1, 4.5.2, and 4.5.3 of this addendum. (*Note:* It may be necessary to choose preliminary analytical regions (see section 4.7 of this addendum), identify the minimum analyte linewidths, or estimate the system noise level (see section 4.12 of this addendum) before selecting the CTS. More than one compound may be needed to meet the criteria; if so, obtain separate cylinders for each compound.)

4.5.1 The central wavenumber position of each analytical region shall lie within 25 percent of the wavenumber position of at least one CTS absorption band.

4.5.2 The absorption bands in section 4.5.1 of this addendum shall exhibit peak absorbances greater than ten times the value RMS_{EST} (see section 4.12 of this addendum) but less than 1.5 absorbance units.

4.5.3 At least one absorption CTS band within the operating range of the FTIR instrument shall have an instrument-independent linewidth no greater than the narrowest analyte absorption band. Perform and document measurements or cite Studies to determine analyte and CTS compound linewidths.

4.5.4 For each analytical region, specify the upper and lower wavenumber positions (FFU_m and FFL_m, respectively) that bracket the CTS absorption band or bands for the associated analytical region. Specify the wavenumber range, FNU to FNL, containing the absorption band that meets the criterion of section 4.5.3 of this addendum.

4.5.5 Associate, whenever possible, a single set of CTS gas cylinders with a set of reference spectra.

Replacement CTS gas cylinders shall contain the same compounds at concentrations within 5 percent of that of the original CTS cylinders; the entire absorption spectra (not individual spectral segments) of the replacement gas shall be scaled by a factor between 0.95 and 1.05 to match the original CTS spectra.

4.6 Prepare Reference Spectra. (*Note:* Reference spectra are available in a permanent soft copy from the EPA spectral library on the EMTIC (Emission Measurement Technical Information Center) computer bulletin board; they may be used if applicable.)

4.6.1 Select the reference absorption pathlength (L_R) of the cell.

4.6.2 Obtain or prepare a set of chemical standards for each analyte, potential and known spectral interferants, and CTS. Select the concentrations of the chemical standards to correspond to the top of the desired range.

4.6.2.1 Commercially-Prepared Chemical Standards. Chemical standards for many compounds may be obtained from independent sources, such as a specialty gas manufacturer, chemical company, or commercial laboratory. These standards (accurate to within ± 2 percent) shall be prepared according to EPA Traceability Protocol (see Reference D) or shall be traceable to NIST standards. Obtain from the supplier an estimate of the stability of the analyte concentration. Obtain and follow all of the supplier's recommendations for recertifying the analyte concentration.

4.6.2.2 Self-Prepared Chemical Standards. Chemical standards may be prepared by diluting certified commercially prepared chemical gases or pure analytes with ultra-pure carrier (UPC) grade nitrogen according to the barometric and volumetric techniques generally described in Reference A, section A4.6.

4.6.3 Record a set of the absorption spectra of the CTS {R1}, then a set of the reference spectra at two or more concentrations in duplicate over the desired range (the top of the range must be less than 10 times that of the bottom), followed by a second set of CTS spectra {R2}. (If self-prepared standards are used, see section 4.6.5 of this addendum before disposing of any of the standards.) The maximum accepted standard concentration-pathlength product (ASCPP) for each compound shall be higher than the maximum estimated concentration-pathlength products for both analytes and known interferants in the effluent gas. For each analyte, the minimum ASCPP shall be no greater than ten times the concentration-pathlength product of that analyte at its required detection limit.

4.6.4 Permanently store the background and interferograms in digitized form. Document details of the mathematical process for generating the spectra from these interferograms. Record the sample pressure (P_R), sample temperature (T_R), reference absorption pathlength (L_R), and interferogram signal integration period (t_{SR}). Signal integration periods for the background interferograms shall be $\geq t_{SR}$. Values of P_R, L_R, and t_{SR} shall not deviate by more than ±1 percent from the time of recording {R1} to that of recording {R2}.

4.6.5 If self-prepared chemical standards are employed and spectra of only two concentrations are recorded for one or more compounds, verify the accuracy of the dilution technique by analyzing the prepared standards for those compounds with a secondary (non-FTIR) technique in accordance with sections 4.6.5.1 through 4.6.5.4 of this addendum.

4.6.5.1 Record the response of the secondary technique to each of the four standards prepared.

4.6.5.2 Perform a linear regression of the response values (dependant variable) versus the accepted standard concentration (ASC) values (independent variable), with the regression constrained to pass through the zero-response, zero ASC point.

4.6.5.3 Calculate the average fractional difference between the actual response values and the regression-predicted values (those calculated from the regression line using the four ASC values as the independent variable).

4.6.5.4 If the average fractional difference value calculated in section 4.6.5.3 of this addendum is larger for any compound than the corresponding AUi, the dilution technique is not sufficiently accurate and the reference spectra prepared are not valid for the analysis.

4.7 Select Analytical Regions. Using the general considerations in section 7 of Reference A and the spectral characteristics of the analytes and interferants, select the analytical regions for the application. Label them m = 1 to M. Specify the lower, center and upper wavenumber positions of each analytical region (FL_m, FC_m, and FU_m, respectively). Specify the analytes and interferants which exhibit absorption in each region.

4.8 Determine Fractional Reproducibility Uncertainties. Using attachement E of this addendum, calculate the fractional reproducibility uncertainty for each analyte (FRU_i) from a comparison of {R1} and {R2}. If $FRU_i > AU_i$ for any analyte, the reference spectra generated in accordance with section 4.6 of this addendum are not valid for the application.

4.9 Identify Known Interferants. Using attachment B of this addendum, determine which potential interferants affect the analyte concentration determinations. Relabel these potential interferant as "known" interferants, and designate these compounds from k = 1 to K. Attachment B to this addendum also provides criteria for determining whether the selected analytical regions are suitable.

4.10 Prepare Computerized Analytical Programs.

4.10.1 Choose or devise mathematical techniques (e.g, classical least squares, inverse least squares, cross-correlation, and factor analysis) based on equation 4 of Reference A that are appropriate for analyzing spectral data by comparison with reference spectra.

4.10.2 Following the general recommendations of Reference A, prepare a computer program or set of programs that analyzes all of the analytes and known interferants, based on the selected analytical regions (section 4.7 of this addendum) and the prepared reference spectra (section 4.6 of this addendum). Specify the baseline correction technique (e.g., determining the slope and intercept of a linear baseline contribution in each analytical region) for each analytical region, including all relevant wavenumber positions.

4.10.3 Use programs that provide as output [at the reference absorption pathlength (L_R), reference gas temperature (T_R), and reference gas pressure (P_R)] the analyte concentrations, the known interferant concentrations, and the baseline slope and intercept values. If the sample absorption pathlength (L_S), sample gas temperature (T_S), or sample gas pressure (P_S) during the actual sample analyses differ from L_R, T_R, and P_R, use a program or set of programs that applies multiplicative corrections to the derived concentrations to account for these variations, and that provides as output both the corrected and uncorrected values. Include in the report of the analysis (see section 7.0 of this addendum) the details of any transformations applied to the original reference spectra (e.g., differentiation), in such a fashion that all analytical results may

be verified by an independent agent from the reference spectra and data spectra alone.

4.11 Determine the Fractional Calibration Uncertainty. Calculate the fractional calibration uncertainty for each analyte (FCU_i) according to attachment F of this addendum, and compare these values to the fractional uncertainty limits (AU_i; see section 4.1.2 of this addendum). If $PCU_i > AU_i$, either the reference spectra or analytical programs for that analyte are unsuitable.

4.12 Verify System Configuration Suitability. Using attachment C of this addendum, measure or obtain estimates of the noise level (RMS_{EST}, absorbance) of the FTIR system. Alternatively, construct the complete spectrometer system and determine the values RMS_{Sm} using attachment G of this addendum. Estimate the minimum measurement uncertainty for each analyte (MAU_i, ppm) and known interferant (MIU_k, ppm) using attachment D of this addendum. Verify that (a) $MAU_i < (AU_i)\ (DL_i)$, $FRU_i < AU_i$, and $FCU_i < AU_i$ for each analyte and that (b) the CTS chosen meets the requirements listed in sections 4.5.1 through 4.5.5 of this addendum.

5.0 Sampling and Analysis Procedure

5.1 Analysis System Assembly and Leak-Test. Assemble the analysis system. Allow sufficient time for all system components to reach the desired temperature. Then, determine the leak-rate (L_R) and leak volume (V_L), where $V_L = L_R\ t_{SS}$. Leak volumes shall be ≤4 percent of V_{SS}.

5.2 Verify Instrumental Performance. Measure the noise level of the system in each analytical region using the procedure of attachment G of this addendum. If any noise level is higher than that estimated for the system in section 4.12 of this addendum, repeat the calculations of attachment D of this addendum and verify that the requirements of section 4.12 of this addendum are met; if they are not, adjust or repair the instrument and repeat this section.

5.3 Determine the Sample Absorption Pathlength. Record a background spectrum. Then, fill the absorption cell with CTS at the pressure P_R and record a set of CTS spectra {R3}. Store the background and unscaled CTS single beam interferograms and spectra. Using attachment H of this addendum, calculate the sample absorption pathlength (L_S) for each analytical region. The values L_S shall not differ from the approximated sample pathlength L_S' (see section 4.4 of this addendum) by more than 5 percent.

5.4 Record Sample Spectrum. Connect the sample line to the source. Either evacuate the absorption cell to an absolute pressure below 5 mmHg before extracting a sample from the effluent stream into the absorption cell, or pump at least ten cell volumes of sample through the cell before obtaining a sample. Record the sample pressure P_S. Generate the absorbance spectrum of the sample. Store the background and sample single beam interferograms, and document the process by which the absorbance spectra are generated from these data. (If necessary, apply the spectral transformations developed in section 5.6.2 of this addendum). The resulting sample spectrum is referred to below as S_S. (*Note:* Multiple sample spectra may be recorded according to the procedures of section 5.4 of this addendum before performing sections 5.5 and 5.6 of this addendum.)

5.5 Quantify Analyte Concentrations. Calculate the unscaled analyte concentrations RUA_i and unscaled interferant concentrations RUI_K using the programs developed in section 4 of this addendum. To correct for pathlength and pressure variations between the reference and sample spectra, calculate the scaling factor, R_{LPS} using equation A.1,

$$R_{LPS} = (L_R P_R T_S)/(L_S P_S T_R) \quad \text{((Eq. 320–A.1)}$$

Calculate the final analyte and interferant concentrations RSA_i and RSI_k using equations A.2 and A.3,

$$RSA_i = R_{LPS} RUA_i \quad \text{(Eq. 320–A.2)}$$
$$RSI_k = R_{LPS} RUI_k \quad \text{(Eq. 320–A.3)}$$

5.6 Determine Fractional Analysis Uncertainty. Fill the absorption cell with CTS at the pressure P_S. Record a set of CTS spectra {R4}. Store the background and CTS single beam interferograms. Using appendix H of this addendum, calculate the fractional analysis uncertainty (FAU) for each analytical region. If the FAU indicated for any analytical region is greater than the required accuracy requirements determined in sections 4.1.1 through 4.1.4 of this addendum, then comparisons to previously recorded reference spectra are invalid in that analytical region, and the analyst shall perform one or both of the procedures of sections 5.6.1 through 5.6.2 of this addendum.

5.6.1 Perform instrumental checks and adjust the instrument to restore its performance to acceptable levels. If adjustments are made, repeat sections 5.3, 5.4 (except for the recording of a sample spectrum), and 5.5 of this addendum to demonstrate that acceptable uncertainties are obtained in all analytical regions.

5.6.2 Apply appropriate mathematical transformations (e.g., frequency shifting, zero-filling, apodization, smoothing) to the spectra (or to the interferograms upon which the spectra are based) generated during the performance of the procedures of section 5.3 of this addendum. Document these transformations and their reproducibility. Do not apply multiplicative scaling of the spectra, or any set of transformations that is mathematically equivalent to multiplicative scaling. Different transformations may be applied to different analytical regions. Frequency shifts shall be less than one-half the minimum instrumental linewidth, and must be applied to all spectral data points in an analytical region. The mathematical transformations may be retained for the analysis if they are also applied to the appropriate analytical regions of all sample spectra recorded, and if all original sample spectra are digitally stored. Repeat sections 5.3, 5.4 (except the recording of a sample spectrum), and 5.5 of this addendum to demonstrate that these transformations lead to acceptable calculated concentration uncertainties in all analytical regions.

6.0 Post-Analysis Evaluations

Estimate the overall accuracy of the analyses performed in accordance with sections 5.1 through 5.6 of this addendum using the procedures of sections 6.1 through 6.3 of this addendum.

6.1 Qualitatively Confirm the Assumed Matrix. Examine each analytical region of the sample spectrum for spectral evidence of unexpected or unidentified interferants. If found, identify the interfering compounds (see Reference C for guidance) and add them to the list of known interferants. Repeat the procedures of section 4 of this addendum to include the interferants in the uncertainty calculations and analysis procedures. Verify that the MAU and FCU values do not increase beyond acceptable levels for the application requirements. Re-calculate the analyte concentrations (section 5.5 of this addendum) in the affected analytical regions.

6.2 Quantitatively Evaluate Fractional Model Uncertainty (FMU). Perform the procedures of either section 6.2.1 or 6.2.2 of this addendum:

6.2.1 Using appendix I of this addendum, determine the fractional model error (FMU) for each analyte.

6.2.2 Provide statistically determined uncertainties FMU for each analyte which are equivalent to two standard deviations at the 95 percent confidence level. Such determinations, if employed, must be based on mathematical examinations of the pertinent sample spectra (not the reference spectra alone). Include in the report of the analysis (see section 7.0 of this addendum) a complete description of the determination of the concentration uncertainties.

6.3 Estimate Overall Concentration Uncertainty (OCU). Using appendix J of this addendum, determine the overall concentration uncertainty (OCU) for each analyte. If the OCU is larger than the required accuracy for any analyte, repeat sections 4 and 6 of this addendum.

7.0 Reporting Requirements

[Documentation pertaining to virtually all the procedures of sections 4, 5, and 6 will be required. Software copies of reference spectra and sample spectra will be retained for some minimum time following the actual testing.]

8.0 References

(A) Standard Practices for General Techniques of Infrared Quantitative Analysis (American Society for Testing and Materials, Designation E 168–88).

(B) The Coblentz Society Specifications for Evaluation of Research Quality Analytical Infrared Reference Spectra (Class II); Anal. Chemistry *47*, 945A (1975); Appl. Spectroscopy *444*, pp. 211–215, 1990.

(C) Standard Practices for General Techniques for Qualitative Infrared Analysis, American Society for Testing and Materials, Designation E 1252–88.

(D) "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," U.S. Environmental Protection Agency Publication No. EPA/600/R–93/224, December 1993.

Attachment A to Addendum to Method 320—Definitions of Terms and Symbols

A.1 Definitions of Terms. All terms used in this method that are not defined below have the meaning given to them in the CAA and in subpart A of this part.

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Absorption band means a contiguous wavenumber region of a spectrum (equivalently, a contiguous set of absorbance spectrum data points) in which the absorbance passes through a maximum or a series of maxima.

Absorption pathlength means the distance in a spectrophotometer, measured in the direction of propagation of the beam of radiant energy, between the surface of the specimen on which the radiant energy is incident and the surface of the specimen from which it is emergent.

Analytical region means a contiguous wavenumber region (equivalently, a contiguous set of absorbance spectrum data points) used in the quantitative analysis for one or more analytes. (*Note:* The quantitative result for a single analyte may be based on data from more than one analytical region.)

Apodization means modification of the ILS function by multiplying the interferogram by a weighing function whose magnitude varies with retardation.

Background spectrum means the single beam spectrum obtained with all system components without sample present.

Baseline means any line drawn on an absorption spectrum to establish a reference point that represents a function of the radiant power incident on a sample at a given wavelength.

Beers's law means the direct proportionality of the absorbance of a compound in a homogeneous sample to its concentration.

Calibration transfer standard (CTS) gas means a gas standard of a compound used to achieve and/or demonstrate suitable quantitative agreement between sample spectra and the reference spectra; see section 4.5.1 of this addendum.

Compound means a substance possessing a distinct, unique molecular structure.

Concentration (c) means the quantity of a compound contained in a unit quantity of sample. The unit "ppm" (number, or mole, basis) is recommended.

Concentration-pathlength product means the mathematical product of concentration of the species and absorption pathlength. For reference spectra, this is a known quantity; for sample spectra, it is the quantity directly determined from Beer's law. The units "centimeters-ppm" or "meters-ppm" are recommended.

Derivative absorption spectrum means a plot of rate of change of absorbance or of any function of absorbance with respect to wavelength or any function of wavelength.

Double beam spectrum means a transmission or absorbance spectrum derived by dividing the sample single beam spectrum by the background spectrum.(*Note:* The term "double-beam" is used elsewhere to denote a spectrum in which the sample and background interferograms are collected simultaneously along physically distinct absorption paths. Here, the term denotes a spectrum in which the sample and background interferograms are collected at different times along the same absorption path.)

Fast Fourier transform (FFT) means a method of speeding up the computation of a discrete FT by factoring the data into sparse matrices containing mostly zeros.

Flyback means interferometer motion during which no data are recorded.

Fourier transform (FT) means the mathematical process for converting an amplitude-time spectrum to an amplitude-frequency spectrum, or vice versa.

Fourier transform infrared (FTIR) spectrometer means an analytical system that employs a source of mid-infrared radiation, an interferometer, an enclosed sample cell of known absorption pathlength, an infrared detector, optical elements that transfer infrared radiation between components, and a computer system. The time-domain detector response (interferogram) is processed by a Fourier transform to yield a representation of the detector response vs. infrared frequency. (*Note:* When FTIR spectrometers are interfaced with other instruments, a slash should be used to denote the interface; e.g., GC/FTIR; HPCL/FTIR, and the use of FTIR should be explicit; i.e., FTIR not IR.)

Frequency, ν means the number of cycles per unit time.

Infrared means the portion of the electromagnetic spectrum containing wavelengths from approximately 0.78 to 800 microns.

Interferogram, I(σ) means record of the modulated component of the interference signal measured as a function of retardation by the detector.

Interferometer means device that divides a beam of radiant energy into two or more paths, generates an optical path difference between the beams, and recombines them in order to produce repetitive interference maxima and minima as the optical retardation is varied.

Linewidth means the full width at half maximum of an absorption band in units of wavenumbers (cm^{-1}).

Mid-infrared means the region of the electromagnetic spectrum from approximately 400 to 5000 cm^{-1}.

Reference spectra means absorption spectra of gases with known chemical compositions, recorded at a known absorption pathlength, which are used in the quantitative analysis of gas samples.

Retardation, σ means optical path difference between two beams in an interferometer, also known as "optical path difference" or "optical retardation."

Scan means digital representation of the detector output obtained during one complete motion of the interferometer's moving assembly or assemblies.

Scaling means application of a multiplicative factor to the absorbance values in a spectrum.

Single beam spectrum means Fourier-transformed interferogram, representing the detector response vs. wavenumber. (*Note:* The term "single-beam" is used elsewhere to denote any spectrum in which the sample and background interferograms are recorded on the same physical absorption path; such usage differentiates such spectra from those generated using interferograms recorded along two physically distinct absorption paths (see "double-beam spectrum" above). Here, the term applies (for example) to the two spectra used directly in the calculation of transmission and absorbance spectra of a sample.)

Standard reference material means a reference material, the composition or properties of which are certified by a recognized standardizing agency or group. (*Note:* The equivalent ISO term is "certified reference material.")

Transmittance, T means the ratio of radiant power transmitted by the sample to the radiant power incident on the sample. Estimated in FTIR spectroscopy by forming the ratio of the single-beam sample and background spectra.

Wavenumber, ν means the number of waves per unit length. *(Note:* The usual unit of wavenumber is the reciprocal centimeter, cm^{-1}. The wavenumber is the reciprocal of the wavelength, λ, when λ is expressed in centimeters.) *Zero-filling* means the addition of zero-valued points to the end of a measured interferogram. *(Note:* Performing the FT of a zero-filled interferogram results in correctly interpolated points in the computed spectrum.)

A.2 Definitions of Mathematical Symbols. The symbols used in equations in this subpart are defined as follows:

(1) A, absorbance = the logarithm to the base 10 of the reciprocal of the transmittance (T).

$$A = \log_{10}\left(\frac{1}{T}\right) = -\log_{10}T$$

(2) AAI_{im} = band area of the i^{th} analyte in the m^{th} analytical region, at the concentration (CL_i) corresponding to the product of its required detection limit (DL_i) and analytical uncertainty limit (AU_i) :

(3) AAV_{im} = average absorbance of the i^{th} analyte in the m^{th} analytical region, at the concentration (CL_i) corresponding to the product of its required detection limit (DL_i) and analytical uncertainty limit (AU_i) .

(4) ASC, accepted standard concentration = the concentration value assigned to a chemical standard.

(5) ASCPP, accepted standard concentration-pathlength product = for a chemical standard, the product of the ASC and the sample absorption pathlength. The units "centimeters-ppm" or "meters-ppm" are recommended.

(6) AU_i, analytical uncertainty limit = the maximum permissible fractional uncertainty of analysis for the i^{th} analyte concentration, expressed as a fraction of the analyte concentration determined in the analysis.

(7) AVT_m = average estimated total absorbance in the m^{th} analytical region.

(8) $CKWN_k$ = estimated concentration of the k^{th} known interferant.

(9) $CMAX_i$ = estimated maximum concentration of the i^{th} analyte.

(10) $CPOT_j$ = estimated concentration of the j^{th} potential interferant.

(11) DL_i, required detection limit = for the i^{th} analyte, the lowest concentration of the analyte for which its overall fractional uncertainty (OFU) is required to be less than the analytical uncertainty limit (AU_i).

(12) FC_m = center wavenumber position of the m^{th} analytical region.

(13) FAU_i, fractional analytical uncertainty = calculated uncertainty in the measured concentration of the i^{th} analyte because of errors in the mathematical comparison of reference and sample spectra.

(14) FCU_i, fractional calibration uncertainty = calculated uncertainty in the measured concentration of the i^{th} analyte because of errors in Beer's law modeling of the reference spectra concentrations.

(15) FFL_m = lower wavenumber position of the CTS absorption band associated with the m^{th} analytical region.

(16) FFU_m = upper wavenumber position of the CTS absorption band associated with the m^{th} analytical region.

(17) FL_m = lower wavenumber position of the m^{th} analytical region.

(18) FMU_i, fractional model uncertainty = calculated uncertainty in the measured concentration of the i^{th} analyte because of errors in the absorption model employed.

(19) FN_L = lower wavenumber position of the CTS spectrum containing an absorption band at least as narrow as the analyte absorption bands.

(20) FN_U = upper wavenumber position of the CTS spectrum containing an absorption band at least as narrow as the analyte absorption bands.

(21) FRU_i, fractional reproducibility uncertainty = calculated uncertainty in the measured concentration of the i^{th} analyte because of errors in the reproducibility of spectra from the FTIR system.

(22) FU_m = upper wavenumber position of the m^{th} analytical region.

(23) IAI_{jm} = band area of the j^{th} potential interferant in the m^{th} analytical region, at its expected concentration ($CPOT_j$).

(24) IAV_{im} = average absorbance of the i^{th} analyte in the m^{th} analytical region, at its expected concentration ($CPOT_j$).

(25) $ISC_{i \text{ or } k}$, indicated standard concentration = the concentration from the computerized analytical program for a single-compound reference spectrum for the i^{th} analyte or k^{th} known interferant.

(26) kPa = kilo-Pascal (see Pascal).

(27) L_S' = estimated sample absorption pathlength.

(28) L_R = reference absorption pathlength.

(29) L_S = actual sample absorption pathlength.

(30) MAU_i = mean of the MAU_{im} over the appropriate analytical regions.

(31) MAU_{im}, minimum analyte uncertainty = the calculated minimum concentration for which the analytical uncertainty limit (AU_i) in the measurement of the i^{th} analyte, based on spectral data in the m^{th} analytical region, can be maintained.

(32) MIU_j = mean of the MIU_{jm} over the appropriate analytical regions.

(33) MIU_{jm}, minimum interferant uncertainty = the calculated minimum concentration for which the analytical uncertainty limit $CPOT_j/20$ in the measurement of the j^{th} interferant, based on spectral data in the m^{th} analytical region, can be maintained.

(34) MIL, minimum instrumental linewidth = the minimum linewidth from the FTIR system, in wavenumbers. (*Note:* The MIL of a system may be determined by observing an absorption band known (through higher resolution examinations) to be narrower than indicated by the system. The MIL is fundamentally limited by the retardation of the interferometer, but is also affected by other operational parameters (e.g., the choice of apodization).)

(35) N_i = number of analytes.

(36) N_j = number of potential interferants.

(37) N_k = number of known interferants.

(38) N_{scan} = the number of scans averaged to obtain an interferogram.

(39) OFU_i = the overall fractional uncertainty in an analyte concentration determined in the analysis (OFU_i = MAX {FRU, FCU_i, FAU_i, FMU_i }).

(40) Pascal (Pa) = metric unit of static pressure, equal to one Newton per square meter; one atmosphere is equal to 101,325 Pa; 1/760 atmosphere (one Torr, or one millimeter Hg) is equal to 133.322 Pa.

(41) P_{min} = minimum pressure of the sampling system during the sampling procedure.

(42) P_S' = estimated sample pressure.

(43) P_R = reference pressure.

(44) P_S = actual sample pressure.

(45) RMS_{nm} = measured noise level of the FTIR system in the m^{th} analytical region.

(46) RMSD, root mean square difference = a measure of accuracy determined by the following equation:

$$RMSD = \sqrt{\left(\frac{1}{n}\right)\sum_{i=1}^{n} e_i^2}$$

Where:

n = the number of observations for which the accuracy is determined.

e_i = the difference between a measured value of a property and its mean value over the n observations.

Note: The RMSD value "between a set of n contiguous absorbance values (A_i) and the mean of the values" (A_M) is defined as

$$RMSD = \sqrt{\left(\frac{1}{n}\right)\sum_{i=1}^{n} (A_i - A_M)^2}$$

(47) RSA_i = the (calculated) final concentration of the i^{th} analyte.

(48) RSI_k = the (calculated) final concentration of the k^{th} known interferant.

(49) t_{scan}, scan time = time used to acquire a single scan, not including flyback.

(50) t_S, signal integration period = the period of time over which an interferogram is averaged by addition and scaling of individual scans. In terms of the number of scans N_{scan} and scan time t_{scan}, $t_S = N_{scan}t_{scan}$.

(51) t_{SR} = signal integration period used in recording reference spectra.

(52) t_{SS} = signal integration period used in recording sample spectra.

(53) T_R = absolute temperature of gases used in recording reference spectra.

(54) T_S = absolute temperature of sample gas as sample spectra are recorded.

(55) TP, Throughput = manufacturer's estimate of the fraction of the total infrared power transmitted by the absorption cell and transfer optics from the interferometer to the detector.

(56) V_{SS} = volume of the infrared absorption cell, including parts of attached tubing.

(57) W_{ik} = weight used to average over analytical regions k for quantities related to the analyte i; see attachment D of this addendum.

Attachment B to Addendum to Method 320—Identifying Spectral Interferants

B.1 General

B.1.1 Assume a fixed absorption pathlength equal to the value L_S'.

B.1.2 Use band area calculations to compare the relative absorption strengths of the analytes and potential interferants. In the m^{th} analytical region (FL_m to FU_m), use either rectangular or trapezoidal approximations to determine the band areas described below (see Reference A, sections A.3.1 through A.3.3). Document any baseline corrections applied to the spectra.

B.1.3 Use the average total absorbance of the analytes and potential interferants in each analytical region to determine whether the analytical region is suitable for analyte concentration determinations. (*Note:* The average absorbance in an analytical region is the band area divided by the width of the analytical region in wavenumbers. The average total absorbance in an analytical region is the sum of the average absorbances of all analytes and potential interferants.)

B.2 Calculations

B.2.1 Prepare spectral representations of each analyte at the concentration $CL_i = (DL_i)(AU_i)$, where DL_i is the required detection limit and AU_i is the maximum permissible analytical uncertainty. For the m^{th} analytical region, calculate the band area (AAI_{im}) and average absorbance (AAV_{im}) from these scaled analyte spectra.

B.2.2 Prepare spectral representations of each potential interferant at its expected concentration ($CPOT_j$). For the m^{th} analytical region, calculate the band area (IAI_{jm}) and average absorbance (IAV_{jm}) from these scaled potential interferant spectra.

B.2.3 Repeat the calculation for each analytical region, and record the band area results in matrix form as indicated in Figure B.1.

B.2.4 If the band area of any potential interferant in an analytical region is greater than the one-half the band area of any analyte (i.e., $IAI_{jm} > 0.5\ AAI_{im}$ for any pair ij and any m), classify the potential interferant as a known interferant. Label the known interferants k = 1 to K. Record the results in matrix form as indicated in Figure B.2.

B.2.5 Calculate the average total absorbance (AVT_m) for each analytical region and record the values in the last row of the matrix described in Figure B.2. Any analytical region where $AVT_m > 2.0$ is unsuitable.

FIGURE B.1.—PRESENTATION OF POTENTIAL INTERFERANT CALCULATIONS

	Analytical regions	
	I	M
Analyte Labels		
1	AAI_{11}	AAI_{1M}
I	AAI_{I1}	AAI_{IM}
Potential Interferant Labels		
1	IAI_{11}	IAI_{1M}

FIGURE B.1.—PRESENTATION OF POTENTIAL INTERFERANT CALCULATIONS—Continued

	Analytical regions	
	1	M
J	IAI_{J1}	IAI_{JM}

FIGURE B.2.—PRESENTATION OF KNOWN INTERFERANT CALCULATIONS

	Analytical regions	
	1	M
Analyte Labels		
1	AAI_{11}	AAI_{1M}
I	AAI_{I1}	AAI_{IM}
Known Interferant Labels		
1	IAI_{11}	IAI_{1M}
K	IAI_{K1}	IAI_{KM}
Total Average Absorbance.	AVT_1	AVT_M

Attachment C to Addendum to Method 320—Estimating Noise Levels

C.1 General

C.1.1 The root-mean-square (RMS) noise level is the standard measure of noise in this addendum. The RMS noise level of a contiguous segment of a spectrum is defined as the RMS difference (RMSD) between the absorbance values which form the segment and the mean value of that segment (see attachment A of this addendum).

C.1.2 The RMS noise value in double-beam absorbance spectra is assumed to be inversely proportional to: (a) the square root of the signal integration period of the sample single beam spectra from which it is formed, and (b) the total infrared power transmitted through the interferometer and absorption cell.

C.1.3 Practically, the assumption of C.1.2 allows the RMS noise level of a complete system to be estimated from the quantities described in sections C.1.3.1 through C.1.3.4:

C.1.3.1 RMS_{MAN}, the noise level of the system (in absorbance units), without the absorption cell and transfer optics, *under those conditions necessary to yield the specified minimum instrumental linewidth,* e.g., Jacquinot stop size.

C.1.3.2 t_{MAN}, the manufacturer's signal integration time used to determine RMS_{MAN}.

C.1.3.3 t_{SS}, the signal integration time for the analyses.

C.1.3.4 TP, the manufacturer's estimate of the fraction of the total infrared power transmitted by the absorption cell and transfer optics from the interferometer to the detector.

C.2 Calculations

C.2.1 Obtain the values of RMS_{MAN}, t_{MAN}, and TP from the manufacturers of the equipment, or determine the noise level by direct measurements with the completely constructed system proposed in section 4 of this addendum.

C.2.2 Calculate the noise value of the system (RMS_{EST}) using equation C.1.

$$RMS_{EST} = RMS_{MAN}\, TP \sqrt{\frac{t_{ss}}{t_{MAN}}} \qquad \text{(Eq. 320-C.1)}$$

Attachment D to Addendum to Method 320—Estimating Minimum Concentration Measurement Uncertainties (MAU and MIU)

D.1 General

Estimate the minimum concentration measurement uncertainties for the i^{th} analyte (MAU_i) and j^{th} interferant (MIU_j) based on the spectral data in the m^{th} analytical region by comparing the analyte band area in the analytical region (AAI_{im}) and estimating or measuring the noise level of the system (RMS_{EST} or RMS_{Sm}). (*Note:* For a single analytical region, the MAU or MIU value is the concentration of the analyte or interferant for which the band area is equal to the product of the analytical region width (in wavenumbers) and the noise level of the system (in absorbance units). If data from more than one analytical region are used in the determination of an analyte concentration, the MAU or MIU is the mean of the separate MAU or MIU values calculated for each analytical region.)

D.2 Calculations

D.2.1 For each analytical region, set RMS = RMS_{Sm} if measured (attachment G of this addendum), or set RMS = RMS_{EST} if estimated (attachment C of this addendum).

D.2.2 For each analyte associated with the analytical region, calculate MAU_{im} using equation D.1,

$$MAU_{im} = (RMS)(DL_i)(AU_i)\frac{(FU_m - FL_m)}{AAI_{im}} \qquad \text{(Eq. 320-D.1)}$$

D.2.3 If only the m^{th} analytical region is used to calculate the concentration of the i^{th} analyte, set $MAU_i = MAU_{im}$.

D.2.4 If more than one analytical region is used to calculate the concentration of the i^{th} analyte, set MAU_i equal to the weighted mean of the appropriate MAU_{im} values calculated above; the weight for each term in the mean is equal to the fraction of the total wavenumber range used for the calculation represented by each analytical region. Mathematically, if the set of analytical regions employed is {m'}, then the MAU for each analytical region is given by equation D.2.

$$MAU_i = \sum_{k \in \{m'\}} W_{ik}\, MAU_{ik} \quad \text{(Eq. 320-D.2)}$$

Where the weight Wik is defined for each term in the sum as

$$W_{ik} = (FM_k - FL_k)\left(\sum_{p \in \{m'\}} [FM_p - FL_p]\right)^{-1} \qquad \text{(Eq. 320-D.3)}$$

D.2.5 Repeat sections D.2.1 through D.2.4 of this to calculate the analogous values MIU_j for the interferants j = 1 to J. Replace the value $(AU_i)(DL_i)$ in equation D.1 with $CPOT_j/20$; replace the value AAI_{im} in equation D.1 with IAI_{jm}.

Attachment E to Addendum to Method 320—Determining Fractional Reproducibility Uncertainties (FRU)

E.1 General

To estimate the reproducibility of the spectroscopic results of the system, compare the CTS spectra recorded before and after preparing the reference spectra. Compare the difference between the spectra to their average band area. Perform the calculation for each analytical region on the portions of the CTS spectra associated with that analytical region.

E.2 Calculations

E.2.1 The CTS spectra {R1} consist of N spectra, denoted by S_{1i}, i=1, N. Similarly, the CTS spectra {R2} consist of N spectra, denoted by S_{2i}, i=1, N. Each S_{ki} is the spectrum of a single compound, where i denotes the compound and k denotes the set {Rk} of which S_{ki} is a member. Form the spectra S_3 according to $S_{3i} = S_{2i} - S_{1i}$ for each i. Form the spectra S_4 according to $S_{4i} = [S_{2i}+S_{1i}]/2$ for each i.

E.2.2 Each analytical region m is associated with a portion of the CTS spectra S_{2i} and S_{1i}, for a particular i, with lower and upper wavenumber limits FFL_m and FFU_m, respectively.

E.2.3 For each m and the associated i, calculate the band area of S_{4i} in the wavenumber range FFU_m to FFL_m. Follow the guidelines of section B.1.2 of this addendum for this band area calculation. Denote the result by BAV_m.

E.2.4 For each m and the associated i, calculate the RMSD of S_{3i} between the absorbance values and their mean in the wavenumber range FFU_m to FFL_m. Denote the result by $SRMS_m$.

E.2.5 For each analytical region m, calculate FM_m using equation E.1,

$$FM_m = SRMS_m(FFU_m - FFL_m)/BAV_m \qquad \text{(Eq. 320-E.1)}$$

E.2.6 If only the m^{th} analytical region is used to calculate the concentration of the i^{th} analyte, set $FRU_i = FM_m$.

E.2.7 If a number pi of analytical regions are used to calculate the concentration of the i^{th} analyte, set FRU_i equal to the weighted mean of the appropriate FM_m values calculated according to section E.2.5. Mathematically, if the set of analytical regions employed is {m'}, then FRU_i is given by equation E.2,

$$FRU_i = \sum_{k \in \{m'\}} W_{ik} FM_k \qquad \text{(Eq. 320-E.2)}$$

Where the W_{ik} are calculated as described in Attachment D of this addendum.

Attachment F to Addendum to Method 320—Determining Fractional Calibration Uncertainties (FCU)

F.1 General

F.1.1 The concentrations yielded by the computerized analytical program applied to each single-compound reference spectrum are defined as the indicated standard concentrations (ISC's). The ISC values for a single compound spectrum should ideally equal the accepted standard concentration (ASC) for one analyte or interferant, and should ideally be zero for all other compounds. Variations from these results are caused by errors in the ASC values, variations from the Beer's law (or modified Beer's law) model used to determine the concentrations, and noise in the spectra. When the first two effects dominate, the systematic nature of the errors is often apparent and the analyst shall take steps to correct them.

F.1.2 When the calibration error appears non-systematic, apply the procedures of sections F.2.1 through F.2.3 of this appendix to estimate the fractional calibration uncertainty (FCU) for each compound. The FCU is defined as the mean fractional error between the ASC and the ISC for all reference spectra with non-zero ASC for that compound. The FCU for each compound shall be less than the required fractional uncertainty specified in section 4.1 of this addendum.

F.1.3 The computerized analytical programs shall also be required to yield acceptably low concentrations for compounds with ISC = 0 when applied to the reference spectra. The ISC of each reference spectrum for each analyte or interferant shall not exceed that compound's minimum measurement uncertainty (MAU or MIU).

F.2 Calculations

F.2.1 Apply each analytical program to each reference spectrum. Prepare a similar table to that in Figure F.1 to present the ISC and ASC values for each analyte and interferant in each reference spectrum. Maintain the order of reference file names and compounds employed in preparing Figure F.1.

F.2.2 For all reference spectra in Figure F.1, verify that the absolute values of the ISC's are less than the compound's MAU (for analytes) or MIU (for interferants).

F.2.3 For each analyte reference spectrum, calculate the quantity (ASC–ISC)/ASC. For each analyte, calculate the mean of these values (the FCU_i for the i^{th} analyte) over all reference spectra. Prepare a similar table to that in Figure F.2 to present the FCU_i and analytical uncertainty limit (AU_i) for each analyte.

FIGURE F.1.—PRESENTATION OF ACCEPTED STANDARD CONCENTRATIONS (ASC'S) AND INDICATED STANDARD CONCENTRATIONS (ISC'S)

Compound name	Reference spectrum file name	ASC (ppm)	ISC (ppm)					
					Analytes i=1 j=1	Interferants I J		

FIGURE F.2.—PRESENTATION OF FRACTIONAL CALIBRATION UNCERTAINTIES (FCU'S) AND ANALYTICAL UNCERTAINTIES (AU'S)

Analyte name	FCU (%)	AU (%)

Attachment G to Addendum to Method 320—Measuring Noise Levels

G.1 General

The root-mean-square (RMS) noise level is the standard measure of noise. The RMS noise level of a contiguous segment of a spectrum is the RMSD between the absorbance values that form the segment and the mean value of the segment (see appendix A of this addendum).

G.2 Calculations

G.2.1 Evacuate the absorption cell or fill it with UPC grade nitrogen at approximately one atmosphere total pressure.

G.2.2 Record two single beam spectra of signal integration period t_{SS}.

G.2.3 Form the double beam absorption spectrum from these two single beam spectra, and calculate the noise level RMS_{Sm} in the M analytical regions.

Attachment H of Addendum to Method 320—Determining Sample Absorption Pathlength (L_S) and Fractional Analytical Uncertainty (FAU)

H.1 General

Reference spectra recorded at absorption pathlength (L_R), gas pressure (P_R), and gas absolute temperature (T_R) may be used to determine analyte concentrations in samples whose spectra are recorded at conditions different from that of the reference spectra, i.e., at absorption pathlength (L_S), absolute temperature (T_S), and pressure (P_S). This appendix describes the calculations for estimating the fractional uncertainty (FAU) of this practice. It also describes the calculations for determining the sample absorption pathlength from comparison of CTS spectra, and for preparing spectra for further instrumental and procedural checks.

H.1.1 Before sampling, determine the sample absorption pathlength using least squares analysis. Determine the ratio L_S/L_R by comparing the spectral sets {R1} and {R3}, which are recorded using the same CTS at L_S and L_R, and T_S and T_R, but both at P_R.

H.1.2 Determine the fractional analysis uncertainty (FAU) for each analyte by comparing a scaled CTS spectral set, recorded at L_S, T_S, and P_S, to the CTS reference spectra of the same gas, recorded at L_R, T_R, and P_R. Perform the quantitative comparison after recording the sample spectra, based on band areas of the spectra in the CTS absorbance band associated with each analyte.

H.2 Calculations

H.2.1 Absorption Pathlength Determination. Perform and document separate linear baseline corrections to each analytical region in the spectral sets {R1} and {R3}. Form a one-dimensional array A_R containing the absorbance values from all segments of {R1} that are associated with the analytical regions; the members of the array are A_{Ri}, i = 1, n. Form a similar one-dimensional array A_S from the absorbance values in the spectral set {R3}; the members of the array are A_{Si}, i = 1, n. Based on the model $A_S = rA_R + E$, determine the least-squares estimate of r', the value of r which minimizes the square error E^2. Calculate the sample absorption pathlength, L_S, using equation H.1,

$L_S = r'(T_S/T_R)L_R$ (Eq. 320–H.)

H.2.2 Fractional Analysis Uncertainty. Perform and document separate linear baseline corrections to each analytical region in the spectral sets {R1} and {R4}. Form the arrays A_S and A_R as described in section H.2.1 of this appendix, using values from {R1} to form A_R, and values from {R4} to form A_S. Calculate $NRMS_E$ and IA_{AV} using equations H.2 and H.3,

$$RMS_E = \sqrt{\sum_{i=1}^{n}\left[A_{Si} - \left(\frac{T_R}{T_S}\right)\left(\frac{L_S}{L_R}\right)\left(\frac{P_S}{P_R}\right)A_{Ri}\right]} \qquad \text{(Eq. 320-H.2)}$$

$$A_{AV} = \frac{1}{2}\sum_{i=1}^{n}\left|A_{Si} + \left(\frac{T_R}{T_S}\right)\left(\frac{L_S}{L_R}\right)\left(\frac{P_S}{P_R}\right)A_{Ri}\right| \qquad \text{(Eq. 320-H.3)}$$

The fractional analytical uncertainty, FAU, is given by equation H.4,

$$FAU = \frac{NRMS_E}{IA_{AV}} \qquad \text{(Eq. 320-H.4)}$$

Attachment I to Addendum to Method 320—Determining Fractional Model Uncertainties (FMU)

I.1 General

To prepare analytical programs for FTIR analyses, the sample constituents must first be assumed. The calculations in this, appendix, based upon a simulation of the sample spectrum, shall be used to verify the appropriateness of these assumptions. The simulated spectra consist of the sum of single compound reference spectra scaled to represent their contributions to the sample absorbance spectrum; scaling factors are based on the indicated standard concentrations (ISC) and measured (sample) analyte and interferant concentrations, the sample and reference absorption pathlengths, and the sample and reference gas pressures. No band-shape correction for differences in the temperature of the sample and reference spectra gases is made; such errors are included in the FMU estimate. The actual and simulated sample spectra are quantitatively compared to determine the fractional model uncertainty; this comparison uses the reference spectra band areas and residuals in the difference spectrum formed from the actual and simulated sample spectra.

I.2 Calculations

I.2.1 For each analyte (with scaled concentration RSA_i), select a reference spectrum SA_i with indicated standard concentration ISC_i. Calculate the scaling factors, RA_i, using equation I.1,

$$RA_i = \frac{T_R L_S P_S RSA_i}{T_S L_R P_R ISC_i} \qquad \text{(Eq. 320-I.1)}$$

Form the spectra SAC_i by scaling each SA_i by the factor RA_i.

I.2.2 For each interferant, select a reference spectrum SI_k with indicated standard concentration ISC_k. Calculate the scaling factors, RI_k, using equation I.2,

$$RI_k = \frac{T_R L_S P_S RSI_k}{T_S L_R P_R ISC_k} \qquad \text{(Eq. 320-I.2)}$$

Form the spectra SIC_k by scaling each SI_k by the factor RI_k.

I.2.3 For each analytical region, determine by visual inspection which of the spectra SAC_i and SIC_k exhibit absorbance bands within the analytical region. Subtract each spectrum SAC_i and SIC_k exhibiting absorbance from the sample spectrum S_S to form the spectrum SUB_S. To save analysis time and to avoid the introduction of unwanted noise into the subtracted spectrum, it is recommended that the calculation be made (1) only for those spectral data points within the analytical regions, and (2) for each analytical region separately using the original spectrum S_S.

I.2.4 For each analytical region m, calculate the RMSD of SUB_S between the absorbance values and their mean in the region FFU_m to FFL_m. Denote the result by $RMSS_m$.

I.2.5 For each analyte i, calculate FMm, using equation I.3,

$$FM_m = \frac{RMSS_m (FFU_m - FFL_m) AU_i DL_i}{AAI_i RSA_i} \qquad \text{(Eq. 320-I.3)}$$

for each analytical region associated with the analyte.

I.2.6 If only the m^{th} analytical region is used to calculate the concentration of the i^{th} analyte, set $FMU_i = FM_m$.

I.2.7 If a number of analytical regions are used to calculate the concentration of the i^{th} analyte, set FM_i equal to the weighted mean of the appropriate FM_m values calculated using equation I–3. Mathematically, if the set of analytical regions employed is {m'}, then the fractional model uncertainty, FMU, is given by equation I.4,

$$FMU_i = \sum_{k \in \{m'\}} W_{ik} FM_k \qquad \text{(Eq. 320-I.4)}$$

Where W_{ik} is calculated as described in Attachment D of this addendum.

Attachment J to Addendum to Method 320—Determining Overall Concentration Uncertainties (OCU)

The calculations in this addendum estimate the measurement uncertainties for various FTIR measurements. The lowest possible overall concentration uncertainty (OCU) for an analyte is its MAU value, which is an estimate of the absolute concentration uncertainty when spectral noise dominates the measurement error. However, if the product of the largest fractional concentration uncertainty (FRU, FCU, FAU, or FMU) and the measured concentration of an analyte exceeds the MAU for the analyte, then the OCU is this product. In mathematical terms, set OFU_i = MAX{FRU_i, FCU_i, FAU_i, FMU_i} and OCU_i = MAX{RSA_i*OFU_i, MAU_i}.

Method 321—Measurement of Gaseous Hydrogen Chloride Emissions At Portland Cement Kilns by Fourier Transform Infrared (FTIR) Spectroscopy

1.0 Introduction

This method should be performed by those persons familiar with the operation of Fourier Transform Infrared (FTIR) instrumentation in the application to source sampling. This document describes the sampling procedures for use in the application of FTIR spectrometry for the determination of vapor phase hydrogen chloride (HCl) concentrations both before and after particulate matter control devices installed at portland cement kilns. A procedure for analyte spiking is included for quality assurance. This method is considered to be self validating provided that the requirements listed in section 9 of this method are followed. The analytical procedures for interpreting infrared spectra from emission measurements are described in the "Protocol For The Use of Extractive Fourier Transform Infrared (FTIR) Spectrometry in Analyses of Gaseous Emissions From Stationary Industrial Sources", included as an addendum to proposed Method 320 of this appendix (hereafter referred to as the "FTIR Protocol"). References 1 and 2 describe the use of FTIR spectrometry in field measurements. Sample transport presents the principal difficulty in directly measuring HCl emissions. This identical problem must be overcome by any extractive measurement method. HCl is reactive and water soluble. The sampling system must be adequately designed to prevent sample condensation in the system.

1.1 Scope and Application.

This method is specifically designed for the application of FTIR Spectrometry in extractive measurements of gaseous HCl concentrations in portland cement kiln emissions.

1.2 Applicability. This method applies to the measurement of HCl [CAS No. 7647–01–0]. This method can be applied to the determination of HCl concentrations both before and after particulate matter control devices installed at portland cement manufacturing facilities. This method applies to either continuous flow through measurement (with isolated sample analysis) or grab sampling (batch analysis). HCl is measured using the mid-infrared spectral region for analysis (about 400 to 4000 cm^{-1} or 25 to 2.5 μm). Table 1 lists the suggested analytical region for quantification of HCl taking the interference from water vapor into consideration.

TABLE 1.—EXAMPLE ANALYTICAL REGION FOR HCL

Compound	Analytical region (cm^{-1})	Potential interferants
Hydrogen chloride.	2679–2840	Water.

1.3 Method Range and Sensitivity.

1.3.1 The analytical range is determined by the instrumental design and the composition of the gas stream. For practical purposes there is no upper limit to the range because the pathlength may be reduced or the sample may be diluted. The lower detection range depends on (1) the absorption coefficient of the compound in the analytical frequency region, (2) the spectral resolution, (3) the interferometer sampling time, (4) the detector sensitivity and response, and (5) the absorption pathlength.

1.3.2 The practical lower quantification range is usually higher than the instrument sensitivity allows and is dependent upon (1) the presence of interfering species in the exhaust gas including H_2O, CO_2, and SO_2, (2) analyte losses in the sampling system, (3) the optical alignment of the gas cell and transfer optics, and (4) the quality of the reflective surfaces in the cell (cell throughput). Under typical test conditions (moisture content of up to 30% and CO_2 concentrations from 1 to 15 percent), a 22 meter path length cell with a suitable sampling system may achieve a lower quantification range of from 1 to 5 ppm for HCl.

1.4 Data Quality Objectives.

1.4.1 In designing or configuring the analytical system, data quality is determined by measuring of the root mean square deviation (RMSD) of the absorbance values within a chosen spectral (analytical) region. The RMSD provides an indication of the signal-to-noise ratio (S/N) of the spectral baseline. Appendix D of the FTIR Protocol (the addendum to Method 320 of this appendix) presents a discussion of the relationship between the RMSD, lower detection limit, DL_i, and analytical uncertainty, AU_i. It is important to consider the target analyte quantification limit when performing testing with FTIR instrumentation, and to optimize the system to achieve the desired detection limit.

1.4.2 Data quality is determined by measuring the root mean square (RMS) noise level in each analytical spectral region (appendix C of the FTIR Protocol). The RMS noise is defined as the root mean square deviation (RMSD) of the absorbance values in an analytical region from the mean absorbance value in the same region. Appendix D of the *FTIR Protocol* defines the minimum analyte uncertainty (MAU), and how the RMSD is used to calculate the MAU. The MAU_{im} is the minimum concentration of the ith analyte in the mth analytical region for which the analytical uncertainty limit can be maintained. Table 2 to this method presents example values of AU and MAU using the analytical region presented in Table 1 to this method.

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TABLE 2.—EXAMPLE PRE-TEST PROTOCOL CALCULATIONS FOR HYDROGEN CHLORIDE

	HCl
Reference concentration (ppm-meters)/K	11.2
Reference Band Area	2.881
DL (ppm-meters)/K	0.1117
AU	0.2
CL (DL x AU)	0.02234
FL (cm^{-1})	2679.83
FU (cm^{-1})	2840.93
FC (cm^{-1})	2760.38
AAI (ppm-meters)/K	0.06435
RMSD	2.28 E–03
MAU (ppm-meters)/K	1.28E–01
MAU ppm at 22 meters and 250 °F	0.2284

2.0 Summary of Method

2.1 Principle.

See Method 320 of this appendix. HCl can also undergo rotation transitions by absorbing energy in the far-infrared spectral region. The rotational transitions are superimposed on the vibrational fundamental to give a series of lines centered at the fundamental vibrational frequency, 2885 cm^{-1}. The frequencies of absorbance and the pattern of rotational/vibrational lines are unique to HCl. When this distinct pattern is observed in an infrared spectrum of an unknown sample, it unequivocally identifies HCl as a component of the mixture. The infrared spectrum of HCl is very distinctive and cannot be confused with the spectrum of any other compound. See Reference 6.

2.2 Sampling and Analysis. See Method 320 of this appendix.

2.3 Operator Requirements. The analyst must have knowledge of spectral patterns to choose an appropriate absorption path length or determine if sample dilution is necessary. The analyst should also understand FTIR instrument operation well enough to choose instrument settings that are consistent with the objectives of the analysis.

3.0 Definitions

See A of the FTIR Protocol.

4.0 Interferences

This method will not measure HCl under conditions: (1) where the sample gas stream can condense in the sampling system or the instrumentation, or (2) where a high moisture content sample relative to the analyte concentrations imparts spectral interference due to the water vapor absorbance bands. For measuring HCl the first (sampling) consideration is more critical. Spectral interference from water vapor is not a significant problem except at very high moisture levels and low HCl concentrations.

4.1 Analytical Interferences. See Method 320 of this appendix.

4.1.1 Background Interferences. See Method 320 of this appendix.

4.1.2 Spectral interferences. Water vapor can present spectral interference for FTIR gas analysis of HCl. Therefore, the water vapor in the spectra of kiln gas samples must be accounted for. This means preparing at least one spectrum of a water vapor sample where the moisture concentration is close to that in the kiln gas.

4.2 Sampling System Interferences. The principal sampling system interferant for measuring HCl is water vapor. Steps must be taken to ensure that no condensation forms anywhere in the probe assembly, sample lines, or analytical instrumentation. Cold spots anywhere in the sampling system must be avoided. The extent of sampling system bias in the FTIR analysis of HCl depends on concentrations of potential interferants, moisture content of the gas stream, temperature of the gas stream, temperature of sampling system components, sample flow rate, and reactivity of HCl with other species in the gas stream (e.g., ammonia). For measuring HCl in a wet gas stream the temperatures of the gas stream, sampling components, and the sample flow rate are of primary importance. Analyte spiking with HCl is performed to demonstrate the integrity of the sampling system for transporting HCl vapor in the flue gas to the FTIR instrument. See section 9 of this method for a complete description of analyte spiking.

5.0 Safety

5.1 Hydrogen chloride vapor is corrosive and can cause irritation or severe damage to respiratory system, eyes and skin. Exposure to this compound should be avoided.

5.2 This method may involve sampling at locations having high positive or negative pressures, or high concentrations of hazardous or toxic pollutants, and can not address all safety problems encountered under these diverse sampling conditions. It is the responsibility of the tester(s) to ensure proper safety and health practices, and to determine the applicability of regulatory limitations before performing this test method. Leak-check procedures are outlined in section 8.2 of Method 320 of this .

6.0 Equipment and Supplies.

(**Note:** Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.)

6.1 FTIR Spectrometer and Detector. An FTIR Spectrometer system (interferometer, transfer optics, gas cell and detector) having the capability of measuring HCl to the predetermined minimum detectable level required (see section 4.1.3 of the FTIR Protocol). The system must also include an accurate means to control and/or measure the temperature of the FTIR gas analysis cell, and a personal computer with compatible software that provides real-time updates of the spectral profile during sample and spectral collection.

6.2 Pump. Capable of evacuating the FTIR cell volume to 1 Torr (133.3 Pascals) within two minutes (for batch sample analysis).

6.3 Mass Flow Meters/Controllers. To accurately measure analyte spike flow rate, having the appropriate calibrated range and a stated accuracy of ± 2 percent of the absolute measurement value. This device must be calibrated with the major component of the calibration/spike gas (*e.g.*, nitrogen) using an NIST traceable bubble meter or equivalent. Single point calibration checks should be performed daily in the field. When spiking HCl, the mass flow meter/controller should be thoroughly purged before and after introduction of the gas to prevent corrosion of the interior parts.

6.4 Polytetrafluoroethane tubing. Diameter and length suitable to connect cylinder regulators.

6.5 Stainless Steel tubing. Type 316 of appropriate length and diameter for heated connections.

6.6 Gas Regulators. Purgeable HCl regulator.

6.7 Pressure Gauge. Capable of measuring pressure from 0 to 1000 Torr (133.3 Pa=1 Torr) within ± 5 percent.

6.8 Sampling Probe. Glass, stainless steel or other appropriate material of sufficient length and physical integrity to sustain heating, prevent adsorption of analytes and capable of reaching gas sampling point.

6.9 Sampling Line. Heated 180 °C (360 °F) and fabricated of either stainless steel, polytetrafluoroethane or other material that prevents adsorption of HCl and transports effluent to analytical instrumentation. The extractive sample line must have the capability to transport sample gas to the analytical components as well as direct heated calibration spike gas to the calibration assembly located at the sample probe. It is important to minimize the length of heated sample line.

6.10 Particulate Filters. A sintered stainless steel filter rated at 20 microns or greater may be placed at the inlet of the probe (for removal of large particulate matter). A heated filter (Balston® or equivalent) rated at 1 micron is necessary for primary particulate matter removal, and shall be placed immediately after the heated probe. The filter/filter holder temperature should be maintained at 180 °C (360 °F).

6.11 Calibration/Analyte Spike Assembly. A heated three-way valve assembly (or equivalent) to introduce surrogate spikes into the sampling system at the outlet of the probe before the primary particulate filter.

6.12 Sample Extraction Pump. A leak-free heated head pump (KNF® Neuberger or equivalent) capable of extracting sample effluent through entire sampling system at a rate which prevents analyte losses and minimizes analyzer response time. The pump should have a heated by-pass and may be placed either before the FTIR instrument or after. If the sample pump is located upstream of the FTIR instrument, it must be fabricated from materials non-reactive to HCl. The sampling system and FTIR measurement system shall allow the operator to obtain at least six sample spectra during a one-hour period.

6.13 Barometer. For measurement of barometric pressure.

6.14 Gas Sample Manifold. A distribution manifold having the capabilities listed in sections 6.14.1 through 6.14.4;

6.14.1 Delivery of calibration gas directly to the analytical instrumentation;

6.14.2 Delivery of calibration gas to the sample probe (system calibration or analyte spike) via a heated traced sample line;

6.14.3 Delivery of sample gas (kiln gas, spiked kiln gas, or system calibrations) to the analytical instrumentation;

6.14.4 Delivery (optional) of a humidified nitrogen sample stream.

6.15 Flow Measurement Device. Type S Pitot tube (or equivalent) and Magnahelic® set for measurement of volumetric flow rate.

7.0 Reagents and Standards

HCl can be purchased in a standard compressed gas cylinder. The most stable HCl cylinder mixture available has a concentration certified at ±5 percent. Such a cylinder is suitable for performing analyte spiking because it will provide reproducible samples. The stability of the cylinder can be monitored over time by periodically performing direct FTIR analysis of cylinder samples. It is recommended that a 10–50 ppm cylinder of HCl be prepared having from 2–5 ppm SF6 as a tracer compound. (See sections 7.1 through 7.3 of Method 320 of this for a complete description of the use of existing HCl reference spectra. See section 9.1 of Method 320 of this for a complete discussion of standard concentration selection.)

8.0 Sample Collection, Preservation and Storage

See also Method 320 of this appendix.

8.1 Pretest. A screening test is ideal for obtaining proper data that can be used for preparing analytical program files. Information from literature surveys and source personnel is also acceptable. Information about the sampling location and gas stream composition is required to determine the optimum sampling system configuration for measuring HCl. Determine the percent moisture of the kiln gas by Method 4 of appendix A to part 60 of this chapter or by performing a wet bulb/dry bulb measurement. Perform a preliminary traverse of the sample duct or stack and select the sampling point(s). Acquire an initial spectrum and determine the optimum operational pathlength of the instrument.

8.2 Leak-Check. See Method 320 of this appendix, section 8.2 for direction on performing leak-checks.

8.3 Background Spectrum. See Method 320 of this appendix, section 8.5 for direction in background spectral acquisition.

8.4 Pre-Test Calibration Transfer Standard (Direct Instrument Calibration). See Method 320 of this appendix, section 8.3 for direction in CTS spectral acquisition.

8.5 Pre-Test System Calibration. See Method 320 of this appendix, sections 8.6.1 through 8.6.2 for direction in performing system calibration.

8.6 Sampling.

8.6.1 Extractive System. An extractive system maintained at 180 °C (360 °F) or higher which is capable of directing a total flow of at least 12 L/min to the sample cell is required (References 1 and 2). Insert the probe into the duct or stack at a point representing the average volumetric flow rate and 25 percent of the cross sectional area. Co-locate an appropriate flow monitoring device with the sample probe so that the flow rate is recorded at specified time intervals during emission testing (*e.g.*, differential pressure measurements taken every 10 minutes during each run).

8.6.2 Batch Samples. Evacuate the absorbance cell to 5 Torr (or less) absolute pressure before taking first sample. Fill the cell with kiln gas to ambient pressure and record the infrared spectrum, then evacuate the cell until there is no further evidence of infrared absorption. Repeat this procedure, collecting a total of six separate sample spectra within a 1-hour period.

8.6.3 Continuous Flow Through Sampling. Purge the FTIR cell with kiln gas for a time period sufficient to equilibrate the entire sampling system and FTIR gas cell. The time required is a function of the mechanical response time of the system (determined by performing the system calibration with the CTS gas or equivalent), and by the chemical reactivity of the target analytes. If the effluent target analyte concentration is not variable, observation of the spectral up-date of the flowing gas sample should be performed until equilibration of the sample is achieved. Isolate the gas cell from the sample flow by directing the purge flow to vent. Record the spectrum and pressure of the sample gas. After spectral acquisition, allow the sample gas to purge the cell with at least three volumes of kiln gas. The time required to adequately purge the cell with the required volume of gas is a function of (1) cell volume, (2) flow rate through the cell, and (3) cell design. It is important that the gas introduction and vent for the FTIR cell provides a complete purge through the cell.

8.6.4 Continuous Sampling. In some cases it is possible to collect spectra continuously while the FTIR cell is purged with sample gas. The sample integration time, t_{ss}, the sample flow rate through the gas cell, and the sample integration time must be chosen so that the collected data consist of at least 10 spectra with each spectrum being of a separate cell volume of flue gas. Sampling in this manner may only be performed if the native source analyte concentrations do not affect the test results.

8.7 Sample Conditioning

8.7.1 High Moisture Sampling. Kiln gas emitted from wet process cement kilns may contain 3- to 40 percent moisture. Zinc selenide windows or the equivalent should be used when attempting to analyze hot/wet kiln gas under these conditions to prevent dissolution of water soluble window materials (*e.g.*, KBr).

8.7.2 Sample Dilution. The sample may be diluted using an in-stack dilution probe, or an external dilution device provided that the sample is not diluted below the instrument's quantification range. As an alternative to using a dilution probe, nitrogen may be dynamically spiked into the effluent stream in the same manner as analyte spiking. A constant dilution rate shall be maintained throughout the measurement process. It is critical to measure and verify the exact dilution ratio when using a dilution probe or the nitrogen spiking approach. Calibrating the system with a calibration gas containing an appropriate tracer compound will allow determination of the dilution ratio for most measurement systems. The tester shall specify the procedures used to determine the dilution ratio, and include these calibration results in the report.

8.8 Sampling QA, Data Storage and Reporting. See the FTIR Protocol. Sample integration times shall be sufficient to achieve the required signal-to-noise ratio, and all sample spectra should have unique file names. Two copies of sample interferograms and processed spectra will be stored on separate computer media. For each sample spectrum the analyst must document the sampling conditions, the sampling time (while the cell was being filled), the time the spectrum was recorded, the instrumental conditions (path length, temperature, pressure, resolution, integration time), and the spectral file name. A hard copy of these data must be maintained until the test results are accepted.

8.9 Signal Transmittance. Monitor the signal transmittance through the instrumental system. If signal transmittance (relative to the background) drops below 95 percent in any spectral region where the sample does not absorb infrared energy, then a new background spectrum must be obtained.

8.10 Post-test CTS. After the sampling run completion, record the CTS spectrum. Analysis of the spectral band area used for quantification from pre-and post-test CTS spectra should agree to within ±5 percent or corrective action must be taken.

8.11 Post-test QA. The sample spectra shall be inspected immediately after the run to verify that the gas matrix composition was close to the assumed gas matrix, (this is necessary to account for the concentrations of the interferants for use in the analytical analysis programs), and to confirm that the sampling and instrumental parameters were appropriate for the conditions encountered.

9.0 Quality Control

Use analyte spiking to verify the effectiveness of the sampling system for the target compounds in the actual kiln gas matrix. QA spiking shall be performed before and after each sample run. QA spiking shall be performed after the pre-and post-test CTS direct and system calibrations. The system biases calculated from the pre-and post-test dynamic analyte spiking shall be within ±30 percent for the spiked surrogate analytes for the measurements to be considered valid. See sections 9.3.1 through 9.3.2 for the requisite calculations. Measurement of the undiluted spike (direct-to-cell measurement) involves sending dry, spike gas to the FTIR cell, filling the cell to 1 atmosphere and obtaining the spectrum of this sample. The direct-to-cell measurement should be performed before each analyte spike so that the recovery of the dynamically spiked analytes may be calculated. Analyte spiking is only effective for assessing the integrity of the sampling system when the concentration of HCl in the source does not vary substantially. Any attempt to quantify an analyte recovery in a variable concentration matrix will result in errors in the expected concentration of the spiked sample. If the kiln gas target analyte concentrations vary by more than ±5 percent (or 5 ppm, whichever is greater) in the time required to acquire a sample spectrum, it may be necessary to: (1) use a dual sample probe approach, (2) use two independent FTIR measurement systems, (3) use alternate QA/QC procedures, or (4) postpone testing until stable emission concentrations are achieved. (See section 9.2.3 of this method).

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It is recommended that a laboratory evaluation be performed before attempting to employ this method under actual field conditions. The laboratory evaluation shall include (1) performance of all applicable calculations in section 4 of the FTIR Protocol; (2) simulated analyte spiking experiments in dry (ambient) and humidified sample matrices using HCl; and (3) performance of bias (recovery) calculations from analyte spiking experiments. It is not necessary to perform a laboratory evaluation before every field test. The purpose of the laboratory study is to demonstrate that the actual instrument and sampling system configuration used in field testing meets the requirements set forth in this method.

9.1 Spike Materials. Perform analyte spiking with an HCl standard to demonstrate the integrity of the sampling system.

9.1.1 An HCl standard of approximately 50 ppm in a balance of ultra pure nitrogen is recommended. The SF_6 (tracer) concentration shall be 2 to 5 ppm depending upon the measurement pathlength. The spike ratio (spike flow/total flow) shall be no greater than 1:10, and an ideal spike concentration should approximate the native effluent concentration.

9.1.2 The ideal spike concentration may not be achieved because the target concentration cannot be accurately predicted prior to the field test, and limited calibration standards will be available during testing. Therefore, practical constraints must be applied that allow the tester to spike at an anticipated concentration. For these tests, the analyte concentration contributed by the HCl standard spike should be 1 to 5 ppm or should more closely approximate the native concentration if it is greater.

9.2 Spike Procedure

9.2.1 A spiking/sampling apparatus is shown in Figure 2. Introduce the spike/tracer gas mixture at a constant flow (±2 percent) rate at approximately 10 percent of the total sample flow. (For example, introduce the surrogate spike at 1 L/min ±20 cc/min, into a total sample flow rate of 10 L/min). The spike must be pre-heated before introduction into the sample matrix to prevent a localized condensation of the gas stream at the spike introduction point. A heated sample transport line(s) containing multiple transport tubes within the heated bundle may be used to spike gas up through the sampling system to the spike introduction point. Use a calibrated flow device (*e.g.*, mass flow meter/controller), to monitor the spike flow as indicated by a calibrated flow meter or controller, or alternately, the SF_6 tracer ratio may be calculated from the direct measurement and the diluted measurement. It is often desirable to use the tracer approach in calculating the spike/total flow ratio because of the difficulty in accurately measuring hot/wet total flow. The tracer technique has been successfully used in past validation efforts (Reference 1).

9.2.2 Perform a direct-to-cell measurement of the dry, undiluted spike gas. Introduce the spike directly to the FTIR cell, bypassing the sampling system. Fill cell to 1 atmosphere and collect the spectrum of this sample. Ensure that the spike gas has equilibrated to the temperature of the measurement cell before acquisition of the spectra. Inspect the spectrum and verify that the gas is dry and contains negligible CO_2. Repeat the process to obtain a second direct-to-cell measurement. Analysis of spectral band areas for HCl from these duplicate measurements should agree to within ±5 percent of the mean.

9.2.3 Analyte Spiking. Determine whether the kiln gas contains native concentrations of HCl by examination of preliminary spectra. Determine whether the concentration varies significantly with time by observing a continuously up-dated spectrum of sample gas in the flow-through sampling mode. If the concentration varies by more than ±5 percent during the period of time required to acquire a spectra, then an alternate approach should be used. One alternate approach uses two sampling lines to convey sample to the gas distribution manifold. One of the sample lines is used to continuously extract unspiked kiln gas from the source. The other sample line serves as the analyte spike line. One FTIR system can be used in this arrangement. Spiked or unspiked sample gas may be directed to the FTIR system from the gas distribution manifold, with the need to purge only the components between the manifold and the FTIR system. This approach minimizes the time required to acquire an equilibrated sample of spiked or unspiked kiln gas. If the source varies by more than ±5 percent (or 5 ppm, whichever is greater) in the time it takes to switch from the unspiked sample line to the spiked sample line, then analyte spiking may not be a feasible means to determine the effectiveness of the sampling system for the HCl in the sample matrix. A second alternative is to use two completely independent FTIR measurement systems. One system would measure unspiked samples while the other system would measure the spiked samples. As a last option, (where no other alternatives can be used) a humidified nitrogen stream may be generated in the field which approximates the moisture content of the kiln gas. Analyte spiking into this humidified stream can be employed to assure that the sampling system is adequate for transporting the HCl to the FTIR instrumentation.

9.2.3.1 Adjust the spike flow rate to approximately 10 percent of the total flow by metering spike gas through a calibrated mass flowmeter or controller. Allow spike flow to equilibrate within the sampling system before analyzing the first spiked kiln gas samples. A minimum of two consecutive spikes are required. Analysis of the spectral band area used for quantification should agree to within ±5 percent or corrective action must be taken.

9.2.3.2 After QA spiking is completed, the sampling system components shall be purged with nitrogen or dry air to eliminate traces of the HCl compound from the sampling system components. Acquire a sample spectra of the nitrogen purge to verify the absence of the calibration mixture.

9.2.3.3 Analyte spiking procedures must be carefully executed to ensure that meaningful measurements are achieved. The requirements of sections 9.2.3.3.1 through 9.2.3.3.4 shall be met.

9.2.3.3.1 The spike must be in the vapor phase, dry, and heated to (or above) the kiln gas temperature before it is introduced to the kiln gas stream.

9.2.3.3.2 The spike flow rate must be constant and accurately measured.

9.2.3.3.3 The total flow must also be measured continuously and reliably or the dilution ratio must otherwise be verified before and after a run by introducing a spike of a non-reactive, stable compound (i.e., tracer).

9.2.3.3.4 The tracer must be inert to the sampling system components, not contained in the effluent gas, and readily detected by the analytical instrumentation. Sulfur hexafluoride (SF_6) has been used successfully (References 1 and 2) for this purpose.

9.3 Calculations

9.3.1 Recovery. Calculate the percent recovery of the spiked analytes using equations 1 and 2.

$\%R = (S_m/C_e) \times 100$ (Eq. 321–1).

S_m = Mean concentration of the analyte spiked effluent samples (observed).

C_e = Expected concentration of the spiked samples (theoretical).

$C_e = D_f C_s + S_u (1 - D_f)$ (Eq. 321–2)

D_f = dilution Factor (Spike flow/Total flow). total flow = spike flow plus effluent flow.

C_s = cylinder concentration of spike gas.

S_u = native concentration of analytes in unspiked samples.

The spike dilution factor may be confirmed by measuring the total flow and the spike flow directly. Alternately, the spike dilution can be verified by comparing the concentration of the tracer compound in the spiked samples (diluted) to the tracer concentration in the direct (undiluted) measurement of the spike gas.

If SF_6 is the tracer gas, then

$D_f = [SF_6]_{spike} / [SF_6]_{direct}$ (Eq. 321–3)

$[SF_6]_{spike}$ = the diluted SF6 concentration measured in a spiked sample.

$[SF_6]_{direct}$ = the SF_6 concentration measured directly.

9.3.2 Bias. The bias may be determined by the difference between the observed spike value and the expected response (i.e., the equivalent concentration of the spiked material plus the analyte concentration adjusted for spike dilution). Bias is defined by section 6.3.1 of EPA Method 301 of this (Reference 8) as,

$B = S_m - C_e$ (Eq. 321–4)

where:

B = Bias at spike level.

S_m = Mean concentration of the analyte spiked samples.

C_e = Expected concentration of the analyte in spiked samples.

Acceptable recoveries for analyte spiking are ±30 percent. Application of correction factors to the data based upon bias and recovery calculations is subject to the approval of the Administrator.

10.0 Calibration and Standardization

10.1 Calibration transfer standards (CTS). The EPA Traceability Protocol gases or NIST traceable standards, with a minimum accuracy of ±2 percent shall be used. For

other requirements of the CTS, see the FTIR Protocol section 4.5.

10.2 Signal-to-Noise Ratio (S/N). The S/N shall be less than the minimum acceptable measurement uncertainty in the analytical regions to be used for measuring HCl.

10.3 Absorbance Pathlength. Verify the absorbance path length by comparing CTS spectra to reference spectra of the calibration gas(es).

10.4 Instrument Resolution. Measure the line width of appropriate CTS band(s) to verify instrumental resolution.

10.5 Apodization Function. Choose the appropriate apodization function. Determine any appropriate mathematical transformations that are required to correct instrumental errors by measuring the CTS. Any mathematical transformations must be documented and reproducible. Reference 9 provides additional information about FTIR instrumentation.

11.0 Analytical Procedure

A full description of the analytical procedures is given in sections 4.6—4.11, sections 5, 6, and 7, and the appendices of the FTIR Protocol. Additional description of quantitative spectral analysis is provided in References 10 and 11.

12.0 Data Analysis and Calculations

Data analysis is performed using appropriate reference spectra whose concentrations can be verified using CTS spectra. Various analytical programs (References 10 and 11) are available to relate sample absorbance to a concentration standard. Calculated concentrations should be verified by analyzing spectral baselines after mathematically subtracting scaled reference spectra from the sample spectra. A full description of the data analysis and calculations may be found in the FTIR Protocol (sections 4.0, 5.0, 6.0 and appendices).

12.1 Calculated concentrations in sample spectra are corrected for differences in absorption pathlength between the reference and sample spectra by

$$C_{corr} = (L_r/L_s) \times (T_s/T_r) \times (C_{calc}) \quad \text{(Eq. 321–5)}$$

Where:

C_{corr} = The pathlength corrected concentration.

C_{calc} = The initial calculated concentration (output of the multicomponent analysis program designed for the compound).

L_r = The pathlength associated with the reference spectra.

L_s = The pathlength associated with the sample spectra.

T_s = The absolute temperature (K) of the sample gas.

T_r = The absolute temperature (K) at which reference spectra were recorded.

12.2 The temperature correction in equation 5 is a volumetric correction. It does not account for temperature dependence of rotational-vibrational relative line intensities. Whenever possible, the reference spectra used in the analysis should be collected at a temperature near the temperature of the FTIR cell used in the test to minimize the calculated error in the measurement (FTIR Protocol, appendix D). Additionally, the analytical region chosen for the analysis should be sufficiently broad to minimize errors caused by small differences in relative line intensities between reference spectra and the sample spectra.

13.0 Method Performance

A description of the method performance may be found in the FTIR Protocol. This method is self validating provided the results meet the performance specification of the QA spike in sections 9.0 through 9.3 of this method.

14.0 Pollution Prevention

This is a gas phase measurement. Gas is extracted from the source, analyzed by the instrumentation, and discharged through the instrument vent.

15.0 Waste Management

Gas standards of HCl are handled according to the instructions enclosed with the material safety data sheet.

16.0 References

1. "Laboratory and Field Evaluation of a Methodology for Determination of Hydrogen Chloride Emissions From Municipal and Hazardous Waste Incinerators," S. C. Steinsberger and J. H. Margeson. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. NTIS Report No. PB89–220586. (1989).

2. "Evaluation of HCl Measurement Techniques at Municipal and Hazardous Waste Incinerators," S.A. Shanklin, S.C. Steinsberger, and L. Cone, Entropy, Inc. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. NTIS Report No. PB90–221896. (1989).

3. "Fourier Transform Infrared (FTIR) Method Validation at a Coal Fired-Boiler," Entropy, Inc. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA Publication No. EPA–454/R95–004. NTIS Report No. PB95–193199. (1993).

4. "Field Validation Test Using Fourier Transform Infrared (FTIR) Spectrometry To Measure Formaldehyde, Phenol and Methanol at a Wool Fiberglass Production Facility." Draft. U.S. Environmental Protection Agency Report, Entropy, Inc., EPA Contract No. 68D20163, Work Assignment I–32.

5. Kinner, L.L., Geyer, T.G., Plummer, G.W., Dunder, T.A., Entropy, Inc. "Application of FTIR as a Continuous Emission Monitoring System." Presentation at 1994 International Incineration Conference, Houston, Tx. May 10, 1994.

6. "Molecular Vibrations; The Theory of Infrared and Raman Vibrational Spectra," E. Bright Wilson, J.C. Decius, and P.C. Cross, Dover Publications, Inc., 1980. For a less intensive treatment of molecular rotational-vibrational spectra see, for example, "Physical Chemistry," G.M. Barrow, chapters 12, 13, and 14, McGraw Hill, Inc., 1979.

7. "Laboratory and Field Evaluations of Ammonium Chloride Interference in Method 26," U.S. Environmental Protection Agency Report, Entropy, Inc., EPA Contract No. 68D20163, Work Assignment No. I–45.

8. 40 CFR 63, A. Method 301—Field Validation of Pollutant Measurement Methods from Various Waste Media.

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10. "Computer-Assisted Quantitative Infrared Spectroscopy," Gregory L. McClure (ed.), ASTM Special Publication 934 (ASTM), 1987.

11. "Multivariate Least-Squares Methods Applied to the Quantitative Spectral Analysis of Multicomponent Mixtures," Applied Spectroscopy, 39(10), 73–84, 1985.

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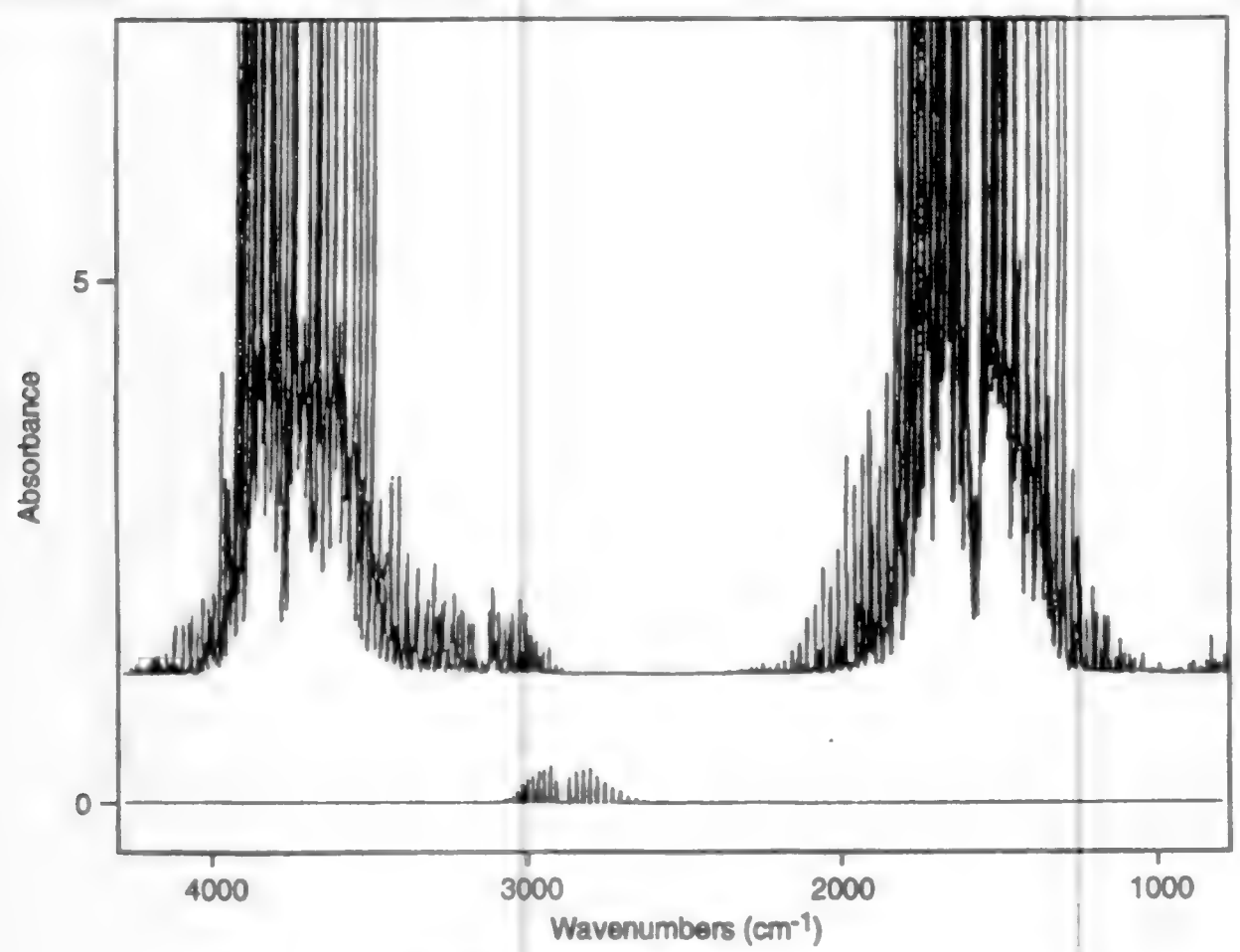

Top, water vapor (194hsub); Bottom, HCl at 11.4 (ppm-M)/K.

Figure 1. FTIR Spectra of HCl and Water.

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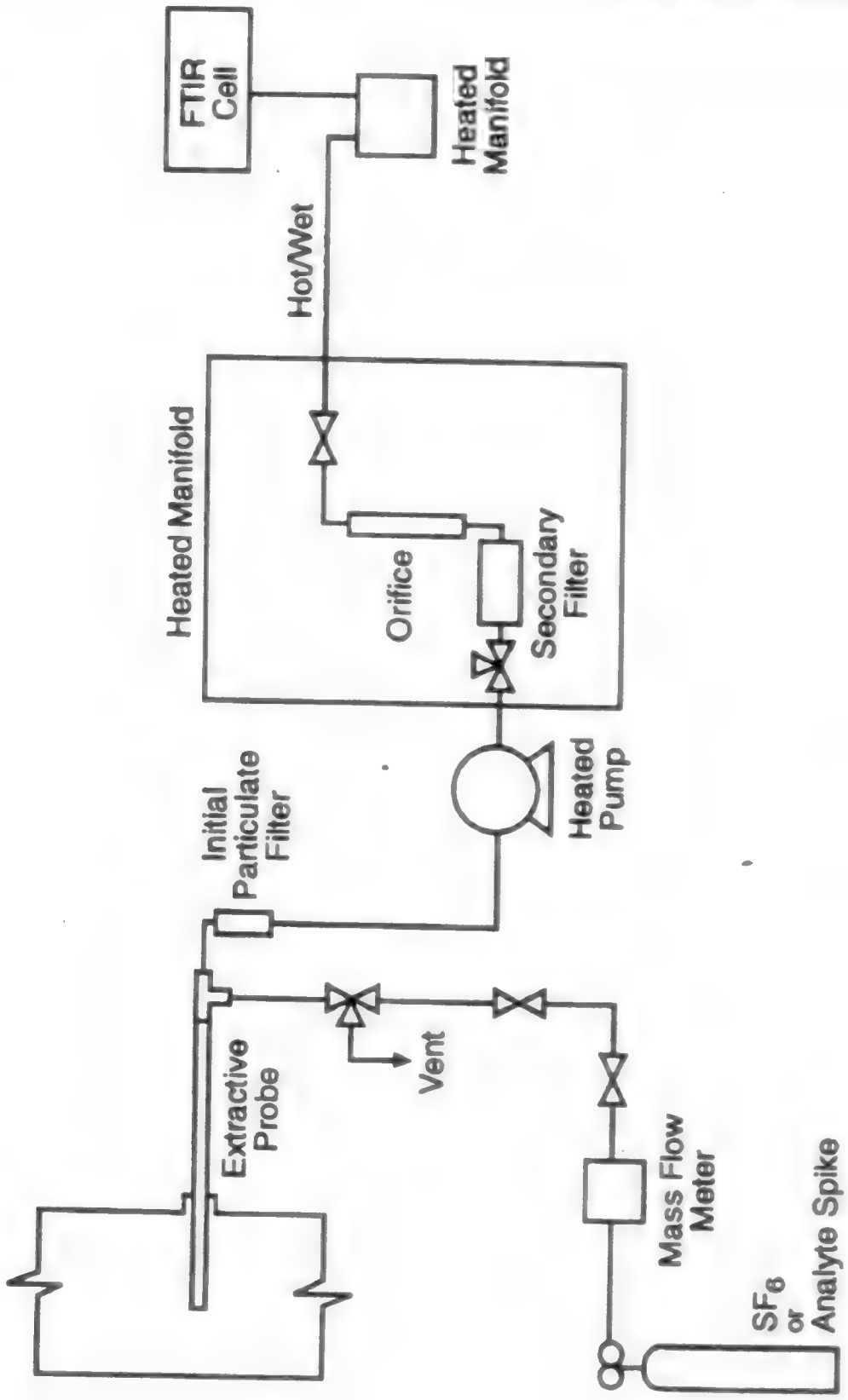

Figure 2. FTIR Sampling/Spiking System.

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Method 322—Measurement of Hydrogen Chloride Emissions From Portland Cement Kilns by GFCIR

1.0 Applicability and Principle

1.1 Applicability. This method is applicable to the determination of hydrogen chloride (HCl) concentrations in emissions from portland cement kilns. This is an instrumental method for the measurement of HCl using an extractive sampling system and an infrared (IR) gas-filter correlation (GFC) analyzer. This method is intended to provide the cement industry with a direct interface instrumental method. A procedure for analyte spiking is included for quality assurance. This method is considered to be self-validating provided that the requirements in section 9 of this method are followed.

1.2 Principle. A gas sample is continuously extracted from a stack or duct over the test period using either a source-level hot/wet extractive subsystem or a dilution extractive subsystem. A nondispersive infrared gas filter correlation (NDIR–GFC) analyzer is specified for the measurement of HCl in the sample. The total measurement system is comprised of the extractive subsystem, the analyzer, and the data acquisition subsystem. Test system performance specifications are included in this method to provide for the collection of accurate, reproducible data.

1.3 Test System Operating Range. The measurement range (span) of the test system shall include the anticipated HCl concentrations of the effluent and spiked samples. The range should be selected so that the average of the effluent measurements is between 25 and 75 percent of span. If at any time during a test run, the effluent concentration exceeds the span value of the test system, the run shall be considered invalid.

2.0 Summary of Method

2.1 Sampling and Analysis. Kiln gas is continuously extracted from the stack or duct using either a source level, hot/wet extractive system, or an in-situ dilution probe or heated out-of-stack dilution system. The sample is then directed by a heated sample line maintained above 350 °F to a GFC analyzer having a range appropriate to the type of sampling system. The gas filter correlation analyzer incorporates a gas cell filled with HCl. This gas cell is periodically moved into the path of an infrared measurement beam of the instrument to filter out essentially all of the HCl absorption wavelengths. Spectral filtering provides a reference from which the HCl concentration of the sample can be determined. Interferences are minimized in the analyzer by choosing a spectral band over which compounds such as CO_2 and H_2O either do not absorb significantly or do not match the spectral pattern of the HCl infrared absorption.

2.2 Operator Requirements. The analyst must be familiar with the specifications and test procedures of this method and follow them in order to obtain reproducible and accurate data.

3.0 Definitions

3.1 Measurement System. The total equipment required for the determination of gas concentration. The measurement system consists of the following major subsystems:

3.1.1 Sample Interface. That portion of a system used for one or more of the following: sample acquisition, sample transport, sample conditioning, or protection of the analyzers from the effects of the stack gas.

3.1.2 Gas Analyzer. That portion of the system that senses the gas to be measured and generates an output proportional to its concentration.

3.1.3 Data Recorder. A strip chart recorder, analog computer, or digital recorder for recording measurement data from the analyzer output.

3.2 Span. The upper limit of the gas concentration measurement range displayed on the data recorder.

3.3 Calibration Gas. A known concentration of a gas in an appropriate diluent gas (i.e., N_2).

3.4 Analyzer Calibration Error. The difference between the gas concentration exhibited by the gas analyzer and the known concentration of the calibration gas when the calibration gas is introduced directly to the analyzer.

3.5 Sampling System Bias. The sampling system bias is the difference between the gas concentrations exhibited by the measurement system when a known concentration gas is introduced at the outlet of the sampling probe and the known value of the calibration gas.

3.6 Response Time. The amount of time required for the measurement system to display 95 percent of a step change in gas concentration on the data recorder.

3.7 Calibration Curve. A graph or other systematic method of establishing the relationship between the analyzer response and the actual gas concentration introduced to the analyzer.

3.8 Linearity. The linear response of the analyzer or test system to known calibration inputs covering the concentration range of the system.

3.9 Interference Rejection. The ability of the system to reject the effect of interferences in the analytical measurement processes of the test system.

4.0 Interferences

4.1 Sampling System Interferences. An important consideration in measuring HCl using an extractive measurement system is to ensure that a representative kiln gas sample is delivered to the gas analyzer. A sampling system interferant is a factor that inhibits an analyte from reaching the analytical instrumentation. Condensed water vapor is a strong sampling system interferant for HCl and other water soluble compounds. "Cold spots" in the sampling system can allow water vapor in the sample to condense resulting in removal of HCl from the sample stream. The extent of HCl sampling system bias depends on concentrations of potential interferants, moisture content of the gas stream, temperature of the gas stream, temperature of sampling system components, sample flow rate, and reactivity of HCl with other species in the gas stream. For measuring HCl in a wet gas stream, the temperatures of the gas stream and sampling system components and the sample flow rate are of primary importance. In order to prevent problems with condensation in the sampling system, these parameters must be closely monitored.

4.1.1 System Calibration Checks. Performing these calibration checks where HCl calibration gas is injected through the entire system both before and after each test run demonstrates the integrity of the sampling system and capability of the analyzer for measuring this water soluble and otherwise unstable compound under ideal conditions (i.e., HCl in N_2).

4.1.2 Analyte Spiking Checks. For analyte spiking checks, HCl calibration gas is quantitatively added to the sample stream at a point upstream of the particulate filter and all other sample handling components both before and after each test run. The volume of HCl spike gas should not exceed 10 percent of the total sample volume so that the sample matrix is relatively unaffected. Successfully performing these checks demonstrates the integrity of the sampling system for measuring this water soluble and reactive compound under actual sample matrix conditions. Successfully performing these checks also demonstrates the adequacy of the interference rejection capability of the analyzer. (See section 9.3 of this method.)

4.2 Analytical Interferences. Analytical interferences are reduced by the GFC spectroscopic technique required by the method. The accuracy of HCl measurements provided by some GFC analyzers is known to be sensitive to the moisture content of the sample. This must be taken into account in order to acquire accurate results. These analyzers must be calibrated for the specific moisture content of the samples.

5.0 Safety

This method may involve sampling at locations having high positive or negative pressures, or high concentrations of hazardous or toxic pollutants, and cannot address all safety problems encountered under these diverse sampling conditions. It is the responsibility of the tester(s) to ensure proper safety and health practices, and to determine the applicability of regulatory limitations before performing this test method. Because HCl is a respiratory irritant, it is advisable to limit exposure to this compound.

6.0 Equipment and Supplies.

(**Note:** Mention of company or product names does not constitute endorsement by the U. S. Environmental Protection Agency.)

6.1 Measurement System. Use any GFC measurement system for HCl that meets the specifications of this method. All sampling system components must be maintained above the kiln gas temperature, when possible, or at least 350 °F. The length of sample transport line should be minimized and sampling rate should be as high as possible to minimize adsorption of HCl. The essential components of the measurement system are described in sections 6.1.1 through 6.1.12.

6.1.1 Sample Probe. Glass, stainless steel, Hastalloy ™, or equivalent, of sufficient

length to traverse the sample points. The sampling probe shall be heated to a minimum of 350 °F to prevent condensation. Dilution extractive systems must use a dilution ratio such that the average diluted concentrations are between 25 to 75 percent of the selected measurement range of the analyzer.

6.1.2 Calibration Valve Assembly. Use a heated, three-way valve assembly, or equivalent, for selecting either sample gas or introducing calibration gases to the measurement system or introducing analyte spikes into the measurement system at the outlet of the sampling probe before the primary particulate filter.

6.1.3 Particulate Filter. A coarse filter or other device may be placed at the inlet of the probe for removal of large particulate (10 microns or greater). A heated (Balston® or equivalent) filter rated at 1 micron is necessary for primary particulate removal, and shall be placed immediately after the heated probe. The filter/filter holder shall be maintained at 350 °F or a higher temperature. Additional filters at the inlet of the gas analyzer may be used to prevent accumulation of particulate material in the measurement system and extend the useful life of components. All filters shall be fabricated of materials that are nonreactive with HCl. Some types of glass filters are known to react with HCl.

6.1.4 Sample Transport Lines. Stainless steel or polytetrafluoroethylene (PTFE) tubing shall be heated to a minimum temperature of 350 °F (sufficient to prevent condensation and to prevent HCl and NH_3 from combining into ammonium chloride in the sampling system) to transport the sample gas to the gas analyzer.

6.1.5 Sample Pump. Use a leak-free pump to pull the sample gas through the system at a flow rate sufficient to minimize the response time of the measurement system. The pump components that contact the sample must be heated to a temperature greater than 350 °F and must be constructed of a material that is nonreactive to HCl.

6.1.6 Sample Flow Rate Control. A sample flow rate control valve and rotameter, or equivalent, must be used to maintain a constant sampling rate within ±10 percent. These components must be heated to a temperature greater than 350 °F. (**Note**: The tester may elect to install a back-pressure regulator to maintain the sample gas manifold at a constant pressure in order to protect the analyzer(s) from over-pressurization, and to minimize the need for flow rate adjustments.)

6.1.7 Sample Gas Manifold. A sample gas manifold, heated to a minimum of 350 °F, is used to divert a portion of the sample gas stream to the analyzer and the remainder to the by-pass discharge vent. The sample gas manifold should also include provisions for introducing calibration gases directly to the analyzer. The manifold must be constructed of material that is nonreactive to the gas being sampled.

6.1.8 Gas Analyzer. Use a nondispersive infrared analyzer utilizing the gas filter correlation technique to determine HCl concentrations. The analyzer shall meet the applicable performance specifications of section 8.0 of this method. (**Note:** Housing the analyzer in a clean, thermally-stable, vibration free environment will minimize drift in the analyzer calibration.) The analyzer (system) shall be designed so that the response of a known calibration input shall not deviate by more than ±3 percent from the expected value. The analyzer or measurement system manufacturer may provide documentation that the instrument meets this design requirement. Alternatively, a known concentration gas standard and calibration dilution system meeting the requirements of Method 205 of appendix M to part 51 of this chapter, "Verification of Gas Dilution Systems for Field Calibrations" (or equivalent procedure), may be used to develop a multi-point calibration curve over the measurement range of the analyzer.

6.1.9 Gas Regulators. Single stage regulator with cross purge assembly that is used to purge the CGA fitting and regulator before and after use. (This purge is necessary to clear the calibration gas delivery system of ambient water vapor after the initial connection is made, or after cylinder changeover, and will extend the life of the regulator.) Wetted parts are 316 stainless steel to handle corrosive gases.

6.1.10 Data Recorder. A strip chart recorder, analog computer, or digital recorder, for recording measurement data. The data recorder resolution (i.e., readability) shall be 0.5 percent of span. Alternatively, a digital or analog meter having a resolution of 0.5 percent of span may be used to obtain the analyzer responses and the readings may be recorded manually. If this alternative is used, the readings shall be obtained at equally-spaced intervals over the duration of the sampling run. For sampling run durations of less than 1 hour, measurements at 1-minute intervals or a minimum of 30 measurements, whichever is less restrictive, shall be obtained. For sampling run durations greater than 1 hour, measurements at 2-minute intervals or a minimum of 96 measurements, whichever is less restrictive, shall be obtained.

6.1.11 Mass Flow Meters/Controllers. A mass flow meter having the appropriate calibrated range and a stated accuracy of ±2 percent of the measurement range is used to measure the HCl spike flow rate. This device must be calibrated with the major component of the calibration spike gas (e.g., nitrogen) using an NIST traceable bubble meter or equivalent. When spiking HCl, the mass flow meter/controller should be thoroughly purged before and after introduction of the gas to prevent corrosion of the interior parts.

6.1.12 System Flow Measurement. A measurement device or procedure to determine the total flow rate of sample gas within the measurement system. A rotameter, or mass flow meter calibrated relative to a laboratory standard to within ±2 percent of the measurement value at the actual operating temperature, moisture content, and sample composition (molecular weight) is acceptable. A system which ensures that the total sample flow rate is constant within ±2 percent and which relies on an intermittent measurement of the actual flow rate (e.g., calibrated gas meter) is also acceptable.

6.2 HCl Calibration Gases. The calibration gases for the gas analyzer shall be HCl in N_2. Use at least three calibration gases as specified below:

6.2.1 High-Range Gas. Concentration equivalent to 80 to 100 percent of the span.

6.2.2 Mid-Range Gas. Concentration equivalent to 40 to 60 percent of the span.

6.2.3 Zero Gas. Concentration of less than 0.25 percent of the span. Purified ambient air may be used for the zero gas by passing air through a charcoal filter or through one or more impingers containing a solution of 3 percent H_2O_2.

6.2.4 Spike Gas. A calibration gas of known concentration (typically 100 to 200 ppm) used for analyte spikes in accordance with the requirements of section 9.3 of this method.

7.0 Reagents and Standards

7.1 Hydrogen Chloride. Hydrogen Chloride is a reactive gas and is available in steel cylinders from various commercial gas vendors. The stability is such that it is not possible to purchase a cylinder mixture whose HCl concentration can be certified at better than ±5 percent. The stability of the cylinder may be monitored over time by periodically analyzing cylinder samples. The cylinder gas concentration must be verified within 1 month prior to the use of the calibration gas. Due to the relatively high uncertainty of HCl calibration gas values, difficulties may develop in meeting the performance specifications if the mid-range and high-range calibration gases are not consistent with each other. Where problems are encountered, the consistency of the test gas standards may be determined: (1) By comparing analyzer responses for the test gases with the responses to additional certified calibration gas standards, (2) by reanalysis of the calibration gases in accordance with sections 7.2.1 or 7.2.2 of this method, or (3) by other procedures subject to the approval of EPA.

7.2 Calibration Gas Concentration Verification. There are two alternatives for establishing the concentrations of calibration gases. Alternative No. 1 is preferred.

7.2.1 Alternative No. 1. The value of the calibration gases may be obtained from the vendor's certified analysis within 1 month prior to the test. Obtain a certification from the gas manufacturer that identifies the analytical procedures and date of certification.

7.2.2 Alternative No. 2. Perform triplicate analyses of the gases using Method 26 of A to part 60 of this chapter. Obtain gas mixtures with a manufacturer's tolerance not to exceed ±5 percent of the tag value. Within 1 month of the field test, analyze each of the calibration gases in triplicate using Method 26 of appendix A to part 60 of this chapter. The tester must follow all of the procedures in Method 26 (e.g., use midget impingers, heated Pallflex TX40H175 filter (TFE-glass mat), etc. if this analysis is performed. Citation 3 in section 13 of this method describes procedures and techniques that may be used for this analysis. Record the results on a data sheet. Each of the individual HCl analytical results for each calibration gas shall be within 5 percent (or 5 ppm, whichever is greater) of the triplicate set average; otherwise, discard the entire set and

repeat the triplicate analyses. If the average of the triplicate analyses is within 5 percent of the calibration gas manufacturer's cylinder tag value, use the tag value; otherwise, conduct at least three additional analyses until the results of six consecutive runs agree within 5 percent (or 5 ppm, whichever is greater) of the average. Then use this average for the cylinder value.

7.3 Calibration Gas Dilution Systems. Sample flow rates of approximately 15 L/min are typical for extractive HCl measurement systems. These flow rates coupled with response times of 15 to 30 minutes will result in consumption of large quantities of calibration gases. The number of cylinders and amount of calibration gas can be reduced by the use of a calibration gas dilution system in accordance with Method 205 of appendix M to part 51 of this chapter, "Verification of Gas Dilution Systems for Field Instrument Calibrations." If this option is used, the tester shall also introduce an undiluted calibration gas approximating the effluent HCl concentration during the initial calibration error test of the measurement system as a quality assurance check.

8.0 Test System Performance Specifications

8.1 Analyzer Calibration Error. This error shall be less than ±5 percent of the emission standard concentration or ±1 ppm, (whichever is greater) for zero, mid-, and high-range gases.

8.2 Sampling System Bias. This bias shall be less than ±7.5 percent of the emission standard concentration or ±1.5 ppm (whichever is greater) for zero and mid-range gases.

8.3 Analyte Spike Recovery. This recovery shall be between 70 to 130 percent of the expected concentration of spiked samples calculated with the average of the before and after run spikes.

9.0 Sample Collection, Preservation, and Storage

9.1 Pretest. Perform the procedures of sections 9.1.1 through 9.1.3.3 of this method before measurement of emissions (procedures in section 9.2 of this method). It is important to note that after a regulator is placed on an HCl gas cylinder valve, the regulator should be purged with dry N2 or dry compressed air for approximately 10 minutes before initiating any HCl gas flow through the system. This purge is necessary to remove any ambient water vapor from within the regulator and calibration gas transport lines; the HCl in the calibration gas may react with this water vapor and increase system response time. A purge of the system should also be performed at the conclusion of a test day prior to removing the regulator from the gas cylinder. Although the regulator wetted parts are corrosion resistant, this will reduce the possibility of corrosion developing within the regulator and extend the life of the equipment.

9.1.1 Measurement System Preparation. Assemble the measurement system by following the manufacturer's written instructions for preparing and preconditioning the gas analyzer and, as applicable, the other system components. Introduce the calibration gases in any sequence, and make all necessary adjustments to calibrate the analyzer and the data recorder. If necessary, adjust the instrument for the specific moisture content of the samples. Adjust system components to achieve correct sampling rates.

9.1.2 Analyzer Calibration Error. Conduct the analyzer calibration error check in the field by introducing calibration gases to the measurement system at any point upstream of the gas analyzer in accordance with sections 9.1.2.1 and 9.1.2.2 of this method.

9.1.2.1 After the measurement system has been prepared for use, introduce the zero, mid-range, and high-range gases to the analyzer. During this check, make no adjustments to the system except those necessary to achieve the correct calibration gas flow rate at the analyzer. Record the analyzer responses to each calibration gas. (**Note**: A calibration curve established prior to the analyzer calibration error check may be used to convert the analyzer response to the equivalent gas concentration introduced to the analyzer. However, the same correction procedure shall be used for all effluent and calibration measurements obtained during the test.

9.1.2.2 The analyzer calibration error check shall be considered invalid if the difference in gas concentration displayed by the analyzer and the concentration of the calibration gas exceeds ±5 percent of the emission standard concentration or ±1 ppm, (whichever is greater) for the zero, mid-, or high-range calibration gases. If an invalid calibration is exhibited, cross-check or recertify the calibration gases, take corrective action, and repeat the analyzer calibration error check until acceptable performance is achieved.

9.1.3 Sampling System Bias Check. For nondilution extractive systems, perform the sampling system bias check by introducing calibration gases either at the probe inlet or at a calibration valve installed at the outlet of the sampling probe. For dilution systems, calibration gases for both the analyzer calibration error check and the sampling system bias check must be introduced prior to the point of sample dilution. For dilution and nondilution systems, a zero gas and either a mid-range or high-range gas (whichever more closely approximates the effluent concentration) shall be used for the sampling system bias check.

9.1.3.1 Introduce the upscale calibration gas, and record the gas concentration displayed by the analyzer. Then introduce zero gas, and record the gas concentration displayed by the analyzer. During the sampling system bias check, operate the system at the normal sampling rate, and make no adjustments to the measurement system other than those necessary to achieve proper calibration gas flow rates at the analyzer. Alternately introduce the zero and upscale gases until a stable response is achieved. The tester shall determine the measurement system response time by observing the times required to achieve a stable response for both the zero and upscale gases. Note the longer of the two times and note the time required for the measurement system to reach 95 percent of the step change in the effluent concentration as the response time.

9.1.3.2 For nondilution systems, where the analyzer calibration error test is performed by introducing gases directly to the analyzer, the sampling system bias check shall be considered invalid if the difference between the gas concentrations displayed by the measurement system for the sampling system bias check and the known gas concentration standard exceeds ±7.5 percent of the emission standard or ±1.5 ppm, (whichever is greater) for either the zero or the upscale calibration gases. If an invalid calibration is exhibited, take corrective action, and repeat the sampling system bias check until acceptable performance is achieved. If adjustment to the analyzer is required, first repeat the analyzer calibration error check, then repeat the sampling system bias check.

9.1.3.3 For dilution systems (and nondilution systems where all calibration gases are introduced at the probe), the comparison of the analyzer calibration error results and sampling system bias check results is not meaningful. For these systems, the sampling system bias check shall be considered invalid if the difference between the gas concentrations displayed by the analyzer and the actual gas concentrations exceed ±7.5 percent of the emission standard or ±1.5 ppm, (whichever is greater) for either the zero or the upscale calibration gases. If an invalid calibration is exhibited, take corrective action, and repeat the sampling system bias check until acceptable performance is achieved. If adjustment to the analyzer is required, first repeat the analyzer calibration error check.

9.2 Emission Test Procedures

9.2.1 Selection of Sampling Site and Sampling Points. Select a measurement site and sampling points using the same criteria that are applicable to Method 26 of A to part 60 of this chapter.

9.2.2 Sample Collection. Position the sampling probe at the first measurement point, and begin sampling at the same rate as used during the sampling system bias check. Maintain constant rate sampling (i.e., ±10 percent) during the entire run. Field test experience has shown that conditioning of the sample system is necessary for approximately 1-hour prior to conducting the first sample run. This conditioning period should be repeated after particulate filters are replaced and at the beginning of each new day or following any period when the sampling system is inoperative. Experience has also shown that prior to adequate conditioning of the system, the response to analyte spikes and/or the change from an upscale calibration gas to a representative effluent measurement may be delayed by more than twice the normal measurement system response time. It is recommended that the analyte spikes (see section 9.3 of this method) be performed to determine if the system is adequately conditioned. The sampling system is ready for use when the time required for the measurement system to equilibrate after a change from a representative effluent measurement to a representative spiked sample measurement approximates the calibration gas response time observed in section 9.1.3.1 of this method.

9.2.3 Sample Duration. After completing the sampling system bias checks and analyte spikes prior to a test run, constant rate sampling of the effluent should begin. For each run, use only those measurements obtained after all residual response to calibration standards or spikes are eliminated and representative effluent measurements are displayed to determine the average effluent concentration. At a minimum, this requires that the response time of the measurement system has elapsed before data are recorded for calculation of the average effluent concentration. Sampling should be continuous for the duration of the test run. The length of data collection should be at least as long as required for sample collection by Method 26 of part 60 of this chapter. One hour sampling runs using this method have provided reliable data for cement kilns.

9.2.4 Validation of Runs. Before and after each run, or if adjustments are necessary for the measurement system during the run, repeat the sampling system bias check procedure described in section 9.1.3 of this method. (Make no adjustments to the measurement system until after the drift checks are completed.) Record the analyzer's responses.

9.2.4.1 If the post-run sampling system bias for either the zero or upscale calibration gas exceeds the sampling system bias specification, then the run is considered invalid. Take corrective action, and repeat both the analyzer calibration error check procedure (section 9.1.2 of this method) and the sampling system bias check procedure (section 9.1.3 of this method) before repeating the run.

9.2.4.2 If the post-run sampling system bias for both the zero and upscale calibration gas are within the sampling system bias specification, then construct two 2-point straight lines, one using the pre-run zero and upscale check values and the other using the post-run zero and upscale check values. Use the slopes and y-intercepts of the two lines to calculate the gas concentration for the run in accordance with equation 1 of this method.

9.3 Analyte Spiking—Self-Validating Procedure. Use analyte spiking to verify the effectiveness of the sampling system for the target compounds in the actual kiln gas matrix. Quality assurance (QA) spiking should be performed before and after each sample run. The spikes may be performed following the sampling system bias checks (zero and mid-range system calibrations) before each run in a series and also after the last run. The HCl spike recovery should be within ±30 percent as calculated using equations 1 and 2 of this method. Two general approaches are applicable for the use of analyte spiking to validate a GFC HCl measurement system: (1) Two independent measurement systems can be operated concurrently with analyte spikes introduced to one of the systems, or (2) a single measurement system can be used to analyze consecutively, spiked and unspiked samples in an alternating fashion. The two-system approach is similar to Method 301 of this appendix and the measurement bias is determined from the difference in the paired concurrent measurements relative to the amount of HCl spike added to the spiked system. The two-system approach must employ identical sampling systems and analyzers and both measurement systems should be calibrated using the same mid- and high-range calibration standards. The two-system approach should be largely unaffected by temporal variations in the effluent concentrations if both measurement systems achieve the same calibration responses and both systems have the same response times. (See Method 301 of this appendix for appropriate calculation procedures.) The single measurement system approach is applicable when the concentration of HCl in the source does not vary substantially during the period of the test. Since the approach depends on the comparison of consecutive spiked and unspiked samples, temporal variations in the effluent HCl concentrations will introduce errors in determining the expected concentration of the spiked samples. If the effluent HCl concentrations vary by more than ±10 percent (or ±5 ppm, whichever is greater) during the time required to obtain and equilibrate a new sample (system response time), it may be necessary to: (1) Use a dual sampling system approach, (2) postpone testing until stable emission concentrations are achieved, (3) switch to the two-system approach [if possible] or, (4) rely on alternative QA/QC procedures. The dual-sampling system alternative uses two sampling lines to convey sample to the gas distribution manifold. One of the sample lines is used to continuously extract unspiked kiln gas from the source. The other sample line serves as the analyte spike line. One GFC analyzer can be used to alternately measure the HCl concentration from the two sampling systems with the need to purge only the components between the common manifold and the analyzer. This minimizes the time required to acquire an equilibrated sample of spiked or unspiked kiln gas. If the source varies by more than ±10 percent or ±5 ppm, (whichever is greater) during the time it takes to switch from the unspiked sample line to the spiked sample line, then the dual-sampling system alternative approach is not applicable. As a last option, (where no other alternatives can be used) a humidified nitrogen stream may be generated in the field which approximates the moisture content of the kiln gas. Analyte spiking into this humidified stream can be employed to assure that the sampling system is adequate for transporting the HCl to the GFC analyzer and that the analyzer's water interference rejection is adequate.

9.3.1 Spike Gas Concentration and Spike Ratio. The volume of HCl spike gas should not exceed 10 percent of the total sample volume (i.e., spike to total sample ratio of 1:10) to ensure that the sample matrix is relatively unaffected. An ideal spike concentration should approximate the native effluent concentration, thus the spiked sample concentrations would represent approximately twice the native effluent concentrations. The ideal spike concentration may not be achieved because the native HCl concentration cannot be accurately predicted prior to the field test, and limited calibration gas standards will be available during the field test. Some flexibility is available by varying the spike ratio over the range from 1:10 to 1:20. Practical constraints must be applied to allow the tester to spike at an anticipated concentration. Thus, the tester may use a 100 ppm calibration gas and a spike ratio of 1:10 as default values where information regarding the expected HCl effluent concentration is not available prior to the tests. Alternatively, the tester may select another calibration gas standard and/or lower spike ratio (e.g., 1:20) to more closely approximate the effluent HCl concentration.

9.3.2 Spike Procedure. Introduce the HCl spike gas mixture at a constant flow rate (±2 percent) at less than 10 percent of the total sample flow rate. (For example, introduce the HCl spike gas at 1 L/min (±20 cc/min) into a total sample flow rate of 10 L/min). The spike gas must be preheated before introduction into the sample matrix to prevent a localized condensation of the gas stream at the spike introduction point. A heated sample transport line(s) containing multiple transport tubes within the heated bundle may be used to spike gas up through the sampling system to the spike introduction point. Use a calibrated flow device (e.g., mass flow meter/controller) to monitor the spike flow rate. Use a calibrated flow device (e.g., rotameter, mass flow meter, orifice meter, or other method) to monitor the total sample flow rate. Calculate the spike ratio from the measurements of spike flow and total flow. (See equation 2 and 3 in section 10.2 of this method.)

9.3.3 Analyte Spiking. Determine the approximate effluent HCl concentrations by examination of preliminary samples. For single-system approaches, determine whether the HCl concentration varies significantly with time by comparing consecutive samples for the period of time corresponding to at least twice the system response time. (For analyzers without sample averaging, estimate average values for two to five minute periods by observing the instrument display or data recorder output.) If the concentration of the individual samples varies by more than ±10 percent relative to the mean value or ±5 ppm, (whichever is greater), an alternate approach may be needed.

9.3.3.1 Adjust the spike flow rate to the appropriate level relative to the total flow by metering spike gas through a calibrated mass flow meter or controller. Allow spike flow to equilibrate within the sampling system for at least the measurement system response time and a steady response to the spike gas is observed before recording response to the spiked gas sample. Next, terminate the spike gas flow and allow the measurement system to sample only the effluent. After the measurement system response time has elapsed and representative effluent measurements are obtained, record the effluent unspiked concentration. Immediately calculate the spike recovery.

9.3.3.2 If the spike recovery is not within acceptable limits and a change in the effluent concentration is suspected as the cause for exceeding the recovery limit, repeat the analyte spike procedure without making any adjustments to the analyzer or sampling system. If the second spike recovery falls within the recovery limits, disregard the first

attempt and record the results of the second spike.

9.3.3.3 Analyte spikes must be performed before and after each test run. Sampling system bias checks must also be performed before and after each test run. Depending on the particular sampling strategy and other constraints, it may be necessary to compare effluent data either immediately before or immediately after the spike sample to determine the spike recovery. Either method is acceptable provided a consistent approach is used for the test program. The average spike recovery for the pre-and post-run spikes shall be used to determine if spike recovery is between 70 and 130 percent.

10.0 Data Analysis and Emission Calculations

The average gas effluent concentration is determined from the average gas concentration displayed by the gas analyzer and is adjusted for the zero and upscale sampling system bias checks, as determined in accordance with section 9.2.3 of this method. The average gas concentration displayed by the analyzer may be determined by integration of the area under the curve for chart recorders, or by averaging all of the effluent measurements. Alternatively, the average may be calculated from measurements recorded at equally spaced intervals over the entire duration of the run. For sampling run durations of less than 1-hour, average measurements at 2-minute intervals or less, shall be used. For sampling run durations greater than 1-hour, measurements at 2-minute intervals or a minimum of 96 measurements, whichever is less restrictive, shall be used. Calculate the effluent gas concentration using equation 1.

$$C_{gas} = \frac{(m_i + m_f)\left[\frac{(C_{avg} - b_c)}{m_c}\right] + (b_i + b_f)}{2} \qquad \text{(Eq. 322-1)}$$

Where:

b_c=Y-intercept of the calibration least-squares line.

b_f=Y-intercept of the final bias check 2-point line.

b_i=Y-intercept of the initial bias check 2-point line.

C_{gas}=Effluent gas concentration, as measured, ppm.

C_{avg}=Average gas concentration indicated by gas analyzer, as measured, ppm.

m_c=Slope of the calibration least-squares line.

m_f=Slope of the final bias check 2-point line.

m_i=Slope of the initial bias check 2-point line.

The following equations are used to determine the percent recovery (%R) for analyte spiking:

$\%R=(S_M/C_E)\times 100$ (Eq. 322–2)

Where:

S_M=Mean concentration of duplicate analyte spiked samples (observed).

C_E=Expected concentration of analyte spiked samples (theoretical).

$C_E=C_S(Q_S/Q_T)+S_U(1-Q_S/Q_T)$ (Eq. 322–3)

Where:

C_S=Concentration of HCl spike gas (cylinder tag value).

Q_S=Spike gas flow rate.

Q_T=Total sample flow rate (effluent sample flow plus spike flow).

S_U=Native concentration of HCl in unspiked effluent samples.

Acceptable recoveries for analyte spiking are ±30 percent.

11.0 Pollution Prevention

Gas extracted from the source and analyzed or vented from the system manifold shall be either scrubbed, exhausted back into the stack, or discharged into the atmosphere where suitable dilution can occur to prevent harm to personnel health and welfare or plant or personal property.

12.0 Waste Management

Gas standards of HCl are handled as according to the instructions enclosed with the materials safety data sheets.

13.0 References

1. Peeler, J.W., Summary Letter Report to Ann Dougherty, Portland Cement Association, June 20, 1996.

2. Test Protocol, Determination of Hydrogen Chloride Emissions from Cement Kilns (Instrumental Analyzer Procedure) Revision 4; June 20, 1996.

3. Westlin, Peter R. and John W. Brown. Methods for Collecting and Analyzing Gas Cylinder Samples. Source Evaluation Society Newsletter. *3*(3):5–15. September 1978.

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Tuesday
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Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priority for Fiscal Years 1998–99 and Inviting Applications for a New Rehabilitation Engineering Research Center; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of a Final Funding Priority for Fiscal Years 1998–1999 for a Rehabilitation Engineering Research Center

AGENCY: Department of Education.

SUMMARY: The Secretary announces a final funding priority for a Rehabilitation Engineering Research Center (RERC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on an area of national need. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect on April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains a final priority under the Disability and Rehabilitation Research Projects and Centers program for an RERC related to improved technology access for land mine survivors.

The authority for RERCs is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(b)(3)). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

Note: This notice of a final priority does *not* solicit applications. A notice inviting applications under this competition is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On January 27, 1998, the Secretary published a notice of a proposed priority in the **Federal Register** (63 FR 4148–4150), The Department of Education received 3 letters commenting on the notice of a proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

Comment: The fields of medicine, engineering, and prosthetics and orthotics will play critical roles in the successful completion of this project. These disciplines should be appropriately represented on the RERC's staff and the principal investigator should be recruited from one of these three disciplines.

Discussion: Individuals with backgrounds in these three disciplines are expected to make significant contributions to the completion of the project. Applicants have the discretion to propose key personnel, and an applicant could propose to have a principal investigator with a background in medicine, engineering, or prosthetics and orthotics. The peer review process will evaluate the merits of the proposed personnel.

Changes: None.

Comment: Information is needed on the various types of injuries that occur in land mine incidents. Land mine incidents almost always result in the need for lower limb amputation. However, we have insufficient information on the nature and number of incidents that also result in concomitant visual and hearing deficits, or severe facial scarring. In addition, the RERC should develop "special technical assistance" to aid survivors with disabilities in addition to lower limb amputation.

Discussion: The RERC is required to "Identify the needs of land mine survivors for other types of rehabilitation technologies which may include but need not be limited to vision, hearing and speech aids, and wheelchairs." In carrying out this activity, the RERC will address the commenter's concern regarding technical assistance and generate information on the rehabilitation needs of persons who experience concomitant visual and hearing deficits or severe facial scarring that occur in land mine incidents. The priority does not authorize the RERC to conduct survey research on the number of such incidents because it is outside the scope of the congressional mandate and the resources allocated to this RERC.

Changes: None.

Comment: The RERC should be required to develop economically effective systems for the delivery of prosthetic services for amputees whose stump conditions require surgical or other therapeutic intervention prior to prosthetic management.

Discussion: Issues related to person or device interfaces are important in prosthetic research and development. An applicant could propose to address surgical or other interventions preliminary to prosthetic applications. The peer review process will evaluate the merits of the proposal. However, addressing surgical or other interventions preliminary to prosthetic applications is not required because there is insufficient evidence about the unique aspects of this problem related to land mine incidents to warrant requiring all applicants to conduct this study.

Changes: None.

Description of the Rehabilitation Engineering Research Center Program

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers, and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities.

Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology

and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority.

Priority: Improved Technology Access for Land Mine Survivors Background

In the House Report accompanying the appropriations for the Department of Education, it is stated that:

The Committee has included up to $850,000 within the amounts available to NIDRR to establish, through a competitive award, a rehabilitation engineering research center dealing with the unique needs of land mine survivors. The center is to operate in cooperation with an institution of higher education involved in both rehabilitation medicine and engineering research, training and service and is to focus on the unique rehabilitation needs of the victims of land mine injuries. Specifically, the center is to focus on the development of inexpensive replacement limbs; the development and dissemination of educational materials on prosthetics, and other appropriate prosthetic, orthotic, or assistive technology devices; and the training of health care providers in effective methods of assistance to this population.

In response to this directive, the Secretary is establishing the following priority. Both the Congress and NIDRR are aware of the historic significance of periods of international conflict in stimulating the science of rehabilitation to develop solutions to the impairments caused by sustained large-scale violence. Most recently, survivors of land mine injuries in dozens of nations in Latin America, Europe, Africa, and Asia are in need of innovative solutions to address the loss of limbs and other conditions such as sensory impairments, communication impairments, burns, and other conditions caused by anti-personnel land mines.

Because most of those with unmet needs are located in countries that are either not industrialized, lack infrastructures for rehabilitative services, or lack economic resources, the approaches to meeting these needs must be tailored to their particular circumstances. Solutions, which will focus on, but not be limited to, limb replacement, must be suitable for the available materials, resources, and expertise in the relevant countries, and must also concentrate on building capacity in those nations for design and fitting, manufacture, distribution, maintenance, and provision of supports and services. This RERC will have broad scope in the development of devices through scientific methods, training of indigenous scientists, service providers, and advocates, and transferring technology to the local economies.

There are many national and international organizations that play a role in addressing the problems of land mine survivors and the Center should involve relevant organizations in appropriate roles in Center operations. Included in this group are organizations of survivors themselves; such consumer organizations are important targets of education, information, and training, particularly in the areas of self-help, maintenance of devices, and the need for accommodations, supports, and follow up care. Because so many of the victims of land mines are children, special attention must be directed toward the special needs of children who are growing and developing, and for whom most prostheses or orthoses therefore will have a limited period of utility. The Center may opt to address these problems through technological solutions where feasible, or through partnerships that will provide ongoing care and support.

The work of this RERC will have implications for the United States population as well. There is a continuing need for new and different types of prostheses and orthoses in the United States and other developed nations, with special need for prosthetic and orthotic devices and other rehabilitation technology that is suitable for different climates, low-cost, and appropriate in various cultures. New conditions of health care delivery portend limited resources for rehabilitation technologies and services and durable medical equipment; thus there will be a greater emphasis on durability, endurance, cost containment, and ease of maintenance. This Center's activities will contribute to advancing science, broadening knowledge of materials and methods, and increasing our understanding of and sensitivity to cultural and economic concerns in provision of these rehabilitation technologies.

Priority: The Secretary will establish an RERC to address the unique rehabilitation needs of land mine survivors through developing and testing appropriate innovative replacement limbs (particularly low-cost limbs suitable for developing economies), and other prosthetic and orthotic devices; training indigenous technicians, manufacturers, and health care providers in the fabrication and fitting of appropriate devices; and educating land mine survivors and their families. The RERC shall:

(1) Develop a sound scientific process for evaluating the suitability of existing devices, assessing user needs, developing new and innovative designs, and testing inexpensive replacement limbs, prototypes of prostheses, orthoses, and other appropriate rehabilitation technology devices;

(2) Identify and evaluate existing technologies and systems used for limb replacement and related rehabilitation technology in various nations where there are extensive land mine injuries;

(3) Demonstrate the suitability of proposed devices in terms of cost-effectiveness and appropriateness to the indigenous economies, including available materials, work force capabilities, and infrastructure capacity for timely production and delivery of devices;

(4) Identify the needs of land mine survivors for other types of rehabilitation technologies which may include but need not be limited to vision, hearing and speech aids, and wheelchairs;

(5) Develop and maintain a database to track and correlate consumer needs and characteristics, device specification and performance, and outcomes and conduct a definitive evaluation of the products and procedures;

In carrying out the purposes of the priority, the RERC must:

- Address the needs of land mine survivors of all ages, with particular attention to systems for meeting the changing needs of growing children;
- Conduct, in the third year of the award, a state-of-the-science conference and provide NIDRR with a report on this conference by the end of the fourth year;
- Conduct training of health care providers in affected nations in effective methods of providing rehabilitative assistance to this population; and
- Collaborate with key international organizations and government agencies in the affected nations, with consumer organizations of land mine survivors, and with rehabilitation researchers and service providers, and other Federal agencies including the Department of Defense, the Agency for International Development, the Centers for Disease Control, and the Department of Veterans' Affairs.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers)

Dated: March 18, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–7577 Filed 3–23–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133E]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for a New Rehabilitation Engineering Research Center for Fiscal Year 1998

Purpose of Program: Rehabilitation Engineering Research Centers (RERCs) conduct research, demonstration, and training activities regarding rehabilitation technology—including rehabilitation engineering, assistive technology devices, and assistive technology services, in order to enhance the opportunities to better meet the needs of, and address the barriers confronted by, individuals with disabilities in all aspects of their lives.

Deadline for Transmittal of Applications: May 26, 1998.

Application Available: March 25, 1998.

Maximum Award Amount per Year: $850,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1.

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; (b) Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350, particularly *Rehabilitation Engineering Research Centers* in Subpart D; and (c) the notice of final funding priority on Improved Technology Access for Land Mine Survivors published elsewhere in this issue of the **Federal Register**.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format e.g., Braille, large print, audiotape, or computer diskette on request to the contact person listed in the preceding paragraph.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

PROGRAM AUTHORITY: 29 U.S.C. 760–762.

Dated: March 18, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–7578 Filed 3–23–98; 8:45 am]

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federal register

Tuesday
March 24, 1998

Part IV

Office of Personnel Management

Proposed Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense; Notice

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OFFICE OF PERSONNEL MANAGEMENT

Proposed Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense (DoD)

AGENCY: Office of Personnel Management.

ACTION: Notice of intent to implement demonstration project.

SUMMARY: Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. § 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85), permits the Department of Defense (DoD), with the approval of OPM, to conduct a personnel demonstration project within the Department's civilian acquisition workforce and those supporting personnel assigned to work directly with the acquisition workforce. DoD is proposing a demonstration project to cover the civilian acquisition workforce and teams of personnel, more than half of which consist of members of the acquisition workforce and the remainder of which consist of supporting personnel assigned to work directly with the acquisition workforce, throughout DoD. The total number of participants is limited to 95,000.

DATES: Comment date: To be considered, written comments must be submitted on or before public hearings will be scheduled as follows:

1. 23 April 1998, 10 A.M.; at Essayons Theater Bldg 219, 19th St., Ft. Belvoir, VA 22060.

2. 30 April 1998, 10 A.M.; at 100 N. Sepulveda Blvd., Conference Room Plaza Level, El Segundo, CA 90245.

3. 5 May 1998, 10 A.M.; at Air Force Museum Auditorium, 1100 Spaatz St., Wright-Patterson AFB, OH 45433–7102.

At the time of the hearings, interested persons or organizations may present their written or oral comments on the proposed demonstration project. The hearings will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and state the hearing location, so that OPM can plan the hearings and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to five minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

ADDRESSES: Comments may be mailed to Helen C. Onufrak, U.S. Office of Personnel Management, 1900 E Street NW., Room 7460, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: On proposed demonstration project: OSD Greg Giddens, Acquisition Workforce Personnel Demonstration, 5203 Leesburg Pike, Suite 1404, Falls Church, VA 22041, 703–602–8652; on proposed demonstration project and public hearings: OPM Helen C. Onufrak, U.S. Office of Personnel Management, 1900 E Street NW., Room 7460, Washington, DC 20415, 202–606–1506.

SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) has submitted a proposed demonstration project entitled "Department of Defense Acquisition Workforce Personnel Demonstration Project" for consideration under chapter 47 of title 5, United States Code.

The purpose of this project is to demonstrate a flexible and responsive personnel system that will enhance the Department's ability to attract, retain, and motivate a high-quality workforce. To this end, the proposed project involves: (1) Expansion of the candidate selection process; (2) establishment of three appointment authorities (permanent, modified term, and temporary limited); (3) extended probationary period for new employees in certain circumstances; (4) modified reduction-in-force (RIF) procedures; (5) broadbanding; (6) simplified job classification; (7) a contribution-based compensation and appraisal system; (8) academic degree and certificate training; (9) sabbaticals; and (10) a voluntary emeritus program.

Dated: March 18, 1998.

Office of Personnel Management.

Janice R. Lachance,

Director.

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I. Executive Summary

The project was designed by a Process Action Team (PAT) under the uthority of the Under Secretary of Defense for Acquisition and Technology, with the participation of and review by DoD and the Office of Personnel Management (OPM). The purpose of the project is to enhance the quality, professionalism, and management of the DoD acquisition workforce through improvements in the efficiency and effectiveness of the human resources management system. The project interventions will strive to achieve the best workforce for the acquisition mission, adjust the workforce for change, and improve workforce quality. The project framework addresses all aspects of the human resources life-cycle model.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD acquisition can be enhanced by allowing greater managerial control over personnel processes and functions and, at the same time, expand the opportunities available to employees through a more responsive and flexible personnel system. The quality of DoD acquisition activities, people, and products has been under intense scrutiny in recent years. The perceived deterioration of quality is believed to be due, in substantial part, to the erosion of control that line managers have over their human resources. This demonstration project will provide managers, at the lowest practical level, the authority, control, and flexibility

they need to achieve quality acquisition processes and quality products. This project not only provides a system that retains, recognizes, and rewards employees for their contribution, but also supports their personal and professional growth.

B. Problems With the Present System

One of the goals of the Defense Acquisition Workforce Improvement Act (DAWIA) is to create well-trained, multi-skilled professionals who can completely and effectively manage multi-million-dollar programs. Additionally, Integrated Product Teams (IPTs) require multi-skilled personnel who can function in a dynamic team environment. The acquisition professional who thinks "outside the box," can operate effectively in more than one functional area, and is willing to take managed risks, will be the individual most likely to be a high contributor to the team. Because of this, the current personnel system must be re-engineered to provide incentives and rewards to employees who exhibit these characteristics and who increase their contribution to the acquisition mission accordingly. Hiring restrictions and overly complex job classifications unduly exhaust valuable resources and unnecessarily detract attention from the acquisition mission. Managers must be able to compete with the private sector for the best talent and be able to make timely job offers to potential employees. Those same managers need the tools to reward employees for excellence, so that the acquisition systems produced reflect the quality of such a workforce. A contribution-based compensation system will help managers acquire these tools and provide a forum in which to apply them. The acquisition process is continually changing and is moving more toward a team environment; therefore, managers must be given local control of positions and their classification in order to move employees freely within their organization when demanded by the mission, and to provide developmental opportunities for employees. Additionally, managers have only limited tools to shape the workforce to ensure continued growth of new ideas, perspectives, and state-of-the art skills for the 21st century. In summary, today's acquisition workforce management problems appear to be largely outside the control of the acquisition managers. The inflexibility of many of today's personnel processes and the diffused authority, accountability, and approval chains throughout the organizations, result in a workforce that cannot posture itself for the rapidly changing technological and business environment. Also, the current personnel system does not provide an environment that motivates employees to continue to increase their contribution to the organization and the mission. This demonstration is designed to provide an encouraging environment that promotes the growth of all employees and to improve the local acquisition managers' ability and authority to manage the acquisition workforce effectively.

C. Changes Required/Expected Benefits

This project will demonstrate that a human resource system tailored to the mission and needs of the DoD acquisition workforce will result in: (a) Increased quality in the acquisition workforce and the products it acquires; (b) increased timeliness of key personnel processes; (c) workforce data trends toward higher retention rates of "excellent contributors" and separation rates of "poor contributors"; (d) increased satisfaction of serviced DoD customers with the acquisition process and its products; and (e) increased workforce satisfaction with the personnel management system.

The DoD acquisition workforce demonstration program builds on the features of demonstration projects at the Air Force Research Laboratory, Department of the Navy (China Lake), and National Institute of Standards and Technology (NIST). The long-standing Department of the Navy (China Lake) and NIST demonstration projects have produced impressive statistics on job satisfaction for their employees versus that for the Federal workforce in general. Therefore, in addition to the expected benefits mentioned above, it is anticipated that the DoD acquisition workforce demonstration project will result in more satisfied employees as a consequence of the demonstration's pay equity, classification accuracy, and fairness of performance management. A full range of measures will be collected during project evaluation (sections VII and VIII.B).

D. Bargaining Requirements

Employees within a unit to which a labor organization is accorded exclusive recognition under Chapter 71 of title 5, United States Code, shall not be included as part of the demonstration project unless the exclusive representative and the agency have entered into a written agreement covering participation in and implementation of this project. The parties may use mediation or any other mutually acceptable means to resolve disputes over the implementation of the project with respect to unit employees. Neither party may request the assistance of the Federal Service Impasses Panel to resolve such disputes.

Either labor or management may unilaterally withdraw from negotiations over the application of this demonstration project to bargaining unit members at any time up until final agreement approval, without such action being considered an unfair labor practice under Section 7116 of title 5, United States Code for refusing to negotiate in good faith.

Written agreements addressing the initial implementation of the demonstration project to bargaining unit members are subject to higher-level review and approval within DoD prior to implementation. This review is to ensure local agreements comply with the requirements of the demonstration project and any Service-wide implementing directives. The decision of the higher-level review is not subject to third-party intervention or review. Written agreements established under this paragraph shall be considered "local agreements subject to a national or controlling agreement at a higher level" as provided in 5 U.S.C. 7114(c)(4), and the approved demonstration project shall be considered a "national agreement" under that section.

Once a written agreement is reached and approved allowing for the local implementation of the project, all subsequent negotiations during the life of the project shall be subject to binding impasse procedures under Section 7119 of title 5, United States Code, or to alternative impasse procedures agreed to by the parties.

E. Participating Organizations

The DoD Acquisition Workforce Personnel Demonstration Project will include various organizational elements of the Air Force, Army, Navy, Marine Corps, Defense Information Systems Agency, and Defense Logistics Agency. Participating organizations are shown in Table 1.

TABLE 1- PARTICIPATING ORGANIZATIONS

	Air Force	
Command	**Organization/Office Symbol**	**Locations**
Air Force Materiel Command (AFMC)	Arnold Engineering Development Center (AEDC) - 656 ABW / DO, FM, IN, PK, SD, XP	Arnold AFB, TN
AFMC	Air Force Development Test Center (AFDTC) - 96 ABW / 39 FTS, 40 FTS, 46 Ops Gp, 46 Ops Sq, 46 TS, 46 TW - TS, 96 Comm Gp, 96 Computer Sq, 96 Med Support Sq, 96 Services Sq, AS, BC, CC, CD, CE, DR, FM, PK, SE, XP	Eglin AFB, FL
AFMC	AFDTC - 96 ABW / 46 OPS, DET 1	Hurlburt Field, FL

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AFMC	AFDTC - 96 ABW / 46 TG - CC, 586 FTS, 746 TS, 846 TS, TGR, XP	Holloman AFB, NM
AFMC	AFDTC - 96 ABW / 46 TG, DET 1	White Sands Missile Range, NM
AFMC	AFDTC / 46 LG, 46 LSS, 46 Maint Sq	Eglin AFB, FL
AFMC	AFDTC / 46 OG, OL-AA	Robins AFB, GA
AFMC	AFDTC / 46 OG, OL-AB	McClellan AFB, CA
AFMC	AFDTC / 46 TS DET 1	Hanscom AFB, MA
AFMC	Air Force Flight Test Center (AFFTC) - 412 TW / BX, CA, CC, EW, LG, RM, TS, CV, OG, RL, USAFTPS, Det 1, Det 3, FTC/CC, CD, CV, FM, BC, EM, PK, SE, MQ, XP, JA, PA, HO, IN, IG, 95 ABW / CC, CV, XP, MU, HC, CP, SL, CE, 95 Support Group	Edwards AFB, CA
AFMC	AFFTC - 412 TW / EW, LGLL-2	AF Plant 04, TX
AFMC	AFFTC - 412 TW / HN, LGLL-10, LGLL-13, LGLL-8	Wright-Patterson AFB, OH
AFMC	AFFTC - 412 TW / LGLL-1	Seattle, WA
AFMC	AFFTC - 412 TW / LGLL-5A	Long Beach, CA
AFMC	AFFTC - 412 TW / LGLL-6A	Hurlburt Field, FL
AFMC	AFFTC - 412 TW / LGLL-9A	Tinker AFB, OK
AFMC	AFFTC - 412 TW / TSIO	Kirtland AFB, NM
AFMC	AFFTC - 412 TW / TSU	Hill AFB, UT
AFMC	AFFTC - 95 ABW / ASX, CE, DP, SC, XP	Edwards AFB, CA
AFMC	AFFTC / AFEREG, BC, CD, EM, FM, PK, XP	Edwards AFB, CA

AFMC	Aeronautical Systems Center (ASC) - 645 Mat Sqd / TM	Kirtland AFB, NM
AFMC	ASC - 88 ABW / DET 4	Ontario, CA
AFMC	ASC - 88 ABW / FMPM-1, PKW	Wright-Patterson AFB, OH
AFMC	ASC - 88 ABW / RAB	Tinker AFB, OK
AFMC	ASC - 88 ABW / REB	Greenville, TX
AFMC	ASC / 645 MATS, AZ, BC, CCZ, CV, EM, EN, FB, FM, HP, HR, LP, LU, PK, RA, SC, SE, SM, SY, VC, VJ, XR, YC, YD, YP, YT, YW	Wright-Patterson AFB, OH
AFMC	ASC / AL, AS, AY/CCQ, CY, EN, FM, PK, YH, YU	Eglin AFB, FL
AFMC	ASC / Det	Patuxent River NAS, MD
AFMC	ASC / Det, Det 4, EN, RA, SY	Palmdale AF Plant, CA
AFMC	ASC / SY/YP	Gifu AFB, Japan
AFMC	ASC / SYR-YJ	Arlington, VA
AFMC	Electronic Systems Center (ESC) - ALL	All Locations
AFMC	HQ AFMC - Contracting Office / PKL	Hill AFB, UT
AFMC	HQ AFMC - FOA - OAS / DR	Kirtland AFB, NM
AFMC	HQ AFMC - Space Sys Support Gr / AX, DR - FOA, RM, SD, SE, SIB, SM, SR	Peterson AFB, CO
AFMC	HQ AFMC - Space Sys Support Gr / DET1, DR - FOA	Lowry AFB, CO
AFMC	HQ AFMC - Space Sys Support Gr / DR - FOA	Falcon AFB, CO
AFMC	HQ AFMC - Tech Transition Office / TT	Wright-Patterson AFB, OH
AFMC	HQ AFMC / CEPX, DO,	Wright-Patterson AFB, OH

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	DPEE, DR, EN, FM, IG, INS, LG, LO, PK, SC, SPP, STX, XP	
AFMC	Human Systems Center (HSC) - 70 ABG / SVF	Brooks AFB, TX
AFMC	HSC - Institute for Air and Space Medicine	Brooks AFB, TX
AFMC	HSC - Institute for ESOH Risk Analysis	Brooks AFB, TX
AFMC	HSC / BC, EM, FM, PK, SAS, XR, YA	Brooks AFB, TX
AFMC	Oklahoma City - Air Logistics Center (OC-ALC) - 72 ABW / 72GSCB, 72GSVFL, 72LGSISC, 72MDP, 72SGSL, BC, CR, EM, FM, LA, LC, LH, LI, LK, LP, PK, QL, SE, TI	Tinker AFB, OK
AFMC	Ogden -Air Logistics Center (OO-ALC) - 75 ABW / BC, CCX, CR, FM, LA, LF, LGSPA, LI, LM, PK, QL, SC, SGSL, TI	Hill AFB, UT
AFMC	OO-ALC - 75 ABW / LMSV	Vandenberg AFB, CA
AFMC	San Antonio -Air Logistics Center (SA-ALC) - 76 ABW / BC, B-LT, B-MA, CR, DOK, FM, LA, LC, LD, LF, LG, LP, LR, NW, PK, PR, SE, SF, TI	Kelly AFB, TX
AFMC	SA-ALC - 76 ABW / LCB	Long Beach, CA
AFMC	SA-ALC - 76 ABW / LCOS	Altus AFB, OK
AFMC	SA-ALC - 76 ABW / LDEE	Pensacola, FL
AFMC	SA-ALC - 76 ABW / LFRM	Randolph AFB, TX
AFMC	SA-ALC - 76 ABW / LPFA	W Palm Beach, FL

AFMC	SA-ALC - 76 ABW / NWI	Kirtland AFB, NM
AFMC	Sacramento Air Logistics Center (SM-ALC) - 77 ABW / AQ, BC, CEP, CL, DPEL, FM, LA, LG, LH, LI, PK, QL, SC, TI	McClellan AFB, CA
AFMC	SM-ALC - 77 ABW / OLLHXX	Tinker AFB, OK
AFMC	SM-ALC - 77 ABW / QLA	Palmdale AF Plant, CA
AFMC	SM-ALC - 77 ABW / QLPL	Colorado Springs, CO
AFMC	Space Missile Center (SMC) - 66 ABG, 61 CS, 61MDS, 61MSS, SMC/ CC, BC, HO, IG, IN, JA, MQ, PA, AX, FM, PK, XR, AD, CI, CL, CW, CZ, MC, MT, MV	Los Angeles, CA
AFMC	SMC - Det 8/ CC, CL, CW, PK, AX	Cape Canaveral AFB, FL
AFMC	SMC - Det 9 / CL, CW, TE, CC, PK	Vandenberg AFB, CA
AFMC	SMC - DET 2, SMC/ CW	Onizuka, CA
AFMC	SMC - SMC / PK, TE, TM, AX	Kirtland AFB, NM
AFMC	SMC/TE	Houston, TX
AFMC	SMC/ AX	Washington, DC
AFMC	SMC - AX	Bristol, England
AFMC	Warner Robins Air Logistics Center (WR-ALC) - 70 ABW / BC, FM, LB, LF, LG, LJ, LK, LN, LR, LU, LV, LY, PK, QL, SC, SE, SPA, TI	Robins AFB, GA
AFMC	WR-ALC - 70 ABW / LUJC	Pensacola, FL

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AFMC	WR-ALC - 70 ABW / LUJD	Cherry Point MCAS, NC
AFMC	WR-ALC - 70 ABW / ML	Heath, OH
Secretary of the Air Force	Assistant Secretary of the Air Force (Acquisition) (SAF/AQ)	Pentagon, VA

Army		
Command	**Organization/Office Symbol**	**Locations**
Army Acquisition Executive Support Agency (AAESA)	Headquarters, RDAISA. Contract Support Agency (CSA), Acquisition Career Management Office, Joint Simulations (JSIMS), Army Digitization Office (ADO), Leavenworth Support; Pentagon Support; Management Support Training Group	Ft. Belvoir, VA; Pentagon, VA; Orlando, FL; Radford, VA; Alexandria, VA; Falls Church, VA
AAESA	PEO Aviation (AVN), includes all associated PM's and Liaison Representatives	Huntsville, AL; Pentagon, VA
AAESA	PEO Command, Control and Communication Systems (C3S)	Ft. Monmouth, NJ; Pentagon, VA; Ft. Belvoir, VA; Huntsville, AL; Ft. Sill, OK; Ft. Wayne, IN; Ft. Hood, TX; Seoul, Korea; Yong San, Korea; McLean, VA; White Sands Missile Range, NM; Ft. Bliss, TX; Tallahassee, FL; El Segundo, CA; Ft. Leavenworth, KS; Ft. Sill, OK
AAESA	PEO Ground Combat Support Systems (GCSS), includes all associated	Picatinny Arsenal, NJ; Warren, MI; Pentagon, VA; Washington, DC

	Army	
	PM's and Liaison Representatives	
AAESA	PM, Chemical Demilitarization	Aberdeen Proving Ground, MD; Pentagon, VA; Washington, DC
AAESA	PEO Standard Army Management Information Systems (STAMIS), includes all associated PM's and Liaison Representatives	Ft. Belvoir, VA; Ft. Monroe, VA; Ft. Knox, KY; Ft. Monmouth, NJ; Ft. Lee, VA
AAESA	PM-Unmanned Aerial Vehicle (UAV)	Huntsville, AL; Pentagon, VA; Washington, DC
AAESA	PEO Tactical Missiles, includes all associated PM's and Liaison Representatives	Huntsville, AL; Pentagon, VA; Washington, DC
AAESA	PM-Joint Program for Biological Defense	Ft. Ritchie, MD; Falls Church, VA; Ft. Detrick, MD; Aberdeen Proving Ground, MD
AAESA	PEO IEW&S, includes all associated PM's and Liaison Representatives	Ft. Monmouth, NJ; Ft. Belvoir, VA
AAESA	PEO AMD, includes all associated PM's, Liaison Representatives	Huntsville, AL; Pentagon, VA
Army Materiel Command (AMC)	Headquarters - Acquisition	Alexandria, VA
AMC	Materiel Readiness Activities	Alexandria, VA; Redstone Arsenal, AL; Ft. Benning, GA; Ft. Bliss, TX; Ft. Bragg, NC; Ft. Campbell, KY; Ft. Carson, CO; Ft. Drum, NY; Yong San, Korea; Seckenheim, Germany; Ft. Richardson, AK; Ft. Huachuca, AZ; Ft. Irwin, CA; Ft. Knox, KY; Ft. Lewis, WA; Ft. Polk,

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	Army	
		LA; Ft. Riley, KS; Ft. Stewart, GA; Ft. Leonard Wood, MO
AMC	AMC Headquarters Staff Support Activities	Alexandria, VA; Yong San, Korea; Aberdeen Proving Ground, MD; Rock Island, IL; Nahbohnch, Germany
AMC	US Army Air and Missile Command (AMCOM [MICOM +ATCOM])	All Locations
AMC	US Army Communications - Electronics Command (CECOM)	All Locations
Medical Command (MEDCOM)	US Army Medical Command (MEDCOM)/MCAA	Honolulu, HI; Seattle, WA; El Paso, TX; San Antonio, TX; Augusta, GA; Walter Reed, Washington, DC
AMC	Intelligence Operations Center (IOC) / Watervliet Arsenal	Watervliet, NY
AMC	US Army Tank Automotive and Armaments Command (TACOM)	Warren, MI; Rock Island, IL; Ft. Bragg, NC; Ft. Knox, KY; Ft. Campbell, KY; Ft. Drum, NY; Ft. Benning, GA; Ft. McPherson, GA; Ft. Stewart, GA; Ft. Polk, LA; Ft. Leonard Wood, MO; Corzal, Panama; Camp Shelby, MS; Ft. Hood, TX; Ft. Bliss, TX; Ft. Sill, OK; Ft. Riley, KS; Ft. Lewis, WA; Ft. Carson, CO; Garwin Field ID; Ft. Huachuca, AZ; Ft. Irwin, CA; Schofield Barracks, HI; Hunter AFB, GA; Kuwait; Ft. Belvoir, VA; Picatinny Arsenal, NJ

	Army	
AMC	US Army Test and Evaluation Command (TECOM) Headquarters (DAWIA-coded positions only)	Aberdeen Proving Ground, MD
AMC	TECOM - STEWS-MT; STEWS-DT; STEWS-NRA; STEWS-NRD; STEWS-NRO-C; STEWS-NRO-A; STEWS-EPG	White Sands Missile Range, NM; Kirtland AFB, NM; Ft. Huachuca, AZ
AMC	TECOM	Ft. Rucker, AL; Ft. Huachuca, AZ; Huntsville, AL; Yuma Proving Ground, AZ
Ofc Asst. Secy. of Army (Fin Mgt & Compt)	US Army Cost & Econ Anls Center	Falls Church, VA
Ofc Asst. Secy. of Army (Fin Mgt & Compt)	SAFM-BUI	Pentagon, VA
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Director of Assessment and Evaluation (SARD-ZD)	Pentagon, VA
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Deputy Assistant Secretary of the Army for Procurement (SARD-ZP)	Falls Church, VA
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Deputy Assistant Secretary for Plans/Programs/Policy (SARD-ZR)	Radford, VA; Pentagon, VA; Ft. Belvoir, VA
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Deputy for Systems Management (SARD-ZS)	Pentagon, VA
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Deputy Assistant Secretary for Research and Technology (SARD-ZT)	Pentagon, VA
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Management Support; SACO	Pentagon, VA
8th Army	US Army Contracting Command Korea/EAKC	Seoul, Korea
US Army Operational Test	HQ, OPTEC	Alexandria, VA

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	Army	
and Evaluation Command (OPTEC)		
US Army Operational Test and Evaluation Command (OPTEC)	OPTEC Contracting Activity (OCA)	Ft. Hood, TX
US Army Operational Test and Evaluation Command (OPTEC)	Operational Evaluation Command (OEC)	Alexandria, VA
US Army Operational Test and Evaluation Command (OPTEC)	Evaluation Analysis Center (EAC)	Aberdeen Proving Ground, MD; Ft. Monmouth, NJ; Ft. Bliss, TX
Headquarters Department of the Army (HQDA)	Defense Supply Services Washington (DSSW)/JDSS-W	Washington, DC; Ft. Belvoir, VA; Alexandria, VA; Falls Church, VA
National Guard Bureau	PEO/PM RCAS, NGB-RCS-RA	Newington, VA
Military Traffic Management Command	MTAQ	Falls Church, VA
US Army Space & Missile Defense Command	SMDC	Arlington, VA; Kwajalein Atoll; Huntsville, AL; Fairfax, VA; Colorado Springs, CO; White Sands Missile Range, NM
US Army Training & Doctrine Command	Headquarters - TRADOC Acquisition Directorate and Small & Disadvantaged Business Utilization Office	Ft. Monroe, VA
US Army Training & Doctrine Command	Directorate of Contracting and TRADOC Contracting Activity	Ft. Eustis, VA
US Army Training & Doctrine Command	Directorate of Contracting and Mission Contracting Activity	Ft. Leavenworth, KS
US Army Training & Doctrine Command	Directorate of Contracting and Mission Contracting Activity	Ft. Lee, VA
US Army Training & Doctrine Command	Directorates of Contracting	Ft. Knox, KY; Ft. Benning, GA; Ft. Leonard Wood, MO; Ft. Bliss, TX; Ft. Sill,

	Army	
		OK; Ft. Huachuca, AZ; Carlisle Barracks, PA; Ft. Jackson, SC; Ft. Gordon, GA; Ft. McClellan, AL; Ft. Rucker, AL; Ft. Lee, VA; Presidio at Monterey, CA.
US Army Corps of Engineers	Engineering and Support Centers, Directorate of Contracting (Note: Only 1102, 1103, 1105 and 1106 positions will participate in this demonstration project.)	Huntsville, AL
US Army Corps of Engineers	Headquarters (Note: Only 1102, 1103, 1105 and 1106 positions will participate in this demonstration project.)	Washington, DC
US Army Corps of Engineers	Regional Headquarters (Note: Only 1102, 1103, 1105 and 1106 positions will participate in this demonstration project.)	Omaha, NE; Chicago, IL
US Army Corps of Engineers	Division, Directorates of Contracting (Note: Only 1102, 1103, 1105 and 1106 positions will participate in this demonstration project.)	Cincinnati, OH; Vicksburg, MS; New York, NY; Portland, OR; Honolulu, HI; Atlanta, GA; San Francisco, CA; Dallas, TX;
US Army Corps of Engineers	District Contracting Offices (Note: Only 1102, 1103, 1105 and 1106 positions will participate in this demonstration project.)	Huntington, WV; Louisville, KY; Nashville, TN; Pittsburgh, PA; Buffalo, NY; Chicago, IL; Detroit, MI; Memphis, TN; New Orleans, LA; St. Louis, MO; Vicksburg, MS; Rock Island, IL; St. Paul, MN; Baltimore, MD; New York, NY; Norfolk, VA; Philadelphia, PA; Waltham, MA; Kansas City, MO; Omaha, NE; Portland, OR; Seattle, WA; Walla Walla, WA; Camp Zuma, Japan;

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Army		
		Anchorage, AK; Charleston, SC; Jacksonville, FL; Mobile, AL; Savannah, GA; Wilmington, NC; Albuquerque, NM; Los Angeles, CA; Sacramento, CA; San Francisco, CA; Ft. Worth, TX; Galveston, TX, Little Rock, AR; Tulsa, OK; Frankfurt, Germany; Seoul, Korea
US Army Corps of Engineers	Transatlantic Programs Center, Directorate of Contracting (Note: Only 1102, 1103, 1105 and 1106 positions will participate in this demonstration project.)	Winchester, VA
US Army Corps of Engineers	Humphreys Engineering Center Support Activity, Contracting Office (Note: Only 1102, 1103, 1105 and 1106 positions will participate in this demonstration project.)	Alexandria, VA
US Army Corps of Engineers	Marine Design Center (Note: Only 1102, 1103, 1105 and 1106 positions will participate in this demonstration project.)	Philadelphia, PA

Navy		
Command	**Organization/Office Symbol**	**Locations**
Assistant Secretary of the Navy (Research, Development and Acquisition)	ASN(RD&A)	Arlington, VA
Navy International Program Office	NIPO	Arlington, VA

	Navy	
NAVSUP	NAVICP	Philadelphia, PA
Naval Supply Systems Command (NAVSUP)	NAVSUP Headquarters	Mechanicsburg, PA
NAVSUP	Navy Fleet Material Support Office	Mechanicsburg, PA
NAVSUP	Fleet and Industrial Supply Center	Norfolk, VA; Virginia Beach, VA; Portsmouth, VA; Yorktown, VA; Williamsburg, VA; Colts Neck, NJ; Leonardo, NJ; Philadelphia, PA; Newport, RI; Washington, DC
NAVSUP	Fleet and Industrial Supply Center, Puget Sound	Bremerton, WA
NAVSUP	Fleet and Industrial Supply Center	San Diego, CA
Naval Sea Systems Command (NAVSEA)	SEA 91 (Acquisition)	Arlington, VA
NAVSEA	PEO CLA	Arlington, VA
NAVSUP	Fitting Out and Supply Assistance Center	Norfolk, VA
NAVSUP	Fleet and Industrial Supply Center	Pearl Harbor, HI
NAVAL Center for Acquisition Training	NCAT	Norfolk, VA

	Marines	
Command	**Organization/Office Symbol**	**Locations**
Marine Corps Systems Command	Amphibious Vehicle Test Bed (AVTB)	Camp Pendleton, CA
Marine Corps Systems Command	MARCORSYSCOM-Headquarters; CSLE; Program Support Section	Quantico, VA; Warren, MI; Albany, GA
Marine Corps Systems Command	Marine Corps Tactical Systems Support Activity-	Camp Pendleton, CA

	(MCTSSA)	
Marine Corps Systems Command		Picatinny Arsenal, NJ

	DoD	
Command	**Organization/Office Symbol**	**Locations**
Under Secretary of Defense (Acquisition and Technology)	Director, Defense Procurement	Pentagon, VA
Under Secretary of Defense (Acquisition and Technology)	Director, Acquisition Program Integration	Pentagon, VA
Under Secretary of Defense (Acquisition and Technology)	Deputy Under Secretary of Defense (Acquisition Reform)	Pentagon, VA
Under Secretary of Defense (Acquisition and Technology)	Director, Test, Systems Engineering and Evaluation	Pentagon, VA
DARPA	DARPA/C MO	Arlington, VA
Defense Finance and Accounting Service (DFAS)	Acquisition Support Organization (ASO)	Arlington, VA
DFAS	Integrated Contracting Office (ICO)	Arlington, VA
DFAS	Contract Support Organization (CSO)	Cleveland, OH; Columbus, OH; Denver, CO; Indianapolis, IN; Kansas City, MO
Defense Information Services Agency (DISA)	D2, D4, D6/JE, D7, D8, CIO, COS, DC, DISC, NC, SA, TC, DITCO-NCR, DITCO Europe	Arlington, VA
DISA	D3/WE	NCR, MD/VA/DC; Slidell, LA; Pensacola, FL
DISA	DITCO	Scott AFB, IL; Wheeler AFB, HI

	DoD	
DISA	DMC	Chambersburg, PA; Columbus, OH; Dayton, OH; Denver, CO; Huntsville, AL; Gunter AFB, AL; Hill AFB, UT; Oklahoma City, OK; Rock Island, IL; Sacramento, CA; San Antonio, TX; San Diego, CA; Warner Robins, GA
DISA	Ft. Huachuca	Ft. Huachuca, AZ
DISA	Ft. Monmouth	Ft. Monmouth, NJ
DISA	DT Alaska	Elmendorf AFB, AK
Defense Logistics Agency (DLA)/DAPSC	Office of Contracting	Ft. Belvoir, VA
DLA/DLA Administrative Support Center	DASC	Ft. Belvoir, VA
DLA/Defense Contract Management Command (DCMC)	DCMC-Hartford	Hartford, CT
DLA/Defense Contract Management Command	DCMC-Pratt & Whitney	E. Hartford, CT
DLA/Defense Contract Management Command	DCMC-Hamilton-Standard	Hartford, CT
DLA/Defense Contract Management Command	DCMC-Phoenix	Phoenix, AZ
DLA/Defense Contract Management Command	DCMC-Van Nuys	Van Nuys, CA
DLA/Defense Contract Management Command	DCMC-Boeing Canoga Park	Canoga Park, CA
DLA/Defense Contract Management Command	DCMC-Seattle	Seattle, WA
DLA/Defense Contract Management Command	DCMC-Boeing Seattle	Seattle, WA
DLA/Defense Contract Management Command	DCMC-Thiokol	Brigham City, UT
DLA/Defense Contract Management Command	DCMC-Boeing St. Louis	St. Louis, MO

	DoD	
DLA /Defense Fuel Supply Center	DFSC	Ft. Belvoir, VA
DLA/Defense Service Center Philadelphia	DSCP	Philadelphia, PA
DLA/Defense National Stockpile Center	DNSC	Ft. Belvoir, VA
DLA/Defense Reutilization and Marketing Service	DRMS-Offices of Contracting	Columbus, OH; Battle Creek, MI; Ogden, UT
DLA	Materiel Management	Ft. Belvoir, VA

F. Participating Employees

In determining the scope of the demonstration project, primary consideration was given to the number and diversity of occupations with the DoD acquisition workforce and the teams of personnel, more than half of which consist of members of the acquisition workforce and the remainder of which consist of supporting personnel assigned to work directly with the acquisition workforce, as well as the need for adequate development and testing of the Contribution-based Compensation and Appraisal System (CCAS). Additionally, current DoD human resource management design goals and priorities for the entire civilian workforce were considered. While the intent of this project is to provide DoD activities with increased control and accountability for their covered workforces, the decision was made to restrict development efforts initially to covered General Schedule (GS) positions. Employees covered under the Performance Management and Recognition System Termination Act (pay plan code GM) are General Schedule employees and are covered under the demonstration project.

Interns assigned to an organization participating in this demonstration are included. Employees in the Student Temporary Employment Program (summer hire and stay in school), all positions designated as primary or secondary law enforcement officer (LEO) positions (5 U.S.C. §§ 5541(3)), and all positions in the Defense Civilian Intelligence Personnel System (DCIPS) (10 U.S.C. Chapter 83) are excluded from the Demonstration Project, even if their series and organizations are listed in Tables 1 and 2. Additionally, this demonstration project does not cover those positions that have previously been identified for coverage by a science and technology reinvention laboratory demonstration project, the U.S. Army Europe (USAREUR) demonstration project, or the permanent demonstration project at the Naval Command, Control, and Ocean Surveillance Center, San Diego, CA and the Naval Air Warfare Center, Weapons Division, China Lake, CA.

The job series included in the project are identified in Table 2. To determine if your series and organization are included, locate your organization in Table 1 and then find your job series in Table 2. Additional questions, if any, regarding your specific position should be addressed to OSD, Acquisition Workforce Personnel Demonstration Project Office, or refer to the Web Site at www.crfpst.wpafb.af.mil/Demo/.

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TABLE 2 - SERIES INCLUDED IN THE DoD ACQUISITION WORKFORCE PERSONNEL DEMONSTRATION PROJECT

BUSINESS MANAGEMENT & TECHNICAL MANAGEMENT PROFESSIONAL	
SERIES NUMBER	SERIES TITLE
0018	SAFETY AND OCCUPATIONAL HEALTH MANAGEMENT
0028	ENVIRONMENTAL PROTECTION SPECIALIST
0030	SPORTS SPECIALIST
0062	CLOTHING DESIGN
0080	SECURITY ADMINISTRATION
0101	SOCIAL SCIENCE
0110	ECONOMIST
0170	HISTORY

0180	PSYCHOLOGY
0184	SOCIOLOGY
0185	SOCIAL WORKER
0188	RECREATION SPECIALIST
0190	GENERAL ANTHROPOLOGY
0201	PERSONNEL MANAGEMENT
0205	MILITARY PERSONNEL MANAGEMENT
0212	PERSONNEL STAFFING SPECIALIST
0221	POSITION CLASSIFICATION
0230	EMPLOYEE RELATIONS
0233	LABOR RELATIONS
0235	EMPLOYEE DEVELOPMENT
0246	CONTRACTOR INDUSTRIAL RELATIONS
0260	EQUAL EMPLOYMENT OPPORTUNITY
0301	MISCELLANEOUS ADMINISTRATION & PROGRAM
0332	COMPUTER OPERATION
0334	COMPUTER SPECIALIST
0340	PROGRAM MANAGEMENT
0341	ADMINISTRATIVE OFFICER
0343	MANAGEMENT AND PROGRAM ANALYSIS
0346	LOGISTICS MANAGEMENT
0391	TELECOMMUNICATIONS
0399	ADMINISTRATIVE/OFFICE SUPPORT STUDENT TRAINEE
0401	GENERAL BIOLOGICAL SCIENCE
0403	MICROBIOLOGY
0405	PHARMACOLOGY
0408	ECOLOGY
0410	ZOOLOGY
0413	PHYSIOLOGY
0414	ENTOMOLOGY
0415	TOXICOLOGY
0440	GENETICS
0460	FORESTRY

0493	HOME ECONOMICS
0501	FINANCIAL ADMINISTRATION AND PROGRAM
0505	FINANCIAL MANAGEMENT
0510	ACCOUNTING
0511	AUDITING
0544	CIVILIAN PAY
0560	BUDGET ANALYSIS
0601	GENERAL HEALTH SCIENCE
0602	MEDICAL OFFICER
0630	DIETICIAN AND NUTRITIONIST
0660	PHARMACIST
0662	OPTOMETRIST
0690	INDUSTRIAL HYGIENE
0701	VETERINARY MEDICAL SCIENCE
0801	GENERAL ENGINEERING
0803	SAFETY ENGINEERING
0804	FIRE PREVENTION ENGINEERING
0806	MATERIALS ENGINEERING
0808	ARCHITECTURE
0810	CIVIL ENGINEERING
0819	ENVIRONMENTAL ENGINEERING
0830	MECHANICAL ENGINEERING
0840	NUCLEAR ENGINEERING
0850	ELECTRICAL ENGINEERING
0854	COMPUTER ENGINEERING
0855	ELECTRONICS ENGINEERING
0858	BIOMEDICAL ENGINEERING
0861	AEROSPACE ENGINEERING
0871	NAVAL ARCHITECTURE
0873	SHIP SURVEYING
0880	MINING ENGINEERING
0881	PETROLEUM ENGINEERING
0892	CERAMIC ENGINEERING
0893	CHEMICAL ENGINEERING
0894	WELDING ENGINEERING

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0896	INDUSTRIAL ENGINEERING
0899	ENGINEERING AND ARCHITECTURE STUDENT TRAINEE
0905	GENERAL ATTORNEY
0950	PARALEGAL SPECIALIST
0962	CONTRACT REPRESENTATIVE
1001	GENERAL ARTS AND INFORMATION
1010	EXHIBITS SPECIALIST
1020	ILLUSTRATING
1035	PUBLIC AFFAIRS
1060	PHOTOGRAPHY
1071	AUDIO-VISUAL PRODUCTION
1082	WRITING AND EDITING
1083	TECHNICAL WRITING AND EDITING
1084	VISUAL INFORMATION
1101	GENERAL BUSINESS AND INDUSTRY
1102	CONTRACTING
1103	INDUSTRIAL PROPERTY MANAGEMENT
1104	PROPERTY DISPOSAL
1130	PUBLIC UTILITIES SPECIALIST
1150	INDUSTRIAL SPECIALIST
1160	FINANCIAL ANALYSIS
1163	INSURANCE
1170	REALTY
1173	HOUSING MANAGEMENT
1176	BUILDING MANAGEMENT
1199	BUSINESS AND INDUSTRY STUDENT TRAINEE
1221	PATENT ADVISOR
1222	PATENT ATTORNEY
1301	GENERAL PHYSICAL SCIENCE
1306	HEALTH PHYSICS
1310	PHYSICS
1313	GEOPHYSICS
1320	CHEMISTRY
1321	METALLURGY

1330	ASTRONOMY AND SPACE SCIENCE
1340	METEOROLOGY
1350	GEOLOGY
1360	OCEANOGRAPHY
1370	CARTOGRAPHY
1382	FOOD TECHNOLOGY
1384	TEXTILE TECHNOLOGY
1386	PHOTOGRAPHIC TECHNOLOGY
1410	LIBRARIAN
1412	TECHNICAL INFORMATION SERVICES
1501	GENERAL MATHEMATICS (AFIT FACULTY ONLY)
1510	ACTUARY
1515	OPERATIONS RESEARCH
1520	MATHEMATICS
1529	MATHEMATICAL STATISTICIAN
1530	STATISTICIAN
1550	COMPUTER SCIENCE
1599	MATHEMATICAL AND STATISTICS STUDENT TRAINEE
1601	GENERAL FACILITIES & EQUIPMENT
1640	FACILITY MANAGEMENT
1670	EQUIPMENT SPECIALIST
1701	GENERAL EDUCATION AND TRAINING
1710	EDUCATION AND VOCATIONAL TRAINING
1712	TRAINING INSTRUCTION
1740	EDUCATION SERVICES
1750	INSTRUCTIONAL SYSTEMS
1799	EDUCATION STUDENT TRAINEE
1801	GENERAL INSPECTION, INVESTIGATION & COMPLIANCE
1802	COMPLIANCE, INSPECTION & SUPPORT
1879	CUSTOMS
1890	CUSTOMS INSPECTION
1910	QUALITY ASSURANCE

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2001	GENERAL SUPPLY
2003	SUPPLY PROGRAM MANAGEMENT
2010	INVENTORY MANAGEMENT
2030	DISTRIBUTION FACILITIES AND STORAGE MANAGEMENT
2032	PACKAGING
2050	SUPPLY CATALOGING
2101	TRANSPORTATION SPECIALISTS
2130	TRAFFIC MANAGEMENT
2150	TRANSPORTATION OPERATIONS
2151	AUTOMOTIVE EQUIPMENT DISPATCHER
2152	AIR TRAFFIC CONTROL
2161	MARINE CARGO
2181	AIRCRAFT OPERATION

TECHNICAL MANAGEMENT SUPPORT	
SERIES NUMBER	SERIES TITLE
0019	SAFETY TECHNICIAN
0102	SOCIAL SCIENCE AIDE
0186	SOCIAL SERVICES AIDE AND ASSISTANCE
0189	RECREATION AIDE AND ASSISTANCE
0390	TELECOMMUNICATIONS PROCESSING
0404	BIOLOGICAL SCIENCE TECHNICIAN
0640	HEALTH AIDE AND TECHNICIAN
0644	MEDICAL TECHNOLOGIST
0802	ENGINEERING TECHNICIAN
0809	CONSTRUCTION CONTROL
0818	ENGINEERING DRAFTING
0856	ELECTRONICS TECHNICIAN
0895	INDUSTRIAL ENGINEERING TECHNICIAN
1152	PRODUCTION CONTROL
1311	PHYSICAL SCIENCE TECHNICIAN
1316	HYDRAULIC TECHNICIAN
1341	METEOROLOGICAL TECHNICIAN
1374	GEODETIC TECHNICIAN

1411	LIBRARY TECHNICIAN
1521	MATHEMATICS TECHNICIAN
1531	STATISTICAL ASSISTANT
1702	EDUCATION & TRAINING TECHNICIAN

ADMINISTRATIVE SUPPORT	
SERIES NUMBER	SERIES TITLE
0029	ENVIRONMENTAL PROTECTION ASSISTANT
0085	SECURITY GUARD
0086	SECURITY CLERICAL AND ASSISTANCE
0203	PERSONNEL CLERICAL AND ASSISTANCE
0204	MILITARY PERSONNEL CLERICAL AND TECHNICIAN
0303	MISCELLANEOUS CLERK & ASSISTANT
0304	INFORMATION RECEPTIONIST
0305	MAIL AND FILE
0309	CORRESPONDENCE CLERK
0318	SECRETARY
0322	CLERK-TYPIST
0326	OFFICE AUTOMATION CLERICAL & ASSISTANCE
0335	COMPUTER CLERK & ASSISTANT
0342	SUPPORT SERVICES ADMINISTRATION
0344	MANAGEMENT CLERICAL AND ASSISTANCE
0350	EQUIPMENT OPERATOR
0356	DATA TRANSCRIBER
0361	EQUAL OPPORTUNITY ASSISTANCE
0392	GENERAL TELECOMMUNICATIONS
0394	COMMUNICATIONS CLERICAL
0503	FINANCIAL CLERICAL AND ASSISTANCE
0525	ACCOUNTING TECHNICIAN
0540	VOUCHER EXAMINING
0561	BUDGET CLERICAL AND ASSISTANCE
0679	MEDICAL CLERK
0963	LEGAL INSTRUMENTS EXAMINING
0986	LEGAL CLERICAL AND ASSISTANCE

0990	GENERAL CLAIMS EXAMINING
0995	DEPENDENTS AND ESTATES CLAIMS EXAMINING
1087	EDITORIAL ASSISTANCE
1105	PURCHASING
1106	PROCUREMENT CLERICAL AND ASSISTANCE
1107	PROPERTY DISPOSAL CLERICAL AND TECHNICIAN
2005	SUPPLY CLERICAL AND TECHNICIAN
2102	TRANSPORTATION CLERK AND ASSISTANCE
2131	FREIGHT RATE
2132	TRAVEL
2134	SHIPMENT CLERICAL
2135	TRANSPORTATION LOSS & DAMAGE CLAIMS EXAMINING
2144	CARGO SCHEDULING

Qualifying positions in other job series, located in participating organizations, may be phased in during the course of the project, up to the statutory maximum. However, prior OSD and OPM approval would be required.

Current demographics and union representation for the positions covered by this demonstration project are shown in Table 3.

TABLE 3 - DoD ACQUISITION WORKFORCE DEMOGRAPHICS AND UNION REPRESENTATION

CAREER PATHS	
Business Management & Technical Management Professional	51,434
Technical Management Support	8,562
Administrative Support	11,457
GS-13 AND ABOVE	12,438
GS-12 AND BELOW	59,015

OCCUPATIONAL FAMILIES	22
PERCENTAGE OF VETERANS	22%
UNION AFFILIATION	
AFGE	42,940
NFFE	1,907
IFPTE	
NAGE	795
IAM	
IBT	
PPF	
OTHER	835
DoD COMPONENT	
AIR FORCE	35,480
ARMY	24,083
NAVY	5,030
MARINE CORPS	926
DoD	1,245
DLA	4,689
TOTAL	71,453

Of the 71,453 personnel assigned to this project, 46,477 are represented by labor unions. Union representatives have been separately notified about the project and participated in its development. DoD is proceeding to fulfill its obligation to consult or negotiate with the unions, as appropriate, in accordance with 5 U.S.C. 4703(f).

G. Project Design

In September 1996, a Process Action Team (PAT) was formed by the Secretary of Defense in response to Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C. § 1701 note). The PAT was chartered to take full opportunity of this legislation and to develop solutions for many DoD acquisition workforce personnel issues. The team included managers from each of the Military Services and DoD Components, as well as subject-matter experts from civilian personnel and manpower. This team developed 13 initiatives that together represent sweeping changes to the entire spectrum of human resource management for the DoD acquisition workforce. Several initiatives were designed to assist DoD acquisition activities in hiring and placing the best people to fulfill mission requirements. Others focused on developing, motivating, and equitably compensating employees based on their contribution to the mission. Initiatives to manage workforce realignment effectively and maintain organizational excellence were also developed. These initiatives were endorsed and accepted in total by the acquisition leadership.

After thorough study, the original 13 initiatives were refined. Those appearing herein constitute the demonstration project for purposes of 5 U.S.C. § 4703. The remainder are subject to policies established by OMB and DoD; waivers are being sought at those levels.

III. Personnel System Changes

A. Hiring and Appointment Authorities

1. Simplified, Accelerated Hiring

The complexity of the current system and various hiring restrictions create delays; hamper management's ability to hire, develop, realign, and retain a quality workforce that is reflective of our nation's diversity; and inhibit a

quick response to economic and population changes. Line managers find the complexity limiting as they attempt to accomplish timely recruitment of needed skills. To compete with the private sector for the best talent available and be able to make expeditious job offers, managers need a process that is streamlined, easy to administer, and allows for timely job offers. In order to create a human resource management system that facilitates mission execution and organization excellence, this demonstration project will respond to today's dynamic environment of downsizing, restructuring, and installation closures by obtaining, developing, utilizing, incentivizing, and retaining high-performing employees. The project will provide a flexible system that can reduce, restructure, or renew the workforce quickly to meet diverse mission needs, respond to workload exigencies, and contribute to quality products, people and workplaces.

Specifically, this part of the demonstration project will provide simplified, accelerated hiring that allows participating organizations to more rapidly appoint individuals to positions. Appropriate recruitment methods and sources will include those that are likely to yield quality candidates with the knowledge, skills, and abilities necessary to perform the duties of the position.

(a) Delegated Examining Process

This demonstration project proposes a streamlined examining process. An applicant's basic eligibility will be determined using OPM's Operating Manual "Qualifications Standards for General Schedule Positions" and DAWIA requirements as needed. Minimum eligibility requirements will be those at the lowest equivalent GS grade of the appropriate broadband level. Selective placement factors may be established in accordance with OPM's Operating Manual "Qualifications Standards for General Schedule Positions" when judged to be critical to successful job performance. These factors will be communicated to applicants and must be met for basic eligibility.

Candidates who meet the basic "minimum" qualifications will be further evaluated based on knowledge, skills, and abilities which are directly linked to the position(s) to be filled. Based on this assessment, candidates will receive numerical scores of 70, 80, or 90. No intermediate scores will be granted except for those eligibles who are entitled to veterans' preference. Preference eligibles meeting basic (minimum) qualifications will receive an additional five or ten points (depending on their preference eligibility), added to the minimum scores identified above. Candidates will be placed in one of the quality groups based on their numerical score, including any veterans' preference points: Basically Qualified (score of 70 and above); Highly Qualified (score of 80 and above); or Superior (score of 90 and above). The names of preference eligibles will be entered ahead of others having the same numerical score.

For scientific/engineering and professional positions at the basic rate of pay equivalent to GS–9 and above, candidates will be referred by quality groups in the order of the numerical ratings, including any veterans' preference points. For all other positions, (i.e., other than scientific/engineering and professional positions at the equivalent of GS–9 and above), preference eligibles with a compensable service-connected disability of ten percent or more who meet basic (minimum) eligibility will be listed at the top of the highest group certified.

Selecting officials should be provided with a reasonable number of qualified candidates from which to choose. All candidates in the highest group will be certified. If there is an insufficient number of candidates in the highest group, candidates in the next lower group may be certified in rank order. When two or more groups are certified, candidates will be identified by quality group (i.e., Superior, Highly Qualified, Basically Qualified) in the order of their numerical scores. Passing over any preference eligible(s) to select a nonpreference eligible requires approval under current pass-over or objection procedures.

(b) Scholastic Achievement Appointment

This project proposes to establish a Scholastic Achievement Appointment that provides the authority to appoint candidates with degrees to positions with positive education requirements. Candidates may be appointed under this procedure if: (1) They meet the minimum standards for the positions as published in OPM's Operating Manual "Qualification Standards for General Schedule Positions," plus any selective factors stated in the vacancy announcement; (2) the occupation has a positive education requirement; (3) the candidate has a cumulative grade point average (GPA) of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualification Standards for the occupational series and an overall undergraduate GPA of at least 3.0 on a 4.0 scale; and (4) the appointment is into a position at a pay level lower than the top step of GS–7. Appointments may also be made at the equivalent of GS–9 through GS–11 on the basis of graduate education and experience, but with the requirement of a GPA of at least 3.7 on a scale of 4.0 for graduate courses in the field of study required for the occupation. Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of nonpreference eligibles. Passing over any preference eligible(s) to select a nonpreference eligible requires OPM approval under current objection procedures. This authority allows for competitive appointment to positions at the broadband level II.

2. Appointment Authority

The DoD acquisition environment is seriously affected by variable workload and mission changes that require flexibility not only in workforce numbers but required skills and knowledge. The current personnel system is unable to rapidly adapt the workforce to these changes. This demonstration project will provide a method to expand and contract the workforce as needed. Under this demonstration project there will be three appointment options: permanent, temporary limited, and modified term appointments. The permanent option will be the existing career and career-conditional appointments. The temporary limited option will be the existing temporary-authority-not-to-exceed-one-year appointments. The modified term option will be a new appointment authority that is based on the existing term appointment, but may extend up to five years with a one-year locally approved extension. Benefits and appeal rights are the same as those currently afforded term employees.

Agencies may make a modified term appointment for a period that is expected to last longer than one year, but not to exceed five years with an option for one additional year, when the need for an employee's service is not permanent.

Reasons for making a modified term appointment include, but are not limited to, carrying out special project work; staffing new or existing programs of limited duration; filling a position in activities undergoing review for reduction or closure; and replacing permanent employees who have been temporarily assigned to another

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position, are on extended leave, or have entered military service.

Selections for modified term appointments will be made under competitive examining processes. An agency may make a modified term appointment without regard to the existence of an appropriate certificate if there are insufficient eligibles on the appropriate register and the selectee is:

(a) A person with eligibility for reinstatement;

(b) Any veteran who meets the qualifications for a veterans readjustment appointment;

(c) A person eligible for career or career-conditional employment under §§ 315.601, 315.605, 315.606, 315.607, 315.609, 315.703, or 316.608;

(d) A former term employee of the agency who left prior to the expiration of his/her appointment. Reappointment must be to a position covered by the same term authority under which the individual previously served, and service under such reappointment may not exceed the expiration date of the original term appointment;

(e) A disabled veteran who has been retired from active military service with a disability rating of 30 percent or more, or has been rated by the Department of Veterans Affairs within the preceding year as having a compensable, service-connected disability of 30 percent or more;

(f) A person eligible for acquisition of competitive status for career appointment under 5 U.S.C. 3304(c). (However, a term employee does not acquire a competitive status on the basis of this term appointment; nor does this term appointment extend or terminate the employee's eligibility under 5 U.S.C. 3304(c)); or

(g) A temporary employee who is within reach for term appointment to the same position from an appropriate register at the time of his/her temporary appointment, or during subsequent service in the position, provided that the register was being used for term appointments at the time the employee was reached and he/she has been continuously employed in the position since being reached.

An agency may place a modified term employee in any other modified term position provided the employee meets the qualifying requirements of that position. However, such reassignment will not serve to extend the appointment beyond the original term appointment time period. The qualifications of modified term employees will be determined according to OPM's Operating Manual "Qualifications Standards for General Schedule Positions" and applicable DAWIA requirements.

Employees hired under the modified term appointment authority are in a temporary status but may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term positions(s) may be eligible for conversion to career-conditional appointment at a later date; (2) have served two years of continuous service in the term position; and (3) be selected under merit promotion procedures for the permanent position.

Service under a modified term appointment immediately prior to a permanent appointment shall count toward the probationary period requirements provided contribution is adequate and the permanent position is in the same career path as the modified term appointment.

3. Voluntary Emeritus Program

Under the demonstration project, Commanders/Directors will have the authority to offer retired or separated individuals voluntary assignments in their activities and to accept the gratuitous services of those individuals. Voluntary emeritus program assignments are not considered employment by the Federal Government (except as indicated below). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on earlier separation from Federal Service. This program may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the mission of the command.

The Voluntary Emeritus Corps will ensure continued quality acquisition by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the acquisition community. The program will be beneficial during manpower reductions as program managers, engineers, and other skilled acquisition professionals accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the Voluntary Emeritus Corps, a volunteer must be recommended to the decision-making authority by one or more acquisition managers. No one who applies is entitled to an emeritus position. The decision-making authority must document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while the volunteer is serving in emeritus status. Retired or separated Federal employees may accept an emeritus position without a "break in service" or mandatory waiting period.

Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government but may participate on any contract if no conflict of interest exists. The volunteer may be required to submit a financial disclosure form annually and will not be permitted to participate on any contracts where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established among the volunteer, the decision-making authority, and the Civilian Personnel Office. The agreement must be finalized before the assumption of duties and shall include:

(a) a statement that the service provided is gratuitous, does not constitute an appointment in the Civil Service, is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government because of the service are waived by the volunteer;

(b) a statement that the volunteer will be considered a Federal employee for the purposes of:

(i) Subchapter I of Chapter 81 of title 5, U.S.C. (using the formula established in 10 U.S.C. §§ 1588 for determination of compensation) (work-related injury compensation);

(ii) Chapter 171 of title 28, U.S.C. (tort claims procedure);

(iii) Section 552a of title 5, U.S.C. (records maintained on individuals); and

(iv) Chapter 11 of title 18, U.S.C. (conflicts of interest).

(c) The volunteer's work schedule;

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) Support provided by the activity (travel, administrative, office space, supplies, etc.);

(f) A one-page statement of duties and experience;

(g) A statement specifying that no additional time will be added to a volunteer's service credit for such

purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Corps;

(h) A provision allowing either party to void the agreement with ten days' written notice; and

(i) The level of security access required.

4. Extended Probationary Period

For employees in the professional career path, the current one-year probationary period does not always provide managers the time needed to properly assess the contribution and conduct of new hires in the acquisition environment. Often, new hires are required to attend extensive training and/or educational assignments away from their normal work site and outside the review of their supervisors. A means of extending the opportunity for management to review and evaluate the contribution and potential of new hires so assigned is needed. Expansion of the current one-year probationary period will afford management better control over the quality of employees required to meet mission needs and provide sufficient opportunity to evaluate contribution during the beginning of an acquisition career.

All newly hired permanent career-conditional employees in the professional career path may be subject to an extension of their probationary period equal to the length of any educational/training assignment that places the employee outside normal supervisory review. The extended probationary period could apply to non-status hires, i.e., new hires or those who do not have reemployment or reinstatement eligibility. An employee appointed prior to the implementation date of the demonstration project will not be affected. Aside from extending the probationary period, all other features of the current probationary period are retained.

Probationary employees will be terminated when they fail to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When a supervisor decides to terminate an employee serving a probationary period because his/her work contribution or conduct during that period fails to demonstrate fitness or qualifications for continued employment, the supervisor shall terminate the employee's services by written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the supervisor's conclusions as to the inadequacies of the employee's contribution or conduct.

Service under modified term appointment with no break in service before a permanent appointment made under this demonstration project shall count toward the probationary period requirements, provided that the contribution is adequate and the permanent position is in the same career path as the modified term appointment.

B. Broadbanding

1. Broadband Levels

The broadbanding system will replace the current General Schedule (GS) structure. Currently, the 15 grades of the General Schedule are used to classify positions and, therefore, to set pay. The General Schedule covers all "white-collar" work—administrative, technical, clerical, and professional. The system will initially cover only those positions designated by the Defense Acquisition Workforce Improvement Act (DAWIA) in the Department of Defense acquisition workforce and those positions that support the acquisition workforce.

Occupations with similar characteristics will be grouped together into three career paths with broadband levels designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates. Competitive promotions will be less frequent and movement through the broadband levels will be a more seamless process than under current procedures. Like the previous broadband systems used at the Department of the Navy (China Lake) and the National Institute of Standards and Technology (NIST) permanent demonstration projects, advancement within the system is contingent on merit.

There will be four broadband levels in the demonstration project, labeled I, II, III, and IV. Levels I through IV will include the current grades of GS–01 through GS–15. These are the grades in which the DoD acquisition workforce employees are currently found. Comparison to the GS grades was used in setting the upper and lower dollar limits of the broadband levels; however, once the employees are moved into the demonstration project, GS grades will no longer apply.

The three career paths and their associated broadband levels are as follows:

Business Management & Technical Management Professional

I (GS 1-4)	II (GS 5-11)	III (GS 12-13)	IV (GS 14-15)

Technical Management Support

I (GS 1-4)	II (GS 5-8)	III (GS 9-11)	IV (GS 12-13)

Administrative Support

I (GS 1-4)	II (GS 5-7)	III (GS 8-10)

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Generally, employees will be converted into the broadband level that includes their permanent GS grade of record. Each employee is assured an initial place in the system without loss of pay. As the rates of the General Schedule are increased due to General Schedule pay increases, the minimum and maximum rates of the broadband levels will also move up. Individual employees receive pay increases based on their appraisals under the Contribution-based Compensation and Appraisal System (CCAS). Since pay progression through the levels depends on contribution, there will be no scheduled within-grade increases (WGIs) or scheduled General Schedule increases for employees once the broadbanding system is in place. Special salary rates will no longer be applicable to demonstration project employees. Employees will be eligible for the locality pay of their geographical area (see section V, paragraph A, "Conversion to the Demonstration Project") with the exception of those employees stationed at an overseas location.

Newly hired personnel entering the system will be employed at a level consistent with the expected basic qualifications for the level, as determined by rating against qualifications standards. The hiring official will determine the starting salary based upon available labor market considerations relative to special qualifications requirements, scarcity of qualified applicants, programmatic urgency, and education/experience of the new candidates.

The use of broadbanding provides a stronger link between pay and contribution to the mission of the organization. It is simpler, less time consuming, and less costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized career paths, and complements the other personnel management aspects of the demonstration project.

2. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that the organization have maximum flexibility to assign individuals. Broadbanding enables the organization to have the maximum flexibility to assign an employee within broad descriptions, consistent with the needs of the organization and the individual's qualifications. Assignments may be accomplished as realignments and do not constitute a position change. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

C. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series that are divided into 22 occupational families.

The acquisition personnel demonstration project currently covers numerous series in the 22 occupational families. The occupational series, which frequently provide well-recognized disciplines with which employees wish to be identified, will be maintained. This will facilitate movement of personnel into and out of the demonstration project.

2. Classification Standards

The present system of OPM classification standards will be used for identification of proper series and occupational titles of positions within the demonstration project. References in the position classification standards to grade criteria will not be used as part of the demonstration project. Rather, the CCAS broadband level descriptors, as aligned in the three career paths, will be used for the purpose of broadband level determination. These descriptors are derived from the OPM Primary Classification Standard. Under the demonstration project, each broadband level is represented by a set of descriptors. This eliminates the need for the use of grading criteria in OPM classification standards. The broadband level descriptors can be found in section D.

3. Classification Authority

Under the demonstration, commanders (or equivalent) will have delegated classification authority and may re-delegate this authority to subordinate management levels. Re-delegated classification approval must be exercised at least one management level above the first-line supervisor of the employee or position under review. First-line supervisors will provide classification recommendations. Personnel specialists will provide on-going consultation and guidance to managers and supervisors throughout the classification process.

4. Position Requirements Document

Under the demonstration project's classification system, a new position requirements document (PRD) will replace the current agency-developed position description form. The PRD will combine the position information, staffing requirements, and contribution expectations into a one- or two-page document. The new PRD will include a description of job-specific information, reference the CCAS broadband level descriptors for the assigned broadband level, and provide other information pertinent to the job. Supervisors will use a computer-assisted process to produce the PRD. The objectives in developing the new PRD are to: (a) simplify the descriptions and the preparation process through automation; (b) provide more flexibility in work assignments; and (c) provide a more useful tool for other functions of personnel management, e.g., recruitment, assessment of contribution, employee development, and reduction in force.

5. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption or non-exemption determinations will be made consistent with criteria found in 5 CFR (Code of Federal Regulations) Part 551.

All employees are covered by the FLSA unless they meet criteria for exemption. The duties and responsibilities outlined in the broadband level descriptors for each pay band will be compared to the FLSA criteria and the tentative conclusions programmed into the automated classification system so that the system will be able to generate the FLSA coverage based upon the user's selection of occupational family, pay band, and supervisory responsibility. Each position will be evaluated on a case-by-case basis by comparing the duties and responsibilities assigned, the broadband level descriptors for each broadband level, and the 5 CFR Part 551 FLSA criteria.

6. Classification Appeals

An employee may appeal the occupational series, title, or broadband level of his or her own position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. If an employee is not satisfied with the DoD response, he or she may appeal to the Office of Personnel Management only after DoD

has rendered a decision under the provisions of the demonstration project. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under title 5 apply.

An employee may not appeal the accuracy of the position requirements document, the demonstration project classification criteria, or the pay-setting criteria; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the Civilian Personnel Office/ Human Resources Office (CPO/HRO) providing personnel service and will include copies of appropriate demonstration project criteria.

D. Contribution-based Compensation and Appraisal System

1. Overview

The purpose of the Contribution-based Compensation and Appraisal System (CCAS) is to provide an equitable and flexible method for appraising and compensating the DoD acquisition workforce. It is central to the objectives of the Defense Acquisition Workforce Improvement Act (DAWIA) and the National Performance Review, and will correlate individual compensation to organizational mission contribution. CCAS allows for more employee involvement in the performance appraisal process, increases communication between supervisors and employees, promotes a clear accountability of contribution by each employee, facilitates employee progression tied to organizational contribution, and provides an understandable basis for salary changes. Most of the funds previously allocated for performance-based awards will be reserved for distribution under the CCAS system, based on employee contribution.

CCAS is a contribution-based appraisal system that goes beyond a performance-based rating system. That is, it measures the employee's contribution to the goals of the organization, rather than how well the employee performed a job as defined by a performance plan. Past experience with the existing civilian performance appraisal system indicates that performance plans are often tailored to the individual's level of previous performance. Hence, an employee may have been rewarded by salary step increases for accomplishing a satisfactory level of performance against a diminishing set of responsibilities. CCAS promotes salary adjustment decisions made on the basis of an individual's overall annual contribution when compared to all other employees and level of compensation. Therefore, larger than average salary increases are possible for employees who are determined to be "under-compensated," and smaller than average increases are permitted for employees who are deemed to be "over-compensated" in relation to their organizational contributions.

An employee's performance is a component of contribution that influences the ultimate Overall Contribution Score (OCS). Contribution is measured by using a set of factors, discriminators, and descriptors, each of which is relevant to the success of a DoD acquisition center or unit. Taken together, these factors, discriminators, and descriptors capture the critical content of jobs in each career path. The factors, discriminators, and descriptors may not be modified or supplemented. These factors, discriminators, and descriptors are the same as those used to classify a position at the appropriate broadband level.

The six (6) factors are: (1) Problem Solving, (2) Teamwork/Cooperation, (3) Customer Relations, (4) Leadership/ Supervision, (5) Communication, and (6) Resource Management. These factors were chosen for evaluating the yearly contribution of DoD acquisition personnel in the three career paths: (1) Business Management & Technical Management Professional, (2) Technical Management Support, and (3) Administrative Support. Each factor has multiple levels of increasing contribution corresponding to the broadband levels. Each factor contains descriptors for each respective level within the relevant career path.

CAREER PATH: (1) BUSINESS MANAGEMENT & TECHNICAL MANAGEMENT PROFESSIONAL

FACTOR: 1.—PROBLEM SOLVING

FACTOR DESCRIPTION

This factor describes/captures personal and organizational problem-solving results. EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Completed work meets project/program objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

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LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Performs activities on a task; assists supervisor or other appropriate personnel. • Resolves routine problems within established guidelines. • Independently performs assigned tasks within area of responsibility; refers situations to supervisor or other appropriate personnel when existing guidelines do not apply. • Takes initiative in determining and implementing appropriate procedures.	- Scope/Impact - Complexity/Difficulty - Independence - Creativity
Level II • Plans and conducts functional technical activities for projects/programs. • Identifies, analyzes, and resolves complex/difficult problems. • Independently identifies and resolves conventional problems which may require deviations from accepted policies or instructions. • Adapts existing plans and techniques to accomplish complex projects/programs. Recommends improvements to the design or operation of systems, equipment, or processes.	- Scope/Impact - Complexity/Difficulty - Independence - Creativity
Level III • Independently defines, directs, or leads highly challenging projects/programs. Identifies and resolves highly complex problems not susceptible to treatment by accepted methods. • Develops, integrates, and implements solutions to diverse, highly complex problems across multiple areas and disciplines. • Anticipates problems, develops sound solutions and action plans to ensure program/mission accomplishment. • Develops plans and techniques to fit new situations to improve overall program and policies. Establishes precedents in application of problem-solving techniques to enhance existing processes.	- Scope/Impact - Complexity/Difficulty - Independence - Creativity
Level IV • Defines, establishes, and directs organizational focus	- Scope/Impact

(on challenging and highly complex project/ programs). Identifies and resolves highly complex problems that cross organizational boundaries and promulgates solutions. Resolution of problems requires mastery of the field to develop new hypotheses or fundamental new concepts. • Assesses and provides strategic direction for resolution of mission critical problems, policies, and procedures. • Works at senior level to define, integrate, and implement strategic direction for vital programs with long-term impact on large numbers of people. Initiates actions to resolve major organizational issues. Promulgates innovative solutions and methodologies. • Works with senior management to establish new fundamental concepts and criteria and stimulate the development of new policies, methodologies, and techniques. Converts strategic goals into programs or policies.	- Complexity/Difficulty - Independence - Creativity

FACTOR: 2.—TEAMWORK/COOPERATION

FACTOR DESCRIPTION

This factor, applicable to all teams, describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

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LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Works with others to accomplish routine tasks • Contributes ideas in own area of expertise. Interacts cooperatively with others. • Regularly completes assignments in support of team goals.	- Scope of Team Effort - Contribution to Team - Effectiveness
Level II • Works with others to accomplish projects/programs. • Uses varied approaches to resolve or collaborate on project/program issues. Facilitates cooperative interactions with others. • Guides/supports others in executing team assignments. Proactively functions as an integral part of the team.	- Scope of Team Effort - Contribution to Team - Effectiveness
Level III • Works with others to accomplish complex projects/programs. • Applies innovative approaches to resolve unusual/difficult issues significantly impacting important policies or programs. Promotes and maintains environment for cooperation and teamwork. • Leads and guides others in formulating and executing team plans. Expertise is sought by peers.	- Scope of Team Effort - Contribution to Team - Effectiveness
Level IV • Leads/guides/mentors workforce in dealing with complex problems. • Solves broad organizational issues. Implements strategic plans within and across organizational components. Ensures a cooperative teamwork environment. • Leads/guides workforce in achieving organizational goals. Participates on high-level teams. Is sought out for consultation.	- Scope of Team Effort - Contribution to Team - Effectiveness

FACTOR: 3.—CUSTOMER RELATIONS

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Independently carries out routine customer requests. • Participates as a team member to meet customer needs. • Interacts with customers on routine issues with appropriate guidance.	- Breadth of Influence - Customer Needs - Customer Interaction Level
Level II • Guides the technical/functional efforts of individuals or team members as they interact with customers. • Initiates meetings and interactions with customers to understand customer needs/expectations. • Interacts independently with customers to communicate information and coordinate actions.	- Breadth of Influence - Customer Needs - Customer Interaction Level
Level III • Guides and integrates functional efforts of individuals or teams in support of customer interaction. Seeks innovative approaches to satisfy customers. • Establishes customer alliances, anticipates and fulfills customer needs, and translates customer needs to programs/projects.	- Breadth of Influence - Customer Needs

• Interacts independently and proactively with customers to identify and define complex/difficult problems and to develop and implement strategies or techniques for resolving program/project problems (e.g., determining priorities and resolving conflict among customers' requirements).	- Customer Interaction Level
Level IV • Leads and manages the organizational interactions with customers from a strategic standpoint. • Works to assess and promulgate political, fiscal, and other factors affecting customer and program/project needs. Works with customer at management levels to resolve problems affecting program/projects(e.g., problems that involve determining priorities and resolving conflicts among customers' requirements). • Works at senior level to stimulate customer alliances for program/project support. Stimulates, organizes, and leads overall customer interactions.	- Breadth of Influence - Customer Needs - Customer Interaction Level

FACTOR: 4.—LEADERSHIP/SUPERVISION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational leadership and/or supervision.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Takes initiative in accomplishing assigned tasks.	- Leadership Role

• Provides inputs to others in own technical/functional area. • Seeks and takes advantage of developmental opportunities.	- Breadth of Influence - Mentoring/Employee Development
LEVEL II • Actively contributes as a team member/leader; provides insight and recommends changes or solutions to problems. • Proactively guides, coordinates, and consults with others to accomplish projects. • Identifies and pursues individual/team development opportunities.	- Leadership Role - Breadth of Influence - Mentoring/Employee Development
Level III • Provides guidance to individuals/teams; resolves conflicts. Considered a functional/technical expert by others in the organization; is regularly sought out by others for advice and assistance. • Defines, organizes, and assigns activities to accomplish project/program goals. Guides, motivates, and oversees the activities of individuals and teams with focus on project/program issues. • Fosters individual/team development by mentoring. Pursues or creates training development programs for self and others.	- Leadership Role - Breadth of Influence - Mentoring/Employee Development
LEVEL IV • Establishes and/or leads teams to carry out complex projects or programs. Resolves conflicts. Creates climate where empowerment and creativity thrive. Recognized as a technical/functional authority on specific issues. • Leads, defines, manages, and integrates efforts of several groups or teams. Ensures organizational mission and program success. • Fosters the development of other team members by providing guidance or sharing expertise. Directs assignments to encourage employee development and cross-functional growth to meet organizational needs. Pursues personal professional development.	- Leadership Role - Breadth of Influence - Mentoring/Employee Development

FACTOR: 5.—COMMUNICATION

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Communicates routine task status/results as required. • Provides timely data and written analyses for input to management/technical reports or contractual documents. • Explains status/results of assigned tasks.	- Level of Interaction (Audience) - Written - Oral
LEVEL II • Communicates team or group tasking results, internally and externally, at peer levels. • Writes, or is a major contributor to, management/technical reports or contractual documents. • Presents informational briefings.	- Level of Interaction (Audience) - Written - Oral
LEVEL III • Communicates project or program results to all levels, internally and externally. • Reviews and approves, or is a major contributor to/ lead author of, management reports or contractual documents for external distribution. Provides inputs to policies. • Presents briefings to obtain consensus/approval.	- Level of Interaction (Audience) - Written - Oral
LEVEL IV • Determines and communicates organizational positions on major projects or policies to senior level. • Prepares, reviews, and approves major reports or policies of organization for internal and external distribution. Resolves diverse viewpoints/controversial issues. • Presents organizational briefings to convey strategic vision or organizational policies.	- Level of Interaction (Audience) - Written - Oral

FACTOR: 6.—RESOURCE MANAGEMENT

FACTOR DESCRIPTION

This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I	
• Uses assigned resources needed to accomplish tasks.	- Scope of Responsibility
• Plans individual time and assigned resources to accomplish tasks.	- Planning/Budgeting
• Effectively accomplishes assigned tasks.	- Execution/Efficiency
LEVEL II	
• Plans and utilizes appropriate resources to accomplish project goals.	- Scope of Responsibility
• Optimizes resources to accomplish projects/programs	- Planning/Budgeting

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within established schedules. • Effectively accomplishes project/program goals within established resource guidelines.	- Execution/Efficiency
LEVEL III • Plans and allocates resources to accomplish multiple project/programs. • Identifies and optimizes resources to accomplish multiple project/program goals. • Effectively accomplishes multiple project/program goals within established guidelines.	- Scope of Responsibility - Planning/Budgeting - Execution/Efficiency
LEVEL IV • Develops, acquires, and allocates resources to accomplish mission goals and strategic objectives. • Formulates organizational strategies, tactics, and budget/action plan to acquire and allocate resources. • Optimizes, controls, and manages all resources across projects/programs. Develops and integrates innovative approaches to attain goals and minimize expenditures.	- Scope of Responsibility - Planning/Budgeting - Execution/Efficiency

CAREER PATH: (2) TECHNICAL MANAGEMENT SUPPORT

FACTOR: 1.—PROBLEM SOLVING

FACTOR DESCRIPTION

This factor describes/captures personal and organizational problem-solving.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Completed work meets project/program objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Conducts activities on a task; assists supervisors or other appropriate personnel. • Resolves routine problems within established guidelines. • Works with others in solving problems with appropriate guidance. • Takes initiative in selecting and implementing appropriate procedures.	- Scope/Impact - Complexity/Difficulty - Independence - Creativity
LEVEL II • Plans and conducts technical activities for projects. • Identifies and resolves non-routine technical problems utilizing established patterns and methods. • Identifies and resolves problems; adapts accepted policies, procedures, or methods with moderate guidance. • Adapts existing plans and techniques to accomplish projects.	- Scope/Impact - Complexity/Difficulty - Independence - Creativity
LEVEL III • Plans and conducts challenging and difficult technical activities for projects/programs. • Develops, integrates, and implements solutions to complex problems on projects/programs. • Identifies problems; develops solutions and action plans with minimal guidance. • Develops plans and techniques to fit new situations.	- Scope/Impact - Complexity/Difficulty - Independence - Creativity
LEVEL IV • Identifies and resolves complex problems that may cross functional/technical boundaries and promulgates solutions. • Develops, integrates/implements solutions to diverse, complex problems which may cross multiple projects/programs or functional/technical areas. • Independently resolves and coordinates technical problems involving multiple projects/programs. • Develops plans and techniques to fit new situations and/or to address issues that cross technical/functional areas.	- Scope/Impact - Complexity/Difficulty - Independence - Creativity

FACTOR: 2.—TEAMWORK/COOPERATION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Works with others to accomplish routine tasks. • Contributes ideas in own area of expertise. Interacts cooperatively with others. • Regularly completes assignments in support of team goals.	- Scope of Team Effort - Contribution to Team - Effectiveness
LEVEL II • Works with others in accomplishing projects. • Contributes ideas in own area of expertise. Facilitates cooperative interactions with others. • Supports others in executing team assignments. Proactively functions as an integral part of the team.	- Scope of Team Effort - Contribution to Team - Effectiveness
LEVEL III • Works with others to accomplish complex projects/programs. • Guides others to resolve or collaborate on complex project/program issues. Promotes cooperative interactions with others. • Integrates technical expertise and guides activities to support team accomplishment.	- Scope of Team Effort - Contribution to Team - Effectiveness
LEVEL IV • Leads others to accomplish complex projects and programs. • Applies innovative approaches to resolve unusual/difficult technical/management issues. Promotes and maintains environment for cooperation and teamwork. • Leads and guides others in formulating and executing team plans. Expertise is sought by others.	- Scope of Team Effort - Contribution to Team - Effectiveness

FACTOR: 3.—CUSTOMER RELATIONS

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Assists customer support activities. • Participates as a team member to meet customer needs. • Interacts with customers on routine issues with appropriate guidance.	- Breadth of Influence - Customer Needs - Customer Interaction Level
LEVEL II	

• Actively participates with others to satisfy customer requests. • Interacts with customers to respond to customer needs/expectations. • Interacts with customers to communicate information and coordinate action.	- Breadth of Influence - Customer Needs - Customer Interaction Level
LEVEL III • Guides the technical efforts of individuals or teams as they relate with customers. Deviates from standard approaches when necessary. • Initiates meetings and interactions with customers to understand customer needs/expectations. • Interacts independently and proactively with customers to identify/define problems and to implement solutions.	- Breadth of Influence - Customer Needs - Customer Interaction Level
LEVEL IV • Leads and coordinates technical efforts of individuals or teams in support of customer interactions. Develops innovative approaches to satisfy customers. • Establishes customer alliances; anticipates and fulfills customer needs and translates customer needs to project/programs. Organizes and leads customer interactions. • Interacts proactively with customers to identify and define complex/controversial problems and to develop and implement strategies or techniques for resolving project/program issues.	- Breadth of Influence - Customer Needs - Customer Interaction Level

FACTOR: 4.—LEADERSHIP/SUPERVISION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational leadership and/or supervision.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Takes initiative in accomplishing assigned tasks. Asks for assistance as appropriate. • Provides input to others in technical/functional area. • Seeks and takes advantage of developmental opportunities.	- Leadership Role - Breadth of Influence - Mentoring/Employee Development
LEVEL II • Actively contributes as team member; takes initiative to accomplish assigned projects. • Consults and coordinates with others to complete projects within established guidelines. • Identifies and pursues individual/team developmental opportunities.	- Leadership Role - Breadth of Influence - Mentoring/Employee Development
LEVEL III • Actively contributes as team member or leader. Recognized for functional/technical expertise. • Defines, organizes, and assigns activities to accomplish goals. Guides, motivates and oversees others in accomplishing projects/programs. • Promotes developmental opportunities for self and team. Advises others to seek specific training.	- Leadership Role - Breadth of Influence - Mentoring/Employee Development
LEVEL IV • Provides guidance to individuals/teams; resolves conflicts. Serves as subject matter expert. • Guides, motivates, and oversees multiple complex projects/programs. • Directs assignments to encourage employee development and cross-technical/functional growth to meet organizational needs. Pursues self-development.	- Leadership Role - Breadth of Influence - Mentoring/Employee Development

FACTOR: 5.—COMMUNICATION

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

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LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Communicates routine task/status/results as required. • Provides data and accurate draft documentation of assigned tasks for input to reports or documents. • Explains status/results of assigned tasks.	- Level of Interaction (Audience) - Written - Oral
LEVEL II • Communicates team or group project status/results at equivalent levels within the agency. • Writes segments of management/technical reports or documents. • Communicates group/team results.	- Level of Interaction (Audience) - Written - Oral
LEVEL III • Communicates project/program status/results to management. • Consolidates input and writes management/technical reports/documents for projects/programs. • Presents project/program briefings.	- Level of Interaction (Audience) - Written - Oral
LEVEL IV • Determines and communicates project/program positions at senior levels. • Prepares, reviews, and approves	- Level of Interaction (Audience) - Written

management/technical reports for internal and external distribution. • Presents project/program briefings to obtain consensus/approval. Represents the organization as technical subject matter expert.	- Oral

FACTOR: 6.—RESOURCE MANAGEMENT

FACTOR DESCRIPTION

This factor describes/captures personal and organizational utilization of resources to accomplish the mission.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Uses assigned resources to accomplish tasks. • Plans individual time to accomplish tasks. • Effectively accomplishes assigned tasks with appropriate guidance.	- Scope of Responsibility - Planning/Budgeting - Execution/Efficiency
LEVEL II • Identifies and uses resources appropriately to accomplish projects. • Plans resources to achieve task schedules. • Independently accomplishes assigned tasks.	- Scope of Responsibility - Planning/Budgeting - Execution/Efficiency
LEVEL III • Plans and utilizes appropriate resources to accomplish projects/programs.	- Scope of Responsibility
• Optimizes resources to accomplish projects within established milestones. • Effectively accomplishes projects/programs within established resource guidelines.	- Planning/Budgeting - Execution/Efficiency
LEVEL IV • Plans and allocates resources to accomplish multiple project/program goals. • Identifies and optimizes resources to accomplish multiple project/program goals. • Effectively accomplishes multiple project/program goals within established thresholds. Develops innovative approaches to attain goals and minimize resource expenditures.	- Scope of Responsibility - Planning/Budgeting - Execution/Efficiency

CAREER PATH: (3) ADMINISTRATIVE SUPPORT

FACTOR: 1.—PROBLEM SOLVING

FACTOR DESCRIPTION

This factor describes/captures personal and organizational problem solving.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Completed work meets project/program objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

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LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Conducts activities on a segment of a task. Assists supervisor or other appropriate personnel. • Applies standard rules, procedures, or operations to resolve routine problems.	- Scope/Impact - Complexity/Difficulty
• Independently carries out routine tasks. • Takes initiative in selecting and implementing appropriate procedures.	- Independence - Creativity
LEVEL II • Plans and conducts administrative activities for projects. • Develops, modifies, and/or applies rules, procedures, or operations to resolve problems of moderate complexity/difficulty. • Independently plans and executes assignments; resolves problems and handles deviations. • Identifies and adapts guidelines for new or unusual situations.	- Scope/Impact - Complexity/Difficulty - Independence - Creativity
LEVEL III • Plans and conducts complex administrative activities. • Develops rules, procedures, or operations for complex/difficult organizational tasks. • Identifies issues and determines approaches and methods to accomplish tasks. Initiates effective actions and resolves related conflicts. • Identifies issues requiring new procedures and develops appropriate guidelines.	- Scope/Impact - Complexity/Difficulty - Independence - Creativity

FACTOR: 2.—TEAMWORK/COOPERATION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Works with others to accomplish routine tasks. • Contributes ideas on routine procedures. Interacts cooperatively with others. • Regularly completes tasks in support of team goals.	- Scope of Team Effort - Contribution to Team - Effectiveness
LEVEL II • Works with others to accomplish tasks. • Resolves administrative problems; facilitates cooperative interactions with others. • Guides others and coordinates activities in support of team goals. Proactively functions as an integral part of the team.	- Scope of Team Effort - Contribution to Team - Effectiveness
LEVEL III • Works with others on complex issues/problems that may cross functional areas. • Applies expertise in resolving complex administrative issues. Promotes and maintains environment for cooperation/teamwork. Sets tone for internal/external cooperation. • Leads and guides others in formulating and executing plans in support of team goals.	- Scope of Team Effort - Contribution to Team - Effectiveness

FACTOR: 3.—CUSTOMER RELATIONS

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Assists customer support activities. • Meets routine customer needs. • Interacts with customers on routine issues within specific guidelines.	- Breadth of Influence - Customer Needs - Customer Interaction Level
LEVEL II • Guides the administrative efforts of individuals or team members as they interact with customers. • Independently interacts with customers to understand customer needs/expectations. • Interacts independently with customers to communicate information and coordinate actions.	- Breadth of Influence - Customer Needs - Customer Interaction Level
LEVEL III • Identifies, defines, and guides administrative efforts in support of customer interactions; coordinates and focuses activities to support multiple customers. • Establishes customer alliances and translates needs to customer service. • Works independently with customers at all levels to define services and resolve non-routine problems.	- Breadth of Influence - Customer Needs - Customer Interaction Level

FACTOR: 4.—LEADERSHIP/SUPERVISION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational leadership and/or supervision.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Takes initiative in accomplishing assigned tasks. Asks for assistance as appropriate. • Provides input in administrative/functional area. • Seeks and takes advantage of developmental opportunities.	- Leadership Role - Breadth of Influence - Mentoring/Employee Development
LEVEL II • Actively contributes as team member or leader; takes initiative to accomplish assigned projects. • Guides others in accomplishing projects. • Coordinates appropriately with others to complete tasks within established guidelines. • Identifies and pursues individual/team developmental opportunities.	- Leadership Role - Breadth of Influence - Empowerment - Mentoring/Employee Development
LEVEL III • Provides guidance to individuals/teams; resolves conflicts. Expertise solicited by others. • Guides and accounts for results or activities of individuals, teams, or projects. • Promotes individual/team development; leads development of training programs for self and others.	- Leadership Role - Breadth of Influence - Mentoring/Employee Development

FACTOR: 5.—COMMUNICATION

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Communicates routine task/status results as required. • Writes timely and accurate draft documentation. • Explains status/results of assigned tasks.	- Level of Interaction (Audience) - Written - Oral
LEVEL II • Interprets and communicates administrative procedures within immediate organization. • Prepares, coordinates, and consolidates documents, reports, or briefings. • Communicates/presents internal administrative/functional procedures and tasks internally and externally.	- Level of Interaction (Audience) - Written - Oral
LEVEL III • Develops and advises on administrative procedures and communicates them to all levels, both internally and externally. • Prepares, reviews, and/or approves documents, reports, or briefings. • Explains and/or communicates administrative/functional procedures at all levels.	- Level of Interaction (Audience) - Written - Oral

FACTOR: 6.—RESOURCE MANAGEMENT

FACTOR DESCRIPTION

This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Available resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I	
• Uses assigned resources to accomplish tasks.	- Scope of Responsibility
• Plans individual time and assigned resources to accomplish tasks.	- Planning/Budgeting
• Effectively accomplishes assigned tasks.	- Execution/Efficiency
LEVEL II	
• Identifies and uses resources to accomplish projects.	- Scope of Responsibility
• Plans resources to achieve project schedules.	- Planning/Budgeting
• Effectively accomplishes projects within established resource guidelines.	- Execution/Efficiency
LEVEL III	
• Plans, acquires, and allocates resources to accomplish objectives.	- Scope of Responsibility
• Coordinates resources across projects.	- Planning/Budgeting
• Optimizes resource utilization across projects.	- Execution/Efficiency

2. Normal Pay Range (NPR)

The Contribution-based Compensation and Appraisal System (CCAS) integrated pay schedule provides a direct link between increasing levels of contribution and increasing salary. This is shown by the graph in Figure 1. The horizontal axis spans from 0 to the maximum contribution score of 100. The vertical axis spans from zero dollars to the dollar equivalent of GS–15, step 10. This encompasses the full salary range paid under this demonstration; GS–1, step 1 through GS–15, step 10 for Calendar Year 1998 (CY98). (Note: Figure 1 currently depicts CY98. Each year the rails for the NPR are adjusted based on the General Schedule pay increase under 5 U.S.C. 5303.) The area between the upper and lower rail is considered the normal pay range; employees whose annual overall contribution score (OCS) plotted against their base salary falls on or within the rails are considered "appropriately compensated." Employees whose salaries fall below the NPR for their assessed contribution score are considered "under-compensated," and those falling above the NPR are considered "over-compensated." The goal of CCAS is to make pay consistent with employees' contributions to the mission of the organization.

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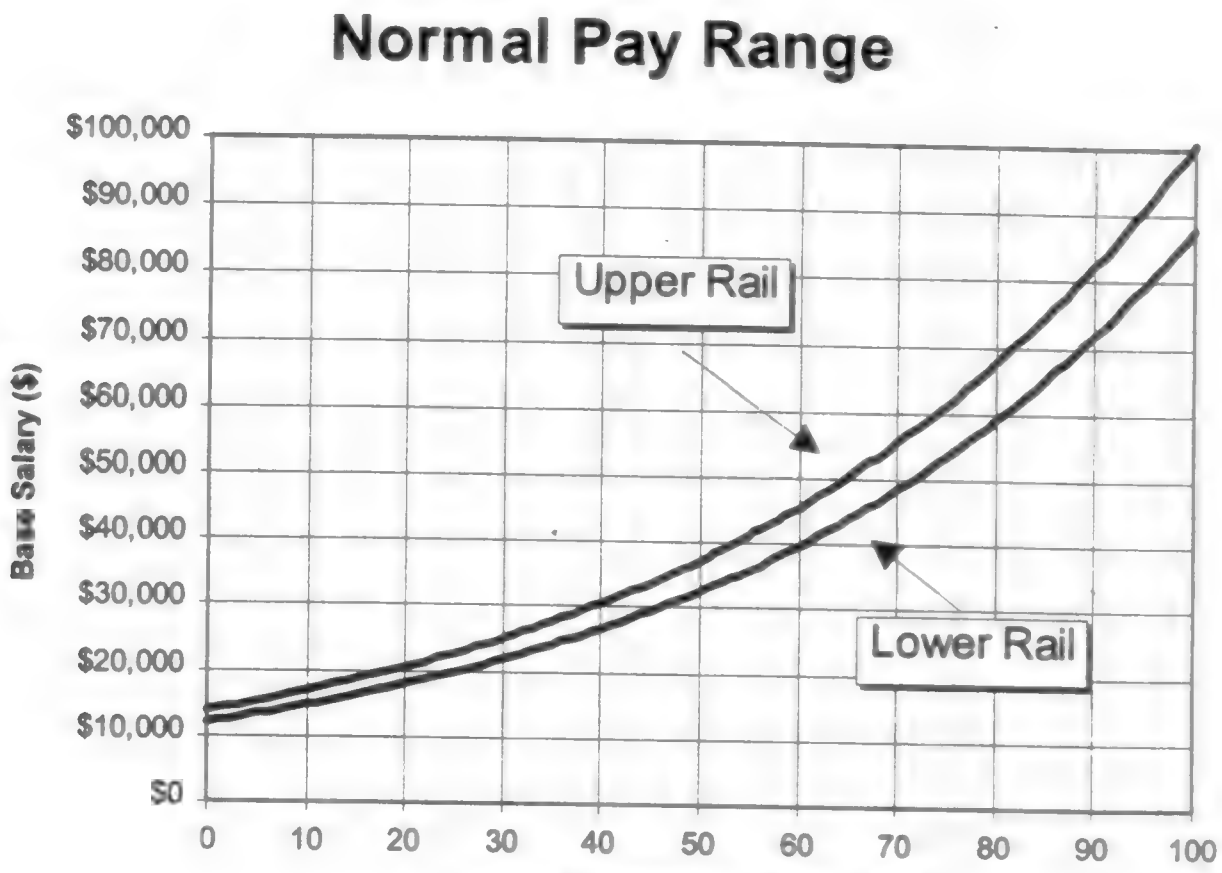
Figure 1. Normal Pay Range



The NPR was established using the following parameters:

1. The lowest possible score is an OCS of 0, which equates to the lowest salary paid under this demonstration, GS–1, step 1.

2. The highest possible score is an OCS of 100, which equates to the highest salary paid under this demonstrations, GS–15, step 10.

3. Changes in OCS correspond to a constant percentage change in salary along the rails.

4. The upper and lower rails encompass an area of +/-4.0 OCS points, or +/-8.0 percent in terms of salary, relative to the points established in parameters 1 and 2, above.

FORMULAE

Given these constraints, the formulae for the rails found in Figure 1 are:

$$\text{Salary}_{\text{upper rail}} = 13997^{*} (1.020043)^{\text{OCS}}$$

$$\text{Salary}_{\text{lower rail}} = 11923^{*} (1.020043)^{\text{OCS}}$$

The integrated pay schedule and the NPR are the same for all the career paths. What vary among the career paths are the beginnings and endings of the broadband levels. The minimum and maximum numerical OCS values and associated base salaries for each broadband level by career path are provided in Table 4. These minimum and maximum breakpoints represent the lowest and highest General Schedule (GS) salary rate for the grades banded together and, therefore, the minimum and maximum salaries possible for each level. Each year, the rails for the NPR are adjusted based on the General Schedule pay increase granted to the Federal workforce. Locality salary adjustments are not included in the NPR but are incorporated in the demonstration participants' pay.

Employees will enter the demonstration project without a loss of pay (see section V) and without a CCAS score. The first CCAS score will result from the first annual CCAS assessment process. Until then, no employee is either under-compensated or over-compensated. Employees, however, may determine their expected contribution range by locating the intersection of their salary with the rails of the NPR. Future CCAS assessments may alter an employee's position relative to these rails.

TABLE 4 - OCS AND SALARY RANGES BY BROADBAND LEVEL

Business Management & Technical Management Professional			
Broadband Level	GS Bands	Normal OCS Range	Salary Range
I	1 - 4	0 - 29	$12,960 - $23,203
II	5 - 11	22 - 66	$19,969 - $47,589
III	12 - 13	61 - 83	$43,876 - $67,827
IV	14 - 15	79 - 100	$61,656 - $94,287

Technical Management Support			
Broadband Level	GS Bands	Normal OCS Range	Salary Range
I	1 - 4	0 - 29	$12,960 - $23,203
II	5 - 8	22 - 51	$19,969 - $35,610
III	9 - 11	43 - 66	$30,257 - $47,589
IV	12 - 13	61 - 83	$43,876 - $67,827

Administrative Support			
Broadband Level	GS Bands	Normal OCS Range	Salary Range
I	1 - 4	0 - 29	$12,960 - $23,203
II	5 - 7	22 - 46	$19,969 - $32,150
III	8 - 10	38 - 61	$27,393 - $43,319

3. CCAS Appraisal Process

The annual appraisal cycle begins on October 1 and ends on September 30 of the following year. At the beginning of the annual appraisal period, the broadband level descriptors will be provided to employees so that they know the basis on which their contribution will be assessed for their pay pool. (A pay pool is a group of employees among whom the CCAS dollars are distributed. This might be all the employees in a division or directorate. The local commander determines the pay pool structure.) At that time, employees will be advised that all factors are critical. Key terms such as "team" and "customer" will be defined or clarified. Supervisor and employee discussion of specific work assignments, standards, objectives, and the employee's contributions within the CCAS framework should be conducted on an ongoing basis.

At the end of the annual appraisal period, the immediate supervisor (rating official) meets with his/her employees, requesting them to summarize their contributions for each factor. From employees' inputs and his/her own knowledge, the rating official identifies for each employee the appropriate contribution level (1, 2, 3, or 4) for each factor. The rating officials (including second-level supervisor) meet to ensure consistency and equity of the contribution ratings. Then the rating officials calculate the overall contribution scores (OCS).

To determine the OCS, numerical values are assigned based on the contribution levels of individuals, using the ranges shown in Table 5. Generally, the OCS is calculated by averaging the numerical values assigned for each of the six factors. (All OCSs will be rounded to the nearest whole number.) However, at the discretion of the pay pool manager, different weights may be applied to the factors to produce a weighted average, provided that the weights are applied uniformly across the pay pool and employees are advised in advance, i.e., at the beginning of the

rating period. Weighting may not result in any factor becoming zero.

The rating officials (including second-level supervisor) meet again to review the OCS for all employees, correcting any inconsistencies identified and making the appropriate adjustments in the factor ratings, and placing the employees in rank order.

TABLE 5. CONTRIBUTION SCORE RANGES BY CAREER PATH

Business Management & Technical Management Professional

Contribution Level	Contribution Score Point Range
1	0-29
2	22-66
3	61-83
4	79-100

Technical Management Support

Contribution Level	Contribution Score Point Range
1	0-29
2	22-51
3	43-66
4	61-83

Administrative Support

Contribution Level	Contribution Score Point Range
1	0-29
2	22-46
3	38-61

The pay pool panel (pay pool manager and the rating officials in the pay pool who report directly to him/her) conducts a final review of the OCS and the recommended compensation adjustments for the pay pool members. The pay pool panel has the authority to make OCS adjustments, after discussion with the initial rating officials, to ensure equity and consistency in the ranking of all employees.

Final approval of OCS rests with the pay pool manager, the individual within the organization responsible for managing the CCAS process. The OCS, as approved by the pay pool manager, becomes the rating of record. Rating officials will communicate the factor scores and OCS to each employee and discuss the results.

If on October 1, the employee has served under CCAS for less than six months, the rating official will wait for the subsequent annual cycle to assess the employee. The first CCAS appraisal must be rendered within 18 months after entering the demonstration project.

When an employee cannot be evaluated readily by the normal CCAS appraisal process due to special circumstances that take the individual away from normal duties or duty station (e.g., long-term full-time training, active

military duty, extended sick leave, leave without pay, etc.), the rating official will document the special circumstances on the appraisal form. The rating official will then determine which of the following options to use:

(a) Re-certify the employee's last contribution appraisal; or

(b) Presume the employee is contributing consistently with his/her pay level and will be given the full general increase.

Pay adjustments will be made on the basis of the CCAS appraisal or substitute determination and the employee's rate of basic pay. Pay adjustments are subject to pay-out rules discussed in section III D 5. Final pay determinations will be made at the pay pool manager's level. CCAS scores can only be adjusted after discussion with the rating official.

Pay adjustments will be documented by SF–50, Notification of Personnel Action. For historical and analytical purposes, the effective date of CCAS assessments, actual appraisal scores, actual salary increases, amounts contributed to the pay pool, and applicable "bonus" amounts will be maintained for each demonstration project employee.

4. Pay Pools

The pay pool structure and allocated funds are under the authority of the local commander or equivalent. The following minimal guidelines will apply: (a) a pay pool is based on the organizational structure and should include a range of salaries and contribution levels; (b) a pay pool should be large enough to constitute a reasonable statistical sample, i.e., not less than 35 individuals (when possible) or more than 300 individuals; (c) a pay pool must be large enough to include a second level of supervision, since the CCAS process uses a group of supervisors in the pay pool to determine OCS and recommended salary adjustments; and (d) neither the pay pool manager nor the supervisors within a pay pool will recommend or set their own individual pay levels.

The amount of money available within a pay pool is determined by the general pay increase and the money that would have been available for quality step increases, within-grade increases, awards (performance-based awards as defined in 5 U.S.C. 4505(a)), promotions between grades encompassed in the same broadband level, and other appropriate factors (reference section VIII B). However, the awards money portion cannot be used for increments to salary. The dollars to be included in the pay pool will be computed based on the salaries of the employees in the pay pool as of September 30 each year.

5. Salary Adjustment Guidelines

After the initial assignment into the CCAS, employees' yearly contributions will be determined by the CCAS process described above, and their overall contribution scores versus their current rate of basic pay will be plotted on a graph along with the NPR (see Figure 2). The position of those points relative to the upper and lower rails of the NPR gives a relative measure of the compensation (salary) versus contribution (OCS). Employees fall into one of three categories: under-compensated (Employee A), appropriately compensated (Employee B), or over-compensated (Employee C). Depending on the category into which each employee falls, he/she is eligible for up to three forms of additional compensation. The pay pool panel has the option of awarding the employee up to the full General Schedule pay increase (as authorized by Congress and the President), a contribution rating increase (an increase in base salary), and/or a contribution award (a lump-sum payment that does not affect base salary). Employees on retained rate in the demonstration plan will receive pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR 536.101. An employee receiving a retained rate is not eligible for a contribution rating increase, since such increases are limited by the maximum salary rate for the employee's broadband level. An outline of compensation eligibility by contribution category is given in Table 6.

Figure 2. CCAS COMPENSATION CATEGORIES

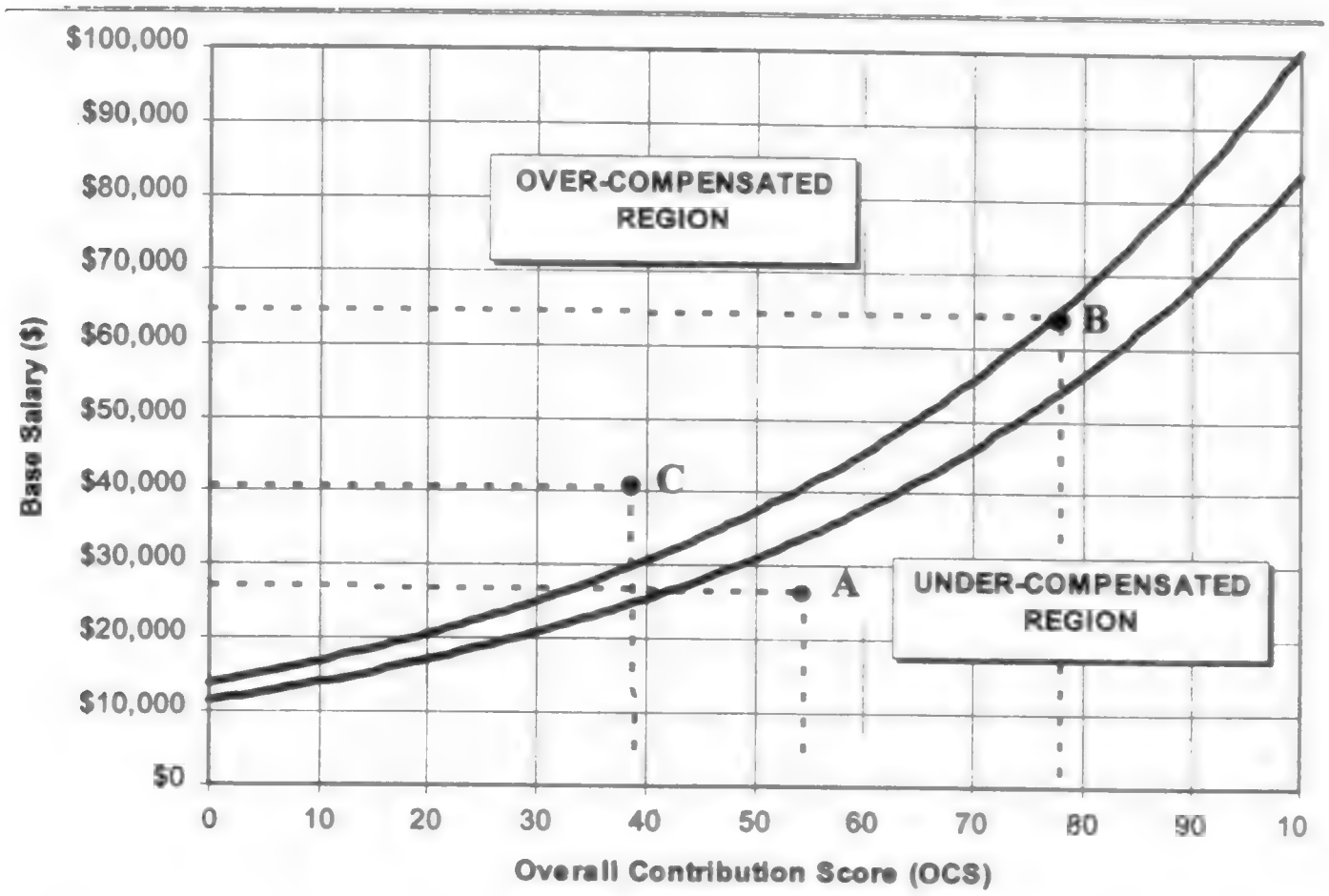


TABLE 6 - COMPENSATION ELIGIBILITY CHART

Category	General Pay Increase	Contribution Rating Increase	Contribution Award	[1]Locality Pay
Over-Compensated	Could be reduced or denied	NO	NO	YES
Appropriately Compensated	YES	YES[2] - Up to 6%	YES[5]	YES
Under-Compensated	YES	YES[3, 4] - Up to 20%	YES[5]	YES

[1] Basic pay plus locality pay may not exceed Executive Level IV basic pay.
[2] May not exceed upper rail of NPR for employee's OCS or maximum salary for current broadband level.
[3] Over 20% requires local commander's approval.
[4] May not exceed 6% above the lower rail or the maximum salary for current broadband level.
[5] Pay pool manager approves up to $10,000. Amounts exceeding $10,000 require local commander's approval.

In general, those employees who fall in the under-compensated category of the NPR should expect to receive greater percentage salary increases than those who fall in the over-compensated category. Over time, people will migrate closer to the normal pay range and receive a salary appropriate for their level of contribution.

Employees whose OCS would result in awarding a contribution rating increase such that the salary exceeds the maximum salary for their current broadband level may receive a contribution award equaling the difference.

The contribution rating increase fund includes what are now within-grade increases, quality step increases, and promotions between grades encompassed in the same broadband level. The fund will be set at not less than two percent of the activity's total salary budget (2.4 percent for the first year). This figure will be adjusted as necessary to maintain cost discipline over the life of the demonstration project. The amount of money available to each pay pool is determined annually by the local commander. The general pay increase fund and the contribution rating increase fund may be transferred to another category, but the contribution award fund may not be transferred.

The contribution award fund includes what were formerly performance awards and will be used for awards given under the CCAS process. The fund will be set at not less than one percent of the activity's total salary budget. This fund will not exceed 90 percent of the total awards budget so as to allow for other awards not related to the CCAS process, e.g., on-the-spot awards and group awards, which will continue to be encouraged by management to promote excellence in acquisition and attainment of organizational goals. For the first year this fund will be set at 1.3 percent.

Each pay pool manager will set the necessary guidelines for pay adjustments in the pay pool. Decisions will be consistent within the pay pool, reflect cost discipline over the life of the demonstration project, and be subject to command review. The maximum available pay rate under this demonstration project will be the rate for a GS–15, step 10.

6. Movement Between Broadband Levels

It is the intent of the demonstration project to have career growth accomplished through the broadband levels. Movement within a broadband level will be determined by contribution and salary following the CCAS pay-out calculation. Movement to a higher broadband level is normally a competitive action, based on Office of Personnel Management qualifications standards. Movement to a lower broadband level may be voluntary or involuntary.

Broadband levels were derived from salaries of the banded GS grades. The lowest salary of any given broadband level is that for step 1 of the lowest GS grade in that broadband level. Likewise, the highest salary of any given broadband level is that for step 10 of the highest GS grade in that broadband level. There is a natural overlap in salaries in the GS grades that also occurs in the broadband system. Since the OCS is directly related to salaries, there is also an overlap between OCS across broadband levels.

Under the demonstration project, managers are provided greater flexibility in assigning duties by moving employees between positions within their broadband level. If there are vacancies at higher levels, employees may be considered for promotion to those positions in accordance with competitive selection procedures. Noncompetitive promotion capabilities in the current system will remain viable in the demonstration.

Under the approved competitive selection procedures, the selecting official may consider candidates from any source based on viable and supportable job-related, merit-based methodology. Similarly, if there is sufficient cause, an employee may be demoted to a lower broadband level position according to the contribution-based reduction-in-pay or removal procedures discussed in section III E 2.

7. Implementation Schedule

The 1998 employee annual appraisal will be done according to Component performance plan rules in effect at the time of the 1998 close-out. Employees will be moved by personnel action into the demonstration project and into the appropriate broadband level between October 1998 and February 1999 following an implementation plan approved by DoD and OPM. Employees will receive base pay adjustments for accrued within-grade increases and career ladder promotions at the time they are moved. All employees under the demonstration project will receive the January 1999 general pay increase.

8. CCAS Grievance Procedures

An employee may not grieve the pay received under CCAS except where the employee is covered by a negotiated grievance procedure that includes grievances over CCAS pay.

An employee may grieve the OCS (rating of record). If an employee is covered by a negotiated grievance procedure that includes grievances over appraisal scores, then the employee must resolve a grievance over an appraisal score under that procedure (i.e., that procedure is the sole and exclusive procedure for resolving such grievances). If an employee is not in a bargaining unit, or is in a bargaining unit but grievances over appraisal scores are not covered under a negotiated grievance procedure, then the employee may use the administrative grievance procedure (5 CFR Part 771) with supplemental instructions described in the following paragraph.

The employee will submit the grievance first to the rating official, who will submit a recommendation to the pay pool panel. The pay pool panel may accept the rating official's recommendation or reach an independent decision. In the event that the pay pool panel's decision is different from the rating official's recommendation, appropriate justification will be provided. The pay pool panel's decision is final unless the employee requests reconsideration by the next higher official to the pay pool manager. That official would then render the final decision on the grievance.

9. Using the CCAS Rating as Additional Service Credit During Reduction in Force

Table 7 illustrates the years of retention service credit associated with appraisal results:

TABLE 7 - RETENTION SERVICE CREDIT ASSOCIATED WITH APPRAISAL RESULTS

Business Management
&
Technical Management Professional

Broadband	OCS	OCS Range			
		Years of Retention Service Credit			
Level	Normal Range	20	16	12	0
I	0 - 29	22 or above	15 - 21	8 - 14	7 or lower
II	22 - 66	61 or above	45 - 60	30 - 44	29 or lower

III	61 - 83	79 or above	73 - 78	67 - 72	66 or lower
IV	79 - 100	96 or above	90 - 95	84 - 89	83 or lower

Technical Management Support

Broadband	OCS	OCS Range			
		Years of Retention Service Credit			
Level	Normal Range	20	16	12	0
I	0 - 29	22 or above	15 - 21	8 - 14	7 or lower
II	22 - 51	43 or above	36 - 42	30 - 35	29 or lower
III	43 - 66	61 or above	55 - 60	50 - 54	49 or lower
IV	61 - 83	79 or above	73 - 78	67 - 72	66 or lower

Administrative Support

Broadband	OCS	OCS Range			
		Years of Retention Service Credit			
Level	Normal Range	20	16	12	0
I	0 - 29	22 or above	15 - 21	8 - 14	7 or lower
II	22 - 46	38 or above	34 - 37	30 - 33	29 or lower
III	38 - 61	57 or above	52 - 56	47 - 51	46 or lower

E. Special Situations Related to Pay

1. Change in Assignment

The CCAS concept, using the broadbanding structure, provides flexibility in making assignments. In many cases an employee can be assigned, without change in their rate of basic pay, within broad descriptions, and, at the same time, consistent with the needs of the organization and commensurate with the individual's qualifications. Subsequent organizational assignments to projects, tasks, or functions requiring the same level and area of expertise and the same qualifications would not constitute an assignment outside the scope or coverage of the current level descriptors. In most cases, such assignments would be within the factor descriptors and could be accomplished without the need to process a personnel action. Assignment resulting in series change or competitive level change shall be accomplished by official personnel action. Thus, this approach allows for broader latitude in organizational assignments and streamlines the administrative process. Rules for specific types of assignments under CCAS follow.

(a) Competitive, Noncompetitive, and Temporary Promotions. When an employee is promoted to a higher broadband level, the salary upon promotion will be at least six percent, but not more than 20 percent, greater than the employee's current salary. However, if the minimum rate of the new broadband level is more than 20 percent greater than the employee's current salary, then the minimum rate of the new broadband level is the new salary. The employee's salary may not exceed the salary range of the new broadband level.

(b) Competitive Selection for a Position with Higher Potential Salary. When an employee is competitively selected for a position with a higher target broadband level than previously held (e.g., Upward Mobility), upon movement to the new position the employee will receive the salary corresponding to the minimum of the new broadband level or the existing salary, whichever is greater.

(c) Voluntary Change to Lower Broadband Level/Change in Career Path (except RIF). When an employee accepts a voluntary change to lower broadband level or different career path, salary may be set at any point within the broadband level to which appointed, except that the new salary will not exceed the employee's current salary or the maximum salary of the broadband level to which assigned, whichever is lower.

(d) Involuntary Change to Lower Broadband Level Without Reduction in Pay Due to Contribution-based Action. Due to inadequate contribution, an employee's salary may fall below the minimum rate of basic pay for the broadband level to which he/she is assigned. When an employee is changed to a lower broadband level due to such a situation, this movement is not considered an adverse action.

(e) Involuntary Reduction in Pay, to Include Change to Lower Broadband Level and/or Change in Career Path Due to Adverse Action. An employee may receive a reduction in pay within his/her existing broadband level and career path, be changed to a lower broadband level, and/or be moved to a new position in a different career path due to an adverse action. In these situations, the employee's salary will be reduced by at least 6 percent, but will be set no lower than the minimum salary of the broadband level to which assigned. Employees placed into a lower broadband due to adverse action are not entitled to pay retention.

(f) Reduction-in-Force (RIF) Action (including employees who are offered and accept a vacancy at a lower broadband level or in a different career path). The employee is entitled to pay retention if all title 5 conditions are met.

(g) Return to Limited or Light Duty from a Disability as a Result of Occupational Injury to a Position in a Lower Broadband Level or to a Career Path with Lower Salary Potential than Held Prior to the Injury. The employee is entitled indefinitely to the salary held prior to the injury and will receive full general and locality pay increases.

2. Contribution-based Reduction-in-Pay or Removal Actions

CCAS is a contribution-based appraisal system that goes beyond a performance-based rating system. Contribution is measured against six critical factors corresponding to the three career paths, each having multiple levels of increasing contribution. (For the purposes of this section, critical factors are synonymous with critical elements as referenced in 5 U.S.C. Chapter 43.) This section applies to reduction in pay or removal of demonstration project employees based solely on inadequate contribution. Inadequate contribution in any one factor at any time during the appraisal period is considered grounds for initiation of reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance except with respect to appeals of such actions. 5 U.S.C. 4303(e) provides the statutory authority for appeals of contribution-based actions. As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under 5 U.S.C. 75, as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's contribution in any factor is at or less than the mid-point of the next lower broadband level (or a factor score of zero for broadband level 1 employees), the employee is considered to be contributing inadequately. In this case, the supervisor must inform the employee, in writing, that unless the contribution increases to a score above the midpoint of this next lower broadband level, and is sustained at this level, the employee may be reduced in pay or removed. For broadband level 1 employees, a factor score that increases to and is sustained above zero is determined to be adequate.

This written notification will include a contribution improvement plan (CIP) which outlines specific areas in which the employee is inadequately contributing. Additionally, the CIP must include actions required of the employee, and the time in which they must be accomplished, to increase and sustain the employee's contribution at an adequate level.

Additionally, when an employee's contribution plots in the area above the upper rail of the normal pay range, the employee is considered to be contributing inadequately. In this case, the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and to higher levels of management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay or removed.

These provisions also apply to an employee whose contribution deteriorates during the year. In such instances, the group of supervisors who meet during the CCAS assessment process may reconvene any time during the year to review the circumstances warranting the recommendation to take further action on the employee.

When the rating official informs the employee that the employee may be reduced in pay or removed, the rating official will afford the employee a

reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution with regard to identifiable factors. As part of the employee's opportunity to demonstrate adequate contribution, he or she will be placed on a contribution improvement plan (CIP). The CIP will state how the employee's contribution is inadequate, what improvements are required, recommendations on how to achieve adequate contribution, assistance that the agency shall offer to the employee in improving inadequate contribution, and consequences of failure to improve.

Once an employee has been afforded a reasonable opportunity to demonstrate adequate contribution but fails to do so, a reduction-in-pay (which may include a change to a lower broadband level and/or reassignment) or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall contribution once again declines to an inadequate level, the employee will be afforded an additional opportunity to demonstrate adequate contribution before it is determined whether or not to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to a 30-day advance notice of the proposed action that identifies specific instances of inadequate contribution by the employee on which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce in pay or remove an employee for inadequate contribution may be based only on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction in pay or removal that is based on inadequate contribution will be preserved and made available for review by the affected employee or a designated representative. As a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary when the employee makes an oral reply; and the written notice of decision and the reasons therefor, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate adequate contribution.

F. Revised Reduction-In-Force (RIF) Procedures

The proposed RIF system will have a single round of competition to replace the current two-round process. Once the position to be abolished has been identified, the incumbent of that position may displace another employee when the incumbent has a higher retention standing and is fully qualified for the position occupied by the employee with lower standing. Retention standing is based on tenure, veterans' preference, length of service, and contribution, preserving the same weights as today's system. The "undue disruption" standard currently utilized will serve as the criterion to determine if an employee is fully qualified. In addition, to be fully qualified, the employee must meet DAWIA statutory requirements for the position, if applicable. The displaced individual may similarly displace other employees. Displacement is normally limited to one broadband level below the employee's present level. However, a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to the equivalent of five General Schedule grades below the employee's present level. If/when there is no position in which an employee can either be placed by this process or be assigned to a vacant position, that employee will be separated.

An employee's entitlement to additional service credit associated with appraisal results will be based on the employee's three most recent annual overall contribution scores (OCSs) of record received during the four-year period prior to the issuance of reduction-in-force notices (see Table 7). However, if at that time three CCAS cycles have not yet been completed, the annual performance rating of record under the previous performance management system will be substituted for one or more OCSs, as appropriate. The value(s) of the actual OCS(s) or performance rating(s) of record will be divided by the number of actual rating(s) received. In cases where an individual employee has no annual OCS or performance rating of record, a modal OCS or performance rating will be assigned and used to determine the additional service credit for that individual.

The new system will eliminate current provisions for retained grade, but will keep retained pay provisions as outlined in 5 U.S.C. 5363 and 5 CFR 536.101 as modified in the waiver section of this notice (section IX). All positions within commands participating in the demonstration project and located within the same commuting area may be considered a separate competitive area.

G. Academic Degree and Certificate Training

Trained and educated personnel are a critical resource in an acquisition organization. This demonstration recognizes that training and development programs are essential to improving the performance of individuals in the acquisition workforce, and thereby raising the overall level of performance of the acquisition workforce, and that a well-developed training program is also a valuable tool for recruiting and retaining motivated employees. Currently, DAWIA authorizes degree and certificate training for acquisition-coded positions through the year 2001. This demonstration extends that authority for the duration of this demonstration and expands its coverage to the acquisition support positions identified in this demonstration project. It also provides authorization at the local level to administer and pay for these degree and certificate training programs. This authorization will facilitate continuous acquisition of advanced, specialized knowledge essential to the acquisition workforce and provide a capability to assist in the recruiting and retaining of personnel critical to the present and future requirements of the acquisition workforce. Funding for this training, while potentially available from numerous sources (including DAWIA for employees in acquisition-coded positions), is the responsibility of the participating organization.

H. Sabbaticals

Organizations participating in the Acquisition Demonstration will have the authority to grant sabbaticals without application to higher levels of authority. These sabbaticals will permit employees to engage in study or work experience that contributes to their development and effectiveness. The sabbatical provides opportunities for employees to acquire knowledge and expertise that cannot be acquired in the

standard working environment. These opportunities should result in enhanced employee contribution. The spectrum of available activities under this program is limited only by the constraint that the activity contribute to the organization's mission and to the employee's development. The program can be used for training with industry or on-the-job work experience with public, private, or nonprofit organizations. It enables an employee to spend time in an academic or industrial environment or to take advantage of the opportunity to devote full-time effort to technical or managerial research.

The Acquisition Demonstration sabbatical program will be available to all demonstration project employees who have seven or more years of Federal service. Each sabbatical will be of three to twelve months' duration and must result in a product, service, report, or study that will benefit the acquisition community as well as increase the employee's individual effectiveness. Requests for a sabbatical must be made by the employee through the chain of command to the employee's installation Executive Director or equivalent, who has final approval authority and who must ensure that the program benefits both the acquisition workforce and the individual employee. Funding for the employee's salary and other expenses of the sabbatical is the responsibility of the participating organization.

IV. Training

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will provide not only the necessary knowledge and skills to carry out the proposed changes, but will also lead to participant commitment to the program.

Training at the beginning of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include: (1) a description of the personnel system; (2) how employees are converted into and out of the system; (3) the pay adjustment and/or bonus process; (4) the new position requirements document; (5) the new classification system; and (6) the contribution-based compensation and appraisal system.

In conjunction with the education, training, and career development assets of the Military Services and DoD Agencies, the demonstration project team will train, orient, and keep informed all supervisors and employees covered by the demonstration project and administrative staff responsible for implementing and administering the human resource program changes.

A. Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, as well as skills training in using the classification system, position requirements document, and contribution evaluation.

B. Administrative Staff

The administrative staff, general personnel specialists, technicians, and administrative officers will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will receive training in the procedural and technical aspects of the project.

C. Employees

In the months prior to implementation, the demonstration project team and Military Service and DoD Agency training and career development offices will provide all employees covered under the demonstration project training through various media. This training is intended to fully inform all affected employees of all significant project decisions, procedures, and processes.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee-protection approach that ensures each employee's initial placement into a broadband level without loss of pay. Automatic conversion from the permanent GS grade and step of record at time of conversion into the new broadband system will be accomplished. Adjustments to the employee's base salary for step increase and non-competitive career ladder promotion will be computed based on the current value of the step or promotion increase and a prorated share based upon the number of weeks an employee has completed towards the next higher step or grade, per paragraph VIII A. This conversion process, i.e. "buy-in," is applicable to employees only at the initiation of the demonstration project.

Special salary rates will no longer be applicable to demonstration project employees. Employees on special salary rates at the time of conversion will receive a new basic rate of pay computed by dividing their highest adjusted rate of basic pay (i.e., special pay rate, or if higher, the locality rate) by the locality pay factor for their area. All employees will be eligible for the future locality pay increases of their geographic area.

When conversion into the demonstration project is accompanied by a simultaneous geographic move, the employee's GS pay entitlements (including any locality or special rate) in the new area will be determined before converting the employee's pay to the demonstration project pay system. A full locality adjustment will then be added to the new basic pay rate.

Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary. If the employee's rate of basic pay exceeds the maximum rate of basic pay for the broadband level corresponding to the employee's GS grade, the employee will remain at that broadband level and will receive a retained rate. Employees who enter the demonstration project later by lateral reassignment or transfer will enter at their current basic pay with no loss or gain due to transfer.

B. Conversion Back to the Former System

If a demonstration project employee is moving to a General Schedule (GS) position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedure will be used to convert the employee's project pay band to a GS grade and the employee's demonstration rate of pay to a GS rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral assignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions,

the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules) as if the GS-converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee is converted to one of the grades in their current broadband level according to the following rules:

(i) The employee's adjusted rate of pay under the demonstration project (including any locality payment) is compared with the step 4 rate in the highest applicable GS rate range. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade-interval series, only odd-numbered grades are considered below GS–11.

(ii) If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(iii) If the employee's adjusted project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second-highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds the step 4 rate of the second-highest grade, the employee is converted to that grade.

(iv) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(v) Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described step 4 rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(vi) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral assignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in broadband level or reduction in pay based upon an adverse action.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to a GS rate of pay in accordance with the following rules:

(i) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(ii) An employee's adjusted rate of pay under the project (including any locality payment) is converted to a GS rate on the highest applicable rate range for the converted GS grade. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(iii) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

(iv) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

3. Employees Receiving a Retained Rate Under the Project

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her broadband level. The DUSD (AR) and the DASD (CPP) will coordinate with OPM to prescribe a procedure for determining GS-equivalent pay rates for employees receiving retained rates.

4. Years of Retention Service Credit and Appraisal Rating Provisions

Employees leaving the demonstration project will be assigned ratings of record that conform with pattern E of 5 CFR 430.208(d) based on the years of credit accumulated for the 3 most recent years during the last 4 years while under the demonstration project. Since the demonstration project does not make use of summary level designators (e.g., Exceptional, Level 5; Highly Successful, Level 4; Fully Successful, Level 3; or Unacceptable, Level 1) used in the appraisal system and programs constructed under 5 U.S.C. Chapter 43 and 5 CFR Part 430, the retention service credit that is based on the employee's OCS as shown in Table 7 will be translated to summary level designators as shown in Table 8 for use by the gaining agency.

TABLE 8 - TRANSLATION OF RETENTION SERVICE CREDIT

RETENTION SERVICE CREDIT	APPRAISAL RATING LEVEL
20	Exceptional or equivalent, Level 5
16	Highly Successful or equivalent, Level 4
12	Fully Successful or equivalent, Level 3
0	Unsuccessful, Level 1

5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. CCAS base salary increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Duration

The project evaluation plan addresses how each intervention will be comprehensively evaluated for at least the first five years of the demonstration project. Major changes and modifications to the interventions can be made through announcement in the **Federal Register**, with OPM approval. At the five-year point, the entire demonstration project will be reexamined for: (a) permanent implementation; (b) modification and additional testing; (c) extension of the test period; or (d) termination.

VII. Evaluation Plan

Demonstration-authorizing legislation (5 U.S.C. Chapter 47) mandates evaluation of the demonstration project to assess the effects of project features and outcomes. In addition, the project will be evaluated for the feasibility of application to other Federal Agencies. The overall evaluation will consist of three phases—baseline, formative, and summative evaluations. The evaluation for the participating agencies will be overseen by the Office of Merit Systems Oversight and Effectiveness, OPM; the Office of the Secretary of Defense (Acquisition & Technology); and the Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), DoD.

The main purpose of the evaluation is to determine the effectiveness of the personnel system changes to be undertaken. To the extent possible, strong direct or indirect relationships will be established between the project features, outcomes, and mission-related changes and personnel system effectiveness criteria. The evaluation approach uses an intervention impact model that specifies each personnel system change as an intervention, the expected effects of each intervention, the corresponding measures, and the data sources for obtaining the measures. Table 9 presents the intervention impact model to be used for this demonstration for initiatives affecting title 5.

TABLE 9 - INTERVENTION IMPACT EVALUATION MODEL

Interventions	Expected Effects	Measures	Data Sources
1. Simplified Accelerated Hiring	A. Ease of hiring	i. Perceived flexibility	a. Attitude survey
	B. Improved recruitment	i. Offer/accept ratios	a. Personnel office data
		ii. Percent declinations	a. Personnel office data
	C. Increased quality of new hires	i. Employee effectiveness	a. Attitude survey
		ii. Experience, education, skills	
	D. Reduced administrative workload/paperwork reduction	i. Actual/perceived time savings	a. Personnel office data b. Attitude survey
	E. Retention	i. Employee turnover	a. Personnel office data
2. Expanded Candidate Selection Process	A. Flexibility in recruitment	i. Perceived flexibility	a. Attitude survey
		ii. Number/percentage of employees hired beyond high 3	a. Workforce data
	B. Increased quality of new hires	i. Employee effectiveness	a. Attitude survey
		ii. Experience, education, skills	
3. Appointment Authority (Permanent, Modified Term, and Temporary Limited)	A. Increased capability to expand and contract workforce	i. Number/percentage of contingent employees	a. Workforce data
		ii. Conversion rate to permanent status	a. Workforce data b. Personnel office data
		iii. Average length of employment (contingent	a. Workforce data b. Personnel office data

	B. Reduced administrative workload	hires) i. Actual/perceived time savings	a. Attitude survey b. Personnel office data
	C. More experienced personnel entering permanent workforce	i. Mission effectiveness	a. Attitude survey
	D. Ease in filling permanent billets (non-competitive conversion)	i. Number/percentage of conversions from modified term to permanent appointments	a. Workforce data b. Personnel office data
4. Flexible Probationary Period	A. Expanded employee assessment period	i. Average conversion period to permanent status ii. Number/percentage of employees completing probationary period	a. Workforce data b. Personnel office data a. Workforce data b. Personnel office data
5. Contribution-based Compensation and Appraisal System			
I. Contribution-based pay progression	A. Increased pay-contribution link	i. Pay-contribution correlations	a. Attitude survey b. Comparison of historical data on compensation regions
		ii. Perceived pay-contribution link	a. Attitude survey
		iii. Perceived fairness of ratings	a. Attitude survey
		iv. Satisfaction with ratings	a. Attitude survey
		v. Employees trust in supervisors	a. Attitude survey
	B. Improved contribution & performance feedback	i. Adequacy of contribution & performance feedback	a. Attitude survey
	C. Increased retention of high contributors	i. Turnover by contribution assessment	a. Workforce data
	D. Increased turnover of low contributors	i. Turnover by contribution assessment	a. Workforce data
II. Cash awards/bonuses	A. Reward/motivate contribution & performance	i. Amount & number of awards by career path, demographics performance	a. Workforce data
		ii. Perceived motivational power	a. Attitude survey
		iii. Perceived fairness of awards	a. Attitude survey
6. Broadbanding	A. Increased organizational flexibility	i. Perceived flexibility	a. Attitude survey
	B. Reduced administrative workload/paperwork reduction	i. Actual/perceived time savings	a. Personnel office data b. Attitude survey
	C. Higher starting salaries	i. Starting salaries of banded vs. non-banded employees	a. Workforce data
	D. More gradual pay progression at entry level	i. Progression of new hires over time by band & career path	a. Workforce data
	E. Increased pay potential	i. Mean salaries by band, career path, demographics	a. Workforce data
	F. Higher average salary	i. Total payroll cost	a. Workforce data
	G. Increased satisfaction with advancement	i. Employees perception of advancement	a. Attitude survey
	H. Increased pay satisfaction	i. Pay satisfaction, internal/ external equity	a. Attitude survey
7. Simplified Classification System	A. Ease of classification	i. Perceived flexibility ii. Fewer position requirements	a. Attitude survey a. Workforce data

	B. Reduced administrative workload/paperwork reduction	documents i. Actual/perceived time savings	b. Personnel office data a. Personnel office data b. Attitude survey
8. Simplified modified RIF	A. Prevent loss of high-performing employees with needed skills	i. Separate employees by demographics, performance ii Satisfaction with RIF process	a. Workforce data b. Attitude survey/focus groups
	B. Contain cost and disruption	i. Number of employees affected by RIF ii. Time to conduct RIF iii. Number of appeals/reinstatements	a. Personnel office data
9. Academic Degree and Certificate Training	A. Increased employee career progression	i. Demographics of affected employees ii. Employee/management satisfaction	a. Workforce data a. Attitude survey
	B. Increased capability/ flexibility for workforce shaping	i. Perceived flexibility	a. Attitude survey
10. Sabbaticals	A. Increased employee career progression	i. Demographics of affected employees ii. Employee/management satisfaction	a. Workforce data a. Attitude survey
	B. Increased capability/ flexibility for workforce shaping	i. Perceived flexibility	a. Attitude survey
11. Voluntary Emeritus Program	A. Encourage voluntary retirement and open up hiring slots for new staff	i. Frequency of use and cost	a. Workforce data

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The specific measures to be collected using the different methods are determined from the goals and objectives stated for each intervention. Both qualitative and quantitative measures will be obtained. Most of the potential measures can be grouped around three major effectiveness criteria: speed, cost, and quality. Collectively, the outcomes of the interventions are hypothesized to lead to agency personnel management improvements, as reflected by timeliness, cost effectiveness, and quality.

Baseline measures will be taken prior to project implementation. Then, repeated post-implementation measurements will be taken to allow longitudinal comparisons by intervention within and across DoD Components. A comparison group will be selected and compared to the demonstration project group to determine the effects and outcomes of the project.

The effectiveness of each intervention and of the project as a whole in meeting stated objectives will be addressed using a multi-approach method. Some methods will be unobtrusive in that they do not require reactions to inputs from employees or managers. These methods include analysis of archival workforce data and personnel office data, review of logs maintained by site historians documenting contextual events, and assessments of external economic and legislative changes. Other methods such as periodic attitude surveys, structured interviews, and focus groups will be used to assess the perceptions of employees, managers, supervisors, and personnel regarding the personnel system changes and the performance of their organizations in general. Evaluation activities will also take into account the unique nature of this project in terms of geographic and organizational diversity.

In addition to the intervention impact model, a general context model will be used to determine the effects of potential intervening variables (e.g., downsizing, regionalization of the personnel function, and the state of the economy in general). Potential unintended outcomes will also be monitored, and an attempt will be made by the evaluation team to link the outcomes or project interventions to organizational effectiveness. In addition to assessing the impact of the individual project features, the evaluation will also assess the impact of the project as a whole, along with possible context effects and effects of intervening variables. The evaluation will also monitor adherence to the merit systems principles and avoidance of prohibited personnel practices. In addition, the evaluation will attempt to link the project effects and outcomes to organizational outcomes such as mission accomplishment and productivity.

The initial evaluation effort will consist of three main phases—baseline, formative, and summative evaluation covering five (5) years. Baseline will collect workforce data to determine the "as-is" state. The formative evaluation phase will include baseline data collection and analyses, implementation evaluation, and interim assessments. Periodic reports and annual summaries will be prepared to document the findings. The summative evaluation phase will focus on an overall assessment of the project outcomes, looking initially at the first four (4) years, with a follow-on report covering the first five (5) years. The rationale for summative evaluation after the first four years is to assess whether the demonstration will continue after the fifth year. If the analysis indicates that the interventions show a positive effect towards meeting the goals of the demonstration, then documentation will be generated to support a request that the demonstration progress further. If the analysis indicates that the interventions do not meet the stated objectives, or if the participating organizations do not wish to continue in the demonstration, then documentation and planning for conversion back to the existing personnel system must be prepared. The fifth-year summative evaluation, used in reporting to Congress, will provide overall assessment of all initiatives individually and as a whole. It will also provide recommendations on broader Federal Government application.

VIII. Demonstration Project Costs

A. Step and Promotion Buy-Ins

Under this demonstration project, implementation of the broadbanding pay structure eliminates the step increments of the current pay structure. To facilitate conversion to this system without loss of pay, employees will receive a basic pay increase for that portion of the next step corresponding to the time in-step they have completed up to the effective date of the employee conversion. As under the current system, supervisors will be able to withhold these partial increases (step) if the employee's performance has fallen below fully successful.

Rules governing within-grade increases (WGI) within each participating Military Service/DoD agency will remain in effect until the employee conversion date. Adjustments to employees' base salary for WGI equity will be computed effective the first pay period in FY99 (October 1998). WGI equity shall be acknowledged by increasing base salaries by a prorated share based upon the actual number of weeks an employee has completed towards the next higher step. Employees at step 10, or receiving retained pay at the time of conversion will not be eligible for this equity adjustment. For those employees in career-ladder promotion programs who are scheduled to be promoted to a higher grade and whose performance is at least fully successful, base pay will be increased by a prorated share of the current value of the next scheduled promotion increase based upon the actual number of weeks the employee has completed towards the next scheduled promotion. No WGI equity adjustment will be made if the employee's pay is adjusted for a promotion that would be effective before the next scheduled WGI.

For purposes of conversion into the demonstration, the January 1999 General Schedule increase to base pay will be given to all employees.

B. Out-Year Project Costs

The overall demonstration cost strategy will be to balance projected costs with benefits of the demonstration to bring about the projected improvements to the DoD Acquisition Workforce. The project evaluation results will be used to ensure that out-year project costs will not outweigh the derived benefits to the demonstration. A baseline will be established at the start of the project, and salary expenditures will be tracked yearly. Implementation costs, including the step and grade buy-in costs detailed above, will not be included in the cost evaluations, but will be accounted for separately.

The amount of money available for contribution increases in the out-years will be determined as part of the annual project evaluation process, starting with a review of the prior year's data for each individual participating site by the Personnel Policy Boards for that site, and then will be reported to the DoD Acquisition Workforce Demonstration Project Executive Steering Committee. The funds determination will be based on a balancing of appropriate factors, including the following: (1) Historical spending for WGI, quality step increases, and in-level career promotions; (2) labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the organization; and (3) the fiscal condition of the organization.

Given the implications of base pay increases for long-term pay and benefit costs, the compensation levels will be determined after cost analysis with documentation of the mission-driven rationale for the amount. As part of the evaluation of the project by Military Services, participating Defense Agencies, DoD, and OPM, the base pay costs (including average salaries) under the demonstration project will be tracked and compared to the base pay costs under similar demonstration projects and under a simulation model that replicates General Schedule spending. These evaluations will balance costs incurred against benefits gained, so that both fiscal responsibility and project success are given appropriate weight.

C. Personnel Policy Boards

It is envisioned that each participating DoD Component shall either establish a Personnel Policy Board for the demonstration project that will consist of the senior civilian in each Program Management Office and Directorate within the Component and be chaired by the Executive Director or modify the charter of an existing group. In either case, the board is tasked with the following:

(a) Overseeing the civilian pay budget;

(b) Addressing issues associated with two separate pay systems (CCAS and GS) during the first phase of the demonstration;

(c) Determining the composition of the CCAS pay pool in accordance with the established guidelines; and statutory constraints;

(d) Reviewing operation of the Component's CCAS pay pools;

(e) Providing guidance to pay pool managers;

(f) Administering funds to CCAS pay pool managers;

(g) Reviewing hiring and promotion salaries;

(h) Monitoring award pool distribution by organization and DAWIA vs. non-DAWIA; and

(i) Assessing the need for changes to demonstration project procedures and policies.

Should any participating Component elect not to establish a Personnel Policy Board, the charter of an existing group within that Component must be modified to include the duties detailed above.

D. Developmental Costs

Costs associated with the development of the demonstration system include software automation, training, and project evaluation. These costs are considered shared costs and will be funded by the Deputy Undersecretary of Defense for Acquisition Reform (DUSD (AR)) for the demonstration period. Site-specific costs for follow-on training, employee salary conversion, and any in-house software automation will be borne by the individual participating sites. The projected annual expenses for each area are summarized in Table 10. Project evaluation costs will continue for at least the first five (5) years and may continue beyond that point.

TABLE 10 - PROJECTED DEVELOPMENTAL COST
(THEN YEAR DOLLARS ($K))

	FY97	FY98	FY99	FY00	FY01	FY02
Training	285	3465	0	0	0	0
Project Evaluation	310	449	308	307	534	378
Automation	25	70	0	0	0	0
Data Systems	100	350	0	0	0	0
Total	720	4334	308	307	534	378

IX. Required Waivers to Law and Regulations

A. Waivers to Title 5, United States Code

Chapter 5, Section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal Government for purposes of this section.

Chapter 31, Section 3111: Acceptance of volunteer service. This section is waived only to the extent required to allow volunteer service under provisions of the voluntary emeritus program.

Chapter 33, Section 3308: Competitive service; examinations; educational requirements prohibited; exceptions (to the extent necessary to accommodate the Scholastic Achievement Appointment's requirement for a college degree).

Chapter 33, Section 3317(a): Competitive service; certification from registers (insofar as "rule of three" is eliminated under the demonstration project).

Chapter 33, Section 3318(a): Insofar as "rule of three" is eliminated under the demonstration project. Veterans' preference provisions remain unchanged.

Chapter 41, Section 4107(a).

Chapter 43, Sections 4301–4305 except for 4303(e) and (f): Related to performance appraisal. In turn, 4303(e) and (f) are waived only to the extent necessary to: (1) Substitute "broadband" for "grade", and (2) provide that moving

to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303.

Chapter 45, Sections 4502(a) and 4502(b).

Chapter 51, Sections 5101–5102 and Sections 5104–5107: Related to classification standards and grading.

Chapter 53, Sections 5301; 5302 (8) and (9); and 5303–5305 and 5331–5336: Related to special pay and pay rates and systems (Sections 5301, 5302 (8) and (9), and 5304 are waived only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Chapter 53, Section 5362: Grade retention.

Chapter 53, Section 5363: Pay retention. This waiver applies only to the extent necessary to: (1) allow demonstration project employees to be treated as General Schedule employees; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (3) replace the term "grade" with "broadband level."

Chapter 53, Section 5371: Related to health care positions. (This waiver applies only to the extent necessary to allow demonstration project employees to hold positions subject to Chapter 51 of title 5.)

Chapter 55, Section 5545 (d): Related to hazardous duty premium pay (only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees).

Chapter 57, Sections 5753, 5754, and 5755: Related to recruitment, relocation, and retention payments, and supervisory differentials (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule).

Chapter 59, Section 5941: Allowances based on living costs and conditions of environment; employees stationed outside the continental United States or Alaska. (This waiver applies only to the extent necessary to provide that COLAs paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM)).

Chapter 59, Section 5948: Related to physicians comparability allowances (only to the extent necessary to treat employees under the demonstration project as General Schedule employees).

Chapter 71, to the extent its provisions (e.g., 5 U.S.C. 7103(a)(12) and 7116) would prohibit management or the union from unilaterally terminating negotiations over whether the project will apply to employees represented by the union.

Chapter 71, Section 7119: To the extent it gives the Federal Service Impasses Panel jurisdiction to resolve impasses referred to it by either party or both parties during or after implementation of the demonstration project.

Chapter 75, Sections 7512 (3): Related to adverse action (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and replace "grade" with "broadband level") and 7512 (4): Related to adverse action (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

B. Waivers to Title 5, Code of Federal Regulations

Part 300, Sections 300.601 through 300.605: Time-in-grade restrictions.

Part 308, Volunteer service: Waived to allow volunteer service under the provisions of the voluntary emeritus program.

Part 315, Sections 315.801 and 315.802: Probationary period.

Part 316, Section 316.301: Term appointment (to the extent that modified term appointments may cover a maximum period of 6 years).

Part 316, Section 316.303: Tenure of term employees (to the extent that term employees may compete for permanent status through local merit promotion plans).

Part 316, Section 316.305: Eligibility for within-grade increases.

Part 332, Section 332.402: "Rule of three" will not be used in the demonstration project.

Part 332, Section 332.404: Order of selection is not limited to highest three eligibles.

Part 351, Sections 351.402 through 351.403: Competitive Area and Competitive Levels; Section 351.504(a): Credit for Performance; and Section 351.601: Order of Release from Competitive Level.

Part 351, Section 351.701 (b) and (c): Assignment rights (bump and retreat): To the extent that the distinction between bump and retreat is eliminated and the placement of demonstration project employees is limited to one broadband level below the employee's present level, except that a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to the equivalent of five General Schedule grades below the employee's present level.

Part 410, Section 410.308(a).

Part 430, Subpart A and Subpart B: Performance management; performance appraisal.

Part 432, Sections 432.101, 432.102, 432.106 and 432.107: (only to the extent necessary to (1) substitute "broadband" for "grade" and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303).

Part 432, Sections 432.103 through 432.105: Performance-based reduction-in-grade and removal actions.

Part 451, Sections 451.106(b) and 451.107(b): Awards.

Part 511, Subpart A; Subpart B; Subpart F, Sections 511.601 through 511.612: Classification within the General Schedule; and Subpart G: Effective Dates of Position Classification Actions or Decisions.

Part 530, Subpart C: Special salary rates.

Part 531, Subpart B, Subpart D, Subpart E: Determining rate of pay; within-grade increases and quality step increases.

Part 531, Subpart F: Locality Payments (only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Part 536, Grade and Pay Retention (only to the extent necessary to eliminate grade retention and to provide that, for the purposes of applying pay retention provisions: (1) demonstration project employees are to be treated as General Schedule employees; (2) "grade" is replaced by "broadband level"; and (3) pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced).

Part 550, Sections 550.703: Severance Pay, definition of "reasonable offer" (by replacing "two grade or pay levels" with "one broadband level" and "grade or pay level" with "broadband level") and 550.902: Hazard Pay, definition of "employee" (only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees).

Part 575, Sections 575.102 (a)(1), 575.202 (a)(1), 575.302 (a)(1), and Subpart D: Recruitment and relocation

bonuses, and retention allowances, and supervisory differentials (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule positions).

Part 591, Subpart B: Cost-of-Living Allowances and Post Differential-Nonforeign Areas. (This waiver applies only to the extent necessary to allow demonstration project employees to be treated as employees under the General Schedule for the purposes of these provisions.)

Part 752, Sections 752.401 (a)(3): Reduction in grade and pay (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and to replace 'grade" with "broadband level") and 752.401 (a)(4) (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

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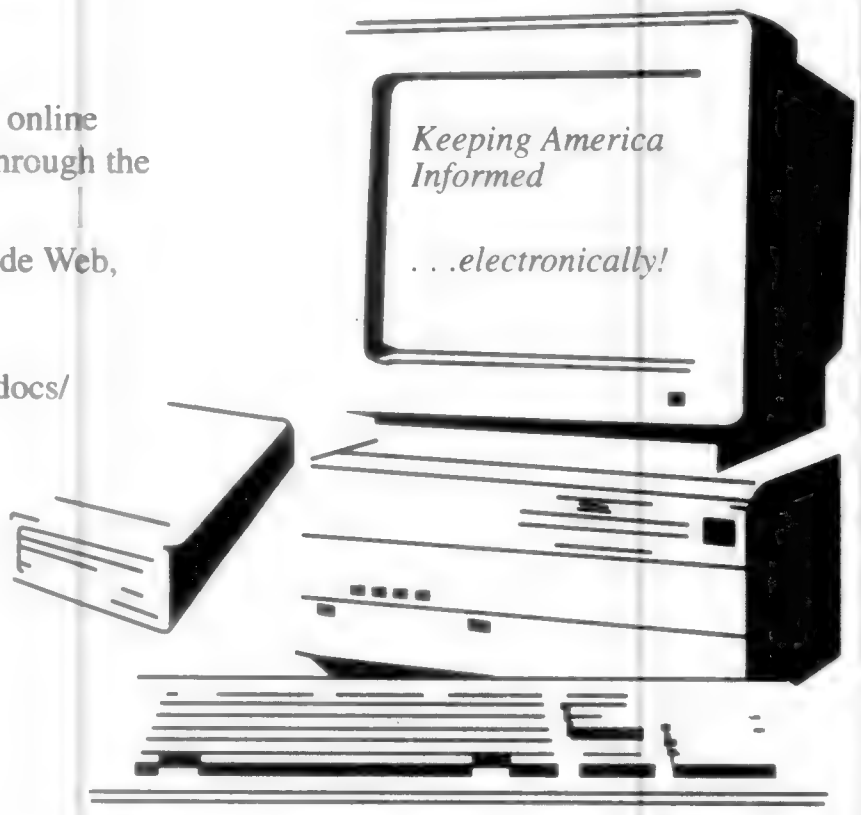

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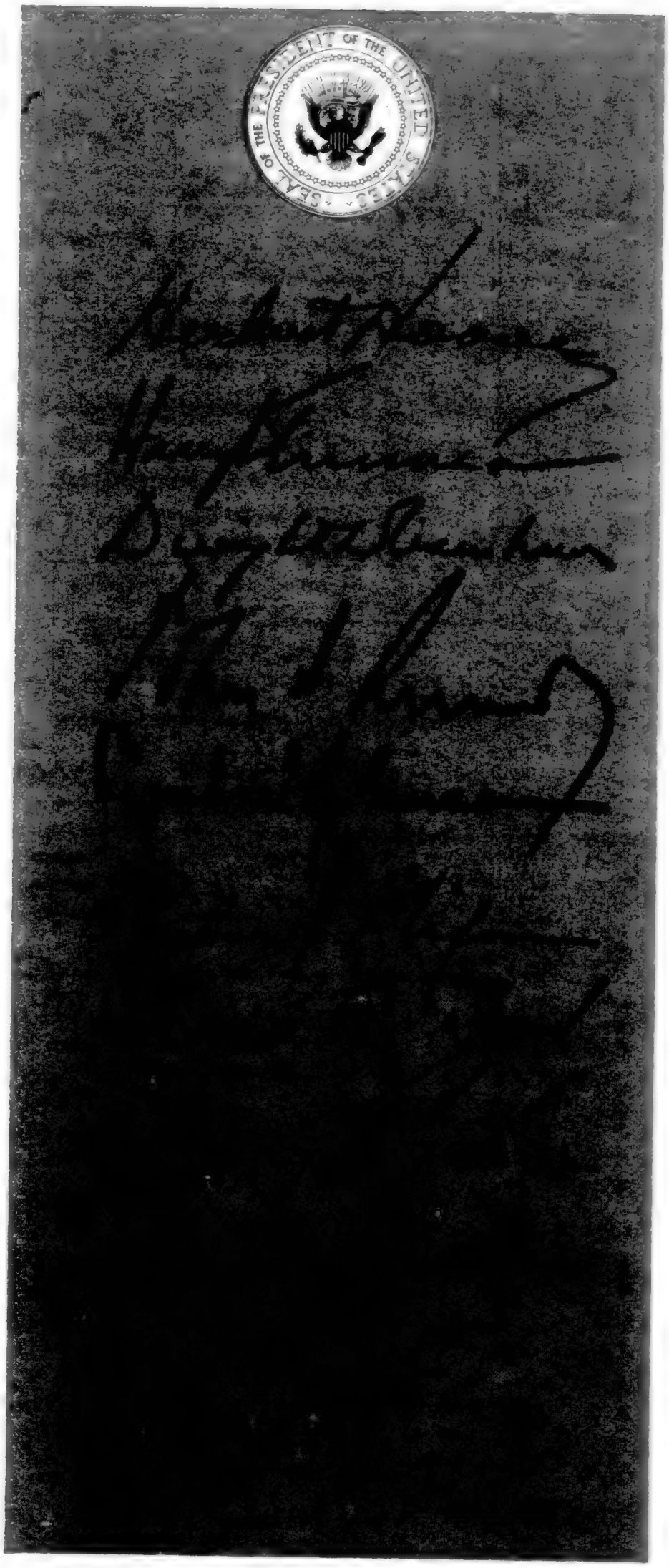

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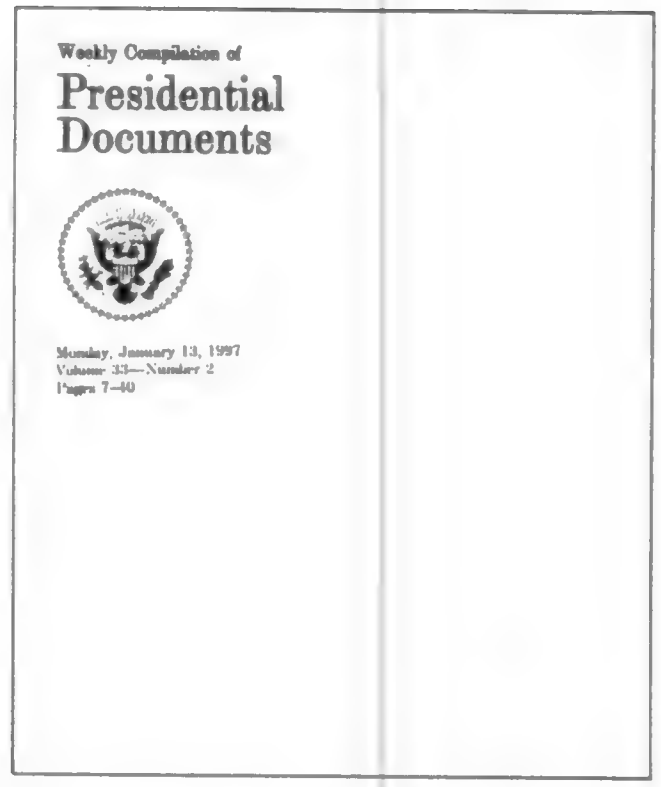

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The President

Presidential Determination No. 98–17 of March 9, 1998

Presidential Determination on Section 402(c)(2)(A) of the Trade Act of 1974—Vietnam

Memorandum for the Secretary of State

Pursuant to section 402(c)(2)(A) of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978, 19 U.S.C. 2432(c)(2)(A)) as amended (the "Act"), I determine that a waiver by Executive order of the application of subsections (a) and (b) of section 402 of the Act with respect to Vietnam will substantially promote the objectives of section 402.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, March 9, 1998.

[FR Doc. 98–7995
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Presidential Determination No. 98–18 of March 9, 1998

Presidential Determination Under Subsection 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended—Vietnam

Memorandum for the Secretary of State

Pursuant to subsection 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to guarantee, insure, extend credit, and participate in the extension of credit in connection with the purchase or lease of any product or service by, for use in, or for sale or lease to Vietnam.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, March 9, 1998.

[FR Doc. 98–7996
Filed 3–24–98; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 63, No. 57
Wednesday, March 25, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401, 454, and 457

General Crop Insurance Regulations, Various Endorsements; Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; and Common Crop Insurance Regulations, Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) adopts regulations for the General Crop Insurance Regulations; Canning and Processing Tomato and Rice Endorsements; Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; and the Common Crop Insurance Regulations, Cotton, Coarse Grains (Corn, Grain Sorghum, and Soybeans), Dry Bean, ELS Cotton, Sugar Beet, and Sunflower Seed Crop Insurance Provisions, effective for the 1998 crop year only, for counties and states with a November 30 contract change date. The intended effect of this action is to extend the contract change date to December 17, 1997.

EFFECTIVE DATE: This rule was effective November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) determined this rule to be not significant for the purposes of Executive Order 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), there are no information collection requirements contained in this rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L.104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The extended contract change date included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, FCIC is required to have changes in policy provisions at the agent's office by November 30. If this date is not met, then the changes will not be applicable until the next crop year. The administrative process has delayed the implementation of the 1998 prevented planting and other policy changes intended to simplify and streamline the process. This regulation merely extended that date so that insurance companies and producers can receive the benefit of these changes in the 1998 crop year. The amount of work required of insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. This rule was published as an interim rule effective November 26, 1997. The rule was in the agents office by November 30, 1997, so as to be effective for the 1998 crop year. The provisions of this rule will not have retroactive effect prior to November 26, 1997. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Tuesday, December 2, 1997, FCIC published an interim rule in the **Federal Register** at 62 FR 63631 to amend the General Crop Insurance Regulations,

Various Endorsements; Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; and Common Crop Insurance Regulations, Various Crop Insurance Provisions by extending the contract change date for certain 1998 spring crop counties and States. Since this rule benefited the insured and insurance companies by improving coverage and simplifying and streamlining the policies, good cause was found to make the interim rule effective November 26, 1997, the date the interim rule was placed on file for public inspection at the office at the **Federal Register**.

Following publication of the interim rule, the public was afforded 27 days to submit written comments and opinions. Comments were received from a reinsured company and legal counsel for a reinsured company. The comments and FCIC's responses are as follows:

Comment: A reinsured company and legal counsel for a reinsured company stated that FCIC's inability to propose and promulgate timely changes in its regulations will adversely affect the reinsured companies and their policyholders. Since the first crops affected by the rule have a sales closing date of January 15, 1998, the commenters state that there is not sufficient time for the companies to understand the changes in the twelve policies FCIC has proposed to change, train the trainers, have the trainers train the agents, have the agents explain these changes to their insureds, and then to permit the insureds to complete the reports required of them in a timely and accurate manner. Also, when the insureds are late receiving the crop insurance changes, it interrupts and delays their planning and decisions. Receiving these changes late contributes to more obstacles to be overcome by program providers and agents as opposed to the mandate and goal of simplification. One of the commenters expects FCIC to hold the reinsured company harmless for the consequences of FCIC's errors and omissions. This commenter also stated that the reinsured company reserves the right to accept, without penalty, late filed applications, written agreements, acreage reports and any other document that requires a belated amendment as a result of the FCIC's delay regardless of whether the sales closing date is extended. The commenter also stated that the reinsured company reserves the right to challenge the legality of the FCIC's interim rule and final rule.

Response: It was crucial that better late and prevented planting coverage be developed and implemented for the 1998 crop year. FCIC spent months working with producers, farm organizations, commodity groups, reinsured companies, an insurance service organization, and agents to develop simplified prevented planting provisions that: (1) Would protect producers when crops were prevented from being planted by an insurable cause of loss, (2) would be actuarially sound, (3) reinsured companies could quickly develop training plans to present to employees and agents, and (4) would be simple enough for agents to explain to the producers in a limited time frame. FCIC determined that its efforts were successful and that neither insureds nor reinsured companies would be adversely affected by extension of the contract change date. The sales closing date of January 15, 1998, which is the first sales closing date for the 1998 crop year, is only applicable to a few counties and crops and few insureds were affected by the contract change date extension. With respect to the sales closing date, neither the Manager or any reinsured company has the authority to extend the sales closing date. Further, nothing in the rule or the time of its implementation should require any sales closing date extensions. Late filed documents may only be accepted in accordance with applicable regulations and FCIC approved procedures. If FCIC extends the contract change date and the reinsured company does not feel prepared to sell a policy prior to the sales closing date, then the company should not sell the policy and the applicant should be advised to find another agent. Therefore, no change has been made and the interim rule as published on December 2, 1997, at 62 FR 63631 is adopted as a final rule.

List of Subjects

7 CFR Part 401

Crop insurance, Canning and processing tomato, Rice.

7 CFR Part 454

Crop insurance, Fresh market tomato (guaranteed production plan).

7 CFR Part 457

Crop insurance, Cotton, Coarse grains (corn, grain sorghum, and soybeans), Dry bean, EL$ cotton, Sugar beet, Sunflower seed.

PART 457—[AMENDED]

The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 USC 1506(1), 1506(p).

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation adopts as a final rule, the interim rule as published at 62 FR 63631 on December 2, 1997.

Signed in Washington, D.C., on March 18, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–7735 Filed 3–24–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV98–985–1 FRC]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1998–99 Marketing Year; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service, USDA, published in the **Federal Register** of February 20, 1998, a document establishing the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1998–99 marketing year. The 1998–99 marketing year covers the period June 1 through May 31. This document corrects an error in the **EFFECTIVE DATES** caption of that rule.

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–720–2491.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 98–4036 published on February 20, 1998 (63 FR 8559), make the following correction. On page 8559, in the first column, under **EFFECTIVE DATES** the dates "June 1, 1998, through May 30, 1999" are corrected to read "June 1, 1998, through May 31, 1999."

Dated: March 19, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–7734 Filed 3–24–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–014–1]

Brucellosis in Cattle; State and Area Classifications; Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Florida from Class A to Class Free. We have determined that Florida meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Florida.

DATES: Interim rule effective March 25, 1998. Consideration will be given only to comments received on or before May 26, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–014–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–014–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Florida was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Florida, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Florida from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Florida.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Florida.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Florida from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Florida, as well as buyers and importers of cattle from this State.

There are an estimated 20,000 cattle herds in Florida that will be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $4 per head.

Therefore, we believe that changing the brucellosis status of Florida will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d). 78.41 [Amended]

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding "Florida," immediately after "Delaware," and paragraph (b) is amended by removing "Florida,".

Done in Washington, DC, this 20th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–7718 Filed 3–24–98; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PART 792

The Freedom of Information Act and Privacy Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is revising its regulations governing the disclosure of information under the Freedom of Information Act (FOIA) to reflect recent changes to FOIA brought about by the enactment of the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA). The revised regulation sets forth new procedures NCUA will employ to implement provisions of E–FOIA, such as expedited treatment of requests and multi-track processing. The rule also clarifies the information that must be included in FOIA requests so that NCUA can process them. Other changes to the rule provide guidance to the public on how to obtain records contained in the files of the Office of Inspector General. A change to the fee provision reflects a recalculation of the agency's duplication costs.

DATES: This regulation is effective April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Dianne Salva, Staff Attorney, or Sheila Albin, Associate General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1996, the President signed into law the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231. E-FOIA has twin goals of making records contained in government files more easily accessible to the public and improving administration of FOIA programs in the agencies. In particular, Congress moved to amend the FOIA because it found that government agencies were increasingly using computers to conduct agency business and store valuable agency records and information. In recognition of the vast amount of information the government maintains in electronic format, E–FOIA was designed to ensure continued public access to government information, including that maintained in electronic format. This final rule revises the NCUA's information disclosure regulations, 12 CFR part 792, to comply with E–FOIA.

On November 13, 1997, NCUA published a proposed rule, (62 FR 60799), and, in response, received five comments from the public. The comments received generally supported the proposal. Several commenters applauded the breadth of information available on the NCUA website, but also asked that NCUA consider expanding the categories of information available on the website and emphasized the need to update the website information expeditiously. NCUA has a wide variety of records on its website and more information is added regularly. One commenter asked that information on the website be made available in various electronic formats. These comments have been forwarded to the NCUA staff responsible for maintenance of the website for consideration.

One commenter expressed confusion over the mechanics of the multi-track system. NCUA believes that a multi-track processing system is the most efficient and fair way to process FOIA requests. If requests were processed on a strict first-in first-out basis, a request that could be easily answered, such as one for a press release, would be processed only after an earlier-received, complex request requiring extensive search and review. Accordingly, the multi-track system remains incorporated in this final rule. One commenter expressed confusion over the interaction between the treatment of an expedited request and the multi-track processing system, as well as the standards that will be applied to determine to which track a request is assigned. To address such confusion, NCUA's final rule clarifies that the multi-track system includes a fast track, an expedited track and a regular track. The types of requests that will enter the fast track are described in the proposal as those that seek records which are readily identifiable or have already been cleared for public release. In general, requests placed on the fast track will be those seeking records that are not voluminous and do not require extensive review to determine the applicability of any FOIA exemptions. The commenter asked that NCUA explain, by example, what type of records would meet that standard. Generally speaking, records that will qualify for the fast track will be those that have previously been released publicly by NCUA under FOIA, and that can be quickly located at the Information Center handling the request. Examples of such documents include NCUA letters to credit unions, reports to Congress, call report data as available on the NCUA website or listings of credit unions in a geographical area.

NCUA received four comments suggesting that it establish a specific time limit for processing requests under the multi-track or expedited processing

systems. NCUA carefully considered the comments concerning setting specific time frames for fast track or expedited requests. The procedure for the multi-track system will be that, when a request is received, the Information Center will review it and determine which track it should enter. Requests within each track will generally be processed according to their date of receipt. This should result in the greatest number of requests being completed in the least amount of time. Furthermore, we reviewed other agencies' final regulations implementing E–FOIA and found that no other agency has elected to assign a time frame of less than 20 days for response to requests in any track of a multi-track system. NCUA is aware that some requests may not easily be categorized, or may appear to qualify for the fast track initially, but be determined to be more complex once the processing is underway. For these reasons, it was determined that no specific time frames, other than those set forth in the statute, should be adopted in the final rule.

One commenter suggested that NCUA establish an electronic form for filing FOIA requests from its website, and another asked that NCUA identify an e-mail address and fax numbers for submitting requests. Since FOIA requests may be submitted to NCUA's Central Office or any of its six regional offices, a list of fax numbers in the rule would be cumbersome, but an e-mail address has been added. NCUA is currently planning to devote space in its website to E–FOIA, and will take the remaining comments into consideration in developing that space.

New Provisions

Section 792.02 now reflects the additional category of records NCUA will make publicly available for inspection and copying: records released under FOIA after March 31, 1997, which the agency determines have become or are likely to become the subject of subsequent requests.

Section 792.03 sets forth the indices of records made available for public inspection and copying and includes the additional index of popular FOIA responses.

Section 792.04 informs the public that certain records created by NCUA after November 1, 1996 are also available on the NCUA website.

Section 792.06 clarifies that records maintained in electronic format are subject to FOIA.

Section 792.07 identifies the places within NCUA where the public may write to request records. The Office of Inspector General has been added to reflect that the NCUA Board has delegated authority to the Inspector General to respond to initial FOIA requests for records contained in Office of Inspector General files.

Sections 792.08 and 792.09 clarify administrative requirements and procedures for submitting FOIA requests. To improve communications between the agency and requesters, requesters are instructed to include their name, address and telephone number with their request. In recognition of the new requirement that agencies honor form or format requests, requesters are also asked to designate their form or format of choice, if other than paper copy, at the time they make their request.

Section 792.10 sets forth the procedures for the multi-track processing system comprised of a fast track, expedited track and regular track. Fast track processing will apply to records that are easily identifiable by NCUA staff and have been previously cleared for release to the public. Fast track requests will be handled as expeditiously as possible in the order they are received. Requests will be placed on the expedited track if the requester meets the requirements for expedited treatment set forth in § 792.18. All information requests that do not meet the fast track or expedited track processing standards will be handled under regular processing procedures. A requester who desires fast track processing, but whose request does not meet those standards, may contact the NCUA to try to narrow the scope of the request so that it will qualify for fast track processing.

Section 792.12 was added to inform requesters that, as long as it is technically feasible and would not harm an interest that a FOIA exemption is intended to protect, NCUA will indicate where, why and how much information was withheld from its response.

Section 792.13 was added to advise requesters that they may obtain information in any readily reproducible form or format they request. It also clarifies that only one copy of a record will be produced.

Section 792.15 sets forth the new processing time limit of 20 working days in place of the prior 10 working days. It also sets forth the two exceptions to the 20 working day time limit: the suspension of time for the payment of fees or if unusual circumstances exist.

Section 792.16 describes the criteria for determining whether unusual circumstances exist. The criteria have not changed. The regulation contains a new provision on aggregating multiple requests which, together, cause unusual circumstances to exist. NCUA will now aggregate multiple requests from the same requester or group of requesters acting in concert, if it believes they constitute a single request, and if, taken together, the requests satisfy the unusual circumstances criteria. This section also contains a new provision advising requesters that, if NCUA sends them a notice extending the processing time due to unusual circumstances, it will also tell them that they may reduce the scope of their request so that it can be processed within the statutory time frame or agree to an alternative time frame.

Section 792.18 has been added to implement the expedited processing provision of E–FOIA. It sets forth the criteria for a requester seeking to establish a compelling need to support a request for expedited processing. E-FOIA permits two categories of requests involving compelling needs to be granted expedited treatment: Those that entail an imminent threat to the life or physical safety of an individual or those that are filed by persons primarily engaged in disseminating information and involve an urgency to inform the public concerning actual or alleged government activity. For ease of administration and consistency, the proposed rule uses the term "representative of the news media" to describe a person primarily engaged in disseminating information, because the term has been used for many years in other provisions of the regulation and is familiar to the public and agency staff. In keeping with Congress' express intent that the specified criteria for compelling need be narrowly applied, expedited processing will only be granted in those extraordinary cases meeting the specific requirements of the regulation. H.R. Rep. 795, 104th Cong., 2d Sess. 26 (1996). As the legislative history states, "the expedited process procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest." *Id.* To meet the criterion of an urgency to inform the public concerning an actual or alleged federal government activity, the requester must show that a delay in the release of the information would compromise a significant recognized interest, and that the requested information pertains to a matter of current exigency to the American public. This section also informs the public of the right of appeal for denial of a request for expedited processing.

Section 792.19 has been amended to reflect that the current fee schedule is available on the NCUA website. It has also been amended to reflect a new duplication rate. The current regulation sets out that searches for records responsive to a FOIA request will be conducted by computer using existing programming. The final rule strikes the reference to existing programming and adds language to say that no modification of existing programming or system will be made if it would significantly interfere with the operation of an NCUA automated information system.

Section 792.28 clarifies that appeals are permitted when NCUA denies a request for a fee waiver or reduction.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. The rule simplifies some of the procedures regarding the release of information and requires disclosure of information in certain instances in accordance with law. The disclosure requirements are imposed on the NCUA, therefore, they should not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act Analysis

These regulations will impose no additional information collection, reporting or record keeping requirements subject to the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

Executive Order 12,612

The NCUA Board certifies that the rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for congressional review of agency rules. The reporting requirement is triggered when a final rule is issued. The rule has been submitted to OMB for determination of whether this final rule constitutes a major rule as defined under the statute. A major rule is one that OMB finds has resulted in or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, federal state or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets. OMB has determined that this rule is not a major rule.

List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Credit unions, Confidential business information, Freedom of Information Act, Privacy Act.

By the National Credit Union Administration Board on March 19, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, NCUA amends 12 CFR part 792 as follows:

PART 792—[AMENDED]

1. The authority citation for part 792 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p.333.

§§ 792.20—792.37 (Subpart B) [Redesignated as Subpart E (§§ 792.52—792.69)]

2. Redesignate subpart B (792.20–792.37) as subpart E (792.52–792.69) and reserve subpart B.

3. Revise subpart A of part 792 to read as follows:

Subpart A—The Freedom of Information Act

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Subpart A—The Freedom of Information Act

General Purpose

§ 792.01 What is the purpose of this subpart?

This subpart describes the procedures you must follow to obtain records from NCUA under the Freedom of Information Act (FOIA), (5 U.S.C. 552).

Records Publicly Available

§ 792.02 What records does NCUA make available to the public for inspection and copying?

Except for records that are exempt from public disclosure under FOIA as amended (5 U.S.C. 552) or are promptly published and copies are available for purchase, NCUA routinely makes the following five types of records available for you to inspect and copy:

(a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(b) Statements of policy and interpretations which have been adopted by the agency but not published in the **Federal Register**;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Copies of all records, regardless of form or format, which have been released after March 31, 1997, in response to a FOIA request and which, because of the nature of their subject matter, NCUA determines have been or are likely to become the subject of subsequent requests; and

(e) Indices of the documents referred to in this paragraph.

§ 792.03 How will I know which records to request?

NCUA maintains current indices providing identifying information for the public for any matter referred to in § 792.02, issued, adopted, or promulgated after July 4, 1967. The listing of material in an index is for the convenience of possible users and does not constitute a determination that all of the items listed will be disclosed. NCUA has determined that publication of the indices is unnecessary and impractical. You may obtain copies of indices by making a request to the Office of Administration, at NCUA, 1775 Duke Street, Alexandria, VA 22314–2387 or, as indicated, on the NCUA web site. The indices are available for public inspection and copying and are provided at their duplication cost. The indices are:

(a) NCUA Publications List: Manuals relating to general and technical information, booklets published by NCUA, and the Credit Union Directory. The NCUA Publications list is available on the NCUA web site.

(b) Directives Control Index: A list of statements of policy, NCUA Instructions, Bulletins, Letters to Credit Unions, and certain internal manuals.

(c) Popular FOIA Index: Records released in response to a FOIA request, that NCUA determines are likely to be the subject of subsequent requests because of the nature of their subject matter. The Popular FOIA Index will be available on the NCUA web site on or before December 31, 1999.

§ 792.04 How can I obtain these records?

You may obtain these types of records or information in the following ways:

(a) You may obtain copies of the records referenced in § 792.02 by obtaining the index referred to in § 792.03 and following the ordering instructions it contains, or by making a request to the FOIA Officer, NCUA, Office of General Counsel at 1775 Duke Street, Alexandria, Virginia 22314–3428.

(b) If they were created by NCUA on or after November 1, 1996, records referenced in § 792.02 are available on the NCUA web site, found at http://www.ncua.gov.

§ 792.05 What is the significance of records made available and indexed?

The records referred to in § 792.02 may be relied on, used, or cited as precedent by NCUA against a party, provided:

(a) The materials have been indexed and either made available or published; or

(b) The party has actual and timely notice of the materials' contents.

Records Available Upon Request

§ 792.06 Can I obtain other records?

Except with respect to records routinely made available under § 792.02 or published in the **Federal Register**, or to the extent that records are exempt under the FOIA, if you make a request for records in accordance with this subpart, NCUA will make such records available to you, including records maintained in electronic format, as long as you agree to pay the actual, direct costs.

§ 792.07 Where do I send my request?

(a) You must send your request to one of NCUA's Information Centers. The Central Office, Regional Offices, Office of Inspector General and the Asset Management and Assistance Center are designated as Information Centers for the NCUA. The Freedom of Information Officer of the Office of General Counsel is responsible for the operations of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices. The Inspector General is responsible for the operation of the Office of Inspector General Information Center.

(b) If you think that the records are located at one of NCUA's Regional Offices, then you should send your request to the appropriate Regional Director, whose address can be found in § 790.2(c) of this chapter.

(c) If you think that the records are located at the Asset Management and Assistance Center, then you should send your request to the President, Asset Management and Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759–8490.

(d) If you think that the records you want are in the files of the Office of Inspector General, then you should send your request to the Inspector General, NCUA, 1775 Duke Street, Alexandria, Virginia 22314–3428.

(e) When you are not sure of the location of records, or if you think that the records you want are located in the Central Office, you should send your request to the Freedom of Information Officer at NCUA, Office of the General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also send your request by electronic mail to FOIA@NCUA.gov.

§ 792.08 What must I include in my request?

Your request must include the following:

(a) Your name, address and a telephone number where you can be reached during normal business hours.

(b) A reasonable description of the records you seek. A reasonable description is one that enables an NCUA employee, who is familiar with the subject area of the request, to locate the record with a reasonable amount of effort.

(c) A statement agreeing to pay all applicable fees or to pay fees up to a certain maximum amount, or requesting a fee reduction or waiver in accordance with § 792.27. If the actual fees are expected to exceed the maximum amount you indicate in your request, NCUA will contact you to see if you are willing to pay the estimated fees. If you do not want to pay the estimated fees, your request will be closed and no bill will be sent.

(d) If other than paper copy, you must identify the form and format of responsive information you are requesting.

§ 792.09 What if my request does not meet the requirements of this subpart?

NCUA need not accept or process your request if it does not comply with the requirements of this subpart. NCUA may return such a request to you with an explanation of the deficiency. You may then submit a corrected request, which will be treated as a new request.

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§ 792.10 What will NCUA do with my request?

(a) On receipt of any request, the Information Center assigns it to the appropriate processing schedule, pursuant to paragraph (b) of this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred to NCUA by another agency, is the date the appropriate Information Center actually receives the request.

(b) NCUA has a multi-track processing system. Requests for records that are readily identifiable by the Information Center and have already been cleared for public release may qualify for fast track processing. Requests which meets the requirements of § 792.18 will be processed on the expedited track. All other requests will be handled under normal processing procedures.

(c) The Information Center will make the determination whether a request qualifies for fast track processing or expedited track processing. You may contact the Information Center to learn to which track your request has been assigned. If your request has not qualified for fast track processing, you will have an opportunity to limit the scope of material requested to qualify for fast track processing. Limitations of requests must be in writing. If your request for expedited processing is not granted, you will be advised of your right to appeal.

(d) The Information Center will normally process requests in the order they are received in the separate processing tracks. However, in NCUA's discretion, a particular request may be processed out of turn.

(e) Upon a determination by the appropriate Information Center to comply with your initial request for records, the records will be made promptly available to you. If we notify you of a denial of your request, we will include the names and titles or positions of each person responsible for the denial.

§ 792.11 What kind of records are exempt from public disclosure?

(a) All records of NCUA or any officer, employee, or agent thereof, are confidential, privileged and exempt from disclosure, except as otherwise provided in this subpart, if they are:

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to an Executive Order.

(2) Records related solely to NCUA internal personnel rules and practices. This exemption applies to internal rules or instructions which must be kept confidential in order to assure effective performance of the functions and activities for which NCUA is responsible and which do not materially affect members of the public. This exemption also applies to manuals and instructions to the extent that release of the information would permit circumvention of laws or regulations.

(3) Specifically exempted from disclosure by statute, where the statute either makes nondisclosure mandatory or establishes particular criteria for withholding information.

(4) Records which contain trade secrets and commercial or financial information which relate to the business, personal or financial affairs of any person or organization, are furnished to NCUA, and are confidential or privileged. This exemption includes, but is not limited to, various types of confidential sales and cost statistics, trade secrets, and names of key customers and personnel. Assurances of confidentiality given by staff are not binding on NCUA.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NCUA. This exemption preserves the existing freedom of NCUA officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within NCUA or in concert with other governmental agencies.

(6) Personnel, medical, and similar files (including financial files), the disclosure of which without written permission would constitute a clearly unwarranted invasion of personal privacy. Files exempt from disclosure include, but are not limited to:

(i) The personnel records of the NCUA;

(ii) The personnel records voluntarily submitted by private parties in response to NCUA's requests for proposals; and

(iii) Files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source;

(v) Would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual. This includes, but is not limited to, information relating to enforcement proceedings upon which NCUA has acted or will act in the future.

(8) Contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of NCUA or any agency responsible for the regulation or supervision of financial institutions. This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

(b) We will provide any reasonably segregable portion of a requested record after deleting those portions that are exempt from disclosure under this section.

§ 792.12 How will I know what records NCUA has determined to be exempt?

As long as it is technically feasible and does not threaten an interest protected by the FOIA, we will:

(a) Mark the place where we redacted information from documents released to you and note the exemption that protects the information from public disclosure; or

(b) Make reasonable efforts to include with our response to you an estimate of the volume of information withheld.

§ 792.13 Can I get the records in different forms or formats?

NCUA will provide a copy of the record in any form or format requested,

such as computer disk, if the record is readily reproducible by us in that form or format, but we will not provide more than one copy of any record.

§ 792.14 Who is responsible for responding to my request?

The appropriate Regional Director, the Inspector General, the President of the Asset Management and Assistance Center, or the Freedom of Information Officer, or, in their absence, their designee, is responsible for making the initial determination on whether to grant or deny a request for information. This official may refer a request to an NCUA employee who is familiar with the subject area of the request. Other NCUA staff members may aid the official by providing information, advice, recommending a decision, or implementing a decision, but no NCUA employee other than an authorized official may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in § 792.15 unless the request involves an unusual circumstance as provided in § 792.16.

§ 792.15 How long will it take to process my request?

NCUA will respond to requests within 20 working days, except:

(a) Where the running of such time is suspended for payment of fees pursuant to § 792.26;

(b) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and § 792.16, the time limit may be extended for:

(1) An additional 10 working days as provided by written notice to you, stating the reasons for the extension and the date on which a determination will be sent; or

(2) Such alternative time period as mutually agreed by you and the Information Office, when NCUA notifies you that the request cannot be processed in the specified time limit.

§ 792.16 What unusual circumstances can delay NCUA's response?

(a) In unusual circumstances, the time limits for responding to your request (or your appeal) may be extended by NCUA. If NCUA extends the time it will provide you with written notice, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Our notice will not specify a date that would result in an extension for more than 10 working days, except as set forth in paragraph (c) of this section. The unusual circumstances that can delay NCUA's response to your request are:

(1) The need to search for, and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of NCUA having a substantial interest in the subject matter.

(b) If you, or you and a group of others acting in concert, submit multiple requests that NCUA believes actually constitute a single request, which would otherwise satisfy the unusual circumstances criteria specified in this section, and the requests involve related matters, then NCUA may aggregate those requests and the provisions of § 792.15(b) will apply.

(c) If NCUA sends you an extension notice, it will also advise you that you can either limit the scope of your request so that it can be processed within the statutory time limit or agree to an alternative time frame for processing your request.

§ 792.17 What can I do if the time limit passes and I still have not received a response?

You can file suit against NCUA because you will be deemed to have exhausted your administrative remedies if NCUA fails to comply with the time limit provisions of this subpart. If NCUA can show that exceptional circumstances exist and that it is exercising due diligence in responding to your request, the court may retain jurisdiction and allow NCUA to complete its review of the records. In determining whether exceptional circumstances exist, the court may consider your refusal to modify the scope of your request or arrange an alternative time frame for processing after being given the opportunity to do so by NCUA, when it notifies you of the existence of unusual circumstances as set forth in § 792.16.

Expedited Processing

§ 792.18 What if my request is urgent and I cannot wait for the records?

You may request expedited processing of your request if you can show a compelling need for the records. In cases where your request for expedited processing is granted or if NCUA has determined to expedite the response, it will be processed as soon as practicable.

(a) To demonstrate a compelling need for expedited processing, you must provide a certified statement. The statement, certified by you to be true and correct to the best of your knowledge and belief, must demonstrate that:

(1) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is a representative of the news media, as defined in § 792.20, and there is urgency to inform the public concerning actual or alleged NCUA activity.

(b) In response to a request for expedited processing, the Information Center will notify you of the determination within ten days of receipt of the request. If the Information Center denies your request for expedited processing, you may file an appeal pursuant to the procedures set forth in § 792.28, and NCUA will expeditiously respond to the appeal.

(c) The Information Center will normally process requests in the order they are received in the separate processing tracks. However, in NCUA's discretion, a particular request may be processed out of turn.

Fees

§ 792.19 How does NCUA calculate the fees for processing my request?

We will charge you our allowable direct costs, unless they are less than the cost of billing you. Direct costs means those expenditures that NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request. Search means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer. Search does not include modification of an existing program or system that would significantly interfere with the operation of an automated information system. Review means examining documents to determine whether any portion should be withheld and preparing documents for disclosure. Fees are subject to change as costs increase. The current rate schedule is available on our web site at http://www.ncua.gov. We may contract with the private sector to locate, reproduce or disseminate records. NCUA will not contract out responsibilities that FOIA requires it to discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. The following labor and duplication rate calculations apply:

(a) NCUA will charge fees at the following rates for manual searches for and review of records:

(1) If search/review is done by clerical staff, the hourly rate for CU–5, plus 16% of that rate to cover benefits;

(2) If search/review is done by professional staff, the hourly rate for CU–13, plus 16% of that rate to cover benefits.

(b) NCUA will charge fees at the hourly rate for CU–13, plus 16% of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(c) NCUA will charge the following duplication fees:

(1) The per-page fee for paper copy reproduction of a document is $.05;

(2) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.);

(3) If any other method of duplication is used, NCUA will charge the actual direct cost of duplication.

§ 792.20 What are the charges for each fee category?

The fee category definitions are:

(a) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(b) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education operating a program or programs of scholarly research.

(c) *Noncommercial scientific institution* means an institution that is not operated for a "commercial" purpose as that term is used in paragraph (a) of this section and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(d) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Included within the meaning of public is the credit union community. The term news means information that is about current events or that would be of current interest to the public. You may consult the following chart to find the fees applicable to your request:

If your fee category is	You'll receive	And you'll be charged
Commercial use	0 hours free search	search time
	0 hours free review	review time
	0 free pages	duplication
Educational institution, noncommercial scientific institution, newsmedia.	Unlimited free search hours	duplication
	Unlimited free review hours	
	100 free pages	
All others	2 hours free search	search time
	Unlimited free review hours.	
	100 free pages	duplication

§ 792.21 Will NCUA provide a fee estimate?

NCUA will notify you of the estimated amount if fees are likely to exceed $25, unless you have indicated in advance a willingness to pay fees as high as those anticipated. You will then have the opportunity to confer with NCUA personnel to reformulate the request to meet your needs at a lower cost.

§ 792.22 What will NCUA charge for other services?

Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

§ 792.23 Can I avoid charges by sending multiple, small requests?

You may not file multiple requests, each seeking portions of a document or similar documents, solely to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge you accordingly.

§ 792.24 Can NCUA charge me interest if I fail to pay my bill?

NCUA can assess interest charges on an unpaid bill starting on the 31st day following the date of the bill. If you fail to pay your bill within 30 days, interest will be at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

§ 792.25 Will NCUA charge me if the records are not found or are determined to be exempt?

NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

§ 792.26 Will I be asked to pay fees in advance?

NCUA will require you to give an assurance of payment or an advance payment only when:

(a) NCUA estimates or determines that allowable charges that you may be required to pay are likely to exceed $250. NCUA will notify you of the likely cost and obtain satisfactory assurance of full payment where you have a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case where you have no history of payment; or

(b) You have previously failed to pay a fee charged in a timely fashion. NCUA may require you to pay the full amount owed, plus any applicable interest, or demonstrate that you have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before we begin to process a new request or a pending request from you.

(c) If you are required to make an advance payment of fees, then the administrative time limits prescribed in § 792.16 will begin only after NCUA has received the fee payments described.

Fee Waiver or Reduction

§ 792.27 Can fees be reduced or waived?

You may request that NCUA waive or reduce fees if disclosure of the information you request is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in your commercial interest.

(a) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) Whether disclosure of the requested information will contribute to public understanding; and

(4) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities,

(b) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(1) Whether you have a commercial interest that would be furthered by the requested disclosure; and if so

(2) Whether the magnitude of your commercial interest is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in your commercial interest.

(c) If the required public interest exists and your commercial interest is not primary in comparison, NCUA will waive or reduce fees.

(d) If you are not satisfied with our determination on your fee waiver or reduction request, you may submit an appeal to the General Counsel in accordance with § 792.28.

Appeals

§ 792.28 What if I am not satisfied with the response I receive?

If you are not satisfied with NCUA's response to your request, you can file an administrative appeal. Your appeal must be in writing and must be filed within 30 days from receipt of the initial determination (in cases of denials of an entire request, or denial of a request for fee waiver or reduction), or from receipt of any records being made available pursuant to the initial determination (in cases of partial denials.) In its response to your initial request, the Freedom of Information Act Officer, Inspector General, President of the Asset Management and Assistance Center, or responsible Regional Director, (or designee,) will notify you that you may appeal any adverse determination to the Office of General Counsel. The General Counsel, or designee, as set forth in this paragraph, will:

(a) Make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is, in whole or in part, upheld, the Office of General Counsel will notify you of the provisions for judicial review of that determination under FOIA. Where you do not address your request or appeal to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(b) The General Counsel is the official responsible for determining all appeals from initial determinations. In case of this person's absence, the appropriate officer acting in the General Counsel's stead will make the appellate determination, unless such officer was responsible for the initial determination, in which case the Vice-Chairman of the NCUA Board will make the appellate determination.

(c) All appeals should be addressed to the General Counsel in the Central Office and should be clearly identified as such on the envelope and in the letter of appeal by using the indicator "FOIA–APPEAL." Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a)(1) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

§ 792.29 If I send NCUA confidential commercial information, can it be disclosed under FOIA?

(a) If you submit confidential commercial information to NCUA, it may be disclosed in response to a FOIA request in accordance with this section.

(b) For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information provided to NCUA by a submitter that arguably is protected from disclosure under § 792.11(a)(4) because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides business information, directly or indirectly, to NCUA.

(c) Submitters of business information must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions deemed to be protected from disclosure under § 792.11(a)(4). Such a designation shall expire ten years after the date of submission.

(d) We will provide a submitter with written notice of a FOIA request or administrative appeal encompassing designated business information when:

(1) The information has been designated in good faith by the submitter as confidential commercial information deemed protected from disclosure under § 792.11(a)(4); or

(2) NCUA has reason to believe that the information may be protected from disclosure under § 792.11(a)(4).

(e) A copy of the notice to the submitter will also be provided to the FOIA requester.

(f) Through the notice described in paragraph (d) of this section, NCUA will afford the submitter a reasonable period of time within which to provide a detailed written statement of any objection to disclosure. The statement must describe why the information is confidential commercial information and why it should not be disclosed.

(g) Whenever we decide that we must disclose confidential commercial information over the objection of the submitter, we will send both the submitter and the FOIA requester, within a reasonable number of days prior to the specified disclosure date, a written notice which will include:

(1) A statement of the reasons for which the submitter's disclosure objection was not sustained; and

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(h) If a requester brings suit to compel disclosure of confidential commercial information, we will promptly notify the submitter.

(i) The notice requirements of paragraph (d) of this section do not apply if:

(1) We determine that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by law; or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that in such case, NCUA will provide the submitter with written notice of any final administrative decision to disclose the information within a reasonable number of days prior to the specified disclosure date.

Release of Exempt Information

§ 792.30 Is there a prohibition against disclosure of exempt records?

Except those authorized officials listed in § 792.14, or as provided in §§ 792.31–792.32, and subpart C of this part, no officer, employee, or agent of NCUA or of any federally-insured credit union shall disclose or permit the disclosure of any exempt records of NCUA to any person other than those NCUA or credit union officers, employees, or agents properly entitled to such information for the performance of their official duties.

§ 792.31 Can exempt records be disclosed to credit unions, financial institutions and state or federal agencies?

The NCUA Board, in its sole discretion, or any person designated by it in writing, may make available to certain governmental agencies and insured financial institutions copies of reports of examination and other documents, papers or information for their use, when necessary, in the performance of their official duties or functions. All reports, documents and papers made available pursuant to this paragraph shall remain the property of NCUA. No person, agency or employee shall disclose the reports or exempt records without NCUA's express written authorization.

§ 792.32 Can exempt records be disclosed to investigatory agencies?

The NCUA Board, or any person designated by it in writing, in its discretion and in appropriate circumstances, may disclose to proper federal or state authorities copies of exempt records pertaining to irregularities discovered in credit unions which may constitute either unsafe or unsound practices or violations of federal or state, civil or criminal law.

[FR Doc. 98–7726 Filed 3–24–98; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–36]

Amendment to Class D and Class E Airspace; Topeka, Philip Billard Municipal Airport, KS; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D and Class E airspace at Topeka, Philip Billard Municipal Airport, KS, and corrects two errors in the airspace designation as published in the direct final rule.

DATES: The direct final rule published at 63 FR 4378 is effective on 0901 UTC, April 23, 1998.

This correction is effective on April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On January 29, 1998, the FAA published in the **Federal Register** a direct final rule, request for comments, which modified the Class D and Class E airspace at Topeka, Philip Billard Municipal Airport, KS (FR Doc. 98–2217, 63 FR 4378, Airspace Docket No. 97–ACE–36). Two errors were subsequently discovered in the Class E airspace designation. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects those errors and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advises the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–2217 published in the **Federal Register** on January 29, 1998, 63 FR 4378, make the following correction to the Topeka, Philip Billard Municipal Airport, KS, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 4379 in the second column, in the airspace designation, under ACE KS E4 Topeka, Philip Billard Municipal Airport, KS [Revised], in the first paragraph, in the sixth line, the geographic coordinates for the Topeka VORTAC are corrected by removing "(Lat. 39°08′14″ N., long. 95°32′51″ W.)" and adding "(Lat. 39°08′14″ N., long. 95°32′57″ W.)" in its place.

On page 4379, in the second column, in the airspace designations, under ACE KS E4 Topeka, Philip Billard Municipal Airport, KS [Revised], after the sixth line, insert; Topeka, Philip Billard Municipal Airport ILS (Lat. 39°03′47″ N., long. 95°36′42″ W.).

Issued in Kansas City, MO on March 5, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division Central, Region.

[FR Doc. 98–7822 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–35]

Amendment to Class D and Class E Airspace; Salina, KS; Correction.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D and Class E airspace at Salina Municipal airport, KS, and corrects two errors in the airspace designation as published in the direct final rule.

DATES: The direct final rule published at 63 FR 4376 is effective on 0901 UTC, April 23, 1998.

This correction is effective on April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On January 29, 1998, the FAA published in the **Federal Register** a direct final rule, request for comments, which modified the Class D and Class E airspace at Salina Municipal Airport, KS (FR Doc. 98–2216, 63 FR 4376, Airspace Docket No. 97–ACE–35). Two errors were subsequently discovered in the Class E airspace designation. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects those errors and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse

comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–2216 published in the **Federal Register** on January 29, 1998, 63 FR 4376, make the following correction to the Salina Municipal Airport, KS, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 4378 in the first column, in the airspace designation, under ACE KS E5 Salina, KS [Revised], in the fifth line, the geographic coordinates for the Salina VORTAC are corrected by removing "(lat. 38°55′35″ N., long. 97°37′35″ W.);; and adding "(lat. 38°55′31″ N., long. 97°37′17″ W.)" in its place.

On page 4378, in the first column, in the airspace designation, under ACE E5 KS Salina, KS [Revised], after the seventh line, insert; Salina Municipal Airport ILS (Lat. 38°48′53″ N., long. 97°38′46″ W.)

Issued in Kansas City, MO on March 5, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–7821 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–37]

Amendment to Class E Airspace; Iola, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct Final rule, confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Iola, KS.

DATES: The direct final rule published at 63 FR 4381 is effective on 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 29, 1998 (63 FR 4381). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 5, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–7823 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–50]

Amendment to Class E Airspace; Andover, NJ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Andover, NJ. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Aeroflex-Andover Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 3 SIAP to Aeroflex-Andover Airport at Andover, NJ.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On January 27, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace at Andover, NJ, was published in the **Federal Register** (63 FR 3859). The development of a GPS RWY 3 SIAP for Aeroflex-Andover Airport requires the amendment of the Class E airspace at Andover, NJ. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Andover, NJ, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 3 SIAP to Aeroflex-Andover Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA NJ AEA E5 Andover, NJ [Revised]

Aeroflex-Andover Airport, NJ
(Lat. 41°00'31" N., long. 74°44'17" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Aeroflex-Andover Airport, excluding the portion that coincides with the Sussex, NJ, Blairstown, NJ, and New York, NY, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on March 12, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–7815 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–48]

Amendment to Class E Airspace; Galax, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Galax, VA. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Twin County Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 10 SIAP to Twin County Airport at Galax, VA.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On January 27, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace at Galax, VA, was published in the **Federal Register** (63 FR 3857). The development of a GPS RWY 18 SIAP for Twin County Airport requires the amendment of the Class E airspace at Galax, VA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulation (14 CFR Part 71) amends Class E airspace at Galax, VA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 18 SIAP to Twin County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1997); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41013, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 | Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA VA AEA E5, Galax VA [Revised]

Twin County Airport, VA
(Lat. 36°45'58" N., long. 80°49'25" W.)

That airspace extending upward from 700 feet above the surface within a 13-mile radius of Twin County Airport, excluding the portion that coincides with the Stuart, VA, Dublin, VA, and Marion, VA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on March 12, 1998.

Franklin D. Hartfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–7816 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–49]

Amendment to Class E Airspace; Wilmington, DE

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Wilmington, DE. The development of a Standards Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at New Castle County Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 9 SIAP to New Castle County Airport at Wilmington, DE.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On January 27, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Wilmington, DE, was published in the **Federal Register** (63 FR 3858). The development of a GPS RWY 9 SIAP for New Castle County Airport requires the amendment of the Class E airspace at Wilmington, DE. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Wilmington, DE, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 9 SIAP to New Castle County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA DE AEA E5, Wilmington, DE [Revised]

New Castle County Airport, DE
(Lat. 39°40'43" N., long. 75°36'24" W.)
Summit Airpark, DE
(Lat. 39°31'13" N., long. 75°43'14" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of New Castle County Airport and within 4 miles each side of the 258° bearing from the airport extending from the 6.7-mile radius to 10 miles west of the airport and within a 6.6-mile radius of Summit Airpark and within 2.2 miles each side of a line bearing 345° from a point at lat. 39°23'36" N., long. 75°40'35" W., extending from said point to the 6.6-mile radius of Summit Airpark, excluding the portion that coincides with the Toughkenamon, PA Class E airspace area.

* * * * *

Issued in Jamaica, New York on March 12, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–7818 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–46]

Amendment to Class E Airspace; Danville, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Danville, VA. The amendments to existing Standing Instrument Approach Procedures (SIAP)s at Danville Regional Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the amended Instrument Landing System (ILS) Runway (RWY) 2 SIAP and the amended Very High Frequency Omnidirectional Range (VOR) RWY 20 SIAP to Danville Regional Airport at Danville, VA.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

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SUPPLEMENTARY INFORMATION:

History

On January 27, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Danville, VA, was published in the **Federal Register** (63 FR 3855). The amendment of the ILS RWY 2 SIAP and the amendment of the VOR RWY 20 SIAP for Danville Regional Airport require the amendment of the Class E airspace at Danville, VA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Danville, VA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the ILS RWY 2 SIAP and VOR RWY 20 SIAP to Danville Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA VA AEA E5 Danville, VA [Revised]

Danville Regional Airport, VA
(Lat. 36°34'27" N., long. 79°20'07" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Danville Regional Airport.

* * * * *

Issued in Jamaica, New York on March 12, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–7819 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–34]

Revocation, Establishment, and Modification of Class E Airspace Areas; Cedar Rapids, IA; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Cedar Rapids, The Eastern Iowa Airport, IA, and corrects an error in the airspace designation as published in the direct final rule.

DATES: The direct final rule published at 63 FR 4380 is effective on 0901 UTC, April 23, 1998.

This correction is effective on April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE—520C, Federal Aviation Administration , 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

On January 29, 1998, the FAA published in the **Federal Register** a direct final rule, request for comments, which removed, established and modified Class E airspace at Cedar Rapids, The Eastern Iowa Airport, IA (FR Doc. 98–2214, 63 FR 4380, Airspace Docket No. 97–ACE–34). An error was subsequently discovered in the Class E airspace designation. After careful review of all available information related to the subject presented above, the FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects those errors and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–2214 published in the **Federal Register** on January 29, 1998, 63 FR 4380, make the following correction to the Cedar Rapids, The Eastern Iowa Airport, IA, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 4381 in the third column, in the airspace designation, under ACE IA E5 Cedar Rapids, IA [Revised], in the first paragraph, in the fourth line, 269° should read 271°.

Issued in Kansas City, MO on March 5, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–7820 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N–384H and 95P–0241]

RIN 0910–AA19

Food Labeling: Nutrient Content Claims, Definition of Term: Healthy

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising its food labeling regulations by amending the definition of the term "healthy" to permit certain processed fruits and vegetables and enriched cereal-grain products that conform to a standard of identity to bear this term. This action is being taken to provide consumers with information that will assist them in achieving their dietary goals. This action also responds to petitions submitted to the agency by the American Frozen Food Institute (AFFI), the National Food Processors Association (NFPA), and the American Bakers Association (ABA).

EFFECTIVE DATE: March 25, 1998.

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SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 10, 1994 (59 FR 24232), FDA published a final rule entitled "Food Labeling: Nutrient Content Claims, Definition of Term: Healthy" (hereinafter referred to as "the healthy final rule"), which established a definition for the use of the implied nutrient content claim "healthy" under the Federal Food, Drug, and Cosmetic Act, as amended by the Nutrition Labeling and Education Act of 1990 (the NLEA). The regulation permits the use of the term "healthy" and its derivatives on the labels of individual foods, main dishes, and meal products that are particularly useful, because of their nutrient profile, in assisting consumers to construct a diet that conforms to current dietary guidelines.

The definition for "healthy" in § 101.65(d) (21 CFR 101.65(d)) provides that an individual food, main dish, or meal product may bear this term if: (1) It is "low" in fat and saturated fat; (2) its content of sodium and cholesterol does not exceed the levels for these nutrients established in the definition; and (3) it contributes at least 10 percent of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) of 1 or more of the following nutrients: Vitamin A, vitamin C, calcium, iron, protein, or fiber (that is, the food must be a "good source" of one or more of these six nutrients). In addition, the definition provides that a food can be fortified to meet the 10 percent nutrient contribution requirement if the fortification is done in accordance with the agency's fortification policy in § 104.20 (21 CFR 104.20). The definition further provides that raw fruits and vegetables are exempt from the 10 percent nutrient contribution requirement and may bear the term provided they meet the other requirements.

Following publication of the healthy final rule, three trade associations, AFFI, NFPA, and ABA, submitted petitions to FDA (Docket Nos. 91N–384H/PRC1, 91N–384H/PRC2, and 95P–024, respectively) requesting that the agency amend the definition of "healthy."

Two of the petitioners, AFFI and NFPA, requested that FDA reconsider its decision to exempt only raw fruits and vegetables from the 10 percent nutrient contribution requirement. Both petitioners argued that precluding certain processed fruits and vegetables from bearing the term "healthy," especially when they are nutritionally equivalent to raw fruits and vegetables, would undermine the intent of the definition for "healthy," which is to assist consumers to construct a diet that conforms to current dietary guidelines. AFFI further argued in their petition that the blanching and freezing processes do not significantly change the nutrient profile of frozen fruits and vegetables. In support of this argument, AFFI presented data to FDA comparing nutrient profiles of various raw and frozen fruits and vegetables, single ingredient versions of the same fruits and vegetables.

The third petition, submitted by ABA, requested that the agency amend the definition of "healthy" to permit the claim on enriched cereal-grain products that conform to the standards of identity in part 136, 137, or 139 (21 CFR part 136, 137, or 139) and bread that conforms to the standard of identity for enriched bread in 21 CFR 136.115, except that it contains whole wheat or other grain products not permitted under that standard. ABA argued that most nutritional authorities agree that grain products play a central role in a healthy diet. In fact, the petitioner argued, precluding enriched cereal-grain products from bearing a "healthy" claim was inconsistent with the basis of the "healthy" claim because these foods are particularly helpful in assisting consumers to construct a diet that conforms to current dietary guidelines.

Having considered the arguments raised in the petitions, the agency tentatively concluded in the **Federal Register** of February 12, 1996 (61 FR 5349), (hereinafter referred to as "the 1996 healthy proposal"), that certain frozen fruit and vegetable products and enriched cereal-grain products that conform to a standard of identity should not be barred from using the term "healthy" because these foods can be particularly useful in assisting consumers in achieving dietary goals. Accordingly, in that document, FDA proposed to amend the definition of "healthy" to allow frozen fruit and vegetable products comprised solely of fruits and vegetables, and enriched grain products that conform to a standard of identity in part 136, 137, or 139, that do not contain 10 percent of vitamin A, vitamin C, calcium, iron, protein, or fiber, but otherwise meet the requirement of the "healthy" definition, to bear the term.

Interested parties were given until April 29, 1996, to comment. FDA received approximately 100 letters in response to the proposal, each containing one or more comments, from industry, trade organizations, consumers, consumer interest groups, and academia. The comments generally supported the proposal. Several comments addressed issues outside the scope of the proposal (e.g., changing the 10 percent nutrient contribution requirement to a 5 percent requirement, revising the nutrient contribution requirement so that it is based on the caloric contribution of the food, and changing the word "enriched" to "partially restored") and they will not be discussed here. A number of comments suggested modifications and revisions in various provisions of the proposal. A summary of these comments and the agency's responses follow:

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II. Comments and Agency Response

A. General Comments

1. One comment that supported the concept of extending use of the "healthy" claim to processed fruits and vegetables and enriched grain products contended that the exemption approach is both discriminatory and piecemeal and that a new regulation providing a rational and consistent approach should be issued.

Similarly, another comment stated that the 1996 healthy proposal would lead to inequity in the marketplace and confuse consumers. The comment asserted that the agency is creating "regulatory chaos" by a desire to fix a problem that in reality does not exist under the current regulations. The comment suggested that the importance of fruits and vegetables as part of a healthy diet, whether they are raw, frozen, or canned, can be highlighted on product labels under the existing regulation even if no exemption to the good source requirement is included in the rule. For example, fruit and vegetable products ineligible to bear the term "healthy" may bear information on general dietary guidance that promotes consumption of fruit and vegetable products as part of an overall healthy diet. Such language, in the absence of an expressed or implied claim, would not require the food bearing the label to meet the requirements of the "healthy" claim. The comment further asserted that the only thing the current regulation would prevent is the use of the word "healthy" in a nutritional context on the label to indicate that the food is, in and of itself, "healthy." Neither of these comments, however, presented any alternative approaches that the agency had not considered when it first established the definition for "healthy."

The agency appreciates the concerns raised in the comments regarding the regulatory approach the agency is taking in this rulemaking in amending the definition of "healthy." Still, it is not persuaded that this approach is discriminatory and will create regulatory chaos. To the contrary, by extending this exemption to other fruit and vegetable products and to enriched cereal-grain products that conform to a standard of identity, the agency will permit the "healthy" claim on products that are particularly helpful in assisting consumers to achieve dietary goals yet are currently precluded from bearing the claim because they do not contain at least 10 percent of the subject nutrients, and in many cases cannot be reformulated to do so. The agency believes that a failure to provide for these foods to bear "healthy" would decrease the utility of the claim in assisting consumers in achieving dietary goals. Therefore, the agency concludes that the approach it is taking in amending the definition of "healthy" in this rulemaking is equitable, consistent with dietary guidelines, and unlikely to confuse consumers regarding use of the term "healthy."

In addition, the approach that FDA is taking in this final rule is similar to the approach that it took in establishing the definition of "healthy" for seafood and game meats. As discussed in the 1996 healthy proposal, FDA adopted different provisions for the use of the term "healthy" on raw, single ingredient seafood and game meat products with regard to the amount of fat, saturated fat, and cholesterol. FDA established different provisions for these foods because, in part, they would not qualify for the claim if held to the criteria of being "low fat" and "low saturated fat" because they are inherently higher in fat and in saturated fat than many other foods, yet some are recommended by the Surgeon General and the Food and Nutrition Board as foods to include in a healthy diet. In this document, FDA is relying on the same general concept on which it based its decision to provide alternative criteria for raw, single ingredient seafood and game meats. Namely, the agency would consider it inappropriate if the requirements in the definition of "healthy" precluded use of the claim for fruits and vegetables and cereal-grain products, which play such an important role in the diet and that dietary guidelines recommend be included in a healthy diet, especially in cases where manufacturers do not have the flexibility to reformulate the food to qualify it to bear the claim. This regulatory approach ensures that the term "healthy" is used in a way that enables consumers to have confidence that the foods that bear this term will in fact be particularly useful in constructing diets that conform to dietary guidelines.

The agency acknowledges that products described in the latter comment do have other claims available to them. However, the fact that these products have other claims available to them is not an adequate basis for the agency to find that they should be precluded from bearing the term "healthy." The agency believes that the more compelling argument is that in cases where the frozen or canned version of the fruit or vegetable is nutritionally comparable to the raw version of the same fruit or vegetable, and it is as beneficial as the raw version, they should be eligible to bear the "healthy" claim under the same conditions as the raw version. Furthermore, consumers should be informed that these foods serve as appropriate and useful alternatives to raw fruits and vegetables in assisting them in achieving their dietary goals.

B. Single Ingredient Fruit and Vegetable Products

The data that AFFI presented in supplemental comments to its petition comparing nutrient profiles of various raw fruits and vegetables and frozen, single ingredient versions of the same fruits and vegetables indicated that frozen fruits and vegetables generally are nutritionally comparable to raw fruits and vegetables. This indication is consistent with the agency's review of literature comparing raw fruits and vegetables to frozen and canned fruits and vegetables (Ref. 1). Based on a preliminary review of the AFFI data, the agency tentatively concluded in the 1996 healthy proposal that frozen, single ingredient fruits and vegetables should not be barred from bearing the term "healthy" because they are nutritionally comparable to raw fruits and vegetables. Moreover, like raw fruits and vegetables, they can contribute significantly to a healthy diet and to achieving compliance with dietary guidelines. Thus, the agency proposed to amend § 101.65(d)(2)(iv) to exempt frozen, single ingredient fruit and vegetable products and mixtures of frozen, single ingredient fruit and vegetable products from the 10 percent nutrient contribution requirement.

2. Some comments were opposed to exempting frozen, single ingredient fruit and vegetable products and mixtures of frozen, single ingredient fruit and vegetable products from the 10 percent nutrient contribution requirement because, the comments contended, frozen, single ingredient fruits and vegetables were nutritionally inferior to the raw fruits and vegetables. These comments argued that allowing manufacturers to label their products as "healthy" when the food did not contain 10 percent of one of the six listed nutrients was not a good idea because of the way that frozen fruits and vegetables were processed (e.g., blanching, trimming, washing, chopping, and freezing). One of these comments asserted that frozen food products are not comparable to raw food products because frozen products tend to diminish in quality during transportation and storage due to temperature changes. The comment contended, therefore, that frozen fruit and vegetable products should bear the term "healthy" only when they meet all

the requirements of the claim, including the 10 percent nutrient contribution requirement.

Many of the comments supported the proposal to exempt frozen, single ingredient fruit and vegetable products and mixtures of frozen, single ingredient fruit and vegetable products from the 10 percent nutrient contribution requirement. They agreed that these foods are nutritionally comparable to raw fruits and vegetables, can be used interchangeably in the diet with raw fruits and vegetables, can make a significant contribution to achieving dietary compliance, and the absence of a claim on frozen versions of a raw product that bears a claim could be misleading. In addition, the comments noted that the appearance of the "healthy" claim on frozen, single ingredient fruits and vegetables communicates something broad, powerful, and positive about the described food consistent with its role in achieving compliant diets and, therefore, would contribute to a balanced and healthful diet by encouraging increased consumption of these products in accordance with dietary guidelines.

The agency disagrees with the first comments. While those comments stated that frozen food products are nutritionally inferior to raw fruits and vegetables, they did not provide the agency with any data or other information to support their position or to cause the agency to reconsider its tentative conclusion that frozen, single ingredient fruits and vegetables are nutritionally comparable to raw fruits and vegetables and can be used interchangeably in the diet.

In efforts to evaluate the nutrient content of frozen fruits and vegetables compared to that of raw fruits and vegetables, the agency reviewed both the AFFI's supplemental data and similar data from the U.S. Department of Agriculture (USDA) (Ref. 2). The nutrient profiles of selected raw fruits and vegetables and frozen, single ingredient versions of the same fruits and vegetables revealed relatively equivalent nutrient profiles. The data reviewed by the agency did not support the argument raised in the comments that blanching and/or freezing fruits and vegetables generally reduces their nutrient content. In fact, some data showed that the nutrient content level for certain nutrients was higher in the frozen version of the food than in the raw version of the food. This is probably attributable to the fact that unprocessed (i.e., raw) fruits and vegetables may lose some of their nutrients over time under certain storage conditions (Ref. 1). Further, both sets of data supported the argument raised by the petitioners that frozen fruits and vegetables have comparable nutritional profiles when compared to the raw version. Therefore, the agency continues to believe that single ingredient frozen fruits and vegetables are nutritionally the same as raw fruits and vegetables. Moreover, these foods can contribute significantly to a healthy diet and to achieving compliance with dietary guidelines, even if particular products do not meet the 10 percent nutrient contribution requirement.

Further, based on these data, the agency concludes that because single ingredient, frozen fruit or vegetable products are nutritionally comparable to the raw versions, they would likely have the same inherent beneficial effects as the raw version. Precluding such foods from bearing the term "healthy" could undermine an important element of current dietary guidance, as well as the basis for the "healthy" claim that is to assist consumers in constructing a diet that conforms to dietary guidelines. Consumers should be informed, moreover, that these foods serve as appropriate and useful alternatives to raw fruits and vegetables in constructing diets consistent with current dietary recommendations even if the products do not meet the 10 percent nutrient contribution requirement. Therefore, the agency concludes that such foods should not be barred from bearing the term "healthy." Accordingly, the agency is amending § 101.65(d) to exempt frozen, single ingredient fruit and vegetable products and mixtures of frozen, single ingredient fruits and vegetables from the 10 percent nutrient contribution requirement.

C. Multi-Ingredient Fruit and Vegetable Products

As discussed in the 1996 healthy proposal (61 FR 5349 at 5352), FDA tentatively concluded that providing an exemption for multi-ingredient fruit and vegetable products would be inconsistent with current dietary recommendations and, consequently, inconsistent with the basis of the "healthy" claim because such foods may increase the consumption of certain undesirable nutrients and decrease consumption of micronutrients. Thus, FDA did not propose to extend the exemption to multi-ingredient fruit and vegetable products composed of ingredients other than fruits or vegetables that do not contain at least 10 percent of one of the six listed nutrients.

3. Two comments requested that the agency reconsider its tentative position regarding the eligibility of multi-ingredient fruit and vegetable products (i.e., products that contain added oils, sodium, sauces, syrups, or similar ingredients) to bear the term "healthy" when the food did not meet the 10 percent nutrient contribution requirement. One comment contended that if a product contains minimal amounts of these added ingredients and the levels of fat, saturated fat, cholesterol, or sodium are not significantly increased, then the product should be granted an exemption. The comment opined that the addition of insignificant amounts of these nutrients should not cause the product to be inconsistent with the purpose of the "healthy" claim or incompatible with current dietary guidelines. The other comment argued that multi-ingredient fruit and vegetable products will likely be better tasting when compared to fruit and vegetable products without these ingredients and, therefore, are more likely to be selected by consumers in their efforts to meet the public health goal of increasing fruit and vegetable consumption.

The agency is not persuaded by these comments that multi-ingredient fruit and vegetable products with added oils, sodium, sauces, syrups, or similar ingredients should be exempt from the 10 percent requirement. These foods do not have the same nutrient profile as fruits or vegetables not containing these added ingredients and therefore, have the potential, when used interchangeably in the diet with such fruits or vegetables, of increasing the dietary intake of substances that dietary guidelines recommend be decreased. Consumers who rely on the appearance of the term "healthy" to construct a diet consistent with current dietary recommendations could be misled to believe that multi-ingredient fruit and vegetable products with added oils, sodium, sauces, syrups, or similar ingredients are just as useful and helpful as raw and single ingredient fruits and vegetables in achieving dietary goals, when in fact, they could increase dietary intake of less desirable nutrients. Furthermore, the usefulness of a food labeled "healthy" is not based on how it compares to a similar food (for example, in taste), but on how, because of its nutrient profile, it contributes to achieving a total diet consistent with dietary recommendations.

The agency notes that the comment suggested minimal or insignificant amounts of these ingredients be permitted. The comments, however, did not provide a basis on which the agency could establish a minimal or insignificant amount. The agency notes,

however, that manufacturers should be advised that fruit and vegetable products composed of ingredients other than fruits or vegetables can be formulated and fortified in accordance with § 104.20 to meet the 10 percent contribution requirement, and, when so formulated, a food that meets the nutrient contribution requirement as well as the other requirements of the claim can bear the term "healthy." Accordingly, FDA is not exempting multi-ingredient fruit and vegetable products that contain added oils, sodium, sauces, syrups, or similar ingredients from the 10 percent nutrient contribution requirement. As discussed below, however, certain nonnutritive ingredients (i.e., ingredients that do not change the levels of macro or micronutrients in the food) may be added under certain conditions.

4. One comment stated that products that meet the standard of identity for fruit, fruit juices, and fruit products (e.g., applesauce) should also be exempt from the 10 percent nutrient contribution requirement. The comment stated that these products contribute to healthful diets. The comment contended that discriminating against apple products, in particular, would confuse consumers and discourage them from consuming fruit products such as apple slices and apple juice. The comment cited no basis for exempting these foods other than the fact that some of the foods cited in the comment met a standard of identity. The comment did not provide any data or other information to suggest which of these products were currently prohibited from bearing the "healthy" claim.

Nevertheless, the agency considered it prudent to review the standards of identity to ensure that fruit products conforming to a standard of identity that are particularly helpful in assisting consumers in constructing diets consistent with dietary guidelines are not unfairly precluded from bearing the term because of the provisions in the standard. Several standards of identity governing fruit products permit the optional fortification of one or more of the six listed nutrients at levels sufficient to meet the 10 percent nutrient contribution requirement. There are fruit products under standards of identity that do not provide for fortification, that are consistent with the basis of the "healthy" claim, and that are not covered by the exemptions issued in this final rule. The agency reviewed USDA's database (Ref. 2) to determine whether these fruit products' nutrient profiles preclude them from bearing the term. Based on this review, the agency determined that these foods have nutrient profiles that would allow them to bear the term "healthy" even under the current regulations without an exemption. The agency therefore concludes that a general exemption for fruit products governed by the standards of identity is not warranted.

D. Canned and Processed Fruit and Vegetable Products

The agency stated in the 1996 healthy proposal (61 FR 5349 at 5352) that if appropriate data were submitted, the agency was prepared to extend the exemption from the 10 percent nutrient contribution requirement to other single ingredient processed fruit and vegetable products. The agency solicited comments and data on the effects of other types of processing (e.g., drying and canning) and on how these processes affect the nutritional profile of fruits and vegetables.

5. Three comments requested that the agency exempt canned fruits and vegetables from the minimum nutrient contribution requirement. In support of this request, one of the comments contained data comparing the nutrient profiles of canned fruits and vegetables to raw and frozen versions of the fruits and vegetables.[1] This comment stated that an exemption should be granted for a broad category of fruit and vegetable products, including canned varieties packed in a medium that may contain other ingredients such as water, spices, flavors, or other additives that do not weaken the requirement that the food be composed solely of fruits and vegetables, for the purpose of bearing the "healthy" claim.

The agency has considered the requests made in the comments as well as reviewed the data submitted in each of the appendices. The data in Appendix A were obtained from laboratory analysis and directly compared nutrient levels of raw and processed versions of the subject fruit or vegetable on a per 100-gram basis. The agency considers the data in Appendix A to be the most relevant in terms of demonstrating the effects of canning on the nutritional profile of fruits and vegetables. The data in Appendix A show that fruits and vegetables that are subjected to freezing and canning processes generally maintain nutrient levels comparable to the raw version. These data were collected nearly 2 decades ago and may not be reflective of current canning technology and its effect on nutrient levels, however. Consequently, the agency reviewed the literature to assess: (1) Whether current canning technologies differ significantly from those used 20 years ago; and (2) if so, whether use of these current technologies results in processed fruits or vegetables with significantly altered nutrient levels as compared to the raw version.

This review indicates that any improvements in canning technologies that have occurred over the last 20 years have not significantly altered nutrient levels in canned foods when compared to raw food (Ref. 3). Consequently, the agency concludes that canned, single ingredient fruit and vegetable products generally have comparable nutrient profiles to the raw and frozen versions of the fruit and vegetable. Accordingly, the agency is revising proposed § 101.65(d)(2)(iv) to include canned, single ingredient fruit and vegetable products in the list of foods that are exempt from the 10 percent nutrient contribution requirement. In deciding to extend this exemption to canned, single ingredient fruit and vegetable products, the agency is acknowledging that these products are nutritionally comparable to, and as beneficial as, raw fruits and vegetables and, therefore, can be used interchangeably in the diet with raw fruits and vegetables. Consequently, these products, like frozen, single ingredient fruits and vegetables, should be permitted to bear the "healthy" claim under the same conditions as raw fruits and vegetables. Moreover, canned, single ingredient fruits and vegetables, like raw and frozen, single ingredient fruits and vegetables, can be particularly helpful in assisting consumers in achieving dietary goals and should not be precluded from bearing a "healthy" claim.

Furthermore, the agency is concerned that an inappropriate message could be sent to consumers if a "healthy" claim were permitted to appear on the raw or frozen version of the fruit or vegetable product but were precluded from appearing on the canned version. Such a situation might not only confuse consumers, it would also be inconsistent with the 1995 Dietary Guidelines. These guidelines state that "the availability of fresh fruits and vegetables varies by season and region of the country, but frozen and canned vegetables ensure a plentiful supply of these healthful foods throughout the

[1] The data submitted to the agency were presented in three appendices, A, B, and C. The Appendix A data directly compared nutrient levels of several versions of the subject fruit or vegetable, including raw, frozen, and canned. The Appendix B data compared nutrient levels before and after heating of each version of the fruit or vegetable (i.e., nutrient levels of frozen products were compared to nutrient levels of frozen products that had been heated). Appendix C contained data comparing nutrient profiles of raw products that had been cooked with other versions of the fruit or vegetable that were either cooked or uncooked.

year." The guidelines therefore recognize that canned as well as frozen fruits and vegetables can be used interchangeably in the diet with, and are just as helpful as, raw fruits and vegetables. Moreover, consumers should be informed that these foods serve as appropriate and useful alternatives to raw fruits and vegetables in assisting them in achieving their dietary goals.

In response to the request that the agency permit the addition of ingredients such as water, spices, flavors, or other additives, the agency would not object to the addition of ingredients that do not change the level of macro or micronutrients in the food because fruits or vegetables with such added ingredients would be nutritionally comparable to the raw version and can be used interchangeably in the diet with raw versions. On the one hand, the addition of oils, sodium, sauces, syrups, and other ingredients that could change the level of nutrients, as compared to raw foods, could increase the consumption of undesirable nutrients beyond that of the raw version, as well as imply that these products have nutritional profiles comparable to the raw version, when in fact they do not. Consequently, the agency finds no basis on which fruit and vegetable products with added oils, sauces, sodium, and syrups should be exempt from the 10 percent requirement. On the other hand, fruit and vegetable products that have nonnutritive added ingredients (such as water, spices, or flavors) maintain comparable nutrient profiles to the raw versions, and, therefore, should be permitted to bear the claim under the same conditions as the raw versions. Accordingly, the agency is amending § 101.65(d)(2)(iv) from the proposal to clarify that foods comprised solely of fruits and vegetables may have added ingredients such as water, spices, flavors or other additives that do not change the level of nutrients in the food. This change from the proposal substantially lengthens the description of the exemption for frozen and canned single ingredient fruits and vegetables. The agency has therefore placed the exemptions to the 10 percent nutrient contribution requirement at the end of § 101.165(d)(2)(iv), paragraphs A through C. In addition, the agency has deleted the phrase "per labeled serving," an error in the proposed codified language, from the final codified language so that the description of the 10 percent nutrient contribution itself conforms to the preexisting codified description in § 101.165(d)(2)(iv).)

6. A few comments opposed exempting canned fruits and vegetables from the 10 percent nutrient contribution requirement because, the comments argued, some canned fruits and vegetables are high in sugar and salt and should not bear the term "healthy."

While the agency appreciates the concerns raised in the comments, the agency notes that it is not, in this rulemaking, providing an exemption for foods containing ingredients that would increase the amount of sugar or salt beyond that occurring in the raw version of the fruit or vegetable. The agency points out, however, that not granting an exemption to these foods would not prohibit fruits and vegetables with added sugar or salt from bearing the "healthy" claim because such foods that contain 10 percent or more of one of the six listed nutrients, and otherwise meet the requirements for the claim, are not precluded from bearing the claim.

E. Enriched Cereal Grain Products

In the 1996 healthy proposal, FDA proposed to amend the definition of "healthy" in § 101.65 to exempt enriched cereal-grain products that conform to a standard of identity in part 136, 137, or 139 from the 10 percent nutrient contribution requirement. This exemption is justified because foods made in accordance with these standards are precluded from meeting the 10 percent nutrient contribution requirement and because they are the types of food that meet the basis of the "healthy" definition and are recommended in dietary guidelines. Foods labeled with the term "healthy" should be those that can be used to achieve a total diet that conforms to current dietary recommendations (see 58 FR 2944 at 2946, January 6, 1993). Current dietary guidelines recommend 6 to 11 servings of breads, cereals, rice, and pasta per day. Because most Americans do not achieve 6 to 11 servings per day, increased consumption of grain products is also recommended in dietary guidelines. The appearance of a "healthy" claim on enriched cereal-grain products would likely encourage consumers to select these products as part of a healthy diet. Furthermore, precluding standardized enriched cereal-grain products from bearing the term "healthy" may confuse consumers because they might incorrectly regard such products as not particularly beneficial in achieving diets consistent with dietary guidelines.

Comments responding to this issue (with the exception of comment 7, in section II.E of this document) supported FDA's proposal, and stated that permitting a "healthy" claim on enriched cereal-grain products would likely encourage consumers to select these products as part of a healthy diet. Accordingly, FDA is amending the definition of the term "healthy" in § 101.65(d)(2)(iv) as proposed to exempt enriched grain products that conform to a standard of identity in part 136, 137, or 139 from the 10 percent nutrient contribution requirement.

7. Two comments opined that the healthy claim should be reserved only for breads that contain flour that is 50 percent whole grain. The comments contended that breads that are made from enriched flour and do not contain at least 50 percent whole grain flour should not be labeled as "healthy." The comments further contended that valuable nutrients such as the B-vitamins, vitamin E, dietary fiber, and minerals are not adequately supplied in enriched flour.

The agency disagrees with these comments. While the agency recognizes that during the milling process of wheat, the B-vitamins, vitamin E, dietary fiber and certain minerals may be lost, the enrichment requirement in the standards of identity restores several of these nutrients. Moreover, as discussed previously in section II.E of this document, standardized enriched cereal-grain products are the types of products that are consistent with the basis of the "healthy" claim and should not be precluded from bearing the claim. The comments are asking the agency to base the requirement to bear the "healthy" claim on the presence and percentage of a particular ingredient in a food rather than on the presence and percentage of particular nutrients that are important to the food's overall nutritional profile. Such an approach would require the agency to change the underlying principles of the "healthy" claim, which focuses on the food's overall nutritional profile. Further, it would require the agency to develop a list of ingredients that could qualify a food to bear a "healthy" claim. The agency believes that such an approach is neither equitable nor feasible. Consequently, the agency is not granting the comments' request that only breads containing 50 percent whole grain flour be labeled as "healthy."

8. Another comment stated that all breakfast cereals should be exempt from the 10 percent nutrient contribution requirement. The comment opined that the presence of the term "healthy" on breakfast cereals would increase their consumption that, in turn, would increase consumption of cereal-grain products. Such consumption, the comment argued, would be entirely consistent with, and supportive of, the

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government's current dietary recommendations and the intent of the NLEA. The comment provided no other rationale for exempting breakfast cereals from the 10 percent requirement.

While the agency agrees that increased consumption of breakfast cereals would mean increased consumption of cereal-grain products, the agency is not persuaded that breakfast cereals should be exempt from the nutrient contribution requirement. There is no evidence to suggest that breakfast cereals as a category of foods are precluded from bearing the term because of the food's inability to meet the 10 percent requirement. On the contrary, breakfast cereals that meet the other requirements of the claim generally are a "good source" of at least one of the listed nutrients. Furthermore, breakfast cereals are not governed by a standard of identity and have the flexibility of modifying their formulation to meet the requirements of the claim. Consequently, FDA is not establishing an exemption for breakfast cereals.

9. A number of comments urged the agency to allow cereal-grain products that are eligible to bear a health claim to also bear the term "healthy." The comments stated that these products play a major role in a healthful diet and precluding these products would confuse consumers and undermine the ability of health claims to assist consumers in making appropriate dietary choices.

The agency strongly disagrees with these comments. The agency would like to reiterate and clarify its position on this subject. The fundamental concerns that underlie a health claim are different from those that underlie the definition of "healthy." FDA's goal is to define "healthy" in such a way that it will highlight foods that, because of their nutrient content, will be most helpful to consumers in constructing a diet that is consistent with all of the dietary recommendations. The purpose of a health claim, by contrast, is to highlight scientifically valid nutrient-disease relationships as well as foods that have a level of the substance in question such that consumption of the food may help to affect the risk of developing the disease in question. In some cases these purposes overlap, in others they do not.

Because a health claim is based on the relationship of a substance to a specific disease or health-related condition (59 FR 24232 at 24233), a product that bears a health claim may not necessarily be particularly helpful in assisting consumers in lowering their daily intake of those nutrients that are not the subject of the claim, but of which reduced daily intake has been recommended. For example, a food must be "low fat" to bear the claim "healthy," whereas some health claims do not require the food to be "low fat." The agency therefore acknowledges that there are foods that will be eligible to bear a health claim that will not be eligible to bear the term "healthy." This fact is not an inconsistency in FDA's regulations because, as described above, these two claims are different and have different functions.

The comments have not persuaded the agency that FDA's goal in defining the term "healthy" would be met if the agency permitted a food to bear the term "healthy" just because it qualifies for a health claim. Therefore, FDA is not amending the definition of "healthy" to permit foods to bear the term simply because the food qualifies to bear a health claim. The agency notes, however, that foods that bear health claims and that meet the requirements for "healthy" may also bear the term "healthy."

III. Economic Analysis

A. Benefit/Cost Analysis

FDA has examined the impacts of this final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "economically significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered "significant" under Executive Order 12866 if it raises novel legal or policy issues. FDA finds that this final rule is neither economically significant nor a significant regulatory action as defined by Executive Order 12866.

In addition, FDA has determined that this rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995 requiring cost-benefit and other analyses. A significant rule is defined in Section 1531(a) as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year * * *".

Finally, in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this final rule is not a major rule for the purpose of Congressional review.

FDA is proposing to permit certain processed fruits and vegetables, and enriched cereal-grain products that conform to a standard of identity to bear the term "healthy." FDA has determined that these products are particularly helpful in assisting consumers to achieve dietary goals.

In the benefit/cost analysis for the proposed rule, FDA stated that the benefit of this rule is to provide more beneficial information to consumers. FDA received comments stating that the rule will have a positive impact on the demand for fruits and vegetables if it helps people to understand the relative nutritiousness of fresh versus frozen or canned produce. Several comments also stated the rule would result in health benefits if it caused consumption of fruits and vegetables to increase.

Although it is possible that this rule will have some marginal impact on the overall demand for fruits and vegetables, it is unlikely that any increase in demand that might occur would be significant. It is likely, however, that demand will shift from products that are higher in fat, sugars, and sodium, such as multi-ingredient vegetable products with added oils, to products that are lower in fat, sugars, and sodium irrespective of whether the switching that may occur is within or between product types. The real benefit of use of the term "healthy" depends not on whether it favors one type of product over another, but on whether it provides consumers with a tool with which they can select foods that will help to achieve dietary goals.

The costs of this regulation will be incurred only by those manufacturers desiring to take advantage of the opportunity to use the term "healthy." FDA cannot predict the number of manufacturers who will take advantage of this opportunity. Therefore, the agency cannot estimate the number of labels that will be revised as a result of this rule. FDA estimates however, that, the cost of revising a label to include a "healthy" claim is approximately $3,000 per label.

B. Small Entity Analysis

FDA has examined the impacts of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a

substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities. Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), FDA certifies that this final rule will not have a significant impact on a substantial number of small entities.

FDA received one comment to the analysis of the proposed rule regarding the potential impact on small entities. The comment suggested that if consumption shifts from raw to processed produce as a result of this rule, the impact on small farmers would be detrimental.

The comment did not provide any data with which FDA could evaluate the potential for shifts in consumption from raw to processed produce or any resulting impact on small farmers. FDA notes, however, that it is unlikely that this rule would cause consumption to shift from raw to processed produce. As stated previously, the likely substitution is from those fruits and vegetables that are too high in fat or sodium to qualify for the term "healthy" to those raw or processed fruits and vegetables that do qualify as "healthy."

FDA further notes that, even if demand for processed produce increased relative to raw produce, the impact on small farmers should not be detrimental. There is no reason to expect that small farmers would not be able to sell their produce to processors if the demand for processed produce increases.

Only those processed products that would meet the current definition of the term "healthy" other than the minimum nutrient contribution requirement will be affected by this rule. Because there is no change in the definition as it applies to those products currently using the term, only those entities desiring to take advantage of the new exemption will bear any cost of this regulation. No firm of any size will voluntarily bear the cost of changing a label to bear the term "healthy" unless doing so will be advantageous to the firm. Therefore, FDA concludes that no small entity will be adversely affected by this rule.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (61 FR 5349, February 12, 1996; corrected May 21, 1996 (61 FR 25421)). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

In the 1996 healthy proposal, FDA stated its tentative conclusion that the proposed rule contains no reporting, recordkeeping, labeling or other third party disclosure requirements and asked for comments on whether the proposed rule imposed any paperwork burden. No comments were received addressing the question of paperwork burden. FDA concludes that the labeling provisions in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320(c)(2)).

VI. References

1. Karmas, E., and R. S. Harris, "Nutritional Evaluation of Food Processing, 3d Ed.," Van Nostrand Reinhold Co., Inc., New York, chapters 3, 4, and 11, 1988.

2. Satchell, F. B., Division of Programs and Enforcement Policy (HFS–158), Center for Food Safety and Applied Nutrition, memorandum to file, September 22, 1995, Modification of USDA's Nutrient Data Base for National Nutrient Databank Release No. 9, "Processed Fruit and Vegetable Products that Qualify to Bear the Term 'Healthy'," June 17, 1994, and July 17, 1995.

3. University of Illinois at Urbana-Champaign, Department of Food Science and Human Nutrition, "Nutrient Conservation in Canned, Frozen and Fresh Foods," October 1997.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.65 is amended by revising paragraph (d)(2)(iv) to read as follows:

§ 101.65 Implied nutrient content claims and related label statements.

* * * * *

(d) * * *

(2) * * *

(iv) The food contains at least 10 percent of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) per reference amount customarily consumed of vitamin A, vitamin C, calcium, iron, protein, or fiber, except for the following:

(A) Raw fruits and vegetables;

(B) Frozen or canned single ingredient fruits and vegetables and mixtures of frozen or canned single ingredient fruits and vegetables, except that ingredients whose addition does not change the nutrient profile of the fruit or vegetable may be added;

(C) Enriched cereal-grain products that conform to a standard of identity in part 136, 137, or 139 of this chapter.

* * * * *

Dated: March 18, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–7667 Filed 3–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 75N–0339]

Human and Veterinary Drugs; Current Good Manufacturing, Processing, Packaging, or Holding; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the current good manufacturing practice regulations for human and veterinary drug products to correct a typographical error. This action is being taken to ensure accuracy and clarity in the agency's regulations.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: FDA has discovered that an error has become incorporated into the agency's current good manufacturing practice regulations for human and veterinary drug products. In an amendment to 21 CFR 211.84, published on September 29, 1978 (43 FR 45014), the word "date" was inadvertently misspelled as "data". This document corrects that error. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has

determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 211 is amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374.

§ 211.84 [Corrected]

2. Section 211.84 *Testing and approval or rejection of components, drug product containers, and closures* is amended in paragraph (c)(5) by removing the word "data" and by adding in its place the word "date".

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7666 Filed 3–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Bambermycins; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulation for bambermycins to correct several cross-references in that regulation. In approving a new animal drug application (NADA) filed by Hoechst Roussel Vet, FDA failed to amend certain cross-references to conform to amendments in the approval document and to provide certain other cross-references. This document provides for those conforming amendments and cross-references.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1739.

SUPPLEMENTARY INFORMATION: In amending the bambermycins regulation to reflect approval of Hoechst Roussel Vet's NADA 141–034 (use of bambermycins Type A medicated articles to make Type C medicated cattle feeds), FDA amended § 558.95 (21 CFR 558.95) by redesignating paragraph (b) as paragraph (d) (see 62 FR 8373, February 25, 1997), but failed to amend the cross-references in paragraph (a). Furthermore, in approving NADA 141–034 to establish several added uses in § 558.95(b)(4) (currently § 558.95(d)(4)) (see 59 FR 15624, April 4, 1994 and 61 FR 43654, August 26, 1996), FDA failed to provide reference in paragraph (a)(5) to uses in paragraphs (b)(4)(ii) and (b)(4)(iii) (current paragraphs (d)(4)(ii) and (d)(4)(iii)). Section 558.95 is amended by revising paragraph (a), by revising the cross-references to paragraphs (d)(1), (d)(2), (d)(3), and (d)(4), as appropriate, and by expanding those references in paragraph (a)(5) to reflect all uses in paragraph (d)(4).

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.95 is amended by revising paragraph (a) to read as follows:

§ 558.95 Bambermycins.

(a) *Approvals.* To sponsors identified by drug labeler codes in § 510.600(c) of this chapter for use of bambermycins Type A medicated articles as bambermycins activity per pound in paragraph (d) of this section as follows:

(1) To 012799: 2, 4, and 10 grams for use as in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this section.

(2) To 012799: 0.4 gram for use as in paragraph (d)(2) of this section.

(3) To 011490: 0.4 and 2 grams for use as in paragraph (d)(2) of this section.

(4) To 012286, 016968, and 017790: 0.4 and 2 grams for use as in paragraph (d)(2) and 2 grams for use as in paragraph (d)(3) of this section.

(5) To 012799: 10 grams to make 40 to 800 grams per ton Type B feed for use as in paragraph (d)(4) of this section.

* * * * *

Dated: March 12, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–7699 Filed 3–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

31 CFR Part 2

National Security Information

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule revises regulatory text that identifies, by position title, senior Treasury officials authorized to originally or derivatively classify national security information under Executive Order 12958. These designations are now contained in Treasury Order 102–19, which is published in the **Federal Register**. This order will be updated as necessary to revise the designations of officials who have been delegated by the Secretary of the Treasury the authority to classify originally or derivatively national security information.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Robert A. McMenamin, Assistant Director (Information and Physical Security), Department of the Treasury, Office of Security, Room 3210 Annex, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220, (202) 622–1120.

SUPPLEMENTARY INFORMATION: This rule removes the specific designations of Treasury officials authorized to originally and derivatively classify national security information under Executive Order 12958 and previous Orders. The designation of such officials is now made by a Treasury Order that will be revised from time to time as may be necessary. This rule reduces costs by making it unnecessary to revise periodically the regulations in part 2.

Because this rule relates to agency management and personnel, notice and public procedure and a delayed effective date are not required pursuant to 5 U.S.C. 553(a)(2) and the provisions of Executive Order 12866 do not apply. Because notice and public procedure is not required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

List of Subjects in 31 CFR Part 2

Classified information, Reporting and recordkeeping requirements.

For the reasons set forth above, 31 CFR Part 2 is amended as set forth below.

PART 2—NATIONAL SECURITY INFORMATION

1. The authority citation for part 2 is revised to read as follows:

Authority: 31 U.S.C. 321; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. Section 2.2 is revised to read as follows:

§ 2.2 Classification Authority.

Designations of original classification authority for national security information are contained in Treasury Order (TO) 102–19 (or successor order), which is published in the **Federal Register**. The authority to classify inheres within the office and may be exercised by a person acting in that capacity. There may be additional redelegations of original classification authority made pursuant to TO 102–19 (or successor order). Officials with original classification authority may derivatively classify at the same classification level.

3. Section 2.9 is revised to read as follows:

§ 2.9 Derivative Classification Authority.

Designations of derivative classification authority for national security information are contained in Treasury Order 102–19 (or successor order). The authority to derivatively classify inheres within the office and may be exercised by a person acting in that capacity. There may be additional redelegations of derivative classification authority made pursuant to TO 102–19 (or successor order). Officials identified in Treasury Order 102–19 (or successor order) may also administratively control and decontrol sensitive but unclassified information using the legend "Limited Official Use" and may redelegate their authority to control and decontrol. Such redelegations shall be in writing on TD F 71–01.20 "Designation of Controlling/Decontrolling Officials" (or successor form).

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 98–7680 Filed 3–24–98; 8:45 am]

BILLING CODE 4810–25–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5977–5]

Approval and Promulgation of Implementation Plans; Colorado; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating corrections to the State Implementation Plan (SIP) for the State of Colorado. First, EPA is correcting its January 21, 1997 rulemaking in which EPA approved several Colorado new source review (NSR) SIP revisions. Specifically, pursuant to a December 17, 1996 request from the state of Colorado, EPA is removing from the approved SIP two sections of Colorado's prevention of significant deterioration (PSD) rules in Regulation No. 3. EPA is also disapproving a provision in the State's definition of "Federally enforceable" in Regulation No. 3 that EPA inadvertently failed to disapprove in its January 21, 1997 rulemaking. The provision in that definition which is being disapproved states that provisions which are not required by the Federal Clean Air Act (Act) shall not be submitted as part of the SIP and shall not be federally enforceable. This provision is being disapproved because the Act provides that any provision approved by EPA as part of the SIP is federally enforceable unless and until the State requests, and EPA approves, a SIP revision removing such provision.

Second, EPA is correcting an October 5, 1979 rulemaking in which EPA incorrectly listed Colorado House Bill 1109 as being approved as part of the Colorado SIP.

Last, EPA is correcting a September 23, 1980 rulemaking, in which EPA mistakenly replaced a Colorado SIP approval in 40 CFR 52.320 with a Montana SIP approval.

EPA proposed these corrections for public comment on December 17, 1997, and no comments were received within the 30-day public comment period.

EFFECTIVE DATE: This rule is effective on April 24, 1998.

ADDRESSES: Copies of the documents relative to this action are available for inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466 and The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, at (303) 312–6445.

SUPPLEMENTARY INFORMATION: On December 17, 1997, EPA proposed several corrections to previous Colorado SIP approvals (62 FR 66046–49). EPA received no public comments on the proposed actions within the 30-day public comment period. EPA received one comment letter, from the Colorado Air Pollution Control Division (APCD), after the close of the public comment period. EPA discusses the APCD's comment letter in section I.B. of this notice. The APCD's comment letter does not warrant any change to the proposed action. Therefore, EPA is promulgating the corrections to the Colorado SIP as proposed in the December 17, 1997 **Federal Register**. The following provides background information on the specific corrections being made to the Colorado SIP and EPA's justification for these corrections:

I. Corrections to EPA's January 21, 1997 Rulemaking

On January 21, 1997, EPA promulgated approval of five Colorado SIP revisions submitted on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. (See 62 FR 2910–2914.) All of these SIP submittals contained revisions to the State's NSR and PSD provisions in Parts A and B of Colorado Regulation No. 3.

A. Correction to Exclude Sections V.B. and VII.A.5. of Part B of Colorado Regulation No. 3 From the SIP

Although the State's November 12, 1993 submittal discussed above only included a few changes to the State's construction permitting requirements, the State submitted its construction permitting regulations (including its PSD rules) in their entirety because the State had also restructured and renumbered Regulation No. 3 in this submittal. Subsequently, on December 17, 1996, the State submitted a request to exclude two sections of Part B of Regulation No. 3 from its November 12, 1993 SIP submittal, specifically Sections V.B. and VII.A.5. (referred to herein as Sections V.B. and VII.A.5. or as "the two provisions.") On January 21, 1997, EPA's approval of the State's November 12, 1993 SIP submittal was published (62 FR 2910). The approval did not exclude Sections V.B. and VII.A.5.

Section V.B. of Part B of Regulation No. 3 applies the Class I sulfur dioxide PSD increment to certain pristine areas

in Colorado that are not designated Class I by the Federal PSD regulations. This is not required by the Act or Federal PSD regulations. Section VII.A.5. of Part B of Regulation No. 3 provides that no new major stationary source or major modification shall individually consume more than 75% of an applicable increment. No such provision (or similar provision) is required by the Act or Federal PSD regulations. Neither of the two provisions is necessary for the State to demonstrate attainment and/or maintenance of the National Ambient Air Quality Standards (NAAQS). Therefore, EPA believes that these two provisions may be removed from the SIP.

In this instance, EPA believes it is appropriate to remove the two provisions from the SIP pursuant to EPA's authority under section 110(k)(6) of the Act. Section 110(k)(6) of the Act provides as follows:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

The State submitted its request well before EPA's final approval of the State's November 12, 1993 SIP submittal was published in the **Federal Register** or was otherwise announced to the public. Thus, EPA had an opportunity to exclude the two provisions from the final published rule, but failed to do so.

Although there may be instances where a request to withdraw components of a SIP implicates the Act's requirement for State notice and hearing, EPA does not believe this is one of them. First, these two provisions had been part of the State's regulations for many years,[1] but had been expressly excluded from the State's SIP submittals of prior PSD revisions and had been expressly excluded from EPA's rulemaking actions on those prior PSD rule revisions. (See 51 FR 31125, September 2, 1986, and 56 FR 12850, March 28, 1991.) Second, the State merely renumbered these two provisions at its July 15, 1993 hearing, and there was no indication that the State intended to change course and submit these two provisions to EPA for approval into the SIP. Presumably, if the State had intended such a change in course, the State would have focused its notice and public hearing on the two provisions prior to adopting the renumbering of Regulation No. 3 and submitting it to EPA. This did not occur, and the evidence suggests that submittal of these two provisions to EPA was merely an oversight. If EPA had reviewed the circumstances more carefully when it received the State's December 17, 1996 letter, EPA could have corrected its final rule before publication.

With respect to Section V.B., EPA also believes a correction is necessary because Section V.B. (which, as stated above, applies the Class I sulfur dioxide increment to certain pristine Class II areas in Colorado) is inconsistent with the requirements of EPA's PSD regulations. Specifically, 40 CFR 51.166(g) contains certain requirements for redesignating an area from Class II to Class I, and the State has not addressed those requirements for the areas listed in Section V.B. Thus, EPA erred in approving Section V.B. as part of the SIP. This position is consistent with EPA's prior rulemaking regarding this provision. In a September 2, 1986 action, EPA did not approve this provision into the SIP, explaining that the State had not followed the specific procedures outlined in 40 CFR 51.166(g) for redesignating an area from Class II to Class I. (See 51 FR 31125.)

For the reasons discussed above, EPA is correcting its January 21, 1997 SIP approval to remove Sections V.B. and VII.A.5. of Part B of Regulation No. 3 from the approved SIP.

B. Correction to Disapprove Provision in Definition of "Federally Enforceable" in Colorado Regulation No. 3

In the State's September 29, 1994 SIP submittal of revisions to Regulation No. 3, the State revised its definition of "Federally Enforceable" in Section I.B.22. of Part A of Colorado Regulation No. 3. EPA's nonattainment NSR and PSD permitting regulations in 40 CFR 51.165 and 51.166, respectively, require this term to be defined in States' permitting programs, as it is used in various definitions and provisions of the Federal preconstruction permitting regulations.

Colorado's definition of "Federally enforceable" basically mirrors the Federal definition in 40 CFR 51.165(a)(1)(xiv) and 51.166(b)(17). However, on August 18, 1994, the State revised this definition (among other things) to add a provision stating the following: "Notwithstanding the foregoing, and except for the voluntarily accepted limitations and conditions described in the preceding sentence, any provision, standard, or regulation that is not required by the Federal Act or that is more stringent than the Federal Act is adopted under powers reserved to the State of Colorado pursuant to section 116 of the Federal Act, is not to be submitted to the EPA as a provision of the SIP and shall not be federally enforceable." (Referred to hereafter as the "quoted language.") According to the State, this revision was made to mirror the definition found in Section 25–7–105.1 of the Colorado Air Pollution Prevention and Control Act.

During the State's public comment period on this regulatory change, EPA stated in an August 12, 1994 letter that it could not approve the quoted language as part of the SIP. Any provision that has been submitted by the State and approved by EPA as part of the SIP is considered to be Federally enforceable regardless of whether it is required by the Act or more stringent than the Act. Similarly, terms and conditions incorporated into a permit that is issued under an EPA-approved permitting program, such as new source review or title V operating permits, are also generally considered to be Federally enforceable.[2] The only way a State can change the Federal enforceability of any provision that has been approved by EPA as part of the SIP is by submitting a request for revision to the SIP and by receiving EPA approval of the SIP revision (through notice and comment rulemaking via the **Federal Register**).

EPA believes the quoted language is thus misleading to the public and the regulated community.

As noted earlier in this notice, EPA received one comment letter, from the Colorado Air Pollution Control Division (APCD), after the close of the public comment period.[3] In its comment letter, the APCD objects to EPA's proposal to disapprove the quoted language. The APCD comments that EPA does not have the authority to expand the scope

[1] The Colorado Air Quality Control Commission originally adopted Section V.B. on March 10, 1983 and Section VII.A.5. on May 17, 1990.

[2] States can designate certain provisions in a title V permit that have not been approved as part of the SIP or that are not otherwise Federally enforceable or Federally required as "State-only" in a title V operating permit, and those terms would not be considered Federally enforceable. [See 40 CFR 70.6(b)(2).]

[3] The APCD did not explain why it was submitting comments after the deadline for comments, nor did it request an extension of the comment period. EPA does not believe it has a legal obligation to consider or respond to this late comment letter as part of this rulemaking action. Nonetheless, because doing so will not significantly delay EPA's final rulemaking action in this matter, EPA is providing this brief response to the APCD's letter. EPA has provided a separate response in a letter to the APCD.

of a SIP submittal by turning State-only provisions into Federally-enforceable provisions and that EPA's disapproval of the quoted language may preclude the State from submitting State-only provisions to EPA for the purpose of providing complete information about the State program.

As to these assertions, the APCD does not explain how EPA's disapproval of the quoted language would turn State-only provisions in a SIP submittal into Federally-enforceable provisions. The State remains free to explicitly identify State-only measures in a SIP submittal and provide them to EPA for informational purposes only. EPA has not approved such measures into the SIP in the past and does not intend to do so in the future because EPA does not consider such measures to be part of the official SIP submittal. EPA's disapproval of the quoted language will not change EPA's approach to explicitly-identified State-only measures in SIP submittals. Similarly, EPA's disapproval of the quoted language will not give EPA the authority to approve, into the Federally enforceable SIP, measures the State has not submitted to EPA or force the State to submit measures that it would not otherwise submit.

On the other hand, if the quoted language remains part of the approved SIP, some may mistakenly believe that it renders unenforceable by EPA a measure the Governor has asked EPA to approve and EPA has approved into the SIP, simply because the measure is not required by the Clean Air Act or is more stringent than Federally required. Such an interpretation is inconsistent with the Clean Air Act (e.g., sections 110, 113, and 304 of the Act), and relevant case law. See, e.g., *Union Elec. Co.* v. *E.P.A.*, 96 S.Ct. 2518 (1976). Also, under such an interpretation, the quoted language would make it impossible for the general public, the regulated community, or EPA to have any certainty regarding the contents of the Federally enforceable SIP in Colorado. This result would clearly be contrary to Congressional intent. Thus, EPA feels compelled to disapprove the quoted language. The APCD's comments offer no reason for EPA to change its position on this matter.

In EPA's January 21, 1997 rulemaking, EPA approved the definition of "Federally enforceable" into the SIP in its entirety. (See 62 FR 2914.) However, for the reasons discussed above and in EPA's August 12, 1994 letter to the State, EPA believes its approval of the quoted language was made in error. Consequently, EPA is correcting its January 21, 1997 rulemaking by disapproving the language in the State's definition of "Federally enforceable" which states that any provision, standard or regulation not required by the Act is not to be submitted as part of the SIP and shall not be Federally enforceable. EPA is making this correction pursuant to section 110(k)(6) of the Act. Because the quoted language is not required by the Act and will not affect the State's ability to implement its permit program, EPA's disapproval of the quoted language will not start any sanctions or Federal implementation plan clocks.

II. Correction of October 5, 1979 Rulemaking

On October 5, 1979, EPA approved several submittals from the State of Colorado, which were made pursuant to the 1977 revisions to the Act. (See 44 FR 57401–57411.) In that action, EPA listed House Bill 1109 in 40 CFR 52.320(c)(14)as one of the submittals being approved (see 44 FR 57409, October 5, 1979). House Bill 1109 repealed and reenacted the State's Air Quality Control Act. The bill was signed into law by the Governor on June 20, 1979 and submitted to EPA on July 23, 1979, along with House Bill 1090 (regarding burning of solid wastes) and Senate Bill 1 (regarding provisions for reducing motor vehicle emissions). In the preamble to the October 5, 1979 rulemaking, EPA discussed the State's July 23, 1979 submittal of the three bills. EPA indicated that it was taking no action on House Bill 1109 at that time and would propose action in the **Federal Register** at a future date to take public comment on the acceptability of the State's revised Air Quality Control Act (see 44 FR 57403). Since EPA clearly stated in the preamble that it was not taking action on House Bill 1109, EPA erred in listing House Bill 1109 as being approved as part of the SIP in 40 CFR 52.320(c)(14). Therefore, pursuant to section 110(k)(6) of the Act, EPA is correcting the regulatory text regarding the State's July 23, 1979 submittal to remove the reference to House Bill 1109.[4]

Although EPA's October 5, 1979 rulemaking indicated that EPA would propose action on House Bill 1109 at a future date, EPA no longer believes it is necessary to take action on House Bill 1109 or any successor provisions in the State's Air Quality Control Act. Generally, EPA does not believe it is necessary to approve State authorizing legislation into the SIP. Instead, EPA needs to be satisfied that such authorizing legislation exists and that it shows that the State has adequate legal authority to adopt, implement, and enforce the SIP. Therefore, EPA will not be taking action on House Bill 1109.

[4] Note that the provision in 40 CFR 52.320(c)(10) promulgated on October 5, 1979 was renumbered as 40 CFR 52.320(c)(15) on June 27, 1980. See 45 FR 43411.

III. Correction of September 23, 1980 Rulemaking

On September 23, 1980, EPA approved various SIP submittals from the State of Montana intended to address the 1977 revisions to the Act. In that action, EPA mistakenly revised 40 CFR 52.320, which identifies SIP approvals for the State of Colorado, to reflect approval of these various Montana SIP submittals (see 45 FR 62984). EPA's original intention with the September 23, 1980 rulemaking was to revise 40 CFR 52.1370(c)(8) for the State of Montana's plan, but EPA promulgated the language regarding Montana's SIP at 40 CFR 52.320(c)(8). On June 30, 1982, EPA partially corrected this error for Montana by promulgating the September 23, 1980 approval at 40 CFR 52.1370(c)(10). (See 47 FR 28373.) However, no correction was ever made to the "Identification of Plan" for Colorado at 40 CFR 52.320. Consequently, EPA is amending 40 CFR 52.320(c)(8) to reinstate the previous Colorado SIP approval promulgated at 52.320(c)(8), as it was last revised on March 2, 1976 (see 41 FR 8958).

IV. Final Action

EPA is revising 40 CFR 52.320(c)(72)(i)(D) to exclude Sections V.B. and VII.A.5. of Part B of Regulation No. 3, which pertain to the State's PSD program, from the approved SIP.

EPA is correcting its January 21, 1997 approval of Section I.B. of Part A of Regulation No. 3 (as in effect on September 30, 1994) to disapprove the last sentence in the definition of "Federally enforceable" which states that any provision, standard or regulation not required by the Act is not to be submitted as part of the SIP and shall not be Federally enforceable.

EPA is amending 40 CFR 52.320(c)(15) to remove the reference to House Bill 1109, which was incorrectly listed as being approved in EPA's October 5, 1979 Colorado rulemaking (see 44 FR 57409).

Last, EPA is amending 40 CFR 52.320(c)(8) to reinstate the Colorado SIP approval promulgated on March 2, 1976 (see 41 FR 8958) that was incorrectly replaced in a September 23, 1980 rulemaking (45 FR 62984).

EPA is making these corrections pursuant to section 110(k)(6) of the Act.

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Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The corrections promulgated herein remove certain provisions from the SIP. However, regardless of EPA's final action, these provisions still apply as a matter of State law, and thus, EPA's action does not affect any existing requirements applicable to small entities. Also, EPA's action does not impose any new Federal requirements. Therefore, EPA certifies that this correction action does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the corrections promulgated do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 26, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 5, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.320 is amended by revising paragraphs (c)(8), (c)(15), and (c)(72)(i)(D) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(8) On June 7, 1974, the Governor submitted five Air Quality Maintenance Area designations.

* * * * *

(15) On July 23, 1979, the Governor submitted House Bill 1090 and Senate Bill 1 as part of the plan.

* * * * *

(72) * * *

(i) * * *

(D) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted 8/18/94, effective 9/30/94, as follows: Part A (with the exception of the last sentence in the definition of "Federally enforceable" in Section I.B.22 and with the exception of Section IV.C.) and Part B (with the exception of Sections V.B. and VII.A.5.). This version of Regulation No. 3, as incorporated by reference here, supersedes and replaces all versions of Regulation No. 3 approved by EPA in previous actions.

* * * * *

[FR Doc. 98–7640 Filed 3–24–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300632; FRL–5779–3]

RIN 2070–AB78

Titanium Dioxide; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of titanium dioxide when used as an inert ingredient (UV protectant) in microencapsulated formulations of lambda-cyhalothrin. Zeneca AgProducts requested this tolerance exemption under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective March 25, 1998. Objections and requests for hearings must be received by EPA on or before April 24, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300632], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300632], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM 1B2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300632]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 4th Floor, Crystal Station 1B1, 2800 Crystal Drive,, Arlington, VA, 22202, (703)–308–8371, e-mail: gairola.indira@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 20, 1997 (62 FR 33641) (FRL–5723–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 6E4675) for a tolerance exemption by Zeneca Ag. Products, 1800 Concord Pike, P.O Box 15458, Wilmington, DE 19850–5458. This notice included a summary of the petition prepared by Zeneca Ag. Products, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001 (d) be amended by establishing an exemption from the requirement of a tolerance for residues of the inert ingredient titanium dioxide, when used as an inert ingredient (UV protectant) in microencapsulated formulations of lambda-cyhalothrin applied to growing crops.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of titanium dioxide and to make a determination on aggregate exposure, consistent with section 408(b)(2), an exemption from the requirement of a tolerance for residues of titanium dioxide when used as an inert ingredient (UV protectant) in microencapsulated formulations of lambda-cyhalothrin. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

Titanium is the eighth most abundant element in the earth's crust and consequently spontaneously enters the food chain to some degree. Titanium dioxide (TiO_2) is a major constituent of a number of minerals, including rutile, which consists of 95% titanium dioxide. The most commercially important of the titanium compounds, titanium dioxide annual worldwide production is estimated to be appoximately two million metric tons. Titanium dioxide is an opaque powder that is approved for use as a colorant in food (21 CFR 73.575), in drugs (21 CFR 73.1575), and in cosmetics (21 CFR 73.2575; 21 CFR 73.3126). It has an extensive range of industrial uses (e.g., paint, paper, and plastics). Titanium dioxide is currently exempt from the requirement for a tolerance when used as a colorant in pesticide formulations (40 CFR 180.1001(d)).

A National Cancer Institute bioassay concluded that titanium dioxide did not affect mortality, and was not carcinogenic at dose levels of 25,000 or 50,000 ppm in rats or mice.

The World Health Organization Committee on Food Coloring Materials has determined that no ADI need be set for the use of titanium dioxide based on the range of acute, subacute and chronic toxicity assays, all showing low mammalian toxicity, including a two year chronic feeding study in mice which was negative for carcinogenicity. Indeed, titanium dioxide is frequently used as a negative control material in *in vivo* chronic dust exposure studies and in *in vivo* assessments of fibrogenic potential of dusts.

B. Exposures and Risks

Titanium dioxide is currently approved for use in a significant number of pharmaceutical, cosmetic, industrial and food products. Therefore, the potential for aggregate exposure from dietary and non-dietary routes does exist for titanium dioxide. While it is difficult to develop a precise estimate of total human exposure to titanium dioxide, its low toxicity at relatively high doses indicate that current exposures are likely to be significantly below levels that may result in adverse health effects. Titanium dioxide is approved for use in food generally up to

1% of the final weight of the food (10,000 ppm). Even the most extreme assumptions regarding its presence in foods following use as an inert ingredient in lambda-cyhalothrin formulations would not result in a measurable increase in potential dietary intake of titanium dioxide.

All registered lambda-cyhalothrin products to which titanium dioxide is added as an inert ingredient are commercial agricultural products not registered for residential use. The potential for non-occupational exposures by the general population above current background levels resulting from the many non-pesticidal uses of titanium dioxide is unlikely.

Section 408(c)(2)(B) requires that, when considering whether to establish, modify, or revoke an exemption from the requirement of a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide chemical's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticide chemicals, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether titanium dioxide has a common mechanism of toxicity with other substances or how to include this pesticide chemical in a cumulative risk assessment. Unlike other pesticide chemicals for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, titanium dioxide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that titanium dioxide has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population, Infants and Children

Based on its low toxicity, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of titanium dioxide. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because of the inconsequential increases in dietary exposure resulting from its application to growing crops as an inert ingredient in formulations of lambda-cyhalothrin.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects in calculating a dose level that to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through the use of margin of exposure analysis or through using uncertainty (safety) in calculating a dose level that poses no appreciable risk to humans.

Due to low toxicity of titanium dioxide, EPA has not used a safety factor analysis in assessing the risk of this compound. For the same reason, application of the additional safety factor for infants and children would not be appropriate.

III. Other Considerations

A. Analytical Enforcement Methodology

The Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for titanium dioxide.

B. International Residue Limits

No Codex maximum residue levels have been established for titanium dioxide.

IV. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of titanium dioxide when used as an inert ingredient (UV protectant) in microencapsulated formulations of lambda-cyhalothrin at no more than 3% by weight of the formulation.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 26, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if

the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300632] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 1B2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 12, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1195 is added to read as follows:

§ 180.1195 Titanium dioxide; exemption from the requirement of a tolerance.

Titanium dioxide is exempted from the requirement of a tolerance for residues in or on growing crops, when used as an inert ingredient (UV protectant) in microencapsulated formulations of the insecticide lambda-cyhalothrin at no more than 3.0% by weight of the formulation.

[FR Doc. 98–7492 Filed 3–24–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300625; FRL–5776–5]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites in or on pecans. The Bayer Corporation submitted a petition to EPA

under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170) requesting this tolerance.

DATES: This regulation is effective March 25, 1998. Objections and requests for hearings must be received by EPA on or before May 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300625], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300625], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document control number [OPP–300625]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Elizabeth T. Haeberer, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–2891, e-mail: haeberer.elizabeth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 17, 1997 (62 FR 66077)(FRL–5758–3), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 5F4480) by the Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013, to establish tolerances for the residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine in or on pecan, nut at 0.05 parts per million (ppm). This notice included a summary of the petition prepared by the Bayer Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.472(a) be amended by establishing a tolerance for the insecticide, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on pecans at 0.05 ppm.

I. Risk Assessment and Statutory Findings

EPA establishes maximum legal levels (tolerances) for pesticide residues on food under section 408 of the FFDCA. EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of Section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances in the **Federal Register** of November 26, 1997, (62 FR 62961–62970)(FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid, and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid, on pecans at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety are discussed below.

1. A battery of acute toxicity studies placing technical imidacloprid in Toxicity Category II for oral LD_{50}, Category IV for dermal LD_{50}, inhalation LC_{50}, eye iritation and dermal irritation. Imidacloprid is a non-sensitizer.

2. In an acute neurotoxicity study, groups of Sprague-Dawley rats (18/sex/dose) were given a single oral administration of imidacloprid (97.6%) in 0.5% methylcellulose with 0.4% Tween 80 in deionized water at 0, 42, 151 or 307 mg/kg. Parameters evaluated included: clinical pathology (6/sex/dose); Functional Observation Battery (FOB) measurements (12/sex/dose); and neuropathology (6/sex/dose). FOB measurements were made approximately 90 minutes post dosing, and on days 7 and 14. Motor activity measurements were made at approximately 2.5 hours post dosing.

At 307 mg/kg/day, 4/18 males and 10/18 females died and both sexes of rats at this dose exhibited decreased numbers of reats, grip strength (forelimb and hindlimb) and response to stimuli (auditory, touch, or tail pinch) as well as increased gait abnormalities, righting reflex impairments and body temperatures. These symptoms regressed by day 5. At 151 milligram/kilograms/day (mg/kg/day), cage side FOB assessments revealed tremors in one male and one female and red nasal staining in one male. On the day of dosing, a dose-related decrease in total session motor activity was observed in males at 151 mg/kg/day (25% decrease) and 307 mg/kg/day (73%) and in females at all dose levels with the decreases (25, 48, and 81%, respectively at 42, 151 and 307 mg/kg/day) reaching statistical significance ($p < 0.05$) at 151 and 307 mg/kg/day dose levels. Decreases in motor activity were seen at all time intervals. Total session locomotor activity was also decreased to about the same percentage difference but statistical significance was not reported. On days 7 and 14, decreases (not statistically significant) were still observed in motor and locomotor activity in surviving high-dose males. The lowest-observed-effect level (LOEL) was 42 mg/kg based on the decrease in

motor and locomotor activities observed in females; a no-observed-effect level (NOEL) was not established.

3. In a subchronic oral toxicity study, groups of Fischer 344 rats (12/sex/dose) were fed diets containing imidacloprid (98.8%) at 0, 150, 1,000, or 3,000 ppm (0, 9.3, 63.3, or 196 mg/kg/day in males and 0, 10.5, 69.3 or 213 mg/kg/day in females, respectively) for 90 days. No treatment-related effects were seen at 150 ppm. Treatment-related effects included decreases in body weight gain during the first 4 weeks of the study at 1,000 ppm (22% in males and 18% in females) and 3,000 ppm (50% in males and 25% in females) with an associated decrease in forelimb grip strength especially in males. The NOEL was 150 ppm (9.3 and 10.5 mg/kg/day in males and females, respectively) and the LOEL was 1,000 ppm (63.3 and 69.3 mg/kg/day in males and females, respectively).

4. In a subchronic dermal toxicity study, groups of five male and five female New Zealand White rabbits received repeated dermal applications of imidacloprid (95%) at 1,000 mg/kg/day (Limit Dose), 6 hours/day, 5 days/week for 3 weeks. No dermal or systemic toxicity was seen. For systemic and dermal toxicity, the NOEL was > 1,000 mg/kg/day; a LOEL was not established.

5. In a rat inhalation study (28-day study in which rats were exposed 6 hours/day, 5 days a week for 4 weeks), the no observable effect concentration (NOEC) for imidacloprid was 5.5 mg/m^3.

6. In a chronic oral toxicity study, groups of beagle dogs (4/sex/dose) were fed diets containing imidacloprid (94.9%) at 0, 200 or 1,250/2,500 ppm (0, 6.1, 15 or 41/72 mg/kg/day, respectively) for 52 weeks. The 1,250 ppm dose was increased to 2,500 ppm from week 17 onwards. The threshold NOEL was 1,250 ppm (41 mg/kg/day). The LOEL was 2,500 ppm (72 mg/kg/day) based on increased cytochrome-P-450 levels in both sexes and was considered to be a threshold dose. Due to the lack of toxicity at 1,250 ppm, a NOEL was not established in this study; following the dose increase to the 2,500 ppm level, toxicity was observed, thus making 1,250 ppm the threshold NOEL and 2,500 ppm the threshold LOEL.

7. In a combined chronic toxicity/carcinogenicity study, groups of Bor WISW rats (50/sex/dose) received imidacloprid (95.3%) at 0, 100, 300 or 900 ppm (0, 5.7, 16.9 or 51.3 mg/kg/day in males and 0, 7.6, 24.9, or 73 mg/kg/day in females, respectively) for 104 weeks. In another study, rats of the same strain (50/sex) received imidacloprid at 0 or 1,800 ppm (0, 102.6 and 143.7 mg/kg/day in males and females, respectively) for 104 weeks. For chronic toxicity, the NOEL was 100 ppm (5.7 mg/kg/day) and the LOEL was 300 ppm (16.9 mg/kg/day) based on decreased body weight gains in females and increased thyroid lesions in males. There was no evidence of carcinogenicity in either sex.

8. In a carcinogenicity study groups of B6C3F1 mice (50/sex/dose) were fed diets containing imidacloprid (95%) at 0, 100, 330 or 1,000 ppm (0, 20, 66 or 208 mg/kg/day in males and 0, 30, 104 or 274 mg/kg/day in females, respectively) for 2 years. In a supplementary study conducted to evaluate the adequacy of the high dose tested in the main study, the same strain of mice (50/sex) received 0 or 2,000 ppm (414 and 424 mg/kg/day in males and females, respectively) for the same time period. For chronic toxicity, the NOEL was 1,000 ppm (208 mg/kg/day). The LOEL was 2,000 ppm (414 mg/kg/day) based on decreased body weight gain, food consumption and water consumption. There was no evidence of carcinogenicity in either sex.

9. In a developmental toxicity study with Sprague-Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 mg/kg/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., cesarean section evaluation). At 100 mg/kg/day, developmental toxicity manifested as wavy ribs (fetus =7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOEL was 10 mg/kg/day lowest dose tested (LDT) based on decreased body weight gain; a NOEL was not established. For developmental toxicity, the NOEL was 30 mg/kg/day and the LOEL was 100 mg/kg/day based on increased wavy ribs.

10. In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24 or 72 mg/kg/day during gestation days 6 through 18. For maternal toxicity, the NOEL was 24 mg/kg/day and the LOEL was 72 mg/kg/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOEL was 24 mg/kg/day and the LOEL was 72 mg/kg/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities.

11. In a 2-generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3; or 52.0 mg/kg/day for males and 0, 8.0, 20.5, or 57.4 mg/kg/day for females). For parental/systemic/reproductive toxicity, the NOEL was 250 ppm (18.3 mg/kg/day) and the LOEL was 750 ppm (52 mg/kg/day), based on decreases in body weight in both sexes in both generations. Based on these factors,the Data Evaluation Record should be revised to indicate the parental/systemic/reproductive NOEL and LOEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

12. Studies on gene mutation and other genotoxic effects: an Ames *Salmonella* Assay which was negative up to 5,500 µg/plate concentration; recombination assay-yeast, negative for cross-over in yeast up to 10,000 µg; *In Vivo* Chromasomal Aberration, negative for chromosome breakage up to 2,000 µg/ml; *In Vitro* Chromasomal Aberrations, positive at 500 µg/ml -S9 and 1,300 µg/ml +S9, both toxic doses (acceptable study); *In Vivo* Sister Chromatid assay, negative up to 2,000 µg/ml; *In Vitro* Cytogenetics-CHO cells, negative for producing forward mutation in CHO (mammalian) cells treated up to 1,222 µg/ml; Micronucleus - mouse, negative up to (toxic) 50 µg/ml (ip); DNA repair test, negative for cross-over in yeast up to 10,000 µg; HGPRT assay-CHO, negative up to 2,000 µg/ml. Mutagenicity studies have demonstrated that imidacloprid is non-mutagenic both *in vivo* and *in vitro*.

B. Toxicological Endpoints

1. *Special sensitivity to infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. These studies are described in unit II A. of this document. The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to in utero exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study data did not identify any increased sensitivity of rats to in utero or postnatal exposure. Parental NOELs were lower or equivalent to developmental or offspring NOELs. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the

reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

Although developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits, no increased sensitivity in pups as compared to adults was seen in the two generation reproduction toxicity study in rats, and the toxicology data base is complete as to core requirements, the Agency determined that the additional safety factor for the protection of infants and children will be retained but reduced to 3x based on the following weight-of-the-evidence considerations relating to potential sensitivity and completeness of the data:

(i) There is concern for structure activity relationship. Imidacloprid, a chloronicotinyl compound, is an analog to nicotine and studies in the published literature suggests that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*.

(ii) There is evidence that imidacloprid administration causes neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2-year carcinogenicity study.

(iii) The concern for structure activity relationship along with the evidence of neurotoxicity dictates the need of a developmental neurotoxicity study for assessment of potential alterations on functional development.

Because a developmental neurotoxicity study potentially relates to both acute and chronic effects in both the mother and the fetus, the additional UF for FQPA is being applied for all population subgroups, and both acute and chronic risk.

2. *Acute toxicity.* Acute dietary risk assessment is required for all population subgroups. LOEL=42 mg/kg/day based on decreased motor activity in female rats; MOE=300, as discussed above. Conventionally, when a LOEL from the critical study is used for risk assessment, an additional UF will be applied. For acute risk assessment with imidacloprid, however, the Committee determined that an additional uncertainty factor is not necessary because: (i) of the low confidence in the endpoint based on the minimal nature of the effect (decreased motor activity only in females);(ii) this effect was seen in adult rats; and (iii) the same effect was not seen in the subchronic toxicity study following repeated doses.

3. *Short - and intermediate - term toxicity.* In a dermal toxicity study, groups of five male and five female New Zealand White rabbits received repeated dermal applications of imidacloprid (95%) at 1,000 mg/kg/day (Limit Dose), 6 hours/day, 5 days/week for three weeks. No dermal or systemic toxicity was seen. For systemic and dermal toxicity, the NOEL was > 1,000 mg/kg/day; a LOEL was not established (MRID No. 42256329).

In an oral toxicity study, groups of Fischer 344 rats (12/sex/dose) were fed diets containing imidacloprid (98.8%) at 0, 150, 1,000, or 3,000 ppm (0, 9.3, 63.3, or 196 mg/kg/day in males and 0, 10.5, 69.3 or 213 mg/kg/day in females, respectively) for 90 days. No treatment-related effects were seen at 150 ppm. Treatment-related effects included decreases in body weight gain during the first 4 weeks of the study at 1,000 ppm (22% in males and 18% in females) and 3,000 ppm (50% in males and 25% in females) with an associated decrease in forelimb grip strength especially in males. The NOEL was 150 ppm (9.3 and 10.5 mg/kg/day in males and females, respectively) and the LOEL was 1,000 ppm (63.3 and 69.3 mg/kg/day in males and females, respectively) (MRID No. 43286401).

In a rat inhalation study (28-day study in which rats were exposed 6 hours/day, 5 days a week for 4 weeks), the no observable effect concentration (NOEC) for imidacloprid was 5.5 mg/m3 (MRID No. 422730-01).

4. *Chronic toxicity.* EPA has established the RfD for 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine at 0.019 mg/kg/day. This RfD is based upon increased number of thyroid lesions in male and decreased body weight gains in female Bor WISW rats, with a NOEL of 5.7 mg/kg/day, and LOEL of 16.9/24.9 mg/kg/day (males and females respectively); UF=300, as discussed above.

5. *Carcinogenicity.* This chemical has been classified as a Group E - no evidence of carcinogenicity for humans. A cancer risk assessment is not required.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established 40 CFR 180.472(a) for the combined residues of 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from imidacloprid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary risk assessment is required for all population subgroups.

This acute dietary (food) risk assessment used the Theoretical Maximum Residue Contribution (TMRC). Resulting exposure values and Margins of Exposure (MOEs; MOE = Acute Endpoint ÷ Exposure) are shown below.

Population Subgroup	High-End[1] Exposure (mg/kg/day)	MOE[2]	Exposure @ 99th Percentile (mg/kg/day)	MOE
U.S. population (48 states)	0.10	420	0.05[3]	840
Infants (< 1 yr)	0.15	280	0.10	420
Children (1-6 yrs)	0.15	280	0.10	420
Females (13+ yrs)	0.05	840	0.04	1050

Population Subgroup	High-End[1] Exposure (mg/kg/day)	MOE[2]	Exposure @ 99th Percentile (mg/kg/day)	MOE
Males (13+ yrs)	0.10	420	0.05	840

[1] > 99.5th Percentile.
[2] MOE = Margin of Exposure.
[3] @ 98th Percentile (U.S. Pop. only).

These results should be viewed as a very conservative risk estimate; refinement using anticipated residue values and percent crop-treated information in conjunction with Monte Carlo analysis would result in a lower estimate (i.e., higher MOE) of acute dietary exposure.

ii. *Chronic exposure and risk.* The endpoint selected for chronic risk assessment is decreased body weight gains in females and increased thyroid lesions observed at 7.6 mg/kg/day in male rats in a combined chronic toxicity/carcinogenicity study. The NOEL was 5.7 mg/kg/day. A UF of 300 is required as discussed above. In conducting this chronic dietary (food) risk assessment, EPA used: (1) tolerance level residues for pecans, grain sorghum, and all other commodities with published, permanent or time-limited imidacloprid tolerances, the pending proposed tolerance for the citrus crop group; and, (2) percent crop-treated (%CT) information on some of these crops. Thus, this risk assessment should be viewed as partially refined. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure. The results are summarized below.

Population Subgroup	Exposure(mg/kg/day)	%RfD
Nursing Infants (<1 year old)	0.002824	15
Non-Nursing Infants (<1 year old)	0.009983	53
Children (1-6 years old)	0.007514	40
Children (7-12 years old)	0.005305	28
U.S. Population - Fall Season	0.003716	20
Northeast Region	0.003771	20
Western Region	0.003842	20
Hispanics	0.003879	20
Non-Hispanic Others	0.003906	21

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (1) that the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of these estimates of percent crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated.

The Agency used percent crop treated (PCT) information as follows. A routine chronic dietary exposure analysis for imidacloprid was based on likely maximum percent of crop treated as follows: 6% grapefruits, 3% oranges, 13% other citrus, 19% apples, 2% pears, 11% grapes, 30% eggplants/peppers, 32% head lettuce, 21% cole crops, 15% melons, 10% tomatoes, 6% cotton.

The Agency believes that the three conditions listed above have been met. With respect to (1), EPA finds that the PCT information described above for imidacloprid is reliable and has a valid basis. The Agency has utilized the latest statistical data from RFF (Resources For The Future), DOANE, and USDA, the best available sources for such information. Concerning (2) and (3), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing imidacloprid in a particular area.

2. *From drinking water.* EPA used the estimated environmental concentration (EEC) data to calculate acute and chronic exposure estimates for imidacloprid in surface water using the following formulas:

Adult Male: Exposure (mg/kg/day) = (chemical concentration in g/L in consumed water) * (10^{-3} mg/µg) ÷ (70 kg body weight) * (2 L water consumed/day)

Adult Female: Exposure (mg/kg/day) = (chemical concentration in g/L in consumed water) * (10^{-3} mg/µg) ÷ (60 kg body weight) * (2 L water consumed/day)

Child (1-6 years): Exposure (mg/kg/day) = (chemical concentration in g/L in consumed water) * (10^{-3} mg/µg) ÷ (10 kg body weight) * (1 L water consumed/day)

Acute MOE: Acute Endpoint (42 mg/kg/day) ÷ Exposure (mg/kg/day)

Chronic Risk (%RfD): Exposure (mg/kg/day) ÷ RfD (0.019 mg/kg/day) * 100

The 2 liters (L) of drinking water consumed/day by adults and the 1 L per day consumed by children are default assumptions used by the Office of Water. The Agency's default body weights for males is 70 kg and for females, 60 kg. HED's default body weight for children is 10 kg.

The results are summarized below:

Population Sub-group	Acute Scenario			Chronic Scenario		
	µg/L in Water Consumed	Exposure (mg/kg/day)	MOE	µg/L in Water Consumed	Exposure (mg/kg/day)	% RfD
Adult male	50.9	0.00145	29,000	19.1	0.00055	2.9
Adult Female	50.9	0.00170	24,700	19.1	0.00064	3.4
Child (1-6 yrs)	50.9	0.00509	8,250	19.1	0.00191	10.1

These results should be viewed as a very conservative risk estimate. Refinement by applying factors to account for the percent of acreage planted in a watershed, the percent of crop-treated, and the water flow rate would result in a lower estimate of acute and chronic exposure from consumption of surface waters containing imidacloprid residues.

3. *From non-occupational non-dietary exposure.* Imidacloprid is currently registered for use on the following residential non-food sites: ornamentals (e.g., flowering and foliage plants, ground covers, turf, lawns, et al.), tobacco, golf courses, walkways, recreational areas, bathrooms, household or domestic dwellings (indoor/outdoor), cats/dogs, and wood protection treatment to buildings. Available data do not demonstrate that imidacloprid has either dermal or inhalation toxicity potential, therefore, non-occupational non-dietary risk assessments are not required. Since data show no toxicity from short term exposure via the dermal or inhalation route, the Agency feels there is no contribution to toxicity from these routes of exposure, and no increase in aggregate risk is anticipated from this exposure. Therefore residential exposure does not aggregate with dietary exposure for any risk assessments.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and " other substances that have a common mechanism of toxicity." An explanation of the current Agency approach to assessment of pesticides with a common mechanism of toxicity may be found in the Final Rule on Bifenthrin Pesticide Tolerances **Federal Register** of November 26, 1997, (62 FR 62961–62970)(FRL–5754–7).

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. Imidacloprid is the sole member to date of the new chloronicotinyl class of pesticides.

D. Aggregate Risks and Determination of Safety for U.S. Population, Infants and Children

1. *Acute risk.* Acute aggregate dietary risk (combined food and water) is estimated by adding the acute exposures to food and water (highest of ground or surface water) and comparing this exposure to the acute dietary endpoint:

Aggregate MOE_{ACUTE} = acute dietary endpoint ÷ aggregate exposure.

The results of the acute aggregate dietary (food and water) risk assessment are given below.

Population Subgroup	Exposure from Food (mg/kg/day)	Exposure from Surface Water (mg/kg/day)	Aggregate Exposure (mg/kg/day)	Aggregate Acute MOE
U.S. population (48 states)	0.101	0.0023	0.102	412
Infants (<1 yr)	0.102	0.0054	0.105	4005
Children (1-6 yrs)	0.102	0.005	0.105	4005
Females (13+ yrs)	0.051	0.002	0.052	[illegible]
Males (13+ yrs)	0.101	0.002	0.102	412

[1] High-End Exposure (>99.5th Percentile).
[2] Exposure @ 99th percentile; high-end exposure = 0.15 mg/kg/day.
[3] 3 Exposure value used was that calculated for females (13+ years) and males (13+ years).
[4] Exposure value used was that calculated for children (1-6 years).
[5] Based on exposure @ 99th percentile; MOE is 271 @ high-end exposure (>99.5th percentile).

For imidacloprid, an (aggregate) acute dietary MOE of ≥300 is needed to protect the safety of all population subgroups. The aggregate MOEs for the general population, females (13+ years), and males (13+ years) are >400 at the high-end exposure. The aggregate MOEs for infants and children are calculated to be 400 at the 99th percentile of exposure, and 271 at the high-end exposure (>99.5th percentile).

In conducting the acute dietary (food) risk assessment the Theoretical Maximum Residue Contribution (TMRC) was used. There was no refinement using anticipated residue values and percent crop-treated information in conjunction with Monte Carlo analysis which would result in a much lower estimate (i.e., higher MOE) of acute dietary exposure.

Because of the very conservative nature of the assumptions used in these calculations, and the fact that refinement would lower the risk estimates (i.e., result in higher MOE values) for both MOE_{food} and MOE_{water}, EPA concludes that there is a reasonable certainty that no harm will result to infants, children, or adults from acute agregate (food and water) exposure to imidacloprid residues.

2. *Chronic risk.* Dermal and inhalation exposure endpoints were not selected due to the demonstrated absence of toxicity, thus, there is no residential component for assessing chronic aggregate exposure and risk.

In conducting the chronic dietary (food) risk assessment, EPA used: (i) tolerance level residues for pecans, grain sorghum, and all other commodities with published, permanent or time-limited imidacloprid tolerances, the pending proposed

tolerance for the citrus crop group; and, (ii) percent crop-treated (%CT) information on some of these crops. Thus, this risk assessment should be viewed as partially refined. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure.

Chronic aggregate dietary risk (combined food and water) will be estimated by adding the chronic exposures to food and water (highest of ground or surface water) and comparing this exposure to the RfD:

Aggregate %RfD Occupied = (aggregate exposure ÷ RfD) x 100.

The results of the chronic aggregate dietary (food and water) risk assessment are given below.

Population Subgroup	Exposure from Food (mg/kg/day)	Exposure from Surface Water (mg/kg/day)	Aggregate Exposure (mg/kg/day)	% RfD Occupied
U.S. population (48 states)	0.0036	0.00061	0.0042	22
Nursing infants (<1 yr old)	0.0028	0.00192	0.0047	25
Non-nursing infants (<1 yr old)	0.0100	0.00192	0.0119	63
Children (1-6 yrs old)	0.0075	0.0019	0.0094	49
Children (7-12 yrs old)	0.0053	0.00192	0.0072	[2]

[1] Used average value based on adult male (0.00055 mg/kg/day) and adult female (0.00064 mg/kg/day).
[2] Data not available; used the value for children (1-6 years).

This chronic aggregate dietary risk assessment is based on conservative exposure consumptions. Refinement of the assumptions used in estimating exposure from food and water sources would result in lower estimates of chronic aggregate dietary risk.

The calculated results indicate that the aggregate dietary exposure to imidacloprid utilizes 22% of the RfD for the U.S. general population.

For infants and children, the percentage of the RfD that is utilized by aggregate dietary exposure to imidacloprid ranges from 25% for nursing infants less than 1-year old, up to 63% for non-nursing infants less than 1-year old.

The Agency generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

EPA concludes that there is a reasonable certainty that no harm will result to infants, children, or adults from chronic aggregate (food plus water) exposure to imidacloprid residues.

3. *Short - intermediate - term risk.* Short - and intermediate - term aggregate exposure take into account chronic dietary food and water plus indoor and outdoor residential exposure. This risk assessment is not required for imidacloprid.

E. Aggregate Cancer Risk for U.S. Population

Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans, therefore, a cancer risk assessment is not required.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of imidacloprid residues in plants and animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated imidacloprid residue in plant (Bayer GC/MS Method 00200 and Bayer HPLC-UV Confirmatory Method 00357) and animal (Bayer GC/MS Method 00191) commodities. These methods have successfully completed EPA Tolerance Method Validation, and are awaiting publication in Pesticide Analytical Manual II (PAM II). In the interim, these methods are available from Calvin Furlow, EPA, OPP, IRSD, PIRIB.

C. Magnitude of Residues

Residue data have been submitted from 13 field trials, with adequate geographical representation, and including 8 varieties of pecans. The pecan trees in 7 field trials were treated with 1 or 2 foliar applications starting at the fill stage for the first application and at or prior to shuck split for the second application for a repeat application interval of 10 + or - 2 days. Pecan trees were treated with imidacloprid at a rate of 0.17 lb ai/acre/application plus a spray adjuvant using ground airblast sprays, for a total application of 0.34 lb/ai/acre/season. Pecans were gathered at the earliest harvest which varied from 4 to 31 days after the last application. Pecan trees in 6 field trials were treated with imidacloprid in a single soil application at a rate of 0.5 lb/ai/acre. The pre-harvest interval (PHI) for pecans from the single soil application ranged from 99 to 150 days.

All treated pecan samples were below the limit of quantitation (LOQ) of <0.05 ppm regardless of the PHI. Total imidacloprid residues ranged from approximately 0.001 ppm to 0.005 ppm or <1/2 the limit of detection (LD).

Crop field trial data are adequate to show that combined residues of imidacloprid and its metabolites, all calculated as imidacloprid, will not exceed the tolerance of 0.05 ppm requested and prescribed in this **Federal Register** rule for the pesticide chemical residue in the raw agricultural commodity, pecans. OPPTS Test Guidelines, Series 860, Residue Chemistry, Table 1, does not list any processed commodities for pecans, thus no imidacloprid in pecans processing study is required. Similarly , there are no bovine, porcine, or poultry feedstuffs associated with pecans; thus there is little likelihood of additional imidacloprid in meat, milk, poultry, and eggs from the feeding of pecans. The established imidacloprid secondary tolerances are adequate for any inadvertent feeding of pecans.

D. Rotational Crop Restrictions.

Field crop rotational studies with three crop groups (small grains, root crops, and leafy vegetables) support a 12-month plant-back restriction. Since pecans are not considered to be a rotated crop, this restriction does not apply to pecans.

E. International Residue Limits

There are no CODEX or Mexican maximum residue limits (MRLs) for imidacloprid on any crop. There are Canadian MRLs for combined residues of imidacloprid plus metabolites with the 6-chlorophenyl moiety, but not on pecans. International compatibility is thus not an issue.

IV. Conclusion

Therefore, the tolerance is established for residues of 1-[(6-chloro-3-

pyridinyl)methyl]-N-nitro-2-imidazolidinimine and its metabolites in or on pecans at 0.05 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 26, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300625] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance for the residues of imidacloprid at 0.05 ppm in/on pecans under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance for the residues of imidacloprid in/on pecans at 0.05 ppm in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 16, 1998

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority : 21 U.S.C. 346a and 371.

2. Section 180.472, paragraph (a) is amended by alphabetically adding the commodity to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million
. . . . .	
Pecans	0.05
. . . . .	

* * * * *

[FR Doc. 98–7647 Filed 3–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300628; FRL–5778–3]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites in or on sorghum grain 0.05 parts per million (ppm), forage 0.10 ppm, and stover 0.10 ppm. Gustafson, Inc. submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170) requesting these tolerances.

DATES: This regulation is effective March 25, 1998. Objections and requests for hearings must be received by EPA on or before May 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300628], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300628], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document control number [OPP–300628]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Elizabeth T. Haeberer, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–2891, e-mail: haeberer.elizabeth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 29, 1997 (62 FR 56171)(FRL–5752–2), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 4F4415) by Gustafson, Inc., 1400 Preston Road, Suite 400, Plano, Texas 75093, to establish tolerances for the residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidiinimine in or on sorgum grain at 0.05 parts per million (ppm), forage 0.10 ppm, and stover 0.10 ppm. This notice included a summary of the petition prepared by Gustafson, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.472(a) be amended by establishing tolerances for the insecticide, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidiinimine, in or on sorghum grain, forage, and stover at 0.05, 0.10, and 0.10 ppm respectively.

I. Risk Assessment and Statutory Findings

EPA establishes maximum legal levels (tolerances) for pesticide residues on food under section 408 of the FFDCA. EPA performs a number of analyses to determine the risk from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances in the **Federal Register**, of November 26, 1997, (62 FR 62961–62970)(FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid, and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl

moiety, all calculated as imidacloprid, in or on sorghum grain, forage, and stover at 0.05, 0.10, and 0.10 ppm respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety are discussed below.

1. A battery of acute toxicity studies placing technical imidacloprid in Toxicity Category II for oral LD_{50}, Category IV for dermal LD_{50}, inhalation LC_{50}, eye iritation and dermal irritation. Imidacloprid is a non-sensitizer.

2. In an acute neurotoxicity study, groups of Sprague-Dawley rats (18/sex/dose) were given a single oral administration of imidacloprid (97.6%) in 0.5% methylcellulose with 0.4% Tween 80 in deionized water at 0, 42, 151 or 307 mg/kg. Parameters evaluated included: clinical pathology (6/sex/dose); Functional Observation Battery (FOB) measurements (12/sex/dose); and neuropathology (6/sex/dose). FOB measurements were made approximately 90 minutes post dosing, and on days 7 and 14. Motor activity measurements were made at approximately 2.5 hours post dosing.

At 307 mg/kg/day, 4/18 males and 10/18 females died and both sexes of rats at this dose exhibited decreased numbers of rears, grip strength (forelimb and hindlimb) and response to stimuli (auditory, touch, or tail pinch) as well as increased gait abnormalities, righting reflex impairments and body temperatures. These symptoms regressed by day 5. At 151 milligram/kilograms/day (mg/kg/day), cage side FOB assessments revealed tremors in one male and one female and red nasal staining in one male. On the day of dosing, a dose-related decrease in total session motor activity was observed in males at 151 mg/kg/day (25% decrease) and 307 mg/kg/day (73%) and in females at all dose levels with the decreases (25, 48, and 81%, respectively at 42, 151 and 307 mg/kg/day) reaching statistical significance ($p < 0.05$) at 151 and 307 mg/kg/day dose levels. Decreases in motor activity were seen at all time intervals. Total session locomotor activity was also decreased to about the same percentage difference but statistical significance was not reported. On days 7 and 14, decreases (not statistically significant) were still observed in motor and locomotor activity in surviving high-dose males. The lowest-observed-effect level (LOEL) was 42 mg/kg based on the decrease in motor and locomotor activities observed in females; a no-observed-effect level (NOEL) was not established.

3. In a subchronic oral toxicity study, groups of Fischer 344 rats (12/sex/dose) were fed diets containing imidacloprid (98.8%) at 0, 150, 1,000, or 3,000 ppm (0, 9.3, 63.3, or 196 mg/kg/day in males and 0, 10.5, 69.3 or 213 mg/kg/day in females, respectively) for 90 days. No treatment-related effects were seen at 150 ppm. Treatment-related effects included decreases in body weight gain during the first 4 weeks of the study at 1,000 ppm (22% in males and 18% in females) and 3,000 ppm (50% in males and 25% in females) with an associated decrease in forelimb grip strength especially in males. The NOEL was 150 ppm (9.3 and 10.5 mg/kg/day in males and females, respectively) and the LOEL was 1,000 ppm (63.3 and 69.3 mg/kg/day in males and females, respectively).

4. In a subchronic dermal toxicity study, groups of 5 male and 5 female New Zealand White rabbits received repeated dermal applications of imidacloprid (95%) at 1,000 mg/kg/day (Limit Dose), 6 hours/day, 5 days/week for three weeks. No dermal or systemic toxicity was seen. For systemic and dermal toxicity, the NOEL was > 1,000 mg/kg/day; a LOEL was not established.

5. In a rat inhalation study (28-day study in which rats were exposed 6 hours/day, 5 days a week for 4 weeks), the no observable effect concentration (NOEC) for imidacloprid was 5.5 mg/m^3.

6. In a chronic oral toxicity study, groups of beagle dogs (4/sex/dose) were fed diets containing imidacloprid (94.9%) at 0, 200 or 1,250/2,500 ppm (0, 6.1, 15 or 41/72 mg/kg/day, respectively) for 52 weeks. The 1,250 ppm dose was increased to 2,500 ppm from week 17 onwards. The threshold NOEL was 1250 ppm (41 mg/kg/day). The LOEL was 2,500 ppm (72 mg/kg/day) based on increased cytochrome-P-450 levels in both sexes and was considered to be a threshold dose. Due to the lack of toxicity at 1,250 ppm, a NOEL was not established in this study; following the dose increase to the 2,500 ppm level, toxicity was observed, thus making 1,250 ppm the threshold NOEL and 2,500 ppm the threshold LOEL.

7. In a combined chronic toxicity/carcinogenicity study, groups of Bor WISW rats (50/sex/dose) received imidacloprid (95.3%) at 0, 100, 300 or 900 ppm (0, 5.7, 16.9 or 51.3 mg/kg/day in males and 0, 7.6, 24.9, or 73 mg/kg/day in females, respectively) for 104 weeks. In another study, rats of the same strain (50/sex) received imidacloprid at 0 or 1,800 ppm (0, 102.6 and 143.7 mg/kg/day in males and females, respectively) for 104 weeks. For chronic toxicity, the NOEL was 100 ppm (5.7 mg/kg/day) and the LOEL was 300 ppm (16.9 mg/kg/day) based on decreased body weight gains in females and increased thyroid lesions in males. There was no evidence of carcinogenicity in either sex.

8. In a carcinogenicity study groups of B6C3F1 mice (50/sex/dose) were fed diets containing imidacloprid (95%) at 0, 100, 330 or 1,000 ppm (0, 20, 66 or 208 mg/kg/day in males and 0, 30, 104 or 274 mg/kg/day in females, respectively) for 2 years. In a supplementary study conducted to evaluate the adequacy of the high dose tested in the main study, the same strain of mice (50/sex) received 0 or 2,000 ppm (414 and 424 mg/kg/day in males and females, respectively) for the same time period. For chronic toxicity, the NOEL was 1,000 ppm (208 mg/kg/day). The LOEL was 2,000 ppm (414 mg/kg/day) based on decreased body weight gain, food consumption and water consumption. There was no evidence of carcinogenicity in either sex.

9. In a developmental toxicity study with Sprague-Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 mg/kg/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., cesarean section evaluation). At 100 mg/kg/day, developmental toxicity manifested as wavy ribs (fetus =7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOEL was 10 mg/kg/day lowest dose tested (LDT) based on decreased body weight gain; a NOEL was not established. For developmental toxicity, the NOEL was 30 mg/kg/day and the LOEL was 100 mg/kg/day based on increased wavy ribs.

10. In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24 or 72 mg/kg/day during gestation days 6 through 18. For maternal toxicity, the NOEL was 24 mg/kg/day and the LOEL was 72 mg/kg/day based on mortality,

decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOEL was 24 mg/kg/day and the LOEL was 72 mg/kg/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities.

11. In a 2-generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg/day for males and 0, 8.0, 20.5, or 57.4 mg/kg/day for females). For parental/systemic/reproductive toxicity, the NOEL was 250 ppm (18.3 mg/kg/day) and the LOEL was 750 ppm (52 mg/kg/day), based on decreases in body weight in both sexes in both generations. Based on these factors, the Data Evaluation Record should be revised to indicate the parental/systemic/reproductive NOEL and LOEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

12. Studies on gene mutation and other genotoxic effects: an Ames *Salmonella* Assay which was negative up to 5,500 µg/plate concentration; recombination assay-yeast, negative for cross-over in yeast up to 10,000 µg; *In Vivo* Chromasomal Aberration, negative for chromosome breakage up to 2,000 µg/ml; *In Vitro* Chromasomal Aberrations, positive at 500 µg/ml -S9 and 1,300 µg/ml +S9, both toxic doses (acceptable study); *In Vivo* Sister Chromatid assay, negative up to 2,000 µg/ml; *In Vitro* Cytogenetics-CHO cells, negative for producing forward mutation in CHO (mammalian) cells treated up to 1222 µg/ml; Micronucleus - mouse, negative up to (toxic) 50 µg/ml (ip); DNA repair test, negative for cross-over in yeast up to 10,000 µg; HGPRT assay-CHO, negative up to 2,000 µg/ml. Mutagenicity studies have demonstrated that imidacloprid is non-mutagenic both *in vivo* and *in vitro*.

B. Toxicological Endpoints

1. Special sensitivity to infants and children. In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. These studies are described in unit II A. of this document. The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study data did not identify any increased sensitivity of rats to in utero or postnatal exposure. Parental NOELs were lower or equivalent to developmental or offspring NOELs. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

Although developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits, no increased sensitivity in pups as compared to adults was seen in the two generation reproduction toxicity study in rats, and the toxicology data base is complete as to core requirements, the Agency determined that the additional safety factor for the protection of infants and children will be retained but reduced to 3x based on the following weight-of-the-evidence considerations relating to potential sensitivity and completeness of the data:

(i) There is concern for structure activity relationship. Imidacloprid, a chloronicotinyl compound, is an analog to nicotine and studies in the published literature suggests that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*.

(ii) There is evidence that imidacloprid administration causes neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2-year carcinogenicity study.

(iii) The concern for structure activity relationship along with the evidence of neurotoxicity dictates the need of a developmental neurotoxicity study for assessment of potential alterations on functional development.

Because a developmental neurotoxicity study potentially relates to both acute and chronic effects in both the mother and the fetus, the additional UF for FQPA is being applied for all population subgroups, and both acute and chronic risk.

2. *Acute toxicity.* Acute dietary risk assessment is required for all population subgroups. LOEL=42 mg/kg/day based on decreased motor activity in female rats; MOE=300, as discussed above. Conventionally, when a LOEL from the critical study is used for risk assessment, an additional UF will be applied. For acute risk assessment with imidacloprid, however, the Committee determined that an additional uncertainty factor is not necessary because: (i) of the low confidence in the endpoint based on the minimal nature of the effect (decreased motor activity only in females); (ii) this effect was seen in adult rats; and (iii) the same effect was not seen in the subchronic toxicity study following repeated doses.

3. *Short - and intermediate - term toxicity.* In a dermal toxicity study, groups of 5 male and 5 female New Zealand White rabbits received repeated dermal applications of imidacloprid (95%) at 1,000 mg/kg/day (Limit Dose), 6 hours/day, 5 days/week for three weeks. No dermal or systemic toxicity was seen. For systemic and dermal toxicity, the NOEL was > 1,000 mg/kg/day; a LOEL was not established (MRID No. 42256329).

In an oral toxicity study, groups of Fischer 344 rats (12/sex/dose) were fed diets containing imidacloprid (98.8%) at 0, 150, 1,000, or 3,000 ppm (0, 9.3, 63.3, or 196 mg/kg/day in males and 0, 10.5, 69.3 or 213 mg/kg/day in females, respectively) for 90 days. No treatment-related effects were seen at 150 ppm. Treatment-related effects included decreases in body weight gain during the first four weeks of the study at 1,000 ppm (22% in males and 18% in females) and 3,000 ppm (50% in males and 25% in females) with an associated decrease in forelimb grip strength especially in males. The NOEL was 150 ppm (9.3 and 10.5 mg/kg/day in males and females, respectively) and the LOEL was 1,000 ppm (63.3 and 69.3 mg/kg/day in males and females, respectively) (MRID No. 43286401).

In a rat inhalation study (28-day study in which rats were exposed 6 hours/day, 5 days a week for 4 weeks), the no observable effect concentration (NOEC)

for imidacloprid was 5.5 mg/m3 (MRID No. 422730-01).

4. *Chronic toxicity.* EPA has established the RfD for 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine at 0.019 mg/kg/day. This RfD is based upon increased number of thyroid lesions in male and decreased body weight gains in female Bor WISW rats, with a NOEL of 5.7 mg/kg/day, and LOEL of 16.9/24.9 mg/kg/day (males and females respectively); UF=300, as discussed above.

5. *Carcinogenicity.* This chemical has been classified as a Group E - no evidence of carcinogenicity for humans. A cancer risk assessment is not required.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established 40 CFR 180.472(a) for the combined residues of 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from imidacloprid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary risk assessment is required for all population subgroups.

This acute dietary (food) risk assessment used the Theoretical Maximum Residue Contribution (TMRC). Resulting exposure values and Margins of Exposure (MOEs; MOE = Acute Endpoint ÷ Exposure) are shown below.

Population Subgroup	High-End[1] Exposure (mg/kg/day)	MOE[2]	Exposure @ 99th Percentile (mg/kg/day)	MOE
U.S. population (48 states)	0.10	420	0.05[3]	840
Infants (< 1 yr)	0.15	280	0.10	420
Children (1-6 yrs)	0.15	280	0.10	420
Females (13+ yrs)	0.05	840	0.04	1050
Males (13+ yrs)	0.10	420	0.05	840

[1] > 99.5th Percentile.
[2] MOE = Margin of Exposure.
[3] @ 98th Percentile (U.S. Pop. only).

These results should be viewed as a very conservative risk estimate; refinement using anticipated residue values and percent crop-treated information in conjunction with Monte Carlo analysis would result in a lower estimate (i.e., higher MOE) of acute dietary exposure.

ii. *Chronic exposure and risk.* The endpoint selected for chronic risk assessment is decreased body weight gains in females and increased thyroid lesions observed at 7.6 mg/kg/day in male rats in a combined chronic toxicity/carcinogenicity study. The NOEL was 5.7 mg/kg/day. A UF of 300 is required as discussed above.

In conducting this chronic dietary (food) risk assessment, EPA used: (i) tolerance level residues for pecans, grain sorghum, and all other commodities with published, permanent or time-limited imidacloprid tolerances, the pending proposed tolerance for the citrus crop group; and, (ii) percent crop-treated (%CT) information on some of these crops. Thus, this risk assessment should be viewed as partially refined. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure.

The results are summarized below.

Population Subgroup	Exposure(mg/kg/day)	%RfD
U.S. Population (48 states)	0.003596	19
Nursing Infants (<1 year old)	0.002824	15
Non-Nursing Infants (<1 year old)	0.009983	53
Children (1-6 years old)	0.007514	40
Children (7-12 years old)	0.005305	28
U.S. Population - Fall Season	0.003716	20
Northeast Region	0.003771	20
Western Region	0.003842	20
Hispanics	0.003879	20
Non-Hispanic Others	0.003906	21

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (1) that the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of these estimates of percent crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated.

The Agency used percent crop treated (PCT) information as follows. A routine chronic dietary exposure analysis for imidacloprid was based on likely maximum percent of crop treated as follows: 6% grapefruits, 3% oranges, 13% other citrus, 19% apples, 2% pears, 11% grapes, 30% eggplants/peppers, 32% head lettuce, 21% cole crops, 15% melons, 10% tomatoes, 6% cotton.

The Agency believes that the three conditions listed above have been met. With respect to (1), EPA finds that the PCT information described above for imidacloprid is reliable and has a valid basis, The Agency has utilized the latest statistical data from RFF (Resources For The Future), DOANE, and USDA, the best available sources for such information. Concerning (2) and (3), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model

for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing imidacloprid in a particular area.

2. *From drinking water.* EPA used the estimated environmental concentration (EEC) data to calculate acute and chronic exposure estimates for imidacloprid in surface water using the following formulas:

Adult Male: Exposure (mg/kg/day) = (chemical concentration in µg/L in consumed water) * (10^{-3} mg/µg) ÷ (70 kg body weight) * (2 L water consumed/day)

Adult Female: Exposure (mg/kg/day) = (chemical concentration in g/L in consumed water) * (10-3 mg/µg) ÷ (60 kg body weight) * (2 L water consumed/day)

Child (1-6 years): Exposure (mg/kg/day) = (chemical concentration in µg/L in consumed water) * (10^{-3} mg/µg) ÷ (10 kg body weight) * (1 L water consumed/day)

Acute MOE: Acute Endpoint (42 mg/kg/day) ÷ Exposure (mg/kg/day)

Chronic Risk (%RfD): Exposure (mg/kg/day) ÷ RfD (0.019 mg/kg/day) * 100

The 2 liters (L) of drinking water consumed/day by adults and the 1 L per day consumed by children are default assumptions used by the Office of Water. The Agency's default body weights for males is 70 kg and for females, 60 kg. HED's default body weight for children is 10 kg.

The results are summarized below:

Population Subgroup	Acute Scenario			Chronic Scenario		
	µg/L in Water Consumed	Exposure (mg/kg/day)	MOE	µg/L in Water Consumed	Exposure (mg/kg/day)	% RfD
Adult male	50.9	0.00145	29,000	19.1	0.00055	2.9
Adult Female	50.9	0.00170	24,700	19.1	0.00064	3.4
Child (1-6 yrs)	50.9	0.00509	8,250	19.1	0.00191	10.1

These results should be viewed as a very conservative risk estimate. Refinement by applying factors to account for the percent of acreage planted in a watershed, the percent of crop-treated, and the water flow rate would result in a lower estimate of acute and chronic exposure from consumption of surface waters containing imidacloprid residues.

3. *From non-occupational non-dietary exposure.* Imidacloprid is currently registered for use on the following residential non-food sites: ornamentals (e.g., flowering and foliage plants, ground covers, turf, lawns, et al.), tobacco, golf courses, walkways, recreational areas, bathrooms, household or domestic dwellings (indoor/outdoor), cats/dogs, and wood protection treatment to buildings. Available data do not demonstrate that imidacloprid has either dermal or inhalation toxicity potential, therefore, non-occupational non-dietary risk assessments are not required. Since data show no toxicity from short term exposure via the dermal or inhalation route, the Agency feels there is no contribution to toxicity from these routes of exposure, and no increase in aggregate risk is anticipated from this exposure. Therefore residential exposure does not aggregate with dietary exposure for any risk assessments.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." An explanation of the current Agency approach to assessment of pesticides with a common mechanism of toxicity may be found in the Final Rule on Bifenthrin Pesticide Tolerances in the **Federal Register**, of November 26, 1997, (62 FR 62961–62970)(FRL–5754–7).

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. Imidacloprid is the sole member to date of the new chloronicotinyl class of pesticides.

D. Aggregate Risks and Determination of Safety for U.S. Population, Infants and Children

1. *Acute risk.* Acute aggregate dietary risk (combined food and water) is estimated by adding the acute exposures to food and water (highest of ground or surface water) and comparing this exposure to the acute dietary endpoint:

Aggregate MOE_{ACUTE} = acute dietary endpoint ÷ aggregate exposure.

The results of the acute aggregate dietary (food and water) risk assessment are given below.

Population Subgroup	Exposure from Food (mg/kg/day)	Exposure from Surface Water (mg/kg/day)	Aggregate Exposure (mg/kg/day)	Aggregate Acute MOE
U.S. population (48 states)	0.101	0.0023	0.102	412
Infants (<1 yr)	0.102	0.0054	0.105	4005
Children (1-6 yrs)	0.102	0.005	0.105	4005
Females (13+ yrs)	0.051	0.002	0.052	[illegible]
Males (13+ yrs)	0.101	0.002	0.102	412

[1] High-End Exposure (>99.5th Percentile).
[2] Exposure @ 99th percentile; high-end exposure = 0.15 mg/kg/day.

[3] 3 Exposure value used was that calculated for females (13+ years) and males (13+ years).
[4] Exposure value used was that calculated for children (1-6 years).
[5] Based on exposure @ 99th percentile; MOE is 271 @ high-end exposure (>99.5th percentile).

For imidacloprid, an (aggregate) acute dietary MOE of ≥300 is needed to protect the safety of all population subgroups. The aggregate MOEs for the general population, females (13+ years), and males (13+ years) are >400 at the high-end exposure. The aggregate MOEs for infants and children are calculated to be 400 at the 99th percentile of exposure, and 271 at the high-end exposure (>99.5th percentile).

In conducting the acute dietary (food) risk assessment the Theoretical Maximum Residue Contribution (TMRC) was used. There was no refinement using anticipated residue values and percent crop-treated information in conjunction with Monte Carlo analysis which would result in a much lower estimate (i.e., higher MOE) of acute dietary exposure.

Because of the very conservative nature of the assumptions used in these calculations, and the fact that refinement would lower the risk estimates (i.e., result in higher MOE values) for both MOE_{food} and MOE_{water}, EPA concludes that there is a reasonable certainty that no harm will result to infants, children, or adults from acute aggregate risk (food and water) exposure to imidacloprid residues.

2. *Chronic risk.* Dermal and inhalation exposure endpoints were not selected due to the demonstrated absence of toxicity, thus, there is no residential component for assessing chronic aggregate exposure and risk.

In conducting the chronic dietary (food) risk assessment, EPA used: (i) tolerance level residues for pecans, grain sorghum, and all other commodities with published, permanent or time-limited imidacloprid tolerances, the pending proposed tolerance for the citrus crop group; and, (ii) percent crop-treated (%CT) information on some of these crops. Thus, this risk assessment should be viewed as partially refined. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure.

Chronic aggregate dietary risk (combined food and water) will be estimated by adding the chronic exposures to food and water (highest of ground or surface water) and comparing this exposure to the RfD:

Aggregate %RfD Occupied = (aggregate exposure ÷ RfD) x 100.

The results of the chronic aggregate dietary (food and water) risk assessment are given below.

Population Subgroup	Exposure from Food (mg/kg/day)	Exposure from Surface Water (mg/kg/day)	Aggregate Exposure (mg/kg/day)	% RfD Occupied
U.S. population (48 states)	0.0036	0.00061	0.0042	22
Nursing infants (<1 yr old)	0.0028	0.00192	0.0047	25
Non-nursing infants (<1 yr old)	0.0100	0.00192	0.0119	63
Children (1-6 yrs old)	0.0075	0.0019	0.0094	49
Children (7-12 yrs old)	0.0053	0.00192	0.0072	38

[1] Used average value based on adult male (0.00055 mg/kg/day) and adult female (0.00064 mg/kg/day).
[2] Data not available; used the value for children (1-6 years).

This chronic aggregate dietary risk assessment is based on conservative exposure consumptions. Refinement of the assumptions used in estimating exposure from food and water sources would result in lower estimates of chronic aggregate dietary risk.

The calculated results indicate that the aggregate dietary exposure to imidacloprid utilizes 22% of the RfD for the U.S. general population.

For infants and children, the percentage of the RfD that is utilized by aggregate dietary exposure to imidacloprid ranges from 25% for nursing infants less than 1 year old, up to 63% for non-nursing infants less than 1 year old.

The Agency generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

EPA concludes that there is a reasonable certainty that no harm will result to infants, children, or adults from chronic aggregate (food plus water) exposure to imidacloprid residues.

3. *Short - intermediate - term risk.* Short - and intermediate - term aggregate exposure take into account chronic dietary food and water plus indoor and outdoor residuential exposure. This risk assessment is not required for imidacloprid.

E. Aggregate Cancer Risk for U.S. Population

Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans, therefore, a cancer risk assessment is not required.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of imidacloprid residues in plants and animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated imidacloprid residue in plant (Bayer GC/MS Method 00200 and Bayer HPLC-UV Confirmatory Method 00357) and animal (Bayer GC/MS Method 00191) commodities. The limit of quantitaion (LOQ) is 0.05 ppm, and the limit of detection (LD) is 0.01 ppm for grain sorgum, sorghum forage and fodder. These methods have successfully completed EPA Tolerance Method Validation, and are awaiting publication in Pesticide Analytical Manual II (PAM II). In the interim, these methods are available from Calvin Furlow, EPA, OPP, IRSD, PIRIB.

C. Magnitude of Residues

A total of three field residue trials were conducted in 1995 in three different states, located in Regions 6, 7, and 8. A single application of imidacloprid was made to seed at a rate of 1X. Two replicate samples of forage were harvested from each treated plot 90-119 days after planting; samples of grain and fodder, 118-139 days. The samples were frozen and analyzed within 3 months of harvest, using the validated enforcement method. The average recovery was 82 ± 10% in grain,

79 ± 4% in forage, and 83 ± 6% in fodder. Analyses of the treated samples showed that the total residues of imidacloprid and its metabolites were <0.05 ppm. These results support tolerances for residues of imidacloprid and its metabolites at 0.05 ppm for sorghum grain, and for sorghum forage and fodder at 0.1 ppm.

D. Magnitude of the Residue in Processed Commodities

There are no detectable total imidacloprid residues at or above the LOQ of 0.05 ppm in the rac sorghum grain from an exaggerated 2X seed treatment application, thus a sorghum processing study is not required.

E. Magnitude of Secondary Residues in Meat/Milk/Poultry/Eggs

Based on the results of the imidacloprid bovine and poultry feeding studies, finite residues will occur in meat, milk, poultry, and eggs from the feeding of imidacloprid treated racs or their processed feed items from seed treatment uses. Adequate total imidacloprid secondary tolerances have been established at 0.1 ppm in milk, 0.3 ppm in meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep, 0.02 ppm in eggs, and 0.05 ppm in meat, fat, and meat by-products of poultry, to cover this seed treatment use in/on sorgum..

F. Rotational Crop Restrictions.

Adequate limited field rotational crop studies have been presented from 3 sites with an in-furrow soil application of the 2.5% granular formulation and soil aged 1, 4, 8, and 11 months before replanting with the cereal grains wheat or sorghum, turnips as the root crop, and mustard greens or spinach as the leafy vegetable. Total imidacloprid residues were at or about the minimum detection limit (MDL) of 0.01 ppm by 11 months. Total imidacloprid residues present would be less after 12 months in cereal or small grains, root crops, or leafy vegetables. These limited field crop rotational studies with the 3 crop groups support an overall 12 month plant back restriction for no detectable residues to be present in rotated crops. No rotational crop imidacloprid tolerances are necessary with such a restriction.

G. International Residue Limits

There are no CODEX or Mexican maximum residue limits (MRLs) for imidacloprid on any crop. There are Canadian MRLs for combined residues of imidacloprid plus metabolites with the 6-chlorophenyl moiety, but not on grain sorghum. International compatibility is thus not an issue.

IV. Conclusion

Therefore, the tolerance is established for residues of 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites in or on grain sorghum at 0.05 ppm, grain sorghum forage and stover at 0.10 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 26, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonablepossibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300628] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances for the residues of imidacloprid and its metabolites in or on grain sorghum at 0.05 ppm, grain sorghum forage and stover at 0.10 ppm under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993).

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This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances for the residues of imidacloprid and its metabolites in or on grain sorghum at 0.05 ppm, grain sorghum forage and stover at 0.10 ppm in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 16, 1998

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.472, paragraph (a) is amended by alphabetically adding the commodities to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Grain, sorghum	0.05
Grain, sorghum forage	0.10
Grain, sorghum stover	0.10
* * * * * * *	

* * * * *

[FR Doc. 98–7646 Filed 3–24–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE95

Endangered and Threatened Wildlife and Plants; Revocation of Critical Habitat for the Mexican Spotted Owl, Loach Minnow, and Spikedace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; notice of revocation of critical habitat.

SUMMARY: Due to several Federal court orders, the Fish and Wildlife Service (Service) amends the List of Threatened and Endangered Wildlife (50 CFR 17.11) to remove critical habitat designations for the Mexican spotted owl (*Strix occidentalis lucida*), spikedace (*Meda fulgida*), and loach minnow (*Rhinichthys cobitis*), pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat is also removed from 50 CFR 17.95(b) (Mexican spotted owl) and 17.95(e) (loach minnow and spikedace).

DATES: This final rule is effective March 25, 1998.

ADDRESSES: The file for this revocation is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Division of Ecological Services, 500 Gold Avenue Southwest, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Renne Lohoefener, Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, telephone 505/248–6920.

SUPPLEMENTARY INFORMATION:

Background

The Service designated critical habitat for the loach minnow and spikedace on March 8, 1994 (59 FR 10898 and 59 FR 10906, respectively). However, on October 13, 1994, the United States District Court for the District of New Mexico set aside the critical habitat designation for the two species, ruling that the Service is required to analyze the effects of critical habitat designation under the National Environmental Policy Act (NEPA). In 1996 the Tenth Circuit affirmed this decision. The District Court's decision setting aside the critical habitat designation became effective when the appeal process for the case was completed. (*Catron County Board of Commissioners, New Mexico* v. *U.S. Fish and Wildlife Service*, CIV No.

93–730 HB, (D.N.M. 1994), *aff'd by* 75 F.3d 1429 (10th Cir. 1996)). The critical habitat designated for these two species occurred also in Arizona which is in the Ninth Circuit where NEPA is not required for critical habitat designations; however, in 1996 the United States District Court for the District of Arizona acknowledged that the set aside in the *Catron County* case also applied in Arizona. (*Southwest Center for Biological Diversity* v. *Rogers*, CV 96–018–TUC–JMR (D. Ariz. 1996)).

The Service designated critical habitat for the Mexican spotted owl on June 6, 1995 (60 FR 29914). On March 4, 1997, the United States District Court for the District of New Mexico set aside that critical habitat designation, again for the Service's failure to complete the NEPA process (*Coalition of Arizona/New Mexico Counties for Stable Economic Growth* v. *U.S. Fish and Wildlife Service*, CIV No. 95–1285–M (D.N.M. 1997)).

Pursuant to the decisions of the New Mexico District Courts, the Service, by publication of this revocation, removes critical habitat for the loach minnow, spikedace, and Mexican spotted owl from the List of Endangered and Threatened Wildlife (17.11) and from the Code of Federal Regulations at 50 CFR 17.95(b) (Mexican spotted owl) and 17.95(e) (loach minnow and spikedace). Further, this revocation gives notice to Federal agencies and interested individuals that the Service will no longer consider critical habitat for the three species for the purpose of conducting section 7 consultation.

Pursuant to 5 U.S.C. 553(d), the requirement for a 30-day delay in the effective date following publication of this revocation is waived. Because critical habitat for these species has been set aside by the United States District Court for the District of New Mexico, the Service believes there is good cause to issue this rule effective immediately.

Required Determinations

This revocation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Division of Ecological Services (see **ADDRESSES** section).

Author: The author of this document is Steven L. Spangle, Division of Ecological Services (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Amend section 17.11(h) by revising the "Critical Habitat" column in the table entry for "Owl, Mexican spotted" under BIRDS to read "NA."

3. Amend section 17.11(h) by revising the "Critical Habitat" column in the table entry for "Minnow, loach" under FISHES to read "NA."

4. Amend section 17.11(h) by revising the "Critical Habitat" column in the table entry for "Spikedace" under FISHES to read "NA."

§ 17.95 [Amended]

5. Amend section 17.95(b) by removing critical habitat maps and associated text for the "Mexican Spotted Owl."

6. Amend section 17.95(e) by removing critical habitat maps and associated text for the "Loach Minnow."

7. Amend section 17.95(e) by removing critical habitat maps and associated text for the "Spikedace."

Dated: March 18, 1998.

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service.

[FR Doc. 98–7620 Filed 3–24–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 031398C]

Fisheries of the Exclusive Economic Zone off Alaska; Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Approval of the Community Development Plans for Pacific halibut, fixed gear sablefish, and crab for the years 1998–2000.

SUMMARY: NMFS announces the approval of recommendations made by the State of Alaska (State) for the 1998–2000 halibut, fixed gear sablefish, and crab Community Development Plans (CDPs) under the Western Alaska Community Development Quota (CDQ) Program. This action announces the decision by NMFS to approve the State's recommended CDPs, including the percentage allocations of the halibut, fixed gear sablefish, and crab CDQ reserves to each CDP, and the availability of findings underlying NMFS's decision. This action is intended to further the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Approval of the CDPs is effective March 23, 1998.

ADDRESSES: Copies of the findings made by NMFS in approving the State's recommendations may be obtained from the Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The CDQ Program for Pacific halibut and fixed gear sablefish was developed by the North Pacific Fishery Management Council (Council) and implemented by NMFS under regulations at subpart C of 50 CFR part 679. The Crab CDQ Program was developed by the Council as part of Amendment 5 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area which was approved by NMFS on September 12, 1997. Regulations implementing the crab CDQ reserves were published by NMFS in the **Federal Register** on February 19, 1998 (63 FR 8356).

Eligible western Alaska communities submitted six proposed CDPs to the State under § 679.30. The CDPs included requests for allocations of the available Pacific halibut, sablefish, and crab CDQ reserves established at § 679.31. The State conducted a public hearing on September 9, 1997, in Anchorage, AK, during which all interested persons had an opportunity to be heard. The hearing covered the substance and content of the proposed CDPs in such a manner that the general public, and particularly the affected parties, had a reasonable opportunity to

understand the impact of each proposed CDP. The State made available for public review all State of Alaska materials pertinent to the hearing at the time the hearing was announced. The public hearing held by the State satisfied the requirements of § 679.30(a)(2).

The State consulted the Council concerning the proposed CDPs during the Council's September 1997 meeting. The Council reviewed copies of the CDP executive summaries, summary sheets, and the State's recommended allocations, and concurred with the State's recommendations.

The State sent its recommendations for approval of the proposed CDPs to NMFS on February 20, 1998. NMFS has determined that the State's recommendations for approval of proposed CDPs are consistent with the community eligibility conditions and evaluation criteria and other applicable provisions of the Federal regulations governing the CDQ Program.

As required by § 679.30(c)(1)(iii), NMFS publishes this notice of approval of the State's recommendations, including the CDQ allocated to each CDP (see following table), and announces the availability of the findings by the Secretary of Commerce regarding this decision (see **ADDRESSES**).

TABLE—STATE OF ALASKA 1998–2000 HALIBUT, FIXED GEAR SABLEFISH, AND CRAB COMMUNITY DEVELOPMENT QUOTA ALLOCATION RECOMMENDATIONS

CDQ allocation	Community development quota group					
	APICDA [1] (percent)	BBEDC [2] (percent)	CBSFA [3] (percent)	CVRF (percent)	NSEDC [4] (percent)	YDFDA [5] (percent)
Halibut:						
Area 4B	100	0	0	0	0	0
Area 4C	10	0	90	0	0	0
Area 4D	[illegible]	23	0	24	26	27
Area 4E	0	30	0	70	0	0
Fixed Gear Sablefish:						
Aleutian Islands	15	20	0	30	20	15
Bering Sea	15	22	18	0	20	25
Crab:						
Bristol Bay Red King Crab	20	20	0	20	20	20
Norton Sound Red King Crab	0	0	0	0	50	50
Pribilof Red & Blue King Crab	0	0	100	0	0	0
St. Matthew Blue King Crab	50	12	0	12	14	12
Bering Sea C. opilio crab	10	19	19	17	18	17
Bering Sea c. bairdi crab	10	19	19	17	18	17

[1] APICDA = Aleutian Pribilof Island Community Development Association.
[2] BBEDC = Bristol Bay Economic Development Corporation.
[3] CBSFA = Central Bering Sea Fishermen's's Association.
[4] NSEDC = Norton Sound Economic Development Corporation.
[5] YDFDA = Yukon Delta Fisheries Development Association.

CDQ fishing for halibut and fixed gear sablefish is authorized beginning March 15, 1998, under § 679.23 and CDQ fishing for crab is authorized beginning March 23, 1998 (the effective date of the final rule implementing the crab CDQ reserves).

Dated: March 20, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7800 Filed 3–20–98; 4:29 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 57
Wednesday, March 25, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 33

RIN 3150–AF54

Specific Domestic Licenses of Broad Scope for Byproduct Material

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Advance Notice of Proposed Rulemaking: Withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission is withdrawing an Advance Notice of Proposed Rulemaking (ANPR) that discussed possible changes to the regulations governing specific domestic licenses of broad scope for byproduct material. Additionally, NRC is announcing plans to finalize draft guidance currently contained in Draft Regulatory Guide DG–0005, "Applications for Licenses of Broad Scope, Revision 2," as a NUREG.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T8F5, Washington, DC 20555, Telephone (301) 415–7900.

SUPPLEMENTARY INFORMATION: On November 14, 1996 (61 FR 58346), the Commission published an ANPR for 10 CFR Part 33, "Specific Domestic Licenses of Broad Scope for Byproduct Material." In the ANPR, the Commission explained that it is considering amending these regulations to clarify the regulatory and health and safety basis of current licensing practices and to provide licensees with the flexibility to make certain types of changes to their radiation safety programs.

The comment period expired February 12, 1997. The Commission received 22 comments on the ANPR. The commenters were composed of broad scope academic and medical facilities; professional associations; private citizens; an Agreement State program; a Federal government agency; and private industry. The majority of commenters responded negatively to the ANPR. After reviewing the comments, NRC has decided to withdraw the ANPR.

NRC is announcing plans to finalize draft guidance currently contained in Draft Regulatory Guide DG–0005, "Applications for Licenses of Broad Scope, Revision 2," as a NUREG. This NUREG will update existing draft guidance and will be published for public comment. A notice of availability of the NUREG will be published in the **Federal Register**. This effort is part of an ongoing project to update and consolidate existing guidance. As part of this project, the NRC staff plans to evaluate the licensing process and license conditions for ways to provide greater flexibility for broad scope licensees to modify their program without seeking a license amendment within the constraints of the existing regulations in 10 CFR Part 33. All comments received in response to the ANPR will be considered in the development of this NUREG.

Dated at Rockville, Maryland, this 19th day of March, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–7808 Filed 3–24–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM147; Notice No. 25–98–02–SC]

Special Conditions: Boeing Model 757–300; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 757–300. This airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM–7), Docket No. NM147, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM147. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Dimtroff, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, telephone (425) 227–2117 or facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM147." The

postcard will be date stamped and returned to the commenter.

Background

On February 21, 1996, the Boeing Commercial Airplane Group, P. O. Box 3707, Seattle, Washington 98124–2207, applied for an amendment to Type Certificate No. A2NM to include the new Model 757–300, a derivative of the 757–200. The 757–300 is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport. Each engine will be capable of delivering 43,100 pounds of thrust. The flight controls are unchanged beyond those changes deemed necessary to accommodate the stretched configuration. The airplane has a seating capacity of up to 289, and a maximum takeoff weight of 270,000 pounds (122,470 Kg).

Type Certification Basis

Under the provisions of Title 14 CFR 21.101, Boeing must show that the Model 757–300 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2NM, or the applicable regulations in effect on the date of application for the change to the Model 757–300. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A2NM include 14 CFR part 25, as amended by Amendments 25–1 through 25–45, and certain other later amended sections of part 25 that are not relevant to these proposed special conditions. Except for certain earlier amended sections of part 25 that are not relevant to these proposed special conditions, Boeing has chosen to comply with part 25 as amended by Amendments 25–1 through 25–85, the applicable regulations in effect on the date of application. In addition to the applicable airworthiness regulations and special conditions, the 757–300 must comply with the fuel vent and exhaust emission requirements of part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and the noise certification requirements of part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the 757–300 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The 757–300 airplane avionics enhancement will utilize electronic systems that perform critical functions, including the following airframe Line Replaceable Units (LRU): Multi-Mode Receiver (MMR), Flight Control Computer (FCC), Yaw Damper Stabilizer Trim Module (YSM), Air Data Inertial Reference System (ADIRS), and the Allied Signal Radio Altimeter (RA). These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the 757–300, which require that new technology electrical and electronic systems, such as the MMR, FCC, YSM, ADIRS, and RA, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field Strength (volts per meter)					
	US		UK/European		Consolidated	
	Peak	Avg.	Peak	Avg.	Peak	Avg.
10 kHz–100 kHz	30	30	50	50	50	50
100 kHz–500 kHz	40	30	60	60	60	60
500 kHz–2 MHz	30	30	70	70	70	70
2 MHz–30 MHz	190	190	200	200	200	200
30 MHz–70 MHz	20	20	30	30	30	30
70 MHz–100 MHz	20	20	30	30	30	30

Frequency	Field Strength (volts per meter)					
	US		UK/European		Consolidated	
	Peak	Avg.	Peak	Avg.	Peak	Avg.
100 MHz–200 MHz	30	30	150	30	150	30
200 MHz–400 MHz	30	30	70	70	70	70
400 MHz–700 MHz	80	80	700	40	700	80
700 MHz–1 GHz	590	240	1700	80	1700	240
1 GHz–2 GHz	970	70	5000	360	5000	360
2 GHz–4 GHz	1570	350	4500	360	4500	360
4 GHz–6 GHz	7200	300	5200	300	7200	300
6 GHz–8 GHz	130	80	2000	330	2000	330
8 GHz–12 GHz	2100	80	3500	270	3500	270
12 GHz–18 GHz	500	330	3500	180	3500	330
18 GHz–40 GHz	780	20	(1)	(1)	780	20

[1] NA.
The field strengths are expressed in terms of peak root-mean-square (rms) values.

The threat levels identified above differ from those used in previous special conditions and are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee. In general, these standards are less critical than the threat level that was previously used as the basis for earlier special conditions.

Applicability

As discussed above, these special conditions would be applicable initially to the 757–300 airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects certain design features only on the Model 757–300. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on this model.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing 757–300 series airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special condition, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 17, 1998.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7826 Filed 3–24–98; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–100–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace (BAe) Jetstream Model 3101 airplanes equipped with a certain autopilot. The proposed action would require modifying the autopilot elevator electric system relays by installing two additional relays and associated wiring changes in the relay box located under the right hand crew seat. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent failure of the autopilot elevator electric system relays for the up and down trim interlocks, which, if not corrected, could result in uncommanded trim servo operation and possible loss of control of the airplane.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–100–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone (01292) 479888; facsimile (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S. M. Nagarajan, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

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proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–100–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–100–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAe Jetstream Model 3101 airplanes equipped with an autopilot system installed under Jetstream Aircraft Limited (JAL) Modifications JM3027, 3243, 3352, or 3483. These modifications encompassed the installation of an autopilot system that had pitch-up and pitch-down relays with an 800 hour life limit. The CAA reports that the cause of the failure of the trip relays is due to the relay contacts opening and closing several times when the coil is de-energized rather than breaking cleanly in one operation. This results in premature failure of the relay contacts.

These conditions, if not corrected, could result in uncommanded trim servo operation and possible loss of control of the airplane.

Relevant Service Information

BAe has issued Jetstream 3100/3200 Series Service Bulletin 22–JK 2628, Revision 2, dated October 21, 1996, which specifies procedures for modifying the autopilot trim relays (which removes the 800 hour life cycle restriction on the pitch up and pitch down relays) by incorporating Kit No. JK2628, which provides two additional relays in the relay box located below the right hand crew seat in the cockpit.

The CAA classified this service bulletin as mandatory and issued British AD No. 006–10–96, undated, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other BAe Jetstream Model 3101 airplanes of the same type design that are registered in the United States, and are equipped with autopilot systems installed under JAL Modifications JM3027, 3243, 3352, or 3483, the FAA is proposing AD action. The proposed AD would require modifying the autopilot system by installing two additional relays and associated wiring changes in the relay box located below the right-hand crew seat in the cockpit. Accomplishment of the proposed installation would be in accordance with Jetstream Series 3100/3200 Service Bulletin 22–JK 2628, Revision 2: October 21, 1996.

Proposed Compliance Time

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this AD occurs regardless of the hours time-in-service. The electrical failure in the relay contacts occurs from frequent use whether or not the airplane is actually in flight. Therefore, to ensure that the above-referenced condition is corrected on all of the affected airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is proposed.

Cost Impact

The FAA estimates that 189 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $430 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $149,310 or $790 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 97–CE–100–AD.

Applicability: Jetstream Model 3101 airplanes (all serial numbers), certificated in any category, that are equipped with autopilot systems installed under Jetstream Aircraft Limited (JAL) Modifications JM3027, 3243, 3352, or 3483.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of the autopilot elevator electric system relays for the up and down trim interlocks, which if not corrected, could result in uncommanded trim servo operation and possible loss of control of the airplane, accomplish the following:

(a) Modify the autopilot system with Jetstream Aircraft Ltd. (JAL) Kit No. JK2628 in accordance with Jetstream 3100/3200 Series Service Bulletin No. 22–JK 2628, Revision 2: October 21, 1996, by installing two additional relays in the relay box with associated wiring changes. This relay box is located under the right-hand crew seat in the cockpit.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Jetstream 3100/3200 Series Service Bulletin No. 22–JK 2628, Revision 2: October 21, 1996 should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone (01292) 479888; facsimile (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in the British AD No. 006–10–96, undated.

Issued in Kansas City, Missouri, on March 17, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7676 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. PC–6, PC–6/A, PC–6/B, and PC–6/C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) PC–6, PC–6/A, PC–6/B, and PC–6/C series airplanes equipped with turbo-prop engines. The proposed action would require modifying the fuel system to improve the venting between the collector tank, the main wing tanks, and the engine. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent engine fuel starvation during maximum climb and descent caused by poor fuel tank venting with low fuel levels, which, if not corrected, could result in a loss of engine power during critical phases of flight.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, Airplane Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–09–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

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FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, notified the FAA that an unsafe condition may exist on certain Pilatus PC–6, PC–6/A, PC–6/B, and PC–6/C series airplanes. The FOCA reports that there have been incidents of engines stopping during flight on these airplanes during parachute dropping and sky-diving missions. The investigation disclosed that the circumstances leading to the incidents were: frequently running at minimum fuel levels; making long and steep climbs and descents; and, making immediate landing and take-off turn-arounds with the engine running. Operating these airplanes in this manner may not allow the collector fuel tank to completely refill, especially if the fuel level is low. Under sustained, maximum achievable climb and descent altitudes, the low fuel level, combined with the current fuel venting system, allows air inclusion in the fuel lines.

These conditions, if not corrected, could result in engine fuel starvation and loss of engine power during critical phases of flight.

Relevant Service Information

Pilatus has issued Service Bulletin No. PC–6–SB–171, dated October 18, 1995, which specifies procedures for modifying the airplane fuel system, which improves the venting of the collector tank between the main wing tanks and the engine. This modification would assist in eliminating the possibility of air inclusion in the fuel lines while operating at maximum climb and descent altitudes. This service information also recommends inserting Airplane Flight Manual (AFM) Temporary Revision dated October 18, 1995, to remind the pilot to avoid repeated prolonged descents.

The FOCA classified this service bulletin as mandatory and issued Swiss AD HB 95–451, dated November 1, 1995, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC–6, PC–6/A, PC–6/B, and PC–6/C series airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying the airplane's fuel venting system. Accomplishment of the proposed modification would be in accordance with Pilatus PC–6 Service Bulletin No. PC–6–SB–171, dated October 18, 1995.

Differences Between the Service Information, the FOCA AD, and the Proposed AD Action

The manufacturer recommends the modification of the fuel venting system and the insertion of a temporary revision to the AFM, and FOCA requires this temporary AFM insertion and modification for airplanes operated in Switzerland. The Swiss AD requires the AFM revision be accomplished prior to further flight and requires the revision to remain in the AFM until the venting modification is accomplished. The FOCA requires that the modification be accomplished within 90 days from receipt of the service bulletin.

The FAA does not propose to require insertion of the temporary AFM revision. The FAA proposes the modification of the fuel venting system and the calendar compliance time that is required by the Swiss AD.

Cost Impact

The FAA estimates that 29 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $614 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,206 or $1,214 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 97–CE–09–AD.

Applicability: Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes (serial numbers 001 through 915), certificated in any category, that are equipped with turbo-prop engines.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent engine fuel starvation during maximum climb and descent caused by poor fuel tank venting with low fuel levels, which, if not corrected, could result in a loss of engine power during critical phases of flight, accomplish the following:

(a) Modify the fuel venting system in accordance with the Accomplishment Instructions section in Pilatus PC–6 Service Bulletin No. PC–6–SB–171, dated October 18, 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Pilatus Service Bulletin No. PC–6–SB–171, dated October 18, 1995, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD HB 95–451, dated November 1, 1995.

Issued in Kansas City, Missouri, on March 18, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7677 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–8]

Establishment of Class E Airspace; Atkinson, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace area at Stuart-Atkinson Municipal Airport, Atkinson, NE. The Federal Aviation Administration has developed Global Positioning System (GPS) Runway (RWY) 29 and VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) RWY 29 Standard Instrument Approach Procedures (SIAPs) to serve Stuart-Atkinson Municipal Airport, Atkinson, NE. Controlled Class E airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate aircraft executing the SIAPs. This proposal would create controlled airspace at Stuart-Atkinson Municipal Airport. The intended effect of this rule is to provide controlled airspace for aircraft executing the SIAPs at the Stuart-Atkinson Municipal Airport.

DATES: Comments must be received on or before May 15, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–8, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ACE–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the cosign date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a dialing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Stuart-Atkinson Municipal Airport, Atkinson, NE. The FAA has developed GPS RWY 29 and VOR/DME RWY 29 SIAPs to serve the Stuart-Atkinson Municipal Airport, Atkinson, NE. Controlled Class E airspace extending upward from 700 feet AGL is needed to contain aircraft executing these SIAPs. The intended effect of this action is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts

thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 740.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigator (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Atkinson, NE [New]

Stuart-Atkinson Municipal Airport, NE
(Lat. 42°33'45" N., long. 99°02'16" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stuart-Atkinson Municipal Airport, excluding that airspace within the O'Neill, NE, Class E airspace.

* * * * *

Issued in Kansas City, MO, on March 5, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–7824 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–14]

Proposed Amendment to Class E Airspace; Lawrence, KS; Perryville, MO; Warrensburg MO; Burlington, IA; Des Moines, IA; Fort Madison, IA; and Dubuque, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace areas at, Lawrence, KS; Perryville, MO; Warrensburg, MO; Burlington, IA; Des Moines, IA; Fort Madison, IA and Dubuque, IA. A review of the Class E airspace designations for the airports listed above indicates they do not meet the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The areas are enlarged to conform to the criteria of FAA Order 7400.2D. The Airport Reference Points (ARP) for Perryville, MO, and Des Moines, IA, are amended. The Instrument Landing System (ILS) and coordinates have been added to the airspace designation for Des Moines, IA. The intended effect of this rule is to comply with the criteria of FAA Order 7400.2D, amend the appropriate ARPs, add the ILSs and coordinates, and provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–14, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An-informal docket may also be-examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested panties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory. economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ACE–14" The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of

Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Person interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR 71 to amend the Class E airspace areas at Lawrence Municipal Airport, KS; Perryville Municipal Airport, MO; Warrensburg Skyhaven Aiport, MO; Burlington Municipal Airport, IA; Des Moines International Airport, IA; Fort Madison Municipal Airport, IA; and Dubuque Regional Airport, IA. A review of the Class E airspace designations for these airports indicates they do not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to next higher tenth of a mile. The amendment of Class E airspace for the airports listed above will meet the criteria of FAA Order 7400.2D, amend the appropriate ARPs, add the ILS and coordinates, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The areas will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, The Federal Aviation Administration proposes to amend part 71 of the Federal Regulations 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE KS E5 Lawrence, KS [Revised]

Lawrence Municipal Airport, KS
(Lat. 39°00'40" N., long. 95°13'00" W.)
Lawrence NDB
(Lat. 39°00'25" N., long. 95°13'17" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lawrence Municipal Airport and within 2.6 miles each side of the 124° bearing from Lawrence NDB extending from the 6.5-mile radius to 7.9 miles southeast of the airport.

* * * * *

ACE MO E5 Perryville, MO [Revised]

Perryville Municipal Airport, MO
(Lat. 37°52'07"N., long. 89°51'44" W.)
Farmington VORTAC, MO
(Lat. 37°40'24" N., long. 90°14'03" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Perryville Municipal Airport and within 1.8 miles each side of the 057° radial of the Farmington VORTAC extending from the 6.6-mile radius to 8.2 miles southwest of the airport

* * * * *

ACE MO E5 Warrensburg, MO [Revised]

Warrensburg, Skyhaven Airport, MO
(Lat. 38°47'03" N., long. 93°48'09" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Skyhaven Airport.

* * * * *

ACE IA E5 Burlington, IA [Revised]

Burlington Municipal Airport, IA
(Lat. 40°47'00" N., long. 91°07'32" W.)
Burlington VORTAC
(Lat. 40°43'24" N., long. 90°55'33" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Burlington Municipal Airport and within 1.8 miles each side of the 293° radial of the Burlington VORTAC extending from the 6.8-mile radius to the Burlington VORTAC.

* * * * *

ACE IA E5 Des Moines, IA [Revised]

Des Moines International Airport, IA
(Lat. 41°32'06" N., long. 93°39'38" W.)
Newton VOR/DME
(Lat. 41°47'02" N., long. 93°06'32" W.)
CLIVE INT/OM
(Lat. 41°35'59" N., long. 93°45'19" W.)
FOREM LOM
(Lat. 41°28'56" N., long 93°34'51" W.)
Des Moines Regional Airport ILS
(Lat. 41°31'40" N., long. 93°38'54" W.)
Des Moines Regional Airport ILS
(Lat. 41°32'50" N., long. 93°40'36"W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Des Moines International Airport and within 3 miles each side of the Des Moines International Airport ILS localizer NW course extending from the 6.9-mile radius area to 16 miles northwest of the CLIVE INT/OM and with 3 miles each side of the Des Moines International Airport ILS localizer SE course extending from the 6.9-mile radius to 16 miles southwest of the FOREM LOM and within 3 miles either side of the 239° radial of the Newton VOR/DME extending from the 6.9-mile radius to 18 miles northeast of the Des Moines International Airport.

* * * * *

ACE 81 E5 Fort Madison, IA

Fort Madison Municipal Airport, IA
(Lat. 40°39'33" N., long. 91°19'37" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Fort Madison Municipal Airport and within 1.8 miles each side of the 078° bearing from the Fort Madison Municipal Airport extending from the 6.4-mile radius to 8.2 miles northeast of the airport.

ACE IA E5 Dubuque, IA [Revised]

Dubuque Regional Airport, IA
(Lat. 42°24'11"N., long. 90°42'33" W.)
Dubuque VORTAC
(Lat. 42°24'05" N., long. 90°42'33" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile

radius of Dubuque Regional Airport and within 2.6 miles each side of the 321° radial of the Dubuque VORTAC extending from the VORTAC to 7 miles northwest of the airport and within 3 miles each side of the 133° radial of the Dubuque VORTAC extending from the VORTAC to 13.5 miles southeast of the airport and with in 3 miles each side of the 189° radial of the Dubuque VORTAC extending from the VORTAC to 7.4 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on March 5, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division, Central Regional.

[FR Doc. 98–7825 Filed 3–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 96P–0023 and 96P–0179]

Food Labeling; Serving Sizes; Reference Amounts for Candies; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 26, 1998, the comment period for the proposal to amend the nutrition labeling regulations pertaining to reference amounts for certain candy products that published in the **Federal Register** of January 8, 1998 (63 FR 1078). The agency is taking this action in response to a request for an extension of the comment period. This extension is intended to provide interested persons with additional time to submit comments to FDA on its proposal.

DATES: Written comments by May 26, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lori A. LeGault, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5269.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 8, 1998 (63 FR 1078), FDA published a proposed rule to amend the nutrition labeling regulations to modify the product category "Sugars and Sweets: Hard Candies, others" by adding "after-dinner mints, caramels, fondants (e.g., plain mints, candy corn), and liquid and powdered candies" as kinds of products included under the category, and a reference amount customarily consumed per eating occasion (reference amount) of 15 milliliters (mL) for liquid candies; create a new product category under "Sugars and Sweets," identified as "Chocolate-covered fondants (e.g., chocolate-covered creams, chocolate-covered mints), taffy, and plain toffee," with a reference amount of 30 grams; and clarify what kinds of candies belong to the "All other candies" product category by expanding the category name to include specific examples. Interested persons were given until March 24, 1998, to submit comments on the proposal.

FDA has received a letter from two trade associations requesting that the agency grant a 60-day extension of the comment period on the proposed rule. The requests contend that additional time is needed to coordinate comments with numerous member companies. The agency acknowledges that the proposed rule is quite technical in nature and, after consideration, has decided to grant an extension of the comment period until May 26, 1998.

Interested persons may, on or before May 26, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 18, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7664 Filed 3–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 804, 806, 807, 810, 820, 821, 1002, and 1020

[Docket No. 97N–0447]

RIN 0910–ZA09

Medical Devices; Review and Revision of Compliance Policy Guides and Regulatory Requirements for Refurbishers, Rebuilders, Reconditioners, Servicers and "As Is" Remarketers of Medical Devices; Request for Comments and Information; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to June 29, 1998, the comment period for the advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of December 23, 1997 (62 FR 67011). This advance notice announced FDA's intention to review and, as needed, to revise compliance policy guides, amend regulatory requirements and, as appropriate, exercise alternative regulatory approaches regarding the remarketing of used medical devices. The agency is taking this action in response to two requests for extensions. This extension of comment period is intended to allow interested persons additional time to submit comments on the ANPRM.

DATES: Written comments by June 29, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4692.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 23, 1997 (62 FR 67011), FDA published an ANPRM announcing the agency's intention to review and, as needed, to revise compliance policy guides (CPG's), amend regulatory requirements and, as appropriate, exercise alternative regulatory approaches with respect to the remarketing of used medical

devices. This reexamination of device remarketing issues is being undertaken, in part, because of competing interests and equity concerns raised by manufacturers, device remarketers, and others, during the rulemaking process for the agency's Quality System (Q/S) regulation part 820 (21 CFR part 820). It provides a method of addressing whether, and to what degree, current good manufacturing practice requirements in the Q/S regulation should be applied by the agency to firms, other than manufacturers and remanufacturers, which process and/or remarket previously used devices outside the control of the device's original manufacturer.

The agency's reassessment is also being undertaken, in part, because of FDA's experience in implementing CPG's 7133.20 and 7124.28. These guides identify what statutory and regulatory requirements, which control the activities of manufacturers, are applicable to the activities of firms considered to be x-ray tube reloaders, or device reconditioners or rebuilders. Agency experience indicates that many firms are unaware of these compliance guides or their own compliance responsibilities, or use other terms to describe their activities. The reassessment is also warranted on the basis of FDA's knowledge of changes in industry practices in the remarketing of used devices.

As a consequence of the previous factors, and for purposes of discussion and public comment during the agency's reevaluation of device remarketing compliance issues, FDA is proposing to define the activities of device refurbishers, servicers, and "as is" remarketers on the basis that their various activities, in contrast to the activities of device remanufacturers defined in 21 CFR 820.3(w), do not significantly change a finished device's performance or safety specifications, or intended use(s). Having proposed to characterize such device processing and remarketing activities in this fashion, the agency is also considering alternative schemes or methods for applying certain regulatory controls to these activities on a voluntary or partial basis, or not at all. Comments, proposals for alternative regulatory schemes, and information were solicited by FDA from the public, the affected industry and other interested parties, in response to the ANPRM.

FDA received two requests to extend the comment period. One requested 30 additional days to focus resources on the referenced matter. The other requested an extension of 180 days so that issues may be discussed further at the multi-day conference of a device industry association, scheduled for September 1998.

FDA believes there is good cause to extend the comment period. However, FDA believes that a 180-extension period would unduly delay the process. Therefore, FDA is extending the comment period for 90 additional days.

Interested persons may, on or before June 29,1998, submit to the Dockets Management Branch (address above) written comments regarding the December 23, 1997, ANPRM described above. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 4, 1998.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–7668 Filed 3–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209463–82]

RIN 1545–AV82

Required Distributions From Qualified Plans and Individual Retirement Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to REG–209463–82, which was published in the **Federal Register** on Tuesday, December 30, 1997 (62 FR 67780). The amendments to existing proposed regulations make changes to the rules that apply if a trust is named as a beneficiary of an employees benefit under a retirement plan.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections is under section 401(a)(9) of the Internal Revenue Code.

Need for Correction

As published, REG–209463–82 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–209463–82), which is the subject of FR Doc. 97–33393, is corrected as follows:

§ 1.409(a)(9)–1 [Corrected]

1. On page 67783, § 1.409(a)(9)–1 is corrected as set out in the following table:

Section	Location	Incorrect language	Corrected language
1.409(a)(9)–1	Q&A D–5, column 2, paragraph (a) of A, line 10.	"paragraph (b) of this D–5A are met,".	"paragraph (b) of this D–5 are met,"
1.409(a)(9)–1	Q&A D–5, column 2, paragraph (a) of A., line 24.	"paragraph (b) of this D–5A are not met,".	"paragraph (b) of this D–5 are not met,"
1.409(a)(9)–1	Q&A D–5, column 3, paragraph (c) of A., line 10 from the top of the column.	"5A are satisfied with respect to such".	"5 are satisfied with respect to such"
1.409(a)(9)–1	Q&A D–6, column 3, paragraph (a) of A., line 3.	"requirements of paragraph (b) of D–5A".	"requirements of paragraph (b) of D–5"
1.409(a)(9)–1	Q&A D–6, column 3, paragraph (a) of A., line 13 from the bottom of the paragraph.	"5A of this section are satisfied with".	"5 of this section are satisfied with"
1.409(a)(9)–1	Q&A D–6, column 3, paragraph (a) of A., line 8 from the bottom of the paragraph.	"paragraph (b) of D–5A of this section are".	"paragraph (b) of D–5 of this section are"

2. On page 67784, § 1.409(a)(9)–1 is corrected as set out in the following table:

Section	Location	Incorrect language	Corrected language
1.409(a)(9)–1	Q&A D–7, column 1, paragraph (a) of A., line 4.	"(b)(4) of D–5A of this section for".	"(b)(4) of D–5 of this section for"
1.409(a)(9)–1	Q&A D–7, column 1, paragraph (a) introductory text of A., last line of the paragraph.	"(2) of this D–7A:"	"(2) of this D–7:"
1.409(a)(9)–1	Q&A D–7, column 1, paragraph (a)(2)(ii) of A., line 5.	"and (3) of D–5A of this section are".	"and (3) of D–5 of this section are"
1.409(a)(9)–1	Q&A D–7, column 1, paragraph (b)(1) of A., second line from the bottom of the column.	"paragraph (b)(1), (2), and (3) of D–5A of".	"paragraph (b)(1), (2) and (3) of D–5 of"
1.409(a)(9)–1	Q&A D–7, column 2, paragraph (c)(1) of A., line 6.	"(a)(1), (a)(2), or (b) of this D–7A, a plan".	"(a)(1), (a)(2), or (b) of this D–7, a plan"
1.409(a)(9)–1	Q&A D–7, column 2, paragraph (c)(1) of A., line 10 from the bottom of the paragraph.	"requirements of paragraph (b) of D–5A".	"requirements of paragraph (b) of D–5"

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).
[FR Doc. 98–7671 Filed 3–24–98; 8:45 am]
BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–5985–5]

Operating Permits Program; Notice of Availability of Draft Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The EPA is allowing public review and comment on the draft preamble and sections of the draft revisions to the operating permits regulations in 40 CFR part 70. The regulatory sections available for comment include those dealing with definitions, applicability, permit programs, permit applications, and permit content, among others, but do not include those associated with permit revisions or permit review by EPA, affected States, and the public. The draft revised sections being made available for review are the same as those contained in the May 14, 1997 draft preamble and regulatory revisions, which were announced as available for review in a June 3, 1997 **Federal Register** notice. The EPA is making these sections available for comment now so that any public comments may be considered before the close of stakeholder discussions. Draft revisions to the sections on permit revisions and permit review by EPA, affected States, and the public will be made available in the future.

DATES: Comments on the draft preamble and regulatory revisions must be received by April 24, 1998.

ADDRESSES: The draft preamble and regulatory revisions are available in EPA's Air Docket number A–93–50 as items VI–A–4 and VI–A–5, respectively. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA air docket is: EPA Air Docket (6102), Attention: Docket Number A–93–50, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC, 20460.

The drafts may also be downloaded from the Internet at: http://www.epa.gov/ttn/oarpg/t5pgm.html.

Comments on the materials referenced in today's notice must be mailed (in duplicate if possible) to: EPA Air Docket (6102), Attention: Docket No. A–93–50, at the above address. Please identify comments as concerning today's notice of availability of items VI–A–4 and VI–A–5.

FOR FURTHER INFORMATION CONTACT: Ray Vogel (telephone 919–541–3153) or Roger Powell (telephone 919–541–5331), Mail Drop 12, EPA, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina, 27711. Internet addresses are: vogel.ray@epa.gov and powell.roger@epa.gov.

SUPPLEMENTARY INFORMATION: The part 70 operating permits regulations were originally promulgated on July 21, 1992 (57 FR 32250). Revisions to part 70 were proposed on August 29, 1994 (59 FR 44460) and August 31, 1995 (60 FR 45530). On May 13, 1997, the Agency released a draft of the final preamble and regulatory revision rulemaking that would revise part 70 for purposes of considering any final comments from interested parties before final action. The draft rulemaking reflected EPA's consideration of comments on the 1994 and 1995 proposals, and included additional regulatory changes that EPA believed appropriate based on comments. Availability of the May 13, 1997 draft and a 30-day public comment period was announced in a June 3, 1997 **Federal Register** notice (62 FR 30289).

Subsequently, after discussing the draft rulemaking with industry, environmental, and State/local permitting agency representatives ("stakeholders"), EPA decided that additional changes were necessary, particularly to the section on permit revision procedures. Consequently, EPA announced in a July 3, 1997 notice (62 FR 36039) that the public should withhold comment on the May 1997 draft until a new draft was prepared.

Since May 1997, EPA has discussed with stakeholders alternative approaches to the permit revision system contained in the May draft. While the discussions with stakeholders to date have involved the provisions of §§ 70.7 and 70.8, EPA also wants to discuss with the stakeholders any concerns with the remaining sections. To prepare for those discussions, it is important to be aware of concerns from the public at large on the remaining sections. Therefore, this notice announces availability of the remaining sections of part 70 for public review. The preamble and regulatory revisions related to §§ 70.7 and 70.8 will be made available in a future **Federal Register** notice of availability.

Items VI–A–4 and VI–A–5 in docket A–93–50 contain the portions of the preamble and regulations for the revisions that may be made to §§ 70.2 through 70.6 and §§ 70.9 through 70.11 of the part 70 regulations. That material is also available on the Internet at the address noted above. As in the June 3, 1997 notice, EPA seeks comment only on regulatory revisions that have changed since the August 1994 and

August 1995 proposals. The changes since the preamble discussions on the relevant sections of part 70 (e.g. § 70.2).

Please send comments directly to Docket A–93–50 at the address previously provided and specify that they are in response to this document. Comments will be forwarded from the Air Docket to the Operating Permits Group of EPA.

Dated: March 17, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–7765 Filed 3–24–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1003, 1005 and 1006

RIN 0991–AA90

Health Care Programs: Fraud and Abuse; Revised OIG Civil Money Penalties Resulting From the Health Insurance Portability and Accountability Act of 1996

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaing.

SUMMARY: This proposed rule would revise the OIG's civil money penalty (CMP) authorities, in conjunction with new and revised provisions set forth in the Health Insurance Portability and Accountability Act of 1996. Among other provisions, this proposed rulemaking would codify new CMPs for: Excluded individuals retaining ownership or control interest in an entity; upcoding and claims for medically unnecessary services; offering inducements to beneficiaries; and false certification of eligibility for home health services. This rule would also codify a number of technical and conforming changes consistent with the OIG's existing sanction authorities.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on May 26, 1998.

ADDRESSES: Pleas mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–25–P, Room 5527 Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–25–P.

Comments will be available for public inspection April 8, 1998 in Room 5524 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8 a.m. to 4:30 p.m., (202) 619–0089.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the OIG Civil Money Penalty Authorities

In 1981, Congress enacted the civil money penalty (CMP) statute, section 1128A of the Social Security Act (the Act) (42 U.S.C. 1320a–7a), as one of several administrative remedies to combat increases in health care fraud and abuse. The CMP law authorized the Secretary and the inspector General to impose CMPs, assessment and program exclusions on individuals and entities whose wrongdoing caused injury to Department programs or their beneficiaries. The statutory penalty and assessment amounts under section 1128A generally provided for a penalty of no more than $2,000 for each item or service at issue, and an assessment in lieu of damages of not more than twice the amount claimed.

Since 1981, Congress has greatly expanded the CMP provisions to apply to numerous types of fraudulent and abusive activities related to Medicare and State health care programs. Specifically, new statutory provisions provided the Secretary and the OIG with the authority to sanction such improper practices as: (1) Hospitals paying physicians to reduce or limit services provided to program beneficiaries; (2) health maintenance organizations (HMOs) failing to provide medically necessary items and services; (3) individuals and entities engaging in certain misleading or fraudulent practices with respect to the marketing and selling of supplemental (Medigap) insurance policies; and (4) hospitals failing to examine and treat, or to properly transfer, emergency room patients (patient dumping).

In 1987, the Medicare and Medicaid Patient and Program Protection Act (MMPPPA), Public Law 100–93, was enacted to improve the ability of the Department "to protect the Medicare and Medicaid programs from fraud and abuse, and to protect the beneficiaries of these programs from incompetent practitioners and from inappropriate and inadequate care." The MMPPPA significantly revised and expanded the OIG's CMP and exclusion sanction authorities. Final OIG regulations addressing amendments to out exclusion and CMP authorities resulting from Public Law 100–93 were published in the **Federal Register** on January 29, 1992 (57 FR 3298).

B. The Health Insurance Portability and Accountability Act of 1996

In the first significant amendments to the OIG's sanction authorities since MMPPPA, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, sets forth a number of important improvements to the OIG's authorities intended to curtail and eliminate health care fraud and abuse. With regard to the sanction authorities, HIPAA expanded the scope of certain basic fraud authorities by extending the application of current CMP provisions beyond those funded by the Department to include all Federal health care programs. The HIPAA also significantly revised and strengthened the OIG's existing CMP authorities pertaining to violations under Medicare and the State health care programs.

Among other provisions related to our CMP authority, HIPAA (1) increases the maximum penalty amounts per false claim from $2,000 to $10,000; (2) allows CMPs to be assessed for incorrect coding, medically unnecessary services, and persons offering remuneration to induce a program beneficiary to order from a particular provider or supplier receiving Medicare or State health care funds; and (3) establishes a new CMP for the false certification of eligibility for Medicare-covered home health services.

While the majority of these revisions to the OIG's CMP authorities under section 1128A of the Act are effective on January 1, 1997,[1] these provisions do allow the Department some policy discretion in their implementation. As a result, we are developing this proposed rulemaking to address these HIPAA penalty provisions, along with other technical revisions and conforming policy changes to the OIG's sanction authorities codified in 42 CFR parts 1003, 1005, and 1006.

[1] Section 232 of HIPAA applies to certifications made on or after August 21, 1996, the enactment date of the statute.

II. Provisions of the Proposed Rule

A. Extension of Current CMP Authority to All Federal Health Care Programs

Section 231(a) of HIPAA amended section 1128A of the Act to allow for the Federal government-wide application of CMPs for false claims to other health care programs, as defined in section 1128B(f) of the Act. Specifically, under section 231(a), the Medicare and State health care programs' CMP authorities for specified fraud and abuse violations, like the Medicare criminal statutes, will now apply to similar violations involving all Federal health care programs, such as CHAMPUS, Veterans, and the Public Health Service programs. (The Federal Employee Health Benefits Plan is expressly excluded from this definition of "Federal health care program.")

As a result, we would amend §§ 1003.100(b)(1)(i), 1003.102(a)(3), 1003.109(a), as well as the definitions for the terms *claim* and *exclusion* set forth in § 1003.101, to apply CMP coverage to all applicable Federal government health care programs. The definition for the term *program* currently set forth in § 1003.101 would also be deleted.

B. Increases in Civil Money Penalty Amounts

Prior to HIPAA, many of the CMP and assessment amounts authorized by section 1128A of the Act, and codified in § 1003.103 of the OIG regulations, remained consistent with the penalty and damage amounts contained in the False Claims Act (FCA) (31 U.S.C. 3729), and had not been revised since the 1986 amendments to that Act. Section 231(c) of HIPAA generally increases the amount of authorized CMPs from $2,000 to $10,000 per item or service improperly claimed or prohibited practice, and raises the authorized assessment amount from double to triple the amount claimed. This amendment to the OIG's authorized CMP amounts is consistent with the penalty and assessment amounts in the FCA which were increased by statute in 1986.

In accordance with section 231(c) of HIPAA, we are proposing to amend § 1003.103(a) to address the increased penalty amount, and § 1003.104 to address the revised assessment amount.

C. Clarification of the Knowledge Standard for Civil Money Penalties

The CMP statute was originally intended to provide an alternative administrative enforcement tool when injury to government programs and beneficiaries was not redressed through traditional civil or criminal remedies. Section 1128A of the Act and our implementing regulations have applied the "knows or should know" standard of proof for the Medicare and State health are programs' CMP provisions regarding false claims and other prohibited acts. The term "should know" has historically placed a duty on health care providers to use "reasonable diligence" to ensure that claims submitted to Medicare were true and accurate. The reason this standard was chosen was that the Medicare system relies heavily on the honesty and good faith of providers in submitting their claims. (The "should know" standard did not impose liability for honest mistakes; if the provider exercised reasonable diligence and still made a mistake, the provider was not liable.)

However, to make the knowledge standard consistent with the FCA, section 231(d) of HIPAA defined the term "should know" to mean "reckless disregard" or "deliberate ignorance" of the truth, with no proof of specific intent required. Under the newly defined "should know" standard in these proposed regulations, individuals and entities would only be liable if they act with deliberate ignorance or reckless disregard of information pertaining to the falsity of a claim or other fraud. No specific intent to defraud is required. The terms should know and should have known would be specifically defined in § 1003.101, with corresponding revisions made in §§ 1003.100(b)(1)(i) and 1003.102(a) and (b).

In addition, we are proposing to add a new paragraph (e) to § 1003.102, defining the term "knowingly," to clarify congressional intent to apply the FCA standard of knowledge to the presentment of a claim under the CMP law.

D. New Civil Money Penalty for Excluded Individuals Retaining Ownership or Control Interest in a Participating Entity

Prior to HIPAA, if an individual retained a direct or indirect ownership or control interest in, or had a management role with, a health care entity that participates in Medicare or any State health care program after the individual had been excluded, the entity itself was at risk of exclusion under section 1128(b)(8) of the Act for as long as the individual maintained his or her relationship with that entity. However, the individual faced no additional liability unless he or she filed, or caused to be filed, a claim for reimbursement. This created a major loophole through which excluded individuals were often able, without penalty, to continue to reap the benefit of participation in Medicare and the State health care programs while excluded.

Section 231(b) of HIPAA specifically set forth new CMP authority designed to deter such affiliations by subjecting the excluded individual to a CMP of up to $10,000 for each day an excluded individual retained a prohibited relationship with a participating entity. This new CMP provision is to apply only to those with an ownership or control interest in a participating entity who know, or should know, of the action constituting the basis for the exclusion, or any excluded persons who retain positions as officers or managing employees of a participating entity. The imposition of the new CMP authority against an excluded individual will prevent excluded parties from continuing to benefit from government health care financing programs through indirect participation.

Under § 1003.102, Basis for civil money penalties and assessments, we propose to add a new paragraph (b)(11) to codify this new authority. Conforming revisions are also being proposed to § 1003.100, Basis and purpose, through the addition of a new paragraph (b)(1)(xi), and to § 1003.103, Amount of penalty, through the addition of a new paragraph (h). In addition, technical changes are being proposed to §§ 1003.105 and 1003.106.

E. New Civil Money Penalties for the Submission of Claims for Upcoding and for Medically Unnecessary Services

The OIG has historically viewed as unlawful under the statute (1) the claiming of an inappropriately elevated medical procedure code in order to obtain program reimbursement exceeding the amount allowed for the item or service rendered (upcoding); (2) a pattern of claiming reimbursement for services that an individual or entity knows, or should know, are not medically necessary; and (3) the routine waiver of Medicare part B copayments and deductibles. To clarify that these actions are unlawful practices, section 231(e) of HIPAA expressly rendered upcoding and the claiming of medically unnecessary services as violations of the CMP statute. (Section 231(h) of HIPAA further addressed the practice of routinely waiving deductible and coinsurance amounts, and is discussed below in section F.)

Section 231(e) of HIPAA establishes specific CMP authority for a pattern or practice of submitting claims, or causing claims to be submitted, based on a code that the person "knows or should

know" will result in greater payment than the code that should have been claimed.

To codify the upcoding prohibition, we would clarify § 1003.102(a)(1) of the regulations to indicate that the OIG may impose a penalty and assessment against any person it determines has presented or caused to be presented a claim for any item or service that the person knows, or should have known, was not provided as claimed, including any claim that is part of a pattern or practice of claims based on upcoding. A new § 1003.102(a)(6) would also be added to implement the OIG's authority to impose a CMP and assessment for any claim for an item or service that was medically unnecessary and part of a pattern or practice of such claims.

F. New Civil Money Penalty for the Offering of Inducements to Beneficiaries

Section 231(h) of HIPAA establishes a new CMP against individuals or entities that know, or should know, that offering remuneration or inducements to a program beneficiary will influence the patient's decision to order or receive any item or service from a particular provider, practitioner or supplier reimbursable under Medicare or the State health care programs. Remuneration includes both the waiver of all or part of the coinsurance and deductible amounts, and "transfers of items and services for free or for other than fair market value." As a result, we are proposing to add a new § 1003.102(b)(12) to codify the new CMP authority for the offering of inducements to beneficiaries, with a conforming change also being made with the addition of a new § 1003.100(b)(1)(xii). In addition, new factors that take into account the degree of culpability and the amount of remuneration offered or transferred with respect to this authority are also being proposed for inclusion in new § 1003.106(a)(1)(i), (a)(1)(vii) and (b)(2)(iv).

This provision is a separate and distinct authority, completely independent of the Medicare and State health care program anti-kickback statute (42 U.S.C. 1320a–7b(b)). Specifically, the anti-kickback statute is an intent-based statute; that is, in order to provide a violation it is necessary to show specific intent to induce referrals or orders for services. Under this new CMP authority, individuals and entities risk imposition of CMPs if they offer remuneration under circumstances where they know or should know that it is likely to influence the selection of the health care provider or service.

For purposes of this provision, we wish to clarify that the offering of remuneration or inducements to program beneficiaries (other than increased coverage, reduced cost-sharing amounts and reduced premium amounts permitted by section 1876 of the Act) to enroll in a Medicare or Medicaid managed health care plan would violate this statutory provision, as such plans restrict beneficiaries to particular providers, practitioners or suppliers.

Statutory exceptions. There are three statutory exceptions to the definition of remuneration in this CMP provision. The first relates to waivers for coinsurance and deductibles that meet certain conditions, the second is for differentials in coinsurance and deductibles as part of a benefits plan design under certain conditions, and the third is for incentives given to individuals to promote the delivery of preventive care as determined by the Secretary. In accordance with section 231(h) of HIPAA, these three exceptions apply only to this CMP provision and have no application to the anti-kickback statute.

The first statutory exception relating to the waiver of coinsurance and deductible amounts exempts from this statutory provision waivers to indigent beneficiaries or after responsible collection efforts have failed.[2] The second exception relating to differentials in coinsurance and deductible amounts as part of a benefits plan design applies where (1) The differentials have been disclosed in writing to all beneficiaries, third-party payors and providers and (2) the differentials meet standards defined by the Secretary. We do not interpret the limited exception for differentials as authorizing any benefit plan design that directly or indirectly attempts to waive a beneficiary's obligation to pay deductible or coinsurance amounts under a Federal health care program. For example, a private insurance company's "coordination of benefits" provision does not operate to relieve a provider of its obligation to bill applicable coinsurance amounts to Medicare beneficiaries. Of course, a private insurer or employer may assume responsibility to pay such deductible or coinsurance amounts for its enrollees. At this time, we are choosing not to set forth in regulations a definition of differentials in coinsurance that are part of a plan design. Rather, we are seeking public comments on how best to define these standards in regulations for purposes of this provision.

The third exception from the statutory definition of remuneration under HIPAA protects *incentives* given to individuals to promote the delivery of preventive care. (However, the exception does not include the direct rendering of preventive medical care.) Specifically, the exception includes the provision of incentives to individuals who are eligible for benefits under a Federal health care program (as defined by section 1128B(f) of the Act) where such incentives are provided for the purpose of inducing individuals to obtain preventive care. The HIPAA requires the Secretary to identify what constitutes "preventive care" for purposes of this provision. Accordingly, we propose to define preventive care within the definition of remuneration at § 1003.101 to mean annual physicals and care associated with, and integral to, preventing the need for treatment or diagnosis of a specific illness, symptom, complaint or injury (including, but not limited to, prenatal and postnatal care, flu shots and immunizations for childhood diseases, AIDS and HIV testing, mammograms, pap smears and prostate cancer screenings, eye examinations, treatment for alcohol and drug addiction, and treatment designed to prevent domestic violence) where such care is provided or directly supervised by the medical provider that has provided the incentive.

Examples of incentives permitted under this provision would include, but would not be limited to, (1) Transportation to and from preventive care services; (2) car seats, baby formula and child safety devices provided for participating in prenatal or parenting classes; and (3) tee shirts, exercise videos and water bottles provided for participating in a post-cardiac care fitness program. Examples of impermissible incentives would include, but would not be limited to, items or services related to the promotion of general health and fitness (excluding an annual physical), such as health club memberships, nonprescription vitamins, nutritional supplements and beauty aids. Also, we believe incentives permitted under section 231(h) of HIPAA and these regulations would not include cash (or cash equivalents).

The conference report accompanying this new CMP made it clear that "this provision (does) not preclude the provision of items and services of nominal value, including, for example,

[2] In the Balanced Budget Act of 1997, Pub. L. 105–33, a technical correction was made in section 4331(e)(1) to indicate that remuneration does not include a waiver of coinsurance and deductible amounts that are permissible under section 1128B(b)(3) of the Act or in regulations developed by the Secretary.

refreshments, medical literature, complimentary local transportation services, or participation in free health fairs." We are interpreting this statement to mean that the aggregate value of such services provided to any individual must be nominal. Hence, the frequent rendering of items and services to any individual may preclude such items and services as being classified as nominal in value.

G. New Civil Money Penalty for the False Certification of Eligibility for Home Health Services

Section 232 of HIPAA established a new CMP for false certification of eligibility to receive home health care. Specifically, under this provision if a physician falsely certifies the medical necessity for Medicare-covered home health services, *Knowing* that the care is not necessary, he or she may be subject to a CMP of the greater of $5,000 or 3 times the amount of the Medicare payments made for the home health care services. This provision applies to false certifications made on or after August 21, 1996. The new authority would be codified in proposed §§ 1003.100(b)(1)(xiii), 1003.102(b)(13) and 1003.103(g) of the regulations.

H. Other Conforming and Technical Regulatory Revisions

In addition to the changes to the OIG regulations at 42 CFR part 1003 designed to comply with the revised CMP sanction provisions required by HIPAA, we are proposing a number of technical changes in part 1003 to clarify and expand the applicability of existing regulations and procedures. In addition, with regard to the applicability of the appeals of exclusions, CMPs and assessments, limited changes are also being proposed in 42 CFR part 1005 with regard to motions to compel discovery and interlocutory appeals to the Departmental Appeals Board (DAB), and the scope of an administrative law judge's (ALJ) authority to issue subpoenas *duces tecum* is being clarified to include the authority to subpoena documents at or prior to the administrative hearing.

Section 1003.100, Basis and purpose—The current language in § 1003.100(b)(1)(viii) provides for the imposition of CMPs and, as applicable, assessments against persons who have "submitted certain prohibited claims against the Medicare program." As a technical change, we propose to delete this language and redesignate the existing paragraphs accordingly, since many CMPs (including several new CMP authorities in HIPAA) do not involve the submission of claims as the prohibited conduct.

Section 1003.102, Basis for civil money penalties and assessments—We are proposing to delete the current regulatory language currently set forth in paragraphs (b)(2) and (b)(3) of this section, and reserve these paragraphs. The authority contained in § 1003.102(b)(2) addresses CMPs for non-participating physicians billing for actual charges in excess of the maximum allowable actual charge. The statutory freeze for actual charges exceeding the maximum allowed has expired, making this authority no longer valid. Section 1003.102(b)(3) addresses CMPs for billing for the services of an assistant at routine cataract surgery. As this authority has now been delegated to the Health Care Financing Administration, we are proposing to delete it from the OIG regulations. Conforming changes would also be made through the deletion of paragraphs (c) and (e) in § 1003.107.

Section 1003.103, Amount of penalty; and section 1003.105, Exclusion from participation in Medicare and State Health care programs—We are proposing to update the regulatory language currently set forth in §§ 1003.103(e) and 1003.105(a)(1), relating to patient anti-dumping provisions, consistent with the statutory amendments to the knowledge standard and penalty amounts.

Section 1003.106, Determinations regarding the amount of the penalty and assessment—We are proposing to broaden the language in paragraph (a)(1) of this section to include all existing and new CMP authorities. In addition, we would amend § 1003.106(b)(5), the factor addressing financial condition, by deleting the first sentence in this paragraph. The current language indicates that it should be considered a mitigating circumstance "if the imposition of the penalty or assessment without reduction will jeopardize the ability of the respondent to continue as a *health care provider*;; (underling added). Since this penalty authority is intended to apply not only to direct providers of health care, but also to those involved in other related activities and positions (such as a transporter of patients or a CEO of a drug company), we believe this factor does not represent a generally applicable standards, and therefore propose deleting this factor.

Section 1003.107, Determinations regarding exclusions—We would amend paragraph (b) of this section to incorporate reference to the new CMP authorities being set forth in § 1003.102(b) (11) and (12) referenced above.

Section 1005.1. Definitions—While the terms "OIG" and "Inspector General" are defined, respectively, at the beginning of parts 1001 and 1003, part 1005 does not currently set forth such a definition. We would revise the definitions section of part 1005 to include a definition for the term "Inspector General."

Section 1005.7. Discovery—We are proposing a revision to § 1005.7(e) to provide for motions to compel discovery once a request for production of documents has been received. Presently, the language in paragraph (e) states that "[A]fter a party has been served with a request for production of documents, that party may file for a protective order." However, there is no provision currently authorizing a motion to compel requested discovery. Thus, the burden is now on the person who wishes to withhold requested documents to file a motion, instead of upon the party who has requested the documents, and who can best explain their relevance. As in the Federal Rules of Civil Procedure, we believe that motions to compel discovery should be authorized by these administrative hearing regulations, so that the party requesting discovery will be responsible for invoking a judicial determination of a discovery dispute. The revision we propose would allow either party to object to discovery requests, and if a motion to compel is filed, a request for a protective order may be requested in response.

Specifically, we would revise § 1005.7(e) to make clear that a party has a right to object to discovery requests without requiring that party to file for a protective order, leaving it to the party seeking the documents to justify why access is appropriate in a motion to compel discovery. Any objections to production of documents would have to be filed with the opposing party within 15 days of receiving the discovery request. The party seeking the production of documents may then file a motion to compel discovery within the next 15 days or any other time frame set by the ALJ. We welcome comments on this clarifying change.

Section 1005.9. Subpoenas for attendance at hearing—We would revise paragraph (b) of § 1005.9 to clarify that this provision is intended to authorize an administrative law judge to issue a subpoena to any individual to attend the hearing and to provide documentary evidence at or prior to the hearing. The existing language in this section has been misconstrued in some instances as only authorizing the production of documents at the hearing. We are clarifying this language to

indicate that an ALJ may issue a subpoena *duces tecum* requiring documents to be produced before the hearing. We believe the proposed language should fully clarify the intent of this provisions.

Section 1005.15, The hearing and burden of proof—Section 1005.2(b) of the regulations defines a "respondent" as the party appealing a CMP, and a "petitioner" as the party appealing an exclusion. The existing language in paragraph (b) of § 1005.15, however, currently incorrectly uses the term "respondent" to refer to several exclusion authorities. We propose revising § 1005.15(b) to make the language in this paragraph consistent with the way parties are currently defined in § 1005.2(b).

Section 1005.21, Appeal to DAB—We would revise the current language in paragraph (d) of this section to allow for interlocutory appeals to the DAB in one limited situation; that is, on the timeliness of filing of the hearing request. Otherwise, in many cases a final ruling on the timeliness of a hearing request will be rendered meaningless because the hearing will take place before an appeal of an appeal of an ALJ's ruling on timeliness can occur.

Deletion of reference to the Office of the General Counsel in §§ 1003.126, 1003.128 and 1006.4—We would make a technical revision in §§ 1003.126, 1003.128(b) and 1006.4(b)(2) by deleting the current reference to "the Office of the General Counsel." Section 1003.126 gives the Office of the General Counsel (OGC) the exclusive authority to settle a case prior to a final decision of the Secretary. Paragraph (b) of § 1003.128 authorizes the OGC "after consultation with the IG" to compromise any penalty and assessment imposed by the Secretary. Section 1006.4(b) addresses attendance at investigational inquiries. The current language indicates that both representatives of the OIG and the OGC may attend and ask questions. With the consolidation of the IG Division of Office of the General Counsel into the OIG, these references to the OGC are no longer appropriate, and the regulatory language should be revised to give the OIG exclusive authority to settle or compromise cases, and to attend investigational inquiries.

III. Regulatory Impact Statement

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a number of businesses the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule.

As indicated above, the provisions contained in this proposed rulemaking are primarily intended to comply with amended statutory authority by (1) expanding the protection of certain basic fraud authorities beyond the Department to include other Federal health care programs, (2) strengthening current legal authorities pertaining to our imposition of CMPs against individuals and entities engaged in prohibited actions and activities, and (3) codifying other new and revised OIG sanction authorities set forth in Public Law 104–191.

We believe that these regulations will not have a significant ecomonic effect on Federal, State or local economies, nor will they have a significant economic effect on a substantial number of small entities. The CMP statute, as enacted by Congress in 1981, was an administrative remedy to combat increases in health care fraud. The CMP provisions have been expanded upon since their original enactment to counteract evolving fraudulent and abusive practices. These proposed regulations merely continue the approach of authorizing CMP sanctions against individuals and entities that abuse Federal and State health care programs as emerging fraudulent practices are identified. These remedial sanctions are addressed to a limited group of individuals and entities; that is, providers who abuse the Federal health care programs to the detriment of the beneficiaries and the public fisc.

The revised CMP provisions set forth in this proposed rule that address the upcoding of claims, and claims for medically unnecessary services, are essentially clarifications of existing OIG authorities. In addition, with respect to the new penalty authorities being codified, such as the CMP for excluded individuals retaining ownership or control interest in an entity and the CMP for the false certification of eligibility for home health services, these provisions target egregious conduct that is limited in scope and nature.

The proposed regulations would implement congressional intent in the area of fraud and abuse in health care programs. The regulations target areas of fraud, not industry; the scope of effect is narrow and targeted specifically to those individuals defrauding or abusing the Medicare and State health care programs. There should be no increase in paperwork or reporting burdens in any pre-existing programs as a result of these regulations.

Similarly, while increases in the authorized CMP amounts from $2,000 to $10,000 per false item or service claimed or prohibited practice may increase overall penalty amounts and recoveries, the process for deriving any settlement will remain essentially the same. While the rise in the amount of penalty from $2,000 to $10,000 is an increase, it is only proportionate to the amount of fraud against the public fisc. It also serves as a deterrent to health care fraud, consistent with congressional intent in the enactment of HIPAA. This penalty amount increase should not significantly affect the health case industry; the only effect is remedial against those who perpetrate fraud against the system and thus violate Federal and State law. This increased maximum amount per false claim or prohibited practice may, in certain circumstances, reduce OIG investigative costs since fewer individual false claims will need to be developed and proved in order for the Government to recover appropriate penalties and assessments. In addition, we believe settlements with individuals and entities may become more likely since the OIG's bargaining power is now enhanced in the face of greater potential financial exposure for the individual or entity.

Overall, we believe that any increase in CMP recoveries will not be significant since the vast majority of individuals, organizations and entities addressed by these regulations do not engage in such prohibited activities and practices. As indicated, these proposed regulations are narrow in scope and effect, serve to codify or revise existing OIG sanctions, comport with congressional and statutory intent, and strengthen the Department legal authorities against those who defraud or otherwise act improperly against the Federal and State health care program. Since there is no significant economic effect on the industry as a whole, there is little likelihood of effect on Federal or State expenditures to implement these

regulations. While some sanctions addressed in this rule may have a minor impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In conclusion, we believe that the aggregate economic impact of these regulations will be minimal, affecting only those limited few who have chosen to engage in prohibited arrangements, schemes and practices in violation of statutory intent. As a result, we have conducted, and the Secretary certifies, that this proposed rule should not have a significant economic impact on a substantial number of small entities that would require a regulatory flexibility analysis.

Paperwork Reduction Act

This proposed rule would impose no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Penalties.

42 CFR Part 1006

Administrative practice and procedure, Fraud, Investigations, Penalties.

Accordingly, 42 CFR Parts 1003, 1005 and 1006 is proposed to be amended as set forth below:

PART 1003—[AMENDED]

A. Part 1003 would be amended as follows:

1. The authority citation for part 1003 would be revised to read as follows:

Authority: 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320b–10, 1395dd(d)(1). 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 would be revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1140, 1876(i)(6), 1877(g), 1882(d) and 1903(m)(5) of the Social Security Act, and sections 421(c) and 427(b)(2) of Pub.L. 99–660 (42 U.S.C. 1320a–7, 1320a–7a,1320a–7(c), 1320b(10), 1395mm, 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2)).

(b) *Purpose.* This part—

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

(i) Have knowingly submitted certain prohibited claims under Federal health care programs;

(ii) Seek payment in violation of the terms of an agreement or a limitation on charges or payments under the Medicare program, or a requirement not to charge in excess of the amount permitted under the Medicaid program;

(iii) Give false or misleading information that might affect the decision to discharge a Medicare patient from the hospital;

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60;

(v) Misuse certain Departmental and Medicare and Medicaid program words, letters symbols or emblems;

(vi) Violate a requirement of section 1867 of the Act § 489.24 of this title;

(vii) Substantially fail to provide an enrollee with required medically necessary items and services, or engage in certain marketing, enrollment, reporting, claims payment, employment or contracting abuses, or that do not meet the requirements for physician incentive plans for Medicare specified in §§ 417.479(d) through (f) of this title;

(viii) Present or cause to be presented a bill or claim for designated health services (as defined in § 411.351 of this title) that they know, or should know, were furnished in accordance with a referral prohibited under § 411.353 of this title;

(ix) Have collected amounts that they know or should know were billed in violation of § 422.353 of this title and have not refunded the amounts collected on a timely basis;

(x) Are physicians or entities that enter into an arrangement or scheme that they know or should know has as a principal purpose the assuring of referrals by the physician to a particular entity which, if made directly, would violate the provisions of § 411.353 of this title;

(xi) Are excluded, and who retain an ownership or control interest of five percent or more in an entity participating in Medicare or a State health care program, or who are officers or managing employees of such an entity (as defined in section 1126(b) of the Act);

(xii) Offer inducements to influence Medicare or State health care program beneficiaries to order or receive particular items or services; or

(xiii) Are physicians who knowingly misrepresent that a Medicare beneficiary requires home health services;

(2) Provides for the exclusion of persons from the Medicare or State health care programs against whom a civil money penalty or assessment has been imposed, and the basis for reinstatement of persons who have been excluded; and

(3) Sets forth the appeal rights of persons subject to a penalty, assessment and exclusion.

3. Section 1003.101 would be amended by republishing the introductory text; by revising the definition for the terms *Claim* and *Exclusion;* by removing the terms *General Counsel* and *Program;* and by adding, in alphabetical order, definitions for the terms *Remuneration* and *Should know,* or *should have known* to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Claim means an application for payment for an item or service to a Federal health care program (as defined in section 1128B(f) of the Act).

* * * * *

Exclusion means the temporary or permanent barring of a person from participation in a Federal health care program (as defined in section 1128B(f) of the Act).

* * * * *

Remuneration, as set forth in § 1003.102(b)(12), is consistent with the definition contained in section 1128A(i)(6) of the Act. For purposes of this definition of remuneration, preventive care means annual physicals and care associated with, and integral to, preventing the need for treatment or diagnosis of a specific illness, symptom, complaint or injury.

* * * * *

Should know or *should have known* means that a person, with respect to information—

(1) Acts in deliberate ignorance of the truth or falsity of the information; or

(2) Acts in reckless disregard of the truth or falsity of the information.

For purposes of this definition no proof of specific intent to defraud is required.

* * * * *

4. Section 1003.102 would be amended by revising the introductory text of paragraph (a) and paragraphs (a)(1) and (a)(3); republishing the introductory text of paragraph (a)(4) and revising paragraphs (a)(4)(iii) and paragraph (a)(5); adding a new

paragraph (a)(6); republishing the introductory text of paragraph (b) and revising introductory paragraph (b)(1); removing and reserving paragraphs (b)(2) and (b)(3); revising paragraphs (b)(4) and (b)(9); and by adding new paragraphs (b)(11) through (b)(13) and (e) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) The OIG may impose a penalty and assessment against any person whom it determines in accordance with this part has knowingly presented, or caused to be presented, a claim which is for—

(1) An item or service that the person knew, or should have known, was not provided as claimed, including a claim that is part of a pattern or practice of claims based on codes that the person knows or should know will result in greater payment to the person than the code applicable to the item or service actually provided;

* * * * *

(3) An item or service furnished during a period in which the person was excluded from participation in the Federal health care program to which the claim was made;

(4) A physician's services (or an item or service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

* * * * *

(iii) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty board when he or she was not so certified;

(5) A payment that such person knows, or should know, may not be made under § 411.353 of this title; or

(6) An item or service that is medically unnecessary, and which is part of a pattern or practice of such claims.

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

(1) Has knowingly presented or caused to be presented a request for payment in violation of the terms of—

* * * * *

(4) Has knowingly given or caused to be given to any person, in the case of inpatient hospital services subject to the provisions of section 1886 of the Act, information that he or she knew, or should have known, was false or misleading and that could reasonably have been expected to influence the decision when to discharge such person or another person from the hospital.

* * * * *

(9) Has not refunded on a timely basis, as defined in § 1003.101, amounts collected as the result of billing an individual, third party payer or other entity for a designated health service that was provided in accordance with a prohibited referral as described in § 411.353 of this title.

* * * * *

(11) Who is not an organization, agency or other entity, and who is excluded from participating in Medicare or a State health care program in accordance with sections 1128 or 1128A of the Act, and who—

(i) Knows or should know of the action constituting the basis for the exclusion, and retains a direct or indirect ownership or control interest of five percent or more in an entity that participates in Medicare or a State health care program; or

(ii) Is an officer or managing employee (as defined in section 1126(b) of the Act) of such entity.

(12) Offers or transfers remuneration (as defined in section 1128(i)(6) of the Act) to any individual eligible for benefits under Medicare or a State health care program, that such person knows or should know is likely to influence such individual to order or to receive from a particular provider, practitioner or supplier any item or service for which payment may be made, in whole or in part, under Medicare or a State health care program.

(13) Is a physician and who executes a document falsely by certifying that a Medicare beneficiary requires home health services when the physician knows that the beneficiary does not meet the eligibility requirements set forth in sections 1814(a)(2)(C) or 1835(a)(2)(A) of the Act.

* * * * *

(e) For purposes of this section, the term "knowingly" is defined consistent with the definition set forth in the Civil False Claims Act (31 U.S.C. 3729(b)).

5. Section 1003.103 would be amended by revising paragraphs (a) and (e); and by adding new paragraphs (g) and (h) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b) through (h) of this section, the OIG may impose a penalty of not more than—

(1) $2,000 for each wrongful act occurring before January 1, 1997 that is subject to a determination under § 1003.102; and

(2) $10,000 for each wrongful act occurring on or after January 1, 1997 that is subject to a determination under § 1003.102.

* * * * *

(e) For violations of section 1867 of the Act or § 489.24 of this title, the OIG may impose—

(1) Against each participating hospital with an emergency department, a penalty of not more than $50,000 for each negligent violation occurring on or after May 1, 1991, except that it the participating hospital has fewer than 100 State-licensed, Medicare-certified beds on the date the penalty is imposed, the penalty will not exceed $25,000; and

(2) Against each responsible physician, a penalty of not more than $50,000 for each negligent violation occurring on or after May 1, 1991.

* * * * *

(g) For violations of § 1003.102(b)(3) the OIG may impose a penalty of not more than the greater of—

(1) $5,000; or

(2) Three times the amount of Medicare payments for home health services that are made with regard to the false certification of eligibility by a physician in accordance with sections 1814(a)(2)(C) or 1835(a)(2)(A) of the Act.

(h) The OIG may impose a penalty of not more than $10,000 per day for each day that the prohibited relationship described in § 1003.102(b)(11) occurs. 6.

6. Section 1003.104 would be revised to read as follows:

§ 1003.104 Amount of assessment.

(a) The OIG may impose an assessment, where authorized, in accordance with § 1003.102, of not more than—

(1) Two times the amount for each item or service wrongfully claimed prior to January 1, 1997; and

(2) Three times the amount for each item or service wrongfully claimed on or after January 1, 1997.

(b) The assessment is in lieu of damages sustained by the Department or a State agency because of that claim.

7. Section 1003.105 would be amended by revising paragraph (a)(1); removing existing paragraph (b)(1); and by redesignating existing paragraphs (b)(2) and (b)(3) respectively as new paragraphs (b)(1) and (b)(2) to read as follows:

§ 1003.105 Exclusion from participation in Medicare and State health care programs.

(a)(1) Except as set forth in paragraph (b) of this section, the following persons may be subject, in lieu of or in addition to any penalty or assessment, to an exclusion from participation in Medicare for a period of time determined under § 1003.107. There will be exclusions from State health care

programs for the same period as the Medicare exclusion for any person who—

(i) Is subject to a penalty or assessment under § 1003.102(a), (b)(1), (b)(4), (b)(11) or (b)(12); or

(ii) Commits a gross and flagrant, or repeated, violation of section 1867 of the Act or § 489.24 of this title on or after May 1, 1991. For purposes of this section, a gross and flagrant violation is one that presents an imminent danger to the health, safety or well-being of the individual who seeks emergency examination and treatment or places that individual unnecessarily in a high-risk situation.

* * * * *

8. Section 1003.106 would be amended by revising paragraph (a)(1); republishing the introductory text of paragraph (b) and revising paragraphs (b)(2) and (b)(5); revising the introductory text of paragraph (c) and paragraph (c)(3); redesignating existing paragraphs (d) and (e) as new paragraphs (e) and (f); revising the introductory text of new redesignated paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 1003.106 Determinaitons regarding the amount of the penalty and assessment.

(a) *Amount of penalty.* (1) In determining the amount of any penalty or assessment in accordance with § 1003.102(a), (b)(1), (b)(4) and (b)(9) through (b)(13), the Department will take into account—

(i) The nature of the claim, referral arrangement or other wrongdoing;

(ii) The degree of culpability of the person against whom a civil money penalty is proposed;

(iii) The history of prior offenses of the person against whom a civil money penalty is proposed;

(iv) The financial condition of the person against whom a civil money penalty is proposed;

(v) The completeness and timeliness of the refund with respect to § 1003.102(b)(9);

(vi) The amount of financial interest involved with respect to § 1003.102(b)(11);

(vii) The amount of remuneration offered or transferred with respect to § 1003.102(b)(12); and

(viii) Such other matters as justice may require.

* * * * *

(b) *Determining the amount of the penalty or assessment.* As guidelines for taking into account the factors listed in paragraph (a)(1) of this section, the following circumstances are to be considered—

* * * * *

(2) *Degree of culpability.* It should be considered a mitigating circumstance if the claim or request for payment for the item or service was the result of an unintentional and unrecognized error in the process the respondent followed in presenting claims or requesting payment, and corrective steps were taken promptly after the error was discovered. It should be considered an aggravating circumstance if—

(i) The respondent knew the item or service was not provided as claimed or if the respondent knew that the claim was false or fraudulent;

(ii) The respondent knew that the items or services were furnished during a period that he or she had been excluded from participation and that no payment could be made as specified in §§ 1003.102(a)(3) and 1003.102(b)(11), or because payment would violate the terms of an assignment or an agreement with a State agency or other agreement or limitation on payment under 1003.102(b);

(iii) The respondent knew that the information could reasonably be expected to influence the decision of when to discharge a patient from a hospital; or

(iv) The respondent knew that the offer or transfer or remuneration described in 1003.102(b)(12) would influence a beneficiary to order or receive particular items or services under Medicare or a State health care program.

* * * * *

(5) *Final condition.* In all cases, the resources available to the respondent will be considered when determining the amount of the penalty and assessment.

* * * * *

(c) In determining the amount of the penalty and assessment to be imposed for every item or service or incident subject to a determination under §§ 1003.102 (a), (b)(1) and (b)(4)—

* * * * *

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should never be less than double the approximate amount of damages and costs (as defined in paragraph (f) of this section) sustained by the United States, or any State, as a result of claims or incidents subject to a determination under §§ 1003.102 (a), (b)(1) and (b)(4).

(d) In considering the factors listed in paragraph (a)(4) of this section for violations subject to a determination under § 1003.103(e), the following circumstances are to be considered, as appropriate, in determining the amount of any penalty—

(1) *Degree of culpability.* It would be a mitigating circumstance if the respondent hospital had appropriate policies and procedures in place, and had effectively trained all of its personnel in the requirements of section 1867 of the Act and § 489.24 of this title, but an employee or responsible physician acted contrary to the respondent hospital's policies and procedures.

(2) *Seriousness of individual's condition.* It would be an aggravating circumstance if the respondent's violation(s) occurred with regard to an individual who presented to the hospital a request for treatment of a medical condition that was clearly an emergency, as defined by § 489.24(b) of this title.

(3) *Prior offenses.* It would be an aggravating circumstance if there is evidence that at any time prior to the current violation(s) the respondent was found to have violated any provision of section 1867 of the Act or § 489.24 of this title.

(4) *Financial condition.* In all cases, the resources available to the respondent would be considered when determining the amount of the penalty. A respondent's audited financial statements, tax returns or financial disclosure statements, as appropriate, will be reviewed by OIG auditors to make a determination with respect to the respondent's financial condition.

(5) *Nature and circumstances of the incident.* It would be considered a mitigating circumstance if an individual presented a request for treatment, but subsequently exhibited conduct that demonstrated a clear intent to leave the respondent hospital voluntarily. In reviewing such circumstances, the OIG would evaluate the respondent's efforts to—

(i) Provide the services required by section 1867 of the Act and § 489.24 of this title, despite the individual's withdrawal of the request for examination or treatment; and

(ii) Document any attempts to inform the individual (or his or her representative) of the risks of leaving the respondent hospital without receiving an appropriate medical screening examination or treatment, and obtain informed consent from the individual (or his or her representative) prior to the individual's departure from the respondent hospital.

(6) *Other matters as justice may require.* (i) It would be considered a mitigating circumstance if the respondent hospital—

(A) Developed and implemented a corrective action plan;

(B) Took immediate appropriate action against any hospital personnel or responsible physician who violated section 1867 of the Act or § 489.24 of this title prior to any investigation of the respondent hospital by HCFA; or

(C) Is a rural or county-owned facility that is faced with severe physician staffing and financial deficiencies.

(ii) It would be considered an aggravating circumstance if an individual was severely harmed or died as a result of the respondent's violation of section 1867 of the Act or § 489.24 of this title.

(iii) Other circumstances of an aggravating or mitigating nature will be taken into account if, in the interests of justice, they require either a reduction of the penalty or an increase in order to assure the achievement of the purposes of this part.

(e) In considering the factors listed in paragraph (a)(5) of this section for violations subject to a determination under § 1003.103(f), the following circumstances are to be considered, as appropriate, in determining the amount of any penalty—

* * * * *

9. Section 1003.107 would be amended by revising paragraph (b); removing existing paragraph (c) and (e); redesignating paragraph (d) as new paragraph (c) and revising it to read as follows:

§ 1003.107 Determinations regarding exclusion.

* * * * *

(b) With respect to determinations to exclude a person under §§ 1003.102(a), (b)(1), (b)(4), (b)(11), or (b)(12), the Department considers those circumstances described in § 1003.106(b). Where there are aggravating circumstances with respect to such determinations, the person should be excluded.

(c) The guidelines set forth in this section are not binding. Nothing in this section limits the authority of the Department to settle any issue or case as provided by § 1003.126.

10. Section 1003.109 would be amended by revising the introductory text of paragraph (a) to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes a penalty and, when applicable, assessment, or proposes to exclude a respondent from participation in a Federal health care program, as applicable, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent written notice of his or her intent to impose a penalty, assessment and exclusion, as applicable. The notice includes—

* * * * *

11. Section 1003.126 would be revised to read as follows:

§ 1003.216 Settlement.

The Inspector General has exclusive authority to settle any issues or case, without consent of the ALJ.

12. Section 1003.128 would be amended by revising paragraph (b) to read as follows:

§ 1003.128 Collection of penalty and assessment.

* * * * *

(b) A penalty or assessment imposed under this part may be compromised by the Inspector General, and may be recovered in a civil action brought in the United States district court for the district where the claim was presented, or where the respondent resides.

* * * * *

PART 1005—[AMENDED]

B. Part 1005 would be amended as follows:

1. The authority citation for part 1005 would continue to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

2. Section 1005.1 would be amended by adding, in alphabetical order; a definition for the term *Inspector General* to read as follows:

§ 1005.1 Definitions.

* * * * *

Inspector General (IG) means the Inspector General of the Department of Health and Human Services or his or her designees.

3. Section 1005.7 would be amended by revising paragraphs (e)(1) (e)(2) to read as follows:

§ 1005.7 Discovery.

* * * * *

(e)(1) When a request for production of documents has been received, within 15 days the party receiving that request will either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part will be specified. Upon receiving any objections, the party seeking production may then, within 15 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. (The party receiving a request for production may also file a motion for protective order any time prior to the date the production is due.)

(2) The ALJ may grant a motion for protective order or deny a motion for an order compelling discovery if the ALJ finds that the discovery sought—

(i) Is irrelevant;

(ii) Is unduly costly or burdensome;

(iii) Will unduly delay the proceeding; or

(iv) Seeks privileged information

* * * * *

4. Section 1005.9 would be amended by revising paragraph (b) to read as follows:

§ 1005.9 Subpoenas for attendance at hearing.

* * * * *

(b) A subpoena requiring the attendance of an individual in accordance with paragraph (a) of this section may also require the individual (whether or not the individual is a party) to produce evidence authorized under § 1005.7 at or prior to the hearing.

* * * * *

5. Section 1005.15 would be amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

§ 1005.15 The hearing and burden of proof.

* * * * *

(b) With regard to the burden of proof in civil money penalty cases under part 1003 of this chapter, in Peer Review Organization exclusion cases under part 1004 of this chapter, and in exclusion cases under §§ 1001.701, 1001.901 and 1001.951 of this chapter—

(1) The respondent or petitioner, as applicable, bears the burden of going forward and the burden of persuasion with respect to affirmative defenses and any mitigating circumstances; and

* * * * *

6. Section 1005.21 would be amended by revising paragraph (d) to read as follows:

§ 1005.21 Appeal to DAB.

* * * * *

(d) There is no right to appear personally before the DAB or to appeal to the DAB any interlocutory ruling by the ALJ, except on the timeliness of a filing of the hearing request.

* * * * *

PART 1006—[AMENDED]

C. Part 1006 would be amended as follows:

1. The authority citation for part 1006 would continue to read as follows:

Authority: 42 U.S.C. 405(d), 405(e), 1302 and 1320a–7a.

2. Section 1006.4 would be amended by republishing the introductory text of

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paragraph (b) and by revising paragraph (b)(2) to read as follows:

§ 1006.4 Procedures for investigational inquiries.

* * * * *

(b) Investigational inquiries are non-public investigatory proceedings. Attendance of non-witnesses is within the discretion of the OIG, except that—

* * * * *

(2) Representatives of the OIG are entitled to attend and ask questions.

* * * * *

Dated: August 21, 1997.

June Gibbs Brown,

Inspector General.

Approved: December 4, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 98–7506 Filed 3–24–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 304 and 307

RIN 0970–AB70

Computerized Support Enforcement Systems

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: These proposed regulations would implement provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), related to child support enforcement program automation. Under PRWORA, States must have in effect a statewide automated data processing and information retrieval system which by October 1, 1997, meets all the requirements of title IV–D of the Social Security Act enacted on or before the date of enactment of the Family Support Act of 1988, and by October 1, 2000, meets all the title IV–D requirements enacted under PRWORA. The law further provides that the October 1, 2000, deadline for systems enhancements will be delayed if HHS does not issue final regulations by August 22, 1998.

DATES: Consideration will be given to written comments received by May 11, 1998. We have reduced the standard 60-day comment period specified in E.O. 12866 to 45 days in recognition of the statutory deadline of August 22, 1998 for issuing final rules and the necessity of providing States with the required guidance as soon as practicable to facilitate their development or enhancement of systems.

ADDRESSES: Address comments to: Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington D.C. 20447. Attention: Norman L. Thompson, Associate Deputy Director for Automation and Special Projects, Office of Child Support Enforcement.

Comments will be available for public inspection Monday through Friday, 8 a.m. to 4:30 p.m. on the fourth floor of the Department's offices at the address mentioned above.

FOR FURTHER INFORMATION CONTACT: Betsy Matheson at (202) 401–7386.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These proposed regulations are published under the authority of several provisions of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Sections 454(16), 454(24), 454A and 455(a)(3)(A) of the Act (42 U.S.C. 654(16), (24), 654A, and 655(a)(3)(A)), contain new requirements for automated data processing and information retrieval systems to carry out the State's IV–D State plan. Other sections, such as section 453 of the Act (42 U.S.C. 653) specify data that the system must furnish or impose safeguarding and disclosure requirements that the system must meet.

These proposed regulations are also published under the general authority of section 1102 (42 U.S.C. 1302) of the Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the provisions for which she is responsible under the Act.

Background

Full and complete automation is pivotal to improving the performance of the nation's child support program. With a current national caseload of 20 million, caseworkers are dependent on enhanced technology and increased automation to keep up with the massive volume of information and transactions critical to future success in providing support to children.

While most States have sought some level of child support program automation since the inception of the program, it wasn't until enactment of the Family Support Act of 1988 (Pub. L. 100–485), that program automation became a title IV–D State plan requirement. The Family Support Act required that States have in operation by October 1, 1995, a certified statewide system. (This date was subsequently extended to October 1, 1997, under Pub. L. 104–35).

These systems are to be statewide, operational, comprehensive, integrated, efficient, and effective. They are required to provide for case initiation; interface with other systems to obtain information to locate parents; aid in paternity establishment efforts by tracking, monitoring, and reporting on State efforts; monitor compliance with support orders and initiate enforcement action; update and maintain case records; process payments and distribute support; meet reporting requirements and address security and privacy issues.

Under PRWORA, States must build on this comprehensive automated foundation to implement the programmatic enhancements the law included for strengthening child support enforcement, including new enforcement tools and a shift in child support distribution requirements to a family-first policy. By October 1, 2000, States must have in place an automated statewide system that meets all the requirements and performs all the functions specified in PRWORA. This requirement recognizes that case processing changes and Federal and State legislative enhancements to State IV–D programs have little impact without proper automated support. The October 1, 2000 date is a completion date for the entire system, however certain requirements and functions must be met prior to that date. We have included those statutory effective dates in the regulations.

Accordingly, this rule proposes to set forth in regulations the framework for automation that State systems must have in place by the October 1, 2000, deadline. Our approach in developing these proposed rules was to adhere as closely as possible to the statute. We believe this approach is essential to ensuring that the proposed rules are well received, allowing the final regulation to be issued by the statutory deadline of August 22, 1998. The State deadline for completing these systems enhancements is delayed by one day for each day, if any, that we miss the statutory deadline for regulating. We believe this would be an unconscionable position—PRWORA compliant systems are intended to have a substantial impact on States' ability to protect the support rights of children, and it is essential that these changes are made without delay.

In addition, we believe the statute provides a proper and straight-forward

functional framework to support ACF's certification standards. These standards are outlined in a document entitled, "Automated Systems for Child Support Enforcement: A Guide for States (the Guide)." Concurrent with publishing these rules and in partnership with State child support agencies, we are updating the Guide to reflect the changes made by PRWORA. In particular, we are focusing on ways to measure system standards that support program outcomes most effectively.

The draft Guide will be disseminated to States and other interested parties for comment through an Action Transmittal (AT). After reviewing the comments received, we will issue an AT with final systems functional requirements.

We have, however, proposed several changes in these regulations to strengthen the process for approving and monitoring State activity under Advanced Planning Documents (APDs) by codifying and building on several existing practices and authorities relevant to systems oversight in regulation. We believe this is necessary to ensure that child support systems meet the critical needs of the program as envisioned under the Family Support Act of 1988 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

As is current practice, once ACF determines, through a certification review, that a Computerized Support Enforcement System (CSES) meets these standards throughout the State, the CSES is certified by ACF. Certification may be granted in two stages. The first stage, level 1 certification, is granted when a State system meets all functional requirements in 45 CFR 307.10, as specified in the Guide, and is installed and operational in a pilot or multiple pilot location and; level 2 certification is granted when statewide installation of the functionally comprehensive system is complete and the system is operational.

PRWORA Automation Enhancements

As indicated above, the Family Support Act laid the foundation for comprehensive automated systems. The PRWORA requirements build on this base to ensure these systems support the new tools and other programmatic enhancements the law included to strengthen child support enforcement.

PRWORA added a new section 454A to the Act to house all functional requirements that State systems must meet, both from the Family Support Act and from PRWORA. Those emanating from PRWORA include:

- Functional requirements specified by the Secretary related to management of the program (454A(b))
- Calculation of performance indicators (454A(c))
- Information integrity and security requirements (454A(d))
- Development of a State case registry (454A(e))
- Expanded information comparisons and other disclosures of information (454A(f)), including to the Federal case registry of child support orders and the Federal Parent Locator Service (FPLS) and with other agencies in the State, agencies of other States and interstate information networks, as necessary and appropriate.
- Collection and distribution of support payments (454A(g)), including facilitating the State's centralized collection and disbursement unit and modifications to meet the revised distribution requirements.
- Expedited Administrative Procedures (454A(h))

Each of these is discussed in greater detail in the section of this preamble entitled, Proposed Regulatory Changes.

To assist States in meeting these mandates for enhancement to their statewide automated systems, Congress provided an additional amount of Federal funding available at the 80 percent rate for the planning, design, development, installation or enhancement of statewide, automated systems. Section 344(b)(2) of PRWORA places a cap on the Federal share of funding available at 80 percent enhanced Federal Financial participation. This 80 percent funding is available to meet the automation requirements of the Family Support Act as well as the new automation requirements of PRWORA. PRWORA also revised section 455(a)(3) of the Act to restore 90 percent Federal funding for completing Family Support Act systems on a limited basis.

Proposed Regulatory Changes

State Plan Requirements (Part 302)

To implement the statutory changes, we first propose to revise the regulations at 45 CFR 302.85, "Mandatory computerized support enforcement systems." Current 45 CFR 302.85(a) provides that if the State did not have in effect by October 13, 1988 a computerized support enforcement system that meets the requirements of § 307.10, the State must submit an Advanced Planning Document (APD) for such a system to the Secretary by October 1, 1991, and have an operational system in effect by October 1, 1995.

Section 454(24) of the Act, as amended by PRWORA, provides that the State must have in effect a computerized support enforcement system which by October 1, 1997 meets all IV–D requirements in effect as of the date of enactment (October 13, 1988) of the Family Support Act of 1988, including all IV–D requirements in PRWORA. In addition, the State must have a CSES which by October 1, 2000 meets all IV–D requirements in effect as of the date of enactment (August 22, 1996) of PRWORA, including all IV–D requirements in that Act.

Thus, the proposed § 302.85(a) of the regulations would reiterate the current statutory requirements for mandatory automated systems for support enforcement. Proposed § 302.85(a)(1) would include the requirement under existing paragraph (a) that the system be developed in accordance with §§ 307.5 and 307.10 of the regulations and the OCSE guidelines entitled "Automated Systems for Child Support Enforcement: A Guide for States." In addition, the proposed § 302.85(a)(2) would require that, by October 1, 2000, a system meeting PRWORA requirements be developed in accordance with §§ 307.5 and 307.11 of the regulations and the OCSE guidelines referenced above.

Change in Federal Financial Participation (Part 304)

To make part 304 regulations consistent with the statute, we propose to amend 45 CFR 304.20, "Availability and rate of Federal financial participation," at paragraph (c) to provide that FFP at the 90 percent rate for the planning, design, development, installation and enhancement of computerized support enforcement systems that meet the requirement of § 307.30(a) is only available until September 30, 1997. (See the discussion below regarding revised § 307.30(a).)

Computerized Support Enforcement Systems (Part 307)

We propose to amend 45 CFR part 307, Computerized support enforcement systems, throughout to conform part 307 to the changes required by sections 454, 454A, and 455(a) of the Act, as amended by PRWORA and the proposed revisions to 45 CFR 302.85, which were discussed earlier.

We propose to revise the title of § 307.10 to read "Functional requirements for computerized support enforcement systems in operation by October 1, 1997", and add titles for two new sections, "§ 307.11 Functional requirements for computerized support enforcement systems in operation by October 1, 2000" and "§ 307.13 Security

and Confidentiality of computerized support enforcement systems in operation by October 1, 2000", to reflect these changes.

We propose to revise § 307.0, "Scope of this part", to reflect the new requirements of sections 454, 454A, 455(a) of the Act, as amended, and section 344(a)(3) of PRWORA regarding statewide automated CSESs. This would be accomplished by referencing the new statutory language in the introductory section and by adding a new paragraph (c) which would refer to the security and confidentiality requirements for CSESs. Accordingly, current paragraphs (c) through (h) would be redesignated as paragraphs (d) through (i).

In § 307.1, "Definitions", we propose to add the definition of "Business day" as defined in the new section 454A(g)(2) of the Act. Accordingly, current paragraphs (b) through (j) would be redesignated as paragraphs (c) through (k). In addition, we propose in the redesignated paragraphs (d) and (g) to replace the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" to reflect the regulatory changes proposed below.

Mandatory Computerized Support Enforcement Systems

We propose to amend 45 CFR 307.5, Mandatory computerized support enforcement systems, as follows:

Currently, paragraphs (a) and (b) are outdated and reflect deadlines mandated by the Family Support Act on APD submittal requirements and timeframes. To reflect the amended section 454(24) of the Act, we propose to eliminate paragraphs (a) and (b) in their entirety, to replace paragraph (a) and to renumber paragraphs (c) through (h) as (b) through (g).

We propose adding a paragraph (a)(1) to provide that each State must have in effect by October 1, 1997, an operational computerized support enforcement system which meets the requirements in 45 CFR 302.85(a)(1) related to the Family Support Act of 1988 requirements and to provide that OCSE will review the systems to certify that these requirements are met. Under paragraph (a)(2), we propose to require each State to have in effect, by October 1, 2000, an operational computerized support enforcement system which meets the requirements in 45 CFR 302.85(a)(2) related to PRWORA requirements and to provide that OCSE will review the systems to certify that these requirements are met.

In addition, under paragraph (d), the reference to "§ 307.10" would be replaced by "§§ 307.10 or 307.11."

Functional Requirements for Computerized Support Enforcement Systems

To reflect the statutory changes, the title of § 307.10 "Functional requirements for computerized support enforcement systems." would be revised to read "Functional requirements for computerized support enforcement systems in operation by October 1, 1997." to better reflect the content of the regulation. In the introductory language, the citation "§ 302.85(a)" would be replaced by the citation "§ 302.85(a)(1)" to reflect proposed changes made earlier in the regulations. The citation "AFDC" would be replaced by the citation "TANF" (Temporary Assistance for Needy Families) in paragraph (b)(10). Paragraph (b)(14) would be deleted because the requirement for electronic data exchange with the title IV–F program (Job Opportunities and Basic Skills Training Program) is no longer operative since under PRWORA States had to eliminate their IV–F programs by July 1, 1997. Current paragraphs (b)(15) and (16) would be redesignated as paragraphs (b)(14) and (15).

We propose to add a new regulation at 45 CFR 307.11, "Functional requirements for computerized support enforcement systems in operation by October 1, 2000," which reiterates the new statutory requirements in sections 454(16) and 454A of the Act, as discussed below.

The introductory language of proposed § 307.11 would specify that each State's computerized support enforcement system established and operated under the title IV–D State plan at § 302.85(a)(2) must meet the requirements in this regulation. As proposed in paragraph (a), the CSES in operation by October 1, 2000 must be planned, designed, developed, installed or enhanced and operated in accordance with an initial and annually updated APD approved under § 307.15 of the regulations. If the State elects to enhance its existing CSES to meet PRWORA requirements, it has the option of submitting either a separate APD or combining the Family Support Act and PRWORA requirements in one APD update. If the State elects to develop a new CSES, a separate implementation APD must be submitted.

We propose in paragraph (b) that the CSES control, account for, and monitor all the factors in the support collection and paternity determination process under the State plan which, at a minimum, include the factors in the regulation. Under the proposed paragraph (b)(1), the system must control, account for, and monitor the activities in § 307.10(b) of the regulations which a CSES in operation by October 1, 1997, must meet, except those activities in paragraphs (b)(3), (8), and (11) of § 307.10. These reporting, financial accountability, and security activities are replaced by similar or expanded provisions discussed later in this preamble that reflect statutory changes from PRWORA.

We propose in paragraph (b)(2) to describe the tasks that the computerized support enforcement system must have the capacity to perform with the frequency and in the manner required under or by the regulations that implement title IV–D of the Act. Paragraph (b)(2)(i) requires the CSES to perform the functions discussed below and any other functions the Secretary of HHS may specify related to the management of the State IV–D program. We are not proposing to add additional management-related functional requirements other than those currently specified or provided in the statute.

Under the proposed paragraph (b)(2)(i)(A), the system must control and account for the use of Federal, State, and local funds in carrying out the State's IV–D program either directly or through an interface with State financial management and expenditure information systems. Some States currently meet this requirement by maintaining and accessing IV–D cost data on a State financial management and expenditure system. Since the statute does not specifically address meeting this requirement through an interface with a State financial management and expenditure information system, we propose to continue to allow the States to meet the financial accountability requirements through an interface.

Paragraph (b)(2)(i)(B) would require the system to maintain the data necessary to meet Federal reporting requirements for the IV–D program on a timely basis as prescribed by the Office of Child Support Enforcement. This proposal is similar to the functional requirements at § 307.10(b)(3) that a system must meet by October 1, 1997.

Paragraph (b)(2)(ii)(A), as proposed, requires the CSES to enable the Secretary of HHS to determine State incentive payments and penalty adjustments required by sections 452(g) and 458 of the Act through the use of automated processes to: (1) Maintain the necessary data for paternity establishment and child support enforcement activities in the State, and (2) calculate the paternity establishment percentage for the State for each fiscal year. Under this requirement, the

system must maintain the necessary data and calculate for each fiscal year the State's paternity establishment percentage under section 452(g) of the Act. The system must also maintain the data necessary to determine State incentive payments under section 458 of the Act. In addition, under paragraph (b)(1), the State will continue to be required to compute and distribute incentive payments to political subdivisions in accordance with § 307.10(b)(6) of the regulations.

Proposed paragraph (b)(2)(ii)(B) would require the system to enable the Secretary to determine State incentive payments and penalty adjustments required by sections 452(g) and 458 of the Act by having in place system controls to ensure: (1) The completeness, and reliability of, and ready access to, the data on State performance for paternity establishment and child support enforcement activities in the State, and (2) the accuracy of the paternity establishment percentage for the State for each fiscal year. Under this provision, the system controls apply to data related to the calculation of the State's paternity establishment percentage, and the calculation of incentive payments. Data regarding the paternity establishment percentage and incentive payments is reported to the Federal government in accordance with instructions issued by OCSE.

Proposed paragraph (b)(2)(iii) requires the system to have controls (e.g., passwords, or blocking of fields) to ensure strict adherence to the systems security policies described in § 307.13(a) of the regulations. Under the proposed § 307.13(a) discussed later in this preamble, the State IV–D agency must have written policies concerning access to data by IV–D agency personnel, and sharing of data with other persons.

Under the proposed paragraph (b)(3), the system must control, account for, and monitor the activities described in PRWORA not otherwise addressed in this part. As indicated previously, we plan to address the detailed systems functional requirements related to title IV–D program requirements modified or added by PRWORA in the Guide which we are in the process of revising and reissuing to the States.

Proposed paragraph (c) would require that the system, to the extent feasible, assist and facilitate the collection and disbursement of support payments through the State disbursement unit, operated under section 454B of the Act. Under paragraph (c)(1), the system must transmit orders and notices to employers and other debtors for the withholding of income: (1) Within 2 business days after the receipt of notice of income, and the income source subject to withholding from the court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, and (2) using uniform formats prescribed by the Secretary. On January 27, 1998, OCSE issued a model wage withholding form (Approval 0970–0154) for use in implementing wage withholding (OCSE Action Transmittal 98–03).

The proposed paragraph (c)(2) would require the system to monitor accounts, on an ongoing basis, to identify promptly failures to make support payments in a timely manner. Paragraph (c)(3), as proposed, requires the system to automatically use enforcement procedures, including enforcement procedures under section 466(c) of the Act, if support payments are not made in a timely manner. These procedures include Federal and State income tax refund offset, intercepting unemployment compensation insurance benefits, intercepting or seizing other benefits through State or local governments, intercepting or seizing judgments, settlements, or lottery winnings, attaching and seizing assets of the obligor held in financial institutions, attaching public and private retirement funds, and imposing liens in accordance with section 466(a)(4) of the Act.

Proposed paragraph (d) requires that, to the maximum extent feasible, the system must be used to implement the expedited administrative procedures required by section 466(c) of the Act. These procedures include: ordering genetic testing for the purpose of establishing paternity under section 466(a)(5) of the Act; issuing a subpoena of financial or other information to establish, modify, or enforce a support order; requesting information from an employer regarding employment, compensation, and benefits of an employee or contractor; accessing records maintained in automated data bases such as records maintained by other State and local government agencies described in section 466(c)(1)(D) of the Act and certain records maintained by private entities regarding custodial and non-custodial parents described in section 466(c)(1)(D) of the Act; increasing the amount of monthly support payments to include an amount for support arrears; and changing the payee to the appropriate government entity when support has been assigned to the State, or required to be paid through the State disbursement unit.

The proposed paragraph (e) requires the State to establish a State case registry (SCR) which must be a component of the computerized child support enforcement system. This registry is essentially a directory of electronic case records or files. Proposed paragraph (e)(1) contains definitions which relate to terms used in this section.

Proposed paragraph (e)(2) describes the records which the registry must contain. Under the proposed paragraph (e)(2)(i), the registry must contain a record of every case receiving child support enforcement services under an approved State plan. Under the proposed paragraph (e)(2)(ii), the registry must contain a record of every support order established or modified in the State on or after October 1, 1998. Under the proposed paragraph (e)(3) each record must include standardized data elements for each participant. These data elements include the name(s), social security number(s), date of birth, case identification number(s), data elements required under paragraph (f)(1) of this section for the operation of the Federal case registry (FCR) and any other data elements required by the Secretary and set forth in instructions issued by the Office.

Under the proposed paragraph (e)(4), each record must include payment data for every case receiving services under the IV–D State plan that has a support order in effect. Under this proposed provision, the payment data must include the following information: (1) Monthly (or other frequency) support owed under the order, (2) other amounts due or overdue under the order including arrearages, interest or late payment penalties and fees, (3) any amount described in paragraph (e)(4)(i) and (ii) of this section that has been collected, (4) the distribution of such collected amounts, (5) the birth date and, beginning no later than October 1, 1999, the name and social security number of any child for whom the order requires the provision of support, and (6) the amount of any lien imposed under the order in accordance with section 466(a)(4) of the Act.

Under paragraph (e)(5), the State using the CSES must establish and update, maintain, and regularly monitor case records in the State case registry for cases receiving services under the State plan. We have not defined "regularly." We invite public comment as to whether timeframes or other standards should be set for the monitoring and updating of records and if so what timeframes and standards would be applied. To ensure that information on an established IV–D case is up to date, the State must regularly update the record to make changes to the status of a case, the status of and information about the

participants of a case, and the other data contained in the case record.

Under the proposal, this would include the following: (1) Information on administrative actions and administrative and judicial proceedings and orders related to paternity and support, (2) information obtained from comparison with Federal, State or local sources of information, (3) information on support collections and distributions, and (4) any other relevant information.

Under the proposed paragraph (e)(6), the State is authorized to meet the requirement in paragraph (e)(2)(ii) of this section which would require the State case registry to have a record of every support order established or modified in the State on or after October 1, 1998, by linking local case registries of support orders through an automated information network. However, linked local case registries established in the State's computerized support enforcement system must meet all other requirements in paragraph (e) of this section.

Under proposed paragraph (f), the State must use the computerized support enforcement system to extract information, at such times, and in such standardized format or formats, as required by the Secretary, for the purposes of sharing and comparing information and receiving information from other data bases and information comparison services to obtain or provide information necessary to enable the State, other States, the Office of Child Support Enforcement or other Federal agencies to carry out the requirements of the Child Support Enforcement program. The use and disclosure of certain data is subject to the requirements of section 6103 of the Internal Revenue Code and the system must meet the security and safeguarding requirements for such data specified by the Internal Revenue Service. (See IRS Publication 1075 entitled "The Information Security Guidelines for Federal, State and Local Agencies.") The system must also comply with safeguarding and disclosure requirements specified in the Act. Timeframes not specified in Federal law regarding the transmission of information will be developed in consultation with the States and appropriate Federal and State workgroup(s). We invite public comment on whether these matters should be addressed in the regulation and if so, what timeframes should be imposed. The comparisons and sharing of information include the activities specified below.

Under proposed paragraph (f)(1), effective October 1, 1998, the State must furnish information to the Federal case registry, including updates as necessary and notices of expiration of support orders, except that States have until October 1, 1999, to furnish child data. We invite public comment as to whether timeframes for the submission of data on new cases or orders and for the submission of updated information should be specified and if so, what are appropriate standards.

Section 453(h)(2) and (3) of the Act require the inclusion of child data in the FCR and provides the Secretary of Treasury with access to FCR data for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on the support or residence of children, such as the Earned Income Tax Program. Under the proposal, the State must provide to the FCR the following data elements on participants: (1) State Federal Information Processing Standard (FIPS) and optionally, county code; (2) State case identification number; (3) State member identification number; (4) case type (IV–D, non-IV–D); (5) social security number and any necessary alternative social security numbers; (6) name, including first, middle, last name and any necessary alternative names; (7) sex (optional); (8) date of birth; (9) participant (custodial party, non-custodial parent, putative father, child); (10) family violence indicator (domestic violence or child abuse); (11) indication of an order; (12) locate request type (optional); (13) locate source (optional), and (14) any other information as the Secretary may require as set forth in instructions issued by the Office.

These data elements were developed in consultation with a workgroup comprising individuals from the State and the Federal level. The primary reason that only these data elements were selected for inclusion in the FCR is that they are static in nature, thereby requiring less update and maintenance. The intent of the FCR is to serve as a "pointer" system to quickly notify States of other States that have an interest and/or information on a participant. State automated child support systems will have more detailed data elements on participants. Upon receiving information from the FCR regarding participants in another State or States, States will be expected to use the Child Support Enforcement Network (CSENet) to ascertain any additional information on a participant that the State may need.

The information we are proposing to require under this paragraph implements section 453(h) requirements for establishment and maintenance of an automated Federal Case Registry of Support Orders.

With respect to domestic violence information identified in item 10 above and addressed under paragraph (f)(1)(x) of this proposal, section 453(b)(2) of the Act states that no information in the Federal Parent Locator Service shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent. Unless otherwise specified in section 453(b)(2), OCSE will not disclose any information on a participant in a IV–D case or non-IV–D support order to any person if the State has included a "family violence" indicator on such participant.

Under proposed paragraph (f)(2), the CSES must request and exchange information with the Federal parent locator service for the purposes specified in section 453 of the Act. As stipulated in statute, the Secretary will not disclose information received under section 453 of the Act when to do so would contravene the national policy or security interests of the United States or the confidentiality of census data or as indicated above if the Secretary has received notice of reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent.

Under proposed paragraph (f)(3), the CSES must exchange information with State agencies, both within and outside of the State, administering programs under title IV–A and title XIX of the Act, as necessary to perform State agency responsibilities under the Child Support Enforcement program.

Under the proposed paragraph (f)(4), the CSES must exchange information with other agencies of the State, and agencies of other States, and interstate information networks, as necessary and appropriate, to assist the State and other States in carrying out the Child Support Enforcement program.

Security and Confidentiality for Computerized Support Enforcement Systems

With the mandates of the Family Support Act of 1988, and most recently of PRWORA, State public assistance agencies have been given additional tools to locate individuals involved in child support cases and visitation and custody orders and their assets. These tools are used in conjunction with or operate through the State's automated

data processing (ADP) system. With the use of these Automated Data Processing (ADP) systems, and the data they maintain and manipulate, come inevitable concerns about the security and privacy of the sensitive and confidential personal, demographic, and financial information resident in these systems. In order to protect this information, our regulations require that States must have policies and procedures in place to ensure the integrity and validity of their automated data processing systems.

Under current rules, States must conduct reviews of automated systems to ensure their security and assess vulnerability, and maintain reports of those reviews for HHS to examine should circumstances warrant. Further, Federal OCSE certification requirements for automated child support systems likewise have specific requirements and objectives relative to physical and operational security, and of the privacy of the data those systems maintain. In addition, numerous Federal and State agencies that share data with States' child support agencies also impose varying degrees of regulatory restriction on the availability, privacy, security and use of the data exchanged. A primary example is the restrictions imposed by the U.S. Department of Treasury's Internal Revenue Service on the income tax refund and 1099 program information provided to States' child support agencies.

Language in PRWORA further strengthens these security requirements, clearly addressing the concerns all Americans have for the privacy of personal information while recognizing the need for effective program administration.

We are proposing to reiterate statutory requirements in section 454A(d) of the Act addressing security and privacy issues by adding new regulations at 45 CFR 307.13, "Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997."

Proposed paragraph (a) would require the State IV–D agency to have safeguards on the integrity, accuracy, completeness of, access to, and use of data in the CSES, including written policies concerning access to data by IV–D agency personnel and sharing of data with other persons. Under proposed paragraph (a)(1), these policies must address access to and use of data to the extent necessary to carry out the IV–D program. This includes the access to and use of data by any individual involved in the IV–D program, including personnel providing IV–D services under a cooperative or purchase-of-service agreement or other arrangement.

Under the proposed paragraph (a)(2), these policies must specify the data that may be used for particular IV–D program purposes, and the personnel permitted access to such data. This provision applies to all personnel who have access to data on the CSES.

Under the proposed paragraph (a)(3) these policies must specify the non-IV–D purposes for which and the non-IV–D persons to whom data may be disclosed.

Paragraph (b), as proposed, would require the State IV–D agency to monitor routine access and use of the computerized support enforcement system through methods such as audit trails and feedback mechanisms to guard against and identify unauthorized access or use. States have flexibility in meeting this requirement, so long as the IV–D agency monitors routine access and use of the system.

Proposed paragraph (c) would require the State IV–D agency to have procedures to ensure that all personnel, including State and local staff and contractors, who may have access to or be required to use confidential program data in the CSES are: (1) Informed of applicable requirements and penalties, including those in section 6103 of the Internal Revenue Service Code, and (2) adequately trained in security procedures. Under this requirement, State procedures must address Federal and State safeguarding requirements, including the safeguarding of information regulations at 45 CFR 303.21 and 303.70(d)(2), and the security and safeguarding requirements for data obtained from the Internal Revenue Service. (See IRS publication 1075, entitled "Tax Information Security Guidelines for Federal, State and Local Agencies." This publication was sent to the IV–D agency in each State by OCSE.)

Finally, paragraph (d) would require the IV–D agency to have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information. The intent of Congress in PRWORA is clear with regard to systems and data security: we must ensure that adequate safeguards are in place to protect the privacy of those we serve. In drafting these regulations, we have attempted to err on the side of comprehensiveness when addressing the needs of security in our automated data processing systems, but to do so without injecting a greater Federal presence in the operation of States' child support enforcement systems. To that end, we are seeking comments from all sectors of the child support program, not just those concerned with the operation of States' automated data processing systems. Further, we are seeking comment in all areas of computer systems security and data privacy relative to these proposed regulations, be it the safety and security of data center operations and equipment, personnel security, data availability and access within the program, and the control of data gathered from and shared with outside agencies. We are also interested in whether these proposed regulations should be more prescriptive in all or part, relative to security and privacy, or whether there are other venues to ensure and/or strengthen data and systems security, such as through formal written guidance manuals, enhanced system certification requirements, action transmittals, training, or a more visible Federal presence and oversight in this area.

Approval of Advance Planning Documents

The regulations at 45 CFR 307.15 speak to certain APD requirements specific to CSE automated system development and we are proposing in these rules to make conforming amendments to address the changes made by PRWORA and as indicated previously, to codify certain existing requirements and authorities related to APD and APDU oversight. Specifically we are proposing to revise 45 CFR 307.15, "Approval of advance planning documents for computerized support enforcement systems," to reflect new functional requirements the State must meet by October 1, 2000.

Currently, paragraph (b)(2) requires that the APD specify how the objectives of the system will be carried out throughout the State, including a projection of how the proposed single State system will meet the functional requirements and encompass all political subdivisions of the State by October 1, 1997.

Federal law now requires each State to have in operation by October 1, 1997, a statewide CSES that meets specified functional requirements, and a statewide system that also meets additional functional requirements by October 1, 2000. Therefore, the proposed paragraph (b)(2) would require that the APD specify how the objectives of a CSES that meets the functional requirements in § 307.10 of the regulations, or the functional requirements in § 307.11 of the regulations, will be carried out throughout the State including a projection of how the proposed system

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will meet the functional requirements and encompass all political subdivisions of the State by October 1, 1997, or also meet the additional functional requirements and encompass all political subdivisions of the State by October 1, 2000.

Under this proposal, the State may submit a separate APD for each group of functional requirements. The State may also update its current APD for the development and implementation of a system to meet the October 1, 1997, requirements in order to address the functional requirements that must be met by October 1, 2000. We also propose to replace the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" where it appears in paragraphs (a), (b), and (c).

A number of States experienced difficulty in developing systems that complied with Family Support Act requirements and, as a consequence, failed to meet the October 1, 1997, deadline for having such systems in place. As a result, OCSE has reviewed the Federal and State experience over the past several years and based on that review, we are putting into place administratively a number of improvements in the Federal and State oversight process. In addition, we are proposing several changes to these regulations that will strengthen the oversight and management of CSE systems development projects.

Continuing a trend begun last year, we will be more aggressively monitoring State CSE development efforts. We intend to conduct on-site technical assistance visits and reviews in all States this year, as we did last year. States whose system development efforts are lagging will receive multiple visits. We are in the process of procuring the services of one or more contractors to augment our ability to monitor States progress and provide project assistance.

In addition, we will be more closely reviewing State APD and APDU submissions. One area of focus will be on the resources available to: (1) Monitor the progress of systems development efforts, (2) assess deliverables, and (3) take corrective action if the project goes astray. Using our current regulatory authority, we will not approve a State's APD unless we are convinced that adequate resources and a well conceived project management approach are available for these purposes, as well as for the systems design and implementation processes.

Most States already retain Quality Assurance assistance, using either contractors or State staff. We will not approve a State's APD unless it evidences adequate quality assurance services. These services may be procured from the private sector, or may be provided by State staff, e.g., a State's information technology office, State auditor, State data center, etc. States with a history of troubled systems development efforts will have to rigorously demonstrate that such resources are available to the project and are integrated into the project's management. We will require that all reports prepared by a State's quality assurance provider be submitted directly to OCSE at the same time they are submitted to the State's project management.

Further, we intend to more systematically determine and monitor key milestones in States' CSE systems development efforts, and to more closely tie project funding to those milestones. Systems should be implemented in phased, successive modules as narrow in scope and brief in duration as practicable, each of which serves a specific part of the overall child support mission and delivers a measurable benefit independent of future modules. To that end, we are proposing to add language to § 307.15(b)(9) to clarify that the APD must contain an estimated schedule of life-cycle milestones and project deliverables (modules) related to the description of estimated expenditures by category. We would also include in the proposed regulation a list of milestones which must be addressed as provided in the "DHHS State Systems Guide" (September 1996). These life cycle milestones should include, where applicable, developing the general and/or detailed system designs, preparing solicitations and awarding contracts for contractor support services, hardware and software, developing a conversion plan, test management plan, installation plan, facilities management plan, training plan, user's manuals, and security and contingency plans; converting and testing data, developing, modifying or converting software, testing software, training staff, installing, testing and accepting systems. Specifically, we are proposing that the APD must include milestones relative to the size, complexity and cost of the project and at a minimum address: Requirements analysis, program design, procurement and project management.

We will treat seriously States' failure to meet critical milestones and deliverables or to report promptly and fully on their progress toward meeting those milestones. We will approach these problems in several ways. States shall reduce risk by using, when possible, fully-tested pilots, simulations or prototypes that accurately model the full-scale system; establish clear measures and accountability for project progress, and secure substantial worker involvement and buy-in throughout the project.

With respect to funding, we will generally provide funding under an approved APD only for the most immediate milestones and funding related to achievement of later milestones will be contingent upon the successful completion of antecedent milestones. For States with proven track records in CSE systems development, we will continue our practice of providing funding approval on an annual basis. Since current regulations provide sufficient authority to limit funding in this way, we are not proposing any additional regulatory changes but rather reaffirming in this preamble management practices which we will follow under existing authority.

In addition, we are proposing to revise § 307.15(b)(10) to expand the requirements for an implementation plan and backup procedures. This proposed language would require certain States to obtain independent validation and verification services (IV&V). These States would include those: (1) That do not have in place a statewide automated child support enforcement system that meets the requirements of the FSA of 1988; (2) States which fail to meet a critical milestone, as identified in their APDs; (3) States which fail to timely and completely submit APD updates; (4) States whose APD indicates the need for a total system redesign; (5) States developing systems under waivers pursuant to section 452(d)(3) of the Social Security Act or, (6) States whose system development efforts we determine are at risk of failure, significant delay, or significant cost overrun.

With respect to this last item, we would point out that Year 2000 systems compliance is critical to State child support enforcement program automation efforts. Accordingly, the requirement above would apply to States which are not Year 2000 compliant and which do not have an existing assessment and monitoring mechanism in place. We would consider any such state at serious risk of systems failure.

OCSE will carefully review States' system development efforts, using States' APD and APDU submissions, other documentation, on-site reviews and monitoring, etc., relating to States' efforts to meet PRWORA requirements. Based on this review, OCSE may

determine that a State must obtain Independent Validation and Verification (IV&V) services and will so require as a condition of its approval of the State's APD and associated funding or contract-related documents. OCSE is in the process of hiring an Independent Validation and Verification (IV&V) contractor to assist in making this determination.

Independent validation and verification efforts must be conducted by an entity that is independent from the State. We would only provide very limited exceptions to this requirement based on a State's request. For example, we would consider an exception in a situation where a State has an existing IV&V provider in place which is independent of the child support agency (or other entity responsible for systems development), which meets all criteria set forth in these rule and where the State's systems development efforts are on track as a result.

The independent validation and verification provider must:

- Develop a project workplan. The plan must be provided directly to OCSE at the same time it is given to the State.
- Review and make recommendations on both the management of the project, both State and vendor, and the technical aspects of the project. The results of this analysis must be provided directly to OCSE at the same time it is given to the State.
- Consult with all stakeholders and assess the user involvement and buy-in regarding system functionality and the system's ability to meet program needs.
- Conduct an analysis of past project performance (schedule, budget) sufficient to identify and make recommendations for improvement.
- Provide a risk management assessment and capacity planning services.
- Develop performance metrics which allow tracking of project completion against milestones set by the State.

The RFP and contract for selecting the IV&V provider must be submitted to OCSE for prior approval and must include the experience and skills of the key personnel proposed for the IV&V analysis. In addition, the contract must specify by name the key personnel who actually will work on the project.

ACF recognizes that many States already have obtained IV&V services. OCSE will review those arrangements to determine if they meet the criteria specified above.

The requirement that a State obtain an IV&V provider if it significantly misses one or more milestones in their APD is intended to assist the State in obtaining an independent assessment of their system development project. The IV&V provider will make an independent assessment and recommendations for addressing the systemic problems that resulted in the missed milestones before the situation reaches the point where suspension of the State's APD and associated Federal funding approval is necessary. Any reports prepared by an IV&V provider must be submitted to OCSE at the same time they are submitted to the State's project manager.

In addition, if a State fails to meet milestones in its APD, OCSE may fully or partially suspend the APD and associated funding. OCSE currently has authority under 45 CFR 307.40 to suspend a State's APD if "the system ceases to comply substantially with the criteria, requirements, and other provision of the APD * * *" This action may include suspension of future systems efforts under the APD until satisfactory corrective action is taken. In such cases, funding for current efforts, i.e., those not affected by the suspension, would continue to be available, although OCSE would closely monitor such expenditures. In more serious cases, suspension would involve cessation of all Federal funds for the project until such time as the State completed corrective action.

We invite comments on this approach as well as suggestions for alternative actions for addressing missed milestones.

Related to this discussion, the Department has recently been discussing with our partners, including State staff, representatives of the corporate community, and other Federal agencies, the need to re-examine the processes associated with development of State systems. Many issues and concerns have been raised in these discussions, including the contracting process and risk sharing among the partners.

There is broad consensus among the partners that a re-examination of the processes associated with development of State systems is necessary. DHHS is committed to moving forward with this process with the goal of implementing changes that will facilitate and improve State system development efforts. We would expect that this process would build upon a recent effort, termed the "Information Technology Partnership," which resulted in changes in policies regarding system transfers, depreciation and expensing, and increases in the thresholds for prior Federal approval of certain APDs and contracts.

Review and Certification of Mandatory Automated Systems

We are proposing to revise 45 CFR 307.25, "Review and certification of computerized support enforcement systems," by replacing the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" in the introductory language to reflect other changes made in this document.

FFP Availability

We are proposing to revise § 307.30, "Federal financial participation at the 90 percent rate for computerized support enforcement systems", to reflect changes made to section 455(a)(3) of the Act by section 344(b)(1) of PRWORA regarding the limited extension of 90 percent Federal financial participation.

Currently, paragraph (a) of the regulation provides that, until September 30, 1995, Federal financial participation was available at the 90 percent rate in expenditures for the planning, design, development, installation or enhancement of a computerized support enforcement system as described in §§ 307.5 and 307.10, if specific conditions are met. Federal law extends the availability of FFP at the 90 percent rate until September 30, 1997, for such activities included in an approved APD or APDU submitted on or before September 30, 1995.

Therefore, proposed paragraph (a) would specify that financial participation is available at the 90 percent rate for expenditures made during Federal fiscal years 1996 and 1997 for the planning, design, development, installation or enhancement of a CSES as described in §§ 307.5 and 307.10, but limited to the amount in an APD or APDU submitted on or before September 30, 1995, and approved by OCSE.

Currently, paragraph (b) provides that Federal funding at the 90 percent rate is available in expenditures for the rental or purchase of hardware and proprietary operating/vendor software during the planning, design, development, installation, enhancement or operation of a CSES described in §§ 307.5 and 307.10.

To reflect the statutory changes discussed earlier, paragraph (b)(1), as proposed, would provide Federal funding at the 90 percent rate until September 30, 1997, on a limited basis in accordance with paragraph (a) of this section for such expenditures.

Similarly, under proposed paragraph (b)(2), FFP is available at the 90 percent rate until September 30, 1997, for expenditures for the rental or purchase

of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation or enhancement of a computerized support enforcement system in accordance with the limitations in paragraph (a) of this section, and the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States." FFP at the 90 percent rate remains unavailable for proprietary applications software developed specifically for a CSES. (See OCSE–AT–96–10 dated December 23, 1996 regarding the procedures for requesting and claiming 90 percent Federal funding.)

ACF has issued proposed regulations at 63 FR 10173, on March 2, 1998, to implement the provisions in section 455(a)(3)(B) of the Act, regarding the availability and allocation of Federal funding at the 80 percent rate for Statewide systems.

With respect to regular funding, we are proposing to amend 45 CFR 307.35, "Federal financial participation at the applicable matching rate for computerized support enforcement systems", by replacing the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" in paragraph (a) to reflect other changes made in this document.

Suspension of APD Approval

Similar to the above, we are proposing to amend 45 CFR 307.40, "Suspension of approval of advance planning document for computerized support enforcement systems", to make a conforming change to replace the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" in paragraph (a) to reflect other changes made in this document.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. The proposed changes in this rule, including IV–D State plan amendments, new functional requirements for CSESs, and limited extension of 90 percent Federal funding, reiterate the language in the statute, and do not add any non-statutory requirements.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. Interested parties may comment to OMB on these recordkeeping requirements as described below. This NPRM contains information collection requirements in §§ 302.85(a)(1) and (2), 307.11 (e) and (f), 307.13(a) and (c), and 307.15(b)(2) which the Department has submitted to OMB for its review.

More specifically, §§ 302.85(a)(1) and (2) include IV–D State plan amendments; §§ 307.11(e) and (f) include procedures for establishing a State Case Registry (SCR) and for providing information to the Federal Case Registry (FCR), § 307.13(a) includes written policies concerning access to data by IV–D agency personnel and sharing of data with other persons to carry out IV–D program activities, § 307.13(c) includes procedures that all personnel with access to or use of confidential data in the CSES be informed of applicable requirements and penalties, and receive training in security procedures, and § 307.15 describes several requirements for an advance planning document for a Statewide computerized support enforcement system.

The respondents to the information collection requirements in this rule are the State child support enforcement agencies of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. The respondents also include the courts that handle family, juvenile, and/or domestic relations cases within the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. The Department requires this collection of information: (1) To determine compliance with the requirements for a Statewide computerized support enforcement system; (2) to determine State compliance with statutory requirements regarding informing IV–D personnel of integrity and security requirements for data maintained in the CSES; and (3) for States to make funding requests through advance planning documents, and APD updates.

These information collection requirements will impose the estimated total annual burden on the States described in the table below.

Information collection	Number of respondents	Responses per respondent	Average burden per response	Total annual burden
302.85(a) (1) and (2)	27	1	.5	13.5
307.11(f)(1)	54		114.17	6,165
307.11(f)(1)	54	1	46.27	2,499
307.11(f)(1)	54	162,963	.083	730,400
307.11(f)(1)	54	52	1.41	3,959
307.11(e)(2)(ii)	54	25,200	.046	62,597
307.11(e)(1)(ii)	3,045	447	.029	39,472
307.13 (a) and (c)	27	1	16.7	451
307.15 (APD)	9.33	1	240	2,239
307.15 (APDU)	62.33	1	60	3,740
Total				851,535.5

The Administration for Children and Families will consider comments by the public on the proposed information collection in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed

collection of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collection of information on those who have to respond, including the use of appropriate automated, electronic, mechanical, or other technology to permit electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

List of Subjects

45 CFR Part 302

Child support, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 304

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 307

Child support, Grant programs—social programs, Computer technology, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.563, Child Support Enforcement Program.)

Dated: March 6, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: March 17, 1998.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR parts 302, 304 and 307 are proposed to be amended as set forth below.

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

§ 302.85 [Amended]

2. Section 302.85 is amended by revising paragraph (a) to read as follows:

* * * * *

(a) *General.* The State plan shall provide that the State will have in effect a computerized support enforcement system:

(1) By October 1, 1997, which meets all the requirements of title IV–D of the Act which were enacted on or before the date of enactment of the Family Support Act of 1988 in accordance with § 307.5 and § 307.10 of this chapter and the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States." This guide is available from the Child Support Information Systems Division, Office of State Systems, ACF, 370 L'Enfant Promenade, SW., Washington, DC 20447; and

(2) By October 1, 2000, which meets all the requirements of title IV–D of the Act enacted on or before the date of enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in accordance with § 307.5 and § 307.11 of this chapter and the OCSE guideline referenced in paragraph (a)(1) of this section.

* * * * *

PART 304—FEDERAL FINANCIAL PARTICIPATION

1. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 304.20 [Amended]

2. In § 304.20, reference to "Until September 30, 1995" in paragraph (c) is revised to read "Until September 30, 1997".

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

1. The authority citation for part 307 is revised to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666, through 669A, and 1302.

§ 307.0 [Amended]

2. Section 307.0 is amended by revising the introductory text; redesignating paragraphs (c) through (h) as paragraphs (d) through (i); and adding a new paragraph (c) to read as follows:

* * * * *

This part implements sections 452(d) and (e), 454(16) and (24) and 454A, and 455(a)(1)(A) and (B), and (a)(3)(A) of the Act which prescribe:

* * * * *

(c) Security and confidentiality requirements for computerized support enforcement systems;

* * * * *

§ 307.1 [Amended]

3. Section 307.1 is amended by redesignating paragraphs (b) through (j) as paragraphs (c) through (k); replacing the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" in the newly designated paragraphs (d) and (g); and adding a new paragraph (b) to read as follows:

* * * * *

(b) Business day means a day on which State offices are open for business.

* * * * *

§ 307.5 [Amended]

4. Section 307.5 is amended by removing paragraphs (a) and (b); redesignating paragraphs (c) through (h) as paragraphs (b) through (g); replacing the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" in the newly redesignated paragraph (d); and adding a new paragraph (a) to read as follows:

* * * * *

(a) Basic requirement.

(1) By October 1, 1997, each State must have in effect an operational computerized support enforcement system, which meets Federal requirements under § 302.85(a)(1). OCSE will review each system to certify that these requirements are met; and

(2) By October 1, 2000, each State must have in effect an operational computerized support enforcement system, which meets Federal requirements under § 302.85(a)(2). OCSE will review each system to certify that these requirements are met.

* * * * *

5. Section 307.10 is amended in the introductory text by replacing the citation "§ 302.85(a)" with the citation "§ 302.85(a)(1)"; replacing "AFDC" with "TANF" in paragraph (b)(10); removing paragraph (b)(14); redesignating paragraphs (b)(15) and (16) as paragraphs (b)(14) and (15); and revising the section heading to read as follows:

§ 307.10 Functional requirements for computerized support enforcement systems in operation by October 1, 1997.

* * * * *

6. Section 307.11 is added to read as follows:

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§ 307.11 Functional requirements for computerized support enforcement systems in operation by October 1, 2000.

At a minimum, each State's computerized support enforcement system established and operated under the title IV–D State plan at § 302.85(a)(2) must:

(a) Be planned, designed, developed, installed or enhanced, and operated in accordance with an initial and annually updated APD approved under § 307.15 of this part;

(b) Control, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan. At a minimum, this includes the following:

(1) The activities described in § 307.10, except paragraphs (b)(3), (8) and (11); and

(2) The capability to perform the following tasks with the frequency and in the manner required under, or by this chapter:

(i) Program Requirements. Performing such functions as the Secretary may specify related to management of the State IV–D program under this chapter including:

(A) Controlling and accounting for the use of Federal, State and local funds in carrying out the program either directly or through an interface with State financial management and expenditure information; and

(B) Maintaining the data necessary to meet Federal reporting requirements under this chapter in a timely basis as prescribed by the Office;

(ii) Allocation of Performance Indicators. Enabling the Secretary to determine the incentive payments and penalty adjustments required by sections 452(g) and 458 of the Act by:

(A) Using automated processes to:

(1) Maintain the requisite data on State performance for paternity establishment and child support enforcement activities in the State; and

(2) Calculate the paternity establishment percentage for the State for each fiscal year;

(B) Having in place system controls to ensure the completeness, and reliability of, and ready access to, the data described in paragraph (b)(2)(i)(A)(1) of this section, and the accuracy of the calculation described in paragraph (b)(2)(i)(A)(2) of this section; and

(iii) System Controls: Having systems controls (e. g., passwords or blocking of fields) to ensure strict adherence to the policies described in § 307.13(a); and

(3) Activities described in Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 not otherwise addressed in this part.

(c) Collection and Disbursement of Support Payments. To the maximum extent feasible, assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 454B of the Act through the performance of functions which, at a minimum, include the following:

(1) Transmission of orders and notices to employers and other debtors for the withholding of income:

(i) Within 2 business days after receipt of notice of income, and the income source subject to withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State; and

(ii) Using uniform formats prescribed by the Secretary;

(2) Ongoing monitoring to promptly identify failures to make timely payment of support; and

(3) Automatic use of enforcement procedures, including procedures under section 466(c) of the Act if payments are not timely;

(d) Expedited Administrative Procedures. To the maximum extent feasible, be used to implement the expedited administrative procedures required by section 466(c) of the Act.

(e) State Case Registry. Have a State case registry that meets the requirements of this paragraph.

(1) Definitions. When used in this paragraph and paragraph (f) of this section, the following definitions shall apply.

(i) *Participant* means an individual who owes or is owed support or with respect to or on behalf of whom a support obligation is sought to be established or other individual connected to an order of support or a child support case being enforced.

(ii) *Participant type* means the custodial party, non-custodial parent, putative father, or child, associated with a case or support order contained in the Federal case registry.

(iii) *locate request type* refers to the purpose of the request for locate services to the Federal case registry. For example, paternity establishment, parental kidnapping or custody and visitation.

(iv) *locate source type* refers to the external sources a locate submitter desires the Federal case registry to match against.

(2) The State case registry shall contain a record of:

(i) Every case receiving child support enforcement services under an approved State plan; and

(ii) Every support order established or modified in the State on or after October 1, 1998.

(3) Standardized data elements shall be included for each participant. These data elements shall include:

(i) Names;

(ii) Social security numbers;

(iii) Dates of birth;

(iv) Case identification numbers;

(v) Other uniform identification numbers;

(vi) Data elements required under paragraph (f)(1) of this section necessary for the operation of the Federal case registry; and

(vii) Any other information that the Secretary may require as set forth in instructions issued by the Office.

(4) The record shall include information for every case in the State case registry receiving services under an approved State plan that has a support order in effect. The information must include:

(i) The amount of monthly (or other frequency) support owed under the order;

(ii) Other amounts due or overdue under the order including arrearages, interest or late payment penalties and fees;

(iii) Any amounts described in paragraph (e)(4)(i) and (ii) of this section that have been collected;

(iv) The distribution of such collected amounts;

(v) The birth date and, beginning no later than October 1, 1999, the name and social security number of any child for whom the order requires the provision of support; and

(vi) The amount of any lien imposed in accordance with section 466(a)(4) of the Act to enforce the order.

(5) Establish and update, maintain, and regularly monitor case records in the State case registry for cases receiving services under the State plan. To ensure information on an established IV–D case is up to date, the State should regularly update the system to make changes to the status of a case, the participants of a case, and the data contained in the case record. This includes the following:

(i) Information on administrative actions and administrative and judicial proceedings and orders related to paternity and support;

(ii) Information obtained from comparison with Federal, State or local sources of information;

(iii) Information on support collections and distributions; and

(iv) Any other relevant information.

(6) States may link local case registries of support orders through an automated information network in meeting paragraph (e)(2)(ii) of this section provided that all other requirements of this paragraph are met.

(f) Information Comparison and other Disclosure of Information. Extract

information, at such times and in such standardized format or formats, as may be required by the Secretary, for purposes of sharing and comparing with, and receiving information from, other data bases and information comparison services, to obtain or provide information necessary to enable the State, other States, the Office or other Federal agencies to carry out this chapter. As applicable, these comparisons and disclosures must comply with the requirements of section 6103 of the Internal Revenue Code of 1986 and the requirements of section 453 of the Act. The comparisons and sharing of information include:

(1) Effective October 1, 1998, (or for the child data, not later than October 1, 1999 the State furnishing the following information to the Federal case registry, including updates as necessary and notices of expiration of support orders, on participants in cases receiving services under the State plan, and in non-IV–D support orders established or modified on or after October 1, 1998:

(i) State Federal Information Processing Standard (FIPS) code and optionally, county code;

(ii) State case identification number;

(iii) State member identification number;

(iv) Case type (IV–D, non-IV–D);

(v) Social security number and any necessary alternative social security numbers;

(vi) Name, including first, middle, last name and any necessary alternative names;

(vii) Sex (optional);

(viii) Date of birth;

(ix) Participant type (custodial party, non-custodial parent, putative father, child);

(x) Family violence indicator (domestic violence or child abuse);

(xi) Indication of an order;

(xii) Locate request type (optional);

(xiii) Locate source (optional); and

(xiv) Any other information the Secretary may require as set forth in instructions issued by the Office.

(2) Requesting or exchanging information with the Federal parent locator service for the purposes specified in section 453 of the Act;

(3) Exchanging information with State agencies, both within and outside of the State, administering programs under titles IV–A and XIX of the Act, as necessary to perform State agency responsibilities under this chapter and under such programs; and

(4) Exchanging information with other agencies of the State, and agencies of other States, and interstate information networks, as necessary and appropriate, to assist the State and other States in carrying out the purposes of this chapter.

7. Section 307.13 is added to read as follows:

§ 307.13 Security and Confidentiality for computerized support enforcement systems in operation after October 1, 1997.

The State IV–D agency shall:

(a) *Information Integrity and Security.* Have safeguards on the integrity, accuracy, completeness of, access to, and use of data in the computerized support enforcement system. These safeguards shall include written policies concerning access to data by IV–D agency personnel, and the sharing of data with other persons to:

(1) Permit access to and use of data to the extent necessary to carry out the State IV–D program under this chapter; and

(2) Specify the data which may be used for particular IV–D program purposes, and the personnel permitted access to such data;

(3) Limit access and disclosure to non-IV–D personnel or for Non-IV–D program purposes as authorized by Federal law.

(b) *Monitoring of access.* Monitor routine access to and use of the computerized support enforcement system through methods such as audit trails and feedback mechanisms to guard against, and promptly identify unauthorized access or use;

(c) *Training and Information.* Have procedures to ensure that all personnel, including State and local staff and contractors, who may have access to or be required to use confidential program data in the computerized support enforcement system are:

(1) Informed of applicable requirements and penalties, including those in section 6103 of the Internal Revenue Service Code and section 453 of the Act; and

(2) Adequately trained in security procedures; and

(d) *Penalties.* Have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information.

§ 307.15 [Amended]

8. Section 307.15 is amended by replacing the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" in paragraphs (a), (b), and (c); and revising paragraph (b)(2), (b)(9) and (b)(10) to read as follows:

* * * * *

(b) * * *

(2) The APD must specify how the objectives of the computerized support enforcement system in §§ 307.10, or 307.11 will be carried out throughout the State; this includes a projection of how the proposed system will meet the functional requirements of §§ 307.10, or 307.11 and how the single State system will encompass all political subdivisions in the State by October 1, 1997, or October 1, 2000 respectively.

* * * * *

(9) The APD must contain a proposed budget and schedule of life-cycle milestones relative to the size, complexity and cost of the project which at a minimum address requirements analysis, program design, procurement and project management; and, a description of estimated expenditures by category and amount for:

(i) Items that are eligible for funding at the enhanced matching rate, and

(ii) items related to developing and operating the system that are eligible for Federal funding at the applicable matching rate;

(10) The APD must contain an implementation plan and backup procedures to handle possible failures in system planning, design, development, installation or enhancement.

(i) These backup procedures must include provision for independent validation and verification (IV&V) analysis of a State's system development effort in the case of States:

(A) that do not have in place a statewide automated child support enforcement system that meets the requirements of the FSA of 1988;

(B) States which fail to meet a critical milestone, as identified in their APDs;

(C) States which fail to timely and completely submit APD updates;

(D) States whose APD indicates the need for a total system redesign;

(E) States developing systems under waivers pursuant to section 452(d)(3) of the Social Security Act; or,

(F) States whose system development efforts we determine are at risk of failure, significant delay, or significant cost overrun.

(ii) Independent validation and verification efforts must be conducted by an entity that is independent from the state (unless the State receives an exception from OCSE) and the entity selected must:

(A) Develop a project workplan. The plan must be provided directly to OCSE at the same time it is given to the State.

(B) Review and make recommendations on both the management of the project, both State and vendor, and the technical aspects of the project. The IV&V provider must provide the results of its analysis directly to OCSE at the same time it reports to the State.

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(C) Consult with all stakeholders and assess the user involvement and buy-in regarding system functionality and the system's ability to meet program needs.

(D) Conduct an analysis of past project performance sufficient to identify and make recommendations for improvement.

(E) Provide a risk management assessment and capacity planning services.

(F) Develop performance metrics which allow tracking project completion against milestones set by the State.

(iii) The RFP and contract for selecting the IV&V provider (or similar documents if IV&V services are provided by other State agencies) must include the experience and skills of the key personnel proposed for the IV&V analysis and specify by name the key personnel who actually will work on the project and must be submitted to OCSE for prior approval.

* * * * *

§ 307.25 [Amended]

9. Section 307.25 is amended by replacing the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" in the introductory text.

10. Section 307.30 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

* * * * *

(a) *Conditions that must be met for FFP.* During Federal fiscal years 1996, and 1997, Federal financial participation is available at the 90 percent rate in expenditures for the planning, design, development, installation or enhancement of a computerized support enforcement system as described in §§ 307.5 and 307.10 of this chapter limited to the amount in an advance planning document, or APDU submitted on or before September 30, 1995, and approved by OCSE if:

* * * * *

(b) *Federal financial participation in the costs of hardware and proprietary software.* (1) Until September 30, 1997, FFP at the 90 percent rate is available in expenditures for the rental or purchase of hardware for the planning, design, development, installation or enhancement of a computerized support enforcement system as described in § 307.10 in accordance with the limitation in paragraph (a) of this section.

(2) Until September 30, 1997, FFP at the 90 percent rate is available for expenditures for the rental or purchase of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation or enhancement of a computerized support enforcement system in accordance with the limitation in paragraph (a) of this section, and the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States." FFP at the 90 percent rate is not available for proprietary application software developed specifically for a computerized support enforcement system. (See § 307.35 of this part regarding reimbursement at the applicable matching rate.)

* * * * *

§ 307.35 [Amended]

11. Section 307.35 is amended by replacing the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" in paragraph (a).

§ 307.40 [Amended]

12. Section 307.40 is amended by replacing the citation "§ 307.10" with the citations "§§ 307.10, or 307.11" in paragraph (a).

[FR Doc. 98–7714 Filed 3–24–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE38

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings and Reopening of Comment Period on Proposed Rule to List the Flatwoods Salamander as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973 (Act), as amended, gives notice that two public hearings will be held on its proposal to list the flatwoods salamander (*Ambystoma cingulatum*) as a threatened species. The Service also announces the reopening of the comment period for this action. The public hearings and the reopening of the comment period will allow additional comments on this proposal to be submitted from all interested parties.

DATES: The first public hearing will be held from 7 to 10 p.m. on April 14, 1998, in Savannah, Georgia. The second public hearing will be held on the evening of April 15, 1998, from 7 to 10 p.m. in Tallahassee, Florida. The comment period on the proposal, which originally closed on February 17, 1998, is now reopened until June 1, 1998. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The April 14 public hearing will be held in the Auditorium at the Savannah Technical Institute, 5717 White Bluff Road, Savannah, Georgia. The April 15 public hearing will be at the Hermitage Centre, Hermitage Room, 1801 Hermitage Boulevard, Tallahassee, Florida. Written comments and materials concerning the proposal may be submitted at the hearing or sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Cary Norquist at the above address (601/965–4900, ext. 28; facsimile 601/965–4340).

SUPPLEMENTARY INFORMATION:

Background

The flatwoods salamander occurs in isolated populations in open, moist, longleaf/slash pine flatwoods across the lower southeastern Coastal Plain in Florida, Georgia, and South Carolina. Habitat loss and degradation from agriculture, urbanization, and certain silvicultural practices are the primary threats to the species. On December 16, 1997, the Service published a rule proposing threatened status for the flatwoods salamander in the **Federal Register** (62 FR 65787–65794). Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. Public hearing requests were received within the allotted time period from Rayonier (Southeast Forest Resources) and the Florida Forestry Association in Florida; Georgia-Pacific and Gilman Paper Company in Georgia; and the American Forest & Paper Association in Washington, DC.

The Service has scheduled these hearings for 7 to 10 p.m. on April 14, 1998, in Savannah, Georgia, and 7 to 10 p.m. on April 15, 1998, in Tallahassee, Florida. Anyone expecting to make an oral presentation at these hearings is encouraged to provide a written copy of their statement to the hearing officer prior to the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration.

There are no limits to the length of written comments presented at these hearings or mailed to the Service. Legal notices announcing the date, time, and location of the hearings are being published in newspapers concurrently with this **Federal Register** notice.

The comment period on the proposal initially closed on February 17, 1998. To accommodate the hearing, the public comment period is now reopened. Written comments may be submitted until June 1, 1998, to the Field Supervisor (see **ADDRESSES** section).

Author: The primary author of this document is Cary Norquist (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 18, 1998.

Judy L. Jones,

Acting Regional Director, Region 4, Fish and Wildlife Service.

[FR Doc. 98–7695 Filed 3–24–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD74

Migratory Bird Hunting: Regulations Regarding Baiting and Baited Areas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to clarify and simplify the migratory game bird hunting regulations regarding baiting. The Service is proposing these changes after an extensive review of the current regulations and in response to public concern about interpretation and clarity of the current regulations, especially with respect to current migratory bird habitat conservation practices (i.e., moist-soil management).

The Service proposes new regulatory language for: Accidental scattering of agricultural crops or natural vegetation incidental to hunting, normal agricultural and soil stabilization practices, baited areas, baiting, manipulation, natural vegetation, and top-sowing of seeds. Proposed changes include new guidance with respect to hunting over natural vegetation that has been manipulated.

The Service invites public comment on this proposed rulemaking and will carefully review and consider all comments received prior to any final rulemaking.

DATES: Comments on this proposed rulemaking must be received by May 26, 1998.

ADDRESSES: Comments regarding this proposed rulemaking should be addressed to: Director, U.S. Fish and Wildlife Service, Post Office Box 3247, Arlington, Virginia 22203–3247. Comments may be hand delivered to 4401 North Fairfax Drive, Suite 500, Arlington, Virginia 22203. The public may inspect comments during normal business hours at 4401 North Fairfax Drive, Suite 500, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Kevin Adams, Chief, Division of Law Enforcement, telephone 703/358–1949, or Paul Schmidt, Chief, Office of Migratory Bird Management, telephone 703/358–1714.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) has authority (16 U.S.C. 703–712 and 16 U.S.C. 742a–j) to regulate activities involving the hunting and other taking of migratory game birds. The Service has promulgated regulations (50 CFR part 20) for the hunting of migratory game birds that includes sections for *Methods of Take* and *Definitions of Terms*.

First established in 1935, the migratory game bird hunting regulations have been substantially modified over the last 60 years to allow more effective management of migratory game bird populations and to respond to public concerns. The Service last modified the portion of the regulations specific to baiting and hunting over baited areas [50 CFR 20.21(i)] in 1973.

The Service has recently received comments from various State wildlife management agencies, the general public, hunters, and conservation organizations to the effect that the baiting regulations are outdated, unclear, and difficult for the general public to interpret and understand. While the Service is attempting to simplify and clarify the regulations in this proposed rulemaking, the Service must also ensure that any proposed changes will both provide continued control over unlawful baiting activities and encourage habitat conservation and management for the benefit of migratory birds.

In 1991, the Service published its intent to review multiple wildlife regulations, including the regulations covering migratory birds, in a **Federal Register** notice dated November 14, 1991 (56 FR 57872). Subsequently, in a **Federal Register** notice dated December 1, 1993 (58 FR 63488), the Service published its intent to further review the migratory bird regulations in 50 CFR parts 20 and 21, subpart D. On March 22, 1996, the Service announced its intent in the **Federal Register** (61 FR 11805) to review the migratory bird hunting regulations specific to waterfowl baiting separately from review of other portions of the regulations pending Service assessment of the moist-soil management aspect (manipulation of natural vegetation). However, the Service has recently decided that in order to achieve the necessary clarity and simplicity in the current regulations, it should review the baiting regulations for all migratory game birds, not just waterfowl. All of the public comments received by the Service in response to the prior **Federal Register** notices have been carefully considered during development of this proposed rule.

In addition to the **Federal Register** notices detailed above inviting public comments, on March 22, 1996, the Service requested the International Association of Fish and Wildlife Agencies (International) to review waterfowl baiting issues involving moist-soil management and make recommendations to the Service. In developing its recommendations, the Service suggested that the International would likely need a working group that represented a broad range of use interests. In May 1997, the International submitted comments to the Service that have been reviewed and considered during development of this proposed rule.

Overview of Proposed Changes

The Service proposes to add new definitions to 50 CFR 20.11, *Meaning of Terms*, for the following terms: *baited area*, *baiting*, *manipulation*, *natural vegetation*, and *normal agricultural and soil stabilization practice*. The purpose of these additions to section 20.11 is to provide a base of reference for terminology used in the regulation and to remove perceived ambiguity about what the Service means when using a particular term. For simplification of the regulations, the Service also proposes to add new language to section 20.21(i), *Methods of Take*, regarding baited areas and baiting.

The Service is proposing new regulatory language to address situations involving the accidental scattering of grains or seeds from agricultural crops or natural vegetation incidental to a migratory game bird hunter's activities. Specific concerns include entering or exiting hunting areas, placing decoys, retrieving downed birds, and using natural vegetation to camouflage blinds.

Current exemptions allow for the hunting of migratory game birds over agricultural lands, and separate those practices allowed for the hunting of waterfowl from those allowed for the hunting of other migratory game birds, such as doves. In this rule, the Service proposes to consolidate the different practices into one term *normal agricultural and soil stabilization practice* that is intended to apply to the hunting of all migratory game birds. The Service is not proposing to change the current exemption in the regulation that allows the hunting of migratory game birds, except waterfowl, over wildlife management food plots that have been manipulated. However, in addition to the words *except waterfowl*, the Service is proposing to exclude cranes as well by changing the language to read *except waterfowl and cranes.*"

The Service is proposing a new prohibition that would apply to the hunting of all migratory game birds over any area that has been planted by means of top sowing (including aerial application) where seeds remain on the surface of the ground as a result. The Service is proposing that this prohibition apply regardless of the purpose of the seeding, and proposes to explicitly exclude top sowing from the proposed definition of *normal agricultural and soil stabilization practice.*

The Service has long supported and encouraged the use of moist-soil management to benefit wildlife by providing important food and habitat. While the Service believes it is very important to continue encouragement of this valuable practice on both public and private lands, clear guidance on what constitutes baiting should accompany this encouragement. Currently, hunting over manipulated moist soil areas could be considered illegal since seeds can be made available to waterfowl as a result of a manipulation. To address moist-soil management issues, the Service proposes to distinguish between those moist-soil practices that will constitute baiting for migratory birds and those that will not. The Service is proposing to provide for the hunting of waterfowl and cranes over natural vegetation that has been manipulated, provided that the manipulations are conducted within specified parameters. The hunting of migratory game birds other than waterfowl and cranes will not be restricted as a result of any such manipulation.

As a related issue, the Service is proposing specific regulatory changes dealing with millet species. Millet, which is easily and readily naturalized, is somewhat unique in that it has applications for both agricultural and wildlife management (i.e., moist-soil management) purposes. After careful consideration and review, the Service has decided to include millet species in its proposed definition of natural vegetation.

Violations of the Migratory Bird Treaty Act constitute criminal offenses and because of this, since 1916 the MBTA has provided significant protection to migratory birds. Enforcement of its regulations includes application of a "strict liability" doctrine. Under strict liability, the fact that a person acted in such a way as to cause a prohibited result is sufficient basis to impose liability. Thus, in the prosecution of a strict liability crime, the government need not prove "scienter" (that the accused knew that he or she was violating the law) or even that the accused should have known he or she was violating the law.

In 1978, the Fifth Circuit Court of Appeals took exception to the strict liability standard in the judicial decision *U.S.* v. *Delahoussaye,* 572 F.2d 910 (5th Cir. 1978). In this decision, the court found that a hunter must make a determination prior to hunting about the legality of a hunting area and the presence or absence of any bait, and a law enforcement officer must show that a hunter knew or should have known about any bait. In 1993, in the Fifth Circuit judicial decision *U.S.* v. *Garrett* (5th Cir. 1993, No. 92–3483), the court revisited *Delahoussaye* and found evidence that it was, in fact, contrary to the intent of a subsequent Congress.

Other Federal courts have repeatedly upheld application of the strict liability doctrine. In *U.S.* v. *Schultz,* 28 F. Supp. 234 (W.D. Kentucky 1939), the court stated: "The beneficial purpose of the treaty and the act would be largely nullified if it was necessary on the part of the government to prove the existence of scienter on the part of defendants accused of violating the provisions of the act." In *Holdridge* v. *United States,* 282 F.2d 302 (8th Cir. 1960), the court stated that strict liability was utilized to "enact the broad policy of protecting an important natural resource, migratory game birds." In *U.S.* v. *Miller,* unpublished (D. Ariz. 1982), the court stated: "The importance of the goal of preserving certain migratory birds in our environment, the difficulty the government would have in enforcing its laws if it were required to prove scienter * * * and the contemplated leniency of the sentence need all be considered." In written testimony to the United States Congress in 1984, Judge Frederic Smalkin, District of Maryland, wrote: "In addition to being a shield for the innocent, such a requirement [to prove scienter] could be a windfall for the guilty, in view of the difficulty of proving scienter beyond a reasonable doubt * * *. The requirement of proving scienter would effectively curtail enforcement of the prohibition of baiting." These are provided as mere samples of a strong foundation of existing case law that supports application of the strict liability doctrine.

At this time, no changes are proposed in the application of strict liability to the migratory game bird baiting regulations. However, the Service recognizes that the application of the strict liability standard to the baiting regulations is of concern to many hunters. Unlike other Federal wildlife laws that provide for both criminal and civil remedies, the Migratory Bird Treaty Act is limited to criminal penalties. The Service invites comments that identify alternatives to the existing penalty provisions dealing with these regulations.

The Service is the principal Federal agency responsible for conserving, protecting, and enhancing fish and wildlife and their habitats for the continuing benefit of all American people. As such, the Service must give due regard not only to the interests of migratory bird hunters but to the interests of all groups. Any other action would conflict with the Service's ability to be fair, impartial, and equitable in accomplishing its mission, and would serve to undermine enforcement efforts and negatively impact migratory birds and their habitat. For example, the doctrine of strict liability applies equally to hunters, who enjoy the privilege of hunting migratory game birds, and to industrial and agricultural entities, whose combined actions create the potential for far-reaching impact on migratory birds and their habitat.

Awareness of the strict liability standard has been important in initiating changes in agricultural and industrial practices to protect migratory birds. For example, the chemical industry has made changes in the manufacture and use of pesticides that are toxic and deadly to migratory birds. In order to comply with the strict liability standard, the electric power industry has taken steps to prevent electrocution and power line strikes to migratory birds; the agriculture community modifies farming practices to prevent the accidental loss of migratory birds due to pesticide poisonings; the petroleum and mining industries have implemented measures to prevent contamination to migratory

birds at petroleum pits, open oil pits, and cyanide leach operations; the commercial aquaculture industry modifies its operations to reduce bird mortality; and developers monitor construction sites to avoid destruction to migratory birds, their habitat, nests, and young.

The strict liability doctrine has long been recognized in Federal courts throughout the Nation as a reasonable and necessary element in protecting the Nation's valuable migratory bird resource. The Supreme Court discussed the necessity for application of the strict liability doctrine in "public welfare offenses," such as violations of the migratory bird regulations, finding that since an injury is the same no matter the intent of the violator, intent is not specified as a necessary element of the offense [see *Morissette* v. *United States*, 342 U.S. 246 (1952)].

Overview—Description of Proposed Regulations Accidental Distribution and Scattering of Grains or Seeds Incidental to Hunting

While the Service does not believe that the accidental distribution and scattering of grains or seeds occurring incidental to migratory game bird hunting has been an enforcement problem in the past, the proposed regulation addresses concerns and provides clarity to law enforcement officers and hunters alike. Therefore, areas where grains or seeds from agricultural crops or natural vegetation have been accidentally scattered as a result of hunters entering or exiting areas, placing decoys, or retrieving downed birds will not be considered baited areas.

Natural vegetation

North America has lost many of its original wetlands in the last 200 years. Dahl (1990) estimates that 22 States have lost over 50%, and 11 States have lost over 70%, of their original wetlands. Overall, about 53% of the original wetlands in the lower 48 States have been lost (Dahl and Johnson, 1991). In many of the remaining wetlands, large-scale land-use changes have often altered the natural water regime to the point that many wetlands are no longer functional. The Service believes that one of the most important factors affecting waterfowl and other migratory bird populations is the amount and availability of quality habitat.

Because of the extensive loss and alteration of wetlands, managers have intensively managed remaining wetland areas to maximize their value to wildlife, especially migratory birds, through moist-soil management. Moist-soil management, or the management of man-made, seasonally flooded impoundments, is a technique that uses manipulation of soil, water, and vegetation to enhance habitat for migratory birds. Modern moist-soil management includes water level manipulation, mowing, burning, and other practices to: (1) Encourage production of moist soil plants for use by wildlife; (2) promote the production of invertebrate and vertebrate food sources; (3) control undesirable plants; and (4) increase biological diversity. Moist-soil plants provide essential nutritional requirements, consistently produce more pounds and diversity of food per acre than agricultural crops, provide seed that are more nutritionally complete and resistant to decay when flooded (providing longer and more constant use by waterfowl), and are more economical and efficient to manage than agricultural crops.

To address moist-soil management issues, the Service is proposing several regulatory changes to ensure that this valuable wildlife management practice continues to be encouraged while also clarifying what constitutes baiting. The proposed regulations provide several new definitions and parameters that attempt to make it clear to the public how natural vegetation may be manipulated for moist-soil management purposes and subsequently hunted over.

The Service proposes to define *natural vegetation* as *any non-agricultural, native, or naturalized plant species, including millet, that grows at a site in response to planting or from existing seeds or other propagules*. This definition is not intended to include plants grown as agricultural crops.

In determining how any proposed regulatory changes should deal with millet, the Service recognizes that millet species have both agricultural and moist-soil management purposes. Millet is readily naturalized and can be an important food source for migrating and wintering waterfowl. Because of these valuable wildlife management traits, the Service believes that the potential benefits justify including millet in the proposed definition of *natural vegetation*. Therefore, the Service is proposing to treat millet species separately from agricultural crops and include millet in the proposed definition for *natural vegetation*.

Manipulation

Because the term is an important component of the proposed regulation, the Service is proposing to add a new definition for *manipulation*. The proposed definition for manipulation is *mowing, shredding, discing, rolling, chopping, trampling, flattening, or wetland-associated plant propagation techniques*. The term manipulation will not include the distributing or scattering of grain, salt, or other feed once it has been removed from or stored on the field where grown. The Service intends that the proposed definition for manipulation apply both to natural vegetation and agricultural crops.

Manipulation of Natural Vegetation

The Service recognizes that the artificial maintenance and restoration of natural vegetation through moist-soil management often creates important habitat for waterfowl and other migratory bird species. The Service intends that any proposed changes to the regulations regarding natural vegetation should be readily understood, enforceable, and provide flexibility for habitat managers to perform wildlife management practices beneficial to breeding, migrating, and wintering migratory birds.

The Service acknowledges that the current regulations were not intended to prevent the manipulation of naturally vegetated areas or to discourage moist-soil management practices of benefit to migratory birds. However, the Service recognizes that there appears to be some disagreement over the interpretation of the current regulations regarding moist-soil management, and that this disagreement could potentially discourage the maintenance and/or restoration of wetland areas. Therefore, the Service is proposing to expressly provide for the hunting of waterfowl and cranes in areas where natural vegetation, including millet, has been manipulated in accordance with certain restrictions. The Service is proposing no restrictions on the manipulation of natural vegetation when hunting migratory game birds other than waterfowl and cranes.

Several commenters pointed out that in wetland situations under ideal conditions some improved varieties of natural vegetation can outproduce their wild counterparts. While seed retention rarely rivals that of agricultural crops, seeds from natural vegetation can persist in the environment for long periods of time after the manipulation of such plants. In recognition of this difference, some recommended that certain wetland plants that have been planted (as opposed to grown naturally), could not be hunted over for 10 days following any alteration (i.e., manipulation). While the Service agrees that some time restriction is necessary (for the reasons outlined above), the Service also believes that any change in

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the regulations should be clear, consistent, enforceable, and easily understood by the public. Thus, the Service is proposing to treat all natural vegetation, whether or not it is planted, in the same manner.

The Service is proposing that any natural vegetation may be manipulated and subsequently hunted over, provided that: (1) The manipulation must be completed 10 days prior to any waterfowl season, and (2) the manipulation is not done during any open waterfowl season. The Service believes that this proposed change will accomplish several objectives. First, it provides for the manipulation of planted natural vegetation areas (i.e., moist-soil management areas) while also allowing subsequent hunting. Second, it provides the public with a clear, specific cut-off date for legal manipulation of such areas, if such areas are to be hunted. Third, it provides multiple opportunities to manipulate the same area during the fall and winter. This is especially important in those areas where there may be long breaks in between waterfowl seasons, such as a September teal season and the regular waterfowl season. Fourth, it provides law enforcement with clear time periods when manipulations are not allowable if such areas are to be hunted. And finally, it does not require a determination of whether the area has been planted or naturally grown, and does not have different requirements for different plant species.

Normal Agricultural and Soil Stabilization Practice

In response to public concerns about the need for greater clarity and consistency when interpreting the regulation covering those agricultural practices that are and are not allowed when hunting migratory game birds, the Service is proposing new regulatory language. The proposed new term to apply to all agricultural activities is *normal agricultural and soil stabilization practice*. This proposed term would replace the agricultural terms in the current regulations (i.e., *normal agricultural planting and harvesting* for waterfowl hunting, and *bona fide agricultural operations* for the hunting of other migratory game birds, such as doves). In addition, the proposed new term would add language to allow post-harvest manipulation activities (such as discing or mowing stubble after harvest and removal of grain) and soil stabilization practices. The proposed term, like the terms it replaces, is intended to apply to the hunting of all migratory game birds over agricultural fields.

In the new definition of *normal agricultural and soil stabilization practice*, the Service is proposing to include specific language providing for the Service to rely upon recommendations by the U.S. Department of Agriculture (USDA) for determinations with respect to planting, harvesting, post-harvest manipulation, and soil stabilization practices. This proposed language will codify current Service policy, and provide the public with a reliable and consistent source of guidance when making determinations about the legality of hunting in agricultural areas. Each year, USDA State specialists, through the cooperative agricultural extension services, make agricultural recommendations that are readily available to farmers, landowners, and the general public. By codifying the role of the USDA, the Service proposes to recognize USDA's State specialists across the United States as an authority on agricultural matters. Since 1980, the Service has relied upon these specialists for assistance with questions on agricultural practices.

Some commenters suggested that the term *normal* used in the current regulations was too vague and that the term *accepted* was a more accurate representation when referring to agricultural operations and procedures. While the final responsibility for determining the conditions by which migratory birds may be harvested remains with the Service, this new definition that relies on recommendations and determinations of USDA State specialists can provide the public with clear and concise direction for obtaining guidance on agricultural practices and their compatibility with migratory game bird hunting.

Baiting

The Service is proposing to add a new definition for baiting to the *Meaning of Terms* section of the regulation. The term *baiting* will be defined as *the direct or indirect placing, exposing, depositing, distributing, or scattering (other than by controlling flooding or water levels) of salt, grain, or other feed capable of attracting migratory game birds that could serve as a lure or an attraction to, on, or over any areas where hunters are attempting to take them*. This definition differs from the language in the *Hunting Methods* section of the current regulation only in that it is shorter and more concise. The current wording *shelled, shucked, unshucked corn wheat or other grain, salt, or other feed* will become *salt, grain, or other feed*. In addition, the language in the current regulation *so as to constitute for such birds a lure, attraction or enticement to* is proposed to be shortened by elimination of the word *enticement* and replacement of the words *so as to* with *that could*. Finally, the proposed definition clarifies that the controlling of flooding and water levels does not constitute baiting.

Baited Area, Top-Sown Seeds

To ensure compliance with the baiting laws, the current regulation requires hunters, landowners, or law enforcement officers to determine whether a hunting area has been subjected to a normal agricultural planting or harvesting, bona fide agricultural operation, or wildlife management practice. When assessing the legality of a hunting situation, the Service recognizes that, at times, it may be difficult to properly determine if a top-sown area has been planted as a normal agricultural planting or has been planted to lure migratory game birds to hunters illegally attempting to take them. Therefore, the Service is proposing to prohibit the taking of all migratory game birds over any lands where planting by top sowing of seeds (including aerial seeding) has occurred where seeds remain on the surface of the ground as a result. Any such area will be considered baited and will remain so for ten days following complete removal of all seeds from the surface of the land. The Service believes that this prohibition will allow hunters and others to more easily and readily determine the legality of a hunting area.

Hunting of Doves and Pigeons

This proposed rule directly affects the hunting of all migratory game birds, including doves and pigeons, with respect to the proposed prohibition on hunting over any top-sown area (see *top-sown seeds* discussion above). The Service is not proposing any change to the current exemption that allows hunting of migratory game birds, other than waterfowl and cranes, over agricultural crops that have been manipulated for wildlife management purposes. Further, the proposed definition for the term *manipulation* is intended to apply to both natural vegetation and agricultural crops.

Hunting of all Migratory Game Birds

This proposed rule maintains the current prohibition on hunting any migratory game bird over any areas where the placing, exposing, depositing, distributing, or scattering of grains, salt, or other feed has occurred once they are removed from or stored on the field where grown. This proposed rule would continue to allow the hunting of all

migratory game birds over an agricultural field that has been planted or harvested in a normal manner, in accordance with the proposed definition for *normal agricultural and soil stabilization practice.*

The Service is proposing to maintain the current *ten-day rule* with respect to baiting and baited areas. The ten-day rule considers an area baited for ten days following complete removal of any salt, grain, or other feed that is capable of luring or attracting migratory game birds to, on, or over areas where hunters are attempting to take them.

Required Determinations

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

The Service has examined this proposed rule under the Paperwork Reduction Act of 1995 and has found it to contain no information collection requirements for which Office of Management and Budget review is required.

Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Unfunded Mandates (Executive Order 12875)

There are no credible scenarios in which this proposed rule could result in a significant annual effect on the economy of $100 million or more. The U.S. Department of Agriculture independently accomplishes the publishing, distributing, and periodically updating of its agricultural determinations, and this is the only identifiable cost associated with this proposed rule. Likewise, there are no foreseen significant adverse effects on the economy. Therefore, the Service has determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Economic Effects (Excecutive Order 12866)

This proposed rule is a wide-ranging update to the current regulations governing migratory game bird hunting. The changes clarify definitions and simplify language, thereby benefitting both law enforcement officers and the hunting public by improving the efficiency of enforcement and protection to migratory bird resources. This proposed rule is not subject to Office of Management and Budget review under Executive Order 12866.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1538 *et seq.*) provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" The Service has initiated a Section 7 consultation under the ESA for this proposed rule. The result of the Service's consultation under Section 7 of the ESA will be available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act Determination (5 U.S.C. 601)

This proposed rule will make minor changes in the existing basic regulation for migratory game bird hunting and will have no significant effect on small entities. No dislocation or other local effects, with regard to hunters and others, are likely to occur. The proposed changes in this rule are intended to provide clarity, simplify methods whereby migratory game birds may be taken, and add new definitions for terms used in part 20. The Service will rely upon State specialists of the U.S. Department of Agriculture for determinations on normal agricultural and soil stabilization practices when questions arise. Accordingly, Service review of this rulemaking under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that it will not have a significant effect on a substantial number of small entities, which includes small businesses, organizations and small government jurisdictions.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

Environmental Effects (National Environmental Policy Act—42 U.S.C. 4321 et seq.)

The Service has determined that National Environmental Policy Act documentation is not required because the proposed rule qualifies as a categorical exclusion under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Service proposes to amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations as set forth below:

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712, 16 U.S.C. 742a-j.

2. Revise section 20.11 by adding new paragraphs (g), (h), (i), (j), and (k) to read as follows:

§ 20.11 Meaning of terms.

* * * * *

(g) *Normal agricultural and soil stabilization practice* means planting, harvesting, and post-harvest manipulation and soil stabilization practices as recommended by State specialists of the cooperative extension service of the U.S. Department of Agriculture, except that for the purposes of this part planting by means of top sowing (including aerial seeding) is not to be considered a normal agricultural or soil stabilization practice.

(h) *Baited area* means any area containing salt, grain, or other feed capable of attracting migratory game birds that is placed, exposed, deposited, distributed, or scattered (other than controlling of flooding or water levels) that could serve as a lure or attraction for such birds to, on, or over areas where hunters are attempting to take them. Such areas will remain a baited area for ten days following complete removal of all such salt, grain, or other feed.

(i) *Baiting* means direct or indirect placing, exposing, depositing, distributing, or scattering (other than by controlling of flooding or water levels) of salt, grain, or other feed capable of attracting migratory game birds that could serve as a lure or attraction to, on, or over any areas where hunters are attempting to take them.

(j) *Manipulation* means mowing, shredding, discing, rolling, chopping, trampling, flattening, or wetland-associated plant propagation techniques with respect to natural vegetation and agricultural crops. The term *manipulation* does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown.

(k) *Natural vegetation* means any non-agricultural, native, or naturalized plant species, including millet, that grows at a site in response to planting or from existing seeds or other propagules.

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3. Amend § 20.21 by revising paragraph (i) to read as follows:

§ 20.21 Hunting methods

* * * * *

(i) By the aid of baiting or on or over any baited area. However, nothing in this paragraph shall prohibit:

(1) The taking of all migratory game birds on or over areas where grains or seeds from agricultural crops or natural vegetation have been accidentally scattered incidental to hunters entering or exiting areas, placing decoys, or retrieving downed birds.

(2) The taking of all migratory game birds on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of a normal agricultural and soil stabilization practice;

(3) The taking of migratory game birds, except waterfowl and cranes, on or over any lands or areas where salt, grain, or other feed has been distributed or scattered as a result of manipulation of an agricultural crop or other feed on the land where grown for wildlife management purposes, or as a result of manipulation of natural vegetation;

(4) The taking of waterfowl and cranes on or over natural vegetation that has been manipulated; *Provided that* the manipulation does not occur: (a) Less than 10 days before any waterfowl season opening, or (b) during any open waterfowl season in that area; Except that for the purposes of this paragraph (3), waterfowl season does not include special sea duck seasons or tribally-ceded land seasons;

(5) The taking of all migratory game birds from a blind or other place of concealment camouflaged with natural vegetation;

* * * * *

Dated: February 17, 1998.

William Leary,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–7686 Filed 3–19–98; 5:04 pm]

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Notices

Federal Register
Vol. 63, No. 57
Wednesday, March 25, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection: Proposed Collection; Comment Request; FNS–260, Acquisition for Food Coupon Books

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection contained in form FCS–260, Requisition for Food Coupon Books.

DATES: Written comments must be submitted on or before May 26, 1998.

ADDRESSES: Send comments and requests for copies of this information collection to: Suzanne Fecteau, Branch Chief, Redemption Management Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Suzanne Fecteau, (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Title: Acquisition for Food Coupon Books.

OMB Number: 0584–0022.

Form Number: FCS–260.

Expiration Date: 08/31/98.

Type of Request: Revision of a currently approved collection.

Abstract: Section 7(e) of the Food Stamp Act of 1977, as amended, (the Act) (7 U.S.C. 2016(e)) requires the U.S. Department of Agriculture (USDA) to prescribe appropriate procedures for the delivery of food coupon books to coupon issuers. States and local agencies use Form FNS–260, Requisition of Food Coupon Books, to order supplies of coupon books. The forms are completed and submitted in hard copy or electronic format to the appropriate Food and Nutrition Service (FNS) regional office. The hard-copy format is normally used only when the electronic format is unavailable. The regional offices enter the order for coupon books into a database where it is automatically reviewed for conformance with policy for ordering. After the order passes the edit checks, FNS then transmits them electronically to the contractor who ships the coupon books. No coupon books are shipped until a completed order has been received and approved by FNS. The order of coupon books is essential to carrying out the policy of the Act of 1977.

The need to print and order food coupons as the sole benefit delivery instrument for the Food Stamp Program has changed. Many areas of the country have switched to Electronic Benefit Transfer (EBT) Systems and no longer issue food coupons to participating households. This has resulted in a direct reduction in the number of States and local agencies completing and submitting food coupon book orders. However, some areas are still using coupons and we must continue to require these areas to order food coupon books. The Office of Management and Budget's (OMB) approval of this information collection expires on August 31, 1998. We intend to seek an extension of OMB's approval for an additional 3 years.

The number of respondents that must complete and submit food coupon orders is estimated to be 1,000 annually; a reduction of 150 respondents. It is estimated that respondents will order coupons at least once every six months. It is further estimated that it takes about 30 minutes to complete and transmit the coupon book order. Thus, total annual burden associated with this information collection is estimated to be 3,000 hours annually (1,000 × 6 × 30 minutes).

It should be noted that current versions of this form reflect our agency name as the Food and Consumer Service and the form number as FCS–260. The form will be revised at the next opportunity to change the agency's name to the Food and Nutrition Service and the form number to FNS–260. The hard-copy version of the form will also be revised when the current supply is exhausted.

Affected Public: State and local governments.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per respondent: 6,000.

Estimated Time per Response: one half hour.

Estimated Total Annual Burden: 3,000 hours; a reduction of 450 annually.

Dated: March 16, 1998.

Yvette S. Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98–7736 Filed 3–24–98; 8:45 am]
BILLING CODE 3410–30–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Survey of the U.S. High Performance Military Explosives and Components Sector to Assess the Current Status of Military-Grade Explosive R&D and Manufacturing in the United States.

Agency Form Number: N/A.

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OMB Approval Number: None.
Type of Request: New collection of information.
Burden: 240 hours.
Average Time Per Response: 6 hours per response.
Number of Respondents: 40 respondents.
Needs and Uses: The information that will be collected by this survey is needed to complete an assessment of the current status of the U.S. high performance explosives and components sector in such areas as production methods, technological development, economic performance, and ability to meet future military requirements. This survey is being initiated at the request of the U.S. Navy's Naval Surface Warfare Centers. Information will be collected only on military-grade explosives and their components; no information will be gathered on commercially-available explosives for such applications as mining or demolition.
Affected Public: Individuals, businesses or other for-profit institutions.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Dennis Marvich (202) 395–3122.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: March 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7703 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Digital Computer System Parameters

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 26, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawn Battle, Department of Commerce, Bureau of Export Administration, 14th and Constitution Avenue, NW, Room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

To export computers that perform above a certain level an export licenses is needed for certain locations. In support of this application, documentation must be provided on the computer system. When BXA receives this information it is thoroughly reviewed by a licensing officer who, depending on the limits of parameters of the system, may submit the application for review by other government agencies. If the application is approved, the respondent is issued a validated export license that authorizes shipment of the computer system. If additional information is required, the respondent will be notified. Applications may be rejected if it is determined that the export or reexport of the system poses a threat to the U.S. national security.

II. Method of Collection

Submitted, as required, with form BXA–748P.

III. Data

OMB Number: 0694–0013.
Form Number: N/A.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 80.
Estimated Time Per Response: 32 minutes per response.
Estimated Total Annual Burden Hours: 83.
Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7702 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods from Mexico; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determination in antidumping duty administrative review of oil country tubular from Mexico.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of Oil Country Tubular Goods from Mexico. This review covers the period August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: John Drury or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3208 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: It is not practicable to complete this review within the original time limit. The Department is extending the time limit for completion of the preliminary results until August 31, 1998, in accordance with Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. 1675 (a)(3)(A)). See memorandum to Robert S. LaRussa from Joseph A. Spetrini regarding the extension of case deadline, dated March 18, 1998.

Dated: March 19, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 98–7803 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

[C–549–806]

Steel Wire Rope from Thailand; Revocation of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of countervailing duty order: Steel wire rope from Thailand.

SUMMARY: Pursuant to section 753(b)(4) of the Tariff Act of 1930, as amended (the Act), the United States International Trade Commission has issued a negative injury determination with respect to the countervailing duty order on steel wire rope from Thailand (63 FR 5816; February 4, 1998). Therefore, pursuant to section 753(b)(3)(B) of the Act, the Department of Commerce is notifying the public of its revocation of the countervailing duty order on steel wire rope from Thailand.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Maria MacKay or Constance Cunningham, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration. U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1995, the Department of Commerce (the Department) published a notice in the **Federal Register** which informed domestic interested parties of their right under section 753(a) of the Act to request an injury investigation by the International Trade Commission (the Commission) with respect to certain outstanding countervailing duty orders issued pursuant to former section 303 of the Act. Countervailing Duty Order: Opportunity to Request a Section 753 Injury Investigation (60 FR 27963; May 26, 1995). On June 30, 1995, the Committee of Domestic Steel Wire Rope and Speciality Cable Manufacturers timely requested that the Commission conduct an investigation under section 753(a) with regard to the outstanding countervailing duty order on steel wire rope from Thailand. On January 5, 1998, the Commission initiated its investigation (63 FR 2414; January 15, 1998).

On January 15, 1998, the Domestic Steel Wire Rope Committee filed a letter with the Commission withdrawing its request for such an investigation, and requesting that the Commission rescind the initiation of its investigation. The Commission accepted the party's withdrawal of its request for an investigation, and rescinded the initiation of its investigation pursuant to sections 753(b)(1)(A) and 704(a)(1)(A) of the Act. Pursuant to section 753(b)(4) of the Act, the Commission notified the Department of its negative determination with regard to the outstanding countervailing duty order on steel wire rope from Thailand (63 FR 5816; February 4, 1998).

Scope

This countervailing duty order covers steel wire rope from Thailand. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. The order excludes stainless steel wire rope, i.e., ropes, cables, and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000. Wire rope is currently classified under subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the HTS. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Determination

As a result of the determination of the Commission that an industry in the United States is not likely to be materially injured by reason of imports of the subject merchandise if the order is revoked, the Department hereby revokes the countervailing duty order on steel wire rope from Thailand pursuant to section 753(b)(3)(B) of the Act. The revocation is effective January 1, 1995, the date Thailand became a Subsidies Agreement country.

Suspension of Liquidation

The Department will instruct the United States Customs Service to discontinue the suspension of liquidation for imports of steel wire rope from Thailand. The Department will also instruct Customs to refund, with interest, any cash deposits of countervailing duties collected since January 1, 1995, when liquidation was suspended pursuant to section 753(a)(4) of the Act.

Dated: March 18, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7804 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Business Development Mission to Eastern Caribbean

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice serves to inform the public of a business development and trade mission to Barbados, St. Lucia, and Grenada, to be held May 3–8, 1998 ("the mission"); provides interested U.S. firms with the opportunity to submit an application to participate in the mission; sets forth objectives, procedures, and selection review criteria for the mission; and requests interested parties to apply. The recruitment and selection of private sector participants in the mission will be conducted in accordance with the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997 and reflected herein.

DATES: Applications should be received by April 8, 1998. Applications received after that date will be considered only if space and scheduling constraints permit. The mission is scheduled for May 3–8, 1998.

ADDRESSES: Request for and submission of applications: Application packets are available from the Project Officer; Ms. Rebecca Hunt, Regional Commercial Officer, U.S. Embassy—Santo Domingo, Dominican Republic, phone 1–809–221–2171 ex 404, fax 1–809–688–4838.

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Numbers listed in this notice are not toll-free. An original and two copies of the required application materials should be sent to the Project Officer at the above address. Applications sent by facsimile must be immediately followed by submission of the original application to the Project Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Hunt, Project Officer, phone 1–809–221–2171 ex 404. Information is also available via the International Trade Administration's (ITA) Internet home page at http://www.ita.doc.gov/doctm.

SUPPLEMENTARY INFORMATION:

Mission Description

As a follow up to President Clinton's commitment at the Bridgetown summit held in May 1997, the Department of Commerce will organize a senior level business development mission to three Eastern Caribbean countries to promote expanded commercial opportunities for U.S. firms. The Clinton Administration has long been committed to fostering and supporting the region's goals of economic diversification, sustained growth, and social stability through the creation of service and niche industries. The President's commitment to the Eastern Caribbean was clearly confirmed with the Economic Goals that were established in the Bridgetown Summit. The United States is committed to increased participation in the economies of the region through: (1) The sales of goods and services in the sectors mentioned below, and (2) joint ventures and investments to foster competitiveness in each country and throughout the region.

With stops in Barbados, Grenada and St. Lucia, the mission will cover all of the Windward Islands (meetings will be held on Barbados with representatives from St. Vincent and the Grenadines and Dominica), focusing on export and business development opportunities for U.S. firms in the areas of tourism development (to include resort management, architectural/engineering services, marina development, building supplies and hotel/resort supplies), specialty and gourmet food industry development (to include food processing and packaging machinery and services, agricultural chemicals and industrial veterinary supplies) and opportunities in the business services area (financial, insurance and data processing) for small, medium and large companies through contacts with both the government and private sector.

The mission itinerary will be as follows:

May 3 (Sun.) Arrive Barbados
May 4 (Mon.) Barbados
May 5 (Tues.) Barbados
  Leave in pm for Grenada
  Arrive Grenada
May 6 (Wed.) Grenada
  Leave in pm for St. Lucia
May 7 (Thur.) St. Lucia
May 8 (Fri.) Mission Concludes

Criteria for Participation

Individuals must be a senior level executive, appropriate to the goals of the mission, with authority to execute sales and other marketing agreements. Company participation will be determined on the basis of:

—Consistency of the company's goals with the scope and desired outcome of the mission;
—Relevance of a company's business line to the plan for the mission;
—Past, present and prospective business activity in the Caribbean;
—Diversity of company size, type, location, demographics and traditional under-representation in business.
—A company's products or services must either be produced in the United States or, if not, marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished product/service. A national interest exception may be applied to this 51 percent rule when a senior Department official deems it appropriate.
—An applicant's partisan political activities (including political contributions) are irrelevant to the selection process. The recruitment and selection of private sector participants in the mission will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997 and reflected herein.
—Endorsements/referrals: Third parties may nominate or endorse potential applicants, but companies nominated or endorsed must themselves submit an application to be eligible for consideration. Referrals from political organizations will not be considered.

Cost: Mission participants will agree to pay the mission fee of $2,100. The participation fee does not cover participants' travel, lodging or other personal expenses.

Authority: 15 U.S.C. 1512.

Dated: March 18, 1998.

Dolores F. Harrod,

Deputy Assistant Secretary, International Operations, US&Foreign Commercial Service.

[FR Doc. 98–7724 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 980319069–8069–01]

Joint Projects with the U.S. Commercial Centers in Sao Paulo, Brazil; Jakarta, Indonesia; and Shanghai, People's Republic of China

AGENCY: U.S. and Foreign Commercial Service, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity.

SUMMARY: The Department of Commerce offers a unique opportunity for nonprofit trade promotion organizations to undertake a joint project with the U.S. and Foreign Commercial Service (US&FCS), the export promotion arm of the U.S. Government, in Brazil, Indonesia and the People's Republic of China. This joint project features space sharing with the US&FCS in the U.S. Commercial Centers ("Commercial Centers") in Sao Paulo, Jakarta, and Shanghai to enhance opportunities for joint project participants to work toward shared market development goals and assist U.S. companies in-country.

FOR FURTHER INFORMATION CONTACT:

Alan Long, Director, U.S. Commercial Center—Sao Paulo, Rua Estados Unidos, 1812, Sao Paulo, SP. 01427–002, Brazil; or
AMCONGEN—Sao Paulo, Unit 3502, APO AA 34030. Tel: (55–11) 853–2811; Fax: (55–11) 3061–0718; Internet: ALong@doc.gov.
Jon Kuehner, Director, U.S. Commercial Center—Jakarta Wisma Metropolitan II, Third Floor, JL. Jendral Sudirman, Jakarta 12920, Indonesia. Tel: (62–21) 526–2850; Fax: (62–21) 526–2855; Internet: Jkuehner@doc.gov.
Will Center Principal Commercial Officer, U.S. Commercial Center—Shanghai Portman Shanghai Centre, Suite 631, 1369 Nanjing West Road, Shanghai, 200040 China. Tel: (86–21) 6279–7640; Fax: (86–21) 6279–7649; Internet: WCenter@doc.gov.

SUPPLEMENTARY INFORMATION:

Commercial Center Concept

U.S. Commercial Centers are enhanced U.S. government export promotion facilities that provide, under one roof, expert business counseling by frontline Commercial Officers, a proven array of trade promotion programs, and in-house business facilities. Commercial Centers are the only U.S. government operations that are designed physically and legally to share space on a long-term basis with nonprofit trade promotion entities who seek to build a

presence in one or more of these countries. US&FCS has authority to enter into joint projects on matters of mutual interest with public organizations and establish U.S. Commercial Centers overseas under 15 U.S.C. 1525 and 4723a. By working with other trade promotion organizations, US&FCS seeks to expand both the trade promotion resources available to U.S. companies as well as the number of U.S. companies served at the Commercial Center.

Eligible Participants

The U.S. and Foreign Commercial Service seeks other federal trade promotion agencies, state-local economic development agencies, nonprofit industry associations, regional and bilateral business councils, and other nonprofit trade promotion entities to share space in the Commercial Centers.

Features of Commercial Centers

Commercial Centers are strategically placed in the heart of the business districts of Sao Paulo, Jakarta and Shanghai to serve clients, U.S. companies, and their business partners in-country. While striving to adapt to local business conditions and opportunities, each Commercial Center provides a consistent level of service and access to core features. In accordance with the authorizing legislation, Title IV, Jobs Through Exports Act of 1992, U.S. Commercial Centers offer the following basic features:

- All the core US&FCS export promotion programs and services, including expert business counseling, advocacy, business-facilitation services;
- Long-term space-sharing for nonprofit trade promotion partners, such as other federal trade promotion agencies, state-local export development offices, and nonprofit industry associations;
- Fully equipped offices and executive support services (in Sao Paulo and Jakarta) for short-term use by U.S. companies and trade promotion organizations;
- Multipurpose rooms for conferences, meetings, technical seminars, product launches, receptions, and other business functions;
- Exhibit or display areas, depending on the market;
- Business Information Center, offering an array of information products, including up-to-the minute commercial intelligence on trade leads and opportunities, extensive market research on leading sectors, on-line/CD-ROM-based company and product locators, and from the Sao Paulo Center, accessibility from remote locations in the U.S. and Brazil; and
- Prime business location that enhances access to prospective business partners and clients.

Joint Project Opportunity in Sao Paulo, Brazil

In July 1994, the first U.S. Commercial Center was established in Sao Paulo. Since then, agencies including the U.S. Information Service, the Foreign Agricultural Service, and the Export-Import Bank have helped put the Commercial Center at the "center" of the bilateral commercial dialogue by holding key events such as government-to-government meetings, technical seminars, and business receptions at the Center. U.S. and Brazilian policymakers used the Sao Paulo Commercial Center as the primary vehicle for establishing the U.S.-Brazil Business Development Council (BDC), the bilateral forum for government-private sector commercial dialogue.

The San Paulo Commercial Center has four fully furnished private offices (twelve square meters each) for long-term participants. Two of these offices are expected to become available in July 1998. The annual contribution to participate in this joint project covers use of a private office, and common areas—reception area and business information center (commercial library). Use of the multipurpose rooms and audio visual equipment are available on a user-fee basis. For short-term use of business facilities, please contact the Commercial Center listed under the "For More Information" section or call the Trade Information Center for a program brochure at 1–800–USA–TRAD.

Joint Project Opportunity in Jakarta, Indonesia

The late Commerce Secretary Ronald H. Brown officially opened the U.S. Commercial Center in Jakarta during the ministerial meetings of the Asia-Pacific Economic Cooperation forum in November 1994. Since its inception, the Commercial Center has been a vehicle for implementing local and regional events, and linking trade policy with trade promotion by organizing bilateral roundtables in conjunction with technical seminars where participating small-and medium-size U.S. companies can demonstrate technical expertise to host country government policymakers and business decisionmakers. Already positioned as long-term participants are the California Trade and Commerce Agency, Foreign Agricultural Service and its Agricutural Trade Office, and the U.S.-Asia Environmental Partnership (USAEP). The current economic challenges sweeping through Asia make the Jakarta Commercial Center a "first-stop" in country for U.S. companies interested in pursuing business opportunities in Indonesia and the region.

Located in the Jakarta World Trade Center Complex, the Commercial Center has available one fully furnished office (twenty-five square meters). The annual contribution to participate in this joint project covers the use of the private office and common areas—a reception area and business information center (commercial library). Use of multi-purpose rooms and audio visual equipment are available on a user-fee basis.

For short-term use of business facilities, please contact the post listed under the **FOR MORE INFORMATION CONTACT** or call the Trade Information Center for a program brochure at 1–800–USA–TRAD.

Joint Project Opportunity in Shanghai, China

The U.S. Commercial Center in Shanghai, established in July 1996, is the first export-promotion facility of its kind in the People's Republic of China. Through the Commercial Centers, U.S. state economic development offices can open representative offices in China. Maryland, Michigan and Washington are among the first states to place representatives in the Commercial Center.

Shanghai is located at the mouth of the Yangtze River, the commercial lifeline of Southeast China, reinforcing this pivotal city's role as the commercial nexus that fits strategically between Beijing, the administrative capital, and the special economic zones in the southern and eastern coastal provinces. Placing the Commercial Center in Shanghai, the financial hub of all of China, positions U.S. companies to compete in the entire Chinese Economic Area, which comprise the vast markets of China, Taiwan and Hong Kong, which reverted to the Mainland in 1997.

The Shanghai Commercial Center includes six private offices for long-term space sharing, two of which are currently available. Offices are fully furnished and are either 20.6 square meters or 25.3 meters in size. The annual contribution to participate in this joint project covers use of private offices and common areas—a reception area and business information center (commercial library). Use of the multipurpose room and audio visual

equipment are available on a user-fee basis.

Please contact the post listed under the **FOR MORE INFORMATION CONTACT** for annual contributions and other Center-specific information or call the Trade Information Center for a program brochure at 1–800–USA–TRAD.

Short-term Use of Commercial Centers by U.S. Companies or Organizations

The joint project opportunity, which features long-term space for periods of one year or longer, is designed to assist nonprofit trade promotion organizations achieve long-term market development goals. The Commercial Centers in Sao Paulo and Jakarta also offer short-term use of business facilities to U.S. companies and business organizations on a user fee basis. For the latter group, the Commercial Center provides an ideal venue to achieve specific, short-term business objectives: hold meetings with prospective clients, potential agents/distributors, local staff, conduct market research, stage technical seminars or product launches, or find a local office. The length of time depends on the specific business objectives and proposals will be considered on a case-by-case basis. The broad goal of Commercial Centers is to offer clients a unique package that combines US&FCS counseling and trade programs and the convenience of using in-house business facilities—fully equipped offices, meeting and conference rooms, exhibit/display areas—at one site. The facilities are made available to complement the core US&FCS trade promotion programs and services which are designed to help U.S. companies export.

Next Steps

Contact the Commercial Centers directly to propose your use of the Commercial Centers on either a long-term or short-term basis. The Directors are in the best position to suggest most effective uses of the Commercial Center resources to achieve your business goals in-country. All proposals will be considered on a first-come, first-served basis.

For the convenience of clients, Commercial Center brochures will be made available through the Trade Information Center, located in Washington D.C.

For general inquiries or requests for export counseling on exploring business opportunities in Brazil, Indonesia and the People's Republic of China and neighboring markets, call 1–800–USA–TRAD and ask the Trade Information Center for the nearest US&FCS domestic field office, referred to as the U.S. Export Assistance Center, for individual counseling.

Marjory E. Searing,

Acting Assistant Secretary and Director General of the U.S. and Foreign Commercial Service.

[FR Doc. 98–6996 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

TITLE: Central Title and Lien Registry for Limited Access Permits.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 26, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Sustainable Fisheries, National Marine Fisheries Service (NMFS), 1315 East West Highway, Silver Spring, Maryland 20910, (301) 713–2396.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation Act requires NMFS to establish a central registry (Registry) for limited access permits (LAPs). The Registry will be the exclusive means of perfecting title to LAPs. It will also be the exclusive means of perfecting security interests in, assignments of, and liens and other encumbrances against LAPs (except for Federal tax liens). The respondents will be commercial fishing industry creditors and borrowers, individuals, partnerships, corporations, and other fisheries parties which need to perfect limited access permit titles and liens.

II. Method of Collection

The collection of information will be collected on the Central Title and Lien Registry filing forms.

III. Data

OMB Number: New Collection.

Form Numbers: N/A.

Type of Review: Regular Submission.

Affected Public: Businesses and other for profit organizations—commercial fishermen, partnerships, and corporations applying for financing or buyback funds.

Estimated Number of Respondents: 3050.

Estimated Time Per Response: .5 hours.

Estimated Total Annual Burden Hours: 1,525.

Estimated Total Annual Cost to Public: No capital, operations, or maintenance costs are expected.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7701 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.; I.D.112197A]

Draft Comprehensive Research and Monitoring Plan for Atlantic Highly Migratory Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of proposed plan.

SUMMARY: NMFS announces the availability of a proposed plan for research and monitoring to support the conservation and management of Atlantic highly migratory species as required by the Atlantic Tunas Convention Act (ATCA). NMFS has prepared this draft plan based on extensive consultation with relevant Federal and state agencies, scientific and technical experts, commercial and recreational fishermen, and other interested persons, public and private. Members of the public are encouraged to respond to this opportunity for further comment on research and monitoring priorities for Atlantic highly migratory species.

DATES: Comments on the proposed plan must be submitted on or before May 11, 1998.

ADDRESSES: Written comments on the proposed plan should be sent to: Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910. This office will provide copies of the draft *Comprehensive Research and Monitoring Program for Atlantic Highly Migratory Species* upon request.

FOR FURTHER INFORMATION CONTACT: Rachel Husted, telephone (301) 713–2347; FAX (301) 713–1917.

SUPPLEMENTARY INFORMATION: NMFS currently undertakes a broad range of actions to address research and monitoring priorities, including rulemaking, scientific activities within the agency, and external partnerships that extend research capabilities. The agency has developed its existing research and monitoring program for HMS through a process of consultative reviews and public meetings with relevant Federal and state agencies, scientific and technical experts, commercial and recreational fishermen, and other interested persons, public and private. NMFS proposes to continue following this same public process, which has proven to be an effective means of consulting all interested parties.

The proposed plan is based upon the existing research and monitoring program at NMFS as well as suggestions for future initiatives based on domestic and international priorities. It has been prepared pursuant to Section 971i(b) of ATCA, which directs the Secretary of Commerce to develop and implement a comprehensive research and monitoring program to support the conservation and management of Atlantic bluefin tuna and other highly migratory species. Section 971i(b) requires that the comprehensive research and monitoring program for HMS shall provide for, but not be limited to, the following:

(a) Statistically designed cooperative tagging studies;

(b) Genetic and biochemical stock analyses;

(c) Population censuses carried out through aerial surveys of fishing grounds and known migration areas;

(d) Adequate observer coverage and port sampling of commercial and recreational fishing activity;

(e) Collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landings reports for charter operations and fishing tournaments, and programs to provide reliable reporting of the catch by private anglers;

(f) Studies of the life history parameters of bluefin tuna and other highly migratory species;

(g) Integration of data from all sources and the preparation of data bases to support management decisions; and

(h) Other research as necessary.

Dated: March 19, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7799 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Apparel Produced or Manufactured in the Republic of Maldives

March 20, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: April 15, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In exchange of notes dated May 16, 1997 and February 19, 1998, the Governments of the United States and the Republic of Maldives agreed to amend the existing export visa arrangement to require that the quantity stated on the visa be listed in whole units. If the quantity exported exceeds one specific whole unit but is less than the next whole unit, visaed quantities will be rounded to the closest whole unit. Half units will be rounded up. Where the exported unit is less than one unit, the shipment will be rounded upwards to one unit.

Effective on April 15, 1998, apparel products, produced or manufactured in Maldives and exported on or after April 15, 1998 must be accompanied by a visa with the quantity stated in whole units, decimals and fractions will no longer be accepted. There will be a grace period from April 15, 1998 through May 14, 1998 during which products, produced or manufactured in Maldives, will not be denied entry if the quantity is stated in decimals and fractions. Shipments exported after May 14, 1998 will be denied entry unless the quantity is stated in whole numbers.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the export visa requirements.

See 47 FR 36879, published on August 24, 1982.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 20, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 18, 1982, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool and man-made fiber apparel, produced or manufactured in the Republic of

Maldives for which the Government of Maldives has not issued an appropriate export visa.

Effective on April 15, 1998 apparel, produced or manufactured in Maldives and exported on or after April 15, 1998 must be accompanied by a visa with the quantity stated in whole units, decimals and fractions will no longer be accepted. There will be a grace period from April 15, 1998 through May 14, 1998 during which apparel, produced or manufactured in Maldives and exported during that period, will not be denied entry if the quantity is stated in decimals and fractions. Shipments exported after May 14, 1998 will be denied entry unless the quantity is stated in whole numbers.

If the quantity exported exceeds one specific whole unit but is less than the next whole unit, visaed quantities will be rounded to the closest whole unit. Half units will be rounded up. Where the exported unit is less than one unit, the shipment will be rounded upwards to one unit.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–7721 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1998 Correlation

March 20, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1998 Correlation

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1998) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program. The Correlation should be amended to include the changes indicated below. These changes were effective on March 1, 1998:

Changes to the 1998 Correlation

These are new numbers and definitions for cooler bags:

Add 6307.90.9905 (369)—Cooler bags with an outer surface of textile materials, of cotton.

Add 6307.90.9907 (670)—Cooler bags with an outer surface of textile materials, of man-made fibers.

Add 6307.90.9909 (870)—Other cooler bags with an outer surface of textile materials.

These numbers were renumbered due to the creation of the statistical breakouts for cooler bags in chapter 63. The categories and definitions remain the same:

4202.92.3015 (369) becomes 4202.92.3016 (369).

4202.92.3030 (670) becomes 4202.92.3031 (670).

4202.92.3090 (870) becomes 4202.92.3091 (870).

Additional change:

Replace 6505.90.9095 (859) with 6505.90.9085 (859)—Other hats and other headgear, knitted or crocheted, not elsewhere specified or included.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–7723 Filed 3–24–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 F.R. 10364.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Thursday, March 26, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission changed the meeting to discuss a rule enforcement review to April 2, 1998 at 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–7922 Filed 3–23–98; 11:26 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0008]

In The Matter of Safety 1st, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Safety 1st, Inc., a corporation, containing a civil penalty of $175,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 9, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C., 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 18, 1998.

Sadye E. Dunn,

Secretary.

CONSUMER PRODUCT SAFETY COMMISSION

Settlement Agreement And Order

1. Safety 1st, Inc. ("Safety 1st") a corporation, enters into this Settlement Agreement and Order with the staff ("the staff") of the Consumer Product Safety Commission ("the Commission") in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSC").

I. The Parties

2. The Consumer Product Safety Commission is an independent federal

regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. Safety 1st is a corporation organized and existing under the laws of the State of Massachusetts. Its principal offices are located at 210 Boylston Street, Chestnut Hill, MA 02167.

II. Staff Allegations

4. Between April 1994 and December 1994 Safety 1st manufactured and distributed approximately 191,000 portable Safety 1st Safe Keeper Bed Rails and Flashlight model 177 (hereinafter, "Bed Rail") in the United States. Safety 1st is, therefore, a manufacturer, distributor and a private labeler of the Bed Rail in commerce.

5. The Bed Rail is a portable household device intended to keep young children from falling out of bed. The Bed Rail is a consumer product.

6. The plastic support arm(s) of the Bed Rail may break or separate from the rest of the guard rail when children users move against them allowing children to become stuck between rail and bed or to fall out of bed. In addition, a sharp edge along the hard plastic seams of the bed rail may cause cuts and abrasions to children.

In 1994 and 1995, Safety 1st admits to receiving 25 injury complaints from consumers describing such Bed Rail incidents. Some of the reported incidents have caused fractures, bruises, lacerations to the face, head, back, chest and otherwise, and one concussion.

7. Safety 1st obtained information which reasonably supported the conclusion that its Bed Rail contained defects which could create a substantial product hazard but failed to report that information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

III. Response of Safety 1st

8. Safety 1st denies the allegations of the staff that the Safekeeper Bed Rail and Flashlight contains any defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

9. Safety 1st filed a report as required by Section 15(b) of the CPSC, 15 U.S.C. 2064(b). Such report contained a disclaimer as to product defect and risk of a substantial product hazard. The separation of the support arms from the bed rail resulted from a failure of the installer to properly assemble the bed rail.

10. Safety 1st also contends that the incidents reported did not involve a serious risk of injury to the intended user age group for the bed rail.

IV. Agreement of The Parties

11. The Commission has jurisdiction over this matter under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*

12. Safety 1st knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the staff allegations cited herein, (2) to judicial review or other challenge or contest of the validity of the Commission's Order, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusion of law with regard to the staff allegations.

13. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with 16 C.F.R. 1118.20.

14. The Settlement Agreement and Order becomes effective upon final acceptance by the Commission and its service upon Safety 1st.

15. Upon final acceptance of this Settlement Agreement by the Commission, the Commission will issue a press release to advise the public of the civil penalty Settlement Agreement and Order.

16. Safety 1st agrees to entry of the attached Order, which is incorporated herein by reference, and to be bound by its terms.

17. This Settlement Agreement and Order are entered into for settlement purposes only and shall not constitute an admission or determination arising from the allegations that the guard rails contain a defect which could create a substantial product hazard.

18. This Settlement Agreement is binding upon Safety 1st and the assigns or successors of Safety 1st.

19. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: March 9, 1998.

Michael Lerner,

Chief Executive Officer, Safety 1st, Inc.

Dated: March 5, 1998.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, The Consumer Product Safety Commission.

Eric L. Stone,

Director, Legal Division, Office of Compliance, The Consumer Product Safety Commission.

William J. Moore, Jr.,

Attorney, Legal Division, Office of Compliance, Litigation, Office of Compliance, The Consumer Product Safety Commission.

Order

Upon consideration of the Settlement Agreement entered into between Respondent, Safety 1st, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Safety 1st, Inc., and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further ordered, that upon final acceptance of the Settlement Agreement and Order, Safety 1st, Inc. shall pay the Commission a civil penalty in the amount of one hundred seventy five thousand and no/100 dollars ($175,000.00), within ten (10) days after service of this Final Order upon the Respondent, Safety 1st, Inc.

Provisionally accepted and Provisional Order issued on the 18th day of March, 1998.

By order of the commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–7672 Filed 3–24–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0286]

Notice and Request for Comments Regarding an Information Collection Requirement

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the

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proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through September 30, 1998. DoD proposes that OMB extend its approval for use through September 30, 2001.

DATES: Consideration will be given to all comments received by May 26, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection requirement should be sent to: Defense Acquisition Regulations Council, Attn: Ms. Melissa D. Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite OMB Control Number 0704–0286 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0286 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa D. Rider, at (703) 602–0131. A copy of this information collection requirement is available electronically via the Internet at: http://www.dtic.mil/dfars/

Paper copies may be obtained from Ms. Melissa D. Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 205, Publicizing Contract Actions, and DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders; OMB Control Number 0704–0286.

Needs and Uses: This information collection requirement pertains to contractor information provided to Cooperative Agreement Holders. DFARS Subpart 205.4 and the clause at DFARS 252.205–7000 require that defense prime contractors awarded contracts over $500,000 provide to cooperative agreement holders, upon request, a list of employees or offices that are responsible for entering into subcontracts under defense contracts. The cooperative agreement holders further disseminate the information to other firms within a geographic area defined in the individual cooperative agreements. The purpose of the cooperative agreements is for the agreement holders to provide procurement technical assistance to business entities within a specified geographic area. This guidance implements 10 U.S.C. 2416.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 7,548.

Number of Responses: 6,682.

Responses per Respondent: 1.

Average Burden per Response: 1.13 hours.

Frequency: On occasion.

Summary of Information Collection

DFARS Subpart 205.4 and the clause at DFARS 252.205–7000 require that defense prime contractors awarded contracts over $500,000 provide to cooperative agreement holders, upon their request, a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list must include the business address, telephone number, and area of responsibility of each employee or office. The contractor need not provide the list to a particular cooperative agreement holder more frequently than once a year.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–7711 Filed 3–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) on the Disposal and Reuse of the BRAC Parcels at Sierra Army Depot (SIAD), California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the proposed action evaluated by this EA to dispose of property made available by the realignment of Sierra Army Depot (SIAD), California, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The EA addresses the environmental consequences of the disposal and subsequent reuse of approximately 4,397 acres at SIAD. The Army will negotiate the transfer of 2,688 acres to the Lassen County Local Redevelopment Authority (LRA), transfer 1,037 acres to the U.S. Department of Health and Human Services, and 600 acres to the U.S. Department of Justice. Seventy-two acres have transferred to the U.S. Department of Interior which were the subject of a separate environmental analysis but the impacts of disposal are also analyzed in the cumulative effectives section of this EA. Three alternative methods of disposal were analyzed: Encumbered disposal, unencumbered disposal and retention of the property in caretaker status (i.e., no action alternative). The Army's preferred alternative for dipsosal of the SIAD BRAC parcels is encumbered disposal which involves conveying the property with conditions imposed on easements and rights-of-ways, remedial activities, unexploded ordnance restriction, noise advisory, wetlands, threatened and endangered species habitat, archaeological site protection and utilities dependencies.

The EA, which is incorporated into the Finding of No Significant Impact (FNSI), examines potential effects of the proposed action and alternatives on 15 resources areas and areas of environmental concern: Land use, climate, air quality, noise, geology, and water resources infrastructure, hazardous and toxic substances, permits and regulatory authorizations, biological resources and ecosystems, cultural resources, economic development, socioeconomics and quality of life.

The cumulative effects analysis of the EA determined that one resource category, (socioeconomic impacts), would have significant adverse impacts. A significant impact to sociological affects, in and of itself, does not give rise to an EIS pursuant to 40 CFR 1508.14. Accordingly, a FNSI is appropriate and an EIS will not be prepared.

DATES: Comments must be submitted on or before April 24, 1998.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. Glen Coffee at the U.S. Army Corps of Engineers, Mobile District, P.O. Box 2288, Mobile, Alabama 36628–0001 or by facsimile at (334) 690–2721.

Dated: March 13, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 98–7698 Filed 3–24–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Program for Qualifying Department of Defense (DOD) Brokers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: In previous **Federal Register** notice (Vol. 62, No. 27, pages 5962–5963) Monday, February 10, 1997, the Headquarters, Military Traffic Management Command (HQMTMC) announced a request for comments on the Program for Qualifying Department of Defense (DoD) Brokers. Due to comments received concerning the earlier notice, HQMTMC has decided to test the Broker Program for a period of one year, beginning June 1, 1998 and ending June 1, 1999. Brokers will be allowed to participate in the movement of all DoD freight except for shipments requiring Transportation Protection Services (TPS). Brokers will be evaluated using the same rules as those applied to carriers who are currently approved to do business with the DoD.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–QQ, Room 630, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

FOR FURTHER INFORMATION CONTACT: Rick Wirtz, MTOP–QQ, telephone 703–681–6393.

SUPPLEMENTARY INFORMATION: MTMC is the agency established within the DoD for the procurement of land transportation services from commercial carriers on behalf of DOD shippers. Historically brokers could not participate in DOD traffic because the broker was an intermediary between the shipper and the carrier, essentially duplicating the mission performed by MTMC of matching the DOD shipper's requirements with a carrier which can accommodate the move. Brokers were not carriers, did not perform transportation, did not assume responsibility for the transportation, and did not publish tariffs or offer Government rate tenders, or enter into Government bills of lading (GBLs) or other transportation contracts. Today, in the deregulated transportation environment, brokers can and do conduct carrier operations, perform transportation, and assume responsibility for the transportation, and no reason appears why they may not voluntarily enter into the DOD standard tender/GBL and other transportation contracts arranged by MTMC. Consequently, MTMC is not proposing to change its policy in order to offer brokers the opportunity to qualify for participation in DOD transportation procurements, except shipments requiring a Transportation Protective Services (TPS). Under MTMC's new policy, brokers interested in completing for DOD traffic, except TPS shipments, could apply for qualification by executing the basic Agreement, and by complying with requirements for submission of evidence of insurance (public liability and cargo), a list of underlying carriers which the broker intends to use in the movement of DOD shipments, a performance bond, and other standard requirements.

Frederick G. Wirtz,

Traffic Management Specialist.

[FR Doc. 98–7720 Filed 3–24–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 24, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 19, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Comprehensive School Reform Demonstration Program.

Frequency: Annually.

Affected Public: Businesses or other for-profits; not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 2,240.

Abstract: This application will be used by the State Education Agencies (SEAs) to obtain funds to provide competitive grants to local education agencies to assist local Title I and some non-Title I schools to adopt research-based comprehensive school reform models. The information will be used to

review and to approve SEA applications to participate in the program.

[FR Doc. 98–7683 Filed 3–24–98; 8:45 am]

BILLING CODE 4000–21–P

DEPARTMENT OF ENERGY

Notice of Renewal of the Secretary of Energy Advisory Board

Pursuant to section 14 (a) (2) (A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (the Board) has been renewed for an additional two-year period, beginning in March 1998.

The Board will continue to provide independent, balanced, and authoritative advice to the Secretary of Energy on matters concerning the Department's management, basic science, research, development and technology activities; energy and national security responsibilities; environmental cleanup activities; energy-related economic activities; and the operations of the Department.

The Board members are selected to assure well-balanced geographical representation and on the basis of their broad competence in areas relating to quality management, basic science, renewable energy, energy policy, environmental science, economics, and broad public policy interests. Membership of the Board will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act (Pub. L. 92–463) and implementing regulations.

The renewal of the Board has been determined to be in the public interest, important and vital to the conduct of the Department's business in connection with the performance of duties established by statute for the Department of Energy. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORAMTION CONTACT: Ms. Rachel M. Samuel, U.S. Department of Energy, HR–7, FORS, Washington, D.C. 20585, Telephone: (202) 586–3279.

Issued in Washington, D.C. on March 20, 1998.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 98–7733 Filed 3–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–15; Integrated Assessment of Global Climate Change Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for the Integrated Assessment of Global Climate Change Program. This notice is a follow on to four previous notices published in the **Federal Register** (Notice 93–4 published December 9, 1992, entitled Economics of Global Change Research Program; Notice 95–12 published December 29, 1994, entitled Global Change Assessment Research Program; Notice 96–06 published January 30, 1996, entitled Global Change Integrated Assessment Research, and Notice 97–06 published February 11, 1997, entitled Integrated Assessment of Global Climate Change Research Program). The research program supports the Department's Global Change Research Program, the U.S. Global Change Research Program and the Administration's goals to understand and mitigate the rise in greenhouse gases.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. All preapplications, referencing Program Notice 98–15, should be received by DOE by 4:30 P.M., E.D.T. April 20, 1998, but early submission of preapplications is encouraged to allow time for meaningful dialogue.

The deadline for receipt of formal applications is 4:30 p.m., E.D.T., May 21, 1998, to be accepted for merit review and to permit timely consideration for award in fiscal year 1998 and early fiscal year 1999.

ADDRESSES: Preapplications, referencing Program Notice 98–15, should be sent E-mail to john.houghton@oer.doe.gov.

Formal applications, referencing Program Notice 98–15, should be sent to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 98–15. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Environmental Sciences Division, ER–74, Office of Biological and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–8288, E-mail: john.houghton@oer.doe.gov, fax: (301) 903–8519. The full text of Program Notice 98–15 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/fr98 __(1 times) 15.html.

SUPPLEMENTARY INFORMATION: The determination of energy policy, such as the administration's analysis of international protocols for global climate change, is tied to understanding the benefits and costs of potential actions with respect to the control of greenhouse gases and possible climate change. The research described in this notice supports the analysis of those benefits and costs.

A theme common to the research topics supported by this program is the support of integrated assessment of global climate change. Integrated assessment of climate change is defined here as the analysis of climate change from the cause, such as greenhouse gas emissions, through impacts, such as changed energy requirements for space conditioning due to temperature changes. Integrated assessment is sometimes, but not always, implemented as a computer model. It evaluates the benefits and costs, not necessarily measured monetarily, for various actions to mitigate global climate change. A description of integrated assessment may be found in Chapter 10: "Integrated Assessment of Climate Change: An Overview and Comparison of Approaches and Results," in Climate Change 1995: Economic and Social Dimensions of Climate Change, edited by Bruce, James P.; Lee, Hoesung; and Haites, Erik F., Cambridge University Press, 1996.

This research will be judged in part on its potential to improve and/or support the analytical basis for policy development. The program is narrowly focused and will primarily concentrate support on the topics described below. Applications that involve development

of analytical models and computer codes will be judged partly on the basis of proposed tasks to prepare documentation and make the models and codes available to other groups.

The following is a list of topics that are high priority. Topics proposed by principal investigators that fall outside this list will need strong justification.

A. Technology Innovation and Diffusion

This category has been a primary focus of the Integrated Assessment of Global Climate Change Program since its initiation five years ago. Potential research projects include such issues as:

- Decomposing the effect of technology innovation and diffusion on carbon emissions into such components as changes in GDP, sectoral mix, innovation, and diffusion. Historical records might be used to estimate trends and make projections that vary as a function of price effects and policy options.
- Technology innovation and diffusion is an important part of several aspects of integrated assessment models, such as backstop technologies, adaptation, resource depletion, labor productivity, and substitution parameters for shifting factor shares. Investigations might include studies to help predict changes in these parameters both for a base case and for various policy options, as well as studies to analyze the internal consistency among these aspects.
- The rate and nature of technology diffusion from the OECD to developing countries is not well understood. Relevant factors include the prediction of the energy-use path for developing countries, the effects of changes in international trade policies and patterns, and carbon leakage.
- The translation of existing literature on the economics of technology innovation into a representation that could be adapted for IA models.
- Investment or other policies to encourage research and development are options for increasing abatement and improving adaptation. Research in this topic would investigate such subjects as evaluating the effectiveness of alternative modes of implementation, such as direct grants or cooperative research projects. How does technology innovation and diffusion happen, and how can we improve it?

B. Emissions Trading

The recent Kyoto protocol has heightened the need to understand the issues involved in implementing emission trading procedures. An underlying question is to design trading procedures so that actions are encouraged that are as coincidental with the goals of the agreement as possible. Research in this area would include theoretical work on emissions trading as well as applied. Such practical factors include:

- What institutional factors need to be considered? What role should be played by national governments? Which set of institutions should be regulated (for example, utilities, distributors, etc.)
- In what way should emission trading be phased in?
- What differences are there between CO_2 and the five other greenhouse gases?
- How flexibly can the emissions trading practices be designed? How well will the practices accommodate changes in targets, country participation, institutional design, or relative weights among the gases?

C. Supply Curves for Non-CO_2 Greenhouse Gases

The Kyoto protocol has included five greenhouse gases other than CO_2: CH_4, N_2O, CFC-11, HCFC-22, and CF_4. The "supply curves" (emission scenarios) for the other five gases are much more poorly understood than the supply curve for CO_2. This research topic would provide information on global emissions of the other five gases under business-as-usual scenarios as well as under plausible alternative scenarios that would result from policy actions.

D. Supply Curves for Land Use

The Kyoto protocol highlighted land use mitigation as an important policy option. Carbon dioxide emissions as a function land use practices are more poorly approximated than emissions from combustion of fossil fuels. Research funded under this topic would develop new information on global carbon dioxide emissions from various land use scenarios, including forests and agricultural lands. The emphasis is on global scale estimates, perhaps regionally disaggregated. What potential is there for enhancing CO_2 uptake? What changes in the global carbon balance could be expected from policy options?

E. Representation of Carbon Management Technologies

Current integrated assessment models include representations of well-known technologies and forecast changes in those technologies into the distant future. However, in general, the models do not represent with as much reliability forecasts of innovative technology changes that might be due to new research and technologies that reduce atmospheric concentrations of carbon dioxide. Research is ongoing that will improve our understanding and ability to develop innovative clean energy sources that will emit less carbon dioxide to the atmosphere. Such developments may rely on the use of fossil fuels and carbon sequestration in the oceans or deep subsurface. New modes of supplying and using substantial amounts of energy, such as hydrogen and fuel cells, may alter future energy, emission, and economy parameters substantially. Research in this topic would identify reasonable technology scenarios that will guide the integrated assessment predictions of energy, fossil fuel use, costs, emissions, and so forth, in response to various policy options.

Program Funding

It is anticipated that up to $1 million will be available for multiple awards to be made in FY 1998 and early FY 1999 in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research, and programmatic needs. Annual budgets are expected to range from $30,000 to $150,000 total costs.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and FFRDCs, including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subaward) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a

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portion of the application, then combine each portion into a single integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic organizations who wish to form a collaborative project with a DOE FFRDC may not include the DOE FFRDC in their application as a lower-tier participant (subaward). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for its portion of the project. The FFRDC must include separate Budget Pages for its portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Integrated Assessment of Global Climate Change Research Program.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The research project description must be 15 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. On the ER grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

Although the required original and seven copies of the application must be submitted, researchers are asked to submit an electronic version of their abstract of the proposed research in ASCII format and their E-mail address to Karen Carlson by E-mail at karen.carlson@oer.doe.gov. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.

Related Funding Opportunities

Investigators may wish to obtain information about the following related funding opportunities:

National Oceanic and Atmospheric Administration

Within the context of its Economics and Human Dimensions of Climate Fluctuations Program, the Office of Global Programs of the National Oceanic and Atmospheric Administration will support research that identifies and analyzes social and economic impacts associated with seasonal, year-to-year, and intradecadal climate variability; improves our understanding of factors that determine human vulnerability to such fluctuations; and identifies options for reducing vulnerability. The program is particularly interested in learning how advanced climate information (e.g., ENSO-based probabilistic climate forecasts), as well as an improved understanding of current coping mechanisms, could be used for reducing vulnerability and providing for more efficient adjustment to these variations. Notice of this program is included in the Program Announcement for NOAA's Climate and Global Change Program, which is published each spring in the **Federal Register**. The deadline for proposals to be considered in Fiscal Year 1999 is expected to be in late summer 1998. For further information, contact: Caitlin Simpson; Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Ave., Suite 1225; Silver Spring, MD 20910; telephone: (301) 427–2089, ext. 47; Internet: simpson@ogp.noaa.gov.

Environmental Protection Agency

In 1998 the Environmental Protection Agency will support research on "Indicators of Global Climate Change." Related requests for assistance that are currently advertised on the EPA home page include "Ecological Indicators," "Regional Scale Analysis and Assessment," "Water and Watersheds" and "Research and Monitoring Program on Ecological Effects of Environmental Stressors Using Coastal Intensive Sites." Information is available through the web site: http://www.epa.gov/ncerqa or hotline 1–800–490–9194. For further information contact Barbara Levinson at Levinson.Barbara@EPAMail.EPA.Gov.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on March 18, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98–7717 Filed 3–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–14; Natural and Accelerated Bioremediation Research Program (NABIR)

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. Grant applications are being solicited for five of the eight NABIR Program research elements: (1) Assessment; (2) Biotransformation and Biodegradation; (3) Community Dynamics and Microbial Ecology; (4) System Engineering, Integration, Prediction, and Optimization; and Bioremediation and its Social Implications and Concerns (BASIC).

DATES: Applicants should submit a Notice of Intent to Apply, containing a title, a list of investigators, and a five-line summary of proposed research by April 15, 1998.

The deadline for receipt of formal applications is 4:30 p.m., E.D.T., May 13, 1998, to be accepted for merit review and to permit timely consideration for award in fiscal year 1998.

ADDRESSES: Notices of Intent to Apply, referencing Program Notice 98–14, should be sent by E-mail to john.houghton@oer.doe.gov.

Formal applications, referencing Program Notice 98–14, must be sent to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 98–14. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Environmental Sciences Division, ER–74, Office of Biological and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–8288, E-mail john.houghton@oer.doe.gov, fax (301) 903–8519. The full text of Program Notice 98–14 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The mission of the NABIR Program is to provide the scientific understanding needed to use natural in situ processes and to develop new methods to accelerate those processes for bioremediation at DOE facilities. The NABIR program is initially emphasizing the bioremediation of metals and radionuclides in the subsurface below the root zone, including both thick vadose and saturated zones. The program is implemented through seven interrelated scientific research elements (Acceleration, Assessment, Biogeochemical Dynamics, Biomolecular Science and Engineering, Biotransformation and Biodegradation, Community Dynamics and Microbial Ecology, and System Engineering, Integration, Prediction, and Optimization); and a social and legal element called Bioremediation and its Social Implications and Concerns (BASIC). A document entitled Natural and Accelerated Bioremediation Research Program Plan (DOE/ER–0659T) containing an initial planning description of the NABIR Program and each of the science elements is available via the Internet using the following web site address: http://www.er.doe.gov/production/ober/nabir/cover.html. The NABIR Program Plan is also available from the Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831 (DOE and DOE grantees only) and the U.S. Department of Commerce, Technology Administration, National Technical Information Service, Springfield, VA 22161, (703) 487–4650 (public source). Additional information about NABIR, such as references to infrastructure that could be available to the research community, can be accessed from the NABIR Homepage: http://www.lbl.gov/NABIR/. Abstracts of currently funded projects are available via the Internet using the following web site address: http://www.lbl.gov/NABIR/awardees.html.

Each scientific research element is directed by a program manager from OBER, who is responsible for providing support and overall direction for the element, including determining the relevance of the proposed research to the goals and objectives of the program element to the NABIR and other DOE programs. The NABIR program also has Science Team Leaders, selected through an earlier peer review process, who provide scientific leadership and coordination to the community of NABIR investigators. Information on the current Science Team Leaders and DOE program staff is available via the Internet using the following web site address: http://www.lbl.gov/NABIR/research__5.html.

Program Focus

The NABIR Program supports long-term, hypothesis-driven research directed at specific topics that will provide the understanding necessary to develop effective new bioremediation technologies for DOE site cleanup. This research will help determine the future viability of bioremediation technologies at the DOE sites. The NABIR Program will not support research to evaluate the risk to humans. Although the program is directed at specific goals, it supports research that is more fundamental in nature than demonstration projects.

The initial emphasis of the NABIR Program is on field-scale research and metal and radionuclide contamination, specifically on the metals and radionuclides associated with past weapons production activities. However, the research program will support laboratory, theoretical, modeling, and other non-field research projects, if they fill important gaps that would be necessary to complete understanding for field-scale studies. The study of real problems might iterate between, for example, the laboratory and the field. Investigators without access to laboratories licensed to work with radionuclides may propose research with non-radioactive surrogates of radionuclides, or collaborate with a licensed laboratory. Typically, the bioremediation of metals and radionuclides involves, but is not limited to, mobilization and immobilization scenarios. Consideration of organic contaminants, such as solvents and complexing agents that would be important substrates, facilitators, inhibitors, or sources of carbon or electron donors or acceptors, can be included in the proposed research to the extent that they influence the primary goal of understanding the remediation of metals and radionuclides. Applicants are encouraged to review Chemical Contaminants on DOE Lands, DOE/ER–0547T, available at the OBER Homepage: http://www.er.doe.gov/production/ober/EPR/contam.pdf, for a compilation of wastes and waste mixtures at the DOE sites.

NABIR is a research program designed to serve as a foundation for microbial in situ bioremediation techniques. Although "spillover" benefits of the research to other cleanup needs such as the use of bioreactors to process waste streams are anticipated, NABIR

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emphasizes investigations into bioremediation of subsurface waste sites and their by-products released to the environment. This emphasis includes research that will assist the application of in situ bioremediation in conjunction with other cleanup methods, for example, using bioremediation to mobilize radionuclides so that pump-and-treat techniques could be more effective. Problems characterized by large areas with low-concentration contamination are emphasized over problems of localized, high concentration contamination. Research on phytoremediation will not be supported during this funding period.

In research plans that involve the potential release of chemicals, enzymes, and/or microorganisms to the field (both at contaminated and non-contaminated control sites), applicants must discuss how they will involve the public or stakeholders in their research, beginning with experimental design through completion of the project. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection, and communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research.

NABIR Infrastructure

The NABIR program anticipates selecting at least one Field Research Center (FRC) located at a DOE site. The FRC will serve as a central facility for researchers to use at their option. However, FRCs will not be identified for at least a year from the date of this solicitation and until National Environmental Policy Act (NEPA) review of the NABIR Program is complete. Applicants may use any available contaminated or uncontaminated field site that is presently available to them, including but not limited to DOE sites. However, investigators are encouraged to consult the listing of current FRC-related field research sites and facilities available to NABIR investigators on the NABIR Homepage, at http://www.lbl.gov/NABIR/research__6.html. Investigators should describe how their research will interface with or transfer to field-scale research at the site they are using, to FRC-related sites, or to the FRC site that will be available in the future. A centrally maintained database will be developed to provide limited information, such as site characterization and kinetics data, that will be needed by a broad segment of investigators. When appropriate, applications must include a short discussion of the Quality Assurance and Quality Control (QA/QC) measures that will be applied in data gathering and analysis activities. Successful applicants will be expected to coordinate their QA/QC protocols with NABIR program personnel. A draft of guidelines to be used by Natural and Accelerated Bioremediation Research (NABIR) program investigators in managing their information and data can be found on the NABIR Homepage: http://www.lbl.gov/NABIR/data-guide.html.

Scientific Research Elements

The following sections describe each of the NABIR scientific research elements that are emphasized in this solicitation. Applicants may propose research that transcends more than one research element; it is also anticipated that many applications could be placed in more than one element. However, each application should identify the one science element most closely aligned with the proposed research, to facilitate scientific review.

Assessment: Current methods for measuring and predicting the effectiveness of bioremediation are inadequate and, in most cases, poorly developed. Demonstrating the effectiveness of bioremediation will require documentation for direct measures, such as alteration of contaminant mobility, or indirect measures, such as accumulation of undesirable by-products. The Assessment program seeks the development of innovative and effective methods to assess:

- Bioremediation rate and activity, including microbial community structure and dynamics, biotransformation processes and rates, and electron flow; and
- Bioremediation endpoints, including not only the concentrations of contaminants and byproducts but also the stability, bioavailability, and toxicity of residual end-products. NABIR will not, however, fund projects that examine human health risks of endpoints.

This element will focus on developing techniques for assessing the bioremedial activities of individual microbial strains and functional groups within a community and on validating existing and emerging laboratory and field techniques. Priority will be given to research applications that could result in techniques and/or instrumentation that: (i) Operate in real time; (ii) operate in field-scale heterogeneous environments; (iii) are cost-effective; and (iv) determine endpoints that more closely approximate limited or non-bioavailability. Research is sought to answer questions such as:

- Can quantitative techniques be adapted or developed for measurement of microbial community structure, movement, activity, and effectiveness during bioremediation?
- How can geophysical, geochemical, and hydrologic properties critical to bioremediation effectiveness be determined?
- What new methods might be developed to interpret complex data sets, including temporal and spatial variability in support of bioremediation management?
- Can bioremediation endpoints that accurately measure bioavailability be quantitatively established?

An important priority is the development of "core scale" and field scale technologies to measure viable biomass, community composition, and nutritional status and "core scale" interrogation technologies. These technologies would address such items as biogeochemical processes that control mineral and contaminant distribution, metabolic activity (especially low-level), biotransformation rates, and hydraulic and hydrogeochemical variables that control microbial distribution. Priority will be given to new and advanced techniques that are likely to be available for use at the NABIR Field Research Center in two to three years (http://www.lbl.gov/NABIR/research__6.html).

Biotransformation and Biodegradation: The goal of all bioremediation efforts is to reduce the potential toxicity of chemical contaminants in the field by using living organisms or their products to mineralize, degrade, transform, mobilize, or immobilize contaminants. There is already a significant base of knowledge about many pathways for organic chemical degradation, and several important contaminant degradation mechanisms are presently under detailed investigation. However, the understanding of biotransformation and biodegradation pathways and mechanisms in the field is incomplete. Although the degradation of many organic compounds and the biotransformation of some inorganic compounds in laboratory cultures have been well described, it is often unclear how this information relates to bioremediation processes under field conditions. The biotransformation of metals and radionuclides in thick, variably saturated, vadose zones is poorly understood. Successful laboratory studies have not allowed for predictions about the fate of complex chemical mixtures that include metals and radionuclides in the field. It would

be useful to understand: (i) The metabolic pathways taken by mixtures of chemicals in the presence of complex microbial communities in vadose zones and their interfaces with saturated zones and the waste plume; (ii) the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting the kinetics of those transformations; and (iii) the relationships between microbial cell microenvironments and aqueous geochemistry related to the sequestration, release, precipitation, solubility, organic complexation, or chemical modification (*e.g.*, oxidation/reduction) of metals and radionuclides. Priority will be given to applications for research: (i) Using multiple contaminants; (ii) using microbial consortia; and (iii) on microbial processes that permanently sequester or chemically alter metallic or radioactive constituents of mixed wastes. Research is needed to address questions such as:

- How can laboratory studies, especially those involving interdisciplinary approaches or mixed culture approaches, be used to accurately represent field situations and allow for predictions of chemical fate?
- How important are microbial species interactions in the biotransformation of metals and radionuclides?
- How do organic and inorganic co-contaminants, *i.e.*, mixed wastes, affect the rates of microbial biotransformation of metals and radionuclides?
- What factors control the fates and kinetics of microbial metal and radionuclide biotransformations in vadose and saturated zones?
- What are the critical characteristics of sites where natural biotransformation and biodegradation of mixed metal and radionuclide wastes are occurring that promote these processes?
- Can microbiological processes be harnessed to permanently sequester metals and/or radionuclides in the subsurface?
- What are the metal- and radionuclide-transforming capabilities, including metabolic pathways, of indigenous microorganisms in deep vadose or saturated zones representative of DOE sites?

Community Dynamics and Microbial Ecology: Fundamental research in Community Dynamics and Microbial Ecology at both the molecular and the organismal level is needed to understand better the natural intrinsic processes of bioremediation in mixed contaminant sites. A more complete understanding of energetics at the community level may ultimately provide the ability to control or stimulate communities capable of transformation and to channel carbon flow (including natural- and polluting-organic compounds) through these communities or populations. It is essential to understand the roles and interactions of diverse microbial communities in order to understand how and to what extent the structure of the biological community influences the course of bioremediation and to what extent the environmental factors influence community dynamics in sites containing metals and radionuclides. This need is especially critical to successful bioremediation of diffuse metals and radionuclides in thick vadose and deep saturated zones. Research should be directed toward: (i) Identifying and characterizing microbial communities at contaminated sites; (ii) understanding the dynamics of in situ microbial communities in the presence of metals and radionuclides; (iii) bacterial survival, including toxic effects from metals and radionuclides; and (iv) measuring key microbial metabolic and transformation processes including reduction, oxidation, mobilization/immobilization, and bacterial survival, including bacterial predation. A specific interest is the understanding of bacterial activity in biofilms that can alter contaminants during intrinsic bioremediation and *in situ* biostimulation. Research utilizing column and *in situ* environments is encouraged particularly with non-destructive techniques and real or near-time monitoring.

Particular attention should be given to:

- The distribution, composition and metabolic activity of biofilms particularly at the field scale;
- The ecology and dynamics of microbial communities as a function of local environmental conditions;
- Quantifying the spatial distribution of in situ microbial communities, particularly at the field scale;
- Environmental factors that affect the presence, abundance, and diversity of in situ, subsurface microbial communities; and
- Fluxes of nutrients and electron donors in the saturated/vadose zones across stratigraphic boundaries where differences in microbial activity occur.

System Engineering, Integration, Prediction, and Optimization: This research element primarily supports modeling activities. One goal of the NABIR program is to produce a model or series of models that will help stimulate bioremediation in the field, predict whether bioremediation will be successful and, if so, how to optimize the approach. Models that take advantage of advanced computational tools can be useful for many reasons, including providing a better understanding of the underlying processes, serving as a way to focus attention on the intersection or coupling between processes and subject areas, and identifying priority or rate-limiting processes. One of the distinguishing features of the NABIR program is its emphasis on integrating among the disciplines and research projects. Models can serve as effective tools to improve integration.

This announcement solicits applications that would, at the end of one year of research, define the structure and the content of an integrative model for the NABIR program. However, the investigators would not necessarily construct the model. Instead, they would identify possible data, tools, resources, or information needed for the development of an integrative model. The investigators might, for example, hold workshops or prepare reviews of existing models, including their advantages and limitations. They might identify criteria for a successful integrative model, suggesting parameters for input and output.

Models eventually developed by and for the NABIR program will focus on the in situ bioremediation of metals and radionuclides. An integrative model will include functions such as water flow and transport, chemical and microbiological reactions, as well as peripheral capabilities, such as statistics, geographic information systems, visualization, and uncertainty analysis. The model must be flexible enough to capture and test process models developed in NABIR research projects. Models will be used, in part, to help set future research priorities of the NABIR program by highlighting missing research topics.

The application should describe the manner in which the investigators will interact with the rest of the NABIR research community and the breadth of capability of the investigators proposing the research. It is anticipated that a future solicitation will be offered for the development of an integrative model following the selection of a Field Research Center and on the results of this solicitation. Awards will be made for up to one year. Anticipated levels of funding are $250,000 or less, contingent on the availability of appropriated funds.

Bioremediation and its Societal Implications and Concerns (BASIC): The introduction of non-native or genetically engineered microorganisms or the manipulation of the environment to

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change its microbial composition or chemical characteristics may raise concerns among those who live or work nearby. Even the reintroduction of native microorganisms into their natural environment can raise people's concerns. Great care is required to involve the affected communities and stakeholders in any plans to use novel agents and/or processes to remediate a contaminated site. Although it may be many years before work in the NABIR program supports any or all of these activities, it is wise to begin consideration of some of the issues involved now. The Bioremediation and its Societal Implications and Concerns (BASIC) component of the NABIR program is directed at these societal implications of bioremediation.

DOE seeks applications that address effective ways to: (i) Articulate the risks and benefits of in situ bioremediation to stakeholders; and (ii) involve affected communities in bioremediation research and decision making. This can include studies or conferences that will identify and clarify the most urgent issues. It is essential that studies, explorations, and discussions of the societal implications of bioremediation research be firmly grounded in the actual NABIR science. As a result, DOE solicits applications for the preparation and dissemination of educational materials, in any appropriate medium, that will enhance understanding of the scientific as well as the societal aspects of bioremediation among the general public or specified groups. Educational efforts that target specific groups should include a detailed description of the relationship between NABIR and that group or community in addition to assessment measures for determining the effectiveness of the educational effort. DOE also encourages applications for the support of conferences focusing on the legal and societal implications of NABIR.

Applicants should demonstrate their knowledge of any relevant literature and should include detailed plans for the gathering and analysis of factual information and its societal implications. Where appropriate, applicants may make use of relevant activities or field sites where bioremediation experiments are planned or underway. All research applications should address the issue of efficient dissemination of results to the widest appropriate audience. Examples of BASIC issues might include:

- Effective education of stakeholders and others regarding the underlying NABIR science;
- Clarification of public perception of bioremediation issues;
- Past experiences and lessons learned from bioremediation using exogenous or engineered organisms;
- Bioremediation strategies and technologies involving microbes—the experiences of the commercial sector; and
- Intellectual property issues of microbes intended for use in field level bioremediation.

Additional information on the NABIR Program, including those elements which are not a part of this solicitation, is available at the following web site: http://www.lbl.gov/NABIR/. For researchers who do not have access to the world wide web, please contact Ms. Carlson; Environmental Sciences Division, ER–74; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; phone (301) 903–3338; fax (301) 903–8519; karen.carlson@oer.doe.gov; for hard copies of background material mentioned in this solicitation.

Program Funding

It is anticipated that up to $3 million will be available for multiple awards to be made in FY 1998 in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research, and programmatic needs. Annual budgets for research projects in the first four scientific research elements are expected to range from $200,000 to $500,000 total costs. Annual budgets for most of the BASIC projects are not expected to exceed $100,000. Researchers are encouraged to team with investigators in other disciplines where appropriate. DOE may encourage collaboration among prospective investigators, to promote joint applications or joint research projects, by using information obtained through other forms of communication.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and FFRDCs, including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subaward) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic organizations who wish to form a collaborative project with a DOE FFRDC may not include the DOE FFRDC in their application as a lower-tier participant (subaward). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for its portion of the project. The FFRDC must include separate Budget Pages for its portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project
2. Appropriateness of the Proposed Method or Approach
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources

4. Reasonableness and Appropriateness of the Proposed Budget

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR Part 605.

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. On the ER grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address. The research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Attachments include curriculum vitae, QA/QC plan, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

Although the required original and seven copies of the application must be submitted, researchers are asked to submit an electronic version of the abstract of the proposed research in ASCII format along with a valid e-mail address to Ms. Karen Carlson by e-mail at karen.carlson@oer.doe.gov. Curriculum vitae should be submitted in a form similar to that of the National Institutes of Health (NIH) or the National Science Foundation (NSF) (two to three pages), for example see: http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.

The Office of Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with NIH "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/nih97-1.html (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**. Grantees must also comply with other federal and state laws and regulations as appropriate, for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Related Funding Opportunities: Investigators may wish to obtain information about the following related funding opportunities:

Department of Energy, Office of Environmental Management: The Environmental Management Science Program (EMSP). Contact: Mr. Mark Gilbertson, Director, Office of Science and Risk Policy, Office of Science and Technology, EM-52, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, e-mail mark.gilbertson@em.doe.gov. phone (202) 586-7150. The EMSP home page is available at web site: http://www.em.doe.gov/science/.

DOE/EPA/NSF/ONR Joint Program on Bioremediation, Dr. Robert E. Menzer, U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance, 401 M Street, SW, Washington, DC 20460, menzer.robert@epamail.epa.gov, phone (202) 260-5779.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, March 18, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98-7716 Filed 3-24-98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98-36-000]

George B. Angle, d/b/a Frontier Oil Company; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, George B. Angle, d/b/a Frontier Oil Company (Angle) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] and an extension of time for dispute resolution, with respect to its Kansas ad valorem tax refund liability under the Commission's September 10, 1997 order in Docket Nos. RP97-369-000, GP97-3-000, GP97-4-000, and GP97-5-000.[2]

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98-39-001, *et al.* (January 28 Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

Angle requests authorization, pursuant to the Commission's January 28 order, that the Commission: (1) Extend the time by 90 days from March 9, 1998, in which to obtain the necessary documents and information to determine if the amount of refund set forth in the Statement of Refunds Due (SRD) received from K N Interstate Transmission Company is correct and to reach an agreement on the amount before submitting the dispute to the Commission, and (2) grant an adjustment to its procedures to allow Angle to place into an escrow account the disputed amount of the refund, which at this time is the entire amount under the SRD, and, after resolution of

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96-954 and 96-1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[4] 82 FERC ¶ 61,059 (1998).

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the dispute, retain in the account (i) principal and interest on amounts attributable to production prior to October 4, 1983, and (ii) interest on all reimbursed principal amounts determined to be in excess of maximum lawful prices (excluding interest retained under (i) above).

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7779 Filed 3–24–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–43–017]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 19, 1998.

Take notice that, on March 16, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to be effective April 1, 1998:

Seventh Revised Sheet No. 2
Second Revised Sheet No. 187.2
Third Revised Sheet No. 189

ANR states that the purpose of the filing is to implement two provisions of the Stipulation and Agreement ("Settlement") filed by ANR on October 17, 1997, and approved by Commission order issued February 13, 1998, ANR Pipeline Company, 82 FERC (CCH) ¶ 61,145 (1998).

ANR further states that, in compliance with the Settlement, the revised tariff sheets reflect the removal of the Interruptible Revenue Crediting provision from its tariff, and changes to its Account No. 858 tracker mechanism. The changes reflected on the proposed tariff sheets are the same as the changes shown on the pro forma tariff sheets that were appended to the Settlement.

ANR states that copies of the filing have been mailed to parties on the restricted service list to this proceeding, intervenors, affected customers, and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7752 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–4–001]

AOG Gas Transmission Company, L.P.; Notice of Petition To Partially Withdraw Rate Application, Approve Existing Rate, and Close Docket

March 19, 1998.

Take notice that on March 11, 1998, AOG Gas Transmission Company, L.P. (AOGGT) filed pursuant to Sections 284.123(e) of the Commission's regulations, a petition to the Commission for an order (1) allowing AOGGT to withdraw its pending proposal in this Docket to continue the existing system-wide rate applicable to service provided through its New Mexico system, and (2) approving AOGGT's existing system-wide rate applicable to transportation service rendered from its system in the state of Oklahoma, $0.0019 per MMBtu. This rate will be applicable to the transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

AOG states that it has or will discontinue the provision of Section 311 transportation services in the State of New Mexico, because of the sale and transfer of its New Mexico facilities to Transwestern Pipeline Company, Conoco, Inc., and El Paso Natural Gas Company during December 1997 and April 1998.

Any person desiring to participate in this proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All Such motions or protests must be filed on or before April 3, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this petition are on field with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7750 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–35–000]

Lee Banks d/b/a Banks Oil Company; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9,1998, Banks, Lee d/b/a Banks Oil Company (Banks), Suite 550, 500 West Douglas, Wichita, Kansas 67202, filed in Docket No. SA98–35–000 a petition for adjustment pursuant to Section 502(c) of the Natural Gas Policy Act (NGPA) 15 U.S.C. 3412(c) and Rules 1101–1117 of the Commission's Rules of Practice and Procedure (18 CFR 385.1101–385.1117) requesting to be relieved of all refund requests or obligations covering all wells with the exception of the Loewen C well (Panhandle), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Banks states that it has adjustment disputes with Northern Natural Gas Company, Panhandle Eastern Pipe Line Company and Colorado Interstate Gas Company.

Banks states further that the request, to be relieved of all refund requests or obligations, is based on the special hardship privileges.

Any person desiring to be heard or to make any protest with reference to said

petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 220426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7778 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–54–000]

Lee Banks d/b/a Banks Oil Company; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Lee Banks d/b/a Banks Oil Company (Banks), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 in Docket No. SA98–54–000. Banks requests to be relieved of his obligation to make Kansas ad valorem tax refunds to Panhandle Eastern Pipe Line Company, except for the Loewen "C" well, which is still producing. The Commission's September 10, 1997, order in Docket No. RP97–369–000, *et al.*, directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988.

Any person desiring to be heard or to make any protest with reference to said petition should on or before15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7794 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–56–000]

Benson Mineral Group, Inc.; Notice of Petition for Adjustment and Request for Extension of Time

March 19, 1998.

Take notice that on March 9, 1998, Benson Mineral Group, Inc., as First Seller (Benson), filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures ([15 U.S.C. 4142(c)(1982)] with respect to Benson's Kansas ad valorem tax refund liability. Benson's petition is on file with the Commission and open to public inspection.

The Commission's September 10, 1997, order on remand from the D.C. Circuit Court of Appeals,[1] in Docket No. RP97–369–000, *et al.*,[2] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)], stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

Benson requests an extension of 90 days from March 9, 1998, to allow Benson and Northern Natural Gas Company (Northern) to resolve any dispute as to the proper amount of refund set forth in the Statement of Refunds Due [SRD] received from Northern and make any refunds owing, or to submit such dispute to FERC for resolution if the parties cannot resolve it within such time. Additionally, Benson requests that the Commission grant an adjustment to its procedures to allow Benson to place into an escrow account not only the disputed amount of the refund, but also principal and interest on amounts attributable to production prior to October 4, 1983, and interest on all other amounts claimed to be due under the SRD, in order to stop the accrual of interest pending resolution of disputes and legal issues. Finally, Benson also requests a determination that it has no liability under the SRD except to amounts attributable solely to its own working interest.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7795 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

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[1] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. Cir. 1996), *cert. denied*, 65 U.S.L.W. 3751 and 3754 (May 12, 1997)(Nos. 96–954 and 96–1230).

[2] See 80 FERC ¶ 61,264 (1997); *order denying reh'g*, 82 FERC ¶ 61,058 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–57–000]

Benson Mineral Group, Inc.; Notice of Petition for Adjustment and Request for Extension of Time

March 19, 1998.

Take notice that on March 9, 1998, Benson Mineral Group, Inc. (BMG) filed a petition for adjustment and a request for extension of time under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting an adjustment to its obligation to make Kansas ad valorem tax refunds to KN Interstate Gas Transmission Company (KN), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

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It is stated that BMB's petition is filed in response to the Commission's September 10, 1997, order in Docket Nos. RP97–369–000, GP97–3–000, GP97–5–000 [1] on remand from the D.C. Circuit Court of Appeals [2], which directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988.

BMG requests that the Commission grant an adjustment to its procedures to allow First Sellers to place into an escrow account the disputed amount of the refund set forth in the Statement of Refunds Due (SRD) from KN,[3] and, after resolution of the dispute, to retain in the account (a) principal and interest on amounts attributable to production prior to October 4, 1983, and (b) interest on all reimbursed principal amount determined to be refundable as being in excess of maximum lawful prices (excluding interest retained under (a)) above. It is stated that the SRD received from KN was $39,853.44, including interest accrued through November 30, 1997.

BMG also requests an extension of time to permit an additional 90 days to resolve any dispute as to the correct amount of its actual refund liability and to reach an agreement on the amount before submitting the dispute to the Commission.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7796 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F. 3d 1478 (D.C. Cir. 1996), *cert. denied*, 65 U.S.L.W. 3751 and 3754 (May 12, 1997) (Nos. 96–954 and 96–1230).

[3] See Docket No. RP98–53–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–58–000]

Benson Mineral Group, Inc.; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Benson Mineral Group, Inc. (First Seller), filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures [15 U.S.C. 3142(c) (1982)] with respect to First Seller's Kansas ad valorem tax refund liability. First Seller's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals,[1] in Docket No. RP97–369–000, *et al.*,[2] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its Order Clarifying Procedures [82 FERC ¶61,059 (1998)], stating therein that producers (first sellers) could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

First Seller requests that the Commission: (1) Grant a 90 day extention to allow First Seller and Panhandle Eastern Pipe Line Company (Panhandle) to resolve any dispute as to the proper amount of the refund liability of First Seller for the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD), filed in Docket No. RP98–40–000, and to make refunds or to submit such dispute to FERC for resolution if the parties cannot resolve it within such time, and (2) in order to stop the accrual of interest pending resolution of disputes and legal issues, grant an adjustment to its procedures to allow First Seller to place into escrow account not only any disputed amount of the refund but also principal and interest on amounts attributable to production prior to October 4, 1983, and interest on all other amounts claimed to be due under the SRD. First Seller also requests that it be determined that it has no liability under the SRD except as to amounts attributable solely to its own working interest.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7797 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. Cir. 1996), *cert. denied*, 65 U.S.L.W. 3751 and 3754 (May 12, 1997) (Nos. 96–954 and 96–1230).

[2] See 80 FERC ¶61,264 (1997); *order denying reh'g*, issued January 28, 1998, 82 FERC ¶61,058 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–59–000]

Benson Mineral Group, Inc.; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Benson Mineral Group, Inc. (Benson—First Seller), filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures [15 U.S.C. 3142(c) (1982)] with respect to Benson's Kansas ad valorem tax refund liability.

The Commission's September 10, 1997 order on remand from the D.C. Circuit Court of Appeals,[1] in Docket No.

[1] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954

RP97–369–000 *et al.*,[2] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its *Order Clarifying Procedures* [82 FERC ¶ 61,059 (1998)], stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA Section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

Benson requests that the Commission:

(1) Grant an extension of 90 days to allow First Sellers and Williams Natural Gas Company (Williams) to resolve any dispute as to the proper amount of the refund liability of First Sellers for the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD) addressed to First Seller, or to submit such dispute to FERC for resolution if the parties cannot resolve it within such time; and

(2) In order to stop the accrual of interest pending resolution of disputes and legal issues, grant an adjustment to its procedures to allow First Sellers to place into an escrow account not only any disputed amount of the refund by Williams but also principal and interest on amounts attributable to production prior to October 4, 1983, interest on all other amounts claimed to be due under the SRD.

First Seller also requests that it be determined that it has no liability under the SRD except as to amounts attributable solely to its own working interest.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7798 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–21–000]

Sally L. Bone; Notice of Petition for Adjustment and Dispute Resolution Request

March 19, 1998.

Take notice that on March 9, 1998, Sally L. Bone (Ms. Bone) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] and a dispute resolution request, with respect to its Kansas ad valorem tax refund liability under the Commission's September 10, 1997 order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000.[2]

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

Ms. Bone requests that the Commission resolve any potential dispute between Ms. Bone and The Williams Companies, Inc. (Williams), finding that Ms. Bone has no liability for reimbursement of Kansas ad valorem taxes paid over the period 1983 to 1988. In support of her claim of no liability Ms. Bone states the following: (1) She acquired the well in question from the estate of Cloris L. Dale on or about August 24, 1992, therefore not owning any type of interest in the well during the years in question. (2) Cloris L. Dale is deceased and her probate estate was closed on August 14, 1992, and that such claims against Cloris L. Dale's estate are barred. (3) The language of a Final Court Settlement states, All demands against the estate have been paid as authorized by law or by the orders of this Court; the time for filing demands has expired, further stating Sally L. Dale Bone shall be released from any further liability. (4) Ms. Bone further states that Cloris L. Dale did not hold the entire working interest in the well in question, stating that the other working interest was held by one Dale Taylor. Ms. Bone questions if Williams should directly bill Mr. Taylor for his share of the tax reimbursement, as to his working interest.

Based on the above information Ms. Bone believes the monies requested by Williams to be legally uncollectible, and request such relief from the demand by Williams. Ms. Bone asserts that it would be inequitable and unfair for the Commission to require Ms. Bone to make refunds to Williams.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7773 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[4] 82 FERC ¶ 61,059 (1998).

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–22–000]

Sally L. Bone; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Sally L. Bone (Mrs. Bone) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] and a dispute resolution request, with respect to its Kansas ad valorem tax refund liability under the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000 , and RP97–369–000.[2] Mrs. Bone's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Mrs. Bone states that the wells in question are the Sudan, Porter, Pinegar, Moyer, Campbell and Williamson located in Kearny County, Kansas. Mrs. Bone owes $104,608.92 to the Enron Corporation (Enron) for the Kansas ad valorem tax refund.

Mrs. Bone states that the Commission will need to resolve a potential dispute between her and Enron as to there being another working interest holder involved in four of the six wells in question. Mrs. Bone objects to paying this person's share of the property tax reimbursement and requests that Enron be ordered to bill the other working interest holder directly. She states that Enron should also bill all royalty interest owners for that person's share of the property tax reimbursement for the same reasons. Mrs. Bone states that Enron made disbursements to all working interest and royalty owners during the time in question.

Mrs. Bone states that she has requested from Enron additional information as to Enron's having made royalty payments directly to royalty interest holders for every well except the Sudan. She is requesting more details on the royalty owners for the entire time in question and based on that information Mrs. Bone can then determine whether any claims against royalty holders are collectible. Mrs. Bone states that a reimbursement was made on May 13, 1986 not January 18, 1986 as Enron had reported and she is requesting that Enron refigure the interest computation from May 13, 1986. Mrs. Bone has requested that Enron investigate the fact that there was another working interest holder in four of the wells. Mrs. Bone has requested more detailed information about the maximum lawful prices determined and was paid for gas during the subject years. Mrs. Bone states that until these questions are satisfactorily resolved, the $104,608.82 will not be paid to Enron. Mrs. Bone requests that the Commission grant staff adjustment and dispute resolution in connection with the Statement of Refunds Due submitted by Enron to her on November 10, 1997. Mrs. Bone states that the sums are in dispute and is asking for a determination that she should not be responsible for the amount until additional information has been received from Enron.

Any person desiring to be heard or to make a protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 - 385.1105, and 385.1106). All protests filed the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7774 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–020 and ER96–1663–021]

California Power Exchange Corporation; Notice of Filing

March 19, 1998.

Take notice that on March 18, 1998, the California Power Exchange Corporation (PX) filed for Commission acceptance in this docket, pursuant to Section 205 of the Federal Power Act, an application to amend the PX Operating Agreement and Tariff (including Protocols) (PX Tariff) and a motion for waiver of the 60-day notice requirement. The PX requests that the proposed PX Tariff amendments be made effective as of the PX operations date because the amendments are needed for initial operations.

The proposed amendments would correct a potential inequity in the PX's Overgeneration procedures that could result from applying the equation included in step 2 of PX Tariff Section 3.3.10 and Section 5.6 of the Bidding and Bid Evaluation Protocol. The proposed amendments would also implement a Congestion Fee regime for Zonal Market Clearing Prices to eliminate a potential "gaming" problem that could result from the application of the ISO's Usage Charge. Finally, the amendments would amend Section 2 of the PX Scheduling and Control Protocol to reflect that the deadlines in the timeline may be temporarily amended or suspended during operations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7801 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1805–000]

Cinergy Operating Companies; Notice of Filing

March 19, 1998.

Take notice that on January 29, 1998, Cinergy Operating Companies tendered for filing an amended quarterly report for the calendar year ending March 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7747 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–162–006]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

March 19, 1998.

Take notice that on March 16, 1998, Cove Point LNG Limited Partnership (Cove Point) tendered for filing to become a part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective March 16, 1998:

Third Revised Sheet No. 136

Cove Point states that these tariff sheets are being filed to comply with the Commission's May 15, 1997 order granting an extension, to March 16, 1998, to comply with the requirements of Order Nos. 587–B and 587–C that Cove Point establish an Internet server and Internet address for conducting business transactions over the Internet and to establish an Internet Web page for posting certain information.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7756 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–20–015]

El Paso Natural Gas Company; Notice of Compliance Filing

March 19, 1998

Take notice that on March 16, 1998, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following revised tariff sheets to become effective March 1, 1998:

1st Sub Fourth Revised Sheet No. 210
1st Sub Second Revised Sheet No. 210.01
1st Sub Second Revised Sheet No 211
1st Sub 1st Rev Original Sheet No. 211A
1st Sub Fourth Revised Sheet No. 215
1st Sub Third Revised Sheet No. 217
Original Sheet No. 219A

El Paso states that the tariff sheets are being filed here to comply with the Commission's order issued February 13, 1998 in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7755 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–15–000]

Mark A. Gower, Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 6, 1998, Mark A. Gower (Gower) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of his obligation to make Kansas ad valorem tax refunds to Panhandle Eastern Pipe Line Company (Panhandle), with respect to his working interest in certain wells operated by Quinque Operating Company, (Quinque) otherwise required by the Commission's September 10, 1997 order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000.[2] Gower's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988.

Gower seeks relief on the grounds of extreme financial hardship stating that:

1. From 1977 until 1987, he was a shareholder of Gower Oil, Inc. And sole proprietor of Mark Gower Oil Properties.

2. By 1987, Gower faced foreclosure procedures in which he lost his interest in these two companies being left with no assets or employment.

3. Gower now earns a wage of fourteen dollars an hour and has no assets which would not be exempt from execution.

4. The state of Idaho is pursuing a collection action against Gower for child support in the amount of $92,788.

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61, 058 (1998).

[3] *Public Service Company of Colorado v. FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

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5. He has no ability to refund the Kansas ad valorem tax reimbursements.

If the Commission does not grant the relief requested Gower requests relief from the payment of any refunds based on the Big E 1–16 Well and the Keating 2–24 Well because tax reimbursement was received by Quinque on those wells for two of the four years on which Panhandle's Statement of Refunds is based. Gower claims that the two wells were deregulated on January 1, 1985 and therefore the refund should not be owed on reimbursements received at a time when the wells were not regulated. Gower also asks for relief from the payment of interest on any principal amount found to be owed by him.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7770 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–48–000]

Graham-Michaelis Corporation; Notice of Petition for Adjustment and Extension of Time

March 19, 1998.

Take notice that on March 9, 1998, Graham-Michaelis Corporation (GMC) and the working interest owners (First Sellers), filed in Docket No. SA98–48–000 a petition for adjustment pursuant to Section 502(c) of the Natural Gas Policy Act (NGPA) 15 U.S.C. 3412(c) and Rules 1101–1117 of the Commission's Rules of Practice and Procedure (18 CFR 385.1101–385.1117) requesting a 90 day extension and to be relieved of all refund requests or obligations, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

GMC requests a 90 day extension from March 9, 1998, in which to reach an agreement with KN Interstate Gas Transmission Company.

First Sellers requests that it be relieved from any refund obligation claimed and that all escrow funds with its interest then be returned to First Sellers.

Any person desiring to be heard or to make any protest with reference to said petition should or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 999 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7789 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–49–000]

Graham-Michaelis Corporation; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Applicants, Graham-Michaelis Corporation (GMC) and the working interest owners [1] filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[2] and an extension of time to reach agreement or a dispute resolution request, with respect to its Kansas ad valorem tax refund liability under the Commission's September 10, 1997 order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–003.[3]

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [4] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[5] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

GMC, on behalf of first sellers for whom it operated (Applicants), requests authorization, pursuant to the Commission's January 28 order, that the Commission: (1) Extend the time by 90 days from March 9, 1998, in which to reach an agreement with Northern Natural Gas Company on the correct amount of the potential refund liability of Applicants and submit any unresolved dispute to the Commission; (2) grant an adjustment to its procedures to allow Applicants to defer payment of principal and interest attributable to royalties for one year until March 9, 1999; and (3) grant an adjustment to the Commission's procedures to allow Applicants to place into an escrow account the amount of the refund which appears presently to be in dispute but which may still be resolved by agreement and (i) amounts attributable to royalty refunds which have not been collected from the royalty owners (principal and interest), (ii) principal and interest on amounts attributable to production prior to October 4, 1983, (iii) interest on royalty amounts which have been recovered from the royalty owners (the principal of which was refunded), and (iv) interest on all reimbursed principal amounts determined to be

[1] Working interest owners are W.A. Michaelis, Jr. Revocable Trust, John L. James Revocable Trust, George D. Rosel Estate, Aikman Oil & Gas Co., CEA Corp., Robert E. Aikman, William H. Aikman, Dail C. West, Graham Enterprises, William L. Graham Revocable Trust, Graham Co., H.R. Michaelis Revocable Trust, David M. Dayvault Revocable Trust, Jack L. Yinger Revocable Trust, K & B Producers, Inc., William Graham, Inc., Chas. A. Neal & Co., March Oil Co., Minatome Corp., Leona P. Maxfield, Lake Forest Academy, and Kaiser-Francis Oil Co.

[2] 15 U.S.C. 3142(c) (1982).

[3] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[4] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[5] 82 FERC ¶61,059 (1998).

refundable as being in excess of maximum lawful prices (excluding interest retained under (i), (ii), and (iii) above).

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7790 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–50–000]

Graham-Michaelis Corporation; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Graham-Michaelis Corporation (GMC), filed a petition for an adjustment under Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA 15 U.S.C. 3412(c)) and Rules 1101–1117 of the Commission's Rules of Practice and Procedure (18 CFR 385.1101–385.1117), wherein GMC requested, on behalf of first sellers (First Sellers) [1] for whom it operated, that the Commission: (1) Extend the time by 90 days from March 9, 1998, in which to reach an agreement with Panhandle Eastern Pipeline Company on the correct amount of the potential refund liability of First Sellers and submit any unresolved dispute to the Commission; (2) grant an adjustment to the Commission's procedures to allow First Sellers to place into an escrow account the amount of refund which appears presently to be in dispute but which may still be resolved by agreement (i) principal and interest on amounts attributable to production prior to October 4, 1983, and (ii) interest on all reimbursed principal amounts determined to be refundable as being in excess of maximum lawful prices (excluding interest retained under (i) above); and (3) grant them relief from refund liability as to one of the wells for which ad valorem tax reimbursements were made. GMC also requests that it be determined that it was not a working interest owner or first seller and that it therefore has no liability under the Statement of Refunds Due SRD.[2]

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7791 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] First sellers are W.A. Michaelis, Jr. Revocable Trust, John L. James Revocable Trust, Dial C. West, Graham Enterprises, William L. Graham Revocable Trust, Betty Harrison Graham Revocable Trust, M.D. Michaelis, GrahamCo, William Graham, Inc., H.R. Michaelis Revocable Trust, David M. Dayvault Revocable Trust, Jack L. Yinger Revocable Trust, Paula Sue Bricker, Graham Petroleum, Inc., Chas. A. Neal & Company, and March Oil Company.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–42–000]

Leo Helzel; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Leo Helzel (Helzel), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 in Docket No. SA98–42–000. Helzel requests an extension of time of 90 days to allow himself and Northern Natural Gas Company (Northern) to resolve any dispute as to the proper amount of the refund liability for the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD) addressed to Benson Mineral Group, Inc. (BMG), the Operator, or to submit such dispute to FERC for resolution if the parties cannot resolve the dispute within such time. Helzel also requests an adjustment to the Commission's procedures to allow him to place into an escrow account not only any disputed amount of the refund amount calculated by Northern but also principal and interest on amount calculated by Northern but also principal and interest on amounts attributable to production prior to October 4, 1983 and interest on all other amounts claimed to be due under the SRD. The Commission's September 10, 1997, order in Docket No. RP97–369–000, *et al.*, directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385,211, 385.105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7784 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

[2] See Docket No. RP98–40–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–40–000]

Human Corporation; Notice of Petition for Adjustment and Extension of Time

March 19, 1998.

Take notice that on March 9, 1998, Human Corporation (Applicant) and working interest owners (First Sellers), filed in Docket No. SA98–40–000 a petition for adjustment pursuant to

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Section 502(c) of the Natural Gas Policy Act 15 U.S.C. 3412(c) and Rules 1101–1117 of the Commission's Rules of Practice and Procedure (18 CFR 385.1101–385.1117) requesting, a 90-day extension to make refunds, an adjustment to its procedures to defer payment of principal and interest for one year, and an adjustment to its procedures to defer payment of principal and interest for one year, and an adjustment to its procedures to stop the accruing of interest, all a more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, First Sellers requests that the Commission: (1) grant a 90-day extension to try to resolve any disputes as to the proper amount of the refund liability for the Kansas *ad valorem* tax reimbursements and to make refunds or to submit such dispute to the Commission for resolution if the parties cannot resolve the dispute within such time; (2) grant an adjustment to its procedures to allow First Sellers to defer payment of principal and interest attributable to royalties for one year; and (3) grant an adjustment to its procedures to allow First Sellers to place into an escrow account not only any disputed amount of the refund but also, (i) principal and interest attributable to royalty refunds which have not been collected from royalty owners; (ii) principal and interest on amounts attributable to production prior to October 4, 1983; and (iii) interest on all other principal claimed to be due under the SRD.

Applicant requests that it not be determined a working interest owner or First Seller of any of the production with respect to which the tax reimbursement were made and that it therefore has no liability under the SRD. Applicant states that it owned no working interest in the wells for which claims for refunds have been made and is therefore not directed by the September 10 Order. As such, Applicant states that it has no refund liability for the reimbursements listed in the SRD and requests a determination to that fact.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7782 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–41–000]

Hummon Corporation; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Hummon Corporation (Hummon), 950 N. Tyler Road, Wichita, Kansas 6721–3240, filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting, on behalf of first sellers (First Sellers)[2] for whom it operated, that the Commission, *inter alia*, grant Hummon a 90-day extension for making refunds so First Sellers and Panhandle Eastern Pipe Line Company (Panhandle) could resolve any dispute as to the proper amount of First Sellers' refund liability for the Kansas *ad valorem* tax reimbursements set forth in the Statement of Refunds Due (SRD)[3] and to make refunds or to submit such dispute to the Commission for resolution if the parties cannot resolve it within such time, all as more fully set forth in the petition which is open to the public for inspection.

Hummon also requests that the Commission grant an adjustment to its procedures to allow First Sellers to defer payment of principal and interest attributable to royalties for one year. Hummon further requests that the Commission, in order to stop the accrual of interest pending resolution of disputes and legal issues, grant an adjustment to the Commission's procedures to allow First Sellers to place into an escrow account not only any disputed amount of the refund, but also (1) principal and interest attributable to royalty refunds which have not been collected from royalty owners; (2) principal and interest on amounts attributable to production prior to October 4, 1983; and (3) interest on all other principal amounts claimed to be due under the SRD.

Hummon also requests that the Commission determine that Hummon was not a working interest owner or first seller of any of the production with respect to which the tax reimbursements were made and that it therefore has no liability under the SRD.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7783 Filed 3–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–28–000]

Kaiser-Francis Oil Company; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Kaiser-Francis Oil Company (Kaiser) filed a petition for adjustment under section 502(c) of the Natural Gas Policy act of 1978 (NGPA),[1] requesting a one-year extension of the deadline for making refunds as to royalties and requesting that the Commission grant a procedural adjustment to allow it to

[1] 15 U.S.C. 3143(c) (1982).

[2] First Sellers are identified as: George C. Berryman, Donald M. Brod, Phyllis E. Brod Trust, Robert A. Clark, Floyd D. Crockett, Roy B. Henderson, George C. Hill, Bryon E. Hummon, Jr., John L. Kiser, Willard J. Kiser, William Mowery Trust, Anne B. Porter Berryman, Alan Sturm, and Arthur Vara, Jr.

[3] Hummon states that Panhandle's SRD claims $11,440.19 for 100 percent of the tax reimbursements, including interest through March 9, 1998.

[1] 15 U.S.C. 3142(c) (1982).

place into an escrow account the interest on the total principle amount attributable to Kaiser's working interest. The March 9, 1998, deadline was established for first sellers to remit refunds of Kansas ad valorem taxes to their pipeline purchasers, as required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] Kaiser's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

Kaiser states it is substantially and adversely affected by the potential Kansas ad valorem tax refund requirement. Kaiser is not seeking to relieve itself of that refund obligation. Rather Kaiser seeks to establish procedures which ensure: (a) That it pays only that which is legitimately owed; and (b) that if it is subsequently determined that its refund liability was less than that originally claimed by Anadarko Petroleum Company (Anadarko) in Docket No. RP98–43–000, it can recover the overpayment. Accordingly, Kaiser requests an adjustment to the general refund procedures to permit it to pay the following amount into an escrow account: the interest on the principal amount attributable to Kaiser's working interest, totaling $19,816.78.

Kaiser states that although there are issues relating to portions of the principal refunds which are pending before the court,[5] to demonstrate its good faith in these proceedings Kaiser has paid the principal amount of refunds attributable to Kaiser's working interest in the amount of $10,169.99 to Anadarko. Should the Commission provide assurances that Kaiser will be able to recover any overpayments without having to initiate a prompt return of refund amounts determined not to be due (such return of refunds not dependent upon recovery from consumers), Kaiser would agree to waive this request for escrowing certain monies. Without such assurances, Kaiser is entitled to have its property protested until the issue of liability has been fully resolved in Court of Congress.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7776 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[4] 82 FERC ¶ 61,059 (1998).

[5] See, Case No. 98–60043, Untied States Court of Appeals for the Fifth Circuit in *Anadarko Petroleum Corp.* v. *FERC*, and *Union Pacific Resources Company* v. *FERC*.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–30–000]

Kaiser-Francis Oil Company; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Kaiser-Francis Oil Company (Kaiser-Francis) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting that the refund procedures in the Commission's September 10, 1997 order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000,[2] be altered with respect to Kaiser-Francis' Kansas ad valorem tax refund liability.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

Kaiser-Francis requests authorization, pursuant to the Commission's January 28 Order, to defer payment to Williams Natural Gas Company (Williams) of principal and interest refunds attributable to unrecovered royalties for one year until March 9, 1999. In addition, Kaiser-Francis requests that it be allowed to place into an escrow account during the requested 1-year deferral period: (1) An amount equal to the principal and interest on royalty refunds which have not been recovered; (2) an amount equal to the interest on royalty refunds recovered (the principal of which was paid to Williams (to protect the interests of royalty owners); and (3) an amount equal to the interest on the total remaining amount of refunds allegedly due (i.e., the interest due on principal), excluding royalties.

Kaiser-Francis argues that it seeks to establish these procedures to ensure that it pays only that which is legitimately owed, and that it will be able to recover the overpayment, if it is subsequently determined that Kaiser-Francis's refund liability was less than that originally claimed by Williams. Kaiser-Francis asserts that a one-year deferral in the obligation to make royalty refunds is necessary in order to allow it to confirm the appropriate refund amounts due, to attempt to locate the prior royalty owners, and to seek recovery of such amounts from the proper royalty owners.

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[4] 82 FERC ¶ 61,059 (1998).

On or before March 9, 1999, Kaiser-Francis proposes to file documentation with the Commission, of those royalties which were not collectible and disburse the recovered royalty refund principal only to Williams. Until that time, Kaiser-Francis proposes to place the interest from royalty refunds which was recovered in its escrow account to protect the royalty owners. In addition, Kaiser-Francis argues that its proposal for an escrow account is necessary to protect its property and that of its royalty owners.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7777 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–51–000]

Kansas Petroleum, Inc.; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Kansas Petroleum, Inc. (KPI), James E. Rhude, E.N. Diderich Trust, and Rhude & Fryberger, Inc., collectively referred to as Applicants, filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting that the refund procedures in the Commission's September 10, 1997, order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000,[1] be altered with respect to Applicant's Kansas ad valorem tax refund liability.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[2] directed first sellers under the NPGA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[3] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

Applicants request that the Commission pursuant to the Commission's January 28 order, (1) grant an extension of 60 days to make refunds to allow Applicants and Colorado Interstate Gas Company (CIG) to reach an agreement of the correct amount of the potential refund liability of Applicants and submit any unresolved dispute to the Commission; (2) to grant an adjustment to its procedures to allow to defer payment to CIG of principal and interest refunds attributable to royalties for one year until March, 9, 1999, and (3) to grant adjustment to its procedures to allow Applicants to place into an escrow account during the requested 1-year deferral period the amount of the refund which is in dispute if there is a dispute and also (i) an amount equal to the royalty refunds which have not been collected from royalty owners (principal and interest), (ii) principal and interest on amounts attributable to production prior to October 4, 1983, (iii) interest on royalty amounts which have been recovered from the royalty owners (principal of which was refunded) and (iv) interest on all reimbursed principal amounts determined to be refundable as being in excess of maximum lawful prices (excluding interest retained under (i), (ii), and (iii) above.

Applicants also request that, if retaining these funds in escrow is not permitted, the Commission adopt other procedures requiring CIG to repay to Applicants, with interest, any of the amounts paid to them from escrow which subsequently are determined to have been a part of their refund obligation.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7792 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–52–000]

Kansas Petroleum, Inc.; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Kansas Petroleum, Inc., E.N. Diderich Trust, James E. Rhude, and Rhude & Fryberger, Inc. (Applicants), filed in Docket No. SA98–52–000 a petition for adjustment pursuant to Section 502(c) of the Natural Gas Policy Act 15 U.S.C. 3412(c) and Rules 1101–1117 of the Commission's Rules of Practice and Procedure (18 CFR 385.1101–385.1117) requesting to be relieved from any further refund liability not heretofore paid for the Kansas *ad valorem* tax reimbursements set forth in a Statement of Refunds Due submitted to Kansas Petroleum, Inc. by KN Interstate Transmission Co. Pending determination of this request, Applicants also request that they be permitted to place in an escrow account the amount of interest on the refund liability as calculated by them, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Applicants state that, in a Settlement Agreement dated January 16, 1989, with

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[3] 82 FERC ¶ 61,059 (1998).

K N Energy, Inc., reimbursement have already been made for the 14 wells involved. As such, Applicants ask that the mutual release be fully enforced and that Applicants be released of refund liability as to total refund amount, both principal and interest. However, Applicants state that they are willing to refund and have refunded the principal of the excess reimbursements in accordance with their calculations. Also, Applicants indicate that the interest on the refunds creates a hardship and are unfair. Applicants are depositing in an escrow account the amount of interest on their principal liability and ask that their deposit of funds into the escrow account be approved.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergas,

Acting Secretary.

[FR Doc. 98–7793 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–160–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 19, 1998.

Take notice that on March 16, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Ninth Revised Sheet No. 1412, with an effective date of April 16, 1998.

Koch proposes an addition to Section 7.5(a) of the General Terms and Conditions regarding payments for firm transportation service requests. Section 7.5(a) requires Customers requesting firm transportation service to make a prepayment to Koch. This amount is credited back to the Customer once service commences or in the event Koch determines it is unable to provide the service. Koch proposes adding a provision reserving the right to waive this requirement on a non-discriminatory basis for any Customer who has paid transportation charges in an amount equal to or greater than the required payment during each of the three months prior to the request.

Section 7.5(a) is intended to prevent unnecessary requests for firm transportation service and therefore avoid unnecessary costs. Koch seeks to relieve established shippers and itself of the burden related to administering this provision while still maintaining a level of protection from such requests.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7157 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–17–000]

Midgard Energy Company; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 6, 1998, Midgard Energy Company (Midgard) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting the grant of a procedural adjustment in connection with its refund liability to Panhandle Eastern Pipe Line Company (Panhandle) for reimbursement of Kansas ad valorem taxes, as required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, RP97–369–000.[2] This petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its Order in Northern Natural Gas Company,[4] stating that it would grant extension of the refund due date for royalty refunds if a producer requests such an extension. In addition, the Commission indicated in its January 28th Order that it would consider adjustment requests as to the refund amounts and the refund procedures.

Midgard requests authorization to place into an escrow account both the principal and interest on pre-October 3, 1983 production and the interest on its remaining refunds to Panhandle. Midgard argues that it seeks to establish this procedure to ensure that it pays only that which is legitimately owed, and that if it is subsequently determined that it has no refund liability for interest or pre-October 3, 1983, production, it can recover the overpayment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

[4] 82 FERC ¶61,059 (1998).

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in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7771 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–44–000]

Molz Oil Company; Notice of Petition for Adjustment and Request for Extension of Time

March 19, 1998.

Take notice that on March 9, 1998, Molz Oil Company (Molz) filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures [15 U.S.C. 3142(c)(1982)] with respect to Molz's Kansas ad valorem tax refund liability. Molz's petition is on file with the Commission and open to public inspection.

The Commission's September 10, 1997, order on remand from the D.C. Circuit Court of Appeals,[1] in Docket No. RP97–369–000, *et al.*,[2] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its Order Clarifying Procedures [82 FERC ¶ 61,059 (1988)], stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

Molz requests, on behalf of first sellers for whom it operated (First Sellers), that the Commission: (1) Extend the time by 90 days from March 9, 1998, in which to obtain the necessary documents and information to determine if the amount of refund set forth in the Statement of Refunds Due [SRD] received from Panhandle Eastern Pipe Line Company [Docket No. RP98–40–000] is correct and to reach an agreement on the amount before submitting the dispute to the Commission; and (2) grant an adjustment to its procedures to allow First Sellers to place into an escrow account the disputed amount of the refund, and, after the resolution of the dispute, retain in the account (i) principal and interest on amounts attributable to production prior to October 4, 1983, and (ii) interest on all reimbursed principal amounts determined to be refundable as being in excess of maximum lawful prices (excluding interest retained under (i) above). Molz also requests a determination that it is liable solely for its proportionate share of the tax refunds.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7785 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–45–000]

Molz Oil Company; Notice of Petition for Adjustment and Request for Extension of Time

March 19, 1998.

Take notice that on March 9, 1998, Molz Oil Company (Molz) and the working interest owners (First Sellers) for whom it operated,[1] filed a petition for adjustment and a request for extension of time under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting an adjustment to its obligation to make Kansas ad valorem tax reforms to Williams Natural Gas Company (WNG), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that Molz's petition is filed in response to the Commission's September 10, 1997, order in Docket Nos. RP97–369–000, GP97–3–000, GP97–5–000[2] on remand from the D.C. Circuit Court of Appeals,[3] which directed first sellers under the NGPA to make Kansas ad valorum tax refunds, with interest, for the period from 1983 to 1988.

Molz requests that the Commission grant an adjustment to its procedures to allow First Sellers to place into an escrow account the disputed amount of the refund set forth in the Statement of Refunds Due (SRD) from WNG,[4] and, after resolution of the dispute, to retain in the account (a) principal and interest on amounts attributable to production prior to October 4, 1983, and (b) interest on all reimbursed principal amount determined to be refundable as being in excess of maximum lawful prices (excluding interest retained under (a) above. It is stated that the SRD received from WNG was $93,447.06, including interest accrued through December 31, 1997.

Molz also requests an extension of time to permit an additional 90 days beginning March 9, 1998, in which to obtain the necessary documents and information to verify the correct amount of its actual refund liability and to reach an agreement on the amount before submitting the dispute to the Commission.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties

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[1] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. Cir. 1996), *cert. denied*, 65 U.S.L.W. 3751 and 3754 (May 12, 1997) (Nos. 96-954 and 96-1230).

[2] See 80 FERC ¶ 61,264 (1997); *order denying reh'g*, 82 FERC ¶ 61,058 (1998).

[1] First Sellers are Donald Albers, Darry Brown, Rick Caruthers, Judy Courson, Donald E. Evans, Helen Evans, K.B. Evans, Martha Evans, Beverly Molz, Jim Molz, Ben Rathgeber, Bob and Lometa Rathgeber, Lamoine Shrock, R.K. Sweetman and Westmore Drilling Co.

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. Cir. 1996), *cert., denied*, 65 U.S.L.W. 3751 and 3754 (May 12, 1997) (Nos. 96–954 and 96–1230).

[4] See. Docket No. RP98–52–000.

to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7786 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–278–000]

Natural Gas Pipeline Company; Notice of Application

March 19, 1998.

Take notice that on March 11, 1998, Natural Gas Pipeline Company (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP98–278–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to MidCon Texas Pipeline Operator, Inc. (MidCon Texas), Natural's Clayton Lateral which consists of approximately 21.7 miles of 16-inch pipeline lateral, meters ranging in sizes of 2 through 10 inches and side taps ranging in sizes of 2 through 6 inches, in Duval and Oak Counties, Texas, for $336,913; as more fully set forth in the application on file with the Commission and open to public inspection.

Natural states the facilities are no longer needed to receive gas for system supply and therefore has decided to sell the facilities to MidCon Texas for net book value.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7746 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP93–206–019 and RP96–347–010]

Northern Natural Gas Company; Notice of Compliance Filing

March 19, 1998.

Take notice that on March 17, 1998, Northern Natural Gas Company (Northern), tendered for filing under protest to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective April 1, 1998:

Fifth Revised Sheet No. 245
Second Revised Sheet No. 246
Second Revised Sheet No. 248

Northern states that the above-listed tariff sheets are filed in compliance with the Commission's Order issued March 2, 1998 in the above-referenced dockets, addressing the Carlton Resolution Settlement.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7751 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–37–000]

Pickrell Drilling Company, Inc., Notice of Petition for Adjustment and Dispute Resolution Request

March 19, 1998.

Take notice that on March 9, 1998, Pickrell Drilling Company, Inc. (Pickrell), filed a petition for an adjustment under Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA 15 U.S.C. 3412(c)) and Rules 1101–1117 of the Commission's Rules of Practice and Procedure (18 CFR 385.1101–385.1117), wherein Pickrell has requested, on behalf of first sellers (First Sellers) [1] for whom it operated, that the Commission: (1) Resolve the pending dispute between First Sellers and ANR Pipeline Company as to the proper amount of the refund liability of First Sellers for the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD) [2] addressed to Pickrell; (2) waive any refund obligation attributable to the royalty interest of Richard M. Linehan, deceased; and (3) grant an adjustment to its procedures to allow First Sellers to place into an escrow account not only the disputed amount of the refund, but also (i) principal and interest on amounts attributable to production prior to October 4, 1983, and (ii) interest on all principal amounts claimed to be due under the SRD (excluding interest included in the disputed amount or (i) above). Pickrell also requested that it be determined that it was not a working interest owner or First Seller of any of the production with respect to which the tax reimbursements were made and

[1] First Sellers are C.W. Sebits, Barbara Oil Company, Vera J. Casado, Dane G. Hansen Trust, National Cooperative Refinery Association, and David H. Tripp.

[2] See Docket No. RP98–42–000.

that it therefore has no liability under the SRD.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7780 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–39–000]

Quinque Oil & Gas Producing Company; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Quinque Oil & Gas Producing Company (Quinque), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting on behalf of certain working interest owners (First Sellers)[2] for whom it operated that the Commission:

(1) Grant an extension of 90 days to allow First Sellers and Panhandle Eastern Pipeline Company (PEPL) to resolve any dispute as to the proper amount of the refund liability of First Sellers from the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD) and to make refunds or to submit such dispute to the Commission for resolution if the parties cannot resolve it within such time, and

(2) In order to stop the accrual of interest pending resolution of disputes and legal issues, grant an adjustment to its procedures to allow First Sellers to place into escrow account only any disputed amount of the refund but also: (1) Principle and interest on amounts of tax reimbursements received in years after the subject well was deregulated, and (ii) principal and interest on amounts attributable to production prior to October 4, 1983.

First Sellers also request an order for reimbursement of the 1984 tax refund First Sellers have made to PEPL to the extent of any part of its is hereafter deemed to be attributable to production prior to October 4, 1983. Quinque also requests that it be determined that it has no liability under the SRD except as to amounts attributable solely to its own working interest. Quinque's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D. C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers would, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7781 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] First Sellers are Quinque Oil & Gas Producing Co., John W. Moore, Margaret C. Moore, Michael Moore, David O. Wilson, Jack E. Engel Estate, Robert Hatcher Estate, Clarence and Margaret Hoeme, C. Dale Stromquist, J & J Enterprises, Lyle Pringle Estate, and Winifred Pringle.

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–46–000]

Quinque Operating Company; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Quinque Operating Company (Quinque) and certain working interest owners (First Sellers)[1] for whom it operated, filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures [15 U.S.C. 3142(c) (1982)] with respect to Quinque's Kansas ad valorem tax refund liability. Quinque's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals,[2] in Docket No. RP97–369–000, *et al.*,[3] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)], stating therein that producers (first sellers) could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

Quinque requests that the Commission: (1) Grant a 90 day extension to allow First Sellers and Colorado Interstate Gas Company (CIG) to resolve any dispute as to the proper amount of the refund liability of First Sellers for the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD), filed in Docket No. RP98–54–000, and to make refunds or to submit such dispute to FERC for resolution if the parties cannot resolve it within such time, and

[1] First Sellers are Quinque Oil & Gas Producing Co.; Jane Moore; Margaret C. Moore; Penny Moore; David O. Wilson; Pete Balog; Robert Hatcher Estate; Clarence and Margaret Hoeme; George Thomas Estate; LewJac Company (LewJac Company's interest now owned by Estate of Jack Engle); Lyle Pringle Estate; Winifred Pringle; F.L. Shogrin; C. Dale Stromquist; Benjamin and Margaret Zane; and Jack and Edna Walker.

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. Cir. 1996), *cert. denied*, 65 U.S.L.W. 3751 and 3754 (May 12, 1997) (Nos. 96–954 and 96–1230).

[3] See 80 FERC ¶ 61,264 (1997); *order denying reh'g*, issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

(2) in order to stop the accrual of interest pending resolution of disputes and legal issues, grant an adjustment to its procedures to allow First Sellers to place into escrow account not only any disputed amount of the refund but also (a) principal and interest on amounts of tax reimbursements received in years after the subject well was deregulated, and (b) principal and interest on amounts attributable to production prior to October 4, 1983.

First Sellers also request an order for reimbursement of the 1984 tax refund First Sellers have made to CIG to the extent any part of it is hereafter deemed to be attributable to production prior to October 4, 1983. Quinque also requests that it be determined that it was not a working interest owner or First Seller of any of the production with respect to which the tax reimbursements were made and that it therefore has no liability under the SRD.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7787 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–47–000]

Quinque Operating Company; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Quinque Operating Company (Quinque) and certain working interest owners for whom it operated,[1] filed a petition, pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures [15 U.S.C. 3142(c) (1982)] with respect to Quinque's Kansas ad valorem tax refund liability.

The Commission's September 10, 1997 order on remand from the D.C. Circuit Court of Appeals,[2] in Docket No. RP97–369–000 *et al*,[3] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its *Order Clarifying Procedures* [82 FERC ¶ 61,059 (1998)], stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA Section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

Quinque requests that the Commission:

(1) Grant an extension of 90 days to allow First Sellers and Panhandle Eastern Pipe Line Company (PEPL) to resolve any dispute as to the proper amount of the refund liability of First Sellers for the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD) addressed to Quinque, or to submit such dispute to FERC for resolution if the parties cannot resolve it within such time, and

(2) In order to stop the accrual of interest pending resolution of disputes and legal issues, grant an adjustment to its procedures to allow First Sellers to place into an escrow account not only any disputed amount of the refund by PEPL but also

(i) principal and interest on amounts of tax reimbursements received in years after the subject wells were deregulated, and

(ii) interest on all principal amounts refunded to PEPL.

Quinque also requests that it be determined that it has no liability under the SRD except as to amounts attributable solely to its own working interest.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7788 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–23–000]

Raymond Oil Company, Inc.; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Raymond Oil Company, Inc. (Raymond) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to make Kansas ad valorem tax refunds to The Williams Companies, Inc. (Williams), as required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] Raymond's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for

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[1] First Sellers are Quinque Oil & Gas Production Co., Quinque Operating Company, John W. Moore, John W. Moore Trust, Margaret C. Moore, Michael Moore, David O. Wilson, Jack R. Engel Estate, J&J EAnterprises, Lyle Pringle Estate, Winifred Pringle, C. Dale Stromquist, Clarence and Margaret Hoeme, Robert L. And Audrpy Rice, George Rosel Estate, Robert Hatcher Estate, and Benjamin and Margaret Zane.

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[3] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

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the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Raymond states that Williams in its November 10, 1997 statement has sought to collect a refund obligation of $376,134.78, including interest through December 31, 1997 for the Carr Lease, the Carr "A" Lease, the Mills "A" Lease, the Mills "R" Lease, and the Cline "A" Lease. Raymond was the operator of the subject leases and no portion of the ad valoram tax attributable to the royalty interest in these leases was ever collected by Raymond and the same is not pertinent to this proceeding. The working interest owners in varying interests in the varying leases are John Alexander, R.L. Rooke, Francis Raymond, Western Ventures, Inc., Patrick Raymond, William M. Raymond, Shirley Stark and Raymond Oil Company, Inc. Raymond has remitted under protest, with all rights reserved, $203,935.24 to Williams on behalf of Patrick Raymond, William M. Raymond, Shirley Stark and Raymond Oil Company, Inc.

Raymond States that John Alexander, R.L. Rooke and Francis Raymond are deceased and that the alleged refunds should be deemed uncollectible. Their respective estates are now closed and the Kansas non-claims statute (K.S.A. 59–2239) has since run out thus leaving no legal way for Raymond, as operator, from taking legal action for recovering any of the monies. Raymond was never the owner of the gas attributable to these deceased working interest owners and as a contract operator of the subject oil and gas leases, Raymond did not purchase this gas from them and does not have an ongoing contractual relationship permitting it to collect the subject refunds through the use of billing adjustments. Raymond reports the monies to be $11,284.04 from John Alexander, $37, 613.48 from R.L. Rooke and $48,075.07 from Francis Raymond.

Raymond states that the alleged refunds due from Western Ventures, Inc. (Western) should be determined as uncollectible. Western was liquidated on December 4, 1986 and the Kansas statutes relating to the liabilities of a dissolved corporation provide that successors in interest now have no obligation for making reimbursement for monies received by the corporation. Raymond requests that the Commission recognize that the applicable three year Kansas statute of limitation and the laws of the State of Kansas prohibit Raymond, as operator, from taking legal action against Western and its stockholders in an attempt to obtain a refund of the tax and interest. Raymond reports that Western owes a refund of $75,226.96.

Raymond requests that the Commission grant Raymond staff adjustment in the amount of $172,199.55 for taxes and interest as of December 31, 1997, in connection with the Statement of Refunds Due submitted to it on November 10, 1997, by Williams.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing must file a motion to intervene in accordance with the Commission's Rules

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7775 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–20–000]

Dale Schwarzhoff; Notice of Petition for Adjustment

March 19, 1998.

Take notice that on March 9, 1998, Dale Schwarzhoff (First Seller) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting that the refund procedures in the Commission's September 10, 1997 order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000,[2] be altered with respect to Schwarzhoff's Kansas ad valorem tax refund liability.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

First Seller requests, pursuant to the Commission's January 28 Order, that the Commission grant First Seller and Northern Natural Gas Pipeline Company (Pipeline), an extension of 90 days to allow First Seller and Pipeline to resolve any dispute as to the proper amount of the refund liability of First Seller for the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD) addressed to Benson Mineral Group, Inc. (BMG), the Operator, or to submit such dispute to FERC for resolution if the parties cannot resolve the dispute within such time. In addition, First Seller also request that in order to stop the accrual of interest pending resolution of disputes and legal issues, that an adjustment be granted to the FERC's procedures to allow First Seller to place into an escrow account not only any disputed amount of the refund amount calculated by Pipeline, but also principal and interest on amounts attributable to production prior to October 4, 1983, and interest on all other amounts claimed to be due under the SRD.

First Seller argues that it seeks to establish these procedures to ensure that it pays only that which is legitimately owed, and that it will be able to recover the overpayment, if it is subsequently determined that First Seller's refund liability was less than that originally claimed by BMG.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[4] 82 FERC ¶ 61,059 (1998).

Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rule.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7772 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–345–003]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

March 19, 1998.

Take notice that on March 16, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 319A, with an effective date of April 15, 1998.

Tennessee states that Fifth Revised Sheet No. 319A is being filed in compliance with the Commission's March 3, 1998 Order on Rehearing and Clarification in the above-referenced docket (March 3 Order). Tennessee Gas Pipeline Company, 82 FERC ¶ 61,221 (1998).

Tennessee states that the revised tariff sheet provides that unscheduled flow penalties do not apply for the remainder of the gas day to an interruptible shipper's gas flow that has been nominated and scheduled at a point but is subsequently involuntarily bumped down to zero at that point.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7754 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–277–000]

Transok, L.L.C. Notice of Petition for Declaratory Order

March 19, 1998.

Take notice that, on March 10, 1998, Transok, L.L.C. (Transok), 110 W. 7th, Tulsa, OK 74101–3008, filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207). Transok requests a declaratory order stating that its acquisition of 37 miles of pipeline, located in Custer and Roger Mills Counties, Oklahoma and currently owned by, Northern Natural Gas Company (Northern) will not subject Transok to the jurisdiction of the Commission. All of this is more fully set forth in the application, which is on file with the Commission and open to public inspection.

This petition is a companion to Northern's application to abandon facilities in Docket No. CP98–218–000. Transok is a limited liability corporation engaged in gathering and intrastate transportation of gas.

Transok and Northern have entered into a sales agreement under which Northern will transfer facilities to Transok for $3,000,000. Transok states that after the transfer, it will use the facilities as part of its gathering system.

The facilities to be sold by Northern consist of:

1. The Redmoon Lateral made up of 14 miles of 8-inch line extending from the outlet of the inactive Crescendo Resources, L.L.P. Plant in Section 5, Township 15N, Range 21W, Roger Mills County, Oklahoma to the Redmoon Dehy Yard located in Section 27, Township 14N, Range 20W, in Custer County, Oklahoma.

2. The Custer County Pipeline made up of 23 miles of 16-inch line extending from the Northern/Transok interconnect in Section 22, Township 13N, Range 17W, to a point in Section 14, Township 12N, Range 14W, all in Custer County, Oklahoma.

Any person desiring to be heard or make any protest with reference to said application should on or before April 9, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transok to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7745 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1930–014 California]

Southern California Edison Company; Notice of Availability of Final Environmental Assessment

March 19, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of

Hydropower Licensing has reviewed the application for a new license for the existing Kern River No. 1 Project. The project is located near Bakersfield, in Kern County, California.

On July 31, 1997, the Commission staff issued and distributed to all parties a draft environmental assessment on the project, and requested that comments be filed with the Commission within 30 days. At the request of the Fish and Wildlife Service the comment period was extended an additional 30 days to September 30, 1997. Comments were filed and are addressed in the final environmental assessment (FEA).

The FEA contains the staff's analysis of the potential environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7748 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Tendered For Filing With The Commission

March 19, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License (Tendered Notice).

b. *Project No.:* 2620–005.

c. *Date filed:* March 9, 1998.

d. *Applicant:* Lockhart Power Company.

e. *Name of Project:* Lockhart Project.

f. *Location:* On the Broad River in Union, Chester, York, and Cherokee counties, South Carolina."

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Leslie Anderson, General Manager, Lockhart Power Company, 420 River Street, Lockhart, South Carolina.

i. *FERC Contact:* Charles R. Hall at (202) 219–2853.

j. *Description of Project:* The existing project consists of: (1) A 16-foot-high, concrete gravity dam; (2) a 7.5-mile-long, 300-care reservoir; (3) a 7,497-foot-long canal; (4) a powerhouse containing five turbine-generator units with a total installed capacity of 15,200 kilowatts (kW), proposed for upgrading to 18,000 kW; and (4) a 1,500-foot-long tailrace.

k. Under Section 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

1. With this notice, we are initiating consultation with the South Carolina State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, 800.4.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7749 Filed 3–24–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181057; FRL 5780–1]

Bifenthrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide bifenthrin (CAS 8657–04–3 *cis* and 83322–02–5 *trans*), formulated as Brigade WSB, to treat up to 9,500 acres of raspberries to control weevils. This is the sixth year this use has been requested, and it has been allowed under section 18 for the past 5 years. Since this request proposes a use which has been requested or granted in any 3 previous years, and a complete application for registration and petition for tolerance has not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether or not to grant the exemption, in accordance with 40 CFR 166.24(a)(6).

DATES: Comments must be received on or before April 9, 1998.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181057," should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instruction under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be included in the public record by EPA without prior notice. The public docket is available for public inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Rm. 267, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–9356); e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of bifenthrin on raspberries to control weevils. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, this emergency exists because of the loss of the chlorinated hydrocarbon insecticides. Initially, raspberry growers obtained some relief through use of carbofuran under an exemption; however, that use was later disallowed

due to groundwater concerns. Exemptions were then issued for several years for use of permethrin, but discontinued as the Applicant opted to request bifenthrin instead, due to claims that use of permethrin disrupted natural controls of other raspberry pests, leading to population flare-ups of these pests (primarily mites). This use of bifenthrin has been allowed under section 18 for the past 5 years, and the Applicant states that alternative controls are not adequate to prevent significant economic losses due to damage and contamination problems from weevils.

Under the proposed exemption, bifenthrin would be applied at a rate of 0.1 lb. active ingredient (a.i.) per acre, with no more than 2 applications during the growing season, not to exceed the rate of 0.2 lb. a.i. per acre using ground equipment only. If all 9,500 acres are treated at this maximum rate, this could potentially result in a total use of 1,900 lb. a.i.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which has been requested or granted in any 3 previous years, and a complete application for registration and/or tolerance petition has not been submitted to the Agency [40 CFR 166.24 (a)(6). Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181057] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181057]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Washington Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: March 13, 1998

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–7301 Filed 3–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181056; FRL 5779–9]

Carbofuran; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture and the Louisiana Department of Agriculture and Forestry (hereafter referred to as the "Applicants") to use the pesticide flowable carbofuran (Furadan 4F Insecticide/Nematicide) (EPA Reg. No. 279–2876) to treat up to 1.8 million acres of cotton in Texas, and up to 500,000 acres of cotton in Louisiana, to control cotton aphids. The Applicants propose the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs. The granular formulation of carbofuran was the subject of a Special Review between the years of 1986–1991, which resulted in a negotiated settlement whereby most of the registered uses of granular carbofuran were phased out. While the flowable formulation of carbofuran is not the subject of a Special Review, EPA believes that the proposed use of flowable carbofuran on cotton could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. Additionally, in 1997 EPA denied requests made under provisions of section 18 for this use of flowable carbofuran. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 9, 1998.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181056," should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instruction under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be included in the public record by EPA without prior notice. The public docket is available for public inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–9358); e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue a specific exemption for the use of carbofuran on cotton to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

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As part of this request, the Applicants assert that the state of Texas and the state of Louisiana are likely to experience non-routine infestations of aphids during the 1998 cotton growing season. The applicants further claim that, without a specific exemption of FIFRA for the use of flowable carbofuran on cotton to control cotton aphids, cotton growers in the states will suffer significant economic losses. The applicants also detail a use program designed to minimize risks to pesticide handlers and applicators, non-target organisms (both Federally-listed endangered species, and non-listed species), and to reduce the possibility of drift and runoff.

The applicants propose to make no more than two applications of flowable carbofuran on cotton at the rate of 0.25 lb. active ingredient [(a.i.)] (8 fluid oz.) in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 1998 growing season (March 1, 1998 until September 30, 1998 in Texas, and between June 1, 1998 – September 30, 1998 in Louisiana) would be 0.5 lb. a.i. (16 fluid oz.) per acre. The applicants propose that the maximum acreage which could be treated under the requested exemption would be 1.8 million acres in Texas, and 500,000 acres in Louisiana. If all acres were treated at the maximum proposed rates, then 900,000 lbs. a.i. (225,000 gallons Furadan 4F Insecticide/Nematicide) would be used in Texas; and 250,000 lbs. a.i. would be used in Louisiana.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the previous Special Review. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181056] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181056]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture, and by the Louisiana Department of Agriculture and Forestry.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: March 13,1998

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–7303 Filed 3–24–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181055; FRL 5779–4]

Pyriproxyfen and Buprofezin; Receipt of Application for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the California Department of Pesticide Regulation (hereafter referred to as the "Applicant") to use the insect growth regulators pyriproxyfen (CAS 95737–68–1) and buprofezin (CAS 69327–76–0) to treat up to 45,000 acres of citrus to control California Red Scale. In the case of pyriproxyfen, the Applicant proposes the first food use of an active ingredient. Buprofezin is an unregistered material, and its proposed use is thus use of a "new" chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before April 9, 1998.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181055," should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instruction under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be included in the public record by EPA without prior notice. The public docket is available for public inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Rm. 267, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–9356); e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of pyriproxyfen and buprofezin on citrus to control California Red Scale. Information in

accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that California Red Scale is a key pest of citrus, and the single most costly pest to control. The Applicant states that in the past, treatments were not required every year for this pest, but in recent years resistance to the registered materials has built up and growers have had to treat up to three times in a single year. Alternative methods of control (parasite releases and packing house washers) are applied where feasible; however, the Applicant asserts that a a different chemistry with a different mode of action is necessary to control the scale. The Applicant asserts that with continued frequent use of currrently registered materials, increased resistance is likely, and these materials will quickly become wholy ineffective, leaving growers with no tools to control these damaging pests. The Applicant states that without adequate control of scale in citrus, significant economic losses are expected. The Applicant indicates that one application of either one or the other of the requested chemicals would not provide adequate control throughout the season, and since application of either would be limited to one, is requesting the use of both materials.

The Applicant proposes to apply pyriproxyfen at a rate of 0.108 lb. active ingredient (a.i.) per acre with a maximum of one application per crop season on up to 45,000 acres of citrus. The Applicant proposes to apply buprofezin at a maximum rate of 2.0 lbs. a.i. per acre with a maximum of one application per crop season on up to 45,000 acres of cotton. Therefore, use under these exemptions could potentially amount to a maximum total of 4,860 lbs. of pyriproxyfen and 90,000 lbs. of buprofezin.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing the first food use of an active ingredient, or for use of a new (unregistered) chemical. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181055] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181055]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: March 12, 1998

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–7302 Filed 3–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181054; FRL 5778–5]

Pyriproxyfen and Buprofezin; Receipt of Application for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Arizona Department of Agriculture (hereafter referred to as the "Applicant") to use the insect growth regulators pyriproxyfen (CAS 95737–68–1) and buprofezin (CAS 69327–76–0) to treat up to 430,000 acres of cotton to control the sweet potato, or silverleaf whitefly *Bemesia species*. In the case of pyriproxyfen, the Applicant proposes the first food use of an active ingredient. Buprofezin is an unregistered material, and its proposed use is thus use of a "new" chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before April 9, 1998.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181054," should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instruction under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be included in the public record by EPA without prior notice. The public docket is available for public inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Rm. 267, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–9356); e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of pyriproxyfen

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and buprofezin on cotton to control the sweet potato, or silverleaf whitefly (SLW). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a new strain or possibly a new species, of whitefly, often referred to as the strain B of sweet potato whitefly, or silverleaf whitefly (SLW), has been a major pest of cotton in Arizona since the early 1990s, and since that time, has caused extensive damage to cotton and vegetable crops. The Applicant claims that adequate control of the SLW is not being achieved with currently registered products and alternative cultural practices. The Applicant points out that large populations of whitefly have demonstrated resistance to available insecticidal control. The Applicant indicates that one application of either one or the other of the requested chemicals would not provide adequate control throughout the season, and since application of either would be limited to one, is requesting the use of both materials. The Applicant indicates that without adequate control of the SLW in cotton, significant economic losses will be suffered.

The Applicant proposes to apply pyriproxyfen at a rate of 0.054 lb. active ingredient (a.i.) per acre with a maximum of one application per crop season on up to 430,000 acres of cotton. The Applicant proposes to apply buprofezin at a rate of 0.35 lb., a.i. per acre with a maximum of one application per crop season on up to 430,000 acres of cotton. Therefore, use under these exemptions could potentially amount to a maximum total of 23,200 lbs. of pyriproxyfen and 150,500 lbs. of buprofezin.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing the first food use of an active ingredient, or for use of a new (unregistered) chemical. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket control number [OPP–181054] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181054]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arizona Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: March 12, 1998

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–7300 Filed 3–24–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

March 19, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public. Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 26, 1998.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0820.

Title: Amendment to Parts 22, 24, 27, 90, and 101 of the Commission's Rules Concerning Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications.

Form No.: FCC 490, FCC 702, FCC 704.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, individuals or households, not-for-profit institutions.

Number of Respondents: 1,600.

Estimated Time Per Response: 1 hour.

Estimated Cost per Respondent: N/A.

Total Annual Burden: 1,600 hours.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: This information collection streamlines Commission procedures by allowing licensees, in certain specific circumstances, to complete pro forma assignments and transfers of control of licenses by selecting the less burdensome procedure of filing a letter after the transaction is complete.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–7705 Filed 3–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

March 19, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0820.
Expiration Date: 9/30/1988.
Title: Amendments to Part 22, 24, 27, 90 and 101 of the Commissions Rules Concerning Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications.
Form No.: FCC 490, FCC 702, and FCC 704.
Estimated Annual Burden: 1,600 annual hours; 1 hour per respondent; 1,600 responses.
Description: This information collection streamlines Commission procedures by allowing licensees, in certain specific circumstances, to complete pro forma assignments and transfers of control of licenses by selecting the less burdensome procedure of filing a letter after the transaction is complete.

OMB Control No.: 3060–0635.
Expiration Date: 3/31/2000.
Title: Amateur Vanity Call Sign Request.
Form No.: 610–V.
Estimated Annual Burden: 26,400 annual hours; 20 minutes per respondent; 80,000 responses.
Description: FCC 610–V is used to apply for a vanity (special) call sign in lieu of a systematically issued call sign. Commission personnel use the data to determine the eligibility for the radio station authorization and to issue radio station/operator license.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98–7704 Filed 3–24–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved By Office of Management and Budget

March 19, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, 44 USC 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Jerry Cowden, Federal Communications Commission, (202) 418–0447.

Federal Communications Commission

OMB Control No.: 3060–0314.
Expiration Date: 3/31/2001.
Title: Section 76.209—Fairness doctrine; personal attacks; political editorials.
Form Number: Not applicable.
Estimated annual burden: 3,411 hours; 2–3 hours per response; 1,312 respondents.
Description: Section 76.209 sets forth notification requirements for cable system operators when personal attacks are made on persons or groups during origination cablecasting. Section 76.209 also requires that when a cable system operator in an editorial endorses or opposes a legally qualified candidate, the operator shall, within 24 hours of the editorial, transmit to the other qualified candidate(s) for the same office or the candidate opposed, notification of the date, time and channel of the editorial; a script or tape of the editorial; and an offer of a reasonable opportunity to respond over the system's facilities.

OMB Control No.: 3060–0346.
Expiration Date: 3/31/2001.
Title: Section 78.27—License conditions.
Form Number: Not applicable.
Estimated Annual Burden: 76 hours; 0.167 hour per respondent; 455 respondents.
Description: Section 78.27 requires licensees of cable television relay service (CARS) stations to notify the Commission in writing when the station commences operation. It also requires a CARS licensee needing additional time to complete construction of the station to request an extension of time 30 days before the expiration of the one-year construction period.

OMB Control No.: 3060–0439.
Expiration Date: 3/31/2001.
Title: Regulations Concerning Indecent Communications by Telephone.
Form Number: Not applicable.
Estimated Annual Burden: 1,632 hours; 0.13 hour (average) per respondent; 10,200 respondents.
Description: The rules and regulations are designed to establish defenses to prosecution and to restrict access to adult message services by minors as required by Section 223 of the Communications Act of 1934, as amended. Section 64.201 contains several information collection requirements: (1) A requirement that certain common carriers block access to indecent messages unless the subscriber seeks access from the common carrier (telephone company) in writing; (2) a requirement that adult message service providers notify their carriers of the nature of their programming; and (3) a requirement that a provider of adult message services request that its carriers identify it as such in bills to its subscribers. Affected respondents are subscribers, common carriers, and providers of adult message services.

OMB Control No.: 3060–0491.
Expiration Date: 3/31/2001.
Title: Section 74.991—Wireless cable application procedures.
Form Number: Not applicable.
Estimated Annual Burden: 50 hours; 4.5 hours per respondent (0.5 hours respondent/4 hours attorney); 100 respondents.
Description: Section 74.991 requires that a wireless cable operator application be filed on FCC Forms 330/304. The applicant must also give local public notice in a daily newspaper of general circulation published in the community in which the proposed station will be located. The data is used by FCC staff to ensure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use.

OMB Control No.: 3060–0490.
Expiration Date: 3/31/2001.
Title: Section 74.902—Frequency assignments.

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Form Number: Not applicable.

Estimated annual burden: 3 hours; 0.5 hour per response; 5 respondents.

Description: Section 74.902 requires that if an MDS applicant involuntarily displaces a point-to-point ITFS station operating on MDS Channels E and F to suitable spectrum, then the initiating MDS party must prepare and file the appropriate application. Additionally, Section 74.902(i) requires that a copy of this application be served on the ITFS licensee to be moved. The data will be used by the ITFS licensee to oppose the involuntary migration if the proposal would not provide comparable ITFS service and to ensure that the public continues to be served.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–7706 Filed 3–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 232–011615.

Title: Contship/CGM/Marfret Space Charter and Sailing Agreement.

Parties:

Contship Containerlines Limited

Compagnie Generale Maritime S.A.

Compagnie Marseille Fret

Synopsis: The proposed agreement authorizes Contship to charter vessels to the other parties for use under the agreement. The agreement also allows the parties to charter space to each other and to enter into related cooperative arrangements in the trade between ports in North Europe, the Mediterranean, the Red Sea, Asia, and Australia and New Zealand, and inland points served via those ports, on the one hand, and ports on the U.S. Atlantic Coast, including inland points served via those ports.

Dated: March 19, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–7679 Filed 3–24–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Sterling International Freight Forwarders, 2351 Jay Street, New Orleans, LA 70122, Linda Lee Lambert, Sole Proprietor

All-Links Freight Co., 5250 W. Century Blvd., #434, Los Angeles, CA 90045, Yung Hoon Kim, Sole Proprietor

Strong Forwarding, 8311 Pat Blvd., Tampa, FL 33615, Cindy Ellen Strong, Sole Proprietor

Express Air Cargo, Inc., 5242½ W. 104th Street, Los Angeles, CA 90045, Officers: Tom Aoyagi, President, Karen Aoyagi, Secretary

Straight Forwarding, 7441 N.W. 8th Street, Miami, FL 33126, Officer: Ilan Friedman, President

J K Forwarding, 17925 S. Santa Fe Avenue, Rancho Dominguez, CA 90221, Kathleen M. Hogan, Sole Proprietor

Kintetsu World Express (U.S.A.), Inc., 66 Powerhouse Road, Roslyn Height, NY 11577–1324, Officers: Hirokazu Tsujimoto, President, Tokiji Shinokawa, First Sr. Vice President

Dated: March 19, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–7678 Filed 3–24–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Interchange Financial Services Corporation, Saddle Brook, New Jersey; to acquire 100 percent of the voting shares of The Jersey Bank for Savings, Montvale, New Jersey.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with First Commercial Corporation, Little Rock, Arkansas, and thereby indirectly acquire First Commercial Bank, N.A., Little Rock, Arkansas; Morrilton Security Bank, N.A., Morrilton, Arkansas; First National Bank of Russellville, Russellville, Arkansas; First National Bank of Conway, Conway, Arkansas; First Commercial Bank of Memphis, N.A., Memphis, Tennessee; The Security Bank, Harrison, Arkansas; Benton State Bank, Benton, Arkansas; Arkansas Bank and Trust Company, Hot Springs, Arkansas; Farmers and Merchants Bank, Rogers, Arkansas; Clinton State Bank, Clinton, Arkansas; Tyler Bank and Trust, N.A., Tyler, Texas; Lufkin National Bank, Lufkin, Texas; Longview National Bank, Longview, Texas; Stone Fort National Bank of Nacogdoches, Nacogdoches, Texas; State First National Bank,

Texarkana, Texas; State First National Bank, Texarkana, Arkansas; Kilgore First National Bank, Kilgore, Texas; First National Bank of Palestine, Palestine, Texas; First National Bank of Nashville, Nashville, Arkansas; Citizens First Bank, El Dorado, Arkansas; Citizens First Bank, Fordyce, Arkansas; Citizens First Bank, Arkadelphia, Arkansas; Arkansas State Bank, Clarksville, Arkansas; First National Bank of Searcy, Searcy, Arkansas; First Bank of Arkansas, Jonesboro, Arkansas; Springhill Bancshares, Inc., Springhill, Louisiana, and its subsidiary, Springhill Bank and Trust Company, Springhill, Louisiana; and TRH Bank Group, Inc., Norman, Oklahoma, and its subsidiary, Security National Bank & Trust Company, Norman, Oklahoma, and Oklahoma National Bank of Duncan, Duncan, Oklahoma.

In connection with this application, Applicant has also applied to acquire First Commercial Mortgage Company, N.A., Little Rock, Arkansas, and thereby engage in making and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

In addition Applicant has also applied to acquire First Commercial Trust Company, N.A., Little Rock, Arkansas, and thereby engage in trust department functions and related investment advisory activities, pursuant to §§ 225.28(b)(5) and 225.28(b)(6) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee, and its second tier subsidiary, Union Planters Holding Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of and thereby merge with Magna Group, Inc., St. Louis, Missouri, and thereby indirectly acquire HBC Acquisition Sub, Inc., St. Louis, Missouri, and Magna Bank, National Association, St. Louis, Missouri.

In connection with this application, Applicants have also applied to acquire Magna Group, Inc., St. Louis, Missouri, and thereby indirectly acquire Charter Bank, S.B., Sparta, Illinois, and thereby engage in the operation of a thrift, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First Bank of Grants, Grants, New Mexico.

E. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Giltner Investment Partnership II, Ltd., Omaha, Nebraska, a *de novo* bank; to become a bank holding company by acquiring 60 percent of the voting shares of The Avoca Company, Omaha, Nebraska, and thereby indirectly acquire The Farmers State Bank of Nebraska, Bennet, Nebraska.

F. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Home Valley Bancorp, Cave Junction, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Home Valley Bank, Cave Junction, Oregon.

Board of Governors of the Federal Reserve System, March 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7807 Filed 3–24–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL SERVICE IMPASSES PANEL

Notice of Proposed Agency Information Collection Activity; Request for Public Comment

AGENCY: Federal Service Impasses Panel.

ACTION: Notice.

SUMMARY: The Federal Service Impasses Panel (Panel) is soliciting public comments on FLRA Form 14, Request for Assistance, as described below, prior to submission of the proposal to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

DATES: Comments due: May 26, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: H. Joseph Schimansky, Executive Director, Federal Service Impasses Panel, 607 14th St., N.W., Suite 220, Washington, D.C. 20424–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection should be directed to H. Joseph Schimansky, Executive Director, Federal Service Impasses Panel, (202) 482–6670, 607 14th St., N.W., Suite 220, Washington, D.C. 20424–0001.

SUPPLEMENTARY INFORMATION: The Panel will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995.

This Notice solicits comments from members of the public and affected agencies concerning the proposed collection of information. The comments will be used to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Panel, including whether the information will have practical utility; (2) evaluate the accuracy of the Panel's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond.

This Notice also lists the following information:

Title of Proposal: Request for Assistance.

OMB Number: 3070–0007.

Type of Review: Extension of a currently approved collection, with minor changes.

Description of the Need for the Information and Proposed Use: The information to be collected by FLRA 14, Request for Assistance, is required for the Panel to be able to process and decide collective bargaining impasses arising under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119. The information collected on the form is to be used to enable Panel staff employees to contact affected parties in impasse proceedings, and to enable staff employees to take the necessary steps to begin the processing of the Request for Assistance. The form will be provided to members of the public who request the form from the Panel, to enable those members of the public to initiate an impasse proceeding before the Panel. The petition form is filed with the Panel's office. Use of the form is not required to obtain Panel assistance, however, so long as the written request by a party for assistance contains the information requested on the form.

The document lists the following information: (1) The title of the information collection; (2) identification of the parties and individuals authorized to act on their behalf, including facsimile numbers; (3) statement of issues at impasse and the summary of positions of the initiating party or parties with respect to those issues; (4) a description of the bargaining unit along with the number of employees included; (5) the expiration date of the parties' labor

agreement; (6) the number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized; (7) if approval of binding arbitration is requested, a statement as to whether any of the proposals to be submitted to the arbitrator contain questions concerning the duty to bargain, a statement of each party's position concerning such questions, and a description of the arbitration procedures to be used; (8) if the impasse arises from an agency determination not to establish or terminate a compressed work schedule under the Federal Employees Flexible and Compressed Work Schedules Act, the schedule or proposed schedule which is the subject of the agency's determination and the finding on which the determination is based, including, in the case where the finding is made by a duly authorized delegatee, evidence of a specific delegation of authority to make such a finding; (9) the name and signature of the party or parties filing the request; and (10) an estimate of the total annual reporting hours and record keeping burden.

Members of the Affected Public: Federal employees representing Federal agencies in their capacity as employer, and Federal employees and employees of labor organizations that are representing those labor organizations, are the members of the public who may file the Request for Assistance form.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection: It should normally take a party no longer than one hour to complete the Request for Assistance form for filing with the Panel. In FY 1997, 148 requests for assistance were filed with the Panel.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chap. 35, as amended.

Dated: March, 19, 1998.

H. Joseph Schimansky,

Executive Director, Federal Service Impasses Panel.

[FR Doc. 98–7586 Filed 3–24–98; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL TRADE COMMISSION

[File No. 972–3025]

Civic Development Group, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Eileen Harrington or Hugh Stevenson, FTC/H–238, Washington, D.C. 20580. (202) 326–3127 or 326–3511.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 18, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted an agreement to a proposed consent order from Civic Development Group, Inc., and Community Network, Inc., corporations, and Scott Pasch and David Keezer, individually and as officers of Civic Development Group, Inc., and Richard McDonnell, individually and as an officer of Community Network, Inc. ("Respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns representations made by Respondents when they solicit consumers by telephone to contribute money to the non-profit organization, the American Deputy Sheriffs' Association ("ADSA").

The Commission's complaint in this matter charges Respondents with engaging in unfair or deceptive acts or practices in connection with soliciting consumers by telephone to contribute to the ADSA. According to the complaint, in the course of making such solicitations, Respondents misrepresent to consumers that: money contributed by consumers to the ADSA had in the past benefitted law enforcement offices in the town, city, county, or state in which the consumers reside; money contributed to the ADSA by consumers had been used in the past to purchase bullet-proof vests for law enforcement offices in the town, city, county, or state in which the consumers reside, and money contributed to the ADSA by consumers had been used in the past to pay death benefits to the survivors of deceased law enforcement officers who resided or worked in the town, city, county, or state in which the consumers reside.

The complaint also alleges that Respondents misrepresented that: Money contributed to the ADSA by consumers would be used to benefit law enforcement offices in the town, city, county, or state in which the consumers reside; money contributed to the ADSA by consumers would be used to purchase bullet-proof vests for law enforcement offices in the town, city, county, or state in which the consumers reside; and money contributed to the ADSA by consumers would be used to pay death benefits to the survivors of deceased law enforcement officers who reside or work in the town, city, county, or state in which the consumers reside.

The consent order contains provisions designed to remedy the violations charged and to prevent Respondents from engaging in similar deceptive or unfair acts or practices in the future.

Paragraph I of the order prohibits Respondents, in connection with a telephone solicitation, from misrepresenting the purpose for which

charitable contribution has been or will be used.

Paragraph II of the order prohibits Respondents, in connection with a telephone solicitation, from misrepresenting the geographic location of the charity, organization or program that has benefitted or will benefit from the charitable contribution.

Paragraph III of the order prohibits Respondents, in connection with a telephone solicitation, from misrepresenting any fact material to the decision of any person to make a charitable contribution.

Paragraph IV of the order requires that Respondents, in connection with telephone solicitations, adopt an education and monitoring program designed to ensure compliance with Paragraph I through III of the order. As part of this education and monitoring program, Respondents must tape-record and review 1,000 solicitation telephone calls every thirty days.

Paragraph V of the order provides that in any action brought by the Commission to enforce the order, unless Respondents know or reasonably should have known of the violation, there shall be a rebuttable presumption that Respondents exercised good faith in complying with Parts I through III of the order, if Respondents show by a preponderance of the evidence that they have established and maintained the education and monitoring program mandated in Paragraph IV of the order.

Paragraph VI of the order requires Respondents, for a period of five (5) years, to maintain and permit representatives of the Commission access to Respondents' business premises to inspect and copy all documents relating in any way to any conduct that is the subject of this order.

Paragraph VII of the order requires that Respondents, for a period of five (5) years, permit representatives of the Commission to interview and depose, under oath, at the Respondents' business premises, the officers, directors, or employees of any such business with regard to compliance with the terms of this order.

Paragraph VIII of the order prohibits Respondents from providing the means and instrumentalities to, or otherwise assisting and facilitating any person who Respondents know or should know makes false or misleading representations about the purpose for which charitable contributions have been or will be used, the geographic location of the charity, organization or program that has benefitted or will benefit from charitable contributions or any fact material to any person to make any charitable contribution.

Paragraph IX of the order requires that Respondents, for a period of five (5) years from the date of entry of the order, deliver a copy of the order to all current and future principals, officers, directors, and managers of Respondents' companies or of any affiliated companies having responsibilities with respect to the subject matter of the order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order.

Paragraph X of the order requires that Respondents Civic Development Group, Inc. and Community Network, Inc. notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order. Provided, however, that, with respect to any proposed change in the corporation about which Respondents learn less than thirty (30) days prior to the date such action is to take place, Respondents shall notify the Commission as soon as is practicable after obtaining such knowledge.

Paragraph XI of the order requires that Respondents Community Network, Inc., Civic Development Group, Inc., and their successors and assigns and Respondents Scott Pasch, David Keezer, and Richard McDonnell, within sixth (60) days after the date of service of the order, and again 180 days following entry of the order, and again at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Paragraph XII of the order requires that Respondents Scott Pasch, David Keezer, and Richard McDonnell, for a period of ten (10) years after the date of issuance of the order, notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment.

Paragraph XIII of the order provides for a twenty (20) year sunset provision.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

By direction of the Commission, Commissioner Azcuenaga and Commissioner Swindle not participating.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioner Sheila F. Anthony

Today, we issue the attached administrative settlement for public comment. The proposed agreement would resolve serious allegations about misrepresentations made by respondents in connection with their telephone fundraising efforts on behalf of a non-profit organization. We present our views on one particular provision in the proposed Order to ensure that it is not misconstrued to suggest to some that the Commission is steering in a new direction.

Part V of the Order provides respondents with a limited rebuttable presumption that they have exercised good faith in complying with key injunctive provisions of the Order, if respondents show, by a preponderance of the evidence, that they have established and maintained the education and compliance program mandated in Part IV. In this case, including this provision is acceptable.

Part IV of the Order establishes numerous and significant monitoring and education requirements designed to ensure that respondents make no deceptive representations in connection with any charitable solicitations by telephone. These requirements include, but are not limited to: disseminating a brochure that discusses the obligations of a professional fundraiser to current and future employees and agents (Part IV.A); monitoring a random and representative sample of employees and agents in each location from which solicitations are made to ensure compliance with the injunctive provisions (Part IV.C); and taping a random and representative sample of telephone solicitations in each location in which solicitations are made and reviewing a random sample of at least 1000 such calls every 30 days to ensure compliance with the injunctive provisions (Part IV.D). Part IV.E further requires that respondents terminate any employee or agent who makes more than one material representation that violates the injunctive provisions in any consecutive twelve-month period.

Given the circumstances of this case as well as the strength and scope of the monitoring and education requirements in Part IV, we are of the view that the limited rebuttable presumption delineated in Part V is acceptable. (Under current law, good faith is among those factors relevant to determining an appropriate civil penalty amount where an order has been violated. See *United States* v. *Danube Carpet Mills, Inc.* 737 F.2d 998, 993–94 (11th Cir. 1984); *United States* v. *Reader's Digest Ass'n,* 662 F.2d 955, 967–68 (3d Cir. 1981), *cert, denied,* 455 U.S. 908 (1982)). This provision does not establish a defense to any subsequent enforcement actions. Similarly, it in no way precludes the

Commission from taking action should it determine that respondents are not in full compliance with any final order. Furthermore, the Commission continues to adhere to its Policy Statement Concerning Errors and Omissions Clauses in Consent Decrees, 59 F.R. 34440 (July 5, 1994). We consider it highly unlikely that other facts would present themselves—in the administrative or federal court context—that would warrant application of the same or a similar rebuttable presumption.

Statement of Commissioner Mozelle W. Thompson

I am writing to express my concurrence with the Statement of Chairman Robert Pitofsky and Commissioner Sheila F. Anthony on the proposed consent agreement that the Commission accepted today for public comment in *Civic Development Group, Inc.* I have voted to support this proposed agreement in recognition of the allegation of serious harm caused by respondents through their fraudulent telemarketing fundraising and the need to place such respondents under order. However, one provision of the order raises issues addressed by my two aforementioned colleagues and that I wish also to address through this Statement.

Part V of the Order in *Civic Development Group* states that in any Commission action to enforce the order, "there shall be a rebuttable presumption that the respondents have exercised good faith in complying with [substantive provisions of the order] if the respondents show, by a preponderance of the evidence, that they have established and maintained the education and compliance program mandated in Paragraph IV of the order * * *."

I question the propriety of accepting a consent agreement that results in shifting the burden of proof to benefit a party that the Commission is claiming engaged in unlawful conduct. There are serious risks in permitting any party or adjudicative body to interfere with the Commission's well-supported prosecutorial discretion, and it could be argued that the limited rebuttable presumption in Part V allows respondent's compliance with the procedural requirements to detract from the Commission's ability to pursue substantive violations.

For purposes of this case only, I accept the order's burden-shifting provision and concur with the Chairman, Commissioner Anthony, and staff that this order is acceptable based on the unique and specialized aspects of this case. Accordingly, in my view, the order presented here should not be regarded as having precedential value.

I trust that staff will continue to work closely with the company to monitor its compliance with the stringent requirements of Part IV as well as all other requirements of the order.

[FR Doc. 98–7700 Filed 3–24–98; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthy People 2010 Planning Process; Amendment

A notice published in the **Federal Register** on February 17, 1998 [63 FR 7810]. The notice is amended as follows:

On page 7810, third column, under the heading **SUPPLEMENTARY INFORMATION** on line 27, website is incorrect. It should read at http://www.cdc.gov/nceh/programs/hp2010/

All other information and requirements of the February 17, 1998, notice remain the same.

Dated: March 19, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–7691 Filed 3–24–98; 8:45 am]
BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0456]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by April 24, 1998.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Conditions for the Use of Narcotic Drugs for Treatment of Narcotic Addiction Reporting and Recordkeeping Requirements (21 CFR 291.505) (OMB Control Number 0910–0140—Reinstatement)

Section 303(g) of the Controlled Substances Act (21 U.S.C. 823(g)) provides for a separate controlled substances registration for practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment. This separate registration is conditioned on the Secretary of the Department of Health and Human Services (the Secretary) determining that the applicant is a practitioner who is qualified (under standards established by the Secretary) to engage in the treatment with respect to which registration is sought. Section 303(g) requires that the Secretary (and, by delegation, FDA and the National Institute of Drug Abuse): (1) Establish standards for practitioners who dispense narcotic drugs to persons for maintenance and/or detoxification treatment; (2) determine whether practitioners who wish to conduct such treatment are qualified under the standards; and (3) determine whether such practitioners will comply with the standards regarding the quantities of narcotic drugs that may be provided for unsupervised use by persons in such treatment.

Regulations found at 21 CFR 291.505 were issued under this authority. These regulations establish reporting requirements that include an application for approval of use of narcotic drugs in a narcotic addiction treatment program that must be submitted to, and approved by, FDA before the treatment program (which may be an individual or an organization) may receive shipments of narcotic drugs. Additional submissions are required when significant changes

are implemented by treatment programs; for some kinds of changes, the regulations require FDA preapproval of the change before it is implemented. Additional submissions and FDA preapproval are also required if a treatment program seeks an exemption from certain requirements. The regulations contain no periodic reporting requirements.

The regulations governing the use of narcotic drugs for treatment of addiction also contain recordkeeping requirements that codify usual and customary practices within the medical and rehabilitative communities. Because the records required by the regulations would be kept even without a regulatory requirement, the time and financial resources necessary to comply with the recordkeeping requirements have not been included in the burden estimate below (see 5 CFR 1320.3(b)(2)).

FDA is requesting approval of the following FDA forms:

(1) Form FDA–2632—"Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program". Organizations or individuals who wish to receive shipments of narcotic drugs for the treatment of narcotic addiction are required to submit this form in duplicate to FDA and to the appropriate State regulatory authority. All information and attachments to the application are required by the regulation. The application must include a list of personnel active in the program, such as physicians, nurses, and counselors; the names of hospitals, institutions, and analytical laboratories; and all other facilities used to provide necessary services required by the regulations. Form FDA–2632 is also used to report to FDA that a program will relocate, change the sponsor, or dispense Levo-Alpha-Acetyl-Methadol (LAAM);

(2) Form FDA–2633—"Medical Responsibility Statement for Use of Narcotic Drugs in a Treatment Program". Each licensed physician authorized to administer or dispense narcotic drugs for the treatment of narcotic addiction must complete this form and submit it to FDA and to the appropriate State regulatory authority;

(3) Form FDA–2635—"Consent to Treatment with an Approved Narcotic Drug". This form is to be completed by the practitioner and signed by the patient when the practitioner explains the treatment program to each new patient. The completed form becomes part of the patient's records and is not transmitted to FDA. Having a patient execute an informed consent form before undertaking a course of medical therapy, such as maintenance or detoxification, is usual and customary medical practice; and

(4) Form FDA–2636—"Hospital Request for Methadone Detoxification Treatment". Before a hospital may receive shipments of methadone for detoxification treatment, a responsible official of the hospital must submit this form to FDA and to the appropriate State regulatory authority, and must have received a notice of approval from FDA. Form FDA–2636 is also used to inform FDA of changes in responsible hospital administrators.

Respondents to this information collection are sponsors and physicians for treatment programs, and hospital officials for hospital detoxification programs.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Time per Response	Total Hours
Form FDA–2632, Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program (New Programs)	291.505(b)(1)(ii), (b)(2)(i), (b)(2)(vi), (b)(3)(i), (c)(3), (c)(4), (d)(2)(i), and (d)(4)(i)(D)	55	1	55	105 min	96.25
Form FDA–2632, Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program (Relocation)	291.505(b)(1)(ii), (c)(4)	35	1	35	70 min	40.83
Form FDA–2632, Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program (Sponsor Change)	291.505(c)(2)(ii),(c)(4)	60	1	60	20 min	20
Form FDA–2632, Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program (Levo-Alpha-Acetyl-Methadol (LAAM) Use)	291.505(b)(2)(iv), (c)(4)	75	1	75	15 min	18.75
Form FDA–2633, Medical Responsibility Statement for Use of Narcotic Drugs in a Treatment Program	291.505(c)(4)	275	1	275	15 min	68.75
Form FDA–2636, Hospital Request for Methadone Detoxification Treatment (New Applicant)	291.505(f)(2)	20	1	20	10 min	3.33
Form FDA–2636, Hospital Request for Methadone Detoxification Treatment (Administrator Change)	291.505(f)(2)	5	1	5	10 min	0.83

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TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Form	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Time per Response	Total Hours
Notifications of deletion of facility in which medication is administered	291.505(b)(2)(i)	45	1	45	15 min	11.25
Requests to change testing laboratory	291.505(d)(2)(i)	25	1	25	40 min	16.66
Reports of addition, modification, or deletion of any program services	291.505(d)(4)(i)(D)	32	1	32	15 min	8
Requests to allow patients to take home daily doses greater than 100 milligrams	291.505(d)(6)(v)(D)	600	1	600	15 min	150
Requests for exemptions from specific program standards	291.505(d)(11)	700	3	2,100	30 min	1,050
Requests for approval of a hospital as a temporary treatment program	291.505(f)(2)(i)	3	1	3	15 min	.75
Requests for alternative methods of distribution	291.505(j)(1)	5	1	5	30 min	2.5
TOTALS		2,035		3,335		1,487.9

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 18, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7665 Filed 3–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–09]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval by March 27, 1998, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: March 27, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed "Request for Proposals—Contract Administrators for Project-Based Section 8 Housing Assistance Payments Contracts." This emergency processing is essential to provide for the immediate, ongoing, responsible administration of over 20,000 Section 8 contracts. These contracts represent a substantial investment to support the physical and financial well-being of affordable housing on a nation-wide basis. It is necessary for the Department to obtain the contract administration capability sought in the Request as soon as possible to ensure that the recent restructuring of the Department does not adversely affect this national investment, but instead, through Departmental oversight of successful bidders rather than direct, hands-on administration, results in improvements in the quality and affordability of the nation's housing stock.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 USC Chapter 35):

(1) Title of the information collection proposal:

"Request for Proposals—Contract Administrators for Project-Based Section 8 Housing Assistance Payments Contracts" (Request)

(2) Summary of the collection of information:

Each party seeking to become a contract administrator under the Request would be required to submit current information, as listed below:

1. Name.
2. Address.
3. Geographic service area in which the applicant proposes to serve as contract administrator.
4. Documented evidence that, within the last two years immediately prior to the date of the proposal, the proposer has performed duties substantially similar to those provided for in the Request.
5. Description of the applicant's experience in conducting mortgage foreclosures or in related activities which would qualify the applicant to serve as a foreclosure commissioner.
6. Description of how the proposer has provided similar services in the past, and a detailed description of experience with oversight of multifamily residential portfolios.
7. The proposal must describe methods used to manage and control prior contracts or portfolios.
8. The proposal must provide the names, addresses and telephone numbers of all references.
9. The proposal must demonstrate a thorough understanding of HUD's requirements and ability and capacity to perform all of the duties and tasks required.

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10. The proposal also must describe the proposer's experience with automated systems to support the services required (including accessibility, documentation, security, and flexibility).

11. The proposal must include sufficient information on the relevant experience, special training and education of proposed personnel related to the tasks to be performed.

12. The proposal must describe the method to be used to manage and control the tasks to be performed under the contract.

13. The proposal must include a quality assurance plan.

14. The proposal must provide a plan for the transfer of responsibility for contract administration from HUD to the Contract Administrator.

15. All proposers must include in their response the fixed, ongoing administrative fee per unit per month they propose for the first year of the ACC.

16. Selected Contract Administrators shall provide to HUD, by the 15th of each month, a report which includes the following information:

*Physical Inspections**

Number of inspections completed during month.
Cumulative percentage of assisted units.
Number with unacceptable ratings.
Number requiring remedial actions and type of action.

*Occupancy and Management**

Number of on-site management reviews completed during month.
Cumulative percentage of reviews completed.
Number of tenant files reviewed.
Cumulative percentage of reviews completed.

*Contract Rents**

Number of rent increases approved.
Number of budget-based rent increases approved.
Number of special rent adjustments reviewed.

Data Systems

Any problems.

Payment to Project Owners

Number of payments made after first of the month with number of days late and reason.

Annual Financial Statements

Number and status of problem cases noted by the Assessment Center.
Number of owners contacted for corrective actions.
Number of corrective actions outstanding (over 30 days late).
Status/progress of corrective actions.

Community/Resident Relations

Description of repeated complaints at any project and steps taken to resolve.
Steps taken to promote resident initiatives.

Loss Mitigation and General Project Servicing

Synopsis of support provided to HUD Centers.
Number of requests reviewed for releases from reserve for replacement account and residual receipts.

Other

Hot topics—Projects that required special attention due to such matters as abatement actions, excessive tenant complaints, inquiries from governmental officials or general public.
Any significant administrative actions that could affect the contract.
Major accomplishments, success stories, etc.
Noteworthy meetings.
Pending issues.

Year-End Reporting

Number of annual operating budgets, requisitions, and year-end statements submitted.
Percentage of required number.

* Where appropriate, the Contract Administrator shall give the project name and project number and submit copies of all reviews and inspections.

(3) Description of the need for the information and its proposed use:

The requested information is needed for HUD's selection of contract administrators to provide contract administration services for project-based Section 8 Housing Assistance Payments (HAP) contracts currently being administered directly by HUD staff. The Department is not providing any assurances of confidentiality.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

HUD will enter into an ACC only with a legal entity that meets one of the following qualifications:

1. A general or special purpose governmental entity, which includes a State, municipality, or public benefit corporation (including a housing authority).

2. A multi-state, regional or interstate entity which has governmental functions.

3. An existing or to be created for-profit or not-for-profit private entity acting as an instrumentality of a governmental entity, or multiple governmental entities, or any of them, acting in concert or partnership with a private entity ("private instrumentality"). Respondents will be entities with experience in real estate foreclosure procedures.

The estimated number of respondents is approximately 250. The estimated frequency of responses is estimated to be no more than three times during a three year period.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden:
Number of Request respondents: 250.
Total burden hours (@ 20 hours per response): 5,000.
Number of Monthly Reporters: 10.
Number of Monthly Reports (Annual): 12.
Total burden hours (@ 5 hours per response): 600.
Total Estimated Annual Burden Hours: 5,600.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 20, 1998.

David S. Cristy

Director, IRM Policy and Management Division.

[FR Doc. 98–7914 Filed 3–23–98; 11:29 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Renewal for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Hadley, Massachusetts; PRT–697823.

This applicant requests renewal of their current permit for take activities for all listed species in the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and the District of Columbia for the purpose of scientific

research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Written data or comments should be submitted to the Regional Endangered Species Permits Coordinator, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, Attention: Diane Lynch, Regional Endangered Species Permits Coordinator. Telephone: (413) 253–8628; FAX: (413) 253–8482.

Dated: March 16, 1998.

Cathy Short,

Deputy Regional Director, Region 5.

[FR Doc. 98–7670 Filed 3–24–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Forum on Ecological Surveys of Aquatic Nuisance Species—Aquatic Nuisance Species Task Force

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the Forum on Ecological Surveys of Aquatic Nuisance Species. The 1996 amendments to the Nonindigenous Aquatic Nuisance Prevention and Control Act added a new subsection requiring that the Aquatic Nuisance Species (ANS) Task Force, in consultation with the U.S. Coast Guard, conduct ecological surveys in nationally significant estuaries and other waters that are highly susceptible to invasion by ANS resulting from ballast water operations and other operations of vessels and require further study. The surveys shall determine what nonindigenous aquatic species are present and estimate the effectiveness of ballast water and other vessel management guidelines and regulations in abating invasions. Studies of the Chesapeake Bay, San Francisco Bay, and Honolulu Harbor are specifically required.

DATES: The Workshop will be held from 8:30 a.m. to 5 p.m. on April 21, 1998.

ADDRESSES: The Workshop will be held at the Smithsonian Environmental Research Center, 647 Contees Wharf Road, Edgewater, Maryland 21037. Minutes of the meeting will be maintained by the Executive Secretary, ANS Task Force, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Craig A. Czarnecki, U.S. Fish and Wildlife Service, by telephone at 703–358–2025 or E-mail at craig__czarnecki@fws.gov or Dr. Gregory Ruiz, Smithsonian Environmental Research Center at 301–261–4190 (ext. 227) or E-mail at ruiz@serc.edu.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces the Forum on Ecological Surveys of Aquatic Nuisance Species pursuant to section 1102(b) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741).

The purposes of this meeting are to (1) provide background on the statutory requirements for ecological surveys, (2) provide an update on past, ongoing, and future studies with a similar focus, (3) discuss standardized approaches for conducting and disseminating results from future ecological surveys, and (4) identify strategies for synthesis and comprehensive analysis among completed surveys.

The meeting is open to the public. Interested persons may make oral statements at the meeting or submit written statements for consideration.

Dated: March 20, 1998.

Rowan Gould,

Acting Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 98–7805 Filed 3–24–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Correction to Location of Meeting

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objective of this meeting is to develop management options for the 1998 Klamath fall chinook salmon season, to be presented to the Pacific Fisheries Management Council. The meeting is open to the public.

Dates: The Klamath Fishery Management Council will meet from 2:00 p.m. to 6:00 p.m. on Sunday, April 5.

Place: The meeting will be held at the Doubletree Hotel Columbia River, 1401 N. Hayden Island Drive, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: March 18, 1998.

Cynthia U. Barry,

Acting Assistant Regional Director, Klamath/Central Pacific Coast Ecoregion.

[FR Doc. 98–7693 Filed 3–24–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00; GP8–0141]

Notice of Meeting of the Eastern Washington Resource Advisory Council

ACTION: Meeting of the Eastern Washington Resource Advisory Council; April 30, 1998, in Spokane, Washington.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on April 30, 1998. The meeting will convene at 8:00 a.m., at the Spokane District Office of the Bureau of Land Management, 1103 N. Fancher Road, Spokane, WA 99212. The meeting will adjourn upon conclusion of business, but no later than 4:00 p.m. Public comments will be heard from 10:00 a.m. until 10:30 a.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. Topics to be discussed include: noxious weeds, the Interior Columbia Basin Ecosystem Management Project, implementation of Standards for

Rangeland Health and Guidelines for Livestock Grazing Management, riparian management, and land exchanges.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212; or call 509–536–1200.

Dated: March 19, 1998.

Joseph K. Buesing,

District Manager.

[FR Doc. 98–7692 Filed 3–24–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1430–00; GP8–0060]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Oregon

AGENCY: Bureau of Land Management, Prineville District.

ACTION: Notice.

SUMMARY: The following public lands in Deschutes County, Oregon have been examined and found suitable for classification for lease or conveyance to the City of Redmond under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Redmond proposes to use the lands for a golf course.

Willamette Meridian

T. 15 S., R. 13 E.,

Sec. 32, NE¼, SE¼NW¼,that portion lying east of the railroad and power line

Containing 181.34 acres, more or less.

The lands are not needed for Federal purposes. The lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued, will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Prineville District, 3050 NE Third, Prineville, Oregon, 97754.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all other forms of appropriation under the public lands laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Prineville District Office, P.O. Box 550, Prineville, Oregon 97754.

Classification Comments. Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a rodeo grounds.

Any adverse comments will be reviewed by the State Directory. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: March 11, 1998.

James L. Hancock,

District Manager.

[FR Doc. 98–7738 Filed 3–24–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–51515, UTU–54044, UTU–56984]

Utah; Proposed Reinstatement of Terminated Oil and Gas Leases

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas leases UTU–51515, UTU–54044, and UTU–56984 for lands in Summit County, Utah, was timely filed and required rentals accruing from October 1, 1998, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee in the amount of $500 for each lease has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of these leases as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate leases UTU–51515, UTU–54044, and UTU–56984, effective October 1, 1997, subject to the original terms and conditions of the leases and the increased rental and royalty rate cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 98–7696 Filed 3–24–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1, 1998, through October 31, 1998. The List of Restricted Joint Bidders published October 9, 1997, in the **Federal Register** at 62 FR 52771 covered the period of November 1, 1997, through April 30, 1998.

Group I. Exxon Corporation; and Exxon San Joaquin Production Co.

Group II. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.; Shell Consolidated Energy Resources Inc.; Shell Land & Energy Company; Shell Onshore Ventures Inc.; Shell Deepwater Development Inc.; Shell Deepwater Production Inc.; Shell Offshore Properties; and Capital II, Inc.

Group III. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group IV. BP America Inc.; The Standard Oil Co.; BP Exploration & Oil Inc.; and BP Exploration (Alaska) Inc.

Dated: March 19, 1998.

Cynthia Quarterman,

Director, Minerals Management Service.

FR Doc. 98–7737 Filed 3–24–98; 8:45 am]

BILLING CODE 4310–MR–M

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Thursday, April 16, 1998, 9 a.m.–4 p.m.; Friday, April 17, 1998, 9 a.m.–12 noon.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: James Esget, Manager, Yakima River Basin Water Enhancement Project, P.O. Box 1749, Yakima, Washington, 98907, (509) 575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review the Bureau of Reclamation's water acquisition process and procedures and develop recommendations on the process to facilitate voluntary sale or lease of water. Progress Reports will be provided on the Basin Conservation Plan and the Yakima River Basin Wetlands and Floodplain Habitat Plan.

Dated: March 17, 1998.

Rick Parker,

Acting Area Manager.

[FR Doc. 98–7521 Filed 3–24–98; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–406]

Certain Lens-Fitted Film Packages; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 13, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Fuji Photo Film Co., Ltd. of Tokyo, Japan. A supplement to the complaint was filed on March 2, 1998. A notice of withdrawal as to one proposed respondent was filed on March 6, 1998. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lens-fitted film packages by reason of infringement of the following claims of the following patents:

(1) claims 1, 5, 6, 9, and 11 of U.S. Letters Patent 4,833,495;

(2) claims 14 and 15 of U.S. Letters Patent 4,855,774;

(3) claims 1, 7, 8, and 15 of U.S. Letters Patent 4,884,087;

(4) claims 1, 19, and 22 of U.S. Letters Patent 4,954,857;

(5) claims 1 and 9 of U.S. Letters Patent 4,972,649;

(6) claims 14 and 16 of U.S. Letters Patent 5,063,400;

(7) claims 1 and 11 of U.S. Letters Patent 5,235,364;

(8) claim 1 of U.S. Letters Patent 5,361,111;

(9) claims 1, 15, 23, and 25 of U.S. Letters Patent 5,381,200;

(10) claims 1 and 7 of U.S. Letters Patent 5,408,288;

(11) claims 1 and 28 of U.S. Letters Patent 5,436,685;

(12) claims 1 and 13 of U.S. Letters Patent Re 34,168;

(13) the claim of U.S. Letters Patent Des. 345,750;

(14) the claim of U.S. Letters Patent Des. 356,101; and

(15) the claim of U.S. Letters Patent Des. 372,722.

The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337 for each of the above patents.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Christine E. Lehman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (1997).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on March 18, 1998, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lens-fitted film packages by reason of infringement of the following claims of the following patents, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337:

(1) claims 1, 5, 6, 9, or 11 of U.S. Letters Patent 4,833,495;

(2) claims 14 or 15 of U.S. Letters Patent 4,855,774;

(3) claims 1, 7, 8, or 15 of U.S. Letters Patent 4,884,087;

(4) claims 1, 19, or 22 of U.S. Letters Patent 4,954,857;

(5) claims 1 or 9 of U.S. Letters Patent 4,972,649;

(6) claims 14 or 16 of U.S. Letters Patent 5,063,400;

(7) claims 1 or 11 of U.S. Letters Patent 5,235,364;

(8) claim 1 of U.S. Letters Patent 5,361,111;

(9) claims 1, 15, 23, or 25 of U.S. Letters Patent 5,381,200;

(10) claims 1 or 7 of U.S. Letters Patent 5,408,288;

(11) claims 1 or 28 of U.S. Letters Patent 5,436,685;

(12) claims 1 or 13 of U.S. Letters Patent Re 34,168;

(13) the claim of U.S. Letters Patent Des. 345,750;

(14) the claim of U.S. Letters Patent Des. 356,101; or

(15) the claim of U.S. Letters Patent Des. 372,722.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Fuji Photo Film Co., Ltd., 26–30 Nishiazabu 2-chome, Minato-ku, Tokyo 106 Japan.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Achiever Industries Limited, 12/F, Union Hing Yip Factory, Building, 20 Hing Yip Street, Kwun tong, Kowloon, Hong Kong
Ad-Tek Specialties Inc., 2641 Townsgate Road, #300, Westlake Village, CA 91361
AmerImage, Inc. d/b/a Rainbow Products, 4680 SW 64th Avenue, Davie, FL 33314–4427
Argus Industries, 2121 Oxford Road, Des Plaines, IL 60018
Boecks Camera LLC, 912 N. La Cienega Boulevard, Los Angeles, CA 90069
Boshi Technology Ltd., Room 921 Star House, 3 Salisbury Road, Tsim Ha Tsui, Kowloon, Hong Kong
BPS Marketing, 18642–142nd Avenue, Woodinville, WA 98017
China Film Equipment Corp., 20 Xin De Street, Beijing, China, Zip C: 100088
Dynatec International, Inc., 3820 West Great Lakes Drive, Salt Lake City, UT 84120
E.T. Trading, Ltd. d/b/a Klikit, 825 McDonald Avenue, Brooklyn, NY 11218
Fast Shot, 7250 Harwill Drive, Suite O, Houston, TX 77036
Forcecam, Inc., 280 South Beverly Drive, Suite 201, Beverly Hills, CA 90212
Hachi International Inc., 444 Park Avenue South, 7th Floor, New York, NY 10016
Innovative Trading Co., 380 South Mentor Avenue, Suite 11, Pasadena, CA 91106
Jazz Photo Corp., 600 Blair Road, Carteret, NJ 07008
Labelle Time, Inc., 65 N.W. 166th Street, North Miami, FL 33169
Linfa Photographic Ind. Co. Ltd., Room 1018–1020, 10/Fl, ower B, New Mandarin Plaza, 14 Science Museum Road, T.S.T., East Kowloon, Hong Kong
Opticam Inc., 810 Navy Street, Santa Monica, CA 90405–5639
Opticolor Camera, 3213 West Wheeler Street, Seattle, WA 98199
Penmax, Inc., 302 West Evergreen Avenue, Monrovia, CA 91016–4503
PhilmEx Photographic Film, 912 N. La Cienega Boulevard, Los Angeles, CA 90069
P.S.I. Industries, Inc., 1160–B South Rogers Circle, Boca Raton, FL 33487
Rino Trading Co., Ltd., B101, 448–1 Sungnae-1 Dong, Kong, Pong-Ku, Seoul, Korea
Sakar International, Inc., 195 Carter Dr., Edison, NJ 08817–2068
T.D.A. Trading Corp., 31–16 Hunters Point Avenue, Long Island City, NY 11101
Vantage Sales, Inc., 600 E. Higgins Road, Elk Grove Village, IL 60007–1519
Vivitar Corp., 1280 Rancho Conejo Blvd., Newbury Park, CA 91320–1403

(c) Christine E. Lehman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–I, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: March 18, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–7744 Filed 3–24–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–763–766 (Final)]

Certain Steel, Wire Rod From Canada, Germany, Trinidad and Tobago, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada, Germany, Trinidad & Tobago, and Venezuela of certain steel wire rod, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[2]

Background

The Commission instituted these investigations effective February 26, 1997, following receipt of a petition filed with the Commission and Commerce by Connecticut Steel Corp., Wallingford, CT; Co-Steel Raritan, Perth Amboy, NJ; GS Industries, Inc., Georgetown, SC; Keystone Steel & Wire Co., Peoria, IL; North Star Steel Texas, Inc., Beaumont, TX; and Northwestern Steel & Wire, Sterling, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain steel wire rod from Canada, Germany, Trinidad & Tobago, and Venezuela were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 22, 1997 (62 FR 54854). A public hearing for these investigations was held concurrently

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford dissenting with respect to Canada, Germany, and Venezuela.

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with that for the corresponding countervailing-duty investigations on October 16, 1997, in Washington, DC, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On February 23, 1998, Commerce published notice in the **Federal Register** of the suspension of its antidumping-investigation on steel wire rod from Venezuela (63 FR 8948) based on agreements it concluded with this country; however, at the same time Commerce indicated that it was continuing its investigation, pursuant to a request by counsel representing the Venezuelan producer. Accordingly, the Commission determined to continue its investigation.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 17, 1998. The views of the Commission are contained in USITC Publication 3087 (March 1998), entitled "Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela: Investigations Nos. 731–TA–763–766 (Final)."

Issued: March 18, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–7743 Filed 3–24–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–67]

Wheat Gluten

Determination

On the basis of the information in the investigation, the Commission unanimously—

(1) determines, pursuant to section 202(b) of the Trade Act of 1974, that wheat gluten [1] is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article; and

(2) makes negative findings, pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act, with respect to imports of wheat gluten from Canada and Mexico.

Findings and Recommendations With Respect to Remedy

The Commission unanimously—

(1) Recommends that the President impose a quantitative restriction, for a 4-year period, on imports of wheat gluten that are the subject of this investigation, in the amount of 126 million pounds in the first year, to be increased by 6 percent each subsequent year that the action is in effect;

(2) Recommends that, within the overall quantitative restriction, the President allocate separate quantitative restrictions for the European Union, Australia, and "all other" non-excluded countries, taking into account the disproportional growth and impact of imports of wheat gluten from the European Union;

(3) Having made negative findings with respect to imports of wheat gluten from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, recommends that such imports be excluded from the quantitative restriction;

(4) Recommends that this import relief action not apply to any imports of wheat gluten from Israel, or to any imports of wheat gluten entered duty free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act; and

(5) Recommends that the President undertake international negotiations to address the underlying cause of the increase in imports of wheat gluten or otherwise to alleviate the injury to the domestic industry.

The Commission finds that this remedy will address the serious injury that it has found to exist and will be the most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

Background

Following receipt of a petition filed on September 19, 1997, on behalf of the Wheat Gluten Industry Council, the Commission, effective September 19, 1997, instituted investigation No. TA–201–67, Wheat Gluten, under section 202 of the Trade Act of 1974 to determine whether wheat gluten is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 1, 1997 (62 FR 51488). The hearing in connection with the injury phase of the investigation was held on December 16, 1997, and the hearing on the question of remedy was held on February 10, 1998. Both hearings were held in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the President on March 18, 1998. The views of the Commission are contained in USITC Publication 3088 (March 1998), entitled "Wheat Gluten: Investigation No. TA–201–67."

Issued: March 19, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–7742 Filed 3–24–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1998 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the availability of grants to support the purchase of equipment and technology, and the procurement of support services under COPS Making Officer Redeployment Effective ("COPS MORE 98"). Eligible applicants under COPS MORE 98 are those state, local and other public law enforcement agencies, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia that employ career law enforcement officers.

DATES: COPS MORE 98 Application Kits will be available after April 13, 1998. The COPS Office will accept applications for COPS MORE 98 from April 13 through May 29, 1998. Large jurisdictions (those serving populations greater than 150,000) are strongly encouraged to apply by May 15, 1998.

ADDRESSES: COPS MORE 98 Application Kits will be mailed to all

[1] The imported article covered by this investigation is wheat gluten, the natural protein portion of wheat that is extracted after wheat is milled into flour. Wheat gluten is provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS).

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eligible agencies or may be obtained by writing to COPS MORE 98, The Department of Justice Crime Bill Response Center, 6th Floor, 1100 Vermont Avenue, NW, DC, 20530, or by calling the Department of Justice Response Center, (202) 307–1460 or 1–800–421–6770, or the full application kit is also available on the COPS Office web site at: http://www.usdoj.gov/cops. Completed application kits should be sent to COPS MORE 98, 3rd Floor, COPS Office, 1100 Vermont Avenue, N.W., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. COPS MORE 98 is designed to expand the time available for community policing by current law enforcement officers, rather than fund the hiring or rehiring of additional law enforcement officers.

COPS MORE 98 permits eligible agencies to seek funding for the purchase of equipment and technology, and the procurement of support resources (including civilian personnel). As a result of this funding, the number of officers redeployed by agencies in community policing must be equal to or greater than the number of officers that would result from grants of the same amount for hiring new officers. Application Kits will be available after April 13, 1998. Completed Applications Kits must be received by the COPS Office by May 29, 1998.

Applicants must provide a thorough explanation of how the proposed redeployment funds will actually result in the required increase in the number of officers deployed in community policing. Additionally, the applicant must specify within the COPS MORE 98 Application a plan for continuing the proposed activity following the conclusion of COPS MORE 98 funding. Technical assistance with the development of community policing plans will be provided to jurisdictions in need of such assistance. Grants will be made for up to 75 percent of the cost of the equipment, technology, or civilian salaries for one year, with the remainder to be paid by state or local funds. Waivers of the non-federal share will be considered upon a showing of severe fiscal distress. COPS redeployment funds may not be used to replace funds that eligible agencies otherwise would have devoted to equipment, technology, or civilian hiring.

COPS funding must be allocated based on a formula previously established by Congress.

An award under COPS MORE 98 will not affect the eligibility of an agency's application for a grant under any other COPS program.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: March 13, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98–7741 Filed 3–24–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Order Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent order in *In the Matters of Hanlin Group, Inc., et al.*, Case Nos. 91–33872–91–33875 (SAS) (Bkcy. D. N.J.), was lodged on March 12, 1998, with the United States Bankruptcy Court for the District of New Jersey. The proposed consent order would settle a claim asserted in this Chapter 11 bankruptcy proceeding by the United States on behalf of the United States Environmental Protection Agency relating to reimbursement of post-petition administrative expenses in environmental response costs that have been or will be expended by EPA at three facilities owned and/or operated by debtors under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The three facilities are the Moundsville, West Virginia plant, owned by the Hanlin Chemicals West Virginia, Inc. subsidiary of the Hanlin Group, Inc., and the Linden, New Jersey and Brunswick, Georgia plants, owned by the LCP Chemicals Division of the Hanlin Group, Inc. The United States asserted a claim for approximately $50–$60 million for future costs of remediating the Moundsville facility, approximately $11–14 million for future costs of remediating the Linden facility, and approximately $4.2 million in past costs incurred with respect to response activities at the Brunswick facility.

Under the terms of the proposed consent order, (1) with respect to the Moundsville facility, where AlliedSignal, Inc. is performing removal activities and has assumed the debtors' environmental obligations under an April 1994 agreement, Allied-Signal, Inc. expressly agrees that resolution of the United States' claim against the debtors does not affect or in any way diminish the cleanup obligations that AlliedSignal, Inc. has undertaken; (2) with respect to the Linden facility, the United States will receive an allowed first-tier administrative expense claim for the $106,000 in costs that EPA has incurred with respect to that facility, a subordinated (second-tier) claim of $5.5 million that would be paid only after payment to all allowed first-tier administrative claimants, and a supersubordinated (third-tier) administrative claim of $5.5 million that would be paid only after payment to all other allowed administrative claimants; (3) with respect to the Brunswick facility, the United States will receive an allowed first-tier administrative expense claim for the $1 million, a subordinated (second-tier) claim of $500,000 that would be paid only after payment to all allowed first-tier administrative claimants, and a supersubordinated (third-tier) administrative claim of $2.7 million that would be paid only after payment to all other allowed administrative claimants. All payments to the United States under the proposed consent order will be paid to the EPA Hazardous Substance Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In the Matters of Hanlin Group, Inc., et al.*, DOJ Ref. No. 90–7–1–593A.

The proposed consent order may be examined at the office of the United States Attorney for the District of New Jersey, 402 East State Street., Rm. 502, Trenton, NJ 08608; the Region II, III, and IV Offices of the Environmental Protection Agency, located at 290 Broadway, New York, NY 10007–1866 (Region II), 841 Chestnut Building, Philadelphia, PA 19107 (Region III), 100 Alabama Street, S.W., Atlanta, GA 30303–3104 (Region IV). and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent order may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th

Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–7673 Filed 3–24–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Section 122(d) of CERCLA, 42 U.S.C. § 9622(d), notice is hereby given that a proposed Consent Decree in *United States* v. *NL Industries, et al.*, No. CV 98–322–HA, was lodged on March 10, 1998, with the United States District Court for the District of Oregon.

In this action the United States sought injunctive relief and recovery of response costs incurred and to be incurred by the United States at the Gould Superfund Site located near Portland, Oregon (the "Site"). Under the proposed Consent Decree, the nine settling parties commit to implement the remedial actions selected in the amended Record of Decision, at a cost estimated by EPA to be approximately $15 million. They also agree to reimburse the United States for future response costs at the Site in excess of $100,000. In addition, the Settling Defendants will covenant not to sue the United States for claims against the Superfund, claims for contribution, and claims based on EPA's selection of response actions.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *NL Industries, et al.*, DOJ Ref. #90–11–3–397C.

The proposed Consent Decree may be examined at the office of the United States Attorney, 1000 SW Third Avenue, Suite 600, Portland, Oregon 97204; the Region X office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $45.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 98–7739 Filed 3–24–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *North Landing Line Construction Company, et al.*, C.A. No. 2:96CV1073, was lodged on February 17, 1998, with the United States District Court for the Eastern District of Virginia. The consent decree resolves the United States' claims with respect to past costs, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, in connection with the cleanup of the Sutton Enterprises Superfund Site, located in Chesapeake, Virginia. The decree also resolves counterclaims alleged against the United States by several defendants. The defendants named in this action are Newport News Shipbuilding and Dry Dock Company, Money Point Diamond Corporation, Future First Associates, William L. Hester, and Jonathan T. Harris. Under the consent decree, the defendants and several federal agencies, including the United States Department of Defense, Department of the Navy, and the Defense Logistics Agency/Defense Reutilization and Marketing Service, against whom counterclaims were filed, will reimburse the Superfund $1,725,000 with respect to the clean-up of the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *North Landing Line Construction Company, et al.*, DOJ Reference No. 90–11–3–1699.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 8000, 101 W. Main Street, Norfolk, Virginia 23510; the Region III Office of the Environmental Protection Agency, 840 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.25 (.25 cents per page production costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–7740 Filed 3–24–98; 8:45 am]

BILLING CODE 4410–15–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, April 9, 1998 and Friday, April 10, 1998 at the Embassy Suites Hotel, 1250 22nd Street NW, Washington, DC in the Consulate/Ambassador Room. The meetings are tentatively scheduled to begin at 9 a.m. on April 9 and at 9 a.m. on April 10.

At the meeting, the Commission will be reviewing a draft of its June 1998 report to the Congress. Among the topics the Commission will discuss are: Variations in Medicare Payment Policies Across Ambulatory Care Sites, Relationship Between Hospitalization and Post-Acute Care, Home Health Costs and Utilization, Medicare+Choice: Standards, Enrollment, and Beneficiary Information, Dual Eligibles, Vulnerable Populations, Financial Liability, Access to Care, Quality of Care, Federal Premium Contribution, Modifying the Fee-for-Service Benefit, and Trends.

Final agendas will be mailed on April 3, 1998 and will be available on the Commission's web sites (WWW.MedPAC.GOV) at that time.

ADDRESSES: 1730 K Street, N.W.; Suite 800; Washington, D.C. 20006. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Ann Johnson, Executive Assistant, at 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220 after April 3, 1998.

Murray N. Ross,

Executive Director.

[FR Doc. 98–7727 Filed 3–24–98; 8:45 am]

BILLING CODE 8220–8W–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 2:00 p.m., Wednesday, January 28, 1998.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated: Washington, D.C., March 16, 1998.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board..

[FR Doc. 98–7958 Filed 3–23–98; 12:47 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 11—Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material.

2. Current OMB approval number: 3150–0062.

3. How often the collection is required: New applications, certifications, and amendments may be submitted at any time. Applications for renewal are submitted every 5 years.

4. Who is required or asked to report: Employees (including applicants for employment), contractors and consultants of NRC licensees and contractors whose activities involve access to or control over special nuclear material at either fixed sites or in transportation activities.

5. The number of annual responses: The majority of responses required under Part 11 are submitted using Standard Form 86, Personnel Security Packet, OMB Clearance No. 3206–0007, and NRC Form 237, Request for Access Authorization, OMB Clearance No. 3150–0050. The response and burden information for those forms is reported separately under those clearances. The remaining number of responses under Part 11 is estimated to be 5.

6. The number of hours needed annually to complete the requirement or request: Approximately 0.25 hours annually per response, for an industry total of 1.25 hours annually.

7. Abstract: NRC regulations in 10 CFR part 11 establish requirements for access to special nuclear material, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization. Personal history information which is submitted on applicants for relevant jobs is provided to OPM, which conducts investigations. NRC reviews the results of these investigations and makes determinations of the eligibility of the applicants for access authorization.

Submit, by May 26, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 18th day of March 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–7810 Filed 3–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

DOCKET NOS. STN 50–528, STN 50–529, AND STN 50–530

Arizona Public Service Company; Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, And 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of amendments to Facility Operating License Nos. NPF–41, NPF–51, and NPF–74, issued to Arizona Public Service Company (the licensee), for operation of the Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, (PVNGS), located in Maricopa County, Arizona.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments will revise the existing, or current Technical Specifications (CTS) in their entirety for PVNGS and incorporate the guidance provided in NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants," Revision 1, dated April 1995. The licensee proposed this action in an amendment request dated October 4, 1996, as supplemented by (1) the following 19 letters submitted in 1997 and dated January 31, March 16, May 30 (2 letters), June 6, July 18 (5 letters), August 31, September 18 (2 letters), September 19 (2 letters), November 7, November 14, November 26, and December 16; and (2) the letter dated February 12, 1998.

The Need for the Proposed Action

It has been recognized that nuclear safety in all nuclear power plants would benefit from an improvement and standardization of the plant Technical Specifications (TS). The "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Plants," (52 FR 3788) contained proposed criteria for defining the scope of TS. Later, the Commission's "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors," published on July 22, 1993 (58 FR 39132), incorporated lessons learned since publication of the interim policy statement and formed the basis for revisions to 10 CFR 50.36. The "Final Rule" (60 FR 36953) codified criteria for determining the content of TS. To facilitate the development of standard TS for nuclear power reactors, each power reactor vendor owners' group (OG) and the NRC staff developed standard TS. For PVNGS, the Standard Technical Specifications (STS) are in NUREG–1432. This document formed the basis for the PVNGS Improved Technical Specifications (ITS) conversion. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS, made note of its safety merits, and indicated its support of the conversion by operating plants to the STS.

Description of the Proposed Change

The proposed revision to the CTS is based on NUREG–1432 and on guidance provided by the Commission in its Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the CTS. Emphasis is placed on human factors principles to improve clarity and understanding of the TS. The Bases section of the TS has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1432, portions of the CTS were also used as the basis for the development of the PVNGS ITS. Plant-specific issues (e.g., unique design features, requirements, and operating practices) were discussed with the licensee, and generic matters with Combustion Engineering and other OGs.

The proposed changes from the CTS can be grouped into four general categories. These categories are characterized as relocated requirements, administrative changes, less restrictive changes involving deletion of requirements, and more restrictive changes, and are as follows:

1. Relocated requirements are items which are in the CTS but do not meet the criteria set forth in the Final Policy Statement. The Final Policy Statement establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in the TS. Relocation of requirements to documents with an established control program, controlled by the regulations or the TS, allows the TS to be reserved only for those conditions or limitations upon reactor operation which are necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety, thereby focusing the scope of the TS. In general, the proposed relocation of items from the CTS to the Updated Final Safety Analysis Report (UFSAR), appropriate plant-specific programs, plant procedures, or ITS Bases follows the guidance of NUREG–1432. Once these items have been relocated to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC-approved control mechanisms, which provide appropriate procedural means to control changes by the licensee.

2. Administrative changes involve the reformatting and rewording of requirements, consistent with the style of the STS in NUREG–1432, to make the TS more readily understandable to plant operators and other users. These changes are purely editorial in nature, or involve the movement or reformatting of requirements without affecting the technical content. Application of a standardized format and style will also help ensure consistency is achieved among specifications in the TS. During this reformatting and rewording process, no technical changes (either actual or interpretational) to the TS will be made unless they are identified and justified.

3. Less restrictive changes and the deletion of requirements involve portions of the CTS which (1) provide information that is descriptive in nature regarding the equipment, systems, actions, or surveillances, (2) provide little or no safety benefit, and (3) place an unnecessary burden on the licensee. This information is proposed to be deleted from the CTS and, in some instances, moved to the proposed Bases, UFSAR, or procedures. The removal of descriptive information to the Bases of the TS, UFSAR, or procedures is permissible because these documents will be controlled through a process that utilizes 10 CFR 50.59 and other NRC-approved control mechanisms. The relaxations of requirements were the result of generic NRC actions or other analyses. They will be justified on a case-by-case basis for PVNGS and described in the safety evaluation to be issued with the license amendments.

4. More restrictive requirements are proposed to be implemented in some areas to impose more stringent requirements than are in the CTS. These more restrictive requirements are being imposed to be consistent with the STS. Such changes have been made after ensuring the previously evaluated safety analysis for PVNGS was not affected. Also, other more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the TS. Examples of more restrictive requirements include: placing a Limiting Condition for Operation (LCO) on plant equipment which is not required by the CTS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

There are seven other proposed changes to the CTS that will be included in the proposed amendments to convert the CTS to the ITS for PVNGS. These other changes have, or will be, the subject of **Federal Register** Notices of Consideration of Issuance of Amendment. These proposed changes are changes to the CTS or deviations to the ISTS and are the following:

1. LCO 3.6.1.5, containment air temperature, the maximum air temperature would be decreased from ≤ 120 °F to ≤ 117 °F, to incorporate instrument uncertainties.

2. LCO 3.6.2.1, containment spray system (CSS) applicability, the LCO would be revised to eliminate the need to enter an emergency shutdown action requirement during a routine shutdown when the CSS is intentionally made inoperable.

3. Surveillance Requirement (SR) 4.6.2.1.c, containment spray header piping water level, the minimum water level would be reduced from 115 feet to 113 feet to include instrument uncertainty.

4. SR 4.6.4.3.d.1, allowable pressure drop across the hydrogen purge filtration unit, the allowable pressure drop across the hydrogen purge exhaust air filtration unit for the hydrogen purge cleanup system would be reduced from 8.4 inches of water gauge to 2.26 inches of water gauge as a result of a revised analysis.

5. SR 4.3.2.1, frequency of testing the engineered safety feature actuation system (ESFAS) subgroup relays, would be extended from 62 days to 9 months on a staggered test basis in accordance with an NRC-approved topical report.

6. Applicability Note for LCO 3.5.1, safety injection tank minimum nitrogen

pressure, would increase the minimum required nitrogen cover pressure for the safety injection tanks (SITs) from 254 psig to 260 psig to include instrument uncertainties.

7. Action 3.1.5.d, misalignment distance for movable control assemblies, the criterion to enter the Action statement for the LCO for misalignment of control assemblies would be reduced from 19 inches to 9.9 inches based on a revised analysis.

These seven changes result in more restrictive conditions on safe plant operation, are based on new safety analyses for PVNGS, prevent unnecessary shutdowns when equipment is intentionally made inoperable, or do not affect existing safety analyses for PVNGS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the CTS for PVNGS. Changes which are administrative in nature have been found to have no effect on the technical content of the TS. The increased clarity and understanding these changes bring to the TS are expected to improve the operators control of PVNGS in normal and accident conditions.

Relocation of requirements from the CTS to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may then be made by the licensee under 10 CFR 50.59 and other NRC-approved control mechanisms which will ensure continued maintenance of adequate requirements. All such relocations have been found consistent with the guidelines of NUREG–1432 and the Commission's Final Policy Statement.

Changes involving more restrictive requirements have been found to enhance plant safety.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit, or to place an unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic action, or of agreements reached during discussions with the OG and found to be acceptable for the plant. Generic relaxations contained in NUREG–1432 have been reviewed by the NRC staff and found to be acceptable.

In summary, the proposed revisions to the TS were found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made to the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational exposure. Also, these changes do not affect the effect the design or operation of the plant, do not involve any modifications to the plant or any increase in the licensed power for the plant, and will not create any new or unreviewed environmental impacts that were not considered in the Final Environmental Statement (FES) related to the operation of PVNGS dated February 1982. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed TS amendments.

With regard to potential non-radiological impacts, the proposed amendments involve features located entirely within the restricted area defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed TS amendments.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed amendments would be to deny the amendments. Denial of the licensee's application would not reduce the environmental impacts of PVNGS operations. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES for PVNGS dated February 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on February 9, 1998, the staff consulted with the Arizona State official, Mr. William Wright of the Arizona Radiation Regulatory Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated October 4, 1996, as supplemented by (1) 19 letters submitted in 1997 dated January 31, March 16, May 30 (2 letters), June 6, July 18 (5 letters), August 31, September 18 (2 letters), September 19 (2 letters), November 7, November 14, November 26, and December 16, and (2) the letter dated February 12, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 19th day of March 1998.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7809 Filed 3–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority Sequoyah Nuclear Plant, Unit Nos. 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–77 and DPR–79, issued to The Tennessee Valley Authority (the licensee), for operation of the Sequoyah Nuclear Plant, Unit Nos. 1 and 2, located in Hamilton County, Tennessee.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires in each area in which special nuclear material (SNM) is handled, used, or stored, a monitoring system that will energize clear audible alarms if accidental criticality occurs.

The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated December 5, 1997,

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The SNM that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of SNM that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and features designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of SNM at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of SNM at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TS), the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. TS requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, "General Design Criteria for Nuclear Power Plants," Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically-safe configurations. This is met at Sequoyah Nuclear Plant, Units 1 and 2, as identified in the TS and the Updated Final Safety Analysis Report (UFSAR). Sequoyah TS Section 5.6.1.2 states that the new fuel storage racks are designed for dry storage of unirradiated fuel assemblies having a U–235 enrichment less than or equal to 5.0 weight percent, while maintaining a k-effective of less than or equal to 0.98 under the most reactive condition. UFSAR Section 9.1.1, New Fuel Storage, for both Units 1 and 2 specify that the fuel racks are designed to provide sufficient spacing between fuel assemblies to maintain a subcritical (k-effective less than or equal to 0.98) array assuming the most reactive condition, and under all design loadings including the safe shutdown earthquake. The UFSAR also specifies that the new fuel racks are designed to preclude the insertion of a new fuel assembly between cavities.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluent nor cause any significant occupational exposures since the TS design controls (including geometric spacing of fuel assembly storage spaces) and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Sequoyah Nuclear Plant, Unit Nos. 1 and 2," dated February 13, 1974.

Agencies and Persons Consulted

In accordance with its stated policy, on January 30, 1998, the Commission staff consulted with the State of Tennessee Official (Joelle Key) regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 5, 1997, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 17th day of March 1997.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7812 Filed 3–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any

amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 2, 1998, through March 13, 1998. The last biweekly notice was published on March 11, 1998 (63 FR 11913).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 24, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the

Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: February 23, 1998.

Description of amendment request: The amendment request proposes changes to the Brunswick Steam Electric Plant Unit 1 Technical Specifications (TS) in support of Cycle 12 operation, including a change to the Minimum Critical Power Ratio safety limit (safety limit MCPR) to a value equivalent to the generic safety limit MCPR for General Electric type GE–13 fuel. The request would additionally remove a footnote limiting the stated value for the safety limit MCPR to a specific fuel cycle and reference to an NRC safety evaluation documenting acceptance of methods used for determining the current cycle safety limit MCPR. The amendment request is provided both in the format of the current TS as well as improved Standard Technical Specifications (iSTS). The Brunswick licensee applied for conversion to ISTS on November 1, 1996, as supplemented on October 13, 1997, and February 26, 1998, and that application is currently undergoing NRC staff review. For iSTS, the licensee has proposed two safety limits MCPR, one pertaining to two-recirculation loop operation and the other to single-recirculation loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed license amendment establishes a revised safety limit MCPR value of 1.09 [two-recirculation loop and 1.10 for single-recirculation loop operation] for use during Unit 1 Cycle 12 operation. General Electric (GE) has determined that both generic and plant-specific evaluations [two-loop operation] yield the same calculated safety limit MCPR value. Additionally, a document referenced by the Technical Specification 6.9.3.2 of methodologies used in determining core operating limits is being removed.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established, consistent with NRC[-] approved methods, to ensure that fuel performance during normal, transient, and accident conditions is acceptable.

The probability of an evaluated accident is not increased by revising the safety limit MCPR value to 1.09 [two-loop/1.10 single-loop]. The change does not require any physical plant modifications or physically affect any plant components. Therefore, no individual precursors of an accident are affected.

The proposed license amendment establishes a revised safety limit MCPR that ensures the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences. Specifically, the reload analysis demonstrates that a safety limit MCPR value of 1.09 [two-loop/1.10 single-loop] ensures that less than 0.1 percent of the fuel rods will experience boiling transition during any plant operation if the limit is not violated.

The methods for calculating the safety limit MCPR have been approved by the NRC and are described in GE's reload licensing methodology topical report NEDE–24011, "General Electric Standard Application for Reactor Fuel (GESTAR II)." Based on (1) the determination of the new safety limit MCPR value using conservative approved methods, and (2) the operability of plant systems designed to mitigate the consequences of accidents not having been changed; the consequences of an accident previously evaluated have not been increased.

Additionally, removal of the footnote on the safety limit MCPR value in Technical Specification 2.1.2 and removal of reference "c" from the document list in Technical Specification 6.9.3.2 will not increase the probability or consequences of accidents previously evaluated. The footnote on the safety limit MCPR value in Technical Specification 2.1.2 and reference "c" in Technical Specification 6.9.3.2 were associated with the safety limit MCPR value of 1.10 for Unit 1 Cycle 11 operation. Since the current safety limit MCPR value of 1.10 applies only to Unit 1 Cycle 11 operation, the footnote on the safety limit MCPR value in Technical Specification 2.1.2 and the reference "c" in Technical Specification 6.9.3.2 are no longer needed and should be deleted. Thus, removal of the footnote on the safety limit MCPR value in Technical Specification 2.1.2 and removal of reference "c" from Technical Specification 6.9.3.2 is an administrative change that has no effect on the probability or consequences of accidents previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed license amendment involves a revision of the safety limit MCPR from 1.10 to 1.09 [two-loop/1.10 single-loop] based on the results of both cycle-specific and generic analyses, removal of the footnote on the safety limit MCPR value in Technical Specification 2.1.2, and the removal of a document reference listed in Technical Specification 6.9.3.2 describing the methods used only during Unit 1 Cycle 11 to determine core operating limits. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable modes of operation. Therefore, no new precursors of an accident are created and no new or different kinds of accidents are created.

3. Does this change involve a significant reduction in a margin of safety?

As previously stated, the methods for calculating the safety limit MCPR have been previously approved by the NRC and are described in GE's reload licensing methodology topical report NEDE–24011. Use of these methods ensures that the resulting safety limit MCPR satisfies the fuel design safety criteria that less than 0.1 percent of the fuel rods experience boiling transition if the safety limit is not violated. Based on the assurance that the fuel design safety criteria will be met, the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Pao-Tsin Kuo (Acting).

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: May 16, 1997.

Description of amendment request: The proposed changes would replace the existing Technical Specification (TS) 4.6.2.3 a.2 cooling water flow rate of 1425 gpm with a new value of 1300 gpm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Cooling water flow to the Containment Fan Coolers is provided by the Emergency Service Water (ESW) System, and Emergency Service Water is not an initiating system in any FSAR [Final Safety Analysis Report] Chapter 15 analyses. Revising the minimum cooling water flow to the Containment Fan Coolers will not increase the probability of initiating any previously evaluated accident, because Containment Fan Cooler performance and integrity will not be adversely affected. The heat removal capacity of the Containment Fan Coolers will be maintained consistent with the assumptions used in the existing HNP [Harris Nuclear Plant] containment analyses, and, therefore, containment integrity should not be challenged.

Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not create any new accident scenarios, because the change does not introduce any new single failures, adverse equipment or material interactions, or release paths.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed amendment does not involve a significant reduction in the margin of safety.

Although the proposed amendment replaces the TS 4.6.2.3 a.2 cooling water flow rate of 1425 gpm with a lower flow rate of 1300 gpm, a cooling water flow rate of greater than or equal to 1300 gpm maintains adequate heat removal capacity as required by existing HNP containment analyses. The Bases for TS 4.6.2.3 a.2 is to ensure that adequate heat removal capacity is available, when the Containment Fan Coolers are operated in conjunction with the Containment Spray Systems, during post-LOCA [Loss-of-Coolant Accident] conditions to prevent the pressure inside containment from exceeding its design rating.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Pao-Tsin Kuo (Acting).

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: October 22, 1997

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) by reducing the reactor coolant system (RCS) specific activity limits in accordance with Generic Letter 95–05. The definition of DOSE EQUIVALENT I–131 would be replaced with the Improved Standard TS definition wording in the first sentence and an equation added based on dose conversion factors derived from International Commission on Radiation Protection (ICRP) ICRP–30. TS 3.4.8, Specific Activity, would be revised by reducing the DOSE EQUIVALENT I–131 limit from 1.0 [micro] Ci[curies]/gram to 0.35 [micro]Ci[curies]/gram. Item 4.a in TS Table 4.4–12, Primary Coolant Specific Activity Sample and Analysis Program, TS Figure 3.4–1, and the Bases for TS 3/4.4.8 would be modified to reflect the reduced DOSE EQUIVALENT I–131 limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change reduces the reactor coolant system (RCS) specific activity limits of Specification 3.4.8 from 1.0 [micro]Ci/gram to 0.35 [micro]Ci/gram and lowers the graph in Figure 3.4–1 by 39 [micro]Ci/gram following the guidance provided in Generic Letter (GL) 95–05. This reduces the RCS acvitity allowed to leak to the secondary side when the plant is operating so that additional margin is available to support a higher allowable accident-induced leakage value as justified by analysis.

The proposed changes to Specification 3.4.8 and the definition of DOSE EQUIVALENT I–131 ensure these requirements are consistent with the latest analyses.

These changes implement the more restrictive RCS activity limits in accordance with applicable analyses and GL 95–05 to ensure the regulations are satisfied. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the configuration of the plant or affect the operation with the reduced specific activity limit. By reducing the specific activity limit, the limit would be reached sooner to initiate evaluation of the out of limit condition. The proposed changes will not result in any additional challenges to the main steam system or the reactor coolant system pressure boundary. Consequently, no new failure modes are introduced as a result of the proposed changes. As a result, the main steam line break, steam generator tube rupture and loss of coolant accident analyses remain bounding. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change reduces the RCS specific activity limit to 0.35 [micro]Ci/gram along with lowering the Figure 3.4–1 limits by 39 [micro]Ci/gram. Reduction of the RCS specific activity limits allows an increase in the limit for the projected SG [steam generator] leakage following SG tube inspection and repair in accordance with the voltage-based SG tube alternate repair criteria (ARC). This follows the guidance provided in GL 95–05 and effectively takes margin available in the specific activity limits and applies it to the projected SG leakage for the ARC. This has been determined to be an acceptable means for accepting higher

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projected leakage rates while still meeting the applicable limits of 10 CFR [Part] 100 and GDC [General Design Criterion] 19 with respect to offsite and control room doses.

The capability for monitoring the specific activity and complying with the required actions remains unchanged. In addition, there is no resultant change in dose consequences. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 3, 1998.

Description of amendment request: The licensee proposed to revise Section 6.2.3.2 of the units' Technical Specifications. Currently, this section prescribes that the Catawba Safety Review Group (SRG) be composed of at least five individuals and at least three of these shall have a bachelor's degree in engineering or related science and at least 2 years professional level experience in his/her field, at least 1 year of which experience shall be in the nuclear field. The licensee proposed to revise this section to provide the option of replacing one of the three degreed individuals with one with at least 15 years of professional level experience in his/her field, at least 10 years of which experience shall be in the nuclear field, at least 3 years of which nuclear experience shall be supervisory/ managerial experience in engineering, and shall hold or have held a Senior Reactor Operator license. The licensee also proposed to editorially revise this section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Would the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment would only change administrative requirements related to personnel qualifications for one of the five SRG [Safety Review Group] positions. The SRG is an oversight group, and the individual who meets the new qualification requirements would be expected to perform at the same level of quality as an individual who meets the current qualification requirements. Changing qualification requirements for an individual who primarily performs an oversight function will not have any direct effect on the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of the SRG, and the SRG was not a factor in the consequences of previously analyzed accidents. Therefore, the proposed change would have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Would the change create the possibility of a new or difference kind of accident from any accident previously evaluated?

No. The proposed change would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Would the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the design and operation of the plant. The proposed change to the Technical Specifications does not involve any change to plant design or operation. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: February 7, 1997.

Description of amendment request: The proposed amendment, if approved, would revise Technical Specification (TS) as delineated below:

1. 4160 Volt Tie From Unit 2.

TS sections 3.7.2.b & d to delete reference to the optional use of the 4160 volt tie from the unit 2 transformer.

2. Emergency Load Sequence and Power Transfer.

a. The testing required by Section 4.5.1.1.b of the TS would be considered satisfactory if the pumps have started and valves have completed travel. The need to evidence the successful starting of pumps and fans and the complete travel of valves by observation of control board component operating lights will be deleted. Neither would a second means of verification, such as: the station computer or control board indicating lights initiated by separate limit switch contacts be required.

b. Section 4.5.1.2.b would be revised in the same manner as 4.5.1.1.b above.

3. Reactor Building Cooling and Isolation System.

a. Section 4.5.3.1.a.1 of the TS would be revised to delete the need to simultaneously test start a spray pump using a Reactor Building 30-psi high pressure test signal while testing the emergency loading sequence.

The proposed change also eliminates the need to evidence the successful starting of the spray pumps by observation of the control board indicating lights or the use of the station computer for Sections 4.5.3.1.a.1 and 4.5.3.1.b.2.

4. Instrument Surveillance Requirements.

Table 4.1–1 of the TS would be revised to delete the strong motion accelerometer and its quarterly battery check surveillance requirement.

5. Air Intake Tunnel (AIT) Fire Protection Systems.

Section 5.5 of the TS would be deleted. The description of the equipment contained in Section 5.5 would be transferred to the Final Safety Analysis Report (FSAR).

6. Hydrogen Recombiner System.

The Bases for Section 4.4.4 TS would be changed to reflect a reduction in the time interval for operation of the hydrogen recombiner following a loss of cooling accident (LOCA) from 9.8 to 9 days.

7. Various editorial and typographical errors would be corrected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The revised TS eliminate overly prescriptive requirements for evidencing component performance, the requirement for redundant diesel block loading tests,

instrumentation from SR [surveillance requirement] tables having no associated LCO [limiting condition for operation], AIT fire protection systems descriptive text, and correct previous typographical errors. Several of the proposed revisions involve changes which are consistent with NUREG–1430, the Revised Standard Technical Specifications (RSTS) for B&W plants. The reliability of systems and components depended upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed changes because assurance of system and equipment availability is maintained by surveillance testing program requirements.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The revised surveillance requirements create no new failure modes. Verification of equipment operation continues to be required by plant procedures. Elimination of the AIT fire protection system descriptive text from the TSs would not create a new or different kind of accident since the change has no effect on surveillance methodology and frequency requirements. They are maintained in the Fire Protection Program.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety because no operating limits are affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas, Director.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 3, 1998.

Description of amendment request: The proposed revision to the Millstone Unit 3 licensing basis would eliminate the requirement to have the recirculation spray system directly inject into the reactor coolant system following a design basis accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Northeast Nuclear Energy Company (NNECO) has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The change to the Emergency Operating Procedures (EOP) to eliminate the use of Recirculation Spray System (RSS) direct injection during cold and hot leg recirculation does not effect the probability of any accident. The elimination of the requirement to have RSS directly [inject] into the reactor coolant system did not increase the consequences of the previously evaluated accidents. These consequences were evaluated based on very conservative assumptions concerning the containment pressure after the design basis Loss of Coolant Accident (LOCA), containment integrated leakage rates, and the fraction of the sprayed volume. None of these assumptions were affected by the elimination of the direct cold-leg injection.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The modification to the RSS did not create the possibility of a new or different accident from those previously analyzed. The change involved elimination of the direct injection flow path from the design basis of the system but did not involve physical modifications to the system itself. The operability of the affected valves within the direct injection alignments remained unchanged and these paths were still available to the operators for contingencies beyond the design basis. The EOPs provided clear and explicit guidance to that effect.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

In considering the impact on the margin of safety as defined in the bases of the Technical Specifications, the impact of the change on the design basis analysis of the fission product barriers must be evaluated.

The minimum Emergency Core Cooling System flow requirement for long-term core cooling is that the modified alignment deliver sufficient flow to satisfy the inventory lost to the boil off in the vessel due to the decay heat and the extended boiling from hot metal in the downcomer and the lower plenum. The analysis determined that these requirements were being met.

The elimination of the direct injection resulted in a flow reduction through the RSS heat exchanger, from approximately 4000 gpm [gallons per minute] to 1200 gpm, thus reducing the rate of the heat transfer from the containment to the service water system. The design basis of the containment heat removal systems (circa 1986) is that the containment pressure will decrease to subatmospheric within one hour after the Design Basis Accident to compensate for the reduction in heat removal from the containment, a smaller allowable RSS pump degradation was assumed in the revised containment analysis. The original RSS pump performance curve was based on a 10 percent reduction in developed head from the design curve. For the modification, a 5 percent reduction was used. The results of the analysis show that with these changes the design basis of maintaining subatmospheric containment pressure was met.

Based on the above, elimination of the direct injection did not reduce the margin of safety because there was no violation of the acceptance limits and no weakening of the protective boundaries.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 2, 1995, as supplemented by letter dated January 9, 1998. The January 9, 1998, submittal supersedes the staff's proposed no significant hazards consideration determination evaluation for the requested changes that was published on April 10, 1996 (61 FR 15995).

Description of amendment requests: In the November 2, 1995, letter, the

licensee proposed to revise Technical Specification (TS) 3.8.1, "AC Sources—Operating," to extend the offsite circuit completion time and to extend the allowed outage time for an emergency diesel generator. The January 9, 1998, letter modifies the original request to (1) further extend the offsite completion time and allowed outage time for an emergency diesel generator, and (2) add a new TS 5.5.2.14, "Configuration Risk Management Program," that ensures a proceduralized probabilistic risk assessment-informed process is in place that assesses the overall impact of plant maintenance on plant risk.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Emergency Diesel Generators (EDGs) are backup alternating current power sources design to power essential safety systems in the event of a loss of offsite power. EDGs are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The EDGs provide backup power to components that mitigate the consequences of accidents. The proposed changes to the Completion Times do not affect any of the assumptions used in the deterministic safety analysis.

To fully evaluate the effect of the EDG Completion Time extension, Probabilistic Safety Analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of accidents previously evaluated.

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.8.1 does not affect the probability or the consequences of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not alter the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the Limiting Conditions for Operation or their Bases that are used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes and these evaluations determined that the changes are either risk neutral or risk beneficial.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: December 19, 1997.

Description of amendment requests: The licensee proposed to revise Technical Specification (TS) 3.4.9, "Pressurizer," to reduce the allowable pressurizer water volume for pressurizer operability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The limiting events impacted by this Technical Specification change have been reanalyzed. These events are the Chemical and Volume Control System (CVCS) Malfunction and CVCS Malfunction With a Concurrent Single Failure of an Active Component, Inadvertent Operation of the Emergency Core Cooling System (ECCS) During Power Operation (Including Single Failure of an Active Component), and Feedwater System Pipe Breaks. The probability of these events is not changed by the restriction of the pressurizer level to 57%. An operator action time of 15 minutes has been identified for the CVCS malfunction and inadvertent ECCS operation events. Based on the availability of operator alarms and indications and operator Simulator training, 15 minute operator action is sufficient to recognize and mitigate the inadvertent CVCS or ECCS operation. Therefore, this change will not involve an increase in the probability or consequences of any previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not involve any change to plant equipment or operation. All the events identified in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR) were evaluated to determine the impact of the change in pressurizer level. In addition to the normally analyzed Inadvertent Operation of the ECCS During Power Operation event a concurrent single failure of an active component was considered in this evaluation. The analysis of this event with single failure of an active component produced consequences that are bounded by the CVCS malfunction with single failure of an active component. No new or different kind of aceident will be created as a result of this Technical Specification change. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This amendment request does not change the manner in which safety limits, limiting safety settings, or limiting conditions for operation are determined. There are no changes to the acceptance criteria for these events as a result of the proposed reduction in the maximum pressurizer water level. This change does not reduce a margin of safety since it lowers allowed pressurizer operational level to 57%. An operator action time of 15 minutes has been identified for the CVCS malfunction and inadvertent ECCS operation events. Based on the availability of operator alarms and indications, and demonstrated operator response in Simulator training, 15 minute operator action has been demonstrated to be adequate to recognize and mitigate the inadvertent CVCS or ECCS operation. Therefore, this proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: January 2, 1998.

Description of amendment requests: The licensee proposed to revise Technical Specification (TS) 3.7.5, "Auxiliary Feedwater (AFW) System," to indicate the turbine driven AFW pump is operable when running in the manual mode to support plant startups, shutdowns, and testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Probabilistic analyses have been performed in support of declaring P140 operable when the pump is manually actuated and operating.

The results show that, considering P–140 to be in test for an entire year, the core damage risk of a Main Steam Line Break/Feedwater Line Break (MSLB/FWLB) slightly increases (4.3E–8/yr) while the risk due to other initiating events decreases (3E–7/yr). The net core damage impact of P–140 in test for an entire year is a Core Damage Frequency (CDF) decrease of 2E–7/yr. Having P140 operating instead of being in standby increases its reliability. This increased reliability reduces the risk due to other initiating events, such as loss of main feedwater, medium and small Loss of Coolant Accidents (LOCAs), Steam Generator Tube Rupture (SGTR), and Loss of Offsite Power (LOP), which require Auxiliary Feedwater (AFW) and which occur with much greater frequency than MSLB/FWLB. With the overall CDF reduction a result of considering P140 being in a test configuration for an entire year, the actual cumulative risk incurred is the weighted fraction that P140 is in the test configuration over a year period. Based on past experience, the pump is running in manual approximately 500 minutes/year, which results in an annual net cumulative CDF reduction on the order of 2E–10/yr due to running P140 in the manual mode.

Therefore, the operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not involve a plant hardware modification or allow the operation of any plant equipment in any way other than originally designed. This change only affects the administrative tracking of the turbine-driven AFW pump when the steam driven AFW pump is operating in the manual mode.

Therefore, the operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Pump history shows the pump is run approximately 500 minutes per year. In all cases except for the one postulated scenario of the Main Steam Isolation Signal followed by an Emergency Feedwater Actuation Signal the turbine-driven AFW pump is not susceptible to being tripped. Also, this postulated scenario does not affect the capability of the motor-driven AFW pumps.

Even though there is a small increase in the CDF from the AFW steam driven pump operating in manual mode based on the possibility of a MSLB/FWLB, also considering other initiating events results in an annual net cumulative CDF reduction on the order of 2E–10/yr due to P140 running in the manual mode.

Therefore, the operation of the facility in accordance with this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear

Date of amendment request: August 20, 1997, as supplemented by letters dated September 18, 1997 and October 31, 1997.

Description of amendment request: The proposed change would revise the Vermont Yankee Technical Specifications Section 6.0, "Administrative Controls," to add and revise reference to NRC-approved methodologies which will be used to generate the cycle-specific thermal operating limits in the Vermont Yankee Core Operating Limits Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not involve any significant increase in the probability or consequences of an accident previously evaluated.

The change updates the Technical Specifications to include an NRC approved method reference to allow calculation of thermal limits with a revised method. It does not affect plant operation and will not weaken or degrade the facility.

2. The proposed change will not create the possibility of a new or different kind of accident since the change is administrative. No physical alterations of the plant, setpoint changes, or operating conditions are proposed.

3. The proposed change will not involve a significant reduction in a margin of safety. The change involves an update to the Administrative Controls in Section 6.0 of the Technical Specifications by adding a reference to NRC approved methods. This administrative change does not alter plant safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037–1128.

NRC Project Director: Cecil O. Thomas, Director.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 4, 1998.

Description of amendment request: The amendment would revise Technical Specification 3.2.4, quadrant power tilt ratio (QPTR), and associated Bases, to clarify the required actions for the limiting condition for operation (LCO) and other changes consistent with the technical specification conversion application submitted by letter dated May 15, 1997.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

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1. Requirements for Determining QPTR

The Action to calculate QPTR once per hour until THERMAL POWER was reduced to less than 50% RATED THERMAL POWER (RTP) when QPTR exceeds the LCO requirements would be deleted and replaced by a new requirement to determine QPTR at least once per 12 hours.

The proposed change involves only the compensatory measures to be taken should the QPTR be outside its limit. The frequency with which QPTR is calculated is not assumed in the initiating events for any accident previously evaluated. In addition, the change does not involve any new operating activities or hardware change. Therefore, the proposed change would not significantly increase the probability of an accident previously evaluated.

Once THERMAL POWER has been reduced appropriately in proportion to the amount that QPTR exceeds 1.00, any additional change would be sufficiently slow that a 12-hour interval for recalculating QPTR will provide an adequate level of protection. Therefore, the proposed change will not significantly increase the consequences of any accident previously evaluated.

2. Completion Time for Resetting the Power Range Neutron Flux-High Trip Setpoints

The proposed change to allow 72 hours for resetting the Power Range Neutron Flux-High trip setpoints involves only the compensatory measures to be taken should the QPTR be outside its limit. These compensatory measures are not assumed in the initiating events for any accident previously evaluated. The proposed actions recognize that the required reduction in power (3% for each 1% of indicated QPTR in excess of 1.00) provide adequate margin for fuel design limits so that consequences of assumed accidents would not be significantly affected. Therefore, the proposed change will not adversely affect the probability or consequences of any accident previously evaluated. Further, by permitting more time to perform resetting the trip setpoints, the chances of a transient may be reduced.

3. Delete(tion) of the Actions (a.3., a.4.) for verifying QPTR to be restored within 24 hours and for identifying and correcting the cause of the out-of-limit condition prior to increasing THERMAL POWER

The proposed changes would delete current Actions a.3. and a.4. and add new Actions for QPTR out of limit including requirements for measuring $F_Q(Z)$ and F^N delta H prior to and following a return to power and performing safety analyses to verify safety requirements are met prior to increasing power above the limits of Action a.1. The proposed changes involve only the compensatory measures to be taken should the QPTR be outside its limit. These compensatory measures are not assumed in the initiating events for any accident previously evaluated. Therefore, the proposed change will not affect the probability or consequences of any accident previously evaluated.

4. Deletion of the Actions for QPTR in excess of 1.09

The proposed change would delete the required Actions for QPTR in excess of 1.09 and Actions for QPTR in excess of 1.02 are followed for all instances where QPTR exceeds 1.02. The proposed change involves only the compensatory measures to be taken should the QPTR be outside its limit. These compensatory measures are not assumed in the initiating events for any accident previously evaluated. The proposed actions recognize that the required reduction in power (3% for each 1% of indicated QPTR in excess of 1.00) provide adequate margin for fuel design limits so that consequences of assumed accidents would not be significantly affected. Therefore, the proposed change will not affect the probability or consequences of any accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

1. Requirements for Determining QPTR

The proposed change for calculating QPTR once every 12 hours does not involve a physical alteration to the plant or change the method by which any safety-related system performs its function. The manner in which the plant would be operated would not be altered. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

2. Completion Time for Resetting the Power Range Neutron Flux-High Trip Setpoints

The proposed change to allow 72 hours for resetting the Power Range Neutron Flux-High trip setpoints does not involve a permanent physical alteration to the plant; no new or different kinds of equipment will be installed. The change would not alter the manner in which the plant would be operated only the timing of actions that provide potential mitigation of accidents. Thus, the change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Delete the Actions (a.3., a.4.) for verifying QPTR to be restored within 24 hours and for identifying and correcting the cause of the out-of-limit condition prior to increasing THERMAL POWER

The proposed changes would delete current Actions a.3. and a.4. and add new Actions for QPTR out-of-limit including requirements for measuring $F_Q(Z)$ and F^N delta H prior to and following a return to power and performing safety analyses to verify safety requirements are met prior to increasing power above the limits of Action a.1. The proposed changes do not involve a physical alteration to the plant; no new or different kinds of equipment would be installed. The changes would not alter the manner in which the plant would be operated only the timing of actions that provide potential mitigation of accidents. Thus, the changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

4. Deletion of the Actions for QPTR in excess of 1.09

The proposed change would delete the required Actions for QPTR in excess of 1.09 and Actions for QPTR in excess of 1.02 are followed for all instances where QPTR exceeds 1.02. The proposed change does not involve a physical alteration to the plant or changes in the way in which the plant is operated. The proposed change involves only the compensatory measures to be taken should QPTR be outside its limit. The assumptions of the accident analyses are unaffected by the proposed change. No new permutations or event initiators are introduced by the proposed alternate methods of dealing with QPTRs in excess of 1.09. Therefore, there is no possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

1. Requirements for Determining QPTR

The proposed change for calculating QPTR once every 12 hours does not change any accident analysis assumptions, initial conditions or results. The proposed change will continue to ensure that the plant is maintained in a safe condition while QPTR is in excess of its limit. Additionally, calculating QPTR once per 12 hours as opposed to every hour while QPTR is in excess of its limit would avoid the diversion of personnel resources from corrective actions with regard to meeting the LCO. Therefore, the proposed change will not involve a significant reduction in any margin of safety.

2. Completion Time for Resetting the Power Range Neutron Flux-High Trip Setpoints

The proposed change to allow 72 hours for resetting the Power Range Neutron Flux-High trip setpoints will continue to ensure that the plant is maintained in a safe condition within the envelope of the safety analyses while QPTR is in excess of its limit. The proposed actions recognize that the required reduction in power (3% for each 1% of indicated QPTR in excess of 1.00) provide adequate margin for fuel design limits so that consequences of assumed accidents would not be significantly affected. Therefore, the proposed change will not involve a significant reduction in any margin of safety.

3. Delete the Actions (a.3., a.4.) for verifying QPTR to be restored within 24 hours and for identifying and correcting the cause of the out-of-limit condition prior to increasing THERMAL POWER

The proposed changes would delete current Actions a.3. and a.4 and add new Actions for QPTR out-of-limit including requirements for measuring $F_Q(Z)$ and F^N delta H prior to and following a return to power and performing safety analyses to verify safety requirements are met prior to increasing power above the limits of Action a.1. The proposed changes will continue to ensure that the plant is maintained in a safe condition within the envelope of the safety analysis while QPTR is in excess of its limit. Therefore, the proposed changes will not involve a significant reduction in any margin of safety.

4. Deletion of the Actions for QPTR in excess of 1.09

The proposed change would delete the required Actions for QPTR in excess of 1.09

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and Action for QPTR in excess of 1.02 are followed for all instances where QPTR exceeds 1.02. The proposed change will continue to ensure that the plant is maintained in a safe condition within the envelope of the safety analyses while QPTR is in excess of its limit. While different actions are taken in response to a QPTR in excess of 1.09, the proposed change will assure that accident analyses assumptions continue to be met. Therefore, the proposed changes will not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 4, 1998.

Description of amendment request: The amendment would revise the technical specifications to (1) create separate functional units for the analog and digital portions of the engineered safety features actuation system (ESFAS) function associated with starting the turbine-driven auxiliary feedwater pump on a loss of offsite power, and (2) add a table notation to clarify that the testing of the time delay relays for the 4 kV undervoltage, loss of voltage and grid degraded voltage portion of the ESFAS is performed as part of the channel calibration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The recognition that different OPERABILITY and surveillance requirements apply to analog vs. digital circuitry does not impact any previously analyzed accidents. The clarification that testing of the time delay relays is performed as part of the CHANNEL CALIBRATION does not impact any previously analyzed events. The proposed change will not affect any of the analysis assumptions for any of the accidents previously evaluated. The proposed change does not alter the current method or procedures for meeting the surveillance requirements in Table 4.3–2. The proposed change will not affect the probability of any event initiators nor will the proposed change affect the ability of any safety-related equipment to perform its intended function. There will be no degradation in the performance of nor an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The separation of analog and digital portions of Functional Unit 6.f or the clarification of testing of the time delay relays will not impact the normal method of plant operation.

The OPERABILITY requirements, ACTION Statement, and surveillance requirements for the analog portion, new Functional Unit 6.f.1), are identical to those of Functional Unit 8.a, while the requirements for the digital portion, new Functional Unit 6.f.2), are consistent with the current technical specifications, other than the new ACTION Statement 30 provisions that defer to the TDAFW pump Specification 3.7.1.2 requirements and the performance of a TADOT during appropriate plant conditions. These changes do not change any ESFAS design standard and are appropriate for digital functions such as this.

Testing of the time delay relays has been performed as part of the 18 month CHANNEL CALIBRATION. The tolerancesfor the time delay relays are sufficient to account for relay drift encountered during the 18 month surveillance testing. The calculated tolerances for the time delay setpoints have been evaluated to insure that safety-related systems, subsystems and components would not be adversely affect[ed] by the drift within the permissible tolerance band.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Previously Published Notices of Consideration of Issuance of Amendments toFacility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: January 26, 1998.

Brief description of amendment request: The proposed amendment would change the SSES Technical Specifications facility staff requirements to allow an individual who does not hold a current senior reactor operator (SRO) license to hold the position of Manager-Nuclear Operations (MNO) and require an individual serving in the capacity of the Operations Supervisor-Nuclear to hold a current SRO license

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and report directly to the MNO and be responsible for directing the licensed activities of licensed operators.

Date of publication of individual notice in Federal Register: February 24, 1998 (63 FR 9270).

Expiration date of individual notice: March 26, 1998.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 25, 1998, TXX–98050.

Description of amendment request: The proposed amendment would be a temporary change to the Technical Specifications to remove the requirement to demonstrate the load shedding feature of MCC XEB4–3 as part of Surveillance Requirements (SRs) 4.8.1.1.2f.4)a) and 4.8.1.1.2f.6)a) until the plant startup subsequent to the next refueling outage or until an outage of greater than 24 hours in duration for each respective unit. This temporary change is requested as a result of the failure to confirm the load shedding feature of MCC XEB4–3 during the last performance of these SRs for the Unit 1 and Unit 2 train B diesel generators (DGs).

Date of individual notice in the **Federal Register:** March 9, 1998, (63 FR 11458).

Expiration date of individual notice: April 8, 1998.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: March 18, 1997, as supplemented by letters dated July 28, 1997, and September 9, 1997.

Brief description of amendments: The amendments revise the operating licenses to reflect approval of Amendment 42 to the Palo Verde Nuclear Generating Station Physical Security Plan. The amendments revise the methods used to search materials, packages, and personnel prior to their entry into the protected area, as described in the security plan.

Date of issuance: March 4, 1998.

Effective date: March 4, 1998.

Amendment No.: Unit 1–115; Unit 2–108; Unit 3–87.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the operating licenses.

Date of initial notice in **Federal Register**: October 8, 1997 (62 FR 52580).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: December 17, 1997, as supplemented by letters dated February 6, 1998 and March 12, 1998.

Brief description of amendment: The proposed change would revise Technical Specifications Section 5.6.5, "Core Operating Limits Report." The revisions add reference to an additional approved methodology for correlating departure from nucleate boiling (DNB) ratios. The added methodology is the Siemens Power Corporation Topical Report, EMF–92–153(P)(A), "HTP: Departure from Nucleate Boiling Correlation for High Thermal Performance Fuel."

Date of issuance: March 16, 1998.

Effective date: March 16, 1998.

Amendment No. 178.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1998 (63 FR 4309). The February 6 and March 12, 1998 submittals provided clarifying information that did not affect the initial determination of no significant hazards considerations. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 27, 1997.

Brief description of amendments: The amendments would change the Dresden and Quad Cities Technical Specifications (TS) to clarify the applicability, action and surveillance requirements for the Standby Liquid Control System (SLCS). The changes would make the current TS requirements for the SLCS consistent with the Improved Standard Technical Specifications (ISTS) contained in NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4."

Date of issuance: March 6, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 167, 162, and 180, 178.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 14, 1998 (63 FR 2277).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consolidated Edison Company of New York, Docket No. 50–247, Indian PointNuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: October 2, 1996, as supplemented July 31, 1997.

Brief description of amendment: The amendment revises Figures 3.1.A–1, 3.1.A–2 and 3.1.A–3, Section 3.1.B and its Bases, Figures 3.1.B–1 and 3.1.B–2, and the Bases of Section 4.3 and Figure 4.3–1 of the Technical Specifications to incorporate the revised Indian Point Unit 2 Heatup and Cooldown Limit Curves for Normal Operation.

Date of issuance: February 27, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 195.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1996 (61 FR 58901).

The July 31, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 17, 1997Brief description of amendments: The amendments revise Section 6.9.1.9 of the Technical Specifications to reference updated or recently approved topical reports, which contain methodologies used to calculate cycle-specific limits contained in the Core Operating Limits Report.

Date of issuance: March 2, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–163; Unit 2–155.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1998 (63 FR 4310).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: July 21, 1997, as supplemented February 18, 1998.

Brief description of amendment: Technical Specification Change Request concerning Emergency Feedwater Surveillance Testing. This request is to make several changes to the ANO–2 Technical Specifications including extension of the emergency feedwater (EFW) pump surveillance testing frequency, a reduction in the minimum steam generator pressure required to perform the surveillance testing on the turbine-driven EFW pump, and a modification to the EFW pump testing requirements.

Date of issuance: March 12, 1998.

Effective date: March 12, 1998.

Amendment No.: 188.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43367).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: September 23, 1997, as supplemented by letters dated February 27 and March 4, 1998.

Brief description of amendment: The amendment changes the Reactor Protective System (RPS) and Engineering Safety Actuation System (ESFAS) trip set point and allowable values for steam generator low pressure. The amendment also relocates the RPS and ESFAS response time tables from the Technical Specifications to the Safety Analysis Report as described in NRC Generic Letter 93–08, "Relocation of Technical Specification Tables of Instrument Response Time Limits," dated December 29, 1993.

Date of issuance: March 12, 1998.

Effective date: March 12, 1998.

Amendment No.: 189.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** January 28, 1998, (63 FR 4311).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: September 23, 1997, as supplemented by letters dated February 27 and March 4, 1998.

Brief description of amendment: The amendment reduces the minimum required reactor coolant system flow rate in TS 3.2.5 until the ANO–2 steam generators are replaced. The reduced reactor coolant system flow requirement will account for plugging of up to approximately 30 percent of the tubes in the existing steam generators at ANO–2.

Date of issuance: March 12, 1998.

Effective date: March 12, 1998.

Amendment No.: 190.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** January 28, 1998, (63 FR 4312).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 5, 1997, as supplemented December 11, 1997, January 9, February 12 and 19, 1998.

Brief description of amendment: To revise the Final Safety Analysis Report (FSAR) and the Improved Technical Specification Bases to reflect the modified reactor building fan recirculation system fan cooler starting logic.

Date of issuance: March 9, 1998.

Effective date: March 9, 1998.

Amendment No.: 165.

Facility Operating License No. DPR–31: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1998 (63 FR 2423). The supplemental letters dated December 11, 1997, January 9, February 12 and 19, 1998, did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 14, 1997, as supplemented by letter dated October 9, 1997 (published in **Federal Register** as May 15, 1997).

Brief description of amendments: The amendments revised the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to revise the surveillance frequencies from at least once every 18 months to at least once per refueling interval (nominally 24 months) including (1) reactor coolant system total flow rate, (2) instrumentation for radiation monitoring, (3) instrumentation and controls for remote shutdown, (4) instrumentation for accident monitoring, and (5) several miscellaneous TS.

Date of issuance: February 27, 1998.

Effective date: February 27, 1998, to be implemented within 90 days of the date of issuance.

Amendment Nos.: Unit 1–123; Unit 2–121.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1997 (62 FR 40855).

The October 9, 1997, supplemental letter provided additional clarifying information and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 2, 1997, as supplemented November 13, 1997.

Brief description of amendment: The amendment changes the Technical Specifications by extending the surveillance interval for the functional testing of certain Inservice Inspection American Society of Mechanical Engineers Code Class 1, 2, and 3 pumps and valves from once a month to once a quarter.

Date of issuance: March 2, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 178.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 26, 1997 (62 FR 14468).

The November 13, 1997, submittal contained clarifying information that did not change the staff's proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 14, 1995, as supplemented September 26, 1997.

Brief description of amendment: The amendment changes the James A. FitzPatrick Technical Specifications (TSs) to incorporate the inservice testing requirements of Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. The amendment supplements Amendment No. 241, dated December 2, 1997, by issuing seven TS pages inadvertently omitted from Amendment No. 241.

Date of issuance: February 27, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 242.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 22, 1996 (61 FR 1635).

The September 26, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 15, 1997.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) to adopt Option B, of 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," to implement a performance-based approach for Type B and C testing. Additionally, the wording in the TSs would be modified for the previous adoption of Option B on Type A testing and a section added on the primary

containment leakage rate testing program.

Date of issuance: February 27, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos: 207 and 188.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 14, 1998 (63 FR 2281).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 17, 1997.

Brief description of amendments: The amendments extended the surveillance interval of the containment spray nozzle air flow test to ten years from five years.

Date of issuance: March 11, 1998.

Effective date: March 11, 1998.

Amendment Nos.: Unit 1—Amendment No. 94; Unit 2—Amendment No. 81.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1998 (63 FR 4325).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440 Perry Nuclear Power Plant, Unit 1, Lake County, Ohio.

Date of application for amendment: December 23, 1997.

Brief description of amendment: This amendment revised Technical Specification 3.8.1, "A.C. Sources—Operating," consistent with the recommendations in NRC Generic Letter 94–01, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators."

Date of issuance: March 12, 1998.

Effective date: March 12, 1998.

Amendment No.: 92.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1998 (63 FR 4326).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: July 11, 1997, as supplemented November 21, December 22, 1997, and February 6, 1998.

Brief description of amendment: The amendment revised Technical Specifications 3.7/4.7 and their associated Bases to incorporate Option B of Appendix J to 10 CFR 50, and editorial changes to TS Table 4.7.2

Date of Issuance: February 26, 1998.

Effective date: February 26, 1998, with full implementation within 30 days.

Amendment No.: 152.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: (62 FR 45465). The November 21, December 22, 1997, and February 6, 1998, letters did not change the initial proposed no significant hazards determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 26, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 20, 1997.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.10 and its associated Bases to eliminate the use of battery charger AB for meeting the requirement of the TS.

Date of issuance: March 5, 1998.

Effective Date: This license amendment is effective as of its date of issuance, to be implemented within 30 days.

Amendment No.: 153

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 31, 1997 (62 FR 68319).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 22, 1997, as supplemented by letter dated September 18 and October 31, 1997.

Brief description of amendment: The amendment revises the Technical Specifications to address the new low pressure CO_2 suppression system for the East and West Switchgear Rooms and more clearly describes the separation of the two rooms.

Date of Issuance: March 6, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 154.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 8, 1997 (62 FR 52590). Information provided by letter dated October 31, 1997, did not affect the original no significant hazards consideration.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 6, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following

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amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 24, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 5, 1998, as supplemented February 12, March 3 and 5, 1998.

Brief description of amendments: The amendments revised the surveillance requirements in Technical Specification (TS) 4.6.1.2 (Requirement a). The change to the referenced TS adds a footnote stating that the requirement for Type A testing will not apply to certain instrument line penetrations.

Date of issuance: March 10, 1998.

Effective date: Both units, as of the date of issuance.

Amendment Nos.: 173 and 146.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. On February 5, 1998, the staff issued a Notice of Enforcement Discretion, which was immediately effective and remained in effect until this amendment was issued.

The Commission's related evaluation of the amendments, finding of emergency circumstances, consultation with the State of Pennsylvania, and final no significant hazards consideration determination are contained in a Safety Evaluation dated March 10, 1998.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Dated at Rockville, Maryland, this 18th day of March 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7652 Filed 3–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974, As Amended; Revisions to System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: System of records; proposed revisions.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Nuclear Regulatory Commission (NRC) is proposing to amend the notice describing the system of records (system) currently entitled NRC–32, "Office of the Controller Financial Transactions and Debt Collection Management Records—NRC," by adding five new routine uses and revising five existing routine uses in order to permit NRC to comply with certain provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134. The system notice was last published in the **Federal Register** on April 17, 1996.

EFFECTIVE DATE: The revised system of records will become effective without further notice on May 4, 1998, unless comments received on or before that date cause a contrary decision. If changes are made based on NRC's review of comments received, a new final notice will be published.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications staff. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays. Copies of comments received may be examined, or copied for a fee, at the NRC Public Document Room at 2120 L Street, NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Freedom of Information Act/Privacy Act Section, Information Services Branch, Information Management Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7170.

SUPPLEMENTARY INFORMATION:

The DCIA contains various provisions intended to maximize the collection of delinquent debts, minimize the costs of debt collection, reduce losses arising from debt management activities, rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies, and ensure that the public is fully informed of the Federal government's debt collection policies and that debtors are cognizant of their financial obligations to repay amounts owed to the government and have all appropriate due process rights.

The proposed revisions to NRC–32 will permit NRC to implement several new techniques for collecting debts and claims authorized or required by the DCIA. New routine use l. will permit NRC to refer nontax debts over 180 days delinquent to the Department of the Treasury (Treasury) for administrative offset against payments due elsewhere in the government under the mandatory, government-wide Treasury Offset Program (TOP). TOP provides a single source for identifying delinquent debtors receiving government funds and, to the extent legally allowed, offsetting the delinquent debts using those same funds. New routine use m. will enable NRC to publicly disseminate the names of certain delinquent debtors and the existence of the debts for debt collection purposes. New routine use n. will enable NRC to match certain debtor records with the Department of Health and Human Services and the Department of Labor to obtain Taxpayer Identification Numbers required by the DCIA for each person doing business with Federal agencies. New routine uses o. and p. will permit NRC to disclose information if it decides or is required

to sell delinquent nontax debts and to report information on collateralized debts to Congress pursuant to 37 U.S.C. 3711(i). Revised routine use b. will permit NRC to participate in a required program to annually match delinquent debt records due all agencies with records of Federal employees to identify those employees delinquent in repayment of certain nontax debts. Revised routine use d. will permit NRC to report current (not delinquent) and delinquent commercial and consumer nontax debt to credit bureaus for use in the administration of debt collection and to report delinquent debt information to the Office of Housing and Urban Development's Credit Alert Interactive Voice Response System. Routine uses e., h., and k. are revised to enable NRC to garnish non-Federal wages of certain delinquent debtors, to provide certain information on discharged debts to Treasury for reporting to the IRS, and to transfer to Treasury or approved Debt Collection Centers certain nontax debts over 180 days delinquent for further collection action. Current routine uses l., m., and n. are redesignated q., r., and s., respectively.

Other minor changes to the system notice for NRC–32 are also being made at this time and include renaming the system "Office of the Chief Financial Officer Financial Transactions and Debt Management Records—NRC" because of an agency reorganization, adding the DCIA and the Federal Claims Collection Standards to the Authority section of the notice, and updating the System Manager's title and the Notification Procedures.

A report on the proposed revisions to NRC–32 is being sent to the Office of Management and Budget (OMB), the Committee on Governmental Affairs of the U.S. Senate, and the Committee on Government Reform and Oversight of the U.S. House of Representatives as required by the Privacy Act and OMB Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

Accordingly, NRC proposes to amend the system notice for NRC–32 in its entirety to read as follows:

NRC–32

SYSTEM NAME:

Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC.

SYSTEM LOCATION:

Primary system—Office of the Chief Financial Officer, NRC, 11545 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2. Other NRC systems of records contain payment and/or collection transaction records and background information that may duplicate some of the records in this system. These other systems include, but are not limited to:

NRC–5, Contracts Records Files—NRC;
NRC–7, Telephone Call Detail Records—NRC;
NRC–10, Freedom of Information Act (FOIA) and Privacy Act (PA) Requests—NRC;
NRC–18, Office of the Inspector General Investigative Records—NRC;
NRC–19, Official Personnel Training Records Files—NRC;
NRC–20, Official Travel Records—NRC;
NRC–21, Payroll Accounting Records—NRC;
NRC–24, Government Property Accountability System—NRC; and
NRC–41, Tort Claims and Personal Property Claims—NRC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals the NRC owes/owed money to or who receive/received a payment from NRC and those who owe/owed money to the United States. Individuals receiving payments include, but are not limited to, current and former employees, contractors, consultants, vendors, and others who travel or perform certain services for NRC. Individuals owing money include, but are not limited to, those who have received goods or services from NRC for which there is a charge or fee (NRC licensees, applicants for NRC licenses, Freedom of Information Act requesters, etc.) and those who have been overpaid and owe NRC a refund (current and former employees, contractors, consultants, vendors, etc.).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes, but is not limited to, names, addresses, telephone numbers, Social Security Numbers (SSN), Taxpayer Identification Numbers (TIN), Individual Taxpayer Identification Numbers (ITIN), fee categories, application and license numbers, contract numbers, vendor numbers, amounts owed, background and supporting documentation, correspondence concerning claims and debts, credit reports, and billing and payment histories. The overall agency accounting system contains data and information integrating accounting functions such as general ledger, funds control, travel, accounts receivable, accounts payable, equipment, and appropriation of funds. Although this system of records contains information on corporations and other business entities, only those records that contain information about individuals that is retrieved by the individual's name or other personal identifier are subject to the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a(b)(12); 5 U.S.C. 5514; 15 U.S.C. 1681a(f); 26 U.S.C. 6103(m)(2); 31 U.S.C. 37, subchapters I and II; 31 U.S.C. 3701(a)(3) (1994); 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3717; 31 U.S.C. 3718; 31 U.S.C. 3720A (1994); 42 U.S.C. 2201; 42 U.S.C. 5841 (1994); Cash Management Improvement Act Amendments of 1992 (Pub. L. 102–589); Debt Collection Improvement Act of 1996 (Pub. L. 104–134); 4 CFR parts 101–105; 10 CFR parts 15, 16, 170, 171 (1997); Executive Order 9397, November 22, 1943; section 201 of Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To debt collection contractors (31 U.S.C. 3718) or to other Federal agencies such as the Department of the Treasury (Treasury) for the purpose of collecting and reporting on delinquent debts as authorized by the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996;

b. To Treasury; the Defense Manpower Data Center, Department of Defense; the United States Postal Service; government corporations; or any other Federal, State, or local agency to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals, including Federal employees, who are delinquent in their repayment of certain debts owed to the U.S. Government, including those incurred under certain programs or services administered by the NRC, in order to collect debts under common law or under the provisions of the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996 which include by voluntary repayment, administrative or salary offset, and referral to debt collection contractors.

c. To the Department of Justice, United States Attorney, Treasury, or

other Federal agencies for further collection action on any delinquent account when circumstances warrant.

d. To credit reporting agencies/credit bureaus for the purpose of either adding to a credit history file or obtaining a credit history file or comparable credit information for use in the administration of debt collection. As authorized by the DCIA, NRC may report current (not delinquent) as well as delinquent consumer and commercial debt to these entities in order to aid in the collection of debts, typically by providing an incentive to the person to repay the debt timely. Proposed revisions to the Federal Claims Collection Standards (FCCS) published in the **Federal Register** on December 31, 1997, direct agencies to report information on delinquent debts to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). NRC will report this information to CAIVRS if this requirement is contained in the final rule amending the FCCS.

e. To any Federal agency where the debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the Federal government on NRC's behalf by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures, or other authorized debt collection methods under the provisions of the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996. Pursuant to the DCIA, NRC may garnish non-Federal wages of certain delinquent debtors so long as required due process procedures are followed. In these instances, NRC's notice to the employer will disclose only the information that may be necessary for the employer to comply with the withholding order.

f. To the Internal Revenue Service (IRS) by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NRC against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3717, and 3718 or common law. Redisclosure of a mailing address obtained from the IRS may be made only for debt collection purposes, including to a debt collection agent to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996, except that redisclosure of a mailing address to a reporting agency is for the limited purpose of obtaining a credit report on the particular taxpayer. Any mailing address information obtained from the IRS will not be used or shared for any other NRC purpose or disclosed by NRC to another Federal, State, or local agency which seeks to locate the same taxpayer for its own debt collection purposes.

g. To refer legally enforceable debts to the IRS or to Treasury's Debt Management Services to be offset against the debtor's tax refunds under the Federal Tax Refund Offset Program.

h. To prepare W–2, 1099, or other forms or electronic submittals, to forward to the IRS and applicable State and local governments for tax reporting purposes. Under the provisions of the DCIA, NRC is permitted to provide Treasury with Form 1099–C information on discharged debts so that Treasury may file the form on NRC's behalf with the IRS. W–2 and 1099 Forms contain information on items to be considered as income to an individual, including certain travel related payments to employees, payments made to persons not treated as employees (e.g., fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part.

i. To banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his or her credit card number for this purpose.

j. To another Federal agency that has asked the NRC to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to name, address, SSN, TIN, ITIN, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset.

k. To Treasury or other Federal agencies with whom NRC has entered into an agreement establishing the terms and conditions for debt collection cross servicing operations on behalf of the NRC to satisfy, in whole or in part, debts owed to the U.S. government. Cross servicing includes the possible use of all debt collection tools such as administrative offset, tax refund offset, referral to debt collection contractors, and referral to the Department of Justice. The DCIA requires agencies to transfer to Treasury or Treasury-designated Debt Collection Centers for cross servicing certain nontax debt over 180 days delinquent. Treasury has the authority to act in the Federal government's best interest to service, collect, compromise, suspend, or terminate collection action in accordance with existing laws under which the debts arise.

l. Information on past due, legally enforceable nontax debts more than 180 days delinquent will be referred to Treasury for the purpose of locating the debtor and/or effecting administrative offset against monies payable by the government to the debtor, or held by the government for the debtor under the DCIA's mandatory, government-wide Treasury Offset Program (TOP). Under TOP, Treasury maintains a database of all qualified delinquent nontax debts, and works with agencies to match by computer their payments against the delinquent debtor database in order to divert payments to pay the delinquent debt. Treasury has the authority to waive the computer matching requirement for NRC and other agencies upon written certification that administrative due process notice requirements have been complied with.

m. For debt collection purposes, NRC may publish or otherwise publicly disseminate information regarding the identity of delinquent nontax debtors and the existence of the nontax debts under the provisions of the Debt Collection Improvement Act of 1996.

n. To the Department of Labor (DOL) and the Department of Health and Human Services (HHS) to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to match NRC's debtor records with records of DOL and HHS to obtain names, name controls, names of employers, addresses, dates of birth, and TINs. The DCIA requires all Federal agencies to obtain taxpayer identification numbers from each individual or entity doing business with the agency, including applicants and recipients of licenses, grants, or benefit payments; contractors; and entities and individuals owing fines, fees, or penalties to the agency. NRC will use TINs in collecting and reporting any delinquent amounts resulting from the activity and in making payments.

o. If NRC decides or is required to sell a delinquent nontax debt pursuant to 31 U.S.C. 3711(i), information in this system of records may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

p. If NRC has current and delinquent collateralized nontax debts pursuant to 31 U.S.C. 3711(i)(4)(A), certain information in this system of records on its portfolio of loans, notes and guarantees, and other collateralized debts will be reported to Congress based on standards developed by the Office of

Management and Budget, in consultation with Treasury.

q. To Treasury in order to request a payment to individuals owed money by the NRC.

r. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

s. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681(a)(f)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on paper and microfiche, and in computer media.

RETRIEVABILITY:

Information is retrieved a number of ways, including by name, SSN, TIN, license or application number, contract or purchase order number, invoice number, voucher number, and vendor code.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force. Records are kept in lockable file rooms or at user's workstations in an area where access is controlled by keycard and is limited to NRC and contractor personnel who need the records to perform their official duties. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by NRC or contractor personnel.

RETENTION AND DISPOSAL:

Paper records are destroyed when six years and three months old in accordance with GRS 6–1.a except that administrative claims files, for which collection action is terminated without extension, are destroyed when ten years and three months old in accordance with GRS 6–10.b. Computer files are deleted after the expiration of the retention period authorized under the GRS for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Accounting and Finance, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedures."

RECORD SOURCE CATEGORIES:

Record source categories include, but are not limited to, individuals covered by the system, their attorneys, or other representatives; NRC; collection agencies or contractors; employing agencies of debtors; and Federal, State and local agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated at Rockville, MD, this 19th day of March 1998.

For the Nuclear Regulatory Commission.

A.J. Galante,

Chief Information Officer.

[FR Doc. 98–7811 Filed 3–20–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 23, 1998.

A closed meeting will be held on Thursday, March 26, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, March 26, 1998, will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 20, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–7916 Filed 3–23–98; 11:25 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0271]

BB&T Capital Partners, LLC; Notice of Issuance of a Small Business Investment Company License

On December 9, 1997, an application was filed by BB&T Capital Partners, LLC, 200 West Second Street, 4th Floor, Winston-Salem, NC 27101 with the Small Business Administration (SBA) in accordance with 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 1996) for a license to operate as a small business investment company. Notice is hereby given that, pursuant to Section 301 (c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0271 on February 26, 1998 to BB&T Capital Partners, LLC to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–7689 Filed 3–24–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0368]

New England Partners Capital, L.P.; Notice of Issuance of a Small Business Investment Company License

On October 22, 1997, an application was filed by New England Partners Capital , L.P., One Boston Place, Suite 2100, Boston, Massachusetts 02108 with the Small Business Administration (SBA) in accordance with § 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 1996) for a license to operate as a small business investment company. Notice is hereby given that, pursuant to Section 301 (c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71–0368 on February 26, 1998 to New England Partners Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–7688 Filed 3–24–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 08/78–0151]

Utah Ventures II, L.P.; Notice of Issuance of a Small Business Investment Company License

On October 22, 1997, an application was filed by Utah Ventures II, L.P., at 423 Wakara Way, Suite 206, Salt Lake City, Utah 84108, with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/78–0151 on December 31, 1997, to Utah Ventures II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 17, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–7690 Filed 3–24–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2769]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Bureau of Finance and Management Policy, Department of State.

ACTION: 60-Day notice of proposed information collection; client satisfaction survey.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New Collection.

Originating Office: Bureau of Finance and Management Policy.

Title of Information Collection: Client Satisfaction Survey.

Frequency: Annually.

Form Number: None.

Respondents: Foreign Service annuitants.

Estimated Number of Respondents: 3,000.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1,500.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comment regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: March 16, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–7764 Filed 3–24–98; 8:45 am]

BILLING CODE 4710–01–M

DEPARTMENT OF STATE

[Public Notice #2772]

Ad Hoc on Administrative Preparations for the 1998 ITU Plenipotentiary Conference International Telecommunications Advisory Committee (ITAC); Meeting

The Department of State announces a meeting, under the United States International Telecommunications Advisory Committee (ITAC), of its Ad Hoc Group on Administrative Preparations for the 1998 International Telecommunication Union (ITU) Plenipotentiary Conference, to be hosted by the United States in Minneapolis, Minnesota in October/November 1998. The meeting will be held April 8, 1998, at 1:30–3 p.m., in Room 1207 of the Department of State, 2201 "C" Street, N.W., Washington, D.C.

The purpose of the upcoming meeting is to provide a comprehensive briefing on administrative preparations for the 1998 ITU Plenipotentiary Conference.

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to 202–647–5957 not later than 24 hours before the scheduled meeting and include the name of the meeting, your name, affiliation, social security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, or U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: March 18, 1998

Richard E. Shrum,

Deputy Committee Coordinator for International Communications Information Technology.

[FR Doc. 98–7685 Filed 3–24–98; 8:45 am]

BILLING CODE 4710–45–M

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DEPARTMENT OF STATE

[Public Notice #2767]

Determination on U.S. Bilateral Assistance to the Republika Srpska

Pursuant to the authority vested in me by section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, Pub. L. 105–118 ("FOAA"), I hereby waive the application of section 573(a) of the FOAA to provide $5 million in Economic Support Funds as budget support to the new Government of the Republika Srpska.

I hereby determine that this U.S. bilateral assistance program directly supports the implementation of the Dayton Agreement and its Annexes.

This Determination shall be published in the **Federal Register**.

Dated: March 12, 1998.

Madeleine Albright,

Secretary of State.

[FR Doc. 98–7763 Filed 3–24–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice #2766]

Determination on U.S. Bilateral Assistance to the Federal Republic of Yugoslavia

Pursuant to the authority vested in me by the section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, Pub. L. 105–118 ("FOAA"), I hereby waive the application of section 573(a) of the FOAA with regard to the following U.S. bilateral assistance programs in the Federal Republic of Yugoslavia (FRY): USAID and USIA-funded programs and projects to support democratic reform, including free and independent media and labor in the FRY; tension-reducing activities in Kosovo; and economic reform in Montenegro.

I hereby determine that these U.S. bilateral assistance programs directly support the implementation of the Dayton Agreement and its Annexes.

This Determination shall be published in the **Federal Register**.

Dated: March 2, 1998.

Madeleine Albright,

Secretary of State.

[FR Doc. 98–7762 Filed 3–24–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (98–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 1998 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 1998 RCAF (Unadjusted) is 0.996. The second quarter 1998 RCAF (Adjusted) is 0.642. The second quarter 1998 RCAF–5 is 0.632.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1549. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: • Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 19, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7753 Filed 3–24–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

[Treasury Order 102–20]

Delegation of Authority Concerning the Information Security Program

Dated: March 19, 1998.

Pursuant to the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and Executive Order (E.O.) 12958, "Classified National Security Information," dated April 17, 1995, as amended, it is ordered that:

1. The Department shall maintain an information security program to fulfill the responsibilities imposed by E.O. 12958, under which national security information is to be classified, safeguarded and declassified. The program shall be applicable throughout the Department.

2. The Assistant Secretary for Management and Chief Financial Officer is delegated the authority of the Secretary to exercise and perform all duties, rights, powers, and obligations under the above-referenced authority, except for any matter in which, by law, executive order, or regulation of outside agencies, the personal decision of the head of the agency or the principal deputy is required. This delegation includes issuing any regulations required to implement the Department's information security program.

3. The Assistant Secretary for Management and Chief Financial Officer is designated as the Department's senior agency official under Section 5.6(c) of E.O. 12958, with authority to direct and administer Treasury's information security program. The Assistant Secretary for Management and Chief Financial Officer shall ensure that the functions listed in Section 5.6(c) of E.O. 12958 are carried out.

4. The authority to classify information is delegated in Treasury Order (TO) 102–19, and this Order does not modify the provisions of TO 102–19.

5. The responsibilities of the Special Assistant to the Secretary (National Security) with respect to National Foreign Intelligence Information continue uninterrupted and are not affected by this Order.

6. The authority delegated by this order may be redelegated.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 98–7681 Filed 3–24–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102–19]

Delegation of Original and Derivative Classification Authority

March 19, 1998.

Pursuant to the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b); Sections 1.4 and 2.2 of Executive Order (E.O.) 12958, "Classified National Security Information," dated April 20, 1995, as amended; and the President's memorandum dated October 13, 1995 (60 FR 53845); the following delegations are made with respect to the

classification of national security information.

1. *Original Classification Authority.* The following officials are delegated original classification authority as indicated.

Original Top Secret

Deputy Secretary
Under Secretary (International Affairs)
Under Secretary (Enforcement)
Assistant Secretary for Management and CFO
Assistant Secretary (International Affairs)
Assistant Secretary (Enforcement)
Special Assistant to the Secretary (National Security)
Commissioner of Customs
Director, United States Secret Service
Director, Bureau of Alcohol, Tobacco and Firearms
Director, Office of Security

Original Secret and Confidential

Under Secretary (Domestic Finance)
General Counsel
Assistant Secretary (Economic Policy)
Inspector General
Director, Bureau of Engraving and Printing

2. The authority delegated in paragraph 1. inheres within the office and may be exercised by a person acting in that capacity.

3. *Redelegation.* Pursuant to E.O. 12958, only the Secretary of the Treasury may delegate the authority to originally classify national security information as Top Secret; only the Secretary or the Department's senior agency official for the information security program (designated in Treasury Order 102–20) may delegate original Secret or Confidential classification authority. The senior agency official is hereby authorized to redelegate original Secret or Confidential classification authority in conformity with the requirements of E.O. 12958.

3. *Derivative Classification Authority.* An official with original classification authority may derivatively classify and delegate derivative classification authority, but only at the same or lower level as the official's original authority.

4. The General Counsel and Executive Secretary are delegated derivative classification authority at the Top Secret level. The following officials are delegated derivative classification authority at the Secret and Confidential levels.

Derivative Secret and Confidential

Assistant Secretary (Financial Markets)
Assistant Secretary (Tax Policy)
Commissioner of Internal Revenue
Commissioner, Financial Management Service
Commissioner, Bureau of the Public Debt
Comptroller of the Currency
Director, Federal Law Enforcement Training Center
Director, United States Mint
Director, Office of Thrift Supervision

5. Derivative classification authority inheres within the office and may be exercised by a person acting in that capacity, and may be redelegated.

Robert E. Rubin,
Secretary of the Treasury.

[FR Doc. 98–7682 Filed 3–24–98; 8:45 am]
BILLING CODE 4810–25–P

Corrections

Federal Register

Vol. 63, No. 57

Wednesday, March 25, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 11-98]

Foreign-Trade Zone 147- Reading, Pennsylvania; Application for Foreign-Trade Subzone Status: Bayer Corporation (Aspirin Products), Myerstown, Pennsylvania

Correction

In notice document 98–6563 appearing on page 12440, in the issue of Friday, March 13, 1998, make the following correction:

On page 12440, in the second column, in the second full paragraph, in the seventh line, " May 21, 1998" should read "May 12, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Availability of Annual Reports

Correction

In notice document 98–5665 appearing on page 10918, in the issue of Thursday, March 5, 1998, make the following correction:

On page 10918, in the first column, in the ninth line, "Advisory Committee for Injury Prevention and Control Injury Research Grant Review Committee" should read

"Advisory Committee for Injury Prevention and Control

Injury Research Grant Review Committee"

BILLING CODE 1505-01-D

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federal register

Wednesday
March 25, 1998

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 401, 403, et al.

Medicare Program; "Without Fault" and Waiver of Recovery From an Individual as It Applies to Medicare Overpayment Liability; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 401, 403, 405, 410, 411, 413, 447, 466, 473, and 493

[HCFA–1719–P]

RIN: 0938–AD95

Medicare Program; "Without Fault" and Waiver of Recovery from an Individual as it Applies to Medicare Overpayment Liability

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule would amend the Medicare regulations governing liability for overpayments to eliminate application of certain regulations of the Social Security Administration and to replace them with HCFA regulations more specific to circumstances involving Medicare overpayments. The following specific changes are included in this rule.

Explicit criteria and the circumstances under which a provider or supplier can be relieved of liability for an overpayment on the basis of being "without fault" with respect to the overpayment.

Specific criteria and circumstances of the conditions under which a waiver of recovery for Medicare overpayments would apply to individuals.

A provision to ordinarily consider it inequitable to recover an overpayment from a without-fault individual when an overpayment is made to a without-fault provider.

Specific provisions that enable Medicare intermediaries and carriers to determine without fault in Medicare overpayments resulting from Medicare secondary payer conditional payments.

Provisions that grant Peer Review Organizations the authority to make without-fault determinations.

Provisions for an administrative appeals process for providers and suppliers with regard to a "not-without-fault" determination.

We expect this rule would prevent some providers and suppliers from claiming without-fault status. This could reduce the number of overpayment liabilities passed on to individuals and result in a slight increase in the amount of money recovered.

DATES: To ensure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and be received by 5 p.m. on May 26, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1719–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1719–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David Walczak (410) 786–4475.

SUPPLEMENTARY INFORMATION:

I. Background

In any large organization that makes payments to a substantial number of individuals, providers, and suppliers, excesses in payment amounts may occur. Medicare overpayments are Medicare funds an individual, provider, or supplier has received that exceed amounts due and payable under the Medicare statute and regulations. (The Medicare rules at § 400.202 define a "supplier" as "a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare." Therefore, in this preamble, we have used the term "supplier" to include a physician.)

Overpayments generally result when payment is made by Medicare for noncovered items or services, when payment is made that exceeds the amount allowed by Medicare for an item or service, or when payment is made for items or services that should have been paid by another insurer (Medicare secondary payer obligations). Once a determination and any necessary adjustments in the amount of the overpayment have been made, the remaining amount is a debt owed to the United States Government.

Section 1870 of the Social Security Act (the Act) provides a framework within which liability for Medicare overpayments is determined and recoupment of overpayments is pursued. This framework prescribes a certain flow of events (that is, a decisionmaking process) that must be followed when pursuing the recoupment of Medicare overpayments.

Specifically, section 1870(a) of the Act provides that a payment to a provider or a supplier is considered to be a payment to the individual who received the items or services. Therefore, all overpayments (with the exception of certain aggregate overpayments described later in this preamble) are considered to be an individual's overpayments. However, under section 1870(b) of the Act, if payment was made to a provider or supplier, Medicare looks first to recover any associated overpayment from the provider or supplier unless: (1) The provider or supplier is "without fault" with respect to the overpayment, or (2) the Secretary determines that the overpayment cannot be recouped from the provider or supplier. Section 1870(b) of the Act also specifies that, in the absence of evidence to the contrary, without fault is administratively presumed for a provider or supplier when an overpayment is discovered after the third calendar year following the year in which notice of the payment was sent to the provider or supplier.

In accordance with section 1870(b) of the Act, if an overpaid provider or supplier is determined to be without fault or the overpayment cannot be recouped from the provider or supplier or the individual was paid directly by the Medicare program, the individual is liable for the overpayment, and Medicare seeks recovery from the individual. In the case of an individual who is liable for an overpayment, section 1870(b) of the Act provides for recovery by adjusting cash benefits by

decreasing subsequent title II payments (social security retirement, survivors, and disability cash benefits) or railroad retirement benefits to which the individual (or other person if the individual dies before the adjustment has been completed) is entitled.

Under section 1870(c) of the Act, adjustment (or any other type of recovery of an overpayment against the individual) is waived if the individual is without fault with respect to the overpayment and if the adjustment or recovery would "defeat the purposes of title II or title XVIII" (Medicare Part A and Part B benefits) of the Act or would be "against equity and good conscience." Section 1870(c) of the Act also specifies that adjustment or recovery is deemed to be against equity and good conscience if the overpayment resulted from expenses incurred for items or services for which payment may not be made under Medicare by reason of the provisions of section 1862(a)(1) or (a)(9) of the Act (not reasonable and necessary or custodial care), and if the Secretary's determination that the payment was incorrect was made after the third year following the year in which notice of that payment was sent to the individual.

II. Current Regulations and Instructions Dealing with Overpayments

The provisions of section 1870(a) through (d) of the Act are incorporated in our regulations in §§ 405.350 to 405.359 ("Liability for Payments to Providers or Suppliers and Handling of Incorrect Payments"). Specifically, § 405.350 ("Individual's liability for payments made to providers and other persons for services furnished the individual") provides that an individual is liable for an overpayment if the overpayment cannot be recouped from the provider or supplier or if the provider or supplier is without fault with respect to the overpayment. Section 405.350(c) further specifies that, in the absence of evidence to the contrary, a provider or supplier is deemed to be without fault if the overpayment determination was made after the third year following the year in which a payment notice was sent to the provider or supplier.

In accordance with § 405.350, we look first to recoup an overpayment from the provider or supplier unless: (1) We determine that the overpayment cannot be recouped from the provider or supplier, or (2) the provider or supplier is without fault with respect to the overpayment. Currently, there are no criteria in our regulations pertaining to when a provider or supplier is without fault, nor do our regulations make reference to Social Security Administration (SSA) regulations with respect to provider or supplier fault. However, criteria are listed in section 3708 of the Medicare Intermediary Manual and in section 7103 of the Medicare Carrier Manual that incorporate the principles employed in the SSA regulations.

Under these manual instructions, a provider or supplier is without fault if it exercised reasonable care in billing for and accepting payment. Exercising reasonable care means that the provider or supplier disclosed all material facts and, based on available information, including but not limited to, the Medicare regulations and instructions, had a reasonable basis for assuming that the payment was correct. However, if the provider or supplier had reason to question the payment, it must have promptly brought the question to the attention of the appropriate Medicare contractor (intermediary or carrier).

If the intermediary or carrier, acting on behalf of HCFA, determines that the provider or supplier is liable for the overpayment according to § 405.350 and the applicable manual instructions, we recoup the overpayment from the provider or supplier. If the intermediary or carrier, acting on behalf of HCFA, determines that the provider or supplier is not liable for the overpayment, liability rests with the individual, regardless of whether the individual was without fault. Whether an individual was without fault is not relevant to his or her liability for the overpayment, but is considered in deciding whether to waive adjustment or recovery of the overpayment.

Under § 405.355 ("Waiver of adjustment or recovery"), adjustment or recovery against the individual is waived if the individual is without fault with respect to the overpayment and if recovery would cause substantial financial hardship so that the purposes of title II or title XVIII of the Act would be defeated or if recovery would be against equity and good conscience. Section 405.356 ("Principles applied in waiver of adjustment or recovery") specifies that the principles applied in determining waiver of adjustment or recovery are the applicable principles found in SSA regulations at 20 CFR 404.506 through 404.509, 20 CFR 404.510(a), and 20 CFR 404.512. These regulations, in part, define "fault" (as used in without fault) and explain the conditions for waiver of the adjustment or recovery if an incorrect payment has been made under title II or title XVIII of the Act. (Before we were established as a separate agency, SSA was responsible for both the social security cash benefit program and the Medicare program. Consequently, the two programs have many identical regulations that embody SSA's understanding of the terms used in the overpayment recoupment process.)

Under § 405.356 of our regulations, intermediaries and carriers, acting on behalf of HCFA, currently determine if an individual is without fault, based on SSA regulations at 20 CFR 404.507 ("Fault"). Under 20 CFR 404.507, the following three elements are considered in determining fault:

- Whether the overpayment resulted from an incorrect statement made by the individual that he or she knew or should have known to be incorrect.
- Whether the overpayment resulted from the individual's failure to furnish information that he or she knew or should have known to be material.
- Whether the overpayment resulted from acceptance of a payment that he or she either knew or could have been expected to know was incorrect. These criteria provide the foundation for making individual waiver of adjustment or recovery decisions.

Under § 405.355, we may waive all or part of a recovery against an individual who is found to be without fault if recovery would defeat the purposes of title II or title XVIII of the Act or would be against equity and good conscience. We currently use as a basis for making these determinations the definitions for these terms found in SSA regulations at 20 CFR 404.508 ("Defeat the purpose of title II") and 20 CFR 404.509 ("Against equity and good conscience; defined").

Under 20 CFR 404.508, "defeat the purpose of title II" means to deprive a person of income required for ordinary and necessary living expenses. Ordinary and necessary expenses, as specified in 20 CFR 404.508, include the following:

- Living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (for example, life, accident, and health insurance including premiums for supplementary medical insurance benefits under title XVIII), taxes, and installment payments.
- Medical, hospitalization, and other similar expenses.
- Expenses for the support of others for whom the individual is legally responsible.
- Other miscellaneous expenses that may reasonably be considered as part of the individual's standard of living.

Using these criteria, 20 CFR 404.508(b) specifies that adjustment or recovery will defeat the purpose of title II, for example, if the person from whom recovery is sought needs substantially all of his or her current income

(including social security monthly benefits) to meet current ordinary and necessary living expenses.

Under 20 CFR 404.509, recovery of an overpayment is against equity and good conscience in the following circumstances:

- Because the individual relied on a notice that payment would be made, or actually received the erroneous payment, the individual—
  - Changed his or her position for the worse; or
  - Relinquished a valuable right.
- The individual was living in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment.

That section further specifies that the individual's financial circumstances are not material to a finding of against equity and good conscience.

HCFA, through its intermediaries and carriers, currently makes determinations of without fault with regard to providers and suppliers. Intermediaries and carriers also coordinate the waiver process if the individual is liable for the overpayment. When an overpayment consists of both Medicare Part A and Part B claims, the lead intermediary or carrier, that is, the one that has paid the most in benefits, is responsible for coordinating the without-fault determinations and the waiver request process. The lead intermediary or carrier coordinates Medicare's activities with all parties, including the intermediary or carrier, the individual or his or her representative(s), the liability insurer or tort-feasor (in Medicare secondary payer cases), and the HCFA regional office, to ensure that the overpayment situation is resolved in accordance with our guidelines.

III. Problem Areas Within the Framework of the Current Regulations and Our Proposed Revisions to the Regulations

A. Without Fault

1. Differences Between the Social Security and Medicare Programs

The proposed regulations regarding without fault will clarify circumstances unique to the Medicare context because the social security regulations do not consider the different roles played by the individual within the social security and Medicare programs. These roles that an individual plays in obtaining benefits from each of the programs are significantly diverse. As a social security claimant, the individual (or his or her representative) receives a cash benefit directly from SSA, generally with no third party involved. As a result, the individual has a very proactive role in providing accurate information to obtain this benefit and has a direct degree of responsibility in accepting the SSA payment each month.

The individual entitled to Medicare, on the other hand, generally receives items or services from a provider or supplier that, in turn, directly bills and accepts payment from the Medicare contractor on behalf of the individual. (There are exceptions to this arrangement, as described later in this preamble.) The information furnished by the individual with respect to the Medicare claim is minimal; most claim-related information is furnished by the provider or supplier. Therefore, the individual entitled to Medicare, in obtaining and accepting Medicare benefits, does not have the same role as a social security claimant.

Because of these role distinctions, the SSA regulations are not always clearly transferable to Medicare overpayment situations. For example, the term "fault," as described in the SSA regulations, focuses on the individual's disclosure of accurate information. This element is emphasized because a social security claimant is in control of all of his or her financial information (for example, receipt of benefit checks and employment information) that often determines the outcome of the claim. SSA relies primarily on the claimant's own self-reporting and disclosure. A social security claimant receives a benefit payment directly and is in a position to know if he or she received more than the correct payment due under title II of the Act.

In contrast, Medicare relies largely on information received from providers and suppliers to determine payment amounts. The individual entitled to Medicare does not have the same control that a social security claimant has in the outcome of a claim. Under most circumstances (with the exception of cases involving unassigned Part B claims and certain Medicare secondary payer situations), the individual entitled to Medicare receives no actual payment and does not know if the payment made under Medicare is correct. Generally, the information generated by a provider or supplier, not information provided by the individual, causes the overpayment to be made. The SSA regulations do not take into account the significant difference between the role an individual plays in receiving social security cash benefits and in receiving Medicare benefits and, therefore, the social security regulations are not always transferable to Medicare overpayment situations.

2. Differences Resulting From Provider and Supplier Involvement

In addition, the SSA regulations do not take into consideration the role that a provider or supplier plays in administering Medicare benefits. While 20 CFR 404.507 describes what constitutes fault (as it relates to without fault) on the part of an overpaid individual, it makes no specific reference to without fault as it pertains to a provider or supplier and does not adequately provide for situations when a determination regarding without fault must be made for providers or suppliers.

While the criteria in 20 CFR 404.507 can generally be applied to all recipients of payments, they do not specifically consider substantive differences between an individual and a provider or supplier billing for and accepting Medicare payment. (Generally, the recipient of a Medicare payment is a provider or supplier. However, in the case of unassigned claims, the recipient is the individual.) Because of Medicare provisions that require all providers and suppliers to submit claims on behalf of individuals, the individual entitled to Medicare does not participate in the actual claim filing process in a significant way. Also, in most instances, it is the provider or supplier, not the individual, that actually receives the Medicare payment. This is because most providers and suppliers agree to bill Medicare directly and to accept the payment amount as determined under the applicable payment system (prospective payment, reasonable cost method, fee schedule, or reasonable charge method) as total payment for covered services. For providers, this is accomplished by entering into a Medicare provider agreement. Suppliers accomplish this either by agreeing to accept assignment on an individual claims basis or by entering into a Medicare participation agreement. Under these circumstances, the individual is responsible for providing the entity with the correct insurance information and authorizing the claim by signing the claim form; however, he or she plays no direct role in the claim filing process and receives no direct payment.

In the case of a supplier that does not accept Medicare assignment, the individual pays the supplier directly. The claim is submitted to the Medicare contractor by the supplier, and the Medicare contractor pays the individual directly. Although in these situations the individual receives payment directly, he or she normally has no way of knowing if the Medicare payment

amount for the item or service he or she received is correct.

These differences raise questions as to whether the same criteria should be applied both to the individual and to the provider or supplier when determining without fault with regard to an overpayment. In particular, determining if the recipient of the payment knew, or could reasonably be expected to know, that the payment amount was incorrect depends on determining the level of information available to the recipient.

The information available to a provider or supplier is more extensive than that available to an individual. We furnish instruction manuals to providers, and intermediaries and carriers send detailed instructions, such as newsletters, to suppliers. This direct access to Medicare payment information should impart a degree of knowledge and responsibility to both providers and suppliers that does not apply to individuals.

For example, a provider or supplier that receives an unusual payment amount for a routinely billed service should be in a better position than the individual to question and determine whether the payment amount is correct. This is because of the information available to a provider or a supplier (for example, a physician should know the Medicare physician fee schedule payment amount for a particular service). Although the individual may directly receive a Medicare payment, an Explanation of Medicare Benefits or a Notice of Utilization showing that Medicare payment has been made, the individual normally has no way of knowing if the Medicare payment amount for a particular covered service or item is correct.

Thus, we propose revisions to the regulations that consider the substantive differences between an individual accepting a Medicare payment and a provider or supplier billing for and accepting a Medicare payment.

3. Revisions Proposed to Reflect Circumstances Unique to Medicare

a. Without Fault as it Applies to Individuals Entitled to Medicare. In this rule, we propose to add regulations that are specifically applicable to individuals entitled to Medicare for determining without fault in Medicare overpayment situations. We propose that an individual be considered to be without fault with respect to a Medicare overpayment if he or she exercises reasonable care in requesting Medicare payment and in accepting Medicare payment.

Under these proposed regulations, an individual exercised reasonable care if he or she accepted a payment that he or she did not know, or could not reasonably have been expected to know, was incorrect; accepted a payment that, on the basis of information available, he or she could reasonably assume was correct; or accepted payment because of reliance on erroneous written information on the interpretation of a pertinent provision of the Act or implementing regulations from an official source within HCFA, SSA, or a Medicare contractor.

Conversely, we propose that an individual is not without fault when the individual: (1) Receives prior written notice that a particular item or service was not covered by Medicare; (2) makes an incorrect statement or withheld information to obtain benefits that were not due him or her; (3) accepts a payment that he or she knew or should have known was not due; or (4) receives a prior determination of liability under the limitation on liability provisions in section 1879 of the Act for the specific items or services for which a without-fault determination is being made.

Criteria to be considered in deciding whether an individual was without fault would include the cause of the overpayment, the individual's ability to realize that the payment was incorrect (based on his or her age, education, and physical or mental state), and whether the individual could reasonably be expected to have taken action to prevent the overpayment from occurring.

b. Without Fault as it Applies to Providers and Suppliers. We propose to incorporate in regulations criteria that currently exist in the Medicare Intermediary Manual, the Medicare Carrier Manual, and 20 CFR 404.506.

Under these proposed regulations, providers or suppliers are "not without fault" unless they exercise reasonable care in billing for and accepting Medicare payments and either: (1) Did not know, and could not reasonably have been expected to know, that Medicare payment exceeded amounts payable under the Medicare statute and regulations and, therefore, accepted payment based on a reasonable assumption that the payment was correct; or (2) did know, or could reasonably have been expected to know, that Medicare payment exceeded amounts payable under the Medicare statute and regulations but questioned the appropriate intermediary or carrier in writing, within 60 days of receipt of the excess payment. If, after questioning the appropriate intermediary or carrier, the provider or supplier relied on a written response from the intermediary or carrier that stated that the Medicare payment was correct, or failed to receive a response from the intermediary or carrier within 120 days of the intermediary's or carrier's receipt of the written inquiry, the provider or supplier is without fault.

We propose that the exercise of reasonable care in billing includes making full disclosure of all material facts and complying with each applicable provision specified in subpart C ("Claims for Payment") of part 424, including the supplying of all the necessary information on the billing form, to ensure correct payment by the intermediary or carrier. We further propose criteria for determining that a provider or supplier knew, or could reasonably have been expected to know, that Medicare payment exceeded amounts payable under the Medicare statute and regulations. Under these proposed criteria, a provider or supplier is considered to have known that Medicare payment exceeded amounts payable under the Medicare statute and regulations if any one of the following conditions is met:

- It had knowledge that payment exceeded amounts payable under the statute and regulations based on experience, actual notice, or constructive notice, including (except in very limited circumstances described later in this preamble) final publication of payment amounts in official source documents; receipt of HCFA notices including manual issuances, bulletins, or other written guides or directives from intermediaries, carriers, or Peer Review Organizations; or experience with Medicare payment amounts for similar or reasonably comparable items or services. Under this criterion, final publication of payment amounts in official source documents includes correction notices that are published after the initial publication.
- It received prior notice from the peer review organization, intermediary, or carrier of the correct Medicare payment for the items or services furnished or for similar or reasonably comparable items or services.
- It gave the individual prior notice of the correct Medicare payment for the items or services furnished or for similar or reasonably comparable items or services.

These proposed criteria are similar to those contained in § 411.406 ("Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary"). Those criteria are used to determine if a provider or supplier is liable for payment of an item or service

under the limitation on liability provisions in section 1879 of the Act because of knowledge that Medicare payment for the item or service would be denied.

Because the criteria we propose in the without fault regulations is based, in part, on the limitation on liability provisions, we propose that a provider or supplier that has already been determined liable under the limitation on liability provisions in section 1879 of the Act for a specific item or service cannot be found without fault with regard to the overpayment for that specific item or service.

c. Without Fault as it Applies to Peer Review Organization Responsibilities. Because this proposed rule would furnish providers and suppliers with appeal rights for determinations that the provider or supplier must repay an overpayment because the provider or supplier is not-without-fault (discussed later), we are considering expanding the responsibility for making without-fault determinations to peer review organizations. Although our final decision may be that intermediaries and carriers make the without-fault determinations for overpayments resulting from peer review organization determinations, we want to provide as much flexibility as possible in exploring this issue. Therefore, we propose revising our regulations to provide peer review organizations with the authority to make without-fault determinations. However, it should be noted that intermediaries, carriers, and peer review organizations that make determinations are acting on behalf of HCFA.

d. Without Fault as it Applies to the Prospective Payment System. Under section 1886(d) of the Act, effective with hospital cost reporting periods beginning on or after October 1, 1983, we established a system of payment for acute inpatient hospital stays under Medicare Part A (Hospital Insurance), based on prospectively-set rates. Under this prospectively-set rate system (the prospective payment system), Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups. The regulations governing the inpatient hospital prospective payment system are located at 42 CFR part 412.

Regarding payments under the prospective payment system, we are required, under section 1886(e)(5)(B) of the Act, to publish by September 1 of each year a list of diagnosis-related group categories and provide instructions on calculating proper Medicare payment amounts. Thus, hospitals paid under the prospective payment system generally have a way to determine whether a payment is correct or incorrect. Accordingly, these hospitals are generally liable for refunding Medicare overpayments they receive under the prospective payment system because, under most circumstances, they cannot be found to be without fault since they have an independent means of conclusively determining whether the prospective payment system payment they accept is correct.

However, under our proposed rule, a provider may be found to be without fault for payments under the prospective payment system in the event of an error in our prospective payment system publication in the **Federal Register**, relating to the diagnosis-related group for which the hospital was overpaid. In these circumstances, a hospital that can show, based on criteria specified in these proposed regulations, that it did not know and could not reasonably have been expected to know that a Medicare payment based on an erroneous published schedule of payment amounts exceeded amounts payable under the Medicare statute and regulations is considered to be without fault for the overpayment that resulted from the erroneous published schedule of payment amounts. We note, however, that this rule would not apply if a correction notice containing the correct schedule of payment amounts has been published in the **Federal Register** after the initial publication of the erroneous schedule of payment amounts. In this instance, the correction notice imputes the same responsibility for knowledge of the overpayment as a correct published schedule of payment amounts.

If the hospital is without fault, liability shifts to the individual under section 1870(b) of the Act. However, under these circumstances, an individual will also be without fault because there is nothing to indicate that the overpayment resulted from the individual not exercising reasonable care in requesting and accepting Medicare payment, as specified in our regulations. In addition, recovery from the individual may be waived on the basis of "equity and good conscience" with respect to Medicare overpayments of this type.

The same rules would also apply for Medicare payment for inpatient hospital capital-related costs. In a final rule published on August 30, 1991 (56 FR 43358), a new subpart M was added to 42 CFR part 412 to provide for a prospective payment system for hospital inpatient capital-related costs. Previously, hospital inpatient operating costs were the only costs covered under the prospective payment system. However, section 1886(g)(1) of the Act now requires that capital-related costs be paid under the prospective payment system effective with cost reporting periods beginning after September 30, 1991, for hospitals paid under the prospective payment system. Implementing regulations are found at § 412.300.

e. Without Fault and Aggregate Overpayment Issues. Under section 1870 of the Act, if a provider is found to be without fault for an overpayment, the individual who received the service for which payment was made is liable for the overpayment. Therefore, application of the without fault provision in section 1870 of the Act is limited to overpayments for individual claims for which lability can ultimately be shifted to a specific individual.

Consequently, the without fault provisions under section 1870 of the Act do not extend to aggregate overpayment issues, such as Medicare cost report errors, because liability for an individual claim cannot be shifted to a specific individual. For certain providers, aggregate overpayments result from payments under a reasonable cost payment methodology in which payment is made on an interim basis throughout the year, with appropriate adjustments made upon settlement of annual cost reports. Because Medicare cost report errors are not directly associated with specific services, liability cannot be shifted from a specific provider to a specific individual.

Thus, the without fault provisions of this proposed rule would not apply to overpayments resulting from aggregate payment issues, such as cost report errors. These overpayments are addressed in section 1878 of the Act, which contains provisions relating to the Provider Reimbursement Review Board and the circumstances under which a provider may obtain a hearing with the Board.

f. Without Fault as it Applies to Payment Under the Medicare Physician Fee Schedule. A major change in Medicare physician payment rules was enacted as part of the Omnibus Budget Reconciliation Act of 1989, (OBRA 1989), Public Law 101–239. Section 6102 of OBRA 1989 added to the Act a new section 1848, "Payment for Physicians' Services." The new section contains three major elements: (1) A new fee schedule for physicians' services based on a Resource-Based Relative Value Scale to replace the reasonable charge payment mechanism; (2) a Medicare volume performance

standard for the rates of increase in Medicare expenditures for physicians' services; and (3) limits on the amounts that nonparticipating physicians submitting unassigned claims can charge individuals for covered services.

We issued a final rule on November 25, 1991, (56 FR 59502) to implement section 1848 of the Act. (The physician fee schedule regulations are set forth at 42 CFR part 414, subpart A.) Section 1848 requires that the fee schedule include national uniform relative values for all physicians' services. The fee schedule is being phased in over 4 years, beginning in 1992, with the new rules fully effective in 1996. During 1992 through 1995, transition provisions generally blend the old payment amount with the fee schedule amount.

At the end of each calendar year, we send each physician and other supplier a schedule of the next year's physician fee schedule amounts. In addition, the fee schedule is published in the **Federal Register** each year. Therefore, all physicians and other suppliers paid under the physician fee schedule are generally in a position to determine whether a payment is correct. Accordingly, physicians and other suppliers are generally liable for refunding Medicare overpayments they receive under this payment system because, under most circumstances, they cannot be found to be without fault since they have an independent way of conclusively determining whether the payment they accept is correct.

However, under our proposed rule, a physician or other supplier may be found to be without fault if an error in the annual fee schedule for the services for which the physician or supplier was overpaid is published in the **Federal Register**. In these circumstances, a physician or other supplier is considered to be without fault for an overpayment resulting from the erroneous schedule if the physician or supplier can show, based on criteria specified in these proposed regulations, that he or she did not know and could not reasonably have been expected to know that a Medicare payment based on an erroneous schedule of payment amounts exceeded amounts payable under the Medicare statute and regulations. We note, however, that this would not be the case if a notice correcting the erroneous schedule has been published.

If the physician or other supplier is found to be without fault, liability shifts to the individual under section 1870(b) of the Act. However, under these circumstances, the individual will also be without fault under our proposed regulations because there is nothing to indicate that the overpayment resulted from the individual not exercising reasonable care in requesting and accepting Medicare payment. In addition, recovery from the individual may be waived on the basis of equity and good conscience with respect to Medicare overpayments of this type.

g. Without Fault As It Applies to Medicare Secondary Payer Obligations. A large proportion of Medicare overpayments results from Medicare secondary payer situations. Because the nature of Medicare secondary payer obligations is somewhat different from other types of Medicare overpayments, in that Medicare secondary payer situations involve a conditional payment and a third party payer, the current regulations addressing without fault pose particular problems for the recovery of Medicare secondary payer obligations.

For example, if a conditional Medicare payment becomes a de facto overpayment (that is, a primary payer pays after Medicare payment) as a result of an individual's action that is unrelated to the filing of a Medicare claim, direct application of the SSA regulations can be difficult. The SSA regulations predate the Medicare secondary payer provisions and, therefore, do not provide for them. Under the current regulations, when an Medicare secondary payer obligation results from a conditional Medicare payment for an individual who is injured in an automobile or other accident, and who subsequently receives a settlement or damage award, the individual is generally considered to be without fault. This is because, within the framework of the SSA regulations, the obligation does not result from failure to supply information because even if the individual informs us of a pending suit we frequently make a conditional payment for the claim.

Thus, when applying the SSA regulations, few circumstances will ever arise when the individual could be found to be at fault in causing an overpayment of this type. This de facto without-fault finding, when coupled with financial or equity considerations, could result in waiving recovery from the individual in the majority of cases, even though the individual may have been instrumental in causing the overpayment.

We do not believe this to be an appropriate outcome in Medicare secondary payer contexts because, under our current operating procedures, all individuals entitled to Medicare receive a Notice of Utilization or an Explanation of Medicare Benefits showing that Medicare has paid for services. Therefore, individuals are informed that Medicare has made a conditional payment. We believe that, because this information is available, a degree of responsibility should be imputed to the individual or the individual's representative. We believe that the individual who elects to pursue subsequent settlement or damage awards for injuries from liability or no-fault insurers or, in some cases, tort-feasors, should be responsible for notifying us of this intent and protecting the proceeds until the Medicare claim is satisfied. If the individual does not take this responsibility, he or she should be found not without fault once a liability insurance payment is made and we seek to recover our conditional payment.

All too often, we are not aware of an individual's liability suit until a liability insurance payment is about to be made, or thereafter. At that point, it is more difficult to assert Medicare's interest, despite the fact that under the Medicare secondary payer statute, Medicare has a priority right of recovery. The Congress intended that Medicare payment would be available to individuals to pay for their covered medical expenses to avoid their having to pay for their medical expenses out-of-pocket. Since Medicare conditionally paid for these medical expenses, Medicare is entitled, under the statute, to reimbursement, as opposed to the individual collecting twice for the same loss—first in the form of a benefit payment and then in the form of a cash settlement.

We propose adding regulations that are specifically applicable to determining without fault for Medicare overpayments resulting from Medicare secondary payer conditional payments. We propose that a provider or supplier will generally be not-without-fault with respect to a Medicare payment in a Medicare secondary payer situation unless the provider or supplier complied with all of the claims filing requirements specified in 42 CFR part 411 and, in the case of providers, the provider agreement provisions in 42 CFR part 489. In addition, we are specifying in these regulations that the without fault provisions do not apply to third party payers or other non-Medicare entities involved in a Medicare secondary payer case.

With regard to individuals in Medicare secondary payer cases, we propose that an individual would not be considered to be without fault if the facts show that the individual failed to notify Medicare within 30 days of the receipt of a payment from an entity that is primary to Medicare or the overpayment resulted because the

individual failed to file a proper claim, as required in regulations, with an entity that is primary to Medicare; made an incorrect statement or withheld information to obtain benefits that were not due him or her; or accepted a payment that he or she should have known was not due.

In some cases we seek recovery of Medicare secondary payer obligations from group health plans as a result of the data match in section 1862(B)(5) of the Act and other procedures. In those situations, it would ordinarily be considered inequitable to recover from the individual, and we will not recover the incorrect Medicare payment from the individual unless the Medicare payment was made to the individual.

In the past, we have required written notification when an individual requests a waiver of recovery of an overpayment. However, on July 10, 1995, we published a proposed rule (60 FR 35544) offering the option of requesting by telephone a review of Part B initial claim determinations. Consequently, we are also proposing in this document that an individual may request to be found without fault and may request waiver by telephoning the contact listed in the notice from the carrier, intermediary, or HCFA.

We also propose to require that, if the individual or the individual's representative received an Explanation of Medicare Benefits or a Notice of Utilization that Medicare made a payment, and the individual subsequently elects to pursue a liability settlement or damage award for an illness or for injuries sustained in an accident, he or she must notify the Medicare contractor within 60 days of filing a suit or a claim with the insurer. Otherwise, he or she cannot be considered to be without fault. Thus, when Medicare is billed for services furnished to an individual, and the individual (or his or her estate) pursues a liability or damage award or payment from another source, he or she must notify the Medicare contractor both when a suit or claim is filed and when payment is received from any source other than Medicare. This notice requirement does not apply in MSP group health plan situations. Failure to furnish the Medicare contractor with both notices will result in the individual (or his or her estate) being "at fault" with respect to any resulting Medicare secondary payer obligation.

To ensure that beneficiaries realize their obligation to notify the Medicare contractor as proposed above, we would include these requirements in general program information furnished to Medicare beneficiaries, as well as in material (such as, pamphlets) that are targeted to Medicare secondary payer situations. Also, we would include these new requirements in any notice or communication we send to beneficiaries in connection with potential liability situations.

B. Not-Without-Fault Determinations and the Appeals Process

Under current regulations (405.704(b)(14)), determinations concerning the waiver of adjustment or recovery of overpayments are considered initial determinations, for purposes of the Medicare appeals process, under Medicare Part A and Part B with respect to individuals. These determinations are often based on not-without-fault findings. However, we do not have regulations that address not-without-fault determinations made for providers or suppliers. We believe that our regulations need to be revised to afford providers and suppliers an explicit right to appeal determinations made under section 1870(b) of the Act that they are not without fault and, therefore, that they must repay an overpayment.

Although the Medicare statute does not specifically provide for appeal rights for providers and suppliers regarding a not-without-fault determination, we believe that the administrative appeals process should include that issue. This process will ensure that, when a not-without-fault determination is made, the adversely-affected party has a due process right of appeal that is expressly recognized by regulation.

Therefore, we propose to revise the Medicare appeals regulations to state that, if a provider or supplier that is not without fault receives an initial determination that an overpayment must be refunded, the issue of without fault would also be appealable.

C. Defeats the Purposes of Title II or Title XVIII of the Act and Equity and Good Conscience

If it is determined that an individual entitled to Medicare is without fault, we may waive all or part of a recovery against that individual according to SSA regulations at 20 CFR 404.508 ("Defeat the purpose of title II") or 20 CFR 404.509 ("Against equity and good conscience; defined"). SSA's definitions of these terms and the examples cited in which they arise reflect SSA's assessment of how this principle applies to recovery from a social security claimant when the claimant has received more than the correct payment due under title II of the Act. There are no illustrations that explain how to apply this principle to a Medicare overpayment situation. As previously noted, an individual entitled to Medicare and a social security claimant are in distinguishable positions with respect to overpayments. For example, the social security claimant is actually receiving a cash benefit. However, the individual entitled to Medicare, in most cases, receives no direct payment. Consequently, the SSA rules are not always directly transferable to a Medicare overpayment situation and provide no clear guidelines for their application to Medicare situations.

In particular, in the case of a Medicare secondary payer overpayment, transferring the SSA regulations for granting a waiver based on financial hardship or equity and good conscience poses a specific problem. Because the SSA regulations predate the existence of the Medicare secondary payer provisions, they were not written with Medicare secondary payer situations in mind and contain no specific illustrations applying to Medicare secondary payer recoveries. In principle, in the Medicare secondary payer context, there is no basis for the existence of financial hardship because the individual either knows or may reasonably be expected to know from the inception of a claim that Medicare has a priority right of recovery (that is, that we can recover our conditional payments directly from the primary payer or from any entity that received payment, directly or indirectly, from the primary payer).

The facts of a particular circumstance, however, do not always support this position. For example, suppose an individual entitled to Medicare has received a cash settlement as a result of a liability suit after receiving Medicare payment. Subsequently, the individual spends the settlement proceeds without repaying Medicare. Within the framework of the SSA regulations, the overpayment does not result from failure to supply information since Medicare pays even if the individual makes us aware of a pending suit. Therefore, the individual passes the first test of being without fault.

The final settlement payment received by the individual as a result of this liability suit could be small enough that an individual could contend that reimbursing Medicare would cause economic hardship or would be inequitable. Thus, it is possible that the individual would not be required to repay Medicare for this type of overpayment because of the application of the SSA regulations addressing without fault coupled with the SSA definitions of "defeats the purposes of title II or title XVIII" and "against equity

and good conscience." We believe that the current Medicare overpayment regulations should be revised to not preclude recovery of an overpayment in Medicare secondary payer situations, but be written in a way that does not unfairly disadvantage the individual or the Medicare program.

Additionally, a 1990 Court of Appeals decision indicates that SSA's definition of against equity and good conscience may be too narrow for SSA or Medicare issues. In the court case, a social security claimant challenged SSA's waiver denial determination that, although he was without fault in causing the overpayment, recovery would not defeat the purpose of title II or be against equity and good conscience. In an unreported decision, the District Court for the Western District of Washington upheld the waiver denial. However, the Court of Appeals for the Ninth Circuit reversed the decision, holding that requiring the plaintiff to repay the overpayment would be against equity and good conscience. (*Quinlivan* v. *Sullivan*, 916 F.2d 524 (9th Cir. 1990)).

The Court indicated that, although the Act does not define the phrase against equity and good conscience, the Secretary has interpreted it, in 20 CFR 404.509, to be narrowly limited to situations when (1) the claimant changed his or her position for the worse, (2) relinquished a valuable right, or (3) lived in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment.

The Court was of the opinion that the Congress intended to broaden the availability of the waiver (*id.* at 526). Accordingly, the Court concluded that "the meaning of the phrase, 'against equity and good conscience,' cannot be limited to the three narrow definitions set forth in the Secretary's regulations. The Congress intended a broad concept of fairness to apply to waiver requests, one that reflects the ordinary meaning of the statutory language and considers the facts and circumstances of each case" (*id.* at 527). The Court favored the against equity and good conscience interpretation used by the Department of Veterans Affairs (VA) in its regulations at 38 CFR 1.965 (July 1, 1988 edition), published on July 19, 1974 (39 FR 26400) (*id.* at 526 and 527, n.2).

The cited VA regulation indicates that the application of the standard, "equity and good conscience," will be applied when the facts and circumstances in a particular case indicate a need for reasonableness and moderation in the exercise of the Government's rights. Under the VA regulations, equity and good conscience means arriving at a fair decision between the obligor and the Government that is not unduly favorable or adverse to either side.

In making a determination of equity and good conscience, the VA regulation specified that consideration should be given, but should not be limited, to the following elements: (1) Fault of the debtor; (2) balance of faults; (3) undue hardship; (4) defeats the purpose for which benefits were intended; (5) unjust enrichment; and (6) changed position to one's detriment. In applying this single standard for all areas of indebtedness, the VA regulation further indicates that consideration should be given to the elements of (1) fraud or misrepresentation of a material fact, (2) material fault, and (3) lack of good faith; any one of which, if found, would preclude the granting of a waiver.

Because the *Quinlivan* case related to a social security claimant, we are not bound to follow that decision. However, a 1993 District Court decision found that we were not using broad concepts of fairness in reviewing waivers in Medicare secondary payer liability cases, nor had we told our decision makers to "base the waiver determination on the totality of the circumstances." We submitted substantial materials to the court to reflect our actual policies (contrasted with the policies reflected in the SSA regulations) with regard to waiver of recovery in Medicare secondary payer liability cases. However, despite those representations, the court ordered us to formalize these policies by way of written guidelines to ensure their application, instead of the SSA policies, when reviewing whether waiver should be granted under equity and good conscience in Medicare secondary payer liability situations. The court, making reference to the *Quinlivan* case, further ordered that the guidelines incorporate broad concepts of fairness and not limit waivers to the three factual situations listed in 20 CFR 404.509. (*Zinman* v. *Shalala*, Civ. No. 90–20674 (N.D. Cal. September 24, 1993 and November 29, 1993)). The September ruling is reported at 835 F. Supp. 1135 (N.D. Cal. 1993).

As a result of that court ruling, we issued guidelines to all of our regional offices on November 17, 1994. In those guidelines, we incorporated our longstanding interpretation of against equity and good conscience as that principle relates to Medicare overpayments. While the guidelines were issued to apply to Medicare secondary payer liability overpayment situations, we advised that they could also be used as guidance in overpayment situations other than those involving Medicare secondary payer liability cases.

We have always taken the broader view of equity and good conscience that the *Quinlivan* and *Zinman* Courts endorsed. Not only do we find the Courts' reasoning in those cases to be persuasive, we also find the language of the VA regulation to be a useful guide. Accordingly, in formulating standards for applying equity and good conscience to Medicare situations for the guidelines issued in November 1994, we have not only expressed our long-held expansive view of this concept, we have also incorporated, to the extent possible, the VA approach in expressing that policy.

We propose to incorporate into our regulations our current policies regarding when recovery of an overpayment may be waived based on financial hardship. Our current policies are in accordance with SSA's definition of defeat the purposes of title II or title XVIII. Under this proposed regulation, recovery of an overpayment would defeat the purposes of title II or title XVIII when the individual needs substantially all current income and assets to meet ordinary and necessary living expenses.

We propose to consider the individual's current assets and ordinary and necessary living expenses when evaluating requests for waiver based on financial hardship. Ordinary and necessary living expenses would include the following:

- Current living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (for example, life, accident, and health insurance including premiums for Part B Medicare), taxes, and installment payments.
- Current medical, hospitalization, and other related expenses not covered by Medicare or another insurer.
- Expenses for the support of others for whom the individual is legally responsible.
- Other miscellaneous expenses that may reasonably be considered necessary to maintain the individual's current standard of living.

In addition, we propose to include in the regulations examples that demonstrate how the principles of defeat the purposes of title II or title XVIII would be applied in Medicare overpayment situations.

We propose to add regulations that incorporate criteria to be used when determining whether recovery of an overpayment may be waived based on equity and good conscience. Our proposed regulations require that the standard of equity and good conscience would be applied to Medicare

overpayment recoveries using broad concepts of fairness and reviewing the totality of the circumstances in each particular case. We have used as the basis for our proposed regulations both language from the VA regulation on equity and good conscience found at 38 CFR 1.965, which the U.S. Court of Appeals for the Ninth Circuit believes reflects the intent of the Congress, and guidelines that were issued as a result of the Zinman court case (as discussed earlier in this preamble).

Under the proposed regulations, factors to be considered when applying the standard of equity and good conscience include, but are not limited to, the following:

- The amount of the overpayment.
- The size of a liability settlement and the amount the individual would retain if Medicare recovered.
- The degree to which recovery would cause undue hardship for the individual.
- The degree to which Medicare and/or its contractors contributed to causing the overpayment.
- The degree to which the individual contributed to causing the overpayment (even if determined to be without fault in accordance with § 401.355).
- The impact of an accident on the individual, both physically and financially.
- Whether the individual would be unjustly enriched by a waiver of recovery.
- Whether it would be equitable for us to reduce the recovery if the individual is responsible for noncovered accident-related out-of-pocket expenses and/or future accident-related expenses.
- Whether the individual made a personal financial decision based on his or her reliance on erroneous information supplied to the individual by Medicare or SSA, and recovery would change the individual's position to his or her material detriment.

Also, we would provide several Medicare overpayment examples in which waiver of recovery is being sought based on the concepts involved with equity and good conscience to illustrate how those concepts are to be applied.

In some cases an overpayment is made to a without-fault provider or supplier on behalf of a without-fault individual who did not receive the payment. In those situations, we ordinarily would consider recovery from the individual to be inequitable, and would, therefore, waive recovery.

In accordance with section 1870(c) of the Act, we would specify that recovery is deemed to be against equity and good conscience if the overpayment resulted from expenses incurred for items or services for which payment may not be made under Medicare by reason of the provisions of 1862(a)(1) or (a)(9) of the Act (reasonable and necessary or custodial care), and if the Secretary's determination that the payment was incorrect was made after the third year following the year in which notice of that payment was sent to the individual.

The basic concepts embodied in the principle of waiver based on equity and good conscience assume that an individual did not intentionally cause an overpayment. Therefore, we propose that applying the equity and good conscience standard for waiving recovery does not apply if we determine that the individual committed fraud, misrepresentation, or some other action or omission that indicates the individual's lack of good faith in causing an overpayment.

D. Waiver Policy With Regard to Liability Settlement Agreements and Stipulations

In general, Medicare policy requires recovering payments from liability awards or settlements, whether a settlement arises from a personal injury action or a survivor action, without regard to how a settlement agreement stipulates disbursement should be made. This requirement also applies to situations in which the settlements do not expressly address damages for medical expenses. Since liability payments are usually based on the injured or deceased person's medical expenses, liability payments are considered to have been made "with respect to" medical services related to the injury even when the settlement does not expressly include an amount for medical expenses. To the extent that Medicare has paid for these services, the law obligates us to seek recovery of Medicare payments.

The only situation in which we recognize allocations of liability payments to nonmedical losses is when the payment is based on a court order on the merits, that is, the court makes a substantive decision on the amounts to be awarded. If the court specifically designates amounts that are for the reimbursement of pain and suffering or other amounts not related to medical services, we will accept the court's designation and not seek recovery from portions of court awards that are designated as payment for losses other than medical services.

Conversely, we do not generally grant waivers if an individual obtains a settlement that is expressly awarded for medical expenses. However, we believe there are circumstances in which waiver could be justified. For example, a situation could arise in which an individual's injury was great but the award of damages was small, or in which the individual incurred bona fide medical expenses (other than deductibles, premiums, and coinsurance) that were not reimbursed by Medicare; that is, out-of-pocket medical expenses. We believe the criteria we propose for equity and good conscience are broad enough that these situations will be taken into consideration when determining whether waiver of recovery should be granted.

E. Waiver Policy With Regard to Estates

Under current law, a deceased individual's estate may request a waiver of adjustment or recovery of an overpayment when the estate (or the now-deceased individual) has effected a liability recovery. Although in these situations an estate (or the now-deceased individual) may be found to have been without fault with respect to notifying us of the third party recovery, it is generally difficult to satisfy the second test for waiver—that recovery from the estate would defeat the purposes of title II or title XVIII or be against equity and good conscience. Because the individual is deceased, he or she does not need the monies to meet ordinary and necessary living expenses or medical expenses. In addition, it is unlikely that the estate would warrant the money based on an argument of detrimental reliance. Therefore, waiver is generally not applied in these situations.

However, when a title II dependent survives a deceased individual (who is without fault), and Medicare's recovery or adjustment of an overpayment from the estate would be made by decreasing payments to the title II dependent, situations could arise in which waiver of adjustment or recovery of the overpayment would be appropriate. Therefore, we propose adding a provision to the regulations that would permit a waiver for an estate if the estate (and the individual) were without fault and the individual had a surviving title II dependent. A waiver would be granted in these situations if recovery from the estate would be made by decreasing payments to the title II dependent and the recovery would defeat the purposes of title II or title XVIII or would be against equity and good conscience.

IV. Provisions of the Proposed Regulations

The existing regulations at §§ 405.301 through 405.359 would be removed.

With the exception of § 405.356, these sections would be replaced by proposed §§ 401.301 through 401.370. The remaining sections of subpart C of part 405 (§§ 405.370 through 405.380) would be redesignated and moved into subpart D of part 401 as §§ 401.375 through 401.396.

These proposed regulations would supersede SSA criteria for Medicare purposes. SSA criteria would no longer have any application to recovering Medicare overpayments.

Generally, this proposed rule clarifies the explicit criteria and circumstances under which a provider, supplier, or individual will be relieved of liability for a Medicare overpayment. Thus, we are proposing no changes to current carrier and intermediary liability in instances when an overpayment results from a carrier or intermediary error. We are aware, however, of the perception that carriers and intermediaries may not be held accountable in instances when an overpayment results from their error. Therefore, we are requesting comments on proposed changes to our current carrier and intermediary standards that might introduce a higher level of accountability when overpayments are the result of carrier or intermediary errors, regardless of whether a provider or supplier was without fault.

As part of the proposed changes to the regulations, we would describe "recovery" to include "adjustment" as one type of recovery, rather than listing it separately, as in section 1870 of the Act. Under Medicare operations, adjustment is one way we can recover an overpayment from an individual who is found liable for that overpayment. However, we have alternative ways of recovering an overpayment that we often use before adjusting title II or railroad retirement benefits. Therefore, we would include adjustment as one of several ways we may recover from an individual (or his or her estate).

In addition, we would make certain technical changes to the regulations.

Once these proposed regulations are published as final, conforming changes will be made to the appropriate regulations in 20 CFR part 404 to remove references to title XVIII as they relate to without fault.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, we believe the information collection requirements referenced in this proposed rule, as summarized below, are exempt from the Paperwork Reduction Act of 1995 for the following reasons:

The requirements in this proposed rule are either facts or opinions obtained or solicited through non-standardized follow-up questions designed to clarify responses to approved collections of information, initiated on an individual basis, and/or are performed in the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or organizations (see title 5 § 1320.3(c), 1320.3(h)(9), and/or 1320.4(a)(2)).

Section 401.352 Waiver of Recovery of Overpayment From Individuals

Section 401.352 requires an individual desiring a waiver of recovery of an overpayment to request the waiver within 60 days from the date on the written notification from HCFA that he or she is liable for the overpayment.

Section 401.364 Without Fault and Medicare Secondary Payer (MSP) Obligations

Section 401.364 requires an individual to give notice of receipt of a payment from an entity that is primary to Medicare and requires an individual desiring a waiver of recovery of an MSP obligation to request the waiver within 60 days from receipt of written notification from HCFA that he or she is liable for the obligation.

Section 411.23 Individual's Cooperation

When HCFA makes conditional payments, § 411.23 requires an individual to notify HCFA of the progress and final outcome of the liability claim. The individual must notify the intermediary or carrier within 60 days of filing a claim with an entity that is primary to Medicare and notify HCFA within 30 days of receipt of payment from an entity primary to Medicare.

Organizations and individuals desiring to submit comments should send them to both the following addresses:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: HCFA–1719–P.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

VI. Regulatory Impact Statement

A. Introduction

This proposed rule clarifies our right and responsibility to recover overpayments, and the conditions under which recovery of overpayments may be waived. Under the Medicare statute, when a Medicare overpayment occurs, and a provider or supplier is found to be without fault, the liability is passed on to the individual. Medicare then seeks recovery from the individual or waives the recovery.

Our present regulations do not clearly differentiate an individual's responsibilities from provider and supplier responsibilities with regard to overpayment liability and recovery. This proposed rule describes the conditions for determining who is at fault for the overpayment; specifies criteria for determining the liability of providers, suppliers, and individuals; and describes the circumstances under which recoveries from individuals can be waived.

In addition, this proposed rule would provide for the administrative appeals process to include determinations when a provider or supplier is found to be at fault in causing an overpayment. Also, this proposed rule more specifically defines without fault with respect to Medicare secondary payer situations as well as the conditions for waiver of adjustment or recovery of Medicare overpayments in Medicare secondary payer situations.

We expect the main effect of this proposal would be to prevent some providers and suppliers from claiming without-fault status. This could reduce the number of overpayment liabilities passed on to individuals and result in a slight increase in the amount of money recovered. We estimate that this proposed rule would result in

additional overpayment recoveries for 5 fiscal years as follows:

ESTIMATED ADDITIONAL RECOVERIES FROM THE MEDICARE PROGRAM PARTS A AND B

[In Millions]

1996	1997	1998	1999	2000
$7	$13	$15	$16	$18

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) we generally prepare a regulatory flexibility analysis unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, all providers and suppliers are considered to be small entities. Individuals and Medicare contractors are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the Regulatory Flexibility Act. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would add regulations that are specifically applicable for determining without fault in general Medicare overpayment situations, as well as for obligations resulting from Medicare secondary payer conditional payments.

Under this proposed rule, a provider or supplier would be required to notify the Medicare contractor in writing within 60 days if any payment exceeds the usual compensation for an item or service under Medicare. A Medicare contractor would be required to respond to a provider or supplier within 120 days of receipt of a written inquiry from the provider or supplier questioning the correctness of a Medicare payment amount.

For Medicare secondary payer situations, an individual pursuing a claim for a liability settlement or damage award for illness or injuries sustained in an accident would be required to notify the Medicare contractor within 60 days of filing a suit or a claim with an insurer. In addition, an individual would be required to notify the Medicare contractor within 30 days of receiving a payment from a liability insurer or, in certain circumstances, direct payment for a tort-feasor.

This proposed rule would not place an unreasonable burden on individuals, providers, suppliers, or Medicare contractors. We believe that the time required for individuals, providers, suppliers, or Medicare contractors to comply with the provisions of this proposed rule would be minimal. As in the past, providers and suppliers would be required to exercise reasonable care in billing for and accepting payment from Medicare.

For these reasons, we have determined that this proposed rule would not result in a significant economic impact on a substantial number of small entities and would not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for either the Regulatory Flexibility Act or section 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

VI. Other Information

A. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. However, we will consider all comments that are received by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 466

Grant programs-health, Health care, Health facilities, Health professions, Peer Review Organizations (PRO), Reporting and recordkeeping requirements.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PRO), Reporting and recordkeeping requirements.

42 CFR Part 493

Grant programs-health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended, under the authority of sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), as follows.

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

A. Part 401 is amended by adding a new subpart D to read as follows:

Subpart D—Recovery of Overpayments, Suspension of Payment, and Repayment of Scholarships and Loans

General Provisions

401.301 Basis and scope.
401.303 Definitions.

Liability for Payments to Providers and Suppliers and Handling of Incorrect Payments

401.305 Individual's liability for incorrect payments.

Medicare Debts Arising from an Overpayment to a Provider or to a Supplier that Received Payment on Behalf of an Individual

401.310 Overpayments.

401.320 Liability of a provider or a supplier.
401.323 Determining without fault for a provider or a supplier.
401.326 When a provider or a supplier is relieved of liability.
401.329 Recovery of overpayment from providers or suppliers: General rule.

Medicare Debts Arising from an Overpayment to an Individual

401.340 Liability of an individual.
401.343 Overpayment limitation for the individual.
401.346 Recovery of overpayment from the individual.
401.349 Adjustment against an individual's title II or railroad retirement benefits.
401.352 Waiver of recovery of overpayment from individuals.
401.355 Determining without fault for an individual.
401.358 Defeat the purposes of title II or title XVIII of the Act.
401.361 Equity and good conscience.
401.364 Without fault and Medicare Secondary Payer (MSP) obligations.
401.367 Initial determination.
401.370 Liability of certifying or disbursing officer.

Suspension of Payment to Providers and Suppliers and Collection and Compromise of Overpayments

401.375—401.390 [Reserved]

Interest

401.393 [Reserved]

Repayment of Scholarships and Loans

401.396 [Reserved]

Subpart D—Recovery of Overpayments, Suspension of Payment, and Repayment of Scholarships and Loans

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

General Provisions

§ 401.301 Basis and scope.

(a) *Statutory basis.* This subpart is based on the indicated provisions of the following sections of the Act:

1815—Payment to providers of services (Part A).

1833—Payment of benefits (Part B).

1842—Use of carriers for administration of benefits.

1848—Payment for physicians' services.

1866—Agreements with providers of services.

1870—Overpayment on behalf of individuals and settlement of claims for benefits on behalf of deceased individuals.

1879—Limitation on liability of individual if Medicare claims are disallowed.

1886—Payment to hospitals for inpatient hospital services.

1892—Offset of payments to individuals to collect past-due obligations arising from breach of scholarship and loan contracts.

(b) *Scope.* (1) This subpart sets forth the policies and procedures for processing incorrect payments and recovering overpayments under the Medicare program and for offsetting payments to collect past-due obligations arising from breach of scholarship and loan contracts.

(2) When the term "HCFA" is used in reference to making determinations, it includes intermediaries, carriers, or PROs, as appropriate.

§ 401.303 Definitions.

(a) *Person* (for purposes of this subpart) means an individual, a trust or estate, a partnership, or a corporation.

(b) *Supplier* has the meaning given in § 400.202 of this chapter.

Liability for Payments to Providers and Suppliers and Handling of Incorrect Payments

§ 401.305 Individual's liability for incorrect payments.

(a) In accordance with section 1870(a) of the Act, any payment made under title XVIII of the Act to any provider or supplier with respect to any item or service furnished an individual is regarded as a payment to the individual, and recovery is made in accordance with §§ 401.346 through 401.352 if any of the following conditions exists:

(1) More than the correct amount is paid to a provider or supplier and the intermediary, the carrier, or HCFA determines that—

(i) Within a reasonable period of time, the excess over the correct amount cannot be recouped from the provider or supplier, or

(ii) The provider or supplier was without fault with respect to the payment of the excess.

(2) A payment has been made to a provider for inpatient hospital services furnished to a noneligible individual before notification of noneligibility, in accordance with the provisions described in section 1814(e) of the Act.

(b) For purposes of paragraph (a)(1)(ii) of this section, a provider or supplier is, in the absence of evidence to the contrary, deemed to be without fault if the determination by HCFA, that more than the correct amount was paid, was made after the third year following the year in which notice was sent to the individual that the amount had been paid.

Medicare Debts Arising From an Overpayment to a Provider or to a Supplier That Received Payment on Behalf of an Individual

§ 401.310 Overpayments.

(a) *Definition.* An overpayment consists of Medicare funds a provider, a supplier, or an individual has received in excess of amounts payable under the Medicare statute and regulations.

(b) *Types of overpayments.* Overpayments are of the following types:

(1) Overpayment to a provider that received payment on behalf of an individual (including an overpayment resulting from payment for inpatient hospital services furnished to a noneligible individual before notification of noneligibility in accordance with section 1814(e) of the Act and an overpayment to a provider determined from a cost report under part 413 of this chapter or under the prospective payment systems (PPS) included in part 412 of this chapter).

(2) Overpayment to a supplier that received payment on behalf of an individual.

(3) Direct overpayment to an individual or to a person acting on behalf of an individual.

(c) *Examples of causes of Medicare overpayments.* Examples of how Medicare overpayments occur include, but are not limited to, the following:

(1) Payments made by Medicare for noncovered services.

(2) Medicare payment in excess of the allowable amount for an identified covered service.

(3) Errors and nonreimbursable expenditures in cost reports.

(4) Duplicate payments.

(5) Medicare payment when another entity had the primary responsibility for payment.

(d) *When an overpayment is considered a debt.* (1) *General Overpayments.* Once a determination and any adjustments in the amount of the overpayment have been made, the remaining amount is a debt owed to the United States Government.

(2) *Medicare Secondary Payer (MSP) obligations.* Potential debts arise under the MSP provisions when an individual recovers payment from an entity that had the primary responsibility for payment. Obligations to refund Medicare under the MSP provisions are addressed in part 411, subparts B through F of this chapter and § 401.364.

§ 401.320 Liability of a provider or a supplier.

(a) In accordance with section 1870(b), unless found to be without

fault, as described in this subpart, a provider or a supplier that receives Medicare payment with respect to items or services furnished to an individual is liable for any overpayment resulting from that payment.

(b) HCFA makes determinations whether providers or suppliers are without fault with respect to overpayments.

§ 401.323 Determining without fault for a provider or a supplier.

(a) *General rule.* In accordance with section 1870(b) of the Act, a provider or a supplier is without fault if—

(1) Based on the criteria specified in paragraph (b) of this section, the facts show that the provider or the supplier exercised reasonable care in billing for and accepting Medicare payment; and

(2) Based on the criteria specified in paragraph (c) of this section, the facts show that the provider or the supplier either—

(i) Did not know, and could not reasonably have been expected to know, that Medicare payment was in excess of amounts payable under the Medicare statute and regulations and, therefore, accepted payment based on a reasonable assumption that the payment was correct; or

(ii) Did know, or could reasonably have been expected to know, that Medicare payment was in excess of amounts payable under the Medicare statute and regulations but questioned the appropriate intermediary or carrier in writing, at the correct address, within 60 days of receipt of the excess payment, and—

(A) Relied on a written response from the intermediary or carrier that stated that the Medicare payment was correct; or

(B) Failed to receive a response from the intermediary or carrier within 120 days of the intermediary's or carrier's receipt of the inquiry.

(b) *Exercising reasonable care in billing.* Exercising reasonable care in billing includes—

(1) Making full disclosure of all material facts; and

(2) Complying with each applicable provision specified in subpart C of part 424 of this chapter, including supplying all necessary information on the billing form (or through electronic media), to ensure correct payment by the intermediary or carrier.

(c) *Criteria for determining that a provider or a supplier knew that the payment was an excess payment.* A provider or a supplier is considered to have known that the Medicare payment was in excess of amounts payable under the Medicare statute and regulations if any one of the conditions specified in paragraphs (c)(1) through (c)(3) of this section is met.

(1) *Knowledge based on experience, actual notice, or constructive notice.* It is clear that the provider or the supplier knew, or could have been expected to know, that Medicare payment was in excess of amounts payable under the Medicare statute and regulations on the basis of—

(i) Final publication (including any published correction notice) of payment amounts in official source documents, for example, the **Federal Register** (except in very limited circumstances, as provided for in paragraph (h)(1) of this section);

(ii) Receipt of HCFA notices, either written or electronic, including manual issuances, bulletins or other written guides, or directives from intermediaries, carriers, or PROs; or

(iii) Experience with Medicare payment amounts for similar or reasonably comparable items or services.

(2) *Notice from the PRO, intermediary, or carrier.* Before the items or services were furnished, the PRO, intermediary, or carrier had informed the provider or supplier of the correct Medicare payment for the items or services furnished or for similar or reasonably comparable items or services.

(3) *Notice from the provider or supplier to the individual.* Before the items or services were furnished, the provider or the supplier informed the individual of the correct Medicare payment for the items or services furnished, or for similar or reasonably comparable items or services.

(d) *Intermediary or carrier fault.* Determination of without fault, as specified in paragraph (a) of this section, pertains solely to the liability of the provider or the supplier. Even when HCFA's or an intermediary's or carrier's actions cause or contribute to the overpayment, that fact does not relieve the provider or the supplier from liability for repayment if the provider or the supplier is not without fault.

(e) *Intermediary and carrier action.* (1) The Medicare intermediary or carrier, as appropriate, must provide a written response within 120 days of receipt of a correctly addressed written inquiry regarding the correctness of a Medicare payment amount. If the intermediary or carrier informs the provider or the supplier that the payment amount is correct, or fails to reply within 120 days, the provider or the supplier is without fault even if the intermediary or carrier should later discover that the questioned payment amount was an overpayment.

(2) The 120-day limitation for the response applies only to an evaluation of the correctness of the payment amount. If the evaluation indicates that the payment amount is incorrect, the intermediary or carrier must send a notice to that effect to the provider or supplier within the 120-day period. Once a timely notice has been sent, the intermediary or carrier may determine the precise amount of the overpayment and initiate recovery procedures without regard to the 120-day limitation.

(f) *When a provider or a supplier is considered to be not without fault.* There are some circumstances when a provider or a supplier will never be without fault. A provider or a supplier is not without fault if any of the following conditions exist:

(1) It did not exercise reasonable care in billing for and accepting payment, in accordance with criteria specified in paragraph (b) of this section.

(2) It accepted a Medicare payment that it knew, or could reasonably have been expected to know, was in excess of amounts payable under the Medicare statute and regulations, as determined by criteria specified in paragraph (c) of this section.

(3) It has already been determined, in accordance with the limitation on liability provisions of section 1879 of the Act and § 411.406 of this chapter, that the provider or the supplier knew, or could reasonably have been expected to know, that the specific items or services (for which a without fault determination is being made) would not be paid for by Medicare.

(4) The overpayment resulted from a payment that did not conform to the applicable published schedule payment amount, as explained in paragraph (h)(2) of this section.

(5) The overpayments resulted from payment for noncovered services that were a part of a pattern of billing for similar services that the provider or the supplier knew or should have known were noncovered.

(6) The overpayment resulted from the failure of the provider or the supplier, in making a claim for payment, to comply with a provision of subpart C of part 424 of this chapter.

(7) The overpayment resulted from a payment by a workers' compensation plan, a liability or no-fault insurer, or group health plan for the same service paid for by Medicare.

(8) Fraud or similar fault has been determined. Similar fault includes situations when a provider or supplier obtains a provider number from a carrier

or intermediary while excluded from the Medicare program and when a provider or supplier hires and seeks reimbursement for services performed by excluded individuals.

(g) *Overpayments that result from Medicare provider cost report errors.* The without fault provisions in this section do not apply to overpayments that result from aggregate payment issues, such as Medicare provider cost report errors.

(h) *Special rule for physician fee schedule and prospective payment system (PPS) diagnosis-related group (DRG) schedule and Medicare fee or rate schedule amounts.* HCFA publishes fee schedules that establish payment amounts for physician services and rates of payment for services furnished under the hospital PPS as indicated by a specific DRG. Other fee schedules or rates of payment may be established from time to time. Except as provided in paragraph (h)(1) of this section, the final publication of these payment amounts in official source documents is evidence that a provider or a supplier could have been expected to know that the payment amount was in excess of amounts payable under the Medicare statute and regulations, as specified in paragraph (c)(1)(i) of this section.

(1) In the case of an error in a schedule of payment amounts published in the **Federal Register** (for which no correction notice has been published), a provider or a supplier that can show, based on criteria specified in paragraphs (c)(1)(ii) or (c)(1)(iii), (c)(2), and (c)(3) of this section, that it did not know, and could not have been expected to know, that a Medicare payment based on the erroneous published schedule of payment amounts was in excess of amounts payable under the Medicare statute and regulations, is without fault with respect to the resulting overpayment.

(2) When an overpayment occurs because a payment does not conform to the applicable published schedule, a provider or a supplier is not without fault.

(i) *Without fault presumption: Three-year rule.* In accordance with section 1870(b) of the Act, if HCFA determines that more than the correct amount was paid to a provider or supplier, and this determination was made after the third calendar year following the year in which the notice was sent to the provider or supplier that payment had been made (or, in the case of Part A benefits, approved), the overpaid provider or supplier is considered without fault unless one of the following conditions exist:

(1) The overpayment resulted from a payment that did not conform to the applicable published schedule payment amount, as explained in paragraph (h)(2) of this section.

(2) The overpayment resulted from payment for noncovered services that were a part of a pattern of billing for similar services that the provider or the supplier knew, or should have known, were noncovered.

(3) The overpayment resulted from the failure of the provider or the supplier, in making a claim for payment, to comply with a provision of subpart C of part 424 of this chapter.

(4) The overpayment resulted from a payment by a workers' compensation plan, a liability or no-fault insurer, or group health plan for the same service paid for by Medicare.

(5) The overpayment resulted from fraud or similar fault. Similar fault includes situations when a provider or supplier obtains a provider number from a carrier or intermediary while excluded from the Medicare program and when a provider or supplier hires and seeks reimbursement for services performed by excluded individuals.

§ 401.326 When a provider or a supplier is relieved of liability.

A provider or a supplier is relieved of liability for refunding an overpayment when it is found to be without fault under the criteria in this subpart. When a provider or a supplier is determined to be without fault, liability for the overpayment shifts to the individual. See § 401.340 (concerning the liability of an individual).

§ 401.329 Recovery of overpayment from providers or suppliers: General rule.

When it is determined that a provider or a supplier is liable for an overpayment, HCFA uses the following methods to recover the overpayment:

(a) Direct collection.

(b) Recoupment or offset against any monies that HCFA owes the provider or supplier.

(c) Offset against a Federal tax refund under authority of 31 U.S.C. 3720A.

Medicare Debts Arising From an Overpayment to an Individual

§ 401.340 Liability of an individual.

(a) *Direct payment imputed.* In accordance with section 1870(a) of the Act, a Medicare payment made to a provider or a supplier with respect to any item or service furnished to an individual is considered as if it were a payment to the individual.

(b) *Scope of individual's potential liability.* In accordance with section 1870(b) of the Act, subject to the provisions in §§ 401.346 through 401.352, an individual is liable for an overpayment if any of the following situations occur:

(1) An amount is paid to an individual that is more than the amount payable under the Medicare statute and regulations.

(2) An amount is paid to a provider or a supplier for items or services furnished to the individual that is more than the amount payable under the Medicare statute and regulations, and HCFA determines that—

(i) The overpayment cannot be recouped from the provider or the supplier within a reasonable period of time; or

(ii) The provider or the supplier was without fault, as described in § 401.323, with respect to the overpayment.

(3) Payment was made to a provider for items and services furnished to an individual under the provisions described in section 1814(e) of the Act ("Payment for Inpatient Hospital Services Prior to Notification of Noneligibility").

§ 401.343 Overpayment limitation for the individual.

If an overpayment has been made to a provider or a supplier, the individual is liable only to the extent that he or she has benefited from that payment, for example, when the Medicare payment exceeds the charges for which the individual was legally responsible.

§ 401.346 Recovery of overpayment from the individual.

If an individual is liable for an overpayment (that is, a payment described in § 401.340(b)), recovery, to the extent of the liability, is made in one of the following ways:

(a) By direct collection against the individual (or his or her estate if the individual has died).

(b) By adjustment of title II or railroad retirement benefits, in accordance with section 1870(b)(3) and 1870(b)(4) of the Act, in one of the following ways:

(1) By decreasing any payment under title II of the Act or under the Railroad Retirement Act of 1974 (45 U.S.C. 231) to which the individual is entitled.

(2) By decreasing, if the individual has died before recovery is completed, any payment under title II of the Act or under the Railroad Retirement Act of 1974 that is based on the individual's earnings record (or compensation) and payable to the individual's estate or to any other person.

(c) By offset against a Federal tax refund under authority of 31 U.S.C. 3720A.

(d) By applying the requirements and procedures that implement the Federal

Claims Collection Act (FCCA) (31 U.S.C. 3711) with respect to Medicare payments and the general FCCA regulations set forth at § 401.387 and subpart F of this part. If HCFA's regulations fail to address a particular issue, refer to 45 CFR part 30.

§ 401.349 Adjustment against an individual's title II or railroad retirement benefits.

(a) *Certification of amount that will be adjusted.* In accordance with section 1870(b) of the Act, as soon as practicable after any adjustment against an individual's title II or railroad retirement benefits is determined to be necessary, HCFA certifies to SSA the amount of the overpayment or payment with respect to which the adjustment is to be made. If the adjustment is to be made by decreasing subsequent payments under the railroad retirement benefits, the certification is made to the Railroad Retirement Board.

(b) *Procedures for recovery by adjustment of benefits.*

(1) The procedures applied in making an adjustment to title II benefits are the applicable procedures of 20 CFR 404.502.

(2) The procedures applied in making an adjustment to railroad retirement benefits are the applicable procedures of 20 CFR part 367.

§ 401.352 Waiver of recovery of overpayment from individuals.

(a) The provisions of § 401.346 are not applied and there is no recovery of an overpayment made under § 401.340(b) if—

(1) The overpayment has been made with respect to an individual who is without fault, as specified in § 401.355, or the recovery would be made by decreasing payment to which another person who is without fault is entitled, as provided in section 1870(c) of the Act; and (2) The recovery would either—

(i) Defeat the purposes of title II or title XVIII of the Act, as specified in § 401.358; or

(ii) Would be against equity and good conscience, as specified in § 401.361.

(b) An individual desiring a waiver of recovery of an overpayment must request the waiver within 60 days from the date on the written notification from HCFA that he or she is liable for the overpayment.

(c) A waiver granted in accordance with § 401.358 or § 401.361 may be granted partially or in full.

(d) HCFA determines whether waiver of recovery of an overpayment for which an individual is liable under this subpart will be granted.

(e) A waiver of recovery of an overpayment may be granted to a deceased individual's estate if all of the following conditions exist:

(1) The estate and the deceased individual are without fault.

(2) The deceased individual is survived by a title II dependent.

(3) Recovery of the overpayment from the estate would be made by decreasing payments to the title II-dependent. (4) The recovery would defeat the purposes of title II or title XVIII, as defined in § 401.358, or would be against equity and good conscience, as defined in § 401.361.

§ 401.355 Determining without fault for an individual.

(a) *General.* In accordance with section 1870(c) of the Act, a determination of without fault pertains to the liability of the individual. Even when HCFA's actions cause or contribute to the overpayment, that fact does not relieve the individual from liability for repayment if the individual is not without fault. In determining whether a individual is without fault, HCFA considers all pertinent circumstances, including the individual's age, intelligence, education, and physical and mental condition. (See § 401.364(d) for application of without fault for an individual with respect to a Medicare payment in an MSP situation.)

(b) *Reasonable care standard.* An individual is considered without fault with respect to an overpayment made to him or her, or to a provider or a supplier on his or her behalf, if the individual has exercised reasonable care in requesting and accepting Medicare payment. The individual, or other person acting on behalf of the individual, has exercised reasonable care when he or she has—

(1) Accepted a payment that the individual, or other person acting on behalf of the individual, did not know, or could not reasonably have been expected to know, was incorrect;

(2) Accepted a payment because of reliance on erroneous written information from an official source within HCFA, SSA, or a Medicare intermediary or carrier with respect to the interpretation of a pertinent provision of the Act or implementing regulations; or

(3) Made a reasonable assumption, based on available information including, but not limited to, Medicare instructions and regulations, that the payment was correct.

(c) *When an individual is considered to be not without fault.* There are some circumstances in which an individual will never be without fault. An individual is considered to be not without fault for an overpayment when the individual, or other person acting on behalf of the individual, has—

(1) Received prior written notice that a particular item or service was not covered or paid for by Medicare;

(2) Made an incorrect statement or withheld information to obtain benefits that were not due the individual;

(3) Accepted a payment that he or she knew or should have known was not due; or

(4) Received a prior determination, in accordance with the limitation on liability provisions in section 1879 of the Act and § 411.404 of this chapter, that he or she knew, or could reasonably have been expected to know, that the specific items or services (for which a without fault determination is being made) would not be paid for by Medicare.

§ 401.358 Defeat the purposes of title II or title XVIII of the Act.

(a) *General.* The standard of defeat the purposes of title II or title XVIII, contained in section 1870(c) of the Act, means that recovery of all or part of the overpayment frustrates the purposes of benefits under these titles by depriving an individual (or surviving title II dependent) of income required for ordinary and necessary living expenses.

(b) *Ordinary and necessary living expenses.* For purposes of this subpart, an individual's ordinary and necessary living expenses include the following expenses:

(1) Current living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (for example, life, accident, and health insurance, including premiums for Supplementary Medical Insurance benefits under title XVIII and premiums for Medigap insurance), taxes, and installment payments.

(2) Current medical, hospitalization, and other related expenses not covered by Medicare or another insurer.

(3) Expenses for the support of others for whom the individual is legally responsible.

(4) Other miscellaneous expenses that may reasonably be considered necessary to maintain the individual's current standard of living.

(c) *Example.* An individual entitled to Medicare, who was also receiving title II benefits, was injured in a slip and fall accident. He pursued a liability suit and received a settlement. However, after a pro rata share of procurement costs were deducted, he was left with an amount that was smaller than, or close to, Medicare's claim amount. As a result of expenses related to the accident, he has a monthly budgetary shortfall and does not have savings. In

addition, the individual has out-of-pocket medical expenses. If Medicare were to recover the overpayment by adjusting the individual's title II benefit, he would be deprived of income necessary for ordinary and necessary living expenses. Assuming that the individual is without fault, his liability for the overpayment may be waived partially or in full based on financial hardship. (The fact that the individual is left with a settlement amount that is smaller, or close to, what Medicare would recover does not automatically permit waiver of the recovery under this regulation. The final determination would depend on the total amount of the individual's settlement and his other financial circumstances.)

§ 401.361 Equity and good conscience.

(a) *General rule.* The standard of equity and good conscience, contained in section 1870(c) of the Act, is applied to title XVIII overpayment recoveries using broad concepts of fairness and reviewing the totality of an individual's circumstances in each particular case.

(b) *Factors to be considered.* In applying the standard of equity and good conscience, factors to consider include, but are not limited to, the following:

(1) The amount of the overpayment.

(2) The size of a liability settlement and the amount the individual would retain if Medicare recovered.

(3) The degree to which recovery would cause undue hardship on the individual.

(4) The degree to which Medicare and/or its contractors contributed to causing the overpayment.

(5) The degree to which the individual contributed to causing the overpayment (even if determined to be without fault in accordance with § 401.355.

(6) The impact of an accident on the individual both physically and financially.

(7) Whether the individual would be unjustly enriched by a waiver of recovery.

(8) If the individual is responsible for noncovered accident-related out-of-pocket expenses and/or future accident-related expenses, whether it would be equitable for Medicare to reduce its recovery.

(9) Whether the individual made a personal financial decision based on his or her reliance on erroneous information supplied to the individual by Medicare or SSA, and recovery would change the individual's position to his or her material detriment.

(c) *Examples in which waiver of recovery is being sought based on the concepts involved with equity and good conscience.* Assuming that the individual is without fault in accordance with § 401.355, the following examples illustrate situations in which waiver of recovery is sought based on the concepts involved with equity and good conscience and how those concepts are to be applied. The purpose of these examples is to illustrate both the application of the basic principles of the equity and good conscience standard and that each individual case must be evaluated on the basis of its particular facts and circumstances.

Example 1

Facts: As a result of an accident, an individual's leg was amputated below the knee, and he was confined to a nursing home. He filed suit for the injuries and damages he suffered as a result of the accident. The settlement he received was just a few hundred dollars more than Medicare's claim amount (after a pro rata share of procurement costs were deducted). The individual has substantial outstanding medical bills that will not be reimbursed by Medicare or another insurer.

Analysis: In determining whether waiver may be granted on the basis of equity and good conscience, HCFA may take into consideration that the accident has had a significant impact on the individual, both physically and financially, in that he must not only deal with the physical trauma of the leg amputation, but also with being confined to the nursing home with its resultant increased nursing care costs. In addition, the individual will retain only a few hundred dollars of his settlement if Medicare seeks full recovery, and will still have substantial remaining medical bills he will be responsible to pay. This situation could cause undue hardship for the individual.

Action: Given the significant impact that the accident has had on the individual, both physically and financially, HCFA may find that it is against equity and good conscience to recover and may grant a full waiver.

Example 2

Facts: As a result of an accident, a 26-year-old individual is rendered a ventilator-dependent quadriplegic. (The individual was eligible for Medicare prior to the accident because of a disabling condition that occurred several years ago; however, he had been able to care for himself without outside assistance.) The individual pursued a liability claim after the accident and received a settlement that was twice the amount of Medicare's potential claim (after a pro rata share of procurement costs were deducted). The individual needs all of his income and settlement proceeds to finance 24-hour nursing care, upon which he will be totally dependent for the remainder of his lifetime, and to enable him to live independently (outside of an institution). In addition, the individual will have future unavoidable accident-related expenses that will not be reimbursed by Medicare or another insurer.

Analysis: In determining whether waiver may be granted on the basis of equity and good conscience, several factors involved in this case should be considered. The individual's young age should be considered as it relates to the expense of being totally dependent on 24-hour nursing care for the remainder of his lifetime. Moreover, he is a ventilator-dependent quadriplegic. Additionally, although he received a settlement that was twice the amount of Medicare's potential recovery, he has substantial accident-related expenses and is likely to have future out-of-pocket expenses that will not be covered by Medicare or another insurer.

Action: HCFA may find that it is against equity and good conscience to recover, and grant full waiver based on the various factors involved in this case. Although the settlement received by the individual is more than Medicare's potential recovery, consideration must be given to the extent of his disability, his need for lifetime 24-hour nursing care, and the future accident-related expenses he is likely to incur.

Example 3

Facts: After being notified in writing by an SSA official that she was eligible for title II and title XVIII benefits, the individual dropped her existing health insurance based on the prospect of receiving health insurance coverage under Medicare. One year later, it was discovered that, due to an error by SSA, her eligibility status was erroneous because she did not have enough qualifying quarters of covered employment under the Act to obtain the required insured status. During that year, the individual was hospitalized; and a significant amount of Medicare benefits was paid on her behalf. Because the individual dropped her previous health insurance coverage, Medicare was her only source of health care coverage during this time. The individual's financial situation is such that recovery of the overpayment would change her financial position for the worse.

Analysis: In determining whether waiver may be granted on the basis of equity and good conscience, HCFA may consider several factors. The fact that the individual made a personal financial

decision based on her reliance on erroneous information supplied by SSA warrants significant consideration. This, in turn, raises the question of whether recovery would change the individual's position to her material detriment, as well as the degree to which she contributed to the overpayment. Since she did not know that she was not entitled to receive the Medicare services (and, in fact, was told otherwise by SSA), it appears that she did nothing to actually contribute to the overpayment other than avail herself of services to which she believed she was entitled.

Action: In this situation, recovery may be waived as against equity and good conscience because the individual, based on erroneous information provided by SSA, relinquished her right to payment from another source, and recovery would change her position to her material detriment.

Example 4

Facts: An individual sustained injuries in an automobile accident that rendered her incapable of operating a motor vehicle unless the vehicle was modified for use by a handicapped person. Medicare made conditional payments on the individual's behalf. The individual filed suit for the injuries and damages she suffered as a result of the accident and received a settlement that was about equal to the amount of Medicare conditional payments made on her behalf. The individual submitted documentation demonstrating that all of the money she received in the settlement was used to purchase a modified vehicle required as a result of the accident and requested a waiver of recovery of the overpayment.

Analysis: If Medicare seeks full recovery, the individual will likely have to sell her modified vehicle to repay Medicare. This modified vehicle is necessary because of the injuries she sustained in the accident and, like the car in which she had the accident, is her only means of transportation. Selling the modified vehicle to repay Medicare would cause her to be without transportation and would place her in a worse position than before the accident. Based on this consideration, and the significant physical impact that the accident has had on the individual, recovery of the overpayment may be against equity and good conscience.

Action: HCFA may grant a waiver in an amount equal to the cost of the vehicle and, based on the various factors involved in this case, including the fact that all of the money she received in the settlement was used to purchase the modified vehicle, could be justified in waiving an additional amount. If the cost of the modified vehicle were less than the settlement amount, HCFA could grant a partial waiver up to the cost of the vehicle.

Note: Using the settlement money to purchase a vehicle was considered appropriate only because the individual required a modified vehicle as a result of her accident. It would be inappropriate to grant waiver simply because the individual chose to purchase another car from the proceeds.

Example 5

Facts: An individual sustained multiple injuries in an automobile accident that caused him to be away from his job (without pay) for 4 months. His monthly income just equals his monthly expenses. The individual received a liability settlement that was about equal to Medicare's potential claim (after a pro rata share of procurement costs were deducted). However, he incurred significant accident-related out-of-pocket medical expenses.

Analysis: In determining whether waiver may be granted on the basis of equity and good conscience, HCFA may take into consideration that the accident has caused the individual to lose 4 months of income, and, thus, his ability to absorb the out-of-pocket medical expenses has greatly diminished. If the individual repaid Medicare the total amount owed, he would be left with no funds with which to pay his out-of-pocket medical expenses. Because of this, it may be equitable for Medicare to reduce its recovery due to the individual's responsibility for noncovered out-of-pocket expenses. Therefore, it would be against equity and good conscience for Medicare to recoup its entire potential recovery amount.

Action: HCFA may grant a partial waiver up to the amount of out-of-pocket expenses.

Example 6

Facts: An individual was injured in an accident that triggered Medicare conditional payments. Before the accident, he was experiencing monthly financial difficulties due to expenses that were not related to the accident. Medicare's recovery after reduction for procurement costs is significantly less than the total liability settlement received by the individual. The individual has several thousand dollars worth of injury-related out-of-pocket medical expenses.

Analysis: Although the individual has monthly financial difficulties that appears to constitute a financial hardship, it must be noted that this financial hardship existed before the accident. It is important to remember that repaying Medicare must be the circumstance that causes financial hardship. Pre-existing financial hardship alone is not a sufficient reason to grant waiver. Additionally, after repaying Medicare and reimbursing himself for out-of-pocket expenses, the individual will still retain a significant portion of the settlement proceeds. The repayment of Medicare's claim will not cause undue hardship. All of these factors must be taken into consideration when making a waiver decision that is not unduly favorable or adverse to either side, but is fair to both the individual and to HCFA.

Action: Based on the circumstances presented in this case, the likely outcome is to deny waiver. Although the individual has substantial out-of-pocket expenses, he would not be unduly disadvantaged if Medicare seeks full recovery because he will still retain a significant portion of his settlement after the recovery.

(d) *Special Rule: When recovery of an overpayment from an individual is ordinarily considered inequitable.* (1) Except for MSP obligations, recovery of an overpayment from a without-fault individual is ordinarily considered to be inequitable if the individual did not receive the payment.

(2) For MSP obligations, recovery from a without-fault individual is considered to be inequitable only if the recovery involves a group health plan and the individual did not receive the Medicare payment.

(e) *Deemed to be against equity and good conscience.* In accordance with section 1870(c) of the Act, recovery of an overpayment, or of such part of an overpayment as is determined would be inconsistent with the purposes of title XVIII of the Act, is deemed to be against equity and good conscience when either of the following conditions exist:

(1) The overpayment resulted from expenses incurred for items or services for which payment may not be made under title XVIII by reason of the provisions of section 1862 (a)(1) or (a)(9) of the Act (reasonable and necessary, or custodial care).

(2) HCFA did not determine that the payment was incorrect until after the third year following the year in which the notice of the payment was sent to the individual.

(f) *Equity and good conscience deemed inapplicable.* In considering whether recovery of a Medicare overpayment should be waived, the application of the standard of equity and good conscience is deemed inapplicable in either of the following circumstances:

(1) The individual committed a fraud or misrepresented a material fact that resulted, directly or indirectly, in the overpayment.

(2) The individual's actions or omissions indicate a lack of good faith or the absence of an honest intention to abstain from taking an unfair advantage of Medicare.

§ 401.364 Without fault and Medicare Secondary Payer (MSP) obligations.

(a) *MSP debt defined.* In general, an MSP debt is an amount owed to the United States Government, once a determination and any recovery adjustments are made to an obligation, that resulted from a payment made by Medicare for an identified item or service and payment for the item or service has been made, can reasonably be expected to be made, or, in certain circumstances, can reasonably be expected to be made promptly, by another entity that is required or responsible under section 1862(b) of the Act to make primary payment. HCFA's rules that govern MSP obligations are located at part 411, subparts B through F of this chapter.

(b) *Application of without-fault provisions to MSP obligations—third-party payor or other non-Medicare entity.* The without-fault and related provisions specified in §§ 401.323 and 401.326 (with respect to providers and suppliers) and in §§ 401.352, 401.355, 401.358, and 401.361 (with respect to individuals entitled to Medicare) do not apply to MSP obligations for which a third-party payer or other non-Medicare entity is liable. A provision in a contract to which a third-party payer or other non-Medicare entity is a party, or a State law provision that governs the relations between the third-party payer or other non-Medicare entity and an individual entitled to Medicare, that gives or purports to give any right of subrogation to the third-party payer or other non-Medicare entity does not confer a right to without-fault consideration for an obligation for which the third-party payer or other non-Medicare entity is responsible.

(c) *Application of without-fault provisions to MSP obligations—providers and suppliers.* In general, a provider or a supplier is not without fault with respect to a Medicare payment in an MSP situation unless it complied with all of the requirements specified in part 411 of this chapter and, in the case of providers, part 489 of this chapter.

(d) *Application of without-fault provisions to MSP obligations—individuals.* (1) In general, an individual is without fault with respect to a Medicare payment in an MSP situation except when the individual (or the individual's representative)—

(i) Fails to give notice as required by § 411.23(a)(1) of this chapter (that is, notice that a claim has been filed with an entity that may be primary to Medicare) to the intermediary or carrier within 60 days of filing the claim;

(ii) Fails to give notice as required by § 411.23(a)(2) of this chapter (that is, notice of receipt of a payment from an entity that is primary to Medicare) to HCFA within 30 days of receipt of a payment;

(iii) Fails to file a proper claim, as defined in § 411.21 of this chapter, with an entity that is primary to Medicare for the item or service for which no proper claim was filed, subject to the recovery provisions in §§ 411.24(l) and 411.32(c) of this chapter;

(iv) Makes an incorrect statement or withholds information to obtain benefits that are not due him or her; or

(v) Accepts a payment that he or she clearly should have known was not due.

(2) An individual who is without fault according to paragraph (d)(1) of this section may have recovery of an MSP obligation (either by adjustment of his or her social security benefit or by direct recovery) waived if the recovery would either—

(i) Defeat the purposes of title II or title XVIII of the Act, as specified in § 401.358; or

(ii) Would be against equity and good conscience, as specified in § 401.361 (a) through (c), (e), and (f).

(3) An individual desiring a waiver of recovery of an MSP obligation must request the waiver within 60 days from receipt of written notification from HCFA that he or she is liable for the obligation.

(4) HCFA may waive recovery, in whole or in part, in accordance with § 401.358 or § 401.361 (a) through (c), (e), and (f) of this subpart.

§ 401.367 Initial determination.

Each of the following determinations is an initial determination for purposes of §§ 405.704(b), 405.704(c), and 405.803(b) of this chapter, as applicable, and the entities are parties for purposes of §§ 405.708 and 405.805 of this chapter:

(a) A determination that a provider or supplier must repay an overpayment because the provider or supplier is not without fault.

(b) A determination that an individual (or the estate of an individual), does not qualify for waiver of adjustment or recovery of overpayments because the individual is, or the estate and the individual are, not without fault.

(c) A determination, with respect to an individual that is (or an estate and individual that are) without fault, that the individual (or estate) does not qualify for waiver of adjustment or recovery of overpayments on the basis that the purposes of title II or of title XVIII of the Act would be defeated, as described in § 401.358.

(d) A determination, with respect to an individual that is (or an estate and individual that are) without fault, that the individual (or estate) does not qualify for waiver of adjustment or recovery of overpayments on the basis that recovery would be against equity and good conscience, as described in § 401.361.

§ 401.370 Liability of certifying or disbursing officer.

No certifying or disbursing officer is liable for any amount certified or paid by him or her to a provider or supplier in either of the following situations:

(a) The amount is waived under the provisions of this subpart.

(b) Recovery is not completed prior to the death of all persons against whose benefits the recovery is authorized.

Suspension of Payment to Providers and Suppliers and Collection and Compromise of Overpayments

§§ 401.375—401.380 [Reserved]

Interest

§ 401.393 [Reserved]

Repayment of Scholarships and Loans

§ 401.396 [Reserved]

B. Part 401, subpart F, is amended as follows:

Subpart F—Claims Collection and Compromise

1. In § 401.601, paragraphs (d)(2)(ii) and (d)(2)(iii) are revised to read as follows:

§ 401.601 Basis and scope.

* * * * *

(d) *Related regulations.* * * *

(2) *HCFA regulations.* * * *

(ii) Adjustments in railroad retirement or social security benefits to recover Medicare overpayments to individuals are covered in §§ 401.310 through 401.340.

(iii) Claims against providers and suppliers for overpayments under Medicare and for assessment of interest are covered in §§ 401.387 and 401.393.

* * * * *

2. In § 401.607, paragraph (d)(2) is revised to read as follows:

§ 401.607 Claims collection.

* * * * *

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(d) *Collection by offset.* * * *

(2) Under regulations at §§ 401.310 through 401.340, HCFA may initiate adjustments in program payments to which an individual is entitled under title II (Federal Old-Age, Survivors, and Disability Insurance Benefits) of the Act or under the Railroad Retirement Act of 1974 (45 U.S.C. 231) to recover Medicare overpayments.

C. Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for subpart C continues to read as follows:

Authority: Sections 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

2. The following sections are redesignated as part 401, subpart D as shown in the table below:

Old section—	New section—
405.370	401.375
405.371	401.378
405.372	401.381
405.373	401.384
405.374	401.387
405.375	401.390
405.376	401.393
405.377	401.394
405.378	401.395
405.380	401.396

3. Subpart C, is further amended by removing the undesignated centered headings and §§ 405.301 through 405.359, and subpart C is reserved.

Subpart G—Reconsiderations and Appeals Under Medicare Part A

4. Subpart G is amended as follows:

a. The authority citation for subpart G continues to read as follows:

Authority: Secs. 1102, 1151, 1154, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1320c–3, 1320c–4, 1395ff(b), 1395hh, 1395ii, and 1395pp).

b. In § 405.704, the section heading and the introductory text of paragraph (c) are revised, and a new paragraph (c)(3) is added, to read as follows:

§ 405.704 Actions that are initial determinations.

* * * * *

(c) *Initial determination with respect to a provider.* An initial determination with respect to a provider is a determination made on the basis of the request for payment filed by the provider under Part A of Medicare on behalf of an individual who was furnished items or services by the provider, but only if the determination involves the following:

* * * * *

(3) A determination by HCFA that a provider must repay an overpayment because the provider is not without fault as that term is described in § 401.323 of this chapter.

Subpart H—Appeals Under the Medicare Part B Program

5. Subpart H is amended as follows:

a. The authority citation for subpart H is revised to read as follows:

Authority: Secs. 1102, 1842(b)(3)(C), and 1869(b) of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), and 1395ff(b)).

b. In § 405.803, paragraph (b) is revised to read as follows:

§ 405.803 Initial determination.

* * * * *

(b) An initial determination for purposes of this subpart includes, among others, the following determinations:

(1) Whether the items and services furnished are covered.

(2) Whether an individual deductible has been met.

(3) Whether a receipted bill or other evidence of payment is acceptable.

(4) Whether the charges for items or services furnished are reasonable.

(5) For items or services furnished an individual by a supplier in accordance with an assignment under § 424.55 of this chapter, that are not covered by reason of § 411.15(g) or § 411.15(k) of this chapter, whether the individual or supplier knew, or could reasonably have been expected to know, that the items or services were excluded from coverage.

(6) A determination that a supplier must repay an overpayment because the supplier is not without fault as that term is described in § 401.323 of this chapter.

(7) A determination that an individual, or the estate of the individual, does not qualify for waiver of adjustment or recovery of overpayments because the individual is, or the estate and the individual are, not without fault as that term is described in § 401.355 of this chapter.

(8) A determination, with respect to an individual that is (or an estate and individual that are) without fault, that the individual (or estate) does not qualify for waiver of adjustment or recovery of overpayments on the basis that recovery would defeat the purposes of title II or of title XVIII of the Act, as described in § 401.358 of this chapter.

(9) A determination, with respect to an individual that is (or an estate and individual that are) without fault, that the individual (or estate) does not qualify for waiver of adjustment or recovery of overpayments on the basis that recovery would be against equity and good conscience, as described in § 401.361 of this chapter.

* * * * * *

c. Section 405.805 is revised to read as follows:

§ 405.805 Parties to the initial determination.

The parties to the initial determination (see § 405.803) may be any party described in § 405.802(b). A party may also be any supplier as defined at § 400.202 of this chapter that has been determined to be not without fault as that term is described in § 401.323 of this chapter, with respect to that issue only.

D. Part 411 is amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 411.23 is revised to read as follows:

§ 411.23 Individual's cooperation.

If HCFA makes conditional payments, the individual must do the following:

(a) Cooperate in notifying HCFA of the progress and final outcome of the liability claim, including, but not limited to—

(1) Notifying the intermediary or carrier within 60 days of filing a claim with an entity that may be primary to Medicare; and

(2) Notifying HCFA within 30 days of the receipt of a payment from the entity that is primary to Medicare.

(b) Cooperate in the recovery action.

3. Section 411.28 is revised to read as follows:

§ 411.28 Waiver of recovery and compromise of claims.

(a) HCFA may waive recovery, in whole or in part, if HCFA determines that waiver is in the best interest of the Medicare program.

(b) General rules applicable to compromise of claims are set forth in subpart F of part 401 of this chapter.

(c) Other rules pertinent to recovery are contained in subpart D of part 401 of this chapter.

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E. Part 466 is amended as set forth below:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for part 466 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 466.86, new paragraph (a)(5) is added to read as follows:

§ 466.86 Correlation of Title XI functions with Title XVIII functions.

(a) Payment determinations. * * *

(5) A finding by the PRO that the provider or supplier is not without fault, as that term is described in § 401.323 of this chapter, with respect to an overpayment, is conclusive for payment purposes.

* * * * *

3. In § 466.94, paragraph (c)(6) is redesignated as paragraph (c)(7), and a new paragraph (c)(6) is added to read as follows:

§ 466.94 Notice of PRO initial denial determination and changes as a result of a DRG validation.

* * * * *

(c) Content of the notice. * * *

(6) If applicable, a statement about the without fault determination as that term is described in § 401.323 of this chapter.

* * * * *

F. Part 473 is amended as set forth below:

PART 473—RECONSIDERATIONS AND APPEALS

1. The authority citation for part 473 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 473.14, paragraph (c)(2) is revised to read as follows:

§ 473.14 Applicability.

* * * * *

(c) *Nonapplicability of rules to related determinations.* * * *

(2) Without fault determinations with respect to overpayments are made under section 1870 of the Act, and limitation on liability determinations on excluded coverage of certain services are made under section 1879 of the Act. Initial determinations under sections 1870 and 1879 and further appeals are governed by the reconsideration and appeal procedures in part 405, subpart G of this chapter for determinations under Medicare Part A, and part 405, subpart H of this chapter for determinations under Medicare Part B. References in those subparts to initial and reconsidered determinations made by HCFA should be read to mean initial and reconsidered determinations made by a PRO.

G. Technical Amendments.

§ 401.378 [Amended]

1. Redesignated § 401.378 is amended as follows:

a. In paragraph (b), the citations "§ 405.372" and "§ 405.373" are removed, and the citations "§ 401.381" and "§ 401.384", respectively, are added in their place.

b. In paragraph (c), the citations "§ 405.372" and "§ 405.372(a)(2)" are removed, and the citations "§ 401.381" and "§ 401.381(a)(2)", respectively, are added in their place.

§ 401.381 [Amended]

2. Redesignated § 401.381 is amended as follows:

a. In paragraph (a)(1), the citation "§ 405.371(a)(1)" is removed and the citation "§ 401.378(a)(1)" is added in its place.

b. In paragraph (a)(2), the citation "§ 405.371(c)" is removed and the citation "§ 401.378(c)" is added in its place.

c. In paragraph (b)(1), the citations "§ 405.374" and "§ 405.375" are removed and the citations "§ 401.387" and "§ 401.390", respectively, are added in their place.

d. In paragraph (e), the citations "§ 405.371(b)" and "§ 405.378" are removed and the citations "§ 401.378(b)" and "§ 401.395", respectively, are added in their place.

3. Redesignated § 401.384 is amended as follows:

a. In paragraph (a) introductory text, the citation "§ 405.371(a)(2)" is removed and the citation "§ 401.378(a)(2)" is added in its place.

b. In paragraph (a)(2), the citation "§ 405.374" is removed and the citation "§ 401.387" is added in its place.

c. In paragraph (c), the citations "§ 405.374" and "§ 405.375" are removed and the citations "§ 401.387" and "§ 401.390", respectively, are added in their place.

§ 401.387 [Amended]

4. In redesignated § 401.387, paragraph (a), the citations "§ 405.372" and "§ 405.373" are removed and the citations "§ 401.381" and "§ 401.384", respectively, are added in their place.

§ 401.390 [Amended]

5. In redesignated § 401.390, paragraph (a), the citations "§ 405.374" and "§ 405.372(b)(2)" are removed and the citations "§ 401.387" and "§ 401.381(b)(2)", respectively, are added in their place.

§ 401.394 [Amended]

6. In redesignated § 401.394, paragraph (e) introductory text, the citation "§ 405.374" is removed and the citation "§ 401.387" is added in its place.

§ 401.601 [Amended]

7. In § 401.601, the following changes are made:

a. In paragraph (d)(2)(ii), the phrase "§§ 405.350–405.356 of this chapter" is removed, and the citation "§ 401.305" is added in its place.

b. In paragraph (d)(2)(iii), the phrase "§§ 405.374 and 405.376 of this chapter" is removed, and the phrase "§§ 401.387 and 401.393" is added in its place.

§ 401.607 [Amended]

8. In § 401.607, in paragraph (d)(2), the phrase "§§ 405.350–405.358 of this chapter" is removed, and the phrase "§§ 401.346 and 401.349" is added in its place.

PART 403—RECOGNITION OF STATE REIMBURSEMENT CONTROL SYSTEMS

9. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 403.310 [Amended]

10. In § 403.310, in paragraph (a), the citation "§ 405.378" is removed, and the citation "§ 401.395" is added in its place.

§ 405.705 [Amended]

11. In § 405.705, in paragraph (d), the citation "§ 405.376" is removed, and the citation "§ 401.393 of this chapter" is added in its place.

§ 405.1801 [Amended]

12. In § 405.1801, in paragraph (a), under the definition "Intermediary determination," in paragraph (4), the citation "§ 405.376" is removed, and the citation "§ 401.393 of this chapter" is added in its place.

§ 405.1803 [Amended]

13. In § 405.1803, in paragraph (c), the citation "405.373" is removed, and the citation "§ 401.384(a) of this chapter" is added in its place.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

14. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 410.1 [Amended]

15. In § 410.1, in paragraph (b), the phrase "subpart C of part 405 of this chapter" is removed, and the phrase "Subpart D of Part 401 of this chapter" is added in its place.

§ 411.28 [Amended]

16. In § 411.28, the following changes are made:

a. In paragraph (b), the citation "405.376" is removed, and the citation "401.393" is added in its place.

b. In paragraph (c), the phrase "in subpart C of part 405 of this chapter" is removed, and the phrase "in subpart D of part 401 of this chapter" is added in its place.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

17. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

§ 413.20 [Amended]

18. In § 413.20, in paragraph (e), the citation "§ 405.372(a)" is removed wherever it appears (twice), and the citation "§ 401.381" is added in its place.

§ 413.153 [Amended]

19. In § 413.153, the following changes are made:

a. In paragraph (a)(1)(ii), the citation "§ 405.377" is removed, and the citation "§ 401.394" is added in its place.

b. In paragraph (a)(1)(iii), the citation "§ 405.378" is removed, and the citation "§ 401.395" is added in its place.

PART 447—PAYMENTS FOR SERVICES

20. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 447.31 [Amended]

21. In § 447.31, in paragraph (a), the citation "Section 405.377" is removed, and the citation "§ 401.394" is added in its place.

PART 493—LABORATORY REQUIREMENTS

22. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12), 1861(s)(13), 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 1302, 1395x(e), the sentence following 1395x(s)(11), 1395x(s)(12), 1395x(s)(13), 1395x(s)(14), 1395x(s)(15), and 1395x(s)(16).

§ 493.1834 [Amended]

23. In § 493.1834, in paragraph (i)(1)(ii), the citation "§ 405.378(d)" is removed, and the citation "§ 401.395(d)" is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 8, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: January 20, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–4230 Filed 3–24–98; 8:45 am]

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Part III

Federal Reserve System

12 CFR Part 205
Electronic Fund Transfers; Final Rule
12 CFR Part 230 et al.
Truth in Savings, Consumer Leasing, Truth in Lending, Equal Credit Opportunity, Electronic Fund Transfers; Proposed Rules

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FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1002]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: The Board is publishing an interim rule amending Regulation E, which implements the Electronic Fund Transfer Act (EFTA). The EFTA establishes certain rights, liabilities, and responsibilities of participants involved in electronic fund transfers (EFTs) to and from consumer asset accounts. Among other things, the act and regulation require disclosures about the terms and conditions of EFT services, account activity, error resolution, and authorizations or confirmations concerning EFTs. These disclosures must generally be provided in writing. In May 1996, the Board issued a proposed rule permitting financial institutions to satisfy the requirement that certain disclosures and other information be in writing by sending information electronically subject to certain requirements. The interim rule allows depository institutions or other entities subject to the act to deliver by electronic communication any of these disclosures and other information required by the act and regulation, as long as the consumer agrees to such delivery. For purposes of the regulation, an electronic communication is a message transmitted electronically that allows visual text to be displayed on equipment such as a modem-equipped computer. This interim rule permits financial institutions to begin implementing systems that allow for the electronic delivery of EFTA disclosures during consideration of similar proposals under other financial services and fair lending laws, appearing elsewhere in today's **Federal Register**.

DATES: Interim rule effective March 25, 1998; comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R–1002, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel or Obrea Poindexter, Staff Attorneys, or John Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR Part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or home banking program. The act and regulation contain rules that govern these and other EFTs. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

Depository institutions, service providers, and other entities use electronic communication to offer a wide variety of financial services relating to checking and other consumer asset accounts including: Account inquiries; transaction verifications; request and documentation of fund transfers between accounts; bill payment services; and full account management. Communicating electronically provides a fast, convenient, and less costly means of receiving and delivering information. In offering home banking and other financial services, depository institutions and others have asked whether they satisfy the requirements of the EFTA and Regulation E by providing or accepting information electronically. In connection with electronic commerce, some service providers would like to obtain the electronic equivalent of a written and signed authorization so that consumers' accounts can be debited on a recurring basis to pay for products or services.

In May 1996, the Board updated Regulation E and the staff commentary under the Board's Regulatory Planning and Review program, which requires regulations to be reviewed and updated periodically. (See 61 FR 19661, May 2, 1996.) During that process and in its review of regulations pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication to deliver information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce compliance costs without adversely affecting consumer protections. Simultaneous with the issuance of Regulation E update, the Board issued a proposed rule permitting financial institutions to satisfy the EFTA requirement that certain disclosures and other information be in writing by sending information electronically in a format the allows the display of text messages in a clear and readily understandable form. The proposal also required that disclosures be provided in a form the consumer may retain, a requirement that an institution could satisfy by providing information that may be printed or downloaded. The proposed rule allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery (61 FR 19696, May 2, 1996).

The Board received approximately 110 comments on the proposal. The majority of comments were submitted by depository institutions and their trade associations. The commenters, including consumer representatives, generally supported the use of electronic communication to deliver information required by the EFTA and Regulation E. Many commenters suggested specific modifications and sought clarification on various aspects of the proposed rule; these comments are addressed below in the section-by-section discussion of the interim rule.

Based on a review of the comments and further analysis, the Board is publishing an interim rule that allows financial institutions to provide Regulation E disclosures electronically; such disclosures remain subject to applicable timing, format, and other requirements of the act and regulation. The interim rule will allow financial institutions to implement systems to provide EFTA information electronically while proposed rules are

being considered to allow the electronic delivery of disclosures under other laws. The term financial institution is broadly defined in the EFTA to include persons that directly or indirectly hold accounts belonging to consumers or that issue an access device and agree to provide EFT services. In this notice, the term "financial institution" is used in that context.

The interim rule is similar to the proposed rule. The interim rule, however, does not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer has agreed to receive disclosures electronically. The Board believes that most financial institutions will accommodate consumer requests for paper copies when feasible.

Elsewhere in today's **Federal Register**, the Board is publishing proposed rules similar to the interim rule under Regulation E to address electronic communication under Regulation B (Equal Credit Opportunity), Regulation DD (Truth in Savings), Regulation M (Consumer Leasing), and Regulation Z (Truth in Lending). Previously, the Board published amendments to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) allowing depository institutions to send notices electronically (62 FR 13801, March 18, 1997).

II. Regulatory Revisions

The EFTA and Regulation E require a number of disclosures to be provided to consumers in writing. The requirement that disclosures be in writing has been presumed to require that institutions provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

Pursuant to its authority under sections 904(a) and (c) of the EFTA, the Board is issuing an interim rule amending Regulation E to permit financial institutions to use electronic communication where the regulation requires that information be provided in writing. The term "electronic communication" is limited to a communication in a form that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as a consumer's computer monitor). Communication by telephone voicemail systems does not meet the definition of "electronic communication" for purposes of this amendment because it does not have the feature generally associated with a writing—visual text.

Definition

Section 205.4(c)(1) defines electronic communication for purposes of Regulation E. The definition is generally the same as in the May 1996 proposed rule, except that editorial changes have been made in the interim rule to clarify and simplify the definition. The reference in the proposal to equipment "in the consumer's possession" has been deleted so as not to preclude application of the rule where, for example, a consumer uses a computer terminal in a public location such as a library or financial institution. The example of a screen phone has been deleted as unnecessary.

Agreements Between Financial Institutions and Consumers

Section 205.4(c)(2) permits financial institutions to send electronic disclosures if the consumer agrees. The interim rule simplifies the wording that was used in the proposed rule. Many commenters on the proposed rule requested that the Board clarify when an agreement between a financial institution and a consumer exists. More specifically, the commenters sought clarification that agreements may be established electronically. There may be various ways that a financial institution and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties is determined by applicable state law. The regulation does not preclude a financial institution and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of EFTA disclosures and other information electronically.

Requirement That Financial Institutions "Send" Electronic Disclosures to Consumers

The interim rule in § 205.4(c)(2), like the proposed rule, provides that disclosures may be "sent" to a consumer electronically. This is consistent with existing requirements in Regulation E, which generally specify that disclosures, documentation, and notices be "mailed," "delivered," or "provided." Many commenters on the proposed rule suggested that making electronic disclosures "available" to consumers should satisfy the requirement. Commenters believed that consumers would benefit from the ability to obtain information from the financial institution, at any time, if the disclosures are "available" at a specified location. Commenters suggested that, alternatively consumers might have to wait for the institution to send information to a specific location, for example, an e-mail address provided by the consumer.

Generally, the regulation requires the financial institution to deliver the information—typically by mail—to an address designated by the consumer. For a paper communication, a financial institution generally would not satisfy that requirement by making disclosures "available," for example, at the financial institution's office (or other location). (The staff commentary to Regulation E does allow financial institutions to permit, but not require, consumers to pick up their periodic statements at the institution. See comment 9(b)–4 to § 205.9.) The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving paper disclosures. Simply posting information on an Internet site without some appropriate notice and instructions about how the consumer may obtain the required information would not satisfy the requirement. Therefore, the interim rule, like the proposal, requires that disclosures be sent (delivered or transmitted) to consumers, but allows the option contained in comment 9(b)–4.

The requirement to send or deliver disclosures to a consumer is satisfied when the institution ensures that the disclosures will be displayed in a timely manner. For example, under Regulation E, initial disclosures must be provided at the time a consumer signs up for an EFT service or before the first transaction. Assume that a consumer uses a personal computer to sign up for a EFT service and consents to the electronic delivery of the initial disclosures. If the disclosures automatically appear on the computer screen before the consumer commits to the service (in accordance with the format and any other requirements of the act and regulation), the institution has satisfied the requirement to send (or deliver or transmit) disclosures to the consumer.

As a practical matter, there may be little distinction between sending or delivering electronic disclosures and making them "available." Financial institutions have flexibility in how they may deliver electronic disclosures to consumers, including, but not limited to, the following examples. They may send disclosures to a consumer-

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designated electronic mail address or they may designate a location on a website where the consumer might enter a personal identification number or other identifier to access required information. In the scenario described above, assume that the consumer signs up for an EFT service, receives the initial disclosures at that time, and agrees to receive all EFTA disclosures electronically. Subsequent disclosures sent to a designated address or placed at a designated location (for example, periodic statements or change-in-terms notices) would generally satisfy the delivery requirements of § 205.4(c)(2).

Electronic communication remains subject to any timing or other applicable requirements under Regulation E. For example, a financial institution that sends a change-in-terms notice required by § 205.8 of Regulation E must satisfy the requirement to provide the notice to the consumer at least 21 days in advance of the change. The Board solicits comment on whether further guidance is needed on how to comply with the timing requirements when a notice is posted on an Internet website.

Requirement That Information Be "Clear and Readily Understandable"

Under the act and regulation, disclosures must be provided to consumers in a clear and readily understandable form. The proposed rule stated that disclosures provided by electronic communication are subject to this standard. Section 205.4(c)(2) of the interim rule retains this requirement, by cross referencing the current regulatory requirement.

Some commenters believed that the requirement would impose a compliance burden if financial institutions had to determine whether the consumer possesses the proper equipment to ensure that a disclosure provided electronically meets the standard. Some commenters expressed concern that the "clear and readily understandable" requirement, coupled with the screen phone example in the supplementary information to the proposed rule, implicitly disapproved of certain types of technologies. Further, some commenters objected to any consideration of the amount of text that may be viewed at any one time (or the screen size of a device) as a factor in determining whether the communication satisfies the requirement.

Under the interim rule, the "clear and readily understandable" requirement applies to electronic communication. The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, the disclosures provided by electronic communication must meet the "clear and readily understandable" standard. While a financial institution is generally not required to ensure that the consumer has the equipment to read the disclosures, in some circumstances an institution would have the responsibility of making sure the proper equipment is in place. For example, if EFT services are offered through terminals in an institution's lobby, or through kiosks located in public or other places, the institution must ensure that the equipment meets the clear and readily understandable standard for EFTA disclosures that are being provided electronically.

Consumer Ability to Retain Disclosures

Under Regulation E, most disclosures must be provided in a form that the consumer may keep. Section 205.4(c)(2) of the interim rule, like the proposal, applies the same requirement to disclosures provided by electronic communication. Financial institutions satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. Most commenters agreed with the Board's interpretation. Many commenters urged the Board to clarify that financial institutions are not obligated to monitor an individual consumer's ability to retain the information; or to ascertain whether the consumer has actually retained it.

The requirements or procedures for electronic delivery are similar to the paper delivery requirements, where the financial institution generally must mail or otherwise deliver the communication to the consumer but need not otherwise ensure that the consumer reads or retains it. Thus, financial institutions are generally not required to monitor a consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that, where appropriate, a financial institution will inform consumers of any special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically.

Similar to the "clear and readily understandable" standard discussed above, in circumstances where the financial institution (or a network in which the institution is a member) controls the equipment to be used for an EFT service—such as ATMs or kiosks in public or other places—the institution does have the responsibility of ensuring retainability. Provided that the delivery requirements are satisfied—for example, that disclosures appear on a screen—methods for fulfilling this retention requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure that appears on the screen to the consumer's electronic mail or post office address.

Consumer's Ability to Request a Paper Copy of an Electronic Disclosure

The proposed rule would have required a financial institution to provide, upon request, a paper copy of any disclosure sent by electronic communication. The consumer could obtain a paper copy for up to one year after the disclosure was sent electronically. Many of the commenters did not object to the paper copy requirement, although most recommended that the Board establish a shorter time period for providing a copy. Some commenters believed that the requirement could diminish their ability to establish electronic accounts and eliminate the potential cost savings of electronic communication.

The interim rule does not require financial institutions to provide a paper copy upon request. In some instances, however, consumers who receive disclosures by electronic communication could experience computer or printer malfunctions. They may be using public electronic terminals that do not have a print or download capability, or they may otherwise need a paper copy of a disclosure on occasion. The Board expects that financial institutions will accommodate a consumer's request for a paper copy, or that they will redeliver disclosures electronically, to the extent that it is feasible to do so.

Paper Confirmation of Electronic Communications

Under the act and regulation, consumers must provide certain information to financial institutions, and institutions have the option of requiring that it be in writing. Regulation E provides that a consumer may stop payment of a preauthorized EFT or allege an error by notifying the institution orally or in writing, and that the institution may require written confirmation of an oral stop-payment order or notice of error.

In the supplementary information to the May 1996 proposed rule, the Board stated its belief that (as in the case of an oral communication) if the consumer sends an electronic communication to the financial institution, the institution could require paper confirmation from the consumer (particularly since the consumer was entitled to a paper copy

upon request under the proposed rule). The Board requested comment on whether and how the regulation should address this point.

Some financial institutions commented that in accepting electronic communication from a consumer, they may need to require paper confirmations for their own and the consumer's protection. Many commenters stated that there will be situations in which it is important for financial institutions to have the ability to require paper confirmations (for example, because it may be more secure). These commenters requested that the Board allow financial institutions to request paper confirmations for certain communications.

Under the interim rule, financial institutions may request paper confirmations in cases where they can currently require written confirmation—electronic and oral stop-payment notices, and electronic and oral notices of error. The financial institution, however, must clearly identify to the consumer the information subject to paper confirmation and must provide the address where written confirmation must be sent.

Consumers preserve their rights under the act and regulation when they send notices of error electronically. If the consumer notifies the financial institution of an alleged error, the financial institution must begin its investigation promptly upon receiving the electronic notice. The financial institution may not delay its investigation until it has received a paper confirmation. This requirement is the same as the requirement for written confirmation following an oral error notice (see comment 11(c)–2 of the staff commentary).

Consumer Signatures and Similar Authentication

Section 205.10(b) requires that preauthorized EFTs be authorized only by a writing signed or similarly authenticated by the consumer. The phrase "or similarly authenticated" was added in the 1996 review of Regulation E. The Board indicated in the **Federal Register** notice accompanying the amendment that the authentication method should provide the same assurance as a signature in a paper-based system, and cited security codes and digital signatures as examples of authentication devices that might meet the requirements of § 205.10(b). Since the 1996 amendment, the Board has received requests for further guidance on electronic authentication methods. The Board is interested in learning about other ways in which authentication in an electronic environment might take the place of the consumer's signature.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that depository institutions and other institutions subject to the EFTA and Regulation E will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of EFTA disclosures and other information, and will address compliance or other issues that may arise as appropriate.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1002 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act and section 904(a)(2) of the EFTA, the Board's Office of the Secretary has reviewed the interim amendments to Regulation E. Overall, the interim amendments are not expected to have any significant impact on small entities. The interim rule would relieve compliance burden by giving financial institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in this interim regulation are found in 12 CFR Part 205. This information would be mandatory to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers using certain home-banking services and consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit financial institutions, including small businesses. This regulation applies to all types of depository institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The Federal Reserve has no data on which to estimate the burden the regulatory amendments would impose on state member banks. However, since the amendments provide an alternative method for delivering disclosures and notices, it is anticipated that the requirements would not be burdensome. The use of electronic communication would likely reduce the paperwork burden of financial institutions. Institutions would be able to use electronic communication to provide disclosures and other information rather than having to print and mail the information in paper form.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this interim regulation is effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments sent to Mary M. McLaughlin, Federal Reserve Board

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Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Reporting and record keeping requirements.

Pursuant to the authority granted in sections 904(a) and (c) of the Electronic Fund Transfer Act, 15 U.S.C. 1693b(a) and (c), and for the reasons set forth in the preamble, the Board amends Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693–1693r.

2. Section 205.4 is amended by adding paragraph (c) to read as follows:

§ 205.4 General disclosure requirements; jointly offered services.

* * * * * *

(c) *Electronic communication.*—(1) *Definition.* For purposes of this regulation, the term *electronic communication* means a message transmitted electronically between a consumer and a financial institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between financial institution and consumer.* A financial institution and a consumer may agree to send by electronic communication any information required by this regulation to be in writing. Information sent by electronic communication to a consumer must comply with paragraph (a) of this section and the applicable timing and other requirements contained in the regulation.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–6988 Filed 3–24–98; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1003]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation DD which implements the Truth in Savings Act. The proposed rule would allow depository institutions to deliver by electronic communication disclosures required by the act and regulation, if the consumer agrees to such delivery. In addition, the Board is publishing proposed amendments to implement amendments to the Truth in Savings Act enacted as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The law modifies the rules for indoor lobby signs, eliminates subsequent disclosure requirements for automatically renewable time accounts with terms less than one month, and repeals the civil liability provisions as of September 30, 2001.

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R–1003, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel or Obrea Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA) is implemented by the Board's Regulation DD, issued September 21, 1992 (57 FR 43337) (correction notice at 57 FR 46480, October 9, 1992). Compliance with the regulation became mandatory in June 1993. The act and regulation require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening. The regulation also includes rules about advertising of deposit accounts. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication for delivery of information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example in May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered the comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation DD to allow institutions to provide Regulation DD disclosures electronically; such disclosures would remain subject to any applicable timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed revisions to address electronic communication under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), and Z (Truth in Lending), published elsewhere in today's **Federal Register**. In addition, the Board has issued an interim rule under Regulation E also published elsewhere in today's **Federal Register**, so that financial institutions can implement systems to provide Electronic Fund Transfer Act information electronically.

II. Proposed Regulatory Revisions

Electronic Communication

The TISA and Regulation DD require several disclosures to be provided to consumers in writing. Under Regulation DD, the regulatory requirement that disclosures be in writing has been presumed to require institutions to provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing at least where visual text is involved.

Therefore, pursuant to its authority under Section 269 of the TISA, the Board proposes to amend Regulation DD to permit depository institutions to use electronic communication where the regulation calls for information to be provided in writing. The term "electronic communication" is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of "electronic communication" for purposes of this regulation because they do not have the feature generally associated with a writing—visual text.

Statutory Amendments

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (1996 Act) contains amendments to the TISA. An amendment to section 266(a)(3) eliminates the requirement that institutions provide disclosures in advance of maturity for automatically renewable (rollover) time accounts with a term of 30 days or less. The Board believes the Congressional intent was to eliminate any subsequent disclosures for monthly time accounts. Accordingly, the proposed amendments to Regulation DD delete § 230.5(c), which requires that institutions disclose (after the account is opened) any changes in account terms for rollover time accounts with a maturity of one month or less. Institutions will continue to provide disclosures when these accounts are opened.

An amendment to section 263(c) of the act expands an exemption from certain advertising provisions for signs on the premises of a depository institution. The proposed amendments to Regulation DD apply this exemption to all signs on the premises of an institution. Section 230.8(e) would be revised to exempt those signs that are inside the premises of the depository institution, including those that face out. Any sign posted outside the depository institution would remain

covered by the advertising provisions unless the sign is exempt by some other provision (such as the electronic media exemption). The 1996 Act repeals the TISA's civil liability provisions, effective September 30, 2001. This statutory amendment does not require a regulatory revision, as the regulation generally does not address civil liability.

III. Section-by-Section Analysis

Section 230.3 General Disclosure Requirements

Section 230.3(a) would be revised to address electronic communication. "Electronic communication" is a visual text message electronically transmitted between a depository institution and a consumer's home computer or other electronic device used by a consumer.

Agreements Between Institutions and Consumers

Section 230.3(a)(2) would permit depository institutions to send electronic disclosures if the consumer agrees. There may be various ways that a financial institution and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be determined by applicable state law. The regulation would not preclude a depository institution and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of TISA disclosures and other information electronically.

Delivery Requirements for Electronic Communication

Regulation DD provides that an institution must, for example, "provide" or "deliver" information to a consumer. Generally, the delivery requirement anticipates that a depository institution will deliver the information—typically by mail—to an address designated by the consumer. For a paper communication, a depository institution would not satisfy that requirement by making disclosures "available" to consumers, for example, at a financial institution's office (or other location). The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving disclosures in paper form. Simply posting information on an Internet site without some appropriate notice and instructions about how the consumer may obtain the required information would not satisfy the requirement.

The requirement to send or deliver disclosures to a consumer would be satisfied if the institution ensures that the disclosures will be displayed in a timely manner. For example, under Regulation DD, account disclosures must be provided before the consumer opens an account or a service is provided, whichever is earlier. Assume that a consumer uses a personal computer to open an account and consents to the electronic delivery of account disclosures. If the disclosures automatically appear on the computer screen before the account is opened or the service is provided (in accordance with the format, timing, and any other requirements of the act and regulation), the institution would satisfy the requirement to send (or deliver or transmit) disclosures to the consumer.

As a practical matter, there may be little distinction between sending or delivering electronic disclosures and making them "available." Depository institutions have flexibility in how they deliver electronic disclosures to consumers including, but not limited to, the following examples. They may send disclosures to a consumer-designated electronic mail address, or they may designate a location on a website where the consumer might enter a personal identification number or other identifier to access required information. If a consumer opens an account, receives the account disclosures at that time, and agrees to receive all Regulation DD disclosures electronically, subsequent disclosures, such as periodic statements or change-in-terms notices, sent (or delivered) to the designated address or placed at a designated location would generally satisfy the delivery requirements of the regulation.

Electronic communication would remain subject to any timing or other applicable requirements under Regulation DD. For example, a depository institution that sends a change-in-terms notice required by § 230.5(a) of Regulation DD must satisfy the requirement to provide the notice to a consumer at least 30 days in advance of the change. The Board solicits comment on whether further guidance is needed on how to comply wth the timing requirements when a notice is posted on an Internet website.

Timing of Providing Account Opening Disclosures

Account opening disclosures, required under § 230.4(a), set forth the terms and conditions of the account. These disclosures inform the consumers of the types and amount of any fees that may be imposed and the interest rate and annual percentage yield (APY) that will be paid on the account. Section 230.4(a)(1) requires that account disclosures be provided before an account is opened or a service is provided, whichever is earlier.

Section 266(b) of the TISA provides that if the consumer is not present at the institution when an initial account is accepted (and the disclosures have not been furnished previously) the institution shall mail or deliver the disclosures no later than ten days after the account is opened or the service is provided. The rationale underlying the ten-day exception is that, in some instances (such as when an account is opened by telephone), the institution cannot provide written disclosures before an account is opened. Because this proposal would permit disclosures to be provided electronically, the same difficulty does not exist if an account is opened electronically. Thus, the Board believes that this ten-day exception should not apply. One major purpose of the TISA is to require clear and uniform disclosure so that consumers can make meaningful comparisons of deposit accounts offered by financial institutions before opening an account. The Board believes that permitting a ten-day delay would seriously diminish the consumer's ability to compare account terms and, therefore, hinder an explicit purpose of the TISA. Thus, the proposed rule requires that account opening disclosures be given before the account is opened or a service is provided, when an account is opened using electronic communication.

Requirement That Information be "Clear and Conspicuous"

Section 230.3(a) of Regulation DD requires depository institutions to present required information "clearly and conspicuously." Under the proposed rule, the "clear and conspicuous" requirement applies to electronic communication. The Board does not intend to discourage or encourage specific types of technologies. Regardless of technology, however, the disclosures provided by electronic communication must meet the "clear and conspicuous" standard. While a depository institution is generally not required to ensure that the consumer has the equipment to read the disclosures, in some circumstances institutions would have the responsibility of making sure the proper equipment is in place. For example, if financial services are offered through terminals in an institution's premises, or through kiosks located in public or other places (such as grocery stores), the

institution must ensure that the equipment meets the clear and conspicuous standard for TISA disclosures that are being provided electronically.

Consumer Ability to Retain Disclosures

Section 230.3(a) of Regulation DD requires that written disclosures be in a form the consumer may keep. This requirement would apply to disclosures provided by electronic communication. Depository institutions would satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. The requirements for electronic delivery are similar to the current paper requirements, where depository institutions generally must mail or deliver the information to the consumer but need not ensure that the consumer reads or retains it. Thus, depository institutions would not be required to monitor an individual consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that a depository institution would inform the consumer of any special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically.

As in the case of the "clear and conspicuous" standard discussed above, in circumstances where the financial institution (or a network in which the institution is a member) controls the equipment to be used for a service—such as terminals in institution lobbies or kiosks in shopping centers—the institution would have the responsibility of ensuring retainability. Methods for fulfilling this requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure to the consumer's electronic mail or post office or other address provided that the delivery requirements (discussed above) are satisfied.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. In light of this evolution, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that depository institutions and other institutions subject to Regulation DD will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of TISA disclosures and other information, and will address compliance or other issues that may arise as appropriate.

Section 230.5 Subsequent Disclosures

5(c) Notice for Time Accounts One Month or Less That Renew Automatically

Section 266(a)(3) of the TISA requires institutions to provide certain disclosures for rollover time accounts at least 30 days before maturity. In implementing this provision in 1992, the Board looked to the legislative history of the TISA, which suggested special rules for short-term time accounts. The Board determined that the purposes of the legislation would not be served by requiring advance disclosures for rollover time accounts with maturities of one month or less. Regulation DD therefore did not require disclosures to be provided in advance of maturity for such time accounts. However, under § 230.5(c) of the regulation, if a term disclosed when the account was opened is changed at renewal, institutions were required to send a notice describing the change within a reasonable time after the renewal of the account.

The 1996 Act eliminates the requirement that institutions provide disclosures in advance of maturity for automatically renewable time accounts with a term of 30 days or less. (Institutions will continue to provide disclosures when these accounts are opened.) Accordingly, the Board proposes to delete § 230.5(c) and the corresponding provision in the official staff commentary, comment 5(c)-1.

The statute eliminates these disclosures for rollover time accounts with a maturity of 30 days or less. Technically, the statute could be read to require subsequent disclosures for rollover time accounts with a maturity of 31 days. For ease of compliance, the Board proposes to eliminate subsequent disclosures for rollover time accounts with a maturity of "one month or less." This approach would not require subsequent disclosures for accounts with a maturity of 31 days and is consistent with other provisions of Regulation DD that interpret one month to include 31 days.

Section 230.8 Advertising

8(e) Exemption for Certain Advertisements

8(e)(2) Indoor Signs

Section 263(a) of the TISA provides that a reference to a specific interest rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. In 1994, the Congress amended section 263(c) of the advertising rules to provide that if a rate is displayed on a sign (including a rate board) designed to be viewed only from the interior of an institution, the disclosure requirements of section 263 do not apply.

A further amendment to section 263(c) of the TISA contained in the 1996 Act expands the exemption for signs on the premises of the depository institution. Under the Board's proposal, all signs inside the premises of an institution would be exempt from certain advertising disclosures (including signs that face outdoors and that are intended to be viewed from outside the premises). The proposal would delete the reference in § 230.8(e) to signs that face outside and the corresponding provision in the official staff commentary, comment 8(e)(2)(i)2. Any sign posted outside a depository institution remains covered by the advertising provisions unless the sign qualifies for some other exemption, such as the exemption for broadcast or electronic media.

Section 230.8(e) of Regulation DD exempts advertisements made through broadcast or electronic media from several of the mandatory advertising disclosures. Questions have arisen about whether the limited exception for broadcast media applies to computer or other advertisements, such as those posted on the Internet. The Board believes that such advertisements are not exempt under the broadcast or electronic media provision. The rationale for broadcast and electronic media exemptions is that these media have time or space constraints that make it extremely burdensome to provide the required disclosures. Advertisements posted on the Internet generally do not have the same time and space constraints. Such advertisements would remain subject to the general advertising rules and, therefore, must comply with the requirements of §§ 230.8(a), (b), (c), and (d) of this section.

Appendix B to Part 230—Model Clauses and Sample Forms

The Board is not proposing any amendments to the model forms and

clauses in Appendix B. The Board believes that financial institutions can adapt the current forms and clauses in Appendix B for electronic use.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1003 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch or 5 ¼ inch computer diskettes in any IBM-compatible DOS-based format.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's office of the Secretary has reviewed the proposed amendments to Regulation DD. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden. The proposed rule would also give depository institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the change in the burden that would be the result of the proposed acceptability of electronic communications. Depository institutions would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden on creditors and financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from depository institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found throughout 12 CFR part 230 and in Appendices A and B. This information is mandatory (12 U.S.C. 4308) to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, annual percentage yield, interest rate, and other account terms whenever a consumer requests the information and before an account is opened. The regulation also requires that fees and other information be provided on any periodic statement the institution sends to the consumer. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Records, required to evidence compliance with the regulation, must be retained for twenty-four months.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation DD (OMB No. 7100–0271) for three years. The current estimated total annual burden for this information collection is 1,478,395 hours, as shown in the top half of the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of depository institutions (except credit unions), not just to state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve only accounts for the burden of the paperwork associated with state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

Both the proposed rules for indoor lobby signs and elimination of subsequent disclosure requirements for automatically renewable time accounts with terms less than one month would decrease the frequency of response slightly; these reductions are shown in the bottom half of the table. It is estimated that the total amount of annual burden after these two proposed revisions would be 1,476,071 hours. There is estimated to be no associated capital or start up cost. The Federal Reserve has not estimated there to be any annual cost burden over the annual hour burden.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Current				
Complete account disclosures (Upon request and new accounts)	996	300	5 minutes	24,900
Subsequent notices:				
Change in terms	996	1,130	1 minute	18,757
Prematurity notices	996	1,095	1 minute	18,177
Periodic statements	996	84,615	1 minute	1,404,609
Advertising	996	12	1 hour	11,952
Total				1,478,395
Proposed				
Complete account disclosures (Upon request and new accounts)	996	300	5 minutes	24,900
Subsequent notices:				
Change in terms	996	1,130	1 minute	18,757

	Number of respondents	Estimated annual frequency	Estimated response time	Eestimated annual burden hours
Prematurity notices	996	1,015	1 minute	16,849
Periodic statements	996	84,615	1 minute	1,404,609
Advertising	996	11	1 hour	10,956
Total				1,476,071
Change				−2,324

The initial disclosures concerning consumers' rights and responsibilities for error resolution are available to the public. Transaction- or account-specific disclosures are not publicly available and are confidential between the depository institution and the consumer. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 552(b)). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0271.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation DD. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

For the reasons set forth in the preamble, the Board proposes to amend, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. In § 230.3, the following amendments would be made:

a. By designating the text of paragraph (a) as paragraph (a)(1) and adding a heading to newly designated paragraph (a)(1);

b. A new paragraph (a)(2) would be added.

The addition and revisions would read as follows:

§ 230.3 General disclosure requirements.

(a) *Form.*—►(1) *General requirements.*◄ * * *

►(2) *Electronic communication.*◄ The term *electronic communication* means a message transmitted electronically between a consumer and a depository institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor. A depository institution and a consumer may agree to send by electronic communication any information required by §§ 230.4 through 230.6 of this part. Information sent by electronic communication to a consumer must comply with paragraph (a)(1) of this section and any applicable timing requirements contained in this part.◄

* * * * *

3. Section 230.5 would be amended by removing paragraph (c) and redesignating paragraph (d) as new paragraph (c):

§ 230.5 Subsequent disclosures.

* * * * *

[(c) *Notice for time accounts one month or less that renew automatically.* For time accounts with a maturity one month or less that renew automatically at maturity, institutions shall disclose any difference in the terms of the new account as compared to the terms required to be disclosed under § 230.4(b) of this part for the existing account, other than a change in the interest rate and corresponding change in the annual percentage yield. The notice shall be mailed or delivered within a reasonable time after the renewal.]

4. Section 230.8 would be amended by revising paragraph (e)(2)(i) to read as follows:

§ 230.8 Advertising.

* * * * *

(e) *Exemption for certain advertisements.* * * *

(2) *Indoor signs.* (i) Signs inside the premises of a depository institution (or the premises of a deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section [unless they face outside the premises and can reasonably be viewed by a consumer only from outside the premises].

* * * * *

5. In Supplement I to Part 230, in § 230.5—Subsequent disclosures, under paragraph (c), paragraph 1. would be removed:

Supplement I to Part 230—Official Staff Interpretations

* * * * *

§ 230.5 Subsequent disclosures

* * * * *

(c) Notice for time accounts one month or less that renew automatically

[1. *Providing disclosures within a reasonable time.* Generally, 10 calendar days after an account renews is a reasonable time for providing disclosures. For time accounts shorter than 10 days, disclosures should be given prior to the next renewal date. For example, if a time account automatically renews every 7 days, disclosures about an account that renews on Wednesday, December 7, 1994, should be given prior to Wednesday, December 14.]

* * * * *

6. In Supplement I to Part 230, in § 230.8—Advertising, under paragraph (e)(2)(i), paragraph 2. would be removed.

* * * * *

§ 230.8 Advertising

* * * * *

(e)(2) Indoor signs.

(e)(2)(i)

* * * * *

[2. *Consumers outside the premises.* Advertisements may be "indoor signs" even though they may be viewed by consumers from outside. An example is a banner, in an institution's glass-enclosed branch office, that is located behind a teller facing customers but is readable by passersby.]

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By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–6989 Filed 3–24–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1004]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The proposed rule would allow lessors to deliver by electronic communication the disclosures required by the act and regulation, if the consumer agrees to such delivery. For purposes of the regulation, an electronic communication is a message transmitted electronically that allows visual text to be displayed on equipment such as a modem-equipped computer. In addition, the proposal contains several technical amendments that would be made to the regulation and commentary.

DATES: Comments should be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R–1004, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Obrea Poindexter or Kyung Cho-Miller, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The Board's Regulation M (12 CFR 213) implements the act. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act.

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication to deliver information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example, in May 1996 the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered the comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation M to allow lessors to provide Regulation M disclosures electronically. Any electronic communication would remain subject to the timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed rules to address electronic communication under Regulations DD (Truth in Savings), B (Equal Credit Opportunity), and Z (Truth in Lending), published elsewhere in today's **Federal Register**. In addition, the Board has issued an interim rule under Regulation E also published elsewhere in today's **Federal Register** so that financial institutions can implement systems to provide Electronic Fund Transfer Act disclosures electronically.

II. Proposed Regulatory Revisions

The CLA and Regulation M require disclosures to be provided to consumers in writing. Under Regulation M, the requirement that disclosures be in writing has been presumed to require that lessors provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing at least where text is involved.

Pursuant to its authority under section 187 of the CLA, the Board proposes to amend Regulation M to permit lessors to use electronic communication where the regulation calls for information to be provided in writing. Few lessors currently consummate lease agreements electronically; however, as standards are developed for establishing legal agreements by electronic communication, more lease contracts may be entered into by that means.

The term "electronic communication" is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of "electronic communication" for purposes of this regulation because they do not have the feature generally associated with a writing—visual text.

Section 213.3—General Disclosure Requirements

3(a) General requirements

Definition

Section 213.3(a) would be revised to address electronic communications under § 213.3(a)(5). Electronic communication is a visual text message electronically transmitted between a lessor and a consumer's home computer or other electronic device used by a consumer.

Agreements Between Lessors and Consumers

Section 213.3(a)(5) permits lessors to send electronic disclosures if the consumer agrees. There may be various ways that a lessor and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be

determined by applicable state law. The regulation would not preclude a lessor and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of CLA and Regulation M disclosures electronically.

Delivery Requirements for Electronic Communication

Regulation M provides that a lessor make disclosures to a consumer. The requirement is satisfied when the institution ensures that the disclosures will be presented to the consumer in a timely manner. Electronic disclosures remain subject to the format, timing, and other applicable requirements under Regulation M.

The "Clear and Conspicuous" Standard

Regulation M requires lessors to present required information "clearly and conspicuously" in writing. The "clear and conspicuous" requirement applies to electronic disclosures. The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, the disclosures provided by electronic communication must meet the "clear and conspicuous" standard. A lessor must satisfy this requirement, but is generally not required to ensure that the consumer has the equipment to read the disclosures.

Consumer Ability to Retain Disclosures

Regulation M requires that written disclosures be in a form the consumer may keep. This requirement applies to disclosures provided by electronic communication. Lessors satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. Thus, lessors would not be required to monitor an individual consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that, where appropriate, a lessor will inform consumers of any special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive disclosures in paper form. As electronic commerce increases and technology advances take place, obtaining disclosures by electronic communication may likely become more commonplace. Compliance and other issues will arise that suggest further interpretations. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that lessors will provide sufficient details about the delivery of disclosures electronically. The Board plans to closely monitor the development of the electronic delivery of Regulation M disclosures, and will address compliance or other issues that may arise as appropriate.

Section 213.4—Content of Disclosures

4(f)(8) Lease term

In September 1996, Regulation M was revised to require, among other things, that lessors show consumers a mathematical progression of how a scheduled payment is derived in a motor vehicle lease. In deriving a scheduled payment, the "total of base periodic payments" is divided by the number of lease payments. The caption in the regulation and on the model forms refers to the number of lease payments as the "lease term."

For leases with monthly payments, typically the lease term and the number of payments are the same. For leases with other payment arrangements, the number of payments and the lease term typically are not the same, for example, single-payment leases. In reflecting the consumer's legal obligation to make one payment under a single-payment lease, the figure disclosed under § 213.4(f)(8) should be one, not the lease term of 24 months or 36 months, for example.

To avoid confusion, references to the "lease term" in § 213.4(f)(8) would be changed to "lease payments" with corresponding changes to the model forms in appendix A. Despite the proposed revision to the model forms, lessors would continue to use the existing form until the supply is exhausted. If properly completed, those forms comply with the requirements of the act and regulation, protecting lessors from civil liability under sections 130 of the Truth in Lending Act and 185 of the Consumer Leasing Act.

The disclosure of the lease term is not a required disclosure. If they choose, however, lessors may disclose the lease term among the segregated disclosures along with the number of lease payments, but should note that the calculation under § 213.4(f)(8) calls for the number of payments.

Section 213.7—Advertising

In April 1997, the Board revised Regulation M to implement amendments to the act contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which streamlined the advertising disclosures for lease transactions. (62 FR 15364, April 1, 1997) Under the act, certain terms in an advertisement will trigger the disclosure of additional information. One of them is a statement in a lease advertisement that no initial payment is required, which triggers the disclosure of additional information. This "triggering" term was inadvertently omitted from § 213.7(d)(1)(ii), and is being added.

Appendix A—Model Forms

The Board is proposing several technical changes to the model forms in appendix A. The model forms for open- and closed-end leases in appendix A–1 and A–2 would be revised to change the reference under the payment calculation from "Lease term. The number of months in your lease." to "Lease payments. The number of payments in your lease." Page 2 of the open-end model form would be revised by adding "value" after "actual" in the "end of term liability" disclosure (a)(3), line 3. Model form A–3 for a furniture lease would be revised by adding "or delivery" after the heading "Amount due at lease signing."

III. Proposed Commentary Provisions

Section 213.4—Content of Disclosures

4(f) Payment Calculation

4(f)(7) Total of Base Periodic Payments.

For motor vehicle leases, lessors are required under § 213.4(f) to provide a mathematical progression of how scheduled lease payments are derived. Some lessors are concerned about exposure to civil liability because if one divides the total of the base periodic payments disclosed under § 213.4(f)(7) by the number of payments in the lease disclosed under § 213.4(f)(8) and then multiplies the base periodic payment disclosed under § 213.4(f)(9) by the number of payments in the lease disclosed under § 213.4(f)(8), the result is different because of rounding.

This anomaly may be avoided by making adjustments to the rent charge. However, some lessors have requested a small tolerance for the total of base periodic payments disclosure. They believe that a tolerance of $1 would be sufficient to remedy differences due to rounding.

In response to issues concerning rounding, proposed comment 4(f)(7)-1 would be added to clarify that if the periodic payment calculation under § 213.4(f) is calculated correctly, the disclosed total of base periodic payments is correct for disclosure purposes even if it varies from the base periodic payments multiplied by the number of payments in the lease, when the difference is solely due to rounding.

4(n) Fees and Taxes

Several examples are provided in comment 4(n)-1 to illustrate when taxes are disclosed under this section. The treatment of taxes paid as a part of regularly scheduled payments is unclear. This comment would be revised to clarify that taxes that are part of the regularly scheduled payments are required to be disclosed under § 213.4(n).

Appendix A—Model Forms

Comment 2 to Appendix A provides examples of acceptable changes that may be made to the model forms. At the request of lessors, the comment would be revised to clarify that inapplicable disclosures may be deleted.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1004 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's office of the Secretary has reviewed the proposed amendments to Regulation M. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden. The proposed rule would also give lessors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Lessors would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to make the information available in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden of lessors or merely may reduce the dollar cost.

The Federal Reserve requests comments from lessors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed revised regulation are found in 12 CFR 213.3, 213.4, 213.5, 213.7, 213.8, and appendix A. This information is mandatory (15 U.S.C. 1667 *et seq.*) to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers using certain home-banking services and consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit, including small businesses. Records, required to evidence compliance with the regulation, must be retained for twenty-four months.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation M (OMB No. 7100–0202) for three years. The current estimated total annual burden for this information collection is 11,179 hours, as shown in the table below. The proposed clarifications of some leasing terms are not estimated to affect the paperwork burden. These amounts reflect the burden estimate of the Federal Reserve System for the state member banks under its supervision, of which relatively few engage in consumer leasing. This regulation applies to all types of lessors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Disclosures	310	120	18 minutes	11,160
Advertising	15	3	25 minutes	19
Total				11,179

Consumer lease information in or referred to by advertisements is available to the public. Disclosures of the costs, liabilities, and terms of consumer lease transactions relating to specific leases are not publicly available. Because the Federal Reserve does not collect any information, no issue of confidentiality under the Freedom of Information Act normally arises. However, the information may be protected from disclosure under the

exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)). An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation M is 7100–0202.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation M. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 would continue to read as follows:

Authority: 15 U.S.C. 1604.

2. Section 213.3 would be amended by adding a new paragraph (a)(5) to read as follows:

§ 213.3 General disclosure requirements.

(a) *General requirements.* * * *

►(5) *Electronic communication.* For purposes of this regulation, the term *electronic communication* means a message transmitted electronically between a consumer and a lessor in a format that allows visual text to be displayed on equipment such as a personal computer monitor. A lessor and a consumer may agree to send by electronic communication the disclosures required by this regulation to be provided in writing. Any electronic communication must comply with paragraph (a) of this section.◄

* * * * *

3. Section 213.4 would be amended by revising paragraph (f)(8) to read as follows:

§ 213.4 Content of disclosures.

* * * * *

(f) *Payment calculation.* * * *

(8) [*Lease term.* The lease term with a description such as "the number of periods of repayment in your lease."] ►Lease payments. The lease payments with a description such as "the number of payments in your lease."◄

* * * * *

4. Section 213.7 would be amended by revising paragraph (d)(1)(ii) to read as follows:

§ 213.7 Advertising.

* * * * *

(d) *Advertisement of terms that require additional disclosure.*—(1) *Triggering terms.* * * *

(ii) A statement of any capitalized cost reduction or other payment ►or that no payment is◄ required ►, ◄prior to or at consummation ►or by delivery, if delivery occurs after consummation.◄ [or that no payment is required.]

* * * * *

5. Appendix A to part 213 would be amended by revising Appendix A–1, Appendix A–2, and Appendix A–3 to read as follows:

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Appendix A-1 Model Open-End or Finance Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ Lessee(s) _____

Amount Due at Lease Signing or Delivery	Monthly Payments	Other Charges (not part of your monthly payment)	Total of Payments (The amount you will have paid by the end of the lease)
(Itemized below)* $ _____	Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	Disposition fee (if you do not purchase the vehicle) $ _____ _____ _____ Total $ _____	$ _____ You will owe an additional amount if the actual value of the vehicle is less than the residual value.

*** Itemization of Amount Due at Lease Signing or Delivery**

Amount Due At Lease Signing or Delivery:

Capitalized cost reduction	$ _____
First monthly payment	_____
Refundable security deposit	_____
Title fees	_____
Registration fees	_____
_____	_____
Total	$ _____

How the Amount Due at Lease Signing or Delivery will be paid:

Net trade-in allowance	$ _____
Rebates and noncash credits	_____
Amount to be paid in cash	_____
_____	_____
Total	$ _____

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the vehicle ($ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) ..... $ _____

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost	−	_____
Adjusted capitalized cost. The amount used in calculating your base monthly payment	=	_____
Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment	−	_____
Depreciation and any amortized amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term	=	_____
Rent charge. The amount charged in addition to the depreciation and any amortized amounts	+	_____
Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge	=	_____
Lease payments. The number of payments in your lease	+	_____
Base monthly payment	=	_____
Monthly sales/use tax	+	_____
_____	+	_____
Total monthly payment	=$	_____

Rent and other charges. The total amount of rent and other charges imposed in connection with your lease $ _____ .

Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of _____ per mile].

Purchase Option at End of Lease Term. [You have an option to purchase the vehicle at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the vehicle at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

Appendix A-1 Model Open-End or Finance Vehicle Lease Disclosures

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Description of Leased Property				
Year	Make	Model	Body Style	Vehicle ID #

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

_____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____.

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

End of Term Liability. (a) The residual value ($ _____) of the vehicle is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is greater than the residual value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus.] If the actual value of the vehicle is less than the residual value, you will be liable for any difference up to $ _____ (3 times the monthly payment). For any difference in excess of that amount, you will be liable only if:
1. Excessive use or damage [as described in paragraph ____] [representing more than normal wear and use] resulted in an unusually low value at the end of the term.
2. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment.
3. You voluntarily agree with us after the end of the lease term to make a higher payment.
Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle. We must also pay your attorney's fees.
(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

_____ .

Maintenance.
[You are responsible for the following maintenance and servicing of the leased vehicle:

_____].

[We are responsible for the following maintenance and servicing of the leased vehicle:

_____].

Warranties. The leased vehicle is subject to the following express warranties:

_____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

_____ .

The charge for such early termination is:

_____ .

(b) We may terminate this lease before the end of the lease term under the following conditions:

_____ .

Upon such termination we shall be entitled to the following charge(s) for:

_____ .

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

_____ .

Late Payments. The charge for late payments is: _____ .

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be [$ _____ /[the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

Appendix A-2 Model Closed-End or Net Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosures

Date _____

Lessor(s) _____ **Lessee(s)** _____

Amount Due at Lease Signing or Delivery	**Monthly Payments**	**Other Charges** (not part of your monthly payment)	**Total of Payments** (The amount you will have paid by the end of the lease)
(Itemized below)*	Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	Disposition fee (if you do not purchase the vehicle) $ _____ _____ _____ Total $ _____	$ _____
$ _____			

*** Itemization of Amount Due at Lease Signing or Delivery**

Amount Due At Lease Signing or Delivery:		**How the Amount Due at Lease Signing or Delivery will be paid:**	
Capitalized cost reduction	$ _____	Net trade-in allowance	$ _____
First monthly payment	_____	Rebates and noncash credits	_____
Refundable security deposit	_____	Amount to be paid in cash	_____
Title fees	_____	_____	_____
Registration fees	_____		
_____	_____		
Total	$ _____	Total	$ _____

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the vehicle ($ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) ..... $ _____

If you want an itemization of this amount, please check this box. ☐

Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost	–	_____
Adjusted capitalized cost. The amount used in calculating your base monthly payment	=	_____
Residual value. The value of the vehicle at the end of the lease used in calculating your base monthly payment	–	_____
Depreciation and any amortized amounts. The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term	=	_____
Rent charge. The amount charged in addition to the depreciation and any amortized amounts	+	_____
Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge	=	_____
Lease payments. The number of payments in your lease	+	_____
Base monthly payment	=	_____
Monthly sales/use tax	+	_____
_____	+	_____
Total monthly payment	=$	_____

Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use [and for mileage in excess of _____ miles per year at the rate of _____ per mile].

Purchase Option at End of Lease Term. [You have an option to purchase the vehicle at the end of the lease term for $ _____ [and a purchase option fee of $ _____].] [You do not have an option to purchase the vehicle at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

Appendix A-2 Model Closed-End or Net Vehicle Lease Disclosures

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Description of Leased Property				
Year	Make	Model	Body Style	Vehicle ID #

Official Fees and Taxes. The total amount you will pay for official and license fees, registration, title, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease:

_____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____.

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle:

_____

Maintenance.
[You are responsible for the following maintenance and servicing of the leased vehicle:

_____].

[We are responsible for the following maintenance and servicing of the leased vehicle:

_____].

Warranties. The leased vehicle is subject to the following express warranties:

_____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions:

_____ .

The charge for such early termination is:

_____ .

(b) We may terminate this lease before the end of the lease term under the following conditions:

_____ .

Upon such termination we shall be entitled to the following charge(s) for:

_____ .

(c) To the extent these charges take into account the value of the vehicle at termination, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

_____

Late Payments. The charge for late payments is: _____

Option to Purchase Leased Property Prior to the End of the Lease. [You have an option to purchase the leased vehicle prior to the end of the term. The price will be [$ _____ /[the method of determining the price].] [You do not have an option to purchase the leased vehicle.]

Appendix A-3 Model Furniture Lease Disclosures

FEDERAL CONSUMER LEASING ACT DISCLOSURE STATEMENT

Date _____

Lessor(s) _____ Lessee(s) _____

Description of Leased Property				
Item	Color	Stock #	Mfg.	Quantity

Amount Due at Lease Signing or Delivery	Monthly Payments	Other Charges (not part of	Total of Payments (The amount you will have paid by the end of the lease)
First monthly payment $ _____ Refundable security deposit $ _____ Delivery/Installation fee $ _____ _____ $ _____ Total $ _____	Your first monthly payment of $ _____ is due on _____, followed by _____ payments of $ _____ due on the _____ of each month. The total of your monthly payments is $ _____.	Pick-up fee $ _____ _____ $ _____ Total $ _____	$ _____

Purchase Option at End of Lease Term. [You have an option to purchase the leased property at the end of the lease term for $ _____ [with a purchase option fee of $ _____].] [You do not have an option to purchase the leased property at the end of the lease term.]

Other Important Terms. See your lease documents for additional information on early termination, purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

[The following provisions are the nonsegregated disclosures required under Regulation M.]

Official Fees and Taxes. The total amount you will pay for official fees, and taxes over the term of your lease, whether included with your monthly payments or assessed otherwise: $ _____ .

Insurance. The following types and amounts of insurance will be acquired in connection with this lease: _____ _____ .

_____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____ .

_____ You (lessee) agree to provide insurance coverage in the amount and types indicated above.

Standards for Wear and Use. The following standards are applicable for determining unreasonable or excess wear and use of the leased property: _____

Maintenance.

[You are responsible for the following maintenance and servicing of the leased property: _____.]

[We are responsible for the following maintenance and servicing of the leased property: _____.]

Warranties. The leased property is subject to the following express warranties: _____ .

Early Termination and Default. (a) You may terminate this lease before the end of the lease term under the following conditions: _____ .

The charge for such early termination is: _____ .

(b) We may terminate this lease before the end of the lease term under the following conditions: _____ .

Upon such termination we shall be entitled to the following charge(s) for: _____ .

_____

Appendix A-3 Model Furniture Lease Disclosures (continued)

Early Termination and Default. (continued)

(c) To the extent these charges take into account the value of the leased property at the end of the lease term, if you disagree with the value we assign to the property, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the property which could be realized at sale. The appraised value shall then be used as the actual value.

Security Interest. We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: _____.

Late Payments. The charge for late payments is: _____.

Purchase Option Prior to the End of the Lease Term.

[You have an option to purchase the leased property prior to the end of the term. The price will be [$ _____]/the method of determining the price].]

[You do not have an option to purchase the leased property.]

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6. In Supplement I to Part 213—Official Staff Commentary to Regulation M, under Section 213.4—Content of Disclosures, the following amendments would be made:

a. A new paragraph heading "4(f)(7) *Total of base periodic payments*" would be added in numerical order and a new paragraph 1. would be added immediately below the new heading.

b. Under (4)(n) *Fees and taxes,* paragraph 1.ii. would be revised.

The addition and revision would read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

* * * * *

Section 213.4—Content of Disclosures

* * * * *

►4(f)(7) Total of base periodic payments.

1. *Accuracy of disclosure.* Lessors are deemed to be in compliance with § 213.4(f)(7) of the regulation if due to rounding in a manner the lessor arrives at the base periodic payment, the amount disclosed under § 213.4(f)(7), the total of base periodic payments, differs from the base periodic payment disclosed under § 213.4(f)(9), multiplied by the number of payments under the lease disclosed under § 213.4(f)(8).◄

* * * * *

4(n) Fees and taxes.

1. *Treatment of certain taxes.* * * *

ii. Taxes that are part of regularly scheduled payments are reflected in the disclosure under §§ 213.4(c) ►and 213.4(n)◄ and itemized under § 213.4(f)(10).

* * * * *

7. In Supplement I to Part 213, under Appendix A—Model Forms, paragraph 2.v. would be revised as follows:

* * * * *

Appendix A—Model Forms

* * * * *

2. *Examples of acceptable changes.* * * *

v. Deleting ►or blocking out◄ inapplicable disclosures [by blocking out], filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items (this should facilitate use of multipurpose standard forms[.])►.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–6990 Filed 3–24–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1005]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation Z, which implements the Truth in Lending Act. The proposal would permit creditors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery.

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R–1005, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel, Obrea Poindexter, or Pamela Morris Blumenthal, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication for delivery of information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example in May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered the comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation Z to allow creditors to provide Regulation Z disclosures electronically; such disclosures would remain subject to any applicable timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed revisions to address electronic communication under Regulations DD (Truth in Savings), B (Equal Credit Opportunity), and M (Consumer Leasing), published elsewhere in today's **Federal Register**. In addition, the Board has issued an interim rule under Regulation E, also published elsewhere in today's **Federal Register** so that financial institutions can implement systems to provide Electronic Fund Transfer Act disclosures electronically.

II. Proposed Regulatory Revisions

The TILA and Regulation Z require several disclosures to be provided to consumers in writing. The requirement that disclosures be in writing has been presumed to require that creditors provide paper documents. However, under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to

be a writing at least where visual text is involved.

Therefore, pursuant to its authority under section 105 of the TILA, the Board proposes to amend Regulation Z to permit creditors to use electronic communication where the regulation calls for information to be provided in writing. The term "electronic communication" is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of "electronic communication" for purposes of this regulation because they do not have the feature generally associated with a writing—visual text.

Section 226.2(a)(27) would be revised to include the definition of electronic communication for purposes of Regulation Z. Under the definition, electronic communication is a visual text message electronically transmitted between a creditor and a consumer's home computer or other electronic device used by a consumer. Sections 226.5, 226.17 and 226.31 would be revised to address electronic communication. These sections contain general disclosure requirements for open-end credit, closed-end credit, and certain home secured loans referred to as "HOEPA loans."

Agreements Between Creditors and Consumers

Sections 226.5(a)(5), 226.17(a)(3), and 226.31(b)(2) would permit creditors to send electronic disclosures if the consumer agrees. There may be various ways that a creditor and a consumer could agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be determined by applicable state law. The regulation would not preclude a creditor and a consumer from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of TILA disclosures and other information electronically.

Delivery Requirements for Electronic Communication

Regulation Z provides that an institution "furnish," "provide," "send," "deliver," or "mail" information to a consumer. Generally, the delivery requirement anticipates that a creditor will deliver the information—typically by mail—to an address designated by the consumer. For a paper communication, a creditor would not satisfy that requirement by making disclosures "available" to consumers, for example, at a creditor's office or other location. The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving disclosures in paper form. Simply posting information on an Internet site without some appropriate notice and instructions about how the consumer may obtain the required information would not satisfy the requirement.

The requirement to send disclosures to a consumer would be satisfied when the institution ensures that the disclosures will be displayed in a timely manner. For example, under Regulation Z, open-end credit initial disclosures generally must be provided before the first transaction under the plan. Assume that a consumer uses a personal computer to apply for a plan and consents to the electronic delivery of the initial disclosures. If the disclosures automatically appear on the computer screen before the consumer commits to the plan (in accordance with the format, timing rules and any other requirements of the act and regulation), the creditor would satisfy the requirement to provide (deliver or transmit) disclosures to the consumer.

As a practical matter, there may be little distinction between sending or delivering electronic disclosures and making them "available." Creditors have flexibility in how they may deliver electronic disclosures to consumers, including, but not limited to, the following examples. They may send disclosures to a consumer-designated electronic mail address or they may designate a location on a website where the consumer enters a personal identification number or other identifier to access required information. In the scenario described above, assume that the consumer applies for a credit plan, receives the initial disclosures at that time, and agrees to receive all Regulation Z disclosures electronically. Subsequent disclosures sent to the designated address or placed at a designated location (for example, periodic statements or change-in-terms notices) would satisfy the delivery requirements of the regulation.

Electronic communication would remain subject to any timing or other applicable requirements under Regulation Z. For example, an electronic change in terms notice required by § 226.9(c) of Regulation Z must still be provided at least fifteen days in advance of the change. The Board solicits comment on whether further guidance is needed on how to comply wth the timing requirements when a notice is posted on an Internet website.

Section 226.5a—Credit and Charge Card Applications and Solicitations

The act and regulation require credit and charge card issuers to provide credit disclosures in certain applications and solicitations to open credit and charge card accounts. Format and content requirements differ for applications or solicitations sent in direct mail campaigns and for those made available to the general public such as in "take-ones" and catalogs or magazines. Disclosures accompanying direct mail applications and solicitations must be presented in a tabular format. Disclosures in a take-one also may be presented in a table with the same content as for direct mail, but the act and regulation permit alternatives as to format and content. The APR disclosed in a direct mail solicitation must be accurate within 60 days of mailing; in a take-one, within 30 days of printing.

Consumers could obtain an electronically sent credit or charge card application in much the same way as either opening a direct-mail piece or browsing through a magazine. Under the proposal, if a card issuer sends an application or solicitation to a consumer by electronic means that alert the consumer that the application or solicitation has arrived, such as electronic mail, the card issuer would follow the direct-mail rules under § 226.5a. If an issuer merely makes an application or solicitation publicly available, such as by posting it on an Internet site, the issuer would follow the "take-one" rules. The Board believes that in the context of electronic communications, "printing" is the equivalent of updating a site on the Internet, for example. Thus, where the "take-one" rules apply, consumers would view APRs that are accurate within 30 days of the card issuer's most recent update of the Internet site. Where the direct-mail rules apply, the APRs disclosed would be accurate within 60 days of the sending of the electronic application or solicitation. The Board requests comment on any compliance difficulties this approach may pose, and possible suggestions for their resolution.

Section 226.17(g)—Mail or Telephone Orders—Delay in Disclosures

Section 226.17(g) allows credit to be offered via mail, telephone, or other electronic means and full TILA disclosures to be deferred as long as a certain number of disclosures are "made

available in written form." The rationale underlying the deferral is that, in some instances, the creditor cannot provide disclosures in the form required by the regulation because of the lack of face to face or direct interaction with the consumer. Because loan products offered by electronic communication (for example, those offered on the Internet) do not appear to pose the same difficulty, the Board believes that this deferral should not apply to electronic disclosures. The Board believes that permitting a deferral would not effectuate the purpose of the TILA to provide consumers with information about credit terms prior to being obligated. Thus, the proposed rule provides that specific disclosures must be provided before consummation of the transaction.

Requirement That Information Be "Clear and Conspicuous"

The act and Regulation Z require creditors to present required information "clearly and conspicuously." Under the proposed rule, the "clear and conspicuous" requirement applies to electronic communication. The Board does not intend to discourage or encourage specific types of technologies. Regardless of technology, however, the disclosures provided by electronic communication must meet the "clear and conspicuous" standard. While a creditor is generally not required to ensure that the consumer has the equipment to read the disclosures, in some circumstances a creditor would have the responsibility of making sure the proper equipment is in place. For example, to use electronic disclosures for credit offered through terminals in a creditor's lobby, or through kiosks located in public or other places, the creditor must ensure that the equipment meets the clear and conspicuous standard for TILA disclosures that are being provided electronically.

Consumer Ability to Retain Disclosures

Regulation Z requires that many of its written disclosures be in a form that the consumer may keep. This requirement would apply to disclosures provided by electronic communication. Creditors would satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the consumer. The requirements for electronic delivery should be similar to the current paper requirements, where creditors generally must mail or deliver the information to the consumer but need not ensure that the consumer reads or retains it. Thus, creditors would not be required to monitor an individual consumer's ability to retain the information, nor to take steps to find out whether the consumer has in fact retained it. The Board anticipates that, where appropriate, a creditor would provide special technical specifications for receiving or retaining information before or at the time a consumer agrees to receive information electronically.

As in the case of the "clear and conspicuous" standard discussed above, in circumstances where the creditor (or a network of which the creditor is a member) controls the equipment to be used for the service—such as terminals in institution lobbies or kiosks in shopping centers—the creditor would have the responsibility of ensuring retainability. Provided that the delivery requirements (discussed above) are satisfied, methods for fulfilling this requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure to the consumer's electronic mail or post office address.

Signature Requirements Under Regulation Z

There are two signature requirements under Regulation Z. Under § 226.4(d) consumers may elect to accept credit life insurance by signing or initialing an affirmative written request after receiving disclosure about the insurance. Under § 226.23 (and the corresponding model forms and official staff commentary) consumers may cancel certain home-secured loans or waive this right by providing a written signed notice to the creditor. The Board indicated in the May 1996 Regulation E proposal that any electronic authentication method should provide the same assurance as a signature in a paper-based system, and cited security codes and digital signatures as examples of authentication devices that might meet the requirements. The Board is interested in learning about other ways in which authentication in an electronic environment might take the place of the consumer's signature.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that creditors subject to the TILA and Regulation Z will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of TILA disclosures and other information, and will address compliance or other issues that may arise as appropriate.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1005 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's Office of the Secretary has reviewed the proposed amendments to Regulation Z. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden by giving creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed revisions under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Creditors would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden on creditors and financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from creditors, especially

state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed revised regulation are found throughout 12 CFR Part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1604(a)) to ensure the disclosure of certain credit costs and terms to consumers, at or before the time consumers enter into a consumer credit transaction and when the availability of consumer credit on particular terms is advertised. The purpose of the disclosures is to encourage competition among various credit sources through informed comparison-shopping by consumers. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Creditors are also required to retain records as evidence of compliance for twenty-four months.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation Z (OMB No. 7100–0199) for three years. The current estimated total annual burden for this information collection is 1,878,846 hours, as shown in the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Open-end credit:				
Initial terms	996	1,150	2.5 minutes	47,725
Change in terms	996	2,500	1.0 minute	41,500
Periodic Statements	996	86,250	45.0 seconds	1,073,813
Error resolution	996	8	15.0 minutes	1,992
Credit and charge card accounts:				
Advance disclosures	996	29,750	10.0 seconds	82,308
Renewal notice	996	10,700	5.0 seconds	14,802
Insurance notice	996	60	15.0 seconds	249
Home equity plans:				
Advance disclosure	996	120	2.0 minutes	3,984
Change in terms	996	3	2.0 minutes	100
Closed-end credit disclosures	996	5,750	6.4 minutes	610,880
Advertising	996	3	30.0 minutes	1,493
Total				1,878,846

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General disclosures of credit terms that appear in advertisements or take-one applications are available to the public. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)). Transaction- or account-specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation Z is 7100–0199.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation Z. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.2 would be amended by adding a new paragraph (a)(27) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* * * *

(27) *Electronic communication* means a message transmitted electronically between a consumer and a creditor in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

* * * * *

►3. Section 226.5 would be amended by adding a new paragraph (a)(5) as follows:◄

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* * * *

►(5) *Electronic communication.* A creditor and a consumer may agree to send by electronic communication, as that term is defined in § 226.2(a)(27), any information required by this subpart to be provided in writing. Information sent by electronic communication to a consumer must comply with paragraph (a)(1) of this section and any applicable timing requirements contained in this subpart.◄

4. Section 226.17 would be amended as follows:

a. By adding a new paragraph (a)(3); and

b. By revising paragraph (g) introductory text.

The revision and addition would read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* * * *

►(3) *Electronic communication.* A creditor and a consumer may agree to send by electronic communication, as that term is defined in § 226.2(a)(27), any information required by this subpart to be provided in writing. Information sent by electronic communication to a consumer must comply with paragraph (a)(1) of this section and any applicable timing requirements contained in this subpart.◄

* * * * *

(g) *Mail or telephone orders—delay in disclosures.* If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or any other written [or electric] communication, ►excluding electronic communication as discussed in paragraph (a)(3) of this section,◄ without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request:

* * * * *

5. Section 226.31 would be amended by redesignating paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2) as to read as follows:

§ 226.31 General rules.

* * * * *

(b)►(1)◄ *Form of disclosures.* * * *

►(2) *Electronic communication.* A creditor and a consumer may agree to send by electronic communication, as that term is defined in § 226.2(a)(27), any information required by this subpart to be provided in writing. Information sent by electronic communication to a consumer must comply with this paragraph (b) and any applicable timing requirements contained in this subpart.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–6991 Filed 3–24–98; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1006]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed rule amending Regulation B, which implements the Equal Credit Opportunity Act. The proposal would permit creditors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation if the consumer agrees to such delivery.

DATES: Comments must be received by May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R–1006, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel or Natalie E. Taylor, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 *et seq.*) makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity

to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The act is implemented by the Board's Regulation B (12 CFR part 202).

As part of the Regulatory Planning and Review Program and its review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), the Board determined that the use of electronic communication for delivery of information to consumers that is required by federal consumer financial services and fair lending laws could effectively reduce regulatory compliance burden without adversely affecting consumer protections. Thus, the Board has been considering the issue and closely following the development of electronic communication. For example, in May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically. In March 1997, the Board issued an amendment to the staff commentary to Regulation CC (Availability of Funds and Collection of Checks) that allowed financial institutions to send notices electronically. (62 FR 13801, March 18, 1997.)

Having considered comments received on the Regulation E proposal and other rulemakings, the Board now proposes to amend Regulation B to allow creditors to provide Regulation B disclosures electronically; such disclosures would remain subject to any applicable timing, format, and other requirements of the act and the regulation. Concurrently, the Board is issuing similar proposed revisions to address electronic communication under Regulations DD (Truth in Savings), Z (Truth in Lending), and M (Consumer Leasing), published elsewhere in today's **Federal Register**. In addition, the Board has issued an interim rule under Regulation E also published elsewhere in today's **Federal Register** so that financial institutions can implement systems to provide Electronic Fund Transfer Act disclosures electronically.

II. Proposed Regulatory Revisions

The ECOA and Regulation B require certain disclosures to be provided to applicants in writing. Under Regulation B, the regulatory requirement that disclosures be in writing has been presumed to require that creditors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing at least where visual text is involved.

Therefore, pursuant to its authority under section 703(a)(1) of the ECOA, the Board proposes to amend Regulation B to permit creditors to use electronic communication where the regulation calls for information to be provided in writing. The term "electronic communication" is limited to a communication that can be displayed as visual text. An example is an electronic visual text message that is displayed on a screen (such as the consumer's computer monitor). Communications by telephone voicemail systems do not meet the definition of "electronic communication" for purposes of this regulation because they do not have the feature generally associated with a writing—visual text.

Section 202.5 Rules Concerning Taking of Applications

A new subsection (f) would be added to § 202.5 to address electronic communication. "Electronic communication" is a visual text message electronically transmitted between a creditor and an applicant's home computer or other electronic device used by an applicant. (Under the ECOA and Regulation B, the term "applicant" includes any person who requests or who has received and extension of credit from a creditor, and any person who is or may become contractually liable regarding an extension of credit. In this notice, the term is used in this context.)

Agreements Between Financial Institutions and Consumers

Section 202.5(f) would permit creditors to send electronic disclosures if the consumer agrees. There may be various ways that a creditor and an applicant agree to the electronic delivery of disclosures and other information. Whether such an agreement exists between the parties would be determined by applicable state law. The regulation would not preclude a creditor and an applicant from entering into an agreement electronically, nor does it prescribe a formal mechanism for doing so. The Board does believe, however, that consumers should be clearly informed when they are consenting to the delivery of ECOA and Regulation B disclosures and other information electronically.

Delivery Requirements for Electronic Communication

Regulation B requires that a creditor "provide," "give," "deliver," or "mail" information to an applicant, or "notify" an applicant of certain information. Generally, the delivery requirement anticipates that a creditor will deliver the information—typically by mail—to an address designated by the applicant. For a paper communication, a creditor would not satisfy that requirement by making disclosures "available" to applicants, for example, at a creditor's office or other location. The Board believes that consumers receiving disclosures by electronic communication should have protections regarding delivery similar to those afforded consumers receiving disclosures in paper form. Simply posting information to an Internet site, however, without some appropriate notice and instructions about how the applicant may obtain the required information would not satisfy the requirement.

As a practical matter, there may be little distinction between sending or delivering electronic disclosures and making them "available." Creditors would have flexibility in how they may deliver electronic disclosures to applicants, including, but not limited to the following examples. They may send disclosures to a consumer-designated electronic mail address or they may designate a location on a website where the applicant enters a personal identification number or other identifier to access required information. Assume that an applicant applies for a credit plan and agrees to receive all ECOA and Regulation B disclosures electronically. Subsequent disclosures, such as adverse action notices, sent (or delivered) to the designated address or placed at a designated location would generally satisfy the delivery requirements of the regulation.

Electronic communication would remain subject to any timing or other applicable requirements under Regulation B. For example, notice of action required by § 202.9(a)(1) of Regulation B must still be provided within thirty days after receiving a completed application. The Board solicits comment on whether further guidance is needed on how to comply with the timing requirements when a notice is posted on an Internet website.

Requirement That Information be "Clear and Conspicuous"

Currently, Regulation B does not expressly require creditors to present required information in a clear and

conspicuous format. On the other hand, Regulations CC (Availability of Funds), DD (Truth in Savings), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) all require that information be provided in a clear and conspicuous (or readily understandable) format. Accordingly, the Board believes it may be desirable to apply this same standard to information provided by electronic communication under Regulation B to ensure that information is understandable. The Board requests comment on whether Regulation B should be amended to apply this requirement to disclosures provided electronically.

Applicant's Ability to Retain Disclosures

Currently, only the notice in § 202.9(a)(3)(i)(B) of Regulation B need be provided in a form the applicant may retain. As in the case of the clear and conspicuous requirement discussed above, Regulations CC (Availability of Funds), DD (Truth in Savings), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) all require that information be provided in a form that the consumer may keep. Because the retention requirement for written disclosures (including electronic communication) exists for those regulations, it seems appropriate to apply a comparable standard to Regulation B. The Board requests comment on whether this retention requirement should be extended to electronic communication under Regulation B.

Creditors would satisfy the retention requirement if, for example, disclosures can be printed or downloaded by the applicant. Thus, creditors would not be required to monitor an individual applicant's ability to retain the information, nor to take steps to find out whether the applicant has in fact retained it. The Board anticipates that, where appropriate, a creditor would inform the applicant of special technical specifications for receiving or retaining information before or at the time an applicant agrees to receive information electronically.

However, in circumstances where the creditor (or a network in which the creditor is a member) controls the equipment to be used for the service—such as terminals in institution lobbies or kiosks in public or other places—the creditor would have the responsibility of ensuring retainability. Provided that the delivery requirements (discussed above) are satisfied, methods for fulfilling this requirement could include, for example, printers incorporated into terminals or a screen message offering to transmit the disclosure to the applicant's electronic mail or post office address.

Consumer Requests for Information

Under Regulation B, applicants are entitled to receive certain information upon written request. For example, § 202.5a requires a creditor to provide—either automatically or upon the applicant's written request—a copy of the appraisal report used in connection with an application for a loan secured by a lien on a dwelling. Where the creditor provides appraisal reports only upon request, the creditor must notify the applicant of the right to request an appraisal and whether the applicant's request must be in writing. Section 202.9(a)(3)(ii) allows a creditor to disclose orally a business applicant's right to a statement of specific reasons for adverse action; however, the creditor must provide the reasons in writing within a specified time period after receiving the applicant's written request for the reasons. The proposed rule would permit all consumer requests required to be in writing to be sent electronically.

Current Need for Safeguards Concerning the Electronic Delivery of Disclosures

Today, most consumers receive federal disclosures in paper form. As electronic commerce and electronic banking increase and technological advances take place, obtaining disclosures by electronic communication will likely become more commonplace. Currently, however, the use of electronic communication in the delivery of financial services is still evolving. Thus, it is difficult to fully predict the extent to which additional safeguards, if any, may be needed to ensure that consumers receive the same protections that exist for disclosures in paper form. The Board expects that creditors subject to Regulation B will provide sufficient details about the delivery of disclosures. The Board plans to closely monitor the development of electronic delivery of disclosures and other information, and will address compliance or other issues that may arise as appropriate.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1006 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's Office of the Secretary has reviewed the proposed amendments to Regulation B. Overall, the proposed amendments are not expected to have any significant impact on small entities. The proposed rule would relieve compliance burden by giving creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed revisions under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Creditors would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication in home banking and financial services may reduce the paperwork burden on creditors and financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this rule is effective. Comments are invited on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork

Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR 202.5, 202.9, 202.12, 202.13, and Appendices B and C. This information is mandatory (15 U.S.C. 1691b(a)(1) and Public Law 104–208, § 2302(a)) to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et. seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Creditors are required to retain records for twelve to twenty-five months as evidence of compliance.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation B (OMB No. 7100–0201) for three years. The current estimated total annual burden for this information collection is 125,177 hours, as shown in the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Notification	996	1,715	2.50 minutes	71,173
Credit history reporting	996	850	2.00 minutes	28,220
Monitoring	996	360	.50 minute	2,988
Appraisal:				
Appraisal report upon request	996	190	5.00 minutes	15,770
Notice of right to appraisal	996	1,650	.25 minute	6,848
Self-testing:				
Recordkeeping of test	45	1	2 hours	90
Recordkeeping of corrective action	11	1	8 hours	88
Total				125,177

Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)). The adverse action disclosure is confidential between the institution and the consumer involved.

An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation B is 7100–0201.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation B. New language is shown inside bold-faced arrows.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 202 as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.5 would be amended by adding a new paragraph (f) to read as follows:

§ 202.5 Rules concerning taking of applications.

* * * * *

►(f) *Electronic communication* means a message transmitted electronically between an applicant and a creditor in a format that allows visual text to be displayed on equipment such as a personal computer monitor. A creditor and an applicant may agree to send by electronic communication any information required by §§ 202.5a, 202.9, or 202.13(b), in accordance with applicable timing requirements. Disclosures provided by electronic communication shall be clear and conspicuous and in a form that the applicant may keep.◄

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–6992 Filed 3–24–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1007]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; technical amendments.

SUMMARY: The Board is publishing for comment a proposed rule to eliminate the extended time periods in Regulation E for investigating claims involving point-of-sale (POS) debit card and foreign-initiated transactions. Regulation E implements the Electronic Fund Transfer Act. Financial institutions generally have up to 10 business days to provisionally credit an account and up to 45 calendar days to complete an investigation of an alleged error. For POS and foreign transactions, financial institutions have up to 20 business days under the regulation to

provisionally credit an account and up to 90 calendar days to complete the investigation of an alleged error. The Board believes that technological improvements in payment systems should permit consumer claims of error to be investigated more quickly than in the past, and proposes to amend the regulation accordingly. The proposed rule also contains a technical amendment to a model form to harmonize it with the regulation.

DATES: Comments must be received on or before May 15, 1998.

ADDRESSES: Comments should refer to Docket No. R–1007, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building Courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Except as provided in the Board's Rules Regarding Availability of Information (12 CFR 261.12), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Obrea O. Poindexter, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR Part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

II. Proposed Regulatory Revisions

Error Resolution—POS Transactions

The EFTA requires a financial institution to investigate and resolve a consumer's claim of error—for an unauthorized EFT, for example—within specified time limits. Within 10 business days after receiving notice of an alleged error an institution must either resolve the claim or provisionally credit the consumer's account while continuing to investigate. In the latter case, the institution must resolve the claim no later than 45 calendar days after receiving notice.

For POS and foreign transactions, Regulation E provides longer time periods; it allows 20 business days to resolve a claim of an error (or to provisionally credit an account if the investigation takes longer), and 90 calendar days to complete the investigation. The rule allows issuers to avoid having to provisionally credit an account before the investigation is complete. The longer periods were adopted by the Board in 1982 for foreign transactions; and were adopted in 1984 for POS transactions, along with amendments to Regulation E to cover paper-based debit card transactions. Initially, the Board proposed to have the longer time periods for resolving claims of error apply only to paper-based debit card transactions (at merchant locations) that did not involve electronic terminals. After public comment, the Board adopted a final rule that applied the extended time frames to all POS transactions. The adoption of a uniform rule avoided the complexity of having the timing rules depend on how the particular EFT was initiated, which would have been confusing to consumers and burdensome to institutions. Moreover, at that time only a small portion of the POS debit card transactions involved electronic terminals.

The use of electronic terminals for all types of POS debit card transactions is now commonplace. Debit card transactions using personal identification numbers (PINs) at grocery stores and other merchant locations (referred to as PIN-protected) have been the most common type of debit card transaction in the United States. In the past few years, however, there has been an increase in the use at POS terminals of debit cards that can be used without a PIN (commonly referred to as check cards). Besides making them available upon request, many institutions have automatically replaced their customers' existing PIN-protected cards with cards that can be used with a PIN or without a PIN depending on where the transaction takes place.

This development has raised concerns about the potentially greater consumer exposure to losses in the absence of PIN protection. On September 24, 1997, the Subcommittee on Financial Institutions and Consumer Credit of the House Committee on Banking and Financial Services held a hearing on two bills to amend the EFTA in connection with the use of check cards. The bills would limit consumer liability for check cards, restrict unsolicited issuance of the cards in substitution for PIN-protected cards, add disclosures, and require institutions to provisionally recredit accounts sooner while investigating claims of unauthorized use or other errors.

With regard to the investigation of claims of error, legislation was introduced that would require institutions to recredit a consumer's account within three business days of notice of the claim of error. An industry representative of a card association testified that standards were voluntarily being adopted to require member institutions to provisionally credit accounts involving the use of a check card within five business days.

The Board believes that technical improvements in the payment system should permit consumer claims involving POS transactions to be investigated more quickly for transactions at POS; the same may be true for foreign transactions as well. Testimony at the September 1997 congressional hearing supports that conclusion. The Board believes that, especially in the context of accounts that can be accessed without PIN protection (potentially increasing consumer exposure to losses), the importance of more prompt recrediting of consumers' funds pending investigation may outweigh the compliance burden, if any, associated with this change. Therefore, the Board proposes to eliminate the extended time periods for POS and foreign transactions. The Board solicits specific comment on whether removal of the special rule would impose an undue burden.

Error Resolution—New Accounts

In the course of the Board's review of Regulation E, financial institutions suggested a change in the error resolution requirements when a new account is involved. The problem arises when individuals open an account with

the intent to defraud. Such individuals may open an account, immediately withdraw all or a large portion of the funds through ARMS, and file a claim with the financial institution disputing the ATM transactions. Often they receive provisional credit because of the financial institution's inability to research the claim (such as by obtaining photographic evidence from a nonproprietary ATM) within ten business days of a claim. At that point, the individual immediately withdraws the funds that were provisionally credited and abandons the account. Institutions believed that having more time to investigate errors involving new accounts would enable them to limit their losses and control this type of fraud.

The Board proposed in May 1996 to amend Regulation E, pursuant to its section 904(c) authority to provide for adjustments and exceptions in the regulation, to extend the error-resolution time periods for new accounts. The proposal would have allowed 20 business days for resolving an error before an institution is required to provisionally credit, and an outside limit of 90 calendar days for resolving the claim. The Board solicited comment on the extensions of time, on the 30-day definition for new accounts, and on whether consumer protections relating to error resolution would be adversely affected.

Comments on the proposed rule, from financial institutions and trade associations, were generally favorable. However, in light of the proposed rule to reduce the time for resolving errors involving POS and foreign transactions, the Board is deferring final action until action is taken on the POS and foreign transaction proposal.

Technical Amendment to Error Resolution Notice

Regulation E requires financial institutions to investigate and resolve errors alleged by consumers, either within 10 business days after receiving the consumer's notice of error or within 45 calendar days after receiving the notice, provided the institution provisionally credits the consumer's account within 10 business days. Upon completion of the investigation, the institution must notify the consumer of its findings. Prior to the 1996 revision of Regulation E, the institution had an additional three days to notify the consumer only if the institution found that an error did not occur and was operating under the 45-day rule. If the institution found that an error did occur, the institution was required to notify the consumer no later than the tenth business day or the 45th calendar day, as applicable.

In the 1996 revision, the Board amended the error resolution procedures (§ 205.11) to allow institutions the three additional days to notify the consumer in all cases. However, the model error resolution notice (Appendix A, paragraph A–3) was not revised at that time to conform to the amendment to § 205.11. The text of the model notice is being amended to conform it to § 205.11 as amended.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1007. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5″ or 5.25″ size, in any DOS-compatible format. Comments on computer diskettes must be accompanied by a paper version.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board's office of the Secretary has reviewed the proposed amendments to Regulation E. The Board believes that the proposal to shorten the time period for investigating errors alleged in point-of-sale debit card transactions will provide increased consumer protection without any increase in regulatory burden. The current exception to the statutory requirement of 10 business days for such investigations was implemented at a time when paper-based transactions were more common. The Board believes that such transactions are uncommon today, beyond the initial deposit of transaction information when depository institutions and third-party processors convert any paper-based information to electronic form. The Board specifically solicits comment on extent of any difficulty that this change might warrant.

V. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget.

The Federal Reserve has no data with which to estimate the burden the proposed revised requirements would impose on state member banks. Issuers would be able to use electronic communication to provide disclosures and other information required by this regulation rather than having to print and mail the information in paper form. The use of electronic communication may reduce the paperwork burden of financial institutions or merely may reduce the dollar cost.

The Federal Reserve requests comments from issuers, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this interim regulation is effective. Comments are invited on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this interim regulation are found throughout 12 CFR Part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for 24 months as evidence of compliance.

The Board also proposes to extend the Recordkeeping and Disclosure Requirements in Connection with Regulation E (OMB No. 7100–0200) for three years. The current estimated total annual burden for this information collection is 462,839 hours, as shown in the table below. These amounts reflect the burden estimate of the Federal Reserve System for the 851 state member banks estimated to be covered by Regulation E. This regulation applies

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to all types of issuers, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

	Number of respondents	Estimated annual frequency	Estimated response time	Estimated annual burden hours
Initial Disclosures:				
Initial terms	851	250	2.50 minutes	8,865
Change in terms	851	340	1.00 minute	4,822
Transaction disclosures:				
Terminal receipts	851	71,990	0.25 minute	255,265
Deposit verifications	851	420	1.50 minutes	8,936
Periodic disclosures	851	12,800	1.00 minute	181,547
Error resolution rules	851	8	30.00 minutes	3,404
Total				462,839

Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)). The disclosures and information about error allegations are confidential between the institution and the consumer. An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation E is 7100–0200.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation E. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

Pursuant to the authority granted in sections 904 (a) and (c) of the Electronic Fund Transfer Act, 15 U.S.C. 1693b (a) and (c), and for the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693–1693r.

§205.11 [Amended]

2. Section 205.11 would be amended by removing paragraph (c)(3) and redesignating paragraph (c)(4) as paragraph (c)(3).

3. In Appendix A to Part 205, in A–3 MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b)), the undesignated second and third paragraphs following paragraph (a)(3) would be revised to read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–3—MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) AND 205.8(b))

(a) *Initial and annual error resolution notice (§§ 205.7(b)(10) and 205.8(b))*

* * * * *

We will ►determine whether an error occurred◄ [tell you the results of our investigation] within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

►We will tell you the results of our investigation within three business days after completing it.◄ If we decide that there was no error, ►this will include◄ [we will send you] a written explanation [within three business days after we finish our investigation]. You may ask for copies of the documents that we used in our investigation.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 12, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–6993 Filed 3–24–98; 8:45 am]

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Wednesday
March 25, 1998

Part IV

Department of Transportation

49 CFR Part 37

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1192

Transportation for Individuals with Disabilities; Proposed Rule

Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles; Over-the-Road Busses; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

49 CFR Part 37

[Docket OST–1998–3648; Notice No. 98–15]

RIN 2105–ACOO

Transportation for Individuals with Disabilities

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department is proposing regulations to require the accessibility of new over-the-road buses (OTRBs) and to require accessible OTRB service. The proposed rules, under the authority of the Americans with Disabilities Act (ADA), apply both to intercity and other fixed-route bus operators and to charter/tour operators. The rules would ensure that passengers with disabilities could use OTRBs, which are the last major mode of surface transportation that are not subject to final accessibility requirements.

DATES: Comments are requested on or before May 26, 1998. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. OST–1998–3648, Department of Transportation, 400 7th Street, S.W., Room PL–401, Washington, D.C., 20590. Comments will be available for inspection at this address from 10:00 a.m. to 5:00 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD), or Donald Trilling, Director, Office of Environment, Energy, and Safety, same street address, Room 9222, (202) 366–4220.

SUPPLEMENTARY INFORMATION: For purposes of the Americans with Disabilities Act (ADA), an OTRB is "a bus characterized by an elevated passenger deck located over a baggage compartment" (section 301(5)). The Department's ADA regulation (49 CFR 37.3) repeats this definition without change. OTRBs are a familiar type of bus used by Greyhound and other fixed-route intercity bus carriers as well as charter and tour operators.

As provided by the ADA, the Department issued limited interim OTRB regulations with its 1991 final ADA rules. The statute originally provided for the Department to issue final regulations by mid-1994, which would go into effect in July 1996 for larger operators and July 1997 for smaller operators. The Department fell behind the statutory schedule. In recognition of this fact, Congress amended the ADA in 1995 to put the final rules into effect two years from the date of their issuance (three years for small entities). The Secretary of Transportation has made issuance of final OTRB rules a priority, and the Department has established a schedule calling for publication of a final rule by September 15, 1998. On this schedule, the rules would begin to apply to larger entities in October 2000 and to smaller entities in October 2001.

Regulatory Activity

In October 1993, the Department issued an advance notice of proposed rulemaking (ANPRM) that asked a variety of questions about the scope of accessibility requirements, interim service requirements, operational and fleet composition issues, lavatories and rest stops, training, and economic issues concerning OTRBs. Also in the autumn of 1993, the Department convened a public meeting at which DOT staff discussed OTRB issues with representatives of the disability community and OTRB industry. On various occasions, former Secretary of Transportation Federico Peña, Secretary of Transportation Rodney Slater and other DOT officials have met with disability community and bus industry groups to discuss the issues involved.

It is clear from the responses to the ANPRM, the public meeting, and comments in meetings that the bus industry and disability community hold quite different views of the course the Department should follow in these regulations. The disability community believes that all new OTRBs should be accessible. The bus industry believes that a "service-based" approach, involving such elements as a small pool of accessible buses, alternate means of access (e.g., station-based lifts and scalamobils), and on-call service. In support of its position, the disability community cites the accessibility requirements of other transportation provisions of the ADA, which uniformly require new vehicles to be accessible, and gaps and inequalities in service that they believe the industry approach would create. In support of its position, the industry cites the higher costs of purchasing and operating accessible vehicles, their projections that demand for accessible service would be low, the economic problems of the intercity bus industry, and their view that their approach is more cost-effective.

Studies

There are two principal studies of over-the-road bus accessibility that the Department has considered in preparing this NPRM. The first was a Congressionally-mandated study prepared in 1993 by the Office of Technology Assessment (OTA), a small Federal agency (Access to Over-the—road Buses for Persons with Disabilities, U.S. Congress, Office of Technology Assessment, OTA–SET–547 (Washington, D.C., U.S. Government Printing Office, May 1993)). The second was prepared for Greyhound by Nathan Associates, a consulting firm.

On potential ridership, the OTA study presents (admittedly crude) estimates that, if OTRB trip rates for disabled passengers are about the same as for the general passenger population, there would be 180,000 annual trips on fixed-route OTRB service by wheelchairs (plus another 200,000 by people using other mobility aids). Greyhound, using the experience of limited accessible OTRB operations in Massachusetts, Colorado, and Ontario, projects an annual demand of 13,600 trips for wheelchair passengers for Greyhound.

The OTA study takes the view that transferring a wheelchair user out of his or her own wheelchair has safety and effectiveness problems, and therefore concludes that, to meet the requirements of the ADA, boarding assistance options must allow an individual to remain in his or her own wheelchair. This could include not only lift-equipped buses, but also station-based or portable lifts in combination with a door and securement location for an individual's wheelchair. The Greyhound study takes the position that, in addition to 75-bus pool of accessible buses, the use of boarding assistance methods that involve transfers from wheelchair to boarding device to vehicle seat (e.g., scalamobils or station-based lifts in combination with boarding chairs) would provide acceptable access for mobility-impaired passengers.

The ADA does not authorize the Department to require accessible restrooms on buses if doing so will result in the loss of seating capacity. All current accessible restroom units would result in a loss of seating capacity. The OTA study recognizes this fact, but

suggests that, in the absence of an accessible restroom, there must be a way for mobility-impaired passengers to use rest stops on a sufficiently frequent basis (OTA suggests every 1.5–2 hours). The Greyhound study finds that requiring accessible restrooms would more than double the costs of accessibility, compared to lift-equipped buses without accessible restrooms. The Greyhound study does not address the issue of rest stops, though previous industry comments have suggested that requiring additional rest stops could be costly and might disrupt schedules.

The OTA study focused on the costs and benefits of OTRB transportation alone. The Greyhound study also makes comparisons with other modes (e.g., intercity rail and air travel), in conjunction with Greyhound's argument that it should not have relatively higher costs than other modes in making its system accessible.

The foregoing discussion does not comprehensively summarize the two studies, but it does illustrate the very different views of OTRB accessibility, and its costs and benefits, that they take. The Department's regulatory evaluation discusses the issues addressed by these studies in greater detail.

Scope of the Department's Legal Discretion

Statutory Provisions

The Department's OTRB rulemaking implements several provisions of Title III of the Americans with Disabilities Act (ADA). Section 304(a) sets forth the general rule that—

> no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

Section 304(b)(1) lists four types of conduct that constitute discrimination in general for all entities covered by Section 304. The first, in § 304(b)(1) is—

> the imposition or application * * * of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered.

Section 304(b)(2) adds the following to the list of actions the failure to do which constitutes discrimination:

> (A) mak[ing] reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);[1]
>
> (B) Provid[ing] auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii);[2] and
>
> (C) remov[ing] barriers consistent with the requirements of section 302(b)(2)(A)[3] and with the requirements of section 303(a)(2).[4]

Section 304(b)(3) begins the statute's specific treatment of vehicle accessibility requirements. It states that discrimination includes—

> the purchase or lease by such an entity of a new vehicle (other than * * * an over-the-road bus) * * * that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the vehicle is used solely in a demand responsive system and the entity can demonstrate that the system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public. (emphasis added).

As the underlined language indicates, the requirements of this paragraph do not cover OTRBs. Instead, Section 304(b)(4)(A) provides that discrimination includes "the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and * * * any other failure of such entity to comply with such regulations * * *."

[1] Discrimination includes "a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods services, facilities, privileges, advantages, or accommodations, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages or accommodations."

[2] Discrimination includes "a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden."

[3] Discrimination includes "a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles* * *used by an establishment for transporting individuals (not including barriers that can be removed only through the retrofitting of vehicles* * *by the installation of a* * *lift), where such removal is readily achievable; and where an entity can demonstrate the removal of [such] a barrier* * *is not readily achievable, a failure to makes goods, services, privileges, advantages, or accommodations, available through alternative methods if such methods are readily achievable."

[4] This section requires making alterations to existing facilities "readily accessible to and usable by" individuals with disabilities, to the maximum extent feasible.

Section 306(a)(2)(A) required the Department to issue interim regulations concerning over-the-road bus service. These rules, which the Department published as 49 CFR 37.169 (56 FR 45640–41; September 6, 1991), had to require operators to "provide accessibility to such bus" for individuals with disabilities, except that structural changes to make buses wheelchair-accessible and the purchase of boarding assistance devices could not be required. The Department views this provision as prohibiting the interim rules from requiring lifts on buses or the acquisition of particular devices to provide accessibility for wheelchair users. The interim rules consequently required boarding assistance without specifying the means. The interim rules also require OTRB operators to provide on-board storage of passengers' wheelchairs.

Section 304(a)(2)(B) concerns the Department's "final requirement," which is to be issued after the Department studies the interim regulations and the OTA study. Section 306)(a)(2)(B)(ii) directs the Department to

> issue new regulations * * * to carry out section 304(b)(4) and 302(b)(2)(D)(ii)[5] that require, taking into account the purposes of the study under section 305 and recommendations resulting from such study, each private entity which uses an over-the-road bus to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

This section provides that, not later than one year after the date of the OTA study, the Department must issue these final regulations. As noted above, the Department fell well behind this schedule. Originally, the ADA provided that the Department's final regulations would take effect

> with respect to small providers of transportation (as defined by the Secretary), 7 years after the date the enactment of this Act [i.e., July 26, 1997]; and * * * with respect to other providers of transportation, 6 years after such date of enactment [i.e., July 26, 1996]. (section 304(a)(2)(B)(iii)).

In recognition of the fact that the Department did not meet the statutory schedule for issuing the final rules, Congress amended section 306(a)(2)(B)(3)(iii) to put the final rules into effect two years from their effective date (three years for small entities).

The ADA provides that the Department's final rules may not require

[5] This section provides that discrimination includes, for private entities not primarily in the business of transporting people, "the purchase or lease of an over-the-road-bus which does not comply with the regulations issued under section 306(a)(2) * * * and any other failure by such entity to comply with such regulations."

"the installation of accessible restrooms in over-the-road buses if such installation would result if such installation would result in a loss of seating capacity." (section 304(a)(2)(C). To the best of the Department's knowledge, all existing accessible restroom units would result in the loss of seating capacity, so this provision effectively bars the Department from requiring accessible restrooms in buses.

The ADA specifies in some detail what the OTA study was intended to accomplish. Section 305(a) said that the OTA study was to determine—

(1) The access needs of individuals with disabilities to over-the road buses and to over-the-road bus service; and (2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service, particularly for individuals who use wheelchairs, through all forms of boarding options.

Section 305(b) told OTA to analyze several factors:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 304(b)(2) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost-saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible rest rooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

Legislative History

The Senate and House versions of the bill that became the ADA contained similar, but somewhat different, provisions concerning OTRBs. The Senate bill provided that it was discrimination to purchase or lease a new OTRB "that is not readily accessible to and usable by individuals with disabilities." (S. Rept. 101–116 at 73). This term meant "able to be entered into and exited from safely and effectively used by individuals with disabilities, including individuals who use wheelchairs." (Id.) The Senate Committee on Labor and Human Resources then provided more specific guidance on what constituted a vehicle that was readily accessible and usable by individuals with disabilities:

Lifts, ramps, and fold-up seats or other wheelchair spaces with appropriate securement devices are among the current features necessary to make transit vehicles readily accessible to and usable by individuals with disabilities. The requirement that a vehicle is to be readily accessible obviously entails that each vehicle is to have some spaces for individuals who use wheelchairs or three-wheeled mobility aids; how many spaces are to be made available for wheelchairs is, however, a determination that depends on various factors, including the number of vehicles in the fleet, seat vacancy rates, and usage by people with disabilities * * * [C]onsistent with these general factors, the determination of how many spaces must be available should be flexible and generally left up to the provider; provided that at least some spaces on each vehicle are accessible. (Id. at 73–74)

Senator Hatch, in a separate statement of additional views, criticized the provision of the Senate bill requiring new OTRBs to be "readily accessible to and usable by" individuals with disabilities as imposing a requirement to purchase lift-equipped buses, which he said would impose overly onerous costs on the private bus industry. He believed that no such requirement should be imposed by Congress until the results of the OTA study were available. (Id. at 102–105.)

The House Committee on Public Works and Transportation began its discussion of OTRB requirements by addressing the relationship between the general nondiscrimination requirements of § 304 and the vehicle-specific requirements of the section:

The examples of discrimination contained in section 304(b) are intended to address situations that are not covered in the specific vehicle and system requirements * * * The general rule contained in paragraph (a) and the examples of discrimination contained in paragraph (b) are not intended to override the specific requirements contained in the sections referenced in the previous sentence. For example, an individual with a disability could not make a successful claim under section 304(a) that he or she had been discriminated against in the full and equal enjoyment of public transportation services on the grounds that an over-the-road bus was not wheelchair lift-equipped, if a lift was not required under 304(b) or 306(a)(2). (H. Rept. 101–485, Pt. 1, at 39)

Commenting on the regulations to be issued by DOT, the Committee added:

Section 304(b)(4) requires over-the-road buses to comply with the regulations issued under section 306(a)(2) and makes it discrimination to purchase or lease an over-the-road-bus which does not meet those requirements. Two sets of regulations will be issued by the Department of Transportation under section 306(a)(2) which include vehicle specific requirements for over-the-road buses. (Id. at 40.)

The first of these two regulations is the interim rule which the Department has already issued as 49 CFR 37.169. "While these interim requirements are in effect," the Committee said, "it will not be considered discrimination for a private entity to purchase or lease an over-the-road bus which is not wheelchair lift-equipped or to which a boarding chair/ramp is not provided to board such bus." (Id. at 43.) With respect to the second regulation, the Committee said the following:

Section 306(a)(2)(B) requires the Secretary of Transportation to review the OTA study and issue final regulations not later than one year after the submission of the study to the Secretary. The regulations shall require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities. The regulations will be effective 7 years after date of enactment for small providers, as defined by the Secretary, and 6 years after date of enactment for other providers. The Secretary may define small providers using current ICC class definitions. The extra year for compliance for these providers acknowledges the increased burden that implementation of some accessibility requirements could have on operators with relatively small fleets. Section 306(a)(2)(C) states that no regulations may require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity. The term "seating capacity" has the same meaning discussed under section 305—a reduction in the number of seats in which passengers can ride comfortably. (Id.)

Statements of additional views by Congressman Hammerschmidt and several colleagues, and Congressman Shuster and several colleagues, praised the House version of the OTRB language as representing a constructive compromise acceptable to all interested parties, including the disability community and the OTRB industry. (Id. at 60, 64–65.)

The Conference Committee report described the construction of the final version of these provisions the bill as follows:

The Senate bill specifies that over-the-road buses must be readily accessible and usable by individuals with disabilities within 7 years for small providers and 6 years for other providers * * * The House amendment deletes the specific obligation to make each bus "readily accessible to and usable by" individuals with disabilities at the end of the 6 or 7 year period * * * Instead, the House amendment specifies that the purchase of new over-the-road buses must be made in accordance with regulations issued

by the Secretary of Transportation * * *. The Senate recedes. (H. Rept. 101–596 at 79.)

The Congressional reports also discussed the purposes of the OTA study. The House Committee made the following statements:

Section 305(a) directs the Office of Technology Assessment (OTA) to conduct a study to determine (1) the access needs of individuals with disabilities to over-the-road bus service; and (2) the most-cost effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities through all forms of boarding options. During its hearings on the legislation, the Committee heard conflicting testimony on the cost and reliability of wheelchair lifts or other boarding assistance devices with regard to their use on over-the-road buses. Therefore, before mandating these or any other boarding options in this Act, a thorough study of the access needs of individuals with disabilities to these buses and the cost-effectiveness of different methods of providing such access is required by the Act. Section 305(b) specifies which issues must be analyzed by the study, but is not intended to be all-inclusive. The analysis required by the legislation includes a review of accessibility issues relating to vehicle-specific aspects of over-the-road buses, as well as to system-wide aspects of over-the-road bus service. Both aspects of over-the-road bus accessibility are included so that neither is favored over the other in the organization of the study. (H. Rept. 101–485, Pt. q, at 40–41.)

With respect to different boarding assistance options, the Committee directed OTA to examine—

the effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities. All types of methods (including the use of boarding chairs, ramps, wheelchair lifts, and other boarding assistance devices) which may, or may not, involve the physical lifting of a boarding assistance device should be analyzed in terms of their effectiveness. (Id. at 41.)

Consistent with the Senate bill's provision requiring OTRBs to be "readily accessible to and usable by" individuals with disabilities, the Senate Committee's comments on the purposes of the study had a different emphasis than those of the House Committee:

Section 305 of the legislation directs the Architectural and Transportation Barriers Compliance Board to undertake a study to determine the access needs of individuals with disabilities to over-the road buses readily accessible to and usable by individuals with disabilities. In determining the most cost-effective methods for making over-the-road buses readily accessible to and usable by persons with disabilities, particularly individuals who use wheelchairs, the legislation specifies that the study should analyze the cost of providing accessibility, recent technological and cost saving developments in equipment and devices, and possible design changes. Thus, the Committee is interested in having the study include a review of current technology such as lifts that enable persons with mobility impairments, particularly those individuals who use wheelchairs, to get on and off buses without being carried; alternative designs to the current lifts; as well as alternative technologies and modifications to the design of buses that may be developed that will also enable such individuals to get on and off over-the-road buses without being carried. (S. Rept. 101–116 at 74.)

In the Conference Committee, as noted above, the Senate receded, and the House provision became part of the final bill. The Conference Committee report said that—

the purpose of the study is revised to include a determination of the access needs of individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options. The study must analyze, among other things, the effectiveness of various methods of providing access to such buses and service to individuals with disabilities. (H. Rept. 101–596 at 79.)

OTA Legal Analysis

In the study mandated by section 305 of the ADA, the OTA set forth a view of the OTRB requirements of the statute that leaves the Department relatively little regulatory discretion. OTA states that "[s]ection 304(b)(4)(A) clarifies that the exclusion of OTRBs from 304(b)(3) is with respect to the compliance date and specific standards, not from the requirement for accessibility." (OTA study at 6.) Unlike situations in which the concept of "undue burden" applies, OTA asserts, "transportation services must meet accessibility standards regardless of cost considerations." (Id.) Moreover, "OTA could find no language in the ADA stating or implying that OTRBs can be held to a lesser standard than other modes of transportation, nor does the ADA give guidance on promulgating such a lesser standard." (Id.) The section 305 requirement for the OTA study is not "an exemption or retreat from the policies and goals of the ADA," and section 306 requires that "DOT's regulations must apply specified previous sections of the ADA to OTRBs and must require OTRB operators to provide accessible service." (Id. at 6–7.)

OTA defines an "accessible OTRB" as one having a level change mechanism (on-board or station-based) that allows individuals to remain in their wheelchairs, a sufficiently wide door to accommodate persons with mobility impairments, two wheelchair securement locations, a means to communicate with persons with sensory or cognitive disabilities, and provisions for the use of accessible restroom facilities. (Id. at 25.) OTA asserts that—

[f]or fixed-route transportation systems, the ADA requires private operators to install accessibility technologies when purchasing or leasing a vehicle. Eventually, *all* scheduled fixed-route service will use accessible vehicles. In the case of privately operated OTRBs, there is some debate about whether DOT has the latitude to promulgate regulations under a different, perhaps lesser, standard of accessibility. However, the OTA expects that the same standard of accessibility will be applied to all private operators of public transportation within the jurisdiction of the ADA * * * *Therefore, OTA anticipates that ADA's standard of accessible service for fixed-route private operators of other public transportation systems extends to fixed route service using OTRBs. In other words, to meet the requirements of the ADA, all OTRBs leased or purchased for use in fixed route service must be accessible.*

Charter and tour services meet the definition of demand-responsive systems. For demand-responsive transportation systems (other than those using OTRBs or automobiles), the ADA has required each private operator * * *,[w]hen purchasing a new vehicle,* * * to purchase an accessible vehicle, unless the operator can show that the system, when viewed in its entirety, provides the same level of service to individuals with disabilities as to those without. *As with fixed-route service, OTA anticipates that the ADA's standard of accessibility for private operators of other demand-responsive transportation systems applies to demand-responsive services using OTRBs * * * In other words, to meet the requirements of the ADA, private operators of demand-responsive OTRB service must eventually have access to enough accessible OTRBs to meet the demand.* (Id. at 25–26, emphasis in original.)

OTA also takes the view that—

the ADA does not allow operators to provide accessible service through the use of alternative vehicles or through reservations systems used solely for persons with disabilities. For example, a tour operator could not provide accessible service with an accessible van that transports passengers with disabilities while the rest of the tour patrons ride in an OTRB. (Id. at 26.)

Views of Commenters to the DOT ANPRM

Bus industry commenters argued that DOT has considerable flexibility in fashioning OTRB requirements. For example, Greyhound argued that the ADA tells DOT to consider "all forms of boarding options" and the "access needs of individuals," rather than binding DOT to a requirement for all new accessible buses. It also asserted that the portions of section 305 that direct OTA to study the economic consequences of accessibility requirements, the anticipated demand for accessible service, and the cost-

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effectiveness of means of providing accessibility imply that DOT could rely on such factors to devise a requirement other than requiring all new buses to have lifts. Greyhound also pointed to the distinction between the section 306 requirement of "accessibility to such bus" and what it regards as the more stringent requirement, elsewhere in the ADA, for making facilities or services "readily accessible to and usable by" individuals with disabilities. The American Bus Association expressed similar views.

Disability community commenters took the opposite position. For example, the Paralyzed Veterans of America/ Consortium of Citizens with Disabilities (PVA/CCD) comments said that the "accessibility to such bus" term in section 306 demonstrated that "Congress plainly indicated its preference for judging accessibility by a vehicle standard rather than a service equivalency standard." The Department's OTRB regulations should be consistent with those for other "private primarily engaged" operators except where the OTRB statutory language differs. Moreover, OTA's findings and conclusions should be "presumptively determinative" of the Department's regulatory decisions. PVA/CCD also assert that OTRB requirements are properly viewed as applying to used as well as new OTRBs. The Disability Rights Education and Defense Fund (DREDF) made similar arguments, stating that Congress mandated that "each individual OTRB should be accessible," rather than allowing a generalized service standard. In addition, DREDF supported, with respect to service in the interim before all buses are accessible, having a boarding chair on each bus and opposed any advance notice requirements.

Analysis

The Department takes the position that it has substantial legal discretion to devise regulations to implement the OTRB requirements of the ADA. DOT could require that OTRB operators meet standards like those applied to other "private, primarily engaged" transportation providers by section 304(b)(3), but the Department is not required to do so. The Department may consider both vehicle-based and service-based approaches to OTRB accessibility, and may consider other factors such as cost. However, the Department is also not mandated by the statute or its legislative history to choose the least costly, or arguably most cost-effective, approach to OTRB access.

1. Separate Statutory Requirements

The first reason for this conclusion is that Congress explicitly separated the requirements for most "private primarily engaged" transportation providers, set forth in section 304(b)(3), from those for OTRB operators, set forth in section 304(b)(4). The former requirement tells fixed route operators to purchase or lease accessible new (but not used) vehicles and tells demand responsive operators to purchase or lease accessible new (but not used) vehicles or ensure that they can provide equivalent service to individuals with disabilities. The latter requirement is simply that the purchase or lease of OTRBs (with no distinction stated between new and used buses) must comply with the regulations issued by DOT under section 306(a)(2).

Had Congress wished to mandate that OTRB requirements be identical with those applying to other "private primarily engaged" transportation providers, Congress could simply have included OTRBs under the requirements of section 304(b)(3), perhaps with an effective date delayed until 1996/97. Instead, Congress specifically said that section 304(b)(3) requirements apply to vehicles "other than * * * an over-the-road bus" and assigned to the Department responsibility for devising OTRB requirements.

2. Different Accessibility Language

The second reason is that Congress intentionally chose different language to express the accessibility requirements for OTRB operators and other "private primarily engaged" providers, respectively. As noted above, section 306(a)(2) provides that the Department's regulations must require "each private entity which uses an over-the-road bus to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs." Disability group comments asserted that the "accessibility to such bus" language should be understood to require that each OTRB must be an accessible bus (e.g., have the accessibility features identified by OTA).

While this language does lend some support to the idea that Congress intended buses to be accessible, it differs from language Congress used elsewhere in the ADA (e.g., section 304(b)(3)), where Congress required that a vehicle be "readily accessible to and usable by" individuals with disabilities. This latter phrase clearly refers to a vehicle that has accessibility features of the kind cited by OTA or required by 49 CFR Part 38. By using a different term, "accessibility to such bus," Congress at least left open the possibility of accessibility being provided by other means.

3. Intent of OTA Study

The third reason for the Department's conclusion concerning its discretion flows from an analysis of the ADA's language and legislative history concerning the OTA report. Section 306(a)(2)(B)(ii) tells the Department to consider not only the recommendations of the OTA study but also its "purposes." The House legislative history said that one important purpose, to be achieved before mandating any particular boarding options, was to study "the access needs of individuals with disabilities to these buses and the cost-effectiveness of different methods of providing such access." (H. Rept. 101–485, Pt. 1, at 40–41). Specifically, the study was to review both "vehicle-specific aspects of over-the-road buses * * * [and] system-wide aspects of over-the-road bus service. Both aspects * * * are included so that neither is favored over the other in the organization of the study." (Id.) All types of methods (including boarding chairs, lifts, ramps, and others) were to be considered. While the Senate legislative history had a stronger (though not exclusive) focus on the use of lift technology, the Conference Committee language states that all forms of boarding options and access to buses and bus service were to be analyzed by the study.

Since Congress intended OTA to study and make recommendations concerning these matters, it is fair to infer that DOT, mandated to take the purposes and recommendations of the study into account, is entitled to consider the same factors and options in its rulemaking. The same point applies with respect to other matters that Congress told OTA to study, such as the demand for accessible OTRB service, the cost of providing accessible OTRBs and OTRB service, and the impact of accessibility requirements on the continuation of OTRB service, particularly in rural areas. Nothing in the statute or the legislative history requires that any of these factors be emphasized to the exclusion of others.

Policy Basis for Proposed Rule

We view the way that the Department uses its considerable legal discretion to shape this proposed regulation as being primarily a policy decision about what is necessary to ensure that individuals with disabilities, including wheelchair users, can realize the rights to nondiscriminatory treatment guaranteed them by the ADA and can effectively

use OTRB buses and service. In the Department's view, it is necessary, to achieve these goals, to ensure that passengers who use wheelchairs can ride, board, and disembark from OTRBs while using their own wheelchairs.

Approaches not permitting passengers to remain in their own wheelchairs involve a minimum of four transfers on each trip (not counting rest or intermediate stops)—from wheelchair to boarding chair or device, and from boarding chair or device to vehicle seat, at the start of the trip, with the process reversed at the end of the trip. This increases the probability of discomfort, indignity, and injury, compared to a trip that does not involve transfers.

Moreover, wheelchairs used by disabled passengers are often quite different from one another, reflecting the individual needs of their users. Vehicle seats are uniform, and consequently do not provide the same comfort and support as the passenger's own wheelchair. This can have health and safety implications for mobility-impaired passengers.

Many mobility-impaired passengers use electric wheelchairs. Many such chairs are large and heavy. Others are of the "scooter" type. It is likely that most electric wheelchairs will not fit into bus luggage compartments. Based on experience in the airline industry, the process of stowing and retrieving electric wheelchairs carries a significant risk of damage to the expensive devices. Bus service to passengers who use electric wheelchairs cannot be effective if transportation for the wheelchairs is unavailable.

Because accessible lavatories reduce seating capacity, the Department will not propose requiring them in OTRBs. This creates fewer problems for passengers if the buses are accessible. If passengers are seated in their own wheelchairs in lift-equipped buses, they can readily get on and off the bus at rest stops. If not, then four more transfers, and potential schedule disruptions, would be involved in allowing wheelchair users to take advantage of rest stops.

The bus industry has proposed meeting these objectives primarily through having a number of accessible OTRBs in a pool, available to disabled passengers who make reservations 48 hours in advance (similar to Option 3, summarized below). The industry asserts that such an arrangement could provide lift-equipped bus service to all passengers needing it, in a less costly and more cost-effective fashion (i.e., with a considerably lower cost per stimulated trip). The Department's regulatory assessment, summarized below, displays the Department's estimates of the cost differences among options. The industry also asserts that this kind of service could become effective more rapidly than a requirement to make all new buses accessible, since it would take 12 years to move to full fleet accessibility.

Pooling and advance reservation systems have some merit, as they allow carriers to make more efficient use of the accessible buses they have to provide transportation to passengers with disabilities. Indeed, the proposed rule contemplates charter/tour operators using pooling arrangements. It also contemplates using pooling arrangements in fixed route service as an interim measure to provide accessible transportation in the years before fleets become fully accessible.

With respect to fixed route services, however, the drawback to pooling/advance reservation systems is one of equal treatment. This is a matter of significance in a rule implementing a nondiscrimination statute. While reservation service is available to passengers for fixed route service in many instances, fixed route OTRB passengers generally are not required to make reservations. Requiring disabled passengers to make reservations on a permanent basis falls short of providing equal conditions of service for disabled passengers, who may want to travel on short notice as much as other passengers. It also increases the probability of administrative error interfering with passengers' travel plans. While we understand the view of the industry that it is preferable, for cost-related reasons, to rely on on-call service with 48-hour advance reservations required, we find it difficult to reconcile this requirement with the ADA's nondiscrimination mandate.

Requiring all new buses to be lift-equipped is consistent with the requirements for all other modes of transportation under the ADA (e.g., all new fixed-route transit buses; all new rapid, commuter, and intercity rail cars; and all new full-size fixed-route private buses other than OTRBs are already required to be accessible). We believe that there is considerable merit in proposing requirements that parallel the requirements of other portions of the ADA.

The Department is not persuaded, however, that the intermodal cost comparisons put forward in the Greyhound study are germane. The ADA imposes accessibility requirements on each mode independently (e.g., urban mass transit bus and rail, intercity rail) without making any statement that relative burdens somehow must be equalized across very different types of transportation. In particular, Greyhound's comparison between intercity bus and airline service overlooks the fact that FAA safety regulations concerning seats and seat anchorages preclude disabled passengers from remaining in their own wheelchairs aboard aircraft. The Department's Air Carrier Access Act rules involve assisted boarding and transfers out of passengers' own wheelchairs because safety requirements peculiar to aviation leave no better accessibility option available. Where better options are available, as they are for OTRBs, it is difficult to argue that they should not be used.

The Department has paid careful attention to the cost and demand data presented in the OTA and Greyhound studies. There is no question that requiring new accessible buses is a costlier option than the pooling/transfer alternatives suggested by the Greyhound study (though the costs of the proposed provisions, as estimated by the regulatory assessment, do not appear to impose an undue financial burden on the industry). In the context of the ADA, however, cost determinations, standing alone, are not necessarily determinative. The statute does not provide that the Department is compelled to meet the needs of disabled passengers in "a cost-effective manner." Cost-effectiveness is one of the considerations that OTA was directed to study, and which the Department is taking into account, but the statute does not mandate that cost-effectiveness considerations trump all others in determining how to make bus travel accessible.

We are concerned that the Greyhound study appears to confuse cost-effectiveness with profitability (i.e., it identifies as cost-effective only those options that result in a net surplus to the company). The study also bases its conclusions about cost-effectiveness on very low demand estimates drawn from a few, scattered systems that require advance notice and do not offer connectivity to the national transportation network that Greyhound provides other customers. While OTA demand estimates may err on the side of generosity, the Greyhound estimates may err on the side of conservatism.

The Department will continue to consider costs as it decides, after reviewing comments, what to require in a final rule. The Department remains open to considering options other than the one it is proposing. However, the Department believes, at this time, that the following provisions would most appropriately implement the

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nondiscrimination requirements of the ADA.

Description of the Proposed Rule

The NPRM would create a new subpart of the Department's ADA rule (49 CFR Part 37, Subpart F). Proposed § 37.111 would restate the statutory compliance dates of two years for larger carriers and three years for smaller carriers. If the final regulation is published on the Department's target date of September 15, 1998, then the rule would begin to apply to larger carriers in October 2000 and to smaller carriers in October 2001. We propose to distinguish between larger and smaller carriers based on the class into which the carrier falls. Class I carriers (i.e., passenger carriers with gross annual transportation operating revenues of $5 million or more, as provided in Surface Transportation Board regulations found in 49 CFR 1249.3, including the "deflator" provision of those rules) would be viewed as larger carriers. Everyone else would be regarded as a smaller carrier. We would add an item to the definitions section of the rule incorporating this distinction.

Section 37.112 states the basic requirement of the proposed rule. Beginning on the dates mentioned above, fixed route carriers ("private entities primarily engaged in providing transportation to people") would have to ensure that new OTRBs they receive are accessible. By an accessible bus, we mean one that meets the OTRB requirements we are proposing to add to 49 CFR part 38. The Part 38 requirements are identical to the proposed OTRB guidelines being promulgated by the Access Board, and include on-board lifts and wheelchair securement locations. It should be noted that, while these guidelines include information about accessible restrooms, the Department is not proposing to require accessible restrooms on OTRBs, since existing accessible restrooms would result in a loss of seating capacity.

We call commenters' attention to the fact that all new OTRBs received by entities after the applicability date would have to be accessible. In the 1990 ADA rule for mass transit, the Department provided that all new transit buses ordered after the effective date had to be accessible. We propose to handle this issue differently in this rule because OTRB operators have 2–3 years from the effective date of a final regulation before accessibility requirements fully apply. The transit rules began to apply 30 days from the issuance of the rule. Unlike the transit operators, OTRB operators will have plenty of time to place orders for accessible vehicles well in advance of the application date.

As in the case of other operators covered by the ADA "private primarily" rules, OTRB operators would not have to ensure that used buses were accessible. Nor would they be required to retrofit vehicles. While the Department has the legal discretion to impose such a requirement with respect to OTRBs, requiring either the purchase of accessible used vehicles (which will not be available in large numbers for some years) or retrofitting (a costly procedure on a bus which has consumed part of its expected useful life) would be too costly and unnecessarily inconsistent with the ADA's requirements in similar contexts. However, as in other parts of the ADA rule, proposed § 37.118 would require remanufactured buses to be made accessible.

Demand-responsive carriers (e.g., charter/tour operators) who obtain new buses would also have to obtain accessible buses, unless and until they fully meet the fleet and service requirements of §§ 37.114–37.115, discussed below. This parallels the accessible vehicle or equivalent service scheme of other ADA requirements for demand-responsive service.

Proposed § 37.113 is a fleet accessibility requirement for fixed route operators. It would require each large operator to ensure that, within 6 years from the applicability date of the rule (e.g., October 2006), half its OTRBs were accessible. All its OTRBs would have to be accessible within 12 years (e.g., October 2012). The 6- and 12-year time frames are based on information in the Greyhound study that Greyhound replaces 1/12 of its fleet per year. (For cost analysis purposes, the Department is using an 11-year fleet replacement period for the entire industry.) The Department seeks comment on the best number of years to include for this purpose (e.g., would 4 and 10 years be better, given the 2–3 years carriers have available before the effective date of the rule?). In addition to being consistent with existing industry practice, this provision is intended to provide a disincentive to carriers obtaining large numbers of inaccessible buses in the time between now and the applicability date of the rules or to deferring purchases of accessible OTRBs until much later in the process, either of which would postpone full fleet accessibility.

One alternative that has been suggested to a fleet accessibility time frame is a requirement that companies retrofit any inaccessible OTRB obtained between the effective date of the final rule and the applicability date to the company (e.g., between October 1998 and October 2000 for large operators). This would also be a disincentive to purchasing large numbers of inaccessible OTRBs in the interim, but would potentially be more costly and would not address the issue of deferred purchases of accessible vehicles. We seek comment on this and other alternatives.

The NPRM proposes an important exception to the fleet accessibility rule. If small operators did not obtain enough new buses to replace 50 percent of their fleet in 6 years or all of their fleet in 12, they would be excused from this requirement. This exception is proposed in light of the practice of many smaller operators of obtaining most or all of their vehicles used. Absent the proposed exception, these companies would have to buy new buses or retrofit used buses to meet the fleet accessibility requirement. The exception will allow these operators to continue their existing procurement practices, thereby reducing potential economic burdens on small entities. Their fleets will become accessible in later years when their sources of used buses have fleets consisting of accessible vehicles. In the meantime, they would have to meet interim service requirements (see proposed § 37.116).

Demand-responsive operators would also have a fleet accessibility requirement (proposed § 37.114). These operators would have to ensure that 10 percent of their fleets are accessible within two years of the applicability date of the rule to them. The Department seeks comment both on the fleet accessibility percentage and the time frame. Again, there would be an exception for small operators who did not obtain enough new buses in the two year period to replace 10 percent of their fleets.

Proposed § 37.115 sets forth a service requirement for demand-responsive operators. Beginning two years after the applicability date of the rule to an entity, the entity would have to ensure that a disabled passenger who asked for service in an accessible OTRB would get it. The operator could ask for 48 hours' advance notice. Advance notice is less onerous in a charter/tour situation, for which most passengers book seats in advance. For example, suppose a small Baltimore charter/tour operator has 20 buses. By October 2005, the operator may well have two accessible OTRBs in its fleet. When the operator is running a trip to Atlantic City, a mobility-impaired passenger who calls 48 hour in advance will have to receive service

in an accessible OTRB. If the operator does not have an accessible OTRB, or one of its own is not available at the time , the operator would obtain an accessible OTRB from a pool or a sharing arrangement with other operators. The Department seeks comment on whether it is realistic to assume that pool arrangements are practicable, particularly for small operators.

Section 37.116 concerns interim service, which operators would have to provide in the years before they had fully implemented all their accessibility requirements. The section would work as follows. From the effective date of the rule (e.g., October 1998) until the applicability date of accessibility requirements to operators (e.g., October 2000 or 2001, depending on the size of the operator), the existing interim service requirements of § 37.169 would continue to apply to operators. In the two-year period beginning with that applicability date (e.g., October 2000–October 2002 for a large operator), operators would to continue to comply with existing § 37.169, unless they had already complied with all of its permanent accessibility requirements. Section 37.169 would be phased out for large operators four years after the effective date of this rule and for small operators five years after the effective date of this rule (e.g., October 2002 or 2003, respectively).

By two years from the applicability date of the rule (e.g., October 2002 for large operators) demand-responsive operators would be required to meet their permanent requirements of 10 percent accessible buses in their fleets plus providing on-call accessible bus service on 48 hours' advance notice. Since it will take fixed-route operators longer to acquire enough buses to have a fully accessible fleet, they would have to meet a continuing interim service requirement. Beginning in 2002, large operators would have to provide on-call accessible bus service on 48 hours' advance notice until such time as their fleets became fully accessible. The requirements for small operators would be the same, but they would start a year later.

So far, the rule has focused on private entities primarily in the business of transporting people. Proposed section 37.117 concerns private entities not primarily in this business. The rules parallel other ADA transportation requirements. Operators providing fixed route service, when they get new buses, must get accessible buses (paralleling the requirements for "private not primarilies" in the ADA and DOT's regulations, this requirement applies to all buses an operator obtains, not just new buses). Demand responsive operators, when they get new buses, must either get accessible buses or ensure that they can provide equivalent service. "Private not primarilies" would not have fleet accessibility or interim requirements.

Proposed § 37.119 concerns the issue of intermediate and rest stops. This issue arises on both fixed route and demand-responsive service. The NPRM proposes that, when an accessible OTRB makes a rest or intermediate stop, a mobility-impaired passenger will have a chance to take advantage of the stop the same as other passengers, through the use of the lift to leave and re-enter the bus. The situation is more problematic when an inaccessible OTRB is involved. We propose that a mobility-impaired passenger will have the chance to use the rest stop, with the driver's assistance in leaving and re-entering the vehicle, to the extent feasible, without unreasonably delaying the trip. That is, if getting a portable lift out of the baggage compartment, doing four transfers, using the facilities, and reversing the process takes so long that the schedule is seriously disrupted, the operator could decline to provide the service. This clearly presents problems to disabled passengers, especially given the absence of on-board accessible restrooms, which is one of the reasons we believe that accessible buses are a superior long-term solution.

We seek comments on two matters concerning rest stops on trips provided by inaccessible buses. First, should the ability of an operator to decline to provide rest stop service to a passenger on the basis of delay apply only to express trips, where the effects of delay would be most detrimental? Second, how long a delay should be regarded as unreasonable, such that an operator could decline to provide the service to passengers with disabilities?

Proposed § 37.120 would make applicable to OTRB operators the training, service and lift maintenance requirements that apply to other forms of bus service. The Department seeks comments whether any provisions should be added, deleted, or changed. With respect to training, the training requirements section of the Department's existing ADA rule (49 CFR § 37.173) requires all transportation providers to ensure that their personnel are trained to proficiency to operate vehicles and equipment safely and properly and safely and properly assist passengers with disabilities. This requirement would apply to carriers using OTRBs with respect to all equipment and services provided for under the proposed rule. The Department's cost estimates for this NPRM include the costs of this training. The Department seeks comment on whether any additional or more specific training or service requirements should be added concerning OTRBs. For example, should there be any requirements concerning how OTRB operators should provide service when the number of wheelchair users seek to travel on a particular trip exceeds the number of wheelchair locations on the bus?

The Access Board and the Department elsewhere in this issue of the **Federal Register** are also publishing proposed accessibility guidelines for OTRBs. They would become part of 49 CFR part 38, the Department's accessibility rules that accompany the DOT ADA rule. One issue on which we seek comment is whether, if a bus meets the requirements for wheelchair locations and an entry door accessible to wheelchair users but does not have an on-board lift, it is appropriate to regard the bus as accessible if it will always be used only for trips between stations that are equipped with station-based lifts that will accommodate passengers' own wheelchairs.

Regulatory Analyses and Notices

This is a significant regulatory proposal under Executive Order 12866 and the Department's Regulatory Policies and Procedures, both because of its cost impacts on the industry and the strong public interest in accessibility matters. The Department has prepared a regulatory evaluation to accompany the NPRM, which we have placed in the docket for the rulemaking. The Office of Management and Budget (OMB) has reviewed this NPRM.

In considering what to propose in this NPRM, the Department considered three basic options for fixed route service. These options are discussed in detail in the regulatory evaluation. The following are summaries of these options and their overall costs. The costs for each option include the costs for the proposed accessibility requirements for demand-responsive systems, but all the variance among the options is accounted for by differences among the fixed route options.

1. *Accessible OTRBs*—All new OTRBs must be accessible. Fleets of large fixed route carriers must be 50% accessible within 6 years and 100% accessible within 12 years. Used buses do not have to be accessible. Small carriers do not have fleet accessibility requirements. Since many small carriers buy primarily used buses, this means that their fleets would not become accessible until accessible used buses became widely

available in the market. Interim service that makes accessible OTRBs available on 48 hours' notice is required beginning after two years. The estimated total cost of this option ranges from $349.7 to $470.9 million over 22 years (net present value over 22 years is $203.6–$261.4 million). The difference between the high and low ends of the range is determined principally by whether operators choose to obtain less or more expensive lifts.

2. *Station-Based Lifts Only*—This option is similar to the following option, except that there is no accessible OTRB or on-call service requirement. It provides less service than other options and has a lower cost. The estimated total cost is $62.2 million over 22 years (net present value over 22 years is $22.7 million).

3. *Station-Based Lifts with On-call Accessible Buses*—Service would be provided through station-based lifts or other appropriate technology for 50% of a carrier's boardings within 2 years and 80% within 7 years. Within two years, 15% of a large carrier's fleet would have to be accessible. Beginning in two years, carriers would have to provide service in accessible buses, on 48 hours' notice, to passengers who could not be served adequately by a station-based-lift system. To make such a system work for small intercity carriers, especially those who did not yet have accessible buses of their own, there would have to be pooling arrangements among carriers. The estimated total cost is $152.9 million over 22 years (net present value over 22 years is $92.5 million).

The following table displays the annual aggregate costs (discounted and annualized) of each of the three fixed route options, expressed in millions of year 2000 dollars. Again, the costs for each option include the costs for the proposed accessibility requirements for demand-responsive systems, but all the variance among the options is accounted for by differences among the fixed route options.

Option	1 (high)	1 (low)	2	3 (low)
Gross Costs	45.20	39.07	16.23	18.72
Increased Revenues	19.90	19.90	11.00	14.11
Net Costs	25.30	19.17	5.23	4.61

A number of points of explanation are needed to understand this table. "Gross costs" include equipment (e.g., lifts on buses) and training, as well as the costs of seating capacity lost when wheelchair users travel on bus trips that are within three persons of being filled to capacity. "Increased revenues" include the revenue generated by stimulated trips taken by disabled passengers and their friends or family. "Net costs" are the difference between the two. It should also be noted that the costs stated for Options 2 and 3 cover only intercity fixed route services and do not include the local fixed route services that are included under Option 1.

As noted elsewhere in this preamble, there is a great deal of uncertainty about the amount of demand that would be stimulated by accessible OTRB service. We believe that Option 2 would generate significantly fewer trips than Option 1. For purposes of our analysis, we have assumed that Option 2 would generate only 25 percent as many trips as would be realized with a system of all lift-equipped buses, and we have projected the revenues accordingly. We believe that it is even more difficult to predict—or even assume—that Option 3 would generate a particular percentage of the demand stimulated by a system of all life-equipped buses. Consequently, the increased revenue figure found in the table for Option 3 ($13.85 million) represents the stimulated demand (about 70 percent of demand generated if all buses are lift-equipped) that would be necessary for increased revenue to break even with fixed route accessibility costs. We do not know whether Option 3 would succeed in obtaining this percentage of demand generated by a system of all lift-equipped buses, however.

Another way of comparing costs is on the basis of cost per stimulated trip. The following table displays, in millions of year 2000 dollars, the gross and net annualized costs for additional each trip generated by each of the options. The notes about the previous table apply to this table as well.

Option	1 (high)	1 (low)	2	3 (low)
Gross Cost	53.49	46.24	27.92	27.81
Net Cost	29.95	23.55	5.99	6.84

It should be noted that, if the costs of accessibility are spread over all trips made by OTRB passengers, rather than only over stimulated trips, the per trip costs are much smaller, in the area of $.35 per trip.

The NPRM proposes the first option, since it is does the best job of providing meaningful accessibility and avoiding discriminatory treatment of passengers with disabilities. In the Department's view, the costs of the first option, while higher than the other two options, are not so great as to impose undue or unreasonable burdens on bus operators. The Department will consider comments concerning all the options, and others which commenters may wish to suggest, as we work toward a final rule. In addition, in the period between the issuance of the final rule and the compliance dates for carriers, the Department will be willing to consider suggestions for modification of whatever option is chosen if it appears that fully satisfactory, but different, arrangements are in place to meet the travel needs of passengers with disabilities in a nondiscriminatory manner.

In terms of the Regulatory Flexibility Act, this proposal is likely to have a significant economic impact on a substantial number of small entities. We have incorporated a Regulatory Flexibility Analysis into the regulatory evaluation. Briefly, we would point out that the additional year's phase-in time provided by statute and the small entity exception to the fleet accessibility requirement should reduce the burdens of the proposed rule on small operators.

In order to assist the Department's analysis of the costs and benefits of various options for accessible OTRB service at the final rule stage, particularly—though not solely—for small entities, the Department requests that commenters provide information on the following questions:

(1) What is the level of ridership for local fixed route and small intercity operators? For charter/tour operators? What are the average fares for these services?

(2) How much price elasticity is there for bus purchases by small operators? That is, if an accessible bus costs a given amount more than an inaccessible bus, how many fewer buses are small operators likely to acquire?

(3) How much price elasticity is there for small operators with respect to fares? That is, will acquisition of accessible buses cause small operators to raise their fares a given amount? If so, what effect will this have on ridership?

(4) Is there additional information about maintenance and repair costs to small operators for used accessible OTRBs they obtain that the Department should take into account?

(5) Is there information about patronage, load factors, and average fares, as well as information on the number of buses in charter/tour service, for each part of the OTRB industry?

(6) What is the proportion of new vs. used buses acquired by companies in each part of the OTRB industry?

(7) How would the proposed bus pooling arrangements work, either in demand responsive service as this NPRM proposes or in fixed-route service as in Option 3 above? Where would the buses come from? Would small carriers receive buses on reasonable terms and in a timely fashion?

(8) Is the experience of public mass transit service with respect to usage of buses by persons with mobility impairments relevant to projecting stimulated demand for over-the-road bus service, or is the analogy too tenuous to support any inferences from one mode to another? The Federal Transit Administration does not receive reports on bus usage by people with mobility impairments; is it available from other sources?

(9) Is there any data from which it would be possible to draw inferences about the demand that would be stimulated by Option 3 (15 percent of fleets consisting of accessible buses, with 48-hour on-call service) vs. Option 1 (all new fixed route buses accessible)? Stated another way, is there a basis for estimating how much additional demand would be generated under Option 1, compared to Option 3?

We note that the class of small operators (i.e., all who are not Class I carriers) does not directly reference the Small Business Administration (SBA) size standards that include most or all OTRB operators (i.e., major group 41 in the SBA size standards found in 13 CFR Part 121). The standards are substantively very close to one another. The break points between small and large operators for the Class I and the SBA definitions are, respectively, $5.3 million and $5 million in annual revenues. The Department seeks comment on these alternative standards.

This NPRM does not contain information collection requirements requiring OMB review under the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Transportation.

Issued This 19th day of March 1998, at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR Part 37 is proposed to be amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority for Part 37 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

2. Section 37.3 of Part 37 is proposed to be amended by adding the following definition, placed in alphabetical order with the existing definitions, to read as follows:

§ 37.3 Definitions.

* * * * *

Small operator means, in the context of over-the-road buses (OTRBs), a private entity primarily in the business of transporting people that is not a Class I motor carrier (i.e., a carrier having average annual gross transportation operating revenues of $5.3 million or more from passenger motor carrier operations, as provided in Department of Transportation regulations, 49 CFR 1249.3).

* * * * *

3. Subparts F and G are proposed to be redesignated as subparts G and H.

4. A new Subpart F, consisting of §§ 37.111 through 37.120, is proposed to be added to part 37, to read as follows:

Subpart F—Over-the-Road Buses (OTRBs)

Sec.

37.111 Application.
37.112 Purchase or lease of new OTRBs by private entities primarily in the business of transporting people.
37.113 Fleet accessibility requirement for OTRB fixed route systems.
37.114 Fleet accessibility requirement for OTRB demand-responsive systems.
37.115 Service requirement for OTRB demand-responsive systems.
37.116 Interim service requirements.
37.117 Purchase or lease of OTRBs by private entities not primarily in the business of transporting people.
37.118 Remanufactured OTRBs.
37.119 Intermediate and rest stops.
37.120 Other service requirements.

Subpart F—Over-the-Road Buses (OTRBs)

§ 37.111 Application.

This subpart applies to all private entities that operate OTRBs beginning [a date two years after the effective date of this subpart] or, in the case of small operators, beginning [a date three years after the effective date of this subpart].

§ 37.112 Purchase or lease of new OTRBs by private entities primarily in the business of transporting people.

The following requirements apply to private entities that are primarily in the business of transporting people, whose operations affect commerce, and that operate OTRBs, with respect to buses delivered to them on or after the date on which this subpart applies to them:

(a) *Fixed route systems.* If the entity operates a fixed route system, and purchases or leases a new OTRB, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) *Demand responsive systems.* If an entity operates a demand responsive system, and purchases or leases a new OTRB, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system fully meets the requirements of §§ 37.114 and 37.115.

§ 37.113 Fleet accessibility requirement for OTRB fixed route systems.

Each private entity primarily in the business of transporting people, whose operations affect commerce, and that provides fixed-route OTRB service shall ensure that—

(a) By a date 6 years from the date on which this subpart applies to the entity, no less than 50 percent of the buses in its fleet with which it provides fixed route service are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) By a date 12 years from the date on which this subpart applies to the entity, 100 percent of the buses in its fleet with which it provides fixed route service are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) *Exception for small operators:* A small operator that does not purchase enough new OTRBs to replace 50 percent of its fleet by a date 6 years from the date on which this subpart applies to the operator or 100 percent of its fleet by a date 12 years from the date on which this subpart applies to the operator is excused from meeting the requirements of paragraphs (a) and (b), respectively, of this section by those dates.

§ 37.114 Fleet accessibility requirement for OTRB demand-responsive systems.

(a) Each private entity primarily in the business of transporting people, whose

operations affect commerce, and that provides demand-responsive OTRB service shall ensure that, by a date 2 years from the date on which this subpart applies to the entity, no less than 10% of the buses in its fleet with which it provides demand responsive service are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) *Exception for small operators:* A small operator that does not purchase enough new buses to replace 10 percent of its fleet by a date 2 years from the date on which this subpart applies to the operator is excused from meeting the requirements of paragraph (a) of this section by that date.

§ 37.115 Service requirement for OTRB demand-responsive systems

Each private entity primarily in the business of transporting people, whose operations affect commerce, and that provides demand-responsive OTRB service shall ensure that, by a date 2 years from date on which the subpart applies to the entity, any individual with a disability that requests service in an accessible OTRB receives such service. The entity may require up to 48 hours' advance notice to provide this service. If the individual with a disability does not provide the advance notice the entity requires, the entity shall nevertheless provide the service if it can do so by making a reasonable effort.

§ 37.116 Interim service requirements

(a) Until 100 percent of the fleet of an entity providing fixed route service is composed of accessible OTRBs, the entity shall meet the following interim service requirements:

(1) By a date 2 years from the date on which this subpart applies to the entity, ensure any individual with a disability that requests service in an accessible OTRB receives such service. The entity may require up to 48 hours' advance notice to provide this service. If the individual with a disability does not provide the advance notice the entity requires, the entity shall nevertheless provide the service if it can do so by making a reasonable effort. If the trip on which the person with a disability wishes to travel is already provided by an accessible bus, the entity has met this requirement.

(2) Before a date 2 years from the date on which this subpart applies to the entity, an entity which is unable to provide the service specified in paragraph (a) of this section shall continue to comply with the requirements of § 37.169.

(b) Before a date 2 years from the date on which this subpart applies to the entity, an entity providing demand responsive service which is unable to provide the service specified in § 37.115 shall meet the requirements of § 37.169.

§ 37.117 Purchase or lease of OTRBs by private entities not primarily in the business of transporting people.

This section applies to all purchases or leases of vehicles by private entities which are not primarily engaged in the business of transporting people, with respect to buses delivered to them on or after the date on which this subpart begins to apply to them.

(a) *Fixed route systems.* If the entity operates a fixed route system and purchases or leases an OTRB for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) *Demand responsive systems.* If the entity operates a demand responsive system, and purchases or leases an OTRB for use on the system, it shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, meets the standard for equivalent service of § 37.105.

§ 37.118 Remanufactured OTRBs.

(a) This section applies to any private entity operating OTRBs which takes one of the following actions:

(1) On or after the date on which this subpart applies to the entity, it remanufactures an OTRB so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases an OTRB which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after the date on which this subpart applies to the entity and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture an OTRB so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by this part would have a significant adverse effect on the structural integrity of the vehicle.

§ 37.119 Intermediate and rest stops.

(a) Whenever an accessible OTRB makes an intermediate or rest stop, a passenger with a disability, including an individual using a wheelchair, shall be permitted to leave and return to the bus on the same basis as other passengers. The driver shall operate the lift and provide assistance with securement as needed.

(b) Whenever an inaccessible OTRB makes an intermediate or rest stop, a passenger with a disability, including an individual using a wheelchair, shall be permitted to leave and return to the bus on the same basis as other passengers to the extent feasible. The driver or other operator personnel shall provide the assistance specified in § 37.116(a)(2). The entity is not required to unreasonably delay the bus in order to provide this service.

§ 37.120 Other service requirements.

(a) OTRB operators shall comply with the requirements of §§ 37.161, 37.165–37.167, and 37.173.

(b) The following additional requirements apply to the maintenance of lifts on OTRBs:

(1) The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

(2) The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.

(3) Except as provided in paragraph (c) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle's next trip and ensure that the lift is repaired before the vehicle returns to service.

(c) If there is no other vehicle available to take the place of an OTRB with an inoperable lift, such that taking the vehicle out of service before its next trip will reduce the transportation service the entity is able to provide, the entity may keep the vehicle in service with an inoperable lift for no more than five days from the day on which the lift is discovered to be inoperative.

5. A new paragraph (g) is proposed to be added to § 37.169, to read as follows:

§ 37.169 Interim requirements for over-the-road bus service operated by private entities.

* * * * *

(g) This section shall cease to apply to small operators of over-the-road buses, as defined in § 37.3, on [a date five years from the effective date of this paragraph], and shall cease to apply to other operators of over-the-road buses on [a date four years from the effective date of this paragraph]

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BILLING CODE 4910–62–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1192

[Docket No. 98–1]

RIN 3014–AA23

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 38

Americans With Disabilities Act Accessibility Guidelines for Transportation Vehicles; Over-the-Road Buses

AGENCIES: Architectural and Transportation Barriers Compliance Board and Department of Transportation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board and the Department of Transportation propose to amend the accessibility guidelines and standards for over-the-road buses (OTRBs) to include technical specifications for lifts, ramps, wheelchair securement devices, and accessible restrooms, under the Americans with Disabilities Act. Revisions to the specifications for doors, steps, and lighting are also proposed. The specifications describe the design features that an OTRB must have to be readily accessible to and usable by persons who use wheelchairs or other mobility aids. The Department of Transportation has published a separate notice of proposed rulemaking elsewhere in today's **Federal Register** which addresses when OTRB operators are required to comply with the specifications.

DATES: Comments should be received by May 26, 1998. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Comments will be available for inspection at the above address from 9:00 a.m. to 5:30 p.m. on regular business days. The Access Board will provide copies of all comments received to the Department of Transportation.

FOR FURTHER INFORMATION CONTACT: *Access Board:* Dennis Cannon, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 35 (voice); (202) 272–5449 (TTY). Electronic mail address: cannon@access-board.gov.

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., room 10424, Washington, DC 20590. Telephone (202) 366–9306 (voice) or (202) 755–7687 (TTY).

The telephone numbers listed above are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication S–21 (Over-the-Road Buses Proposed Rule). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–21. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (http://www.access-board.gov/rules/otrbnprm.htm).

Background

Under the Americans with Disabilities Act of 1990 (ADA), the Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing guidelines to ensure that the various kinds of transportation vehicles covered by the law are readily accessible to and usable by individuals with disabilities.[1] 42 U.S.C. 12204. The Department of Transportation (DOT), which is responsible for issuing regulations to implement the transportation provisions of the ADA, is required to include in its regulations accessibility standards for vehicles that are consistent with the Access Board's guidelines. 42 U.S.C. 12186.

For purposes of the ADA, an over-the-road bus is "a bus characterized by an elevated passenger deck located over a baggage compartment." 42 U.S.C. 12181(5). The ADA provides for rulemaking to establish accessibility requirements for OTRBs operated by private entities to be conducted in two stages: interim requirements and final requirements. 42 U.S.C. 12186.[2]

The interim requirements were established in 1991 and do not require any structural changes to OTRBs. The Access Board issued accessibility guidelines for OTRBs that provide technical specifications for non-structural design features such as floor surfaces, lighting, and handrails and stanchions. 36 CFR 1192.151 to 1192.157. The DOT adopted these guidelines as its standards and also established interim requirements for providing boarding assistance and accommodating wheelchairs and other mobility aids. 49 CFR 37.169 and 49 CFR 38.151 to 38.157.

Prior to establishing the final requirements, the Office of Technology Assessment was to study issues related to OTRB accessibility. 42 U.S.C. 12185. The Office of Technology Assessment published its study on May 16, 1993. Requirements for accessibility were to have taken effect by July 26, 1996, for large transportation providers, and one year later for small entities. 42 U.S.C. 12186. The National Highway System Designation Act of 1995 (Pub. L. 104–59), amended section 306(a)(2)(B)(iii) of the ADA by removing the specific compliance dates and instead requiring large transportation providers to comply two years after the issuance of the DOT regulation, and small providers to comply three years after issuance.

As a preliminary step to issuing requirements, the Access Board and the DOT held a workshop in Washington,

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[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act of 1973, as amended, whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of whom are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

[2] OTRBs purchased by public entities or by a contractor to a public entity must currently meet the same accessibility requirements as do other buses, including requirements for lifts or ramps and wheelchair securement devices. 49 CFR 37.7(c).

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D.C. on October 21 and 22, 1993, to discuss issues related to OTRB accessibility. About 30 representatives of the OTRB industry and disability organizations attended the workshop. At the workshop, it was announced that the Access Board and the DOT were considering amending the accessibility guidelines and standards for OTRBs to include technical specifications for:

- Lifts, ramps, and wheelchair securement devices based on existing requirements for other buses in 36 CFR 1192.23 and 49 CFR 38.23;
- Accessible restrooms based on existing requirements for commuter and intercity rail cars in 36 CFR 1192.107 and 1192.123, and 49 CFR 38.107 and 38.123; and
- Front door width, overhead clearance for doors with lifts or ramps, and step riser height and tread depth.

This notice of proposed rulemaking (NPRM) is issued jointly by the Access Board and the DOT to amend the accessibility guidelines and standards for OTRBs, as discussed at the workshop. The NPRM also proposes to revise the exterior lighting specification for OTRBs and other buses based on an equivalent facilitation determination made by the DOT.

The DOT is publishing a separate NPRM elsewhere in today's **Federal Register** which addresses when OTRB operators are required to comply with the specifications.

Section-by-Section Analysis

Section____.31 Lighting

The NPRM proposes to amend paragraph (c) of this section for standard urban transit buses to conform to the proposal for OTRBs. See the discussion under Section____.157

Section____.153 Doors, Steps and Thresholds

The NPRM proposes to amend paragraph (b) of this section by adding a requirement for a maximum step riser height (8 inches) and minimum step tread depth (11 inches) based on accessibility standards for buildings and facilities. The DOT's regulations currently require that standees be permitted to use lifts. 49 CFR 37.165(g). However, the rise of a lift for an OTRB is much higher than for a typical urban transit bus. The higher rise may make some persons with disabilities, especially those with poor balance, feel uncomfortable and insecure about using the lift, even though it is required to have handrails.

Provisions for step riser height and tread depth were originally proposed for other buses in 1991 but not adopted at the time because lifts were required to accommodate standees and because there were structural difficulties in achieving the proposed provisions. Subsequently, new vehicle designs such as several models of low-floor buses, have made the reduction of step risers practical for urban transit buses. Designs for OTRBs also may have changed since 1991.

Question 1: Should minimum requirements for step riser height and tread depth be established for OTRBs? Are the proposed requirements achievable within the constraints imposed by vehicle structure? Are other requirements more appropriate? Alternatively, are there current lift designs (e.g., folding seats) which would reduce the feeling of insecurity a standee using the lift might experience?

The NPRM proposes to amend paragraph (c) of this section to specify a minimum front door width (30 inches) consistent with other vehicles. This door width is intended to partially accommodate persons using crutches or leg braces or having gait problems who may wish to use the steps instead of the lift. Doors in accessible buildings and facilities are required to provide a 32 inch clear opening based on the crutchtip-to-crutchtip stance of a crutch user. The narrower dimension proposed in the NPRM will provide better access than current OTRB designs for persons who must swing their legs to climb steps. Since a wider opening is needed primarily at the bottom of the door and current designs frequently slope the windshield inward, the proposed requirement would permit the door to taper from a point 48 inches above the first step. It would also limit the intrusion into the required clear width by hinges or other operating mechanisms.

Question 2: Some OTRB designs have doors which are wider than 30 inches. Is a 32 inch width achievable? What would be the cost if engineering changes are needed?

The NPRM proposes to add a new paragraph (d) to this section which specifies a minimum overhead clearance (68 inches) between the top of the door opening and the raised lift platform or highest point of a ramp. A similar provision currently applies to other buses over 22 feet in length. 36 CFR 1192.25(c) and 49 CFR 38.25(c). This clearance is intended to minimize the likelihood that standees using a lift would hit their heads when passing through the door. A lower clearance is required for vehicles of 22 feet or less in length to avoid having to add a large raised roof to a minivan which could make the vehicle unstable. This is not a problem for large buses.

Unlike urban transit buses, lifts for OTRBs have been placed in a dedicated door near the rear of the vehicle. Typical lift doors for OTRBs have a vertical clearance of 61 inches. Some OTRBs have been designed with a 68 inch clearance at the lift door.

Question 3: What OTRB models can meet a 68 inch clearance at the lift door? What are the structural and cost implications of achieving this height? Should requirements be established for both step riser height and tread depths at the front door and overhead clearance at the lift door, or should these requirements be considered alternatives to one another?

The DOT has previously determined for other buses that an "elevator" type lift provides equivalent facilitation to the door height provision. The platform of an "elevator" type lift moves completely within the vehicle envelope. A standee would board the lift from ground level by passing through the doorway with a clearance greater than 68 inches and be raised within the bus. Thus, a standee would never need to pass through the doorway when the lift is raised and would not encounter the door lintel. There is at least one "elevator" type lift for OTRBs.

Question 4: Should "elevator" type lifts be specifically addressed in the guidelines and standards? Information is requested on these lift designs, their cost, and how much baggage space is occupied when the device is stowed.

Some information has recently come to the Board's attention regarding the effect of providing a lift door in the side of a monocoque construction bus. The Board seeks data, including the results of any engineering studies, which document any structural problems and effect on bus life-cycle costs. In some accessible OTRB designs, the lift door is placed toward the rear, close to the rear wheels, while in others it is placed at the bus mid-point, at the maximum bending moment of the vehicle.

Question 5: What effect does door placement have on the structural integrity of a monocoque construction OTRB? Also, urban transit buses have had rear doors for years, some wider than others and some with lifts. What are the comparisons between urban transit buses and OTRBs in terms of life-cycles? Some transit buses no longer employ monocoque construction. Are there OTRBs which also no longer employ monocoque construction?

Section____.157 Lighting

The NPRM proposes to delete the requirement in paragraph (b) of this

section that exterior lights be mounted below window level. The original provision was based on an earlier Federal Transit Administration regulation. 49 CFR 609.15(g)(3). Subsequent to the issuance of that regulation, the Federal Transit Administration began accepting buses which conform to the "Baseline Specifications for Advance Design Buses" (White Book). The White Book permits exterior lights to be mounted in locations other than below the windows. The DOT has determined that compliance with the exterior lighting requirements of the White Book constitutes equivalent facilitation. The NPRM also proposes to delete a similar requirement for other buses in 36 CFR 1192.31(c) and 49 CFR 38.31(c).

Section____.159 Mobility Aid Accessibility

This section is based on the current requirements for lifts, ramps, and wheelchair securement devices in 36 CFR 1192.23 and 49 CFR 38.23 which apply to urban transit buses and OTRBs purchased by public entities. The section has been modified by eliminating the references to vehicles of 22 feet or less in length since all OTRBs exceed this length. Paragraph (a)(2), which is taken from the requirements for rail vehicles, permits OTRBs to use station-based lifts, ramps, or similar boarding devices, provided they meet the technical requirements that would have applied to a vehicle-borne device.

The requirements for securement devices in paragraph (d) are the same as those currently required for urban transit buses and OTRBs purchased by public entities. Bus seats are required to be attached to the bus frame and meet specified forces. The design load established for securement devices is based on the need to secure the wheelchair or mobility aid with constraints similar to those imposed on all other seats.

Question 6a: Are OTRB seats required to meet force and attachment strengths greater than the seats on urban transit buses? If so, what are those forces and how do they relate to requirements for mobility aid securement devices?

Considerable speculation has been put forth regarding whether the securement force requirements for urban transit buses are adequate for OTRBs. The concern is that OTRBs often travel at higher speeds than urban transit buses and collisions would be at higher speeds. However, it is not the speed *per se* but the "g-forces" experienced that is important. Since larger vehicles have their own momentum, the deceleration of a mobility aid with respect to the securement device is less for heavier vehicles. Thus, the current securement device force requirements are greater for small vans than for large buses. 36 CFR 1191.23(d)(1) and 49 CFR 38.23(d)(1).

Question 6b: Since OTRBs are generally heavier than urban transit buses, how will this weight difference affect securement device forces?

Several public transit agencies, and some state agencies, currently operate OTRBs for commuter service on highways at high speed. These vehicles must meet not only the requirements for force, but the limitation on motion of the mobility aid and the requirement for accommodating all common wheelchairs and mobility aids. These securement systems consist of belts or straps that are fastened by the vehicle operator. There is no known commercially available system which is independently operable by the mobility aid user that can accommodate all common wheelchairs and mobility aids, but the common belt systems have been used for many years in public transit applications.

Question 6c: What has been the experience of operators of OTRBs meeting the current securement specification?

Section____.161 Restrooms

Section 306(a)(2)(C) of the ADA specifies that the DOT regulation shall not require the installation of accessible restrooms in OTRBs if such installation would result in a loss of seating capacity. DOT has stated in its NPRM that it has found no designs which do not result in seat loss and, therefore, does not intend to require them. Nevertheless, some entities have elected to provide accessible restrooms as a courtesy to their passengers with disabilities. The specifications in this section are meant to ensure that, where such restrooms are provided voluntarily, they meet some minimum accessibility requirements. However, these technical provisions may be more appropriate for the advisory guidance in the Appendix than the rule itself.

This section is derived from current requirements for restrooms on commuter and intercity rail cars in 36 CFR 1192.107 and 1192.123, and 49 CFR 38.107 and 38.123. The rail car requirement relating to a door from the side has been deleted since the width restrictions on OTRBs would generally preclude a side entrance. The requirement for a 60 inch clear floor space from the front of the water closet is designed to provide some maneuvering space for side door entry. If the entry is from the end opposite the water closet, a shorter space may be workable. These requirements are considered the bare minimum and persons with disabilities have reported difficulty in using current rail car restrooms which meet these requirements.

At least two OTRB manufacturers have designed accessible restrooms for their buses. Also, OTRBs with accessible restrooms are currently operating in commuter service near Los Angeles, California. However, those restrooms may not meet the requirements of this section and a wheelchair user must back into the restroom. The particular design does provide a side approach to the water closet, unlike the rail car version.

Question 7: Are there OTRB restroom designs which provide better accessibility than proposed? Are such restrooms currently in production or available if ordered? What is the cost of providing such restrooms and how many seats are displaced by the design?

In addition, some OTRB operators have provided moveable aisle armrests on some seats. These armrests make it easier for persons to get in and out of closely spaced seats, especially for those with poor balance or mobility.

Question 8: Should a certain percentage of seats be required to have moveable aisle armrests? If so, what percentage and where should they be located (e.g., close to the entry steps)?

Finally, seat loss is a concern of OTRB operators. Some OTRB designs involve sliding sets of pedestal seats forward, rendering them unusable when a wheelchair or mobility aid user is occupying the securement location. Also, some configurations assume a five-foot turning circle must be provided, whereas the vehicle specifications do not require it.

Question 9: What seating configurations have been designed for OTRBs? Has any configuration been developed which would allow a fixed seat adjacent to the securement location for a traveling companion?

Regulatory Process Matters

This proposed rule is jointly issued by the Access Board and the DOT to amend the accessibility guidelines and standards for OTRBs by adding technical specifications for lifts, ramps, wheelchair securement devices, and accessible restrooms. The proposed rule also revises technical specifications for doors, steps, and lighting. DOT has published a separate proposed rule in today's **Federal Register** which addresses when OTRB operators are required to comply with the technical specifications. The proposed rules are closely related and the Access Board

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and the DOT have treated them as a single regulatory action for purposes of Executive Order 12866 and the Regulatory Flexibility Act in order to avoid duplicative or unnecessary analyses. The proposed rules are a significant regulatory action under Executive Order 12866 and DOT's Regulatory Policies and Procedures. DOT has prepared a Regulatory Impact Analysis (RIA), which is summarized in the separate proposed rule the DOT has published in today's **Federal Register**. The Office of Management and Budget has reviewed both proposed rules.

The proposed rules are likely to have a significant impact on a substantial number of small entities. DOT has incorporated a Regulatory Flexibility Analysis into the RIA and has included provisions in the separate proposed rule published in today's **Federal Register** to reduce the burden on small OTRB operators.

Text of Proposed Common Rule

The text of the proposed common rule amendments to 36 CFR part 1192 and 49 CFR part 38 appear below.

1. Section ____.31 is amended by revising paragraph (c) to read as follows:

§ ____.31 Lighting.

* * * * *

(c) The vehicle doorways, including doorways in which lifts or ramps are installed, shall have outside light(s) which, when the door is open, provide at least 1 foot-candle of illumination on the street surface for a distance 3 feet (915 mm) perpendicular to all points on the bottom step tread outer edge. Such light(s) shall be shielded to protect the eyes of entering and exiting passengers.

2. Section ____.153 is amended by revising paragraphs (b) and (c), and by adding paragraph (d) to read as follows:

§ ____.153 Doors, steps and thresholds.

* * * * *

(b) All step edges shall have a band of color(s) running the full width of the step which contrasts from the step tread and riser, either dark-on-light or light-on-dark. The maximum height of step risers shall be 8 inches (200 mm) and the minimum tread depth shall be 11 inches (280 mm).

(c) Doors shall have a minimum clear width when open of 30 inches (760 mm), measured from the lowest step to a height of at least 48 inches (1220 mm), from which point they may taper to a minimum width of 27 inches (690 mm). The clear width may be reduced by a maximum of 4 inches (100 mm) by protrusions of hinges or other operating mechanisms if the protrusion is between 44 (1120 mm) and 48 inches (1220 mm) above the lowest step.

(d) The overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 68 inches (1730 mm).

3. Section ____.157 is amended by revising paragraph (b) to read as follows:

§ ____.157 Lighting.

* * * * *

(b) The vehicle doorway shall have outside light(s) which, when the door is open, provide at least 1 foot-candle of illumination on the street surface for a distance 3 feet (915 mm) perpendicular to all points on the bottom step tread outer edge. Such light(s) shall be shielded to protect the eyes of entering and exiting passengers.

4. Section ____.159 is revised to read as follows:

§ ____.159 Mobility aid accessibility.

(a)(1) *General.* All vehicles covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift or ramp) complying with paragraph (b) or (c) of this section and sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location. At least two securement locations and devices, complying with paragraph (d) of this section, shall be provided.

(2) *Exception:* If portable or station-based lifts, ramps or bridge plates meeting the applicable requirements of this section are provided at stations or other stops required to be accessible under regulations issued by the Department of Transportation, the bus is not required to be equipped with a vehicle-borne device.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds (2665 N). Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the vehicle brakes, transmission, or door, or shall provide other appropriate mechanisms or systems, to ensure that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. The lift shall deploy to all levels (i.e., ground, curb, and intermediate positions) normally encountered in the operating environment. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* Where the lift is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., "rotary lift"), the requirements of this paragraph prohibiting the lift from being stowed while occupied shall not apply if the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions, and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary lift and is intended to be stowed while occupied.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second (305 mm/sec) or their dropping of an occupant in the event of a single failure of any load carrying component.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform which extends beyond the vehicle in its raised position shall have a barrier a minimum 1–½ inches (13 mm) high. Such barriers shall not interfere with maneuvering into or out of the aisle. The loading-edge barrier (outer barrier) which functions as a loading ramp when the lift is at ground

level, shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it. The outer barrier of the lift shall automatically raise or close, or a supplementary system shall automatically engage, and remain raised, closed, or engaged at all times that the platform is more than 3 inches (75 mm) above the roadway or sidewalk and the platform is occupied. Alternatively, a barrier or system may be raised, lowered, opened, closed, engaged, or disengaged by the lift operator, provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed or the supplementary system is engaged.

(6) *Platform surface.* The platform surface shall be free of any protrusions of ¼ inch (6.5 mm) high and shall be slip resistant. The platform shall have a minimum clear width of 28–½ inches (725 mm) at the platform, a minimum clear width of 30 inches (760 mm) measured from 2 inches (50 mm) above the platform surface to 30 inches (760 mm) above the platform, and a minimum clear length of 48 inches (1220 mm) measured from 2 inches (50 mm) above the surface of the platform to 30 inches (760 mm) above the surface of the platform. (See Fig. 1 to this part)

(7) *Platform gaps.* Any openings between the platform surface and the raised barriers shall not exceed ⅝ inch (16 mm) in width. When the platform is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward lift platform edge and the vehicle floor shall not exceed ½ inch (13 mm) horizontally and ⅝ inch (16 mm) vertically. Platforms on semi-automatic lifts may have a hand hold not exceeding 1–½ inches (28 mm) by 4–½ inches (113 mm) located between the edge barriers.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, measured on level ground, for a maximum rise of 3 inches (75 mm), and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to ¼ inch (6.5 mm) . Thresholds between ¼ inch (6.5 mm) and ½ inch (13 mm) high shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees (exclusive of vehicle roll or pitch) in any direction between its unloaded position and its position when loaded with 600 pounds (2665 N) applied through a 26 inch (660 mm) by 26 inch test pallet at the centroid of the platform.

(10) *Platform movement.* No part of the platform shall move at a rate exceeding 6 inches/second (150 mm/sec) during lowering and lifting an occupant, and shall not exceed 12 inches/second (300 mm/sec) during deploying or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration when occupied shall be 0.3g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchair and mobility aid users.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise have difficulty using steps. The platform may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails on two sides, which move in tandem with the lift, and which shall be graspable and provide support to standees throughout the entire lift operation. Handrails shall have a usable component at least 8 inches (200 mm) long with the lowest portion a minimum 30 inches (760 mm) above the platform and the highest portion a maximum 38 inches (965 mm) above the platform. The handrails shall be capable of withstanding a force of 100 pounds (445 N) concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1–¼ inches (32 mm) and 1–½ inches (38 mm) or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch (3.5 mm). Handrails shall be placed to provide a minimum 1–½ inches (38 mm) knuckle clearance from the nearest adjacent surface. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp*—(1) *Design load.* Ramps 30 inches (760 mm) or longer shall support a load of 600 pounds (2665 N), placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches (660 mm by 660 mm), with a safety factor of at least 3 based on the ultimate strength of the material. Ramps shorter than 30 inches (760 mm) shall support a load of 300 pounds (1332 N).

(2) *Ramp surface.* The ramp surface shall be continuous and slip resistant; shall not have protrusions from the surface greater than ¼ inch (6.5 mm) high; shall have a clear width of 30 inches (760 mm); and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from roadway or sidewalk and the transition from vehicle floor to the ramp may be vertical without edge treatment up to ¼ inch (6.5 mm). Changes in level between ¼ inch (6.5 mm) and ½ inch (13 mm) shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp shall have barriers at least 2 inches (50 mm) high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Ramps shall have the least slope practicable and shall not exceed 1:4 when deployed to ground level. If the height of the vehicle floor from which the ramp is deployed is 3 inches (75 mm) or less above a 6 inch (150 mm) curb, a maximum slope of 1:4 is permitted; if the height of the vehicle floor from which the ramp is deployed is 6 inches (150 mm) or less, but greater than 3 inches (75 mm), above a 6 inch (150 mm) curb, a maximum slope of 1:6 is permitted; if the height of the vehicle floor from which the ramp is deployed is 9 inches (225 mm) or less, but greater than 6 inches (150 mm), above a 6 inch curb, a maximum slope of 1:8 is permitted; if the height of the vehicle floor from which the ramp is deployed is greater than 9 inches (225 mm) above a 6 inch (150 mm) curb, a slope of 1:12 shall be achieved. Folding or telescoping ramps are permitted provided they meet all structural requirements of this section.

(6) *Attachment.* When in use for boarding or alighting, the ramp shall be firmly attached to the vehicle so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that no gap between vehicle and ramp exceeds ⅝ inch (16 mm).

(7) *Stowage.* A compartment, securement system, or other appropriate method shall be provided to ensure that stowed ramps, including portable ramps stowed in the passenger area, do not impinge on a passenger's wheelchair or mobility aid or pose any hazard to passengers in the event of a sudden stop or maneuver.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches (760 mm) above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds (445 N) concentrated at any point on the handrail without permanent deformation of the rail or its supporting

structure. The handrail shall have a cross-sectional diameter between 1¼ inches (32 mm) and 1½ inches (38 mm) or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than ⅛ inch (3.5 mm). Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Securement devices*—(1) *Design load.* Securement systems, and their attachments to vehicles, shall restrain a force in the forward longitudinal direction of up to 2,000 pounds (8,880 N) per securement leg or clamping mechanism and a minimum of 4,000 pounds (17,760 N) for each mobility aid.

(2) *Location and size.* The securement system shall be placed as near to the accessible entrance as practicable and shall have a clear floor area of 30 inches (760 mm) by 48 inches (1220 mm). Such space shall adjoin, and may overlap, an access path. Not more than 6 inches (150 mm) of the required clear floor space may be accommodated for footrests under another seat, modesty panel, or other fixed element provided there is a minimum of 9 inches (230 mm) from the floor to the lowest part of the seat overhanging the space. Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space required. (See Fig. 2 to this part)

(3) *Mobility aids accommodated.* The securement system shall secure common wheelchairs and mobility aids and shall either be automatic or easily attached by a person familiar with the system and mobility aid and having average dexterity.

(4) *Orientation.* At least one securement device or system required by paragraph (a) of this section shall secure the wheelchair or mobility aid facing toward the front of the vehicle. Additional securement devices or systems shall secure the wheelchair or mobility aid facing forward or rearward. Where the wheelchair or mobility aid is secured facing the rear of the vehicle, a padded barrier shall be provided. The padded barrier shall extend from a height of 38 inches (965 mm) from the vehicle floor to a height of 56 inches (1420 mm) from the vehicle floor with a width of 18 inches (455 mm), laterally centered immediately in back of the seated individual. Such barriers need not be solid provided equivalent protection is afforded.

(5) *Movement.* When the wheelchair or mobility aid is secured in accordance with manufacturer's instructions, the securement system shall limit the movement of an occupied wheelchair or mobility aid to no more than 2 inches (50 mm) in any direction under normal vehicle operating conditions.

(6) *Stowage.* When not being used for securement, or when the securement area can be used by standees, the securement system shall not interfere with passenger movement, shall not present any hazardous condition, shall be reasonably protected from vandalism, and shall be readily accessed when needed for use.

(7) *Seat belt and shoulder harness.* For each wheelchair or mobility aid securement device provided, a passenger seat belt and shoulder harness, complying with all applicable provisions of the Federal Motor Vehicle Safety Standards, shall also be provided for use by wheelchair or mobility aid users. Such seat belts and shoulder harnesses shall not be used in lieu of a device which secures the wheelchair or mobility aid itself.

5. Section ____.161 is added to subpart G to read as follows:

§ ____.161 Restrooms.

(a) If an accessible restroom is provided, it shall be designed so as to allow a person using a wheelchair or mobility aid to enter and use such restroom as specified in paragraphs (a)(1) through (5) of this section.

(1) The minimum clear floor area shall be 35 inches (890 mm) by 60 inches (1525 mm). Permanently installed fixtures may overlap this area a maximum of 6 inches (150 mm), if the lowest portion of the fixture is a minimum of 9 inches (230 mm) above the floor, and may overlap a maximum of 19 inches (485 mm), if the lowest portion of the fixture is a minimum of 29 inches (740 mm) above the floor, provided such fixtures do not interfere with access to the water closet. Fold-down or retractable seats or shelves may overlap the clear floor space at a lower height provided they can be easily folded up or moved out of the way.

(2) The height of the water closet shall be 17 inches (430 mm) to 19 inches (485 mm) measured to the top of the toilet seat. Seats shall not be sprung to return to a lifted position.

(3) A grab bar at least 24 inches (610 mm) long shall be mounted behind the water closet, and a horizontal grab bar at least 40 inches (1015 mm) long shall be mounted on at least one side wall, with one end not more than 12 inches (305 mm) from the back wall, at a height between 33 inches (840 mm) and 36 inches (915 mm) above the floor.

(4) Faucets and flush controls shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbs (22.2 N). Controls for flush valves shall be mounted no more than 44 inches (1120 mm) above the floor.

(5) Doorways on the end of the enclosure, opposite the water closet, shall have a minimum clear opening width of 32 inches (815 mm). Door latches and hardware shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

(b) Accessible restrooms shall be in close proximity to at least one seating location for persons using mobility aids and shall be connected to such a space by an unobstructed path having a minimum width of 32 inches (815 mm).

6. A heading is added at the end of part ____ preceding the figures to read as follows:

Figures to Part ____

7. Figures 1 and 2 are republished for the convenience of the reader to read as follows:

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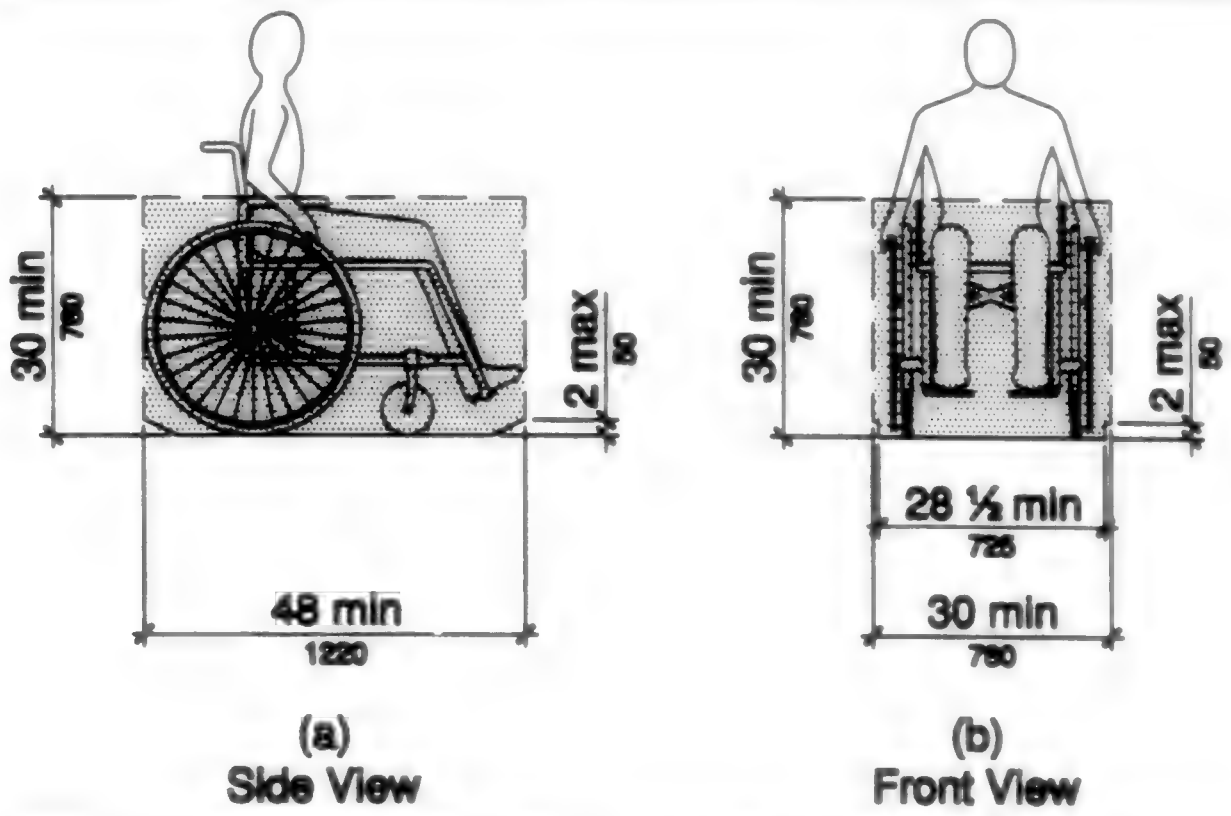

Figure 1
Wheelchair or Mobility Aid Envelope

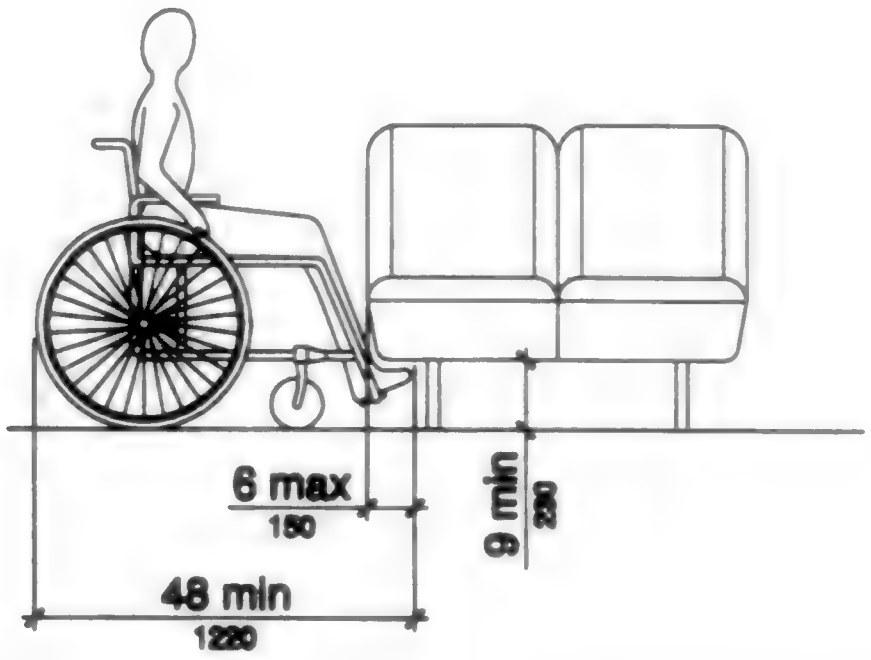

Figure 2
Toe Clearance Under a Fixed Element

BILLING CODES 8150–01–C; 4910–62–C

Adoption of Proposed Common Rule

The agency specific proposals to adopt the common rule, which appears at the end of the common preamble, are set forth below.

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1192

List of Subjects in 36 CFR Part 1192

Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 1192 of title 36 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1192—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR TRANSPORTATION VEHICLES

1. The authority citation for 36 CFR part 1192 is revised to read as follows:

Authority: 42 U.S.C. 12204.

§ 1192.31 [Amended]

2. Section 1192.31 is amended by revising paragraph (c) to read as set forth at the end of the common preamble.

§ 1192.153 [Amended]

3. Section 1192.153 is amended by revising paragraphs (b) and (c), and by adding paragraph (d) to read as set forth at the end of the common preamble.

§ 1192.157 [Amended]

4. Section 1192.157 is amended by revising paragraph (b) to read as set forth at the end of the common preamble.

§ 1192.159 [Revised]

5. Section 1192.159 is revised to read as set forth at the end of the common preamble.

§ 1192.161 [Added]

6. Section 1192.161 is added to subpart G to read as set forth at the end of the common preamble.

7. A heading is added at the end of part 1192 preceding the figures to read as set forth at the end of the common preamble.

Authorized by vote of the Access Board on January 28, 1998.

Patrick D. Cannon,

Chair, Architectural and Transportation Barriers Compliance Board.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 38

List of Subjects in 49 CFR Part 38

Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 38 of title 49 of the Code of Federal Regulations is amended as follows:

PART 38—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY SPECIFICATIONS FOR TRANSPORTATION VEHICLES

1. The authority citation for 49 CFR part 38 is revised to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

§ 38.31 [Amended]

2. Section 38.31 is amended by revising paragraph (c) to read as set forth at the end of the common preamble.

§ 38.153 [Amended]

3. Section 38.153 is amended by revising paragraphs (b) and (c), and by adding paragraph (d) to read as set forth at the end of the common preamble.

§ 38.157 [Amended]

4. Section 38.157 is amended by revising paragraph (b) to read as set forth at the end of the common preamble.

§ 38.159 [Revised]

5. Section 38.159 is revised to read as set forth at the end of the common preamble.

38.161 [Added]

6. Section 38.161 is added to subpart G to read as set forth at the end of the common preamble.

7. A heading is added at the end of part 38 preceding the figures to read as set forth at the end of the common preamble.

Dated: March 19, 1998.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–7687 Filed 3–20–98; 11:24 am]

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Part V

Office of Personnel Management

Science and Technology Laboratory Personnel Management Demonstration Project Final Plan: U.S. Army Engineer Waterways Experiment Station (WES), Vicksburg, MS; Notice; Republication

OFFICE OF PERSONNEL MANAGEMENT

Science and Technology Laboratory Personnel Management Demonstration Project; Department of the Army, U.S. Army Engineer Waterways Experiment Station (WES), Vicksburg, MS; Correction and Republication

Editorial Note: FR Doc. 98–5425 was originally published at page 10464 in the issue of Tuesday, March 3, 1998. The corrected document is republished below in its entirety.

AGENCY: Office of Personnel Management.

ACTION: Notice of approval of demonstration project final plan.

SUMMARY: 5 U.S.C. 4703 authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Public Law 103–337, October 5, 1994, permits the Department of Defense (DoD), with the approval of the OPM, to carry out personnel demonstration projects generally similar to the China Lake demonstration project at DoD Science and Technology (S&T) Reinvention Laboratories. The Army will implement demonstration projects initially to cover five of its S&T Reinvention Laboratories: The Army Research Laboratory; the Army Missile Research, Development, and Engineering Center; the Army Aviation Research and Development Center; the Army Medical Research and Materiel Command; and the Army Engineer Waterways Experiment Station. This plan is for the Army Engineer Waterways Experiment Station (WES).

DATES: This demonstration project will be implemented at WES beginning on September 13, 1998.

FOR FURTHER INFORMATION CONTACT: *WES:* Dr. C.H. Pennington, U.S. Army Engineer Waterways Experiment Station, ATTN: CEWES–ZT–E, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199, phone 601–634–3549. *OPM:* Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415, phone 202–606–1138.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, at least 19 studies of DoD laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. The WES Personnel Management Demonstration Project involves simplified job classifications, pay banding, a performance-based compensation system, streamlined hiring processes, and modified Reduction-in-Force (RIF) procedures.

2. Overview

On March 15, 1997, [62 FR 12006] OPM published this proposed demonstration plan and received thirty-nine letters and eight individuals commented on the proposed plan at the Public Hearing. These comments brought several new perspectives to the attention of those responsible for implementing, overseeing, and evaluating the project. The comments highlighted instances of miscommunication and misunderstanding with the present system as well as the project interventions. Further, they underscored the importance of providing training to employees and supervisors on the demonstration project. The substance of all comments received has been conveyed to the WES Director, Commander and Deputy Director, and the Laboratory Directors in the event that local policies, processes, and training sessions may benefit from such perspectives. A summary of all comments received, along with accompanying responses, is provided below.

A. General Management Issues

Comments: Seventeen comments were in support of the project as a way to provide incentives for promising young people to stay in the Federal Government. Seven were opposed to the project, others were opposed to some of the provisions in the project, and two recommend coverage of engineers and scientists only. Many other comments were made that addressed the organizational environment at WES. Several comments expressed concern over a demonstration project which provides additional flexibility to supervisors and suggested that these flexibilities will allow for or promote abuses and compromises of the merit system. With the feeling that many supervisors currently do not properly execute supervisory responsibilities or utilize the authority and tools provided under the current system, these employees fear a new system that gives supervisors additional flexibility over their career and pay. Several comments mentioned that no checks or oversight seem apparent and that management accountability is lacking under the Project.

Response: It has been the intent of WES from the inception of the Personnel Management Demonstration Project to include the total workforce in a broadbanding performance-based personnel management system, not just the engineers and scientists. Internal equity, organizational cohesiveness based on a common performance management philosophy, and administrative efficiency are reasons WES included the entire workforce in the project. WES acknowledges that the project provides increased authority and responsibility to supervisors, particularly in those areas impacting employees' pay. Experience with other personnel demonstration projects, including the China Lake project, does not support the assumption that increased supervisory discretion and authority leads to merit system abuses. However, WES is sensitive to the concerns expressed by many of the comments and is committed to holding supervisors accountable for the proper use of increased authorities and flexibilities. To assist supervisors in carrying out their new responsibilities, the Personnel Management Demonstration Project currently requires that supervisors be trained on the new system and receive feedback from a number of sources. Aggregate data from the feedback process will be made available to the top management at WES and will be used to monitor and identify further supervisory development and training needs. Project oversight will be achieved by an executive steering committee, co-chaired by the Assistant Secretary of the Army for Research and Technology and the Deputy Assistant Secretary of the Army, Civilian Personnel Policy. Additionally, extensive independent evaluations of the demonstration project will be conducted by OPM's Personnel Resources and Development Center over the first five years of the project. The results of these evaluations will provide WES with information as to whether specific provisions of the project need to be modified, continued as is, or curtailed.

B. Occupational Family and Broadbands

Comments received on this aspect of the Personnel Management Demonstration Project were related to two subtopics; broadbanding and assignment of job series to occupational families.

(1) Broadbanding

(a) *Comment:* Four individuals expressed concern about the proposed broadbanding structure in the Engineers and Scientists occupational family. Two recommended that grades GS–12 through GS–14 be included in one pay band since this was in the original WES proposal. One recommended one pay band covering GS–11 through GS–15. The other recommended that GS–13s, GS–14s, and GS–15s be placed in separate pay bands. Concerns presented included: GS–12s at WES consistently work at the GS–13 or GS–14 level; there is a glass ceiling for GS–12s; GS–12s are lower than others serving on national and international committees; expectations of wholesale transfer of GS–12s which will be a loss to the community; retention problems; costs of retraining new recruits; and concerns about ethical dilemmas when raters and ratees are in the same pay band.

Response: WES recognizes there is a concern over the lack of progression opportunities from GS–12 to GS–13 under the present system and the desirability of establishing a pay band that would remove promotion barriers and allow progression to a level of pay equivalent to the GS–14 level. This is evident in the turnover of engineer and science employees at the GS–12 level, which is the highest at WES. A proposal was included in the first WES plan to address these issues and to experiment with a GS–12 through GS–14 pay band for engineers and scientists performing research, testing and evaluation, and experimental development functions. Based on these comments and those presented during the project development process, the pay banding scheme for the Engineers and Scientists occupational family has been revised to recognize a pay band covering GS–12 through GS–14. The issue of raters and ratees in the same band was considered to be comparable to rating levels under the present system whereby person-in-job positions are frequently at or above the level of their raters. This is not viewed as a potential problem.

(b) *Comment:* One commentor recommended that separate occupational families, pay bands, and pay pools be established for both legal and contracting personnel.

Response: WES currently has 3 attorneys and 13 GS–1102 contracting employees. The creation of separate occupational families and pay bands for each professional group is impractical, would require an inordinate amount of time to manage, and the pay pools would be too small to provide substantial financial rewards to recognize exceptional performance. The legal and contracting occupations will continue to be included in the Administrative occupational family.

(c) *Comment:* One commentor stated that "the ratio of possible pay increases caused by the banding is highly favorable to the white male while the minorities, especially African Americans and females, will find themselves locked in the lower paying bands."

Response: The pay banding schemes were developed by a committee comprised of labor, management, professional, clerical, technical, wage grade, African American, white, male, and female employees. Pay band considerations included the nature of work (professional, nonprofessional, technical, support, etc.), normal level of work, and normal career progression of employees within the various occupational families. The results reflect progression from entry level trainee, to intern to developmental, to journeyman, to advanced journeyman, to expert, to managerial level. No positions were designated to bands based on non-merit factors such as race, sex, national origin, or any other personal considerations of incumbents. Additionally, experience of the China Lake Project shows that broadbanding does not discriminate based on race, sex, national origin or any other personal considerations. To assist WES in monitoring this important issue, data on band level salary, and workforce demographics, supplemented by perceptual data, are included in the planned evaluation strategy. Evaluation results will alert WES of any unintended outcomes and will serve as the basis for decisions to modify the project.

(d) *Comment:* One employee voiced concern about the potential problem of applying for a job in another agency if they were at pay band IV in the Engineers and Scientists occupational family and the desired job was GS–15. The employee was concerned about how the agency would know their comparable grade level.

Response: The project includes a provision for conversion out of the project to the General Schedule pay system. In instances such as this, employees will be encouraged to ask prospective employers to contact the employee's servicing Human Resources Management (HRM) Office for comparable grades, etc., in order to make qualifications determinations.

(2) Assignment of Job Series to Occupational Families

Comments: Three comments were submitted raising concern about the identification of job series to occupational families. These comments were related to the assignment of GS–0544, Civilian Pay Technician, and GS–1106, Procurement Clerk, positions to the General Support occupational family.

Response: The occupational families selected for the WES Personnel Management Demonstration Project group positions by job series under one of four occupational families: Engineers and Scientists; E&S Technicians; Administrative; and General Support. Each occupational family covers occupations similarly treated in regard to type of work, typical career progression, and qualification requirements. Using these criteria, positions designated as Civilian Pay Technician, GS–0544, and Procurement Clerk, GS–1106, are assigned to the General Support occupational family.

C. Performance Evaluation

Comment: One commentor had three concerns about the performance evaluation system that will be used by this project. The commentor recommended that a pass/fail system be adopted, three performance elements be added to the appraisal, and the employee-to-supervisor ratio of about 15:1 be waived.

Response: Several performance evaluation options including a pass/fail system were considered during project development. While pass/fail is a viable option, a system that rates an employee's performance on a scale from 0 to 5 was adopted. The latter is believed to be more compatible for converting performance ratings or scores to pay-for-performance. The recommended three additional performance elements (empowers his/her personnel, acquisition streamlining initiatives, and support to the organization) will not be added since they are considered to be embedded within the seven non-supervisory performance elements or the two supervisory performance elements. The plan contains no requirements for changing the employee-to-supervisor ratio.

D. Supervisory Pay Adjustments and Supervisory Pay Differentials

Comments: Eight comments were received (one was signed by seven individuals) regarding the proposal to allow supervisory pay adjustments and differentials for supervisors in the

Engineers and Scientists occupational family. One was in support of supervisory pay adjustments and differentials. One recommended that supervisory pay adjustments be applied equally to all engineers and scientists supervisors rather than be variable. One commentor recommended that adjustments and differentials be made available to all supervisors regardless of occupational family assignment. One recommended that supervisory pay adjustments be allowed to exceed the pay band maximum pay and considered as basic pay. The others recommended that the proposal to allow these adjustments and differentials be withdrawn. Reasons given included supervisory skills are supporting elements that are not specific to mission and are generic tasks, supervisory work force is stable, proposed plan simplifies the work of supervisors, increased pay for supervisors will penalize direct-mission skills, and the plan should reward individual performance not the position.

Response: The proposal to allow supervisory pay adjustments was to attract and reward the best individuals for supervisory positions, recognize the increased burden placed on engineers and scientists supervisors, and to compensate supervisors who supervise employees that are typically at the same grade level or higher. The supervisory pay adjustment will allow an increase in pay for new supervisors who lateral from a nonsupervisory position to a supervisory position within the same pay band, i.e., pay band IV or V. This adjustment is not automatic and may be varied based on a supervisor's performance, up to a maximum of 10 percent. Supervisory pay differentials are included in order to recognize pay for performance for supervisors who have reached the maximum pay for their pay band. This extension of pay will be given and adjusted based on their actual performance and the differential will not be treated as basic pay. Supervisory adjustments and differentials were not made available to supervisors in other occupational families since most supervise employees in lower pay bands.

E. Distinguished Scholastic Achievement Appointment

Comments: Eighteen individuals identified a need to modify the Personnel Management Demonstration Project to include an initiative that was in the original WES proposal, the establishment of a Distinguished Scholastic Achievement Appointment which provides the authority to appoint undergraduates and graduates with outstanding scholastic records to positions in the Engineers and Scientists occupational family.

Response: 5 U.S.C. 4703 states that before a personnel demonstration project is conducted, a plan shall be developed which identifies the methodology of the project. The plan must be published in the **Federal Register** and submitted as published to public hearings. New initiatives or substantive changes to a proposed personnel demonstration project are not permitted without being submitted to public hearing. The Distinguished Scholastic Achievement Appointment is considered to be a new initiative and has not been the subject of a public hearing. Therefore, the Distinguished Scholastic Achievement Appointment will not be included as part of the WES Personnel Management Demonstration Project at this time. However, WES management intends to submit the Distinguished Scholastic Achievement Appointment as a personnel initiative at the appropriate time in the future.

F. Voluntary Emeritus Program

Comment: One person suggested that the Voluntary Emeritus Program be made available to retired or separated individuals regardless of occupational family.

Response: The national prominence earned by researchers at WES results from their unparalleled engineering and scientific achievements. Many of the retired engineers and scientists continue to be leaders in their professions and the Voluntary Emeritus Program allows them the opportunity to assist WES in solving problems of importance to the nation in broad areas of civil engineering and environmental quality. This intervention will be retained as written and will be monitored through the evaluation process to determine whether it should be expanded to other occupational families.

G. Conversion Buy-In

Comments: Seven commentors were concerned that, at the time of conversion, employees would be given a lump sum cash payment rather than adjusting base salary for time credited toward what would have been the employee's next within-grade increase. All believe that a one-time payment equal to an employee's time vested in their current grade step takes away from the employee's future earnings.

Response: WES has modified the conversion procedure so that, at the time of conversion into the project, each employee will have their basic pay adjusted for time credited toward what would have been the employee's next within-grade increase.

H. Reduction-In-Force (RIF)

Comments: Five commentors were concerned with the revised RIF procedures that place greater emphasis on performance when establishing retention registers. Two commentors viewed the revised procedures as unfair since performance scores are not used to adjust the service computation date; one commentor was concerned about veterans' preference issues; one commentor did not believe that competitive areas should be defined as the occupational family; and the other commentor saw no need to change current RIF procedures.

Response: The current RIF system is complicated, costly, and relatively unresponsive to the needs of the organization. WES believes that flexible and responsive alternatives are needed that place greater emphasis on performance while preserving the guiding principles of veterans' preference laws. The revised RIF procedures will disrupt the organization the least and will increase the probability of retaining the highest performing individuals. Under the Project, employees will retain rights and protections during RIF. At the same time, one goal of the Project is to expand the role of performance in various aspects of employment. For this reason, the Project does not use performance scores to adjust the service computation date (SCD), as one commentor suggested. The Project instead emphasizes performance by using the most recent employee performance score as a separate element in the order of retention during RIF and by giving that score priority over the service computation date in determining the order of retention. Retention standing will be based upon the following factors, listed in order of priority: tenure, veterans' preference, most recent employee performance score, and SCD. The role of veterans' preference remains unchanged from the current system. Finally, competitive areas have been modified to make each of the four occupational families a separate competitive area. All positions in a given occupational family, regardless of their geographic locations, will fall within a single competitive area.

3. Demonstration Project System Changes

Minor editorial changes were made to correct the final version of the Project. In addition, pertinent sections of the final plan have been modified to include: a pay band in the Engineers

and Scientists occupational family that combines GS 12–14 positions (Section III, A, Broadbanding); and an adjustment of basic pay for the time credited toward the employee's next within-grade increase at the time of conversion into the project (Section V, A, Conversion to the Demonstration Project).

Dated: February 26, 1998.

Office of Personnel Management.

Janice R. Lachance,

Director.

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I. Executive Summary

The Department of the Army (DA) will establish Personnel Demonstration Projects generally similar to the system currently in use at the Navy Personnel Demonstration Project known as China Lake. The Personnel Demonstration Projects will be developed to be in-house budget neutral, based on a baseline of September 1995 in-house costs and consistent with the DA plan to downsize the DA laboratories and research and development centers. An in-house budget is a compilation of costs of the many diverse components required to fund the day-to-day operations of a laboratory. These components generally include pay of people (labor, benefits, overtime, awards), training, travel, supplies, non-capital equipment, and other costs depending on the specific function of the activity.

This project was designed by the Assistant Secretary of the Army for Research, Development and Acquisition with the support of the Assistant Secretary of the Army for Civil Works, and the participation of five Army S&T Reinvention Laboratories. Review was provided by the US Army Corps of Engineers, DA, DoD, and OPM. Phases of the project that address non-Title 5 issues began as early as 1 October 1995, with implementation of Title 5 initiatives to begin no earlier than June 3, 1998.

This project is built upon the concepts of linking performance to pay for all covered positions, simplifying paperwork in the processing of classification and other personnel actions, emphasizing partnerships among management, employees, and unions, and delegating other authorities to line managers.

II. Introduction

A. Purpose

The quality of DoD laboratories, their people, and products has been under intense scrutiny in recent years. The perceived deterioration of laboratory quality is due, in substantial part, to the erosion of control which line managers have over their human resources. This demonstration, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve quality laboratories and quality products. The purposes of the demonstration project are to: Improve the hiring process and allow WES to compete more effectively for high-quality personnel; motivate and retain staff through pay for performance, sabbaticals, and a more responsive personnel system; strengthen the manager's role in personnel management through increased delegation of personnel authorities; increase the efficiency of the personnel system by simplifying the classification system through broadbanding and reduction of guidelines, steps, and paperwork; and create a model that could be adopted by other government agencies.

This project will be under the joint sponsorship of the Assistant Secretary of the Army for Research, Development and Acquisition and the Assistant Secretary of the Army for Manpower and Reserve Affairs. The MACOM Commander will execute and manage the project.

Project oversight will be achieved by an executive steering committee made up of top-level executives, co-chaired by the Deputy Assistant Secretary of the Army for Research and Technology and the Deputy Assistant Secretary of the Army (Civilian Personnel Policy). Oversight external to the Army will be provided by DoD and OPM.

B. Problems With the Present System

The civilian personnel system currently in use at DoD laboratories has several major inefficiencies, which hinder management's ability to recruit and retain the best qualified personnel. Line managers have only limited flexibility to administer personnel resources, and existing personnel regulations are often in conflict with line management's ability to perform world-class research. Laboratory managers are frustrated in their attempts to hire the best and brightest engineers and scientists.

The classification system requires lengthy, narrative, individual position descriptions, which have to be classified by the use of complex and often outdated position classification standards. The system causes delays in recruiting, reassigning, promoting, and removing employees. Rewarding or taking a performance based action requires inordinate paperwork and time, often discouraging managers from pursuing critical actions. Few incentives, with limited flexibility, exist for managers to deal with all levels of the workforce, and pay is not always commensurate with an employee's performance. The current RIF system does not adequately recognize performance as a major criterion in RIF situations. The RIF rules are complex, and difficult to understand and administer. The RIF process disrupts operations, due to displacement of employees within their competitive levels and in the exercise of bumping and retreat rights.

C. Changes Required and Expected Benefits

This project is expected to demonstrate that a human resource management system tailored to the mission and need of WES will result in: Increased quality in the engineering and science workforce and the laboratory products they produce; increased timeliness of key personnel processes; trended workforce data that reveals increased retention of excellent contributors and separation rates of poor contributors; and increased customer satisfaction with the laboratory and its products by customers serviced.

This demonstration program builds on the successful features of demonstration projects at China Lake and the National Institute of Standards

and Technology (NIST). These demonstration projects have produced impressive statistics on job satisfaction of their employees versus that for the federal workforce in general. This demonstration expects similar successes. A full range of data will be collected to evaluate the project (and is described in Section VII, Evaluation Plan).

D. Participating Organization

U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199. Employees assigned to WES work at the locations shown in Table 1.

TABLE 1.—DUTY LOCATIONS

Location	Total No. of employees
London, England	1
Berkeley, CA	1
Mobile, AL	3
Washington, DC	1
Fayette, NC	1
Natchez, MS	1
Vicksburg, MS	1,312
Duck, NC	10
Calhoun Falls, SC	1
Lewisville, TX	3
North Bonneville, WA	3
Dallesport, WA	1
Spring Valley, WI	2
Omaha, NE	56

E. Participating Employees

The project will cover all General Schedule (GS) employees assigned to WES. Federal Wage System (FWS) employees, Civilian Intelligence Personnel Management System (CIPMS) employees covered by Title 10, and 5 U.S.C. 3105 Scientific and Technical (ST) employees are not covered, but will follow the same employee development provisions of this plan, except, in the case of CIPMS employees, where the provisions are found to be in conflict with CIPMS. The occupational series of employees included in the project are identified by occupational family in Table 2. All GS employees with appointments exceeding one year will be covered by the provisions of this project. GS employees with appointments limited to one year or less will be covered for pay banding, the performance appraisal process, and salary adjustments. Senior Executive Service (SES) employees will not be included in the project. It is the intent of WES to expand coverage of the project to all FWS employees 1 to 2 years following the date of implementation. In the event of expansion to FWS employees beyond the employee development provisions, full approval will be obtained from DA, DoD, and OPM.

The American Federation of Government Employees (AFGE) represents approximately 500 GS and FWS employees at WES. The AFGE represents most E&S Technicians; most Administrative employees; all General Support employees except fire protection inspectors, security guards, student trainees, and those designated as confidential employees; and all nonsupervisory FWS employees. WES plans to implement this project on September 13, 1998. Bargaining unit employees will be included in the project at that time if Impact and Implementation bargaining is complete. If Impact and Implementation bargaining has not been completed on the date of project implementation, employees represented by AFGE Local 3310 may not be brought into the project until completion of the bargaining process. AFGE Local 3310 has been involved with and participated in the development of the project since its inception. WES will continue to fulfill its obligation to consult or negotiate with the AFGE, as appropriate, in accordance with 5 U.S.C. 4703 (f) and 7117. The participation with the AFGE is within the spirit and intent of Executive Order 12871.

TABLE 2.—OCCUPATIONAL SERIES INCLUDED IN THE DEMONSTRATION PROJECT

Engineers & Scientists	
0023	Outdoor Recreation Planner
0150	Geographer
0193	Archeologist
0401	Biologist
0403	Microbiologist
0408	Ecologist
0410	Zoologist
0414	Entomologist
0430	Botanist
0434	Plant Pathologist
0435	Plant Physiologist
0470	Soil Scientist
0471	Agronomist
0482	Fishery Biologist
0486	Wildlife Biologist
0499	Student Trainee
0690	Industrial Hygienist
0801	General Engineer
0803	Safety Engineer
0806	Materials Engineer
0807	Landscape Architecture
0808	Architecture
0810	Civil/Hydraulic/Structural Engineer
0819	Environmental Engineer
0830	Mechanical Engineer
0850	Electrical Engineer
0854	Computer Engineer
0855	Electronics Engineer
0893	Chemical Engineer
0896	Industrial Engineer
0899	Student Trainee
1301	Physical Scientist
1310	Physicist
1313	Geophysicist
1315	Hydrologist
1320	Chemist
1350	Geologist
1360	Oceanographer
1399	Student Trainee
1515	Operations Research Analyst
1520	Mathematician
1530	Statistician
1550	Computer Scientist
1599	Student Trainee
E&S Technicians	
0028	Environmental Protection Specialist
0802	Engineering Technician
0818	Engineering Draftsman
0856	Electronics Technician
1311	Physical Science Technician
1371	Cartographic Technician
1521	Mathematics Technician
1670	Equipment Specialist
Administrative	
0018	Safety & Occupational Health Specialist
0099	Student Trainee
0260	Equal Employment Opportunity Specialist
0301	Info Syst Mgr Spec/Joint Test Prog Mgt Coordinator/Emergency Oper Mgr
0334	Computer Specialist
0341	Administrative Officer
0343	Mgt & Prog Analysis Officer
0346	Logistics Management Officer
0391	Telecommunications Officer
0399	Student Trainee
0505	Financial Manager
0510	Accountant
0511	Auditor
0560	Budget Officer
0599	Student Trainee
0610	Nurse
0905	General Attorney
0950	Paralegal Specialist
1020	Illustrator
1035	Public Affairs Specialist
1060	Photographer
1071	Audiovisual Specialist
1082	Editor
1084	Visual Information Specialist
1102	Contract Specialist
1104	Property Disposal Specialist
1199	Student Trainee
1410	Librarian
1412	Technical Information Specialist
1499	Student Trainee
1712	Training Instructor
2001	General Supply Specialist
2101	Transportation Specialist
General Support	
0019	Safety Technician
0081	Firefighter
0085	Security Guard
0090	Guide
0099	Student Trainee
0302	Messenger
0303	Clerk
0305	Mail & File Clerk
0312	Clerk-Stenographer

TABLE 2.—OCCUPATIONAL SERIES INCLUDED IN THE DEMONSTRATION PROJECT—Continued

0318	Secretary
0322	Clerk-Typist
0326	Office Automation Clerk
0332	Computer Operator
0335	Computer Clerk
0344	Management Assistant
0361	Equal Employment Opportunity Assistant
0394	Communications Clerk
0503	Financial Clerk & Assistant
0525	Accounting Technician
0530	Cash Processing Technician
0540	Civilian Pay Technician
0544	Teller
0561	Budget Clerk
0986	Legal Clerk
1105	Purchasing Clerk
1106	Procurement Clerk
1107	Property Disposal Clerk
1411	Library Technician
2005	Supply Clerk
2102	Transportation Clerk
2131	Freight Rate Specialist

F. Project Design

In August 1994, a Project Manager was appointed to lead the WES reinvention effort. The Project Manager was assisted by a representative of the servicing HRM Office. During October-November 1994, a WES concept plan was developed to map out desired areas in which to propose changes in the personnel system. The concept plan was then merged into a single Army plan for the participating Army S&T Laboratories and was submitted to the DA in December 1994.

WES formed four teams in January 1995 to develop specific initiatives to be undertaken in the WES demonstration project. The teams were composed of 7 to 14 employees each and included representatives from management, engineers, scientists, technicians, clerical, administrative, wage grade, human resources, and representatives from the local union. The teams developed human resources management initiatives which were designed to: assist in hiring the best people to accomplish the mission; improve training and development of the workforce; improve and simplify the position classification process; develop a broadband system to facilitate classification and career progression; and develop a pay for performance system to recognize employee contributions to mission accomplishment.

The Army's plan was reviewed concurrently by DoD and OPM in April 1996. It was recommended that each Army lab submit individual project plans. The second joint review by DoD and OPM of the lab plans was conducted in September 1996. The philosophy and intent of WES throughout the process of project development was the inclusion of its total workforce. As such, a pay-for-performance broadbanding system was developed for FWS employees, in partnership with representation from the bargaining unit, and was included as part of the WES plan. At the joint reviews, the DoD Civilian Personnel Management Service and OPM's Office of Classification and Office of Compensation Policy considered the broadbanding of FWS employees as outlined in the WES plan to be inappropriate. FWS employees were removed from the plan but will follow the same employee development provisions of this plan. Options for including them in a pay-for-performance system at a later date will be developed by WES, DA, DoD, and OPM.

This plan and these initiatives are the result of many months of effort by dedicated participants at WES, U.S. Army Corps of Engineers, DA, DoD, and OPM levels.

III. Personnel System Changes

A. Broadbanding

1. Pay Bands

Each occupational family will be composed of discrete pay bands corresponding to recognized career advancement within the occupations. The pay bands will replace grades. The pay bands will not be the same for all occupational families. Each occupational family will be divided into four to six pay bands, each pay band covering the same pay range now covered by one or more grades. The minimum rate of basic pay for a band will be the minimum rate for the lower grade in the band as shown on the regular GS schedule. The maximum rate of basic pay for a pay band will be the highest regular schedule GS rate possible for positions within that occupational family and pay band. A salary overlap, similar to the current overlap between GS grades, will be maintained.

Ordinarily an individual will be hired at the lowest salary in a pay band. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance salary within a pay band.

The proposed pay bands for the occupational families and how they relate to the current GS grades are shown in Table 3. This pay band concept has the following advantages because it: reduces the number of classification decisions required during an employee's career; simplifies the classification decision-making process and paperwork; supports delegation of classification authority to line managers; provides a broader range of performance-related pay for each pay band; and prevents the progression of low performers through a pay band by mere longevity, since job performance serves as the basis for determining pay.

The WES pay banding plan expands the pay banding concept used at China Lake and NIST by creating pay band VI of the Engineers and Scientists occupational family. This pay band is designed for Senior Scientific Technical Managers.

Current legal definitions of Senior Executive Service (SES) and ST positions do not fully meet the needs of WES. The SES designation is appropriate for executive level managerial positions whose classification exceeds the GS–15 grade level. The primary knowledge and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are reserved for bench research scientists and engineers; these positions require a very high level of technical expertise and they have little or no supervisory responsibility.

TABLE 3. - OCCUPATIONAL FAMILIES AND PAY BANDS

Occupational Families	Pay Bands															
Engineers and Scientists (E&S)*	I (N)					II (N)					III (E)		IV (E)		V (E)	VI (E)
E&S Technicians	I (N)					II (N)			III (N)		IV (E)					
Administrative	I (N)					II (N)					III (E)		IV (E)		V (E)	
General Support	I (N)			II (N)			III (N)		IV (E)							
Corresponding GS Grades	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15

* Engineers and Scientists pay band II includes a mix of positions: positions equivalent to GS-5 through 10 involve research, test, evaluation, and equipment development work as well as non-research work; positions equivalent to GS-11 involve research work. Pay band III includes non-research positions, e.g., engineers in public works. Pay band IV positions equivalent to GS-12 through GS-14 involve research work; the balance of band IV includes a mix of research and non-research supervisory positions, and program managers.

FLSA Codes: N = Nonexempt; E = Exempt. Although typical exemption status under the various pay bands is shown, actual FLSA exemption status determinations are made on a case-by-case basis.

WES currently has a few positions which typically have characteristics of both SES and ST classifications. Most of these positions are responsible for supervising other GS–15 positions, including branch or division chiefs, non-supervisory research engineers and scientists, and potential ST positions. These positions are classified at the GS–15 level, although their technical expertise warrants classification beyond GS–15. Because of their management responsibility, these individuals are excluded from the ST system.

Because of management considerations, they cannot be placed in the SES. WES management considers the primary requirement for the positions to be knowledge of and expertise in the specific scientific and technology areas related to the mission of the organization. Historically, incumbents of these positions have been recognized within the community as scientific and engineering leaders, who possess primarily scientific/engineering credentials and are considered experts in their field. However, they must also possess strong managerial and supervisory abilities. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as STS is not an option, because the managerial and supervisory responsibilities inherent in the positions cannot be ignored.

The purpose of pay band VI (which will reinforce the equal pay for equal work principle) is to solve a critical classification problem. It will also contribute to an SES "corporate culture" by excluding from the SES positions for which technical expertise is paramount. Payband VI proposes to overcome the difficulties identified above by creating a new category of positions—the Senior Scientific Technical Manager, which has both scientific/technical expertise and full managerial and supervisory authority.

Current GS–15s will convert into the demonstration project at pay band V. After conversion they will be reviewed against established criteria to determine if they should be reclassified to pay band VI. Other positions possibly meeting criteria for classification to pay band VI will be reviewed on a case-by-case basis. The proposed salary range is a minimum of 120 percent of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES level 4 (ES–4). Vacant positions in pay band VI will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory abilities.

Selection panels will be created to assist in filling Payband VI positions. Panel members will be selected from a pool of current WES SES members, ST employees, and later those in Payband

VI, and an equal number of individuals of equivalent stature from outside the laboratory to ensure impartiality, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level.

DoD will test the establishment of pay band VI for a 5-year period. Positions established in pay band VI will be subject to limitations imposed by OPM and DoD. Pay band VI positions will be established only in an S&T Reinvention Laboratory which employs scientists, engineers, or both. Incumbents of pay band VI positions will work primarily in their professional capacity on basic or applied research and secondarily perform managerial or supervisory duties. The number of pay band VI positions within DoD will not exceed 40. These 40 positions will be allocated by ASD (FMP), DoD, and administered by the respective Services. The number of pay band VI positions will be reviewed periodically to determine appropriate position requirements. Pay band VI position allocations will be managed separately from SES, ST, and Senior Level (SL) positions. An evaluation of the pay band VI concept will be performed during the fifth year of the demonstration project.

The final component of pay band VI is the management of all pay band VI assets. Specifically, this authority will be exercised at the DA level and includes the following: authority to classify, create or abolish positions within the limitations imposed by OPM and DoD; recruit and reassign employees in this pay band; set pay and to have their performance appraised under this project's pay-for-performance system. The laboratory wants to demonstrate increased effectiveness by gaining greater managerial control and authority, consistent with merit, affirmative action, and equal employment opportunity principles.

2. Occupational Families

Positions will be grouped into occupational families according to similarities in type of work and customary requirements for formal training or credentials. The historical patterns of advancement within the occupational families will be considered. The current positions and grades at WES have been examined, and their characteristics and distribution have served as guidelines in the development of occupational families. Four occupational families will be established:

(a) Engineers and Scientists. This occupational family includes all technical professional positions such as engineers (civil, hydraulic, structural, mechanical, electronic, electrical, chemical, and environmental), mathematicians, statisticians, computer scientists, outdoor recreational planners, geographers, architects, archaeologists, operations research analysts, and a variety of physical and biological scientists. Specific course work or educational degrees are required for positions in this occupational family.

(b) E&S Technicians. This occupational family consists of the positions that support the various engineering and scientific activities. Employees in this occupational family are required to have training and skills in the various technical areas (civil, hydraulic, structural, geotechnical, physical, coastal, biological, chemical).

(c) Administrative. This occupational family contains specialized functions in such fields as counsel, audit, finance, procurement, public information, accounting, administrative, computing, safety, and management analysis. Special training and skills in administrative fields or special degrees are required.

(d) General Support. This occupational family is composed of positions requiring special skills and knowledge, such as typing or shorthand, and job-related experience. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Other support functions include the work of secretaries, legal clerks, guards, mail clerks, etc.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the executive, administrative, or professional criteria for exemption. As a general rule, the FLSA status can generally be matched to the occupational families and pay bands found in Table 3. Exceptions to these guidelines include supervisors/managers who meet the definitions outlined in the OPM General Schedule Supervisory Guide. The generic position descriptions will not be the sole basis for the FLSA determination. Each position will be evaluated on a case by case basis by comparing the duties and responsibilities assigned, the classification standards for each pay band, under 5 CFR part 551 criteria.

B. Classification

1. Coverage

The present GS classification system has over 400 occupations (also called series), which are divided into 22 groups. The present occupational series will be maintained. New series may be added as needed to reflect new occupations in the work force when established by OPM.

2. Classification Standards

The classification system will be modified to facilitate pay banding. The present classification standards will be used to create local benchmark position description/standards for each pay band, reflecting duties and responsibilities comparable to those described in present classification standards for the span of grades represented by each pay band. Present titles and series will continue to be used in order to recognize the types of work being performed and educational backgrounds and requirements of incumbents. Locally developed specialty codes and OPM functional codes will be used to facilitate titling, making qualification determinations, and assigning competitive levels to determine retention status.

3. Position Descriptions and Classification Process

New standardized position descriptors will be developed to assist managers in exercising delegated position classification authority. Managers will identify the appropriate pay band and descriptor definition and proceed to finalize the position description. A cover sheet similar to the present DA Form 374 will be used to reflect their classification decision. The cover sheet used will include a provision for designating specialty codes. These specialty codes will be developed to identify the special nature of work performed and will be included on the final position descriptor.

An employee may appeal the occupational series or pay band level of his or her position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. If an employee is not satisfied with the DoD response, he or she may then appeal to OPM only after DoD has rendered a decision under the provisions of this demonstration

project. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under Title 5 apply. An employee requesting a classification decision that would exceed the equivalent of a GS–15 level may not submit the appeal to OPM.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the Civilian Personnel Office/Human Resources Office providing personnel service and will include copies of appropriate demonstration project criteria.

C. Pay for Performance

The objective is to establish a pay system that will improve the ability of WES to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a redistribution of pay resources based upon individual performance.

1. Determining Pay Increases

Compensation will be allocated to employees through organizational compensation pools. The WES Director, Commander and Deputy Director, and Laboratory Directors at WES will manage their respective pools.

The compensation pools will have two components: Funds for performance pay increases (money previously available for within-grade increases, quality step increases, and promotions between grades that are banded under the project); and funds for General Schedule pay increases. Performance awards (cash awards and bonuses presently allowed) and locality pay increases will continue under the project and will be excluded from the compensation pools. The compensation pools will be managed to ensure relative cost neutrality. As a result, funds will not be shifted between pools.

Annual base pay increases paid from the performance pay increase component of the compensation pools will be based on eligibility as well as scores on the established standards as follows:

$$PR = \frac{V}{100} S P$$

Where:

PR = employee's annual performance-based pay raise, $
V = value of a share, percent
S = number of shares earned by employee based on performance
P = employee's salary prior to pay raise

The number of shares earned by an employee will vary from 0 to 4 and will depend upon their performance score. A performance pay increase may not cause the employee's rate of basic pay to exceed the maximum rate of the pay band.

The value of a share will be computed in a manner to ensure that the amount of money available for performance pay increases will not exceed the amount of money in a compensation pool that is available for raises. Therefore, the amount of money available annually within a pay pool for performance-based pay raises is:

$$M = \frac{A}{100} \sum_{i=1}^{n} P_i$$

Where:

A = average annual historical pay raise, percent
M = pay pool size, $
P_i = salary of employee I
n = number of employees in compensation pool

The share value (percent) is computed in a manner to ensure exact expenditure of the amount of money in the compensation pool as follows:

$$V = \frac{M}{\sum_{i=1}^{n_e} S_i P_i} \times 100$$

Where:

S_i = number of shares earned by employee I based upon performance
n_e = number of employees within compensation pool that are eligible for a performance-based pay raise

A payout function that correlates number of shares earned by an employee for a performance based pay raise to average performance score will be similar to the plot shown in Figure 1.

The annual General Schedule pay increase will be allocated as follows:

(a) The first step is setting the percentage General Schedule increase that will be given to all eligible employees. This amount will be equal to the General Schedule increase authorized for GS employees. All employees whose average performance score is 2.0 or greater will be eligible for the increase. Employees with an average performance score of less than 2.0 will be ineligible for the full General Schedule increase and may receive either none or one-half of the increase. Pay increases for employees receiving retained rates will be determined in accordance with 5 U.S.C. 5363 except that those with an average performance score of less than 2.0 may receive either none or one-quarter of the increase in the maximum rate of basic pay for the applicable pay band.

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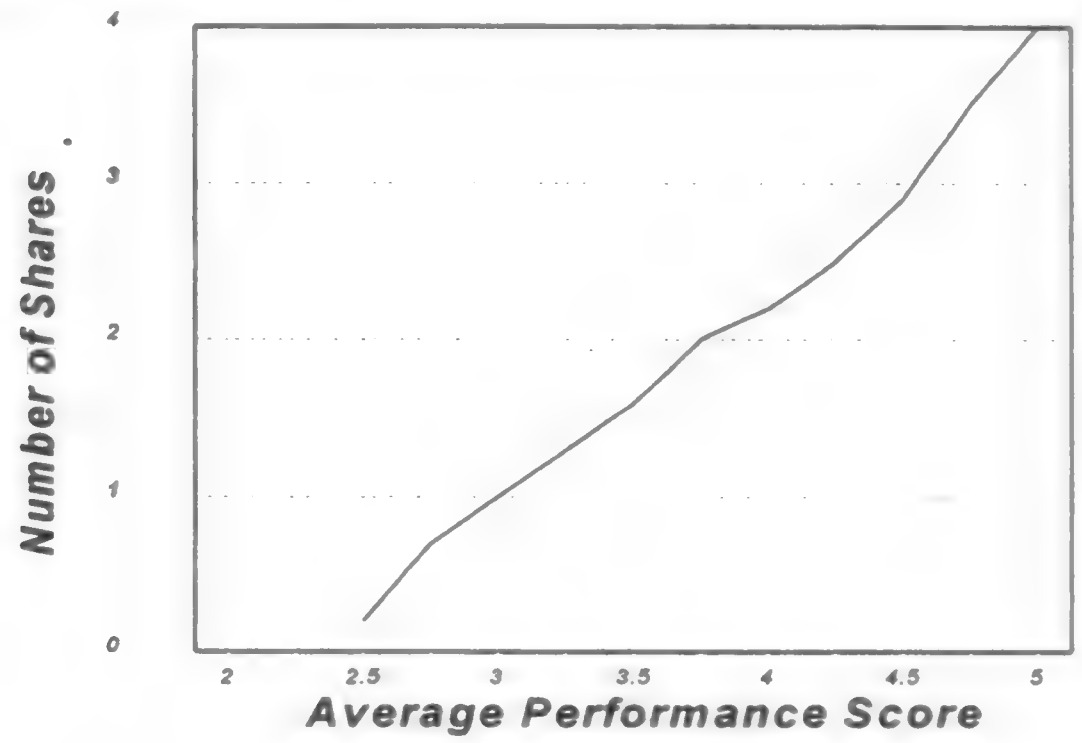
Figure 1. Relation Between Shares Earned for Performance and Average Performance Score



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(b) The minimum and maximum pay rates of basic pay for each pay band in an occupational family will be adjusted by any general pay increase to reflect the new rates in accordance with the criteria reflected in Section III, A, Broadbanding, of this plan. The maximum pay rate for pay band VI cannot exceed the rate for SES level 4. Therefore, employees at or near the top of pay band VI may not receive the full general increase if it is not authorized for SES employees.

2. Performance Evaluation

The performance appraisal system will link compensation to performance through annual performance evaluations and performance ratings. Performance will be evaluated against generic performance standards. Rating elements will be provided for all employees. All rating elements will be critical and scored on a scale of 0 to 5. The score will be based on employees performance as evaluated against generic performance standards for each element. The supervisor will discuss performance rating standards with the employee to clarify performance criteria at the beginning of the rating period. The generic performance standards, with the provision to add specific work plans, will be used to evaluate employee performance. The standards will describe the level of performance required for the employee to be rated fully successful. Reviews will be conducted at least at mid-year to evaluate employee progress in meeting performance standards. However, WES interns in recognized career programs will be appraised semi-annually until they complete their internship. The last performance rating in each annual cycle will be considered to be the rating of record.

Since all employees will not have the same number of rating elements, the element scores will be summed and averaged by the number of elements rated to determine the overall performance score. The score will be used for setting performance pay increases and determining eligibility for performance awards.

Employees must have an average performance score of 2.5 and above to be eligible for performance pay increases. Employees with an average performance score of 2.0 or greater will be eligible for performance awards and full General Schedule increases. Employees with an average score of less than 2.0 will be ineligible for performance awards and full General Schedule increases. A within-the-year review may be used to reevaluate employees with performance scores of less than 2.0. If the employee's performance has improved sufficiently since the last rating period, the employee may be eligible for a nonretroactive General Schedule pay raise at that time.

3. Awards

WES currently has an extensive awards program consisting of both internal and external awards. On-the-spot, special act, and other internal awards (both monetary and nonmonetary) will continue under the project. MACOM, DA, and DoD awards and other honorary noncash awards will be retained.

Cash awards may be given for performance and to recognize and encourage special contributions. Awards can be made to individuals, teams, or organizations. Awards must be approved at a managerial level at least one level higher than the recommending official except in the case where the WES Director is the recommender. Cash awards will not be considered to be a part of base pay.

D. Pay Setting Provisions

1. Pay and Compensation

(a) Pay Ceilings. An employee's total monetary compensation paid in a calendar year may not exceed the rate of basic pay for level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Each pay band will have its own pay ceiling, just as grades do in the GS system. Basic pay rates for the various pay bands will be directly keyed to the GS basic rates of pay except for pay band VI in the Engineers and Scientists occupational family. Pay band VI will have pay rates keyed to a minimum of 120% of the

minimum rate of basic pay for GS–15 basic pay with a maximum of the basic rate of pay established for SES level 4.

(b) Staffing Supplements. Employees assigned to occupational series and geographic areas covered by special rates will be eligible for a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades (e.g., certain engineers in pay bands II and III). The staffing supplement is added to the base pay, much like locality rates are added to base pay. The employee's total pay immediately after implementation of the demonstration project will be the same as immediately before the demonstration project, but a portion of the total will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in total salary. The staffing supplement is calculated as described below.

Upon conversion, the demonstration base rate will be established by dividing the old GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. So the employee's final demonstration special staffing rate equals the demonstration base rate plus the special staffing supplement; this amount will equal the employee's former GS adjusted rate. Simplified, the formula is:

$$\text{Staffing factor} = \frac{\text{Maximum special rate for the banded grades}}{\text{GS rate corresponding to that special rate}}$$

$$\text{Demonstration base rate} = \frac{\text{Old GS adjusted rate (special or locality rate)}}{\text{Staffing factor}}$$

Staffing supplement=Demonstration base rate x (staffing factor—1)
Salary upon conversion=Demonstration base rate + staffing supplement (sum will = existing rate)

Example: In the case of a GS–801–11/03 employee who is receiving a special salary rate, the salary before the demonstration project is $42,944. The maximum special rate for a GS–801–11 Step 10 is $51,295 and the corresponding regular rate is $46,523. The staffing factor is computed as follows:

$$\text{Staffing factor} = \frac{\$51,295}{\$46,523} = 1.1026$$

$$\text{Demonstration base rate} = \frac{\$42,944}{1.1026} = \$38,948$$

Then to determine the staffing supplement, multiply the demonstration base by the staffing factor minus 1.

$$\text{Staffing supplement} = \begin{array}{r} \$38,948 \\ \times\ .1026 \\ \hline \$\ 3,996 \end{array}$$

The staffing supplement of $3,996 is added to the demonstration base rate of $38,948 and the total salary is $42,944, which is the salary of the employee before conversion to the demonstration project.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee is converted into the demonstration, the demonstration base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate.

Any General Schedule or special rate schedule adjustment will require recomputation of the staffing supplement. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, affected employees will be entitled to pay retention. Upon geographic movement, an employee who receives the special staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

Established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), i.e., for purposes of retirement, life insurance, premium pay, and severance pay purposes and for advances in pay. It will also be used to compute worker's compensation payments and lump sum payments for accrued and accumulated annual leave.

2. Promotions

A promotion is the movement of an employee to a higher pay band within the same occupational family or to a pay band in a different occupational family which results in an increase in the employee's salary. Progression within a pay band, whether by performance pay increases or supervisory adjustments, are not subject to the provisions of this section.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by RIF procedures.

(d) Promotion without current competition when the employee was appointed through competitive

procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher pay band, of 180 days or less.

(f) Impact of person-in-the-job promotions.

(g) Promotion resulting from the accretion of duties and responsibilities.

(h) A promotion resulting from the correction of an initial classification error.

Upon promotion to a higher pay band, an employee will be entitled to a 6 percent basic pay increase or the lowest level in the pay band to which promoted, whichever is greater.

3. Link Between Promotion and Performance

Noncompetitive promotions (e.g., accretion of duties, recognition of impact of person-in-job, career ladder) will require an acceptable level of performance in their current position. To be promoted noncompetitively from one band to the next within an occupational family, an employee must meet the minimum qualifications for the job and have a current average performance score of 2.5 or above (Section III, C, Pay for Performance) or equivalent under a different performance management system (an equivalence chart will be developed by HRM specialists and included in the implementation instructions). Selection of employees through competitive procedures will require a current average performance score of 2.5 or above.

4. Supervisory Pay Adjustments

Supervisory pay adjustments may be used, at the discretion of the WES Director, to compensate employees in the Engineers and Scientists occupational family in supervisory positions. Employees in pay band VI of the Engineers and Scientists occupational family are excluded from receiving supervisory pay adjustments. Supervisory pay adjustments are increases to the supervisor's basic rate of pay, ranging up to 10 percent of that pay rate, subject to the constraint that the adjustment may not cause the employee's basic rate of pay to exceed the pay band maximum rate. Only employees in supervisory positions with formal supervisory authority meeting that required for coverage under the OPM GS Supervisory Guide will be considered for the supervisory pay adjustment. Criteria to be considered in determining the pay increase percentage include the following organizational and individual employee factors: needs of the organization to attract, retain, and motivate high quality supervisors; budgetary constraints; years of supervisory experience; amount of supervisory training received; performance; and managerial impact on the organization.

Conditions, after the date of conversion into the demonstration project, under which the application of a supervisory pay adjustment will be considered are as follows:

(a) New hires into supervisory positions will have their initial rate of basic pay set at the supervisor's discretion within the pay range of the applicable pay band. This rate of pay may include a supervisory pay adjustment determined using the ranges and criteria outlined above.

(b) An employee selected for a supervisory position that is within the employee's current pay band may also be considered for a supervisory pay adjustment.

(c) If a supervisor is already authorized a supervisory pay adjustment and is subsequently selected for another supervisory position, within the same pay band, then the supervisory pay adjustment will be redetermined.

(d) An employee promoted to a supervisory position in a higher pay band may be considered for a supervisory adjustment in addition to the pay increase that resulted from the promotion.

Supervisors, upon initial conversion into the demonstration project into the same, or substantially similar position, will be converted at their existing basic rate of pay and will not be given a supervisory pay adjustment at conversion.

Before supervisory employees may receive the pay adjustment, they must sign a statement acknowledging that the entire adjustment will be immediately withdrawn if they are removed from the supervisory position because of unacceptable performance or conduct. Supervisory employees who are reassigned to a nonsupervisory position for any other reasons (i.e., employee choice, management directed reassignment, or RIF) will receive one-half of the pay adjustment for one year following the reassignment. Eliminations or reductions in supervisory pay adjustments are not adverse actions, are not subject to appeal, and are not covered under pay retention provisions.

5. Supervisory Pay Differentials

Supervisory pay differentials may be used, at the discretion of the WES Director, to incentivize and reward supervisors in the Engineers and Scientists occupational family in pay bands IV and V whose pay is at the maximum rate of the pay band. Employees in pay band VI of the Engineers and Scientists occupational family are excluded from receiving supervisory pay differentials. Formal supervisory authority meeting that required for coverage under the OPM GS Supervisory Guide is required. A supervisory pay differential is a cash incentive, paid out on a pay period basis, which is not included as part of the supervisor's basic rate of pay. The differential may be up to 10 percent of the supervisor's basic rate of pay. Criteria to be considered in determining the amount of this supervisory pay differential includes those identified for supervisory pay adjustments.

Supervisors, upon initial conversion into the demonstration project into the same, or substantially similar position, will be converted at their existing basic rate of pay and will not be given a supervisory pay differential upon conversion. The differential will be terminated if the employee is removed from a supervisory position, regardless of cause.

As specified in the Supervisory Pay Adjustment Section, all personnel actions involving a supervisory differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the WES Director. The termination or reduction of the differential is not an adverse action, is not subject to appeal, and is not covered under pay retention provisions.

E. Hiring and Placement Authorities

1. Modified Term Appointments

WES conducts many research and development projects that range from 3 to 6 years. The current 4-year limitation on term appointments imposes a burden on laboratory managers by forcing the termination of some term employees prior to completion of projects they were hired to support. This disrupts the research and development process and reduces the ability of WES to serve its customers.

Under the demonstration project, WES will have the authority to hire individuals under modified term appointments. These appointments will be used to fill positions for a period of more than 1 year but not more than 5 years when the need for employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed 5, rather than 4 years. The WES Director is authorized to

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extend a term appointment 1 additional year.

Employees hired under the modified term appointment authority may be eligible for conversion to career-conditional appointments. To be converted, the employee must: have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected may be eligible for conversion to a career-conditional appointment at a later date; have served 2 years of continuous service in the term position; be selected under WES merit promotion procedures for the permanent position; and have a current performance score of 2.5 or better.

Employees serving under term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional appointment if they have a current performance score of 2.5 or better and are selected under merit promotion procedures for the permanent position after having completed 2 years of continuous service. Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous. Employees serving under modified term appointments under this plan will be covered by the plan's pay-for-performance system.

2. Extended Probationary Period

A new employee needs to demonstrate adequate contribution during all cycles of a research effort for a laboratory manager to render a thorough evaluation. The current 1-year probationary period will be extended to 2 years for all newly hired career employees in the Engineers and Scientists occupational family. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's contribution and conduct.

Aside from extending the time period, all other features of the current probationary period, including the criteria for crediting prior service and the limited notice and appeal rights, are retained. The requirements for conversion to career tenure are unchanged. Employees appointed prior to the implementation date will not be affected.

Probationary employees will be terminated when the employee fails to demonstrate proper conduct, technical competency, and/or adequate work contribution for continued employment. When WES decides to terminate an employee serving a probationary period because their work contribution or conduct during this period fails to demonstrate their fitness or qualifications for continued employment, it shall terminate their services by written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of WES's conclusions as to the inadequacies of their work contribution or conduct.

3. Voluntary Emeritus Program

Under the demonstration project, the WES Director will have the authority to offer retired or separated engineers and scientists voluntary assignments in the laboratory. This authority will include engineers and scientists who have retired or separated from Federal service. Voluntary Emeritus Program assignments are not considered "employment" by the Federal Government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on an earlier separation from Federal service. The Voluntary Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior engineers and scientists could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the emeritus program, a volunteer must be recommended by a Laboratory Director to the WES Director. Everyone who applies is not entitled to a voluntary assignment. The WES Director must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated federal employees may accept an emeritus position without a waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer and WES. The agreement will be reviewed by the local Office of Counsel for ethics determinations under the Joint Ethics Regulation. The agreement must be finalized before the assumption of duties and shall include:

(a) A statement that the voluntary assignment does not constitute an appointment in the civil service and is without compensation and any and all claims against the Government because of the voluntary assignment are waived by the volunteer;

(b) A statement that the volunteer will be considered a federal employee for the purpose of injury compensation;

(c) Volunteer's work schedule;

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) Support provided by the laboratory (travel, administrative, office space, supplies);

(f) A one page Statement of Duties;

(g) A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Program;

(h) A provision allowing either party to void the agreement with 10 working days written notice; and

(i) The level of security access required (any security clearance required by the assignment will be managed by the laboratory while the volunteer is a member of the Voluntary Emeritus Program).

F. Employee Development

The objective of the employee development program will be to develop the competence of employees for maximum achievement of Laboratory, MACOM, DA, and DoD goals. WES will continue its employee development programs, such as local training, off-site training, long-term training, and developmental assignments. Under this Project, the opportunity to apply for expanded developmental opportunities to include sabbaticals and training for degrees, which was previously restricted, will be made available to permanent employees.

1. Sabbatical

WES will have the authority to grant paid sabbaticals to career employees to permit them to engage in study or uncompensated work experience that

will contribute to their development and effectiveness. Each sabbatical should benefit WES as well as increase the employee's individual effectiveness. Examples are as follows: advanced academic teaching, study, or research; self-directed (independent) or guided study; and on-the-job work experience with a public, private, or nonprofit organization. Each recipient of a sabbatical must sign a continued service agreement and agree to serve a period equal to at least three times the length of the sabbatical.

2. Degree Training

Degree training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of DoD laboratories is also a critical tool for recruiting and retaining employees with or requiring critical skills. Constraints under current law and regulation limit degree payment to shortage occupations. In addition, current government-wide regulations authorize payment for degrees based only on recruitment or retention needs. Degree payment is currently not permitted for non-shortage occupations involving critical skills.

Under the Personnel Demonstration Project, WES will expand the authority to provide degree training for purposes of meeting critical skill requirements, to ensure continuous acquisition of advanced and specialized knowledge essential to the organization, and to recruit and retain personnel critical to the present and future requirements of the organization. It is expected that the degree payment authority will be used primarily for attainment of advanced degrees.

G. Reduction in Pay or Removal Actions

Employees covered by the project will be evaluated under a performance evaluation system that affords grievance and/or appeal rights the same as those provided currently.

1. Unacceptable Performance

An employee whose performance is unacceptable (i.e.,who does not perform at the acceptable level described by the standards for a particular critical element, and whose performance thus warrants a performance score of 0 on that element) at any time during the year shall be placed in a Performance Improvement Plan (PIP). If an employee is in a PIP at the end of a rating period, the performance rating will be delayed until the end of the PIP. Any General Schedule increase will be based on the rating at the end of the PIP. If performance remains unsatisfactory upon completion of the PIP, the employee will be separated from his or her position or reduced to a lower pay band. If performance becomes satisfactory, the employee will receive a performance rating of record and appropriate adjustments to pay may be made at that time (i.e., granting General Schedule increase). These performance-based actions will follow the same procedures as current performance-related removals and reductions in grade under Chapter 43 or Chapter 75 when appropriate.

2. Placement in a Lower Pay Band

An employee with an average performance score of less than 2.0 is ineligible for a performance pay increase or performance award and may receive either none or one-half the General Schedule pay increase. Because the minimum pay rate for each pay band will be increased each year by the amount of the General Schedule increase, it is possible that the new minimum rate of a pay band will exceed the basic pay of an employee in that band who did not receive the full General Schedule increase. In these cases, the employee will be moved to the next lower band level. This will not be considered an adverse action, will not be appealable through a statutory appeals process, and will not be covered under grade retention provisions.

H. Revised Reduction in Force (RIF) Procedures

Modifications include limiting competitive areas to occupational families and increasing the emphasis on performance in the RIF process. These modifications will increase the probability of retaining the highest performing individuals in their positions and will increase the probability of displacing the lowest performing individuals.

1. Competitive Areas

For RIF purposes, the competitive area will be the occupational family in which the employee is assigned and will cover all geographic locations.

2. Retention

Retention registers will be established based on the following criteria listed in order of priority: Tenure status (Tenure I-career, Tenure II-career conditional, Tenure III-modified term); veteran's preference; most recent employee performance score; and service computation date. Modified term employees within the affected occupational family will be separated before permanent Tenure I and II employees. The present RIF system essentially remains in effect, except that performance scores are part of the retention order. Performance scores will not be used to adjust the service computation date. The service computation date will be used as a tie breaker. A preference eligible with a compensable service-connected disability of 30 percent or more may displace employees in positions equivalent to 5 GS grades below the minimum grade level of his/her current pay band. Other employees may displace employees in positions no more than two pay band levels below the minimum level of his/her current pay band. Increasing the emphasis on job performance will help ensure the retention of outstanding individuals in RIF situations.

In some cases, an employee may not have a performance score of record. In these situations, a modal performance score will be assigned.

An employee who has received a written decision to demote him/her to a lower pay band competes in a RIF from the position to which he/she has been demoted. Employees who have been demoted for unacceptable performance or conduct, and as of the date of issuance of the RIF notice have not received a performance score in the position to which demoted, will receive a modal performance score.

An employee who has received an improved performance score following a PIP will have the improved performance score considered as the current performance score of record, provided that notification of such improvement is approved and received prior to the cutoff for receipt of personnel actions associated with implementation of RIF mechanics.

An employee with a current rating of unsatisfactory has assignment rights only to a position held by another employee who has a rating of unsatisfactory. An employee who has been given a written decision of removal will not compete in the RIF process.

Modified term appointment employees are in Tenure Group III for reduction in force purposes. Reduction in force procedures are not required when separating these employees when their appointments expire.

3. Grade and Pay Retention

Except where waived or modified in the waiver section of this plan, grade and pay retention will follow current law and regulations.

IV. Training

The key to the success or failure of the proposed demonstration project will be

the training provided for all involved. This training will not only provide the necessary knowledge and skills to carry out the proposed changes, but will also lead to commitment to the program on the part of all participants. Training will be tailored to fit the requirements of every employee included in the project and will fully address employee concerns to ensure that everyone has a comprehensive understanding of the program.

Training at the beginning of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include the following: A description of the system; how employees are converted into the system; pay adjustment process; familiarization with the new position descriptions and performance objectives; the individual performance rating process; the reconsideration process; and the demonstration project administrative and formal evaluation process.

A. Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, skills training in using the classification system, position description preparation, and performance evaluation. Additional training may focus on nonproject procedural techniques such as interpersonal and communication skills.

B. Administrative Staff

The administrative staff, generally personnel specialists, technicians, and administrative officers, will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will need training in the procedural and technical aspects of the project.

C. Employees

WES will train employees covered under the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate occupational family and pay band without loss of pay. An automatic conversion from current GS/GM grade and pay into the new broadbanding system will be accomplished.

Special conversion rules will apply to special rate employees (see Section III, D, Pay Setting Provisions). Employees who enter the demonstration project later by lateral reassignment or transfer will be subject to the same pay conversion rules. Employees serving under regular term appointments at the time of project implementation will be converted to the modified term appointment. Position announcements, etc., will not be required for these term appointments. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the pay band which corresponds to the grade of record. When a temporary promotion is terminated, the employee's pay entitlements will be determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by WES. In no case may those adjustments increase the pay for the position of record beyond the maximum pay rate for the applicable pay band. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered and, if implemented, will be subject to all existing priority placement programs.

At the time of conversion, each employee will have their basic pay adjusted for the time credited (in weeks) toward what would have been the employee's next within-grade increase. This adjustment in basic pay is applicable when employees are converted into the project.

Any employee covered by the project that is located at a permanent duty station Outside the Continental United States will continue to be ineligible for locality pay. Except for the maximum rate of basic pay for pay band VI, which will be limited to rate of basic pay for SES level 4, the maximum basic salary payable in the pay band will be limited to the maximum rate of pay on the GS salary table which does not include any locality pay.

B. Conversion From the Demonstration Project

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS equivalent grade and the employee's project rate of pay to GS equivalent rates of pay. The converted GS grade and rates of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rates of pay will become the employee's actual GS grade and rates of pay after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rates of pay will be used in applying any GS pay/administration rules applicable in connection with the employee's movement out of the project (i.e., promotion rules, highest previous rate rules, pay retention rules) as if the GS converted grade and rates of pay were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(a) The employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement but excluding any supervisory pay adjustment) is compared with step 4 rates in the

highest applicable GS rate range. For this purpose, a "GS rate range" includes a rate range in the GS base schedule, the locality rate schedule for the locality pay area in which the position is located, or the appropriate special rate schedule for the employee's occupational series, as applicable. If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(b) If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted project rate of pay is lower than the applicable step 4 rate of the highest grade, the adjusted rate of pay is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's adjusted rate of pay equals or exceeds step 4 rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate of pay equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate of pay is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: If the employee's adjusted project rate of pay exceeds the maximum rate of the grade assigned under the above-described "step 4" rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted that next higher applicable grade.

(f) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted rate of basic pay under the project (including any locality payment or staffing supplement but excluding any supervisory pay adjustment) is converted to a GS adjusted rate of pay on the highest applicable GS rate range for the converted GS grade. For this purpose, a "GS rate range" includes a rate range in the GS base schedule, an applicable locality rate schedule, or an applicable special rate schedule.

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate of pay is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate of pay must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

3. Engineers and Scientists Pay Band VI Employees

Employees in pay band VI of the Engineers and Scientists occupational family will convert out of the demonstration project at the GS–15 level. WES will develop a procedure to ensure that employees entering pay band VI understand that if they leave the demonstration project and their adjusted pay exceeds the GS–15, step 10 rate, there is no entitlement to retained pay; their GS equivalent rate will be deemed to be the rate for GS–15, step 10. For those pay band VI employees paid below the adjusted GS–15, step 10 rate, the converted rates will be set in accordance with paragraph 2 above.

4. Employees With Band or Pay Retention

(a) If an employee is retaining a pay band level under the demonstration project, apply the procedures in paragraphs 1 and 2, above, using the grades encompassed in the employee's retained band to determine the employee's GS equivalent retained grade and pay rate. The time in a retained band under the demonstration project counts toward the 2-year limit on grade retention in 5 U.S.C. 5382.

(b) If an employee is retaining rate under the demonstration project, the employee's GS equivalent grade is the highest grade encompassed in his or her band level. WES will coordinate with OPM to prescribe a procedure for determining the GS equivalent pay rate for an employee retaining a rate under the demonstration project.

5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project since the last pay-for-performance determination is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration. The project evaluation plan adequately addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration (Proposed Plan for the Evaluation of the DoD Laboratory Demonstration Program, OPM, 1995). Major changes and modifications to the interventions can be made through announcement in the Federal Register and would be made if formative evaluation data warranted. At the 5 year point, the entire demonstration will be reexamined for either: permanent implementation; change and another 3–5 year test period; or expiration.

VII. Evaluation Plan

Authorizing legislation mandated evaluation of the demonstration project to assess the merits of project outcomes and to evaluate the feasibility of applications to other federal organizations. A comprehensive and methodologically rigorous evaluation of the personnel system changes will be carried out. The overall evaluation consists of two components—external and internal evaluation. The external evaluation will be conducted by OPM's Personnel Resources and Development Center (PRDC) to benefit from their extensive experience evaluating demonstration projects. PRDC will serve in the role of external evaluator to ensure the integrity of the evaluation process, outcomes, and interpretation of results. Their external evaluation will be supplemented by an internal evaluation

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to be accomplished by the staff of WES. Selected parts of the evaluation will be completed using contractor support. The contractor(s) will be well qualified and experienced with demonstrated expertise in performing relevant support functions.

Essential elements of the evaluation plan are set forth below. The demonstration project is a complex experiment to be conducted in a dynamic environment over several years. Modifications and refinements to the evaluation plan will be made as required by mid-course project changes. All additions, deletions, and refinements to the current plan will be fully documented and explained as part of the evaluation reporting process. The main purpose of the evaluation is to determine the effectiveness of the personnel system changes described by the individual interventions. Every effort will be made to establish direct cause-and-effect relationships between the interventions and effectiveness criteria. An ancillary objective is to assess the effects of the interventions on improved organizational performance. An indirect causal link is hypothesized between the personnel system changes and improved organizational effectiveness, i.e., improved laboratory performance, mission accomplishment, and customer satisfaction. The current personnel management system with its many rigid rules and regulations often is perceived as a barrier to mission accomplishment. Together, the demonstration project initiatives are intended to remove some of those barriers, and therefore, are expected to contribute to improved laboratory performance.

The evaluation effort will be accomplished in four distinct phases:

(a) Design phase—includes development of the evaluation model, selection of experimental and comparison sites, and collection of baseline data prior to implementation.

(b) Implementation phase—includes actual project implementation and monitoring of the degree and support of implementation to assure that each of the project interventions has been operationalized as originally conceived.

(c) Formative evaluation phase—includes data collection and analysis for five years for purposes of evaluating the effects of the interventions. Periodic reports and annual summaries will be prepared to document the findings.

(d) Summative evaluation phase—focuses on summary evaluation and overall assessment of the project's impact, including presentation of conclusions and final recommendations upon completion of the project.

An intervention impact model (Appendix A) will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified with consistent with expected effects. Measures may also be deleted when appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique.

The evaluation model for the Demonstration Project identifies elements critical to an evaluation of the effectiveness of the interventions. The overall evaluation approach will also include consideration on context variables that are likely to have an impact on project outcomes (e.g., HRM regionalization, downsizing, cross-service integration, and the general state of the economy). However, the main focus of the evaluation will be on intermediate outcomes, i.e., the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and customer satisfaction.

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual data will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of data will be collected as part of the evaluation: workforce data; personnel office data; employee attitudes and feedback using surveys, structured interviews and focus groups; local activity histories, and core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

Costs associated with the development of the personnel demonstration system include software automation, training, and project evaluation. All funding will be provided through the WES budget. The projected annual expenses for each area is summarized in Table 4.

TABLE 4.—PROJECTED DEVELOPMENTAL COSTS

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
Training	.....	$97K	$19K	.....	.....	.....
Project Evaluation	$25K	60K	60K	$60K	$60K	$60K
Automation	80K	10K	.....	.....	.....	.....
Totals	105K	167K	79K	60K	60K	60K

IX. Required Waivers to Law and Regulations

Public Law 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the Demonstration Project. In due course, additional laws and regulations may be identified for waiver request.

A. Waivers to Title 5, U.S. Code

Section 3111, Acceptance of volunteer service.

Section 3132, The Senior Executive Service; definitions and exclusions.

Section 3324, Appointments to positions classified above GS–15.

Section 3341, Details (to the extent that non-competitive details to higher band levels can now be 180 days rather than 120).

Section 4107, Non-Government facilities; restrictions (to the extent that training may be paid for the purpose of an employee to obtain a degree).

Section 4108, Employee agreements; service after training (to the extent that continued service is required only for long-term training and sabbaticals).

Section 4303(f), Actions based on unacceptable performance (to the extent

necessary to: (1) Substitute "pay band" for "grade" and (2) provide that moving to a lower pay band as a result of not receiving the full amount of a general pay increase because of poor performance is not an action covered by the provisions of section 4303).

Sections 5101–5111, Purpose, definitions, basis, classification of positions, review, authority (to the extent that white collar employees will be covered by broadbanding. Pay category determination criteria for Federal Wage System positions remain unchanged).

Sections 5301; 5302 (8), and (9); 5303; and 5304, Pay comparability system (Sections 5301, 5302, and 5304 are waived only to the extent necessary to allow: (1) Demonstration project employees to be treated as General Schedule employees; (2) basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay; and (3) employees in band VI of the Engineers and Scientists occupational family to be treated as ST employees for the purposes of these provisions).

Section 5305, Special pay authority.

Sections 5331–5336, General Schedule pay rates.

Sections 5361–5366, Grade and pay retention (to the extent necessary to (1) replace "grade" with "pay band"; (2) allow demonstration project employees to be treated as General Schedule; (3) provide that pay band retention provisions do not apply to movements to a lower pay band as a result of receiving no or only part of a general pay increase because of poor performance; (4) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of all or part of a supervisory pay adjustment upon leaving a supervisory position; (5) provide that an employee on pay retention whose performance rating is less than 2.0 is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position; and (6) ensure that for employees of pay band VI of the Engineers and Scientists occupational family, pay band retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate).

Section 5545, Night, standby, irregular, and hazardous duty differential (to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in band VI of the Engineers and Scientists occupational family).

Sections 5753, 5754, and 5755, Recruitment and relocation bonuses, retention allowances, and supervisory differentials (to the extent necessary to allow: (1) Employees and positions under the demonstration project to be treated as employees and positions under the General Schedule; and (2) employees in band VI of the Engineers and Scientists occupational family to be treated as ST employees).

Section 7512(3), Adverse actions (to the extent necessary to (1) substitute "pay band" for "grade" and (2) provide that moving to a lower pay band as a result of not receiving the full amount of a general pay increase because of poor performance is not an adverse action).

Section 7512(4), Adverse actions (to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (2) reductions in pay due to removal of all or part of a supervisory adjustment).

B. Waivers to Title 5, Code of Federal Regulations

Part 300.601–605, Time-in-grade restrictions (to the extent that time-in-grade restrictions are eliminated).

Part 308.101–103, Volunteer service (to the extent that volunteer service is unrestricted).

Parts 315.801(a) and 315.802(a), Length of probationary period (to the extent that the probationary period for engineers and scientists is increased to 2 years).

Part 316.301, Term appointment (to the extent that modified term appointments may cover a maximum period of 6 years).

Part 316.303, Tenure of term employees (to the extent that term employees may compete for permanent status through local merit promotion plans).

Part 316.305, Eligibility for within grade increases.

Part 335.103, Covering the length of details and temporary promotions.

Part 351.402(b), Competitive area (to the extent that occupational family is the competitive area).

Part 351.403, Competitive level (to the extent that pay band is substituted for grade).

Part 351.504, Retention standing, credit for performance (to the extent that service credit will not be modified based on performance rating).

Part 351.701, Assignment involving displacement (to the extent that a performance score of 1 is substituted for level 2 and bumping and retreating will be limited to no more than 2 pay bands except for 30 percent compensable veterans who can retreat to the equivalent of 5 GS grades).

Part 410.308, Training to obtain an academic degree.

Part 410.309, Agreements to continue in service. (To the extent necessary that individuals pursuing academic degrees do not sign service agreements.)

Part 430.204, Definition of rating of record (to the extent necessary to allow ratings of record that do not cover performance over the entire appraisal period).

Part 430.208(d), Summary levels (to the extent necessary to allow use of summary performance scores that are not further categorized into five or fewer summary levels).

Part 432.104–105, Performance based reduction in grade and removal actions (to the extent that "pay band" is substituted for "grade" and reduction in band level as a result of non-receipt of General Schedule increases because of poor performance is not an adverse action.

Part 511.101, 201–203, General provisions and coverage of the General Schedule (to the extent that positions are covered by broadbanding).

Part 511.601–612, Classification appeals (to the extent that positions are covered by broadbanding).

Part 530, subpart C, Special salary rates.

Part 531, subparts B, D, and E, Determining the rate of basic pay, within-grade increases, and quality step increases.

Part 531, subpart F, Locality-based comparability payments (to the extent necessary to allow: (1) Demonstration project employees to be treated as General Schedule employees; (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay; and (3) employees in band VI of the Engineer and Scientist occupational family to be treated as ST employees).

Part 536, Grade and pay retention (to the extent necessary to: (1) Replace "grade" with "pay band"; (2) provide that pay band retention provisions do not apply to movements to a lower pay band as a result of receiving no or only part of a general pay increase because of poor performance; (3) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project

pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of all or part of a supervisory pay adjustment upon leaving a supervisory position; (4) provide than an employee on pay retention whose performance rating is less than 2.0 is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position and (5) ensure that for employees in pay band VI of the Engineers and Scientists occupational family, pay band retention is not applicable and pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate).

Part 550.703, Severance pay (to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level").

Part 550.902, Hazardous duty differential, definition of "employee" (to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in band VI of the Engineers and Scientists occupational family).

Part 575, subparts A, B, C, and D, Recruitment bonuses, relocation bonuses, retention allowances and supervisory differentials (to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in band VI of the Engineers and Scientists occupational family to be treated as ST employees for the purposes of these provisions).

Part 752.401 (a)(3), Adverse actions (this provision is waived only to the extent necessary to (1) substitute "pay band" for "grade" and (2) provide that moving a lower pay band as a result of not receiving the full amount of a general pay increase because of poor performance is not an adverse action.

Part 752.401 (a)(4), Adverse actions (to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (2) reductions in pay due to the removal of all or part of a supervisory adjustment).

APPENDIX A—INTERVENTION IMPACT MODEL: PROJECT EVALUATION

Intervention	Expected effects	Measures	Data sources
1. Broadbanding:			
a. Pay Bands	—Less difficulty and less time spent on classification.	—Perceptions of difficulty and time spent on classification activities by managers and personnelists.	—Focus groups. —Attitude survey. —Personnel activity reports.
	—Increased understanding with the classification results under the new system.	—Perceptions of satisfaction with classification process.	—Focus groups. —Attitude survey.
b. Occupational Families	—Increased satisfaction with advancement potential.	—Perceptions of satisfaction with career path process and progression.	—Focus groups. —Attitude survey.
	—Increase in management authority.	—Perception of authority	—Attitude survey.
c. Conversion of Employees to the Demonstration Project.	—Employee acceptance	—Perception of equity and fairness.	—Attitude survey.
2. Classification:			
a. Classification Standards	—Less difficulty and less time spent on classification; less difficulty classifying jobs.	—Perceptions of difficulty and time spent on classification activities by managers and personnelists.	—Focus groups. —Attitude survey. —Personnel activity reports.
	—Increased satisfaction with the classification results under the new system.	—Perceptions of satisfaction with classification process.	—Focus groups. —Attitude survey.
b. Position Descriptions and Classification Process.	—Less difficulty and less time spent on classification by managers.	—Perceptions of difficulty and time spent on classification activities by managers and personnelists.	—Focus groups. —Attitude survey. —Personnel activity reports.
	—Fewer position descriptions	—Reduced time to develop position descriptions.	—Attitude survey. —Personnel activity reports.
	—Increased satisfaction with the classification results under the new system.	—Perceptions of satisfaction with classification process.	—Focus groups. —Attitude survey.
	—Development of generic classification standards.	—Implementation of generic standards.	—Personnel activity reports.
3. Pay for Performance:			
a. Supervisory Pay Adjustments and Differentials.	—Reward top performers who take supervisory and managerial assignments.	—Attitudes of supervisors and managers with pay.	—WES workforce data. —Attitude survey.
b. Promotion Link	—Promotions based on individual's performance.	—Probability of promotion for high performers.	—WES workforce data. —Attitude survey.
c. Link Between Performance and Pay.	—Stronger link between performance and pay.	—Pay for performance correlations. —Perception of pay for performance link.	—WES workforce data. —Attitude survey.
	—Improve retention of high performers.	—Employee perception of equality	—Attitude survey.

APPENDIX A—INTERVENTION IMPACT MODEL: PROJECT EVALUATION—Continued

Intervention	Expected effects	Measures	Data sources
	—Increase turnover among low performers.	—Turnover rates by performance over time.	—WES workforce data.
	—Increase in supervisory decision making authority accountability.	—Supervisors perception of pay for performance link.	—Attitude survey.
	—Increase pay satisfaction	—Employees perception of pay for performance link.	—Attitude survey.
d. Awards	—Reward/motivate performance	—Perceived motivational power	—Attitude survey.
	—To support fair and appropriate distribution of awards.	—Amount and number of awards by occupational family, demographics.	—WES workforce data.
		—Perceived fairness of awards	—Attitude survey.
		—Satisfaction with monetary awards.	—Attitude survey.
4. Hiring and Placement:			
a. Hiring Authority	—Reduction in time to hire	—Time lag from announcement to date.	—WES workforce data hiring log.
	—Improve rate of job offers/acceptance.	—Offer acceptance rate	—WES workforce data hiring log.
	—Improve image as interested caring employer.	—Offer acceptance rate	—Managers' and supervisors' documented experience.
b. Modified Term Appointments.	—Decrease in hiring authorities	—Better qualified candidates within the temporary workforce.	—WES workforce data.
c. Extended Probationary Period.	—Provide managers time to accurately identify successful employees.	—Managers perception of new hires success.	—Attitude survey.
		—New hires performance ratings	—WES workforce data.
	—Increase in length of probation for engineers and scientists.	—Pre and post comparison of length of probation.	—WES workforce data.
	—Increase in voluntary (in lieu of adverse action) and involuntary turnover of low performers during probation.	—Comparison of voluntary/involuntary turnover rates for low performers during probation period.	—WES workforce data.
5. Employee Development:			
a. Sabbaticals	—Increase development of employees.	—Perception of fairness in career development.	—Attitude survey.
	—Use of sabbaticals for career development.		—Documented experience of managers and supervisors.
b. Degree Training	—Increase development of employees.	—Perception of fairness in career development.	—Attitude survey.
6. Reduction-In-Force:			
Modified RIF	—Retention of high performers	—Evaluation rating vs RIF turnover.	—WES workforce data.
			—Historical WES data.
			—Historical RIF data from other Army Laboratories.
	—Reduce disruption to the workforce by limiting RIF to occupational family.	—Attitudes on a RIF action	—Attitude survey.
7. Combination of all Interventions:			
All	—Improved organizational effectiveness.	—Combination of personnel measures.	—All data sources.
	—Improved management of R&D workforce.	—Employee/management satisfaction.	—Attitude survey.
	—Improved planning	—Planning procedures	—Strategic planning documents.
	—Improved cross functional coordination.	—Perceived effectiveness of planning procedures.	—Organizational charts.
		—Actual perceived coordination	
	—Increased product success	—Customer satisfaction	—Attitude survey.
			—Customer satisfaction surveys.

Editorial Note: FR Doc. 98-5425 which was originally published in the issue of Tuesday, March 3, 1998, at page 10464 is being republished in its entirety in the issue of Wednesday, March 25, 1998, because of typesetting errors.

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H.R. 595/P.L. 105–163

To designate the Federal building and United States courthouse located at 475 Mulberry Street in Macon, Georgia, as the "William Augustus Bootle Federal Building and United States Courthouse". (Mar. 20, 1998; 112 Stat. 31)

H.R. 3116/P.L. 105–164

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S. 347/P.L. 105–165

To designate the Federal building located at 61 Forsyth Street SW., in Atlanta, Georgia, as the "Sam Nunn Atlanta Federal Center". (Mar. 20, 1998; 112 Stat. 37)

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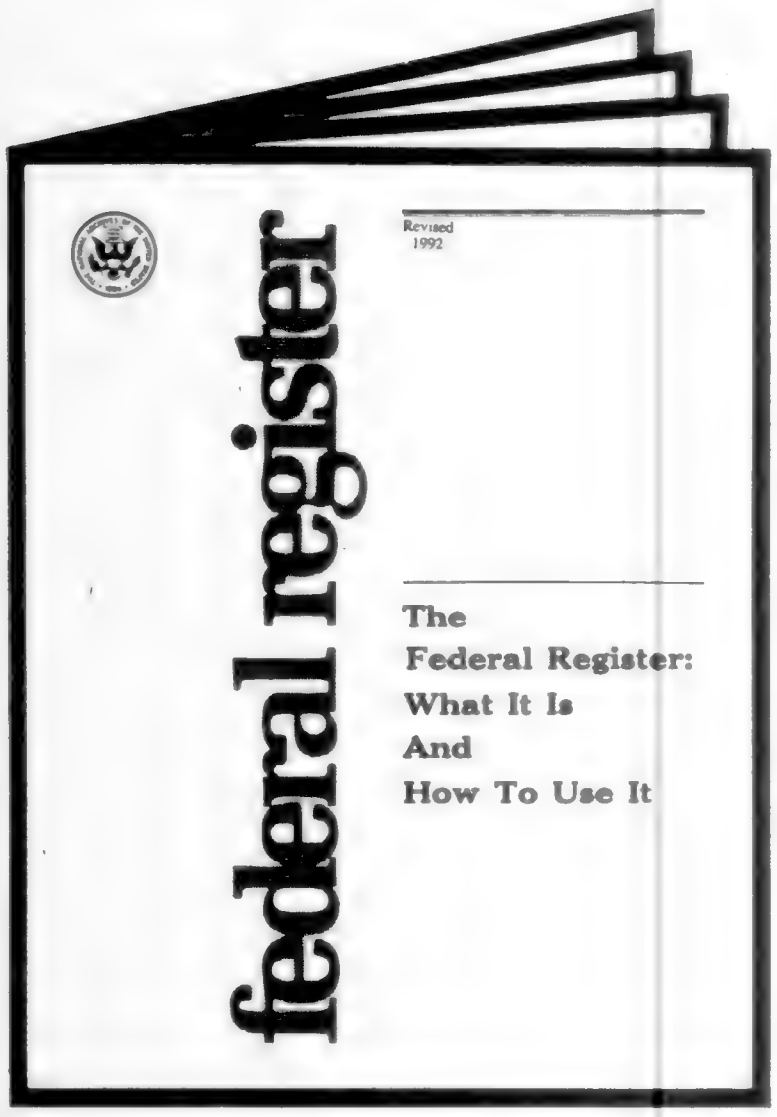

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Rules and Regulations

Federal Register
Vol. 63, No. 58
Thursday, March 26, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV98–925–1 FIR]

Grapes Grown in a Designated Area of Southeastern California; Temporary Suspension of Continuing Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which suspended the continuing assessment rate for the Desert Grape Administrative Committee (Committee) under Marketing Order No. 925 for the 1998 fiscal period. The Committee is responsible for local administration of the marketing order, and recommended that no handler assessments be collected in 1998. It made this recommendation because it has enough reserve funds to cover 1998 fiscal year expenses and expenses expected during the first several months of fiscal year 1999, and to keep its operating reserve within the maximum permitted under the marketing order. The assessment rate will apply again during fiscal year 1999 to cover expenses and to replenish the Committee's reserve funds. That rate will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of grapes grown in southeastern California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. In 1997, an assessment rate of $.01 per lug of grapes was fixed by the Secretary to continue in effect indefinitely unless modified, suspended, or terminated. This action continues to suspend that assessment rate for the 1998 fiscal year. The assessment rate again will apply in fiscal year 1999, and it will be applicable to all assessable grapes beginning January 1, 1999, and continue in effect until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to temporarily suspend § 925.215 of the order's rules and regulations. Section 925.215 established an assessment rate of $0.01 per lug for fiscal period 1997 and subsequent fiscal periods. Continuous assessment rates remain in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary. This rule continues to suspend the $0.01 assessment rate for the 1998 fiscal period.

Section 925.41 of the grape marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. In addition, § 925.42 authorizes the use of reserve funds to cover program expenses. The members of the Committee are producers and handlers of California grapes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. Recommendations concerning the assessment rate were formulated and discussed in a public meeting. Thus, all directly affected persons had an opportunity to participate and provide input.

The Committee met on November 12, 1997, and unanimously recommended carrying over the 1997 reserve fund of almost $190,000, adopting a budget of $160,619, and suspending the assessment rate of $0.01 per lug of grapes for the 1998 fiscal period. The Committee determined that sufficient funds would be available to meet expected 1998 fiscal period expenses, and to cover anticipated expenses during the first few months of fiscal year 1999, before handler assessments are collected. The Committee discussed alternatives to this rule, including not

suspending the assessment rate, but concluded that an assessment rate for 1998 would not be necessary because sufficient reserve funds and interest income would be available to meet 1998 fiscal period expenses, and early season expenses in 1999. Also, the Committee recommended that the major expenditures for the 1998 fiscal period should include $100,000 for research, $25,000 for the sheriff's patrol, and $9,109 for the manager's salary. Budgeted expenses for these items in 1997 were $100,000 for research, $25,000 for compliance purposes, and $8,675 for the manager's salary. Funds in the reserve will be kept within the maximum permitted by the order (approximately one fiscal period's expenses; § 925.42).

The temporary suspension of the continuing assessment rate is effective only for the 1998 fiscal period. The assessment rate of $0.01 per lug will apply again during the 1999 fiscal period, unless subsequent action to suspend or revise this rate is taken by the Department.

Prior to the 1999 fiscal period, and prior to or during each successive fiscal period, the Committee will continue to meet to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998 budget has been approved; and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 27 handlers of California grapes subject to regulation under the marketing order and approximately 80 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. Ten of the 27 handlers subject to regulation have annual grape sales of at least $5,000,000, excluding receipts from any other sources. The remaining 17 handlers have annual receipts less than $5,000,000, excluding receipts from any other sources. In addition, 70 of the 80 producers subject to regulation have annual sales of at least $500,000, excluding receipts from any other sources. The remaining 10 producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of handlers and a minority of producers are classified as small entities.

This rule continues to suspend § 925.215 of the order's rules and regulations, which established an assessment rate of $0.01 per lug for fiscal period 1997 and subsequent fiscal periods. This suspension is in effect for the 1998 fiscal period.

The Committee discussed alternatives to this rule, including not suspending the assessment rate, but concluded that no assessment rate is necessary for 1998 because funds in the reserve and interest income would be adequate to meet 1998 fiscal period's expenses, and expenses for the first several months of fiscal year 1999. Also, the Committee recommended that the major expenditures for the 1998 fiscal period include $100,000 for research, $25,000 for the sheriff's patrol, and $9,109 for the manager's salary. Budgeted expenses for these items in 1997 were $100,000 for research, $25,000 for compliance purposes, and $8,675 for the manager's salary. Funds in the reserve will be kept within the maximum permitted by the order (approximately one fiscal period's expenses; § 925.42).

Handler costs will be reduced during the 1998 fiscal year, as assessments will not be collected. The Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 12, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on December 31, 1997 (62 FR 68150). Copies of that rule were also mailed or sent via facsimile to all grape handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on March 2, 1998, and no comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that a continuing assessment rate on handlers during the 1998 fiscal period no longer tends to effectuate the declared policy of the Act. The suspension shall continue only through December 31, 1998, at which time it shall terminate and the suspended assessment rate specified in § 925.215 will apply again beginning January 1, 1999.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 925 which was published at 62 FR 68150 on December 31, 1997, is adopted as a final rule without change.

Dated: March 20, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–7941 Filed 3–25–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–131–AD; Amendment 39–10342; AD 98–04–30]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–500M Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of Airworthiness Directive (AD) 98–04–30, which applies to Glaser-Dirks Flugzeugbau GmbH Model DG–500M gliders. AD 98–04–30 requires repetitively inspecting the propeller mounting plate for cracks, replacing any cracked propeller mounting plate, and modifying the bolt connections of the propeller mounting plate. This AD was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent the propeller mounting plate from separating from the glider, which could result in propeller separation and possible loss of control of the glider.

EFFECTIVE DATE: May 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on February 26, 1998 (63 FR 9743). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on May 15, 1998. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, Missouri, on March 20, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7887 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–171–AD; Amendment 39–10349, AD 98–04–37]

Airworthiness Directives; Sabreliner Model NA–265–40, –60, –70, and –80 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in the applicability statement of airworthiness directive (AD) 98–04–37, amendment 39–10349, that was published in the **Federal Register** on February 18, 1998 (63 FR 8086). Although the AD referred to the airplane models by using the commonly accepted designations, the typographical error resulted in the omission of the correct and complete type certification name of the specific airplane models addressed by this AD. This AD is applicable to all Sabreliner Model NA–265–40, –60, –70, and –80 series airplanes and requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riddle, Program Manager, Flight Test and Program Management, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4144; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 98–04–37, amendment 39–10349, applicable to all Sabreliner Model NA–265–40, –60, –70, and –80 series airplanes, was published in the **Federal Register** on February 18, 1998 (63 FR 8086). That AD requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

As published, that AD contained an inadvertent omission of the complete name of the airplane models in the applicability statement of the AD. Throughout the preamble and in the applicability statement of that AD, the FAA referred to "Sabreliner Model 40, 60, 70, and 80 series airplanes." However, the certificate authorizing type design authority for these series airplanes identifies the models as "Sabreliner Model NA–265–40, –60, –70, and –80 series airplanes." Although common and standard reference to these models may not include the phrase "NA–265," as listed in the type certificate, the FAA has determined that omission of part of the official designation of the airplane models must be corrected. In all other respects, the original document is correct.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of the AD remains March 25, 1998.

§ 39.13 [Corrected]

On page 8089, in the first column, the applicability statement of AD 98–04–37 is corrected to read as follows:

* * * * *

Applicability: Model NA–265–40, –60, –70, and –80 series airplanes equipped with pneumatic deicing boots, certificated in any category.

* * * * *

Issued in Renton, Washington, on March 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7878 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–28]

Amendment to Class D and Class E Airspace; Poplar Bluff, MO; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D and Class E airspace at Poplar Bluff Municipal Airport, MO, and amends the effective date as published.

DATES: The direct final rule published at 63 FR 2889 is effective on 0901 UTC, April 23, 1998.

This correction is effective April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On January 20, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments which modified the Class D and Class E airspace at Poplar Bluff Municipal Airport, MO (FR Doc. 98–1226, 63 FR 2889, Airspace Docket No. 97–ACE–28). The effective date of the document is amended to coincide with the chart change date.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action amends and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998, the effective date as herein amended. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–1226 published in the **Federal Register** on January 20, 1998, 63 FR 2889, make the following correction to the Poplar Bluff Municipal Airport, MO, Class D and Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 2889 in the third column, after DATES, correct "April 20, 1998" to read, "April 23, 1998."

Issued in Kansas City, MO, on February 25, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–7905 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–21]

Amendment to Class D and Class E Airspace; Manhattan, KS; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D and Class E airspace at Manhattan Municipal Airport, KS, and includes the inadvertent omission of the Manhattan Municipal Airport ILS and coordinates.

DATES: The direct final rule published at 63 FR 2884 is effective on 0901 UTC, April 23, 1998.

This correction is effective on April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On January 20, 1998, the FAA published in the **Federal Register** a direct final rule and request for comments which modified the Class D and Class E airspace at Manhattan Municipal Airport, KS (FR Doc. 98–1229, 63 FR 2884, Airspace Docket No. 97–ACE–21). An error was subsequently discovered in the Class E airspace designation. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–1229 published in the **Federal Register** on January 20, 1998, 63 FR 2884, make the following correction to the Manhattan Municipal Airport, KS, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 2885, in the third column, in the airspace designation, following line 7, insert; "Manhattan Municipal Airport ILS (lat. 39°08′55″N., long. 96°39′43″W.)".

Issued in Kansas City, MO on February 26, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–7903 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–7]

Proposed Amendment to Class E Airspace; Le Mars, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Le Mars Municipal Airport, Le Mars, IA. The FAA has developed a Global Positioning System (GPS) Runway 18 Standard Instrument Approach Procedure (SIAP) to serve Le Mars Municipal Airport, Le Mars, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP. The enlarged area will contain the new GPS RWY 18 SIAP in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 18 SIAP and segregation of aircraft using instrument approach procedures in instrument conditions.

DATES: Effective date: 0901 UTC, June 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 4, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–7, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a GPS RWY 18 SIAP to serve Le Mars Municipal Airport, Le Mars, IA. The amendment to the Class E airspace at Le Mars, IA, is necessary to provide additional controlled airspace extending upward from 700 feet AGL in order to contain the SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–7." The postcard will be date stamped and retuned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reason discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

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§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Le Mars, IA [Revised]

Le Mars Municipal Airport, IA
(Lat 42°46'41" N., long. 96°11'37" W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Le Mars Municipal Airport, excluding that airspace within the Orange City, IA Class E airspace.

* * * * *

Issued in Kansas City, MO, on March 4, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–7909 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–13]

Amendment to Class E Airspace; Aurora, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This notice proposes to amend the Class E airspace area at Aurora Municipal Airport, Aurora, NE. A review of the Class E airspace for Aurora Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to comply with the criteria of FAA Order 7400.2D, and provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR).

DATES: Effective date: 0901 UTC, August 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–13, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Aurora, NE. A review of the Class E airspace for Aurora Municipal Airport, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the Airport Reference Point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Aurora Municipal Airport will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–13". The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Aurora, NE [Revised]

Aurora Municipal Airport, NE
(Lat. 40°53'39"N., long. 97°59'40" W.)
Aurora NDB
(Lat. 40°53'33"N., long. 97°59'50" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Aurora Municipal Airport and within 2.2 miles each side of the 357° bearing from the Aurora NDB extending from the 6.4-mile radius to 7.4 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on March 9, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–7908 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–33]

Amendment to Class E Airspace; Norfolk, NE; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This notice confirms the effective date of a direct final rule which revises the Class E airspace at Norfolk, Karl Stefan Municipal Airport, NE, and amends the effective date as published.

DATES: The direct final rule published at 63 FR 2888 is effective on 0901 UTC, April 23, 1998.

This correction is effective April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On January 20, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments which modified the Class E airspace at Norfolk, Karl Stefan Municipal Airport, NE (FR Doc. 98–1228, 63 FR 2888, Airspace Docket No. 97–ACE–33). The effective date of the document is amended to coincide with the chart change date.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action amends and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998, the effective date as herein amended. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–1228 published in the **Federal Register** on January 20, 1998, 63 FR 2888, make the following correction to the Norfolk, Karl Stefan Municipal Airport, NE, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 2888 in the second column, after **DATES**, correct "April 20, 1998," to read, "April 23, 1998."

Issued in Kansas City, MO, on February 25, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–7907 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–32]

Amendment to Class E Airspace; Columbus NE; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This notice confirms the effective date of a direct final rule which revises the Class E airspace at Columbus Municipal Airport, NE, and amends the effective date as published.

DATES: The direct final rule published at 63 FR 2887 is effective on 0901 UTC, April 23, 1998.

This correction is effective April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration 601 East 12th

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Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On January 20, 1998, the FAA published in **Federal Register** a direct final rule; request for comments which modified the Class E airspace at Columbus Municipal Airport, NE (FR Doc. 98–1230, 63 FR 2887, Airspace Docket No. 97–ACE–32). The effective date of the document is amended to coincide with the chart change date. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action amends and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998, the effective date as herein amended. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–1230 published in the **Federal Register** on January 20, 1998, 63 FR 2887, make the following correction to the Columbus Municipal Airport, NE, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 2887 in the second column, after **DATES**, correct "April 20, 1998," to read, "April 23, 1998."

Issued in Kansas City, MO, on February 26, 1998.

Bryan H. Burleson,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–7906 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–20]

Amendment to Class E Airspace; Marshall Army Airfield, Fort Riley, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Marshall Army Airfield, Fort Riley, KS.

DATES: The direct final rule published at 63 FR 2885 is effective on 0901 UTS, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 20, 1998 (63 FR 2885). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on February 23, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–7904 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 91G–0451]

Direct Food Substances Affirmed as Generally Recognized as Safe; Maltodextrin Derived From Rice Starch

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that maltodextrin derived from rice starch is generally recognized as safe (GRAS). This action is in response to a petition filed by Zumbro, Inc.

DATES: Effective March 26, 1998. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, of a certain publication at 21 CFR 184.1444, effective March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), Zumbro, Inc., Rt. 1, Box 3, Hayfield, MN 55940, submitted a petition (GRASP 2G0380) proposing that maltodextrin derived from rice starch be affirmed as GRAS for use as a direct food ingredient.

FDA published a notice of filing of this petition in the **Federal Register** of April 23, 1992 (57 FR 14839), and gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. FDA received no comments in response to that notice.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of food substances. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, through

experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive, and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (21 CFR 170.30(b)). General recognition of safety through experience based on common use of a substance in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive, and ordinarily is to be based upon generally available data and information concerning the pre-1958 history of use of the substance in food (§ 170.30(c)(1)).

III. Safety Evaluation

FDA has evaluated the petition submitted by Zumbro, Inc., (GRASP 2G0380) on the basis of scientific procedures to determine whether the use of maltodextrin derived from rice starch is GRAS. In addition to evaluating the data in the petition, FDA also has considered published articles in scientific journals along with other available information in its review. The agency concludes, based upon scientific procedures, that the information presented in the petition, and other published and unpublished information, support a determination that the use of maltodextrin derived from rice starch is GRAS.

Data in the petition, along with other information in the agency's files, demonstrate that rice starch is chemically equivalent to corn starch or potato starch. Additionally, the hydrolysis products made from these starch sources, including maltodextrins, are essentially equivalent. Thus, maltodextrin derived from rice starch is equivalent in all material respects to maltodextrin derived from corn starch or potato starch, both of which have been affirmed as GRAS (§ 184.1444 (21 CFR 184.1444)).

A. Evidence of Chemical Equivalency of Potato Starch and Corn Starch to Rice Starch

Starch is the reserve carbohydrate in tubers such as potatoes, in grains such as rice, corn, or barley, in seeds, and in many fruits. As early as 1811, scientists had determined that food starches from various plant sources were essentially equivalent (Ref. 1). All food starches, regardless of the plant source, are composed of chemically equivalent polymeric forms of alpha-bond-linked glucose units (Ref. 2). Starch consists of polymers of amylose and amylopectin polysaccharides (Refs. 1 and 3). The relative proportions of amylose and amylopectin are characteristic of the plant species from which the starch is derived (Refs. 3 and 4).

Because food starches derived from different plant sources are equivalent in all material respects (Ref. 1), FDA's food additive regulation for modified food starch (21 CFR 172.892) does not specify that any particular source of food starch be used to manufacture the additive. In the **Federal Register** of April 1, 1985 (50 FR 12821) (Ref. 5), FDA published a proposal to affirm that rice starch (as well as several other starches) is GRAS for use in food. FDA has not issued a final rule in that rulemaking. In addition, the Committee on Food Chemicals Codex of the National Academy of Sciences has published a monograph on maltodextrin stating that it may be obtained from any edible starch (Ref. 6). Like FDA's food additive regulation for modified food starch, the monograph does not require that the starch be derived from any particular plant source.

Producing maltodextrin by the degradation of starch requires the formation of intermediate breakdown products called dextrins, which result from the partial hydrolysis of starch with mineral acids or amylase (Refs. 2 and 7). Further hydrolysis of the starch dextrins yields maltodextrins.

Dextrins are affirmed as GRAS under 21 CFR 184.1277 and can be prepared by partially hydrolyzing the starch in corn, potato, arrowroot, wheat, rice, or other starch sources. It has been common industrial practice to use a wide variety of starch sources in manufacturing commercial dextrin products (Refs. 2 and 7). During digestion, acid and enzymatic processes in the stomach convert the starch macromolecules to smaller molecules, such as maltodextrin, and eventually to glucose. This digestion process is similar to the commercial process used to produce glucose and fructose, which are GRAS starch-based sweeteners presently used in foods (Ref. 7). (See corn sugar, 21 CFR 184.1857; corn syrup, 21 CFR 184.1865; and high fructose corn syrup, 21 CFR 184.1866).

Starch hydrolysates below 20 dextrose equivalents (D.E.) are classified as maltodextrins (Refs. 8 and 9). Specifications for maltodextrins are listed in the Food Chemicals Codex, 4th ed., (1996) (Ref. 6). Equivalent maltodextrin products result from equivalent hydrolysis of edible starch sources (Ref. 10). Because corn starch, potato starch, and rice starch are essentially equivalent, the products of hydrolysis, from simple glucose molecules to more complex starch hydrolysates, such as dextrins and maltodextrins, are essentially equivalent in terms of chemical, physical, and organoleptic properties.

B. Corroborative Evidence of Chemical Equivalency

The petitioner has submitted data to demonstrate the equivalency of maltodextrin derived from rice starch with maltodextrin derived from tapioca and potato starches, based upon chemical properties such as dextrose equivalents (D.E.) and commercial uses (Refs. 11 and 12). Additionally, the petitioner provided carbohyrate profiles for corn maltodextrin and rice maltodextrin that demonstrate that the range of carbohydrate composition in maltodextrins derived from corn starch is virtually identical to that for maltodextrins derived from rice starch (Ref. 13). Moreover, based upon information submitted by the petitioner and on information available in the current scientific literature, FDA concludes (Ref. 10) that rice starch may be considered chemically equivalent to corn starch in regard to the content of the basic chemical components of starch (i.e., amylose and amylopectin) (Refs. 1, 2, 3, 4, 7, 14, and 15).

C. Proposed Use in Food

Information supplied by the petitioner indicates that maltodextrin derived from rice starch will be used as a replacement for maltodextrin derived from corn starch or potato starch in the same foods, at essentially the same levels, and for the same technical effects that maltodextrin derived from corn starch or potato starch is now used (Ref. 16). The petitioner indicates that maltodextrins are currently used in a wide range of processed and convenience foods, principally as a filler or carrier for flavorings and intensive sweeteners and as a sweetness reducer or texture modifier. Because maltodextrin derived from rice starch will be used as a replacement for maltodextrin derived from corn starch or potato starch, the exposure of consumers to maltodextrin is not expected to increase.

D. General Recognition of Safety

The agency has determined, based on published information, that the safety of maltodextrin derived from rice starch is generally recognized by food safety experts. Foremost in the support of safety is published information that shows that corn starch, potato starch, and rice starch are chemically equivalent, and therefore, maltodextrin

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derived from rice starch is equivalent to the maltodextrin derived from corn starch or potato starch. Thus, maltodextrin derived from rice starch presents no more of a safety concern than maltodextrin derived from corn starch or potato starch, both of which have been affirmed as GRAS.

Moreover, many countries, including those represented by the European Starch Association (Ref. 9), recognize "food starches," including rice starch, as a suitable raw material for maltodextrin production. Furthermore, the Food and Agriculture Organization/World Health Organization and the Joint Expert Committee on Food Additives (JECFA) (Refs. 17 and 18) recognizes maltodextrin as an intermediate product in the production of enzyme-treated starches, a process that JECFA has stated results in the production of normal (meaning safe) food constituents. JECFA does not restrict the sources of food starches used in the production of products such as maltodextrins. JECFA also does not require toxicological testing of products such as maltodextrins that are produced from enzyme-treated starches. Finally, as noted in section III.A. of this document, the agency has proposed to find that rice starch is GRAS (Ref. 5).

The agency concludes that maltodextrin derived from rice starch is chemically and functionally equivalent to maltodextrin derived from edible starch from other sources (Ref. 10). No increase in exposure to maltodextrin would be expected due to the substitution of one source for the other. Because rice starch is already a significant constituent of the typical diet (Ref. 5), the agency does not believe that consumption of maltodextrin derived from rice would cause a dietary concern (Ref. 19).

E. Specifications

The agency has reviewed the specifications for maltodextrin published in the Food Chemicals Codex, 4th ed. (1996), pp. 239 and 240, and it finds that they are acceptable for maltodextrin derived from edible starches. Therefore, the agency is adopting the specifications for maltodextrin derived from edible starches for maltodextrin derived from rice starch.

IV. Conclusions

The agency has evaluated the information in the petition, along with other available data, and has reached the following conclusions:

(1) Rice starch is chemically equivalent to corn and potato starch.

(2) Maltodextrin derived from rice starch is chemically equivalent to maltodextrin derived from corn starch and potato starch, both of which are currently affirmed as GRAS for food use without restriction under § 184.1444.

(3) When maltodextrin derived from rice starch is manufactured according to the methods specified in § 184.1444, for corn and potato starch, there is general recognition among qualified experts that the use of maltodextrin derived from rice starch in food is safe.

Based upon the evaluation of published information, corroborated by unpublished data and information, i.e., based upon scientific procedures (§ 170.30(b)), the agency concludes that maltodextrin derived from rice starch is GRAS for use as a replacement for maltodextrin derived from corn or potato starch. Therefore, the agency is affirming that maltodextrin derived from rice starch is GRAS when used in accordance with good manufacturing practice (21 CFR 184.1(b)(1)).

V. Environmental Effects

The agency has determined under 21 CFR 25.32(f) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis for Executive Order 12866

FDA has examined the impacts of this final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, the agency has determined that this final rule is not a major rule for the purpose of congressional review.

The primary benefit of this action is to remove uncertainty about the regulatory status of the petitioned substance. No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited by this rule.

VII. Regulatory Flexibility Analysis

FDA has examined the impact of this final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small entities. FDA finds that this final rule will not have a significant economic impact on a substantial number of small entities.

No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited. Accordingly, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C. 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

IX. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

1. Wolfrom, M. L., and H. El Khadem, "Chemical Evidence for the Structure of Starch," *Starch: Chemistry and Technology*, edited by R. L. Whistler, and E. F. Paschall, Academic Press, Inc., New York, pp. 251–278, 1965.

2. "Starch Hydrolysis Products: An Introduction and History," *Starch Hydrolysis Products, Worldwide Technology, Production, and Applications*, edited by F. W. Schenck and R. E. Hebeda, VCH Publishers, Inc., New York, pp. 1–21, 1992.

3. "Evaluation of the Health Aspects of Starch and Modified Starches as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1979.

4. Young, A. H., "Fractionation of Starch," *Starch*, 2d ed., edited by R. L. Whistler, and E. F. Paschall, Academic Press, Inc., New York, pp. 249–283, 1984.

5. "Unmodified Food Starches and Acid-Modified Starches; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients," 50 FR 12821, April 1, 1985.

6. Food Chemicals Codex, 4th ed., National Academy Press, Washington, DC, pp. 239 and 240, 1996.

7. Evans, R. B., and O. B. Wurzburg, "Production and Use of Starch Dextrins," *Starch: Chemistry and Technology*, vol. 2, edited by R. L. Whistler, and E. F. Paschall, Academic Press, Inc., New York, pp. 253–278, 1967.

8. "Food Additives and Contaminants Committee Report on Modified Starches," United Kingdom Ministry of Agriculture, Fisheries and Food, FAC/REP/31, Her Majesty's Stationery Office, London, p. 5, 1980.

9. "Definition of Maltodextrin," European Starch Associations, Circular Letter Stex 4/88, February 1988.

10. Memorandum from the Chemistry Review Branch to the Direct Additives Branch, "Maltodextrin from Rice," dated January 13, 1997.

11. "Paselli SA2," *Technical Bulletin*, No. 5.12.33.188EU, AVEBE America, Inc., Princeton, NJ.

12. "INSTANT N–OIL II," *Techical Service Bulletin*, No. 15889–238, National Starch and Chemical Corp., Bridgewater, NJ.

13. Warthesen, J. J., "Analysis of Saccharides in Low-Dextrose Equivalent Starch Hydrolysates Using High-Performance Liquid Chromatography," *Cereal Chemistry*, vol. 61, No. 2, pp. 194 and 195, 1984.

14. Zuber, M. S., "Genic Control of Starch Development" *Starch: Chemistry and Technology*, edited by R. L. Whistler and E. F. Paschall, Academic Press, Inc., New York, pp. 45, 61–63, 1965.

15. Whistler, R. L., and J. R. Daniel, "Starch," *Kirk-Othmer's Encyclopedia of Chemical Technology*, 3d ed., vol. 21, edited by J. Brown, C. I. Eastman, Galojuch, et al., John Wiley & Sons, New York, pp. 492–507, 1983.

16. "Maltodextrin; Proposed Affirmation of GRAS Status as Direct Human Food Ingredient," 47 FR 36443, August 20, 1982.

17. "Specifications for the Identity and Purity of Food Additives and Their Toxicological Evaluation," *FAO Nutrition Meetings Report Series*, No. 46 and *WHO Technical Report Series*, No. 445, pp. 13 and 14, 1970.

18. "Toxicological Evaluation of Some Food Colours, Emulsifiers, Stabilizers, Anti-Caking Agents, and Certain Other Substances," *FAO Nutrition Meetings Report Series*, No. 46A, p. 62 and WHO/FOOD ADD./70.36, 1970.

19. Memorandum from the Additives Evaluation Branch, to the Direct Additives Branch, "GRP 2G0380–GRAS Affirmation Petition for Maltodextrin Derived from Derived Rice: Division of Health Effects Evaluation Review (DHEE; HFS–225)," dated August 3, 1993.

List of Subjects in 21 CFR Part 184

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

2. Section 184.1444 is amended by revising the second sentence in paragraph (a) and by adding paragraph (b)(3) to read as follows:

§ 184.1444 Maltodextrin.

(a) * * * It is prepared as a white powder or concentrated solution by partial hydrolysis of corn starch, potato starch, or rice starch with safe and suitable acids and enzymes.

(b) * * *

(3) Maltodextrin derived from rice starch meets the specifications of the Food Chemicals Codex, 4th ed. (1996), pp. 239 and 240, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

* * * * *

Dated: March 3, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–7894 Filed 3–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 600

[Docket No. 93N–0181]

RIN 0910–AA97

Expedited Safety Reporting Requirements for Human Drug and Biological Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of October 7, 1997 (62 FR 52237), to include some conforming amendments that were inadvertently omitted. The final rule amended the expedited safety reporting regulations for human drug and biological products. This action is being taken to ensure the accuracy and consistency of the regulations.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 7, 1997 (62 FR 52237), FDA amended, among other things, its regulations in § 314.80 *Postmarketing reporting of adverse drug experiences* (21 CFR 314.80) and § 600.80 *Postmarketing reporting of adverse experiences* (21 CFR 600.80). In that document, the agency inadvertently omitted conforming amendments to §§ 314.80(k) and 600.80(l) to correct the current cross-references to §§ 314.80(c)(1)(ii) and 600.80(c)(1)(ii). These paragraphs should reference §§ 314.80(c)(1)(iii) and 600.80(c)(1)(iii), respectively. This correction does not, in any way, alter the scope or intent of the October 7, 1997, document.

In final rule FR Doc. 97–26255, published on October 7, 1997 (62 FR 52237), make the following corrections:

§ 314.80 [Corrected]

1. On page 52251, in amendatory instruction 8, in the second column, beginning in line 7, the phrase, "; and by removing paragraph (j) and redesignating paragraphs (k) and (l) as paragraphs (j) and (k), respectively" is corrected to read, "; by removing paragraph (j), redesignating paragraphs (k) and (l) as paragraphs (j) and (k), respectively; and by revising the last sentence in newly redesignated paragraph (k)".

2. On page 52252, in the second column, in § 314.80, the last sentence of redesignated paragraph (k) is correctly revised to read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

* * * * *

(k) * * * For purposes of this provision, the term "applicant" also includes any person reporting under paragraph (c)(1)(iii) of this section.

§ 600.80 [Corrected]

3. On the page 52252, in the second column, in amendatory instruction 10, beginning in line 5, the phrase, "; and by removing paragraph (j) and redesignating paragraphs (k), (l), and (m) as paragraphs (j), (k), and (l),

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respectively," is corrected to read, "; by removing paragraph (j), redesignating paragraphs (k), (l), and (m) as paragraphs (j), (k), and (l), respectively; and by revising the last sentence in newly redesignated paragraph (l)".

4. On page 52253, in the second column, in § 600.80, the last sentence of newly redesignated paragraph (l) is correctly revised to read as follows:

§ 600.80 Postmarketing reporting of adverse experiences.

* * * * *

(l) * * * For the purposes of this provision, this paragraph also includes any person reporting under paragraph (c)(1)(iii) of this section.

Dated: March 18, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7833 Filed 3–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Koffolk, Inc.

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Koffolk, Inc., One Parker Plaza, Fort Lee, NJ 07024, has informed FDA of a change of sponsor address to P.O. Box 675935, 14735 Las Quintas, Rancho Santa Fe, CA 92067. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the sponsor address for "Koffolk, Inc." and in the table in paragraph (c)(2) in the entry for "063271" by revising the sponsor address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * * *
Koffolk, Inc., P.O. Box 675935, 14735 Las Quintas, Rancho Santa Fe, CA 92067.	063271
* * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * *
063271	Koffolk, Inc., P.O. Box 675935, 14735 Las Quintas, Rancho Santa Fe, CA 92067.
* * *	* * * *

Dated: March 17, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–7835 Filed 3–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Bacitracin Zinc; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that published in the **Federal Register** of October 23, 1997 (62 FR 55161). The document amended the animal drug regulations to reflect approval of abbreviated new animal drug application (ANADA) 200–223 filed by ALPHARMA Inc. In amending the animal drug regulations, the document did not reflect that Boehringer Ingelheim Animal Health, Inc.'s approval for use of bacitracin zinc Type A medicated articles is for chickens only. This document corrects that error.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1739.

SUPPLEMENTARY INFORMATION: In FR Doc. 97–28015, appearing on page 55161 in the **Federal Register** of October 23, 1997, the following correction is made:

§ 558.78 [Amended]

1. On page 55162, in the second column, § 558.78 *Bacitracin zinc* is amended in paragraph (a)(3) by adding the phrase "for chickens" after the word "pound".

Dated: March 17, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–7834 Filed 3–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8767]

RIN 1545–AW07

Guidance Under Subpart F Relating to Partnerships and Branches

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains regulations relating to the treatment under subpart F of certain payments involving branches of a controlled foreign corporation (CFC) that are treated as separate entities for foreign tax purposes or partnerships in which CFCs are partners. These regulations are necessary to provide guidance on transactions relating to such entities. These regulations will affect United States shareholders of controlled foreign corporations. The text of these temporary regulations also serves as the text of the proposed regulations published elsewhere in this issue of the **Federal Register**.

DATES: *Effective date:* These regulations are effective March 23, 1998.

Applicability date: For dates of applicability see §§ 1.904–5T(o), 1.954–1T(c)(1)(i)(E), 1.954–2T(a)(5)(iii) and (a)(6)(ii), 1.954–9T(d) and 301.7701–3T(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Valerie Mark, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. In General

In these temporary regulations and in proposed regulations published elsewhere in this issue of the **Federal Register**, the Treasury and IRS set forth a framework for dealing with issues posed by the use of certain entities that are regarded as fiscally transparent for purposes of U.S. tax law, with regard to the application of subpart F of the Internal Revenue Code.

Subpart F was enacted by Congress to limit the deferral of U.S. taxation of certain income earned outside the United States by foreign corporations controlled by U.S. persons. Limited deferral was retained after the enactment of subpart F to protect the competitiveness of controlled foreign corporations (CFCs) doing business overseas. See S. Rep. No. 1881, 87th Cong., 2d Sess. 78–80 (1962). This limited deferral furthers the objective of allowing a CFC engaged in an active business, and located in a foreign country for appropriate economic reasons, to compete in a similar tax environment with non-U.S.-owned corporations located in the same country.

Conversely, one of the purposes of subpart F is to prevent CFCs from converting active income that is not easily moveable and is earned in a jurisdiction in which a business is located for non-tax reasons, into passive, easily moveable income that is shifted to a lower tax jurisdiction primarily for tax avoidance. Moreover, when subpart F was first enacted it was realized that related person transactions can be easily manipulated to reduce both United States and foreign taxes. Consequently, in enacting subpart F, Congress provided that transactions of CFCs that involve related persons generally give rise to subpart F income with certain enumerated exceptions.

Hybrid branches, which, by definition, are not regarded as fiscally transparent under foreign law, are particularly well suited to the type of tax avoidance described above. In light of the recent proliferation of hybrid branches, Treasury and the IRS believe that it is appropriate to consider the issues related to transactions involving hybrid branches, or other hybrid entities, under subpart F.

The use of partnerships that are fiscally transparent for U.S. tax purposes raises additional issues in the context of subpart F that are similar to those raised in connection with hybrid branches. Such partnerships may or may not be fiscally transparent under foreign law. (Other fiscally-transparent entities, such as grantor trusts, will be the subject of guidance issued in conjunction with the finalization of regulations under section 672(f).)

The entity classification regulations of §§ 301.7701–1 through 301.7701–3 (the check-the-box regulations) make entity classification generally elective, in part so that taxpayers can choose a tax status that is consistent with their business objectives. This administrative provision was not intended to change substantive law. Particularly in the international area, the ability to more easily achieve fiscal transparency can lead to inappropriate results under certain substantive international provisions of the Code. Thus, the Treasury and the IRS believe that it is necessary to provide additional guidance regarding the use of hybrid entities in the international context. See

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preamble to TD 8697, 61 FR 66585 (December 18, 1996).

II. Hybrid Branches

As announced in Notice 98–11 (1998–6 I.R.B. 13), the Treasury and the IRS understand that certain taxpayers are using arrangements involving hybrid branches to circumvent the purposes of subpart F (sections 951 through 964 of the Code). These arrangements generally involve the use of deductible payments to reduce the taxable income of a CFC under foreign law, thereby reducing that CFC's foreign tax and, also under foreign law, the corresponding creation in another entity of low-taxed, passive income of the type to which subpart F was intended to apply. Because of the structure of these arrangements, however, taxpayers take the position that this income is not taxed under subpart F. Treasury and the IRS have concluded that use of these hybrid branch arrangements is contrary to the policies and rules of subpart F.

U.S. international tax policy seeks to balance the objective of neutrality of taxation between domestic and foreign business enterprises (seeking neither to encourage nor to discourage one over the other), while keeping U.S. business competitive. Subpart F strongly reflects and enforces that balance, while the arrangements described above involving hybrid branches upset that balance.

Explanation of Provisions

Under these temporary regulations, hybrid branch payments, as defined in the regulations, between a CFC and its hybrid branch, or between hybrid branches of the CFC may give rise to subpart F income. When certain conditions are present, the non-subpart F income of the CFC, in the amount of the hybrid branch payment, is recharacterized as subpart F income of the CFC. Those conditions include that: the hybrid branch payment reduces the foreign tax of the payor; the hybrid branch payment would have been foreign personal holding company income if made between separate CFCs; and there is a disparity between the effective rate of tax on the payment in the hands of the payee and the hypothetical rate of tax that would have applied if the income had been taxed in the hands of the payor. Treasury and the IRS are considering applying similar principles with respect to the foreign base company services income rules of section 954(e). Comments are requested on this issue. Any regulations promulgated on this issue will be prospective.

Policies underlying subpart F would also be avoided in certain non-hybrid branch transactions that do not reduce the tax of the payor. Treasury and the IRS invite comments on the extent to which rules should be provided to address such transactions. Any regulations promulgated on this issue will be prospective. Comments are also requested regarding the application of these rules to dividend and other equity distributions.

The temporary regulations make clear that the CFC and the hybrid branch, or the hybrid branches, are treated as separate corporations only to recharacterize non-subpart F income as subpart F income in the amount of the hybrid branch payment, and to apply the tax disparity rule of § 1.954–9T(a)(5)(iv). For all other purposes (e.g., for purposes of the earnings and profits limitation of section 952), a CFC and its hybrid branch, or hybrid branches, are not treated as separate corporations.

The temporary regulations provide that the amount recharacterized as subpart F income is the gross amount of the hybrid branch payment limited by the amount of the CFC's earnings and profits attributable to non-subpart F income. This amount is the excess of current earnings and profits over subpart F income, determined after the application of the rules of sections 954(b) and 952(c) and before the application of these temporary regulations. To the extent that the full amount required to be recharacterized under this provision cannot be recharacterized because it exceeds earnings and profits attributable to non-subpart F income, there is no requirement to carry such amounts back or forward to another year.

For purposes of determining the amount of taxes deemed paid under section 960, the amount of non-subpart F income recharacterized as subpart F income is treated as attributable to income in separate foreign tax credit baskets in proportion to the ratio of non-subpart F income in each basket to the total amount of non-subpart F income of the CFC for the taxable year.

The temporary regulations provide that, under certain circumstances, the recharacterization rules will also apply to a CFC s proportionate share of any hybrid branch payment made between a partnership in which the CFC is a partner and a hybrid branch of the partnership, or between hybrid branches of such a partnership. When the partnership is treated as fiscally transparent by the CFC's taxing jurisdiction, the recharacterization rules are applied by treating the hybrid branch payment as if it had been made directly between the CFC and the hybrid branch, or as though the hybrid branches of the partnership had been hybrid branches of the CFC, as applicable. If the partnership is treated as a separate entity by the CFC's taxing jurisdiction, the recharacterization rules are applied to the partnership as if it were a CFC. Comments are requested on whether the rule for such non-fiscally transparent partnerships should be relaxed in the case of small ownership interests.

The temporary regulations provide that income will not be recharacterized unless there is a disparity between the effective rate at which the hybrid branch payment is taxed to the payee and a hypothetical tax rate that measures the tax savings to the payor from the deductible payment. This provision is similar to the rule in § 1.954–3(b), and adopts the same percentage tests as contained in that provision. The regulations also provide a special high tax exception applicable to the hybrid branch payment that is similar to the one contained in section 954(b)(4). Comments are invited on whether the rules of § 1.954–9T could cause inappropriate multiple recharacterizations where the hybrid branch payments are made through a series of related hybrid entities.

The temporary regulations provide that if these provisions affect an entity that has elected under § 301.7701–3(c) to be treated as an entity disregarded as separate from its owner, such an entity may elect to be classified as a corporation, provided it fulfills certain requirements, notwithstanding the sixty-month limitation in that section.

III. Related Provisions

These temporary regulations provide rules, contained in § 1.954–1T(c)(1)(i)(B), to prevent expenses, including related person interest expense which would normally be allocable under section 954(b)(5) to subpart F income of a CFC, from being allocated to a payment from which the expense arises. The allocation limit applies: (i) to the extent such payment is included in the subpart F income of the CFC; (ii) if the expense arises from any payment by the CFC to a hybrid partnership in which the CFC is a partner; and (iii) if the payment reduces foreign tax and there is a significant disparity in tax rates between the payor and payee jurisdictions.

These temporary regulations also address the application of the related person exceptions to the foreign personal holding company income rules in the context of partnership distributive shares and transactions involving hybrid branches. Under section 954(c)(3), foreign personal

holding company income does not include certain interest, dividends, rents and royalties received from related corporations. These exceptions apply, in the case of interest and dividends, when the related corporate payor is organized in the country in which the CFC is organized and uses a substantial part of its assets in a trade or business in that country and, in the case of rents and royalties, when the rent or royalty payment is made for the use or privilege of using property within the CFC's country of incorporation.

The rules regarding the application of the related person exceptions with respect to a CFC partner's distributive share of partnership income are part of the broader set of rules addressing distributive share issues in the context of subpart F contained in the proposed regulations published elsewhere in this issue of the **Federal Register**. Certain rules relating to the related person exception with respect to a CFC partner's distributive share of partnership income, and certain rules relating to the related person exception with respect to hybrid branches, however, are included in these temporary regulations because they address a fact pattern similar to the one to which the hybrid branch payment rules apply. No inference is intended as to the treatment under existing law of such arrangements in relation to the related party exceptions.

Under these rules, if the partnership receives an item of income that reduces the income tax of the payor, the related person exceptions of section 954(c)(3) apply to exclude the income from the foreign personal holding company income of the CFC partner only where: the exception would have applied if the CFC earned the income directly (testing relatedness and country of incorporation at the CFC partner level); and either the partnership is organized and operates in the CFC's country of incorporation, the partnership is treated as fiscally transparent in the CFC's countries of incorporation and operation, or there is no significant disparity between the effective rate of tax imposed on the income and the rate of tax that would be imposed on the income if earned directly by the CFC partner.

The rules applying the related person exceptions with respect to hybrid branches address transactions illustrated in the first example of Notice 98–11 (1998–6 I.R.B. 13). These rules apply to payments by a CFC to a hybrid branch of a related CFC. Under these rules, the related person exceptions will apply to exclude the payments from the foreign personal holding company income of the recipient CFC only if the payment would have qualified for the exception if the hybrid branch had been a separate CFC incorporated in the jurisdiction in which the payment is subject to tax (other than a withholding tax).

IV. Effective Date.

These regulations are effective March 23, 1998. For dates of applicability see §§ 1.904–5T(o), 1.954–1T(c)(1)(i)(E), 1.954–2T(a)(5)(iii) and (6)(iii), 1.954–9T(d) and 301.7701–3T(f) of these regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Valerie Mark, of the Office of the Associate Chief Counsel (International). Other personnel from the IRS and Treasury Department also participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.904–5, paragraph (o) is amended by adding a sentence at the end to read as follows:

§ 1.904–5 Look-through rules as applied to controlled foreign corporations and other entities.

* * * * *

(o) * * * Paragraph (k)(1) of this section does not apply on or after March 23, 1998. For rules applicable on or after March 23, 1998, see § 1.904–5T(k)(1).

Par. 3. § 1.904–5T is added to read as follows:

§ 1.904–5T Look-through rules as applied to controlled foreign corporations and other entities (temporary).

(a) through (j) [Reserved]. For further guidance, see § 1.904–5(a) through (j).

(k) *Ordering rules*—(1) *In general.* Income received or accrued by a related person to which the look-through rules apply is characterized before amounts included from, or paid or distributed by, that person and received or accrued by a related person. For purposes of determining the character of income received or accrued by a person from a related person if the payor or another related person also receives or accrues income from the recipient and the look-through rules apply to the income in all cases, the rules of paragraph (k)(2) of this section apply. Notwithstanding any other provision of this section, the principles of § 1.954–1T(c)(1)(i) will apply to any expense subject to that subparagraph.

(k)(2) through (n) [Reserved]. For further guidance, see § 1.904–5(k)(2) through (n).

(o) *Effective date.* Section 1.904–5T(k)(1) applies on or after March 23, 1998. For rules prior to March 23, 1998, see § 1.904–5(k)(1).

Par. 4. Section 1.954–0(b) is amended by revising the paragraph heading and the entry for § 1.954–0(b) in the list to read as follows:

§ 1.954–0 Introduction.

* * * * *

(b) *Outline of §§ 1.954–0, 1.954–1 and 1.954–2.*

§ 1.954–0 Introduction.

* * * * *

(b) Outline of §§ 1.954–0, 1.954–1, and 1.954–2.

* * * * *

Par. 5. Section 1.954–1 is amended by adding a new paragraph (c)(1)(iv) to read as follows:

§ 1.954–1 Foreign base company income.

* * * * *

(c) * * *

(1) * * *

(iv) *Effective date.* Paragraph (c)(1)(i) of this section does not apply to all

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amounts paid or accrued on or after March 23, 1998 except for amounts paid or accrued pursuant to arrangements entered into before March 23, 1998 and not substantially modified (including, for example, by expansion of the arrangement (whether by exercise of an option or otherwise) such as by an increase in the amount of or term of any borrowing, leasing or licensing constituting the arrangement, changes in direct or indirect control of any entity that is a party to the arrangement, or any similar measure which materially increases the tax benefit of the arrangement) on or after March 23, 1998. For rules applicable on or after March 23, 1998, see § 1.954–1T(c)(1)(i).

Par. 6. Section 1.954–1T is added to read as follows:

§ 1.954–1T Foreign base company income (temporary).

(a) through (c)(1)(i) [Reserved]. For further guidance, see § 1.954–1(a) through (c)(1).

(c)(1)(i) *Deductions against gross foreign base company income*—(A) *In general.* [Reserved]. For further guidance, see § 1.954–1(c)(1)(i).

(B) *Special rule for deductible payments to certain non-fiscally transparent entities.* Notwithstanding any other provision of this section, except as provided in paragraph (c)(1)(i)(C) of this section, an expense (including a distributive share of any expense) that would otherwise be allocable under section 954(b)(5) against the subpart F income of a controlled foreign corporation shall not be allocated against subpart F income of the controlled foreign corporation resulting from the payment giving rise to the expense if—

(*1*) Such expense arises from a payment between the controlled foreign corporation and a partnership in which the controlled foreign corporation is a partner and the partnership is not regarded as fiscally transparent, as defined in § 1.954–9T(a)(7), by any country in which the controlled foreign corporation does business or has substantial assets; and

(*2*) The payment from which the expense arises would have met the foreign tax reduction test of § 1.954–9T(a)(3) and the tax disparity test of § 1.954–9T(a)(5)(iv) if those provisions had been applicable to the payment.

(C) *Limitations.* Paragraph (c)(1)(i)(B) shall not apply to the extent that the controlled foreign corporation partner has no income against which to allocate the expense, other than its distributive share of a payment described in paragraph (c)(1)(i)(B) of this section. Similarly, to the extent an expense described in paragraph (c)(1)(i)(B) of this section exceeds the controlled foreign corporation partner's distributive share of the payment from which the expense arises, such excess amount of the expense may reduce subpart F income (other than such payment) to which it is properly allocable or apportionable under section 954(b)(5).

(D) *Example.* The following example illustrates the application of paragraph (c)(1)(i)(B) and (C) of this section:

Example. CFC, a controlled foreign corporation in Country A, is a 70 percent partner in partnership P, located in Country B. Country A's tax laws do not classify P as a fiscally transparent entity. The rate of tax in country B is 15 percent of the tax rate in country A. P loans $100 to CFC at a market rate of interest. In year 1, CFC pays P $10 of interest on the loan. The interest payment would have caused the recharacterization rules of § 1.954–9T to apply if the payment were made between the entities described in § 1.954–9T(a)(2). CFC's distributive share of P's interest income is $7, which is foreign personal holding company income to CFC under section 954(c). Under paragraph (c)(1)(i)(B) of this section, $7 of the $10 interest expense may not be allocated against any of CFC's subpart F income. However, to the extent the remaining $3 of interest expense is properly allocable to subpart F income of CFC other than its distributive share of P's interest income, this expense may offset such other subpart F income.

(E) *Effective date.* Paragraph (c)(1)(i)(B), (C) and (D) of this section shall apply to all amounts paid or accrued on or after March 23, 1998, except for amounts paid or accrued pursuant to arrangements entered into before March 23, 1998 and not substantially modified (including, for example, by expansion of the arrangement (whether by exercise of an option or otherwise) such as by an increase in the amount of or term of any borrowing, leasing or licensing constituting the arrangement, changes in direct or indirect control of any entity that is a party to the arrangement, or any similar measure which materially increases the tax benefit of the arrangement) on or after March 23, 1998. For rules applicable to amounts paid or accrued pursuant to arrangements entered into before March 23, 1998, see § 1.954–1.

(c)(1)(ii) through (f) [Reserved]. For further guidance, see § 1.954–1(c)(1)(ii) through (f).

Par. 7. Section 1.954–2T is added to read as follows:

§ 1.954–2T Foreign personal holding company income (temporary).

(a)(1) through (4) [Reserved]. For further guidance, see § 1.954–2(a) through (4).

(5) *Special rules applicable to distributive share of partnership income*—(i) *Application of related person exceptions where payment reduces foreign tax of payor.* If a partnership receives an item of income that reduced the foreign income tax of the payor (determined under the principles of § 1.954–9T(a)(3)), to determine the extent to which a controlled foreign corporation's distributive share of such item of income is foreign personal holding company income, the exceptions contained in section 954(c)(3) shall apply only if—

(A)(*1*) Any such exception would have applied to exclude the income from foreign personal holding company income if the controlled foreign corporation had earned the income directly (determined by testing, with reference to such controlled foreign corporation, whether an entity is a related person, within the meaning of section 954(d)(3), or is organized under the laws of, or uses property in, the foreign country in which the controlled foreign corporation is created or organized); and

(*2*) The distributive share of such income is not in respect of a payment made by the controlled foreign corporation to the partnership; and

(B)(*1*) The partnership is created or organized, and uses a substantial part of its assets in a trade or business in the country under the laws of which the controlled foreign corporation is created or organized (determined under the principles of § 1.954–2(b)(4));

(*2*) The partnership is regarded as fiscally transparent, as defined in § 1.954–9T(a)(7), by all countries under the laws of which the controlled foreign corporation is created or organized or has substantial assets; or

(*3*) The income is taxed in the year when earned at an effective rate of tax (determined under the principles of § 1.954–1(d)(2)) that is not less than 90 percent of, and not more than five percentage points less than, the effective rate of tax that would have applied to such income under the laws of the country in which the controlled foreign corporation is created or organized if such income were earned directly by the controlled foreign corporation partner from local sources.

(ii) *Certain other exceptions applicable to foreign personal holding company income.* [Reserved].

(iii) *Effective date.* Paragraph (a)(5)(i) of this section shall apply to all amounts paid or accrued on or after March 23, 1998, except for amounts paid or accrued pursuant to arrangements entered into before March 23, 1998 and

not substantially modified (including, for example, by expansion of the arrangement (whether by exercise of an option or otherwise) such as by an increase in the amount of or term of any borrowing, leasing or licensing constituting the arrangement, changes in direct or indirect control of any entity that is a party to the arrangement, or any similar measure which materially increases the tax benefit of the arrangement) on or after March 23, 1998.

(6) *Special rules applicable to exceptions from foreign personal holding company income treatment in circumstances involving hybrid branches*—(i) *In general.* In the case of a payment between a controlled foreign corporation (or its hybrid branch, as defined in § 1.954–9T(a)(6)) and the hybrid branch of a related controlled foreign corporation, the exceptions contained in section 954(c)(3) shall apply only if the payment would have qualified for the exception if the payor were a separate controlled foreign corporation created or organized in the jurisdiction where foreign tax is reduced and the payee were a separate controlled foreign corporation created or organized under the laws of the jurisdiction in which the payment is subject to tax (other than a withholding tax).

(ii) *Exception where no tax reduction or tax disparity.* Paragraph (a)(6)(i) of this section shall not apply unless the payment would have met the foreign tax reduction test of § 1.954–9T(a)(3) and the tax disparity test of § 1.954–9T(a)(5)(iv) if those provisions had been applicable to the payment.

(iii) *Effective date.* The rules of this section shall apply to all amounts paid or accrued on or after January 16, 1998, except for amounts paid or accrued pursuant to arrangements entered into before January 16, 1998, and not substantially modified (including, for example, by expansion of the arrangement (whether by exercise of an option or otherwise) such as by an increase in the amount of or term of any borrowing, leasing or licensing constituting the arrangement, changes in direct or indirect control of any entity that is a party to the arrangement, or any similar measure which materially increases the tax benefit of the arrangement) on or after January 16, 1998.

(b) through (h) [Reserved]. For further guidance, see § 1.954–2(b) through (h).

Par. 8. Section 1.954–9T is added to read as follows:

§ 1.954–9T Hybrid branches (temporary).

(a) *Subpart F income arising from certain payments involving hybrid branches*—(1) *Payment causing foreign tax reduction gives rise to additional subpart F income.* The non-subpart F income of the controlled foreign corporation will be recharacterized as subpart F income, to the extent provided in paragraph (a)(5) of this section, if—

(i) A hybrid branch payment, as defined in paragraph (a)(6) of this section, is made between the entities described in paragraph (a)(2) of this section;

(ii) The hybrid branch payment reduces foreign tax, as determined under paragraph (a)(3) of this section; and

(iii) The hybrid branch payment is treated as falling within a category of foreign personal holding company income under the rules of paragraph (a)(4) of this section.

(2) *Hybrid branch payment between certain entities*—(i) *In general.* Paragraph (a)(1) of this section shall apply to hybrid branch payments between—

(A) A controlled foreign corporation and its hybrid branch;

(B) Hybrid branches of a controlled foreign corporation;

(C) A partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other partnerships) and a hybrid branch of the partnership; or

(D) Hybrid branches of a partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other partnerships).

(ii) *Hybrid branch payment involving partnership*—(A) *Fiscally transparent partnership.* To the extent of the controlled foreign corporation's proportionate share of a hybrid branch payment, the rules of paragraphs (a)(3), (4) and (5) of this section shall be applied by treating the hybrid branch payment between the partnership and the hybrid branch as if it were made directly between the controlled foreign corporation and the hybrid branch, or as if the hybrid branches of the partnership were hybrid branches of the controlled foreign corporation, if the hybrid branch payment is made between—

(*1*) A fiscally transparent partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other fiscally transparent partnerships) and the partnership's hybrid branch; or

(*2*) Hybrid branches of a fiscally transparent partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other fiscally transparent partnerships).

(B) *Non-fiscally transparent partnership.* To the extent of the controlled foreign corporation's proportionate share of a hybrid branch payment, the rules of paragraphs (a)(3) and (4) and (a)(5)(iv) of this section shall be applied to the non-fiscally transparent partnership as if it were the controlled foreign corporation, if the hybrid branch payment is made between—

(*1*) A non-fiscally transparent partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other partnerships) and the partnership's hybrid branch; or

(*2*) Hybrid branches of a non-fiscally transparent partnership in which a controlled foreign corporation is a partner (either directly or through one or more branches or other partnerships).

(C) *Examples.* The following examples illustrate the application of this paragraph (a)(2)(ii).

Example 1. CFC, a controlled foreign corporation in Country A, is a 90 percent partner in partnership P, which is treated as fiscally transparent under the laws of Country A. P has a hybrid branch, BR, in Country B. P makes an interest payment of $100 to BR. Under Country A law, CFC's 90 percent share of the payment reduces CFC's Country A income tax. Under paragraph (a)(2)(ii)(A) of this section, the recharacterization rules of this section are applied by treating the payment as if made by CFC to BR. Ninety dollars of CFC's non-subpart F income, to the extent available, and subject to the earnings and profits and tax rate limitations of § 1.954–9T(a)(5), is recharacterized as subpart F income.

Example 2. CFC, a controlled foreign corporation in Country A, is a 90 percent partner in partnership P, which is treated as fiscally transparent under the laws of Country A. P has two branches in Country B, BR1 and BR2. BR1 is treated as fiscally transparent under the laws of Country A. BR2 is a hybrid branch. BR1 makes an interest payment of $100 to BR2. Under paragraph (a)(2)(ii)(A) of this section, the payment by BR1, the fiscally transparent branch, is treated as a payment by P, and the deemed payment by P, a fiscally transparent partnership, is treated as made by CFC. Under Country A law, CFC's 90 percent share of BR1's payment reduces CFC's Country A income tax. Ninety dollars of CFC's non-subpart F income, to the extent available, and subject to the earnings and profits and tax rate limitations of § 1.954–9T(a)(5), is recharacterized as subpart F income.

(3) *Application when payment reduces foreign tax.* For purposes of paragraph (a)(1) of this section, a hybrid branch payment reduces foreign tax when the foreign tax imposed on the

income of the payor or any owner of the payor is less than the foreign tax that would have been imposed on such income had the hybrid branch payment not been made, or the hybrid branch payment creates or increases a loss or deficit or other tax attribute which may be carried back or forward to reduce the foreign income tax of the payor or any owner in another year (determined by taking into account any refund of such tax made to the payor, payee or any other person).

(4) *Hybrid branch payment that is included within a category of foreign personal holding company income*—(i) *In general.* For purposes of paragraph (a)(1) of this section, whether the hybrid branch payment is treated as income included within a category of foreign personal holding company income is determined by treating a hybrid branch that is either the payor or recipient of the hybrid branch payment as a separate wholly-owned subsidiary corporation of the controlled foreign corporation that is incorporated in the jurisdiction under the laws of which such hybrid branch is created, organized for foreign law purposes, or has substantial assets. Thus, the hybrid branch payment will be treated as included within a category of foreign personal holding company income if, taking into account any specific exceptions for that category, the payment would be included within a category of foreign personal holding company income if the branch or branches were treated as separately incorporated for U.S. tax purposes.

(ii) *Extent to which controlled foreign corporation and hybrid branches treated as separate entities.* For purposes other than the determination under paragraph (a)(4)(i) of this section, a controlled foreign corporation and its hybrid branch, a partnership and its hybrid branch, or hybrid branches shall not be treated as separate entities. Thus, for example, if a controlled foreign corporation, including all of its hybrid branches, has an overall deficit in earnings and profits to which section 952(c) applies, the limitation of such section on the amount includible in the subpart F income of such corporation will apply. Similarly, for purposes of applying the de minimis and full inclusion rules of section 954(b)(3), a controlled foreign corporation and its hybrid branch, or hybrid branches shall not be treated as separate corporations. Further, a hybrid branch payment that would reduce foreign personal holding company income under section 954(b)(5) if made between two separate entities will not create an expense if made between a controlled foreign corporation and its hybrid branch, a partnership and its hybrid branch, or hybrid branches.

(5) *Recharacterization of income attributable to current earnings and profits as subpart F income*—(i) *General rule.* Non-subpart F income of a controlled foreign corporation in an amount equal to the excess of earnings and profits of the controlled foreign corporation for the taxable year over subpart F income, as defined in section 952(a), will be recharacterized as subpart F income under paragraph (a)(1) of this section only to the extent provided under paragraphs (a)(5)(ii) through (vi) of this section.

(ii) *Subpart F income.* For purposes of determining the excess of current earnings and profits over subpart F income under paragraph (a)(1) of this section, the amount of subpart F income is determined before the application of the rules of this section but after the application of the rules of sections 952(c) and 954(b). Further, such amount is determined by treating the controlled foreign corporation and all of its hybrid branches as a single corporation.

(iii) *Recharacterization limited to gross amount of hybrid branch payment*—(A) *In general.* The amount recharacterized as subpart F income under paragraph (a)(1) of this section is limited to the amount of the hybrid branch payment.

(B) *Exception for duplicative payments.* [Reserved].

(iv) *Tax disparity rule*—(A) *In general.* Paragraph (a)(1) of this section will apply only if the hybrid branch payment falls within the tax disparity rule. The hybrid branch payment falls within the tax disparity rule if it is taxed in the year when earned at an effective rate of tax that is less than 90 percent of, and at least 5 percentage points less than, the hypothetical effective rate of tax imposed on the hybrid branch payment, as determined under paragraph (a)(5)(iv)(B) of this section.

(B) *Hypothetical effective rate of tax*—(*1*) *In general.* The hypothetical effective rate of tax imposed on the hybrid branch payment is—

(*i*) For the taxable year of the payor in which the hybrid branch payment is made, the amount of income taxes that would have been paid or accrued by the payor if the hybrid branch payment had not been made, less the amount of income taxes paid or accrued by the payor; divided by

(*ii*) The amount of the hybrid branch payment.

(*2*) *Hypothetical effective rate of tax when hybrid branch payment causes or increases loss or deficit.* If the hybrid branch payment causes or increases a loss or deficit of the payor for foreign tax purposes, and such loss or deficit can be carried forward or back, the hypothetical effective rate of tax imposed on the hybrid branch payment is the effective rate of tax that would be imposed on the taxable income of the payor for the year in which the foreign law payment is made if the payor's taxable income were equal to the amount of the hybrid branch payment.

(C) *Examples.* The application of this paragraph (a)(5)(iv) is illustrated by the following examples.

Example 1. In 1998, CFC organized in Country A had net income of $60 from manufacturing for Country A tax purposes. It also had a branch (BR) in Country B. BR is a hybrid entity under paragraph (a)(1) of this section. CFC made a payment of $40 to BR, which was a hybrid branch payment under paragraph (a)(6) of this section, and was treated by CFC as a deductible payment for Country A tax purposes. CFC paid $30 of Country A taxes in 1998. It would have paid $50 of Country A taxes without the deductible payment. Country A did not impose any withholding tax on the $40 payment to BR. Country B also did not impose a tax on the $40 received by BR. Therefore, the effective rate of tax on that payment is 0%. Furthermore, the hypothetical effective rate of tax on the $40 hybrid branch payment is 50% ($50 − $30/$40). The effective rate of tax (0%) is less than 90% of, and more than 5 percentage points less than, this hypothetical rate of tax of 50%. As a result, the $40 hybrid branch payment falls within the tax disparity rule of this paragraph (a)(5)(iv).

Example 2. Assume the same facts as in *Example 1*, except that CFC has a loss of $100 for the year for Country A tax purposes. Under Country A law, CFC can carry the loss forward for use in subsequent years. CFC paid no Country A taxes in 1998. The rate of tax in Country A is graduated from 20% to 50%. If the $40 hybrid branch payment were the only item of taxable income of CFC, Country A would have imposed tax at an effective rate of 30%. The effective rate of tax (0%) is less than 90 percent of, and more than 5 percentage points less than, the hypothetical effective rate of tax (30%) imposed on the hybrid branch payment. As a result, the $40 hybrid branch payment falls within the tax disparity rule of this paragraph (a)(5)(iv).

Example 3. Assume the same facts as in *Example 1*, except that Country B imposes tax on the $40 hybrid payment to BR at an effective rate of 50%. The effective rate of 50% is equal to the hypothetical effective rate of tax. As a result, the hybrid branch payment does not fall within the tax disparity rule of this paragraph (a)(5)(iv) and, thus, the recharacterization rules of paragraph (a)(1) of this section do not apply. See also the special high tax exception of paragraph (a)(5)(v) of this section.

(v) *Special high tax exception*—(A) *In general.* Paragraph (a)(1) of this section shall not apply if the non-subpart F income recharacterized as subpart F

income under this section was subject to foreign income taxes imposed by a foreign country or countries at an effective rate that is greater than 90 percent of the maximum rate of tax specified in section 11 for the taxable year of the controlled foreign corporation.

(B) *Effective rate of tax.* The effective rate of tax imposed on the net amount of the hybrid branch payment is determined under the principles of § 1.954–1(d)(2) and (3). See paragraph (c) of this section for the application of section 960 to amounts recharacterized as subpart F income under this section.

(vi) *No carryback or carryforward of amounts in excess of current year earnings and profits limitation.* To the extent that some or all of the amount required to be recharacterized under this section is not recharacterized as subpart F income because the hybrid branch payment exceeds the amount that can be recharacterized, as determined under paragraph (a)(5)(i) of this section, this excess shall not be carried back or forward to another year.

(6) *Definitions.* For purposes of this section—

Entity means any person that is treated by the United States or any jurisdiction as other than an individual.

Hybrid branch means an entity that—

(i) Has a single owner (including ownership through branches) that is either a controlled foreign corporation or a partnership in which a controlled foreign corporation is a partner (either directly or indirectly through one or more branches or partnerships);

(ii) Is treated as fiscally transparent by the United States; and

(iii) Is treated as non-fiscally transparent by the country in which the payor entity, any owner of a fiscally-transparent payor entity, the controlled foreign corporation, or any intermediary partnership is created, organized or has substantial assets.

Hybrid branch payment means the gross amount of any payment (including any accrual) which, under the tax laws of any foreign jurisdiction to which the payor is subject, is regarded as a payment between two separate entities but which, under U.S. income tax principles, is not income to the recipient because it is between two parts of a single entity.

(7) *Fiscally transparent and non-fiscally transparent.* For purposes of this section an entity shall be treated as fiscally transparent with respect to an interest holder of the entity, if such interest holder is required, under the laws of any jurisdiction to which it is subject, to take into account separately, on a current basis, such interest holder's share of all items which, if separately taken into account by such interest holder, would result in an income tax liability for the interest holder in such jurisdiction different from that which would result if the interest holder did not take the share of such items into account separately. A non-fiscally transparent entity is an entity that is not fiscally transparent under this paragraph (a)(7).

(b) *Election to change classification*—(1) *In general.* If a hybrid branch subject to the provisions of paragraph (a) of this section is an entity that has made an election under § 301.7701–3(c)(1) of this chapter to be disregarded as an entity separate from its owner, such entity may elect to change its classification to that of an association taxable as a corporation, under the procedures described in § 301.7701–3(c) of this chapter, without regard to the limitation of § 301.7701–3T(c)(1)(iv) of this chapter, but only if such election is made on or before the last day of the first taxable year beginning on or after January 1, 1998. An election made pursuant to this paragraph (b)(1) is effective as of the first day of such taxable year. The 75 day limitation on retroactivity in § 301.7701–3(c)(1)(iii) of this chapter does not apply.

(2) *Limitation.* An entity can elect to change its classification under the provisions of this paragraph only one time.

(c) *Application of section 960*—For purposes of determining the amount of taxes deemed paid under section 960, the amount of non-subpart F income recharacterized as subpart F income under this section shall be treated as attributable to income in separate categories, as defined in § 1.904–5(a)(1), in proportion to the ratio of non-subpart F income in each such category to the total amount of non-subpart F income of the controlled foreign corporation for the taxable year.

(d) *Effective dates*—(1) *Hybrid branches of controlled foreign corporations.* With respect to hybrid branch payments described in paragraph (a)(2)(i)(A) and (B) of this section, the rules of this section shall apply to all amounts paid or accrued on or after January 16, 1998, except for amounts paid or accrued pursuant to arrangements entered into before January 16, 1998, and not substantially modified (including, for example, by expansion of the arrangement (whether by exercise of an option or otherwise) such as by an increase in the amount of or term of any borrowing, leasing or licensing constituting the arrangement, changes in direct or indirect control of any entity that is a party to the arrangement, or any similar measure which materially increases the tax benefit of the arrangement) on or after January 16, 1998.

(2) *Hybrid branches of partnerships in which controlled foreign corporations are partners.* With respect to hybrid branch payments described in paragraph (a)(2)(i)(C) and (D) of this section, the rules of this section shall apply to all amounts paid or accrued on or after March 23, 1998, except for amounts paid or accrued pursuant to arrangements entered into before March 23, 1998 and not substantially modified (including, for example, by expansion of the arrangement (whether by exercise of an option or otherwise) such as by an increase in the amount of or term of any borrowing, leasing or licensing constituting the arrangement, changes in direct or indirect control of any entity that is a party to the arrangement, or any similar measure which materially increases the tax benefit of the arrangement) on or after March 23, 1998.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for 26 CFR part 301 continue to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 10. In § 301.7701–3, paragraph (f)(1) is amended by adding a sentence at the end to read as follows:

§ 301.7701–3. Classification of certain business entities.

* * * * *

(f)(1) * * * Paragraphs (a), (c)(1)(iv) and (f) of this section do not apply on or after March 23, 1998. For rules applicable on or after March 23, 1998, see § 301.7701–3T(a), (c)(1)(iv) and (f).

Par. 11. Section 301.7701–3T is added to read as follows:

§ 301.7701–3T Classification of certain business entities (temporary).

(a) *In general.* A business entity that is not classified as corporation under § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701–2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election.

Thus, elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification. An entity whose classification is determined under the default classification retains that classification (regardless of any changes in the members' liability that occurs at any time during the time that the entity's classification is relevant as defined in paragraph (d) of this section) until the entity makes an election to change that classification under paragraph (c)(1) of this section. Paragraph (c) of this section provides rules for making express elections. Paragraph (d) provides special rules for foreign eligible entities. Paragraph (e) of this section provides special rules for classifying entities resulting from partnership terminations and divisions under section 708(b). Paragraph (f) of this section sets forth the effective date of this section and a special rule relating to prior periods. An entity that has elected to be disregarded as an entity separate from its owner may nevertheless be treated as a corporation for the limited purposes of § 1.954–9T(a)(4)(i) of this chapter.

(b) through (c)(1)(iii) [Reserved]. For further guidance, see § 301.7701–3(b) through (c)(1)(iii).

(c)(1)(iv) *Limitation.* If an eligible entity makes an election under paragraph (c)(1)(i) of this section to change its classification (other than an election made by an existing entity to change its classification as of the effective date of this section), the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the sixty months if more than fifty percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by person that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election. See § 1.954–9T(b) of this chapter, for circumstances under which certain eligible entities may make an election to change their classification within the sixty-month period.

(c)(1)(v) through (e) [Reserved]. For further guidance, see § 301.7701–3(c)(1)(v) through (e).

(f) *Effective date.* Section 301.7701–3T(a) and (c)(1)(iv) applies on or after March 23, 1998. For rules prior to March 23, 1998, see § 301.7701–3(a) and (c)(1)(iv).

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved:

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–7891 Filed 3–23–98; 12:58 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–018]

Drawbridge Operation Regulations; Stony Creek, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the S173 Bridge across Stony Creek at mile 0.9, in Riviera, Maryland. Beginning March 2 through May 1, 1998, this deviation allows the bridge to remain closed to navigation between the hours of 8 p.m. to 6:30 a.m., Monday through Friday excluding Federal and State holidays. This closure is necessary to facilitate extensive cleaning and painting operations while still providing for the reasonable needs of navigation.

DATES: This deviation is effective from 8 p.m. on March 2, 1998 until 6:30 a.m. on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The S173 Bridge is owned and operated by the Maryland Department of Transportation (MDOT). Alpha Painting & Construction Company, Inc., MDOT's contractor, requested a temporary deviation from the normal operation of the bridge to implement extensive cleaning and painting operations. The current regulation at Title 33, Code of Federal Regulations, Section 117.573 requires the draw to open on signal with the following exceptions: (a) from 6:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday except Federal and State holidays, the draw need only open at 7:30 a.m. and 5 p.m., if any vessels are waiting to pass; (b) From 11 a.m. to 7 p.m. on Saturday and 12 p.m. to 5 p.m. on Sunday, the draw need only open on the hour and half hour; and (c) all public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

The work entails the sandblasting and cleaning of the bridge. Sandblasting will immobilize operation of the drawbridge due to the installation of an encapsulation shield with scaffolding during the closed period. On weekends, holidays, and during all other hours, the bridge will operate in accordance with the current regulations.

Discussions with MDOT concerning the S173 Bridge logs revealed that recreational vessel nighttime transits through this bridge for 1996 and 1997 from March through May caused an average of 12 openings per week, excluding weekends. MDOT's advance publication of the closure in local newspapers, along with the Coast Guard's Local Notice to Mariners, will reduce this temporary deviation's negative impact on transiting vessels.

Beginning March 2 through May 1, 1998, this deviation allows the S173 Bridge to remain closed to navigation between the hours of 8 p.m. to 6:30 a.m.; Monday through Friday excluding Federal and State holidays.

Dated: March 18, 1998.

J. Carmichael,

Acting Captain,

U.S. Coast Guard Commander,

Fifth Coast Guard District.

[FR Doc. 98–7913 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska 98–002]

RIN 2115–AA97

Safety Zone; Summer Bay, Unalaska Island, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Safety zone in Summer Bay, Unalaska Island, AK. The zone is needed to protect the ongoing salvage operation of the M/V KUROSHIMA and the salvage barge. Entry of vessels or persons into this zone not involved in the salvage operation is prohibited unless specifically authorized by the Captain of the Port or his on scene representative, the supervisor of Marine Safety Detachment Unalaska.

DATES: This regulation becomes effective on February 25, 1998 at 1:00 p.m. ADT and terminates on March 31, 1998 at 11:59 p.m. ADT.

FOR FURTHER INFORMATION CONTACT: LCDR Rick Rodriguez, Chief of Port Operations, Coast Guard Captain of the Port Western Alaska, Anchorage, 510 L Street, Suite 100; Anchorage, Alaska 99501; (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The purpose of this safety zone is to allow the salvage barge to conduct salvage operations unencumbered by vessels at or proceeding to anchor within the zone defined later in this rule.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent disruption of the safe salvage operation of the M/V KUROSHIMA.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. A new temporary § 165.T17–002 is added to read as follows:

§ 165.T17–002 Summer Bay Safety Zone.

(a) *Location.* The following area is a Safety Zone: the body of water enclosed by the following coordinates: from Second Priest Rock (N53–54.18, W166–28.0) north to N53–55.0, W166–28.0 east to N53–55.0, W166–26.6 south to the southwest bluff bordering Morris Cove (N53–54.70, W166–26.6).

(b) *Effective dates.* This section becomes effective on February 25, 1998 at 1:00 p.m. ADT and terminates on March 31, 1998 at 11:59 p.m. ADT unless otherwise cancelled by the Captain of the Port Western Alaska.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port or his on scene representative, the supervisor of Marine Safety Detachment Unalaska.

Dated: February 24, 1998.

E. F. Thompson,

Captain, U.S. Coast Guard, Captain of the Port Western Alaska.

[FR Doc. 98–7912 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego; 98–007]

RIN 2115–AA97

Safety Zone; San Diego Bay and Adjacent Waters, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: In conjunction with the release of 'JJ' the gray whale by Sea World of California, the Coast Guard is establishing a temporary, moving safety zone around the USCGC CONIFER from 1:00 p.m. (PST) on March 23, 1998 until 6:00 p.m. (PST) on March 30, 1998. The safety zone will encompass all navigable waters within 250 yards of the USCGC CONIFER while it transits from Naval Station 32nd Street to lighted buoys 5 and 6. The safety zone will expand to 500 yards at lighted buoys 5 and 6, and the safety zone will remain at 500 yards while the USCGC CONIFER transits any/all navigable waters located within the territorial sea of the United States.

This temporary regulation is established to serve three purposes: to protect and facilitate the continued development of the gray whale being released by Sea World of California on behalf of the National Marine Fisheries Service (NMFS) (pursuant to a grant of authority signed by NMFS on November 17, 1995, authorizing Sea World of California to rescue and rehabilitate marine mammals as a member of the California Mammal Stranding Network) to ensure the safety of the vessels and personnel involved in the release, including the USCGC CONIFER and its crew; and, to ensure the safety of any spectator vessels and persons. Entry into, transit through, or anchoring within this moving safety zone is prohibited unless authorized by the Captain of the Port.

In order to ensure maximum safety and environmental protection, to the extent that the USCGC CONIFER navigates to any point located beyond 3 nautical miles from the baseline from which the territorial sea is measured to release 'JJ' the gray whale during the dates and times that this temporary safety zone is in effect, the Coast Guard is also establishing a temporary, nonobligatory moving exclusionary area encompassing all waters within 500 yards of the USCGC CONIFER. Entry into this nonobligatory exclusionary area by any mariner constitutes a risk to navigational safety and a risk to the marine mammal being released, and it may prevent the release of 'JJ' the gray whale. It may also constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 USC § 2302, or has engaged in activities in violation of the MMPA and its implementing regulations.

EFFECTIVE DATES: This regulation becomes effective at 1:00 p.m. (PST) on March 23, 1998, and continues until 6:00 p.m. (PST) on March 30, 1998.

ADDRESSES: Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064.

FOR FURTHER INFORMATION CONTACT: LT Mike Arguelles, U.S. Coast Guard

Marine Safety Office San Diego at (619) 683–6484.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this temporary regulation and good cause exists for making it effective prior to, or in less than 30 days after, **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to public interest because the precise location of the release of 'JJ' the gray whale, and other logistical details surrounding the release, were not finalized until a date fewer than 30 days prior to the scheduled release dates.

Background and Purpose

The release of 'JJ' the gray whale requiring promulgation of this temporary, moving safety zone is scheduled to take place in the navigable waters of San Diego Bay at a point approximately located 3 miles off Point Loma, sometime between March 23–28, 1998; however, the actual release of 'JJ' the gray whale may occur at a point located somewhere further off the coast of Point Loma. The precise release date, time, and location are dependent upon variable northbound marine mammal migratory patterns in the Pacific Ocean.

Territorial sea, as defined in 33 CFR 2.05–5, means all waters within the belt, 3 nautical miles wide, that is adjacent to the coast of the United States and seaward of the territorial sea baseline. The "territorial sea baseline" is defined in 33 CFR 2.05–10. To the extent that the USCGC CONIFER navigates to any point located beyond 3 nautical miles off the coast of Point Loma to release 'JJ' the gray whale during the dates and times that this temporary safety zone is in effect, the Coast Guard is also establishing a temporary, nonobligatory moving exclusionary area encompassing all waters within 500 yards of the USCGC CONIFER. Entry into this nonobligatory exclusionary area by any mariner may pose such a danger to the safety of all parties involved that it might prevent the release of 'JJ' the gray whale; it may also constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 U.S.C. 2302, or has engaged in activities in violation of the MMPA and its implementing regulations.

Discussion of Regulation

Gray whales are a protected species under the Marine Mammal Protection Act (16 U.S.C. 1362(6); 50 CFR 216.3), and all federal agencies are required to cooperate with the Commerce Department in carrying out the purposes of the Marine Mammal Protection Act (16 U.S.C. 1382(b)). Sea World is releasing 'JJ' the gray whale on behalf of NMFS, pursuant to a grant of authority signed by NMFS on November 17, 1995, authorizing Sea World of California to rescue and rehabilitate marine mammals as a member of the California Mammal Stranding Network. This temporary regulation is established to serve three purposes: (1) To protect and facilitate the continued development of the gray whale being released by Sea World of California on behalf of NMFS (pursuant to a grant of authority signed by NMFS on November 17, 1995, authorizing Sea World of California to rescue and rehabilitate marine mammals as a member of the California Mammal Stranding Network), (2) to ensure the safety of the vessels and personnel involved in the release, including the USCGC CONIFER and its crew; and (3) to ensure the safety of any spectator vessels and persons. Entry into, transit through, or anchoring within this moving safety zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). Due to the short duration and limited scope of the safety zone the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Transportation is unnecessary.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612, and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, it will have no significant environmental impact, including no adverse effect on species or habitats protected by the Endangered Species Act, and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T11–047 is added to read as follows:

§ 165.T11–049 Moving Safety Zone: San Diego Bay and Adjacent Waters, San Diego, CA.

(a) *Location.* The safety zone will encompass all navigable waters within 250 yards of the USCGC CONIFER while it transits from Naval Station 32nd Street to lighted buoys 5 and 6. The safety zone will expand to 500 yards at lighted buoys 5 and 6, and the safety zone will remain at 500 yards while the USCGC CONIFER transits any/all navigable waters located within the territorial sea of the United States. "Territorial sea," as defined in 33 CFR 2.05–5, means all waters within the belt, 3 nautical miles wide, that is adjacent to the coast of the United States and seaward of the territorial sea baseline. The "territorial sea baseline" is defined in 33 CFR 2.05–10.

Note: *Nonobiligatory Exclusionary Area.* In order to ensure maximum safety and environmental protection, to the extent that the USCGC CONIFER navigates to any point located beyond 3 nautical miles from the baseline from which the territorial sea is measured to release "JJ" the gray whale during the dates and times that this temporary safety zone is in effect, the Coast Guard is also establishing a temporary, nonobligatory moving exclusionary area

encompassing all waters within 500 yards of the USCGC CONIFER. Entry into this nonobligatory exclusionary area by any mariner constitutes a risk to navigational safety and a risk to the marine mammal being released, and it may prevent the release of "JJ" the gray whale. It may also constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 USC § 2302, or has engaged in activities in violation of the MMPA and its implementing regulations.

(b) *Effective Dates.* This regulation becomes effective at 1:00 p.m. (PST) on March 23, 1998, and continues until 6:00 p.m. (PST) on March 30, 1998, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: March 16, 1998.

J.A. Watson,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 98–7911 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH107a; KY101–9809a; FRL–5985–8]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Ohio; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is extending the attainment date for the Cincinnati-Hamilton interstate moderate ozone nonattainment area from November 15, 1997 to November 15, 1998. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1997. Accordingly, EPA is revising the table in the Code of Federal Regulations concerning ozone attainment dates in this area. In this action, EPA is approving the States' request through "direct final" rulemaking; the rationale for this approval is set forth below. Elsewhere in this **Federal Register**, EPA is proposing approval and soliciting comment on this action; should EPA receive such comment, it will publish an action informing the public that this rule did not take effect; otherwise no further rulemaking will occur on this SIP revision request.

DATES: This final rule is effective May 26, 1998 unless substantive written adverse comments not previously addressed by the State or EPA are received by April 27, 1998. If the effective date is delayed, timely notification will be published in the **Federal Register**.

ADDRESSES: Written comments may be mailed to Joseph M. LeVasseur at the EPA Region 4 address listed below or to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below. Copies of the material submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) may be examined during normal business hours at the following locations:
Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Copies of the materials submitted by the Ohio Environmental Protection Agency (OEPA) may be examined during normal business hours at the following locations:
Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.
OEPA, Division of Air Pollution Control, 1800 Watermark Drive, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Joseph M. LeVasseur at the EPA Region 4 address listed above or Randolph O. Cano at the Region 5 address listed above. (It is recommended that you contact Joseph M. LeVasseur at (404) 562–9035 before visiting the Region 4 office.) (It is recommended that you contact Randolph O. Cano at (312) 886–6036 before visiting the Region 5 office.)

SUPPLEMENTARY INFORMATION:

Request for Attainment Date Extension for the Cincinnati-Hamilton Metropolitan Moderate Ozone Nonattainment Area

On November 14, 1997, OEPA requested a one-year attainment date extension for the Ohio portion of the Cincinnati-Hamilton moderate ozone nonattainment area which consists of Hamilton, Butler, Clermont and Warren Counties in Ohio. Similarly on January 7, 1998 KNREPC requested a one-year attainment date extension for the Kentucky portion of the Cincinnati-Hamilton moderate ozone nonattainment area which consists of Kenton, Boone and Campbell Counties. Since this area was classified as a moderate ozone nonattainment area, the statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act (CAA), was November 15, 1996. On November 17, 1997 (62 FR 61241, and see 63 FR 6664) EPA extended the attainment date to November 15, 1997. The submittals request that the attainment date be extended to November 15, 1998.

CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the CAA requires the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) requires that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality. In a series of **Federal Register** documents, EPA completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the CAA. The Cincinnati-Hamilton ozone nonattainment area was designated nonattainment and classified moderate for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1996. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

CAA Requirements and EPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the average number of expected exceedances of the NAAQS over the most recent three-year period. See General Preamble, 57 FR 13506. In the case of moderate ozone nonattainment areas, the three-year period is 1994–1996. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its

attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, EPA may grant up to two one-year extensions of the attainment date under specified conditions:

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and,

(B) no more than one exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than two one-year extensions may be issued for a single nonattainment area.

EPA interprets this provision to authorize the granting of a one-year extension under the following minimum conditions:

(1) The State requests a one-year extension,

(2) all requirements and commitments in the EPA-approved SIP for the area have been complied with, and,

(3) the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

On November 17, 1997 (62 FR 61241), EPA granted the Ohio and Kentucky requests to extend the attainment date for the Cincinnati Hamilton Interstate moderate ozone nonattainment area from November 15, 1996 to November 15, 1997. The November 17, 1997 approval was based in part on monitored air quality readings for the national air quality standard for 1996.

Ohio's second ozone attainment date extension was supported by monitored air quality readings during 1997.

A review of the actual ambient air quality ozone data from the EPA Aerometric Information Retrieval System (AIRS), shows that a number of air quality monitors located in the Cincinnati-Hamilton ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three year period from 1995 to 1997. At one of these monitors, Middletown OH, the number of expected exceedances was 2.0 for 1995, 1.0 for 1996 and 1.0 for 1997. Because these exceedances averaged more than 1.0 over the three year period, they constitute a violation of the ozone NAAQS for the Cincinnati-Hamilton area during the three year period. Thus the area did not meet the November 15, 1997 attainment date.

Kentucky provided no discussion of monitoring data in its January 7, 1998 request. However, in its November 14, 1997 request, Ohio indicated that Ohio and Kentucky had satisfied the compliance date extension criteria in as much as no monitors in the Cincinnati-Hamilton area monitored more than one exceedance each during 1997. The 1997 monitoring data has been quality controlled and quality assured as has been the data for 1995 and 1996. These data have been summarized in Table 1. The monitoring data for the Oxford, Ohio site located in Butler County is not provided in the list. Currently, quality assured data is not available for this site for 1997.

An examination of the data indicate that three of the ten monitors, currently in operation, recorded one exceedance each during 1997. EPA has determined that the requirements for a second one-year extension of the attainment date have been fulfilled as follows:

TABLE 1.—CINCINNATI-HAMILTON MONITORED EXCEEDANCES AND VIOLATION 1995–97

	Kentucky		
	Boone County	Campbell County	Kenton County
1995	0	0	1.0
1996	0	1.0	1.0
1997	0	0	0

	Ohio							
	Butler County		Hamilton County			Warren County		
	Hamilton	Middletown	Grooms Rd	Ripple Rd	Cincinnati	Lebanon	Cook Rd	Clermont Co
1995	1.0	2.0	0	1.0	1.0	2.0	(1)	1.0
1996	0	1.0	0	0	0	0	(1)	0
1997	0	1.0	1.0	0	0	(1)	1.0	0

[1] No data is available for this site during this year.

(1) Ohio and Kentucky have formally submitted the attainment date extension requests.

(2) Ohio and Kentucky are currently implementing the EPA-approved SIPs.

(3) A review of actual ozone ambient air quality data for the Cincinnati-Hamilton Interstate area indicates that the area has monitored no more than one exceedance of the NAAQS at any monitor during 1997.

Therefore, EPA approves the Ohio and Kentucky second one-year attainment date extension requests for the Cincinnati-Hamilton ozone nonattainment area. As a result, the Kentucky Control Strategy for Ozone which is codified at 40 CFR 52.930 and the Ohio Control Strategy for Ozone which is codified at 40 CFR 52.1885 are being amended to record these attainment date extensions. The chart in 40 CFR 81.318 entitled "Kentucky-Ozone" is being modified to reflect EPA's approval of Kentucky's attainment date extension request. The chart in 40 CFR 81.336 entitled "Ohio-Ozone" is also being modified to reflect EPA's approval of Ohio's attainment date extension request.

EPA Action

EPA is approving the second one-year attainment date extension requests for the Cincinnati-Hamilton moderate

ozone nonattainment area from November 15, 1997 to November 15, 1998 without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve this part 52 and part 81 action should written adverse or critical comments be filed.

This rule will become effective without further notice unless EPA receives relevant adverse written comment on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by April 27, 1998. Should EPA receive such comments, it will publish a final rule informing the public that this rule did not take effect. Any party interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 26, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities. Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the attainment date extension will not affect a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70–3745.73 of the Ohio Revised Code). The EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the CAA. The EPA will take appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, Federal approval for the CAA program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U. S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 26, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to grant Ohio and Kentucky an extension to attain the ozone NAAQS in the Cincinnati-Hamilton ozone nonattainment area as defined in 40 CFR 81.318 and 40 CFR 81.336 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Ozone

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 27, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: March 16, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.930 is amended by adding paragraph (f) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(f) Kentucky's January 7, 1998, request for a one-year attainment date extension for the Kentucky portion of the Cincinnati-Hamilton metropolitan

moderate ozone nonattainment area which consists of Kenton, Boone, and Campbell Counties is approved. The date for attaining the ozone standard in these counties is November 15, 1998.

3. Section 52.1885 is amended by adding paragraph (cc) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(cc) Ohio's November 14, 1997, request for a one-year attainment date extension for the Ohio portion of the Cincinnati-Hamilton metropolitan moderate ozone nonattainment area which consists of Hamilton, Butler, Clermont and Warren Counties is approved. The date for attaining the ozone standard in these counties is November 15, 1998.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.318, the "Kentucky—Ozone" table is amended by revising the entry for the "Cincinnati–Hamilton Area" to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Cincinnati-Hamilton Area:				
Boone County		Nonattainment		Moderate.[2]
Campbell County		Nonattainment		Moderate.[2]
Kenton County		Nonattainment		Moderate.[2]

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1998.

* * * * *

3. In section 81.336, the "Ohio—Ozone" table is amended by revising the entry for the "Cincinnati-Hamilton Area" to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Cincinnati-Hamilton Area:				
Butler County		Nonattainment		Moderate.[2]
Clermont County		Nonattainment		Moderate.[2]
Hamilton County		Nonattainment		Moderate.[2]
Warren County		Nonattainment		Moderate.[2]

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1998.

* * * * *

[FR Doc. 98–7760 Filed 3–25–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL–5986–2]

RIN 2060–AH45

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Additional Update of Post-Rebuild Emission Levels in 1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing EPA's Urban Bus Retrofit/Rebuild Program to provide for the revision of post-rebuild particulate levels based on equipment certified by July 1, 1998. This amendment allows equipment manufacturers additional time to certify equipment capable of influencing compliance under Option 2 (the fleet averaging option) of the program. This amendment provides assurance that the two compliance options of the program remain equivalent, and that urban buses utilize the best retrofit technology reasonably achievable as Congress required. In addition, the amendment provides assurance that urban areas realize the full PM benefits of this program.

DATES: This final rule is effective April 27, 1998.

ADDRESSES: Materials relevant to this amendment are contained in Public Docket No. A–91–28 at the address listed below. This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and

Compliance Division (6403–J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 564–9297.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this amendment consist of the same entities currently regulated by the existing Retrofit/Rebuild Requirements of 40 CFR Part 85, Subpart O, and include urban transit operators in Metropolitan Statistical Areas (MSA's) and Consolidated Metropolitan Statistical Areas (CMSA's) with 1980 populations of 750,000 or more, and equipment manufacturers who voluntarily seek equipment certification pursuant to the program regulations. Regulated categories and entities include:

Category	Examples of regulated entities
industry	Equipment manufacturers who voluntarily seek equipment certification pursuant to the program regulations.
Transit operators	Transit bus operators in Metropolitan Statistical Areas (MSA's) and Consolidated Metropolitan Statistical Areas (CMSA's) with 1980 populations of 750,000 or more, that operate 1993 and earlier model year urban buses.

This table is not meant to be exhaustive, but rather to provide a guide for readers regarding entities regulated by this final rule. This table lists the type of entities that EPA is aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or company is regulated by this action, you should carefully examine the existing urban bus retrofit/rebuild regulations contained in 40 CFR Part 85, Subpart O, and the preamble to the final rule (58 FR 21359, April 21, 1993). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Obtaining Electronic Copies of the Rulemaking Documents

In addition to being available at the location listed above at **ADDRESSES**, copies of the preamble and the regulatory text of this rulemaking are available electronically from two EPA internet Web locations. This service is free of charge, except for any cost you already incur for internet connectivity. An electronic version is made available on the day of publication on the primary Web location listed below. The EPA Office of Mobile Sources also publishes documents on the secondary Web location listed below.

Primary Web location: http://www.epa.gov/EPA–AIR/ (either select desired date or use Search feature).

Secondary Web location: http://www.epa.gov/OMSWWW/ (look in "What's New" or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, minor changes in format, pagination, etc. may occur.

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IV. Background

A. Legal Authority

Authority for the actions promulgated in this final rule is granted to EPA by Sections 202, 206, 207, 219, and 301 of the Clean Air Act as amended in 1990. This final rule was promulgated in accordance with Section 307(d) of the Clean Air Act.

B. General Program Background

Section 219(d) of the Clean Air Act as amended in 1990 requires EPA to promulgate regulations that require certain 1993 and earlier model year urban buses, having engines which are replaced or rebuilt after January 1, 1995, to comply with an emission standard or control technology reflecting the best retrofit technology and maintenance practices reasonably achievable. Section 219(d) restricts this requirement to 1993 and earlier model year urban buses operating in Metropolitan Statistical Areas and Consolidated Metropolitan Statistical Areas with 1980 populations of 750,000 or more.

On April 21, 1993, EPA published final Retrofit/Rebuild Regulations for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The regulations require affected urban bus operators to comply with one of two program options, beginning January 1, 1995. Option 1 establishes particulate matter (PM) emissions requirements for each urban bus in an operator's fleet when the engine is rebuilt or replaced. Option 2 is a fleet averaging program that sets out specific annual target levels for average PM emissions from urban buses in an operator's fleet. The two compliance options are designed to yield equivalent emissions reductions for approximately the same cost.

Option 1 requires affected urban buses to meet a 0.10 g/bhp-hr PM standard at the time of engine rebuild or replacement, if equipment has been certified by EPA for at least six months as meeting the 0.10 g/bhp-hr standard for less than a life cycle cost limit of $7,940 (in 1992 dollars). (The regulation allows a six month lead time before requiring such equipment to allow transit operators to plan their budgeting and procurement activities, and to help ensure that an adequate supply of parts are available from equipment manufacturers.) If equipment is not certified as meeting the 0.10 g/bhp-hr standard for less than the life cycle cost limit, then affected buses must receive equipment which reduces PM emissions by 25 percent, if such equipment has been certified by EPA for at least six months as meeting the 25 percent reduction standard for less than a life cycle cost limit of $2,000 (in 1992 dollars). If no equipment is certified to meet either the 0.10 g/bhp-hr standard, or the 25 percent reduction standard, then affected bus engines must be rebuilt to the original engine configuration, or to an engine configuration certified to have a PM level lower than that of the original engine.

Option 2 is an averaging-based program that requires bus operators to meet an annual average fleet PM level, instead of requiring each individual rebuilt engine to meet a specific PM level. On an annual basis, an operator must reduce its "actual" PM emissions

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from its buses to a level no greater than its annual target level for the fleet (TLF). The operator calculates the TLF for each year of the program, beginning calendar year 1996, based on actual fleet composition, an assumed engine rebuild and retirement schedule, and EPA's determination of expected PM levels for each engine model. As an engine in a fleet is assumed to be rebuilt in a particular calendar year, the TLF calculations "switch" from a "pre-rebuild" PM emission level to a lower "post-rebuild" level that reflects the assumed use of lower-emitting, certified equipment. Over the years of the program, as the engines in a fleet are assumed to be rebuilt, this "switching" results in numerically lower TLF values. As discussed further below, EPA established pre-rebuild levels in the final rule of April 21, 1993, and has established post-rebuild levels based on equipment certified for each engine model. The operator also calculates its "actual" fleet level attained (FLA) for each year of the program, which must not exceed its TLF. The FLA is a fleet weighted average PM level based on the "actual" PM level of each affected engine. The "actual" PM level of each engine is determined by the certification PM level of the equipment used to rebuild or retrofit the engine. If no retrofit equipment is installed on an engine, or if no retrofit equipment is certified for the engine, then the actual PM level is the pre-rebuild PM level.

In the final rule of April 21, 1993, EPA established pre-rebuild PM levels for all engine models, but could only estimate the post-rebuild PM levels because no equipment had been certified. EPA recognized that estimated PM levels may not accurately reflect future equipment certifications, therefore, the final rule contained provisions for EPA to revise the post-rebuild PM levels based on equipment that is actually certified by certain points in time. The final rule provides for review of retrofit/rebuild equipment and for revision of post-rebuild PM emission levels based on equipment certified by July 1, 1994, and again by July 1, 1996. In **Federal Register** documents of September 2, 1994 (59 FR 45626) and August 16, 1996 (61 FR 42764), EPA published post-rebuild PM levels based on equipment that was certified as of July 1, 1994, and July 1, 1996, respectively.

Certification activity under the retrofit program has lagged substantially behind the schedule anticipated by EPA when the final rule of April 21, 1993 was promulgated. No equipment was certified when EPA revised post-rebuild levels based on equipment certified by July 1, 1994. That revision is based on default provisions of the regulation (40 CFR 85.1403(c)(1)(iii)). The first certification for the program occurred on May 31, 1995 (60 FR 28402), almost a year after the post-rebuild levels were revised the first time. Several rebuild/retrofit kits were certified by July 1, 1996, but none were certified to the 0.10 g/bhp-hr PM standard. Therefore, the revision of the post-rebuild levels based on equipment certified by July 1, 1996 is based only on equipment certified to reduce PM by 25 percent, or on no equipment (for those engine models for which no equipment was certified as meeting emissions and cost requirements).

EPA's assumption that certification activity would begin early was incorrect, and more importantly, EPA's assumption that certification activity would be complete by mid-1996 was incorrect. For example, EPA recently certified equipment manufactured by Engelhard Corporation (see 62 FR 12166; March 14, 1997) that triggers the 0.10 g/bhp-hr standard for 1979 through 1989 model year Detroit Diesel Corporation (DDC) 6V92TA MUI engines. Additionally, Johnson Matthey Incorporated has submitted an application to certify equipment to the same standard and applicable to these, and other, DDC engines (see 62 FR 4528; January 30, 1997). As discussed below, EPA is also aware of other plans for certifying equipment to the 0.10 g/bhp-hr standard for several more engine models. For these reasons, EPA expects equipment to be certified that will trigger the 0.10 g/bhp-hr standard for a large segment of the affected engine population.

C. Potential Inequality Between Compliance Options

As noted above, the post-rebuild levels based on equipment certified by July 1, 1996, are based only on equipment certified to reduce PM by 25 percent, or on no equipment in some cases. Absent today's amendment, transit operators complying with Option 2 would determine their TLFs based only on equipment reflective of those post-rebuild levels. On the other hand, transit operators choosing to comply with Option 1 are required to use equipment certified to the 0.10 g/bhp-hr standard, when this standard is triggered. For example, under Option 1 the above-mentioned Engelhard certification (62 FR 12166; March 14, 1997) means that equipment certified to the 0.10 g/bhp-hr standard must be used when applicable urban bus engines are rebuilt or replaced six months or more after the effective date of the certification (that is, on rebuilds or replacements performed after September 14, 1997). Without today's amendment, this and other such equipment certified to the 0.10 g/bhp-hr standard would result in Option 2 producing less emission reductions than Option 1, and Option 1 becoming more costly than Option 2.

Given the current level of certification activity and continued interest from equipment manufacturers, certification of additional 0.10 g/bhp-hr technology is likely. Without today's amendment to the program regulations, transit operators, the majority of whom EPA currently believes are complying with Option 1, would have significant incentive to switch to Option 2. As a result, PM reductions would be significantly reduced in those cities where transit operators switch to Option 2. Furthermore, such a loophole is in direct conflict with the Clean Air Act language that urban buses use the best retrofit technology reasonably achievable.

To ensure equivalent compliance options, a notice of proposed rulemaking (NPRM) was published on November 12, 1996 (61 FR 58022) to maintain the continued link between the requirements of Option 2 and Option 1. That notice proposed amending the program regulations to provide for EPA's review of equipment certified by July 1, 1997, and revision of the post-rebuild levels as necessary. The notice requested comments on several aspects of the proposal, including the effect on the Urban Bus Retrofit/Rebuild Program, transit operators, equipment manufacturers, and the timing of a third revision.

Today's action amends the program regulations to provide for EPA to review equipment certified by July 1, 1998, and to revise the post-rebuild levels for Option 2 TLF calculations, as appropriate. EPA is using July 1, 1998 as the appropriate cut-off instead of the proposed date of July 1, 1997 because, based on comments from an equipment certifier (Johnson Matthey, Incorporated, in comments dated December 9, 1996), EPA expects equipment to be certified at a level of 0.10 g/bhp-hr for additional engine models by mid-1998. These additional engine models comprise a significant portion of the affected fleet. EPA thus believes that providing one more year for review of certified equipment will allow Option 1 and Option 2 to remain equivalent compliance options.

V. Requirements of Today's Amendment to the Urban Bus Retrofit/Rebuild Regulations

As discussed below, today's action amends 40 CFR 85.1403(c)(1) to allow the Agency to include equipment certified by July 1, 1998 to the 0.10 g/bhp-hr standard for less than the life cycle cost ceiling of $7,940 (1992 dollars) in the Option 2 fleet average program for the purpose of setting post-rebuild levels. Thereafter, the Agency will publish in the **Federal Register** the post-rebuild emissions levels that will be required to be used under Option 2 for calculating the target levels for the fleet (TLF). Post-rebuild levels revised as a result of this amendment may be more stringent for calculating TLFs than the post-rebuild levels published on August 16, 1996 (61 FR 42764).

EPA will base the final revision of post-rebuild PM levels on equipment certified by July 1, 1998. This date provides six months lead time prior to January 1, 1999, when the rebuild schedule in section 85.1403(c)(1) will begin to take into account the revisions in post-rebuild levels resulting from any new certifications. Only the TLFs for year 2000 and later are affected by today's amendment.

Also discussed below is a minor correction to the post-rebuild levels used in the TLF calculations for certain model years.

A. Equipment Certification

Today's amendment does not limit the ability of equipment manufacturers to certify equipment. Equipment manufacturers can still certify equipment after July 1, 1998. However, EPA will not consider equipment certified after July 1, 1998 in determining the appropriate post-rebuild levels under Option 2. No additional revisions of post-rebuild levels under Option 2 will occur beyond July 1998 because such revisions would not be expected to impact a significant number of rebuilds under this program.

B. TLF Calculations; Use of Pre- and Post-Rebuild PM Levels

The final rule of April 21, 1993, describes modeling used to calculate, on an annual basis, the target level for a fleet using Option 2. The target level for a fleet (TLF) establishes the maximum average emissions from a fleet, and as such is a compliance standard for a fleet, but it does not establish requirements on any specific bus engine. In general, the model is based on an "adjusted" rebuild schedule that predicts (i.e., "assumes") when each model year engine in a fleet will be rebuilt. The model assumes that certified equipment is applied at the time of an assumed rebuild occurring after program start (January 1, 1995). (Each bus engine is assumed to receive several rebuilds during its lifetime.) When an engine is assumed to be rebuilt in a particular calendar year, the TLF calculations for subsequent calendar years "switch" from one PM emission level to a lower "post-rebuild" level that reflects the assumed use of lower-emitting, certified equipment. This switch results in numerically lower TLF values over the years of the program.

For the TLF calculations, engines in original configurations are assumed to emit at pre-rebuild PM emissions levels. After an assumed rebuild, engines are assumed to emit at post-rebuild levels reflecting use of equipment certified to one of two emissions standards (depending on what equipment is certified): a reduction in PM of at least 25 percent, or a more stringent 0.10 g/bhp-hr standard. Numerical values for the pre-rebuild PM levels are established in the final rule of April 21, 1993 (58 FR 21359). The post-rebuild levels have been established in **Federal Register** documents of September 2, 1994 (59 FR 45626) based on equipment certified by July 1, 1994, and August 16, 1996 (61 FR 42764) based on equipment certified by July 1, 1996. Pursuant to today's amendment, revised post-rebuild levels based on equipment certified by July 1, 1998, may affect TLFs for year 2000 and beyond, depending on a particular fleet's composition.

Crucial to TLF model is the adjusted rebuild schedule, which is described in the final rule of April 21, 1993, and found as a table in the regulations at 40 CFR 85.1403(c)(1)(iv). The adjusted schedule predicts when each model year engine is assumed to be rebuilt. This schedule is shown below pictorially as Figure 1. For purposes of calculating the TLF for each year of the program, the date at which the emission level for a model year engine switches from one PM level to another is January 1st of the year following a rebuild assumed to occur subsequent to program start (January 1, 1995). Today's amendment does not change either the adjusted rebuild schedule or the year of a switch from one PM level to another.

Today's amendment also includes a minor correction regarding the post-rebuild levels used for several year's TLF calculations. This correction to the regulation will prevent overly stringent TLF values for calendar years 1998, 1999, and 2000 (TLF_{98}, TLF_{99}, and TLF_{2000}, respectively) for operators of fleets having 1984 and/or 1985 model year buses, that otherwise might result from application of the original regulation promulgated on April 21, 1993. The original regulation incorrectly assigns post-rebuild levels, based on equipment certified by July 1996, to these two model year engines for the TLF calculations for calendar years 1998, 1999, and 2000. This assignment is not correct because it is not consistent with the adjusted rebuild schedule, which predicts that the 1984 and 1985 model year engines are rebuilt for the last time in 1995 and 1996, respectively. It therefore is not reasonable that the TLF calculations (for these three calendar years) reflect post-rebuild levels established after the last rebuilds of engines are assumed to occur. (Post-rebuild levels were lowered for many engine models based on equipment certified by July 1996.) Today's action corrects the regulation at § 85.1403(c)(1) so that the TLF calculations for these three calendar years use post-rebuild levels based on equipment certified by July 1, 1994, until any 1984 and 1985 model year engines in a fleet is assumed to be retired (see Figure 1).

In general, for TLF calculations, the post-rebuild level used for a particular engine in a fleet is the post-rebuild level effective at the time the engine is assumed to be rebuilt, according to the adjusted rebuild schedule. For the years subsequent to the assumed rebuild, the post-rebuild level remains unchanged until the next rebuild is predicted, at which point the same or a different post-rebuild level may be effective, depending on whether it has been revised. The TLF calculation for a given calendar year is based on engines no older than 15 years of age. (As noted previously, Option 2, as an averaging program, places no specific requirements on individual engines. As a result, the actual date that an engine is rebuilt is not relevant to TLF calculations.)

Additionally, due to today's amendment and for reasons analogous to those described in the preceding paragraphs, it is necessary to clarify what post-rebuild levels are used for calendar year 2000 and later. For fleets having any 1986, 1987, and 1988 model year engines, the TLF calculations must use the post-rebuild levels based on equipment certified by July 1, 1996, until the engines are assumed to be retired (see Figure 1). This is consistent with the adjusted rebuild schedule, which assumes 1986 model year engines are rebuilt for the last time in calendar year 1997 and, 1987 and 1988 model year engines are both assumed to be rebuilt for the last time in 1998. These model year engines cannot reasonably

be expected to be equipped subsequent to their last presumed rebuild, with equipment certified by July 1, 1998. Therefore, the TLF for year 2000 and later must be performed using post-rebuild levels that are in effect for these three model year engines during the year that the last rebuild is performed.

As a result, in accordance with the adjusted rebuild schedule, only engines of model year 1989 through 1993 are assumed to have rebuilds in 1999 or later. Engines assumed to be rebuilt in 1999 are the first that could employ applicable equipment certified by July 1, 1998. Therefore, only 1989 through 1993 model year engines may have revised post-rebuild PM levels based on equipment certified by July 1, 1998. The post-rebuild PM levels for only these engines may be more stringent (based on equipment certified by July 1, 1998) for calculating the TLFs for year 2000 and thereafter.

For purposes of calculating the TLF for each year of the program, section 85.1403(c)(1)(iv) of the regulation states when to use pre- or post-rebuild PM levels. Today's rule revises the chart at 40 CFR 85.1403(c)(1)(iv) to clarify which emissions levels are used for calculating the TLF for each year of the program (that is, whether to use the pre-rebuild PM level, or the post-rebuild level based on equipment certified by July 1, 1994; July 1, 1996; or July 1, 1998).

Figure 2 below is developed from Figure 1 and indicates what PM emissions level is used, for each model year engine in a fleet, to calculate the TLF for a given calendar year. Figure 2 is a pictorial representation of the chart at 40 CFR 85.1403(c)(1)(iv), and as such, indicates which emissions level to use—that is, whether to use the pre- rebuild level; or the post-rebuild level based on equipment certified by July 1, 1994; July 1, 1996; or July 1, 1998. For the purpose of calculating TLFs, the date at which the emissions level for each model year engine switches from one PM level to another is January 1st of the year following a rebuild assumed to occur (as shown in Figure 1) subsequent to program start (January 1, 1995). For example, for TLF_{2000}, only 1985 and later model year engines in a fleet are considered, all of which are assumed to be operating at an appropriate post-rebuild level. For TLF_{2000}, operators must use the post-rebuild levels based on equipment certified by July 1, 1994 (59 FR 45626, September 2, 1994) for any 1985 model year engines, the post-rebuild levels based on equipment certified by July 1, 1996 (61 FR 42764, August 16, 1996) for any 1986 through 1988, and 1991 through 1993 model year engines, and the post-rebuild levels based on equipment certified by July 1, 1998, for any 1989 and 1990 model year engines in their fleets.

As many followers of the Urban Bus Retrofit/Rebuild Program are aware, the Agency developed a computer spreadsheet (also known as "URBAN7.WK1") to assist operators by calculating TLFs and FLAs. With today's action, it becomes apparent for a couple reasons, that operators using URBAN7 may need to determine TLFs separately for several distinct time periods. First, and obvious, some TLFs cannot be determined until post-rebuild levels, based on equipment certified by July 1, 1998, are known. Second, due to limitations in spreadsheet design, URBAN7 accommodates only two PM emissions levels for each model year engine—a pre- rebuild level and one post-rebuild level. URBAN7 does not have provisions for the engine model years that have more than one post-rebuild level. (Some engines experience two assumed rebuilds during the program, each of which may have associated with it a different post-rebuild level.)

For such situations, the user must re-enter the post-rebuild levels for such engines, and "re-run" URBAN7 to determine the TLFs for the appropriate time period(s). It may be necessary to determine TLFs separately for several distinct periods, depending on fleet composition and post-rebuild levels based on equipment certified by July 1, 1998. Presently, given that post-rebuild levels have been established at two points in time (based on equipment certified by July 1, 1994, and July 1, 1996), URBAN7 can calculate the TLFs for calendar years 1996 through 1999. Once the post-rebuild levels based on equipment certified by July 1, 1998 are known, the TLFs for all periods can be calculated, although possibly not in one "run". The Agency will revise the instructions for URBAN7, but does not expect to revise the URBAN7 spreadsheet. Revised instructions will be made available upon request to the person listed above under **FOR FURTHER INFORMATION CONTACT.**

Irrespective of today's amendment, it is worthwhile to remind fleet operators that it becomes increasingly difficult to keep buses older than 15 years in their fleets, because the TLF for a particular calendar year is calculated without consideration of buses that are past 15 years of age. As a result, the TLF for a fleet becomes numerically zero (0.00) when the youngest pre-1994 model year engine is more than 15 years old. On the other hand, operators are able to retain bus engines older than 15 years that have been retrofit with equipment certified to the 0.10 g/bhp-hr standard or, that were originally certified to a 0.10 g/bhp-hr standard, because emissions from these buses are not included in the FLA.

FIGURE 1.—ADJUSTED REBUILD SCHEDULE

Engine model year	Calendar year															
	1993	1994	1995*	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
1993						R1			R2			R3				RETIRE
1992						R1					R3				RETIRE	
1991					R1					R3				RETIRE		
1990		R1					R2			R3			RETIRE			
1989		R1					R3					RETIRE				
1988	R1					R3					RETIRE					
1987			R2			R3				RETIRE						
1986		R2			R3				RETIRE							
1985	R2			R3				RETIRE								
1984			R3				RETIRE									
1983		R3				RETIRE										
1982	R3				RETIRE											
1981				RETIRE												
1980			RETIRE													
1979		RETIRE														

*January 1, 1995 is the start of the program.
R1, R2, R3 = First, second, and third engine rebuild, respectively.

FIGURE 2.—PM EMISSIONS LEVELS FOR TLF CALCULATIONS

Engine model year	"TLF-Year"															
	1993	1994	1995*	1996**	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
1993				pre	pre	pre	post [2]	post [2]	post [2]	post [3]	post [3]	post [3]	post [3]	post [3]	post [3]	post [3]
1992				pre	pre	pre	post [2]	post [2]	post [2]	post [2]	post [2]	post [3]	post [3]	post [3]	post [3]	
1991				pre	pre	post [2]	post [2]	post [2]	post [2]	post [2]	post [3]	post [3]	post [3]	post [3]		
1990				pre	pre	pre	pre	post [3]	post [3]	post [3]	post [3]	post [3]	post [3]			
1989				pre	pre	pre	pre	post [3]	post [3]	post [3]	post [3]	post [3]				
1988				pre	pre	pre	post [2]	post [2]	post [2]	post [2]	post [2]					
1987				post [1]	post [1]	post [1]	post [2]	post [2]	post [2]	post [2]						
1986				pre	pre	post [2]	post [2]	post [2]	post [2]							
1985				pre	post [1]	post [1]	post [1]	post [1]								
1984				post [1]	post [1]	post [1]	post [1]									
1983				pre	pre	pre										
1982				pre	pre											
1981				pre												
1980																
1979																

*January 1, 1995 is the start of the program.
**First "TLF-Year" of the program.
"pre" Pre-rebuild levels established in the final rule of April 21, 1993, pursuant to (c)(1)(iii)(A).
[1] Post-rebuild level established pursuant to (c)(1)(iii)(B), that is, based on equipment certified by July 1, 1994.
[2] Post-rebuild level established pursuant to (c)(1)(iii)(C), that is, based on equipment certified by July 1, 1996.
[3] Post-rebuild level established pursuant to (c)(1)(iii)(D), that is, based on equipment certified by July 1, 1998.

VI. Public Participation

A. Public Hearing

The NPRM of November 12, 1996, stated that EPA would hold a public hearing on the proposal on December 6, 1996 if any requests to testify were received by November 22, 1996. EPA received no requests.

B. Public Comment and Agency Response

In the NPRM of November 12, 1996, EPA solicited written comments on the proposed amendment and its effect on the Urban Bus Retrofit/Rebuild Program, transit operators and equipment manufacturers. In particular, EPA asked for comments on the need to add a third revision of post-rebuild PM levels, the timing of a third revision, the consistency of the amendment with the original regulations, the need to address the potential compliance loophole that may exist, how to ensure the same compliance loophole issue addressed by the amendment does not happen again, and any other aspects of the amendment.

EPA received comments on the NPRM from six parties, consisting of the Manufacturers of Emission Controls Association (MECA), New York State Department of Environmental Conservation (NYSDEC), and four equipment certifiers. The four certifiers are Detroit Diesel Corporation, Twin Rivers Technologies, Engelhard Corporation, and Johnson Matthey, Incorporated. All comments are available in the public docket at the above address. No comments were received from transit operators.

Four commenters support the proposal of November 1996 to amend the regulations: NYSDEC, MECA, Engelhard and Johnson Matthey. NYSDEC states that it is aware of upcoming changes to the National Ambient Air Quality Standard for particulate matter, and that today's amendment will help New York State in its efforts to maintain compliance with those air quality standards. MECA notes that the pace of certification activity under the program has not occurred within the time frame envisioned by EPA when it originally finalized the rule, that the proposed change is needed to ensure that the two compliance programs remain equivalent, and that the change is consistent with the intent of Congress.

Two equipment certifiers support the amendment. Engelhard believes that future revision to post-rebuild PM levels are necessary to maintain equivalence between the two program compliance options. Engelhard states that there is growing public concern about the health effects of diesel particulates, and applauds EPA's efforts in trying to ensure that the Urban Bus Program provides the maximum benefit and is equally applicable to all municipalities. Engelhard fully supports revisions to the post-rebuild PM levels that will ensure that the best available control technology is an option for urban transits operating under either compliance option.

JMI supports EPA's proposal to allow additional time for manufacturers to certify equipment that would influence compliance under Option 2, in order to eliminate the unintended, current disparity between Option 1 and Option 2. JMI also notes its submittal to EPA of an application to certify equipment (see 62 FR 4528; January 30, 1997) applicable to two engine models that complies with the 0.10 g/bhp-hr standard. JMI also states that additional testing is being conducted on other engine models, expected to be completed in 1997, and requests that EPA extend the program deadline for equipment certification to January 1, 1998, to allow for the broadest range of engine models to be included.

EPA expects equipment to be certified that will trigger the 0.10 g/bhp-hr standard for a large segment of the affected engine population. For example, EPA recently certified equipment manufactured by Engelhard (62 FR 12166; March 14, 1997) that triggers the 0.10 g/bhp-hr standard for 1979 through 1989 model year DDC 6V92TA MUI engines. Also, the above-noted comments received from JMI indicate its intent to certify equipment to this standard for these and additional DDC engines. Moreover, EPA is aware, through its review of confidential test plans, of two other equipment manufacturers intending to certify equipment to the 0.10 g/bhp-hr standard for these and other engine models. EPA discussed non-confidential information regarding the equipment of these two manufacturers (Turbodyne Systems Incorporated and A–55 Limited Partnership) during an EPA presentation at an American Public Transit Association Conference in Anaheim, California, on October 10, 1996. (An overview of the EPA presentation, dated October 10, 1996, is located in the public docket). Certification of these equipment cannot occur prior to July 1, 1997. As a result, EPA believes it appropriate to revise post-rebuild levels on equipment certified by July 1, 1998 instead of the July 1, 1997 date

proposed in the November 12, 1996 notice. The July 1998 date will permit a significant portion of the affected engine population to be covered and lessen the likelihood that an inequality will occur again in the future. In addition, use of July 1, 1998 as suggested by JMI, rather than January 1, 1998, allows bus operators to continue to calculate averages using full years, while remaining consistent with the six month lead time that has been used for the urban bus program.

Prospective equipment certifiers and transit operators should note that the "cut-off" date (July 1, 1998) does not preclude subsequent equipment certifications. Additionally, the cut-off date does not prevent any operator from using any equipment certified under the Urban Bus Program, to the extent the operator is otherwise in compliance with program requirements.

Detroit Diesel Corporation (DDC) and Twin Rivers Technologies, L.P. (TRT), provided comments in opposition to today's amendment. DDC comments that the amendment will retroactively and unfairly deny transit operators the compliance flexibility originally provided under the program. Specifically, DDC argues that some operators may have adopted an initial strategy of complying with both options until the post-rebuild PM levels were established based on equipment certified by July 1, 1996. Operators then may have taken irrevocable actions to pursue only Option 2 because of lower compliance costs due to TLFs assumed to be known and fixed. DDC states that an amendment would disadvantage these operators in three ways. First, rebuild costs would be increased if new, more costly equipment is certified. Second, operators would be unable to avoid unknown durability, reliability and operational issues that are likely to occur if equipment is certified without adequate field experience. Third, having relied on the existing rule, an operator's commitment to one option would now result in sacrificing the flexibility to continue compliance under the other option. DDC contends that all of this unfairly penalizes such operators.

With regard to the first concern, EPA agrees that rebuild costs for compliance will be increased if, or when, new equipment is certified, but this is entirely consistent with the original rule. It is an unmistakable expectation clearly spelled out in the final rule of April 21, 1993 that equipment triggering the 0.10 g/bhp-hr standard can be more expensive than equipment designed to reduce PM by 25 percent. For reasons explained in the 1993 final rule, EPA believed, and believes, that such extra costs are appropriate given the extra emissions reductions produced and given the requirements of the statute. The 1993 final rule contemplated that technologies for at least some engines would be certified to meet the 0.10 g/bhp-hr standard. Moreover, today's amendment merely helps assure that compliance Options 1 and 2 are equivalent. Today's amendment will result in no cost increase with respect to the cost evaluation of the original rule. Bus operators complying with Option 2 will still enjoy additional flexibility, because requirements of the option are not engine-specific.

DDC's second contention, that operators will be unable to avoid unknown durability, reliability and operational issues that are likely to occur if equipment is certified without adequate field experience, is not specifically related to either Option 1 or 2, or to this amendment. Generally speaking, these issues may be important for any equipment, and EPA continues to encourage equipment manufacturers, transit operators, and others, to address such concerns during the equipment certification process to assure that they are addressed. Durability, reliability, and operational issues can apply regardless of the standard to which equipment is designed. To the extent that such concerns arise after certification, the program regulations provide remedy in two ways. First, liability for durability of equipment is provided by the emissions warranties required to be provided by certifiers in accordance with 40 CFR 85.1409. Additionally, pursuant to 40 CFR 85.1413, EPA has authority to decertify equipment that fails to comply with 40 CFR 85.1405 through 85.1414.

The final contention noted by DDC, that operators having relied on the final rule and committing to one of the options may have sacrificed the flexibility to continue compliance under the other option, appears speculative. The **Federal Register** notice of August 16, 1996 (61 FR 42764) clearly provides notice that EPA was aware of potential inequality between the options and was considering appropriate action to ensure program integrity. In fact, the notice mentions the possibility of a rulemaking to add a third post-rebuild PM level revision (Id. at 42766).

Moreover, no transit operators have commented adversely to the NPRM, or claimed to have lost flexibility retroactively as a result of today's amendment. The final rule of April 21, 1993, states that an operator may switch between compliance options if it is in compliance with all requirements of the newly chosen option at all times since the beginning of the program. Today's amendment does not change this flexibility.

Twin Rivers Technologies, L.P. (TRT) states that the amendment is ill-advised and improper for several reasons. The following discussion presents each of these issues, and responds to each in turn. First, TRT indicates that the amendment will create a moving compliance target, and that the potential that no technology would be certified at 0.10 g/bhp-hr was "* * * a scenario completely envisioned by the rule's authors" and that "Program 1 and 2 disparity * * * is the very fabric of the program * * *".

EPA agrees that today's amendment will create a compliance target that is more variable than expected by the authors of the 1993 final rule. However, the amendment does not present operators using Option 2 with more rigorous compliance requirements, in the aggregate, than those presented to operators using Option 1. The two options were expected in the 1993 rule to provide equivalent emissions reductions. Today's amendment is fully consistent with that original intent, and follows the original expectation that Option 2 levels would be based on equipment certified to the emissions reduction and life cycle cost requirements of Option 1.

EPA never intended "flexibility" to include switching between two grossly unequal compliance options. Any contention that environmental disparity between the compliance options was envisioned by the final rule, or is the fabric of the program, is inaccurate. To the contrary, the very fabric of the urban bus program is that the two options provide equivalent emissions reductions, and today's amendment is intended to assure this. As stated in the preambles to both the original final rule (58 FR 21359; April 21, 1993) and the proposal preceding it (57 FR 33141; July 27, 1992), EPA bases its legal authority to develop an averaging program on meeting the statutory standard-setting test of reflecting "* * * the best retrofit technology and maintenance practices reasonably achievable" (section 219(d) of the Clean Air Act). In the absence of today's amendment, no clear authority for the averaging option exists. Therefore, today's amendment is consistent with the constraint that the fleet averaging option be equivalent, in terms of emission reductions, to the engine-specific option, and is completely appropriate given EPA's responsibilities under section 219(d) of the Clean Air Act.

Regarding the concern that the amendment raises serious issues among

transit operators, EPA does not believe this to be an accurate assessment. EPA notes that no transit operators commented on the amendment.

The second reason put forth by TRT is that the amendment is unfair because it deprives the soundly managed transit the benefit of selection of compliance option after completing the dual compliance necessary to exercise that right. Additionally, TRT states that the amendment "* * * is an egregious example of * * * ex post facto regulation", and is improper because it is inconsistent with regulatory law that require rules to be made on a prospective basis. TRT also notes the matter of fairness to equipment certifiers that have planned manufacturing and marketing around the regulation.

EPA recognizes that some transit operators may have maintained compliance with both options with intentions of making a selection based on equipment certified by July 1, 1996. The August 16, 1996 **Federal Register** notice revised post-rebuild PM levels, based on equipment certified by July 1, 1996, and also provided notice of the potential inequality between the compliance options and that EPA was considering appropriate action to ensure program integrity. Today's amendment ensures program integrity, but does not change the flexibility of the original rule. Operators, otherwise in compliance with both options, are not prevented from selecting to comply with only one of the options.

EPA disagrees with the claim that today's amendment constitutes "ex post facto" regulation or is improper, because the changes of the amendment solely effect the requirements of transit operators using Option 2 for TLFs calculated after 1999. No violations of the amendments promulgated today can occur prior to the year 2000. Nor would any of the requirements for rebuilds scheduled to be performed prior to 1999 be made more stringent because of these amendments. Moreover, the comment misapprehends EPA's responsibilities under the Act. EPA is permitted to amend its regulations in order to account for new developments. Moreover, such amendments are completely appropriate where, as here, failure to do so would lead to regulations that no longer meet the technology requirements of the statute. Today's amendments are fully consistent with the legislative requirement to use the "* * * best retrofit technology * * * reasonably achievable", and the original program design. The design of the original program accomplishes the legislative requirement by providing for equivalent emissions reductions from Option 1 and 2. Today's amendment assures that emissions reductions from the two options remain equivalent.

With regard to the matter of fairness to transit operators, EPA believes that selection between two compliance options that are not equivalent is not the proper test of "fairness". As discussed above, the intent of the original regulation is equivalent emissions reduction from both Option 1 and Option 2. The test for fairness, therefore, is relevant to switching between compliance options that are otherwise equivalent. Indeed, "fairness" would not exist in the absence of today's amendment to the program regulations, because the two compliance options would be clearly and significantly unequal in terms of emissions reductions and costs to operators.

With regard to the matter of fairness to equipment certifiers, the regulation is clear that one level of technology (that is, equipment certified to reduce PM by at least 25 percent) is meant to be superseded by a more effective technology (equipment certified to the 0.10 g/bhp-hr standard), if such technology is certified. Though equipment certifiers and transit operators may have different expectations of final fleet requirements based on this rule, such parties were always subject to possible changes in fleet requirements based on certification of 0.10 g/bhp-hr technology. That certification of such technology will be recognized in Option 2 two years later than originally expected is not a fundamental change in the possible outcomes regarding technology and fleet requirements that were always inherent in the retrofit/rebuild program. Finally, as discussed above, this amendment will only affect post-rebuild expected levels for bus engines manufactured in at most five model years. Moreover, more stringent post-rebuild levels for three of these model years (1991 through 1993) would not go into place until, at the earliest, TLF_{2002}.

Third, TRT notes EPA's assessments in the preamble to the original rulemaking that limiting the number of revisions of the post-rebuild levels is important to provide stability in the averaging program, and that having more than two revisions could lead to a "moving target" for operators. TRT expresses concern for continued revisions to post-rebuild levels in the future.

EPA recognizes the concern related to the "moving target" nature of several revisions. However, a revision based on equipment certified by July 1, 1998, will be only the second revision of substance, because no equipment was certified for the "first" revision. This "second" revision is necessary to maintain Option 2 equivalent to Option 1. EPA expects that the 0.10 g/bhp-hr standard will be triggered for a significant portion of the affected fleet by July 1, 1998. Therefore, there is not expected to be further need to revise post-rebuild levels subsequent to July 1, 1998.

Fourth, TRT indicates that there is no disparity in emissions reductions between the two options, and expresses the following several contentions in support of this point. Each is accompanied by EPA's response.

In support, TRT first suggests that if the post-rebuild level for only the 1979 through 1987 6V92TA engines are reduced from 0.30 to 0.10 g/bhp-hr, then TLFs for fleets with buses later than model year 1987 could increase after the year 2002, which could increase PM emissions. This suggestion is not persuasive for several reasons. First, it presumes that no technology will be certified for engines manufactured from 1988 through 1993, which is by no means certain. Second, if in fact technology is not certified for later engines, then this regulatory amendment will have little effect because, as explained above, Option 2 post-rebuild levels for engines manufactured prior to 1989 will not be affected by this amendment. Finally, TRT does not explain how lowering the target post-rebuild level (TLF) for even a subset of a fleet can ever increase actual emission levels (that is, the FLA) for the fleet, compared with the actual levels that would result from the fleet having to meet a less stringent target level. Reluctance to retire engines seems irrelevant to the target level calculation, because the emissions from any higher emitting engine, even one that is greater than fifteen years old, must be counted as part of a fleet's actual emissions, which will always create an incentive to retire more polluting buses, whether they are older or newer.

Also in support, TRT notes that only fleets that have maintained simultaneous Option 1 and Option 2 compliance can currently choose to comply with either Option 1 or 2 in the future. TRT believes that many fleets have most likely lost their ability to claim Option 2 compliance. (Therefore, few fleets are currently using Option 2.) EPA does not know the number of fleets complying with either or both options, and TRT provides no data or information in support of its statements. However, as stated above, EPA believes that today's amendment is necessary to assure equivalent reductions from both

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options and to maintain legal authority for the averaging option. Moreover, given the minimal requirements of Option 2 following the September 2, 1994 update, the notice in the August 16, 1996 update, and the short period between the August 16 update and the NPRM, it is unlikely that many operators would have lost this opportunity prior to the publication of the NPRM.

Also in support, TRT states that EPA misunderstands both the lack of action taken by Option 1 fleets to reduce emissions, and the many actions required by Option 2 fleets. TRT states that Option 2 actually provides no flexibility toward meeting the TLF. The TLF is never approached in a fleet using only Option 1 (regardless of the post-rebuild levels), because such fleets will rebuild less frequently, and might eliminate rebuilding, given the increased cost of complying with the 0.10 g/bhp-hr standard. TRT suggests that the retrofit/rebuild program is responsible for fleets reducing their engine rebuilds from once every seven years to less than half that rate. On the other hand, TRT claims that Option 2, by virtue of the calculations that determine TLFs based on specific assumed rebuild schedules, and retirement of engines at 15 years of age, will provide an ever increasing annual reduction in PM emissions. Option 2 reductions are not subject to the actual rebuild strategy of a fleet, but to the requirements of calculations that force a continual decrease in TLF with time. In summary, TRT claims that a compliant operator using Option 2 will generate greater emissions reduction than under Option 1. An operator using only Option 1 could conceivably create zero emissions reductions, regardless of the equipment certified.

EPA believes that TRT's perception of compliance under the two options is somewhat, but not entirely, accurate. Further, TRT provides no information to substantiate the statements regarding rebuild frequency. No fleet operators commented.

As discussed in the April 21, 1993 rulemaking, EPA understands that operators may eliminate some engine rebuilds, and move others forward or back in time in order to minimize costs associated with the cost of compliance with the urban bus program. The assumed rebuild schedule, a key factor of the calculations used by Option 2 operators, is "adjusted" to reflect the expectation that rebuild schedules may be changed. While EPA has only recently begun to audit fleet operators for compliance with program requirements, we have no information that fleet operators are not performing rebuilds.

Option 2 is designed to yield fleet-wide equivalent emissions reductions with Option 1 based on three factors: an adjusted engine rebuild schedule, the availability of certified technology, and an assumed retirement schedule. EPA estimated the impact of certified equipment technology (and incident costs) on the rebuild schedule of each particular model year of engine. The rebuild presumptions include elimination of some rebuilds for some model year engines, and moving other rebuilds, either forward in time or back, to postpone or avoid costs related to applying certified retrofit/rebuild equipment. Under either compliance option, engines can be kept in a fleet as long as desired. Under Option 1, if an engine is not retired, then rebuild or replacement cannot be postponed indefinitely. When rebuild or replacement occurs, compliance with the correct PM standard is required (which may include the 0.10 g/bhp-hr standard), regardless of when the standard has been triggered. For Option 2, the TLF calculation for a particular calendar year is based on engines 15 years of age and less. Therefore, the TLF for a fleet becomes numerically zero (0.00) when the youngest pre-1994 model year engine in the fleet is more than 15 years of age. Option 2 encourages, but does not require, retirement of engines at 15 years of age and greater. Engines that are older than 15 years and meet a 0.10 g/bhp-hr standard, do not influence the calculations for either the target level of the fleet (TLF) or the fleet level attained (FLA). In summary, EPA believes that the two compliance options will produce equivalent emissions reductions.

TRT's final comment is that, if EPA determines to provide additional time to certify equipment affecting Option 2, then the extension should be longer than January 1, 1998, based on TRT's appraisal of the amount of time necessary for certification.

This comment is consistent with a similar comment from JMI, and EPA agrees. With today's amendment, EPA will review equipment certified by July 1, 1998, and revise post-rebuild PM levels if necessary. A "July" date provides an operator using Option 2 with approximately 6 months to plan a rebuild strategy to be taken for the subsequent year.

VII. Environmental Impact

The environmental impacts expected to result from the retrofit/rebuild program are outlined in the final Regulatory Support Document (RSD) for the final rule of April 21, 1993 and can be found in public docket A–91–28 (see **ADDRESSES** section above). Today's amendment does not result in any additional emissions reductions beyond those outlined in the RSD. However, today's amendment will help ensure that these expected reductions are actually achieved by closing an unintended compliance loophole. If transit operators were allowed to take advantage of the loophole in the 1993 final rule, then PM reductions will not be achieved at the level EPA originally anticipated. In addition, to the extent that transit operators can avoid installing low-emitting technology on buses, such buses will not reflect the "best retrofit technology * * * reasonably achievable" as Congress required.

VIII. Economic Impact

Today's finalized amendment is expected to have no additional economic impact compared to the economic impact described in original regulations finalized on April 21, 1993. While failure to take today's final action could result in reduced costs for those transit operators that could take advantage of the loophole, no additional costs unaccounted for in the original regulations would be imposed on any transit operators as a result of today's action. In conjunction with the final rule of April 21, 1993, the costs associated with the program have previously been determined to be reasonable and the program to be cost-effective.

IX. Administrative Requirements

A. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents.

Subsequent to the final rule of April 21, 1993, EPA received OMB approval of the Information Collection Request (ICR) document having EPA ICR number 1702.01 and OMB ICR number 2060–0302. It is approved for use through July 31, 1997. That ICR document estimates the public reporting, record keeping, and testing burden for collecting information necessary to implement and oversee the Urban Bus Retrofit/Rebuild Program. The public burden is estimated to be a total of 7,214 hours, and includes estimates of time required of equipment manufacturers and transit operators. Equipment manufacturers are

required to establish and retain for a period of five years after equipment certification, information regarding the manufacturing and testing of retrofit equipment. This includes such information as production drawings, testing results and analysis, a description of quality control plans, and in-service data or analyses. Transit operators are required to maintain records concerning activities associated with retrofitting and rebuilding urban buses, such as reviewing program regulations, purchasing retrofit/rebuild equipment, engine rebuilds and replacement, and maintaining evidence showing compliance with the retrofit/rebuild program. Copies of the ICR document may be obtained from Sandy Farmer, Information Policy Branch (mail code 2136); EPA; 401 "M" Street SW, Washington DC, 20460, or by calling (202) 260–2740.

EPA is preparing an ICR document, to submit for OMB approval, that would continue information collection past the July 31, 1997 expiration date of the above-mentioned document. Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to: Chief, Information Policy Branch, EPA, 401 "M" Street S.W., Washington DC, 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC, 20503, marked "Attention: Desk Officer for EPA."

B. Impact on Small Entities

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

The urban bus operators affected by the program regulations are not small businesses. In addition, EPA determined that the original regulations of the Urban Bus Retrofit/Rebuild Program (58 FR 21359, April 21, 1993) did not have an adverse impact on a substantial number of small entities. Today's amendment does not impose any new costs above those included in the original rulemaking. Today's action will affect only a few businesses using the retrofit fleet averaging program and will likely have an effect solely on a small portion of the businesses' fleet. There may be benefit to those small business entities that manufacture retrofit/rebuild equipment, since urban bus operators may be required to use such equipment.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The order defines "significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal policy issues arising out of legal mandate, the President's priorities, or the principles set forth in the order.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Today's amendment contains no Federal mandates that result in expenditure by State, local, or tribal governments, in aggregate, or by the private sector, of $100 million in any one year. With the April 21, 1993 promulgation of the urban bus retrofit/rebuild regulations, EPA estimated that the nationwide cost would range from $2 million to $37 million per year, depending upon the year.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 85

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: March 19, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Part 85 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 85—[AMENDED]

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 85.1403 is amended by revising paragraph (c)(1)(iii)(B) introductory text, (c)(1)(iii)(C) introductory text, and (c)(1)(iv); removing paragraph (c)(1)(iii)(C)(*6*); and adding paragraph (c)(1)(iii)(D) to read as follows:

§ 85.1403 Particulate standard for pre-1994 model year urban buses effective at time of engine rebuild or engine replacement.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(B) For the TLF calculations as specified in paragraph (c)(1)(iv) of this section, post-rebuild particulate emissions levels for a specific engine model shall be equal to the following:

* * * * *

(C) For TLF calculations as specified in paragraph (c)(1)(iv) of this section, post-rebuild particulate emission levels

for a specific engine model shall be equal to the following:

* * * * *

(D) For TLF calculations as specified in paragraph (c)(1)(iv) of this section, post-rebuild particulate emission levels for a specific engine model shall be equal to the following:

(*1*) 0.10 g/bhp-hr, for any engine model (other than those indicated in paragraph (c)(1)(iii)(D)(*4*) of this section) for which equipment has been certified by July 1, 1998 as meeting the emission and cost requirements of paragraph (b)(1) of this section for all affected urban bus operators;

(*2*) For any engine model for which no equipment has been certified by July 1, 1998 as meeting the requirements of paragraph (b)(1) of this section for all affected urban bus operators, but for which equipment has been certified by July 1, 1996 as meeting the emission and cost requirements of paragraph (b)(2) of this section for all affected urban bus operators, the post-rebuild particulate emission level shall equal the lowest emission level (greater than or equal to 0.10 g/bhp-hr) certified by July 1, 1998 for any such equipment;

(*3*) For any engine model for which no equipment has been certified by July 1, 1998 as meeting the emission and cost requirements of paragraph (b)(1) or (b)(2) of this section, the post-rebuild particulate emission level shall equal the pre-rebuild particulate level;

(*4*) For any engine model with a pre-rebuild particulate level below 0.10 g/bhp-hr, the post-rebuild particulate emission level shall equal the pre-rebuild particulate level;

(*5*) Notwithstanding paragraph (c)(1)(iii)(D)(*3*) of this section, if by July 1, 1998, no equipment has been certified to meet the emission requirements of paragraph (b)(1) or (b)(2) of this section for any of the engine models listed in the table at paragraph (c)(1)(iii)(A) of this section, then the post-rebuild particulate levels shall be the pre-rebuild particulate levels specified in the table at paragraph (c)(1)(iii)(A) of this section; and

(*6*) Notwithstanding paragraph (c)(1)(iii)(D)(*3*) of this section, if by July 1, 1998, equipment has been certified to meet the emissions requirements of paragraph (b)(1) or (b)(2) of this section for any of the engine models listed in the table at paragraph (c)(1)(iii)(A) of this section, but no equipment has been certified by July 1, 1998 to meet the life-cycle cost requirements of paragraph (b)(1) or (b)(2) of this section, then the post-rebuild particulate levels shall be as specified in the following table:

Engine model	Model year sold	Pre-rebuild PM level (g/bhp-hr)	Post-rebuild PM level (g/bhp-hr)
DDC 6V92TA	1979–1987	0.50	0.30
	1988–1989	.30	.30
DDC 6V92TA DDECI	1986–1987	.30	.30
DDC 6V92TA DDECII	1988–1991	.31	.25
	1992	.25	.25
	1993 (no trap)	.25	.25
	1993 (trap)	.07	.07
DDC Series 50	1993	.16	.16
DDC 6V71N	1973–1987	.50	.50
	1988–1989	.50	.50
DDC 6V71T	1985–1986	.50	.50
DDC 8V71N	1973–1984	.50	.50
DDC 6L71TA	1990	.59	.59
	1988–1989	.31	.31
DDC 6L71TA DDEC	1990–1991	.30	.30
Cummins L10	1985–1987	.65	.46
	1988–1989	.55	.46
	1990–1991	.46	.46
Cummins L10 EC	1992	.25	.25
	1993 (trap)	.05	.05
Alternatively-fueled Engines	Pre-1994	.10	.10
Other Engines	Pre-1988	.50	.50
	1988–1993	(1)	(1)

(1) New engine certification level.

(iv) To determine which particulate (PM) emission level from paragraph (c)(1)(iii) of this section is used for a particular model year engine in a fleet for the TLF of a given calendar year, use the following table:

Model year of engine	Year for which TLF is being calculated	Particulate emission level (see § 85.1403(c)(1)(iii))
1993	1996–1998	Pre-Rebuild Level.[1]
	1999–2001	Post-Rebuild Level.[3]
	2002–thereafter	Post-Rebuild Level.[4]
1992	1996–1998	Pre-Rebuild Level.[1]
	1999–2003	Post-Rebuild Level.[3]
	2004–thereafter	Post-Rebuild Level.[4]
1991	1996–1997	Pre-Rebuild Level.[1]
	1998–2002	Post-Rebuild Level.[3]
	2003–thereafter	Post-Rebuild Level.[4]
1990	1996–1999	Pre-Rebuild Level.[1]
	2000–thereafter	Post-Rebuild Level.[4]
1989	1996–1999	Pre-Rebuild Level.[1]
	2000–thereafter	Post-Rebuild Level.[4]
1988	1996–1998	Pre-Rebuild Level.[1]

Model year of engine	Year for which TLF is being calculated	Particulate emission level (see § 85.1403(c)(1)(iii))
	1999–thereafter	Post-Rebuild Level.[3]
1987	1996–1998	Post-Rebuild Level.[2]
	1999–thereafter	Post-Rebuild Level.[3]
1986	1996–1997	Pre-Rebuild Level.[1]
	1998–thereafter	Post-Rebuild Level.[3]
1985	1996	Pre-Rebuild Level.[1]
	1997–thereafter	Post-Rebuild Level.[2]
1984	1996–thereafter	Post-Rebuild Level.[2]
Pre-1984	1996–thereafter	Pre-Rebuild Level.[1]

[1] The pre-rebuild PM level established in paragraph (c)(1)(iii)(A) of this section.
[2] The post-rebuild PM level established pursuant to paragraph (c)(1)(iii)(B) of this section.
[3] The post-rebuild PM level established pursuant to paragraph (c)(1)(iii)(C) of this section.
[4] The post-rebuild PM level established pursuant to paragraph (c)(1)(iii)(D) of this section.

* * * * *

[FR Doc. 98–7767 Filed 3–25–98; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

[FTR Amendment 71]

RIN 3090–AG48

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 1998 RIT allowance to be paid to relocating Federal employees.

DATES: This final rule is effective January 1, 1998, and applies for RIT allowance payments made on or after January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Calvin L. Pittman, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: This amendment provides the tax tables necessary to compute the relocation income tax (RIT) allowance for employees who are taxed in 1998 on moving expense reimbursements.

The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR part 302–11 is amended to read as follows:

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302–11 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

2. Appendixes A, B, C, and D to part 302–11 are amended by adding the following tables at the end of each appendix, respectively:

Appendix A to Part 302–11—Federal Tax Tables For RIT Allowance

* * * * * * *

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1997

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1997.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,067	$32,674	$12,963	$46,966	$16,798	$59,856	$8,702	$29,669
28	32,674	71,647	46,966	104,632	59,856	123,931	29,669	62,023
31	71,647	141,006	104,632	161,381	123,931	180,221	62,023	92,072
36	141,006	288,900	161,381	293,567	180,221	299,695	92,072	152,835
39.6	288,900	.....	293,567	.....	299,695	.....	– 152,835	.....

Appendix—B to Part 302–11—State Tax Tables for RIT Allowance

* * * * * * *

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State Marginal Tax Rates by Earned Income Level—Tax Year 1997

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1997.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column.[1 2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & over
Alabama	5	5	5	5
Alaska	0	0	0	0
Arizona	2.9	3.3	3.9	5.17
Arkansas	4.5	7	7	7
If single status [3]	4	7	7	7
California	2	4	6	9.3
If single status [3]	4	9.3	9.3	9.3
Colorado	5	5	5	5
Connecticut	3	4.5	4.5	4.5
If single status [3]	4.5	4.5	4.5	4.5
Delaware	5.8	6.9	6.9	6.9
District of Columbia	8	9.5	9.5	9.5
Florida	0	0	0	0
Georgia	6	6	6	6
Hawaii	6	9.5	10	10
If single status [3]	9.5	10	10	10
Idaho	7.8	8.2	8.2	8.2
Illinois	3	3	3	3
Indiana	3.4	3.4	3.4	3.4
Iowa	6.8	7.55	9.98	9.98
If single status [3]	7.2	8.8	9.98	9.98
Kansas	3.5	6.25	6.25	6.45
If single status [3]	4.4	7.75	7.75	7.75
Kentucky	6	6	6	6
Louisiana	2	4	4	6
If single status [3]	4	4	6	6
Maine	4.5	7	8.5	8.5
If single status [3]	8.5	8.5	8.5	8.5
Maryland	5	5	5	5
Massachusetts	5.95	5.95	5.95	5.95
Michigan	4.4	4.4	4.4	4.4
Minnesota	6	8	8	8.5
If single status [3]	8	8	8.5	8.5
Mississippi	5	5	5	5
Missouri	6	6	6	6
Montana	6	9	10	11
Nebraska	3.65	5.24	6.99	6.99
If single status [3]	5.24	6.99	6.99	6.99
Nevada	0	0	0	0
New Hampshire	0	0	0	0
New Jersey	1.4	1.75	2.45	6.37
If single status [3]	1.4	3.50	5.525	6.37
New Mexico	3.2	6	7.1	8.5
If single status [3]	6	7.1	7.9	8.5
New York	4	5.9	6.85	6.85
If single status [3]	5.9	6.85	6.85	6.85
North Carolina	6	7	7	7.75
North Dakota	6.67	9.33	12	12
If single status [3]	8	10.67	12	12
Ohio	2.853	4.279	4.993	7.201
Oklahoma	4	7	7	7
If single status [3]	7	7	7	7
Oregon	9	9	9	9
Pennsylvania	2.8	2.8	2.8	2.8
Rhode Island	27.5	27.5	27.5	27.5
(Rhode Island—See Footnote 4)				
South Carolina	7	7	7	7
South Dakota	0	0	0	0
Tennessee	0	0	0	0
Texas	0	0	0	0
Utah	7	7	7	7
Vermont	25	25	25	25

Marginal tax rates (stated in percents) for the earned income amounts specified in each column.[1 2]

State (or district)	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & over
(Vermont—See Footnote 5)				
Virginia	5	5.75	5.75	5.75
Washington	0	0	0	0
West Virginia	4	4.5	6	6.5
Wisconsin	6.55	6.93	6.93	6.93
Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island is 27.5 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[5] The income tax rate for Vermont is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

Appendix C to Part 302–11—Federal Tax Tables for RIT Allowance—Year 2

* * * * *

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1998

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, or 1997.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,229	$33,530	$12,964	$48,232	$16,858	$61,069	$8,685	$30,351
28	33,530	73,135	48,232	109,311	61,069	126,880	30,351	63,863
31	73,135	145,648	109,311	177,378	126,880	184,945	63,863	92,550
36	145,648	299,410	177,378	321,683	184,945	308,061	92,550	152,715
39.6	299,410	.....	321,683	.....	308,061	.....	152,715	.....

Appendix D to Part 302–11—Puerto Rico Tax Tables for RIT Allowance

* * * * *

Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 1997

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate	Single filing status		Any other filing status	
Percent	Over	But not over	Over	But not over
12	.....	.....	.....	$25,000
18	.....	$25,000	.....	.....
31	$25,000	50,000	$25,000	50,000
33	50,000	.....	50,000	.....

Dated: March 10, 1998.

Thurman M. Davis, Sr.,

Acting Administrator of General Services.

[FR Doc. 98–7830 Filed 3–25–98; 8:45 am]

BILLING CODE 6820–34–P

VOL 63 ISS 58 MR 26 1998 UMI

DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 97–D323]

Defense Federal Acquisition Regulation Supplement; Comprehensive Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect revisions made to the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. The revisions to the test program implement Section 822 of the National Defense Authorization Act for Fiscal Year 1998.

DATES: *Effective Date:* March 26, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 26, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97–D323 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D323 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 219.702 to reflect revisions made to the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. The revisions to the test program implement Section 822 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 822 extends, from September 30, 1998, to September 30, 2000, the expiration date for the test program; and provides for use of comprehensive subcontracting plans by participating contractors that are performing as subcontractors under DoD contracts.

The revised DoD test plan is published in the Notices section of this issue of the **Federal Register**.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses are exempt from subcontracting plan requirements, and the rule does not change the obligation of large business concerns to maximize subcontracting opportunities for small business concerns. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D323 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim DFARS rule reflects changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as required by Section 822 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 822 was effective upon enactment on November 18, 1997. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 219 is amended as follows:

1. The authority citation for 48 CFR Part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

2. Section 219.702 is amended by revising paragraphs (a)(i) and (ii) to read as follows:

219.702 Statutory requirements.

(a) * * *

(i) The test program—

(A) Will be conducted—

(*1*) From October 1, 1990, through September 30, 2000;

(*2*) In accordance with the DoD test plan, "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans"; and

(*3*) By the military departments and defense agencies through specifically designated contracting activities; and

(B) Permits contractors selected for participation in the test program by the designated contracting activities to—

(*1*) Negotiate plant, division, or company-wide comprehensive subcontracting plans instead of individual contract subcontracting plans; and

(*2*) Use the comprehensive plans when performing any DoD contract or subcontract that requires a subcontracting plan.

(ii) During the test period, comprehensive subcontracting plans will—

(A) Be negotiated on an annual basis by the designated contracting activities;

(B) Be incorporated by the contractors' cognizant contract administration activity into all of the contractors' active DoD contracts that require a plan;

(C) Be accepted for use by contractors participating in the test, whether performing at the prime or subcontract level; and

(D) Not be subject to application of liquidated damages during the period of the test program (Section 402, Pub. L. 101–574).

[FR Doc. 98–7708 Filed 3–25–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 97–D320]

Defense Federal Acquisition Regulation Supplement; Limitation on Allowability of Compensation for Certain Contractor Personnel

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove certain limitations on individual compensation costs for contractor personnel, as a result of changes made to the Federal Acquisition Regulation in Federal Acquisition Circular 97–04 on February 23, 1998.

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT:

Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D320.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Part 231 to remove certain limitations on individual compensation costs for contractor personnel. Section 31.205–6, paragraph (p), of the Federal Acquisition Regulation, as amended by Item XIII of Federal Acquisition Circular 97–04 (63 FR 9066, February 23, 1998), contains the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D320 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205–6 [Amended]

2. Section 231.205–6 is amended by removing paragraphs (a)(2)(i)(A) through (a)(2)(ii)(B).

231.303 [Amended]

3. Section 231.303 is amended by removing paragraph (3), and by redesignating paragraph (4) as paragraph (3).

231.603 [Amended]

4. Section 231.603 is amended by removing paragraph (1), and by removing the paragraph (2) designation.

231.703 [Amended]

5. Section 231.703 is amended by removing paragraph (1), and by removing the paragraph (2) designation.

[FR Doc. 98–7710 Filed 3–25–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AE83

Endangered and Threatened Wildlife and Plants; Proposed Reclassification From Endangered to Threatened Status for the Mariana Fruit Bat From Guam, and Proposed Threatened Status for the Mariana Fruit Bat From the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes reclassification from endangered to threatened status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Mariana fruit bat (*Pteropus mariannus mariannus*) from Guam, and threatened status pursuant to the Act for the Mariana fruit bat from the Commonwealth of the Northern Mariana Islands (CNMI). This subspecies is restricted to the Mariana archipelago, comprised of the Territory of Guam and the CNMI. The Mariana fruit bat is listed as endangered on Guam, and the populations on the southern islands of the CNMI (Aguijan, Tinian, and Saipan) are candidates for listing. Recent evidence suggests that inter-island movement between Guam and other islands throughout the archipelago is not a rare event; hence, the Mariana fruit bats on Guam are no longer believed to represent a population distinct from those in the CNMI. Similarly, the populations of Aguijan, Tinian, and Saipan are not believed to be distinct from one another or from populations on other islands in the archipelago. Therefore, for the purposes of this proposed rule, all Mariana fruit bats in the Mariana Island archipelago are considered to represent one population. Mariana fruit bats are known from all of the islands of the Mariana archipelago, and throughout this range they are threatened by illegal hunting, degradation and loss of habitat from feral animals and through the development of forested areas, the potential for extinction of subpopulations from naturally occurring events such as typhoons, and predation by the brown tree snake. This proposal, if made final, would implement the protection provisions provided by the Act.

DATES: Comments from all interested parties must be received by May 26, 1998. Public hearing requests must be received by May 11, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to Brooks Harper, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor-Endangered Species, Pacific Islands Office, at the above address (telephone 808/541–3441, FAX 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Mariana Islands archipelago consists of the 15-island Commonwealth of the Northern Mariana Islands (CNMI) and the Territory of Guam. Both are within the jurisdiction of the United States. This archipelago extends 466 miles (750 kilometers (km)) from 13°14′N, 144°45′W and 20°3′N, 144°54′W and is approximately 932 miles (1,500 km) east of the Philippine Islands. The ten northern islands are volcanic, while the five southern islands are uplifted coral limestone plateaus with volcanic outcrops. Mariana fruit bats have historically inhabited all of these islands. The largest southern islands (Guam, Rota, Tinian, and Saipan) are occupied by approximately 160,000 people.

The northern islands (north of Saipan) are either unoccupied or support just a few families. The climate is tropical, with daily mean temperatures of 75 to 90° Fahrenheit (24 to 32° Celsius), high humidity, and average annual rainfall of 78 to 103 inches (in) (200 to 260 centimeters (cm)). Typhoons may strike the Mariana Islands during any month of the year, but are most frequent between July and October.

The Mariana fruit bat is a medium-sized fruit bat in the family Pteropididae weighing 330 to 577 grams (0.66 to 1.15 pounds) and has a forearm length ranging from 13.4 to 15.6 cm (5.3 to 6.1 in); males are slightly larger than females. The underside (abdomen) is colored black to brown, with gray hair interspersed, creating a grizzled appearance. The shoulders (mantel) and sides of the neck are usually bright golden brown, but may be paler in some individuals. The head varies from brown to dark brown. The well-formed and rounded ears and the large eyes give a canine-like appearance; members of the pteropodid bat family are often referred to as flying foxes.

The taxonomic status of fruit bats in Micronesia and the western Pacific is not clearly understood, nor is there a consensus regarding the taxonomic classification of island or island group populations. Andersen (1912), one of the first to examine Pacific Pteropidids, recognized several species in the genus *Pteropus*, including *mariannus*, *pelewensis*, *yapensis*, *ualanus*, *loochooensis*, *vanikorensis*, *tonganus*, and *geddiei*. Subsequently, Kuroda (1938) combined several of these, and recognized seven subspecies under *Pteropus mariannus* including *mariannus*, *pelewensis*, *yapensis*, *ulanus*, *ulthiensis*, *paganensis* and *loochooensis*, but Corbet and Hill (1980) recognized *mariannus*, *pelewensis*, *yapensis*, *ulanus*, and *loochooensis* as distinct species. In contrast, Honacki *et al.* (1982) included those five species under *Pteropus mariannus*. Nowak and Paradiso (1983) elevated *yapensis*, *pelewensis*, and *ualanus* to species. Corbet and Hill (1986, 1991) reversed their previous classification (Corbet and Hill 1980), following instead Honacki *et al.* (1982), and also placed those bats under *Pteropus mariannus*. Nowak (1991) elevated several populations to species level, listing *pelewensis*, *yapensis*, *ualanus*, *mariannus*, *vanikorensis*, and *tonganus* as distinct species. Pierson and Rainey (1992) largely followed Kuroda (1938), recognizing seven subspecies under *Pteropus mariannus*. Similarly, Koopman (1993) includes those bats under *Pteropus mariannus*, electing not to elevate them to the specific level. Flannery (1995) was oddly inconsistent, considering *mariannus*, *loochooensis*, *paganensis*, *and ulthiensis* as subspecies, but elevating *pelewensis*, *ualanus*, and *yapensis* to full species. Finally Nowak (1994) again presented his earlier treatment found in Nowak (1991), elevating five island or island group populations to the species level.

In general, the taxonomic revisions proposed since Andersen (1912) have not been based on any rigorous examination of specimens of the taxa in question and, often, these changes are presented without comment or justification. Ultimately, the taxonomic revisions presented above represent the professional opinions of the authors, and serve to illustrate the considerable uncertainty regarding the taxonomic status of many of the western Pacific bat species.

Following the taxonomic treatments of Koopman (1993) and Pierson and Rainey (1992), *Pteropus mariannus* (Desmarest 1822) is a widely dispersed species occurring north of the equator in portions of Micronesia north to the Japanese Ryukyu Islands, and is represented by seven subspecies. Two of these are restricted to the Mariana Islands—the Mariana fruit bat (*Pteropus mariannus mariannus*), and the Pagan fruit bat (*Pteropus mariannus paganensis*). These two subspecies, together with two other bat species, the little Mariana fruit bat (*Pteropus tokudae*), federally listed as endangered on Guam on August 27, 1984 (49 FR 33881), but now thought to be extinct, and the sheath-tailed bat (*Emballonura semicaudata*), a candidate for Federal listing on September 19, 1997 (62 FR 49398), in the CNMI, are the only non-marine mammals native to the Mariana Islands.

The taxonomic status of the Pagan fruit bat is not fully resolved. Yamashina (1932) collected three males and one female from the islands of Pagan and Alamagan in 1931, and stated that "This species, as compared to the *Pteropus mariannus mariannus* that inhabit Guam, is distinctly darker in coloration, having brownish wings." He made no further comparisons, and thus this subspecific distinction is based on an equivocal interpretation of the coloration of four specimens. He also considered a "species" of bat "which falls in between this new species (*paganensis*) and that which inhabits Guam" to occur on Saipan and Rota. However, it is currently accepted that the bats on Rota, Tinian, Aguijan (= Aguiguan), Saipan, and Guam are referable to *Pteropus mariannus mariannus*. The subspecific status of bats found on the islands between Saipan and Alamagan (Farallon de Mendinilla, Anatahan, Sariguan, and Guguan), and north of Pagan (Agrihan, Asuncion, Maug, and Uracus) is not known, and bat populations on these islands have not been assigned to subspecies.

The slight morphological differences used to distinguish *Pteropus mariannus paganensis* from *Pteropus mariannus mariannus* is attributable to natural variation that occurs not only between islands, but within individual island populations (T. Lemke, Montana Department of Fish, Wildlife, and Parks, *in litt.* 1986; D. Worthington, USFWS Honolulu, pers. obs.). Thus, the Pagan fruit bat is probably not distinct from the Mariana fruit bat (Pierson and Rainey 1992; G. Wiles, Guam Division of Aquatic and Wildlife Resources, pers. comm. 1997; Worthington and Taisacan 1996), particularly in light of the strong evidence that suggests that movement between islands is not a rare event (Wiles and Glass 1990). Until this taxonomic question is resolved, and given the high degree of similarity between these subspecies, it makes little biological sense to consider *Pteropus mariannus paganensis* as distinct from *Pteropus mariannus mariannus*. Similarly, the unassigned bats found north of Saipan are most appropriately referable to *Pteropus mariannus mariannus*.

The status of the Mariana fruit bat prior to the 20th century is unknown. In 1920, the sight of fruit bats was considered to be "not * * * uncommon" on Guam (Crampton 1921). By 1931, Coultas (1931) stated that bats were uncommon on Guam, possibly due to the introduction of firearms. Woodside (1958) estimated the Guam population to number 3,000. This number had dropped to between 200 and 750 animals by 1995, in part due to the introduction of the brown tree snake (*Boiga irregularis*) (Wiles 1996, Wiles *et al.* 1995). G. Wiles (pers. comm. 1997) observed between 300 and 350 bats on Guam during March 1997. Bat subpopulations on Aguijan, Saipan, and Tinian were not surveyed prior to the 1970's. Subsequent observations suggest that these subpopulations have been small, with only 25 to 125 bats observed on each island (Lemke 1984, Wiles 1996, Worthington and Taisacan 1996). In 1995, between 100 and 125 bats were believed present on Aguijan (Wiles 1996). A colony of approximately 35 bats was seen on Saipan in 1995, the largest colony seen there in a decade (Worthington and Taisacan 1996). Recent observations on Tinian indicate that although fruit bats are occasionally

seen, their residence status is uncertain (Marshall *et al.* 1995). On Rota, bat numbers have declined from an estimated 2,400 animals before Typhoon Roy in 1988 to just under 1,000 in 1996 (Worthington and Taisacan 1996). The Rota population is apparently stable, but poaching continues to be a serious problem (Worthington and Taisacan 1996). The bats from Rota are believed to move among the southern islands, and this population is considered to be critical to the long-term stability of fruit bats in the Mariana Islands (Wiles and Glass 1990).

The relatively isolated northern islands have not been surveyed as frequently as the southern islands. In 1983, a minimum of 7,450 bats were documented during an expedition to the islands north of Saipan (Anonymous 1984, Wiles *et al.* 1989). Rice and Taisacan (1993) reported that between 1988 and 1992, bats were seen commonly on all northern islands except Farallon de Medinilla, Maug, and Uracus, although bats are known to occur on these islands. Observations during these years were incidental and Rice and Taisacan (1993) suggested no changes be made to the 1983 estimates. A survey of Anatahan in 1995 found approximately 2,000 animals (Marshall *et al.* 1995), and T. Sutterfield (U.S. Navy, Hawaii, *in litt.* 1997) observed two fruit bats roosting in low shrubs on Farallon de Mendinilla in December 1996.

The Mariana fruit bat is highly colonial, forming colonies of a few to over 800 animals (Pierson and Rainey 1992, Wiles 1987a, Worthington and Taisacan 1995). The bats group themselves into harems (one male and two to 15 females) or bachelor groups (predominately males), or reside as single males on the edge of the colony (Wiles 1987a). On Guam, the sex ratio in a single colony was observed to vary from 37.5 to 72.7 males per 100 females (Wiles 1982).

Reproduction is believed to occur throughout the year in *Pteropus mariannus yapensis* on Yap (Falanruw 1988) and in *Pteropus mariannus mariannus* on Guam (Wiles 1987a). Mating and the presence of nursing young have been observed year-round on Guam (Perez 1972, Wiles 1983) with no apparent peak in births (Wiles 1987a). Glass and Taisacan (1988) suggested a similar pattern on Rota, but also indicated that a peak birthing season may occur during May and June, as has been observed in other pteropodid bats (Pierson and Rainey 1992). Female bats of this family generally have one young per year (Pierson and Rainey 1992), and observations on Guam between July 1982 and May 1985 found 262 female bats each with a single young (USFWS 1990). This reproductive rate, very low for a mammal of this size, results in a slow recovery rate when populations are reduced in numbers (Pierson and Rainey 1992). Length of gestation and age of sexual maturity is unknown for the Mariana fruit bat, but other related bats have a gestation period of approximately 4.6 to 6.3 months (Pierson and Rainey 1992). Female Mariana fruit bats on Guam may be able to breed as soon as 6 to 18 months of age (USFWS 1990), but sexual maturity in pteropodid bats usually does not occur until the bats are 18 to 24 months old (Pierson and Rainey 1992).

Native forest is the primary habitat required by the Mariana fruit bat, although some introduced plant species can provide roosting and feeding resources. Fruit bats are important in tropical forests because they naturally disperse plant seeds and thereby help maintain forest diversity and contribute to plant recovery after typhoons and other catastrophic events (Cox *et al.* 1992). Mariana fruit bats forage and roost primarily in native forest, and occasionally in coconut groves and strand vegetation (Wiles 1987b, Worthington and Taisacan 1996). Wiles (1987b) described six bat roost sites on Guam, all within native limestone forest. Major roost trees included *Ficus* sp. and *Neisosperma oppositifolia*. On Rota, fruit bats used primary and secondary limestone forest for roosting and foraging (Glass and Taisacan 1988). At least nine tree species were used for roosting including *Elaeocarpus sphaericus, Macaranga thompsonii, Guamia speciosa, Hernandia* sp., *Artocarpus mariannensis, Ficus prolixia, Barringtonia asiatica, Randia cochinchinensis,* and introduced *Theobroma cacao* (Glass and Taisacan 1988). A small bat colony also was observed roosting in *Casuarina equisetifolia* on Aguijan Island (Worthington and Taisacan 1996). At least 22 plant species are used as food sources by the Mariana fruit bat. Food items include the fruits of 17 species of plants, especially native *Artocarpus mariannensis, Artocarpus altilis, Cycas circinalis, Ficus* spp., *Pandanus tectorius, Terminalia catappa,* and introduced *Carica papaya;* the flowers of seven plants, including native *Ceiba peritandna, Erythrina variegata,* and introduced *Cocos nucifera;* and leaf, stems and twig tips of *Artocarpus* spp. (USFWS 1990, Wiles 1987a).

Most of the known fruit bat roost sites in the Mariana Islands are located on public lands. On Guam, the remaining roost and nearly all fruit bat foraging habitat is found on U.S. military and Government of Guam lands. There is no U.S. Government-owned land in the CNMI; all public lands are administered by the CNMI government. Saipan has little public land that is not leased and developed, but a few areas still support native forest that are occasionally used by fruit bats. Tinian has large tracts of public land that contain small stands of native forest suitable for bats, and a large portion of public land on the northern end of the island is under lease to the U.S. Department of the Navy (Navy) for military activities. All of the land on Aguijan is publicly owned. Approximately 60 percent of the land on Rota is publicly owned, although much of this has been leased to private individuals. The primary roosting areas on Rota are on public lands; however, some private lands still retain native limestone forest that can support bats. The northern islands are mostly public lands, with some land developed as small homestead lots. Farallon de Mendinilla is currently leased to the Navy as a bombardment range.

The movement of bats among the islands is an aspect of their biology that is critical to conservation. The August 27, 1984, Federal listing (49 FR 33881) of fruit bats resident on Guam was based on the assumption that these bats formed a separate population segment distinct from the bats found in the CNMI. Recently, biologists in the Mariana Islands have gathered evidence indicating that movement of bats among the Mariana Islands links these colonies as a single population. Wiles and Glass (1990) indicated that bats fly between the islands of Guam and Rota, and the ephemeral nature of bat colonies on the islands of Tinian and Aguijan, which are close to one another and to Saipan, makes it likely that inter-island travel also occurs between these islands (Worthington and Taisacan 1996). Information on the movement of bats in the northern islands is limited, but inter-island transit among these islands and to the southern islands probably occurs annually (Wiles *et al.* 1989, Worthington and Taisacan 1996, G. Wiles, pers. comm. 1997). For the purposes of conservation, individual island subpopulations of fruit bats in the Mariana Islands should be considered as one contiguous population (Lemke 1986, USFWS 1990, Wiles and Glass 1990, Worthington and Taisacan 1996).

Previous Federal Action

A status review of the Mariana fruit bat was initiated on May 18, 1979 (44 FR 29128). On August 27, 1984, the

Service listed the Guam population of Mariana fruit bats as endangered (49 FR 33881). On March 4, 1986, the Service received a petition dated February 24, 1986, from Dr. Thomas O. Lemke, that requested determination of endangered status for all remaining subpopulations of the Mariana fruit bat.

The Service published a 90-day finding on the petition on January 21, 1987 (52 FR 2239), announcing that substantial information to list the Mariana fruit bat as endangered had been presented in the petition and that the requested action may be warranted. On July 7, 1988, the Service published a 12-month finding in the **Federal Register** (53 FR 25511) announcing that the petitioned action request for a determination of endangered status with respect to Mariana fruit bat populations resident on the islands of Aguijan, Tinian, and Saipan was warranted but precluded by other pending listing proposals of higher priority. The Service also determined in this finding that listing was not warranted for fruit bats resident on Rota, Asuncion, Guguan, and the other northern islands, because these colonies were adequately protected by existing hunting restrictions or by the inaccessibility of the locations of the colonies by hunters (53 FR 25513). However, new information compiled since the publication of the finding on July 7, 1988, indicates that listing is now warranted for the Mariana fruit bats resident in the CNMI, and that reclassification from endangered to threatened is warranted for the fruit bats on Guam. The new information concerning threats, populations, distribution and movement, and taxonomy has been incorporated into this proposed rule. This proposed rule constitutes the final 12-month finding on the petition to list the Mariana fruit bat.

Fruit bats found on Aguijan, Tinian, and Saipan are currently identified as candidates for listing in the notice of review for animal and plant taxa published in the **Federal Register** on September 19, 1997 (62 FR 49401).

On October 22, 1987, *Pteropus mariannus* was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Continuing declines in bat populations resulted in the reclassification of *Pteropus mariannus* to Appendix I of CITES on January 18, 1990 (54 FR 51432).

The processing of this proposed rule conforms with the Service's fiscal year (FY) 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond FY 1997 until such time as new guidance is published. The FY 1997 guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and (2) the restoration of significant funding for listing through enactment of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority to resolving the listing status of outstanding proposed listings (Tier 2). A lower priority is assigned to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered (Tier 3). The lowest priority is given to processing critical habitat determinations, delistings, and other reclassifications (Tier 4). The guidance also states that "effective April 1, 1997, the Service will concurrently undertake all of the activities included in Tiers 1, 2, and 3" (61 FR 64480).

Processing of this proposed rule is a Tier 3 activity. The proposed rule effects a downlisting of the Mariana fruit bat on Guam, which action, taken by itself, would be a Tier 4 activity. However, based on the new information discussed above, the Service believes it is biologically inappropriate to consider fruit bats on each island as distinct populations, and the Service believes that the fruit bats in the Mariana Islands should be managed as one population. In addition, the Service can effect the downlisting of the Mariana fruit bat on Guam with little or no additional time and expense in conjunction with proposing the entire range of the species for listing as threatened, while a separate action to downlist the species with respect to Guam at some future date would require the expenditure of additional resources. Therefore, in the interests of (1) efficiency in allocating its scarce resources and (2) biological and management consistency, the Service will include the downlisting of the Mariana fruit bat on Guam as a part of this Tier 3 activity. This treatment is consistent with the purpose of the current listing priority guidance. *See* 61 FR 64479 (discussing inclusion of withdrawals of proposed rules in Tier 2). Furthermore, the downlisting will not reduce the protection afforded under the Act to Mariana fruit bats on Guam.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mariana fruit bat (*Pteropus mariannus mariannus*) (=Mariana flying fox) in the Mariana Islands are listed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Prior to 1500 B.C., the Mariana Islands were mostly forested (Fosberg 1960). Following that date, human occupation by the indigenous Chamorro and subsequent administration under Spain, Germany, Japan, and the United States have resulted in a continual degradation of fruit bat habitat on all of the southern Mariana Islands and some of the northern islands.

During the Japanese occupation, extensive removal of native forests for the development of sugar cane was greatly accelerated on the southern islands. These fields covered almost all of Tinian and much of Aguijan, Saipan, and Rota (Fosberg 1960). During and after World War II, military activities resulted in dramatic reductions in fruit bat habitat on Guam, Tinian, and Saipan. During this period, open agricultural fields and other areas prone to erosion were seeded with tangantangan (*Leucaena leucocephala*) (Fosberg 1960). Tangantangan grows as low to moderate stature, single-species stands with no substantial understory. Native forest cannot take root and grow where this alien tree has become established (Craig 1993), preventing regeneration of fruit bat habitat.

On Guam, human land development and feral animals have altered most of the native vegetation of the island. Probably no more than 30 percent of Guam's land area is covered by native limestone and ravine forest, with federally owned lands in northern Guam representing the largest contiguous areas. Other Federal, Government of Guam, and some private lands also possess forested areas that represent adequate habitat for bats (G. Wiles, pers. comm. 1997). Due to the

anthropogenic impacts discussed previously, most of Saipan's native forest has been replaced by mixed second growth forests, savanna grasslands, and dense thickets of tangantangan (Falanruw *et al.* 1989). By 1982, vegetation mapping revealed that just five percent of native forest remained on Saipan and Tinian (Engbring *et al.* 1986). This remaining forest continues to be threatened by possible development. Although 47 percent of the native forest persists on Aguijan (Engbring *et al.* 1986), this habitat is threatened by feral goats. Rota experienced extensive agricultural development by the Japanese prior to World War II, but was not invaded by allied forces during World War II. The absence of an invasion, combined with rugged topography, resulted in the persistence of stands of native forest. Today, Rota retains less than 60 percent of its native forest (Falanruw *et al.* 1989). One 18-hole golf resort has been completed on Rota and plans for additional large-scale development, together with smaller developments, continue to threaten the remaining limestone forest with fragmentation and degradation. Throughout the Mariana Islands, goats, pigs, cattle, and deer have caused severe damage to forest vegetation by browsing directly on plants, causing erosion (Kessler 1997, Marshall *et al.* 1995), and retarding forest growth and regeneration (Lemke 1992b). Thus, all of these islands retain only a fraction of their historical forested habitat, and this remaining habitat is threatened by the fragmentation and degradation associated with development and feral animals.

The northern islands escaped the development that has occurred in the southern islands. However, historic introduction of feral goats, pigs, and cattle to Sarigan, Pagan, Agrihan, and Anatahan, continues to cause significant degradation of forest habitat on these islands (Kessler 1997). On Anatahan, Marshall *et al.* (1995) indicated that uncontrolled feral goats could eliminate native forest within 50 years. The current severe damage on Anatahan has apparently been rapid, as T. Lemke (*in litt.* 1995) did not note significant erosion or large numbers of goats in the early 1980's.

Military training activities in areas used by fruit bats could significantly impact their habitat. The use of Farallon de Mendinilla by U.S. armed forces as a bombardment range retards the vegetation regeneration, increases erosion that impedes regeneration of vegetation, and causes wildfires that destroy habitat. Together, these effects limit available fruit bat habitat on this island.

B. Over Utilization for Commercial, Recreational, Scientific, or Educational Purposes

Mariana fruit bats have been used as food since humans first arrived on the islands (Lemke 1992a), and their consumption represents a significant cultural tradition. Social events and cultural status in the Mariana Islands are often enhanced by a variety of foods, and fruit bat is highly prized. Because of their scarcity, bats are often reserved for the elderly and other respected guests, and one bat may be shared among several people (Lemke 1992a).

Traditionally, fruit bats were captured with limited success using nets, traps, thorny branches on poles, or stone projectiles (Lemke 1992a). Today, bats are mostly taken with shotguns fired at roosting and feeding sites or along flyways. One shotgun blast may kill several bats, and a successful raid can glean up to 50 bats (Lemke 1992a, Wiles 1987b). Hunting at nursery colonies can also result in abandonment and direct mortality of infant bats (Lemke 1992a).

From 1975 to 1981, prior to listing the Mariana fruit bats as endangered on Guam (49 FR 33881), approximately 15,800 fruit bats were shipped to Guam from Rota and Saipan for human consumption (Wiles and Payne 1986). During the last two decades, thousands of fruit bats have been shipped annually into the Mariana Islands from other Pacific islands for human consumption. Most of these shipments were the Palau fruit bat (*Pteropus mariannus pelwensis*) from the Republic of Palau. Currently, a single fruit bat can sell for over US$50.00 in the CNMI (Worthington and Taisacan 1996).

Poaching continues to be one of the most important factors in the decline of the Mariana fruit bat (Glass and Taisacan 1988, Lemke 1992b, Marshall *et al.* 1995, USFWS 1990, Worthington and Taisacan 1996). Reports of poaching on Rota occur almost monthly (S. Taisacan, CNMI Division of Fish and Wildlife, pers. comm. 1997a, 1997b). In 1987, between three and eight bats were reported poached from a small colony on Saipan (Glass and Taisacan 1988). Following Typhoon Roy in 1988, defoliation and other damage caused by the storm forced bats on Rota to forage during the day in areas close to human habitation (Lemke 1992b). Poachers took advantage of this situation and extensive illegal hunting occurred, reducing the total Rota population by more than half (A. Palacios, CNMI Division of Fish and Wildlife, *in litt.* 1990). Continued poaching probably prevents the fruit bats on Rota from increasing in number to pre-storm abundance (Worthington and Taisacan 1996). Poaching of fruit bats on the northern islands is also occasionally reported, and is believed to be an increasingly significant problem in the CNMI (Worthington and Taisacan 1996).

C. Disease or Predation

The brown tree snake, which has caused the extinction of several bird species on Guam (Savidge 1987), is probably responsible for the lack of recruitment in the single remaining Mariana fruit bat colony on that island (Pierson and Rainey 1992, Wiles 1987a). Although only two cases of snake predation on Guam bats have been reported (Wiles 1983), the brown tree snake is considered capable of preying on young bats at their roosts (USFWS 1990). Wiles (1987b) and Wiles *et al.* (1995) suggested that snakes will prey on young bats that have become too large to be carried by their mothers and are left at the roosts at night. In 1982, 46.6 percent of all juvenile Mariana fruit bats counted in northern Guam were judged to be in this size class, but between 1984 and 1986, after brown tree snakes had spread into the area, no bats of this size class were observed (USFWS 1990).

Brown tree snakes were accidentally introduced to Guam between 1945 and 1952, probably hidden in ship cargo (Rodda *et al.* 1992). By 1986 the snake had reached the extreme northern end of the island (Savidge 1987), and was probably present throughout the island. Because of a variety of historical and ecological factors associated with the snake, and due to Guam's location and role as a major transportation hub in the Pacific, there is a high probability that human activities will disperse brown tree snakes from Guam to other Pacific islands (Fritts 1988). Reports of snakes found in the CNMI, especially on the island of Saipan, have increased since 1986 (Brown Tree Snake Control Plan 1996). Between 1986 and 1995, at least 46 snake sightings have been reported in the CNMI (Vogt and Marshall 1996). Brown tree snakes have been regularly sighted on Saipan (31 sightings since 1986) and occasionally on Tinian (4 sightings in 1995). Five brown tree snakes have been captured on Saipan (S. Vogt, CNMI DFW pers. comm. 1997, Vogt and Marshall 1996). The frequency of snake sightings reported from 1986 through 1997 indicates that a brown tree snake population may now be established on Saipan (Brown Tree Snake Control Plan 1996). Vogt and Marshall (1996) argue that Saipan, Tinian, and Rota will eventually mirror

the ecological and economic disaster that has occurred on Guam, including the decimation of fruit bat colonies, if snakes are not eradicated or better controlled.

D. The Inadequacy of Existing Regulatory Mechanisms

Prompted by a severe decline in fruit bat numbers, the CNMI legislature in 1977 passed a moratorium on the taking of fruit bats on all islands (Pub. L. 5–21, September 1977). Although this moratorium has been annually reauthorized until 1996, no agency possessed enforcement authority until the CNMI Division of Fish and Wildlife was created in 1981 (Lemke 1992a). Even though this agency has legal enforcement authority, implementation of the hunting ban has been difficult, and few investigations or convictions have taken place (Lemke 1992a). The CNMI prohibition against hunting of fruit bats was not continued in 1996 (R. Folta, CNMI Department of Land and Natural Resources, *in litt.* 1996). The bats are listed as threatened or endangered (the CNMI makes no specific distinction between the threatened and endangered categories) by the CNMI government on Rota, Saipan, Tinian, and Aguijan (CNMI 1991), but receive no such protection on the islands north of Saipan. Additionally, no regulations prohibit the taking of these threatened or endangered species (K. Garlick, USFWS, Guam, *in litt.* 1997) and protection of these bats is greatly lacking (Worthington and Taisacan 1996; A. Palacios *in litt.* 1990). The Mariana fruit bat is also listed as an endangered species by the Government of Guam (Wiles 1982). On Guam, the bat receives significant protection from hunting, primarily because its primary colony has resided on U.S. Department of the Air Force (Air Force) lands, where access is limited, since 1980.

On October 22, 1987, *Pteropus mariannus* was included in Appendix II of CITES. Continuing declines in bat populations resulted in the reclassification of *Pteropus mariannus* to Appendix I of CITES on January 18, 1990, as well as the listing of all other species of *Pteropus* under Appendix II of CITES (except those species already listed under Appendix I or with earlier dates under Appendix II), in an effort to provide a basis for the control of shipments and as a stimulus to exporting countries to manage their bat populations. All subspecies of *Pteropus mariannus* are now protected under CITES and listed under Appendix I of that Convention (50 CFR part 23).

CITES is a treaty established to prevent trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be exported for primarily commercial purposes. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade.

The Republic of Palau became subject to the CITES restrictions for trade with the Mariana Islands when it established its independence from the United States in October 1994. However, fruit bats from Palau, Pohnpei, and the Philippine Islands are reportedly smuggled into the Mariana Islands on a regular basis (E. Hester, USFWS, Hawaii, pers. comm. 1997; Stinson *et al.* 1992; Wiles 1992; Worthington and Taisacan 1996). Experts remain concerned that the demand for fruit bats will remain high and poaching pressure on Rota and the northern islands may increase (Wiles 1996, Worthington and Taisacan 1995).

Current activities that may help stabilize and protect the population of this bat on the southern islands include a Habitat Conservation Plan (HCP) for the island of Rota. This plan is being developed with the cooperation of the CNMI government and the local Rota residents, and with technical assistance from the U.S. Fish and Wildlife Service Pacific Islands Office. Initiated largely to assist in the conservation of the Mariana crow (*Corvus kubaryi*), most of the land included in the HCP is limestone forest used by bats for foraging and roosting. Historic bat roosting areas are also included in the Sabana Conservation Area, part of a conservation effort designed by the CNMI government meant to limit development in this upper elevation area. Preservation of these forested areas is essential for the long term stability of fruit bat populations.

The Guam National Wildlife Refuge (Refuge) was created on October 1, 1993, with additional lands incorporated in 1994 by cooperative agreements between the Service, the Air Force and the Navy. The establishment and management of the Refuge on Navy and Air Force lands provides a commitment by the Navy, Air Force, and Service for a "coordinated program centered on the protection of endangered and threatened species and other native flora and fauna* ¶ *" Enactment of such a program by these agencies will contribute to the continued survival and recovery of the Mariana fruit bat on Guam, as important foraging and roosting habitat is found within the Refuge boundaries.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Military training activities in areas used by fruit bats could significantly disrupt the behavior of these bats. On Guam, military aircraft traffic near the primary roosting site creates a potential for the abandonment of this roost (Morton 1996). In general, military training activities including live-fire exercises and aircraft overflights, in or near areas on any of the islands that support fruit bats, are likely to disrupt fruit bat behavior and may result in mortalities.

The small number of Mariana fruit bats remaining on Guam, Saipan and Aguijan place these colonies at risk of extinction from naturally occurring events and environmental factors. Typhoons in particular, could eliminate one or more of these colonies. Typhoons can drastically reduce or alter forested areas that constitute fruit bat habitat. In 1988, super Typhoon Roy defoliated or altered almost all of the forested areas on Rota (Fancy and Snetsinger 1996). Another typhoon that hit the northern island of Maug in 1981 also had similar devastating effects on fruit bat habitat (Lemke 1992b). Vegetation changes associated with such storms can eliminate fruit bat forest habitat, change tree species composition to less desirable species, and knock down important food resources (Lemke 1992b). Following Typhoon Roy, defoliation and other damage caused by the storm forced the bats on Rota to forage during the day in areas close to human habitation (Lemke 1992b). Poachers on Rota illegally hunted the bats, reducing their numbers by more than half (A. Palacios, *in litt.* 1990). There is no evidence that direct mortality caused by the storm was significant (Lemke 1992b). Future storms that cause bats to alter their normal behavior patterns could lead to similar episodes of illegal hunting, further reducing the remaining population of Mariana fruit bats (Worthington and Taisacan 1996).

Currently, the Mariana fruit bat on Guam is listed as endangered (49 FR 33881), and fruit bats in the CNMI on the islands of Aguijan, Tinian, and Saipan are identified as candidates for listing as threatened or endangered (62 FR 49401). At the time the Guam population was listed, fruit bats on the various islands in the Marianas were believed to represent separate, discrete populations of *Pteropus mariannus*

mariannus. Since the listing of the Mariana fruit bat on Guam in 1984, additional information pertaining to the biology of the Mariana fruit bat has become available, particularly with regard to the movement of bats between islands. Inter-island movement of the Mariana fruit bat between the islands of the Mariana archipelago is not a rare event. Based on this information, the Service believes it is biologically inappropriate to consider fruit bats on each island as distinct populations, and the Service believes that the fruit bats in the Mariana Islands should be managed as one population.

Only a "species" may be listed as threatened or endangered under the Act. This term is defined under section 3 of the Act to include any subspecies of fish or wildlife and any distinct population segment of any species of fish and wildlife that interbreeds when mature. Service policy regarding the recognition of distinct vertebrate populations, published in the **Federal Register** on February 7, 1996 (FR 61 4722), precludes treating non-distinct vertebrate populations differently with regard to listing status. The Service believes that the Mariana fruit bats in the CNMI and Guam represent one population, but recognizes that the survival of these bats on Guam continues to be threatened by a variety of factors. However, when viewed in the context of representing a portion of the entire Mariana fruit bat population in the Mariana Islands, rather than as a distinct population as previously thought, reclassification from endangered to threatened is appropriate and biologically justified. Therefore, proposing to list the entire population of *Pteropus mariannus mariannus* as threatened throughout its range, including bats in both the CNMI and Guam, retains an appropriate level of protection for this bat on Guam while increasing overall protection to the Mariana fruit bat throughout the Mariana Islands.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to propose this rule. Based on this evaluation, the proposed action is to list the Mariana fruit bat as threatened on all islands in the CNMI, and reclassify the Mariana fruit bat as threatened on Guam. The loss of native forest continues to be a significant threat to the survival of this species. Few bats occur on Saipan, Tinian, and Aguijan. Although a significant number of bats persist on Rota, recent information has shown them to be at risk from illegal hunting and loss of forest habitat. The brown tree snake continues to prevent recruitment of bats on Guam, and the possible future introduction of the brown tree snake into the CNMI could also greatly reduce or eliminate the Mariana fruit bats on Rota and other islands. The bats on Rota are probably the source of bats seen on Guam, Saipan, Tinian, and Aguijan, making this subpopulation particularly important for the survival and recovery of the Mariana fruit bat in the southern Mariana Islands. Feral goats continue to seriously degrade fruit bat forest habitat on many of the northern islands. Although the remoteness of the northern islands affords some protection for the bats, it also offers poaching opportunities in the absence of wildlife law enforcement personnel. Thus, throughout the CNMI and Guam, this species is threatened by habitat degradation from human disturbance, animal damage, and typhoons; direct exploitation in the form of hunting; and, the direct impacts from and the threat of the arrival of the brown tree snake. The likelihood of regular inter-island movement between the islands of the Mariana archipelago warrants that the Mariana fruit bats in the Mariana Island archipelago be viewed as and managed as one population. While not in immediate danger of extinction, the Mariana fruit bat from the CNMI and Guam is likely to become an endangered species in the foreseeable future if the present threats and declines continue.

Critical habitat is not being proposed for this species, for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (I) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Mariana fruit bat at this time. Service regulations (50 CFR 424.12 (a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. As such, designation of critical habitat may affect non-Federal lands only where such a Federal nexus exists. Federal agencies must ensure that their actions do not result in destruction or adverse modification of critical habitat. Aside from this added consideration under section 7, the Act does not provide any additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas where the listed species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat).

The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required for the designation of critical habitat, would increase the degree of threat from illegal hunting of the Mariana fruit bat and contribute to its decline. As discussed under Factor B in the "Summary of Factors Affecting the Species", the Mariana fruit bat is extremely vulnerable to illegal hunting, which contributes to the decline of this species. Poaching continues to be one of the most significant factors in the decline of the Mariana fruit bat (Glass and Taisacan 1988, Lemke 1992b, Marshall *et al.* 1995, USFWS 1990, Worthington and Taisacan 1996). Reports of poaching on Rota occur almost monthly (S. Taisacan, pers. comm. 1997a, 1997b). Poaching is also known to occur on the northern islands and represents a significant threat to bats on these islands (Worthington and Taisacan 1996).

That bats occupy the islands north of Saipan is generally known, but specific roost locations are not widely known. On Rota, bat roosting areas have been noted on unpublished maps, but specific roost sites within these areas have not been mapped. The specific

location of the only roost on Guam is not widely known by the public. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required for the designation of critical habitat, may increase the degree of threat from illegal hunting of the Mariana fruit bat by identifying roosting sites where bats are most susceptible to illegal hunting, and contribute to the decline of this species.

With the increased publicity of this species if listing as threatened is finalized, a higher incidence of illegal hunting may occur, particularly on the islands north of Saipan. Publication of precise maps and descriptions of critical habitat in the **Federal Register** may expose bats on these islands to more frequent illegal hunting, thus resulting in the further decline of the species. Publication of critical habitat descriptions and maps would ultimately make the Mariana fruit bat more vulnerable and increase enforcement problems.

Further, there would be little benefit to the species from a critical habitat designation covering habitat and roosts on private, Government of Guam, or CNMI lands even if in the future there is additional Federal involvement through permitting or funding, such as through the Federal Highway Administration or the Federal Emergency Management Agency. Designating critical habitat would not create a management plan for the bat or establish numerical population goals for long-term survival of the species nor directly affect areas not designated as critical habitat. Federal involvement, where it does occur, can be identified without the designation of critical habitat because interagency coordination requirements (e.g., Fish and Wildlife Coordination Act (FWCA) and the Endangered Species Act) are already in place.

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or carried out by such agency (agency action). This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Any future Federal action that may affect the species will be subject to section 7 consultation to ensure that it does not jeopardize the continued existence of the species. Implementing regulations (50 CFR part 402) define "jeopardize the continuing existence of" and "destruction or adverse modification of" in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification of habitat means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. An action that appreciably diminishes habitat for recovery and survival may also jeopardize the continued existence of the species because negative impacts to such habitat may reduce population numbers, decrease reproductive success, or alter species distribution through habitat fragmentation.

In addition, the only bat roost on Guam is located on military lands incorporated into the Guam National Wildlife Refuge by cooperative agreements between the Service, the Air Force, and the Navy. The establishment and management of the Refuge overlay on Navy and Air Force lands provides a commitment by the Navy, Air Force, and Service to protect endangered and threatened species. Among other provisions, the cooperative agreements establishing the overlay refuge provide for the development of a species management plan, including actions to benefit the Mariana fruit bat. These agreements also establish procedures for coordination and consultation between the military and the Service, and include a requirement that the military agency coordinate with the Service before undertaking any activities that may affect lands identified as providing essential habitat for the Mariana fruit bat. Implementation of the refuge overlay agreements will contribute to the continued survival and recovery of the Mariana fruit bat.

In the CNMI, the military leases land on Tinian and Farallon de Mendinilla, and is aware of the presence of the Mariana fruit bat on both of these islands (U.S. Navy 1997; T. Sutterfield U.S. Navy, Hawaii, *in litt.* 1997). On Tinian, the Navy's Natural Resources Management Plan for the military lease area recommends actions that will, in part, enhance fruit bat habitat (U.S. Navy 1997); the Service has provided comments to the Navy regarding this plan (USFWS *in litt.* 1997).

Therefore, there would be no benefit from critical habitat designation for roosts or habitat on military land as they are currently aware of the bat's occurrence and their actions would be subject to the refuge overlay agreements on Guam and section 7 consultation for any activity it authorized, funded, or carried out. The designation of critical habitat would not increase their commitment or management efforts. Protection of Mariana fruit bats on these lands, as well as military leased land in the CNMI, will most effectively be addressed through the recovery process and the consultation process of section 7.

The Service acknowledges that critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit this species by alerting permitting agencies to potential sites for reintroduction and allow them the opportunity to evaluate proposals that may affect these areas. However, in this case, the existing roosts of Mariana fruit bats are either currently known by the military and the CNMI and Guam governments, or the appropriate landowners will be notified prior to publication of the proposed rule. If future management actions include unoccupied habitat, any benefit provided by designation of such habitat as critical will be accomplished more effectively and efficiently with the current coordination process.

The Service believes that the minimal benefit of designating critical habitat would be far outweighed by the increased threats to the species that would result from identification of critical habitat. All parties and principal landowners involved in the recovery of the Mariana fruit bat will be notified of the location and importance of protecting this species and its habitat prior to publication of the proposed rule. Protection of this habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from illegal hunting and is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages

and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with states and mandates that recovery plans be developed for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed animals are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Parts of Guam, Tinian, Rota, and Farallon de Mendinilla are used as, or are under consideration for use as, training areas by U.S. armed forces. Federally supported activities that could affect the Mariana fruit bat or its habitat in the future include, but are not limited to, the following—helicopter over-flights at or near roosting areas, bombardment of areas where bats are known to occur, and other military activities such as troop movements, road and firebreak construction, or live-fire exercises that disrupt normal fruit bat biology or habitat. Conservation of this bat may be consistent with most ongoing operations at these sites, but the proposed listing of the species in the CNMI could result in some restrictions on military use of the land.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect—or attempt any of these) any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Pursuant to section 10 of the Act and 50 CFR 17.32, permits may be issued to carry out otherwise prohibited activities involving threatened animal species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.32.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the range of the species. Activities involving the Mariana fruit bat that the Service believes will not likely be considered a violation of section 9 include, but are not limited to, scientific or recreational activities within forested areas that support colonies of fruit bats, but exclusive of the specific sites known to support these colonies.

Activities that the Service believes could potentially harm the Mariana fruit bat resulting in "take", or which otherwise could be considered a violation of section 9 include, but are not limited to, the following:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, transporting, or shipping of the species;

(2) Intentional introduction of exotic species that compete with or prey on bats, such as the introduction of the predatory brown tree snake to islands that support bat colonies;

(3) Activities that disturb bats from roost sites and feeding areas;

(4) Unauthorized destruction or alteration of forested areas that are required by the bats for foraging, roosting, breeding, or rearing young;

(5) Engaging in the unauthorized import or export of these bats or in interstate and foreign commerce (commerce across State lines and international boundaries).

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; FAX 503/231–6243).

Effects of the Rule

This proposed rule would revise § 17.11(h) to reclassify the Guam "population" of *Pteropus mariannus mariannus* from endangered to threatened to reflect the Service's conclusion that this subspecies consists of only one population. This single population, including individuals on Guam, is not in imminent danger of extinction throughout a significant portion of its range. *Pteropus mariannus mariannus* is considered, however, likely to become endangered within the foreseeable future, and this proposed rule would revise § 17.11(h) to list the Mariana fruit bat as threatened throughout its range. Reclassification of the Mariana fruit bat on Guam to threatened does not alter the protection under the Act currently afforded to individuals of that species on Guam.

The Mariana fruit bat is listed as threatened or endangered (the CNMI makes no specific distinction between the threatened and endangered categories) by the CNMI government on Rota, Saipan, Tinian, and Aguijan (CNMI 1991), but receives no such protection on the islands north of Saipan; additionally, no regulations prohibit the taking of fruit bats in the CNMI. The Mariana fruit bat is listed as endangered on Guam by the Government of Guam, and take is prohibited (Wiles 1982).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Parts of Guam, Tinian, Rota, and Farallon de Mendinilla are used as, or are under consideration for use as,

training areas by U.S. armed forces. Federally supported activities that could affect the Mariana fruit bat or its habitat in the future include, but are not limited to helicopter over-flights at or near roosting areas, bombardment of areas where bats are known to occur, other military activities such as troop movements, road and firebreak construction, or live-fire exercises that disrupt normal fruit bat biology or habitat. Conservation of this bat may be consistent with most ongoing operations at these sites, but the proposed listing of the species could result in some restrictions on military use of the land. These agencies have been involved in recovery and section 7 consultation activities for this species since it was listed as endangered on Guam in 1984, and they are likely to remain involved. Recovery activities are not expected to diminish as the primary objective of the recovery strategy is delisting of the species.

This reclassification is not an irreversible commitment on the part of the Service. Reclassifying *Pteropus mariannus mariannus* to endangered would be possible should changes occur in management, habitat, or other factors that alter the the present threats to the recovery and survival of the species.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this subspecies and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this subspecies; and,

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final determination that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Impact Statements and Environmental Assessments, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the OMB under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Author: The author of this proposed rule is David Worthington, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), revise the table entry for "Bat, Mariana fruit" under MAMMALS is revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
•	•	•	•	•	•	•	•
Bat, Mariana fruit (=Mariana flying fox).	*Pteropus mariannus mariannus.*	Western Pacific Ocean—U.S.A. (GU, MP).	Entire	T	156,___	NA	NA
•	•	•	•	•	•	•	•

Dated: March 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–7836 Filed 3–25–98; 8:45 am]

BILLING CODE 4310–55–U

Proposed Rules

Federal Register
Vol. 63, No. 58
Thursday, March 26, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–42–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require a one-time inspection to detect discrepancies of the electrical harness of the propeller de-icing system and of the hydraulic pressure pipe from the engine driven pump (EDP); and follow-on corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent chafing of the hydraulic pressure pipe of the EDP, which could result in charring of the hydraulic tube and consequent engine compartment fire.

DATES: Comments must be received by April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–42–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–42–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–42–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that it received reports of chafing between the electrical harness of the propeller de-icing system and the hydraulic pressure pipe from the engine driven pump (EDP) which resulted in the loss of hydraulic fluid in one reservoir. The chafing of the electrical harness and the hydraulic pressure pipe has been attributed to incorrect routing of the electrical harness that occurred in production. Such chafing, if not corrected, could result in charring of the hydraulic tube, and consequent engine compartment fire.

Explanation of Relevant Service Information

Saab has issued Service Bulletin SAAB 2000–30–014, Revision 01, dated January 9, 1998, which describes procedures for a one-time visual inspection to detect discrepancies (incorrect routing, insufficient clearance, and chafing) of the electrical harness of the propeller de-icing system, and repair, if necessary. The service bulletin also describes procedures for a one-time visual inspection to detect chafing of the hydraulic pipe from the EDP, and replacement of any discrepant pipe with a new pipe, if necessary. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–121, dated January 9, 1998, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $180, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 98–NM–42–AD.

Applicability: Saab Model SAAB 2000 series airplanes, serial numbers 004 through 053 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the hydraulic pressure pipe of the engine driven pump (EDP), which could result in charring of the hydraulic tube and consequent engine compartment fire, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with Saab Service Bulletin 2000–30–014, Revision 01, dated January 9, 1998.

(1) Perform a one-time inspection to detect discrepancies (incorrect routing, insufficient clearance, and chafing) of the electrical harness of the propeller de-icing system, left and right sides. If any discrepancy is found, prior to further flight, repair.

(2) Perform a one-time visual inspection to detect chafing of the hydraulic pipe of the EDP, left and right sides. If any chafing is found, prior to further flight, replace the pipe with a new or serviceable part.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

NOTE 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–121, dated January 9, 1998.

Issued in Renton, Washington, on March 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7881 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–311–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes Powered by Rolls-Royce RB211–535E4/E4B Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This proposal would require repetitive inspections to detect cracking of the acoustic panels in the engine inlet, and repair, if necessary. This proposal also would require eventual replacement of the existing engine inlet with a new inlet, which, when accomplished, would terminate the repetitive inspections. This proposal is prompted by reports of cracking of acoustic panels in the engine inlet, and incidents of pieces of the panels breaking off and being ingested into the engine. The actions specified by the proposed AD are intended to detect and correct cracking of the acoustic panels in the engine inlet, which could result in reduced structural integrity of the engine inlet, and consequent engine shutdown or surge; or in the event of a fan blade failure, separation of the inlet from the engine.

DATES: Comments must be received by May 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathrine H. Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1547; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–311–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of cracking of the acoustic panels in the engine inlets of certain Boeing Model 757–200 series airplanes. In several cases, the areas of cracking are large enough to affect the structural integrity of the engine inlets. These cracked areas could detach and be ingested into the engine, which could cause internal damage to the engine and consequent engine shutdown. The cracked areas also could sag and disturb the airflow into the engine, which could cause the engine to surge and lose power. The FAA has received reports of two incidents in which portions of the engine inlet acoustic panels have been ingested into the engine; in one of these incidents, the ingested piece caused high vibration in the engine and damage to the leading edge tip of the fan blade.

The cracking of the acoustic panels has been attributed to an inherent design problem of the engine inlet, in which the resonance of the honeycomb structure at the core of the acoustic panels coincides with the passing frequency of the fan blade, which causes the honeycomb structure to crack. Because of the nature of this condition, the FAA has concluded that such cracking may exist or develop on other airplanes of this type design.

Cracking of the acoustic panels in the engine inlet, if not detected and corrected, could result in reduced structural integrity of the engine inlet, and consequent engine shutdown or surge; or in the event of a fan blade failure, separation of the inlet from the engine.

Explanation of Relevant Service Information

The FAA has reviewed and approved Rolls-Royce Service Bulletin RB.211–71–B480, Revision 1, dated August 15, 1997, which describes procedures for repetitive detailed inspections to detect cracking of the acoustic panels in the engine inlet, and repair, if necessary.

The FAA also has reviewed and approved Rolls-Royce Service Bulletin RB.211–71–9909, Revision 1, dated May 26, 1995, and Rolls-Royce Service Bulletin RB.211–71–9958, Revision 1, dated March 18, 1994, which describe procedures for replacing the existing engine inlet assembly with a new engine inlet assembly that incorporates improved acoustic panels. Such replacement eliminates the need for the repetitive inspections. Accomplishment of this replacement, as described in these service bulletins, is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, for airplane on which damage is found that exceeds the acceptance standards provided in paragraph 2.A. of Appendix 1 of Rolls-Royce Service Bulletin RB.211–71–B480, Revision 1, dated August 15, 1997, the service bulletin specifies that the manufacturer should be contacted for disposition of such damage. However, this proposed AD would not require that the manufacturer be contacted, but rather that those damaged engine inlets be replaced prior to further flight.

Cost Impact

There are approximately 52 airplanes of the affected design in the worldwide fleet. The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD.

Assuming both engines have inlets on which the improved acoustic panels have not been installed, it would take approximately 3 work hours per airplane (1.5 work hours per engine) to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $4,320, or $180 per airplane, per inspection cycle.

Assuming both engines have inlets on which the improved acoustic panels have not been installed, it would take approximately 4 work hours per airplane (2 work hours per engine) to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the engine manufacturer at no cost to the operator. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $5,760, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 97–NM–311–AD.

Applicability: Model 757–200 series airplanes; equipped with Rolls-Royce RB211–535E4/E4B engines, fitted with nose cowls having serial numbers 9001 through 9124 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the acoustic panels in the engine inlet, which could result in reduced structural integrity of the engine inlet, and consequent engine shutdown or surge; or in the event of a fan blade failure, separation of the inlet from the engine; accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a detailed inspection to detect cracking of the acoustic panels in the engine inlet, in accordance with Rolls-Royce Service Bulletin RB.211–71–B480, Revision 1, dated August 15, 1997.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 650 hours time-in-service.

(2) If any cracking is detected, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii), as applicable.

(i) If cracking is within the acceptance standards provided in paragraph 2.A. of Appendix 1 of the service bulletin, repair within 350 hours time-in-service, in accordance with the service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 650 hours time-in-service.

(ii) If cracking is outside the acceptance standards provided in paragraph 2.A. of Appendix 1 of the service bulletin, prior to further flight, replace the engine inlet with a new engine inlet that incorporates improved acoustic panels, in accordance with Rolls-Royce Service Bulletin RB.211–71–9909, Revision 1, dated May 26, 1995, and Rolls-Royce Service Bulletin RB.211–71–9958, Revision 1, dated March 18, 1994. No further action is required by this AD for that engine inlet.

(b) Within 18 months after the effective date of this AD, replace both existing engine inlets with new inlets that incorporate improved acoustic panels, in accordance with Rolls-Royce Service Bulletin RB.211–71–9909, Revision 1, dated May 26, 1995, and Rolls-Royce Service Bulletin RB.211–71–9958, Revision 1, dated March 18, 1994. Accomplishment of such replacement constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7880 Filed 3–25–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–288–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This proposal would require repetitive inspections to detect cracking of the lower cap of the wing rear spar, and repair, if necessary. This proposal is prompted by reports of fatigue cracks found in the lower cap of the wing rear spar. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the lower cap of the wing rear spar, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by May 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–288–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51

(2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–288–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–288–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of four instances of crack development in the lower cap of the wing rear spar. In all four instances, a single crack on the left or right wing had propagated from the aft leg into both the vertical and forward legs of the spar cap. All affected airplanes had accumulated over 32,000 flight hours and over 18,000 landings. The cause of the cracking has been attributed to fatigue. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Other Relevant Rulemaking

The subject area is designated as Principal Structural Element (PSE) No. 57.10.007/.008 in McDonnell Douglas Report No. L26–012, "DC–10 Supplemental Inspection Document (SID)," Volume I, Revision 5, dated October 1994; Volume II, Revision 5, dated October 1994; and Volume III–94, dated November 1994. Inspections of that PSE are required by AD 95–23–09, amendment 39–9429 (60 FR 61649, December 1, 1995). The inspections required for this PSE follow the fleet leader sampling criteria with a fatigue life threshold (Nth) greater than 34,000 landings, which corresponds to a probability of failure per flight of 10^{-9}; i.e., failure is extremely improbable. All of the cracks have been detected on airplanes with fewer than 34,000 landings. Additionally, a PSE is defined as structure on which undetected failure could lead to loss of the structural integrity of the airplane. Therefore, the FAA has determined that an additional AD is warranted to require inspection of the lower cap of the wing rear spar on Model DC–10 series airplanes and KC–10A (military) airplanes after accumulation of 7,000 total landings. Such inspections would ensure that fatigue cracking is detected in a timely manner, well in advance of cracking reaching a critical length.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–57A137, dated July 31, 1997, which describes procedures for repetitive eddy current surface inspections to detect cracking in the lower cap of the wing rear spar.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between the Alert Service Bulletin and This Proposed AD

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Operators also should note that, although the alert service bulletin recommends a compliance time of 60 days for accomplishment of the initial inspection for airplanes that have accumulated more than 7,000 total landings, this proposed AD would require that the initial inspection be accomplished within 18 months after the effective date of the AD. In developing the proposed compliance time, the FAA determined that a compliance time of 18 months is appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, and the practical aspects of an orderly inspection of the fleet during regular maintenance periods.

Cost Impact

There are approximately 283 airplanes of the affected design in the worldwide fleet. The FAA estimates that 201 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $96,480, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action"

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under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 97–NM–288–AD.

Applicability: Model DC–10 series airplanes and KC–10A (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–57A137, dated July 31, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the lower cap of the wing rear spar, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Conduct an eddy current surface inspection to detect cracking of the lower cap of the wing rear spar, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin DC10–57–A137, dated July 31, 1997; at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter, repeat this inspection at intervals not to exceed 1,500 landings.

(1) Prior to the accumulation of 7,000 total landings, or within 18 months after the effective date of this AD, whichever occurs later. Or

(2) Within 1,500 landings after the accomplishment of the inspection of Principal Structural Elements 57.10.007 and 57.10.008, in accordance with AD 95–23–09, amendment 39–9429.

(b) If any crack is found during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7879 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–110–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Model 3101, Jetstream Model 3201, and Jetstream 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain British Aerospace (BAe) Model HP.137 Jetstream Mk.1, Jetstream Model 3101, Jetstream Model 3201, and Jetstream 200 series airplanes. The proposed AD would require replacing the windshield wiper arm attachment bolts and windshield wiper arm on all of the affected airplanes, and measuring the material thickness of the upper and lower toggle attachment brackets on the nose landing gear of the affected airplanes, and replacing the toggle attachment bracket lugs if necessary. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent the windshield wiper arm from corroding, detaching from the airplane during flight, and penetrating the fuselage, which, if not corrected, could result in possible injury to the pilot and passengers; and to prevent collapse of the nose landing gear caused by design deficiency, which, if not corrected, could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE–110-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft., Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S. M. Nagarajan, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All

communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–110–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–110–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that unsafe conditions may exist on certain BAe Model HP.137 Jetstream Mk.1, Jetstream Model 3101, Jetstream Model 3201, and Jetstream 200 series airplanes. The CAA reports the following:

—That a windshield wiper arm came loose from one of the above airplanes. Once the wiper arm detached from the airplane, it hit the propeller blade, and broke off the tip of the propeller blade. The wiper arm, wiper arm attachment bolt, and the propeller tip penetrated the fuselage. It was later determined by a CAA investigation that the wiper arm attachment bolt failed because of corrosion.

—That a nose landing gear (NLG) failure was attributed to fatigued NLG toggle bracket lugs and axle bracket lugs. Further investigation by the CAA and the manufacturer determined that external radii drawing tolerances have led to insufficient wall thicknesses, contributing to fatigue on the NLG axle brackets during landing.

These conditions, if not corrected, could result in pilot and passenger injury and loss of control of the airplane during landing operations.

Relevant Service Information

BAe has issued the following service information:

Jetstream Series 3100/3200 Service Bulletin (SB) 30–JA 950641, Original Issue: August 23, 1996, Revision No. 2: March 18, 1997, which specifies following the procedures provided in Rosemont Aerospace Inc. Service Bulletin No. 2314M–30–16, dated December, 1996, for replacing the windshield wiper arm attachment bolts; and,

Jetstream Series 3100/3200 Alert Service Bulletin No. 32–JA 960601, Original Issue: October 25, 1996, Revision No. 1: dated April 11, 1997, which specifies following the procedures provided in APPH Precision Hydraulics SB No. 32–66, Revision No. 2, Issued: March 1997, for measuring the outer wall thickness of the toggle bracket lugs and the axle bracket lugs on the nose landing gear, and replacing these parts if the measurement is not within certain measurements limits. This SB incorporates the following effective pages:

Pages	Revision level	Date
2, 5, and 6	Revision 2	March 1997.

The CAA classified these service bulletins as mandatory and issued the following AD's in order to assure the continued airworthiness of these airplanes in the United Kingdom: British AD 006–08–96, not dated, for the windshield wipers condition; and British AD 002–10–96, not dated, for the nose landing gear condition.

The FAA's Determination

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other BAe Model HP.137 Jetstream Mk.1, Jetstream Model 3101, Jetstream Model 3201, and Jetstream 200 series airplanes of the same type design registered in the United States, the FAA is proposing AD action. This proposed AD would require replacing the windshield arm and windshield arm attachment bolt; and, measuring the outer wall thickness of the NLG toggle bracket lugs and axle bracket lugs, and replacing any part that does not meet the required measurements. Accomplishment of these proposed actions would be in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 314 airplanes in the U.S. registry would be affected by the windshield wiper portion of the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the replacement of the proposed AD, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost. Based on these figures, the total cost impact for the windshield wiper portion of the proposed AD on U.S. operators is estimated to be $37,680, or $120 per airplane.

The FAA estimates that 284 airplanes in the U.S. registry would be affected by the nose landing gear portion of the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the measurement of the proposed AD, and that the average labor rate is approximately $60 an hour. No parts are required to accomplish this portion of the proposed AD. Based on these figures, the total cost impact of the nose landing gear portion of the proposed AD on U.S. operators is estimated to be $34,080, or $120 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a

"significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 97–CE–110–AD.

Applicability: Model HP.137 Jetstream Mk.1, Jetstream Model 3101, Jetstream Model 3201, and Jetstream 200 series airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the windshield wiper arm from corroding, detaching from the airplane during flight, and penetrating the fuselage, which, if not corrected, could result in possible injury to pilot and passengers; and to prevent collapse of the nose landing gear caused by design deficiency, which, if not corrected, could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 90 days after the effective date of this AD, replace the windshield wiper arm and windshield wiper attachment bolt in accordance with the Accomplishment Instructions section in the Jetstream Series 3100/3200 Service Bulletin (SB) 30–JA 950641, Original Issue: August 23, 1996, Revision No. 2: March 18, 1997, and the Accomplishment Instructions section of the Rosemont Aerospace Inc. SB No. 2314M–30–16, dated December 1996.

(b) Within the next 90 days after the effective date of this AD, measure the outer wall thickness of the nose landing gear (NLG) toggle bracket lugs and the axle bracket lugs in accordance with the Accomplishment Instructions in APPH Precision Hydraulics SB 32–66, Revision No. 2, Issued March 1997 which incorporates the following pages:

Pages	Revision level	Date
2, 5, and 6	Revision 2	March 1997.

Note 2: The APPH SB is referenced in the Accomplishment Instructions in Jetstream Series 3100/3200 Alert Service Bulletin No. 32–JA 960601, Revision No. 1, April 11, 1997, Original Issue, October 25, 1996.

(1) Prior to further flight, replace the NLG toggle bracket lugs and axle bracket lugs, if the measurements of the outer wall thickness do not meet the criteria set out in the Table contained in paragraph B. (5) of the Accomplishment Instructions section in APPH Precision Hydraulics SB 32–66, Revision 2, Issued March 1997.

(2) If the measurements of the outer wall thickness are within the criteria set out in the Table contained in paragraph B. (5) of the Accomplishment Instructions section in APPH Precision Hydraulics SB 32–66, Revision 2, Issued March 1997, replace the NLG toggle bracket lugs and axle bracket lugs at the times specified in the Table referenced above, or within the next 50 landings after the measurement is taken, whichever occurs later.

Note 3: The compliance time in this AD takes precedence over the compliance times published in the applicable service bulletins.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to the service information referenced in this AD should be directed to British Aerospace Regional Aircraft., Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone (01292) 479888; facsimile (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 5: The subject of this AD is addressed in British AD 002–10–96, not dated, for the nose landing gear condition; and British AD 006–08–96, not dated, for the wind shield wiper condition.

Issued in Kansas City, Missouri, on March 19, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7886 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–121–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Dornier Luftfahrt GmbH (Dornier) Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes. The proposed AD would require modifying the logic in the failure detection circuits of the landing gear uplock switches. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent a false warning indication of landing gear failure because of the design of the landing gear warning system, which could result in incorrect actions from the pilot based on the warning indications.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–121–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes. The LBA reports an incident of a false landing gear warning indication on one of the above-referenced airplanes. The current design of the landing gear warning system is such that the three uplock switches could actuate in a parallel connection. If one or two switches fail or failure in the wiring cables occurs, the system would not identify the failed system. The third switch may then initiate a false gear warning indication.

These conditions, if not corrected in a timely manner, could result in incorrect actions from the pilot based on false landing gear warning indications.

Relevant Service Information

Dornier has issued Service Bulletin No. SB–228–215, Revision No. 1, dated January 31, 1995, which specifies procedures for modifying the logic in the failure detection circuits of the landing gear uplock switches.

The LBA classified this service bulletin as mandatory and issued German AD No. 95–246, dated August 23, 1995, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Dornier Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying the logic in the failure detection circuits of the landing gear uplock switches. Accomplishment of the proposed installation would be in accordance with Dornier Service Bulletin No. SB–228–215, Revision No. 1, dated January 31, 1995.

Cost Impact

The FAA estimates that 26 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 32 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $49,920, or $1,920 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

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PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Dornier Luftfahrt GmBH: Docket No. 97–CE–121–AD.

Applicability: Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes, serial numbers 0001 through 8235, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent a false warning indication of landing gear failure because of the design of the landing gear warning system, which could result in incorrect actions from the pilot based on the warning indications, accomplish the following:

(a) Modify the logic in the failure detection circuits of the landing gear uplock switches in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Dornier Service Bulletin No. SB–228–215, Revision No. 1, dated January 31, 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64016. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Dornier Service Bulletin No. SB–228–215, Revision No. 1, dated January 31, 1995, should be directed to Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 95–246, dated August 23, 1995.

Issued in Kansas City, Missouri, on March 19, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7888 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–126–AD]

RIN 2120–AA64

Airworthiness Directives; Avions Mudry & Cie Model CAP 10B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede airworthiness directive (AD) 93–10–11, which currently requires the following actions on Avions Mudry & Cie (Avions) Model CAP 10B airplanes: installing an inspection opening in the wing, repetitively inspecting the upper wing spar cap for cracks, and repairing any cracks. The proposed action would retain the same actions already required by AD 93–10–11, but would add inspecting, and repairing if necessary, the lower surface of the wing spar. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent structural cracks in the wing spar, which, if not corrected, could lead to loss of a wing and loss of control of the airplane.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–126–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Avions Mudry & Cie, B.P. 214, 27300 Bernay, France: telephone (33) 32.43.47.34; facsimile (33) 32.43.47.90. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–126–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–126–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 93–10–11, Amendment 39–8592, (58 FR 31342, June 2, 1993) currently requires

installing a permanent inspection opening and repetitively inspecting the upper wing spar caps for cracks on Avions Model CAP 10B airplanes, and if any cracks are found, prior to further flight, repairing the cracks in accordance with a repair scheme provided by the manufacturer.

Actions Since Issuance of Previous Rule

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may still exist on certain Avions Mudry & Cie (Avions) Model CAP 10B airplanes.

The DGAC advises that they are still receiving reports of cracks on the upper surfaces of the wing, and cracks have now been showing up on the underside of the wing spar. The DGAC reports that this cracking occurs as a result of exceeding the load limit determined for the airplane, executing snap roll maneuvers outside the envelope for which the airplane is certificated, and repetitive hard landings.

Avions has used the information received from field reports to revise the service information regarding the inspection procedures for detecting cracks in the critical structure of the wings. Some reports have noted cracks along the No. 1 spar ribs, on the roots left and right of the wing, and cracks caused by over stress on the spar. Some damage has been extending to the lower surface of the spar and has occurred along the undercarriage attachment fitting. Cracks in these areas lead to separation of the spruce filler, delamination of the lower surfaces of the spar, and splits in the plywood skin of the lower wing spar surface.

Relevant Service Information

Avions has issued Service Bulletin CAP10B–57–003, Revision 1, dated April 3, 1996, which specifies procedures for inspecting the upper and lower wing spar for cracks, and determining whether any cracks found are compression cracks or lengthwise wood fissures. The revised service information simplifies the inspection procedure for the upper surface of the wing spar, recommends contacting the manufacturer for a repair method to fix any cracks found, and adds a new inspection to the lower surface of the wing spar along the undercarriage attachment fitting.

The inspections to the lower wing surface would also include determining what type of spruce filler is used at the underwing location, and depending on the type of spruce filler the wing is equipped with, a boroscope inspection would be performed. If any cracks are found, the service information recommends that the operator contact the manufacturer for the appropriate repair method. The manufacturer recommends repetitively inspecting for cracks in the same areas regardless of whether a repair was made.

The DGAC classified this service bulletin as mandatory and issued French AD 92–240(A)R1, dated October 22, 1997, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Model CAP 10B airplanes of the same type design registered for operation in the United States, the proposed AD would supersede AD 93–10–11 with a new AD that would require repetitively inspecting the upper and lower wing spars for structural cracking, and if any cracks are found, repairing the cracks in accordance with a repair method provided by the manufacturer through the FAA.

Cost Impact

The FAA estimates that 37 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. There is no cost for parts associated with the proposed AD. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,100 or $300 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 93–10–11, Amendment 39–8592, and by adding a new AD to read as follows:

Avions Mudry & Cie: Docket No. 97–CE–126–AD; Supersedes AD 93–10–11, Amendment 39–8592.

Applicability: Model CAP 10B airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or

repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, or within the next 1,000 hours TIS after the last inspection required in accordance with AD 93–10–11, Amendment 39–8592, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 1,000 hours TIS.

To prevent structural cracks in the wing spars, which, if not corrected, could lead to loss of a wing and loss of control of the airplane, accomplish the following:

(a) Inspect the upper and lower wing surfaces of both wing spars for cracks in accordance with Avions Mudry & Cie (Avions) Service Bulletin (SB) CAP10B–57–003, Revision 1, dated April 3, 1996.

(b) If any cracks are found, prior to further flight, repair the cracks with a repair scheme obtained from the manufacturer through the FAA Project Officer at the Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

Note 2: The compliance times required in this AD take precedence over the compliance times stated in Avions SB CAP10B–57–003, Revision 1, dated April 3, 1996.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate. Alternative methods of compliance approved in accordance with AD 93–10–11 are not considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Avions Mudry & Cie Service Bulletin CAP10B–57–003, Revision 1, dated April 3, 1996, should be directed to Avions Mudry & Cie, B.P. 214, 27300 Bernay, France: telephone (33) 32 43 47 34; facsimile (33) 32 43 47 90. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 93–10–11, Amendment 39–8592.

Note 4: The subject of this AD is addressed in French AD 92–240(A)R1, dated October 22, 1997.

Issued in Kansas City, Missouri, on March 19, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7889 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

RIN 1515–AB49

Gray Market Imports and Other Trademarked Goods

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations in light of the 1993 decision of the U.S. Court of Appeals for the District of Columbia in *Lever Bros. Co.* v. *United States.* In line with that decision, the proposed rule would, upon application by the U.S trademark owner, restrict importation of certain gray market articles that bear genuine trademarks identical to or substantially indistinguishable from those appearing on articles authorized by the U.S. trademark owner for importation or sale in the U.S., and that thereby create a likelihood of consumer confusion, in circumstances where the gray market articles and those bearing the authorized U.S trademark are physically and materially different. The proposed restrictions would apply notwithstanding that the U.S. and foreign trademark owners are the same, are parent and subsidiary companies, or are otherwise subject to common ownership or control. The proposed restrictions would not be applicable if the otherwise restricted articles are labeled in accordance with proposed standards to eliminate consumer confusion.

In addition, it is proposed to reorganize the Customs Regulations, with respect to importations bearing recorded trademarks or trade names, in order to clarify Customs enforcement of trademark rights as they relate to products bearing counterfeit, copying, or simulating marks and trade names, and to clarify Customs enforcement against gray market goods.

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Michael Smith, Intellectual Property Rights Branch, (202–927–2330).

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1993, the United States Court of Appeals for the District of Columbia issued a decision in *Lever Bros. Co.* v. *United States,* 981 F.2d 1330 (D.C. Cir. 1993) (*Lever*) regarding certain prohibitions against the importation of certain "gray market" goods. In general, gray market goods are articles that are genuine but are not authorized for importation by the U.S trademark owner. In light of this decision, a number of regulatory changes to part 133, Customs Regulations (19 CFR part 133) are proposed.

The Lever Decision

Lever Brothers Company ("Lever U.S.") owned the domestic trademarks "SHIELD" and "SUNLIGHT," and manufactured products in the United States bearing those trademarks. Lever Brothers Limited ("Lever U.K.") owned the foreign trademarks "SHIELD" and "SUNLIGHT," and manufactured products abroad bearing those trademarks. Lever U.S. and Lever U.K. were affiliated through Unilever, a Dutch company. The *Lever* court proceeded on the uncontested assumption that the articles produced for the U.S. and foreign markets respectively differed in terms of composition, and performance characteristics, among other things.

A third party, unrelated to either Lever U.S. or Lever U.K., imported into the United States, without the authorization of Lever U.S., "SHIELD" deodorant soap and "SUNLIGHT" dishwashing products manufactured abroad by Lever U.K. Customs declined to restrict these importations, based on § 133.21(c)(2) of the Customs Regulations, 19 CFR 133.21(c)(2), which states that no protection against unauthorized genuine goods bearing otherwise restricted marks is provided when the foreign and domestic trademark owners are subject to common ownership or control.

Lever U.S. brought suit to compel Customs to deny entry, claiming that the differences between the Lever U.K. and Lever U.S. products resulted in consumer confusion and deception about the nature and origin of the imported merchandise, thereby constituting a violation of section 42 of

the Lanham Act, 15 U.S.C. 1124. The Appellate Court found that section 42 of the Lanham Act precludes the application of Customs' affiliate exception with respect to physically, materially different goods. The Court of Appeals affirmed the District Court's ruling that section 42 of the Lanham Act bars the importation of such goods. The District Court was directed to issue an injunction requiring Customs to exclude from entry the "SHIELD" and "SUNLIGHT" products at issue.

Protection Against Gray Market Goods

Currently, Customs enforces restrictions against trademarked gray market goods with two exceptions found in § 133.21(c): the "affiliate" exception of § 133.21(c)(2), and the "same owner" exception of § 133.21(c)(1). (In this document, for the sake of simplicity, except where the "same owner" exception and the "affiliate" exception are separately mentioned and distinguished, these exceptions will be referred to generically as the "affiliate exception", the term used in Lever.)

Restrictions Under Section 42 and the Lever Decision

Section 42 of the Lanham Act, 15 U.S.C. 1124, protects against consumer deception or confusion about an article's origin or sponsorship by restricting the importation of trademarked goods under certain circumstances. When an article is the domestic product of the U.S. trademark owner, that owner exercises control over the use of the trademark and the resulting goodwill. Similarly, Customs has taken the position that an article bearing an identical trademark and produced abroad by the U.S. trademark owner, a parent or subsidiary of the U.S. trademark owner, or a party subject to common ownership or control with the U.S. trademark owner, would be under the constructive control of either the U.S. trademark owner or a party who owned or controlled the U.S. trademark owner. Enforcement of the distribution rights of such an article produced abroad by a party related to the U.S. trademark holder was a matter to be addressed through private remedies. Therefore, Customs regulations do not provide for restrictions on the importation of such gray market goods. Prior to *Lever*, the applicability of this "affiliate exception" depended simply on the presence of the genuine trademark and the existence of the relevant intracompany relationship, and was not contingent on whether the gray market articles were the same as, or different from, the articles authorized for importation or sale in the United States.

However, the Court of Appeals in *Lever* drew a distinction between identical goods produced abroad under one of the scenarios contemplated by the affiliate exception and goods that are physically and materially different from the goods authorized by the U.S. trademark owner. Although the injunction in *Lever* was specifically limited to the articles at issue therein—"SHIELD" deodorant soap and "SUNLIGHT" detergent—the Court of Appeals" interpretation of the Lanham Act was not so limited and, absent some specially differentiating feature, would apply equally to other physically and materially different "gray market" goods. In addition, it seems clear that the *Lever* opinion should also apply not only to the "affiliate" exception of § 133.21(c)(2), but also to the "same owner" exception of § 133.21(c)(1). Customs proposes to make its regulations consistent with *Lever* to protect against consumer confusion as to the source or sponsorship of imported goods—notwithstanding that they are (1) produced by the owner of the U.S. trademark, (2) a parent or subsidiary of the U.S. trademark owner, or (3) a party subject to common ownership or control with the U.S. trademark owner—when the goods bear a mark identical to, or substantially indistinguishable from, a domestically registered trademark and are found to be physically and materially different from goods authorized by the U.S. trademark owner.

Customs proposes regulations that will continue to apply the current restrictions on the importation of gray market goods bearing legitimate trademarks that are identical to or substantially indistinguishable from trademarks on articles authorized for importation or sale in the United States under scenarios where the affiliate exception does not apply. The new restrictions that are being proposed also will ban, upon application by the trademark owner, even in affiliate exception scenarios, the importation into the United States of articles bearing genuine trademarks but that are materially and physically different and which are not authorized by the U.S. trademark owner. In the latter case, however, the restrictions will not apply when the imported article also bears a label that would inform the ultimate retail purchaser in the United States of the gray market identity of the product. This exception is contained in an exception to the restrictions that is outlined more fully below.

The Proposed Labeling Exception

In *Lever*, the Court of Appeals specifically notes that section 42 of the Lanham Act forbids importation of merchandise bearing a mark that shall copy or simulate a trademark registered in accordance with its provisions. In the Court's opinion, the Lanham Act appears on its face to aim at deceit and consumer confusion; when identical trademarks have acquired different meanings in different countries, one who imports the foreign version to sell it under that trademark will (in the absence of some "specially differentiating feature") cause the confusion Congress sought to avoid. The Customs Service believes that an informative label appearing prominently on such trademarked gray market goods would constitute a "specially differentiating feature" of the kind referred to by the Court.

Customs believes that a label can serve as an appropriate means of eliminating potential harm if the label makes clear that an article is materially and physically different from the product authorized by the trademark owner for importation or sale in the U.S. and is imported without authorization. Customs believes that a labeling exception to the new restrictions is consistent with the principles enunciated in *Lever*. In other words, where an article which is produced abroad by a party authorized to do so, bearing a genuine trademark, and imported without the authorization of the U.S. trademark owner, also bears a label in accordance with the proposed rule, Customs will regard the label as qualifying possible erroneous inferences regarding the characteristics of the article that might be drawn by the consumer from the trademark alone. Where such a label is present to modify the message regarding product characteristics that ordinarily may be communicated by the trademark standing alone, so as to eliminate the likelihood of consumer confusion, the Customs Service will conclude that the trademark, under those circumstances, does not "copy or simulate" the U.S.-registered mark. Such a label would modify any inference that may be drawn by the consumer from the trademark so as to eliminate the likelihood of consumer confusion.

The proposed regulations implement the responsibility of the Customs Service as the agency charged with the enforcement of the law to do so in a reasonable manner, and to promulgate appropriate rules regarding how it will interpret and apply section 42 of the Lanham Act. The proposed rules

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establish the criteria that Customs will apply in carrying out its responsibilities concerning the importation of gray market goods. These rules are limited to the importation requirements of section 42 of the Lanham Act and do not apply to other provisions of the Act. To be eligible for the exception to the restriction, the label must be conspicuous and legible and appear in proximity to the trademark in its most prominent location on the article or retail packaging of the product. Where the likelihood of consumer confusion is eliminated by an acceptable, qualifying label which clearly informs the consumer about the nature of a product, Customs will except the product bearing such a label from the restrictions on importing physically and materially different gray market products.

The Customs Service is not imposing a regulatory requirement for the labeling of gray market goods. Customs proposes herein an exception to the new restriction on physically and materially different gray market products as described above. The proposed rule is intended to ensure that an acceptable label will be sufficiently conspicuous and legible and in sufficient proximity to the most prominent display of the trademark on the good or its package so as to eliminate inferences which might be drawn in the absence of such label.

In the view of Customs, the information conveyed by a label of the type proposed herein would eliminate consumer confusion and inform any reasonably alert or informed customer as to the characteristics of the goods. Armed with that information, the consumer would then be free to proceed based on his own determination of self-interest, weighing quality, price and other factors. The proposed exception for conspicuously labeled gray market imports would preserve the integrity and commercial value of the U.S. registered mark and eliminate consumer confusion regarding the source or sponsorship of the goods. Further, it would prevent the Lanham Act protection from being invoked inappropriately as a barrier to trade, while permitting consumer choice, promoting price competition, and avoiding injecting the Customs Service into intracompany world market division arrangements or disputes.

Customs is proposing standard language for the label that will except gray market goods from the new restriction on importation of such goods that are physically and materially different. The purpose of the proposed rule is to implement the *Lever* decision, and the label language has been designed to address simply and narrowly the factors on which the Court of Appeals for the D.C. Circuit focused in its ruling, namely, the gray market identity of the goods and the fact of physical and material difference. To the extent that an individual importer chooses to design a label that contains additional, product specific data, this is expressly permitted by the proposed rule.

A single label will reduce the administrative burden on Customs and promote consistency in the treatment of gray market imports subject to the rules. Customs believes that it will simplify the labeling process for importers, reducing costs and the risk that a process of individual label review and approval by Customs could cause delay and serve as a barrier to trade. Finally, Customs believes that a single label may achieve general recognition among consumers as a gray market label whereas a multiplicity of individual labels actually might create consumer confusion as to the significance of the labels.

The Customs Service believes that the proposed rule extends the appropriate protection under the trademark laws to owners of a U.S. trademark while not permitting those laws to be used as a shield against competition. In eliminating the risk of consumer confusion, the interest of the consumer in product choice and price competition in the marketplace should be considered along with the interest of the U.S. trademark holder in protecting its goodwill and reputation. The Customs Service believes that the right of the mark owner is limited to protection that addresses the potential damage to the mark owner. The identity and reputation of the domestic mark owner can be preserved and the public interest served by effectuating open and informed competition.

The Proposed Amendments

A critical step in applying the *Lever* decision is defining the scope of "physically and materially different." The *Lever* court did not provide specific criteria for determining when products should be considered physically and materially different. Customs recognizes that no bright line test can be established which would delineate the relevant difference(s) among the multitude of products that may be involved in the gray market. Such determinations are inherently fact specific and must be made on a case-by-case basis. Customs also recognizes, however, that without certain guidelines, the importing public cannot reasonably expect Customs consistently to protect owners of U.S.-registered trademarks while facilitating the flow of legitimate commercial trade. With that in mind, Customs proposes to amend its regulations to include categories of information that trademark owners may provide to Customs for consideration in its determination as to whether certain trademarks may be entitled to protection under the rationale of *Lever* and the new rules promulgated herein ("*Lever*-rule" protection).

Thus, in addition to the current information described in § 133.2, Customs Regulations (19 CFR 133.2), Customs will consider the following:

1. The composition of both the authorized and gray market product(s) (including chemical composition);
2. Formulation, product construction, structure, or composite product components, of both the authorized and gray market product(s);
3. The performance and operational characteristics of both the authorized and gray market product(s);
4. Differences between the authorized and gray market products resulting from legal or regulatory requirements, certification, etc.;
5. Other characteristics that can be described with particularity by the U.S. owner claiming gray market protection.

Such characteristics must clearly distinguish authorized articles from gray market articles, applying criteria which establishes the protection of the statute, namely protection from consumer confusion and deception.

In each case, any proffered characteristic must be supported by competent evidence. Customs recognizes that it cannot anticipate all of the considerations that may lead to a finding of "physical and material difference," but *Lever* suggests certain categories of information which are appropriate. The last criterion above leaves open the possibility that unspecified information may be considered at Customs' discretion.

Owners claiming gray market protection under the proposed provision should be aware that Customs will require the grounds for claiming physical and material differences to be stated with particularity. Any such request lacking in specificity will be rejected.

T.D. 92–60

On June 26, 1992, Customs published in the **Federal Register** (57 FR 28605) a Notice of Court Order, notifying owners of trademarks recorded with Customs that the *Lever* court had ordered Customs to provide protection against physically and materially different gray market products. To date, two applications have been received,

requesting protection. The first, on behalf of the owner of the "Duracell" trademark, was denied. See 57 FR 46063. The second, on behalf of the owner of the "Yamaha" trademark, was suspended following the public comment period, following the issuance of the decision of the appellate court in *Lever*. Customs will no longer accept applications under the June 26, 1992, **Federal Register** notice. Any further applications must be made after the final amendments resulting from this notice of proposed rulemaking become effective, and must be in compliance therewith. The "Yamaha" application will be evaluated in this fashion, and a decision thereon published in the **Federal Register**.

Proposed Amendment of Recordations

Customs anticipates that the owners of U.S. registered trademarks currently recorded with Customs who believe that they may now be entitled to protection ("*Lever*-rule" protection) from gray market importations under the regulatory changes, if adopted, may submit requests to Customs concerning their eligibility, along with detailed explanations of the reasons for their perceived eligibility. Any party applying for "*Lever*-rule" protection must also submit a summary of the physical and material differences relied on in support of its application. At approximately 30-day intervals, Customs will publish in the **Federal Register** a list of those trademarks for which "*Lever*-rule" protection for physically and materially different gray market products has been requested including summaries of the physical and material differences. Interested parties shall then have 30 days in which to comment on the request(s). At the end of the 30-day comment period, Customs shall examine the request(s) and any comments from the public before issuing a determination on whether "*Lever*-rule" protection is granted. For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination.

If protection is granted, Customs will publish in the **Federal Register** a notice that a trademark will receive "*Lever*-rule" protection. Subsequent importations of physically and materially different products will be denied entry; the merchandise will be detained under the procedures described in proposed § 133.25 of the Customs Regulations (proposed 19 CFR 133.25), and be subject to seizure after 30 days pursuant to 19 U.S.C. 1595a(c)(2)(C), unless the physically and materially different product bears in a conspicuous location a legible label stating that "This product is not the product authorized by the United States trademark owner for importation and is physically and materially different." Other information designed to dispel consumer confusion may also be added. Proposed § 133.23(d) will permit an importer to establish, during the 30-day detention period, that the detained merchandise is not physically and materially different from the product authorized for importation or sale in the U.S. by the U.S. trademark owner. Merchandise seized under the regulations may be subject to a petition for relief under the provisions of §§ 133.51 and 133.52 and part 171, Customs Regulations (19 CFR part 171).

Additional Proposed Regulatory Changes

In addition to the gray market regulation changes being proposed herein, Customs proposes to reorganize and renumber the remainder of subpart C, part 133. These changes are intended to clarify Customs enforcement of trademark rights as they relate to products bearing counterfeit, or copying or simulating marks and names, and to clarify Customs enforcement generally against gray market goods. None of the clerical proposals made in this connection, other than those stemming from the *Lever* decision, alters Customs enforcement practices.

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. All such comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

Regulatory Flexibility Act and Executive Order 12866

The proposed rule would generally reflect case law intended to protect products with valid U.S. trademarks against infringing imports. Hence, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the rule is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. Nor does the proposed rule meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information related to this notice of proposed rulemaking has been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1515–0114. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Although this document restates the collection(s) of information without substantive change, comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of the Customs Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information related to this proposed regulation is in § 133.2. This information is necessary in order to enable Customs to protect products with valid U.S. trademarks against infringing imports. The collection of information is voluntary. The likely respondents are businesses.

Estimated total annual reporting and/or recordkeeping burden: _____ hours.

Estimated average annual burden hours per respondent and/or recordkeeper:

Estimated number of respondents and/or recordkeepers:

Estimated annual frequency of responses:

Comments on the collection of information should be directed to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch,

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Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments should be submitted within the same time frame as comments on the substance of the proposal.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 133

Copyrights, Customs duties and inspection, Fees assessment, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise (counterfeit goods), Seizures and forfeitures, Trademarks, Trade names, Unfair competition.

Proposed Amendment

It is proposed to amend part 133, Customs Regulations (19 CFR part 133), as set forth below.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 would continue to read as follows, and the specific sectional authority for part 133 would be revised to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 133.1 also issued under 15 U.S.C. 1096, 1124;

Sections 133.2 through 133.7, 133.11 through 133.13, and 133.15 also issued under 15 U.S.C. 1124;

Sections 133.21 through 133.25 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526;

Sections 133.26 and 133.46 also issued under 19 U.S.C. 1623;

Section 133.52 also issued under 19 U.S.C. 1526;

Section 133.53 also issued under 19 U.S.C. 1558(a).

2. It is proposed to amend § 133.2 by adding new paragraphs (e) and (f) to read as follows:

§ 133.2 Application to record trademark.

* * * * *

(e) *"Lever-rule" protection.* For owners of U.S trademarks who desire protection against gray market articles on the basis of physical and material differences (see *Leyer Bros. Co.* v. *United States*, 981 F.2d 1330 (D.C. Cir. 1993)), a description of any physical and material difference between the articles authorized for importation or sale in the United States and those not so authorized. In each instance, owners who assert that physical and material differences exist must state the basis for such a claim with particularity, and must support such assertions by competent evidence and provide summaries of physical and material differences for publication. Customs determination of physical and material differences may include, but is not limited to, considerations of:

(1) The composition of both the authorized and gray market product(s) (including chemical composition);

(2) Formulation, product construction, structure, or composite product components, of both the authorized and gray market product;

(3) Performance and/or operational characteristics of both the authorized and gray market product;

(4) Differences resulting from legal or regulatory requirements, certification, etc.;

(5) Other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

(f) At approximately 30-day intervals, Customs will publish in the **Federal Register** a list of those trademarks for which gray market protection for physically and materially different products has been requested and summaries of physical and material differences. Interested parties shall then have 30 days in which to comment on the request(s). At the end of the 30-day comment period, Customs shall examine the request(s) and any comments from the public before issuing a determination whether gray market protection is granted. For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination. If protection is granted, Customs will publish in the **Federal Register** a notice that a trademark will receive *Lever* rule protection.

3. It is proposed to amend part 133 by revising subpart C to read as follows:

Subpart C—Importations Bearing Recorded Trademarks or Trade Names

Sec.

133.21 Articles bearing counterfeit trademarks.
133.22 Restrictions on importation of articles bearing copying or simulating trademarks.
133.23 Restrictions on importation of gray market articles.
133.24 Restrictions on articles accompanying importer and mail importations.
133.25 Procedure on detention of articles subject to restriction.
133.26 Demand for redelivery of released merchandise.

Subpart C—Importations Bearing Recorded Trademarks or Trade Names

§ 133.21 Articles bearing counterfeit trademarks.

(a) *Counterfeit trademark defined.* A "counterfeit trademark" is a spurious trademark that is identical to, or substantially indistinguishable from, a registered trademark.

(b) *Seizure.* Any article of domestic or foreign manufacture imported into the United States bearing a counterfeit trademark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the customs laws.

(c) *Notice to trademark owner.* When merchandise is seized under this section, Customs shall disclose to the owner of the trademark the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The name and address of the manufacturer;

(6) The country of origin of the merchandise;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(d) *Samples available to the trademark owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the trademark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as (insert description) and provided pursuant to 19 CFR 133.21(d) was (damaged/

destroyed/lost) during examination, testing, or other use."

(e) *Failure to make appropriate disposition.* Unless the trademark owner, within 30 days of notification, provides written consent to importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with § 133.52, subject to the importer's right to petition for relief from the forfeiture under the provisions of part 171 of this chapter.

§ 133.22 Restrictions on importation of articles bearing copying or simulating trademarks.

(a) *Copying or simulating trademark or trade name defined.* A "copying or simulating" trademark or trade name is one which may so resemble a recorded mark or name as to be likely to cause the public to associate the copying or simulating mark or name with the recorded mark or name.

(b) *Denial of entry.* Any articles of foreign or domestic manufacture imported into the United States bearing a mark or name copying or simulating a recorded mark or name shall be denied entry and subject to detention as provided in § 133.25.

(c) *Relief from detention of articles bearing copying or simulating trademarks.* Articles subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following circumstances are applicable:

(1) The objectionable mark is removed or obliterated as a condition to entry in such a manner as to be illegible and incapable of being reconstituted, for example by:

(i) Grinding off imprinted trademarks wherever they appear;

(ii) Removing and disposing of plates bearing a trademark or trade name;

(2) The merchandise is imported by the recordant of the trademark or trade name or his designate;

(3) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set forth in paragraph (b) of this section or § 133.23(c) of this subpart, and such consent is furnished to appropriate Customs officials;

(4) The articles of foreign manufacture bear a recorded trademark and the one-item personal exemption is claimed and allowed under § 148.55 of this chapter.

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(1) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.26).

(e) *Release of detained articles.* Articles detained in accordance with § 133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction set forth in paragraph (c) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.23 Restrictions on importation of gray market articles.

(a) *Restricted gray market articles defined.* "Restricted gray market articles" are foreign-made articles bearing a genuine trademark or trade name identical with or substantially indistinguishable from one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States and imported without the authorization of the U.S. owner. "Restricted gray market goods" include goods bearing a genuine trademark or trade name which is:

(1) *Independent licensee.* Applied by a licensee (including a manufacturer) independent of the U.S. owner, or

(2) *Foreign owner.* Applied under the authority of a foreign trademark or trade name owner other than the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§ 133.2(d) and 133.12(d) of this part), from whom the U.S. owner acquired the domestic title, or to whom the U.S. owner sold the foreign title(s); or

(3) *"Lever-rule".* Applied by the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§ 133.2(d) and 133.12(d) of this part), to goods that the Customs Service has determined to be physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S. (as defined in § 133.2 of this part).

(b) *Labeling of physically and materially different goods.* Goods determined by the Customs Service to be physically and materially different under the procedures of this part, bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§ 133.2(d) and 133.12(d) of this part), shall not be detained under the provisions of paragraph (c) of this section where the merchandise or its packaging bears a conspicuous and legible label designed to remain on the product until the first point of sale to a retail consumer in the United States stating that:

"This product is not the product authorized by the United States trademark owner for importation and is physically and materially different."

The label must be in close proximity to the trademark as it appears in its most prominent location on the article itself or the retail package or container. Other information designed to dispel consumer confusion may also be added.

(c) *Denial of entry.* All restricted gray market goods imported into the United States shall be denied entry and subject to detention as provided in § 133.25, except as provided in paragraph (b) of this section.

(d) *Relief from detention of gray market articles.* Gray market goods subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following exceptions, as well as the circumstances described above in § 133.22(c), are applicable:

(1) The trademark or trade name was applied under the authority of a foreign trademark or trade name owner who is the same as the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (in an instance covered by §§ 133.2(d) and 133.12(d) of this part); and/or

(2) For goods bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner, that the merchandise as imported is not physically and materially different, as described in § 133.2(e), from articles authorized by the U.S. owner for importation or sale in the United States.

(e) *Release of detained articles.* Articles detained in accordance with § 133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark restriction set forth in § 133.22(c) of this subpart or in paragraph (d) of this section are established.

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(f) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be notified of the seizure and liability of forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.24 Restrictions on articles accompanying importer and mail importations.

(a) *Detention.* Articles accompanying importer and mail importations subject to the restrictions of §§ 133.22 and 133.23 shall be detained for 30 days from the date of notice that such restrictions apply, to permit the establishment of whether any of the circumstances described in § 133.22(c) or § 133.23(d) are applicable.

(b) *Notice of detention.* Notice of detention shall be given in the following manner:

(1) *Articles accompanying importer.* When the articles are carried as accompanying baggage or on the person of persons arriving in the United States, the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) *Mail importations.* When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, notice of the detention shall be given on Customs Form 8.

(c) *Release of detained articles.*—(1) *General.* Articles detained in accordance with paragraph (a) of this section may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction(s) set forth in § 133.22(c) or § 133.23(d) of this subpart are established.

(2) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(i) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(ii) The request of the importer to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, may be exported or destroyed at the request of the addressee or may be released if:

(i) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(ii) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(d) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.25 Procedure on detention of articles subject to restriction.

(a) *In general.* Articles subject to the restrictions of §§ 133.22 and 133.23 shall be detained for 30 days from the date on which the merchandise is presented for Customs examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in § 133.22(c) or § 133.23(d) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time merchandise is presented for Customs examination until the time a notice of detention is issued, Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Once a notice of detention is issued, Customs shall disclose to the owner of the trademark or trade name the following information, if available, within 30 days, excluding weekends and holidays, of the date of detention:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved; and

(5) The country of origin of the merchandise.

(c) *Samples available to the trademark or trade name owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as (insert description) and provided pursuant to 19 CFR 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement."

(d) *Form of notice.* Notice of detention of articles found subject to the restrictions of § 133.22 or § 133.23 shall be given the importer in writing.

§ 133.26 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of § 133.22 or § 133.23 of this subpart, the port director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 133.62 of this chapter, in accordance with § 141.113 of this chapter. If the merchandise is not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(g) of this chapter.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: March 5, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–7969 Filed 3–25–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–104537–97]

RIN 1545–AV11

Guidance Under Subpart F Relating to Partnerships and Branches

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: The IRS and Treasury Department are issuing temporary regulations, published elsewhere in this issue of the **Federal Register**, relating to the treatment under subpart F of certain branches of a controlled foreign corporation (CFC) that are treated as separate entities for foreign tax purposes. The text of the temporary regulations also serves as the text of these proposed regulations. In addition, this document contains proposed regulations relating to the treatment of a CFC's distributive share of partnership income. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by June 24, 1998. Outlines of oral comments to be discussed at the public hearing scheduled for July 15, 1998, must be received by June 24, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–104537–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (REG–104537–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Valerie Mark, (202) 622–3840; concerning submissions and the hearing, Mike Slaughter (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. In General

In these proposed regulations, and in temporary regulations published elsewhere in this issue of the **Federal Register**, the Treasury and IRS set forth a framework for dealing with the issues posed by the use of certain entities which are regarded as fiscally transparent for the purposes of U.S. tax law, with regard to the application of subpart F of the Internal Revenue Code.

Subpart F was enacted by Congress to limit the deferral of U.S. taxation of certain income earned outside the United States by foreign corporations controlled by U.S. persons. Limited deferral was retained after the enactment of subpart F to protect the competitiveness of controlled foreign corporations (CFCs) doing business overseas. See S. Rep. No. 1881, 87th Cong., 2d Sess. 78–80 (1962). This limited deferral furthers the objective of allowing a CFC engaged in an active business, and located in a foreign country for appropriate economic reasons, to compete in a similar tax environment with non-U.S. owned corporations located in the same country.

Conversely, one of the purposes of subpart F is to prevent CFCs from converting active income that is not easily moveable and is earned in a jurisdiction in which a business is located for non-tax reasons into passive, easily moveable income shifted to a lower tax jurisdiction primarily for tax avoidance. Moreover, when subpart F was first enacted it was realized that related person transactions can be easily manipulated to reduce both United States and foreign taxes. Consequently, in enacting subpart F, Congress provided that transactions of CFCs that involve related persons generally give rise to subpart F income with certain enumerated exceptions.

Hybrid branches, by definition, are not regarded as fiscally transparent under foreign law. Thus, they are particularly well suited for the type of tax avoidance described above. In light of the recent proliferation of hybrid branches, Treasury and the IRS believe that it is appropriate to consider the issues related to transactions involving hybrid branches, or other hybrid entities, under subpart F.

The use of other organizations that are fiscally transparent for U.S. tax purposes, including partnerships, raise additional issues. These entities may or may not be fiscally transparent under foreign law. In the context of subpart F, issues similar to those raised in connection with hybrid branches are raised in connection with partnerships. (Other fiscally-transparent entities, such as grantor trusts, will be the subject of guidance issued in conjunction with the finalization of regulations under section 672(f).)

The entity classification regulations of §§ 301.7701–1 through 301.7701–3 (the check-the-box regulations) make entity classification generally elective, in part so that taxpayers can choose a tax status consistent with their business objectives. This administrative provision, however, was not intended to change substantive law. Particularly in the international area, however, the ability to more easily achieve fiscal transparency can lead to inappropriate results under certain substantive international provisions of the Code. Thus, the Treasury and the IRS believe that it is necessary to provide additional guidance regarding the use of hybrid entities in the international context. *See* preamble to T.D. 8697, 61 Fed. Reg. 66585 (December 18, 1996).

II. Controlled Foreign Corporation's Distributive Share of Partnership Income

In *Brown Group, Inc.* v. *Commissioner*, 77 F.3d 217 (8th Cir. 1996), vacating and remanding 104 T.C. 105 (1995), a Cayman Islands partnership with a Cayman Islands CFC partner earned commission income from selling footwear purchased in Brazil on behalf of the CFC's U.S. parent. This commission income would have been subpart F income, specifically foreign base company sales income under section 954(d), to the CFC if it had earned this commission income directly and under the same circumstances in which the partnership earned this income. The Tax Court held that the CFC's distributive share of this commission income was subpart F income. The Eighth Circuit, vacating and remanding the Tax Court's decision, held that the CFC's distributive share of this commission income was not subpart F income.

In response to the Eighth Circuit's opinion, the IRS announced that it intended to issue regulations under subpart F to confirm its position that whether a CFC partner's distributive share of partnership income is subpart F income generally is determined at the CFC partner level. See Notice 96–39 (1996–2 C.B. 209).

These proposed regulations would address the treatment of a CFC partner's distributive share of partnership income

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under subpart F. These regulations apply to all categories of subpart F income, not only to foreign base company sales income, which was at issue in Brown Group. These regulations would provide specific rules that apply to determine a CFC partner's distributive share of foreign personal holding company income, foreign base company sales income, foreign base company services income, and earnings invested in United States property.

The approach taken by these proposed regulations is based on the provisions of subchapter K and subpart F and the policies underlying those provisions. The legislative history of subchapter K indicates that a partnership distributive share should be characterized by using the approach that best serves the Code or regulations section at issue. Subpart F limits deferral of U.S. income tax on common types of passive income received by CFCs, as well as on certain other types of easily moveable income. To allow a CFC to avoid subpart F treatment for items of income by the simple expedient of receiving them as distributive shares of partnership income, rather than directly, is contrary to the intent of subpart F.

Explanation of Provisions

Under these proposed regulations, income and deductions would be characterized at the partnership level. If any part of the partnership's gross income would be subpart F income if received directly by partners that are CFCs, it must be separately stated under section 702. Comments are requested as to whether this rule should not apply for ownership levels under certain thresholds. The regulations under section 702 also would be clarified to expressly provide that an item must be separately stated when, if separately taken into account by any partner, the separately stated item would affect the income tax liability of that partner or any other person. This clarification incorporates in the regulations the position of the IRS. See Rev. Rul. 86–138 (1986–2 C.B. 84) (holding that a subsidiary partnership in a multi-tiered arrangement must separately state items which, if separately taken into account by any partner of any partnership in the multi-tiered arrangement, would affect the income tax liability of that partner).

The regulations under section 952 would also be clarified to expressly include within the definition of subpart F income a CFC's distributive share of any item of gross income of a partnership to the extent the income would have been subpart F income if received by the CFC partner directly. The proposed regulations would further provide that, generally, in determining whether a distributive share of partnership income is subpart F income, whether an entity is a related person and whether activity takes place in or outside the CFC's country of incorporation is determined with respect to the CFC partner and not the partnership. Thus, on the Brown Group facts, the income in issue would retain its character as commission income from the sale of shoes purchased in Brazil on behalf of a U.S. parent for sale in the U.S. It would be determined at the CFC partner level that the shoes were manufactured and sold for use outside of the CFC's country of incorporation (Cayman Islands), and that the U.S. parent was a related person with respect to the CFC. Thus, the income would be foreign base company sales income.

The proposed and temporary regulations also address the question of whether a CFC's distributive share of partnership income can qualify for the exceptions from foreign personal holding company income treatment. Some of these exceptions are based on whether the income is earned in a transaction with a related person that is incorporated, or uses property, in the CFC's country of incorporation. The proposed and temporary regulations address the application of those exceptions. Other exceptions are based on the activities performed by the CFC in connection with the property through which it earns the income. The proposed regulations would provide that the exceptions requiring activity will generally apply if the exception would have applied to the income had the partnership itself been a CFC. This requirement is not met if the partnership can qualify for the exception only by taking into account the separate activities of its partners (e.g., the partnership owns property and the CFC provides the management services).

These proposed regulations would amend the rules regarding the application of the manufacturing exception of § 1.954–3(a)(4). The regulations would clarify the Service's current position that, in general, a controlled foreign corporation can apply the exception only if it has performed the manufacturing activities itself. Thus, manufacturing activities of a contract manufacturer will not be taken into account.

Nevertheless, the manufacturing activities of a partnership may be taken into account under the distributive share rules when the partnership sells the property that it manufactures. These proposed regulations would clarify how the manufacturing exception of § 1.954–3(a)(4) applies in the context of the distributive share rules. As previously noted, the general rules would provide that income that could be foreign base company sales income at the CFC partner level is separately stated and that determinations as to relatedness and the relevant country are made at the partner level. Consistent with the framework outlined above, these regulations would allow a CFC's distributive share of sales income to be excluded, under the manufacturing exception of § 1.954–3(a)(4), when the partnership's activities with respect to the property it sells (without regard to the CFC partner's activities) would be sufficient to constitute manufacturing.

Treasury and the IRS are considering applying foreign base company sales income rules in the context of manufacturing branches of partnerships. Comments are requested as to the appropriate scope of such rules.

Under the general rule for determining whether a CFC partner's distributive share includes subpart F income, a CFC partner's distributive share of partnership income earned from performing services for or on behalf of a person that is a related person with respect to the CFC partner will be foreign base company services income. These proposed regulations also would describe how the substantial assistance rule of § 1.954–4(b)(1)(iv) applies when the CFC earns services income through a partnership. When the partnership is performing services for a person unrelated to the CFC partner but the CFC partner provides substantial assistance to the partnership contributing to the performance of those services, the partner and the partnership would be regarded as separate entities and the substantial assistance provided from the CFC to the partnership would cause the CFC's distributive share of the services income to be treated as foreign base company services income. Treasury and the IRS are considering applying similar principles to branches. Comments are requested on this issue.

Finally, consistent with Rev. Rul. 90–112 (1990–2 C.B. 186), the regulations would provide that, for purposes of section 956, a CFC partner's investment in U.S. property includes the U.S. property held by a partnership to the extent of the CFC's ownership interest in the partnership. Comments are requested on this issue.

III. Hybrid Branches

Temporary regulations, published elsewhere in this issue of the **Federal Register** amend the Income Tax

Regulations (26 CFR part 1) relating to sections 952 and 954 by adding rules relating to the treatment under subpart F of certain branches of a CFC or a partnership in which a CFC is a partner that are treated as separate entities for foreign tax purposes. The text of those temporary regulations also serves as the text of the proposed regulations. The preamble to the temporary regulations explains the reasons for the addition.

IV. Proposed Effective Date

These regulations are proposed to apply for taxable years of a controlled foreign corporation beginning on or after the date the final regulations are published in the **Federal Register**. For prior periods, the IRS will rely on principles and authorities under subpart F and subchapter K to apply an aggregate approach, including § 1.701–2(e) and (f) of the regulations for periods for which it is effective.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 15, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by June 22, 1998 and submit an outline of topics to be discussed and time to be devoted to each topic (signed original and eight (8) copies) by June 24, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Valerie Mark of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.702–1 is amended as follows:

1. Paragraph (a)(8)(ii) is revised.
2. A new paragraph (c)(1)(v) is added.

The addition and revision read as follows:

§ 1.702–1 Income and credits of partner.

(a) * * *

(8) * * *

(ii) Each partner must also take into account separately the partner's distributive share of any partnership item which, if separately taken into account by any partner, would result in an income tax liability for that partner, or for any other person, different from that which would result if that partner did not take the item into account separately. Thus, if any partner is a controlled foreign corporation, as defined in section 957, items of income that would be gross subpart F income if taken into account by the controlled foreign corporation must be separately stated for all partners. Under section 911(a), if any partner is a bona fide resident of a foreign country who may exclude from gross income the part of the partner's distributive share which qualifies as earned income as defined in section 911(b), the earned income of the partnership for all partners must be separately stated. Similarly, all relevant items of income or deduction of the partnership must be separately stated for all partners in determining the applicability of section 183 (relating to activities not engaged in for profit) and the recomputation of tax thereunder for any partner.

* * * * *

(c) * * *

(1) * * *

(v) In determining whether the de minimis or full inclusion rules of section 954(b)(3) apply.

* * * * *

Par. 3. In § 1.952–1, paragraphs (b) through (f) are redesignated as paragraphs (c) through (g), respectively, and a new paragraph (b) is added to read as follows:

§ 1.952–1 Subpart F income defined.

* * * * *

(b) *Treatment of distributive share of partnership income—*

(1) *In general.* A controlled foreign corporation's distributive share of any item of income of a partnership is income that falls within a category of subpart F income described in section 952(a) to the extent the item of income would have been income in such category if received by the controlled foreign corporation directly. For specific rules regarding the treatment of a distributive share of partnership income under certain provisions of subpart F, see §§ 1.954–1(g); 1.954–2(a)(5); 1.954–3(a)(6); 1.954–4(b)(2)(iii); and 1.954–6(g).

(2) *Example.* The application of this paragraph (b) may be illustrated by the following example.

Example. CFC, a controlled foreign corporation, is an 80-percent partner in PRS, a foreign partnership. PRS earns $100 of interest income that is not export financing interest, as defined in section 954(c)(2)(B), from a person unrelated to CFC. This interest income would have been foreign personal holding company income to CFC, under section 954(c), if it had received this income directly. Accordingly, CFC's distributive share of this interest income, $80, is foreign personal holding company income.

* * * * *

Par. 4. Section 1.954–1 is amended as follows:

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1. Paragraphs (c)(1)(i)(A) through (D) are redesignated as (c)(1)(i)(A)(*1*) through (*4*), respectively.

2. A new paragraph heading for newly designated paragraph (c)(1)(i)(A) is added.

3. New paragraphs (c)(1)(i)(B) through (E) are added.

4. Paragraph (g) is added.

The additions read as follows:

§ 1.954–1 Foreign base company income.

* * * * *

(c) * * *

(1) * * *

(i) *Deductions against gross foreign base company income*—

(A) *In general.* * * *

* * * * *

(B) through (E) [The text of the proposed paragraphs (c)(1)(i)(B) through (E) is the same as the text of § 1.954–1T(c)(1)(i)(B) through (E) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) *Distributive share of partnership income*—(1) *Application of related person and country of organization tests.* Unless otherwise provided, to determine the extent to which a controlled foreign corporation's distributive share of any item of gross income of a partnership would have been subpart F income if received by it directly, under § 1.952–1(b), if a provision of subpart F requires a determination of whether an entity is a related person, within the meaning of section 954(d)(3), or whether an activity occurred within or outside the country under the laws of which the controlled foreign corporation is created or organized, this determination shall be made by reference to such controlled foreign corporation and not by reference to the partnership.

(2) *Example.* The application of paragraph (g)(1) of this section is illustrated by the following example:

Example. (i) CFC1, a controlled foreign corporation organized in Country A, is an 80-percent partner in Partnership, a partnership organized in Country B. CFC2, a controlled foreign corporation organized in Country B, owns the remaining 20 percent interest in Partnership. CFC1 and CFC2 are owned by a common U.S. parent, USP. CFC2 manufactures Product A in Country B. Partnership earns sales income from purchasing Product A from CFC2 and selling it to third parties located in Country B that are not related persons with respect to CFC1 or CFC2. For purposes of determining whether CFC1's distributive share of Partnership's sales income is foreign base company sales income under section 954(d), CFC1 is treated as if it purchased Product A from CFC2 and sold it to third parties in Country B. Under section 954(d)(3), CFC2 is a related person with respect to CFC1. Thus, with respect to CFC1, the sales income is deemed to be derived from the purchase of personal property from a related person. Because the property purchased is both manufactured and sold for use outside of Country A, CFC1's country of organization, CFC1's distributive share of the sales income is foreign base company sales income.

(ii) For purposes of determining whether CFC2's distributive share of Partnership's sales income is foreign base company sales income, CFC2 is treated as if it directly sold Product A to third parties within Country B. Therefore, Product A is both manufactured and sold for use within CFC2's country of organization. Thus, CFC2's distributive share of Partnership's sales income is not foreign base company sales income.

Par. 5. In § 1.954–2, paragraphs (a)(5) and (a)(6) are added to read as follows:

§ 1.954–2 Foreign personal holding company income.

(a) * * *

(5) *Special rules applicable to distributive share of partnership income*—(i) [The text of the proposed paragraph (a)(5)(i) is the same as the text of § 1.954–2T(a)(5) published elsewhere in this issue of the **Federal Register**].

(ii) *Certain other exceptions applicable to foreign personal holding company income.* To determine the extent to which a controlled foreign corporation's distributive share of an item of income of a partnership is foreign personal holding company income, the exceptions contained in sections 954(c)(2) and § 1.954–2(b)(2) and (6), (e)(1)(ii), (f)(1)(ii), (g)(2)(ii), and (h)(3)(ii), shall apply only if any such exception would have applied to exclude the income from foreign personal holding company income if the controlled foreign corporation had earned the income directly, determined by taking into account only the activities of, and property owned by, the partnership and not the separate activities or property of the controlled foreign corporation or any other person.

(iii) [The text of the proposed paragraph (a)(5)(iii) is the same as the text of § 1.954–2T(a)(5)(iii) published elsewhere in this issue of the **Federal Register**].

(6) *Special rules applicable to exceptions from foreign personal holding company income treatment in circumstances involving hybrid branches*—(i) [The text of the proposed paragraph (a)(6)(i) is the same as the text of § 1.954–2T(a)(6) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 6. Section 1.954–3 is amended as follows:

1. The second sentence of paragraph (a)(4)(i) is revised.

2. The first sentence of paragraph (a)(4)(ii) is revised.

3. Paragraph (a)(6) is added.

The revisions and addition read as follows:

§ 1.954–3 Foreign base company sales income.

(a) * * *

(4) * * *

(i) * * * A controlled foreign corporation (selling corporation) will be considered, for purposes of this paragraph (a)(4), to have manufactured, produced, or constructed personal property that it sells if, as a result of the operations conducted by such selling corporation in connection with the property that it purchased and sold, the property sold is in effect not the property that it purchased. * * *

(ii) * * * If, prior to its sale of property that it has purchased, a selling corporation substantially transforms the property, the selling corporation will be treated as having manufactured, produced, or constructed such property. * * *

* * * * *

(6) *Special rule applicable to distributive share of partnership income*—(i) *In general.* To determine the extent to which a controlled foreign corporation's distributive share of any item of gross income of a partnership would have been foreign base company sales income if received by it directly, under § 1.952–1(b), the property sold will be considered to be manufactured, produced or constructed by the controlled foreign corporation within the meaning of paragraph (a)(4) of this section only if the manufacturing exception of paragraph (a)(4) of this section would have applied to exclude the income from foreign base company sales income if the controlled foreign corporation had earned the income directly, determined by taking into account only the activities of, and property owned by, the partnership and not the separate activities or property of the controlled foreign corporation or any other person.

* * * * *

Par. 7. In § 1.954–4, paragraph (b)(2)(iii) is added to read as follows:

§ 1.954–4 Foreign base company services income.

* * * * *

(b) * * *

(2) * * *

(iii) *Special rule applicable to distributive share of partnership income.* A controlled foreign corporation's distributive share of a partnership's services income will be deemed to be derived from services

performed for or on behalf of a related person, within the meaning of section 954(e)(1)(A), if the partnership is a related person with respect to the controlled foreign corporation, under section 954(d)(3), and, in connection with the services performed by the partnership, the controlled foreign corporation provided assistance that would have constituted substantial assistance contributing to the performance of such services, under paragraph (b)(2)(ii) of this section, if furnished to the controlled foreign corporation by a related person.

* * * * *

Par. 8. Section 1.954–9 is added to read as follows:

§ 1.954–9 Hybrid branches.

[The text of this proposed section is the same as the text of § 1.954–9T published elsewhere in this issue of the **Federal Register**.]

Par. 9. In § 1.956–2, paragraph (a)(3) is added to read as follows:

§ 1.956–2 Definition of United States property.

(a) * * *

(3) For purposes of section 956, if a controlled foreign corporation is a partner in a partnership that owns property that would be United States property, within the meaning of paragraph (a)(1) of this section, if owned directly by the controlled foreign corporation, the controlled foreign corporation will be treated as holding an interest in the property equal to its ownership interest in the partnership and such ownership interest will be treated as an interest in United States property.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 10. The authority citation for 26 CFR part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 11. Section 301.7701–3 is amended as follows:

1. Paragraph (a) is amended by adding a sentence at the end of the paragraph.

2. Paragraph (c)(1)(iv) is amended by adding a sentence at the end of the paragraph.

The additions read as follows:

§ 301.7701–3 Classification of certain business entities.

(a) [The text of the proposed paragraph (a) of this section is the same as the text of § 301.7701–3T(a) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) * * *

(1) * * *

(iv) [The text of the proposed paragraph (c)(1)(iv) of this section is the same as the text of § 301.7701–3T(c)(1)(iv) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–7890 Filed 3–23–98; 12:58 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH107–1b; KY101–9809b; FRL–5986–1]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Ohio; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend the attainment date for the Cincinnati-Hamilton interstate moderate ozone nonattainment area from November 15, 1997 to November 15, 1998. This proposed extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1997. Accordingly, EPA is also proposing to revise the tables in the Code of Federal Regulations concerning ozone attainment dates in this area. In the final rules section of this **Federal Register**, the EPA is approving these actions as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. This direct final rule will become effective without further notice unless EPA receives relevant adverse written comment on this proposed rule. Should EPA receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that rule and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before April 27, 1998.

ADDRESSES: Comments may be mailed to Joseph M. LeVasseur at the EPA Region 4 address listed below or to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below. Copies of the material submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) may be examined during normal business hours at the following locations:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Copies of the materials submitted by the Ohio Environmental Protection Agency (OEPA) may be examined during normal business hours at the following locations:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

OEPA, Division of Air Pollution Control, 1800 Watermark Drive, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312) 886–6036 or Joseph M. LeVasseur at (404) 562–9035.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 27, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: March 16, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 98–7761 Filed 3–25–98; 8:45 am]

BILLING CODE 6560–50–P

VOL 63 ISS 58 MR 26 1998 UMI

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–3650]

RIN 2127–AF72

Federal Motor Vehicle Safety Standards: Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Termination of proposed rulemaking.

SUMMARY: This notice terminates a rulemaking action in which NHTSA proposed amending the Federal motor vehicle safety standard that establishes requirements for vehicles equipped with air brake systems. The proposed amendment would have required that trucks, buses, and truck tractors be equipped with an automatic means of removing moisture and other contaminants from air brake systems, and would have deleted the current requirement for a supply reservoir since the reservoir's function would be performed by the automatic system. Moisture and contaminants can cause valves to stick, thereby preventing sufficient air pressure from being delivered to the brake chambers.

NHTSA is terminating this rulemaking action because the agency has decided that it should address this issue through more broadly worded performance requirements that would give manufacturers flexibility to choose the type of air cleaning and drying system appropriate for their new air-braked vehicles. The agency will continue to study the issue with a view to initiate a future rulemaking proceeding for regulating the performance of methods for cleansing and drying the compressed air that supplies air brake systems.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Joseph P. Scott, Safety Standards Engineer, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590; telephone (202) 366–2720; FAX (202) 493–2739.

For legal issues: Walter Myers, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590; telephone (202) 366–2992; FAX (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard (Standard) No. 121, *Air Brake Systems*, specifies braking performance requirements for vehicles equipped with air brake systems. The standard requires such vehicles to be equipped with, among other things, a "condensate drain valve that can be manually operated" (paragraph S5.1.2.4 for trucks and buses and paragraph S5.2.1.3 for trailers). Such valve allows contaminants such as water, oil, and dirt to be drained from the brake system's reservoirs.

On July 28, 1994, Domenic F. Coletta, M.D., Deputy Medical Examiner of Salem County, New Jersey, submitted a petition for rulemaking to amend Standard 121 to require a condensate drain valve that automatically purges moisture and contaminants from the air supply reservoir. Dr. Coletta stated in his petition that currently available automatic drain valves would better ensure safety because reservoirs equipped with manual drain valves are usually not drained on a regular basis by vehicle drivers. He argued, therefore, that contaminants are present in reservoirs, thus creating unsafe conditions for operation of trucks and buses. He cited conversations with truck drivers and New Jersey state police to the effect that manual drain valves are normally not used to remove contaminants from the reservoirs. He supplied no data, however, on the extent to which requiring automatic drain valves could be expected to enhance motor vehicle safety.

On February 21, 1995, NHTSA granted Dr. Coletta's petition and, on July 24, 1995, issued a request for comments seeking data on automatic drain valves and the effects contaminants in air brake systems before proceeding to rulemaking (60 FR 37864).

The agency received 34 responses to the request for comments from vehicle and equipment manufacturers, industry trade associations, a safety advocacy group, fleet and individual truck operators, a U.S. senator, and numerous private citizens. In general, the manufacturers and trade associations stated that a Federal requirement was not necessary, that the current use of air dryers and the trend toward their widespread use was sufficient to maintain a safe level of performance. Several commenters stated that they had no record of any crashes caused by contaminated air in the brake system. The commenters were split, however, on whether contaminated air constituted a significant safety problem in an air brake system.

Based on a thorough review of the comments, NHTSA published a Notice of Proposed Rulemaking (NPRM) on November 4, 1996 (61 FR 56652), proposing to amend Standard 121 to require that each truck, bus, and truck tractor be equipped with an automatic means of removing moisture and contaminants from its air brake system. The purpose of this proposal was to improve the safety of air-braked vehicles by improving the reliability and durability of ABS modulator valves and pneumatic control valves. The NPRM also proposed the deletion of the requirement for a supply reservoir since its function, the removal of moisture and contaminants, would be accomplished by the addition of such automatic means. Accordingly, NHTSA believed that the deletion of the supply reservoir would not adversely affect the safety of those vehicles. It is worth noting that S5.1.2 of Standard No. 121 provides the option of removing moisture and contaminants by using either a supply reservoir or a service reservoir(s) with automatic drain valves.

The agency received 26 comments on the NPRM, the majority of which (17 of 26) supported the proposal to mandate a means of automatically removing moisture and contaminants from air brake systems. Others supported the use of such devices, but opposed mandating them.

Agency Decision

The agency estimates that approximately 80 to 90 percent of new truck tractors and 75 percent of new single-unit trucks are now being equipped with some type of air moisture/contaminant removal system.

There are 3 basic removal systems which currently can be used on new trucks, tractors and buses equipped with air brakes: automatic drain valves, supply reservoirs (wet tank), and air dryers. Each system has its advantages and disadvantages, as follows:

a. Automatic drain valve. (1) *Advantages.* This is the simplest system for ensuring a clean and dry air brake system. It purges most of the contamination in the supply reservoir, thus preventing contamination from entering the service reservoirs and pneumatic drain valves farther downstream. Since drivers and maintenance personnel may not drain the reservoirs on a daily basis as they should, an automatic drain valve will systematically drain the reservoirs without the need for human intervention. Automatic drain valves on each reservoir could ensure a cleaner air brake system, especially in light of the requirements for ABS.

(2) *Disadvantages.* Automatic drain valves can become clogged and frozen, resulting in the danger of the valve sticking open or closed. Particularly in the southwestern United States, an automatic drain valve would add costs without providing any significant benefits. Unlike air dryers, such valves do not provide any significant dew point reduction. Thus, the air in the brake system could still retain sufficient moisture to degrade the pneumatic valves.

b. Supply reservoir (wet tank). (1) *Advantages.* The supply reservoir or wet tank provides a means of collecting moisture and contaminants before they enter the air brake system, thereby acting as a buffer between the compressor and the service reservoirs. The supply reservoir traps most of the condensate and contaminants before they reach the service reservoirs and provides a backup for desiccant-type dryers in the event of failure.[1]

(2) *Disadvantages.* The presence of the wet tank complicates the air system and reduces the amount of compressed air available for the emergency brake system.

c. Air Dryer. (1) *Advantages.* Air dryers with an integrated condensate drain valve are currently the most effective method of removing moisture and other contaminants from an air brake system. Air dryers also provide some filtration of the compressed air by removing some oils and contaminants from the air. Automatic drain valves do not provide any dew point reduction, while air dryers can provide a 10° to 20° Fahrenheit reduction. This is important because moisture can still be present even with automatic drain valves installed in the system.

(2) *Disadvantages.* Air dryers can fail, and can increase the application times for service and parking brakes. Further, air dryers could place an unnecessary cost burden on some operators and fleets, such as those operating in the southwestern United States, where humidity is low and there is less need for air dryers.

After much consideration and analysis of this issue, NHTSA now believes that it should address this issue through more broadly worded performance requirements that would give manufacturers flexibility to choose the type of air cleaning and drying system appropriate for their new air-braked vehicles. However, the agency is not yet ready to propose such requirements. Accordingly, NHTSA is terminating this rulemaking action.

The agency's goal throughout its consideration of these issues has been, and remains, ensuring the removal of moisture and contaminants from air brake systems by improving the reliability and durability of ABS and associated modular valves and pneumatic control valves. To that end, the agency is actively working with the Society of Automotive Engineers (SAE) to establish an SAE Recommended Practice and associated test procedures for air drying and cleansing equipment used in air brake systems. These procedures would be valuable for testing the vast majority of new heavy trucks. NHTSA estimates that, currently, over 80 percent of new air-braked heavy trucks are being built with air dryers and of those, more than 90 percent are the desiccant type dryers. Regardless of the results of SAE's efforts, however, NHTSA intends to propose performance requirements for the removal of moisture and contaminants from air brake systems, and provide comprehensive test procedures to measure that performance.

Meanwhile, the agency notes that paragraph S5.1.2 of Standard 121 requires that manufacturers provide "either an automatic condensate drain valve for each service reservoir or a supply reservoir between the service reservoir system and the source of air pressure." This will assure that trucks and buses equipped with air brakes will have a means of moisture/contaminant removal adequate to maintain the safety of such systems. Completion of the SAE studies is estimated to be in the fall of 1998.

For the reasons stated above, NHTSA is terminating this rulemaking action.

Authority: 49 U.S.C. §§ 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on March 20, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–7910 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–59–P

[1] In a typical desiccant-style system, the incoming air is routed into the bottom end of an air dryer where a large portion of the moisture and contaminants falls to the bottom. The partially cleaned air then passes through an oil separator. The air, still moist, then is passed through a drying bed of desiccant material (a substance, such as calcium oxide, used as a drying agent) that absorbs the remaining moisture. These dryers are equipped with an automatic drain valve that periodically purges moisture and contaminants from the air system.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980319068–8068–01; I.D. 021998A]

RIN 0648–AK59

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fishery; Fishing Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to extend the current moratorium on harvesting seamount groundfish from the Hancock Seamount in the Northwestern Hawaiian Islands for 6 years, through August 31, 2004. The fishery has been under a moratorium since 1986. At its meeting the week of April 21, 1997, the Western Pacific Fishery Management Council (Council) heard reports from its Bottomfish Plan Team and Scientific and Statistical Committee that indicated that armorhead (*Pentaceros richardsoni*), an overfished seamount species, has not recovered; therefore, the Council recommended that the moratorium be extended. This proposed rule would allow the protection provided for this resource to continue.

DATES: Comments must be submitted by May 11, 1998.

ADDRESSES: Comments on the proposed rule should be sent to William T. Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: James J. Morgan or Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, (562) 980–4030, or Mr. Al Katekaru, Pacific Islands Area Office, (808) 973–2985.

SUPPLEMENTARY INFORMATION: When the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP) was implemented (51 FR 27413, July 31, 1986), a 6-year moratorium was established to aid the recovery of armorhead (*Pentaceros richardsoni*) on Hancock Seamount. This resource was overfished by foreign vessels before the Magnuson Fishery Conservation and Management Act was implemented; it has never been the target of domestic

fishermen. Periodic reviews of the stocks indicated that no recovery had occurred; therefore, on August 17, 1992, (57 FR 36907), the moratorium was extended to August 31, 1998. Armorhead was listed as overfished in the September 1997 "Report to Congress Status of Fisheries of the United States."

The last U.S. research cruise of Hancock Seamount was conducted in 1993; however, the Japanese trawl fleet continues to harvest armorhead on neighboring seamounts outside the exclusive economic zone (EEZ). According to bottom trawl catch and effort statistics provided by the National Research Institute of the Far Seas Fisheries, the most current (1995) spawning potential ratio (SPR) for the armorhead stock is 1.8 percent at all seamounts outside the EEZ. These seamounts comprise 95 percent of the trawl grounds and 91 percent of the total historic seamount-wide catch in the Japanese trawl fishery. Based on the low SPR value, it is inferred that the status of the Hancock Seamount armorhead stock is similarly depressed and well under the current 20 percent SPR definition for an overfished stock.

At its April 21, 1997, meeting the Council heard reports from its Bottomfish Plan Team and Scientific and Statistical Committee on the status of seamount groundfish resources. On the basis of those reports, and in accordance with the framework procedures at 50 CFR 660.67, the Council recommended that the moratorium be extended for at least another 6 years, through August 31, 2004.

The Council recognizes that the stocks extend outside the EEZ and that the moratorium will not ensure recovery of the resource within the EEZ; however, the action is in accordance with U.S. responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act. The Council has also taken action to convene a panel of international experts to explore possible international management of the Emperor and Hawaiian Ridge Seamount armorhead fishery under the aegis of the United Nations Agreement Relating to Straddling Fish Stocks and Highly Migratory Fish Stocks.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as follows:

The National Marine Fisheries Service (NMFS) considers an impact to be "significant" if it results in a reduction in annual gross revenues by more than 5 percent, an increase in annual compliance costs of greater than 5 percent, compliance costs at least 10 percent higher for small entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business. NMFS considers a "substantial number" of small entities to be more than 20 percent of those small entities affected by the regulation engaged in the fishery. Because there have never been U.S. interests actively involved in the seamount groundfish fishery, this rule would not result in a significant economic impact on small entities. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 18, 1998.

David L. Evans,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 660.68 is revised to read as follows:

§ 660.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 2004.

[FR Doc. 98–7965 Filed 3–25–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 58

Thursday, March 26, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on April 9, 1998, in Newport, Oregon, at the Holiday Inn, 3019 N. Coast Highway, Newport, OR. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Reports from PAC Subcommittees (Adapative Management Area, Water Quality/Fish, Media, and Timber); (2) Followup on recreation and landscape level research information presented at last PAC meeting; (3) recreation fees. All Oregon Coast Provincial Advisory Committee meetings are open to the public. Two 15-minute open public forums are scheduled for 10:00 a.m. and 2:15 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Trish Hogervorst, Public Affairs Officer, Bureau of Land Management, at (503) 375–5657, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: March 20, 1998.

James R. Furnish,

Forest Supervisor.

[FR Doc. 98–7927 Filed 3–25–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, April 9, 1998, at the USDI Salem BLM Office; 1717 Fabry Rd SE; Salem, Oregon 97306; phone (503) 375–5642. The Advisory Committee meeting is scheduled for 9:00 a.m. to approximately 2:00 p.m. The tentative agenda includes: (1) Information on the Willamette Livability Forum, (2) Social and Economic Accomplishment of Northwest Forest Plan in the Willamette Province, (3) Future trends—Funding for Social/Economic objectives, (4) Proposal to form subcommittee for Waldo Lake Plan, (5) Riparian Subcommittee update, (6) Public Forum.

The public forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged. Written comments may be submitted prior to the meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: March 20, 1997.

Arlie D. Anderson,

Acting Willamette Forest Supervisor.

[FR Doc. 98–7884 Filed 3–25–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:00 p.m. on May 7, 1998, at the Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to discuss civil rights issues and review special education data.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 17, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–7951 Filed 3–25–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on Tuesday, April 21, 1998, at the Ogden Park Hotel, 247 24th Street, Ogden, Utah 84401. The purpose of the meeting is to discuss current issues in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1400 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

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Dated at Washington, DC, March 17, 1998.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 98–7952 Filed 3–25–98; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 4:30 p.m. on Thursday, April 23, 1998, at the Blue Cross-Blue Shield of Vermont, 1 East Road, Montpelier, Vermont 05401. The purpose of the meeting is to complete revisions to its draft report entitled "Racial Harassment in Vermont Public Schools" and continue planning for FY 98.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kimberly B. Cheney, 802–229–0334, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 19, 1998.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 98–7950 Filed 3–25–98; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on April 22, 1998, at the Westin Hotel, 1900 Fifth Avenue, Seattle, Washington 98101. The purpose of the meeting is to discuss Native American health care issues and civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 19, 1998.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 98–7949 Filed 3–25–98; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a meeting of the Census Advisory Committee of Professional Associations.

The Committee is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee advises the Director of the Bureau of the Census on the full range of Census Bureau programs and activities in relation to their areas of expertise.

DATES: The meeting will convene on April 23–24, 1998. On April 23, the meeting will begin at 9:00 a.m. and adjourn at 5:15 p.m. On April 24, the meeting will begin at 9:00 a.m. and adjourn at 12:15 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Individuals wishing additional information or minutes regarding this meeting, or wishing to submit written statements, may contact the Committee Liaison Officer on 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The agenda for the meeting on April 23, which will begin at 9:00 a.m. and adjourn at 5:15 p.m., is the following:

- Introductory Remarks by the Acting Director, Bureau of the Census.
- Census Bureau Responses to Committee Recommendations.
- The Census Bureau's Plans for Poverty Measurement.
- Are We on the Right Track With the Corporate Marketing Program?
- Economic Census Update.
- How Can the Census Bureau Get Consistent and Useful Feedback From Its Customers?
- Census 2000 and Dress Rehearsal Plans.
- Overview of Indicators of Innovation and Technology.
- Panel Discussion: The National Science Foundation Research and Development Survey.
- Demonstration of the Latest DADS Prototype.
- How Do We Evaluate the Dress Rehearsal and Census 2000?
- Panel Discussion: Where Should We Go From Here?
- How Do We Evaluate the Marketing Strategy for the Dress Rehearsal and Census 2000?
- How Should the Census Bureau Price Data Products Through DADS?

The agenda for the meeting on April 24, which will begin at 9:00 a.m. and adjourn at 12:15 p.m., is the following:

- Chief Economist Updates.
- How Should We Promote Confidentiality in the Decennial Census?
- How Will the OMB Proposal on Tabulation of Race and Ethnicity Data Be Implemented in Dress Rehearsal Tabulations?
- Develop Recommendations and Special Interest Activities.
- Closing Session.

The meeting is open to the public, and a brief period is set aside during the closing session for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer, Ms. Maxine Anderson-Brown, Room 3039, Federal Building 3, Suitland, MD 20233, at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau Committee Liaison Officer.

Dated: March 19, 1998.
James F. Holmes,
Acting Director, Bureau of the Census.
[FR Doc. 98–7839 Filed 3–25–98; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty changed circumstances review.

SUMMARY: In response to a request by SeAH Steel Corporation submitted on March 27, 1997, the Department of Commerce is conducting a changed circumstances review to examine whether SeAH Steel Corporation is the successor to Pusan Steel Pipe. As a result of this review, the Department of Commerce preliminarily finds that for purposes of this proceeding, SeAH is the successor to Pusan Steel Pipe and should be assigned the antidumping deposit rate applicable to Pusan Steel Pipe.

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Marian Wells or Cynthia Thirumalai, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–6309 and 482–4087 respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations, codified at 19 CFR part 353, April 1997.

Background

On July 15, 1997, we published a notice of initiation in this changed circumstances review (*see Circular Welded Non-Alloy Steel Pipe from Korea: Notice of Extension of Time Limit for Preliminary Results, Partial Termination of Antidumping Duty Administrative Review and Initiation of Changed Circumstances Review* (62 FR 37865)). SeAH Steel Corporation (SeAH) submitted information on its corporate structure and production facilities on January 22, 1998 in response to a request by the Department. We are conducting this review in accordance with 19 CFR 353.22(f).

Scope of Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela* (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Successorship

Pusan Steel Pipe (PSP) legally changed its name to SeAH on December 28, 1995, effective as of January 1, 1996. In its request for this changed circumstances review, SeAH asked that it be found the successor to PSP insofar as the change was in name only while the legal structure of the company, its management and ownership were not affected.

In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in (1) management, (2) production facilities, (3) suppliers, and (4) customer base. (*See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review* ("Brass Sheet and Strip"), (57 FR 7759, March 5, 1990), and *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review*, (59 6955, February 14, 1994).) While no one or several of these factors will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be a successor to a second if its resulting operation is essentially the same as that of its predecessor (*see, Brass Sheet and Strip*). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity, the Department will assign the new company the cash deposit rate of its predecessor.

We have received information from SeAH that demonstrates that no major changes occurred with respect to PSP's management, plant facilities, customer base or suppliers. Specifically, we have received product brochures, promotional materials, organizational charts, and lists of managers names for 1995 and 1996. Therefore, the change in name from PSP to SeAH had no material effect on the operation of the company with respect to the production and sale of subject merchandise (i.e., standard pipe). Based on the foregoing, we preliminarily find that SeAH is the successor to PSP and, as such, is entitled to PSP's cash deposit rate with respect to entries of subject merchandise.

Preliminary Results of the Review

We preliminarily conclude that SeAH is the successor to PSP. Should our final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assign SeAH

the antidumping duty cash deposit rate applicable to PSP of 6.00 percent *ad valorem*.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within ten days of publication.

If requested, a hearing will be held April 6, 1998. Interested parties may submit case briefs by March 27, 1998. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than April 1, 1998. The Department will issue a notice of the final results of the changed circumstance review, which will include the results of its analysis of issues raised in any such briefs and hearing. This changed circumstances review and notice are in accordance with 19 CFR 353.22(f).

Dated: March 18, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7986 Filed 3–25–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–071]

Viscose Rayon Staple Fiber From Finland: Postponement of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of the antidumping duty administrative review of the antidumping finding on viscose rayon staple fiber from Finland, covering the period March 1, 1996, through February 28, 1997, since it is not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Alexander Amdur, Antidumping Duty and Countervailing Duty Enforcement Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–4740 or 482–5346.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Background

On April 24, 1997 (62 FR 19988), the Department initiated an administrative review of the antidumping duty finding on viscose rayon staple fiber from Finland, covering the period March 1, 1996 through February 28, 1997. On December 10, 1997 (62 FR 65063), the Department published the preliminary determination in this review.

Postponement of Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 180 days after the date on which the preliminary determination is published.

Because of the complexity of the scope issues involved in this review, we determine that it is not practicable to complete this review within the original time frame.

Accordingly, the deadline for issuing the final results of this review will be no later than 180 days from the publication of the preliminary determination (June 8, 1998).

These extensions are in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: March 20, 1998.

Richard Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–7964 Filed 3–25–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0137]

Submission for OMB Review; Comment Request Entitled Simplified Acquisition Procedures/FACNET

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance; correction.

SUMMARY: The notice document 98–7105 beginning on page 13640, third column, in the issue of March 20, 1998, was incorrect. This notice replaces the incorrect notice.

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Simplified Acquisition Procedures/FACNET. A request for public comments was published at 63 FR 1833, January 12, 1998. No comments were received.

DATES: Comments may be submitted on or before April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Federal Acquisition Policy Division, GSA (202) 501–1900.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0137, Simplified Acquisition Procedures/FACNET, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title IX of the Federal Acquisition Streamlining Act of 1994 (the Act) amended the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*) by adding new sections regarding the establishment of a program for the development and

implementation of a Federal Acquisition Computer Network (hereinafter referred to as FACNET) which allows electronic interchange of procurement information between the private sector and the Federal Government and among Federal agencies. Specific functions of FACNET are set forth under Section 30 of the Act.

Regulatory coverage on FACNET is included under FAR Subpart 4.5—Electronic Commerce in Contracting. FAR section 4.503 requires contractors to provide registration information to the Central Contractor Registration in order to conduct business through electronic commerce (EC) with the Federal Government. Contractor registration information is collected electronically as a prerequisite for conducting EC with the Federal Government. The process for collection of contractor information uses the Federal Implementation Conventions ANSI X12, Trading Partner Profile, in accordance with the Federal Information Processing Standards 161(FIPS). These standards are published by the National Institute for Standards and Technology (NIST). The information required to be submitted as part of contractor registration is the same as that currently provided by the SF 129, Solicitation Mailing List Application; the SF 3881, ACH vendor/Miscellaneous Payment Enrollment Form for paper transactions. In addition, information pertaining to a contractor assignment of commercial and Government entity (CAGE) code (where applicable); electronic data interchange (EDI) capabilities, including ANSI X12 transaction set and version number status for production, testing, sending and receiving; and the registrant's value added network (VAN) or value added service (VAS) electronic communications number also needs to be provided as part of the registration process. Requiring information consistent with the existing forms that Government contractors are familiar with simplifies the process of gathering current, factual data to input into the Registration System. The additional information is information contractors should have readily available when they have established EC/EDI capability.

The information submitted by contractors will permit the Central Contractor Registration to establish a central repository for all vendors doing business with the Federal Government, information that is accessible by all Government contracting activities

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *100,000;* responses per respondent, *1;* total annual responses, *100,000;* preparation hours per response, *.25;* and total response burden hours, *25,000.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *100,000;* hours per recordkeeper, .25; and total recordkeeping burden hours, *25,000.*

Obtaining Copies of Proposals

Requester may obtain a copy the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0137, Simplified Acquisition Procedures/FACNET, in all correspondence.

Dated: March 20, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–7829 Filed 3–25–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Notice of test program.

SUMMARY: The Department of Defense is amending its Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans to implement Section 822 of the National Defense Authorization Act for Fiscal Year 1988.

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ivory Fisher, Office of Small and Disadvantaged Business Utilization, OUSD (A&T) SADBU, 3061 Defense Pentagon, Washington, DC 20301–3061, telephone (703) 697–1688, telefax (703) 693–7014.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with Section 834 of Public Law 101–189, as amended, the Department of Defense (DoD) established a Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (the Program) to determine whether the use of comprehensive subcontracting plans on a corporate, division, or plant-wide basis would increase subcontracting opportunities for small business concerns. DoD is amending the Program to implement the requirements of Section 822 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). The amendments (1) provide for subcontracts that are awarded by participating contractors performing as subcontractors, under DoD contracts, to be included in comprehensive small business subcontracting plans, and (2) extend the Program through September 30, 2000.

Ivory Fisher,

Office of Small and Disadvantaged Business Utilization.

The revised test plan is as follows:

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

I. Purpose

This document implements Section 834 of Public Law 101–189, the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended. The primary purpose of the Comprehensive Small Business Subcontracting Plan Test Program (the Program) is to determine whether the negotiation and administration of comprehensive small business subcontracting plans will reduce administrative burdens on contractors while enhancing subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals under Department of Defense DoD contracts.

II. Authority

The Program is established pursuant to Section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended.

III. Program Requirements

A. The Program shall be conducted from October 1, 1990, through September 30, 2000.

B. The selection of contractors for participation in the Program shall be in accordance with Section 811(b)(3) of the National Defense Authorization Act For Fiscal Year 1996, Public Law 104–106. Eligible contractors are large business concerns at the major (total) corporate level that, during the preceding fiscal year:

1. Were performing under at least three DoD prime contracts; furnished supplies or services (including professional services) to DoD, engaged

in research and development for DoD, or performed construction for DoD; and were paid $5,000,000 or more for such contract activities; and

2. Achieved a small disadvantaged business (SDB) subcontracting participation rate of 5 percent or more during the preceding fiscal year. However, this requirement does not apply to the eight original contractors accepted into the Program. Additionally, a large business with an SDB subcontracting participation rate of less than 5 percent during the preceding fiscal year may request, through the designated contracting activity, to participate in the Program if the firm submits a detailed plan with milestones leading to attainment of at least a 5 percent SDB subcontracting participation rate by September 30, 2000.

C. Contractors selected for participation shall:

1. Be eligible in accordance with paragraph III(B);

2. Establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during the preceding fiscal year, except that a division or plant that historically reported through a higher-level division, but would meet the criteria of paragraph III(B)(2), shall be permitted to participate in the Program if the lower-level division, plant or profit center can demonstrate a 5 percent or greater subcontract performance level with SDB concerns;

3. Have reported to DoD on the SF 295 for the previous fiscal year, except as provided in paragraph III(C)(2);

4. Accept an SDB goal for each fiscal year of not less than 5 percent, or an SDB goal that is in accordance with the milestone established under paragraph III(B)(2);

5. Comply with the requirements of Defense Federal Acquisition Regulation Supplement (DFARS) Section 215.605 for source selection purposes;

6. Offer a broad range of subcontracting opportunities;

7. Voluntarily agree to participate; and

8. Have at least one active contract that requires a subcontracting plan at the designated DoD buying activity responsible for negotiating the Comprehensive Subcontracting Plan.

IV. Elements of the Comprehensive Small Business Subcontracting Plan

A. The comprehensive small business subcontracting plan shall address each of the 11 elements set forth in paragraph (d) of the clause at FAR 52.219–9, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan."

1. The subcontracting plan, percentage and corresponding dollar goals for awards to small business, small disadvantaged business and women-owned small business concerns shall be developed by the contractor for its entire business operation in support of all DoD contracts and subcontracts under DoD contracts regardless of dollar value.

2. Participating contractors shall include separate specific goals and timetables for the awarding of subcontracts in two industry categories which have not historically been made available to small business and small disadvantaged business concerns. These industry categories will be recommended by the contractor and approved by the contracting officer. Subcontract awards made in support of the specific industry categories shall also count towards attainment of the overall small business and small disadvantaged business goals.

3. The subcontracting plan shall set forth the prime contractor's actions to publicize prospective subcontract opportunities for small business, small disadvantaged business and women-owned small business concerns.

B. Subcontracting plans to be established under the Program shall be submitted each year by participating contractors to the designated contracting officer 45 days prior to the end of the Government's fiscal year (September 30). However, new contractors requesting participation under the Program shall submit subcontracting plans to the contracting officer as far in advance as possible to the beginning of the fiscal year in which the contractor proposes to participate.

V. Procedures

A. The Service Acquisition Executive within each military department and defense agency having contractors that meet the requirements of paragraphs III(B) and (C) shall designate at least three but more than five contracting activities to participate in the Program. In selecting the contracting activities to participate in the Program, the Service Acquisition Executive shall ensure that the designated activities cover a broad range of supplies and services.

B. The designated contracting activity will accomplish the following:

1. With the coordination of the Director, Office of Small and Disadvantaged Business Utilization, for their military department of defense agency, select as many eligible prime contractors (at least five) for participation under the Program as deemed appropriate.

2. Establish a "Comprehensive Small Business Subcontracting Plan" negotiating team(s) composed as follows:

a. A contracting officer(s) who will be responsible for negotiation and approval of the comprehensive subcontracting plan(s) as well as the responsibilities at FAR 19.705.

b. The contracting activity's Small and Disadvantaged Business Utilization Specialist.

c. The Small and Disadvantaged Business Utilization Specialist of the cognizant administration activity that administers the preponderance of the selected prime contractor's contracts and/or the appropriate individual who will administer contractor performance under the test in accordance with FAR 19.706 and the provisions herein.

d. Production specialist, price analyst and other functional specialists as appropriate.

C. The designated contracting officer shall:

1. Encourage prime contractors interested in participating in the Program to enter the Program on a plant or facility basis.

2. Solicit proposed comprehensive subcontracting plans from selected contractor(s) as soon as possible and by July 1, annually thereafter.

3. By October 1, and annually thereafter, review, negotiate and approve on behalf of DoD a comprehensive subcontracting plan for each selected contractor.

4. Distribute copies of the approved subcontracting plan in accordance with paragraph VI(A).

5. Upon negotiation and acceptance of the comprehensive subcontracting plan, obtain from the contractor:

a. A listing of all active DoD contracts that contain individual subcontracting plans required by Section 211 of Public Law 95–507.

b. The listing shall include the following:

i. Contract number.

ii. Name and address of the contracting activity.

iii. Contracting Officer's name and phone number.

6. Upon receipt of the information provided by the participating contractor under paragraph V(C)(4), direct the designated administrative contracting officer to issue a comprehensive change order, which modifies all of the contractor's active DoD contracts that include subcontracting plans. The modification will substitute the contractor's approved comprehensive subcontracting plan for the individual

plans, will substitute the clause at DFARS 252.219–7004 for the clause at FAR 52.219–9, and will delete the clauses at FAR 52.219–10 and 52.219–16 and DFARS 252.219–7003 and 252.219–7005, as appropriate.

7. Review annually, with the contract administration activity, the contractor's performance under the plan. Document the review findings and distribute, in accordance with paragraph VI(A), within 45 days of the end of the fiscal year.

8. By November 15 of the year after acceptance, and annually thereafter, determine whether the contractor has met its comprehensive subcontracting goals. If the goals have not been met, determine whether there is any indication that the contractor failed to make a good faith effort and take appropriate action.

9. By December 15, 2000, prepare and submit a report on each participating contractor's performance which details the results of the Program. The report must compare the contractor's performance under the Program with its performance for the three fiscal years prior to acceptance into the Program. The report distribution will be in accordance with paragraph VI(A).

D. Participating contractors:

1. Shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the SF 295 during the preceding fiscal year, except that those contractors that historically reported through a higher headquarters can elect to participate as a separate (lower-level) reporting profit center, plant or division if the contractor achieved an SDB subcontracting performance rate of 5 percent or greater in the preceding fiscal year.

2. Upon negotiation of an acceptable comprehensive subcontracting plan, shall be exempt from individual contract-by-contract reporting requirements for DoD contracts and subcontracts under DoD contracts unless otherwise required in accordance with paragraph III(C)(5).

3. Shall continue individual contract reporting on non-DoD contracts.

4. Shall comply with the flow-down provisions of Section 211 of Public Law 95–507 for large business subcontractors which are not participating in the Program. Consequently, large business concerns which are not participating in the Program receiving a DoD subcontract in excess of $500,000 ($1,000,000 for construction) are required to adopt a plan similar to that mandated by the clause at FAR 52.219–9. Participating contractors are prohibited from flowing down the "Comprehensive" subcontracting deviation provisions of DFARS 252.219–7004. Accordingly, large business subcontractors to the participating contractors who themselves are not participating in the Program shall be required to establish individual subcontracting plans with specific goals for awards to small business, small disadvantaged business and women-owned small business concerns.

5. Upon expulsion from the Program or Program termination on September 30, 2000, shall negotiate and establish individual subcontracting plans on all future DoD contracts that otherwise meet the requirements of Section 211 of Public Law 95–507.

VI. Monitoring and Reporting of Comprehensive Subcontracting Plans and Goals

A. Upon negotiation and acceptance of comprehensive subcontracting plans and goals, the designated activity shall immediately forward one copy of the plan to each of the following:

1. Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (Acquisition and Technology), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301–3061.

2. Director, Small and Disadvantaged Business Utilization, for the military department or defense agency of the activity that negotiated and accepted the comprehensive subcontracting plan.

3. The cognizant contract administration office.

B. Each participating contractor shall complete the SF 295 "Summary Subcontract Report" in accordance with the instructions on the back of the form on a semi-annual basis, except as noted below.

1. One copy of the SF 295 and attachments shall be submitted to Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (Acquisition and Technology), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301–3061.

2. Participating contractors shall enter in Item 14 "Remarks" block the annual corporate, division or plant-wide small business, small disadvantaged business and women-owned small business percentage and corresponding dollar goals.

3. Participating contractors shall also enter separately in Item 14 the percentage and corresponding dollar goals for each of the two selected industry categories (see paragraph IV(A)(2)).

4. Participating contractors shall also enter separately in Item 14 on a semi-annual cumulative basis the percentage and corresponding dollar amount of subcontract awards made in each of the two selected industry categories.

5. Participating contractors shall be exempt from the completion of SF 294 "Subcontract Report For Individual Contracts" for DoD contracts during their participation in the Program.

[FR Doc. 98–7709 Filed 3–25–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of January 1998)

Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of January 1998, include the installation and state where the cost comparison is being performed, the total authorizations under study, public announcement date and anticipated solicitation date. The following initiatives are in various stages of completion.

COST COMPARISONS

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation scheduled for
EIELSON AFB	AK	ADMINISTRATIVE TELEPHONE SWITCHBOARD.	10	18–Oct–96	01–Jul–98.
EIELSON AFB	AK	MILITARY FAMILY HOUSING MANAGEMENT	16	17–Nov–97	17–May–98.

COST COMPARISONS—Continued

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation scheduled for
ELMENDORF AFB	AK	ADMINISTRATIVE TELEPHONE SWITCHBOARD.	16	14–Jul–97	01–Feb–98.
ELMENDORF AFB	AK	MILITARY FAMILY HOUSING MANAGEMENT	22	19–Sep–96	02–Feb–98.
EDWARDS AFB	CA	BASE SUPPLY	327	02–May–96	12–May–97.
LOS ANGELES AFS	CA	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNTIONS.	65	01–Jul–97	30–Jul–98.
LOS ANGELES AFS	CA	HOUSING MANAGEMENT	10	01–Jul–97	30–Jul–98.
LOS ANGELES AFS	CA	SERVICES ACTIVITIES	8	01–Jul–97	30–Jul–98.
MARCH AFB	CA	AIRFIELD OPERATIONS AND WEATHER	41	13–Jun–96	30–Dec–98.
MARCH AFB	CA	BASE OPERATING SUPPORT	237	13–Jun–96	08–Feb–99.
MARCH AFB	CA	TRANSIENT AIRCRAFT MAINTENANCE	0	13–Jun–96	30–Apr–98.
ONIZUKA AFB	CA	UTILITIES PLANT	25	06–May–96	01–Nov–97.
TRAVIS AFB	CA	MILITARY FAMILY HOUSING MAINTENANCE	88	05–May–97	25–Jun–97.
VANDENBERG AFB	CA	BASE OPERATING SUPPORT	211	29–Jul–96	15–Jan–98.
VANDENBERG AFB	CA	CIVIL ENGINEERING MATERIAL ACQUISITION	12	06–May–96	30–Oct–97.
VANDENBERG AFB	CA	CIVIL ENGINEERING	5	29–Jul–96	01–Nov–97.
VANDENBERG AFB	CA	HOUSING MANAGEMENT	14	29–Jul–96	01–Nov–97.
VANDENBERG AFB	CA	STRUCTURAL MAINTENANCE	32	06–May–96	30–Oct–97.
VANDENBERG AFB	CA	TRAINER FABRICATION	12	24–Nov–97	01–Jan–99.
BUCKLEY ANGB	CO	AIRFIELD MANAGEMENT	34	22–Mar–95	01–Apr–98.
BUCKLEY ANGB	CO	CIVIL ENGINEERING	55	24–Nov–97	01–Jan–99.
FALCON AFB	CO	UTILITIES PLANT	21	06–May–96	01–Nov–97.
PETERSON AFB	CO	BASE OPERATING SUPPORT	121	29–Jul–96	03–Jul–97.
PETERSON AFB	CO	CIVIL ENGINEERING MATERIAL ACQUISITION	8	29–Jul–96	09–Jan–98.
USAF ACADEMY	CO	MESS ATTENDANTS	170	10–Mar–97	28–Feb–98.
DOVER AFB	DE	TRANSIENT AIRCRAFT MAINTENANCE/AIR GROUND EQUIPMENT.	24	05–Sep–97	02–Jun–98.
EGLIN AFB	FL	CIVIL ENGINEERING	96	03–Dec–96	15–Apr–98.
HOMESTEAD ARB	FL	AIRFIELD OPERATIONS AND WEATHER	25	13–Jun–96	13–Apr–99.
HOMESTEAD ARB	FL	BASE OPERATING SUPPORT	149	13–Jun–96	29–Dec–98.
HURLBURT FIELD	FL	COMMUNICATION FUNCTIONS	24	12–Nov–97.	
HURLBURT FIELD	FL	ENVIRONMENTAL	13	23–Sep–97	20–Jul–98.
HURLBURT FIELD	FL	TRANSIENT AIRCRAFT MAINTENANCE	11	08–Aug–96	09–Jun–97.
MACDILL AFB	FL	CIVIL ENGINEERING	310	06–Nov–97	26–Jan–99.
MACDILL AFB	FL	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	88	07–Oct–97	28–Dec–98.
PATRICK AFB	FL	BASE OPERATING SUPPORT	121	29–Jul–96	15–Nov–97.
PATRICK AFB	FL	HOUSING MANAGEMENT	7	29–Jul–96	15–Jan–98.
DOBBINS ARB	GA	BASE OPERATING SUPPORT	127	13–Jun–96	02–Mar–98.
DOBBINS ARB	GA	COMMUNICATION FUNCTIONS	0	13–Jun–96	02–Mar–98.
DOBBINS ARB	GA	CONTROL TOWER OPERATIONS	33	13–Jun–96	02–Mar–98.
DOBBINS ARB	GA	WEATHER SERVICES	0	13–Jun–96	02–Mar–98.
ROBINS AFB	GA	EDUCATION SERVICES	29	28–Feb–97	28–Feb–98.
ROBINS AFB	GA	MILITARY FAMILY HOUSING MAINTENANCE	13	02–May–96	09–May–97.
RAMSTEIN AB	GERMY	MESS ATTENDANTS	33	10–Jul–96	01–Mar–97.
RAMSTEIN AB	GERMY	MILITARY FAMILY HOUSING MAINTENANCE	129	19–Jun–97	01–Mar–98.
RAMSTEIN AB	GERMY	PRECISION MEASUREMENT EQUIPMENT LABORATORY.	79	06–May–97	01–Jan–98.
SPANGDAHLEM AB	GERMY	MESS ATTENDANTS	16	10–Jul–96	01–Mar–97.
HICKAM AFB	HI	BASE OPERATING SUPPORT	528	11–Mar–97	15–Mar–98.
SCOTT AFB	IL	BASE SUPPLY	110	03–Jun–97	28–Aug–98.
GRISSOM AFB	IN	AIRFIELD OPERATIONS AND WEATHER	35	13–Jun–96	11–May–98.
GRISSOM AFB	IN	BASE OPERATING SUPPORT	170	13–Jun–96	11–May–98.
GRISSOM AFB	IN	TRANSIENT AIRCRAFT MAINTENANCE	0	13–Jun–96	10–Oct–98.
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	66	13–Jun–96	10–Aug–99.
HANSCOM AFB	MA	COMMUNICATION FUNCTIONS	93	28–Feb–97	15–Apr–98.
HANSCOM AFB	MA	DATA PROCESSING	18	28–Feb–97	15–Apr–98.
WESTOVER AFB	MA	BASE OPERATING SUPPORT	210	13–Jun–96	08–Feb–98.
WESTOVER AFB	MA	CONTROL TOWER OPERATIONS	19	13–Jun–96	27–Feb–98.
WESTOVER AFB	MA	WEATHER SERVICES	0	13–Jun–96	27–Feb–98.
ANDREWS AFB	MD	AIRCRAFT MAINTENANCE AND SUPPLY	750	25–Jul–97	21–Dec–98.
ANDREWS AFB	MD	MEDICAL FACILITY MAINTENANCE	11	09–Oct–97	04–May–98.
MINN/ST PAUL IAP ARS	MN	BASE OPERATING SUPPORT	104	13–Jun–96	10–Apr–98.
MINN/ST PAUL IAP ARS	MN	COMMUNICATION FUNCTIONS	0	13–Jun–96	27–Feb–98.
KEESLER AFB	MS	TECHNICAL TRAINING CENTER EQUIPMENT MAINTENANCE.	253	13–Jun–96	25–Aug–97.
MALMSTROM AFB	MT	BASE COMMUNICATIONS	72	06–Oct–97	01–Jan–99.
MALMSTROM AFB	MT	BASE SUPPLY	149	06–May–96	20–Dec–97.
MALMSTROM AFB	MT	HEATING SYSTEMS	36	24–Nov–97	01–Jan–99.
MULTIPLE	MULT.	ADMINISTRATIVE SWITCHBOARD	59	19–Jun–97	01–Mar–98.

COST COMPARISONS—Continued

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation scheduled for
INSTALLATIONS:					
RAF MILDENHALL	UKING				
RAMSTEIN AB	GERMY				
SEMBACH	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE	MULT.	GENERAL LIBRARY	19	29–Jul–97	01–Apr–98.
INSTALLATIONS:					
F E WARREN AFB	WY				
MALMSTROM AFB	MT				
PATRICK AFB	FL				
PETERSON AFB	CO				
VANDENBERG AFB	CA				
MULTIPLE	MULT:	TECHNICAL TRAINING-ELECTRONIC PRINCIPLES TRAINING.	157	03–Dec–96	12–Sep–97.
INSTALLATIONS:					
KEESLER AFB	MS				
LACKLAND AFB	TX				
GRAND FORKS AFB	ND	HEATING SYSTEMS	13	11–Dec–97	23–Dec–97.
OFFUTT AFB	NE	DATA AUTOMATION	346	24–Sep–97	29–May–98.
NEW BOSTON AS	NH	BASE OPERATING SUPPORT	[illegible]	03–Dec–97	16–Dec–98.
MCGUIRE AFB	NJ	MILITARY FAMILY HOUSING MAINTENANCE	19	07–Oct–95	30–Jun–97.
CANNON AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE	21	16–Apr–96	23–Jul–97.
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE	[illegible]	12–May–97	07–Mar–98.
KIRTLAND AFB	NM	BASE COMMUNICATIONS	[illegible]	06–Nov–97	12–Jul–98.
KIRTLAND AFB	NM	BASE SUPPLY	170	02–May–96	01–Jul–97.
KIRTLAND AFB	NM	COMMUNICATION FUNCTIONS	54	29–Apr–97	02–Feb–98.
KIRTLAND AFB	NM	PRECISION MEASUREMENT EQUIPMENT LABORATORY.	51	02–May–96	06–Aug–97.
NIAGRA FALLS IAP	NY	BASE OPERATING SUPPORT	[illegible]	13–Jun–96	30–Jan–98.
NIAGRA FALLS IAP	NY	WEATHER SERVICES	[illegible]	13–Jun–96	30–Jan–98.
WRIGHT PATTERSON AFB	OH	ACADEMIC AND PLATFORM INSTRUCTIONS	115	15–Aug–97	08–Sep–98.
WRIGHT PATTERSON AFB	OH	BASE OPERATING SUPPORT	[illegible]	02–May–96	27–Aug–97.
WRIGHT PATTERSON AFB	OH	CIVIL ENGINEERING	698	15–Aug–97	08–Sep–98.
YOUNGSTOWN REGIONAL AIRPORT ARS.	OH	BASE OPERATING SUPPORT	102	13–Jun–96	10–Jun–98.
TINKER AFB	OK	CIVIL ENGINEERING	567	15–Apr–97	13–Feb–98.
TINKER AFB	OK	COMMUNICATION FUNCTIONS	138	02–May–96	14–Aug–97.
GREATER PITTSBURG IAP	PA	BASE OPERATING SUPPORT	111	13–Jun–96	27–Apr–98.
WILLOW GROVE ARS	PA	BASE OPERATING SUPPORT	78	13–Jun–96	10–Aug–98.
CHARLESTON AFB	SC	AUDIOVISUAL	13	06–Jun–97	30–Aug–98.
CHARLESTON AFB	SC	MILITARY FAMILY HOUSING MAINTENANCE	14	23–Sep–97	20–Jun–98.
SHAW AFB	SC	MILITARY FAMILY HOUSING MAINTENANCE	33	09–Jul–97	09–Jun–98.
BROOKS AFB	TX	LABORATORY SUPPORT SERVICES	42	02–May–96	24–Jul–97.
CARSWELL AFB	TX	BASE OPERATING SUPPORT	91	13–Jun–96	06–Feb–99.
HILL AFB	UT	HEATING SYSTEMS	[illegible]	29–Apr–97	24–Apr–98.
HILL AFB	UT	RECREATIONAL SUPPORT	7	02–May–96	24–Feb–98.
LANGLEY AFB	VA	MILITARY FAMILY HOUSING MAINTENANCE	16	24–Nov–97	01–Mar–98.
MCCHORD AFB	WA	HEATING SYSTEMS	11	23–Sep–97	17–Sep–98.
MCCHORD AFB	WA	MILITARY FAMILY HOUSING MAINTENANCE	15	23–Sep–97	17–Sep–98.
GENERAL MITCHELL IAP ARS	WI	BASE OPERATING SUPPORT	93	13–Jun–96	28–Feb–98.
F E WARREN AFB	WY	BASE COMMUNICATIONS	76	30–Oct–97	01–Jan–99.
F E WARREN AFB	WY	BASE SUPPLY	157	06–May–96	01–Jan–98.
F E WARREN AFB	WY	HEATING SYSTEMS	18	06–May–96	12–Mar–98.

DIRECT CONVERSIONS

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation scheduled for
EIELSON AFB	AK	TRANSIENT AIRCRAFT MAINTENANCE	14	18–Oct–96	01–Jul–98.
ELMENDORF AFB	AK	TRANSIENT AIRCRAFT MAINTENANCE	12	10–Nov–97	12–Jun–98.
DAVIS MONTHAN AFB	AZ	CIVIL ENGINEERING	5	24–Jan–97	15–Feb–98.
DAVIS MONTHAN AFB	AZ	GENERAL LIBRARY	[illegible]	24–Jan–97	15–Feb–98.
EDWARDS AFB	CA	LABORATORY SUPPLY SUPPORT	10	04–Jun–97	30–Sep–97.
LOS ANGELES AFS	CA	PACKING & CRATING	4	01–Jul–97	30–Apr–98.
TRAVIS AFB	CA	ENVIRONMENTAL	11	23–Sep–97	30–Sep–98.
TRAVIS AFB	CA	FURNISHINGS MANAGEMENT	3	14–Mar–97	06–Nov–97.
TRAVIS AFB	CA	GENERAL LIBRARY	[illegible]	14–Mar–97	05–Jan–98.
TRAVIS AFB	CA	PROTECTIVE COATING	5	14–Mar–97	07–Jul–97.

DIRECT CONVERSIONS—Continued

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation scheduled for
VANDENBERG AFB	CA	CIVIL ENGINEERING	9	29–Jul–96	16–Dec–97.
FALCON AFB	CO	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	209	06–May–96	05–Jan–98.
FALCON AFB	CO	ENGINEERING DATA CENTER	[illegible]	17–Nov–97	05–Jan–99.
FALCON AFB	CO	SITE INTEGRATION AND SUPPORT	120	06–May–96	15–Oct–97.
PETERSON AFB	CO	PACKING & CRATING	[illegible]	10–Sep–97	01–Sep–98.
PETERSON AFB	CO	PRECISION MEASUREMENT EQUIPMENT LABORATORY.	21	06–May–96	15–Jan–98.
PETERSON AFB	CO	QUALITY ASSURANCE TRAINING	1	06–May–96	15–Nov–97.
DOVER AFB	DE	FURNISHINGS MANAGEMENT	2	14–Mar–97	13–Nov–97.
DOVER AFB	DE	PROTECTIVE COATING	3	14–Mar–97	18–Jul–97.
MACDILL AFB	FL	MEDICAL TRANSCRIPTION CENTER	[illegible]	03–Jun–97	03–Oct–97.
PATRICK AFB	FL	CIVIL ENGINEERING MATERIAL ACQUISITION	[illegible]	06–May–96	30–Oct–97.
PATRICK AFB	FL	TRANSIENT AIRCRAFT MAINTENANCE	11	10–Sep–97	05–Jan–99.
MOODY AFB	GA	HOSPITAL SERVICES	2	01–Dec–97	30–Nov–97.
SCOTT AFB	IL	GENERAL LIBRARY	7	17–Mar–97	08–Aug–97.
SCOTT AFB	IL	GROUNDS MAINTENANCE	[illegible]	17–Mar–97	09–Jan–98.
SCOTT AFB	IL	MEDICAL FACILITY MAINTENANCE	[illegible]	17–Mar–97	15–Oct–97.
AVIANO AB	ITALY	WAR RESERVE MATERIEL (WRM)	30	16–Aug–96	
MISAWA AB	JAPAN	RANGE OPERATIONS	10	01–Jul–96	13–Nov–97.
OSAN AB	KOREA	RANGE OPERATIONS AND MAINTENANCE	[illegible]	15–Jul–96	15–Sep–97.
MCCONNELL AFB	KS	GENERAL LIBRARY	[illegible]	14–Mar–97	05–Dec–97.
MCCONNELL AFB	KS	HEATING SYSTEMS	[illegible]	14–Mar–97	04–Oct–97.
BARKSDALE AFB	LA	CIVIL ENGINEERING	[illegible]	11–Jun–97	01–Mar–98.
BARKSDALE AFB	LA	GENERAL LIBRARY	[illegible]	11–Jun–97	01–Feb–98.
BARKSDALE AFB	LA	HOSPITAL SERVICES	3	01–Dec–97	15–Feb–98.
ANDREWS AFB	MD	SOFTWARE PROGRAMMING	23	18–Jun–97	28–Jul–98.
MULTIPLE INSTALLATIONS:	MULT.	COMMUNICATIONS OPERATIONS AND	27	21–Feb–96	13–Nov–97.
PRUEM AB	GERMY	MAINTENANCE			
RAMSTEIN AB	GERMY				
SPANGDAHLEM AB	GERMY				
MULTIPLE INSTALLATIONS: F E WARREN AFB	MULT.	MAINTENANCE DATA AND TECHNICAL ORDER LIBRARY.	67	29–Jul–96	30–Sep–97.
MALMSTROM AFB	WY				
MINOT AFB	MT				
VANDENBERG AFB	ND				
	CA				
SEYMOUR JOHNSON AFB	NC	GENERAL LIBRARY	7	11–Jun–97	14–Oct–97.
SEYMOUR JOHNSON AFB	NC	TRANSIENT AIRCRAFT MAINTENANCE	8	12–Nov–97	25–Nov–98.
GRAND FORKS AFB	ND	ADMINISTRATIVE SWITCHBOARD	12	26–Jul–95	31–Oct–97.
GRAND FORKS AFB	ND	FURNISHINGS MANAGEMENT	[illegible]	19–Sep–96	10–Dec–97.
GRAND FORKS AFB	ND	GENERAL LIBRARY	[illegible]	11–Mar–97	10–Dec–97.
MINOT AFB	ND	HEATING SYSTEMS	13	23–Sep–97	21–Jan–98.
OFFUTT AFB	NE	HOSPITAL MAINTENANCE	7	01–May–96	01–Mar–97.
OFFUTT AFB	NE	PROTECTIVE COATING	[illegible]	11–Jun–97	01–Dec–97.
MCGUIRE AFB	NJ	GENERAL LIBRARY	[illegible]	17–Mar–97	28–May–98.
KIRTLAND AFB	NM	DORMITORY MANAGEMENT	[illegible]	28–Feb–97	26–Mar–98.
NELLIS AFB	NV	WEAPONS SYSTEMS TRAINER OPERATIONS	14	12–Jun–97	07–Nov–97.
ALTUS AFB	OK	MEDICAL STENOGRAPHY	[illegible]	17–Nov–97	
TINKER AFB	OK	GENERAL LIBRARY	[illegible]	01–Jul–96	19–Jan–98.
CHARLESTON AFB	SC	HEATING SYSTEMS	[illegible]	14–Mar–97	02–Feb–98.
NORTH FIELD AUXILIARY ACR FIELD.	SC	GROUNDS MAINTENANCE	1	14–Mar–97	26–Jan–98.
INCIRLIK AB	TURKY	BASE OPERATING SUPPORT	220	08–Sep–97	21–Jul–97.
INCIRLIK AB	TURKY	COMMUNICATION FUNCTIONS	56	08–Sep–97	13–Mar–98.
RANDOLPH AFB	TX	GENERAL LIBRARY	7	03–Dec–96	02–Feb–98.
HILL AFB	UT	FACILITIES SERVICES MAINTENANCE	4	10–Mar–97	24–Feb–98.
HILL AFB	UT	GENERAL LIBRARY	[illegible]	02–May–96	02–Mar–98.
HILL AFB	UT	HOUSING MANAGEMENT	[illegible]	10–Mar–97	24–Feb–98.
LANGLEY AFB	VA	HOSPITAL SERVICES	[illegible]	01–Dec–97	31–Jan–98.
FAIRCHILD AFB	WA	FURNISHINGS MANAGEMENT	[illegible]	19–Sep–96	27–Oct–97.
FAIRCHILD AFB	WA	GENERAL LIBRARY	4	15–Mar–97	14–Jul–97.
MCCHORD AFB	WA	GENERAL LIBRARY	[illegible]	17–Mar–97	03–Oct–98.
MCCHORD AFB	WA	GROUNDS MAINTENANCE	[illegible]	17–Mar–97	05–Jan–98.
F E WARREN AFB	WY	FOOD SERVICES	17	29–Jul–97	01–Dec–98.
F E WARREN AFB	WY	HOUSING MANAGEMENT	[illegible]	24–Nov–97	01–Jan–99.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–7948 Filed 3–25–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of the Environmental Assessment for the Proposed Acquisition of Real Estate Interests for Altus Air Force Base (AFB), Oklahoma

The United States Air Force is announcing availability of an Environmental Assessment (EA) which analyzes the proposed acquisition of easements near the ends of a new runway at Altus AFB. The Air Force proposes to acquire easements over approximately 1,046 acres, relocate residents, and remove dwellings so that the runway may be used by all assigned aircraft. The EA describes the proposal and alternatives considered and analyzes potential impacts.

The Air Force is planning to conduct a public meeting on April 9, 1998 at 7:00 p.m. at the Herschal H. Crow Auditorium at Western Oklahoma State College in Altus, Oklahoma. The purpose of the meeting is to present the proposal and information addressed in the EA and to solicit public comments.

All interested parties are invited to comment on the EA. Statements, both written and oral, from representatives of government agencies, public interest groups, and the public will be accepted. Written and oral comments will be reviewed in their entirety and given equal consideration. In order to ensure the Air Force has sufficient time to fully consider public input on issues relating to the analyses contained in the EA, comments should be submitted to the address below by April 24, 1998.

An EA is an environmental analysis process that results in a detailed public document that may lead to a Finding of No Significant Impact for the proposed action. If there are significant impacts, an Environmental Impact Statement will be prepared. Public participation is integral to this EA process. The National Environmental Policy Act requires federal agencies to prepare a detailed environmental analysis before committing resources for significant proposed actions.

Copies of the EA will be available for review beginning March 24, 1998 at the Altus, Oklahoma Public Library and the Cordell, Oklahoma Public Library. To obtain a copy of the EA, or to submit written comments, address correspondence to: 97 AMW/PA, 100 Inez Blvd., Suite 2, Altus AFB, OK 73523–5067, (580) 481–7700.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–7852 Filed 3–25–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meetings of the Chief of Naval Operations Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meetings.

SUMMARY: The Chief of Naval Operations Executive Panel will meet to conduct mid-term and final briefings of the various task forces to the Chief of Naval Operations. These sessions will be closed to the public.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: LCDR Janice Graham, USN, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302–0268, telephone number (703) 681–6205.

SUPPLEMENTARY INFORMATION: This notice of meetings is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). The meetings will be held on:

31 March 1998, 1:30 p.m. to 2:30 p.m.;
2 April 1998, 3 p.m. to 4 p.m.;
13 April 1998, 1:30 p.m. to 2:30 p.m.;
15 April 1998, 1:30 p.m. to 2:30 p.m.; and
24 April 1998, 1:30 p.m. to 2:30 p.m.

The purpose of these meetings is to conduct mid-term and final briefings of the various task forces to the Chief of Naval Operations. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. According, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of these meetings be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code. The requirement to publish this notice 15 days prior to the first meeting could not be met due to a delay in administrative processing.

Dated: 18 March 1998.

Lou Rae Langevin,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 98–7953 Filed 3–25–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Lockheed Martin Corporation, Lockheed Martin Tactical Defense System

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Intent to Grant Exclusive Patent License.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Lockheed Martin Corporation, Lockheed Martin Tactical Defense System, a revocable, nonassignable, exclusive license in the United States, and certain foreign countries, to practice the Government owned invention described in U.S. Patent No. 5,572,320 entitled "Fluid Sampling Utilizing Optical Near Field Imaging," in the field of machine condition assessment.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than May 26, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Authority: 35 U. S. C. 207, 37 CFR Part 404)

Dated: March 13, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–7858 Filed 3–25–98; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; SmithKline Beecham Biologicals S.A.

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Intent to Grant Exclusive Patent License.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to SmithKline Beecham Biologicals S. A., a revocable, nonassignable, exclusive license in the United States, and certain foreign countries, to practice the Government owned inventions described in U.S. Patent No. 5,198,535 entitled "Protective Malaria Sporozoite Surface Protein Immunogen and Gene," issued March 30, 1993, and U.S. Patent Application Serial No. 08/053,450 entitled "Protective Malaria Sporozoite Surface Protein Immunogen and Gene" in the field of human vaccines to prevent and/or treat malaria based on immunization schedules using only recombinant proteins as immunogens.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than May 26, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U. S. C. 207, 37 CFR Part 404)

Dated: March 13, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–7859 Filed 3–25–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 26, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 20, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Consolidated State Performance Report.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 52.

Abstract: The reauthorized Elementary and Secondary Education Act (ESEA), in general, and its provision for submission of consolidated plans, in particular (see section 14301 of the ESEA), emphasize the importance of cross-program coordination and integration of federal programs into educational activities carried out with State and local funds. Yet while nearly all States receive ESEA formula grant program funding on the basis of consolidated plans, until now the Department has still required states to report on program performance and beneficiaries on a program-by-program basis. Continuing to do so sends an inconsistent message about the value of consolidated planning and program integration as tools for increasing student achievement. This consolidated state reporting instrument would replace individual program reporting under ESEA programs and Goals 2000 for all entities that submit ESEA consolidated plans (and be an optional reporting vehicle for the other states). It will allow state and local officials and educators to see, at one time, the full scope of their reporting (and corresponding data collection) responsibilities, and promote the Department's interest in (1) receiving essential information on how states have implemented their approved consolidated state plans and (2) promoting the Department's ability to provide assistance to states on how they may be able to use federal funds most effectively. In addition, the state consolidated performance report is intended as an initial step toward an optimal design to track indicators of program performance, including those the Department is required to develop under the Government Performance and Results Act. It is expected that reporting in future consolidated instruments will

change as the U.S. Department of Education and the states develop their capacities to elicit and use accurate and reliable information for monitoring, reporting, and improvement.

[FR Doc. 98–7882 Filed 3–25–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, April 16, 1998: 5:00 p.m.–10:00 p.m.

ADDRESSES: Executive Inn, Roosevelt Room, 1 Executive Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Carlos Alvarado, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:00 p.m. Call to Order
5:15 p.m. Approve Meeting Minutes
5:30 p.m. Public Comment/Questions
6:00 p.m. Presentations
7:00 p.m. Break
7:15 p.m. Presentations
8:30 p.m. Public Comment
9:00 p.m. Administrative Issues
10:00 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carlos Alvarado at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on March 23, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–7954 Filed 3–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, April 15, 1998: 6 p.m.–9 p.m. (Mountain Standard Time).

ADDRESSES: North Valley Senior Center, 3825 Fourth Street NW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m. Call to Order/Roll Call
7:00 p.m. Public Comments
7:10 p.m. Approval of Agenda
7:12 p.m. Approval of 03/18/98 Minutes
7:17 p.m. Chairperson's Report—Jamie Welles
7:20 p.m. Sandia National Laboratory's Environmental Restoration/Waste Management Presentation/Discussion
7:45 p.m. Break
7:55 p.m. Sandia National Laboratory's Environmental Restoration/Waste Management Issues Discussion
8:42 p.m. New/Other Business
8:52 p.m. Public Comments
8:58 p.m. Announcement of Next Meeting
9:00 p.m. Adjourn

A final agenda will be available at the meeting Wednesday, April 15, 1998.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

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Issued at Washington, DC on March 23, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–7956 Filed 3–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, May 6, 1998: 5:30 p.m.–9 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m. Call to Order
5:40 p.m. Presentations
7:00 p.m. Public Comment/Questions
7:30 p.m. Break
7:45 p.m. Review Action Items
8:00 p.m. Approve Meeting Minutes
8:10 p.m. Committee Reports
8:45 p.m. Public Comment
9:00 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC, on March 23, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–7957 Filed 3–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Intent To Provide Optional Prescreening Process for the National Industrial Competitiveness Through Energy, Environment and Economics (NICE^3) Program

AGENCY: The Department of Energy (DOE).

ACTION: Notice of intent to provide optional prescreening process for potential applicants under the DOE NICE^3 program solicitation.

SUMMARY: The Office of Industrial Technologies of the Department of Energy is funding a State Grant Program entitled National Industrial Competitiveness through Energy, Environment, and Economics (NICE^3). The goals of the NICE^3 Program are to improve energy efficiency, promote cleaner production, and to improve competitiveness in industry.

FOR FURTHER INFORMATION CONTACT: Eric Hass, at (303) 275–4728, or Steve Blazek, at (303) 275–4723, at the U.S. Department of Energy Golden Field Office, 1617 Cole Boulevard, Golden, Colorado 80401, FAX (303) 275–4788. In addition, information on the NICE3 program can be located at http//www.oit.doe.gov/Access/nice^3. The Contract Specialist is James Damm, at (303) 275–4744.

SUPPLEMENTARY INFORMATION:

Background Information

The intent of the NICE^3 program is to fund projects that have completed the research and development stage and are ready to demonstrate a fully integrated commercial unit. For the past seven years the NICE^3 program has funded innovative industrial technologies. Some industrial technologies that the NICE^3 program has funded follow: SO_3 Cleaning Process in the Manufacture of Semiconductors; Innovative Design of a Brick Kiln Using Low Thermal Mass Technology; Continuously Reform Electroless Nickel Plating Solutions; Recovery and Reuse of Water-Washed Overspray Paint; and HCl Acid Recovery System.

Eligible applicants for funding include any authorized agency of the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States. For convenience, the term State in this notice refers to all eligible State agency applicants. Local governments, State and private universities, private non-profits, private businesses, and individuals, who are not eligible as direct applicants, must work with the appropriate State agencies in developing projects and forming participation arrangements. The state applicant is required to have an industrial partner to be eligible for grant consideration.

The Catalog of Federal Domestic Assistance number assigned to this program is 81.105. It is anticipated that up to $6 million in Federal funds will be made available in FY 1999 by DOE for the June 1998 solicitation. 50% cost sharing is required by all applicants and/or cooperating project participants. The DOE share for each award shall not exceed $425,000. The industrial partner may receive a maximum of $400,000 in DOE funding. A maximum of $25,000, or 10% of the total amount to industry, whichever is less, may be used to support the state applicant's cost share, if any, for costs associated with technology transfer/dissemination, marketing, etc. In addition to direct financial contributions, cost sharing can include beneficial services or items, such as manpower equipment, consultants, and computer time that are allowable in accordance with applicable cost principles.

Presolicitation

This notice is to advise potential applicants and project participants of the June 1998 solicitation and that DOE will accept presolicitation submissions that set out a brief description of the potential projects. The submissions

should not exceed two pages and should adhere to the format laid out in the preproposal format. This format can be obtained by calling the U.S. Department of Energy's Golden Field Office contacts or the OIT website (listed in the FOR FURTHER INFORMATION CONTACT section). All preproposal submissions will be reviewed by NICE[3] project monitors at the Golden Field Office. The monitors will provide comments to the submitter on the proposed project's applicability to the NICE[3] program. In addition, the reviewers will provide feedback which the applicant can use to formulate and refine their proposal.

The submission of a presolicitation description is not mandatory for submitting an application under the June 1998 solicitation. The DOE reviews and comments under the presolicitation process will not be used by DOE in evaluating or awarding applications under the solicitation. The only purpose of the presolicitation process is to assist potential applicants, who may need assistance, in refining their application.

DATES: A brief description of the proposed project can be submitted to the Golden Field Office on or before May 15, 1998. All summaries must be submitted through a state agency.

Issued in Golden, Colorado, on March 17, 1998.

Dated: March 13, 1998.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 98–7955 Filed 3–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–26–000]

Glenn M. Dunne, Sr. Trust; Notice of Petition for Adjustment

March 29, 1998.

Take notice that on March 9, 1998, Glenn M. Dunne, Sr. Trust (Dunne) filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 [15 U.S.C. 3142(c) (1982)], requesting that the Commission issue an order determining that the Kansas ad valorem tax refunds required by the Commission's September 10, 1997 order (in Docket No. RP97–369–000 *et al*[1] on remand from the D.C. Circuit Court of Appeals,[2] are barred by operation of law. The subject refunds have been sought by Panhandle Eastern Pipe Line Company (Panhandle), in response to the Commission's September 10 order. Dunne's petition is on file with the Commission and open to public inspection.

Dunne requests that the Commission resolve the dispute between it and Panhandle concerning principal amount of refunds. Dunne also request a one year extension of the deadline for making refunds as to royalties. In addition, Dunne requests that the Commission grant a procedural adjustment to allow it to place into an escrow account: (a) the principal amount of refunds and interest thereon attributable to unrecovered royalities, (b) the principal amount and interest thereon attributable to production prior to October 3, 1983, (c) the interest due on royalty refunds which were recovered and paid to Panhandle and (d) the interest due on principal refunds other than royalties, pre-October 3rd production, and the disputed amount described above.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7847 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–13–000]

Hoffmann Oil Company; Notice of Petition for Adjustment and Dispute Resolution Request

March 20, 1998.

Take notice that on March 6, 1998, Hoffmann Oil Company (Hoffmann) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] and a dispute resolution request with respect to Hoffman's Kansas ad valorem tax refund liability under the Commission's September 10, 1997 order (September 10 order) in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000.[2] Hoffmann's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the DC Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in an order issued January 28, 1998, in Docket No. RP98–39–001, *et al.*,[4] stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

Hoffmann specifically requests that the Commission: (1) Resolve the pending dispute between Hoffmann and Panhandle Eastern Pipeline Company (Panhandle) concerning the proper amount of refunds, including interest, for reimbursement of Kansas ad valorem taxes paid over the period 1983 to 1988 (with such amounts being placed in an escrow account); (2) grant an adjustment to its procedures to allow Hoffman to defer payment of principal and interest attributable to royalties for one year until March 9, 1999; and (3) grant an adjustment to the Commission's procedures to allow Hoffmann to place

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[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 2, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g 82 FERC ¶ 61,058(1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

[4] See Order Clarifying Procedures 82 FERC ¶ 61,059 (1998).

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into an escrow account: (i) Amounts attributable to royalty refunds which have not been collected from the royalty owner (principal and interest), (ii) interest on royalty amounts which have been recovered from the royalty owners (the principal of which was refunded); and (iii) interest on the total amount of refunds allegedly due (excluding royalties, disputed amounts, and pre-October 3rd production).

In support of its request Hoffmann states that it is not seeking to relieve itself of its refund obligation, rather it merely seeks to establish procedures which ensure that it pays only that which is legitimately owed and that if it is subsequently determined that its refund liability was less than that claimed by Panhandle, it can recover the overpayment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7845 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–27–000]

Kaiser-Francis Oil Company; Notice of Petition for Adjustment

March 20, 1998.

Take notice that on March 9, 1998, Kaiser-Francis Oil Company (Kaiser-Francis) filed a petition for adjustment, pursuant to section 502(C) of the Natural Gas Policy Act of 1978 [15 U.S.C. 3142(c) (1982)], requesting that the Commission issue an order determining that the Kansas ad valorem tax refunds required by the Commission's September 10, 1997 order (in Docket No. RP97–369–000 *et al* [1] on remand from the D.C. Circuit Court of Appeals,[2] are barred by operation of law. The subject refunds have been sought by Colorado Interstate Company (CIG), in response to the Commission's September 10 order. Kaiser-Francis's petition is on file with the Commission and open to public inspection.

Kaiser-Francis requests that the commission (1) grant an adjustment to its procedures to allow Kaiser-Francis to deter payment of principal and interest attributable to royalties for one year until March 9, 1999; and (2) grant an adjustment to the Commission's procedures to allow Kaiser-Francis to place into an escrow account in a federally-insured financial institution: (i) amounts attributable to royalty refunds which have not been collected from the royalty owner (principal and interest), (ii) interest on royalty amounts which have been recovered from the royalty owners (the principal of which was refunded); and (iii) interest on the total amount of refunds allegedly due (excluding royalties).

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7848 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–29–000]

Kaiser-Francis Oil Company; Notice of Petition for Adjustment

March 20, 1998.

Take notice that on March 9, 1998, Kaiser-Francis Oil Company (Kaiser) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting that the Commission: (1) Grant an adjustment to its procedures to allow Kaiser to defer payment of principal and interest attributable to royalties for one-year until March 9, 1999; and (2) Grant a procedural adjustment to allow Kaiser to place into an escrow account: (i) amounts attributable to royalty refunds which have not been collected from the royalty owner (principal and interest); (ii) interest on royalty amounts which have been recovered from the royalty owners (the principal of which was refunded); and (iii) interest on the total amount of refunds allegedly due (excluding royalties). The March 9, 1998, deadline was established for first sellers to remit refunds of Kansas ad valorem taxes to their pipeline purchasers, as required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] Kaiser's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28, Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirements and the timing and procedures for implementing the refunds, based on the individual

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[4] 82 FERC ¶ 61,059 (1998).

circumstances applicable to each first seller.

Kaiser states it is substantially and adversely affected by the potential Kansas ad valorem tax refund requirement. Kaiser is not seeking to relieve itself of that refund obligation. Rather Kaiser seeks to establish procedures which ensure: (a) That it pays only that which is legitimately owned; and (b) that if it is subsequently determined that its refund liability was less than that originally claimed by Panhandle Eastern Pipe Line Company (Panhandle) in Docket No. RP98–40–000, it can recover the overpayment. Accordingly, Kaiser requests an adjustment to the general refund procedures to permit it to pay the following amount into an escrow account: (a) the principal and interest on the uncollected royalties; and (b) interest on amounts not disputed herein other than amounts listed in (a) above.

Kaiser states that with respect to the royalty amounts of the alleged refunds due, Kaiser has been working diligently to determine its potential refund liability and to obtain contribution from its royalty owners. However, Kaiser has not been able either to obtain reimbursement or confirm the uncollectibility of the vase majority of its royalty amounts for which refunds are due. Rather than deferring royalty refunds, Kaiser would prefer to pay the amount of the refunds which its believes may be uncollectible into an escrow account. Accordingly, Kaiser intends to place the amount of $33,830.61 (reflecting all royalties and related interest) into its escrow account and hereby requests all necessary approval to do so. Kaiser requests a one-year extension of the refund due date for the purpose of allowing it to try to collect the royalty refunds. In addition, Kaiser seeks authorization to place the following amounts into its escrow account: (a) the interest on the royalty refunds, the principal of which is paid to Panhandle; and (b) the interest on refunds due (other than royalties), in the amount of $64,627.10. Kaiser intends to place these amounts in its escrow account on March 9, 1998, and requests appropriate adjustment relief to authorize that plan.

Kaiser states that although there are issues relating to portions of the principal refunds which are pending before the Court,[5] to demonstrate its good faith in these proceedings Kaiser has paid the principal amount of refunds attributable to Kaiser's working interest in the amount of $39,912.22 to Panhandle. Should the Commission provide assurances that kaiser will be able to recover any overpayments without having to initiate a prompt return of refund amounts determined not to be due (such return of refunds not dependent upon recovery from consumers), Kaiser would agreed to waive this request for escrowing certain monies. Without such assurances, Kaiser is entitled to have its property protested until the issue of liability has been fully resolved in Courts or Congress.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice; file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7849 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

[5] *See*, Case No. 98–60043, United States Court of Appeals for the Fifth Circuit in *Anadarko Petroleum Corp.* v. *FERC*, and *Union Pacific Resources Company* v. *FERC*.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–53–000]

Kansas Petroleum, Inc.; Notice of Petition for Adjustment

March 20, 1998.

Take notice that on March 9, 1998, Kansas Petroleum, Inc. (Kansas Petroleum), care of 200 West Douglas—Fourth Floor, Wichita, Kansas 67202–3084, filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting, on behalf of first sellers (First Sellers[2] for whom it operated, that the Commission grant them relief from any further refund liability not heretofore paid for the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD)[3] submitted to Kansas Petroleum by Northern Natural Gas Company (Northern), all as more fully set forth in the petition which is open to the public for inspection.

Kansas Petroleum also requests that the Commission, pending resolution of this proceeding, permit Kansas Petroleum to place in an escrow account the amount of interest on the refund liability as calculated.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7851 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] First Sellers are identified as: E.N. Diderich Trust, Howard M. Gillespie Living Trust, Gail P. Popovich, James E. Rhude, James Tasheff, Arthur O. Wilkonson, and Lester Wilkonson Trust.

[3] Kansas Petroleum states that Northern's SRD claims $84,976.18 for the principal and $156,844.71 in interest accrued through March 9, 1998, for a total of $241,820.89.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–262–000]

Kern River Gas Transmission Company; Notice of Request Under Blanket Authorization

March 20, 1998.

Take notice that on March 4, 1998, Kern River Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP98–262–000, pursuant to Sections 157.205 and 157.211 of the

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Commission's Regulations under the Natural Gas Act (NGA) for authorization to utilize the existing Tehachapi-Cummings Meter Station an authorized delivery point for the delivery of natural gas, on a secondary firm or interruptible basis, for any eligible shipper authorized in blanket certificate issued in Docket No. CP89–2048–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Kern River states that the Tehachapi-Cummings Meter Station is located on Kern River and Mojave Pipeline Company's (Mojave) common pipeline facilities in Kern River County, California, and is owned and operated by Mojave.

Kern River further states that Mobil Oil Corporation has requested that Kern River provide deliveries of natural gas to the Tehachapi-Cummings delivery point on a secondary firm basis. Kern River reports that pursuant to an agreement between Kern River and Mojave, dated August 29, 1989, Mojave and Kern River have the right to use each other's delivery points on the common pipeline facilities as secondary delivery points.

Kern River proposes to utilize the existing Tehachapi-Cummings Meter Station for deliveries of gas to the Water District for Mobil or other shippers for whom Kern River is, or will be, authorized to transport gas.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7840 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–34–000]

McCoy Petroleum Corporation; Notice of Petition for Adjustment

March 20, 1998.

Take notice that on March 9, 1998, McCoy Petroleum Corporation (McCoy), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to refund to The Williams Companies, Inc., (Williams) the Kansas ad valorem tax refunds owned by three of the working interest owners in a well located in Barber County, Kansas, otherwise required by the Commission's September 10, 1997 order (September 10 order) in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000.[2] McCoy's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in an order issued January 28, 1998, in Docket No. RP98–39–001, *et al.*,[4] stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

McCoy states that it was and is the operator of the Wortman #1 Lease and the Reed #1 Lease located in Barber County, Kansas. McCoy claims that no portion of the ad valorem tax attributable to the royalty interest in these leases was ever collected by McCoy and is not pertinent to this proceeding. McCoy also states that three of the working interest owners in the Reed #1–23 Well were National Oil Company (National), K & E Drilling Company (K&E), and Christina Sollars (Sollars). McCoy explains that since payment of the reimbursement of the ad valorem taxes to National and Sollars, they have both declared bankruptcy. McCoy states that several years ago K & E sold all of its assets and the company is no longer in business. McCoy indicates that the principal and attributable to National is $1550.88, the amount of the principal and attributable to K&E is $620.35, and the amount of principal attributable to Sollars is $48.46 for a total of $2,219.69.

McCoy asserts that the claims against Nation and Sollars by McCoy are uncollectable by virtue of the federal bankruptcy law. McCoy also asserts that the Kansas statutes relating to the liabilities of a dissolved corporation provide that successors in interest to K&E have no obligation at this time to pay to Williams any Kansas ad valorem tax reimbursement that may have been received by the corporation during the subject period. McCoy further states that the balance of the claim made by Williams against McCoy is being remitted under protest, with all rights reserved, to Williams on behalf of McCoy and the other working interest owners in the two subject leases.

In support of its request for a staff adjustment, McCoy states that it does not have an ongoing contractual relationship with these three working interest owners which would permit McCoy to collect the subject refunds through billing adjustments. McCoy asserts that therefore the alleged refunds as to these three working interest owners should be deemed to be uncollectible and the Commission should waive the obligation of McCoy to make payment of the same. McCoy requests that the Commission grant McCoy staff adjustment in the amount $2,219.69 for taxes and interest as of December 31, 1997, in connection with the Statement of Refunds Due submitted to it on November 10, 1997, by Williams.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make to protestants parties to the proceeding. Any person wishing

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶61,264 (1997); order denying reh'g 82 FERC ¶61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

[4] See Order Clarifying Procedures 82 FERC ¶61,059 (1998).

to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7850 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–25–000]

Range Oil Company, Inc.; Notice of Petition for Adjustment

March 20, 1998.

Take notice that on March 9, 1998, Range Oil Company, Inc. (Range) filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 [15 U.S.C. 3142(c)(1982)], requesting that the Commission issue an order determining that the Kansas ad valorem tax refunds required by the Commission's September 10, 1997 order (in Docket No. RP97–369–000, *et al.*) [1] on remand from the DC Circuit Court of Appeals,[2] are barred by operation of law. The subject refunds have been sought by Williams Natural Gas Company (Williams) in response to the Commission's September 10 order. Range's petition is on file with the Commission and open to public inspection.

Range has been unable to identify all of the subject gas leases. Range has requested that Williams assist in the allocation of the claim between leases. All of the monies received from Williams as reimbursement of Kansas ad valorem taxes was remitted to royalty owners of various leases operated by Range, no part of the reimbursement was allocated to the working interest in the subject leases.

Range does not have an ongoing contractual relationship which would permit Range to collect the subject refunds through billing adjustments; applicant states that the alleged refunds as to these royalty owners should be deemed to be uncollectible because four (4) of these royalty owners are deceased and their estates are closed, and the Kansas non-claim statute (K.S.A. 59–2239) prohibits Range, as operator, from taking legal action against these deceased royalty owners to obtain refunds. Applicant further submits that the refunds due from Herbert C. Voorhis and Joyce Voorhis in the total amount of $1,115.32 should be deemed to be subject to a hardship ruling based upon the statement of their attorney. Applicant submits that these refunds should be deemed to be uncollectible and the Commission should waive the obligation of Range to make payment of the same to Williams.

Therefore, Range requests that the Commission grant Range staff adjustments in the amount of $2,159.25 for taxes and interest as of December 31, 1997, in connection with the Statement of Refunds Due submitted to it on November 10, 1997, by Williams.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7846 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264(1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058(1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (DC 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR96–2–002 and PR96–7–002]

Transok, LLC; Notice of Filing

March 20, 1998.

Take notice that on March 16, 1998, Transok, LLC (Transok) submitted for filing fuel factors of .94% for the Transok Traditional System and of 1.44% for the Anadarko System proposed to be effective May 1, 1998, pursuant to the terms of Transok's most recent section 311 rate cases which implemented fuel trackers for both systems.

Transok states that it has served a copy of the filing on all current shippers and on the Oklahoma Corporation Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7841 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–104–000]

Williston Basin Interstate Pipeline Company; Notice of Technical Conference

March 20, 1998.

On December 31, 1997, Williston Basin Interstate Pipeline Company (Williston Basin) filed tariff sheets to implement a paper pooling service pursuant to a request by one of its shippers and in compliance with Order No. 587, Standards for Business Practices of Interstate Natural Gas Pipelines. On January 30, 1998, the Commission issued an order accepting the tariff sheets effective February 1, 1998, subject to conditions, and subject to Williston Basin's filing revised tariff sheets within 15 days of the order.[1]

In the January 30, 1998 order, the Commission questioned Williston Basin's restrictions regarding storage volumes and pooled volumes originating from multiple rate schedules, and required Williston Basin to file an explanation within 15 days of the order. On February 13, 1998, Williston Basin filed further explanations to support those provisions of its proposed pooling service. These explanations require further inquiry. Therefore, pursuant to the January 30, 1998 order, staff will convene a technical conference at which

[1] Williston Basin Interstate Pipeline Company, 82 FERC § 61,082 (1998).

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the parties can address any unresolved issues related to Williston Basin's pooling proposal.

Take notice that the technical conference will be held on Tuesday, April 7, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7843 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–56–000, et al.]

AES Huntington Beach, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

March 17, 1998.

Take notice that the following filings have been made with the Commission:

1. AES Huntington Beach, L.L.C.

[Docket No. EG98–56–000]

On March 9, 1998, AES Huntington Beach, L.L.C. (AES Huntington Beach), a California limited liability company with its principal office located at 44 Montgomery Street, Suite 3450, San Francisco, California, 94104, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

AES Huntington Beach states that it plans to purchase an electric generating plant located in Huntington Beach, California, from Southern California Edison Company. Upon completion of the sale, AES Huntington Beach will be engaged directly and exclusively in owning the facility, a gas-fired plant with a capacity of approximately 566 MW, and in selling the output of the facility for resale. AES Huntington Beach states that because generating units at the facility have been identified by the California Independent System Operator (ISO) as "reliability must-run" during certain periods, the ISO may call upon the output of these units, when must-run conditions exist, at rates regulated by this Commission.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. AES Redondo Beach, L.L.C.

[Docket No. EG98–57–000]

On March 9, 1998, AES Redondo Beach, L.L.C. (AES Redondo Beach), a California limited liability company with its principal office located at 44 Montgomery Street, Suite 3450, San Francisco, California, 94104, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

AES Redondo Beach states that it plans to purchase an electric generating plant located in Redondo Beach, California, from Southern California Edison Company. Upon completion of the sale, AES Redondo Beach will be engaged directly and exclusively in owning the facility, a gas-fired plant with a capacity of approximately 1310 MW, and in selling the output of the facility for resale. AES Redondo Beach states that because generating units at the facility have been identified by the California Independent System Operator (ISO) as "reliability must-run" during certain periods, the ISO may call upon the output of these units, when must-run conditions exist, at rates regulated by this Commission.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Williams Energy Services Company

[Docket No. ER95–305–015]

Take notice that on March 10, 1998, Williams Energy Services Company (WESCO), a power marketer selling electric power at wholesale pursuant to market-based rate authority granted to it by the Federal Energy Regulatory Commission, tendered for filing an updated market power analysis in compliance with Commission's March 10, 1995, letter order in Docket No. ER95–305.

Comment date: March 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Columbus Southern Power Company

[Docket No. ER98–2162–000]

Take notice that on March 11, 1998, Columbus Southern Power Company (CSP), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement dated February 10, 1998, between CSP, Buckeye Power, Inc. (Buckeye) and Buckeye Rural Electric Cooperative, Inc. (BRE). BRE is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

BRE has requested CSP provide a temporary delivery point, pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968. CSP requests an effective date of March 27, 1998, for the tendered agreements.

CSP states that copies of its filing were served upon Buckeye Rural Electric Cooperative, Inc., Buckeye Power, Inc. and the Public Utilities Commission of Ohio.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric

[Docket No. ER98–2163–000]

Take notice that on March 12, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Columbia Power Marketing Corporation under LG&E's Open Access Transmission Tariff.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric

[Docket No. ER98–2164–000]

Take notice that on March 9, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Griffin Energy Marketing under LG&E's Open Access Transmission Tariff.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric

[Docket No. ER98–2165–000]

Take notice that on March 12, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Columbia Power Marketing Corporation under LG&E's Open Access Transmission Tariff.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric

[Docket No. ER98–2166–000]

Take notice that on March 12, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Griffin Energy Marketing, L.L.C., under LG&E's Open Access Transmission Tariff.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Lowell Cogeneration Company

[Docket No. ER98–2167–000]

Take notice that on March 12, 1998, Lowell Cogeneration Company Limited Partnership tendered for filing a Notification of Change in Status.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Amoco Energy Trading Corporation

[Docket No. ER98–2168–000]

Take notice that on March 12, 1998, Amoco Energy Trading Corporation (Amoco Trading), tendered for filing a letter on behalf of the Executive Committee of the Western Systems Power Pool (WSPP), indicating that Amoco Trading had completed all the steps for pool membership. Amoco Trading requests that the Commission amend the WSPP Agreement to include it as a member.

Amoco Trading requests an effective date of March 13, 1998, for the proposed amendment. Accordingly, Amoco Trading requests waiver of the Commission's notice requirements for good cause shown.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER98–2169–000]

Take notice that on March 12, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an agreement with the Algoma Utility Commission for the installation of equipment on WPSC's transmission system.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER98–2170–000]

Take notice that on March 12, 1998, Florida Power Corporation (FPC), tendered for filing a service agreement between East Kentucky Power Cooperative and FPC for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume No. 8. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement is proposed to be effective February 17, 1998.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER98–2171–000]

Take notice that on March 12, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Ohio Edison Company (OhioEd), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of February 13, 1998.

Copies of the filing have been served upon OhioEd and the New Jersey Board of Public Utilities.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Electric and Gas Company

[Docket No. ER98–2172–000]

Take notice that on March 12, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Enron Power Marketing, Inc. (Enron), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of February 13, 1998.

Copies of the filing have been served upon Enron and the New Jersey Board of Public Utilities.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas Gas and Electric Company

[Docket No. ER98–2173–000]

Take notice that on March 12, 1998, Western Resources, Inc. (Western Resources), on behalf of its wholly-owned subsidiary, Kansas Gas and Electric Company (KGE), tendered for filing a Sixth Revised Exhibit B to the Electric Power, Transmission and Service Contract between KGE and Kansas Electric Power Cooperative, Inc. (KEPCo). KGE states the filing is to update Exhibit B to reflect the installation of the Burden point of delivery. This filing is proposed to become effective February 23, 1998.

A copy of this filing was served upon KEPCo and the Kansas Corporation Commission.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER98–2174–000]

Take notice that on March 12, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and City of Lakeland, Florida, under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to the City of Lakeland, Florida, under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of March 12, 1998, for the Service Agreement.

Copies of the filing were served upon City of Lakeland, Florida, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

[Docket No. ER98–2192–000]

Take notice that on March 11, 1998, Florida Power Corporation (Florida Power), tendered for filing a Form of Service Agreement for Network Contract Demand Transmission Service to provide to itself short term network contract demand service pursuant to Part IV of its open access transmission tariff, FERC Electric Tariff, First Revised Volume No. 6. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on March 12, 1998.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER98–2199–000]

On March 11, 1998, the California Independent System Operator Corporation (ISO), filed a revised

Appendix A to the Responsible Participating Transmission Owner Agreement (RPTO Agreement) between the ISO and Pacific Gas and Electric Company (PG&E), which was initially filed on December 12, 1997, for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket No. ER98–1057–000, including the California Public Utilities Commission.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Chicago Housing Authority

[Docket No. TX98–1–000]

Take notice that on March 10, 1998, Chicago Housing Authority tendered for filing supplemental information to its November 14, 1997, filing submitted in the above-referenced docket.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7898 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–28–000, et al.]

COS de Guatemala, Sociedad Anonima, et al.; Electric Rate and Corporate Regulation Filings

March 16, 1998.

Take notice that the following filings have been made with the Commission:

1. COS de Guatemala, Sociedad Anonima

[Docket No. EG98–28–000]

Take notice that on March 10, 1998, COS de Guatemala Sociedad Anonima (Applicant), 250 West Pratt Street, 23rd Floor, Baltimore, MD 21201, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a private Guatemalan company organized as a Sociedad Anonima. Applicant intends to directly and exclusively operate certain facilities which will consist of various generating units having a current effective capacity of approximately 85 MW and located on the shores of Lake Amaititlan, 32 kms outside Guatemala City and a gas turbine unit located in the Province of Escuintla, approximately 62 kms outside Guatemala City and which will be owned by Guatemala Generating Group y Cia., S.C.A. (GGG), a Guatemalan company formerly known as Credieegsa y Cia., S.C.A. GGG intends to expand the Generating Facilities between 60 and 185 MW through the upgrading of existing equipment and/or the installation of additional generating equipment.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Credieegsa y Cia., S.C.A.

[Docket No. EG98–29–000]

On March 10, 1998, Guatemalan Generating Group y Cia., S.C.A., formerly Credieegsa y Cia., S.C.A. (Applicant), 250 West Pratt Street, 23rd Floor, Baltimore, MD 21201, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a private Guatemalan company organized as a Sociedad En Comandita Por Acciones by Empresa Electrica de Guatemala S.A. (EEGSA), as part of EEGSA's privatization of its electric generation assets. Applicant has recently changed its name from Credieegsa y Cia., S.C.A. to Guatemalan Generating Group y Cia., S.C.A. Applicant owns certain facilities which consist of various generating units located on the shores of Lake Amititlan, 32 kms outside Guatemala City and a gas turbine unit located in the Province of Escuintla, approximately 62 kms outside Guatemala City (the Generating Facilities). Applicant intends to expand the Generating Facilities between 60 and 185 MW through the upgrading of existing equipment and/or the installation of additional generating equipment. Applicant will be engaged directly and exclusively in the business of owning and/or operating the Generating Facilities and selling electricity at wholesale, and may, as discussed in the Application, engage in foreign sales of electric energy at retail. The Generating Facilities will be operated by COS de Guatemala, Sociedad Anonima.

Comment date: April 2, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Zhengzhou Dengyuan Power Company Ltd.

[Docket No. EG98–51–000]

Take notice that on March 2, 1998, Zhengzhou Dengyuan Power Company Ltd. (Dengyuan), a Chinese cooperative joint venture, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission Regulations.

Dengyuan is a company established for the purpose of owning the 55 MW coal-fired power project in Dengfeng City, Henan Province (Project), for the generation and sales of wholesale electric power to utilities and retail electric power to industrial end users in China. The sponsors of the Project and their respective interests are as follows: Henan Dengfeng Power Group Company Limited (Power Group) (51%) and Western Resources International Limited (49%).

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Storm Lake Power Partners I, LLC

[Docket No. EG98–52–000]

Take notice that on March 6, 1998, Storm Lake Power Partners I, LLC, 13000 Jameson Road, Tehachapi, California 93581, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Storm Lake Power Partners I, LLC, an indirect wholly-owned subsidiary of

Enron Wind Corp., is developing a wind turbine generation facility with approximately 150 wind turbines, each with a capacity of 750kW, resulting in an aggregate peak generating capacity of approximately 112.5MW. Storm Lake Power Partners I, LLC plans to sell power to MidAmerican Energy Company as approved by the Commission. Zond Development Corp. and Zond Minnesota Development Corp. II, 80 FERC ¶ 61,051 (1997).

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Storm Lake Power Partners II, LLC

[Docket No. EG98–53–000]

Take notice that on March 6, 1998, Storm Lake Power Partners II, LLC, 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Storm Lake Power Partners II, LLC, an indirect, wholly owned subsidiary of Enron Wind Corp., is developing a wind turbine generation facility with approximately 100 wind turbines, each with a nameplate capacity of 750 kW, resulting in an aggregate peak generating capacity of approximately 75 MW. Storm Lake Power Partners II, LLC plans to sell power to IES Utilities Inc., as approved by the Commission. Iowa Power Partners I, LLC, 81 FERC ¶ 61,058 (1997).

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. AES Alamitos, L.L.C.

[Docket No. EG98–55–000]

Take notice that on March 9, 1998, AES Alamitos, L.L.C. (AES Alamitos), a California limited liability company with its principal office located at 44 Montgomery Street, Suite 3450, San Francisco, California, 94104, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

AES Alamitos states that it plans to purchase an electric generating plant located in Alamitos, California, from Southern California Edison Company. Upon completion of the sale, AES Alamitos will be engaged directly and exclusively in owning the facility, a gas-fired plant with a capacity of approximately 2080 MW, and in selling the output of the facility for resale. AES Alamitos states that because generating units at the facility have been identified by the California Independent System Operator (ISO) as "reliability must-run" during certain periods, the ISO may call upon the output of these units, when must-run conditions exist, at rates regulated by this Commission.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Illinois Power Company

[Docket No. ER98–2150–000]

Take notice that on March 11, 1998, Illinois Power Company (Illinois Power), tendered for filing a point to point, firm transmission service agreement under which Illinois Power will provide transmission service to Mitsubishi Motor Manufacturing of America, Inc., pursuant to its open access transmission tariff.

Illinois Power states that copies of the filing have been served upon Mitsubishi Motor Manufacturing of America, Inc., and to affected state regulatory commissions.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice

8. Citizens Utilities Company

[Docket No. ER98–2151–000]

Take notice that on March 11, 1998, Citizens Utilities Company (Citizens), tendered for filing on behalf of itself and Swanton Village Electric Light Department (Swanton), an Agreement whereby Swanton will make available to Citizens a small amount of load in order to increase the transmission capability of Citizens' Vermont transmission system.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy System

[Docket No. ER98–2153–000]

Take notice that on March 11, 1998, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for VTEC Energy, Incorporated, the Transmission customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under the Service Agreement is March 1, 1998.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER98–2154–000]

Take notice that on March 11, 1998, Entergy Services, Inc (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement Between Entergy Services, as agent for the Entergy Operating Companies and Public Service Electric and Gas Company.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER98–2155–000]

Take notice that on March 11, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Public Service Electric and Gas Company.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER98–2156–000]

Take notice that on March 11, 1998, Carolina Power & Light Company (Carolina), tendered for filing executed Service Agreements between Carolina and the following Eligible Entities: Strategic Energy Ltd.; and North American Energy Conservation, Inc. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Western Resources, Inc

[Docket No. ER98–2157–000]

Take notice that on March 11, 1998, Western Resources, Inc., acting on behalf of itself and Kansas Gas and Electric Company (collectively, Western Resources), tendered for filing an application for an order accepting its proposed market-based power sales tariff. Western Resources intends to sell electric capacity and energy at market rates mutually agreed to by Western Resources and the customer in arms-length negotiations.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. American Electric Power Service Corporation

[Docket No. ER98–2158–000]

Take notice that on March 11, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service billed on and after February 11, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2159–000]

Take notice that on March 11, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing tariff sheets amending and supplementing Con Edison's Electric Rate Schedule No. 2, for the wholesale sale of electric energy and capacity at market-based rates. The filing would authorize sales by Con Edison to corporate affiliates or subsidiaries, subject to cost-based maximum and minimum rates.

Con Edison states that a copy of this filing has been served by mail upon The New York State Public Service Commission.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Interstate Power Company

[Docket No. ER98–2161–000]

Take notice that on March 11, 1998, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreements between IPW and Northern States Power Company (NSP). Under the Transmission Service Agreement, IPW will provide point-to-point transmission service to NSP.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Cherokee County Cogeneration Partners, L.P.

[Docket No. QF94–160–003]

Take notice that on March 6, 1998, Cherokee County Cogeneration Partners, L.P. (Applicant), 132 Peoples Creek Road, Gaffney, South Carolina 29304 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the cogenration facility is located in Cherokee County, South Carolina. The Commission originally certified the facility in Cherokee County Cogeneration Partners, L.P., 75 FERC ¶ 61,156 (1996). A notice of self-recertification was filed on February 16, 1996. The instant application for recertification is to reflect changes in the upstream ownership of the facility.

Comment date: 15 days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7900 Filed 3–25–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER89–627–001 et al.]

Florida Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

March 20, 1998.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket Nos. ER89–627–001 and ER91–252–001]

Take notice that on March 9, 1998, Florida Power Corporation tendered for filing an amendment in the above-referenced dockets.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–1508–002]

Take notice that on March 16, 1998, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Compliance Filing in the above-listed docket.

Con Edison states that a copy of this filing has been served by mail upon all parties on the official service list.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER97–3189–011]

Take notice that on March 17, 1998, PJM Interconnection, L.L.C. (PJM) tendered for filing in accordance with ordering paragraph (G) of the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 (1997), incorporating into the PJM Open Access Transmission Tariff (PJM Tariff) the rate revisions filed by the regional transmission owners on December 15, 1997 and March 2, 1998 in response to ordering paragraph (F) of the Commission's order.

PJM requests an effective date for the revised rate for April 1, 1998, consistent with the effective date of the revised PJM Tariff.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER98–1447–000]

Take notice that on March 17, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing an amendment to its January 16, 1998, filing in this docket.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER98–1606–000]

Take notice that on March 17, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing an amendment to its January 24, 1998, filing in this docket.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER98–1643–000]

Take notice that on March 16, 1998, Portland General Electric Company (PGE) tendered for filing a revised Application for Order Accepting Initial Rate Schedule and Granting Waivers and Blanket Authority, to become effective March 31, 1998.

The proposed tariff (FERC Electric Service Tariff No. 10) provides the terms and conditions pursuant to which PGE will sell electric capacity and energy transactions on the California Power Exchange (PX). In these transactions, PGE intends to charge market-based rates as determined by the auction settlement procedures prescribed by the PX Operating Agreement and Tariff of the California Power Exchange Corporation filed in Docket No. ER96–1663.

Copies of this filing were served upon the Oregon Public Utility Commission and the California PX.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. California Power Exchange Corporation

[Docket No. ER98–2095–000]

Take notice that on December 16, 1997, the California Power Exchange Corporation (PX) tendered for filing one executed copy of the PX Participation Agreement pursuant to the requirement that all service agreements be filed pursuant to Section 205 of the Federal Power Act. In so doing, the PX requests that the Commission disclaim jurisdiction over the filing of such PX Participation Agreements (and related addenda) because those agreements are not agreements for the sale of transmission of energy in interstate commerce, no do the agreements affect the rate for energy traded through the PX. Therefore, the PX Participation Agreement is not the type of contract that is required to be filed pursuant to Section 205. In the alternative, the PX requests that if the Commission finds that the agreements are of the type required to be filed, the PX requests that the Commission grant a waiver of such filing requirement for the reasons set forth in the filing.

For informational purposes, the PX also files three addenda to the PX Participation Agreement that it requires to implement specific provisions of Rate Schedule 1 of the PX Tariff, which was filed on October 17, 1997, in Docket No. ER98–210–000. The PX believes that because these addenda implement provisions already filed with the Commission, it is unnecessary for them to be filed pursuant to Section 205. However, to the extent that the Commission finds that these addenda must be filed to be part of the PX Tariff, the PX requests that the Commission accept its filing as a filing pursuant to Section 205 and requests that the Commission grant any waivers necessary for those tariff changes to become effective on January 1, 1998.

Copies of the filing were served upon all parties in Docket Nos. EC96–19–008 and ER96–1663–009.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER98–2160–000]

Take notice that on March 11, 1998, San Diego Gas & Electric Company filed for Commission approval in this docket, pursuant to Section 205 of the Federal Power Act, amendments to SDG&E's proposed Master Must Run Agreement (MMRA) to be entered into with the California Independent System Operator (ISO), originally filed on October 31, 1997, in Docket No. ER98–496–000. The amendments would add Black Start service from some units to the ancillary services already provided by SDG&E under these agreements; modify billing, settlement and payment procedures to conform to current ISO practices; and update and correct unit performance data. SDG&E has requested that these proposed changes be consolidated with the existing proceeding. SDG&E requests that the proposed amended MMRA be made effective subject to refund by March 31, 1998, the anticipated effective date of the California Independent System Operator Corporation.

SDG&E has served this filing on all parties listed on the official service list in Docket No. ER98–496, including the Public Utilities Commission.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER98–2215–000]

Take notice that on March 17, 1998, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with American Electric Power Service Corporation (AEP). Wisconsin Electric respectfully requests an effective date March 18, 1998.

Copies of the filing have been served on AEP, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER98–2218–000]

Take notice that on March 17, 1998, Northeast Utilities Service Company (NUSCO), on behalf of its affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire, (collectively the NU System Companies), tendered for filing a Service Agreement under the NU System Companies' Sale for Resale Tariff No. 7 Market-Based Rates.

NUSCO states that a copy of this filing has been mailed to the Cinergy Capital & Trading, Inc.

NUSCO requests that the Service Agreement become effective March 9, 1998.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER98–2219–000]

Take notice that on March 17, 1998, Northern States Power Company (Minnesota) and Northern States Power

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Company (Wisconsin) (jointly NSP) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Merchant Energy Group of the Americas.

NSP requests that the Commission accept both the agreements effective February 16, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER98–2220–000]

Take notice that on March 17, 1998, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Entergy Power Marketing Corp. (Entergy). Wisconsin Electric respectfully requests an effective date March 18, 1998.

Copies of the filing have been served on Entergy, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. California Power Exchange Corporation

[Docket No. ER98–2221–000]

Take notice that the California Power Exchange Corporation (PX), on March 5, 1998, filed the following substitute tariff sheets to be effective on March 31, 1998, pursuant to Section 205 of the Federal Power Act.

Substitute First Revised Sheet No. 207
Substitute First Revised Sheet No. 298

On January 30, 1998, the PX filed an amended rate filing. Subsequent to that time, the PX discovered three errors in two of its tariff sheets that were filed in the January 30 amended rate filing. The PX submits that its filing corrects such errors.

The PX seeks any waivers necessary to allow this tariff sheet to go into effect on March 31, 1998.

Copies of the filing were served upon all persons included on the service list compiled in Docket Nos. ER98–210–000 and ER98–1729–000.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER98–2222–000]

Take notice that on March 17, 1998, PJM Interconnection, L.L.C. (PJM) tendered for filing amendments to the Operating Agreement of the PJM Interconnection, L.L.C. and the PJM Open Access Transmission Tariff.

The amendments address: (1) Accounting for costs and revenues associated with loop flows from the New York Power Pool, (2) the correction of a mistaken reference in the Operating Agreement regarding payments to generators, (3) a change in accounting for meter corrections, and (4) correction of the stated effective dates for the Operating Agreement schedules.

PJM requests a waiver for the Commission's regulations to permit an effective date of April 1, 1998 for the amendments to the Operating Agreement and PJM Tariff.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Delmarva Power & Light Company

[Docket No. ER98–2224–000]

Take notice that on March 17, 1998, Delmarva Power & Light Company tendered for filing executed umbrella service agreements with American Electric Power Service Corporation and Strategic Energy Limited, L.P., under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PJM Interconnection, L.L.C.

[Docket No. ER98–2225–000]

Take notice that on March 17, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing four executed service agreements for point-to-point service under the PJM Open Access Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. California Independent System Operator Corporation

[Docket No. ES98–9–000]

Take notice that on March 13, 1998, California Independent System Operator Corporation (ISO) tendered for filing an amendment to its Application, under Section 204 of the Federal Power Act, seeking authorization to issue securities and for certain waivers of Part 34 requirements. The ISO requests authorization to increase its long-term debt issuance from $260,000,000 to $310,000,000. The reason for the increase is to include additional infrastructure costs approved by the ISO Governing Board in December 1997 and operating costs for the first quarter of 1998, which will be capitalized as a result of a three month delay in initial operations.

Comment date: April 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Soyland Power Cooperative, Inc.

[Docket No. ES98–22–000]

Take notice that on February 26, 1997, Soyland Power Cooperative, Inc. (Soyland), filed an application under Section 204 of the Federal Power Act seeking authorization to enter into a loan agreement with the National Rural Utilities Cooperative Finance Corporation under which Soyland would borrow $68 million and seeking an exemption from the competitive bidding and negotiated placement requirements of 18 CFR 34.2(a).

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Citizens Utility Company

[Docket No. ES98–23–000]

Take notice that on March 10, 1998, Citizens Utility Company filed an Application with the Federal Energy Regulatory Commission under Section 204 of the Federal Power Act requesting an order authorizing the issuance of up to $294,500,000 in industrial development revenue bonds, special purpose revenue bonds, and environmental facilities revenue bonds in connection with the construction, extension, and improvement of public utility facilities.

Comment date: April 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

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20. Arizona Public Service Company, Bangor Hydro-Electric Company, Central Maine Power Company, Maine Electric Power Company, Central Vermont Public Service Corporation, Connecticut Valley Electric Company Inc., Dayton Power & Light Company, Kentucky Utilities Company, Louisville Gas & Electric Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), PECO Energy Company, Rochester Gas and Electric Corporation, San Diego Gas & Electric Company, United Illuminating Company, Virginia Electric and Power Company, Western Resources Inc.

[Docket No. OA97–466–001; Docket No. OA97–519–001; Docket Nos. OA97–422–001 and OA97–462–001; Docket No. OA97–196–001; Docket No. OA97–418–001; Docket No. OA97–460–001; Docket No. OA97–402–001; Docket No. OA97–406–001; Docket No. OA97–440–001; Docket No. OA97–452–001; Docket No. OA97–399–001; Docket No. OA97–597–001; Docket No. OA97–439–002; Docket No. OA97–312–001]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct [1] under Order Nos. 889 *et seq.*[2] The revised standards were submitted in response to the Commission's February 12, 1998 order on standards of conduct.[3]

Comment date: April 6, 1998, in accordance with Standard E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7899 Filed 3–25–98; 8:45 am]

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[1] The revised standards of conduct were submitted between February 23 and March 17, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, order on rehearing, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, rehearing denied, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

[3] Arizona Public Service Company, *et al.*, 82 FERC ¶ 61,132 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

March 20, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent License.

b. *Project No.:* 1981–010.

c. *Date Filed:* February 25, 1998.

d. *Applicant:* Oconto Electric Cooperative.

e. *Name of Project:* Stiles Hydroelectric Project.

f. *Location:* On the Oconto River in Oconto County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Anthony A. Anderson, Oconto Electric Cooperative, 7479 REA Road, P.O. Box 168, Oconto Falls, WI 54154–0168, (920) 846–2816.

i. *FERC Contact:* Patti Leppert-Slack (202) 219–2767.

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* the existing project consists of: (1) a dam and reservoir; (2) a powerhouse containing two generating units with a total capacity of 1,000 kilowatts; (3) a substation; and (4) appurtenant facilities. The applicant states that the average annual generation has been 5,577.47 megawatthours.

The applicant is not proposing any changes to the existing project works.

l. With this notice, we are initiating consultation with the *WISCONSIN STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7842 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11553–001]

Lace River Hydro; Notice of Surrender of Preliminary Permit

March 20, 1998.

Take notice that Lace River Hydro, permittee for the proposed Lace River Project, has requested that its preliminary permit be terminated. The permit was issued on December 11, 1995, and would have expired on November 30, 1998. The project would have been located on the Lace River near the town of Juneau in Juneau County, Alaska. The permittee states that the proposed project is not economically feasible under existing environmental and engineering constraints.

The permittee filed the request on November 5, 1997, and the preliminary permit for Project No. 11553 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7844 Filed 3–25–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5986–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements for Universal Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Universal Waste Handlers and Destination Facilities Reporting and Recordkeeping Requirements, EPA ICR Number 1597.03, OMB Control Number 2050–0145, current expiration date 5/31/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epa.gov*, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1597.03.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request Number 1597.03: Universal Waste Handlers and Destination Facilities, Reporting and Recordkeeping Requirements (OMB Control No. 2050–0145; EPA ICR No. 1597.03.) expiring 5/31/98. This is a request for extension of a currently approved collection.

Abstract: EPA promulgated the Universal Waste standards at 40 CFR part 273. The Universal Waste standards govern the collection and management of widely generated wastes known as universal wastes. EPA has identified hazardous waste batteries, certain hazardous waste pesticides, and hazardous waste thermostats as universal wastes. Other wastes may be added to the universal waste Federal program if EPA determines such regulation is appropriate. The regulations allow universal waste handlers to manage universal wastes under a reduced set of regulatory requirements. Destination facilities, on the other hand, (i.e., those facilities accepting universal waste for treatment, recycling, or disposal) remain subject to all applicable standards under 40 CFR parts 264 or 265.

The universal waste regulations at part 273 were promulgated by EPA under the authority of subtitle C in RCRA. This information collection targets the collection of information for the following reporting or recordkeeping requirements: notification, labeling and marking, storage time limitations, off-site shipments, tracking universal waste shipments, and petitions to include other waste categories at the federal level.

It is necessary for EPA to collect universal waste information to ensure that universal waste is collected and managed in a manner that is protective of human health and the environment. EPA requires, among other things, large quantity handlers of universal waste (LQHUWs) to notify the Agency of their universal waste management activities so that EPA can obtain general information on these handlers, and so that it can facilitate enforcement of the regulations at part 273. In addition, EPA requires universal waste handlers to record the date on which they begin storing universal waste on-site to ensure that such accumulation is performed responsibly. EPA also requires certain universal waste handlers to track receipt of universal waste shipments as well as shipments sent off-site to ensure that universal waste is properly treated, recycled, and disposed. Finally, the submission of petitions in support of regulating other wastes or waste categories under part 273 helps EPA (1) to compile information on these wastes, and (2) to determine whether regulation as a universal waste is appropriate. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/28/97 (62 FR 63329); one comment was received.

Burden Statement: The average public recordkeeping burden for SQHUWs under this collection of information is estimated to range from 1.12 hours to 1.62 hours per year. This estimate includes time for reading the regulations, labeling universal waste, and maintaining records demonstrating the length of storage. There is no associated reporting burden for SQHUWs. The reporting burden for LQHUWs is estimated to range from 0 hours to 2.41 hours per year. This estimate includes time for notifying EPA of universal waste management, and preparing and submitting notices of rejected or illegal universal waste shipments. The recordkeeping burden for LQHUWs under this collection of information is estimated to range from 5.82 hours to 6.82 hours per year. This estimate includes time for reading the regulations, labeling universal waste, maintaining records demonstrating the length of storage, and maintaining records of universal waste received and sent. The reporting burden for destination facilities is estimated to range from 0 hours to 2.41 hours. This estimate includes time for preparing and submitting notices of rejected or illegal universal waste shipments. The recordkeeping burden for destination facilities is estimated to be 115.37 hours per year. This estimate includes time for reading the regulations and maintaining records of universal waste received.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Waste handlers of certain hazardous waste (i.e., batteries, pesticides and mercury-containing thermostats), and destination facilities.

Estimated Number of Respondents: 79,510.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 122,674 hours.

Estimated Total Annualized Cost Burden: $1,456.15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1597.03 and OMB Control No. 2050–0145 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 20, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–7934 Filed 3–25–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5986–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses, OMB Control Number 2060–0302, expiration date: 04–30–98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1702.02.

SUPPLEMENTARY INFORMATION:

Title: Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses, OMB Control Number 2060–0302, EPA ICR No. 1702.02, expiration date: 04–30–98. This is a request for extension of a currently approved collection.

Abstract: Section 219 (d) of the Clean Air Act, as amended in 1990, requires that the EPA promulgate regulations for urban buses that: a) operate in Metropolitan Statistical Areas (MSA) or consolidated MSA's with a 1980 population of 750,000 or more (the program could be expanded in the future to MSA's of less than 750,000, under section 219(c) of the CAA); b) are not subject to the 1994 or later urban bus standards; and c) have their engines replaced or rebuilt after January 1, 1995.

The CAA Amendments require the subject urban buses be retrofitted to comply with an emission standard that reflects the best retrofit technology and maintenance practices reasonably achievable. Under these provisions, EPA has set new requirements for pre-1994 model year urban buses that are effective after January 1, 1995, when urban bus engines are rebuilt or replaced. The program requires that the particulate emissions level of the urban bus engines be reduced to a level below the engines' original particulate level through the use of retrofit/rebuild equipment that is certified by EPA. The program will phase itself out as pre-1994 urban buses are retired from fleets.

It is critical to the program that EPA know, with reasonable certainty, that equipment, when properly installed, maintained and used, will provide the emissions reductions promised by the equipment suppliers over the warranty period. The information that EPA is collecting at the time of certification is needed to determine: (1) the emissions performance of retrofit urban buses, (2) the installation and maintenance requirements of retrofit systems, and (3) the adequacy of the warranty provisions that will be provided with the retrofit systems. Collection of the information from certifiers is required to obtain certification approval. EPA requirements for submitting a notification of intent to certify retrofit/rebuild equipment are found in 40 CFR 85.1407(a). The record keeping requirements for equipment manufacturers are found in 40 CFR 85.1412(a)(1). Records are kept on equipment descriptions, test data, quality control plans and data, and in-service data. EPA may audit certifiers records to ensure accuracy and completeness of records.

Urban bus operators are required to maintain records concerning activities associated with retrofitting/rebuilding urban buses. The record keeping requirements for urban bus operators are found in 40 CFR 85.1404. Records are kept on equipment purchased, engine rebuilds and replacements, fuel type, and compliance with the applicable program option. EPA may request that operators submit information summarizing compliance with fleet compliance with program compliance based on recorded information. EPA may audit operator fleets and records to ensure compliance with program requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/09/97 (62 FR 64828); no comments were received in response to this document.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 9 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owner/operators of 1993 and earlier model year Urban Buses.

Estimated Number of Respondents: 163.

Frequency of Response: 338.

Estimated Total Annual Hour Burden: 2996 hours.

Estimated Total Annualized Cost Burden: $170,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1702.02 and OMB Control No. 2060–0302 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 20, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–7935 Filed 3–25–98; 8:45 am]

BILLING CODE 6560–60–P

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5986–5]

EPA Region III Comprehensive Environmental Response, Compensation and Liability Act Program; Transfer of Information to Contractors and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region III intends to authorize certain contractors and subcontractors access to information submitted to EPA under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Contractor access to this information will occur April 27, 1998. Comments concerning CBI access will be accepted for thirty days from March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Janowiak (3HS42), Chief, Contracts, ADP and State Support Section, EPA Region III (215) 566–3334.

SUPPLEMENTARY INFORMATION: The contractors and subcontractors listed below will provide certain services to EPA Region III, including: (1) Information management support services for the operation of a file room and an administrative records room in Philadelphia, Pennsylvania; (2) compilation and organization of documents and information; and (3) review and analysis of documents and information. In performing these tasks, employees of the contractors and subcontractors listed below will have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which these contractors and subcontractors will have access potentially include all documents submitted under the CERCLA. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that these contractors and subcontractors require access to CBI to perform the work required under the contracts and subcontracts. These regulations provide for five days notice before contractors are given CBI. This document is intended to provide notice of all disclosures of such information by EPA Region III to the contractors and subcontractors listed below.

All of the listed contractors and subcontractors are required by contract to protect confidential information. When the contractors' and subcontractors' need for the documents is completed, the contractors and subcontractors will return them to EPA. The contractors and subcontractors to which this notice applies are as follows:

List of Contractors

- Booz-Allen & Hamilton, Inc—Contract #68–W4–0010
  Subcontractors to Booz-Allen & Hamilton, Inc. are:
  CDM-Federal Programs Corporation
  Dynamic Corporation
  PRC Environmental Management, Inc.
  CACI, Inc.
  Investigative Consultant Services, Inc.
  Northeast Investigations
  Tri-State Enterprises
- CH2M Hill—Contract #68–W8–0090
- Black & Veatch Waste Science and Technology Corporation—Contract #68–W8–0091
- IT Corporation—Contract #68–S7–3005
- OHM Remediation—Contract #68–S7–3004
- Roy F. Weston, Inc—Contract #68–S5–3002
  Subcontractors to Roy F. Weston, Inc. are:
  Foster Wheeler
  Tetra Tech EM, Inc.
  RAI, Inc.
  C.C. Johnson & Malhotra, P.C.
- Brown & Root Environmental (a Division of Brown and Root, Inc.)—Contract #68–S6–3003
  Subcontractors to Brown & Root Environmental are:
  Gannett Fleming, Inc.
  Dynamic Corporation
  C.C. Johnson & Malhota, P.C.
- CDM-Federal Programs Corporation—Contract #68–S7–3003
- Black and Veatch Waste Science and Technology Corporation/Tetra Tech, Inc.—Contract #68–S7–3002

List of Cooperative Agreements

- National Association of Hispanic Elderly—#CQ–822511
- AARP Foundation
- (Senior Environmental Employment)–#824021, #823952

Dated: March 19, 1998.

Kathryn Hodgkiss,

Acting Division Director, Hazardous Site Cleanup Division.

[FR Doc. 98–7931 Filed 3–25–98; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5986–8]

Annual Conference on Analysis of Pollutants in the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conference.

SUMMARY: The Office of Science and Technology and the Water Environment Federation will co-sponsor the "21st Annual Conference on Analysis of Pollutants in the Environment" to discuss issues relating to environmental measurement. The conference is open to the public.

DATES: On May 6, 1998, two workshops will be held prior to the start of the conference. The workshop topics and program times are:

EPA's Plans for Use of Screening Procedures for Compliance Monitoring, May 6, 1998, 8 a.m. to 12 Noon.

Method Validation and Documentation Requirements under the U.S. EPA Office of Water's Streamlining Initiative, May 6, 1998, 1 p.m. to 5 p.m.

The annual conference will be held on May 7–8, 1998. On May 7, 1998, the conference will begin at 8:30 a.m. and adjourn at 4:45 p.m. On May 8, 1998, the conference will begin at 8:30 a.m. and adjourn at 4:30 p.m.

ADDRESSES: The conference will be held at the Norfolk Waterside Marriott Hotel, Norfolk, Virginia.

FOR FURTHER INFORMATION CONTACT: The conference and workshop are being arranged by the Water Environment Federation. For information on registration, hotel rates, transportation, and reservations call the Water Environment Federation at (800) 444–2933. If you have technical questions regarding the conference program, please contact Marion Thompson by phone at (202) 260–7117 or by facsimile at (202) 260–7185.

SUPPLEMENTARY INFORMATION: EPA's 21st Annual Conference on Analysis of Pollutants in the Environment is designed to bring together representatives of regulated industries, commercial environmental laboratories, State and Federal regulators, and environmental consultants and contractors to discuss issues relating to environmental measurement with a particular focus on analytical methods.

The conference agenda follows:

Thursday, May 7, 1998

Welcome and Status of Office Water Activities

8:30 am—Welcome from the Water Environment Federation: Current Projects and Future Goals of the Laboratory Practices Committee—Laura Conrad, Occoquan Sewage Authority
8:45 am—Office of Water Activities—James Hanlon, U.S. EPA Office of Science & Technology
9:00 am—Analytical Activities Within EPA's Office of Science and Technology—William Telliard, U.S. EPA Office of Science & Technology

Cyanide

9:30 am—Analysis and Characterization of Cyanide in Contaminated Groundwater—Sharon Drop, Alcoa Technical Center
10:00 am—Break

Organics

10:15 am—Determination of 209 PCB Congeners in 14 Arochlors by HRGC/HRMS Using EPA Method 1668—Brian Fowler, Axys Analytical Services, Ltd.
10:45 am—Approaches to Chemical Fingerprinting of Fossil Fuel Residues in Tissues—Paul Boehm, Arthur D. Little, Inc.
11:15 am—Analysis of Humic and Fulvic Acids using Flow Field-Flow Fractionation as an Analytical Technique—Kathryn Healy, Iowa State University
11:45 am—Lunch

Sampling

1:00 pm—In-situ Sample Preparation for Radiochemical Analyses of Surface Water—Donna Beals, Westinghouse Savannah River Company

Microbiologicals

1:30 pm—Methods for Determination of Toxic and Non-toxic Pfisteria and Pfisteria-like Dinoflagellates—JoAnn Burkholder, North Carolina State University
2:00 pm—The Usefulness of the Microtox Test for Predicting Aquatic Community Protection—Donald Mount, AScI Corporation
2:30 pm—Validation of USEPA Method 1622: Cryptosporidium in Water by Filtration/IMS/FA—Jennifer Clancy, CEC
3:00 pm—Break
3:15 pm—Technical Transfer of a Protozoan Detection Method from Research to Standard Operating Procedure—Carrie Hancock, CH Diagnostic
3:45 pm—Methods for Detection of Viable and Infectious Cryptosporidium parvum in Water—Ricardo DeLeon, Metropolitan Water District of Southern California
4:15 pm—Food for Thought: New Methods for Salmonella Detection in Biosolids—Rick Danielson, BioVir Laboratories

Friday, May 8, 1998

Data Reporting

8:30 am—Roll-out of DEEMS (Department of Energy Environmental Management Electronic Data Deliverable Master Specification)—Joan Fisk, U. S. EPA OERR and Joseph Solsky, U.S. Army Corps of Engineers

Detection/Quantitation

9:15 am—Routine QC Standards Used as a Guide to Conducting Detection Limit Studies—Larry Penfold, Quanterra, Inc.

Oil and Grease and TPH

9:45 am—Analytical Issues with the Determination of Oxigenates in the Environment—Ileana Rhodes, Shell Development Company
10:15 am—Break
10:30 am—Methods for the Analysis of Oil and Grease and Sources of Variability in their Application to Produced Waters from Oil and Gas Production Operations—Joe Raia, J.C. Raia Consulting Services
11:00 am—Alternate Methods for Infrared Analysis of Total Oil and Grease (TOG) in Effluent Water and Total Petroleum Hydrocarbons (TPH) in Soils—Paul Wilks, Wilks Enterprise, Inc.
11:30 am—Lunch

Great Lakes Initiative

12:45 pm—Toxics Monitoring for Modeling in Lake Michigan: A QA Manager's Perspective—Louis Blume, U.S. EPA Region V, Great Lakes National Program Office

Metals

1:15 pm—Evaluation of Techniques for Collection of Effluent Samples for Trace Metals Analysis—Kim Shaw, Northeast Ohio Regional Sewer District
1:45 pm—Corrosion in Drinking Water Distribution Systems: A Major Source of Copper and Lead to Wastewaters and Effluents—Russell Isaac, Massachusetts DEP
2:15 pm—Uptake and Assimilation of Mercury and Methylmercury by Phytoplankton—Carl Watras, Wisconsin Department of Natural Resources
2:45 pm—Break
3:00 pm—Analytical Issues Associated with Application of EPA's Proposed 1600 Series Trace Metals Methods to Pulp and Paper Effluents—Jeff Louch, NCASI
3:30 pm—Copper-Complexing Organic Ligands in the Chesapeake Bay Water Column and Sediment Porewaters: Effects on Copper Speciation and Implications of Their Sediment/Water Exchange—John Donat, Old Dominion University
4:00 pm—Lower MDLs and Better Accuracy for "Total Recoverable Metals" in Water Through the Use of Dilute HF/HNO_3 Digestion at 85° C in Sealed Teflon Bottles—Nicolas Bloom, Frontier Geosciences
4:30 pm—Closing Remarks—James Hanlon, Deputy Director, Office of Science and Technology

Dated: March 19, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–7936 Filed 3–25–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5986–3]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; notification of Public Advisory CSI Computers and Electronics Sector Subcommittee meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notification is hereby given that the Computers and Electronics Sector Subcommittee of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at the meeting will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the announcement below.

Computers and Electronics Sector Subcommittee—April 14 and 15, 1998

Notification is hereby given that the Environmental Protection Agency will hold an open meeting of the CSI Computers and Electronics Sector Subcommittee to begin on Tuesday, April 14 with registration at 9:00 a.m EST. On Wednesday, April 15, 1998, the meeting will begin at 8:30 a.m. EST and end at 3:00 p.m. EST. The meeting will be held at the Holiday Inn Hotel and Suites, 625 First Street, Alexandria,

Virginia. The telephone number is (703) 548–6300.

Both days, April 14 and 15, will be devoted partly to breakout sessions for the three subcommittee workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Integrated and Sustainable Alternative Strategies for Electronics) and partly to plenary sessions. Over the course of the two days, the Subcommittee will be discussing progress on a number of projects for environmental protection in the computers and electronics industry.

Projects that will be discussed include: BOLDER (Basic On-Line Disaster and Emergency Response), a project to integrate the BOLDER emergency response electronic reporting and information access system with the EPA "One Plan," and to implement a full-scale test of the system in Phoenix, AZ.; Beta-BOLDER, a project to test the transferability of the BOLDER system to less technologically advanced communities by pilot testing the system in at least one small city; Better BOLDER, a project to make the BOLDER facility emergency response plan information accessible to the public in a useful context, using both the Internet and other means; CURE (Consolidated Uniform Report for the Environment), a project to develop and test in Texas a system for submitting environmental information required by multiple statutes on a single form, and to make that form electronic; Voluntary Program for Life Cycle Management of Electronic Products/State Multi-Stakeholder Dialogue, a project to develop a challenge program with incentives to marshal industry's interest and capacity to preserve resources and promote recycling, building on current state programs; SPECIE (Superior Performance for the Environment through Community Involvement and Engagement), a project to develop a printed resource guide to strengthen community collaboration in projects requiring input from multiple stakeholders by providing tools to assist stakeholders to develop cooperative and constructive approaches to addressing environmental issues in their communities; Evaluation of Models and Development of Best Practices for Electronic Equipment Recovery/San Francisco Recycling Pilot, a project to compile and examine data from pilot collection projects, including one in San Francisco, identify data gaps, and provide an umbrella report to communities and the recycling industry; Green Track, a project to develop a program that offers regulatory flexibility or other incentives to encourage facilities to improve environmental performance beyond current regulatory requirements; Definition of "Legitimate Recycling:" a project to seek consensus-based decisions on the recycling of computer parts, and define certain electronics-related activities that the sector would recommend EPA exempt from existing solid waste regulation.

Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

FOR FURTHER INFORMATION CONTACT: John J. Bowser, Acting DFO, U.S. EPA on (202) 260–1771, by fax on (202) 260–1096, by e-mail at bowser.john@epamail.epa.gov., or by mail at U.S. EPA (MC 7405), 401 M Street, S.W., Washington, DC 20460; Mark Mahoney, U.S. EPA Region 1 on (617) 565–1155; or David Jones, U.S. EPA Region 9 on (415) 744–2266.

Inspection of Subcommittee Documents

Documents relating to the above Sector Subcommittee announcement will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meeting, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http./ /www.epa.gov/commonsense.

Dated: March 20, 1998.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–7933 Filed 3–25–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5986–9]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Wednesday, May 20, 1998 from 9 a.m. to 5 p.m., and Thursday, May 21, 1998 from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will take place at the Best Western Key Bridge, 1850 N. Fort Myer Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street, SW, Washington, DC 20460; telephone (202) 260–5373; fax (202) 260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by May 13, 1998 will be considered by the Task Force at or subsequent to the meeting.

Dated: March 19, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–7937 Filed 3–25–98; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5987–1]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Tulalip Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notification is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve past and estimated future liabilities of 11 *de minimis* parties for costs incurred, or to be incurred, by EPA at the Tulalip Landfill Superfund Site in Marysville, Washington.

DATES: Comments must be provided on or before April 27, 1998.

ADDRESSES: Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, ORC–158, 1200 Sixth Avenue, Seattle, Washington 98101, and should refer to In Re Tulalip Landfill Superfund Site, Marysville, Washington, U.S. EPA Docket No. 10–98–0027–CERCLA.

FOR FURTHER INFORMATION CONTACT: Elizabeth McKenna, Office of Regional Counsel (ORC–158), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0016.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notification is hereby given of a proposed administrative settlement concerning the Tulalip Landfill hazardous waste site located on Ebey Island between Steamboat Slough and Ebey Slough in the Snohomish River delta system between Everett and Marysville, Washington. The Site was listed on the National Priorities List (NPL) on April 25, 1995 (60 FR 20350). Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice. Below are listed the 11 parties who have executed the proposed Administrative Order on Consent:

Ace Tank & Equipment Co.; Bill Pierre Ford; Crowley Marine Services, Inc./ Puget Sound Tug & Barge; Delta Marine; Evergreen Washelli Memorial Park Co., Inc.; McFarland Wrecking Corporation; Mehrer Drywall, Inc.; Peoples National Bank (U.S. Bank of Washington, N.A.); Sato Corporation; Seafood Processing (CITYICE Cold Storage); Smith & Son, Inc.

The EPA is entering into this agreement under the authority of sections 122(g), 106 and 107 of CERCLA, 42 U.S.C. 9622(g), 9606 and 9607. Section 122(g) authorizes settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties in the Tulalip Landfill case who each are responsible for less than 0.2% of the volume of hazardous substances at the site.

In February and March 1988, EPA contractor Ecology & Environment, Inc. (E&E) performed a site inspection of the landfill for NPL evaluation. The inspection revealed groundwater contamination with unacceptably high levels of arsenic, barium, cadmium, chromium, lead, mercury, and silver. Water samples taken in the wetlands adjacent to the site showed exceedences of marine chronic criteria for cadmium, chromium, and lead, as well as exceedences in marine acute criteria for copper, nickel, and zinc. In addition, a variety of metals were found in on-site pools and leachate. The study concluded that contamination was migrating off site. On July 29, 1991, EPA proposed adding the Tulalip Landfill to the NPL, and on April 25, 1995, with the support of the Governor of the State of Washington and the Tulalip Tribes of Washington, EPA published the final rule adding the Site to the NPL.

EPA is performing a Remedial Investigation (RI) and Feasibility Study (FS) in two parts pursuant to an Administrative Order on Consent with several potentially responsible parties. The first part, which has been completed, evaluated various containment alternatives for the landfill source area, which includes approximately 147 acres in which waste was deposited. The second part evaluates the off-source areas, which include the wetlands and tidal channels that surround the landfill source area. On March 1, 1996, EPA issued a Record of Decision that selected an interim remedial action for the source area. The selected interim remedy requires installation of an engineered, low-permeability cover over the source area of the landfill, at an estimated cost of $25.1 million.

The proposed settlement requires each settling party to pay a fixed sum of money based on their volumetric share. The total amount to be recovered from the proposed settlement is $238,283. The amount paid will be deposited in the Tulalip Landfill Special Account within the EPA Hazardous Substances Superfund to be used for the cover over the source area at the landfill. Upon full payment, each settling party will receive a release from further civil or administrative liabilities for the Site and statutory contribution protection under Section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5).

EPA will receive written comments relating to this proposed settlement for a period of thirty (30) days from the date of this publication.

The proposed agreement may be obtained from Cindy Colgate, Office of Environmental Cleanup (ECL–113), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1815. The Administrative Record for this settlement may be examined at the EPA's Region 10 office located at 1200 Sixth Avenue, Seattle, Washington 98101, by contacting Bob Phillips, Superfund Records Manager, Office of Environmental Cleanup (ECL–110), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6699.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 41 U.S.C. 9601–9675.

Charles E. Findley,

Acting Regional Administrator.

[FR Doc. 98–7938 Filed 3–25–98; 8:45 am]

BILLING CODE 6560–60–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–547]

Request Submission of Superior Alternatives to Proposed Agreement to Resolve Pocket Commissions Bankruptcy; Pocket Communications, Inc., No. 97–5–4105–ESD, and In re DCR PCS, Inc., No. 97–5–4106–ESD (Jointly Administered Under No. 97–5–4105–ESD)

March 23, 1998.

Subject to higher and better alternatives, the Commission staff, in coordination with the staff of the Department of Justice, Civil Division, expects to recommend a proposed transaction ("Proposed Transaction") that would resolve the above-referenced bankruptcy proceeding involving DCR

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PCS, Inc., and Pocket Communications, Inc. (collectively "Pocket"). The purpose of this Public Notice is to begin the process for receiving alternative proposals and evaluating whether any of them constitutes a better alternative for the United States.

Appended hereto as Attachment are portions of a term sheet describing the Proposed Transaction. Key terms include the following: (1) a newly formed entity would acquire the FCC licenses of DCR PCS, Inc., that comprise the Dallas and Chicago MTAs; (2) license payments for authority to operate in those markets would be made to the United States in accordance with Schedule 5.1.1 to the attached term sheet; (3) all other licenses of DCR PCS, Inc., would be returned to the FCC; and (4) the Pocket bankruptcy proceedings would be resolved.

Parties interested in offering superior alternative proposals to the Proposed Transaction are requested to do so in writing by May 7, 1998. Parties submitting superior alternatives must demonstrate compliance with the Commission's rules and policies governing PCS C Block eligibility and ownership. See 47 CFR 24.2110 and 24.709. Prior to Commission staff entering into discussions or accepting a submission by a party, the party must represent in writing to the Commission that doing so would not contravene any agreement with the DIP Lenders (as defined in the attached term sheet).

Neither this Public Notice nor any proposals responsive thereto or discussions of such proposals shall constitute the solicitation of votes as to a plan of reorganization in the Pocket cases or the filing of such a plan, each of which shall be subject to the provisions of the Bankruptcy Code and related bankruptcy procedures.

Written alternatives to the Proposed Transaction should be submitted to the Office of General Counsel, 1919 M Street, N.W., attention: David E. Horowitz, Esq., Room No. 622, Stop Code 1440B, Washington, DC 20554.

For further information, please contact FCC Wireless Telecommunications Bureau staff at (717) 338–2888.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment—Summary of Terms for Proposed Plan of Reorganization of Pocket Communications, Inc.

1 Purpose

1.1 Each of Ericsson, Inc. ("Ericsson"), Masa Telecom, Inc. ("MTI"), Pacific Eagle Investments, Ltd. ("PEIL"), Pacific Eagle Investment (L) Limited ("PEILL"), Masa Telecom Asia Investment Pte Ltd. ("MTAI") (collectively, "Masa/Pacific Eagle"), and Siemens Telecom Networks ("Siemens") (together with Ericsson and Masa/Pacific Eagle, the "DIP Lenders") has decided to develop and file a plan of reorganization (the "Plan") with the U.S. Bankruptcy Court (the "Court") for DCR PCS, Inc. ("DCR") and Pocket Communications, Inc. ("Pocket" and together with DCR "the Debtors"). Among other issues, the Plan will provide for the disposition of the licenses (collectively, the "Licenses") issued by the Federal Communications Commission ("FCC") to DCR for providing personal communications services ("PCS"). This Summary of Terms (the "Term Sheet") sets forth the framework for the Plan.

1.2 This Term Sheet was prepared for discussion purposes only and is not to be construed as a commitment to invest, to lend money, or to provide vendor financing. It is a summary of the terms upon which the DIP Lenders expect to submit this transaction for corporate approval from each of their respective boards or principals, and it is subject to negotiation with and consent of the United States and potential Designated Entities, as well as agreement to terms of final documentation. Neither this Term Sheet nor the Plan shall bind the FCC to approve the transactions contemplated by the Term Sheet or the Plan.

2 Overview of the Plan

2.1 Subject to Sections 7.8 and 7.9, on the effective date of the Plan (the "Effective Date"), in exchange for payment of certain cash and entry into the agreements specified below:

2.1.1 DCR shall transfer the Licenses for the Chicago MTA (hereinafter, the "Chicago Licenses") and the Licenses for the Dallas MTA (hereinafter the "Dallas Licenses") to certain subsidiaries of NEWGSM Co. to be formed as provided in Section 3.3 (the "New Licensees");

2.1.2 All Licenses except the Chicago Licenses and the Dallas Licenses shall automatically cancel pursuant to section 10.7 hereof; and 2.1.3 Debtors shall transfer all their assets other than the Licenses to NEWGSM Co. or subsidiaries thereof other than the New Licensees.

2.2 All terms of this Term Sheet except the Confidential Provisions shall be included in a public version of the Term Sheet (the "Public Version Term Sheet").

3 Transfer of the Chicago and Dallas Licenses

3.1 The DIP Lenders will cause a new company, NEWGSM Co., to be formed prior to the Effective Date.

3.2 The DIP Lenders will cause NEWGSM Co. to create operating subsidiaries (the "Operating Subsidiaries") of NEWGSM Co. prior to the Effective Date. The Operating Subsidiaries shall conduct the business operations of NEWGSM Co. and its direct and indirect subsidiaries for the provision of PCS in the Chicago and Dallas MTAs.

3.3 The DIP Lenders will cause NEWGSM Co. to create the New Licensees prior to the Effective Date as wholly owned subsidiaries of NEWGSM Co. for the sole purpose of holding the Chicago Licenses and the Dallas Licenses.

3.4 Vendor financing (as specified in Sections 4.3 and 8.2, "Vendor Financing") will be provided to one or more Operating Subsidiaries.

3.5 NEWGSM Co. will be controlled by a new "Control Group," as defined by the FCC's rules.

3.6 [Intentionally omitted]

3.7 Each New Licensee shall comply with all FCC rules and regulations, including those relating to C-Block and C-Block eligibility; provided, however, that to the extent any New Licensee is unable to satisfy said rules and regulations, it may seek a waiver from the FCC in connection with the transactions contemplated by this Term Sheet.

4 Capital: By the date (the "Confirmation Date") on which the Court enters an order (the "Confirmation Order") confirming the Plan, NEWGSM Co. will have the following commitments for capital conditioned solely upon the occurrence of the Effective Date:

4.1 COMMON EQUITY:

4.1.1 the "Initial Equity Investment"

4.1.2 [Redacted]

4.1.3 [Redacted]

4.1.4 [Redacted]

4.1.5 [Intentionally omitted]

4.2 Subordinated Debt:

4.2.1 the "Initial Purchase Commitment"

4.2.2 [Redacted]

4.3 Vendor Financing:

4.3.1 [Redacted]

5 Assumed Debt: As part of the Plan, the DIP Lenders shall cause the following obligations to be assumed on the Effective Date in the manner set forth below:

5.1 FCC License Payments:

5.1.1 The New Licensees shall make quarterly payments to the United States

in accordance with Schedule 5.1.1 attached hereto to hold the Chicago and Dallas Licenses and to satisfy the obligation to the United States originally incurred as a result of the initial issuance to DCR of the Chicago and Dallas Licenses. All payments specified in this section 5.1.1, whether matured or unmatured, shall be known as the "FCC License Payments."

5.1.2 Each Chicago and Dallas License shall incorporate a payment schedule specific to that License. Each such License's quarterly payment shall be for an amount equal to the quarterly payment shown on Schedule 5.1.1 times the POP Ratio for the BTA for that License. "POP Ratio" means, for each of the Chicago and Dallas Licenses, the percentage equaling the number of POPs in that BTA divided by the total number of POPs in the Chicago and Dallas MTAs. The FCC License Payments scheduled to be made after November 4, 2006 (the "Extended Payments") may be prepaid at a discount rate of 6.5 percent prior to the date on which the Chicago and Dallas Licenses are scheduled to expire by their terms. Any Extended Payments not made by November 4, 2006 shall be included in the renewed Chicago or Dallas License (each, a "Renewed License") to which it relates. Each Chicago and Dallas License and each Renewed License shall provide that if full and timely payment of the FCC License Payment to be made thereunder is not made, the License shall automatically cancel to the extent provided in FCC rules and regulations.

5.1.3 All obligations of the New Licensees to make the FCC License Payments shall be secured in accordance with the same terms and conditions set forth in sections 1 and 2 of the original FCC Broadband Personal Communications Service, C-Block Security Agreement executed by DCR for the Licenses, except for changes necessary to accommodate the structure of the FCC License Payments. Each member of the NEWGSM Co. Corporate Family and each Vendor shall execute an agreement covenanting not to bring any suit or take any other action, other than applying for relief at the FCC, to prevent the United States or the FCC from collecting all FCC License Payments, or from canceling any of the Chicago Licenses, the Dallas Licenses or the Renewed Licenses under the terms provided therein.

5.1.4 NEWGSM Co. and each of its direct and indirect subsidiaries (the "NEWGSM Co. Corporate Family") shall guarantee the obligation of each New Licensee to make the FCC License Payments.

5.1.5 Each of the Chicago Licenses (the "Chicago Asset Pool") shall secure payment of the FCC License Payments arising under the Chicago Licenses, and failure to make a timely payment of an FCC License Payment arising under one of the Chicago Licenses shall be a payment default on only the Chicago Asset Pool. Each of the Dallas Licenses (the "Dallas Asset Pool") shall secure payment of the FCC License Payments arising under the Dallas Licenses, and failure to make a timely payment of an FCC License Payment arising under one of the Dallas Licenses shall be a payment default on only the Dallas Asset Pool. Any default on the FCC License Payments for the Chicago Licenses shall not be a default on FCC License Payments for the Dallas Asset Pool. Any default on the FCC License Payments for the Dallas Licenses shall not be a default on FCC License Payments for the Chicago Asset Pool.

5.1.6 Except for changes which are necessary to accommodate the structure of the FCC License Payments, the events of default for the FCC License Payments and cure periods therefor shall be the same as specified in the FCC Installment Payment Plan Note for Broadband Personal Communications Services, C-Block executed by DCR.

5.1.7 Transfer of any of the Chicago or Dallas Licenses shall be subject to approval by the FCC. If, with FCC approval, any of the New Licensees transfers one of the Chicago Licenses out of the Chicago Asset Pool or one of the Dallas Licenses out of the Dallas Asset Pool, then in exchange for the United States' release of any further FCC License Payments for that License, the New Licensee shall pay or have paid for it an amount equal to the present value of the remaining FCC License Payments for that License at a discount rate of 6.5 percent, together with any unjust enrichment payment obligations incurred under FCC regulations.

5.2 [Intentionally omitted]

5.3 NEWGSM Co. will assume $158 million of certain of the DIP Lenders' pre-petition secured and unsecured claims against the Debtors' estates on terms acceptable to the DIP Lenders.

6 Terms and Conditions for Chicago Licenses and Dallas Licenses

6.1 Except as modified hereby or otherwise agreed upon by the parties, the same terms and conditions applicable to C-Block licensees, including without limitation the build-out benchmarks and license renewal provisions, shall apply to the Chicago Licenses and Dallas Licenses upon assignment to the New Licensees.

7 Timing of Plan Proposal and Confirmation Date, and of Investments and Note Purchases

7.1 Each of the DIP Lenders shall use its best efforts to file the Plan with the Court by March 31, 1998 (the "Plan Filing Deadline"). Each of the DIP Lenders shall be a co-proponent of the Plan.

7.2 If DCR desires to elect any restructuring option under the C Block Order (as amended from time to time), it shall indicate in writing which of the options it prefers by the earlier of (i) the deadline for making such an election in the C Block Order as amended or in any other extension connected with the election of the options that the FCC permits and that applies to DCR, (ii) the thirtieth calendar day after the Termination Date (as defined in Section 7.3.1 below), or (iii) the thirtieth calendar day after Confirmation Deadline if the Confirmation Date has not occurred by the Confirmation Deadline (as defined in Section 7.3 below). The Plan shall provide that upon occurrence of the Effective Date, (i) the Debtors' right to elect any of the restructuring options offered to C-Block licensees shall terminate, and (ii) any of the Debtors' previous elections under the C Block Order shall be deemed null and void. Any disposition of Licenses in connection with any DCR election pursuant to the C Block Order shall be subject to applicable law.

7.3 [Redacted]

7.3.1 The DIP Lenders may terminate the Plan if the FCC has not approved the transfer of the Chicago Licenses and Dallas Licenses to the New Licensees (the "FCC Grant") by the earlier of 150 days after the approval of the Disclosure Statement or December 31, 1998 (the "Termination Date"), or if the FCC Grant has occurred by the Termination Date but is subject to a stay.

7.4 By the date scheduled for the hearing on the Disclosure Statement, each of the DIP Lenders shall have obtained, among other things:

7.4.1 All requisite approvals within each of their respective organizations to take all actions contemplated herein to be taken by them provided only that the Effective Date conditions specified in Section 12.2 below are met; and

7.4.2 [Redacted]

7.5 By the Confirmation Date, the DIP Lenders and the DE shall execute commitment letters, binding unless the Effective Date does not occur, to provide funds necessary to confirm the Plan to capitalize NEWGSM Co. without resort to third-party financing of any kind. Such commitments shall not preclude

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NEWGSM Co. from obtaining new or additional financing from other sources, reasonably acceptable to the DIP Lenders and the United States, provided (x) the payment terms, security and other rights of the United States, and the credit quality of the obligor, are not adversely changed, and (y) such financing is consistent with applicable law, including any applicable FCC regulations.

7.6 [Intentionally omitted]

7.7 The DIP Lenders and the United States shall jointly move for an order by the Court, and if any objection thereto is filed, shall present evidence, that the United States and the FCC have not defaulted on any obligation under the DIP Order and the related FCC Term Sheet. By the date three business days prior to the date on which ballots on the Plan are due, the United States shall have obtained an order of the Court that the United States and the FCC have not defaulted on any obligation under the DIP Order and the related FCC Term Sheet.

7.8 The United States shall determine, in its sole discretion, whether the United States believes there exists a higher and better alternative (the "Alternative") to the Plan. The United States is free to accept any such Alternative instead of the Plan. In determining whether an Alternative exists:

7.8.1 For Sixty (60) days from the date of this Term Sheet, the United States and the FCC may negotiate with any person about alternative proposals for reorganizing the Debtors, and may reveal to any such person any information that the FCC deems appropriate to disclose (including without limitation, all provisions of this Term Sheet) except the Confidential Provisions (as defined in Section 7.8.2);

7.8.2 Neither the United States nor the FCC will reveal (i) any business plan or draft thereof provided to it or them by the DIP Lenders in connection with the negotiation of this Term Sheet, (ii) any provision of the Term Sheet other than those set forth in the Public Version Term Sheet, Exhibit 2.2 hereof, (items (i) and (ii), the "Confidential Provisions");

7.8.3 As of the date of this Term Sheet, the FCC may publish in the customary ways a public notice that (i) discloses the Public Version Term Sheet, (ii) indicates that any person who desires to propose or discuss an alternative to the Plan must first represent in writing to the FCC that doing so would not contravene any agreement with the DIP Lenders, and (iii) discusses the other procedures for submitting alternatives to the Plan to the FCC, but otherwise, except as expressly authorized in writing by the DIP Lenders or to any extent required by law, neither the United States nor the FCC will solicit an alternative proposal to the Term Sheet by any of the following means: (i) commissioning any advertisement, (ii) running any notice in any federal publication or (iii) issuing any press release.

7.9 Nothing contained herein shall require the DIP Lenders to vote in favor of the Alternative.

8 Terms of New Debt Securities

8.1 [Intentionally omitted]

8.2 Vendor Financing: [Redacted]

8.3 Subordinated Notes: [Redacted]

8.4 Dip Lenders Claim Notes: [Redacted]

9 Vendor Undertakings

The vendors will provide NEWGSM Co. with PCS equipment and services necessary to build an operational PCS service using the GSM mode of signal transmission for the Chicago Licenses and the Dallas Licenses. NEWGSM Co. shall purchase all PCS equipment and services for the Chicago Licenses from Ericsson, and all PCS equipment and services for the Dallas Licenses from Siemens.

10 Reorganization of the Residual Debtor Estates

10.1 Allowed administrative expenses shall be paid as follows:

10.1.1 On the Effective Date, the DIP Lenders shall lend to the Debtors' estates, on the same terms and conditions as the original DIP Loan (except as to maturity, repayment and as otherwise modified herein), an additional amount (the "Additional Loan") not to exceed $5.5 million to pay in full all unpaid administrative expenses other than the original DIP Loan and the Additional Loan.

10.1.2 On the later of the Effective Date or when otherwise allowed, administrative claims shall be paid to the extent allowed by the Court ("Allowed Administrative Claims").

10.1.3 On the Effective Date, NEWGSM Co. shall assume and repay to the DIP Lenders the DIP Loan and the Additional Loan, plus accrued interest and charges, and the DIP Lenders shall waive payment of the DIP Loan by the Debtors and by the United States (including the FCC) under the terms of the existing DIP Loan Order and documentation.

10.2 On the Effective Date, NEWGSM Co. shall pay to the Pocket estate $5.5 million less the amount of Allowed Administrative Claims, for payment of distributions to the unsecured creditors, other than the DIP Lenders in accordance with section 10.6.

10.3 [Intentionally omitted]

10.4 [Intentionally omitted]

10.5 On the Effective Date, NEWGSM Co. will assume $158 million of the DIP Lenders' pre-petition secured and unsecured debt against the Debtors' estates, as provided in Section 8.4.

10.6 After the DIP Loan, Additional Loan and Allowed Administrative Claims are indefeasibly paid in full, the DIP Lenders will permit the unsecured creditors, other than the DIP Lenders, to share *pro rata* in the remaining funds described in section 10.2 above, ahead of the remaining unsecured claims of the DIP Lenders, which are approximately $20 million.

10.7 On the Effective Date, Licenses except the Chicago Licenses and the Dallas Licenses shall automatically be canceled, and the Debtors and certain others shall be released from obligations to the United States related to the Licenses as provided in Section 11.2 below.

10.8 NEWGSM Co. shall comply with section 1123(a)(6) of the Bankruptcy Code in issuing equity and warrants.

11 Releases

11.1 On the Effective Date, each of the Debtors, and each of their successors and assigns, on its own behalf and on behalf of each of its present and former officers, directors, trustees, managers, employees, agents, attorneys, accountants, and consultants, shall release, waive, compromise and settle any and all rights, claims and causes of action that each has, has had or at any time in the future may have against any of the United States, the FCC, the DIP Lenders or any present or former commissioner, employee, agent, attorney, financial advisor or consultant of the United States, the FCC, or the DIP Lenders with respect to or arising in any way in connection with or as a result of any of the Licenses, or any of Debtors' notes, security agreements, or other instruments to the United States, the FCC, or the DIP Lenders, or financial accommodations at any time furnished to or for the benefit of either of the Debtors, including without limitation, any claim under any state or federal fraudulent transfer, fraudulent conveyance, preference or similar law. If the Effective Date does not occur, the releases for which this paragraph provides shall be deemed null and void.

11.2 On the Effective Date, the United States (including the FCC) will release all claims and causes of action (other than tax, criminal or fraud claims) that it has, has had or at any time in the future may have against any

of the DIP Lenders, the Debtors, the Debtors' estates, or any of its or their present or former officers, directors, trustees, managers, employees, agents, attorneys, financial advisors and consultants, with respect to or arising in any way in connection with or as a result of the Licenses, or any of Debtors' notes, security agreements, or other instruments to the United States or the FCC, or financial accommodations at any time furnished to or for the benefit of either of the Debtors; provided, however, that all claims and rights of the United States or the FCC under the Plan and the documents delivered to the United States or the FCC in connection with the Plan are expressly excluded from the foregoing release. If the Effective Date does not occur, the releases for which this paragraph provides shall be deemed null and void.

11.3 On the Effective Date, each of the DIP Lenders, and each of their successors and assigns, on its own behalf and on behalf of each of its present and former officers, directors, trustees, managers, employees, agents, attorneys, accountants, and consultants, shall release, waive, compromise and settle any and all rights, claims and causes of action that each has, has had or at any time in the future may have against the United States, the FCC, the Debtors, or any present or former commissioner, employee, agent, attorney, financial advisor or consultant of any of them, with respect to or arising in any way in connection with or as a result of the Licenses, or any of Debtors' notes, security agreements, or other instruments to the United States, the FCC, or the DIP Lenders, or financial accommodations at any time furnished to or for the benefit of either of the Debtors, including without limitation, any claim under any state or federal fraudulent transfer, fraudulent conveyance, preference or similar law; provided that all claims and rights of the DIP Lenders or NEWGSM Co. under the Plan and the documents delivered to the DIP Lenders or NEWGSM Co. in connection with the Plan are expressly excluded from the foregoing release. If the Effective Date does not occur, the releases for which this paragraph provides shall be deemed null and void.

11.4 On the Effective Date, each unsecured creditor and administrative claimant of the Debtors, and each of their successors and assigns, on its own behalf and on behalf of each of its present and former officers, directors, trustees, managers, employees, agents, attorneys, accountants, and consultants, shall release, waive, compromise and settle any and all rights, claims and causes of action that each has, has had or at any time in the future may have against the United States, the FCC, each of the DIP Lenders, or any present or former commissioner, employee, agent, attorney, financial advisor or consultant of any of them, with respect to or arising in any way in connection with or as a result of the Licenses, or any claim against, or administrative expense of, either of the Debtors; provided that such releases shall not apply to the rights of unsecured creditors and administrative claimants to payments under the Plan and Confirmation Order. If the Effective Date does not occur, the releases for which this paragraph provides shall be deemed null and void.

12 Effective Date Timing and Conditions

12.1 The Effective Date shall occur on the later of (i) eleventh calendar day after the Confirmation Date, and (ii) the date on which the conditions precedent to the effectiveness of the Plan have been fulfilled or waived in accordance with the Plan; provided that if such day is a Saturday, a Sunday, or a legal holiday specified in Fed. R. Civ. P. 6(a), then the Effective Date shall occur the next calendar day that is not a Saturday, a Sunday, or a legal holiday specified in Fed. R. Civ. P. 6(a).

12.2 In addition to the provisions of section 12.1, the occurrence of the Effective Date shall be subject to the occurrence of each of the following conditions:

12.2.1 The Confirmation Order shall have been entered in form and substance satisfactory to the United States and the DIP Lenders, and shall not be the subject of a stay; and

12.2.2 The FCC Grant shall have been entered and such order shall not be the subject of a stay.

SCHEDULE 5.1.1—SCHEDULE OF PAYMENTS UNDER THE FCC OBLIGATION

Payment	Total payment
10/1998	[1] $5,826,000
1/1999	5,826,000
4/1999	5,826,000
7/1999	5,826,000
10/1999	5,826,000
1/2000	5,826,000
4/2000	5,826,000
7/2000	5,826,000
10/2000	5,826,000
1/2001	5,826,000
4/2001	5,826,000
7/2001	5,826,000
10/2001	5,826,000
1/2002	5,826,000
4/2002	5,826,000
7/2002	5,826,000
10/2002	5,826,000
1/2003	23,541,000
4/2003	23,541,000
7/2003	23,541,000
10/2003	23,541,000
1/2004	23,541,000
4/2004	23,541,000
7/2004	23,541,000
10/2004	23,541,000
1/2005	23,541,000
4/2005	23,541,000
7/2005	23,541,000
10/2005	23,541,000
1/2006	23,541,000
4/2006	23,541,000
7/2006	23,541,000
10/2006	23,541,000
1/2007	613,438
4/2007	613,438
7/2007	613,438
10/2007	613,438
1/2008	613,438
4/2008	613,438
7/2008	613,438
10/2008	38,363,438

[1] If the payment due at the end of October 1998 is for less than a full quarter, the payment will be pro rated based on 12 thirty-day months.

[FR Doc. 98–7986 Filed 3–25–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Public Comments Regarding Extensions to Existing OMB Clearances

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The FMC is preparing submissions to the Office of Management and Budget (OMB) for continued approval of the following information collections (extensions with no changes) under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. Chapter 35): OMB No. 3072–0012 (Licensing of Ocean Freight Forwarders and Form FMC–18); OMB No. 3072–0028 (Foreign Commerce Anti-Rebating Certification); and OMB No. 3072–0053 (Non-Vessel-Operating Common Carriers Surety Bonds). Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval and will become a matter of public record.

DATES: Comments must be submitted on or before May 26, 1998.

ADDRESSES: Send comments to: Edward P. Walsh, Managing Director, Federal Maritime Commission, 800 North

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Capitol Street, NW., Washington, DC 20573, (Telephone: (202) 523–5800).

FOR FURTHER INFORMATION CONTACT: Send requests for copies of the current OMB clearances to: George D. Bowers, Director, Office of Information Resources Management, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573 (Telephone: (202) 523–5834).

SUPPLEMENTARY INFORMATION: Ocean Freight Forwarder Licensing—OMB approval number 3072–0012 expires August 31, 1998.

Abstract: Section 19 of the Shipping Act of 1984, 46 U.S.C. app. § 1718, requires that no person shall act as a freight forwarder unless they hold a license by the Federal Maritime Commission. The Act requires the Commission to issue a license to any person that it determines to be qualified by experience and character to act as an ocean freight forwarder if that person has provided a surety bond issued by a surety company found acceptable by the Secretary of the Treasury. The Commission has implemented the provisions of Section 19 in regulations contained in 46 CFR Part 510 and its related application form, FMC–18.

Needs and Uses: The Commission uses information obtained from Form FMC–18 as well as information contained in the Commission's files and letters of reference to determine whether an applicant meets the requirements for a license. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing.

Frequency: This information is collected as applicants apply for a license or when certain information changes in existing licenses.

Type of Respondents: Persons desiring to act as freight forwarders.

Number of annual respondents: The Commission estimates an annual respondent universe of 2,007 licensed freight forwarders. The Commission estimates that the rule will impose, in varying degrees, a reporting burden on the entire respondent universe.

Estimated time per response: The completion time for the Form FMC–18 is estimated to be 2 person hours on average with the range being .5 hours to 4 hours. It is estimated that 694 person hours will be expended by respondents to complete Form FMC–18.

Total Annual Burden: The Commission estimates the total annual burden to be 2,018 person hours, as follows: 822 hours to comply with the regulation provisions; 502 hours for recordkeeping requirements; and 694 hours to complete the Form FMC–18.

Foreign Commerce Anti-rebating Certification—OMB approval number 3072–0028 expires August 31, 1998.

Abstract: Section 15(b) of the Shipping Act of 1984, 46 U.S.C. app. § 1714(b), requires the chief executive officer of each common carrier and certain other persons to file with the Commission a periodic written certification that anti-rebating policies have been implemented and that full cooperation will be given to any Commission investigation of illegal rebating activity. The Commission has implemented the provisions of section 15(b) in regulations contained in 46 CFR 582.

Needs and Uses: The Commission uses the information filed by these parties to maintain continuous surveillance over the activities of these entities and to provide an effective deterrent against rebating practices.

Frequency: This information is collected with the filing of a carrier's initial tariff and the applicant's licensed ocean freight forwarder application. On each subsequent even-numbered calendar year, certifications are required to be filed.

Type of Respondents: Respondents may include the chief executive officer of each common carrier and ocean freight forwarder, shipper, shipper's association, marine terminal operator or broker.

Number of Annual Respondents: The Commission estimates a total of approximately 4,857 respondents as follows: 2,450 Non-vessel Operating Common Carriers, 400 Vessel Operating Common Carriers and 2,007 ocean freight forwarders.

Estimated Time Per Response: The Commission estimates approximately .5 person hours per response.

Total Annual Burden: Total annual burden is estimated at 2,429 person hours. NVOCC Surety Bonds—OMB approval number 3072–0053 expires September 30, 1988.

Abstract: Section 23(a) of the Shipping Act of 1984, 46 U.S.C. app. § 1721(a), requires each non-vessel operating common carrier (NVOCC) to furnish the Commission with an acceptable bond, proof of insurance or other surety, which is to be available to pay for damages arising from transportation-related activities, reparations or penalties. The Commission has implemented the provisions of section 23(a) in regulations contained in 45 CFR 583.

Needs and Uses: The Commission uses the information to maintain continuous surveillance over NVOCCs and to enable the Commission to discharge its duties under the Act. Upon request, the Commission provides information to the public regarding a carrier's evidence of financial responsibility.

Frequency: Documents are filed annually.

Type of Respondents: Non-Vessel Operating Common Carriers.

Number of annual respondents: The Commission estimates that approximately 2,450 NVOCCs will file these documents.

Estimated Time per response: The Commission estimates one person hour per response for each filing.

Total Annual Burden: Total annual manhour burden is estimated at 2,450 hours.

Before the Commission submits these renewal packages to the Office of Management and Budget, the Commission is inviting public, written comments on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates for the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: March 20, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–7860 Filed 3–25–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Alabama National BanCorporation, Birmingham, Alabama; to merge with Public Bank Corporation, St. Cloud, Florida, and thereby indirectly acquire Public Bank, St. Cloud, Florida.

Board of Governors of the Federal Reserve System, March 23, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7970 Filed 3–25–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire CitFed Bancorp, Inc., Dayton, Ohio, and thereby indirectly acquire Citizens Federal Bank, FSB, Dayton, Ohio, and thereby engage in permissible savings association activities, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y; CitFed Mortgage Corporation of America, Dayton, Ohio, and thereby engage in extending credit and servicing loans activities, pursuant § 225.28(b)(1) of the Board's Regulation Y; and C.F. Property Management Company (dba CitFed Investment Group), Dayton, Ohio, and thereby engage in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7971 Filed 3–25–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Government in the Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System.

TIME AND DATE: 2:30 p.m., Tuesday, March 31, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.
2. Any items carried forward from a previously announced meeting.

• The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement of this meeting. (The Web site also includes procedural and other information about the meeting.)

Dated: March 24, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–8036 Filed 3–24–98; 11:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–248]

Public Buildings and Space

To: Heads of Federal Agencies
Subject: POW/MIA Flag Display

1. *What is the purpose of this bulletin?* This bulletin notifies Federal agencies of the implementation guidelines of section 1082, Display of POW/MIA Flag, of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85 (H.R. 1119, 111 Stat. 1629), enacted November 18, 1997. This law replaces section 1084 of Pub. L. 102–190 (36 U.S.C. 189 note).

2. *When does this bulletin expire?* This bulletin does not expire unless the Act is amended, superseded, or cancelled.

3. *Who does this Act apply to?* Federal establishments with responsibility for the following locations:

(a) Capitol;
(b) White House;
(c) Korean War Veterans Memorial and Vietnam Veterans Memorial;
(d) National cemeteries;
(e) Buildings containing the official offices of:
(1) Secretary of State;
(2) Secretary of Defense;
(3) Secretary of Veterans Affairs; and
(4) Director of Selective Service System;
(f) Major military installations, as designated by the Secretary of Defense;
(g) Department of Veterans Affairs medical centers;
(h) United States Postal Service post offices.

4. *What action must I take?* If this bulletin applies to your Federal establishment, you must prescribe any implementation regulations necessary to carry out this section of the Act by May 17, 1998. (If you are responsible for the Capitol this action is not needed.) Regulations must follow the general guidelines established by the Act outlined in this bulletin.

a. *When do we display our POW/MIA flag?*

You fly the flag on the following six days:

(a) Armed Forces Day, third Saturday in May;
(b) Memorial Day, last Monday in May;
(c) Flag Day, June 14;
(d) Independence Day, July 4;
(e) National POW/MIA Recognition Day (not determined as of the date of this law);
(f) Veterans Day, November 11.

(1) *What exceptions are there to the days we display our flag?* At United States Postal Service post offices that are not open for business on any of the six days listed in the above paragraph, the flag must be displayed on the last business day before that day in lieu of the specified day.

(2) *What other days do we display our flag?* At Department of Veterans Affairs medical centers the flag must also be displayed every day the United States flag is displayed.

b. *How do I display the POW/MIA flag?* The flag is to be visible to the public. The flag is not to require an employee to report to work solely for the purpose of displaying the flag. Additional implementation regulations are to be prescribed as necessary by the individual Federal establishments affected by this law. If you are responsible for the Capitol building, the display of this POW/MIA flag is in addition to the display of the POW/MIA flag in the Rotunda of the Capitol as required by Senate Resolution 5 of the 101st Congress (103 Stat. 2533).

c. *Why display the POW/MIA flag?* Display of the POW/MIA flag is a symbol of our Nation's concern and commitment to accounting for all Americans who remain, or in the future may become, unaccounted for as prisoners of war, missing in action, or otherwise unaccounted for as a result of hostile action.

d. *What flag is the official POW/MIA flag?* The official POW/MIA flag is the National League of Families POW/MIA flag, as designated by section 2 of Pub. L. 101–355 (36 U.S.C. 189).

5. *Who distributes official POW/MIA flags?* GSA distributes official POW/MIA flags. You can obtain flags through GSA's Federal Supply Service by your usual ordering procedures. Ordering options include GSA Advantage!™, GSA's on-line shopping service at http://www.fss.gsa.gov, FEDSTRIP, MILSTRIP, or Customer Supply Centers. For assistance contact GSA's National Customer Service Center on 1–800–448–3111 or DSN 465–1416.

6. *Where can I get further information about this bulletin?* You can contact Stanley C. Langfeld, Director, Real Property Policy Division, Office of Real Property, on (202) 501–1737.

Dated: March 19, 1998.

G. Martin Wagner,

Associate Administrator, Governmentwide Policy.

[FR Doc. 98–7923 Filed 3–25–98; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Program Announcement No. ACF/ACYF 98–04; Fiscal Year 1998 Discretionary Announcement for Early Head Start; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice of FY 1998 Early Head Start availability of financial assistance and request for applications.

SUMMARY: The Administration on Children, Youth and Families announces financial assistance to be competitively awarded to local public and non-profit private entities—including Early Head Start and Head Start grantees—to provide child and family development services for low-income families with children under age three and pregnant women. Early Head Start programs provide early, continuous, intensive and comprehensive child development and family support services on a year-round basis to low-income families. The purpose of the Early Head Start program is to enhance children's physical, social emotional, and intellectual development; to support parents' efforts to fulfill their parental roles; and to help parents move toward self-sufficiency.

The funds available will be competitively awarded to eligible applicants to operate Early Head Start programs in unserved or underserved areas.

Grants will be competitively awarded: (1) to eligible applicants, including current Head Start and Early Head Start grantees, to operate Early Head Start programs in geographic areas not currently served by existing Early Head Start programs; and (2) to existing Early Head Start grantees for the purpose of expanding enrollment in underserved areas within their current service areas.

DATES: The closing date for receipt of applications is 4:30 p.m. EDT on June 25, 1998.

FOR FURTHER INFORMATION CONTACT: A copy of the program announcement and necessary application forms can be obtained by contacting: Early Head Start, Administration on Children, Youth and Families Operations Center, 1225 Jefferson Davis Highway, Suite 415, Arlington, VA 22202. The telephone number is 1–800–351–2293. The fax number is 1–703–416–6077.

Copies of the program announcement can be downloaded from the Head Start web site at: www.acf.dhhs.gov/programs/hsb.

SUPPLEMENTARY INFORMATION:

Eligible Applicants

Applicants eligible to apply to become an Early Head Start program are public agencies and private non-profit agencies. Early Head Start and Head Start grantees are eligible to apply.

Project Duration

Awards will be on a competitive basis and will be for a one-year period. The project period will be for five years.

Federal Share of Project Costs

Grantees that operate Early Head Start programs must, in most instances, provide a non-Federal contribution of at least 20 percent of the total approved costs of the project.

Available Funds

Approximately $70 million is available to fund programs that will serve at least 10,000 children.

Anticipated Number of Projects to be Funded

It is estimated that up to 100 project will be funded.

Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9831 et seq.

Catalog of Federal Domestic Assistance: NUmber 93.600, Head Start.

Dated: March 19, 1998.

Carol W. Williams,

Acting Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 98–7837 Filed 3–25–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0376]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by April 27, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

National Tobacco Retailer Tracking Survey

On February 28, 1997, new Federal regulations in 21 CFR part 897 went into effect that prohibit retailers from selling cigarettes and smokeless tobacco to persons younger than 18 years of age, and require retailers to verify, by means of photographic identification, the age of purchaser younger than 27 years old. To enforce these requirements, FDA is commissioning State officials to conduct compliance checks during which an adolescent, accompanied by a commissioned official, will attempt to purchase cigarettes and smokeless tobacco at retail establishments.

FDA is planning to conduct a national advertising campaign aimed at raising retailers' awareness of the new regulations and motivating retailers to comply. The campaign will target persons who sell cigarettes or smokeless tobacco to consumers for their personal use, including clerks and cashiers in grocery and convenience stores, pharmacies and drug stores, gas stations, liquor stores, taverns and bars, and tobacco stores. As a part of the campaign, FDA is proposing to conduct a three-part telephone survey of tobacco retailers to measure their awareness of, and compliance with, the new regulations before and after exposure to the advertising campaign.

The initial overall media campaign would focus on the 10 States with which FDA has already contracted to conduct compliance checks, and would be expanded as additional States contract with FDA. The media campaign would be conducted over a 12-month period in each State that receives it. States that have contracted with FDA and are exposed to the media campaign (test States) will be compared with States that have not contracted with FDA (control States). Although some of the control States may contract with FDA during the course of the data collection, at the start of the data collection there would be 10 test States and 10 control States.

A total of 6,000 tobacco retailers would be randomly selected to participate in a telephone interview over three phases of data collection. Data would be collected in three phases over a 12-month period. The first phase would occur immediately before the 10 test States that have contracted with FDA are exposed to the media campaign. The second phase would occur approximately 6 months later and would allow for an assessment of retailer awareness of and compliance with the new regulations after recent exposure to the advertising campaign in the original 10 test States. A third phase of data collection would be conducted approximately 6 months after the second phase. This phase would address retailer awareness of and compliance with the new regulations after extended exposure to the media campaign in the original 10 test States, and would address retailer awareness of and compliance with the new regulations after recent exposure to the advertising campaign in those former control States that contracted with FDA after the first phase of data collection. All interviewing would be conducted by a single-market research firm that would employ computer-aided telephone interviewing technology to expedite the fieldwork and improve accuracy. FDA plans to use the results of the survey to assess the effectiveness of the advertising campaign. Under section 903(b)(2)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393 (b)(2)(C)), FDA is authorized to conduct surveys and other research relating to its responsibilities.

In the **Federal Register** of December 30, 1997 (62 FR 67876), the agency requested comments on the proposed collection of information. No comments were received.

Respondents to this collection of information would be tobacco retailers and salesclerks.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
6,000	1	6,000	0.2	1,200

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 20, 1998.

William K. Hubbard,

Associate Commisioner for Policy Coordination.

[FR Doc. 98–7832 Filed 3–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0489]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by April 26, 1998.

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ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collections of information to OMB for review and clearance.

Petition For Administrative Reconsideration of Action—21 CFR 10.33—(OMB Control Number 0910–0192—Reinstatement)

Section 10.33 (21 CFR 10.33), issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may petition the Commissioner of Food and Drugs (the Commissioner) for reconsideration of an agency's action. A petition for reconsideration must contain a full statement in a well-organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. Each petition must be submitted no later than 30 days after the decision involved. The Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.33(b)	7	1	7	10	70

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Due to a typographical error, the total burden hours were reported as 700 in FDA's December 16, 1997 (62 FR 65812), notice providing 60 days for public comment on this collection of information. The total has been corrected to 70. The burden estimate for this collection of information is based on agency records and experience over the past 3 years. Agency personnel handling the petitions for administrative reconsideration of an action estimate approximately seven requests being received by the agency annually, each requiring an average of 10 hours preparation time.

Dated: March 18, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7893 Filed 3–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on May 13, 14, and 15, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 13, 1998, the committee will discuss the science of corticosteroid induced osteoporosis. On May 14, 1998, the committee will discuss new drug application (NDA) 20–866, Ergoset™, (bromocryptine mesylate, Ergoscience) as monotherapy as an adjunct to diet to improve glycemic control in patients with non-insulin-dependent diabetes mellitus, whose hyperglycemia cannot be satisfactorily managed with diet alone; or concomitantly with a sulfonylurea when diet and Ergoset™ alone do not result in glycemic control. On May 15, 1998, the committee will discuss NDA 20–898, Thyrogen™, (thyrotropin alpha, rTSH, Genzyme) as an adjunct for the detection of thyroid cancer.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 8, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. on May 13, 14, and 15, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 8, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 19, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–7897 Filed 3–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Gas; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing the following public workshop: Medical Gas Workshop. The topics to be discussed are good manufacturing practice (GMP) issues for the medical gas industry, including air liquefaction, transfilling, and hospital installations.

Date and Time: The public workshop will be held on Wednesday, May 13, 1998, 8:30 a.m. to 4:30 p.m. The deadline for registration is May 1, 1998.

Location: The public workshop will be held at the Food and Drug Administration Laboratory, 3032 Bryan St., Dallas, TX 75204. Maps to the public workshop location will be faxed upon request.

Contact Person: Brenda C. Cox, Food and Drug Administration, 7920 Elmbrook Dr., suite 102, Dallas, TX 75247, 214–655–8100, ext. 133, FAX 214–655–8114, or e-mail "bcox@ora.fda.gov".

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by Friday, May 1, 1998. Please include "Medical Gas Workshop Registration" in the subject line. There is no registration fee for this public workshop. Space is limited to the first 100 registrants, and further limited to 2 attendees per firm. Firms desiring more than two slots may be accommodated if there are vacancies.

If you need special accommodations due to a disability, please contact Brenda C. Cox at least 7 days in advance.

Dated: March 18, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7896 Filed 3–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Reproductive Health Drugs; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Reproductive Health Drugs.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on April 20, 1998, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Ballrooms I, II, III, and IV, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly L. Topper or Robin M. Spencer, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857–1000, 301–443–5455, or e-mail TOPPERK@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12537. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 20–797, Antocin (atosiban injection, R. W. Johnson) for use in the management of premature labor.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 10, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 10, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 19, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–7895 Filed 3–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–5]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Physician Certification / Recertification in Skilled Nursing Facilities and Supporting Regulations 42 CFR 424.20; *Form No.:* HCFA–R–5; *Use:* The Medicare program requires as a condition of participation for Medicare Part A payment for posthospital skilled nursing facility (SNF) services, that a physician must certify and periodically recertify that a beneficiary requires an SNF level of care. The physician certification requirement is intended to ensure that the beneficiary's need for services has been established and then reviewed and updated at appropriate intervals. *Frequency:* On occasion; *Affected Public:* Individuals or Households, Business or other for-profit, Not -for-profit institutions, State, Local or Tribal Government; *Number of Respondents:* 1,493,493; *Total Annual Responses:* 3; *Total Annual Hours:* 365,914.

To obtain copies of the supporting statement for the proposed paperwork

collections referenced above, or any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, nformation Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 17, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–7855 Filed 3–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–37]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Medicaid Program Budget Report and Supporting Regulations 42 CFR 400.00–430.00; *Form No.:* HCFA–37 OMB # 0938–0101; *Use:* The Medicaid Program Budget report is prepared by the State Medicaid Agencies and is used by HCFA for; (1) developing National Medicaid Budget estimates, (2) quantification of Budget Assumptions, (3) the issuance of quarterly Medicaid Grant Awards, and (4) collection of projected State receipts of donations and taxes. *Frequency:* Quarterly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 7,840.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 17, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–7854 Filed 3–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–64]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program; *Form No.:* HCFA–64; *Use:* This form is used by State Medicaid agencies to report their actual program benefit costs and administrative expenses to the Health Care Financing Administration (HCFA). HCFA uses this information to compute the Federal financial participation (FFP) for the State's Medicaid Program costs. *Frequency:* Quarterly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 11,984.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 17, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–7856 Filed 3–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–225]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget

(OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Medicare Physician Communication Survey; *Form No.:* HCFA–R–225; *Use:* This is a request for clearance for a survey of physicians to determine their information needs regarding Medicare and Medicaid issues. The survey will provide information for HCFA's Office of Strategic Planning, Research & Evaluation Group, Division of Payment Research to support a communication strategy for physicians treating Medicare beneficiaries. It is part of a larger effort of market research aimed at understanding the communication needs of HCFA providers and other partners. This information will answer two questions on physicians' preferences to help guide HCFA's communication strategy: (1) what information physicians want from HCFA, and (2) how physicians want to receive such information. This survey is designed to provide data that will help answer and prioritize these questions. *Frequency:* One time; *Affected Public:* Business or other for-profit; *Number of Respondents:* 650; *Total Annual Responses:* 650; *Total Annual Hours:* 217.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 17, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–7857 Filed 3–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco Use Supplement to the 1998–1999 Current Population Survey"

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco Use Supplement to the 1998–1999 Current Population Survey". *Type of Information Request:* OMB #0925–0368, Exp. 3/31/97, REINSTATEMENT, with change. *Need and Use of Information Collection:* The "Tobacco Use" supplement to the Current Population Survey conducted by the Bureau of the Census will collect data from the civilian non-institutionalized population on tobacco use and smoking prevalence, smoking intervention dissemination of workplace smoking policies and cessation programs as well as medical and dental advice to stop smoking, and changes in smoking norms and attitudes. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large scale 17 state demonstration project. This survey will also provide valuable information to Government agencies and to the general public necessary for tobacco control research. The survey will allow state specific estimates to be made. Data will be collected in September 1998, January 1999 and May 1999 from approximately 255,000 respondents. *Frequency of Response:* One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Persons 15 yrs. of age or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 170,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* .1169; and *Estimated Total Annual Burden Hours Requested:* 19,873. The annualized cost to respondents is estimated at: $198,727. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, Health Statistician, National Cancer Institute, Executive Plaza North, Room 313, Bethesda, Maryland 20892–7344, or call non-toll free number (301) 496–4970, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to *ah42t@nih.gov* or Anne__Hartman@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 17, 1998.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 98–7872 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Submission for OMB Review; Comment Request, the Cardiovascular Health Study

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 8, 1997, pages 52567–52668, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, and information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: The Cardiovascular Health Study. Type of Information Collection Requested: NEW. Need and Use of Information Collection: This study will qualify associations between conventional and hypothetical risk factors and coronary heart disease and stroke in people age 65 and older. The primary objectives include quantifying associations of risk factors with subclinical disease, characterize the natural history of coronary heart disease, stroke and identify factors associated with clinical course. The findings will provide important information on cardiovascular disease in an older U.S. population and lead to early treatment of risk factors associated with disease and identification of factors which may be important in disease prevention. Frequency of response: 5.36 (annual number of responses/annual number of respondents). Affected public: Individuals or households. Types of Respondents: Individuals recruited for CHS and their selected proxies and physicians. The annual reporting burden is as follows: Estimated Number of Responses per respondent: 5.4; and Estimated Total Annual Burden Hours Requested: 8,098. There are no costs for respondents. Estimated annualized cost for information collection for a 13-year period is $6,820 thousand per year. This is based on CHS Field, Coordinating and Reading Centers costs in thousands per year. Personnel, $3,627; Equipment, $47; Subcontracts, $257; Others $1,437; Overhead, $1,437. The annualized cost of monitoring the project by the NHLBI is $207 thousand.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Robin Boineau, MD, Epidemiology and Biometry Program, Division of Epidemiology and Clinical Applications, National Heart, Lung and Blood Institute, II Rockledge Centre, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892. Phone, (301) 435–0707, Facsimile (301) 480–1667, or electronic mail: boineau@gwgate.nhlbi.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before April 27, 1998.

Dated: March 16, 1998.

Shelia E. Merritt,

Executive Officer, NHLBI.

[FR Doc. 98–7871 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 9, 1998.

Time: 1 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7863 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Trauma and Burn (Teleconference).

Date: March 25, 1998.

Time: 3:00 p.m.—adjournment.

Place: NIH, NIGMS, Natcher Building, Room IAS–13, Bethesda, Maryland.

Contact Person: Dr. Bruce Wetzel, Scientific Review Administrator, NIGMS,

Natcher Building—Room IAS–13, Bethesda, Maryland 20892, Telephone: 301–594–3907.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set fourth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: March 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7865 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting.

The meeting will be open to the public to provide concept review of proposed contract solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of SEP: Is Semen Quality Declining: Prospective Study of U.S. Students (TELECONFERENCE).

Date: May 4, 1998.

Time: 1:00 p.m. (ET)—adjournment.

Place:

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.

Agenda: To provide concept review of proposed contract.

(Catalog of Federal Domestic Assistance Programs Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: March 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7866 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Adolescents and Sexually Transmitted Diseases Cooperative Research Center.

Date: April 23–24, 1998.

Time: 8:00 a.m. to Adjournment.

Place: Solar Building, Room 1A1, 6003 Executive Boulevard, Bethesda, MD 20892, (301) 402–0747.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892, (301) 496–7465.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: March 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7867 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–7 (M1).

Date: April 13–15, 1998.

Time: 8:30 AM

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815, (301) 656–1500.

Contact: Lakshamanan Sankaran, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7868 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Open Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review a concept statement for a proposed request for proposals (RFP).

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: April 1, 1998 (Telephone Conference).

Time: 2:00 p.m.

Place of Meeting: Willco Building, 6000 Executive Boulevard, Suite 409, Rockville, MD 20892–7003.

Contact Person: Mark R. Green, Ph.D., 6000 Executive Boulevard, Suite 409, Rockville, MD 20892–7003, 301–443–4375.

The meeting will be open to the public. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ida Nestorio at 301–443–4376.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: March 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7869 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Nursing Research Special Emphasis Panel (SEP) meeting:

Name of SEP: Depression in Previously Infertile New Mothers (Telephone Conference Call).

Date: March 31, 1998.

Time: 2:00 p.m.

Place: Building 45, Room 3AN–18B, 45 Center Drive, Bethesda, Maryland 20892.

Contact Person: Mary Stephens-Frazier, Ph.D., Building 45, Room 3AN–18B, 45 Center Drive, Bethesda, Maryland 20892, (301) 594–5971.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: March 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7873 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SES) meeting:

Name of SEP: Science Education Partnership Award.

Date: April 9, 1998.

Time: 12:00 p.m. to Adjournment.

Place: Teleconference Call, 6003 Executive Boulevard, Solar Building, Room 1A1, Bethesda, MD 20892, (301) 402–0747.

Contact Person: Dr. Paula Strickland, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C02, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: March 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7874 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of SEP: National Institute on Aging Special Emphasis Panel Prevention of Alzheimer's Dementia and Cognitive Decline (Teleconference).

Date of Meeting: March 30, 1998.

Time of Meeting: 12:00 p.m. to adjournment.

Place of Meeting: Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland.

Purpose/Agenda: To review one grant application.

Contact Person: Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute on Aging Special Emphasis Panel Geriatrics Program. (Teleconference).

Date of Meeting: April 6, 1998.

Time of Meeting: 1:00 to 3:00 p.m.

Place of Meeting: Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland.

Purpose/Agenda: To review a cooperative agreement type grant related to the Geriatrics Program.

Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Review of the Dementia Supplement to the AHEAD Cooperative Agreement Grant.

Date of Meeting: April 9, 1998.

Time of Meeting: 12:00 p.m. to adjournment.

Place of Meeting: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

Purpose/Agenda: To review a supplement to study economic aspects of dementia.

Contact Person: Dr. Paul Lenz, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland, 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Neurology and Neuropsychology of Aging Program (Teleconference).

Date of Meeting: April 13, 1998.

Time of Meeting: 1:00 to 3:00 p.m.

Place of Meeting: Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland.

Purpose/Agenda: To review 11 pilot project grants related to the Neurology and Neuropsychology of Aging Program.

Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health).

Dated: March 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7876 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on May 14 and May 15, 1998, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 5:00 p.m. on May 14 and from 9:00 a.m. to approximately 12 noon on May 15 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jackie Duley at (301) 496–4441 in advance of the meeting.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 14, from approximately 1:00 p.m. to 2:00 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Alexa McCray, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: March 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7864 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Chairpersons, Boards of Scientific Counselors for Institutes and Divisions at the National Institutes of Health

Notice is hereby given of a meeting scheduled by the Deputy Director for Intramural Research at the National Institutes of Health with the Chairpersons of the Boards of Scientific Counselors. The Boards of Scientific Counselors are an advisory group to the Scientific Directors of the Intramural Research Programs at the NIH. This meeting will take place from 10 a.m. to 3 p.m. on Monday, May 11, 1998, at the NIH, 9000 Rockville Pike, Bethesda, MD, Building 1, Room 151. The meeting will include a discussion of policies and procedures that apply to the regular review of NIH intramural scientists and their work, with special emphasis on clinical research.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Audrey Boyle at the Office of Intramural Research, NIH, Building 1, Room 114, Telephone (301) 496–1921 or Fax (301) 402–4273 in advance of the meeting.

Dated: March 17, 1998.

Ruth Kirschstein,

Deputy Director, NIH.

[FR Doc. 98–7870 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: April 7, 1998.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4146, Telephone Conference.

Contact Person: Dr. Martin Padarathsingh, Scientific Review Administrator, 6701 Rockledge Drive, Room 4146, Bethesda, Maryland 20892, (301) 435–1717.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 8, 1998.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4180, Telephone Conference.

Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 9, 1998.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4180, Telephone Conference.

Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: April 14, 1998.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

Name of SEP: Clinical Sciences.

Date: April 14, 1998.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4106, Telephone Conference.

Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Clinical Sciences.

Date: April 15, 1998.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4106, Telephone Conference.

Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Clinical Sciences.

Date: April 16, 1998.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4138, Telephone Conference.

Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Biological and Physiological Sciences.

Date: April 30, 1998.

Time: 2:30 p.m.

Place: NIH, Rockledge 2, Room 4122, Telephone Conference.

Contact Person: Dr. Krish Kirshnan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4122, Bethesda, Maryland 20892, (301) 435–1779.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–7875 Filed 3–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Proposed Project

Evaluation of the HHS Access to Community Care and Effective Services and Supports (ACCESS), OMB Control No. 0930–0164—Revision. The Center for Mental Health Services (CMHS) currently has approval to conduct an evaluation study that is assessing service systems integration (SI) approaches for homeless persons with serious mental illnesses. The evaluation study is collecting data through interviews (at baseline, 3 months after baseline, and 12 months after baseline) with homeless persons with serious mental illness and providers of services (at approximately 18-month intervals, beginning in 1994) to homeless persons. SI sites will be contrasted with comparison sites to assess the impact of SI. The evaluation will describe approaches to SI, processes by which SI takes place, factors that influence SI, and the impact that SI has on homeless persons with serious mental illness.

OMB approval will be sought for an 18-month follow-up interview for the fourth cohort of homeless clients, a fourth wave of interviews with providers of services to homeless persons, and state and local level implementation data from the project staff.

	Total respondents	Number of responses/respondent	Hours/response	Annualized burden hours (over 5 yrs.)
Clients (homeless persons)	1,440	1	0.750	216
Service providers	860	1	0.400	70
Project staff	27	1	1.5	272
Total	2,347	1	.84	558

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 20, 1998.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–7967 Filed 3–25–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4352–N–01]

Notice of Proposed Information; Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: May 26, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4238, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for

review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Lease Requirements—24 CFR 966.4.

OMB Control Number, if applicable: 2577–0006.

Description of the need for the information and proposed use: HUD regulations 24 CFR 966.4 prescribe the provisions that shall be incorporated in leases by public housing agencies (PHAs) for dwelling units assisted under the U.S. Housing Act of 1937 in projects owned by or leased to PHAs and leased or subleased by PHAs to the tenants. This recordkeeping requirement imposed upon PHAs by HUD regulations and associated information collected by the PHA from tenants is incidental to the PHAs' day-to-day operations as landlords of rental housing. If these minimal requirements were not imposed, the Federal Government would have no assurance that PHAs were adopting leases consistent with the law and regulations and no assurance that tenants were being provided proper access to the PHA's grievance procedure.

Agency form numbers, if applicable: None.

Members of affected public: State, Local or Tribal Government, Individuals or households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3,330 respondents, one-time for new and modified leases, 48 hours per response, 158,400 hours total recordkeeping burden.

Status of the proposed information collection: Extension.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chaper 35, as amended.

Dated: March 19, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–7915 Filed 3–25–98; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Environmental Assessment, Preliminary Finding of No Significant Impact and Receipt of Application for a Habitat Conservation Plan/Appplication for Incidental Take Permit for a Project Known as Lantana Ocean Front, Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. Maurice Kodsi, of Lantana Development of Brevard, Inc. (Applicant) is seeking an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of one family of the federally threatened Florida scrub-jay, *Aphelocoma coerulescens*, in Brevard County, Florida, for a period of 10 years. The proposed taking would be incidental to construction of a 96-unit condominium called Lantana Ocean Front, a Condominium, also known as the Milford/Martesia Site (Project). The Project will involve the clearing of 4.7 acres of a 10-acre site for the construction of four, four-story buildings, separate garages, a swimming pool with bath house, a dune crossover, and parking. The remaining 5.3 acres of the property, which lies seaward, is below the Indian Harbour Beach Setback Line, and will be preserved. A pair of Florida scrub-jays occupies 2.2 acres of the developable property which will be permanently altered by the proposed construction activity.

The project, called Lantana Ocean Front, a Condominium, also known as the Milford/Martesia Site, is located east of and bordering Highway A1A approximately one mile north of State Road 518 (Eau Gallie Causeway), in Section 12, Township 27 South, Range 37 East, in the central beaches area of Indian Harbour, Brevard County, Florida.

The Service also announces the availability of an Environmental Assessment (EA) on the submitted application for incidental take/Habitat Conservation Plan (HCP). Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made a preliminary determination that re-issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. This Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. Further, the Service specifically requests comment on the appropriateness of the "No Surprises" assurances contained in this application. "No Surprises" means that the applicant will not be required to pay for mitigation beyond that contained in the application at any time in the future, so long as the species are adequately covered and the HCP is properly functioning. The Service will evaluate this application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and Section 10(a) of the Act. If it is determined that the requirements are met, an ITP will be issued for the incidental take of the Florida scrub-jay. The final determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. This notice is provided pursuant to Section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the application/HCP, and EA should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before April 27, 1998.

ADDRESSES: Persons wishing to review the application/HCP and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jacksonville, Florida, Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit PRT-840501 in such comments, or in requests for the documents discussed herein. Requests

for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see **ADDRESSES** above), telephone: 404/679–7110; or Mr. Jay Herrington at the Jacksonville, Florida, Field Office (see **ADDRESSES** above), telephone: 904/232–2580.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens* is geographically isolated from other species of scrub-jays found in Mexico and the Western United States. The Florida scrub-jay is found exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the state of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys indicate that one family of Florida scrub-jays inhabits the Project site. Construction of the Project's infrastructure and subsequent construction of the condominium will likely result in the death of, or injury to, *Aphelocoma coerulescens* incidental to the carrying out of the otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the consequences of the three alternatives. The first alternative, the proposed action alternative, is issuance of an ITP with the requirement that all lost habitat be mitigated by replacement via acquisition of habitat off of the barrier island. Further, this alternative provides for restrictions of construction activity, purchase of offsite habitat for the Florida scrub-jay, establishment of an endowment fund for managing the offsite acquired habitat, and donation of the additional offsite habitat. The HCP provides a funding mechanism for these mitigation measures. The second alternative is issuance of an ITP with mitigation on the barrier island. Cumulative impacts of historical development has left the remaining scrub habitat extremely fragmented and spatially isolated. Consequently, predation rates have increased and reproductive success has decreased. This alternative discusses the consequences of this mitigation approach to the overall success of achieving effective habitat/species replacement. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens* and exposure of the applicant to Section 9 of the Act.

As stated above, the Service has made a preliminary determination that the issuance of an amended ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA, HCP, and appropriate amendments. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The applicant has ensured that adequate additional funding will be provided to implement the measures proposed in the submitted HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of his permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of the amended Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinions, in combination with the above findings, will be used in the final analysis to determine whether or not to issue this ITP.

Dated: March 20, 1998.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 98–7885 Filed 3–25–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The U.S. Geological Survey (USGS) is contemplating entering into a 2-year Cooperative Research and Development Agreement with Esso Explorations Inc., to complete and publicly release in digital form, a map of sedimentary basins of the world. The VZG Research Institution in Moscow, Russia, originally produced a paper copy of this map but because of financial reasons, had to stop work on producing it in digital form. Under this CRADA, Esso Exploration Inc. will participate in the compilation, act as technical advisor/editor, provide GIS formats, and support the project financially. The U.S. Geological Survey will acquire data, finish compiling, and prepare the map in full digital GIS format. The map will be released to the public upon completion.

ADDRESSES: If any other parties are interested in participating in this CRADA or in similar activities with the USGS, please contact: Dr. Thomas S. Ahlbrandt, Central Energy Resources Team, Box 25046, MS 939, Denver, Colorado 80225; telephone (303) 236–5776; E-mail:ahlbrandt@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: March 6, 1998.

P. Patrick Leahy,

Chief, Geologic Division.

[FR Doc. 98–7861 Filed 3–25–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–98–1320–01; COC 61653]

Colorado; Notice of Invitation for Coal Exploration License Application, Bowie Resources Limited

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Bowie Resources Limited in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Delta County, Colorado:

T. 13 S., R.91 W., 6th P.M.
Sec. 2, SW¼NW¼, N½SW¼, and SE¼SW¼;
Sec. 3, lots 1 to 3, inclusive, S½NE¼, S½SW¼, and N½SE¼;
Sec. 11, NE¼NW¼;

The area described contains approximately 562.31 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 61653 at the Bureau

of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them on or before April 27, 1998.

Karen Purvis, Solid Minerals Team, Resource Services, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215

and

Bowie Resources Limited, P.O. Box 483, Paonia, Colorado 81428

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: March 17, 1998.

Karen Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 98–7853 Filed 3–25–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–1050–00; AZA–25624]

Notice of Realty Action, Recreation and Public Purpose (R&PP) Act Classification, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The notice of realty action published on Tuesday, February 10, 1998, in **Federal Register** document 63–27, page 6768 is corrected as follows;

1. Page 6768, 3rd Column, Line 12, "Sec. 16, SE¼SE¼SE¼NE¼," should read, "Sec. 16, SW¼SE¼SE¼NE¼."

FOR FURTHER INFORMATION CONTACT:

Joyce Bailey, Realty Specialist, Kingman Field Office, 2475 Beverly Ave, Kingman, Arizona, 86401, telephone (520) 692–4400.

Dated: March 12, 1998.

John R. Christensen,

Field Manager.

[FR Doc. 98–7862 Filed 3–25–98; 8:45 am]

BILLING CODE 4310–32–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–98–005]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 1, 1998 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA–761–762 (Final) (Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan)—briefing and vote.
5. Outstanding action jackets:

1. Document No. EC–98–003: Final report in Inv. No. 332–372 (The Economic Implications of Liberalizing APEC Tariff and Nontariff Barriers to Trade).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 24, 1998

Donna R. Koehnke,

Secretary.

[FR Doc. 98–8148 Filed 3–24–98; 3:26 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Acme Steel Company*, Civil Action No. 96 C 2076, has been lodged with the United States District Court for the Northern District of Illinois on March 12, 1998.

The Consent Decree resolves claims asserted against defendant, Acme Steel Company ("Acme"), under the Clean Air Act ("Act"), 42 U.S.C. 7401 *et seq.*, for violations of opacity and particulate matter emission limits relating to emissions from Acme's Basic Oxygen Furnace (BOF) Shop. Acme has completed various improvements to its BOF Shop and will provide a certification that it is now in compliance with applicable requirements of the Act, the Illinois SIP and specified permits. Under the Consent Decree, Acme will pay a civil penalty of $410,000. In addition, Acme will construct a fugitive emission collection system that will reduce particulate emissions at Acme's BOF Shop below levels currently required under the Illinois SIP, and Acme will implement dust control measures to reduce emissions from its coke plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Acme Steel Company*, D.J. Ref. 90–5–2–1–1964.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604 (contact Jonathan Haile), at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60606 (contact Robert Thompson), and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $8.75 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–7945 Filed 3–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, and Section 9622(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on March 12, 1998, a proposed De Micromis Consent Decree in *United States* v. *Consolidation Coal Company, et al.*, Civil Action No. C2–94–785, was lodged with the United States District Court for the Southern District of Ohio.

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The proposed De Micromis Consent Decree resolves the liability of and provides contribution protection to three municipalities (the City of Benwood, West Virginia; the Village of Flushing, Ohio; and the City of Wheeling, West Virginia) that contributed minuscule amounts of municipal solid waste or municipal sewer sludge to the Buckeye Reclamation Landfill Superfund Site (the "Site"), located in Belmont County, Ohio.

The proposed De Micromis Consent Decree is considered part of the overall settlement of the United States claims. As de micromis contributors of waste to the Site, the three settling municipalities, all of which have been named as third party defendants, are not required to make any payment under the proposed De Micromis Consent Decree.

The Department of Justice will receive comments concerning the proposed De Micromis Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C., 20044, and should refer to *United States* v. *Consolidation Coal Company, et al.*, DOJ Number 90–11–2–1006. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of the Resources Conservation and Recovery Act, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney, Southern District of Ohio, 280 N. High Street, 4th Floor, Columbus, OH (614) 469–5715; (2) the U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd. Chicago, Illinois 60604, (312) 886–6842; and (3) the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed De Micromis Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $3.00 ($.25 per page reproduction charge) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section Environment & Natural Resources.

[FR Doc. 98–7946 Filed 3–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Department of Justice policy, notice is hereby given that on March 9, 1998, a proposed Consent Decree in *United States* v. *Cowles Media Company, et al.*, Civil No. 4–96–958, was lodged in the United States District Court for the District of Minnesota. The Complaint filed by the United States sought to recover costs incurred by the United States pursuant to CERCLA, 42 U.S.C. 9601 *et seq.*, at the Brooklyn Park Dump Site in Brooklyn Park, Minnesota. The Consent Decree requires Defendant, the Estate of Arthur Wise, to reimburse the United States in the amount of $50,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Cowles Media Company, et al.*, D.J. Ref. No. 90–11–2–1099.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the District of Minnesota, 234 United States Courthouse, 110 S. 4th Street, Minneapolis, MN 55401 (contact Assistant United States Attorney Friedrich Siekert); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Elizabeth Murphy); and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, 202–624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $4.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–7947 Filed 3–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and State of Connecticut* v. *Town of Southington, et al.*, Civil Action Nos. 3:98cv8 and 3:98cv236 was lodged on March 12, 1998, with the United States District Court for the District of Connecticut.

The compliant in this action seeks (1) to recover, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq., response costs incurred and to be incurred by the U.S. Environmental Protection Agency ("EPA") at the Old Southington Landfill Superfund Site located in the Town of Southington, Connecticut ("Site"); and (2) injunctive relief under Section 106 of CERCLA, 42 U.S.C. 9606. The defendants include the Towns of Southington, United Technologies Corp. and 266 other parties.

The proposed Consent Decree embodies an agreement with two potentially responsible parties ("PRPs") at the Site pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, to perform a remedial action at the Site including the relocation of businesses located on the Site, the construction of a multi-layer cap, the excavation and consolidation of a "hot-spot", the extraction and possible treatment of landfill gases, and the performance of additional groundwater studies. The proposed Consent Decree also embodies an agreement with 266 PRPs at the Site, including the U.S. Army, the U.S. Navy and the General Services Administration, to pay approximately $5.1 million, in aggregate, in settlement of claims for EPA's past and future responses costs, and certain parties' past costs at the Site. The monies paid by these 266 settlers will be used to reimburse past costs incurred at the Site and to partially fund the remedial action being performed by the two performing parties.

The Consent Decree provides the settling defendants with releases for civil liability for: (1) EPA's and the State of Connecticut's ("State's") past CERCLA response costs at the Site; (2) response costs in connection with the remedy for the Site; and (3) for damages for natural resources under the trusteeship of the Secretary of

Commerce, through the National Oceanic and Atmospheric Administration.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree.

Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States and State of Connecticut* v. *Town of Southington, et al.*, DOJ Ref. No. 90–11–2–420A.

The proposed consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse, 915 Lafayette Blvd., Rm. 309, Bridgeport, CT 06604; the Region I Office of the Environmental Protection Agency, Region I Records Center, 90 Canal Street, First Floor, Boston, MA 02203; and the Consent Decree Library, 1120 G Street, N.W., Fourth Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Fourth Floor, N.W., Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $175.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–7943 Filed 3–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on March 12, 1998 a proposed consent decree in *United States, et al. v. Stone Container Corporation*, Civil Action No. CV 96–017–M, was lodged with the United States District Court for the District of Montana.

In this action, the United States sought civil penalties and injunctive relief under Section 113 of the Clean Air Act, 42 U.S.C. 7413, for alleged violations of the Clean Air Act committed at Stone Container Corporation's ("Stone") kraft pulp mill and liner board facility near Missoula, Montana. The proposed consent decree provides for payment of a civil penalty in the amount of $312,500 and requires Stone's compliance with certain provisions of the Montana State Implementation Plan and certain provisions of the Montana State Implementation Plan and certain New Source Performance Standards set forth at 40 CFR Part 60. The proposed consent decree also requires Stone to study and revise correlation equations necessary for determining Stone's compliance with its mass emissions limits for particulates. Three citizens groups, Montana Coalition for Health, Environmental and Economic Rights, Inc., Cold Mountain, Cold Rivers, Inc. and Native Forest Network, Inc., also are parties to the proposed consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States, et al.* v. *Stone Container Corporation*, D.J. Ref. 90–5–2–1–1975.

The proposed consent decree may be examined at the Office of the United States Attorney, 2929 Third Ave. North, Western Federal Savings and Loan Building, Suite 400, Billings, Montana 59101, at U.S. EPA Region Eight, 999 18th Street, Denver, Colorado 80202, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 2005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $11.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–7944 Filed 3–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Proposed Prospective Purchaser Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act and Under the Clean Water Act

Notice is hereby given that a proposed Prospective Purchaser Agreement ("PPA") was executed on March 6, 1998, by the U.S. Environmental Protection Agency ("EPA"), and approved on March 6, 1998, by the U.S. Department of the Interior ("DOI"), and is subject to final approval by the U.S. Department of Justice. The proposed PPA would resolve certain potential claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, and under section 311(b)(3) of the Clean Water Act, 42 U.S.C. 1321(b)(3), against the City of Aurora, Colorado, acting by and through its Utility Enterprise, as the prospective purchaser of the Hayden Ranch located in Lake County, Colorado (the "prospective purchaser"). The PPA would require the prospective purchaser to provide access to the United States for the implementation of potential future removal actions by or at the direction of EPA, or environmental restoration activities by or at the direction of DOI, on the Hayden Ranch, located in Lake County, Colorado, in response to past mining activities in areas hydrologically upstream of the Hayden Ranch property, and in particular at the California Gulch Superfund Site. Such access would allow for the construction of a permanent repository on the Hayden Ranch, and placement of tailings in such repository which may be excavated from various fluvial tailings locations in an eleven-mile reach of the upper Arkansas River basin. The prospective purchaser would be obligated to provide for the long-term maintenance and monitoring associated with such improvements made by or at the direction of EPA or DOI. The prospective purchaser would further be required to provide the United States limited water rights for a three year period in connection with EPA's removal actions or DOI's environmental restoration activities on the Hayden Ranch.

EPA and DOI will receive for a period of fifteen (15) days from the date of this publication comments relating to the PPA. Comments should be addressed to William P. Yellowtail, Regional Administrator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202.

The proposed PPA may be examined at the Superfund Records Center, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Fifth Floor, North Terrace, Denver, CO 80202. A copy of the proposed Prospective Purchaser Agreement may be obtained in person, by mail from, or by calling the Superfund Records Center, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500,

Denver, CO 80202, telephone number (303) 312–6473.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–7973 Filed 3–25–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA Number 175N]

Public Meetings for Environmental Documentation on Herbicidal Eradication

AGENCY: Drug Enforcement Administration.

ACTION: Notice of public meetings.

SUMMARY: This notice advises the public that the "Draft Supplement to the Environmental Impact Statements for Cannabis Eradication in the Contiguous United States and Hawaii" (DSEIS) is available for public review and comment and that public meetings will be held regarding this document. On August 13, 1996, we announced our intent to supplement the programmatic EIS's on eradication of Cannabis on Federal and non-Federal lands and welcomed comments (FR 61 42056). The DSEIS is an update of the latest scientific information regarding the herbicidal alternatives in the original environmental impact statement (EIS) documentation.

In 1985 and 1986, the Drug Enforcement Administration (DEA) published progammatic EISs for its Cannabis eradication program. The first EIS was prepared for Cannabis eradication on Federal lands in the continental United States, and the second EIS was prepared for the program as it pertained to non-Federal lands, Indian lands, and the State of Hawaii, including Native Hawaiian Homestead lands. The alternatives analyzed in detail in the EIS include the use of manual, mechanical, and herbicidal eradication methods.

In the DSEIS, changes to the herbicidal eradication alternatives in the 1985 and 1986 EISs were analyzed. The changes analyzed were (1) the addition of triclopyr as an approved program herbicide; (2) elimination of paraquat as an approved program herbicide; and (3) changes in program delivery, including elimination of broadcast aerial applications of herbicides, use of new technology in aerial directed treatments of herbicides, use of marker dyes, and use of amine formulations of 2,4-D..

DATES: Five public meetings will be held.

Tuesday, May 12, 1998, 4 pm–8 pm, Denver, Colorado, Renaissance Denver, 3801 Quebec Street, Denver, Colorado 80207 (Ball Room)

Friday, May 15, 1998, 4 pm–8 pm, Honolulu, Hawaii, Ala Moana Hotel, 410 Atkins Drive, Honolulu, Hawaii 96814 (Hibiscus Ball Room)

Tuesday, May 19, 1998, 4 pm–8 pm, Boise, Idaho, Boise Center on the Grove, 850 West Front Street, Boise, Idaho 83702 (The Summit Room)

Thursday, May 21, 1998, 4 pm–8 pm, Atlanta, Georgia, Westin Atlanta Airport, 4736 Best Road, Atlanta, GA 30337 (Grand Ball Room 1)

Wednesday, May 27, 1998, 4 pm–8 pm, Washington, DC Metro Area, Holiday Eisenhower Metro Center, 2460 Eisenhower Avenue, Alexandria, VA 22314 (Eisenhower Station Ball)

The public comment period will be open for 45 days beginning with the U.S. Environmental Protection Agency's formal Notice of Availability, anticipated to appear in the **Federal Register** on April 17, 1998. The DSEIS will be mailed to the names on the mailing list.

CONTACTS: Comments and participation at the public meetings are invited. Speakers are requested to present one original and three copies of the written text of their presentation to register. Speakers may pre-register by facsimile at (301) 734–3640 any time of day or by calling Ms. Vicki Wickheiser, U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS). Speakers should identify which meeting they plan to attend. Speakers may also register starting at 3 p.m. the day of the meeting. Again, they should present written text as described above.

ADDRESSES: Comments and participation at the public meetings are invited. Speakers are requested to submit text of their presentation to: Ms. Vicky Wickheiser, DOA/APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737–1228. Anyone unable to attend one of the above meetings, who wishes to submit written comments to the DSEIS may submit them to the above address prior to June 1, 1998.

Copies of the Draft DSEIS

Copies of the DSEIS have been sent to all agencies and individuals who responded to the DSEIS **Federal Register** Notice of Intent, and to all respondents from the Original EIS Mailing list who responded positively to a mailing list query, and to other individuals that have requested copies of the document. Persons wishing copies of this DSEIS should immediately contact: Mr. Jack Edmundson, DOA/APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737–1228, phone (301)–734–4844, facsimile (301)–734–5992.

Copies of the DSEIS will be available until May 10, 1998. There will be a limited number of copies of the DSEIS at each public meeting. We have also arranged to have Internet online access to the document through the Drug Enforcement Administration's web site: <www.usdoj.gov/dea> Click on Programs then select Cannabis.

Dated: March 13, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–7828 Filed 3–25–98; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Drug Courts Program Office; Agency Information Collection Activities; Proposed Collection; Grantee Survey

ACTION: Emergency notification of information collection under review; new collection drug courts grantee data collection survey.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written comments and suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally,

comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Evaluate whether the data collection instrument will minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is described below:

(1) *Type of information collection.* New data collection.

(2) *The title of the form/collection.* Drug Court Grantee Data Collection Survey.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

Form Number: none. Drug Courts Program Office, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract.

This survey will assist in the National evaluation of Drug Courts. The data to be collected will assist in determining the effectiveness of these grants and the information will be shared with the drug court field to improve program quality.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 respondents to complete a 1–1.5 hour survey semi-annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW.

Dated: March 20, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–7928 Filed 3–25–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Indian and Native American Welfare-to-Work Grant Program Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the revision of the currently-approved preapplication and planning requirements for the Indian and Native American Welfare-to-Work (INA WtW) Grant Program (OMB Clearance Number 1205–0383) for the FY 1999 funding period. A copy of the currently-approved information collection request (ICR), especially FY 1998 preapplication and planning guidance, can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 26, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Thomas M. Dowd, Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–8502 ext 119 (VOICE) or (202) 219–6338 (FAX) (these are not toll-free numbers) or Internet: DOWDT@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration of the Department of Labor is considering revisions to its currently-approved preapplication and planning system for the Indian and Native American Welfare-to-Work Grant Program for one more year (July 1, 1998 to June 30, 1999). Current authorization for the INA WtW program expires on September 30, 1999, but grantees can continue to expend funds for three years from the date "the funds are so provided". This ICR concerns the submission of applications and plans by Federally-recognized tribes and Alaska Native entities (or consortia thereof) eligible to receive funding under the Indian and Native American Welfare-to-Work (INA WtW) program. These instructions include a preapplication process for those tribes which do not operate a tribal Temporary Assistance for Needy Families (TANF) program or a Native Employment Works (NEW) program, as established by section 412(a)(3) of the amended Social Security Act [42 U.S.C. 612(a)(3)], and which did not qualify for a FY 1998 INA WtW grant under the "substantial services" criteria. These non-TANF or NEW tribes must qualify as INA WtW grantees under the "substantial services" criteria established by the Department in accordance with the provisions of section 412(a)(3)(B)(ii) [42 U.S.C. 612(a)(3)(B)(ii)] of the Social Security Act, as amended. Once determined to have met the "substantial services" criteria, applicants must submit a plan containing a Standard Form (SF) 424, the basic information on service area,

plans for providing client services, preliminary funding and expenditure estimates, and standard assurances and forms common to most Federal funds recipients. This request for comment is an attempt to solicit input from those grantees which participated in the preapplication and/or planning process for FY 1998, and which may have recommendations for improving the process for FY 1999.

II. Current Actions

The proposed ICR will be a revision of Item no. 1205–0383, expiring 03/31/98 for the currently-approved system, that will be used by approximately 80 INA WtW grantees as the preapplication and planning vehicle for applying for INA WtW grants for FY 1999. Grantees will be required to couch their FY 1999 INA WtW plans in terms of planned numbers of enrolled individuals, their characteristics, training and services to be provided, planned outcomes, including job placement and wage data, as well as projections of program expenditures. Current paperwork burdens are covered under OMB Clearance No. 1205-0383 (expiration date 3/31/98), and have been included in the following burden estimates. For ease of analysis, the following burden estimate is broken down into the two main components of INA WtW program application: (1) Preapplication; and (2) planning.

Type of Review: Revision (with changes).

Agency: Employment and Training Administration.

Title: Indian and Native American Welfare-to-Work Grant Programs.

OMB Number: 1205–0383.

Catalog of Federal Domestic Assistance Number: 17.254.

Frequency: Annual (Both preapplication and plan submission).

Affected Public: Federally-recognized tribes, Alaska Native regional non-profit corporations, and/or consortia of any of the above.

Number of Respondents: 80.

Total Responses: 80.

Estimated Time Per Respondent: planning—6 hours; preapplication—3 hours.

Total Burden Hours: 480. (NOTE: no estimate is given for the preapplication process, as only a few tribes or consortia which did not receive FY 1998 INA WtW grants and which are neither TANF nor NEW tribes will have to submit one to establish eligibility.)

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None (planning and/or preapplication is a once-a-year activity).

Signed at Washington, DC this 20th day of March, 1998.

Anna W. Goddard,

Director, Office of Special Targeted Programs.

[FR Doc. 98–7960 Filed 3–25–98; 8:45 am]

BILLING CODE 4510–30–U

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Library Service Grant to PREL/FAS

ACTION: Notice.

SUMMARY: Section 221(b)(3)(C) Special Rule of the Library Services and Technology Act (LSTA) states that the Institute of Museum and Library Services (IMLS) Director shall award grants to the Pacific Territories and Freely Associated States (FAS) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory (PREL) in Honolulu, Hawaii. The Act allows IMLS to compensate PREL for administrative expenses. (PREL has been renamed Pacific Resources for Education and Learning.) This notice provides guidance on administration of FY98 PREL/FAS LSTA grants.

ADDRESSES: Institute of Museum and Library Services, Office of Library Services, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Jane Heiser, Director of State Grants at the address given above, telephone (202) 606–5226.

SUPPLEMENTARY INFORMATION:

1. For projects funded under the LSTA, the Pacific Territories/FAS shall be administered by PREL.

2. The PREL Program Officer will attend training at IMLS on the program and fiscal requirements.

3. PREL, after consultation with the Territories and Freely Associated States, shall submit a plan to the Institute of Museum and Library Services Director describing the administration of the program.

4. Excepting GU and CNMI, grantees will not receive formula grants since they are ineligible under the general funding of the Act. Awards for the competitive grants will be a combination of a basic grant amount based on a formula and a competitive/discretionary process.

5. Formula grants will be based on population (or a percentage of each allotment).

6. The balance of each allotment would be open for discretionary applications from the appropriate entity (the territorial/FAS library).

7. Activities eligible for assistance are those listed under the LSTA.

8. Funds will be used only for the purposes of the LSTA.

9. A library in a Territory or a Freely Associated State that receives a grant under the LSTA is subject to all laws, regulations, and requirements applicable to this program.

10. To compete for a discretionary grant; a territorial/FAS library shall submit an application to PREL for consideration. The application is to be in accordance with deadlines and other administrative procedures established by PREL.

11. Prior to submission of the application, the territorial/FAS library would coordinate, regarding the development of the application, with appropriate educational agencies, institutions, and organizations that are in the Territory or Freely Associated State and that serve its area.

12. In determining the order of selection for awards under the LSTA, the IMLS Director considers the recommendations of PREL, based on selection criteria established by PREL, which will include an evaluation plan.

13. The IMLS Director may require a grantee to submit reports containing information the Director finds necessary to carry out the Director's functions under the LSTA.

14. At the end of the fiscal year the PREL will collect and abstract the annual reports of the activities supported under LSTA for submission to the IMLS Director.

15. PREL, in consultation with the IMLS Office of Library Services, will include training programs for grantees.

Mamie Bittner,

Director, Public and Legislative Affairs.

[FR Doc. 98–7713 Filed 3–25–98; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Processes; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Processes (5138) (Panel B).

Date and Time: Wednesday and Thursday, April 15 & 16, 1998, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rm. 630, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Karen Kindle, Program Director for Biochemistry of Gene Expression, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1441.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Biochemistry of Gene Expression Program as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–7929 Filed 3–25–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cell Biology (1136).

Date and Time: Wednesday, Thursday, and Friday, April 15, 16 and 17, 1998; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Drs. Barbara Zain and Richard D. Rodewald, Program Directors for the Cell Biology Program, National Science Foundation, Room 655 South, Arlington, VA 22230. Telephone: 703/306–1442.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Cell Biology Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 23, 1998.

Rebecca M. Winkler,

Committee Management Officer.

[FR Doc. 98–7930 Filed 3–25–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–237]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–19, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Dresden Nuclear Power Station, Unit 2, located in Grundy County, Illinois.

The proposed amendment would reflect a change in the Dresden, Unit 2, minimum critical power ratio (MCPR) Safety Limit and revise footnotes in Technical Specifications (TS) Section 5.3, to allow the use of Siemens Power Corporation (SPC) ATRIUM–9B fuel.

This request for amendment was submitted under exigent circumstances to support Dresden, Unit 2, Cycle 16, operation which is scheduled to begin on April 12, 1998. The licensee had submitted an application for TS amendments on August 29, 1997, (published on January 14, 1998 at 63 FR 227) citing SPC Topical for Revised ANFB Correlation Uncertainty, ANF–1125(P), Supplement 1, Appendix D, to allow the use of SPC ATRIUM–9B fuel. However, the need for additional information has delayed the review of this topical report. To ensure that use of ATRIUM–9B fuel is approved in time for the scheduled Unit 2 startup, ComEd determined that it would submit this one-time cycle-specific amendment request proposing an interim conservative approach to calculating the MCPR Safety Limit. The time necessary for ComEd to develop this TS request would not allow the normal 30-day period for public comment to support Dresden, Unit 2, startup on April 12, 1998. However, should startup on Dresden, Unit 2, be delayed enough to allow the normal 30-day period for public comment, this amendment will not be issued until expiration of the normal 30-day period for public comment.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. This change does not affect the operability of plant systems, nor does it compromise any fuel performance limits.

Revision to Cycle Specific Footnotes for Dresden 2 Cycle 16 Operation With ATRIUM–9B

The revisions to the footnotes in [Technical Specification] Section 5.3 have no implications for accident analysis or plant operations. The purpose of the revisions to the footnotes is to allow operation of Dresden Unit 2 Cycle 16 with an interim conservative approach to calculating the MCPR Safety Limit. This is the same approach that was NRC approved for use for Dresden Unit 3 Cycle 15 and Quad Cities Unit 2 Cycle 15. The Dresden Unit 2 Cycle 16 MCPR Safety Limit was calculated using an interim additive constant uncertainty. The MCPR Safety Limit is used in the determination of the cycle's MCPR Operating Limit. The MCPR Operating Limit ensures that the MCPR Safety Limit is not violated for any anticipated operational occurrence. This revision does not affect any plant equipment or processes; therefore, there is no alteration in the probability or consequences of an accident previously evaluated.

Revision to the MCPR Safety Limit

Changing the MCPR Safety Limit for Dresden Unit 2 from 1.08 to 1.09 will not increase the probability of an accident previously evaluated. Additionally, operational MCPR limits will be applied that will ensure the MCPR Safety Limit is not violated during all modes of operation and anticipated operational occurrences. Changing the MCPR Safety Limit will not alter any physical systems or operating procedures. The Dresden Unit 2 MCPR Safety Limit is set to 1.09, which is a critical power

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ratio value where less than 0.1% of the rods in the core are expected to experience transition boiling. This application for amendment does not change the criterion of ensuring that less than 0.1% of the rods in the core are calculated to experience transition boiling when the core is at the MCPR Safety Limit. Therefore, the probability or consequences of an accident will not increase.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated:

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications to the plant configuration or changes in allowable modes of operation. Other than the use of a full reload of ATRIUM–9B fuel in Dresden Unit 2 Cycle 16 in Modes 1 and 2, this Technical Specification submittal does not involve any modifications to the plant configuration or allowable modes of operation. The operation with a full reload of ATRIUM–9B was previously approved for Dresden Unit 3 Cycle 15. The ATRIUM–9B fuel is compatible with the existing 9x9–2 fuel in the Dresden Unit 2 core. No new precursors of an accident are created and no new or different kinds of accidents are created. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Revision To Cycle Specific Footnotes for Dresden 2 Cycle 16 Operation With ATRIUM–9B

The revision to the cycle specific footnotes in Section 5.3 is necessary to allow operation of Dresden Unit 2 Cycle 16. This revision will not alter any plant systems, equipment or physical conditions of the site. Revising the footnotes in Section 5.3 allows operation with a reload of ATRIUM–9B in Modes 1 and 2 for Unit 2 Cycle 16, which has previously been approved for Dresden Unit 3 Cycle 15. This revision is based on the fact that an interim conservative additive constant uncertainty has been used to calculate the Dresden Unit 2 Cycle 16 MCPR Safety Limit. NRC approval of this interim approach in determining the Dresden Unit 2 Cycle 16 MCPR Safety Limit will ensure that fuel limits are determined and cycle specific analyses are performed for Dresden Unit 2 Cycle 16 utilizing NRC approved methods. Therefore, no new or different kinds of accidents are created from this revision.

Revision to the MCPR Safety Limit

Changing the MCPR Safety Limit will not create the possibility of a new accident from an accident previously evaluated. This change will not alter or add any new equipment or change plant modes of operation. The MCPR Safety Limit is established to ensure that 99.9% of the rods avoid transition boiling. The new MCPR Safety Limit for Dresden Unit 2, 1.09, is greater than the current value of 1.08 and is consistent with MCPR Safety Limit calculations in support of Dresden Unit 2 Cycle 16 operation. Therefore, no new accidents are created that are different from those previously evaluated.

3. Involve a significant reduction in the margin of safety for the following reasons:

Revision to Cycle Specific Footnotes for Dresden 2 Cycle 16 Operation With ATRIUM–9B

The results of the analyses for Dresden Unit 2 Cycle 16 verify that, with an interim additive constant uncertainty, an MCPR Safety Limit of 1.09 is supportable with less then 0.1% of the rods predicted to experience transition boiling. Since there is sufficient margin to the amount of rods predicted to experience transition boiling, and a conservative interim approach has been used to calculate the additive constant uncertainty, removing the footnotes to enable Dresden Unit 2 Cycle 16 to operate with ATRIUM–9B fuel will not reduce the margin of safety.

Revision to the MCPR Safety Limit

Changing the MCPR Safety Limit for Dresden Unit 2 will not involve any reduction in margin of safety. The MCPR Safety Limit provides a margin of safety by ensuring that less than 0.1% of the rods are expected to be in transition boiling if the MCPR Safety Limit is not violated. The proposed Technical Specification amendment to change the MCPR Safety Limit to 1.09 supports operation of Dresden Unit 2 Cycle 16. SPC used the ANFB critical power correlation with an interim ATRIUM–9B additive constant uncertainty to perform the MCPR Safety Limit calculations.

Because a conservative method is used to apply the ATRIUM–9B additive constant uncertainty in the MCPR Safety Limit calculation, a decrease in the margin to safety will not occur due to changing the MCPR Safety Limit. The revised Dresden Unit 2 MCPR Safety Limit will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed Dresden Unit 2 MCPR Safety Limit to ensure that the MCPR Safety Limit is not violated during all modes of operation including anticipated operational occurrences. This will ensure that the fuel design safety criterion of more than 99.9% of the fuel rods avoiding transition boiling during normal operation as well as during any anticipated operational occurrence is met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by close of business (4:15 p.m. EST) within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 27, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing

Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael L. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 19, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 23rd day of March, 1998.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8005 Filed 3–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7002]

Notice of Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental

impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: February 3, 1998.

Brief description of amendment: On February 3, 1998, United States Enrichment Corporation (USEC) submitted a certification amendment request (CAR) to temporarily, approximately six weeks, convert the X–705 South Annex from NRC regulations to Department of Energy (DOE) Regulatory Oversight Agreement (ROA) regulations for the replacement of inoperable HEU cylinder valves. The changes proposed in USEC's CAR involve SAR Section 3.7, "HEU DOWNBLENDING ACTIVITIES," Fundamental Nuclear Material Control (FNMC) Plan Section 2.2.7, "MBA Structure," and the Plan for Achieving Compliance at the Portsmouth Gaseous Diffusion Plant (Compliance Plan) Issue A.4., "Possession of Uranium Enriched to Greater than 10% ^{235}U."

The change to SAR Section 3.7 recognizes the HEU cylinder valve replacement under DOE ROA regulations as an anticipated evolution and provides a description of that activity. The revisions to Section 2 of the FNMC Plan and related Issue A.4 of the Compliance Plan describe access control into the X–705 facility during the period of six weeks that the areas are temporarily converted to DOE ROA regulation, to verify that no removal of fissile material occurs during the valve replacement activities, and to certify that changing the status of the areas will not result in Portsmouth (PORTS) possessing HEU or cause PORTS to exceed the HEU possession limit before returning the areas to NRC regulation.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed amendment does not propose any new or unanalyzed activity for the facility. The amendment would temporarily change the regulatory oversight of the valve replacement due to possession limit constraints and would not change the types or increase the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendment does not propose any new or unanalyzed activity for the facility. The same radiological controls and criticality controls found acceptable for lower enrichment cylinder valve replacements would remain in effect for the HEU cylinder valve replacement. Therefore the amendment would not result in a significant increase in individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction; therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendment does not propose any new or unanalyzed activity for the facility. The same radiological controls, industrial hygiene controls, and criticality controls found acceptable for lower enrichment cylinder valve replacements would remain in effect for the HEU cylinder valve replacement. Therefore, the amendment would not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed amendment does not propose any new or unanalyzed activity for the facility. Therefore, the amendment does not raise the possibility of a new or different kind of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

For the reasons provided in the assessment of criterion 4 and 5, the proposed amendment would not result in a significant reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

For the reasons provided in the assessment of criterion 4 and 5, the proposed amendment would not result in an overall decrease in the effectiveness of the plant's safety.

The amendment proposed changes to the FNMC Plan and Compliance Plan to increase the security and safeguards requirements commensurate with DOE ROA requirements for high enrichment and provides assurances through a special static inventory of the areas at the end of the transition to confirm the facility status. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards or security programs.

Effective date: The amendment to GDP–2 will become effective 7 days after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will allow temporary transfer of regulatory oversight of the X–705 Building for high enrichment uranium cylinder valve replacement.

Local Public Document Room location: Portsmouth Public Library,

1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 17th day of March 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–7963 Filed 3–25–98; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Callaway Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. NPF–30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Union Electric Company from the requirements of 10 CFR 50.60, which requires all power reactors to meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in Appendices G and H to 10 CFR Part 50. The proposed exemption would allow Union Electric to apply American Society for Mechanical Engineers (ASME) Code Case N–514 for determining Callaway's cold overpressurization mitigation system (COMS) pressure setpoint.

The proposed action is in accordance with the licensee's application for exemption dated August 22, 1997.

The Need for the Proposed Action

The proposed exemption is needed to support an amendment to the Callaway Technical Specifications which will revise the heatup, cooldown and COMS curves. The use of ASME Code Case N–514 would allow an increased operating band for system makeup and pressure control.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that application of Code Case N–514 represents a special circumstance in accordance with 10 CFR 50.12(a)(2)(ii) on specific exemptions, such that the specific requirements of 10 CFR 50.60 and Appendix G are "* * * not necessary to achieve the underlying purpose of the rule," which in this case is to protect the reactor vessel from brittle failure.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Callaway Plant dated March 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on March 19, 1998, the staff consulted with the Missouri State Official, Mr. Tom Lange of the Missouri Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 22, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201–5149.

Dated at Rockville, Maryland, this 20th day of March 1998.

For the Nuclear Regulatory Commission.

Barry C. Westreich,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7962 Filed 3–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 1.134, "Medical Evaluation of Licensed Personnel at Nuclear Power Plants," has been developed to provide guidance acceptable to the NRC staff on evaluating the medical qualifications of applicants for initial or renewal operator or senior operator licenses for nuclear power plants. Regulatory Guide 1.134 also provides for notification to the NRC of an operator's incapacitating disability or illness. This guide endorses the American National Standards Institute standard, ANSI/ANS–3.4–1996, "Medical Certification and Monitoring of Personnel Requiring Operator Licenses for Nuclear Power Plants."

The NRC has verified with the Office of Management and Budget the determination that this regulatory guide is not a major rule.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides

are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Printing, Graphics and Distribution Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax at (301) 415–5272. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of March 1998.

For the Nuclear Regulatory Commission.

Joseph A. Murphy,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 98–7961 Filed 3–25–98; 8:45 am]

BILLING CODE 7590–01–U

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading

March 24, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Shopping.com because of recent market activity in the stock that may have been the result of manipulative conduct.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, March 24, 1998 through 11:59 p.m. EDT, on April 6, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8034 Filed 3–24–98; 1:43 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39776; File No. 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Granting Approval of Extension of Temporary Registration as a Clearing Agency

March 20, 1998

On February 28, 1997, the MBS Clearing Corporation ("MBSCC") filed [1] with the Securities and Exchange Commission ("Commission") an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act") [2] requesting that the Commission grant MBSCC permanent registration as a clearing agency under Section 17A of the Act.[3] Because MBSCC's current temporary registration expires on March 31, 1998, the Commission is extending MBSCC's temporary registration as a clearing agency through March 31, 1999, while it completes its review of MBSCC's application for permanent registration. The Commission is publishing this notice and order to solicit comments from interested persons and to extend MBSCC's temporary registration as a clearing agency through March 31, 1999.

On February 2, 1987, the Commission granted MBSCC's application for registration as a clearing agency pursuant to Sections 17A(b)[4] and 19(a)(1)[5] of the Act and Rule 17Ab2–1(c)[6] thereunder for a period of eighteen months.[7] Subsequently, the Commission has issued orders that extended MBSCC's temporary registration as a clearing agency. The last extension order extends MBSCC's temporary registration through March 31, 1998.[8]

As discussed in detail in the original order granting MBSCC's registration, one of the primary reasons for MBSCC's registration was to enable it to provide for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. Since the original temporary registration order, MBSCC has implemented several improvements to its operating and financial standards and continues to work towards enhancing the safety and efficiency of its operations. For example during the past year MBSCC appraised the value given to securities deposited as collateral for participants funds obligations.[9] In addition, MBSCC modified its rules to explicitly state that MBSCC's participants are liable as principal for any contracts or other transactions they submit to MBSCC on behalf of entities that are not participants.[10]

MBSCC has functioned effectively as a registered clearing agency for over ten years. Accordingly, in light of MBSCC's past performance and the need for continuity of the services MBSCC provides to its participants, the Commission believes that it is necessary and appropriate in the public interest and for the prompt and accurate clearance and settlement of securities transactions to extend MBSCC's temporary registration through March 31, 1999. During this temporary registration period, the Commission will continue its review of MBSCC's application for permanent registration. Any comments received during MBSCC's temporary registration will be considered in conjunction with the Commission's review of MBSCC's request for permenant registration as a clearing agency under Section 17A of the Act.[11]

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the request for permanent registration as a clearing agency that are filed with the Commission, and all written communications relating to the extension between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will

[1] Letter from Julie Beyers, MBSCC, February 27, 1997.

[2] 15 U.S.C. 78s(a).

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b).

[5] 15 U.S.C. 78s(a)(1).

[6] 17 CFR 240.17Ab2–1(c).

[7] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[8] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 32412; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; and 38784 (June 27, 1997) 62 FR 36587.

[9] Securities Exchange Act Release No. 38769 (June 24, 1997), 62 FR 34859 [File No. MBS–97–02].

[10] Securities Exchange Act Release No. 39405 (December 5, 1997), 62 FR 65466 [File No. MBS–97–05].

[11] 15 U.S.C. 78q–1.

be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. 600–22.

Conclusion

On the basis of the foregoing, the Commission finds that extending MBSCC's temporary registration as a clearing agency is consistent with the Act and in particular with Section 17A of the Act.[12]

It is therefore ordered, pursuant to Section 19(a) of the Act, that MBSCC's temporary registration as a clearing agency (File No. 600–22) be, and hereby is, extended through March 31, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7919 Filed 3–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39775; File No. SR–Amex–98–11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Reduction in the Value of the de Jager Year 2000, Amex Securities Broker/Dealer and Amex Airline Indices

March 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. On March 11, 1998, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission is also granting accelerated approval to the portion of the proposal relating to the Amex Securities Broker/Dealer Index ("Broker/Dealer Index").[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to split the de Jager Year 2000 ("de Jager Index"), Broker/Dealer Index and Amex Airline ("Airline Index") Indices to one-half of their current values.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 12, 1994, the Commission granted the Exchange approval to list and trade options on the Airline Index.[4] Initially, the aggregate value of the stocks contained in the Airline Index was reduced by a divisor to establish an index benchmark value of 200. Over the past two years, the index value of the Airline Index has more than tripled in value from 200 to 728.

On March 15, 1994, the Commission granted the Exchange approval to list and trade options on the Broker/Dealer Index.[5] Initially, the aggregate value of the stocks contained in the Broker/Dealer Index was reduced by a divisor to establish an index benchmark value of 300. Since its creation the index value of the Broker/Dealer Index has more than tripled from 300 to 953.[6]

On February 19, 1997, the Commission granted the Exchange approval list and trade options on the de Jager Index.[7] Initially, the aggregate value of the stocks contained in the de Jager Index was reduced by a divisor to establish an index benchmark value of 250. Since its creation, the index value of the de Jager Index has nearly doubled in value from 250[8] to 413.

As a consequence of the rising Indices' values, premium levels for the Airline, Broker/Dealer and de Jager Indices options have also risen. According to the Exchange, these higher premium levels have been cited as the principal factor that has discouraged retail investors and some small market professionals from trading these index options. As a result, the Exchange is proposing to decrease the Airline, Broker/Dealer and de Jager Indices to one-half of their respective present values.

To decrease the Indices' values, the Exchange will double the divisor used in calculating the Indices. The Amex proposes no other changes to the components of the Indices, their methods of calculation (other than the change in the divisor), expiration style of the options or any other Index specification.

The Amex believes that lower valued Indices will result in substantial lowering of the dollar values of options premiums for the airline, Broker/Dealer and de Jager Indices options contracts. The Exchange plan to adjust outstanding series similar to the manner in which equity options are adjusted for a 2-for-1 stock split. On the effective date of the split "ex-date," the number of outstanding Airline, Broker/Dealer and de Jager Indices' options contracts

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[12] 15 U.S.C. 78q–1.

[13] 17 CFR 200.30–3(a)(50)(i).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Sharon Lawson, Esq., Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 10, 1998 ("Amendment No. 1"). In Amendment No. 1, the Amex requests expedited review and accelerated effectiveness of the proposed rule change with respect to the provisions concerning the Amex Securities Broker/Dealer Index. In addition to correcting a clerical error, Amendment No. 1 also makes clear that the position and exercise limits, which are proposed to be initially doubled, will revert to their original limits at the expiration of the furthest expiration month for non-long term options series ("LEAPs") as established on the date of the split.

[4] *See* Securities Exchange Act Release No. 35084, 59 FR 65419 (December 19, 1994) (order approving File No. SR–Amex–94–54).

[5] *See* Securities Exchange Act Release No. 33766, 59 FR 13518 (March 22, 1994) (order approving File No. SR–Amex–93–37).

[6] At the time the proposal was originally filed, the index value of the Broker/Dealer Index had increased to 953. Subsequent to the original filing, however, the index value has increased to more than 1000. According to the Amex, the system used to calculate the value of the Index cannot accommodate four-digit numbers. As a result, all calculations of the value of options on the Broker/Dealer Index must be performed manually on a continuous basis for each series. Therefore, the Amex has requested accelerated approval of the provisions of the proposal pertaining to the Broker/Dealer Index. *See* Amendment No. 1, *supra* note 3.

[7] *See* Securities Exchange Act Release No. 38307, 62 FR 8469 (February 25, 1997) (order approving File No. SR–Amex–97–04).

[8] As originally filed, the proposal incorrectly listed the de Jager's benchmark Index value as 200. This clerical error was corrected by the Exchange in Amendment No. 1. *See* Amendment No. 1, *supra* note 3.

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will be doubled and strike prices halved.

Position and Exercise Limits

Currently, position and exercise limits for the Airline and Broker/Dealer Indices equal 15,000 contracts, while position and exercise limits for the de Jager Index equal 12,000 contracts, on the same side of the market. The Exchange proposes to double the position and exercise limits to 30,000 contract for the Airline and Broker/Dealer Indices and to 24,000 contracts for the de Jager Index on the same side of the market. This change will be make simultaneously with the proposed reduction of the Indices' value and the doubling of the number of contracts.

Since the new position and exercise limits will be equivalent to the Indices' present limits, there is no additional potential for manipulation of the Indices or the underlying securities. Further, an investor who is currently at the 15,000 (or 12,000) contract limit will, as a result of the index value reductions, automatically hold 30,000 (or 24,000) contracts to correspond with the lowered index values. These increased position and exercise limits will revert to their original limits at the expiration of the furthest month for non-LEAPs [9] as established on the date of the split.

The Exchange believes that decreasing the values of the Airline, Broker/Dealer and de Jager Indices may make these index options more attractive to retail investors and other market professionals and therefore, more competitive with other products in the marketplace.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [10] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has also requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act,[11] for approving the proposed split of the Broker/Dealer Index on an accelerated basis prior to the thirtieth day after publication in the **Federal Register**.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File Number SR–Amex–98–11 and should be submitted by April 16, 1998.

V. Commission Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change

The Commission finds that the portion of the proposed rule change, as amended, relating to the Broker/Dealer Index is consistent with the requirements of Section 6 of the Act [13] and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission believes that the provisions of the proposed rule change pertaining to the Broker/Dealer Index are consistent with and further the objectives of Section 6(b)(5) of the Act [15] in that the proposed splitting of the Broker/Dealer Index and the associated temporary increases in the position and exercise limits would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

By reducing the value of the Broker/Dealer Index, the Commission believes that a broader range of investors will be provided with a means to hedge their exposure to the market risk associated with the stocks underlying the Index. Similarly, the Commission believes that reducing the value of the Broker/Dealer Index may attract additional investors, thus creating a more active and liquid trading market.

The Commission also believes that Amex's proposed adjustments to its position and exercise limits applicable to the Broker/Dealer Index are appropriate and consistent with the Act. In particular, the Commission believes that the temporary doubling of the position and exercise limits are reasonable in light of the fact that the size of the Broker/Dealer Index option contract will be halved and that, as a result, the number of outstanding options contracts an investor holds will be doubled. The temporary doubling of the position and exercise limits, therefore, will ensure that investors will not potentially be in violation of the lower existing position and exercise

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[9] The proposal, as originally filed, required the increased position and exercise limits to revert to the original limits at the expiration of the furthest expiration month as established on the date of the split. Because trading in LEAPs has been approved for each of the three Indices, the Amex proposes to clarify that position and exercise limits will revert to their original levels at the expiration of the furthest expiration month for non-LEAPs. *See* Amendment No. 1, *supra* note 3. The furthest expiration month for non-LEAPs is generally nine months.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] *See* note 6, *supra*.

[13] 15 U.S.C. 78f.

[14] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

limits while permitting market participants to maintain, after the split of the Broker/Dealer Index, their current level of investment in the Broker/Dealer Index option contracts. As noted above, the increased position and exercise limits of 30,000 contracts will revert to their original limit of 15,000 contracts at the expiration of the further expiration month of non-LEAPs as established on the date of the split, which is expected to be October 1998.[16]

The Commission further believes that doubling the Broker/Dealer Index's divisor will not have an adverse market impact on the trading in these options. After the split, the Broker/Dealer Index will continue to be comprised of the same stocks with the same weightings and will be calculated in the same manner, except for the proposed change in the divisor. The Commission notes that the Amex's surveillance procedures also will remain the same.

Finally, the Commission notes that, prior to implementing the changes, the Exchange will provide advance notice of the proposed changes to the Broker/Dealer Index to its membership through an information circular.[17] The Broker/Dealer Index is expected to be reduced by one-half prior to the April 17, 1998 expiration. The Amex has committed to provide notice to its membership at least two weeks prior to the implementation of the proposed change to the Broker/Dealer Index value and the resulting adjustments to the outstanding Broker/Dealer Index options contracts. The Commission believes that the proposed time frame should allow for adequate notice to be provided to the holders of all open positions in Broker/Dealer Index options and other market participants.

The Commission finds good cause for partially approving the proposed rule prior to the thirtieth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that the proposed split of the Broker/Dealer Index raises no new or novel regulatory concerns. In addition, the Commission notes that since the initial filing of the proposal, the value of the Broker/Dealer Index has increased to the extent that present value is in excess of 1000. As the system used to calculate the value of the Index cannot accommodate four-digit numbers, all calculations of the value of options on the Broker/Dealer Index must be performed manually on a continuous basis for each series. The Commission believes that to ensure the continued accuracy and reliability of the values of Broker/Dealer Index options contracts, the accelerated approval of the portion of the proposal relating to the Broker/Dealer Index is appropriate. In addition, the Amex has ensured that market participants will receive adequate notice prior to implementation of the adjustments to the index value and outstanding Broker/Dealer Index options. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) of the Act,[18] to partially accelerate approval of the proposed rule change, as discussed above.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the portion of the proposed rule change (SR–Amex–98–11) relating to the Broker/Dealer Index is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7921 Filed 3–25–98; 8:45 am]

BILLING CODE 8010–01–M

[16] According to the Amex, October 1998 will be the furthest expiration month for non-LEAPs on the Broker/Dealer Index for purposes of the reversion of position and exercise limits to their original levels. The Amex has agreed to provide notice to its members to remind them of the need to reduce their positions at least one month prior to the date that the position and exercise limits revert to their original levels. Per telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Deborah Flynn, Division, Commission, on March 19, 1998.

[17] Per telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Deborah Flynn, Division, Commission, on March 19, 1998.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39771; File No. SR–NASD–98–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Elimination of Position and Exercise Limits for FLEX Equity Options

March 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 1998, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 2860(b) of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to establish the NASD member firms and their customers shall have the same position and exercise limits for FLEX Equity Options as the firms that are also members of the exchange on which such FLEX Equity Options trade. Below is the text of the proposed rule change. Proposed new language is in italics.

Rule 2860. Options

* * * * *

(b) Requirements.

(1) General.

(A) Applicability—This Rule shall be applicable (i) to the trading of options contracts issued by The Options Clearing Corporation and displayed on The Nasdaq Stock Market and to the terms and conditions of such contracts; (ii) to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members who are not members of an exchange on which the option executed is listed; (iii) to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in conventional options; and (iv) other matters related to options trading.

Unless otherwise indicated herein, subparagraphs (3) through (12) shall apply only to options displayed on Nasdaq and standardized and conventional on common stock and subparagraphs (13) through (24) shall apply to transactions in all options as defined in paragraph (a), including common stock. *The position and exercise limits for FLEX Equity Options for members who are not also members of the exchange on which FLEX Equity Options trade shall be the same as the position and exercise limits as applicable to members of the exchange on which such FLEX Equity Options are traded.*

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(2) Definitions.

The following terms shall, unless the context otherwise requires, have the stated meanings:

* * * * *

(W) *Flex Equity Option—The term "Flex Equity Option" means any options contract issued, or subject to issuance by, The Options clearing Corporation whereby the parties to the transaction have the ability to negotiate the terms of the contract consistent with the rules of the exchange on which the options contract is traded.*

(X)–(ZZ) Redesignated accordingly.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified I Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 5, 1997, The Nasdaq Stock Market, Inc. ("Nasdaq") filed a proposed rule change with the Commission to: (1) amend NASD Rule 2860(b) to disaggregate conventional equity options from exchange-traded equity options for position limit purposes and establish a new conventional equity option base position limit of three times the limit allowed for standardized options on the same underlying security;[3] (2) amend the NASD's OTC Collar Aggregation Exemption to provide that the exemption may be utilized with respect to an entire conventional equity options position, not just that portion of the position that was established pursuant to the NASD's Equity Option Hedge Exemption; and (3) eliminate position and exercise limits on FLEX Equity Options. Shortly thereafter, on September 9, 1997,[4] the Commission approved a two-year pilot program ("Pilot Program") to eliminate position and exercise limits for FLEX Equity Options, which are traded on the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the Pacific Exchange, Inc. ("PCX") (collectively "Options Exchanges").[5] In light of the adoption of the Pilot Program, NASD Regulation seeks to amend its rules to be consistent with the rules of the Options Exchanges. The NASD has withdrawn its proposed rule change (SR–NASD–97–67) dated September 5, 1997, and recently refiled a proposed rule change addressing items (1) and (2) described above.[6] The NASD determined to submit the instant rule filing concerning FLEX Equity Options separately in order to obtain expedited approval, which is necessary to avoid inconsistencies between the rules of the NASD and the Options Exchanges.

The NASD's option position and exercise limits apply, among other things, to "the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members who are not members of an exchange on which the option executed is listed."[7] As currently written, the NASD's position limits do not provide any exemption for FLEX Equity Options. Consequently, NASD member firms who are not members of an Options Exchange and who effect proprietary or customer FLEX Equity Options through members of the Options Exchanges are subject to options position and exercise limits. In contrast, Options Exchange member firms executing such orders in FLEX Equity Options are not subject to NASD options position and exercise limits.[8] NASD Regulation does not believe that NASD and Options Exchange member firms and their customers should be subject to different position and exercise limits with respect to FLEX Equity Options.

To reconcile the NASD rules with those of the Options Exchanges, the proposed rule change provides that the position and exercise limits for FLEX Equity Options[9] for NASD members who are not members of an Options Exchange shall be the same as the position and exercise limits applicable to members of the exchange on which such FLEX Equity Options are traded. Moreover, since the proposed rule change incorporates the position and exercise limits for FLEX Equity Options established by the Options Exchanges, the elimination of position and exercise limits for FLEX Equity Options will continue only as long as the Pilot Program remains in effect, subject, of course, to extensions by the Commission or the adoption of a rule permanently eliminating position and exercise limits for FLEX Equity Options.

Finally, although the proposed rule change does not specify any of the reporting, margin and capital charge requirements of the Pilot Program, NASD members and their customers will be effectuating such requirements through the Options Exchange member (who is subject to the requirements of the Pilot Program) effecting the FLEX Equity Option transaction.

2. Statutory Basis

NASD Regulation believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[10] which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, NASD Regulation believes that amending its rules to incorporate changes in the position and exercise limits for FLEX Equity Options as a result of the Pilot Program achieves these purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] Telephone Conversation between Gary L. Goldsholle, Office of General Counsel, NASD Regulation, and Christine Richardson, Division of Market Regulation, Commission, February 26, 1998.

[4] *See* Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

[5] FLEX Equity Options, are exchange-traded options issued by The Options Clearing Corporation that give investors the ability, within specified limits, to designate certain terms of the option (*i.e.*, the exercise price, exercise style, expiration date, or option type). The Commission notes that it recently approved rules to permit the Philadelphia Stock Exchange to list and trade FLEX Equity Options. *See* Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

[6] *See* SR–NASD–98–22.

[7] NASD Rule 2860(b)(1)(A).

[8] In other words, NASD member firms that are also members of an Options Exchange are not subject to the NASD's options position and exercise limits with regard to FLEX Equity Options.

[9] The proposed rule change defines FLEX Equity Options as any options contract issued, or subject to issuance by, The Options Clearing Corporation whereby the parties to the transaction have the ability to negotiate the terms of the contract consistent with the rules of the exchange on which the options contracts is traded.

[10] 15 U.S.C. 78*o*–3.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASDA Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In general, the Commission believes that the proposed rule change, eliminating position and exercise limits for FLEX Equity Options for members of the NASD who are not also a member of an Options Exchange, is appropriate given that the Commission recently approved similar proposed rule changes for the Options Exchanges.[11] In the approval order for the Options Exchanges, the Commission cited several reasons for approving the elimination of position and exercise limits for FLEX Equity Options on a pilot basis. Those reasons apply here as well. First, the FLEX Equity Options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals), who have both the experience and ability to engage in negotiated, customized transactions. For example, with a required minimum size of 250 contracts to open a transaction in a new series, FLEX Equity Options are designed to appeal to institutional investors, and it is unlikely that retail investors would be able to engage in options transactions at that size. Second, all of the Options Exchanges' other current rules and provisions governing FLEX Equity Options remain applicable. Third, the Options Clearing Corporation will serve as the counter-party guarantor in every exchange-traded transaction. Fourth, the elimination of position and exercise limits for FLEX Equity Options potentially could expand the depth and liquidity of the FLEX Equity Option market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Finally, the Exchanges' surveillance programs and enhanced monitoring procedures will be applicable to the trading of FLEX Equity Options and should detect and deter trading abuses arising from the elimination of position and exercise limits.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the current rules have the effect of placing certain NASD member firms and their customers at a competitive disadvantage to Options Exchange member firms with respect to FLEX Equity Options position and exercise limits because the latter are not subject to the NASD's position and exercise limits. The Commission believes that accelerated approval of the proposed rule change will conform the NASD rules concerning position and exercise limits for FLEX Equity Options with those of the Options Exchanges, thereby resulting in consistent application of the position and exercise limits for FLEX Equity Options. Accordingly, the Commission believes that it is consistent with Section 15A of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–98–15 and should submitted by April 16, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–98–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7917 Filed 3–25–98; 8:45 am]

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[11] *See* Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

[12] 15 U.S.C. § 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39774; File No. SR–NYSE–98–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

March 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 6, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend the pilot period during which recent changes to Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material" (collectively the "Rules"), became operative. The Rules establish guidelines for the reimbursement of expenses by issuers to NYSE member

[1] 15 U.S.C. 78s(b)(1).

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organizations for the processing of proxy materials and other issuer communications ("Materials") with respect to security holders whose securities are held in street name. The Rules also allow NYSE member organizations to employ the practice of "householding" to eliminate multiple mailings of Materials to beneficial security holders at the same address.

On March 14, 1997, the Commission approved a NYSE proposal that significantly amended the Rules and the reimbursement guidelines set forth therein (the "Previous Filing").[2] In a separate filing related to this proposed rule change (the "Companion Filing"), the Commission approved the Exchange's proposal to reduce the rate of reimbursement for mailing each set of Materials from $.55 to $.50, and to extend the current pilot period through July 31, 1998.[3] This filing proposes one change to the Rules, regarding the use of householding through implied consent, and also proposes to extend the effectiveness of the Rules, as amended by this filing, the Previous Filing and the Companion Filing, through June 30, 2001.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Previous Filing and the Companion Filing lowered certain reimbursement guidelines, created incentive fees to eliminate duplicative mailings, established a supplemental fee for intermediaries that coordinate multiple nominees, and established rules allowing householding.

The Commission approved the Previous Filing on a pilot basis and established an initial expiration date of May 13, 1998. The Companion Filing extended the expiration date through July 31, 1998.[4] In the Previous Filing, the Exchange committed to undertake an independent audit that would analyze the application of the modified Rules during the 1997 proxy season (the "Audit"). The Exchange stated that it would submit the Audit to the Commission by October 31, 1997. Due to delays in the audit procedure, the Exchange did not deliver the Audit to the Commission until January, 1998.[5]

In addition to its proposal to extend the pilot period through June 30, 2001, the Exchange seeks to amend the Rules regarding householding to provide for the use of "implied consent." This amendment would allow a member organization to send only one set of Materials to a household encompassing multiple beneficial holders if the member organization provided at least 60 days' notice of the proposed householding and the beneficial holders did not object to such practice.[6]

As to the extension of the pilot period through June 30, 2001,[7] the Exchange believes that the Audit indicates the reimbursement fees implemented during the pilot period are reasonable. However, the Exchange believes that additional experience with the pilot period fee structure would be useful before determining whether to seek permanent approval of such fee structure or to propose additional amendments. The Exchange contends that a three-year extension would provide that experience, while also providing the market with sufficient certainty that the current rules will be available for a reasonable period of time. The Exchange believes such certainty is necessary to allow market participants to invest in the infrastructure necessary to support the proxy communication process.

In its order approving the Previous Filing, the Commission stated that it was then appropriate for the Exchange to propose specific rates of reimbursement. However, the Commission went on to recommend that the Exchange, issuers, and broker-dealers develop and approach that would foster competition in this area. The Commission also suggested that the Exchange and other self-regulatory organizations ("SOR's") "explore whether reimbursement can be set by market forces, and whether this would provide a more efficient, competitive, and fair process than SRO standards."

The Exchange appreciates the Commission's concerns. However, the Exchange believes it is unlikely that competition will develop to the extent necessary to relieve the Exchange of its role in establishing reimbursement guidelines. for example, within the last year, three large NYSE member organizations contracted with the industry leader, ADP Financial Information Services, Inc. ("ADP"), to handle the mailing of Materials, rather than continuing to process such mailings through in-house operations.[8] While the Exchange certainly would encourage competition in this industry, the Exchange believes that experience indicates that the proxy communication process benefits from the economies of scales and uniform procedures that arise when most mailings are coordinated through a single entity.

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[2] Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Previous Filing contains a detailed description regarding the background and history of the Rules.

[3] *See* Securities Exchange Act Release No. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998).

[4] In the Companion Filing, the Commission noted that the May 13, 1998, expiration date intersected the time period when proxy materials traditionally are distributed to shareholders. As a result, NYSE member organizations potentially would have been reimbursed at two different rates—the rates established by the Previous Filing, and the rates in effect prior to the implementation of the Previous Filing (the default rates)—if the expiration date were not extended.

[5] A copy of the Audit is publicly available for review in File No. SR–NYSE–98–05 at the Commission's Public Reference Section located at the address specified in Item IV.

[6] The Exchange represents that its proposal is substantively identical to the implied consent provision set forth in the Commission's recent proposed rulemaking release concerning householding. *See* Securities Act Release No. 7475; Securities Exchange Act Release No. 39321; and Investment Company Act Release No. 22884 (Nov. 13, 1997), 62 FR 61933 (Nov. 20, 1997). The rules currently permit NYSE members to household annual reports, interim reports, proxy statements, and other materials where the beneficial holders have provided actual consent. However, it should be noted that the Commission's proposed rule only would allow the householding of prospectuses, annual reports, and semiannual reports if the consent (actual or implied) of beneficial holders was obtained.

[7] In connection with the Exchange's request for a thirty-five month extension of the pilot reimbursement guidelines, the Commission notes that the Exchange has committed to undertake an independent audit of the revised fee structure during the 1998 proxy season. Conversation between James E. Buck, Senior Vice President and Secretary, Exchange, and Sharon M. Lawson, Senior Special Counsel, Division of Market Regulation, Commission, March 18, 1998.

[8] The NYSE member organizations are: Merrill Lynch, Pierce, Fenner & Smith, Inc.; Paine Webber Incorporated; and Prudential Securities Incorporated. The Audit states that of the sixty-nine NYSE member organizations that responded to the Audit-Related survey, ninety-three percent indicated they subcontract their proxy distribution responsibilities to ADP. It should be noted that this rate of subcontracting does not include the three NYSE member organizations named above.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act [9] that an exchange maintain rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. Nor has the Exchange received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the exchange consents, the Commission will:

(A) By order approved the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission generally solicits comment on the questions set forth below to facilitate its independent determination as to whether the new fee structure: (1) provides for the equitable allocation of reasonable fees among NYSE-listed companies and NYSE member firms, consistent with Section 6(b)(4) of the Act; (2) conforms with Sections 6(b)(5) and 6(b)(8) of the Act by not unfairly discriminating among issuers and imposing a burden on competition that is not necessary under the Act; and (3) imposes fees that are "reasonable" within the meaning of Rules 14a–13, 14b–1, and 14b–2 under Sections 14(a) and 14(b) of the Act. The Commission notes that Rules 14a–13, 14b–1, and 14b–2 require registered broker-dealers, banks and other covered nominees to deliver proxy materials, annual reports and other corporate communications to street-name security holders. These rules are meant to ensure, among other things, that public companies reimburse these nominees, upon request, for "reasonable expenses" incurred in delivering such communications.

At stated in the Previous Filing, the Commission has reached no final resolution of the issues noted by commenters. The Commission will continue to closely examine the impact of the revised proxy fee reimbursement guidelines on NYSE-listed companies and NYSE member firms. Because the Audit did not analyze recent developments such as the shifting of proxy distribution activities to ADP from three of four self-distributing broker-dealers, and ADP's Internet proxy delivery and voting mechanism, the Commission solicits specific comment on the following questions: (1) ADP introduced its Internet delivery and voting services after the fee structure was approved on a pilot basis on March 14, 1997. Accordingly, the Commission solicits comment regarding the itemized fees that ADP charges issuers for Internet proxy delivery and voting services. In addition, should the processing fee that relates to the mailing of materials in paper format (which the Exchange recently reduced from $0.55 to $0.50 per basic proxy package) be modified to reflect the actual costs of electronic delivery? (2) Is the incentive fee ($0.50 per mailing eliminated) necessary or appropriate, in whole or part, now that ADP is offering the Internet as a vehicle for delivery of proxy materials and other corporate communications to street-name holders? (3) Is the proposed thirty-five month extension of the pilot more appropriate than a longer or shorter period? (4) Are issuers with small but diffuse shareholder bases realizing the same benefits from ADP's nominee coordination activities as larger issuers whose securities are widely owned but more concentrated in the accounts of nominees? (5) Does the $20 nominee coordination fee have a disproportionate impact on smaller issuers?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–05 and should be submitted by April 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7918 Filed 3–25–98; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39770; File No. SR–NYSE–97–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to Exchange Policy for Entry of MOC/LOC Orders and Publication of Imbalances

March 18, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 29, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. § 78s(b)(1)

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of changes to the Exchange's policy for entry of market-on-close ("MOC") and limit-at-the-close ("LOC") orders and publication of imbalances, for both expiration and non-expiration days.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The NYSE has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Special procedures regarding the entry of MOC and LOC orders have been in effect for more than ten years. These procedures are designed to alleviate excess volatility at the close by providing MOC imbalance information to market participants in a timely manner in order to attract contra-side interest. The procedures have been refined over the years based on the Exchange's experience and input from constituents. The Exchange is now proposing additional refinements to the procedures in order to enhance their usefulness.

The current procedures require the MOC and LOC orders in any stock be entered by 3:40 p.m. on expiration days, and by 3:50 p.m. on non-expiration days. No cancellation or reduction of any MOC or LOC order in any stock may take place after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days, (except in a case of legitimate error or to comply with the provisions of Exchange Rule 80A). In addition, Floor brokers representing any MOC orders must indicate their MOC interest to the specialist by 3:40 p.m. or 3:50 p.m., for expiration and non-expiration days, respectively.

For the selected stocks identified by the Exchange (formerly known as "pilot stocks") and published in its "special stock list," a single publication of imbalances of 50,000 shares or more is required to be made as soon as practicable after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days. On expiration days, stocks on the special stock list that do not have an imbalance of 50,000 shares or more at 3:40 p.m. must publish a "no imbalance" status. Imbalances of 50,000 shares or more must also be published for stocks going into or out of an index. For any other stock, an imbalance of 50,000 shares or more may be published at the request of the specialist, with Floor Official approval. After the 3:40 p.m. or 3:50 p.m. imbalance publication, MOC and LOC orders may be entered only to offset a published imbalance. No MOC or LOC orders may be entered if there is no imbalance publication. On expiration days, the entry of MOC or LOC orders after 3:40 p.m. to establish or liquidate positions related to a strategy involving derivative instruments is not permitted, even if such orders might offset published imbalances.

In July of 1997, the NYSE's Market Performance Committee appointed a subcommittee to review MOC procedures. The subcommittee made several recommendations to increase the effectiveness of the procedures. These changes, which the Exchange is proposing to implement, are:

- 3:40 p.m. deadline for entry of MOC and LOC orders and indication of MOC interest to specialists by Floor brokers representing any MOC orders, every day. This earlier deadline on non-expiration days would provide additional time to attract contra-side interest.
- Integration of marketable LOC orders in the imbalance publication. Currently, imbalance publications indicate MOC interest but not LOC interest. *See* Amendment No. 1. The Exchange is proposing to include both MOC and marketable LOC orders in the imbalance publication. The determination of whether an LOC order is "marketable" would be based upon the last sale price at 3:40 or 3:50 p.m. This means that LOC orders to buy at a higher price would be included with the buy MOC orders; LOC orders to sell at a lower price would be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the imbalance calculation. This would provide a more complete picture to market participants of the potential size of the imbalance at the close.
- The Exchange is also proposing mandatory publication of all MOC/LOC imbalances of 50,000 shares or more in *all* stocks on *any* trading day as soon as practicable after 3:40 p.m. As discussed above and in Amendment No. 1, currently, the Exchange requires mandatory publication of imbalances of 50,000 shares or more only in stocks on special stock lists (formerly "pilot stocks") and stocks being added to or dropped from an index on expiration days as soon as practicable after 3:40 p.m. (or 3:50 p.m. for non-expiration days). Publication of an imbalance of *less than* 50,000 shares may be made at that time with the approval of a Floor Official. This proposed new provision would permit but not require the publication of an imbalance which, although less than 50,000 shares, may be significantly greater than average daily volume in a stock. This would enhance information available to market participants concerning stocks with significant imbalances.
- The Exchange also proposed a new procedure to permit non-mandatory publication of MOC/LOC imbalances of *any* size between 3:00 and 3:40 p.m., with Floor Official approval; these publications would be informational only, with no effect on MOC/LOC order entry. Imbalance information would be required to be updated at 3:40 p.m. for all stocks on all days, regardless of size, in order to provide timely imbalance information to market participants.
- An additional imbalance publication on both expiration and non-expiration days, must be made at 3:50 p.m. for any stock that had an imbalance publication at 3:40 p.m.[3] If the imbalance at 3:50 p.m. is less than 50,000 shares, a "no imbalance" status must be published, except that an imbalance of less than 50,000 shares may be published with Floor Official approval, provided there had been an imbalance publication at 3:40 p.m. If there were no imbalance publication at 3:40 p.m., there would not be a publication at 3:50 p.m., since MOC and LOC orders could not be entered during the interim to change the imbalance. If the 3:50 p.m. imbalance publication reversed the first imbalance publication, only MOC and LOC orders which offset the 3:50 p.m. imbalance would be permitted to be entered thereafter. This would present market participants with

[2] On March 18, 1998, at the Commission staff's request, the NYSE amended the filing by submitting a chart which clarifies the proposed procedures and contains the authority and sources for the NYSE's proposed policy change for entry of MOC and LOC orders and for the publication of imbalances, for both expiration and non-expiration days. *See* Letter from Donald Siemer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated march 13, 1998 ("Amendment No. 1"). The chart is provided in Exhibit A, below.

[3] Currently, the Exchange requires only a single imbalance publication at 3:40 p.m. on expiration days and at 3:50 p.m. on non-expiration days. *See* Amendment No. 1.

a more timely and more accurate picture of imbalances before the close.

• MOC/LOC order entry is precluded after 3:40 p.m. in all stocks on all days, unless an imbalance is published, in which case entry of MOC/LOC orders would be permitted only on the contra side of the published imbalance.

The Exchange believes that these revisions would provide more timely and more complete information to market participants concerning MOC/LOC order imbalances and improve the effectiveness of the procedures.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed changes to MOC/LOC procedures are designed to respond to constituent advice that more timely and more complete information with respect to MOC/LOC imbalances would improve the Exchange's closing procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change to consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–36 and should be submitted by April 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,
Deputy Secretary.

EXHIBIT A.—MOC AND LOC CHANGES PROPOSED IN FILE NO. SR–NYSE–97–36

Proposed policy	Current policy	Sources for current policy
• *3:40 p.m.* deadline for entry of MOC and LOC orders on *expiration* days and *non-expiration* days.	• *3:40 p.m.* deadline for entry of MOC and LOC orders on *expiration* days.	• Expiration day MOC procedures permanent approval (File No. SR–NYSE–96–31, Release No. 34–37894, October 30, 1996); Information Memo No. 96–34, November 8, 1996. • LOC order entry procedures pilot approval (File No. SR–NYSE–97–21, Release No. 34–37969, November 20, 1996 and File No. SR–NYSE–97–19, Release No. 34–38865, July 23, 1997); Information Member No. 97–25, May 13, 1997.
• Same as above	• *3:50 p.m.* deadline for entry of MOC and LOC orders on *non-expiration* days.	• Non-expiration day MOC procedures permanent approval (File No. SR–NYSE–94–44, Release No. 34–35589, April 10, 1995); Information Memo No. 95–21, May 12, 1995. • LOC order entry procedures pilot approval (File No. SR–NYSE–96–21, Release No. 34–37969, November 20, 1996 and File No. SR–NYSE–97–19, Release 34–38865, July 23, 1997); Information Memo No. 97–25, May 13, 1997.
• Integration of marketable LOC orders in the imbalance publication, (i.e., include *both MOC* and *marketable LOC* orders in imbalance publication).	• Imbalance publication indicates *MOC* interest only.	• Expiration day MOC procedures permanent approval (File No. SR–NYSE–96–31, Release No. 34–37894, October 30, 1996); Information Memo No. 96–34, November 8, 1996.

[4] 17 CFR 200.30–3(a)(12).

EXHIBIT A.—MOC AND LOC CHANGES PROPOSED IN FILE NO. SR–NYSE–97–36—Continued

Proposed policy	Current policy	Sources for current policy
• Mandatory publication of all *MOC/LOC* imbalances of 50,000 shares or more in *all stocks* on *any trading day* (i.e., expiration and non-expiration days) as soon as practicable after *3:40* p.m.	• Mandatory publication of *MOC* imbalances of 50,000 shares or more in *stocks on special stocks lists* (formerly known as pilot stocks) and *stocks being added to or dropped from an index,* on *expiration days* as soon as practicable after *3:40* p.m.	• Expiration day of MOC procedures permanent approval (File No. SR–NYSE–96–31, Release No. 34–37894, October 30, 1996); Information Memo No. 96–34, November 8, 1996.
• Same as above	• Mandatory publication of MOC imbalances of 50,000 shares or more in *stocks on special stock lists* (formerly—known as pilot stocks) and *stocks being added to or dropped from an index,* on *non-expiration* days as soon as practicable after 3:50 p.m.	• Non-expiration day MOC procedures permanent approval (File No. SR–NYSE–94–44, Release No. 34–35589, April 10, 1995); Information Memo No. 95–21, May 12, 1995.
• Non-mandatory publication of MOC/LOC imbalances of *less than* 50,000 shares at *3:40* p.m. with Floor Official approval.	• New.	
• Non-mandatory publication of MOC/LOC imbalances of *any* size *between 3:00 and 3:40 p.m.,* with Floor Official approval. These would be informational only with no effect on MOC/LOC order entry. Imbalance information would be required to be updated at 3:40 p.m., regardless of size.	• New.	
• Additional imbalance publication on both expiration and non-expiration days, at *3:50 p.m.* for any stock which had an imbalance publication at 3:40 p.m.	• *Single* imbalance publication at *3:40 p.m.,* on *expiration* days and at *3.50 p.m.* on *non-expiration* days.	Expiration day MOC procedures permanent approval (File No. SR–NYSE–96–31, Release No. 34–37894, October 30, 1996); Information Memo No. 96–34, November 8, 1996. • Non-expiration day MOC procedures permanent approval (File No. SR–NYSE–94–44, Release No. 34–35589, April 10, 1995); Information Memo No. 95–21, May 12, 1995.
• After 3:40 and 3:50 p.m. imbalance publications on *any* trading day, MOC/LOC orders may be entered only to offset a published imbalance.	• After imbalance publications at *3:40* p.m. on *expiration days* and *3:50* p.m. on *non-expiration* days, MOC/LOC orders may be entered only to offset a published imbalance.	Expiration day MOC procedures permanent approval (File No. SR–NYSE–96–31, Release No. 34–37894, October 30, 1996); Information Memo No. 96–34, November 8, 1996. • Non-expiration day MOC procedures permanent approval (File No. SR–NYSE–94–44, Release No. 34–35589, April 10, 1995); Information Memo No. 95–21, May 12, 1995. • LOC order entry procedures pilot approval (File No. SR–NYSE–96–21, Release No. 34–37969, November 20, 1996 and File No. SR–NYSE–97–19, Release No. 34–38865, July 23, 1997); Information Memo No. 97–25, May 13, 1997.
• If the imbalance at 3:50 p.m. is less than 50,000 shares, either (1) a "no imbalance" status must be published; or (2) Floor Official approval must be sought to publish an imbalance of less than 50,000 shares. • If there were no imbalance publication at 3:40 p.m., there would not be a publication at 3:50 p.m..	•New.	

[FR Doc. 98–7920 Filed 3–25–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–04]

Delegation of Authority for Budget Execution in the Departmental Offices

March 20, 1998.

1. *Delegation.* Pursuant to sections 3. and 5. of Treasury Order (TO) 102–13, this Directive delegates the authority for budget execution/control of funds in the Departmental Offices (DO).

2. For the purposes of paragraphs 3.a. and 3.c. of TO 102–13, the Deputy Assistant Secretary (Administration) shall perform those functions assigned there to the "head of bureau" with respect to the DO other than the Financial Crimes Enforcement Network (FinCEN).

3. The Director, FinCEN:

(a) Is delegated authority to incur obligations and make expenditures within the budgetary resources available to FinCEN consistent with applicable Office of Management and Budget apportionments and reapportionments and other authority to make funds available for obligation;

(b) Is delegated authority to issue sub-allotments or allocations of funds to components of FinCEN; and

(c) Shall maintain a system of administrative control of funds for

FinCEN in conformity with the requirements of paragraph 3.c. of TO 102–13.

4. Nothing in this Directive shall be construed to:

a. Apply to the Office of Inspector General, the Community Development Financial Institutions Fund, or the Treasury Asset Forfeiture Fund; or

b. Change organizational or reporting relationships of DO or FinCEN.

5. *Authority.* TO 102–13, "Delegation of Authority Concerning Budget Matters," dated January 19, 1993.

6. *Cancellation.* Treasury Directive 12–04, "Delegation of Authority for Budget Execution in the Departmental Offices," dated September 28, 1995, is superseded.

7. *Expiration Date.* This Directive expires three years after date of issuance unless superseded or cancelled prior to that date.

8. *Office of Primary Interest.* Office of Financial and Budget Execution, Office of the Deputy Chief Financial Officer, Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 98–7926 Filed 3–25–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Customs Service

Application of Producers' Good Versus Consumers' Good Test in Determining Country of Origin Marking

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed interpretation; solicitation of comments.

SUMMARY: This notice advises the public that Customs does not intend to rely on the distinction between producers' goods and consumers' goods in making country of origin marking determinations. It is Customs' opinion that the consumer-good-versus-producer-good distinction is not determinative that a substantial transformation, as it is traditionally defined, has occurred as demonstrated in a number of recent court decisions. As this proposal may affect certain importer practices, Customs is soliciting comments.

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1675).

SUPPLEMENTARY INFORMATION:

Background

In *Midwood Industries, Inc.* v. *United States,* 313 F. Supp. 951 (Cust. Ct. 1970), the U.S. Customs Court considered whether an importer of steel forgings was the ultimate purchaser for purposes of the marking statute, 19 U.S.C. 1304. The court cited the principles set forth in *United States* v. *Gibson-Thomsen Co., Inc.,* 27 CCPA 267 (1940), in determining that the importer's manufacturing operations made it the ultimate purchaser, namely that the importer may be considered the ultimate purchaser for marking purposes if it subjects the article to further processing that results in the manufacture of a new article with a new name, character and use. However, the *Midwood* court also found it relevant to that finding that the imported forgings at issue were transformed from producers' goods to consumers' goods, stating:

> While it may be true * * * that the imported forgings are made as close to the dimensions of ultimate finished form as is possible, they, nevertheless, remain forgings unless and until converted by some manufacturer into consumers' good, i.e., flanges and fittings. And as producers' goods the forgings are a material of further manufacture, having, as such, a special value and appeal only for manufacturers of flanges and fittings. But, as consumers' goods and flanges and fittings produced from these forgings are end use products, having, as such, a special value and appeal for industrial users and for distributors of industrial products. *Midwood* at 957.

It is Customs' opinion that based on subsequent court decisions applying substantial transformation analysis, *Midwood* would be decided differently today. In *National Juice Products Ass'n.* v. *United States.,* 628 F. Supp. 978 (CIT 1986), for example, the court stated that the significance of the producers' goods to consumers' goods transformation in marking cases is diminished in light of its decision in *Uniroyal, Inc.* v. *United States,* 542 F. Supp. 1026 (CIT 1983). In *Uniroyal,* the court held that despite a change in name from an "upper" to a "shoe," there was no substantial transformation because the attachment of an outsole to an upper was a minor manufacturing or combining process that left the identity of the upper intact and was the very "essence" of the finished shoe. Utilizing the analysis it had articulated in *Uniroyal,* the court in *National Juice Products* found that the addition of water, orange essences, and oils to concentrate does not change the fundamental character of the product, which is still essentially the product of the juice of oranges. The court stated: "Under recent precedents, the transition from producers' to consumers' goods is not determinative." 628 F. Supp. at 989–990. In both *Uniroyal* and *National Juice Products,* however, it was clear that imported materials could have been characterized as "producers' goods," had the court wished to adopt the reasoning used in *Midwood.*

In *Superior Wire* v. *United States,* 669 F. Supp. 472 (CIT 1987), *aff'd,* 867 F.2d 1409 (Fed. Cir. 1989), the lower court found no substantial transformation because while there was a name change from wire rod to wire, there was no character or use change when wire rod was drawn into wire. While the lower court referred to *Torrington* v. *United States,* 764 F.2d 1563 (Fed. Cir. 1985), and *Midwood* and their use of the producers' versus consumers' goods distinction, it also relied on *Uniroyal,* where that distinction was not found to be determinative as to substantial transformation. Accordingly, the court in *Superior Wire* looked to many factors, such as a value added, change in tariff classification, amount of labor required, or capital investment, in determining whether a substantial transformation had occurred and did not endorse the use of the producers' good-consumers' goods analysis of *Midwood.*

Additionally, while the court in *Ferrostaal Metals Corp.* v. *United States,* 664 F. Supp. 535, 541 (CIT 1987), referred to *Midwood's* producers' goods versus consumers' goods distinction as evidence that a change in utility of a product is indicative of a substantial transformation, it did not find that distinction to be particularly determinative. Rather, as it had in *Superior Wire,* the court looked at the "totality of the evidence" to hold that hot-dipped galvanized steel sheet was substantially transformed into a "new and different article of commerce," full hard cold-rolled steel sheet. *Id.* At 541.

Finally, in one of the most recent cases, *National Hand Tool Corp.* v. *United States,* 16 CIT 308 (1992), the court did not mention the producers' goods-consumers' goods analysis in its application of the substantial

transformation test. As in the *National Juice Products* and *Uniroyal* decisions, it was clear that the imported articles at issue, hand tool forgings, could have been characterized as "producers' goods," had the court wished to engage in the *Midwood* analysis.

Accordingly, in interpreting the numerous relevant decisions of the Federal Circuit and Court of International Trade, it is Customs' opinion that it is not bound to follow the producer's good versus consumer's good reasoning set forth in *Midwood*. Therefore, Customs does not intend to use producer's good-consumer's good analysis in making country of origin marking determinations under the substantial transformation test. If additional cross-checks are needed in order to make a country of origin marking determination, Customs intends to rely on the "essence" test of *Uniroyal* which has been given more weight as exemplified by numerous recent decisions of the Court of International Trade and Federal Circuit.

If this proposal is adopted, parties may seek clarification regarding the continued viability of any ruling that they believe was based on the producers' goods-consumers' goods analysis articulated in *Midwood*.

Comments

Before making a final decision on this proposed position, consideration will be given to any written comments timely submitted to Customs. Mindful of Judge Restani's remarks in *National Juice Products* regarding the propriety of seeking comments from interested parties concerning the effective date of policy changes which have a significant impact on an entire industry, Customs also seeks comments from interested parties as to the impact this proposed interpretation may have on importers and how much time is reasonably needed to comply. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: October 1, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–7968 Filed 3–25–98; 8:45 am]

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Corrections

Federal Register
Vol. 63, No. 58
Thursday, March 26, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF PERSONNEL MANAGEMENT

Proposed Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense (DoD)

Correction

In notice document 98–7486 beginning on page 14254, in the issue of Tuesday, March 24, 1998, make the following correction:

On page 14254, in the first column, in the **DATES** section, in the third line, after "before" insert "May 26, 1998:".

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Thursday
March 26, 1998

Part II

Office of Personnel Management

5 CFR Parts 581 and 582

Processing Garnishment Orders for Child Support and Alimony and Commercial Garnishment of Federal Employees' Pay; Final Rule

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 581 and 582

RIN 3206–AH43

Processing Garnishment Orders for Child Support and Alimony and Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is finalizing amendments to its rules for processing garnishment orders for child support and alimony and to its rules for processing commercial garnishment orders. OPM is also updating the appendices to its regulations.

EFFECTIVE DATE: April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Senior Attorney, Office of the General Counsel, (202) 606–1700.

SUPPLEMENTARY INFORMATION: On June 11, 1997, OPM published a notice of proposed rulemaking for both its support and its commercial garnishment rules. (62 FR 31763) OPM received ten comments, including eight comments from federal agencies, one comment from a federal employee organization, and one comment from a private law firm.

The majority of the proposed changes to the support garnishment regulations (5 CFR part 581) were intended to implement provisions of 42 U.S.C. 659, as amended by section 362 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193.

Among these proposed changes was an amendment to § 581.103(c)(1) concerning the garnishment of pension payments made by the Department of Veterans Affairs (VA). By letters dated July 23, 1997, and August 13, 1997, the VA explained that the proposed amendment to § 581.103(c)(1) was not supported by law. The VA noted that sections 5542 and 5557 of the Balanced Budget Act of 1997, Pub. L. 105–33, amended Pub. L. 104–193 to clarify that VA pension benefits payable under Chapter 15 of title 38 of the United States Code are not subject to garnishment. As requested by the VA and in accordance with the Balanced Budget Act amendments, we have deleted VA pension payments from § 581.103(c)(1).

One agency recommended that OPM amend the definition of legal process in § 581.102(f) to expressly refer to the new interstate enforcement orders referred to in section 362 of Pub. L. 104–193 as "notices to withhold income pursuant to subsection (a)(1) or (b) of section 466 (of the Social Security Act)"; that OPM add voluntary separation incentive payments and special separation benefits to the items subject to garnishment that are listed in § 581.103; and that OPM revise § 581.303(a)(4) to cover situations where interrogatories in connection with garnishment actions are received by the wrong office. OPM adopted all of these recommendations. The reference to the new orders § 5812.102(f) is reasonable and appropriate. The inclusion of the separation payments in § 581.103 is consistent with FPM Bulletin 581–14 (Nov. 4, 1993) in which OPM announced its determination that separation incentive payments are subject to both support and commercial garnishment. OPM believes that the recommended revision to § 581.303(a)(4) may be of assistance to agencies that receive interrogatories.

One agency recommended that employee contributions to the Thrift Savings Plan as provided for in 5 U.S.C. 8432, be deleted from the moneys subject to garnishment in § 581.103(c). We concur because such contributions are subject to garnishment in accordance with procedures prescribed by the Federal Retirement Thrift Investment Board implementing 5 U.S.C. 8437(e)(3), rather than under the procedures in part 581.

The union commented that the proposed amendment to § 581.103(c), which revises the listing for death benefits that are subject to garnishment, might result in the garnishment of death benefits payable to someone other than a person obligated to pay child support or alimony. The union further commented that § 581.101(a)(1) was redundant because it discusses an obligor's legal obligations to provide child support, alimony, or both, even though the term "obligor" is already defined as an individual having a legal obligation to pay alimony or child support. In fact, all of the items listed in § 581.103(c) are for obligors generally and the definition of "obligor" in § 581.101(h) eliminates the possibility that someone other than an obligor would be subject to legal process. Therefore, no change was needed. We have also concluded that notwithstanding the redundancy, § 581.101(a)(1) does not require any revision. As to whether death benefits are, in fact, subject to garnishment as remuneration for employment for the obligor, we must emphasize that Congress has expressly provided that "death benefits under any Federal program" are subject to garnishment for child support and alimony. 42 U.S.C. 659(h)(1)(A)(ii)(III).

One agency questioned whether the "authorized official" mentioned in the definition of legal process in § 581.102(f)(1)(iii) would include an attorney. In certain jurisdictions, attorneys are authorized to issue legal process. Attorneys may, therefore, in certain jurisdictions, qualify as authorized officials.

The union indicated that legal process which did not expressly name a governmental entity would not be regular on its face. OPM has previously determined that legal process which does not expressly name a governmental entity may be accepted for processing. (58 FR 35845) This determination is in accordance with the decision of the United States Court of Appeals for the Federal Circuit in *Millard* v. *United States*, 916 F.2d 1 (1990).

In response to an agency comment, we have corrected a typographical error in the definition of child support and revised the definition of alimony in § 581.102 in accordance with the definitions in 42 U.S.C. 659(i)(3).

As suggested by one agency, we have revised § 581.202(b) to clarify that the Government is not liable for improper service of process. This same agency suggested that § 581.303(a)(4) be revised to permit the designated agent's counsel or other designee to respond to interrogatories. This suggestion has been adopted. However this agency's recommendations that §§ 581.402(a) and 582.402(a) be amended to permit agencies to apply the law where the agency is geographically situated has not been accepted. Because Congress has specified that federal agencies are to be treated like private parties, it would be inappropriate to provide that agencies may apply the law of the jurisdiction in which the agency is located or the Federal Rules of Civil Procedure rather than the law of the jurisdiction that issued the legal process. See 42 U.S.C. 659(a) and *Loftin* v. *Rush*, 767 F.2d 800, 806 (11th Cir. 1985).

As explained in our notice of proposed rulemaking, § 581.402(b) concerns the applicability of the maximum limitations of the Consumer Credit Protection Act, 15 U.S.C. 1673, in the unusual situation where an employee-obligor receives remuneration from more than one governmental entity. One agency commented that while they agreed with this amendment conceptually, they were concerned about its practical application inasmuch

as it is unlikely that one governmental entity would necessarily be aware that the obligor is receiving remuneration from a second governmental entity. While we share this concern, past experience indicates that there are few situations where a court will apply the maximum limitations to more than the specific amount payable by the governmental entity that has received the legal process. We recognize that in those limited situations where the court aggregates payments, the governmental entity may need to make further inquiries to the court. Our goal was to ensure that OPM's regulations did not prohibit the court's action even though it may necessarily complicate the processing of orders where this occurs.

Commenters also suggested that §§ 581.102(d), 581.202(b), 581.303(a)(2), 581.303(a)(3), and 581.305(d) be revised. One agency suggested, for example, that agencies should not be required to be familiar with all of the service of process procedures in each State. However, except as already discussed with regard to § 581.202(b), we have declined to amend the regulations pursuant to these suggestions. All of these sections implement specific provisions of 42 U.S.C. 659 as amended by section 362 of Pub. L. 104–193.

Three commenters criticized the proposed amendments to the commercial garnishment regulations in 5 CFR part 582, particularly the proposed amendment to § 582.305(k), an amendment that requires employing agencies to deduct the agency's administrative costs incurred in complying with commercial garnishment orders. While the proposed amendment was mandated by section 643 of the National Defense Authorization Act for Fiscal Year 1996, Pub. L. 104–106, on November 18, 1997, Congress repealed section 643 with its enactment of section 1105 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85. In accordance with section 1105 of Pub. L. 105–85, OPM has deleted the proposed amendment to § 582.305(k).

The employee organization commented that while § 582.305(c)(1) directed agencies to comply with State law, paragraph (c)(2) appears to direct agencies to ignore State law. One agency suggested that § 582.305(c)(1) be revised. However, the proposed provisions are proper. Agencies must comply with the provisions of State law concerning the continuing effect of a garnishment order pending an appeal. *See First Virginia Bank* v. *Vera Randolph and United States*, 920 F. Supp. 213 (D.D.C. 1996), *reversed on other grounds*, 110 F.3d 75 (D.C. Cir. 1997), *cert. denied*, 66 U.S.L.W. 3472 (U.S. Jan. 20, 1998) (No. 97–451). However, agencies need not comply with State laws that would require the agency to escrow funds. See 42 U.S.C. 659(e) and 5 CFR 582.305(h).

One agency recommended that OPM amend Part 582 to expressly provide for the garnishment of interest due the creditor by the employee-obligor that accrued during the garnishment process. Congress has provided that the Federal Government shall comply with commercial garnishment orders as if it were a private person. 42 U.S.C. 659(a). In jurisdictions where private employers are permitted to garnish for the interest associated with commercial garnishment orders, so too are agencies of the Federal Government. In accordance with this recommendation that we clarify this requirement, we have added a new paragraph (m) to § 582.305.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited to federal employees and their creditors.

List of Subjects in 5 CFR Parts 581 and 582

Alimony, Child support, Claims, Government employees, and Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 581 and 582 of Title 5, Code of Federal Regulations, as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND ALIMONY

1. The authority citation for part 581 is revised as follows:

Authority: 42 U.S.C. 659; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262) (1979).

2. Section 581.101 is revised to read as follows:

§ 581.101 Purpose.

(2) Notwithstanding any other provision of law (including section 407 of title 42, United States Code, section 5301 of title 38, United States Code, and sections 8346 and 8470 of title 5, United States Code), section 659 of title 42, United States Code, as amended, provides that moneys, the entitlement to which is based upon remuneration for employment, due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person:

(1) To legal process for the enforcement of an obligor's legal obligations to provide child support, alimony, or both, resulting from an action brought by an individual obligee; and

(2) To withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of title 42, United States Code, and to regulations of the Secretary of Health and Human Services under such subsections, and to any other legal process brought by a State agency subject to regulations of the Secretary of Health and Human Services that is administering a program under an approved State plan to enforce the legal obligations of obligors to provide child support and alimony.

(b) Section 659 of title 42, United States Code, as amended, provides further that each governmental entity shall be subject to the same requirements as would apply if the governmental entity were a private person, except as set forth in this part.

3. In § 581.102, paragraphs (d), (e), and (f) are revised and paragraph (k) is added to read as follows:

§ 581.102 Definitions.

* * * * *

(d) *Child support* means the amounts required to be paid for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages or reimbursement, and which may include other related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief.

(e) *Alimony* means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of the individual, and (subject to and in accordance with State law) includes separate maintenance, alimony pendente lite, maintenance, and spousal support, and includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

Alimony does not include child support or any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(f) *Legal process* means any writ, order, summons, notice to withhold income pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, court ordered wage assignment, or in the case where a child support order is submitted by a child support agency using the standard Order/Notice to withhold income for child support as required by section 324 of Pub. L. 104–193 and which—

(1) Is issued by:

(i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;

(ii) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; or

(iv) A State agency authorized to issue income withholding notices pursuant to State or local law or pursuant to the requirements of section 666(b) to title 42 of the United States Code; and

(2) Is directed to, and the purpose of which is to compel, a governmental entity, to make a payment from moneys otherwise payable to an individual, to another party to satisfy a legal obligation of the individual to provide child support, alimony or both.

* * * * *

(k) *Individual obligee* means any individual or entity other than a State agency authorized to issue income withholding notices pursuant to the requirements of section 666(b) to title 42 of the United States Code.

4. In § 581.103, paragraphs (a) and (b) introductory text, are republished, paragraphs (a)(27), (a)(28), (b)(14), (b)(15), and (c) are revised, and paragraphs (a)(29), (b)(16), and (b)(17) are added to read as follows:

§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

* * * * *

(27) Special pay adjustments for law enforcement officers in selected cities;

(28) Advances in pay; and

(29) voluntary separation incentive payments.

(b) For the personal service of an obligor in the uniformed services of the United States:

* * * * *

(14) Severance pay (including disability severance pay);

(15) Cash awards (NOAA Corps);

(16) Special separation benefits; and

(17) Voluntary separation incentives.

(c) for obligors generally:

(1) Periodic benefits, including a periodic benefit as defined in section 428(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter II of chapter 7 of title 42 of the United States Code (Social Security Act); and payments under chapter 9 of title 45 of the United States Code (Railroad Retirement Act) or any other system, plan, or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:

(i) Pensions;

(ii) Retirement benefits;

(iii) Retired/retainer pay;

(iv) Annuities; and

(v) Dependents' or survivors' benefits when payable to the obligor;

(2) Refunds of retirement contributions where an application has been filed;

(3) Amounts received under any federal program for compensation for work injuries; and

(4) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.

(5) Compensation for death under any federal program, including death gratuities authorized under 5 U.S.C. 8133(f); 5 U.S.C. 8134(a); Pub. L. 103–332, section 312; and Pub. L. 104–208, section 651.

(6) Any payment under any federal program established to provide "black lung" benefits;

(7) Any payment by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived either the entire amount or a portion of the retired or retainer pay in order to receive such compensation. In such cases, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired pay or waived retainer pay is subject to garnishment.

§ 581.104 [Amended]

5. In § 581.104, paragraph (j) is removed and paragraph (k) is redesignated as paragraph (j).

6. In § 581.105, paragraph (a) is revised to read as follows:

§ 581.105 Exclusions.

* * * * *

(a) Are owed by the individual to the United States, except that an indebtedness based on a levy for income tax under section 6331 of title 26 of the United States Code, shall not be excluded in complying with legal process for the support of minor children if the legal process was entered prior to the date of the levy;

* * * * *

7. In § 581.202, paragraphs (a) and (b) are revised to read as follows:

§ 581.202 Service of process.

(a) A party using this part shall serve legal process on the agent designated in appendix A to this part, or if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of that governmental entity, which has moneys due and payable to the obligor. Where the legal process is directed to, and the purpose of the legal process is to compel a governmental entity which holds moneys which are otherwise payable to an individual, to make a payment from such moneys in order to satisfy a legal obligation of such individual to provide child support or make alimony payments, the legal process need not expressly name the governmental entity as a garnishee.

(b) Service shall be accomplished pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of title 42 of the United States Code. The designated agent shall note the date and time of receipt on the legal process. The governmental entity shall make every reasonable effort to facilitate proper service of process on its designated agent(s). If legal process is not directed to any particular official within the entity, or if it is addressed to the wrong individual, the recipient shall, nonetheless, forward the legal process to the designated agent. However, valid service is not accomplished until the legal process is received in the office of the designated agent. Moreover, the Government will not be liable for any costs or damages resulting from an agency's failure to

timely serve process or to correct faulty service of process.

* * * * *

8. In § 581.303, paragraph (a) is revised to read as follows:

§ 581.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process pursuant to State procedures in effect pursuant to subjection (a)(1) or (b) of section 666 of title 42, United States Code, within 30 calendar days, or within such longer period as may be prescribed by applicable State law, the agent shall comply with all applicable provisions of section 666, including as follows:

(1) If an agent is served with notice concerning amounts owed by an obligor to more than one person, the agent shall comply with section 666(b)(7);

(2) Allocation of moneys due and payable to an individual under section 666(b) shall be governed by section 666(b) and the regulations prescribed under such section by the Secretary of Health and Human Services;

(3) Such moneys as remain after compliance with paragraphs (a)(1) and (a)(2) of this section shall be available to satisfy any other such legal process on a first-come, first-served basis, with any such legal process being satisfied out of such moneys as remain after the satisfaction of all such legal process which have been previously served.

(4) The agent or the agent's counsel or other designee shall respond within 30 calendar days to interrogatories which accompany legal process if the information sought in the interrogatory is not available to the entity to which it was sent, and the proper entity is known, the recipient shall forward the interrogatory to the appropriate entity in sufficient time to allow for a timely response.

* * * * *

9. In § 581.305, paragraphs (d) and (e) are revised to read as follows:

§ 581.305 Honoring legal process.

* * * * *

(d) If a governmental entity is served with more than one legal process for the same moneys due or payable to an individual, the entity shall comply with § 581.303(a). *Provided,* That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 581.402.

(e)(1) Neither the United States, any disbursing officer, nor any governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part.

(2) Neither the United States, any disbursing officer, nor any governmental entity shall be liable under this part to pay money damages for failure to comply with legal process.

* * * * *

10. In subpart D, § 581.402 is revised to read as follows:

§ 581.402 Maximum garnishment limitations.

(a) Except as provided in paragraph (b) of this section, pursuant to section 1673(b)(2) (A) and (B) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended), unless a lower maximum garnishment limitation is provided by applicable State or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support order(s) shall not exceed:

(1) Fifty percent of the obligor's aggregate disposable earnings for any workweek, where the obligor asserts by affidavit, or by other acceptable evidence, that he or she is supporting a spouse, a dependent child, or both, other than the former spouse, child, or both, for whose support such order is issued, except that an additional five percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is 12 weeks prior to that workweek. An obligor shall be considered to be supporting a spouse, dependent child, or both, only if the obligor provides over half of the support for a spouse, dependent child or both.

(2) Sixty percent of the obligor's aggregate disposable earnings for any workweek, where the obligor fails to assert by affidavit or establishes by other acceptable evidence, that he or she is supporting a spouse, dependent child, or both, other than a former spouse, child, or both, with respect to whose support such order is issued, except that an additional five percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is 12 weeks prior to that workweek.

(3) Where, under § 581.302(a)(2), an obligor submits evidence that he or she is supporting a second spouse, child, or both a second spouse and dependent child, copies of the evidence shall be sent by the governmental entity to the garnishor, or the garnishor's representative, as well as to the court, or other authority as specified in § 581.102(f)(1), together with notification that the obligor's support claim will be honored. If the garnishor disagrees with the obligor's support claim, the garnishor should immediately refer the matter to the court, or other authority, for resolution.

(b) In instances where an obligor is receiving remuneration from more than one governmental entity, an authority described in § 581.102(f)(1) may apply the limitations described in paragraph (a) of this section to the total remuneration, i.e., to the combined aggregate disposable earnings received by the obligor.

11. Section 581.501 is revised to read as follows:

§ 581.501 Rules, regulations, and directives by governmental entities.

Appropriate officials of all governmental entities shall, to the extent necessary, issue implementing rules, regulations, or directives that are consistent with this part or as are otherwise in accordance with statutory law.

12. Appendix A to part 581 is revised to read as follows:

Appendix A to Part 581—List of Agents Designated to Accept Legal Process

[This appendix lists the agents designated to accept legal process for the Executive Branch of the United States, the United States Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.]

I. Departments

Department of Agriculture

Office of the Secretary
Office of the Deputy Secretary
Office of the Under Secretaries
Office of the Assistant Secretaries
Director, Executive Resources and Services Division, Office of Personnel, Room 334 W—Administration Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720–6047
Office of Inspector General
Chief Counsel to the Inspector General, Office of Inspector General, Room 27E—Administration Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720–9110
Administration
Board of Contract Appeals
Chief Financial Officer
Judicial Officer
Office of Administrative Law Judges
Office of Budget and Program Analysis
Office of Civil Rights Enforcement
Office of Communications
Office of Congressional and Intergovernmental Relations
Office of the General Counsel

Office of Information and Resources Management
Office of Operations
Office of Personnel
Office of Small and Disadvantaged Business Utilization

Chief, Employment and Compensation Branch, Office of Personnel—POD, Room 31W—Administration Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250–9630, (202) 720–7797

Chief Economist Office of risk Assessment and Cost-Benefit Analysis World Agricultural Outlook Board

Chief, Economics and Statistics Operations Branch, Human Resources Division, Agricultural Research Service, Room 1424—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720–7657

Farm and Foreign Agricultural Services
Consolidated Farm Service Agency
Foreign Agricultural Service

Chief, Employee and Labor Relations Branch, Human Resources Division, Consolidated Farm Service Agency, Room 6732—South Bldg., PO Box 2415, Washington, DC 20013, (202) 720–5964

Federal Crop Insurance Corporation

Chief, Labor Relations Branch, Federal Crop Insurance Corporation, Consolidated Farm Service Agency, Room 6732—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720–5964

Food, Nutrition, and Consumer Services
Food and Consumer Service

Senior Employee Relations Specialist, Employee Relations Division, Food and Consumer Service, 3101 Park Center Drive, Room 623, Alexandria, VA 22302, (703) 305–2374

Marketing and Regulatory Programs

Chief, Employee Relations Branch, Agricultural Marketing Service, PED, ERB, Room 1745—South Bldg., P.O. Box 96456, Washington, DC 20090–6456, (202) 720–5721

Agricultural Marketing Service
(Except for employees of the Milk Marketing Administration)
Animal and Plant Health Inspection Service
Grain Inspection, Packers and Stockyards Administration

Chief, Human Resources Operations, HR, Marketing and Regulatory Programs, Animal and Plant Health Inspection Service, Butler Square West, 5th Floor, 100 N. 6th Street, Minneapolis, MN 55403, (612) 370–2107

Agricultural Marketing Service
Milk Marketing Employees

Personnel Management Specialist, Agricultural Marketing Service, DA, Room 2754—South Bldg., P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7258

Food Safety
Food Safety and Inspection Service

Chief, Classification and Organization Branch, Personnel Division, Food Safety and Inspection Service, Room 3821—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250–3700, (202) 720–6287.

Rural Economic and Community Development
Rural Housing and Community Development Service
Rural Business and Cooperative Development Service

Chief, Employee Information Systems Branch, Human Relations Division, Rural Housing and Community Development Service, 501 School St., SW., Washington, DC 20250, (202) 245–5573

Rural Utilities Service

Chief, Rural Utilities Service, Personnel Operations Branch, Human Relations Division, Rural Housing and Community Development Service, Room 4031—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250–1382, (202) 720–1382

Natural Resources and Environment
Forest Service
Washington Office

Director, Personnel Management, 900 RP–E, PO Box 96090, Washington, DC 20090–6090, (703) 235–8102

International Institute of Tropical Forestry

Director, Call Box 25000, UPR Experimental Station Grounds, Rio Piedras, PR 00928–2500, (809) 766–5335

Region 1

Regional Forester, Regional Office, Federal Bldg., PO Box 7669, Missoula, MT 59807, (406) 329–3003

Idaho

Clearwater—Forest Supervisor, 12730 Highway 12, Orofino, ID 83544, (208) 476–4541
Idaho Panhandle National Forests—Forest Supervisor, 1201 Ironwood Dr., Coeur d'Alene, ID 83814, (208) 765–7223
Nez Perce—Forest Supervisor, Rt. 2, Box 475, Grangeville, ID 83530, (208) 983–1950

Montana

Beaverhead—Forest Supervisor, 420 Barrett St., Dillon, MT 59725–3572, (406) 683–3900
Bitterroot—Forest Supervisor, 1801 N. 1st St., Hamilton, MT 59840, (406) 363–7121
Custer—Forest Supervisor, Box 2556, Billings, MT 59103, (406) 657–6361
Deerlodge—Forest Supervisor, Federal Bldg., Box 400, Butte, MT 59701, (406) 496–3400
Flathead—Forest Supervisor, 1935 3rd Ave., E., Kalispell, MT 59901, (406) 755–5401
Gallatin—Forest Supervisor, Federal Bldg., 10 E. Babcock Ave., Box 130, Bozeman, MT 59771, (406) 587–6701
Helena—Forest Supervisor, 2880 Skyway Dr., Helena, MT 59601, (406) 449–5201
Kootenai—Forest Supervisor, 506 Highway 2 W., Libby, MT 59923, (406) 293–6211
Lewis and Clark—Forest Supervisor, PO Box 869, 1101 15th St. N., Great Falls, MT 59403, (406) 791–7700
Lolo—Forest Supervisor, Bldg. 24, Ft. Missoula, Missoula, MT 59801, (406) 329–3750

Region 2

Regional Forester, Regional Office, 740 Simms St., Lakewood, CO 80255, (303) 275–5306

Colorado

Arapaho and Roosevelt—Forest Supervisor, 240 W. Prospect, Fort Collins, CO 80526, (303) 498–1100
Grand Mesa, Uncompahgre, and Gunnison—Forest Supervisor, 2250 Highway 50, Delta, CO 81416, (303) 874–7691
Pike and San Isabel—Forest Supervisor, 1920 Valley Dr., Pueblo, CO 81008, (719) 545–8737
Rio Grande—Forest Supervisor, 1803 West Highway 160, Monte Vista, CO 81144, (719) 852–5941
Routt—Forest Supervisor, 29587 W. US 40, Suite 20, Steamboat Springs, CO 80487–9550, (303) 879–1722
San Juan—Forest Supervisor, 701 Camino Del Rico, Room 301, Durango, CO 81301, (303) 247–4874
White River—Forest Supervisor, Old Federal Bldg., Box 948, Glenwood Springs, CO 81602, (303) 945–2521

Nebraska

Nebraska—Forest Supervisor, 125 N. Main St., Chadron, NE 69337, (308) 432–0300

South Dakota

Black Hills—Forest Supervisor, R.R. 2, Box 200, Custer, SD 57730–9504, (605) 673–2251

Wyoming

Bighorn—Forest Supervisor, 1969 So. Sheridan Ave., Sheridan, WY 82801, (307) 672–0751
Medicine Bow—Forest Supervisor, 2468 Jackson St., Laramie, WY 82070–6535, (307) 745–8971
Shoshone—Forest Supervisor, 808 Meadow Lane, Cody, WY 82414, (307) 527–6241

Region 3

Regional Forester, Regional Office, Federal Bldg., 517 Gold Ave., SW., Albuquerque, NM 87102, (505) 842–3380

Arizona

Apache—Sitgreaves—Forest Supervisor, Federal Bldg., Box 640, Springerville, AZ 85938, (602) 333–4301
Coconino—Forest Supervisor, 2323 E. Greenlaw Lane, Flagstaff, AZ 86004, (602) 527–3600
Coronado—Forest Supervisor, 300 W. Congress, Tucson, AZ 85701, (692) 670–4552
Kaibab—Forest Supervisor, 800 S. 6th St., Williams, AZ 86046, (602) 635–2681
Prescott—Forest Supervisor, 344 South Cortez, Prescott, AZ 86303, (602) 771–4700
Tonto—Forest Supervisor, 2324 E. McDowell Rd., Phoenix, AZ 85006, (602) 225–5200

New Mexico

Carson—Forest Supervisor, 208 Cruz Alta Rd., PO Box 558, Taos, NM 87571, (505) 758–6200
Cibola—Forest Supervisor, 2113 Osuna Rd., NE., Suite A, Albuquerque, NM 87113–1001, (505) 761–4650
Gila—Forest Supervisor, 3005 E. Camino del Bosque, Silver City, NM 88061, (505) 388–8201

Lincoln—Forest Supervisor, Federal Bldg., 1101 New York Ave., Alamogordo, NM 88310–6992, (505) 434–7200
Santa Fe—Forest Supervisor, 1220 St. Francis Dr., Santa Fe, NM 87504, (505) 988–6940

Region 4

Regional Forester, Regional Office, Federal Bldg., 324 25th St., Ogden, UT 84401, (801) 625–5298

Idaho

Boise—Forest Supervisor, 1750 Front Street, Boise, ID 83702, (208) 364–4100
Caribou—Forest Supervisor, 250 S. 4th Ave., Suite 282, Federal Bldg., Pocatello, ID 83201, (208) 236–7500
Challis—Forest Supervisor, HC 63 Box 1671, F.S. Bldg., Challis, ID 83226, (208) 879–2285
Payette—Forest Supervisor, Box 10206 or 106 W. Park, McCall, ID 83638, (208) 634–0700
Salmon—Forest Supervisor, P.O. Box 729, Salmon, ID 83467–0729, (208) 765–2215
Sawtooth—Forest Supervisor, 2647 Kimberly Rd. East, Twin Falls, ID 83301–7976, (208) 737–3200
Targhee—Forest Supervisor, 420 N. Bridge St., P.O. Box 208, St. Anthony, ID 83445, (208) 624–3151

Nevada

Humboldt—Forest Supervisor, 976 Mountain City Highway, Elko, NV 89801, (702) 738–5171
Toiyabe—Forest Supervisor, 1200 Franklin Way, Sparks, NV 89431, (702) 355–5300

Utah

Ashley—Forest Supervisor, 355 North Vernal Ave., Vernal, UT 84078, (801) 789–1181
Dixie—Forest Supervisor, 82 No. 100 E. St., P.O. Box 580, Cedar City, UT 84721–0580, (801) 865–3700
Fishlake—Forest Supervisor, 115 E. 900 N, Richfield, UT 84701, (801) 896–9233
Manti—La Sal—Forest Supervisor, 599 W. Price River Drive, Price, UT 84501, (801) 637–2817
Uinta—Forest Supervisor, 88 W. 100 N., Provo, UT 84601, (801) 342–5100
Wasatch—Cache—Forest Supervisor, 8236 Federal Bldg., 125 S. State St., Salt Lake City, UT 84138, (801) 524–5030

Wyoming

Bridger—Teton—Forest Supervisor, F.S. Bldg., 340 N. Cache, Box 1888, Jackson, WY 83001, (307) 739–5500

Region 5

Regional Forester, Regional Office, 630 Sansome St., San Francisco, San Francisco, CA 94111, (415) 705–2856

California

Angeles—Forest Supervisor, 701 N. Santa Anita Ave., Arcadia, CA 91006, (818) 574–1613
Cleveland—Forest Supervisor, 10845 Rancho Bernardo Rd., Suite 200, San Diego, CA 92127–2107, (619) 673–6180
Eldorado—Forest Supervisor, 100 Forni Rd., Placerville, CA 95667, (916) 622–5062
Inyo—Forest Supervisor, 873 North Main St., Bishop, CA 93514, (619) 873–2400
Klamath—Forest Supervisor, 1312 Fairlane Rd., Yreka, CA 96097, (916) 842–6131
Lassen—Forest Supervisor, 55 S. Sacramento St., Susanville, CA 96130, (916) 257–2151
Los Padres—Forest Supervisor, 6144 Calle Real, Goleta, CA 93117, (805) 683–6711
Mendocino—Forest Supervisor, 420 E. Laurel St., Willows, CA 95988, (916) 934–3316
Modoc—Forest Supervisor, 800 W. 12th St., Alturas, CA 96101, (916) 233–5811
Plumas—Forest Supervisor, 159 Lawrence St., Box 11500, Quincy, CA 95971–6025, (916) 283–2050
San Bernardino—Forest Supervisor, 1824 S. Commercenter Cir., San Bernardino, CA 92408–3430, (909) 383–5588
Sequoia—Forest Supervisor, 900 W. Grand Ave., Porterville, CA 93257–2035, (209) 784–1500
Shasta—Trinity—Forest Supervisor, 2400 Washington Ave., Redding, CA 96001, (916) 246–5222
Sierra—Forest Supervisor, 1600 Tollhouse Rd., Clovis, CA 93611, (209) 297–0706
Six Rivers—Forest Supervisor, 1330 Bayshore Way, Eureka, CA 95501–3834, (707) 441–3517
Stanislaus—Forest Supervisor, 19777 Greenley Rd., Sonora, CA 95370, (209) 532–3671
Tahoe—Forest Supervisor, 631 Coyote St., PO Box 6003, Nevada City, CA 95959–6003, (916) 265–4531

Region 6

Regional Forester, Regional Office, 333 S.W. 1st Ave., PO Box 3623, Portland, OR 97208, (503) 326–3630

Oregon

Deschutes—Forest Supervisor, 1645 Highway 20 E., Bend, OR 97701, (503) 388–2715
Fremont—Forest Supervisor, 524 North G St., Lakeview, OR 97630, (503) 947–2151
Malheur—Forest Supervisor, 139 NE Dayton St., John Day, OR 97845, (503) 575–1731
Mt. Hood—Forest Supervisor, 2955 N.W. Division St., Gresham, OR 97030, (503) 666–0700
Ochoco—Forest Supervisor, Box 490, Prineville, OR 97754, (503) 447–6247
Rogue River—Forest Supervisor, Federal Bldg., 333 W. 8th St., Box 520, Medford, OR 97501, (503) 776–3600
Siskiyou—Forest Supervisor, Box 440, Grants Pass, OR 97526, (503) 471–6500
Siuslaw—Forest Supervisor, Box 1148, Corvallis, OR 97339, (503) 750–7000
Umatilla—Forest Supervisor, 2517 SW Hailey Ave., Pendleton, OR 97801, (503) 278–3721
Umpqua—Forest Supervisor, Box 1008, Roseburg, OR 97470, (503) 672–6601
Wallowa—Whitman—Forest Supervisor, Box 907, Baker City, OR 97814, (503) 523–6391
Willamette—Forest Supervisor, Box 10607, Eugene, OR 97440, (503) 465–6521
Winema—Forest Supervisor, 2819 Dahlia, Klamath Falls, OR 97601, (503) 883–6714

Washington

Colville—Forest Supervisor, 765 S. Main, Colville, WA 99114, (509) 684–7000
Gifford Pinchot—Forest Supervisor, 6926 E. 4th Plain Blvd., Vancouver, WA 98668–8944, (206) 750–5000
Mt. Baker—Snoqualmie—Forest Supervisor, 21905 64th Avenue West, Mountlake Terrace, WA 98043, (206) 744–3200
Okanogan—Forest Supervisor, 1240 South Second Ave., Okanogan, WA 98840, (509) 826–3275
Olympic—Forest Supervisor, 1835 Black Lake Blvd., SW., Olympia, WA 98512, (206) 956–2300
Wenatchee—Forest Supervisor, 301 Yakima St., PO Box 811, Wenatchee, WA 98807, (509) 662–4335

Region 8

Regional Forester, Regional Office, 1720 Peachtree Rd., NW., Atlanta, GA 30367, (404) 347–3841

Alabama

National Forests in Alabama—Forest Supervisor, 2946 Chestnut St., Montgomery, AL 36107–3010, (205) 832–4470

Arkansas

Ouachita—Forest Supervisor, Box 1270, Federal Bldg., Hot Springs National Park, AR 71902, (501) 321–5200
Ozark—St. Francis—Forest Supervisor, 605 West Main, Box 1008, Russellville, AR 72801, (501) 968–2354

Florida

National Forests in Florida—Forest Supervisor, Woodcrest Office Park, 325 John Knox Rd., Suite F–100, Tallahassee, FL 32303, (904) 681–7265

Georgia

Chattahoochee and Oconee—Forest Supervisor, 508 Oak St., NW., Gainesville, GA 30501, (404) 536–0541

Kentucky

Daniel Boone—Forest Supervisor, 100 Vaught Rd., Winchester, KY 40391, (606) 745–3100

Louisiana

Kisatchie—Forest Supervisor, 2500 Shreveport Hwy., PO Box 5500, Pineville, LA 71361–5500, (318) 473–7160

Mississippi

National Forests in Mississippi—Forest Supervisor, 100 W. Capital St., Suite 1141, Jackson, MS 39269, (601) 965–4391

North Carolina

National Forests in North Carolina—Forest Supervisor, Post and Otis Streets, PO Box 2750, Asheville, NC 28802, (704) 257–4200

Puerto Rico and the Virgin Islands

Caribbean National Forest—Forest Supervisor, Call Box 25000, Rio Piedras, PR 00928–2500, (809) 766–5335

South Carolina

Francis Marion and Sumter National Forests—Forest Supervisor, 4923 Broad River Rd., Columbia, SC 29212, (803) 765–5222

Tennessee

Cherokee—Forest Supervisor, 2800 N. Ocoee St., NE., PO Box 2010, Cleveland, TN 37320, (615) 476–9700

Texas

National Forests in Texas—Forest Supervisor, Homer Garrison Federal Bldg., 701 N. First St., Lufkin, TX 75901, (409) 639–8501

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Virginia

George Washington—Forest Supervisor, PO Box 233, Harrison Plaza, Harrisonburg, VA 22801, (703) 433–2491

Region 9

Regional Forester, Regional Office, 310 W. Wisconsin Ave., Room 500, Milwaukee, WI 53203, (414) 297–3674

Illinois

Shawnee—Forest Supervisor, 901 S. Commercial St., Harrisburg, IL 62946, (618) 253–7114

Indiana

Hoosier—Forest Supervisor, 811 Constitution Ave., Bedford, IN 47421, (812) 275–5987

Michigan

Hiawatha—Forest Supervisor, 2727 N. Lincoln Rd., Escanaba, MI 49829, (906) 786–4062

Huron—Manistee—Forest Supervisor, 421 S. Mitchell St., Cadillac, MI 49601, (616) 775–2421

Ottawa—Forest Supervisor, 2100 E. Cloverland Dr., Ironwood, MI 49938, (906) 932–1330

Minnesota

Chippewa—Forest Supervisor, Rt. 3 Box 244, Cass Lake, MN 56633, (218) 335–8600

Superior—Forest Supervisor, Box 338, Federal Bldg., 515 W. First St., Duluth, MN 55802, (218) 720–5324

Missouri

Mark Twain—Forest Supervisor, 401 Fairgrounds Rd., Rolla, MO 65401, (314) 364–4621

New Hampshire and Maine, White Mountain—Forest Supervisor, Federal Bldg., 719 Main St., PO Box 638, Laconia, NH 03247, (603) 528–8721

Ohio

Wayne—Forest Supervisor, 219 Columbus Rd., Athens, OH 45701–1399, (614) 592–5544

Pennsylvania

Allegheny—Forest Supervisor, 222 Liberty St., Box 847, Warren, PA 16365, (814) 723–5150

Vermont

Green Mountain and Finger Lakes—Forest Supervisor, 231 N. Main St., Rutland, NY 05701, (802) 747–6700

West Virginia

Monongahela—Forest Supervisor, USDA Bldg., 200 Sycamore St., Elkins, WV 26241–3962, (304) 636–1800

Wisconsin

Chequamegon—Forest Supervisor, 1170 4th Ave. South, Park Falls, WI 54552, (715) 762–2461

Nicolet—Forest Supervisor, Federal Bldg., 68 S. Stevens, Rhinelander, WI 54501, (715) 362–1300

Region 10

Regional Forester, Regional Office, Federal Office Bldg., Box 21628, Juneau, AK 99802–1628, (907) 586–8719

Alaska

Chugach—Forest Supervisor, 3301 C St., Suite 300, Anchorage, AK 99503–3998, (907) 271–2500

Tongass—Chatham Area—Forest Supervisor, 204 Siginaka Way, Sitka, AK 99835, (907) 747–6671

Tongass—Ketchikan Area—Forest Supervisor, Federal Bldg., Ketchikan, AK 99901, (907) 225–3101

Tongass—Stikine Area—Forest Supervisor, Box 309, Petersburg, AK 99833, (907) 772–3841

Forest and Range Experiment Stations

Intermountain Research Station, Director, 324 25th Street, Ogden, UT 84401, (801) 625–5412

North Central Forest Experiment Station, Director, 1992 Folwell Ave., St. Paul, MN 55108, (612) 649–5249

Northeastern Forest Experiment Station, Director, 5 Radnor Corporate Center, Suite 200, PO Box 6775, Radnor, PA 19087–8775, (610) 975–4017

Pacific Northwest Research Station, Director, PO Box 3890, Portland, OR 97208–3890, (503) 326–5640

Pacific Southwest Forest and Range Experiment Station, Director, 800 Buchanan St., West Building, Albany, CA 94710–0011, (510) 559–6310

Rocky Mountain Forest and Range Experiment Station, Director, 240 W. Prospect Rd., Fort Collins, CO 80526–2098, (303) 498–1126

Southeastern Forest Experiment Station, Director, 200 Weaver Blvd., PO Box 2680, Ashville, NC 28802, (704) 257–4300

Southern Forest Experiment Station, Director, T–10210, U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans, LA 70113, (504) 589–3921

Forest Products Laboratory, Director, One Gifford Pinchot Dr., Madison, WI 53705–2398, (608) 231–9318

Northeastern Area State and Private Forestry, Director, 5 Radnor Corporate Center, Suite 200, PO Box 6775, Radnor, PA 19087–8775, (610) 975–4103

Natural Resources Conservation Service

Regional Administrative Officer, Natural Resources Conservation Service, Midwest Regional Office, 2820 Walton Commons West, Suite 123, Madison, WI 53704–6785, (608) 224–3000

Regional Administrative Officer, Natural Resources Conservation Service, West Regional Office, 650 Capitol Mall, Room 6072, Sacramento, CA 95814, (916) 498–5240

Regional Administrative Officer, Natural Resources Conservation Service, Southeast Regional Office, 1720 Peachtree Road, NW., Suite 716–N, Atlanta, GA 30309–2439, (404) 347–6153

Regional Administrative Officer, Natural Resources Conservation Service, East Regional Office, 11710 Beltsville Drive, Suite 100, Calverton Office Bldg., #2, Beltsville, MD 20705, (301) 586–1328

Regional Administrative Officer, Natural Resources Conservation Service, South Central Regional Office, PO Box 6459, Ft. Worth, TX 76115–0459, (817) 334–5258, ext. 3504

Regional Administrative Officer, Natural Resources Conservation Service, Northern Plains Regional Office, 100 Centennial Mall North, Room 152, Lincoln, NE 68508–3866, (402) 437–5315

Human Resources Officer, Natural Resources Conservation Service, National Business Management Center, Bldg. 23, 501 W. Felix Street, PO Box 6567, Ft. Worth, TX 76115, (817) 334–5427, ext. 3750

Human Resources Officer, Natural Resources Conservation Service, PO Box 2890, Room 5215-South Bldg., Washington, DC 20013–2890, (202) 720–4264

Human Resources Officer, Natural Resources Conservation Service, 665 Opelika Road, PO Box 311, Auburn, AL 36830–0311, (334) 887–4543

Human Resources Officer, Natural Resources Conservation Service, 3003 N. Central Ave., Suite 800, Phoenix, AZ 85012–2945, (602) 280–8800

Human Resources Officer, Natural Resources Conservation Service, 700 West Capitol Avenue, Federal Bldg., Room 5404, Little Rock, AR 72201–3225, (501) 324–5479

Human Resources Officer, Natural Resources Conservation Service, 2121–C 2nd Street, Davis, CA 95616, (916) 757–8294

Human Resources Officer, Natural Resources Conservation Services, 655 Parfet Street, Room E200C, Lakewood, CO 80215–5517, (303) 236–2891, ext. 219

Human Resources Officer, Natural Resources Conservation Service, 16 Professional Park Road, Storrs, CT 06268–1299, (860) 487–4014

Human Resources Officer, Natural Resources Conservation Service, 1203 College Park Drive, Suite 101, Dover, DE 19904–8713, (302) 678–4173

Human Resources Officer, Natural Resources Conservation Service, 2614 NW 43rd Street, Gainesville, FL 32606, (352) 338–9525

Human Resources Officer, Natural Resources Conservation Service, Federal Bldg., Box 13, 355 E. Hancock Avenue, Athens, GA 30601, (706) 546–2270

Human Resources Officer, Natural Resources Conservation Service, 300 Ala Moana Blvd., Rm 4316, PO Box 50004, Honolulu, HI 96850–0002, (808) 541–1896

Human Resources Officer, Natural Resources Conservation Service, 693 Federal Bldg., 210 Walnut Street, Des Moines, IA 50309, (515) 284–4588

Human Resources Officer, Natural Resources Conservation Service, 3244 Elder Street, Room 124, Boise, ID 83705–4711, (208) 378–5712

Human Resources Officer, Natural Resources Conservation Service, 1902 Fox Drive, Champaign, IL 61820, (217) 398–5288

Human Resources Officer, Natural Resources Conservation Service, 6013 Lakeside Blvd., Indianapolis, IN 46278, (317) 290–3207, ext. 335

Human Resources Officer, Natural Resources Conservation Service, 760 S. Broadway, Salina, KS 67401, (913) 823–4510

Human Resources Officer, Natural Resources Conservation Service, 771 Corporate Drive, Suite 110, Lexington, KY 40503–5479, (606) 224–7353

Human Resources Officer, Natural Resources Conservation Service, 3737 Government

Street, Alexandria, LA 71302–3327, (318) 473–7786
Human Resources Officer, Natural Resources Conservation Service, 451 West Street, Amherst, MA 01002–2955, (413) 253–4353
Human Resources Officer, Natural Resources Conservation Service, John Hanson Business Center, 339 Busch's Frontage Road, Suite 301, Annapolis, MD 21401–5534, (410) 757–0861, ext. 337
Human Resources Officer, Natural Resources Conservation Service, 5 Godfrey Drive, Orono, ME 04473, (207) 866–7245
Human Resources Officer, Natural Resources Conservation Service, 1405 S. Harrison Road, Room 101, East Lansing, MI 48823–5243, (517) 337–6701, ext. 1233
Human Resources Officer, Natural Resources Conservation Service, 600 FCS Bldg., 375 Jackson St., St. Paul, MN 55101–1854, (612) 290–3678
Human Resources Officer, Natural Resources Conservation Service, 100 West Capitol Street, Federal Bldg., Suite 1321, Jackson, MS 39269, (601) 965–5183
Human Resources Manager, Natural Resources Conservation Service, 601 Business Loop 70 West, Parkade Center, Suite 250, Columbia, MO 65203, (573) 876–0904
Human Resources Manager, Natural Resources Conservation Service, Federal Building, Room 443, 10 East Babcock Street, Bozeman, MT 59715, (406) 587–5566
Human Resources Manager, Natural Resources Conservation Service, 4405 Bland Road, Suite 205, Raleigh, NC 27609, (919) 873–2108
Human Resources Manager, Natural Resources Conservation Service, 220 Rosser Avenue, P.O. Box 1458, Room 278, Bismarck, ND 58502–1458, (701) 250–4761
Human Resources Manager, Natural Resources Conservation Service, 100 Centennial Mall, N., Federal Bldg., Room 152, Lincoln, NE 68508–3866, (402) 437–4057
Human Resources Manager, Natural Resources Conservation Service, 2 Madbury Road, Federal Building, Durham, NH 03824–1499, (868) 686–7581
Human Resources Manager, Natural Resources Conservation Service, 1370 Hamilton Street, Somerset, NJ 08873, (908) 246–1171, ext. 166
Human Resources Manager, Natural Resources Conservation Service, 6200 Jefferson Street, NE., Albuquerque, NM 87109–3734, (505) 761–4409
Human Resources Manager, Natural Resources Conservation Service, 5301 Longley Lane, Bldg. F, Suite 201, Reno, NV 89511, (702) 784–5867
Human Resources Manager, Natural Resources Conservation Service, 441 South Salina Street, Suite 354, Syracuse, NY 13202–2450, (315) 477–6512
Human Resources Manager, Natural Resources Conservation Service, 200 North High Street, Room 522, Columbus, OH 43215, (614) 469–6977
Human Resources Manager, Natural Resources Conservation Service, 100 USDA, Suite 203, Stillwater, OK 74074–2655, (405) 742–1209
Human Resources Manager, Natural Resources Conservation Service, 101 SW Main Street, Suite 1300, Portland, OR 97204, (503) 414–3211
Human Resources Manager, Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, PA 17110–2993, (717) 782–3716
Human Resources Manager, Natural Resources Conservation Service, 1835 Assembly Street, Room 950, Columbia, SC 29201, (803) 253–3920
Human Resources Manager, Natural Resources Conservation Service, Federal Bldg., 200 4th St., SW., Huron, SD 57350–2475, (605) 352–1224
Human Resources Manager, Natural Resources Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203, (615) 736–5388
Human Resources Manager, Natural Resources Conservation Service, W.R. Poage Federal Bldg., 101 South Main St., Temple, TX 76501–7682, (817) 774–1246
Human Resources Manager, Natural Resources Conservation Service, 125 S. State Street, Room 4402, P.O. Box 11350, Salt Lake City, UT 84147, (801) 524–5068
Human Resources Manager, Natural Resources Conservation Service, 69 Union Street, Winooski, VT 05404–1999, (802) 951–6795, ext. 223
Human Resources Manager, Natural Resources Conservation Service, 1606 Santa Rosa Road, Culpeper Bldg., Suite 209, Richmond, VA 23229–5014, (804) 287–1625
Human Resources Manager, Natural Resources Conservation Service, Rock Pointe Tower II, W. 316 Boone Avenue, Suite 450, Spokane, WA 99201–2348, (509) 353–2333
Human Resources Manager, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, WV 26505, (304) 291–4152, ext. 176
Human Resources Manager, Natural Resources Conservation Service, 6515 Watts Road, Suite 200, Madison, WI 53719–2726, (608) 264–5341, ext. 161
Human Resources Manager, Natural Resources Conservation Service, 100 East B Street, Room 3124, Casper, WY 82601–1911, (307) 261–6492
Research, Education, and Economics, Agricultural Research Service, Cooperative State Research, Education, and Extension Service, National Agricultural Statistics Service, Economic Research Service
Agricultural Research Service, Office of the Director, Human Resources Division, 6303 Ivy Lane, Suite 810, Greenbelt, MD 20770–1433, (301) 344–1518

National Appeals Division

Administrative Officer, National Appeals Division, 3101 Park Center Drive, Room 1020, Alexandria, VA 22302, (703) 305–2566

Department of Commerce

1. Bureau of the Census and the Economics and Statistics Administration (ESA): For Census employee-obligors employed by Headquarters, a Regional Office, the Hagerstown Telephone Center and the Tucson Telephone Center; and for employee-obligors in ESA—Headquarters/Washington, DC offices only:

Bureau of the Census, Human Resources Division, ATTN: Chief, Pay, Processing and Systems Branch, FOB # 3, Room 3254, Washington, DC 20233, (301) 457–3710

For employee-obligors employed by the Census Data Preparation Division:

Bureau of the Census, Data Preparation Division, ATTN: Chief, Human Resources Branch, Bldg. 66, Room 113, Jeffersonville, IN 47132, (812) 218–3323

2. Patent and Trademark Office (PTO): Human Resources Manager

U.S. Patent and Trademark Office, Box 3, Washington, DC 20231, (703) 305–8221

3. United States and Foreign Commercial Service (US&FCS): Personnel Officer

Office of Foreign Service Personnel, Room 3815, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 482–3133

4. International Trade Administration (ITA) (For employee-obligors of the Headquarters/Washington, DC offices only):

Human Resources Manager, Personnel Management Division, Room 4809, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 482–3438

5. National Institute of Standards and Technology (NIST), the Technology Administration (TA), and the National Technical Information Service (NTIS) (For NIST employee-obligors other than in Colorado and Hawaii; for employee-obligors employed by TA and NTIS):

Personnel Officer, Office of Human Resources Management, Administration Building, Room A–123, Gaithersburg, MD 20899, (301) 975–3000

6. Office of the Inspector General (OIG):

Human Resources Manager, Resource Management Division, Room 7713, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 482–4948

7. National Oceanic and Atmospheric Administration (NOAA) (For employee-obligors in the Headquarters/Washington, DC; the Silver Spring and Camp Springs, MD; and the Sterling, VA offices only): Chief

Human Resources Services Division, NOAA, 1315 East-West Highway, Room 13619, Silver Spring, MD 20910, (301) 713–0524

8. Office of the Secretary (O/S), Bureau of Economic Analysis (BEA), Bureau of Export Administration (BXA), Economic Development Administration (EDA), Minority Business Development Agency (MBDA), and National Telecommunications and Information Administration (NTIA) (For employee-obligors in Washington, DC metro area offices only):

Human Resources Manager, Office of Personnel Operations, Office of the Secretary, Room 5005, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3827

9. Regional employees of NOAA, NIST, BXA, EDA, MBDA, ITA, NTIA, to the Human Resources Manager servicing the region or State in which they are employed, as follows:

a. Central Region. For NOAA employee-obligors in the States of: Alabama, Arkansas,

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Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin; for National Marine Fisheries Service employees in the states of North Carolina, South Carolina and Texas; and for National Weather Service employees in the States of Colorado, Kansas, Nebraska, North Dakota, South Dakota, and Wyoming; for employee-obligors in the BXA, EDA, MBDA, and ITA in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin:

Human Resources Manager, Central Administrative Support Center (CASC), Federal Building, Room 1736, 601 East 12th Street, Kansas City, MO 64106, (816) 426–2056

b. Eastern Region. For NOAA employee-obligors in the States of: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Puerto Rico, and the Virgin Islands; for employee-obligors in the BXA, EDA, MBDA, and ITA in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Puerto Rico, and the Virgin Islands:

Human Resources Manager, Eastern Administrative Support Center (EASC), NOAA EC, 200 World Trade Center, Norfolk, VA 23510, (757) 441–6517

c. Mountain Region. For NOAA employee-obligors in the States of: Alaska, Colorado, Florida, Hawaii, Idaho, and Oklahoma, at the South Pole and in American Samoa; and for the National Weather Service employees in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, Oklahoma, Tennessee, Texas and in Puerto Rico; for employee-obligors in BXA, EDA, MBDA, NIST, and NTIA in the States of Arkansas, Colorado, Hawaii, Iowa, Louisiana, Missouri, Montana, South Dakota, Texas, Utah and Wisconsin:

Human Resources Office, Mountain Administrative Support Center (MASC), MC22A, 325 Broadway, Boulder, CO 80303–3328, (303) 497–3578

d. Western Region. For NOAA employee-obligors in the States of Arizona, California, Montana, Nevada, Oregon, Utah, Washington, and the Trust Territories; for employee-obligors in BXA, EDA, MBDA, and ITA in the States of Arizona, California, Nevada, Oregon, Utah, Washington, and the Trust Territories:

Human Resources Manager, Western Administrative Support Center (WASC), NOAA WC2, 7600 Sand Point Way, NE., Bin C15700, Seattle, WA 89115–0070, (206) 526–6057

10. In cases where the name of the operating unit cannot be determined:

Director for Human Resources Management, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 5001, (202) 482–4807

Department of Defense

Unless specifically listed below, all military members (active, retired, reserve, and national guard), and all civilian employees of the Department of Defense:

Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service, Cleveland Center—Code L (DFAS–CL/L), P.O. Box 998002, Cleveland, OH 44199–8002, (216) 522–5301

Army

a. Civilian employees in Germany:

Commander, 266th Theater Finance Corps, Attention: AEUCF–CPF, Unit 29001, APO AE 09007, 011–49–6221–57–7977/6044

b. Nonappropriated fund civilian employees of the Army:

Post Exchanges

Army and Air Force Exchange Service, Attention: CM–C–RI, P.O. Box 660202, Dallas, TX 75266–0202, (214) 312–2011

Navy

a. Military Sealift Command Pacific Mariners:

Office of Counsel (Code N2), Military Sealift Command, Pacific, 280 Anchor Way, Suite 1W, Oakland, CA 94625–5010

b. Military Sealift Command Atlantic Mariners:

Office of Counsel, Military Sealift Command, Atlantic, Military Ocean Terminal, Building 42, Bayonne, NJ 07002–5399

c. Nonappropriated fund civilian employees of Navy Exchanges or related nonappropriated fund instrumentalities administered by the Navy Resale Systems Office:

Commanding Officer, Navy Exchange Service Command, 3280 Virginia Beach Blvd., Virginia Beach, VA 23452, (804) 631–3614

d. Nonappropriated fund civilian employees at Navy clubs, messes or recreational facilities:

Chief of Navy Personnel, Director, Morale, Welfare, and Recreation Division (MWR), Washington, DC 20370, (202) 433–3005

e. Nonappropriated fund personnel of activities that fall outside the purview of the Chief of Navy Personnel or the Commanding Officer of the Navy Exchange Service Command, such as locally established morale, welfare and other social and hobby clubs, such process may be served on the commanding officer of the activity concerned.

Marine Corps

Nonappropriated fund civilian employees, process may be served on the commanding officer of the activity concerned.

Air Force

a. Nonappropriated fund civilian employees of base exchanges:

Army and Air Force Exchange Service, Attention: FA–F/R, PO Box 650038, Dallas, TX 75265–0038, (214) 312–2119

b. Nonappropriated fund civilian employees of all other Air Force nonappropriated fund activities:

Office of Legal Counsel, Air Force Services Agency, 10100 Reunion Place, Suite 503, San Antonio, TX 78216–4138, (210) 652–7051

Department of Education

Assistant Secretary, Office of Management, FB–10, Room 2164, 600 Independence Avenue, SW., Washington, DC 20202–2110, (202) 401–0470

Department of Energy

Power Administration

1. Alaska Power Administration

Administrator, Alaska Power Administration, Department of Energy, PO Box 020050, Juneau, AK 99802–0050, (907) 586–7405

2. Bonneville Power Administration

Chief, Payroll Section DSDP, Bonneville Power Administration, Department of Energy, 905 NE. 11th Avenue, Portland, OR 97232, (503) 230–3203

3. Southeastern Power Administration

Chief, Payroll Branch, Department of Energy, Forrestal Building, Room 1E–184, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5581

4. Southwestern Power Administration

Chief Counsel, Southwestern Power Administration, Department of Energy, PO Box Drawer 1619, Tulsa, OK 74101, (918) 581–7426

5. Western Area Power Administration

General Counsel, Western Area Power Administration, Department of Energy, PO Box 3402, Golden, CO 80401, (303) 231–1529

Field Offices

1. Albuquerque Operations Office

Chief Counsel, Albuquerque Operations Office, Department of Energy, PO Box 5400, Albuquerque, NM 87115, (505) 844–7265

2. Chicago Operations Office

Chief Counsel, Chicago Operations Office, Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439, (312) 972–2032

3. Idaho Operations Office

Financial Services Division-Payroll, 850 Energy Drive, Idaho Falls, ID 83401, (208) 526–0459

4. Nevada Operations Office

Chief, Payroll Branch, CR–431, Department of Energy, GTN Building, Room 259, Washington, DC 20585, (301) 903–4012

5. Oak Ridge Operations Office

Chief Counsel, Oak Ridge Operations Office, Department of Energy, P.O. Box 20001, Oak Ridge, TN 37831–8510, (615) 576–1200

6. Richland Operations Office

Chief Counsel, Richland Operations Office, Department of Energy, P.O. Box 550, Richland, WA 99352, (509) 376–7311

7. Oakland Operations Office

Director, Finance and Accounting Division, Department of Energy, 1301 Clay Street, Oakland, CA 94612–5208, (510) 637–1532

8. Savannah River Operations Office

Director, Financial Management and Program Support Division, Department of Energy, P.O. Box A, Aiken, SC 29802, (803) 725–5590

9. Washington DC Headquarters, Pittsburgh Naval Reactors Office, Schenectady Naval Reactors Office, and All Other Organizations Within the Department of Energy

Chief, Payroll Branch, CR–431, Department of Energy, GTN Building, Room E–259, Washington, DC 20585, (301) 903–4012

Department of Health and Human Services

Garnishment Agent, Office of General Counsel, Room 5362—North Building, 330 Independence Ave., SW., Washington, DC 20201, (202) 619–0150

Department of Housing and Urban Development

Director, Systems Support Division, Employee Service Center, 451 7th Street, SW., Room 2284, Washington, DC 20410, (202) 708–0241

Department of the Interior

Chief, Payroll Operations Division, Attn: Code D–2605, Bureau of Reclamation, Administrative Service Center, Department of the Interior, P.O. Box 272030, 7201 West Mansfield Avenue, Denver, CO 80227–9030, (303) 969–7739

Department of Justice

Offices, Boards, and Divisions

Personnel Group/Payroll Operations, 1331 Pennsylvania Avenue, NW., Suite 1170, Washington, DC 20530, (202) 514–6008

Office of the Inspector General

Personnel Division, 1425 New York Avenue, NW., Suite 7000, Washington, DC 20005, (202) 616–4501

For employees of any office of a United States Attorney and for employees of the Executive Office for United States Attorneys:

Assistant Director, Executive Office for United States Attorneys, Personnel Staff, Bicentennial Building, 600 E Street, NW., Room 8017, Washington, DC 20530

United States Marshals Service

Personnel Office, 600 Army Navy Drive, Room 850, Arlington, VA 22202–4210, (202) 307–9637

Office of Justice Programs

Office of Personnel, 633 Indiana Avenue, NW., Room 600, Washington, DC 20530, (202) 307–0730

U.S. Trustees Programs

Personnel Office, 901 E Street, NW., Room 770, Washington, DC 20530, (202) 616–1000

Drug Enforcement Administration

Office of Personnel, Employee Relations Unit, 700 Army Navy Drive, Room 3164, Arlington, VA 22202–4210, (202) 307–1222

Immigration and Naturalization Service

Personnel Support, Immigration and Naturalization Service, 425 I Street, NW., Room 2038, Washington, DC 20536, (202) 514–2525

Human Resources and Career Development, Immigration and Naturalization Service, One Federal Drive #400, Whipple Bldg., Fort Snelling, MN 55111, (612) 725–3211

Human Resources and Career Development, Immigration and Naturalization Service, 70 Kimball Avenue, South Burlington, VT 05403, (802) 660–5137

Human Resources and Career Development, Immigration and Naturalization Service, 7701 N. Stemmons Freeway, Dallas TX 75247, (214) 655–6032

Personnel Office, Immigration and Naturalization Service, P.O. Box 30070, Laguna Niguel, CA 92607, (714) 643–4934

Federal Prisons Systems, U.S. Penitentiary, Personnel Office, 1300 Metropolitan, Leavenworth, KS 66048, (913) 682–8700

Federal Correctional Institution, Personnel Office, Route 37, Danbury, CT 06811, (203) 743–6471

Personnel Office, 320 1st Street, NW., Room 161, Washington, DC 20534, (202) 307–3135

U.S. Penitentiary, Personnel Office, Highway 63 South, Terre Haute, IN 47808, (812) 238–1531

U.S. Penitentiary, Personnel Office, RD #5, Lewisburg, PA 17837, (717) 523–1251

Federal Correctional Institution, Personnel Office, P.O. Box 1000, Anthony, NM 88021, (915) 886–3422

Federal Correctional Institution, Personnel Office, Kettler River Road, Sandstone, MN 55072, (612) 245–2262

U.S. Penitentiary, Personnel Office, 601 McDonough Blvd., SE., Atlanta, GA 30315, (404) 622–6241

Federal Correctional Institution, Personnel Office, PO Box 9999, Milan, MI 48160, (313) 439–1511

Federal Correctional Institution, Personnel Office, PO Box 888, Ashland, KY 41105, (606) 928–6414

Federal Correctional Institution, Personnel Office, 501 Capital Cir., NE., Tallahassee, FL 32301, (904) 878–2173

Federal Correctional Institution, Personnel Office, Greenbag Road, Morgantown, WV 26505, (304) 296–4416

U.S. Medical Center, Federal Prison, Personnel Office, 1900 W. Sunshine, Springfield, MO 65808, (417) 862–7041

Federal Correctional Institution, Personnel Office, 2113 N. HWY 175, Seagoville, TX 75159, (214) 287–2911

Federal Correctional Institution, Personnel Office, 1000 River Road, Petersburg, VA 23804–1000, (804) 733–7881

Federal Prison Camp, Personnel Office, Glen Ray Road, Box B, Alderson, WV 24910 (304) 445–2901

U.S. Penitentiary, Personnel Office, 3901 Klein Blvd., Lompoc, CA 93436, (805) 735–3245

Federal Correctional Institution, Personnel Office, Highway 66 West, El Reno, OK 73036, (405) 262–4875

Federal Correctional Institution, Personnel Office, 9595 W. Quincy Avenue, Englewood, CO 80123, (303) 985–1566

Federal Correctional Institution, Personnel Office, 1299 Seaside Avenue, Terminal Island, CA 90731, (310) 831–8961

U.S. Penitentiary, Personnel Office, Rt. 5, P.O. Box 2000, Marion, IL 62959, (618) 964–1441

Federal Correctional Institution, Personnel Office, 3150 Norton Road, Fort Worth, TX 76119, (817) 535–2111

Metropolitan Correctional Center, Personnel Office, 150 Park Row, New York, NY 10007, (212) 791–9130

Federal Correctional Institution, Personnel Office, P.O. Box 1000, Butner, NC 27509, (919) 575–4541

Federal Correctional Institution, Personnel Office, RR #2, Box 820, Safford, AZ 85546, (602) 348–1337

Bureau of Prisons, South Central Regional Office, Personnel Office, 4211 Cedar Springs, Suite 300, Dallas, TX 75219, (214) 767–9700

Federal Correctional Institution, Personnel Office, Oxford, WI 53952, (608) 584–5511

Federal Medical Center, Personnel Office, 3301 Leestown Road, Lexington, KY 40511, (606) 255–6812

Federal Correctional Institution, Personnel Office, 5701 8th Street, Dublin, CA 94568, (510) 833–7500

Federal Correctional Institution, Personnel Office, 8901 S. Wilmot Road, Tucson, AZ 85706, (602) 574–7100

Bureau of Prisons, Personnel Office, SE Regional Office, 523 McDonough Blvd., SE., Atlanta, GA 30315, (404) 624–5252

Bureau of Prisons, North Central Regional Office, Personnel Office, 4th & State Avenue, 8th Floor—Tower II, Kansas City, KS 66101–2492, (913) 551–1144

Bureau of Prisons, Personnel Office, NE Region, U.S. Customs, 2nd & Chestnut, 7th Floor, Philadelphia, PA 19106, (215) 597–6302

Bureau of Prisons, Personnel Office, W. Regional Office, 7950 Dublin Blvd., 3rd Floor, Dublin, CA 94568, (510) 803–4710

Metropolitan Correctional Center, Personnel Office, 71 W. Van Buren Street, Chicago, IL 60605, (312) 322–0567

Metropolitan Correctional Center, Personnel Office, 808 Union Street, San Diego, CA 92101, (619) 232–4311

Metropolitan Correctional Center, Personnel Office, 15801 SW 137th Avenue, Miami, FL 33177, (305) 255–6788

Federal Correctional Institution, Personnel Office, 1101 John A. Denie Road, Memphis, TN 38134, (901) 372–2269

Federal Prison Camp, Personnel Office, P.O. Box 1000, Montgomery, PA 17752, (717) 547–1641

Federal Correctional Institution, Personnel Office, P.O. Box 730, HWY 95, Bastrop, TX 78602–0730, (512) 321–3903

Federal Prison Camp, Personnel Office, Eglin AFB, Eglin AFB, FL 32542, (904) 882–8522

Federal Correctional Institution, Personnel Office, 565 E Renfroe Road, Talladega, AL 35160, (205) 362–0410

Federal Prison Camp, Personnel Office, P.O. Box 500, Boron, CA 93516, (619) 762–5161

Federal Correctional Institution, Personnel Office, 1900 Simler Avenue, Big Spring, TX 79720, (915) 263–8304

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Federal Correctional Institution, Personnel Office, P.O. Box 600, Otisville, NY 10963, (914) 386–5855
Federal Correctional Institution, Personnel Office, P.O. Box 300, Raybrook, NY 12977, (518) 891–5400
Federal Correctional Institution, Personnel Office, 37900 North 45th Avenue, Dept. 1680, Phoenix, AZ 85027, (602) 465–5112
Federal Correctional Institution, Personnel Office, P.O. Box 5050, Oakdale, LA 71463, (318) 335–4070
Federal Medical Center, Personnel Office, P.O. Box 4600, Rochester, MN 55903, (507) 287–0674
Federal Correctional Institution, Personnel Office, P.O. Box 1000, Loretto, PA 15940, (814) 472–4140
Federal Prison Camp, Personnel Office, Maxwell AFB, Montgomery, AL 36112, (205) 834–3681
Federal Correctional Institution, Personnel Office, 3625 FCI Road, Marianna, FL 32446, (904) 526–6377
Metropolitan Detention Center, Personnel Office, 535 N. Alameda Street, Los Angeles, CA 90012, (213) 485–0439
Federal Prison Camp, Personnel Office, P.O. Box 680, Yankton, SD 57078, (605) 665–3265
Federal Prison Camp, Personnel Office, Drawer 2197, Bryan, TX 77803, (409) 823–1879
Federal Prison Camp, Personnel Office, Saufley Field, Pensacola, FL 32509, (904) 457–1911
Federal Correctional Institution, Personnel Office, 3600 Guard Road, Lompoc, CA 93436, (805) 736–4154
Federal Correctional Institution, Personnel Office, Box 5000, Bradford, PA 16701, (814) 362–8900
Federal Prison Camp, Personnel Office, Seymour Johnson AFB, Goldsboro, NC 27533, (919) 735–9711
Federal Prison Camp, Personnel Office, Nellis AFB, Nellis, NV 89191, (702) 644–5001
Federal Correctional Institution, Personnel Office, P.O. Box 5001, Sheridan, OR 97378, (503) 843–4442
Federal Correctional Institution, Personnel Office, 2600 Highway 301 South, Jesup, GA 31545, (912) 427–0870
Federal Correctional Institution, Personnel Office, P.O. Box 280, Fairton, NJ 08320, (609) 453–4068
Federal Prison Camp, Personnel Office, P.O. Box 1400, Duluth, MN 55814, (218) 722–8634
Federal Prison Camp, Personnel Office, P.O. Box 16300, El Paso, TX 79906, (915) 540–6150
Federal Correctional Institution, Personnel Office, P.O. Box 4000, Three Rivers, TX 78071, (512) 786–3576
Federal Detention Center, Personnel Office, P.O. Box 5060, Oakdale, LA 71463, (318) 335–4070
Federal Prison Camp, Personnel Office, 6696 Navy Road, Millington, TN 38053, (901) 872–2277
Federal Medical Center, Personnel Office, P.O. Box 68, Carville, LA 70721, (504) 389–5044
Federal Correctional Institution, Personnel Office, P.O. Box 789, Minersville, PA 17954, (717) 544–7121
Federal Prison Camp, Personnel Office, Homestead, FL 33039, (305) 258–9676
Federal Prison Camp, Personnel Office, Box 40150, Tyndall AFB, FL 32403, (904) 286–6777
Metropolitan Detention Center, Personnel Office, P.O. Box 34028, Ft. Buchanan, PR 00934, (809) 749–4480
Bureau of Prisons #580, Personnel Office, Management & Specialist Training Center, 791 Chambers Road, Aurora, CO 80011, (303) 361–0567
LSCI, P.O. Box 1500, White Deer, PA 17887, (717) 547–1990
Federal Correctional Institution, Personnel Office, Rt. 8 Box 58, Fox Hollow Road, Manchester, KY 40962, (606) 598–4153
Metropolitan Detention Center, Personnel Office, 100 29th Street, Brooklyn, NY 11232, (718) 832–1039
U.S. Penitentiary-High, 5880 State Hwy, 67 South, Florence, CO 81226, (719) 784–9454
Federal Correctional Institution, Personnel Office, 5880 State Hwy, 67 South, Florence, Co 81226, (719) 784–9100
Federal Correctional Institution, Personnel Office, P.O. Box 699, Estill, SC 29918, (803) 625–4607
Federal Correctional Institution, Personnel Office, P.O. Box 2500, White Deer, PA 17887, (717) 547–7950
Federal Detention Center, Personnel Office, 1638, Northwest 82nd Avenue, Miami, FL 33126, (305) 597–4884
Bureau of Prisons, Personnel Office, Mid Atlantic Region, 10010 Junctions Dr., #100–N, Annapolis Junction, MD 20701, (301) 317–3199
U.S. Penitentiary, Personnel Office, P.O. Box 3500, White Deer, PA 17887, (717) 547–0963
North Central Regional Office, Personnel Office, 4th & State Ave., 8th Floor—Tower II, Kansas City, KS 66101–2492, (913) 551–1114
Federal Prison Camp, Personnel Office, Glen Ray Road—Box B, Alderson, WV 24910–0700, (304) 445–2901
Federal Correctional Complex, Personnel Office, P.O. Box 999, 904 NE 50th Way, Coleman, FL 33521–0999, (904) 748–0999
Federal Correctional Institution, Personnel Office, Fort Dix, P.O. Box 38, Trenton, NJ 08640, (609) 723–1100
Federal Medical Center, Personnel Office, P.O. Box 27066, J St., Bldg. 3000, Ft. Worth, TX 76127–7066, (817) 782–3834

Federal Bureau of Investigation

Personnel Officer, FBI Headquarters, J. Edgar Hoover Building, 10th Street and Pennsylvania Avenue, NW., Room 6012, Washington, DC 20535, (202) 324–3514

Department of Labor

1. Payments to employees of the Department of Labor:

Director, Office of Accounting, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8314

2. Process relating to those exceptional cases where there is money due and payable by the United States under the Longshoreman's Act should be directed to the:

Associate Director for Longshore and Harbor Worker's Compensation, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8721

3. Process relating to benefits payable under the Federal Employees' Compensation Act should be directed to the appropriate district office of the Office of Workers' Compensation Programs:

District No. 1

District Director, Office of Workers' Compensation Programs, John F. Kennedy Building, Room 1800, Government Center, Boston, MA 12203, (617) 565–2137

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

District No. 2

District Director, Office of Workers' Compensation Programs, 201 Varick Street, Room 750, P.O. Box 566, New York, NY 10014–0566, (212) 337–2075

New Jersey, New York, Puerto Rico, and the Virgin Islands

District No. 3

District Director, Office of Workers' Compensation Programs, Gateway Building, 3535 Market Street, Philadelphia, PA 19104, (215) 596–1457

Delaware, Pennsylvania, and West Virginia

District No. 6

District Director, Office of Workers' Compensation Programs, 214 N. Hogan Street, Suite 1026, Jacksonville, FL 32202, (904) 232–2821

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 9

District Director, Office of Workers' Compensation Programs, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–3800

Indiana, Michigan, and Ohio

District No. 10

District Director, Office of Workers' Compensation Programs, 230 S. Dearborn Street, 8th Floor, Chicago, IL 60604, (312) 353–5656

Illinois, Minnesota, and Wisconsin

District No. 11

Regional Director, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 426–2195

Iowa, Kansas, Missouri, and Nebraska

District No. 12

District Director, Office of Workers' Compensation Programs, 1801 California Street, Suite 915, Denver, CO 80202, (303) 391–6000

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

District No. 13

District Director, Office of Workers' Compensation Programs, 71 Stevenson Street, 2nd Floor, P.O. Box 3769, San Francisco, CA 94119–3769, (415) 744–6610

Arizona, California, Hawaii, Guam, and Nevada

District No. 14

District Director, Office of Workers' Compensation Programs, 111 Third Avenue, Suite 615, Seattle, WA 98101, (206) 553–5508

Alaska, Idaho, Oregon, and Washington

District No. 16

District Director, Office of Workers' Compensation Programs, 525 Griffin Street, Room 100, Dallas, TX 75202, (214) 767–2580

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

District No. 25

District Director, Office of Workers' Compensation Programs, 800 N. Capitol Street, Room 800, Washington, DC 20211, (202) 724–0713

District of Columbia, Maryland, and Virginia

4. Process relating to claims arising out of the places set forth below and process seeking to attach Federal Employees' Compensation Act benefits payable to employees of the Department of Labor should be directed to the:

Regional Director, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 426–2195

Department of State

Executive Director (L/EX), Office of the legal Adviser, Department of State, 22nd and C Streets, NW., Room 5519A, Washington, DC 20520, (202) 647–8323

Department of Transportation

Office of the Secretary

General Counsel, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–4702

Agent designated to accept legal process issued by courts in the District of Columbia:

Assistant Chief Counsel, AGC–100, Department of Transportation, 701 Pennsylvania Avenue, NW., Suite 925, Washington, DC 20004, (202) 376–6416

Agent designated to accept legal process issued by courts in the District of Columbia:

Assistant Chief Counsel, MC–7, Department of Transportation, P.O. Box 25082, Oklahoma City, OK 73125, (405) 954–3296

Agent designated to accept legal process issued by courts in the State of New Jersey:

Assistant Chief Counsel, ACT–7, FAA Technical Center, Department of Transportation, Atlantic City, NJ 08405, (609) 485–7087

United States Coast Guard

Commanding Officer (LGL), Coast Guard Human Resources, Service and Information Center, 444 SE. Quincy Street, Topeka, KS 66683–3591, (785) 357–3595

Federal Aviation Administration

1. Headquarters (Washington, DC) and overseas employees:

Agent designated to accept legal process issued by courts in the District of Columbia:

Assistant Chief Counsel, AGC–100, Federal Aviation Administration, 701 Pennsylvania Avenue, NW., Suite 925, Washington, DC 20004, (202) 376–6416

Agent designated to accept legal process issued by courts in the State of Oklahoma:

Assistant Chief Counsel, AMC–7, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125, (405) 954–3296

Agent designated to accept legal process issued by courts in the State of New Jersey:

Assistant Chief Counsel, ACT–7, FAA Technical Center, Federal Aviation Administration, Atlantic City, NJ 08405, (609) 485–7087

Agent designated to accept legal process issued by courts in the State of Alaska:

Assistant Chief Counsel, AAL–7, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AL 99533, (907) 271–5269

Agent designated to accept legal process issued by courts in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut:

Assistant Chief Counsel, ANE–7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803, (617) 238–7040

Agent designated to accept legal process issued by courts in the States of New York, Pennsylvania, Maryland, West Virginia, Delaware, and Virginia:

Assistant Chief Counsel, AEA–7, Federal Aviation Administration, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430, (718) 553–1035

Agent designated to accept legal process issued by courts in the States of Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi:

Assistant Chief Counsel, ASO–7, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320, (404) 763–7204

Agent designated to accept legal process issued by courts in the States of Louisiana, Arkansas, Texas, and New Mexico:

Assistant Chief Counsel, ASW–7, Federal Aviation Administration, 2601 Meacham Boulevard, Forth Worth, TX 76137–4298, (817) 222–5064

Agent designated to accept legal process issued by courts in the States of Nebraska, Iowa, Missouri, and Kansas:

Assistant Chief Counsel, ACE–7, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106, (816) 426–5446

Agent designated to accept legal process issued by courts in the State of Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, North Dakota, and South Dakota:

Assistant Chief Counsel, AGL–7, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018, (708) 294–7108

Agent designated to accept legal process issued by courts in the States of Colorado, Utah, Wyoming, Montana, Idaho, Oregon, and Washington:

Assistant Chief Counsel, AMN–7, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056, (206) 227–2007

Agent designated to accept legal process issued by courts in the States of Hawaii, Arizona, Nevada, and California:

Assistant Chief Counsel, AWP, Federal Aviation Administration, PO Box 92007, World Postal Center, Los Angeles, CA 90009, (310) 297–1270

Department of the Treasury

(1) Departmental Offices

Assistant General Counsel (Administrative and General Law), Treasury Department, 1500 Pennsylvania Avenue, NW., Room 1410, Washington, DC 20220, (202) 622–0450

(2) Office of Foreign Assets Control

Chief Counsel, Second Floor, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–2410

(3) Financial Management Service

Chief Counsel, Financial Management Service, 401 14th Street, SW., Room 531, Washington, DC 20227, (202) 874–6680

(4) Internal Revenue Service

Chief, Special Processing Unit, Garnishing Processing Center, 214 North Kanawha Street, Beckley, WV 25801, (304) 256–6200

(5) Bureau of Alcohol, Tobacco & Firearms

Chief Counsel, 650 Massachusetts Avenue, NW., Room 6100, Washington, DC 20226, (202) 927–7772

(6) Bureau of the Public Debt

Deputy Chief Counsel, Bureau of the Public Debt, Room 119, Hintgen Building, Parkersburg, WV 26106–1328, (304) 480–5192

(7) Secret Service

Legal Counsel, 1800 G Street, NW., Room 842, Washington, DC 20023, (202) 435–5771

(8) Bureau of Engraving & Printing

Legal Counsel, 14th & C Streets, NW., Room 306M, Washington, DC 20228, (202) 874–2500

(9) Office of the Comptroller of the Currency

Washington Headquarters.

Director of Litigation, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219–0001, (202) 874–5280

District Offices

District Counsel, Office of the Comptroller of the Currency, Northeasten District, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036–7730, (212) 790–4010

District Counsel, Office of the Comptroller of the Currency, Southeastern District,

Marquis One Tower, Suite 600, 245 Peachtree Center Ave., NE., Atlanta, GA 30303–1223, (404) 588–4520

District Counsel, Office of the Comptroller of the Currency, Central District, One Financial Place, Suite 2700, 440 South LaSalle St., Chicago, IL 60605–1073, (312) 663–8020

District Counsel, Office of the Comptroller of the Currency, Midwestern District, 2345 Grand Avenue, Suit 700, Kansas City, MO 64108–2683, (816) 556–1870

District Counsel, Office of the Comptroller of the Currency, Southwestern District, 1600 Lincoln Plaza, 500 North Akard Street, Dallas, TX 75201–3345, (214) 720–7012

District Counsel, Office of the Comptroller of the Currency, Western District, 50 Fremont Street, Suite 3900, San Francisco, CA 94105–2292, (415) 545–5980

(10) United States Mint

Chief Counsel, 633 3rd Street, NW., Room 733, Washington, DC 20220, (202) 874–6040

(11) Federal Law Enforcement Training Center

Legal Counsel, Building 69, Glynco, GA 31524, (912) 267–2100

(12) Customs Service

Assistant Chief Counsel, PO Box 68914, Indianapolis, IN 46278, (317) 298–1233

(13) Office of Thrift Supervision

Chief Counsel, 1700 G Street, NW., Fifth Floor, Washington, DC 20552, (202) 906–6251

Department of Veterans Affairs

The fiscal officer at each Department of Veterans Affairs (VA) facility shall be the designated agent for VA employee obligers at that facility. When a facility at which an individual is employed does not have a fiscal officer, the address and telephone number listed is for the fiscal officer servicing such a facility. In those limited cases where a portion of VA service-connected benefits may be subject to garnishment, service of process, unless otherwise indicated below, should be made at the regional office nearest the veteran obligor's permanent residence.

Alabama

Fiscal Officer, Birmingham Medical Center, Send to: Fiscal Officer, VA Medical Center, 215 Perry Hill Road, Montgomery, AL 36193, (205) 272–4670, ext. 4709

National Cemetery Area Office, 700 South 19th Street, Birmingham, AL 35233, (205) 939–2103

Mobile Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501, (601) 863–1972, ext. 225

Fiscal Officer, Montgomery Regional Office, 474 South Court Street, Montgomery, AL 36104, (205) 832–7172

Fiscal Officer Montgomery Medical Center, 215 Perry Hill Road, Montgomery, AL 36109, (205) 272–4670, ext. 204

Fiscal Officer, Tuscaloosa Medical Center, Tuscaloosa, AL 35401, (205) 553–3760

Fiscal Officer, Tuskegee Medical Center, Tuskegee, AL 36083, (205) 727–0550, ext. 0622

Alaska

Fiscal Officer, Anchorage Regional Office, Outpatient Clinic, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250

Juneau VA Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250

Sitka National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250

Arizona

Cave Creek National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Seventh Street & Indian School Road, Phoenix, AZ 85012, (602) 277–5551

Fiscal Officer, Phoenix Regional Office, 3225 North Central Avenue, Phoenix, AZ 85012, (606) 241–2735

Fiscal Officer, Phoenix Medical Center, Seventh Street & Indian School Road, Phoenix, AZ 85012, (602) 277–5551

Fiscal Officer, Prescott Medical Center, Prescott, AZ 86313, (602) 445–4860, ext. 264

Prescott National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Prescott, AZ 86313, (602) 445–4860, ext. 264

Fiscal Officer, Tucson Medical Center, Tucson, AZ 85723, (602) 792–1450, ext. 710

Arkansas

Fayetteville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fiscal Officer, Fayetteville Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fort Smith National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fiscal Officer, Little Rock Regional Office, 1200 W. 3d Street, Little Rock, AR 72201, (501) 378–5142

Fiscal Officer, John L. McClellan Memorial, Veterans Hospital, 4300 West 7th Street (04), Little Rock, AR 72205, (501) 661–1202, ext. 1310

Fiscal Officer, VA Regional Office, Send to: VA Medical Center, 11000 N. College Avenue, Fayetteville, AR 72701, (501) 444–5007

Fiscal Officer, VA Regional Office, Building 65, Fort Roots, PO Box 1280, North Little Rock, Little Rock, AR 72115, (501) 370–3741

California

Bell Supply Depot, Send to: Fiscal Officer, VA Supply Depot, PO Box 27, Hines, IL 60141, (312) 681–6800

Fiscal Officer, Fresno Medical Center, 2615 East Clinton Avenue, Fresno, CA 94703, (209) 225–6100

Fiscal Officer, Livermore Medical Center, Livermore, CA 94550, (415) 447–2560, ext. 317

Fiscal Officer, Loma Linda Medical Center, 11201 Benton Street, Loma Linda, CA 92357, (714) 825–7084, ext. 2550/2551

Fiscal Officer, Long Beach Medical Center, 5901 East Seventh Street, Long Beach, CA 90822, (213) 498–1313, ext. 2101

Fiscal Officer, Los Angeles Regional Office, Federal Building, 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 209–7565

Jurisdiction over the following counties in California: Inyo, Kern, Los Angeles, Orange, San Bernadino, San Luis Obispo, Santa Barbara and Ventura.

Los Angeles Data Processing Center, Send to: Fiscal Officer, VA Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 209–7565

Fiscal Officer, Los Angeles Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Los Angeles Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Los Angeles Outpatient Clinic, 425 South Hill Street, Los Angeles, CA 90013, (213) 894–3870

Los Angeles Regional Office of Audit, Send to: Fiscal Officer, VA Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 824–4402

Los Angeles Field Office of Audit, Send to: Fiscal Officer, VA Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

Los Angeles National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Martinez Medical Center, 150 Muir Rd., Martinez, CA 94553, (415) 228–6680, ext. 235

Fiscal Officer, Palo Alto Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304, (415) 493–5000, ext. 5643

Riverside National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

San Bruno National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Bruno, CA 94121, (415) 221–4810, ext. 315/316

Fiscal Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500, ext. 3351

San Diego Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500, ext. 3351

Fiscal Officer, San Diego Regional Office, 2022 Camino Del Rio North, San Diego, CA 92108, (714) 289–5703

Jurisdiction over the following counties in California: Imperial, Riverside and San Diego

San Francisco National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Officer, 4150 Clement Street, San Francisco, CA 94121, (415) 556–0483

Fiscal Officer, San Francisco Regional Office, 211 Main Street, San Francisco, CA 94105, (415) 974–0160

Jurisdiction over all counties in California except Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Imperial, Riverside, San Diego, Alpine, Lassen, Modoc and Mono.

Fiscal Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 221–4810, ext. 315/316

Fiscal Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91343, (818) 891–2377

Colorado

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Colorado

Fiscal Officer, Denver Regional Office, Denver Federal Center, Building 20, Denver, CO 80225, (303) 234–3920

Fiscal Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813

Denver National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813

Fort Logan National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813

Fort Lyon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Lyon, CO 81038, (719) 384–3987

Fiscal Officer, Fort Lyon Medical Center, Fort Lyon, CO 81038, (719) 384–3987

Fiscal Officer, Grand Junction Medical Center, 2121 North Avenue, Grand Junction, CO 81501, (303) 242–0731, ext. 275

Connecticut

Fiscal Officer, Hartford Regional Office, 450 Main Street, Hartford, CT 06103, (203) 244–3217

Fiscal Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111, (203) 666–6951, ext. 369

Fiscal Officer, West Haven Medical Center, 950 Campbell Avenue, West Haven, CT 06516, (203) 932–5711, ext. 859

Delaware

Fiscal Officer, Wilmington Medical and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 633–5432

District of Columbia

Finance Division Chief (047H), Washington Central Office, 810 Vermont Avenue, NW., Room C–50, Washington, DC 20420, (202) 233–3901

Washington Veterans Canteen Service Field Office, Send to: Finance Division Chief (047H), VA Central Office, 810 Vermont Avenue, NW., Room C–50, Washington, DC 20420, (202) 233–3901

Fiscal Officer, Washington Regional Office, 941 North Capitol Street, NE., Washington, DC 20421, (202) 208–1349

Jurisdiction over all foreign countries or overseas areas except Mexico, American Samoa, Guam, Midway, Wake, the Trust Territory of the Pacific Islands, the Virgin Islands and the Philippines. Also, jurisdiction over Prince George's and Montgomery Counties in Maryland; Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church in Virginia.

Fiscal Officer, Washington Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8229

Florida

Fiscal Officer, Bay Pines Medical Center, National Cemetery Area Office, Bay Pines, FL 33504, (813) 398–9321

Fiscal Officer, Gainesville Medical Center, Archer Road, Gainesville, FL 32601, (904) 376–1611, ext. 6685

Jacksonville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1601 SW. Archer Road, Gainesville, FL 32602, (904) 376–1611, ext. 6685

Jacksonville VA Office, Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893–3236

Fiscal Officer, Lake City Medical Center, 801 South Marion Street, Lake City, FL 32055, (904) 755–3016

Miami VA Office, Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893–3236

Fiscal Officer, Miami Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4284

Orlando Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1300 North 30th Street, Tampa, FL 33612, (813) 971–4500

Fiscal Officer, James A. Haley Veterans' Hospital, 13000 Bruce B. Downs Blvd., Tampa, FL 33612, (813) 972–7501

Riviera Beach Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4284

Pensacola National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501, (601) 863–1972, ext. 225

St. Augustine National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Archer Road, Gainesville, FL 32602, (904) 376–1611, ext. 6685

Fiscal Officer, St. Petersburg Regional Office, 144 First Avenue, South, St. Petersburg, FL 33612, (813) 893–3236

Georgia

Fiscal Officer, Atlanta Regional Office, 730 Peachtree Street, NE., Atlanta, GA 30365, (404) 347–5008

Atlanta Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Atlanta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Office, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Atlanta Field Office of Audit, Send to: Fiscal Officer, VA Regional Office, 730 Peachtree Street, NE., Atlanta, GA 30301, (404) 347–5008

Fiscal Officer, Augusta Medical Center, Augusta, GA 30904, (404) 733–4471, ext. 675/676

Fiscal Officer, VA Medical Center, 2460 Wrightsboro Road, Augusta, GA 30910, (404) 724–5116

Fiscal Officer, Decatur Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111, ext. 6320

Fiscal Officer, Dublin Medical Center, Dublin, GA 31021, (912) 272–1210, ext. 373

Marietta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Hawaii

Fiscal Officer, Honolulu Regional Office, PO Box 50188, Honolulu, HI 96850, (808) 541–1490

Jurisdiction over Islands of American Samoa, Guam, Wake, Midway and Trust Territory of the Pacific Islands

Honolulu National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, PO Box 50188, Honolulu, HI 96850, (808) 546–2109

Idaho

Fiscal Officer, Boise Medical Center, 500 West Fort Street, Boise, ID 83702, (208) 336–5100, ext. 7312

Fiscal Officer, Boise Regional Office, Federal Bldg. & U.S. Courthouse, 550 West Fort Street, Box 044, Boise, ID 83724, (208) 334–1009

Illinois

Alton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4631

AMF O'Hare Field Office of Audit, Send to: Fiscal Officer, VA Medical Center, Hines, IL 60141, (312) 343–7200, ext. 2481

Fiscal Officer, Chicago Medical Center (Lakeside), 33 East Huron Street, Chicago, IL 60611, (312) 943–6600

Fiscal Officer, Chicago Medical Center (West Side), 820 South Damen Avenue, Chicago, IL 60612, (312) 666–6500, ext. 3338

Fiscal Officer, Chicago Regional Office, 536 South Clark Street, Chicago, IL 60680, (312) 886–9417

Fiscal Officer, Danville Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 442–8000

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 442–8000, ext. 210

Fiscal Officer, Hines Medical Center, Hines, IL 60141, (312) 343–7200, ext. 2481

Hines Marketing Center, Send to: Fiscal Officer, VA Supply Depot, PO Box 27, Hines, IL 60141, (312) 681–6800

Fiscal Officer, Hines Supply Depot, PO Box 27, Hines, IL 60141, (312) 681–6800

Fiscal Officer, Hines Data Processing Center, PO Box 66303, AMF O'Hare, Hines, IL 60666, (312) 681–6650

Fiscal Officer, Marion Medical Center, Marion, IL 62959, (618) 997–5311

Mound City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2401 West Main Street, Marion, IL 62959, (618) 997–5311

Fiscal Officer, North Chicago Medical Center, North Chicago, IL 60064, (312) 689–1900

Quincy National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 338–0581, ext. 304

Rock Island National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 338–0581, ext. 304

Springfield National Cemetery Area Officer, Send to: Fiscal Officer, VA Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 442–8000

Indiana

Evansville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Marion, IL 62959, (618) 997–5311

Fiscal Officer, Fort Wayne Medical Center, 1600 Randalia Drive, Fort Wayne, IN 46805, (219) 426–5431

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Fiscal Officer, Indianapolis Regional Office, 575 North Pennsylvania Street, Indianapolis, IN 46204, (317) 269–7840
Fiscal Officer, Indianapolis Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 635–7401, ext. 2363
Indianapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 635–7401, ext. 2363
Fiscal Officer, Marion Medical Center, Marion, IN 46952, (317) 674–3321, ext. 214
Marion National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Marion, IN 46952, (317) 674–3321, ext. 211
New Albany National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401

Iowa

Fiscal Officer, Des Moines Regional Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4220
Fiscal Officer, Des Moines Medical Center, 30th & Euclid Avenue, Des Moines, IA 50310, (515) 699–5999
Fiscal Officer, Iowa City Medical Center, Iowa City, IA 52246, (319) 338–0581, ext. 7702
Keokuk National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52246, (319) 338–0581, ext. 7702
Keokuk National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52246, (319) 338–0581, ext. 7702

Kansas

Ft. Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000, ext. 214
Ft. Scott National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000, ext. 214
Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000, ext. 214
Fiscal Officer, Leavenworth Medical Center, Leavenworth, KS 66048, (913) 682–2000, ext. 214
Fiscal Officer, Topeka Medical Center, 2200 Gage Blvd., Topeka, KS 66622, (913) 272–3111, ext. 521
Fiscal Officer, Wichita Medical Center, 5500 East Kellogg, Wichita, KA 67211 (316) 685–2221, ext. 256
Wichita Regional Office, Send to: VA Medical Center, 5500 East Kellogg, Wichita, KS 67211, (316) 685–2111, ext. 256

Process for VA service-connected benefits should also be sent to the Wichita Medical Center rather than to the Wichita Regional Office.

Fiscal Officer, VA Regional Office, 901 George Washington Blvd, Wichita, KS 67211, (316) 269–6813

Kentucky

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 223–4511
Fiscal Officer, Knoxville Medical Center, Knoxville, KY 50138, (515) 842–3101, ext. 241
Lebanon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511
Lexington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511
Fiscal Officer, Lexington Medical Center, Lexington KY 40507, (606) 233–4511
Fiscal Officer, Louisville Regional Office, 600 Federal Place, Louisville, KY 40202, (502) 582–6482
Fiscal Officer, Louisville Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401, ext. 241
Louisville National Cemetery Area Office (Zachry Taylor), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401, ext. 241
Louisville National Cemetery Area Office (Cave Hill), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401, ext. 241
Nancy National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Lexington, KY 40507, (606) 233–4511
Nicholasville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511
Perryville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511

Louisiana

Fiscal Officer, Alexandria Medical Center, Alexandria LA 71303, (318) 473–0010, ext. 2281
Baton Rouge National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811
Fiscal Officer, New Orleans Regional Office, 701 Loyola Avenue, New Orleans, LA 70133, (504) 589–6604
Fiscal Officer, New Orleans Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811
Baton Rouge National Cemetery, 220 North 19th Street, Baton Rouge, LA 70806, (504) 389–0788
Pineville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Alexandria, LA 71301, (318) 442–0251
Fiscal Officer, Shreveport Medical Center, 510 East Stoner Avenue, Shreveport, LA 71101, (318) 221–8411, ext. 722
Shreveport VA Office, Send to: Fiscal Officer, VA Regional Officer, 701 Loyola Avenue, New Orleans, LA 70113, (504) 589–6604
Port Hudson (Zachary) National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Maine

Portland VA Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623–8411
Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330, (207) 623–8411
Togus National Cemetery Area Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623–8411

Maryland

Annapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932, ext. 5281/5282
Fiscal Officer, Baltimore Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, MD 21201, (301) 962–4410

Jurisdiction does not include Prince George's and Montgomery Counties which are included under the Washington, DC Regional Office

Baltimore Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932, ext. 5281/5282
Fiscal Officer, Baltimore Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932, ext. 5281/5282
Baltimore National Cemetery Area Office (Loudon Park), Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932, ext. 5281/5282
Fiscal Officer, Fort Howard Medical Center, Fort Howard, MD 21052, (301) 687–8768, ext. 328
Hyattsville Field Office of Audit, Send to: Fiscal Division Chief (047H), VA Central Office, Room C–50, 810 Vermont Avenue, Washington, DC 20420, (202) 389–3901
Fiscal Officer, Perry Point Medical Center, Perry Point, MD 21902, (301) 642–2411, ext. 5224/5225

Massachusetts

Fiscal Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730, (617) 275–7500
Fiscal Officer, Boston Regional Office, John F. Kennedy Bldg., Room 400C, Government Center, Boston, MA, (617) 565–2616

Jurisdiction over certain towns in Bristol and Plymouth Counties and the counties of Barnstable, Dukes and Nantucket is allocated to the Providence, Rhode Island Regional Office.

Boston Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232–9500, ext. 427/420
Fiscal Officer, Boston Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232–9500, ext. 427/420
Bourne National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Brockton, MA 02401, (617) 583–4500, ext. 266
Fiscal Officer, Brockton Medical Center, Brockton, MA 02401 (617) 583–4500, ext. 266
Lowell Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130 (617) 322–9500, ext 427/420
New Bedford Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Providence, RI 02908, (401) 273–7100
Fiscal Officer, Northampton Medical Center, Northampton, MA 01060, (413) 584–4040
Springfield Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Northampton, MA 01060, (413) 584–4040
Springfield VA Office, Send to: Fiscal Officer, VA Regional Office, John F.

Kennedy Bldg., Room 400C, Government Center, Boston, MA 02203, (617) 565–2616
Fiscal Officer, West Roxbury Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 323–7700, ext. 5650
Worcester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 323–7700, ext. 5650

Michigan

Fiscal Officer, Allen Park Medical Center, Allen Park, MI 48101, (313) 562–6000, ext. 535
Fiscal Officer, Ann Arbor Medical Center, 2215 Fuller Road, Ann Arbor, MI 48105, (313) 769–7100, ext. 288/289
Fiscal Officer, Battle Creek Medical Center, Battle Creek, MI 49016, (616) 966–5600, ext. 3566
Grand Rapids Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Battle Creek, MI 49016, (616) 966–5600, ext. 3566
Fiscal Officer, Detroit Regional Office, 477 Michigan Avenue, Detroit, MI 48226, (313) 226–4190
Fiscal Officer, Iron Mountain Medical Center, Iron Mountain, MI 49801, (906) 774–3300, ext. 308
Fiscal Officer, Saginaw Medical Center, 1500 Weiss Street, Saginaw, MI 48602, (517) 793–2340, ext. 3061

Minnesota

Fiscal Officer, Minneapolis Medical Center, 54th & 48th Avenue, South Minneapolis, MN 55417, (612) 725–6767, ext. 6311
Fiscal Officer, St. Cloud Medical Center, St. Cloud, MN 56301, (612) 252–1600, ext. 411
Fiscal Officer, St. Paul Center (Regional Office), Federal Building, Ft. Snelling, St. Paul, MN 55111, (612) 725–4075
Fiscal Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725–2150

Jurisdiction over the counties of Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau and Wilkin is allocated to the Fargo, North Dakota Center.

St. Paul National Cemetery Area Office, Send to: VA Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725–6767, ext. 6311
St. Paul Data Processing Center, Send to: Fiscal Officer, VA Center, Federal Building, Ft. Snelling, St. Paul, MN 55111, (612) 725–3075
St. Paul Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 54th & 48th Avenue, Minneapolis, MN 55111, (612) 725–6767, ext. 6311

Mississippi

Biloxi National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Biloxi, MS 39531, (601) 863–1972, ext. 225
Fiscal Officer, Biloxi Medical Center, Biloxi, MS 39531, (601) 863–1972, ext. 225
Corrinth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990
Fiscal Officer, Gulfport Medical Center, Gulfport, MS 39601, (601) 863–1972, ext. 225
Fiscal Officer, Jackson Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216, (601) 362–4471, ext. 1281
Fiscal Officer, VA Regional Office, Federal Building, 100 W. Capitol St., Suite 207, Jackson, MS 39269, (601) 965–4853
Natchez National Cemetery, Send to: Fiscal Officer, VA Medical Center, 1500 E. Woodrow Wilson Dr., Jackson, MS 39216, (601) 362–4471, ext. 1281

Process for VA service-connected benefits should also be sent to the Jackson Medical Center rather than to the Jackson Regional Office.

Missouri

Fiscal Officer, Columbia Medical Center, 800 Stadium Road, Columbia, MO 62501, (314) 443–2511
Jefferson City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443–2511, ext. 6050
Fiscal Officer, Kansas City Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128, (816) 861–4700, ext. 214
Fiscal Officer, Poplar Bluff Medical Center, Poplar Bluff, MO 63901, (314) 686–4151
St. Louis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4931
Fiscal Officer, St. Louis Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539–3112
Fiscal Officer, VA Medical Center, 1500 N. Westwood Blvd., Poplar Bluff, MO 63901, (314) 686–4151, ext. 265
St. Louis Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4631
Fiscal Officer, St. Louis Medical Center, St. Louis, MO 63125, (314) 894–4631
St. Louis Records Processing Center, Send to: Fiscal Officer, VA Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539–3112
Springfield National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Montana

Fiscal Officer, Fort Harrison Medical & Regional Office Center, Fort Harrison, MT 59636, (406) 442–6410
Fiscal Officer, Mile City Medical Center, 210 N. Broadwell, Miles City, MT 59301, (406) 232–3060

Nebraska

Fiscal Officer, Grand Island Medical Center, 2201 N. Broadwell, Grand Island, NE 68801, (308) 382–3660, ext. 244
Fiscal Officer, Lincoln Regional Office, 100 Centennial Mall North, Lincoln NE 68510, (402) 437–5041
Fiscal Officer, Lincoln Regional Office, 600 South 70th Street, Lincoln NE 68510, (402) 489–3802, ext. 332
Maxwell National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Grand Island, NE 68801, (308) 382–3660, ext. 244
Fiscal Officer, Omaha Medical Center, 4101 Woolworth Avenue, Omaha, NE, (402) 346–8800, ext. 4538

Nevada

Las Vegas Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89250, (702) 786–7200, ext. 244
Fiscal Officer, Reno Regional Office, 1201 Terminal Way, Reno, NV (702) 784–5637

Jurisdiction over the following counties in California: Alpine, Lassen, Modoc and Mono.

Fiscal Officer, Reno Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786–7200, ext. 244
Henderson Outpatient Clinic, Send to: Fiscal Officer, Reno Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786–7200, ext. 244

New Hampshire

Fiscal Officer, Manchester Regional Office, 275 Chestnut Street, Manchester, NH 03103, (603) 666–7638
Fiscal Officer, Manchester Medical Center 718 Smyth Road, Manchester, NH 03104, (603) 624–4366

New Jersey

Beverly National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University and Woodland Avenues, Philadelphia, PA 19104, (215) 382–2400, ext. 291/292
Fiscal Officer, East Orange Medical Center, Tremont Avenue and So. Center Street, East Orange, NJ 07019, (201) 676–1000, ext. 1771
Fiscal Officer, Lyons Medical Center, Lyons, NJ 07939, (201) 647–0180, ext. 4302
Newark Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, Tremont Avenue and So. Center Street, East Orange, NJ 07019, (201) 676–1000, ext. 125
Fiscal Officer, Newark Regional Office, 20 Washington Place, Newark, NJ 07102, (201) 645–3507
Salem National Cemetery Area Office, Send to: Fiscal Officer, VA Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 994–2511
Fiscal Officer, Somerville Supply Depot, Somerville, NJ 08876, (210) 725–2540

New Mexico

Fiscal Officer, Albuquerque Regional Office, 500 Gold Avenue, SW., Albuquerque, NM 87102, (505) 766–2204
Fiscal Officer, Albuquerque Medical Center, 2100 Ridgecrest Drive, SE., Albuquerque NM 87108, (505) 265–1711
Santa Fe National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive, SE., Albuquerque, NM 87108, (505) 265–1711, ext. 2214

New York

Fiscal Officer, Albany Medical Center, 113 Holland Ave., Albany, NY 12202, (518) 462–3311, ext. 355
Fiscal Officer, VA Medical Center, 800 Irving Center, Syracuse, NY 13210, (315) 476–7461, ext. 2358
Albany VA Office, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue & 24th Street, New York, NY 10001, (211) 620–6293

Fiscal Officer, Batavia Medical Center, Redfield Parkway, Batavia, NY 14020, (716) 345–7500, ext. 215
Fiscal Officer, Bath Medical Center, Bath, NY 14810, (607) 776–2111, ext. 1502
Fiscal Officer, Bronx Medical Center, 140 W. Kings Bridge Road, Bronx, NY 10408, (212) 584–9000, ext. 1502/1717
Fiscal Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542
Brooklyn National Cemetery Area Office, Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–2541
Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251
Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

Jurisdiction over all counties in New York not listed under the New York Regional Office.

Fiscal Officer, Buffalo Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215, (716) 862–3335/(716) 834–9200, ext. 3335
Calverton National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Northport, NY 11768, (516) 261–4400, ext. 7101/7103
Fiscal Officer, Canandiague Medical Center, Canandaigua, NY 14424, (716) 394–2000, ext. 3368
Fiscal Officer, Castle Point Medical Center, Castle Point, NY 12511, (914) 882–5404
Elmira National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Bath, NY 14810, (607) 776–2111
Farmingdale National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768, (516) 261–4400, ext. 2462/2463
Fiscal Officer, Montrose Medical Center, Montrose, NY 10548, (914) 737–4400, ext. 2463
Fiscal Officer, New York Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320
New York Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320
New York Prosthetics Center, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001, (212) 620–6293
Fiscal Officer, New York Regional Office, 252 Seventh Avenue at 24th Street, New York, NY 10001, (212) 620–6293

Jurisdiction over the following counties in New York: Albany, Bronx, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schharie, Suffolk, Sullivan, Ulster, Warren, Washington and Westchester.

New York Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (202) 686–7320
Fiscal Officer, Northport Medical Center, Northport, NY 11768, (516) 261–4400, ext. 2462/2463
Rochester VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251
Rochester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Batavia, NY 14020, (716) 343–7500, ext. 215
Fiscal Officer, Syracuse Medical Center, Irving Avenue & University Place, Syracuse, NY 13210, (315) 476–7461
Syracuse VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

North Carolina

Fiscal Officer, Asheville Medical Center, 1100 Tunnel Road, Asheville, NC 28801, (704) 298–7911, ext. 5616
Fiscal Officer, Durham Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 671–6913
Fiscal Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120
New Bern National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120
Raleigh National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 286–0411, ext. 6469
Fiscal Officer, Salisbury Medical Center, Salisbury, NC 28144, (704) 636–2351
Salisbury National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636–2351
Wilmington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120
Fiscal Officer, Winston-Salem Regional Office, 251 North Main Street, Winston-Salem, NC 27102 (919) 761–3513
Winston-Salem Outpatient Regional Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636–2351

North Dakota

Fiscal Officer, Fargo Medical and Regional Office Center, 21st & Elm, Fargo, ND 58102, (701) 232–3241, ext. 249

See listing under the St. Paul, Minnesota Center for the names of the counties in Minnesota which come under the jurisdiction of the Fargo, North Dakota Center.

Ohio

Fiscal Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773–1141, ext. 203
Fiscal Officer, Cincinnati Medical Center, 3200 Vine Street, Cincinnati, OH 45220, (513) 550–5040, ext. 4113
Fiscal Officer, VA Medical Center, 2090 Kenny Road, Columbus, OH 43221, (614) 469–6712
Cincinnati VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540
Fiscal Officer, Cleveland Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540
Fiscal Officer, Cleveland Medical Center, 10,000 Brecksville Rd, Brecksville, OH 44141, (216) 526–3030, ext. 7170
Fiscal Officer, Columbus Outpatient Clinic, 456 Clinic Drive, Columbus, OH 43210, (614) 469–6712
Columbus VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540
Dayton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Dayton, OH 45248, (513) 268–6511, ext. 262–2157
Fiscal Officer, VA Medical Center, 4100 W. Third Street, Dayton, OH 45428, (513) 262–2157

Oklahoma

Fort Gibson National Cemetery Area Office, Fiscal Officer, VA Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401, (918) 683–3261, ext. 392
Fiscal Officer, Muskogee Regional Office, 125 South Main Street, Muskogee, OK 74401, (918) 687–2169
Fiscal Officer, Muskogee Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401, (918) 683–3261, ext. 392
Fiscal Officer, Oklahoma City Medical Center, 921 Northeast 13th Street, Oklahoma, OK 73104, (405) 272–9876, ext. 500
Oklahoma City VA Office, Send to: Fiscal Officer, VA Regional Office, 125 South Main St., Muskogee, OK 74401, (908) 687–2169

Oregon

Portland National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220–8262, ext. 6948
Fiscal Officer, Portland Regional Office, 1220 SW 3rd Avenue, Portland, OR 97204, (503) 221–2521
Fiscal Officer, Portland Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220–8262, ext. 6948
Portland Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97210, (503) 222–9221, ext. 6984
Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 440–1000, ext. 4261
Roseburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 672–4411
Fiscal Officer, White City Domiciliary, White City, OR 97501, (503) 826–2111, ext. 241
White City National Cemetery Area, Send to: Fiscal Officer, VA Office, Domiciliary, White City, OR 97503, (503) 826–2111, ext. 241

Pennsylvania

Fiscal Officer, Altoona Medical Center, Altoona, PA 16603, (814) 943–8164, ext. 7046
Annville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center,

Lebanon, PA 17042, (717) 272–6621, ext. 229
Fiscal Officer, VA Medical Center, Butler, PA, 16001, (412) 287–4781, ext. 4505
Fiscal Officer, Coatsville Medical Center, Coatsville, PA 19320, (215) 384–7711, ext. 342
Fiscal Officer, Erie Medical Center, 135 East 38th Street, Erie, PA 16501, (814) 868–8661
Harrisburg Outpatient Clinic Substation, Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272–6621, ext. 229
Fiscal Officer, Lebanon Medical Center, Lebanon Medical Center, Lebanon, PA, 17042, (717) 272–6621, ext. 229
Fiscal Officer, Philadelphia Center (Regional Office), PO Box 8079, Philadelphia, PA 19101, (215) 951–5321

Jurisdiction over the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York.

Philadelphia Data Processing Center, Send to: Fiscal Officer, VA Medical Center, P.O. Box 13399, Philadelphia, PA 19101, (215) 951–5321
Philadelphia National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 951–5321
Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (125) 951–5321
Fiscal Officer, Pittsburgh Regional Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644–4394

Jurisdiction over all of the counties in Pennsylvania that are not listed under the Philadelphia Center (Regional Office) and jurisdiction over the following counties in West Virginia: Brooke, Hancock, Marshall and Ohio.

Fiscal Officer, Pittsburgh Medical Center, Highland Drive, Pittsburgh, PA 15206, (412) 363–4900, ext. 4235
Fiscal Officer, Pittsburgh Medical Center, University Drive C, Pittsburgh, PA 15240 (412) 683–3000, ext. 675
Fiscal Officer, Wilkes-Barre Medical Center, 1111 East End Blvd., Wilkes-Barre, PA 18711, (717) 824–3521, ext. 7211

Philippines

Manila Regional Office Outpatient Clinic and Manila Regional Office Center
For either of the above, send to:

Director, Department of Veterans Affairs, APO, San Francisco, CA 96528, 011–632–521–7116, ext. 2560

Puerto Rico

Raymon National Cemetery Area Office, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (890) 766–5115
Hato Regional Office, GPO, Box 4867, San Juan, PR 00936, (809) 766–5115
Mayaguez Outpatient Clinic Substation, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 763–0275
Rio Piedras Medical and Regional Office Center, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 758–7575, ext. 4953
Fiscal Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927–5800, (809) 766–5365/(809) 766–5953

Rhode Island

Fiscal Officer, Providence Regional Office, 321 South Main Street, Providence, RI 02903, (401) 528–4439

Jurisdication over the following towns and counties in Massachusetts: all towns in Bristol County except Mansfield and Easton, the towns of Lakeville, Middleboro, Carver, Rochester, Mattapoisett, Marion, and Wareham in Plymouth County; and the counties of Dukes, Nantucket and Barnstable.

Fiscal Officer, Providence Medical Center, Davis Park, Providence, RI 02908, (401) 475–3019

South Carolina

Beaufort National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577–5011, ext. 222
Fiscal Officer, Charleston Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577–5011, ext. 222
Fiscal Officer, Columbia Regional Office, 1801 Assembly Street, Columbia, SC 29201, (803) 765–5210
Fiscal Officer, Columbia Medical Center, Columbia, SC 29201, (803) 776–4000, ext. 150
Florence National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776–4000, ext. 149
Greenville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776–4000, ext. 149

South Dakota

Fort Meade National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741 (605) 347–2511, ext. 272
Fiscal Officer, VA Medical Center, Fort Meade, SD 57741 (605) 347–2511, ext. 272
Hot Springs National Cemetery Area Office, Fiscal Officer, VA Medical Center, Hot Springs, SD 57747 (605) 745–4101, ext. 246
Fiscal Officer, Hot Springs Medical Center, Hot Springs, SD 57747, (605) 745–4101
Fiscal Officer, Sioux Falls Medical and Regional Office Center, PO Box 5046, Sioux Falls, SD 57117, (605) 333–6823

Tennessee

Chattanooga Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37203, (615) 327–4651
Chattanooga National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Murfreesboro, TN 37123, (615) 893–1360
Knoxville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926–1171, ext. 7601
Knoxville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1320 24th Avenue, South, Nashville, TN 37203, (615) 327–4651, ext. 553
Madison National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1320 24th Avenue, South, Nashville, TN 37203, (615) 327–4651, ext. 553
Fiscal Officer, Memphis Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990, ext. 5838
Memphis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990, ext. 5838
Fiscal Officer, Mountain Home Medical Center, Mountain Home, TN 37684, (615) 926–1171, ext. 7601
Mountain Home National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926–1171
Fiscal Officer, Murfreesboro Medical Center, Murfreesboro, TN 37130, (615) 893–1360, ext. 3198
Fiscal Officer, National Regional Office, 110 Ninth Avenue South, Nashville, TN 37203, (615) 736–5352
Fiscal Officer, Medical Center, 1310 24th Avenue, South, Nashville, TN 37212, (615) 327–4751, ext. 5147

Texas

Fiscal Officer, Amarillo Medical Center, 6010 Amarillo Blvd. W., Amarillo, TX 79106, (806) 355–9703, ext. 7370
Fiscal Officer, Austin Data Processing Center, 1615 East Woodward Street, Austin, TX 78772, (512) 482–4028
Beaumont Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795–7493
Fiscal Officer, Big Spring Medical Center, Big Spring, TX 79720, (915) 263–7361, ext. 326
Fiscal Officer, Bonham Medical Center, East 96th & Lipscomb Street, Bonham, TX 75418, (218) 583–2111, ext. 240
Corpus Christi Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660, ext. 5871
Fiscal Officer, Dallas Medical Center, 4500 South Lancaster Road, Dallas, TX 75216, (214) 376–5451, ext. 5238
Dallas VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 757–6454
Fiscal Officer, El Paso Outpatient Clinic, 5919 Brook Hollow Drive, el Paso, TX 79925, (915) 579–7960
Fort Bliss National Cemetery Area Office, Send to: Fiscal Officer, VA Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 579–7960
Fiscal Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795–7493
Fiscal Officer, Houston Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 660–4121

Jurisdiction over the country of Mexico and the following counties in Texas: Angelina, Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Blanco, Brazoria, Brewster, Brooks, Caldwell, Calhoun,

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Cameron, Chambers, Colorado, Comal, Crockett, DeWitt, Dimmitt, Duval, Edwards, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kenndall, Kennedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Lavaca, Liberty, Live Oak, McCulloch, McMullen, Mason, Matagorda, Maverick, Medina, Menard, Montgomery, Necogdoches, Newton, Nueces, Orange, Pecos, Polk, Real, Refugio, Sabine, San Augustine, San Jacinto, San Patrico, Schleicher, Shelby, Starr, Sutton, Terrell, Trinity, Tyler, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata and Zavala.

Houston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795–7493

Fiscal Officer, Kerrville Medical Center, Kerrville, TX 78028, (512) 896–2020, ext. 300

Kerrville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Kerrville, TX 78028, (512) 896–2020, ext. 300

Lubbock VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 657–6464, ext. 635

Fiscal Officer, Lubbock Outpatient Clinic, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762–7209

Fiscal Officer, Marlin Medical Center, 1016 Ward Street, Marlin, TX 76661, (817) 883–3511, ext. 224

McAllen Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660, ext. 5871

Fiscal Officer, San Antonio Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660, ext. 5871

San Antonio VA Office, Send to: Fiscal Officer, VA Regional Office, 2515 Murworth Drive, Houston, TX 77054 (713) 226–4185

San Antonio National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660, ext. 5871

San Antonio National Cemetery Area Office, (Fort Sam Houston), Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660, ext. 5871

Fiscal Officer, Temple Medical Center, Temple, TX 76501, (817) 778–4811

Fiscal Officer, Waco Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 756–6454

Jurisdiction over all counties in Texas not listed under the Houston Regional Office.

Fiscal Officer, Waco Medical Center, Memorial Drive, Waco, TX 76703, (817) 752–6581

Waco Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, Memorial Drive, Waco, TX 76703, (817) 752–6581

Utah

Fiscal Officer, Salt Lake City Regional Office, 125 South State Street, Salt Lake City, UT 84147, (801) 524–5361

Fiscal Officer, Salt Lake City Medical Center, 500 Foothill Blvd., Salt Lake City, UT 85148, (810) 584–1213

Vermont

Fiscal Officer, White River Junction, Medical and Regional Office Center, White River Junction, VT 05001, (802) 295–9363, ext. 1034

Virginia

Alexandria National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8228

Culpeper National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263–0811, ext. 3176

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salem, VA 24153, (703) 982–2463

Hopewell National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Leesburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8228

Mechanicsville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Fiscal Officer, Hampton Medical Center, Hampton, VA 23667, (804) 722–9961

Hampton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Hampton, VA 23667, (807) 722–9961

Quantico National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8228

Fiscal Officer, Richmond Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Richmond National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Fiscal Officer, Roanoke Regional Office, 210 Franklin Road, SW., Roanoke, VA 24011, (703) 982–6116

Jurisdiction over Fairfax and Arlington Counties and the cities of Alexandria, Fairfax, and Falls Church is allocated to the Washington, DC Regional Office.

Fiscal Officer, Salem Medical Center, Salem, VA 24153, (703) 982–2463

Sandston national Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231–9011, ext. 205

Staunton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salem, VA 24135, (703) 982–2463

Winchester National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263–0811, ext. 3176

Washington

Fiscal Officer, American Lake Medical Center, Tacoma, WA 98493, (206) 582–8440, ext. 6049

Fiscal Officer, Seattle Regional Office, 915 Second Avenue, Seattle, WA 98714, (206) 442–5025

Fiscal Officer, Seattle Medical Center, 1160 S. Columbian Way, Seattle, WA 98198, (206) 764–2226

Seattle Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1160 S. Columbia Way, Seattle, WA 98198, (206) 764–2226

Fiscal Officer, Spokane Medical Center—North, 4815 Assembly Street, Spokane, WA 99205, (509) 327–0283, ext. 286

Vancouver Medical Center, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201, (503) 220–8262, ext. 6948

West Virginia

Fiscal Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801, (304) 225–2121, ext. 4174

Fiscal Officer, Clarksburg Medical Center, Clarksburg, WV 26301, (304) 623–3461, ext. 3389

Grafton National Cemetery Area Office, Fiscal Officer, VA Medical Center, Clarksburg, WV 26301, (304) 623–3461, ext. 335

Fiscal Officer, Huntington Regional Office, 640 West Avenue, Huntington, WV 25701, (304) 529–5477

Jurisdiction over the counties of Brooke, Hancock, Marshall and Ohio is allocated to the Pittsburgh, Pennsylvania Regional Office.

Fiscal Officer, Huntington Medical Center, 1540 Spring Valley Drive, Huntington, WV 25704, (304) 429–6741, ext. 2422

Fiscal Officer, Martinsburg Medical Center, Martinsburg, WV 25401, (304) 263–0811, ext. 3176

Wheeling Outpatient Clinic Substation, Fiscal Officer, VA Medical Center, University Drive C, Pittsburgh, PA 15240, (412) 683–7675

Wisconsin

Fiscal Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WI 53705, (608) 262–7050

Fiscal Officer, Milwaukee (Wood) Regional Office, PO Box 6, Wood, WI 53193, (414) 671–8121

Fiscal Officer, Tomah Medical Center, Tomah, WI 54660, (608) 372–1786

Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384–2000, ext. 2591

Wood National Cemetery Area Office, Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384–2000, ext. 2591

Wyoming

Fiscal Officer, Cheyenne Medical & Regional, Office Center, 2360 East Pershing Blvd., Cheyenne, WY 82001, (307) 672–7339

Fiscal Officer, Sheridan Medical Center, Sheridan, WY 82801, (307) 672–3473

Social Security Administration

1. For the garnishment of the remuneration of employees:

Garnishment Agent, Office of the General Counsel, Room 611, Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–4202

Effective March 30, 1998, garnishment orders for employees of the Social Security Administration should be sent to:

Chief, Payroll Operations Division, Attn.: Code D–2640, Bureau of Reclamation, Administrative Services Center, Department of the Interior, P.O. Box 272030, Denver, CO 80227–9030, (303) 969–7739

2. For the garnishment of benefits under Title II of the Social Security Act, legal process may be served on the office manager at any Social Security District or Branch Office. The addresses and telephone numbers of Social Security District and Branch Offices may be found in the local telephone directory.

II. Agencies

(Unless otherwise indicated below, all agencies of the executive branch shall be subject to service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments where such service is sent by certified or registered mail, return receipt requested, or by personal service, upon the head of the agency.)

Agency for International Development

For employees of the Agency for International Development and the Trade and Development Program:

Payroll Division, Office of Financial Management (FM/P), U.S. Agency for International Development, Room 403 SA–2, Washington, DC 20523, (202) 663–2011, (fax) (202) 663–2354

Arms Control and Disarmament Agency

General Counsel, Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451, (202) 647–3596

Central Intelligence Agency

Office of Personnel Security, Attn: Chief, Special Activities Staff, Washington, DC 20505, (703) 482–1217

Commission on Civil Rights

Solicitor, Commission on Civil Rights, 624 9th Street, NW., Suite 632, Washington, DC 20425, (202) 376–8351

Commodity Futures Trading Commission

Director, Office of Personnel, Commodity Futures Trading Commission, Three Lafayette Center, Room 7200, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5003

Consumer Product Safety Commission

(Mail Service), General Counsel, Consumer Product Safety Commission, Washington, DC 20207–0001, (202) 504–0980

(Personal Service), General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Room 700, Bethesda, MD 20814–4408, (301) 504–0980

Environmental Protection Agency

Chief, Headquarters Accounting Operations Branch, Financial Management Division (3303), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5116

Export-Import Bank of the United States

General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Room 947, Washington, DC 20571, (202) 566–8334

Equal Employment Opportunity Commission

Director, Financial Management Division, 1801 L Street, NW., Room 2002, Washington, DC 20507, (202) 663–4224

Farm Credit Administration

Chief, Fiscal Management Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4122

Federal Deposit Insurance Corporation

Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, (202) 898–3686

Federal Election Commission

Accounting Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 376–5270

Federal Emergency Management Agency

Office of General Counsel, General Law Division, 500 C Street, SW., Washington, DC 20472, (202) 646–4105

Federal Labor Relations Authority

Director of Personnel, Federal Labor Relations Authority, 607 14th Street, NW., Suite 430, Washington, DC 20424, (202) 482–6690

Federal Maritime Commission

Director of Personnel or Deputy Director of Personnel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5773

Federal Mediation and Conciliation Service

General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, (202) 653–5305

Federal Retirement Thrift Investment Board

Payments to Board employees:

Director of Administration, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, (202) 942–1670

Benefits from the Thrift Savings Fund:

General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, (202) 942–1662

Federal Trade Commission

Garnishment orders for employees of the Federal Trade Commission should be sent to:

Chief, Payroll Operations Division, Attn.: Code D–2605, Bureau of Reclamation, Administrative Services Center, Department of the Interior, 7201 West Mansfield Avenue, Denver, CO 80227–9030, (303) 969–7739

General Services Administration

1. Region 1 (Maine, Vermont, New Hampshire, Massachusetts, Connecticut):

Regional Counsel, 10 Causeway Street, Boston, MA 02222, (617) 835–5896

2. Region 2 (New York, New Jersey, Puerto Rico, the Virgin Islands):

Regional Counsel, 26 Federal Plaza, New York, NY 10007, (212) 264–8306

3. Region 3 (Pennsylvania, West Virginia, Maryland, Virginia, less the greater metropolitan area of Washington, DC):

Regional Counsel, Ninth and Market Streets, Philadelphia, PA 19107, (215) 597–1319

4. Region 4 (Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Florida):

Regional Counsel, R.B. Russell Federal Building and U.S. Courthouse, 75 Spring Street, SW., Atlanta, GA 30303, (404) 331–0915

5. Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio):

Regional Counsel, 230 South Dearborn Street, Chicago, IL 60604, (312) 353–5392

6. Region 6 (Nebraska, Iowa, Kansas, Missouri):

Regional Counsel, 1500 E. Bannister Road, Kansas City, MO 64131, (816) 926–7212

7. Region 7 (New Mexico, Texas, Oklahoma, Arkansas, Louisiana):

Regional Counsel, 819 Taylor Street, Fort Worth, TX 76102, (817) 334–2325

8. Region 8 (Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado):

Regional Counsel, Building 41, Denver Federal Center, Denver, CO 80225, (303) 776–7352

9. Region 9 (California, Nevada, Arizona, Hawaii, Guam):

Regional Counsel, 525 Market Street, San Francisco, CA 94105, (415) 744–5057

10. Region 10 (Washington, Oregon, Idaho, Alaska):

Regional Counsel, GSA Center, Auburn, WA 98002, (206) 396–7007

11. Greater metropolitan area of Washington, DC (includes parts of Maryland and Virginia):

Regional Counsel, 7th & D Streets, NW., Washington, DC 20547, (202) 708–5155

Institute of Peace

Garnishment orders for employees of the Institute of Peace should be sent to:

General Services Administration, Director, Finance Division—(6BC), 1500 E. Bannister Road, Room 1107, Kansas City, MO 64131, (816) 926–1666

Merit Systems Protection Board

Director, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, (202) 653–5805

National Aeronautics and Space Administration

NASA Headquarters

Associate General Counsel (General), Attention: SN Code GG, NASA Headquarters, 300 E Street, SW., Washington, DC 20546, (202) 358–2465

NASA Field Installations

Chief Counsel, Ames Research Center, Moffett Field, CA 94035, (415) 694–5055

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Chief Counsel, Dryden Flight Research Center, Edwards, CA 93523, (805) 258–2827
Chief Counsel, Goddard Space Flight Center, (including Wallops Flight Center), Greenbelt, MD 20771, (301) 286–9181
Chief Counsel, Johnson Space Center, Houston, TX 77058, (713) 483–3021
Chief Counsel, Kennedy Space Center, Kennedy Space Center, FL 32899, (407) 867–2550
Chief Counsel, Langley Research Center, Hampton, VA 23665, (804) 864–3221
Chief Counsel, Lewis Research Center, Cleveland, OH 44135, (216) 433–2318
Chief Counsel, Marshall Space Flight center, Marshall Space Flight Center, AL 35812, (205) 544–0012
Chief Counsel, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, (601) 688–2164

National Archives and Records Administration

General Counsel (NSL), Room 305 Archives Building, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408, (202) 501–5535

National Capital Planning Commission

Administrative Officer, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576, (202) 724–0170

National Credit Union Administration

General Counsel, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428, (703) 518–6540

National Endowment for the Arts

General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 522, Washington, DC 20506, (202) 682–5418

National Endowment for the Humanities

General Counsel, National Endowment for the Humanities, Room 530, Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 606–8322

National Labor Relations Board

Director of Personnel, National Labor Relations Board, 1099 14th Street, NW., Room 6700, Washington, DC 20570–0001, (202) 273–3904

National Mediation Board

Administrative Officer, National Mediation Board, 1301 K Street, NW., Suite 250 East, Washington, DC 20572, (202) 523–5950

National Railroad Adjustment Board

Staff Director/Grievances, National Railroad Adjustment Board, 175 West Jackson Boulevard, Chicago, IL 60604, (312) 886–7300

National Science Foundation

General Counsel, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1060

National Security Agency

General Counsel, National Security Agency, 9800 Savage Road, Ft. Meade, MD 20755–6000, (301) 688–6054

National Transportation Safety Board

Director, Personnel and Training Division, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, ATTN: AD–30, (202) 382–6718

Navajo and Hopi Indian Relocation Commission

Attorney, Navajo and Hopi Indian Relocation Commission, 201 East Birch, Room 11, P.O. Box KK, Flagstaff, AZ 86002, (602) 779–2721

Nuclear Regulatory Commission

Controller, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–4750

Office of Personnel Management

Payments to OPM employees:

General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606–1700

Payments of retirement benefits under the Civil Service Retirement System and the Federal Employees Retirement System:

Associate Director for Retirement and Insurance, Office of Personnel Management, Court Ordered Benefits Branch, PO Box 17, Washington, DC 20044, (202) 606–0218.

Overseas Private Investment Corporation

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, (202) 336–8524

Panama Canal Commission

Secretary, Office of the Secretary, International Square, 1825 I Street, NW., Suite 1050, Washington, DC 20006–5402, (202) 634–6441

Pension Benefit Guaranty Corporation

General Counsel or Deputy General Counsel, 1200 K Street, NW., Washington, DC 20005–4026, (202) 326–4020

Railroad Retirement Board

Deputy General Counsel, Bureau of Law, 844 North Rush Street, Chicago, IL 60611, (312) 751–4935

Securities and Exchange Commission

Branch Chief, Fiscal Operations, Office of the Comptroller, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 942–0349

Selective Service System

General Counsel, 1515 Wilson Boulevard, Arlington, VA 22209–2425, (703) 235–2050.

Small Business Administration

District Director, Birmingham District Office, 908 South 20th Street, Birmingham, AL 35205, (205) 254–1344
District Director, Anchorage District Office, 1016 West 6th Avenue, Anchorage, AK 99501, (907) 271–4022
District Director, Phoenix District Office, 3030 North Central Avenue, Phoenix, AZ 85012, (602) 261–3611
District Director, Little Rock District Office, 611 Gaines Street, Little Rock, AR 72201, (501) 378–5871
District Director, Los Angeles District Office, 350 S. Figueroa Street, Los Angeles, CA 90071, (213) 688–2956
District Director, San Diego District Office, 880 Front Street, San Diego, CA 92188, (714) 291–5440
District Director, San Francisco District Office, 211 Main Street, San Francisco, CA 94105, (415) 556–7490
District Director, Denver District Office, 721 19th Street, Denver, CO 80202, (303) 837–2607
District Director, Hartford District Office, One Financial Plaza, Hartford, CT 06106, (203) 244–3600
District Director, Washington District Office, 1030 15th Street, NW., Washington DC 20417, (202) 655–4000
District Director, Jacksonville District Office, 400 West Bay Street, Jacksonville, FL 32202, (904) 791–3782
District Director, Miami District Office, 222 Ponce De Leon Blvd., Coral Gables, FL 33134, (305) 350–5521
District Director, Atlanta District Office, 1720 Peachtree Street, NW., Atlanta, GA 30309, (404) 347–2441
District Director, Honolulu District Office, 300 Ala Moana, Honolulu, HI 96850, (808) 546–8950
District Director, Boise District Office, 1005 Main Street, Boise, ID 83701, (208) 384–1096
District Director, Des Moines District Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4433
District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604, (312) 353–4528
District Director, Indianapolis District Office, 575 N. Pennsylvania Street, Indianapolis, IN 46204, (317) 269–7272
District Director, Wichita District Office, 110 East Waterman Street, Wichita, KS 67202, (316) 267–6571
District Director, Louisville District Office, 600 Federal Place, Louisville, KY 40201, (502) 582–5978
District Director, New Orleans District Office, 1001 Howard Avenue, New Orleans, LA 70113, (504) 589–6685
District Director, Augusta District Office, 40 Western Avenue, Augusta, ME 04330, (207) 622–6171
District Director, Baltimore District Office, 8600 LaSalle Road, Towson, MD 21204, (301) 862–4392
District Director, Boston District Office, 150 Causeway Street, Boston, MA 02114, (617) 223–2100
District Director, Detroit District, 477 Michigan Avenue, Detroit, MI 48116, (313) 226–6075
District Director, Minneapolis District Office, 12 South 6th Street, Minneapolis, MN 55402, (612) 725–2362
District Director, Jackson District Office, 101 West Capitol Street, Suite 400, Jackson, MS 39201, (601) 965–5371
District Director, Kansas City District Office, 1150 Grande Avenue, Kansas City, MO 64106, (816) 374–3416
District Director, St. Louis District Office, One Mercantile Center, St. Louis, MO 63101, (314) 425–4191

District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601, (406) 449–5381
District Director, Omaha District Office, 19th & Farnum Street, Omaha, NE 68102, (404) 221–4691
District Director, Las Vegas District Office, 301 East Stewart, Las Vegas, NV 89101, (702) 385–6611
District Director, Concord District Office, 55 Pleasant Street, Concord, NH 03301, (603) 224–4041
District Director, Newark District Office, 970 Broad Street, Newark, NJ 07102, (201) 645–2434
District Director, Albuquerque District Office, 5000 Marble Avenue, NE., Albuquerque, NM 87110, (505) 766–3430
District Director, New York District Office, 26 Federal Plaza, New York, NY 10007, (212) 264–4355
District Director, Syracuse District Office, 100 South Clinton Street, Syracuse, NY 13260, (315) 423–5383
District Director, Charlotte District Office, 230 South Tryon Street, Charlotte, NC 28202, (704) 371–6111
District Director, Fargo District Office, 657 2nd Avenue, North, Fargo, ND 58108, (701) 237–5771
District Director, Sioux Falls District Office, 101 South Main Avenue, Sioux Falls, SD 57102, (605) 336–2980
District Director, Cleveland District Office, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–4180
District Director, Columbus District Office, 85 Marconi Boulevard, Columbus, OH 43215, (614) 469–6860
District Director, Oklahoma City District Office, 200 NW. 5th Street, Oklahoma City, OK 73102, (405) 231–4301
District Director, Portland District Office, 1220 SW. Third Avenue, Portland, OR 97204, (503) 221–2682
District Director, Philadelphia District Office, 231 St. Asaphs Road, Bala Cynwyd, PA 19004, (215) 597–3311
District Director, Pittsburgh District Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644–2780
District Director, Hato Rey District Office, Chardon & Bolivia Streets, Hato Rey, PR 00918, (809) 753–4572
District Director, Providence District Office, 57 Eddy Street, Providence, RI 02903, (401) 528–4580
District Director, Columbia District Office, 1835 Assembly Street, Columbia, SC 29201, (803) 765–5376
District Director, Nashville District Office, 404 James Robertson Parkway, Nashville, TN 37219, (615) 251–5881
District Director, Dallas District Office, 1100 Commerce Street, Dallas, TX 75242, (214) 767–0605
District Director, Houston District Office, 500 Dallas Street, Houston, TX 77002, (713) 226–4341
District Director, Lower Rio Grande Valley District Office, 222 East Van Buren Street, Harlingen, TX 78550, (512) 423–4534
District Director, Lubbock District Office, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762–7466
District Director, San Antonio District Office, 727 East Durango Street, San Antonio, TX 78206, (512) 229–6250
District Director, Salt Lake City District Office, 125 South State Street, Salt Lake City, UT 84138, (314) 425–5800
District Director, Montpelier District Office, 87 State Street, Montpelier, VT 05602, (802) 229–0538
District Director, Richmond District Office, 400 North 8th Street, Richmond, VA 23240, (804) 782–2617
District Director, Seattle District Office, 915 Second Avenue, Seattle, WA 98174, (206) 442–5534
District Director, Spokane District Office, West 920 Riverside Avenue, Spokane, WA 99210, (509) 456–5310
District Director, Clarksburg District Office, 109 North 3rd Street, Clarksburg, WV 26301, (304) 623–5631
District Director, Madison District Office, 212 East Washington Avenue, Madison, WI 53703, (608) 264–5261
District Director, Casper District Office, 100 East B Street, Casper, WY 82602, (307) 265–5266

Tennessee Valley Authority

Payments to TVA employees:

Chairman, Board of Directors, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902, (423) 632–2101

Payments of retirement benefits under the TVA Retirement System:

Chairman, Board of Directors, TVA Retirement System, 500 West Summit Hill Drive, Knoxville, TN 37902, (423) 632–0202

United States Information Agency

Counsel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 485–7976

United States Soldiers' & Airmen's Home

Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service, Cleveland Center, Code L (DFAS—CL/L), PO Box 998002, Cleveland, OH 44199–8002, (216) 522–5301

III. United States Postal Service and Postal Rate Commission

United States Postal Service and Postal Rate Commission

Manager, Payroll Processing Branch, 1 Federal Drive, Ft. Snelling, MN 55111–9650, (612) 293–6300

IV. The District of Columbia, American Samoa, Guam, and the Virgin Islands

The District of Columbia

Assistant City Administrator for Financial Management, The District Building, Room 412, 14th and Pennsylvania Avenue, NW, Washington, DC 20004, (202) 727–6979

American Samoa

Director of Administrative Service, American Samoa government, Pago Pago, American Samoa 96799, (684) 633–4155

Guam

Attorney General, PO Box DA, Agana, Guam 96910, 472–6841 (Country Code 671)

The Virgin Islands

Attorney General, PO Box 280, St. Thomas, VI 00801, (809) 774–1163

V. Instrumentality

Smithsonian Institution

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees:

General Counsel, The Smithsonian Institution, MRC 012, 1000 Jefferson Drive, SW., Washington, DC 20560, (202) 357–2583

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution:

General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017, (212) 490–9000

VI. Executive Office of the President

Executive Office of the President

General Counsel, Office of Administration, Old Executive Office Building, Washington, DC 20503, (202) 395–2273

13. Appendix B to part 581 is revised to read as follows:

Appendix B to Part 581—List of Agents Designated to Facilitate the Service of Legal Process on Federal Employees

(The agents designated to accept legal process for the garnishment of the remuneration for employment due from the United States are listed in appendix A to part 581. Appendix B to part 581 lists the agents designated to assist in the service of legal process in civil actions pursuant to orders of State courts to establish paternity and to establish or to enforce support obligations by making Federal employees and members of the Uniformed Services available for service of process, regardless of the location of the employee's workplace or of the member's duty station. Agents are listed in appendix B only for those executive agencies where the designations differ from those found in appendix A to part 581.)

Department of Defense

The Department of Defense officials identified pursuant to Executive Order 12953, section 302, shall facilitate an employee's or member's availability for service of process. Additionally, these officials shall be responsible for answering inquiries about their respective organization's service of process rules. Such officials are not responsible for actual service of process and will not accept requests to make such service.

Office of the Secretary of Defense

Personnel Management Specialist, DoD Civilian Personnel Management Service,

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1400 Key Blvd., Level A, Arlington, VA 22209

Department of the Army

Members of the uniformed service, active, reserve, and retired.

Office of the Judge Advocate General, ATTN: DAJA–LA, 2200 Army Pentagon, Washington, DC 20310–2200, (703) 697–3170.

Federal civilian employees of the Army, both appropriated fund and nonappropriated fund.

Deputy Assistant Secretary, (Civilian Personnel Policy/Director of Civilian Personnel), 111 Army Pentagon, Washington, DC 20310–0111, (703) 695–4237

Active duty, reserve, and appropriated fund and nonappropriated fund employees of the Department of the Army employed within the United States.

Appropriated fund and nonappropriated fund Federal civilian employees employed in Panama.

Deputy Chief of Staff for Resource Management, U.S. Army Southern Command, Finance & Accounting Office, Civilian Personnel Section, ATTN: Unit 7153, SORM–FA–C, APO AA 34004

Department of the Navy

In order to locate, or determine the cognizant command and mailing address of a Navy Member:

Bureau of Naval Personnel, Worldwide Locator, (Pers 324D), 2 Navy Annex, Washington, DC 20370–3000, (703) 614–3155/5011

In order to obtain assistance in the service of legal process in civil actions pursuant to orders of State courts:

Bureau of Naval Personnel, Office of Legal Counsel (Pers 06), 2 Navy Annex, Washington, DC 20370–5006, (703) 614–4110

Members of the Marine Corps

Paralegal Specialist, Headquarters, U.S. Marine Corps (JAR), 2 Navy Annex, Washington, DC 20380–1775, (703) 614–2510

For assistance in service of process on Department of the Navy civilian employees:

Department of the Navy, Office of Civilian Personnel Mgmt., Office of Counsel (Code OL), 800 N. Quincy Street, Arlington, VA 2203, (703) 696–4717

Department of the Air Force

For all military and civilian personnel:

AFLSA/JACA, 1420 Air Force Pentagon, Washington, DC 20330–1420, (703) 695–2450

Defense Intelligence Agency

Defense Intelligence Agency, ATTN: Office of the General Counsel, The Pentagon—Room 2E–238, Washington, DC 20301–7400

Defense Mapping Agency

Defense Mapping Agency, Office of Legal Services, 3200 South Second Street, St. Louis, MO 63118

Defense Nuclear Agency

Associate General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398, (703) 325–7681

On-Site Inspection Agency

General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398, (703) 325–7681

Department of Housing and Urban Development

Headquarters

Chief, Systems Support Branch, Technology Support Division, 451 7th Street, SW., Room 2256, Washington, DC 20410, (202) 708–0241

New England (Massachusetts, Maine, Vermont, New Hampshire, Rhode Island, and Connecticut)

Human Resources Officer, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222, (617) 565–5435

New York, New Jersey

Human Resources Officer, 26 Federal Plaza, New York, NY 10278, (212) 264–0782

Mid-Atlantic (Pennsylvania, Maryland, Washington, DC, West Virginia, Virginia, and Delaware)

Human Resources Officer, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107, (215) 656–0593

Southwest (Georgia, North Carolina, Kentucky, Tennessee, South Carolina, Alabama, Mississippi, Puerto Rico, and Florida)

Human Resources Officer, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA 30303, (404) 331–4078

Midwest (Illinois, Minnesota, Wisconsin, Michigan, Ohio, and Indiana)

Human Resources Officer, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–5960

Southwest (Texas, Oklahoma, Arkansas, Louisiana, and New Mexico)

Human Resources Officer, 1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113, (817) 885–5471

Great Plains (Kansas, Missouri, Iowa, and Nebraska)

Human Resources Officer, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101, (913) 551–5419

Rocky Mountain (Colorado, Montana, North Dakota, South Dakota, Wyoming, and Utah)

Human Resources Officer, First Interstate Tower North, 633 17th Street, Denver, CO 80202, (303) 672–5259

Pacific/Hawaii (California, Nevada, Arizona, and Hawaii)

Human Resources Officer, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102, (415) 556–7142

Northwest/Alaska (Washington, Oregon, Idaho, and Alaska)

Human Resources Officer, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104, (206) 220–5125

Department of Justice

Federal Bureau of Investigation

Chief, Payroll Administration and Processing Unit, Room 1885, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20535, (202) 324–5881

Department of Transportation

HPT–1 (FHWA), Room 4317, Department of Transportation, Washington, DC 20590

G–PC (USCG), Room 4100E, CGHQ, Department of Transportation, Washington, DC 20590

RAD–10 (FRA), Room 8232, Department of Transportation, Washington, DC 20590

NAD–20 (NHTSA), Room 5306, Department of Transportation, Washington, DC 20590

TAD–30 (FTA), Room 7101, Department of Transportation, Washington, DC 20590

DMA–12 (RSPA), Room 8401, Department of Transportation, Washington, DC 20590

JM–20 (OIG), Room 7418, Department of Transportation, Washington, DC 20590

MAR–360 (MARAD), Room 8101, Department of Transportation, Washington, DC 20590

Personnel Officer (SLSDC), 180 Andrews Street, Masena, NY 13662–1763

AHR–1 (FAA), FOB–10A, Room 500E, Department of Transportation, Washington, DC 20590

Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh St., SW., Room 5424, Washington, DC 20590

Department of Veterans Affairs

Alabama

Human Resources Management Officer, Birmingham Medical Center, 700 South 19th Street, Birmingham, AL 35233, (205) 933–4478

Montgomery Regional Office, Send to: VBA Southern Area Human Resources, Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Human Resources Management Officer, Montgomery Medical Center, 215 Perry Hill Road, Montgomery, AL 36109–3798, (334) 272–4670

Human Resources Management Officer, Tuskegee Medical Center, 2400 Hospital Road, Tuskegee, AL 36083–5001, (334) 727–0550

Human Resources Management Officer, Tuscaloosa Medical Center, 3701 Loop Road, Tuscaloosa, AL 35404, (205) 554–2000, ext. 2542

Fort Mitchell National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2400 Hospital Road, Tuskegee, AL 36083–5001, (334) 727–0550

Mobile Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 400 Veterans Blvd., Biloxi, MS 39531, (601) 388–5541, ext. 5780

Alaska

Fort Richardson (Sitka) National Cemetery, Send to: Human Resources Management

Officer, VA Medical Center & Regional Office, 2925 DeBarr Road, Anchorage, AK 99508–2989, (907) 257–4750

Human Resources Management Officer, Anchorage Medical Center & Regional Office, 2925 DeBarr Road, Anchorage, AK 99508–2989, (907) 257–4750

Arizona

Human Resources Management Officer, Prescott Medical Center, 500 N. Highway 89, Prescott, AZ 86313–5000, (520) 776–6015

Prescott National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 500 N. Highway 89, Prescott, AZ 86313–5000, (520) 776–6015

Human Resources Management Officer, Phoenix Medical Center, 650 E. Indian School Road, Phoenix, AZ 85012, (602) 277–5551, ext. 7594

Human Resources Management Officer, Tucson Medical Center, 3601 South Sixth Avenue, Tuscon, AZ 85723–0001, (520) 629–1503

Phoenix Regional Office, Send to: VBA Western Area Human Resources, Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Arizona (Cave Creek) Memorial National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 650 E. Indian School Road, Phoenix, AZ 85012, (602) 277–5551, ext. 7594

Arkansas

Fayetteville National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1100 N. College Avenue, Fayetteville, AR 72703, (501) 444–5020

Fort Smith National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1100 N. College Avenue, Fayetteville, AR 72703, (501) 444–5020

Little Rock National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4300 West 7th Street, Little Rock, AR 72114, (501) 370–6677

Little Rock Regional Office, Send to: VBA Southern Area Human Resources, Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Human Resources Management Officer, Little Rock Medical Center, 4300 West 7th Street, Little Rock, AR 72114, (501) 370–6677

Human Resources Management Officer, Fayetteville Medical Center, 1100 N. College Avenue, Fayetteville, AR 72703, (501) 444–5020

California

Human Resources Management Officer, Palo Alto Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304–1207, (415) 493–5000, ext. 5515

Human Resources Management Officer, Loma Linda Medical Center, 11201 Benton Street, Loma Linda, CA 92357–0002, (909) 825–7084, ext. 3058

San Diego Regional Office, Send to: VBA Western Area Human Resources, Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Sepulveda VCS Western Region, Send to: Human Resources Management Officer, VA Medical Center, 16111 Plummer Street, Sepulveda, CA 91343–2099, (818) 895–9377

Human Resources Management Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121–1598, (415) 750–2107

Human Resources Management Officer, Fresno Medical Center, 2615 E. Clinton Avenue, Fresno, CA 93703–2223, (209) 225–6100, ext. 5005

Human Resources Management Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161–0001, (619) 552–8585

Oakland Regional Office, Send To: VBA Western Area Human Resources, Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Human Resources Management Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91343–2099, (818) 895–9377

Human Resources Management Officer, Los Angeles, Medical Center, Wilshire & Sawtelle Blvds., Los Angeles, CA 90073, (310) 824–3153

Los Angeles Field Office of Audit, Send to: Human Resources Management Officer, VA Medical Center, Wilshire & Sawtelle Blvds., Los Angeles, CA 90073, (310) 824–3153

Los Angeles Regional Office of Audit, Send to: Human Resources Management Officer, VA Medical Center, Wilshire & Sawtelle Blvds., Los Angeles, CA 90073, (310) 824–3153

Human Resources Management Office, Los Angeles Outpatient Clinic, 351 E. Temple St., Los Angeles, CA 90012–3328, (213) 253–2677

Pleasant Hill Northern California System of Clinics, Human Resources Management Officer, 2300 Contra Costa Blvd., Suite 440, Pleasant Hills, CA 94523–3961, (510) 372–7000

Human Resources Management Officer, Long Beach Medical Center, 5901 E. Seventh Street, Long Beach, CA 90882–5201, (310) 494–5642

Los Angeles Regional Office, Send To: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

San Bruno (Golden Gate) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121–1598, (415) 750–2107

Fort Rosecrans National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161–0001, (619) 552–8585

Los Angeles National Cemetery, Send to Human Resources Management Office, VA Medical Center, Wilshire & Sawtelle Blvds., Los Angeles, CA 90073, (310) 824–3153

San Joaquin Valley National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2615 E. Clinton Avenue, Fresno, CA 93703–2223, (209) 225–6100, ext. 5005

Riverside National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 11201 Benton Street, Loma Linda, CA 92357–0002, (909) 825–7084, ext. 3058

San Francisco National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121–1598, (415) 750–2107

San Diego Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161–0001, (619) 552–8585

Colorado

Human Resources Management Officer, Grand Junction Medical Center, 2121 North Avenue, Grand Junction, CO 81501, (970) 252–0731, ext. 2062

Human Resources Management Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220–0166, (303) 393–2815

Denver Regional Office, Sent to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Human Resources Management Officer, Fort Lyon Medical Center, Fort Lyon, CO 81038–5000, (719) 384–3190

Fort Logan National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220–0166, (303) 393–2815

Denver National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220–0166, (303) 393–2815

VBA Western Area Human Resources Management Office, Human Resources Management Director, 12600, W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Denver Civilian Health and Medical Program (CHAMPVA), Human Resources Management Officer, 300 S. Jackson St., Denver, CO 80206, (303) 331–7514

Denver Distribution Center, Send to: VBA Western Area Human Resources, Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215 (303) 231–5855

Connecticut

Hartford Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Human Resources Management Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111, (203) 667–6710

Human Resources Management Officer, West Haven Medical Center, 950 Campbell Avenue, West Haven, CT 06516, (203) 932–5711

District of Columbia

Human Resources Management Officer, Washington DC Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8200

Director, Central Office Human Resources, Management Service, VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–4950

Washington DC Regional Office, Sent to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Delaware

Human Resources Management Officer, Wilmington Medical and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 633–5340

Florida

Pensacola (Barrancas) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 400 Veterans Blvd., Biloxi, MS 39531, (601) 388–5541, ext. 5780

Human Resources Management Officer, Bay Pines Medical Center, 10000 Bay Pines Blvd., Bay Pines, FL 33504, (813) 398–6661, ext. 4116

Florida National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 13000 Bruce B. Downs Blvd., Tampa, FL 33612, (813) 972–7524

Riviera Beach Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4455, ext. 3343

Orlando Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 13000 Bruce B. Downs Blvd., Tampa, FL 33612, (813) 972–7524

Miami VA Office, Send to: VBA Southern Area Human Resources, Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Jacksonville VA Office, Send to: VBA Southern Area Human Resources, Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Jacksonville Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1601 SW Archer Road, Gainesville, FL 32608–1197, (904) 374–6045

Daytona Beach Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1601 SW Archer Road, Gainesville, FL 32608–1197, (904) 374–6045

Jacksonville Vet Center, Send to: Human Resources Management Officer, VA Medical Center, 1601 SW Archer Road, Gainesville, FL 32608–1197, (904) 374–6045

Human Resources Management Officer, Tampa Medical Center, 13000 Bruce B. Downs Blvd., Tampa, FL 33612, (813) 972–7524

Bay Pines National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 10000 Bay Pines Blvd., Bay Pines, FL 33504, (813) 398–6661, ext. 4116

Human Resources Management Officer, Gainesville Medical Center, 1601 SW Archer Road, Gainesville, FL 32608–1197, (904) 374–6045

St. Petersburg Regional Office, Send to: VBA Southern Area Human Resources Management Office, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Human Resources Management Officer, Palm Beach Gardens Medical Center, P.O. Box 33207, Palm Beach Gardens, FL 33420, (407) 691–8251

Human Resources Management Officer, Miami Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4455, ext. 3343

Human Resources Management Officer, Lake City Medical Center, 801 S. Marion Street, Lake City, FL 32025–5898, (904) 755–3016

Georgia

Marietta National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728–7636

Atlanta Veterans Canteen Service Field Office, Send to: Human Resources Management Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728–7636

Human Resources Management Officer, Augusta Medical Center, 1 Freedom Way, Augusta, GA 30904–6285, (706) 823–3955

Human Resources Management Officer, Dublin Medical Center, 1826 Veterans Blvd., Dublin, GA 31021, (912) 277–2753

Atlanta Field Office of Audit, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Atlanta National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728–7636

Human Resources Management Officer, Atlanta Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728–7636

Income Verification Match Center, Send to: Human Resources Management Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 728–7636

Atlanta Regional Office, Send to: VBA Southern Area Human Resources, Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Hawaii

Human Resources Management Officer, Honolulu Medical and Regional Office Center, 300 Ala Moana Blvd., P.O. Box 50188, Honolulu, HI 96850, (808) 566–1470

Pacific Memorial National Cemetery, Send to: Human Resources Management Officer, VA Medical and Regional Office Center, 300 Ala Moana Blvd., P.O. Box 50188, Honolulu, HI 96850, (808) 566–1470

Idaho

Human Resources Management Officer, Boise Medical Center, 500 W. Fort Street, Boise, ID 83702–4598, (208) 338–7218

Boise Regional Office, Send to: VBA Western Area Human Resources, Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Illinois

Human Resources Management Officer, North Chicago Medical Center, 3001 Green Bay Road, North Chicago, IL 60064, (708) 578–3763

Human Resources Management Office, Hines Medical Center, Edward Hines Jr. Hospital, 5th Avenue & Roosevelt Road, Hines, IL 60141, (708) 216–2601

Rock Island National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Highway 6 West, Iowa City, IA 52246, (319) 338–0581, ext. 7720

Danville National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 431–6548

Human Resources Management Officer, Chicago Lakeside Medical Center, 333 E. Huron Street, Chicago, IL 60611, (312) 943–6600

Camp Butler National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 431–6548

Hines Systems Delivery Center, Send to: Human Resources Management Officer, Hines Benefits Delivery Center, PO Box 27 (901A1), Hines, IL 60141, (708) 681–6680

Human Resources Management Officer, Chicago Medical Center, 820 South Damen Avenue, PO Box 8195, Chicago, IL 60680, (312) 633–2174

Chicago Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Human Resources Management Officer, Marion Medical Center, 2401 W. Main Street, Marion, IL 62959, (618) 997–5311, ext. 4116

Hines Finance Center, Send to: Human Resources Management Officer, Hines Benefits Delivery Center, PO Box 27 (901A1), Hines, IL 60141, (708) 681–6680

Human Resources Management Officer, Danville Medical Center, 1900 E. Main Street, Danville, IL 61832, (217) 431–6548

Hines National Acquisition Center, Send to: Human Resources Management Officer, Hines Benefits Delivery Center, PO Box 27 (901A1), Hines, IL 60141, (708) 681–6680

Hines Benefits Delivery Center, Human Resources Management Officer, PO Box 27 (901A1), Hines, IL 60141, (708) 681–6680

Alton National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, Jefferson Barracks, St. Louis, MO 63106, (314) 894–6620

Mound City National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2401 W. Main Street, Marion, IL 62959, (618) 997–5311, ext. 4116

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Quincy National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, Highway 6 West, Iowa City, IA 52246, (319) 338–0581, ext. 7720

Indiana

Marion National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1700 East 38th, Marion, IN 46953–4589, (317) 677–3101

Human Resources Management Officer, Marion Medical Center, 1700 East 38th, Marion, IN 46953–4589, (317) 677–3101

Human Resources Management Officer, Indianapolis Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 267–8758

Human Resources Management Officer, Fort Wayne Medical Center, 2121 Lake Avenue, Fort Wayne, IN 46805–5100, (219) 460–1342

Indianapolis Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

New Albany National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895–3401, ext. 5866

Evansville Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 2401 W. Main Street, Marion, IL 62959, (618) 997–5311, ext. 4116

Indianapolis National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 267–8758

Iowa

Des Moines Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Keokuk National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Highway 6 West, Iowa City, IA 52246, (319) 338–0581, ext. 7720

Human Resources Management Officer, Knoxville Medical Center, 1515 W. Pleasant Street, Knoxville, IA 50138, (515) 842–3101, ext. 6219

Human Resources Management Officer, Des Moines Medical Center, 3600 30th Street, Des Moines, IA 50310, (515) 271–5812

Human Resources Management Officer, Iowa City Medical Center, Highway 6 West, Iowa City, IA 52246, (319) 338–0581, ext. 7720

Kansas

Human Resources Management Officer, Topeka Medical Center, 2200 Gage Blvd., Topeka, KS 66622, (913) 271–4310

Human Resources Management Officer, Leavenworth Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682–2000, ext. 2500

Leavenworth National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682–2000, ext 2500

Human Resources Management Officer, Wichita Medical and Regional Office Center, 901 George Washington Blvd., Wichita, KS 67211, (316) 651–3625

Fort Scott National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682–2000, ext. 2500

Ft. Leavenworth National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 4101 S. 4th St. Trafficway, Leavenworth, KS 66048, (913) 682–2000, ext. 2500

Kentucky

Nicholasville (Camp Nelson) National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511–1093, (606) 281–3924

Zachary Taylor National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895–3401, ext. 5866

Human Resources Management Officer, Louisville Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895–3401, ext. 5866

Lebanon National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895–3401, ext. 5866

Louisville Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Cave Hill National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40206, (502) 895–3401, ext. 5866

Human Resources Management Officer, Lexington Medical Center, 2250 Leestown Road, Lexington, KY 40511–1093, (606) 281–3924

Danville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511–1093, (606) 281–3924

Lexington National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511–1093, (606) 281–3924

Nancy National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511–1093, (606) 281–3924

Perryville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511–1093, (606) 281–3924

Louisiana

Human Resources Management Officer, New Orleans Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Port Hudson (Zachary) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Human Resources Management Officer, Alexandria Medical Center, Highway 171, Alexandria, LA 71301, (318) 473–0010, ext. 2262

Human Resources Management Officer, Shreveport Medical Center, 510 E. Stoner Avenue, Shreveport, LA 71101–4295, (318) 424–6028

Alexandria (Pinesville) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Highway 171, Alexandria, LA 71301, (318) 473–0010, ext. 2262

New Orleans Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Baton Rouge National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Shreveport VA Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Maine

Human Resources Management Officer, Togus Medical and Regional Office Center, Togus, ME 04330, (207) 623–5713

Portland VA (Vet Center) Office, Send to: Human Resources Management Officer, VA Medical and Regional Office Center, Togus, ME 04330, (207) 623–5713

Togus National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical and Regional Office Center, Togus, ME 04330, (207) 623–5713

Maryland

Human Resources Management Officer, Ft. Howard Medical Center, 9600 N. Point Road, Ft. Howard, MD 21052, (410) 687–8343

Ft. Howard VCS Eastern Region, Send to: Human Resources Management Officer, VA Medical Center, 9600 N. Point Road, Ft. Howard, MD 21052, (410) 687–8343

Baltimore Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Human Resources Management Officer, Baltimore Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605–7200

Baltimore National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605–7200

Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Human Resources Management Officer, Perry Point Medical Center, Building 101, Perry

Point, MD 21902, (410) 642–2411, ext. 5193

Baltimore Rehabilitation, Research and Development Center, Send to: Human Resources Management Officer, VA Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605–7200

Annapolis National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605–7200

Baltimore Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 10 N. Greene Street, Baltimore, MD 21201, (410) 605–7200

Hyattsville Field Office of Audit, Send to: Director, CO Human Resources Management Service, VA Central Office, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–4950

Massachusetts

Human Resources Management Officer, Boston Medical Center, 150 S. Huntington Ave., Boston, MA 02130, (617) 232–9500, ext. 5561

Human Resources Management Officer, Northampton Medical Center, Northampton, MA 01060–1288, (413) 582–3027

Boston Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Human Resources Management Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730, (617) 275–7500, ext. 2367

Bourne National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 940 Belmont Street, Brockton, MA 02401, (508) 583–4500, ext. 3260

Human Resources Management Officer, Brockton Medical Center, 940 Belmont Street, Brockton, MA 02401, (508) 583–4500, ext. 3260

Boston Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 150 S. Huntington Ave., Boston, MA 02130, (617) 232–9500, ext. 5561

Lowell Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 150 S. Huntington Ave., Boston, MA 02130, (617) 232–9500, ext. 5561

New Bedford Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 830 Chalkstone Avenue, Providence, RI 02908–4799, (401) 457–3072

Springfield Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, Northampton, MA 01060–1288, (413) 582–3027

Springfield VA Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

West Roxbury Medical Center, Send to: Human Resources Management Officer, VA Medical Center, 940 Belmont Street, Brockton, MA 02401, (508) 583–4500, ext. 3260

Worchester Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 940 Belmont Street, Brockton, MA 02401, (508) 583–4500, ext. 3260

Michigan

Fort Custer National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 5500 Armstrong Rd., Battle Creek, MI 49016, (616) 966–5600, ext. 3600

Grand Rapids Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 5500 Armstrong Rd., Battle Creek, MI 49016, (616) 966–5600, ext. 3600

Detroit Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Human Resources Management Officer, Battle Creek Medical Center, 5500 Armstrong Rd., Battle Creek, MI 49016, (616) 966–5600, ext. 3600

Human Resources Management Officer, Saginaw Medical Center, 1500 Weiss Street, Saginaw, MI 48602, (517) 793–2340, ext. 3070

VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Human Resources Management Officer, Iron Mountain Medical Center, H Street, Iron Mountain, MI 49801, (906) 774–3300, ext. 2280

Human Resources Management Officer, Ann Arbor Medical Center, 2215 Fuller Rd., Ann Arbor, MI 28105, (313) 761–7938

Human Resources Management Officer, Allen Park Medical Center, Southfield & Outer Drive, Allen Park, MI 48101, (313) 562–6000, ext. 3323

Minnesota

St. Paul Regional Office and Insurance Center, Send to: VBA Central Area Human Resources, Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Fort Snelling National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725–2061

Fort Snelling Debt Management Center, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Human Resources Management Officer, Minneapolis Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725–2061

Human Resources Management Officer, St. Cloud Medical Center, 4801 8th Street North, St. Cloud, MN 56303, (612) 255–6301

St. Paul Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725–2061

Mississippi

Corinth National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990, ext. 5928

VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Human Resources Management Officer, Biloxi Medical Center, 400 Veterans Blvd., Biloxi, MS 39531, (601) 388–5541, ext. 5780

Biloxi National Cemetery, Human Resources Management Officer, VA Medical Center, 400 Veterans Blvd., Biloxi, MS 39531, (601) 388–5541, ext. 5780

Jackson Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Human Resources Management Officer, Jackson Medical Center, 1500 E. Woodrow Wilson Blvd., Jackson, MS 39216, (601) 364–1239

Natchez National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1500 E. Woodrow Wilson Blvd., Jackson, MS 39216, (601) 364–1239

Missouri

Human Resources Management Officer, St. Louis Medical Center, Jefferson Bks., St. Louis, MO 63106, (314) 894–6620

Human Resources Management Officer, Poplar Bluff Medical Center, 1500 N. Westwood Blvd., Poplar Bluff, MO 63901, (314) 686–4151, ext. 328

St. Louis Records Processing Center, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Human Resources Management Officer, Kansas City Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128, (816) 861–4700, ext. 6926

Jefferson Barracks National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 800 Hospital Drive, Columbia, MO 65201, (314) 443–2511, ext. 6261

Human Resources Management Officer, Columbia Medical Center, 800 Hospital Drive, Columbia, MO 65201, (314) 443–2511, ext. 6261

St. Louis Regional Office, Send to: VBA Central Area Human Resources, Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Veterans Canteen Service Field Office, Send to: Human Resources Management Officer, VA Medical Center, Jefferson Barracks, St. Louis, MO 63106, (314) 894–6620

Springfield National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1100 N. College Avenue, Fayetteville, AR 72703, (501) 444–5020

Montana

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Resource
Hopkins
(410) 962

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Montana

Human Resources Management Officer, Fort Harrison Medical Center and Regional Office, Fort Harrison, MT 59636, (406) 447–7933

Human Resources Management Officer, Miles City Medical Center, 210 South Winchester, Miles City, MT 59301–4798, (406) 232–8287

Nebraska

Lincoln Regional Office, Send to: VBA Central Area Human Resources, Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Human Resources Management Officer, Lincoln Medical Center, 600 South 70th Street, Lincoln, NE 68510, (402) 489–3802, ext. 7819

Human Resources Management Officer, Grand Island Medical Center, 2201 N. Broadwell Ave., Grand Island, NE 68803, (308) 389–5177

Maxwell (Fort McPherson) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2201 N. Broadwell Ave., Grand Island, NE 68803, (308) 389–5177

Human Resources Management Officer, Omaha Medical Center, 4101 Woolworth Avenue, Omaha, NE 68105, (402) 449–0614

Nevada

Human Resources Management Officer, Reno Medical Center, 1000 Locust Street, Reno, NV 89520–0111, (702) 328–1260

Reno Regional Office, Send to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Las Vegas Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520–0111, (702) 328–1260

Henderson Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520–0111, (702) 328–1260

New Hampshire

Manchester Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Human Resources Management Officer, Manchester Medical Center, 718 Smyth Road, Manchester, NH 03104, (603) 624–4366, ext. 6608

New Jersey

Beverly National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 823–4088

New Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Human Resources Management Officer, East Orange Medical Center, 385 Tremont Avenue, East Orange, NJ 07018–0195, (201) 676–1000, ext. 1366

James J. Howard Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 385 Tremont Avenue, East Orange, NJ 07018–0195, (201) 676–1000, ext. 1366

Newark Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 385 Tremont Avenue, East Orange, NJ 07018–0195, (201) 676–1000, ext. 1366

Human Resources Management Officer, Lyons Medical Center, Knollcroft Road, Lyons, NJ 07939, (908) 647–0180, ext. 4002

New Mexico

Albuquerque Regional Office, Send to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Santa Fe National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2100 Ridgecrest Dr., SE., Albuquerque, NM 87108–5138, (505) 256–5707

New York

Human Resources Management Officer, Bath Medical Center, Bath, NY 14810, (607) 776–2111, ext. 1239

Human Resources Management Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3660

Human Resources Management Officer, Montrose Medical Center, P.O. Box 100, Montrose, NY 10548–0100, (914) 737–4400, ext. 2553

Human Resources Management Officer, Syracuse Medical Center, 800 Irving Avenue, Syracuse, NY 13210–2799, (315) 477–4531

Human Resources Management Officer, Bronx Medical Center, 130 W. Kingsbridge Road, Bronx, NY 10468, (718) 584–9000, ext. 6590

Human Resources Management Officer, New York Medical Center, 423 East 23rd Street, New York, NY 10010, (212) 686–7500, ext. 7635

Human Resources Management Officer, Castle Point Medical Center, Route 9D, Castle Point, NY 12511, (914) 831–2000, ext. 5405

Human Resources Management Officer, Northport Medical Center, 79 Middleville Road, Northport, NY 11768, (516) 261–4400, ext. 2715

Human Resources Management Officer, Albany Medical Center, 113 Holland Avenue, Albany, NY 12208, (518) 462–3311, ext. 2231

Calverton National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 79 Middleville Road, Northport, NY 11768, (516) 261–4400, ext. 2715

Human Resources Management Officer, Buffalo Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215, (716) 862–3605

New York Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Human Resources Management Officer, Batavia Medical Center, 222 Richmond Ave., Batavia, NY 14020, (716) 343–7500, ext. 7272

Bath (Elmira) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Bath, NY 14810, (607) 776–2111, ext 1239

Long Island National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 79 Middleville Road, Northport, NY 11768, (516) 261–4400, ext. 2715

Albany VA (Vet Center) Office, Send to: Human Resources Management Officer, VA Medical Center, 113 Holland Avenue, Albany, NY 12208, (518) 462–3311, ext. 2231

Brooklyn National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3660

Brooklyn Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3660

New York Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 423 East 23rd Street, New York, NY 10010, (212) 686–7500, ext. 7635

New York Prosthetics Center, Send to: Human Resources Management Officer, VA Medical Center, 423 East 23rd Street, New York, NY 10010, (212) 686–7500, ext. 7635

New York Veterans Canteen Service Field Office, Send to: Human Resources Management Officer, VA Medical Center, 423 East 23rd Street, New York, NY 10010, (212) 686–7500, ext. 7635

Rochester VA (Vet Center) Office, Send to: Human Resources Management Officer, VA Medical Center, 222 Richmond Ave., Batavia, NY 14020, (716) 343–7500, ext. 7272

Buffalo Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Rochester Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 222 Richmond Ave., Batavia, NY 14020, (716) 343–7500, ext. 7272

Human Resources Management Officer, Canandaigua Medical Center, Canandaigua, NY 14424, (716) 394–2000, ext. 3700

Syracuse VA Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

North Carolina

Human Resources Management Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 822–7055

Raleigh National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 286–6901

Human Resources Management Officer, Durham Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 286–6901

Human Resources Management Officer, Asheville Medical Center, 1100 Tunnell Road, Asheville, NC 28805, (704) 299–2535

New Bern National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 822–7055

Salisbury National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1601 Brenner Avenue, Salisbury, NC 28144, (704) 638–3432

Winston-Salem Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Human Resources Management Officer, Salisbury Medical Center, 1601 Brenner Avenue, Salisbury, NC 28144, (704) 638–3432

Wilmington National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 822–7055

Winston-Salem Outpatient Regional Office, Send to: Human Resources Management Officer, VA Medical Center, 1601 Brenner Avenue, Salisbury, NC 28144, (704) 638–3432

North Dakota

Human Resources Management Officer, Fargo Medical and Regional Office Center, 655 First Avenue, Fargo, ND 58102, (701) 232–3241

Ohio

Human Resources Management Officer, Columbus Outpatient Clinic, 2090 Kenny Road, Columbus, OH 43221, (614) 257–5501

Cleveland Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Dayton National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 4100 W. Third Street, Dayton, OH 45428, (513) 262–2107

Human Resources Management Officer, Cincinnati Medical Center, 3200 Vine Street, Cincinnati, OH 45220, (513) 559–5051

Cincinnati VA Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Columbus VA Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Human Resources Management Officer, Dayton Medical Center, 4100 W. Third Street, Dayton, OH 45428, (513) 262–2107

Human Resources Management Officer, Cleveland Medical Center, 10000 Brecksville Rd., Brecksville, OH 44141, (216) 526–3030, ext. 7900

Human Resources Management Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773–1141, ext. 7538

Oklahoma

Fort Gibson National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Honor Heights Drive, Muskogee, OK 74401, (918) 683–3261, ext. 404

Human Resources Management Officer, Oklahoma City Medical Center, 921 NE 13th Street, Oklahoma City, OK 73104, (405) 270–5157

Muskogee Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Human Resources Management Officer, Muskogee Medical Center, Honor Heights Drive, Muskogee, OK 74401, (918) 683–3261, ext. 404

Oklahoma City VA Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson MS 39213, (601) 965–4140

Oregon

Portland Regional Office, Send to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Human Resources Management Officer, White City Medical Center, 8495 Craterlake Highway, White City, OR 97503–1088, (503) 826–2111, ext. 3204

Human Resources Management Officer, Roseburg Medical Center, 913 NW Garden Valley Blvd., Roseburg, OR 97470–6153, (503) 440–1260

Human Resources Management Officer, Portland Medical Center, 3710 SW US Veterans Hospital Rd., Portland, OR 97207–1034, (503) 220–3403

Eagle Point National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 8495 Craterlake Highway, White City, OR 97503–1088, (503) 826–2111, ext. 3204

Williamette National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 3710 SW US Veterans Hospital Rd., Portland, OR 97207–1034, (503) 220–3403

Pennsylvania

Human Resources Management Officer, Pittsburgh Medical Center, University Drive C, Pittsburgh, PA 15240, (412) 692–3240

Philadelphia Benefits Delivery Center, Send to: Human Resources Management Liaison, VA Regional Office, 5000 Wissahickon Avenue, P.O. Box 13399, Philadelphia, PA 19101, (215) 951–5534

Human Resources Management Officer, Wilkes-Barre Medical Center, 1111 East End Boulevard, Wilkes-Barre, PA 18711, (717) 821–7209

Philadelphia Systems Development Center, Send to: Human Resources Management Liaison, VA Regional Office, 5000 Wissahickon Avenue, P.O. Box 13399, Philadelphia, PA 19101, (215) 951–5534

Philadelphia National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 823–4088

Annville (Indiantown Gap) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1700 S. Lincoln Avenue, Lebanon, PA 17042, (717) 272–6621, ext. 4055

Human Resources Management Officer, Philadelphia Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 823–4088

Human Resources Management Officer, Altoona Medical Center, 2907 Pleasant Valley Blvd., Altoona, PA 16602–4377, (814) 943–8164, ext. 7039

Human Resources Management Officer, Lebanon Medical Center, 1700 S. Lincoln Avenue, Lebanon, PA 17042, (717) 272–6621, ext. 4055

Harrisburg Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 1700 S. Lincoln Avenue, Lebanon, PA 17042, (717) 272–6621, ext. 4055

Human Resources Management Officer, Coatesville Medical Center, 1400 BlackHorse Hill Rd., Coatesville, PA 19320–2096, (610) 383–0234

Human Resources Management Officer, Pittsburgh (HD) Medical Center, 7180 Highland Drive, Pittsburgh, PA 15206–1297, (412) 365–4755

Human Resources Management Officer, Butler Medical Center, 325 New Castle Road, Butler, PA 16001–2480, (412) 477–5051

Pittsburgh Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Philadelphia Regional Office, Human Resources Management Liaison, 5000 Wissahickon Avenue, P.O. Box 13399, Philadelphia, PA 19101, (215) 951–5534

Human Resources Management Officer, Erie Medical Center, 135 East 38th Street, Erie, PA 16504, (814) 868–6205

Philippines

Manila Regional Office Outpatient Clinic, Manila Regional Office Center, Send to: Director, Department of Veterans Affairs, APO, San Francisco, CA 96528, 011–632–521–7116

Puerto Rico

Puerto Rico National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927–5800, (809) 766–5485

Human Resources Management Officer, San Juan Medical Center, One Veterans Plaza, San Juan, PR 00927–5800, (809) 766–5485

Mayaguez Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927–5800, (809) 766–5485

San Juan Regional Office, Send to: VBA Southern Area Human Resources Management Officer, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Rhode Island

Human Resources Management Officer, Providence Medical Center, 830 Chalkstone Avenue, Providence, RI 02908–4799, (401) 457–3072

Providence
Area Serv
Resources
Hopkins
(410) 962

South Carol

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Human Res
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Ferry Rd.
695–6835

Greenville
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Officer, V
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5011, ext.

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Mountain H
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Home, TN
7181

Nashville (N
Send to:
Officer, V
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(615) 327

Chattanooga
Human R
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Murfreesb
1360, ext.

Knoxville N
Human R
Medical

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Providence Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

South Carolina

Florence National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 6439 Garners Ferry Rd., Columbia, SC 29201–1639, (803) 695–6835

Human Resources Management Officer, Columbia Medical Center, 6439 Garners Ferry Rd., Columbia, SC 29201–1639, (803) 695–6835

Greenville Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 6439 Garners Ferry Rd., Columbia, SC 29201–1639, (803) 695–6835

Human Resources Management Officer, Charleston Medical Center, 109 Bee Street, Charleston, SC 29401–5799, (803) 577–5011, ext. 7610

Beaufort National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 109 Bee Street, Charleston, SC 29401–5799, (803) 577–5011, ext. 7610

Columbia Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

South Dakota

Human Resources Management Officer, Hot Springs Medical Center, 500 North 5th Street, Hot Springs, SD 57747, (605) 745–2018

Hot Springs National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 500 North 5th Street, Hot Springs, SD 57747, (605) 745–2018

Human Resources Management Officer, Fort Meade Medical Center, 113 Comanche Road, Fort Meade, SD 57741, (605) 347–7090

Fort Meade (Black Hills) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 113 Comanche Road, Fort Meade, SD 57741, (605) 347–7090

Human Resources Management Officer, Sioux Falls Medical and Regional Office Center, PO Box 5046, 2501 W. 22nd St., Sioux Falls, SD 57117, (605) 333–6852

Tennessee

Mountain Home National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Johnston City, Mountain Home, TN 37684, (615) 926–1171, ext. 7181

Nashville (Madison) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1310 24th Avenue South, Nashville, TN 37212–2637, (615) 327–5381

Chattanooga National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 3400 Lebanon Road, Murfreesboro, TN 37129–1236, (615) 893–1360, ext. 3317

Knoxville National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Johnston City, Mountain Home, TN 37684, (615) 926–1171, ext. 7181

Memphis National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8900, ext. 5928

Human Resources Management Officer, Memphis Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990, ext. 5928

Human Resources Management Officer, Mountain Home Medical Center, Johnston City, Mountain Home, TN 37684, (615) 926–1171, ext. 7181

Human Resources Management Officer, Nashville Medical Center, 1310 24th Avenue South, Nashville, TN 37212–2637, (615) 327–5381

Knoxville Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 1310 24th Avenue South, Nashville, TN 37212–2637, (615) 327–5381

Nashville Regional Office, Send to: VBA Southern Area Human Resources Management Office Human Resources Management Officer, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Texas

Human Resources Management Officer, San Antonio Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (210) 617–5300, ext. 6732

Corpus Christi Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (210) 617–5300, ext. 6732

McAllen Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (210) 617–5300, ext. 6732

Human Resources Management Officer, Temple Medical Center,1901 S. 1st Street, Temple, TX 76504, (817) 778–4811, ext. 4429

Human Resources Management Officer, Austin Automation Center, 1615 E. Woodard Street, Austin, TX 78772, (512) 326–6054

Human Resources Management Officer, Waco Medical Center, 4800 Memorial Drive, Waco, TX 76711, (817) 752–6581, ext. 6346

Waco Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 4800 Memorial Drive, Waco, TX 76711, (817) 752–6581, ext. 6346

Human Resources Management Officer, Dallas Medical Center, 4500 S. Lancaster Road, Dallas, TX 75216, (214) 372–7032

Human Resources Management Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794–7458

Beaumont Outpatient Clinic Substation, Send to: Human Resources Management Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794–7458

Lufkin Outpatient Clinic, Send to: Human Resources Management Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794–7458

Human Resources Management Officer, Waco Medical Center, 4800 Memorial Drive, Waco, TX 76711, (817) 752–6581, ext. 6346

Human Resources Management Officer, El Paso Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 540–7878

Fort Bliss National Cemetery, Send to: Human Resources Management Officer, El Paso Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 540–7878

Houston Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

San Antonio VA Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Human Resources Management Officer, Big Spring Medical Center, 2400 Gregg St., Big Spring, TX 79720, (915) 264–4820

Austin Systems Development Center, Send to: Human Resources Management Officer, Austin Automation Center, 1615 E. Woodard Street, Austin, TX 78772, (512) 326–6054

Human Resources Management Officer, Amarillo Medical Center, 6010 Amarillo Blvd. West, Amarillo, TX 79106, (806) 354–7827

Houston National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794–7458

San Antonio National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (210) 617–5300, ext. 6732

Fort Sam Houston National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (210) 617–5300, ext. 6732

Human Resources Management Officer, Kerrville Medical Center, 3600 Memorial Blvd., Kerrville, TX 78028, (210) 792–2518

Kerrville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 3600 Memorial Blvd., Kerrville, TX 78028, (210) 792–2518

Human Resources Management Officer, Marlin Medical Center, 1016 Ward Street, Marlin, TX 76661, (817) 883–3511, ext. 4702

Human Resources Management Officer, Bonham Medical Center, East Ninth & Lipscomb Street, Bonham, TX 75418–4091, (903) 583–2111, ext. 6331

Waco Regional Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Dallas VA Office, Send to: VBA Southern Area Human Resources Management Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Lubbock VA Office, Send to: VBA Southern Area Human Resources Management

Office, Human Resources Management Director, 6508 Dogwood Parkway, Suite E, Jackson, MS 39213, (601) 965–4140

Lubbock Outpatient Clinic, Send to: Human Resources Management Office, VA Medical Center, 6010 Amarillo Blvd. West, Amarillo, TX 79106, (806) 354–7827

Austin Finance Center, Send to: Human Resources Management Officer, Austin Automation Center, 1615 E. Woodard Street, Austin, TX 78772, (512) 326–6054

Utah

Salt Lake City Regional Office, Send to: VBA Western Area Human Resources Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Human Resources Management Officer, Salt Lake City Medical Center, 500 Foothill Blvd., Salt Lake City, UT 84148–0001, (801) 584–1284

Vermont

Human Resources Management Officer, White River Junction Medical and Regional Office Center, White River Junction, VT 05009, (802) 295–9363, ext. 5350

Virginia

Human Resources Management Officer, Richmond Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230–1305

Human Resources Management Officer, Hampton Medical Center, 100 Emancipation Road, Hampton, VA 23667, (804) 722–9961, ext. 3160

Richmond National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249 (804) 230–1305

Quantico National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8200

Hampton National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 100 Emancipation Road, Hampton, VA 23667, (804) 722–9961, ext. 3160

Culpepper National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, Route 9, Martinsburg, WV 25401, (304) 263–0811, ext. 3237

Roanoke Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Human Resources Management Officer, Salem Medical Center, 1970 Roanoke Blvd., Salem, VA 24153, (703) 982–2463, ext. 2812

Danville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1970 Roanoke Blvd., Salem, VA 24153, (703) 982–2463, ext. 2812

Alexandria National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8200

Leesburg National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8200

Mechanicsville National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230–1305

Sandston National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249, (804) 230–1305

Hopewell National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249 (804) 230–1305

Staunton National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, 1970 Roanoke Blvd., Salem, VA 24153, (703) 982–2463, ext. 2812

Winchester National Cemetery Area Office, Send to: Human Resources Management Officer, VA Medical Center, Route 9, Martinsburg, WV 25401, (304) 263–0811, ext. 3237

Washington

Seattle Regional Office, Send to: VBA Western Area Human Resources, Management Office, Human Resources Management Director, 126000 W. Colfax Ave., Suite C–300, Lakewood, CO 80215, (303) 231–5855

Human Resources Management Officer, Walla Walla Medical Center, 77 Wainwright Drive, Walla Walla, WA 99362–3975, (509) 527–3453

Human Resources Management Officer, Seattle Medical Center, 1660 S. Columbian Way, Seattle, WA 98108–1597, (206) 764–2135

Seattle Outpatient Clinic (Vet Center), Send to: Human Resources Management Officer, VA Medical Center, 1660 S. Columbian Way, Seattle, WA 98108–1597, (206) 764–2135

Human Resources Management Officer, Tacoma Medical Center, American Lake, Tacoma, WA 98493, (206) 582–8440, ext. 6054

Human Resources Management Officer, Spokane Medical Center, 4815 North Assembly Street, Spokane, WA 99205–6197, (509) 327–0242

West Virginia

Human Resources Management Officer, Huntington Medical Center, 1540 Spring Valley Road, Huntington, WV 25704, (304) 429–6755, ext. 2343

Human Resources Management Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801, (304) 255–2121, ext. 4461

Human Resources Management Officer, Clarksburg, Medical Center, 1 Medical Center Dr., Clarksburg, WV 26301, (304) 623–7697

Human Resources Management Officer, Martinsburg Medical Center, Route 9, Martinsburg, WV 25401, (304) 263–0811, ext. 3237

West Virginia (Grafton) National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 1 Medical Center Dr., Clarksburg, WV 26301, (304) 623–7697

Huntington Regional Office, Send to: Eastern Area Servicing Assistance Center, Human Resources Management Director, 31 Hopkins Plaza, Baltimore, MD 21202–2004, (410) 962–4090

Wisconsin

Wood National Cemetery, Send to: Human Resources Management Officer, VA Medical Center, 5000 W. National Avenue, Milwaukee, WI 53295, (414) 384–2000

Milwaukee Regional Office, Send to: VBA Central Area Human Resources Management Office, Human Resources Management Director, 38701 Seven Mile Road, Suite 345, Livonia, MI 48152, (313) 953–8830

Human Resources Management Officer, Milwaukee Medical Center, 5000 W. National Avenue, Milwaukee, WI 53295, (414) 384–2000, ext. 2930

Human Resources Management Officer, Tomah Medical Center, 500 E. Veterans Street, Tomah, WI 54660, (608) 372–1636

Human Resources Management Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WI 53705, (608) 262–7026

Wyoming

Human Resources Management Officer, Sheridan Medical Center, 1898 Fort Road, Sheridan, WY 82801–8320, (307) 672–1673

Human Resources Management Officer, Cheyenne Medical and Regional Office Center, 2360 East Pershing Blvd., Cheyenne, WY 82001, (307) 778–7331

II. Agencies

American Battle Monuments Commission

Chief, Administration, Room 5127, Pulaski Building, 20 Massachusetts Avenue, NW., Washington, DC 20314–0001, (202) 761–0533

Architectural and Transportation Barriers Compliance Board

General Counsel, 1331 F Street, NW., #1000, Washington, DC 20004–1111, (202) 272–5434, ext. 16

Equal Employment Opportunity Commission

Management Director, Office of Management, 1801 L Street, NW., Washington, DC 20507, (202) 663–4411

Export-Import Bank of the United States

Associate General Counsel, 811 Vermont Avenue, NW., Room 955, Washington, DC 20571, (202) 565–3432

Farm Credit Administration

Chief, Human Resources Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4122

Federal Communications Commission

Chief, Payroll/Personnel Support Branch, 1919 M Street, NW., Room 212, Washington, DC 20554, (202) 481–0136

Federal Deposit Insurance Corporation

Chief, Operations Section, Office of Personnel Management, 550 17th Street,

NW., PA–1730–5018, Washington, DC 20429, (202) 942–3401

Federal Election Commission

Assistant General Counsel—Administrative Law, 999 E Street, NW., Washington, DC 20463, (202) 219–3690

Federal Energy Regulatory Commission

Chief, Payroll Branch, Department of Energy, GTN Building, Room E–259, Washington, DC 20585, (301) 903–4012

Federal Housing Finance Board

Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, (202) 408–2685 or (202) 408–2686

Federal Retirement Thrift Investment Board

Director of Personnel, 1250 H Street, NW., Suite 400, Washington, DC 20005, (202) 942–1680

Federal Trade Commission

Director, Division of Personnel, 6th Street & Pennsylvania Avenue, NW., Room H–148, Washington, DC 20580, (202) 326–2022

General Accounting Office

Comptroller General, Attention: Chief, Payroll/Personnel Systems Branch, Personnel, Room 1180, 441 G Street, NW., Washington, DC 20415, (202) 512–5811

General Services Administration

Office of Personnel, Personnel Operations Division, Office of General Counsel, 18th & F Streets, NW., Room 1100, Washington, DC 20405, (202) 501–0610

New England Region (ME, VT, NH, MA, RI, CT)

Office of Personnel, 10 Causeway Street, Room 1095, Boston, MA 02222, (617) 565–5860

Northeast and Caribbean Region (NY, NJ, PR, VI)

Office of Personnel, 26 Federal Plaza, Room 18–110, New York, NY 10278, (212) 264–8302 or (212) 264–8303

Mid-Atlantic Region (PA, WV, VA, MD, DE)

Office of Personnel, Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3396, (215) 656–5642

Southeast Region—Atlanta (KY, TN, MS, AL, GA, NC, SC, FL)

Office of Personnel, 401 West Peachtree Street, NW., Room 2802, Atlanta, GA 30365–2550, (404) 331–5171

Great Lakes Region (MN, WI, IL, MI, IN, OH)

Office of Personnel, 230 S. Dearborn Street, Room 3730, Mail Stop 37–7, Chicago, IL 60604, (312) 353–0992

The Heartland Region (KS, NE, IA, MO)

Office of Personnel, 1500 E. Bannister Road, Kansas City, MO 64131, (816) 926–7208

Greater Southwest Region (TX, NM, OK, AR, LA) and Rocky Mountain Region (MT, ND, SD, WY, UT, CO)

Office of Personnel, 819 Taylor Street, Room 9A00, Ft. Worth, TX 76102, (817) 334–2361 or (817) 334–3442 or (817) 334–2741

Pacific Rim Region (CA, NV, AZ, HI, GU, CM) and Northwest/Arctic Region (WA, ID, OR, AK)

Office of Personnel, 525 Market Street, San Francisco, CA 94105, (415) 744–5189

National Capital Region (DC, surrounding VA & MD counties), Office of Personnel, 7th & D Streets, SW., Room 1030, Washington, DC 20407, (202) 708–5319

If initial contact is not made with one of the above agent offices, GSA employees (or designees) on site who are contacted by process servers have been instructed to contact the appropriate office listed above for guidance in fulfilling GSA's responsibilities for facilitation of service of process to establish paternity and establish a support obligation.

Institute of Peace

Personnel and Benefits Manager, 1550 M Street, NW., Suite 700, Washington, DC 20005, (202) 429–3801

Inter-American Foundation

General Counsel, 901 N. Stuart Street, 10th Floor, Arlington, VA 22203, (703) 841–3894

JFK Assassination Records Review Board

General Counsel, 600 E Street, NW., Washington, DC 20530

Merit Systems Protection Board

Director, Human Resources Management Division, Office of Planning and Resources Management, 1120 Vermont Avenue, NW., Washington, DC 20419, (202) 653–5916

National Archives & Records Administration

Supervisory Personnel Staffing Specialist, Personnel Operations Branch, 9700 Page Avenue, Room 2002, St. Louis, MO 63132, (314) 538–4953

National Capital Planning Commission

General Counsel, 801 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20576, (202) 724–0174

Nuclear Regulatory Commission

Chief, Policy and Labor Relations, Office of Personnel, Washington, DC 20555, (301) 415–7526

Nuclear Waste Technical Review Board

Administrative Officer, 1100 Wilson Blvd., Suite 910, Arlington, VA 22209, (703) 235–4473

Office of Special Counsel

Director of Management and Associate Special Counsel for Planning and Advice, 1730 M Street, NW., Suite 201, Washington, DC 20036–4505, (202) 653–9455

Peace Corps

Associate General Counsel, 1990 K Street, NW., Room 8300, Washington, DC 20526, (202) 606–3114

Resolution Trust Corporation

Payroll Specialist/Paralegal Specialist, 1717 H Street, NW., Washington, DC 20434, (202) 736–3095

Securities and Exchange Commission

Personnel Management Specialist, Office of Administrative & Personnel Management, 450 5th Street, NW. (Stop 2–3), Washington, DC 20549

Small Business Administration

Chief, Personnel/Payroll Systems Branch or Payroll Analyst, 409 3rd Street, SW., Suite 4200, Washington, DC 20416, (202) 205–6148 or (202) 205–6213

III. United States Postal Service

United States Postal Service

The United States Postal Service will cooperate with process servers in the service of process regarding private civil or criminal matters only when service is attempted in person on the subject employee at the employee's place of employment, in accordance with the provisions of 39 CFR 243.2(g). Service of summonses and complaints, in private matters, by mail to either the agent or employees at their workstations is not permitted.

The Postal Service agent will attempt to facilitate and assist personnel of child support enforcement agencies within the limitations imposed by the Privacy Act, 5 U.S.C. 552a and relevant Postal regulations. The requester must furnish the name and social security number of the person who is the subject of the inquiry.

Manager, Payroll Processing Branch, 1 Federal Drive, Ft. Snelling, MN 55111–9650, (612) 293–6300

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

14. The authority citation for part 582 continues to read as follows:

Authority: 5 U.S.C. 552a; 15 U.S.C. 1673; E.O. 12897.

15. In § 582.305, paragraphs (c) and (g) are revised and paragraph (m) is added to read as follows:

§ 582.305 Honoring legal process.

* * * * *

(c)(1) The filing of an appeal by an employee-obligor will not generally delay the processing of a garnishment action. If the employee-obligor establishes to the satisfaction of the employee-obligor's agency that the law of the jurisdiction which issued the legal process provides that the processing of the garnishment action shall be suspended during an appeal, and if the employee-obligor establishes that he or she has filed an appeal, the employing agency shall comply with the applicable law of the jurisdiction and delay or suspend the processing of the garnishment action.

(2) Notwithstanding paragraph (c)(1) of this section, the employing agency shall not be required to establish an escrow account to comply with the legal process even if the applicable law of the jurisdiction requires private employers to do so.

* * * * *

(g)(1) Neither the United States, and executive agency, nor any disbursing officer shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part.

(2) Neither the United States, an executive agency, nor any disbursing officer shall be liable under this part to pay money damages for failure to comply with the legal process.

* * * * *

(m) Within 30 days following the collection of the amount required in the garnishment order, the creditor may submit a final statement of interest that accrued during the garnishment process, and the employing agency shall process the statement for payment, provided the garnishment order authorizes the collection of such interest. This final statement of interest should be accompanied by a statement of account showing how the interest was computed.

16. In § 582.402, paragraph (a) is revised to read as follows:

§ 582.402 Maximum garnishment limitations.

* * * * *

(a) Unless a lower maximum limitation is provided by applicable State or local law, the maximum part of an employee-obligor's aggregate disposable earnings subject to garnishment to enforce any legal debt other than an order for child support or alimony, including any amounts withheld to offset administrative costs as provided for in § 582.305(k), shall not exceed 25 percent of the employee-obligor's aggregate disposable earnings for any workweek. As appropriate, State or local law should be construed as providing a lower maximum limitation where legal process may only be processed on a one at a time basis. Where an agency is garnishing 25 percent or more of an employee-obligor's aggregate disposable earnings for any workweek in compliance with legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act, no additional amount may be garnished in compliance with legal process under this part. Furthermore, the following dollar limitations, which are contained in title 29 of the Code of Federal Regulations, part 870, must be applied in determining the garnishable amount of the employee's aggregate disposable earnings:

(1) If the employee-obligor's aggregate disposable earnings for the workweek are in excess of 40 times the Fair Labor Standards Act (FLSA) minimum hourly wage, 25 percent of the employee-obligor's aggregate disposable earnings may be garnished. For example, effective September 1, 1997, when the FLSA minimum wage rate is $5.15 per hour, this rate multiplied by 40 equals $206.00 and thus, if an employee-obligor's disposable earnings are in excess of $206.00 for a workweek, 25 percent of the employee-obligor's disposable earnings are subject to garnishment.

(2) If the employee-obligor's aggregate disposable earnings for a workweek are less than 40 times the FLSA minimum hourly wage, garnishment may not exceed the amount by which the employee-obligor's aggregate disposable earnings exceed 30 times the current minimum wage rate. For example, at an FLSA minimum wage rate of $5.15 per hour, the amount of aggregate disposable earnings which may not be garnished is $154.50 [$5.15 × 30]. Only the amount above $154.50 is garnishable.

(3) If the employee-obligor's aggregate disposable earnings in a workweek are equal to or less than 30 times the FLSA minimum hourly wage, the employee-obligator's earnings may not be garnished in any amount.

* * * * *

17. Section 582.501 is revised to read as follows:

§ 582.501 Rules, regulations, and directives by agencies.

Appropriate officials of all agencies shall, to the extent necessary, issue implementing rules, regulations, or directives that are consistent with this part or as are otherwise in accordance with statutory law.

[FR Doc. 98–7573 Filed 3–25–98; 8:45 am]
BILLING CODE 6325–01–M

federal register

Thursday
March 26, 1998

Part III

Department of Education

Regional Resource and Federal Center Programs; Notice

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DEPARTMENT OF EDUCATION

Regional Resource and Federal Center Programs

AGENCY: Department of Education.

ACTION: Notice of proposed waiver and additional activities.

SUMMARY: The Secretary proposes to waive the requirements in EDGAR at 34 CFR 75.261 as applied to the currently-funded Regional Resource Centers and to require the Centers to carry out certain additional activities. Section 75.261 sets forth the conditions for extending a project period, including the general prohibition against extending projects that involve the obligation of additional Federal funds. The Secretary proposes to issue continuation awards to the Regional Resource Center Programs in order to ensure the most efficient use of Federal funds. The Department is therefore soliciting public comment on the proposed waiver and the new activities that the RRCs would undertake.

DATES: Comments must be received on April 27, 1998.

ADDRESSES: All comments concerning this proposal should be addressed to Debra Sturdivant or Marie Roane, U.S. Department of Education, 600 Independence Avenue, SW., Room 3527, Switzer Building, Washington, DC 20202–2641.

FOR FURTHER INFORMATION CONTACT: Debra Sturdivant, Telephone: (202) 205–8038, or Marie Roane, Telephone: (202) 205–8451. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 A.M. and 8:00 P.M. Eastern Standard Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On December 14, 1992, the Department issued a Notice Inviting Applications for New Awards under the Regional Resource Center Program for Fiscal Year 1992. In this notice the Department announced that it would make six awards of up to 60 months under 34 CFR 75.105(c)(3) and the Individuals with Disabilities Education Act (IDEA), which directed the Secretary to support the establishment of Regional Centers that provide consultation, technical assistance and training to State educational agencies and, through those State educational agencies, to local educational agencies and to other appropriate public agencies providing special education and related services and early intervention services.

The grant period for the six centers ends May 31, 1998. In order to carry out activities relating to implementation of the IDEA Amendments of 1997 as stated by the Senate Appropriations Committee in its report accompanying the Department's fiscal year 1998 appropriations act, it is necessary to issue continuation awards to the existing grantees. Specifically, the Senate report states that the Secretary should provide training and disseminate information to State and local administrators, teachers, related services personnel, parents of children with disabilities, and other appropriate parties on the implementation of the 1997 amendments.

The Department is utilizing a number of strategies to carry out this directive. Because the Regional Resource Centers (RRCs) have a primary role in assisting States in implementing the IDEA Amendments of 1997, these organizations are well-positioned to play a key part in this training and information effort. In particular, the Secretary plans for the RRCs to conduct a series of regional institutes for educational excellence. The purposes of the regional institutes are:

(1) To ensure that State education agency personnel, local school personnel and parents receive high-quality, accurate training on the IDEA Amendments of 1997 in order to improve results for students with disabilities through improved teaching and learning;

(2) To build field support as part of the implementation of the IDEA Amendments of 1997 that is community-based and grounded in the context of improving schooling and results for children; and

(3) To ensure the involvement of State education agencies, local school personnel, parents, Office of Special Education and Rehabilitative Services (OSERS)—supported technical assistance and dissemination services, State technical assistance providers, and topical research centers in the development of strategies and models to implement the IDEA Amendments of 1997.

Because the regional institutes would be held during the summer of 1998, the project period for the current Regional Resource Centers must be extended to enable the RRCs to both plan and conduct the institutes. The Secretary believes that it is essential that the RRCs conduct the institutes given the RRCs technical assistance expertise and experience in carrying out similar activities.

Based on the foregoing, the Secretary believes that it makes the most programmatic sense and is the most efficient use of Federal funds to issue continuation awards. However, to do so, the Department must waive the requirements in EDGAR at 34 CFR 75.261 as well as provide for the new activities stated in this notice. That provision includes a prohibition against project period extensions that involve the obligation of additional Federal funds.

Reasons

There is an immediate need to provide training and information to the populations that will be targeted by the regional institutes. Waiting until after a new RRC competition to hold the institutes would severely hinder the Department's efforts to address the critical needs that are now present in the regions. The current RRCs have already conducted extensive training and information activities related to State implementation of the Amendments and are best suited to conduct the regional institutes.

Therefore, the Department proposes to issue continuation awards to the current grantees for four (4) months.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and additional activities would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by this proposal are the six Centers currently receiving Federal funds. However, the proposal would not have a significant economic impact on the Centers because the waiver and additional activities would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposal would impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard to continuation awards.

Paperwork Reduction Act of 1980

This proposal has been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental

partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed waiver and additional activities.

All comments submitted in response to this proposal will be available for public inspection, during and after the comment period, in room 3521, 300 "C" Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

(Catalog of Federal Domestic Assistance Number 84.028, Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities)

Dated: March 20, 1998.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–7831 Filed 3–25–98; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23, 25 and 33
Airworthiness Standards; Rain and Hail Ingestion Standards; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25 and 33

[Docket No. 28652; Amendment Nos. 23–53, 25–95, and 33–19]

RIN 2120–AF75

Airworthiness Standards; Rain and Hail Ingestion Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish revisions to the Federal Aviation Administration's certification standards for rain and hail ingestion for aircraft turbine engines. These amendments address engine power-loss and instability phenomena attributed to operation in extreme rain or hail that are not adequately addressed by current requirements. These amendments also generally harmonize these standards with rain and hail ingestion standards being amended by the Joint Aviation Authorities (JAA). These amendments establish nearly uniform standards for engines certified in the United States under 14 CFR part 33 and in the JAA countries under Joint Airworthiness Requirements-Engines (JAR–E), thereby simplifying the certification of engine designs by the FAA and the JAA.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: John Fisher, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; telephone (781) 238–7149; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register's** electronic bulletin board service (20002–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or document number of this final rule.

Persons interested in being placed on the mailing list for future notices of proposed rulemaking and final rulemaking should request from the above office a copy of Advisory Circular No. 11–2A, Notices of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following internet address: 9–AWA–SBEFA@faa.dot.gov.

Background

Statement of the Problem

There have been a number of multiple turbine engine power-loss and instability events, forced landings, and accidents attributed to operating airplanes in extreme rain or hail. Investigations have revealed that ambient rain or hail concentrations can be amplified significantly through the turbine engine core at high flight speeds and low engine power conditions. Rain or hail through the turbine engine core may degrade compressor stability, combustor flameout margin, and fuel control run down margin. Ingestion of extreme quantities of rain or hail through the engine core may ultimately produce a number of engine anomalies, including surging, power loss, and engine flameout.

Industry Study

In 1987, the Aerospace Industries Association (AIA) initiated a study of natural icing effects on high bypass ratio (HBR) turbofan engines that concentrated primarily on the mechanical damage aspects of icing encounters. It was discovered during that study that separate power-loss and instability phenomena existed that were not related to mechanical damage. Consequently, in 1988 another AIA study was initiated to determine the magnitude of these threats and to recommend changes to part 33, if appropriate. AIA, working with the Association Europeenne des constructeurs de Materiel Aerospatial (AECMA), concluded that a potential flight safety threat exists for turbine engines installed on airplanes operating in extreme rain and hail. Further, the study concluded that the current water and hail ingestion standards of 14 CFR part 33 do not adequately address this threat.

Engine Harmonization Effort

The FAA is committed to undertaking and supporting harmonization of standards in part 33 with those in Joint Aviation Requirements-Engines (JAR–E). In August 1989, as a result of that commitment, the FAA Engine and Propeller Directorate participated in a meeting with the Joint Aviation Authorities (JAA), AIA, and AECMA. The purpose of the meeting was to establish a philosophy, guidelines, and a working relationship regarding the resolution of issues arising from standards that need harmonization, including the adoption of new standards when needed. All parties agreed to work in partnership to address jointly the harmonization task. This partnership was later expanded to include the airworthiness authority of Canada, Transport Canada.

This partnership identified seven items which were considered the most critical to the initial harmonization effort. New rain and hail ingestion standards are an item on this list of seven items and, therefore, represent a critical harmonization effort.

Aviation Rulemaking Advisory Committee Project

In December 1992, the FAA requested the Aviation Rulemaking Advisory Committee (ARAC) to evaluate the need for new rain and hail ingestion standards. This task, in turn, was assigned to the Engine Harmonization Working Group (EHWG) of the Transport Airplane and Engine Issues Group (TAEIG) on December 11, 1992 (57 FR 58840). On November 7, 1995, the TAEIG recommended to the FAA that it proceed with rulemaking and associated advisory material even

though one manufacturer expressed reservations. The FAA published a notice of proposed rulemaking on August 9, 1996 (61 FR 41688). This rule and associated advisory material reflect the ARAC recommendations.

Discussion of Comments

All interested persons have been afforded an opportunity to participate in this rulemaking, and due consideration has been given to all comments received. The commenters represent domestic and foreign industry, and foreign airworthiness authorities. Five commenters provided the FAA with comments to the NPRM.

Four commenters expressed concern with the proposed wording for §§ 23.903 and 25.903. The commenters state that the proposal could result in retroactive requirements imposed on certain engines already type certificated. Three of the four commenters further state that this part of the proposal represents a significant departure from the proposal submitted to the FAA by ARAC.

The FAA agrees. It was not the intent of the FAA to retroactively impose the new requirements on an engine design already type certificated unless service history indicates that an unsafe condition is present. The FAA has changed the wording for §§ 23.903 and 25.903 back to that originally proposed by the ARAC.

All five commenters found a number of typographical errors and suggested some editorial changes. One notable typographical error appeared in the "Disposition of Comments" section of the preamble of the proposal. When addressing a concern that the hail threat definition was apparently rounded up to 10 g/m^3, the value 8/3 g/m^3 was incorrect and should have been written as 8.7 g/m^3.

The FAA also agrees to the other recommendations by the commenters and the following grammatical corrections and changes to § 33.78 and Appendix B have been made to this rule:

Section 33.78(a)(1): "Critical inlet fact area" has been changed to "Critical inlet face area" and the last sentence revised to read, "the hailstones shall be ingested in a rapid sequence to simulate a hailstone encounter and the number and size of the hailstones shall be determined as follows:".

Section 33.78(a)(1)(ii): The term "one 20-inch" has been changed to "one 2-inch".

Section 33.78(a)(2): The following has been added to the beginning of the paragraph, "In addition to complying with paragraph (a)(1) of this section and", and a comma has been added immediately following the phrase "or loss of acceleration and deceleration capability".

Section 33.78(b)(4): "deceleration" has been replaced with "acceleration".

Appendix B, Table B3: "Contribution to total LWC (%)" has been changed to "Contribution to total RWC (%)".

Appendix B, Table B4: The term "0.49" has been changed to "0–4.9", and "hailstone" has been replaced with "hail" in the title, column heading, and footnote.

One commenter provided an additional clarifying statement with respect to the hail threat level variations obtained from the Industry Study. Given an extremely remote encounter probability and a typical thirty second exposure to severe hail, the assessed hail threat level varies from 8.7 g/m^3 to 10.2 g/m^3, depending upon the airspeed of the aircraft traversing the hail shaft.

The FAA agrees with the commenter's additional explanation of the assessed hail threat variation. However, the discussion of the Industry Study in the proposal is technically correct.

One commenter states the need for advisory material to accompany the rule to clarify various terms and criteria contained in the rule.

The FAA agrees. An extensive advisory circular (AC) was drafted providing explanation of the various terms and criteria contained in the rule. The FAA issued a notice of availability of proposed AC and request for comments on September 5, 1996 (61 FR 46893). Further information regarding this AC can be obtained by contacting the FAA at the address specified under FOR FURTHER INFORMATION CONTACT:

One commenter suggested changes to the preamble discussion regarding power loss and performance degradation. The commenter did not suggest nor imply that any changes to the proposed rule were needed. The FAA need not address those comments since they do not affect the meaning of these regulations.

One commenter states that the criterion of no flameout contained in § 33.78(a)(2) and § 33.78(b) was excessive. The commenter further states that many engines are equipped with automatic re-ignition systems that would ensure quick recovery from a flameout.

The FAA disagrees. Automatic re-ignition systems can facilitate quick recovery from a flameout as a result of a momentary ingestion, such as an ice shed. However, the rain and hail ingestion threats addressed by the new standards are not momentary, and have been defined for purposes of certification testing as 30 seconds duration for hail and 3 minutes duration for rain. Once flameout occurs under these conditions, it is unlikely that the engine will be capable of recovery until the ingestion of rain or hail ceases, with or without an automatic re-ignition system. Also, for actual encounters of severe rain and hail, it is likely that the engine will continue to ingest water, at lower concentrations, after exiting the area of severe rain or hail. The effect of this ingested water is to lower the starting capability of the engine. Therefore, if an airplane encounters severe rain or hail with installed engines that are susceptible to flameout, the airplane will be susceptible to an all engine out, forced landing. For these reasons, demonstrating tolerance to flameout under conditions of extreme rain and hail is a primary objective of the new standards.

One commenter states that the acceptance criteria for rain and hail ingestion contained in § 33.78(a)(2) and § 33.78(b) appeared to be more stringent than the acceptance for ice ingestion. The commenter believes that the acceptance criteria for rain and hail ingestion should be less stringent than for ice ingestion, since ice ingestion is a more common occurrence than hail ingestion.

The FAA concurs with the commenter that the stringency of acceptance criteria should be proportional to the occurrence rate of the threat being assessed. However, the FAA disagrees with the commenter's view that the acceptance criteria for rain and hail ingestion are more stringent than for ice ingestion. Some amount of sustained power or thrust loss is permitted following an ice ingestion test. Also, the FAA would accept momentary but recoverable surges and stalls encountered while testing to the new rain and hail ingestion standards, but has not historically accepted momentary surges and stalls following an ice ingestion test. Flameout, run down, continued or non-recoverable surge or stall, and loss of acceleration and deceleration are unacceptable conditions for rain, hail and ice ingestion.

Finally, the FAA has made the following minor editorial changes to better align this rule with recent changes to the JAA's requirements. These changes do not affect the scope of the rule or change the intent of these sections.

Section 33.78(a)(1): The phrase "maximum true air speed" replaces the phrase "maximum rough air speed", and the phrase "operating in rough air" is added following the words "representative aircraft".

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Section 33.78(a)(1)(i) and (ii): The word "area" is changed to read "areas".

Section 33.78(c): In the first sentence the phrase "complying with paragraph (a)(1) of this section" is changed to read "complying with paragraphs (a)(1) and (a)(2) of this section.

Appendix B: The word "hailstones" is changed to read "hail" in the introductory paragraph and also in Table B4.

After careful review of all the comments, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), there are no information collection requirements associated with this final rule.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Incremental Costs

The proposed rule will permit a range of compliance options, thereby enabling manufacturers to select cost-minimizing approaches. Approaches that maximize the use of analytical methods will most likely be the least expensive means to demonstrate compliance, while approaches that rely primarily on engine testing in a simulated rain and hail environment will likely be the most costly. Incremental certification cost estimates supplied by industry varied depending on engine model and the testing method used.

FAA conservatively estimates that incremental certification costs for an airplane turbine engine design will be approximately $627,000—this includes $300,000 in additional engineering hours, and $327,000 for the prorated share of the cost of a test facility.

Based on statements from industry, the FAA expects that, once Rain/Hail centrifuging and engine cycle models are established, compliance will be accomplished through design modifications that will have little impact on manufacturing costs. Such design features may affect: (1) fan blade/propeller, (2) spinner/nose cone, (3) bypass splitter, (4) engine bleeds, (5) accessory loads, (6) variable stator scheduling, and (7) fuel control. Similarly, the FAA expects that the rule will have a negligible effect on operating costs.

Expected Benefits

Rain or hail related in-flight engine shutdowns are rare occurrences. This is due, in large part, to the high quality of meteorological data available to ground controllers and pilots, and to well established weather avoidance procedures. However, while such events are infrequent, they pose a serious hazard because they typically occur during a critical phase of flight where recovery is difficult or impossible.

An examination of the FAA accident/incident database system and National Transportation Safety Board (NTSB) records revealed two accidents that were the result of inflight engine shutdown or rundowns caused by excessive water ingestion. In each case, the aircraft was in the descent phase of flight. These accidents form the basis of the expected benefits of the subject rule. However, what follows should be considered a conservative estimate of the rule's potential benefits for three reasons.

First, the rule should have the effect of increasing turbine engine water ingestion tolerance regardless of the source of water Accident/incident records show that many events (not included in the benefits estimates that follow) were caused by other forms of water such as snow and graupel. It is possible that some of these cases would have benefited from the subject rule.

Second, several other incidents, while not resulting in a crash, nevertheless had catastrophic potential. This potential could be exacerbated by the development of more efficient turbofan powerplants which have permitted large aircraft designs incorporating fewer engines. An industry study identified seven events (not recorded in either the FAA or NTSB databases) in which rain and/or hail affected two or more engines and resulted in an inflight shutdown of at least one engine.

Third, heavy rain and hail are often accompanied by severe turbulence and windshear. While recovery from a water induced engine shutdown is frequently successful, the ability to maintain engine power during an encounter with an unexpected downdraft could be crucial to avoiding a crash.

The available accident and aircraft usage data suggest the categories that are used to classify the benefits of the subject rule. These classifications are: (1) Large air carrier aircraft (operated by major and national air carriers), and (2) other air carrier aircraft (operated by large regional, medium regional, commuter, and other small certificated air carriers). An examination of accident records for the 20-year period 1975–1994 indicates that, in the absence of the subject rule, the probability of a hull loss due to a water induced loss of engine power is 0.0094 per million departures for large air carriers, and 0.0249 per million departures for other air carriers.

The calculation of the rule's benefits, then, depends on the degree to which the rule can reduce this risk. According to industry representatives, compliance with the revised water ingestion standards will reduce the rate of engine power loss events by two orders of magnitude. This analysis assumes that the rule's effect on the accident rate will be proportionately equal to the rule's effect on the event rate.

Using projections from the FAA Aviation Forecast, this analysis assumes that the average large air carrier airplane has 168 seats and a load factor of 61%. The average regional air carrier airplane is assumed to have 30 seats and a load factor of 51%. The estimated distribution of fatal, serious, and minor injuries is based on the actual distribution of casualties in the accidents cited above. On the basis of these assumptions, FAA estimates the annual benefits of prevented casualties per airplane will be $3,360 for large air carriers and $618 for other air carriers.

Benefits and Costs Analysis

The benefits and costs of the rule are compared for two representative engine certifications: (1) An engine designed for operation on a large jet transport (corresponding to the "large air carrier" category described earlier), and (2) an engine designed for operation on a regional transport (corresponding to the "other air carrier" category).

For each certification, the following assumptions apply: (1) 50 engines are produced per year for 10 years (500 total

engines produced per certification), (2) incremental certification costs are incurred in the year 2000, (3) engine production begins in the year 2002, (4) the first engines enter service in the year 2003, (5) each engine is retired after 10 years, (6) the discount rate is 7%. Also, in order to compare incremental engine costs with expected benefits (which are expressed in terms of the reduction in the aircraft accident rate) this analysis assumes that each aircraft has two engines.

Under the assumptions enumerated above, total lifecycle benefits for a representative engine designed for operation on a large airplane equal approximately $9.3 million or $3.5 million at present value (1997 dollars). Total lifecycle benefits for a representative engine designed for operation on a regional airplane equal to approximately $1.8 million or $0.7 million at present value.

This analysis postulates that incremental certification costs for both representative engine designs are the same. As discussed above, incremental costs are approximately $627,000 or $512,000 at present value.

FAA finds that the rule would be cost-beneficial. Under very conservative production, service life, and incremental engine certification cost assumption, the expected discounted benefits of prevented casualties and aircraft damage will exceed costs by a ratio ranging from 6.9 to 1 for large air carriers to 1.3 to 1 for other air carriers.

Harmonization Benefits

In addition to the benefits of increased safety, the rule harmonizes with JAR requirements, thus reducing costs associated with certificating aircraft turbine engines to differing airworthiness standards.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposal and to explain the rational for their actions. The Act covers a wide range of small entities, including small businesses, non-for-profit organizations and small governmental jurisdictions.

Agencies must perform an analysis to determine whether a rule will have a significant economic impact on a substantial number of small entities; if the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA).

However, if after an analysis for a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. Section 605(b) of the 1980 act provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required preliminary analysis of the proposal and determined that it would not have a significant economic impact on a substantial number of small entities. That determination was published in the **Federal Register** on August 9, 1996 as part of the Notice of Proposed Rulemaking. No comments were received regarding the economic analysis of the rule. No substantial changes were made in the final rule from the proposed rule, and estimated costs were not significantly modified. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The rule will have little or no effect on trade for either U.S. firms marketing turbine engines in foreign markets or foreign firms marketing turbine engines in the U.S. Generally, this rule harmonizes FAA requirements with existing and proposed JAA requirements.

Federalism Implication

The regulations will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (The Act), enacted as Public L. 104–4 on March 22, 1995, requires each federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(A) of The Act, 2 U.S.C. 1534(A), requires the federal agency to develop an effective process to permit timely input by elected officers (or their designees) of state, local, and tribal governments on a proposed "significant intergovernmental mandate". A "significant intergovernmental mandate" under The Act is any provision in a federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of The Act, 2 U.S.C. 1533, which supplements section 204(A), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this rule does not contain a significant intergovernmental or private sector mandate as defined by the act.

List of Subjects in 14 CFR Parts 23, 25 and 33

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendments

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 23, 25, and 33 as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Section 23.901 is amended by revising paragraph (d)(2) to read as follows:

§ 23.901 Installation.

* * * * *

(d) * * *

(2) Ensure that the capability of the installed engine to withstand the ingestion of rain, hail, ice, and birds into the engine inlet is not less than the

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capability established for the engine itself under § 23.903(a)(2).

* * * * *

3. Section 23.903 is amended by revising paragraph (a)(2) to read as follows:

§ 23.903 Engines.

(a) * * *

(2) Each turbine engine must either—

(i) Comply with §§ 33.77 and 33.78 of this chapter in effect on April 30, 1998; or as subsequently amended; or

(ii) Comply with § 33.77 of this chapter in effect on October 31, 1974, or as subsequently amended prior to April 30, 1998, and must have a foreign object ingestion service history that has not resulted in any unsafe condition; or

(iii) Be shown to have a foreign object ingestion service history in similar installation locations which has not resulted in any unsafe condition.

Note: § 33.77 of this chapter in effect on October 31, 1974, was published in 14 CFR parts 1 to 59, Revised as of January 1, 1975. See 39 FR 35467, October 1, 1974.

* * * * *

PART 25—AIRWORTHINESS STANDARDS; TRANSPORT CATEGORY AIRPLANES

4. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

5. Section 25.903 is amended by revising paragraph (a)(2) to read as follows:

§ 25.903 Engines.

(a) * * *

(2) Each turbine engine must either—

(i) Comply with §§ 33.77 and 33.78 of this chapter in effect on April 30, 1998 or as subsequently amended; or

(ii) Comply with § 33.77 of this chapter in effect on October 31, 1974, or as subsequently amended prior to April 30, 1998, and must have a foreign object ingestion service history that has not resulted in any unsafe condition; or

(iii) Be shown to have a foreign object ingestion service history in similar installation locations which has not resulted in any unsafe condition.

Note: § 33.77 of this chapter in effect on October 31, 1974, was published in 14 CFR parts 1 to 59, Revised as of January 1, 1975. See 39 FR 35467, October 1, 1974.

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

6. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40113, 44701–44702, 44704.

7. Section 33.77 is amended by revising paragraphs (c) and (e) to read as follows:

§ 33.77 Foreign object ingestion.

* * * * *

(c) Ingestion of ice under the conditions prescribed in paragraph (e) of this section, may not cause a sustained power or thrust loss or require the engine to be shut down.

* * * * *

(e) Compliance with paragraphs (a), (b), and (c) of this section must be shown by engine test under the following ingestion conditions:

Foreign object	Test quantity	Speed of foreign object	Engine operation	Ingestion
Birds:				
3-ounce size	One for each 50 square inches of inlet area, or fraction thereof, up to a maximum of 16 birds. Three-ounce bird ingestion not required if a 1½-pound bird will pass the inlet guide vanes into the rotor blades.	Liftoff speed of typical aircraft.	Takeoff	In rapid sequence to simulate a flock encounter and aimed at selected critical areas.
1½-pound size	One for the first 300 square inches of inlet area, if it can enter the inlet, plus one for each additional 600 square inches of inlet area, or fraction, thereof up to a maximum of 8 birds.	Initial climb speed of typical aircraft.	Takeoff	In rapid sequence to simulate a flock encounter at selected critical areas.
4-pound size	One, if it can enter the inlet	Maximum climb speed of typical aircraft, if the engine has inlet guide vanes.	Maximum cruise	Aimed at critical area.
		Liftoff speed of typical aircraft, if the engine does not have inlet guide vanes.	Takeoff	Aimed at critical area.
Ice:				
Maximum accumulation on a typical inlet cowl and engine face resulting from a 2-minute delay in actuating anti-icing system, or a slab of ice which is comparable in weight or thickness for that size engine..	Sucked in		Maximum cruise	To simulate a continuous maximum icing encounter at 25° F.

NOTE: The term "inlet area" as used in this section means the engine inlet projected area at the front face of the engine. It includes the projected area of any spinner or bullet nose that is provided.

8. Section 33.78 is added to part 33, to read as follows:

§ 33.78 Rain and hail ingestion.

(a) *All engines.* (1) The ingestion of large hailstones (0.8 to 0.9 specific gravity) at the maximum true air speed, up to 15,000 feet (4,500 meters), associated with a representative aircraft operating in rough air, with the engine at maximum continuous power, may not cause unacceptable mechanical damage or unacceptable power or thrust loss after the ingestion, or require the engine to be shut down. One-half the number of hailstones shall be aimed randomly over the inlet face area and the other half aimed at the critical inlet face area. The hailstones shall be ingested in a rapid sequence to simulate a hailstone encounter and the number and size of the hailstones shall be determined as follows:

(i) One 1-inch (25 millimeters) diameter hailstone for engines with inlet areas of not more than 100 square inches (0.0645 square meters).

(ii) One 1-inch (25 millimeters) diameter and one 2-inch (50 millimeters) diameter hailstone for each 150 square inches (0.0968 square meters) of inlet area, or fraction thereof, for engines with inlet areas of more than 100 square inches (0.0645 square meters).

(2) In addition to complying with paragraph (a)(1) of this section and except as provided in paragraph (b) of this section, it must be shown that each engine is capable of acceptable operation throughout its specified operating envelope when subjected to sudden encounters with the certification standard concentrations of rain and hail, as defined in appendix B to this part. Acceptable engine operation precludes flameout, run down, continued or non-recoverable surge or stall, or loss of acceleration and deceleration capability, during any three minute continuous period in rain and during any 30 second continuous period in hail. It must also be shown after the ingestion that there is no unacceptable mechanical damage, unacceptable power or thrust loss, or other adverse engine anomalies.

(b) *Engines for rotorcraft.* As an alternative to the requirements specified in paragraph (a)(2) of this section, for rotorcraft turbine engines only, it must be shown that each engine is capable of acceptable operation during and after the ingestion of rain with an overall ratio of water droplet flow to airflow, by weight, with a uniform distribution at the inlet plane, of at least four percent. Acceptable engine operation precludes flameout, run down, continued or non-recoverable surge or stall, or loss of acceleration and deceleration capability. It must also be shown after the ingestion that there is no unacceptable mechanical damage, unacceptable power loss, or other adverse engine anomalies. The rain ingestion must occur under the following static ground level conditions:

(1) A normal stabilization period at take-off power without rain ingestion, followed immediately by the suddenly commencing ingestion of rain for three minutes at takeoff power, then

(2) Continuation of the rain ingestion during subsequent rapid deceleration to minimum idle, then

(3) Continuation of the rain ingestion during three minutes at minimum idle power to be certified for flight operation, then

(4) Continuation of the rain ingestion during subsequent rapid acceleration to takeoff power.

(c) *Engines for supersonic airplanes.* In addition to complying with paragraphs (a)(1) and (a)(2) of this section, a separate test for supersonic airplane engines only, shall be conducted with three hailstones ingested at supersonic cruise velocity. These hailstones shall be aimed at the engine's critical face area, and their ingestion must not cause unacceptable mechanical damage or unacceptable power or thrust loss after the ingestion or require the engine to be shut down. The size of these hailstones shall be determined from the linear variation in diameter from 1-inch (25 millimeters) at 35,000 feet (10,500 meters) to ¼-inch (6 millimeters) at 60,000 feet (18,000 meters) using the diameter corresponding to the lowest expected supersonic cruise altitude. Alternatively, three larger hailstones may be ingested at subsonic velocities such that the kinetic energy of these larger hailstones is equivalent to the applicable supersonic ingestion conditions.

(d) For an engine that incorporates or requires the use of a protection device, demonstration of the rain and hail ingestion capabilities of the engine, as required in paragraphs (a), (b), and (c) of this section, may be waived wholly or in part by the Administrator if the applicant shows that:

(1) The subject rain and hail constituents are of a size that will not pass through the protection device;

(2) The protection device will withstand the impact of the subject rain and hail constituents; and

(3) The subject of rain and hail constituents, stopped by the protection device, will not obstruct the flow of induction air into the engine, resulting in damage, power or thrust loss, or other adverse engine anomalies in excess of what would be accepted in paragraphs (a), (b), and (c) of this section.

9. Appendix B is added to part 33, to read as follows:

Appendix B to Part 33—Certification Standard Atmospheric Concentrations of Rain and Hail

Figure B1, Table B1, Table B2, Table B3, and Table B4 specify the atmospheric concentrations and size distributions of rain and hail for establishing certification, in accordance with the requirements of § 33.78(a)(2). In conducting tests, normally by spraying liquid water to simulate rain conditions and by delivering hail fabricated from ice to simulate hail conditions, the use of water droplets and hail having shapes, sizes and distributions of sizes other than those defined in this appendix B, or the use of a single size or shape for each water droplet or hail, can be accepted, provided that applicant shows that the substitution does not reduce the severity of the test.

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FIGURE B1 - Illustration of Rain and Hail Threats. Certification concentrations are obtained using Tables B1 and B2.

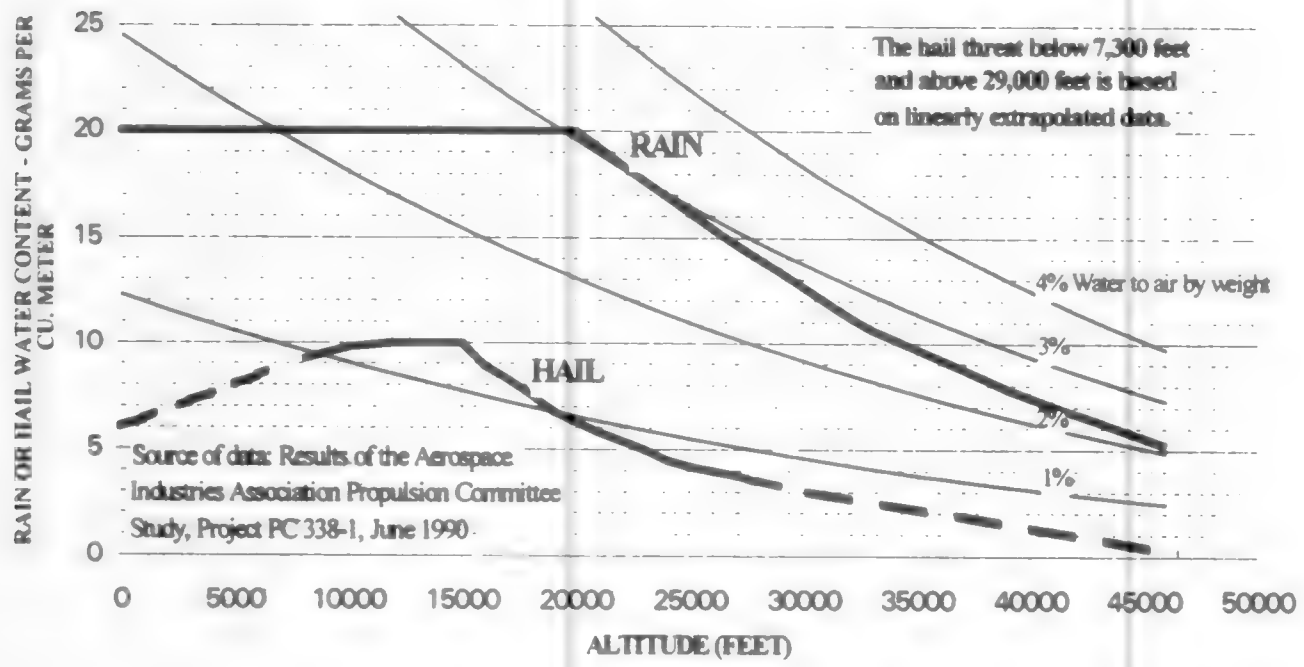

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TABLE B1.—CERTIFICATION STANDARD ATMOSPHERIC RAIN CONCENTRATIONS

Altitude (feet)	Rain water content (RWC) (grams water/ meter^3 air)
0	20.0
20,000	20.0
26,300	15.2
32,700	10.8
39,300	7.7
46,000	5.2

RWC values at other altitudes may be determined by linear interpolation.

NOTE: Source of data—Results of the Aerospace Industries Association (AIA) Propulsion Committee Study, Project PC 338–1, June 1990.

TABLE B2.—CERTIFICATION STANDARD ATMOSPHERIC HAIL CONCENTRATIONS

Altitude (feet)	Hail water content (HWC) (grams water/ meter^3 air)
0	6.0
7,300	8.9
8,500	9.4
10,000	9.9
12,000	10.0
15,000	10.0
16,000	8.9
17,700	7.8
19,300	6.6
21,500	5.6
24,300	4.4
29,000	3.3
46,000	0.2

HWC values at other altitudes may be determined by linear interpolation. The hail threat below 7,300 feet and above 29,000 feet is based on linearly extrapolated data.

Note: Source of data—Results of the Aerospace Industries Association (AIA Propulsion Committee (PC) Study, Project PC 338–1, June 1990.

TABLE B3.—CERTIFICATION STANDARD ATMOSPHERIC RAIN DROPLET SIZE DISTRIBUTION

Rain droplet diameter (mm)	Contribution total RWC (%)
0–0.49	0
0.50–0.99	2.25
1.00–1.49	8.75
1.50–1.99	16.25
2.00–2.49	19.00
2.50–2.99	17.75
3.00–3.49	13.50
3.50–3.99	9.50
4.00–4.49	6.00
4.50–4.99	3.00
5.00–5.49	2.00
5.50–5.99	1.25
6.00–6.49	0.50
6.50–7.00	0.25
Total	100.00

Median diameter of rain droplets in 2.66 mm

Note: Source of data—Results of the Aerospace Industries Association (AIA Propulsion Committee (PC) Study, Project PC 338–1, June 1990.

TABLE B4.—CERTIFICATION STANDARD ATMOSPHERIC HAIL SIZE DISTRIBUTION

Hail diameter (mm)	Contribution total HWC (%)
0–4.9	0
5.0–9.9	17.00
10.0–14.9	25.00
15.0–19.9	22.50
20.0–24.9	16.00
25.0–29.9	9.75
30.0–34.9	4.75
35.0–39.9	2.50
40.0–44.9	1.50

TABLE B4.—CERTIFICATION STANDARD ATMOSPHERIC HAIL SIZE DISTRIBUTION—Continued

Hail diameter (mm)	Contribution total HWC (%)
45.0–49.9	0.75
50.0–55.0	0.25
Total	100.00

Median diameter of hail is 16 mm

Note: Source of data—Results of the Aerospace Industries Association (AIA Propulsion Committee (PC) Study, Project PC 338–1, June 1990.

Issued in Washington, DC, on March 20, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–7902 Filed 3–25–98; 8:45 am]

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Federal Register
Vol. 63, No. 59
Friday, March 27, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1010]

Bank Holding Companies and Change in Bank Control; Clarification to the Board's Section 20 Orders

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Conditions to Board Orders.

SUMMARY: The Board is clarifying one of the operating standards established in its decisions under the Bank Holding Company Act and section 20 of the Glass-Steagall Act permitting a nonbank subsidiary of a bank holding company to underwrite and deal in securities. The Board is modifying the customer disclosure operating standard to make clear that a section 20 subsidiary operating off bank premises may satisfy the standard by providing a one-time disclosure in writing when an investment account is opened.

EFFECTIVE DATE: March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Corsi, Senior Counsel, (202) 452–3275, *Legal Division;* Michael J. Schoenfeld, Senior Supervisory Financial Analyst, (202) 452–2781, Division of Banking Supervision and Regulation; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins, (202) 452–3544.

SUPPLEMENTARY INFORMATION: In August 1997 the Board approved a substantial revision to the prudential limitations governing the activities of section 20 subsidiaries of bank holding companies.[1] The Board removed all of the existing firewalls and adopted in their place 8 operating standards.[2] Operating standard 4(i) mandates that a section 20 subsidiary provide its retail customers with the same oral and written disclosures that are required of depository institutions by the Interagency Statement on the Retail Sale of Nondeposit Investment Products (Interagency Statement),[3] even when the section 20 subsidiary is operating off bank premises.[4]

The Interagency Statement generally applies to retail sales of securities and other nondeposit investment products on the premises of depository institutions, and requires that customers be informed that the products being sold are not FDIC-insured, are not deposits of or guaranteed by any depository institution, and are subject to investment risks, including possible loss of principal. The Statement requires that these disclosures be given orally during sales presentations, in connection with investment advice, and when an investment account is opened. Written disclosures also are required when an investment account is opened.[5] Disclosures are generally required in advertisements and promotional materials as well as in customer confirmations and account statements.

A section 20 subsidiary, like any affiliated or unaffiliated broker, operating on the premises of a depository institution is subject to the provisions of the Interagency Statement. The operating standards extend the disclosure requirements of the Interagency Statement to apply even when a section 20 subsidiary is operating off the premises of a depository institution.

The Board recently received a request from several bank holding companies that control section 20 subsidiaries to clarify the operating standard on disclosures. These holding companies believe that requiring a section 20 subsidiary to comply with the oral disclosures mandated by the Interagency Statement when operating off the premises of a depository institution is excessively burdensome. The holding companies contend that it is not unusual for customers to call a broker several times a day to solicit the broker's views on a particular security. The companies believe that requiring brokers to provide oral disclosures to customers in every instance is potentially damaging to customer relationships and serves no purpose.

The Board retained a disclosure requirement as one of the section 20 operating standards to avoid customer confusion regarding whether products sold by a section 20 subsidiary are federally insured or guaranteed by an affiliated bank. The Board sought to limit the burden of the disclosure requirement on section 20 subsidiaries by requiring only disclosures to retail customers, and requiring the disclosures in the Interagency Statement, which are familiar to banking organizations. The Board stated that the disclosure requirement provides some benefit at minimal cost.

The requesting bank holding companies are now stating that the cost of complying with the disclosure requirement is higher than anticipated when the Board adopted the operating standards. The cost has become particularly apparent in view of the large numbers of registered representatives employed by broker-dealers that have been acquired by bank holding companies in recent months. The burden on large numbers of brokers in complying with the oral disclosure requirement, and the burden on institutions of monitoring compliance with the requirement does not appear to be offset by a corresponding benefit. The potential for customer confusion regarding the nature of products being purchased should be less when a section 20 subsidiary is not operating on bank premises. Accordingly, it appears appropriate to reduce the regulatory burden on bank holding companies in these instances.

When a section 20 subsidiary is operating off bank premises, the concern regarding customer confusion should be adequately mitigated if, when a retail customer opens an investment account, the subsidiary provides the customer with the written disclosures required by the Interagency Statement in that situation. None of the other provisions of the Interagency Statement would apply to a section 20 subsidiary unless it is engaged in activities through arrangements with a bank that are

[1] 62 FR 45295 (August 27, 1997). Section 20 subsidiaries are companies that underwrite and deal in, to a limited extent, securities that a member bank may not underwrite or deal in.

[2] These operating standards are set out at 12 CFR 225.200.

[3] I FRRS ¶ 3–1579.51.

[4] 12 CFR 225.200(b)(4)(i).

[5] The Interagency Statement states that customers should sign a statement acknowledging that they understand the written disclosures that they receive.

covered by the Interagency Statement. This revised requirement should relieve some of the compliance burden on section 20 subsidiaries while continuing to mitigate the concerns expressed by the Board in adopting the disclosure requirement.

Public Comment and Deferred Effective Date

The Board does not believe that the notice, public comment and delayed effective date requirements of the Administrative Procedure Act at 5 U.S.C. 553 apply with respect to this action. The requirements of section 553 do not apply when an agency finds that notice and public procedure thereon are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). Similarly, a delayed effective date is not required with respect to agency action that relieves a restriction. 5 U.S.C. 553(d)(1).

The Board believes that notice, public procedure and a delayed effective date are unnecessary in connection with this action. The Board recently amended this restriction after providing notice and seeking public comment. Furthermore, this action would relieve a restriction on bank holding companies that operate section 20 subsidiaries. Accordingly, the Board concludes that the requirements of section 553 do not apply to this action.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR Part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, 3908, and 3909.

2. Section 225.200 is amended by revising paragraph (b)(4)(i) to read as follows:

§ 225.200 Conditions to Board's section 20 orders.

* * * * *

(b) *Conditions.* * * *

(4) *Customer disclosure*—(i) *Disclosure to section 20 customers.* A section 20 subsidiary shall provide, in writing, to each of its retail customers,[4] at the time an investment account is opened, the same minimum disclosures, and obtain the same customer acknowledgment, described in the Interagency Statement on Retail Sales of Nondeposit Investment Products (Statement) as applicable in such situations. These disclosures must be provided regardless of whether the section 20 subsidiary is itself engaged in activities through arrangements with a bank that is covered by the Statement.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 23, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–7972 Filed 3–26–98; 8:45 am]

BILLING CODE 6210–01–P

[4] For purposes of this operating standard, a retail customer is any customer that is not an "accredited investor" as defined in 17 CFR 230.501(a).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–21–AD; Amendment 39–10425]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B16 series airplanes, that currently requires disabling the remote fuel/defuel panel in the cockpit; and provides for an optional modification of the remote fuel/defuel panel, which would terminate the requirement to disable the panel. This amendment reduces the applicability of the existing AD. This amendment is prompted by reports of in-flight failure of the panel that resulted when a circuit breaker on a battery bus opened due to insufficient current flow capacity. The actions specified in this amendment are intended to prevent the circuit breakers from opening during flight, which could result in irreversible loss of engine indicating and fuel quantity systems in the cockpit.

DATES: Effective June 25, 1998.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register on December 23, 1997 (62 FR 64519, December 8, 1997).

Comments for inclusion in the Rules Docket must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–21–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier Aviation Services, 1255 East Aeropark Boulevard, Tucson, Arizona 85706. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On December 1, 1997, the FAA issued AD 97–25–11, amendment 39–10235 (62 FR 64519, December 8, 1997), applicable to certain Bombardier Model CL–600–2B16 series airplanes. That action requires disabling the remote fuel/defuel panel in the cockpit, and provides for an optional modification of the remote fuel/defuel panel, which would terminate the requirement to disable the panel. That action was prompted by reports of in-flight failure of the panel that resulted when a circuit breaker on a battery bus opened due to insufficient current flow capacity. The actions required by that AD are intended to prevent the circuit breakers from opening during flight, which could result in irreversible loss of engine indicating and fuel quantity systems in the cockpit.

Actions Since Issuance of Previous Rule

The applicability of the existing AD specifies that the AD applies to Model CL–600–2B16 series airplanes that have been modified in accordance with Supplemental Type Certificate SA6003NM. However, since the

issuance of the existing AD, the FAA has discovered that the only airplanes affected by the AD are those listed in the service bulletins referred to in the existing action (Bombardier Service Bulletins SB TUS–28–20–02–1 and SB TUS–28–20–02, both dated November 13, 1997). In light of this, the FAA finds that certain airplanes affected by the existing AD should be removed from the applicability. The applicability of this AD has been revised to specify the serial numbers of the affected airplanes.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 97–25–11 to continue to require disabling the remote fuel/defuel panel in the cockpit; and to continue to provide for an optional modification of the remote fuel/defuel panel in the cockpit, which would terminate the requirement to disable the panel. This amendment reduces the applicability of the existing AD. The actions are required to be accomplished in accordance with the service bulletins referenced previously.

Cost Impact

Since this amendment merely revises the applicability of the existing AD, it adds no additional costs, and requires no additional work to be performed by affected operators. The current costs associated with this amendment are reiterated in their entirety (as follows) for the convenience of affected operators:

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $840, or $60 per airplane. This new amendment adds no new costs to affected operators.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 200 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the optional terminating action would be $12,000 per airplane.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. The only change effecting this revision is the limitation of the applicability of the existing AD. The date for compliance with the requirements of the existing rule has passed, and the FAA has already addressed requests from operators for approval of alternative methods of compliance. Therefore, the FAA does not anticipate receiving additional comments regarding this regulation.

In accordance with 14 CFR 11.17, unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received; at that time, the AD number will be specified, and the date on which the final rule will become effective will be confirmed. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–21–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

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Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10235 (62 FR 64519, December 8, 1997), and by adding a new airworthiness directive (AD), amendment 39–10425, to read as follows:

Bombardier Inc. (Formerly Canadair): Amendment 39–10425. Docket 98–NM–21–AD. Revises AD 97–25–11, Amendment 39–10235.

Applicability: Model CL–600–2B16 series airplanes, serial numbers 5113, 5117, 5127, 5134, 5136, 5144, 5150, 5151, 5166, 5174, 5175, 5176, 5179, and 5188; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the circuit breakers on the battery bus from opening during flight, which could result in irreversible loss of engine indicating and fuel quantity systems in the cockpit, accomplish the following:

(a) Within 5 days after December 23, 1997 (the effective date of AD 97–25–11, amendment 39–10235), disable the remote fuel/defuel panel, in accordance with Bombardier Service Bulletin SB TUS–28–20–02–1, dated November 13, 1997.

(b) Modification of the remote fuel/defuel panel in accordance with Bombardier Service Bulletin SB TUS–28–20–02, dated November 13, 1997, permits the remote fuel-defuel panel to be enabled, and constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Bombardier Service Bulletin SB TUS–28–20–02–1, dated November 13, 1997; or Bombardier Service Bulletin SB TUS–28–20–02, dated November 13, 1997. This incorporation by reference was approved previously by the Director of the Federal Register as of December 23, 1997 (62 FR 64519, December 8, 1997). Copies may be obtained from Bombardier Aviation Services, 1255 East Aeropark Boulevard, Tucson, Arizona 85706. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 25, 1998.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8095 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231, 241, 271, 276

[Release Nos. 33–7516, 34–39779, IA–1710, IC–23071; International Series Release No. 1125]

Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission is publishing its views on the application of the registration obligations under the U.S. federal securities laws to the use of Internet Web sites to disseminate offering and solicitation materials for offshore sales of securities and investment services.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Dudek, Chief, and Rani Doyle, Attorney, Office of International Corporate Finance at 202–942–2990 (with respect to Securities Act issues); Paula Jenson, Deputy Chief Counsel, Division of Market Regulation, at 202–942–0073 (with respect to broker-dealer registration issues), Elizabeth King, Senior Special Counsel, Division of Market Regulation, at 202–942–0140 (with respect to exchange registration issues); and Karrie McMillan, Assistant Chief Counsel, Sarah A. Wagman, Special Counsel, and Brendan C. Fox, Attorney, Division of Investment Management, at 202–942–0660 (with respect to matters relating to investment companies and investment advisers).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Internet permits market participants to disseminate advertisements and other information regarding securities and investment services across national borders. Because persons in the United States have access to this securities-related information, market participants have expressed uncertainty about the application of the registration requirements of the U.S. securities laws to their offshore Internet offers (*i.e.*, offers over Internet Web sites of securities or investment services that by their terms are not made to U.S. persons). Today, we are providing our views on how issuers, investment companies, broker-dealers, exchanges and investment advisers may use Internet Web sites to solicit offshore securities transactions and clients without the securities or investment company being registered with the Commission under the Securities Act of 1933[1] or the Investment Company Act of 1940,[2] or without the investment service provider registering under the Investment Advisers Act of 1940,[3] or the broker-dealer or exchange registering under the broker-dealer and exchange registration provisions under the Securities Exchange Act of 1934.[4]

The purpose of this interpretation is to clarify when the posting of offering or solicitation materials on Internet Web sites would not be considered activity taking place "in the United States." We are only providing clarification on this aspect of the registration requirements and are not altering the fundamental requirement that all offers and sales in

[1] 15 U.S.C. 77a, *et seq.* (the "Securities Act").

[2] 15 U.S.C. 80a–1, *et seq.* (the "Investment Company Act").

[3] 15 U.S.C. 80b–1, *et seq.* (the "Advisers Act").

[4] 15 U.S.C. 78a, *et seq.* (the "Exchange Act").

the United States be registered under the U.S. securities laws or made under an applicable exemption.

Under this interpretation, application of the registration provisions of the U.S. securities laws depends on whether Internet offers, solicitations or other communications are targeted to the United States. We would not view issuers, broker-dealers, exchanges, and investment advisers that implement measures that are reasonably designed to guard against sales or the provision of services to U.S. persons to have targeted persons in the United States with their Internet offers. Under these circumstances, Internet postings would not, by themselves, result in a registration obligation under the U.S. securities laws.

The determination of whether measures reasonably designed to guard against sales to U.S. persons have been implemented depends on the facts and circumstances, and can be satisfied through different means. We discuss in this release examples of measures that are adequate to serve this purpose for both U.S. and foreign entities. We also discuss why measures that are adequate for foreign issuers would not necessarily be adequate measures for U.S. issuers. U.S. issuers should undertake more restrictive measures when using the Internet to solicit offshore securities transactions.

This interpretation does not address the anti-fraud and anti-manipulation provisions of the securities laws, which will continue to reach all Internet activities that satisfy the relevant jurisdictional tests.[5] Even in the absence of sales in the United States, we will take appropriate enforcement action whenever we believe that fraudulent or manipulative Internet activities have originated in the United States or placed U.S. investors at risk. Further, we are not addressing the circumstances under which a U.S. court could exercise personal jurisdiction over a non-U.S. person with respect to that person's offshore Internet offer.

The interaction between the U.S. securities laws and the Internet can be expected to continue to evolve. As technology and practice develop, we may revisit these and related issues.

II. Background

A. The Global Reach of the Internet

The development of the Internet presents numerous opportunities and benefits for consumers and investors throughout the world. It also presents significant challenges for regulators charged with protecting consumers and investors. Regulators in many countries are attempting to administer their respective laws to preserve important protections provided by their regulatory schemes without stifling the Internet's vast communications potential.[6] We share this goal in our administration of the U.S. securities laws.[7]

Information posted on Internet Web sites concerning securities and investments can be made readily available without regard to geographic and political boundaries.[8] Additionally, the interactive nature of the Internet makes it possible for investors to purchase electronically the securities or services offered. For these and other reasons, we believe that the use of the Internet by market participants and investors presents significant issues under the U.S. securities laws.

Although this release focuses on Internet Web sites, the Internet offers a variety of forms of communication. We distinguish between Web site postings and more targeted Internet communication methods. More targeted communication methods are comparable to traditional mail because the sender directs the information to a particular person, group or entity. These methods include e-mail and technology that allows mass e-mailing or "spamming." Information posted on a Web site, however, is not sent to any particular person, although it is available for anyone to search for and retrieve.[9] Offerors using those more targeted technologies must assume the responsibility of identifying when their offering materials are being sent to persons in the United States and must comply fully with the U.S. securities laws.

B. Regulation of Offers

Many registration requirements under the U.S. securities laws are triggered when an offer of securities or financial services, such as brokerage or investment advisory services, is made to the general public.

- Under the Securities Act, absent an exemption, an issuer that offers or sells securities in the United States through use of the mails or other means of interstate commerce must register the offering with the Commission.[10] An offering of securities may be exempt from registration if it is conducted as a "private placement," without any general solicitation of investors.[11]
- Under the Investment Company Act, a foreign investment company may not use the mails or other means of interstate commerce to publicly offer its securities in the United States or to U.S. persons unless the investment company receives an order from the Commission permitting it to register under the Investment Company Act.[12] A foreign investment company may, however, make a private offer of its securities in the United States or to U.S. persons in reliance on one of the exclusions from the definition of "investment company" under the Investment Company Act.[13]
- Under the Advisers Act, an adviser is prohibited from using the mails or other means of interstate commerce in connection with its business as an investment adviser, unless the adviser is registered with the Commission, or is exempted or excluded from the requirement to register.[14]
- Under the Exchange Act, a broker or dealer generally must register with the Commission if it uses the mails or any means of interstate commerce to effect

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[5] The courts have recognized U.S. jurisdiction over fraudulent conduct where substantial conduct or effects occur in the United States. *See generally Itoba Ltd.* v. *LEP Group PLC*, 54 F.3d 118 (2d Cir. 1995), *cert. denied*, 516 U.S. 1044 (1996) and *Robinson* v. *TCI/US West Communications Inc.*, 117 F.3d 900 (5th Cir. 1997) (citing *Schoenbaum* v. *Firstbrook*, 405 F.2d 200 (2d Cir.), *rev'd on other grounds on rehrg. en banc*, 405 F.2d 215 (2d Cir. 1968), *cert. denied*, 395 U.S. 906 (1969) (effects test)); *Bersch* v. *Drexel Firestone Inc.*, 519 F.2d 974 (2d Cir.), *cert. denied*, 423 U.S. 1018 (1975) (conduct test); *Leasco Data Processing Equipment Corp.* v. *Maxwell*, 468 F.2d 1326 (2d Cir. 1972) (conduct test).

[6] *See* President William J. Clinton and Vice President Albert Gore, Jr., *A Framework for Global Electronic Commerce* (1997), <http://www.iitf.nist.gov/eleccomm/ecomm.htm>; European Ministerial Conference, "Global Information Networks: Realizing the Potential," July 6–8, 1997, Ministerial Declaration, Global Informational Networks, <http://www2.echo.lu/bonn/final.html>.

[7] For a discussion of recent Commission actions addressing the Internet, *see The Impact of Recent Technological Advances on the Securities Markets*, Report prepared by the Staff of the U.S. Securities and Exchange Commission pursuant to Section 510(a) of the National Securities Markets Improvements Act of 1996 (Oct. 1997) <http://www.sec.gov/news/studies/techrp97.htm>.

[8] Wilske and Schiller, *International Jurisdiction in Cyberspace: Which States May Regulate the Internet?*, <http://www.law.indiana.edu/fcj/pubs/v50/no1/wilske.html>, Section II.A.2.(c).

[9] The Web site sponsor can aid Internet searches by adding "tags" to its Web site that facilitate a search engine identifying the site as containing information relating to targeted topics. Generally, we will not view the use of tags relating to securities or investments as transforming the Web site into a targeted communication that would require additional measures to assure against sales to U.S. persons, such as blocking access by U.S. persons to the offering materials.

[10] Section 5 of the Securities Act, 15 U.S.C. 77e.

[11] *See, e.g.*, Section 4(2) of the Securities Act, 15 U.S.C. 77d(2); Regulation D [17 CFR 230.501–508].

[12] Section 7(d) of the Investment Company Act, 15 U.S.C. 80a–7(d).

[13] *See* Section 3(c)(1) and Section 3(c)(7) of the Investment Company Act, 15 U.S.C. 80a–3(c)(1), 15 U.S.C. 80a–3(c)(7). *See also* Staff no-action letter, Goodwin, Procter & Hoar (available Feb. 28, 1997) ("Goodwin Procter").

[14] Section 203(a) of the Advisers Act, 15 U.S.C. 80b–3(a).

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transactions in, or to induce or attempt to induce the purchase or sale of, any security.[15]

• Under the Exchange Act, an exchange generally must register with the Commission if it uses the mails or any means of interstate commerce for the purpose of using its facilities to effect any transaction in a security or to report any such transaction.[16]

The posting of information on a Web site may constitute an offer of securities or investment services for purposes of the U.S. securities laws.[17] Our discussion of these issues will proceed on the assumption that the Web site contains information that constitutes an "offer" of securities or investment services under the U.S. securities laws.[18] Because anyone who has access to the Internet can obtain access to a Web site unless the Web site sponsor adopts special procedures to restrict access, the pertinent legal issue is whether those Web site postings are offers *in the United States* that must be registered.

III. Offshore Offers and Solicitations on the Internet

A. General Approach

Some may argue that regulators could best protect investors by requiring registration or licensing for any Internet offer of securities or investment services that their residents could access. As a practical matter, however, the adoption of such an approach by securities regulators could preclude some of the most promising Internet applications by investors, issuers, and financial service providers.

The regulation of offers is a fundamental element of federal and some U.S. state securities regulatory schemes. Absent the transaction of business in the United States or with U.S. persons, however, our interest in regulating solicitation activity is less compelling.[19] We believe that our investor protection concerns are best addressed through the implementation by issuers and financial service providers of precautionary measures that are reasonably designed to ensure that offshore Internet offers are not targeted to persons in the United States or to U.S. persons.[20]

B. Procedures Reasonably Designed to Avoid Targeting the United States

When offerors implement adequate measures to prevent U.S. persons from participating in an offshore Internet offer, we would not view the offer as targeted at the United States and thus would not treat it as occurring in the United States for registration purposes. What constitutes adequate measures will depend on all the facts and circumstances of any particular situation. We generally would not consider an offshore Internet offer made by a non-U.S. offeror as targeted at the United States, however, if:

• The Web site includes a prominent disclaimer making it clear that the offer is directed only to countries other than the United States. For example, the Web site could state that the securities or services are not being offered in the United States or to U.S. persons, or it could specify those jurisdictions (other than the United States) in which the offer is being made;[21] and

• The Web site offeror implements procedures that are reasonably designed to guard against sales to U.S. persons in the offshore offering. For example, the offeror could ascertain the purchaser's residence by obtaining such information as mailing addresses or telephone numbers (or area code) prior to the sale. This measure will allow the offeror to avoid sending or delivering securities, offering materials, services or products to a person at a U.S. address or telephone number.

These procedures are not exclusive; other procedures that suffice to guard against sales to U.S. persons also can be used to demonstrate that the offer is not targeted at the United States. Regardless of the precautions adopted, however, we would view solicitations that appear by their content to be targeted at U.S. persons as made in the United States. Examples of this type of solicitation include purportedly offshore offers that emphasize the investor's ability to avoid U.S. income taxes on the investments.[22] We are concerned that the advice that we provide to assist those who attempt to comply with both the letter and spirit of the securities laws will be used by others as a pretext to violate those laws. Sham offshore offerings or procedures, or other schemes will not allow issuers or promoters to escape their registration obligations under the U.S. securities laws.

C. Effect of Attempts by U.S. Persons to Evade Restrictions

We recognize that U.S. persons may respond falsely to residence questions, disguise their country of residence by using non-resident addresses, or use other devices, such as offshore nominees, in order to participate in offshore offerings of securities or investment services. Thus, even if the foreign market participant has taken measures reasonably designed to guard against sales to U.S. persons, a U.S. person nevertheless could circumvent those measures.

In our view, if a U.S. person purchases securities or investment services notwithstanding adequate procedures reasonably designed to prevent the purchase, we would not view the Internet offer after the fact as having been targeted at the United

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[15] Section 15(a) of the Exchange Act, 15 U.S.C. 78o(a).

[16] Section 6 of the Exchange Act, 15 U.S.C. 78f.

[17] *See, e.g.*, Securities Act Release No. 7233, Question 20 (Oct. 6, 1995) [60 FR 53458] ("The placing of the offering materials on the Internet would not be consistent with the prohibition against general solicitation or advertising in Rule 502(c) of Regulation D.").

[18] We also assume that the Internet is an instrument of interstate commerce and that its use satisfies the "jurisdictional means" requirements of the federal securities laws. *See American Library Ass'n* v. *Pataki*, 969 F. Supp. 160, 161 (S.D.N.Y. 1997).

[19] Under a resolution adopted by the North American Securities Administrators Association ("NASAA"), states are encouraged to take appropriate steps to exempt Internet offers from the registration provisions of their securities laws when the offers indicate that the securities are not being offered to residents of their state and the offers are not otherwise specifically made to any persons in their state. Sales of the securities that were the subject of the Internet offer could be made in that state after the offering has been registered and the final prospectus has been delivered to investors, or where the sales are exempt from registration. NASAA, *Resolution Regarding Securities Offered on the Internet* (adopted Jan. 7, 1996), 1996 CCH Par. 7040 (Jan. 1996).

According to NASAA, 32 states have implemented the resolution and 15 states have indicated an intent to do so.

Several foreign authorities have provided guidance on Internet and securities related issues. *See, e.g., Policy Statement 107 on Electronic Prospectuses* (Sept. 1996) <http://www.asc.gov.au> (Australia); Notice and Interpretation Note, *Trading Securities and Providing Advice Respecting Securities on the Internet* (Mar. 3, 1997), NIN #97/9 (British Columbia, Canada).

[20] We use the term "U.S. person" as it is defined in Rule 902(k) of Regulation S under the Securities Act [17 CFR 230.902(k)], which is premised on residence in the United States, regardless of any temporary presence outside the United State. *See* Securities Act Release No. 7505 (Feb. 18, 1998) [63 FR 9632 (Feb. 25, 1998)] (renumbering CFR sections). "U.S. person" generally has the same meaning for purposes of Section 7(d) of the Investment Company Act as under Rule 902(k) of Regulation S under the Securities Act. *See* Goodwin Procter, *supra* note 13. For purposes of this release, we deem Internet offers "targeted at the United States" to include Internet offers targeted to U.S. persons. *Cf.* Rule 902(h)(2) of Regulation S [17 CFR 230.902(h)(2)] (offers targeting identifiable groups of U.S. persons offshore are not offshore transactions).

[21] The disclaimer would have to be meaningful. For example, the disclaimer could state, "This offering is intended only to be available to residents of countries within the European Union." Because of the global reach of the Internet, a disclaimer that simply states, "The offer is not being made in any jurisdiction in which the offer would or could be illegal," however, would not be meaningful. In addition, if the disclaimer is not on the same screen as the offering material, or is not on a screen that must be viewed before a person can view the offering materials, it would not be meaningful.

[22] In our view, while a relevant factor, the fact that an Internet offeror posts offering materials in English even though it is based in a non-English speaking country will not, by itself, demonstrate that the offer is targeted at the United States.

States, absent indications that would put the issuer on notice that the purchaser was a U.S. person. This information might include (but is not limited to): receipt of payment drawn on a U.S. bank; provision of a U.S. taxpayer identification or social security number; or, statements by the purchaser indicating that, notwithstanding a foreign address, he or she is a U.S. resident. Confronted with such information, we would expect offerors to take steps to verify that the purchaser is not a U.S. person before selling to that person.[23] Additionally, if despite its use of measures that appear to be reasonably designed to prevent sales to U.S. persons, the offeror discovers that it has sold to U.S. persons, it may need to evaluate whether other measures may be necessary to provide reasonable assurance against future sales to U.S. persons.

D. Third-Party Web Services

An issuer, underwriter or other type of offshore Internet offeror may seek to have its offering materials posted on a third-party's Web site. In that event, if the offeror uses a third-party Web service that employs at least the same level of precautions against sales to U.S. persons as would be adequate for the offshore Internet offeror to employ, we would not view the third-party's Web site as an offer that is targeted to the United States.[24]

When an offeror, or those acting on its behalf, uses a third-party's Web site to generate interest in the Internet offer, more stringent precautions by the offeror than those outlined in Section III.B. may be warranted. These precautions may include limiting access to its Internet offering materials to persons who can demonstrate that they are not U.S. persons. For example, additional precautions may be called for when the Internet offeror:

- Posts offering or solicitation material or otherwise causes the offer to be listed on an investment-oriented Web site that has a significant number of U.S. clients or subscribers, or where U.S. investors could be expected to search for information about investment opportunities or services; or
- Arranges for direct or indirect hyperlinks from a third-party investment-oriented page to its own Web page containing the offering material.

[23] These additional steps could include a request for further evidence (*e.g.*, a copy of a passport or driver's license).

[24] Governmental authorities or securities exchanges could post issuer information that is required by law to be filed with them, including prospectuses, on their Web sites without restriction. Securities exchanges, however, should consider the U.S. registration implications of their Web sites as a whole. *See infra* Section VII.B

IV. Additional Issues Under the Securities Act

Our Securities Act analysis assumes that the information posted on a Web site would, were we to deem it to occur in the United States, constitute an "offer" within the meaning of Section 5(c) of the Securities Act and Regulation S, a "public offering" prohibited under Section 4(2) of the Act, a "general solicitation or general advertising" prohibited under Rule 502(c) of Regulation D,[25] and a "directed selling effort" prohibited under Regulation S.[26] The focus of our analysis, then, is under what circumstances should we deem offshore Internet offers to which U.S. persons can gain access not to occur in the United States.

A. Offshore Offerings by Foreign Issuers

1. Regulation S

When a foreign issuer is making an unregistered offshore Internet offer and does not plan to sell securities in the United States as part of the offering, it should implement the general measures outlined in Section III.B. to avoid targeting the United States. Assuming that the offering is made pursuant to Regulation S, the offering must comply with all of the applicable requirements under that regulation, including the requirement that all offers and sales be made in "offshore transactions."[27]

2. U.S. Exempt Component

Foreign issuers commonly make offshore offerings concurrently with private offerings to U.S. institutional buyers. An offering exempt under Section 4(2) of the Securities Act may not involve "any public offering." Regulation D specifically prohibits the offer or sale of securities through a "general solicitation or general advertising." Publicly accessible Web site postings may not be used as a means to locate investors to participate in a pending or imminent U.S. offering relying on those provisions. If a Web site posting would be inappropriate for a U.S. private placement, an issuer should not attempt to accomplish the same result indirectly through the posting of an offshore Internet offer.

In addition to implementing the type of precautionary measures previously discussed, foreign issuers could implement other procedures to prevent their offshore Internet offers from being used to solicit participants for their U.S.-based exempt offerings, including:

- The Internet offeror could allow unrestricted access to its offshore Internet offering materials, but not permit persons responding to the offshore Internet offering to participate in its exempt U.S. offering, even if otherwise qualified to do so. In that situation, the offeror would keep a record of all persons responding over the Internet and all persons who otherwise indicate that they are responding to the offshore Internet offering;[28] *or*
- The Web site offeror could ensure that access to the posted offering materials is limited to those viewers who first provide their residence information and, in doing so, do not provide information such as a U.S. area code or address that indicates that they are a U.S. person.[29] Thus, U.S. persons could obtain access only by misrepresenting their residence information.[30]

We believe that it would not be advisable for us to dictate the use of any one particular technology or screening method to protect against general solicitation in these instances. Any less

[25] Rule 502(c) under the Securities Act [17 CFR 240.502(c)].

[26] Rule 902(c) [17 CFR 230.902(C)].

[27] Rule 902(h) and Rule 903 of Regulations S [17 CFR 230.902(h) and 230.903]. The issuer's or underwriter's use of an Internet Web site to offer securities will not, by itself, prevent bona fide offshore purchasers in a Regulation S offering from reselling into the United States pursuant to registration or an exemption, such as Rule 144A [17 CFR 230.144A], provided that: (1) those purchasers are not part of the selling group; (2) those purchasers are not affiliated with the issuer or any member of the selling group; and (3) the issuer's or underwriter's use of the Web site was not undertaken as part of an arrangement with, or on behalf of, such offshore purchasers.

[28] To identify those persons who are responding to the Internet offer, the Web site could provide telephone numbers, contact persons, or addresses that differ from those used in the offeror's other, more traditional offering materials. Under an approach suggested in staff no-action letters, the offeror could communicate with U.S. persons on the list to determine whether they are accredited investors with a view towards permitting their participation in separate, future exempt U.S. offerings by the issuer or, where the Web site offeror is an intermediary, other issuers. *See* Staff no-action letters, Royce Exchange Fund (available Aug. 28, 1996); Bateman Eichler (available Dec. 3, 1985); E.F. Hutton & Co. (available Dec. 3, 1985); Woodtrails-Seattle (available Aug. 9, 1982). Likewise, any investor solicited by the issuer or underwriter prior to or independent of the Web site posting could participate in the private offer, regardless of whether the investor may have viewed the posted offshore offering materials.

[29] This step could be accomplished in multiple ways. For example, when a person reaches the Web site and then attempts to move to a section that includes offering information, a screen could ask for the required residence information. After the user enters the information, the area code and address could be automatically and immediately screened to eliminate further access to those who match a U.S. area code or address. Alternately, the offeror could require a password and not assign a password until it verifies that address information, or it could block access by using technology that recognizes the country from which the Web site is being accessed.

[30] Web site offerors must act in good faith to screen U.S. persons from viewing offering information. A screening mechanism that suggests ways of easy bypass would not be evidence of good faith.

costly, less intrusive method that is equally or more effective than those that we have suggested would be adequate as well.

In addition, the posted offering materials should relate only to the offshore offering.[31] The materials should contain only that information (if any) concerning the private U.S. offering that is required by foreign law to be provided to investors participating in the offshore public offering.[32]

B. Offshore Offerings by U.S. Issuers

Our approach to the use of Web sites to post offshore securities offerings distinguishes between domestic and foreign issuers.[33] For the following reasons, additional precautions are justified for Web sites operated by domestic issuers purporting not to make a public offering in the United States:

- The substantial contacts that a U.S. issuer has with the United States justifies our exercise of more extensive regulatory jurisdiction over its securities-related activities;
- There is a strong likelihood that securities of U.S. issuers initially offered and sold offshore will enter the U.S. trading markets; and
- U.S. issuers and investors have a much greater expectation that securities offerings by domestic issuers will be subject to the U.S. securities laws.

Our experience with abusive practices under Regulation S indicates that we should proceed cautiously when giving guidance to U.S. issuers in the area of unregistered offshore offerings. As a result, we would not consider a U.S. issuer using a Web site to make an unregistered offer to have implemented reasonable measures to prevent sales to U.S. persons unless, in addition to the general precautions discussed above in Section III.B., the U.S. issuer implements password-type procedures that are reasonably designed to ensure that only non-U.S. persons can obtain access to the offer.[34] Under this procedure, persons seeking access to the Internet offer would have to demonstrate to the issuer or intermediary that they are not U.S. persons before obtaining the password for the site.[35]

In the context of broader Securities Act reform, we have been considering whether the current general solicitation and other offering communications restrictions on issuers and other offering participants should be modified to create greater flexibility.[36] To the extent that we reform those restrictions on offering communications in the future, we also will consider the implications of those changes for unregistered offshore Internet offerings.

C. Concurrent U.S. Registered Offering

A registered offering in the United States that takes place concurrently with an unregistered offshore Internet offer presents concerns because of the Securities Act's restrictions on making offers prior to the filing of a registration statement or, in the case of written or published offers, outside of the statutory prospectus. Consistent with these requirements, therefore, premature posting of offering information must be avoided. Existing Commission rules that provide a safe harbor for announcements of anticipated offerings provide guidance in this respect.[37] The Commission is considering whether to provide further guidance or to make further changes concerning concurrent U.S. registered offerings and offshore Internet offers in the context of broader Securities Act reforms.

D. Underwriters

Just as an issuer must take reasonable steps to avoid offers of unregistered securities in the United States, so too must persons acting on behalf of the issuer, such as underwriters or distributors. These persons, for purposes of the Securities Act, stand in the place of the issuer.

Thus, regardless of whether the underwriter is foreign or domestic, what constitutes measures reasonably designed to prevent sales to U.S. persons will depend on the status of the issuer. For example, if the issuer is domestic and precautionary measures would call for its Web site containing offshore offering information to be password-protected, so too should the information be protected on the underwriter's Web site.[38]

V. Additional Issues Under the Investment Company Act

This portion of the release addresses certain issues that arise under the Investment Company Act when a foreign fund (that is, an investment company that is organized under the laws of a jurisdiction other than the United States) makes an offshore Internet offer of its securities. In general, as with other types of securities offerings, we would not consider an Internet offer by a foreign fund to cause the fund to be subject to regulation or registration under the Investment Company Act if the foreign fund implements measures reasonably designed to guard against sales to U.S. persons.

The issue raised by the use of the Internet is whether a foreign fund's Internet offer that can be accessed by U.S. persons should be considered a public offer in the United States.[39] Consistent with our position under the Securities Act, if a foreign fund implements measures reasonably designed to guard against sales to U.S. persons, we would not consider the foreign fund's Internet offer to be targeted to U.S. persons, and therefore would not consider the Internet offer to constitute a public offer in the United

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[31] A foreign issuer that wishes to use an Internet Web site to conduct the concurrent private placement in the United States could follow the general procedures developed in the domestic context for private placements on the Internet. *See, e.g.*, Staff no-action letters, IPONET (available July 26, 1996); Lamp Technologies, Inc. (available May 29, 1997). Under these procedures, the public offer posted on the Web site may not provide a hyperlink or otherwise alert the viewer to any Web site containing private placement offering materials.

[32] Rule 135c under the Securities Act [17 CFR 230.135c] provides useful guidance on what limited information could be included on the Web site under these circumstances.

[33] We use the term "foreign issuer" as it is defined in Rule 902(e) of Regulation S [17 CFR 230.902(e)]. *See* Securities Act Release No. 7505.

[34] *See, e.g.*, IPONET and Lamp Technologies, Inc., *supra* note 31. Our interpretation therefore would allow for the creation of limited-access systems. Eventually, closed systems may develop that target only non-U.S. persons and qualified U.S. investors.

[35] *See* Securities Act Release No. 7392 at n.31 (Feb. 28, 1997) [62 FR 9258] (issuer cannot accept at face value representations by investors regarding their residence). *See also* IPONET, *supra* note 31(IPONET's activities were supervised by an entity that verified information provided to IPONET by people who filled out IPONET's on-line questionnaire. Information from the questionnaires was used to determine whether respondents qualified as accredited investors and therefore were eligible to obtain password to access password-protected Web pages where IPONET posted private offerings).

[36] Securities Act Release No. 7314 (July 25, 1996) [61 FR 40044]; Securities Act Release No. 7187 (July 10, 1995) [60 FR 356545].

[37] *See, e.g.*, Rule 135 under the Securities Act [17 CFR 230.135].

[38] This, however, would not include bona fide research that complies with the Commission's safe harbor rules for research reports. *See* Rules 137–139 under the Securities Act [17 CFR 230.137–230.139]. *Cf.* Exchange Act Rule 15a–6(a)(2) [17 CFR 240.15a–6(a)(2)] (conditional exemption from U.S. broker-dealer registration for foreign broker-dealers that furnish research reports to "major institutional investors" as defined in the rule).

[39] Section 7(d) of the Investment Company Act generally prohibits a foreign fund from using U.S. jurisdictional means to make a public offer of its securities in the United States or to U.S. persons, unless the fund receives an order from the Commission permitting it to register under the Investment Company Act. The Commission may issue such an order only if it finds that it is legally and practically feasible to enforce the provisions of the Investment Company Act effectively against the foreign fund, and that the issuance of the order is consistent with the public interest and the protection of investors.

For purposes of Section V, references to offers and sales to U.S. persons include offers or sales in the United States. Similarly, references to offers or sales in the United States include offers or sales to U.S. persons.

States subjecting the foreign fund to regulation and registration under the Investment Company Act.

An Internet offer by a foreign fund may arise in a number of situations. For example, a foreign fund could conduct an Internet offer that is targeted exclusively offshore. A foreign fund also could conduct an offshore Internet offer in addition to a private U.S. offer.[40] We discuss these situations separately below. We also address the use of the Internet by unregistered U.S. funds making private offshore offers, and the use of other forms of Internet marketing of investment company securities.

A. Internet Offers by a Foreign Fund

1. Offers Targeted Exclusively Offshore

When a foreign fund is making an unregistered offshore Internet offer and does not intend to sell securities in the United States as part of the offering, our general statements in Section III.B. outlining the need for precautionary measures to avoid targeting the United States apply here as well. We may view an Internet offer as being targeted to U.S. persons, however, if the foreign fund is engaged in activities, either as a part of or in addition to its Internet offer, that are designed to attract U.S. persons to the Internet offer, such as advertising the existence of the foreign fund's Web site in a U.S. publication.

2. Foreign Funds Conducting Offshore and Private U.S. Offers

Next, we address offshore Internet offers by foreign funds that also are conducting private U.S. offers.[41] We would not consider a foreign fund that is concurrently conducting both a private U.S. offer and an offshore Internet offer to be making a public offer of its securities in the United States if the foreign fund implements measures reasonably designed to guard against public sales of its securities to U.S. persons, and the Internet offer is not indirectly used as a general solicitation for participants in the private U.S. offer. As stated above, what constitutes adequate measures will depend on all of the facts and circumstances. In addition to implementing the type of precautionary measures discussed in Section III.B. (with one modification noted below), a foreign fund could use any procedures reasonably designed to guard against use of its Internet offer to generally solicit participants in the U.S. private offer.[42]

If a foreign fund that is concurrently conducting a private U.S. offer and an Internet offer uses a disclaimer that reflects the existence of two separate offers and indicates that the Internet offer is not being made in the United States, we would view this action as an indication that the fund has taken measures reasonably designed to guard against publicly selling its securities to U.S. persons. The disclaimer could state, for example, that *this* offer (the offshore Internet offer) is not being made in the United States (or identify the jurisdictions in which the Internet offer is being made) and that the offer and sale of securities in the United States is not permitted except pursuant to an exemption from registration.

If, however, a foreign fund directly or indirectly provides any additional information on its Web site about the types of persons to whom offers and sales can be made pursuant to an exemption under U.S. law, or provides guidance on how U.S. persons may obtain this or other purchasing information, we would view this action as an indication that the foreign fund is using its Internet offer to target the United States, except to the extent that foreign law requires that the information be disclosed.[43] Moreover, if the foreign fund provides a hyperlink, or otherwise directs U.S. persons, to another source that provides information about the private offering, we would view this action as an indication that the foreign fund is targeting the United States. In our view, either of these actions could result in the foreign fund making a public offer in the United States.

A foreign fund also may be making a public offer in the United States if it provides any other information about the private U.S. offer on its Web site, except to the extent that foreign law requires that the information be disclosed.[44] If the foreign fund wishes to provide information on its Web site relating to its private U.S. offer (other than information required by foreign law), it generally may do so without registering under the Investment Company Act if it adopts and implements password-type procedures with respect to that information.[45]

As with our position under the Securities Act, we are concerned that our guidance with respect to the Investment Company Act may be used by some foreign funds that are conducting Internet offers to engage in activities that are part of a plan or scheme to make public offers in the United States. None of our statements in this release is intended to suggest that any foreign fund could do indirectly what it could not lawfully do directly.[46]

B. Offshore Offers by U.S. Funds

As previously noted, the Commission's position on the use of the Internet for unregistered offshore offers generally distinguishes between U.S.

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[40] In addition, a foreign fund also may use the Internet exclusively to conduct a private U.S. offer. This release doe not address the ability of a foreign fund to conduct a private U.S. offer over the Internet, except to the extent that it is relevant to the foreign fund's ability to simultaneously conduct an offshore Internet offer. *See infra* note 45 and accompanying text. As discussed above in Section I, the statements made in this release do not alter the requirement that all offers and sales in the United States must be pursuant to registration under the U.S. securities laws or an applicable exemption.

[41] The staff previously took the position that under certain circumstances a foreign fund that is conducting an offshore offer also may make a private U.S. offer in reliance on the exclusion from the definition of "investment company" in Section 3(c)(1) of the Investment Company Act consistent with the public offering prohibition contained in Section 7(d). *See* Staff no-action letter, Touche Remnant & Co. (available Aug. 27, 1984) ("Touche Remnant"). In Goodwin Procter, *supra* note 13, the staff similarly took the position that under certain circumstances a foreign fund that is conducting an offshore offer also may make a private U.S. offer in reliance on the exclusion from the definition of "investment company" in Section 3(c)(7) of the Investment Company Act consistent with the public offering prohibition contained in Section 7(d). the staff also has stated that if U.S. persons become shareholders of a foreign fund for reasons beyond the control of the fund or persons acting on its behalf, the fund would not be required to count those shareholders as U.S. persons for purposes of determining whether the fund may rely on the exception from the definition of "investment company" in Section 3(c)(1) of the Investment Company Act. *See* Staff no-action letter, Investment Funds Institute of Canada (available Mar. 4, 1996). The same position applies to foreign funds relying on Section 3(c)(7) of the Investment Company Act. *See generally* Goodwin Procter, *supra* note 13. We take the position that Touche Remnant is superseded to the extent that it is inconsistent with these positions.

[42] *See* notes 28–32 *supra* and accompanying text.

[43] Although Rule 135c by its terms applies only to Section 5 of the Securities Act, we would take a similar approach with respect to the type of information that a foreign fund may, if required by foreign law, provide on its Internet site about a U.S. private offer without violating the public offering prohibition contained in Section 7(d) of the Investment Company Act. *See supra* note 32 and accompany text.

[44] An adviser to a foreign fund conducting an offshore Internet offer that also sponsors a U.S.-registered investment company with the same investment objectives and policies as the foreign fund may provide information about, or direct the viewer to, the registered U.S. offer without the Internet offer being considered to be a public offer of the foreign fund's securities in the United States.

[45] *See* Lamp Technologies, Inc. and IPONET, *supra* note 31. Prequalification and password-type procedures are intended to ensure that only persons eligible to privately purchase the securities can obtain access to a Web site used in connection with a private offer and that the dissemination of information through the Internet site does not constitute a "general solicitation" under Rule 502(c) of Regulation D under the Securities Act. In addition to the procedures discussed in Lamp Technologies, there may be other, equally effective procedures designed to restrict access to information on the Internet to those persons who are eligible to purchase securities in a private U.S. offer.

[46] *See* Section 48(a) of the Investment Company Act.

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and foreign issuers, based upon the Commission's greater interest in regulating the conduct of U.S. issuers in the United States. As noted in Section IV.B., we will not require a U.S. issuer making an offshore offer over the Internet to register the offer under the Securities Act if it uses procedures reasonably designed to ensure that only non-U.S. persons may view the offer. We conclude that the same approach should apply under the Investment Company Act to U.S. funds making offshore Internet offers. Thus, we would not consider a U.S. fund making a private offshore offer in reliance on one of the exclusions from the definition of "investment company" in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act to be making a public offer in the United States if the fund uses procedures, such as password-protected web sites, reasonably designed to ensure the private nature of the offer.[47]

As noted above, we are considering whether the current restrictions on general solicitations in connection with private offers under the Securities Act should be modified.[48] In the event that we revise current Securities Act restrictions on exempt private offers and unregistered offshore offers, we anticipate that we would consider parallel revisions under the Investment Company Act.

C. Other Forms of Internet Marketing of Investment Company Securities

We analyze Internet offers made by or on behalf of a foreign fund in generally the same manner as offers by other types of issuers.[49] If a foreign fund or persons acting on its behalf seek to use a third-party Web site to generate interest in an offshore offer, the implementation of more stringent restrictions on the offshore Internet offer may be necessary to ensure that the offer is not being directed into the United States, including limiting access to the Internet offering materials to persons who can demonstrate that they are not U.S. persons.[50]

VI. Offers of Advisory Services Under the Advisers Act

This portion of the release addresses issues that arise under the Advisers Act when a foreign adviser (that is, an investment adviser that is organized under the laws of a jurisdiction other than the United States) offers its advisory services over the Internet. In general, a foreign adviser may be able to rely on an exemption from registration under the Advisers Act if it has fewer than fifteen U.S. clients and implements measures reasonably designed to ensure that, based on its Internet activities, the adviser is not holding itself out as an investment adviser in the United States.[51]

The issue raised by a foreign investment adviser's use of the Internet is whether and, if so, under what circumstances, the foreign adviser may provide information about its advisory services over the Internet without being considered to be holding itself out as an investment adviser in the United States. We conclude that a foreign adviser providing advisory services over the Internet generally would be holding itself out as an investment adviser. Specifically, we have stated that we generally will consider an adviser who uses a publicly available electronic medium, such as the Internet, to provide information about its services to be holding itself out to the public as an adviser, and to not qualify for the exemption from registration contained in

Section 203(b)(3) of the Advisers Act.[52] If, however, the adviser implements measures reasonably designed to guard against directing information provided on the Internet about its advisory services to U.S. persons, we would not consider the foreign adviser to be holding itself out as an investment adviser in the United States for purposes of Section 203(b)(3).

What constitutes measures reasonably designed to guard against an adviser holding itself out as an investment adviser in the United States will depend on all of the facts and circumstances. We generally would consider an adviser to have implemented measures reasonably designed to guard against holding itself out as an investment adviser in the United States if:

- The Web site includes a prominent disclaimer making it clear to whom the site materials are (or are not) directed.[53]
- The adviser implements procedures reasonably designed to guard against directing information about its advisory services to U.S. persons (e.g., obtaining sufficient residency information such as mailing addresses or telephone numbers prior to sending further information), other than to its fourteen or fewer U.S. clients.[54]

Other measures also may provide adequate assurance that a foreign adviser is not holding itself out as an investment adviser in the United States.

VII. Exchange Act Registration Issues

The Internet activities of broker-dealers and markets (including exchanges) also raise issues under the Exchange Act. Foreign entities that perform these functions should consider whether their Internet activities would subject them to registration under the Exchange Act.

A. Broker-Dealer Activities

Broker-dealers must register with the Commission if they are physically present in the United States, or if, regardless of their location, they effect, induce, or attempt to induce securities transactions with investors in the United States. The issue, therefore, is whether the Commission would deem a broker-dealer's Web site to be an attempt to induce securities transactions with U.S. persons. Broker-dealer Web sites may offer market information and investment tools, real-time or delayed quote information, market summaries, research, portfolio management tools, and analytic programs. Some sites also include information on commissions and other fees, branch office locations, and instructions on how to contact the broker-dealer. In essence, Web sites advertise the broker-dealers' services to potential investors with the intent of attracting securities business.

In keeping with the general principles outlined above (Section III.B.), the Commission will not consider a foreign broker-dealer's advertising on an Internet Web site to constitute an attempt to induce a securities transaction with U.S. persons if the foreign broker-dealer takes measures reasonably designed to ensure that it does not effect securities transactions with U.S. persons as a result of its Internet activities.

Under our general principles, as applied in the broker-dealer context, a

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[47] *See supra* notes 34–35 and accompanying text.

[48] *See supra* note 36 and accompanying text.

[49] *See* Section III.D., *supra*.

[50] *Id.*

[51] Section 203(a) of the Advisers Act generally prohibits any investment adviser from using U.S. jurisdictional means in connection with its business as an investment adviser, unless the adviser is registered with the Commission, or is exempted or excluded from the requirement to register. Section 203(b)(3) of the Advisers Act provides for an exemption from registration for any adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds itself out generally to the public as an investment adviser nor acts as an adviser to a U.S.-registered investment company or business development company. The staff has taken the position that foreign advisers are required to count only their U.S. clients for purposes of determining whether they are exempt from registration under Section 203(b)(3). *See Protecting Investors: A Half Century of Investment Company Regulation*, at 223 n.6 (1992); Staff no-action letter, Murray Johnstone Ltd. (available Oct. 7, 1994).

[52] *See* use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Adviser for Delivery of Information, Securities Act Release No. 7288 (May 9, 1996) at text accompanying n. 32. *But see* Lamp Technologies, Inc., *supra* note 31.

[53] *See supra* note 21 and accompaying text.

[54] *See* text following *supra* note 21.

foreign broker-dealer generally would be considered to have taken measures reasonably designed to ensure it does not effect securities transactions with U.S. persons as a result of its Internet activities if it:

- Posts a prominent disclaimer on the Web site either affirmatively delineating the countries in which the broker-dealer's services are available, or stating that the services are not available to U.S. persons; and
- Refuses to provide brokerage services to any potential customer that the broker-dealer has reason to believe is, or that indicates that it is, a U.S. person, based on residence, mailing address, payment method, or other grounds.

As a means to implement the latter procedure, the broker-dealer should require potential customers to provide sufficient residence information.

These procedures are not exclusive. Adoption of other equally or more effective precautions can also suffice to demonstrate that the broker-dealer does not effect securities transactions with U.S. persons as a result of its Internet activities.

The Commission has exempted foreign broker-dealers that effect transactions with U.S. customers from registering in the United States if these customers initiated transactions with the foreign broker-dealers outside of the United States without solicitation. Specifically, Exchange Act Rule 15a–6 currently provides an exemption from U.S. broker-dealer registration for foreign broker-dealers that effect transactions in securities with or for persons that they have not solicited.[55] Foreign broker-dealers that solicit transactions with U.S. persons, however, are required to register as broker-dealers in the United States.

Foreign broker-dealers that have Internet Web sites and that intend to rely on Rule 15a–6's "unsolicited" exemption should ensure that the "unsolicited" customer's transactions are not in fact solicited, either directly or indirectly, through customers accessing their Web sites.[56] In particular, these broker-dealers could obtain, as a precaution reasonably designed to prevent that result, affirmative representations from potential U.S. customers that they deem unsolicited that those customers have not previously accessed their Web sites. Alternatively, a broker-dealer could maintain records that are sufficiently detailed and verifiable to reliably determine that such U.S. customers had not obtained access to its Web site.

B. Exchange Activities

Until recently, in order to obtain current market information about, and to purchase or sell securities on, a foreign market, a U.S. investor typically contacted a U.S. broker-dealer by telephone or facsimile. Alternatively, the U.S. investor could directly contact a foreign broker-dealer that is a member of the foreign market. Today, however, the technology exists for investors to obtain real-time information about trading on foreign markets from a number of different sources, and to enter and execute orders on those markets electronically from the United States. Many exchanges, for example, offer Web sites through which they provide real-time quotes and other market information, e-mail addresses for questions, general contact and membership information (including the names and addresses of members), and other investing tools.

The U.S. securities laws require exchanges to register with the Commission if they (or any broker or dealer) "make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction."[57] The Commission currently is considering the question of under what circumstances a foreign market that provides the ability in the United States for U.S. persons to trade directly in the market must register as a U.S. exchange.[58]

At this time, however, the Commission will not apply the exchange registration requirements to a foreign market that sponsors a Web site generally advertising the foreign exchange, disseminating quotes (including real-time quotes with counterparty identification), or allowing orders to be directed to the market through its Web site, so long as the exchange takes steps reasonably designed to prevent U.S. persons from directing orders to the market through its Web site. In our view, an exchange generally would be considered to have taken steps reasonably designed to prevent U.S. persons from accessing the market through its Web site if it:

- Posts a disclaimer on the Web site affirmatively stating either the countries in which the exchange's services are directly available, or that the exchange's services are not directly available to U.S. persons;
- Requires potential members or direct participants in the exchange to state their residence and mailing address;
- Refuses to allow trading on the exchange through the Web site by any person that the exchange has reason to believe, or that indicates it, is a U.S. person; and
- Refrains from making arrangements to provide U.S. persons with access to the exchange over the Internet indirectly through its members.[59]

List of Subjects

17 CFR Parts 231, 241 and 276

Securities.

17 CFR Part 271

Investment companies, Securities.

Amendments to the Code of Federal Regulations

For the reasons set forth in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

1. Part 231 is amended by adding Release No. 33–7516 and the release date of March 23, 1998, to the list of interpretative releases.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 241 is amended by adding Release No. 34–39779 and the release date of March 23, 1998, to the list of interpretative releases.

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 271 is amended by adding Release No. IC–23071 and the release date of March 23, 1998, to the list of interpretative releases.

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[55] Exchange Act Rule 15a–6(a)(1) [17 CFR 240.15a–6(a)(1)].

[56] Because a securities firm's Web site itself typically is a solicitation, orders routed through the Web site would not be considered "unsolicited."

[57] Section 5 of the Exchange Act, 15 U.S.C. 78e.

[58] Exchange Act Release No. 38672 (May 23, 1997).

[59] This last step would preclude an exchange from relying on this release if it, for example, sets the terms under which exchange members provide Internet access to the exchange, or makes arrangements for U.S. persons to directly clear and settle trades conducted on the exchange through the Internet. Foreign exchanges that knowingly provide U.S. persons with access to their trading facilities through the Internet would not be able to rely on this interpretation, and may be required to register with the Commission.

PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. Part 276 is amended by adding Release No. IA–1710 and the release date of March 23, 1998, to the list of interpretative releases.

By the Commission.

Dated: March 23, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8001 Filed 3–26–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–7512A; 34–39748A; IC–23064A; File No. S7–10–97]

RIN 3235–AE46

Registration Form Used by Open-End Management Investment Companies; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** on Monday, March 23, 1998 (63 FR 13916). The regulations adopted amendments to Form N–1A, the form used by mutual funds to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933.

DATES: Effective on June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Doretha M. VanSlyke, Attorney, 202–942–0721.

SUPPLEMENTARY INFORMATION: As published, the final regulations did not contain the Office of Management and Budget approval information that needs to appear on the front page of Form N–1A.

Accordingly, the publication on March 23, 1998 of the final regulations which were the subject of FR Doc. 98–7070 is corrected as follows.

On page 13944, first column, in Form N–1A, the Office of Management and Budget approval information is corrected as follows:

"**OMB Approval**

OMB Number: 3235–0307.
Expires: 05/31/00.
Estimated average burden hours per response: 212.95".

Dated: March 23, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8035 Filed 3–26–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 93C–0248]

Listing of Color Additives Exempt from Certification; Canthaxanthin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of canthaxanthin as a color additive in the feed of salmonid fish to enhance the color of their flesh. This action is in response to a petition filed by BASF Corp.

DATES: Effective April 28, 1998, except as to any provisions that may be stayed by the filing of proper objections; written objections and request for a hearing by April 27, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3078.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of August 12, 1993 (58 FR 42975), FDA announced that a color additive petition (CAP 3C0240) had been filed by BASF Corp., 100 Cherry Hill Rd., Parsippany, NJ 07054. The petitioner requested that FDA amend the color additive regulations to provide for the safe use of canthaxanthin as a color additive in the feed of salmonid fish. The petition was filed under section 721(d) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(d)).

II. Safety Evaluation

Canthaxanthin (β,β-carotene-4,4'-dione) and astaxanthin are two coloring substances found in wild salmonids (Refs. 1 and 2). They are responsible for imparting the pink or red coloring to these fish. Astaxanthin, found in crustaceans that constitute a significant portion of the diet of wild salmonids, is the primary coloring substances found in wild salmonids (Ref. 2). Canthaxanthin contributes less coloring to wild salmonids and is present at levels of 0.3 to 1.0 milligram per kilogram (mg/kg) (Ref. 1). Coloration of aquacultured salmonids that is comparable to that in wild salmonids may be achieved by feeding aquacultured salmonids a diet that is higher in canthaxanthin than is present in the diet of wild fish.

Based on the data and information that is before the agency, FDA has determined that the use of canthaxanthin in fish feed at a level of 80 mg/kg (72 grams (g)/ton) is safe. This level will result in 4 to 8 mg/kg of the color additive in the flesh of salmonids (Ref. 3).

As part of its safety evaluation, FDA estimated the cumulative exposure to canthaxanthin. The cumulative exposure consists of exposure from the proposed use in salmonids and the exposure from all currently listed uses. FDA used data and information contained in the petition concerning residues of canthaxanthin in salmonids to estimate the exposure to canthaxanthin from the proposed use. The agency used these data and information, in addition to data and information on the currently regulated uses of canthaxanthin, to determine the cumulative exposure to canthaxanthin.

FDA estimates that, for the petitioned use, a level of 8 mg of canthaxanthin/kg salmonid flesh will result in an exposure of no greater than 0.08 mg/person/day (mg/p/d) for an individual consuming those fish at the 90th percentile (Ref. 4). To estimate, for this final rule, the exposure to canthaxanthin from all currently regulated uses, FDA used the poundages of canthaxanthin used in food taken from the 1982 and 1987 National Academy of Sciences' (NAS) surveys of additives used in food (Ref. 5).

FDA previously estimated the exposure to canthaxanthin from currently regulated uses, when, in 1985, FDA issued a regulation that allowed the use of canthaxanthin in broiler chicken feed for coloring skin (hereinafter referred to as "the 1985 rule") (50 FR 47532, November 19, 1985). As part of its review of the BASF Corp. petition, FDA evaluated the exposure to canthaxanthin, based on currently regulated uses, and found that the calculation done for the 1985 rule was erroneous in that it overestimated

exposure to the color additive. The preamble to the 1985 rule contained a theoretical estimate of exposure to canthaxanthin based on use of the color additive in all food. This worst case estimate for exposure to canthaxanthin was determined to be 100 mg/p/d (Ref. 6). The estimated exposure to canthaxanthin from its use in chicken feed (6 mg/p/d) was then added to the 100 mg/p/d, resulting in a cumulative estimated exposure of 106 mg/p/d.

FDA has now determined that the 100 mg/p/d estimate is unreasonably exaggerated because for technologic and aesthetic reasons canthaxanthin will not be used to color all foods. FDA has also determined that it is incorrect to add the 6 mg/p/d estimate of exposure from its use in chicken feed to the 100 mg/p/d worst case estimate because the worst case estimate already included the intake of colored chicken. Furthermore, FDA has determined that the 6 mg/p/d estimate of exposure from colored chicken skin is unreasonably exaggerated because it would require a daily intake of approximately 12,000 g (approximately 264 pounds) of chicken containing canthaxanthin at 50 part per billion (ppb) to achieve this exposure to canthaxanthin. Consequently, FDA recalculated the exposure to canthaxanthin from use in chicken feed, and used the recalculated exposure level in order to determine the exposure from all currently regulated uses of the color additive. FDA then added the exposure from the proposed use of canthaxanthin in salmonids to the exposure from the currently regulated uses to estimate the cumulative exposure to canthaxanthin.

The use of canthaxanthin in feed results in a residual level of canthaxanthin of 50 ppb in chicken meat, of 150 ppb in chicken fat, and of 2 parts per million in chicken livers. Combining these data with intakes of these foods gives an exposure to canthaxanthin from its use in chicken feed of 0.007 mg/p/d (Ref. 7). FDA determined, based on the 1982 and 1987 NAS surveys, that the per capita disappearance of canthaxanthin was 0.027 mg/p/d (1982 data) and 0.008 mg/p/d (1987 data). To provide a conservative, yet reasonable estimate of exposure using these poundage data, FDA assumed that only 10 percent of the population consumes the entire output of food colored with canthaxanthin and chose the higher of the two per capita disappearances (the 1982 data) to calculate a per capita exposure of 0.27 mg/p/d (0.027 mg/p/d x 10 = 0.27 mg/p/d) from all pre-1985 uses of the color additive. Adding the recalculated exposure from use in chicken feed (0.007 mg/p/d) to the exposure from currently regulated uses based upon the 1982 estimate of 0.27 mg/p/d results in a total exposure from currently regulated uses of 0.28 mg/p/d. Therefore, the cumulative exposure to canthaxanthin from its currently regulated uses plus the petitioned use is 0.36 mg/p/d (0.28 mg/p/d current use + 0.08 mg/p/d proposed use in salmonids).

Because of the numerous conservative assumptions used in calculating exposure, the actual cumulative exposure from the current and petitioned uses of canthaxanthin is likely to be substantially less than the estimated cumulative exposure of 0.36 mg/p/d.

The acceptable daily intake (ADI) of canthaxanthin, as previously determined by FDA, is 150 mg/p/d (50 FR 47532 at 47533). FDA's estimates for the 90th percentile human exposure to canthaxanthin in aquacultured fish flesh of 0.08 mg/p/d and the cumulative exposure for canthaxanthin of 0.36 mg/p/d represent only small fractions of this amount.

In 1996, the Joint Expert Committee on Food Additives (JECFA) of the Food and Agriculture Organization and the World Health Organization (WHO) determined an ADI of 0.03 mg/kg body weight (bw) (1.8 mg/p/d) for canthaxanthin based on a no-observed-effect-level of 0.25 mg/kg bw/d in humans and a safety factor of 10 (Ref. 8). JECFA's ADI was based on consideration of recent reports of crystalline retinopathy in subjects consuming large quantities of canthaxanthin as part of tanning pills and animal studies conducted to study this retinal effect.

FDA has proceeded to make a determination on the petitioned use of canthaxanthin even though it has yet to evaluate the studies that JECFA considered in determining JECFA's 1996 ADI. FDA believes it is entirely sound to do so because the exposure from the petitioned use of canthaxanthin is well below both FDA's and JECFA's ADI (Ref. 9). Nevertheless, the agency may determine, in response to a petition for an additional use of canthaxanthin, that a reevaluation of the exposure to this color additive is warranted, including consideration of the studies that JECFA considered in arriving at its 1996 ADI.

The agency has reviewed the safety information for canthaxanthin and finds that there is no basis for concern that harm will result to consumers from the current and petitioned uses of canthaxanthin. Thus, FDA concludes that there is a reasonable certainty of no harm from the current and petitioned uses of canthaxanthin (Ref. 10).

FDA received one comment on the petition. This comment endorsed the petitioned use of canthaxanthin.

III. Stability

FDA finds that canthaxanthin is relatively unstable. Pure crystalline canthaxanthin must be stored in the absence of light, heat, and oxygen to minimize chemical changes and decomposition that would result in loss of color (Refs. 1 and 11). Thus, it is necessary to produce a stabilized form of canthaxanthin for it to be marketed for addition to salmonid feed for the purpose of coloring fish flesh. Because of this concern, the petitioner manufactures canthaxanthin in a beadlet form, which the manufacturer has shown provides increased stability to the color additive mixture. Therefore, newly added § 73.75(c)(3)(i) (21 CFR 73.75(c)(3)(i)) requires that canthaxanthin be added to fish feed only in the form of a stabilized color additive mixture.

IV. Labeling Requirements

All color additives, in accordance with § 70.25 (21 CFR 70.25), require sufficient information to assure their safe use and to allow a determination of compliance with any limitations imposed by the agency in other applicable regulations. Therefore, the labeling of the color additive, canthaxanthin, and any mixture prepared therefrom, is subject to the requirements of § 70.25.

According to § 70.25(a)(4), an expiration date for a color additive must be stated on its label if stability data require it. FDA finds that because of the instability of canthaxanthin, an expiration date must be stated on the label of sealed and open containers, in accordance with § 70.25(a)(4). FDA also finds that declaration of the expiration date constitutes a material fact that must be disclosed on the label of the color additive mixture under sections 201(n) and 403(a)(1) of the act (21 U.S.C. 321(n) and 343(a)(1)) because failure to do so would constitute a failure to reveal facts material in light of the other representations made on the label and material with respect to consequences which may result from the use of the color additive. The use of canthaxanthin requires the declaration of expiration dates because this relatively unstable color additive can decompose to products that would not be coloring agents and thus would not affect the color of salmonid flesh.

In addition to the requirements for labeling the color additive or color

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additive mixture, the ingredient list on fish feed, to which canthaxanthin is added, must identify the presence of the color additive under § 501.4 (21 CFR 501.4). New § 73.75(d)(3) references § 501.4 to ensure that the presence of canthaxanthin as a color additive in the fish feed will be declared on the ingredient label.

Finally, the presence of the color additive must be declared on the label of any food, including salmonid fish, containing added canthaxanthin and food containing such salmonid fish as an ingredient. Section 101.22(b) (21 CFR 101.22(b)) requires a food that bears or contains artificial coloring, such as salmon artificially colored with canthaxanthin, to bear labeling even though such food is not in package form. Section 101.22(c) requires that label statements of artificial coloring be "likely to be read by the ordinary person under customary conditions of purchase and use of such food."

Furthermore, § 101.22(k)(2) requires, in the statement of ingredients for a food to which any coloring has been added, and for which the coloring is not subject to certification, a declaration that makes it clear that a color additive has been used in the food. In addition, the presence of a color additive must be declared on any bulk container of food containing a color additive that is held at a retail establishment under the provisions in § 101.100(a)(2) (21 CFR 101.100(a)(2)). The ingredient label would prevent economic fraud in salmonid fish containing added canthaxanthin because the ingredient label would notify the consumer that the fish is artificially colored. Without such ingredient labeling, food comprising salmonid fish with added canthaxanthin would be deemed to be misbranded under section 403(k) of the act which states that: "A food shall be deemed to be misbrandeded * * * If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact * * *."

Therefore, in accordance with §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2), labeling on any salmonid fish containing canthaxanthin is required to declare the presence of the color additive or color additive mixture. New § 73.75(d)(4) references §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2) to ensure that, at the retail level, the presence of canthaxanthin as a color additive in the fish will be declared, and that the labeling of the bulk fish container, including a list of ingredients, will be displayed on the container or on a counter card with similar information.

V. Conclusions

FDA has evaluated the data in the petition and other relevant material and concludes that canthaxanthin is safe and suitable for the intended use, and therefore, that the regulations in § 73.75 should be amended as set forth below. In addition, based upon the factors listed in 21 CFR 71.20(b), the agency concludes that certification of canthaxanthin is not necessary for the protection of the public health.

Because of the relative instability of crystalline canthaxanthin, the agency believes that the use of this color additive should be in the form of a stabilized color additive mixture for all regulated uses of canthaxanthin. In addition, the agency believes that stability data for canthaxanthin require that the labeling of this color additive for all regulated uses include an expiration date. Therefore, the agency is requiring, in new § 73.75(c) and (d), that the use of canthaxanthin in fish feed be in the form of a stabilized color additive mixture and that the labeling include an expiration date. The currently listed uses for canthaxanthin have no such requirements. Therefore, the agency plans to publish a proposed rule to amend the current regulation in § 73.75 to require, for such uses, that canthaxanthin be in the form of a stabilized color additive mixture and that the labeling include an expiration date (Ref. 12).

VI. Inspection of Documents

In accordance with § 71.15(a) (21 CFR 71.15(a)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15(b), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before April 27, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Christophersen, A. G., P. Knuthsen, and L. H. Skibsted, "Determination of Carotenoids in Salmonids," *Zeitschrift für Lebensmittel-Untersuchung Forschung*, 188:413-418, 1989.

2. Schiedt, K., F. J. Leuenberger, and M. Vecchi, "Natural Occurrence of Enantiomeric and Meso-Astaxanthin," *Helvitica Chimica Acta*, 64:449–457, 1981.

3. Storebakken, T., P. Foss, K. Schiedt, E. Austreng, S. Liaaen-Jensen, and U. Mainz, "Carotenoids in Diets for Salmonids IV. Pigmentation of Atlantic Salmon with Astaxanthin, Astaxanthin Dipalmitate and Canthaxanthin," *Aquaculture*, 65: 279–292, 1987.

4. Memorandum from M. DiNovi, FDA, to J. Wallwork, FDA, May 17, 1996.

5. National Academy of Sciences, "1987 Poundage and Technical Effects Update of Substances Added to Food," p. 98, Washington, DC, 1989.

6. Memorandum from L. Borodinsky, FDA. to J. Taylor, FDA, April 28, 1989.

7. Memorandum from M. DiNovi, FDA, to J. Wallwork, FDA, August 29, 1996.
8. Olsen, P. "Canthaxanthin," in *Toxicological Evaluation of Certain Food Additives and Contaminants in Food*. WHO Food Additive Series: 35, World Health Organization, Geneva, pp. 157–171, 1996.
9. Memorandum of April 17, 1997, FDA Meeting Regarding Canthaxanthin: JECFA's 1996 ADI.
10. Memorandum from C. Johnson, FDA, to J. Wallwork, FDA, September 10, 1996.
11. Bunnell, R. H., and B. Borenstein, "Canthaxanthin, A Potential New Food Color," *Food Technology*, 21: 13A–16A, 1967.
12. Memorandum of Telephone Conversation between J. Wallwork, FDA, and S. Turujman, FDA, July 8, 1996.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 73.75 is amended in paragraph (c)(1)(i) by removing the period at the end and by adding "; and" in its place, by adding paragraph (c)(3), and by revising paragraph (d) to read as follows:

§ 73.75 Canthaxanthin.

* * * * *

(c) * * *

(3) Canthaxanthin may be safely used in the feed of salmonid fish in accordance with the following prescribed conditions:

(i) Canthaxanthin may be added to the fish feed only in the form of a stabilized color additive mixture;

(ii) The color additive is used to enhance the pink to orange-red color of the flesh of salmonid fish; and

(iii) The quantity of color additive in feed shall not exceed 80 milligrams per kilogram (72 grams per ton) of finished feed.

(d) *Labeling requirements.* (1) The labeling of the color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(2) For purposes of coloring fish, the labeling of the color additive and any premixes prepared therefrom shall bear expiration dates (established through generally accepted stability testing methods) for the sealed and open container, other information required by § 70.25 of this chapter, and adequate directions to prepare a final product complying with the limitations prescribed in paragraph (c)(3) of this section.

(3) The presence of the color additive in finished fish feed prepared according to paragraph (c)(3) of this section shall be declared in accordance with § 501.4 of this chapter.

(4) The presence of the color additive in salmonid fish that have been fed feeds containing canthaxanthin shall be declared in accordance with §§ 101.22(b), (c), and (k)(2), and 101.100(a)(2) of this chapter.

* * * * *

Dated: March 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–8127 Filed 3–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 104, and 135

Foods and Drugs; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to correct certain errors that have become incorporated into the food labeling regulations. This action is being taken to improve the accuracy and clarity of the regulations.

EFFECTIVE DATE: March 27, 1998

FOR FURTHER INFORMATION CONTACT: Theresa L. Thomas, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION: FDA has discovered that certain errors have become incorporated into the agency's codified regulations on food labeling. FDA is correcting these nonsubstantive errors.

In the **Federal Register** of June 3, 1996 (61 FR 27771), FDA published a final rule entitled "Revocation of Certain Regulations Affecting Food." The final rule, among other things, revoked § 100.130 (21 CFR 100.130). However, in issuing the rule, the agency inadvertently neglected to remove the cross-reference to § 100.130 in § 101.2. Also in the **Federal Register** of January 6, 1993 (58 FR 2079), FDA published a final rule entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label." The 1993 final rule, among other things, revised § 101.9 (21 CFR 101.9) in its entirety. However, in issuing the 1993 final rule, the agency inadvertently neglected to revise the reference to "§ 101.9(e)" that appeared in §§ 101.12 and 104.5 (21 CFR 101.12 and 104.5) to read "§ 101.9(g)." In this order, FDA is amending §§ 101.2, 101.12, and 104.5 to correct these inadvertent omissions.

In addition to these modifications, FDA is making a number of other minor corrections involving spelling and punctuation errors.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

Lists of Subjects

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 104

Food grades and standards, Frozen foods, Nutrition.

21 CFR Part 135

Food grades and standards, Food labeling, Frozen foods, Ice cream.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 101, 104, and 135 are amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

§ 101.2 [Amended]

2. Section 101.2 *Information panel of package form food* is amended by removing paragraph (c)(1)(ii)(B)(*3*)(*i*) and by redesignating paragraphs (c)(1)(ii)(B)(*3*)(*ii*), (c)(1)(ii)(B)(*3*)(*iii*), and (c)(1)(ii)(B)(*3*)(*iv*) as paragraphs (c)(1)(ii)(B)(*3*)(*i*), (c)(1)(ii)(B)(*3*)(*ii*), and (c)(1)(B)(*3*)(*iii*), respectively.

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§ 101.12 [Amended]

3. Section 101.12 *Reference amounts customarily consumed per eating occasion* is amended in paragraph (e)(2) by removing the citation "§ 101.9(e)" and adding in its place "§ 101.9(g)."

§ 101.13 [Amended]

4. Section 101.13 *Nutrient content claims—general principles* is amended in paragraph (q)(8) by revising the words "fluoridated fluoride added" to read "fluoridated, fluoride added,".

§ 101.22 [Amended]

5. Section 101.22 *Foods; labeling of spices, flavorings, colorings and chemical preservatives* is amended in the third sentence of paragraph (i)(4) by removing the phrase "A flavor used" and adding in its place the phrase "A flavor user".

PART 104—NUTRITIONAL QUALITY GUIDELINES FOR FOODS

6. The authority citation for 21 CFR part 104 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 371(a).

§ 104.5 [Amended]

7. Section 104.5 *General principles* is amended in paragraph (e) by removing the citation "§ 101.9(e)" and adding in its place "§ 101.9(g)".

PART 135—FROZEN DESSERTS

8. The authority citation for 21 CFR part 135 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

§ 135.110 [Amended]

9. Section 135.110 *Ice cream and frozen custard* is amended in paragraph (f)(3)(i) by removing the citation to paragraph "(e)(2)(ii)" and adding in its place "(f)(2)(ii)".

Dated: March 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7983 Filed 3–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Tilmicosin Phosphate Injection; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of February 17, 1998 (63 FR 7701). The document amended the drug regulations to reflect approval of a supplemental new animal drug application filed by Elanco Animal Health, A Division of Eli Lilly and Co. The document was published with an error. This document corrects that error.

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 98–3897, appearing on page 7701, in the **Federal Register** of Tuesday, February 17, 1998, the following correction is made:

§ 522.2471 [Corrected]

1. On page 7701, in the third column, in amendment no. 2, in line four, "13th and 14th" is corrected to read "14th and 15th".

Dated: March 19, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–7982 Filed 3–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–013]
RIN 2115–AE46

Special Local Regulations for Marine Events; Whitbread Chesapeake, Chesapeake Bay, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Chesapeake Bay portion of the Whitbread Round-the-World Offshore Yacht Race. Three marine events held as part of the Whitbread Round-the-World Race will take place in the waters of the Chesapeake Bay and Patapsco River. The dates for these activities are April 22 through May 3, 1998. These regulations are needed to allow Whitbread Chesapeake, Inc. to protect boaters, spectators and participants from the dangers associated with the events.

DATES: This temporary final rule is effective from 6 a.m. EDT (Eastern Daylight Time) on April 22, 1998 to 6 a.m. EDT on April 23, from 9 a.m. EDT to 12 p.m. EDT on April 30, 1998, and from 10 a.m. EDT to 2:30 p.m. EDT on May 3, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant James Driscoll, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, telephone number (410) 576–2676.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. Following normal rulemaking procedures would have been impractical since there is not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date. Immediate action is needed to protect vessel traffic from the potential hazards associated with congested waterways.

Background and Purpose

Whitbread Chesapeake, Inc. has submitted three marine event permit applications to the U.S. Coast Guard for events to be held as part of the Whitbread Round-the-World Offshore Yacht Race. On April 22, 1998, Whitbread Chesapeake, Inc. will sponsor the Whitbread Chesapeake Leg 7 finish. This event will consist of 10 offshore sailing vessels conducting race finish line approaches, finish line crossings and preparations for mooring on the waters of the Patapsco River and Northwest Harbor. On April 30, 1998, Whitbread Chesapeake, Inc. will sponsor the Whitbread Chesapeake parade of sail. This event will consist of 10 offshore sailing vessels conducting organized transit on the waters of the Patapsco River and Chesapeake Bay from Baltimore Inner Harbor to Annapolis Harbor. On May 3, 1998, Whitbread Chesapeake, Inc. will sponsor the Whitbread Chesapeake Leg 8 start. This event will consist of 10 offshore sailing vessels conducting race start preparations, start box maneuvering, corridor racing and gate area approaches on the waters of the Chesapeake Bay. A large fleet of spectator vessels is anticipated for each event. Due to the need for vessel control during the races and parade of sail, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Regulations

The Coast Guard will establish temporary special local regulations on specified waters of the Chesapeake Bay

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and Patapsco River. Because of the nature of the events to be held as part of the Whitbread Round-the-World Offshore Yacht Race and the length of time over which the events are scheduled to run, the Coast Guard believes the most effective way to meet all safety, security and vessel control objectives is to establish three separate regulated areas. As events occur, the various regulated areas will be in effect only as the need arises. The temporary special local regulations will restrict general navigation in the regulated areas during the events. Spectator anchorage areas will also be established for spectator vessels to view the events. These regulations are needed to control vessel traffic during the marine events to enhance the safety of participants, spectators, and transiting vessels.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated areas will only be in effect for a limited amount of time, extensive advisories have been and will be made to the affected maritime community so that they may adjust their schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to allow for minimal disruption to their enterprise.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

These regulations contain no Collection of Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1b (as amended, 61 FR 13564; March 27, 1996), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35–T05–013 is added to read as follows:

§ 100.35–T05–013 Whitbread Chesapeake, Chesapeake Bay, Maryland.

(a) *Definitions:*

(1) *Northwest Harbor Regulated Area.* The waters of the Patapsco River and Northwest Harbor enclosed by:

Latitude	Longitude
39°15′33.5″ North	76°34′07.5″ West, to
39°15′17.5″ North	76°33′58.0″ West, to
39°15′15.5″ North	76°34′15.5″ West, to
39°15′23.5″ North	76°34′44.0″ West, to
39°15′50.5″ North	76°34′39.5″ West, to
39°15′57.5″ North	76°34′42.0″ West, to
39°16′04.5″ North	76°34′36.5″ West, to
39°16′28.0″ North	76°34′37.0″ West, to
39°16′28.0″ North	76°34′15.0″ West

(2) *Patapsco River Regulated Area.* All waters of the Patapsco River enclosed by:

Latitude	Longitude
39°15′55.0″ North	76°34′32.0″ West, to
39°15′37.0″ North	76°34′40.0″ West, to
39°15′37.0″ North	76°34′18.0″ West, to
39°15′55.0″ North	76°34′32.0″ West

(3) *Chesapeake Bay Regulated Area.* The waters of the Chesapeake Bay enclosed by:

Latitude	Longitude
39°00′38.0″ North	76°23′06.0″ West, to
39°00′18.0″ North	76°21′37.5″ West, to
38°56′11.0″ North	76°24′10.0″ West, to
38°54′01.5″ North	76°24′22.0″ West, to
38°54′11.0″ North	76°24′29.0″ West, to
38°53′58.0″ North	76°25′44.0″ West, to
38°53′39.0″ North	76°25′53,0″ West, to
38°56′33.0″ North	76°25′41.0″ West, to
39°00′38.0″ North	76°23′06.0″ West

(4) *Fort McHenry Southwest Spectator Anchorage Area.* The waters southwest of Fort McHenry bounded by a line connecting the following points:

Latitude	Longitude
39°15′34.0″ North	76°34′52.5″ West, to
39°15′23.0″ North	76°34′55.5″ West, to
39°15′23.0″ North	76°35′20.5″ West, to
39°15′30.0″ North	76°35′20.5″ West, to
39°15′34.0″ North	76°34′52.5″ West

(5) *Fort McHenry South Spectator Anchorage Area.* The waters south of Fort McHenry bounded by a line connecting the following points:

Latitude	Longitude
39°15′33.5″ North	76°34′47.0″ West, to
39°15′23.5″ North	76°34′50.0″ West, to
39°15′23.5″ North	76°34′44.0″ West, to
39°15′33.0″ North	76°34′42.0″ West, to
39°15′33.5″ North	76°34′47.0″ West, to

(6) *Fairfield West Spectator Anchorage Area.* The waters north of Fairfield bounded by a line connecting the following points:

Latitude	Longitude
39°15′12.5″ North	76°34′50.0″ West, to
39°15′17.5″ North	76°34′45.0″ West, to
39°15′17.5″ North	76°34′36.0″ West, to
39°15′09.0″ North	76°34′43.0″ West, to
39°15′12.5″ North	76°34′50.0″ West

(7) *Fairfield West Spectator Anchorage Area.* The waters north of Fairfield bounded by a line connecting the following points:

Latitude	Longitude
39°15′17.5″ North	76°34′22.5″ West, to
39°15′17.5″ North	76°34′28.5″ West, to
39°15′09.0″ North	76°34′27.5″ West, to
39°15′09.0″ North	76°34′35.0″ West, to
39°15′17.5″ North	76°33′22.5″ West

(8) *Lazaretto Point Spectator Anchorage Area.* The waters southeast

of Lazaretto Point bounded by a line connecting the following points:

Latitude	Longitude
39°15′31.0″ North	76°33′58.0″ West, to
39°15′17.5″ North	76°33′58.0″ West, to
39°15′25.0″ North	76°34′02.0″ West, to
39°15′31.0″ North	76°33′58.0″ West

(9) *Chesapeake Bay Spectator Anchorage Area.* The waters of the Chesapeake Bay bounded by a line connecting the following points:

Latitude	Longitude
38°59′23.0″ North	76°24′12.0″ West, to
38°59′17.5″ North	76°23′57.0″ West, to
38°58′07.0″ North	76°24′42.0″ West, to
38°58′11.0″ North	76°24′53.0″ West, to
38°59′23.0″ North	76°24′12.0″ West

All coordinates referenced use Datum NAD 1983.

(10) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations:*

(1) All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated areas.

(3) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(4) Spectator vessels may enter and anchor in the special spectator anchorage areas described in paragraph (a) of this section without the permission of the Patrol Commander. They shall use caution not to enter the regulated areas. No vessel shall anchor within a tunnel, cable or pipeline area shown on a Government chart.

(c) *Effective Periods.* The regulated area described in paragraph (a)(1) of this section and the spectator anchorage areas described in paragraphs (a)(4) through (a)(8) are effective from 6 a.m. EDT (Eastern Daylight Time) on April 22, 1998 to 6 a.m. EDT on April 23. The regulated area described in paragraph (a)(2) of this section is effective from 9 a.m. EDT to 12 p.m. on April 30, 1998. The regulated area described in paragraph (a)(3) of this section and the spectator anchorage area described in paragraph (a)(9) are effective from 10 a.m. EDT to 2:30 p.m. on May 3, 1998. The Coast Guard Patrol Commander will announce by Broadcast Notice to Mariners the specific time periods during which the regulations will be enforced.

Dated: March 3, 1998.

J.S. Carmichael,

Captain, USCG, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–8120 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Extension of Group E (No-Fee) Post Office Box Service Eligibility

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Domestic Mail Manual (DMM) is amended to extend Group E (no-fee) post office box eligibility to a customer whose physical residence or business location is within the immediate vicinity of the post office, and therefore ineligible for extension of carrier delivery service as specified in postal standards concerning extension of delivery service.

EFFECTIVE DATE: April 5, 1998.

FOR FURTHER INFORMATION CONTACT: John Dorsey (202) 268–3295.

SUPPLEMENTARY INFORMATION: On June 7, 1996, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on several special service reform proposals, including a proposal to establish Group E (no-fee) post office box service for certain customers who are ineligible for carrier delivery service. The PRC designated the filing as Docket No. MC96–3, and published in the **Federal Register** (61 FR 31968–31979) a notice of the filing with a description of the Postal Service's proposals on June 21, 1996.

Pursuant to 39 U.S.C 3624, the PRC issued its Recommended Decision on the Postal Service's Request to the Governors of the Postal Service on April 2, 1997. The PRC's Recommended Decision included eligibility for no-fee post office box service for customers ineligible for carrier delivery service, subject to administrative decisions regarding the customer's proximity to a post office.

The Postal Service implemented the changes resulting from Docket MC96–3, including the offering of no-fee post office box service to customers who are ineligible for any form of carrier delivery. The final rule published in the **Federal Register** (62 FR 31512–31516, June 10, 1997) eliminated post office box service fees for customers at those post offices who are ineligible for carrier delivery service (from any post office). Fees were also eliminated for box customers who are ineligible for carrier delivery service at offices which provide delivery service, except for those customers who reside in the immediate vicinity of the office. This amendment eliminates the exception for proximate customers, thus making all customers who are ineligible for carrier delivery service equally eligible for no-fee post office box service. Finally, the amendment eliminates the reference to "Group E" offices, since eligibility for no-fee box service is customer-specific.

Lists of Subjects in 39 CFR Part 1111

Postal Service

PART 111—[AMENDED]

The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual which is incorporated by reference in the Code of Federal Regulations (See 39 CFR Part III) as set forth below:

* * * * *

D Deposit, Collection, and Delivery

* * * * *

D910 Post Office Box Service

* * * * *

[Amend heading of 4.0 to read as follows:]

4.0 BASIS OF FEES, PAYMENT, AND RENEWAL

4.1 General

[Amend 4.1 to read as follows:]

Post office box service fees are based on the size of the box provided, and the fee group of the administering facility together with customer eligibility for a Group E post office box as identified in 5.0.

* * * * *

4.5 Payment

[Amend 4.5 to read as follows:]

All fees are for a semiannual (6-month) period, and must be paid in

advance for no less than one but no more than two semiannual periods, except as provided under 4.8, 4.9, and 4.12. Fees may be paid using cash, credit or debit card, or check or money order payable to the postmaster. A mailed payment must be received by the postmaster on or before the due date.

[Amend heading of 4.6 and amend text to read as follows:]

4.6 Service Period

Except under 4.9, the beginning date for a post office box service period is determined by the approval date of the application. The period begins on the first day of the same month the application is approved if approval is on or before the 15th of the month. If approved after the 15th of the month, the period begins the first day of the following month. Thereafter, fees for service renewal may be paid and Group E post office box service renewal notification may be effected any time during the last 30 days of the service period, but no later than the last day of the service period.

[Add new 4.7 to read as follows:]

4.7 Group E Renewal

Group E post office box service and renewal are for an annual (12-month) period.

[Redesignate current 4.7 as 4.8; no other changes.]

[Redesignate current 4.8 as 4.9, and amend heading and text to read as follows:]

4.9 Exception for Small Offices

Postmasters at non-city delivery and non-delivery offices with fewer than 500 post office boxes may set April 1 and October 1 as the beginning payment periods for box customers in their offices. Payment periods beginning other than April 1 or October 1 are brought into alignment with these respective dates by adjusting fees as follows:

a. New service, one-sixth of the semiannual fee is charged for each remaining month between the beginning of the new payment period and the next April 1 or October 1.

b. Existing service, one-sixth of the semiannual fee is charged for each remaining month between the end of all currently paid periods and the next April 1 or October 1.

c. Next one or two semiannual payment periods, an adjustment may be accepted in addition to fees.

[Redesignate current 4.9, 4.10, and 4.11 as 4.10, 4.11, and 4.12 respectively; no other changes:]

5.0 FEE GROUP ASSIGNMENTS

5.1 Post Offices

* * * * *

[Amend 5.1.b to read as follows:]

b. Post Office With Only Rural or Highway Contract Carrier Delivery. A post office that does not provide city carrier delivery but provides only rural carrier or highway contract carrier delivery at any of its administered facilities applies Group D fees, except as provided in 5.3. A customer whose physical residence or business location is within the geographic delivery ZIP Code boundaries administered by that non-city delivery post office, who is ineligible for any form of carrier delivery service, and who does not receive carrier delivery via an out-of-bounds delivery receptacle, may obtain one post office box service through a box of the smallest available size (i.e., the smallest box currently vacant) at the Group E fee (no-fee). Boxes at Group E fees are also available as provided under 5.1c. * * *

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–8003 Filed 3–26–98; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No

environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Duval (FEMA Docket No. 7233).	City of Jacksonville	July 8, 1997, July 15, 1997, *The Florida Times-Union.*	The Honorable John A. Delaney, Mayor of the City of Jacksonville, City Hall, 220 East Bay Street, 14th Floor, Jacksonville, Florida 32202.	July 1, 1997	120077 E
Illinois:					
Cook (FEMA Docket No. 7213).	City of Prospect Heights.	February 7, 1997, February 14, 1997, *Daily Herald.*	The Honorable Edward P. Rotchford, Mayor of the City of Prospect Heights, 1 North Elmhurst Road, Prospect Heights, Illinois 60070.	January 30, 1997	170919 B
DuPage County (FEMA Docket No. 7233).	Village of Lisle	July 25, 1997, August 1, 1997, *The Lisle Sun.*	The Honorable Ronald F. Ghilardi, Mayor of the Village of Lisle, 1040 Burlington Avenue, Lisle, Illinois 60532.	July 18, 1997	170211 B
Stephenson (FEMA Docket No. 7233).	Unincorporated Areas.	June 11, 1997, June 18, 1997, *The Journal Standard.*	Mr. Dean Danner, Chairman of the Stephenson County Board of Commissioners, 15 North Galena Avenue, Freeport, Illinois 61032.	June 6, 1997	170639 B
Winnebago (FEMA Docket No. 7233).	Unincorporated Areas.	June 11, 1997, June 18, 1997, *Rockford Register Star.*	Ms. Christine Cohn, Chairman of the Winnebago County Board of Commissioners, 404 Elm Street, Room 504, Rockford, Illinois 61101.	June 6, 1997	170720 B
Maine: York (FEMA Docket No. 7233).	Town of Kittery	June 3, 1997, June 10, 1997, *Portsmouth Herald.*	Mr. Phil McCarthy, Kittery Town Manager, P.O. Box 808, Kittery, Maine 03904.	May 23, 1997	230171 D
Maryland: Washington (FEMA Docket No. 7217).	Unincorporated Areas.	February 14, 1997, February 21, 1997, *The Morning Herald* and *The Daily Mail.*	Mr. Rodney Shoop, Washington County Administrator, 100 West Washington Street, Hagerstown, Maryland 21740.	May 22, 1997	240070 A
New Hampshire: Grafton (FEMA Docket No. 7233).	Town of Bridgewater.	June 11, 1997, June 18, 1997, *Record Enterprise.*	Mr. Terrance Murphy, Head Selectman, Town of Bridgewater, 297 Mayhew Turnpike, Bristol, New Hampshire 03222.	December 5, 1997	330046 C
Ohio: Fairfield and Franklin (FEMA Docket No. 7221).	City of Columbus ..	May 23, 1997, May 30, 1997, *The Columbus Dispatch.*	The Honorable Gregory S. Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	August 28, 1997 ...	390170 G
Pennsylvania:					
Blair (FEMA Docket No. 7233).	Township of Blair	July 8, 1997, July 15, 1997, *Altoona Mirror.*	Mr. George Harley, Secretary/Treasurer of the Township of Blair, 575 Cedarcrest Drive, Duncansville, Pennsylvania 16635.	June 30, 1997	421386 A
Cambria (FEMA Docket No. 7233).	City of Johnstown	June 13, 1997, June 20, 1997, *Tribune-Democrat.*	The Honorable Linda Weaver, Mayor of the City of Johnstown, 401 Main Street, Johnstown, Pennsylvania 15901.	June 6, 1997	420231 C
South Carolina: Horry (FEMA Docket No. 7233).	Unincorporated Areas.	July 17, 1997, July 24, 1997, *The Sun News.*	Ms. Linda Angus, Horry County Administrator, 103 Elm Street, Conway, South Carolina 29526.	October 15, 1997	450104 E
Virginia:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Independent City (FEMA Docket No. 7245).	City of Alexandria	October 23, 1997, October 30, 1997, *The Alexandria Journal* and *The Alexandria Gazette Packet.*	The Honorable Kerry J. Donley, Mayor of the City of Alexandria, 301 King Street, Suite 2300, Alexandria, Virginia 22314.	October 10, 1997	515519
(Independent City) (FEMA Docket No. 7233).	City of Harrisonburg.	August 15, 1997, August 22, 1997, *Daily News-Record.*	The Honorable Rodney L. Eagle, Mayor of the City of Harrisonburg, City Hall, Harrisonburg, Virginia 22801.	August 5, 1997	510076 B
Arlington (FEMA Docket No. 7213).	Unincorporated Areas.	February 7, 1997, February 14, 1997, *Arlington Journal.*	Ms. Ellen M. Bosman, Chairman of the Arlington County Board of Commissioners, 2100 Clarendon Boulevard, Suite 300, Arlington, Virginia 22201.	May 15, 1997	515520 B
Culpeper (FEMA Docket No. 7225).	Unincorporated Areas.	March 11, 1997, March 18, 1997, *Culpeper Star-Exponent.*	Mr. Steven Miner, Culpeper County Administrator, 135 West Cameron Street, Culpeper, Virginia 22701.	September 3, 1997	510041 B
Wisconsin: Washington (FEMA Docket No. 7233).	Village of Germantown.	June 5, 1997, June 12, 1997, *Germantown Banner-Press.*	Mr. Paul Brandenburg, 1997 Village of Germantown Administrator, P.O. Box 337, Germantown, Wisconsin 53022–0337.	September 10, 1997.	550472 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 19, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–8091 Filed 3–26–98; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7249]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut:					
Fairfield	Town of Darien	December 16, 1997, December 23, 1997, *The Advocate.*	Mr. Robert Harrel, Town of Darien First Selectman, 2 Renshaw Road, Darien, Connecticut 06820.	December 11, 1997.	090005 D
Fairfield	City of Stamford	December 16, 1997, December 23, 1997, *The Advocate.*	The Honorable Dannel Malloy, Mayor of the City of Stamford, 888 Washington Boulevard, P.O. Box 10152, Stamford, Connecticut 06904–2152.	December 11, 1997.	090015 C
Florida:					
Charlotte	Unincorporated Areas.	November 20, 1997, November 27, 1997, *Sarasota Herald Tribune—Charlotte AM Edition.*	Mr. Matthew D. DeBoer, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Road, Room 536, Port Charlotte, Florida 33948–1094.	November 13, 1997.	120061 E
Orange	Unincorporated Areas.	December 9, 1997, December 16, 1997, *The Orlando Sentinel.*	M. Krishnamurthy, Ph.D., P.E., Manager, Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, Florida 32839.	July 17, 1997	120179 D
Seminole	Unincorporated Areas.	March 14, 1997, March 21, 1997, *The Orlando Sentinel.*	Mr. Gary Kaiser, Acting Seminole County Manager, 1101 East First Street, Sanford, Florida 32771.	June 3, 1997	120289 E
Georgia: Glynn	Unincorporated Areas.	December 19, 1997, December 26, 1997, *Brunswick News.*	Mr. Lee Gilmour, Glynn County Administrator, P.O. Box 879, Brunswick, Georgia 31521.	December 11, 1997.	130092 D
Illinois:					
Cook	Village of Orland Park.	May 29, 1997, June 6, 1997, *Daily Southtown.*	The Honorable Daniel McLaughlin, Mayor of the Village of Orland Park 14700 Ravinia Avenue, Orland Park, Illinois 60462.	September 3, 1997	170140 B
DuPage and Cook.	Village of Burr Ridge.	January 8, 1997, January 15, 1997, *The Doings.*	Mr. Emil J. Coglianese, Jr., President of the Village of Burr Ridge, 7660 South County Line Road, Burr Ridge, Illinois 60521.	April 15, 1997	170071 C
Kane & Cook	City of Elgin	November 5, 1997, November 12, 1997, *The Courier-News.*	The Honorable Kevin Kelly, Mayor of the City of Elgin, 150 Dexter Court, Elgin, Illinois 60120–5555.	October 29, 1997	170087 C
Indiana: Noble	Unincorporated Areas.	December 24, 1997, December 31, 1997, *Albion New Era.*	Mr. Harold Troyer, President of the Noble County Board of Commissioners, 3378 South 500 East, Laotto, Indiana 46763.	March 31, 1998	180183 A
Kentucky: Warren	City of Bowling Green.	October 21, 1997, October 28, 1997, *Daily News.*	The Honorable Elden Renaud, Mayor of the City of Bowling Green, P.O. Box 430, Bowling Green, Kentucky 42102–0430.	October 14, 1997	210219 D
Maine: Cumberland	Town of Harpswell	December 24, 1997, December 31, 1997, *Times Record.*	Mr. Robert E. Waddle, First Selectman for the Town of Harpswell, P.O. Box 139, South Harpswell, Maine 04079.	December 17, 1997.	230169 C
Michigan:					
Macomb	Township of Macomb.	June 25, 1997, July 2, 1997, *The Macomb Daily.*	Mr. John Brennen, Macomb Township Supervisor, 19925 Twenty-Three Mile Road, Macomb, Michigan 48042.	June 16, 1997	260445 B
Wayne	City of Grosse Pointe Park.	November 20, 1997, November 28, 1997, *Grosse Pointe News.*	The Honorable Palmer Heenan, Mayor of the City of Grosse Pointe Park, 15115 East Jefferson Avenue, Grosse Pointe Park, Michigan 48230.	May 18, 1998	260230 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Wayne & Oakland.	City of Northville ...	November 6, 1997, November 13, 1997, *Northville Record.*	The Honorable Christopher J. Johnson, Mayor of the City of Northville, City Hall, 215 West Main Street, Northville, Michigan 48167.	February 11, 1998	260235 A
Minnesota: Scott ...	City of Shakopee ..	October 30, 1997, *Shakopee Valley News.*	The Honorable Jeff Henderson, Mayor of the City of Shakopee, 129 Holmes Street South, Shakopee, Minnesota 55379.	October 23, 1997	270434 C
New Jersey:					
Morris	Township of Jefferson.	December 17, 1997, December 24, 1997, *Aim Newspapers.*	The Honorable Evelyn Brown, Mayor of the Township of Jefferson, 1033 Weldon Street, Lake Hopatcong, New Jersey 07849.	March 24, 1998	340522 B
Morris	Borough of Morris Plains.	November 27, 1997, December 4, 1997, *Morris News-Bee.*	The Honorable Frank Druetzler, Mayor of the Borough of Morris Plains, 531 Speedwell Avenue, P.O. Box 305, Morris Plains, New Jersey 07950–0305.	March 4, 1998	340351 B
New York:					
Erie	Town of Orchard Park.	December 20, 1997, December 27, 1997, *The Southtowns Citizen.*	Mr. Dennis J. Mill, Supervisor of the Town of Orchard Park, 4295 South Buffalo Street, Orchard Park, New York 14127.	March 27, 1998	360255 B
Erie	Village of Orchard Park.	December 20, 1997, December 27, 1997, *The Southtowns Citizen.*	The Honorable Patricia A. Dickman, Mayor of the Village of Orchard Park, 4295 South Buffalo Street, Orchard Park, New York 14127.	March 27, 1998	360254 B
Steuben	City of Hornell	September 19, 1997, September 26, 1997, *The Evening Tribune.*	The Honorable Shawn D. Hogan, Mayor of the City of Hornell, 108 Broadway, Hornell, New York 14843.	September 12, 1997.	360776 B
Steuben	Town of Hornellsville.	September 19, 1997, September 26, 1997, *The Evening Tribune.*	Mr. Charles Flanders, Supervisor for the Town of Hornellsville, P.O. Box 1, Ackport, New York 14807.	September 12, 1997.	360777 B
Steuben	Village of North Hornell.	September 19, 1997, September 26, 1997, *The Evening Tribune.*	The Honorable Kenneth Beckerink, Mayor of the Village of North Hornell, West Maplewood Avenue, Hornell, New York 14843.	September 12, 1997.	361477 A
Ohio:					
Greene	City of Fairborn	July 24, 1997, July 31, 1997, *Fairborn Daily Herald.*	The Honorable James Baines, Mayor of the City of Fairborn, 44 West Hebble Avenue, Fairborn, Ohio 45324.	October 29, 1997	390195 B
Greene	Unincorporated Areas.	July 24, 1997, July 31, 1997, *Xenia Daily Gazette.*	Mr. Steve Stapleton, Greene County Administrator, 35 Greene Street, Xenia, Ohio 45385.	October 29, 1997	390193 B
Lorain	City of Avon	December 16, 1997, December 23, 1997, *The Morning Journal.*	The Honorable James A. Smith, Mayor of the City of Avon, 36774 Detroit Road, Avon, Ohio 44011–1588.	December 11, 1997.	390348 C
Lucas	Unincorporated Areas.	November 5, 1997, November 12, 1997, *The Blade.*	Ms. Sandy Isenberg, President of the Lucas County Board of Commissioners, One Government Center, Suite 800, Toledo, Ohio 43604–2259.	October 29, 1997	390359 B
Warren	City of Mason	December 24, 1997, December 31, 1997, *The Western Star.*	The Honorable Dick Staten, Mayor of the City of Mason, 202 West Main Street, Mason, Ohio 45040.	December 17, 1997.	390559 C
Pennsylvania:					
Bucks	Borough of Quakertown.	October 21, 1997, October 28, 1997, *The Morning Call.*	Mr. David L. Woglom, Manager of the Borough of Quakertown, 15–35 North Second Street, P.O. Box 727, Quakertown, Pennsylvania 18951.	January 26, 1998	420200
Bucks	Township of Richland.	October 21, 1997, October 28, 1997, *The Morning Call.*	Mr. Earl Kline, Chairman of the Board of Supervisors, P.O. Box 249, Richlandtown, Pennsylvania 18955.	January 26, 1998	421095 B
South Carolina: Sumter.	City of Sumter	December 15, 1997, December 22, 1997, *The Item.*	Mr. Talmadge Tobias, City Manager for the City of Sumter, P.O. Box 1449, Sumter, South Carolina 29151.	December 9, 1997	450184 B
Tennessee:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Rutherford	City of Murfreesboro.	December 19, 1997, December 26, 1997, *The Daily News Journal.*	The Honorable Joe B. Jackson, Mayor of the City of Murfreesboro, 111 West Vine Street, P.O. Box 1139, Murfreesboro, Tennessee 37133–1139.	March 26, 1998	470168 C
Shelby	Unincorporated Areas.	October 21, 1997, October 28, 1997, *The Commercial Appeal.*	Mr. Jim Kelly, Chief Administrative Officer, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	January 28, 1998	470214 E
Shelby	Unincorporated Areas.	October 23, 1997, October 30, 1997, *The Daily News.*	Mr. Jim Kelley, Chief Administrative Officer, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	January 28, 1998	470214 E
Wisconsin: Barron	Unincorporated Areas.	December 18, 1997, December 25, 1997, *The Chetek Alert.*	Mr. Arnold Ellison, County Board Chairman, Barron County Courthouse, 330 East LaSalle Avenue, Barron, Wisconsin 54812.	December 9, 1997	550568 C
Wisconsin: Waukesha	City of Muskego ...	December 11, 1997, December 18, 1997, *Muskego Sun.*	The Honorable David DeAngelis, Mayor of the City of Muskego, W182 South 8200 Racine Avenue, Muskego, Wisconsin 53150.	December 3, 1997	550486 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 19, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–8090 Filed 3–26–98; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Chickasaw (City), Mobile County (FEMA Docket No. 7223)	
Chickasaw Creek:	
Downstream side of U.S. Route 43	*11
Upstream side of I–65	*12
Maps available for inspection at the Chickasaw City Hall, 224 North Craft Highway, Chickasaw, Alabama.	
Dauphin Island (Town), Mobile County (FEMA Docket No. 7223)	
Gulf of Mexico:	
Approximately 570 feet due south of intersection of Audubon and Admiral Streets	*9
Approximately 660 feet due south of intersection of Audubon and Admiral Streets	*12
Approximately 700 feet due south of intersection of Audubon and Admiral Streets	*12
Maps available for inspection at the Dauphin Island Town Hall, 1011 Bienville Boulevard, Dauphin Island, Alabama.	
Mobile County (Unincorporated Areas) (FEMA Docket No. 7223)	
Chickasaw Creek:	
Approximately 1,440 feet upstream of Old Saint Stevens Road	*35
Approximately 1.04 miles downstream of confluence of Coon Branch	*42
Crooked Creek:	
Approximately 2.94 miles downstream of Wulff Road (County Highway 68)	*116
Approximately 0.94 mile upstream of Wulff Road (County Highway 68)	*180
Halls Mill Creek:	
Approximately 1,800 feet upstream of Interstate Route 10	*11
Approximately 2,100 feet upstream of Leroy Stevens Road	*90
Miller Creek:	
Approximately 0.7 mile downstream of Johnson Road	*94
Approximately 0.2 mile upstream of Snow Road	*140
Miller Creek Tributary:	
At confluence with Miller Creek	*119
Approximately 140 feet upstream of Snow Road	*157
Muddy Creek:	
Approximately 1.9 miles downstream of Laurendine Road	*8
Approximately 110 feet upstream of Swedetown Road	*63
Rabbit Creek:	
Approximately 820 feet upstream of U.S. Highway 90	*42
Approximately 0.5 mile upstream of Old Pascagoula Road	*81
Second Creek:	
Upstream side of Cody Road	*44
Approximately 50 feet downstream of the confluence of Second Creek Tributary	*66
Second Creek Tributary:	
Approximately 110 feet upstream of confluence with Second Creek	*67
Downstream side of Schillinger Road	*96
Maps available for inspection at the Mobile County Public Works Department, Mobile County Government Building, 205 Government Street, Mobile, Alabama.	
Mount Vernon (Town), Mobile County (FEMA Docket No. 7223)	
Cedar Creek:	
Approximately 3,000 feet downstream of U.S. Route 43	*17
Approximately 250 feet downstream of U.S. Route 43	*17
Maps available for inspection at the Mount Vernon Town Hall, 1565 Boyles Avenue, Mount Vernon, Alabama.	
Prichard (City), Mobile County (FEMA Docket No. 7223)	
Chickasaw Creek:	
At upstream side of Interstate Route 65	*12
Approximately 1,450 feet upstream of Old Saint Stevens Road	*35
Eightmile Creek:	
At downstream side of Bear Fork Road	*40
Approximately 100 feet upstream of Bear Fork Road	*40
Magee Creek:	
At confluence with Chickasaw Creek	*35
Approximately 1,160 feet upstream of Illinois Central Gulf Railroad	*36
Toulmins Spring Branch:	
Approximately 1,250 feet downstream of Craft Highway	*12
Approximately 400 feet downstream of Chastang Avenue	*24
Maps available for inspection at the Prichard City Hall, 216 East Prichard Avenue, Prichard, Alabama.	
Saraland (City), Mobile County (FEMA Docket No. 7223)	
Chickasaw Creek:	
Downstream corporate limits	*11
Upstream corporate limits	*11
Maps available for inspection at the Saraland City Hall, 716 Highway 43, Saraland, Alabama.	
CONNECTICUT	
Southington (Town), Hartford County (FEMA Docket No. 7199)	
Quinnipiac River:	
Downstream side of Hart Street	*150
Downstream side of Interstate 84	*162
Spring Lake Brook:	
Confluence with Quinnipiac River	*153
Approximately 360 feet upstream of Darling Drive	*158
Quinnipiac River Diversion Channel:	
Upstream side of Chapman Street	*153
At the divergence from the Quinnipiac River	*154
Maps available for inspection at the Southington Town Hall, 75 Main Street, Southington, Connecticut.	
DELAWARE	
New Castle County (Unincorporated Areas) (FEMA Docket No. 7231)	
Christina River:	
Approximately 50 feet upstream of State Route 273 (Nottingham Road)	*133
At State boundary	*160
West Branch Christina River:	
Approximately 1,500 feet upstream of confluence with Christina River	*160

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 900 feet upstream of State Route 2	*90
East Branch Christina River:	
At confluence with Christina River	*156
Approximately 100 feet upstream of the confluence with Christina River	*157
Maps available for inspection at the New Castle County Office of Special Services, 187–A Old Churchman Road, New Castle, Delaware.	
Newark (City), New Castle County (FEMA Docket No. 7231)	
Christina River:	
Approximately 100 feet downstream of State Route 273	*130
At Wedgewood Road	*158
West Branch Christina River:	
Approximately 580 feet upstream of confluence with Christina River	*87
At state boundary	*107
Persimmon Run:	
At the confluence with West Branch Christina River	*96
Approximately 380 feet upstream of confluence with West Branch Christina River	*98
Tributary to West Branch Christina River:	
At confluence with West Branch Christina River	*106
Approximately 300 feet upstream of confluence with West Branch Christina River	*107
Maps available for inspection at the Newark Planning Department, 220 Elkton Road, Newark, Delaware.	
FLORIDA	
Unincorporated Areas of Escambia County (FEMA Docket No. 7199)	
Bayou Grande:	
Approximately 2,000 feet downstream of Blue Angel Parkway	*8
Approximately 150 feet upstream of Etheridge Road	*19
Bayou Marcus:	
Approximately 800 feet downstream of Blue Angel Parkway	*11
Approximately 100 feet upstream of Interstate 10	*108
Tributary to Bayou Marcus:	
At confluence with Bayou Marcus	*14
Approximately 1 mile upstream of Lillian Highway ..	*22
Bridge Creek:	
Approximately 1,800 feet upstream of U.S. Highway 98	*7
Approximately 200 feet upstream of Blue Angel Parkway	*33
Tributary to Bridge Creek:	
At confluence with Bridge Creek	*7
Approximately 0.7 mile upstream of Little Bridge Creek Drive	*19
Eightmile Creek:	
At confluence with Elevenmile Creek	*19
At Fowler Avenue	*104
Escambia River:	
Approximately 0.7 mile upstream Quintette Road	*26
Approximately 400 feet upstream of State Road 4	*59
Elevenmile Creek:	
Approximately 1.1 miles downstream of confluence with Hurst Branch	*9
At Kingsfield Road	*68
Garcon Swamp:	
Approximately 400 feet upstream of Sorrento Road ...	*6
At Blue Angel Parkway	*21
Jones Creek:	
At Navy Boulevard	*6
Approximately 1.6 miles upstream of Fairfield Drive	*25
Pine Barren Creek:	
At the confluence with Escambia River	*30
Approximately 50 feet upstream of Wiggins Bridge ..	*55
Weekly Bayou:	
Approximately 650 feet downstream of Bauer Road	*5
Approximately 1.7 miles upstream of Bauer Road	*22
Tributary to Weekly Bayou:	
At confluence with Weekly Bayou	*11
Approximately 1.1 miles upstream of confluence with Weekly Bayou	*22
Old River:	
Approximately 1.5 miles southwest from the intersection of Perdido Key Drive and Sharp Reef Road	*14
Shallow Flooding:	
Upstream of Bayou Grande:	
Between Etheridge and Bauer Roads	*19
Upstream of Jones Creek:	
Between a point approximately 1.6 miles upstream of State Route 289A to approximately 1,600 feet upstream	*24
Upstream of Bridge Creek:	
Between approximately 200 feet upstream of Blue Angel Parkway and State Route 289A	*33
Upstream of Tributary to Bayou Marcus:	
From a point approximately 1.1 miles upstream of Lillian Highway to Blue Angel Parkway	*22
Maps available for inspection at the Escambia County Public Works Department, 1190 West Leonard, Pensacola, Florida.	
Keystone Heights (City), Clay County (FEMA Docket No. 7231)	
Lake Geneva:	
Entire shoreline within community	*108
Brooklyn Lake:	
Entire shoreline within community	*118
Maps available for inspection at the Keystone Heights City Hall, 555 South Lawrence Boulevard, Keystone Heights, Florida.	
Lee County (Unincorporated Areas) (FEMA Docket No. 7231)	
Imperial River:	
Approximately 2,225 feet upstream of Matheson Avenue	*12
Just upstream of Bonita Grande Road	*17
Maps available for inspection at the Lee County Public Works Community Development Building, 1500 Monroe Street, Ft. Myers, Florida.	
Stuart (City), Martin County (FEMA Docket No. 7227)	
St. Lucie River:	
Approximately 200 feet east of the intersection of U.S. 1 and Fern Avenue	*10
Approximately 1500 feet east of the intersection of East Ocean Boulevard and Flamingo Drive	*7
North Fork St. Lucie River:	
Entire reach within community	*9
Approximately 550 feet west of intersection of River Drive and Treasure Road ..	*8
St. Lucie River:	
Approximately 300 feet east of the intersection of East Ocean Boulevard and Flamingo Drive	*7
South Fork St. Lucie River:.	
Approximately 300 feet west of the intersection of West 1st Street and Atlanta Avenue	*9
Approximately 500 feet southwest of the intersection of South Carolina Drive and Palm City Avenue	*7
Krueger Creek:	
Approximately 250 feet east of the intersection of East Ocean Boulevard and Krueger Parkway	*7
Fraizer Creek:	
Approximately 50 feet south of the intersection of 7th Street and Colorado Avenue	*7
Poppolton Creek:	
Approximately 300 feet south of the intersection of Federal Highway and Riverview Avenue	*7
Approximately 0.4 mile east along Central Parkway from intersection with State Route 76	*7

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Stuart City Hall, Building and Zoning Department, 121 S.W. Flagler Avenue, Stuart, Florida.	
GEORGIA	
Alpharetta (City), Fulton County (FEMA Docket No. 7223 and 7231)	
Lake Windward:	
Upstream of Lake Windward at city limit	*1,028
Approximately 100 feet upstream of Lake Windward Drive	*1,028
Foe Killer Creek:	
Confluence with Big Creek	*965
Approximately 2,600 feet upstream of Mayfield Road	*1085
Tributary No. 5 to Big Creek:	
Confluence with Big Creek	*984
Approximately 2,500 feet upstream of confluence with Big Creek	*984
Tributary No. 2 to Big Creek:	
Confluence with Big Creek	*969
Approximately 1,600 feet upstream of Morrison Parkway	*1,035
Long Indian Creek:	
At its confluence with Big Creek	*973
Approximately 1,400 feet upstream of confluence with Big Creek	*973
Camp Creek No. 1:	
Confluence with Big Creek	*993
Approximately 950 feet upstream of confluence with Tributary 9	*994
Big Creek:	
Approximately 6,000 feet upstream of Old Holcomb Bridge Road	*964
At McGinnis Ferry Road	*997
Tributary No. 3 to Big Creek:	
Approximately 1,700 feet upstream of confluence with Big Creek	*974
At Norcross Street	*1,090
Caney Creek:	
At confluence with Big Creek	*994
Approximately 0.19 mile upstream of Lake Windward Drive	*994
Maps available for inspection at the City Hall, 2 South Main Street, Alpharetta, Georgia.	
Atlanta (City), Fulton County (FEMA Docket No. 7223)	
Caldwell Branch:	
Approximately 0.34 mile downstream of Melvin Road	*826
Approximately 0.32 mile downstream of Melvin Road	*826
South Utoy Creek:	
Approximately 800 feet upstream of Interstate Route 285	*817
Approximately 0.4 mile upstream of Interstate Route 285	*821
Long Island Creek:	
At its confluence with Chattahoochee River	*778
Approximately 750 feet upstream of the confluence with Chattahoochee River	*778
North Fork Camp Creek:	
At confluence with South Fork Camp Creek	*819
Approximately 100 feet upstream of the confluence with South Fork Camp Creek	*819
Maps available for inspection at the Atlanta City Hall, Bureau of Planning, 55 Trinity Avenue, S.W., Suite 3350, Atlanta, Georgia.	
College Park (City), Fulton County (FEMA Docket No. 7223)	
Fur Creek:	
Approximately 400 feet upstream of Pelot Road at the downstream corporate limits	*879
Approximately 1,000 feet upstream of Pelot Road	*879
Sun Valley Creek:	
Approximately 594 feet downstream of Janice Drive	*918
Approximately 50 feet upstream of Janice Drive	*934
Unnamed Tributary to Flint River West Fork:	
At confluence with Flint River West Fork (Approximately 400 feet downstream of Myrtle Street)	*986
Approximately 100 feet upstream of Jackson Street	*1,001
Maps available for inspection at the City Engineer's Office, 3667 Main Street, College Park, Georgia.	
Duluth (City), Gwinnett County (FEMA Docket No. 7199)	
Swilling Creek:	
Approximately 1,600 feet upstream of the confluence with the Chattahoochee River	*900
Approximately 0.64 mile upstream of Howell Ferry Road	*944
Swilling Creek Tributary:	
At the confluence with Swilling Creek	*928
Approximately 1,450 feet upstream of footbridge	*967
Rogers Creek:	
Approximately 1,950 feet upstream of the confluence with Chattahoochee River	*903
Approximately 1,420 feet upstream of Bridlewood Drive	*985
Maps available for inspection at City of Duluth Planning and Development Department, 3578 West Lawrenceville Street, Duluth, Georgia.	
East Point (City), Fulton County (FEMA Docket No. 7223)	
Smith Creek:	
Approximately 600 feet upstream of confluence with North Fork Camp Creek	*828
Approximately 0.22 mile upstream of confluence with North Fork Camp Creek	*828
Headland Branch:	
At confluence with South Utoy Creek	*855
Approximately 600 feet upstream of the confluence with South Utoy Creek	*857
Farley Branch:	
At confluence with Headland Branch	*855
Approximately 400 feet upstream of the confluence with Headland Branch	*857
North Fork Camp Creek:	
Approximately 0.39 mile downstream of Dogwood Drive	*856
Approximately 500 feet downstream of Dogwood Drive	*861
Maps available for inspection at the City Engineer's Office, 2777 East Point Street, East Point, Georgia.	
Fairburn (City), Fulton County (FEMA Docket No. 7223)	
Whitewater Creek:	
Approximately 0.4 mile upstream of Fayetteville Road	*922
Approximately 0.5 mile upstream of Fayetteville Road	*925
Line Creek:	
Approximately 1.3 miles downstream of Rivertown Road	*909
Approximately 1.2 miles downstream of Rivertown Road	*911
Maps available for inspection at the Fairburn City Hall, 56 Malone Street, Fairburn, Georgia.	
Fulton County (Unincorporated Areas) (FEMA Docket No. 7223)	
Deep Creek:	
Approximately 650 feet upstream of Cascade Palmetto Highway	*750
Approximately 0.5 mile upstream of Koweta Road	*833
Camp Creek:	
Approximately 350 downstream of Cascade Palmetto Highway	*750
Approximately 750 feet upstream of Welcome All Road	*819
South Fork Camp Creek:	
Approximately 750 feet upstream of Welcome All Road	*819

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.93 mile upstream of Welcome All Road	*828
Line Creek:	
At confluence with Deep Creek	*759
Approximately 0.38 mile upstream of White Mill Road	*909
Little River:	
Approximately 1,250 feet downstream of county boundary	*888
Approximately 1,700 feet upstream of county boundary	*891
Rocky Creek:	
Approximately 1,650 feet upstream of Mountain Park Road	*915
Approximately 2,800 feet upstream of Mountain Park Road	*917
Foe Killer Creek:	
Approximately 2,000 feet upstream of Alpharetta Road	*1,019
Approximately 1,950 feet upstream of Mayfield Road	*1,078
Big Creek:	
Approximately 2,750 feet upstream of Mansell Road	*969
Approximately 2,000 feet upstream of Webb Road Bridge	*991
Johns Creek:	
Approximately 2,050 feet upstream of confluence with Chattahoochee River	*892
At McGinnis Ferry Road	*1,024
South Fork Marsh Creek:	
At confluence with Marsh Creek	*920
Approximately 75 feet upstream of confluence with Marsh Creek	*920
Marsh Creek:	
Approximately 550 feet downstream of Riverside Drive	*811
At Turner McDonald Parkway (Route 400)	*948
Tributary to Camp Creek:	
At its confluence with Camp Creek	*781
Approximately 0.5 mile upstream of Erin Road	*830
Red Mill Creek:	
At its confluence with Deep Creek	*793
Approximately 0.5 mile upstream of South Fulton Parkway	*805
Long Island Creek:	
Approximately 1,400 feet upstream of confluence with Chattahoochee River	*779
Approximately 1,150 feet upstream of Kingsport Drive	*898
Cowart Lake Tributary:	
At confluence of Camp Creek	*794
Approximately 1.2 miles upstream of Cowart Lake Dam at the upstream corporate limits	*830
North Fork Camp Creek:	
At confluence with Camp Creek	*819
Approximately 0.1 mile upstream of confluence with Camp Creek	*822
Wolf Creek:	
At confluence with Camp Creek	*789
Approximately 1,300 feet upstream of confluence with Camp Creek	*789
Niskey Creek:	
At confluence with Utoy Creek	*776
Approximately 1,750 feet upstream of Danforth Road	*805
Long Indian Creek:	
Approximately 2,000 feet upstream of the confluence of Big Creek	*974
Approximately 800 feet upstream of State Bridge Road (State Route 120)	*1,081
Tributary No. 2 to Big Creek:	
Approximately 250 feet upstream of State Route 400	*990
Enon Creek:	
At confluence with Camp Creek	*768
Approximately 0.5 mile upstream of the confluence with Camp Creek	*769
Morning Creek:	
Approximately 1,000 feet downstream of Jonesboro Road	*842
Approximately 50 feet downstream of Jonesboro Road	*842
Valley Brook Creek:	
At confluence with Camp Creek	*818
Approximately 0.2 mile downstream of Ben Hill Road	*819

Maps available for inspection at the Fulton County Government Building, 141 Pryor Street, S.W., 10th Floor, Atlanta, Georgia.

Gwinnett County (Unincorporated Areas) (FEMA Docket No. 7199)

Rogers Creek:	
Approximately 1,650 feet downstream of Peachtree Industrial Boulevard	*910
Approximately 1,160 feet upstream of State Route 120	*959

Maps available for inspection at the Gwinnett County Department of Transportation, 75 Langley Drive, Lawrenceville, Georgia.

Roswell (City), Fulton County (FEMA Docket No. 7223)

Foe Killer Creek:	
Approximately 200 feet upstream of Old Roswell Road	*977
Approximately 1,100 feet upstream of Upper Hembree Road	*1,027
Crossville Creek:	
Approximately 500 feet upstream of confluence with Hog Wallow Creek	*1,018
Approximately 3,300 feet upstream of Wavetree Drive	*1,077
Strickland Creek:	
Confluence with Foe Killer Creek	*1,017
Approximately 1,250 feet upstream of confluence with Foe Killer Creek	*1,017
Crossville Branch:	
Confluence with Crossville Creek	*1,062
Approximately 450 feet upstream of confluence with Crossville Creek	*1,062
Riverside Creek:	
Approximately 100 feet downstream of Azalea Drive	*864
Approximately 600 feet upstream of Corinth Road	*987
Seven Branches:	
Approximately 50 feet upstream of Martins Lake Dam	*887
Approximately 2,000 feet upstream of Calhoree Creek Parkway	*966
Big Creek:	
Approximately 400 feet upstream of Riverside Drive	*867
Approximately 1,000 feet upstream of Mansell Road	*988
Tributary No. 2 to Big Creek:	
Approximately 1,000 feet upstream of Morrison Parkway	*1,032
At Maxwell Street	*1,054
Hughes Creek:	
Confluence with Foe Killer Creek	*1,026
Approximately 750 feet upstream of confluence with Foe Killer Creek	*1,026

Maps available for inspection at the Fulton County City Hall, Suite G–50, 38 Hill Street, Roswell, Georgia.

Towns County (Unincorporated Areas) (FEMA Docket No. 7227)

Kirby Branch:	
At confluence with Fodder Creek	*2,009
Approximately 3,700 feet upstream of Fodder Creek Road	*2,089
Rocky Branch:	
At confluence with Fodder Creek	*2,066
Approximately 2,150 feet upstream of Fodder Creek Road	*2,129
Hiawassee River:	
At Streakhill Road	*1,936
Approximately 1,000 feet upstream of confluence of Brown Branch	*2,061
Cynth Creek:	
At confluence with Hiawassee River	*1,945
Approximately 1.1 miles upstream of confluence with Hiawassee River	*2,038
Wilson Cove Creek:	
At confluence with Hog Creek	*1,952
Approximately 2,900 feet upstream of Willshook Road	*2,067
Upper Bell Creek:	
At State Route 75	*1,935
At upstream county boundary	*2,003
Fodder Creek:	*1,951

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At Fodder Creek Road.	
Approximately 40 feet downstream of Ruby Lake Drive	*2,076
Hooper Branch:	
At confluence with Fodder Creek	*1,986
Approximately 2,600 feet upstream of confluence with Fodder Creek	*2,015
Brasstown Creek:	
At downstream county boundary	*1,714
Approximately 300 feet downstream of Plott Town Road	*1,967
Crooked Creek:	
At confluence with Brasstown Creek	*1,751
Approximately 1,300 feet upstream of Private Road	*1,830
Byers Creek:	
At confluence with Brasstown Creek	*1,824
Approximately 1.06 miles upstream side of Townsend Mill Road	*2,039
Hog Creek:	
Approximately 1,200 feet downstream of confluence with Wilson Cove Creek	*1,943
Approximately 0.98 mile upstream of Barrett Road	*2,024
Owl Creek:	
At confluence with Hiawassee River	*1,993
Approximately 2,150 feet upstream side of Owl Creek Road	*2,059
Mill Creek:	
At confluence with Hiawassee River	*2,005
Approximately 0.95 mile upstream side of State Routes 17 and 75	*2,096
Tallulah River:	
Approximately 2.22 miles downstream of county boundary	*2,324
At upstream county boundary	*2,507
Maps available for inspection at the Towns County Office Building, 48 River Street, Suite I, Hiawassee, Georgia.	
Union City (City), Fulton County (FEMA Docket No. 7223)	
Deep Creek:	
Approximately 500 feet upstream of Koweta Road	*826
Approximately 0.9 mile upstream of Koweta Road	*839
Maps available for inspection at the Union City Hall Map Room, 5047 Union Street, Union City, Georgia.	
Young Harris (City), Towns County (FEMA Docket No. 7227)	
Tributary to Brasstown Creek:	
200 feet downstream of confluence with Brasstown Creek	*1,827
Approximately 625 feet downstream of Reed Street bridge	*1,836
Maps available for inspection at the Young Harris City Hall, 5187 Maple Street, Young Harris, Georgia.	

ILLINOIS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Dixon (City), Lee County (FEMA Docket No. 7227)	
Plum Creek:	
Approximately 550 feet downstream of Willett Avenue	*654
Approximately 525 feet upstream of Galena Avenue	*718
Unnamed Tributary 1 to Plum Creek:	
Approximately 1,400 feet downstream of Galena Avenue	*703
Approximately 150 feet upstream of Lowell Park Road	*728
Maps available for inspection at the City Hall Building/Zoning Office, 121 West 2nd Street, Dixon, Illinois.	
Lee County (Unincorporated Areas) (FEMA Docket No. 7227)	
Unnamed Tributary 1 to Plum Creek:	
At confluence with Plum Creek	*683
Approximately 160 feet upstream of Lowell Park Road	*728
Unnamed Tributary 2 to Plum Creek:	
At confluence with Plum Creek	*719
Approximately 120 feet upstream of Country Club Drive	*743
Plum Creek:	
Approximately 40 feet upstream of Palmyra Street	*653
Approximately 100 feet upstream of Timber Creek Road	*740
Maps available for inspection at the Lee County Zoning Office, 112 East 2nd Street, Dixon, Illinois.	

MAINE

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Dresden (Town), Lincoln County (FEMA Docket No. 7199)	
Kennebec River:	
At downstream corporate limits	*11
At upstream corporate limits	*20
Eastern River:	
At the confluence with Kennebec River	*11
Approximately 2.1 miles upstream of State Route 27	*12
Maps available for inspection at the Dresden Town Office, Route 27, Dresden, Maine.	
Sanford (Town), York County (FEMA Docket No. 7231)	
Mousam River (Lower Reach):	
At the downstream corporate limits	*154
At downstream side of Estes Lake Dam	*184
Maps available for inspection at the Town of Sanford Code Enforcement Office, 267 Main Street, Sanford, Maine.	

MICHIGAN

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Bay De Noc (Township), Delta County (FEMA Docket No. 7227)	
Green Bay:	
Entire shoreline within community	*585
Big Bay De Noc:	
Entire shoreline within community	*585
Little Bay De Noc:	
Entire shoreline within community	*585
Maps available for inspection at the Bay De Noc Township Supervisor's Home Office, 5765 Olson V Point Five Lane, Rapid River, Michigan.	
Cherry Grove (Township), Wexford County (FEMA Docket No. 7223)	
Lake Mitchell:	
Entire shoreline within the community	*1,291
Maps available for inspection at the Cherry Grove Township Hall, South 33 Mile Road, Cadillac, Michigan	
Clam Lake (Township), Wexford County (FEMA Docket No. 7223)	
Lake Cadillac:	
Entire shoreline within the community	*1,291
Lake Mitchell:	
Entire shoreline within the community	*1,291
Maps available for inspection at the Clam Lake Township Hall, South 43 Road, Cadillac, Michigan.	
Ensign (Township), Delta County (FEMA Docket No. 7227)	
Little Bay De Noc:	
Entire shoreline within community	*585
Big Bay De Noc:	
Entire shoreline within community	*585
Maps available for inspection at the Ensign Township Office, 9332 County 511, W.5 Road, Rapid River, Michigan.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Escanaba (City), Delta County (FEMA Docket No. 7190)	
Little Bay De Noc:	
Entire shoreline within community	*585
Green Bay:	
Entire shoreline within community	*585
Portage Creek:	
Approximately 2,785 feet downstream of confluence with Willow Creek	*589
Approximately 75 feet downstream of confluence with Willow Creek	*595
Willow Creek:	
Approximately 3,300 feet downstream of 8th Avenue	*596
Approximately 100 feet upstream of New Danforth Road	*627
Maps available for inspection at the City of Escanaba Protective Department, 410 Ludington Street, Escanaba, Michigan.	
Escanaba (Township), Delta County (FEMA Docket No. 7219)	
Little Bay De Noc:	
Entire shoreline within community	*585
Maps available for inspection at the Escanaba Township Hall, County 416, 20th Road, Gladstone, Michigan.	
Fairbanks (Township), Delta County (FEMA Docket No. 7219)	
Big Bay De Noc:	
Approximately 200 feet west and south of the intersection of 11 Road and 11 Drive	*584
At approximately 1,550 feet west of the intersection of HH Road and 8th Road	*585
Green Bay:	
In the vicinity of Sac Bay	*585
At the southernmost tip of Garden Peninsula	*584
Lake Michigan:	
Entire shoreline within community	*584
Maps available for inspection at the Fairbanks Township Hall, 4314 11 Road, Garden, Michigan.	
Ford River (Township), Delta County (FEMA Docket No. 7190)	
Green Bay:	
Entire shoreline within community	*585
Ford River:	
Approximately 1,000 feet upstream of State Route 35	*585
At 10.75 Road	*585
Maps available for inspection at the Ford River Township Building, 3845 K Road, Bark River, Michigan.	
Garden (Township), Delta County (FEMA Docket No. 7219)	
Big Bay De Noc:	
Entire shoreline within community	*585
Lake Michigan:	
Entire shoreline within community	*584
Maps available for inspection at the Garden Supervisor's Office, State Road, Garden, Michigan.	
Garden (Village), Delta County (FEMA Docket No. 7190)	
Big Bay De Noc/Garden Bay:	
Entire shoreline within community	*585
Maps available for inspection at the Garden Village Hall, Garden Avenue, Garden, Michigan.	
Haring (Charter Township), Wexford County (FEMA Docket No. 7223)	
Clam River:	
At Seeley Road (Road No. 49)	*1,265
At 13th Street (Road No. 36)	*1,287
Maps available for inspection at the Haring Township Hall, 505 Bell Avenue, Cadillac, Michigan.	
Nahma (Township), Delta County (FEMA Docket No. 7190)	
Big Bay De Noc:	
Entire shoreline within community	*585
Maps available for inspection at the Township Supervisor's Home Office, 9484 EE.25 Road, Rapid River, Michigan.	
Wells (Township), Delta County (FEMA Docket No. 7190)	
Little Bay De Noc:	
Entire shoreline within community	*585
Portage Creek:	
Approximately 75 feet downstream of confluence with Willow Creek (downstream corporate limits)	*595
At confluence with Willow Creek	*595
Willow Creek:	
At confluence with Portage Creek	*595
Approximately 700 feet upstream of confluence with Portage Creek	*596
Escanaba River:	
From confluence with Little Bay De Noc	*585
Approximately 500 feet upstream of U.S. Routes 2 and 41	*585
Maps available for inspection at the Wells Township Building, 6436 North Eight Road, Wells, Michigan.	
MINNESOTA	
Olmsted County (Unincorporated Areas) (FEMA Docket No. 7231)	
North Run of the North Fork of Cascade Creek:	
At U.S. Highway 14	*1,006
Approximately 550 feet downstream of KR–6 Dam	*1,037
South Run of the North Fork of Cascade Creek:	
Approximately 100 feet upstream of the confluence with Cascade Creek	*1,006
Approximately 1.31 miles upstream of Chicago and Northwestern Railroad	*1,040
South Fork Zumbro River:	
Approximately 600 feet downstream of 55th Street NW	*968
Approximately 700 feet downstream of Mayowood Road	*1,027
Bear Creek:	
Approximately 520 feet upstream of the confluence of Willow Creek	*1,012
Approximately 220 feet upstream of the confluence of Badger Creek	*1,016
Cascade Creek:	
Approximately 0.4 mile upstream of the confluence of North Run of the North Fork of Cascade Creek	*1,012
Approximately 250 feet downstream of County Road 34	*1,016
Shallow Flooding Area:	
Between the Chicago and Northwestern Railroad and North Run of the North Fork of Cascade Creek	#1
Maps available for inspection at the City of Rochester-Olmsted Planning Department, 2122 Campus Drive, S.E., Rochester, Minnesota.	
Rochester (City), Olmsted County (FEMA Docket No. 7231)	
North Run of the North Fork of Cascade Creek:	
At confluence with Cascade Creek	*1,004
Approximately 1,000 feet upstream of 19th Street NW	*1,027
South Run of the North Fork of Cascade Creek:	
At confluence with Cascade Creek	*1,006
Approximately 0.5 mile upstream of Chicago and North Western	*1,026

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Bear Creek:	
Approximately 300 feet downstream of 4th Street SE	*985
Approximately 50 feet downstream of confluence of Willow Creek	*1,011
South Fork Zumbro River:	
At 55th Street NW	*985
Approximately 1,500 feet downstream of Mayowood Road	*1,026
Cascade Creek:	
At confluence with South Fork Zumbro River	*978
Approximately 250 feet downstream of County Road 34	*1,015
Willow Creek:	
Approximately 660 feet upstream of the confluence with Bear Creek	*1,013
Approximately 265 feet downstream of 11th Avenue SE	*1,015
Shallow Flooding Area:	
Between U.S. Highway 14 and the Chicago and Northwestern Railroad, approximately 850 feet northwest of the intersection of 7th Street NW and U.S. Highway 14	#2
Between the Chicago and Northwestern Railroad and the North Run of the North Fork of Cascade Creek	#1
Between U.S. Highway 14 and the Chicago and Northwestern Railroad, approximately 400 feet northwest of the intersection of 7th Street NW and U.S. Highway 14	#3
Maps available for inspection at the City of Rochester-Olmsted Planning Department, 2122 Campus Drive, S.E., Rochester, Minnesota.	
NEW HAMPSHIRE	
Alexandria (Town), Grafton County (FEMA Docket No. 7231)	
Newfound Lake:	
Entire shoreline within community	*591
Maps available for inspection at the Alexandria Town Hall, Plummer Hill, Alexandria, New Hampshire.	
Hebron (Town), Grafton County (FEMA Docket No. 7235)	
Newfound Lake:	
Entire shoreline within community	*591
Maps available for inspection at the Hebron Town Hall, Church Lane, Hebron, New Hampshire.	
NEW JERSEY	
Brick (Township), Ocean County (FEMA Docket No. 7231)	
Atlantic Ocean:	
Approximately 250 feet east of the intersection of Ocean Avenue and Bay Avenue South	*15
Entire shoreline within community	*15
Shallow Flooding:	
Approximately 50 feet west of the intersection of Ocean Avenue and Grandview Avenue	#1
Just east of the intersection of southbound lane of State Route 35 and 9th Avenue	#2
Barnegat Bay:	
Approximately 1,200 feet west of the intersection of southbound lane of State Route 35 and Brigantine Lane	*7
Approximately 100 feet southwest of the intersection of the northbound and southbound lanes of State Route 35	*7
Maps available for inspection at the Township of Brick Engineering Department, Brick Town Hall, 401 Chambers Bridge Road, Brick, New Jersey.	
NEW YORK	
Elma (Town), Erie County (FEMA Docket No. 7223)	
Little Buffalo Creek:	
Just upstream of Hall Road	*745
At upstream corporate limits	*782
Pond Creek:	
Approximately 500 feet upstream of confluence with Buffalo Creek	*716
Just downstream of Rice Road	*809
South Branch Slate Bottom Creek:	
Approximately 0.7 mile downstream of Aurora Road	*674
Approximately 840 feet upstream of Aurora Road	*684
Cazenovia Creek:	
At downstream corporate limits	*687
At upstream corporate limits	*773
Maps available for inspection at the Elma Town Hall, 1910 Bowen Road, Elma, New York.	
Henrietta (Town), Monroe County (FEMA Docket No. 7227)	
East Branch Tributary Red Creek:	
Approximately 1,050 feet upstream of confluence with East Branch Red Creek	*530
Approximately 190 feet upstream of State Route 15A	*575
South Stem East Branch Tributary Red Creek:	
At confluence with East Branch Tributary Red Creek	*554
Downstream side of State Route 15A	*576
Maps available for inspection at the Henrietta Town Hall, 475 Calkins Road, Henrietta, New York.	
Lee (Town), Oneida County (FEMA Docket No. 7243)	
Canada Creek:	
At downstream corporate limits	*478
Approximately 1,200 feet upstream of Point Rock Road	*697
Tributary to Canada Creek:	
At confluence with Canada Creek	*591
Approximately 915 feet upstream of Lee Center Taberg Road	*652
Mohawk River:	
At corporate limits	*920
Approximately 1,050 feet upstream of corporate limits	*931
West Branch Mohawk River:	
At confluence with East Branch Mohawk River and Mohawk River	*931
Approximately 510 feet upstream of State Route 26	*1,001
Sash Factory Creek:	
At downstream corporate limits	*430
On downstream side of Kiwanis Road	*557
Tributary to Delta Lake:	
At confluence with Delta Lake	*542
Approximately 0.39 mile upstream of Lee Center Taberg Road	*678
Maps available for inspection at the Lee Town Hall, 5808 Stokes-Lee Center Road, Lee Center, New York.	
NORTH CAROLINA	
Alexander County (Unincorporated Areas) (FEMA Docket No. 7231)	
Catawba River (Lake Hickory):	
At upstream side of Oxford Dam	*935
At downstream side of State Highway 127	*936
Catawba River (Lookout Shoals Lake):	
At downstream county boundary	*847
Approximately 1.9 miles upstream of downstream county boundary	*849
Maps available for inspection at the Alexander County Planning and Inspection Emergency Management Office, 322 1st Avenue, S.W., Taylorsville, North Carolina.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Burke County (Unincorporated Areas) (FEMA Docket No. 7231)	
Rhodhiss Lake:	
At Lake Rhodhiss Dam	*1,003
At State Route 1001	*1,005
Maps available for inspection at the Avery Avenue Government Building, 200 Avery Avenue, Morganton, North Carolina.	
Caldwell County (Unincorporated Areas) (FEMA Docket No. 7231)	
Catawba River:	
At Lake Rhodhiss Dam	*1,003
At State Route 1001	*1,005
Maps available for inspection at the Caldwell County Planning Department, Caldwell County Offices, 905 West Avenue, Lenoir, North Carolina.	
Gaston County (Unincorporated Areas) (FEMA Docket No. 7227)	
Mountain Island Lake:	
Upstream side of Mountain Island Dam	*655
Approximately 6.3 miles upstream of Mountain Island Dam	*657
Maps available for inspection at the Gaston County Planning/Code Enforcement Office, 212 West Main Avenue, Gastonia, North Carolina.	
Goldsboro (City), Wayne County (FEMA Docket No. 7231)	
Mills Creek:	
Approximately 600 feet upstream of confluence with West Bear Creek	*95
Approximately 1,075 feet upstream of State Route 13	*116
Maps available for inspection at the Goldsboro City Hall Annex, 222 North Center Street, Goldsboro, North Carolina.	
Indian Beach (Town), Carteret County (FEMA Docket No. 7227)	
Atlantic Ocean:	
Approximately 150 feet south of the intersection of Salter Path Road (State Route 58) and State Route 1192	*13
Approximately 700 feet south of the intersection of Salter Path Road (State Route 58) and State Route 1192	*19
Bogue Sound:	
Approximately 0.4 mile west/northwest of the intersection of Salter Path Road (State Route 58) and easternmost corporate limits	*6
Approximately 0.6 mile north of the intersection of Salter Path Road (State Route 58) and State Route 1192	*7
Maps available for inspection at the Indian Beach Town Hall, 1400 Salterpath Road, Indian Beach, North Carolina.	
Iredell County (Unincorporated Areas) (FEMA Docket No. 7231)	
Catawba River (Lake Norman):	
At downstream county boundary	*761
Approximately 1 mile downstream of State Route 1004	*763
Catawba River (Lookout Shoals Lake):	
At Lookout Shoals Dam	*847
At upstream county boundary	*847
Maps available for inspection at the Iredell County Planning Department, 227 South Center Street, Statesville, North Carolina.	
Lincoln County (Unincorporated Areas) (FEMA Docket No. 7231)	
Lake Norman:	
Entire shoreline within community	*761
Maps available for inspection at the Lincoln County Building and Land Development Department, 302 North Academy Street, Lincolnton, North Carolina.	
Mecklenburg County (Unincorporated Areas) (FEMA Docket No. 7231)	
Lake Norman:	
Entire shoreline within county	*761
Mountain Island Lake:	
At Mountain Island Dam	*655
Approximately 4.8 miles upstream of State Route 16	*657
Lake Wylie:	
At downstream county boundary	*571
Approximately 2.4 miles downstream of State Route 49	*572
Maps available for inspection at the Mecklenburg County Engineering and Building Standards, 700 North Tryon Street, Charlotte, North Carolina.	
Transylvania County (Unincorporated Areas) (FEMA Docket Nos. 7223 and 7231)	
Davidson River:	
Confluence with French Broad River	*2,103
Approximately 5,200 feet upstream of U.S. Highway 64/276	*2,142
East Fork of French Broad River:	
Confluence with French Broad River	*2,177
Approximately 4.44 miles upstream of confluence with French Broad River	*2,291
Cathey's Creek:	
Confluence with French Broad River	*2,147
Approximately 1,250 feet upstream of U.S. Highway 64	*2,193
Patterson Creek:	
At confluence with French Broad River	*2,150
Approximately 1,500 feet upstream of Cathey's Creek Church Road	*2,203
Carson Creek:	
Confluence with French Broad River	*2,136
Approximately 1,225 feet upstream of confluence with French Broad River	*2,139
Little River:	
Confluence with French Broad River	*2,093
Approximately 1,795 feet downstream of confluence of Crab Creek	*2,094
Lamb Creek:	
Approximately 1,675 feet upstream of Lambs Creek Road	*2,252
Approximately 0.4 mile upstream of Lambs Creek Road	*2,261
French Broad River:	
Upstream side of Crab Creek Road	*2,093
Approximately 1 mile upstream of Turnpike Road	*2,206
North Fork French Broad River:	
At confluence with French Broad River	*2,206
Upstream side of U.S. Highway 64	*2,208
West Fork French Broad River:	
At confluence with French Broad River	*2,206
Approximately 475 feet upstream from confluence with French Broad River	*2,208
Middle Fork French Broad River:	
At confluence with French Broad River	*2,177
Approximately 26 feet downstream of East Fork Road	*2,181
Lake Toxaway:	
Entire shoreline within community	*3,012
Cardinal Lake:	
Entire shoreline within community	*3,044
Maps available for inspection at the Transylvania County Community Services Building, 203 East Morgan Street, Brevard, North Carolina.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Whiteville (City), Columbus County (FEMA Docket No. 7231)	
Soules Swamp:	
Approximately 0.6 mile south of intersection of Canal Street and Mill Street	*53
Approximately 0.5 mile south of the intersection of State Roads 1437 and 1438	*58
Maps available for inspection at the Whiteville City Hall, 317 South Madison, Whiteville, North Carolina.	
OHIO 1	
Champaign County (Unincorporated Areas) (FEMA Docket No. 7231)	
Anderson Creek:	
At confluence with Mad River	*978
Approximately 3,050 feet upstream of Stickley Road	*1,013
Mad River:	
At upstream side of County Line Road	*954
Approximately 1.7 miles upstream of U.S. Route 36	*1,009
Moore Run:	
At upstream side of County Line Road	*963
Approximately 5,000 feet upstream of Woodburn Road	*1,000
Maps available for inspection at the Champaign County Engineer's Office, 428 Beech Street, Urbana, Ohio.	
West Milton (Village), Miami County (FEMA Docket No. 7190)	
Jones Run:	
Approximately 400 feet southeast of intersection of State Route 48 and Cedar Drive	*905
Approximately 400 feet southeast of Highway 48	*916
Hatfield Ditch:	
At downstream side of State Route 48	*896
Approximately 0.49 mile upstream of State Route 48	*931
Maps available for inspection at the West Milton Village Hall, 701 South Miami Street, West Milton, Ohio.	
PENNSYLVANIA	
Allison (Township), Clinton County (FEMA Docket No. 7227)	
West Branch Susquehanna River:	
At confluence of Sugar Run	*572
At the upstream corporate limits	*577
Sugar Run:	
At confluence with West Branch Susquehanna River	*572
Approximately 130 feet upstream of Township Route 398	*572
Maps available for inspection at the home of the Allison Township Chairman, Glen Road, Mill Hall, Pennsylvania.	
Conewago (Township), Adams County (FEMA Docket No. 7168)	
Plum Creek:	
Approximately 1 mile upstream of confluence with South Branch Conewago Creek	*519
At county boundary	*559
Slagle Run:	
Approximately 150 feet upstream of downstream corporate limits	*522
At county boundary	*539
Maps available for inspection at the Conewago Township Building, 350 Third Street, Hanover, Pennsylvania.	
McSherrystown (Borough), Adams County (FEMA Docket No. 7155)	
Plum Creek:	
At downstream corporate limits (approximately 1,250 feet downstream of State Route 116)	*526
At upstream corporate limits (approximately 1,175 feet upstream of State Route 116)	*534
Maps available for inspection at the Borough Building, 338 Main Street, McSherrystown, Pennsylvania.	
St. Marys (City), Elk County (FEMA Docket No. 7227)	
Brewery Run:	
Approximately 25 feet upstream of confluence with Elk Creek	*1,643
Approximately 150 feet upstream of Hagerty Road	*1,715
Maps available for inspection at the City Hall, 808 South Michael Road, St. Marys, Pennsylvania.	
SOUTH CAROLINA	
Mullins (City), Marion County (FEMA Docket No. 7211)	
Fowler Branch:	
At corporate limits	*86
At State Route 41	*92
White Oak Creek:	
Approximately 0.47 mile downstream of Cleveland Street (at downstream corporate limits)	*71
Approximately 350 feet upstream of U.S. Route 76 (at upstream corporate limits)	*87
Unnamed Tributary to White Oak Creek:	
At confluence of White Oak Creek	*85
At downstream side of Yarboro Street	*94
Maps available for inspection at the Mullins City Hall, 151 Northeast Front Street, Mullins, South Carolina.	
TENNESSEE	
Oak Ridge (City), Anderson and Roane Counties (FEMA Docket No. 7227)	
Emory Valley Creek:	
Approximately 845 feet downstream of Bay Path Drive	*799
Approximately .48 mile upstream of Columbia Drive	*837
Brushy Fork Poplar Creek:	
Approximately 1,848 feet downstream of County Road	*795
Approximately 650 feet upstream of County Road	*798
Maps available for inspection at the Oak Ridge Municipal Building Implementation Development Department, 200 South Tulane Avenue, Oak Ridge, Tennessee.	
VIRGINIA	
Rappahannock County (Unincorporated Areas) (FEMA Docket No. 7231)	
Thornton River:	
At State Route 620	*593
Approximately 1.7 miles upstream of State Route 667	*960
North Fork Thornton River:	
At confluence with Thornton River	*635
Approximately 1,500 feet upstream of State Route 600	*755
Maps available for inspection at the Rappahannock County Administration and Zoning Office, 290 Gay Street, Washington, Virginia.	
Richmond (Independent City) (FEMA Docket No. 7227)	
James River:	
At downstream corporate limits	*27
At downstream side of Hollywood Dam	*58
Broad Rock Creek:	
At confluence with James River	*32
Approximately 150 feet downstream of Interstate 95	*32
Maps available for inspection at the Richmond Community Development Department, 900 East Broad Street, Room 110, Richmond, Virginia.	
WISCONSIN	
Oconto County (Unincorporated Areas) (FEMA Docket No. 7231)	
Pensaukee River:	
At U.S. Route 41	*596

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.96 mile downstream of confluence of Spring Creek	*635
Brookside Creek:	
At the confluence with Pensaukee River	*607
Approximately 750 feet downstream of Moody Road	*607
Maps available for inspection at the Oconto County Land and Water Resources—Zoning Division, 301 Washington Street, Oconto, Wisconsin.	
Washburn County (Unincorporated Areas) (FEMA Docket Nos. 7138 and 7227)	
Middle McKenzie Lake:	
Entire shoreline within county	*989
McKenzie Lake:	
Entire shoreline within county	*990
Long Lake:	
Entire shoreline within county	*1,227
Mud Lake:	
Entire shoreline within county	*1,227
Red Cedar Lake:	
Entire shoreline within county	*1,189
Bear Lake:	
Entire shoreline within county	*1,222
Trego Lake:	
Entire shoreline within county	*1,036
Matthews Lake:	
Entire shoreline within county	*995
Spooner Lake:	
Entire shoreline within county	*1,093
Maps available for inspection at the Washburn County Zoning Administration, 10 West 4th Avenue, Shell Lake, Wisconsin.	
Westfield (Village), Marquette County (FEMA Docket No. 7231)	
Westfield Creek:	
Approximately 400 feet downstream of U.S. Route 51	*840
Approximately 75 feet downstream of Spring Street Branch/Dam	*843
Maps available for inspection at the Westfield Village Hall, 124 East Third Street, Westfield, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 19, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–8089 Filed 3–26–98; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 252

[DFARS Case 97–D325]

Defense Federal Acquisition Regulation Supplement; List of Firms Not Eligible for Defense Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 843 of the National Defense Authorization Act for Fiscal Year 1998. Section 843 requires that the Secretary of Defense maintain a list of all firms that the Secretary has identified as being subject to a prohibition on contract award due to ownership or control of the firm by the government of a terrorist country; and that DoD contractors be prohibited from entering into subcontracts with firms on the list unless there is a compelling reason to do so.

DATES: Effective date: March 27, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 11, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulation Council, Attn: Mr. Michael Pelkey, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97–D325 in all corresponding related to this issue. E-mail comments should cite DFARS Case 97–D325 in the subject line.

FOR FURTHER INFORMATION CONTACT: Michael Pelkey, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2327 contains a prohibition on contracting with a firm or a subsidiary of a firm that is owned or controlled by the government of a country that has repeatedly provided support for acts of international terrorism. Section 843 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) amended 10 U.S.C. 2327 to require that the Secretary of Defense maintain a list of all firms that the Secretary has identified as being subject to the prohibition, and that DoD contractors be prohibited from entering into subcontracts with firms on the list unless there is a compelling reason to do so. This DFARS rule provides procedures to facilitate maintenance of the list and a contract clause that requires DoD approval of a proposed subcontract with a firm on the list.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because few small entities are believed to subcontract with firms that are owned or controlled by the government of a terrority country. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D325 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the interim rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 843 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 843 requires that the Secretary of Defense maintain a list of all firms that the Secretary has identified as being subject to the prohibition at 10 U.S.C. 2327 due to ownership or control of the firm by the government of a terrorist country, and that DoD contractors be prohibited from entering into subcontracts with firms on the list unless there is a compelling reason to do so. Section 843 was effective upon enactment on November 18, 1997. Immediate implementation is necessary to prevent the award of contracts and subcontracts that are prohibited by Section 843. Commments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 209 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 209 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.104–1 is amended by revising paragraph (g)(i)(A) introductory text and paragraph (g)(i)(A)(*1*) to read as follows:

209.104–1 General standards.

* * * * *

(g)(i) * * *

(A) Under 10 U.S.C. 2327(b), a contracting officer shall not award a contract of $100,000 or more to a firm or to a subsidiary of a firm when a foreign government—

(1) Either directly or indirectly, has a significant interest—

(i) In the firm; or

(ii) In the subsidiary or the firm that owns the subsidiary; and

* * * * *

3. Section 209.104–70 is amended by revising paragraph (a) to read as follows:

209.104–70 Solicitation provisions.

(a) Use the provision at 252.209–7001, Disclosure of Ownership or Cóntrol by the Government of a Terrorist Country, in all solicitations expected to result in contracts of $100,000 or more. Any disclosure that the government of a terrorist country has a significant interest in an offeror or a subsidiary of an offeror shall be forwarded through the head of the agency to the Director, Defense Procurement, ATTN: OUSD(A&T)DP/FC, 3060 Defense Pentagon, Washington, DC 20101–3060.

* * * * *

4. Section 209.405–2 is added to read as follows:

209.405–2 Restrictions on subcontracting.

(a) The contracting officer shall not consent to any subcontract with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a terrorist country unless the agency head states in writing the compelling reasons for the subcontract.

5. Section 209.409 is added to read as follows:

209.409 Solicitation provision and contract clause.

Use the clause at 252.209–7004, Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country, in solicitations and contracts with a value of $100,000 or more.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.209–7001 is amended by revising the clause date and paragraph (b) to read as follows:

252.209–7001 Disclosure of Ownership or Control by the Government of a Terrorist Country.

* * * * *

Disclosure of Ownership or Control by the Government of a Terrorist Country (Mar 1998)

* * * * *

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

* * * * *

7. Section 252.209–7004 is added to read as follows:

252.209–7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.

As prescribed in 209.409, use the following clause:

Subcontracting with Firms that are Owned or Controlled by the Government of a Terrorist County (Mar 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of $25,000 with a firm, or a subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

[FR Doc. 98–7707 Filed 3–26–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 032098A]

Atlantic Shark Fisheries; Large Coastal Shark Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by persons aboard vessels issued a Federal Atlantic shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea. This action is necessary to ensure that the semiannual quota of 642 metric tons (mt) for the period January 1 through June 30, 1998, is not exceeded.

DATES: The closure is effective from 11:30 p.m. local time March 31, 1998, through June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Sharks of the Atlantic Ocean and its implementing regulations found at 50 CFR part 678 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Section 678.24(b) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishers. The first semiannual quota of 642 mt is available for harvest from January 1 through June 30, 1998.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.25 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.24(b). When shark harvests reach, or are projected to reach, a quota established under § 678.24(b), the AA is further required under § 678.25 to close the fishery.

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The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period January 1 through June 30, 1998, for large coastal sharks in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained as of March 31, 1998. During the closure, retention of large coastal sharks is prohibited for persons fishing aboard vessels issued a permit under § 678.4, unless the vessel is operating as a charter vessel or headboat, in which case the vessel may retain up to two large coastal sharks per trip subject to the provisions of § 678.25(a)(2). The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4, is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure, and were held in storage by a dealer or processor.

Persons fishing aboard vessels issued a Federal Atlantic shark permit under § 678.4 are reminded that, as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8113 Filed 3–26–98; 8:45 am]

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7 CFR Pa

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Revision
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AGENCY: A
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ACTION: P

SUMMARY:
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Proposed Rules

Federal Register
Vol. 63, No. 59
Friday, March 27, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–98–004]

Revision of User Fees for 1998 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to reduce user fees for cotton producers for 1998 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1997 user fee for this classification service was $1.40 per bale. This proposal would reduce the fee for the 1998 crop to $1.30 per bale. The proposed reduction in fees resulted from increased efficiency in classing operations. The fee is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

DATES: Comments must be received by April 27, 1998.

ADDRESSES: Comments and inquiries should be addressed to, Cotton Programs, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641—South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION:

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposal on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). It has been determined that the implementation of this proposed rule would not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 40,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) The fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services (the 1997 user fee for classification services was $1.40 per bale; the fee for the 1998 crop would be reduced to $1.30 per bale; the 1998 crop is estimated at 15,684,900 bales);

(2) The cost reduction will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 1997 crop, 17,949,575 bales were classed out of 18,346,450 bales produced.

(4) Based on the average price paid to growers for cotton from the 1996 crop of 69.3 cents per pound, 500 pound bales of cotton are worth an average of $346.50 each. The proposed user fee for classification services, $1.30 per bale, is less than one percent of the value of an average bale of cotton.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 1998, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.40 per bale during the 1997 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Pub. L. 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, supervision, and development and maintenance of cotton standards.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.30 per bale during the 1998 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1997. Therefore, the 1998 producer's user fee for classification service is based on the 1997 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Pub. L. 102–237. The 1997 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.08 per bale. A two percent, or four cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.08 would result in a 1998 base fee of $2.12 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed

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for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1998 crop is estimated at 15,684,900 bales. The 1998 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 32 cents per bale reduction and was subtracted from the 1998 base fee of $2.12 per bale, resulting in a fee of $1.80 per bale.

With a fee of $1.80 per bale, the projected operating reserve would be 46.806 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.80 must be reduced by 50 cents per bale, to $1.30 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 1998 season fee at $1.30 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the reduction in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents requesting classification data provided on computer punched cards will be charged a fee of 10 cents per card to reflect the costs of providing this service. Requests for punch card classification data represents only 2.6 percent of the total bales classed. This change would be reflected in § 28.910 (a). Growers or their designated agents receiving classification data by methods other than computer punched cards would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at five cents per bale, and it would be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of ten cents per card would be charged. The fee in § 28.910 (b) for an owner receiving classification data from the central database would remain at five cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be reduced from $1.40 per bale to $1.30 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

Finally, the authority citation for Subpart D of Part 28 was revised at 61 FR 19512. This action would correct that revision by specifying Subpart D rather than a reference to Part 28 in its entirety.

A thirty-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 1998, as provided by the Cotton Statistics and Estimates Act.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[AMENDED]

1. The authority citation for Part 28, Subpart D, would be revised to read as follows:

Authority: 7 U.S.C. 471—476.

2. In § 28.909, paragraph (b) would be revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.30 per bale.

* * * * *

3. In § 28.910, paragraph (a) would be revised to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

(a) (1) The samples submitted as provided in the subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States shall be issued by any one of the following methods at no additional charge:

(i) Computer diskettes,

(ii) Computer tapes, or

(iii) Telecommunications, with all long distance telephone line charges paid by the receiver of data.

(2) When an additional copy of the classification memorandum is issued by any method listed in (a)(1), there will be a charge of five cents per bale. If provided as an additional method of data transfer, the minimum fee for each tape or diskette issued shall be $10.00.

(3) Upon request, computer punch cards may be issued. The fee for this service shall be 10 cents per card.

* * * * *

4. In § 28.911, the last sentence of paragraph (a) would be revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.30 per bale.

* * * * *

Dated: March 24, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–8177 Filed 3–26–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA59

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing an approximate 2.9 percent increase in certain service fees for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The proposed increase covers hourly rates and certain unit rates on tests performed at other than an applicant's facility. The proposed increase is designed to generate additional revenue required to recover operational costs created by cost-of-living increases to Federal salaries in fiscal year 1998.

DATES: Written comments must be submitted on or before May 26, 1998.

ADDRESSES: Written comments must be submitted to George Wollam, USDA,

GIPSA, ART, Stop 3649, Washington, D.C. 20250–3649, or FAX them to (202) 720–4628. All comments received will be made available for public inspection during regular business hours in Room 0623, South Building, USDA, 1400 Independence Avenue, SW, Washington, D.C. 20250–3649 (7 CFR 1.27(b)). Comments may also be sent by electronic mail or Internet to: gwollam@fgisdc.usda.gov.

FOR FURTHER INFORMATION CONTACT: George Wollam at above address or telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this proposed rule.

Effects on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Most users of GIPSA inspection and weighing services do not meet the requirements for small entities. GIPSA is required by statute to make services available and to recover costs of providing such services, as nearly as practicable.

The proposed fee revision is primarily applicable to entities engaged in the export of grain. Under provisions of the USGSA, most grain exported from U.S. export port locations must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 37 export facilities. All of the export facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities as defined under the Regulatory Flexibility Act and the regulations issued thereunder. Some users of the service who request non-mandatory official inspection and weighing services (most of which represent appeals) at other than export locations could be considered small entities. However, this fee increase merely reflects the cost-of-living increases in Federal salaries for hourly and certain unit fees.

In fiscal year 1997, GIPSA's obligations were $22,972,026 with revenue of $21,527,695, resulting in a loss of $1,444,331 and retained earnings of negative $419,417. In fiscal year 1998, as of January 31, GIPSA's obligations were $8,116,935 with revenue of $8,170,327 and retained earnings of negative $374,608. GIPSA cannot absorb the 2.9 percent increase in salary costs with the existing deficit in retained earnings. Additionally, GIPSA will continue to monitor its costs to improve operating efficiencies, and adopt cost saving measures, where possible and practicable.

The approximate 2.9 percent proposed increase in fees would not have a significant impact on either small or large entities. GIPSA estimates an annual increase of $509,000 in revenue based on a work volume of 74,045,472 metric tons, the equivalent to fiscal year 1997.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

The USGSA requires GIPSA to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs.

The proposed 2.9 percent fee increase generates additional revenue required to recover operational costs created by a January 1998 cost-of-living increase to Federal salaries. The average salary increase for GIPSA employees in calendar year 1998 is approximately 2.9 percent. This proposed action is being taken to ensure that the service fees charged by GIPSA generate adequate revenue to cover the additional cost created by the January 1998 Federal salary increase.

The current USGSA fees covering hourly rates and certain unit rates on tests performed at other than an applicant's facility were published in the **Federal Register** on June 11, 1997 (62 FR 31701), and became effective on June 15, 1997. They will appear in the 1998 edition of 7 CFR 800.71, Schedule A, Fees for Official Inspection and Weighing Services Performed in the United States. The hourly fees covered by this proposal generate revenue to cover the basic salary, benefits, and leave for those employees providing direct service delivery. GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs. This proposal increases those unit fees based on a 2.9 percent increase to the labor cost of each unit. Other associated costs, including overhead, are collected through additional fees contained in the published fee schedule and are not included under this proposal.

The amount of revenue collected as a result of this proposal is a direct function of the work volume. GIPSA estimates an annual increase of $509,000 in revenue based on a work volume of 74,045,472 metric tons, the equivalent to fiscal year 1997. If GIPSA foregoes this adjustment, GIPSA will incur a net loss equivalent to 2.9 percent for every hour worked by an employee providing direct service delivery.

In fiscal year 1997, GIPSA's obligations were $22,972,026 with revenue of $21,527,695, resulting in a loss of $1,444,331 and retained earnings of negative $419,417. In fiscal year 1998, as of January 31, GIPSA's obligations were $8,116,935 with revenue of $8,170,327 and retained earnings of negative $374,608. GIPSA cannot afford to absorb an additional $509,000 loss due to the 2.9 percent increase in salary costs with the existing deficit in retained earnings. Additionally, GIPSA will continue to monitor its costs to improve operating efficiencies and adopt cost saving measures, where possible and practicable.

Proposed Action

GIPSA proposes to apply an approximate 2.9 percent increase to those hourly and certain unit rates in 7 CFR 800.71, Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite GIPSA Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in a GIPSA Laboratory; and Table 3, Miscellaneous Services.

In reviewing the fee schedule to identify fees that would require an approximate 2.9 percent increase, GIPSA has identified several fees that

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under the current fee schedule are at levels that would not require any change. Accordingly, these fees would remain the same at this time.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grains.

For the reasons set out in the preamble, 7 CFR Part 800 is proposed to be revised as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. In § 800.71 Paragraph(s), Schedule A is revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	$24.40	$26.40	$34.40	$41.40
6-month contract	26.80	28.60	36.60	47.80
3-month contract	30.60	31.60	39.80	49.40
Noncontract	35.40	37.40	45.40	55.80

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Soybean protein and oil (one or both)	1.50
(iv) Wheat protein (per test)	1.50
(v) Sunflower oil (per test)	1.50
(vi) Vomitoxin (qualitative)	7.50
(vii) Vomitoxin (quantitative)	12.50
(viii) Waxy corn (per test)	1.50
(ix) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(x) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).	
(i) All outbound carriers (per-metric-ton) [4]	
(a) 1–1,000,000	$0.1013
(b) 1,000,001—1,500,000	.0923
(c) 1,500,001—2,000,000	.0473
(d) 2,000,001—5,000,000	.0360
(e) 5,000,001—7,000,000	.0192
(f) 7,000,000+	.0023

[1] Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.— SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1 2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	$18.00
(b) Railcar (per carrier)	27.50
(c) Barge (per carrier)	174.25
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.75
(b) Railcar (per carrier)	19.00
(c) Barge (per carrier)	108.00

TABLE 2.— SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	10.50
(b) Warehouseman inspection (per sample)	17.50
(c) Factor only (per factor—maximum 2 factors)	4.50
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	11.50
(f) Class X Weighing (per hour per service representative)	46.40
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	25.50
(b) Aflatoxin (per test—TLC method)	101.50
(c) Soybean protein and oil (one or both)	8.00
(d) Wheat protein (per test)	8.00
(e) Sunflower oil (per test)	8.00
(f) Vomitoxin (qualitative)	26.00
(g) Vomitoxin (quantitative)	31.00
(h) Waxy corn (per test)	9.25
(i) Canola (per test—00 dip test)	9.25
(j) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service. [4]	
(i) Board Appeals and Appeals (grade and factor)	75.25
(a) Factor only (per factor—max 2 factors)	39.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	25.75
(b) Aflatoxin (TLC)	111.00
(c) Soybean protein and oil (one or both)	15.75
(d) Wheat protein (per test)	15.75
(e) Sunflower oil (per test)	15.75
(f) Vomitoxin (per test—qualitative)	36.00
(g) Vomitoxin (per test—quantitative)	41.00
(h) Vomitoxin (per test—HPLC Board Appeal)	128.00
(i) Pesticide Residue Testing [3].	
(1) Routine Compounds (per sample)	200.00
(2) Special Compounds (per service representative)	100.00
(j) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(iii) Review of weighing (per hour per service representative)	67.40
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (minimum $250 per ship)	50.00
(ii) Subsequent ship examinations (same as original) (minimum $150 per ship)	
(iii) Barge (per examination)	40.00
(iv) All other carriers (per examination)	15.00

[1] Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72 (b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative) [2]	$46.40
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	46.40
(3) Special weighing services (per hour per service representative) [2].	
(i) Scale testing and certification	46.40
(ii) Evaluation of weighing and material handling systems	46.40
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	46.40
(iv) NTEP Prototype evaluation of Railroad Track	46.40
Scales (plus usage fee per day for test car)	100.00
(v) Mass standards calibration and reverification	46.40
(vi) Special projects	46.40
(4) Foreign travel (per day per service representative)	230.00
(5) Online customized data EGIS service.	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.50

TABLE 3.—MISCELLANEOUS SERVICES [1]—Continued

(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost).	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1).	

[1] Any requested service that is not listed will be performed at $46.40 per hour.
[2] Regular business hours-Monday thru Friday-service provided at other than regular hours charged at the applicable overtime hourly rate.

* * * * *

Dated: March 20, 1998.

James R. Baker,

Administrator.

[FR Doc. 98–7939 Filed 3–26–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563f and 574

[No. 98–28]

RIN 1550–AB10

Agency Disapproval of Directors and Senior Executive Officers of Savings Associations and Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations implementing section 32 of the Federal Deposit Insurance Act (FDIA). This statute requires certain savings associations and savings and loan holding companies to provide prior notice of the appointment or employment of directors and senior executive officers. The proposed changes eliminate unnecessary regulatory burden, implement changes enacted in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), and more closely conform OTS regulations to those of the other banking agencies as required under section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA).

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 98–28. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; sent by facsimile transmission to FAX number (202) 906–7755; or sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Frances C. Augello, Senior Counsel, Business Transactions Division, Chief Counsel's Office (202) 906–6151; Scott Ciardi, Financial Analyst, Corporate Activities Division, (202) 906–6960; or Mary Jo Johnson, Project Manager, Supervision Policy (202) 906–5739, Office of Thrift Supervision, 1700 G Street, NW., Washington D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 32 of FDIA [1] requires certain savings associations and savings and loan holding companies to notify the OTS at least 30 days before adding any individual to the board of directors or employing an individual as a senior executive officer. Section 2209 of the EGRPRA [2] amended section 32 of the FDIA by changing the circumstances under which a notice must be filed. Section 2209 also provided that the OTS may have as long as 90 days to issue a notice of disapproval of the proposed addition of a director or employment of a senior executive officer.

The OTS proposes to amend its regulations implementing section 32 of FDIA to reflect the EGRPRA amendments and to eliminate unnecessary burden. In accordance with section 303 of the CDRIA,[3] the OTS has coordinated with other federal banking agencies to streamline and clarify the regulations implementing section 32 of FDIA. The proposed OTS rule conforms generally to regulations that have been promulgated by the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (FRB), and proposed by the Federal Deposit Insurance Corporation (FDIC).[4]

[1] 12 U.S.C. 1831i.
[2] Pub.L. 104–208, 110 Stat. 3009 (Sept. 30, 1996).
[3] Pub. L. 103–325, 108 Stat. 2215 (Sept. 23, 1994).
[4] (OCC) 61 FR 60341 (November 27, 1996); (FRB) 62 FR 9290 (February 28, 1997); (FDIC) 61 FR 52809 (October 9, 1997).

The proposed rule is discussed in detail below. This proposal restates the provisions of the existing rule at § 574.9 with the revisions noted in the discussion. In addition, the OTS has rewritten the rule using plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the **Federal Register** Document Drafting Handbook (January 1997 edition). The primary goal of plain language drafting is to make regulations easier to understand. Plain language drafting emphasizes the use of informative headings (often written as a question), non-technical language (including the use of "you") and sentences in the active voice.

The use of the plain language format has not altered the substance of the regulation. The OTS welcomes comments on the plain language format, and suggestions on how to improve it. The OTS is committed to converting more of its regulations to the plain language format to reduce regulatory burden.

II. Proposed Amendments

Proposed Section 574.10—What does this subpart do?

Proposed § 574.10 states that the new regulations implement section 32 of the FDIA.

Proposed Section 574.11—What definitions apply to this subpart?

Proposed § 574.11 sets forth the definitions that apply to the notice requirement under section 32. The proposed provision retains the substance of the existing definitions, except as noted below.

The proposed regulation revises the definition of "director" to clarify the circumstances under which an advisory director would not be considered a director. Those circumstances would be if the individual (1) is not elected by the shareholders; (2) is not authorized to vote on any matters before the board, *or any committee* of the board; (3) provides

only general policy advice to the board *or any committee* of the board; and (4) has not been identified by the OTS in writing as an individual who performs the functions of a director, or who exercises a significant influence over, or participates in, major policymaking decisions of the board.

The current definition of "senior executive officer" would also be clarified. The proposed rule states explicitly that the president of a savings association or savings and loan holding company is a senior executive officer.

Finally, the existing definitions of "complete notice" and "complete notice date" are eliminated as unnecessary.

Proposed Section 574.12—Who must give prior notice?

Proposed § 574.12(a) sets forth the circumstances under which notice is required, and implements certain changes made in EGRPRA.

Prior to EGRPRA, section 32 of the FDIA required a savings association or savings and loan holding company to file prior notice where: (1) the savings association was chartered less than two years, (2) the savings association or savings and loan holding company had undergone a change of control within the preceding two years, or (3) the savings association or savings and loan holding company was not in compliance with minimum capital requirements or was otherwise in a troubled condition.

Section 2209 of the EGRPRA eliminated the notice requirement for savings associations chartered for less than two years, and for savings associations and savings and loan holding companies that had undergone a change in control within the previous two years. Section 2209 also added a new provision requiring prior notice where an agency determines, in connection with its review of a capital restoration plan required under section 38 of the FDIA or otherwise, that prior notice is appropriate.

The proposed regulation makes those changes and also makes minor clarifications to existing filing requirements. For example, the proposed regulation clarifies that filings are required when an existing senior executive officer changes responsibilities.

Proposed § 574.12(b) permits an individual seeking election to a board of directors to file a notice, if the individual has not been nominated by management. The current regulation includes a similar provision. See existing § 574.9(d)(l)(ii).

The current regulation includes a special rule for multi-tiered savings and loan holding companies. The special rule limits the circumstances under which filings are required with respect to changes in directors or senior executive officers of savings and loan holding companies. *See* existing § 574.9(d)(5). The OTS originally promulgated this special rule to reduce the number of unnecessary filings by multi-tiered savings and loan holding companies within two years of a change of control. Because EGRPRA eliminated the filing requirement relating to changes of control, the proposed regulation eliminates the special rule for multi-tiered savings and loan holding companies.

The proposed regulations require filings only from entities described in proposed § 574.12. For example, a savings and loan holding company is required to file if it is in troubled condition. A savings association is required to file if it is undercapitalized or in troubled condition or if OTS requires, as part of prompt corrective action, the filing of a notice.

Proposed Section 574.13—What procedures govern the filing of my notice?

The proposed regulation at § 574.13 sets forth the procedures governing the filing of notices. This proposed section retains the existing requirement that the notice must be filed in accordance with the procedures in 12 CFR 516.1.

Proposed Section 574.14—What information must I include in my notice?

The proposed regulation eliminates specific notice content requirements currently set forth at existing § 574.9(d)(2)(i)-(iii). Instead, the proposed rule requires that the notice contain the information required under paragraph 6(A) of the Change in Bank Control Act,[5] and information prescribed in appropriate interagency forms. Currently, these forms include the Interagency Notice of Change in Director or Senior Executive Officer,[6] and the Interagency Biographical and Financial Report (Notice Forms).[7]

In addition, the proposed regulation retains the current requirement that a proposed director or senior executive officer provide legible fingerprints. Fingerprints may be omitted, if the individual previously submitted fingerprints as part of a notice filed with the OTS under section 32 of the FDIA within the previous three years.

Finally, the proposed regulation requires the submission of such other information required by the OTS. The proposed regulation further states explicitly that the OTS may require or accept other information in lieu of the specific requirements of § 574.14.

The OTS proposes to eliminate the current regulatory provision requiring certain certifications. *See* existing § 574.9(d)(l)(ii). The cited OTS Notice Forms already require similar certifications. Moreover, the signature requirement on the Notice Forms adequately ensures the accuracy of the information provided in the form.[8]

Proposed Section 574.15—What procedures govern OTS review of my notice for completeness?

Proposed § 574.15 sets forth the procedures governing OTS review of the notice, and consolidates several provisions in the current regulations.[9] The revised regulation provides that the OTS will review the notice to determine if it is complete. If the notice is complete, the OTS will notify the filer in writing of the date that the OTS received the complete notice. If the OTS determines that the notice is incomplete, the OTS will notify the filer in writing why it is incomplete, and will request the filer to submit additional information within a specified time period.

If the OTS requests additional information, the filer must provide the information or request the OTS to suspend processing of the notice within the time period prescribed by the OTS. If the filer does not act within the specified period, the OTS may treat the notice as withdrawn or review the notice based on the provided information. In its review, the OTS may draw reasonable inferences from the filer's failure to provide the requested information.

The proposed regulation eliminates the current provision permitting the OTS to suspend processing for up to 60 days upon the request of the filer. *See* existing § 574.9(d)(4)(i). This provision is unnecessary in light of the EGRPRA amendments permitting OTS to extend the 30-day notice period for an additional 60 days. In any event, OTS may suspend processing at the filer's request for a specified period of time.

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[5] 12 U.S.C. 1817(j)(6)(A).

[6] OTS Form 1624.

[7] OTS Form 1623.

[8] *See also* 12 CFR 563.180(b) which provides that no person filing or seeking approval of any application shall knowingly make any written or oral statement to the OTS that is false or misleading with respect to any material fact or omits to state any material fact concerning any matter within the jurisdiction of the OTS.

[9] *See* 12 CFR 574.9(d)(1), (d)(3), and (d)(4).

In addition, the proposal streamlines the regulation by eliminating the current provision which permits the OTS to suspend processing for 60 days if the OTS does not receive a report requested from another agency. *See* existing § 574.9(d)(4)(ii). This provision is no longer necessary because the statute now permits the agency to extend the review period up to an additional 60 days and the OTS may always request the filer to suspend the time periods voluntarily.

Proposed Section 574.16—What standards and procedures will govern OTS review of the substance of my notice?

Proposed § 574.16 sets forth the review standard for notices submitted under section 32 of the FDIA. The proposed review standard is unchanged, except that it eliminates the reference to the best interests of the savings and loan holding company. This change conforms the rule more closely to section 32 of FDIA. *See* existing § 574.9(d)(6).

Proposed Section 574.17—When may a proposed director or senior executive officer begin service?

Proposed § 574.17 sets forth the circumstances under which a proposed director or senior executive officer may begin service. The proposed regulation incorporates the current regulations at §§ 574.9(b)(2), (d)(7) and (d)(9). Consistent with the EGRPRA amendments, the OTS may extend the 30-day review period for an additional period not to exceed 60 days. The OTS expects to continue to process most section 32 notices within 30 days. In special circumstances, such as where the administrative record is incomplete, however, extensions may be necessary.

Proposed Section 574.18—When will the OTS waive the prior notice requirement?

Proposed § 574.18(a) addresses waiver of the prior notice requirement. The current regulation permits the OTS to waive the notice if the OTS "finds that waiver would be in the best interest of the savings association or the savings and loan holding company, would be in the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement of this provision." *See* existing § 574.9(d)(8).

The proposed regulation revises the standard. The OTS may waive the prior notice requirement if it finds that delay in the individual's assumption of the position would threaten the safety or soundness of the savings association, or would not be in the public interest, or other extraordinary circumstances exist. The proposed regulation conforms more closely to section 32 of the FDIA, which states that the OTS may prescribe by regulation conditions under which prior notice may be waived in the event of extraordinary circumstances.

The proposed regulation includes the current requirement that if a waiver is granted, the notice must be filed within the time period specified in the waiver.

Proposed § 574.18(b) waives the prior notice requirement with respect to certain individuals elected to the board of directors. An individual will qualify for this waiver if he or she was not nominated by management and provides the required notice within seven calendar days after being elected. This provision is based on existing § 574.9(d)(8)(ii).

Finally, the proposed regulation, in conformity with the statute, provides that a waiver shall not affect the authority of the OTS to disapprove a notice within 30 days after a waiver is granted. For the individual who is serving pursuant to proposed § 574.18(b), the 30 day period would commence with the individual's election. The OTS notes that the waiver section of the statute does not specifically provide for any extension of this 30 day period.[10]

III. Disposition of Existing Regulations

The following chart gives an overview of the changes made to Part 574.

Revised provision	Former provision	Comments
§ 574.10		Added.
574.11	574.9(a)	Modified.
574.12	§ 574.9(b), (c)(3) and (d)(1)(ii)	Significantly modified.
	574.9(c)(1) and (2)	Deleted.
§ 574.13	§ 574.9(d)(1)	Modified.
§ 574.14	§ 574.9(d)(1) and (2)	Modified and added.
§ 574.15	§ 574.9(d)(3) and (4)	Significantly modified.
	§ 574.9(d)(5)	Deleted.
§ 574.16	§ 574.9(d)(6)	Modified.
§ 574.17	§ 574.9(b)(2), (d)(7) and (d)(9)	Significantly modified.
§ 574.18	§ 574.9(d)(8)	Modified.

IV. Executive Order 12866

The Director of the OTS has determined that this proposed rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule does not impose any additional burdens or requirements upon small entities and reduces several paperwork and other burdens on all savings associations and savings and loan holding companies.

VI. Paperwork Reduction Act

There are no new information collection requirements contained in this proposal. The information collection requirements contained in this proposal are the same as those required in the form Interagency Notice of Change in Director and Senior Executive Officer,[11] which has been previously submitted to and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0047.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires

[10] Compare 12 U.S.C. 1831i(a).

[11] OTS Form 1624.

an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 563f

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

1. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

2. Existing §§ 574.1 through 574.8 are designated as subpart A, and the subpart heading is added to read as follows:

Subpart A—Acquisition of Control

* * * * *

§ 574.9 [Removed and Reserved]

3. Section 574.9 is removed and reserved.

4. Subpart B, consisting of §§ 574.10 through 574.18, is added to read as follows:

Subpart B—Notice of Change of Director or Senior Executive Officer

Sec.

574.10 What does this subpart do?
574.11 What definitions apply to this subpart?
574.12 Who must give prior notice?
574.13 What procedures govern the filing of my notice?
574.14 What information must I include in my notice?
574.15 What procedures govern OTS review of my notice for completeness?
574.16 What standards and procedures will govern OTS review of the substance of my notice?
574.17 When may a proposed director or senior executive officer begin service?
574.18 When will the OTS waive the prior notice requirement?

Subpart B—Notice of Change of Director or Senior Executive Officer

§ 574.10 What does this subpart do?

This subpart implements 12 U.S.C. 1831i, which requires certain savings associations and savings and loan holding companies to notify the OTS before appointing or employing directors and senior executive officers.

§ 574.11 What definitions apply to this subpart?

The following definitions apply to this subpart:

Director means an individual who serves on the board of directors of a savings association or savings and loan holding company. This term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;

(3) Provides only general policy advice to the board of directors or any committee of the board of directors; and

(4) Has not been identified by the OTS in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

Senior executive officer means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

Troubled condition means:

(1) A savings association that has a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter;

(2) A savings and loan holding company that has an unsatisfactory rating under the OTS's holding company rating system, or that is informed in writing by the OTS that it has an adverse effect on its subsidiary savings association;

(3) A savings association or savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(4) A savings association or savings and loan holding company that is informed in writing by the OTS that it is in troubled condition based on information available to the OTS.

§ 574.12 Who must give prior notice?

(a) *Savings association or savings and loan holding company.* Except as provided under § 574.18, you must notify the OTS at least 30 days before adding or replacing any member of your board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if:

(1) You are a savings association and at least one of the following circumstances apply:

(i) You do not comply with all minimum capital requirements under part 567 of this chapter;

(ii) You are in troubled condition; or

(iii) The OTS has notified you, in connection with its review of a capital restoration plan required under section 38 of the Federal Deposit Insurance Act or part 565 of this chapter or otherwise, that a notice is required under this subpart; or

(2) You are a savings and loan holding company and you are in troubled condition.

(b) *Notice by individual.* If you are an individual seeking election to the board of directors of a savings association or savings and loan holding company, and have not been nominated by management, you may provide the prior notice required under paragraph (a) of this section or you may follow the process under § 574.18.

§ 574.13 What procedures govern the filing of my notice?

The procedures found in § 516.1 of this chapter govern the filing of your notice under § 574.12.

§ 574.14 What information must I include in my notice?

(a) *Content requirements.* Your notice must include:

(1) The information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Notice of Change in Director or Senior Executive Officer and the Interagency Biographical and Financial Report;

(2) Legible fingerprints of the proposed director or senior executive officer. You are not required to file fingerprints if, within three years prior to the date of submission of the notice, the proposed director or senior executive officer provided legible

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fingerprints as part of a notice filed with the OTS under 12 U.S.C. 1831i; and

(3) Such other information required by the OTS.

(b) *Modification of content requirements.* The OTS may require or accept other information in place of the content requirements in paragraph (a) of this section.

§ 574.15 What procedures govern OTS review of my notice for completeness?

The OTS will first review your notice to determine whether it is complete.

(a) If your notice is complete, the OTS will notify you in writing of the date that the OTS received the complete notice.

(b) If your notice is not complete, the OTS will notify you in writing what additional information you need to submit, why we need the information, and when you must submit it. You must, within the specified time period, provide additional information or request that the OTS suspend processing of the notice. If you fail to act within the specified time period, the OTS may treat the notice as withdrawn or may review the application based on the information provided.

§ 574.16 What standards and procedures will govern OTS review of the substance of my notice?

The OTS will disapprove a notice if the OTS finds that the competence, experience, character, or integrity of the proposed director or senior executive officer indicates that it would not be in the best interests of the depositors of the savings association or of the public to permit the individual to be employed by, or associated with, the savings association or savings and loan holding company. If the OTS disapproves a notice, it will issue a written notice that explains why the OTS disapproved the notice. The OTS will send the notice to the savings association or savings and loan holding company and the individual.

§ 574.17 When may a proposed director or senior executive officer begin service?

(a) A proposed director or senior executive officer may begin service 30 days after the date the OTS receives all required information, unless:

(1) The OTS notifies you that it has disapproved the notice; or

(2) The OTS extends the 30-day period for an additional period not to exceed 60 days. If the OTS extends the 30-day period, it will notify you in writing that the period has been extended, and will state the reason for the extension. The proposed director or senior executive officer may begin service upon expiration of the extended period, unless the OTS notifies you that it has disapproved the notice during the extended period.

(b) Notwithstanding paragraph (a) of this section, a proposed director or senior executive officer may begin service after OTS notifies you, in writing, of its intention not to disapprove the notice.

§ 574.18 When will the OTS waive the prior notice requirement?

(a) *Waiver request.* (1) An individual may serve as a director or senior executive officer before filing a notice under this subpart if OTS issues a written finding that:

(i) Delay would threaten the safety or soundness of the savings association;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) If the OTS grants a waiver, you must file a notice under this subpart within the time period specified by the OTS.

(b) *Automatic waiver.* An individual may serve as a director before filing a notice under this subpart, if the individual was not nominated by management and the individual submits a notice under this subpart within seven days after election as a director.

(c) *Subsequent OTS action.* The OTS may disapprove a notice within 30 days after OTS issues a waiver under paragraph (a) of this section or within 30 days after the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (b) of this section.

5. Existing § 574.100 is designated as subpart C, and the subpart heading is added to read as follows:

Subpart C—Rebuttal of Control Agreement

* * * * *

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

6. The authority citation for part 563f continues to read as follows:

Authority: 12 U.S.C. 3201–3208.

7. Section 563f.2 is amended by revising paragraph (l)(1)(iii) to read as follows:

§ 563f.2 Definitions.

* * * * *

(l) Management official. (1) * * *

(iii) A senior executive officer as that term is defined in § 574.11 of this chapter;

* * * * *

8. Section 563f.5 is amended by revising paragraphs (b)(2)(i) and (b)(2)(ii) to read as follows:

§ 563f.5 Regulatory Standards exemption.

* * * * *

(b) * * *

(2) * * *

(i) That official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to § 547.17 of this chapter; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a "troubled condition" as defined in § 574.11 of this chapter at the time the service under that section was approved.

* * * * *

9. Section 563f.6 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 563f.6 Management Consignment exemption.

* * * * *

(b) * * *

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to § 574.17 of this chapter and the institution had operated for less than two years at the time the service under § 574.17 of this chapter was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to § 574.17 of this chapter and the institution was not in compliance with minimum capital requirements or otherwise was in a "troubled condition" as defined under § 574.11 of this chapter at the time service under § 574.11 of this chapter was approved.

* * * * *

Dated: March 18, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–7883 Filed 3–26–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–13–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require replacement of the non-return valves located in the engine fuel feed lines on the outer fuel tank with new return valves; and, for certain airplanes, replacement of the inner tank booster pump canisters with modified canisters. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent sticking of non-return valves located in the fuel system, which could result in an internal fuel transfer from the center tank to the inner or outer tank. Such a transfer of fuel could lead to fuel spillage overboard through the vent system, and consequent insufficient fuel for the airplane to reach its flight destination.

DATES: Comments must be received by April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–13–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that it has received reports of sticking of the non-return valves located in the engine fuel feed line on the outer wing fuel tank. A report also has been received of a similar failure of the non-return valve located in the inner tank fuel pump canister. The cause of the sticking of the non-return valves has been attributed to excessive free play in the shutter of the valves. This condition, if not corrected, could result in an internal fuel transfer from the center tank to the inner or outer tank, which could lead to fuel spillage overboard through the vent system, and consequent insufficient fuel to reach the flight destination.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins, which describe procedures for replacement of the non-return valves located in the engine fuel feed lines on the outer fuel tank with new non-return valves:

- A300–28–0063, Revision 1, dated January 15, 1997 (for Model A300 series airplanes)
- A310–28–2053, Revision 1, dated January 15, 1997 (for Model A310 series airplanes)
- A300–28–6031, Revision 1, dated January 15, 1997 (for Model A300–600 series airplanes)

For certain airplanes, Airbus also has issued the following service bulletins, which describe procedures for replacement of the inner fuel tank booster pump canisters with modified canisters:

- A300–28–0071, dated January 15, 1997 (for Model A300 series airplanes)
- A310–28–2124, dated January 15, 1997 (for Model A310 series airplanes)
- A300–28–6054, dated January 15, 1997 (for Model A300–600 series airplanes)

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–082–215(B), dated March 12, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 103 Model A300, A310, and A300–600 series airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that the proposed replacement of the non-return valves would take approximately 66 work hours per airplane to accomplish, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed action on U.S. operators is estimated to be $407,880, or $3,960 per airplane.

The FAA estimates that replacement of the inner fuel tank booster pump canisters would take approximately 12 work hours per airplane to accomplish, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed action on U.S. operators is estimated to be $74,160, or $720 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98–NM–13–AD.

Applicability: Model A300, A310, and A300–600 series airplanes; on which Airbus Modification 8928 or 6094 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent sticking of non-return valves located in the fuel system, which could result in fuel spillage overboard and consequent insufficient fuel for the airplane to reach its flight destination, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Modification 8928 has not been installed: Replace the non-return valves located in the engine fuel feed lines on the outer fuel tank with new non-return valves, in accordance with Airbus Service Bulletin A300–28–0063, Revision 1 (for Model A300 series airplanes); Airbus Service Bulletin A310–28–2053, Revision 1 (for Model A310 series airplanes); or Airbus Service Bulletin A300–28–6031, Revision 1 (for Model A300–600 series airplanes); all dated January 15, 1997; as applicable.

(2) For extended range twin-engine operations (ETOPS) airplanes, or airplanes equipped with auxiliary tanks; on which Airbus Modification 6094 has not been installed: Replace the inner tank booster pump canisters with modified canisters, in accordance with Airbus Service Bulletin A300–28–0071 (for Model A300 series airplanes); A310–28–2124 (for Model A310 series airplanes); or A300–28–6054 (for Model A300–600 series airplanes); all dated January 15, 1997; as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–082–215(B), dated March 12, 1997.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8096 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, –300, –SP, and –SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document announces a reopening of the comment period for the above-referenced NPRM, applicable to

all Boeing Model 747–100, –200, –300, –SP, and –SR series airplanes. That NPRM invites comments concerning the proposed requirement for installation of components for the suppression of electrical transients and/or the installation of shielding and separation of the electrical wiring of the fuel quantity indication system (FQIS). This reopening of the comment period is necessary to afford all interested persons an opportunity to present their views on the proposed requirements of that NPRM.

DATES: Comments must be received by May 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information concerning this NPRM may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747–100, –200, and –300 series airplanes was published in the **Federal Register** on December 1, 1997 (62 FR 63624). That action proposed to require installation of components for the suppression of electrical transients and/or the installation of shielding and separation of the electrical wiring of the fuel quantity indication system (FQIS). That action invites comments on regulatory, economic, environmental, and energy aspects of the proposal.

That action was prompted by testing results, which revealed that excessive energy levels in the electrical wiring and probes of the fuel system could be induced by electrical transients. The actions specified by the proposed AD are intended to prevent electrical transients induced by electromagnetic interference (EMI) or electrical short circuit conditions from causing arcing of the FQIS electrical wiring or probes in the fuel tank, which could result in a source of ignition in the fuel tank.

Since the issuance of that proposal, several commenters have raised issues regarding the ability to implement corrective action in a timely manner, particularly because the manufacturer has yet to issue a service bulletin. Based on these and other comments, the FAA has determined that further discussion and input may be beneficial prior to the adoption of a final rule. As a result, the FAA has decided to reopen the comment period for 60 days to receive additional comments.

In addition, the applicability of the proposed rule addresses "All Model 747–100, –200, and –300 series airplanes." However, the FAA's intent was that the proposal also apply to Model 747–SP and –SR series airplanes. Those airplanes are generally considered to be either Model 747–100 or –200 series airplanes. Therefore, the applicability of the proposed rule is clarified as follows:

"All Model 747–100, –200, –300, –SP, and –SR series airplanes; certificated in any category."

The comment period for Rules Docket No. 97–NM–272–AD closes May 26, 1998.

Because only the applicability statement and no other portion of the proposal or other regulatory information has been changed, the entire proposal is not being republished.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8094 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–55–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 and MD–11 Series Airplanes, and KC–10 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 and MD–11 series airplanes, and KC–10 (military) series airplanes. This proposal would require a one-time inspection for blockage of the lubrication holes on the forward trunnion spacer assembly, and a one-time inspection of the forward trunnion bolt on the left and right main landing gear (MLG) to detect discrepancies; and repair, if necessary. This proposal is prompted by reports of blockage by opposing bushings of the lubrication holes on the forward trunnion spacer assembly, and reports of flaking, galling, and corrosion of the forward trunnion bolt. The actions specified by the proposed AD are intended to detect and correct such flaking, galling, and corrosion of the forward trunnion bolt, which could result in premature failure of the forward trunnion bolt and could lead to separation of the MLG from the wing during takeoff and landing.

DATES: Comments must be received by May 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and

be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–55–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports from two operators indicating that, in five instances on McDonnell Douglas Model MD–11 in-service airplanes, the lubrication holes on the forward trunnion spacer assembly on the left and right main landing gear (MLG) were blocked by opposing bushings, and that the forward trunnion bolt on the left and right MLG was flaking, galling, and corroding. Investigations have revealed that the forward trunnion spacer assemblies were manufactured in a way that could block the lubrication holes. If the lubrication holes are blocked, lubricant cannot migrate to the forward trunnion bolt. Without lubrication, the chrome surface of the forward trunnion bolt may flake and gall and the grooves of the bolt may corrode. This condition, if not corrected, could result in premature failure of the forward trunnion bolt, which could lead to separation of the MLG from the wing during takeoff and landing.

Although the forward trunnion spacer assemblies were installed during production on Model MD–11 series airplanes, the spacer assemblies may have been used as spare parts on Model DC–10 series airplanes and KC–10 (military) series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–32–074, dated December 15, 1997, and McDonnell Douglas Service Bulletin DC10–32–248, dated December 17, 1997, which describe procedures for a one-time visual inspection of the lubrication holes on the forward trunnion spacer assembly on the left and right MLG for blockage by opposing bushings; a one-time visual inspection of the forward trunnion bolt on the left and right MLG for chrome flaking, galling, and corrosion in the grooves; and repair, if necessary. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed Rule and the Relevant Service Information

Operators should note that, although the service bulletins recommend accomplishing the visual inspections at the earliest practical maintenance period or within 24 months, the FAA has determined that an interval of 24 months would not address the identified unsafe condition in a timely manner. In developing appropriate compliance times for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspections (less than one work hour). In light of all of these factors, the FAA finds an 18-month compliance time for Model DC–10 series airplanes and Model KC–10 (military) series airplanes, and a 15-month compliance time for Model MD–11 series airplanes for initiating the required actions to be warranted. These compliance times represent appropriate intervals of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 522 airplanes of the affected design in the worldwide fleet. The FAA estimates that 326 McDonnell Douglas Model DC–10 and MD–11 series airplanes and KC–10 (military) series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the proposed AD on U.S. operators is estimated to be $19,560, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 98–NM–55–AD.

Applicability: Model DC–10 and MD–11 series airplanes, and KC–10 (military) series airplanes; as listed in McDonnell Douglas Service Bulletin DC10–32–248, dated December 17, 1997, and in McDonnell Douglas Service Bulletin MD11–32–074, dated December 15, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct flaking, galling, and corrosion of the forward trunnion bolt as a result of installation of a suspected unapproved part (SUP), and consequent premature failure of the forward trunnion bolt and separation of the main landing gear (MLG) from the wing during takeoff and landing, accomplish the following:

(a) For airplanes listed in McDonnell Douglas Service Bulletin MD11–32–074, dated December 15, 1997: Within 15 months after the effective date of this AD, perform a one-time visual inspection of the lubrication holes on the forward trunnion spacer assembly on the MLG for blockage by opposing bushings, and perform a one-time visual inspection of the forward trunnion bolt on the left and right MLG for chrome flaking, galling, and corrosion in the grooves; in accordance with the service bulletin.

(1) Condition 1. If the lubrication holes on the forward trunnion spacer assembly are not blocked by opposing bushings, and the forward trunnion bolt does not reveal chrome flaking or galling, and exhibits no corrosion in the grooves, no further work is required by this AD.

(2) Condition 2. If the lubrication holes on the forward trunnion spacer assembly are blocked by opposing bushings, and the forward trunnion bolt does not reveal chrome flaking or galling, and exhibits no corrosion in the grooves: Prior to further flight, replace the forward trunnion spacer assembly with a new part in accordance with the service bulletin.

(3) Condition 3. If the lubrication holes on the forward trunnion spacer assembly are blocked by opposing bushings, and the forward trunnion bolt reveals chrome flaking, galling, or corrosion in the grooves, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD:

(i) Option 1. Prior to further flight, replace the forward trunnion spacer assembly with a new part, and replace the forward trunnion bolt with a new part in accordance with the service bulletin. Or

(ii) Option 2. Prior to further flight, replace the forward trunnion spacer assembly with a new part, and rework the forward trunnion bolt in accordance with the service bulletin.

(b) For airplanes listed in McDonnell Douglas Service Bulletin DC10–32–248, dated December 17, 1997: Within 18 months after the effective date of this AD, perform a one-time visual inspection of the lubrication holes on the forward trunnion spacer assembly on the MLG for blockage by opposing bushings, and perform a one-time visual inspection of the forward trunnion bolt on the left and right MLG for chrome flaking, galling, and corrosion in the grooves; in accordance with the service bulletin.

(1) Condition 1. If the lubrication holes on the forward trunnion spacer assembly are not blocked by opposing bushings, and the forward trunnion bolt does not reveal chrome flaking, or galling, and exhibits no corrosion in the grooves, no further work is required by this AD.

(2) Condition 2. If the lubrication holes on the forward trunnion spacer assembly are blocked by opposing bushings, and the forward trunnion bolt does not reveal chrome flaking or galling, and exhibits no corrosion in the grooves: Prior to further flight, replace the forward trunnion spacer assembly with a new part in accordance with the service bulletin.

(3) Condition 3. If the lubrication holes on the forward trunnion spacer assembly are blocked by opposing bushings, and the forward trunnion bolt reveals chrome flaking, galling, or corrosion in the grooves, accomplish either paragraph (b)(3)(i) or (b)(3)(ii) of this AD:

(i) Option 1. Prior to further flight, replace the forward trunnion spacer assembly with a new part, and replace the forward trunnion bolt with a new part in accordance with the service bulletin. Or

(ii) Option 2. Prior to further flight, replace the forward trunnion spacer assembly with a new part, and rework the forward trunnion bolt in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8099 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes. This proposal would require a one-time visual inspection of the pilot valve harness tubes for bulges and cracks, cleaning the tubes, applying sealant at the tube end opening, and replacing any discrepant tubes with serviceable tubes. This proposal also would require replacement of the pilot valve harness tubes and vent valve tubes with new tubes having improved anti-corrosion protection. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent cracking of the pilot valve harness tubes, which could allow fuel to enter the conduit and leak overboard; this condition could result in increased risk of a fuel tank explosion and fire.

DATES: Comments must be received by April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, ACE–115A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that cracks have been detected in the pilot valve harness tube (conduit) inside the wing, close to rib 15. The cracking is the result of water entering the tube at the end opening in the rear spar, then freezing and expanding. Such cracking can allow fuel to enter the tube, wet the harness, and drain overboard. This condition, if not corrected, could result in increased risk of a fuel tank explosion and fire.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–28–0005, dated May 23, 1997, which describes procedures for a one-time visual inspection of the pilot valve harness tubes (conduit) at its lower segment for bulges and cracks, cleaning the tubes to remove any water, applying sealant at the tube opening at wing spar II around the harness, and replacing any discrepant tubes with new or serviceable tubes.

EMBRAER has also issued Service Bulletin 145–28–0006, dated October 22, 1997, which describes procedures for replacement of the existing pilot valve harness tubes and vent valve tubes with new tubes having improved anti-corrosion protection. Accomplishment of the actions specified in this service bulletin is intended to adequately address the identified unsafe condition.

The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 97–07–02R1, dated January 15, 1998, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,800, or $120 per airplane.

It would take approximately 8 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $7,200, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 98–NM–34–AD.

Applicability: Model EMB–145 series airplanes; as listed in EMBRAER Service Bulletin 145–28–0005, dated May 23, 1997, and EMBRAER Service Bulletin 145–28–0006, dated October 22, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the pilot valve harness tubes, which could allow fuel to enter the conduit and leak overboard, and result in increased risk of a fuel tank explosion and fire, accomplish the following:

(a) Within 30 calendar days or 200 hours time-in-service after the effective date of this AD, whichever occurs later, perform a one-time visual inspection of the pilot valve harness tubes (conduit) for bulges and cracks, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0005, dated May 23, 1997.

(1) If no discrepancy is found in the harness tube, prior to further flight, clean the tube and apply sealant at the tube end opening in accordance with the service bulletin.

(2) If any crack or bulge is found in the harness tube, prior to further flight, replace the tube with a new or serviceable tube, clean the tube, and apply sealant at the tube end opening in accordance with the service bulletin.

(b) Within 4,000 hours time-in-service after the effective date of this AD, replace the existing pilot valve harness tubes and vent valve tubes with new tubes, in accordance with EMBRAER Service Bulletin 145–28–0006, dated October 22, 1997.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–07–02R1, dated January 15, 1998.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8098 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–33–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–120 series airplanes. This proposal would require a one-time inspection for delamination, erosion, and condition of fillet sealant and conductive edge sealer of the wing and empennage leading edge area behind the de-ice boots, and follow-on corrective actions. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent delamination of the wing and empennage leading edge due to improper installation of the wing de-ice boot, which could result in reduced controllability of the airplane.

DATES: Comments must be received by April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–33–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on all EMBRAER Model EMB–120 series airplanes. The DAC advises that it received one report of an in-flight incident involving roll control difficulties. Results of an inspection of the leading edge of the wing revealed that the top layer of the composite material just behind the upper edge of the de-ice boot had delaminated and was lifted up by the slipstream (airflow). Further investigation indicated that the replacement de-ice boot was installed improperly. The gaps between the upper edge of the de-ice boot and recess step were not filled with sealant at the time of installation. In addition, the delamination may have occurred during the original installation of the wing deicing system. This condition, if not corrected, could result in delamination of the wing and empennage leading edge, which could lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 120–51–A004, Revision 01, dated November 10, 1997, which describes procedures for a one-time visual inspection for delamination, erosion, and condition of fillet sealant and conductive edge sealer of the wing and empennage leading edge area behind the de-ice boots, and follow-on corrective actions. [The corrective actions include restoration of the conductive edge sealer (if erosion within specified limits is found), and application of a coat of conductive edge sealer over the anti-static paint at the recess step between the de-ice boot and the leading edge.] The DAC classified this alert service bulletin as mandatory and issued Brazilian airworthiness directive 97–09–07 (undated) in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain corrective actions, this proposal would require correction of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 240 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $28,800, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (Embraer): Docket 98–NM–33–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent delamination of the wing and empennage leading edge due to improper installation of the wing de-ice boot, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 75 flight hours or 120 days after the effective date of this AD, whichever occurs later: Perform a one-time visual inspection for delamination, erosion, and condition of fillet sealant and conductive edge sealer of the wing and empennage leading edge area behind the de-ice boots, in accordance with EMBRAER Alert Service Bulletin 120–51–A004, Revision 01, dated November 10, 1997. Except as provided by paragraph (b) of this AD, prior to further flight, accomplish follow-on corrective actions in accordance with the alert service bulletin.

(b) If any discrepancy is found during accomplishment of paragraph (a) of this AD, and the alert service bulletin specifies to contact EMBRAER: Prior to further flight, repair the affected structure in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–09–07 (undated).

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8097 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, A310, A319, A320, A321, A330, and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300, A300–600, and A310 series airplanes, and certain Airbus Model A319, A320, A321, A330, and A340 series airplanes. This proposal would require repetitive visual inspections of the striker and guide valve of the passenger door actuators and certain emergency door actuators for corrosion, and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion of the emergency actuator mechanism, which could cause failure of the emergency actuator striker mechanism on the passenger or emergency doors, and lead to difficulty in opening the passenger or emergency doors during an emergency evacuation.

DATES: Comments must be received by April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–179–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300, A300–600, and A310 series airplanes, and on certain Airbus Model A319, A320, A321, A330, and A340 series airplanes. The DGAC advises that a failure of the emergency power assist feature on a passenger door has occurred on one Model A320 series airplane. The failure of the emergency actuator, which provides the power assist feature, was attributed to corrosion found in the guide valve bore, on the striker end, and in the striker hole. The same emergency actuator striker mechanism part is installed on

all of the previously mentioned models; therefore, such corrosion may exist or develop on these airplanes as well. This condition, if not detected and corrected in a timely manner, could result in difficulty in opening the passenger or emergency doors during an emergency evacuation.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–52–0168, dated December 4, 1996 (for Model A300 series airplanes); A300–52–6052, dated December 4, 1996 (for Model A300–600 series airplanes); A310–52–2058, dated December 4, 1996 (for Model A310 series airplanes); All Operator Telex (AOT) 52–12, Revision 1, dated May 9, 1996 (for Model A319, A320, and A321 series airplanes); A330–52–3038, Revision 1, dated December 2, 1996 (for Model A330 series airplanes); and A340–52–4048, Revision 3, dated June 10, 1997 (for Model A340 series airplanes), which describe procedures for the following:

- visually inspecting the striker and guide valve of the passenger door actuators (for all airplanes) and emergency door actuators (for Model A321, A330, A340 series airplanes) for corrosion;
- cleaning and reinstalling the emergency actuator striker mechanism; and
- replacing the emergency actuator striker mechanism with a serviceable part.

The DGAC classified this service information as mandatory and issued French airworthiness directives 97–062–213(B), dated February 26, 1997; 96–093–080(B)R2, dated October 22, 1997; and 96–195–037(B)R1, and 96–196–048(B)R1, both dated December 3, 1997; in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below.

Differences Between This Proposed AD and the Related Foreign AD

Operators should note that, unlike the procedures described in the previously cited French airworthiness directives; this proposed AD would not permit dispatch with a door actuator striker mechanism inoperative. The FAA has determined that, because of the safety implications and consequences associated with such inoperative equipment, any inoperative striker mechanism that is found to be corroded must be either replaced or cleaned such that proper function is restored prior to further flight.

Cost Impact: Model A300 and A300–600 Series Airplanes

The FAA estimates that 85 Model A300 and A300–600 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $45,900, or $540 per airplane, per inspection cycle.

Cost Impact: Model A310 Series Airplanes

The FAA estimates that 41 Model A310 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $14,760, or $360 per airplane, per inspection cycle.

Cost Impact: Model A319 and A320 Series Airplanes

The FAA estimates that 128 Model A319 and A320 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be $30,720, or $240 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Cost Impact: Model A321, A330, and A340 Series Airplanes

There are currently no Model A321, A330, or A340 series airplanes on the U.S. Register. All of these airplanes included in the applicability of this proposed rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers it necessary to include these airplanes in the applicability of this proposed rule in order to ensure that the unsafe condition is addressed in the event that any of the subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected Model A321 series airplane be imported and placed on the U.S. Register in the future, it would take approximately 8 work hours per airplane to accomplish the proposed inspections. Based on an average labor rate of $60 per work hour, the cost impact of the proposed inspections would be $480 per airplane, per inspection cycle.

Should an affected Model A330 or A340 series airplane be imported and placed on the U.S. Register in the future, it would take approximately 32 work hours per airplane to accomplish the proposed inspections. Based on an average labor rate of $60 per work hour, the cost impact of the proposed inspections would be $1,920 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–179–AD.

Applicability: All Model A300, A300–600, and A310 series airplanes; and Model A319, A320, A321, A330 and A340 series airplanes, excluding Model A319 and A320 series airplanes on which Airbus Modification 26015 has been accomplished, and excluding Model A321 series airplanes on which both Airbus Modifications 26015 and 26211 have been accomplished, and excluding Model A330 and A340 series airplanes on which both Airbus Modifications 45090 and 45155 have been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the emergency actuator mechanism, which could cause failure of the emergency actuator striker mechanism on the passenger or emergency doors, and lead to difficulty in opening the passenger or emergency doors during an emergency evacuation, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, or within 36 months after date of manufacture, whichever occurs later, and thereafter at intervals not to exceed 3 years: Perform the actions required by paragraphs (a)(1) and/or (a)(2) of this AD, as applicable, in accordance with Airbus Service Bulletin A300–52–0168, dated December 4, 1996 (for Model A300 series airplanes); A300–52–6052, dated December 4, 1996 (for Model A300–600 series airplanes); A310–52–2058, dated December 4, 1996 (for Model A310 series airplanes); A330–52–3038, Revision 1, dated December 2, 1996 (for Model A330 series airplanes); A340–52–4048, Revision 3, dated June 10, 1997 (for Model A340 series airplanes); or Airbus All Operator Telex (AOT) 52–12, Revision 1, dated May 9, 1996 (for Model A319, A320, and A321 series airplanes); as applicable.

(1) For Model A321, A330, and A340 series airplanes: Visually inspect the striker and guide valve of the emergency door actuators for corrosion.

(2) For all airplanes: Visually inspect the striker and guide valve of the passenger door actuators for corrosion.

Note 2: Additional service information regarding the required inspections on Airbus Model A300, A300–600, and A310 series airplanes is provided in RATIER–FIGEAC Service Bulletin 701–5000–52–9, Revision 1, dated October 10, 1996.

(b) If corrosion is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with Airbus Service Bulletin A300–52–0168, dated December 4, 1996 (for Model A300 series airplanes); A300–52–6052, dated December 4, 1996 (for Model A300–600 series airplanes); A310–52–2058, dated December 4, 1996 (for Model A310 series airplanes); A330–52–3038, Revision 1, dated December 2, 1996 (for Model A330 series airplanes); A340–52–4048, Revision 3, dated June 10, 1997 (for Model A340 series airplanes), or Airbus AOT 52–12, Revision 1, dated May 9, 1996 (for Model A319, A320, and A321 series airplanes); as applicable.

(1) Clean the corroded areas of the emergency actuator striker mechanism to restore proper function, and re-install the mechanism; and, within 18 months after the corrosion is found, replace the mechanism with a serviceable part. Or

(2) Replace the emergency actuator striker mechanism with a serviceable part.

(c) As of the effective date of this AD, no person shall install a passenger door or emergency door actuator on any airplane without first inspecting that actuator in accordance with paragraph (a) of this AD, and repairing, if necessary, in accordance with paragraph (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 97–062–213(B), dated February 26, 1997; 96–093–080(B)R2, dated October 22, 1997; and 96–195–037(B)R1 and 96–196–048(B)R1, both dated December 3, 1997.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8128 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability caused by

the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–102–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved airplane flight manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since Short Brothers Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 148 Short Brothers Model SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,880, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this

proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers PLC: Docket 97–NM–102–AD.

Applicability: All SD3–30, SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8129 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–331–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA Model CN–235 series airplanes. This proposal would require modification of the passenger and crew doors and repetitive visual inspections, adjustments, and tests of the passenger and crew door latching and locking systems to ensure correct operation. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent inadvertent opening of a door during flight of the airplane, which could result in rapid decompression of the passenger cabin.

DATES: Comments must be received by April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–331–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

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submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–331–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–331–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on all CASA Model CN–235 series airplanes. The DGAC advises that it received a report indicating that the main passenger door opened during flight on a CASA Model CN–235–200 series airplane. Investigation revealed that the closing mechanism of the door was distorted and some elements of the locking device also were deformed and broken. These conditions resulted in failure of the door to latch properly, and allowed inadvertent opening of the passenger door. This condition, if not corrected, could result in rapid decompression of the passenger cabin.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB–235–52–54, Revision 1, dated October 24, 1995, which describes procedures for modification of the passenger and crew doors by relocating the window, replacing the attachment bolt in the step, adding a notch in the upper closing locking lever, and reaming the door latch housings.

CASA also has issued Communication COM 235–098, Revision 02, dated October 19, 1995, which describes procedures for repetitive visual inspections to detect discrepancies of the latching and locking systems and the microswitch system of the passenger and crew doors; and adjustments and tests to ensure these systems operate correctly.

The DGAC classified these service documents as mandatory and issued Spanish airworthiness directive 3/95, Revision 1, dated October 1, 1995, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below.

Differences Between Proposed Rule and Foreign AD

Operators should note that, although the parallel Spanish airworthiness directive does not mandate accomplishment of the specified actions for the CASA Model CN–235 series airplane having serial number C–011, the applicability of this proposed AD would include that airplane. Although that airplane was not certificated for civilian operation by the DGAC, the FAA has certificated it as such. The FAA has determined that the unsafe condition addressed in this AD also may exist or develop on that airplane; therefore, the applicability of this proposed AD includes that serial number.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $480, or $240 per airplane, per inspection cycle.

It would take approximately 60 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $406 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $8,012, or $4,006 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A. (CASA): Docket 97–NM–331–AD.

Applicability: All Model CN–235 series airplanes, including serial number (S/N) C–011, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of a door during flight, which could result in rapid decompression of the passenger cabin, accomplish the following:

(a) Within 3 months or 300 flight hours after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the passenger and crew doors in accordance with CASA Service Bulletin SB–235–52–54, Revision 1, dated October 24, 1995; and

(2) Perform follow-on actions (i.e., inspections for discrepancies, adjustments, and tests) in accordance with CASA COM 235–098, Revision 02, dated October 19, 1995. If any discrepancy is found, prior to further flight, accomplish the applicable corrective action in accordance with the COM. Thereafter accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Repeat the visual inspection for discrepancies of the passenger door and crew door latching and locking systems, in accordance with paragraph 1. of CASA COM 235–098, Revision 02, dated October 19, 1995, at intervals not to exceed 300 flight hours. If any discrepancy is found, prior to further flight, accomplish the applicable corrective action in accordance with the COM.

(ii) Repeat adjustments and tests of the door latching and locking systems, in accordance with paragraph 2., 3., and paragraph V) of Annex II of CASA COM 235–098, Revision 02, dated October 19, 1995, at intervals not to exceed 1,200 flight hours. If any discrepancy is found during any adjustment or test, prior to further flight, accomplish the applicable corrective action in accordance with the COM.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 3/95, Revision 1, dated October 1, 1995.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8134 Filed 3–26–98; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–309–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive detailed visual inspections to detect corrosion on the rear spar web of the wing center section and adjacent bulkhead fittings at body station 1241; and corrective action, if necessary. This proposal is prompted by reports of corrosion found on the rear spar web and bulkhead fitting. The actions specified by the proposed AD are intended to detect and correct such corrosion, which could cause cracking of the rear spar web, and result in a fuel leak and consequent fire/explosion in the wheel well of the main landing gear.

DATES: Comments must be received by May 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–309–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of corrosion found on Boeing Model 747 series airplanes. The corrosion was found on the rear spar web and the bulkhead fitting of body station 1241; corrosion thicknesses ranged from 0.030 to 0.250 inch. Investigation revealed that moisture trapped between the rear

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spar web and the bulkhead fitting resulted in the corrosion. Such corrosion, if not detected and corrected in a timely manner, could cause cracking of the rear spar web, and result in a fuel leak and consequent fire/explosion in the wheel well of the main landing gear.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–57–2263, Revision 1, dated December 21, 1995, which describes procedures for repetitive detailed visual inspections to detect corrosion of the rear spar web of the wing center section and adjacent bulkhead fittings at body station 1241; and corrective action, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed in the following section.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, while the service bulletin specifies that the application of corrosion inhibitor following an inspection eliminates the necessity for further inspections, this proposed AD would require that the inspection be repeated at regular intervals. The FAA has determined that repetitive inspections and corrective action are necessary in order to detect and correct corrosion in a timely manner and to adequately address the identified unsafe condition.

Additionally, operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require that the repair of those conditions be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 816 airplanes of the affected design in the worldwide fleet. The FAA estimates that 236 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $28,320, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 97–NM–309–AD.

Applicability: Model 747 series airplanes, line positions 1 through 816 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and consequent cracking of the rear spar web of the wing center section and adjacent bulkhead fittings at body station 1241, which could result in a fuel leak and subsequent fire/explosion in the wheel well of the main landing gear, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a detailed visual inspection to detect corrosion of the rear spar web of the wing center section and adjacent bulkhead fittings at body station 1241, in accordance with Boeing Service Bulletin 747–57–2263, Revision 1, dated December 21, 1995. Thereafter, repeat the inspection at intervals not to exceed 2 years.

(1) If no corrosion is detected during the inspection: Prior to further flight, apply corrosion inhibitor in accordance with the service bulletin.

(2) If any corrosion is detected during the inspection, and the corrosion is within the limits specified by the service bulletin: Prior to further flight, accomplish the actions specified in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii).

(i) Remove the corrosion in accordance with the service bulletin. And

(ii) Perform a high frequency eddy current inspection to detect cracking in the area of removed corrosion in accordance with the service bulletin. If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. And

(iii) Apply corrosion inhibitor in accordance with the service bulletin.

(3) If any corrosion is detected during the inspection, and the corrosion exceeds the limits specified by the service bulletin: Prior to further flight, repair the corroded area in accordance with a method approved by the Manager, Seattle ACO.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle

ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8133 Filed 3–25–98; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 243

Guides for the Decorative Wall Paneling Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("Commission") is requesting public comments on its Guides for the Decorative Wall Paneling Industry ("Decorative Wall Paneling Guides" or "the Guides"). The Commission is also requesting comments about the overall costs and benefits of its Guides and their overall economic impact, as part of its systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until May 26, 1998.

ADDRESSES: Mailed comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580. Mailed comments about the Guides for the Decorative Wall Paneling Industry should be identified as "CFR Part 243—Comment." E-mail comments will be accepted at [paneling@ftc.gov]. Those who comment by e-mail should give a mailing address to which an acknowledgment can be sent.

FOR FURTHER INFORMATION CONTACT: Eric Nickerson, Investigator, Federal Trade Commission, Denver Regional Office, 1961 Stout Street, Suite 1523, Denver, CO 80294, telephone number (303) 844–3584, E-mail [enickerson@ftc.gov].

SUPPLEMENTARY INFORMATION:

I. Decorative Wall Paneling Guides

The Commission promulgated the Guides for the Decorative Wall Paneling Industry on December 15, 1971, 36 FR 23796 (1971), under section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45.[1] The Guides became effective on December 15, 1972.

These Guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements." 16 CFR 1.5. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions.

The Decorative Wall Paneling Guides provide guidance to manufacturers, retail distributors, and other suppliers ("sellers") of decorative wall panels in labeling, advertising, and promoting their products in a manner consistent with Section 5 of the FTC Act. The guides are designed to protect purchasers from being misled by the appearance of a product, or by deceptive descriptions, depictions, designations, or representations in advertisements, labels, or other promotional materials.

The Guides provide examples of non-deceptive references and representations with respect to the construction, composition, or appearance of industry products. The Guides also point out that sellers bear the affirmative responsibility of providing detailed disclosures regarding the composition of the products being offered.

II. Regulatory Review Program

The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. The Commission solicits comments on, among other things, the economic impact of and the continuing need for the Guides; possible conflict between the Guides and state, local, or other federal laws; and the effect on the Guide of any technological, economic, or other industry changes.

[1] Section 5 of the FTC Act declares unfair methods of competition and unfair or deceptive acts or practices to be unlawful.

III. Request For Comment

The Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Decorative Wall Paneling Guides?

(a) What benefits have the Guides provided to purchasers of the products affected by the Guides?

(b) Have the Guides imposed costs on purchasers?

(2) What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

(a) How would these changes affect the costs the Guides impose on firms adhering to their advice? How would these changes affect the benefits to purchasers?

(3) What significant burdens or costs, including costs of compliance, have the Guides imposed on firms subject to their advice?

(a) Have the Guides provided benefits to such firms? If so, what benefits?

(4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms subject to their advice?

(a) How would these changes affect the benefits provided by the Guides?

(5) Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Guides were issued, what effects, if any, have changes in the global marketplace, relevant technology or economic conditions had on the Guides? For example, do example, do sellers use E-mail, the Internet or CD ROM to advertise or sell decorative wall panels? If so, in what manner? Does use of this new technology affect consumers' rights or sellers' responsibilities under the Guides?

(7) Are there problems today in the labeling, advertising, or selling of decorative wall panels? If yes, what are the nature of these problems? Do the Guides adequately address any problems that may exist?

(8) Are any portions of the Guides outdated or otherwise no longer relevant in this industry?

(9) Are there industry standards covering any of the issues addressed by the Guides? If yes, what are they?

List of Subjects in 16 CFR Part 243

Advertising, Forests and forest products, Labeling, Trade practices, Wall paneling industry.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–8073 Filed 3–26–98; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Requests for Exemptive, No-Action and Interpretative Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On January 22, 1998, the Commodity Futures Trading Commission (the "Commission" or "CFTC") published in the **Federal Register** a request for public comment on proposed regulations to establish procedures for the filing of requests for the issuance of exemptive, no-action and interperative letters from the Commission's staff. The original comment period expires March 23, 1998. 63 FR 3285 (January 22 1998). By letters dated March 19 and 20, 1998 respectively, the Securities Industry Association and the Futures Industry Association Inc., requested an extension of the comment period. In order to insure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to extend the comment period for an additional thirty days for all interested parties.

DATES: Written comments must be received on or before April 22, 1998.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to secretary@cftc.gov. Reference should be made to "Rule Proposal Re: Requests for Exemptive, No-Action, and Interpretative Letters."

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, or Helene Schroeder, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone Number: (202) 418–5450. Facsimile Number: (202) 418–5547. Electronic Mail; tm@cftc.gov.

Issued in Washington, DC on March 23, 1998 by the Commission.

Jean W. Webb,

Secretary of the Commission.

[FR Doc. 98–8121 Filed 3–26–98; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42199A; FRL–5764–9]

RIN 2070–AC76

Testing Consent Order and Export Notification Requirements for Maleic Anhydride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 26, 1996, EPA proposed a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. Included as one of these chemical substances was maleic anhydride (CAS No. 108–31–6). EPA invited the submission of proposals for enforceable consent agreements (ECAs) for pharmacokinetics (PK) testing of the HAPs chemicals and received a proposal for testing maleic anhydride from the Chemical Manufacturers Association, Maleic Anhydride Panel (CMA MA Panel). In a previous document, EPA solicited interested parties to monitor or participate in negotiations on an ECA for maleic anhydride. EPA is proposing that if an ECA is successfully concluded for maleic anhydride, then the subsequent publication of the TSCA section 4 testing consent order (Order) in the **Federal Register** would add maleic anhydride to the table of testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers. As a result of the proposed addition of maleic anhydride, all exporters of maleic anhydride, including persons who do not sign the ECA, would be subject to export notification requirements under section 12(b) of TSCA.

DATES: Written comments on this proposed rule must be received by EPA on or before May 26, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42199A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–99, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov following the instructions under Unit IV. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. E–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Information and Testing Branch (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1998/).

II. Development of Enforceable Consent Agreement for Maleic Anhydride

Maleic anhydride is one of the chemicals proposed for health effects testing in a proposed HAPs test rule under section 4(a) of TSCA in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1). The proposed HAPs test rule was amended on December 24, 1997 (62 FR 67466) (FRL–5742–2). In the proposed HAPs test rule, EPA invited the submission of proposals for PK testing for the chemicals included in the proposed HAPs test rule. These proposals could provide the

basis for negotiation of ECAs, which, if successfully concluded, would be incorporated into Orders. The PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. A proposal for PK testing for maleic anhydride was submitted by the CMA MA Panel to EPA on November 8, 1996. The Agency reviewed this alternative testing proposal and prepared a preliminary technical analysis of the proposal which it sent to the CMA MA Panel on July 10, 1997. The CMA MA Panel responded on September 3, 1997, that it has a continued interest in pursuing the ECA process for maleic anhydride. EPA has decided to proceed with the ECA process for maleic anhydride. EPA has published a document soliciting interested parties to monitor or participate in negotiations on an ECA for PK testing of maleic anhydride (63 FR 1464, January 9, 1998) (FRL–5765–1). The procedures for ECA negotiations are described at 40 CFR 790.22(b).

If the ECA for maleic anhydride is successfully concluded, and an Order is published in the **Federal Register**, testing to develop needed data would be required of those persons that have signed the agreement. Section 12(b) of TSCA provides that if any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 of TSCA, that person shall notify EPA of this export or intent to export. This requirement applies to data obtained from either a test rule or an ECA and Order under the authority of section 4 of TSCA. EPA intends the ECA to include the export notification requirements of section 12(b) of TSCA, codified at 40 CFR part 707, subpart D.

III. Publication of Testing Consent Order

EPA is proposing that if an ECA is successfully concluded for maleic anhydride, the publication of the Order in the **Federal Register** would add maleic anhydride to the table in 40 CFR 799.5000, Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

Exporters of chemicals listed at 40 CFR 799.5000 are required under 40 CFR 799.19, Chemical imports and exports, to comply with the export notification requirements of 40 CFR part 707, subpart D. This proposed rule, when finalized, would amend § 799.5000, and, in accordance with 40 CFR 799.19, all exporters of maleic anhydride, including persons who do not sign the ECA, would be subject to export notification requirements under 40 CFR part 707, subpart D.

Under 40 CFR 707.65(a)(2)(ii), a person who exports or intends to export for the first time to a particular foreign country a chemical subject to TSCA section 4 data requirements must submit a one-time notice to EPA identifying the chemical and country of import. A single notice can cover multiple chemicals and multiple countries. If additional importing countries are subsequently added, additional export notices must be submitted to EPA. Other procedures for submitting export notifications to EPA are described in 40 CFR 707.65.

Under 40 CFR 707.67, the contents of the export notification from the exporter or intended exporter to EPA shall include:

1. The name of the chemical (i.e., in this case, maleic anhydride).
2. The name and address of the exporter.
3. The country(ies) of import.
4. The date(s) of export or intended export.
5. The section of TSCA under which EPA has taken action (i.e., in this case, section 4 of TSCA).

Following receipt of the 12(b) notification from the exporter or intended exporter, under 40 CFR 707.70, EPA will provide notice of the export or intended export to the affected foreign government(s).

IV. Public Record and Electronic Submissions

The official record for this rulemaking (including comments and data submitted electronically as described below), including the public version, that does not include any information claimed as CBI, has been established for this rulemaking under docket control number OPPTS–42199A. The official record for this document also includes all material and submissions filed under docket control number OPPTS–42187A, the record for the proposed HAPs test rule, as amended, and all materials and submissions filed under docket control number OPPTS–42187B, the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42199A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

V. Regulatory Assessment Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA does not believe that the impacts of this proposed rule constitute a significant economic impact on small entities.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification was $62.60. See U.S. EPA, "Economic Analysis in Support of the Final Rule to Amend Rule Promulgated Under TSCA Section 12(b)," OPPT/ETD/RIB, June 1992, contained in the record for this rulemaking, and referenced in the amended proposed HAPs test rule (62 FR 67466, December 24, 1997). Inflated through the last quarter of 1996 using the Consumer Price Index, the current cost is estimated to be $69.56. Although data available to EPA regarding export shipments of the HAPs chemicals are limited, a small exporter would have to have annual revenues below $6,956 per chemical/country combination in order to be impacted at a 1% or greater level. For example, a small exporter filing three notifications per year would have to have annual sales revenues below $20,868 (3 x $6,956) in order to be classified as impacted at the greater than 1% level. EPA believes that it is reasonable to assume that few, if any, small exporters would file sufficient export notifications to be impacted at or above the 1% level. Based on this, the export notification requirements triggered by the ECA for maleic anhydride would be unlikely to have a significant economic impact on small

exporters. Because EPA has concluded that there is no significant impact on small exporters, the Agency does not need to determine the number or size of the entities that would be impacted at a 1% or greater level.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities.

B. Executive Order 12866; Executive Order 12898; Executive Order 13045

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). It does not involve special considerations of environmental-justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), nor raise any issues regarding children's environmental-health risks under Executive Order 13045 (62 FR 19885, April 23, 1997) because the Executive Order does not apply to actions expected to have an economic impact of less than $100 million.

C. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for the collection of information is estimated to average 0.55 hour per response.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, this action is not subject to the requirements of sections 202 and 205 of UMRA. The requirements of sections 203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental mandate, respectively, also do not apply to this proposed rule because the rule would only affect the private sector, i.e., those companies that test chemicals.

E. National Technology Transfer and Advancement Act

This proposed regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: March 18, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding maleic anhydride to the table in CAS number order to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS number	Substance or mixture name	Testing	FR publication date
•	•	•	•
108–31–6	Maleic anhydride	Health effects	[date of final rule]
•	•	•	•

[FR Doc. 98–8071 Filed 3–26–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42201A; FRL–5765–4]

RIN 2070–AC76

Testing Consent Order and Export Notification Requirements for Hydrogen Fluoride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 26, 1996, EPA proposed a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. Included as one of these chemical substances was hydrogen fluoride (CAS No. 7664–39–3). EPA invited the submission of proposals for enforceable consent agreements (ECAs) for pharmacokinetics (PK) testing of the HAPs chemicals and received a proposal for testing hydrogen fluoride from the Chemical Manufacturers Association, Hydrogen Fluoride Panel (CMA HF Panel). In a previous document, EPA solicited interested parties to monitor or participate in negotiations on an ECA for hydrogen fluoride. EPA is proposing that if an ECA is successfully concluded for hydrogen fluoride, then the subsequent publication of the TSCA section 4 testing consent order (Order) in the **Federal Register** would add hydrogen fluoride to the table of testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers. As a result of the proposed addition of hydrogen fluoride, all exporters of hydrogen fluoride, including persons who do not sign the ECA, would be subject to export notification requirements under section 12(b) of TSCA.

DATES: Written comments on this proposed rule must be received by EPA on or before May 26, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42201A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–99, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov following the instructions under Unit IV. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. E–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Information and Testing Branch (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1998/).

II. Development of Enforceable Consent Agreement for Hydrogen Fluoride

Hydrogen fluoride is one of the chemicals proposed for health effects testing in a proposed HAPs test rule under section 4(a) of TSCA in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1). The proposed HAPs test rule was amended on December 24, 1997 (62 FR 67466) (FRL–5742–2). In the proposed HAPs test rule, EPA invited the submission of proposals for PK testing for the chemicals included in the proposed HAPs test rule. These proposals could provide the basis for negotiation of ECAs, which, if successfully concluded, would be incorporated into Orders. The PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. A proposal for PK testing for hydrogen fluoride was submitted by the CMA HF Panel to EPA on November 27, 1996. The Agency reviewed this alternative testing proposal and prepared a preliminary technical analysis of the proposal which it sent to the CMA HF Panel on June 26, 1997. The CMA HF Panel responded on September 10, 1997, that it has a continued interest in pursuing the ECA process for hydrogen fluoride. EPA has decided to proceed with the ECA process for hydrogen fluoride. EPA has published a document soliciting interested parties to monitor or participate in negotiations on an ECA for PK testing of hydrogen fluoride (63 FR 1467, January 9, 1998) (FRL–5765–5). The procedures for ECA negotiations are described at 40 CFR 790.22(b).

If the ECA for hydrogen fluoride is successfully concluded, and an Order is published in the **Federal Register**, testing to develop needed data would be required of those persons that have signed the agreement. Section 12(b) of TSCA provides that if any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 of TSCA, that person shall notify EPA of this export or intent to export. This requirement applies to data obtained from either a test rule or an ECA and Order under the authority of section 4 of TSCA. EPA intends the ECA to include the export notification requirements of section 12(b) of TSCA, codified at 40 CFR part 707, subpart D.

III. Publication of Testing Consent Order

EPA is proposing that if an ECA is successfully concluded for hydrogen fluoride, the publication of the Order in the **Federal Register** would add hydrogen fluoride to the table in 40 CFR 799.5000, Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

Exporters of chemicals listed at 40 CFR 799.5000 are required under 40 CFR 799.19, Chemical imports and

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exports, to comply with the export notification requirements of 40 CFR part 707, subpart D. This proposed rule, when finalized, would amend § 799.5000, and, in accordance with 40 CFR 799.19, all exporters of hydrogen fluoride, including persons who do not sign the ECA, would be subject to export notification requirements under 40 CFR part 707, subpart D.

Under 40 CFR 707.65(a)(2)(ii), a person who exports or intends to export for the first time to a particular foreign country a chemical subject to TSCA section 4 data requirements must submit a one-time notice to EPA identifying the chemical and country of import. A single notice can cover multiple chemicals and multiple countries. If additional importing countries are subsequently added, additional export notices must be submitted to EPA. Other procedures for submitting export notifications to EPA are described in 40 CFR 707.65.

Under 40 CFR 707.67, the contents of the export notification from the exporter or intended exporter to EPA shall include:

1. The name of the chemical (i.e., in this case, hydrogen fluoride).
2. The name and address of the exporter.
3. The country(ies) of import.
4. The date(s) of export or intended export.
5. The section of TSCA under which EPA has taken action (i.e., in this case, section 4 of TSCA).

Following receipt of the 12(b) notification from the exporter or intended exporter, under 40 CFR 707.70, EPA will provide notice of the export or intended export to the affected foreign government(s).

IV. Public Record and Electronic Submissions

The official record for this rulemaking (including comments and data submitted electronically as described below), including the public version, that does not include any information claimed as CBI, has been established for this rulemaking under docket control number OPPTS–42201A. The official record for this document also includes all material and submissions filed under docket control number OPPTS–42187A, the record for the proposed HAPs test rule, as amended, and all materials and submissions filed under docket control number OPPTS–42187B, the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42201A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

V. Regulatory Assessment Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA does not believe that the impacts of this proposed rule constitute a significant economic impact on small entities.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification was $62.60. See U.S. EPA, "Economic Analysis in Support of the Final Rule to Amend Rule Promulgated Under TSCA Section 12(b)," OPPT/ETD/RIB, June 1992, contained in the record for this rulemaking, and referenced in the amended proposed HAPs test rule (62 FR 67466, December 24, 1997). Inflated through the last quarter of 1996 using the Consumer Price Index, the current cost is estimated to be $69.56. Although data available to EPA regarding export shipments of the HAPs chemicals are limited, a small exporter would have to have annual revenues below $6,956 per chemical/country combination in order to be impacted at a 1% or greater level. For example, a small exporter filing three notifications per year would have to have annual sales revenues below $20,868 (3 x $6,956) in order to be classified as impacted at the greater than 1% level. EPA believes that it is reasonable to assume that few, if any, small exporters would file sufficient export notifications to be impacted at or above the 1% level. Based on this, the export notification requirements triggered by the ECA for hydrogen fluoride would be unlikely to have a significant economic impact on small exporters. Because EPA has concluded that there is no significant impact on small exporters, the Agency does not need to determine the number or size of the entities that would be impacted at a 1% or greater level.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities.

B. Executive Order 12866; Executive Order 12898; Executive Order 13045

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). It does not involve special considerations of environmental-justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), nor raise any issues regarding children's environmental-health risks under Executive Order 13045 (62 FR 1985, April 23, 1997) because the Executive Order does not apply to actions expected to have an economic impact of less than $100 million.

C. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for the collection of information is estimated to average 0.55 hour per response.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, this action is not subject to the

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requirements of sections 202 and 205 of UMRA. The requirements of sections 203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental mandate, respectively, also do not apply to this proposed rule because the rule would only affect the private sector, i.e., those companies that test chemicals.

E. National Technology Transfer and Advancement Act

This proposed regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: March 13, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding hydrogen fluoride to the table in CAS number order to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS number	Substance or mixture name	Testing	FR publication date
.	. .	. .	. .
7664–39–3	Hydrogen fluoride	Health effects	[date of final rule]
.	. .	. .	. .

[FR Doc. 98–8070 Filed 3–26–98; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42200A; FRL–5765–2]

RIN 2070–AC76

Testing Consent Order and Export Notification Requirements for Phthalic Anhydride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 26, 1996, EPA proposed a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. Included as one of these chemical substances was phthalic anhydride (CAS No. 85–44–9). EPA invited the submission of proposals for enforceable consent agreements (ECAs) for pharmacokinetics (PK) testing of the HAPs chemicals and received a proposal for testing phthalic anhydride from the Chemical Manufacturers Association, Phthalic Anhydride Panel (CMA PA Panel). In a previous document EPA solicited interested parties to monitor or participate in negotiations on an ECA for phthalic anhydride. EPA is proposing that if an ECA is successfully concluded for phthalic anhydride, then the subsequent publication of the TSCA section 4 testing consent order (Order) in the **Federal Register** would add phthalic anhydride to the table of testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers. As a result of the proposed addition of phthalic anhydride, all exporters of phthalic anhydride, including persons who do not sign the ECA, would be subject to export notification requirements under section 12(b) of TSCA.

DATES: Written comments on this proposed rule must be received by EPA on or before May 26, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42200A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–99, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov following the instructions under Unit IV. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For additional information:* Susan B. Hazen, Director, Environmental Assistance

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Division (7408), Rm. E–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Information and Testing Branch (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1998/).

II. Development of Enforceable Consent Agreement for Phthalic Anhydride

Phthalic anhydride is one of the chemicals proposed for health effects testing in a proposed HAPs test rule under section 4(a) of TSCA in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1). The proposed HAPs test rule was amended on December 24, 1997 (62 FR 67466) (FRL–5742–2). In the proposed HAPs test-rule, EPA invited the submission of proposals for PK testing for the chemicals included in the proposed HAPs test rule. These proposals could provide the basis for negotiation of ECAs, which, if successfully concluded, would be incorporated into Orders. The PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. A proposal for PK testing for phthalic anhydride was submitted by the CMA PA Panel to EPA on November 22, 1996. The Agency reviewed this alternative testing proposal and prepared a preliminary technical analysis of the proposal which it sent to the CMA PA Panel on July 10, 1997. The CMA PA Panel responded on Septembr 3, 1997, that it has a continued interest in pursuing the ECA process for phthalic anhydride. EPA has decided to proceed with the ECA process for phthalic anhydride. EPA has published a document soliciting interested parties to monitor or participate in negotiations on an ECA for PK testing of phthalic anhydride (63 FR 1469, January 9, 1998) (FRL–5765–3). The procedures for ECA negotiations are described at 40 CFR 790.22(b).

If the ECA for phthalic anhydride is successfully concluded, and an Order is published in the **Federal Register**, testing to develop needed data would be required of those persons that have signed the agreement. Section 12(b) of TSCA provides that if any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 of TSCA, that person shall notify EPA of this export or intent to export. This requirement applies to data obtained from either a test rule or an ECA and Order under the authority of section 4 of TSCA. EPA intends the ECA to include the export notification requirements of section 12(b) of TSCA, codified at 40 CFR part 707, subpart D.

III. Publication of Testing Consent Order

EPA is proposing that if an ECA is successfully concluded for phthalic anhydride, the publication of the Order in the **Federal Register** would add phthalic anhydride to the table in 40 CFR 799.5000, Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

Exporters of chemicals listed at 40 CFR 799.5000 are required under 40 CFR 799.19, Chemical imports and exports, to comply with the export notification requirements of 40 CFR part 707, subpart D. This proposed rule, when finalized, would amend § 799.5000, and, in accordance with 40 CFR 799.19, all exporters of phthalic anhydride, including persons who do not sign the ECA, would be subject to export notification requirements under 40 CFR part 707, subpart D.

Under 40 CFR 707.65(a)(2)(ii), a person who exports or intends to export for the first time to a particular foreign country a chemical subject to TSCA section 4 data requirements must submit a one-time notice to EPA identifying the chemical and country of import. A single notice can cover multiple chemicals and multiple countries. If additional importing countries are subsequently added, additional export notices must be submitted to EPA. Other procedures for submitting export notifications to EPA are described in 40 CFR 707.65.

Under 40 CFR 707.67, the contents of the export notification from the exporter or intended exporter to EPA shall include:

1. The name of the chemical (i.e., in this case, phthalic anhydride).
2. The name and address of the exporter.
3. The country(ies) of import.
4. The date(s) of export or intended export.
5. The section of TSCA under which EPA has taken action (i.e., in this case, section 4 of TSCA).

Following receipt of the 12(b) notification from the exporter or intended exporter, under 40 CFR 707.70, EPA will provide notice of the export or intended export to the affected foreign government(s).

IV. Public Record and Electronic Submissions

The official record for this rulemaking (including comments and data submitted electronically as described below), including the public version, that does not include any information claimed as CBI, has been established for this rulemaking under docket control number OPPTS–42200A. The official record for this document also includes all material and submissions filed under docket control number OPPTS–42187A, the record for the proposed HAPs test rule, as amended, and all materials and submissions filed under docket control number OPPTS–42187B, the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42200A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

V. Regulatory Assessment Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA does not believe that the impacts of this proposed rule constitute a significant economic impact on small entities.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification was $62.60. See U.S. EPA, "Economic Analysis in Support of the Final Rule to Amend Rule Promulgated Under TSCA Section 12(b)," OPPT/ETD/RIB, June 1992, contained in the record for this rulemaking, and referenced in the amended proposed HAPs test rule (62 FR 67466, December 24, 1997). Inflated through the last quarter of 1996 using the Consumer Price Index, the current cost is estimated to be $69.56. Although data available to EPA regarding export shipments of the HAPs chemicals are limited, a small exporter would have to have annual revenues below $6,956 per chemical/country combination in order to be impacted at a 1% or greater level. For example, a small exporter filing three notifications per year would have to have annual sales revenues below $20,868 (3 x $6,956) in order to be classified as impacted at the greater than 1% level. EPA believes that it is reasonable to assume that few, if any, small exporters would file sufficient export notifications to be impacted at or above the 1% level. Based on this, the export notification requirements triggered by the ECA for phthalic anhydride would be unlikely to have a significant economic impact on small exporters. Because EPA has concluded that there is no significant impact on small exporters, the Agency does not need to determine the number or size of the entities that would be impacted at a 1% or greater level.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities.

B. Executive Order 12866; Executive Order 12898; Executive Order 13045

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). It does not involve special considerations of environmental-justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), nor raise any issues regarding children's environmental-health risks under Executive Order 13045 (62 FR 1985, April 23, 1997) because the Executive Order does not apply to actions expected to have an economic impact of less than $100 million.

C. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for the collection of information is estimated to average 0.55 hour per response.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, this action is not subject to the requirements of sections 202 and 205 of UMRA. The requirements of sections 203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental mandate, respectively, also do not apply to this proposed rule because the rule would only affect the private sector, i.e., those companies that test chemicals.

E. National Technology Transfer and Advancement Act

This proposed regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: March 13, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding phthalic anhydride to the table in CAS number order to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS number	Substance or mixture name	Testing	FR publication date
*	* *	* *	* *
85–44–9	Phthalic anhydride	Health effects	[date of final rule]

CAS number	Substance or mixture name	Testing	FR publication date
•	• •	• •	• •

[FR Doc. 98–8069 Filed 3–26–98; 8:45 am]
BILLING CODE 5550–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2620

RIN 1004–AC71

State Grants, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Bureau of Land Management (BLM) is withdrawing a proposed rule published in the November 15, 1996, **Federal Register**, that proposed removing subpart 2627 of 43 CFR part 2620. This subpart spells out the applicaton process involved in the State of Alaska's selection of lands under the Alaska Statehood Act and the Act of January 21, 1929 (University of Alaska land grant). BLM had proposed removing the regulations because we thought they were repetitive of statutory language, outdated, and not necessary for program implementation.

FOR FURTHER INFORMATION CONTACT: Frances Watson, Regulatory Affairs Group (WO–630), Bureau of Land Management, Mail Stop 401LS, 1849 C Street, N.W., Washington, D.C. 20240; telephone (202) 452–5006 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: BLM published the proposed rule on November 15, 1996, at 61 FR 58500–58501. We received one comment from a State agency during the public comment period that ended on January 14, 1997. The agency opposed the proposed rule as being premature since all State selections have not been made under the Alaska Statehood Act and the Act of January 21, 1929 (University of Alaska land grants). After consideration of that comment, BLM has decided to withdraw the proposed rule and will take no further action on the proposal.

Dated: March 5, 1998.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 98–7827 Filed 3–26–98; 8:45 am]
BILLING CODE 4310–84–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7247]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform.

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Fairfield (Town), Fairfield County.	Londons Brook	Approximately 430 feet downstream of State Route 59.	None	*107
			Approximately 1,100 feet upstream of Casmir Drive.	None	*173
		Londons Brook Divided Flow.	At confluence with Londons Brook	None	*118
			At Bond Street	None	*129
Maps available for inspection at the Town of Fairfield Planning and Zoning Department, 725 Old Post Road, Fairfield, Connecticut. Send comments to Mr. Kenneth Flatto, First Selectman for the Town of Fairfield, 725 Old Post Road, Fairfield, Connecticut 06430.					
Connecticut	Windham (Town), Windham County.	Willimantic River	Approximately 1,370 feet upstream from confluence with Shetucket River.	*159	*160
			At upstream corporate limits	*254	*255
Maps available for inspection at the Windham Town Clerk's Office, 979 Main Street, Willimantic, Connecticut. Send comments to Walter Pawelkiewicz, Ph.D., First Selectman for the Town of Windham, 979 Main Street, Willimantic, Connecticut 06226.					
Florida	Belleair (Town), Pinellas County.	Gulf of Mexico	Approximately 1,100 feet northwest of the intersection of Corbett Street and Druid Road.	*13	*16
			Approximately 300 feet south of the intersection of Bellevue Boulevard and Druid Road.	*9	*12
Maps available for inspection at the Belleair Town Hall, 901 Ponce De Leon Boulevard, Belleair, Florida. Send comments to Mr. Stephen Cottrell, Belleair Town Manager, 901 Ponce De Leon Boulevard, Belleair, Florida 33756.					
Florida	Belleair Beach (City), Pinellas County.	Gulf of Mexico	At the intersection of Donato Drive and Altea Drive.	*9	*11
			Approximately 300 feet west of the intersection of Harrison Avenue and Gulf Boulevard.	*14	*16
Maps available for inspection at the Belleair Beach City Hall, 444 Causeway Boulevard, Belleair Beach, Florida. Send comments to The Honorable William L. Atteberry, Mayor of the City of Belleair Beach, 444 Causeway Boulevard, Belleair Beach, Florida 33786.					
Florida	Belleair Bluffs (City), Pinellas County.	Gulf of Mexico	Approximately 300 feet west of the intersection of Renatta Drive and Bluff View Drive.	*10	*12
			Approximately 1,700 feet west of the intersection of Lentz Road and Los Gatos Drive.	*12	*14
Maps available for inspection at the Belleair Bluffs City Hall, 115 Florence Drive, Belleair Bluffs, Florida. Send comments to The Honorable David Coyner, Mayor of the City of Belleair Bluffs, 115 Florence Drive, Belleair Bluffs, Florida 33770–1978.					
Florida	Belleair Shore (Town), Pinellas County.	Gulf of Mexico	Approximately 300 feet west of the intersection of 13th Street and Gulf Boulevard.	*12	*15
			Approximately 50 feet west of the intersection of 1st Street and Gulf Boulevard.	*9	*12
Maps available for inspection at the Belleair Shore Town Hall, 1200 Gulf Boulevard, Belleair Shore, Florida. Send comments to The Honorable George Jirotka, Mayor of the Town of Belleair Shore, 1200 Gulf Boulevard, Belleair Shore, Florida 33786.					
Florida	Clearwater (City), Pinellas County.	Gulf of Mexico	At the intersection of Fulton Avenue and Harbor Drive.	*10	*11
			Approximately 0.4 mile northwest of intersection of Bay Esplanade and Eldorado Avenue.	*15	*16
		Joe's Creek	Approximately 500 feet downstream of 49th Street North.	None	*24
			Downstream side of 49th Street North	None	*25

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City of Clearwater Central Permitting Department, 100 South Myrtle Avenue, Clearwater, Florida. Send comments to Mr. Michael Roberto, Clearwater City Manager, P.O. Box 4748, Clearwater, Florida 33758–4748.					
Florida	Dunedin (City), Pinellas County.	Curlew Creek	At confluence with Intracoastal Waterway	*14	*17
			Approximately 0.34 mile upstream of County Road 1.	None	*25
		Jerry Branch	At confluence with Curlew Creek	None	*25
			Approximately 0.4 mile upstream of Main Street.	None	*47
		Gulf of Mexico	Approximately 1.0 mile northwest of the intersection of Edinburgh Drive and Causeway Boulevard.	*15	*17
			Approximately 300 feet west of the intersection of Douglas Avenue and Lyndhurst Street.	*10	*11
Maps available for inspection at the City of Dunedin Engineering Department, 737 Louden Street, Dunedin, Florida. Send comments to Mr. John Lawrence, Dunedin City Manager, P.O. Box 1348, Dunedin, Florida 34697–1348.					
Florida	Gulfport (City), Pinellas County.	Gulf of Mexico/Boca Ciega Bay.	Approximately 1,500 feet southeast of the intersection of Seabreeze Point Boulevard and Seabird Road.	*12	*6
			Approximately 300 feet east of the intersection of Pompano Place and Dolphin Boulevard East.	*10	*12
Maps available for inspection at the City of Gulfport Public Services Department, 5330 23rd Avenue South, Gulfport, Florida. Send comments to Mr. Robert E. Lee, Gulfport City Manager, 2401 53rd Street South, Gulfport, Florida 33707.					
Florida	Indian Rocks Beach (City), Pinellas County.	Gulf of Mexico	Approximately 200 feet west of the intersection of Gulf Boulevard and 27th Avenue.	*9	*13
			At the intersection of 20th Avenue and Bay Boulevard.	*9	*11
Maps available for inspection at the Indian Rocks Beach City Hall, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida. Send comments to The Honorable Robert Dinicola, Mayor of the City of Indian Rocks Beach, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida 33785.					
Florida	Indian Shores (Town), Pinellas County.	Gulf of Mexico	Approximately 200 feet east of the intersection of 200th Avenue and Gulf Boulevard.	*9	*11
			Approximately 250 feet west of the intersection of 199th Avenue and Gulf Boulevard.	*12	*15
Maps available for inspection at the Indian Shores Town Hall, 19305 Gulf Boulevard, Indian Shores, Florida. Send comments to The Honorable Robert G. McEwen, Mayor of the Town of Indian Shores, 19305 Gulf Boulevard, Indian Shores, Florida 33785.					
Florida	Kenneth City (Town), Pinellas County.	Joe's Creek	Upstream side of 66th Street	*16	*15
			Approximately 23 miles upstream of 58th Street.	*23	*21
Maps available for inspection at the Kenneth City Town Hall, 6000 54th Avenue North, Kenneth City, Florida. Send comments to The Honorable Maurice Knox, Mayor of the Town of Kenneth City, 6000 54th Avenue North, Kenneth City, Florida 33709.					
Florida	Largo (City), Pinellas County.	Gulf of Mexico	At the intersection of Indian Rocks Road and Dryer Avenue.	*9	*10
			Approximately 1,200 feet northwest of the intersection of Indian Rocks Road and Kent Drive.	*11	*13
Maps available for inspection at the Largo City Hall, Engineering Department, 225 1st Avenue, SW, Largo, Florida. Send comments to Mr. Steve Stanton, Largo City Manager, P.O. Box 296, Largo, Florida 33779–0296.					
Florida	Madeira Beach (City), Pinellas County.	Gulf of Mexico	Approximately 100 feet east of the intersection of 154th Avenue and Second Street East.	*9	*11

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 600 feet southwest of the intersection of 132nd Avenue and Gulf Boulevard.	*15	*16
Maps available for inspection at the Madeira Beach Building Department, 300 Municipal Drive, Madeira Beach, Florida. Send comments to Mr. Kim Leinbach, Madeira Beach City Manager, 300 Municipal Drive, Madeira Beach, Florida 33708.					
Florida	North Redington Beach (Town), Pinellas County.	Gulf of Mexico	At the intersection of Rosa Lee Way and 173rd Avenue.	*9	*11
			Approximately 450 feet west of the intersection of 173rd Avenue and Gulf Boulevard.	*12	*16
Maps available for inspection at the North Redington Beach Town Hall, 190 173rd Avenue, North Redington Beach, Florida. Send comments to The Honorable Harold Radcliffe, Mayor of the Town of North Redington Beach, 190 173rd Avenue, North Redington Beach, Florida 33708.					
Florida	Pinellas County (Unincorporated Areas).	Brooker Creek, Tributary A.	At East Lake Road	None	*6
			Approximately 0.42 mile upstream of Ridgemoor Boulevard.	None	*16
		Brooker Creek, Tributary B.	At confluence with Brooker Creek Tributary A.	None	*8
			At Eastlake Woodlands Parkway	None	*9
		Joe's Creek, Tributary No. 4.	At confluence with Joe's Creek	*12	*10
			Approximately 0.25 mile upstream of 53rd Street.	*18	*17
		Joe's Creek Tributary No. 5.	At 74th Avenue (Park Boulevard)	None	*10
			Approximately 0.26 mile upstream of Park Boulevard.	None	*10
		Miles Creek	At confluence with Joe's Creek	*15	*13
			Approximately 700 feet downstream of 38th Avenue.	*15	*13
		Hollin Creek Tributary A	Approximately 0.06 mile downstream of Old East Lake Road.	None	*9
			Approximately 0.29 mile upstream of Crescent Oaks Boulevard.	None	*22
		Hollin Creek Tributary A–2	At confluence with Hollin Creek Tributary A.	None	*19
			At Dirt Road	None	*19
		Hollin Creek Tributary B	At confluence with Hollin Creek Tributary A.	None	*12
			At Trinity Boulevard	None	*21
		Jerry Branch	At Brady Drive	None	*25
			At the weir on north end of Indigo Drive	None	*47
		Joe's Creek	Approximately 1,250 feet downstream of 54th Avenue North.	*11	*10
			At 28th Street North	None	*45
		Curlew Creek	Approximately 0.7 mile upstream of CSX Transportation.	*11	*12
			Approximately 750 feet upstream of County Road 1/Palm Harbor Road.	None	*21
		Gulf of Mexico/Boca Ciega Bay.	At the intersection of Gulfwinds Drive West and Crosswinds Drive.	*10	*11
			Approximately 300 feet southwest of the intersection of Curlew Place and Florida Avenue.	*16	*18
Maps available for inspection at the Pinellas County Zoning Department, 310 Court Street, Clearwater, Florida. Send comments to Mr. Fred E. Marquis, Pinellas County Administrator, 315 Court Street, Clearwater, Florida 33756.					
Florida	Pinellas Park (City), Pinellas County.	Joe's Creek Tributary No. 4.	At 62nd Avenue North	*11	*14
			Approximately 0.25 mile upstream of 53rd Street North.	*18	*17
		Joe's Creek Tributary No. 5.	Approximately 0.26 mile upstream of Park Boulevard.	None	*10

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.02 mile upstream of 61st Street North.	None	*16

Maps available for inspection at the City of Pinellas Park Technical Services Building, 6051—78th Avenue North, Pinellas Park, Florida.

Send comments to Mr. Robert Bray, Jr., AICP, City of Pinellas Park Floodplain Manager/Planning Director, P.O. Box 1100, Pinellas Park, Florida 33780–1100.

Florida	Redington Beach (Town), Pinellas County.	Gulf of Mexico	At the intersection of East 3rd Street and Redington Drive.	*9	*11
			Approximately 500 feet west of the intersection of Gulf Boulevard and 164th Avenue.	*15	*16

Maps available for inspection at the Redington Beach Town Hall, 105 164th Avenue, Redington Beach, Florida.

Send comments to The Honorable Mark Deighton, Mayor of the Town of Redington Beach, 105 164th Avenue, Redington Beach, Florida 33708.

Florida	Redington Shores (Town), Pinellas County.	Gulf of Mexico	Approximately 100 feet north of the intersection of 1st Street and Long Point Drive.	*9	*11
			Approximately 600 feet west of intersection of Gulf Boulevard and Coral Avenue.	*14	*16

Maps available for inspection at the Redington Shores Town Hall, 17798 Gulf Boulevard, Redington Shores, Florida.

Send comments to The Honorable J. J. Beyrouti, Mayor of the Town of Redington Shores, 17798 Gulf Boulevard, Redington Shores, Florida 33708.

Florida	Seminole (City), Pinellas County.	Gulf of Mexico/Boca Ciega Bay.	At the intersection of 94th Street and 46th Avenue North.	*10	*11
			Approximately 400 feet southeast of the intersection of Woodlawn Drive and Seminole Boulevard.	*10	*15

Maps available for inspection at the City of Seminole Technical Services Department, 7464 Ridge Road, Seminole, Florida.

Send comments to The Honorable Dottie Reeder, Mayor of the City of Seminole, 7464 Ridge Road, Seminole, Florida 33772.

Florida	South Pasadena (City), Pinellas County.	Gulf of Mexico/Boca Ciega Bay.	At the intersection of Gulfport Boulevard and Pasadena Avenue.	*10	*12
			Approximately 500 feet west of the intersection of Sunset Drive and Bigonia Way.	*12	*15

Maps available for inspection at the South Pasadena City Hall, 7047 Sunset Drive South, South Pasadena, Florida.

Send comments to The Honorable Fred G. Held, Jr., Mayor of the City of South Pasadena, 7047 Sunset Drive, South Pasadena, Florida 33707.

Florida	St. Pete Beach (City), Pinellas County.	Gulf of Mexico	At the intersection of 80th Way and Blind Pass Road.	*10	*11
			Approximately 600 feet southwest of the intersection of 72nd Avenue and Sunset Avenue.	*15	*16

Maps available for inspection at the St. Pete Beach City Hall, 7701 Boca Ciega Drive, St. Pete Beach, Florida.

Send comments to Mr. Carl L. Schwing, St. Pete Beach City Manager, 7701 Boca Ciega Drive, St. Pete Beach, Florida 33706.

Florida	St. Petersburg (City) Pinellas County.	Miles Creek	Approximately 700 feet downstream of 38th Avenue.	*16	*13
			Approximately 0.05 mile upstream of 22nd Avenue and 58th Street.	*18	*19
		Gulf of Mexico/Boca Ciega Bay.	Approximately 50 feet west of the intersection of Park Street and 24th Avenue North.	*10	*12
			Approximately 200 feet southwest of the intersection of Sunset Drive North and 31st Terrace North.	*13	*15

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City of St. Petersburg Municipal Services Center, Permit Division, 14th Street North, St. Petersburg, Florida.					
Send comments to The Honorable David Fischer, Mayor of the City of St. Petersburg, P.O. Box 2842, St. Petersburg, Florida 33731–2842.					
Florida	Tarpon Springs (City) Pinellas County.	Gulf of Mexico	Approximately 300 feet south of the intersection of Castleworks Lane and Coldstream Court.	*10	*11
			Approximately 1,000 feet west of the intersection of Harbor Watch Circle and North Pointe Alexis Drive.	*17	*18
Maps available for inspection at the Tarpon Springs City Hall, 324 East Pine Street, Tarpon Springs, Florida.					
Send comments to Mr. Costa F. Vatikiotis, Tarpon Springs City Manager, P.O. Box 5004, Tarpon Springs, Florida 33688–5004.					
Florida	Treasure Island (City) Pinellas County.	Gulf of Mexico	Approximately 1,000 feet west of the intersection of Dolphin Drive and Paradise Boulevard.	*10	*11
			Approximately 900 feet west of the intersection of 125th Avenue and Gulf Boulevard.	*15	*17
Maps available for inspection at the Treasure Island City Hall, Building Department, 120 108th Avenue, Treasure Island, Florida.					
Send comments to Mr. Charles Coward, Treasure Island City Manager, 120 108th Avenue, Treasure Island, Florida 33706.					
Indiana	New Albany (City), Floyd County.	Fall Run	At confluence with Falling Run	*438	*443
			At downstream side of Grant Line Road	*442	*443
		Falling Run	At Ohio River levee	*433	*438
			At Janie Drive	*479	*474
		Middle Creek	Approximately 150 feet downstream of State Route 111.	None	*448
			Approximately 75 feet upstream of upstream crossing of Southern Railway.	None	*472
		Vincennes Run	At confluence with Middle Creek	None	*448
			Approximately 70 feet upstream of Eagle Lane.	None	*471
Maps available for inspection at the City of New Albany Planning Commission, Room 329, City-County Building, 311 Hauss Square, New Albany, Indiana.					
Send comments to The Honorable Douglas B. England, Mayor of the City of New Albany, Room 316, City-County Building, 1 Hauss Square, New Albany, Indiana 47150–5336.					
Kentucky	Pike County (Unincorporated Areas).	Tug Fork	Approximatley 0.35 mile upstream of confluence of Turkey Creek.	*664	*663
			Approximately 0.5 mile upstream of confluence of Sycamore Creek.	*675	*674
		Shelby Creek	Approximately 1.14 mile upstream of confluence with Levisa Fork.	*687	*688
			Approximately 0.26 mile upstream of Low Water Crossing.	*822	*821
Maps available for inspection at the Pike County Courthouse, 324 Main Street, Pikeville, Kentucky.					
Send comments to The Honorable Donna Damron, Pike County Judge/Executive, 324 Main Street, Pikeville, Kentucky 41501.					
Kentucky	Pikeville (City), Pike County.	Harold Branch	At confluence with Pikeville Road	*671	*672
			Approximately 290 feet upstream of confluence with Pikeville Pond.	*671	*672
		Ferguson Creek	At confluence with Pikeville Pond	*671	*670
			Approximately 0.25 mile upstream of confluence with Pikeville Pond.	*671	*670
Maps available for inspection at the Building Inspector's Office, 260 Hambley Boulevard, Pikeville, Kentucky.					
Send comments to The Honorable Steven D. Combs, Mayor of the City of Pikeville, P.O. Box 1228, Pikeville, Kentucky 41502.					
Maine	Sidney (Town), Kennebec County.	Kennebec River	At downstream corporate limits	None	*45
			At upstream corporate limits	None	*56
		Messalonskee Lake	Entire shoreline within community	None	*238

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Sidney Town Office, RR 3 Middle Road, Augusta, Maine. Send comments to Mr. Gary Fuller, Town of Sidney Code Enforcement Officer, RR 3 Middle Road, Box 491, Augusta, Maine 04330.					
Maine	Vienna (Town), Kennebec County.	Flying Pond	Entire shoreline within community	None	*349
Maps available for inspection at the Vienna Town Hall, Route 41, Vienna, Maine. Send comments to Mr. Creston Gaither, Secretary of the Town of Vienna Planning Board, RFD 1, Box 630, Vienna, Maine 04306.					
Massachusetts	Sudbury (Town), Middlesex County.	Cold Brook	Approximately 2.05 miles above confluence with Pantry Brook.	*122	*123
			Approximately 150 feet downstream of Pantry Road.	None	*131
		Dudley Brook and Tributary A to Dudley Brook.	Approximately 900 feet upstream of Bent Road.	None	*155
			Approximately 10 feet upstream of Boston Post Road.	None	*162
		Mineway Brook	Approximately 410 feet upstream of confluence with Pantry Brook.	*125	*126
			Approximately 240 feet upstream of Concord Road.	None	*224
		Pantry Brook	Approximately 110 feet upstream of Marlboro Road.	None	*142
			Approximately 0.54 mile upstream of Marlboro Road.	None	*161
		Run Brook	Approximately 700 feet upstream of confluence with Hop Brook.	*149	*148
			Approximately 155 feet upstream of Fairbank Road.	None	*182
		Tributary A to Cold Brook	Approximately 1300 feet upstream of confluence with Cold Brook.	*122	*123
			Approximately 635 feet upstream of Tantamouse Trail.	None	*175
		Tributary A to Hop Brook	Approximately 550 feet upstream with Hop Brook/Stearns Mill Pond.	None	*159
			Approximately 65 feet upstream of Firecut Lane.	None	*182
		Tributary A to Pantry Brook.	At confluence with Pantry Brook	None	*142
			Approximately 21 feet downstream of Willis Road.	None	*182
		Tributary B to Hop Brook	Approximately 500 feet upstream of confluence with Hop Brook.	None	*160
			Approximately 20 feet upstream of Moore Road.	None	*174
		Tributary C to Hop Brook	Approximately 710 feet upstream of confluence with Hop Brook.	*163	*164
			Approximately 0.8 mile above confluence with Hop Brook.	None	*176
		Tributary D to Hop Brook	Approximately 660 feet upstream of confluence with Hop Brook.	*163	*164
			At upstream corporate limits	None	*180
Maps available for inspection at the Sudbury Town Hall, 288 Old Sudbury Road, Sudbury, Massachusetts. Send comments to Mr. Steven Ledoux, Sudbury Town Manager, 288 Old Sudbury Road, Sudbury, Massachusetts 01776.					
Minnesota	Chaska (City), Carver County.	East Creek	Approximately 1875 feet upstream of confluence with Minnesota River.	*723	*712
			Approximately 100 feet upstream of North Valley Road.	None	*775
		Minnesota River	At upstream side of Milwaukee Road Railroad.	*723	*724
			Approximately 1320 feet upstream of Milwaukee Road Railroad.	*723	*724
		Old Clay Hole	Entire shoreline within community	*738	*729
		Ponding Areas at Outlet A	Entire shoreline within community	*726	*719
		Courthouse Lake	Entire shoreline within community	*723	*703

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City of Chaska Engineer's Office, One City Hall Plaza, Chaska, Minnesota. Send comments to Mr. David Pokorney, Chaska City Administrator, One City Hall Plaza, Chaska, Minnesota 55318–1962.					
Mississippi	Columbus (City), Lowndes County.	Luxapalila Creek	At upstream side of Burlington Northern Railroad.	*170	*169
			Approximately 600 feet upstream of U.S. Highway 82 Bypass.	*180	*178
		McCrary Creek	At confluence with Luxapilila Creek	*172	*170
			Approximately 500 feet upstream of Idlewood Road.	*173	172
		Magby Creek	At confluence with Luxapalila Creek	*177	*173
			Approximately 0.60 mile downstream of Lehmberg Road.	*184	*183
Maps available for inspection at the Columbus City Hall, Building Inspection Department, 1215 2nd Avenue North, Columbus, Mississippi. Send comments to The Honorable George Wade, Mayor of the City of Columbus, City Hall, Columbus, Mississippi 39703.					
Mississippi	Lowndes County (Unincorporated Areas).	Black Creek	At confluence with Luxapalila Creek	*185	*183
			Approximately 1.0 mile upstream of confluence with Luxapalila Creek.	*186	*185
		Luxapalila Creek Tributary	At confluence with Luxapilila Creek	*199	*198
			Approximately 1.3 miles upstream of confluence with Luxapalila Creek.	*201	*202
		Yellow Creek	At Confluence with Luxapalila Creek	*196	*195
			Approximately 1.0 mile upstream of confluence with Luxapalila Creek.	*199	*198
		Laxapalila Creek	At upstream side of Burlington Northern Railroad.	*170	*169
			At county/state boundary	*214	*211
Maps available for inspection at the Lowndes County Building Inspection Department, 17 Airline Road, Columbus, Mississippi. Send comments to Mr. J.L. Williams, President of the Lowndes County Board of Supervisors, P O. Box 1364, Columbus, Mississippi 39703.					
New Jersey	Berkeley Heights (Township), Union County.	Green Brook	At confluence of Blue Brook	*196	*197
			Approximately 1600 feet upstream of Apple Tree Road.	*406	*405
		Blue Brook	At confluence with Green Brook	*196	*197
			Approximately 1.4 miles upstream of Seely's Pond Dam.	None	*240
		Branch Green Brook	At confluence with Green Brook	*358	*363
			Approximately 110 feet upstream of confluence with Green Brook.	*362	*363
		Branch Blue Brook	At confluence with Blue Brook	*209	*210
			Approximately 10 feet upstream of confluence with Blue Brook.	*209	*210
Maps available for inspection at the Berkeley Heights Township Engineering Office, 29 Park Avenue, Berkeley Heights, New Jersey. Send comments to The Honorable David Palladino, Mayor of the Township of Berkeley Heights, 29 Park Avenue, Berkeley Heights, New Jersey 07922.					
New Jersey	Scotch Plains (Township), Union County.	Green Brook	Approximately 250 feet upstream of Terrill Road.	*137	*136
			At upstream corporate limits	*196	*198
		Blue Brook	At confluence with Green Brook	*196	*198
			At upstream corporate limits	*243	*240
Maps available for inspection at the Township of Scotch Plains Engineering Office, 430 Park Avenue, Scotch Plains, New Jersey. Send comments to The Honorable Irene Schmidt, Mayor of the Township of Scotch Plains, 430 Park Avenue, Scotch Plains, New Jersey 07076.					
North Carolina	Atlantic Beach (Town), Carteret County.	Bogue Sound	Approximately 800 feet north of intersection of North Court and Hoop Pole Road within extraterritorial jurisdiction limits.	None	*8
			Approximately 2,000 feet north of intersection of Salter Path Road and Dunes Avenue within extraterritorial jurisdiction limits.	None	*8

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
			Approximately 0.5 mile east of intersection of North Court and Hoop Pole Road within extraterritorial jurisdiction limits.	*7	*9
			Approximately 0.6 mile northwest of intersection of Old Causeway and Pond Drive within extraterritorial jurisdiction limits.	*7	*9
			Approximately 1,500 feet north of intersection of Fort Macon Drive and Tar Landing Road within extraterritorial jurisdiction limits.	None	*9
Maps available for inspection at the Atlantic Beach Town Office, 125 West Fort Macon Road, Atlantic Beach, North Carolina. Send comments to Mr. Anthony Barrett, Atlantic Beach Town Manager, P.O. Box 10, Atlantic Beach, North Carolina 28512.					
North Carolina	Carteret County (Unincorporated Areas).	Atlantic Ocean	Approximately 300 feet south of the intersection of NC 58 and Hoffman Road.	None	*13
		Atlantic Ocean/Onslow Bay.	Approximately 1240 feet south of the intersection of State Route 1190 and State Route 1191.	*15	*18
		Atlantic Ocean/Bogue Sound.	Approximately 450 feet north of the intersection of NC 58 and Hoffman Road.	*6	*18
			Approximately 1.2 miles east of the intersection of State Route 1190 and State Route 1191.	*14	*18
Maps available for inspection at the Carteret County Central Permit Office, Courthouse Square, Beaufort, North Carolina. Send comments to Mr. Robert Murphy, Carteret County Manager, County Manager's Office, Courthouse Square, Beaufort, North Carolina 28516.					
North Carolina	Grifton (Town) Lenoir and Pitt Counties.	Contentnea Creek	Approximately 3.7 miles downstream of CSX Transportation.	None	*21
			Approximately 2.6 miles upstream of State Highway 11.	None	*28
		Eagle Swamp	Approximately 0.9 mile downstream of County Route 1800.	None	*24
			Approximately 500 feet upstream of County Route 1709.	None	*33
Maps available for inspection at the Grifton Town Hall, 212 West Queen Street, Grifton, North Carolina. Send comments to The Honorable Marian McLawhorn, Mayor of the Town of Grifton, P.O. Box 579, Grifton, North Carolina 28530.					
North Carolina	Pine Knoll Shores (Town), Carteret County.	Bogue Sound	At the intersection of Arborvitae Court and Cottonwood Court.	None	*7
			Approximately 400 feet upstream of the intersection of Morey and Coral Drives.	*6	*7
		Atlantic Ocean	At the intersection of Pinewood and Bay Drives.	None	*12
			Entire shoreline within community between western and eastern corporate limits.	*16	*19
		Pine Knoll Waterway	Entire shoreline within community	None	*7
		Kings Corner Hearth Cove	Entire shoreline within community	None	*7
Maps available for inspection at the Pine Knoll Shores Town Hall, 100 Municipal Circle, Pine Knoll Shores, North Carolina. Send comments to The Honorable Reese Musgrave, Mayor of the Town of Pine Knoll Shores, 100 Municipal Circle, Pine Knoll Shores, North Carolina 28512.					
North Carolina	Raleigh (City), Wake County.	Southwest Prong Beaverdam Creek.	At the confluence with Beaverdam Creek (Basin 18, Stream 28).	*247	*248
			Approximately 50 feet downstream of Cambridge Road.	*258	*257
Maps available for inspection at the City of Raleigh Inspections Department, Conservation Section, 222 West Hargett Street, Raleigh, North Carolina. Send comments to Mr. D.E. Benton, Jr., Raleigh City Manager, P.O. Box 590, 222 West Hargett Street, Raleigh, North Carolina 27602.					
Ohio	Ashville (Village), Pickaway County.	Walnut Creek	Just upstream of Cromley Road	None	*687

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 700 feet downstream of Lockbourne Eastern Road.	None	*694
Maps available for inspection at the Village of Ashville Municipal Building, 91 West Main Street, Ashville, Ohio. Send comments to The Honorable Jane Cline, Mayor of the Village of Ashville, 91 West Main Street, Ashville, Ohio 43103.					
Ohio	Circleville (City), Pickaway County.	Hargus Creek	At Island Road	*671	*670
			Approximately 50 feet upstream of Stoutsville Pike.	None	*700
		Hominy Creek	Approximately 350 feet upstream of confluence with Hargus Creek.	*687	*686
			Approximately 0.73 mile downstream of Bolender-Pontius Road.	*702	*704
		McHenry Ditch	At confluence with Hargus Creek	*675	*676
			Approximately 750 feet upstream of Nicholas Drive.	None	*702
		Scioto River	Area between U.S. Route 23 and CSX Transportation.	None	*666
Maps available for inspection at the City of Circleville Public Service Office, 127 South Court Street, Circleville, Ohio. Send comments to The Honorable Patricia Radabaugh, Mayor of the City of Circleville, 127 South Court Street, Circleville, Ohio 43113.					
Ohio	Pickaway County (Unincorporated Areas).	Hargus Creek	At CSX Transportation	*671	*670
			Approximately 700 feet upstream of Bolender-Pontius Road.	None	*753
		Hominy Creek	Approximately 0.78 mile downstream of Bolender-Pontius Road.	*702	*703
			Approximately 600 feet upstream of Conrail.	None	*752
		Scioto River	At the downstream county boundary	*652	*651
			Approximately 1,600 feet upstream of confluence of Big Walnut Creek.	*693	*694
		Mud Run	At upstream side of State Route 316 (Ashville Road).	None	*680
			Approximately 1.5 miles upstream of State Route 752.	None	*695
		Scioto Overflow to Mud Run.	At confluence with Mud Run	None	*683
		Big Run	At downstream side of Weigand Road	None	*687
		Big Walnut Creek	At county boundary	None	*809
			Approximately 1.1 miles upstream of confluence with Scioto River.	*693	*694
Maps available for inspection at the Pickaway County Commissioners Office, 207 South Court Street, Circleville, Ohio. Send comments to Mr. Robert Huffer, Chairman of the Pickaway County Board of Commissioners, 207 South Court Street, Circleville, Ohio 43113.					
Ohio	South Bloomfield (Village) Pickaway County.	Mud Run	At a point approximately 2,000 feet downstream of Ashville Road (State Route 316).	*678	*679
			At State Route 752	*681	*680
		Scioto River	At a point approximately 0.5 mile downstream of State Roue 316.	None	*682
			At a point approximately 1,400 feet downstream of State Route 316.	None	*682
Maps available for inspection at the Village of South Bloomfield Municipal Building, 5023 South Union Street, South Bloomfield, Ohio. Send comments to The Honorable Albert Junior Roese, Mayor of the Village of South Bloomfield, 5023 South Union Street, South Bloomfield, Ohio 43103–1035.					
Pennsylvania	Upper Merion (Township), Montgomery County.	Abrams Run	At confluence with Crow Creek	None	*141
			Approximately 420 feet upstream of Falcon Road.	None	*234
		Unnamed Creek A	At confluence with Matsunk Creek	*68	*76
			Approximately 80 feet upstream of Flint Hill Road.	None	*114
		Crow Creek	At upstream side of ConRail	*78	*80
			Approximately 80 feet upstream of Croton Road.	None	*287

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Frog Run	At Flint Hill Road	None	*92
			Approximately 440 feet upstream of South Henderson Road.	None	*188
		Gulph Mills Creek	Approximately 130 feet downstream of I–76.	None	*127
			Approximately 330 feet upstream of Gypsy Road.	None	*270
		Abrams Creek	At upstream side of ConRail	*78	*80
			Approximately 60 feet upstream of Brownlee Road.	None	*116
		Matsunk Creek	Approximately 120 feet upstream of confluence with Schuylkill River.	*68	*69
			Approximately 140 feet upstream of School Line Drive.	None	*211
		Gulph Mills Tributary A	At confluence with Gulph Mills Creek	None	*154
			Approximately 80 feet upstream of Arden Road.	None	*155
		Gulph Mills Tributary B	At confluence with Gulph Mills Creek	None	*161
			Approximately 65 feet upstream of Lantern Lane.	None	*173

Maps available for inspection at the Upper Merion Public Works Department, 175 West Valley Forge Road, King of Prussia, Pennsylvania.

Send comments to Mr. Ronald G. Wagenmann, Upper Merion Township Manager, 175 West Valley Forge Road, King of Prussia, Pennsylvania 19406.

West Virginia	Berkeley County (Unincorporated Areas).	Rockymarsh Run	Approximately 80 feet downstream of Billmyer Mill Road.	None	*418
			At confluence of Tributary to Rockymarsh Run.	None	*427
		Tributary to Rockymarsh Run.	At confluence with Rockymarsh Run	None	*427
			Approximately 820 feet upstream of State Route 45.	None	*436

Maps available for inspection at the Berkeley County Planning Commission, 119 West King Street, Martinsburg, West Virginia.

Send comments to Mr. James C. Smith, President of the Berkeley County Board of Commissioners, 126 West King Street, Martinsburg, West Virginia 25401.

West Virginia	Jefferson County (Unincorporated Areas).	Rockymarsh Run	Approximately 430 feet downstream of Billmyer Mill Road.	None	*411
			Approximately 700 feet upstream of State Route 45.	None	*442
		Tributary to Rockymarsh Run.	At confluence with Rockymarsh Run	None	*427
			Approximately 820 feet upstream of State Route 45.	None	*436

Maps available for inspection at the Jefferson County Clerk's Office, 100 East Washington Street, Charlestown, West Virginia.

Send comments to Mr. James Knode, President of the Jefferson County Commission, P.O. Box 250, 110 East Washington Street, Charlestown, West Virginia 25414.

Wisconsin	Chetek (City), Barron County.	Chetek River	Approximately 1,700 feet downstream of Chicago and North Railway (At corporate limits).	None	*1,031
			Approximately 50 feet downstream of dam on Chetek River.	None	*1,039

Maps available for inspection at the Chetek City Clerk's Office, Chetek City Hall, 220 Stout Street, Chetek, Wisconsin.

Send comments to The Honorable Shirley A. Webb, Mayor of the City of Chetek, P.O. Box 194, Chetek, Wisconsin 54728.

Wisconsin	Merrill (City) Lincoln County.	Wisconsin River	Approximately 1.1 miles downstream of U.S. Route 51.	*1,244	*1,241
			Approximately 500 feet upstream of Alexander Dam.	None	*1,276
		Prairie River	At the confluence with Wisconsin River	*1,253	*1,252
			Approximately 1,480 feet upstream of Third Street.	*1,258	*1,259
		Devil Creek	At the confluence with Wisconsin River	*1,255	*1,254
			At Heldt Street	*1,255	*1,266

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the City of Merrill Building Inspector/Zoning Administrator's Office, Merrill City Hall, 1004 East First Street, Merrill, Wisconsin.

Send comments to The Honorable Patricia Woller, Mayor of the City of Merrill, 1004 East First Street, Merrill, Wisconsin 54452.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 19, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–8088 Filed 3–26–98; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF DEFENSE

48 CFR Parts 228 and 252

[DFARS Case 98–D002]

Defense Federal Acquisition Regulation Supplement; Compliance with Spanish Laws and Insurance

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements for use of a clause pertaining to compliance with Spanish laws and insurance under contracts for services or construction to be performed in Spain.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 26, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMB 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 98–D002 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98–D002 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS 228.370(f) to clarify the prescription for use of the clause at 252.228–7006, Compliance with Spanish Laws and Insurance. The rule also amends the clause at 552.228–7006 to clarify that the requirements of the clause apply only if the contractor is not a Spanish concern; and that the requirements of the clause apply to subcontracts with non-Spanish concerns that will perform work in Spain under the contract.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is a clarification of existing requirements and applies only to contracts for services or construction to be performed in Spain. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98–D002 in correspondence.

C. Paperwork Reduction Act

The existing paperwork burden requirements of the clause at DFARS 252.228–7006 have been approved by the Office of Management and Budget under Clearance Number 0704–0229, which expires on September 30, 1998. This rule is not expected to result in a change in the estimated burden hours.

List of Subjects in 48 CFR Parts 228 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 228 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 228 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 228—BONDS AND INSURANCE

2. Section 228.370 is amended by revising paragraph (f) to read as follows:

228.370 Additional clauses.

* * * * *

(f) Use the clause at 252.228–7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain, unless the contractor is a Spanish concern.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.228–7006 is amended by revising the clause date; and redesignating paragraphs (a) through (e) as paragraphs (b) through (f), respectively; adding a new paragraph (a); and revising newly designated paragraph (e) to read as follows:

252.228–7006 Compliance with Spanish laws and insurance.

* * * * *

COMPLIANCE WITH SPANISH LAWS AND INSURANCE (XXX 19XX)

(a) The requirements of this clause apply only if the Contractor is not a Spanish concern.

* * * * *

(e) The Contractor shall provide the Contracting Officer with a similar representation for all subcontracts with non-Spanish concerns that will perform work in Spain under this contract.

* * * * *

[FR Doc. 98–7712 Filed 3–26–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE86

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Devils River Minnow (Dionda diaboli) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

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63
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ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Devils River minnow (*Dionda diaboli*) as an endangered species under authority of the Endangered Species Act of 1973, as amended (Act). The current range of the Devils River minnow is limited to three stream systems in Val Verde and Kinney counties, Texas, and one drainage in Coahuila, Mexico. The species' range has been significantly contracted and fragmented. In addition, the numbers of Devils River minnows collected during fish surveys has declined dramatically over the past 25 years; the species has declined from one of the most abundant fish to one of the least abundant. Based on the current information, the decline of the species in both distribution and abundance may be attributed in large part to the effects of habitat loss and modification and possibly predation by smallmouth bass (*Micropterus dolomieu*), an introduced game fish. This proposal, if made final, will implement Federal protection provided by the Act for the Devils River minnow.

DATES: Comments from all interested parties must be received by July 27, 1998. Public hearing requests must be received by May 11, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas, 78758. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nathan Allan, Fish and Wildlife Biologist (see **ADDRESSES** section) (telephone 512/490–0057; facsimile 512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

The Devils River minnow (*Dionda diaboli* Hubbs and Brown) is classified in the Cyprinidae (Minnow) family. It was first collected from Las Moras Creek, near Brackettville, Texas, on April 14, 1951. The species was formally described by Hubbs and Brown (1956) from specimens collected in the Devils River; the holotype locality being Devils River at Baker's Crossing. The species occurs with *Dionda argentosa* (manantial roundnose minnow) and is also similar to *Dionda episcopa* (roundnose minnow). Devils River minnow is recognized as a distinct species by the American Fisheries Society (Robins *et al.* 1991) based on morphological characteristics (Hubbs and Brown 1956), genetic markers (Mayden *et al.* 1992) and chromosome differences (Gold *et al.* 1992).

The Devils River minnow is a small fish, with adults reaching sizes of 25–53 millimeters (mm) (1.0–2.1 inches (in)) standard length. The fish has a wedge-shaped caudal spot and pronounced lateral stripe with double dashes extending through the eye to the snout but not reaching the lower lip. The species has a narrow head with prominent dark markings on scale pockets above the lateral line that produce a cross-hatched appearance when viewed from the top (Hubbs and Brown 1956).

No information is available on life history characteristics, feeding patterns, or reproductive behaviors of this species. However, based on the extended intestinal tract, species of the genus *Dionda* are considered to feed primarily on algae. *Dionda episcopa* have been observed to be broadcast spawners with nonadhesive eggs that sink to the substrate (Johnston and Page 1992).

General habitat associations for Devils River minnow have been described as channels of fast-flowing, spring-fed waters over gravel substrates (Harrell 1978). Although the species is closely associated with spring systems, it most often occurs where spring flow enters a stream, rather than in the spring outflow itself (Hubbs and Garrett 1990). The species is adapted to the hydrologic variations inherent in desert river systems (Harrell 1978), characterized by extended droughts and extreme flash floods (USGS 1989).

The Devils River minnow is part of a unique fish fauna in west Texas streams where a mixture of fishes occur, including Mexican peripherals, local endemics, and widespread North American fishes (Hubbs 1957). About half of the native fishes of the Chihuahuan Desert of Mexico and Texas are considered threatened by Hubbs (1990) and at least four species have been documented to already be extinct (Miller *et al.* 1989), primarily due to habitat destruction and introduced species.

The Devils River minnow is native to tributary streams of the Rio Grande River in Val Verde and Kinney counties, Texas, and Coahuila, Mexico. The known historic range of the species is based on collections from the 1950s and 1970s and includes—the Devils River from Beaver Lake downstream to near its confluence with the Rio Grande; San Felipe Creek from the springs in the headwaters to springs in Del Rio; Sycamore Creek, in Kinney County; Las Moras Creek near Brackettville; and Rio Sabinas, Rio San Carlos, and Rio Alamo from the Rio Salado drainage in northern Mexico (Brown 1955; Hubbs and Brown 1956; Robinson 1959; Harrell 1978; Smith and Miller 1986; Garrett *et al.* 1992). Despite numerous collection efforts, the species has never been reported from the mainstem Rio Grande, the Rio Conchos drainage, or tributary streams other than those listed above. The range of the species prior to 1951 is unknown.

The current distribution of Devils River minnow in Texas was described by Garrett *et al.* (1992). This study documented the presence of the species in 1989 at two sites on the Devils River, two sites on San Felipe Creek, and one site on Sycamore Creek. Garrett *et al.* (1992) showed that Devils River minnow was very rare throughout its range in 1989 compared to past collections. At 24 sampling locations within the historic range, a total of only 7 individuals were collected from 5 sites. In addition to declines in the Devils River minnow populations, Garrett *et al.* (1992) also observed a general shift in community structure toward fishes that tend to occupy quiet water or pool habitat, conditions that are often limited in flowing spring runs. The authors hypothesized that this shift was the result of reduced stream flows from drought, exacerbated by human modification to stream habitats, especially in Sycamore and Las Moras creeks.

No published information has been found on the status of the Devils River minnow in Mexico. A review of museum records indicates the species may now occur in only two localities in Mexico. Populations there appear to be very depressed and face significant threats from industrial development (Contreras and Lozano 1994; S. Contreras-B., University of Nuevo Leon, *in litt.* 1997). Throughout the region of northern Mexico, fish species are severely threatened with habitat loss and modification. Of an approximate 200 species that may occur in the region, 135 are considered threatened (Williams *et al.* 1989; Contreras and Lozano 1994) and 15 are thought to already be extinct (Miller *et al.* 1989; Contreras and Lozano 1994).

The region of Texas where the Devils River minnow occurs is semi-arid, receiving an average of about 46 centimeters (cm) (18 in) of rainfall annually. Spring-fed streams of west Texas flow southerly through rocky, limestone soils and shrubby vegetation characteristic of desert hill country. The aquifer that sustains spring flows within

the range of the Devils River minnow is the Edwards-Trinity (Plateau) Aquifer. This major aquifer produces the largest number of springs in Texas (Brune 1975). The contributing recharge area for springs on the Devils River and San Felipe Creek is suspected to include a large area as far north as Sheffield in Pecos County and Eldorado in Schleicher County, although the subsurface hydrogeomorphology of the region is not well-defined (Brune 1981). The flow from springs tends to fluctuate considerably, depending on the amount of rainfall, recharge, and water in storage in the underground reservoirs. Conservation of this groundwater supply is essential for the continued existence of the Devils River minnow.

Areas where the Devils River minnow occurs are mostly in private ownership. Exceptions include the Devils River State Natural Area, owned by the Texas Parks and Wildlife Department (TPWD) (Baxter 1993), and land adjoining portions of San Felipe Creek, owned by the City of Del Rio (population of about 38,000). One important private holding is the Dolan Falls Preserve, owned by The Nature Conservancy (Baxter 1993). Primary land uses are cattle, sheep, and goat ranching. Generally, these areas are very remote with little human development, beyond those to support ranching operations. Primary communities within the Devils River watershed are Ozona in Crockett County and Sonora in Sutton County (each with a population of less than 5,000), in the upper portion of the drainage where flows in the Devils River are intermittent. The middle and lower portions of the Devils River are popular for recreational fishing and canoeing (Gough 1993), although public access is limited.

The Devils River minnow is currently listed as a threatened species by the State of Texas, the Texas Organization for Endangered Species (Hubbs *et al.* 1991), and the Endangered Species Committee of the American Fisheries Society (Williams *et al.* 1989).

Previous Federal Action

On August 15, 1978, the Service published a proposed rule (43 FR 36117) to list the Devils River minnow as a threatened species and to designate critical habitat. On March 6, 1979, the Service published a notice (44 FR 12382) to withdraw the critical habitat portion of the proposal in order to meet requirements set forth in the Endangered Species Act Amendments of 1978 (Public Law 95–632, 92 Stat. 3751). The Service reproposed the designation of critical habitat for the Devils River minnow on May 16, 1980 (45 FR 32348). A notice of public hearing was published on July 9, 1980 (45 FR 46141), and the public hearing was held on July 23, 1980, in Del Rio, Texas. The Service gave notice that the listing and critical habitat proposals were withdrawn on September 30, 1980 (45 FR 64853), because the 2-year time limit on the proposal had expired.

The Service included the Devils River minnow as a category 2 candidate species in Notices of Review published December 30, 1982 (47 FR 38454), September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554). Category 2 taxa were those that the Service believed may be eligible for threatened or endangered status, but for which the available biological information in possession of the Service was insufficient to support listing the species. However, new information obtained in 1989 (and later published as Garrett *et al.* 1992) provided a basis for including the Devils River minnow as a category 1 candidate in Notices of Review published November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Category 1 taxa were those for which the Service had substantial biological information on hand to support proposing to list the species as threatened or endangered.

As announced in a notice published in the February 28, 1996, **Federal Register** (61 FR 7596), the designation of multiple categories of candidates has been discontinued, and only former category 1 species are now recognized as candidates for listing purposes. The Devils River minnow remained a candidate species with a listing priority of 2 in Notices of Review published February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398). The listing priority numbers for candidate taxa range from 1 (highest priority) to 12 (lowest priority) and are assigned by the Service based on the immediacy and magnitude of threats, as well as taxonomic status (48 FR 43098).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Devils River minnow (*Dionda diaboli*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

(1.) Devils River

The Devils River constitutes the largest segment of the documented range of the Devils River minnow. Over 40 percent of the total length of the Devils River has been lost as potential habitat, representing a contraction of the range from the northern extent of the distribution of the species. The Devils River from Beaver Springs to its confluence with the Rio Grande is about 127 river-kilometers(km) (79 river-miles(mi)) long. The lower 29 km, downstream of Big Satan Creek, is inundated by Amistad Reservoir. The uppermost 26 km, between Pecan Springs and Beaver Springs, can no longer be considered suitable habitat because of the loss of permanent flows.

The most significant loss of Devils River minnow habitat occurred on the Devils River with the impoundment of Amistad Reservoir in 1968. Backwaters from Amistad Dam inundated the natural stream habitats (about 29 km), transforming the area from a riverine to lake environment. The area is no longer suitable for most native fishes, including Devils River minnow. Before construction of Amistad Dam, two smaller dams (Devils Lake and Wall Lake) were built in the 1920's in this lower portion of the stream. However, spring run habitat remained and Devils River minnow was collected there in 1953 and 1954. Amistad Reservoir, however, inundated these springs, eliminating the natural environment and suitable habitat for native fish. Also, the construction of the dam created a physical barrier to fish movement that permanently separated the Devils River population of the species from other populations.

In addition to habitat loss in the lower Devils River due to impoundment, habitat for the species has been lost from the lack of permanent spring flows in the upstream portion (about 26 km) of the river (Dietz 1955, Brune 1975, Harrell 1978). These springs historically provided a pristine source of significant flowing water. Brune (1981) indicates that agricultural land use practices both within and north of the watershed may affect aquifer levels and account for a lack of permanent flows from the northern-most springs. Heavy well pumping from groundwater reserves for irrigation (Dietz 1955) and long term overgrazing (that reduces recharge and enhances runoff) have been cited as possible causes for decreased spring flows in the upper Devils River (Brune 1981). Springs on the Devils River

(upstream of Pecan Springs) that no longer support permanent discharges include Beaver, Juno, Headwater, Stein, and San Pedro springs (Brune 1981).

Continued decline of permanent discharge from springs is a significant threat to Devils River minnow in the middle segment of the Devils River. This threat can be the result of drought and/or human activities that withdraw groundwater or prevent recharge. The remaining central portion of the Devils River continues to flow naturally, and has been referred to as one of the most pristine rivers in Texas. Because of large groundwater reservoirs that support the remaining spring systems, the river maintains a substantial perennial flow.

Historic stream flow analysis, however, indicates decreasing base flows during the 1960's that were independent of precipitation levels (suggesting human influences). Drought can further aggravate spring flow declines (Garrett 1992). Declining trends of stream flow during the 1950's and 1980's track a decrease in precipitation in the region, suggesting the effects of drought (USGS 1989).

When spring flows become seasonally intermittent, fish populations are unable to use the stream to fulfill their life history requirements. Declines in base flow of streams also affect fish populations by reducing the total available habitat and thereby intensifying competitive and predatory interactions. For Devils River minnow, decreased instream flows may lead to a population decline due to exclusion from preferred habitats and increased mortality from predation.

Using relative abundance as an indicator, the Devils River minnow has decreased in the Devils River over time. The Devils River minnow was the fifth most abundant species of 18 species collected in 1953 at Bakers Crossing (Brown 1955); the sixth most abundant of 23 species in the river in 1974 (Harrell 1978); and one of the least abundant of 16 species in 1989 (Garrett *et al.* 1992). Recent information from Cantu and Winemiller (1997) indicates that the species was still present in the Devils River at the confluence with Dolan Falls in 1994, but only in low numbers (thirteenth most abundant of 27 species). The four collections by Cantu and Winemiller (1997) were extensive surveys over 1 year at the one site near Dolan Falls. Even with this increased effort, only 28 individuals of Devils River minnow, out of 4,470 total fish, were documented.

New information on the distribution and abundance of Devils River minnow in the Devils River and San Felipe Creek was obtained from surveys conducted in November 1997 by the TPWD. No Devils River minnow were collected from several locations on the Devils River from Pecan Springs downstream to Finegan Springs, just above Dolan Falls (Gary Garrett, TPWD, *in litt.* 1997). This indicates that, if the fish still persists in the Devils River, it is very rare.

The drastic decline in abundance within the Devils River can best be documented from collections at the site at Baker's Crossing. Over 60 individuals were collected there in 1953, only one was collected in 1989, and none were collected in 1997.

(2.) San Felipe Creek

San Felipe Creek constitutes the second largest segment of remaining habitat for Devils River minnow in Texas. Devils River minnow previously occurred in two areas on this stream. The upper area is associated with a series of headwater springs several miles upstream of the City of Del Rio and the lower area is associated with two large springs in Del Rio.

In 1979, Devils River minnow made up about 2 percent of all collections (total of 3,458 fish), and was the seventh most abundant of 16 species in the headwater springs in the upper portion of San Felipe Creek. In 1989, no Devils River minnow were collected from this site (Garrett *et al.* 1992). No known collections have been made in this area since 1989. This area of San Felipe Creek (upstream of Del Rio) is privately owned and no information is available to discern why the populations of Devils River minnow in this area have significantly declined.

In San Felipe Springs (in Del Rio) in 1989, the fish was very rare (less than 1 percent of 1,651 fish collected, and the tenth most abundant of 12 species collected) (Garrett *et al.* 1992). Data from 1997 suggest that the Devils River minnow is common in the San Felipe Springs and the urban section of the creek (about 50 individuals were collected for captive study) (Gary Garrett, TPWD, *in litt.* 1997).

The San Felipe Springs are located within the City of Del Rio and may be threatened with future habitat changes from continued urban development. Brune (1975) lists San Felipe Springs as one of the four largest springs in Texas. The City draws water directly from the springs which are the sole source of the City's municipal water supply. The expected population growth of Del Rio is projected to be low (0.5 to 1 percent annual growth). With some water conservation measures in place to reduce per capita water use, the City could reduce its water consumption in coming decades. However, any future declines in spring flows due to increased withdrawals could affect the Devils River minnow population in this location. Presently, Amistad Reservoir is thought to increase spring flows from San Felipe Springs because the pool elevation of the reservoir is often higher than that of the spring outlet. This situation places hydrostatic pressure on San Felipe Springs through inundated spring openings within the reservoir (Brune 1981).

Water quality and contamination are constant threats to the population in San Felipe Creek because of the urban setting. Recent studies by the Texas Natural Resource Conservation Commission (TNRCC) (1994) found elevated levels of nitrates, phosphates and orthophosphates in San Felipe Creek, indicating potential water quality problems. Land uses in the immediate area of the springs, such as runoff from the municipal golf course near the spring, may be contributing to these conditions. Other threats from catastrophic events such as contaminant spills could affect the species.

Based on the current abundance of the Devils River minnow in San Felipe Creek, it appears that existing practices that could impact the aquatic habitat are not yet serious enough to significantly reduce the local population. Aquatic habitat conservation measures (such as water use conservation and water quality protection) in this section of San Felipe Creek could help ensure survival of the species there.

(3.) Sycamore Creek

Sycamore Creek constitutes a relatively small portion of the range of the species. There is only one published account of fishes in this stream from one site, at the State Highway 277 crossing near the Rio Grande River (Garrett *et al.* 1992), although Harrell (1980) references the species' occurrence there. Garrett *et al.* (1992) found very few individuals at this location. Sycamore Creek is an ungaged stream, and there is little information available on habitat conditions. However, the Devils River minnow in this stream is evidently very rare and faces increased risks for extirpation because of the apparent small population size. Devils River minnow in Sycamore Creek likely face potential threats from decreasing spring and stream flows due to groundwater withdrawals and some land use practices in the watershed.

(4.) Las Moras Creek

Las Moras Creek represents the eastern extent of the range of the species. Although the populations there may have been restricted to the spring

area in Brackettville, the number of fish in historic collections was relatively large (54 individuals were collected in 1953) (Hubbs and Brown 1956). The natural spring system in Brackettville that supports Las Moras Creek is the location of the earliest collection of Devils River minnow. The species has not been collected from these springs since the 1950s and is believed to be extirpated from that stream, based on several sampling efforts in the late 1970's and 1980's (Smith and Miller 1986; Hubbs *et al.* 1991; Garrett *et al.* 1992).

Habitat for the Devils River minnow was lost when the spring was altered by damming the outflow and removing streambank vegetation to create a recreational swimming pool. Garrett *et al.* (1992) reported that the creek smelled of chlorine, indicating that the swimming pool may be maintained with chlorination (a toxin to fish). Garrett *et al.* 1992 also indicates that spring flow has been drastically reduced by drought and diversion of water for human consumption. This combination of habitat loss and alteration and the resulting water quality problems appears to be the most likely cause for the apparent extirpation of the species from Las Moras Creek.

(5.) Rio Salado

The populations of Devils River minnow in the Rio Salado Drainage of northern Mexico represent a critical portion of the range. These streams are southern tributaries of the Rio Grande and are geographically distinct from the tributaries where the fish occurs in Texas. Garrett *et al.* (1992) cites that the Devils River minnow occurs in low numbers in the Rio San Carlos and Rio Sabinas. The species may also occur in the Rio Alamo (S. Contreras-B., University of Nuevo Leon, *in litt.* 1997).

The condition of aquatic habitats in the Rio Salado drainage in Mexico is extremely poor. Contreras and Lozano (1994) report that aquatic ecosystems in this region of Mexico face significant threats due to groundwater and surface water withdrawals, as well as air and water pollution. Watersheds in northern Mexico have been heavily impacted by land uses and industrial development (S. Contreras-B., University of Nuevo Leon, *in litt.* 1997). The Rio Sabinas, in particular, has been noted for decreasing flows; and spring systems within Coahuila have been extensively exploited (Contreras and Lozano 1994).

(6.) Range-Wide

Habitat loss and modification throughout a significant portion of the range of the Devils River minnow has resulted in both the fragmentation and contraction of the range of the species. The previous occurrences of known populations of Devils River minnow in Texas can be grouped into nine geographic areas, primarily associated with spring systems: five areas in the Devils River (lower Devils River, Dolan Falls, Baker's Crossing, Pecan Springs, Juno to Beaver Lake); two areas in San Felipe Creek (headwater springs and Del Rio); one area in Sycamore Creek; and one area in Las Moras Creek. Of these nine areas, the best available information indicates that a viable population may exist only in San Felipe Creek in Del Rio. The known existence of only one viable population located in an urban setting makes the threat of extinction of the species within the U.S. very high. Although detailed information is limited regarding the status of the species in Mexico, its condition there is likely at least to be threatened.

The construction of Amistad Dam has separated the two primary populations of Devils River minnow in Texas (Devils River and San Felipe Creek) and assured they will be permanently isolated from one another. This population fragmentation has significant conservation implications (Gilpin 1987). Determining and monitoring the genetic structure of the different Devils River minnow populations will be needed to ensure the necessary genetic variation within and among populations is not lost (Meffe 1986; Minckley *et al.* 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not considered a significant threat to the Devils River minnow. However, there is a potential for impacts should this species be harvested as a baitfish (either commercially or non-commercially).

C. Disease or Predation

The Devils River minnow may be affected by the presence of introduced fishes within its range. Of special concern is the threat of predation by smallmouth bass (*Micropterus dolomieu*), a game fish introduced to Amistad Reservoir in about 1975. The smallmouth bass is native to eastern North America but has been widely introduced as a sport fish to reservoirs and streams outside its natural range. It is believed smallmouth bass gained access to the upper portions of the Devils River (upstream of Dolan Falls) in the early to mid-1980's (Gary Garrett, TPWD, pers. comm. 1997). This species is now the dominant predator in the fish community of the Devils River. The TPWD is currently managing the Devils River as a trophy smallmouth bass fishery.

The Devils River minnow evolved in the presence of native piscivores such as channel catfish (*Ictalurus punctatus*) and largemouth bass (*Micropterus salmoides*) and is adapted to persist with these species. However, smallmouth bass are not native, are aggressive predators, and are known to impact other native fish communities (Taylor *et al.* 1984, Moyle 1994). The Devils River minnow falls within the size class of small fishes that are susceptible to predation by smallmouth bass. The scarcity of Devils River minnow in the Devils River (where smallmouth bass are prominent) and the abundance of Devils River minnow in San Felipe Creek (where smallmouth bass are not known to occur) provides circumstantial evidence of the likely impacts of this introduced predator. The establishment of smallmouth bass in San Felipe Creek is another potential threat to that Devils River minnow population.

The release (intentional or unintentional) of other minnows into areas inhabited by Devils River minnow is another potential threat. Live bait fish are commonly discarded by anglers resulting in introductions of nonnative species. This situation has occurred in many streams in the southwestern U.S. with considerable impacts to the native fish community (Moyle 1994). Exotic fishes from aquariums can also be introduced into local waters. Currently, only a small number of introduced fishes occur within the range of the Devils River minnow, but the potential for bait bucket introductions is high because of the number of anglers on the Devils River. Threats to the populations of Devils River minnow from possible introduction and establishment of nonnative fishes include diseases, parasites, competition for food and space, and hybridization.

D. The Inadequacy of Existing Regulatory Mechanisms

The Devils River minnow is listed as a threatened species by the State of Texas. This provides some protection from collecting, as a permit is required to collect listed species in Texas. However, there is no State or local mechanism to protect habitat for the conservation of the species. In addition, limited regulations exist to prevent unintentional releases of exotic species by the baitfish industry and anglers.

Limited State regulations exist that serve to protect instream flows for surface water rights and water quality for wildlife and human uses. However,

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these regulations were not designed to conserve habitat for native fishes and currently no minimum instream flows are required on streams where Devils River minnow occur. Surface water rights along the Rio Grande in Texas and its U.S. tributaries are administered by the State of Texas. Groundwater withdrawals that could be affecting stream flows within the range of the Devils River minnow are unregulated. Texas courts have held that, with few exceptions, landowners have the right to take all the water that can be captured under their land (right of capture). Therefore, there is little opportunity to protect groundwater reserves within existing regulations.

State Water Quality Standards, though primarily concerned with protecting human health, may provide some protection to the Devils River minnow and its habitat. The classification of the Devils River and San Felipe Creek under the Texas Surface Water Quality Standards requires maintenance of existing water quality. Sycamore and Las Moras Creeks are not classified under these standards

E. Other Natural or Manmade Factors Affecting Its Continued Existence.

The destruction of habitat throughout the range of the Devils River minnow has reduced the number of viable populations of the species, perhaps down to as few as one. The restricted range makes the species especially vulnerable to extinction. The Devils River minnow is currently known to be common in only one location, San Felipe Creek in Del Rio, and this population is threatened due to its proximity to the urban environment.

Populations of Devils River minnow in Sycamore Creek, and possibly the Devils River, may have so few individuals that they may no longer constitute viable populations (Caughley and Gunn 1996). Small populations can lead to genetic erosion through inbreeding and are more vulnerable to loss from random natural events than larger populations (Meffe 1986).

The overall decline in abundance of Devils River minnow is likely the result of several cumulative factors. For example, subtle changes in stream flows could produce small shifts in habitat use that make the species more vulnerable to competition and predation by native predators and nonnative smallmouth bass. In addition, long-term drought can have a major effect on the habitat of the species, particularly when combined with impacts of human water use. This species has adapted to the historic natural climatic variations (such as large floods and prolonged droughts). However, in conjunction with other threats to the species (primarily existing habitat loss and exotic predators), a drought could significantly increase the threat of extinction. The use of water supplies for human needs (municipal or agricultural) serves to worsen the effects of drought on the natural environment.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Devils River minnow as endangered. The species currently inhabits a very limited range and the best scientific information available indicates a decline in abundance throughout the range of the species. The species is in danger of becoming extinct in the foreseeable future throughout all or a significant portion of its range. Threatened status would not accurately reflect the vulnerability of the species due to its restricted range and low numbers. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that the designation of critical habitat for the Devils River minnow is not prudent due to lack of benefit. The section 7 prohibitions against adverse modification of critical habitat apply to Federal actions only (see Available Conservation Measures section). The watersheds in the U.S. in which the Devils River minnow occurs are almost entirely in private ownership, and no significant Federal actions affecting the species' habitat are likely to occur in the area. Therefore, the designation of critical habitat would provide no benefit to the species.

In addition, any Federal action which would cause adverse modification of critical habitat for the Devils River Minnow likely would also cause jeopardy. Under section 7, actions funded, authorized, and carried out by Federal agencies may not jeopardize the continued existence of a species or result in the destruction or adverse modification of critical habitat. To "jeopardize the continued existence" of a species is defined as an action that appreciably reduces the likelihood of its survival and recovery. "Destruction or adverse modification of critical habitat" is defined as an appreciable reduction in the value of critical habitat for the survival and recovery of a species. Given the imperiled status of the Devils River minnow, it is likely that a Federal action that would destroy or adversely modify the species' critical habitat would also jeopardize its continued existence. Thus, prohibitions associated with critical habitat would be duplicative and superfluous, and would, therefore, provide no benefit to the species.

Finally, critical habitat designation can sometimes serve to highlight areas that may be in need of special management considerations or protection. The continued existence of the Devils River minnow is dependent upon the efforts of the TPWD and local land owners, and those parties are aware of the areas in need of special management considerations or protection. For these reasons, the designation of critical habitat for the Devils River minnow would provide no benefit to the species beyond that conferred by listing alone and is, therefore, not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation

actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species.

The State of Texas is currently working on a conservation agreement for the Devils River minnow. Because the agreement has not yet been finalized, the Service did not consider it in determining whether to issue this listing proposal. Should this agreement be finalized within a reasonable period of time, and should the Service decide that it potentially removes the need to list the species, the Service will extend or reopen the comment period for this proposal to accept comments on the agreement and its ability to remove the need to list the species.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing these interagency cooperation provisions of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include Army Corps of Engineers review and approval of activities such as the construction of roads, bridges, and dredging projects subject to Section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*) and U.S. Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System. Other Federal agencies whose actions could require consultation include the Department of Defense, Natural Resources Conservation Service, the Federal Highways Administration, and the Department of Housing and Urban Development.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the U.S. to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.22.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and on-going activities within a species' range. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Normal livestock grazing and other standard ranching practices which do not destroy or significantly degrade Devils River minnow habitat.

(2) Federally-approved projects that involve activities conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

Activities the Service believes could potentially harm the Devils River minnow and result in "take" include, but are not limited to:

(1) Unauthorized collecting or handling of the species.

(2) Any activities that may result in destruction or significant alteration of habitat occupied by Devils River minnow including, but not limited to, the discharge of fill material, the diversion or alteration of spring and stream flows or withdrawal of groundwater to the point at which habitat becomes unsuitable for the species, and the alteration of the physical channels within the spring runs and stream segments occupied by the species;

(3) Discharge or dumping of pollutants such as chemicals, silt, household or industrial waste, or other material into the springs or streams occupied by Devils River minnow or into areas that provide access to the aquifer and where such discharge or dumping could affect water quality in spring outflows;

(4) Herbicide, pesticide, or fertilizer application in violation of label restrictions in or near the springs containing the species; and

(5) Introduction of certain non-native species (fish, plants, and other) into occupied habitat of the Devils River minnow or areas connected to these habitats.

In the descriptions of activities above, a violation of section 9 would occur if those activities occur to an extent that would result in "take" of Devils River minnow. Not all of the activities mentioned above will result in violation of section 9 of the Act; only those activities which result in "take" of Devils River minnow would be considered violations of section 9. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES** section).

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Region 2, Endangered Species Listing Coordinator, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87103–1306 (telephone 505/248–6655; facsimile 505/248–6922).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any

threat (or lack thereof) to the Devils River minnow;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communication may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Austin Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Nathan Allan (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
.	.	.	.	.	.	.	.
Minnow, Devils River	Dionda diaboli	U.S.A. (TX), Mexico	Entire	E	.....	NA	NA
.	.	.	.	.	.	.	.

Dated: March 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–7997 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE56

Endangered and Threatened Wildlife and Plants; Extension of Public Comment Period on Proposed Endangered Status for the Pecos Pupfish (Cyprinodon pecosensis) and Notice of Public Hearing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period is extended on the proposed rule to list the Pecos pupfish (*Cyprinodon pecosensis*) as an endangered species. The Service is working with the New Mexico Department of Game and Fish, the New Mexico State Parks Department, the Texas Department of Parks and Wildlife, and the Bureau of Land Management to assess potential conservation actions for the species. The extension of the comment period will allow these entities and all other interested parties to continue to work with the Service and to submit comments on the proposal.

The Eddy County Board of Commissioners, Eddy County, New Mexico, has requested that a public hearing be held on this proposal. The Service gives notice that a public hearing will be held on the proposed rule.

DATES: The comment period for this proposal, originally opened from January 30 through March 31, 1998, will be extended to November 20, 1998. Comments must be received by the closing date. The public hearing will be held from 5 p.m. to 8 p.m. on April 9, 1998, in Carlsbad, New Mexico (see **ADDRESSES** section).

ADDRESSES: The public hearing will be held at the Pecos River Village Conference Center, 711 Muscatel, Carlsbad, New Mexico. Written comments and materials should be sent to the Field Supervisor, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, Field

Supervisor, at the above address or at telephone 505/761–4525, ext. 106.

SUPPLEMENTARY INFORMATION:

Background

The historical range of the Pecos pupfish included the mainstream Pecos River and various lakes, gypsum sinkholes, saline springs, and tributaries associated with the river from the vicinity of Roswell, Chaves County, New Mexico, downstream to the vicinity of Sheffield, Pecos County, Texas. The Pecos pupfish has been replaced by sheepshead minnow (*Cyprinodon variegatus*) x Pecos pupfish hybrids throughout more than two-thirds of its historical range. Pure populations of the Pecos pupfish are now thought to occur only in a reduced reach of the Pecos River and small and isolated off-channel habitats within the Pecos River Basin in New Mexico; in the upper reaches of Salt Creek, Culberson and Reeves counties, Texas; and in two water-filled gravel pits in Pecos County, Texas.

On January 30, 1998, the Service published a proposed rule to list the Pecos pupfish as endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. A public hearing request was received within the allotted time period from Laurie Kincaid, Chairman of the Eddy County Board of Commissioners, New Mexico.

The Service has scheduled this hearing in Carlsbad, New Mexico, on April 9, 1998, at the Pecos River Village Conference Center, 711 Muscatel, Carlsbad, New Mexico. Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of the statement to be presented to the Service at the start of the hearing. Oral statements may be limited to several minutes if there are many requests to speak. Oral comments presented at the public hearing are given the same weight and consideration as written comments. If the public hearing is of insufficient time to provide for all who wish to speak, all who are not accommodated will be asked to submit their comments in writing. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The Service must receive all comments by November 20, 1998. Comments should be submitted to the Service at the office listed in the **ADDRESSES** section above. Legal notices announcing the date, time, and location of the hearing are being published in newspapers concurrently with this **Federal Register** notice.

Author

The primary author of this notice is Jennifer Fowler-Propst, at the above address.

Authority

The authority citation for this action is 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Reporting and recordkeeping requirements, Transportation.

Dated: March 20, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–8018 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 63, No. 59
Friday, March 27, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room of William M. Mercer, Incorporated, 30th Floor, Conference Room 30C, 1166 Avenue of the Americas, New York, New York, on Monday, March 30, 1998, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, Section 1242 (a)(1)(B).

We have determined as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), that the subject of the meeting falls with the exception to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 17, 1998.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 98–7979 Filed 3–26–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act: Revision of an Existing System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of an existing system of records.

SUMMARY: The U.S. Department of Agriculture is giving notice of a revision to its Privacy Act System of Records entitled Claims Against Food Stamp Recipients–USDA/FNS–3.

DATES: This revision will become effective on May 11, 1998, unless modified by a subsequent notice to incorporate comments received from the public. To be assured of consideration, comments must be received by the contact person listed below on or before April 27, 1998.

ADDRESSES: Comments should be addressed to James I. Porter, Assistant Branch Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 905, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Joseph M. Scordato, Food and Nutrition Service Privacy Act Officer, Room 308, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone (703) 305–2244.

SUPPLEMENTARY INFORMATION: The Privacy Act requires FNS to publish this Privacy Act Systems of Records Notice to inform the public that certain changes are being made to a system of records containing information on individuals against whom fiscal claims have been established under the Food Stamp Program and to request public comment.

Monetary claims are established against food stamp recipients and former recipients who owe debts due to certain errors or infractions of Food Stamp Program rules. State and Federal Government offices seek collections for these debts through recoupment of benefits for recipients still receiving benefits, direct billing to non-recipients and other means. Debt collection and tracking systems necessarily were established to accomplish these collections, and the establishment of and certain changes to such systems require notification to the public under the Privacy Act.

This notice announces changes to implement the Treasury Offset Program (TOP). TOP is a mandatory government-wide delinquent debt matching and payment offset system, centralized in the Department of Treasury. The Debt Collection Act of 1982, as amended, (Pub.L. 97–365) provides statutory authority for Federal agencies to collect debts through administrative offset. The Debt Collection Improvement Act of 1996 (Pub.L.104–134) expands the statutory authority for TOP by requiring agencies to transfer delinquent non-tax debt to Treasury for the purpose of offsetting Federal payments to collect delinquent debts owed to the Federal Government. TOP operates in accordance with statutory and regulatory authorities, including those contained in 31 U.S.C. 3716 and 4 CFR part 102. Further, this notice announces our intent for the Department of Treasury and other debt collection centers designated as such by Treasury, to be among those with whom data may be shared.

FNS has been participating in the Federal Tax Refund Offset (FTROP) and Federal Salary Offset (FSOP) Programs. FNS published notices to test FTROP in 1991 and FSOP in 1994. Final regulations were published in 1995. Under these programs food stamp debts that occurred due to overissuance of program benefits, as a result of an intentional program violation or an inadvertent household error, are offset from Federal Tax Refunds and the salaries of Federal employees, respectively. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 removed some limits on collection methods for State agency error claims. As a result the scope of referable debts was broadened to include State agency error claims.

This Notice modifies the system of records entitled, Claims against Food Stamp Recipients—USDA/FNS—3 so that FNS can fully comply with the Department of the Treasury (Treasury) requirements for various debt collection actions. This Notice modifies the systems of records as follows. The current routine use (1) was changed to list Treasury and its designated collection centers as the referral points and to include Federal administrative payments as an additional routine use and record source category. The current routine use (2) was modified to eliminate the requirement that Federal employee claims be deleted from the tax refund claims, as there is no longer a separate FTROP, since both are subsumed under TOP.

FNS has included some technical changes that do not affect the operation of the system. The notice is modified to reflect that the system manager and system location are now in the FNS Grants Management Division rather than

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in Accounting Division as a result of an internal reorganization.

The Privacy Act requires that any changes in the types of data entered into or extracted from systems of records, or changes in the entities with whom the data is shared be announced to the public in a notice. In this case, there are no changes in the types of data collected about individuals; however, more individuals will be affected by the notice with the addition of State agency error claims now being eligible for offset. Additional entities with whom the data may be shared are identified. The Department of the Treasury and other debt collection centers, as defined by Treasury are new entities with whom data will be shared.

Data will continue to be shared with the following entities: the Department of Defense (DOD); the United States Postal Service (USPS); other Federal agencies that employ debtors; State agencies for such purposes as updating claims files, collecting claims, and fiscal reporting; and Congressional offices in response to an inquiry from the Congressional office made at the request of the individual against whom the claim has been established.

Dated: March 20, 1998.

Signed at Washington, DC.

Dan Glickman,

Secretary of Agriculture.

USDA/FNS–3

SYSTEM NAME:

Claims Against Food Stamp Recipients—USDA/FNS–3.

SYSTEM LOCATION:

Grants Management Division, Food and Nutrition Service (FNS), United States Department of Agriculture, 3101 Park Center Drive, Room 415, Alexandria, Virginia 22302, and FNS Regional Offices located in: Atlanta, Georgia, which covers the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Boston, Massachusetts, which covers the States of Connecticut, Massachusetts, Maine, New Hampshire, New York, Rhode Island, and Vermont; Chicago, Illinois, which covers the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Dallas, Texas, which covers the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Denver, Colorado, which covers the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; Trenton, New Jersey, which covers the State of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia; and San Francisco, California, which covers the State of Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, American Samoa, Trust Territories of the Pacific, and Washington. The address of each regional office is listed in the telephone directory of the respective cities listed above under the heading of "United States Government, Department of Agriculture, Food and Nutrition Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received food stamp benefits to which they are not entitled.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system consists of individuals' names, addresses, Social Security Numbers and amounts of claims and amounts of any collections. The information in the system also includes identification of individuals' Federal and/or United States Postal Service (USPS) employing agencies and other sources of Federal payments, if any. The system also may include limited information about claims such as age, reasons for the overissuance of benefits, and State agency collection efforts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2011–2031.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the Department of Treasury (Treasury) or other designated debt collection centers for debt collection actions including administrative offset. (2) Referral to the Department of Defense (DOD) and the USPS to identify Federal and USPS employees owing claims. (3) Referral may be made to State agencies for such purposes as updating claims files, collecting claims, and for fiscal reporting. Referral may also be made to Federal agencies and the USPS for additional collection action. (4) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the written request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by automated data storage methods such as magnetic tape and disk. Some records may also be maintained on paper.

RETRIEVABILITY:

Records are retrievable by name and Social Security Number.

SAFEGUARDS:

Access to records is limited to those persons who process the records for the specific routine uses stated above. Records in such forms as magnetic tape are kept in physically secured rooms and/or cabinets. Various methods of computer security limit access to records in automated databases. Paper records will be segregated and physically secured in locked cabinets.

RETENTION AND DISPOSAL:

The Food and Nutrition Service retains records for no longer than two years. All records are either returned to State agencies or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Grants Management Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 415, Alexandria, Virginia 22302.

NOTIFICATION PROCEDURE:

Individuals may request from the system manager identified in the preceding paragraph information regarding this system of records or whether the system contains records pertaining to them. Individuals requesting such information must provide their name, address and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals may obtain information about records in the system which pertain to them by written or oral requests to the system manager. To assure confidentiality and prompt routing, written requests should be marked "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct requests to the system manager, state the reasons for contesting the information and provide any available documentation to support the requested action.

RECORD SOURCE CATEGORIES:

Information in this system comes from State agency files concerning food stamp recipient claims, from IRS files of addresses of individuals who have filed income tax returns, Information in this system also comes from DoD and USPS files of individuals who are currently employed by or who are receiving pensions and other payments from Federal agencies and the USPS, and

from all other sources of Federal payments.

[FR Doc. 98–8104 Filed 3–26–98; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on April 17, 1998 at the Jamestown s'Klallam Tribal Center, 1033 Old Blyn Highway, Sequim, Washington. The meeting will begin at 9:30 a.m. and continue until 3:00 p.m. Agenda items to be covered include: (1) Review and update on 1998 watershed restoration program; (2) Update on listing of salmon stocks under the Endangered Species Act in the Puget Sound area; (3) Update from the Monitoring sub-committee; (4) Review of Chief Dombeck's Agenda for the Forest Service; (5) Update or current projects and activities on the Quilcene Ranger District. Olympic Province Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211.

Dated: March 20, 1998.

Claire Lavendel,

Acting Forest Supervisor.

[FR Doc. 98–8122 Filed 3–26–98; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Toby Creek Watershed, PA

AGENCY: USDA—Natural Resources Conservation Service.

ACTION: "Notice of a Finding of No Significant Impact".

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR, Part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR, Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Little Toby Creek Watershed, Elk and Jefferson Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Oertly, State Conservationist, USDA—Natural Resources Conservation Service, Suite 340, One Credit Union Place, Harrisburg, Pennsylvania 17110–2993, telephone (717) 237–2202; fax (717) 237–2239.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant adverse impacts on the local, regional, or national environment. As a result of these findings, Janet L. Oertly, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for water quality improvement by treating acid mine drainage from seven discharges that are the source of surface water pollution. The planned works of improvement involve six passive wetland treatment systems and one hydrated lime dosing plant to reduce acid, iron, and aluminum loadings into watershed streams. A deep mine opening will be closed and a mine highwall will be removed.

The "Notice of a Finding of No Significant Impact" (FONSI) has been forwarded to the U.S. Environmental Protection Agency. A limited number of copies of the FONSI is available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Janet L. Oertly.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

[FR Doc. 98–7990 Filed 3–26–98; 8:45 am]
BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: April 27, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 6, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (63 F.R. 6152) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in

connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Grounds Maintenance

S.E. Army Reserve Intelligence Center, Building 839, Fort Gillem, Georgia

Janitorial/Custodial

Greensburg AMSA 104, Greensburg, Pennsylvania

Janitorial/Custodial OCIE Warehouse, Latrobe, Pennsylvania

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Bag, Paper, Grocer's

8105–00–281–1158
8105–00–281–1163
8105–00–281–1425
8105–00–271–1485
8105–00–286–7308
8105–00–281–1156
8105–00–281–1429
8105–00–579–9161
8105–00–022–1319
8105–00–543–7169
8105–00–262–7363
8105–00–130–4586

G. John Heyer,

General Counsel.

[FR Doc. 98–8045 Filed 3–26–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 27, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Pen, Black, Ergonomic
M.R. 013
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Services

Food Service
Great Lakes Naval Training Center, (Galleys 535, 928 & 1128), 2703 Sheridan Road, Great Lakes, Illinois
NPA: GWS, Inc., Milwaukee, Wisconsin

Janitorial/Custodial

USARC Headquarters, Fort McPherson, Georgia
NPA: WORKTEC, Jonesboro, Georgia

G. John Heyer,

General Counsel.

[FR Doc. 98–8047 Filed 3–26–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 9999, FR Doc. 98–5095, in the issue of February 27, 1998, in the first column, the service listed as Janitorial/Custodial, Marine Corps Air Base, Camp Pendleton, California should read Janitorial/Custodial, (including Fallbrook Naval Ordinance Center), Camp Pendleton, California.

G. John Heyer,

General Counsel.

[FR Doc. 98–8046 Filed 3–26–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Short Supply Regulations, Petroleum (Crude Oil).

Agency Form Number: None.

OMB Approval Number: 0694–0027.

Type of Request: Extension of a currently approved collection of information.

Burden: 196 hours.

Average Time Per Response: Ranges between 4 to 10 hours per response.

Number of Respondents: 24 respondents.

Needs and Uses: The export of U.S. domestic crude oil is restricted by five separate, but overlapping statutes. The Export Administration Regulations require that applications for licenses to export crude oil under the provisions of the statutes must include supporting documents and statements to prove compliance with the Act. The information is used by licensing officers to determine the exporter's compliance with the statutes.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dennis Marvich (202) 395–3122.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: March 23, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8013 Filed 3–26–98; 8:45 a.m.]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Order Amending August 3, 1995 Order Denying Export Privileges

In the Matter of: Realtek Semi-Conductor Co., Ltd., with addresses at 3F, 56, Wu-Kung 6 Rd., Wu-Ku Industrial Park, Taipei Hsien, Taiwan; 1F, No. 11 Industry E. Rd. IX, Science-Based Industrial Park, Hsinchu, 300 Taiwan; and 6F, No. 4 Fu-Shon Street, Taipei, Taiwan, Respondent.

On August 3, 1995, I issued a Decision and Order of Default (hereinafter the "Order") against Realtek Semi-Conductor Co. Ltd. (hereinafter "Realtek"), affirming a Recommended Decision and Default Order (hereinafter "Decision") issued by Edward J. Kuhlmann, Administrative Law Judge. In his Decision, Judge Kuhlmann found that Realtek had violated the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1997)) (hereinafter the "Regulations"),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1997)) (hereinafter the "Act"),[2] by causing, aiding, or abetting the export of U.S.-origin Trident TVGA 8800 and TVGA 8900 graphic chip technology from the United States to Taiwan without the written letter of assurance required by Section 779.4 of the former Regulations. Based on Judge Kuhlmann's Decision and by Order of August 3, 1995, I denied all of Realtek's U.S. export privileges for five years. The Order was published in the **Federal Register** (60 FR 40565, August 9, 1995).

Since publication of that Order, Realtek has moved from the addressed listed on the August 3, 1995 Order. Set forth below are the current addresses for the company, which replace the address listed on the August 3, 1996 Order.

3F, 56, Wu-Kung 6 Rd., Wu-Ku Industrial Park, Taipei Hsien, Taiwan,

and

1F, No. 11 Industry E. Rd. IX, Science-Based Industrial Park, Hsinchu, 300 Taiwan

This order is effective immediately and will be published in the **Federal Register.**

Dated: March 19, 1998.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 98–8025 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Regulations governing the violation referenced in the August 3, 1995 Order are found in the 1994 version of the Code of Federal Regulations (15 CFR Parts 768–799 (1994)) and are hereinafter referred to as the former Regulations. Since that time the Regulations have been reorganized and restructured.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1997)).

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 962]

Grant of Authority for Subzone Status; Shell Oil Company Oil Refinery, Mobile County, AL; Correction

The **Federal Register** notice (63 FR 13168, 3/18/98) describing Foreign-Trade Zones Board Order 962 (approved 3/6/98) authorizing special-purpose subzone status at the oil refinery complex of Shell Oil Company, located in Mobile County, Alabama, is corrected as follows:

Paragraph 6, Sentence 1, should read, *"Now, therefore,* the Board hereby authorizes the establishment of a subzone (Subzone 82G) at the oil refinery complex of Shell Oil Company, located in Mobile County, Alabama, * * *"

Dated: March 19, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–8108 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 13–98]

Foreign-Trade Zone 216—Olympia, WA Request for Export Processing Authority; Darigold, Inc. Dairy By-Products

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Olympia, grantee of FTZ 216, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Darigold, Inc. (Darigold), to process certain dairy by-products for export under FTZ procedures within FTZ 216. It was formally filed on March 19, 1998.

Darigold operates a 74,000 square foot dairy product processing facility (37 employees) within FTZ 216—Site 13 located at 67 S.W. Chehalis Avenue in Chehalis, Washington, for manufacturing/ processing a variety of dairy products, such as dry milk and whey, for the U.S. market and export. This application requests authority on behalf of Darigold to process foreign origin, ex-quota liquid whey permeate (a by-product of cheese manufacturing) into dried whey under FTZ procedures for export. In this activity, foreign whey permeate (HTSUS 0404.10.11, duty rate—13%) would be admitted to FTZ 216 to be processed (pasteurized,

evaporated, crystallized, dried) into powdered whey (HTSUS 0404.10.50, 3.3%). All of the finished powdered whey would be exported in 25 kilogram bags, and no foreign, ex-quota liquid whey permeate would be entered for U.S. consumption.

FTZ procedures would exempt Darigold from U.S. dairy product quota requirements and Customs duty payments on the foreign whey permeate used in this export activity. The application indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 11, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 26, 1998).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: March 19, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–8109 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Termination of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 22, 1997, the Department of Commerce published a notice of initiation of a new shipper administrative review of the antidumping duty order on certain pasta from Italy. The Department is now terminating that review.

EFFECTIVE DATE: March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Edward Easton or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1777 or 482–5288, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to the regulations at 19 CFR Section 353, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On June 17, 1997, Amabile S.r.l. ("Amabile") requested that the Department conduct a new shipper review of the antidumping duty order on certain pasta from Italy. On August 15, 1997, the Department initiated a new shipper review for Amabile relating to the antidumping duty order on certain pasta from Italy, covering the period July 1, 1996 through June 30, 1997 (62 FR 44643, August 22, 1997). On September 4, 1997, we issued the Department's antidumping duty questionnaire [1] to Amabile. On October 3, 1997, Amabile requested an extension to respond and consequently submitted its response to Sections A–C of the questionnaire on November 3, 1997. The Department initiated a cost investigation on December 24, 1997, and Amabile submitted its response to Section D of the antidumping questionnaire on January 28, 1998.

On January 22, 1998, the Department extended the time for completion of the preliminary results of this review to no later than June 11, 1998 (63 FR 4218, January 28, 1998).

Termination of New Shipper Review

On February 19, 1998, counsel for Amabile informed the Department in writing that its only U.S. sales during the period of review had been canceled. Given its lack of sales to the United States during the period of review, Amabile withdrew its request for a new shipper review and requested that the Department terminate the new shipper review. Therefore, the Department is terminating the new shipper review concerning Amabile.

This notice is published pursuant to 19 CFR 353.22(h).

Dated: March 19, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–8106 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–DS–P

[1] Section A of the questionnaire requests information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request home market sales listings and U.S. sales listings, respectively. Section D requests additional information about the cost of production.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results for the sixth review of silicon metal from Brazil. This review covers the period July 1, 1996 through June 30, 1997.

EFFECTIVE DATE: March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Lisette Lach at 202/482–0190 or Cindy Sonmez at 202/482–0961; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Extension of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results within the original time limit. (*See* Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration, March 19, 1998). The Department is extending the time limit for completion of the preliminary results until July 30, 1998 in accordance with section 751(a)(3)(A) of the Act.

The deadline for the final results of this review will continue to be 90 days after publication of the preliminary results.

Dated: March 20, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 98–8107 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 980320072–8072–01]

Solicitation of Minority Business Development Center Applications for Miami/Ft. Lauderdale, Raleigh/Durham, San Antonio, El Paso, Statewide New Mexico, Philadelphia, Williamsburg, Seattle, Honolulu and San Jose

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Minority Business Development Centers (MBDC) listed in this document.

The purpose of the MBDC Program is to provide business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

DATES: The closing date for applications is April 27, 1998, 5:00 p.m. (local time). Applications must be received in the Executive Secretariat or Room 1874 on or before the closing date.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, NW., Room 5073, Washington, DC 20230. If application is hand delivered by the applicant or its representative, it must be delivered to Room 1874, which is located at entrance #10, 15th Street NW, between Pennsylvania and Constitution Avenues.

PRE-APPLICATION CONFERENCE: A pre-application conference will be held for each MBDC. Interested applicants should immediately contact the appropriate regional office, as indicated below, for further information.

Proper Identification Is Required for Entrance Into Any Federal Building.

1. *MBDC Application:* Miami/Ft. Lauderdale.

Consolidated Metropolitan Statistical Area: Miami/Ft. Lauderdale, Florida.

Award Number: 04–10–98003–01.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta Regional Office at (404) 730–3300.

For Further Information and an Application Package, Contact: Robert Henderson, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (6 months) from July 1, 1998 to December 31, 1998, is estimated at $333,427. The total Federal amount is $283,413 and is composed of $276,500 plus the Audit Fee amount of $6,913. The application must include a minimum cost share of 15%, $50,014 in non-Federal (cost-sharing) contributions for a total project cost of $333,427. The operator of the Miami/Ft. Lauderdale MBDC is required to maintain a satellite office in the Ft. Lauderdale, Florida Primary Metropolitan Statistical Area, as well as having their Headquarter's office in the Miami, Florida Primary Metropolitan Statistical Area.

2. *MBDC Application:* Seattle.

Primary Metropolitan Statistical Area: Seattle, Washington.

Award Number: 09–10–98004–01.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco Regional Office at (415) 744–3001.

For Further Information and an Application Package, Contact: Melda Cabrera, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (6 months) from July 1, 1998 to December 31, 1998, is estimated at $111,098. The total Federal amount is $94,434 and is composed of $92,130 plus the Audit Fee amount of $2,304. The application must include a minimum cost share of 15%, $16,664 in non-Federal (cost-sharing) contributions for a total project cost of $111,098.

3. *MBDC Application:* San Jose.

Primary Metropolitan Statistical Area: San Jose, California.

Award Number: 09–10–98005–01.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco Regional Office at (415) 744–3001.

For Further Information and an Application Package, Contact: Melda Cabrera, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $333,125. The total Federal amount is $283,156 and is composed of $276,250 plus the Audit Fee amount of $6,906. The application must include a minimum cost share of 15%, $49,969 in non-Federal (cost-sharing) contributions for a total project cost of $333,125.

4. *MBDC Application:* San Antonio.

Metropolitan Statistical Area: San Antonio, Texas.

Award Number: 06–10–98002–01.

Pre-Application Conference: For the exact date, time and place, contact the Dallas Regional Office at (214) 767–8001.

For Further Information and an Application Package, Contact: John Iglehart, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (6 months) from July 1, 1998 to December 31, 1998, is estimated at $166,562. The total Federal amount is $141,578 and is composed of $138,744 plus the Audit Fee amount of $2,834. The application must include a minimum cost share of 15%, $24,984 in non-Federal (cost-sharing) contributions for a total project cost of $166,562.

5. *MBDC Application:* El Paso.

Metropolitan Statistical Area: El Paso, Texas.

Award Number: 06–10–98003–01.

Pre-Application Conference: For the exact date, time and place, contact the Dallas Regional Office at (214) 767–8001.

For Further Information and an Application Package, Contact: John Iglehart, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $198,970. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,845 in non-Federal (cost-sharing) contributions for a total project cost of $198,970.

6. *MBDC Application:* Statewide New Mexico.

Metropolitan Statistical Area: State of New Mexico.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco Regional Office at (415) 744–3001.

For Further Information and an Application Package, Contact: Melda Cabrera, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $333,125. The total Federal amount is $283,156 and is composed of $276,250 plus the Audit Fee amount of $6,906. The application must include a minimum cost share of 15%, $49,969 in non-Federal (cost-sharing) contributions for a total project cost of $333,125.

4. *MBDC Application:* San Antonio.

Metropolitan Statistical Area: San Antonio, Texas.

Award Number: 06–10–98002–01.

Pre-Application Conference: For the exact date, time and place, contact the Dallas Regional Office at (214) 767–8001.

For Further Information and an Application Package, Contact: John Iglehart, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (6 months) from July 1, 1998 to December 31, 1998, is estimated at $166,562. The total Federal amount is $141,578 and is composed of $138,744 plus the Audit Fee amount of $2,834. The application must include a minimum cost share of 15%, $24,984 in non-Federal (cost-sharing) contributions for a total project cost of $166,562.

5. *MBDC Application:* El Paso.

Metropolitan Statistical Area: El Paso, Texas.

Award Number: 06–10–98003–01.

Pre-Application Conference: For the exact date, time and place, contact the Dallas Regional Office at (214) 767–8001.

For Further Information and an Application Package, Contact: John Iglehart, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $198,970. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,845 in non-Federal (cost-sharing) contributions for a total project cost of $198,970.

6. *MBDC Application:* Statewide New Mexico.

Metropolitan Statistical Area: State of New Mexico.

Award Number: 06–10–98006–01.

Pre-Application Conference: For the exact date, time and place, contact the Dallas Regional Office at (214) 767–8001.

For Further Information and an Application Package, Contact: John Iglehart, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $333,125. The total Federal amount is $283,156 and is composed of $276,250 plus the Audit Fee amount of $6,906. The application must include a minimum cost share of 15%, $49,960 in non-Federal (cost-sharing) contributions for a total project cost of $333,125.

7. *MBDC Application:* Philadelphia.

Primary Metropolitan Statistical Area: Philadelphia, Pennsylvania.

Award Number: 02–10–98002–01.

Pre-Application Conference: For the exact date, time and place, contact the New York Regional Office at (212) 264–3262.

For Further Information and an Application Package, Contact: Heyward Davenport, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $388,898. The total Federal amount is $330,563 and is composed of $322,500 plus the Audit Fee amount of $8,063. The application must include a minimum cost share of 15%, $58,335 in non-Federal (cost-sharing) contributions for a total project cost of $388,898.

8. *MBDC Application:* Williamsburg.

Metropolitan Statistical Area: Williamsburg/Brooklyn, New York.

Award Number: 02–10–98003–01.

Pre-Application Conference: For the exact date, time and place, contact the New York Regional Office at (212) 264–3262.

For Further Information and an Application Package, Contact: Heyward Davenport, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $385,882. The total Federal amount is $328,000 and is composed of $320,000 plus the Audit Fee amount of $8,000. The application must include a minimum cost share of 15%, $57,882 in non-Federal (cost-sharing) contributions for a total project cost of $385,882.

9. *MBDC Application:* Honolulu.

Metropolitan Statistical Area: Honolulu, Hawaii.

Award Number: 09–10–98006–01.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco Regional Office at (415) 744–3001.

For Further Information and an Application Package, Contact: Melda Cabrera, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (4 months) from September 1, 1998 to December 31, 1998, is estimated at $68,166. The total Federal amount is $68,166 and is composed of $66,666 plus the Audit Fee amount of $1,500. The application must include a minimum cost share of 15%, $12,029 in non-Federal (cost-sharing) contributions for a total project cost of $80,195.

10. *MBDC Application:* Raleigh/Durham.

Metropolitan Statistical Area: Raleigh/Durham, North Carolina.

Award number: 04–10–98004–01.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta Regional Office at (404) 730–3300.

For Further Information and an Application Package, Contact: Robert Henderson, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $353,972. The total Federal amount is $300,876 and is composed of $292,624 plus the Audit Fee amount of $8,252. The application must include a minimum cost share of 15%, $53,096 in non-Federal (cost-sharing) contributions for a total project cost of $353,972. The operator of the Raleigh/Durham MBDC is required to maintain a satellite office in the Charlotte, North Carolina Metropolitan Statistical Area, as well as having their Headquarter's office in the Raleigh/Durham, North Carolina Metropolitan Statistical Area.

SUPPLEMENTARY INFORMATION: The following information and requirements are applicable to the listed MBDCs: Miami/Ft. Lauderdale, Raleigh/Durham, San Antonio, El Paso, Statewide New Mexico, Philadelphia, Williamsburg, Seattle, Honolulu, and San Jose.

The funding instrument for this project will be a cooperative agreement. Competition is open to non-profit and for-profit organizations (including sole-proprietors), state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated by an independent panel of at least three individuals qualified to review the applications based on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. The competitive panel's evaluations are then considered by the Regional Director or the Director's designee who makes a recommendation for selection to the Director of MBDA. The Director of MBDA will review those applications determined to be acceptable and responsive. Recommendations by the Regional Director or the Director's designee and final award selection by the Director shall be based on the number of evaluation criteria points received, the demonstrated responsibility of the applicant, and the Director's determination of the applications most likely to further the purpose of the MBDA program. Negative audit findings, financial instability, and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. Applicants not selected for these reasons will be notified. The applicant with the highest point score will not necessarily receive the award. On occasion, competitive solicitations or competitive panels may produce results that do not satisfactorily comply with MBDA program requirements. Some examples of unsatisfactory results are as follows:

- Competition resulting in no applications,
- Competition resulting in one programmatically acceptable application (where the MBDA Director establishes with written justification that a slate of more than one programmatically acceptable application is necessary), and
- Competition resulting in all unresponsive applications (determined to be programmatically unacceptable).

In these cases, MBDA will take the most time and cost effective approach available that is in the best interest of

the government to achieve its mission. This includes one of the following:

• *Recompetition*—is the most acceptable option. Where time and funding considerations allow for recompetition, MBDA will cancel the original solicitation and issue a new one; beginning a new round of competition.

• *Re-paneling*—is a viable option when the MBDA Director has reason to question either the objectivity or proper scoring of a panel.

• *Negotiation*—may be an option in those instances where the MBDA Director believes that recompeting would produce the same or similar results as the original competition and is, therefore, a waste of government money and time. When negotiations occur because recompeting is not a viable option, negotiations must occur equitably with all original applicants.

• *Cancellation*—is appropriate when none of the above is determined to be a viable option, or for other programmatic reasons.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Under MBDA's existing competitive program cycle, an MBDC recipient can receive two additional twelve-month budget periods. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The contact person indicated above can answer questions concerning the preceding information, and copies of application kits and applicable regulations can be obtained at the above address. This document involves collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0640–0006. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Application Forms and Kit—Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev 4–92), shall be used in applying for financial assistance. An application kit containing all application forms and certifications is available by contacting the appropriate Regional Office listed as further information contacts.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect costs rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Outstanding Accounts Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters, which significantly reflect on the applicant's management honesty or financial integrity.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, § 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase

American-made equipment and products with funding provided under this program.

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: March 23, 1998.

Juanita E. Berry,

Federal Register Liaison Officer, Minority Business Development Agency.

Courtland Cox,

Acting Director, Minority Business Development Agency.

[FR Doc. 98–8081 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–21–U

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 980320072–8075–02]

Solicitation of Native American Business Development Center Applications for Minnesota, North/South Dakota, and Oklahoma

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Native American Business Development Centers (NABDC) listed in this document.

The purpose of the NABDC Program is to provide integrated business development services to Native American entrepreneurs and other eligible clients within designated geographic service areas.

DATES: The closing date for applications is April 27, 1998, 5:00 p.m. (local time). Applications must be received in the Executive Secretariat or Room 1874 on or before the closing date.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230. If application is hand delivered by the applicant or its representative, it must be delivered to Room 1874, which is located at entrance #10, 15th Street NW, between Pennsylvania and Constitution Avenues.

PRE-APPLICATION CONFERENCE: A pre-application conference will be held for each NABDC. Interested applicants should immediately contact the appropriate regional office, as indicated below, for further information.

Proper Identification Is Required for Entrance Into Any Federal Building.

1. NABDC Application: Minnesota.

Metropolitan Statistical Area: State of Minnesota.

Award Number: 05–10–98001–01.

Pre-Application Conference: For the exact date, time and place, contact the Chicago Regional Office at (312) 353–0182.

For Further Information and an Application Package, Contact: David Vega, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $169,125. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125.

2. NABDC Application: North/South Dakota.

Metropolitan Statistical Area: States of North and South Dakota.

Award Number: 06–10–98004–01.

Pre-Application Conference: For the exact date, time and place, contact the Dallas Regional Office at (214) 767–8001.

For Further Information and an Application Package, Contact: John Iglehart, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $169,125. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125.

3. NABDC Application: Oklahoma.

Metropolitan Statistical Area: State of Oklahoma.

Award Number: 06–10–98005–01.

Pre-Application Conference: For the exact date, time and place, contact the Dallas Regional Office at (214) 767–8001.

For Further Information and an Application Package, Contact: John Iglehart, Regional Director.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from January 1, 1999 to December 31, 1999, is estimated at $254,200. The total Federal amount is $254,200 and is composed of 248,000 plus the Audit Fee amount of $6,200.

SUPPLEMENTARY INFORMATION: The following information and requirements are applicable to the listed NABDCs: Minnesota, North/South Dakota, and Oklahoma.

The funding instrument for this project will be a cooperative agreement. Competition is open to non-profit and for-profit organizations (including sole-proprietors), state and local governments, American Indian tribes and educational institutions.

Applicaitons will be evaluated by an independent panel of at least three individuals qualified to review the applications based on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. The competitive panel's evaluations are then considered by the Regional Director or the Director's designee who makes a recommendation for selection to the Director of MBDA. The Director of MBDA will review those applications determined to be acceptable and responsive. Recommendations by the Regional Director or the Director's designee and final award selection by the Director shall be based on the number of evaluation criteria points received, the demonstrated responsibility of the applicant, and the Director's determination of the applications most likely to further the purpose of the MBDA program. Negative audit findings, financial instability, and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. Applicants not selected for these reasons will be notified. The applicant with the highest point score will not necessarily receive the award. On occasion, competitive solicitations or competitive panels may produce results that do not satisfactorily comply with MBDA program requirements. Some examples of unsatisfactory results are as follows:

- Competition resulting in no applications,
- Competition resulting one programmatically acceptable application (where the MBDA Director establishes with written justification that a slate of more than one programmatically acceptable application is necessary), and

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• Competition resulting in all unresponsive applications (determined to be programmatically unacceptable).

In these cases, MBDA will take the most time and cost effective approach available that is in the best interest of the government to achieve its mission. This includes one of the following:

• *Recompetition*—is the most acceptable option. Where time and funding considerations allow for recompetition, MBDA will cancel the original solicitation and issue a new one; beginning a new round of competition.

• *Re-paneling*—is a viable option when the MBDA Director has reason to question either the objectivity or proper scoring of a panel.

• *Negotiation*—may be an option in those instances where the MBDA Director believes that recompeting would produce the same or similar results as the original competition and is, therefore, a waste of government money and time. When negotiations occur because recompeting is not a viable option, negotiations must occur equitably with all original applicants.

• *Cancellation*—is appropriate when none of the above is determined to be a viable option, or for other programmatic reasons.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Under MBDA's existing competitive program cycle, an NABDC recipient can receive two additional twelve-month budget periods. Continued funding will be at the total discretion of MBDA based on such factors as the NABDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The contact person indicated above can answer questions concerning the preceding information, and copies of application kits and applicable regulations can be obtained at the above address. This document involves collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0640–0006. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Application Forms and Kit—Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev 4–92), shall be used in apply for financial assistance. An application kit containing all application forms and certifications is available by contacting the appropriate Regional Office listed as further information contacts.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect costs rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Outstanding Accounts Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—Alll non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters, which significantly reflect on the applicant's management honesty or financial integrity.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, § 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26 § 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and

products with funding provided under this program.

11.801 Native American Business Development Center (Catalog of Federal Domestic Assistance)

Dated: March 23, 1998.

Juanita E. Berry,

Federal Register Liaison Officer, Minority Business Development Agency.

Courtland Cox,

Acting Director, Minority Business Development Agency.

[FR Doc. 98–8082 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Billfish Tagging Report

ACTION: Proposed collection; comment request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 26, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dave Holts, Southwest Fisheries Science Center (SWFSC), 8604 La Jolla Shores Drive, P.O. Box 271, La Jolla, California 92038–0271; (619) 546–7186.

SUPPLEMENTARY INFORMATION:

I. Abstract

Anglers report tagging date, location, species, name, etc. for billfish they have tagged and released. Minor revisions have been made to the NOAA 88–162 to reflect better reporting.

II. Method of Collection

The SWFSC provides tagging supplies to individuals electing to tag and release the billfish they catch. The "Billfish Tagging Report" is the primary mechanism by which these cooperating anglers and commercial fishers return the tagging and release information concerning the billfish they have tagged. Responses are not required for any legal or administrative purpose. Interested individuals cooperating in the Program do so on a strictly voluntary basis.

III. Data

OMB Number: 0648–0009.
Form Number: NOAA 88–162.
Type of Review: Regular Submission.
Affected Public: Individuals, businesses or other for-profit (billfish anglers and commercial fishers).
Estimated Number of Respondents: 1,250.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 104.2.
Estimated Total Annual Cost to Public: 0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 23, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

(FR Doc. 98–8014 Filed 3–26–98; 8:45 a.m.)

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032398C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, P.O. Box 1239, Seward, AK 99664, has been issued a permit to import Steller sea lions (*Eumetopias jubatus*) and harbor seals (*Phoca vitulina*) and obtain other harbor seals from U.S. facilities for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/ 586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On January 27, 1998, notice was published in the **Federal Register** (63 FR 3880) that a request for a scientific research permit to import Steller sea lions and harbor seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 23, 1998.

Art Jeffers,

Acting Chief, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–8112 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–22–F

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.031798A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 978, issued to the Oregon Coast Aquarium, 2820 SE Ferry Slip Road, Newport, Oregon 97365, was amended effective on March 20, 1998.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6150).

FOR FURTHER INFORMATION CONTACT: Ann Hochman, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

By letter of February 9, 1998, the Oregon Coast Aquarium (Aquarium) and the Free Willy Keiko Foundation (Foundation) jointly requested that the public display permit issued on September 25, 1995, to the Oregon Coast Aquarium be amended to change the Permit Holder from the Aquarium to the Foundation. NMFS reviewed this request along with supporting documentation and determined that: (1) The Foundation has the responsibility for and the authority to determine the disposition of "Keiko"; (2) the Foundation meets the three criteria for holding marine mammals for purposes of public display; (3) for Marine Mammal Inventory purposes, the holder of record of "Keiko" should be the Foundation; and (4) it was appropriate to amend the permit to change the Permit Holder from the Aquarium to the Foundation.

This amendment of Permit No. 978 is considered a "minor amendment" under 50 CFR 216.39(a)(2) and, therefore, publication of this **Federal Register** notice is not required. However, NMFS determined that, in this case where a change in Permit Holder is involved, a notice is appropriate. This notice should not be perceived as a precedent concerning other minor amendments.

Dated: March 23, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–8114 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Visa and Certification Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

March 24, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and certification requirements.

EFFECTIVE DATE: March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Effective on March 27, 1998, textile products in Categories 352/652, produced or manufactured in El Salvador and exported on or after March 27, 1998 will no longer require a visa. In addition, products in Categories 352/652 will no longer be subject to the Special Access Program.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 60 FR 2740, published on January 11, 1995.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 24, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 6, 1995, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador which were not properly visaed by the Government of El Salvador.

Effective on March 27, 1998, you are directed to no longer require a visa for shipments of textile products in Categories 352/652 which are produced or manufactured in El Salvador and exported on or after March 27, 1998. In addition, products in Categories 352/652 will no longer be subject to the Special Access Program.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–8031 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Visa and Certification Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

March 24, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and certification requirements.

EFFECTIVE DATE: March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Effective on March 27, 1998, textile products in Categories 352/652, produced or manufactured in Honduras and exported on or after March 27, 1998 will no longer require a visa. In addition, products in Categories 352/652 will no longer be subject to the Special Access Program.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 61 FR 38236, published on July 23, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 24, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 18, 1996, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain textile products, produced or manufactured in Honduras which were not properly visaed by the Government of Honduras.

Effective on March 27, 1998, you are directed to no longer require a visa for shipments of textile products in Categories 352/652 which are produced or manufactured in Honduras and exported on or after March 27, 1998. In addition, products in Categories 352/652 will no longer be subject to the Special Access Program.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–8030 Filed 3–26–98; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds and Education Awards Under the AmeriCorps Education Awards Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds and education awards under the AmeriCorps Education Awards Program.

SUMMARY: The Corporation for National and Community Service (the "Corporation") seeks to expand opportunities for individuals to serve as AmeriCorps members and earn educational benefits, broaden the network of national service programs and strategies, increase the number of communities joining with AmeriCorps to better meet compelling local needs, and encourage additional non-federal resources to support national and community service.

Accordingly, the Corporation announces the availability of up to 10,000 education awards from the National Service Trust (the Trust) for national, state, and local community service programs that: (1) Can support most or all of the AmeriCorps member and program costs from sources other than the Corporation; (2) meet agreed-upon AmeriCorps program requirements; and (3) are judged to be high quality according to Corporation criteria, as highlighted below and set forth in the application materials. The education awards may be earned by AmeriCorps members successfully completing full-time, part-time, or reduced part-time terms of service in a community service program approved through this application process.

AmeriCorps Education Awards programs supported through this competition are expected to uphold standards of service quality, member support and program management similar to other AmeriCorps programs in order to maintain the integrity of the AmeriCorps National Service Network. However, the Corporation has modified certain AmeriCorps requirements and permits program sponsors greater management and operating flexibility. In addition, the Corporation will consider requests for up to $500 per full-time member (pro-rated for part-time members) to manage these programs.

Potential program sponsors eligible to apply under this Notice include national nonprofit organizations, multi-state collaborations, State Commissions on National and Community Service (on behalf of local non-profit organizations, state and local units of government, other state-wide programs, and programs operating only within the state), institutions for higher education, and state education agencies.

Program and administrative requirements are set forth in the application guidelines issued by the Corporation.

DATES: Applications may be obtained on or after March 25, 1998. There are two separate competitions for funding with the following deadlines: April 23, 1998, and June 23, 1998.

ADDRESSES: Application materials and additional information may be requested from: AmeriCorps Education Awards Program, Corporation for National Service, 1201 New York Avenue NW, Washington, DC 20525. Materials may also be requested by telephone, at 202/606–5000, ext. 417, or (TDD) 202/565–2700, and may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the Nation's education, public safety, environmental, and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501, *et seq.* (the Act), the Corporation may "support innovative and model programs." 42 U.S.C. 12653(b). In addition, an individual can receive an education award from the National Service Trust if, among other things, the individual "successfully completes the required term of service * * * in an approved national service position." 42 U.S.C. 12602. The Act defines an approved national service position to include six specific service positions and "such other national service positions as the Corporation considers to be appropriate." 42 U.S.C. 12573.

The AmeriCorps Education Awards Program was launched in the 1997 program year, during which 104 proposals were approved, representing approximately 14,000 service positions. Sponsors include national non-profit organizations, state commissions, institutions of higher education, state and local agencies, and local organizations. Program requirements and application guidelines have been refined based on the experience of this first year.

Program Eligibility and Design

The Corporation will accept applications from eligible applicants

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proposing to sponsor a national service program that addresses unmet education, public safety, environmental, and other human needs in the community served. The Corporation seeks high-quality programs that (1) "get things done" to meet local needs, (2) strengthen communities, and (3) develop members. Programs must establish specific objectives which are subject to the Corporation's approval.

The Corporation seeks programs that will support most or all program and participant costs (other than the education awards) through sources other than the Corporation. However, the Corporation will consider requests for up to $500 per full-time member (pro-rated for part-time members) to manage the program and will fund all the approved education awards. A request for funds in addition to the education awards should only be made when necessary and may affect approval of the proposal due to lack of available funding. There is no match requirement under the AmeriCorps Education Award Program.

Programs will be required to cooperate with the Corporation and its evaluators in all its monitoring and evaluation efforts. Semi-annual program progress reports will be required. Member hours must be tracked, and member enrollment, end-of-term, and other National Service Trust forms must be submitted in compliance with existing requirements.

By getting things done, the Corporation means that programs are expected to meet specific and articulated local needs through direct and demonstrable service, and must include clear objectives related to the proposed service activities and results.

To strengthen communities, programs should engage a full range of local partners to build a self-sustaining commitment to service.

To develop members, programs should provide appropriate training, education, supervision, and support to carry out the service activities.

Program Strategies

The Corporation intends to support a variety of strategies under this initiative. The following are examples of strategies for part-time (including summer) and full-time programs. Applicants are encouraged to identify additional strategies and demonstrate to the Corporation why they should be supported.

1. School-based and community-based service programs, including youth corps, that provide tutoring and mentoring for younger children and opportunities to participate in service projects after school, on weekends, and during school vacations.

2. College-based programs in which student AmeriCorps members, including Federal Work Study students, perform service (or serve as service-learning coordinators) in local schools or other community settings.

3. Summer programs in which AmeriCorps members organize service and other positive activities for children and youth.

4. Before and after-school child care programs led by AmeriCorps members and funded by local communities.

5. Full-time service programs run by faith-based organizations, youth corps, or other entities.

6. Fellowship programs in which individuals such as recent college or professional school graduates are placed in community service positions.

7. Programs sponsored by youth-serving organizations that create opportunities for older members or graduates of the organization to provide positive activities for younger members.

8. Service programs for college students that involve part-time service during the academic year and full-time service during the summer.

9. Programs initiated by mayors and other local officials to integrate locally funded AmeriCorps members into community-wide strategies to meet local needs.

Terms of Service

Programs must enroll members for full-time, part-time, or reduced part-time terms of service. A full-time term of service requires members to serve at least 1700 hours during a period of not less than nine months and not more than a year. A part-time term requires members to serve at least 900 hours during a period of not more than two years. Reduced part-time terms are less than 900 hours, and are either: (1) Full-time—at least 35 hours per week—for a minimum of 8 weeks during the summer or another multi-month period; or (2) service of at least 450 hours during a single academic year (*i.e.*, September to May), while enrolled in college.

Under the AmeriCorps Education Awards Program, the Corporation will not accept proposals for part-time terms of more than two years nor for reduced part-time terms other than the two types explained above. Successful applicants will have up to one year following the start of the program to select and place members who will receive the approved education awards upon successful completion of their service.

Member Recruitment and Development

Programs must recruit and select members in a non-partisan, non-political, and non-discriminatory manner. Members must be U.S. citizens, U.S. nationals, or lawful permanent resident aliens. Members must be at least 17 years old at the time of their enrollment, except for out-of-school sixteen year-olds who may participate in youth corps programs and programs for disadvantaged youth that address the need for housing and other community facilities in low-income areas.

Programs are encouraged to recruit members who possess leadership potential and a commitment to the goals of national service, regardless of the member's educational level, work experience, or economic background. Programs should engage diverse members, community volunteers and staff in service activities, and should actively seek to include members and staff from the communities in which projects are conducted, as well as individuals of different races and ethnicity, ages, genders, education levels, socioeconomic backgrounds, and individuals with disabilities.

Programs must provide members with the training, skills, and knowledge necessary to perform the tasks required in their respective projects. In addition, programs must provide reasonable accommodation, including auxiliary aids and services, based on the individualized need of a member who is a qualified individual with a disability. Also, programs are encouraged to help members who have not completed their secondary education to earn the equivalent of a high school diploma.

In recruiting and placing members, programs must not displace any employee or position, or otherwise violate the non-displacement provisions of the Corporation's regulations, which are published at 45 CFR 2540.100(f).

Member Benefits

The Corporation does not require that a living allowance be paid, or health care and child care benefits be provided, to members under the AmeriCorps Education Awards Program. While the Corporation strongly encourages program sponsors to do so whenever possible, Corporation funds may not be used to provide any part of an allowance or such benefits. However, programs proposing full-time members must explain how these members will meet basic living expenses during their terms of service.

The maximum living allowance which may be paid to full-time AmeriCorps Members under this

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program is $16,680 per year, regardless of the source. Any living allowance for a part-time Member may not exceed a prorated share of a maximum of $16,680 per year on a full-time basis. This maximum may be waived by the Corporation, upon request, for certain professional corps and similar programs.

Programs must also establish and maintain a procedure for receiving and resolving grievances from members and other interested individuals concerning the program.

Eligibility for and Use of Education Award

Members who successfully complete full-time, part-time, or reduced part-time terms of service are eligible to earn no more than two education awards. Full-time education awards are $4,725, and part-time education awards are $2,362.50. Amounts of reduced part-time education awards are prorated to the number of hours served.

The education award may be used only for specific educational purposes: (1) To repay a member's qualified student loans; or (2) toward the cost of a member's attendance at a qualified institution of higher education or approved School-to-Work program. The education award is not transferable to anyone other than the member. The award will be paid directly to the loan holder or the educational institution by the Corporation.

Prohibited Service

Prohibited activities may not be performed by participants in the course of their duties, at the request of program staff, or in a manner that would associate the activities with the national service program or the Corporation. However, members are free to engage in such activities on their own initiative, on their own time, and at their own expense. These activities include:

(1) Any effort to influence legislation;

(2) Organizing or engaging in protests, petitions, boycotts, or strikes;

(3) Assisting, promoting, or deterring union organizing;

(4) Impairing existing contracts for services or collective bargaining agreements;

(5) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(6) Participating in, or endorsing, events or activities which are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;

(7) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious education or worship, constructing or operating facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

(8) Providing a direct benefit to (a) a business organized for profit, (b) a labor union, (c) a partisan political organization, (d) a nonprofit organization that fails to comply with the restrictions contained in Sec. 501(c)(3) of the Internal Revenue Code of 1986, or (e) an organization engaged in the religious activities described in paragraph (7) above, unless Corporation assistance is not used to support those religious activities;

(9) Voter registration drives by AmeriCorps members.

Eligible Applicants

State Commissions, national non-profit organizations proposing to operate in more than one state, and multi-state collaborations, must apply directly to the Corporation. Institutions of higher education and state education agencies may apply directly to the Corporation, or to State Commissions, as below.

Local non-profit organizations, state and local units of government (other than state education agencies), other state-wide programs, and other programs operating solely within the state must apply through respective State Commissions. Interested applicants should first contact their respective commissions.

Current Education Awards Program sponsors should contact the Corporation or their respective State Commissions for information about continuing their existing programs.

Pursuant to the Lobbying Disclosure Act of 1995, an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible to apply, serve as a host site for member placements, or act in any type of supervisory role in the program.

This Notice does not apply to organizations currently operating, or interested in applying to become, AmeriCorps*VISTA cost-share projects. Such organizations should contact the respective state office of the Corporation for National Service.

Criteria for the Selection of Programs

The Corporation will employ the following criteria in the review of proposals under this initiative:

1. *Program Quality.* A proposal must establish clear and specific objectives to meet compelling community needs, demonstrate the applicant's capacity to implement meaningful service activities based on these needs, and select, train and manage AmeriCorps members to carry out these needs. The proposal should evidence strong community support and the capacity to substantially and positively impact the community being served, as well as to document that impact.

2. *Program Growth.* If the applicant currently sponsors an AmeriCorps project or other community service project, the proposal must evidence how the availability of education awards will add value to the program and increase the program's impact in the community.

3. *Preference for Youth Programs.* The Corporation will give preference to proposals addressing the needs of our Nation's children and youth, such as tutoring, mentoring, after-school and summer programs, and immunization, as well as programs to involve children and youth in performing service themselves.

4. *Summer Programs.* For the application deadline of April 23, 1998, the Corporation will give a preference to programs which will begin operations during June or July, 1998.

Selection Process

The Corporation will judge proposals with a process that includes review by outside experts, staff review and recommendations, and final approval by the Corporation Board.

The Corporation will enter into negotiations with potentially successful applicants in a manner that may require significant modifications to original proposals. Awards are contingent on successful completion of negotiations. The number of applications approved, the number of education awards provided to approved programs, and the duration of approved programs are subject to the availability of funds and education awards.

Dated: March 23, 1998.

Thomas L. Bryant,

Associate General Counsel, Office of the General Counsel.

[FR Doc. 98–8017 Filed 3–26–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–281–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

March 23, 1998.

Take notice that on March 16, 1998, Colorado Interstate Gas Company (CIG), P.O.Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP98–281–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the existing Bush Lake Purchase Meter Station in Sweetwater County, Wyoming by sale to BTA Oil Producers, under CIG's blanket certificate pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that the Bush Lake Purchase Meter Station is remote from CIG's facilities. It was constructed in 1978 to measure gas purchased by CIG from Western Transmission Corporation (Western). After measurement by CIG, the gas was delivered to Panhandle Eastern Pipe Line Company (Panhandle) and Panhandle redelivered the gas to CIG under an exchange agreement certificated in Docket No. CP77–423. Both Western and Panhandle facilities have been sold to other parties. CIG has agreed to sell the Bush Lake Purchase Meter Station to BTA Oil Producers (BTA), the current operator of the upstream facilities, for $7,000 as detailed in the Purchase and Sale Agreement dated February 27, 1998. Because this facility is remote from CIG's other facilities, it is more economic for BTA to own and operate.

CIG states that the proposed abandonment is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed abandonment without detriment or disadvantage to CIG's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8006 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN98–3–000]

Consumers Energy Company; Order Instituting Proceeding

Issued March 23, 1998.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

Consumers Energy Company (Consumers), a local distribution company in Michigan, holds firm transportation (FT) capacity on interstate natural gas pipelines. Consumers has a limited-jurisdiction blanket certificate of public convenience and necessity under section 7 of the Natural Gas Act (NGA).[1] The blanket certificate is solely for the purpose of releasing FT capacity to replacement shippers pursuant to the Commission's capacity release regulations, 18 CFR 284.243 (1997).

This order establishes a proceeding pursuant to sections 5 and 16 of the NGA.[2] The Commission is requiring Consumers to identify each transaction in which it released or is releasing capacity to a replacement shipper at the pipeline's applicable maximum tariff rate and also received or will receive a payment in excess of the pipeline's applicable maximum rate. For each such transaction, we are requiring Consumers to show why it has not violated, and is not violating, NGA sections 4(a), 4(b)[3] and 5(a) and section 284.243(h)(1) of the Commission's regulations, as well as the section 284.243(g) blanket certificate Consumers holds.

For each such transaction, we are also requiring Consumers to show why it should not refund to the replacement shipper any payment Consumers received in excess of the relevant pipeline maximum tariff rate.

[1] 15 U.S.C. 717f (1994).

[2] 15 U.S.C. 717d and 717o (1994).

[3] 15 U.S.C. 717(a) and (b) (1994).

I. Regulatory Background

In Order No. 636,[4] the Commission added section 284.243[5] to its regulations to require all open-access pipelines to provide a capacity release mechanism. Under capacity release, shippers "can voluntarily reallocate all or a part of their firm transportation capacity rights to any person who wants to obtain that capacity by contracting with the pipeline."[6] Shippers may allocate their capacity only under section 284.243.[7] Section 284.243(g) grants shippers limited-jurisdiction blanket certificates of public convenience and necessity pursuant to section 7 of the NGA solely for the purpose of releasing firm capacity.

Section 284.243(h)(1) authorizes firm shippers to release capacity at the maximum applicable pipeline tariff rate without prior notice.[8] However, section 284.243(h)(1) also specifies that the release cannot exceed the maximum rate. Finally, section 284.243(h)(1) mandates that notice of a release at the maximum rate "must be provided on the pipeline's electronic bulletin board * * * not later than forty-eight hours * * * after the release transaction commences."

In Order No. 636–A, the Commission stated that electronic bulletin board (EBB) postings of capacity releases are necessary to prevent abuse by releasing shippers, including requiring compensation "outside of the reassignment process."[9] Thus, the Commission requires that "*all* terms and conditions for capacity release must be posted. * * *"[10] In Order No. 636–B, the Commission expressly rejected a proposal that pipelines need not post on their EBBs release transactions involving designated, prearranged replacement shippers at maximum rates.[11] Posting of releases at maximum rates, which are not subject to bidding, is nonetheless necessary to provide the industry and the Commission with the ability to review and monitor transactions at maximum rates.[12]

[4] FERC Stats. & Regs., Regs. Preambles 1991–1996 ¶ 30,939 (1992).

[5] 18 CFR 284.243 (1997).

[6] FERC Stats. & Regs. Regs. Preambles 1991–1996 at 30,418.

[7] *Id.*

[8] 18 CFR 284.243(h)(1).

[9] FERC Stats. & Regs., Regs. Preambles 1991–1996 ¶ 30,950 at 30,559 (1992).

[10] *Id.* (Emphasis in original.)

[11] 61 FERC ¶ 61,272 at 61,994 (1992).

[12] Order No. 577, FERC Stats. & Regs., Regs. Preambles 1991–1996 ¶ 31,017 at 31,316, n. 16 (1995).

II. Factual Background

Consumers is subject to the jurisdiction of the Michigan Public Service Commission (PSC) with respect to retail gas sales in the state of Michigan. In a gas cost reconciliation (GCR) proceeding pending before the PSC,[13] a Consumers witness testified that Consumers "charge[d] more than the maximum pipeline rate for certain release transactions * * *."[14] He also characterized the transactions as "capacity pricing transactions in which [Consumers] receives an increment over maximum pipeline rates * * *."[15]

The Consumers witness was responding to evidence from the Michigan Department of Attorney General (Michigan AG) that, in six release transactions involving firm capacity on Panhandle Eastern Pipe Line Company (Panhandle) and ANR Pipeline Company (ANR), Consumers appears to have obtained release prices higher than the relevant pipeline's maximum tariff rate for the released capacity. In each instance, according to the Michigan AG witness, Consumers received a credit from the pipeline for a release at the maximum tariff rate, and the replacement shipper paid directly to Consumers additional consideration in excess of the pipeline's maximum tariff rate.[16] The Michigan AG witness concluded that, through the six releases, Consumers collected a total of $486,911 in excess of the applicable pipeline maximum tariff rate, as follows:

Replacement shipper	Pipeline	Month	Excess revenue
Anadarko Trading Co	ANR	7/96	25,668
Anadarko Trading Co	Panhandle	11/96	193,400
Howard Energy	Panhandle	4/96	100,599
Tenaska Mktg. Ventures	Panhandle	4/96	68,044
TransCanada Gas Services	Panhandle	7/96	37,200
Valero Gas Mktg., L.P	ANR	7/96	62,000
Total			486,911

III. Discussion

With[17] respect to the six releases, it appears that Consumers violated the Commission's rate ceiling applicable to capacity releases. It also appears that Consumers violated the regulations on providing notice of all the terms and conditions applicable to capacity release transactions.

A. Violations of the Rate Ceilings on Capacity Releases

In the PSC proceeding, Consumers stated that with respect to the six releases, it charged and collected a premium over the pipelines' maximum rates in return for releasing FT capacity. Nothing in the testimony of Consumers's witness or the Michigan AG's witness indicates that Consumers itself sold any gas in connection with the release transactions. For example, the release agreement between Consumers and Anadarko Trading Company (Anadarko) for capacity on Panhandle states that Consumers's payment will be based on Anadarko's price for Anadarko's gas sales.[18] Therefore, all revenue that Consumers received in excess of the pipelines' applicable maximum rates appears to have been consideration solely for Consumers's release of pipeline capacity. Thus, Consumers appears to have violated the capacity release maximum rate ceiling in section 284.243(h)(1).

If so, Consumers, a "natural-gas company" subject to the Commission's jurisdiction with respect to capacity releases, charged and received from replacement shippers unjust and unreasonable transportation rates and charges in violation of NGA sections 4(a) and 5(a). If Consumers charged prices for releasing capacity in excess of the rate cap, it also appears to have violated NGA sections 4(b) and 5(a) by subjecting the replacement shippers to an undue disadvantage (the premium above the applicable pipeline maximum rate).

Section 16 of the NGA empowers the Commission to take any necessary or appropriate actions to carry out the provisions of the NGA. In Order No. 636, the Commission explained that the certificates it issued to releasing shippers under section 284.243(g) "make it clear that the Commission has sufficient jurisdiction to take appropriate enforcement action if capacity is not released on a nondiscriminatory basis."[19] In other words, as a releasing shipper, Consumers is subject to the full scope of the Commission's authority under NGA section 16 with respect to all aspects of the release, including any violation of the section 284.243(h)(1) price ceiling. Section 16 thus authorizes the Commission to order Consumers to refund to the replacement shippers the excess over the just and reasonable rate (*i.e.*, the excess over the applicable pipeline's maximum tariff rate).[20]

Moreover, under NGA section 5(a), the Commission may require a natural-gas company to charge a just and reasonable rate if the Commission determines that the company is charging an unjust or unreasonable rate for transactions under the Commission's jurisdiction. Upon a finding that the company is engaging in an unduly discriminatory or preferential practice relating to such a transaction, NGA section 5(a) also authorizes the Commission to order a natural-gas company to change its contracts or practices. Thus, upon a finding that Consumers is violating NGA sections 4(a), 4(b) and 5(a) with respect to its capacity releases, the Commission could require Consumers to cease any current violations by amending its current capacity release agreements and by requiring new agreements to state that Consumers may not collect rates in excess of the pipelines' applicable maximum rates.

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[13] Consumers Energy Company, PSC Case No. U–11060–R (1996–97 GCR Reconciliation).

[14] Rebuttal Testimony of Michael J. Shore on Behalf of Consumers Energy Company (December 1997), p. 7.

[15] *Id.* at 8.

[16] Supplemental Testimony of Ralph E. Miller on Behalf of the Michigan Department of Attorney General (December 5, 1997), pp. 7–8; Michigan AG Exhibit I–___(REM–1).

[17] Michigan AG Exhibit I–___ (REM–1); Michigan AG Exhibit I–___ (REM–4), Bates Nos. 06010042–46.

[18] An October 1, 1996 "Transaction Agreement" between Consumers and Anadarko covering releases from November 1, 1996 through March 31, 1997 is attached to Michigan AG Exhibit I–___(REM–4), Bates Nos. 06010049–50.

[19] FERC Stats. & Regs., Regs. Preambles 1991–1996 at 30,421.

[20] *C.f.*, 18 CFR 154.501 (1997) (refund obligation for natural-gas companies); *Coastal Oil & Gas Corp.* versus *FERC*, 782 F.2d 1249, 1253 (5th Cir. 1986), *citing Mesa Petroleum Co.* v. *FPC*, 441 F.2d 182 (5th Cir. 1971) (Commission can require violators to cure the harm caused by violations).

B. Violation of the Commission's Notice Requirements

As previously discussed, section 284.243(h)(1) requires that notice of a capacity release (at the maximum rate) must be provided on a pipeline's EBB not later than 48 hours after the release transaction commences. In Order No. 636–A, the Commission stated that it "will not tolerate deals undertaken to avoid the notice requirements of the regulations."[21]

With respect to the six transactions identified above, it is not clear whether Consumers disclosed to Panhandle or ANR that the replacement shippers had to share revenue (above the pipelines' maximum tariff rates) with Consumers. If Consumers did fail to notify the pipelines of this condition, the pipelines could not post the condition on their EBBs. Consumers would thus have violated the notice requirement of section 284.243(h)(1).

The Commission Orders

(A) Within 30 days of the issuance of this order, Consumers shall:

(1) File an answer to the allegations of violations that conforms to the requirements of Rule 213 of the Commission's Rules of Practice and Procedure, 18 CFR 385.213 (1997). In its answer, Consumers shall admit or deny, specifically and in detail, each allegation set forth in Part III of this order, and shall set forth every defense relied on. If an allegation is only partially accurate, Consumers shall specify that part of the allegation it admits and that part of the allegation it denies.

(2) Show in this answer why it has not violated sections 4(a), 4(b), and 5(a) of the NGA and section 284.243(h)(1) of the Commission's regulations. In addition, Consumers shall show why it has not violated its blanket certificate issued under section 7 of the NGA and section 284.243(g) of the Commission's regulations.

(3) For the period from January 1, 1996 through the date of its answer to this order, identify each transaction in which Consumers (a) released or is releasing capacity to a replacement shipper and (b) received or will receive any payment or other consideration in excess of the relevant pipeline's applicable maximum tariff rate.

(4) For each of the six release transactions identified by the Michigan AG discussed herein, and for each transaction identified in response to Ordering Paragraph (A)(3):

a. Identify the pipeline, the date(s) of the release and the replacement shipper, and calculate the amount in excess of the pipeline's applicable maximum tariff rate;

b. Provide copies of all documents relating to the release transaction, including the release agreement (with all amendments), all billing statements submitted by Consumers to the replacement shipper, all records of payments or other consideration made by the replacement shipper, and all communications between Consumers and the relevant pipeline, and all communications between Consumers and the replacement shipper, concerning the transaction; and

c. Show why Consumers should not refund to the replacement shipper any payment Consumers received in excess of the relevant pipeline's applicable maximum tariff rate; and

d. If the transaction is ongoing, show why Consumers should not be required to limit its collections of rates or other consideration from the replacement shipper to the pipeline's applicable maximum tariff rate.

(B) Notice of this proceeding will be published in the **Federal Register**. Interested parties will have 20 days from the date of publication of the notice to intervene.

By the Commission.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8010 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

[21] FERC Stats. & Regs., Regs. Preambles 1991–1996 at 30,559.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–4084–001]

Denver City Energy Associates, L.P.; Notice of Filing

March 23, 1998.

Take notice that on February 27, 1998, Denver City Energy Associates, L.P., (DCE), tendered for filing a revised Code of Conduct in compliance with the Federal Energy Regulatory Commission order issued on January 28, 1998 in Docket No. ER97–4084–001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before April 2, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8032 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10624–020]

French Paper Company; Notice Rejecting Request for Rehearing

March 23, 1998.

On February 10, 1998, the Acting Director, Office of Hydropower Licensing, issued an order modifying and approving the fish entrainment study recommendations proposed by French Paper Company, licensee for the French Paper Project No. 10624. 82 FERC ¶ 62,134. On March 12, 1998, the Michigan Department of Natural Resources (Michigan DNR) filed a request for rehearing of this order with the Commission.

Under Section 313(a) of the Federal Power Act, 16 U.S.C. 825*l*(a), a request for rehearing may be filed only by a party to the proceeding. In order to become a party to any Commission proceeding, an interested person must file a motion to intervene pursuant to Rule 214 of the Rules of Practice and Procedure, 18 CFR 385.214. Michigan DNR's prior intervention in the licensing proceeding for this project does not continue into post-licensing proceedings.[1] Because Michigan DNR did not file a motion to intervene in this post-licensing proceeding, it therefore is not a party. Consequently, its request for rehearing is rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice pursuant to 18 CFR 385.713.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8011 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Kings River Conservation District, 36 FERC ¶ 61,365 (1986).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–290–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

March 23, 1998.

Take notice that on March 19, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP98–290–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to own and operate certain facilities in Arkansas to deliver gas to Arkla, a distribution of NorAm Energy Corporation authorized in blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request on file with the Commission and open to public inspection.

NGT proposes to install a 1-inch delivery tap and meter station on NGT's Line BT–14 in Conway County, Arkansas which would provide service to Arkla's rural distribution system. The estimated volumes to be delivered through the above facilities are 4,320 MMBtu annually and 11 MMBtu on a peak day. NGT's construction costs are estimated at $6,523. NGT states that Arkla would reimburse NGT $5,603 of actual construction costs.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8009 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–282–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

March 23, 1998.

Take notice that on March 16, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158–0900, filed in Docket No. CP98–282–000, a request, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211), for authorization to construct and operate a new Oremet Meter Station to provide direct deliveries to Oregon Metallurgical Corporation (Oremet) in Linn County, Oregon, under Northwest's blanket certificate authorization issued in Docket No. CP82–433–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest describes the new meter station as tap facilities, consisting of two 4-inch taps, one each on Northwest's 10-inch Camas-Eugene Lateral and 20-inch lateral loop line; and meter facilities consisting of a 3-inch turbine meter, 2-inch piping, filter-separator, valves and appurtenances.

Northwest reports that the proposed meter station will have a design delivery capacity of approximately 4,300 Dth per day, limited by the inlet piping, calculated at an assumed line pressure of 500 psig, with initial deliveries projected to be up to 2,000 Dth per day and up to 500,000 Dth annually.

Northwest states that Oremet is presently receiving natural gas transportation and sales services from Northwest Natural Gas Company (Northwest Natural), a local distribution company. Northwest says that Oremet requested Northwest to provide a new delivery point for direct natural gas deliveries to Oremet's titanium mill, when the Oregon Public Utility Commission declined to approve an anti-bypass competitive rate contract between Northwest Natural and Oremet.

Northwest provides services to Northwest Natural under Rate Schedule TF–1, TF–2 or TI–1 transportation agreements. Northwest indicates that to receive service from Northwest at the new Oremet Meter Station, Oremet intends to acquire released firm capacity on Northwest's system or arrange for deliveries by existing firm shippers.

Northwest states that the total cost for construction of the meter station will be approximately $189,000; $30,000 for new tap facilities to be built and owned by Northwest and the remainder for the new meter facilities to be built and owned by Oremet. Northwest says its expenses will be totally reimbursed by Oremet. Northwest proposes to operate the meter station, including facilities to be owned by Oremet, as part of its open-access transportation system.

Northwest asserts that any deliveries made to Oremet through the new Meter Station will be gas delivered either for Oremet or other shippers for whom Northwest is authorized to transport gas. Northwest states that any volumes delivered to the new Oremet delivery point will be within the authorized entitlement of such shippers. Northwest does not expect its system peak day deliveries or its annual throughput to increase since deliveries through the proposed facilities will replace existing services currently being provided by Northwest Natural, which is also served by Northwest.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C., 20426, pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8007 Filed 3–26–98; 11:25 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–285–000]

Northwest Pipeline Corporation; Notice of Application

March 23, 1998.

Take notice that on March 18, 1998, Northwest Pipeline Corporation

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(Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed an application pursuant to Sections 7 (b) and (c) of the Natural Gas Act and Part 157 of the Commission's Regulations for amendments to existing certificates of public convenience and necessity, permission and approval for abandonments and approval of various tariff waivers and modifications as necessary to implement changes in its use of storage for system balancing and its provision of storage from the Jackson Prairie Storage Project (Jackson Prairie), in which it is a one-third owner, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that the proposed changes generally are related to and/or consistent with proposals by Puget Sound Energy, Inc. (Puget Sound), the Project Operator of Jackson Prairie, to implement an updated and amended Gas Storage Agreement (Update Project Agreement) and expand the storage project.

Concurrently with the implementation of the Updated Project Agreement proposed by Puget Sound, which is anticipated to occur in the fall of 1998, Northwest proposes to:

(1) Abandon the certificated services provided under Rate Schedule SGS–1 and X–82 for the two-thirds of the Jackson Prairie capacity owned by Puget Sound and The Washington Water Power Company. (Each owner henceforth will have direct access to its one-third ownership share of storage rights in Jackson Prairie.)

(2) Abandon the certificated Rate Schedule SGS–1 services from Northwest's one-third ownership share of storage rights in Jackson Prairie. (Each SGS–1 customer has elected to convert to open-access service under Rate Schedule SGS–2F.) Northwest also requests waivers of the posting/billing provisions in Section 25 of the General Terms and Conditions in its FERC tariff to the extent necessary to effectuate these conversions.

(3) Increase total firm deliverability by 2,200 Dth per day (Dth/d) and total firm working gas capacity by 60,400 Dth available for Northwest's storage services from its one-third ownership share in the storage project. (These increased storage quantities result from utilization of an updated thermal conversion factor for the existing volumetric capacities of the storage project.) Northwest specifically requests waivers of the available capacity posting provisions in Sections 17.4(c) and 26 of the General Terms and Conditions in its FERC tariff to allow these available storage quantities to be allocated pro rata among Northwest's existing firm storage customers, as reflected in the new Rate Schedule SGS–2F service agreements replacing existing service agreements for both converting Rate Schedule SGS–1 customers and existing Rate Schedule SGS–2F customers.

(4) Utilize for system balancing all firm, best-efforts and interruptible rights to which Northwest is entitled under the Updated Project Agreement, to the extent such rights are not being used to provide firm service under Rate Schedule SGS–2F. (This clarification of existing certificate authority ensures that Northwest's existing balancing flexibility will be maintained.)

(5) Abandon its certificate for operation of the Jackson Prairie meter station. (Northwest henceforth will operate the meter station as agent for and under the certificate authority of Puget Sound, the project operator.)

(6) Implement the related tariff changes necessary to: cancel Rate Schedules X–82 and SGS–1; enhance the best-efforts withdrawal rights under Rate Schedule SGS–2F; clarify and revise the scheduling and curtailment priorities for Northwest's use of its storage service rights under the Updated Project Agreement; clarify and enhance availability of interruptible service under Rate Schedule SGS–2I; explicitly define injection capacity rights under Rate Schedule SGS–2F; and update and revise the provisions of Rate Schedule TF–2 for storage redelivery transportation service.

Upon completion of the Jackson Prairie expansion proposed by Puget Sound, which is anticipated to occur in the fall of 1999, Northwest proposes to:

(1) Realign storage capacity authorized to be retained for system balancing by replacing 3.04 Bcf of its existing Clay Basin storage capacity and the associated 25.3 MMcf/d of firm deliverability with Northwest's share of the proposed Jackson Prairie expansion capacity, 1.067 Bcf of storage capacity and the associated 100 MMcf/d firm deliverability;

(2) Abandon, by sale, Northwest's certificated share of the Jackson Prairie Zone 2 cushion gas (0.73 Bcf) and Zone 9 testing gas (0.33 Bcf) which will be converted to working gas as a result of Puget Sound's proposed expansion;

(3) Implement the related tariff changes necessary to: revise the fuel gas reimbursement procedures applicable to Northwest's share of the Jackson Prairie storage fuel and lost and unaccounted-for-gas; allow the sale of the cushion gas and testing gas proposed to be abandoned; and reflect the storage project's proposed new withdrawal deliverability formula in Rate Schedule SGS–2F.

Further, Northwest requests the Commission to make a determination in this proceeding that Northwest's one-third share (approximately $10 million) of the Jackson Prairie expansion costs should be treated on a rolled-in basis in Northwest's next general rate case. Northwest proposes to use its share of the expanded storage capacity for system balancing, which will provide system-wide operational benefits. Northwest contends that its cost-of-service attributable to the expansion will be more than offset by the associated reduction in Clay Basin storage expenses.

Northwest also requests blanket authority to make periodic, short-term (less than one year) adjustments in the quantity of Clay Basin storage capacity and associated injection and withdrawal rights which it retains for system balancing, as appropriate to accommodate by short-term changes in its operational balancing agreements.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8008 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–64–000]

R.J. Patrick Operating Company; Notice of Petition for Adjustment

March 23, 1998.

Take notice that on March 10, 1998, R.J. Patrick Operating Company (Patrick Operating Company), filed a petition for adjustment under Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to pay Kansas ad valorem tax refunds, as required by the Commission's September 10, 1997, order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000 and RP97–369–000,[2] and as set forth in the Statement of Refunds Due (SRD) received from Northern Natural Gas Company. Patrick Operating Company's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10, order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Patrick Operating Company states that the SRD, as subsequently revised, seeks refund in the amount of $323,669.97, including interest, for 8 Western Kansas wells, namely, the Lemert #2, R. Baker #1, Wimmer 1, 3, and 4, Ora Baker #2, and the Ora Baker #1 and #3. Patrick Operating Company also states that the Ora Baker #1, determined to be a Section 102 well, was deregulated January 1, 1985. Patrick Operating Company further states that during the period involved from 1983 through June 1987, these were very low-volume wells.

Patrick Operating Company states that since the wells were producing 12 Mcf per day or less, all of the wells, except the Lemert, were sold February 1, 1995. Patrick Operating Company further states that the Lemert #2 was then sold in February 1992, at which time it was also producing about 12 Mcf per day.

It is stated that the R.J. Operating Company presently operates 20 wells, of which Mr. and Mrs. R.J. Patrick own 5 of the wells. It is stated that these wells are owned by a number of people, many of whom do not have great financial resources. It is stated that it would take considerable time to recover the reimbursement amount even from other production. The Patrick Operating Company states that although each working interest owner is liable for his own share of any refund; Patrick Operating Company is requesting that since the 8 wells were only marginally economical to produce, that Mr. Patrick and all other working interest owners be relieved of any refund obligation because of the great financial hardship that would occur.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 285.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8012 Filed 3–26–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] *See* 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1986), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–32–000, et al.]

PG&E Generating Company, et al. Electric Rate and Corporate Regulation Filings

March 19, 1998.

Take notice that the following filings have been made with the Commission:

1. PG&E Generating Company, U.S. Generating Company, LLC, USGen Power Group, LLC, USGen Energy Group, LLC

[Docket No. EC98–32–000]

Take notice that on March 17, 1998, PG&E Generating Company, U.S. Generating Company, LLC, USGen Power Group, LLC, and USGen Energy Group, LLC tendered for filing an application for approval pursuant to Section 203 of the Federal Power Act for an intra-corporate restructuring, or for disclaimer of jurisdiction over such restructuring.

Comment date: April 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Wind Energy Partners, LLC

[Docket No. EG98–58–000]

On March 11, 1998, West Texas Wind Energy Partners, LLC (WTWEP) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

WTWEP is developing a wind-powered eligible facility with a capacity of 74.6 megawatts (gross), powered by 113 Vestas V–47 660kW wind turbines, which will be located approximately four miles southeast of the town of McCamey, Texas, in the area known as the Southwest Mesa, Upton and Crockett Counties, Texas.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Morgan Stanley Capital Group v. Illinois Power Company

[Docket No. EL98–29–000]

Take notice that on March 6, 1998, Morgan Stanley Capital Group tendered for filing a Complaint and Request for Expeditious Action against Illinois Power Company (IP) regarding (1) IP's failure to accurately post available firm

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transmission capacity, (2) IP's failure to award transmission capacity in a nondiscriminatory manner as required by its tariffs and the Commission's regulations, and (3) IP's discriminatory allocation of transmission in favor of its own bulk power marketing arm.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. The Narragansett Electric Company

[Docket No. EL98–30–000]

Take notice that on March 13, 1998, The Narragansett Electric Company submitted for filing a Petition for Declaratory Order Approving Proposed Jurisdictional Separation for Transmission and Distribution Facilities.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket Nos. ER89–627–001]

Take notice that on March 9, 1998, Florida Power Corporation tendered for filing an amendment in the above-referenced dockets.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. CSW Operating Companies

[Docket No. ER97–1793–000]

Take notice that on February 23, 1998, CSW Operating Companies tendered for filing a letter of withdrawal in the above-referenced docket.

Comment date: April 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. MidAmerican Energy Company

[Docket No. ER98–1742–000]

Take notice that on March 13, 1998, MidAmerican Energy Company tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of certain reused tariff sheets consistent with the quarterly filing requirement with the information for which MidAmerican sought confidential treatment in its February 2, 1998 filing (Docket No. ER98–1742–000) included.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in *Southern Company Services, Inc.*, 75 FERC ¶61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the applicable quarter.

MidAmerican proposes an effective date of the first day of the applicable quarter for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the Southern Company Services, Inc. order and the effective date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Minnesota Power & Light Company

[Docket No. ER98–1895–000]

Take notice that on February 17, 1998, Minnesota Power & Light Company and Superior Water, Light and Power tendered for filing a signed Service Agreement for Non-Firm Point-to-Point Transmission Service with the Power Company of America under its Transmission Service Agreement to satisfy its filing requirements under this tariff.

Comment date: March 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Power Partners I, LLC

[Docket No. ER98–2118–000]

Take notice that on March 6, 1998, Iowa Power Partners I, LLC tendered for filing a Notice of Succession in the above-referenced docket.

Comment date: April 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. NGE Generation, Inc.

[Docket No. ER98–2179–000]

Take notice that on March 13, 1998, NGE Generation, Inc. tendered for filing a Notice of Succession for the transfer of certain jurisdictional facilities from New York State Electric & Gas Corporation to NGE Generation Inc. The transfer was effective on February 11, 1998. By this filing, NGE Generation, Inc. adopts, ratifies and makes its own, in every respect, all applicable tariffs, rate schedules, and supplements thereto, heretofore filed with the Commission by New York State Electric & Gas Corporation.

NGE Generation, Inc. Served copies of the filing on the New York State Public Service Commission and all of the customers and utilities served under or parties to the tariff and rate schedules.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER98–2193–000]

Take notice that on March 16, 1998, UtiliCorp United Inc. (UtiliCorp) tendered for filing on behalf of its operating division, Missouri Public Service, a service agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Continental Energy Services, L.L.C. The service agreement provides for the sale of capacity and energy by Missouri Public Service to Continental Energy Services, L.L.C. pursuant to the tariff, and for the sale of capacity and energy by Continental Energy Services, L.L.C. to Missouri Public Service pursuant to Continental Energy Services, L.L.C.'s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Continental Energy Services, L.L.C.

UtiliCorp requests waiver of the Commission's regulations to permit the service agreement to become effective in accordance with its terms.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER98–2194–000]

Take notice that on March 16, 1998, Cinergy Services, Inc. (Cinergy) tendered for filing on behalf of its operating company, PSI Energy, Inc. (PSI) a Second Supplemental dated February 1, 1998, to the Interchange Agreement dated June 1, 1993, between the City of Piqua, Ohio and Cinergy.

Cinergy requests an effective date of one day after the filing of this Second Supplemental Agreement of the Interchange Agreement.

Copies of the filing were served on the City of Piqua, Ohio, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Commission.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER98–2195–000]

Take notice that on March 16, 1998, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff entered into between Cinergy and Boston Edison Company (BE).

Cinergy and BE are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER98–2196–000]

Take notice that on March 16, 1998, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff entered into between Cinergy and ConAgra Energy Services, Inc. (ConAgra).

Cinergy and ConAgra are requesting an effective date of February 28, 1998.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Company

[Docket No. ER98–2197–000]

Take notice that on March 16, 1998, New England Power Company (NEP) filed a service agreement with VTEC Energy, Inc. for non-firm, point-to-point transmission service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Company

[Docket No. ER98–2198–000]

Take notice that on March 16, 1998, New England Power Company (NEP) filed an assignment of a Service Agreement, dated as of March 15, 1997, (Service) between Ohio Edison Company and NEP. NEP requests waiver of the Commission's sixty (60) day notice requirement and an immediate effective date for the assignment.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Company Services, Inc.

[Docket No. ER98–2200–000]

Take notice that on March 16, 1998, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company) tendered for filing two revisions to Southern Company's Open Access Transmission Tariff (Tariff). Southern Company seeks express authority to waive, under certain circumstances and on a non-discriminatory basis, the deposit required to accompany applications for firm point-to-point transmission service. In addition, Southern Company is also revising the Tariff to expressly state that SCS is Southern Company's Designated Agent under the Tariff.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PJM Interconnection, L.L.C.

[Docket No. ER98–2201–000]

Take notice that on March 16, 1998, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, membership applications of Columbia Power Marketing, Constellation Energy Source, Inc., and PEI Power Corporation. PJM requests an effective date on the day after receipt by the Commission.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company

[Docket No. ER98–2202–000]

Take notice that on March 16, 1998, Louisville Gas and Electric Company (LG&E) tendered for filing an executed Purchase and Sales Agreement between LG&E and Griffin Energy Marketing, L.L.C. under LG&E's Rate Schedule GSS.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Ameren Services Company

[Docket No. ER98–2203–000]

Take notice that on March 16, 1998, Ameren Services Company (Ameren Services) tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Kahoka, Missouri (City). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to City pursuant to Ameren's Open Access Transmission Tariff.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Ameren Services Company

[Docket No. ER98–2204–000]

Take notice that on March 16, 1998, Ameren Services Company (ASC) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between ASC and Merchant Energy Group of the Americas, Inc. (MEGA). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to MEGA pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Ameren Services Company

[Docket No. ER98–2205–000]

Take notice that on March 16, 1998, Ameren Services Company (ASC) tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and ConAgra Energy Services, Inc., Merchant Energy Group of the Americas, Inc. and SCANA Energy Marketing, Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Union Electric Company

[Docket No. ER98–2206–000]

Take notice that on March 16, 1998, Union Electric Company (UE) tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and the City of Kahoka, Missouri (City). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to the City pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. South Carolina Electric & Gas Company

[Docket No. ER98–2207–000]

Take notice that on March 16, 1998, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Tenaska Power Services Co. (TPSC) as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon TPSC and the South Carolina Public Service Commission.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. UtiliCorp United Inc.

[Docket No. ER98–2208–000]

Take notice that on March 16, 1998, UtiliCorp United Inc. tendered for filing

on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Continental Energy Services, L.L.C. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Continental Energy Services, L.L.C. pursuant to the tariff, and for the sale of capacity and energy by Continental Energy Services, L.L.C. to WestPlains Energy-Kansas pursuant to Continental Energy Services, L.L.C.'s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Continental Energy Services, L.L.C.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. UtiliCorp United Inc.

[Docket No. ER98–2209–000]

Take notice that on March 16, 1998, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Continental Energy Services, L.L.C. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Continental Energy Services, L.L.C. pursuant to the tariff, and for the sale of capacity and energy by Continental Energy Services, L.L.C. to WestPlains Energy-Colorado pursuant to Continental Energy Services, L.L.C."s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Continental Energy Services, L.L.C.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Indiana Michigan Power Company

[Docket No. ER98–2210–000]

Take notice that on March 16, 1998, Indiana Michigan Power Company (I&M) tendered for filing with the Commission Facility Request No. 11 to the existing Agreement dated December 11, 1989 (1989 Agreement) between I&M and Wabash Valley Power Association, Inc. (WVPA). Facility Request No. 11 was negotiated in response to WVPA's request that I&M provide new facilities at a new 138 kV tap station to be owned by WVPA and operated by I&M known as Fruit Belt Electric Cooperative-Flowerfield Tap Station. The Commission has previously designated the 1989 Agreement as I&M's Rate Schedule FERC No. 81.

As requested by, and for the sole benefit of WVPA, I&M proposes an effective date of May 15, 1998, for Facility Request No. 11. A copy of this filing was served upon WVPA, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Tampa Electric Company

[Docket No. ER98–2211–000]

Take notice that on March 16, 1998, Tampa Electric Company (Tampa Electric) tendered for filing a Contract for the Purchase and Sale of Power and Energy (Contract) between Tampa Electric and NP Energy Inc. (NP Energy). The Contract provides for the negotiation of individual transactions in which Tampa Electric will sell power and energy to NP Energy.

Tampa Electric proposes an effective date of March 17, 1998 for the Contract, or, if the Commission's notice requirement cannot be waived, the earlier of May 15, 1998 or the date the Contract is accepted for filing.

Copies of the filing have been served on NP Energy and the Florida Public Service Commission.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Rochester Gas and Electric Corporation

[Docket No. ER98–2212–000]

Take notice that on March 16, 1998, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the PP&L, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of March 9, 1998, for the Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Boston Edison Company

[Docket No. ER98–2213–000]

Take notice that on March 16, 1998, Boston Edison Company (Boston Edison) filed revised sheets to its open access tariff deleting a provision in Section 36.5 of the tariff requiring tariff customers to pay Boston Edison for reactive supply and voltage control service.

Boston Edison requests that this filing be allowed to become effective 60 days from date of receipt of filing.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Louisville Gas and Electric Company

[Docket No. ER98–2214–000]

Take notice that on March 16, 1998, Louisville Gas and Electric Company (LG&E) tendered for filing an executed Purchase and Sales Agreement between LG&E and Tenaska Power Services Company under LG&E's Rate Schedule GSS.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Niagara Mohawk Power Corporation

[Docket No. ER98–2216–000]

Take notice that on March 16, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing an executed transmission service agreement between NMPC and Eastern Power Distribution, Inc. This transmission service agreement specifies that Eastern Power Distribution, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This tariff, filed on July 9, 1996, will allow NMPC and Eastern Power Distribution, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Eastern Power Distribution, Inc., as the parties may mutually agree.

NMPC requests an effective date of March 5, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Eastern Power Distribution, Inc.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Niagara Mohawk Power Corporation

[Docket No. ER98–2217–000]

Take notice that on March 16, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing an executed Transmission Service Agreement between NMPC and Eastern Power Distribution, Inc. This transmission service agreement specifies that Eastern Power Distribution, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This tariff, filed with on July 9, 1996, will allow NMPC and Eastern Power Distribution, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Eastern Power Distribution, Inc., as the parties may mutually agree.

NMPC requests an effective date of March 5, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Eastern Power Distribution, Inc.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Rochester Gas and Electric Corporation

[Docket No. ER98–2223–000]

Take notice that on March 16, 1998, Rochester Gas and Electric Corporation filed an application for amendment of its December 31, 1996, filing in OA97–243–000. RG&E is making this filing to reflect transmission rates resulting from a settlement agreement accepted by the Commission in Docket No. OA96–141.

A copy of the filing has been served on the Public Service Commission of the State of New York.

Comment date: April 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Florida Power Corporation

[Docket No. OA96–73–001]

Take notice that on March 9, 1998, Florida Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: April 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. PacifiCorp

[Docket No. OA97–405–000]

Take notice that on March 10, 1998, PacifiCorp tendered for filing an amendment to its filing of an unexecuted contract entitled Amendment No. 1 to the AC Intertie Agreement between PacifiCorp and Bonneville Power Administration (Bonneville).

Copies of this filing were supplied to Bonneville, the Public Utility Commission of Oregon, Public Service Commission of Utah, and the Washington Utilities and Transportation Commission.

PacifiCorp renews its request for an effective date of January 3, 1997 be assigned to the Agreement.

Comment date: April 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Inquiry Concerning the Commission's Policy on Independent System Operators, Midwest Independent Transmission System Operator, Inc., Cincinnati Gas & Electric Company

[Docket No. PL98–5–000, Docket No. ER98–1438–000 and EC98–24–000]

Take notice that on March 2, 1998, the State Public Utility or Public Service Commissions of Arkansas, Illinois, Kansas, Michigan, Minnesota, Missouri, North Dakota, Ohio, Oklahoma, Pennsylvania, and Texas tendered for filing a Petition concerning the matter of competing and/or conflicting independent system operator formation processes in the above-referenced dockets.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7901 Filed 3–26–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5987–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Spill Prevention, Control and Countermeasure Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Spill Prevention, Control and Countermeasure Plans, OMB Control No. 2050–0021; expiring 5/31/98). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0328.07.

SUPPLEMENTARY INFORMATION:

Title: "Spill Prevention, Control and Countermeasure Plans" (OMB Control No. 2050–0021; EPA ICR No. 328.07) expiring 5/31/98. This ICR requests an extension of a currently approved collection.

Abstract: Under section 311 of the Clean Water Act, EPA's Oil Pollution Prevention regulation (40 CFR part 112) requires facility owners or operators to prepare and implement SPCC Plans and keep certain records. Preparation of the SPCC Plan requires that a facility owner or operator analyze how to prevent oil discharges, thereby promoting appropriate facility design and operations. The information in the SPCC Plan also promotes efficient response in the event of a discharge. Finally, proper maintenance of the SPCC Plan promotes important spill-reducing measures, facilitates leak detection, and generally ensures that the facility deters discharges at its peak capability. All of the SPCC Plan recordkeeping activities are mandatory. The specific activities and reasons and uses for the information collection are described below.

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Recordkeeping Activities: Under section 112.3, a facility owner or operator must prepare a written SPCC Plan, maintain it at or near the facility, and have it certified by a Registered Professional Engineer (PE). Under section 112.5 the SPCC Plan must be amended (i) whenever there is a facility change that materially affects the potential to discharge oil, and (ii) to include more effective prevention and control technology identified in the owner or operator's triennial Plan review. If amended, the Plan must also be certified by a PE. Under section 112.4, in the event of certain oil discharges, facility owners or operators must submit the SPCC Plan and other information to the EPA Regional Administrator and the appropriate state water pollution control agency within 60 days. Upon review, the Regional Administrator may require amendment of the SPCC Plan. Again, the amended Plan must be certified by a PE. Under section 112.3, the owner or operator must maintain (and update) records of specific inspections as outlined under section 112.7(e).

On December 2, 1997, at 62 FR 63812, EPA published proposed revisions to the SPCC rule (40 CFR part 112). The proposed revisions were designed to reduce the information collection burden of the SPCC rule. The comment period for the proposal closed on February 2, 1998. EPA is now reviewing the comments received. EPA will also review the comments received pursuant to proposals to modify the SPCC rule in 1991 and 1993 (*see* 56 FR 54612, October 22, 1991; and 58 FR 8824, February 17, 1993) and craft a single final rule embodying the 1991, 1993, and 1997 proposals. The final rule should be published in 1999.

Purpose of Data Collection: Facility owners or operators are the primary users of SPCC Plans and related data. EPA does not collect the Plan or related records on a routine basis. Facilities that prepare, implement, and maintain an SPCC Plan improve their ability to prevent oil discharges, and mitigate the environmental damage caused by such discharges. As facility owners or operators accumulate the data, they necessarily analyze the facility's capability to prevent oil discharges, facilitate safety awareness, and promote the use of appropriate design and operational standards that reduce the likelihood of an oil discharge. The Plan information can also help the facility respond efficiently in the event of a discharge. Inspection records help facility owners and operators to promote important operation and maintenance, and demonstrate compliance with SPCC requirements.

EPA also uses the SPCC data in certain situations. EPA primarily uses SPCC Plan data to verify that facilities comply with the regulation and implement their Plan, including design and operation specifications and inspection requirements. EPA reviews SPCC Plans; (1) when facilities submit the Plans because of oil discharges, and (2) as part of EPA's inspection program. State and local governments may also use the data, which is not necessarily available elsewhere and can greatly assist local emergency preparedness planning efforts.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 18, 1997 (62 FR 66360); EPA received five comment letters.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 39.9 hours per newly regulated facility and 5.4 hours per already regulated facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements to train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/affected entities: Non-transportation facilities with the potential to discharge oil to navigable waters.

Estimated number of respondents: 455,472.

Frequency of response: One-time plan, occasional records/reports.

Estimated total annual hour burden: 2.62 million hours.

Estimated total annualized cost burden: $79.3 million.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 328.07 and OMB Control No. 2050–0021 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M St., SW., Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725—17th St., NW., Washington, DC 20503.

Dated: March 23, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–8053 Filed 3–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5987–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Request for the 1997 State Source Water Assessment and Protection Programs Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: The 1997 State Source Water Assessment and Protection Programs Guidance, EPA ICR#1816.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www/epa/gov/icr and refer to EPA ICR No. 1816.01.

SUPPLEMENTARY INFORMATION:

Title: The 1997 State Source Water Assessment and Protection Programs

Guidance (EPA ICR No. 1816.01). This is a new collection.

Abstract: Section 1453 (a)(3) of the Safe Drinking Water Act requires states to submit to EPA a Source Water Assessment Program within 18 months after issuance of the national guidance on State Source Water Assessment and Protection Programs, which was issued by EPA on August 5, 1997. These State source water assessments and protection programs describe the process by which a State does assessments for the protection and benefit of public water systems by: delineating source water protection areas, conducting contamination source inventories and susceptibility determinations, and indicating whether or not it plans to implement a source water protection program. A State is also required to develop such a program with public participation and report the results of the assessments to the public.

Once a State program is approved by EPA, the State has two years to complete the source water assessments for the public water systems within its borders. Section 1453(a)(4) allows a State to request an extension of up to 18 months to complete the assessments. The extension request must indicate the reason a State requires additional time and must include a description of how and when the State will complete the assessment within the requested extension period. The request must also include information on the progress in implementing the assessments by the end of the first 18 months. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/24/97 (FRL–5846–4). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,436 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and Puerto Rico.

Estimated Number of Respondents: 51.

Frequency of Response: Occasional.

Estimated Total Annual Hour Burden: 402,009 hours.

Estimated Total Annualized Cost Burden: $18,582,723.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR NO. 1816.01 in any correspondence.

Ms. Sandy Farmer,
U.S. Environmental Protection Agency,
OPPE Regulatory Information Division (2137),
401 M Street SW,
Washington, DC 20460;
and
Office of Information and Regulatory Afairs,
Office of Management and Budget,
Attention: Desk Officer for EPA,
725 17th Street, NW,
Washington, DC 20503.

Dated: March 23, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–8054 Filed 3–26–98; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140268; FRL–5781–2]

Computer Based Systems, Incorporated; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Computer Based Systems, Incorporated (CBSI), 2750 Prosperity Avenue, Suite 300, Fairfax, VA 22031, for access to information which has been submitted to EPA under sections 303, 311, 312, and 313 of the Emergency Planning and Community Right-to-Know Act of 1986, also known as Title III. Some of the information may be claimed or determined to be trade secret information.

DATE: CBSI will have access to the trade secret information submitted to EPA pursuant to this Notice effective April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janette Petersen, Information Management Division (7407), Office of Pollution Prevention and Toxics, Rm. NE–G102, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–1558.

SUPPLEMENTARY INFORMATION: Under the Superfund Amendments and Reauthorization Act of 1986 (SARA), industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA.

Under contract number 68–W–98–045, CBSI will assist the Office of Pollution Prevention and Toxics, Information Management Division in receiving and processing the information submitted by industry in response to the requirements of sections 303, 311, 312, and 313 of SARA. Specifically, CBSI will establish and maintain a facility, called the Regulatory Data Collection Reporting Center. For example, CBSI personnel will be given access to SARA section 303, 311, 312, and 313 submissions and related documents. Some of the information may be claimed or may be determined to be trade secret. Personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures.

EPA is issuing this notice to inform all submitters of information under sections 303, 311, 312, and 313 of SARA that EPA may provide CBSI access to these trade secret materials on a need-to-know basis. All access to SARA trade secret information under this contract will take place at the Regulatory Data Collection Reporting Center. Upon termination of their contract or prior to termination of their contract at EPA's request, CBSI will return all materials to EPA.

Clearance to access to SARA trade secret information under this contract is scheduled to expire on January 31, 2003.

List of Subjects

Environmental protection.

Dated: March 20, 1998.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–8068 Filed 3–26–98; 8:45 am]

BILLING CODE [illegible]

VOL 63 ISS 59 MR 27 1998 UMI

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5490–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed March 16, 1998 Through March 20, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980086, Final EIS, FHW, FL, Miami Intermodal Center (MIC), Construction, Bounded by FL–112 on the north, FL–836 on the south, Miami International Airport landside terminal NW 27th Avenue on the east, along FL–836 that extends West to NW 57th Avenue, Dade County, FL, Due: April 27, 1998, Contact: J. R. Skinner (904) 942–9579.

EIS No. 980087, Final EIS, AFS, ID, Caribou National Forest, Implementation, Federal Phosphate Leasing Proposal for the Manning Creek and Dairy Syncline Tracts, Caribou County, ID, Due: April 27, 1998, Contact: Steve Robison (208) 236–7573.

EIS No. 980088, Draft EIS, FHW, AL, Tuscaloosa East Bypass Project (DPI–0080(001), Construction from I–59/I–20 east Tuscaloosa and Newport to US–82 near west of Newport, Funding, NPDESs Permit, COE Section 10 and 404 Permits, Tuscaloosa County, AL, Due: May 22, 1998, Contact: Joe D. Wilkerson (334) 223–7370.

EIS No. 980089, Draft Supplement, AFS, OR, Summit Fire Recovery Forest Restoration Project, Implementation, Information on Two New Alternatives, Malheur National Forest, Long Creek Ranger District, Grant County, OR, Due: May 11, 1998, Contact: Michael Hutchins (541) 575–3000.

EIS No. 980090, Draft EIS, FHW, PA, PA–0119 South Transportation Improvement Project, Between Blairsville and Homer City, Funding, NPDESs Permit and COE Section 404 Permit, Indiana County, PA, Due: May 13, 1998, Contact: Ronald W. Carmichael, PE. (717) 221–3461.

EIS No. 980091, Draft EIS, COE, NJ, Lower Cape May Meadows—Cape May Point Feasibility Study, Ecosystem Restoration, New Jersey Shore Protection Study, Cape May County, NJ, Due: May 11, 1998, Contact: Beth Brandreth (215) 656–6558.

EIS No. 980092, Final EIS, AFS, CA, San Juan Fuels and Wildlife Project, Implementation, Tahoe National Forest, Nevada City Ranger District, Nevada County, CA, Due: April 27, 1998, Contact: Don Thane (530) 265–4531.

EIS No. 980093, Draft EIS, USA, MD, Aberdeen Proving Ground, Pilot Testing of Neutralization/ Biotreatment of Mustard Agent (HD), Design, Construction and Operation, NPDESs and COE Section 404 Permit, Harford County, MD, Due: May 11, 1998, Contact: Don Thane (530) 265–4531.

EIS No. 980094, Final EIS, AFS, OR, Crown Pacific Limited Partnership Land Exchange Project, Implementation, Consolidate Land Ownership and Enhance Future Resource, Deschutes, Fremont and Winema National Forests, Deschutes, Jefferson, Klamath and Lake Counties, OR, Due: April 27, 1998, Contact: Susan Skakel (541) 388–2715.

EIS No. 980095, Final EIS, GSA, WA, Seattle New Federal Courthouse, Construction, King County, WA, Due: April 27, 1998, Contact: Michael D. Levine (253) 931–7263.

EIS No. 980096, Regulatory Draft EIS, NOA, American Lobster Fishery Management Plan, Implementation, To Prevent Overfishing of American Lobster and to Rebuild Lobster Stocks, Exclusive Economic Zone (EEZ) off the New England and Mid-Atlantic, Due: May 11, 1998, Contact: Bob Ross (978) 281–9234.

EIS No. 980097, Final EIS, COE, CA, Unocal Avila Beach Cleanup Project, Petroleum Hydrocarbon Contamination, Approval and Implementation, US Army COE Section 10 and 404 Permits Issuance, San Luis Obispo County, CA, Due: April 27, 1998, Contact: Tiffany Welch (805) 641–2935.

Amended Notices

EIS No. 970439, DRAFT EIS, IBR, CA, Programmatic EIS—Central Valley Project Improvement Act (CVPIA) of 1992 Implementation, Central Valley, Trinity, Contra Costa, Alameda, Santa Clara and San Benito Counties, CA, Due: April 17, 1998, Contact: Alan Candlish (916) 978–5190. Published FR 11–14–97—Review Period extended.

EIS No. 980014, Draft EIS, AFS, OR, Nicore Mining Project, Implementation, Plan-of-Operations, Mining of Four Sites, Road Construction, Reconstruction, Hauling and Stockpiling of Ore, Rough and Ready Creek Watershed, Illinois Valley Ranger District, Siskiyou National Forest, Medford District, Josephine County, OR, Due: May 15, 1998, Contact: Rochelle Desser (541) 592–2166. Published FR 01–30–98 Review Period Extended.

Dated: March 24, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–8110 Filed 3–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5490–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 09, 1998 Through March 13, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the OFFICE OF FEDERAL ACTIVITIES AT (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–K65082–CA Rating EC2, Payen, Pass Creek and English Range Allotments, Grazing Land Management Plan, Implementation, Tahoe National Forest, Sierraville Ranger District, Sierra and Nevada Counties, CA.

Summary: EPA expressed environmental concerns about insufficient site information to develop a monitoring plan and suggested the final EIS contain environmental indicators and establish threshold values to measure improvement.

ERP No. D–BLM–J31025–WY Rating EO2, Greybull Valley Irrigation District Dam and Reservoir Project, Issuance of Right-of-Way Permit and COE Section 404 Permit, Park County, WY.

Summary: EPA expressed environmental objections about cumulative adverse impacts to the aquatic system of the Greybull River and requested that the water conservation alternative be pursued.

ERP No. D–BLM–J60019–WY Rating EC2, Cave Gulch-Bullfrog-Waltman Natural Gas Development Project, Implementation, Platte River Resource Area, Natrona County, WY.

Summary: EPA expressed environmental concerns about impacts to a regional ground water recharge area

and suggested the final EIS develop site-specific ground water data and define the selected protection measures.

EERP No. D–BLM–J67026–MT Rating EC2, Golden Sunlight Mine Expansion, Implementation of Amendment 008 to Operating Permit No. 0065, COE Section 404 Permit, Whitehall, Jefferson County MT.

Summary: EPA expressed environmental concerns about implementing the proposed environmental mitigation measures and suggested the final EIS calculate the final bonding amount needed to comply with water quality standards in perpetuity and improve the groundwater mixing zone procedure.

ERP No. DR–AFS–K65184–CA Rating EC2, Aock Creek Recreational Trails Management Plan, Implementation, Additional Information, Eldorado National Forest, Georgetown Ranger Director, Eldorado County, CA.

Summary: EPA expressed environmental concerns about numerous substantive changes to the Forest Service's preferred alternative, and recommended that the Forest Service take additional steps to address high road densities and excessive sediment delivery in the project area. The final monitoring plan identify specific sedimentation minimization targets and follow-up actions.

ERP No. D1–AFS–J65111–MT, Rating EC2, Flathead National Forest, Management Direction Plan Related to Old Growth Forests, Forest Plan Amendment No. 21, Implementation, Flathead, Lake, Lincoln, Missoula and Lewis and Clark Counties, MT.

Summary: EPA expressed environmental concerns and recommends that the preferred alternative be modified to include areas of old growth to monitor ecological responses and to allow protect biodiversity and grizzly bear habitat.

Final EISs

ERP No. F–AFS–J61098–MT, Lost Trail Ski Area Expansion Project, Implementation, New Master Development Plan, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT.

Summary: EPA expressed environmental concerns about inadequate wetlands mitigation, potential water quality degradation associated with increased wastewater pollutant loading, lack of adequate analysis and disclosure or indirect growth related impacts and air quality impacts.

ERP No. F–AFS–J65263–SD, Anchor Hill Mine Expansion Project in Gilt Edge Mine, Plan-of-Operations, Approval, Black Hills National Forest, SD.

Summary: The Final EIS has addressed many of EPA's comment however, EPA has remaining concerns about the inadequate cash reclamation bonding, the absence of post closure operations and maintenance (O&M) funding/bonding and contingency plans, and long term water quality protection.

ERP No. F–AFS–J65271–MT, Jericho Salvage Timber Sale, Implementation, Salvage Treatments and Temporary Road Construction, Helena National Forest, Helena Ranger District, Powell County, MT.

Summary: EPA expressed environmental concerns about proposed reduction of streamside buffer zone widths below INFISH recommended widths, and inadequate water quality/aquatics monitoring for the detection and mitigation of all potential environmental impacts of the management actions.

Dated: March 24, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–8111 Filed 3–26–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5987–5]

Public Meeting on the Ground Water Disinfection Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notification is hereby given that the Environmental Protection Agency (EPA) is holding three public meetings concerning the Ground Water Disinfection Rule (GWDR). The objective of these meetings are to provide the public with the current available data and the potential regulatory options under consideration to support the GWDR development; ask for comments on the data and potential regulatory options; solicit further data if available; as well as to identify parties who may be interested in further meetings.

DATES: The first meeting will be held on May 5, 1998, in Portland, OR. The second will be held on June 9, 1998, in Madison, WI. The last meeting will be held on June 25, 1998, in Dallas, TX.

FOR FURTHER INFORMATION CONTACT: EPA will provide a copy of meeting materials prior to each meeting to anyone requesting it. To register for any of these meetings and for copies of the meeting materials please contact the Safe Drinking Water Hotline (800) 426–4791 or Martha Kucera at US EPA (202) 260–7773, kucera.martha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act as amended in 1996 directs EPA to promulgate regulations requiring disinfection "as necessary" for ground water systems. The intention of the GWDR is to reduce microbial contamination risk from public water sources relying on ground water. To determine if treatment is necessary, the rule will establish a framework to identify public water supplies vulnerable to microbial contamination and to develop and implement risk control strategies including but not limited to disinfection. This rulemaking will apply to all public water systems that use ground water, which includes noncommunity systems.

Dated: March 23, 1998.

W. R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–8055 Filed 3–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00529; FRL–5779–5]

Pesticide Program Dialogue Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act [Public Law 92–463], EPA's Office of Pesticide Programs (OPP) is giving notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC).

DATES: The meeting will be held on Thursday, April 16, 1998 from 8:30 a.m. to 5:45 p.m. and Friday, April 17, 1998 from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at: the Holiday Inn (Hotel & Suites, Historic District Alexandria); 625 First Street; Alexandria, Virginia 22314; Telephone number: 703 548–6300.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach or Linda Murray, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Highway; Arlington, VA 22202; Phone: 703 305–

7090; e-mail: fehrenbach.margie@epamail.epa.gov or murray.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The PPDC is composed of a balanced group of participants from the following sectors: federal agencies and state governments; consumer and environmental/public interest groups, including representatives from the general public; academia; the public health community; pesticide industry and user groups. The Committee was formed to foster communication and understanding among the parties represented on the Committee and with OPP. The Committee also provides advice and guidance to OPP regarding pesticide regulatory, policy, and implementation issues.

PPDC meetings are open to the public. Outside statements are welcome. Oral statements will be limited to five minutes per individual or group. Any person who wishes to file a written statement can do so before or after a Committee meeting. These statements will become part of the permanent file and will be provided to the Committee members for their information. Materials will be available for public review at the following address: U.S. Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

Major topics to be discussed at the April 16–17, 1998 meeting include: registration review; update on the FQPA safety factor (10×); FQPA consumer brochure; Approach for Reassessing Tolerances for Organophosphates (ARTO); section 18 issues; and, ecological issues.

List of Subjects

Environmental protection.

Dated: March 16, 1998.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 98–8066 Filed 3–26–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64037; FRL 5778–4]

Notice of Receipt of Request to Voluntarily Cancel Rid-A-Bird Perch 1100 Solution According to Memorandum of Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by the registrant, Rid-A-Bird, Inc. of Wilton, Iowa, to voluntarily cancel Rid-A-Bird Perch 1100 Solution and is publishing the Memorandum of Agreement (MOA) dated November 5, 1997, between the Agency and Registrant affecting the terms and conditions of this registration and its cancellation.

DATES: The effective date of this cancellation is March 1, 1999. EPA is providing a 180–day opportunity for comment on the request for voluntary cancellation of Rid-A-Bird Perch 1100 Solution. To comment, or for further information, contact: By mail: Dennis R. Deziel, Office of Pesticide Programs (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 3W26, Crystal Station, 2900 Crystal Drive, Arlington, VA 22202, (703) 308–8173; e-mail: deziel.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be canceled, and pursuant to section 6(f)(1)(C), EPA must provide a 180–day opportunity for comment on a request for voluntary cancellation unless that period is waived by the registrant or EPA. In this case the Registrant has requested voluntary cancellation through the signing of a MOA dated November 5, 1997, with the Agency. This MOA modifies the terms and conditions of this registration and its cancellation.

The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request. In this case the Agency is including the text of the MOA in this Notice of Receipt.

II. Background

The MOA sets forth the terms between the EPA and Rid-A-Bird, Inc. "Registrant" regarding Rid-A-Bird Perch 1100 Solution or "the product," EPA Reg. No. 7579–2, a registration held by the Registrant under FIFRA containing the active ingredient fenthion, which is also known under the chemical name of *O,O*-Dimethyl *O*-(4-(methylthio)-m-tolyl) phosphorothioate.

The Rid-A-Bird Perch 1100 Solution is currently registered for control of starlings, English sparrows, and pigeons at the following sites: (1) In and around farm buildings and feed lots; (2) building tops and structural steel; (3) inside other buildings; (4) power plants and sub-stations; (5) storage yards; (6) loading docks; and (7) bridges. EPA believes that this product may pose a significant risk to non-target species feeding on pest species killed by the Rid-A-Bird Perch 1100 Solution at these sites. This concern is supported by numerous incidents in the United States involving mortality to non-target species such as: barn swallows; crows; screech, short-eared, and great-horned owls; kestrels; sharp-shinned, Cooper's, and red-tailed hawks; the peregrine falcon; and the bald eagle.

EPA and the Registrant have entered into an agreement in an effort to make future poisoning incidents from the Registrant's perch products less likely. The MOA serves as the Registrant's request for voluntary cancellation of the Rid-A-Bird Perch 1100 Solution with an effective date of March 1, 1999. After this date, the Registrant may not distribute or sell the Rid-A-Bird Perch 1100 Solution except for the purposes of recall or disposal. Persons other than the Registrant and producers of the product may continue to distribute, sell or use the product until October 1, 1999. Any use of existing stocks must be in accordance with the previously approved labeling accompanying the products. In addition, the Registrant will complete by December 1, 1999, a recall of product held by distributors, sellers or users of the Rid-A-Bird Perch product after the expiration of the existing stocks date.

The Registrant has also agreed to seek an experimental use permit (EUP) to conduct experiments necessary to support an application for the registration of a perch product containing the new active ingredient CPT, which is also known under the chemical name of 3-chloro-4-methylbenzenamine, or 3-chloro-p-toluidine. A perch with CPT is expected to reduce secondary poisonings, because available data indicate that CPT is less toxic to most birds of prey than is fenthion. EPA has agreed to conduct an expedited review of the EUP application and any subsequent application submitted by the Registrant to support the registration of a CPT perch product.

The Agreement does not affect any other uses of products containing the active ingredient fenthion. In addition, because this is the only current fenthion bird perch product, the Agreement does not affect other registrants of products containing fenthion.

III. Voluntary Cancellation Request

This Notice announces receipt by the Agency of a request to cancel a pesticide product registered under section 3 of FIFRA. This registration is listed in the following Table 1.

TABLE 1. — REGISTRATION WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
7579–2	Rid-A-Bird Perch 1100 Solution	Fenthion

This cancellation is effective March 1, 1999.

The following Table 2 includes the name and address of record for the registrant of the product in Table 1.

TABLE 2. — REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
7579	Rid-A-Bird, Inc. P.O. Box 436 Wilton, IA 52778

IV. Additional Information

As a convience to the reader, the MOA reads as follows:

Memorandum of Agreement Between the Environmental Protection Agency and Rid-A-Bird, Inc. Regarding the Registration of the Rid-A-Bird Perch Product Containing Fenthion

This Memorandum sets forth the terms of an Agreement "Agreement" between the United States Environmental Protection Agency (EPA) and Rid-A-Bird, Inc. "Registrant" regarding Rid-A-Bird Perch 1100 Solution or "the product," EPA Reg. No. 7579–2, a registration held by the Registrant under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) containing the active ingredient fenthion, which is also known under the chemical name of *O,O*-Dimethyl *O*-(4-(methylthio)-m-tolyl) phosphorothioate.

The Rid-A-Bird Perch 1100 Solution is currently registered for control of starlings, English sparrows, and pigeons at the following sites: (1) in and around farm buildings and feed lots; (2) building tops and structural steel; (3) inside other buildings; (4) power plants and sub-stations; (5) storage yards; (6) loading docks; and (7) bridges.

This Agreement serves as the Registrant's request for voluntary cancellation of the Rid-A-Bird Perch 1100 Solution with an effective date of March 1, 1999. After this date, the Registrant may not distribute or sell the Rid-A-Bird Perch 1100 Solution except for the purposes of recall or disposal. Persons other than the Registrant and producers of the product may continue to distribute, sell or use the product until October 1, 1999. In addition, the Registrant will complete by December 1, 1999 a recall of product held by distributors, sellers or users of the Rid-A-Bird Perch product after the expiration of the existing stocks date. The Registrant has also agreed to seek an experimental use permit (EUP) to conduct experiments necessary to support an application for the registration of a perch product containing the new active ingredient CPT, which is also known under the chemical name of 3-chloro-4-methylbenzenamine. EPA has agreed to conduct an expedited review of the EUP application and any subsequent application submitted by the Registrant to support the registration of a CPT perch product.

The Agreement does not affect any other uses of products containing the active ingredient fenthion. In addition, because this is the only current fenthion bird perch product, the Agreement does not affect other registrants of products containing fenthion. The specific terms of this Agreement are as follows:

1. This Agreement constitutes the Registrant's request for the voluntary cancellation of the Rid-A-Bird Perch 1100 Solution pursuant to section 6(f) of FIFRA. The terms of the cancellation will be as follows:

(a) The effective date of cancellation will be March 1, 1999. The Registrant and any producer of the product may not distribute or sell the canceled product after such date except for the purposes of recall or proper disposal.

(b) Existing stocks of the canceled product in the possession of persons other than the Registrant or any producer of the product may not be distributed, sold or used after October 1, 1999 except for the purposes of recall or proper disposal.

(c) The Registrant agrees as a condition of continued registration of the product that it may not withdraw this request for voluntary cancellation.

2. The Registrant agrees as a condition of continuing registration of the Rid-A-Bird Perch 1100 Solution to submit an amendment to include on the label or in supplemental labeling the following statements on all products sold or distribute by the Registrant or any producer of the product after May 1, 1998:

(a) This product may not be used in starling roosting areas.

(b) This product may not be used on sites utilized by over 200 starlings.

(c) This product may not be used after October 1. 1999.

The Registrant agrees to submit proposed labeling to EPA to implement these changes no later than April 1, 1998.

3. EPA will, as expeditiously as possible, review the Registrant's proposed labeling submitted pursuant to paragraph 2, and will make a good faith effort to act on the proposed labeling within 10 working days of receipt.

4. The Registrant agrees to complete a recall of all canceled product at its own expense by December 1, 1999. The registrant agrees that it will contact any customer who has purchased 1 gallon or more of the product in the year preceding the expiration date of the existing stocks period under paragraph 1(b) (October 1, 1999 or a later date if the existing stocks date is extended pursuant to paragraph 7) to provide information on the return of the product. The communication must inform the customer that the existing stocks date will soon expire; that any further distribution, sale or use of the product after the expiration of the existing stocks date is unlawful; that the Registrant is recalling all unused and unopened product down to the user level; and that the Registrant will bear the cost of transportation and provide a full refund (or equivalent value) for any returned product. The Registrant agrees to maintain a log that records the name of each customer contacted and the date of the communication. The Registrant agrees that if the recall is not be completed prior to the registration of a CPT perch solution product (should EPA issue a registration for such a product), completion of the recall pursuant to the terms of this agreement shall be a condition of the registration of its CPT perch solution product.

5. The Registrant Agrees to submit an application for an experimental use permit under section 5 of FIFRA and 40 CFR part 172 for a product containing the active ingredient CPT by November 15, 1997. Data requirements for the EUP application are set forth in Appendix A, "Proposed Data Requirements for Rid-A-Bird CPT Bird Control Perch for Experimental Use Permit and Registration - September 10, 1997 [interested parties can obtain a copy of

Appendix A, "proposed data requirements," by contacting Mr. Dan Peacock at (703) 305–5407]. Within two months of receipt of a complete EUP application, EPA will review all information contained in the EUP application and will provide the Registrant with lists of:

(a) the terms and conditions EPA intends to impose upon issuance of the EUP;

(b) revised data requirements for registration of a CPT Perch Solution product (if changed by the EUP review); and

(c) the results of all reviews of data and rationales for extrapolating data from Starlicide to satisfy CPT requirements.

6. After receipt by the Registrant of the above EUP review, EPA agrees to meet with the Registrant and/or its representatives at least once, if requested, to discuss any issue involving the EUP and registration of CPT.

7. EPA agrees to review any complete application submitted by the Registrant for registration of a perch solution product containing the active ingredient CPT within 4 months of receipt. If EPA's total review time for complete EUP and registration applications for perch solution products containing CPT exceeds 6 months in the aggregate, the existing stocks provisions of the cancellation order as set forth in paragraph 1(b), and the date for the recall of all canceled product as set forth in paragraph 4, shall each be extended by a period equal to the additional time utilized by EPA for the review of the applications. The effective date of cancellation under paragraph 1(a) shall not be extended unless EPA determines, in its discretion, to extend the date.

8. The parties acknowledge that the labeling restrictions set forth in paragraph 2 apply only to the Rid-A-Bird Perch 1100 Solution and are not necessarily applicable to the registration of a CPT perch product by the Registrant. The acceptability of labeling and proposed uses for a CPT perch product will be evaluated on their own merits by EPA pursuant to section 3 of FIFRA.

9. The Registrant agrees that failure to comply with any of the conditions of registration set forth in this Agreement shall be grounds for cancellation of the Rid-A-Bird Perch 1100 Solution under section 6(e) of FIFRA.

10. The Registrant agrees that it will not challenge or assist any person in challenging this Agreement in any forum.

11. This Agreement constitutes the complete agreement reached by EPA and the Registrant.

12. This Agreement shall take effect if the Registrant and EPA sign the Agreement. The effective date shall be the date that the last party signs the Agreement.

Dated this 3rd and 5th day of November, 1997.

Steven Johnson, Acting Director, Office of Pesticide Programs, U.S. Environmental Protection Agency, /s/ 11/5/97.

Keith Wilson, President, Rid-A-Bird, Inc., /s/ 11/3/97.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: March 18, 1998

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–8067 Filed 3–26–98; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–799; FRL–5579–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–799, must be received on or before April 27, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product reviewer listed in the table below:

Product Manager	Office location/telephone number	Address
Ann Sibold	Rm. 212, CM #2, 703–305–6502, e-mail:sibold.ann@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Joseph M. Tavano	Rm. 214, CM #2, 703–305–6411, e-mail: tavano.joseph@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–799] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in

Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 19, 1998

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. American Cyanamid Company

PP 6F4623

EPA has received a pesticide petition (PP 6F4623) from American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543-0400, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance of 0.5 ppm for residues of 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1-pyrrole-3-carbonitrile, (chlorfenapyr) in or on the raw agricultural commodity citrus. As citrus processed commodities fed to food animals may be transferred to milk and edible tissues, tolerances are also proposed for the following ruminant food items: milk at 0.01 parts per million (ppm); milk fat at 0.15 ppm; meat at 0.01 ppm; and meat by-products (including fat) at 0.10 ppm.

The proposed analytical method is capillary gas chromatography using an electron capture detector. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residues of chlorfenapyr in plants is adequately understood and the residue of concern in citrus consists of the parent molecule. Expressed on a whole basis, the parent compound accounted for 56-75% of the total radioactive residue (TRR), 98% of which was associated with the external rinse and peel.

2. *Analytical method.* The GC analytical method, M2284, which is proposed as the enforcement method for the residues of chlorfenapyr in citrus, has a limit of detection (LOD) of 0.01 ppm (0.025 ppm for juice) and a limit of quantitation (LOQ) of 0.05 ppm.

3. *Magnitude of residues.* Extensive citrus field trials have been conducted over multiple growing seasons in all major citrus growing regions of the US. The results of these studies indicate that at the highest proposed use rate of 1.05 lbs ai/A, the maximum expected chlorfenapyr residues are 0.4 ppm in oranges, 0.38 ppm in lemons and 0.27 ppm in grapefruit in/on citrus samples harvested 7 days following the last application. These field trial data are adequate to support the proposed tolerance of 0.5 ppm in/on citrus harvested 7-days following the last application. The results of processing studies indicate that chlorfenapyr residues do not concentrate in molasses and juice. The actual concentration factors in dried pulp (2.4x) and citrus oil (70x) are well below the maximum theoretical concentration factors for these commodities. Although citrus oil is not considered to be a ready-to-eat item and is not expected to contribute to the dietary exposure, a tolerance at 35 ppm (0.5 ppm x 70) is proposed for enforcement purposes.

B. Toxicological Profile

1. *Acute toxicity.* Based on the EPA's toxicity category criteria, the acute toxicity category for chlorfenapyr technical is Category II or moderately toxic (signal word WARNING) and the acute toxicity category for the 2SC formulation is Category III or slightly toxic (signal word CAUTION). Males appear to be more sensitive to the effects of chlorfenapyr than females. The acute toxicity profile indicates that absorption by the oral route appears to be greater than by the dermal route. The following are the results from the acute toxicity tests conducted on the technical material:

i. Rat Oral LD_{50}: 441/1152 milligram/kilograms (mg/kg) bwt.(M/F) -- Tox. Category II

ii. Rabbit Dermal LD_{50}: >2,000 mg/kg bwt.(M/F) -- Tox. Category III

iii. Acute Inhal. LC_{50}: 0.83/>2.7 mg/L (M/F) -- Tox. Category III

iv. Eye Irritation: Moderately Irritating -- Tox. Category III

v. Dermal Irritation: Non-Irritating -- Tox. Category IV

vi. Dermal Sensitization: Non-Sensitizer -- Non Sensitizer

vii. Acute Neurotoxicity: NOEL 45 mg/kg bwt. -- Not An Acute Neurotoxicant

2. *Genotoxicty.* Chlorfenapyr technical (94.5% a.i.) was examined in a battery of *in vitro* and *in vivo* tests to assess its genotoxicity and its potential for carcinogenicity. These tests are summarized below.

Microbial/Microsome Mutagenicity Assay: Non-mutagenic

Mammalian Cell CHO/HGPRT Mutagenicity Assay: Non-mutagenic

In Vivo Micronucleus Assay: Non-genotoxic

In Vitro—Chromosome Aberration Assay in CHO: Non-clastogenic

In Vitro—Chromosome Aberration Assay in CHLC: Non-clastogenic

Unscheduled DNA Synthesis (UDS) Assay: Non-genotoxic.

3. *Reproductive and developmental toxicity.* Chlorfenapyr is neither a reproductive or developmental toxicant and is not a teratogenic agent in the Sprague-Dawley rat or the New Zealand white rabbit. This is demonstrated by the results of the following studies:

Rat Oral Teratology -- No-Observed-Effect-Level (NOEL) for maternal toxicity 25 mg/kg bwt./day and NOEL for fetal/develop. toxicity 225 milligram/kilograms body weight/day (mg/kg bwt./day)

Rabbit Oral Teratology -- NOEL for maternal toxicity 5 mg/kg bwt./day and NOEL for fetal/develop. toxicity 30 mg/kg bwt./day

Rat 2-Generation Reproduction -- NOEL for parental toxicity /growth and offspring development 60 ppm (5 mg/kg bwt./day)
NOEL for reproductive performance 600 ppm (44 mg/kg bwt./day).

4. *Subchronic toxicity.* The following are the results of the subchronic toxicity tests that have been conducted with chlorfenapyr:

28-Day Rabbit Dermal -- NOEL 100 mg/kg bwt./day

28-Day Rat Feeding -- NOEL >600 ppm (< 71.6 mg/kg bwt./day)

28-Day Mouse Feeding -- NOEL >160 ppm (<32 mg/kg bwt./day)

13-Week Rat Dietary -- NOAEL 150 ppm (11.7 mg/kg bwt./day)

13-Week Mouse Dietary -- NOEL 40 ppm (8.2 mg/kg bwt./day)

13-Week Dog Dietary -- NOAEL 120 ppm (4.2 mg/kg bwt./day)

5. *Chronic toxicity.* Chlorfenapyr is not oncogenic in either Sprague Dawley rats or CD-1 mice and is not likely to be carcinogenic in humans. The following are the results of the chronic toxicity tests that have been conducted with chlorfenapyr:

1-Year Neurotoxicity in Rats -- NOEL 60 ppm (2.6/3.4 mg/kg bwt./day M/F)

1-Year Dog Dietary -- NOEL 120 ppm (4.0/4.5 mg/kg bwt./day M/F)

24-Month Rat Dietary -- NOEL for Chronic Effects 60 ppm (2.9/3.6 mg/kg bwt./day M/F) and NOEL for Oncogenic Effects 600 ppm (31/37 mg/kg bwt./day M/F)

18-Month Mouse Dietary -- NOEL for Chronic Effects 20 ppm (2.8/3.7 mg/kg bwt./day M/F) and NOEL for Oncogenic Effects 240 ppm (34.5/44.5 mg/kg bwt./day M/F)

6. *Animal metabolism.* A metabolism study was conducted in Sprague Dawley rats at approximately 20 and 200 mg/kg bwt. using radiolabeled chlorfenapyr. Approximately 65% of the administered dose was eliminated during the first 24 hours (62% in feces and 3% in urine) and by 48 hours following dosing, approximately 85% of the dose had been excreted (80% in feces and 5% in urine). The absorbed chlorfenapyr-related residues were distributed throughout the body and detected in tissues and organs of all treatment groups. The principal route of elimination was via feces, mainly as unchanged parent plus minor N-dealkylated, debrominated and hydroxylated oxidation products.

The metabolic pathway of chlorfenapyr in the laying hen and the lactating goat was also similar to that in laboratory rats.

7. *Metabolite toxicology.* The parent molecule is the only moiety of toxicological significance which needs regulation in plant and animal commodities.

8. *Endocrine effects.* Collective organ weights and histopathological findings from the 2-generation rat reproduction study, as well as from the subchronic and chronic toxicity studies in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available which suggests that chlorfenapyr would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* For purposes of assessing the potential dietary exposure, a Theoretical Maximum Residue Contribution (TMRC) has been calculated from the tolerance of chlorfenapyr in/on citrus at 0.5 ppm. This exposure assessment is based on very conservative assumptions, namely 100% of all citrus is treated with chlorfenapyr and that the residues of chlorfenapyr in citrus are at the tolerance level. Although there are no other established US permanent tolerances for chlorfenapyr, a petition for a permanent tolerance at 0.5 ppm in cottonseed is pending at the Agency. Therefore, the dietary exposures to residues of chlorfenapyr in or on food will be limited to residues in cottonseed, citrus and food and feed items derived from them. As dried citrus pulp is a dairy and beef cattle feed item, a cold feeding study with dairy cattle was conducted. Since this study demonstrated that measurable residues of chlorfenapyr may occur in milk, meat and meat by products, appropriate residue tolerances for these items are proposed. The contribution of the citrus tolerances alone to the daily consumption uses only 0.23% of the reference dose (RfD) for the overall US population. The combined contributions of the citrus and the pending cottonseed tolerances to the daily consumption uses less than 1% (actual 0.85%) of the reference dose for the overall US population and less than 3% (actual 2.23%) and less than 1% (actual 0.89%) of the reference doses for children aged 1-6 and for non-nursing infants, respectively.

ii. *Drinking water.* There is no available information about chlorfenapyr exposures via levels in drinking water. There is no concern for exposure to residues of chlorfenapyr in drinking water because of its extremely low water solubility (120 ppb at 25°). Chlorfenapyr is also immobile in soil and does not leach because it is strongly adsorbed to all common soil types. In addition, the label explicitly prohibits applications near aquatic areas

There is a reasonable certainty that no harm will result from dietary exposure to chlorfenapyr, because dietary exposure to residues on food will use only a small fraction of the (RfD) (including exposure of sensitive subpopulations), and exposure through drinking water is expected to be insignificant.

2. *Non-dietary exposure.* There is no available information quantifying non-dietary exposure to chlorfenapyr. However, based on the physico-chemical characteristics of the compound, the proposed use pattern and available information concerning its environmental fate, non-dietary exposure is expected to be negligible. The vapor pressure of chlorfenapyr is less than 1×10^{-7} mm of Hg; therefore, the potential for non-occupational exposure by inhalation is insignificant. Moreover, the current proposed registration is for outdoor, terrestrial uses which severely limit the potential for non-occupational exposure.

D. Cumulative Effects

The pyrrole insecticides represent a new class of chemistry with a unique mechanism of action. The parent molecule, AC 303,630 is a pro-insecticide which is converted to the active form, CL 303,268, via rapid metabolism by mixed function oxidases (MFOs). The active form uncouples oxidative phosphorylation in the insect mitochondria by disrupting the proton gradient across the mitochondrial membrane. The production of ATP is inhibited resulting in the cessation of all cellular functions. Because of this unique mechanism of action, it is highly unlikely that toxic effects produced by chlorfenapyr would be cumulative with those of any other pesticide chemical.

In mammals, there is a lower titer of MFOs, and chlorfenapyr is metabolized by different pathways (including dehalogenation, oxidation and ring hydroxylation) to other polar metabolites without any significant accumulation of the potent uncoupler, CL—303,268. In the rat, approximately 85 % of the administered dose is excreted in the feces within 48-hours, thereby reducing the levels of AC 303,630 and CL 303,268 that are capable of reaching the mitochondria. This differential metabolism of AC 303,630 to CL 303,268 in insects versus to other polar metabolites in mammals is responsible for the selective insect toxicity of the pyrroles.

E. Safety Determination

1. *U.S. population.* The RfD of 0.03 mg/kg bwt./day for the residues of chlorfenapyr in citrus is calculated by applying a 100-fold safety factor to the overall NOEL of 3 mg/kg bwt./day. This NOEL is of based on the results of the chronic feeding studies in the rat and mouse and the 2-generation reproduction study in the rat (see Item 2). The TMRC for the proposed tolerances in citrus alone, (0.0000692 mg/kg bwt./day), will utilize only 0.23% of the RfD for the general U.S. population and the combined TMRC for the proposed chlorfenapyr tolerances in cottonseed, citrus, milk and meat (0.0002558 mg/kg bwt./day) will utilize approximately 0.85% of the RfD for the general U.S. population.

2. *Infants and children.* The TMRC in milk consumed by a non-nursing infant

(>1-year of age) is 0.0002435 mg/kg bwt./day. The combined tolerances will use less than 1% (actual 0.89%) of the RfD for non-nursing infants. The TMRC in milk consumed by a child (1-6 years of age) is 0.0003886 mg/kg bwt./day. The combined TMRC for the proposed chlorfenapyr tolerances in cottonseed, citrus meat and milk consumed by a child 1-6 years of age is 0.0006708 mg/kg bwt./day, which is less than 3% (actual 2.23%) of the RfD. Therefore, the results of the toxicology and metabolism studies support both the safety of chlorfenapyr to humans based on the intended use as an insecticide-miticide on citrus and cottonseed and the granting of the requested tolerances in cottonseed, citrus, milk, milk fat solids, meat and meat by-products.

Based on the conservative assumptions used in proposing the above tolerances and the absence of other non-dietary routes of exposure to chlorfenapyr, and since the calculated exposures are well below 100% of the reference dose, there is a reasonable certainty that no harm will result from aggregate exposure to residues of chlorfenapyr, including all anticipated dietary exposure and all other non-occupational exposures. The use of a 100-fold safety factor ensures an acceptable margin of safety for both the overall U. S. population as well as infants and children. As the toxicology database (reproduction/developmental and teratology studies) is complete, valid and reliable, no additional safety factor is needed.

The 100-fold margin of safety is adequate to assure a reasonable certainty of no harm to infants and children from the proposed use. As stated earlier, the NOEL is based on the effects observed in the rat and mouse chronic oncogenicity studies, (reduced body weight gains, increased globulin and cholesterol values and increased liver weights in the rat and reduced body weight gains and vacuolation of white matter of the mouse brain), the one-year neurotoxicity study in the rat, (reduced body weight gains and vacuolar myelinopathy of the brain and spinal cord that is completely reversible following termination of treatment and is not associated with any damage to neuronal cell bodies or axons; vacuolation of the white matter is a consequence of edema (water) formation between the myelin layers which result from the unrestricted movement of ions across the cell membranes) and the 2-generation rat reproduction study, (reduced body weight gains for parental animals and reduced pup body weights for the F1 and F2 litters; however no behavioral changes were observed in either F1 or F2 offsprings in the 2-generation reproduction study). Moreover, as the NOELs for fetal/developmental toxicity are significantly higher than those for maternal toxicity, the results indicate that chlorfenapyr is neither a developmental toxicant nor a teratogenic agent in either the Sprague-Dawley rat or New Zealand White rabbit. Thus, there is no reliable information to indicate that there would be a variability in the sensitivities of infants and children and adults to the effects of exposure to chlorfenapyr.

F. International Tolerances

Section 408 (b)(4) of the amended FFDCA requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission.

There is neither a Codex proposal, nor Canadian or Mexican tolerances/limits for residues of chlorfenapyr in/on citrus. Therefore, a compatibility issue is not relevant to the proposed tolerance.

2. Rohm and Haas Company

PP 6G4681

EPA has received a pesticide petition (PP 6G4681) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of tebufenozide, benzoic acid, 3,5-dimethyl-,1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide in or on the raw agricultural commodity pears at 1.5 (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of tebufenozide in plants (grapes, apples, rice and sugar beets) is adequately understood for the purposes of these tolerances. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage. The metabolism of tebufenozide in goats proceeds along the same metabolic pathway as observed in plants. No accumulation of residues in tissues or milk occurred. Because apple pomace is not fed to poultry, there is no reasonable expectation that measurable residues of tebufenozide will occur in eggs, poultry meat or poultry meat by-products.

2. *Analytical method.* A high performance liquid chromatographic (HPLC) analytical method using ultraviolet (UV) or mass selective detection have been validated for apples. The method involves extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limits of quantitation is 0.02 ppm for apples.

B. Toxicological Profile

1. *Acute toxicity.* Tebufenozide has low acute toxicity. Tebufenozide Technical was practically non-toxic by ingestion of a single oral dose in rats and mice (LD_{50} > 5,000 milligram/kilograms (mg/kg) and was practically non-toxic by dermal application (LD_{50} > 5,000 mg/kg). Tebufenozide Technical was not significantly toxic to rats after a 4-hr inhalation exposure with an LC_{50} value of 4.5 mg/L (highest attainable concentration), is not considered to be a primary eye irritant or a skin irritant and is not a dermal sensitizer. An acute neurotoxicity study in rats did not produce any neurotoxic or neuropathologic effects.

2. *Genotoxicty.* Tebufenozide technical was negative (non-mutagenic) in an Ames assay with and without hepatic enzyme activation and in a reverse mutation assay with *E. coli.* Tebufenozide technical was negative in a hypoxanthine guanine phophoribosyl transferase (HGPRT) gene mutation assay using Chinese hamster ovary (CHO) cells in culture when tested with and without hepatic enzyme activation. In isolated rat hepatocytes, tebufenozide technical did not induce unscheduled DNA synthesis (UDS) or repair when tested up to the maximum soluble concentration in culture medium. Tebufenozide did not produce chromosome effects *in vivo* using rat bone marrow cells or *in vitro* using Chinese hamster ovary cells (CHO). On the basis of the results from this battery of tests, it is concluded that tebufenozide is not mutagenic or genotoxic.

3. *Reproductive and developmental toxicity*—i. NOELs for developmental and maternal toxicity to tebufenozide

were established at 1,000 milligram/kilograms/day (mg/kg/day) highest dose tested (HDT) in both the rat and rabbit. No signs of developmental toxicity were exhibited.

ii. In a 2-generation reproduction study in the rat, the reproductive/developmental toxicity (NOEL) of 12.1 mg/kg/day was 14-fold higher than the parental (systemic) toxicity NOEL 10 ppm 0.85 mg/kg/day. Equivocal reproductive effects were observed only at the 2,000 ppm dose.

iii. In a second rat reproduction study, the equivocal reproductive effects were not observed at 2,000 ppm (the NOEL equal to 149-195 mg/kg/day) and the NOEL for systemic toxicity was determined to be 25 ppm (1.9-2.3 mg/kg/day).

4. *Subchronic toxicity*— i. The NOEL in a 90-day rat feeding study was 200 ppm (13 mg/kg/day for males, 16 mg/kg/day for females). The lowest-observed-effect-level (LOEL) was 2,000 ppm (133 mg/kg/day for males, 155 mg/kg/day for females). Decreased body weights in males and females was observed at the LOEL of 2,000 ppm. As part of this study, the potential for tebufenozide to produce subchronic neurotoxicity was investigated. Tebufenozide did not produce neurotoxic or neuropathologic effects when administered in the diets of rats for 3-months at concentrations up to and including the limit dose of 20,000 ppm (NOEL = 1330 mg/kg/day for males, 1,650 mg/kg/day for females).

ii. In a 90-day feeding study with mice, the NOEL was 20 ppm (3.4 and 4.0 mg/kg/day for males and females, respectively). The LOEL was 200 ppm (35.3 and 44.7 mg/kg/day for males and females, respectively). Decreases in body weight gain were noted in male mice at the LOEL of 200 ppm.

iii. A 90-day dog feeding study gave a NOEL of 50 ppm (2.1 mg/kg/day for males and females). The LOEL was 500 ppm (20.1 and 21.4 mg/kg/day for males and females, respectively). At the LOEL, females exhibited a decrease in rate of weight gain and males presented an increased reticulocyte

iv. A 10-week study was conducted in the dog to examine the reversibility of the effects on hematological parameters that were observed in other dietary studies with the dog. Tebufenozide was administered for 6-weeks in the diet to 4 male dogs at concentrations of either 0 or 1,500 ppm. After the 6-week, the dogs receiving treated feed were switched to the control diet for 4-weeks. Hematological parameters were measured in both groups prior to treatment, at the end of the 6-weeks treatment, after 2-weeks of recovery on the control diet and after 4-weeks of recovery on the control diet. All hematological parameters in the treated/recovery group were returned to control levels indicating that the effects of tebufenozide on the hemopoietic system are reversible in the dog.

v. In a 28-day dermal toxicity study in the rat, the NOEL was 1,000 mg/kg/day, (HDT). Tebufenozide did not produce toxicity in the rat when administered dermally for 4-weeks at doses up to and including the limit dose of 1,000 mg/kg/day.

5. *Chronic toxicity*—i. A 1-year feeding study in dogs resulted in decreased red blood cells, hematocrit, and hemoglobin and increased Heinz bodies, reticulocytes, and platelets at the (LOEL) of 8.7 mg/kg/day. The NOEL in this study was 1.8 mg/kg/day.

ii. An 18-month mouse carcinogenicity study showed no signs of carcinogenicity at dosage levels up to and including 1,000 ppm, the highest dose tested.

iii. In a combined rat chronic/oncogenicity study, the NOEL for chronic toxicity was 100 ppm (4.8 and 6.1 mg/kg/day for males and females, respectively) and the LOEL was 1,000 ppm (48 and 61 mg/kg/day for males and females, respectively). No carcinogenicity was observed at the dosage levels up to 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. *Animal metabolism*. The adsorption, distribution, excretion and metabolism of tebufenozide in rats was investigated. Tebufenozide is partially absorbed, is rapidly excreted and does not accumulate in tissues. Although tebufenozide is mainly excreted unchanged, a number of polar metabolites were identified. These metabolites are products of oxidation of the benzylic ethyl or methyl side chains of the molecule. These metabolites were detected in plant and other animal (rat, goat, hen) metabolism studies.

7. *Metabolite toxicology*. Common metabolic pathways for tebufenozide have been identified in both plants (grape, apple, rice and sugar beet) and animals (rat, goat, hen). The metabolic pathway common to both plants and animals involves oxidation of the alkyl substituents (ethyl and methyl groups) of the aromatic rings primarily at the benzylic positions. Extensive degradation and elimination of polar metabolites occurs in animals such that residue are unlikely to accumulate in humans or animals exposed to these residues through the diet.

8. *Endocrine disruption*. The toxicology profile of tebufenozide shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen. Based on structure-activity information, tebufenozide is unlikely to exhibit estrogenic activity. Tebufenozide was not active in a direct *in vitro* estrogen binding assay. No indicators of estrogenic or other endocrine effects were observed in mammalian chronic studies or in mammalian and avian reproduction studies. Ecdysone has no known effects in vertebrates. Overall, the weight of evidence provides no indication that tebufenozide has endocrine activity in vertebrates.

C. Aggregate Exposure

1. *Dietary exposure*. Use of an agricultural pesticide may result, directly or indirectly in pesticide residues in food. These residues are determined by chemical analysis. Data from field studies are evaluated to determine the appropriate level of residue that would not be exceeded if the pesticide were used according to the label use directions.

2. *Plant and animal metabolism*. The metabolism of tebufenozide in plants (grapes, apples, rice and sugar beets) is adequately understood for the purposes of these tolerances. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage. The metabolism of tebufenozide in goats proceeds along the same metabolic pathway as observed in plants. No accumulation of residues in tissues or milk occurred. Because apple pomace is not fed to poultry, there is no reasonable expectation that measurable residues of tebufenozide will occur in eggs, poultry meat or poultry meat by-products.

3. *Analytical methods*. A high performance liquid chromatographic (HPLC) analytical method using ultraviolet (UV) or mass selective detection have been validated for apples. The method involves extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limits of quantitation is 0.02 ppm for apples.

4. *Food*. Tolerances for residues of tebufenozide are currently expressed as benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2(4-ethylbenzoyl) hydrazide. Tolerances currently exist for residues on apples at 1.0 ppm (import

tolerance) and on walnuts at 0.1 ppm (see 40 CFR 180.482).

5. *Acute risk*—i. No appropriate acute dietary endpoint was identified by the Agency. This risk assessment is not required.

ii. *Chronic risk.* For chronic dietary risk assessment, the tolerance and temporary tolerance values are used and the assumption that all walnuts, imported apples and pears which are consumed in the U.S. will contain residues at the tolerance level. The theoretical maximum residue contribution (TMRC) using existing tolerances and temporary tolerances for tebufenozide on food crops is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of those food products consumed by various population subgroups and assuming that 100% of the food crops are treated with tebufenozide. The Theoretical Maximum Residue Contribution (TMRC) from current tolerances and temporary tolerances (MRID 44319101) is calculated using the Dietary Exposure Evaluation Model (Version 5.03b, licensed by Novigen Sciences Inc.) which uses USDA food consumption data from the 1989-1992 survey.

With the current and proposed uses of tebufenozide, the TMRC estimate represents 4.31% of the Reference dose (RfD) for the U.S. population as a whole. The subgroup with the greatest chronic exposure is non-nursing infants (less than 1-year old), for which the TMRC estimate represents 20.3% of the RfD. The chronic dietary risks from these uses do not exceed EPA's level of concern.

6. *Drinking water.* An additional potential source of dietary exposure to residues of pesticides are residues in drinking water. Review of environmental fate data by the Environmental Fate and Effects Division concludes that tebufenozide is moderately persistent to persistent and mobile, and could potentially leach to groundwater and runoff to surface water under certain environmental conditions. However, in terrestrial field dissipation studies, residues of tebufenozide and its soil metabolites showed no downward mobility and remained associated with the upper layers of soil. Foliar interception (up to 60% of the total dosage applied) by target crops reduces the ground level residues of tebufenozide. There is no established Maximum Concentration Level (MCL) for residues of tebufenozide in drinking water. No drinking water health advisory levels have been established for tebufenozide.

There are no available data to perform a quantitative drinking water risk assessment for tebufenozide at this time. However, in order to mitigate the potential for tebufenozide to leach into groundwater or runoff to surface water, precautionary language has been incorporated into the product label. Also, to the best of our knowledge, previous experience with more persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Considering the precautionary language on the label and based on our knowledge of previous experience with persistent chemicals, significant exposure from residues of tebufenozide in drinking water is not anticipated.

7. *Non-dietary exposure.* Tebufenozide is not registered for either indoor or outdoor residential use. Non-occupational exposure to the general population is therefore not expected and not considered in aggregate exposure estimates.

D. Cumulative Effects

The potential for cumulative effects of tebufenozide with other substances that have a common mechanism of toxicity was considered. Tebufenozide belongs to the class of insecticide chemicals known as diacylhydrazines. The only other diacylhydrazine currently registered for non-food crop uses is halofenozide. Tebufenozide and halofenozide both produce a mild, reversible anemia following subchronic/chronic exposure at high doses; however, halofenozide also exhibits other patterns of toxicity (liver toxicity following subchronic exposure and developmental/systemic toxicity following acute exposure) which tebufenozide does not. Given the different spectrum of toxicity produced by tebufenozide, there is no reliable data at the molecular/mechanistic level which would indicate that toxic effects produced by tebufenozide would be cumulative with those of halofenozide (or any other chemical compound).

In addition to the observed differences in mammalian toxicity, tebufenozide also exhibits unique toxicity against target insect pests. Tebufenozide is an agonist of 20-hydroxyecdysone, the insect molting hormone, and interferes with the normal molting process in target lepidopteran species by interacting with ecdysone receptors from those species. Unlike other ecdysone agonists such as halofenozide, tebufenozide does not produces symptoms which may be indicative of systemic toxicity in beetle larvae (*Coleopteran* species). Tebufenozide has a different spectrum of activity than other ecdysone agonists. In contrast to the other agonists such as halofenozide which act mainly on coleopteran insects, tebufenozide is highly specific for lepidopteran insects.

Based on the overall pattern of toxicity produced by tebufenozide in mammalian and insect systems, the compound's toxicity appears to be distinct from that of other chemicals, including organochlorines, organophosphates, carbamates, pyrethroids, benzoylureas, and other diacylhydrazines. Thus, there is no evidence to date to suggest that cumulative effects of tebufenozide and other chemicals should be considered.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the dietary exposure to tebufenozide from the current and proposed tolerances will utilize 4.31% of the RfD for the U.S. population and 20.3% for non-nursing infants under 1-year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues to the U.S. population and non-nursing infants.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, data from developmental toxicity studies in the rat and rabbit and 2-generation reproduction studies in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to 1 or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. Developmental toxicity was not observed in developmental studies using rats and rabbits. The NOEL for developmental effects in both rats and rabbits was 1,000 mg/kg/day, which is the limit dose for testing in developmental studies.

In the 2-generation reproductive toxicity study in the rat, the reproductive/ developmental toxicity NOEL of 12.1 mg/kg/day was 14-fold higher than the parental (systemic) toxicity NOEL (0.85 mg/kg/day). The reproductive (pup) LOEL of 171.1 mg/kg/day was based on a slight increase in both generations in the number of pregnant females that either did not deliver or had difficulty and had to be sacrificed. In addition, the length of gestation increased and implantation sites decreased significantly in F1 dams. These effects were not replicated at the same dose in a second 2-generation rat reproduction study. In this second study, reproductive effects were not observed at 2,000 ppm (the NOEL equal to 149-195 mg/kg/day) and the NOEL for systemic toxicity was determined to be 25 ppm (1.9-2.3 mg/kg/day).

Because these reproductive effects occurred in the presence of parental (systemic) toxicity and were not replicated at the same doses in a second study, these data do not indicate an increased pre-natal or post-natal sensitivity to children and infants (that infants and children might be more sensitive than adults) to tebufenozide exposure. FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. Based on current toxicological data discussed above, an additional uncertainty factor is not warranted and the RfD at 0.018 mg/kg/day is appropriate for assessing aggregate risk to infants and children. Rohm and Haas concludes that there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of tebufenozide.

F. International Tolerances

There are no approved CODEX maximum residue levels (MRLs) established for residues of tebufenozide. At the 1996 Joint Meeting for Pesticide Residues, the FAO expert panel considered residue data for pome fruit and proposed an MRL (Step 3) of 1.0 mg/kg.

3. Valent U.S.A. Corporation

PP 7F4882

EPA has received a pesticide petition (PP 7F4882) from Valent U.S.A. Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine in or on the raw agricultural commodity Pome Fruits(Crop Group 11, including apples and pears) at 0.2 (ppm), Walnuts at 0.02 ppm, and Apple Pomace,wet at 0.8 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residues in cotton, apples, and animals is adequately understood. Metabolism of 14C-pyriproxyfen labelled in the phenoxyphenyl ring and in the pyridyl ring was studied in cotton, apples, lactating goats, and laying hens (and rats). The nature of the residue is defined by the metabolism studies primarily as pyriproxyfen. The major metabolic pathways in plants is hydroxylation and cleavage of the ether linkage, followed by further metabolism into more polar products by oxidation or conjugation reactions, however, the bulk of the radiochemical residues was parent. Comparing metabolites from cotton, apple, goat and hen (and rat) shows that there are no significant metabolites in plants which are not also present in the excreta or tissues of animals.

Ruminant and poultry metabolism studies demonstrated that transfer of administered 14C residues to tissues was low. Total 14C residues in goat milk, muscle and tissues accounted for less than 2% of the administered dose, and were less than 1 ppm in all cases. In poultry, total 14C residues in eggs, muscle and tissues accounted for about 2.7% of the administered dose, and were less than 1 ppm in all cases except for gizzard.

2. *Analytical method.* Practical analytical methods for detecting and measuring levels of pyriproxyfen (and relevant metabolites) have been developed and validated for the raw agricultural commodities, their respective processing fractions, and animal tissues. The methods have been independently validated in cottonseed and apples (and oranges) and the extraction methodology has been validated using aged radiochemical residue samples from metabolism studies. EPA has(personal communication) successfully validated the analytical method for analysis of cottonseed raw agricultural commodity. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of food with residues at or above the levels set for the proposed tolerance.

3. *Magnitude of residues*—i. *Apples.* A total of fifteen trials were conducted in 1994, 1995, and 1996 to determine the magnitude of the residue in apples and apple processing commodities from regions representing approximately 97% of the commercial U.S. apple acreage. The mean residue of pyriproxyfen found in these samples was 0.091 ppm with a standard deviation (δ, n-1 degrees of freedom) of 0.035 ppm and a maximum residue of 0.18 ppm. Apples from two sites were processed into juice and wet pomace. The results from the processing samples show that pyriproxyfen was substantially retained with the wet pomace fraction, resulting in a 5 x concentration in this fraction. The average processing concentration factor for pyriproxyfen from fruit into apple pomace, wet, was 4.89 x. No residues of pyriproxyfen above the 0.01 LOD was detected in the juice fractions.

ii. *Pears.* A total of eight trials were conducted in 1994, 1995, and 1996 to determine the magnitude of the residue of pyriproxyfen in pears from regions representing approximately 95% of the commercial U.S. pear acreage. The mean residue of pyriproxyfen found in these samples was 0.039 ppm with a standard deviation (δ, n-1 degrees of freedom) of 0.016 ppm and a maximum residue of 0.07 ppm.

iii. *Walnuts.* A total of 4 trials were conducted in 1996 to determine the magnitude of the residue of pyriproxyfen in walnut nutmeats all in region x where 98% of the commercial walnut acreage is located. No residues of pyriproxyfen above the 0.01 ppm limit of detection were found in any walnut nutmeat collected for this study.

4. *Secondary residues.* Since low residues were detected in animal feed items (cotton gin byproducts, apple pomace, wet) and animal metabolism studies do not show potential for significant residue transfer, detectable secondary residues in animal tissues, milk, and eggs are not expected. Therefore, tolerances are not needed for these commodities.

B. Toxicological Profile

1. *Acute toxicity.* The acute toxicity of technical grade pyriproxyfen is low by all routes, classified as Category III for acute dermal and inhalation toxicity, and Category IV for acute oral toxicity, and skin/eye irritation. Pyriproxyfen is not a skin sensitizing agent.

2. *Genotoxicty*. Pyriproxyfen does not present a genetic hazard. Pyriproxyfen was negative in the following tests for mutagenicity: Ames assay with and without S9, *in vitro* unscheduled DNA synthesis in HeLa S3 cells, *in vitro* gene mutation in V79 Chinese hamster cells, and *in vitro* chromosomal aberration with and without S9 in Chinese hamster ovary cells.

3. *Reproductive and developmental toxicity*. Pyriproxyfen is not a developmental toxicant. In the rat teratology study, maternal toxicity was observed at doses of 300 mg/kg/day and greater, the NOEL for prenatal developmental toxicity was 100 mg/kg/day. A rabbit teratology study resulted in a maternal NOEL of 100 mg/kg/day, with no developmental effects observed in the rabbit fetuses.

In the study conducted with rats, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 mg/kg/day during gestation days 7-17. Maternal toxicity (mortality, decreased body weight gain and food consumption and clinical signs of toxicity) was observed at doses of 300 mg/kg/day and greater. The maternal NOEL was 100 mg/kg/day. A transient increase in skeletal variations was observed in rat fetuses exposed to 300 mg/kg/day and greater. These effects were not present in animals examined at the end of the postnatal period, therefore, the NOEL for prenatal developmental toxicity was 100 mg/kg/day. An increased incidence of visceral and skeletal variations was observed postnatally at 1,000 mg/kg/day. The NOEL for postnatal developmental toxicity was 300 mg/kg/day. In the study conducted with rabbits, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 mg/kg/day during gestation days 6-18. Maternal toxicity (clinical signs of toxicity including one death, decreased body weight gain and food consumption, and abortions or premature deliveries) was observed at oral doses of 300 mg/kg/day or higher. The maternal NOEL was 100 mg/kg/day. No developmental effects were observed in the rabbit fetuses. The NOEL for developmental toxicity in rabbits was 1,000 mg/kg/day.

Pyriproxyfen is not a reproductive toxicant. Pyriproxyfen was administered in the diet at levels of 0, 200, 1,000, and 5,000 ppm through 2- generations of rats. Adult systemic toxicity (reduced body weights, liver and kidney histopathology, and increased liver weight) was produced at the 5,000 ppm dose (453 mg/kg/day in males, 498 mg/kg/day in females during the pre-mating period). The systemic NOEL was 1,000 ppm (87 mg/kg/day in males, 96 mg/kg/day in females). No effects on reproduction were produced even at 5,000 ppm, the highest dose tested.

4. *Subchronic toxicity*. Subchronic oral toxicity studies conducted with pyriproxyfen technical in the rat, mouse and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of decreased body weight gain; increased liver weights; histopathological changes in the liver and kidney; decreased red blood cell counts, hemoglobin and hematocrit; altered blood chemistry parameters; and, at 5,000 and 10,000 ppm in mice, a decrease in survival rates. The NOELs from these studies were 400 ppm (23.5 mg/kg/day for males, 27.7 mg/kg/day for females) in rats, 1,000 ppm (149.4 mg/kg/day for males, 196.5 mg/kg/day for females) in mice, and 100 mg/kg/day in dogs.

In a 4-week inhalation study of pyriproxyfen technical in rats, decreased body weight and increased water consumption were observed at 1,000 mg/m3 . The NOEL in this study was 482 mg/m3.

A 21-day dermal toxicity study in rats with pyriproxyfen technical did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg/day, the highest dose tested. In a 21-day dermal study conducted with KNACK Insect Growth Regulator the test material produced a NOEL of 1,000 mg/kg/day (highest dose tested) for systemic effects, and a NOEL for skin irritation of 100 mg/kg/day.

5. *Chronic toxicity*. Pyriproxyfen technical has been tested in chronic studies with dogs, rats and mice.

Pyriproxyfen technical was administered to dogs in capsules at doses of 0, 30, 100, 300 and 1,000 mg/kg/day for 1-year. Dogs exposed to dose levels of 300 mg/kg/day or higher showed overt clinical signs of toxicity, elevated levels of blood enzymes and liver damage. The NOEL in this study was 100 mg/kg/day.

Pyriproxyfen technical was administered to mice at doses of 0, 120, 600 and 3,000 ppm in diet for 78-weeks. The NOEL for systemic effects in this study was 600 ppm (84 mg/kg/day in males, 109.5 mg/kg/day in females), and a LOEL of 3,000 ppm (420 mg/kg/day in males, 547 mg/kg/day in females) was established based on an increase in kidney lesions.

In a 2-year study in rats, pyriproxyfen technical was administered in the diet at levels of 0, 120, 600, and 3,000 ppm. The NOEL for systemic effects in this study was 600 ppm (27.31 mg/kg/day in males, 35.1 mg/kg/day in females). A LOEL of 3,000 ppm (138 mg/kg/day in males, 182.7 mg/kg/day in females) was established based on a depression in body weight gain in females.

EPA has established a RfD for pyriproxyfen of 0.35 mg/kg/day, based on the rat 2-year chronic/oncogenicity study. Effects cited by EPA in the RfD Tracking Report include negative trend in mean red blood cell volume; increased hepatocyte cytoplasm and cytoplasm:nucleus ratios; and decreased sinusoidal spaces.

Pyriproxyfen is not a carcinogen. Studies with pyriproxyfen show that repeated high dose exposures produced changes in the liver, kidney and red blood cells, but did not produce cancer in test animals. No oncogenic response was observed in a rat 2-year chronic feeding/oncogenicitystudy or in a 78-week study on mice.

Pyriproxyfen's oncogenicity classification is "E" (no evidence of carcinogenicity for humans).

6. *Animal metabolism*. The mammalian metabolism of pyriproxyfen is understood. The absorption, tissue distribution, metabolism and excretion of 14C-labeled pyriproxyfen were studied in rats after single oral doses of 2 or 1,000 mg/kg (phenoxyphenyl and pyridyl label), and after a single oral dose of 2 mg/kg (phenoxyphenyl label only) following 14 daily oral doses at 2 mg/kg of unlabelled material.

Both the phenoxyphenyl-label and pyridyl-label studies exhibited very similar results. For all dose groups, most (88-96%) of the administered radiolabel was excreted in the urine and feces within 2-days after radiolabeled test material dosing, and 92-98% of the administered dose was excreted within 7-days. 7-days after dosing, tissue residues were generally low, accounting for no more than 0.3% of the dosed 14^C. 14^C concentrations in fat were the highest in tissues analyzed. Recovery in tissues over time indicates that the potential for bioaccumulation is minimal. There are no significant sex or dose-related differences in excretion or metabolism.

7. *Endocrine disruption*. Pyriproxyfen is specifically designed to be an insect growth regulator and is known to produce juvenile hormone-mediated effects in arthropods. However, this mechanism-of-action in target insects has no relevance to the mammalian endocrine system. While specific tests, uniquely designed to evaluate the potential effects of pyriproxyfen on mammalian endocrine systems have not been conducted, the toxicology of pyriproxyfen has been extensively evaluated in acute, sub-chronic, chronic, developmental, and reproductive toxicology studies. The results of these studies show no

evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, it is concluded that Sumilarv does not possess estrogenic or endocrine disrupting properties applicable to mammals.

C. Aggregate Exposure

1. *Dietary exposure.* A chronic dietary exposure and risk assessment based on anticipated residues from samples from field residue studies was performed in cotton, apple, pear, and walnut and assumed that 100% of the crops were treated. The exposure analysis also reflected the contribution of meat and milk residues, without regard to detectability, based on commodities used for feed containing residues at anticipated residue levels.

Using mean anticipated residue values and 100% of the crop treated, exposure to the U.S. population - 48 States - all seasons is calculated to be only 0.000049 mg/kg body-wt/day. The most exposed sub-population, non-nursing infants (<1-year), is calculated to be 0.000273 mg/kg bwt./day. These calculated exposures represent, respectively, 0.014, and 0.078 percent occupancy of the RfD of 0.35 mg/kg body-wt/day. Chronic dietary risk from exposure to pyriproxyfen residues on the proposed crops may be characterized as negligible.

2. *Drinking water.* Since pyriproxyfen is to be applied outdoors to growing agricultural crops, the potential exists for the parent or its metabolites to reach ground or surface water that may be used for drinking water.

3. *Ground water.* Pyriproxyfen is extremely insoluble in water (0.367 mg/L at 25°, with high octanol/water partitioning constant (Log P O/W = 5.37 at 25°, and relatively short soil half-life (aerobic soil metabolism T ½ = 6 to 9 days). Given the low use rates, the immobility of the parent and the instability of the soil metabolites in soil, it is very unlikely that pyriproxyfen or its metabolites could leach to and contaminate potable groundwater.

4. *Surface water.* In connection with the potential for dietary exposure from surface potable water, a simulation of expected exposure concentration (EEC) values in aquatic systems has been performed using the Pesticide Root Zone Model (PRZM-3) and the Exposure Analysis Modeling System, version 2.97 (EXAMSII). The simulation was designed to approximate as closely as possible the conditions associated with the high rate proposed use on tree crops. The results of the modelingdemonstrate that the maximum upper tenth percentile concentrations modeled in water adjacent to treated fields are instantaneous, 0.36 ppb; 96-hour, 0.23 ppb; and 21-day, 0.14 ppb.

To obtain a very conservative estimate of a possible dietary exposure from drinking water, it could be assumed that all water consumed contains pyriproxyfen at the maximum upper tenth percentile concentrations modeled in aquatic systems adjacent to treated orchards. The 21-day concentration, 0.14 ppb (0.00014 mg/kg), is used because drinking water is considered to be a chronic exposure, and there are no identified acute or short term endpoints of concern. Using standard assumptions of body weight and water consumption (adult 70 kg, 2 kg water per day; child 10 kg, 1 kg water), the highest possible exposure would be 4.0 x 10-6 and 1.4 x 10-5 mg/kg bwt./day for the adult and child, respectively. This very small, but probably exaggerated, exposure would occupy 0.00114 (adult) and 0.004 (child) percent of the chronic reference dose of 0.35 mg/kg body-wt/day.

5. *Non-dietary exposure.* Pyriproxyfen has numerous registered products for household use primarily of indoor, non-food applications by consumers. The consumer uses of pyriproxyfen typically do not involve chronic exposure. Instead, consumers are exposed intermittently to a particular product (e.g., pet care pump spray) containing pyriproxyfen. Since the pharmacokinetics of pyriproxyfen indicate a relatively short elimination half-life, cumulative toxicological effects resulting from bioaccumulation are not plausible following these short-term, intermittent exposures. Further, pyriproxyfen is very short-lived in the environment and this indoor domestic use of pyriproxyfen may provide only relatively short-term reservoirs.

The most relevant exposure for non-dietary exposure assessment is short-term to intermediate average daily exposure estimates. The non-dietary exposure assessment for pyriproxyfen conservatively focuses on upper-bound estimates of potential applicator (adult) and post-application (adult and child - less than 1-year old) exposures on the day of application. Subsequent days present no applicator exposure, and a decreasing contribution to short-term total exposure.

The assessment presented herein estimates exposures for selected consumer uses that are considered representative, plausible, and reasonable worst case exposure scenarios. The scenarios selected include:

(i) Potential exposures associated with adult application (dermal and inhalation exposures) and post-application (adult and child inhalation exposures) of pyriproxyfen-containing pet care products; and

(ii) Potential adult application exposures (dermal and inhalation), and adult (inhalation) and child exposures (inhalation, dermal, incidental oral ingestion associated with hand-to-mouth behavior) post-application exposures associated with consumer use of a carpet spray product.

Using a combination of representative information from the PHED data base for applicators (adult), and surrogate data from a study of exposure to indoor broadcast applications (post-application adult and child) a series of adsorbed dose estimates were calculated for adult applicators, and post-application exposures to adults and children by dermal, inhalation, and (hand-to-mouth) oral routes. The methodology, assumptions, and estimates are presented in detail in the full FQPA exposure analysis, the table below presents the results.

SUMMARY OF ESTIMATED HUMAN APPLICATION AND POST-APPLICATION EXPOSURES ASSOCIATED WITH USE OF PET SPRAY AND CARPET SPRAY PRODUCTS CONTAINING PYRIPROXYFEN AS THE ACTIVE INGREDIENT

Product	Population	Timing of Exposure	Daily Dose (mg/kg bw/day)			
			Inhalation[1]	Dermal[2]	Oral[1]	Total
Pet Spray	Adults	Application	4.3×10^{-6}	0.085	[3]NA	0.085
		Post-Application	1.8×10^{-5}	NA	NA	1.8×10^{-5}
		TOTAL	2.2×10^{-5}	0.085	NA	0.085
	Children	Post-Application	3.7×10^{-5}	NA	NA	3.7×10^{-5}
Carpet Spray	Adults	Application	1.3×10^{-6}	5.1×10^{-4}	NA	5.1×10^{-4}
		Post-Application	5.4×10^{-6}	NA	NA	5.4×10^{-6}

SUMMARY OF ESTIMATED HUMAN APPLICATION AND POST-APPLICATION EXPOSURES ASSOCIATED WITH USE OF PET SPRAY AND CARPET SPRAY PRODUCTS CONTAINING PYRIPROXYFEN AS THE ACTIVE INGREDIENT—Continued

Product	Population	Timing of Exposure	Daily Dose (mg/kg bw/day)			
			Inhalation[1]	Dermal[2]	Oral[1]	Total
	Crawling Infant	TOTAL	6.7×10^{-6}	5.1×10^{-4}	NA	5.2×10^{-4}
		Post-Application ...	1.5×10^{-5}	1.3×10^{-3}	2.1×10^{-4}	1.5×10^{-3}

[1] 100 % adsorption.
[2] Conservatively assumes a dermal absorption factor of 50%.
[3] Exposure pathway not applicable.

It is important to emphasize that the exposures summarized in the table are based on conservative assumptions and surrogate data. Further, the exposures are calculated for the day of application. Subsequent daily exposures would be less as pyriproxyfen is adsorbed into substrate, or dissipates and becomes unavailable by other mechanisms. Exposures to applicators on non-application days would be zero.

Further, the Agency has not identified acute or short term toxicity endpoints of concern. Endpoints that could be considered for short term and intermediate exposures include a developmental toxicity no observed effect level (NOEL) of 100 mg/kg/day (rat and rabbit), a rat 21-day dermal systemic NOEL of 1,000 mg/kg/day (technical grade and end-use products), a 4-week rat inhalation toxicity NOEL of 482 mg/m3, and a 90-day rat oral toxicity NOEL of 23.5 mg/kg/day. There are no dermal absorption data for pyriproxyfen. The 1-day exposure calculated for the applicator of the pet spray (0.085 mg/kg/day) is 57-times larger than the next highest calculated exposure which is the total exposure to a crawling infant on the day of application of the carpet spray (1.5×10^{-3} mg/kg/day). Furthermore, the return frequency is much different. Label instructions allow treatment of the dog every 14-days during the flea season, while the carpet can be treated only each 120-days. The 1-day exposure can be compared to the smallest short term endpoint, that from the 90-day rat oral toxicity NOEL of 23.5 mg/kg/day, and a Margin of Exposure (MOE) can be calculated. This compares an acute exposure to a sub-chronic endpoint.

MOE = Toxicity Endpoint (mg/kg/day) ÷ Daily Short Term Exposure (mg/kg/day)

$MOE_{Pet\ Spray\ Applicator,\ One\ day} = 276$

Probably more realistic, a short term daily exposure to the adult applicator can be calculated and compared to the same endpoint.

Daily Exposure (mg/kg/day) = Applicator Exposure (mg/kg/day) ÷ Frequency (days)

$MOE_{Pet\ Spray\ Applicator} = 3900$

Based on the available toxicity data and the conservative exposure assumptions, and because infants and children are not applicators in the household, the smallest acute and short term MOE value for children is based on post-application exposures. The day of application exposure to a crawling infant is the sum of inhalation, dermal adsorption, and oral (hand to mouth) exposures. Subsequent daily exposures are not quantified, but because of dissipation of the active ingredient in the home environment but must be smaller than on the day of application.

$MOE_{Carpet\ Spray,\ Crawling\ Infant} = 15{,}700$

There is usually no cause for concern if margins of exposure exceed 100. All other margins of exposure that can be calculated from the non-occupational, non-dietary exposures summarized in the table above are considerably larger than that for the pet spray applicator and (post carpet spray application) crawling infant.

Summary of Aggregate Non-Occupational Exposures. Aggregate exposure is defined as the sum all non-occupational exposures to the general U.S. population and relevant sub-populations to the single active ingredient, pyriproxyfen. These exposures can be classified as acute, short term, and chronic.

Acute and Short Term Non-Occupational Potential acute and short term non-occupational exposures to pyriproxyfen are associated with household uses -- applicator, bystander, and post-application exposures. For preliminary risk analysis, these exposures, oftentimes calculated using conservative assumptions and surrogate data, are compared to appropriate acute and short term toxicity endpoints to yield margins of exposure (MOE). In general, if exposure estimates are conservative and the resulting MOE values are greater than 100, the Agency is not concerned. In contrast, if conservative MOE values are less than 100, then more refined exposure estimates and/or exposure mitigation are required.

The Agency has not identified acute or short term toxicity endpoints of concern for pyriproxyfen. Valent has identified the 90-day rat oral toxicity with a NOEL of 23.5 mg/kg/day as the short term study with the lowest exposure endpoint. Comparing this endpoint with the short term non-occupational exposures calculated for the household uses of pyriproxyfen gives MOE values all much larger than 100. These acute and short term exposures are small enough to be of little significance.

C. Chronic Exposures

Potential chronic exposures to pyriproxyfen are considered to be derived from dietary exposures to primary and secondary residues in food, and to potential residues in drinking water. To calculate the total potential chronic exposure from food and drinking water, the calculated exposures from both media can be summed. To assess risk these totals can then be compared to the chronic RfD.

Summation of the Calculated Potential Chronic Exposure to Pyriproxyfen in Food and Drinking Water and Percent Occupancy of the RfD for Two U.S. Populations

Medium(mg/kg body-wt/day)	General Population(adult)	Non-NursingInfant (1)
Food	0.000049	0.000273
Drinking Water	0.000004	0.000014

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Summation of the Calculated Potential Chronic Exposure to Pyriproxyfen in Food and Drinking Water and Percent Occupancy of the RfD for Two U.S. Populations—Continued

Medium(mg/kg body-wt/day)	General Population(adult)	Non-NursingInfant (1)
Total	0.000053	0.000287
%RfD(0.35 mg/kg body-wt/day)	0.015	0.082

If the occupancy of the RfD is less than 100%, the Agency usually has little cause for concern. From the table above, it can be seen that the total potential chronic exposure to pyriproxyfen is truly insignificant, and should not be cause for concern.

D. Cumulative Effects

Valent has considered the potential for cumulative exposure to substances with a common mechanism of toxicity to pyriproxyfen. However, a cumulative exposure assessment is not appropriate at this time because there is no available information to indicate that the effects of pyriproxyfen would be cumulative with those of any other chemical compound. Therefore, Valent is considering only the potential risk of pyriproxyfen in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicity database, EPA has established an RfD value of 0.35 mg/kg bwt./day using the NOEL from the chronic rat feeding study and a 100-fold uncertainty factor. The aggregate chronic exposure to pyriproxyfen will utilize less than 0.1% of the RfD for the U.S. population. Because estimated exposures are far below 100 percent of the RfD, Valent concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyriproxyfen residues.

2. *Infants and children.* Using the same conservative exposure assumptions as for the general population, the percent of the RfD utilized by aggregate chronic exposure to residues of pyriproxyfen is 0.082% for non-nursing infants, the most highly exposed population subgroup. Valent concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues of pyriproxyfen.

F. International Tolerances

There are presently no Codex maximum residue levels established for residues of pyriproxyfen on any crop.

[FR Doc. 98–8065 Filed 3–26–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181058; FRL–5780–4]

Triazamate; Receipt of Application for Emergency Exemption; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide triazamate (CAS 112143-82-5) to treat up to 5,000 acres of true fir Christmas trees to control root aphids.

The Applicant proposes the use of a new (unregistered) chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-18058 ," should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Division (7502), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instruction under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be included in the public record by EPA without prior notice. The public docket is available for public inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 2, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-308-9362); e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:. Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of triazamate on true fir Christmas trees to control root aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the root aphid is not new to the Northwest, but has only recently been identified as posing a serious economic threat to true fir Christmas tree plantations. Root aphids feed on the roots of true fir trees, causing stunting and color loss in the foliage, and increasing susceptibility to disease. Losses extend from the first year through the life of the plantation. Attempts to chemically control the aphids during the winged stage during migration to and from fir trees have not been successful. Foliar and soil drench applications of several insecticides have also been tested, with none being adequately successful.

Under the proposed exemption, a maximum of two applications, at least 30 days apart and when aphids are present, at a rate of 0.5 lb/acre of formulated product (0.25 lb/acre active ingredient) would be applied by ground or air. A maximum of 5,000 acres in Kitsap, Lewis, Mason and Thurston counties would be treated. Do not apply

through any type of irrigation system. No application will be permitted within 50 yards of any body of water. Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 12 hours.

This notice does not constitute a decision by EPA on the application itself. The regulations governing Section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), -OR- if an emergency exemption for a use has been requested in any 3 previous years, and a complete application for registration of the use and/or a tolerance petition has not been submitted to the Agency 40 CFR 166.24. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181058] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp- docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181058]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Washinton Department of Agriculture.

List of Subject

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: March 19, 1998

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–8072 Filed 3–26–98; 8:45 am]

BILLING CODE 5560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5988–1]

Proposed CERCLA, RCRA, Clean Water Act, and Oil Pollution Act Prospective Purchaser Agreement for the American Western Refining, L.P. Refinery Site

AGENCY: U.S. Environmental Protection Agency ("U.S. EPA").

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed Prospective Purchaser Agreement ("PPA") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99–499, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sections 6901 *et seq.*, the Clean Water Act ("CWA"), 33 U.S.C. Sections 1251, *et seq.*, the Oil Pollution Act ("OPA"), 33 U.S.C. Sections 2701 *et seq.*, and Section 22.2b of the Illinois Environmental Protection Act, 415 ILCS 5/22.2b, applying to the purchase of equipment to be dismantled and removed from the AWR refinery site ("the Site") located in Lawrenceville, Illinois, has been signed by AWR Acquisition, LC; Clark Oil Trading Company and Blastco Services Company ("settling parties").

Under the PPA, the settling parties agree to dismantle and remove all structures, tanks, units, drums and other equipment above the refinery's ground surface, and drain, remove, and legally dispose, recycle, or sell the contents. The settling parties will also perform asbestos abatement work on each piece of equipment containing asbestos and dispose of the asbestos in accordance with law. U.S. EPA and the United States Coast Guard are currently conducting an oil seep removal action at the Site pursuant to Section 1012 of the Oil Pollution Act, 33 U.S.C. Section 2712. Under the PPA the settling parties will fund certain environmentally beneficial work relating to this oil seep. In particular, the settling parties will provide funding for monitoring, operating, and maintaining oil/water separator and wastewater treatment systems, site security, electrical power, utility, and fire protection at the Property. In total, the PPA obtains environmentally beneficial work that is estimated to be worth more than $3.9 million.

Opportunity for Public Meeting

Commentors may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. Section 6973(d).

DATES: Comments on the proposed PPA and any request for public meeting must be received by U.S. EPA on or before April 27, 1998.

ADDRESSES: A copy of the proposed PPA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604. Please contact Thomas J. Martin at (312) 886–4273, prior to visiting the Region 5 office. Comments on the proposed PPA should be addressed to Mr. Martin and sent to the address listed above.

FOR FURTHER INFORMATION CONTACT: Thomas J. Martin at (312) 886–4273, of the U.S. EPA Region 5 Office of Regional Counsel, or Kevin Turner, at (312) 886–4444, of the U.S. EPA Superfund Division.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed PPA. Comments should be sent to the addressee identified in this notice.

Dated: March 13, 1998.

David A. Ullrich,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 98–8056 Filed 3–26–98; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the Paperwork Reduction Act of 1995, the Export-Import Bank of the United States (Ex-Im Bank) invites comments on the following information collection for which Ex-Im Bank intends to request approval from the Office of Management and Budget (OMB).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) is

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announcing an opportunity for public comment on the proposed collection.

DATES: Interested persons are invited to submit comments on or before May 26, 1998.

ADDRESSES: Please address written comments to Rick McAleer, Export-Import Bank of the United States, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3958.

FOR FURTHER INFORMATION CONTACT: Copies of these submissions and any additional information may be obtained from Dan Garcia, Export-Import Bank of the United States, 811 Vermont Ave., N.W., Washington, D.C. 20571, (202) 565–3356.

SUPPLEMENTARY INFORMATION:

Abstract: OMB 3048–0005: Two applications fall under this collection. EIB–95–9 is the Ex-Im Bank Letter of Interest Application Form and EIB–95–10 is the Ex-Im Bank Preliminary Commitment and Final Commitment Application Form. There is no change to EIB–95–9 other than a three-year extension of the expiration date. EIB–95–10 is being changed to incorporate additional information requirements that had been requested later in the application process. OMB 3048–0009: Nine applications fall under this collection, only one is being changed (EIB–92–48, Ex-Im Bank Application for Medium-Term Export Credit Insurance). Like, EIB–95–10, EIB–92–48 is being changed to incorporate additional information requirements that had originally been requested later in the application process. The purpose of these application changes is to improve the processing time by requesting all necessary information up-front.

Burden Statement Summary:

Type of request: Revision and extension of expiration date.

OMB Number: 3048–0005 and 3048–0009.

Form Number: EIB–95–9; EIB–95–10; and EIB–92–48.

Title: EIB–95–9—Ex-Im Bank Letter of Interest Application Form; EIB–95–10—Ex-IM Bank Preliminary Commitment and Final Commitment Application Form; and EIB–92–48—Application for Medium-Term Export Credit Insurance.

Frequency of Use: Submission of Applications

Respondents: Any U.S. or foreign bank, other financial institution, other responsible party including the exporter or creditworthy borrowers in a country eligible for Ex-Im Bank assistance.

Estimated total number of annual responses: EIB–95–9:900, EIB–95–10: 550, EIB–92–48: 550.

Estimated total number of hours needed to fill out the form: EIB–95–9: 300, EIB–95–10: 825, EIB–92–48: 825.

Dated: March 23, 1998.

Dan Garcia,

Agency Clearance Officer.

[FR Doc. 98–8015 Filed 3–26–98; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 87–313; DA 98–484]

Accounting and Audits Division

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice invites interested parties to comment on a proposal of numerous modifications to the ARMIS Report 43–07 Infrastructure Report. These modifications would reflect recent changes in the telecommunications industry and capture a more accurate picture of the infrastructure deployed in the public network, particularly in rural areas. The proposed modifications are organized according to each table in the ARMIS Infrastructure Report. Our goal is to improve the Commission's existing infrastructure monitoring system so that the Commission, the states, and other interested parties will have the data necessary to make informed decisions and to track the deployment of new technologies.

DATES: Comments are to be filed on or before April 24, 1998. Reply comments are due on or before May 15, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20052.

FOR FURTHER INFORMATION CONTACT: Anthony Dale, Common Carrier Bureau, Accounting and Audits Division, (202) 418–2260, or via E-mail to "dbyrd@fcc.gov".

SUPPLEMENTARY INFORMATION:

1. The Common Carrier Bureau ("the Bureau") is considering modifications to the Commission's primary tool for assessing infrastructure development in the Automated Reporting Management Information System ("ARMIS"), the ARMIS 43–07 Infrastructure Report. These modifications would reflect recent changes in the telecommunications industry and capture a more accurate picture of the infrastructure deployed in the public network, particularly in rural areas. The ARMIS 43–07 Infrastructure Report illustrates the deployment of infrastructure in the networks of mandatory price cap local exchange carriers ("LECs") by collecting four categories of data: (1) switching equipment; (2) transmission facilities; (3) call set-up time; and (4) plant additions and book costs. The ARMIS 43–07 Infrastructure Report is organized into four tables, one for each category of data.

2. The proposed modifications are organized according to each table in the ARMIS Infrastructure Report. Our goal is to improve the Commission's existing infrastructure monitoring system so that the Commission, the states, and other interested parties will have the data necessary to make informed decisions and to track the deployment of new technologies.

Table I—Switching Equipment Reporting

3. *Asynchronous Transfer Mode Switching.* Table I of ARMIS Report 43–07 provides data on the quantity, features, and number of lines served for three types of switches: (1) electromechanical switches, (2) analog stored program control switches, and (3) digital stored program control switches. Information on switches capable of transmitting the Asynchronous Transfer Mode ("ATM") protocol is not included in this report. Because ATM is a new technology that carriers are deploying in their networks, we propose including information for ATM switches in Table I, and we seek comment on the characteristics of ATM that carriers should provide in the ARMIS 43–07 Infrastructure Report.

4. *Switched Multi-megabit Data Service and Frame Relay Service.* Switched multi-megabit data service ("SMDS") and frame relay service are high-speed data telecommunications services built upon packet-switching technology. These services are widely offered to business customers for high-volume usage. We propose that carriers report data on SMDS and frame relay services in Table I of the ARMIS 43–07 Infrastructure Report and seek comment on which characteristics of switches used to provide SMDS and frame relay services carriers should report.

Table II—Transmission Facilities Reporting

5. Table II of the ARMIS Report 43–07 includes information about existing transmission facilities, which are components of the telecommunications network that physically link nodes in the network. Transmission facilities are used to carry voice, video, and data traffic. Carriers use either analog or digital technology on copper wire, coaxial cable, fiber, radio, and other media.

6. *Rural Transmission Facilities.* Although mandatory price cap carriers disaggregate reported data to reflect MSA and non-MSA categories in Table I of ARMIS Report 43–07, Table II does not require carriers to disaggregate data by MSA and non-MSA categories. Because the reporting carriers do not distinguish between rural and urban transmission facilities, the Commission cannot assess the deployment of advanced telecommunications infrastructure or compare rural and urban infrastructure development. Therefore, we propose modifying Table II of ARMIS Report 43–07 to require carriers to report data disaggregated by MSA and non-MSA. We seek comment on whether this level of disaggregation will assist the Commission and other interested parties in measuring the deployment of advanced telecommunications infrastructure in rural areas, or whether we should consider a greater level of detail.

7. *Coaxial Cable.* In the first section of Table II, "Sheath Kilometers," carriers report data for three categories of cable: (1) twisted pair copper; (2) fiber; and (3) other. Coaxial cable is currently included in the "Other" category. Coaxial cable is being deployed to provide telecommunications services to the public. Our existing reporting requirements do not provide the extent of coaxial cable deployed in the network. Including coaxial cable as a separate category would allow the Commission to monitor the use of that technology in competition with traditional transmission facilities. We propose modifying Table II so that carriers report coaxial cable separately as a discrete category instead of the aggregated "Other" category. We seek comment on this proposal.

8. *Interoffice Working Facilities.* In the "Interoffice Working Facilities" section of Table II, fiber is reported under the heading "Digital Carrier Links." Fiber is frequently used in metropolitan areas to transmit analog video signals. Currently, Table II does not contain a separate row that reports how much interoffice fiber is used for analog transmission. We propose including a row that would contain this information. We solicit comment on this proposal.

9. *Loop Plant-Central Office Terminations.* In the "Loop Plant-Central Office Terminations" section of Table II carriers report fiber used in digital mode, but not fiber used in an analog mode. Adding a category for reporting fiber used in an analog mode would provide a better picture of infrastructure development and permit benchmarking. We propose that, in addition to reporting fiber interoffice working facilities used for analog transmission as mentioned above, carriers should report on fiber loops used for analog transmission. We solicit comment on this proposal.

10. *Digital Loop Carrier.* For a number of years, carriers have been using digital loop carrier ("DLC") systems to reduce the cost of serving subscribers. The expanding deployment of digital end office switches has fostered the development and deployment of a new version of DLC, called Integrated Digital Loop Carrier ("IDLC"), which allows carriers to serve even more subscribers with fewer transmission paths. IDLC, which is generally deployed over fiber-optic cable, provides high-capacity transmission facilities closer to subscribers, so that these subscribers can use advanced telecommunications services. We propose requiring carriers to report data about DLC and IDLC deployment in the "Loop Plant-Central Office Terminations" section of Table II. Information about DLC and IDLC deployment would assist the Commission and the states in monitoring the development of new technologies used in the local loop. We seek comment on this proposal and on categories of data that would provide an accurate picture of DLC and IDLC deployment without placing an undue administrative burden on the reporting LECs.

11. *Other Transmission Facility Data.* In the *Universal Service Order*, the Commission adopted rules that provide schools and libraries discounts on all commercially available telecommunications services, Internet access, and internal connections. (*See* Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, paras. 424–607 (1997)(62 FR 32862, June 17, 1997). The Commission also adopted rules that provide support to rural health care providers for toll-free Internet access and telecommunications services up to a bandwidth of 1.544 megabits per second. The Commission has noted an increasing interest in the use of the public network for transmitting data and accessing the Internet. Because there is no national standard for the performance of subscriber loops in transmitting data, our existing reporting requirements do not provide us information to assess the ability of subscribers to access the Internet and use high-speed data communications services. In order to have a more complete picture of the capabilities of the existing infrastructure and to measure the extent of access to information services, we propose that carriers should be required to report in the "Other Transmission Facility Data" section of Table II a count of the number of working subscriber loops capable of carrying analog data at 9.6 kilobits per second; a count of working subscriber loops capable of carrying analog data at 28.8 kilobits per second; and a count of working subscriber loops capable of carrying digital data at 64 kilobits per second. We seek comment on whether these categories will provide the necessary level of detail, or whether we should consider additional categories to illustrate data communications capabilities in the local loop. In addition, because we recognize that incumbent LECs may not currently maintain records at this level of detail, we invite interested parties to comment on the engineering methods and monitoring equipment carriers could use to accurately measure the performance capability of local loops, and the cost of obtaining this information.

Table III—LEC Set-up Time Reporting

12. Table III of the ARMIS 43–07 Infrastructure Report provides information about LEC call set-up time for calls delivered by the LEC to interexchange carriers. LEC call set-up time reporting measures the time from when the customer completes dialing until the call reaches an interexchange carrier. This table may be irrelevant given the wide deployment of new technologies, such as SS7 network capabilities and ISDN, that greatly reduce call set-up time. We propose removing this table from the ARMIS 43–07 Infrastructure report.

Table IV—Additions and Book Costs

13. In Table IV of the ARMIS 43–07 Infrastructure Report, carriers report data concerning access lines in service, access line gain, and total gross capital expenditures. Because this information is reported in other ARMIS reports, or can be extrapolated from existing reports, we propose modifying the ARMIS 43–07 Infrastructure Report to eliminate Table IV. Commission staff would still be able to ascertain this information, so eliminating this table would not inhibit the Commission's ability to monitor the development of infrastructure in the network.

14. *Paperwork Reduction Act.* As part of a continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on information collections contained in this Public Notice, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at

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the same time as other comments on this Public Notice. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

15. *Filing Procedures.* Interested parties may file comments no later than *April 24, 1998.* Reply comments may be filed no later than *May 15, 1998.* All pleadings should reference AAD File No. 98–23. The original and six copies should be submitted to the Secretary of the Commission; one copy should be submitted to Anthony Dale, Accounting and Audits Division, Common Carrier Bureau, 2000 L Street, Suite 201, Washington, DC 20554. Comments and replies must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and replies. In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 1231 20th Street, N.W., Washington, D.C. 20037, (202) 857–3800. All pleadings are available for public inspection and copying in the Accounting and Audits public reference room.

Action by the Chief, Common Carrier Bureau, FCC.

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting and Audits Division, Common Carrier Bureau.

[FR Doc. 98–7987 Filed 3–26–98; 8:45 am]

BILLING CODE 8712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 24, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0823.

Expiration Date: 09/30/98.

Title: Pay Telephone Reclassification Memorandum Opinion and Order, CC Docket No. 96–128.

Form No.: N/A.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 400 respondents; 111.7 hours per response (avg.); 44,700 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion, monthly, quarterly, annually, one-time.

Description: In the Payphone Orders, the Commission adopted new rules and policies governing the payphone industry to implement Section 276 of the Telecommunications Act of 1996. Those rules and policies in part establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone." Specifically, the Commission established a plan to ensure that payphone service providers (PSPs) were compensated for certain noncoin calls originated from their payphones. As part of this plan, the Commission required that by October 7, 1997, LECs provide payphone-specific coding digits to PSPs, and that PSPs provide those digits from their payphones to IXCs. The provision of payphone-specific coding digits is a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls. The Common Carrier Bureau, on its own motion, subsequently provided a waiver until March 9, 1998, for those payphones for which the necessary coding digits were not provided to identify calls. In a Memorandum Opinion and Order (MO&O) (released March 9, 1998), we clarify the requirements established in the Payphone Orders for the provision for payphone-specific coding digits and for tariffs that LECs must file pursuant to the Payphone Orders. We also grant a waiver of Part 69 of the Commission's rules so that LECs can establish rate elements to recover the costs of implementing FLEX ANI to provide payphone-specific coding digits for per-call compensation. The Commission in the Memorandum Opinion and Order, therefore, is effecting the following collections of information made in regard to information disclosures required in the Payphone Orders to implement Section 276 of the Act. The collection requirements are as follows: a. LEC Tariff to provide FLEX ANI to IXCs: The MO&O requires that local exchange carriers (LECs) implement FLEX ANI to comply with the requirements set forth in the Payphone Orders. LECs must provide to IXCs through their interstate tariffs, FLEX ANI service so that IXCs can identify which calls come from a payphone. LECs (and PSPs) must provide FLEX ANI to IXCs without charge for the limited purpose of per-call compensation, and accordingly, LECs providing FLEX ANI must revise their interstate tariffs to reflect FLEX ANI as a nonchargeable option to IXCs no later than March 30, 1998, to be effective no later than April 15, 1998, in those areas that it is available. (*No. of respondents:* 400; *hours per response:* 35 hours; *total annual burden:* 14,000 hours.) b. LEC Tariff to recover costs: LECs must file a tariff to establish a rate element in their interstate tariffs to recover their costs from PSPs for providing payphone-specific coding digits to IXCs. This tariff must reflect the costs of implementing FLEX ANI to provide payphone-specific coding digits for payphone compensation, and provide for recovery of such costs over a reasonable time period through a monthly recurring flat-rate charge. LECs must provide cost support information for the rate elements they propose. The Bureau will review these LEC rate element tariff filings, the reasonableness of the costs, and the recovery period. LECs will recover their costs over an amortization period of no more than ten years. The rate element charges will discontinue when the LEC has recovered its cost. (*No. of respondents:* 400; *hours per response:* 35 hours; *total annual burden* 14,000 hours.) c. LECs must provide IXCs information on payphones that provide payphone-specific coding digits for smart and dumb payphones: LECs must provide IXCs information on the number and location of smart and dumb payphones providing payphone-specific coding digits, as well as the number of those that are not. (*No. of respondents:* 400; *hours per response:* 24 hours; *total annual burden:* 9600 hours.) d. LECs must provide IXCs and PSPs information on where FLEX ANI is available now and when it is to be scheduled in the future: Within 30 days of the release of the MO&O, LECs should be prepared to provide IXCs, upon request, information regarding

their plans to implement FLEX ANI by end office. LECs must provide IXCs and PSPs information on payphones that provide payphone-specific coding digits on end offices where FLEX ANI is available, and where it is not, on a monthly basis. Pursuant to the waivers in this order, LECs must also inform IXCs and PSPs proposed dates for its availability. (*No. of respondents:* 400; *hours per response:* 16 hours; *total annual burden:* 6400 hours.) e. For a waiver granted to small or midsize LECs, a cost analysis must be provided, upon request: In the MO&O, the Bureau grants a waiver to midsize and small LECs that will be unable to recover the costs of implementing FLEX ANI in a reasonable time period. LECs must make this evaluation within 30 days of the release of the MO&O. The LEC must then notify IXCs that they will not be implementing FLEX ANI pursuant to this waiver, and provide the number of dumb payphones providing the "27" coding digit and the number of smart phones for which payphone-specific coding digits are unavailable. A LEC delaying the implementation of FLEX ANI pursuant to this waiver provision must be prepared to provide its analysis, if requested by the Commission. (*No. of respondents:* 20; *hours per response:* 35 hours; *total annual burden:* 700 hours.) The information disclosure rules and policies governing the payphone industry to implement Section 276 of the Act will ensure the payment of per-call compensation by implementing a method for LECs to provide information to IXCs to identify calls, for each and every call made from a payphone. The Bureau has reviewed several methods of identifying payphone calls and determined that among them, FLEX ANI is the most flexible and has the added capability of providing a number of additional coding digits, in real-time, that can uniquely identify a call as coming from a payphone. FLEX ANI is, therefore, the best method. *Obligation to respond:* required.

OMB Control No.: 3060–0512.
Expiration Date: 09/30/98.
Title: The ARMIS Annual Summary Report.
Form No.: FCC Report 43–01.
Respondents: Businesses or other for profit entities.
Estimated Annual Burden: 150 respondents; 220 hours per response (avg.); 33,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annually.
Description: The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. *Obligation to respond:* Mandatory.

OMB Control No.: 3060–0395.
Expiration Date: 09/30/98.
Title: Automated Reporting and Management Information Systems (ARMIS)—Sections 43.21 and 43.22.
Form No.: FCC Reports 43–02, 43–03, 43–05.
Respondents: Business or other for profit.
Estimated Annual Burden: 50 respondents; 1252.7 hours per response (avg.); 62,637 total annual hours.
Estimated Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annually.
Description: FCC Report 43–02 contains company-wide data for each account specified in the Uniform System of Accounts (USOA). It provides the annual operating results of the carriers' activities for every account in the USOA. (*No. of respondents:* 50; *hours per response:* 960 hours; *total annual burden:* 48,000 hours). FCC Report 43–05 collects data at the study area level and holding company level and is designed to capture trends in service quality under price cap regulation. It provides service quality information in the areas of interexchange access service installation and repair intervals, local service installation and repair intervals, trunk blockage and total switch downtime for price cap companies. (*No. of respondents:* 12; *hours per response:* 849 hours; *total annual burden:* 10,197.4 hours). FCC Report 43–07 is designed to capture trends in telephone industry infrastructure development under price cap regulation. It provides switch deployment and capabilities data. (*No. of respondents:* 8; *hours per response:* 550 hours; *total annual burden:* 4400 hours). *Obligation to comply:* Mandatory.

OMB Control No.: 3060–0513.
Expiration Date: 09/30/98.
Title: ARMIS Joint Cost Report.
Form No.: FCC Report 43–03.
Respondents: Business or other for profit.
Estimated Annual Burden: 150 respondents; 200 hours per response (avg.); 30,000 total annual hours.
Estimated Annual Reporting and Recordkeeping: $0.
Frequency of Response: Annually.
Description: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze the regulated and nonregulated cost and revenue allocations by study area in order to prevent cross-subsidization of nonregulated operations by the regulated operations.

OMB Control No.: 3060–0511.
Expiration Date: 09/30/98.
Title: ARMIS Access Report.
Form No.: FCC Report 43–04.
Estimated Annual Burden: 150 respondents; 1,150 hours per response (avg.); 172,500 total annual hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annually.
Description: The Access Report is needed to administer the results of the FCC's jurisdictional separations and access charge procedures in order to analyze revenue requirements, joint cost allocations, jurisdictional separations and access charges. *Obligation to comply:* Mandatory.

OMB Control No.: 3060–0763.
Expiration Date: 09/30/98.
Title: The ARMIS Customer Satisfaction Report.
Form No.: FCC Report 43–06.
Respondents: Businesses or other for profit entities.
Estimated Annual Burden: 8 respondents; 7200 hours per response (avg.); 5,760 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annually.
Description: The Customer Satisfaction Report collects data from carrier surveys designed to capture trends in service quality. *Obligation to comply:* Mandatory.

OMB Control No.: 3060–0496.
Title: The ARMIS Operating Data Report.
Form No.: FCC Report 43–08.
Respondents: Businesses or other for profit entities.
Estimated Annual Burden: 50 respondents; 160 hours per response (avg.); 8,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annually.
Description: The ARMIS Operating Data Report consists of statistical schedules which are needed by the Commission to monitor network growth, usage, and reliability. *Obligation to comply:* Mandatory.

ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. The information contained in the reports provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances

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the Commission's ability to process and analyze the extensive amounts of data it needs to administer its rules. All the reports have been updated to reflect the new expiration date. Copies of the updated reports may be obtained from Barbara Van Hagen of the Accounting and Audits Division at 2000 L Street, N.W., Washington, D.C., Room 812. Call 202–418–0849.

OMB Control No.: 3060–0439.
Expiration Date: 03/31/2001.
Title: Regulations Concerning Indecent Communications By Telephone.
Form No.: N/A.
Respondents: Business or other for profit entities.
Estimated Annual Burden: 10,200 respondents; .16 hours per response (avg). 1,632 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: Section 223 of the Communications Act of 1934, as amended, 47 U.S.C. Section 223, as amended by the Appropriations Act of 1990, Public Law 101–166, Sections 521, 103 Stat. 1192 (November 21, 1989), imposes fines and penalties on those who knowingly use the telephone to make obscene or indecent communications for commercial purposes. The fines and penalties are applicable to those who use the telephone, or permit their telephone to be used, for obscene communications to any person and to those who use the telephone for indecent communications to persons under 18 years of age or to adults without their consent. Section 223 requires telephone companies, to the extent technically feasible, to prohibit access to indecent communications from the telephone of a subscriber who has not previously requested access. 47 C.F.R. 64.201 implements the statute. The rules and regulations establish defenses to prosecution where the defendant restricts access to the prohibited indecent communications to persons 18 years of age or older by complying with the Commission's procedures. Section 64.201 contains several information collection requirements including: (1) A requirement that certain common carriers block access to indecent messages unless the subscriber seeks access from the common carrier (telephone company) in writing (*no. of respondents:* 10,000; hours *per response:* 10 minutes; total annual burden: 1600 hours); (2) a requirement that adult message service providers notify their carriers of the nature of their programming (no. of respondents: 100; *hours per response:* 10 minutes; *total annual burden:* 16, hours); and (3) a requirement that a provider of adult message services request that their carriers identify it as such in bills to its subscribers (*no. of respondents:* 100; *hours per response:* 10 minutes; *total annual burden:* 16 hours). The information requirements are imposed on carriers, adult message service providers and those who solicit their services to ensure that minors are denied access to material deemed indecent. If the information collections were not imposed the Commission would not be able to carry out its responsibilities as mandated in Section 223 of the Act. Obligation to respond: required.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98–8153 Filed 3–26–98; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 87–313; DA 98–483]

Accounting and Audits Division

AGENCY: Federal Communications Commission.
ACTION: Notice.

SUMMARY: This Public Notice invites interested parties to comment on a proposal of numerous improvements to the ARMIS Report 43–05 Service Quality Report, which provides data regarding service quality, and the ARMIS Report 43–06 Customer Satisfaction Report, which provides data concerning customer satisfaction. The ARMIS 43–05 Service Quality Report captures important service quality trends of price cap carriers on a study area basis. The ARMIS Report 43–06 Customer Satisfaction Report, reflects the results of customer satisfaction surveys conducted by carriers.

DATES: Comments are to be filed on or before April 24, 1998. Reply comments are due on or before May 15, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20052.

FOR FURTHER INFORMATION CONTACT: Anthony Dale, Common Carrier Bureau, Accounting and Audits Division, (202) 418–2260, or via E-mail to "dbyrd@fcc.gov".

SUPPLEMENTARY INFORMATION:

1. In this Public Notice released March 11, 1998 (*"Notice"*), the Common Carrier Bureau ("the Bureau") proposes a number of improvements to the ARMIS Report 43–05 Service Quality Report, which provides data regarding service quality, and the ARMIS Report 43–06 Customer Satisfaction Report, which provides data concerning customer satisfaction. The ARMIS 43–05 Service Quality Report captures important service quality trends of price cap carriers on a study area basis. ARMIS Report 43–05 contains five tables: (1) Installation and repair intervals for interexchange carriers; (2) installation and repair intervals for local access customers; (3) common trunk blockage; (4) total switch downtime and occurrences of two minutes or more duration; and (5) service quality complaints. ARMIS Report 43–06, the Customer Satisfaction Report, reflects the results of customer satisfaction surveys conducted by carriers. The report captures trends in service quality as measured by the perception of residential, small business, and large business customers. All incumbent local exchange carriers ("LECs") subject to price cap regulation file the Service Quality Report, but only the Bell operating companies and GTE file the Customer Satisfaction Report.

A. Service Quality in Rural Areas

2. We are particularly interested in the quality of service available in rural areas. We seek additional comments on modifications to both the ARMIS 43–05 Service Quality Report and the ARMIS 43–06 Customer Satisfaction Report that would permit detailed analysis of the quality of service provided to rural areas. For ARMIS Report 43–05, carriers already disaggregate the reported data into MSA and non-MSA categories throughout most of the report. For ARMIS Report 43–06, the Customer Satisfaction Report, we propose disaggregating the reported data to reflect customer satisfaction by MSA and non-MSA categories. We seek comment on whether this level of disaggregation adequately illustrates the quality of service provided to rural areas, or whether we should consider a greater level of detail.

3. Additionally, although ARMIS Report 43–05 collects data concerning switch outages, the report does not collect data concerning facility outages caused by cable cuts, which are the primary source of network outages. Because many rural areas do not meet

the reporting threshold identified in the Commission's network outage reports, the ARMIS 43–05 Service Quality Report does not provide a complete picture of the quality of service in many rural areas. Therefore, we propose modifying ARMIS Report 43–05 to include a table for reporting facility outages resulting in a threshold number of customers out of service for longer than twelve hours. There are very few, if any, rural areas that meet the threshold number of 30,000 customers set in the Commission's rules for reporting network outages, (*See* 47 CFR 63.100) so the Commission does not collect all the information needed to monitor the quality of service in rural areas. Therefore, we propose using a percentage of subscribers in wire center serving area that are affected by the facility outage. Carriers would report facility outages affecting greater than five—or perhaps ten—percent of the subscribers served in a wire center serving area. Carriers would disaggregate this data into MSA and non-MSA categories. We seek comment on this proposal, on the recommended format of a facility outage table in ARMIS Report 43–05, and on the suggested reporting threshold necessary to provide an accurate picture of rural service quality.

B. ARMIS 43–05 Service Quality Report

1. Table I—Installation and Repair Intervals (Interexchange Access)

4. Table I of the ARMIS Service Quality Report 43–05 presents incumbent LEC installation and repair intervals for service provided to interexchange carriers. This table contains useful information regarding the number of complaints, referred to as "trouble reports," received by an incumbent LEC from an interexchange carrier in a given period and percentages of service commitments met by the incumbent LECs. It does not, however, contain information regarding the total number of switched or special access lines that could trigger trouble reports. Consequently, it is difficult for the Commission and other interested parties to benchmark data for incumbent LECs of varying sizes. We propose that incumbent LECs should report the total number of switched and all special access lines provided to interexchange carriers in each study area.

2. Table II—Installation and Repair Intervals (Local Service)

5. Table II is the primary source of service quality information regarding the services provided by price cap LECs to their local customers. Table II consists of two major columns (one for residential customers and one for business customers) and five major rows (Installation Intervals, Repair Intervals, Initial Trouble Reports, Repeat Trouble Reports, No Trouble Found) that contain data on how price cap LECs perform during the reporting period in the installation and repair of basic local telecommunications services. Each column and row is further disaggregated to provide greater detail regarding the installation and repair of lines. As a whole, Table II illustrates the service quality provided by the price cap LECs to residential and business customers. This information is used by the Commission state commissions, and other interested parties to evaluate and benchmark carriers' installation and repair data.

6. Customer trouble reporting measures both the number and the types of service problems that local business and residential customers report to the reporting carrier. These trouble reports are categorized as either "initial" trouble reports or "repeat" trouble reports. A "repeat trouble" is a trouble reported on a line within thirty days of the disposition of a previous trouble; all other trouble reports are categorized as "initial." In addition to the quantity and type of troubles, carriers also report the time needed to close out the troubles. One way for closing out a trouble is the "no trouble found" report. Currently, carriers are required to report only the total number of instances in which, upon investigation, no trouble was found. Analysis of existing reports shows a substantial increase in the number of troubles closed out as "no trouble found." We propose that carriers should be required to disaggregate this information into two rows in Table II—one showing the total number of "no trouble found" reports for "initial" trouble reports, and one for "repeat" trouble reports.

7. Incumbent LECs provide local special service circuits, which are circuits other than those used for basic telephone service, to business customers. In its current format, Table II does not require incumbent LECs to report information on local (intraLATA or intrastate) special service circuits. Many types of special service circuits perform the same function as those circuits that incumbent LECs already report in Table II. We propose modifying Table II to require carriers to report data on local special service circuits and to disaggregate this data by MSA and non-MSA categories. We seek comment on this proposal and additional suggestions for the reporting format of information on local special service circuits.

C. Table IV—Switches

8. Table IV of ARMIS Report 43–05 contains information about the number of switches of various sizes and a count of those switches that experience operating downtime of two minutes or more. Switch size is reported according to the number of lines each switch serves. Currently, carriers are required to report outages by various switch sizes up to 20,000 lines with all larger switches being categorized into a single row. Because 47 CFR 63.100 requires that carriers report network outages for switches over 30,000 lines, we propose that a new row should be added to Table IV for switches over 20,000 lines but less than 30,000 lines with the last row modified to include switches with 30,000 or more lines.

9. *Paperwork Reduction Act.* As part of its continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on information collections contained in this Public Notice, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this Public Notice. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

10. *Comment Filing Procedures.* Interested parties may file comments no later than *April 29, 1998.* Reply comments may be filed no later than *May 15, 1998.* All pleadings should reference AAD File No. 98–22. The original and six copies should be submitted to the Secretary of the Commission; one copy should be submitted to Anthony Dale, Accounting and Audits Division, Common Carrier Bureau, FCC, 2000 L Street, Suite 201, Washington, DC 20554. In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. All pleadings will be made available for public inspection and copying in the

Accounting and Audits public reference room.

Action by the Chief, Common Carrier Bureau, FCC.

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting and Audits Division, Common Carrier Bureau.

[FR Doc. 98–7988 Filed 3–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:36 a.m. on Tuesday, March 24, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory, liquidation, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Ms. Leann Britton, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Mr. John E. Ryan, acting in the place and stead of Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: March 24, 1998.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 98–8205 Filed 3–25–98; 11:25 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Madison County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–8092 Filed 3–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Walton and Washington for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8093 Filed 3–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–010714–026.

Title: Trans-Atlantic American Flag Liner Operators.

Parties:

Farrell Lines Incorporated
Lykes Lines Limited, LLC
Sea-Land Service, Inc.
American President Lines Ltd.

Synopsis: The proposed modification deletes the requirement that each member post a financial guarantee and reduces the notice requirement before resigning from 180 to 60 days.

Dated: March 24, 1998.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–8038 Filed 3–26–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 13, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Donald O. Gilmer Revocable Trust, and Donald O. Gilmer, Trustee, Delano, Minnesota; to acquire voting shares of Delano State Agency, Inc., Delano, Minnesota, and thereby indirectly acquire voting shares of State Bank of Delano, Delano, Minnesota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Thomas Peters and Ramona Peters, both of Walnut Springs, Texas; to acquire additional voting shares of Southwestern Bancshares, Inc., Glen Rose, Texas, and Southwestern Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire First National Bank, Glen Rose, Texas.

Board of Governors of the Federal Reserve System, March 24, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8037 Filed 3–26–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[ATSDR–134]

Agency for Toxic Substances and Disease Registry (ATSDR); Quarterly Public Health Assessments Completed; Correction

A notice announcing the availability of the Quarterly Public Health Assessments was published in the **Federal Register** on March 11, 1998, (63 FR 11896). This notice is corrected as follows:

On page 11897, in the first column, in the tenth line under the heading of Michigan, "Albion—PB–105794)" should read "Albion—(PB–117872)."

All other information and requirements of the March 11, 1998, notice remain the same.

Dated: March 23, 1998.

Georgi Jones,

Director, Office of Policy and External Affairs Agency for Toxic Substances and Disease Registry.

[FR Doc. 98–8123 Filed 3–26–98; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on April 23, 1998, 8 a.m. to 6 p.m., and April 24, 1998, 9 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 23, 1998, the committee will: (1) Discuss and make recommendations on a premarket notification submission for a vascular graft used in hemodialysis access; and (2) provide input for preclinical and clinical data requirements necessary to evaluate devices used as adjuncts to the Heimlich maneuver for treatment of foreign-body airway obstruction. On April 24, 1998, the committee will discuss, make recommendations, and vote on a premarket approval application for a transmyocardial revascularization device.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 13, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. on April 23, 1998. Near the end of the committee deliberations, on each specific device being discussed, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Oral presentations from the public will be scheduled between approximately 9 a.m. and 9:30 a.m. on April 24, 1998. Near the end of the committee deliberations, on each specific device being discussed, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 13, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 19, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–7981 Filed 3–26–98; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–03]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.C.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), provider should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, Area-MI, Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; ARMY: Mr. Jeff Holste, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22315; (703) 428–6318; COE: Mr. Bob Swieconek, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1749; DOT: Mr. Philip Rockmaker, Acting Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation,400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; INTERIOR: Ms. Lola D. Knight, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: March 19, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program, Federal Register Report for 03/27/98

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. 220
Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810244
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 226
Fort Richardson
Fort Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810245
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 260
Fort Richardson
Fort Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810246
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 267
Fort Richardson
Fort Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810247
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 271
Fort Richardson
Fort Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810248
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 280
Fort Richardson
Fort Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810249
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 283
Fort Richardson
Fort Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810250
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 286
Fort Richardson
Fort Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810251
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 635
Fort Richardson
Fort Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810252
Status: Excess
Comment: 10,835 sq. ft., most recent use—px/snack bar, off-site use only

Bldg. 760
Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number 219810253
Status: Excess
Comment: 24,600 sq. ft., most recent use—veh. maint., off-site use only

Bldg. 45040
Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number 219810257
Status: Excess
Comment: 3186 sq. ft., most recent use—veh. maint., off-site use only

Arizona

20 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 12585, 13550, 14442, 15540, 15547, 15554–15556, 16401, 22215, 30108, 30109, 30122, 30124, 30133, 84015, 84016, 84018, 87849, 91276
Landholding Agency: Army
Property Number 219810258
Status: Excess
Comment: Various sq. ft., off-site use only

13 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15335, 15339, 15372, 15553, 30023, 30026, 30027, 30103, 30128, 66050, 66052, 66053, 90310
Landholding Agency: Army
Property Number 219810259
Status: Excess
Comment: Various sq. ft., wood, off-site use only

4 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 14444, 22418, 30110, 30138
Landholding Agency: Army
Property Number 219810260
Status: Excess
Comment: Various sq. ft., block, off-site use only

California

Bldg. 4282
Presido of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number 219810378
Status: Unutilized
Comment: 2283 sq. ft., presence of asbestos/lead paint, most recent use—Office

Bldg. 4461
Presido of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number 219810379
Status: Unutilized
Comment: 992 sq. ft., presence of asbestos/lead paint, most recent use—Storage

3 Bachelor Enlisted Quarters
U.S. Coast Guard Station Humboldt Bay
Samoa CA 95564–9999
Landholding Agency: Army
Property Number 879810001
Status: Unutilized
Comment: 2550 sq. ft. each, 2-story, wood, most recent use—residential, needs rehab, off-site use only

Georgia

Bldg. T–286
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219810261
Status: Excess
Comment: 5310 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. P–1622
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219810262
Status: Excess
Comment: 64 sq. ft., poor condition, most recent use—gas station, off-site use only

Bldg. P–9597
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219810263
Status: Excess
Comment: 324 sq. ft., Poor condition, most recent use—storage, off-site use only

Bldg. 122
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810264
Status: Unutilized
Comment: 1933 sq. ft., most recent use—admin., off-site use only

Bldg. 123
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810265
Status: Unutilized
Comment: 3590 sq. ft., most recent use—admin., off-site use only

Bldg. 124
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810266
Status: Unutilized
Comment: 227 sq. ft., most recent use—access control, off-site use only

Bldg. 214
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810267
Status: Unutilized
Comment: 26,268 sq. ft., most recent use—confinement facility, off-site use only

Bldg. 305
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810268
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only

Bldg. 318
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810269
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. 1699
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810270
Status: Unutilized
Comment: 3000 sq. ft., most recent use—admin., off-site use only

Bldg. 1749
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810271
Status: Unutilized
Comment: 2044 sq. ft., most recent use—admin., off-site use only

Bldg. 1752
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810272
Status: Unutilized
Comment: 1380 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. 1756
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810273
Status: Unutilized

Comment: 2548 sq. ft., poor condition, most recent use—admin., off-site use only
Bldg. 1792
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810274
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only
Bldg. 1796
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810275
Status: Unutilized
Comment: 5071 sq. ft., most recent use—recreation, off-site use only
Bldg. 1836
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810276
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only
Bldg. 2639
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810277
Status: Unutilized
Comment: 4720 sq. ft., most recent use—hdqtrs. bldg., off-site use only
Bldg. 2640
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810278
Status: Unutilized
Comment: 4798 sq. ft., most recent use—admin., off-site use only
Bldg. 2641
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810279
Status: Unutilized
Comment: 1336 sq. ft., most recent use—storage, off-site use only
Bldg. 2642
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810280
Status: Unutilized
Comment: 4798 sq. ft., most recent use—admin., off-site use only
Bldg. 2643
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810281
Status: Unutilized
Comment: 4720 sq. ft., most recent use—admin., off-site use only
Bldg. 4313
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810282
Status: Unutilized
Comment: 3108 sq. ft., most recent use—veh. maint. shop, off-site use only
Bldg. 4314
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810283
Status: Unutilized
Comment: 3108 sq. ft., most recent use—veh. maint. shop, off-site use only
Bldg. 4315
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810284
Status: Unutilized
Comment: 2220 sq. ft., most recent use—veh. maint. shop, off-site use only
Bldg. 4316
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810285
Status: Unutilized
Comment: 688 sq. ft., most recent use—veh. maint. shop, off-site use only
Bldg. 4373
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810286
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg. off-site use only
Bldg. 4628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810287
Status: Unutilized
Comment: 5483 sq. ft., most recent use—. admin., off-site use only
Bldg. 5003
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810288
Status: Unutilized
Comment: 1520 sq. ft., most recent use—storage, off-site use only
Bldg. 5006
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810289
Status: Unutilized
Comment: 1520 sq. ft., most recent use—storage, off-site use only
Bldg. 5011
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810290
Status: Unutilized
Comment: 1520 sq. ft., most recent use—storage, off-site use only
Bldg. 5014
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219810291
Status: Unutilized
Comment: 1520 sq. ft., most recent use—storage, off-site use only

Kansas

Bldg. S–650
Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219810292
Status: Unutilized
Comment: 22,331 sq. ft., presence of asbestos, most recent use—cold storage
Bldg. P–652
Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219810293
Status: Unutilized
Comment: 8,167 sq. ft., presence of asbestos, most recent use—cold storage
Bldg. S–7711
Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219810294
Status: Unutilized
Comment: 648 sq. ft., poor condition presence of asbestos, most recent use—storage
Bldg. P–63
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219810295
Status: Unutilized
Comment: 9376 sq. ft., concrete, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–323
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219810297
Status: Unutilized
Comment: 720 sq. ft., most recent use—boy scout bldg., off-site use only
Bldg. T–688
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219810298
Status: Unutilized
Comment: 832 sq. ft., possible lead paint, most recent use—girl scout bldg., off-site use only
Bldg. T–895
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219810299
Status: Unutilized
Comment: 228 sq. ft., possible lead paint, most recent use—storage, off-site use only
Bldg. P–1032
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219810300
Status: Unutilized
Comment: 728 sq. ft., most recent use—dog kennel, off-site use only

Kentucky

Bldg. 800
Louisville IAP
Louisville Co: Jefferson KY 40213–2625
Landholding Agency: Air Force
Property Number: 189810026
Status: Underutilized
Comment: 9125 sq. ft., most recent use—storage, needs rehab

Maryland
Bldg. 6294
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219810302
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—custodial, off-site use only
Bldg. 3176
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219810303
Status: Unutilized
Comment: 7670 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only
Bldg. 00410
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219810304
Status: Unutilized
Comment: concrete, most recent use—ordnance facility

Massachusetts
Facility No. 00029
OMS Boston
Boston Co: Suffolk MA 02210–2109
Landholding Agency: Army
Property Number: 219810301
Status: Unutilized
Comment: 220 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage, off-site use only

Missouri
Bldg. 430
Fort Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810305
Status: Unutilized
Comment: 4100 sq. ft., presence of asbestos/lead paint, most recent use—Red Cross facility, off-site use only
Bldg. 758
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810306
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only
Bldg. 759
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810307
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only
Bldg. 760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810308
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, off-site use only
Bldgs. 761–766
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810309
Status: Unutilized
Comment: 2400 sq. ft. each, presence of asbestos/lead paint, most recent use—classroom, off-site use only
Bldg. 1498
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810310
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only
Bldg. 1650
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810311
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only
Bldg. 2111
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810312
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only
Bldg. 2170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810313
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only
Bldg. 2184
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810314
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only
Bldg. 2204
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810315
Status: Unutilized
Comment: 3525 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only
Bldg. 2225
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810316
Status: Unutilized
Comment: 820 sq. ft., presence of lead paint, most recent use—storage, off-site use only
Bldg. 2271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810317
Status: Unutilized
Comment: 256 sq. ft., presence of lead paint, most recent use—storage, off-site use only
Bldg. 2275
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810318
Status: Unutilized
Comment: 225 sq. ft., presence of lead paint, most recent use—storage, off-site use only
Bldg. 2291
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810319
Status: Unutilized
Comment: 510 sq. ft., presence of lead paint, most recent use—storage, off-site use only
Bldg. 2316
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810320
Status: Unutilized
Comment: 5774 sq. ft., presence of asbestos/lead paint, most recent use—cold storage, off-site use only
Bldg. 2317
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810321
Status: Unutilized
Comment: 6510 sq. ft., presence of asbestos/lead paint, most recent use—cold storage, off-site use only
Bldg. 2318
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810322
Status: Unutilized
Comment: 9267 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 2347
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810323
Status: Unutilized
Comment: 6510 sq. ft., presence of asbestos/lead paint, most recent use—cold storage, off-site use only

Bldg. 2348
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810324
Status: Unutilized
Comment: 6510 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2579
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810325
Status: Unutilized
Comment: 176 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 2580
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810326
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, most recent use—generator plant, off-site use only

Bldg. 4199
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810327
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 6030
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810328
Status: Unutilized
Comment: 1000 sq. ft., presence of lead paint, poor condition, most recent use—storage, off-site use only

New Jersey

Bldg. TO5311
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5505
Landholding Agency: Army
Property Number: 219810329
Status: Unutilized
Comment: 3779 sq. ft., most recent use—cold storage, off-site use only

Bldg. 2316
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219810320
Status: Unutilized
Comment: 5774 sq. ft., presence of asbestos/lead paint, most recent use—cold storage, off-site use only

New York

Bldg. T–17
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810330
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–18
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810331
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–181
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810332
Status: Unutilized
Comment: 3151 sq. ft., needs rehab, most recent use—maintenance, off-site use only

Bldg. T–213
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810333
Status: Unutilized
Comment: 1676 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–214
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810334
Status: Unutilized
Comment: 3663 sq. ft., needs rehab, most recent use—barber shop, off-site use only

Bldg. T–259
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810335
Status: Unutilized
Comment: 2360 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. T–279
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810336
Status: Unutilized
Comment: 2510 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. T–335
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810337
Status: Unutilized
Comment: 2734 sq. ft., needs rehab, most recent use—hdqts. bldg., off-site use only

Bldgs. T352, T–358
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810338
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—barracks, off-site use only

Bldgs. T360–T363, T365
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810339
Status: Unutilized
Comment: various sq. ft., needs rehab, most recent use—hdqts. bldg. off-site use only

Bldgs. T376, T476
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810340
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—barracks, off-site use only

Bldg. T520
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810341
Status: Unutilized
Comment: 2360 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. T569
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810342
Status: Unutilized
Comment: 1296 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. T729, T755
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810343
Status: Unutilized
Comment: 2360 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. T847
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810344
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—barracks, off-site use only

Bldg. S893
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810345
Status: Unutilized
Comment: 1734 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. P996
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810346
Status: Unutilized
Comment: 9602 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. P2164
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810347
Status: Unutilized
Comment: 294 sq. ft., needs rehab, most recent use—water treatment bldg., off-site use only

Bldgs. T2206, T2207
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810348
Status: Unutilized

Comment: 7670 sq. ft., needs rehab, most recent use—officers quarters, off-site use only

Bldg. S2706
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810349
Status: Unutilized
Comment: 235 sq. ft., needs rehab, most recent use—access control bldg., off-site use only

Bldg. P22461
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810350
Status: Unutilized
Comment: 64 sq. ft., needs rehab, most recent use—range support facility, off-site use only

Bldg. T22462
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219810351
Status: Unutilized
Comment: 320 sq. ft., needs rehab, most recent use—range/target house, off-site use only

North Carolina

Bldg. P2633
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219810352
Status: Unutilized
Comment: 720 sq. ft. trailer

Oklahoma

Bldg. P841
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810353
Status: Unutilized
Comment: 192 sq. ft., possible asbestos/lead paint, most recent use—dispatch, off-site use only

Bldg. S955
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810354
Status: Unutilized
Comment: 854 sq. ft., possible asbestos/lead paint, most recent use—training, off-site use only

Bldg. P1438
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810355
Status: Unutilized
Comment: 1410 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only

Bldg. T4052
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810356
Status: Unutilized
Comment: 1650 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 4463
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810357
Status: Unutilized
Comment: 2262 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. S–4913
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810358
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5028
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810359
Status: Unutilized
Comment: 23 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–5204
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810360
Status: Unutilized
Comment: 3107 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–5205
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810361
Status: Unutilized
Comment: 1440 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. S–5206
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810362
Status: Unutilized
Comment: 1440 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. S–6020
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810363
Status: Unutilized
Comment: 104 sq. ft., possible asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. S–6049
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219810364
Status: Unutilized
Comment: 104 sq. ft., possible asbestos/lead paint, most recent use—shelter, off-site use only

Rhode Island

Facility T
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810175
Status: Unutilized
Comment: 1610 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Facility U
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810176
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop off-site use only

Facility V
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810177
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility W
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810178
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—training/office, off-site use only

Facility X
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810179
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Facility Y
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810180
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin., off-site use only

Facility 322
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810181
Status: Unutilized
Comment: 800 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility 323
Naval Education & Training Center
Coddington Park

Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810182
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility 324
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810183
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility 325
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810184
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Facility 326
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810185
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Facility 327
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 779810186
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Texas

Bldg. P–1382
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219810365
Status: Unutilized
Comment: 30,082 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. P–2013
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219810366
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—instruction, off-site use only

Bldg. P–2014
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219810367
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—instruction, off-site use only

Bldg. P–2015
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219810368
Status: Unutilized
Comment: 11,333 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2016
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219810369
Status: Unutilized
Comment: 11,517 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2017
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219810370
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. S–3897
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219810371
Status: Unutilized
Comment: 4,200 sq. ft., presence of asbestos/lead paint, most recent use—instruction, off-site use only

Virginia

98 Bldgs.
New Gosport Housing Community
Naval Base, Type A
Portsmouth VA 23702–
Location: #1020–1055, 1063–1116, 1118–1125
Landholding Agency: Navy
Property Number: 779810201
Status: Excess
Comment: 725 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

63 Bldgs.
New Gosport Housing Community
Naval Base, Type B
Portsmouth VA 23702–
Location: #1140–1183, 1185–1188, 1198–1210, 1234–1236
Landholding Agency: Navy
Property Number: 779810202
Status: Unutilized
Comment: 1450 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

23 Bldgs.
New Gosport Housing Community
Naval Base, Type C
Portsmouth VA 23702–
Location: #1211–1233
Landholding Agency: Navy
Property Number: 779810203
Status: Unutilized
Comment: 1150 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. HF1
Hewitt Farms Housing Community
Naval Base
Norfolk VA 23518–
Landholding Agency: Navy
Property Number: 779810204
Status: Excess
Comment: 1224 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

15 Bldgs.
Hewitt Farms Housing Community
Naval Base, Type A
Norfolk VA 23518–
Location: #HF3, 5, 9, 45, 49, 53, 58, 60, 64, 70, 72, 74, 76, 80, 88
Landholding Agency: Navy
Property Number: 779810205
Status: Excess
Comment: 1472 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

15 Bldgs.
Hewitt Farms Housing Community
Naval Base, Type B
Norfolk VA 23518–
Location: #HF4, 6, 10, 39, 51, 59, 62, 65, 66, 69, 73, 77, 79, 81, 84
Landholding Agency: Navy
Property Number: 779810206
Status: Excess
Comment: 2116 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

4 Bldgs.
Hewitt Farms Housing Community
Naval Base, Type C
Norfolk VA 23518–
Location: #HF8, 12, 82, 86
Landholding Agency: Navy
Property Number: 779810207
Status: Excess
Comment: 2116 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

17 Bldgs.
Hewitt Farms Housing Community
Naval Base, Type D
Norfolk VA 23518–
Location: #HF2, 7, 11, 35, 37, 41, 43, 47, 55, 61, 63, 67, 68, 71, 75, 78, 90
Landholding Agency: Navy
Property Number: 779810208
Status: Excess
Comment: 3588 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. #HF57, Type D1
Hewitt Farms Housing Community
Naval Base
Norfolk VA 23518–
Landholding Agency: Navy
Property Number: 779810209
Status: Excess
Comment: 2116 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

12 Bldgs.
Hewitt Farms Housing Community
Naval Base, Type E
Norfolk VA 23518–
Location: #HF13, 14, 18, 22, 26, 33, 38, 40, 42, 44, 46, 56
Landholding Agency: Navy
Property Number: 779810210
Status: Excess

Comment: 1625 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

8 Bldgs.
Hewitt Farms Housing Community
Naval Base, Type F
Norfolk VA 23518–
Location: #HF21, 25, 30, 34, 48, 54, 85, 89
Landholding Agency: Navy
Property Number: 779810211
Status: Excess
Comment: 2200 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

6 Bldgs.
Hewitt Farms Housing Community
Naval Base, Type G
Norfolk VA 23518–
Location: #HF16, 17, 23, 31, 83, 91
Landholding Agency: Navy
Property Number: 779810212
Status: Excess
Comment: 2750 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

3 Bldgs.
Hewitt Farms Housing Community
Naval Base, Type H
Norfolk VA 23518–
Location: #HF32, 50, 87
Landholding Agency: Navy
Property Number: 779810213
Status: Excess
Comment: 2750 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

9 Bldgs.
Hewitt Farms Housing Community
Naval Base, Type I
Norfolk VA 23518–
Location: #HF15, 19, 20, 24, 27, 28, 29, 36, 52
Landholding Agency: Navy
Property Number: 779810214
Status: Excess
Comment: 1925 sq. ft. each, needs rehab, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. SP–3–8
Naval Air Station
Norfolk VA
Landholding Agency: Navy
Property Number: 779810215
Status: Excess
Comment: 120 sq. ft., most recent use—gate/sentry house, off-site use only

Washington

Bldgs. C0509, C0709, C0720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—residential, off-site use only

4 Bldgs.
Fort Lewis
CO511, CO710, CO711, CO719
Ft. Lewis Co: Pierce WA 98433—
Landholding Agency: Army
Property Number: 219810373
Status: Unutilized
Comment: 1,144 sq, ft., possible asbestos/lead paint, needs rehab, most recent use—dayrooms, off-site use only

11 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433—
Location: CO528, CO701, CO708, CO721, CO526, CO527, CO702, CO703, CO706, CO707, CO722
Landholding Agency: Army
Property Number: 219810374
Status: Unutilized
Comment: 2207 sq, ft., possible asbestos/lead paint, needs rehab, most recent use—dining, off-site use only

Bldgs. 5230, 6220, 6103
Fort Lewis
Ft. Lewis Co: Pierce WA 98433—
Landholding Agency: Army
Property Number: 219810375
Status: Unutilized
Comment: 1372 sq, ft., possible asbestos/lead paint, needs rehab, most recent use—admin., off-site use only

11 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433—
Location: 6030, 6101, 6132, 6133, 6165, 6166, 6202, CO150, CO151, CO154, CO155
Landholding Agency: Army
Property Number: 219810376
Status: Unutilized
Comment: 3108 sq, ft., possible asbestos/lead paint, needs rehab, most recent use—motor repair shop, off-site use only

4 Bldgs.
Fort Lewis
6033, 6164, 6218, CO160
Ft. Lewis Co: Pierce WA 98433—
Landholding Agency: Army
Property Number: 219810377
Status: Unutilized
Comment: 542 sq, ft., possible asbestos/lead paint, needs rehab, most recent use—oil storage, off-site use only

Land (by State)

Louisiana

Land—Wallace Lake Dam Road
Section 35
Shreveport Co: Caddo LA 71115–
Landholding Agency: GSA
Property Number: 549810006
Status: Excess
Comment: 10.6 acres, most recnet use—agriculture
GSA Number: 7–D–LA–556

Nebraska

Hastings Radar Bomb Scoring
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189810027
Status: Unutilized
Comment: 11 acres

Washington

Spokane Satellite Tracking #1
Fairchild AFB
Portion of Site
Spokane WA 99224–
Landholding Agency: 189810028
Status: Unutilized
Comment: 1.14 acres w/water well pump house

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Bldg. 808
Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810254
Status: Excess
Comment: 99,927 sq. ft., most recent use—cold storage, off-site use only

Bldg. 809
Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810255
Status: Excess
Comment: 5,000 sq. ft., most recent use—storage, off-site use only

Bldg. 47799
Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219810256
Status: Excess
Comment: 15,050 sq. ft., most recent use—confinement facility, off-site use only

Kansas

Bldg. P–295
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219810296
Status: Unutilized
Comment: 3480 sq. ft., concrete, most recent use—underground storage, off-site use only

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 1551
Galena Airport
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 189810030
Status: Unutilized
Reason: Within airport runway clear zone

California

Bldgs. 2–11, 20–21
Edwards AFB
P-Area Housing
Edwards AFB Co: Kern CA 93524–
Landholding Agency: Air Force
Property Number: 189810029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 110
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 219810380
Status: Unutilized
Reason: Extensive deterioration

Bldg. 418
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 219810381
Status: Unutilized
Reason: Extensive deterioration

#1124, #1545
San Gabriel Canyon

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Azusa Co: Los Angeles CA 91702–
Landholding Agency: GSA
Property Number: 549810011
Status: Excess
Reason: Extensive deterioration
#1053
San Gabriel Canyon
Azusa Co: Los Angeles CA 91702–
Landholding Agency: GSA
Property Number: 549810012
Status: Excess
Reason: Extensive deterioration
Bldg. 547
Naval Station, San Diego
San Diego, CA 92136–
Landholding Agency: Navy
Property Number: 779810172
Status: Excess
Comment: Extensive deterioration

North Carolina

Bldg. BB10
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779810173
Status: Unutilized
Reason: Secured Area Extensive deterioration
Bldg. M509
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779810174
Status: Unutilized
Reason: Secured Area

Ohio

Toledo Federal Building
234 Summit Avenue
Toledo Co: Lucas OH 43604–
Landholding Agency: GSA
Property Number: 549810014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material GSA Number: 1–G–H–804

Virginia

Bldg. 14
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810187
Status: Unutilized
Reason: Extensive deterioration
Bldg. 39
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810188
Status: Unutilized
Reason: Extensive deterioration
Bldg. 42
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810189
Status: Unutilized
Reason: Extensive deterioration
Bldg. 61
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810190
Status: Unutilized
Reason: Extensive deterioration
Bldg. 62
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810191
Status: Unutilized
Reason: Extensive deterioration
Bldg. 68
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810192
Status: Unutilized
Reason: Extensive deterioration
Bldg. 73
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810193
Status: Unutilized
Reason: Extensive deterioration
Bldg. 194
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810194
Status: Unutilized
Reason: Extensive deterioration
Bldg. 195
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810195
Status: Unutilized
Reason: Extensive deterioration
Bldg. 212
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810196
Status: Unutilized
Reason: Extensive deterioration
Bldg. 263
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810197
Status: Unutilized
Reason: Extensive deterioration
Bldg. 264
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810198
Status: Unutilized
Reason: Extensive deterioration
Bldg. 278
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810199
Status: Unutilized
Reason: Extensive deterioration
Bldg. 291
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779810200
Status: Unutilized
Reason: Extensive deterioration
Bldg. V–69
Naval Air Station
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779810216
Status: Excess
Reason: Extensive deterioration

Washington

Bldgs. 1158, 1159
Hozomeen Ranger Station
Ross Lake National Recreation Area
Co: Whatcom WA
Landholding Agency: Interior
Property Number: 619810014
Status: Excess
Reason: Extensive deterioration
Bldg. 332
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 779810217
Status: Excess
Reason: Secured Area
Bldg. 2512
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 779810218
Status: Excess
Reason: Secured Area
Bldg. 2536
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 779810219
Status: Excess
Reason: Secured Area
Bldg. 2591
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 779810220
Status: Excess
Reason: Secured Area

Land (by State)

Washington

2.95 acre encroachment parcel
155 Harrigan Lane
Mesa Co: Franklin WA 99343–
Landholding Agency: GSA
Property Number: 549810013
Status: Surplus
Reason: Other
Comment: no legal access
GSA Number: 9–B–WA–1147

West Virginia

Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601–
Landholding Agency: COE
Property Number: 319810006
Status: Excess
Reason: Other
Comment: inaccessible

[FR Doc. 98–7674 Filed 3–25–98; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–677336

Applicant: Florida Museum of Natural History, Gainesville, FL

The applicant requests renewal of their permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

PRT–840644

Applicant: International Crane Foundation, Baraboo, WI

The applicant requests a permit to export 3 Siberian crane (*Grus leucogeranus*) eggs to VogelPark Zoo, Walsrode, Germany for the purpose of enhancement to the survival and propagation of the species through isolation-rearing and re-introduction of specimens to the wild.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 23, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–8000 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Final Environmental Impact Statement for the Establishment of the Northern Tallgrass Prairie Habitat Preservation Area in Western Minnesota and Northwestern Iowa

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a Final Environmental Impact Statement (FEIS) which is available for public review. The FEIS evaluates the establishment of a Northern Tallgrass Prairie Habitat Preservation Area as a means of working with individuals, groups, and governmental entities to permanently preserve remnant tracts of northern tallgrass prairie. Three alternatives, including a No Action alternative are being considered. The action alternatives are aimed at permanently protecting and enhancing prairie remnants.

The Service's preferred alternative (Alternative B) is to permanently protect and enhance prairie remnants through partnerships, incentives, education, and cooperative agreements. Any conservation easements, or acquisition of full title would be done by the Service and Service Partners. Service acquisition of easements and fee interest in lands would be on a voluntary basis from willing sellers.

DATES: A decision whether to implement the preferred alternative will be made after a 30-day waiting period from the date of this notice.

ADDRESSES: Individuals wishing copies of the FEIS for review should contact: Jane West, Project Manager, U.S. Fish and Wildlife Service, BHW Federal Building, 1 Federal Drive, Fort Snelling, MN 55111–4056.

FOR FURTHER INFORMATION CONTACT: Jane West at the address listed above or by telephone at 612/713–5314.

SUPPLEMENTARY INFORMATION: America's native grasslands are a vanishing ecosystem, and mounting evidence indicates that many species are disappearing as fast as the prairie habitats on which they depend. Few other ecosystem types have experienced as great a degree of loss and alteration. In Minnesota and Iowa, the native northern tallgrass prairie has declined to less than 1 percent of its original 25 million acres (10. 1 million hectares).

Through an integrated ecosystem approach, the Service, with its partners, proposes to protect and restore fish and wildlife habitats through holistic management strategies using a wide variety of tools, and techniques. The Service proposes to participate in public and private partnerships at many levels, complimenting other prairie projects such as those of the Iowa County Conservation Boards, Iowa and Minnesota Departments of Natural Resources, the Nature Conservancy, and others.

Dated: March 17, 1998.

Robb M. Morin,

Acting Regional Director.

[FR Doc. 98–7410 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposals To Register An Operation Breeding Appendix-I Species in Captivity for Commercial Purposes According to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service announces that it intends to submit to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) proposals to register a breeding operation for Sky-Out Falcons, a breeding facility for gyrfalcons (*Falco rusticolus*) and peregrine falcons (*Falco peregrinus*), both specific and hybrid offspring, owned and operated by David H. Jamieson, Reno, Nevada (one of each species). The registration of this facility will allow specimens to be designated as bred in captivity for commercial purposes and deemed to be specimens of species included in Appendix II, as provided for in Article VII, paragraph 4 of CITES. Public comments are solicited.

DATES: Comments will be accepted until April 27, 1998.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail stop ARLSQ 750, 4401 N. Fairfax Drive, Arlington, Virginia 22203. Fax number 703–358–2276. Copies of the full text of the registration proposals are available from the Office of Scientific Authority and will be mailed upon request. Comments and other information received are available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia, address.

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FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, at the address given above (telephone: 703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, hereinafter referred to as CITES, is an international treaty designed to regulate international trade in animal and plant species that are or may become threatened with extinction. Authority for implementing CITES has been delegated to the Secretary of Interior through the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*). Species are listed in Appendix I, II, or III of CITES, depending on the degree of threat and level of control needed. Species listed in Appendix I receive the highest level of protection and require both an import permit from the country of import and an export permit from the country of export, and imports may not be for primarily commercial purposes. However, Article VII, paragraph 4 of CITES provides that specimens of animal species included in Appendix I bred in captivity for commercial purposes shall be deemed to be specimens of species included in Appendix II. Appendix-II species require an export permit only (no import permit) and may be imported for commercial or non-commercial purposes.

Through resolutions adopted at meetings of the Conference of the Parties to CITES, the Parties have defined criteria for registering breeding operations with the CITES Secretariat, whereby specimens of Appendix-I species from those operations would qualify as bred in captivity for commercial purposes. Resolution Conf. 10.16 adopted at the Tenth Meeting of the Conference of the Parties to CITES (which replaces Conf. 2.12 (rev.)) requires that parental breeding stock at such operations must: (a) be established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild; (b) be maintained without introduction of specimens from the wild, except for occasional augmentation to prevent or alleviate deleterious inbreeding, and for other limited purposes; and (c) have produced offspring of second (F2) or subsequent generations (F3, F4, etc.) in a controlled environment, belong to a species included in a list, established by the CITES Standing Committee, of species commonly bred to second or subsequent generations, or be managed in a manner that has been demonstrated to be capable of reliably producing second-generation offspring in a controlled environment. Resolution Conf. 8.15 provides guidelines for registering and monitoring operations breeding Appendix-I animal species for commercial purposes, and specifies the documentation required to establish that the operation meets the criteria of Resolution Conf. 10.16.

To register a captive-breeding operation, the Management Authority of the country in which the operation is located must approve the operation, in consultation with that country's Scientific Authority. The sponsoring Management Authority must then submit a proposal to register the operation to the CITES Secretariat, which will follow the process presented in Resolution Conf. 8.15.

After a review of relevant information, including breeding records and other documentation, the Fish and Wildlife Service has prepared for submission to the CITES Secretariat the following proposals: (1) the registration of Sky-Out Falcons owned and operated by David H. Jamieson, Reno, Nevada, as a commercial captive-breeding operation for gyrfalcons (*Falco rusticolus*), an Appendix I species, and hybrids; and (2) the registration of Sky-Out Falcons for peregrine falcons (*Falco peregrinus*), an Appendix-I species, and hybrids. Although this is the first commercial captive-breeding operation proposed for registration within the United States for any species, it is not the first operation registered with the CITES Secretariat for these two species (15 operations have been registered for peregrine falcons and 10 operations for gyrfalcons). The Sky-Out Falcons operation has been breeding falcons since 1974, with a combined production of 45 gyrfalcons and 46 peregrine falcons in 1995 and 1996. All of these offspring have been second-generation captive-hatched offspring. The Service is satisfied that all breeding stock has been legally acquired and maintained under appropriate permits, as determined by the Division of Law Enforcement in Region 1 of the Fish and Wildlife Service. Mr. Jamieson has provided detailed information on current holdings, husbandry practices, enclosures, production at his operation, and breeding strategies for genetic management of his flocks so as to minimize deleterious inbreeding. (Mr. Jamieson currently holds a pair of *F. p. anatum*, a species listed as endangered under the Endangered Species Act of 1973, as amended. This pair of birds is not included in this registration process and any offspring of either member of the pair would not be considered registered under Resolution Conf. 8.15.)

Required Determination

The Service prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA), for this notice and concluded in a Finding of No Significant Impact (FONSI) based on a review and evaluation of the information contained within the EA that there would be no significant impact on the human environment as a result of this action and that the preparation of an environmental impact statement on this action is not required by Section 102(2) of NEPA or its implementing regulations. The EA and FONSI for this action are on file at the Service's Office of Scientific Authority in Arlington, Virginia, and a copy may be obtained by any interested person for review and provide comments by contacting the individual identified under the section entitled, **FOR FURTHER INFORMATION.**

Author

This notice was prepared by Mr. Timothy J. Van Norman, Wildlife Biologist, Office of Scientific Authority, U.S. Fish and Wildlife Service (703/358–1708).

Dated: March 20, 1998.

Margaret Tieger,

Acting Chief, Office of Management Authority.

[FR Doc. 98–8048 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On December 19, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 244, Page 66660, that an application had been filed with the Fish and Wildlife Service by Eugene Giscombe for a permit (PRT–837603) to import a sport-hunted polar bear trophy, taken from the McClintock Channel population, Northwest Territories, Canada for personal use.

Notice is hereby given that on February 10, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On January 6, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 3, Page 571, that an application had been filed with the Fish and Wildlife Service by Stephen C. Slack for a permit (PRT–837990) to import a sport-hunted polar bear trophy, taken prior to April 30, 1994, from the Davis Strait population, Northwest Territories, Canada for personal use.

Notice is hereby given that on March 3, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: March 23, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–7998 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 30, 1998, North Pacific Trading Company, 815 N.E. Davis Street, Portland, Oregon 97202, made application by renewal to the Drug Enforcement Administration to be registered as an importer of marihuana (7360) a basic class of controlled substance listed in Schedule I.

This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird food.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 13, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–8083 Filed 3–26–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Joint Issuance of Permit for Marine Mammals

On October 22, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 204, Page 54851, that an application had been filed with the Fish and Wildlife Service by the American Museum of Natural History, New York, NY for a permit (FWS# 831724, NMFS# 876–1402) to import, export, re-import and re-export biological samples from all Cetacea, Pinnipedia, Sirenia, sea and marine otters for the purpose of scientific research.

Notice is hereby given that on March 2, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service in cooperation with the National Marine Fisheries Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for this application are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm. 700, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: March 11, 1998.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

Dated: March 13, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7999 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1430–00; GP8–0130]

Notice of Meeting of Southeast Oregon Resource Advisory Council and Notice of Change of Designated Federal Official for Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Southeast Oregon Resource Advisory Council, and Notice of Change of Designated Federal Official to Steve A. Ellis, District Manager, Lakeview District Office, Bureau of Land Management, PO Box 151, Lakeview, Oregon 97630 (Phone 541–947–2177).

SUMMARY: A meeting of the Southeast Oregon Resource Advisory Council will be held April 28, 1998, from 8 a.m. to 4:15 p.m. (PDT) and April 29, 1998, from 8 am to 11:45 a.m. Public comments are scheduled from 12 noon to 12:30 p.m., April 28, 1998. The Noxious Weeds subcommittee and the Fuels and Prescribed Fire Subcommittee will meet on April 29 at 1 p.m.

The meeting will be held at the Memorial Building of the Harney

County Fairgrounds, Fairgrounds Road, Burns, Oregon. On April 28, 1998, the Council will recess at an appropriate time for a lunch break of approximately one hour.

The Council is meeting to discuss the Interior Columbia Basin Ecosystem Management Draft Environmental Impact Statement.

ADDRESSES: The Southeast Oregon Resource Advisory Council will meet at the Memorial Building of the Harney County Fairgrounds, Fairgrounds Road, Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Sonya Hickman, Bureau of Land Management, Lakeview District, 1000 South 9th Street Lakeview, Oregon 97630 (Telephone 541–947–2177).

Dated: March 17, 1998.

M. Joe Tague,

Acting District Manager for the Lakeview District, BLM.

[FR Doc. 98–7925 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW130504]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW130504 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW130504 effective November 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 98–7989 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Ramada Hotel Old Town in Alexandria, Virginia, on April 28–29, 1998.

The agenda will cover the following principal subjects:

—Report from the Environmental Forum
—20th Anniversary of the OCS Lands Act Amendments: "What Has Worked and How Can We Make It Work Better?"
—Safety Strategy
—Oil Spill Financial Responsibility Rule
—Hard Minerals Update:
—Amboy Aggregate
—MMS Policy and Guidelines on Fees for OCS Resources Used in Shore Protection and Restoration Projects
—Subcommittee Update
—OCS Scientific Committee Update
—Year of the Ocean
—Federal/State Baseline Boundary Development Process
—Coastal Impact Assistance
—Regional Update: Alaska, Gulf of Mexico, and Pacific Regions.

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than April 17, 1998, to the Minerals Management Service, 381 Elden Street, MS–4001, Herndon, Virginia, 20170, Attention: Jeryne Bryant.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Jeryne Bryant at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia.

DATES: Tuesday, April 28 and Wednesday, April 29, 1998.

ADDRESSES: The Ramada Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia 22314—(800) 272–6232 or (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant at the address and phone number listed above.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: March 23, 1998.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 98–7984 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Renew Request for Clearance of Information Collection, Special Park Uses Management, Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–14, 44 U.S.C. 3507) and 5 CFR, part 1320 Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comment on a request for renewal of approval for the information collection requirements. These information collections are associated with permits implementing provisions of agency regulations pertaining to the use of public lands. The uses considered under this information collection application generally include those which make commercial use of public lands (such as commercial vehicles using Park roadways or which regulate activities not available to the public at large, (such as grazing in Parks where such activity is authorized by law). The OMB control number 1024–0026. NPS forms 10–114 (Special Use Permit) is the primary form used to permit and limit such uses of public lands. Application is generally in the form of a letter.

DATES: Public comments will be accepted on or before May 26, 1998.

ADDRESSES: Send comments to: Ken Johnson, Shenandoah National Park, 3655 U.S. Highway 211 East, Luray VA. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of the above mentioned forms may be obtained by writing to the above address or by calling the telephone number below.

FOR FURTHER INFORMATION CONTACT: Ken Johnson at 540–999–3249.

SUPPLEMENTARY INFORMATION: Specific Comments Sought: NPS seeks

comments, in particular, on the necessity for this information collection, the accuracy of our burden estimates, the clarity of the information to be collected and alternative methods of collection to minimize burden and improve service to the public.

Cross References to Other OMB Approvals

This information collection approval request, in addition to renewing the approval under OMB number 1024–0026 will also replace the approvals under OMB number 1024–0015. In furtherance of recommendations found in OMB's draft implementing guidance for the Paperwork Reduction Act, NPS is bundling information collection requests which are similar in intent and burden.

Dated: March 23, 1998.

Diane Cooke,

NPS Information Collection Liaison.

[FR Doc. 98–8022 Filed 3–26–98; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: National Park Service Visitor Survey Card, Department of the Interior.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) Visitor Services Project—Visitor Survey Card proposes to conduct visitor surveys at all 376 National Park System Units to learn visitors' opinions about park facilities, services and recreational opportunities in each park unit. This effort is required by the Government Performance and Results Act of 1993 (GPRA) goals and standards. In addition, visitors' understanding of park significance will be measured for each National Park unit. The results of these studies will be used to measure performance toward the GPRA goals (IIa1 and iib1) and standards and by park managers to improve the services they provide to visitors while better protecting park natural and cultural resources. A study package, including the proposed visitor survey card questionnaire (the same card will be used in all parks) for these proposed park studies, has been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1329, Reporting and Record Keeping Requirements, the NPS invites public comment on this proposed information collection request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The purpose of the proposed ICR is to document visitors' opinions about park facilities, services and recreation opportunities. In addition, visitors' understanding of park significance will be measured for each National Park System unit. Park unit performance will be evaluated according to National Park Service GPRA goals and standards. This information will be used by park managers, park planners and NPS regional and Washington office staff in priority setting for budget processes.

There were no public comments received as a result of publishing a 60 day notice of intention to request clearance of information collection for this study in the **Federal Register**.

DATES: Public comments will be accepted on or before April 27, 1998.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC, 20530; and also to: Terry Bergerson; Cooperative Park Studies Unit; Department of Forest Resources; College of Forestry, Wildlife and Range Sciences; University of Idaho; Moscow, ID 83844–1133.

FOR FURTHER INFORMATION OR A COPY OF THE QUESTIONNAIRE SUBMITTED FOR OMB REVIEW, CONTACT: Terry Bergerson, phone 208–885–4806, FAX: 208–885–4261, or email: *tberger@uidaho.edu*

SUPPLEMENTARY INFORMATION:.

Title: National Park Service (NPS) Visitor Service Project Visitor Survey Card.

Bureau From Number: Not Applicable.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The NPS needs to learn visitors' opinions about park facilities, services and recreational opportunities in each part unit to meet the requirements of the Government Performance and Results Act of 1993 (GPRA) goals and standards. In addition, visitors' understanding of park significance will be measured for each National Park unit. The proposed information, to be collected from visitors in all 376 National Park System units, is not available from existing records, sources, or observations.

Automated Data Collection: At the present time, there is no automated way to gather this information since it includes asking visitors to evaluate services and facilities that they used during their park visit. The information contained in these surveys will be processed automatically using scanning machines.

Description of Respondents: A sample of visitors to each National Park System Unit.

Estimated Average Number of Respondents: Total to represent all 376 National Park System units—67,680 respondents.

Estimated Average Burden Hours Per Response: 3 minutes.

Estimated Average Number of Responses: Each respondent will respond on one time, so the number of responses will be the same as the number of respondents.

Frequency of response: One time.

Estimated Annual Reporting Burden: Total 3,384 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–8019 Filed 3–26–98; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Shark Valley, Everglades National Park, FL; Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Service proposes to award a concession contract authorizing a concession to provide, operate, and maintain interpretive tram tours, bicycle rentals, limited snack items, and sundries for the public at Shark Valley located at Everglades National Park, Florida, for a period of 10 years from approximately January 1, 1999 to December 31, 2009.

EFFECTIVE DATE: Offers will be accepted for sixty (60) days under the terms described in the Prospectus. The sixty (60) day application period will begin with the release of the Prospectus, which will occur on or before April 27,

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1998. The actual release date of the Prospectus shall be the date the notice is published in the "Commerce Business Daily".

ADDRESSES: Interested parties should contact Henry Benedetti, Chief-Concessions Management, Everglades National Park, 40001 State Road 9336, Homestead, FL, 33034 for a copy of the Prospectus.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared since the improvement program includes only replacement of existing facilities on previously disturbed land.

The existing concessioner has performed its obligation to the satisfaction of Secretary under an existing contract which expired by limitation of time on November 30, 1992, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (16 U.S.C. 20 *et seq.*), is entitled to be given preference in the renewal of the contract, and in the award of a new contract providing that the existing concessioner submits a responsive offer. Responsive means a timely offer which meets the terms and conditions of the Prospectus. This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by an existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner. If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract permit will then be awarded to the party that has submitted the best responsive offer. The Secretary will consider and evaluate all offers received as a result of this notice.

Any offer, including that of the existing concessioner, must be received by the (Superintendent), Everglades National Park, 40001 State Road 9336, Homestead, FL 33034, no later than the sixtieth (60th) day following the day notice is published in the "Commerce Business Daily" to be considered and evaluated.

Henry Benedetti,

Chief, Concessions Management, Everglades National Park.

[FR Doc. 98–8020 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before MARCH 21, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by April 13, 1998.

Patrick Andrus,

Acting Keeper of the National Register.

ARIZONA

Coconino County

DelSue Motor Inn (Historic US Route 66 MPS), 234 E US 66, Williams, 98000356

CONNECTICUT

Fairfield County

Beardsley Park, 1875 Noble Ave., Bridgeport, 98000357

Hartford County

East Windsor Academy, 115 Scantic Rd., East Windsor, 98000359

Elm Street Historic District, Along Elm St., from 18 to 191 Elm St., Rocky Hill, 98000358

New Haven County

Blakeslee, Joseph, House, 1211 Barnes Rd., Wallingford, 98000362

New London County

Alden Tavern Site, Address Restricted, Lebanon vicinity, 98000361

Commonwealth Works Site,

Address Restricted, Norwich vicinity, 98000360

MISSOURI

Henry County

St. Ludger Catholic Church, Jct. of MO K and High St., Montrose vicinity, 98000365

Miller County

Union Electric Administration Building—Lakeside, 1 Willmore Ln., Lakeside vicinity, 98000364

St. Louis Independent City American Zinc, Lead and Smelting Company Building, 20 S. Fourth St., St. Louis, 98000363

NEW YORK

New York County

Broad Exchange Building, 25 Broad St., New York, 98000366

TENNESSEE

Shelby County

Humes, L.C., High School (Public Schools in Memphis MPS), 659 N. Manassas, Memphis, 98000368

Melrose School (Public School Buildings in Memphis MPS), 843 Dallas St., Memphis, 98000367

WASHINGTON

Spokane County

Miller Block, 808 W. Sprague Ave., Spokane, 98000370

Montvale Block (Single Room Occupancy Hotel's in the Central Business District of Spokane MPS), 1001–1009 W. First Ave., Spokane, 98000369

[FR Doc. 98–8124 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Churchill County, NV in the Control of the Nevada State Office, Bureau of Land Management, Reno, NV

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Churchill County, NV in the control of the Nevada State Office, Bureau of Land Management, Reno, NV.

A detailed assessment of the human remains was made by Bureau of Land Management and Nevada State Museum professional staff in consultation with representatives of the Paiute-Shoshone Tribe of the Fallon Reservation and Colony.

In 1940, human remains representing one individual were recovered during legally authorized excavations from a crevice burial near the Grimes Point Site. No known individuals were identified. A minimum of 4,061 associated funerary objects include a rope fragment, glass beads, and fragments of arrow shafts.

The associated funerary objects date this burial to the historic period (c. 19th century). Historical documents and ethnographic sources indicate that the Paiute people have occupied this area since precontact times. Northern Paiute oral tradition further support this evidence.

Based on the above mentioned information, officials of the Bureau of

Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Land Management have also determined that the minimum 4,061 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Paiute-Shoshone Tribe of the Fallon Reservation and Colony.

This notice has been sent to officials of the Paiute-Shoshone Tribe of the Fallon Reservation and Colony. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Cynthia Ellis, NAGPRA Coordinator, Nevada State Office, BLM, P.O. Box 1200, Reno, NV 89520; telephone: (702) 785–6469, before April 27, 1998. Repatriation of the human remains and associated funerary objects to the culturally affiliated tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: March 23, 1998.

S. Terry Childs,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 98–8016 Filed 3–26–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Office of Police Corps and Law Enforcement Education

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Police Corps interim final regulation and Police Corps service agreement.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, § 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590. Written comments may also be submitted to Charlotte C. Grzebien, Assistant General Counsel, Office of Community Oriented Policing Services, 1100 Vermont Avenue NW., Washington, DC 20530, or via facsimile at (202) 616–2914.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/Component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below.

Police Corps Interim Final Regulation and Police Corps Service Agreement.

(1) *Type of information collection.* New collection.

(2) *The title of the form/collection.* Police Corps Interim Final Regulation and Police Corps Service Agreement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection.* Form: COPS 17/01 and 17/02. Office of Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.*

Police Corps Interim Final Regulation

The Police Corps Interim Final Regulation sets forth guidance to interested States and territories and individual participants on the requirements for participations in the Police Corps, a scholarship program for students willing to provide 4 years of service in return for funding. The Regulations specifics required information on each participant.

Police Corps Service Agreement

The Police Corps Service Agreement is the written contract between the Office of Police Corps and Law Enforcement Education and selected Police Corps participants, setting forth the participants' agreement to provide 4 years of law enforcement service in exchange for scholarship or reimbursement funds for educational purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Police Corps Interim Final Regulation:

Approximately 8 respondents, at 20 hours per response (including record-keeping). Police Corps Service Agreement, approximately 144 respondents, at 10 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection.* Approximately 184 hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 24, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–8077 Filed 3–26–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Civil Division

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Reinstatement, with change, of a previously approved collection for which approval has expired: claim for damage, injury, or death.

The Department of Justice, Civil Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 6, 1997 at 62 FR 52149, allowing for an emergency review with 60-day public comment period. No comments were received by the Civil Division on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 27, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) Title of the Form/Collection: Claim for Damage, Injury, or Death.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form SF95, Claim for Damage, Injury, or Death. Civil Division.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Others that apply: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government. This information is needed to present a claim against the United States Government under the Federal Tort Claims Act, 28 U.S.C. 2675(a).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 300,000 responses at 6 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,800,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Jeffrey Axelrad 202–616–4400, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Jeffrey Axelrad.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 23, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–8078 Filed 3–26–98; 8:45 am]

BILLING CODE 4717–01–M

DEPARTMENT OF JUSTICE

Office of Inspector General

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under emergency review; survey of community oriented policing services grantees.

The Department of Justice, Office of the Inspector General, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by March 23, 1998. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Dennis Marwich, (202) 395–3122, Department of Justice Desk Officer, Washington, DC 20530

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to John Antonelli (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John Antonelli, 202–616–4666, Office of the Inspector General, Audit Division, U.S. Department of Justice, Suite 5000, 1425 New York Avenue NW., Washington, DC 20005.

Overview of this information collection:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Survey of Community Oriented Policing Services Grantees.

(3) *The agency form number, if any, and the applicable component of the*

Department sponsoring the collection: None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: state, and local law enforcement agencies. Other: None. This collection will gather information for an Inspector General's audit on the efficiency and effectiveness on the Community Oriented Policing Services grant programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 respondents with an average 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 400 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 24, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–8079 Filed 3–26–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 28, 1998, and published in the **Federal Register** on December 19, 1997, (62 FR 66666), Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amephetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the above listed controlled substances for isotope labeled standards for drug analysis.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cambridge Isotope Lab to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 12, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–8087 Filed 3–26–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 23, 1998, Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methandone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

The firm plans to manufacture the controlled substances for distribution as bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above proposed application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 26, 1998.

Dated: March 16, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–8084 Filed 3–26–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 28, 1997, and published in the **Federal Register** on December 19, 1997, (62 FR 66667), High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture analytical reference standards.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of High Standard Products

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to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 18, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–8086 Filed 3–26–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 6, 1998, Inhalon Pharmaceuticals, Inc., 3998 Schelden Circle, Bethlehem, Pennsylvania 18017, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II

The firm plans to develop a manufacturing process for these products such that the products can be ultimately formulated by the parent company.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 26, 1998.

Dated: March 19, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–8085 Filed 3–26–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP(BJS)–1161]

RIN 1121–ZA98

National Sex Offender Registry Assistance Program (NSOR–AP)

AGENCY: Office of Justice Programs, Bureau of Justice Statistics (BJS), Justice.

ACTION: Notice of program plan.

SUMMARY: The Bureau of Justice Statistics (BJS) is publishing this notice to announce the establishment of the National Sex Offender Registry Assistance Program (NSOR–AP) in Fiscal Year (FY) 1998. The NSOR Assistance Program is a component of the BJS National Criminal History Improvement Program (NCHIP). Copies of this announcement also can be found on the Internet at http://www.ojp.usdoj.gov/bjs/.

FOR FURTHER INFORMATION CONTACT: Carol G. Kaplan at (202) 307–0759 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Program Goals

The BJS National Sex Offender Registry Assistance Program (NSOR–AP) supports the President's goal of establishing an effective national registry of convicted sex offenders. The registry will ensure that accurate and complete information about convicted sex offenders is appropriately made available to law enforcement to protect the public and prevent further victimizations. Specifically, the program will help states ensure that:

(1) State sex offender registries identify, collect, and properly disseminate relevant information that is consistent, accurate, complete, and up-to-date;

(2) States establish appropriate interfaces with the FBI's national system so that State registry information on sex offenders can be obtained and tracked from one jurisdiction to another.

Background

Establishment of an effective national sex offender registry that is capable of providing instant access to data on sex offender location on an interstate basis is a national priority.

In his Order dated June 25, 1996, President Clinton directed that Attorney General Reno develop a plan for a national sex offender registry by August 1996. In her response, submitted to the President on August 22, 1996, the Attorney General stressed the DOJ commitment to establishment of a sex offender registry and indicated that achievement of this goal would be achieved through a coordinated effort involving the FBI (the agency that will maintain and operate the National Sex Offender Registry), the National Law Enforcement Telecommunications System (NLETS) (the system through which States will communicate registry information between and among themselves and the FBI), and the States (which have primary responsibility for gathering data on sex offenders for use within the State and input into the national system). In addition, subsequent amendments to 42 U.S.C. 14072 require the establishment of such a registry and amendments to 42 U.S.C. 14071 require States to participate in the Registry as a condition of eligibility for full Byrne grant funding.

The permanent National Sex Offender Registry File will be developed as part of the FBI's NCIC–2000 project and will include a fingerprint and photo ("mugshot") image of the registered offender. The file will be a "hot file" and be accessible to authorized users without submitting fingerprints. As reported in the Attorney General's August 1996 response to the President, the accelerated date for the permanent system to be in place is mid-1999.

Pending establishment of the permanent system, an interim national pointer system has been established by the FBI, that flags criminal history records of persons whom States identify as being registered as sex offenders. This is similar to the procedure used in the "Flash" system that identifies parolees and probationers. Inquiries that result in a "hit" identify the State registry that holds the full information on an offender. Inquiring criminal justice agencies may use NLETS (or phone or paper) to request more detailed information. Flags are set based on input from each of the States. As of March 4, 1998, the FBI indicates that 23 States are providing data to the interim system and that an estimated 31,590 records are currently flagged.

Available information indicates that all States operate some type of sex offender registry at this time. In order, however, for the national system to permit law enforcement in each State to have information on offenders initially released in other States, or traveling throughout the Nation, these individual

registries must be automated, accurate, and interfaced with the national system on a timely basis.

The BJS National Sex Offender Registry Assistance Program (NSOR–AP) is designed to help States ensure that State sex offender registries identify, collect, and properly disseminate relevant information that is consistent, accurate, complete and up-to-date. Additionally, the program will help States establish appropriate interfaces with the FBI's national system so that State registry information on sex offenders can be obtained and tracked from one jurisdiction to another.

The BJS NSOR–AP program will also assist States in meeting relevant requirements of current Federal legislation (*The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act , Megan's Law,* and the *Pam Lychner Sexual Offender Tracking and Identification Act* (42 U.S.C. 14071, 14072), as amended by section 115 of the general provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriation Act of 1998, P.L. 105–119) and applicable State standards.

Appropriation and Assistance Program

The FY 1998 BJS appropriation includes $25 million to support the national sex offender registry. Funds will be awarded to States under the BJS National Sex Offender Registry Assistance Program (NSOR–AP), which is a discretionary award component of the overall BJS National Criminal History Improvement Program (NCHIP). All States will be eligible for an award under the NSOR–AP program.

Application and Award Process

Only one application will be accepted from each State. The application must be submitted by the agency designated by the Governor to administer the NSOR assistance program. Where the designated agency is the same as the designated NCHIP agency, a separate application must be submitted for NSOR–AP funds and NCHIP funds. A State may choose to submit its application as part of a multistate consortium or other entity. In such case, the application should include a statement of commitment from each State and be signed by an individual designated by the Governor of each participating State. The application should also indicate specific responsibilities and include a separate budget for each State.

Timing

To be eligible for 1998 NSOR–AP funds, an application must be submitted to BJS by April 15, 1998.

Awards normally will be for 12 months, although a longer period can be approved with sufficient justification. Project activity may be initiated after July 1, 1998, but no later than September 1998. In the event that an award is made before July 1, 1998, the applicant may request an earlier start up date. Applications must contain an end date no later than December 31, 1999.

Allocation of Funds Within the State

The agency designated to apply for and receive the NSOR–AP award may allocate the funds within the State consistent with State policy and goals. Although it is anticipated that the majority of funds will be utilized at the State level to directly support development of the State registry and interfaces with the national system, funds may be directed to local agencies requiring assistance in connection with, for example, input of data. States should be particularly aware of the key role played by courts in development of registry information and of special needs of Indian tribes.

Interface With the FBI's National Sex Offender Registry System

Regular input to the FBI's national system is a key goal of this assistance program. Accordingly, States that are not currently submitting information to the FBI's national registry at the time of their application for funding are encouraged to request funding to accomplish this goal by September 30, 1998. All applications must either indicate that the State is already submitting information or specify the date(s) by which data will be provided to the FBI's interim and/or permanent system.

Program Narrative

In addition to the requirements set forth in Appendix A, the National Sex Offender Registry Assistance Program (NSOR–AP) application should include the following parts.

Part I. Background

This section should include a short description of the status of, and plans for, those aspects of the State sex offender registry that are necessary for understanding the application. In particular, the discussion should indicate whether the registry is automated in whole or in part and describe the process for data input and dissemination to law enforcement agencies within the State. The section should also indicate whether data is being sent electronically to the FBI and the categories of persons eligible to access registry data. Where funds are requested for fingerprint or mugshot equipment, the section should indicate the status of fingerprint or mugshot capability at the registry and among local agencies charged with data input. The applicant should also indicate whether any coordination arrangements exist with neighboring States or Indian tribes.

Part II. Identification of Needs

This section should identify those areas and problems that the applicant State believes should be addressed to upgrade the functioning of the State registry and its interface with the national system, consistent with Federal and State legislative requirements.

Part III. Program Description

This section should describe specific tasks to be undertaken with requested funds. Tasks to be undertaken should be listed in priority order, with intended impact, budget requirements, and estimated dates of completion. The application should indicate the means by which each task will help the State achieve the goals of the program.

Part IV. Coordination

To ensure that the NSOR program fully supports the President's goals and furthers the overall DOJ efforts to establish a national sex offender registry, BJS will closely coordinate the NSOR–AP program with relevant offices within the Department of Justice, including the Office of Justice Programs, and the FBI. Similar coordination is expected between the State's agency responsible for the State sex offender registry and other interested State and local agencies and Indian tribes.

To ensure coordination of Federal funding efforts, the application should include information on current awards or pending applications for Federal funding to support activities for which funds are being requested in the current NSOR–AP application. Where relevant, such information should indicate the amount of the other award, the grantor agency, and the program purpose.

Part V. Timetable

This section should set forth a timetable for all tasks proposed to be funded under the award. The section should also include a statement assuring that the State currently is submitting data to the FBI national sex offender registry system, or set forth a timetable by which such a link will be effectuated.

Part VI. Fund Allocation and Budget

This section should identify the agencies or governmental components that will receive funds under the award. In particular, the application should specify the level of funds or other benefits that will be directed for the courts or Indian tribes. The application should identify those agencies to receive funds under the award and indicate the fiscal arrangements to accomplish fund transfer if the recipient agency is not the implementing agency. The budget should provide details for expenses in required categories (see Appendix A, Application Content). Please note that allocation of funds to other States and local agencies is considered a contractual arrangement under federal budgeting categories.

Review and Funding Criteria

States should understand that full funding may not be possible for all proposed activities. Allocation of funds will be based on the amount requested and the following factors:

(1) The extent to which proposed tasks will ensure that the applicant State becomes a fully-functional part of the FBI's National Sex Offender Registry;

(2) The extent to which activities to be supported under the award will, by virtue of the number of sex offenders in the State, the level of technical development in the State, geographic or demographic factors, current operating procedures and requirements, or other related factors, be expected to have a major impact on availability of information about sex offenders, both within the State and nationally;

(3) The proposed use or enhancement of innovative procedures that may be of value to other jurisdictions;

(4) The technical feasibility of the proposal and the extent to which the proposal appears reasonable in light of the State's current level of system development and statutory framework;

(5) Reasonableness of the budget;

(6) Nature of the proposed expenditures; and

(7) The reasonableness of the relationship between the proposed activities and the current status of the State system in terms of technical development, legislation, current fiscal demands and future operating costs.

Funding and Allowable Costs

Funds may be used for the following purposes:

1. Automate and enhance automation of registries—Funds may be used to automate and/or upgrade the automation of the State sex offender registry. Eligible costs also include automating linkage between the registry and law enforcement agencies within the State, and developing and implementing procedures to transfer information to the FBI. Funds may only be used for procedures that are compatible with the FBI system.

2. Improve online access for law enforcement across the State—Funds may be used to create linkage with local radio dispatchers or computerized methods of dissemination as a mean of providing timely access to registry data to officers in the field. Funds may not be used for purchase of individual equipment to be used by law enforcement officers in the field.

3. Support automated input from courts, corrections and other agencies and entities responsible for transmitting registry data—Funds may be used to automate and develop procedures for automated transmission of data from courts, correctional agencies and other responsible agencies and entities to the registry. This may entail direct transfer of funds to these components of the criminal justice system. Allowable costs may include in-house automation, but only to the extent that such efforts are directly related to the transmission of sex offender data to the registry. Where funds are requested for automation of court, correctional or other records, the application should indicate the proportion of activity related to the identification and/or transmission of records for use in the sex offender registry.

4. Develop procedures and software to permit automated input to interim or permanent FBI system—Funds may be used for hardware, software and development, implementation, and training in procedures to support automated input to the FBI's interim or permanent sex offender registry system.

5. Develop procedures and provide appropriate training to persons responsible for inputting data (including registrants)—Funds may be used to purchase equipment and develop/implement technical procedures to facilitate registration of offenders. Funds may also be used to develop procedures and train personnel to ensure that complete information is inputted to the system on a timely basis. Funds may also be used to develop procedures to advise registrants of reporting responsibilities and to establish and implement protocols for them to fulfill this requirement.

6. Purchase automated fingerprint equipment and develop procedures and protocols—Funds may be used to purchase equipment, develop procedures, and implement protocols for fingerprinting registrants entering a State system from another jurisdiction (or where otherwise not identifiable within the State). This may include purchase of livescan equipment for local agencies. Where funds are to be used for this purpose, the application should demonstrate that funds can be justified on the basis of geographic, population, traffic or other related factors. Livescan can only be purchased where the State has established an Automated Fingerprint Identification System (AFIS) and either has implemented or is implementing procedures to ensure that the AFIS is compatible with FBI standards.

7. Establish mugshot identification capability—Funds may be used for purchase of equipment and development/implementation of procedures to include mugshots of registrants for use either within the State or for transmission to the FBI at such time as that capability becomes available. Mugshot support community notification and law enforcement use of the registry as a tool for identification and apprehension of suspects. States requesting funds for this use must justify the location of the equipment in terms of geography, population, traffic, and demography and ensure that equipment to be used at the local or county level includes the capability for transmission of images to the registry for use throughout the State. All equipment and software purchased or developed with funds under the award must be compatible with FBI standards.

8. Review existing records (both manual and automated) to identify previously convicted individuals for inclusion in the registry and/or develop flagging software to identify qualifying criminal history records—Where consistent with State legislation, funds may be used for review of existing records to identify, flag, and transmit data from records of previously released offenders who qualify for inclusion in the registry. This may include a review of juvenile records where consistent with State law or practice.

9. Establish operating procedures to ensure that data in the registries are accurate and complete—In order for the national registry to be reliable and beneficial to the law enforcement community, data submitted from States must be both accurate and complete. Funds may be used to develop and implement procedures and software, provide relevant training, ensure that changes in status are recorded and transmitted to the FBI, and ensure that both the State data and the data at the FBI are accurate, up to date and complete.

10. Evaluate, audit, provide training, and participate at national/regional/local conferences and training sessions—Funds may be used to audit or evaluate current operations or needs, in order to identify necessary system enhancements and/or modifications. Funds may also be used to collect data on transactions to and from the registry, utilization patterns, or any related information. States must agree to cooperate with BJS and DOJ supported evaluation efforts and with statistical analysis conducted pursuant to other awards made by BJS. Where necessary, funds may be used to meet this requirement.

Funds may also be used to sponsor training programs to support registry operations and to send up to two representatives to two workshops/meetings/conferences focusing on operation of the State or national sex offender registry. Additional funds may be used to support additional participation at meetings with prior BJS approval.

11. Make registry data available for background checks—Funds may be used to purchase equipment and develop software to permit the disclosure of registry data in connection with background checks or other purposes as authorized by State or Federal legislation.

The program does not require either "hard" (cash) or "soft" (in-kind) matching funds. Indications of State support, however, may be interpreted as expressions of commitment by the State to the program. Additionally, all applicants must agree to participate in evaluations sponsored by the Federal Government. The NSOR-AP program is intended to support the national sex offender registry by assisting States to develop and enhance State registries that feed into the national system. Costs of regular operating expenditures are not, therefore, covered under the program.

Application and Administrative Requirements

Application Content

All applicants must submit:

- Standard Form 424, Application for Federal Assistance.
- Budget Detail Worksheet (replaced the SF 424A, Budget Information).
- OJP Form 4000/3 (Rev. 1–93), Program Narrative and Assurances.
- OJP Form 4061/6 Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements.
- OJP Form 7120/1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds).

Applicants are requested to submit an original and two copies of the application and certifications to the following address: Application Coordinator, Bureau of Justice Statistics, 810 7th Street, NW., Washington, DC 20531; Phone: (202) 616–3500.

Standard Form 424 (SF–424). The SF–424, a one-page sheet with 18 items, serves as a cover sheet for the entire application. This form is required for every application for Federal assistance. NO APPLICATION CAN BE ACCEPTED WITHOUT A COMPLETED, SIGNED ORIGINAL SF–424. Directions to complete each item are included on the back of the form.

Budget Detail Worksheet. Applicants must provide a detailed justification for all costs, including the basis for computation of these costs. For example, the detailed budget would include the salaries of staff involved in the project and the portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs related to the project; equipment to be purchased with the award funds; and supplies required to complete the project. Budget narrative. The budget narrative should detail costs included in each budget category for the Federal and the non-Federal (in-kind and cash) share. The purpose of the budget narrative is to relate items budgeted to project activities and to provide justification and explanation for budget items, including criteria and data used to arrive at the estimates for each budget category. The budget narrative should also indicate amounts to be made available to agencies other than the grant recipient (for example, the agency with responsibility for CCH, the courts, local agencies.) The following information is provided to assist the applicant in developing the budget narrative.

a. Personnel category. List each position by title (and name of employee if available), show annual salary rate and percentage of time to be devoted to the project by the employee. Compensation paid for employees engaged in federally assisted activities must be consistent with that paid for similar work in other activities of the applicant.

b. Fringe benefits category. Indicate each type of benefit included and explain how the total cost allowable for employees assigned to the project is computed.

c. Travel category. Itemize travel expenses of project personnel by purpose (e.g., faculty to training site, field interviews, advisory group meetings, etc.) And show basis or computation (e.g., "Five trips for x purpose at $80 average cost—$50 transportation and two days per diem at $15" or "Six people to 30-day meeting at $70 transportation and $45 subsistence.") In training projects where travel and subsistence for trainees is included, this should be separately listed indicating the number of trainees and the unit costs involved.

(1) Identify the tentative location of all training sessions, meetings, and other travel.

(2) Applicants should consult such references as the *Official Airline Guide* and the *Hotel and Motel Redbook* in projecting travel costs to obtain competitive rates.

d. Equipment. List each type of equipment to be purchased or rented with unit or monthly costs.

e. Supplies. List items within this category by major type (office supplies, training materials, research forms, postage) and show basis for computation. Provide unit or monthly estimates.

f. Contractual category. State the selection basis for any contract, subcontract, prospective contract or prospective subcontract (including construction services and equipment.) Please note, applications that include noncompetitive contracts for the provision of specific services must contain a sole source justification for any procurement in excess of $100,000.

For individuals to be reimbursed for personal services on a fee basis, list by name or type of consultant or service, the proposed fee (by day, week, or hour) and the amounts of time to be devoted to such services.

For construction contracts and organization (including professional associations and education institutions performing professional services), indicate the type of service to be performed and the estimated contract cost data.

g. Construction category. Describe construction or renovation which will be accomplished using grant funds and the method used to calculate cost.

h. Other category. Include under "other" such items as rent, reproduction, telephone, and janitorial or security services. List items by major type with basis of computation shown. (Provide square footage and cost per square foot for rent—provide local and long distance telephone charges separately.)

i. Indirect charges category. The Agency may accept an indirect cost rate previously approved for an applicant by a Federal agency. Applicants must

enclose a copy of the approved rate agreement with the grant application.

j. Program income. If applicable, provide a detailed estimate of the amount of program income to be generated during the grant period and its proposed application (to reduce the cost of the project or to increase the scope of the project). Also, describe the source of program income, listing the rental rates to be obtained, sale prices of publications supported by grant funds, and registration fees charged for particular sessions. If scholarships (covering, for example, registration fees) are awarded by the organization to certain conference attendees, the application should identify the percentage of all attendees that are projected as "scholarship" cases and the precise criteria for their selection.

Program narrative. All applications must include a program narrative that fully describes the expected design and implementation of the proposed program. OJP Form 4000/3 (Rev. 1–93) provides additional detailed instructions for preparing the program narrative.

The narrative should include a time line of activities indicating, for each proposed activity, the projected duration of the activity, expected completion date, and any products expected. The application should include a description of the roles and responsibilities of key organizational and/or functional components involved in project activities; and a list of key personnel responsible for managing and implementing the major elements of the program. Assurances. OJP Form 4000/3 (Rev 1–93) must be included in the application submission. If submitting this form separate from the SF–424, the applicant must sign and date the form to certify compliance with the Federal statutes, regulations, and requirements as cited.

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace. Applicants should refer to the regulations cited in OJP Form, 4061/6 to determine the certification to which they are required to attest. A copy of OJP Form 4061/6 can be obtained from the BJS Application Coordinator. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying," and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

Financial and Administrative Requirements

Discretionary grants are governed by the provisions of OMB Circulars applicable to financial assistance. The circulars, in addition to the OJP Financial Guide, are available from the Office of Justice Programs. This guideline manual is intended to assist grantees in the administration of funds and includes information on allowable costs, methods of payment, Federal rights of access to records, audit requirements, accounting systems, and financial records.

Complete and accurate information is required relative to the application, expenditure of funds, and program performance. The consequences of failure to comply with program guidelines and requirements will be determined at the discretion of the Department.

Civil Rights Obligations

All applicants for Federal financial assistance must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity that receives such Federal funds. Section 809(c), Omnibus Crime Control & Safe Streets Act of 1968, provides that:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title.

Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans With Disabilities Act prohibit discrimination on the basis of disability.

The applicant agency must discuss how it will ensure nondiscriminatory practices as they relate to:

(1) Delivery of services or benefits—to ensure that individuals will not be denied access to services or benefits under the program or activity on the basis of race, color, religion, national origin, gender, age, or disability;

(2) Employment practices—to ensure that its personnel in the program or activity are selected for employment without regard to race, color, religion, national origin, gender, age, or disability; and

(3) Program participation—to ensure members of any planning, steering or advisory board, which is an integral part of the program or activity, are not excluded from participation on the basis of race, color, religion, national origin, gender, age or disability; and to encourage the selection of such members who are reflective of the diversity in the community to be served.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A–128, "Audits of State and Local Governments" which establishes regulations to implement the Act. OMB Circular A–128, "Audits of State and Local Governments," outlines the requirements for organizational audits which apply to BJS grantees.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, "when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program."

Intergovernmental Review of Federal Programs

Federal Executive Order 12372, "Intergovernmental Review of Federal Programs," allows States to establish a process for reviewing Federal programs in the State, to choose which programs they wish to review, to conduct such reviews, and to make their views known to the funding Federal agency through a State "single point of contact."

If the State has established a "single point of contact," and if the State has selected this program to be included in its review process, the applicant must send a copy of its letter or application to the State "single point of contact" at the same time that it is submitted to BJS. The letter or application submitted to BJS must indicate that this has been done. The State must complete its review within 60 days. The review period will begin on the date that the letter or application is officially received by BJS. If BJS does not receive comments from the State's "single point

of contact" by the end of the review period, this will be interpreted as a "no comment" response.

If the State has not established a "single point of contact," or if it has not selected the BJS statistics development or criminal history improvement programs in its review process, this must be stated in the letter or application.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 98–8105 Filed 3–26–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission For OMB Review; Comment Request

March 24, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before April 27, 1998.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Final Finding—Single, Full-Shift Respirable Dust Measurements.

OMB Number: 1219-Onew.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Cite	Respondents	Average time	Total burden hours
30 CFR 71.300	81	3 hours 10 minutes	257
30 CFR 71.301(d)	81	10 minutes	14
30 CFR 75.370 and 30 CFR 75.370(a)(3)	63	6 hours 20 minutes	210
30 CFR 75.370(e)	63	10 minutes	11
30 CFR 75.370(f)	63	15 minutes	16
30 CFR 90.300	3	3 hours 10 minutes	10
30 CFR 90.301(d)	3	20 minutes	1
Total	357		519

Total Burden Hours: 519.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $116,230.

Description: Requires mine operators to use abatement samples to demonstrate to MSHA that they have corrected the condition or practice which resulted in the citation for exceeding the applicable respirable dust standard.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–8115 Filed 3–26–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Labor Research Advisory Council; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with General Services Administration (GSA), I have determined that renewal of the Labor Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics regarding the statistical and analytical work of the Bureau of Labor Statistics, providing perspectives on these programs in relation to the needs of the labor unions and their members.

Council membership and participation in the Council and its subcommittees are broadly representative of union organizations of all sizes of membership, with national coverage that reflects the geographical, industrial, and occupational sectors of the economy.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Charter is being filed simultaneously herewith with the Library of Congress and the appropriate congressional committees.

Interested persons are invited to submit comments regarding renewal of the Labor Research Advisory Council. Such comments should be addressed to: William G. Barron, Jr., Bureau of Labor Statistics, Department of Labor, Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone: 202–606–7802.

Signed at Washington, DC this 24th day of March, 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 98–8024 Filed 3–26–98; 8:45 am]

BILLING CODE 4510–24–M

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DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Spring meetings of the Business Research Advisory Council and its committees will be held on April 8, 9, and 30, 1998. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE, Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officials from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 8, 1998—Meeting Rooms 9 & 10

10–11:30 a.m.—Committee on Employment Projections

1. Graphic presentation of 1996–2006 projections
2. The OEP Internet: Some new information
3. Open discussion of ways to improve OEP's projections publications
4. Ongoing OEP projections
5. Discussion of items for Fall 1998 meeting

1:30–2:30 p.m.—Committee on Price Indexes

1. Update on program developments
   a. Producer Price Indexes
   b. The Consumer Price Index
2. Other business

3–4:30 p.m.—Committee on Productivity and Foreign Labor Statistics

1. Report on recent developments in the Office of Productivity and Technology
2. International comparisons of unit labor costs
3. Recent trends in productivity measures for major sectors of the U.S. economy
4. The new BLS industry productivity data set

Thursday, April 9, 1998—Meeting Rooms 9 & 10

8:30–11:30 a.m.—Committee on Employment and Unemployment Statistics

1. Update on program developments
2. Other business

10:30–12:30 p.m. Council Meeting

1. Chairperson's opening remarks
3. Discussion with the Associate Commissioner, Office of Publications
4. Chairperson's closing remarks

1:30–3 p.m. Committee on Compensation and Working Conditions

1. Factors explaining wage variation in the National Compensation Survey
2. OCWC Compensation Data on the Internet
3. Benefits in the National Compensation Survey

Thursday, April 30, 1998—Meeting Room 4

1:30–3 p.m.—Committee on Occupational Safety and Health Statistics

1. Review of industry summary news release for the 1996 Survey of Occupational Injuries and Illnesses
2. Review of the worker demographics and case characteristics news release for the 1996 Survey of Occupational Injuries and Illnesses.
3. Update on Occupational Safety and Health Administration plans for revising its recordkeeping guidelines.

The meetings are open to the public. Persons with disabilities and those wishing to attend these meetings as observers should contact Nancy Sullivan, Bureau of Labor Statistics, at (202) 606–5903, for appropriate accommodations.

Signed at Washington, DC the 23rd day of March 1998.

William G. Barron, Jr.,

Deputy Commissioner.

[FR Doc. 98–8023 Filed 3–26–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decision thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

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Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Ave., N.W., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ980002 (Feb. 13, 1998)

Volume II

Pennsylvania
PA980023 (Feb. 13, 1998)
PA980024 (Feb. 13, 1998)
PA980029 (Feb. 13, 1998)
PA980040 (Feb. 13, 1998)
PA980052 (Feb. 13, 1998)
PA980060 (Feb. 13, 1998)
PA980063 (Feb. 13, 1998)
West Virginia
WV980002 (Feb. 13, 1998)
WV980003 (Feb. 13, 1998)
WV980006 (Feb. 13, 1998)

Volume III

Florida
FL980045 (Feb. 13, 1998)
Georgia
GA980083 (Feb. 13, 1998)
North Carolina
NC980050 (Feb. 13, 1998)
South Carolina
SC980036 (Feb. 13, 1998)

Volume IV

Illinois
IL980018 (Feb. 13, 1998)
IL980033 (Feb. 13, 1998)
IL980035 (Feb. 13, 1998)
IL980036 (Feb. 13, 1998)
IL980039 (Feb. 13, 1998)
IL980044 (Feb. 13, 1998)
IL980056 (Feb. 13, 1998)
Michigan
MI980007 (Feb. 13, 1998)
MI980066 (Feb. 13, 1998)
MI980068 (Feb. 13, 1998)
MI980071 (Feb. 13, 1998)
MI980074 (Feb. 13, 1998)
MI980078 (Feb. 13, 1998)
MI980080 (Feb. 13, 1998)

Volume V

Oklahoma
OK980013 (Feb. 13, 1998)
OK980014 (Feb. 13, 1998)
OK980016 (Feb. 13, 1998)
OK980017 (Feb. 13, 1998)
OK980028 (Feb. 13, 1998)
OK980034 (Feb. 13, 1998)
OK980035 (Feb. 13, 1998)
OK980036 (Feb. 13, 1998)
OK980037 (Feb. 13, 1998)
OK980038 (Feb. 13, 1998)
OK980043 (Feb. 13, 1998)

Volume VI

Washington
WA980001 (Feb. 13, 1998)
WA980002 (Feb. 13, 1998)
Wyoming
WY980009 (Feb. 13, 1998)

Volume VII

California
CA980009 (Feb. 13, 1998)
CA980029 (Feb. 13, 1998)

General Wage Determination Publication

General Wage Determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The General Wage Determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 20th day of March 1998.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–7719 Filed 3–26–98; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–043)]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee, Task Force on NASA's Aviation Environmental Compatibility Research; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Task Force on NASA's Aviation Environmental Compatibility Research.

DATES: Wednesday, April 22, 1998, 8:00 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Darlene Boykins, Office of Aeronautics and Space Transportation Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4743).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The purpose of the meeting is to review actions related to the Task Force Charter listed below:.

—Based on examining past application of NASA research, recommend ways to improve effectiveness of environmental technology transfer.
—Evaluate process being used to assess and recommend NASA research plans in noise and emissions relative to the "Three Pillars" environmental goals.
—Recommend ways to ensure the appropriate use of research in regulatory considerations.
—Recommend ways of improving the relationship of NASA with the air carrier community, aircraft and engine manufacturers, other environmental research and technology organizations, and regulatory agencies with regard to environmental research and technology.
—Identify critical interdependencies of environmental goals with the other related "Three Pillar" goals.

It is imperative that the meeting be held on these dates to accommodate the

scheduling priorities of the key participants.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–8125 Filed 3–26–98; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Northern States Power Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses DPR–42 and DPR–60 issued to Northern States Power Company (the licensee) for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota.

The proposed amendments would (1) update the Technical Specification heatup and cooldown rate curves and extend their reactor fluence limit from the current 20 effective full power years (EFPY) to a new value of 35 EFPY, (2) incorporate into Technical Specifications the use of a Pressure and Temperature Limits Report (PTLR), and (3) change the power-operated relief valves (PORVs) temperature requirement for operability.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to update the Prairie Island pressure and temperature limits curves and the Over Pressure Protection System (OPPS) setpoints for reactor vessel fluence to 35 EFPY is based upon measurements and calculations that were performed in accordance with an NRC approved methodology for performing reactor vessel fracture analysis to meet 10CFR50 Appendix G and H requirements. These calculations made application of American Society of Mechanical Engineers (ASME) Code Case N–514, "Low Temperature Overpressure Protection," in determining the acceptable OPPS setpoint for Prairie Island Units 1 and 2. This permits the OPPS pressure relief setpoint to be established such that the maximum pressure at the reactor vessel material's most limiting location is limited to 110% of the pressure determined to satisfy ASME Section XI, Appendix G, Article G–2215. As detailed in the exemption request to apply this ASME Code Case, the development of the Appendix G pressure/temperature limit curves incorporates numerous conservatisms. For this reason the ASME code committee approved this code case. Application of this code case with the approved methodology does not produce a significant increase in the probability or magnitude of brittle fracture of the reactor vessel.

The proposed change to relocate the pressure and temperature limits curves and the Over Pressure Protection System (OPPS) setpoints to a Pressure and Temperature Limits Report is an administrative change. It does not affect any system which is a contributor to initiating events for previously evaluated anticipated operational occurrences and therefore does not involve any significant increase in the probability or consequence of an accident previously evaluated.

The proposed change in PORV operability temperature from 310 °F to a new value of 350 °F does not affect any system which is a contributor to initiating events for previously evaluated anticipated operational occurrences and therefore does not involve any significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed change to update the Prairie Island pressure and temperature limits curves and the Over Pressure Protection System (OPPS) setpoints for a reactor fluence limit of 35 EFPY does not introduce a new mode of operation or testing, or make physical changes to the plant. (The new Technical Specification requirement to isolate the accumulators whenever the RCS [reactor coolant system] temperature is less than the OPPS enable temperature does not introduce a new mode of operation since Unit Shutdown procedures close the accumulator discharge valves and tag out their breakers when RCS pressure falls below 1000 psig.) The general methods employed to develop this change are well understood and have been previously reviewed and approved. Updating the operating restrictions, OPPS setpoints, and reactor fluence limit for operation do not create a possibility of a new or different kind of accident from those previously analyzed.

The proposed change to relocate the pressure and temperature limits curves and the Over Pressure Protection System (OPPS) setpoints to a Pressure and Temperature Limits Report is an administrative change. The proposed change does not alter the design, function, or operation of any plant component, therefore a possibility of a new or different kind of accident from those previously analyzed has not [been] created.

The proposed change in the PORV operability temperature from 310 °F to a new value of 350 °F does not involve a physical alteration of the plant. Since no new or different type of equipment will be installed, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety.

Although neutron irradiation reduces the material fracture toughness of the reactor vessel, deterministic analyses have demonstrated that proposed P/T [pressure/temperature] curves, OPPS setpoints and reactor vessel fluence limits for operation will preserve the required margin of safety in the RCS boundary during postulated low temperature pressurization events.

The proposed change to use the PTLR is administrative in nature and does not impact the operation of the Prairie Island Nuclear Generating Plant in a manner that would result in any significant reduction in any margin of safety.

The proposed change in the PORV operability temperature from 310 °F to a new value of 350 °F does not impact any systems that are relied upon for core cooling or RCS pressure relief at RCS temperatures below 350 °F. Setting the PORV operability temperature back to 350 °F aligns the PORVs with the Pressurizer Safety Valve operability requirement so the PORVs are still available to limit challenges to the Pressurizer Safety Valve settings during conditions of higher RCS pressure and energy when pressure surges become more significant. (In Amendment[s] 91/84 this temperature was changed for operational flexibility from its previous value of 350 °F to a new value of 310 °F to be coincident with the OPPS Enable Temperature. This change was not done to establish a larger margin of safety.) For RCS temperatures below 350 °F both the pressure and core energy are sufficiently decreased that pressure surges become less significant. For RCS temperatures below 350 °F the RHR [residual heat removal] system is capable of removing the reactor decay heat and thereby controlling RCS pressure and temperature. In the unlikely event that a significant pressure surge were to occur in this temperature range with neither RHR nor the PORVs in service, one pressurizer safety valve would be operable to mitigate potential overpressure transients. Thus this change does not involve

a significant reduction in the margin of safety associated with either the RCS boundary or fuel cladding.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by close of business within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 27, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 6, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, MD, this 24th day of March 1998.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects–III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8029 Filed 3–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company, (TU Electric, the licensee), for operation of the Comanche Peak Steam Electric Station, Units 1 and 2, located in Somervell County, Texas.

The proposed amendment would provide a temporary Technical Specification change for Surveillance Requirements (SRs) 4.8.1.1.2f.4(b) and 4.8.1.1.2f.6(b) to allow the verification of the auto connected shut-down loads through the load sequencer to be performed at power for fuel cycle 6 on Unit 1 and fuel cycle 4 on Unit 2. The temporary change is requested as a result of the discovery that some of the safety injection (SI) and blackout (BO) sequencer block contacts had not been tested in accordance with the above SRs. These surveillances were performed during the last refueling outage for each unit as part of the integrative tests. However, it was subsequently discovered that some of the sequencer loads had parallel starting paths such that it could not be determined, based only on the observation that the equipment had successfully started, that the specific contacts required to be tested had in fact operated. In addition, verification of testing of certain contacts was missing. This was reported promptly to the NRC at the time of discovery and prompt action to remedy the situation was taken.

The licensee requested a Notice of Enforcement Discretion (NOED) by letter dated March 10, 1998. The NRC orally issued the NOED at 9:25 a.m. EST on March 11, 1998, to allow the facility to continue operation while the TS is processed. Pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.c, of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG–1600, the letter documenting the issuance of the NOED was dated March 13, 1998. The NOED was to be effective for the period of time it takes the NRC staff to process the proposed change to the TSs on an exigent bases.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Crediting the power performance of the portions of surveillance testing necessary to demonstrate the OPERABILITY of the SI and BO Sequencer block contacts, will not increase the probability or consequences of an accident previously evaluated. The conclusion has been reached that the probability of initiating a perturbation in the A.C. electrical distribution system is not created via the crediting of the tests. As the testing is conducted on only one train per unit at a given time, no increase in consequences, other than those previously postulated, are considered credible.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Perturbations in the A.C. electrical distribution system have been fully considered within the Final Safety Analysis Report. No new or different kind of perturbation or accident is deemed credible from crediting the performance of the testing.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Crediting the required testing at power does not create any new failure scenarios or A.C. electrical distribution perturbations, no associated margin is expected to be reduced. As such, there is no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 13, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, PO Box 19497, Arlington, TX 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 12, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the University of Texas at Arlington Library, Government Publications/ Maps, 702 College, PO Box 19497, Arlington, TX 76019.

Dated at Rockville, MD, this 23rd day of March 1998.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8027 Filed 3–26–98; 8:45 am]

BILLING CODE 7590–01–P

VOL 63 ISS 59 MR 27 1998 UMI

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–28 issued to Vermont Yankee Nuclear Power Corporation (the licensee) for operation of the Vermont Yankee Nuclear Power Station (VY) located in Windham County, Vermont.

The proposed amendment would modify the licensing basis by limiting the time the large (18″) purge and vent valves may be open to containment.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

No physical change is being made to any systems or components that are credited in the safety analysis, therefore there is no change in the probability or consequences of any accident analyzed in the Final Safety Analysis Report.

The proposed change will not affect the ability of the purge and vent valves to isolate primary containment. The ability to isolate primary containment remains unaffected by the proposed amendment.

VY's current licensing basis allows for unlimited purge and vent operations, but this does not ensure the integrity of the [standby gas treatment] SBGT system. The proposed change will assure the integrity and operability of the SBGT system if a design basis accident occurs. This is accomplished by restricting the use of each 18 inch containment vent and purge flow path during any period that primary containment integrity is required. The restrictions imposed by the license amendment request on the opening of the purge and vent valves will limit the period of time that a potential off-site release flow path exists. Consequently, the probability that a potential release path exists coincident with a breach of the primary coolant system will be reduced, providing additional assurance that a release of radioactive gases to the environment will be avoided.

Allowing limited use of the purge and vent valves during periods when primary containment integrity is required reduces the probability of an accident by allowing personnel access to primary containment for the maintenance and inspection of equipment. In addition, it will allow performance of rated temperature and pressure inspections of the reactor coolant system (RCS) during plant startups which provide additional margin for safe operation of the unit by verifying all RCS boundaries that have been interrupted during the refueling outage have been returned to an operable condition.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not establish a new mode of operation for the purge and vent valve system, only the extent to which the system may be used. The proposed change imposes additional restrictions on the operations of the containment purge and vent valves. Additional restrictions for operation of these valves does not create the possibility for a new or different kind of accident from any accident previously evaluated.

Additionally, the proposed change does not affect the ability of the containment purge and vent valves to mitigate previously evaluated accidents during the modes they are credited. The purge and vent valves, if open during an accident will maintain the ability to close against the postulated differential pressure.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Currently, [the technical specification] TS allows unlimited use of containment purge and vent isolation valves. The proposed change will assure the integrity and operability of the SBGT system. This is accomplished by restricting the use of each 18 inch containment purge and vent flow path during periods when primary containment integrity is required. The more restrictive requirements reduce the probability of an accident concurrent with purge and vent operations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 27, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10

CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 20, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, MD, this 23rd day of March 1998.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8028 Filed 3–26–98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on April 16, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 16, 1998—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of matters related to elevation of core damage frequency to a fundamental goal and possible revision to the Commission's Safety Goal Policy Statement. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the

meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 23, 1998.

Medhat M. El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–8026 Filed 3–26–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

DEPARTMENT OF COMMERCE

Bureau of the Census

Procedures for Reconciling and Appealing Address List Information for the 2000 Census

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, and Bureau of the Census, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: As part of their implementation of the Census Address List Improvement Act of 1994, the Office of Management and Budget (OMB) and the Bureau of the Census (Bureau) request public comment on proposed processes for developing the address information that will be used in conducting the 2000 Census. The Bureau is proposing a Reconciliation process that would seek to resolve disagreements between the Bureau and participating local or tribal governments, or their designated representatives, regarding specific addresses or groups of addresses. For any disagreements that are not resolved, OMB is proposing an Appeal process that would be available to local and tribal governments, or their designated representatives, that wish to appeal the decisions made by the Bureau of the Census with respect to their suggestions for the Census 2000 address list.

In conducting the Census 2000 enumeration the Bureau will include all addresses added to or corrected in the census address list as a result of the Reconciliation and/or Appeal processes, using the same procedures used for all other addresses on the list. Inclusion of an address on the list does not mean that a housing unit or its inhabitants are actually at the address, or that the address will be included in the final Census 2000 data summaries. The census-taking process will determine the inclusion status of the address—whether or not it is actually a housing unit—and the final population and housing unit status for each address.

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: *Comments:* Please send comments concerning these proposed procedures to: Katherine K. Wallman, Chief Statistician, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10201, 725 17th Street NW, Washington DC 20503; fax: (202) 395–7245.

Electronic availability and addresses: This **Federal Register** Notice is available electronically from the OMB Homepage on the World Wide Web: <<http://www.whitehouse.gov/WH/EOP/OMB/html/fedreg.html>>. **Federal Register** notices also are available electronically from the U.S. Government Printing Office web site: <<http://www.access.gpo.gov/su_docs/aces/aces140.html>> Questions about accessing the **Federal Register** online via GPO Access may be directed to telephone (202) 512–1530 or toll free at (888) 293–6498; to fax (202) 512–1262; or to email <<gpoaccess@gpo.gov>>

This notice is available in paper copy from the OMB Publications Office, NEOB, Room 2200, 725 17th Street NW, Washington DC 20503; telephone (202) 395–7332; fax (202) 395–6137.

FOR FURTHER INFORMATION CONTACT: Nancy Kirkendall, Office of Management and Budget, NEOB, Room 10201, 725 17th Street NW, Washington, DC 20503; telephone: (202) 395–7313; fax (202) 395–7245.

SUPPLEMENTARY INFORMATION:

The Census Address List Improvement Act of 1994

The Census Address List Improvement Act of 1994 (P.L. 103–430) changed the Bureau's decennial census address list development procedures to improve the accuracy of, and resolve disagreements concerning, address information. In addition to requiring that the United States Postal Service provide address information to the Bureau (Section 4), the Act also increased the role of local and tribal governments in the development of Bureau address information. Section 2 of the Act requires the Bureau to develop a process under which it would receive, review, and respond to recommendations by these governments regarding address information. To resolve any disagreements that may remain after this process, Section 3 of the Act requires the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA), acting through the Chief Statistician and in consultation with the Bureau, to develop an appeal process through which local and tribal governments, or their designated representatives, may administratively appeal the decisions by the Bureau under 13 U.S.C. 16.

The Bureau's LUCA Process

The Bureau is attempting to develop the most accurate and comprehensive address information practicable for all jurisdictions in the country in cooperation with the United States Postal Service and local and tribal governments, as required by the Census Address List Improvement Act of 1994. The Bureau's address list partnerships with these governments will be undertaken via the program entitled the "Local Update of Census Addresses" (LUCA), during which the Bureau will provide portions of its census address list to participating local and tribal governments for their review. For those areas that do not have city-style addresses (i.e., rural route, post office box number, or general delivery addresses), the Bureau will provide the most recent address and location information available from field activities.

Jurisdictions that participate in the LUCA program may respond with address change suggestions including corrections, additions, deletions, and address location information. The Bureau issued its standards for addresses in the **Federal Register**, 60 FR 58326, November 27, 1995. These standards described the components of acceptable city-style addresses, including apartment numbers for each

unit address in a multi-unit building, a current 5-digit ZIP code, and the distinction between residential and commercial addresses.

The LUCA process began in early 1998 with the mailing of invitations to local and tribal governments to participate in the program. As jurisdictions notify the Bureau of their desire to participate in the program, appropriate materials will be generated and delivered. Once a jurisdiction receives its materials, it has 3 months in which to conduct its review and provide suggested changes back to the Bureau. Jurisdictions with city-style mail delivery areas will conduct the review of their portion of the Bureau's address list in 1998. The Bureau will conduct listing activities to prepare the address list for jurisdictions with noncity-style addresses in the last half of 1998. As these listings are completed, they will be delivered to participating jurisdictions for their review. The three month review period for jurisdictions with noncity-style addresses will extend into the second quarter of 1999.

The Bureau will conduct field canvassing operations to verify the existence and accuracy of the address information provided via the LUCA program. The Bureau, as part of its address list development process, will conduct a field canvass of all blocks in the city-style address mail delivery areas. Updates from local and tribal governments will be verified at that time. Since this canvass covers approximately 94 million addresses, the operation will be conducted in three waves, each of six-week duration. The first wave is scheduled to begin in January 1999, and the operation will be completed with the end of the third wave in May 1999. For areas that do not have city-style mail delivery, a separate field verification will be conducted soon after receiving suggestions from local and tribal governments. In all areas, the Bureau will provide timely written feedback to a participating jurisdiction after all their suggested changes have been reviewed and evaluated. For each jurisdiction, the LUCA program will be officially completed at the time the Bureau provides feedback.

The Proposed Reconciliation Process

After receiving the LUCA feedback from the Bureau, a participating local or tribal government may ask the Bureau to reconsider its determination during the Reconciliation process. (The Bureau's proposal for the Reconciliation process follows at Exhibit 1.) The goal of the Reconciliation process is to resolve disagreements regarding specific addresses or groups of addresses, and to reach concurrence between the Bureau and the participating government. This concurrence relates both to the existence of addresses and to the location of each address. As in the LUCA process, the Reconciliation process will conclude with a written determination by the Bureau regarding the existence of addresses or the location of addresses provided by the participating government. The Census Bureau is using 30 days as a standard for completing the Reconciliation process for a jurisdiction. The standard should be achievable for all jurisdictions but those with a large number of disputed addresses. The wave approach to canvassing in city-style address areas imparts a waved implementation to both the Reconciliation and the Appeal processes. The first wave of canvassing will be completed by late February, 1999. The Bureau will begin accepting requests for Reconciliation from these jurisdictions in March. The final wave of canvassing will be completed by late May. The Bureau will begin accepting requests for Reconciliation from these jurisdictions in June. The Reconciliation process for both city-style and noncity-style address areas will be complete by August 31, 1999.

The Proposed Appeal Process

If, at the end of the Reconciliation process, the participating government disagrees with the Bureau's determination regarding the address information or the location of addresses, it may formally seek an outside review of the Bureau's decision via the Appeal process. During the Appeal process, a participating government will have the opportunity to ask a Federal official, designated by OMB and outside the Bureau and the Department of Commerce, to review the Bureau's determination and issue a final decision. Jurisdictions may file an appeal only upon completion of the Reconciliation process. Thus, those jurisdictions scheduled for the first block canvassing wave will enter the Appeal process before those in the later waves. Appeals for all jurisdictions will be filed during the period April through September 1999. The Appeal process will be concluded by January 14, 2000. (The OIRA Administrator's proposal for the Appeal process follows at Exhibit 2.)

The Next Stages in Developing the Reconciliation and Appeal Processes

Comments are sought on all aspects of the Reconciliation and Appeal processes. After these comments are reviewed and considered, the Bureau and the OIRA Administrator plan to issue a notice, by July 1998, outlining the final Reconciliation and Appeal processes.

Donald R. Arbuckle,

Deputy Administrator, Office of Information and Regulatory Affairs.

James Holmes,

Acting Director, Bureau of the Census.

Exhibit 1

Proposed Reconciliation Process

Reconciliation will be conducted by the Bureau of the Census (Bureau) at the request of the participating local or tribal government, or its designated representative. The process will begin when a participating government formally disagrees with the Bureau's decision regarding the inclusion, exclusion, or geographic placement of specific addresses on the census address list that the participating government recommended during the Local Update of Census Addresses (LUCA) process.

1. When To File a Reconciliation Request

The participating government must file a Request for Reconciliation, in writing, within 21 calendar days of receiving the LUCA feedback (i.e., the information provided by the Bureau in response to materials submitted by the participating government; the feedback may be in the form-of a paper listing or a computer file, as requested by the participating government).

"Receipt" as used herein shall be defined as the date the Bureau transmits the document in question to the participating government plus three (3) calendar days. The Bureau may transmit documents via first class mail, via overnight delivery service, via facsimile, or via electronic mail, as appropriate, but must keep an accurate record of the date it transmits documents.

2. What Documentation To File

Requests for Reconciliation must be printed or typed. Documentation must include: (1) the name of the participating government; (2) the name, address, and telephone number of that government's contact person; (3) the list of addresses or groups of addresses that are being questioned; and (4) any supporting evidence.

With respect to the list of questioned addresses (or groups of addresses), separate lists should be provided for addresses (a) which are believed to exist but are not included on the census address list, (b) which are believed to be incorrectly included on the census address list, or (c) which are believed to be correctly included but not correctly located on the census address list.

Specific recommendations should be provided for how addresses and their locations should appear on the Census 2000 address list.

The supporting evidence should establish the validity of the addresses and their locations. Two types of supporting evidence are recommended below. The first specifically reflects the validity of any address or map reference sources; the second describes other useful sources of supporting evidence. The participating government may submit any documentation it deems relevant in support of its claim.

a. Quality of address or map reference sources.

(1) The date of the address source.

(2) How often the address source is updated.

(3) The methods used to update the source.

(4) Quality assurance procedures that are used in maintaining the address source.

(5) How the address source is used by the participating government and/or by the originator of the source.

b. Other useful supporting evidence.

(1) On-site inspection and/or interview of resident.

(2) Issuance of recent occupancy permit for unit. (Building permits are not acceptable as they do not ensure that the units have been built and/or are occupied.)

(3) Provision of utilities (electricity, gas, sewer, water, telephone, etc.) to the residence. The utility record should show that this is not service to a commercial unit, or an additional service to an existing residence (such as a second telephone line).

(4) Provision of other governmental services (housing assistance, welfare, etc.) to residents of the unit.

(5) Issuance of demolition permits.

(6) Aerial photography and/or standard photography.

(7) Land use maps.

(8) Local 911 emergency lists, with flags distinguishing residential from commercial units.

(9) Tax assessment records with flags distinguishing residential from commercial units.

3. Where To File the Request for Reconciliation

A Request for Reconciliation must be filed with the Bureau's Regional Census Center for the region in which the participating government is located.

4. Reconciliation Review

Bureau staff will review materials submitted by the participating government and will contact local or tribal participants to provide them an opportunity to discuss their questions and concerns with Bureau staff. This dialogue with the local or tribal participants may include meetings in person, telephone conversations, written correspondence, site inspections to view addresses, or a combination of these approaches as determined by the Bureau.

Following this dialogue, the participating government will be notified in writing of the Bureau's final determination and the basis for it. Accepted addresses will be added to or corrected in the census address list. The participating government also will be informed of its right to an Appeal, and may proceed to the Appeal stage if it is not satisfied with the resolution provided by the Bureau during the Reconciliation phase.

In conducting the Census 2000 enumeration the Bureau will include all addresses added to or corrected in the census address list as a result of the Reconciliation and/or Appeal process, using the same procedures used for all other addresses on the list. Inclusion of an address on the list does not mean that a housing unit or its inhabitants are actually at the address, or that the address will be included in the final Census 2000 data summaries. The census-taking process will determine the inclusion status of the address—whether or not it is actually a housing unit—and the final population and housing unit status for each address.

5. Time for Completion of Reconciliation Process

The Census Bureau is using 30 days as a standard for completing the Reconciliation process for a jurisdiction. The standard should be achievable for all jurisdictions but those with a large number of disputed addresses. The Reconciliation review shall be completed and a participating government shall be notified in writing of the Bureau's determination no later than August 31, 1999. From the date a participating government receives the Bureau's final determination, it will have 30 calendar days in which it may file an Appeal on any or all of the addresses (see the proposed Appeal Process issued by the Administrator of the Office of Information and Regulatory Affairs).

Exhibit 2

Proposed Appeal Process

Following receipt of the Bureau's determination from the Reconciliation process, the participating local or tribal government, or its designated agent, may file an Appeal if it disagrees with the Bureau's Reconciliation determination. The Appeal process will be based solely on a review of written documentation provided by the participating government and the Bureau.

1. When May a Participating Government File an Appeal

An Appeal must be filed by the participating government within 30 calendar days of that government's receipt of the Bureau's final determination from the Reconciliation process (see 3, below, regarding what the participating government must file within 30 days). An appeal may be filed only with respect to addresses for which the participating government had previously sought Bureau review during the LUCA program and its Reconciliation process.

"Receipt" as used herein shall be defined as the date the Bureau transmits the document in question to the participating government plus three (3) calendar days. The Bureau may transmit documents via first class mail, via overnight delivery service, via facsimile, or via electronic mail, as appropriate, but must keep an accurate record of the date it transmits documents.

2. Who Will Review and Decide the Appeal

The Appeal process will be administered by a Consortium of Federal agencies outside the Department of Commerce. Appeal Officers will be selected from a roster of Federal employees who have been trained in the procedures for an appeal and in the examination and analysis of address information, locations of addresses, supporting documentary evidence, and written position statements. Appeal Officers also will be trained in the preparation of a written determination. The addresses and telephone numbers of Consortium offices participating in the Appeal process will be made public when they are selected.

3. What Documentation Shall the Participating Government File With an Appeal

Each Appeal must be submitted to the Consortium, and must be printed or typed. The appeal documentation must include: (1) the name of the participating government; (2) the name, address, and telephone number of that government's contact person; (3) the list of addresses or groups of addresses that are being appealed; (4) a copy of the Bureau's Reconciliation determination regarding those addresses; (5) the date on which the participating government received the Bureau's determination;

and (6) any supporting evidence for the position taken by the participating government in its Appeal.

In its Appeal documentation, the participating government should specifically respond to the explanation that accompanied the Bureau's Reconciliation determination. With respect to the list of questioned addresses (or groups of addresses), separate lists should be provided for addresses (a) which are believed to exist but are not included on the census address list, (b) which are believed to be incorrectly included on the census address list, or (c) which are believed to be correctly included but not correctly located on the census address list. Specific recommendations should be provided for how addresses and locations should appear on the census address list.

The supporting evidence should demonstrate the basis for the participating government's position concerning the disputed addresses. Supporting evidence may include the material submitted in support of the Reconciliation review for the disputed addresses and any additional information. Two types of supporting evidence were recommended by the Bureau in its issuance regarding the Reconciliation process; the first specifically reflects the validity of any address or map reference sources; the second describes other useful sources of supporting evidence:

a. Quality of address or map reference sources.

(1) The date of the address source.

(2) How often the address source is updated.

(3) The methods used to update the source.

(4) Quality assurance procedures that are used in maintaining the address source.

(5) How the address source is used by the participating government and/or by the originator of the source.

b. Other useful supporting evidence.

(1) On-site inspection and/or interview of resident.

(2) Issuance of recent occupancy permit for unit. (Building permits are not acceptable as they do not ensure that the units have been built and/or are occupied.)

(3) Provision of utilities (electricity, gas, sewer, water, telephone, etc.) to the residence. The utility record should show that this is not service to a commercial unit, or an additional service to an existing residence (such as a second telephone line).

(4) Provision of other governmental services (housing assistance, welfare, etc.) to residents of the unit.

(5) Issuance of demolition permits.

(6) Aerial photography and/or standard photography.

(7) Land use maps.

(8) Local 911 emergency lists, with flags distinguishing residential from commercial units.

(9) Tax assessment records with flags distinguishing residential from commercial units.

All of the Appeal documentation must be received by the Consortium within 30 calendar days of the participating government's receipt of the Bureau's final Reconciliation determination; at the same time, the participating government shall send a complete copy of the Appeal documentation to the Bureau. Except in response to a written request from the Appeal Officer (see 6, below), the participating government may not submit any materials to the Consortium after the 30-day period.

4. Assignment of an Appeal Officer and Notification of Appeal Status

Upon receipt of an Appeal, the Consortium will assign an Appeal Officer to the case and notify the Bureau, in writing, that the Appeal has been filed; a copy of the notification also will be sent to the participating government. This notification will identify the participating government and provide a list of the disputed addresses.

5. Submission by the Bureau of Written Documentation and Supporting Evidence

Upon receipt of the notification that an Appeal has been filed, the Bureau will have 14 calendar days in which to submit written documentation briefly summarizing its position as well as any supporting evidence concerning the disputed addresses to the Appeal Officer. Except in response to a written request from the Appeal Officer (see 6, below), the Bureau may not submit any materials to the Appeal Officer after the 14-day period. At the same time the Bureau must send to the participating government a complete copy of the Bureau's submission to the Appeal Officer.

6. The Appeal Review and Determination

The Appeal Officer will review the written documentation and supporting evidence submitted by the participating government and the Bureau. No testimony or oral argument will be received by the Appeal Officer. If the Appeal Officer determines that he or she requires additional information or clarification, the Appeal Officer may request it in writing, with notice to both parties, and the relevant party(ies) shall respond in writing. Appeal Officers will apply the following principles in conducting their review:

(1) The Appeal Officer shall consider the quality of the map or address reference source as the basis for determining the validity of an address or group of addresses and their locations.

(2) For those addresses for which the Appeal Officer determines that the quality of the supporting evidence submitted by both parties is generally of comparable value, the Appeal Officer shall decide in favor of the participating government.

At the conclusion of reviewing a disputed address (or group of addresses), the Appeal Officer will issue a written determination and provide it to both the participating government and the Bureau. The written determination will include a brief summary explanation of the Appeal Officer's decision, and will specify how the disputed addresses and/or block numbers should appear on the Census 2000 address list. Each written determination shall become part of the administrative record of the Appeal process.

An Appeal Officer's decision on a disputed address is final. In conducting the Census 2000 enumeration the Bureau will include all addresses added to or corrected in the census address list as a result of the Appeal process, using the same procedures used for all other addresses on the list. Inclusion of an address on the list does not mean that a housing unit or its inhabitants are actually at the address, or that the address will be included in the final Census 2000 data summaries. The census-taking process will determine the inclusion status of the address—whether or not it is actually a housing unit—and the final population and housing unit status for each address.

7. Time for Completion of Appeal Review

Appeal Reviews shall be completed and written determinations issued to the concerned parties as soon as possible, and in any event no later than January 14, 2000.

[FR Doc. 98–7959 Filed 3–26–98; 8:45 am]

BILLING CODE 3110–01–P

VOL 63 ISS 59 MR 27 1998 UMI

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, April 2,1998.

The meeting will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: March 18, 1998.

Phyllis G. Heuerman,

Acting Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98–7985 Filed 3–26–98; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988 Notice of RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs; notification to individuals who are beneficiaries under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, civil service benefit and payment information obtained from the Office of Personnel Management (OPM).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from OPM by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, P.L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program.

Name of Participating Agencies

Office of Personnel Management and Railroad Retirement Board.

Purpose of the Match

The purpose of the match is to enable the RRB to (1) identify affected RRB annuitants who are in receipt of a Federal public pension benefit but who have not reported receipt of this benefit to the RRB and (2) receive needed Federal public pension benefit information for affected RRB annuitants more timely and accurately. Previously the RRB relied on the affected annuitant to report adjustments in the amount of such public pension benefits.

Authority for Conducting the Match

Sections 3(a)(1), 4(a)(1) and 4(f)(1) of the Railroad Retirement Act require that the RRB reduce the Railroad Retirement benefits or certain beneficiaries entitled to Railroad Retirement employee and/or spouse/widow benefits who are also entitled to a government pension based on their own noncovered earnings. This reduction is referred to as Public Service Pension offset. Section 224 of the Social Security Act provides for the reduction of disability benefits when the disabled worker this also entitled to a public disability benefit (PDB). This reduction is referred to as PDB offset. As civil service disability benefit is considered a PDB. Section 224(h)(1) requires any Federal agency is provide RRB with information in its possession that RRB may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Social Security Act. Pursuant to 5 U.S.C. Section 552a(b)(3) OPM has established routine uses to disclose the subject information to RRB.

Categories or Records and Individuals Covered

The records to be used in the match and the roles of the matching participants are described as follows: OPM will provide RRB twice a year with a magnetic tape file extracted from its annuity and survivor master file of its Civil Service Retirement and Insurance Records. The Privacy Act System of Records designation is OPM/Central-1. The following information from this OPM Privacy Act System of Records with be transmitted to RRB for the approximately 2.3 million records in the system: name, social security number, date of birth, civil service claim number, first potential month and year of eligibility for civil service benefits, first month, day, year of entitlement to civil service benefits, amount of gross civil service benefits, and effective date (month, day, year) of civil service amount, and where applicable, civil service disability indicator, civil service FICA covered month indicator, and civil service total service months. The RRB will match the Social Security number, name, and date of birth contained in the OPM file against the same fields in its Mater Benefit Files. The Privacy Act

System of Records designations for these files are: RRB–15, "Research Master Record for Survivor Beneficiaries Under the Railroad Retirement Act," and RRB–26, "Research Master Record for Retired Railroad Employees and Their Dependents." For records that are matched, the RRB will extract the civil service payment information.

Inclusive Dates of the Matching Program

The matching program will become effective 40 day after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register,** , whichever date is later. This matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: March 20, 1998.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–7991 Filed 3–26–98; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988 Notice of RRB and SSA Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs; notification to individuals who are railroad employees, or applicants and beneficiaries under the Railroad Retirement Act or who are applicants or beneficiaries under the Social Security Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, information obtained from the Social Security Administration (SSA) of the amount of wages reported to SSA and the amount of benefits paid by that agency. The RRB is also issuing public notice, on behalf of the Social Security Administration, of SSA's use and intent to use, in ongoing computer matching programs, information obtained from the RRB of the amount of railroad earnings reported to the RRB.

The purposes of this notice are (1) to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from SSA by means of a computer match and (2) to advise individuals applying for or receiving benefits under the Social Security Act of the use made by SSA of this information obtained from RRB by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub.L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program. This notice relates to a consolidation of two existing matching programs. Under one of these programs (referenced by RRB for convenience as RRB/SSA 1–2–3), SSA furnishes to RRB information needed by RRB to administer the Railroad Retirement Act. Under the other program (referenced by RRB for convenience as RRB/SSA–4), RRB furnishes to SSA information needed by SSA to administer the Social Security Act. For RRB/SSA 1–2–3, the required notice covering the current and fourth cycle of the program which began July 6, 1997, was published at 62 FR 25679 (May 9, 1997); for RRB/SSA–4, the required notice covering the current and fourth cycle of the program which began August 28, 1997, was published at 62 FR 40563 (July 29, 1997).

Name of Participating Agencies

Social Security Administration and Railroad Retirement Board.

Purpose of the Match

The RRB will, on a daily basis, obtain from SSA a record of the wages reported to SSA for persons who have applied for benefits under the Railroad Retirement Act and a record of the amount of benefits paid by that agency to persons who are receiving or have applied for benefits under the Railroad Retirement Act. The wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (45 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f). The benefit information is needed to adjust the tier I annuity component for the receipt of the Social Security benefit. This information is available from no other source.

In addition, the RRB will receive from SSA the amount of certain social security benefits which the RRB pays on behalf of SSA. Section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)) provides that the RRB shall make the payment of certain social security benefits. The RRB also requires this information in order to adjust the amount of any annuity due to the receipt of a social security benefit. Section 10(a) of the Railroad Retirement Act (45 U.S.C. 231i(a)) permits the RRB to recover any overpayment from the accrual of social security benefits. This information is not available from any other source.

Thirdly, the RRB will receive from SSA once a year a copy of SSA's Master Benefit Record for earmarked RRB annuitants. Section 7(b)(7)) of the Railroad Retirement Act (45 U.S.C. (b)(7) requires that SSA provide the requested information. The RRB needs this information to make the necessary cost-of-living computation quickly and accurately for those RRB annuitants who are also SSA beneficiaries.

SSA will receive from RRB weekly RRB earnings information for all railroad employees. SSA will match the identifying information of the records furnished by the RRB against the identifying information contained in its Master Benefit Record and its Master Earnings File. If there is a match, SSA will use the RRB earnings to adjust the amount of Social Security benefits in its Annual Earnings Reappraisal Operation (AERO). This information is available from no other source.

SSA will also receive from RRB on a daily basis RRB earnings information on selected individuals. The transfer of information may be initiated either by RRB or by SSA. SSA needs this information to determine eligibility to Social Security benefits and, if eligibility is met, to determine the benefit amount payable. Section 18 of the Railroad Retirement Act (45 U.S.C. 231(q)(2)) requires that earnings considered as compensation under the Railroad Retirement Act be considered as wages under the Social Security Act for the purposes of determining entitlement under the Social Security

Act if the person has less than 10 years of railroad service or has 10 or more years of service but does not have a current connection with the railroad industry at the time of his/her death.

Authority for Conducting the Match

Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(h)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act.

Sections 202, 205(o) and 215(f) of the Social Security Act (42 U.S.C. 402, 405(o) and 415(f) relate to benefit provisions, inclusion of railroad compensation together with wages for payment of benefits under certain circumstances, and the recomputation of benefits.

Categories of Records and Individuals Covered

All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of any social security wages and the amount of any social security benefits furnished to the RRB by SSA. In addition, all persons who ever worked in the railroad industry after 1936 will have a record of their service and compensation furnished to SSA by RRB. The applicable Privacy Act Systems of Records used in the matching program are as follows: RRB–5, Master File of Railroad Employees' Creditable Compensation; RRB–22, Railroad Retirement, Survivor, Pensioner Benefit System; SSA/OSR, 09–60–0090, Master Beneficiary Record (MBR); and SSA/OSR, 09–60–0059, Master Earnings File (MEF).

Inclusive Dates of the Matching Program

The consolidated matching program shall become effective no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be or has been furnished to the Office of Management and Budget and the designated committees of both houses of Congress.

Dated: March 20, 1998.

By authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 98–8080 Filed 3–26–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26846]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 20, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public References.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 13, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will received a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9147)

Allegheny Energy, Inc. (formerly, Allegheny Power System, Inc.) ("Allegheny"), 10435 Downsville Pike, Hagerstown, Maryland 21740, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, and 80–92 under the Act, in connection with a proposed combination with DQE, Inc. ("DQE"), a holding company exempt under sections 3(a)(1) by rule 2 from all provisions of the Act except section 9(a)(2).

As described in more detail below, Allegheny proposes: (1) to acquire, by means of the mergers described below all of the issued and outstanding common stock of DQE ("DQE Common Stock); and, through this acquisition, (i) all of the issued and outstanding common stock of DQE's direct electric utility subsidiary company, Duquesne Light Company ("Duquesne Light"), and all of the issued and outstanding common stock of Duquesne Light's three electric utility subsidiary companies, Allegheny Development Corporation ("ADC"), DH Energy, Inc. and MT Energy, Inc. and (ii) all of the issued and outstanding common stock of DQE's two direct holding company subsidiaries, Duquesne Enterprises ("DE") and DQE Energy Services ("DES"), each of which is currently exempt under section 3(a)(1) by rule 2 from all provisions of the Act except section 9(a)(2); (2) to form and capitalize a special purpose subsidiary and issue Allegheny common stock ("Allegheny Common Stock") to effect the proposed transactions; (3) to add DQE and certain of its subsidiaries to the Allegheny money pool ("Money Pool"); (4) to provide loans and guarantees to DQE's nonutility subsidiaries; and (5) to authorize Allegheny Power Service Corporation ("AP Services") to render services to DQE's utility and nonutility subsidiaries.

Allegheny, through subsidiaries, is engaged principally in the generation, transmission, distribution and sale of electricity throughout a 29,000 square mile service area covering parts of Maryland, Ohio, Pennsylvania, Virginia and West Virginia. Allegheny has three wholly electric operating companies, Monongahela Power Company ("Monongahela"), The Potomac Edison Company ("Potomac Edison") and West Penn Power Company ("West Penn"). The three utility subsidiaries jointly own Allegheny Generating Company ("AGE"), a Virginia corporation. AGC's only asset is a 40% undivided interest in a pumped-storage hydroelectric generating facility located in Bath County, Virginia and its connecting transmission facilities. AGC's 840-megawatt share of the capacity of the station is sold to its three parents.

Monongahela, an Ohio corporation, is engaged in the generation, transmission and distribution of electricity to 350,062 retail customers and eight wholesale customers in an area of approximately 11,900 square miles with a population of approximately 710,000 in northern West Virginia and an adjacent portion of

Ohio.[1] In the fiscal year ended December 31, 1996, Monongahela provided approximately 24% of Allegheny's consolidated revenues. Monongahela is subject to regulation by the Public Utilities Commission of Ohio and the Public Service Commission for West Virginia.

Potomac Edison, a Virginia corporation, is engaged in the generation, transmission and distribution of electricity to 375,432 retail customers and ten wholesale customers in an area of approximately 7,300 square miles with a population of approximately 782,000 in portions of Maryland, Virginia and West Virginia.[2] In the fiscal year ended December 31, 1996, Potomac Edison provided approximately 31% of Allegheny's consolidated revenues. Potomac Edison is subject to regulation by the State Corporation Commission of Virginia, the West Virginia Commission and the Maryland Public Service Commission.

West Penn, a Pennsylvania corporation, is engaged in the generation, transmission and distribution of electricity to 662,881 retail customers and 15 wholesale customers in an area to approximately 9,900 square miles with a population of approximately 1.399 million in southwestern and north and south central Pennsylvania.[3] In the fiscal year ended December 31, 1996, West Penn provided approximately 45% of Allegheny's consolidated revenues. West Penn is subject to regulation by the Pennsylvania Public Utility Commission ("Pennsylvania Commission").

Wholesale rates for electric energy sold in interstate commerce, wheeling rates for energy transmission in interstate commerce, and certain other activities of Allegheny system companies, including the operation of hydroelectric plants, are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

Allegheny also owns directly all the issued and outstanding stock of two nonutility companies, AYP Capital, Inc. ("AYP Capital") and AP Services. Allegheny conducts its nonutility business through AYP Capital, which has three wholly owned subsidiaries, AYP Energy, Inc., an exempt wholesaler generator and a power marketer; Allegheny Communications Connect, Inc., an exempt telecommunications company; and Allegheny Energy Solutions, Inc., formed as an unregulated subsidiary to provide electric energy and related services to retail customers as retail energy and service are opened to competition.[4]

For the twelve months ended September 30, 1997, Allegheny's total revenue on a consolidated basis was $2.3 billion. Consolidated assets of Allegheny and its subsidiaries as of September 30, 1997, were approximately $6.5 billion, consisting of $5.2 billion in net electric utility property, plant and equipment and $1.3 billion in other corporate assets.

DQE's sole utility subsidiary, Duquesne Light, is engaged in the production, transmission, distribution and sale of electric energy. Duquesne Light serves an area of approximately 800 square miles, including Pittsburgh and municipalities, in Allegheny, Beaver and (to a limited extent) Westmoreland Counties, Pennsylvania, having a population of approximately 1.51 million of which 370,000 reside in Pittsburgh. Duquesne Light also sells electricity to other utilities. Duquesne Light owns undivided interests as tenant-in-common in two nuclear facilities and leases an undivided interest in a third ("Nuclear Facilities").[5] Duquesne Light is subject to regulation by the Pennsylvania Commission. The FERC has jurisdiction over wholesale rates for electric energy sold in interstate commerce, wheeling rates for energy transmission in interstate commerce, and certain other activities of Duquesne Light. DQE's electric utility operations are also subject to regulation by the Nuclear Regulatory Commission with respect to the operation of the Nuclear Facilities.

DQE has five direct nonutility subsidiaries. DE makes strategic investments related to DQE's core energy business. DES is a diversified energy services company that offers a wide range of energy solutions for industrial, utility and consumer markets worldwide. DQEnergy Partners, Inc. was formed in December 1996 to align DQE with strategic partners to capitalize on opportunities in the energy services industry. Montauk, Inc. is a financial services company that makes long-term investments. It was established to provide financing for DQE's unregulated businesses and their customers. Brighter Light Corporation has no active operations.

For the twelve months ended September 30, 1997, DQE's total revenue on a consolidated basis was approximately $1.22 billion. Consolidated assets of DQE and its subsidiaries as of September 30, 1997, were approximately $4.7 billion, consisting of $3.7 billion in net electric utility assets and $1 billion in nonutility assets.

An Agreement and Plan of Merger, dated as of April 5, 1997 ("Merger Agreement"), among DQE, Allegheny and AYP Sub, Inc., a wholly owned subsidiary that Allegheny will incorporate under Pennsylvania law ("Merger Sub"), provides for a combination of Allegheny and DQE in which Merger Sub will be merged with and into DQE ("Merger"), with DQE as the surviving corporation.

To effectuate the Merger, Allegheny requests authority to form and capitalize Merger Sub. Merger Sub will be incorporated solely for the purpose of effectuating the Merger and, prior to the consummation of the Merger, Merger Sub will have no operations other than those contemplated by the Merger Agreement. The authorized capital stock of Merger Sub will consist of 1,000 shares of common stock, $.01 par value, all of which will be issued to Allegheny at the price of $1.00 per share.

Allegheny requests authority to issue up to 90,557,682 shares of Allegheny Common Stock to consummate the Merger. Each share of DQE Common Stock[6] issued and outstanding immediately prior to the effective date of the Merger will be converted into the right to receive, and become exchangeable for, 1.12 shares of Allegheny Common Stock. Upon consummation of the Merger, holders of DQE Common Stock immediately prior to the Merger will own approximately 42% of the outstanding shares of Allegheny Common Stock after the Merger, based on the number of shares of Allegheny Common Stock and DQE

[1] Monongahela also owns generating capacity in Pennsylvania.

[2] Potomac Edison also owns generating capacity in Pennsylvania.

[3] West Penn also owns generating capacity in West Virginia.

[4] Through its utility subsidiaries, Allegheny also owns three other small nonutility companies. Allegheny Pittsburgh Coal Company, which is jointly owned by Monongahela, Potomac Edison and West Penn, owns coal rights in a tract of land in Pennsylvania. West Virginia Power and Transmission Company ("West Virginia Power"), a wholly owned subsidiary of West Penn, and West Penn West Virginia Water Power Company, a wholly owned subsidiary of West Virginia Power, each own tracts of land in West Virginia and Pennsylvania, respectively.

[5] Specifically, Duquesne Light owns a 13.74% interest in Perry Power Station Unit 1 and a 47.5% interest in Beaver Valley Power Station Unit 1, and leases a 13.74% interest in Beaver Valley Power Station Unit 2.

[6] Other than shares owned by Allegheny, Merger Sub and any other subsidiary of Allegheny and shares of DQE Common Stock that are owned by DQE or any subsidiary of DQE, in each case not held on behalf of third parties and which are not shares of DQE Common Stock held by Duquesne Light to provide for redemption of the subsidiary's preference shares under the terms of the subsidiary's 401(k) plan or to provide benefits under another employee benefit plan of Duquesne Light (collectively, "Excluded Shares").

Common Stock outstanding as of September 30, 1997.

After the Merger, DQE will be a wholly owned subsidiary of Allegheny. Allegheny's utility and nonutility subsidiaries will remain subsidiaries of Allegheny. DQE's utility and nonutility subsidiaries will become indirect subsidiaries of DQE. Upon consummation of the Merger, DQE will be a wholly owned subsidiary of Allegheny.

The applicants request authority for certain of DQE's direct and indirect subsidiaries to participate in the Money Pool under the same terms and conditions as Monongahela, Potomac Edison and West Penn (i.e., be permitted to both invest in and borrow from the Money Pool), as stated in the Commission order dated April 18, 1996 (HCAR No. 26506).

The applicants also request authorization for DQE's nonutility subsidiaries to borrow or obtain guarantees from Allegheny under the same terms and conditions as the nonutility subsidiaries of Allegheny, as stated in the Commission order dated October 9, 1996 (HCAR No. 26590).

AP Services is a service company subsidiary. It provides various technical, engineering, accounting, administrative, financial, purchasing, computing, managerial, operational and legal services to Allegheny's subsidiaries, including AYP Capital and its subsidiaries, at cost.

AP Services proposes to enter into service agreements ("Service Agreements") with certain utility and nonutility subsidiaries of DQE (including Duquesne Light), which will become effective upon the consummation of the Merger. The Service Agreements are similar in all material respects to those service agreements which AP Services has signed with its client companies. Under the terms of the Service Agreements, AP Services will render to DQE's subsidiaries, at cost, various technical, engineering, accounting, administrative, financial, purchasing, computing, managerial, operational and legal services. AP Services will account for, allocate and charge its costs of the services provided on a full cost reimbursement basis under a work order system consistent with the Uniform System of Accounts for Mutual and Subsidiary Service Companies. The time AP Services employees spend working for the subsidiaries of DQE will be billed to and paid by the applicable subsidiary on a monthly basis, based upon time records. Each DQE subsidiary that is party to a Service Agreement will maintain separate financial records and detailed supporting records.

Gulf Power Co., et al. (70–9171)

Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida, 32501, and Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi, 39501, wholly owned subsidiaries of The Southern Company, a registered holding company, have filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Gulf and Mississippi propose to issue and sell in one or more series through March 31, 2003 senior debentures, senior promissory notes or other senior debt instruments ("Senior Notes") governed by an indenture or other document. The amount of Senior Notes would not exceed $350 million outstanding for Gulf or $400 million outstanding for Mississippi.

The provisions of each series of Senior Notes and related instruments would be determined when the sale of each series of Senior Notes occurs. However, Gulf and Mississippi request authority to issue and sell Senior Notes whose terms fall within certain parameters described below.

First, the effective cost of money on Senior Notes will not exceed the greater of 300 basis points over U.S. Treasury securities having comparable maturities or a gross spread over those Treasury securities that is consistent with comparable securities. Second, the maturity of the Senior Notes will not exceed approximately 50 years.

Third, the interest rate on the Senior Notes will be either fixed or adjusted on a periodic basis, either by auction or remarketing procedures that use one or more formulas based on certain reference rates, or by other predetermined methods. Fourth, the Senior Notes will be direct, unsecured and unsubordinated obligations of Gulf or Mississippi ranked equally with all other unsecured and unsubordinated obligations of Gulf or Mississippi.

The proceeds from the issuance and sale of Senior Notes will be used principally (i) to finance capital expenditures, (ii) to acquire, retire or redeem securities, (iii) to repay outstanding short-term borrowings, (iv) to provide working capital and/or (v) for other general corporate purposes.

American Electric Power Company, Inc., et al. (70–9181)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its wholly owned nonutility subsidiary, American Electric Power Service Corporation ("AEPSC"), both of 1 Riverside Plaza, Columbus, Ohio 43215, have filed a declaration under sections 6(a), 7, and 12(b) of the Act and rules 45 and 54 under the Act requesting authorization for AEP to guarantee certain payment obligations of AEPSC.

AEPSC will issue unsecured long-term promissory notes ("Notes") to one or more commercial banks, financial institutions or other institutional investors under the terms and conditions of one or more term-loan agreements ("Proposed Loan Agreement"). The Proposed Loan Agreement and the Notes will have a term of not less than nine months and no more than ten years from the date of borrowing.

The Notes will bear interest at a fixed, fluctuating or combination fixed and fluctuating rate. If the interest rate is fixed, interest on the Notes at the time of issuance will not be greater than 250 basis points above the yield to maturity of United States Treasury obligations which have maturities similar to the maturity date of the Notes. If the interest rate is fluctuating, interest on the Notes will be not be greater than 200 basis points above the rate of interest announced publicly by a major bank from time to time as its base or prime rate. The actual rate of interest on the Notes will be as further determined by AEPSC and the lender.

AEPSC intends to use proceeds from the Notes to pay long-term debt at, or prior to, maturity, to repay short-term debt, for working capital or other corporate purposes.[2]

AEP proposes to issue guarantees ("Guarantees") in support of the Notes in an aggregate amount not to exceed $20 million outstanding at any one time, through December 31, 2003. Under the Guarantees, AEP will be unconditionally obligated to pay amounts due and unpaid by AEPSC in connection with the Notes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8002 Filed 3–26–98; 8:45 am]

BILLING CODE 8010–01–M

[2] AEPSC currently has a term loan in the principal amount of $10 million, which will mature on October 14, 1998.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3066, Amdt. 1]

State of Alabama

In accordance with a notice from the Federal Emergency Management Agency dated March 17, 1998, the above-numbered Declaration is hereby amended to include Barbour, Butler, Conecuh, Crenshaw, Henry, and Randolph Counties in the State of Alabama as a disaster area due to damages caused by severe storms and flooding beginning on March 7, 1998 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bullock, Chambers, Clay, Cleburne, Lowndes, Montgomery, Russell, Tallapooga, and Wilcox in the State of Alabama may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 8, 1998 and for economic injury the termination date is December 9, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 19, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–8041 Filed 3–26–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3045, Amdt. 6]

State of Florida

In accordance with notices from the Federal Emergency Management Agency dated March 11 and March 13, 1998, the above-numbered Declaration is hereby amended to include the following counties in the State of Florida as a disaster area due to damages caused by severe storms, high winds, tornadoes, and flooding beginning on December 25, 1997 and continuing: Calhoun, Collier, Escambia, Franklin, Gadsden, Glades, Gulf, Holmes, Jackson, Liberty, Okaloosa. Okeechobee, Santa Rosa, Sarasota, Walton, and Washington.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bay, Holmes, Lee, Leon, Martin, Monroe, St. Lucie and Wakulla in the State of Florida may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is April 6, 1998 and for economic injury the termination date is October 6, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 19, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–8040 Filed 3–26–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3072]

State of Florida

Lee County and the contiguous Counties of Charlotte, Collier, Glades, and Hendry in the State of Florida constitute a disaster area as a result of damages caused by severe storms that occurred February 2–4, 1998. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 18, 1998 and for economic injury until the close of business on December 18, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 307211 and for economic injury the number is 977100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 18, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–8044 Filed 3–26–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3069]

State of Georgia

As a result of the President's major disaster declaration on March 11, 1998, and amendments thereto on March 12, 14, and 16, I find that the following counties in the State of Georgia constitute a disaster area due to damages caused by severe storms and flooding beginning on March 7, 1998 and continuing: Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Bleckley, Brooks, Burke, Calhoun, Candler, Clay, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Douglas, Early, Emanuel, Haralson, Heard, Irwin, Jeff Davis, Jefferson, Jenkins, Johnson, Laurens, Lee, Macon, McIntosh, Miller, Mitchell, Monroe, Montgomery, Pike, Pulaski, Quitman, Randolph, Screven, Seminole, Stewart, Sumter, Talbot, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Ware, Webster, Wheeler, Wilcox, and Worth. Applications for loans for physical damages may be filed until the close of business on May 10, 1998, and for loans for economic injury until the close of business on December 11, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bibb, Brantley, Bulloch, Butts, Carroll, Charlton, Chattahoochee, Clinch, Cobb, Coweta, Effingham, Evans, Fulton, Glascock, Glynn, Grady, Harris, Houston, Jasper, Jones, Lamar, Lanier, Liberty, Long, Lowndes, Marion, McDuffie, Meriwether, Muscogee, Paulding, Peach, Pierce, Polk, Richmond, Schley, Spalding, Tattnall, Taylor, Troup, Turner, Twiggs, Upson, Warren, Washington, Wayne, and Wilkinson Counties in Georgia; Baker, Gadsden, Jackson, Jefferson, Leon, and Madison Counties in Florida; and Aiken, Allendale, Barnwell, and Hampton Counties in South Carolina.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared

under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 306906. For economic injury the numbers are 976700 for Georgia, 976800 for Florida, and 977200 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 18, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–8043 Filed 3–26–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3052, Amdt. 2]

State of Maine

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to April 15, 1998.

All other information remains the same, i.e., the deadline for filing applications for economic is October 15, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 19, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–8042 Filed 3–26–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3064, Amendment. 1]

State of New Jersey

In accordance with a notice from the Federal Emergency Management Agency dated March 10, 1998, the above-numbered Declaration is hereby amended to include Ocean County, New Jersey as a disaster area due to damages caused by a severe winter coastal storm, high winds, and flooding that occurred February 4–9, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Monmouth, New Jersey may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 2, 1998 and for economic injury the termination date is December 3, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 18, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–8039 Filed 3–26–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #2765]

Determination on U.S. Support for Multilateral Assistance to Bosnia-Herzegovina

Pursuant to the authority vested in me by section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, Pub. L. 105–118 ("FOAA"), I hereby waive the application of section 573(b) of the FOAA with regard to loan projects offered by the World Bank's International Finance Corporation (IFC), the European Bank for Reconstruction and Development (EBRD), and the World Bank's International Development Association (IDA) to Bosnia-Herzegovina; and a loan project offered by the IDA to the Republika Srpska (RS).

I hereby determine that the IFC, EBRD and the two IDA loans directly support the implementation of the Dayton Agreement and its Annexes.

This Determination shall be published in the **Federal Register**.

Dated: March 12, 1998.

Madeleine Albright,

The Secretary of State.

[FR Doc. 98–7994 Filed 3–26–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice #2764

Determination on U.S. Bilateral Assistance to the Republika Srpska

Pursuant to the authority vested in me by section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, Pub. L. 105–118 ("FOAA"), I hereby waive the application of section 573(a) of the FOAA with regard to the following U.S. bilateral assistance programs in the Republika Srpska: support for civilian police restructuring; USIA programs promoting democratization, reconciliation, and free and independent media; OSCE-supervised elections and human rights activities; and Trade and Development Agency (TDA) activities designed to assist U.S. businesses in Bosnia.

I hereby determine that these U.S. bilateral assistance programs directly support the implementation of the Dayton Agreement and its Annexes.

This Determination shall be published in the **Federal Register**.

Dated: March 2, 1998.

Madeleine Albright,

Secretary of State.

[FR Doc. 98–7993 Filed 3–26–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–98–3553]

Marine Transportation System; Waterways, Ports, and Their Intermodal Connections

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings; correction.

SUMMARY: This document contains corrections to the notice of meetings [USCG–98–3553] which was published March 18, 1998 (63 FR 13295). The notice announced the dates and locations of 6 listening sessions to gather data and opinions for a development of a customer-based strategy for waterways, ports, and their intermodal connections.

DATES: This correction is effective on March 27, 1998.

FOR FURTHER INFORMATION CONTACT:

For information on the public docket, contact Carol Kelley, Coast Guard Dockets Team Leader or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329; for information concerning the notice of meeting contact Joyce Short, U.S. Coast Guard (G–M–2), 2100 Second St., SW., Washington, DC 20593–0001, telephone 202–267–6164.

SUPPLEMENTARY INFORMATION:

Need for Correction

The Coast Guard published a document in the **Federal Register** of March 18, 1998 (63 CFR 13295), which announced the dates and locations of 6 listening sessions to gather data and opinions for a development of a customer-based strategy for waterways, ports, and their intermodal connections. That document published an incorrect address for the public meeting in Oakland, CA. This document corrects that address.

In notice FR Doc. 98–7034 published on March 18, 1998 (63 CFR 13295), make the following corrections:

1. On page 13296, first column, under ADDRESSES: correct the address for Oakland, CA to read: "Oakland, CA—Port of Oakland, Board Room, 2nd Floor, 530 Water Street, Oakland, CA 94607".

Dated: March 23, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–8119 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Clark County, Indiana and Jefferson County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed construction of two new Ohio River Crossings on new alignments including approaches, and connections to existing roadway systems.

FOR FURTHER INFORMATION CONTACT: Jesse A. Story, Division Administrator, Federal Highway Administration, John C. Watts Federal Building and U.S. Courthouse, 330 W. Broadway, Frankfort, Kentucky 40601. Telephone: (502) 223–6720, Fax: (502) 223–6735.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Indiana Department of Transportation (INDOT) and the Kentucky Transportation Cabinet (KYTC) will prepare an EIS for the construction of two new river crossings in the vicinity of Jeffersonville and Utica, Clark County, Indiana, and Louisville and Prospect, Jefferson County, Kentucky.

The study will build upon the purpose and need and alternatives analysis resulting from the Ohio River Major Investment Study (ORMIS) Final Report (April 1997). The EIS will discuss environmental, social and economic impacts associated with the development of the proposed action.

Several public meetings have been held in conjunction with the ORMIS study. Notification of future public meetings and hearings will be advertised. Public notice will be given of the time and place of the public hearing. The Draft Environmental Impact Statement will be available for public and agency review and comment. The scoping process will build upon ORMIS's public and agency involvement and will be used to identify significant issues to be addressed in the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to the program)

Issued on: March 18, 1998.

Jesse A. Story,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 98–8103 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplementary to the Draft Environmental Impact Statement: Crawford and Perry Counties, IN

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the pubic that a Supplementary to the Draft Environmental Impact Statement will be prepared for the proposed construction of a new road section of State Road 145 from Interstate 64 near the town of St. Croix northward to the existing intersection of State Road 145 and State Road 64 for an approximate distance of 8.3 to 9.6 miles depending on the alternate selected. The project is located in the southern Indiana counties of Crawford and Perry. The Draft Environmental Impact Statement was accepted by the FHWA on April 1, 1996 and was circulated for comments. The Supplement will better define the purpose and need of the proposed action. Additionally, another alternate will be discussed to fully cover the proposed improvement area.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas N. Head, Program Operations Engineer, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana, 46204. Telephone (317) 226–5353.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Indiana Dept of Transportation, will prepare a supplement to the Draft Environmental Impact Statement on these additional items covering the proposed State Road 145 and its alternatives in Crawford and Perry counties. The discussions of proposed alignments in the Draft Environmental Impact Statement are still valid. The Supplement will provide a revised purpose and need of the planned improvement as well as another alternate not discussed in the Draft Environmental Impact Statement.

Since the additional alternate is being developed to consider all feasible alternates, additional coordination will be done with appropriate agencies. No formal scoping meetings are planned for these alterations to the approved Draft Environmental Impact Statement. An additional public hearing will be scheduled to discuss the additional information being developed for the proposed action. The Supplemental Draft Environmental Impact Statement will be made available for public and agency review and comment.

To ensure that the full ranges of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Supplemental EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research,

Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to the program)

Douglas N. Head,

Program Operations Engineer, Indianapolis, Indiana.

[FR Doc. 98–7992 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. RST–97–5]

Petition for Exemption or Waiver of Compliance With the Requirements of Section 213.233(c) of the Federal Track Safety Standards; New Jersey Transit Rail Operations, Inc.

In accordance with 49 CFR 211.41, notice is hereby given that the New Jersey Transit Rail Operations, Incorporated, (NJT) has submitted a petition, dated December 3, 1997, for a waiver of compliance with certain requirements of Title 49, Code of Federal Regulations, Part 213: Track Safety Standards.

The purpose of the petition is to request of the Federal Railroad Administration (FRA) relief from compliance with the provisions of 49 CFR 213.233(c) of the Federal Track Safety Standards. The petitioner requests approval to eliminate one of two weekly visual track inspections required by this section for track carrying passenger traffic. Petitioner proposes, in the interest of equivalent safety, to substitute for the eliminated visual inspection the operation of a track geometry measuring vehicle over the affected main track and sidings on a quarterly basis. Such equipment does not operate over the tracks of the petitioner today.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Number RST–97–5 and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) in Room 7051, 1120 Vermont Avenue, NW., Washington, DC 20005.

Issued in Washington, DC on March 24, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–8101 Filed 3–26–98; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on exemption applications in JULY–DECEMBER 1997. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on March 18, 1998.

Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
Modification Exemptions				
5749–M	DOT–E 5749	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315(a)	Authorizes the use of an insulated nickel steel DOT Specification MC–331 cargo for transportation of a certain flammable gas. (Mode 1.)
6922–M	DOT–E 6922	Solvay Fluorides, Greenwich, CT.	49 CFR 173.314(c), 179.300–15.	Authorizes the use of a DOT Specification 106A500–X multi-unit tank car tank, for shipment of certain compressed gases. (Modes 1, 2, 3.)
7657–M	DOT–E 7657	Welker Engineering Co., Sugar Land, TX.	49 CFR 173.119, 173.302(a) (1), 173.304(a) (1), 173.304(b) (1), 175.3, 178.42.	Authorizes the manufacture, marking and sale of non-DOT specification cylinders, for transportation of certain compressed gases. (Modes 1, 2, 3, 4.)
7765–M	DOT–E 7765	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302(a) (4), 175.3.	Authorizes the use of nonrefillable, non-DOT specification cylinders, for transportation of a Division 2.2 material. (Modes 1, 2, 3, 4.)
8723–M	DOT–E 8723	Dyno Nobel Inc., Salt Lake City, UT.	49 CFR 172.101, 173.114a(h) (3), 173.154, 176.415, 176.83.	Authorizes the use of non-DOT specification motor vehicles for bulk shipment of certain blasting agents. (Modes 1, 2.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8723–M	DOT–E 8723	Dyno Nobel Inc., Salt Lake City, UT.	49 CFR 172.101, 173.114a(h) (3), 173.154, 176.415, 176.83.	Authorizes the use of non-DOT specification motor vehicles for bulk shipment of certain blasting agents. (Modes 1, 2.)
9758–M	DOT–E 9758	Suunto, Carlsbad, CA	49 CFR 173.304(d) (3) (ii), 178.33.	Authorizes the shipment of certain Division 2.1 gases in a nonrefillable, non-DOT inside container conforming with the DOT–2P except for diameter and capacity. (Modes 1, 2, 3, 4, 5.)
10511–M	DOT–E 10511	Schlumberger Technology Corporation, Houston, TX.	49 CFR 173.304	To authorize shipment of Sulfur Hexafluoride classed as a nonflammable gas in a non-DOT specification device contained in a specially designed shipping vessel. (Modes 1, 2, 3, 4, 5.)
10798–M	DOT–E 10798	Olin Corp., Stamford, CT	49 CFR 174.67 (i) and (j)	Authorizes tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10974–M	DOT–E 10974	International Paper, Erie, PA.	49 CFR 174.67 (i) and (j)	Authorizes tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
11055–M	DOT–E 11055	Environmental Transport Systems, Inc., Fargo, ND.	49 CFR 173.226(C), 174.81, 176.83, 177.848, Part 172, Subpart E.	Authorizes the transportation of specifically identified hazardous materials that meet criteria for Division 6.1, PG I, Hazard Zone A in combination packages and provides relief from certain labeling and segregation requirements. (Modes 1, 2, 3.)
11244–M	DOT–E 11244	Aerospace Design & Development, Inc., Niwot, CO.	49 CFR 173.316(c), 178.57.	Authorizes manufacture, marking and sale of non-DOT specification titanium alloy cylinders for transportation of air, refrigerated liquid. (Mode 1.)
11248–M	DOT–E 11248	Hazmatpac, Houston, TX	49 CFR 173.3(a), 175.3, 177.848(b), 49 CFR 172 Subpart E & Subpart F, and Subpart H, Part 173, Subpart D, Subpart E, Subpart F.	Authorizes the manufacture, mark and sale of specially designed combination type packaging for transporting certain hazardous materials without required labelling and placarding in limited quantities. (Modes 1, 2, 3, 4, 5.)
11262–M	DOT–E 11262	Caire, Inc., Burnsville, MN	49 CFR 173.316(c) (2), 175.3, 178.57–8(c).	Authorizes the manufacture, marking and sale of a non-DOT specification cylinder comparable to DOT Specification 4L to be used for the transportation of oxygen. (Mode 1.)
11344–M	DOT–E 11344	Dupont SHE Excellence Center, Wilmington, DE.	49 CFR 174.67(i) and (j) ..	Authorizes tank cars, containing acetic acid, glacial, to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring is maintained. (Mode 2.)
11380–M	DOT–E 11380	Western Atlas Logging Services Houston, TX.	49 CFR 173.34(d), 178.37–13, 178.37–15, 178.37–5.	Authorizes the transportation of certain compressed hydrocarbon gases in non-DOT specification cylinders. (Modes 1, 2, 3, 4.)
11489–M	DOT–E 11489	TRW Vehicle Safety Systems, Queen Creek, AZ.	49 CFR 172.320, 173.56(b).	Authorizes the transportation by private carriage, of certain unapproved or unidentified items as approved, air bag inflators or air bag modules or seat belt pretensioners or seat belt modules as Division 1.4C explosives articles. (Mode 1.)
11512–M	DOT–E 11512	Alaska Eskimo Whaling Commission (AEWC), Barrow, AK.	49 CFR 172.101, Column (9B), 175.30.	Authorizes the transportation of approximately 150 pounds of black powder, Division 1.1D, by cargo aircraft only. (Mode 4.)
11512–M	DOT–E–11512	Alaska Eskimo Whaling Commission, Barrow, AK.	49 CFR 172.101, Column (9B), 175.30.	Authorizes the transportation of approximately 150 pounds of black powder, Division 1.1D, by cargo aircraft only. (Mode 4.)
11536–M	DOT–E 11536	Huges Space & Communications Co., Los Angeles, CA.	49 CFR 173.159, 173.302, 173.304, 173.62.	Authorizes the transportation of a spacecraft in a special sealed packaging (shipping container). The spacecraft contains Division 2.2 gases and Class 8 corrosive liquids in non-DOT specification packagings and limited quantities of Division 1.4S explosives secured within the spacecraft. (Mode 4.)
11580–M	DOT–E 11580	The Columbi ana Boiler Co., Columbiana, OH.	49 CFR 173.158(b) (g) & (h), 173.192(a), 173.201, 173.202, 173.203, 173.226, 173.227, 173.336, 173.40(a).	To authorize the manufacture, mark and sale of non-DOT specification stainless steel cylinders comparable to DOT Specification 4BW to be used for the transportation of various hazardous materials. (Modes 1, 2, 3, 4, 5.)
11725–M	DOT–E 11725	Swales Aerospace, Beltsville, MD.	49 CFR 173.301, 173.302(a), 173.304(a) (2), 173.34(d), 173.40, 175.3.	To authorize the transportation in commerce of certain non-DOT specification containers containing certain Division 2.1, 2.2, and 2.3 liquefied and compressed gases. (Mode 1.)

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11787–M	DOT–E 11787	Bayer Corp., Pittsburgh, PA.	49 CFR 173. 226(b)(1)	To authorize the emergency transportation of Toxic liquid, flammable, organic n.o.s. Division 6.1, PIH, Zone A material in 6HA1 drums that have not been hydrostatic tested to 80 psig. (Modes 1, 2.)
11799–M	DOT–E 11799	Cryonix, Inc., Rockville, MD.	49 CFR 173.196	To authorize the transportation in commerce of alternative secondary packaging consisting of heat sealed, plastic sleeve, packed in small quantities with absorbent material to be transported inside commercial freezer, for use in transporting Infectious substances, Division 6.2. (Mode 1.)
11836–M	DOT–E 11836	HCI USA Distribution Companies, Inc., Greensboro, NC.	49 CFR 173.203, 173.24 ..	To authorize the emergency transportation of polyethylene drums for use in transporting non-bulk quantities of ammonia solutions, Class 8. (Mode 1.)
11856–M	DOT–E 11856	Olin Corporation, Chandler, AZ.	49 CFR 173.304(a) (2), 173.34(d), 175.3.	To authorize the emergency transportation in commerce of a satellite system containing Division 2.3 and Class 8 materials. (Modes 1, 4.)
11888–M	DOT–E 11888	Day & Zimmerman, Inc. Parsons, KS.	49 CFR 172.101	Request for an emergency exemption in order to transport an explosive 1.1A in a solution of ethanol and water. (Mode 1.)
11902–M	DOT–E 11902	Eurotainer USA, Inc., Somerset, NJ.	49 CFR 173.225(e) (3)(c)	Request for an emergency exemption from 173.225(e)(3)(c) concerning portable tank pressure relief device setting and capacity requirements for certain organic peroxides. (Modes 1, 2, 3.)
11932–M	DOT–E 11932	PEPCO Manufacturing Co., Inc., Portland, OR.	49 CFR 172.101(i) (3)	To authorize the transportation in commerce of oxygen generators in passenger service units in bulk non-DOT specification packaging. (Mode 1.)
11937–M	DOT–E 11937	Puritan-Bennett Aero Systems Co., Lexena, KS.	49 CFR 172.102(c) (1)	To authorize the transportation in commerce of an oxygen generator, chemical, with one of the two positive means of preventing unintentional actuation of generator consisting of a packaging feature. (Modes 1, 2, 3, 4.)
11955–M	DOT–E 11955	Scott Aviation, Lancaster, NY.	49 CFR 172.102(c)	To authorize the emergency transportation in commerce oxygenators which utilize which utilize special packaging as secondary means of preventing actuation. (Modes 1, 2, 3, 4.)
11988–M	DOT–E 11988	COFAP of America, Inc, Dayton, OH.	49 CFR parts 100–180 except as provided in the exemption.	Request for an emergency exemption to manufacture, mark and sell shock absorbers and struts containing non-flammable gas as accumulators. (Modes 1, 2, 3, 4, 5.)
New Exemptions				
9743–N	DOT–E 9743	Allied-Signal, Inc., Morristown, NJ.	49 CFR 173.420(a) (2)	To authorize shipment of uranium hexafluoride classed as radioactive material in cylinders not manufactured in accordance with ANSI N14.1–1982 standard. (Modes 1, 2, 3.)
10664–N	DOT–E 10664	EFIC Corporation, San Jose, CA.	49 CFR 173.302(a) (1), 173.304(a) (1), 175.3.	To manufacture, mark and sell fully overwrapped high pressure cylinders consisting of aluminum liners overwrapped in carbon and glass fibers for transportation of nonliquified compressed gases. (Modes 1, 2, 3, 4, 5.)
10915–N	DOT–E 10915	Luxfer Gas Cylinders—Composite Cylinder Division, Riverside, CA.	49 CFR 173.302(a) (1), 173.304(a) (d), 175.3.	To authorize the manufacture, mark and sell of non-DOT specification fiber reinforced plastic cylinders built to DOT FRP–1 standard for use in transporting various flammable and non-flammable gases. (Modes 1, 2, 3, 4, 5.)
10945–N	DOT–E 10945	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3.	To authorize the manufacture, mark and sale of non-DOT specification fiber reinforced plastic full composite cylinders constructed of seamless 6061–T6 aluminum pressure vessel fully overwrapped with filament windings for use in transporting various material classed as flammable and non-flammable gases, Class 2. (Modes 1, 2, 3, 4, 5.)
11194–N	DOT–E 11194	Carleton Technologies Inc., Glen Burnie, MD.	49 CFR 173.304(a), 175.3, 49 CFR 173.302(a).	To authorize the manufacture, mark and sell of non-DOT specification fiber reinforced plastic full composite cylinder for shipment of certain Division 2.1 and 2.2 gases. (Modes 1, 2, 3, 4, 5.)
11443–N	DOT–E 11443	Hercules Inc., Wilmington, DE.	49 CFR 173.225(e)	To authorize the transportation of Division 5.2 organic peroxides in intermediate bulk containers equipped with the same pressure release system as DOT–57 portable tanks. (Mode 1.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11465–N	DOT–E 11465	Monsanto Co., St. Louis, MO.	49 CFR 173.240(c)	To authorize the transportation in commerce of solid hazardous waste, Class 9, to be transported in non-DOT specification bulk fiberboard boxes. (Mode 1.)
11559–N	DOT–E 11559	Japan Oxygen, Inc., Long Beach, CA.	49 CFR 173.318	To authorize the transportation of non-DOT specification insulated cargo tanks for use in transporting helium, Division 2.2. (Modes 1, 3.)
11578–N	DOT–E 11578	General Alum & Chemical Co., Searsport, MA.	49 CFR 174.67(j)	To authorize tank cars to remain connected during unloading process of sulfuric acid without the physical presence of an unloader. (Mode 2.)
11592–N	DOT–E 11592	Amtrol Inc., West Warwick, RI.	49 CFR 173.306(g)	To authorize an alternative design equation in the manufacture, market and sale of cylinders of deep-draw dome design for use in transporting compressed air or compressed nitrogen. (Modes 1, 2, 3.)
11606–N	DOT–E 11606	Safety-Kleen Corp., Elgin, IL.	49 CFR 173.28(b) (2)	To authorize the transportation in commerce of re-used non-DOT specification steel drums to ship waste combustible liquid and tetrachloroethylene sludges. (Mode 2.)
11613–N	DOT–E 11613	Solutia Inc., St. Louis, MO	49 CFR 174.67(i)	To authorize rail cars to remain connected during entire unloading process without the physical presence of an unloader. (Mode 2.)
11621–N	DOT–E 11621	Aerojet Industrial Products, North Las Vegas, NV.	49 CFR 172.101(i), 173.301(h), 173.302(a), 173.34(e).	To authorize the manufacture, mark and sale of non-DOT Specification cylinders as permanently mounted equipment for use in transporting non-liquefied compressed gases Division 2.2 (Mode 1.)
11654–N	DOT–E 11654	Hoechst Celanese Corp., Dallas, XT.	49 CFR 172.203(a), 173.31(c) (1), 179.13, Appendix B to Subpart B, Par. (2),.	To authorize the transportation in commerce of certain class 3 material in DOT 105J tank cars with a maximum gross weight greater than 184,000. (Mode 2.)
11662–N	DOT–E 11662	FIB Technologies, Inc, Westboro, MA.	49 CFR 173.304(a) (2)	To authorize the transportation in commerce of hexafluorethane, Division 2.2, in DOT–3T 2400 cylinders. (Mode 1, 2, 3.)
11668–N	DOT–E 11668	Allied-Signal, Inc., Morristown, NJ.	49 CFR 173.420(2) (d)	To authorize the one time shipment of space defective Model 48 OM cylinder containing uranium hexafluoride, Class 7. (Mode 1.)
11692–N	DOT–E 11692	SCM Technologies, Tilbury, ON.	49 CFR 173.301, 173.302, 173.304, 175.3, 178.45.	To authorize the manufacture, mark and sale of a non-DOT specification cylinder similar to DOT 3T, except with a lower minimum allowable wall thickness for use in transporting certain Division 2.1, 2.2, and 2.3 material. (Modes 1, 2, 3, 4.)
11701–N	DOT–E 11701	Dept. of Defense, Falls Church, VA.	49 CFR 173.34(e) (13)(i) & (iii).	To provide for a 3-year hydrostatic pressure test and to extend the life of non-DOT specification cylinders used in the missile program to 30 years. (Modes 1, 2, 4.)
11721–N	DOT–E 11721	The Coleman Co., Inc., Wichita, KS.	49 CFR 178.65–4(c) (1) ...	To authorize the elimination of 100% internal visual inspection of cylinders for use in transporting Division 2.1 material. (Modes 1, 2, 3, 4.)
11768–N	DOT–E 11768	Flotec Inc., Indianapolis, IN.	49 CFR 173.302(a) (5)(1)	To authorize the transportation in commerce of oxygen, Division 2.2, in aluminum cylinders equipped with specially designed aluminum valves. (Mode 1.)
11773–N	DOT–E 11773	West Coast Air Charter, Ontario, CA.	49 CFR 171.11, 172.101, 172.204(c) (3), 173.27, 175.30(a) (1), 175.320(b), Part 107, Appendix B.	To authorize the transportation of Class 1 explosives presently forbidden or in quantities greater than those authorized for shipment by air. (Mode 4.)
11780–N	DOT–E 11780	Hewlett-Packard Co., Washington, DC.	49 CFR 173.304(a) (2), 175.3.	To authorize the transportation in commerce of certain x-ray systems containing sulfur hexafluoride, Division 2.2. (Modes 1, 2, 3, 4, 5).
11786–N	DOT–E 11786	Dow Corning Corp., Midland, MI.	49 CFR 174.67(i) & (j)	To authorize tank cars to remain connected during unloading of various hazardous materials without the physical presence of an unloader. (Mode 2.)
11800–N	DOT–E 11800	General Fire Extinguisher Corp., Northbrook, IL.	49 CFR 173.309	To authorize the transportation in commerce of fire extinguishers, that exceed quantity limitation, for use in transporting liquefied compressed gas. (Modes 1, 2, 3, 4, 5.)
11808–N	DOT–E 11808	Trinity Industries, Inc., Dallas, TX.	49 CFR 179.300–19(a)	To authorize the foreign inspection of certain multi-unit tank cars (one ton containers) manufactured in Mexico for use in transporting chlorine. (Mode 2.)

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11814–N	DOT–E 11814	The Columbiana Boiler Co., Columbiana, OH.	49 CFR 178.245	To manufacture, mark and sell non-DOT specification steel portable tanks permanently fitted within an ISO frame similar to DOT-51 portable tanks for use in transporting those hazardous materials as authorized in DOT-Specification 51 portable tanks. (Modes 1, 2, 3.)
11824–N	DOT–E 11824	The Dow Chemical Co., Freeport, TX.	49 CFR 172.203(a), 172.302(c), 180.509(6)(e).	To authorize the use of alternative testing method for tank car structural re-certification, extend the internal visual tank and service equipment inspection cycle to 15 years and provide relief from the shipping paper and marking requirements. (Mode 2.)
11825–N	DOT–E 11825	Bevill Meter Service, Homer, LA.	49 CFR 173.304, 173.315	To authorize the transportation of a non-DOT specification container described as a meter prover for use in transporting various hydrocarbon products. (Mode 1.)
11834–N	DOT–E 11834	Ashland Chemical Co., Dublin, OH.	49 CFR 173.173, 173.202	To authorize the transportation of Division 3 and 5.1 material in UN 1A2/Y1.4/100 openhead steel drums as part of a mechanical application system. (Modes 1, 2.).
11839–N	DOT–E 11839	Williams Field Services, Opal, WY.	49 CFR 177.834(i)	To authorize loading of cargo tank containing Class 3 and Division 2.1 material without the physical presence of an unloader. (Mode 1.)
11850–N	DOT–E 11850	Air Transportation Association & Members, Washington, DC.	49 CFR 173.34(e)	To provide for an alternative testing method for DOT-Specification 4DA and 4DS cylinders used as components of aircraft systems. (Modes 4, 5.)
11859–N	DOT–E 11859	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 178.65	To authorize the manufacture, mark and sale of non-DOT specification cylinders as part of a gas bottle system consisting of two cylindrical/spherical halves fabricated from stainless steel for use in transporting Division 1.4S material. (Modes 1, 2, 3.)
11860–N	DOT–E 11860	GATX, Chicago, IL	49 CFR 173,31(b)(3)	To authorize the transportation in commerce of DOT111A60ALW–2 aluminum tank cars without head shields to be used in transporting hydrogen peroxide, Division 5.1. (Mode 2.)
11865–N	DOT–E 11865	ACCU Conversion, Inc., City of Industry, CA.	49 CFR 174.67(i)&(j)	To authorize rail cars containing Class 8 and Division 5.1 material to remain connected during loading and unloading operations without the physical presence of an unloader. (Mode 2.)
11866–N	DOT–E 11866	Sea-Land Service, Inc., Charlotte, NC.	49 CFR 176.905	To authorize transportation in commerce of cars and other motor vehicles, with batteries connected with some fuel in the fuel tank with required ventilation of each hold or compartment of a vessel. (Mode 3.)
11871–N	DOT–E 11871	Biotech Research Laboratories, Rockville, MD.	49 CFR 173.196, 178.609	To authorize the transportation in commerce of infectious clinical samples and various other biological fluids in mechanical freezers. (Mode 1.)
11873–N	DOT–E 11873	Incendere Inc., West Chester, PA.	49 CFR 172.101, 172.101(8).	To authorize the transportation in commerce of regulated medical waste in plastic bags in non-DOT specification steel roll-off containers as outer packaging (Mode 1.)
11879–N	DOT–E 11879	Cardone Industries, Inc., Philadelphia, PA.	49 CFR 100–180	To authorize the manufacture, mark, and sale of certain shock absorbers and struts, containing a Division 2.2 material for transportation in commerce as accumulators, not subject to the Hazardous Materials Regulations. (Modes 1, 2, 3, 4, 5.)
11880–N	DOT–E 11880	International Catalyst Corp., Loydminister, CN.	49 CFR 173.241, 173.242	To authorize the transportation in commerce of Division 4.2 material in modified covered hopper railcars. (Mode 2.)
11886–N	DOT–E 11886	Standard Chlorine of Delaware, Inc., Delaware City, DE.	49 CFR 173.213(c)	To authorize the transportation in commerce of Environmentally Hazardous Substance, Solid n.o.s., Class 9, in 5M1 bags. (Mode 1.)
11891–N	DOT–E 11891	Aldrich Chemical Co., Milwaukee, WI.	49 CFR 171 to 178	To authorize the one-time transportation in commerce of certain hazardous materials in various classes and divisions, contained in specific type packagings, as essentially non-regulated. (Mode 1.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11892–N	DOT–E 11892	Van Vool HV, B–2500 Lier, Koningshooikt, BE.	49 CFR 178.245, Part 173	To authorize the manufacture, mark and sale of non-DOT specification steel portable tanks, similar to DOT–51 steel portable tanks, permanently fitted within an ISO frame for use in transporting those hazardous material authorized in a DOT–51. (Modes 1, 2, 3.)
11900–N	DOT–E 11900	Osmose Wood Preserving, Inc., Buffalo, NY.	49 CFR 173.4(a) (1)(iii)	To authorize the transportation in commerce of methylisothiocyanate, Division 6.1 in containers which exceed the quantity limitations authorized by the small quantity exceptions. (Mode 1.)
11912–N	DOT–E 11912	Florida Power Light, Jensen Beach, FL.	49 CFR 173.403, 173.427	To authorize the transportation in commerce of steam generators to be classified as surface contaminated objects and transported in non-specification packaging. (Mode 2.)
11926–N	DOT–E 11926	The Dow Chemical Co., Midland, MI.	49 CFR 173.221	To authorize the transportation in commerce of polystrene beads, expandable, Class 9, in UN1H2 plastic drums not to exceed 200 pounds. (Modes 1, 2, 3, 4.)
11903–N	DOT–E 11903	Comptank Corporation, Ontario, CN.	49 CFR 107.503(b), 172.102(c) (3), SP B15, B23, B30, B32, 173.241, 173.242, 173.243, 178.340, 178.342, 178.343, 180.405, 180.413(d).	To authorize the use of non-DOT specification cargo tanks manufactured from glass fiber reinforced plastics for use in transporting variouis hazardous materials classed as Division 6.1, Class 3, 8 or 9. (Mode 1.)
11910–N	DOT–E 11910	San Esters Corp., New York, NY.	49 CFR 172.102(c) (7)(i), T15.	To authorize the transportation in commerce of allyl methacrylate, Division 6.1, in IMO Type 1 tanks with a minimum test pressure of 4 bar, equipped with prohibited bottom outlets. (Modes 1, 3.)
11933–N	DOT–E 11933	The Columbiana Boiler Co., Columbiana, OH.	49 CFR 173.3, 173.304	To authorize the manufacture, mark and sale of a non-DOT specification cylinder (pressure vessel) for the transportation in commerce of chlorine, Division 2.3. (Modes 1, 2, 3.)

Emergency Exemptions

EE 11826–N	DOT–E 11826	MG Industries-Gas Technology & Services Group, Morrisville, PA.	49 CFR 173.302(a) (5)	To authorize the transportation in commerce of DOT–3AL aluminum cylinders for use in transporting various mixtures of gases. (Modes 1, 2, 3, 4.)
EE 11902–N	DOT–E 11902	Eurotainer USA, Inc., Somerset, NJ.	49 CFR 173.225(e) (3)(c)	Request for an emergency exemption from 173.225(e)(3)(c) concerning portable tank pressure relief device setting and capacity requirements for certain organic peroxides. (Modes 1, 2, 3.)
EE 11931–N	DOT–E 11931	Mine Safety Appliances Co., Pittsburgh, PA.	49 CFR 172.101, SP 60 ...	To authorize the transportation of personal breathing apparatus without two independent means of preventing actuation. (Modes 1, 2, 3, 4.)
EE 11932–N	DOT–E 11932	PECO, Portland, OR	49 CFR 172.101(i) (3)	To authorize the transportation in commerce of oxygen generators in passenger service units in bulk non-DOT specification packaging. (Mode 1.)
EE 11937–N	DOT–E 11937	Puritan-Bennett Aero Systems Co., Lexena, KS.	49 CFR 172.102(c) (1)	To authorize the transportation in commerce of an oxygen generator, chemical, with one of the two positive means of preventing unintentional actuation of generator consisting of a packaging feature. (Modes 1, 2, 3, 4.)
EE 11949–N	DOT–E 11949	Drager Aerospace Oxycrew (PBE), Lubeck, GE.	49 CFR 172.102(c) (1), SP 60.	To authorize the transportation in commerce of protective breathing equipment (PBE), containing chemical oxygen generators which utilize special integra packaging as a secondary means of preventing actuation. (Modes 1, 2, 3, 4.)
EE 11951–N	DOT–E 11951	Van Waters & Rogers, Inc, Anchorage, AK.	49 CFR 172.101 col. 9(b)	Emergency exemption request from the quantity limitation per package provisions, concerning hypochlorite solutions, which limits the quantity per package to 60 L on cargo aircraft only. The request states that this would be a one-time shipment of the material in quantitites of 53 gallons net product per package. (Mode 4.)
EE 11952–N	DOT–E 11952	Department of Defense (DOD), Falls Church, VA.	49 CFR 173.306(a)	To authorize the emergency transportation in commerce of specially designed packaging consisting of a cylinder containing less than 7.22 cubic inches of nitrogen, compressed, Division 2.2 overpacked in container weighing approximately 89 pounds. (Mode 1.)

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11955–N	DOT–E 11955	Scott Aviation, Lancaster, NY.	49 CFR 172.102(c)	To authorize the emergency transportation in commerce oxygen genators which utilize speical packaging as secondary means of preventing actuation. (Modes 1, 2, 3, 4.)
EE 11956–N	DOT–E 11956	Scott Aviation, Lancaster, NY.	49 CFR 172.102(c) (1)	To authorize the emergency transportation in commerce of protective breathing equipment (PBE), containing chemical oxygen generators which utilize special packaging as a secondary means of preventing actuation. (Modes 1, 2, 3, 4.)
EE 11958–N	DOT–E 11958	Nucor Steel, Darlington, SC.	49 CFR 173.24b(d) (2)	To authorize the emergency transportation in commerce of Hazardous Waste Solid, n.o.s. in a hopper type rail car. (Mode 2.)
EE 11959–N	DOT–E 11959	Nucor Steel, Mount Pleasant, SC.	49 CFR 173.24b(d) (2)	Request for an emergency exemption to authorize the movement of a hopper type rail car overloaded with hazardous waste solid. (Mode 2.)
EE 11960–N	DOT–E 11960	Russell-Stanley Corp. Red Bank, NJ.	49 CFR 172.101, 173.201	Request for an emergency exemption to transport material in drums that are not marked with the correct UN performance rating. (Mode 1.)
EE 11961–E	DOT–E 11961	Vulcan Chemicals, Birmingham, AL.	49 CFR 173.24(b), 173.31(b) (1)(3), 179–300–12(b), 179.300–13, 179.300–14.	Request for an emergency exemption to transport of a one ton tank container with chlorine. The tank has leakage around one of the product valves and is equipped with a B kit. The tank will be moved approximately 200 miles in order to determine why the leak developed. (Mode 1.)
EE 11962–N	DOT–E 11962	Bayer Corp., Pittsburgh, PA.	49 CFR 173.212	Bayer is requesting an emergency exemption to transport pure sodium in a chemical process vessel (accumulator). (Mode 1.)
EE 11964–N	DOT–E 11964	Matec, Inc., Lake Oswego, OR.	49 CFR 173.158	MATEC, INC. is requesting an emergency exemption to permit 60 drums of 70% nitric acid to be transported from Portland Oregon to Eugene Or. The drums are not authorized to be used under 49 CFR. (Mode 1.)
EE 11969–N	DOT–E 11969	Advanced Environmental Technical Services, Flanders, NJ.	49 CFR 173.304(a) (2)	Request for an emergency exemption to permit the transportation of anhydrous ammonia in cylinders that are not authorized for anhydrous ammonia. (Mode 1.)
EE 11973–N	DOT–E 11973	UXB International, Ashburn, VA.	49 CFR 173.3, 173.320, 173.54, 173.56, 173.57.	Request for an emergency exemption to transport materials (including waste explosives) in packaging that is not authorized for the material. (Mode 1.)
EE 11974–N	DOT–E 11974	Laidlaw Environmental Services, Columbia, SC.	49 CFR 173.21	Request for an emergency exemption to transport a forbidden material from Illinois to Nebraska. (Mode 1.)
EE 11975–N	DOT–E 11975	Solutia, Inc., St. Louis, MO.	49 CFR 172.101, special provision B59, 173.242.	Request for an emergency exemption to transport phosphorus pentasulfide in a water-tight, sift-proof closed top metal hopper truck. (Mode 1.)
EE 11978–N	DOT–E 11978	Radian International Research, Triangle Park, NC.	49 CFR 172.202, 172.203, 172.301.	Request for an emergency exemption for the one-time shipment of approximately 1,700 chemicals using generic proper shipping names without the technical names associated with the general description. (Mode 1.)
EE 11979–N	DOT–E 11979	InLiner USA, Houston, TX	49 CFR 173.242	To authorize the emergency one-time transportation in commerce of resin solution, injected into a polyester felt liner configuration which is shipped in a refrigerated trailer containing dry ice to maintain temperature control. (Mode 1.)
EE 11985–N	DOT–E 11985	Shell Chemical Co., Lakeland, FL.	49 CFR 173.242	Request for the one-time transportation of a tank containing solid sulphuric acid to a disposal site. (Mode 1.)
EE 11986–N	DOT–E 11986	DOD/MTMC, Falls Church, VA.	49 CFR 176.136 (a) and (b).	Request for emergency exemption to authorize the stowage of Division 1.2, comp. group L explosives in a freight container below deck aboard large, med. speed rollon/roll off vessels. (Mode 3.)
EE 11988–N	DOT–E 11988	COFAP of America, Inc., Dayton, OH.	49 CFR parts 100–180 except as provided in the exemption..	Request for an emergency exemption to manufacture, mark and sell shock absorbers and struts containing non-flammable gas as accumulators. (Modes 1, 2, 3, 4, 5.)
EE 11989–N	DOT–E 11989	DOD/MTMC, Falls Church, VA.	49 CFR 172.504, 172.504, 176.83(9b), 176.83(9b), 176.83(9d), 176.83(9d), 176.83(9f).	Request for an emergency exemption from segregation requirements aboard vessels for explosive materials. (Mode 3.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11911–N	DOT–E 11991	Cabot Performance Materials.	49 CFR 174.427	Request for an emergency exemption to transport containers that have leaks to be shipped back to their origin for reprocessing, in order to prevent significant injury to persons or property. (Modes 1, 2.)
EE 11995–N	DOT–E 11995	Stolt Nielsen, Houston, TX	49 CFR Special Provision T15.	Request for an emergency exemption to permit the movement of an intermodal tank container of toxic liquid flammable. The tank is not authorized under 49 CFR. (Mode
EE 11996–N	DOT–E 11996	Van Waters & Rogers, Carencro, LA.	49 CFR 173.24, 173.304, 173.34.	Request for an emergency exemption to transport a cylinder containing sulfur dioxide with an emergency capping kit (Kit A) applied. (Mode 1.)
EE 11997–N	DOT–E 11997	Howard Industries, Columbus, OH.	49 CFR 171.2, 173.212(a)	Request for an emergency exemption to use packagings that are not authorized to transport lithium hydroxide. (Mode 1.)
EE 11998–N	DOT–E 11998	Safety-Kleen Oil Recovery, East Chicago, IN.	49 CFR 172.102, SP B74	To authorize the emergency transportation of seventeen (17) DOT Specification 105J200W tank cars transporting RQ Waste Toxic Liquids, corrosive, Inorganic, n.o.s., Division 6.1 and Class 8, Poison Inhalation hazard zone B not meeting SP B74. (Mode 2.)
EE 12006–N	DOT–E 12006	Delta Chemical Corp., Baltimore, MD.	49 CFR 173.24(b), 173.31, 179.300–12(b), 179.300–13, 179.300–14.	Request to transport a leaking clorine one ton container equipped with an emergency kit "b". (Mode 1.)
EE 12007–N	DOT–E 12007	Soils Chem. Corp., Hollister, CA.	49 CFR 173.40	Request for packaging not authorized for Chloropicrin (Mode 1.)
EE 12008–N	DOT–E 12008	ASARCO Inc., New York, NY.	49 CFR 173.31(a) (3), 180.509(c) (3)(iii).	To authorize the emergency transportation of Corrosive Liquid, n.o.s., Class 8, in rubber lined tank cars. (Mode 2.)
EE 12009–N	DOT–E 12009	Drug Enforcement Administration, Washington DC.	49 CFR 173.304	Request for an emergency exemption to transport anhydrous ammonia in cylinders that are not authorized or exceed the maximum storage density. (Mode 1.)
EE12012–N	DOT–E 12012	Waste Management Federal Services, Richland, WA.	49 CFR 173.24(b), 179–300–12(b), 179.300–13(a), 179.300–14.	Request for emergency exemption to transport sulfuric acid in tank cars for a period of 90 days beyond the period of tank test requirements. (Mode 1.)
EE12016–N	DOT–E 12016	Cytec Industries, Inc., West Patterson, NJ.	49 CFR 1	Request for emergency exemption to transport sulfuric acid in tank cars for a period of 90 days beyond the period of tank test requirements. (Mode 2.)
EE12017–N	DOT–E 12017	A.H. Marks, West Yorkshire, England.	49 CFR 172.102(c) (7)(i)	Request for emergency exemption to permit the one-time shipment of a 6.1 material in an IM 101 portable tank equipped with bottom outlets. (Mode 1.)
EE12019–N	DOT–E 12019	Lockheed Martin Skunk Work, Palmdale, Ca.	49 CFR 173.62	To authorize one-time transportation in commerce of an explosive device installed into a guided missile test vehicle. The device is installed in such a way that it cannot be removed at this stage of assembly. (Mode 1.)

DENIALS

10020–M	Request by Allwaste, Inc. Houston, TX to authorizes the use of a non-DOT specification roll-on/roll-off container, for transportation of Class 8 solids denied September 17, 1997.
11579–M	Request by Dyno Nobel Inc. Salt Lake City, UT to authorize the transportation in commerce of certain Class 8 acidic material on the same motor vehicle with Division 1.5D explosives denied November 26, 1997.
11748–N	Request by Frank W. Hake Associates Memphis, TN to authorize the transportation in commerce of steam generators from pressurized water nuclear power plants without the use of overpack denied October 15, 1997.
11816–N	Request by The Scotts Co. Marysville, OH to authorize the transportation in commerce of certain hazardous materials across a public road, from one part of a plant to another, as essentially not subject to the hazard communication requirements in Part 172 denied December 11, 1997.
11823–N	Request by Dyno Nobel Inc. Salt Lake City, UT to authorize the emergency transportation of explosive components to a waste disposal site denied November 12, 1997.
11843–N	Request by Shell Chemical Co. Houston, TX to authorize an exemption from the requirement to modify, reassign, retire, or remove at least 50 percent of in-service tank car fleet used for the transportation of a hazardous substance denied August 19, 1997.
11943–N	Request by ICI Americas Inc. Wilmington, DE to authorize the transportation of co-loading of materials meeting Packing Group III toxic (poison) class, bearing "harmful—keep away from food" labels denied August 1, 1997.

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WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11653–N	Phillips Petroleum Co., Bartlesville, OK.	49 CFR 174.9	To authorize the transportation in commerce of a empty tank car with defective heater coils (PSPX 517) last contained a Class 8 material. (Mode 2.)
11671–N	Matheson Gas Products, Secaucus, NJ.	49 CFR 172,101, Col (9B)	To authorize the transportation in commerce of arsine and phosphine, Division 2.3 in DOT specification cylinders by cargo only aircraft. (Mode 4.)
11678–N	Air Transport Association, Washington, DC.	49 CFR 172.200, 172.201, 172.202, 172.203, 172.204, 172.300, 172.301, 172.415, 172.600–604, 173.29 & 175.33.	To authorize the transportation in commerce of DOT approved cylinders, not to exceed 7.5 cu. ft., used in connection with calibration devices for alcohol testing units for flight crews, containing Division 2.2 material to be transported without required marking, labelling, shipping paper, and notification of pilot in command. (Modes 4, 5.)
11830–N	North Coast Container Corp., Cleveland, OH.	49 CFR 178.3(a)(5), 178.503(a)(10).	To authorize the transportation of 55 gallon full removable head and non-removable head steel drums with alternative markings. (Mode 1.)
11852–N	McKenzie Tank Lines, Inc., Tallahassee, FL.	49 CFR 173.315(A) Note 24 ...	To authorize transportation in commerce of methylamine, anhydrous, Division 2.1, in MC330 and 331 cargo tanks and the manufacture, mark and sale of new 331 cargo tanks that do not meet the container specification requirements. (Mode 1.)
11869–N	Driscoll Children's Hospital, Corpus Christi, TX.	49 CFR 172.101 9(a)	To authorize the transportation in commerce of nitric oxide, Division 2.3, with a subsidiary risk of Division 5.1 and Class 8 in aluminum cylinders weighing no more than 11 lbs. for use as part of a emergency medical transport of critically ill newborns and infants care system. (Mode 5.)
11940–N	Dept of Defense, Falls Church, VA.	49 CFR 172.301	DOD requests an emergency exemption to transport boxes containing 1.4S materials inadvertently marked with the incorrect shipping name. (Mode 1.)

[FR Doc. 98–8100 Filed 3–26–98; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33407]

Dakota, Minnesota & Eastern Railroad Corporation—Construction and Operation of New Rail Facilities in Campbell, Converse, Niobrara, and Weston Counties, WY, Custer, Fall River, Jackson, and Pennington Counties, SD, and Blue Earth, Nicollet, and Steele Counties, MN

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of intent to prepare an environmental impact statement (EIS), request for comments on the proposed EIS scope, and notice of scoping meetings.

SUMMARY: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves a total new construction of 280.9 miles of rail line. Additionally, DM&E proposes to rebuild 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. Because the construction and operation of this project has the potential to result in significant environmental impact, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA will hold agency and public scoping meetings as part of the EIS process, at the dates and locations described below. The exact locations of the meetings will be advertised two weeks prior to the meeting dates.

Dates and Locations

Agency Scoping Meetings

April 29, 1998, Cheyenne, Wyoming 9–11 am
May 14, 1998, St. Paul, Minnesota 1–3 pm
June 17, 1998, Pierre, South Dakota 9–11 am

Public Scoping Meetings

April 29, 1998, Wright, Wyoming 4–7 pm
April 30, 1998, Edgemont, South Dakota 4–7 pm
May 1, 1998, Hot Springs, Wyoming 4–7 pm
May 12, 1998, Mankato, Minnesota 4–7 pm
May 13, 1998, Rochester, Minnesota 4–7 pm
June 16, 1998, Wall, South Dakota 4–7 pm
June 17, 1998, Pierre, South Dakota 4–7 pm
June 18, 1998, Huron, South Dakota 4–7 pm
June 29, 1998, Brookings, South Dakota 4–7 pm
June 30, 1998, Springfield, Minnesota 4–7 pm

Both the agency and public scoping meetings will be informal meetings during which interested persons may ask questions about the proposal and the Board's environmental review process, and advise the Board's representative about potential environmental effects of the project. SEA will make available to the public a draft scope of the EIS before the first meeting. SEA will also provide time for the public to submit written comments on the draft scope. That period will run concurrently with the agency and public meetings. SEA will issue a final scope shortly after the final meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Rutson, SEA Project Manager, Powder River Basin Expansion Project, (202) 565–1545.

SUPPLEMENTARY INFORMATION:

Background

The proposed rail construction project, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line by the Dakota,

Minnesota & Eastern Railroad Corporation (DM&E), Brookings, South Dakota. The project would provide access for a third rail carrier to serve the region's coal mines and transport coal eastward from the Powder River Basin. New rail construction would include 262.03 miles of rail line extending off DM&E's existing system near Wasta, South Dakota, extending generally southwesterly to Edgemont, South Dakota and then westerly into Wyoming to connect with existing coal mines located south of Gillette, Wyoming. This portion of the new construction would traverse portions of Custer, Fall River, Jackson, and Pennington Counties, South Dakota and Campbell, Converse, Niobrara, and Weston Counties, Wyoming.

New rail line construction would also include a 13.31 mile line segment around Mankato, Minnesota within Blue Earth and Nicollet Counties. DM&E currently has trackage on both sides of Mankato, accessed by trackage rights on rail line operated by Union Pacific Railroad (UP). The proposed Mankato construction would provide DM&E direct access between its existing lines, avoid operational conflicts with UP, and route rail traffic around the southern side of Mankato, avoiding the downtown area.

The final proposed segment of new rail construction would involve a connection between the existing rail systems of DM&E and I&M Rail Link. The connection would include construction and operation of 2.94 miles of new rail line near Owatonna, Steele County, Minnesota. The connection would allow interchange of rail traffic between the two carriers.

In order to transport coal over the existing system, DM&E proposes to rebuild 597.8 miles of rail line along its existing system. The majority of this—584.95 miles—would be along DM&E's mainline between Wasta, South Dakota, and Winona, Minnesota. An additional 12.85 miles of existing rail line between Oral and Smithwick, South Dakota would also be rebuilt. Rail line rebuilding would include rail and tie replacement, additional sidings, signals, grade crossing improvements, and other systems.

DM&E plans to transport coal as its principle commodity. However, shippers desiring rail access could ship other commodities in addition to coal over DM&E's rail line. Existing shippers along the existing DM&E system would continue to receive rail service.

Environmental Review Process

At this time, the Board's SEA is requesting information and general comments on the scope of environmental issues to be addressed in the EIS for the proposed project. The National Environmental Policy Act (NEPA) process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS and their potential for significance. SEA will soon develop and make available a draft scope of study for the EIS and provide a period for the submission of written comments on it. Concurrently, scoping meetings will be held as noted above to provide opportunities for public involvement and input into the scoping process. Following the issuance of a draft scope and the comment period, SEA will issue a final scope of study for the EIS.

After issuing the final scope of study, SEA will prepare a Draft EIS (DEIS) for the project. The DEIS will address those environmental issues and concerns identified during the scoping process and detailed in the scope of study. It will also contain SEA's preliminary recommended environmental mitigation measures. The DEIS will be made available upon its completion for public review and comment. A Final EIS (FEIS) then will be prepared reflecting SEA's further analysis and the comments to the DEIS. In reaching its decision in this case, the Board will take into account the DEIS, FEIS, and all environmental comments that are received.

Filing Environmental Comments

SEA encourages broad participation in the EIS process. Interested persons and agencies are invited to participate in the scoping phase by reviewing the scope of study, attending the scoping meetings, and submitting written comments SEA. A signed original and 10 copies of comments should be submitted to: Office of the Secretary, Case Control Unit, STB Finance Docket No. 33407, Surface Transportation Board, 1925 K Street, NW., Washington, D.C. 20423–0001.

To ensure proper handling of your comments, you must mark your submission: Attention: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing.

By following this procedure, your comments will be placed in the formal Public Record for this case. In addition, SEA will add your name to its mailing list for distribution of the final scope of study for the EIS, the DEIS, and FEIS.

Issued: March 27, 1998.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 98–8117 Filed 3–26–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–492 (Sub-No. 1X)]

Fillmore Western Railway Company—Abandonment Exemption—in Fillmore, Jefferson, Saline and Thayer Counties, NE

On March 9, 1998, Fillmore Western Railway Company (FWRY) filed with the Surface Transportation Board (Board) a corrected petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon the following lines of railroad: (1) the Bruning Line extending from railroad milepost 10.0 near Geneva, to railroad milepost 24.5 near Bruning; (2) the Daykin Line extending from railroad milepost 35.8 at East Strang Junction to railroad milepost 23.2/28.4 at Tobias and continuing to the end of the line at railroad milepost 36.2 at Daykin; and (3) the Shickley Line extending from railroad milepost 37.5 near West Strang Junction to railroad milepost 45.0 at Shickley, a total distance of 42.40 miles in Fillmore, Jefferson, Saline and Thayer Counties, NE.[1] The lines traverse U.S. Postal Service Zip Codes 68146, 68406, 68361, 68436, 68444, 68322, 68453 and 68338. The lines include the stations of Shickley (milepost 45.0), Bruning (milepost 24.5), Ohiowa (milepost 29.8), Tobias (milepost 23.2/28.4), and Daykin (milepost 36.2).

The lines do not contain federally granted rights-of-way. Any documentation in FWRY's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding

[1] FWRY's original petition for exemption, filed January 26, 1998, included incorrect milepost designations. In an errata to its petition, FWRY corrected the milepost designations and amended the total mileage. Also, petitioner certified that it served corrected information in its environmental and historic reports to the proper parties and published the corrections in a newspaper of general circulation as required. The dates reflected in this notice are based on the date the errata was received, which is the official filing date.

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pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 26, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the lines, the lines may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 16, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–492 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) T. Scott Bannister, 1300 Des Moines Bldg., 405 Sixth Ave., Des Moines, IA 50309.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: March 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–7619 Filed 3–25–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8849

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8849, Claim for Refund of Excise Taxes.

DATES: Written comments should be received on or before May 26, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund of Excise Taxes

OMB Number: 1545–1420

Form Number: 8849

Abstract: Internal Revenue Code sections 6402 and 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms, and not-for-profit institutions.

Estimated Number of Respondents: 125,292

Estimated Time Per Respondent: 7 hr., 7 min.

Estimated Total Annual Burden Hours: 890,507

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7974 Filed 3–26–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6406

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting

comments concerning Form 6406, Short Form Application for Determination for Minor Amendment of Employee Benefit Plan.

DATES: Written comments should be received on or before May 26, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Short Form Application for Determination for Minor Amendment of Employee Benefit Plan.

OMB Number: 1545–0229.

Form Number: 6406.

Abstract: Form 6406 is used to apply for a determination for a minor amendment for an employee benefit plan if that plan has already received a favorable determination letter that takes into account the requirements of the Tax Reform Act of 1986. The information gathered will be used to decide whether the plan is qualified under Internal Revenue Code section 401(a).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 16,000.

Estimated Time Per Respondent: 12 hr., 59 min.

Estimated Total Annual Burden Hours: 207,840.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7975 Filed 3–26–98; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5578

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.

DATES: Written comments should be received on or before May 26, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.

OMB Number: 1545–0213.

Form Number: 5578.

Abstract: Every organization that claims exemption from Federal income tax under Internal Revenue Code section 501(c)(3) and that operates, supervises, or controls a private school must file a certification of racial nondiscrimination. Such organizations, if they are not required to file Form 990, must provide the certification on Form 5578. The Internal Revenue Service uses the information to help ensure that the school is maintaining a nondiscriminatory policy in keeping with its exempt status.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 4 hr., 45 min.

Estimated Total Annual Burden Hours: 4,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: March 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7976 Filed 3–26–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3520–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520–A, Annual Information Return of Foreign Trust with a U.S. Owner.

DATES: Written comments should be received on or before May 26, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Information Return of Foreign Trust with a U.S. Owner.

OMB Number: 1545–0160.

Form Number: 3520–A.

Abstract: Internal Revenue Code section 6048(b) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return. Form 3520–A is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3520–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other-for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 43 hr., 2 min.

Estimated Total Annual Burden Hours: 21,515.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7977 Filed 3–26–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8857

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8857, Request for Innocent Spouse Relief.

DATES: Written comments should be received on or before May 26, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Innocent Spouse Relief.

OMB Number: 1545–1596.

Form Number: 8857.

Abstract: Section 6013(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, "innocent spouse" relief when: the taxpayer filed a joint return with tax substantially understated; the taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. Form 8857 is used to request relief from liability of an understatement of tax on a joint return resulting from a grossly erroneous item attributable to the spouse.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11,667.

Estimated Time Per Respondent: 1 hr., 5 min.

Estimated Total Annual Burden Hours: 12,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7978 Filed 3–26–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 8172]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, TD 8172, Qualification of Trustee or Like Fiduciary in Bankruptcy (§ 301.6036–1).

DATES: Written comments should be received on or before May 26, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualification of Trustee or Like Fiduciary in Bankruptcy.

OMB Number: 1545–0773.

Regulation Project Number: TD 8172.

Abstract: Internal Revenue Code section 6036 requires that receivers, trustees in bankruptcy, assignees for the benefit of creditors, or other like fiduciaries, and all executors shall notify the district director within 10 days of appointment. This regulation provides that the notice shall include the name and location of the Court and when possible, the date, time, and place of any hearing, meeting or other scheduled action. The regulation also eliminates the notice requirement under section 6036 for bankruptcy trustees, debtors in possession and other fiduciaries in a bankruptcy proceeding.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 18, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7980 Filed 3–26–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "An Expressionist in Paris: The Paintings of Chaim Soutine" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Jewish Museum, New York, New York, from on or about April 26, 1998, to on or about August 16, 1998, the Los Angeles County Museum of Art, Los Angeles, California, from on or about September 17, 1998 to on or about January 3, 1999, and the Cincinnati Art Museum, Cincinnati, Ohio, from on or about February 14, 1999 to on or about May 2, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg, Assistant General Counsel, at 202/619–6084; the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

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Dated: March 23, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–8033 Filed 3–26–98; 8:45 am]

BILLING CODE 8230–01–M

federal register

Friday
March 27, 1998

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63

Aerospace Manufacturing and Rework Facilities; National Emission Standards for Hazardous Air Pollutants and Control Techniques Guideline Document for Source Categories; Final and Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5978–4]

RIN 2060–AE02

National Emission Standards for Hazardous Air Pollutants and Control Techniques Guideline Document for Source Categories: Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and release of final control techniques guideline (CTG) document.

SUMMARY: This action finalizes several amendments to the national emission standards for hazardous air pollutants (NESHAP) for aerospace manufacturing and rework facilities proposed in the **Federal Register** on October 29, 1996 (61 FR 55842). The amendments include: Corrections to several references in the rule; revisions and additions to definitions; clarification of the applicability of the cleaning operations standards; clarification of the applicability of the rule to space vehicles; addition of standards for Type I chemical milling maskants; addition of a test method for determining the filtration efficiency of dry particulate filters; revision of standards for new and existing sources using dry particulate filters to control emissions from topcoat and primer application and depainting operations; addition of an exemption for certain water-reducible coatings; addition of an exemption from inorganic HAP requirements for hand-held spray can applications; addition of an essential use exemption for cleaning solvents; clarification of compliance dates; clarification of the applicability of new source MACT to spray booths; clarification and addition of emissions averaging provisions; revision of the requirements for new and existing primer and topcoat application operations; clarification of monitoring requirements for dry particulate filter usage; revision of the standard for depainting operations; addition of a cross reference to requirements in the General Provisions in subpart A of part 63; addition of appendix A to this subpart containing definitions for specialty coatings; miscellaneous changes to the proposed amendatory language; and minor technical corrections, including correction of the OMB tracking number in 40 CFR part 9 (Section 9.1), that were not part of the October 29, 1996 proposal. Today's action takes final action on all of these amendments.

EFFECTIVE DATE: March 27, 1998.

ADDRESSES: *Control Techniques Guideline.* Copies of the final CTG may be obtained from the U. S. EPA Library (MD–35), Research Triangle Park, NC 27711; telephone (919) 541–2777.

An electronic version of documents from the Office of Air and Radiation (OAR) are available through EPA's OAR Technology Transfer Network Web site (TTNWeb). The TTNWeb is a collection of related Web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the Internet via the World Wide Web at the following address, "http://www.epa.gov/ttn". Electronic versions of this preamble and rule are located under the OAR Policy and Guidance Information Web site, "http://www.epa.gov/ttn/oarpg/", under the Recently Signed Rules section. If more information on the TTNWeb is needed, contact the Systems Operator at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice and analyses performed in developing this rule, contact Ms. Barbara Driscoll, Policy Planning and Standards Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–0164. For implementation issues (guidance documents), contact Ms. Ingrid Ward, Program Review Group, Information Transfer and Program Integration Division (MD–12), U. S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–0300. For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA regional representative. For a listing of EPA regional contacts, see the following **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners or operators of facilities that are engaged, either in part or in whole, in the manufacturing or rework of commercial, civil, or military aerospace vehicles or components and that are major sources as defined in § 63.2 of this part. Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities that are major sources of hazardous air pollutants and manufacture, rework, or repair aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles.
Federal Government	Federal facilities that are major sources of hazardous air pollutants and manufacture, rework, or repair aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles.

This table is not intended to be exhaustive, but rather it provides a guide for readers regarding entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in § 63.741 of the NESHAP for aerospace manufacturing and rework facilities promulgated in the **Federal Register** on September 1, 1995 (60 FR 45948). If you have questions regarding the applicability of this action to a particular entity, contact the appropriate regional representative:

Region I

NESHAP (MACT) Coordinator, U.S. EPA Region I, John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203–001, (617) 565–3438

Region II

Umesh Dholakia or Yue-On Chiu, U.S. EPA Region II, 290 Broadway Street, New York, NY 10007–1866, (212) 637–4023 (Umesh), (212) 637–4065 (Yue-On)

Region III

Bernard Turlinski, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2150

Region IV

Leonardo Ceron, U.S. EPA Region IV, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303–3104, (404) 562–9129

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Region V

Emmett Keegan, U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–0678

Region VI

Elvia Evering, U.S. EPA Region VI, First Interstate Bank Tower, @ Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733, (214) 665–7575

Region VII

Richard Tripp, U.S. EPA Region VII, Air Toxics Coordinator, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7566

Region VIII

Heather Rooney, U.S. EPA Region VIII, Air Toxics Coordinator, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6971

Region IX

Nikole Reaksecker, U.S. EPA Region IX, Air Division-6, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1187

Region X

Andrea Wullenweber, U.S. EPA Region X, Air Toxics Coordinator, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–8760

These amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

In addition, the EPA announces the availability of a final control techniques guideline (CTG) document for control of volatile organic compound (VOC) emissions from aerospace manufacturing and rework facilities. This document has been prepared in accordance with section 183(b)(3) of the Clean Air Act Amendments of 1990 (the "Act") to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within ozone national ambient air quality standard nonattainment areas. The final document recommends RACT for industries included in, but not limited to, 10 Standard Industrial Classification (SIC) codes: SIC 3720, Aircraft and Parts; SIC 3721, Aircraft; SIC 3724, Aircraft Engines and Engine Parts; SIC 3728, Aircraft Parts and Equipment; SIC 3760, Guided Missiles, Space Vehicles, and Parts; SIC 3761, Guided Missiles and Space Vehicles; SIC 3764, Space Propulsion Units and Parts; SIC 3769, Space Vehicle Equipment; SIC 4512, Scheduled Air Transportation; and SIC 4581, Airports, Flying Fields, and Services.

(As of January 1, 1997, a new numerical coding system for classifying industries has been implemented by the U.S. Census Bureau. The new system is called the North American Industrial Classification System—NAICS. The following list of affected industries was developed as a cross-reference to the above SIC codes: NAICS 336411, Aircraft Manufacturing; NAICS 336412, Aircraft Engine and Engine Parts Manufacturing; NAICS 336413, Other Aircraft Part and Auxiliary Equipment Manufacturing; NAICS 336414, Guided Missile and Space Vehicle Manufacturing; NAICS 336419, Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing; NAICS 481111, Scheduled Passenger Air Transportation; and NAICS 481112, Scheduled Freight Air Transportation.)

The information presented below is organized as follows:

I. Background
  A. Public Comment on the October 29, 1996 Proposal
  B. Judicial Review
II. Summary of Major Comments and Changes to the Proposed Amendments to the Rule
  A. Corrections to References
  B. Definitions
  C. Cleaning Operations
  D. Applicability to Space Vehicles
  E. Standards for Type I Maskants
  F. Test Method for Determining Filtration Efficiency
  G. Standards for Dry Particulate Filters
  H. Exemption for Waterborne Coatings
  I. Exemption From Inorganic HAP Requirements for Hand-Held Spray Can Applications
  J. Essential Use Exemption for Cleaning Solvents
  K. Compliance Dates
  L. Requirements for New Affected Sources (Spray Booths)
  M. Emissions Averaging
  N. Requirements for New and Existing Primer and Topcoat Application Operations
  O. Monitoring Requirements for Dry Particulate Filter Usage
  P. Depainting Operations
  Q. Applicability of General Provisions
  R. Specialty Coatings
  S. Miscellaneous Changes
  T. Technical Corrections
III. Control Techniques Guideline
IV. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866
  D. Regulatory Flexibility Act
  E. Submission to Congress
  F. Unfunded Mandates Reform Act

I. Background

National emission standards for hazardous air pollutants for aerospace manufacturing and rework facilities were proposed under Section 112(d) of the Clean Air Act Amendments of 1990 (the "Act") in the **Federal Register** on June 6, 1994 (59 FR 29216). Public comments were received regarding the standards and the final NESHAP was promulgated in the **Federal Register** on September 1, 1995 (60 FR 45948). After promulgation of the final rule, several issues were raised by various industry representatives and affected parties. Based on discussions with the commenters, the Agency proposed actions to amend §§ 63.741, 63.742, 63.743, 63.744, 63.745, 63.746, 63.747, 63.749, 63.750, 63.751, 63.752 and 63.753 of subpart GG of 40 CFR part 63. These sections deal with applicability, definitions, general standards, cleaning operations, topcoat and primer application operations, depainting operations, chemical milling maskant application operations, compliance dates and determinations, test methods and procedures, monitoring requirements, recordkeeping requirements, and reporting requirements. These changes provide additional flexibility to the regulated community and in several instances, clarify/correct errors in the regulatory text.

A. Public Comment on the October 29, 1996 Proposal

Eighteen comment letters were received on the October 29, 1996 **Federal Register** document that proposed changes to the rule. The proposed changes covered a variety of issues and many of the comment letters were supportive of the amendments. A few other comment letters also included suggested editorial revisions to further clarify some aspects of the proposed amendments or to address oversights in the proposed amendments. The EPA considered these suggestions and, where appropriate, made changes to the proposed amendments. The significant issues raised and the changes to the proposed amendments are summarized in this preamble. More detailed responses are provided in an addendum to the background information document (BID) volume II which can be found in Docket A–92–20, document No. EPA 453/R–97–003b. Some of the comment letters also included numerous issues not covered in the October 29, 1996 proposal. The EPA reviewed and responded to each of these in the addendum to the BID; any resulting changes to the final rule will

be proposed in a future **Federal Register** notice.

B. Judicial Review

Under section 307(b)(1) of the Act, judicial review of today's amendments to the NESHAP for aerospace manufacturing and rework facilities is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Summary of Major Comments and Changes to the Proposed Amendments to the Rule

A. Corrections to References

In the September 1995 promulgated rule, there were several references to § 63.751(b)(7)(iii), which only existed in an earlier draft of the promulgated rule. The EPA proposed the following revisions in October 1996: § 63.751(b)(6)(ii)(A) of the promulgated rule references (b)(7)(iii)(A)(*3*), but should reference paragraph (b)(6)(iii)(A)(*2*); § 63.751(b)(6)(iii) references (b)(7)(iii)(A), and (b)(7)(iii) (B) or (C), but should reference paragraphs (b)(6)(iii)(A), and (b)(6)(iii) (B) or (C); § 63.751(b)(6)(iii)(A)(*2*) references (b)(7)(iii)(A)(*1*), but should reference paragraph (b)(6)(iii)(A)(*1*); § 63.751(b)(6)(iii)(D) references (b)(7)(iii) (B) or (C), but should reference paragraph (b)(6)(iii) (B) or (C). There were no comments on these proposed revisions.

B. Definitions

The October 29, 1996 **Federal Register** notice contained several definitions to be added to § 63.742 and several to be revised, based on additional information submitted to the Agency after promulgation of the final rule. These changes are summarized below.

The definition of cleaning solvent in the promulgated rule stated that "cleaning solvent" did not include solutions that contained "no" HAP or VOC. Many aqueous cleaners contain negligible amounts of HAP or VOC. The EPA wants to encourage the use of these aqueous cleaners. Therefore, in October 1996 the EPA proposed the following language to exclude cleaners containing de minimis levels of HAP or VOC from the definition of cleaning solvent: "Cleaning solvent means a liquid material used for hand-wipe, spray gun, or flush cleaning. This definition does not include solutions that contain HAP and VOC below the de minimis levels specified in § 63.741(f) (e.g., water or acetone)." The EPA also proposed to change the applicable portion of § 63.741(f) to read: "The requirements of this subpart also do not apply to primers, topcoats, chemical milling maskants, strippers, and cleaning solvents containing HAP and VOC at a concentration less than 0.1 percent for carcinogens or 1.0 percent for noncarcinogens, as determined from manufacturer's representations." One commenter stated that not all HAP's are VOC's, nor are all VOC's HAP's. If the "and" is used, then one could read § 63.741(f) to require both VOC's and HAP's to be present for an exemption to apply. The commenter recommended using "and/or" which is unacceptable because it would create an exemption when both HAP and VOC were present, but only one was below the specified level. It is not the Agency's position that both HAP and VOC need be present for the exemption described in § 63.741(f) to apply.

The proposed definition also contained a parenthetical reference to water or acetone as examples of substances that might be present at a de minimis level. One commenter stated the parenthetical reference to water or acetone is confusing and should be deleted. The EPA agreed and has revised the definition as follows:

Cleaning solvent means a liquid material used for hand-wipe, spray gun, or flush cleaning. This definition does not include solutions that contain HAP and VOC below the de minimis levels specified in § 63.741(f).

The Agency also proposed adding a definition for antique aerospace vehicle or component so that these vehicles and components would be exempted from the regulation. One commenter supported the proposed definition. Another commenter suggested revising the definition to include those nonflight worthy aircraft intended for permanent display, or used for static manufacturing technology demonstrations. The commenter indicated that the definition in 14 CFR 45.22 is limited to operational, flight worthy aircraft used in exhibitions (motion pictures, television productions or air shows). The EPA believes that the passage to which the commenter refers actually concerns "exhibition" rather than "antique" aircraft. It was not EPA's intent to add an exemption for exhibition aircraft that do not meet the "antique aircraft" definition. In addition, EPA believes that it is not necessary to expand the scope of the "antique aircraft" definition because the Agency interprets the definition as including aircraft built at least 30 years ago that are not currently flightworthy. Therefore, EPA is promulgating the definition of antique aircraft as set forth in the proposal with some clarification (i.e., simplification) as follows:

Antique aerospace vehicle or component means an aircraft or component thereof that was built at least 30 years ago. An antique aerospace vehicle would not routinely be in commercial or military service in the capacity for which it was designed.

Due to the proposed addition of a standard for Type I chemical milling maskants, EPA proposed revising the definition for chemical milling maskant. One commenter noted that in the proposed definition, listed examples should be made identical to the listed names for these maskants found in appendix A to subpart GG. Another commenter raised the issue of exempting chemical milling maskants used for two different types of chemical milling applications. The commenter stated the same maskant can be used in aluminum chemical milling and titanium chemical milling, but these applications are not used on the same part or subassembly. A maskant used for both aluminum chemical milling and titanium chemical milling could not meet the low VOC content limits. In an existing plating shop which uses the same maskant tanks for two chemical milling applications, the proposed definition and associated maskant limits would require the addition of a new maskant tank to meet the low VOC maskant limit and another tank to meet the critical use applications. This might result in an increase in emissions since the surface area of the maskant in the tanks would double. The EPA agreed that the commenters' changes are reasonable because the purpose of the rule is to reduce HAP emissions and that adding a new maskant tank would likely increase HAP emissions in the aggregate. The definition has been revised as follows:

Chemical milling maskant means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or Type II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are also exempt from this subpart. (See also Type I and Type II etchant definitions.)

To further clarify the types of chemical milling maskants that are covered by the final rule, the Agency is providing the following separate definitions for Type I and Type II etchants:

Type I etchant means a chemical milling etchant that contains varying amounts of dissolved sulfur and does not contain amines.

Type II etchant means a chemical milling etchant that is a strong sodium hydroxide solution containing amines.

A commenter provided example scenarios in which the current definition of self-priming topcoat is overly restrictive. The commenter further stated that self-priming topcoats should be recognized as topcoats and the topcoat VOC/HAP limits should apply, not the primer limits. The Agency did not agree that the described scenarios are likely to present any problems in determining the appropriate coating category. However, the Agency did agree that removing the last sentence from the definition which stated: "The coating is not subsequently topcoated with any other product formulation" does clarify the definition of self-priming topcoat and makes it more consistent with the definition of topcoat.

Based on additional information received from industry, the EPA proposed in October 1996 to change or add the following definitions:

Aircraft transparency means the aircraft windshield, canopy, passenger windows, lenses, and other components that are constructed of transparent materials.

Chemical milling maskant application operation means application of chemical milling maskant for use with Type I or Type II chemical milling etchants.

Closed-cycle depainting system means a dust-free, automated process that removes permanent coating in small sections at a time, and maintains a continuous vacuum around the area(s) being depainted to capture emissions.

High volume low pressure (HVLP) spray equipment means spray equipment that is used to apply coating by means of a spray gun that operates at 10.0 psig of atomizing air pressure or less at the air cap.

Specialty coating means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection. Individual specialty coatings are defined in appendix A to this subpart and in the CTG for Aerospace Manufacturing and Rework Operations (Document No. EPA 453/R–97–004).

Waterborne (water-reducible) coating means any coating that contains more than 5 percent water by weight as applied in its volatile fraction.

No comments were received on these proposed definitions.

Section 63.741(f) has also been modified to include § 63.742 (Definitions) in the list of additional specific exemptions from regulatory coverage.

C. Cleaning Operations

Under the promulgated rule, the standards for cleaning operations could be read to apply to all cleaning operations at a facility, not only to cleaning operations that involve aerospace vehicles, components, or coating equipment. In order to clarify the applicability of the standards for cleaning operations, the Agency proposed to revise § 63.741(c) to limit the applicability of the final rule to the manufacture or rework of aerospace vehicles or components. Other nonaerospace activities (e.g., general facility cleaning) are not subject to the requirements of this rule. No comments were received on this issue and EPA is promulgating the revisions as proposed.

The EPA proposed to replace the word "solvent" with the defined term "cleaning solvent" for clarity and consistency in § 63.744, paragraphs (a), (b), (c), and (e). The EPA has also changed the cleaning rag storage requirement by rewording the first sentence of § 63.744(a)(1) as follows:

Place cleaning solvent-laden cloth, paper, or any other absorbent applicators used for cleaning in bags or other closed containers upon completing their use.

As originally promulgated, this NESHAP required that cleaning rags be stored immediately after use. In October 1996, EPA proposed to remove the word "immediately" from the sentence to make the rule more consistent from a temporal standpoint with the storage requirements contained in the California SIP-approved rules that were the basis for this requirement. No comments were received on these revisions. Accordingly, EPA decided to promulgate this change.

In addition, the EPA has changed the requirements for flush cleaning to cover the situation in which an operator is cleaning multiple items at the same station, without leaving the station. The change to § 63.744(d) is as follows: "* * * empty the used cleaning solvent each time aerospace parts or assemblies, or components of a coating unit (with the exception of spray guns) are flush cleaned * * *." This change will better carry out the Agency's intent in regulating flush cleaning. No comments were received on this change.

Based on information from industry, the EPA proposed a modification to the exemption in § 63.744(e)(10). The revised text reads as follows:

Cleaning of aircraft transparencies, polycarbonate, or glass substrates.

No comments were received on this revision.

D. Applicability to Space Vehicles

Space vehicles (i.e., vehicles designed to travel beyond the limit of the earth's atmosphere) are specifically exempted from the requirements of this rule, except for the standards for depainting operations. The EPA proposed (1) removing the reference to these vehicles in § 63.741(f) and (2) adding an additional specific exemption in a new paragraph, § 63.741(h), to clarify the exemption. The EPA proposed § 63.741(h) as follows:

Regulated activities associated with space vehicles designed to travel beyond the limit of the earth's atmosphere, including but not limited to satellites, space stations, and the Space Shuttle System (including orbiter, external tanks, and solid rocket boosters), are exempt from the requirements of this subpart, except for depainting operations found in § 63.746.

One commenter concurred with this revision as an important clarification of the applicability of the rule for aerospace organizations. The EPA decided to promulgate this change to the final rule.

E. Standards for Type I Maskants

The EPA proposed to establish an emission limitation for Type I maskants and to include Type I maskants within the definition of chemical milling maskants. Pursuant to section 114 of the Act, information regarding maskants was requested from nine companies that own or operate aerospace manufacturing and rework facilities. Information was requested for all types of maskants, including total quantity used, formulation data, VOC and organic HAP content as received and as applied, substrate category and the composition of the metal alloy on which the maskant is applied, a listing of the type of parts or specific aircraft surfaces on which the maskant is used, VOC and HAP emissions from maskant application operations, and type(s) of controls (if any). The information received on Type I maskants was used to calculate a MACT floor. The MACT floor was determined to be the weighted (by usage volume) average HAP emissions from the sources, 622 grams per liter [g/L] (5.2 pounds per gallon [lb/gal]).

The EPA proposed revising § 63.747(c) to include organic HAP and VOC content limits of 622 grams per liter (g/L) (5.2 pounds per gallon [lb/gal]) as the standard for uncontrolled Type I chemical milling maskants. The EPA proposed revising paragraphs (c)(1) and (2) to specify that the organic HAP and VOC limits of 160 g/L (1.3 lb/gal) apply only to Type II chemical milling maskants. One commenter supported EPA's proposed limits and stated the proposed Type I limit recognizes that some chemical etching applications require the use of solvent-based maskants, while still achieving a significant reduction in VOC and HAP emissions from masking operations.

Due to the addition of a standard for Type I chemical milling maskants, EPA also proposed removing the definition of Type I maskants from the list of specialty coatings in appendix A of this subpart and revising the definition for chemical milling maskant in § 63.742 of the promulgated rule. No comments were received on deletion of the definition for Type I maskants from Appendix A, and comments received on the definition for chemical milling maskant are discussed under definitions in Section II.B of this preamble.

F. Test Method for Determining Filtration Efficiency

The Agency proposed a test method, Method 319, for the determination of filtration efficiency for paint overspray arresters (also referred to as particulate filters). The Agency proposed that this method be used by filter manufacturers to certify their filter efficiency. Commenters raised several issues related to the technical validity of proposed Method 319 and who could run the test. Based on these comments, the Agency has modified § 63.750(o) to state that this method can be used by filter manufacturers or distributors, paint/depainting booth suppliers, or owners or operators of affected sources to certify the efficiency of their filters for meeting the dry particulate filter requirements in today's amendments.

The EPA also proposed filter efficiency tables (Tables 1, 2, 3, and 4 of § 63.745) and one commenter recommended adding descriptive language to the table headings. The EPA added "for existing sources" or "for new sources" to each of the table headings in response to the comment.

TABLE 1 OF § 63.745.—TWO-STAGE ARRESTOR; LIQUID PHASE CHALLENGE FOR EXISTING SOURCES

Filtration efficiency requirement, %	Aerodynamic particle size range, µm
>90	>5.7
>50	>4.1
>10	>2.2

TABLE 2 OF § 63.745.—TWO-STAGE ARRESTOR; SOLID PHASE CHALLENGE FOR EXISTING SOURCES

Filtration efficiency requirement, %	Aerodynamic particle size range, µm
>90	>8.1
>50	>5.0
>10	>2.6

TABLE 3 OF § 63.745.—THREE-STAGE ARRESTOR; LIQUID PHASE CHALLENGE FOR NEW SOURCES

Filtration efficiency requirement, %	Aerodynamic particle size range, µm
>95	>2.0
>80	>1.0
>65	>0.42

TABLE 4 OF § 63.745.—THREE-STAGE ARRESTOR; SOLID PHASE CHALLENGE FOR NEW SOURCES

Filtration efficiency requirement, %	Aerodynamic particle size range, µm
>95	>2.5
>85	>1.1
>75	>0.70

Three commenters raised several issues related to test Method 319 and disagreed with specifics of the test method. All of the issues are addressed in the Agency's documented responses in Section 2.9 of the Addendum to the BID (Volume II), Document No. EPA 453/R–97–003b. In summary, Method 319 will retain use of oleic acid and potassium chloride (KCl) challenge aerosols. By selecting oleic acid and KCl as simulants for wet and dry overspray, the amount of testing needed is reduced because only two challenge materials are used, particle sizing accuracy is maintained, and safety and handling issues associated with volatile paint components are avoided.

The method has been revised to allow additional flexibility for alternate duct configurations. The 180 degree bend in the duct has been made optional thereby allowing use of a straight duct. Also, the measurement procedures have been revised to allow the use of two particle counters to allow simultaneous sampling (one sampling upstream and one sampling downstream).

Additionally, the NESHAP retains equal requirements for "paint overspray arrestors" under § 63.745 Primer and Topcoat Application Operations, and "particulate" filters under § 63.746 Depainting Operations.

G. Standards for Dry Particulate Filters

The Agency proposed to revise MACT requirements for the control of inorganic particulates from certain primer, topcoat, and depainting operations. Based on a review of the available data, the EPA proposed requiring existing sources using particulate filters in depainting as well as topcoat and primer operations, in which any of the coatings contain inorganic HAP, to meet the filtration efficiency established for the two-stage system that was tested. Specifically, the Agency proposed requiring owners or operators of existing sources to use particulate filters that are certified under § 63.750(o) to meet or exceed the efficiency data in Tables 1 and 2 of § 63.745 (developed from the two-stage filter testing). The Agency has modified this language to indicate certification must be consistent with § 63.750(o); therefore, this method can be used by filter manufacturers or distributors, paint/depainting booth suppliers, and/or owners or operators of affected sources to certify the efficiency of their filters.

The Agency also proposed that new sources meet the filtration efficiency data points for the three-stage system that was tested. Specifically, the Agency proposed requiring owners or operators of new sources to use particulate filters that are certified under § 63.750(o) to meet or exceed the efficiency data in Tables 3 and 4 of § 63.745 (developed from the three-stage filter testing). These new filtration requirements reflect a performance based standard rather than specified equipment, thus allowing more flexibility for affected sources to comply with the NESHAP.

One commenter believed that test Method 319 is flawed and therefore questioned the filter efficiency limits

developed using testing based on Method 319. The Agency disagrees with the commenter and believes the filter efficiency limits to be technically based as equivalent to MACT. The test method is based on several years of work performed for EPA and culminated in testing of the two- and three-stage paint arrestors determined to represent MACT for the aerospace industry.

In announcing these revised MACT requirements for particulate emissions, the Agency realizes that there are unique circumstances in which owners and operators have commenced construction or reconstruction of a new spray booth or hangar after the proposed regulation (June 4, 1994) and have had to comply with the requirements in the promulgated rule (September 1, 1995). For these owners or operators of aerospace manufacturing or rework operations who have commenced construction or reconstruction of new spray booth or hanger for inorganic HAP depainting operations, primer, or topcoat operations after June 4, 1994 but prior to October 29, 1996, the EPA has provided the flexibility to meet either the requirements for new sources under § 63.745(g)(2)(ii) of the amendments to the final regulation found in today's notice or the requirements for new sources under § 63.45(g)(2)(iv) of the September 1, 1995 promulgated rule which are found in § 63.745(g)(2)(iii) in the amended rule. Sources that commenced construction prior to June 4, 1994 are still required to meet the existing source requirements for depainting operations and painting (topcoat or primer application) operations found in the final amended rule.

H. Exemption for Waterborne Coatings

The EPA proposed that any waterborne coating for which the manufacturer's supplied data demonstrate that the coating meets the organic HAP and VOC content limits for its coating type as specified in the regulation be exempt from many of the organic HAP and VOC related requirements of this regulation. If the manufacturer's supplied data indicate that the waterborne coating meets the organic HAP and VOC content emission limits for its coating type, as specified in §§ 63.745(c) and 63.747(c), then the owner or operator would not be required to demonstrate compliance for these coatings using the test method specified in § 63.750(c). However, the owner or operator would still be required to maintain purchase records and manufacturer's supplied data sheets for exempt coatings. Owners or operators of facilities using waterborne coatings would also be required to handle and transfer these coatings in a manner that minimizes spills, apply these coatings using one or more of the specified application techniques, and comply with inorganic HAP emission requirements. This exemption was added as § 63.741(i) as follows:

> Any waterborne coating for which the manufacturer's supplied data demonstrate that organic HAP and VOC contents are less than or equal to the organic HAP and VOC content limits for its coating type, as specified in §§ 63.745(c) and 63.747(c), is exempt from the following requirements of this subpart: §§ 63.745(d)–(e), 63.747(d)–(e), 63.749(d) and (h), 63.750(c)–(h) and (k)–(m), 63.752(c) and (f), and 63.753(c) and (e). A facility shall maintain the manufacturer's supplied data and annual purchase records for each exempt waterborne coating readily available for inspection and review, and shall retain these data for 5 years.

Section 63.741(f) was also modified to include § 63.741(i) in the list of additional specific exemptions from regulatory coverage.

The Agency proposed this exemption to streamline and simplify the requirements for owners and operators of facilities using these coatings and to encourage the use of waterborne coatings which may result in lower emissions than other coating types. No comments were received on this issue and EPA decided to promulgate this change.

I. Exemption From Inorganic HAP Requirements for Hand-Held Spray Can Applications

Two commenters noted that the final rule created a point of confusion over the absence of an exemption from inorganic HAP requirements for the use of hand-held spray cans used outside a paint booth or hangar (i.e., touch-up operations). The Agency noted that such an exemption currently exists under § 63.745(f)(3)(v) for primers and topcoats containing organic HAP or VOC, and the requirements for touch-up operations would also provide an exemption for these activities when conducted outside of the hangar or paint booth. However, the Agency agreed with the commenters that potential confusion could result in the absence of a clear exemption under the inorganic HAP requirements. Therefore, the Agency has added the following paragraph (x) to the list of operations in § 63.745(g)(4) not subject to the requirements of paragraphs 63.745 (g)(1) through (g)(3):

> (x) The use of hand-held spray can application methods.

J. Essential Use Exemption for Cleaning Solvents

In accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol"), EPA has granted essential use allowances for limited applications of ozone depleting substances (ODS's). The EPA proposed that an essential use exemption be added to this rule for cleaning operations that have been identified as essential uses. The proposed language has been revised slightly for greater consistency with the stratospheric ozone regulations. The exemption was added as § 63.744(e)(13) as follows:

> Cleaning operations identified as essential uses under the Montreal Protocol for which the Administrator has allocated essential use allowances or exemptions in 40 CFR 82.4.

One commenter concurred with EPA on this added exemption and EPA decided to promulgate this change.

K. Compliance Dates

The EPA wishes to clarify an inconsistency between the preamble to the final rule and the regulation. The preamble to the final aerospace NESHAP states, "Owners or operators of new commercial, civil, or military aerospace OEM and rework operations with initial startup after September 1, 1998 will be required to comply with all requirements upon startup." This statement is incorrect. The text of the promulgated regulation correctly states that new sources, with initial startup on or after September 1, 1995, must comply with all requirements upon startup. In October 1996, the EPA also proposed to clarify that the deadline for approval of an alternate control device is 120 days prior to the compliance date. This clarification, mistakenly omitted from the published final rule, is now reflected in § 63.743(c). No comments were received on this issue and, thus, EPA decided to promulgate this change.

L. Requirements for New Affected Sources (Spray Booths)

The Agency has clarified the requirements for new affected sources. An affected source is an emission unit, process, or operation identified in the NESHAP that is part of the entire facility, but is not necessarily a major source. In today's action the Agency is clarifying its intent that for inorganic HAP emissions, each spray booth or hangar that contains a primer or topcoat application operation subject to § 63.745(g) or a depainting operation

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subject to § 63.746(b)(4) is considered an affected source and has added this description under § 63.741(c). To avoid any inconsistency, the Agency has also added the words "For organic HAP or VOC emissions" at the beginning of § 63.741(c) (2), (3), and (4). If such an affected source is constructed or reconstructed after October 29, 1996, then that spray booth or hangar must comply with the applicable inorganic HAP control requirements. Construction or reconstruction of a new spray booth or hangar at a facility with an existing coating or depainting operation will not cause the existing operation to be subject to any other new source standards; only the new spray booth or hangar will be subject to the applicable new source requirements for inorganic HAP and will need to comply upon the effective date of the requirements or startup, whichever is later. The EPA is also making this clarification in § 63.749(a), the compliance dates and determinations section of the final rule.

In addition, EPA also clarified that § 63.5(b)(3) of the General Provisions, which requires advance notice and approval by the Agency prior to construction or reconstruction of a major affected source, shall apply to the construction or reconstruction of a new spray booth or hangar at a facility for an existing coating or depainting operation only if the booth or hangar has the potential to emit 10 tons/yr or more of an individual inorganic HAP or 25 tons/yr or more of all inorganic HAP combined. Owners or operators of an existing coating or depainting operation who construct or reconstruct a new booth or hangar that emit or have the potential to emit less than 10/25 tons/yr of inorganic HAP's will only be required to submit an annual notification on or before March 1 of each year. This annual notification shall include all of the information required in § 63.5(b)(4) for each such booth or hangar constructed or reconstructed in the prior calendar year, except that the information shall be limited to the inorganic HAP's from the new booth or hangar. Of course, any owner or operator that constructs or reconstructs a new spray booth or hangar at a facility at which there is no existing coating or depainting operation will be required to comply with all of the applicable notice and advance approval requirements of § 63.5.

M. Emissions Averaging

Under the September 1, 1995 promulgated rule the averaging of emissions was permitted to occur within coating types (i.e., topcoats, primers, or maskants). The EPA also indicated at that time in the 1995 background information document that EPA would be investigating options with respect to implementing a broad-based averaging scheme as a compliance option for the Aerospace NESHAP. Based on additional discussion in roundtable meetings, the EPA proposed in the October 29, 1996 amendments to consolidate the language dealing with the averaging of emissions as it applies to the aerospace industry. Paragraphs 63.745(e)(2) and 63.747(e)(2) were consolidated into a new § 63.743(d), which, if promulgated as proposed, would have permitted averaging across coating types.

In response to the October 1996 proposal, the EPA received two comments that supported the changes to the averaging provisions. One commenter indicated that introductory text was needed to clarify the intent of § 63.743(d), which is where the averaging provisions are now located. The EPA agrees with the commenter and has added introductory language to § 63.743(d). Another commenter wanted the averaging provisions to be expanded to include controlled operations (i.e., those with control devices). The EPA believes that as currently allowed, the averaging of uncontrolled coatings will encourage development and use of lower HAP and VOC content coatings in the aerospace industry. In order to preserve the environmental benefit of pollution prevention, EPA will not extend the averaging system to include controlled coatings.

With regards to an expanded emissions averaging scheme, the EPA looked at various ways to expand the averaging provisions in the September 1995 promulgated rule so as to allow averaging between certain coating types. In designing emissions trading and averaging systems, EPA believes that it is important to consider the effect that trading or averaging is likely to have on facilities' actual emissions, as well as the effect on facilities' maximum allowable emissions. A workable scheme for averaging across coating types was not developed because the format of the coating limits in the rule as originally promulgated creates inherent difficulties in making equitable comparisons/calculations of actual emissions from coating categories with different limits. In order to include effective emissions averaging provisions for different coating categories (e.g., primers, topcoats, and maskants) or other emission sources, the format of the entire rule would have to be overhauled. Such changes are now beyond the scope of the work involved in finalizing these amendments to the aerospace rule.

N. Requirements for New and Existing Primer and Topcoat Application Operations

The September 1, 1995 promulgated NESHAP requires owners or operators of primer and topcoat application operations who wish to use an alternative application method (other than HVLP or electrostatic spray) to demonstrate that the emissions generated during the initial 30-day period, the period of time required to apply primer to five completely assembled aircraft, or a time period approved by the permitting agency are less than or equal to the emissions generated using HVLP or electrostatic spray application methods. Since promulgation, the Agency has received comments from industry concerning the test method for alternative spray equipment application requiring actual production trials. Those concerns involved the use of ineffective application equipment on actual production parts or assemblies which could lead to product quality and safety issues with significant cost to the manufacturer. The Agency has acknowledged those concerns and provided additional flexibility to owners or operators of primer and topcoat application operations seeking to use alternative application methods.

The October 1996, proposed amendments to the final NESHAP in § 63.750(i)(2)(ii) allowed owners or operators an alternative approach whereby the proposed application method is tested against either HVLP or electrostatic spray application methods in a laboratory or pilot production area, using parts and coatings representative of the process(es) in which the alternative method is to be used. Under this alternative, the laboratory test will use the same part configuration(s) and the same number of parts for both the proposed method and the HVLP or electrostatic spray application methods. The Agency intended to make the laboratory test an additional option instead of replacing the production evaluation in the final rule. Therefore, since no comments were received on the proposed revision to § 63.750(i)(2)(ii), the Agency decided to promulgate this change by designating the proposed § 63.750(i)(2)(ii) as § 63.750(i)(2)(iii). For consistency, this change has also been made to § 63.749 (d)(3)(iii)(B) and (d)(4)(iii)(B).

O. Monitoring Requirements for Dry Particulate Filter Usage

The Agency proposed to clarify the monitoring requirements for owners or operators of depainting and painting

operations using dry particulate filters and HEPA filters to comply with this NESHAP. The EPA proposed to add language to § 63.751(c)(1) to clarify that owners or operators are required to read and record monitoring (i.e., pressure drop) data only once per shift.

One commenter requested that the phrase "continuously monitor" in § 63.745(g)(2)(v) be changed to "monitor once per shift" to avoid confusion with the Agency's clarification of monitoring requirements in other sections of the final rule. Past experience with such control systems indicates that reading the designated operating parameter once per shift is sufficient for this system to be considered continuously monitored. The Agency believes that the systems should be continuously monitored by some mechanism, but that reading and recording the data should be required only once per shift. Therefore, the EPA has changed the cited text in § 63.745 (g)(2)(iv)(C) and (g)(2)(v) to match monitoring requirements in other sections of the final rule.

P. Depainting Operations

Based on numerous comments on the depainting operation standard, the EPA proposed a clarification to § 63.746. The promulgated standard was presented in terms of volume (gallons) of organic HAP-containing chemical strippers per aircraft. Because the NESHAP is specific to HAP, in October 1996 the EPA proposed changing the units of the standard and stating the requirements in terms of weight (pounds) of organic HAP per aircraft. The proposed standard was meant to be equivalent in terms of actual HAP emissions to the atmosphere and was based on assumptions concerning typical HAP contents of chemical strippers. The proposed limits allowed greater flexibility to the owner or operator of a new or existing depainting operation in selecting materials to perform spot stripping and decal removal.

Based on comments involving technical arguments both for and against the different units for the spot stripping and decal removal allowance, the EPA decided to include both types of units and allow operators to decide which units they want to use and document their decision in their initial notification and/or operating permit. Accordingly, the EPA is promulgating the spot stripping and decal removal allowance in § 63.746(b)(3) as follows:

> Each owner or operator of a new or existing depainting operation shall not, on an annual average basis, use more than 26 gallons of organic-HAP containing chemical strippers or alternatively 190 pounds of organic HAP per commercial aircraft depainted; or more than 50 gallons of organic HAP-containing chemical strippers or alternatively 365 pounds of organic HAP per military aircraft depainted for spot stripping and decal removal.

One commenter noted an apparent error in the proposed revision of Equation 20 and provided corrected definitions for the revised terms in the corrected equation. The EPA has incorporated those corrections in the final rule, as well as provided both equations to calculate the average annual volume of organic HAP-containing chemical stripper (Equation 20) or average annual weight of organic HAP (newly designated Equation 21) used for spot stripping and decal removal.

Accordingly, the EPA has also revised Equation 21 in § 63.750(j)(3) as follows:

$$C = \frac{\sum_{i=1}^{n}\left(V_{si}D_{hi}\left(\sum_{i=1}^{m}W_{hi}\right)\right)}{A} \qquad \text{Eq. 21}$$

Where:

C=annual average weight (lb per aircraft) of organic HAP (chemical stripper) used for spot stripping and decal removal.

m=number of organic HAP contained in each chemical stripper, as applied.

n=number of organic HAP-containing chemical strippers used in the annual period.

W_{hi}=weight fraction (expressed as a decimal) of each organic HAP (i) contained in the chemical stripper, as applied, for each aircraft depainted.

D_{hi}=density (lb/gal) of each organic HAP-containing chemical stripper (i) used in the annual period.

V_{si}=volume (gal) of organic HAP-containing chemical stripper (i) used during the annual period.

A=number of aircraft for which depainting operations began during the annual period.

Another commenter noted a typographical error in the proposed revision to the spot stripping and decal removal allowance in § 63.749(f)(3)(ii)(A). The Agency has incorporated the corrected text into the final amendment.

Q. Applicability of General Provisions

The EPA proposed in October 1996 the addition of Table 1: General Provisions' Applicability to subpart GG, in order to clarify the applicability of the General Provisions to this rule. Table 1 is referenced in § 63.741 and is located at the end of the final rule text. No comments were provided on this issue.

R. Specialty Coatings

In appendix A to this subpart, the EPA proposed to revise the last sentence of the definition of adhesive bonding primer to state: "There are two categories of adhesive bonding primers: primers with a design cure at 250°F or below and primers with a design cure above 250°F." This revision is a clarification that was omitted in the final rule.

Two commenters suggested that the specialty coating definitions be reviewed and one of the commenters further suggested that the following specialty coating categories be added:

Bearing coating—a coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

Dry lubricative material—a coating consisting of lauric acid, cetyl alcohol, waxes, or other non-cross linked or resin-bound materials which acts as a dry lubricant.

Caulking and smoothing compounds—semi-solid materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

These coating categories have been used by the San Diego and/or South Coast (California) Air Quality Management Districts in their aerospace coating regulations. Therefore, the Agency has incorporated these definitions into appendix A to subpart GG (and has also incorporated the suggested definitions and the corresponding VOC limits into the final CTG document). The Agency has also deleted the definitions for conformal coatings, protective oils/waxes, and space vehicle coatings from appendix A to subpart GG to be consistent with the CTG. Other commenters found typographical errors or areas for clarification involving the definitions of "electric or radiation-effect coating," "pretreatment coatings," and "wet fastener installation coating" which have been corrected in these final amendments.

S. Miscellaneous Changes

The EPA also made a number of minor changes to several sections of the October 1996 proposal based on public comments. One commenter requested the removal of the prohibition on use of ozone-depleting substances from § 63.744. The control of HAP and ozone-depleting substances are under two

separate programs; hence, the EPA has deleted the reference to ozone-depleting substances in Table 1 of § 63.744.

Another commenter noted that the table numbering in proposed § 63.750(o) was incorrect. The Agency has corrected the text to state "* * * found in Tables 1 and 2, or 3 and 4 of § 63.745 for existing and new sources respectively."

Two commenters noted there should be a reference to the term "H_i" in § 63.750(k) since § 63.749(h)(3)(i) cites this section for the method to determine H_i. The Agency has clarified § 63.750(k) by adding the term H_i to the stated definition at the end of the paragraph.

T. Technical Corrections

The following amendments are technical corrections that were not part of the October 29, 1996 proposal. These changes are being made as part of today's action as a matter of efficiency in rulemaking. Furthermore, these changes are noncontroversial and do not substantively change the requirements of the rule. By promulgating these technical corrections directly as a final rule, the EPA is foregoing an opportunity for public comment on a notice of proposed rulemaking. Section 553(b) of title V of the United States Code and section 307(b) of the CAA permit an agency to forego notice and comment when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The EPA finds that notice and comment regarding these technical corrections are unnecessary due to their noncontroversial nature and because they do not change the requirements of the final rule. The EPA finds that this constitutes good cause under 5 U.S.C. § 553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary.

1. Clarification of the Definition of Coating

The word "protective" was added to the definition of "coating" in § 63.742 to be consistent with other surface coating regulations and CTG's.

2. Addition of the Definition of Recovery Device

Two commenters requested that the term "dedicated solvent recovery device" be defined in the rule so that proper test procedures may be followed. The Agency has included the following definition for "recovery device" in § 63.742 which is based on the definition from the HON:

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators, or organic-water separator or organic removal devices such as decanters, strippers, or thin-film evaporation units.

A dedicated solvent recovery device refers to such control equipment (as described/defined above) that is specific to a given process or control system.

3. Correction of Cited Reference to Table 1 of this Section in § 63.744(a), (b)(1), and (d)

The numbering format for several tables in the promulgated rule was erroneous and confusing. The table reference in § 63.744(a),(b)(1), and (d) has been corrected to read: "Table 1 of this section."

4. Clarification of Requirements in § 63.744(c)

Several questions have been raised related to spray gun cleaning using water as the cleaning solvent. Language was added to the introductory text at the end of § 63.744(c) stating that spray gun cleaning operations using cleaning solvent solutions that contain HAP and VOC below the de minimis levels specified in § 63.741(f) are exempt from the subsequent requirements in paragraphs (c)(1) through (c)(4).

5. Clarifications to § 63.745(e) and (f)

All references to topcoat(s) or topcoat application operations include self-priming topcoats. The parenthetical phrase "(including self-priming topcoats)" was added to all applicable paragraphs in § 63.745 (e) and (f) for clarification and consistency with § 63.745(c)(3) and (c)(4). In § 63.745(f)(1), the reference to application techniques specified in paragraphs (f)(1)(i) through (f)(1)(viii) has been corrected to read "(f)(1)(i) through (f)(1)(ix)."

6. Clarification to § 63.746(a)

The words "or rework" were added to the last sentence in § 63.746(a) to clarify that all aerospace facilities (manufacturing or rework) that depaint six or less completed aerospace vehicles in a calendar year are exempt from this section.

7. Clarification of Language in § 63.746(c)(1)

The wording in § 63.746(c)(1) was changed to three separate paragraphs (paragraphs (c) (2) and (3) were added) to clarify the procedures to be used in determining compliance with the control efficiency (≥95 percent) for new control systems. The language has been clarified to describe how the control efficiencies are determined involving the capture and destruction or removal efficiencies and may take into account the volume of chemical stripper used (relative to baseline applications) and is consistent with the example provided.

8. Correction of Equation to Determine the Composite Vapor Pressure in § 63.750(b)(2)

A summation sign was added in front of the second term of the denominator (involving "W_e") of the equation used to determine the composite vapor pressure of hand-wipe cleaning solvents.

9. Correction of OMB Tracking Number

In compliance with the Paperwork Reduction Act (PRA), this technical correction amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for this final rule.

The EPA is today amending the table in 40 CFR part 9 (Section 9.1) of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The affected regulations are codified at 40 CFR part 63 subpart GG, sections 63.752 and 63.753 (recordkeeping and reporting requirements, respectively). The correct OMB control (tracking) number for this final rule is 2060–0314.

This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

III. Control Techniques Guideline

Today's action includes the final issuance of the control techniques guideline(CTG) whose availability in draft form was announced in the **Federal Register** on October 29, 1996 (61 FR 55842). There were several comments involving the draft CTG submitted with other comments on the proposed NESHAP amendments. Most of those comments involved specialty coating category definitions and their associated VOC limits. One commenter who suggested adding three new coating category definitions (discussed previously in section Q) also raised several other concerns involving the proposed definitions and/or associated limits for clear coatings, lacquers, and specialized function coatings. Since the specialty coating limits are meant to

reflect baseline levels nationwide, and will have no significant impact on emission reductions, the EPA has decided to maintain the proposed definitions and associated limits for these coating categories.

Under the Clean Air Act, as amended in 1990 (the "Act"), State implementation plans (SIP's) for ozone nonattainment areas (except marginal areas) must be revised to require reasonably available control technology (RACT) for sources for which the EPA publishes a CTG between November 15, 1990 and the date an area achieves attainment status (the Act, § 182(b)(2), (c), (d), (e)). The EPA has defined RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility" (44 FR 53761, 53762, September 17, 1979).

The CTG's review current knowledge and data concerning the technology and costs of various emissions control techniques. The CTG's are intended to provide State and local air pollution authorities with an information base for proceeding with their own analyses of RACT to meet statutory requirements.

Each CTG contains a "presumptive norm" for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to the category. Where applicable, the EPA recommends that States adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to achieve the national ambient air quality standards and the economic and technical circumstances of the individual source.

This CTG is issued pursuant to Clean Air Act § 183(b)(3), which requires issuance of a CTG to reduce VOC emissions from aerospace coatings and solvents. It addresses RACT for control of VOC emissions from aerospace manufacturing and rework facilities. Volatile organic compound emissions from primer, topcoat, and "specialty" coating applications, maskant applications, sealing, adhesives, and cleaning operations are addressed. Emission limits for processes also addressed in the NESHAP are identical to the NESHAP limits. Those revisions to the NESHAP amendments described in this preamble and relevant to the CTG have been incorporated into the final CTG document. Many of the steps in aerospace manufacturing and rework operations involve the use of organic solvents and are sources of VOC emissions. The sources, mechanisms, and control of these VOC emissions are described in the CTG.

The coating category VOC limits, application techniques, and equipment requirements identified as RACT in the CTG were assumed to represent RACT requirements 1 year after the major sources have met the NESHAP (MACT) requirements, and therefore, will be effective on September 1, 1999. (The NESHAP compliance date for existing sources is September 1, 1998). The EPA estimates that State and local regulations developed pursuant to this CTG will affect about 2,869 facilities. Since the only new requirements in the CTG (requirements that are not included in the NESHAP) concern sealants, adhesives, and specialty coatings, which represent only about 3 percent of all VOC emissions from aerospace operations, the additional costs and emission reductions resulting from the CTG will be negligible. Further information on costs is presented in the CTG document and in the July 1995 BID on the NESHAP for Aerospace Manufacturing and Rework Facilities.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all of the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and the involved industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the content of the docket will serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act).

B. Paperwork Reduction Act

The amendments do not impose any new information collection requirements and result in no change to the currently approved collection. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the NESHAP for aerospace manufacturing and rework facilities under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0314. (EPA ICR No. 1687.03). A copy of the Information Collection Request (ICR) may be obtained from Sandy Farmer, Regulatory Information Division; EPA; 401 M Street, S.W., (Mail Code 2137); Washington, D.C. 20460 or by calling (202) 260–2740.

Burden means the total time, effort, or financial resources expended by person to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data searches; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulation are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Today's amendments should have no impact on the information collection burden estimates made previously. Today's action does not impose any additional information collection requirements. The reduced recordkeeping associated with cleaning solvents used for nonaerospace manufacturing/rework activities represents a 6 percent reduction in the burden estimated for the final rule. Consequently, the ICR has not been revised for purposes of today's action.

C. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735 [October 4, 1993]), the EPA is required to determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of this E.O. to prepare a regulatory impact analysis (RIA). The E.O. defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or

planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not a "significant regulatory action" within the meaning of the E.O.

Under E.O. 12866, the final CTG document for aerospace manufacturing and rework facilities is not considered a "regulatory action," defined as "any substantive action by an agency * * * that promulgates or is expected to lead to the promulgation of a final rule or regulation." This CTG document is not a regulatory action by EPA, rather it provides information to States to aid them in developing rules.

D. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant impact on a substantial number of small entities. This final rule makes minor amendments to the Aerospace NESHAP, including changes to definitions, applicability provisions, and several minor changes to the standards (emission limits) and the monitoring, recordkeeping, and reporting requirements. In addition, this notice includes a standard for Type I chemical milling maskants and a test method for determining filtration efficiency of dry particulate filters. The overall impact of these amendments is a net decrease in requirements on all entities affected by this rule, including small entities. Therefore these amendments will not have a significant economic impact on a substantial number of small entities.

E. Submission to Congress

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by a proposed intergovernmental mandate. Section 204 requires the Agency to develop a process to allow elected state, local, and Tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law. The EPA has determined that these amendments do not include a Federal mandate that may result in expenditure by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Small governments will not be uniquely impacted by these amendments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 10, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, parts 9 and 63 of title 40, chapter I, of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9 1857 *et seq.*, 6901–6992k, 7401–7671g, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by revising the entry "63.752–63.753" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories	
* * * * *	
63.752–63.753	2060–0314
* * * * *	

PART 63—[AMENDED]

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—[Amended]

4. Section 63.741 is amended by revising paragraph (b), paragraph (c) introductory text, paragraphs (c)(2), (c)(3), (c)(4), and the last three sentences of paragraph (f); and adding paragraphs (c)(7), (h), (i), and (j) to read as follows:

§ 63.741 Applicability and designation of affected sources.

* * * * *

(b) The owner or operator of an affected source shall comply with the requirements of this subpart and of subpart A of this part, except as specified in § 63.743(a) and Table 1 of this subpart.

(c) *Affected sources.* The affected sources to which the provisions of this subpart apply are specified in paragraphs (c)(1) through (7) of this section. The activities subject to this subpart are limited to the manufacture or rework of aerospace vehicles or components as defined in this subpart. Where a dispute arises relating to the applicability of this subpart to a specific activity, the owner or operator shall demonstrate whether or not the activity is regulated under this subpart.

* * * * *

(2) For organic HAP or VOC emissions, each primer application operation, which is the total of all primer applications at the facility.

(3) For organic HAP or VOC emissions, each topcoat application operation, which is the total of all topcoat applications at the facility.

(4) For organic HAP or VOC emissions, each depainting operation, which is the total of all depainting at the facility.

* * * * *

(7) For inorganic HAP emissions, each spray booth or hangar that contains a primer or topcoat application operation subject to § 63.745(g) or a depainting operation subject to § 63.746(b)(4).

* * * * *

(f) * * * These requirements also do not apply to parts and assemblies not critical to the vehicle's structural integrity or flight performance. The requirements of this subpart also do not apply to primers, topcoats, chemical milling maskants, strippers, and cleaning solvents containing HAP and VOC at concentrations less than 0.1 percent for carcinogens or 1.0 percent for noncarcinogens, as determined from manufacturer's representations. Additional specific exemptions from regulatory coverage are set forth in paragraphs (e), (g), (h), (i) and (j) of this section and §§ 63.742, 63.744(a)(1), (b), (e), 63.745(a), (f)(3), (g)(4), 63.746(a), (b)(5), 63.747(c)(3), and 63.749(d).

* * * * *

(h) Regulated activities associated with space vehicles designed to travel beyond the limit of the earth's atmosphere, including but not limited to satellites, space stations, and the Space Shuttle System (including orbiter, external tanks, and solid rocket boosters), are exempt from the requirements of this subpart, except for depainting operations found in § 63.746.

(i) Any waterborne coating for which the manufacturer's supplied data demonstrate that organic HAP and VOC contents are less than or equal to the organic HAP and VOC content limits for its coating type, as specified in §§ 63.745(c) and 63.747(c), is exempt from the following requirements of this subpart: §§ 63.745(d)–(e), 63.747(d)–(e), 63.749(d) and (h), 63.750(c)–(h) and (k)–(m), 63.752(c) and (f), and 63.753(c) and (e). A facility shall maintain the manufacturer's supplied data and annual purchase records for each exempt waterborne coating readily available for inspection and review and shall retain these data for 5 years.

(j) This subpart does not apply to rework operations performed on antique aerospace vehicles or components.

5. Section 63.742 is amended by revising the definitions for "aircraft transparency," "chemical milling maskant," "chemical milling maskant application operation," "cleaning solvent," "coating," "high volume low pressure (HVLP) spray equipment," and "specialty coating"; by removing the parenthetical text from the end of the definition of "Type II etchant"; by removing the last sentence from the definition of "self-priming topcoat"; and by adding in alphabetical order definitions for "antique aerospace vehicle or component," "closed-cycle depainting system," "recovery device," "Type I etchant," and "waterborne (water-reducible) coating" to read as follows:

§ 63.742 Definitions.

* * * * *

Aircraft transparency means the aircraft windshield, canopy, passenger windows, lenses, and other components which are constructed of transparent materials.

Antique aerospace vehicle or component means an aircraft or component thereof that was built at least 30 years ago. An antique aerospace vehicle would not routinely be in commercial or military service in the capacity for which it was designed.

* * * * *

Chemical milling maskant means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are also exempt from this subpart. (See also Type I and Type II etchant definitions.)

Chemical milling maskant application operation means application of chemical milling maskant for use with Type I or Type II chemical milling etchants.

* * * * *

Cleaning solvent means a liquid material used for hand-wipe, spray gun, or flush cleaning. This definition does not include solutions that contain HAP and VOC below the de minimis levels specified in § 63.741(f).

Closed-cycle depainting system means a dust-free, automated process that removes permanent coating in small sections at a time and maintains a continuous vacuum around the area(s) being depainted to capture emissions.

Coating means a material that is applied to the surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself.

* * * * *

High volume low pressure (HVLP) spray equipment means spray equipment that is used to apply coating by means of a spray gun that operates at 10.0 psig of atomizing air pressure or less at the air cap.

* * * * *

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators, or organic-water separators or organic removal devices such as decanters, strippers, or thin-film evaporation units.

* * * * *

Specialty coating means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection. Individual specialty coatings are defined in appendix A to this subpart and in the CTG for Aerospace Manufacturing and Rework Operations (EPA 453/R–97–004).

* * * * *

Type I etchant means a chemical milling etchant that contains varying amounts of dissolved sulfur and does not contain amines.

* * * * *

Waterborne (water-reducible) coating means any coating that contains more than 5 percent water by weight as applied in its volatile fraction.

* * * * *

6. Section 63.743 is amended by revising paragraphs (a) introductory text, (b) introductory text, and (c), and by adding paragraphs (a)(10) and (d) to read as follows:

§ 63.743 Standards: General.

(a) Except as provided in paragraphs (a)(4) through (a)(10) of this section and in Table 1 of this subpart, each owner

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or operator of an affected source subject to this subpart is also subject to the following sections of subpart A of this part:

* * * * *

(10) For the purposes of compliance with the requirements of § 63.5(b)(4) of the General Provisions and this subpart, owners or operators of existing primer or topcoat application operations and depainting operations who construct or reconstruct a spray booth or hangar that does not have the potential to emit 10 tons/yr or more of an individual inorganic HAP or 25 tons/yr or more of all inorganic HAP combined shall only be required to notify the Administrator of such construction or reconstruction on an annual basis. Notification shall be submitted on or before March 1 of each year and shall include the information required in § 63.5(b)(4) for each such spray booth or hangar constructed or reconstructed during the prior calendar year, except that such information shall be limited to inorganic HAP's. No advance notification or written approval from the Administrator pursuant to § 63.5(b)(3) shall be required for the construction or reconstruction of such a spray booth or hangar unless the booth or hangar has the potential to emit 10 tons/yr or more of an individual inorganic HAP or 25 tons/yr or more of all inorganic HAP combined.

(b) *Startup, shutdown, and malfunction plan.* Each owner or operator that uses an air pollution control device or equipment to control HAP emissions shall prepare and operate in accordance with a startup, shutdown, and malfunction plan in accordance with § 63.6. Dry particulate filter systems operated per the manufacturer's instructions are exempt from a startup, shutdown, and malfunction plan. A startup, shutdown, and malfunction plan shall be prepared for facilities using locally prepared operating procedures. In addition to the information required in § 63.6, this plan shall also include the following provisions:

* * * * *

(c) An owner or operator who uses an air pollution control device or equipment not listed in this subpart shall submit a description of the device or equipment, test data verifying the performance of the device or equipment in controlling organic HAP and/or VOC emissions, as appropriate, and specific operating parameters that will be monitored to establish compliance with the standards to the Administrator for approval not later than 120 days prior to the compliance date.

(d) Instead of complying with the individual coating limits in §§ 63.745 and 63.747, a facility may choose to comply with the averaging provisions specified in paragraphs (d)(1) through (d)(6) of this section.

(1) Each owner or operator of a new or existing source shall use any combination of primers, topcoats (including self-priming topcoats), Type I chemical milling maskants, or Type II chemical milling maskants such that the monthly volume-weighted average organic HAP and VOC contents of the combination of primers, topcoats, Type I chemical milling maskants, or Type II chemical milling maskants, as determined in accordance with the applicable procedures set forth in § 63.750, complies with the specified content limits in §§ 63.745(c) and 63.747(c), unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(2) Averaging is allowed only for uncontrolled primers, topcoats (including self-priming topcoats), Type I chemical milling maskants, or Type II chemical milling maskants.

(3) Averaging is not allowed between primers and topcoats (including self-priming topcoats).

(4) Averaging is not allowed between Type I and Type II chemical milling maskants.

(5) Averaging is not allowed between primers and chemical milling maskants, or between topcoats and chemical milling maskants.

(6) Each averaging scheme shall be approved in advance by the permitting agency and adopted as part of the facility's title V permit.

7. Section 63.744 is amended by revising the text of paragraph (a) introductory text, and paragraphs (a)(1), (a)(2), (b) introductory text, (b)(1), (c)(1)(ii), (c)(2), (c)(4), (d), (e)(1), (e)(2), (e)(9), (e)(10), and (e)(11) and by removing the period at the end of paragraph (e)(12) and replacing it with "; and"; by adding a sentence to (6) introductory text, and paragraph (e)(13); and by redesignating Table 3 as Table 1 and revising it and transferring it from paragraph (a) to the end of this section as follows:

§ 63.744 Standards: Cleaning operations.

(a) *Housekeeping measures.* Each owner or operator of a new or existing cleaning operation subject to this subpart shall comply with the requirements in these paragraphs unless the cleaning solvent used is identified in Table 1 of this section or contains HAP and VOC below the de minimis levels specified in § 63.741(f).

(1) Place cleaning solvent-laden cloth, paper, or any other absorbent applicators used for cleaning in bags or other closed containers upon completing their use. Ensure that these bags and containers are kept closed at all times except when depositing or removing these materials from the container. Use bags and containers of such design so as to contain the vapors of the cleaning solvent. Cotton-tipped swabs used for very small cleaning operations are exempt from this requirement.

(2) Store fresh and spent cleaning solvents, except semi-aqueous solvent cleaners, used in aerospace cleaning operations in closed containers.

* * * * *

(b) *Hand-wipe cleaning.* Each owner or operator of a new or existing hand-wipe cleaning operation (excluding cleaning of spray gun equipment performed in accordance with paragraph (c) of this section) subject to this subpart shall use cleaning solvents that meet one of the requirements specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section. Cleaning solvent solutions that contain HAP and VOC below the de minimis levels specified in § 63.741(f) are exempt from the requirements in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(1) Meet one of the composition requirements in Table 1 of this section;

* * * * *

(c) * * * Spray gun cleaning operations using cleaning solvent solutions that contain HAP and VOC below the de minimis levels specified in § 63.741(f) are exempt from the requirements in paragraphs (c)(1) through (c)(4) of this section.

(1) * * *

(ii) If leaks are found during the monthly inspection required in § 63.751(a), repairs shall be made as soon as practicable, but no later than 15 days after the leak was found. If the leak is not repaired by the 15th day after detection, the cleaning solvent shall be removed, and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued.

(2) *Nonatomized cleaning.* Clean the spray gun by placing cleaning solvent in the pressure pot and forcing it through the gun with the atomizing cap in place. No atomizing air is to be used. Direct the cleaning solvent from the spray gun into a vat, drum, or other waste container that is closed when not in use.

* * * * *

(4) *Atomizing cleaning.* Clean the spray gun by forcing the cleaning solvent through the gun and direct the resulting atomized spray into a waste

container that is fitted with a device designed to capture the atomized cleaning solvent emissions.

(d) *Flush cleaning.* Each owner or operator of a flush cleaning operation subject to this subpart (excluding those in which Table 1 or semi-aqueous cleaning solvents are used) shall empty the used cleaning solvent each time aerospace parts or assemblies, or components of a coating unit (with the exception of spray guns) are flush cleaned into an enclosed container or collection system that is kept closed when not in use or into a system with equivalent emission control.

(e) * * *

(1) Cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen;

(2) Cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, or hydrazine);

* * * * *

(9) Cleaning of metallic and nonmetallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components;

(10) Cleaning of aircraft transparencies, polycarbonate, or glass substrates;

(11) Cleaning and cleaning solvent usage associated with research and development, quality control, and laboratory testing;

* * * * *

(13) Cleaning operations identified as essential uses under the Montreal Protocol for which the Administrator has allocated essential use allowances or exemptions in 40 CFR 82.4.

Cleaning solvent type	Composition requirements
Aqueous	Cleaning solvents in which water is the primary ingredient (≥80 percent of cleaning solvent solution as applied must be water). Detergents, surfactants, and bioenzyme mixtures and nutrients may be combined with the water along with a variety of additives, such as organic solvents (e.g., high boiling point alcohols), builders, saponifiers, inhibitors, emulsifiers, pH buffers, and antifoaming agents. Aqueous solutions must have a flash point greater than 93 °C (200 °F) (as reported by the manufacturer), and the solution must be miscible with water.
Hydrocarbon-based	Cleaners that are composed of photochemically reactive hydrocarbons and oxygenated hydrocarbons and have a maximum vapor pressure of 7 mm Hg at 20 °C (3.75 in. H_2O at 68 °F). These cleaners also contain no HAP.

8. Section 63.745 is amended by revising paragraphs (e)(1), (e)(2), (f) introductory text, (f)(1) introductory text, the first sentence of (f)(2), (g)(2)(i), (g)(2)(ii), and (g)(2)(iii); removing paragraph (g)(2)(iv); redesignating paragraphs (g)(2)(v) and (g)(2)(vi) as (g)(2)(iv) and (g)(2)(v), respectively; revising the newly designated paragraphs (g)(2)(iv) and (g)(2)(v); removing the word "and" at the end of paragraph (g)(4)(viii); revising the punctuation "." at the end of paragraph (g)(4)(ix) to read "; and"; and adding paragraph (g)(4)(x) to read as follows:

§ 63.745 Standards: Primer and topcoat application operations.

* * * * *

(e) * * *

(1) Use primers and topcoats (including self-priming topcoats) with HAP and VOC content levels equal to or less than the limits specified in paragraphs (c)(1) through (c)(4) of this section; or

(2) Use the averaging provisions described in § 63.743(d).

(f) *Application equipment.* Except as provided in paragraph (f)(3) of this section, each owner or operator of a new or existing primer or topcoat (including self-priming topcoat) application operation subject to this subpart in which any of the coatings contain organic HAP or VOC shall comply with the requirements specified in paragraphs (f)(1) and (f)(2) of this section.

(1) All primers and topcoats (including self-priming topcoats) shall be applied using one or more of the application techniques specified in paragraphs (f)(1)(i) through (f)(1)(ix) of this section. * * *

* * * * *

(2) All application devices used to apply primers or topcoats (including self-priming topcoats) shall be operated according to company procedures, local specified operating procedures, and/or the manufacturer's specifications, whichever is most stringent, at alltimes. * * *

* * * * *

(g) * * *

(2) * * *

(i) For existing sources, the owner or operator must choose one of the following:

(A) Before exhausting it to the atmosphere, pass the air stream through a dry particulate filter system certified using the methods described in § 63.750(o) to meet or exceed the efficiency data points in Tables 1 and 2 of this section; or

TABLE 1.—TWO-STAGE ARRESTOR; LIQUID PHASE CHALLENGE FOR EXISTING SOURCES

Filtration efficiency requirement, %	Aerodynamic particle size range, µm
>90	>5.7
>50	>4.1
>10	>2.2

TABLE 2.—TWO-STAGE ARRESTOR; SOLID PHASE CHALLENGE FOR EXISTING SOURCES

Filtration efficiency requirement, %	Aerodynamic particle size range, µm
>90	>8.1
>50	>5.0
>10	>2.6

(B) Before exhausting it to the atmosphere, pass the air stream through a waterwash system that shall remain in operation during all coating application operations; or

(C) Before exhausting it to the atmosphere, pass the air stream through an air pollution control system that meets or exceeds the efficiency data points in Tables 1 and 2 of this section

and is approved by the permitting authority.

(ii) For new sources, either:

(A) Before exhausting it to the atmosphere, pass the air stream through a dry particulate filter system certified using the methods described in § 63.750(o) to meet or exceed the efficiency data points in Tables 3 and 4 of this section; or

TABLE 3.—THREE-STAGE ARRESTOR; LIQUID PHASE CHALLENGE FOR NEW SOURCES

Filtration efficiency requirement, %	Aerodynamic particle size range, μm
>95	>2.0
>80	>1.0
>65	>0.42

TABLE 4.—THREE-STAGE ARRESTOR; SOLID PHASE CHALLENGE FOR NEW SOURCES

Filtration efficiency requirement, %	Aerodynamic particle size range, μm
>95	>2.5
>85	>1.1
>75	>0.70

(B) Before exhausting it to the atmosphere, pass the air stream through an air pollution control system that meets or exceeds the efficiency data points in Tables 3 and 4 of this section and is approved by the permitting authority.

(iii) Owners or operators of new sources that have commenced construction or reconstruction after June 6, 1994 but prior to October 29, 1996 may comply with the following requirements in lieu of the requirements in paragraph (g)(2)(ii) of this section:

(A) Pass the air stream through either a two-stage dry particulate filter system or a waterwash system before exhausting it to the atmosphere.

(B) If the primer or topcoat contains chromium or cadmium, control shall consist of a HEPA filter system, three-stage filter system, or other control system equivalent to the three stage filter system as approved by the permitting agency.

(iv) If a dry particulate filter system is used, the following requirements shall be met:

(A) Maintain the system in good working order;

(B) Install a differential pressure gauge across the filter banks;

(C) Continuously monitor the pressure drop across the filter and read and record the pressure drop once per shift; and

(D) Take corrective action when the pressure drop exceeds or falls below the filter manufacturer's recommended limit(s).

(v) If a waterwash system is used, continuously monitor the water flow rate and read and record the water flow rate once per shift.

* * * * *

(4) * * *

(x) The use of hand-held spray can application methods.

9. Section 63.746 is amended by revising the last sentence of paragraph (a) introductory text, (b)(1), (b)(3), (b)(4)(i), (b)(4)(ii), (b)(4)(iii)(C), (b)(4)(iv), the second sentence of paragraph (b)(4)(v), and (c)(1); and adding paragraphs (c)(2) and (c)(3) to read as follows:

§ 63.746 Standards: Depainting operations.

(a) * * * This section does not apply to an aerospace manufacturing or rework facility that depaints six or less completed aerospace vehicles in a calendar year.

* * * * *

(b)(1) *HAP emissions—non-HAP chemical strippers and technologies.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, each owner or operator of a new or existing aerospace depainting operation subject to this subpart shall emit no organic HAP from chemical stripping formulations and agents or chemical paint softeners.

* * * * *

(3) Each owner or operator of a new or existing depainting operation shall not, on an annual average basis, use more than 26 gallons of organic HAP-containing chemical strippers or alternatively 190 pounds of organic HAP per commercial aircraft depainted; or more than 50 gallons of organic HAP-containing chemical strippers or alternatively 365 pounds of organic HAP per military aircraft depainted for spot stripping and decal removal.

(4) * * *

(i) Perform the depainting operation in an enclosed area, unless a closed-cycle depainting system is used.

(ii)(A) For existing sources pass any air stream removed from the enclosed area or closed-cycle depainting system through a dry particulate filter system, certified using the method described in § 63.750(o) to meet or exceed the efficiency data points in Tables 1 and 2 of § 63.745, through a baghouse, or through a waterwash system before exhausting it to the atmosphere.

(B) For new sources pass any air stream removed from the enclosed area or closed-cycle depainting system through a dry particulate filter system certified using the method described in § 63.750(o) to meet or exceed the efficiency data points in Tables 3 and 4 of § 63.745 or through a baghouse before exhausting it to the atmosphere.

(iii) * * *

(C) Continuously monitor the pressure drop across the filter, and read and record the pressure drop once per shift; and

* * * * *

(iv) If a waterwash system is used, continuously monitor the water flow rate, and read and record the water flow rate once per shift.

(v) * * * If the water path in the waterwash system fails the visual continuity/flow characteristics check, as recorded pursuant to § 63.752(e)(7), or the water flow rate, as recorded pursuant to § 63.752(d)(2), exceeds the limit(s) specified by the booth manufacturer or in locally prepared operating procedures, or the booth manufacturer's or locally prepared maintenance procedures for the filter or waterwash system have not been performed as scheduled, shut down the operation immediately and take corrective action. * * *

* * * * *

(c) * * *

(1) All organic HAP emissions from the operation shall be reduced by the use of a control system. Each control system that was installed before the effective date shall reduce the operations' organic HAP emissions to the atmosphere by 81 percent or greater, taking into account capture and destruction or removal efficiencies.

(2) Each control system installed on or after the effective date shall reduce organic HAP emissions to the atmosphere by 95 percent or greater. Reduction shall take into account capture and destruction or removal efficiencies, and may take into account the volume of chemical stripper used relative to baseline levels (e.g., the 95 percent efficiency may be achieved by controlling emissions at 81 percent efficiency with a control system and using 74 percent less stripper than in baseline applications). The baseline shall be calculated using data from 1996 and 1997, which shall be on a usage per aircraft or usage per square foot of surface basis.

(3) The capture and destruction or removal efficiencies are to be

determined using the procedures in § 63.750(g) when a carbon adsorber is used and those in § 63.750(h) when a control device other than a carbon adsorber is used.

10. Section 63.747 is amended by revising paragraphs (c)(1), (c)(2) and (e)(2) to read as follows:

§ 63.747 Standards: Chemical milling maskant application operations.

* * * * *

(c) * * *

(1) Organic HAP emissions from chemical milling maskants shall be limited to organic HAP content levels of no more than 622 grams of organic HAP per liter (5.2 lb/gal) of Type I chemical milling maskant (less water) as applied, and no more than 160 grams of organic HAP per liter (1.3 lb/gal) of Type II chemical milling maskant (less water) as applied.

(2) VOC emissions from chemical milling maskants shall be limited to VOC content levels of no more than 622 grams of VOC per liter (5.2 lb/gal) of Type I chemical milling maskant (less water and exempt solvents) as applied, and no more than 160 grams of VOC per liter (1.3 lb/gal) of Type II chemical milling maskant (less water and exempt solvents) as applied.

* * * * *

(e) * * *

(2) Use the averaging provisions described in § 63.743(d).

11. Section 63.749 is amended by revising paragraphs (a), (b), (d)(3)(iii)(B), (d)(4)(iii), (f)(3)(ii)(A), and (h)(3)(i) to read as follows:

§ 63.749 Compliance dates and determinations.

(a) *Compliance dates.* (1) Each owner or operator of an existing affected source subject to this subpart shall comply with the requirements of this subpart by September 1, 1998, except as specified in paragraph (a)(2) of this section. Owners or operators of new affected sources subject to this subpart shall comply on the effective date or upon startup, whichever is later. In addition, each owner or operator shall comply with the compliance dates specified in § 63.6(b) and (c).

(2) Owners or operators of existing primer or topcoat application operations and depainting operations who construct or reconstruct a spray booth or hangar must comply with the new source requirements for inorganic HAP specified in §§ 63.745(g)(2)(ii) and 63.746(b)(4) for that new spray booth or hangar upon startup. Such sources must still comply with all other existing source requirements by September 1, 1998.

(b) *General.* Each facility subject to this subpart shall be considered in noncompliance if the owner or operator fails to submit a startup, shutdown, and malfunction plan as required by § 63.743(b) or uses a control device other than one specified in this subpart that has not been approved by the Administrator, as required by § 63.743(c).

* * * * *

(d) * * *

(3) * * *

(iii) * * *

(B) Uses an alternative application technique, as allowed under § 63.745(f)(1)(ix), such that the emissions of both organic HAP and VOC for the implementation period of the alternative application method are less than or equal to the emissions generated using HVLP or electrostatic spray application methods as determined using the procedures specified in § 63.750(i).

* * * * *

(4) * * *

(iii) * * *

(A) Uses an application technique specified in § 63.745 (f)(1)(i) through (f)(1)(viii); or

(B) Uses an alternative application technique, as allowed under § 63.745(f)(1)(ix), such that the emissions of both organic HAP and VOC for the implementation period of the alternative application method are less than or equal to the emissions generated using HVLP or electrostatic spray application methods as determined using the procedures specified in § 63.750(i).

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(A) For any spot stripping and decal removal, the value of C, as determined using the procedures specified in § 63.750(j), is less than or equal to 25 gallons of organic HAP-containing chemical stripper or 190 pounds of organic HAP per commercial aircraft depainted calculated on a yearly average; and is less than or equal to 50 gallons of organic HAP-containing chemical stripper or 365 pounds of organic HAP per military aircraft depainted calculated on a yearly average; and

* * * * *

(h) * * *

(3) * * *

(i) For all uncontrolled chemical milling maskants, all values of H_i and H_e (as determined using the procedures specified in § 63.750 (k) and (l)) are less than or equal to 622 grams of organic HAP per liter (5.2 lb/gal) of Type I chemical milling maskant as applied (less water), and 160 grams of organic HAP per liter (1.3 lb/gal) of Type II chemical milling maskant as applied (less water). All values of G_i and G_e (as determined using the procedures specified in § 63.750 (m) and (n)) are less than or equal to 622 grams of VOC per liter (5.2 lb/gal) of Type I chemical milling maskant as applied (less water and exempt solvents), and 160 grams of VOC per liter (1.3 lb/gal) of Type II chemical milling maskant (less water and exempt solvents) as applied.

* * * * *

12. Section 63.750 is amended by revising the equation in paragraph (b)(2); paragraphs (c)(1), (e)(1), equation 7 ("Eq. 7") in (e)(2), (g)(3)(ii), (g)(9)(i), (i)(1), (i)(2)(iii), (j) introductory text, (j)(1), (j)(3), (k) introductory text, (k)(1), (l)(4), and (n)(3); and by adding paragraphs (i)(2)(iv) and (o) to read as follows:

§ 63.750 Test methods and procedures.

* * * * *

(b) * * *

(2) * * *

$$PP_c = \sum_{i=1}^{n} \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{\sum_{i=1}^{n} W_e}{MW_e} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

* * * * *

(c) * * *

(1) For coatings that contain no exempt solvents, determine the total organic HAP content using manufacturer's supplied data or Method 24 of 40 CFR part 60, appendix A, to determine the VOC content. The VOC content shall be used as a surrogate for total HAP content for coatings that contain no exempt solvent. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance shall be based on the results from the Method 24 analysis.

* * * * *

(e) * * *

(1) Determine the VOC content of each formulation (less water and exempt solvents) as applied using manufacturer's supplied data or Method 24 of 40 CFR part 60, appendix A, to determine the VOC content. The VOC content shall be used as a surrogate for total HAP content for coatings that contain no exempt solvent. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance shall be based on the results from the Method 24 analysis.

(2) * * *

$$G_i = \frac{M_{vi}}{(1 - V_{wi}) - V_{xi}} \qquad \text{Eq. 7}$$

* * * * *

(g) * * *

(3) * * *

(ii) Assure that all HAP emissions from the affected HAP emission point(s) are segregated from gaseous emission points not affected by this subpart and that the emissions can be captured for measurement, as described in paragraphs (g)(2)(ii) (A) and (B) of this section;

* * * * *

(9) * * *

(i) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual carbon adsorber vessels pursuant to paragraph (g) (2) or (4) of this section, the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all of the individual carbon adsorber vessels.

* * * * *

(i)(1) *Alternative application method—primers and topcoats.* Each owner or operator seeking to use an alternative application method (as allowed in § 63.745(f)(1)(ix)) in complying with the standards for primers and topcoats shall use the procedures specified in paragraphs (i)(2)(i) and (i)(2)(ii) or (i)(2)(iii) of this section to determine the organic HAP and VOC emission levels of the alternative application technique as compared to either HVLP or electrostatic spray application methods.

(2) * * *

(iii) Test the proposed application method against either HVLP or electrostatic spray application methods in a laboratory or pilot production area, using parts and coatings representative of the process(es) where the alternative method is to be used. The laboratory test will use the same part configuration(s) and the same number of parts for both the proposed method and the HVLP or electrostatic spray application methods.

(iv) Whenever the approach in either paragraph (i)(2)(ii) or (i)(2)(iii) of this section is used, the owner or operator shall calculate both the organic HAP and VOC emission reduction using equation:

$$P = \frac{E_b - E_3}{E_b} \times 100$$

where:

P=organic HAP or VOC emission reduction, percent.

E_b=organic HAP or VOC emissions, in pounds, before the alternative application technique was implemented, as determined under paragraph (i)(2)(i) of this section.

E_a=organic HAP of VOC emissions, in pounds, after the alternative application technique was implemented, as determined under paragraph (i)(2)(ii) of this section.

* * * * *

(j) *Spot stripping and decal removal.* Each owner or operator seeking to comply with § 63.746(b)(3) shall determine the volume of organic HAP-containing chemical strippers or alternatively the weight of organic HAP used per aircraft using the procedure specified in paragraphs (j)(1) through (j)(3) of this section.

(1) For each chemical stripper used for spot stripping and decal removal, determine for each annual period the total volume as applied or the total weight of organic HAP using the procedure specified in paragraph (d)(2) of this section.

* * * * *

(3) Calculate the annual average volume of organic HAP-containing chemical stripper or weight of organic HAP used for spot stripping and decal removal per aircraft using equation 20 (volume) or equation 21 (weight):

$$C = \frac{\sum_{i=1}^{n} V_{si}}{A} \qquad \text{Eq. 20}$$

where:

C=annual average volume (gal per aircraft) of organic HAP-containing chemical stripper used for spot stripping and decal removal.

n=number of organic HAP-containing chemical strippers used in the annual period.

V_{si}=volume (gal) of organic HAP-containing chemical stripper (i) used during the annual period.

A=number of aircraft for which depainting operations began during the annual period.

$$C = \frac{\sum_{i=1}^{n}\left(V_{si} D_{hi}\left(\sum_{i=1}^{m} W_{hi}\right)\right)}{A} \qquad \text{Eq. 21}$$

where:

C = annual average weight (lb per aircraft) of organic HAP (chemical stripper) used for spot stripping and decal removal.

m = number of organic HAP contained in each chemical stripper, as applied.

n = number of organic HAP-containing chemical strippers used in the annual period.

W_{hi} = weight fraction (expressed as a decimal) of each organic HAP (i) contained in the chemical stripper, as applied, for each aircraft depainted.

D_{hi} = density (lb/gal) of each organic HAP-containing chemical stripper (i), used in the annual period.

V_{si} = volume (gal) of organic HAP-containing chemical stripper (i) used during the annual period.

A = number of aircraft for which depainting operations began during the annual period.

(k) *Organic HAP content level determination—compliant chemical milling maskants.* For those uncontrolled chemical milling maskants complying with the chemical milling maskant organic HAP content limit specified in § 63.747(c)(1) without being averaged, the following procedures shall be used to determine the mass of organic HAP emitted per unit volume of coating (chemical milling maskant) i as applied (less water), H_i (lb/gal).

(1) For coatings that contain no exempt solvents, determine the total organic HAP content using manufacturer's supplied data or Method 24 of 40 CFR part 60, appendix A to determine the VOC content. The VOC content shall be used as a surrogate for total HAP content for coatings that contain no exempt solvent. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance shall be based on the results from the Method 24 analysis.

* * * * *

(l) * * *

(4) Calculate the volume-weighted average mass of organic HAP emitted per unit volume (lb/gal) of chemical milling maskant (less water) as applied for all chemical milling maskants during each 30-day period using equation 22:

$$H_a = \frac{\sum_{i=1}^{n} W_{Hi} D_{mi} V_{mi}}{M_{lw}} \qquad \text{Eq. 22}$$

* * * * *

(n) * * *

(3) Calculate the volume-weighted average mass of VOC emitted per unit volume (lb/gal) of chemical milling maskant (less water and exempt solvents) as applied during each 30-day period using equation 23:

$$G_a = \frac{\sum_{i=1}^{n} (VOC)_{mi} V_{mi}}{M_{lwes}} \quad \text{Eq. 23}$$

* * * * *

(o) *Inorganic HAP emissions—dry particulate filter certification requirements.* Dry particulate filters used to comply with § 63.745(g)(2) or § 63.746(b)(4) must be certified by the filter manufacturer or distributor, paint/depainting booth supplier, and/or the facility owner or operator using method 319 in appendix A of subpart A of this part, to meet or exceed the efficiency data points found in Tables 1 and 2, or 3 and 4 of § 63.745 for existing or new sources respectively.

13. Section 63.751 is amended by revising the first sentence of paragraph (b)(6)(ii)(A), (b)(6)(iii) introductory text, and the first sentence of paragraph (b)(6)(iii)(A)(*2*) introductory text and paragraphs (b)(6)(iii)(D), (c)(1), (c)(2) and (d) to read as follows:

§ 63.751 Monitoring requirements.

* * * * *

(b) * * *
(6) * * *
(ii) * * *

(A) Except as allowed by paragraph (b)(6)(iii)(A)(*2*) of this section, all continuous emission monitors shall comply with performance specification (PS) 8 or 9 in 40 CFR part 60, appendix B, as appropriate depending on whether VOC or HAP concentration is being measured. * * *

* * * * *

(iii) Owners or operators complying with § 63.745(d), § 63.746(c), or § 63.747(d) through the use of a control device and establishing a site-specific operating parameter in accordance with paragraph (b)(1) of this section shall fulfill the requirements of paragraph (b)(6)(iii)(A) of this section and paragraph (b)(6)(iii)(B) or (C) of this section, as appropriate.

(A) * * *

(*2*) For owners or operators using a nonregenerative carbon adsorber, in lieu of using continuous emission monitors as specified in paragraph (b)(6)(iii)(A)(*1*) of this section, the owner or operator may use a portable monitoring device to monitor total HAP or VOC concentration at the inlet and outlet or the outlet of the carbon adsorber as appropriate. * * *

* * * * *

(D) If complying with § 63.745(d), § 63.746(c), or § 63.747(d) through the use of a nonregenerative carbon adsorber, in lieu of the requirements of paragraph (b)(6)(iii)(B) or (C) of this section, the owner or operator may replace the carbon in the carbon adsorber system with fresh carbon at a regular predetermined time interval as determined in accordance with paragraph (b)(2) of this section.

* * * * *

(c) * * *

(1) Each owner or operator using a dry particulate filter system to meet the requirements of § 63.745(g)(2) shall, while primer or topcoat application operations are occurring, continuously monitor the pressure drop across the system and read and record the pressure drop once per shift foliowing the recordkeeping requirements of § 63.752(d).

(2) Each owner or operator using a waterwash system to meet the requirements of § 63.745(g)(2) shall, while primer or topcoat application operations are occurring, continuously monitor the water flow rate through the system, and read and record the water flow rate once per shift following the recordkeeping requirements of § 63.752(d).

(d) *Particulate filters and waterwash booths—depainting operations.* Each owner or operator using a dry particulate filter or waterwash system in accordance with the requirements of § 63.746(b)(4) shall, while depainting operations are occurring, continuously monitor the pressure drop across the particulate filters or the water flow rate through the waterwash system and read and record the pressure drop or the water flow rate once per shift following the recordkeeping requirements of § 63.752(e).

* * * * *

14. Section 63.752 is amended by revising paragraphs (b)(1), (e)(1)(ii), (e)(6), and (f) introductory text; and by removing paragraph (d)(4) to read as follows:

§ 63.752 Recordkeeping requirements.

* * * * *

(b) * * *

(1) The name, vapor pressure, and documentation showing the organic HAP constituents of each cleaning solvent used for affected cleaning operations at the facility.

* * * * *

(e) * * *
(1) * * *

(ii) Monthly volumes of each organic HAP containing chemical stripper used or monthly weight of organic HAP-material used for spot stripping and decal removal.

* * * * *

(6) *Spot stripping and decal removal.* For spot stripping and decal removal, the volume of organic HAP-containing chemical stripper or weight of organic HAP used, the annual average volume of organic HAP-containing chemical stripper or weight of organic HAP used per aircraft, the annual number of aircraft stripped, and all data and calculations used.

* * * * *

(f) *Chemical milling maskant application operations.* Each owner or operator seeking to comply with the organic HAP and VOC content limits for the chemical milling maskant application operation, as specified in § 63.747(c), or the control system requirements specified in § 63.747(d), shall record the information specified in paragraphs (f)(1) through (f)(4) of this section, as appropriate.

* * * * *

15. Section 63.753 is amended by revising paragraphs (a)(1) introductory text and (d)(2)(i) to read as follows:

§ 63.753 Reporting requirements.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, each owner or operator subject to this subpart shall fulfill the requirements contained in § 63.9(a) through (e) and (h) through (j), Notification requirements, and § 63.10(a), (b), (d), and (f), Recordkeeping and reporting requirements, of the General Provisions, 40 CFR part 63, subpart A, and that the initial notification for existing sources required in § 63.9(b)(2) shall be submitted not later than September 1, 1997. In addition to the requirements of § 63.9(h), the notification of compliance status shall include:

* * * * *

(d) * * *
(2) * * *

(i) The average volume per aircraft of organic HAP-containing chemical strippers or weight of organic HAP used for spot stripping and decal removal operations if it exceeds the limits specified in § 63.746(b)(3); and

* * * * *

16. Table 1 is added to the end of subpart GG to read as follows:

TABLE 1 TO SUBPART GG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG

Reference	Applies to affected sources in subpart GG	Comment
63.1(a)(1)	Yes	
63.1(a)(2)	Yes	
63.1(a)(3)	Yes	
63.1(a)(4)	Yes	
63.1(a)(5)	No	Reserved.
63.1(a)(6)	Yes	
63.1(a)(7)	Yes	
63.1(a)(8)	Yes	
63.1(a)(9)	No	Reserved.
63.1(a)(10)	Yes	
63.1(a)(11)	Yes	
63.1(a)(12)	Yes	
63.1(a)(13)	Yes	
63.1(a)(14)	Yes	
63.1(b)(1)	Yes	
63.1(b)(2)	Yes	
63.1(b)(3)	Yes	
63.1(c)(1)	Yes	
63.1(c)(2)	Yes	Subpart GG does not apply to area sources.
63.1(c)(3)	No	Reserved.
63.1(c)(4)	Yes	
63.1(c)(5)	Yes	
63.1(d)	No	Reserved.
63.1(e)	Yes	
63.2	Yes	
63.3	Yes	
63.4(a)(1)	Yes	
63.4(a)(2)	Yes	
63.4(a)(3)	Yes	
63.4(a)(4)	No	Reserved.
63.4(a)(5)	Yes	
63.4(b)	Yes	
63.4(c)	Yes	
63.5(a)	Yes	
63.5(b)(1)	Yes	
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes	
63.5(b)(4)	Yes	
63.5(b)(5)	Yes	
63.5(b)(6)	Yes	
63.5(c)	No	Reserved.
63.5(d)(1)(i)	Yes	
63.5(d)(1)(ii)(A)–(H)	Yes	
63.5(d)(1)(ii)(I)	No	Reserved.
63.5(d)(1)(ii)(J)	Yes	
63.5(d)(1)(iii)	Yes	
63.5(d)(2)–(4)	Yes	
63.5(e)	Yes	
63.5(f)	Yes	
63.6(a)	Yes	
63.6(b)(1)–(5)	Yes	§63.749(a) specifies compliance dates for new sources.
63.6(b)(6)	No	Reserved.
63.6(b)(7)	Yes	
63.6(c)(1)	Yes	
63.6(c)(2)	No	The standards in subpart GG are promulgated under section 112(d) of the Act.
63.6(c)(3)–(4)	No	Reserved.
63.6(c)(5)	Yes	
63.6(d)	No	Reserved.
63.6(e)	Yes	63.743(b) includes additional provisions for the operation and maintenance plan.
63.6(f)	Yes	
63.6(g)	Yes	
63.6(h)	No	The standards in subpart GG do not include opacity standards.
63.6(i)(1)–(3)	Yes	
63.6(i)(4)(i)(A)	Yes	
63.6(i)(4)(i)(B)	No	§63.743(a)(4) specifies that requests for extension of compliance must be submitted no later than 120 days before an affected source's compliance date.
63.6(i)(4)(ii)	No	The standards in subpart GG are promulgated under section 112(d) of the Act.

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TABLE 1 TO SUBPART GG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG—Continued

Reference	Applies to affected sources in subpart GG	Comment
63.6(i)(5)–(12)	Yes	
63.6(i)(13)	Yes	
63.6(i)(14)	Yes	
63.6(i)(15)	No	Reserved.
63.6(i)(16)	Yes	
63.6(j)	Yes	
63.7(a)(1)	Yes	
63.7(a)(2)(i)–(vi)	Yes	
63.7(a)(2)(vii)–(viii)	No	Reserved.
63.7(a)(2)(ix)	Yes	
63.7(a)(3)	Yes	
63.7(b)	Yes	
63.7(c)	Yes	
63.7(d)	Yes	
63.7(e)	Yes	
63.7(f)	Yes	
63.7(g)(1)	Yes	
63.7(g)(2)	No	Reserved.
63.7(g)(3)	Yes	
63.7(h)	Yes	
63.8(a)(1)–(2)	Yes	
63.8(a)(3)	No	Reserved.
63.8(a)(4)	Yes	
63.8(b)	Yes	
63.8(c)	Yes	
63.8(d)	No	
63.8(e)(1)–(4)	Yes	
63.8(e)(5)(i)	Yes	
63.8(e)(5)(ii)	No	The standards in subpart GG do not include opacity standards.
63.8(f)(1)	Yes	
63.8(f)(2)(i)–(vii)	Yes	
63.8(f)(2)(viii)	No	The standards in subpart GG do not include opacity standards.
63.8(f)(2)(ix)	Yes	
63.8(f)(3)–(6)	Yes	
63.8(g)	Yes	
63.9(a)	Yes	
63.9(b)(1)	Yes	
63.9(b)(2)	Yes	§ 63.753(a)(1) requires submittal of the initial notification at least 1 year prior to the compliance date; § 63.753(a)(2) allows a title V or part 70 permit application to be substituted for the initial notification in certain circumstances.
63.9(b)(3)	Yes	
63.9(b)(4)	Yes	
63.9(b)(5)	Yes	
63.9(c)	Yes	
63.9(d)	Yes	
63.9(e)	Yes	
63.9(f)	No	The standards in subpart GG do not include opacity standards.
63.9(g)(1)	No	
63.9(g)(2)	No	The standards in subpart GG do not include opacity standards.
63.9(g)(3)	No	
63.9(h)(1)–(3)	Yes	§ 63.753(a)(1) also specifies additional information to be included in the notification of compliance status.
63.9(h)(4)	No	Reserved.
63.9(h)(5)–(6)	Yes	
63.9(i)	Yes	
63.9(j)	Yes	
63.10(a)	Yes	
63.10(b)	Yes	
63.10(c)(1)	No	
63.10(c)(2)–(4)	No	Reserved.
63.10(c)(5)–(8)	No	
63.10(c)(9)	No	Reserved.
63.10(c)(10)–(13)	No	
63.10(c)(14)	No	§ 63.8(d) does not apply to this subpart.
63.10(c)(15)	No	

TABLE 1 TO SUBPART GG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG—Continued

Reference	Applies to affected sources in subpart GG	Comment
63.10(d)(1)–(2)	Yes	
63.10(d)(3)	No	The standards in subpart GG do not include opacity standards.
63.10(d)(4)	Yes	
63.10(d)(5)	Yes	
63.(10)(e)(1)	No	
63.10(e)(2)(i)	No	
63.10(e)(2)(ii)	No	The standards in subpart GG do not include opacity standards.
63.10(e)(3)	No	
63.10(e)(4)	No	The standards in subpart GG do not include opacity standards.
63.10(f)	Yes	
63.11	Yes	
63.12	Yes	
63.13	Yes	
63.14	Yes	
63.15	Yes	

17. Appendix A of subpart GG is added to read as follows:

Appendix A to Subpart GG of Part 63—Specialty Coating Definitions

Ablative coating—A coating that chars when exposed to open flame or extreme temperatures, as would occur during the failure of an engine casing or during aerodynamic heating. The ablative char surface serves as an insulative barrier, protecting adjacent components from the heat or open flame.

Adhesion promoter—A very thin coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

Adhesive bonding primer—A primer applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250°F or below and primers with a design cure above 250°F.

Aerosol coating—A hand-held, pressurized, nonrefillable container that expels an adhesive or a coating in a finely divided spray when a valve on the container is depressed.

Antichafe coating—A coating applied to areas of moving aerospace components that may rub during normal operations or installation.

Bearing coating—A coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

Bonding maskant—A temporary coating used to protect selected areas of aerospace parts from strong acid or alkaline solutions during processing for bonding.

Caulking and smoothing compounds—Semi-solid materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

Chemical agent-resistant coating (CARC)—An exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

Clear coating—A transparent coating usually applied over a colored opaque coating, metallic substrate, or placard to give improved gloss and protection to the color coat. In some cases, a clearcoat refers to any transparent coating without regard to substrate.

Commercial exterior aerodynamic structure primer—A primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

Commercial interior adhesive—Materials used in the bonding of passenger cabin interior components. These components must meet the FAA fireworthiness requirements.

Compatible substrate primer—Includes two categories: compatible epoxy primer and adhesive primer. *Compatible epoxy primer* is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. *Adhesive primer* is a coating that (1) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application, or (2) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

Corrosion prevention system—A coating system that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

Critical use and line sealer maskant—A temporary coating, not covered under other maskant categories, used to protect selected areas of aerospace parts from strong acid or alkaline solutions such as those used in anodizing, plating, chemical milling and processing of magnesium, titanium, high-strength steel, high-precision aluminum chemical milling of deep cuts, and aluminum chemical milling of complex shapes. Materials used for repairs or to bridge gaps left by scribing operations (i.e. line sealer) are also included in this category.

Cryogenic flexible primer—A primer designed to provide corrosion resistance, flexibility, and adhesion of subsequent coating systems when exposed to loads up to and surpassing the yield point of the substrate at cryogenic temperatures (−275°F and below).

Cryoprotective coating—A coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

Cyanoacrylate adhesive—A fast-setting, single component adhesive that cures at room temperature. Also known as "super glue."

Dry lubricative material—A coating consisting of lauric acid, cetyl alcohol, waxes, or other non-cross linked or resin-bound materials which act as a dry lubricant.

Electric or radiation-effect coating—A coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are exempt.

Electrostatic discharge and electromagnetic interference (EMI) coating—A coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

Elevated-temperature Skydrol-resistant commercial primer—A primer applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester (PE) hydraulic fluid (Skydrol 500b or equivalent) at the elevated temperature of 150°F for 1,000 hours.

Epoxy polyamide topcoat—A coating used where harder films are required or in some areas where engraving is accomplished in camouflage colors.

Fire-resistant (interior) coating—For civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts subject to the flammability requirements of MIL–STD–1630A and MIL–A–87721. For space applications, these coatings are used on parts subject to the flammability requirements of SE–R–0006 and SSP 30233.

Flexible primer—A primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

Flight test coating—A coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.

Fuel tank adhesive—An adhesive used to bond components exposed to fuel and that must be compatible with fuel tank coatings.

Fuel tank coating—A coating applied to fuel tank components to inhibit corrosion and/or bacterial growth and to assure sealant adhesion in extreme environmental conditions.

High temperature coating—A coating designed to withstand temperatures of more than 350 °F.

Insulation covering—Material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

Intermediate release coating—A thin coating applied beneath topcoats to assist in removing the topcoat in depainting operations and generally to allow the use of less hazardous depainting methods.

Lacquer—A clear or pigmented coating formulated with a nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.

Metalized epoxy coating—A coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

Mold release—A coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

Nonstructural adhesive—An adhesive that bonds nonload bearing aerospace components in noncritical applications and is not covered in any other specialty adhesive categories.

Optical anti-reflection coating—A coating with a low reflectance in the infrared and visible wavelength ranges, which is used for anti-reflection on or near optical and laser hardware.

Part marking coating—Coatings or inks used to make identifying markings on materials, components, and/or assemblies. These markings may be either permanent or temporary.

Pretreatment coating—An organic coating that contains at least 0.5 percent acids by weight and is applied directly to metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

Rain erosion-resistant coating—A coating or coating system used to protect the leading edges of parts such as flaps, stabilizers, radomes, engine inlet nacelles, etc. against erosion caused by rain impact during flight.

Rocket motor bonding adhesive—An adhesive used in rocket motor bonding applications.

Rocket motor nozzle coating—A catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

Rubber-based adhesive—Quick setting contact cements that provide a strong, yet flexible, bond between two mating surfaces that may be of dissimilar materials.

Scale inhibitor—A coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

Screen print ink—Inks used in screen printing processes during fabrication of decorative laminates and decals.

Seal coat maskant—An overcoat applied over a maskant to improve abrasion and chemical resistance during production operations.

Sealant—A material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

Silicone insulation material—Insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

Solid film lubricant—A very thin coating consisting of a binder system containing as its chief pigment material one or more of the following: molybdenum, graphite, polytetrafluoroethylene (PTFE), or other solids that act as a dry lubricant between faying surfaces.

Specialized function coatings—Coatings that fulfill extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other Specialty Coating categories.

Structural autoclavable adhesive—An adhesive used to bond load-carrying aerospace components that is cured by heat and pressure in an autoclave.

Structural nonautoclavable adhesive—An adhesive cured under ambient conditions that is used to bond load-carrying aerospace components or for other critical functions, such as nonstructural bonding in the proximity of engines.

Temporary protective coating—A coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

Thermal control coating—Coatings formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

Touch-up and Repair Coating—A coating used to cover minor coating imperfections appearing after the main coating operation.

Wet fastener installation coating—A primer or sealant applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

Wing coating—A corrosion-resistant topcoat that is resilient enough to withstand the flexing of the wings.

18. Appendix A to Part 63 is amended by adding method 319 in numerical order to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Method 319: Determination of Filtration Efficiency for Paint Overspray Arrestors

1.0 Scope and Application.

1.1 This method applies to the determination of the initial, particle size dependent, filtration efficiency for paint arrestors over the particle diameter range from 0.3 to 10 μm. The method applies to single and multiple stage paint arrestors or paint arrestor media. The method is applicable to efficiency determinations from 0 to 99 percent. Two test aerosols are used—one liquid phase and one solid phase. Oleic acid, a low-volatility liquid (CAS Number 112–80–1), is used to simulate the behavior of wet paint overspray. The solid-phase aerosol is potassium chloride salt (KCl, CAS Number 7447–40–7) and is used to simulate the behavior of a dry overspray. The method is limited to determination of the initial, clean filtration efficiency of the arrestor. Changes in efficiency (either increase or decrease) due to the accumulation of paint overspray on and within the arrestor are not evaluated.

1.2 Efficiency is defined as 1—Penetration (e.g., 70 percent efficiency is equal to 0.30 penetration). Penetration is based on the ratio of the downstream particle concentration to the upstream concentration. It is often more useful, from a mathematical or statistical point of view, to discuss the upstream and downstream counts in terms of penetration rather than the derived efficiency value. Thus, this document uses both penetration and efficiency as appropriate.

1.3 For a paint arrestor system or subsystem which has been tested by this method, adding additional filtration devices

to the system or subsystem shall be assumed to result in an efficiency of at least that of the original system without the requirement for additional testing. (For example, if the final stage of a three-stage paint arrestor system has been tested by itself, then the addition of the other two stages shall be assumed to maintain, as a minimum, the filtration efficiency provided by the final stage alone. Thus, in this example, if the final stage has been shown to meet the filtration requirements of Table 1 of § 63.745 of subpart GG, then the final stage in combination with any additional paint arrestor stages also passes the filtration requirements.)

2.0 Summary of Method.

2.1 This method applies to the determination of the fractional (i.e., particle-size dependent) aerosol penetration of several types of paint arrestors. Fractional penetration is computed from aerosol concentrations measured upstream and downstream of an arrestor installed in a laboratory test rig. The aerosol concentrations upstream and downstream of the arrestors are measured with an aerosol analyzer that simultaneously counts and sizes the particles in the aerosol stream. The aerosol analyzer covers the particle diameter size range from 0.3 to 10 μm in a minimum of 12 contiguous sizing channels. Each sizing channel covers a narrow range of particle diameters. For example, Channel 1 may cover from 0.3 to 0.4 μm, Channel 2 from 0.4 to 0.5 μm, * * * By taking the ratio of the downstream to upstream counts on a channel by channel basis, the penetration is computed for each of the sizing channels.

2.2 The upstream and downstream aerosol measurements are made while injecting the test aerosol into the air stream upstream of the arrestor (ambient aerosol is removed with HEPA filters on the inlet of the test rig). This test aerosol spans the particle size range from 0.3 to 10 μm and provides sufficient upstream concentration in each of the optical particle counter (OPC) sizing channels to allow accurate calculation of penetration, down to penetrations of approximately 0.01 (i.e., 1 percent penetration; 99 percent efficiency). Results are presented as a graph and a data table showing the aerodynamic particle diameter and the corresponding fractional efficiency.

3.0 Definitions.

Aerodynamic Diameter—diameter of a unit density sphere having the same aerodynamic properties as the particle in question.

Efficiency is defined as equal to 1—Penetration.

Optical Particle Counter (OPC)—an instrument that counts particles by size using light scattering. An OPC gives particle diameters based on size, index of refraction, and shape.

Penetration—the fraction of the aerosol that penetrates the filter at a given particle diameter. Penetration equals the downstream concentration divided by the upstream concentration.

4.0 Interferences.

4.1 The influence of the known interferences (particle losses) are negated by correction of the data using blanks.

5.0 Safety.

5.1 There are no specific safety precautions for this method above those of good laboratory practice. This standard does not purport to address all of the safety problems, if any, associated with its use. It is the responsibility of the user of this method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.

6.0 Equipment and Supplies.

6.1 Test Facility. A schematic diagram of a test duct used in the development of the method is shown in Figure 319–1.

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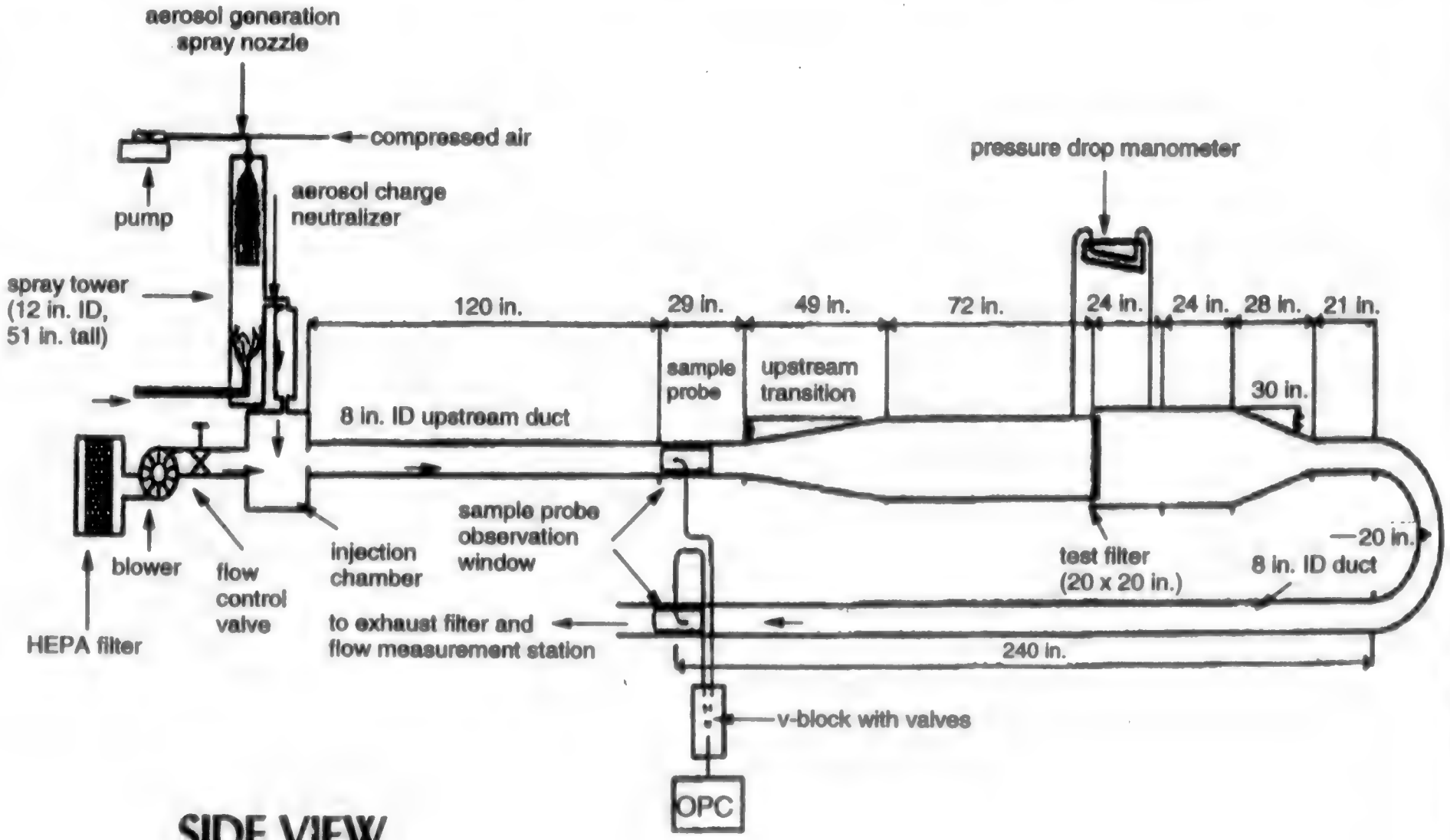

Figure 319-1. Schematic illustration of the fractional efficiency test rig.

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6.1.1 The test section, paint spray section, and attached transitions are constructed of stainless and galvanized steel. The upstream and downstream ducting is 20 cm diameter polyvinyl chloride (PVC). The upstream transition provides a 7° angle of expansion to provide a uniform air flow distribution to the paint arrestors. Aerosol concentration is measured upstream and downstream of the test section to obtain the challenge and penetrating aerosol concentrations, respectively. Because the downstream ducting runs back under the test section, the challenge and penetrating aerosol taps are located physically near each other, thereby facilitating aerosol sampling and reducing sample-line length. The inlet nozzles of the upstream and downstream aerosol probes are designed to yield isokinetic sampling conditions.

6.1.2 The configuration and dimensions of the test duct can deviate from those of Figure 319–1 provided that the following key elements are maintained: the test duct must meet the criteria specified in Table 319–1; the inlet air is HEPA filtered; the blower is on the upstream side of the duct thereby creating a positive pressure in the duct relative to the surrounding room; the challenge air has a temperature between 50° and 100°F and a relative humidity of less than 65 percent; the angle of the upstream transition (if used) to the paint arrestor must not exceed 7°; the angle of the downstream transition (if used) from the paint arrestor must not exceed 30°; the test duct must provide a means for mixing the challenge aerosol with the upstream flow (in lieu of any mixing device, a duct length of 15 duct diameters fulfills this requirement); the test duct must provide a means for mixing any penetrating aerosol with the downstream flow (in lieu of any mixing device, a duct length of 15 duct diameters fulfills this requirement); the test section must provide a secure and leak-free mounting for single and multiple stage arrestors; and the test duct may utilize a 180° bend in the downstream duct.

TABLE 319–1.—QC CONTROL LIMITS

	Frequency and description	Control limits
OPC zero count	Each Test. OPC samples HEPA-filtered air	<50 counts per minute.
OPC sizing accuracy check	Daily. Sample aerosolized PSL spheres	Peak of distribution should be in correct OPC channel.
Minimum counts per channel for challenge aerosol	Each Test	Minimum total of 500 particle counts per channel.
Maximum particle concentration	Each Test. Needed to ensure OPC is not overloaded.	<10% of manufacturer's claimed upper limit corresponding to a 10% count error.
Standard Deviation of Penetration	Computed for each test based on the CV of the upstream and downstream counts.	<0.10 for 0.3 to 3 μm diameter. <0.30 for >3 μm diameter.
0% Penetration	Monthly	<0.01.
100% Penetration—KCl	Triplicate tests performed immediately before, during, or after triplicate arrestor tests.	0.3 to 1 μm: 0.90 to 1.10. 1 to 3 μm: 0.75 to 1.25. 3 to 10 μm: 0.50 to 1.50.
100% Penetration—Oleic Acid	Triplicate tests performed immediately before, during, or after triplicate arrestor tests.	0.3 to 1 μm: 0.90 to 1.10. 1 to 3 μm: 0.75 to 1.25. 3 to 10 μm: 0.50 to 1.50.

6.2 Aerosol Generator. The aerosol generator is used to produce a stable aerosol covering the particle size range from 0.3 to 10 μm diameter. The generator used in the development of this method consists of an air atomizing nozzle positioned at the top of a 0.30–m (12-in.) diameter, 1.3–m (51-in.) tall, acrylic, transparent, spray tower. This tower allows larger sized particles, which would otherwise foul the test duct and sample lines, to fall out of the aerosol. It also adds drying air to ensure that the KCl droplets dry to solid salt particles. After generation, the aerosol passes through an aerosol neutralizer (Kr85 radioactive source) to neutralize any electrostatic charge on the aerosol (electrostatic charge is an unavoidable consequence of most aerosol generation methods). To improve the mixing of the aerosol with the air stream, the aerosol is injected counter to the airflow. Generators of other designs may be used, but they must produce a stable aerosol concentration over the 0.3 to 10 μm diameter size range; provide a means of ensuring the complete drying of the KCl aerosol; and utilize a charge neutralizer to neutralize any electrostatic charge on the aerosol. The resultant challenge aerosol must meet the minimum count per channel and maximum concentration criteria of Table 319–1.

6.3 Installation of Paint Arrestor. The paint arrestor is to be installed in the test duct in a manner that precludes air bypassing the arrestor. Since arrestor media are often sold unmounted, a mounting frame may be used to provide back support for the media in addition to sealing it into the duct. The mounting frame for 20 in. x 20 in. arrestors will have minimum open internal dimensions of 18 in. square. Mounting frames for 24 in. x 24 in. arrestors will have minimum open internal dimensions of 22 in. square. The open internal dimensions of the mounting frame shall not be less than 75 percent of the approach duct dimensions.

6.4 Optical Particle Counter. The upstream and downstream aerosol concentrations are measured with a high-resolution optical particle counter (OPC). To ensure comparability of test results, the OPC shall utilize an optical design based on wide-angle light scattering and provided a minimum of 12 contiguous particle sizing channels from 0.3 to 10μm diameter (based on response to PSL) where, for each channel, the ratio of the diameter corresponding to the upper channel bound to the lower channel bound must not exceed 1.5.

6.5 Aerosol Sampling System. The upstream and downstream sample lines must be made of rigid electrically-grounded metallic tubing having a smooth inside surface, and they must be rigidly secured to prevent movement during testing. The upstream and downstream sample lines are to be nominally identical in geometry. The use of a short length (100 mm maximum) of straight flexible tubing to make the final connection to the OPC is acceptable. The inlet nozzles of the upstream and downstream probes must be sharp-edged and of appropriate entrance diameter to maintain isokinetic sampling within 20 percent of the air velocity.

6.5.1 The sampling system may be designed to acquire the upstream and downstream samples using (a) sequential upstream-downstream sampling with a single OPC, (b) simultaneous upstream and downstream sampling with two OPC's, or (c) sequential upstream-downstream sampling with two OPC's.

6.5.2 When two particle counters are used to acquire the upstream and downstream counts, they must be closely matched in flowrate and optical design.

6.6 Airflow Monitor. The volumetric airflow through the system shall be measured with a calibrated orifice plate, flow nozzle, or laminar flow element. The measurement device must have an accuracy of 5 percent or better.

7.0 Reagents and Standards.

7.1 The liquid test aerosol is reagent grade, 98 percent pure, oleic acid (Table 319–2). The solid test aerosol is KCl aerosolized from a solution of KCl in water. In addition to the test aerosol, a calibration aerosol of monodisperse polystyrene latex (PSL) spheres is used to verify the calibration of the OPC.

TABLE 319–2.—PROPERTIES OF THE TEST AND CALIBRATION AEROSOLS

	Refractive index	Density, g/cm^3	Shape
Oleic Acid (liquid-phase challenge aerosol)	1.46 nonabsorbing	0.89	Spherical.
KCl (solid-phase challenge aerosol)	1.49	1.98	Cubic or agglomerated cubes.
PSL (calibration aerosol)	1.59 nonabsorbing	1.05	Spherical.

8.0 Sample Collection, Preservation, and Storage.

8.1 In this test, all sampling occurs in real-time, thus no samples are collected that require preservation or storage during the test. The paint arrestors are shipped and stored to avoid structural damage or soiling. Each arrestor may be shipped in its original box from the manufacturer or similar cardboard box. Arrestors are stored at the test site in a location that keeps them clean and dry. Each arrestor is clearly labeled for tracking purposes.

9.0 Quality Control.

9.1 Table 319–1 lists the QC control limits.

9.2 The standard deviation (σ) of the penetration (P) for a given test at each of the 15 OPC sizing channels is computed from the coefficient of variation (CV, the standard deviation divided by the mean) of the upstream and downstream measurements as:

$$\sigma_P = P\sqrt{\left(CV^2_{upstream} + CV^2_{downstream}\right)} \qquad \text{(Eq. 319-1)}$$

For a properly operating system, the standard deviation of the penetration is < 0.10 at particle diameters from 0.3 to 3 μm and less than 0.30 at diameters > 3 μm.

9.3 Data Quality Objectives (DQO).

9.3.1 Fractional Penetration. From the triplicate tests of each paint arrestor model, the standard deviation for the penetration measurements at each particle size (i.e., for each sizing channel of the OPC) is computed as:

$$s = \left[\sum\left(P_i - \bar{P}\right)^2/(n-1)\right]^{\frac{1}{2}} \qquad \text{(Eq. 319-2)}$$

where P_i represents an individual penetration measurement, and P the average of the 3 (n = 3) individual measurements.

9.3.2 Bias of the fractional penetration values is determined from triplicate no-filter and HEPA filter tests. These tests determine the measurement bias at 100 percent penetration and 0 percent penetration, respectively.

9.3.3 PSL-Equivalent Light Scattering Diameter. The precision and bias of the OPC sizing determination are based on sampling a known diameter of PSL and noting whether the particle counts peak in the correct channel of the OPC. This is a pass/fail measurement with no calculations involved.

9.3.4 Airflow. The precision of the measurement must be within 5 percent of the set point.

10.0 Calibration and Standardization.

10.1 Optical Particle Counter. The OPC must have an up-to-date factory calibration. Check the OPC zero at the beginning and end of each test by sampling HEPA-filtered air. Verify the sizing accuracy on a daily basis (for days when tests are performed) with 1-size PSL spheres.

10.2 Airflow Measurement. Airflow measurement devices must have an accuracy of 5 percent or better. Manometers used in conjunction with the orifice plate must be inspected prior to use for proper level, zero, and mechanical integrity. Tubing connections to the manometer must be free from kinks and have secure connections.

10.3 Pressure Drop. Measure pressure drop across the paint arrestor with an inclined manometer readable to within 0.01 in. H_2O. Prior to use, the level and zero of the manometer, and all tubing connections, must be inspected and adjusted as needed.

11.0 Procedure.

11.1 Filtration Efficiency. For both the oleic acid and KCl challenges, this procedure is performed in triplicate using a new arrestor for each test.

11.1.1 General Information and Test Duct Preparation

11.1.1.1 Use the "Test Run Sheet" form (Figure 319–2) to record the test information.

Run Sheet

Part 1. General Information

Date and Time: _____

Test Operator: _____

Test #: _____

Paint Arrestor:

Brand/Model _____

Arrestor Assigned ID # _____

Condition of arrestor (i.e., is there any damage? Must be new condition to proceed):

_____

Manometer zero and level confirmed?

_____

Part 2. Clean Efficiency Test

Date and Time: _____

Optical Particle Counter:

20 min. warm up _____

Zero count (< 50 counts/min) _____

Daily PSL check _____

PSL Diam: _____ μm

File name for OPC data: _____

Test Conditions:

Air Flow: _____

Temp & RH: Temp _____ °F RH _____ %

Atm. Pressure: _____in. Hg
(From mercury barometer)

Aerosol Generator: (record all operating parameters)

_____

_____

_____

_____

Test Aerosol:

(Oleic acid or KCl) _____

Arrestor:

Pressure drop: at start _____ in. H_2O

at end _____ in. H_2O

Condition of arrestor at end of test (note any physical deterioration):

_____

_____

Figure 319–2. Test Run Sheet

Other report formats which contain the same information are acceptable.

11.1.1.2 Record the date, time, test operator, Test #, paint arrestor brand/model and its assigned ID number. For tests with no arrestor, record none.

11.1.1.3 Ensure that the arrestor is undamaged and is in "new" condition.

11.1.1.4 Mount the arrestor in the appropriate frame. Inspect for any airflow leak paths.

11.1.1.5 Install frame-mounted arrestor in the test duct. Examine the installed arrestor to verify that it is sealed in the duct. For tests with no arrestor, install the empty frame.

11.1.1.6 Visually confirm the manometer zero and level. Adjust as needed.

11.1.2 Clean Efficiency Test.

11.1.2.1 Record the date and time upon beginning this section.

11.1.2.2 Optical Particle Counter.

11.1.2.2.1 General: Operate the OPC per the manufacturer's instructions allowing a minimum of 20 minutes warm up before making any measurements.

11.1.2.2.2 Overload: The OPC will yield inaccurate data if the aerosol concentration it is attempting to measure exceeds its operating limit. To ensure reliable measurements, the maximum aerosol concentration will not exceed 10 percent of the manufacturer's claimed upper concentration limit corresponding to a 10 percent count error. If this value is exceeded, reduce the aerosol concentration until the acceptable conditions are met.

11.1.2.2.3 Zero Count: Connect a HEPA capsule to the inlet of the OPC and obtain printouts for three samples (each a minimum of 1-minute each). Record maximum cumulative zero count. If the count rate exceeds 50 counts per minute, the OPC requires servicing before continuing.

11.1.2.2.4 PSL Check of OPC Calibration: Confirm the calibration of the OPC by sampling a known size PSL aerosol. Aerosolize the PSL using an appropriate nebulizer. Record whether the peak count is observed in the proper channel. If the peak is not seen in the appropriate channel, have the OPC recalibrated.

11.1.2.3 Test Conditions:

11.1.2.3.1 Airflow: The test airflow corresponds to a nominal face velocity of 120 FPM through the arrestor. For arrestors having nominal 20 in. x 20 in. face dimensions, this measurement corresponds to an airflow of 333 cfm. For arrestors having nominal face dimensions of 24 in. x 24 in., this measurement corresponds to an airflow of 480 cfm.

11.1.2.3.2 Temperature and Relative Humidity: The temperature and relative humidity of the challenge air stream will be measured to within an accuracy of +/ − 2°F and +/ − 10 percent RH. To protect the probe from fouling, it may be removed during periods of aerosol generation.

11.1.2.3.3 Barometric Pressure: Use a mercury barometer. Record the atmospheric pressure.

11.1.2.4 Upstream and Downstream Background Counts.

11.1.2.4.1 With the arrestor installed in the test duct and the airflow set at the proper value, turn on the data acquisition computer and bring up the data acquisition program.

11.1.2.4.2 Set the OPC settings for the appropriate test sample duration with output for both printer and computer data collection.

11.1.2.4.3 Obtain one set of upstream-downstream background measurements.

11.1.2.4.4 After obtaining the upstream-downstream measurements, stop data acquisition.

11.1.2.5 Efficiency Measurements:

11.1.2.5.1 Record the arrestor pressure drop.

11.1.2.5.2 Turn on the Aerosol Generator. Begin aerosol generation and record the operating parameters.

11.1.2.5.3 Monitor the particle counts. Allow a minimum of 5 minutes for the generator to stabilize.

11.1.2.5.4 Confirm that the total particle count does not exceed the predetermined upper limit. Adjust generator as needed.

11.1.2.5.5 Confirm that a minimum of 50 particle counts are measured in the upstream sample in each of the OPC channels per sample. (A minimum of 50 counts per channel per sample will yield the required minimum 500 counts per channel total for the 10 upstream samples as specified in Table 319–1.) Adjust generator or sample time as needed.

11.1.2.5.6 If you are unable to obtain a stable concentration within the concentration limit and with the 50 count minimum per channel, adjust the aerosol generator.

11.1.2.5.7 When the counts are stable, perform repeated upstream-downstream sampling until 10 upstream-downstream measurements are obtained.

11.1.2.5.8 After collection of the 10 upstream-downstream samples, stop data acquisition and allow 2 more minutes for final purging of generator.

11.1.2.5.9 Obtain one additional set of upstream-downstream background samples.

11.1.2.5.10 After obtaining the upstream-downstream background samples, stop data acquisition.

11.1.2.5.11 Record the arrestor pressure drop.

11.1.2.5.12 Turn off blower.

11.1.2.5.13 Remove the paint arrestor assembly from the test duct. Note any signs of physical deterioration.

11.1.2.5.14 Remove the arrestor from the frame and place the arrestor in an appropriate storage bag.

11.2 Control Test: 100 Percent Penetration Test. A 100 percent penetration test must be performed immediately before each individual paint arrestor test using the same challenge aerosol substance (i.e., oleic acid or KCl) as to be used in the arrestor test. These tests are performed with no arrestor installed in the test housing. This test is a relatively stringent test of the adequacy of the overall duct, sampling, measurement, and aerosol generation system. The test is performed as a normal penetration test except the paint arrestor is not used. A perfect system would yield a measured penetration of 1 at all particle sizes. Deviations from 1 can occur due to particle losses in the duct, differences in the degree of aerosol uniformity (i.e., mixing) at the upstream and downstream probes, and differences in particle transport efficiency in the upstream and downstream sampling lines.

11.3 Control Test: 0 Percent Penetration. One 0 percent penetration test must be performed at least monthly during testing. The test is performed by using a HEPA filter rather than a paint arrestor. This test assesses the adequacy of the instrument response time and sample line lag.

12.0 Data Analysis and Calculations.

12.1 Analysis. The analytical procedures for the fractional penetration and flow velocity measurements are described in Section 11. Note that the primary measurements, those of the upstream and downstream aerosol concentrations, are performed with the OPC which acquires the sample and analyzes it in real time. Because all the test data are collected in real time, there are no analytical procedures performed subsequent to the actual test, only data analysis.

12.2 Calculations.

12.2.1 Penetration.

Nomenclature

U = Upstream particle count
D = Downstream particle count
U_b = Upstream background count
D_b = Downstream background count
P_{100} = 100 percent penetration value determined immediately prior to the arrestor test computed for each channel

$$P_{100} = \frac{\left(\overline{D} - \overline{D_b}\right)}{\left(\overline{U} - \overline{U_b}\right)}$$

P = Penetration of the arrestor corrected for P_{100}
ó = Sample standard deviation
CV = Coefficient of variation = ó/mean
E = Efficiency.

Overbar denotes arithmetic mean of quantity.

Analysis of each test involves the following quantities:

- P_{100} value for each sizing channel from the 100 percent penetration control test,
- 2 upstream background values,
- 2 downstream background values,
- 10 upstream values with aerosol generator on, and
- 10 downstream values with aerosol generator on.

Using the values associated with each sizing channel, the penetration associated with each particle-sizing channel is calculated as:

$$P = \left\{\frac{\left(\overline{D} - \overline{D_b}\right)}{\left(\overline{U} - \overline{U_b}\right)}\right\} / P_{100} \qquad \text{(Eq. 319-3)}$$

$$E = 1 - P \qquad \text{(Eq. 319-4)}$$

Most often, the background levels are small compared to the values when the aerosol generator is on.

12.3 The relationship between the physical diameter ($D_{Physical}$) as measured by the OPC to the aerodynamic diameter (D_{Aero}) is given by:

$$D_{Aero} = D_{Physical}\sqrt{\frac{\rho_{Particle}}{\rho_o}\frac{CCF_{Physical}}{CCF_{Aero}}} \qquad \text{(Eq. 319-5)}$$

Where:

ρ_o = unit density of 1 g/cm³.

$\rho_{Particle}$ = the density of the particle, 0.89 g/cm³ for oleic acid.

$CCF_{Physical}$ = the Cunningham Correction Factor at $D_{Physical}$.

CCF_{Aero} = the Cunningham Correction Factor at D^{Aero}.

12.4 Presentation of Results. For a given arrestor, results will be presented for:

- Triplicate arrestor tests with the liquid-phase challenge aerosol,
- Triplicate arrestor tests with the solid-phase challenge aerosol,
- Triplicate 100 percent penetration tests with the liquid-phase challenge aerosol,
- Triplicate 100 percent penetration tests with the solid-phase challenge aerosol, and
- One 0 percent filter test (using either the liquid-phase or solid-phase aerosol and performed at least monthly).

12.4.1 Results for the paint arrestor test must be presented in both graphical and tabular form. The X-axis of the graph will be a logarithmic scale of aerodynamic diameter from 0.1 to 100 μm. The Y-axis will be efficiency (%) on a linear scale from 0 to 100. Plots for each individual run and a plot of the average of triplicate solid-phase and of the average triplicate liquid-phase tests must be prepared. All plots are to be based on point-to-point plotting (i.e., no curve fitting is to be used). The data are to be plotted based on the geometric mean diameter of each of the OPC's sizing channels.

12.4.2 Tabulated data from each test must be provided. The data must include the upper and lower diameter bound and geometric mean diameter of each of the OPC sizing channels, the background particle counts for each channel for each sample, the upstream particle counts for each channel for each sample, the downstream particle counts for each channel for each sample, the 100 percent penetration values computed for each channel, and the 0 percent penetration values computed for each channel.

13.0 Pollution Prevention.

13.1 The quantities of materials to be aerosolized should be prepared in accord with the amount needed for the current tests so as to prevent wasteful excess.

14.0 Waste Management.

14.1 Paint arrestors may be returned to originator, if requested, or disposed of with regular laboratory waste.

15.0 References.

1. Hanley, J.T., D.D. Smith and L. Cox. "Fractional Penetration of Paint Overspray Arrestors, Draft Final Report," EPA Cooperative Agreement CR–817083–01–0, January 1994.

2. Hanley, J.T., D.D. Smith, and D.S. Ensor. "Define a Fractional Efficiency Test Method that is Compatible with Particulate Removal Air Cleaners Used in General Ventilation," Final Report, 671–RP, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., December 1993.

3. "Project Work and Quality Assurance Plan: Fractional Penetration of Paint Overspray Arrestors, Category II," EPA Cooperative Agreement No. CR–817083, July 1994.

[FR Doc. 98–6999 Filed 3–26–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5978–5]

National Emission Standards for Hazardous Air Pollutants; Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: This action proposes amendments to the national emission standards for hazardous air pollutants (NESHAP) for aerospace manufacturing and rework facilities and are amended in a final rule published elsewhere in today's **Federal Register**. Today's proposed changes involve new definitions for general aviation and general aviation rework facility, separate coating limits for primers and topcoats used on general aviation aircraft, and additional changes resulting from public comments on previously proposed (October 29, 1996) amendments to the final rule.

DATES: *Comments.* Comments on these proposed changes must be received on or before May 26, 1998.

ADDRESSES: *Comments.* Interested parties may submit written comments (in duplicate, if possible) on the proposed changes to the NESHAP to: Air and Radiation Docket and Information Center (6102), (LE–131), Attention, Docket No. A–92–20, U. S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments on the proposed changes to the NESHAP may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 5.1 (or 6.1) or ASCII file format. All comments in electronic form must be identified by the docket number A–92–20. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries. *Docket.* Docket No. A–92–20, containing the proposed regulatory text and other materials related to this rulemaking used in developing the NESHAP, is available for public inspection and copying between 8:30 a.m. to noon, and from 1 and 3 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. The docket for the NESHAP is available for public inspection and copying at the Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

An electronic version of documents from the Office of Air and Radiation (OAR) are available through EPA's OAR Technology Transfer Network Web site (TTNWeb). The TTNWeb is a collection of related Web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the Internet via the World Wide Web at the following address, "http:/www.epa.gov/ttn". Electronic versions of this preamble and the proposed amendments to the final rule are located under the OAR Policy and Guidance Information Web site, "http:/www.epa.gov/ttn/oarpg/", under the Recently Signed Rules section. If more information on the TTNWeb is needed, contact the Systems Operator at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed changes to the standards, contact Ms. Barbara Driscoll, Policy Planning and Standards Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0164.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners or operators of facilities that are engaged, either in part or in whole, in the manufacturing or rework of commercial, civil, or military aerospace vehicles or components and that are major sources as defined in § 63.2. Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities which are major sources of hazardous air pollutants and manufacture, rework, or repair aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles.
Federal Government	Federal facilities which are major sources of hazardous air pollutants and manufacture, rework, or repair aircraft such as airplanes, helicopters, missiles, rockets, and space vehicles.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in § 63.741 of the NESHAP for aerospace manufacturing and rework facilities promulgated in the **Federal Register** on September 1, 1995 (60 FR 45948) the amendments in a final rule published elsewhere in today's **Federal Register**.

The information presented below is organized as follows:

I. Background
II. Summary of and Rationale for Proposed Rule Changes
A. Definitions
B. Standards for Primers and Topcoats
C. Clarification of Relationship Between NESHAP and Federal Aviation Administration (FAA) Regulations
D. Hand-Wipe Cleaning: Removal of References to Section 112(l) and Equivalent Volume Reduction Demonstration
E. Exemption for Cleaning of Automated Spray Equipment Nozzle Tips
F. Monitoring Parameters for Pumpless Waterwash Systems
G. Exclusion of Charged Media Certification Using Test Method 319
III. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Regulatory Flexibility Act
E. Unfunded Mandates Reform Act

I. Background

National emission standards for hazardous air pollutants for aerospace manufacturing and rework facilities were proposed in the **Federal Register** on June 6, 1994 (60 FR 29216). Public comments were received regarding the standards and the final NESHAP was promulgated in the **Federal Register** on September 1, 1995 (60 FR 45948). Amendments to the final rule appear in another part of today's **Federal Register**. This action proposes additional amendments to §§ 63.741, 63.742,

63.745, 63.751, 63.752 and 63.753 of subpart GG of 40 CFR part 63 and Method 319 of Appendix A to part 63—TEST METHODS. These sections deal with applicability, definitions, topcoat and primer application operations, monitoring requirements, record-keeping requirements, and reporting requirements.

The Agency set these standards for aerospace manufacturing and rework facilities to address organic and inorganic HAP emissions. As stated in the preamble to the final rule (September 1995), nationwide emissions of HAP from at least 2,869 major source aerospace manufacturing and rework facilities will be reduced by approximately 112,600 Mg (123,700 tons). These proposed changes to the final rule will not result in any significant changes to the emission reductions or cost impacts because (1) only a small number of general aviation (GA) rework facilities will be considered major sources and therefore subject to the NESHAP requirements and (2) only one or two known aerospace facilities utilize pumpless waterwash systems for controlling particulate emissions.

II. Summary of and Rationale for Proposed Rule Changes

A. Definitions

The EPA proposes adding the following definitions to § 63.742:

General aviation (GA) means the segment of the aerospace industry involving noncommercial and nonmilitary aircraft designed to carry 19 passengers or less. This definition is meant to include most smaller corporate jets and privately owned aircrafts.

General aviation rework facility means an aerospace facility with the majority of its revenues resulting from the reconstruction, repair, maintenance, repainting, conversion, or alteration or aerospace vehicles or components.

As discussed next (in paragraph II. B.), the Agency is proposing separate standards for primer and topcoat applications for GA rework facilities. Based on public comments received and information received by the Agency at industry roundtable meetings, the Agency believes that the proposed definition for GA will accurately describe the segment of the aerospace industry servicing those smaller aircraft for which the alternative primer and topcoat standards are intended.

B. Standards for Primers and Topcoats

Based on information presented at a roundtable meeting held on March 13–14, 1996 and in public comments on the aerospace standard, the Agency has developed alternative emission limits for topcoat and primer applications on general aviation aircraft. These limits were developed in light of the assertions made by GA aerospace rework industry representatives that the coatings applied to GA aircraft are significantly thicker (typically ≥ 7mm) than coatings applied to most commercial aircraft (typically around 3mm). According to GA rework industry representatives, GA customers typically require thicker coatings (relative to commercial aircraft) to enhance the appearance of their aircraft. Furthermore, these industry representatives stated that the business climate for GA aircraft rework operations is such that if GA rework facilities located in the U.S. are unable to provide the customer-specified coatings (in terms of thickness and appearance), they will lose customers who would readily have their aircraft painted at other U.S. facilities not subject to the NESHAP requirements (i.e., nonmajor sources) or outside of the U.S., at facilities located in areas with nonexistent or less stringent air emissions standards.

The Agency also notes that, based on available information on this segment of the industry, many GA rework facilities would be area sources emitting less than 10 tons per year (tons/yr) of any single HAP, and less than 25 tons/yr of combined HAP. Nevertheless, GA rework facilities do exist which are major sources. For these facilities the Agency finds that the coating (primer and topcoat) application operations are different for GA rework facilities than commercial and military facilities. Accordingly, the Agency proposes to subcategorize GA rework facilities and to determine a separate MACT floor for primer and topcoat application conducted at such facilities.

Based on the best information available to the Agency, there are less than 30 GA rework facilities that would be considered major sources of HAP emissions and therefore subject to the NESHAP requirements. Since there are less than 30 sources, the MACT floor for primer and topcoat (including self-priming topcoat) rework application to GA aircraft was based on the average of the best performing five sources found in the Agency's data base on GA sources. The data from the GA rework facilities in the Agency's data base were ranked according to the average HAP content of all coatings, weighted by annual usage volume. The best five facilities were identified as having an overall facility weighted average HAP and VOC content of 540 grams per liter (g/L) [4.5 pounds per gallon (lb/gal)] for both primers and topcoats.

Most, if not all, of the GA rework facilities that will have to comply with the NESHAP limits are competing for business with facilities that are minor (area) sources. The NESHAP does not impact minor sources and allows them to continue their current painting and depainting operations to meet customer requirements and expectations. The Agency is therefore proposing the MACT floor limits for primer and topcoat application for GA rework facilities in § 63.745(c)(1) through (c)(4). The HAP limits for both primers and topcoats (including self-priming topcoats) are equivalent: less than or equal to 540 g/L (4.5 lb/gal) of coating (less water) as applied. The VOC limits for both primers and topcoats are also equivalent: less than or equal to 540 g/L (4.5 lb/gal) of coating (less water and exempt solvents) as applied.

C. Clarification of Relationship Between NESHAP and Federal Aviation Administration (FAA) Regulations

The EPA has worked closely with the FAA during the development of the final NESHAP for the aerospace manufacturing and rework source category. Both agencies recognize the importance of continuing airworthiness and the safety of the flying public as repair facilities modify their procedures to comply with the NESHAP. The FAA and the EPA are committed to minimizing the impact on airworthiness while maximizing the reduction of HAP emissions under the NESHAP.

In industry roundtable meetings subsequent to the promulgation date, commenters noted that there appeared to be conflicts between the NESHAP requirements and existing FAA regulations, which primarily affect the General Aviation segment of the industry. The EPA and FAA both recognize that there exists a potential for conflict involving regulations concerning the use of HAP-containing chemical strippers. The NESHAP does not allow HAP-containing chemical strippers (e.g., methylene chloride based strippers) to be used for depainting aircraft (except for spot stripping and decal removal), and some aircraft manufacturers' maintenance manuals specify that only certain materials (e.g., methylene chloride based strippers) may be used for depainting. The FAA regulations require that maintenance be performed in an FAA-acceptable manner, which normally requires the procedures in the manufacturer's manual be followed. If those procedures are not followed, aircraft airworthiness could be jeopardized.

Since promulgation of the NESHAP on September 1, 1995, many of the aircraft manufacturers (principally those manufacturing transport category

aircraft) have made the necessary revisions to their maintenance manuals to provide for non-HAP materials (chemical strippers) to be used for depainting. Those revisions have been FAA approved or will be submitted for FAA approval, when required. For the other manufacturers (principally General Aviation manufacturers), once the necessary information (revised/updated maintenance manuals, service bulletins, and/or advisory circulars) is approved by the FAA and is distributed to the regulated community, the potential regulatory conflict will be eliminated, and aerospace rework facilities will be able to use various products to comply with most EPA and FAA requirements.

Because of the small numbers of aircraft affected and the considerable expense of testing alternative materials for use on antique aircraft (those over 30 years old), the October 29, 1996 amendments to the final rule (NESHAP) contain an exemption for the rework of these aircraft. For the same reason, these proposed revisions to the NESHAP extend that exemption to rework of aircraft and aircraft components whose manufacturers are out of business.

Specifically, the EPA is proposing to exempt rework of aircraft whose manufacturers are out of business by adding the following to § 63.741(f):

These requirements do not apply to the rework of aircraft or aircraft components if the holder of the Federal Aviation Administration (FAA) design approval, or that holder's licensee, is not actively manufacturing aircraft or aircraft components.

The FAA certifies that an aircraft, engine, propeller, or part design meets certain airworthiness requirements, and issues to the designer of that product a type certificate (TC), supplemental type certificate (STC), Technical Standard Order Authorization (TSOA), or Parts Manufacturer Approval (PMA). The procedures for issuing TCs, STCs, TSOAs, and PMAs are contained in FAA regulations at 14 CFR, part 21. The holder of one of these is a "design approval holder."

Should any manufacturers still in business not revise their maintenance instructions to allow use of NESHAP-compliant materials, the FAA has committed to issue a notice publicizing the process by which repair facilities can request approval for alternatives (currently a very time-consuming and resource-intensive process). In addition, many existing Airworthiness Directives (AD's), issued under part 39 of Title 14 of the CFR, specify the use of HAP. (AD's are regulations addressing safety of flight, and compliance with them is mandatory.) An FAA notice will address the process by which repair stations, mechanics and operators can obtain alternative means of compliance for those AD's, for the purpose of approving substitution of non-HAP materials.

D. Hand-Wipe Cleaning: Removal of References to Section 112(l) and Equipment Volume Reduction Demonstration

Section 63.744(b)(3) of the amended NESHAP (requirements for hand wipe cleaning) refers to requirements of section 112(l) of the Clean Air Act. Based on comments received on the October 29, 1996 amendments to the final rule, the Agency is proposing to remove the references to section 112(l) of the Clean Air Act. Requiring submittal and approval of each individual alternative plan under section 112(l) is unwarranted and contrary to the intent of section 112(l). Therefore, the proposed requirements of § 63.744(b)(3) no longer include the reference to "section 112(l) of the Act."

There were additional comments regarding § 63.744(b)(3) and establishing a baseline volume of hand-wipe cleaning solvents used in cleaning operations. The commenters suggested deleting the requirement for demonstrating that the 60 percent volume reduction provides emission reductions equivalent to the solvent composition or vapor pressure compliance options. The Agency agrees that the equivalency demonstration is confusing and is proposing new language in § 63.744(b)(3) regarding approval of baseline levels.

E. Exemption for Cleaning of Automated Spray Equipment Nozzle Tips

Two commenters suggested that the Agency exempt owners or operators of aerospace cleaning operations from requirements for a closed container when cleaning the nozzle tips of automated spray equipment systems. As explained below, the Agency agrees with the commenters and is proposing an amendment to § 63.744(c) as follows:

(5) Cleaning of the nozzle tips of automated spray equipment systems, except for robotic systems that can be programmed to spray into a closed container, shall be exempt from the requirements of paragraph (c) of this section.

In proposing this exemption from cleaning requirements for the nozzle tips of automated spray equipment systems, the Agency agrees with the commenters that such an exemption was found necessary for at least one State air pollution prevention standard [South Coast Air Quality Management District (California) Rule 1171. Solvent Cleaning Operations, last revised September 13, 1996]. The Agency notes that such automated spray equipment cannot be easily disassembled. Such nonrobotic spray equipment is typically constructed on a moving track to spray when a part is positioned in front of the spray gun, and to shut off when no part is sensed. These nonrobotic spray guns typically cannot be programmed to move away from the parts to spray cleaning solvent into some type of closed container. Cleaning of these spray guns without disassembly can only occur by manually spraying cleaning solvent from the spray gun into the open air of the booth.

F. Monitoring Parameters for Pumpless Waterwash Systems

Two commenters on the proposed amendments requested that the Agency address potential problems with the monitoring requirements for waterwash particulate control systems found in the final rule. Pumpless waterwash systems are considered to be part of the MACT floor involving waterwash particulate control systems but were overlooked in the regulatory text detailing the associated standards, monitoring, recordkeeping, and reporting requirements. The commenters specifically requested that the Agency incorporate monitoring requirements for pumpless waterwash systems. The Agency agrees with the commenters that clarifications to the monitoring requirements are needed in order to provide for the use of this control technology. The Agency was not aware of all the various types of systems involved with this control technology when the final standards were promulgated. The Agency is therefore proposing the following changes:

In § 63.742, revise the following definition:

Waterwash system means a control system that utilizes flowing water (i.e., a conventional waterwash system) or a pumpless system to remove particulate emissions from the exhaust air stream in spray coating application or dry media blast depainting operations.

In § 63.745(g)(2)(v), modify the paragraph as follows:

(v) If a conventional waterwash system is used, continuously monitor the water flow rate and read and record the water flow rate once per shift. If a pumpless system is used, continuously monitor the booth parameter(s) which indicate performance of the booth per the manufacturer's recommendations to maintain the booth within the acceptable operating efficiency range and read and record the parameters once per shift.

In § 63.751(c)(2), modify the paragraph as follows:

(2) Each owner or operator using a conventional waterwash system to meet the requirements of § 63.745(g)(2) shall, while primer or topcoat application operations are occurring, continuously monitor the water flow rate through the system and read and record the water flow rate once per shift following the recordkeeping requirements of § 63.752(d). Each owner or operator using a pumpless waterwash system to meet the requirements of § 63.745(g)(2) shall, while primer or topcoat applications operations are occurring, measure and record the parameter(s) recommended by the booth manufacturer which indicate booth performance once per shift, following the recordkeeping requirements of § 63.752(d).

In § 63.751(d), modify the paragraph as follows:

(d) Each owner or operator using a dry particulate filter or a conventional waterwash system in accordance with the requirements of § 63.746(b)(4) shall, while depainting operations are occurring, continuously monitor the pressure drop across the particulate filters or the water flow rate through the conventional waterwash system and read and record the pressure drop or the water flow rate once per shift following the recordkeeping requirements of § 63.752(e). Each owner or operator using a pumpless waterwash system to meet the requirements of § 63.746(b)(4) shall, while depainting operations are occurring, measure and record the parameter(s) recommended by the booth manufacturer which indicate booth performance once per shift, following the recordkeeping requirements of § 63.752(e).

In § 63.752(d)(2), modify the paragraph as follows:

(2) Each owner or operator complying with § 63.745(g) through the use of a conventional waterwash system shall record the water flow rate through the operating system once each shift during which coating operations occur. Each owner or operator complying with § 63.745(g) through the use of a pumpless waterwash system shall record the parameter(s) recommended by the booth manufacturer which indicate the performance of the booth once each shift during which coating operations occur.

In § 63.752(d)(3), modify the paragraph as follows:

(3) This log shall include the acceptable limit(s) of pressure drop, water flow rate, or for the pumpless waterwash booth, the booth manufacturer recommended parameter(s) which indicate the booth performance, as applicable, as specified by the filter or booth manufacturer or in locally prepared operating procedures.

In § 63.752(e)(7), modify the paragraph as follows:

(7) *Inorganic HAP emissions.* Each owner or operator shall record the actual pressure drop across the particulate filters or the visual continuity of the water curtain and water flow rate for conventional waterwash systems once each shift in which the depainting process is in operation. For pumpless waterwash systems, the owner or operator shall record the parameter(s) recommended by the booth manufacturer which indicate the performance of the booth once per shift in which the depainting process is in operation. This log shall include the acceptable limit(s) of the pressure drop as specified by the filter manufacturer, the visual continuity of the water curtain and water flow rate for conventional waterwash systems, or the recommended parameter(s) which indicate the booth performance for pumpless systems as specified by the booth manufacturer or in locally prepared operating procedures.

In § 63.753(c)(1)(vi), modify the paragraph as follows:

(vi) All times when a primer or topcoat application operation was not immediately shut down when the pressure drop across a dry particulate filter or HEPA filter system, the water flow rate through a conventional waterwash system, or the recommended parameter(s) which indicate the booth performance for pumpless systems, as appropriate, was outside the limit(s) specified by the filter or booth manufacturer or in locally prepared operating procedures;

In § 63.753(d)(1)(vii), modify the paragraph as follows:

(vii) All periods where a nonchemical depainting operation subject to § 63.746(b)(2) and (b)(4) for the control of inorganic HAP emissions was not immediately shut down when the pressure drop, water flow rate, or recommended booth parameter(s) was outside the limit(s) specified by the filter or booth manufacturer or in locally prepared operational procedures;

G. Exclusion of Charged Media Certification Using Test Method 319

One commenter questioned whether test Method 319 can be used to certify charged media (filters). Previous evaluations of charged-fiber media indicated nontypical filtration efficiency curves over short time periods because of the rapid accumulation of paint overspray. Based on this historical information and test data, the Agency is proposing to not allow arrestors composed of charged-fiber media to be certified by Method 319. The Agency specifically requests comment on this issue and performance data using Method 319 or other evaluation results using criteria that can be correlated to Method 319 (i.e., maintaining the key elements described in Section 6.1.2 of Method 319).

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all of the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and the industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the content of the docket will serve as the record in case of judicial review (except for interagency review materials) (§ 307(d)(7)(A) of the Act).

B. Paperwork Reduction Act

These proposed amendments do not impose any new information collection requirements and result in no change to the currently approved collection. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the NESHAP for aerospace manufacturing and rework facilities under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0314. (EPA ICR no. 1687.03). A copy of the ICR may be obtained from Sandy Farmer, Regulatory Information Division; EPA; 401 M Street, S.W., (Mail Code 2137); Washington, D.C. 20460 or by calling (202) 260–2740.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Today's proposed amendments should have no impact on the information collection burden estimates made previously. Today's action does

not impose any additional information collection requirements. Consequently, the ICR has not been revised for purposes of today's action.

C. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735 [October 4, 1993]), the EPA is required to determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of this E.O. The E.O. defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not a "significant regulatory action" within the meaning of the E.O.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the Agency certifies that the rule will not have a significant economic impact on substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because the overall impact of these amendments is a net decrease in requirements on all entities including small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by a proposed intergovernmental mandate. Section 204 requires the Agency to develop a process to allow elected State, local, and Tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law. The EPA has determined that these amendments do not include a Federal mandate that may result in expenditure by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Small governments will not be uniquely impacted by these amendments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

Dated: March 10, 1998.

List of Subject in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 10, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart GG—[Amended]

2. In § 63.741 paragraph (f) is amended by adding a new sentence after the second sentence to read as follows:

§ 63.741 Applicability and designation of affected sources.

* * * * *

(f) * * * These requirements do not apply to the rework of aircraft or aircraft components if the holder of the Federal Aviation Administration (FAA) design approval, or the holder's licensee, is not actively manufacturing aircraft or aircraft components. * * *

3. Section 63.742 is amended by revising the definition for "waterwash system" and adding in alphabetical order definitions for "general aviation" and "general aviation rework facility" to read as follows:

§ 63.742 Definitions.

* * * * *

General aviation (GA) means the segment of the aerospace industry involving noncommercial and nonmilitary aircraft designed to carry 19 passengers or less. (This definition is meant to include most smaller corporate jets and privately owned aircraft.)

General aviation rework facility means any aerospace facility with the majority of its revenues resulting from the reconstruction, repair, maintenance, repainting, conversion, or alteration of aerospace vehicles or components.

* * * * *

Waterwash system means a control system that utilizes flowing water (i.e., a conventional waterwash system) or a pumpless system to remove particulate emissions from the exhaust air stream in spray coating application or dry media blast depainting operations.

* * * * *

4. Section 63.744 is amended by revising the last sentence in paragraph (b)(3) and adding paragraph (c)(5) to read as follows:

§ 63.744 Standards: Cleaning operations.

* * * * *

(b) * * *

(3) * * * Demonstrate that the volume of hand-wipe cleaning solvents used in cleaning operations has been reduced by at least 60 percent from a baseline adjusted for production. The baseline shall be calculated using data from 1996 and 1997, or as otherwise agreed upon by the Administrator or delegated State Authority. The baseline shall be approved by the Administrator or delegated State Authority and shall be included as part of the facility's title V or part 70 permit.

(c) * * *

(5) Cleaning of the nozzle tips of automated spray equipment systems, except for robotic systems that can be programmed to spray into a closed container, shall be exempt from the requirements of paragraph (c) of this section.

* * * * *

5. Section 63.745 is amended by revising paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (g)(2)(v) to read as follows:

§ 63.745 Standards: Primer and topcoat application operations.

* * * * *

(c) * * *

(1) Organic HAP emissions from primers shall be limited to an organic HAP content level of no more than: 350 g/L (2.9 lb/gal) of primer (less water) as applied or 540 g/L (4.5 lb/gal) of primer (less water) as applied for general aviation rework facilities.

(2) VOC emissions from primers shall be limited to a VOC content level of no more than: 350 g/L (2.9 lb/gal) of primer (less water and exempt solvents) as applied or 540 g/L (4.5 lb/gal) of primer (less water and exempt solvents) as applied for general aviation rework facilities.

(3) Organic HAP emissions from topcoats shall be limited to an organic HAP content level of no more than: 420 g/L (3.5 lb/gal) of coating (less water) as applied or 540 g/L (4.5 lb/gal) of coating (less water) as applied for general aviation rework facilities. Organic HAP emissions from self-priming topcoats shall be limited to an organic HAP content level of no more than: 420 g/L (3.5 lb/gal) of self-priming topcoat (less water) as applied or 540 g/L (4.5 lb/gal) of self-priming topcoat (less water) as applied for general aviation rework facilities.

(4) VOC emissions from topcoats shall be limited to a VOC content level of no more than: 420 g/L (3.5 lb/gal) of coating (less water and exempt solvents) as applied or 540 g/L (4.5 lb/gal) of coating (less water and exempt solvents) as applied for general aviation rework facilities. VOC emissions from self-priming topcoats shall be limited to a VOC content level of no more than: 420 g/L (3.5 lb/gal) of self-priming topcoat (less water and exempt solvents) as applied or 540 g/L (4.5 lb/gal) of self-priming topcoat (less water) as applied for general aviation rework facilities.

* * * * *

(g) * * *

(2) * * *

(v) If a conventional waterwash system is used, continuously monitor the water flow rate and read and record the water flow rate once per shift. If a pumpless system is used, continuously monitor the booth parameter(s) which indicate performance of the booth per the manufacturer's recommendations to maintain the booth within the acceptable operating efficiency range and read and record the parameters once per shift.

* * * * *

6. Section 63.751 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 63.751 Monitoring requirements.

* * * * *

(c) * * *

(2) Each owner or operator using a conventional waterwash system to meet the requirements of § 63.745(g)(2) shall, while primer or topcoat application operations are occurring, continuously monitor the water flow rate through the system and read and record the water flow rate once per shift following the recordkeeping requirements of § 63.752(d). Each owner or operator using a pumpless waterwash system to meet the requirements of § 63.745(g)(2) shall, while primer and topcoat application operations are occurring, measure and record the parameter(s) recommended by the booth manufacturer which indicate booth performance once per shift, following the recordkeeping requirements of § 63.752(d).

(d) *Particulate filters and waterwash booths—depainting operations.* Each owner or operator using a dry particulate filter or a conventional waterwash system in accordance with the requirements of § 63.746(b)(4) shall, while depainting operations are occurring, continuously monitor the pressure drop across the particulate filters or the water flow rate through the conventional waterwash system and read and record the pressure drop or the water flow rate once per shift following the recordkeeping requirements of § 63.752(e). Each owner or operator using a pumpless waterwash system to meet the requirements of § 63.746(b)(4) shall, while depainting operations are occurring, measure and record the parameter(s) recommended by the booth manufacturer which indicate booth performance once per shift, following the recordkeeping requirements of § 63.752(e).

* * * * *

7. Section 63.752 is amended by revising paragraphs (c)(2) introductory text, (d)(2), (d)(3), and (e)(7) to read as follows:

§ 63.752 Recordkeeping requirements.

* * * * *

(c) * * *

(2) For uncontrolled primers and topcoats that meet the organic HAP and VOC content limits in § 63.745(c)(1) through (c)(4) without averaging:

* * * * *

(d) * * *

(2) Each owner or operator complying with § 63.745(g) through the use of a conventional waterwash system shall record the water flow rate through the operating system once each shift during which coating operations occur. Each owner or operator complying with § 63.745(g) through the use of a pumpless waterwash system shall record the parameter(s) recommended by the booth manufacturer which indicate the performance of the booth once each shift during which coating operations occur.

(3) This log shall include the acceptable limit(s) of pressure drop, water flow rate, or for the pumpless waterwash booth, the booth manufacturer recommended parameter(s) which indicate the booth performance, as applicable, as specified by the filter or booth manufacturer or in locally prepared operating procedures.

* * * * *

(e) * * *

(7) *Inorganic HAP emissions.* Each owner or operator shall record the actual pressure drop across the particulate filters or the visual continuity of the water curtain and water flow rate for conventional waterwash systems once each shift in which the depainting process is in operation. For pumpless waterwash systems, the owner or operator shall record the parameter(s) recommended by the booth manufacturer which indicate the performance of the booth once per shift in which the depainting process is in operation. This log shall include the acceptable limit(s) of the pressure drop as specified by the filter manufacturer, the visual continuity of the water curtain and the water flow rate for conventional waterwash systems, or the recommended parameter(s) which indicate the booth performance for pumpless systems as specified by the booth manufacturer or in locally prepared operating procedures.

* * * * *

8. Section 63.753 is amended by revising paragraphs (c)(1)(vi) and (d)(1)(vii) to read as follows:

§ 63.753 Reporting requirements.

* * * * *

(c) * * *

(1) * * *

(vi) All times when a primer or topcoat application operation was not immediately shut down when the pressure drop across a dry particulate filter or HEPA filter system, the water flow rate through a conventional waterwash system, or the recommended parameter(s) which indicate the booth performance for pumpless systems, as appropriate, was outside the limit(s) specified by the filter or booth

manufacturer or in locally prepared operating procedures;

* * * * *

(d) * * *

(1) * * *

(vii) All periods where a nonchemical depainting operation subject to § 63.746 (b)(2) and (b)(4) for the control of inorganic HAP emissions was not immediately shut down when the pressure drop, water flow rate, or recommended booth parameter(s) was outside the limit(s) specified by the filter or booth manufacturer or in locally prepared operational procedures;

* * * * *

9. In Appendix A to part 63, Method 319 is amended by adding a new sentence to the end of section 1.1 to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Method 319: Determination of Filtration Efficiency for Paint Overspray Arrestors

* * * * *

1.0 * * *

1.1 * * * Due to the potential for paint overspray accumulation to decrease the filtration efficiency of charged-fiber media, arrestors composed of charged-fiber media shall not be tested by this method.

* * * * *

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Part III

Department of Agriculture

Forest Service

36 CFR Part 292

Smith River National Recreation Area; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AB39

Smith River National Recreation Area

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements Section 8(d) of the Smith River National Recreation Area Act of 1990 and sets forth the procedures by which the Forest Service will regulate mineral operations on National Forest System lands within the Smith River National Recreation Area.

This rule supplements existing Forest Service regulations and is intended to ensure that mineral operations are conducted in a manner consistent with the purposes for which the Smith River National Recreation Area was established.

EFFECTIVE DATE: This rule is effective April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Sam Hotchkiss, Minerals and Geology Management Staff, (202) 205–1535.

SUPPLEMENTARY INFORMATION:

Background

The Smith River National Recreation Area (SRNRA) was established by the Smith River National Recreation Area Act of 1990 (the Act) (16 U.S.C. 460bbb *et seq.*). The purpose of the Act is to ensure "* * * the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural resources * * *."

In order to meet the purposes of the Act, Congress directed the Forest Service to administer the SRNRA to, among other things, provide for a broad range of recreation uses and improve fisheries and water quality. Subject to valid existing rights, Congress prohibited locatable mineral operations, prohibited mineral leasing (including leasing of geothermal resources), and limited the extraction of mineral materials within the SRNRA to situations where the material extracted is used for construction and maintenance of roads and other facilities within the SRNRA and in certain areas excluded from the SRNRA by the Act.

The SRNRA consists of approximately 300,000 acres of National Forest System lands in the Six Rivers National Forest in northern California. The Act divides the SRNRA into eight distinct management areas and specifies a management emphasis for each. There are also four areas within the exterior boundaries of the SRNRA that were expressly excluded from the provisions of the Act.

One of the eight management areas in the SRNRA is the Siskiyou Wilderness, most of which was designated by Congress on September 26, 1984. The Gasquet-Orleans Corridor was added to the Siskiyou Wilderness by the Act in 1990. The Act specifies that the Siskiyou Wilderness is to continue to be managed pursuant to the provisions of the Wilderness Act. In accordance with Section 4(d)(3) of the Wilderness Act, the federal lands within the Siskiyou Wilderness (excluding the Gasquet-Orleans Corridor addition) were withdrawn from the operation of the mining and mineral leasing laws, subject to valid existing rights, as of September 26, 1984.

The Act also redesignated the following rivers and some of their tributaries as components of the National Wild and Scenic Rivers System: (1) The Smith River; (2) the Middle Fork of the Smith River; (3) the North Fork of the Smith River; (4) the Siskiyou Fork of the Smith River; and (5) the South Fork of the Smith River. These same rivers and most of the designated tributaries had previously been designated components of the Wild and Scenic Rivers System on January 19, 1981, pursuant to Section 2(a)(ii) of the Wild and Scenic Rivers Act. The Act designated as wild segments two tributaries which had not previously been designated—Peridotite Creek, tributary to the North Fork of the Smith River, and Harrington Creek, tributary to the South Fork of the Smith River. The Act also changed the classification of some tributaries designated in 1981, from recreational to scenic or wild. For example, the lower 2.5 mile segment of Myrtle Creek, tributary to the Middle Fork of the Smith River, was reclassified as wild. In the Act, Congress directed that these designated wild and scenic rivers and tributaries be managed in accordance with the Act and the Wild and Scenic Rivers Act, whichever is more restrictive. In accordance with Section 9(a)(iii) of the Wild and Scenic Rivers Act, the federal lands within segments of designated rivers or tributaries classified "wild" (except for Peridotite Creek, Harrington Creek, and the lower 2.5 miles of Myrtle Creek that were reclassified in the Act) were withdrawn from the operation of the mining and mineral leasing laws, subject to valid existing rights on January 19, 1981.

Under this patchwork of wild and scenic rivers, wilderness, and national recreation area designations there emerge three different dates of withdrawal which apply to federal lands. First, there are the federal lands within "wild" segments of wild and scenic rivers (excluding those that were designated or reclassified as "wild" in the Act) which were withdrawn subject to valid existing rights on January 19, 1981, pursuant to Section 9(a)(iii) of the Wild and Scenic Rivers Act. Second, there are the federal lands within the Siskiyou Wilderness (excluding both the Gasquet-Orleans Corridor addition and the aforementioned "wild" segments of wild and scenic rivers) which were withdrawn subject to valid existing rights on September 26, 1984, pursuant to Section 4(d)(3) of the Wilderness Act. Third, the remaining federal lands that comprise the SRNRA (which includes, among others, the "scenic" and "recreational" segments of wild and scenic rivers, the "wild" segments of wild and scenic rivers as designated or reclassified by the Act, and the Gasquet-Orleans Corridor addition to the Siskiyou Wilderness) that were withdrawn subject to valid existing rights on November 16, 1990, pursuant to Section 8(a) of the Act.

Mining and prospecting for minerals have been important parts of the history of the Smith River area since the 1850's. Historically, mining operations within the Smith River area have been small-scale placer gold exploration and recovery operations within the bed and banks of the Smith River and its main tributaries. Panning, sluicing, and dredging operations occur predominantly during the summer months. In recent years, large, low-grade, nickel-cobalt resources in the uplands of the Smith River watershed have attracted the attention of prospectors. Based on a review of Bureau of Land Management (BLM) records, there were approximately 2,776 mining claims covering about 30,000 acres of National Forest System lands within the SRNRA upon the date of enactment of the Act in 1990. By May 1997, however, BLM records indicate that there were only approximately 297 mining claims covering about 7,700 acres of National Forest System lands in the SRNRA that met current filing requirements. None of the claims are for mill site locations. There are no active operations on mining claims or on lands with outstanding mineral rights.

In Section 8 of the Act, Congress addressed the extent to which mineral operations would be authorized within the SRNRA. Section 8(a) of the Act withdrew as of the effective date of the Act, all federal lands in the SRNRA from the operation of the mining, mineral and geothermal leasing laws subject to valid existing rights. Section 8(b) precluded the issuance of patents for locations and claims made prior to the establishment of the SRNRA. Section 8(c) of the Act prohibited all mineral operations within the SRNRA except where valid existing rights are established. Section 8(c) also prohibited the extraction of mineral materials such as, common varieties of stone, sand, and gravel, except if used in the construction and maintenance of roads and other facilities within the SRNRA and the excluded areas. Finally, under Section 8(d), the Secretary was authorized and directed to promulgate supplementary regulations to promote and protect the purposes for which the SRNRA was designated.

On November 8, 1994, the largest claimholder in the SRNRA filed suit against the Department of Agriculture in United States District Court for the Northern District of California alleging violations of the Act. *California Nickel Corp.* v. *Espy*, No. C94–3904–DLJ (N.D. Cal.). Specifically, the suit alleged that the Department violated the Act by not promulgating regulations for mineral operations in the SRNRA as required under Section 8(d). The Department did not dispute that Section 8(d) of the Act required the promulgation of supplementary regulations for the SRNRA. In fact, preliminary progress towards the development of a regulation had been made prior to the initiation of litigation.

On June 23, 1995, proposed supplementary regulations for mineral activities in the SRNRA were published in the **Federal Register** for notice and comment (60 FR 32633). Seven letters were received during the 60-day comment period and were considered in the development of a final rule which was published on April 3, 1996 (61 FR 14621). Upon publication, the claimholder who had initiated litigation against the agency amended its complaint to challenge the substance of the April 3, 1996, final rule. On March 14, 1997, the court invalidated three provisions of the April 3, 1996, final rule. *California Nickel Corp.* v. *Glickman*, No. C–94–3904–DLJ, slip op. (N.D. Cal. Mar. 14, 1997). Specifically, the court held that a provision limiting the period of approval of a plan of operations to 5 years was arbitrary and capricious because the agency had failed to evaluate whether mining under such a time constraint might result in a taking of private property. The court also ruled that the agency had been arbitrary and capricious by failing to explain why the supplementary regulations did not include a timetable for processing and reviewing plans of operations. Finally, the court ruled that mining operators had been denied due process because the rule did not include a mechanism by which Forest Service determinations that valid existing rights had not been established could be reviewed within the Department of the Interior.

On September 8, 1997, the Forest Service published a second proposed rule for notice and comment which included provisions that addressed the court's concerns (62 FR 47167). Specifically, the second proposed rule provided that plans of operations would be approved for the minimum time reasonably necessary for a prudent operator to complete mining operations. The second proposed rule also stipulated that plans of operations would be reviewed for completeness within 120 days of submission and that valid existing rights determinations would be completed within 2 years except when the Forest Service could show cause as to why additional time was necessary. Finally, the second proposed rule included a provision requiring the Forest Service to promptly request the Bureau of Land Management to initiate a contest action whenever it concluded that an applicant had failed to establish the presence of valid existing rights. Other modifications were made to clarify and improve the regulations generally, but they were not required as a result of the March 1997 court decision.

Four letters were submitted during the 60-day comment period that ended on November 7, 1997. The comments contained in these four letters were considered by the Forest Service in the development of this final rule. Based on the comments, several changes were made in the text of the final rule. Some of these changes were made to the provisions of the second proposed rule which had been added to respond to the court's concerns with the first final rule. For example, a new provision was added to this final rule which expressly provides for an extension of the approval period for a plan of operations. Additionally, the time to review a plan of operations for completeness was shortened from 120 to 60 days. Finally, the procedure by which a Forest Service valid existing rights determination is referred to the Bureau of Land Management was refined and clarified. These and other changes and the reasons for the changes are explained more fully in the following paragraphs.

All comments received are available for review in the Office of the Director, Minerals and Geology Management Staff, Auditors Building, 4th Floor, 201 14th Street, SW., Washington, DC, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday. The Department appreciates the time and energy the reviewers invested in preparing these letters and in articulating their views regarding the proposed rule.

Analysis of Public Comment

Comments on the proposed rule dealt with general issues, including whether supplementary regulations are necessary, whether a taking of private property had occurred, whether the agency exceeded its authority to regulate mineral operations on National Forest System lands, whether the new provisions in the second proposed rule were the same or substantially similar to those in the first final rule that had been struck down by the court, whether the supplementary regulations were in furtherance of the Act, whether the supplementary regulations were punitive, whether mineral collecting was a permissible recreational activity in the SRNRA, whether the requirement for a plan of operations should apply to suction dredge and sluice operations, and whether delay by the Forest Service in promulgating the supplementary regulations caused the abandonment of more than 4,500 mining claims. In addition to the preceding general comments, several specific issues concerning the enumerated provisions of the proposed rule were raised. A summary of the comments and the Department's responses to them follows.

General Comments

1. *Supplementary mining regulations are unnecessary since the Forest Service already has adequate authority to protect the SRNRA in accordance with the Act.* One reviewer stated that there is no need for additional regulations pertaining to mineral operations in the SRNRA since existing Forest Service regulations governing these activities at 36 CFR part 228 provide ample protection to the SRNRA and its resources.

Response: The issue of whether additional regulation of mineral operations in the SRNRA is necessary was conclusively determined by Congress in Section 8(d) of the Act. This provision specifically states that "the Secretary (of Agriculture) is authorized and directed to issue supplementary

regulations to promote and protect the purposes for which the (SRNRA) is designated." It is not within the discretion of the Department to evaluate whether such regulations are necessary. The Act obligates the Department to issue them, therefore, no change to the rule has been made based on the comment.

2. *The new regulations should not differ from the Forest Service's current mining regulations at 36 CFR part 228 unless "some unique aspect of the SRNRA" justifies a change.* One reviewer felt that the supplementary regulations for mineral operations in the SRNRA should be identical to the current mining regulations at 36 CFR part 228 unless "a reasonable and rational justification * * * based upon some unique aspect of the SRNRA" can be identified to justify the change.

Response: The Department disagrees with this comment for the following reasons. First, there is no indication in the Act or its legislative history that the supplementary mining regulations must mirror the current mining regulations at 36 CFR part 228 unless a unique attribute of the SRNRA might warrant a change. The Act vested the Department with considerably more discretion to determine the appropriate form and content of the supplementary regulations. It is worth noting, however, that the supplementary regulations build upon, and are integrated with, the Forest Service's current mining regulations at 36 CFR part 228.

Secondly, even assuming that this reviewer was correct, the Act and its legislative history contain numerous references to the unique attributes of the SRNRA which justify different and more stringent regulation of mineral development activities than elsewhere on National Forest System lands. Section 2 of the Act recognizes the "invaluable legacy" represented by the undammed and free-flowing Smith River; the unusual "richness of ecological diversity," "renowned anadromous fisheries," "exceptional water quality," and "abundant wildlife" in the Smith River watershed; and the "exceptional opportunities" for wilderness, water sports, fishing, hunting, camping, and sightseeing. Similar language is contained in the House committee report and floor debate pertaining to the establishment of the SRNRA. *See,* H.Rep. No. 707, 101st Cong., 2d Sess. 11–12 (1990); 136 Cong. Rec. 24720 (Sept. 17, 1990). Thus, there appear to be several "unique aspects" in the SRNRA which justify departing from the general Forest Service mining regulations at 36 CFR part 228. Based on the foregoing discussion, no change was made to the rule.

3. *The second proposed rule utilizes many of the provisions from the first final rule that were invalidated by the court.* One reviewer criticized the second proposed rule for containing provisions that varied only slightly from those in the first final rule that were invalidated by the court.

Response: The Department disagrees with this reviewer's characterization.

On March 14, 1997, the court invalidated three provisions of the first final supplementary regulations for the SRNRA that had been published on April 3, 1996. *California Nickel Corp.* v. *Glickman,* No. C–94–3904–DLJ, slip op. (N.D. Cal. Mar. 14, 1997). The court first ruled that a provision limiting the approval period of a plan of operations for mining in the SRNRA to 5 years was arbitrary and capricious because the agency had failed to consider all the relevant factors in adopting this provision. Specifically the court concluded that there was no indication in the record that the agency had considered whether a 5-year limit might result in a taking of private property. *Id.* at 9–11. The court next ruled that a provision exempting plans of operations in the SRNRA from the generally applicable timetables for review set forth in the mining regulations at 36 CFR part 228, subpart A, was arbitrary and capricious because the agency failed to explain or justify its position. *Id.* at 11–13. Finally, the court held that the rule denied a mining operator due process because it did not provide a mechanism by which the Bureau of Land Management could review determinations by the Forest Service that valid existing rights had not been established by the operator. *Id.* at 13–17.

The Forest Service took the court's concerns seriously. Bearing in mind its overall responsibility to administer the SRNRA in conformance with the Act, the Forest Service published a second proposed rule on September 8, 1997, which specifically responded to the deficiencies that had been identified by the court (62 FR 47167).

With respect to the approval period for a plan of operations, the new proposed rule provided for approval for the "minimum amount of time reasonably necessary for a prudent operator to complete the mineral development activities covered by the approved plan of operations."

This provision ensures the protection of the SRNRA while providing mineral operators the necessary flexibility to conduct their activities. The Department believes this approach should allay concerns about the potential deprivation of property arising from an abbreviated approval period which might preclude the completion of mining operations. At the same time, this provision should ensure that mining operations will be conducted in an expeditious manner and will not be protracted over time to the detriment of the land and resources of the SRNRA.

With respect to timetables for reviewing plans of operations in the SRNRA, the second proposed rule provided that the Forest Service will notify the operator within 120 days whether all the necessary information to evaluate a plan of operations has been submitted. In addition, the second proposed rule provided that once the necessary information has been submitted, the determination of whether the operator has established valid existing rights will be completed within 2 years unless the agency can show good cause in writing as to why more time will be necessary. The preamble of the second proposed rule went into considerable detail to explain why this timetable, rather than the timetable set forth at 36 CFR part 228, subpart A, was more appropriate for reviewing plans of operation in the SRNRA.

Finally, with respect to appeals of valid existing rights determinations adverse to a mining operator, the second proposed rule provided that the Forest Service would notify the Bureau of Land Management promptly of adverse determinations and request the initiation of a mineral contest action against the pertinent mining claims.

The Department believes that the changes in the second proposed rule are significant and address the concerns identified by the court in its March 14, 1997, ruling. The Department also believes that the second proposed rule was faithful to, and consistent with, the legal obligations assumed by the Forest Service pursuant to the Act. It should be noted that each of the provisions added to the second proposed rule based on the March 14, 1997, court decision was further modified in response to comments that were received on the second proposed rule. Therefore, no changes were made to the rule based on this comment.

4. *The regulations are unlawful because they exceed the Forest Service's authority to administer minerals on National Forest System lands and do not promote and protect the purposes for which the SRNRA was established.* Two reviewers stated that the second proposed rule unlawfully augmented the Forest Service's authority to regulate minerals in the SRNRA. One of these reviewers added that by effectively eliminating recreational mining from

the SRNRA, the proposed rule was flawed because it did not "promote and protect" one of the purposes for which the SRNRA was established.

Response: The Department disagrees with this comment. This rule does not increase the authority of the Forest Service to regulate minerals in the SRNRA. Rather, it sets forth a system for determining whether a claimholder possesses valid existing rights and, where such rights exist, the terms and conditions under which National Forest System lands may be used to conduct mineral development activities. This system is entirely consistent with the authority delegated by Congress in Section 8(d) of the Act which, the Department believes, reflects an eminently reasonable compromise between an outright prohibition of all mining in the SRNRA (which might have led to potential takings liability) and permitting mining to continue without additional regulation (which might have adversely impacted the values for which the SRNRA was established).

The Department also rejects the assertion that mining was considered one of the "recreational" activities for which the SRNRA was established and which the Forest Service must "promote and protect" through its administration. Section 2 of the Act specifically identifies "wilderness, water sports, fishing, hunting, camping, and sightseeing" as recreational activities occurring in the SRNRA. Although this recitation is not necessarily exclusive, mining is clearly not the type of activity that fits comfortably within this class of recreation pursuits. No changes to the rule were made based on the comments of these two reviewers.

5. *The supplementary regulations target a single class of users and is punitive.* One reviewer contended that the second proposed rule was punitive and directed at a single class of users of the SRNRA, namely miners. This reviewer further noted that in other congressionally designated national recreation areas, supplementary regulations addressed activities other than just mining and affected parties other than just miners.

Response: The Department agrees that the supplementary regulations apply only to those wishing to conduct mineral operations in the SRNRA, but disagrees that they are punitive. The narrow focus of the regulations is based on the statutory authority in Section 8 of the Act which pertains explicitly and exclusively to mining. The legislative history of the Act reinforces the view that Congressional intent in adding this provision was to avoid or minimize mining practices that might negatively impact the resource values for which the SRNRA was established.

> With regard to mining, the amendments would give explicit recognition to the rights associated with valid existing claims, and direct the Secretary to issue supplementary regulations designed to "promote and protect" the purposes for which the recreation area is created. Although I remain concerned about the potential for destructive mining, I am hopeful that the supplemental regulations will address those concerns.
>
> 136 Cong. Rec. H13045, 13046 (Oct. 26, 1990) (Statement of Rep. Bosco).

The Department disagrees with the reviewer's suggestion that the scope of these regulations should be expanded based on similarly expansive supplementary regulations in other congressionally designated national recreation areas. The statutes which established these other areas specifically address the types of issues to be covered by the regulations. *See, e.g.*, the Sawtooth National Recreation Area Act, 16 U.S.C. 460aa–3, –10; the Hells Canyon National Recreation Area Act, 16 U.S.C. 460gg–7(a–e).

Since limiting the scope of this rule to mineral operations in the SRNRA is fully consistent with the Act and its associated legislative history, the Department declines to expand the scope of the final rule to address other uses and activities occurring within the SRNRA. Therefore, no changes to the rule were made based on this comment.

6. *The rule was drafted to eliminate mining from the SRNRA and, in so doing, it does not provide for the wise use and sustained productivity of its resources.* One reviewer asserted that the second proposed rule would result in the elimination of mining from the SRNRA and, thus, would not provide for the wise use and sustained productivity of resources as required by the Act.

Response: The Department disagrees with this comment. The Act, not this rule, prohibits mining in the SRNRA, except where valid existing rights can be established. This rule merely prescribes the procedure to be used by the Forest Service to determine whether valid existing rights are present and, if so, the appropriate terms and conditions under which the mining operations should be conducted in order to ensure that the values for which the SRNRA was established are protected in perpetuity. No change was made to this rule based on this comment.

7. *Forest Service's strategy of delay and burden has already resulted in abandonment of 4,500 claims in the SRNRA.* One reviewer accused the Department, through its delay in the promulgation of this rule, of being responsible for the abandonment of more than 4,500 mining claims in the SRNRA.

Response: The Department disagrees with this reviewer's contention. According to records maintained by the Bureau of Land Management, there were approximately 2,776 claims listed as "open" when the SRNRA was established in 1990. Assessment work for over one-half of those claims had not been recorded with BLM for the 1989–1990 assessment year. In some cases, assessment work had not been recorded for several years prior to the establishment of the SRNRA. As a result, in 1991, BLM issued "abandoned and void" decisions on 1,329 claims in the SRNRA. None of these abandonment decisions resulted from any actions, or lack thereof, as the case may be, by the Department. This meant that approximately 1,447 mining claims were still listed on National Forest System lands within the SRNRA in 1991.

Beginning with the 1993–1994 assessment year, the Bureau of Land Management instituted a new nationwide fee system requiring holders of more than ten claims to pay a $100 per claim fee while allowing holders of ten or fewer claims to obtain an exemption from the fee requirement. Of the approximately 1,447 mining claims in the SRNRA in 1991, fees were paid or exemptions obtained on only 320 claims. As a result, the Bureau of Land Management issued "abandoned and void" decisions on an additional 1,127 claims in the SRNRA. Once again, the abandonment of these claims was unrelated to Forest Service administration of the SRNRA.

Since then, the holders of an additional 23 claims have failed to pay the required fees or obtain an exemption to the fees. These claims also have been declared abandoned and void by BLM. Thus, there are only 297 open claims in the SRNRA at this time. No change to the rule was required based on this comment.

8. *Limiting "recreational mining" is inconsistent with the SRNRA.* Two reviewers stated that the purposes for which the SRNRA was designated include recreational mining and prospecting activity and that any attempt to limit recreational mining is at odds with congressional intent.

Response: Executive agencies of the Government cannot permit activities involving the search for, and removal of, minerals on federal lands, including National Forest System lands, except to the extent that Congress has enacted legislation authorizing those activities.

This limitation results from Section 3 of Article 4 of the United States Constitution which provides in pertinent part that: "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *." Accordingly, as the United States Supreme Court has observed, the United States owns the minerals found on its lands "and it lies in the discretion of Congress, acting in the public interest, to determine how much of the property it shall dispose." *Ashwander v. Tennessee Valley Authority,* 297 U.S. 288, 336 (1936).

In 1872, Congress enacted general mining laws providing for the disposal of locatable minerals on federal lands now included in the SRNRA. 30 U.S.C. 22 *et seq.* However, in 1990, when Congress enacted the Act, it expressly withdrew the SRNRA from the operation of the mining laws, subject to valid existing rights. 16 U.S.C. 460bbb–6(a). As noted in the Supplementary Information section, some of the federal land within the SRNRA had been withdrawn from the operation of the mining laws prior to the enactment of the Act in 1990. Congress concluded that mining in the SRNRA was inconsistent with the purposes for which the SRNRA was established or else it would not have withdrawn these lands from the operation of the United States mining laws. To construe the Act as authorizing mining of locatable minerals, whether that mining is characterized as being for "recreational" or "commercial" purposes, absent the existence of valid existing rights, would frustrate Congressional intent to block that very activity.

In summary, the only mineral activities that may occur in the SRNRA are those for which valid existing rights have been established, those authorized by a mineral materials contract or permit, or those associated with outstanding mineral rights. The Department has no authority to allow locatable mineral activities on lands in the SRNRA, whether the activity is characterized as a recreational pursuit or a commercial venture, unless the Government determines that valid existing rights have been established. This prohibition applies even if an individual wishes to mine for personal enjoyment rather than financial gain and even if the impact on the lands and resources of the SRNRA is minimal. Therefore, no change has been made in the rule as a result of these comments.

9. *Plan of operations should not be required for suction dredge and sluice operations.* Two reviewers contended that the rule should not require plans of operations for suction dredge and sluice operations.

Response: Locatable mineral operations on National Forest System lands are primarily governed by the current locatable mineral regulations at 36 CFR part 228, subpart A. In the past, suction dredging operations in the SRNRA have been authorized by plans of operations, notices of intent, and, occasionally, without any written authorization at all. However, as noted previously, in establishing the SRNRA, Congress specified that subject to valid existing rights, all locatable mineral operations on federal land are prohibited. Furthermore, even in those instances where an operator establishes valid existing rights to conduct dredging operations, those operations would still be subject to regulation to ensure that the values for which the SRNRA was established were protected and enhanced.

By requiring a plan of operations for suction dredging activities, the Department can accomplish two objectives. First, it can verify that the operator possesses valid existing rights to conduct suction dredging operations. Second, it can ensure that the impacts of the suction dredging operations are minimized to the extent practicable in order to protect and preserve the values for which the SRNRA was established. The Department believes that in order to protect the unique fishery and other resource values of the SRNRA, careful and considered evaluation of all suction dredging activities is necessary. The best mechanism for this to occur is through the process of developing and reviewing a plan of operations. Therefore, no changes were made in the final rule to exempt suction dredging activities from the plan of operations requirements.

10. *Review periods of one to two years for proposals to conduct suction dredge operations is onerous and doesn't promote "recreational mining".* One reviewer asserted that suction dredge operations and sluicing have negligible impact on surface resources and should not be required to be approved under a plan of operations with a possible processing timeframe of 1 to 2 years.

Response: As an initial matter, it should be noted that the Department does not agree that all suction dredging and small scale sluicing operations have negligible environmental impacts. Furthermore, the impacts of these activities must be evaluated individually and cumulatively. It may well be that the effect of an individual operation is minimal, but the cumulative effect of several such operations may be significant.

With respect to the time it takes to review a plan of operations, the rule sets out 2 years as the maximum amount of time (except for good cause shown) to evaluate whether valid existing rights are present. Under certain circumstances, it may not take the full 2 years to complete this evaluation.

The issue concerning whether the Department has the authority to permit "recreational mineral activities" absent valid existing rights has been addressed previously. Based on the foregoing, no change was made in the final rule in response to this comment.

11. *Characterization of nickel-cobalt resources as "low grade".* One reviewer objected to the characterization of the nickel-cobalt resources in the uplands of the Smith River watershed as "low-grade" to the extent that this characterization suggests that the resources are either insignificant or unworthy of development and requested that the characterization "low-grade" be deleted from the preamble.

Response: "Low grade" is a phrase commonly used within the mining industry to describe situations where the anticipated percentage of elements in a given area is less than the percentage of the same elements currently being mined elsewhere. This is an apt description of the nickel-cobalt resources in the SRNRA. In fact, the holder of most of the claims in the SRNRA where the nickel-cobalt resources are located has previously acknowledged that the grade of the nickel-cobalt resources in the SRNRA is less than the grade of nickel-cobalt resources being mined in other parts of the world. No change was made to the rule as a result of this comment.

12. *The proposed rule underestimates the amount of time required for an operator to gather and submit information required as part of a plan of operations.* One reviewer commented that the proposed rule's estimate of 2 hours as the time required for an operator to gather and submit information required by the Forest Service as part of a plan of operations was too low.

Response: The Department has reassessed its original estimate. Initially, it was thought that an operator could gather the data and complete a plan of operations in 2 hours. The Department continues to believe that the vast majority of the data and information required for a plan of operations should be in the possession of the operator or is readily obtainable and should take only a couple of hours to compile and submit. However, in response to the

comments received on this issue, the estimated time to gather the requested information and prepare a plan of operations has been increased from 2 to 20 hours. The final information package submitted to the Office of Management and Budget estimates that it will take an average of 20 hours to gather and submit the information required for review and that, on average, two parties will submit plans of operation to the Forest Service each year for review. This results in an estimated total annual burden of 40 hours. Based on the comment regarding the time it takes to gather and submit information for a plan of operations, a change was made in the "Controlling Paperwork Burdens on the Public" section of the preamble for the second final rule.

13. *The proposed rule effects a taking of property without just compensation in violation of the Fifth Amendment of the Constitution.* One reviewer suggested that the mere publication of a proposed rule for notice and comment violated the Fifth Amendment by taking property without just compensation.

Response: The Department disagrees with the comment. The Fifth Amendment states in part "* * * nor shall private property be taken for public use without just compensation." The act of publishing a proposed rule for notice and comment does not deprive anyone of a property interest protected by the Fifth Amendment. Indeed, a proposed rule is not even enforceable. It is only after a final rule is published in accordance with the provisions of the Administrative Procedures Act that a regulation becomes enforceable. Thus, the publication of a proposed rule cannot constitute a taking. Therefore, no change to the preamble was made based upon this comment by a reviewer.

14. *Compliance with Executive Order 12630.* Several reviewers took issue with the means by which the agency satisfied the obligations of Executive Order 12630 which requires agency officials to evaluate the potential takings implications of their actions. These reviewers asserted that evaluating the agency action of publishing a proposed rule for potential takings liability was "disingenuous," "false reasoning," and "make(s) a mockery" of the Executive Order. Two of the reviewers suggested that the takings implication of the final rule should be evaluated as well.

Response: The Department disagrees with the reviewers. Executive Order 12630 was issued in 1988 to facilitate internal analysis of the potential takings implications of proposed agency actions. The objective of the Executive Order is to ensure that agency officials are notified in advance of the potential takings implications associated with proposed actions. Such advance notice should minimize inadvertent takings and may lead to modifications of the proposed action, although there is nothing in the Executive Order which requires an agency to modify proposed actions to avoid a potential taking. Executive Order 12630 specifically provides that it is "intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person."

The only agency action at issue in this instance was the publication of a proposed rule. As indicated previously, a proposed rule is not enforceable as law and, therefore, cannot affect private property. Furthermore, it would have been inappropriate to evaluate the underlying provisions of the proposed rule for takings implications since those provisions might be subsequently modified in the final rule.

A takings implication assessment has been prepared on this second final rule. It concludes that the action of publishing a final rule does not present the risk of a taking. It does, however, acknowledge that the regulation, as applied in a specific case, may present the risk of a taking. Since takings claims are highly fact specific, it is not prudent to engage in further conjecture at this time regarding whether private property might be taken as a result of the "as applied" affect of the rule on private property. Among the factors that would be considered if such a claim arose are the character of the government action, the economic impact of the government action on the property, and the reasonable investment backed expectations of the property owner. For obvious reasons, it is impossible to make judgments regarding these factors at this point. However, additional takings implication assessments will be prepared in accordance with Executive Order 12630 to evaluate potential takings risks associated with agency implementation of these supplementary regulations. No change was made to the final rule based on this comment. However, a takings implication assessment was prepared on the final rule.

Specific Comments on Proposed Subpart G

The following discussion addresses comments on specific sections of the proposed rule and, where applicable, identifies modifications in the final rule made as a result of the comments.

No comments were received on § 292.61—Definitions, § 292.66—Operating Plan Requirements, § 292.67—Operating Plan Approval, and § 292.68—Mineral Material Operations. Consequently, the final rule adopts the text of these sections as originally proposed, and no further discussion is included in this analysis.

In addition, in § 292.60, one typographical error has been corrected and paragraph (e) has been deleted. The decision to eliminate paragraph (e) which dealt with the effect of the supplementary mining regulations on ongoing mineral operations was made because there are no ongoing operations in the SRNRA at this time nor are any plans of operations currently being considered. Thus, it was determined that the deletion of paragraph (e) would simplify the supplementary regulations by eliminating a provision that discusses a contingency which does not exist. Beyond that, no additional changes were made to § 292.60 and it is not discussed further in this analysis.

Finally, citations in this final rule to these regulations or to other regulations applicable to the administration of National Forest System lands have been modified to conform with the format established by the Office of the Federal Register. These changes do not affect the rights and obligations of the Federal Government or any affected interests.

Section 292.62, Valid Existing Rights

Paragraph (a) of this section sets forth three definitions of "valid existing rights" that will be used to evaluate mining claims in the SRNRA. The only difference in the three definitions is the date by which the location and discovery of the valuable mineral deposit must have occurred. The definition that applies to a given mining claim will depend on whether the claim lies on federal lands within the corridor of a wild segment of a wild and scenic river designated in 1981, within that portion of the Siskiyou Wilderness designated in 1984, or within the remainder of the SRNRA. Paragraph (b) of this section provided that limited mining operations may be authorized in order to enable an operator to confirm that discovery of a valuable mineral deposit occurred prior to the applicable date of withdrawal. This paragraph provided that the operations would be "limited in scope and duration" but did not provide independent authority to prospect, explore, or make a new discovery.

Comment: The Forest Service is without authority to alter the United States mining laws in defining valid existing rights. One reviewer agreed

with the definition of valid existing rights in paragraph (a)(3) if it merely requires the claimant to have a valid mining claim as of the date of enactment of the Act, the claim has not been subsequently abandoned, and the appropriate fees and filings have been made. The reviewer objected to any additional requirements of the definition in paragraph (a)(3) which would allegedly alter the United States mining laws. In particular, the reviewer urged that paragraph (a)(3)(iv) be confined to the technical aspects of retaining a valid unpatented mining claim. The reviewer further stated that paragraph (a)(3)(iv) should not be construed to allow the Forest Service to evaluate the continued validity of a mining claim even though the reviewer acknowledged that the Bureau of Land Management possessed that authority.

Response: Initially, it should be noted that the United States mining laws do not contain a definition of "valid existing rights." To the extent that a definition of "valid existing rights" exists, it is largely the product of judicial and administrative interpretations of the United States mining laws. The definition of "valid existing rights" in § 292.62(a) is fully consistent with the United States mining laws, relevant case law, and administrative interpretations. These authorities have long held that for a mining claim to be valid it must be properly located, supported by the discovery of a valuable deposit of a locatable mineral, located and held in good faith, and properly maintained in compliance with certain filing requirements and annual labor or fee requirements. For a mining claim located in a withdrawn area to constitute a valid existing right, the claim must have been valid prior to the effective date of the withdrawal of the area, continue to be held in good faith, continue to be maintained in compliance with filing and annual labor or fee requirements, and continue to be supported by the discovery of a valuable mineral deposit. The last element means that the mineral deposit must continue to remain valuable. In that regard, it is well established that the exhaustion of a mineral deposit or loss of its marketability will lead to a finding that the mining claimant no longer possesses valid existing rights.

To the extent that the reviewer is suggesting that the Forest Service may not examine issues relevant to the question of whether a mining claim constitutes a valid existing right, except in connection with a mineral contest initiated by the Bureau of Land Management, the position of this Department as well as the Department of the Interior is to the contrary.

We recognize that a final determination that a claim is invalid for lack of discovery can be made only after a contest proceeding. We also recognize, however, that the mere location of a claim does not presumptively make it valid and that an agency operating under a mandate to minimize surface disturbance may properly require the mining claimant to affirmatively establish the existence of a valid existing right * * * before allowing operations to proceed.

Richard C. Swainbank, 141 IBLA 37, 44 (1997)(citation omitted). While *Swainbank* involved the National Park Service, its holding applies to the Forest Service, which, like the National Park Service, also operates under a mandate to minimize surface disturbance resulting from locatable mineral operations.

Since the Act withdrew the lands in the SRNRA from the operation of the United States mining laws subject to valid existing rights, it is not within the Department's discretion to authorize operations within the SRNRA unless the claimant can demonstrate that the mining claim satisfies all of the requirements in § 292.62(a) and, therefore, constitutes a valid existing right. No change has been made in the final rule in response to this comment.

Comment: The Forest Service must approve operations for the purpose of confirming a discovery of a valuable locatable mineral deposit. Two reviewers objected to § 292.62(b) because they contend it unlawfully gives the Forest Service broad discretion to refuse to permit operations necessary to confirm the discovery of a valuable mineral deposit consistent with the definition of valid existing rights in § 292.62(a). One of the reviewers who contended that the Forest Service must approve such operations, nonetheless, criticized the Forest Service for including this provision in the proposed rule, arguing that it simply provides another opportunity to delay a mining claimant's exercise of the rights accorded by the United States mining laws.

One of the reviewers also objected to the use of the term "limited" when describing operations to gather information to confirm the existence of a discovery of a valuable mineral deposit that predated the withdrawal of the SRNRA from the operation of the mining laws. The same reviewer also objected to the provision in § 292.62(b) which stated that the information gathering operations would be "limited in scope and duration."

The second reviewer proposed that the § 292.62(b) be revised to specifically authorize mineral operations necessary to demonstrate the quantity and quality of the mineralization.

Response: Section 292.62(b) was added to the second proposed rule to address situations that might arise in the SRNRA when a mining claimant must gather information to confirm that the discovery of a valuable mineral deposit occurred prior to the withdrawal of the SRNRA from the operation of the mining laws. In response to the comments received, this paragraph has been reworded to clarify that an authorized officer must approve a proposed plan of operations submitted by a mining claimant to conduct mineral operations which may be necessary to gather information to confirm the discovery of a valuable mineral deposit consistent with the rule's definition of "valid existing rights." The claimant must, however, provide sufficient information to demonstrate that the exposure of valuable minerals on the claim predated the withdrawal of the land.

Section 292.62(b) codifies administrative interpretations of the United States mining laws which hold that, under certain circumstances, a mining claimant is entitled to an opportunity to collect further information to assist in the determination of whether the mining claim constitutes a valid existing right. The Department does not understand how a procedure that a mining claimant has voluntarily elected can constitute an impediment to an exercise of any rights which the claimant may possess. The procedure provides a mechanism for a claimant to bolster his claim of valid existing rights and presumably this procedure would not be elected by a claimant who is confident that he already possesses such rights. Accordingly, the Department sees no reason to modify § 292.62(b) based on this comment.

The Department agrees that there was no need to refer to operations conducted pursuant to § 292.62(b) as "limited." Similarly, the Department agrees that there is no need to limit the scope and duration of operations carried out under § 292.62(b). Therefore, these words have been omitted from the final rule. However, these changes do not modify the Forest Service's authorities or a mining claimant's rights. The administrative interpretations of the United States mining laws on which § 292.62(b) is based, recognize that the mineral operations, which a mining claimant has the right to conduct on a claim located on withdrawn lands prior to a determination that the claim constitutes a valid existing right, are

inherently limited and those limitations are reflected in the other provisions of § 292.62(b). *See, e.g., United States* v. *Conner*, 139 IBLA 361, 372 (1997); *United States* v. *Crowley*, 124 IBLA 374, 378–379 (1992); *United States* v. *Mavros*, 122 IBLA 297, 310–311 (1992).

The Department does not agree that § 292.62(b) should be revised to require the authorized officer to approve mineral operations needed to demonstrate the quantity and quality of mineralization on a mining claim in the SRNRA. Mineral operations on withdrawn lands may not be permitted for the purpose of exposing new veins or lodes or performing work which would otherwise result in the discovery of a valuable mineral deposit. *United States* v. *Parker*, 82 IBLA 344, 384 (1984); *United States* v. *Chappell*, 42 IBLA 74, 81 (1979). Thus, the Government lacks authority to permit mineral operations pursuant to § 292.62(b) for the purpose of demonstrating the quantity and quality of mineralization on a mining claim unless those operations constitute an effort to confirm or corroborate the preexisting exposure of a valuable mineral deposit discovered prior to the withdrawal of the lands. *United States* v. *Chappell*, 42 IBLA 74, 81 (1979).

Based on the reviewers' comments, § 292.62(b) has been revised to clarify these points.

Section 292.63, Plan of Operations—Supplementary Requirements.

Paragraph (a) of this section specified that a plan of operations is required for all mineral development activities within the SRNRA where a plan would be required under 36 CFR part 228, subpart A, or when mechanical or motorized equipment would be used. Operations covered by this requirement would include, but not be limited to, those using suction dredges or sluices. Paragraph (b) specifically identified the information required in a plan of operations to evaluate an assertion of valid existing rights. Paragraph (c) identified the information required by the Forest Service to evaluate the operational details and impacts of the proposed mineral development activity as well as to determine the appropriate standards to mitigate and reclaim the affected areas.

Comment: A title report prepared by a private certified mineral title examiner should be sufficient to establish chain of title and valid existing rights. Two reviewers suggested that an operator should have an alternative way to satisfy the "paperwork chain-of-title step" by providing the Forest Service a report from a certified mineral title examiner or title company which shows an unbroken chain-of-title and valid existing rights.

Response: Proposed § 292.63(b) merely identified the specific information that must be furnished to the Forest Service by the operator in support of the operator's contention that the mining claim constitutes a valid existing right. The operator is free to use anyone, including private certified mineral title examiners or title companies, to collect and assemble the specified information in whatever manner the operator deems appropriate. Thus, no change is required in the rule to enable the operator to use private mineral title examiners or title companies to collect and submit the required information.

The respondents also might be suggesting that the Department should not question the opinion of a private certified mineral title examiner or title company on the issue of whether a mining claim constitutes a valid existing right. The Department does not agree with this suggestion. The Government has a duty to insure that valid mining claims are recognized, invalid mining claims are eliminated, and the rights of the public are preserved. *Cameron* v. *United States*, 252 U.S. 450, 460 (1920). This duty is significant because, as the Supreme Court also recognized in that case, unlawful mining claims result in private appropriations of land which rightfully belong to the public. The Department believes that it would be inappropriate to entrust a party retained and paid for by the proponent of an allegedly valid claim to discharge the government's duty to determine that very question.

For the same reasons, the information that is submitted to the Forest Service pursuant to § 292.63(b) cannot simply be a statement by a certified mineral title examiner or a title company that there is a continuous chain-of-title and that the mining claim constitutes a valid existing right. The submission made pursuant to § 292.63(b) must include the listed items and the information must be provided with specificity so that the government can fulfill its obligation to determine whether the operator has the right to conduct mineral operations in the SRNRA. Therefore, no change has been made to the final rule as a result of these comments.

Comment: Evidence of past or present sales of minerals cannot be required to establish valid existing rights. Three respondents objected to what they perceived to be a mandatory requirement that an operator submit evidence of past and present sales of a valuable mineral as part of a plan of operations. One respondent noted that there is no requirement in the United States mining laws that a claimant must have actually marketed the minerals discovered in order to establish the validity of the mining claim. The other two reviewers contended that the requirement is not supported by case law or legal precedent. One respondent observed that minerals may not have been produced or sold from mining claims which constitute valid existing rights, particularly with respect to lode mining claims in the developmental stage. That respondent also noted that many mining claims have been patented before any production occurred.

Response: The Department agrees that the United States mining laws do not require that a mining claimant must have marketed minerals in order to establish the validity of a mining claim. It is possible for an operator to prove that a mining claim constitutes a valid existing right without having produced minerals from the claim or having sold any minerals that have been produced. The Department also agrees that mining claims have been patented before mineral production has occurred. In proposing § 292.63(b)(9), the Department did not intend to suggest that an operator could not make an adequate showing of valid existing rights absent mineral production or absent past or present sales of minerals from the claim, or to preclude the operator from making that showing.

Nonetheless, evidence of mineral sales is relevant to the operator's assertion that valid existing rights have been established. Sales information represents confirmable documentation that mineral production has occurred on a mining claim. Evidence of mineral production is important because Department of the Interior rules recognize that "(u)ncontradicted evidence of the absence of production over an extended period of time may, in and of itself, establish a prima facie case of invalidity." *United States* v. *Miller*, 138 IBLA 246, 277 n.18 (1997) (citation omitted). The Department of the Interior has explained that "(t)his rule reflects the principle that, given the varying economic conditions present over a period of many years, a mining claim will usually be developed unless it is not commercially feasible to do so profitably. In other words, the best evidence of what a prudent man would do is what a prudent man has done." *United States* v. *Knoblock*, 131 IBLA 48, 88 (1994) (citation omitted).

For these reasons, no change has been made in § 292.63(b)(9) of the final rule except to insert the word "existing" at the beginning of the paragraph. This

change makes it clear that an operator is not required to submit evidence of sales which have not occurred or to submit evidence which no longer exists. To the extent that sales evidence exists, it is directly relevant to the determination of valid existing rights and must be provided.

Comment: The reference in the preamble to § 292.63(c)(3) regarding concurrent reclamation was erroneous. One reviewer observed that the preamble referred to a provision of the proposed rule regarding concurrent reclamation at § 292.63(c)(3) but that no such provision existed in the text of the proposed rule.

Response: The reviewer is correct and a change was made in the final rule. The provision concerning concurrent reclamation is set forth at § 292.69. The Department apologizes for any confusion the incorrect citation may have caused.

Section 292.64, Plan of Operations—Approval

Section 292.64 of the proposed rule sets forth the procedure that would be followed to review and approve a plan of operations submitted in conformance with § 292.63. Paragraph (a) stated that within 120 days of submission, the Forest Service would notify the applicant whether all the necessary information had been included or whether additional documentation was necessary. In addition, where all the necessary information had been included, this paragraph further explained that except for good cause shown, the Forest Service would determine whether the applicant possessed valid existing rights within 2 years. Paragraph (b) provided that if an applicant failed to demonstrate to the satisfaction of the Forest Service that valid existing rights had been established, it would notify the applicant in writing of its finding and that it would request the Bureau of Land Management to initiate a mineral contest action. Paragraph (c) stated that an assessment by the Forest Service that an applicant does not possess valid existing rights was a final agency action that was not subject to further administrative appeal within the Department. Paragraph (d) explained that when valid existing rights are present, the Forest Service would proceed to review the rest of the plan of operations which consists largely of the operational details of the mineral development activities being proposed. Paragraph (e) required the Forest Service to notify the applicant whether the plan has been approved or rejected, and paragraph (f) required the Forest Service to explain in writing the reason(s) for not approving a plan. For plans that are approved, paragraph (g) required the Forest Service to establish an approval period which would be equal to the minimum amount of time it would reasonably take a prudent operator to complete the mineral development activities set forth in the plan. Paragraph (h) identified the circumstances that would justify a modification to an approved plan of operations. Finally, paragraph (i) required an operator to develop a new plan of operations or amend a previously approved plan of operations, if the mining operations differed in type, scope, or duration from those described in the original plan, and if those differences would result in resource impacts not anticipated when the original plan was approved.

Comment: The allocation of 120 days to determine whether an applicant had included all the required information in a plan of operations was excessive. All the reviewers remarked that the Forest Service should be able to determine in less than 120 days whether a plan of operations is complete.

Response: The Department agrees. Determination of whether a plan of operations is complete should be a fairly routine task that entails a comparison of the items listed in § 292.63 of the rule with the items submitted by the applicant as part of the plan of operations. Clearly, acknowledgment that a plan is complete should not be construed as a determination that valid existing rights have been established or that the plan has been approved. It merely means that the necessary information has been supplied and that the Forest Service will use this information to conduct its review. In light of the comments received, the time to complete this task has been shortened to 60 days in the final rule.

Comment: The proposed rule turns mining law "upside down" by making a claimant prove valid existing rights under a burdensome and lengthy process and unlawfully provides that mineral development activities of those possessing valid existing rights are subject to regulation. One reviewer contended that because claimants are entitled to the exclusive use and possession of the valuable minerals they discover, the proposed rule violates the United States mining laws by shifting the burden from the Government to the operator to demonstrate the establishment of valid existing rights. In addition, by making this burden as onerous and time consuming as possible, the reviewer asserted that the proposed rule is an attempt to drive all mining out of the SRNRA. Finally, this reviewer contended that the proposed rule violates Congress's specific instructions that mining claimants are not to be disturbed by the Department's management of the SRNRA.

Response: The Department disagrees with this reviewer's characterizations. The exclusive use and possession referred to by this reviewer applies to other private parties but not to the United States, which, in this instance, is responsible for the administration of the National Forest System lands in the SRNRA on which the claims are located. The mere location of a claim does not presumptively make it valid and an agency operating under a mandate to minimize surface disturbance may properly require the mining claimant to establish the existence of a valid existing right before allowing operations to proceed. *Richard C. Swainbank,* 141 IBLA 37, 44 (1997).

In response to the allegation that the process was "as onerous and time consuming as possible," the Department merely states that one of the primary objectives of this rule is to ensure that those conducting mineral development activities in the SRNRA have established that they possess valid existing rights. The Department does not believe that a system, requiring that the party asserting valid existing rights produce whatever evidence is in its possession to substantiate its claim, is either onerous or time consuming. It is not the intent of the Department to eliminate mining in the SRNRA in those instances where valid existing rights have been established.

Finally, the Department disagrees with the assertion that holders of valid existing rights are not to be disturbed by the Forest Service's administration of the SRNRA. Although the reviewer refers to "Congress" specific instructions," no citation to the Act is supplied. The Department believes that the reviewer may be relying on Section 8(c) of the Act for this proposition. However, Section 8(c) prohibits mineral development activity on federally owned land in the SRNRA subject to valid existing rights. 16 U.S.C. 460bbb–6(c). Section 8(c) does not address under what circumstances mineral development activities may be conducted in the SRNRA where valid existing rights have been established. That direction is set forth in Section 8(d) of the Act which provides for the issuance of supplementary mining regulations. *Id.* at section 460bbb–6(d). Unlike Section 8(c), Section 8(d) does not include a "subject to valid existing rights" proviso. *Id.* Thus, all mining activities in the SRNRA are subject to

the supplementary regulations, a view corroborated by legislative history. The original version of the SRNRA legislation would have prohibited all mineral development activities. As a result of concerns for the potential takings liability associated with a blanket prohibition on all mining activities, the legislation was subsequently amended to prohibit mining subject to valid existing rights and to authorize supplementary regulations governing all mining operations for which valid existing rights were established. The chief sponsor of the Act commented,

> With regard to mining, the amendments would give explicit recognition to the rights associated with valid existing claims, and direct the Secretary to issue supplementary regulations designed to 'promote and protect' the purposes for which the recreation area is created. Although I remain concerned about the potential for destructive mining, I am hopeful that the supplemental regulations will address these concerns.

136 Cong. Rec. H13045, 13046 (Oct. 26, 1990) (Statement of Rep. Bosco). The Act and the legislative history are clear that only those operators who have established valid existing rights may conduct mineral development activities in the SRNRA and, where allowed, those activities must be conducted in conformance with the provisions of this rule.

Alternatively, the reviewer may be contending that the Department lacks authority to require a mining claimant to establish that a mining claim constitutes a valid existing right which survived the withdrawal and that the only means for the Government to consider the valid existing rights issue is in connection with a mineral contest proceeding before the Bureau of Land Management. If that is the reviewer's contention, it is plainly inconsistent with the Department of the Interior's administrative interpretations of the United States mining laws.

As discussed previously, there is nothing in the Act to suggest that persons with valid mining claims predating the establishment of the SRNRA were not to be disturbed by the Department's management of the SRNRA. Rather, Congress merely withdrew the SRNRA from the operation of the United States mining laws "subject to valid existing rights" just as it has done many times with respect to other federally owned lands. In discussing a situation where mining operations could only be conducted as an incident of a valid existing right, the Interior Board of Land Appeals observed that "(a)ny inference * * * that the mere location of a mining claim raises a presumption of validity, vis-a-vis the United States is plainly wrong. The mere assertion of a claim to land is simply that." *Southern Utah Wilderness Alliance*, 125 IBLA 175, 188 n.7 (1993). The Board also observed that even in a contest proceeding brought by the government "it is the claimant who must establish the validity of the claim." *Id.* The Board then recited its holding in *Havlah Group*, 60 IBLA 349, 361 (1981) that "it is not unreasonable to require a claimant to make a preliminary showing of facts which support a valid existing right." *Id.* at 188. In *Havlah Group*, where a proposed plan of operations had been submitted for lands on which all actions of the Secretary of the Interior under the statute were "subject to valid existing rights," the Board noted that once the claimant had submitted a preliminary showing, the Bureau of Land Management could either bring a mineral contest challenging the validity of the claim or permit the operations to go forward. 60 IBLA at 361. *See also, Richard C. Swainbank*, 141 IBLA 37, 44 (1997); *Richard C. Behnke*, 122 IBLA 131, 140 n.13 (1992). Thus, persons holding mining claims in the SRNRA are not entitled to any presumption that those claims constitute valid existing rights. It is fully consistent with the Act and the United States mining laws for the Department, which operates under a mandate to minimize surface disturbance caused by mining operations, to require claimants "to affirmatively establish the existence of a valid existing right * * *." *Richard C. Swainbank*, 141 IBLA at 44. For these reasons, no changes have been made in the final rule in response to these comments.

Comment: There was no explanation of what might constitute "good cause" so as to justify an extension of time beyond 2 years for the Forest Service to complete a valid existing rights determination. One reviewer objected to § 292.64(a)(1) and asserted that the proposed rule failed to explain "good cause" or otherwise justify why it might take longer than 2 years to complete a valid existing rights determination given that, among other things, § 292.63(b) requires the operator to provide all of the information necessary to make a valid existing rights determination. With respect to the examples of good cause mentioned in the preamble to the proposed rule, the reviewer argued that matters such as budget and manpower availability are within the control of the Forest Service and that weather considerations are unimportant because there is little need for a site visit to determine the validity of the type of mining claims occurring in the SRNRA.

Response: The Department disagrees to the extent that the respondent suggests that the Forest Service only needs the information submitted by a claimant in order to make a valid existing rights determination. The Government has a responsibility to insure that valid mining claims are recognized, invalid mining claims are eliminated, and the rights of the public are preserved. *Cameron* v. *United States*, 252 U.S. 450, 460 (1920). This responsibility is significant because as the Supreme Court recognized in that case, invalid mining claims unlawfully appropriate public lands to private use contrary to the rights of the public. The Government's independent responsibility to determine the validity of a mining claim cannot be discharged merely by accepting at face value whatever information is supplied by the claimant, who is the proponent of the allegedly valid mining claims. In all cases, the Government must perform its own field examination of the mining claim which allegedly constitutes a valid existing right to confirm the information submitted by the operator.

As explained in great detail in the preamble to the proposed rule, the field examination of a mining claim and the preparation of a written mineral report by a certified mineral examiner is a complicated and lengthy process. While the Department will use its best efforts to complete the valid existing rights determination within 2 years, many factors acting singly, or in combination, may make it impossible. Among those factors are the inaccessibility of field sites due to flooding, landslides, or fires; the unavailability of qualified personnel due to reassignments for fire fighting or other emergencies, protracted medical leave, unanticipated retirements, other previously scheduled validity, or valid existing rights determinations; the time necessary to prepare environmental documents required for sampling on the claim; or the unique technical issues presented by a mining proposal. It is not possible to identify all of the events and contingencies that could cause a justifiable delay in a valid existing rights determination. For these reasons, no change was made in § 292.64(a)(1) in the final rule.

Comment: The number of mineral examiners in the Pacific Southwest Region of the Forest Service is unclear. One reviewer noted that there appeared to be a discrepancy in the second proposed rule regarding the number of Forest Service mineral examiners in the Pacific Southwest Region.

Response: There was no discrepancy. To clarify what was stated in the second proposed rule, there are five certified mineral examiners in the region. Two of the five are also certified review mineral examiners and, therefore, are qualified to conduct mineral examinations and to serve as reviewers who approve mineral reports prepared by other mineral examiners. No change was made in the final rule based upon this comment.

Comment: The FS has adequate staffing to handle the anticipated two plans per year in less than 2 years. Two reviewers asserted that the existing cadre of certified mineral examiners in the Pacific Southwest region should be able to complete valid existing rights determinations for claims in the SRNRA in less than 2 years since only two plans of operations are estimated to be submitted per year. One reviewer also asserted that the Department can allocate its financial and human resources as it deems appropriate and that it would be improper for the Department to deploy its manpower in a fashion which precludes completion of the required examinations in less than 2 years.

Response: An employee who is not certified as a review mineral examiner or as a mineral examiner, may only work on a valid existing rights determination under the direct supervision of someone who is certified. Only certified Forest Service mineral examiners or review mineral examiners are allowed to conduct valid existing rights determinations. There are only five such employees in the Pacific Southwest Region of the Forest Service. These five individuals are responsible for conducting valid existing rights determinations in all withdrawn areas in the Pacific Southwest Region, not just the SRNRA. It would be unfair to individuals whose claims lie outside the SRNRA if the Forest Service redirected the focus and energy of the five Pacific Southwest Region examiners so that valid existing rights determinations in the SRNRA would be completed first. There is no reason that mining claimants in the SRNRA should be afforded preference over others whose mining claims are located elsewhere in the region. Accordingly, even though it is estimated that only two plans of operations will be submitted annually for mining claims in the SRNRA, those plans must be reviewed, along with other plans submitted in the region, in the order that they were received.

The Department agrees that, in theory, it is possible to reassign Forest Service personnel from other regions to complete priority work assignments in the Pacific Southwest Region. However, agency staffing levels are at a significantly lower level than a decade ago due to reduced congressional appropriations. Current staffing levels do not permit reassignment of certified mineral examiners without creating substantial delays in the completion of work which those examiners are responsible to perform in their regularly assigned region. The work that would not be completed in the originating region includes the same type of work; that is, valid existing rights determinations required before operations are authorized in the many National Forest System areas that have been withdrawn from the operation of the United States mining laws subject to valid existing rights. Thus, this comment also fails to recognize that prioritizing valid existing rights determinations for claimants in the SRNRA will prejudice similarly situated claimants in other withdrawn areas.

Furthermore, as discussed in connection with the preceding comment, it is not just personnel limitations which may result in a valid existing rights determination taking 2 or more years to complete. Other factors, which may lengthen the time to make a determination, include: The short field season in the SRNRA; the time needed to prepare environmental documents required for surface disturbing sampling operations; or the inaccessibility of the mining claims due to flooding, fire conditions, landslides, or other natural conditions. For these reasons, no change has been made in § 292.64(a)(1) of the final rule in response to these comments.

Comment: The rule should include a provision requiring "prompt" notification of BLM of any adverse valid existing rights determination. One reviewer observed that the proposed rule properly required that notice of an adverse valid existing rights determination be given to an operator that states, among other things, that the Forest Service will promptly notify the Bureau of Land Management of its determination and request initiation of a mineral contest. However, the reviewer faulted the proposed rule for not containing a separate requirement that the authorized officer promptly notify the Bureau of Land Management of an adverse determination and request initiation of a mineral contest.

Response: Section 292.64(b) of the proposed regulation required the Forest Service to notify the operator of a determination that there is not sufficient evidence of valid existing rights. That paragraph also required the notice to the operator to state that the Forest Service will "promptly" notify the Bureau of Land Management of its determination and request the initiation of a mineral contest action. The Department believed that this provision would insure quick Forest Service action on the notification to the Bureau of Land Management. However, to make it perfectly clear that this is also an affirmative requirement, paragraph (b) has been broken down into paragraphs (b)(1) and (b)(2). Paragraph (2) contains this affirmative requirement to notify the Bureau of Land Management of the Forest Service's determination and to request the initiation of a mineral contest.

Comment: The Forest Service lacks authority to treat an authorized officer's decision that there is not sufficient evidence of valid existing rights as final agency action. One reviewer contended that § 292.64(c), which stated that an authorized officer's decision that there is not sufficient evidence of valid existing rights was final agency action, rendered the BLM mining claim contest action process meaningless. The reviewer also alleged that this provision conflicts with the March 14, 1997, decision in *California Nickel Corporation* v. *Glickman,* No. C94–3904–DLJ, slip op. (N.D. Cal.). The reviewer recommended that the final rule include a provision stating that the Forest Service must change its position concerning valid existing rights if the Department of the Interior rules in favor of the operator on a Forest Service's mineral contest. The reviewer also recommended that the Department make clear in the final rule that referral of the Department's preliminary adverse valid existing rights determination to the Department of the Interior is the appropriate administrative process rather than appeal through the Forest Service or the Department of Agriculture. Finally, the reviewer recommended that the final rule state that there is no final determination of valid existing rights until the Department of the Interior administrative process has been exhausted.

Response: The term "final agency action" in § 292.64(c) resulted in unintended confusion. This term was used merely to clarify that an authorized officer's determination would not be subject to appeal within the Department because the previous paragraph requires the issue to be referred to the Bureau of Land Management. In response to this comment and to avoid misinterpretation of the provision, the term "final agency action" has been omitted from § 292.64(c) in the final rule.

Other changes have been made to this section in the final rule to make it clear that resorting to the BLM contest

proceeding is not meaningless and to emphasize that the Forest Service will recognize that a claimant has valid existing rights if that is the final determination of the Department of the Interior or of a court reviewing the Department of the Interior's decision in the contest action. Specifically, § 292.64(b)(1) has been revised to clarify that the effect of the authorized officer's determination that there is insufficient evidence of valid existing rights is to stay further consideration of the proposed plan of operations pending final action on the valid existing rights issue by the Department of the Interior or by final judicial review. Also, § 292.64(d) has been revised to require the authorized officer to resume consideration of the plan of operations if the final agency action by the Department of the Interior or final judicial review of the Department of the Interior decision determines that valid existing rights exist.

Finally, to address the reviewer's concerns, the remainder of the language in § 292.64(c) has been retained to make it clear that a decision finding insufficient evidence of valid existing rights is not subject to appeal in this Department.

Comment: Once a valid existing rights determination is made in favor of the operator, the rule should make the authorized officer's review of the plan of operations subject to the Forest Service's general mining regulations set forth at 36 CFR 228.5. The proposed rule provides an unlimited amount of time to complete the review of the operational aspects of the mineral operation. One reviewer contended that there is no reason why the applicable time limitations in the Forest Service's general mining regulations should not apply to consideration of the operational aspect of a proposed plan of operations for the SRNRA. With regard to one of the reasons given by the Department in the second proposed rule for the absence of definite time limitations for reviewing a plan of operations (the need to comply with the National Environmental Policy Act (NEPA) for approval of large-scale operations), the reviewer noted that general regulations provide that the authorized officer must notify the operator no later than 30, or at times 90, days after the filing of a plan of operations that it cannot be approved until completion of NEPA compliance. The operator contended that this feature of the general mining regulations keeps the process moving while the proposed SRNRA regulations institutionalize delay.

Response: The reviewer may have overlooked several reasons, in addition to NEPA compliance, given by the Department for the absence of definite time limitations for reviewing proposed plans of operations. As was stated in the preamble to the second proposed rule, NEPA is just one of the statutes with which the Forest Service must comply in reviewing a proposed plan of operations. Compliance with the requirements of the Endangered Species Act (ESA) can take several years, and, in contrast to NEPA where the Forest Service is usually in charge of the compliance process, the priorities and resources of the National Marine Fisheries Service or the United States Fish and Wildlife Service often determine the pace of compliance with the ESA.

The reviewer also may be implying that § 228.5 of this chapter adequately reflects the requirements of NEPA by providing more than 90 days for NEPA compliance. That is not necessarily correct. While 36 CFR 228.5 provides for more than 90 days for review of a plan of operations when NEPA requires the preparation of an environmental impact statement, the regulations do not provide more than 90 days for review of a plan of operations when NEPA requires the preparation of an environmental assessment. However, the preparation of environmental assessments usually requires substantially more time than 90 days.

In relying on 36 CFR 228.5, the reviewer overlooks the fact, recognized in *Baker* v. *United States Department of Agriculture*, 928 F. Supp. 1513, 1519 (D.Idaho 1996), that a "conspicuous conflict[] occurs between 36 CFR 228.5 and the requirements of the NEPA and the ESA." In *Baker*, the court found that the conflict arose because 36 CFR 228.5 was promulgated in 1974, before the 1978 promulgation of regulations concerning environmental assessments and before the 1986 promulgation of regulations under the Endangered Species Act. The *Baker* court held that the 90-day time limit in § 228.5 and the regulatory requirements of the NEPA and the ESA are in "irreconcilable conflict." Therefore, the court held that "the 90-day limit must give way" due to the conflict with the more recent NEPA and ESA regulations. *Id.* at 1520. However, as the court held, this result does not mean that the "Forest Service is unencumbered by time limitations in examining [plans of operations]" because there are other time limits in the NEPA and ESA process as well as "a general rule prohibiting unreasonable delays." *Id.* Consequently, even if the requirements of § 228.5 of this chapter are not applicable, Forest Service review of a proposed plan of operations "remains subject to time constraints * * * " and the SRNRA regulations will not institutionalize delay. *Id.*

For these reasons, the Department believes that it would be senseless and misleading to persons asserting that they possess valid existing rights to conduct locatable mineral operations in the SRNRA, to adopt supplementary regulations which rely on the time limitations for reviewing a plan of operations set forth in the Forest Service's general mining regulations as requested by the reviewer. While the Forest Service will make every effort to process plans of operations as expeditiously as possible, the Department has made no changes to the text of this section in the final rule.

Comment: The rejection of a plan of operations by the Forest Service is unlawful and would constitute a taking. One reviewer asserted that the Forest Service cannot simply refuse to approve a plan of operations as suggested in paragraphs 292.64(e) and (f). The reviewer alleged that a refusal to approve a plan of operations would preclude a claimant from working his claim and constitute a taking of the claimant's property. The reviewer argued that there was no comparable provision in the Department's general mining regulations at part 228, subpart A, of this title and no administrative basis for departing from those regulations. However, the reviewer also argued that § 228.5(a)(3) of this title, at least requires the authorized officer to "[n]otify the operator of any changes in, or additions to, the plan of operations to meet the purpose of the regulations in this part."

Response: The Department agrees that it does not have the authority to refuse to approve a reasonable plan of operations which is not otherwise prohibited by law. However, the Department is not obligated to allow unreasonable mining operations to be conducted on National Forest System lands. Thus, even with respect to mining operations which were being conducted before the promulgation of 36 CFR part 228, subpart A, it was held that the Department could prohibit unreasonable mining operations pursuant to the Surface Resources Act of 1955, 30 U.S.C. 611–14. *United States v. Richardson*, 599 F.2d 290, 291, 294–95 (9th Cir. 1979). The reason for the court's conclusion was that this statute "supersede(d) and modif[ied] the pre-existing recognition of broad rights under 30 U.S.C. 26 * * *." *Id.* at 295.

This authority did not change with the promulgation of 36 CFR part 228,

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subpart A. While the reviewer may argue that 36 CFR part 228, subpart A, does not allow the Forest Service to refuse to approve a plan of operations, that argument is inconsistent with 36 CFR 228.5(a)(3), a provision cited by the reviewer, which is only relevant when the Forest Service has refused to approve a proposed plan of operations. Indeed, in cases involving mining operations subject to 36 CFR part 228, subpart A, courts have found that Forest Service may refuse to approve an unreasonable plan of operations or a plan otherwise prohibited by a law such as the Endangered Species Act. "(T)he Forest Service clearly has the power to reject an unreasonable plan (of operations)." *Baker* v. *United States Department of Agriculture,* 928 F. Supp. 1513, 1518 (D. Idaho 1996). "Of course, the Forest Service would have the authority to deny an unreasonable plan of operations or a plan otherwise prohibited by law. *E.g.* 16 U.S.C. 1538 (endangered species located at the mine site.)." *Havasupai Tribe* v. *United States,* 752 F. Supp. 1471, 1492 (D. Ariz. 1990), *aff'd sub nom. Havasupai Tribe* v. *Robertson,* 943 F.2d 32 (9th Cir. 1991).

The second proposed rule did not embody a meaningful departure from 36 CFR 228.5(a). Proposed § 292.64(e) and (f) each specifically provided that disapproval of a plan of operations is an option available to the authorized officer. Similarly, when 36 CFR 228.5(a)(1) and (a)(3) are read together there is no doubt that disapproval of a plan of operations is also an option available to the Forest Service under the Department's general mining regulations. Also, while 36 CFR 228.5(a)(3) requires the authorized officer to "(n)otify the operator of any changes in, or additions to, the plan of operations to meet the purpose of the regulations in this part," proposed § 292.64(f) requires the authorized officer to "explain why the proposed plan of operations cannot be approved." The variation between 36 CFR 228.5 and 292.64(e) and (f) of this rule appears to be a distinction without a difference. At most, the difference is that under these final regulations, the Department gives the operator the discretion to propose an alternative plan of operations which, while addressing the authorized officer's concerns, also best meets the operator's objectives instead of prescribing the approach that the operator must adopt.

To avoid any confusion, it should be understood that the Forest Service will, where necessary, make every effort to resolve differences and to negotiate plans of operations that are acceptable to the operator and to the Forest Service before exercising the authority to refuse to approve a plan of operations. However, as a last resort, the Forest Service may in certain circumstances, be left no alternative except to refuse a plan of operations. Whether refusing to approve a plan of operations would constitute a taking cannot be ascertained at this juncture. However, to the extent that one of the factors considered in any regulatory takings claim is the reasonable, investment backed expectations of the property owner, it may be difficult for an operator to demonstrate that the agency's refusal to approve an unreasonable plan of operations requires payment of just compensation under the Fifth Amendment. For these reasons, no changes were made to the final rule in response to this comment.

Comment: The proposed time period for the mineral operations fails to give recognition to the operator's rights under the United States mining laws and provides another opportunity to delay mining. One reviewer argued that § 292.64(g) of the second proposed rule, which would establish a time period for the mineral operations authorized by an approved plan of operations equal to the minimum amount of time reasonably necessary for a prudent operator to complete the mineral development activities covered by the plan, would limit the length of time that the operator may engage in mining operations on a mining claim and consequently nullify the operator's rights under the United States mining laws, which do not include such a restriction. The reviewer contended that recognition of valid existing rights means that the Government must give respect and effect to the entirety of an operator's rights under the mining laws. The reviewer also contended that proposed § 292.64(g) provides another opportunity for the Forest Service to delay mining while the operator challenges the Forest Service's determination of the amount of time that would be reasonably necessary for a prudent operator to complete the mineral activities. Finally, the reviewer asserted that there is no reason why the final rule should not emulate the Forest Service's general mining regulations by merely requiring that the plan of operations describe the duration of the expected operations.

Two other reviewers also objected to the proposal to set the operating timeframe for the minimum amount of time necessary, arguing that unforeseen events, such as changes in market conditions, severe weather, strikes, acts of God, or force-majeure can delay start-up and completion timeframes. Both reviewers also noted that additional mineral reserves may be identified after production begins so that additional time is required to mine the deposit. One reviewer recommended that the timeframe be left open ended or at the very least set for 300 percent of the minimum amount of time anticipated. That reviewer also stated that a guaranteed right to extend the operating timeframe must be provided. Finally, that reviewer contended that § 292.64(g) could cause a takings by making financing unavailable and stated that a takings impact analysis had not been prepared for this provision. The other reviewer recommended that the timeframe be left open ended or set by the miner.

Response: Several reviewers appear to have assumed that it was not possible to obtain an extension of the time period provided in an approved plan of operations to conduct authorized operations. This interpretation was not the Department's intent. Accordingly, a new § 292.64(h)(4), is included in the final rule. This new paragraph makes it clear that a plan of operations may be modified to extend its term or scope when the criteria set forth in § 292.64(i) for submission of a supplemental plan of operations or a modification of the plan of operations pursuant to 36 CFR 228.5, are not triggered. The final rule consequently cannot be construed as preventing an operator from fully mining a valuable locatable mineral deposit in the SRNRA on a mining claim which continues to constitute a valid existing right.

The other comments concern the standard included in proposed § 292.64(g) for establishing the term of approval for a plan of operations. The United States mining laws do not address the question of the duration of mining operations. However, judicial and administrative interpretations of the mining laws have long made it clear that "(u)nder the mining laws Congress has made public lands available to people for the purpose of mining valuable mineral deposits and not for other purposes." *United States* v. *Coleman,* 390 U.S. 599, 602 (1968). Indeed, the "all-pervading purpose of the mining laws is to further the speedy and orderly development of the mineral resources of our country." *United States* v. *Nogueira,* 403 F.2d 816, 823 (9th Cir. 1968)(citation omitted). Mining claims which do not "conform to the law under which they are initiated * * * work an unlawful private appropriation in derogation of the rights of the public." *Cameron* v. *United States,* 252 U.S. 450, 460 (1920). Thus it is beyond dispute

that the Government has a definite interest in seeing that operations on mining claims are diligently pursued to a conclusion, that the lands are reclaimed, and that the reclaimed lands are restored to other public uses, particularly where Congress has given the lands a special designation and management emphasis such as in the case of the SRNRA. These interests are all fostered by requiring the completion of mining operations within the time provided for in proposed § 292.64(g) of this part. Therefore, this provision does not conflict with the United States mining laws. For the same reasons, it would be inappropriate to adopt a final rule which provides that the term of approval of a plan of operations is open-ended, is 300 percent of the minimum amount of time reasonably necessary for a prudent operator to complete the authorized operations, or is unilaterally established by the operator.

Limiting the period of approval of a plan of operations, as provided in the second proposed rule, does not conflict with a determination that an operator has valid existing rights because that determination is time dependent and not conclusive of present conditions and rights. It is beyond dispute that a mining claim, which constituted a valid existing right at one time, may lose that status. A claim can become invalid due to a change in markets which results in a loss of the discovery or due to failure to make certain filings or payments. Even if a discovery can be shown to exist on a mining claim, the claim can be invalidated upon a showing that it was not located or held in good faith for mining purposes. *In re Pacific Coast Molybdenum Co.*, 75 IBLA 16, 35 (1983). Moreover, where valid existing rights continue to be maintained and an operator requires additional time to complete operations, such time can be provided pursuant to either § 292.64(h)(4) or § 292.64(i) of the final rule. These final rules appropriately consider and recognize valid existing rights. Therefore, no change was made to the rule in response to these comments.

The Department agrees that severe weather, strikes, acts of God, and force-majeure situations can delay start-up and completion of mineral operations. However, delays occur regardless of what criteria the Government selects to determine the time period for approval of a plan of operations. Rather than adjusting the final rule to provide additional time for the conduct of operations, which in many cases might be unnecessary, the Department believes that the course of action consistent with the long-standing interpretations of the United States mining laws is to approve operations for the minimum amount of time reasonably necessary for a prudent operator to complete the operations and to provide for an extension if, and when, there is a delay in the start-up or completion of the approved operations. However, the Department cautions that changes in market conditions, in and of itself, would not necessarily warrant an extension in the approval period since it might actually result in the loss of a discovery and of the valid existing right. Similarly, the suggestion that an operator is entitled to an extension of the term of approval for a plan of operations where operations have not been completed overlooks the fact that a variety of circumstances can result in the loss of a valid existing right to conduct operations on a mining claim after the initial approval of a plan of operations. Therefore, it might be inconsistent with the United States mining laws to extend the term of approval of the plan of operations in some circumstances where the suggested criteria are met. Accordingly, the final rule was not changed in response to these suggestions.

The Department agrees that more time in addition to that authorized by a plan of operations may be required to mine additional mineral reserves identified after mineral production begins pursuant to the approved plan. However, this fact does not justify the suggestion that the original term of approval of a plan should be inflated to cover such a contingency. It is well established that mining activities are subject to regulation to protect the environment. Congress also has specifically declared that the policy of the Federal Government is to encourage private enterprise in "the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment * * *." 30 U.S.C. 21a. The environmental impacts of mining mineral reserves that are identified after approval of a plan obviously could not have been adequately considered or mitigated by the authorized officer in reviewing the proposed plan. Thus, it would be inconsistent with 30 U.S.C. 21a and probably other environmental statutes, for the Forest Service to permit the mining of reserves identified after mineral production begins without review of those operations pursuant to § 292.64(h)(4) or § 292.64(i) of this final rule, as applicable. Consequently, the possibility that additional reserves might be identified after mineral production begins does not justify the suggestion that the period of approval for a plan of operations should be longer than the minimum amount of time reasonably necessary for a prudent operator to complete the approved mineral development activities. The final rule has not been changed in response to this comment.

The Department agrees that mining operations might be delayed as a consequence of an operator's decision to challenge the Forest Service's determination of the amount of time that would be reasonably necessary for a prudent operator to complete the approved mineral operations. The same is true with respect to all requirements included in an approved plan of operations and, for that matter, in all authorizations issued by the Government. The only way to eliminate this risk would be to permit mining claimants to engage in unrestricted and unregulated mining on National Forest System lands. Congress rejected that option in 1897 when it enacted the Organic Administration Act which authorized the Department of Agriculture to promulgate reasonable rules and regulations to protect the surface of National Forest System lands from the adverse impacts of locatable mineral operations. 16 U.S.C. 551. In enacting 30 U.S.C. 21a, Congress restated that the policy of the Federal Government is to encourage private enterprise in "the reclamation of mined land so as to lessen any adverse impact of mineral extraction and processing upon the physical environment * * *." Thus, the fact that an operator's challenge that the term of approval of a plan of operations might delay the commencement of the approved operations does not warrant a change in § 292.64(g). The likelihood that a challenge to an approved plan of operations will delay the start-up of such operations is a risk that the operator must evaluate and assume in deciding whether to bring the challenge. No change to the rule was made based upon these suggestions.

From a legal standpoint, the Department disagrees with the reviewer's contention that the inability to secure financing, in and of itself, may result in a taking and we are unaware of any case which supports such a proposition. As described in some detail previously, takings cases are highly fact specific inquiries which generally require a court to consider the following factors: the character of the governmental action, the economic impact of that action, and the reasonable investment-backed expectations of the property owner. The inability to obtain financing may have some bearing on

one or more of the aforementioned factors, but it is not dispositive.

From a practical standpoint, however, it seems somewhat counter intuitive to contend that an operator would be unable to obtain financing based on the establishment of an approval period that was calculated to be sufficient for a prudent operator to complete the mining operations as documented in the plan of operations. However, in light of the change made to the final rule which expressly allows for extensions in the approval period, the Department believes that this reviewer's concern about the potential takings implications of this provision has been resolved.

For these reasons, § 292.64(g) of this part is reasonable and within the authority of the agency. This provision is preferable to the agency's general mining regulations which do not specifically address the issue of the term of approval of a plan of operations other than to require that the proposed plan of operations submitted by the operator must describe the period during which the proposed activity will take place.

The Department believes that adopting the requirement in § 292.64(g) of this subpart may result in the following benefits. Specifying the term of approval of a plan of operations should result in increasing the promptness with which mining operations are pursued to a conclusion, and the promptness with which the lands are reclaimed and restored to other public uses. Regrettably, past experience suggests that, on occasion, operators behave less diligently once the mining phase ceases and the reclamation phase begins because reclamation operations are costly rather than profitable. Where the term of a plan of operations is fixed rather than open-ended, sanctions can be imposed for failure to complete the reclamation activities by the plan's termination date. This fosters the well recognized purposes of the United States' laws of furthering the speedy and orderly development of the nation's mineral resources and insuring that federal lands are not in an unreclaimed state, or reclaimed at public expense, to the detriment of the right of the American people to use public lands. These goals are particularly important where, as in the case of the SRNRA, Congress has withdrawn lands from the operation of the United States mining laws subject to valid existing rights and specified special purposes for which the lands are to be administered.

Also knowing when mineral operations must be completed will improve the agency's ability to evaluate the environmental impacts of those activities because those impacts are dependent on the rate at which the activities are conducted as well as the nature of the activities. Better information regarding the likely impacts of mineral operations should result in the preparation of better environmental documents required by procedural statutes such as the National Environmental Policy Act and better compliance with substantive environmental statutes such as the Endangered Species Act. Better information about the likely impacts of mining also will allow the Government to make more accurate determinations regarding the amount of the bond that an operator should be required to post.

For these reasons, § 292.64(g) of this part was not revised in response to the comments. However, a new § 292.64(h)(4), was included in the final rule to clarify that it is possible to modify an approved plan of operations to extend its term or scope.

Comment: Section 292.64(i) of the proposed rule contains an erroneous reference to § 292.64. One reviewer detected that § 292.64(i) included a reference to § 292.64 rather than § 292.63.

Response: The Department recognizes the potential for confusion resulting from including a reference to § 292.64 in § 292.64. To rectify the matter, this final rule paragraph has been changed to eliminate any reference to a section of the supplementary regulations. It should be well understood that if a new or supplemental plan of operations is necessary, it will be subject to the review and approval provisions of these supplementary regulations.

Section 292.65, Plan of Operations—Suspension

This section of the second proposed rule authorized the Forest Service to suspend mineral development activities if the operations are being conducted in violation of applicable law, regulation, or the terms and conditions of the operator's approved plan of operations. Except in cases where the violations present an imminent threat of harm to public health, safety, or the environment, this provision required the Forest Service to give the operator 30 days advance notice of the suspension. The 30-day notice should, in most instances, give the operator sufficient time to correct the violations prior to the suspension taking effect. In cases where mineral operations present an imminent threat of harm to public health, safety, or the environment (or where such harm is already occurring), regardless of whether the operator is in violation of applicable laws, regulations, or the terms and conditions of the plan of operations, the second proposed rule authorized the Forest Service to take immediate action to suspend the mineral development activity. In these cases, the rule directed the Forest Service to notify the operator of the reason for the action as soon as it is reasonably practicable after the suspension.

Comment: Suspension authority is duplicative of existing authority and may result in regulatory abuse. One reviewer noted that the Forest Service already has broad enforcement authority to suspend mining operations and that this provision in the rule is, therefore, unnecessary and will lead to regulatory abuses by the Forest Service.

Response: The current United States Department of Agriculture regulations at 36 CFR part 228, subpart A, do not contain a provision authorizing the Forest Service to suspend a mineral operation, in whole or in part, if an operator is not in compliance with applicable statutes, regulations or terms and conditions of the approved plan of operations. Where there is an immediate threat to public health, safety, or the environment, presented by the mining operation, this provision allows the Forest Service to respond quickly. The potential for regulatory abuse, if any, is significantly reduced by requiring written notice to the operator which informs him or her of the basis for the suspension.

Where there is no threat to public health, safety or the environment, there realistically is no potential for "regulatory abuse" feared by this reviewer since the Forest Service must inform the operator in writing of the proposed suspension 30 days before it takes effect. Generally, it is presumed that 30 days should be sufficient time for the operator to address the concern which led to the issuance of the suspension notice. For these reasons, no change has been made to the second final rule as a result of this comment.

Section 292.69, Concurrent Reclamation.

The second proposed rule stipulated that reclamation of National Forest System lands and resources should occur concurrently with the mineral operation "to the maximum extent practicable."

Comment: The operator, not the Forest Service, should determine what is reasonable and practicable reclamation. One reviewer acknowledged that concurrent reclamation is a reasonable requirement to protect the SRNRA so long as it is interpreted sensibly. However, the reviewer asserted that

what is reasonable and practicable should be left to the judgment of the operator, not the Forest Service.

Response: The regulations being adopted to govern mineral operations in the SRNRA provide the operator an opportunity to give input concerning reclamation measures appropriate for lands disturbed by the mining activities. Section 292.63(b) of this part requires the operator to submit a proposed plan of operations. Section 292.63(c) requires the proposed plan to address environmental protection requirements, including reclamation. Presumably an operator would not propose reclamation activities considered to be impracticable. Assuming that the Forest Service agrees that the proposed plan of operations provides, to the maximum extent possible, that reclamation shall proceed concurrently with the mineral operations and satisfies the other requirements of 36 CFR 228.8, the reclamation would be approved. It is standard Forest Service practice to work with an operator to fashion a mutually agreeable solution in cases where the Forest Service concludes that the proposed reclamation is unreasonable.

However, for a number of reasons, the Department cannot agree that the operator should be given unilateral permission to determine how reclamation of National Forest System lands should occur. Most importantly, the statute, which extended the United States mining laws to National Forest System lands reserved from the public domain, charged the Department to "insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction * * *." 16 U.S.C. 551. Adopting the policy advocated by the reviewer would effectively delegate the Department's statutory duties to those whom the Department is required to regulate.

The manner in which lands are reclaimed also has an enormous bearing on their ability to be restored to other productive uses. The Forest Service has the ultimate responsibility to specify the manner in which mined lands are reclaimed so that the rights of the public in those lands are preserved.

Finally, there are great economic incentives for operators to perform as little reclamation as possible, because reclamation represents the most controllable cost of mineral operations. Letting operators determine the type and scope of reclamation would likely result in lesser protection being afforded the lands and resources within the SRNRA than is provided outside the SRNRA. This practice would be contrary to the statutory requirements to protect and preserve the values of the SRNRA. For these reasons, no change has been made to § 292.69 as a result of the comment.

Comment: The extreme requirements in the concurrent reclamation provision are not justified. One reviewer objected to the requirement in proposed § 292.69 that plans of operations should provide, to the maximum extent practicable, that reclamation proceed concurrently with the mineral operation. The reviewer asserted that there is no administrative justification for departure from the agency's general mining regulations which provide that reclamation must occur upon the exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the completion of operations, unless a longer time is allowed by the authorized officer. The reviewer also asserted that there is no administrative justification for departure from the reclamation provision of the first final rule which called for concurrent reclamation when practicable, not to the maximum extent practicable. The reviewer asserts that § 292.69 provides another opportunity for the Forest Service to impose unreasonable and expensive procedures upon an operator and, thereby, deprive him of his property rights.

Response: As discussed previously, past experience demonstrates that operators tend to be less diligent once mining ceases and reclamation begins because reclamation of operations are costly rather than profitable. The Department believes that requiring concurrent reclamation to the maximum extent practicable will result in reclamation being initiated and completed sooner than it would be under the standards set forth in 36 CFR 228.8 of the Department's general mining regulations or the April 3, 1996, final rule. This result is important for a number of reasons.

The first involves the purposes of the Act. Section 2 of the Act specifically enumerated the features that led to the designation of the SRNRA. Some of these features included: (1) It represents one of the last wholly intact vestiges of an invaluable legacy of wild and scenic rivers, (2) it exhibits a richness of ecological diversity unusual in a basin of its size, and (3) it offers exceptional opportunities for a wide range of recreational activities, including wilderness, water sports, fishing, hunting, camping, and sightseeing. The purposes of the Act are to ensure "* * * the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural resources * * *." 16 U.S.C. 460bbb–2(a).

The SRNRA was recognized by Congress as a unique area to be protected to the extent allowable by law. In addition, in Section 8 of the Act entitled "Minerals," Congress directed the Secretary of Agriculture to promulgate supplementary regulations to promote and protect the purposes for the recreation area is designated. 16 U.S.C. 460bbb–6(d). Therefore, this rule is specifically designed to supplement the current locatable mineral regulations at 36 CFR part 228, subpart A, and thus provide a greater degree of protection for the federal lands and resources in the SRNRA than may be available for federal lands and resources administered elsewhere.

One additional protective measure is the concurrent reclamation requirement in § 292.69. This requirement will ensure that mined land is restored to another productive use in the shortest possible time. Reclamation will be required to the fullest extent practicable. This will fulfill the Department's statutory obligation under the Act to promote and protect the values for which the SRNRA was designated.

Secondly, requiring concurrent reclamation to the maximum extent practicable will foster the Federal Government's policy to encourage private enterprise in "the reclamation of mined lands, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment" as established by Congress in 30 U.S.C. 21a. Reclamation either eliminates or dramatically reduces the adverse impacts of mineral extraction upon the environment. In most, if not all cases, requiring more prompt reclamation will reduce the amount of environmental impacts caused by mineral extraction.

Finally, the benefits of requiring concurrent reclamation to the maximum extent practicable—increasing the promptness with which mined lands are returned to other productive uses and reducing the overall quantum of adverse impacts of mineral extraction upon the environment—are consistent with the Department's charge to "ensure the objects of such reservations, namely to regulate their occupancy and use and to preserve the forests thereon from destruction * * *." 16 U.S.C. 551. Thus, the departure from the reclamation requirements in 36 CFR 228.8 and the April 3, 1996, final rule is reasonable and adequately justified.

Mining claimants in the SRNRA have no right to conduct mineral operations without adhering to reclamation requirements. The law, which extended the United States mining laws to National Forest System lands reserved from the public domain, specifically provides that persons entering national forests for the purposes of prospecting, locating, and developing the mineral resources thereof, "must comply with the rules and regulations covering such national forests." 16 U.S.C. 478. Moreover, another section of that statute charged the Department to "insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction * * *." 16 U.S.C. 551. Also, while the reclamation requirement in § 292.69 of the second proposed rule is admittedly stricter than the reclamation requirements in 36 CFR part 228, subpart A, or the April 3, 1996, final rule, it only requires concurrent reclamation to the "maximum extent practicable," which is by definition, achievable. The concurrent reclamation requirement by its own terms, therefore, does not amount to a prohibition on a mining claimant's entitlement to conduct mineral operations on a mining claim in which valid existing rights have been established. Consequently, the assertion that the concurrent reclamation requirement in § 292.69 effects a taking of the claimant's property rights is without merit.

For these reasons, no change has been made in § 292.69 as a result of the comment.

Section 292.70, Indemnification.

The second proposed rule specified that the owners and/or operators of mining claims and the owners and/or lessees of outstanding mineral rights would be liable for the following: (1) Indemnifying the United States for injury, loss, or damage which the United States incurs as a result of any mining operation in the SRNRA; (2) payments made by the United States in satisfaction of claims, demands, or judgments for such injury, loss, or damage; and (3) costs incurred by the United States, including attorney's fees and expenses, for any action involving noncompliance with an approved plan of operations or activities outside a mutually agreed to operating plan.

Comment: The indemnification provision is vague and of questionable legal authority. In addition to suggesting that this section was vague and potentially over inclusive, one reviewer requested the agency to specify the authority under which it may seek indemnification from operators to recover costs associated with, among other things, injury, loss, or damage to National Forest System lands and resources resulting from mineral operations in the SRNRA. This reviewer concluded that since this is a new provision for the SRNRA, there must be new statutory authority or a recent change in the law from which it is derived. If no such new authority exists, the reviewer argued that this provision must be deleted.

Response: The authority for the indemnification provision in the supplementary regulations for mining in the SRNRA is derived from the Organic Administration Act of 1897, 16 U.S.C. 551, which states in relevant part that,

> The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside * * * and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction * * *.

The reviewer's presumption that the Forest Service must be able to point to a recent change in the law to support the inclusion of an indemnification provision in this rule because it is "new and unique" in the SRNRA is unfounded. The authority dates back to 1897 with the enactment of the Organic Administration Act. Similar indemnification provisions are incorporated into several other regulations which prescribe the terms for various uses of National Forest System lands. For example, the regulations governing issuance of special use authorizations for uses such as rights-of-way, ski areas, and communications facilities contain an indemnification provision (36 CFR 251.56(d)). The regulations governing the leasing and development of oil and gas resources on National Forest System lands also includes an indemnification provision (36 CFR 228.110).

The Department does not find the indemnification provision unconstitutionally vague or overly inclusive. In *Village of Hoffman Estates* v. *The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982), the Supreme Court enumerated a number of factors which affect the degree of vagueness which the Constitution tolerates. For example, a less strict vagueness test will apply if a regulation is economic in nature, does not contain criminal sanctions, and does not implicate constitutionally protected rights. In *United States* v. *Doremus*, 888 F.2d 630 (9th Cir. 1989), the United States Court of Appeals for the Ninth Circuit rejected a vagueness challenge to a Forest Service regulation prohibiting certain types of conduct related to mining activities on National Forest System lands.

This second final rule meets all the factors required by the Supreme Court ruling. Consequently, there have been no changes made to the text of the final rule based on this comment.

Comment: The provision authorizing collection of attorneys' fees and expenses is unlawful. One reviewer asserted that the Department lacks the statutory authority to include attorneys' fees and expenses in § 292.70(c) as items for which the Government can be indemnified, in the event an operator is found to be conducting mineral development activities in the SRNRA where a plan of operations or operating plan has not been approved or where the activities are not in compliance with an approved plan of operations or an approved operating plan.

Response: Although the Department does not agree that the authority to recover attorneys' fees and expenses does not exist, the final rule has been modified to eliminate these items from the rule. However, to the extent independent authority exists to recover attorneys' fees and expenses under statutes including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* or the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, the Department reserves the right to seek such a recovery in the event unauthorized mineral operations in the SRNRA result in violations of one or more of these authorities.

Regulatory Impact

This second final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this regulation is not a significant rule. It will not have an annual effect of $100 million or more on the economy and will not adversely affect productivity, competition, jobs, the environment, public health and safety, or State and local governments.

This second final rule will not interfere with an action taken or planned by another agency and it will not raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. In short, little or no effect on the National economy will result from this second final rule, since it affects only mining activities on

National Forest System lands in the SRNRA. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the RFA because of its limited scope and application. Also, this second final rule does not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in local or foreign markets.

Environmental Impact

An environmental assessment and a Finding of No Significant Impact titled "Regulation of Mineral Operations on National Forest System Lands within the Smith River National Recreation Area" have been prepared and both documents are available upon request by calling the contact listed earlier in this rulemaking under FOR FURTHER INFORMATION CONTACT.

Controlling Paperwork Burdens on the Public

The second proposed rule modified a previously approved information collection to include the requirement that a plan of operations include additional information identifying hazardous or toxic materials used in the operation, the mineral wastes that might be generated, and how public health and safety are to be maintained.

This information collection modification was discussed in the preamble of the second proposed rule and comment was requested specifically on the information collection. As discussed in the comment and response section, the one comment received on the collection stated that the time for collecting the additional information was not sufficient. The agency has increased the estimate of burden hours from 2 hours to 20 hours in response to this comment.

The final information collection package for this rulemaking has been reviewed by the Office of Management and Budget according to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320. The information requirements in this rule have been assigned control number 0596–0138 for use through September 30, 1998.

No Takings Implications

In compliance with Executive Order 12630 and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, the takings implications of the second final rule have been reviewed and considered. It has been determined that there is no risk of a taking.

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Upon adoption of this rule: (1) All State and local laws and regulations that are in conflict with this final rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this final rule and; (3) it would not require administrative proceedings before parties would file suit in court challenging its provisions.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on state, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 292

Administrative practice and procedure, Environmental protection, Mineral resources, National forests, and National recreation areas.

Therefore, for the reasons set forth in the preamble, part 292 of Chapter II of Title 36 of the Code of Federal Regulations is amended by adding a new subpart G to read as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart G—Smith River National Recreation Area

Sec.

292.60 Purpose and scope.
292.61 Definitions.
292.62 Valid existing rights.

Locatable Minerals

292.63 Plan of operations—supplementary requirements.
292.64 Plan of operations—approval.
292.65 Plan of operations—suspension.

Outstanding Mineral Rights

292.66 Operating plan requirements—outstanding mineral rights.
292.67 Operating plan approval—outstanding mineral rights.

Mineral Materials

292.68 Mineral material operations.

Other Provisions

292.69 Concurrent reclamation.
292.70 Indemnification.Subpart G—Smith River National Recreation Area

Subpart G—Smith River National Recreation Area

Authority: 16 U.S.C. 460bbb *et seq.*

§ 292.60 Purpose and scope.

(a) *Purpose.* The regulations of this subpart set forth the rules and procedures by which the Forest Service regulates mineral operations on National Forest System lands within the Smith River National Recreation Area as established by Congress in the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

(b) *Scope.* The rules of this subpart apply only to mineral operations on National Forest System lands within the Smith River National Recreation Area.

(c) *Applicability of other rules.* The rules of this subpart supplement existing Forest Service regulations concerning the review, approval, and administration of mineral operations on National Forest System lands including, but not limited to, those set forth at parts 228, 251, and 261 of this chapter.

(d) *Conflicts.* In the event of conflict or inconsistency between the rules of this subpart and other parts of this chapter, the rules of this subpart take precedence, to the extent allowable by law.

§ 292.61 Definitions.

The special terms used in this subpart have the following meaning:

Act means the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

Authorized officer means the Forest Service officer to whom authority has been delegated to take actions pursuant to the provisions of this subpart.

Hazardous material means any hazardous substance, pollutant, contaminant, hazardous waste, and oil or other petroleum products, as those terms are defined under any Federal, State, or local law or regulation.

Outstanding mineral rights means the rights owned by a party other than the surface owner at the time the surface was conveyed to the United States.

SRNRA is the abbreviation for the Smith River National Recreation Area, located within the Six Rivers National Forest, California.

§ 292.62 Valid existing rights.

(a) *Definition.* For the purposes of this subpart, valid existing rights are defined as follows:

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(1) *For certain "Wild" River segments.* The rights associated with all mining claims on National Forest System lands within the SRNRA in "wild" segments of the Wild and Scenic Smith River, Middle Fork Smith River, North Fork Smith River, Siskiyou Fork Smith River, South Fork Smith River, and their designated tributaries, except Peridotite Creek, Harrington Creek, and the lower 2.5 miles of Myrtle Creek, which:

(i) Were properly located prior to January 19, 1981;

(ii) Were properly maintained thereafter under the applicable law;

(iii) Were supported by a discovery of a valuable mineral deposit within the meaning of the United States mining laws prior to January 19, 1981, which discovery has been continuously maintained since that date; and

(iv) Continue to be valid.

(2) *For Siskiyou Wilderness.* The rights associated with all mining claims on National Forest System lands within the SRNRA in the Siskiyou Wilderness except, those within the Gasquet-Orleans Corridor addition or those rights covered by paragraph (a)(1) of this section which:

(i) Were properly located prior to September 26, 1984;

(ii) Were properly maintained thereafter under the applicable law;

(iii) Were supported by a discovery of a valuable mineral deposit within the meaning of the United States mining laws prior to September 26, 1984, which discovery has been continuously maintained since that date; and

(iv) Continue to be valid.

(3) *For all other lands.* The rights associated with all mining claims on National Forest System lands in that portion of the SRNRA not covered by paragraph (a)(1) or (a)(2) of this section which:

(i) Were properly located prior to November 16, 1990;

(ii) Were properly maintained thereafter under the applicable law;

(iii) Were supported by a discovery of a valuable mineral deposit within the meaning of the United States mining laws prior to November 16, 1990, which discovery has been continuously maintained since that date; and

(iv) Continue to be valid.

(b) *Operations to confirm discovery.* The authorized officer shall authorize those mineral operations that may be necessary for the purpose of gathering information to confirm or otherwise demonstrate the discovery of a valuable mineral deposit consistent with the definition in paragraph (a) of this section or to obtain evidence for a contest hearing regarding the claim's validity, upon receipt of a proposed plan of operations as defined in § 292.63 of this subpart to conduct such operations and of sufficient information from the operator to show an exposure of valuable minerals on a claim that predates the withdrawal of the federal land from the operation of the United States mining laws. The authorized officer shall authorize only those operations that may be necessary to confirm or demonstrate the discovery of a valuable mineral deposit prior to the date of withdrawal of the federal land on which the claim is situated. Pursuant to this paragraph, the authorized officer shall not authorize any operations which would constitute prospecting, exploration, or otherwise uncovering or discovering a valuable mineral deposit.

Locatable Minerals

§ 292.63 Plan of operations—supplementary requirements.

(a) *Applicability.* In addition to the activities for which a plan of operations is required under § 228.4 of this chapter, a plan of operations is required when a proposed operation within the SRNRA involves mechanical or motorized equipment, including a suction dredge and/or sluice.

(b) *Information to support valid existing rights.* A proposed plan of operations within the SRNRA must include at least the following information on the existence of valid existing rights:

(1) The mining claim recordation serial number assigned by the Bureau of Land Management;

(2) A copy of the original location notice and conveyance deeds, if ownership has changed since the date of location;

(3) A copy of affidavits of assessment work or notices of intention to hold the mining claim since the date of recordation with the Bureau of Land Management;

(4) Verification by the Bureau of Land Management that the holding or maintenance fees have been paid or have been exempted;

(5) Sketches or maps showing the location of past and present mineral workings on the claims and information sufficient to locate and define the mining claim corners and boundaries on the ground;

(6) An identification of the valuable mineral that has been discovered;

(7) An identification of the site within the claims where the deposit has been discovered and exposed;

(8) Information on the quantity and quality of the deposit including copies of assays or test reports, the width, locations of veins, the size and extent of any deposit; and

(9) Existing evidence of past and present sales of the valuable mineral.

(c) *Minimum information on proposed operations.* In addition to the requirements of paragraph (b) of this section, a plan of operations must include the information required at §§ 228.4 (c)(1) through (c)(3) of this chapter which includes information about the proponent and a detailed description of the proposed operation. In addition, if the operator and claim owner are different, the operator must submit a copy of the authorization or agreement under which the proposed operations are to be conducted. A plan of operations must also address the environmental requirements of § 228.8 of this chapter which includes reclamation. In addition, a plan of operations also must include the following:

(1) An identification of the hazardous materials and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation, and the proposed means for disposing of such substances;

(2) An identification of the character and composition of the mineral wastes that will be used or generated and a proposed method or strategy for their placement, control, isolation, or removal; and

(3) An identification of how public health and safety are to be maintained.

§ 292.64 Plan of operations—approval.

(a) *Timeframe for review.* Except as provided in paragraph (b) of § 292.62 of this subpart, upon receipt of a plan of operations, the authorized officer shall review the information related to valid existing rights and notify the operator in writing within 60 days of one of the following situations:

(1) That sufficient information on valid existing rights has been provided and the anticipated date by which the valid existing rights determination will be completed, which shall not be more than 2 years after the date of notification; unless the authorized officer, upon finding of good cause with written notice and explanation to the operator, extends the time period for completion of the valid existing rights determination.

(2) That the operator has failed to provide sufficient information to review a claim of valid existing rights and, therefore, the authorized officer has no obligation to evaluate whether the operator has valid existing rights or to process the operator's proposed plan of operations.

(b)(1) If the authorized officer concludes that there is not sufficient

evidence of valid existing rights, the officer shall so notify the operator in writing of the reasons for the determination, inform the operator that the proposed mineral operation cannot be conducted, advise the operator that the Forest Service will promptly notify the Bureau of Land Management of the determination and request the initiation of a mineral contest action against the pertinent mining claim, and advise the operator that further consideration of the proposed plan of operations is suspended pending final action by the Department of the Interior on the operator's claim of valid existing rights and any final judicial review thereof.

(2) If the authorized officer concludes that there is not sufficient evidence of valid existing rights, the authorized officer also shall notify promptly the Bureau of Land Management of the determination and request the initiation of a mineral contest action against the pertinent mining claims.

(c) An authorized officer's decision pursuant to paragraph (b) of this section that there is not sufficient evidence of valid existing rights is not subject to further agency or Department of Agriculture review or administrative appeal.

(d) The authorized officer shall notify the operator in writing that the review of the remainder of the proposed plan will proceed if:

(1) The authorized officer concludes that there is sufficient evidence of valid existing rights;

(2) Final agency action by the Department of the Interior determines that the applicable mining claim constitutes a valid existing right; or

(3) Final judicial review of final agency action by the Department of the Interior finds that the applicable mining claim constitutes a valid existing right.

(e) Upon completion of the review of the plan of operations, the authorized officer shall ensure that the minimum information required by § 292.63(c) of this subpart has been addressed and, pursuant to § 228.5(a) of this chapter, notify the operator in writing whether or not the plan of operations is approved.

(f) If the plan of operations is not approved, the authorized officer shall explain in writing why the plan of operations cannot be approved.

(g) If the plan of operations is approved, the authorized officer shall establish a time period for the proposed operations which shall be for the minimum amount of time reasonably necessary for a prudent operator to complete the mineral development activities covered by the approved plan of operations.

(h) An approved plan of operations is subject to review and modification as follows:

(1) To bring the plan into conformance with changes in applicable federal law or regulation; or

(2) To respond to new information not available at the time the authorized officer approved the plan, for example, new listings of threatened or endangered species; or

(3) To correct errors or omissions made at the time the plan was approved, for example, to ensure compliance with applicable federal law or regulation; or

(4) To permit operations requested by the operator that differ in type, scope, or duration from those in an approved plan of operations but that are not subject to paragraph (i) of this section.

(i) If an operator desires to conduct operations that differ in type, scope, or duration from those in an approved plan of operations, and if those changes will result in resource impacts not anticipated when the original plan was approved, the operator must submit a supplemental plan or a modification of the plan for review and approval.

§ 292.65 Plan of operations—suspension.

(a) The authorized officer may suspend mineral operations due to an operator's noncompliance with applicable statutes, regulations, or terms and conditions of the approved plan of operations.

(1) In those cases that present a threat of imminent harm to public health, safety, or the environment, or where such harm is already occurring, the authorized officer may take immediate action to stop the threat or damage without prior notice. In such case, written notice and explanation of the action taken shall be given the operator as soon as reasonably practicable following the suspension.

(2) In those cases that do not present a threat of imminent harm to public health, safety, or the environment, the authorized officer must first notify the operator in writing of the basis for the suspension and provide the operator with reasonably sufficient time to respond to the notice of the authorized officer or to bring the mineral operations into conformance with applicable laws, regulations, or the terms and conditions of the approved plan of operations.

(b) Except as otherwise provided in this section, the authorized officer shall notify the operator not less than 30 days prior to the date of the proposed suspension.

Outstanding Mineral Rights

§ 292.66 Operating plan requirements—outstanding mineral rights.

(a) Proposals for mineral operations involving outstanding mineral rights within the SRNRA must be documented in an operating plan and submitted in writing to the authorized officer.

(b) An operating plan for operations involving outstanding mineral rights within the SRNRA must include the following:

(1) The name and legal mailing address of the operator, owner, and any lessees, assigns, and designees;

(2) A copy of the deed or other legal instrument that conveyed the outstanding mineral rights;

(3) Sketches or maps showing the location of the outstanding mineral rights, the proposed area of operations, including, but not limited to, existing and/or proposed roads or access routes identified for use, any new proposed road construction, and the approximate location and size of the areas to be disturbed, including existing or proposed structures, facilities, and other improvements to be used;

(4) A description of the type of operations which includes, at a minimum, a list of the type, size, location, and number of structures, facilities, and other improvements to be used;

(5) An identification of the hazardous materials and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation and the proposed means for disposing of such substances;

(6) An identification of the character and composition of the mineral wastes that will be used or generated and a proposed method or strategy for their placement, control, isolation, remediation, or removal; and

(7) A reclamation plan to reduce or control on-site and off-site damage to natural resources resulting from mineral operations. The plan must:

(i) Provide reclamation to the extent practicable;

(ii) Show how public health and safety are maintained;

(iii) Identify and describe reclamation measures to include, but not limited to, the following:

(A) Reduction and/or control of erosion, landslides, and water runoff;

(B) Rehabilitation of wildlife and fisheries habitat to be disturbed by the proposed mineral operation; and

(C) Protection of water quality.

(iv) Demonstrate how the area of surface disturbance will be reclaimed to a condition or use that is consistent

with the Six Rivers National Forest Land and Resource Management Plan.

§ 292.67 Operating plan approval—outstanding mineral rights.

(a) Upon receipt of an operating plan, the authorized officer must review the information related to the ownership of the outstanding mineral rights and notify the operator that:

(1) Sufficient information on ownership of the outstanding mineral rights has been provided; or

(2) Sufficient information on ownership of outstanding mineral rights has not been provided, including an explanation of the specific information that still needs to be provided, and that no further action on the plan of operations will be taken until the authorized officer's receipt of the specified information.

(b) If the review shows outstanding mineral rights have not been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have not been verified, explain the reasons for such a finding, and that the proposed mineral operation cannot be conducted.

(c) If the review shows that outstanding mineral rights have been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have been verified and that review of the proposed operating plan will proceed.

(d) The authorized officer shall review the operating plan to determine if all of the following criteria are met:

(1) The operating plan is consistent with the rights granted by the deed;

(2) The operating plan is consistent with the Six Rivers National Forest Land and Resource Management Plan; and

(3) The operating plan uses only so much of the surface as is necessary for the proposed mineral operations.

(e) Upon completion of the review of the operating plan, the authorized officer shall notify the operator in writing of one of the following:

(1) The operating plan meets all of the criteria of paragraphs (d)(1) through (d)(3) of this section and, therefore, is approved;

(2) The operating plan does not meet one or more of the criteria in paragraphs (d)(1) through (d)(3) of this section. Where feasible, the authorized officer may indicate changes to the operating plan that would satisfy the criteria in paragraphs (d)(1) through (d)(3) of this section and, thus, if accepted by the operator, would result in approval of the operating plan.

(f) To conduct mineral operations beyond those described in an approved operating plan, the owner or lessee must submit, in writing, an amended operating plan to the authorized officer at the earliest practicable date. New operations covered by the proposed amendment may not begin until the authorized officer has reviewed and responded in writing to the proposed amendment. The authorized officer shall review a proposed amendment of an approved operating plan to determine that the criteria in paragraphs (d)(1) through (d)(3) of this section are met.

Mineral Materials

§ 292.68 Mineral material operations.

Subject to the provisions of part 228, subpart C, and part 293 of this chapter, the authorized officer may approve contracts and permits for the sale or other disposal of mineral materials, including but not limited to, common varieties of gravel, sand, or stone. However, such contracts and permits may be approved only if the material is not within a designated wilderness area and is to be used for the construction and maintenance of roads and other facilities within the SRNRA or the four excluded areas identified by the Act.

Other Provisions

§ 292.69 Concurrent reclamation.

Plans of operations involving locatable minerals, operating plans involving outstanding mineral rights, and contracts or permits for mineral materials should all provide, to the maximum extent practicable, that reclamation proceed concurrently with the mineral operation.

§ 292.70 Indemnification.

The owner and/or operator of mining claims and the owner and/or lessee of outstanding mineral rights are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for the following:

(a) Costs, damages, claims, liabilities, judgments, injury and loss, including those incurred from fire suppression efforts, and environmental response actions and cleanup and abatement costs incurred by the United States and arising from past, present, and future acts or omissions of the owner, operator, or lessee in connection with the use and occupancy of the unpatented mining claim and/or mineral operation. This includes acts or omissions covered by Federal, State, and local pollution control and environmental statutes and regulations.

(b) Payments made by the United States in satisfaction of claims, demands, or judgments for an injury, loss, damage, or costs, including for fire suppression and environmental response action and cleanup and abatement costs, which result from past, present, and future acts or omissions of the owner, operator, or lessee in connection with the use and occupancy of the unpatented mining claim and/or mineral operations.

(c) Costs incurred by the United States for any action resulting from noncompliance with an approved plan of operations or activities outside an approved operating plan.

Dated: March 12, 1998.

Brian Eliot Burke,

Deputy Under Secretary, NRE.

[FR Doc. 98–7924 Filed 3–26–98; 8:45 am]

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Part IV

Environmental Protection Agency

Public Review Draft Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5988–3]

Public Review Draft Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems

AGENCY: Environmental Protection Agency.

ACTION: Solicitation of comments on public review draft.

SUMMARY: In this Public Notice, the Environmental Protection Agency (EPA) is seeking comments on the public review draft "Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems." The public review draft guidelines are published in the Supplementary Information section of this notice.

DATES: Submit written comments on or before June 25, 1998.

ADDRESSES: Send written comments on these draft guidelines to the Operator Certification Comment Clerk: Water Docket MC–4101 (docket #W–98–07), Environmental Protection Agency: 401 M Street, S.W., Washington DC 20460. Please submit an original and three copies of your comments and enclosures (including references).

Those who comment and want EPA to acknowledge receipt of their comments must enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by Docket #W–98–07. Comments and data will also be accepted on disks as a WordPerfect 5.1 or 6.1 file. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for these guidelines has been established under Docket #W–98–07, and includes supporting documentation as well as printed paper versions of electronic comments. The record is available for review at EPA's Water Docket: 401 M Street, S.W., Washington DC 20460. For access to the Docket materials, call 202–260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment and reference Docket #W–98–07.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426–4791, for general information about and copies of this document. For technical inquiries, contact Richard Naylor, Implementation and Assistance Division, Office of Ground Water and Drinking Water (4606), U.S. EPA, 401 M Street, SW, Washington, DC, 20460. The telephone number is (202) 260–5135 and the e-mail address is naylor.richard@epamail.epa.gov.

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I. Introduction

Statutory Requirements

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182) direct the Administrator of the United States Environmental Protection Agency (EPA), in cooperation with the States, to publish guidelines in the **Federal Register** specifying minimum standards for certification and recertification of operators of community and nontransient noncommunity public water systems. The final guidelines are required to be published by February 1999. States then have two years to adopt and implement an operator certification program that meets the requirements of these guidelines. After that date, if a State has not adopted and implemented an approved program, the Administrator must withhold 20 percent of the funds a State is otherwise entitled to receive in its Drinking Water State Revolving Fund (DWSRF) capitalization grants under section 1452 of SDWA.

All of the requirements contained in these guidelines are requirements to avoid DWSRF capitalization grant withholding. There are no other sanctions for States with operator certification programs that do not meet the requirements of these guidelines.

B. Process for Developing Guidelines

The draft guidelines consist of nine baseline standards. In the development of the nine baseline standards, EPA utilized the combined knowledge and expertise of two working groups that it appointed on operator certification. One work group, the State-EPA Work Group, was appointed to fulfill EPA's responsibility under section 1419(a) to publish guidelines on operator certification "in cooperation with States." This work group was composed of seven State and ten EPA representatives. The other work group, the Operator Certification Working Group of the National Drinking Water Advisory Council (NDWAC), also referred to as the Partnership, was formed to provide EPA with views in addition to those of States. This group was composed of 23 members representing public water systems, environmental and public interest advocacy groups, State drinking water program representatives, EPA, U.S. Department of Agriculture, U.S. Public Health Service, Indian Health Service, and other interest groups.

Procedurally, the two groups worked closely together. The Partnership identified potential categories for which minimum standards would be developed. The State-EPA Work Group then developed draft issue papers for these categories. The Partnership and the State-EPA Work Group exchanged reviews of the proposed language on what both groups referred to as "baseline standards," and worked toward achieving consensus on these standards. The baseline standards were then forwarded by the Partnership to the NDWAC. In October 1997, the NDWAC formally transmitted its recommended baseline standards to the EPA. The baseline standards contained in these guidelines are based on the formal recommendations of the NDWAC.

II. Key Certification Issues

During the development of the baseline standards upon which these guidelines are based, the work groups debated a number of certification issues. Included here, as background for the reader, is a discussion of the key issues along with a brief explanation of how

the groups chose to address each issue. EPA would like to draw the public's attention to these issues to encourage review and comment.

A. Baseline Standards

Should training, coverage and reciprocity be separate baseline standards? The Partnership, in identifying the baseline standards for operator certification, initially debated whether to make training, coverage and reciprocity separate baseline standards. After considerable discussion, the group decided that training and coverage should be appropriately included as elements within other baseline standards. It was decided that reciprocity should not be a requirement, but States should be encouraged to develop reciprocity procedures between certifying authorities.

B. Grandparenting of Operators

Should the guidelines provide for the grandparenting of operators? The terminology "grandparenting of operators," as used in the context of these draft guidelines, means exempting existing operators from the initial certification requirements such as having to have a high school education or equivalent and passing an exam. The consensus of the work groups was that grandparenting may be necessary to allow the many competent operators who have been successfully operating treatment facilities and/or distribution systems but who may not meet the initial requirements of certification to become certified. It does not make sense to put people out of work. Also, some members felt that a grandparenting provision was important because of their concern that it may not be legal in some States to impose requirements that could cause someone to lose their present job if they did not meet the initial certification requirements. Furthermore, it was felt that grandparenting may be necessary to provide a transition period for some States to accomplish the certification of operators (identify, notify, test, etc.) for which certification had not previously been required. The intent of the work groups was to make grandparenting a short-lived option available only to facilitate the transition to the new guidelines. The decision to allow grandparenting would be left to the State's discretion. Some States may not offer grandparenting; however, if a State chooses to allow grandparenting the guidelines impose certain restrictions.

C. Operator Testing

Should written exams be mandatory? Some members argued that a written exam was essential to ensure that an operator could read directions, warning labels, regulations, etc. Others felt that certain individuals did not perform well on written exams, especially those with a disability such as dyslexia and therefore, should have available an alternative to a written exam. Some members felt that a performance exam was superior. The consensus was to allow the States to decide what type of exam would be the most appropriate—written, oral, performance-based, or a combination, as long as the exam demonstrates that the applicant has the necessary skills, knowledge, ability and judgement that is appropriate for the classification.

D. Operator Training

Should the guidelines specify training requirements? Under the guidelines, training is required in order for an operator to renew his/her certification. Some members felt that the guidelines should be more specific about the continuing education requirements that are necessary for certification renewal. The consensus was to allow the States to decide what type and amount of training is appropriate.

E. Renewal Period

Should the guidelines specify a maximum time for renewal or should States decide what is appropriate? The consensus was that the guidelines should require States to have a fixed cycle of renewal; however, it was not a clear consensus as to whether the guidelines should specify a period of time or leave it up to the States. The majority of members voted for a fixed cycle of renewal not to exceed three years. Most States already have a renewal cycle of three years or less.

F. Size Categories for Systems

The work groups discussed establishing size categories for systems and tailoring certification requirements to the size of the system. All States currently have a method for categorizing systems within the State. Establishing nationally uniform size categories would be very disruptive with little benefit. The consensus was that defining the size of systems should be left up to the States.

G. Exemptions

Should small or certain types of systems be exempt from the requirement to have a certified operator? Some members of the work groups felt that there should be exemptions from the requirement to have a certified operator for some systems such as small ground water systems with no treatment. However, small water systems historically violate drinking water requirements significantly more often than those serving larger communities. Competent operating personnel are vitally important to the long term, safe operation of small water systems. The Partnership felt it was Congress' intent that small systems should be covered by the operator certification guidelines. Hence, the reimbursement provision for the training and certification costs for operators of systems serving 3,300 or less. Accordingly, the guidelines do not provide any categorical exemptions to the certification requirements. Instead, the guidelines do provide the States with the flexibility to decide what is the appropriate level of training and type of examination for certification. For example, in the case of a small ground water system with no treatment and only on-site plumbing, it may be only necessary for the operator to be trained and tested on proper sampling procedures to become certified.

H. Indian Tribes

The Partnership, through the NDWAC, made the following recommendation to EPA concerning operator certification for Indian Tribes:

> The Council recognizes that the SDWA, with regard to operator certification, is silent as to whether these guidelines apply to Indian Tribes. The Council believes that all users of public water supplies are entitled to safe water and that a program for operator certification is one means of helping to ensure this basic need. As a result, the Council recommends that EPA, seek clarification and resolve this omission, and consult to the greatest extent practicable, and to the extent permitted by law, with the Tribal governments prior to taking action on operator certification issues that impact Tribes or Tribal systems. We recommend using the operator certification baseline standards to initiate discussions with Tribes.

EPA is currently pursuing this recommendation.

I. Expense Reimbursement

The SDWA authorizes the Administrator to provide reimbursement for the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating systems serving 3,300 persons or fewer that are required to undergo training pursuant to these guidelines. The reimbursement will be provided through grants to States. EPA is in the process of developing an estimate of the reimbursable expenses of training and certification of small system operators and will work with stakeholders to develop an appropriate grant allocation methodology.

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III. Operator Certification Guidelines

A. Public Health Objectives

The public health objectives of the guidelines are to ensure that:

- Customers of any public water system be provided with an adequate supply of safe, potable drinking water.
- Consumers are confident that their water is safe to drink.
- Public water system operators are trained and certified and that they have knowledge and understanding of the public health reasons for drinking water standards.

Ongoing training is necessary to the public health objectives of this program.

B. Antibacksliding

Because these guidelines represent only minimum standards, it is expected that States whose current operator certification program requirements go beyond or exceed these minimum standards not lower their operator certification program requirements. EPA will not approve the operator certification program of any State that reduces its standards below the level that existed 12 months prior to the effective date of these guidelines unless the reduction can be justified by the State and is approved by EPA.

C. Baseline Standards

Each State operator certification program must include as a minimum the essential elements of the nine baseline standards described below. Essential elements to avoid DWSRF withholding are introduced by words such as "the States must." For each essential element, the State must describe how its operator certification program complies with the requirement. Additionally, several of the baseline standards include highly recommended elements that are intended to complement, improve, and expand the parameters of essential elements of an operator certification program. These highly recommended elements are introduced by words such as "the States should."

1. Authorization

As evidenced by an Attorney General's certification, the State must have the legal authority to implement the program requiring the certification of operators of all community and nontransient noncommunity water systems and to require that the systems comply with the appropriate requirements of the program.

2. Classification of Systems, Facilities, and Operators

To avoid DWSRF withholding, a State's program must meet the following requirements:

- It must classify and rank all community and nontransient noncommunity water systems based on indicators of potential health risk such as but not limited to: a) complexity, size and source water for treatment facilities, and b) complexity and size for distribution systems.
- It must require owners of all community and nontransient noncommunity water systems to place the direct supervision of their water system, including each treatment facility and/or distribution system, under the responsible charge of an operator(s) holding a valid certification equal to or greater than the classification of the treatment facility and/or distribution system.
- It must require, at a minimum, that the operator(s) in responsible charge or equivalent must hold a valid certification equal to or greater than the classification of their water system, including each treatment facility and distribution system, as determined by the State.
- It must require that all operating personnel making process control/system integrity decisions about water quality or quantity that affect public health be certified.
- It must require that a designated certified operator must be available for each operating shift.

3. Operator Qualifications

To avoid DWSRF withholding, States must require operator applicants to:

- Take and pass an exam that demonstrates that the applicant has the necessary skills, knowledge, ability and judgement as appropriate for the classification. All exam questions must be State validated to ensure no illegal bias, and they must be based on a job analysis and related to the classification of the system or facility.
- Have a high school diploma or a general equivalency diploma (GED).

Have the defined minimum amount of on-the-job experience for each appropriate level of certification. The amount of experience required increases with each classification level. Experience that is used to meet the experience requirement for any class of certification may not be substituted for education. Education that is used to meet the education requirement for any class of certification may not be substituted for experience.

States may allow experience and/or relevant training to be substituted for a high school diploma or GED. Post high school education may be substituted for experience. Credit may be given for experience in a related field (e.g., wastewater). Experience and education may not be used more than once as a substitution.

Grandparenting

EPA recognizes that there are many competent small system operators that may not meet the initial requirements to become certified. EPA believes that some States may need a transition period to allow these operators to become certified and that this can be accomplished through "grandparenting" the requirements in some circumstances. It is recommended that grandparenting determinations be based on factors such as system compliance history, operator experience and knowledge, system complexity, and lack of treatment.

If States choose to include a grandparenting provision in their programs, it must include the following requirements:

- During this initial transition period, grandparenting is permitted only to existing Operator(s) in Responsible Charge of existing systems which, because of State law changes to meet these guidelines, must for the first time have a certified operator.
- There are two options offered for consideration and comment concerning the time period within which a system must apply to the State for grandparenting. Because a clear consensus was not achieved during the deliberations of the work groups both options are presented here.

(1) The system must apply for grandparenting within two years of the effective date of the State's regulation; or

(2) The system must apply for grandparenting within one year of the effective date of the State's regulation.

- Grandparenting shall be site specific and non-transferable.
- After an operator is grandparented, he or she must, within some time period specified by the State, meet all requirements to obtain certification including the payment of any necessary fees, acquiring necessary training to meet the renewal requirements, and demonstrating the skills, knowledge, ability and judgement for that classification.
- If the classification of the plant or distribution system changes to a higher level, then the grandparented certification will no longer be valid.

4. Enforcement

To avoid DWSRF withholding, the State agency with primary enforcement responsibility for the Public Water System Supervision (PWSS) Program must have regulations requiring community water systems and nontransient noncommunity water systems to comply with State operator certification requirements. In nonprimacy States, the Governor shall determine which State Agency shall have this responsibility. States must have appropriate enforcement capabilities such as, but not limited to: administrative orders, bilateral compliance agreements, criminal or civil administrative penalties, and stipulated penalties.

States must have the ability to revoke operator certifications.

States must also have the ability to suspend operator certifications or take other appropriate action for operator misconduct such as, but not limited to: fraud, falsification of application, falsification of operating records, gross negligence in operation, incompetence, or failure to use reasonable care or judgement in the performance of duties.

5. Certification Renewal

To avoid DWSRF withholding, the State must establish training requirements for renewal based on the level of certification held by the operator.

States must require operators to acquire necessary amounts and types of approved training. States may determine other requirements as deemed necessary.

States must have a fixed cycle of renewal not to exceed three years.

The State must consider a certificate to have lapsed and the individual must recertify, if the individual fails to renew or qualify for renewal and is beyond a grace period (not to exceed two years).

6. Resources Needed To Implement the Program

To avoid DWSRF withholding, the States must provide sufficient resources to adequately fund and sustain the operator certification program (including components such as, but not limited to: staff, data management, testing, enforcement, administration, and training approval). EPA recommends that States establish a dedicated fund that is self-sufficient.

7. Recertification

To avoid DWSRF withholding, the States must have a process for recertification of individuals whose certification has lapsed. This process must include: review of the individual's experience and training, and reexamination. The State must consider the certificate to have lapsed and the individual must recertify, if the individual fails to renew or qualify for renewal and is beyond a grace period (not to exceed 2 years). The State may develop more stringent requirements for recertification for individuals whose certificates have been revoked or suspended.

8. Stakeholder Involvement

Stakeholder involvement is important to the public health objectives of the program. It helps to ensure the relevancy and validity of the program, and the confidence of all interested parties.

To avoid DWSRF withholding, States must include ongoing stakeholder involvement in the revision and operations of State operator certification programs. A stakeholder board or advisory committee is strongly recommended.

9. Program Review

To avoid DWSRF withholding, States must perform reviews of their operator certification programs. EPA recommends that States perform periodic internal reviews and occasional external/peer reviews. Examples of reviews include, but are not limited to: regulations, exams and exam scores for bias, exam items for relevancy and validity, compliance, enforcement, budget and staffing, training relevancy, training needs through examination performance, and data management system.

IV. Program Submittal Process

A. Requirements

1. Submittal Schedule

Not later than two years after the guidelines are published, to avoid DWSRF withholding, States must have adopted and implemented a program for the certification of operators of community and nontransient noncommunity public water systems that meets the requirements of or is substantially equivalent to these guidelines. States are encouraged to submit their operator certification programs to the appropriate EPA Regional Administrator for review as early as possible. Any State that expects to receive its FY 2000 or FY 2001 capitalization grant after February 6, 2001, should submit its operator certification program to EPA by August 2000. Also, any State that intends to enforce its existing operator certification program in lieu of these guidelines must submit its program to EPA by August 2000. EPA must determine whether an existing State operator certification program is substantially equivalent to these guidelines.

Future annual submittals of state operator certification programs to EPA must be submitted either before or with the annual capitalization grant application.

2. Submittal Contents

The submittal of operator certification programs to EPA by States must include the following:

(1) The State Attorney General's certification that the State has the legal authority to implement the program requiring the certification of operators of all community and nontransient noncommunity water systems and to require that the systems comply with the appropriate requirements of the program;

(2) A full description and explanation of how the State's operator certification program complies with or is substantially equivalent to the requirements of these guidelines;

(3) A copy of the State operator certification regulations; and

(4) All annual program submittals subsequent to the initial submittal must include documentation and evaluation of ongoing program implementation.

B. Approval Process

EPA must approve or disapprove a State program within nine months after submittal. If there is no EPA action within the nine month period, a State program will be deemed approved and/or substantially equivalent to the guidelines.

C. Disapproval Process

If the Regional Administrator determines that a program (or portion thereof) is to be disapproved, EPA will send a written statement of the reasons for such disapproval to the State.

Within six months of EPA's written statement to the State, the State must submit a modified program to EPA to avoid DWSRF withholding. The State's modifications to the program must be based upon the recommendations of EPA. If EPA disapproves the program (or portion thereof), EPA will advise the State of any deficiencies in an expeditious manner to ensure that the State has an opportunity to develop an approvable program.

EPA must then make a decision on whether to approve or disapprove a State's re-submittal.

D. Withholding of Funds

The Administrator shall withhold 20% of a State's funds that it is entitled

to receive under the DWSRF program (section 1452) unless the State has adopted and is implementing a program for the certification of operators of community and nontransient noncommunity public water systems that meets the requirements of these guidelines. This withholding provision will begin two years after the effective date of these guidelines.

E. Reallotment of Funds

All funds withheld by the Administrator because the State does not develop and implement an operator certification program that meets the requirements of these guidelines shall be reallotted using the allotment formula that was used to distribute funds for that year, except that the Administrator may reserve and allocate 10 percent of the amount for financial assistance to Indian Tribes. None of these funds reallotted by the Administrator shall be allotted to a State unless the State has met the requirements of these guidelines.

V. Definitions

Administrator—means the Administrator of the United States Environmental Protection Agency.

Available—Based on system size, complexity, and source water quality, a certified operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner.

Community Water System (CWS)—a public water system providing water to at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Distribution Complexity—Such as, but not limited to, pressure zones, booster stations, storage tanks, fire protection, chlorination, non-residential consumers, cross connection potential, and demand variations.

Distribution Size—Such as, but not limited to, population served, number of service connections, size of pipes, total distance of pipe, and quantity.

Distribution System—Any combination of pipes, tanks, pumps, etc. which delivers water from the source(s) and/or treatment facility(ies) to the consumer.

Grandparenting—The exemption for the existing operator(s) in responsible charge, as of the effective date of the State's regulation, from meeting the initial education and/or examination requirements for the class of certification the system has been assigned.

Nontransient Noncommunity (NTNC) Water Systems—is a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year. Common types of NTNC water systems are those serving schools, day care centers, factories, restaurants, nursing homes, and hospitals.

Operating Shift—That period of time during which operator decisions that affect public health are necessary for proper operation of the system.

Primacy—Primary enforcement responsibility for administration and enforcement of the primary drinking water regulations and related requirements applicable to public water systems within a State.

Responsible Charge—The Operator(s) in Responsible Charge or his/her equivalent is defined as the person(s) designated by the owner to be the certified operator(s) who makes decisions regarding the daily operational activities of a public water system, water treatment facility and/or distribution system, that will directly impact the quality and/or quantity of drinking water.

Source Water—Such as but not limited to: type (surface water, groundwater, groundwater under the influence of surface water, purchase), quality (variability), protection (e.g., wellhead protection)

Treatment Size—Such as but not limited to, population served, number of service connections, and plant flow.

Treatment Facility—Any place(s) where a community water system or nontransient non-community water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system.

Treatment Complexity—Such as, but not limited to, difficulty in controlling water quality, potential effect to the consumer and safety of the operator.

VI. Acronyms

CWS—Community Water System
DWSRF—Drinking Water State Revolving Fund
EPA—United States Environmental Protection Agency
GED—General Equivalency Diploma
NDWAC—National Drinking Water Advisory Council
NTNCWS or NTNC—Nontransient Noncommunity Water System
PWSS Program—Public Water System Supervision Program
SDWA—Safe Drinking Water Act

Dated: March 23, 1998.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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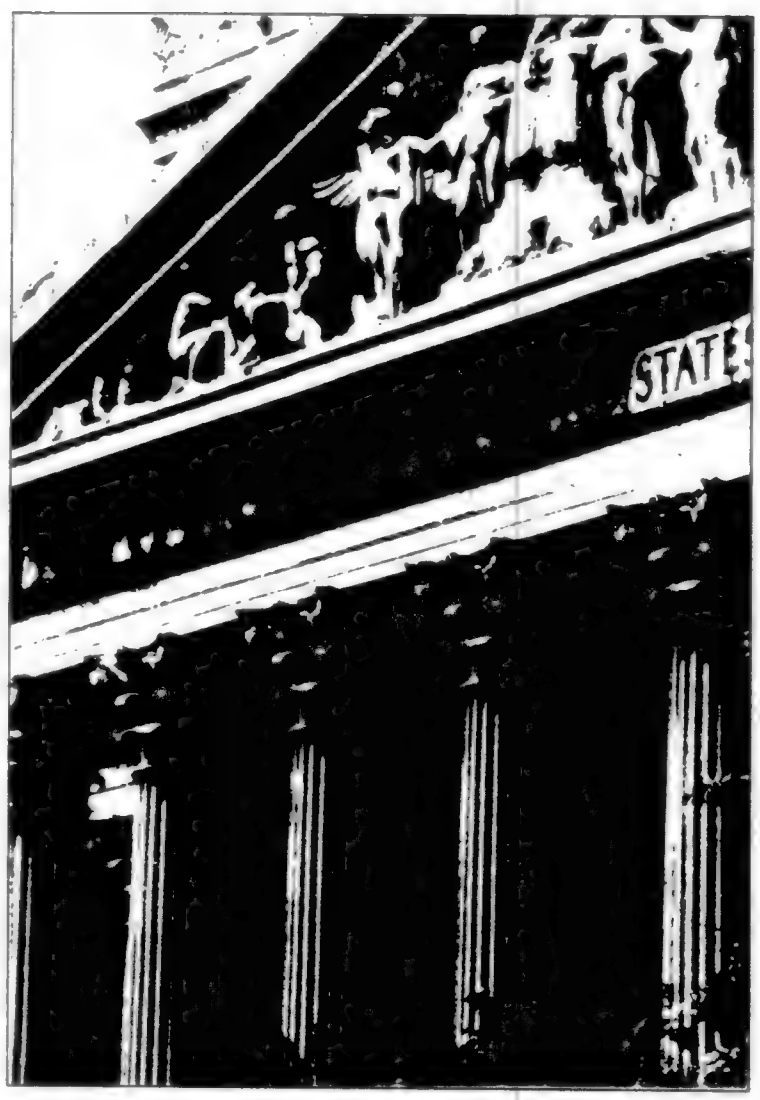

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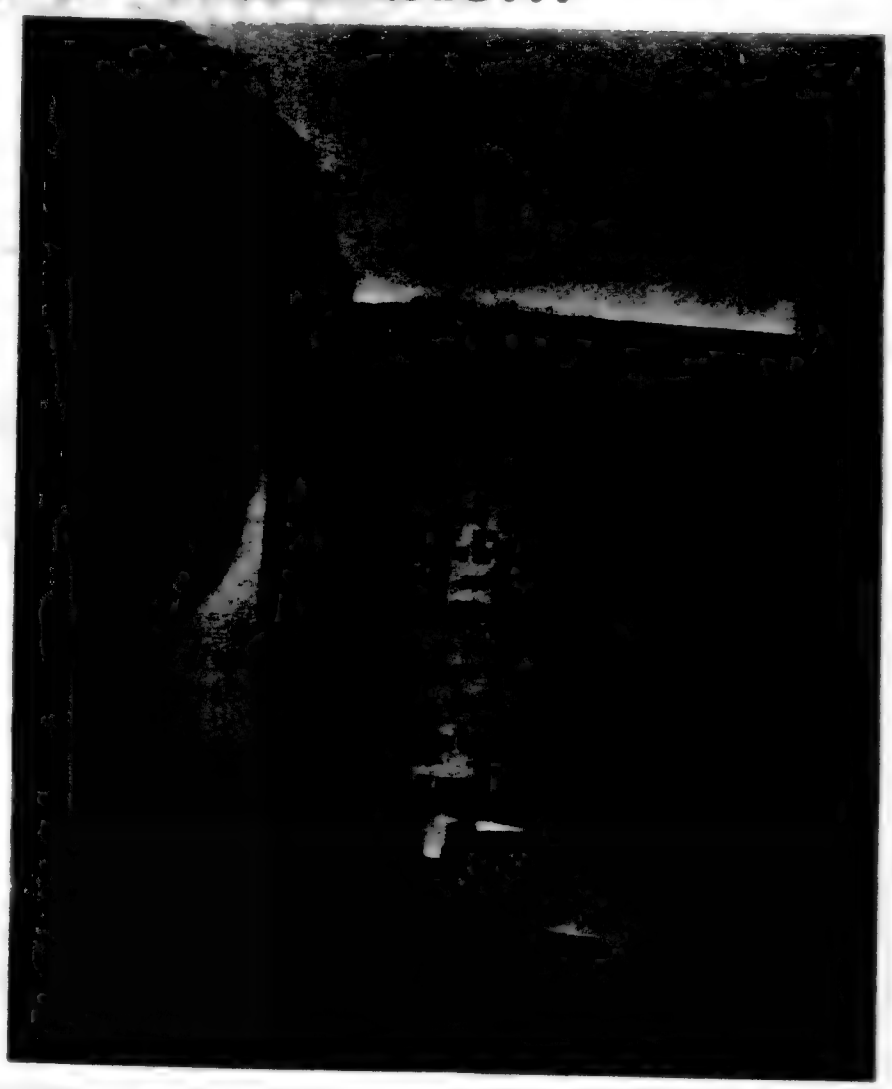

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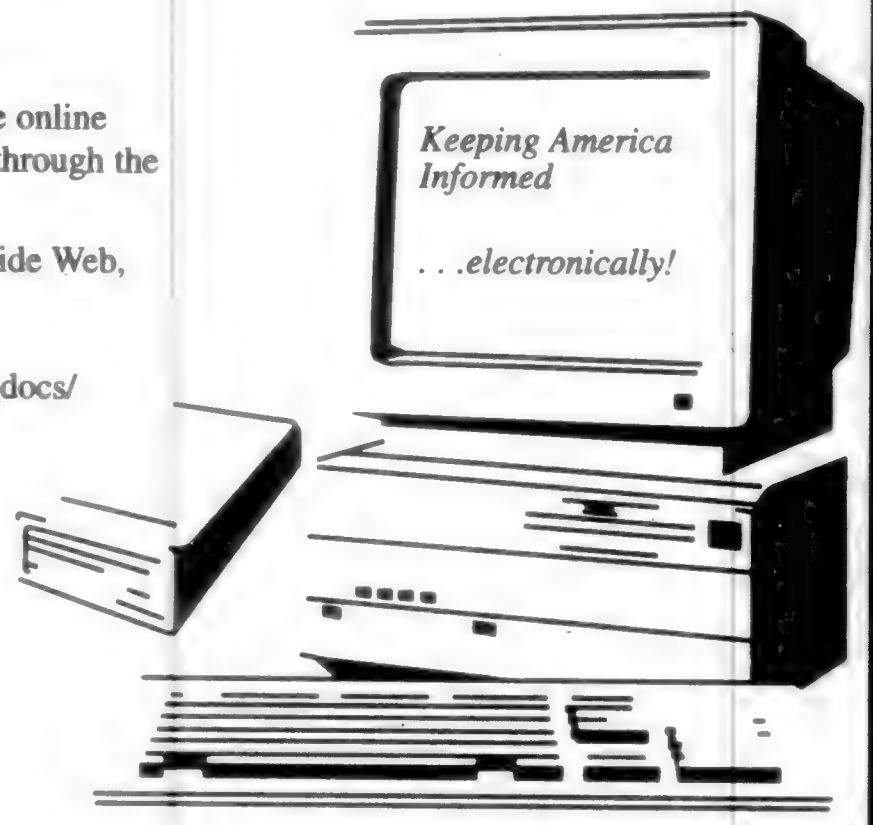

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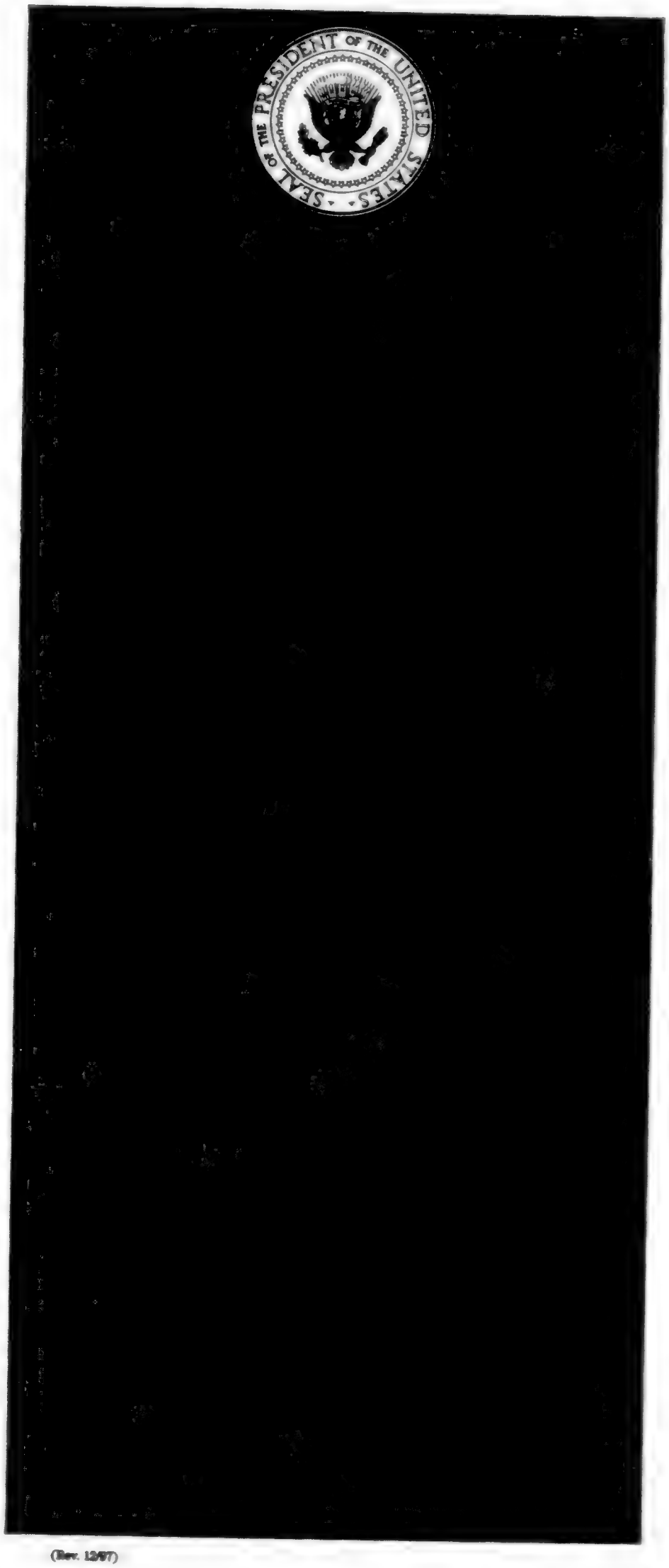

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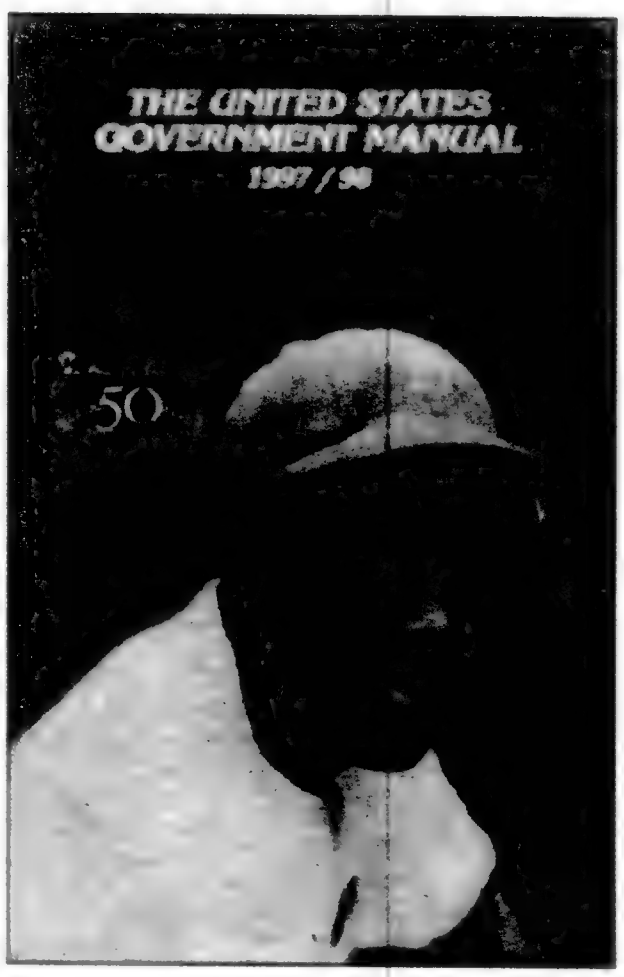

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Rules and Regulations

Federal Register
Vol. 63, No. 60
Monday, March 30, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI01

Prevailing Rate Systems; Survey Order Month Change for Jefferson, New York, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to change the survey order month for the Jefferson, NY, nonappropriated fund (NAF) Federal Wage System (FWS) wage area from March to April beginning with the next full-scale wage survey for the Jefferson wage area in 1998. This change is expected to improve the survey data yield for the Jefferson wage area and to allow the Department of Defense to better balance its wage survey workload.

EFFECTIVE DATE: March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Allen at (202) 606–2848, or send an e-mail message to maallen@opm.gov.

SUPPLEMENTARY INFORMATION: On September 2, 1997, OPM published a proposed rule to change the survey order month for the Jefferson, NY, NAF FWS wage area (62 FR 46221). The proposed rule provided a 30-day period for public comment, during which OPM received no comments.

The Department of Defense, the lead agency for the Jefferson wage area, requested that the survey order month for the Jefferson wage area be changed from March to April beginning with the 1998 full-scale wage survey in the Jefferson wage area. Changing the wage survey order month for the Jefferson wage area will allow the local wage survey committee to avoid conducting local wage surveys during inclement March weather and will thereby improve wage survey participation and data yield. In addition, the new survey month will allow the Department of Defense to better balance its wage survey workload by moving wage surveys in the Jefferson wage area from a heavy workload month to a light workload month. The April survey order month will delay the Jefferson wage schedule effective date by only 1 month.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists to make this regulation effective in less than 30 days. The regulation is being made effective immediately because of the need to conduct a full scale wage survey in the Jefferson wage area in April rather than in March 1998.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—[Amended]

2. Appendix B to subpart B is amended under the State of New York by revising the beginning month of survey listing for the Jefferson wage area from March to April.

[FR Doc. 98–8204 Filed 3–27–98; 8:45 am]
BILLING CODE 6325–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D, Docket No. R–0966]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending its Regulation D, Reserve Requirements of Depository Institutions, issued pursuant to section 19 of the Federal Reserve Act, in order to move from the current system of contemporaneous reserve maintenance for institutions that are weekly deposits reporters to a system under which reserves are maintained on a lagged basis by such institutions. Under a lagged reserve maintenance system, the reserve maintenance period for a weekly deposits reporter will begin thirty days after the beginning of a reserve computation period. Under the current system, the reserve maintenance period begins only two days after the beginning of a reserve computation period.

DATES: *Effective date:* The final rule will be effective on July 30, 1998.

Applicability date: The final rule will be applicable as of the maintenance period beginning July 30, 1998. For that maintenance period, required reserves and the vault cash that can be used to meet reserve requirements will be based on the computation period that begins on June 30, 1998.

FOR FURTHER INFORMATION CONTACT: William Whitesell, Section Chief, Money and Reserves Projections Section, Division of Monetary Affairs (202/452–2967); Oliver Ireland, Associate General Counsel, (202/452–3625) or Lawranne Stewart, Senior Attorney (202/452–3625), Legal Division. For the hearing impaired only, contact Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The Board of Governors of the Federal Reserve System (Board) published a notice of proposed rulemaking in the **Federal Register** on November 12, 1997 (62 FR 60671) that solicited comments

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on proposed amendments to its Regulation D, Reserve Requirements of Depository Institutions (12 CFR Part 204). Under the proposal, a lag of thirty days (two full maintenance periods) would be introduced between the beginning of a reserve computation period and the beginning of the maintenance period during which reserves for that computation period must be maintained. The reserve maintenance period therefore would not begin until seventeen days after the end of the computation period. The proposal also provides for the same two-period lag in the computation of the vault cash to be applied to satisfy reserve requirements.

Providing a two-period lag for both required reserves and applied vault cash will allow the Federal Reserve, as well as depository institutions, to calculate the level of required reserve balances before the beginning of the maintenance period. It has become increasingly difficult to estimate the quantity of balances that depositories must hold at Reserve Banks to meet reserve requirements in the concurrent maintenance period, largely because of the implementation of retail sweep programs by many institutions. In addition to improving the ability of depository institutions and the Federal Reserve to estimate and project required reserve balances, the increased lag also should reduce the level of resources that must be devoted to these tasks.

The Board received a total of thirty written comments on its November proposal. Comments were received from eleven banking organizations, one savings bank, eight depository industry associations, seven Reserve Banks, a university professor, and a member of a research institution; the comment list also contains a Board staff summary of a briefing of Reserve Bank presidents on the issue.

Four Reserve Banks, all but one of the depository institutions, and all but one of the depository industry associations expressed support for the proposal. These commenters agreed that lagged reserve requirements would provide earlier, more accurate information about the level of required reserves. The improvement in information would make depositories better able to manage their reserve positions, and would allow savings on the resources now used to estimate reserve needs. Better information about the required reserve balances of the banking system as a whole also would facilitate the implementation of monetary policy by the Open Market Desk.

While a majority of the commenters supported the proposal, some commenters, including a depository institution, three Reserve Banks, and two individuals were opposed to it.

One small bank opposed lagged reserve requirements (LRR) because of the seasonal surge in deposit inflows it experiences during a single week in both May and November. With LRR, it would have to wait "three weeks to keep the required reserves." However, it should not be too difficult for this institution to find a means of investing its excess reserves temporarily, and then, if needed, borrow funds from its correspondent or from market sources in order to meet reserve requirements. If such funding is unavailable, the institution presumably would be eligible to apply for a loan from the discount window.

One Reserve Bank argued that, before abandoning contemporaneous reserve requirements, the Federal Reserve should explore the possibility of reducing funds rate volatility by conducting multiple open market operations in a single day. Careful consideration has indeed been given to this idea. For the first time since the 1970s, the Open Market Desk in 1997 began conducting multiple repurchase agreement operations within a day, when needed. In practice, however, such operations cannot be undertaken very late in the day, when much of the volatility in the funds rate arises, because the securities wire for book entry transactions closes at 3:30 p.m., and because of a limited availability of collateral for repurchase agreement transactions late in the business day.

Other objections to a shift to LRR were expressed by three Reserve Banks, a university professor, and a member of a research institution. Some argued that LRR would make it more difficult to return to a regime of monetary targeting. However, there appears to be only a remote chance that the FOMC would move away from its current eclectic policymaking, involving review of a wide variety of macroeconomic indicators, in order to return to a regime of strict monetary targeting. The monetary aggregates have not proved to be sufficiently reliable to perform such a role. M1, the aggregate against which reserves currently are required, is no longer a candidate for monetary targeting in part because of its heightened interest sensitivity following the deregulation of deposit interest rates in the 1980s, and also because of uncertainties related to retail sweep programs and overseas demand for United States currency. M2 has also suffered from an unstable relationship to income and interest rates in this decade. Broad monetary aggregates like M2 may again become useful as indicators, but they are not likely to be employed as strictly targeted variables to be closely controlled over short time periods.

Even if M2 growth were used as a strict target for monetary policy, a federal funds rate instrument would be more appropriate than a reserve quantity instrument to hit that target. The reason is that the bulk of M2 is not by law subject to reserve requirements, and as a result, its relationship to reserve quantities is quite loose. With a federal funds rate instrument, rather than a reserve quantity instrument, there is no advantage to contemporaneous reserve requirements; in fact, monetary policy is more easily implemented with LRR.

Some of those objecting to LRR emphasized the advantage that contemporaneous requirements have over LRR in a regime of both strict monetary targeting and use of predetermined reserve quantities to hit those monetary targets. It is indeed the case that contemporaneous reserve requirements have a timing advantage compared with LRR in this type of operating regime, although the chance of returning to such a regime appears remote. In particular, when using a reserve quantity instrument, the response of short-term interest rates to unexpected changes in money demand is quicker by a week or two with contemporaneous requirements.

However, as one Reserve Bank argues, this advantage for contemporaneous requirements is rather small: "[E]xperience suggests that, in practice, the deposit adjustment mechanism * * * would be essentially the same under both contemporaneous accounting and the lag proposed by the Board." In particular, "transaction deposits do not appear to respond to changes in cost within a time frame as short as the current, two-week maintenance period."

While contemporaneous requirements would have an advantage under monetary targeting with a reserve quantity instrument, LRR does not preclude such a regime, as one Reserve Bank mentioned. In fact, reserve requirements were lagged during the 1979-to-1982 period, when the Federal Reserve used a nonborrowed reserve instrument to hit targets for intermediate-term M1 growth.

One Reserve Bank commented that the Federal Reserve should employ a system that helps in the implementation of monetary policy under the operating regime it is using at the time. And LRR is "more consistent with our current regime." If the Federal Reserve returned

"to reserve targeting at some point in the future and * * * desired a slightly more rapid response of interest rates to variations in the money stock," it could then reinstitute contemporaneous requirements.

Another Reserve Bank commented that, while the likelihood of returning to a reserve-based operating regime was remote, "the Federal Reserve would have a much easier time converting from lagged to contemporaneous reserve accounting than it did in the past," because "[o]ur statistical processing systems have become much more sophisticated and flexible." Accounting and information systems at banks and thrifts have also improved substantially in recent years, as pointed out by some commenters, and therefore depositories should also find it less difficult than in 1984 to return to contemporaneous requirements, if it became necessary.

In summary, while contemporaneous reserve requirements would have an advantage over LRR in a situation in which the FOMC both returned to monetary targeting and switched from an interest rate to a reserve quantity operating instrument, the probability of that situation occurring appears to be exceedingly small and the advantage would be modest.[1] Under the operating procedures employed currently and likely to be employed prospectively by the Federal Reserve, LRR is preferable to contemporaneous reserve requirements for the purpose of monetary policy implementation. Lagged requirements would also allow resource cost savings both for the Federal Reserve and for depositories, and would permit depositories to cut some of the financial losses owing to the holding of reserve balances that are at times insufficient and at times too high. For these reasons, the Board is implementing lagged reserve requirements as proposed.

Some of the comments received included suggestions that were unrelated to the issue of lagged versus contemporaneous reserve requirements. One Reserve Bank argued that abolishing reserve requirements, "would free up resources spent by depository institutions on sweep accounts and other devices that minimize reserve requirements." This is a legislative issue, however, rather than an issue for a Board decision.

A major clearinghouse did not appear to object to lagged reserve requirements, but recommended that, to reduce uncertainties about reserves positions, the Federal Reserve should restrict the last fifteen minutes of trading on the funds wire each day to direct trades among depositories for their own account at a Reserve Bank. The Board will continue to review this and other ideas for reducing volatility in the market for reserves in order to determine whether any further adjustments in its procedures are appropriate.

A banking association argued that the implementation of lagged reserve requirements should allow elimination of the costly "Daily Advance Report of Deposits," which collects deposit and vault cash data daily from large banks and thrifts. This report is indeed used to estimate the level of required reserve balances in the current maintenance period, and with lagged requirements, it would no longer be needed for this purpose. However, the report also provides an early indication of the weekly changes in the monetary aggregates. For this reason, the Board does not plan to eliminate this report at the present time. In the future, however, the Board could evaluate whether this report from large depositories and a similar report from a sample of small banks might be trimmed to reduce burdens on depository institutions and the Federal Reserve.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish a final regulatory flexibility analysis (5 U.S.C. 604) containing: (1) A succinct statement of the need for and the objectives of the rule; and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments; (3) a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

As discussed above, the purpose of the amendment is to improve the ability of the Federal Reserve and depository institutions to estimate accurately the quantity of reserves that will be needed to meet reserve requirements. The amendments will affect only institutions that are weekly deposits reporters, which generally include depository institutions that have total deposits of $75 million or greater, as only these institutions currently are required to maintain reserves on a contemporaneous basis.[2] The amendments will not increase reporting or recordkeeping requirements associated with Regulation D for institutions that are weekly reporters, but will significantly simplify compliance with the rule for these institutions. The amendments therefore will not increase regulatory burden on small institutions generally.

For those small institutions that are affected, the amendments generally will reduce regulatory burden. Although a few institutions with large seasonal variations in their deposit bases may experience a greater temporary mismatch between their levels of maintained versus required reserves, these mismatches can be managed without undue burden through the money markets in the same manner that depository institutions currently manage their reserve positions.

As discussed above, the Board also has considered and continues to consider other methods for reducing uncertainties in the market for reserves. The Board recognizes that the amendments considered here do not address all issues related to such uncertainties, but believes that the adoption of a lagged reserve maintenance system will provide a significant improvement in information regarding the level of required reserve balances for both the Federal Reserve and for depository institutions.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board is amending part 204 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.3, paragraph (c) is revised to read as follows:

§ 204.3 Computation and maintenance.

* * * * *

(c) *Computation of required reserves for institutions that report on a weekly basis.* (1) Required reserves are

[1] Should the Federal Reserve determine that effective monetary policy required that a reserve instrument be employed to hit a money supply target, it could consider whether the shorter lag of contemporaneous reserve requirements would again be useful; it would need also to consider whether to ask Congress for permission to impose reserve requirements on personal time and savings deposits in order to better align required reserves with the monetary aggregate most likely to be targeted, M2.

[2] While weekly reporters that are Edge or Agreement corporations or U.S. branches or agencies of a foreign bank may have deposits of less than $75 million, the deposits of these entities represent only a portion of the total deposits of the larger organizations to which they belong.

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computed on the basis of daily average balances of deposits and Eurocurrency liabilities during a 14-day period ending every second Monday (the computation period). Reserve requirements are computed by applying the ratios prescribed in § 204.9 to the classes of deposits and Eurocurrency liabilities of the institution. In determining the reserve balance that is required to be maintained with the Federal Reserve, the average daily vault cash held during the computation period is deducted from the amount of the institution's required reserves.

(2) The reserve balance that is required to be maintained with the Federal Reserve shall be maintained during a 14-day period (the "maintenance period") that begins on the third Thursday following the end of a given computation period.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 24, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8190 Filed 3–27–98; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: Under this rule, an SBA disaster loan borrower can request an increase in a disaster loan within two years after the loan was approved. The increase must be used to cover eligible damages resulting from events that occurred after the loan was approved and were beyond the borrower's control. Under the rule, the SBA Associate Administrator for Disaster Assistance can waive the two year limit because of extraordinary circumstances.

DATES: This rule is effective March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, 202/205–6734.

SUPPLEMENTARY INFORMATION: SBA makes thousands of physical and economic injury disaster loans to repair or replace damaged property or to help a business recover from economic injury. Borrowers must use such loans only to help them recover from the effects of a specific disaster. Borrowers may request increases in their loans after the initial disaster loans were made and, where appropriate, SBA will approve the request. On November 25, 1997, SBA published a notice of proposed rulemaking (62 FR 62707), to define the circumstances under which a borrower could request an increase and to limit the time period for the request to two years. The SBA Associate Administrator for Disaster Assistance (AA/DA) has the authority to waive the two year limit for extraordinary and unforeseeable circumstances. SBA received no comments from the public on the proposed rule. The final rule is identical to the proposed rule.

Under the rule, a borrower of a disaster loan (whether physical or economic injury) can request an increase in the loan amount if the eligible cost of repair or replacement of damages increases because of events occurring after the loan approval that were beyond the borrower's control. For example, a borrower can request an increase of a physical disaster loan before the repair, renovation or reconstruction is completed if hidden damage is discovered or if official building codes changed since SBA approved the physical disaster loan. With respect to economic injury disaster loans, borrowers can request increases in working capital if they cannot resume business activity as quickly as planned because of events beyond their control. These examples, while not all inclusive, support a borrower's request for an increase in the amount of a disaster loan. These kinds of events usually will be apparent within two years after SBA approves a disaster loan. However, in extraordinary circumstances, the rule permits the AA/DA to waive the two year limitation.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not constitute a significant rule within the meaning of Executive Order 12866 and does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It is not likely to have an annual economic effect of $100 million or more on the economy, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Programs, No. 59.012 and 59.008)

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends part 123, chapter I, title 13, Code of Federal Regulations, as follows:

PART 123—DISASTER LOAN ASSISTANCE

1. The authority citation for part 123 continues to read as follows:

Authority: 15 U,S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Sections 123.18, 123.19 and 123.20 are added to read as follows:

§ 123.18 Can I request an increase in the amount of a physical disaster loan?

SBA will consider your request for an increase in your loan if you can show that the eligible cost of repair or replacement of damages increased because of events occurring after the loan approval that were beyond your control. An eligible cost is one which is related to the disaster for which SBA issued the original loan. For example, if you discover hidden damage within a reasonable time after SBA approved your original disaster loan and before repair, renovation, or reconstruction is complete, you may request an increase. Or, if applicable building code requirements were changed since SBA approved your original loan, you may request an increase in your loan amount.

123.19 May I request an increase in the amount of an economic injury loan?

SBA will consider your request for an increase in the loan amount if you can show that the increase is essential for your business to continue and is based on events occurring after SBA approved your original loan which were beyond your control. For example, delays may have occurred beyond your control which prevent you from resuming your normal business activity in a reasonable time frame. Your request for an increase in the loan amount must be related to the disaster for which the SBA

economic injury disaster loan was originally made.

§ 123.20 How long do I have to request an increase in the amount of a physical disaster loan or an economic injury loan?

You should request a loan increase as soon as possible after you discover the need for the increase, but not later than two years after SBA approved your physical disaster or economic injury loan. After two years, the SBA Associate Administrator for Disaster Assistance (AA/DA) may waive this limitation after finding extraordinary and unforeseeable circumstances.

Dated: March 20, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–8245 Filed 3–27–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–16–AD; Amendment 39–10420; AD 98–07–02]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –3, –3B, and –3C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to CFM International CFM56–2, –3, –3B, and –3C series turbofan engines. This action requires the removal from service of certain No. 3 bearing rear stationary air/oil seals, replacement with serviceable parts, and the installation of retention bushings. This action also requires the removal from service of high pressure compressor rotor (HPCR) stage 1–2 spools that have contacted the outer cone of the seal. This amendment is prompted by several reports of outer cone separation of the No. 3 bearing rear stationary air/oil seal. The actions specified in this AD are intended to prevent rubs between the outer cone of the No. 3 bearing rear stationary air/oil seal and the HPCR stage 1–2 spool, which could result in a potential uncontained failure of the HPCR stage 1–2 spool, and damage to the aircraft.

DATES: Effective March 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 29, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–16–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received 26 reports where the inner and outer cones of the No. 3 bearing rear stationary air/oil seal have separated on CFM International CFM56–2, –3, –3B, and –3C series turbofan engines. The seal consists of two composite cones which are bonded together with an adhesive. Investigation revealed that the adhesive used on certain seals have less bonding capability than required. When the seal debonds, the outer cone moves aft and allows oil to migrate into the high pressure compressor rotor (HPCR) flowpath, which may result in oil fumes in the cabin. As the seal continues to move aft, the outer cone contacts the bore of the stage 1 disk of the HPCR stage 1–2 spool. New retention bushings exist, that when installed, will preclude a separated seal from contacting the HPCR stage 1–2 spool. This condition, if not corrected, could result in rubs between the outer cone of the No. 3 bearing rear stationary air/oil seal and the HPCR stage 1–2 spool, which could result in a potential uncontained failure of the HPCR stage 1–2 spool, and damage to the aircraft.

The FAA has reviewed and approved the technical contents of CFM International CFM56–2 Service Bulletin (SB) No. 72–825 and CFM56–3/–3B/–3C SB No. 72–856, both dated January 23, 1998, that describes procedures for removal from service of certain HPCR stage 1–2 spools from engines that have documented rubs on the stage 1 disk bore due to contact with the outer cone of the No. 3 bearing rear stationary air/oil seal. In addition, the FAA has reviewed and approved the technical contents of CFM International CFM56–2 SB No. 72–823, dated August 12, 1997, and CFM56–3/–3B/–3C SB No. 72–855, Revision 1, dated February 9, 1998, that describes procedures for installation of the No. 3 bearing rear stationary air/oil seal retention bushings.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent rubs between the outer cone of the No. 3 bearing rear stationary air/oil seal and the HPCR stage 1–2 spool, which could result in a potential uncontained failure of the HPCR stage 1–2 spool. This AD requires the removal from service, within 15 days after the effective date of this AD, of certain No. 3 bearing rear stationary air/oil seals, replacement with serviceable parts, and the installation of retention bushings. This AD also requires the removal from service of HPCR stage 1–2 spools that have contacted the outer cone of the seal at the next engine shop visit after the effective date of this AD, or prior to accumulating 2,000 cycles in service (CIS) since the engine shop visit that first confirmed the rub event. The 2,000 CIS interval was established based on an extensive test program on the CFM56–5 series engine. The compliance end-date was determined based upon risk assessment and parts availability. The actions are required to be accomplished in accordance with the SBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or

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arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–16–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–07–02 CFM International: Amendment 39–10420. Docket 98–ANE–16–AD.

Applicability: CFM International CFM56–2, –3, –3B, and –3C series turbofan engines installed on, but not limited to, McDonnell Douglas DC–8 series and Boeing 737 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rubs between the outer cone of the No. 3 bearing rear stationary air/oil seal and the high pressure compressor rotor (HPCR) stage 1–2 spool, which could result in a potential uncontained failure of the HPCR stage 1–2 spool, and damage to the aircraft, accomplish the following:

(a) For CFM International CFM56–2 series engines, with high pressure compressor rotor (HPCR) stage 1–2 spool, Part Number (P/N) 9992M60G07, with part Serial Number (S/N) listed in CFM56–2 Service Bulletin (SB) No. 72–825, dated January 23, 1998, installed, accomplish the following:

(1) Remove the HPCR stage 1–2 spool from service at the next engine shop visit after the effective date of this AD, or prior to accumulating 2,000 cycles in service (CIS) since the engine shop visit that first confirmed the rub event, whichever occurs first, in accordance with CFM International CFM56–2 SB No. 72–825, dated January 23, 1998, and replace with a serviceable HPCR stage 1–2 spool.

(2) Install No. 3 bearing rear air/oil seal retention bushings in accordance with CFM International CFM56–2 SB No. 72–823, dated August 12, 1997.

(b) For CFM International CFM56–3, –3B, and –3C series engines, with HPCR stage 1–2 spool, P/N 1589M66G02, with part S/Ns listed in CFM International CFM56–3/–3B/–3C SB No. 72–856, dated January 23, 1998, installed, accomplish the following:

(1) Remove the HPCR stage 1–2 spool from service at the next engine shop visit after the effective date of this AD, or prior to accumulating 2,000 CIS since the engine shop visit that first confirmed the rub event, whichever occurs first, in accordance with CFM56–3/–3B/–3C SB No. 72–856, dated January 23, 1998, and replace with a serviceable HPCR stage 1–2 spool.

(2) Install No. 3 bearing rear air/oil seal retention bushings in accordance with CFM International CFM56–3/–3B/–3C SB No. 72–855, Revision 1, dated February 9, 1998.

(c) For CFM56–3, –3B, and –3C engines, having any of the following engine S/Ns: 856692, 856709, 856713, 856799, 856673, 856691, 856694, 856696, 856697, 856746, 856780, 857669, 857685, 857686, 857704, and 859115; accomplish the following within 15 days after the effective date of this AD:

(1) Remove from service No. 3 bearing rear stationary air/oil seal, P/N 1663M91G03, and replace with a serviceable No. 3 bearing rear stationary air/oil seal. No. 3 bearing rear stationary air/oil seals removed in accordance with this paragraph are unserviceable.

(2) Install No. 3 bearing rear air/oil seal retention bushings in accordance with CFM International CFM56–3/–3B/–3C SB No. 72–855, Revision 1, dated February 9, 1998.

(d) For the purpose of this AD, the following definitions apply:

(1) A shop visit is defined as the induction of an engine into the shop for any maintenance.

(2) A serviceable HPCR stage 1–2 spool is defined as a spool without a rub or scratch indication.

(3) A serviceable No. 3 bearing rear stationary air/oil seal is defined as a new seal, P/N 1663M91G03, that is not identified by S/N in Table 1 of this AD.

TABLE 1.—NO. 3 BEARING REAR STATIONARY AIR/OIL SEAL S/NS

[P/N 1663M91G03]

CTD81631	CTD81907	CTD81908	CTD81998
CTD82004	CTD82132	CTD82208	CTD82210

TABLE 1.—NO. 3 BEARING REAR STATIONARY AIR/OIL SEAL S/NS—Continued

[P/N 1663M91G03]

CTD82212	CTD82213	CTD82271	CTD82295
CTD82297	CTD82298	CTD82300	CTD82304
CTD82457	CTD82759	CTD82766	CTD82767
CTD82788	CTD82817	CTD82822	CTD82854
CTD82855	CTD82856	CTD82857	CTD82859
CTD82962	CTD83232	CTD83474	CTD83637
CTD83839	CTD84100	CTD84138	CTD84140
CTD84141	CTD84143	CTD84144	CTD84145
CTD84148	CTD84203	CTD84206	CTD84207
CTD84258	CTD84262	CTD84360	CTD84363
CTD84604	CTD84712	CTD84741	CTD85147
CTD85148	CTD85149	CTD85161	CTD85162
CTD85166	CTD85168	CTD85169	CTD85170
CTD85172	CTD85348	CTD85349	CTD85351
CTD85352	CTD85353	CTD85354	CTD85355

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following CFM International SBs:

Document No.	Pages	Revision	Date
CFM56–2, SB No. 72–823 ..... Total pages: 12.	1–12	Original	August 12, 1997.
CFM56–2, SB No. 72–825 ..... Total pages: 7.	1–7	Original	January 23, 1998.
CFM56–3/–3B/–3C, SB No. 72–856 ..... Total pages: 8.	1–8	Original	January 23, 1998.
CFM56–3/–3B/–3C, SB No. 72–855 ..... Total pages: 16.	1–16	1	February 9, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 30, 1998.

Issued in Burlington, Massachusetts, on March 17, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–7560 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–306–AD; Amendment 39–10423; AD 98–07–05]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires replacement of the main landing gear (MLG) trunnion fittings with reinforced trunnion fittings. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent collapse of the MLG due to fatigue cracking of the MLG trunnion fittings.

DATES: Effective May 4, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 4, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

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Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on January 22, 1998 (63 FR 3272). That action proposed to require replacement of the main landing gear (MLG) trunnion fittings with reinforced trunnion fittings.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $14,400, or $4,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–07–05 Saab Aircraft AB: Amendment 39–10423. Docket 97–NM–306–AD.

Applicability: Model SAAB 2000 series airplanes having serial numbers –003 through –040 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the main landing gear (MLG) due to fatigue cracking of the MLG trunnion fittings, accomplish the following:

(a) Prior to the accumulation of 12,000 total flight cycles, or within 100 flight cycles after the effective date of this AD, whichever occurs later, replace the MLG trunnion fittings with reinforced trunnion fittings in accordance with Saab Service Bulletin 2000–57–010, dated February 25, 1997.

(b) As of the effective date of this AD, no person shall install any MLG trunnion fitting having part number 7357451–503 or –504 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Saab Service Bulletin 2000–57–010, dated February 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–108, dated February 27, 1997.

(f) This amendment becomes effective on May 4, 1998.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8132 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–163–AD; Amendment 39–10424; AD 98–07–06]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A, and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace

Model BAe 146–100A, –200A, and –300A, and Model Avro 146–RJ series airplanes, that requires repetitive inspections of the attachment brackets between the horizontal and vertical stabilizers to detect intergranular corrosion, and follow-on actions. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct reduced structural integrity of the stabilizer brackets due to corrosion, which could result in reduced controllability of the airplane.

DATES: Effective May 4, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 4, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A, and Model Avro 146–RJ series airplanes was published in the **Federal Register** on January 29, 1998 (63 FR 4404). That action proposed to require repetitive inspections of the attachment brackets between the horizontal and vertical stabilizers to detect intergranular corrosion, and follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 40 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,400, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–07–06 British Aerospace Regional Aircraft Limited [Formerly British Aerospace Regional Aircraft Limited, Avro International Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited]: Amendment 39–10424. Docket 97–NM–163–AD.

Applicability: Model BAe 146–100A, –200A, and –300A, and Model Avro 146–RJ series airplanes; certificated in any category; having the following constructors numbers:

Model	Constructors numbers
BAe 146–100A, –200A, and –300A.	All.
Avro 146–RJ70/70A ..	All up to and including E1267.
Avro 146–RJ85/85A ..	All up to and including E2300.
Avro 146–RJ100/100A.	All up to and including E3301.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct reduced structural integrity of the stabilizer attachment brackets due to corrosion, which could result in reduced controllability of the airplane, accomplish the following:

(a) Perform an inspection to detect corrosion of the attachment brackets between the horizontal and vertical stabilizers, in accordance with British Aerospace Service Bulletin SB.55–15, dated April 14, 1997, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed 12,000 flight cycles or 4 years after the initial inspection, whichever occurs first.

(1) For Model BAe 146–100A, –200A, and –300A series airplanes having constructors numbers identified in paragraph D.(1)(a) of the Planning Information section of the service bulletin: Inspect within 20 months after the effective date of this AD.

(2) For Model BAe 146–100A, –200A, and –300A series airplanes having constructors numbers identified in paragraph D.(1)(b) of the Planning Information section of the service bulletin: Inspect within 32 months after the effective date of this AD.

(3) For Model BAe 146–100A, –200A, and –300A series airplanes and Avro 146–RJ70A, –85A, and –100A airplanes having constructors numbers identified in paragraph D.(1)(c) of the Planning Information section of the service bulletin: Inspect within 44 months after the effective date of this AD.

(b) If no corrosion is detected, prior to further flight, restore the original protective treatment and apply additional surface protection to the attachment brackets, in accordance with British Aerospace Service Bulletin SB.55–15, dated April 14, 1997.

(c) If any corrosion is detected and it is accessible, prior to further flight, blend out the corrosion, re-protect the blended areas, and apply additional surface protection to the attachment brackets in accordance with British Aerospace Service Bulletin SB.55–15, dated April 14, 1997.

(d) If any corrosion is detected and it is not accessible, or if, after blending, the damage to the attachment brackets is found to be outside the limits identified in British Aerospace Service Bulletin SB.55–15, dated April 14, 1997, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with British Aerospace Service Bulletin SB.55–15, dated April 14, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 001–04–97 (undated).

(h) This amendment becomes effective on May 4, 1998.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8131 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–108–AD; Amendment 39–10422; AD 98–07–04]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires a one-time inspection for discrepancies of certain engine control cables, and replacement of the cables with new or serviceable control cables, if necessary. It also requires modification of the cable fairleads on the nose rib firewall. Additionally, this amendment requires modification of the mounting brackets of the control cable pulleys in the pulley box. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent chafing of engine control cables, which could cause the cables to break and result in loss of engine control and consequent reduced controllability of the airplane.

DATES: Effective May 4, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 4, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on January 22, 1998 (63 FR 3270). That action proposed to require a one-time inspection for discrepancies of certain engine control cables, and replacement of the cables with new or serviceable control cables, if necessary. That action also proposed to require modification of the cable fairleads on the nose rib firewall. Additionally, that action proposed to require modification of the mounting brackets of the control cable pulleys in the pulley box.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 59 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD.

The actions specified in Dornier Service Bulletin SB–328–76–152 will be required to be accomplished on 56 Dornier Model 328–100 series airplanes of U.S. registry. It will take approximately 4 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of this action on the 56 affected U.S.-registered airplanes is estimated to be $13,440, or $240 per airplane.

The actions specified in Dornier Service Bulletin SB–328–76–168 will be required to be accomplished on 29 Dornier Model 328–100 series airplanes of U.S. registry. It will take approximately 12 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will be

provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of this action on the 29 affected U.S.-registered airplanes is estimated to be $20,880, or $720 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive: 98–07–04 DORNIER: Amendment 39–10422. Docket 97-NM–108-AD.

Applicability: Model 328–100 series airplanes; as listed in Dornier Service Bulletins SB–328–76–152 and SB–328–76–168, both dated May 6, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of engine control cables, which could cause the control cables to break and result in loss of engine control and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to detect chafing or discrepancies of the engine control cables in the areas of the cable fairleads on the nose rib firewall, and the cable fairleads in the fuselage; in accordance with Dornier Service Bulletins SB–328–76–152 and SB–328–76–168, both dated May 6, 1996; respectively. If any discrepancy or chafing is found, prior to further flight, replace the damaged cables with new or serviceable cables in accordance with the applicable service bulletin.

(b) For airplanes listed in Dornier Service Bulletin SB–328–76–152, dated May 6, 1996: Prior to further flight following the inspection required in paragraph (a) of this AD, modify the cable fairleads on the nose rib firewall in accordance with the service bulletin.

(c) For airplanes listed in Dornier Service Bulletin SB–328–76–168, dated May 6, 1996: Prior to further flight following the inspection required in paragraph (a) of this AD, modify the mounting brackets of the control cable pulleys in the pulley box in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Dornier Service Bulletin SB–328–76–152, dated May 6, 1996, and Dornier Service Bulletin SB–328–76–168, dated May 6, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directives 96–288 and 96–290, both dated October 10, 1996.

(g) This amendment becomes effective on May 4, 1998.

Issued in Renton, Washington, on March 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8130 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–16]

RIN 2120–AA66

Modification of Class D Airspace South of Abbotsford, British Columbia (BC), on the United States Side of the U.S./Canadian Border, and the Establishment of a Class C Airspace Area in the Vicinity of Point Roberts, Washington (WA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; establishment of effective date.

SUMMARY: On November 5, 1997, the FAA delayed the effective date for modification of Class D airspace south of Abbotsford, British Columbia (BC), on the United States side of the U.S./Canadian border, and the establishment of a Class C airspace area in the vicinity of Point Roberts, Washington (WA), as described in the final rule published in the **Federal Register** on August 28, 1997. That final rule was issued to assist Transport Canada in its efforts to reduce the risk of midair collision, enhance safety, and improve traffic flows within the Vancouver and Abbotsford, BC, International Airport Areas. This action

establishes the effective dates for the modification of these airspace areas.

EFFECTIVE DATES: The final rule published in the **Federal Register** on August 28, 1997 (62 FR 45526), and delayed on November 12, 1997 (62 FR 60647), is effective 0901 UTC, June 18, 1998, for the Class C airspace; and 0901 UTC, May 20, 1999, for the Class D airspace.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1997, the FAA issued the Modification of Class D airspace south of Abbotsford, BC, on the United States side of the U.S./Canadian border, and the establishment of a Class C airspace area in the vicinity of Point Roberts, WA, final rule (62 FR 45526). That final rule, which was to become effective on November 6, 1997, was issued to assist Transport Canada in its efforts to reduce the risk of midair collision, enhance safety, and improve traffic flows within the Vancouver and Abbotsford, BC, International Airport Areas.

On November 5, 1997 (62 FR 60647, November 12, 1997), the FAA delayed the implementation of the above rule at the request of Transport Canada. Transport Canada requested that the FAA take action to delay the rule to allow Nav-Canada an opportunity to complete a review of current Canadian airspace, aircraft operations, and air traffic procedures for the affected areas.

On January 5, 1998, Transport Canada notified the FAA via the FAA's Northwest Mountain regional office that their review was completed and requested that the FAA take action to implement the airspace modifications detailed in the August 20, 1997, final rule. This action establishes the effective dates for the modification of these airspace areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Effective Date

The effective date of Airspace Docket 93–AWA–16 (62 FR 45526, August 28, 1997, as delayed at 62 FR 60647, November 12, 1997) Class C airspace is 0901 UTC, June 18, 1998, and the Class D airspace is effective 0901 UTC, May 20, 1999.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on March 20, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98–8145 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–45]

Amendment to Class E Airspace; Blacksburg, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Blacksburg, VA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Virginia Tech Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS RWY 12 SIAP to Virginia Tech Airport at Blacksburg, VA.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On January 27, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Blacksburg, VA, was published in the **Federal Register** (63 FR 3854). The development of a GPS RWY 12 SIAP for Virginia Tech Airport requires the amendment of the Class E airspace at Blacksburg, VA. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Blacksburg, VA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 12 SIAP to Virginia Tech Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA AEA E5 Blacksburg, VA [Revised]

Virginia Tech Airport, VA
(Lat. 37°12'28" N., long. 80°24'29" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Virginia Tech Airport and within 4 miles each side of the 297° bearing from the airport extending from the 10-mile radius to 17 miles northwest of the airport, excluding the portions that coincide with the Roanoke, VA, and Dublin, VA Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on March 12, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–7817 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–47]

Amendment to Class E Airspace; Pennington Gap, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Lee County Airport, Pennington Gap, VA. All instrument procedures for the airport have been cancelled. The need for Class E airspace no longer exists for Instrument Flight Rules (IFR) operations at the airport. This action will result in the airspace reverting to Class G airspace.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On January 27, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the Class E airspace extending upward from 700 feet above the surface at Lee County Airport, Pennington Gap, VA, was published in the **Federal Register** (63 FR 3856).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes Class E airspace at Pennington Gap, VA. The need for controlled airspace extending from 700 feet AGL at the Lee County Airport no longer exists. This area will be removed from the appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA AEA E5 Pennington Gap, VA [Removed]

* * * * *

Issued in Jamaica, New York on March 18, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–8272 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–24]

Amendment to Class E Airspace; Lincoln, NE; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule

published on January 16, 1998, which revises Class E airspace at Lincoln Municipal Airport, NE, and corrects an error in the airspace designation as published in the direct final rule.

DATES: The direct final rule published at 63 FR 2600 is effective on 0901 UTC, April 23, 1998.

This correction is effective on April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On January 16, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments which modified the Class E airspace at Lincoln Municipal Airport, NE (FR Document 98–1104, 63 FR 2600, Airspace Docket No. 97–ACE–24). An error was subsequently discovered in the Class E airspace designation. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–1104 published in the **Federal Register** on January 16, 1998, 63 FR 2600, make the following correction to the Lincoln Municipal Airport, NE, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 2601, in the first column, in the ACE NE E5, Lincoln, NE airspace designation, after line 4, add Lincoln Municipal Airport ILS (lat. 40°52′02″ N., long. 96°45′42″ W.).

Issued in Kansas City, MO on February 23, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–8271 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–30]

Amendment to Class E Airspace; Audubon, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule published on January 16, 1998, which revises Class E airspace at Audubon, IA.

DATES: The direct final rule published at 63 FR 2598 is effective on 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 16, 1998 (63 FR 2598). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on February 23, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–8270 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–31]

Amendment of Class E Airspace; Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Daytona Beach, FL. A Global Positioning System (GPS) Runway (RWY) 6 (Special) Standard Instrument Approach Procedure (SIAP) has been developed for Spruce Creek Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (FR) operations at Spruce Creek Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On January 26, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Daytona Beach, FL, (63 FR 3673). This action would provide adequate Class E airspace for IFR operations at Spruce Creek Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) modifies Class E airspace at Daytona Beach, FL. A GPS RWY 6 (Special) SIAP has been developed for Spruce Creek Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Spruce Creek Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. This amendment also reflects the current name of the Daytona Beach Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS, AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Daytona Beach, FL [Revised]

Daytona Beach International Airport, FL
(Lat. 29°10′48″ N, long. 81°03′27″ W)
Spruce Creek Airport
(Lat. 29°04′49″ N, long. 81°02′48″ W)
Ormond Beach Municipal Airport
(Lat. 29°18′04″ N, long. 81°06′50″ W)
Ormond Beach VORTAC
(Lat. 29°18′12″ N, long. 81°06′46″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Daytona Beach International Airport, and within a 6.4-mile radius of Spruce Creek Airport, and within 6.4-mile radius of Ormond Beach Municipal Airport and within 3.2 miles each side of the Ormond Beach VORTAC 256° radial extending from the 6.4-mile radius to 7 miles west of the VORTAC.

* * * * *

Issued in College Park, Georgia, on March 9, 1998.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–8268 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 950609150–8003–04]

RIN 0648–AI06

Jade Collection in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; notice of public availability of final supplemental environmental impact statement/management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations and Designation Document for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary. For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade. This final rule will allow, under certain circumstances, these types of activities to occur while still protecting Sanctuary resources.

DATES: Congress and the Governor of the State of California have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the amendment to the Designation Document and regulations before it takes effect. After the forty-five day review period, the amendment to the Designation Document and regulations automatically becomes final and takes effect, unless the Governor of the State of California certifies within the forty-five day period to the Secretary of Commerce that the amendment to the Designation Document and regulations is unacceptable. In such case, the amendment to the Designation Document and regulations cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of California, and the original prohibition against collection of jade shall remain in effect. NOAA will publish in the **Federal Register** a document announcing the effective date following the forty-five day review period.

ADDRESSES: Copies of the Final Supplemental Environmental Impact Statement/Management Plan supporting this action may be obtained from Scott Kathey, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, California 93940.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4251.

SUPPLEMENTARY INFORMATION:

I. Background

In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) was designated on September 18, 1992. SRD issued final regulations, effective January 1, 1993, to implement the Sanctuary designation (15 CFR Part 922 Subpart M). The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities and thus make it unlawful for any person to conduct them or cause them to be conducted.

The MBNMS regulations prohibit exploring for, developing or producing oil, gas or minerals within the Sanctuary (15 CFR 922.132(a)(1)). Further, the regulations and Designation Document (the constitution for the Sanctuary) prohibit NOAA from issuing a permit or other approval for this activity in the Sanctuary (15 CFR 922.132(f); Designation Document, Article V). Therefore, the Sanctuary regulations and Designation Document absolutely prohibit exploring for, developing or

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producing oil, gas or minerals in the MBNMS. Exploring for, developing or producing oil or gas in the MBNMS is also statutorily prohibited.

The region within the Sanctuary known as the Jade Cove area consists of a series of small coves located south of Big Sur, near the town of Gorda. Jade (also called nephrite) occurs in pods and nodules in the serpentine bedrock formation, extending down the cliffs and into the seabed. The coastal area is very dynamic, subject to strong waves and tides, which erode the bedrock and sometimes release the jade. Jade is found primarily as pebbles or larger stones on the shore and seabed, and as revealed deposits in the seafloor.

For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade. Even prior to the designation of the MBNMS, extraction of minerals from State submerged lands was prohibited by State law, unless authorized under a permit from the State (please see response to comment (9)). The U.S. Forest Service also prohibits the removal without a lease of any rocks or minerals within the Los Padres National Forest, which abuts the inshore boundary of the Sanctuary in the Jade Cove area.

NOAA is amending the regulations for the MBNMS to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary, specifically the area bounded by the 35°55′20″ N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach) to the north, the 35°53′20″ N latitude parallel (coastal reference point: westernmost tip of Cape San Martin) to the south, and from the mean high tide line seaward to the 90-foot isobath (depth line). Limited, small scale collection of loose pieces of jade (which would otherwise naturally disintegrate) from the Jade Cove area will have at most a *de minimis* effect on the jade resource, a non-living resource, and will not destroy, cause the loss of, or injure other resources or qualities of the MBNMS. It should also be noted that the MBNMS Sanctuary Advisory Council (Council) recommended to SRD that the regulations be amended to allow small scale jade collection. The Council has devoted considerable time during several of its monthly meetings to obtain information and public testimony, and convened a task force to review this issue. There was also public support for the course of action.

The prohibition against permitting or otherwise approving the exploration, development or production of oil, gas or minerals in the Sanctuary is a term of the Designation Document for the Sanctuary. Pursuant to section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(a)(4)), the terms of designation of a national marine sanctuary may be modified only by the same procedures by which the original designation is made. Therefore, to allow limited, small-scale jade collection in the Jade Cove area of the Sanctuary, NOAA must comply with the procedures by which the Sanctuary was designated. Designations of national marine sanctuaries are governed by sections 303 and 304 of the NMSA (16 U.S.C. 1433, 1434). Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary (this final rule pertains entirely to State waters). This final rule is therefore accompanied by a Final Supplemental Environmental Impact Statement/Management Plan (FSEIS/MP). This final rule represents NOAA's preferred alternative as discussed in the FSEIS/MP. The Governor of California has forty-five days of continuous session of Congress beginning today to certify an objection to this final rule, should he make such a determination. If the Governor certifies an objection to this final rule, it will not take effect and the original prohibition will remain in effect.

NOAA issued an Advance Notice of Proposed Rulemaking (ANPR) on August 9, 1995 (60 FR 40540), to inform the public of the issue under consideration and to invite general advice, recommendations, information, and other comments from interested parties concerning the collection of marine jade within the Sanctuary. The comment period closed on September 8, 1995, with 195 comments received. Most comments were from individuals and favored unrestricted jade collection. NOAA issued a proposed rule on June 13, 1997 (62 FR 32320), to inform the public of NOAA's proposed course of action and to invite comments from interested parties. The comment period closed August 12, 1997, with 246 written comments received. A public hearing was held on July 30, 1997, with eight verbal comments received. All the comments were supportive of the proposed rule. A general summary of written and verbal comments and NOAA's responses follows.

II. Comments and Responses

(1) Comment: All comments support the proposed regulation allowing limited, small scale jade collection to occur in the Jade Cove area of the Sanctuary.

Response: No response necessary.

(2) Comment: How were the boundaries for the area of jade collection chosen?

Response: NOAA consulted with jade collectors, artisans, divers, natural resource managers, and other knowledgeable parties, and received input from the Sanctuary Advisory Council, to determine the most commonly used area of traditional marine jade collection and selected the boundaries of the Jade Cove area to accommodate such traditional collection while still protecting the resources and qualities of the NBNMS.

(3) Comment: The place name "north Plaskett Point" used in the proposed rule to identify the northern boundary of the jade collection area is not locally recognized. Please replace it with "south Sand Dollar Beach," which is a better known reference point. Specifically, there is a set of stairs located at south Sand Dollar Beach which coincides with the northern boundary of the collection area and is known to local residents and frequent visitors.

Response: NOAA agrees and has made the appropriate changes.

(4) Comment: NOAA should undertake an assessment of how much jade is available for harvesting.

Response: Because most of the jade in the Jade Cove area is present in smaller pods and nodules, not in veins, it is difficult to assess or measure the exact amount of jade in the Sanctuary. Information presented to NOAA at a meeting of the MBNMS Advisory Council in June 1994 by a geologist from the U.S. Geological Survey indicated that historic collection had not "limited" the jade resource and she did not believe that future collections at the same level would "limit" the jade resource.

(5) Comment: Collection of jade should require reporting of the amount taken to determine if there are any impacts of casual collection on the environment.

Response: The amount of jade removed pursuant to a permit issued by NOAA will be required to be reported. The amount of jade removed under the general exception, however, may be difficult to assess given the isolation and exposure of the area, the transitory nature of many visitors to the area, and the lack of NOAA or other personnel to monitor jade collection activities. NBNMS may establish a voluntary reporting system for jade removed under the general exception to assist in determining how much jade is removed

on an annual basis from the Jade Cove area.

(6) Comment: NOAA should consider an alternative of seasonal closures on jade collection, if only for safety reasons.

Response: NOAA believes that the inhospitable and often harsh conditions in winter are self-limiting to collection of marine jade in the Jade Cove area. People collect jade at their own risk. NOAA's action only removes a restriction on a previously prohibited activity.

(7) Comment: The proposed rule is not clear on what restrictions, if any, exist on the commercial use of jade collected under the conditions of the proposed rule. Please clarify.

Response: NOAA does not place any conditions on the use of jade that has been removed under the general exception. Persons who wish to remove jade under a Sanctuary permit will be required to explain the purpose for which the jade is to be removed, including commercial or "for profit" uses. All permits will be considered on a case-by-case basis according to the general permit criteria at 15 CFR 922.48 and 922.133; preference will be given to research and education uses. NOAA will not allow commercial excavation or mining of the jade resource within the MBNMS.

(8) Comment: If a person finds a loose large piece of jade that cannot be carried out by an individual, can he break the large piece into several smaller pieces with the hand tools allowed under the exception and remove the smaller pieces?

Response: If a stone is not removable under the conditions given in the general exception for limited, small-scale jade collection under this rule, including an individual being allowed to remove only what he carries himself, then a permit will be required to remove the stone. Hand tools are only allowed to aid in maneuvering and lifting loose stones, and scratching the surface of a stone as necessary to determine if it is jade. Hand tools are not authorized to be used to break or chip stones under any circumstances.

(9) Comment: NOAA stated in the proposed rule that prior to Sanctuary designation, collection of marine jade from California ocean areas was a violation of state law. This is not true and should be corrected.

Response: Under California law, the State Lands Commission (SLC) has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State (California Public Resources Code § 6301). The SLC is authorized to issue prospecting permits and leases for the extraction and removal of minerals, other than oil and gas or other hydrocarbon substances, from lands, including tide and submerged lands belonging to the state, consistent with the procedures of the California Code of Regulations, Title 2, Division 3, Article 4, Section 2200–2205. As the SLC has not prescribed regulations for the noncommercial hobby collection of minerals from state lands, any collection of minerals from such lands is considered commercial collection.

Should any person remove, without a permit, jade in large amounts or for the purpose of sale, the SLC has authority under Public Resource Code § 6302 to seek civil damages for trespass, and for conversion of public property. The SLC also has authority to seek criminal penalties for trespass (Penal Code § 602) or for theft (Penal Code § 484, 495).

(10) Comment: Please enter into the official record the document Jade Collection—A California Heritage previously submitted to NOAA.

Response: Jade Collection—A California Heritage is part of the administrative record for this rule and is available for public inspection.

(11) Comment: Please enter into the official record all previous correspondence sent to NOAA on the issue of jade collection within the Sanctuary.

Response: All correspondence sent to NOAA on the issue of jade collection prior to the public comment period of the proposed rule was considered in the course of NOAA's decision-making process and is available for public inspection.

(12) Comment: Can a collector collect jade outside the established collection zone if he/she obtains a Sanctuary permit?

Response: No. The absolute prohibition against exploring for, developing or producing oil, gas or minerals will remain in effect outside the Jade Cove area within the Sanctuary.

III. Revised Article V of the Designation Document for the Monterey Bay National Marine Sanctuary

No change to Article I–IV, and Article VI of the Designation Document have been made by NOAA. Article V of the Designation Document is amended by revising paragraph 2. Paragraph 2 of Article V is presented in its entirety with the revised language in italics.

Article V. Effect on Leases, Permits, Licenses, and Rights

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) the exploration for, development of or production of oil, gas or minerals within the Sanctuary except for limited, small-scale jade collection in the Jade Cove area of the Sanctuary [defined as the area bounded by the 35°55′20″ N latitude parallel (coastal reference point: beach access stairway at South Sand Dollar Beach), the 35°53′20″ N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and the mean high tide line seaward to the 90-foot isobath (depth line)]; (2) the discharge of primary-treated sewage (except for regulation, pursuant to Section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

End of Revised Article V of the Designation Document

IV. Summary of the Regulatory Amendment

Jade is a non-living resource of the MBNMS (see 15 CFR 922.3). Allowing limited, small-scale collection of small pieces already loose, which would otherwise naturally disintegrate, will have at most a *de minimis* effect on the jade resource. Further, it appears that collection of loose pieces of jade from the authorized area of the Sanctuary can be conducted without destroying, causing the loss of, or injuring other Sanctuary resources or qualities. Small scale, limited collection of jade is allowed under an exception to the MBNMS prohibitions, with certain conditions. Larger loose pieces of jade not allowed to be collected under the exception may be authorized to be collected under a Sanctuary permit. However, under no circumstances will NOAA allow the use of pneumatic, mechanical, electrical, hydraulic or explosive tools to collect jade. NOAA will also not issue a permit to allow excavation or mining of the jade resource, or the collection of larger loose pieces that support important components of the benthic community.

Consequently, NOAA is amending section 922.132(a)(1), 922.132(f), and section 922.133(c) to provide an exception to the prohibition against exploring for, developing or producing

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oil, gas or minerals in the Sanctuary, to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary [defined as the area bounded by the 35°55′20″N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach), the 35°53′20″N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and the mean high tide line seaward to the 90-foot isobath (depth line)]. NOAA is also amending section 922.132(a)(4) to provide, for consistency, a corresponding exception to the prohibition against alteration of the seabed for collection of loose jade as described below. The exception is limited to the Jade Cove area as this has been the primary area historically of marine jade collection.

The exception also contains certain other limitations to protect Sanctuary resources and qualities. The exception limits collection to jade pieces already loose from the seabed, meaning that natural storm or wave action has already completely separated the stone from the seabed. Under the general exception, no tools may be used to collect jade except (a) a hand tool, defined as a hand-held implement, utilized for the collection of jade pursuant to section 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron), to maneuver or lift a loose jade piece or scratch the surface of a stone as necessary to determine if it is jade; (b) a lift bag or multiple lift bags with a combined lift capacity not to exceed 200 pounds; or (c) a vessel (except for a motorized personal watercraft (see § 922.132(a)(7)) to provide access to the authorized area. Finally, each person may collect only what that person individually carries. The two hundred pound lift bag limit corresponds with the restriction limiting jade removal to what each person individually carries. Over one hundred pounds is considered to be a very heavy physical demand level (see Matheson, L. and Matheson, M. Examiners Manual for the Spinal Function Sort), and appears to correspond with the maximum amount that an average person could lift. The two hundred pound lift bag will allow safe transport to the surface of stones weighing less than 200 pounds. More important, the limitation is consistent with the overall effort to avoid jade collection that could adversely impact benthic (bottom) habitat.

Loose stones exceeding two hundred pounds would be of such mass as to be more likely to support important components of the benthic community and should not be readily made available for removal under the regulatory exception. A Sanctuary permit will be required for the collection of such loose pieces of jade. Applications for Sanctuary permits will be reviewed on a case-by-case basis under the general permit criteria contained at 15 CFR §§ 922.48 and 922.133, and will require that the applicant have all necessary approvals from other jurisdictions, including the California State Lands Commission. Preference will be given to those applicants proposing to collect such larger pieces for research or educational purposes. Any Sanctuary permits issued for jade collection will be conditioned to protect Sanctuary resources and in no circumstances will NOAA permit the use of pneumatic, mechanical, electrical, hydraulic or explosive tools to collect jade. This prohibition applies equally to collection activities conducted from authorized vessels, thus no deck cranes, davits, winches or other onboard equipment may be used to collect jade. NOAA will also not permit any excavation or mining of the jade resource, or the collection of larger loose pieces that support important components of the benthic community.

The exception for the limited, small-scale collection of loose pieces of jade does not extend to oil or gas or any other mineral. Furthermore, there is a statutory prohibition against leasing, exploration, development, or production of oil or gas in the Sanctuary.

Any collection of jade in Jade Cove, which is within California State waters, will require a State permit because of the State's prohibitions against taking minerals from State submerged lands (please see response to comment (9)). This is consistent with 15 CFR 922.42, which provides that any activity within a specific national marine sanctuary not expressly prohibited or otherwise regulated by that sanctuary's regulations may be conducted subject to, among other things, all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction. Current Federal and State restrictions on jade collection in upland areas adjacent to the Sanctuary are unaffected by this rulemaking.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act, 16 U.S.C. 1434(a)(4), provides that the terms of designation may be modified only by the same procedures by which the original designation is made. Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. 1433, 1434. Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary.

Congress and the Governor of the State of California have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the amendment to the Designation Document and regulations before it takes effect. After the forty-five day review period, the amendment to the Designation Document and regulations automatically becomes final and takes effect, unless the Governor of the State of California certifies within the forty-five day period to the Secretary of Commerce that the amendment to the Designation Document and regulations is unacceptable. In such case, the amendment to the Designation Document and regulations cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of California, and the original prohibition shall remain in effect. NOAA will publish in the **Federal Register** a notice of effective date following the forty-five day review period.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA, 16 U.S.C. 1434, requires the preparation of an environmental impact statement (EIS) as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the EIS be made available to the public. NOAA prepared and made available to the public a draft supplemental environmental impact statement/management plan for the Monterey Bay National Marine Sanctuary on the proposal to amend the regulations and Designation Document to allow limited, small-scale jade collection in the Jade Cove area of the Sanctuary. A final supplemental environmental impact statement/management plan has been prepared and is available to the public from the addresses listed at the beginning of this notice.

Executive Order 12866: Regulatory Impact

NOAA has concluded that this regulatory action is not significant within the meaning of section 3(f) of

Executive Order 12866 because it will not result in:

(1) An annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety;

(2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of such recipients; or

(4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have sufficient federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration as follows:

The rule amends the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) regulations to allow limited, small-scale collection of jade from an area within the Sanctuary known as Jade Cove, consistent with other applicable Federal and State law. Prior to the designation of the Sanctuary, extraction of minerals from State submerged lands was prohibited by State law, unless authorized by a permit issued by the State. The regulations implementing the designation of the Sanctuary absolutely prohibit exploration for, development or production of oil, gas or minerals in the Sanctuary. Consequently, because jade is a mineral, its collection is absolutely prohibited even if authorized by a State permit. Jade can be collected within Jade Cove, which is within California State waters, provided its collection is authorized by a State permit. Without a State permit, its collection would be prohibited by the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands. NOAA is aware of only one small business that used the jade resource prior to the Sanctuary's designation. That business did not conduct large-scale collection or rely solely on jade from Jade Cove. Most of its jade was collected from other sources, including from upland and out of State sources. Consequently, the rule is not expected to significantly impact a substantial number of small business entities.

Accordingly, a Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This rule will not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Historic preservation, Intergovernmental relations, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 16, 1998.

Captain Evelyn Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Part 922 is amended as follows:

PART 922—[AMENDED]

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart M—Monterey Bay National Marine Sanctuary

2. Section 922.131 is amended by adding the following definition in alphabetical order to read as follows:

§ 922.131 Definitions.

* * * * *

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to § 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron). Pneumatic, mechanical, electrical, hydraulic or explosive tools are, therefore, examples of what does not meet this definition.

* * * * *

3. Section 922.132 is amended by revising paragraphs (a)(1), (a)(4) introductory text, (d) and (f). By removing "or" at the end of paragraph (a)(4)(iv), by removing the period at the end of paragraph (a)(4)(v), and adding "; or" in its place, and by adding paragraph (a)(4)(vi) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary except: jade may be collected (meaning removed) from the area bounded by the 35°55'20" N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach), the 35°53'20" N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and from the mean high tide line seaward to the 90-foot isobath (depth line) (the "authorized area") *provided that*:

(i) Only jade already loose from the seabed may be collected;

(ii) No tool may be used to collect jade except:

(A) A hand tool (as defined in § 922.131) to maneuver or lift the jade or scratch the surface of a stone as necessary to determine if it is jade;

(B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or

(C) A vessel (except for motorized personal watercraft) (see paragraph (a)(7) of this section) to provide access to the authorized area;

(iii) Each person may collect only what that person individually carries; and

(iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii) of this section, any person may apply for a permit to collect such a loose piece by following the procedures in § 922.133.

* * * * *

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary except as an incidental result of:

* * * * *

(vi) Collection of jade pursuant to paragraph (a)(1) of this section, provided that there is no constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

* * * * *

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, paragraphs (a) (2) and (8) of this section, and paragraph (a)(10) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to §§ 922.48 and 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

* * * * *

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under §§ 922.48 and 922.133 or a Special Use permit under

section 310 of the Act authorizing, or otherwise approve: the exploration for, development or production of oil, gas or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

4. Section 922.133 is amended by revising paragraphs (a) and (c) to read as follows:

§ 922.133 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a) (2) through (8), and § 922.132(a) (10), if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and 922.48.

* * * * *

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a) (2) through (8), and § 922.132(a)(10) if the Director finds the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; allow the removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove area under § 922.132(a)(1)(iv); assist in managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extend to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. For jade collection, preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes. In addition, the Director may consider such other factors as he or she deems appropriate.

* * * * *

[FR Doc. 98–7201 Filed 3–27–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 98–21]

Copyright/Trademark Name Protection; Disclosure of Information; Correction

AGENCY: Customs Service, Treasury.

ACTION: Final rule; corrections.

SUMMARY: Customs published in the **Federal Register** of March 12, 1998, a document which amended the Customs Regulations to allow Customs to provide to intellectual property rights (IPR) owners sample merchandise and to disclose to IPR owners certain information regarding the identity of persons involved with importing merchandise that is detained or seized for infringement of the IPR owner's registered copyright, trademark, or trade name rights. Inadvertently, § 133.43 was incorrectly amended. This document corrects the amendment of that section.

DATES: This correction is effective April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Smith, Attorney, Intellectual Property Rights Branch (202) 927–2326.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1998, Customs published in the **Federal Register** (63 FR 11996)(FR Doc. 98–6183) T.D. 98–21 to amend the Customs Regulations at part 133 to allow Customs to provide to intellectual property rights (IPR) owners sample merchandise and to disclose to IPR owners certain information regarding the identity of persons involved with importing merchandise that is detained or seized for infringement of the IPR owner's registered copyright, trademark, or trade name rights.

This document corrects three editorial errors to § 133.43 that were contained in T.D. 98–21. The editorial errors concern the amendment to § 133.43, which pertains to the procedure on suspicion of infringing copies.

It has come to Customs attention that a requirement currently in paragraph (b)(2) of § 133.43 that was never intended to be changed was inadvertently dropped from the regulatory text in the March 12 publication. The dropped requirement, that Customs is reinserting in this correction document, concerns what a copyright owner must file with a port director to prevent an imported article suspected of being an infringing copy from being released if the importer files a denial that the article is an infringing copy. The copyright owner must file a bond along with a written demand for exclusion from entry of the detained article. The text of paragraph (b)(2) of § 133.43 in the March 12 publication inadvertently dropped the bond requirement.

The second and third errors concern the text of the second sentence in paragraph (c). One error incorrectly identified trademark owners as the object of the procedure when it should have referenced copyright owners. The other error mistakenly included words ("Customs detention or seizure, or * * *, in the event that the Commissioner of Customs, or his designee, or a federal court determines that the article does not bear an infringing mark") that should have been omitted and were not. Accordingly, this document corrects those errors.

Correction of Publication

Accordingly, the publication on March 12, 1998, of the final rule (T.D. 98–21)(63 FR 11996)(FR Doc. 98–6183) is corrected as follows:

1. On page 12000, in the third column, paragraphs (b)(6) and (c) of § 133.43 are corrected to read as follows:

§ 133.43 Procedure on suspicion of infringing copies.

* * * * *

(b) * * *

(6) Notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the port director:

(i) A written demand for the exclusion from entry of the detained imported article; and

(ii) A bond, in the form and amount specified by the port director, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event the Commissioner or his designee

determines that the article is not an infringing copy prohibited importation under section 602 of the Copyright Act of 1976 (17 U.S.C. 602)(See part 113 of this chapter).

(c) *Samples available to the copyright owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination or testing to assist in determining whether the article imported is a piratical copy. To obtain a sample under this section, the copyright owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] provided pursuant to 19 CFR 133.43(c) was (damaged/destroyed/lost) during examination or testing for copyright infringement.

* * * * *

Dated: March 25, 1998.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 98–8218 Filed 3–27–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–004]

RIN 2115–AE46

Special Local Regulations; Annual Air & Sea Show, Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the City of Fort Lauderdale Annual Air & Sea Show. This event will be held annually on the first Friday, Saturday and Sunday of May, and will involve approximately 150 participating aircraft and vessels, and 3,000 spectator craft. The resulting congestion will create an extra or unusual hazard in the navigable waters. These regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule becomes effective April 29, 1998.

FOR FURTHER INFORMATION CONTACT: LTJG J. Delgado Coast Guard Group Miami, Florida at (305) 535–4409.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 17, 1998 (63 FR 7740), the Coast Guard published a Notice of Proposed Rulemaking seeking comments on the establishment of permanent special local regulations for the Air & Sea Show held annually on the third Friday, Saturday and Sunday of May off of Fort Lauderdale, Florida. One comment was received from the Florida Department of Natural Resources, seeking a slight change in the coordinates of the regulated area to better protect marine species. The Coast Guard has incorporated the suggested change into the regulations.

Background and Purpose

The City of Fort Lauderdale Annual Air & Sea Show is a three day event with approximately 130 aircraft and 18 ski boats, jet skis and offshore racing power boats. In addition, various military aircraft, including high performance aircraft, will be operating at high speeds and low altitudes in the area directly above the regulated area. The event will take place in the Atlantic Ocean from Fort Lauderdale beach to one nautical mile offshore, between Oakland Park Boulevard and the 17th Street Causeway.

These regulations will prohibit non-participating vessels from entering the regulated area, and directs participants to obey instructions from the patrol commander.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 6 hours on Friday, and 8 hours on Saturday and Sunday.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for approximately eight hours each day for three days each year.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to section 2.B.2.a (CE #34(h)) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35. * * *

2. A new section 100.731 is added to read as follows:

§ 100.731 Special local regulations; annual Ft. Lauderdale Air & Sea Show, Ft. Lauderdale, FL.

(a) *Regulated area.* The following is a regulated area: All waters of the Atlantic Ocean west of a line drawn from 26–10.32N, 080–05.9W to 26–06.36N, 080–05.58W. All coordinates referenced use Datum: NAD 83.

(b) *Special local regulations.* (1) All vessels, with the exception of event participants, are prohibited from entering the regulated area without the specific permission of the patrol commander.

(2) All vessels shall immediately follow any specific instructions given by event patrol craft and exercise extreme caution while operating in or near the regulated area. A succession of not fewer than five short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) After the termination of the Air and Sea Show event for each respective day, all vessels may resume normal operations.

(c) *Dates.* These regulations become effective annually on the first Friday, Saturday and Sunday of May, from 9 a.m. to 3 p.m. EDT on Friday, and from 9 a.m. to 5 p.m. EDT on Saturday and Sunday.

Dated: March 20, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–8261 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 98–003]

RIN 2115–AE46

Special Local Regulations; Miami Beach, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Miami Super Boat Race. This event will be held annually on the third Sunday of April 1000 feet offshore Miami Beach, between 12 p.m. and 4 p.m. Easter Daylight Time (EDT). The regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule becomes effective on March 30, 1998.

FOR FURTHER INFORMATION CONTACT: LTJG J. Delgado, Coast Guard Group Miami, FL at (305) 535–4409.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 17, 1998 (63 FR 7741), the Coast Guard published a Notice of Proposed Rulemaking to establish permanent special local regulations for the Miami Super Boat Race, which will be held annually on the third Sunday in April. No comments were received during the comment period.

Background and Purpose

Super Boat International Productions Inc., is sponsoring a high speed power boat race with approximately thirty-five (35) race boats, ranging in length from 24 to 50 feet, participating in the event. There will be approximately two hundred (200) spectator craft. The race will take place in the Atlantic Ocean 1,000 feet off the Miami Beach shore, from the Miami Beach Clock Tower to Atlantic Heights. The race boats will be competing at high speeds with numerous spectator crafts in the area, creating an extra or unusual hazard in the navigable waterways. These regulations will create regulated areas for the competing vessels and for spectator craft.

In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective in less than 30 days after **Federal Register** publication. Delaying the effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public as the event is scheduled to occur in less than 30 days. Further, upon receiving the permit application, the Coast Guard published a Notice of Proposed Rulemaking and received no comments. The permit application was not received in time to allow for an acceptable comment period and a 30 day delay in the effective date of the regulations.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only four hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), The Coast Guard must consider-whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdiction with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for approximately four hours for one day each year.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to section 2.B.2.a (CE #34(h)) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water),* Reporting and recordkeeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100–[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.730 is added to read as follows:

§ 100.730 Annual Miami Super Boat Race; Miami Beach, Florida

(a) *Regualted area.* (1) A regulated area is established by a line joining the following points: 25–46.3N, 080–07.85W; thence to, 25–46.3N, 080–06.82W; thence to, 25–51.3N, 080–06.20W; thence to, 25–51.3N, 080–07.18W; thence along the shoreline to the starting point. All coordinate referenced use Datum: NAD 83.

(2) A spectator area is established in the vicinity of the regulated area for spectator traffic and is defined by a line joining the following points, beginning from: 25–51.3N, 080–06.15W; thence to, 25–51.3N, 080–05.85W; thence to, 25–46.3N, 080–06.55W; thence to, 25–46.3N, 080–06.77W; and back to the starting point. All coordinates referenced use Datum: NAD 83.

(3) A buffer zone of 300 feet separates the race course and the spectator areas.

(b) *Special local regulations.* (1) Entry into the regulated area by other than event participants is prohibited unless otherwise authorized by the Patrol Commander. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. Traffic may be permitted to resume normal operations between scheduled racing events, at the discretion of the Patrol Commander.

(2) A succession of not fewer than five short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) Spectators are required to maintain a safe distance from the race course at all times.

(c) *Dates:* These regulations become effective annually at 12 p.m. and terminate at 4 p.m. EDT on the third Sunday in April.

Dated: March 20, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–8262 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH103–1a; FRL–5978–6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: USEPA approves State Implementation Plan (SIP) revisions submitted by the State of Ohio on December 9, 1996, which added a Statewide exemption for sources burning natural gas from operating rate restrictions that would otherwise apply for purposes of sulfur dioxide control, and changed the sulfur dioxide (SO_2) limits on a site specific basis by removing a restriction on the simultaneous operation of the three heaters (B010, B008, and B006) at the Sun Oil Company facility in Lucas County, USEPA also approves previously adopted revisions to rule OAC 3745–18–06, entitled general emission limit provision, adding limits for stationary gas turbines and stationary internal combustion engines.

DATES: The "direct final" approval is effective on May 29, 1998 unless written adverse or critical comments are received by April 29, 1998. If the effective date is delayed timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revisions request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604

(It is recommended that you telephone Phuong Nguyen, Environmental Scientist, at (312) 886–6701 before visiting the Region 5 office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886–6701.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Implementation Plan (FIP) containing SO_2 regulations regarding sources in Ohio was promulgated on August 27, 1976 (41 FR 36324).

On May 4, 1981 (46 FR 24966), USEPA proposed to disapprove the Ohio SO_2 SIP for Lucas County. This proposed disapproval was based on the modeling analysis of Lucas County submitted by the Toledo Edison Company. This analysis predicted violations of the 24-hour and the 3-hour National Air Quality Standard (NAAQS) under applicable rules in Lucas County.

After May 4, 1981, Ohio EPA provided updated emission data for sources in Lucas County. USEPA initiated a remodeling analysis. The purpose of the reanalysis was to evaluate the effect of the updated emissions on the previously predicted violations. Results of the remodeling showed no violation of either the 24-hour or 3-hour standard. On January 13, 1982 (47 FR 1398) USEPA proposed to approve the State of Ohio's SO_2 plan for Lucas County and withdrew the prior proposed rule.

On June 30, 1982, the final rulemaking became effective (47 FR 28377). In the June 30, 1982 action, USEPA approved the Ohio SIP for SO_2 for Lucas County. The Plan was approved because it was demonstrated to provide for attainment and maintenance of the SO_2 NAAQS in Lucas County. The plan included all major SO_2 sources in the county except for Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company.

II. Review of State Submittal

In its December 9, 1996 submittal, Ohio requested approval of OAC 3745–18–54 (O) for the Sun Oil Company to replace the current applicable FIP and approval of revisions to OAC 3745–18–06 (A) exempting sources burning natural gas from otherwise applicable limits. The submittal provides a technical support document for the requested SO_2 limits for the Sun Oil Company facility and a synopsis of the requested revision of Ohio administrative code rule 3745–18–06 (A). The revision was adopted on October 7, 1996, and became effective on October 31, 1996. By letter of December 15, 1997, Ohio submitted further clarification of its exemption for sources burning natural gas and requested the USEPA also rulemake on other previously adopted revisions to rule 3745–18–06, notably including added limits on emissions from stationary gas turbines and stationary internal combustion engines.

A. Sun Oil Company

Originally, Sun Oil Company chose to use two fuel sources with different SO_2 content (#2 fuel oil and #6 fuel oil) as the fuels burned for the three heaters (B006, B008, B010) at this facility. The

structure of the FIP, in requiring that no more than two of these three units operate at anyone time, allows various combinations of these units to operate. Modeling in support of the federally promulgated limits demonstrated attainment even for the worst case combination of two of these three sources operating. The revisions adopted by the State would provide no change in maximum emissions from B010 and would reduce maximum emissions from B006 and B008 from about 28 pounds per hour down to about 1 pound per hour for each source. It is clear that the worst case combined impacts from sources B006 and B008 under the new limits will be less than the worst case impact of just one of these sources operating under the federally promulgated limits. The worst case impact of B010 is unchanged. Thus, Ohio EPA has demonstrated that the worst case impact of all three sources operating within the new limits will be less than the worst case combination of two of the three sources operating under the federally promulgated limits, such that the new limits provide even greater assurance of attainment.

The three Sun Oil facility heaters are listed in the documentation to the SIP submittal. The FIP limits are 1.10 pounds per million British thermal units actual heat input (#/MM Btu) for heaters B006 and B008, and 1.60 #/MM Btu for heater B010. The revised limits are 0.04 #/MM Btu for heaters B006 and B008, and B010 limit is unchanged. (The limits and rules for Lucas County, other than for the Sun Oil Company facility, are not addressed in this rulemaking.)

A September 28, 1994, memorandum from the Director, Air Quality Management Division, Office of Air Quality Planning and Standards, USEPA, to the Director, Air and Radiation Division, Region 5, entitled, "Response to Request for Guidance on Issues with Ohio Sulfur Dioxide Federal Implementation Plan" provides guidance on this type of submittal. This memo sets forth three criteria to be met so that FIP limits can be reverted to the SIP without new modeling. Under the first two criteria, there must be no known inadequacy in the original attainment demonstration. Under the third criteria, the State limits must reflect no relaxation of existing emission limits. All three of these criteria are met. Therefore, the revised limits may be considered to be adequate to assure attainment without further modeling.

In addition to the requested revision, Sun Oil Company has informed the Ohio EPA that heater number H–301 (OEPA source number B001) has been removed from the facility. Therefore, Ohio EPA is also requesting revision to the emission limits for that source from 1.50 pounds of SO_2 per million Btu heat input to 0.0 pounds of SO_2 per million Btu heat input.

Finally, the name of the company is being changed in the rule to reflect the current name of the company "Sun Company, Inc. (R&M)".

In terms of enforceability, the submitted limits can be evaluated using a stack test, which is acceptable to USEPA. Recordkeeping and reporting requirements are the same as those applied to other sources and are fully satisfactory. The emission limits are clear and should be readily enforceable.

B. Exemption for Sources Burning Natural Gas

The second revision to Ohio's State Implementation Plan for sulfur dioxide is a statewide provision exempting any regulated SO_2 source from applicable limits on hours of operation for days it is solely burning natural gas. To qualify, the gas must have a heat content greater than 950 Btu/scf (British thermal unit per Standard cubic feet) and a sulfur content less than 0.6 pounds per million standard cubic feet, and thus must have negligible emissions (less than 0.0006 pounds per million Btu). The restrictions on operating rates were originally intended to reduce daily total sulfur dioxide emissions below the level associated with full capacity operation for sources designed to burn high sulfur fuels. While sources are burning natural gas instead they are emitting negligible sulfur dioxide. Thus, operating rate restrictions are not needed on such days to assure attainment. If another fuel is burned during any part of a calendar day (from midnight to midnight) the respective emission limits and operating rates would remain effective.

Strictly speaking, as Ohio's rule is written, the exemption is applied to all limitations in rules 3745–18–06 to 3745–18–94 for days a source is burning natural gas. That is, on these days a source is exempted from limitations on emission rates and stack heights as well as on hours of operation. However, the nominal exemptions from these other provisions are not meaningful in a practical sense. To qualify for he nominal exemption from emissions limits (which range from 0.15 to 9.5 pounds per million Btu), the source must burn a fuel with emissions more than 200 to 10,000 times lower than the otherwise applicable limits. Sources under qualifying conditions would also be nominally exempt from requirements to vent emissions from stacks of at least a mandated minimum height, but it is unlikely that a source would vent its gas burning emissions from a lower height than it vents its emissions from higher sulfur rules, and in any case the emissions from burning qualifying gas are sufficiently low that stack height restrictions should be unnecessary to assure attainment. Consequently, the exemption from restrictions on operating hours is the only type of exemption in this submittal with practical significance and thus is being approved.

C. Other Provisions of Rule 3745–18–06

The third revision to Ohio's State Implementation Plan for sulfur dioxide is an approval of previous revisions to rule OAC 3745–18–06, entitled general emission limit provisions. This includes paragraph (F), relating to stationary gas turbines, and paragraph (G), relating to stationary internal combustion engines. Neither gas turbines nor internal combustion engines are steam-generating units. They, therefore, did not have general emission limits in the SO_2 rules except for a few cases where peaking units were included at power plants. These emission limits will strengthen the SIP because they add federally-enforceable emission limits to source categories that heretofore had no limits.

III. Final Action

USEPA is approving Ohio EPA's December 9, 1996, submittal to replace the federally promulgated site specific SO_2 limits for the Sun Oil Company facility with State rules modified to reduce limits for two sources in conjunction with removal of a prohibition against simultaneous operation of three sources.

USEPA is also approving an exemption from limits on operating hours and rates for sources on days when only natural gas is burned. Finally, USEPA is approving the addition of emission limits for stationary gas turbines and stationary internal combustion engines.

The USEPA is publishing this action without prior proposal because the USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical comments be filed. This action will become effective without further notice unless the EPA receives relevant adverse written comment on the parallel proposed rule (published in the proposed rules section of this **Federal**

Register) by April 29, 1998. Should the USEPA receive such comments, it will publish a final rule informing the public that this action did not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 29, 1998.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or trial governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Audit Privilege

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70–3745.73 of the Ohio Revised Code). USEPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the CAA, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the CAA program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

F. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of appeals for the appropriate circuit by May 29, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated February 23, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(116) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(116) On December 9, 1996, the Ohio Environmental Protection Agency submitted two revisions to its sulfur dioxide rules. The first revision provides adjusted, State adopted limits for a Sun Oil Company facility. The second revision, applicable Statewide, exempts sources from operating hour limits on days when only natural gas is burned. Further, by letter of December 15, 1997, the State requested that U.S. Environmental Protection Agency address the addition of emission limits for stationary gas turbines and stationary internal combustion engines in rule 3745–18–06 that have been adopted previously.

(i) *Incorporation by reference.* (A) Ohio Administrative Code (OAC) rule 3745–18–54 (O) and OAC rule 3745–18–06, adopted October 7, 1996, effective October 31, 1996.

3. Section 52.1881 is amended by revising paragraphs (a)(4) and (a)(8) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) * * *

(4) Approval-USEPA approves the sulfur dioxide emission limits for the

following counties: Adams County (except Dayton Power & Light-Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County, (except Cincinnati Gas & Electric-Beckjord), Clinton County, Columbiana County, Coshocton County, (except Columbus & Southern Ohio Electric-Conesville), Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County (except Ohio Valley Electric Company-Kyger Creek and Ohio Power-Gavin), Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County (except Ohio Rubber, Cleveland Electric Illuminating Company-Eastlake, and Painesville Municipal Boiler #5), Lawrence County (except Allied Chemical-South Point), Licking County, Logan County, Lorain County (except Ohio Edision-Edgewater, Cleveland Electric Illuminating-Avon Lake, U.S. Steel-Lorain, and B.F. Goodrich), Lucas County (except Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County, Montgomery County (except Bergstrom Paper, Miami Paper, Bergstrom Paper, Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumball County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical), Wayne County, Williams County, Wood County (except Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

* * * * *

(8) No Action-USEPA is neither approving nor disapproving the emission limitations for the following counties on sources pending further review: Adams County (Dayton Power & Light-Stuart), Allen County (Cairo Chemical), Butler County, Clermont County (Cincinnati Gas & Electric-Beckjord), Coshocton County (Columbus & Southern Ohio Electric-Conesville), Cuyahoga County, Franklin County, Gallia County (Ohio Valley Electric Company-Kyger Creek, and Ohio Power-Gavin), Lake County (Ohio Rubber, Cleveland Electric Illuminating Company-Eastlake, and Painesville Municipal-Boiler #5), Lawrence County (Allied Chemical-South Point), Lorain County (Ohio Edison-Edgewater Plant, Cleveland Electric Illuminating Avon Lake, U.S. Steel-Lorain, and B.F. Goodrich), Lucas County (Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).

* * * * *

[FR Doc. 98–7759 Filed 3–27–98; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0068b; FRL–5987–3]

Interim Final Determination That State has Corrected the Deficiency; State of California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a proposed rulemking to fully approve the State of California's submittal of its State implementation plan (SIP) revision concerning San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4401. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on September 27, 1996. This action will defer the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, EPA will take comment. If no relevant adverse comments are received on EPA's proposed approval of the State's submittal, EPA will finalize the approval of Rule 4401 and will also finalize the determination that the State has corrected the deficiencies that started the sanctions clock. If relevant adverse comments are received on EPA's proposed approval of Rule 4401 and this interim final action, EPA will publish a final determination taking into consideration any comments received.

DATES: This action is effective March 30, 1998. Comments must be received by April 29, 1998.

ADDRESSES: Comments should be sent to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule and EPA's evaluation report, which are the basis for this action, are available for public review at the above address. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), U.S. EPA Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 1992, the State submitted SJVUAPCD Rule 465.1 as a revision to the SIP, which EPA disapproved in part on August 28, 1996. *See* 61 FR 44161. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal implementation plan (FIP). The State subsequently submitted a revised rule on March 10, 1998, in the form of SJVUAPCD Rule 4401, adopted on January 15, 1998. In the Proposed Rules section of today's **Federal Register**. EPA has proposed full approval of SJVUAPCD Rule 4401.

Based on the proposed full approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this interim final action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this action. If, based on any comments on this action or any comments on EPA's

proposed full approval of SJVUAPCD Rule 4401, EPA determines that the State's submittal is not fully approvable and this interim final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on September 27, 1996. However, this action will defer the imposition of the offsets sanction and will defer the imposition of the highway sanction. *See* 59 FR 39832 (August 4, 1994). If EPA takes final action to fully approve Rule 4401, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If EPA receives adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. *See* 59 FR 39832, codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, impositions of the offset sanction will be deferred and imposition of the highway sanction will be deferred until EPA's final action fully approving SJVUAPCD Rule 4401 becomes effective or until EPA takes action proposing or finalizing disapproval in whole or part the State submittal. If EPA takes final action fully approving SJVUAPCD Rule 4401, any sanctions clocks will be permanently stopped and any imposed, stayed or deferred sanctions will be permanently lifted upon the effective date of that final action.

Because EPA has preliminarily determined that the State has provided an approvable revision to its SIP, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this document is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

III. Regulatory Process

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action temporarily relieves sources of an additional burden placed on them by the sanctions provisions of the CAA. Therefore, I certify that it does not have an impact on any small entities.

B. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to private sector, of $100 million or more.

Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

This interim final action temporarily relieves sources of an additional burden placed on them by the sanctions provisions of the CAA. This action does not impose any new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this interim final action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

C. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates that finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, annecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 30, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register** . This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

D. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 20, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–8062 Filed 3–27–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7240]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood

elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Washington	City of Springdale	January 9, 1998, January 16, 1998, *The Morning News.*	The Honorable Charles McKinney, Mayor, City of Springdale, Administration Building, 201 Spring Street, Springdale, Arkansas 72764.	December 11, 1997	050219
California:					
Contra Costa	City of Antioch	January 21, 1998, January 28, 1998, *Antioch Ledger Dispatch.*	The Honorable Mary Rocha, Mayor, City of Antioch, P.O. Box 5007, Antioch, California 94531–5007.	December 17, 1997	060026
San Bernardino	City of Ontario	January 14, 1998, January 21, 1998, *Inland Valley Daily Bulletin.*	The Honorable James Fatland, Mayor, City of Ontario, 303 East B Street Ontario, California 91764.	November 20, 1997	060278

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Shasta	City of Redding	January 15, 1998, January 22, 1998, *Record Searchlight.*	The Honorable Patricia Anderson, Mayor, City of Redding, 760 Parkview Avenue, Redding, California 96001.	April 22, 1998	060360
Los Angeles	City of Redondo Beach	January 15, 1998, January 22, 1998, *Redonod Reflex/South Bay Extra.*	The Honorable Gregory C. Hill, Mayor, City of Redondo Beach, 415 Diamond Street, Redondo Beach California 90277.	December 15, 1997	060150
Santa Clara	City of San Jose	January 16, 1998, January 23, 1998, *San Jose Mercury News.*	The Honorable Susan Hammer, Mayor, City of San Jose, 801 North First Street, Room 600, San Jose, California 95110.	December 4, 1997	060349
Santa Barbara	Unincorporated Areas	January 23, 1998, January 30, 1998, *Santa Barbara News-Press.*	The Honorable Naomi Schwartz, Chairperson, Santa Barbara County Board of Supervisors, 105 West Anapamu Street, Santa Barbara, California 93101.	January 7, 1998	060331
Santa Clara	Unincorporated Areas	January 16, 1998, January 23, 1998, *San Jose Mercury News.*	The Honorable James T. Beall, Jr., Chairman, Santa Clara County, Board of Supervisors, 70 West Hedding Street, East Wing, 10th Floor, San Jose, California 95110.	December 4, 1997	060337
Los Angeles	City of Torrance	January 15, 1998, January 22, 1998, *Daily Breeze.*	The Honorable Dee Hardison, Mayor, City of Torrance, 3031 Torrance Boulevard, Torrance, California 90503.	December 15, 1997	060165
Nevada: Clark	City of North Las Vegas.	January 8, 1998, January 15, 1998, *Las Vegas Review Journal.*	The Honorable Michael Montandon, Mayor, City of North Las Vegas, P.O. Box 4086, North Las Vegas, Nevada 89036.	November 20, 1997	320007
New Mexico:					
Bernalillo	City of Albuquerque	January 13, 1998, January 20, 1998, *Albuquerque Journal.*	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	November 24, 1997	350002
Bernalillo	Unincorporated Areas	January 23, 1998, January 30, 1998, *Albuquerque Journal.*	The Honorable Tom Rutherford, Chairman, Bernalillo County Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	December 22, 1997	350001
Oklahoma: Oklahoma	City of Edmond	January 15, 1998, January 22, 1998, *The Edmond Evening Sun.*	The Honorable Bob Rudkin, Mayor, City of Edmond, P.O. Box 202, Edmond, Oklahoma 73083.	December 2, 1997	400252

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oregon: Lincoln	Unincorporated Areas	January 7, 1998, January 14, 1998, *News Guard.*	The Honorable Don Lindly, Chairman, Lincoln County, Board of Commissioners, 225 West Olive, Room 110, Newport, Oregon 97365.	December 10, 1997	410129
Texas:					
Johnson	City of Burleson	January 14, 1998, January 21, 1998, *Burleson Star.*	The Honorable Rick Roper, Mayor, City of Burleson, City Hall, 141 West Renfro, Burleson, Texas 76028.	December 8, 1997	485459
Bexar	City of Castle Hills	January 8, 1998, January 15, 1998, *San Antonio Express.*	The Honorable Marty Rubin, Mayor, City of Castle Hills, 6915 West Avenue, San Antonio, Texas 78213.	December 2, 1997	480037
Montgomery	City of Conroe	January 23, 1998, January 30, 1998, *Conroe Courier.*	The Honorable Carter Moore, Mayor, City of Conroe, P.O. Box 3066, Conroe, Texas 77305.	January 8, 1998	480484
Tarrant	City of Grand Prairie	January 22, 1998, January 29, 1998, *Grand Prairie News.*	The Honorable Charles England, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	December 30, 1997	485472
Tarrant, Dallas, and Ellis.	City of Grand Prairie	January 15, 1998, January 22, 1998, *Grand Prairie News.*	The Honorable Charles England, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, Texas 75053–4045.	December 12, 1997	485472
Harris	Unincorporated Areas	January 22, 1998, January 29, 1998, *Houston Chronicle.*	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	January 9, 1998	480287
Dallas	City of Irving	January 22, 1998, January 29, 1998, *Irving News.*	The Honorable Morris H. Parrish, Mayor, City of Irving, P.O. Box 152288, Irving, Texas 75015–2288.	January 9, 1998	480180
Johnson	Unincorporated Areas	January 14, 1998, January 21, 1998, *Burleson Star.*	The Honorable Roger Harmon, Johnson County Judge, Johnson County Courthouse, #2 Main Street, Cleburne, Texas 76031.	December 8, 1997	480879
Bexar	City of San Antonio	January 13, 1998, January 20, 1998, *San Antonio Express-News.*	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	April 20, 1998	480045
Bexar	City of San Antonio	January 8, 1998, January 15, 1998, *San Antonio Express-News.*	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	December 2, 1997	480045
Tarrant	City of Watauga	January 13, 1998, January 20, 1998, *Fort Worth Star-Telegram.*	The Honorable Hector Garcia, Mayor, City of Watauga, 7101 Whitley Road, Watauga, Texas 76148.	December 5, 1997	480613

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Utah: Salt Lake	Unincorporated Areas	January 14, 1998, January 21, 1998, *The Salt Lake Tribune.*	The Honorable Randy Horiuchi, Salt Lake County Commissioner, 2001 South State Street, Suite N2100, Salt Lake City, Utah 84190–1000.	December 17, 1997	490102

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 20, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–8075 Filed 3–27–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Arkansas	
Adona (City), Perry County (FEMA Docket No. 7184)	
Howell Creek:	
At confluence with Rocky Cypress Creek	*363
Approximately 400 feet upstream of Locust Road	*411
Rocky Cypress Creek:	
Approximately 6,950 feet downstream of Railroad Street	*339
Approximately 1,500 feet upstream of Railroad Street ..	*366
Maps are available for inspection at the City of Adona City Hall, Highway 10 West, Adona, Arkansas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Houston (Town), Perry County (FEMA Docket No. 7184)	
West Fork Mill Creek:	
Approximately 450 feet upstream of Little Rock and Western Railroad bridge	*286
Approximately 1,650 feet upstream of Route 113 bridge	*293
West Fork Mill Creek Tributary 1:	
Approximately 200 feet above confluence with West Fork Mill Creek	*286
Approximately 250 feet upstream of Route 216 bridge	*297
West Fork Mill Creek Tributary 2:	
Approximately 650 feet upstream of confluence with West Fork Mill Creek	*287
Approximately 300 feet upstream of private drive (northern)	*295
Houston Creek:	
Approximately 1,400 feet downstream of Little Rock and Western Railroad bridge	*305
Approximately 1,100 feet upstream of Route 113 bridge	*329
Maps are available for inspection at the Town of Houston Town Hall, Main Street, Houston, Arkansas.	
Perry County (and Incorporated Areas) (FEMA Docket No. 7214)	
Cedar Creek:	
At confluence with Fourche La Fave River	+286
Approximately 700 feet upstream of Westgate Drive ..	+366
Casa Creek:	
At confluence with Big Creek	+326
Approximately 3,500 feet upstream of Third Street (State Highway 10)	+398
Grace Creek Tributary:	
Just downstream of Little Rock and Western Railroad	+352
Approximately 1,600 feet upstream of Third Street (State Highway 10)	+378
West Fork Mill Creek:	
At State Highway 60	+283
Approximately 2,000 feet upstream of Highway 113	+294
West Fork Mill Creek Tributary 1:	
At confluence with West Fork Mill Creek	+283
Houston Creek:	
Approximately 2,500 feet downstream of State Highway 60	+283
Approximately 1,700 feet upstream of Highway 113	+340
Rocky Cypress Creek:	
Approximately 2.2 miles downstream of confluence of Howell Creek	+324
Just downstream of confluence of Danner Creek ...	+372
Fourche La Fave River:	
At confluence with Arkansas River	+278
Approximately 3.2 miles upstream of State Highway 10	+285
Arkansas River:	
At Perry-Pulaski County border	+275
At Perry-Conway County border	+294
Maps are available for inspection at the Perry County Courthouse, Main Street, Perryville, Arkansas.	
Maps are available for inspection at the Town of Bigelow Town Hall, North Front Street, Bigelow, Arkansas.	
Maps are available for inspection at the City of Casa City Hall, State Highway 10, Casa, Arkansas.	
Maps are available for inspection at the Town of Fourche Town Hall, Fourche, Arkansas.	
Maps are available for inspection at the City of Perryville City Hall, Pine Street, Perryville, Arkansas.	
Maps are available for inspection at the City of Adona City Hall, Adona, Arkansas.	
Maps are available for inspection at the Town of Houston Town Hall, Highway 60, Houston, Arkansas.	
Pulaski County (Unincorporated Areas) (FEMA Docket No. 7234)	
Bringle Creek:	
Approximately 500 feet upstream of confluence with Maumelle River	*300
At confluence with Bringle Creek Tributary A	*345
Bringle Creek Tributary A:	
At confluence with Bringle Creek	*345
Approximately 1,600 feet above confluence with Bringle Creek	*364
Ferndale Creek:	
At confluence with Maumelle River	*368
Approximately 200 feet upstream of Ferndale Road	*368
Just upstream of Ferncliff Road	*442
Maps are available for inspection at 501 West Markham, Little Rock, Arkansas.	
California	
Bellflower (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
At the intersection of Rose Street and Lakewood Boulevard	*61
At the intersection of Artesia Freeway and Lakewood Boulevard	*67
At the intersection of Lakewood Boulevard and Alondra Street	*71
Maps are available for inspection at the City of Bellflower Planning Department, City Hall, 16600 Civic Center Drive, Bellflower, California.	
Agoura Hills (City), Los Angeles County (FEMA Docket No. 7234)	
Medea Creek:	
Approximately 975 feet upstream of Canwood Street	*859
Approximately 1,105 feet upstream of Canwood Street	*860
Approximately 750 feet upstream of Fountainwood Street	*947
Maps are available for inspection at the City of Agoura Hills Planning Department, City Hall, 30101 Agoura Court, Agoura Hills, California.	
Carson (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
Approximately 4,600 feet south of Sepulveda Boulevard bridge over Dominguez Channel	*13
At the Carson Street underpass beneath San Diego Freeway	*20
At the intersection of Prospect Avenue and Van Buren Street	*35
Just east of Compton Creek and west of Long Beach Freeway	*52
At the intersection of Carson Street and Wilmington Avenue	*3
Maps are available for inspection at the City of Carson Public Works Department, 701 East Carson Street, Carson, California.	
Colusa (City), Colusa County (FEMA Docket No. 7234)	
Colusa Trough:	
Approximately 600 feet downstream of State Highway 20	*50
Approximately 4,000 feet downstream of State Highway 20	*50
Maps are available for inspection at the City of Colusa Planning Department, 425 Webster Street, Colusa, California.	
Colusa County (Unincorporated Areas) (FEMA Docket No. 7234)	
Colusa Trough:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
At State Highway 20	*50
Approximately 10,850 feet upstream of Lurline Road	*55
Maps are available for inspection at the Colusa County Department of Planning and Building, 220 12th Street, Colusa, California.	
Compton (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
Approximately 1,200 feet south of Artesia Freeway just east of the Southern Pacific Railroad	*56
At the intersection of Long Beach Boulevard and Temple Avenue	*65
At the intersection of Long Beach Boulevard and Elm Street	*71
At the intersection of South San Antonio Avenue and East Compton Boulevard	*74
At Banning Street west of Santa Fe Avenue	*80
Maps are available for inspection at the City of Compton Planning Department, 205 South Willowbrook Avenue, Compton, California.	
Downey (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
At the intersection of Century Boulevard and Verdura Avenue	*81
At the intersection of Golden and Bixler Avenues	*83
Rio Hondo:	
Approximately 100 feet west of the intersection of Brock Avenue and Gardendale Street	*85
At the intersection of Bellflower Boulevard and Washburn Road	*100
At the intersection of Muller Street and Lakewood Boulevard	*118
At the intersection of Paramount Boulevard and Florence Avenue	*126
At the intersection of Telegraph Road and Lakewood Boulevard	*143
At the intersection of Patton Road and Cleta Street	#1
At the intersection of Downey Avenue and Texas Street	#2
Maps are available for inspection at the City of Downey City Hall, 11111 Brookshire Avenue, Downey, California.	
Gardena (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
Approximately 800 feet south of the intersection of 170th Street and Catalina Avenue	*20
Maps are available for inspection at the City of Gardena Community Development Department, 1700 West 162nd Street, Room 101, Gardena, California.	
Lakewood (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
At the intersection of Carson Street and Josie Avenue	*36
Approximately 700 feet south of the intersection of South Street and Lakewood Boulevard	*54
Approximately 400 feet north of the intersection of Lakewood Boulevard and Ashworth Street	*61
Just northeast of the intersection of Del Amo Boulevard and Palo Verde Avenue	#1
Maps are available for inspection at the City of Lakewood Community Development Department, City Hall, 5050 Clark Avenue, Lakewood, California.	
Long Beach (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
At the intersection of Second Street and Pacific Coast Highway	*11
Approximately 200 feet south of the intersection of Santa Fe Avenue and 23rd Street	*15
At the intersection of Willow and Magnolia Avenues	*23
Just upstream of the intersection of Wardlow Road and Bellflower Boulevard	*30
Just east of the Los Angeles River and south of San Diego Freeway	*38
At the intersection of Virginia Avenue and 48th Street	*50
At the intersection of Long Beach Freeway and Del Amo Boulevard	*52
At the intersection of Myrtle Avenue and 63rd Street	*57
At the intersection of Myrtle Avenue and 72nd Street	*68
Maps are available for inspection at the City of Long Beach Department of Public Works, 333 West Ocean Boulevard, Long Beach, California.	
Los Angeles (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
At the intersection of Alameda Street and Avalon Boulevard	*11
At Pacific Coast Highway bridge over Dominguez Channel	*12
At the intersection of Vermont Avenue and Artesia Freeway	*20
Approximately 2,000 feet south of San Diego Freeway	*27
Approximately 200 feet upstream of the Brooklyn Avenue bridge, just east of the Los Angeles River Channel	*297
Approximately 1,650 feet upstream of the Broadway bridge, just east of the Los Angeles River Channel	*311
Maps are available for inspection at the City of Los Angeles City Hall, 200 North Main Street, Room 305, Los Angeles, California.	
Los Angeles County (Unincorporated Areas) (FEMA Docket No. 7039)	
Los Angeles River:	
Approximately 1,600 feet south of the intersection of Westminster Avenue and Studebaker Road	*11
Approximately 500 feet south of the intersection of Westminster Avenue and Studebaker Road	*12
At the intersection of Del Amo Boulevard and Santa Fe Avenue	*41
At the intersection of Del Amo Boulevard and Susana Road	*52
Approximately 650 feet south of the intersection of Atlantic Avenue and Compton Boulevard	*68
At Long Beach Freeway just north of the Fernwood Avenue overpass	*85
Just west of the intersection of Del Amo Boulevard and Alameda Street	#3
Rio Hondo:	
Just east of the Los Angeles River, just upstream of Fernwood Avenue	*83
Just east of the Los Angeles River and just south of the Imperial Highway bridge	*94
Maps are available for inspection at the Los Angeles County Public Works Department, Planning Division, 900 South Fremont Avenue, 11th Floor, Los Angeles, California.	
Lynwood (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
At the intersection of McMillan Street and Atlantic Avenue	*75

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
At the intersection of Euclid Avenue and Peach Street	*78
At the intersection of Atlantic and Agnes Avenues	*81
At the intersection of Cortland Street and Louise Avenue	*85
At the intersection of Century Boulevard and Louise Avenue	*85
Maps are available for inspection at the City of Lynwood Department of Public Works, Engineering Division, City Hall Annex, 11330 Bullis Road, Lynwood, California.	
Montebello (City), Los Angeles County (FEMA Docket No. 7039)	
Rio Hondo:	
Just east of Rio Hondo Channel in line with Beach Street	*168
Just east of Rio Hondo Channel, 300 feet south of Beverly Boulevard	*184
Maps are available for inspection at the City of Montebello City Hall, 1600 West Beverly Boulevard, Montebello, California.	
Paramount (City), Los Angeles County (FEMA Docket No. 7039)	
Los Angeles River:	
At the intersection of South Downey Avenue and East Flower Street	*68
Four hundred feet north of the intersection of South Orange Avenue and East Alondra Boulevard	*71
At the intersection of East Golden Avenue and Obispo Avenue	*83
Just west of the Los Angeles River channel and south of the Union Pacific Railroad Bridge	*84
Rio Hondo:	
At the intersection of South Orizaba Avenue and East Golden Avenue	*83
At the intersection of South Orange Avenue and East Hogee Drive	*84
Approximately 200 feet northwest of the intersection of East Gardendale Street and South Brocks Avenue	*86
Maps are available for inspection at the City Public Works Yard, 15300 Downey Avenue, Paramount, California, and City Building Department, 16400 Colorado Avenue, Paramount, California.	
Pico Rivera (City), Los Angeles County (FEMA Docket No. 7039)	
Rio Hondo:	
Just upstream of the intersection of Rosemead Boulevard and Telegraph Road	*143
At the intersection of Loch Alene Avenue and Foxbury Way	*158
At the intersection of Rieshel Street and Picovista Road	*162
At the intersection of Calico and Friendship Avenues	*190
At the intersection of Mines and Cord Avenues	#1
Maps are available for inspection at the City of Pico Rivera Public Works Department, 6615 Passons Boulevard, Pico Rivera, California.	
South Gate (City), Los Angeles County (FEMA Docket No. 7039)	
Rio Hondo:	
At the intersection of Paramount Boulevard and Florence Avenue	*83
At the intersection of Imperial Highway and Garfield Place	*94
At the crossing of the Union Pacific Railroad and Miller Way	*108
At the intersection of Garfield Avenue and Firestone Boulevard	*109
At the Southern Pacific Railroad, just east of Rio Hondo Channel	*113
Los Angeles River:	
At the intersection of Century and Paramount Boulevards	*83
Maps are available for inspection at the Office of the City Clerk, South Gate City Hall, 8650 California Avenue, South Gate, California.	
Yolo County (Unincorporated Areas) (FEMA Docket No. 7064)	
Yolo Bypass:	
Approximately 17,000 feet downstream of the Southern Pacific Railroad	*26
Approximately 11,500 feet downstream of the Western Pacific Railroad	*28
Approximately 7,000 feet downstream of the Western Pacific Railroad	*29
Just upstream of the Western Pacific Railroad	*31
Approximately 16,000 feet downstream of Freemont Weir	*32
Approximately 7,500 feet downstream of Freemont Weir	*34
Just upstream of Freemont Weir	*39
Deep Ponding:	
Approximately 4,500 feet southeast of confluence of Sacramento Bypass and Tule Canal	*30
Area south of the Western Pacific Railroad and upstream of Sacramento Bypass, bounded by Yolo Bypass and the Sacramento River	*31
Area north of the Western Pacific Railroad, bounded by Yolo Bypass and the Sacramento River	*33
Sacramento Bypass:	
Approximately 4,000 feet downstream of the Western Pacific Railroad	*29
Just downstream of the Western Pacific Railroad	*30
Just upstream of Freeport Bridge	*25
Approximately 13,500 feet upstream of Freeport Bridge	*26
Approximately 27,000 feet upstream of Freeport Bridge	*28
Approximately 24,000 feet downstream of Interstate Route 5/Route 16	*31
Approximately 11,000 feet downstream of Interstate Route 5/Route 16	*32
Approximately 5,000 feet downstream of Interstate Route 5/Route 16	*34
Approximately 8,000 feet downstream of Interstate Route 5/Route 16	*36
Approximately 5,000 feet upstream of Interstate Route 5/Route 16	*37
Approximately 11,000 feet upstream of Interstate Route 5/Route 16	*38
Approximately 18,500 feet upstream of Interstate Route 5/Route 16	*39
Maps are available for inspection at the Yolo County Department of Public Works, 292 West Beamer Street, Woodland, California.	
Hawaii	
Maui County (FEMA Docket No. 7234)	
Pacific Ocean:	
At the intersection of Front and Baker Streets	*7
At the intersection of Front and Shaw Streets	*6
Approximately 3,300 feet south of confluence with Kauaula Stream	*9
Maps are available for inspection at the Maui County Planning Department, 250 South High Street, Wailuku, Hawaii.	
Idaho	
Bellevue (City), Blaine County (FEMA Docket No. 7234)	
Quigley Creek:	
At the intersection of Third and Cedar Streets	*5,187

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Approximately 380 feet upstream of Spruce Street	*5,199
Maps are available for inspection at the Building Inspector's Office, City Hall, 117 Pine Street, Bellevue, Idaho.	
Blaine County (Unincorporated Areas) (FEMA Docket No. 7234)	
Quigley Creek:	
At the intersection of Third and Cedar Streets	*5,187
Approximately 380 feet upstream of Spruce Street	*5,199
Maps are available for inspection at the Blaine County Planning and Zoning Department, Blaine County Courthouse, 206 First Avenue South, Hailey, Idaho.	
Louisiana	
Greenwood (Town), Caddo Parish (FEMA Docket No. 7234)	
Cross Bayou Tributary 1:	
Approximately 1,900 feet downstream of State Highway 79	*203
Approximately 1,600 feet upstream of U.S. Highway 80	*220
Cross Bayou Tributary 2:	
Approximately 800 feet downstream of Speedway Drive	*202
Approximately 3,000 feet upstream of U.S. Highway 80	*229
Cross Bayou Tributary 3:	
Approximately 100 feet downstream of the Union Pacific Railroad	*209
Approximately 1,000 feet upstream of U.S. Highway 80	*259
Gilmer Bayou Tributary 1:	
At limit of detailed study at the eastern corporate limits	*234
Approximately 6,000 feet above the eastern corporate limits	*265
Gilmer Bayou Tributary 2:	
Approximately 550 feet downstream of Waterwood Drive	*234
Approximately 3,000 feet upstream of Beebe Drive	*270
Gilmer Bayou Tributary 3:	
Approximately 1,750 feet downstream of Winburn Drive	*244
Approximately 2,250 feet upstream of Winburn Drive ...	*272
Maps are available for inspection at 9381 Greenwood Road, Greenwood, Louisiana.	
Oklahoma	
Allen (Town), Pontotoc and Hughes Counties (FEMA Docket No. 7234)	
Town Branch:	
Approximately 500 feet downstream of Commerce Street	*837
Approximately 1,500 feet upstream of "B" Street	*855
Maps are available for inspection at the Town of Allen Town Hall, Allen, Oklahoma.	
Oregon	
Troutdale (City), Multnomah County (FEMA Docket No. 7234)	
Beaver Creek:	
At Jackson Park Road	*40
Just upstream of Troutdale Road	*183
Approximately 200 feet downstream of Southeast Stark Street	*242
Maps are available for inspection at the City of Troutdale Community Development Department, 104 Southeast Kibling Avenue, Troutdale, Oregon.	
Wyoming	
Rock Springs (City), Sweetwater County (FEMA Docket No. 7128)	
Bitter Creek:	
Approximately 500 feet downstream of confluence with Killpecker Creek	*6,246
Approximately 1,000 feet downstream of the Union Pacific Railroad	*6,263
Maps are available for inspection at the City of Rock Springs Department of Public Works, 212 D Street, Rock Springs, Wyoming.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 20, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–8074 Filed 3–27–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–184; MM Docket No. 92–260; FCC 97–376]

Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission amended its rules regarding cable home wiring and home run wiring for multichannel video programming distributors. 47 CFR 76.613, 76.802 and 76.804 contained new and modified information collection requirements and became effective on March 13, 1998. Compliance with 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806 also is required as of March 13, 1998.

DATES: The amendments to 47 CFR 76.613, 76.802 and 76.804, published at 62 FR 61016, became effective on March 13, 1998. Compliance with 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806, published at 62 FR 61016, is required as of March 13, 1998.

FOR FURTHER INFORMATION CONTACT: JoAnn Lucanik or Lynn Crakes, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

1. On October 9, 1997, the Commission adopted an order amending its rules regarding the disposition of cable home wiring and home run wiring of multichannel video programming distributors, signal leakage and interference from a multichannel video programming distributor, access to molding and customer pre-termination access to cable home wiring. See 62 FR 61016, November 14, 1997. Because amended §§76.613, 76.802 and 76.804 of the Commission's rules imposed new or modified information collection requirements, they could not become effective until approved by the Office of Management and Budget ("OMB"). In addition, compliance with the amendments to 47 CFR 76.5, 76.620, 76.800, 76.805, and 76.806, was not required until OMB approval of the information collection requirements in 47 CFR 76.613, 76.802 and 76.804. OMB approved the rule changes on March 13, 1998.

2. The order stated that the rules as amended would become effective upon approval by OMB, and that the Commission would publish a document announcing the effective date of the rules. The amendments to 47 CFR 76.613, 76.802 and 76.804 became effective on March 13, 1998. Compliance with 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806 is also required as of March 13, 1998.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8185 Filed 3–27–98; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 63, No. 60
Monday, March 30, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA55

Official/Unofficial Weighing Service

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to amend portions of the General Regulations under the United States Grain Standards Act, as amended (USGSA), to allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility, but not on the same mode of conveyance at the same facility. This will provide agencies with more flexibility in providing the weighing services needed by the grain industry. Currently, agencies designated by GIPSA to provide official weighing services cannot provide similar unofficial services.

DATES: Comments must be submitted on or before May 29, 1998.

ADDRESSES: All comments concerning this proposed regulation should be addressed to George Wollam, GIPSA–FGIS, USDA, STOP 3649, 1400 Independence Avenue, SW, Washington, D.C. 20250, or FAX (202) 720–4628. All comments received will be made available for public inspection during business hours in Room 0623-South Building, 1400 Independence Avenue, SW, Washington, D.C. 20250 (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam (202) 720–0292, at the above address.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This amended rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this proposal will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would allow official agencies to provide both official and unofficial weighing services within their assigned area of responsibility, but not on the same mode of conveyance at the same facility. Currently, official agencies designated to provide official weighing services cannot provide similar unofficial services. There are presently 65 agencies designated by GIPSA, 57 private entities and 8 State agencies. Of the 65 official agencies, 14 are designated to perform official weighing services. It is estimated that 59 agencies perform official inspection and unofficial weighing while 8 have been allowed by GIPSA to perform both official weighing and unofficial weighing in addition to providing official inspection services. Most of these agencies would be considered small entities under Small Business Administration criteria. Agencies designated to provide official services would be afforded more flexibility in delivering the weighing services needed by the domestic grain market. Existing official agencies not designated to perform official weighing services would continue to provide unofficial weighing services. While the extent to which official agencies will choose to provide unofficial services is difficult to quantify and may depend upon many variables, it is believed that the proposed rule would have a beneficial effect on these agencies and the grain industry as a whole.

Information Collection and Record keeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements in Part 800 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

A direct final rule (60 FR 39242) was published on August 2, 1995, which notified the public of amendments to those regulations that prohibit official agencies from providing official weighing service when they provide similar unofficial service. GIPSA had planned to allow agencies to do both official and unofficial weighing within their assigned areas, but not at the same facility. Two written adverse comments in response to the direct final rule were received. One comment noted that GIPSA did not allow official agencies designated to perform both official weighing services and unofficial weighing because of possible confusion between the two; that the proposed rule was an attempt by a Federal agency to be in direct competition with the private sector; and questioned GIPSA's belief that there was a lack of available supervising agencies in the weighing area. The other comment also disagreed that there was a decrease in the availability of unofficial weighing supervision services and expressed concern regarding intrusion by a Federal agency into the private sector. The concerns raised by these comments are discussed in the following paragraphs.

The direct final rule was inadvertently not withdrawn prior to its effective date. A final rule was published (60 FR 65236) on December 19, 1995, which reinstated the regulations that were in effect prior to the effective date of the direct final rule. Therefore, GIPSA is now requesting public comment on allowing agencies and grain elevators to perform both official and unofficial weighing services, except at the same facility.

Designated agencies are agencies granted authority under the USGSA to provide official inspection service, or

Class X or Class Y weighing services or both, at locations other than export port locations. Most (88 percent) of these agencies are designated for inspection services only. The reason is that before 1976, most grain inspection agencies were already providing weighing as an additional service to grain inspection. These agencies were affiliated with and supervised by the then existing weighing and inspection bureaus under the direction of the Association of American Railroads, local grain exchanges, boards of trade, and various State programs. After the 1976 amendment to the USGSA, weighing performed by the grain inspection agencies became unofficial weighing. Most agencies continued their unofficial weighing and applied for inspection designations only.

However, since 1976, many inspection and weighing bureaus, boards of trade, and the Association of American Railroads have ceased providing supervision of the unofficial weighing services. Unofficial weighing services are currently still available from a variety of industry sources, including 51 of the agencies already designated by GIPSA for inspection services only.

However, we believe that there is a need for more access to Class X or Class Y weighing services that are provided for under the authority of the USGSA. To that end, since 1991, after receiving official weighing requests in several areas, GIPSA's Administrator (under § 800.2 of the regulations) has allowed 8 designated official agencies to provide both official and unofficial weighing. If allowed to provide both types of service, many more agencies that are now designated for official inspection only could also provide official weighing service. Further, designated agencies can generally provide Class X and Class Y weighing at a lower cost than GIPSA field offices due to their proximity to the grain facilities.

Initially, GIPSA did not allow agencies to provide both types of service because confusion might result on the part of the grain industry and the official agencies themselves as to which type of service an official agency was providing. However, in reevaluating this policy as it applies to weighing and evaluating the case-by-case situations where it has been allowed since 1991, GIPSA has found that such confusion has not been a factor, especially when GIPSA has separated official and unofficial weighing by not allowing agencies to provide both types of service at the same facility. The requirements for performing official weighing are easily distinguishable from unofficial weighing. Official weighing requires that: (1) Scales be tested by GIPSA; (2) designated agencies follow GIPSA-prescribed procedures to maintain proper operation and accurate weighing; and (3) designated agencies issue GIPSA-approved official grain weight certificates certifying the accuracy of weighing. Since official and unofficial weighing services have distinct requirements, designated agencies should have little problem in maintaining the separation of official and unofficial weighing, as long as it is not on the same mode of conveyance. In addition, GIPSA oversight conducted by the field offices and appropriate headquarters units should be able to detect any problems arising from the change.

Accordingly, GIPSA disagrees with the comments received as a result of the direct final rule. GIPSA proposes to change the weighing provisions of the regulations. This proposed rule does not change the requirements for inspection services. Following the close of the comment period, the comments will be considered and a final action addressing the comments will be published in the **Federal Register**.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Proposed Action

For reasons set forth in the preamble, 7 CFR Part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.76(a) is revised to read as follows:

§ 800.76 Prohibited services; restricted services.

(a) *Prohibited services.* No agency shall perform any inspection function or provide any inspection service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act. No agency shall perform official and unofficial weighing on the same mode of conveyance at the same facility.

* * * * *

3. Section 800.186(c)(3) introductory text is revised to read as follows:

§ 800.186 Standards of conduct.

* * * * *

(c) * * *

(3) Except as provided in § 800.76(a), engage in any outside (unofficial) work or activity that:

* * * * *

4. Section 800.196(g)(6)(ii) is revised to read as follows:

§ 800.196 Designations.

* * * * *

(g) * * *

(6) * * *

(ii) *Unofficial activities.* Except as provided in § 800.76(a), the agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

* * * * *

Dated: March 20, 1998.

James R. Baker,

Administrator.

[FR Doc. 98–7940 Filed 3–27–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–59–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require replacement of the de-icing system timer with a new improved timer. This proposal is prompted by reports of a short circuit in the propeller and/or de-ice wiring, and subsequent failure of the timer. The actions specified by the proposed AD are intended to prevent propeller disbonding due to short circuiting in the de-icing wiring system, which could result in reduced controllability of the airplane.

DATES: Comments must be received April 29, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–

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59–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–59–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–59–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received reports indicating that a failure sequence can occur, consisting of a short circuit in the propeller and/or airframe de-ice wiring, and subsequent failure of the timer. This failure could result in constant electrical current flow through the closed relay and shorted circuit, even if the aircraft de-ice switch is turned off. A constant electrical current could result in propeller blade overheat and consequent propeller blade disbonding. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–30–164, dated April 30, 1996, which describes procedures for replacement of the de-icing system timer with a new improved timer. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, approved this service bulletin.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be furnished by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,500, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GmbH: Docket 98–NM–59–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3039 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller disbonding due to short circuiting in the de-icing wiring system, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 8 months after the effective date of this AD, replace the de-icing system timer with a new improved timer in accordance with Dornier Service Bulletin SB–328–30–164, dated April 30, 1996.

(b) As of the effective date of this AD, no person shall install a de-icing system timer having part number A–5639–2 or 4E2947–2, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 24, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8223 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–21]

Proposed Establishment of Class E Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Minot, ND. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument flight procedures and provide a safer operating environment when the control tower is closed. The airport meets the minimum communications and weather observation and reporting requirements for controlled airspace extending upward from the surface. This action proposes to create controlled airspace with a 4.2-mile radius for this airport.

DATES: Comments must be received on or before May 18, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–21, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Minot, ND, to accommodate FAR Part 121 and Part 135 air carrier aircraft executing instrument flight rules procedure during periods when the control tower is closed. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from the surface of the earth are published in paragraph

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6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AGL ND E2 Minot, ND [New]

Minot International Airport, ND
(Lat. 48° 15′ 34″ N., long. 101° 16′ 52″ W.)

Within a 4.2-mile radius of the Minot International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice of Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

* * * * *

Issued in Des Plaines, Illinois on March 17, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–8143 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–15]

Proposed Amendment to Class E Airspace; Garden City, KS; Liberal, KS; Fort Dodge, IA; Fort Madison, IA; Columbus, NE; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Garden City, KS; Liberal, KS; Fort Dodge, IA; Fort Madison, IA; Columbus, NE, and Grand Island, NE. A review of the Class E airspace designations for the airports listed above indicates they do not meet the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The areas are enlarged to conform to the criteria of FAA Order 7400.2D. The Airport Reference Points (ARPs) for Garden City Regional Airport, KS, and Columbus Municipal Airport, NE, are amended and included in this document. The Instrument Landing System (ILS) and coordinates for Grand Island, Central Nebraska Airport, NE, and Columbus Municipal Airport, NE, are added to the airspace designations. The name of the Garden City Municipal Airport, KS, has been changed to the Garden City Regional Airport, KS. The intended effect of this rule is to comply with the criteria of FAA Order 7400.2D, amend the appropriate ARPs, add the ILSs and coordinates, and to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–15, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ACE–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace areas at Garden City Regional Airport, KS; Liberal Municipal Airport, KS; Fort Dodge Regional Airport, IA; Fort Madison Municipal Airport, IA; Columbus Municipal Airport, NE; and Grand Island, Central Nebraska Airport, NE. A review of the Class E airspace designations for these airports indicates they do not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL. is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The Class E surface area designations for Garden City-Regional Airport, KS, and Columbus Municipal Airport, NE, include the new ARPs. The amendment to Class E airspace designations for the airports listed above, will meet the criteria of FAA Order 7400.2D, amend the appropriate ARPs, add the ILSs and coordinates, provide additional controlled airspace at the above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The areas will be depicted on appropriate aeronautical charts. Class E surface airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Code of Federal Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface areas for an airport

* * * * *

ACE KS E2 Garden City, KS [Revised]

Garden City Regional Airport, KS
(lat. 37°55'39" N., long. 100°43'28" W.)
Garden City VORTAC
(lat. 37°55'09" N., long. 100°43'30" W.)

Within a 4.1-mile radius of Garden City Regional Airport and within 2.2 miles each side of the Garden City VORTAC 004° radial extending from the 4.1-mile radius to 7 miles north of the VORTAC and with 2.2 miles each side of the Garden City VORTAC 171° Radial extending from the 4.1-mile radius to 5 miles south of the VORTAC.

* * * * *

ACE KS E2 Liberal, KS [Revised]

Liberal Municipal Airport, KS
(Lat. 37°02'39" N., long. 100°57'36" W.)
Liberal VORTAC
(Lat. 37°02'40" N., long. 100°58'16" W.)

Within a 4.2-mile radius of Liberal Municipal Airport and within 1.8 miles each side of the Liberal VORTAC 027° radial extending from the 4.2-mile radius to 7 miles northeast of the VORTAC and within 1.8 miles each side of the Liberal 153° radial extending from the 4.2-mile radius to 7 miles southeast of the VORTAC and within 2.6 miles each side of the Liberal VORTAC 206° radial extending from the VORTAC to 7.4 miles southwest of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE NE E2 Columbus, NE [Revised]

Columbus Municipal Airport, NE
(Lat. 41°26'52" N., long. 97°20'24" W.)
Columbus VOR/CME
(Lat. 41°27'00" N., long. 97°20'27 " W.)

Within a 4-mile radius of Columbus Municipal Airport and within 2.6 miles each side of the 157° radial of the Columbus VOR/DME extending from the 4-mile radius to 8.7 miles southeast of the VOR/DME and within 2.6 miles each side of the 317° radial of the Columbus VOR/DME extending from the 4-mile radius to 7.4 miles northwest of the VOR/DME and within 3.5 miles each side of the 330° bearing from the Columbus Municipal Airport extending from the 4-mile radius to 10.5 miles northwest of the Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Garden City, KS [Revised]

Garden City Regional Airport, KS
(Lat. 37°55'39" N., long. 100°43'28" W.)
Garden City VORTAC
(Lat. 37°55'09" N., long. 100°43'30" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Garden City Regional Airport and within 4 miles east and 8 miles west of the 004° radial of the Garden City VORTAC extending from the airport to 16 miles north of the VORTAC.

* * * * *

ACE KS E5 Liberal, KS [Revised]

Liberal Municipal Airport, KS
(Lat. 37°02'39" N., long. 100°57'36" W.)
Liberal VORTAC
(Lat. 37°02'40" N., long. 100°58'16" W.)
Liberal Municipal Airport ILS
(Lat. 37°03'27" N., long. 100°57'23" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Liberal Municipal Airport and within 2.6 miles each side of the 027° radial of the Liberal VORTAC extending from the 6.4-mile radius to 8.7 miles northeast of the VORTAC and within 2.6 miles each side of the 153° radial of the Liberal VORTAC extending from the 6.4-mile radius to 8.7 miles southeast of the VORTAC and within 3 miles either side of the ILS localizer course extending from the 6.4-mile radius to 12 miles south of the airport and within 3 miles

each side of the 206° radial of the Liberal VORTAC extending from the 6.4-mile radius to 8.7 miles southwest of the VORTAC.

* * * * *

ACE IA E5 Fort Dodge, IA [Revised]

Fort Dodge Regional Airport, IA
(Lat. 42°33'05" N., long. 94°11'33" W.)

That airspace extending upward from 700 fee above the surface within a 6.7-mile radius of the Fort Dodge Regional Airport.

* * * * *

ACE IA E5 Fort Madison, IA [Revised]

Fort Madison Municipal Airport, IA
(lat. 40°39'33" N., long. 91°19'37" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Fort Madison Municipal Airport and within 1.8 miles each side of the 078° bearing from the Fort Madison Municipal Airport extending from the 6.4-mile radius to 8.2 miles northeast of the airport.

* * * * *

ACE NE E5 Columbus, NE [Revised]

Columbus Municipal Airport, NE
(lat. 41°26'52" N., long. 97°20'24" W.)
Columbus VOR/DME
(lat. 41°27'00" N., long. 97°20'27" W.)
Columbus Municipal Airport ILS
(lat. 41°26'25" N., long. 97°20'12" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Columbus Municipal Airport and within 4.2 miles each side of the 157° radial of the Columbus VOR/DME extending from the 6.6-mile radius to 9.5 miles southeast of the VOR/DME and within 4 miles each side of the Columbus ILS localizer course extending from the 6.6-mile radius to 10.5 miles northwest of the airport.

* * * * *

ACE NE E5 Grand Island, NE [Revised]

Grand Island, Central Nebraska Regional Airport, NE
(lat. 40°58'03" N., long. 98°18'31" W.)
Grand Island VORTAC
(lat. 40°59'03" N., long. 98°18'53" W.)
Grand Island, Central Nebraska Regional Airport ILS
(lat. 40°58'55" N., long. 98°18'53" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Central Nebraska Regional Airport and within 4 miles each side of the Grand Island ILS localizer course extending from the 6.6-mile to 8.7 miles south of the airport and within 4 miles northeast and 6 miles southwest of the 294° radial of the Grand Island VORTAC extending from the 6.6-mile radius to 16 miles northwest of the VORTAC and within 4 miles east and 6 miles west of the 360° radial of the Grand Island VORTAC extending from the 6.6-mile radius to 16 miles north of the VORTAC

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Issued in Kansas City, MO, on March 9, 1998.

Jack B. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–8142 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–3]

Proposed Amendment of Class E Airspace; Fernandina Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Fernandina Beach, FL. A Global Positioning System (GPS) Runway (RWY) 13 Standard Instrument Approach Procedure (SIAP) has been developed for Fernandina Beach Municipal Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Fernandina Beach Municipal Airport.

DATES: Comments must be received on or before April 29, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–3, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ASO–3," The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Fernandina Beach, FL. A GPS RWY 13 SIAP has been developed for Fernandina Beach Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Fernandina Beach Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document

would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Fernandina Beach, FL [Revised]

Fernandina Beach Municipal Airport, FL
(lat. 30°36'35"N, long. 81°27'38"W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.6-mile radius of Fernandina Beach Municipal Airport.

* * * * *

Issued in College Park, Georgia, on March 18, 1998.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–8269 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–02]

Proposed Revision of Class E Airspace; Cortez, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would provide additional controlled airspace to accommodate the development of two new Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at the Cortez Municipal Airport. These new SIAP's require airspace extending upward from 700 feet above the surface in order to contain associated holding procedures.

DATES: Comments must be received on or before May 14, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–02, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–02, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ANM–02." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR 71) to modify Class E airspace at Cortez Municipal Airport, Cortez, CO. This amendment would provide additional airspace necessary to fully encompass the holding patterns for the GPS Runway 3 and the GPS Runway 21 SIAP. The FAA establishes Class E airspace extending upward from 700 feet AGL, where necessary, to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace, and to promote safe flight operations under Instrument Flight Rules (IFR) at the Cortez Municipal Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Cortez, CO [Revised]

Cortez Municipal Airport, CO
(Lat. 37°18′11″N, long. 108°37′41″W)
Cortez VOR/DME
(Lat. 37°23′23″N, long. 108°33′43″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Cortez Municipal Airport, and within 3.1 miles each side of the Cortez VOR/DME 184° and 004° radials extending from the 7-mile radius to 10.1 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface beginning at lat. 36°34′50″N, long. 109°00′00″W; to lat. 36°51′00″N, long. 108°59′00″W; to lat. 37°04′00″N, long. 108°57′00″W; to lat. 37°16′00″N, long. 108°50′00″W; to lat. 37°30′00″N, long. 109°03′00″W; to lat. 37°47′00″N, long. 109°03′00″W; to lat. 37°52′00″N, long. 108°52′00″W; to lat. 38°02′00″N, long. 108°33′00″W; to lat. 38°00′00″N, long. 108°19′00″W; to lat. 37°16′00″N, long. 108°22′00″W; to lat. 37°02′00″N, long. 108°34′00″W; to lat. 36°49′00″N, long. 107°57′00″W; to lat. 36°36′00″N, long. 108°06′00″W; to lat. 36°52′00″N, long. 108°38′00″W; to lat. 36°31′00″N, long. 108°35′00″W; thence to point of beginning.

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Issued in Seattle, Washington, on March 17, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Nowthwest Mountain Region.

[FR Doc. 98–8267 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Two-Part Documents for Commodity Poola

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rule amendments.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has determined pursuant to Section 17(j) of the Commodity Exchange Act [1] ("Act") to review the National Futures Association's ("NFA's") Compliance Rule 2–35 ("the Rule") and its Interpretive Notice regarding commodity pool Disclosure Documents. The Rule requires the commodity pool operator ("CPO") of a commodity pool required to register its securities under the Securities Act of 1933 ("public pool") to deliver a two-part document to prospective participants. The first part of the document must be the Disclosure Document required by Commission Rule 4.21(a),[2] written using plain English principles and limited to specific disclosure information. The second part is a Statement of Additional Information ("SAI"), which may include information that is not in the Disclosure Document, provided that the information is not misleading or otherwise inconsistent with applicable statutes, rules or regulations.[3] The CPO of a commodity pool that is not required to register its securities under the Securities Act of 1933 ("private pool") [4] must prepare a Disclosure Document and may prepare and distribute an SAI, but is not required to do so. Should the Rule be approved by the Commission, it will be necessary to amend Commission Rules 4.24(v), 4.25(a)(2) and 4.25(c)(5) to permit the use of the two-part document format. Accordingly, these amendments are contingent upon Commission approval of NFA Compliance Rule 2–35. The Commission, therefore, is providing the opportunity for comment prior to accepting NFA Compliance Rule 2–35 and implementing the related proposed amendments to Commission rules.

DATES: Comments must be received by April 29, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5221, or by electronic mail to secretary@cftc.gov. Reference should be made to "Two-Part Documents for Commodity Pools."

FOR FURTHER INFORMATION CONTACT: Leanna L. Morris, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W.,

[1] 7 U.S.C. 21(j) (1994).

[2] Commission rules referred to herein can be found at 17 CFR Ch. I (1997).

[3] Theoretically, the CPO of a public pool could prepare a Disclosure Document containing all of the required information and not need to prepare a separate SAI containing additional information. In that case, the CPO would not be required to deliver a two-part document, but would instead deliver only a Disclosure Document. However, most, if not all, public pools include more than the required information, such as trading comparison charts, additional text describing the market system, and the limited partnership agreement. Therefore, it is not expected that CPOs of public pools would prepare a Disclosure Document without also preparing an SAI.

[4] Pursuant to Commission Rule 4.24(d)(3)(i), a "private pool" is one that is privately offered pursuant to section 4(2) of the Securities Act of 1933, as amended, or pursuant to Regulation D thereunder.

Washington, D.C. 20581. Telephone: (202) 418–5434.

SUPPLEMENTARY INFORMATION :

I. Introduction

By letters dated December 24, 1997 and January 20, 1998, NFA submitted to the Commission for its approval, pursuant to Section 17(j) of the Act, NFA Compliance Rule 2–35 and its Interpretive Notice regarding commodity pool Disclosure Documents. NFA's submission indicated that it intends to implement the Rule on or after a date at least six months following receipt of notice of Commission approval. Should the Rule be approved by the Commission, it will be necessary to amend Commission Rules 4.24(v), 4.25(a)(2) and 4.25(c)(5) to permit the use of the two-part document format. Commission Rule 4.24(v) would be amended to require that supplemental information be disclosed only in the second part of the two-part document. Commission Rule 4.25(a)(2) would be amended to allow monthly rate of return information of the offered pool to be provided in the second part of the two-part document. Commission Rule 4.25(c)(5) would be amended to allow such required information to be provided in the second part of the two-part document.

II. Description of NFA Compliance Rule 2–35

NFA's Interpretive Notice regarding commodity pool Disclosure Documents states that "[a] Disclosure Document should provide essential information about the fundamental characteristics of a pool, and it should provide the information in a way that will assist investors in making informed decisions about whether to invest in the pool." Accordingly, the Rule adopts a two-part document format and plain English principles, described below, for a more "understandable" document.

The Rule requires that the CPO of a public pool deliver a two-part document. The first part of the document must be the Disclosure Document required by Commission Rule 4.21(a), written using plain English principles[5] and limited to specific disclosure information, as discussed in detail below. The second part is a Statement of Additional Information ("SAI"), which may include information that is not in the Disclosure Document, provided that the information is not misleading or otherwise inconsistent with applicable statutes, rules or regulations.

The CPO of a private pool must prepare and distribute a Disclosure Document and may prepare and distribute an SAI, but is not required to do so. If the CPO of a private pool chooses to prepare an SAI, it may be bound together with the Disclosure Document, so long as the Disclosure Document comes first. If the CPO of a private pool binds the SAI separately, the CPO is not required to provide it to a prospective participant unless requested by the prospective participant.

The Rule requires that the Disclosure Document required by Commission Rule 4.21(a) be clear and concise, written using plain English principles, and be limited to the following: information required by Commission Rules 4.24 and 4.25, with some exceptions to the required performance disclosures discussed below; any other information necessary to understand the fundamental characteristics of the pool or to keep the Disclosure Document from being misleading; and any other information required by the Securities and Exchange Commission or state securities administrators to be included in Part 1 of a two-part document.

With respect to performance disclosures, the Rule states that a CPO may provide the monthly rate of return information required under Commission Rule 4.25(a)(1)(i)(H) and the performance information required under Commission Rule 4.25(c)(5) in the SAI. Although the CPO may include the monthly rate of return information in the SAI, the Disclosure Document must still include annual rate of return information for the pool for the most recent five calendar years and year-to-date. It should be noted that, if the CPO does not prepare an SAI, the monthly rate of return information required under Commission Rule 4.25(a)(1)(i)(H) and the performance information required under Commission Rule 4.25(c)(5) must be included in the Disclosure Document.

III. Commission Policy and Rules

In the Commission's Policy Statement of January 21, 1997, the Commission confirmed its support in principle of the use of two-part documents. As currently written, however, Commission Rules 4.24(v), 4.25(a)(2) and 4.25(c)(5) do not permit the use of a two-part document format due to a specified order and placement of supplemental information and performance disclosures. Accordingly, if the Commission approves NFA Compliance Rule 2–35, it is necessary to amend Commission Rules 4.24(v), 4.25(a)(2) and 4.25(c)(5) to permit certain disclosures to be provided in the second part of a two-part document.

Commission Rule 4.24(v) provides that, if supplemental information, as defined by the regulation, is included in the Disclosure Document, the information must be disclosed in a specified order. Certain supplemental performance information must be placed after all specifically required performance information, while certain other supplemental performance information must be included in the Disclosure Document following all required and non-required disclosures. Supplemental non-performance information relating to a required disclosure may be included with the related required disclosure.

Commission Rule 4.25(a)(2) provides that, in addition to the required performance disclosures of Commission Rule 4.25(a)(1)(i)(H), the rate of return of the offered pool must be presented on a monthly basis for the period specified in Commission Rule 4.25(a)(5).

Commission Rule 4.25(c)(5) provides that, with respect to commodity trading advisors ("CTAs") and investee pools for which performance is not required to be disclosed pursuant to Commission Rules 4.25(c)(3) and 4.25(c)(4) (hereinafter "non-major CTAs and investee pools"),[6] the CPO must provide a summary description of the performance history of each of such advisors and pools.

Should the Commission approve NFA's Compliance Rule 2–35, the Commission believes that certain amendments to Commission Rules 4.24(v), 4.25(a)(2) and 4.25(c)(5), as discussed below, would permit the use of two-part documents by CPOs.

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[5] NFA's Interpretive Notice to Rule 2–35 provides guidance on what is meant by the use of "plain English principles." Such principles include: using active voice; using short sentences and paragraphs; breaking up the document into short sections; using titles and sub-titles that specifically describe the contents of each section; using words that are definite, concrete, and part of everyday language; avoiding legal jargon and highly technical terms; using glossaries to define technical terms that cannot be avoided; avoiding multiple negatives; and using tables and bullet lists, where appropriate. (See NFA's Interpretive Notice to Rule 2–35). The Rule does not affect the prescribed statements of Commission Rules 4.24(a) and 4.24(b).

[6] Commission Rule 4.10(d)(5) defines "major investee pool" as any investee pool that is allocated or intended to be allocated at least ten percent of the net asset value of the pool. Commission Rule 4.10(i) defines "major commodity trading advisor" as, with respect to a pool, any CTA that is allocated or intended to be allocated at least ten percent of the pool's funds available for commodity interest trading. Accordingly, "non-major CTAs and investee pools" do not meet the ten percent allocation requirement.

IV. Discussion

The Commission believes that the adoption of a two-part document format and plain English principles will assist investors in making an informed decision prior to investing in a pool by providing clear and concise information about the possible investment. Material information would be provided in the first part of a two-part document and written in a manner that is easily digested by avoiding technical or legal terminology and excessive detail. Should the CPO desire to include more information about the pool, its program, or other non-misleading disclosures, it could be provided in the second part of a two-part document. Accordingly, the two-part format will keep the emphasis on the material, required information found in the Disclosure Document.

The amendments to the Commission rules proposed herein would support the use of a two-part document by permitting that certain required disclosures be provided in the second part of a two-part document. Specifically, Commission Rule 4.24(v) would be amended to provide that all supplemental information must be contained only in the second part of a two-part document.

Commission Rule 4.25(a)(2) would be amended to provide that the monthly rate of return performance of the offered pool may be provided in the second part of a two-part document.[7]

Commission Rule 4.25(c)(5) would be amended to provide that the required summary description of the performance history of non-major CTAs and investee pools, as defined above, may be provided in the second part of a two-part document.

As noted earlier, these amendments would not take effect unless the Commission approves NFA Compliance Rule 2–35. Accordingly, the Commission seeks comments on NFA Compliance Rule 2–35 and its Interpretive Notice regarding commodity pool Disclosure Documents and the related proposed Commission rule amendments for the purpose of permitting two-part documents for CPOs.

Copies of the Rule and its Interpretive Notice will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C., 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein will affect registered CPOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[8] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[9] Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [10] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act.

There is no burden associated with the proposed rule amendments to Commission Rules 4.24(v), 4.25(a)(2) or 4.25(c)(5). While these proposed rule amendments have no burden, the group of rules 3038–0005 of which these rules are a part has the following burden:

Average burden hours per response: 124.65.

Number of respondents: 4,624.

Frequency of response: On occasion.

Persons wishing to comment on the information which would be required by these proposed rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 4

Brokers, commodity futures, commodity pool operators and commodity trading advisors.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6l, 6m, 6n, 6o, and 12(a), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, 24.

2. Section 4.24(v) is amended by revising paragraph (v)(3) introductory text to read as follows:

§ 4.24 General disclosures required.

* * * * * *

(v) * * *

(3) Must be placed as follows, unless otherwise specified by Commission rules, provided that where a two-part disclosure document is used pursuant to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, all supplemental information must be provided in the second part of the two-part document:

* * * * * *

3. Section 4.25 is amended by revising paragraphs (a)(2)(i) and (c)(5) introductory text to read as follows:

§ 4.25 Performance disclosures.

(a) * * *

(2) * * * (i) The performance of the offered pool must be identified as such and separately presented first, provided that where the pool operator uses a two-part disclosure document pursuant to the rules promulgated by a registered futures association pursuant to section 17(j) of the Act, the rate of return of the offered pool on a monthly basis may be provided, in the format set forth in § 4.25(a)(2)(ii) and § 4.25(a)(2)(iii), in the second part of the two-part document;

* * * * * *

(c) * * *

(5) With respect to commodity trading advisors and investee pools for which performance is not required to be disclosed pursuant to § 4.25(c)(3) and (4), the pool operator must provide a summary description of the performance history of each of such advisors and pools including the following information, provided that where the pool operator uses a two-part disclosure document pursuant to the rules promulgated by a registered futures association pursuant to section 17(j) of the Act, such summary

[7] Pursuant to NFA Compliance Rule 2–35, the annual rate of return performance information of the offered pool must be provided in the first part of a two-part Disclosure Document.

[8] 47 FR 18618–18621 (April 30, 1982).

[9] 47 FR 18619–18620.

[10] Pub. L. 104–13 (May 13, 1995).

description may be provided in the second part of the two-part document:

* * * * *

Dated: March 23, 1998.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–8147 Filed 3–27–98; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–008]

RIN 2115–AE46

Special Local Regulations; Around Alone Sailboat Race, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations creating a regulated area in the coastal waters off Charleston, SC, for the Around Alone single-handed sailboat race, sponsored by Great Adventures, Ltd. These regulations will prohibit entry into the regulated area by non-participating vessels during the event. These regulations are necessary to provide for the safety of life on navigable waters because of the expected presence of numerous spectator craft.

DATES: Comments must be received on or before May 29, 1998.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to the Operations Office at the above address between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (803) 724–7628. Comments will become part of this docket and will be available for inspection or copying at the Operations Office at the above address.

FOR FURTHER INFORMATION CONTACT: LTJG S.S. Brisco, Project Manager, Coast Guard Group Charleston at (803) 724–7628.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourage interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD07–98–008) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons desiring acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES**. The request should include why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed regulations are needed to provide for the safety of life during the start of the Around Alone 1998–99 sailing race. These proposed regulations are intended to promote safe navigation offshore of Charleston harbor immediately before, during, and after the start of the race by controlling the traffic entering, exiting, and traveling within the regulated area. The anticipated concentration of commercial traffic, spectator vessels, and participating vessels associated with the race poses a safety concern which is addressed in these proposed safety regulations.

The proposed regulations will encompass a trapezoidal area south of the Charleston Harbor entrance lighted buoy 7 (LLNR 2405). Four conspicuous markers will indicate the corners of the regulated area. These proposed regulations would prohibit the movement of spectator vessels and other non-participants within the regulated area on September 26, 1998, between 10 a.m. and 2 p.m. at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal is not a major significant regulatory action under section 3(f) of executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed regulations will only be in effect for approximately 4 hours on September 26, 1998.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed regulated area would be in effect for only 4 hours in a limited area outside Charleston harbor. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal, and has determined pursuant to section 2.B.2.a (CD #34(h)) of Commandant Instruction M16475.1C, that this proposal is categorically excluded from further environmental documentation.

Lists of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

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Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.35T–07–008 is added to read as follows:

§ 100.35T–07–008 Around Alone 1998–99 Sailing Race; Charleston, SC

(a) *Definitions.* (1) *Regulated area.* The regulated area includes the waters off Charleston, SC, in an area bounded by four corner points located at 32–42.72N, 79–47.64W; 32–42.09N, 79–46.96W; 32–41.61N, 79–47.28W; and 32–41.78N, 79–48.27W. All coordinates reference Datum: NAD 83. These four points will be conspicuously marked with four markers.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, SC.

(b) *Special local regulations.* (1) Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Coast Guard Patrol Commander.

(2) The Coast Guard Patrol Commander may delay, modify, or cancel the race as conditions or circumstances require. The Coast Guard Patrol Commander shall monitor the start of the race with the race committee, to allow for a window of opportunity for the race participants to depart the harbor with minimal interference with inbound or outbound commercial traffic.

(3) Spectator and other non-participating vessels may only follow the participants out of Charleston Harbor to the race starting area if they maintain a minimum distance of 500 yards behind the last participant, at the discretion of the Patrol Commander. Upon completion of the start of the race and when the last race participant has passed the outermost boundary of the regulated area, all vessels may resume normal operations.

(c) *Date.* This section becomes effective at 10 a.m. and terminates at 2 p.m. EDT on September 26, 1998.

Dated: March 16, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–8256 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH103–1b; FRL–5978–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposes to approve State Implementation Plan (SIP) revisions submitted by the State of Ohio on December 9, 1996, which provides for a Statewide sulfur dioxide exemption provision for sources burning natural gas and also changes the sulfur dioxide (SO_2) limits for the Sun Oil Company in Lucas County. The Sun Oil site specific revision revises emission limits to remove a restriction on the simultaneous operation of three heaters (B010, B008, and B006) at a Sun Oil Company facility. The statewide revision provides that sources burning natural gas are exempt from operating hour and rate restrictions that would otherwise apply for purposes of sulfur dioxide control, and USEPA also approves a previous revision to rule OAC 3745–18–06, entitled general emission limit provisions. This includes paragraph (F), relating to stationary gas turbines, and paragraph (G), relating to stationary internal combustion engines.

In the final rules section of this **Federal Register**, the EPA is approving the State's requests as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this notice of proposed rulemaking. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before April 29, 1998.

ADDRESSES: Written comments may be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Ohio Environmental Protection Agency may be examined during normal business hours at the following location: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886–6701.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 23, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

[FR Doc. 98–7758 Filed 3–27–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0068a; FRL–5987–4]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concerns Rule 4401 from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). This rule controls volatile organic compound (VOC) emissions from steam-enhanced crude oil production well vents. The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the Federally-approved SIP. In addition, the

final action on this rule will serve as a final determination that the deficiencies in this rule have been corrected and that on the effective date of the final action, any sanction or Federal implementation plan (FIP) clock will be stopped. Thus, EPA is proposing approval of this rule into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before April 29, 1998.

ADDRESSES: Comments may be mailed to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Applicability

This document concerns SJVUAPCD Rule 4401, Steam-enhanced Crude Oil Production Well Vents, adopted by SJVUAPCD on January 15, 1998. This rule was submitted by the California Air Resources Board (CARB) to EPA on March 10, 1998.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Area which encompassed the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. See 43 FR 8964, 40 CFR 81.305. Because some of these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] See 40 CFR 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for States to submit corrections of those deficiencies.

The SJVUAPCD was formed on March 20, 1991. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County, which remains under the jurisdiction of the Kern County Air Pollution Control District.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or worse as of the date of enactment.

It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. At the time of enactment of the CAA amendments, the San Joaquin Valley Area was classified as serious;[4] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

This document addresses EPA's proposed action for SJVUAPCD Rule 4401, Steam-enhanced Crude Oil Production Well Vents. The SJVUAPCD adopted this rule on January 15, 1998, and this rule was submitted by CARB to EPA on March 10, 1998. The submitted rule was found to be complete on March 18, 1998, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[5] and is being proposed for approval into the SIP.

Rule 4401 controls VOC emissions from steam-enhanced crude oil production well vents. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of SJVUAPCD's effort to achieve the National Ambient Air Quality Standard for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the

[1] At that time, Kern Country included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for the following counties: Kern, King, Madera, Merced, and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The San Joaquin Valley Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[5] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). For some source categories, such as steam-enhanced crude oil production well vents, EPA did not publish a CTG. Therefore, there is no CTG applicable to Rule 4401. In such cases, the District makes a determination of what controls are required to satisfy the RACT requirement, by reviewing the operations of facilities within the affected source category. In that review, the technological and economic feasibility of the proposed controls are considered. Additionally, the District may rely on EPA policy documents or technical guidance to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD's submitted Rule 4401 includes the following significant changes from the current SIP:

1. Language in several provisions has been amended to clarify the intent of the rule.

2. Provisions related to implementation of best available control technology (BACT) and offsets have been amended to be consistent with Federal requirements.

3. Additional recordkeeping requirements have been added to determine compliance with the rule.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD Rule 4401 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Based on this proposed full approval, EPA is also making an interim final determination that the State has corrected the deficiencies for which a sanctions clock began on September 27, 1996. See 61 FR 44161, August 28, 1996. Elsewhere in today's **Federal Register**, EPA has published a document that defers the imposition of sanctions until EPA's final action approving SJVUAPCD Rule 4401 becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA takes final action fully approving SJVUAPCD Rule 4401, any sanctions clocks will be permanently stopped and any imposed, stayed or deferred sanctions will be permanently lifted upon the effective date of that final action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Regulatory Process

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIAP approvals under sections 100 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

B. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal government in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rule being proposed for approval by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments, or to the private sector result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

C. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52:

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 20, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–8063 Filed 3–27–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC036–2007; FRL–5988–5]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval and withdrawal of proposed disapproval action.

SUMMARY: EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the District of Columbia (the District) on November 27, 1997. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program within the District. The intended effect of this action is to propose conditional approval of the District's enhanced

motor vehicle I/M program. EPA is proposing approval conditioned upon the District meeting the April 30, 1999 start date committed to and contained in its enhanced I/M SIP revision. EPA is also withdrawing its October 10, 1996 (61 FR 53166) proposed disapproval action of the enhanced I/M SIP revision submitted by the District of Columbia on July 13, 1995 (supplemented March 27, 1996).

DATES: Comments must be received on or before April 29, 1998.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti @ 215–566–2174, at the EPA Region III address above, or via e-mail at magliocchetti.catherine @epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the Region III office.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxide (NO_x) emissions. An important control measure to reduce these emissions is the implementation of a motor vehicle inspection and maintenance (I/M) program. Despite being subject to the most rigorous vehicle pollution control program in the world, cars and trucks still create about half of the ozone air pollution and nearly all of the carbon monoxide air pollution in United States cities, as well as toxic contaminants. Of all highway vehicles, passenger cars and light-duty trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. They also emit substantial amounts of nitrogen oxides and air toxics. Although the U.S. has made progress in reducing emissions of these pollutants, total fleet emissions remain high. This is because the number of vehicle miles traveled on U.S. roads has doubled in the last 20 years to 2 trillion miles per year, offsetting much of the technological progress in vehicle emission control over the same two decades. Projections indicate that the steady growth in vehicle travel will continue. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

Today's cars are absolutely dependent on properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly, and the average car on the road emits three to four times the new car standard. Major malfunctions in the emission control system can cause emissions to skyrocket. As a result, 10 to 30 percent of cars are causing the majority of the vehicle-related pollution problem. Unfortunately, it is rarely obvious which cars fall into this category, as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect vehicle driveability.

Effective I/M programs, however, can identify these problem cars and assure their repair. I/M programs ensure that cars are properly maintained during customer use. I/M produces emission reduction results soon after the program is put in place.

The Clean Air Act as amended in 1990 (the Act) requires that most polluted cities adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the "basic" I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; CO areas that exceed a 12.7 parts per million (ppm) design value [1] with urbanized populations of 200,000 or more; and all metropolitan statistical areas with a population of 100,000 or more in the Northeast Ozone Transport Region.

"Basic" and "enhanced" I/M programs both achieve their objectives by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An "enhanced" program covers more of the vehicles in operation, employs inspection methods that are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373), herein referred to as the I/M Rule. Flexibility amendments to this rule, which provided for a low enhanced I/M performance standard for use in certain qualifying areas were published on September 18, 1995 (60 FR 48029) and additional I/M flexibility amendments for qualified areas in the OTR were published on July 25, 1996 (61 FR 39031).

Under sections 182(c)(3), 187(a)(6) and 187(b)(1) of the Act, and 40 CFR 51.350(a), any area having a 1980 Bureau of Census-defined urbanized area population of 200,000 or more and that is either: (1) designated as serious or worse ozone nonattainment or (2) moderate or serious CO nonattainment areas with a design value greater than 12.7 ppm, shall implement enhanced I/M in the 1990 Census-defined urbanized area. The Act also established the ozone transport region (OTR) in the northeastern United States comprised of 11 states and the District. Section 184(b)(1)(A) of the Act require the implementation of enhanced I/M programs in all metropolitan statistical areas (MSAs) located in the OTR that have a population of 100,000 or more people.

The November 1992 I/M Rule establishes minimum performance standards for basic and enhanced I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification;

[1] The air quality design value is estimated using EPA guidance. Generally, the fourth highest monitored value with 3 complete years of data is selected as the ozone design value because the standard allows one exceedance for each year. The highest of the second high monitored values with 2 complete years of data is selected as the carbon monoxide design value.

public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for enhanced I/M programs is based on a high-technology transient test, known as IM240, for new technology vehicles (i.e, those with closed-loop control and, especially, fuel injected engines), including a transient loaded exhaust short test incorporating hydrocarbons (HC), CO and NO_x cutpoints, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test.

Under the November 1992 I/M Rule enhanced I/M programs were required to initially begin phased-in implementation by January 1, 1995, with final full implementation slated for January 1, 1996. Due to EPA rule changes, and the flexibility afforded by the National Highway Systems Designation Act of 1995 (NHA) EPA believes states should be afforded extra time to begin full implementation of their enhanced I/M programs. Since the 1995 deadline has now passed, EPA believes that state I/M programs must now start up as soon as practicable.

II. Background

The District of Columbia is part of the OTR and is part of the Washington DC, MSA with a population of 100,000 or more. Section 184(b)(1)(A) of the Act require all states in the OTR region which contain MSAs or parts thereof with populations of 100,000 or more, to submit a SIP revision for an enhanced I/M program.

On July 13, 1995 the District of Columbia Department of Consumer and Regulatory Affairs, now known as the Department of Health (DoH), submitted to EPA a SIP revision for an enhanced I/M program. On March 27, 1996, DoH submitted a supplement to this SIP revision, in response to changes to the federal program requirements resulting from new federal legislation governing enhanced I/M programs, and EPA rule changes to the program. EPA's evaluation of this SIP revision submittal (including its supplement) concluded that it did not meet the requirements of the Clean Air Act, and subsequently EPA proposed disapproval of the SIP revision on October 10, 1996 (61 FR 53166). The rationale for EPA's disapproval can be found in the notice of proposed rulemaking, and will not be restated here. In response to EPA's proposed disapproval of the District's plan, DoH completely redesigned the District's enhanced I/M program. On November 25, 1997, DoH submitted to EPA another enhanced I/M SIP revision which replaced, completely, its earlier enhanced I/M submittal, and simultaneously requested that EPA withdrawal the October 1996 proposed disapproval. In preparing the latest SIP revision, DoH has attempted to address all of the programmatic deficiencies identified in the October 1996 proposed disapproval of the previously submitted SIP revision.

EPA's summary of the requirements of the federal I/M rule as found in 40 CFR 51.350–51.373 and EPA's analysis of the District's November 25, 1997 submittal is outlined below. A more detailed analysis of the District's submittal is contained in a Technical Support Document (TSD) dated March 10, 1998. For interested parties, the TSD is available upon request from the Region III office, listed in the **ADDRESSES** section above. Parties desiring additional details on the I/M rule are referred to the November 5, 1992 **Federal Register** notice (57 FR 52950) or 40 CFR 51.350–51.373, as well as the I/M Flexibility Amendments in the September 18, 1995 **Federal Register** notice (60 FR 48029) and the additional I/M flexibility amendments for qualified areas in the OTR, published on July 25, 1996 at (61 FR 39031).

III. EPA's Analysis of the District of Columbia's Enhanced I/M Program

As discussed above, sections 182(c)(3), 184(b)(1)(A), 187(a)(6) and 187(b)(1) of the Act require that states adopt and implement regulations for enhanced I/M programs in certain areas. Based upon EPA's review of the District's submittal, EPA believes the District has complied with all aspects of the Act and the I/M rule. EPA is proposing approval, conditioned upon the District meeting the April 30, 1999 start date committed to and contained in its enhanced I/M SIP revision. EPA is imposing this condition because while it agrees that the District's start date of April 30, 1999 is as expeditious as practicable given current circumstances, EPA also believes that it is imperative that this date be met with no further delay beyond the originally mandated federal date for start-up of enhanced I/M programs. Because the originally mandated start date has now passed, EPA proposes to condition approval of the District's I/M program on start-up as soon as practicable. In light of the current status of the District program, EPA concludes that April 30, 1999 is as soon as practicable to start the program in the District. EPA has reviewed the November 25, 1997 SIP revision, and has determined that the enhanced I/M program detailed in the SIP revision meets all of the other requirements of the CAA.

A. Applicability—40 CFR 51.350

Section 184(b)(1)(A) of the Act and 40 CFR 51.350(a) require all states in the OTR which contain MSAs or parts thereof with populations of 100,000 or more to implement an enhanced I/M program. The District of Columbia is part of the OTR and is a part of the Washington, DC, MSA, which has a population in excess of 100,000. DC's enhanced I/M program will be implemented throughout the District.

The District's I/M legislative authority (Title 40, Chapter 2) provides the legal authority to establish the geographic boundaries of the program. The program boundaries listed in Section 1 of the SIP revision are the inclusive zipcode listings for the entire District, and thus meet the federal I/M requirements under § 51.350.

The I/M rule requires that the state program shall not sunset until it is no longer necessary. EPA interprets the I/M rule as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. DoH has previously informed EPA, through its November 13, 1996 comment letter on the October 1996 proposed disapproval, that the legislation governing the District's I/M program will not sunset unless it is actively repealed or amended by the City Council. DoH therefore believes that the program is authorized up to and beyond the attainment date. EPA agrees with this assessment, since there is no sunset date provision attached to the enabling legislation. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.350 of the I/M rule.

B. Enhanced I/M Performance Standard—40 CFR 51.351

In accordance with the Act and with the I/M rule, the enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission

levels achieved by the State's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas such as the District, the performance standard must be met for both NO_x and HC.

The District's submittal includes the following program design parameters:

Network Type—Centralized, test-only.

Start Date—April 1999.

Test Frequency—Biennial.

Model Year/Vehicle Type Coverage—All 1974 and newer light duty gasoline vehicles (LDGV); light duty gasoline trucks 1 & 2 (LDGT1, LDGT2); and heavy duty gasoline vehicles up to 26,000 lbs gross vehicle weight.

Exhaust Emission Test Type—Transient test for 1984 and newer model year vehicles idle test for1983 and older model year vehicles.

Emission Standards—Permanent transient test standards for 1984 and newer model year light duty vehicles: 0.8 gpm HC, 15 gpm CO, 2.0 gpm NO_x. [Please refer to the District's I/M regulations (18 DCMR 752) for transient test standards for other applicable model years]

Emission Control Device—Pressure and purge check on all 1984 and newer model year vehicles.

Stringency (pre-1981 failure rate)—40%.

Waiver Rate—3% on pre- and post-1981 vehicles.

Compliance Rate—96%.

Evaluation Date—For HC and NO_x: July 1, 2002.

EPA has reviewed the District's modeling of the program and has determined that the design parameters are acceptable; and that the model performance standard has been met. EPA notes that an appropriate methodology was used by the District in accounting for a start-date month of April, which cannot be directly entered into the MOBILE model. For further information on the modeling approach, please consult the TSD. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.351 of the I/M rule.

C. Network Type and Program Evaluation—40 CFR 51.353

The enhanced program must include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Act and the I/M rule. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports.

In response to the changing format of many enhanced I/M programs (resulting from increased flexibility under the I/M Flexibility Rule and the National Highway Systems Designation Act of 1995) EPA has committed to re-examining the requirements of this section of the I/M rule (see 63 FR 1362, January 9, 1998). EPA here notes that, as indicated in that rulemaking, whatever the outcome of this examination of alternative program evaluation methods, the original evaluation method will also be available to programs such as the District's that have opted for a centralized approach using IM240 equipment.

The original approach calls for the SIP to include the collection of data from a state monitored or administered mass emission test of at least 0.1% of the vehicles subject to inspection each year, a description of the sampling methodology, a description of the data collection and analysis system and the legal authority enabling the evaluation program.

In addition to these requirements, the state should also provide, in the biennial report, the results of undercover surveys of inspector effectiveness related to identifying vehicles in need of repair. Also, the State should, in its biennial reports, provide local fleet emission factors in assessing the actual effectiveness of the I/M program.

The District's submittal includes an ongoing program evaluation that meets the original I/M rule requirements. The District has the legal authority to conduct this testing under Title 40, Chapter 2. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.353(d) of the I/M rule.

D. Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the state to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if it can be demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The November 25, 1997 SIP revision documents that sufficient funds, equipment and personnel for the I/M program are available. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.354(d) of the I/M rule.

E. Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency, however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The District's statutory authority provides for a biennial test frequency, and meets the test frequency and convenience requirements of the I/M rule. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.355.

F. Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements

of 40 CFR 51.353(a). Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the State or local I/M area.

The I/M rule requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The District's enhanced I/M program requires coverage of all 1974 and newer LDGV, LDGT1 and LDGT2, and HDGV up to 26,000 pounds GVWR (gross vehicle weight rating), which are registered or required to be registered in the I/M program area. District regulations allow for the inspection of any vehicle that is operating in the public space of the District.

As of the date of the SIP submittal, approximately 236,600 vehicles (118,300 vehicles annually) will be subject to enhanced I/M testing. Title 40, Chapter 2 and the District's I/M regulations provide the legal authority to implement and enforce the vehicle coverage requirement. The District's program provides for fleet self-testing, using the same testing requirements and the same quality control standards as the centralized component. The District's plan for testing fleet vehicles is acceptable and meets the requirements of the I/M rule. The District's regulation provides for special exemptions for antique vehicles (i.e., vehicles more than 25 years old) and vehicles that are 2 years old and newer. These are acceptable exemptions and have been appropriately accounted for in the District's modeling demonstration.

EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.356(b) of the I/M rule.

G. Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", EPA–AA–EPSD–IM–93–1, dated April 1994. The I/M rule also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be tested in the same manner as other subject vehicles.

The District's regulations provide test procedures for transient emission and evaporative system purge and pressure testing in accordance with the requirements of the I/M rule. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.357(e) of the I/M rule.

H. Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The I/M rule requires that the State SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The District's submittal contains the written technical specifications for all test equipment to be used in the program. The specifications require the use of computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems which meet the I/M rule and are approvable. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.358(c) of the I/M rule.

I. Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

The District's submittal contains the appropriate regulations and technical manuals that describe and establish quality control measures for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. Therefore, EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.359(f) of the I/M rule.

J. Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The I/M rule allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

The District's regulations and statutory authority provide the necessary authority to issue waivers, set and adjust cost limits, administer and enforce the waiver system, and set a $450 cost limit and allow for an annual adjustment of the cost limit to reflect the change in the CPI as compared to the CPI in 1989. The SIP revision includes provisions that address waiver criteria and procedures, including cost limits, tampering and warranty related repairs, quality control and administration. These provisions meet the I/M rule requirements and are approvable. The District has set a maximum waiver rate of 3% for both pre-1981 and 1981 and later vehicles. EPA has interpreted a section of the District's SIP revision to say that the District will take corrective action if the waiver rate exceeds 3%. The interpretation was needed to address what appears to be a typographical error in the District's submittal. The District used a 3% waiver rate in its performance standard modeling. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.360(d) of the I/M rule.

K. Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate

to be used for modeling purposes and to be maintained in practice.

Title 40, Chapter 2 provides the legal authority to implement a registration denial system. The District's program will use registration denial to enforce the program, if the vehicle is not in compliance with the inspection requirement. The District's regulations call for ticketing of any vehicle found with an expired registration sticker. In the District's submittal, DoH states that the fine for an expired registration is $300. EPA believes this penalty schedule constitutes a "meaningful" fine for noncompliance with the inspection program. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.361(c) of the I/M rule.

L. Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The I/M rule requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established that will characterize, evaluate and enforce the program.

The District's program includes a strategy for effective auditing of the I/M program. The program's QA/QC procedures are outlined in the SIP revision, as is the program's information management system. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.362(c) of the I/M rule.

M. Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all State I/M enforcement officials and auditors. A description of the quality assurance program that includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The District's submittal contains procedures for conducting overt and covert audits. These audit results will be recorded and retained in station and inspector files. Performance audits of inspectors will consist of both covert and overt audits. The District will provide an adequate number of covert vehicles for the purposes of conducting audits, so as to avoid detection by the inspectors during audit procedures. Formal training is required for all program auditors and enforcement officials. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.363(e) of the I/M rule.

N. Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The I/M Rule requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The District has provided evidence of authority and sufficient resources to impose penalties and a penalty schedule for enforcement against the District's inspectors. Since the program will be "state-operated", other penalty schedules (e.g. contractor penalty schedules) are not required under this section. EPA notes that the penalty schedule provided by the District does differ from the federal requirements in terms of the types and severity of individual penalties that will be levied against inspectors for fraud, incompetency, or other misconduct. However, EPA has reviewed the District's penalty schedule and has determined that overall, it will adequately serve the intent of § 51.364(d)(1) of the I/M rule and be equivalent to the minimum penalties specified in the I/M Rule.

EPA has therefore determined that the District of Columbia has satisfied all of the requirements of § 51.364(d) of the I/M rule.

O. Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The I/M Rule requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359. The District's regulation and RFP require the collection of data on each individual test conducted as well as quality control checks, and describe the type of data to be collected. The type of test data collected meets the I/M Rule requirements and is approvable.

EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.365 of the I/M rule.

P. Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The I/M Rule requires annual reports to be submitted that provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July of each year, and shall provide statistics for the period of January to December of the previous year. A biennial report shall also be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The District SIP revision provides for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. The type of data to be collected and analyzed and reported on meets the I/M rule requirements and is approvable. The District commits to submit annual reports on these programs to EPA by July of the subsequent reporting year. A commitment to submit a biennial report to EPA which addresses reporting requirements set forth in 40 CFR 51.366(e) is also included in the SIP. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.366(f) of the I/M rule.

Q. Inspector Training and Licensing or Certification—40 CFR 51.367

The I/M rule requires all inspectors to be formally trained and licensed or certified to perform inspections.

The District's regulations requires all inspectors to receive formal training, and be certified by the DC Department of Public Works. The District's regulations and the SIP revision include a description of and the information covered in the training program, a description of the required written and hands-on tests, and a description of the certification process. Recertification of inspectors is required every two years. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.367(c) of the I/M rule.

R. Public Information and Consumer Protection—40 CFR 51.368

The I/M rule requires the SIP to include public information and consumer protection programs. The DC program includes both of these features. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.368 of the I/M rule.

S. Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The I/M rule requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the I/M rule, and a description of the repair technician training resources available in the community.

The District's SIP revision requires the implementation of a technical assistance program, which includes a hot line service to assist repair technicians and a method of regularly informing the repair facilities of changes in the program, training courses, and common repair problems. A repair facility performance monitoring program is also included in the District's SIP revision. This monitoring will provide the motoring public a summary of local repair facilities' performances, and provide regular feedback to each facility on their repair performance and requires the submittal of a completed repair form at the time of retest. The District's regulation provides for the establishment and implementation of a repair technician training program which, at a minimum, covers the four types of training described in 40 CFR 51.369(c). EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.369(d) of the I/M rule.

T. Compliance with Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in a emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

Under the District's regulation, owners are required to comply with emission related recalls before completing the emission test and renewing the vehicle registration. EPA notes that the District will readdress this requirement once EPA finalizes its policy and guidance on Recall Compliance. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.370(d) of the I/M rule.

U. On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

Legal authority to implement the on-road testing program and enforce off-cycle inspection and repair requirements is contained in Title 40, Chapter 2. The SIP submittal requires the use of RSD to test 0.5% of the fleet per year and will be implemented by a contractor. A description of the program, which includes resource allocations, and methods of collecting, analyzing and reporting the results of the testing are detailed in the submittal. EPA has determined that the District of Columbia has satisfied all of the requirements of § 51.371(b) of the I/M rule.

V. State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–52.373

The District's submittal included the final I/M regulations, legislative authority to implement the program, and a detailed discussion on each of the required program design elements. The start date for implementation of full-stringency cutpoints will be April 30, 1999.

The District has adequately completed a modeling demonstration showing that the program design meets the performance standard, and the District has provided evidence of adequate funding and resources to implement the program. EPA has determined that the District has satisfied the requirements of §§ 51.372(e) and 51.373.

EPA's review of the material indicates that the District has adopted an enhanced I/M program in accordance with the requirements of the Act. EPA is proposing to conditionally approve the District's SIP revision that was submitted on November 25, 1997. The only condition of this proposed rulemaking is that the District begin full implementation of the enhanced I/M program on or before April 30, 1999. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing to conditionally approve the revision to the District of Columbia SIP submitted on November 27, 1997 for an enhanced I/M program. EPA's proposed approval is conditioned upon the District meeting the April 30, 1999 start date committed to and contained in its November 27, 1997 SIP revision submittal. EPA is also withdrawing its previously proposed disapproval action of an enhanced I/M SIP revision submitted by the District of Columbia on July 13, 1995 (supplemented March 27, 1996) because that action is no longer germane, given that the District's submittal of November 27, 1997 completely replaced those earlier submittals.

After full consideration of any comments received on this proposed conditional approval, EPA shall take final rulemaking action. In the event that final conditional approval is granted, the conversion from conditional approval to full approval or to disapproval will be dependent upon whether or not the District meets the start date of April 30, 1999 committed to in the SIP revision. If the District starts the enhanced testing program on or before April 30, 1999, then any final conditional approval shall convert to a full approval of the SIP revision. If the District fails to fully implement

enhanced I/M testing in the District by April 30, 1999, EPA would notify the District by letter that the condition has not been met and that any final conditional approval has converted to a disapproval, and the clock for imposition of sanctions under section 179(a) of the Act would start as of the date of the letter. Subsequently, a notice would be published in the **Federal Register** announcing that the SIP revision has been disapproved.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and a subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the proposed conditional approval is promulgated and subsequently is converted to a disapproval under section 110(k), based on the District's failure to meet the condition committed to in its submittal, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the conditional approval action being proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action only proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove the District's enhanced I/M SIP revision will be based on whether it meets the requirements of the federal enhanced I/M regulations, section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 19, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–8064 Filed 3–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5986–4]

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the H & K Sales Superfund site from the national priorities list; request for comments.

SUMMARY: The United States Environmental Protection Agency (EPA) Region V announces its intent to delete the H & K Sales Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by EPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State of Michigan, has determined that no further response is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before April 29, 1998.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Alvah N. Belding Library, 302 East Main Street, Belding, Michigan 48809. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional

Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Kevin Adler, Remedial Project Manager at (312) 886–7078 or Gladys Beard, Associate Remedial Project Manager, Superfund Division (SR–6J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Denise Gawlinski (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–9859.

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I. Introduction

The Environmental Protection Agency (EPA) Region V announces its intent to delete the H & K Sales Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate non-time Critical Removal Actions or Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day comment period. The public is asked to comment on EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The H & K Sales site is located at 100 East Main Street in Belding, Michigan. The site is the portion of the Belding Warehouse facility in which World War II (WWII) era military-surplus aircraft components had been stored since 1994. Some of the aircraft components are marked with paint containing radium-226, which is a naturally occurring, but hazardous, radioactive material.

The Belding Warehouse facility is located on several acres of land in a commercial section of town. The property is bounded by the Flat River on the north, Bridge Street on the west, and adjacent industrial buildings on the east and south. Several schools, a hospital, and many residences are located within a one-mile radius of the site, almost 6000 people live within this area.

The Belding Warehouse facility is privately owned and consists of two main buildings. The site is a single-story building consisting of three large rooms, each approximately 10,000 square feet in area. This building has a concrete floor and foundation, brick and block walls, and a metal roof. Two of the three rooms were packed with crates of the WWII surplus material; the third room was empty. Evidence of cracks in the concrete floor, leaks in the roof, and floor drains with an uncertain discharge location pointed towards the potential for release of radium-226 into the environment. The building is attached to a separate, three-story building that was not used for storage of the surplus material and thus was not contaminated.

In the late 1940s, Aircraft Components, Inc., of Benton Harbor, Michigan, purchased the radium-paint aircraft components as military surplus for resale. Aircraft Components stored the surplus material in several Benton Harbor locations, including in its main warehouse building which is now also a Superfund cleanup site. After the owners of the company died in the early 1990s the main warehouse building in Benton Harbor was sold along with its contents. The new owners of the Benton Harbor warehouse sold some of the surplus material to a salvage facility in Arkansas whose radiation alarm was tripped during a delivery of the material. The facility notified the Arkansas Department of Health, which traced the shipment to Michigan and then notified the Michigan Department of Public Health's Division of Radiological Protection. The Division of Radiological Protection is now called the Drinking Water and Radiological Protection Division and is a part of the Michigan Department of Environmental Quality (MDEQ).

MDEQ staff determined that the origin of the material was the Aircraft Components Inc., warehouse in Benton Harbor. The MDEQ interviewed the new owners of the warehouse and determined that a large portion of their inventory had been sold to another Michigan firm (H & K Sales) and moved to Belding, Michigan. The MDEQ investigated the Belding Warehouse facility in late September 1994 and estimated that thousands of radium-painted gauges and other aircraft components were packed in wooden crates inside part of the warehouse facility. Using radiation detection equipment, the MDEQ measured

ambient gamma ray dose rate readings within the building at more than 700 times the level that naturally occurs in Michigan. In October 1994, the EPA and the MDEQ conducted a radiological survey at the site and confirmed the MDEQ's initial findings.

In June 1995, the Agency for Toxic Substances and Disease Registry issued a public health advisory and recommended that the site be addressed by the EPA without delay. ATSDR was concerned that a fire at the warehouse could result in the widespread dispersal of radium into the environment by the smoke plume and by water runoff into the adjacent Flat River. In September 1995, the site was nominated for inclusion on the EPA's National Priorities List (NPL), which made it eligible for study and cleanup under the Superfund law. The site was added to the NPL in July 1996.

In October 1995, the EPA met with officials from the U. S. Air Force in Washington, D.C. and requested that they undertake the cleanup of the radium-226-painted materials. The EPA considers the Air Force, which originally sold the radium-painted gauges and other materials to Aircraft Components, to be a potentially responsible party as defined by the Superfund Law. The Air Force declined to participate in a cleanup at that time, citing budgetary and logistical reasons.

In February 1996, the EPA, with assistance from the MDEQ, conducted a detailed inspection of the site and prepared a document called an Engineering Evaluation/Cost Analysis (EE/CA). An EE/CA is a type of study that the EPA uses to evaluate removal program cleanup alternatives and to request Superfund money for cleanup of sites that pose immediate threats to public health and the environment. A site risk evaluation performed as part of the EE/CA by the U.S. EPA concluded that people working in the warehouse buildings could be exposed to harmful levels of radiation from radium and/or radon gas, which is generated by the radioactive decay of radium. EPA and MDEQ shared ATSDR's concern that radium could be released to the environment should there be a fire, or as the result of other events such as vandalism or theft.

The EPA began the planning stage of the cleanup in September 1996. At that time, the EPA contracted with another federal agency, the U.S. Department of the Interior's Bureau of Reclamation (USBR), to manage the cleanup. Onsite cleanup work began in January 1997 and included the following activities:

- The building was secured to prevent release of radiation to the environment during the handling of the radium-painted materials and to prevent entrance to the clean-up areas by untrained persons;
- A detailed, base-line radiation survey using radiation-detection devices was performed in the buildings: (1) To determine where "hotspots" existed to alert site clean-up workers and prevent exposure to high doses of radiation during the cleanup; and (2) to more accurately predict where radium-painted items were stored (before the large number of storage crates were opened for sorting);
- Radium-painted materials were segregated and packed into proper containers for shipment to a disposal facility in the state of Washington. Two shipments, each containing an average of 85 containers of radium painted materials, were sent off-site for disposal. Each container held between 200 and 300 radium-painted components, which means more than 34,000 radium-painted aircraft components were transported off-site for disposal;
- A waste shredder was set up in the building to process packaging materials and other non-hazardous items for disposal in a local landfill. These materials were tested to ensure that they did not exceed the federal or state criterion for disposal of radioactive items in municipal landfills. Approximately 56 loads of material were sent to the local landfill; each load contained about 540 cubic feet (averaging about 4.5 tons) of shredded wastes, for a total of 30,240 cubic feet (252 tons). Using the local landfill was a safe and cost-effective alternative to sending the non-hazardous wastes to a disposal facility in Utah;
- Approximately 1,000 cubic feet of material was packaged and shipped to a low-level radioactive waste disposal facility in Utah. This material was not painted with radium-226, but had enough radium-226 dust in it to exceed the federal criterion for disposal in the local landfill;
- More than 4,500 cubic feet of aircraft components and other materials were subjected to radiation surveys, cleaned if necessary, and then released back to the original owners (H&K Sales, Inc.) for unrestricted use, including resale to collectors, etc. Items such as airplane propellers, nuts and bolts, and certain pieces of heavy machinery were reclaimed by the owners, saving the U.S. EPA substantial sums in disposal costs; and
- Smaller amounts of other hazardous items, including radium-226-painted components containing such materials as mercury and diesel fuel,were properly packaged and shipped off-site for disposal. For example, the mercury-containing components were shipped to a processing facility in Texas where the mercury will be reclaimed for re-use. The radium 226-painted components will then be sent to the disposal facility in the state of Washington.

EPA has determined that no further remedial action needs to take place at the site for the following reasons:

- The site no longer contains radium-226 above standards or above naturally-occurring levels.
- The warehouse buildings have been emptied of the radium-painted materials, thus the risk of release of radium-226 to the environment (air, ground water, surface water, or soil) ended.
- There are several floor drains in Rooms 1 and 2 however, these drains had been plugged prior to the placement of the radium-painted materials at the site and thus were not a potential conduit for radium-226 to be released to the environment. During the final radiation survey, the drains were found not to have radium-226-contamination in them.
- Radiation survey data from certain areas outside of the site building ensured that no radium was tracked off-site by site cleanup workers and that no radium had been released to the environment in the short time that the materials had been stored at the warehouse.
- Radon gas levels are at a level below the acceptable criteria of 4 pCi/L inside the buildings.

All risks to human health and the environment posed by the site have been removed.

EPA, with concurrence from the State of Michigan, has determined that all appropriate Fund-financed responses under CERCLA at the H & K Sales Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, EPA proposes to delete the site from the NPL.

Dated: March 13, 1998.

David Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–7932 Filed 3–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42203A; FRL–5769–7]

RIN 2070–AC78

Testing Consent Order and Export Notification Requirements for Diethanolamine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 26, 1996, EPA proposed a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. Included as one of these chemical substances was diethanolamine (CAS No. 111–42–2). EPA invited the submission of proposals for enforceable consent agreements (ECAs) for pharmacokinetics testing of the HAPs chemicals and received a proposal for testing diethanolamine from the Chemical Manufacturers Association, Alkanolamines Panel (CMA Alkanolamines Panel). In a previous document EPA solicited interested parties to monitor or participate in negotiations on an ECA for diethanolamine. EPA is proposing that if an ECA is successfully concluded for diethanolamine, then the subsequent publication of the TSCA section 4 testing consent order (Order) in the **Federal Register** would add diethanolamine to the table of testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers. As a result of the proposed addition of diethanolamine, all exporters of diethanolamine, including persons who do not sign the ECA, would be subject to export notification requirements under section 12(b) of TSCA.

DATES: Written comments on this proposed rule must be received on or before May 29, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42203A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–99, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit IV. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Information and Testing Branch (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1998/).

II. Development of Enforceable Consent Agreement for Diethanolamine

Diethanolamine is one of the chemicals proposed for health effects testing in a proposed HAPs test rule under section 4(a) of TSCA in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1). The proposed HAPs test rule was amended on December 24, 1997 (62 FR 67466) (FRL–5742–2). In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) testing for the chemicals included in the proposed HAPs test rule. These proposals could provide the basis for negotiation of ECAs, which, if successfully concluded, would be incorporated into Orders. The PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. A proposal for PK testing for diethanolamine was submitted by the CMA Alkanolamines Panel to EPA on November 25, 1996. The Agency reviewed this alternative testing proposal and prepared a preliminary technical analysis of the proposal which it sent to the CMA Alkanolamines Panel Panel on November 21, 1997. The CMA Alkanolamines Panel Panel responded on December 31, 1997 that it has a continued interest in pursuing the ECA process for diethanolamine. EPA has decided to proceed with the ECA process for diethanolamine. EPA has published a document soliciting interested parties to monitor or participate in negotiations on an ECA for PK testing of diethanolamine (63 FR 3109, January 21, 1998) (FRL–5766–7). The procedures for ECA negotiations are described at 40 CFR 790.22(b).

If the ECA for diethanolamine is successfully concluded, and an Order is published in the **Federal Register**, testing to develop needed data would be required of those persons that have signed the agreement. Section 12(b) of TSCA provides that if any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 of TSCA, that person shall notify EPA of this export or intent to export. This requirement applies to data obtained from either a test rule or an ECA and Order under the authority of section 4 of TSCA. EPA intends the ECA to include the export notification requirements of section 12(b) of TSCA, codified at 40 CFR part 707, subpart D.

III. Publication of Testing Consent Order

EPA is proposing that if an ECA is successfully concluded for diethanolamine, the publication of the Order in the **Federal Register** would add diethanolamine to the table in 40 CFR 799.5000, Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

Exporters of chemicals listed at 40 CFR 799.5000 are required under 40 CFR 799.19, Chemical imports and exports, to comply with the export notification requirements of 40 CFR part 707, subpart D. This proposed rule,

when finalized, would amend § 799.5000, and, in accordance with 40 CFR 799.19, all exporters of diethanolamine, including persons who do not sign the ECA, would be subject to export notification requirements under 40 CFR part 707, subpart D.

Under 40 CFR 707.65(a)(2)(ii), a person who exports or intends to export for the first time to a particular foreign country a chemical subject to TSCA section 4 data requirements must submit a one-time notice to EPA identifying the chemical and country of import. A single notice can cover multiple chemicals and multiple countries. If additional importing countries are subsequently added, additional export notices must be submitted to EPA. Other procedures for submitting export notifications to EPA are described in 40 CFR 707.65.

Under 40 CFR 707.67, the contents of the export notification from the exporter or intended exporter to EPA shall include:

1. The name of the chemical (i.e., in this case, diethanolamine).
2. The name and address of the exporter.
3. The country(ies) of import.
4. The date(s) of export or intended export.
5. The section of TSCA under which EPA has taken action (i.e., in this case, section 4 of TSCA).

Following receipt of the section 12(b) notification from the exporter or intended exporter, under 40 CFR 707.70, EPA will provide notice of the export or intended export to the affected foreign government(s).

IV. Public Record and Electronic Submissions

The official record for this rulemaking (including comments and data submitted electronically as described below), including the public version, that does not include any information claimed as CBI, has been established for this rulemaking under docket control number OPPTS–42203A. The official record for this document also includes all material and submissions filed under docket control number [OPPTS–42187A; FRL–4869–1], the record for the proposed HAPs test rule, as amended, and all materials and submissions filed under docket control number [OPPTS–42187B; FRL–4869–1], the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42203A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

V. Regulatory Assessment Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA does not believe that the impacts of this proposed rule constitute a significant economic impact on small entities.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification was $62.60. See U.S. EPA, "Economic Analysis in Support of the Final Rule to Amend Rule Promulgated Under TSCA Section 12(b)," OPPT/ETD/RIB, June 1992, contained in the record for this rulemaking, and referenced in the amended proposed HAPs test rule (62 FR 67466, December 24, 1997). Inflated through the last quarter of 1996 using the Consumer Price Index, the current cost is estimated to be $69.56. Although data available to EPA regarding export shipments of the HAPs chemicals are limited, a small exporter would have to have annual revenues below $6,956 per chemical/country combination in order to be impacted at a 1% or greater level. For example, a small exporter filing 3 notifications per year would have to have annual sales revenues below $20,868 (3 x $6,956) in order to be classified as impacted at the greater than 1% level. EPA believes that it is reasonable to assume that few, if any, small exporters would file sufficient export notifications to be impacted at or above the 1% level. Based on this, the export notification requirements triggered by the ECA for diethanolamine would be unlikely to have a significant economic impact on small exporters. Because EPA has concluded that there is no significant impact on small exporters, the Agency does not need to determine the number or size of the entities that would be impacted at a 1% or greater level.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities.

B. Executive Order 12866; Executive Order 12898; Executive Order 13045

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). It does not involve special considerations of environmental-justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), nor raise any issues regarding children's environmental-health risks under Executive Order 13045 (62 FR 1985, April 23, 1997) because the Executive Order does not apply to actions expected to have an economic impact of less than $100 million.

C. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for the collection of information is estimated to average 0.55 hour per response.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, this action is not subject to the requirements of sections 202 and 205 of UMRA. The requirements of sections

203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental mandate, respectively, also do not apply to this proposed rule because the rule would only affect the private sector, i.e., those companies that test chemicals.

E. National Technology Transfer and Advancement Act

This proposed regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: March 13, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding diethanolamine to the table in CAS number order to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS number	Substance or mixture name	Testing	FR publication date
.	.	.	.
111–42–2	Diethanolamine	Health effects	[insert date for final rule.]
.	.	.	.

* * * * *

[FR Doc. 98–8211 Filed 3–27–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42202A; FRL–5769–6]

RIN 2070–AC76

Testing Consent Order and Export Notification Requirements for Ethylene Glycol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 26, 1996, EPA proposed a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. Included as one of these chemical substances was ethylene glycol (CAS No. 107–21–1). EPA invited the submission of proposals for enforceable consent agreements (ECAs) for pharmacokinetics testing of the HAPs chemicals and received a proposal for testing ethylene glycol from the Chemical Manufacturers Association, Alkanolamines Panel (CMA Alkanolamines Panel). In a previous document EPA solicited interested parties to monitor or participate in negotiations on an ECA for ethylene glycol. EPA is proposing that if an ECA is successfully concluded for ethylene glycol, then the subsequent publication of the TSCA section 4 testing consent order (Order) in the **Federal Register** would add ethylene glycol to the table of testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers. As a result of the proposed addition of ethylene glycol, all exporters of ethylene glycol, including persons who do not sign the ECA, would be subject to export notification requirements under section 12(b) of TSCA.

DATES: Written comments on this proposed rule must be received on or before (*May 29, 1998.*

ADDRESSES: Each comment must bear the docket control number, OPPTS–42202A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–99, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit IV. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of

Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Information and Testing Branch (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1998/).

II. Development of Enforceable Consent Agreement for Ethylene Glycol

Ethylene glycol is one of the chemicals proposed for health effects testing in a proposed HAPs test rule under section 4(a) of TSCA in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1). The proposed HAPs test rule was amended on December 24, 1997 (62 FR 67466) (FRL–5742–2). In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) testing for the chemicals included in the proposed HAPs test rule. These proposals could provide the basis for negotiation of ECAs, which, if successfully concluded, would be incorporated into Orders. The PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. A proposal for PK testing for ethylene glycol was submitted by the CMA Ethylene Glycol Panel (CMA EG Panel) to EPA on November 5, 1996. The Agency reviewed this alternative testing proposal and prepared a preliminary technical analysis of the proposal which it sent to the CMA EG Panel on August 26, 1997. The CMA EG Panel responded on October 6, 1997 that it has a continued interest in pursuing the ECA process for ethylene glycol. EPA has decided to proceed with the ECA process for ethylene glycol. EPA has published a document soliciting interested parties to monitor or participate in negotiations on an ECA for PK testing of ethylene glycol (63 FR 3111, January 21, 1998) (FRL–5766–6). The procedures for ECA negotiations are described at 40 CFR 790.22(b).

If the ECA for ethylene glycol is successfully concluded, and an Order is published in the **Federal Register**, testing to develop needed data would be required of those persons that have signed the agreement. Section 12(b) of TSCA provides that if any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 of TSCA, that person shall notify EPA of this export or intent to export. This requirement applies to data obtained from either a test rule or an ECA and Order under the authority of section 4 of TSCA. EPA intends the ECA to include the export notification requirements of section 12(b) of TSCA, codified at 40 CFR part 707, subpart D.

III. Publication of Testing Consent Order

EPA is proposing that if an ECA is successfully concluded for ethylene glycol, the publication of the Order in the **Federal Register** would add ethylene glycol to the table in 40 CFR 799.5000, Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

Exporters of chemicals listed at 40 CFR 799.5000 are required under 40 CFR 799.19, Chemical imports and exports, to comply with the export notification requirements of 40 CFR part 707, subpart D. This proposed rule, when finalized, would amend § 799.5000, and, in accordance with 40 CFR 799.19, all exporters of ethylene glycol, including persons who do not sign the ECA, would be subject to export notification requirements under 40 CFR part 707, subpart D.

Under 40 CFR 707.65(a)(2)(ii), a person who exports or intends to export for the first time to a particular foreign country a chemical subject to TSCA section 4 data requirements must submit a one-time notice to EPA identifying the chemical and country of import. A single notice can cover multiple chemicals and multiple countries. If additional importing countries are subsequently added, additional export notices must be submitted to EPA. Other procedures for submitting export notifications to EPA are described in 40 CFR 707.65.

Under 40 CFR 707.67, the contents of the export notification from the exporter or intended exporter to EPA shall include:

1. The name of the chemical (i.e., in this case, ethylene glycol).
2. The name and address of the exporter.
3. The country(ies) of import.
4. The date(s) of export or intended export.
5. The section of TSCA under which EPA has taken action (i.e., in this case, section 4 of TSCA).

Following receipt of the section 12(b) notification from the exporter or intended exporter, under 40 CFR 707.70, EPA will provide notice of the export or intended export to the affected foreign government(s).

IV. Public Record and Electronic Submissions

The official record for this rulemaking (including comments and data submitted electronically as described below), including the public version, that does not include any information claimed as CBI, has been established for this rulemaking under docket control number OPPTS–42202A. The official record for this document also includes all material and submissions filed under docket control number [OPPTS–42187A; FRL–4869–1], the record for the proposed HAPs test rule, as amended, and all materials and submissions filed under docket control number [OPPTS–42187B; FRL–4869–1], the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42202A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

V. Regulatory Assessment Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA does not believe that the impacts of this proposed rule constitute a significant economic impact on small entities.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification was $62.60. See U.S. EPA, "Economic Analysis in Support of the Final Rule to Amend Rule Promulgated Under TSCA Section 12(b)," OPPT/ETD/RIB, June 1992, contained in the record for this rulemaking, and referenced in the amended proposed HAPs test rule (62 FR 67466, December 24, 1997). Inflated through the last quarter of 1996 using the Consumer Price Index, the current cost is estimated to be $69.56. Although data available to EPA regarding export shipments of the HAPs chemicals are limited, a small exporter would have to have annual revenues below $6,956 per chemical/country combination in order to be impacted at a 1% or greater level. For example, a small exporter filing 3 notifications per year would have to have annual sales revenues below $20,868 (3 x $6,956) in order to be classified as impacted at the greater than 1% level. EPA believes that it is reasonable to assume that few, if any, small exporters would file sufficient export notifications to be impacted at or above the 1% level. Based on this, the export notification requirements triggered by the ECA for ethylene glycol would be unlikely to have a significant economic impact on small exporters. Because EPA has concluded that there is no significant impact on small exporters, the Agency does not need to determine the number or size of the entities that would be impacted at a 1% or greater level.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities.

B. Executive Order 12866; Executive Order 12898; Executive Order 13045

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). It does not involve special considerations of environmental-justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), nor raise any issues regarding children's environmental-health risks under Executive Order 13045 (62 FR 1985, April 23, 1997) because the Executive Order does not apply to actions expected to have an economic impact of less than $100 million.

C. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for the collection of information is estimated to average 0.55 hour per response.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, this action is not subject to the requirements of sections 202 and 205 of UMRA. The requirements of sections 203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental mandate, respectively, also do not apply to this proposed rule because the rule would only affect the private sector, i.e., those companies that test chemicals.

E. National Technology Transfer and Advancement Act

This proposed regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: March 13, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding ethylene glycol to the table in CAS number order to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS number	Substance or mixture name	Testing	FR publication date
.	.	.	.
107–21–1	Ethylene glycol	Health effects	[Insert date of final rule]

CAS number	Substance or mixture name	Testing	FR publication date
*	*	*	*

* * * * *

[FR Doc. 98–8210 Filed 3–27–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7242]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of the Executive Order 12866 of September 30,1 993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Alaska	Municipality of Anchorage.	South Fork Little Campbell Creek.	At upstream side of East Frontage Road of New Seward Highway.	*121	*121
			At downstream side of Petersburg Street	*139	*141
			At downstream side of Lake Otis Highway.	*192	*192

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
*To indicate feet, Greater Anchorage Borough, Post Quake, U.S. Coastal and Geodetic Survey, Mean Sea Level 1972.					
Maps are available for inspection at the Department of Public Works, Project Management and Engineering Division, 3500 East Tudor Road, Anchorage, Alaska.					
Send comments to The Honorable Rick Mystrom, Mayor, Municipality of Anchorage, P.O. Box 196650, Anchorage, Alaska 99519–6650.					
Arkansas	West Memphis (City), Critenden County.	Fifteen Mile Bayou	Approximately 1.6 miles downstream of U.S. Highways 70 and 79.	None	*209
			At confluence with Ten Mile Bayou Diversion Ditch.	*211	*211
			At Missouri Pacific Railroad	None	*212
		Ten Mile Bayou Diversion Ditch.	At confluence with Fifteen Mile Bayou	*211	*211
			Approximately 850 feet downstream of North Frontage Road.	*214	*214
			At confluence with Ten Mile Bayou	*215	*215
		Ten Mile Bayou	At confluence with Ten Mile Bayou Diversion Ditch.	*215	*215
			At Missouri Pacific Railroad	*215	*215
			Approximately 1 mile upstream of Missouri Pacific Railroad.	None	*215
Maps are available for inspection at 205 South Redding, West Memphis, Arkansas.					
Send comments to The Honorable Al Boals, Mayor, City of West Memphis, P.O. Box 1728, West Memphis, Arkansas 72301.					
California	Alameda County (Unincorporated Areas).	San Lorenzo Creek (Line B (Zone 2)).	At tidal gate	*7	*7
			Approximately 320 feet downstream of Southern Pacific Railroad.	*7	*8
			At upstream side of 14th Street	None	*34
		San Leandro (Line A (Zone 2)).	At mouth	None	*7
			Approximately 140 feet downstream of confluence of Crow Creek.	*167	*169
Maps are available for inspection at the Alameda County Public Works Department, 399 Elmhurst Street, Hayward, California.					
Send comments to The Honorable Susan Muranishi, Commissioner, Alameda County, 1221 Oak Street, Suite 555, Oakland, California 94612.					
California	Firebaugh (City), Fresno and Madera Counties.	San Joaquin River	Approximately 2.1 miles downstream of 7½ Avenue.	None	*141
			Approximately 1.9 miles upstream of 7½ Avenue.	None	*146
Maps are available for inspection at the City of Firebaugh City Hall, 1575 11th Street, Firebaugh, California.					
Send comments to Mr. L. Keyth Durham, City Manager, City of Firebaugh, 1575 11th Street, Firebaugh, California 93622.					
California	Fremont (City), Alameda County.	Line K (Zone 6)	At confluence with Line E (Zone 6) Lagume Creek.	None	*48
			Approximately 2,170 feet upstream of Paseo Padre Parkway (at downstream end of 60-inch reinforced concrete pipe).	*255	*263
		Line B (Zone 5)	At upstream side of Interstate 880	None	*32
			Approximately 630 feet upstream of Paseo Padre Parkway.	None	*56
		Line C (Zone 6), (Torges Creek).	At confluence of Line D (Zone 6)	None	*13
			Just upstream of I–680	None	*183
		Line E (Zone 6) Laguna Creek.	At mouth	*9	*9
			Approximately 2,400 feet downstream of Cushing Parkway.	*9	*10
			Approximately 50 feet upstream of parking lot driveway.	None	*56
		Line F (Zone 6), Aroyo Del Agua Caliente Creek.	At confluence with Line E (Zone 6) Laguna Creek.	*9	*10
			Approximately 1,310 feet upstream of Agua Caliente Creek.	None	*200

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Fremont Planning Department, 39550 Liberty Street, Fremont, California. Send comments to The Honorable Gus Morrison, Mayor, City of Fremont, P.O. 5006, Fremont, California 94537–5006.					
California	Fresno County (Unincorporated Areas).	San Joaquin River	Approximately 5.6 miles downstream of confluence of Firebaugh Wasteway.	None	*138
			0.2 mile upstream of confluence of Firebaugh Wasteway with San Joaquin River.	*145	*147
Maps are available for inspection at the Fresno County Office, 2220 Tulare Street, Fresno, California. Send comments to Mr. William Randolph, County Administrative Officer, 2281 Tulare Street, Room 304, Fresno, California 93721.					
California	Hayward (City), Alameda County.	Alameda Creek-Line A (Zone 3A).	Approximately 1,350 feet downstream of tidal gate.	*7	*7
			At tidal gate	[illegible]	[illegible]
			Approximately 150 feet upstream of Interstate 880.	None	*11
		Ward Creek-Line B (Zone 3A).	Approximately 180 feet upstream of confluence of Line D (Zone 3A) and Alameda Creek-Line A (Zone 3A).	*10	*10
			Approximately 400 feet upstream of confluence of Line D (Zone 3A) and Alameda Creek-Line A (Zone 3A).	*10	*11
			Approximately 730 feet upstream of Southern Pacific Railroad.	*46	*47
		San Lorenzo Creek-Line B (Zone 2).	At downstream corporate limits	None	*83
			At upstream corporate limits	None	*117
		Line D (Zone 3A)	At confluence with Line A (Zone 3A)	*10	*10
			Approximately 350 feet upstream of Industrial Parkway West.	*10	*11
			Approximately 1,500 feet upstream of Union Pacific Railroad.	*17	*17
		Sulphur Creek Line K (Zone 2).	Approximately 3,500 feet downstream of Southern Pacific Railroad.	*7	*7
			Approximately 2,100 feet downstream of Southern Pacific Railroad.	*7	*8
			Approximately 350 feet upstream of Interstate 80.	*56	*57
Maps are available for inspection at the City of Hayward Department of Public Works, 25151 Clawiter Road, Hayward, California. Send comments to The Honorable Roberts Cooper, Mayor, City of Hayward, 25151 Clawiter Road, Hayward, California 94545.					
California	Madera County (Unincorporated Areas).	San Joaquin River	Approximately 5.6 miles downstream of confluence of Firebaugh Wasteway.	None	*138
			Approximately 0.2 mile upstream of confluence of Firebaugh Wasteway with San Joaquin River.	*145	*147
Maps are available for inspection at the Madera County Engineering Department, 135 West Yosemite Avenue, Madera, California. Send comments to Mr. Stell Manfredi, County Administrative Officer, 209 West Yosemite Avenue, Madera, California 93637.					
California	Newark (City) Alameda County.	Line B	Approximately 3,400 feet downstream of Southern Pacific Railroad.	*12	*12
			Approximately 2,800 feet downstream of Southern Pacific Railroad.	*13	*12
			At upstream corporate limit, approximately 415 feet upstream of Cedar Boulevard.	*28	*30
		Line F–1	At downstream corporate limit, at confluence with Plummer Creek.	*8	*8
			Just upstream of Elm Street	*10	*11
			Approximately 1,250 feet upstream of Cedar Boulevard.	*33	*35
Maps are available for inspection at the Newark City Clerk's Office, City Administration Building, 37101 Newark Boulevard, Newark, California. Send comments to The Honorable David Smith, Mayor, City of Newark, 37101 Newark Boulevard, Newark, California 94560.					
California	San Leandro (City), Alameda County.	San Leandro—Line A (Zone 2).	At tidal gate	*7	*7

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 320 feet, downstream of Southern Pacific Railroad.	*7	*8
			At 14th Street	None	*34

Maps are available for inspection at the Permit Center Kiosk, 835 East 14th Street, San Leandro, California.
Send comments to The Honorable Ellen Corbett, Mayor, City of San Leandro, 835 East 14th Street, San Leandro, California 94577.

California	Union City (City), Alameda County.	Line M (Zone 5)	At gated structure approximately .24 mile downstream of Royal Ann Drive.	*31	*32
			Approximately .33 mile downstream of Gregory Way.	*46	*47
			Approximately 560 feet upstream of Gregory Way.	*47	*47
		Alameda Creek (Line A (Zone 3A)).	Approximately 1,350 feet downstream of tidal gates.	*7	*7
			At upstream side of tidal gates	*9	*8
			Approximately 1,000 feet upstream of Interstate 880.	None	*10

Maps are available for inspection at the City of Union City Public Works Department, Engineering Division, 34009 Alvarado Niles Road, Union City, California.
Send comments to The Honorable Mark Green, Mayor, City of Union City, 34009 Alvarado Niles Road, Union City, California 94587.

California	Winters (City), Yolo County.	Dry Creek	Approximately 1,900 feet downstream of private road (wooden bridge).	*121	*121
			Approximately 450 feet downstream of private road (wooden bridge).	*122	*121
			Approximately 5,010 feet (.95 mile) upstream of State Highway 128.	None	*150

Maps are available for inspection at the City of Winters Department of Public Works, 318 First Street, Winters, California.
Send comments to The Honorable Harold Anderson, Mayor, City of Winters, 318 First Street, Winters, California 95694.

California	Yolo County (Unincorporated (Areas).	Dry Creek	Approximately 1,900 feet downstream of private road (wooden bridge).	*121	*121
			Approximately 450 feet downstream of private road (wooden bridge).	*122	*121
			Approximately 650 feet upstream of County Road 33.	None	*175

Maps are available for inspection at the Yolo County Community Development Agency, 292 West Beamer Street, Woodland, California.
Send comments to Mr. Roy Pederson, Yolo County Administrative Officer, 625 Court Street, Woodland, California 95695.

California	Yolo County (Unincorporated Areas).	South Fork Willow Slough	Approximately 1,350 feet downstream of Interstate 505.	None	*141
			Approximately 1,500 feet upstream of County Road 89.	*151	*152
			Approximately 1,650 feet upstream of County Road 89.	*152	*152
		Cottonwood Slough	Approximately 1,120 feet downstream of Interstate 505.	None	*141
			Approximately 2,770 feet upstream of Interstate 505.	None	*147
		Dry Slough	At confluence with Willow Slough	None	*53
			Approximately 980 feet above County Road 95.	None	*93
		North Davis Drain	At Southern Pacific Railroad	None	*46
			At divergence from Dry Slough	None	*85
		Union School Slough	At confluence with Willow Slough	None	*66
			Approximately 790 feet upstream of County Road 95.	None	*91
		Unnamed Tributary of Union School Slough.	At confluence with Union School Slough	None	*72
			At divergence from Dry Slough	None	*78
		Unnamed Tributary of Willow Slough.	At upstream side of Road 96	None	*81
			At divergence from Dry Slough	None	*88
		Unnamed Overflow Area South of County Road 31.	Approximately 1,300 feet downstream of County Road 97.	None	*71
			At divergence from Dry Slough	None	*85

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Willow Slough	Approximately 275 feet downstream of Southern Pacific Railroad.	None	*47
			Approximately 650 feet upstream of County Road 95.	None	*92
		Willow Slough Left Overbank No. 1.	At convergence with Willow Slough Left Overbank No. 2.	None	*83
			At divergence from Willow Slough	None	*83
		Willow Slough Left Overbank No. 2.	At confluence with Willow Slough	None	*76
			At divergence from Willow Slough	None	*83
		Yolo County Airport Drainage Channel.	At confluence with Unnamed Tributary of Willow Slough.	None	*86
			Approximately 7,750 feet upstream of confluence with Unnamed Tributary of Willow Slough.	None	*88

Maps are available for inspection at the Community Development Agency, 292 West Beamer Street, Woodland, California.
Send comments to Mr. Roy Pederson, Yolo County Administrative Officer, 6251 Court Street, Woodland, California 95695.

Iowa	Urbandale (City) Dallas and Polk Counties.	Walnut Creek	Approximately 1,400 feet downstream of the 200th Street Bridge.	None	*893
			Approximately 360 feet upstream of the 200th Street Bridge.	None	*896

Maps are available for inspection at the Department of Engineering, Public Works, 9401 Hickman Road, Urbandale, Iowa.
Send comments to The Honorable Brad Zaun, Mayor, City of Urbandale, 3315 70th Street, Urbandale, Iowa 50322–3540.

Louisiana	Acadia Parish (Unincorporated Areas).	Bayou Queue de Tortue	Approximately 2,400 feet downstream of State Route 719.	None	*27
			Approximately 50 feet downstream of State Route 719.	None	*28

Maps are available for inspection at 568 Court Circle, Crowley, Louisiana.
Send comments to The Honorable Glen Bihm, President, Acadia Parish Police Jury, P.O. Box A, Crowley, Louisiana 70527.

Louisiana	Warren County and Incorporated Areas.	North River	Approximately 1,000 feet downstream of Chicago, Rock Island and Pacific Railroad.	None	+780
			Approximately 1,400 feet upstream of 33rd Avenue.	None	+832
		Plug Run	Approximately 500 feet downstream of Summerset Road.	None	+796
			Approximately 3,700 feet upstream of Chicago, Rock Island and Pacific Railroad.	None	+845
		Unnamed Tributary No. 1	Approximately 160 feet downstream of 165th Place.	None	+782
			Approximately 400 feet downstream of South Fifth Street.	None	+802
		Unnamed Tributary No. 2	Approximately 800 feet downstream of Chicago, Rock Island and Pacific Railroad.	None	+780
			Approximately 1,300 feet upstream of South Fifth Street.	None	+800
		Middle Creek	Approximately 1,900 feet downstream of 50th Avenue.	None	+859
			Just upstream of 20th Avenue	None	+948
		Cavitt Creek	Approximately 1,200 feet downstream of Grimes Street.	None	+802
			Just upstream of West Iowa Avenue	None	+868

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Warren County Courthouse Annex, 217 West Salem Indianola, Iowa.					
Send comments to The Honorable Del Baber, Chairman, Warren County Board of Supervisors, County Courthouse, 115 North Howard, Indianola, Iowa 50125.					
Maps are available for inspection at the City of Carlisle City Hall, 195 North First Street, Carlisle, Iowa.					
Send comments to The Honorable Ray Schicher, Mayor, City of Carlisle, 195 North First Street, Carlisle, Iowa 50047.					
Maps are available for inspection at the City of Norwalk City Hall, 705 North Avenue, Norwalk, Iowa.					
Send comments to The Honorable Jerry L. Starkweather, Mayor, City of Norwalk, 705 North Avenue, Norwalk, Iowa 50211.					
Maps are available for inspection at the City of Indianola City Hall, 110 North First Street, Indianola, Iowa.					
Send comments to The Honorable Jerry Kelly, Mayor, City of Indianola, P.O. Box 299, Indianola, Iowa 50125.					
Maps are available for inspection at the City of Ackworth City Hall, 104 Main Street, Ackworth, Iowa.					
Send comments to The Honorable Doreen Sutherland, Mayor, City of Ackworth, 104 Main Street, Ackworth, Iowa 50001.					
Maps are available for inspection at the City of Cumming City Hall, 607 Station Street, Cumming, Iowa.					
Send comments to The Honorable Michael Wayne, Mayor, City of Cumming, P.O. Box 100, Cumming, Iowa 50061.					
Nevada	Lyon County (Unincorporated Areas).	Overflow Area North of Truckee Canal.	Approximately 100 feet downstream of Southern Pacific Railroad.	None	*4,133
			Approximately 6,350 feet upstream of Main Street.	None	*4,193
		Overflow Area North of Truckee Canal (Unnamed Ditch).	At confluence with Overflow Area North of Truckee Canal.	None	*4,158
			Approximately 5,020 feet upstream of confluence with Overflow Area North of Truckee Canal.	None	*4,193
Maps are available for inspection at Lyon County Community Development, 16 South Center Street, Yerington, Nevada.					
Send comments to Mr. Steve Snyder, Lyon County Manager, 31 South Main Street, Yerington, Nevada 89447.					
Texas	Ector County and Incorporated Areas.	Monahans Draw	Approximately 6,200 feet downstream of Grandview Road.	*2,835	*2,834
			Approximately 100 feet downstream of Crane Avenue.	*2,877	*2,876
			At intersection of Tripp Avenue and 23rd Street.	*2,941	*2,940
			Approximately 50 feet upstream of State Route 866.	*3,042	*3,042
		Monahans Draw Tributary 1.	At confluence with Monahans Draw	*2,931	*2,930
			Just downstream of Cypress Road	*2,964	*2,963
		Monahans Draw Tributary 2.	At confluence with Monahans Draw	*2,977	*2,977
			Approximately 350 feet upstream of Damascus Drive.	None	*2,985
			Approximately 300 feet upstream of Westcliff Drive.	None	*3,000
			Approximately 3,500 feet upstream of Westcliff Drive, just downstream of an unnamed road.	*3,015	*3,015
		Muskingum Draw	At confluence with Monahans Draw	*2,870	*2,868
			At 57th Street	*2,943	*2,942
			Just upstream of Loop 338, located just upstream of Sprague Avenue.	None	*2,967
		Muskingum Draw South Tributary.	*At confluence with Muskingum Draw	None	*2,955
			At divergence from Muskingum Draw at Sprague Avenue.	None	*2,963
		Muskingum Draw South Overflow Channel.	At Stoner Road	None	*2,960
		West Side Drainage Channel.	At confluence with Monahans Draw	*2,896	*2,896
			Just upstream of Park Boulevard	*2,907	*2,905
			Approximately 200 feet upstream of Santa Monica Drive.	*2,913	*2,914
		Stream WSDC–D	At intersection of Third and Edison Streets.	*2,897	*2,896
			At Harless Avenue near the intersection of West 13th Street.	*2,907	*2,906

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Stream WSDC–DD	At intersection of Third Street and Kelly Avenue.	*2,896	*2,895
			Just east of West County Road near its intersection with Park Boulevard.	*2,901	*2,901
		East Side Channel	At confluence with Far East Channel	*2,856	*2,855
			Approximately 500 feet upstream of U.S. 80 Frontage Road.	None	*2,888
		East Side Channel Split Flow.	Just downstream of Custer Avenue	None	*2,910
			Approximately 800 feet upstream of confluence with East Side Channel.	None	*2,888
			Approximately 600 feet upstream of Pueblo Avenue.	None	*2,905
		Stream ESC–1	At confluence with East Side Channel	*2,889	*2,888
			Approximately 780 feet upstream of Pagewood Avenue.	*2,897	*2,895
		Far East Channel	Approximately 670 feet upstream of confluence of East Side Channel.	*2,856	*2,856
			Approximately 1,000 feet upstream of U.S. 80 Frontage Road.	*2,878	*2,878
			Approximately 150 feet upstream of Maple Avenue.	*2,906	*2,906
		Stream FEC–1	At confluence with Far East Channel	*2,888	*2,887
			Approximately 300 feet downstream of 42nd Street (or 2,800 feet upstream of confluence with Far East Channel).	*2,900	*2,899
		Stream FEC–1A	At confluence with Stream FEC–1	None	*2,892
			At divergence from Far East Channel	None	*2,905
		Stream FEC–S	At confluence with Far East Channel	*2,901	*2,900
			At divergence from Stream FEC–1A	*2,903	*2,903

Maps are available for inspection at the Ector County Public Works Department, County Annex Building, 1010 East Eighth Street, Odessa, Texas.

Send comments to The Honorable Jim Jordan, Ector County Judge, 300 North Grant, Odessa, Texas 79761.

Maps are available for inspection at the City of Odessa City Hall, 411 West Eighth, Odessa, Texas.

Send comments to The Honorable Mike Atkins, Mayor, City of Odessa, P.O. Box 4398, Odessa, Texas 79760.

Texas	Gonzales County (Unincorporated Areas).	San Marcos River	Approximately 1,600 feet downstream of confluence of Plum Creek at the County boundary.	None	*340
			Approximately 200 feet upstream of U.S. Highway 10 at the County boundary.	None	*356

Maps are available for inspection at the Gonzales County Courthouse, 1709 Sarah DeWitt Drive, Gonzales, Texas.

Send comments to The Honorable Henry Vollentine, Gonzales County Judge, 1709 Sarah DeWitt Drive, Gonzales, Texas 78629.

Texas	Guadalupe County (Unincorporated Areas).	San Marcos River	Approximately 175 feet upstream of U.S. highway 10 at the easternmost County boundary.	*358	*355
			Just upstream of U.S. Highway 90	*380	*379
			Just upstream of State Highway 671	*411	*409
			Just upstream of State Highway 20	*442	*442
			At FM 1977	*487	*485
			Approximately 1.9 miles upstream of Access Road at the northernmost County boundary.	*548	*551

Maps are available for inspection at 415 East Donegan, Seguin, Texas.

Send comments to The Honorable James Segebiel, Guadalupe County Judge, 415 East Donegan, Seguin, Texas 78155.

Texas	Harris County and Incorporated Areas.	Clear Creek	Approximately 4,300 feet upstream of I–45/75.	+13	+14
			Just upstream of Edgewood Drive	+24	+26
			Approximately 1,000 feet upstream of Mykawa Road.	+48	+47
			Approximately 800 feet upstream of South Freeway.	+57	+58
		Tributary 10.08 to Clear Creek.	Just downstream of I–45/75	+11	+12
			Approximately 850 feet downstream of Forest Park Cemetery Road.	+12	+13

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Turkey Creek	Approximately 2,000 feet upstream of Beamer Road.	+27	+28
		Halls Road Ditch	Approximately 1,600 feet upstream of Dixie Farm Road.	+28	+29
	Brazoria County and Incorporated Areas.	Clear Creek	Just upstream of Country Club Drive	+38	+39
			Approximately 1,000 feet upstream of Mykawa Road.	+48	+47
			Approximately 800 feet upstream of South Freeway.	+57	+58
		Chigger Creek	Just upstream of State Highway 35	#1	++39
			Just downstream of Atchison Topeka & Santa Fe Railway.	None	++41
		Chigger Creek Bypass	At divergence from Chigger Creek	None	++40
		Cowart Creek	Just upstream of FM 2351	None	++33
			Just upstream of State Highway 35	None	++44
			Just upstream of County Road 827	None	++55
		Marys Creek	Approximately 200 feet upstream of FM 518.	+42	++41
			Just upstream of State Highway 35	+49	++48
			Approximately 2,500 feet upstream of FM 1128.	+54	++55
			Just downstream of Old Chocolate Bayou Road.	+55	None
		Hickory Slough	Just downstream of Old Alvin Road	None	++45
			Just downstream of Garden Road (County Road 109).	None	++51
			Approximately 2,000 feet upstream of Cullen Boulevard (FM 518).	None	++55
		Marys Creek Bypass	Just upstream of Brazoria/Galveston County boundary.	+32	++29
			Approximately 3,500 feet downstream of County Road 963.	+38	++37
	Fort Bend County and Incorporated Areas.	Clear Creek	Just downstream of Missouri Pacific Railroad.	+65	+63
			Just downstream of Roven Road	+69	+70
	League City (City), Galveston and Harris Counties.	Clear Creek	Approximately 4,300 feet upstream of I-45/75.	+13	+14
		Unnamed Tributary to Clear Creek.	At confluence with Clear Creek	+13	+14
			Approximately 800 feet upstream of Parker Road.	+14	+14
		Magnolia Creek	At confluence with Clear Creek	+14	+16
			Approximately 500 feet upstream of FM 518.	+15	+16
	Friendswood (City), Galveston and Harris Counties.	Clear Creek	Just downstream of Whispering Pines Avenue.	+20	+22
			Just upstream of Edgewood Drive	+24	+26
		Chigger Creek	Just upstream of confluence with Clear Creek.	+15	+17
			Just downstream of Windwood Drive	+28	++30
			Just downstream of Saint Cloud Drive	+36	++34
		Chigger Creek Bypass	At confluence with Chigger Creek	None	++32
		Cowart Creek	At confluence with Clear Creek	+19	+21
		Cedar Gully	At confluence with Clear Creek	+22	+24
			Just downstream of Blackhawk Boulevard	+22	+24
		Marys Creek	At confluence with Clear Creek	+23	+24
			Just upstream of Winding Road	+25	+28
		Turkey Creek	At confluence with Clear Creek	+26	+28
		Tributary 0.16 to Turkey Creek.	At confluence with Turkey Creek	+26	+28
			Approximately 2,400 feet upstream of confluence with Turkey Creek.	+27	+28
		Halls Road Ditch	At confluence with Clear Creek	+27	+29

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

+ NGVD—1973 Releveling.
++ NGVD—1978 Releveling.

Maps are available for inspection at the Map Repository, c/o Ms. Lupe Xamora, Permit Department, Harris County Engineering Division, 9900 Northwest Freeway, Suite 103, Houston, Texas 77002.
Send comments to The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Houston, Texas 77002.
Maps are available for inspection at the Map Repository, c/o Mr. Bob Williams, City Engineering Building, City of League City, 300 West Walker, League City, Texas 77573.
Send comments to The Honorable Tommy Frankovich, Mayor, City of League City, 300 West Walker Street, League City, Texas 77573.
Maps are available for inspection at the Map Repository, Public Works Building, City of Friendswood, 1306 Deepwood Drive, Friendswood, Texas.
Send comments to The Honorable Harold Whitaker, Mayor, City of Friendswood, 910 South Friendswood, Friendswood, Texas 77546–3291.
Maps are available for inspection at the City of Pearland Permits Department, City Hall, 3519 Liberty Drive, Pearland, Texas.
Send comments to The Honorable Tom Reid, Mayor, City of Pearland, 3519 Liberty Drive, Pearland, Texas 77581.
Maps are available for inspection at the Map Repository, City of Brookside Village City Hall, 6243 Brookside Road, Brookside Village, Texas.
Send comments to The Honorable George Carter, Mayor, City of Brookside Village, 6243 Brookside Road, Brookside Village, Texas 77581.
Maps are available for inspection at the Map Repository, c/o Mr. Mike Loomis, Floodplain Group, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562.
Send comments to The Honorable Bob Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562.
Maps are available for inspection at the Map Repository, Brazoria County Courthouse, 111 East Locust Street, Angleton, Texas.
Send comments to The Honorable John Willy, Brazoria County Judge, Brazoria County Courthouse, 111 East Locust Street, Angleton, Texas 77515.
Maps are available for inspection at the Map Repository, County Engineer's Office, Fort Bend County, 1124 Blume Road, Rosenberg, Texas.
Send comments to The Honorable Michael D. Rozell, Fort Bend County Judge, 301 Jackson Street, Suite 719, Richmond, Texas 77469.
Maps are available for inspection at the Map Repository, c/o Mr. Jim Williams, Director of Community Development, City of Webster, P.O. Box 57130, Webster, Texas 77598–7130.
Send comments to The Honorable Floyd Myers, Mayor, City of Webster, P.O. Box 57130, Webster, Texas 77598–7130.

Texas	Henderson County and Incorporated Areas.	Cedar Creek Lake	Along shoreline of Cedar Creek Lane	None	*323

Maps are available for inspection at the City of Payne Springs Community Center, Highway 198, Payne Springs, Texas.
Send comments to The Honorable Lloyd Durst, Mayor, City of Payne Springs, City Hall, P.O. Box 1719, Payne Springs, Texas 75147.
Maps are available for inspection at the City of Tool City Hall, Highway 274, Tool, Texas.
Send comments to The Honorable A.J. Phillips, Mayor, City of Tool, City Hall, P.O. Box 843, Tool, Texas 75143.
Maps are available for inspection at the City of Log Cabin City Hall, 14387 Alamo Road, Log Cabin, Texas.
Send comments to The Honorable Robert L. Ford, Mayor, City of Log Cabin, City Hall, 14387 Alamo Road, Log Cabin, Texas 75148.
Maps are available for inspection at the City of Caney City, City Hall, 15241 Barron Road, Caney City, Texas.
Send comments to The Honorable Joe Barron, Mayor, City of Caney City, City Hall, 15241 Barron Road, Caney City, Texas 75148.
Maps are available for inspection at the City of Seven Points City Hall, Highway 85, Seven Points, Texas.
Send comments to The Honorable Marion Hill, Mayor, City of Seven Points, City Hall, P.O. Box 43233, Seven Points, Texas 75143.
Maps are available for inspection at the City of Star Harbor City Hall, 99 Sunset Street, Malakoff, Texas.
Send comments to The Honorable Jack Ferguson, Mayor, City of Star Harbor, City Hall, P.O. Drawer 949, Malakoff, Texas 75148.
Maps are available for inspection at the Town of Enchanted Oaks Town Hall, 111 Deerwood, Mabank, Texas.
Send comments to The Honorable Ken Braswell, Mayor, Town of Enchanted Oaks, 190 First Oak, Mabank, Texas 75147.
Maps are available for inspection at the City of Gun Barrel City, City Hall, 1810 West Main, Gun Barrel City, Texas.
Send comments to The Honorable Joe Agnes, Mayor, City of Gun Barrel City, City Hall, 1810 West Main, Gun Barrel City, Texas 75147.
Maps are available for inspection at 102 East Tyler Avenue, Athens, Texas.
Send comments to The Honorable Tommy Smith, Henderson County Judge, County Courthouse Annex, 101 East Tyler Avenue, Athens, Texas 75751.

Texas	Midland County Unincorported Area.	Monahans Draw	Approximately 2.1 miles downstream of County Road 1160.	None	*2,694
			Approximately 4,300 feet upstream of Tower Road.	*2,754	*2,753
		Monahans Draw (Near Ector County Boundary).	Approximately 1,000 feet downstream of Ector-Midland County boundary.	None	*2,833
			At Ector-Midland County boundary	None	*2,834

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Midland County Engineer's Office, 2145 East Highway 80, Midland, Texas. Send comments to The Honorable Jeff Norwood, Midland County Judge, County Courthouse, 200 West Wall, Midland, Texas 79701.					
Texas	Victoria County (Unincorporated Areas).	Coleto Creek	Just upstream of FM 466	*66	*66
			Approximately 1.1 miles upstream of Southern Pacific Railroad.	*90	*86
		Whispering Creek	Approximately 830 feet upstream of John Stockbauer Drive.	*112	*111
			Approximately 3,600 feet upstream of Loop 463.	*119	*118
Maps are available for inspection at the Victoria County Floodplain Administration, 2805A North Navarro, Victoria, Texas. Send comments to The Honorable Helen R. Walker, Victoria County Judge, 115 North Bridge, Room 127, Victoria, Texas 77901.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 20, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–8076 Filed 3–27–98; 8:45 am]

BILLING CODE 4718–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE80

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Holocarpha macradenia (Santa Cruz tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes threatened status pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), for *Holocarpha macradenia* (Santa Cruz tarplant). It is threatened by alteration and destruction of habitat due to historical and ongoing urban and commercial development, habitat alteration due to cattle grazing, limited success of seed transplant populations, and competition from non-native plants. This proposed rule, if made final, would extend the Act's protection to this plant. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by May 29, 1998. Public hearing requests must be received by May 14, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone number 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Holocarpha macradenia (Santa Cruz tarplant) was first recognized by Augustin-Pyramus de Candolle, who published the name *Hemizonia macradenia* in 1836 (Ferris 1960). In 1897, E. L. Greene referred the species to the genus *Holocarpha* with publication of the new combination *Holocarpha macradenia* (DC.) E. Greene (Ferris 1960). This name has continued to be recognized in the most recent treatment for the genus (Keil 1993).

Holocarpha macradenia, an aromatic annual herb in the aster (Asteraceae) family, is one of only four species of *Holocarpha*, all of which are restricted to California. The genus name is derived from the Greek *holos* for whole and *karphos* for chaff, referring to the scales found among the florets on the receptacle (the structure that supports the florets in the daisy-like flower head). The plant is rigid with lateral branches that arise to the height of the main stem which is 1 to 5 decimeters (dm) (4 to 20 inches (in)) tall. The lower leaves are broadly linear and up to 12 centimeters (cm) (5 in) long; the upper leaves are smaller, with rolled back margins, and are truncated by a distinctive craterform gland. The yellow flower head is surrounded from beneath by bracts that each have about 25 stout gland-tipped projections (Keil 1993). *Holocarpha macradenia* is distinguished from other members of the genus by its numerous ray flowers and its black anthers.

Historically, habitat for *Holocarpha macradenia* consisted of grasslands and prairies found on coastal terraces below 100 meters (m) (330 feet (ft)) in elevation, from Monterey County north to Marin County. In the Santa Cruz area, the gently sloping terrace platforms are separated by steep-sided "gulches," whereas in the Watsonville area (Monterey County) and on the east side of San Francisco Bay, the terraces are more extensively dissected, and *Holocarpha macradenia* populations occur on alluvium derived from the terrace deposits (Palmer 1986). The soils are typically sandy clay soils; the clay component of these soils holds moisture long into the growing season. The coastal prairie habitat, found from Monterey Bay and northward, is becoming increasingly fragmented and restricted in distribution. Historically, four major factors contributed to changes in the distribution and composition of coastal prairies—the introduction of highly competitive, non-native species; an increase in grazing pressures; the elimination of annual fires; and cultivation (Heady et al.1988).

Santa Cruz tarplant is most frequently associated with grasses; non-native grasses include wild oats (*Avena fatua*), Mediterranean barley (*Hordeum hystrix*), and bromes (*Bromus* sp.). Native associates include needlegrass (*Nassela* sp.), California oatgrass (*Danthonia californica*), and herbaceous species, including other tarplants (*Hemizonia* sp.). At some locations, the plant is found with species of concern, including Gairdner's yampah

(*Perideridia gairdneri*), San Francisco popcorn flower (*Plagiobothrys diffusus*), Santa Cruz clover (*Trifolium buckwestiorum*), and the Ohlone tiger beetle (*Cicindela ohlone*) (California Natural Diversity Data Base (CNDDB) 1997).

Historically, *Holocarpha macradenia* was known from "low dry fields about San Francisco Bay" (Jepson 1925). Around the San Francisco Bay, herbarium collections were made from Tamalipas in Marin County in 1934; from near Berkeley, Oakland, and San Lorenzo in Alameda County as early as 1894; and from Pinole in Contra Costa County (CNDDB 1997, Specimen Management System for California Herbaria (SMASCH) 1997). All of the native San Francisco Bay area populations have been extirpated; the last remaining native population, known as the Pinole Vista population, consisting of 10,000 plants, was eliminated in 1993 by a commercial development (California Department of Fish and Game (CDFG) 1997).

By 1959, Munz (1959) also noted it from Santa Cruz County, but added that the plant was possibly extinct. However, numerous collections were made from the Monterey Bay area in Santa Cruz County in the late 1950s and early 1960s. In 1966 and 1969, Hoover made the first collections in northern Monterey County, just south of the Santa Cruz County line (SMASCH 1997). Additional populations were found in Monterey County in the subsequent decades, although the lack of specific locational information on herbarium labels makes it difficult to determine exactly how many populations occurred there. According to CNDDB, nine populations in Santa Cruz and Monterey counties have been extirpated by development (CDFG 1993). Most recently, in 1993, a population in Watsonville (known as the Anna Street site) was destroyed during construction of office buildings and a parking lot (CDFG 1995a).

Holocarpha macradenia is currently known from a total of 18 populations; 12 of these are remaining native populations, and 6 are a result of experimental seedings. Six of the native populations occur around the city of Santa Cruz. The names of the six populations are given here, followed by the population size and (in parentheses), the year of the most recent survey—Graham Hill Road, 12,000 (1994); Twin Lakes, 0 (1997); Arana Gulch, 20,000 (1997); O'Neill/Tan, 2 (1993)/0 (1997); Winkle, 0 (1994); Fairway, 1,500 (1993).

The remaining six native populations occur around the city of Watsonville, scattered from Watsonville Airport to Hall Road, eight kilometers (km) (five miles (mi)) to the south-southeast. The names of the six populations are given here, followed by the population size and (in parentheses) the year of the most recent survey—Watsonville Airport, 240,000 (1994); Harkins Slough, 15,000 (1993); Apple Hill, 700 (1995); Struve Slough, 1 (1994); Spring Hills Golf Course, 4,000 (1990); Porter Ranch, 3,200 (1993).

The other six extant populations of *Holocarpha macradenia* are a result of experimental seed transplants in Wildcat Regional Park in the east San Francisco Bay area. The names of the six populations are given here, followed by the population size; surveys were most recently completed in 1997—Big Belgum, 148; Big Belgum West, 51; Upper Belgum, 22; Mezue, 5,000'7,000; Fowler, 22; Upper Havey, 17 (Olsen et al. 1997).

Holocarpha macradenia is threatened primarily by historic and current habitat alteration and destruction caused by residential development. Destruction of habitat may also result from recreational development, airport expansion, and agriculture. Even where occupied habitat has been set aside in preserves, conservation easements, and open spaces, the plant suffers secondary impacts from that development, such as casual use by residents, children, and pets, the inadvertent introduction of non-native species into tarplant habitat, and changes in hydrology resulting from adjacent residential use. Santa Cruz tarplant is also threatened by competition with non-native species including a variety of grass species, French broom (*Genista monspessulana*), eucalyptus (*Eucalyptus* sp.), acacia (*Acacia decurrens, A. melanoxylon*), and artichoke thistle (*Cynara cardunculus*) that are favored by historic disturbances such as cattle grazing. This species is also threatened by naturally occurring events due to the small numbers of individuals and limited area occupied by many of the populations.

Previous Federal Action

Federal action on this plant began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report (House Doc. No. 94–51), was presented to Congress on January 9, 1975, and included *Holocarpha macradenia* as endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of the Service's intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Holocarpha macradenia* was included in the June 16, 1976 **Federal Register** document.

In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice (44 FR 70796) of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Holocarpha macradenia* as a category 1 candidate (species for which data in the Service's possession was sufficient to support proposals for listing).

On February 15, 1983, the Service published a notice (48 FR 6752) of its prior finding that the listing of *Holocarpha macradenia* was warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act as amended in 1982. Pursuant to section 4(b)(3)(C)(i) of the Act, this finding must be recycled annually, until the species is either proposed for listing, or the petitioned action is found to be not warranted. Each October from 1983 through 1990 further findings were made that the listing of *Holocarpha macradenia* was warranted, but that the listing of this species was precluded by other pending proposals of higher priority.

Holocarpha macradenia continued to be included as a category 1 candidate in plant notices of review published September 27, 1985 (50 FR 39526), February 1, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). Upon publication of the February 28, 1996 notice of review (61 FR 7596), the Service ceased using category designations and included *Holocarpha macradenia* as a candidate. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered. The 1997 notice of review, published September 19 (62 FR 49398) retained *Holocarpha macradenia* as a candidate, with a listing priority of 2.

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475), and extended on October 23, 1997 (62 FR 55268). The guidance clarified the order in which the Service processed rulemakings during fiscal year 1997. The guidance called for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the conservation status of outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the lists of threatened and endangered plants and animals. This proposed rule constitutes a Tier 3 action. The 1997 listing priority guidance remains in effect pending the publication of the Final Listing Priority Guidance for FY 1998/FY 1999.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Holocarpha macradenia* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Urbanization has been responsible for severely reducing the extent of coastal prairie habitat that supports *Holocarpha macradenia*. All native populations of *Holocarpha macradenia* have been extirpated from Alameda, Contra Costa, and Marin counties around the San Francisco Bay (CDFG 1997a). Habitat for the last naturally occurring population in the San Francisco Bay area, near Pinole in Contra Costa County, was converted to a shopping center in 1993 (CDFG 1997a, CNDDB 1997). The only populations that persist in this area are six populations that were transplanted as seed into Wildcat Canyon Regional Park in Contra Costa County.

Since *Holocarpha macradenia* was listed as endangered by the State of California in 1979, the (CDFG) has been tracking the status of its populations. Because locality information on historical collections is often general, it is difficult to assess the total number of historical populations. However, CDFG has determined that the plant has been extirpated from nine locations around the Monterey Bay since 1979 (CDFG 1993, CNDDB 1997). Most recently, a population at what was referred to as the Anna Street site in Watsonville was destroyed sometime after a 1992 survey, during construction of office buildings and a parking lot (CDFG 1995a, CNDDB 1997).

In the last four years, increasing concern over the loss of tarplant habitat and populations have led certain permitting agencies to require conservation of remaining habitat during review of development projects. Because of this, the rate of habitat destruction has been slowed. However, direct impacts and alteration through secondary effects of development threaten the remaining habitat and populations. In many cases, historical alteration of habitat has been exacerbated by current human activities. A detailed description of the 12 remaining native sites is given here. Because the six seed transplant sites in Contra Costa County are not sites where the plant was known to be native, the threats to those sites are discussed under "Factor E."

The Graham Hill Road site is owned by the Cowell Foundation. An Environmental Impact Report (EIR) was approved by the County of Santa Cruz in 1996 for a development that comprises 52 residences, a fire station, a common area, a park, and an equestrian facility and trails on a 170-acre parcel (Environmental Science Associates 1996). The developer has proposed to include 0.5 acre of occupied tarplant habitat and 10 acres of coastal prairie habitat within a 17-acre conservation easement. In addition to Santa Cruz tarplant, other species of concern occur here, including Gairdner's yampah, San Francisco popcorn flower, and Santa Cruz clover. In 1994, there were five colonies of tarplant, occupying less than one acre of habitat. One colony supported 10,000 individuals and the other four collectively supported 2,000 individuals. To date, the development has not proceeded because the developer has been unable to negotiate a necessary sewage treatment connection with the City of Scotts Valley. The property and attendant EIR are currently for sale. French broom has invaded the coastal prairie habitat and is considered a threat to all four of the plant species of concern, including Santa Cruz tarplant (Environmental Science Associates 1995). *Holocarpha macradenia* is threatened on this site by development, competition with non-native plants, and vulnerability to naturally occurring events due to the small extent of occupied habitat (also see Factor E).

The Twin Lakes site is owned by the California Department of Parks and Recreation (CDPR). The site has been fragmented by an access road for park vehicles and several hiking paths. The population occupies less than 1 acre and has declined as follows—120 individuals in 1986, fewer than 10 in 1994, 1 in 1996, and 0 in 1997. The decline has been attributed to competition from French broom and non-native grasses (CDFG 1995a; G. Gray, ecologist, CDPR, pers. comm. 1997). In the last three years, CDPR has made progress in removing broom from the site. They also have experimented with management actions that would enhance habitat for *Holocarpha macradenia* through mowing, raking, simulating cattle hoof action with wood blocks, and burning. The population, however, has continued to decline. In 1997, CDPR committed significant funding to continue with experimental management actions (G. Gray, pers. comm. 1997). *Holocarpha macradenia* is threatened on this site by competition with non-native plants, and vulnerability to naturally occurring events due to the small population size and small extent of occupied habitat (also see Factor E).

The Arana Gulch population is on a 63-acre parcel of land owned and managed by the City of Santa Cruz (City). In the late 1980s, the population comprised about 100,000 individuals. Grazing by cattle was terminated in 1988, and over the next few years, population sizes decreased due to competition with non-native grasses. In 1993, the population was down to 133 individuals, and in 1994, no individuals were seen. In 1994, the City acquired the parcel from a private landowner. The City entered into a Memorandum of Understanding (MOU) with CDFG in 1997 to focus on management actions that would enhance the four colonies, which cover approximately 5 acres within a 17-acre management area (CDFG 1997b). Management actions begun in 1995 included mowing, raking, hoeing, and mechanical scraping of the habitat. In 1997, when the population comprised about 20,000 individuals, the highest density of tarplant was on a portion of the habitat that had accidentally burned (K. Lyons, consultant, pers. comm. 1997). The City is proposing to construct a bicycle path that would bisect the management area (Brady and Associates, Inc. 1997). Direct impacts to occupied Santa Cruz tarplant habitat would be avoided, but secondary impacts associated with increased recreational use may make management more difficult. *Holocarpha macradenia*

is threatened on this site by development and competition with non-native plants (also see Factor E).

The O'Neill/Tan Ranch population straddles the boundary of two parcels.

The O'Neill Ranch property is owned by the County Redevelopment Agency (CRA). In 1996, the County approved development of the 100-acre property into a county park. The tarplant is located in the upper reaches of the park where past recreational use has consisted of occasional hiking. A park management plan is currently being developed, and will include the population of tarplant in a 15-acre conservation easement which is zoned for "passive recreation." The plan may recommend fencing around 1 acre of tarplant habitat in lieu of trying to restrict hikers to designated trails (S. Gilchrist, CRA, pers. comm. 1997). Although the site receives light use currently, development of the Tan property will allow easier access to a larger number of people. The County hopes to establish a cooperative management strategy with the developers to address management of this population. The size of the *Holocarpha macradenia* population has fluctuated since 1979 as follows—between 100 to 200 plants (1979); 0 (1984); 0 (1985); 170 (1986); 0 (1990); 170 (1991) and 2 (1993) (Brady and Associates 1995). Santa Cruz clover and Gairdner's yampah are two sensitive species that occur with the tarplant at this site.

The size of the *Holocarpha macradenia* population on the Tan parcel is difficult to determine, as historic surveys did not count individuals separately from those on the O'Neill parcel. However, because the total number of individuals in the entire population has never been larger than 200, it can be inferred that the Tan parcel supported only a portion of these. In 1996, only one tarplant individual was seen (Val Haley, consultant, in litt. 1997); in 1997 no individuals were seen (K. Lyons, pers. comm. 1997). The coastal prairie habitat on this parcel also supports Gairdner's yampah and Santa Cruz clover, both species of concern.

The 106-acre Tan property is privately owned, and was approved for development of 28 residential units in 1997. The habitat mitigation plan for the development calls for the inclusion of approximately 0.4 acres that support tarplant in a 10.5-acre conservation parcel that will be managed by the homeowner's association (HRG 1996). The plan also includes management prescriptions for the conservation parcel, including mowing, weed control, fencing, and removal of invasive non-native plants. Invasive non-native plants in the vicinity of the tarplant include French broom, rattlesnake grass (*Briza* sp.), and eucalyptus (HRG 1996). *Holocarpha macradenia* is threatened on the combined O'Neill/Tan site by development, competition with non-native plants, and vulnerability to naturally occurring events due to the small population size and small extent of occupied habitat (also see Factor E).

The Winkle Avenue site is privately owned. Part of the tarplant population at this site was destroyed by two phases of a residential development in 1986, and part of the remaining parcel was placed in a "temporary open space easement" (Strelow Consulting 1997). However, the remaining 58-acre parcel is now also being proposed for development of 21 residential units (Parsons Engineering Science, Inc. 1997). Approval by the County of Santa Cruz is pending; the planning department will recommend that the development be limited to 10 residential units, with the remaining 11 lots to be placed in a preservation easement (K. Tschantz, County of Santa Cruz Planning Department, pers. comm. 1997, CDFG in litt. 1997). In 1993, the tarplant population consisted of approximately 100 plants covering 174 square feet (Parsons Engineering Science, Inc 1997); in 1994, none were seen (CDFG 1995). In addition to development, the population on this site has been subject to competition with French broom and non-native grasses. This site also supports populations of the Ohlone tiger beetle and Gairdner's yampah, both species of concern. *Holocarpha macradenia* is threatened on this site by development, competition with non-native plants, and vulnerability to naturally occurring events due to the small population size and small extent of occupied habitat (also see Factor E).

The Fairway Drive site is privately owned. In 1989, the 30-acre parcel supported a population of approximately 5,000 plants on less than one acre. At the time, the site was considered a "well preserved fragment of native grassland" that supported native bunchgrasses (California oatgrass and purple needlegrass (*Nassella pulchra*)) as well as several species of concern, including Gairdner's yampah and San Francisco popcorn flower (CNDDB 1997). Grazing by horses ceased in that year. In 1993, the population was approximately 1,500 plants (CDFG 1995a, Greening Associates 1995); the decline has been attributed to cessation of grazing. Several woody non-native species, including French broom, acacia, pampas grass (*Cortaderia jubata*), and eucalyptus (*Eucalyptus globulus*), have invaded the grasslands and are rapidly spreading. In 1996, the County approved a lot split into four parcels, with the condition that the coastal terrace prairie habitat be placed in a preservation easement of approximately 15 acres, and a management plan be developed and implemented (K. Tschantz, pers. comm. 1997). *Holocarpha macradenia* is threatened on this site by competition with non-native plants and by its vulnerability to naturally occurring events due to small population size and small extent of occupied habitat (also see Factor E).

Around the city of Watsonville, six native populations of Santa Cruz tarplant are scattered from Watsonville Airport to Hall Road, eight kilometers (km) (five mi) to the south-southeast. The Watsonville Airport site, owned by the City of Watsonville, supports the largest population of Santa Cruz tarplant. In 1993, the population was estimated to be 459,000 plants; in 1994, it was estimated to be 240,000 plants (CNDDB 1997). Portions of the 37-acre site are grazed, and other portions are mowed several times between late spring and late summer. This management appears to have benefitted the Santa Cruz tarplant by reducing competition from non-native species. In 1994, the City released an initial study for proposed clay mining and a 20-year airport expansion plan. Both activities would potentially reduce tarplant habitat (Denise Duffy & Associates 1994). Since then, the proposal to mine clay has been removed from consideration due to permitting complications. CDFG has been working with City representatives to formalize an agreement to use ongoing management activities to enhance tarplant habitat, but a final agreement has not been reached. CDFG has also been working with City representatives to develop a strategy to phase airport expansion over a number of years so that loss of tarplant habitat would be minimized. *Holocarpha macradenia* is threatened on this site by development and competition with non-native plants (also see Factor E).

The Harkins Slough site is privately owned. In 1993, the population consisted of about 15,000 plants in two colonies, one covering 1 acre, and the other 0.1 acre in size. Cattle grazing was discontinued in 1990. Current uses of the property include fava bean production. Due to limited access to the property, the current status of the population is unknown. In anticipation of developing residences and a golf course, the owners requested that the

property be annexed to the City of Watsonville in 1997. However, due to the public's concern over the loss of prime agricultural land in the area, the city council turned down the request. In 1997, CDFG approached the owners with a proposal to assist in conservation efforts; no agreements have been reached yet. *Holocarpha macradenia* is threatened on this site by vulnerability to naturally occurring events due to the small population size and small extent of occupied habitat (see Factor E) and possibly by development.

The Apple Hill site is owned by the California Department of Transportation (CALTRANS). The population used to comprise three colonies, but two were extirpated by construction of a housing development on the adjacent private property. The remaining colony occurs in a strip between the development and Highway 152; the strip has been used as a play area for local children and pets, a repository for yard waste, and as a short-cut to the local market (CDFG 1994; G. Smith, resource ecologist, CDPR, pers. comm 1997). CALTRANS had proposed moving a fence along the highway such that it would offer additional protection to the remaining colony. However, due to internal reorganization and changes in staffing within CALTRANS, this action has not been taken yet (G. Ruggerone, CALTRANS, pers. comm. 1997). The population size has fluctuated between 4,000 in 1986 down to 81 in 1994. In the most recent count in 1995, the population supported 700 individuals (CNDDB 1997). *Holocarpha macradenia* is threatened on this site by development and by vulnerability to naturally occurring events due to the small population size and small extent of occupied habitat (also see Factor E).

The Struve Slough site is privately owned. In the late 1980s, it supported one of the largest populations of Santa Cruz tarplant, occupying 4 acres and comprising 400,000 plants in 1989 (CDFG 1995). However, cattle grazing on the site was terminated in 1989, and since then, the population size has dropped precipitously. The site is now dominated by non-native wild oat (*Avena* sp.), prickly lettuce (*Picrus echioides*), and fennel (*Foeniculum vulgare*), which outcompete the tarplant (CDFG 1995). By 1993 and 1994, only one tarplant individual was observed. The Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*), a federally endangered species, has also been documented from this site. An EIR for a housing development at this site was approved by the City of Watsonville in 1992. However, a requirement to add a fire road, which would cross regulated wetlands, has held up the development. A revised EIR is due to be released soon. The CDFG has expressed an interest in enlisting the property owners in conservation efforts, but no agreements have yet been reached (D. Hillyard, plant ecologist, CDFG, pers. comm. 1997). *Holocarpha macradenia* is threatened on this site by development, competition with non-native plants, and vulnerability to naturally occurring events due to the small population size and small extent of occupied habitat (also see Factor E).

The Spring Hills Golf Course (Course) site is privately owned. In 1989, Santa Cruz tarplant was observed growing in five separate colonies scattered over 13 acres in unlandscaped patches between the course's fairways. The distribution of the colonies suggests that additional habitat for the tarplant was altered by conversion to fairway. In 1989 and 1990, the largest colony supported 2,000 to 3,000 plants, and the other four colonies supported between 100 and 400 plants each (CNDDB 1997). The tarplant was last observed at this site in 1995; at that time, no population size estimates were made, but it appeared that all colonies were still present (B. Davilla, pers. comm. 1997). In 1997, CDFG approached representatives of the Course and expressed an interest in enlisting them in conservation efforts. To date, however, no agreements have been made (D. Hillyard, pers. comm. 1997). The threats to *Holocarpha macradenia* on this site are uncertain.

The Porter Ranch site is privately owned. Taylor noted that this site is unusual in that the *Holocarpha macradenia* population is primarily in the bottom of a small canyon, rather than on the adjacent terrace or upper slope (Taylor 1990). The population is scattered over approximately 10 acres. Between 1984 and 1993, population sizes fluctuated between 1,500 plants in 1984 and 43,000 in 1989 (CNDDB 1997). The most recent population estimate in 1993 was 3,200 plants. The site is grazed by cattle; apparently different patches of *Holocarpha macradenia* have been grazed with varying intensities (M. Silverstein, Elkhorn Slough Foundation, pers. comm. 1997). Morgan noted that there were fewer than 100 plants in 1996 within a cattle exclosure where there had previously been many more plants (R. Morgan, pers. comm. 1997). The owners are interested in developing management plans in conjunction with The Nature Conservancy that would address appropriate grazing levels to benefit the tarplant (CDFG 1994, M. Silverstein, pers. comm. 1997). The threats to *Holocarpha macradenia* on this site are uncertain.

In summary, development, with its associated effects, is a primary threat to *Holocarpha macradenia*. Six of the 12 remaining native populations are on privately owned lands that are currently or anticipated to be proposed for urban development (Graham Hill Road, the Tan portion of O'Neill/Tan, Winkle Avenue, Fairway Drive, Harkins Slough, and Struve Slough); 1 is on a site slated for a phased, 20-year airport expansion (Watsonville Airport); and 3 are subject to secondary effects of adjacent residential development (Arana Gulch, Twin Lakes, Apple Hill). Although 7 of the 12 sites include plans for conservation of *Holocarpha macradenia*, either through development-related mitigation, or by virtue of being on City, County, or State agency lands, the successful implementation of these plans has not been demonstrated. In particular, the size and quality of conservation areas and management actions prescribed through the environmental review process (see Factor D) may not be biologically adequate to meet the goal of long-term conservation of the species. In addition, conservation areas where *Holocarpha macradenia* populations are small in numbers, small in area, whose habitat is degraded, or that continue to receive secondary effects of adjacent human activities, become more vulnerable to extirpation from naturally occurring events (see Factor E).

B. Overuse for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a problem for this species.

C. Disease or Predation.

Disease is not known to be a problem for this species. Predation by cattle, livestock, or other wildlife species is not known to occur, and is unlikely given that the oil glands of mature *Holocarpha macradenia* would make it unpalatable. Whether very young plants are subject to predation prior to maturation of oil glands is unknown.

Grazing by cattle has altered habitat for *Holocarpha macradenia* at a number of sites (Arana Gulch, O'Neill/Tan, Watsonville Airport, Harkins Slough, Struve Slough, Porter Ranch, and all six seed transplant populations in Wildcat Regional Park). Prior to the spread of non-native annual grasses in the valleys and foothills of California, the openings between perennial grasses in grassland and oak woodland communities were probably occupied by native herbs (Barbour et al. 1993). Grazing alters the species composition of grasslands in several ways. The hooves of cattle create

sufficient soil disturbance to allow the establishment of non-native species, intensive grazing eliminates native species through selective foraging and favors the establishment of non-native species, and cattle act as dispersal vectors for non-native species (Heady 1977; Sauer 1988, Willoughby 1986). Once non-native species become established, they compete with native herbs and grasses for water, nutrients, and light. Because non-native grasses are prolific seeders, they continue to increase in abundance at the expense of the native taxa.

Once habitat for *Holocarpha macradenia* has been altered by grazing and the proliferation of non-native plants, continued grazing may be deleterious or beneficial to the persistence of the species. The effects of continued grazing on *Holocarpha macradenia* depend on many factors, including the current condition of the site, the timing, and the amount of grazing. In some cases, light to moderate grazing will remove sufficient biomass of non-native grasses to allow *Holocarpha macradenia* to persist (CDFG 1995a, CDFG 1995b). For example, a combination of mowing and grazing has probably favored the persistence of *Holocarpha macradenia* at the Watsonville Airport site. The decline of *Holocarpha macradenia* on the Struve Slough site has been attributed to the cessation of grazing (CDFG 1995a, Taylor 1990). On the other hand, heavy grazing is most likely responsible for the decline or restriction in *Holocarpha macradenia* population sizes at the Arana Gulch, Tan, and portions of the Porter Ranch sites (CNDDB 1997, CDFG 1995a), as well as one of the seed transplant populations (Big Belgum) in Wildcat Canyon Regional Park (CDFG 1995b).

Because cattle grazing has frequently resulted in increasing the abundance of non-native species, competition with these non-natives is typically a problem. Additional discussion on this issue is found under Factor E of this rule.

D. The Inadequacy of Existing Regulatory Mechanisms

The CDFG Commission listed *Holocarpha macradenia* as an endangered species in 1979 under the California Native Plant Protection Act (CNPPA) (Div. 2, chapter 10 sec. 1900 et seq. of the CDFG Code) and the California Endangered Species Act (CESA) (Division 3, Chapter 1.5 sec. 2050 et seq.). Although the "take" of State-listed plants has long been prohibited under the CNPPA, Division 2, Chapter 10, section 1908 and the CESA, Division 3, Chapter 1.5, section 2080, in the past these statutes have not provided adequate protection for such plants from the impacts of habitat modification and land use change. For example, under CNPPA, after CDFG notifies a landowner that a State-listed plant grows on his or her property, the statute requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (CNPPA, Division, 2, Chapter 10, section 1913). Under recent amendments to CESA, a permit under section 2081(b) of the CDFG Code is required to "take" State listed species incidental to otherwise lawful activities. The amendments require that impacts to the species be fully mitigated. However these new requirements have not been tested and several years will be required to evaluate their effectiveness.

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for State listing as rare, threatened, or endangered, but are not so listed, are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

The County of Santa Cruz recently revised its Local Coastal Program and General Plan (Santa Cruz County 1994). Under this plan, "grasslands in the coastal zone" are identified as one of a number of Sensitive Habitats. Uses allowed within Sensitive Habitat areas are restricted to those that are dependent on the habitat's resources unless other uses are "(a) consistent with protection policies and serve a specific purpose beneficial to the public; (b) it is determined through environmental review that any adverse impacts on the resource will be completely mitigated and that there is no feasible less-damaging alternative; and (c) legally necessary to allow a reasonable economic use of the land, and there is no feasible less-damaging alternative." (Santa Cruz County 1994). The County has attempted to protect Santa Cruz tarplant during review of proposals for development that fall under their purview by establishing conservation easements volunteered by the project applicant, or preservation easements requested of the applicant by the County. To date, these include development projects at the following sites—Graham Hill Road, O'Neill, Tan, Winkle, and Fairway Drive. These easements typically set aside all or most of the occupied habitat of *Holocarpha macradenia* and provide for implementation of management plans for the attendant coastal prairie habitat. Despite these efforts, however, the easements cover small remnant acreages that represent only a fragment of the original coastal prairie habitat that used to occur in the region, and intensive management will be needed to support *Holocarpha macradenia* on these sites.

Since *Holocarpha macradenia* was listed by the State in 1979, CDFG has been tracking the status of its populations. Concern increased in the late 1980s and early 1990s when it became apparent that native populations were being destroyed by development, both in the San Francisco Bay area and the Monterey Bay area. In 1993 and 1995, CDFG hosted three *Holocarpha macradenia* recovery workshops to review the status of the species and attendant populations, and to identify needed actions to conserve the species. As a result of these workshops, CDFG developed a MOU with the City of Santa Cruz addressing management of the population at Arana Gulch, initiated discussion with the City of Watsonville regarding the development of a MOU for management of the Watsonville Airport site, provided funding for management of several populations (including those at Arana Gulch and at Wildcat Regional Park), and developed a conservation plan for the species, including a list of four priority sites to target for conservation. Efforts to enlist the four property owners to conserve the species are pending.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Three additional factors threaten the continued existence of *Holocarpha macradenia*—limited success of transplant efforts, competition with

non-native plants, and extinction caused by naturally occurring events.

In Factor A above, detailed accounts were given of the 12 remaining native populations of *Holocarpha macradenia*. The other six extant populations of *Holocarpha macradenia* are a result of experimental seed transplants. A brief summary of these transplanted populations is warranted. In 1911, Jepson referred to *Holocarpha macradenia* as being "abundant" in west Berkeley and Oakland (Havlik 1986). Due to loss of habitat to urbanization, Munz (1959) considered the taxon "possibly extinct." Therefore, when several populations were found near Pinole and Richmond in Contra Costa County in the late 1970s and early 1980s, botanists placed a high priority on establishing additional populations to forestall extinction. Experiments were carried out to establish new populations by seeding what was thought to be appropriate habitat (Havlik 1986). Most of the transplants were done at Wildcat Canyon Regional Park, which straddles Alameda and Contra Costa counties, but several transplants were on lands owned and managed by East Bay Municipal Utility District (EBMUD).

Havlik (1989) reviewed results from the first seven years of seed transplants and discussed how habitat characteristics, including soil type, grazing pressure (cattle), and occurrence within the coastal fog belt, may have affected transplant success. Initial data suggested that populations exposed to moderate grazing pressure were larger than those exposed to low grazing pressure. From 1982 to 1986, a total of 22 seed transplants was attempted within Wildcat Regional Park and on EBMUD land. Most of the sites have been monitored annually since then. In 1989, 3 sites supported over 3,000 plants; two had over 1,000 plants; eleven had over 100 plants; 2 had over 10 plants; and 4 had no plants.

By 1993, 1 site (referred to as Mezue) supported a population of 6,400 plants; 4 had fewer than 300 plants; 2 had fewer than 100 plants; 10 had no plants; and 3 sites could not be relocated (CDFG 1994). By 1997, the Mezue site supported between 5,000 and 7,000 plants; 1 had fewer than 300 plants; 4 had fewer than 100 plants; and 7 had no plants. Most of the remaining sites were not checked since previous multiple-year monitoring indicated that plants had disappeared from those sites.

Although the information gathered from these seed transplant trials has been valuable for understanding the life history of the plant and how it responds to various types of management, the limited success of establishing viable populations means that these transplant sites have a limited value for maintaining the viability of the species compared to the native populations. The seeded populations of tarplant are threatened to some extent by competition with artichoke thistle and non-native grasses.

One of the most prevalent forms of habitat alteration occurring within the coastal prairie habitat of Santa Cruz tarplant is the conversion of the flora from one comprised primarily of native grasses to one comprised primarily of non-native grasses. As discussed in factors A and C above, the conversion of native habitats to grazing lands enhances the opportunity for non-native grasses to be introduced and disseminate into the surrounding areas. Because many non-native grasses germinate early and seed prolifically, they may quickly gain a competitive advantage over native grasses (Heady 1977, McClintock 1986). Field survey reports show that non-native grasses have become prevalent, and thus represent a potential threat, at the following sites for *Holocarpha macradenia*—Arana Gulch, Twin Lakes, Tan, Watsonville Airport, Harkins Slough, Struve Slough, Spring Hills, Porter (CNDDB 1997, Taylor 1990).

The Struve Slough site, which until 1989 supported one of the largest populations of Santa Cruz tarplant, is currently dominated by non-native species, primarily wild oat, prickly lettuce, and wild fennel. Before 1989, grazing by cattle had favored the presence of ryegrass (*Lolium multiflorum*) and quaking grass (*Briza maxima*) on the site; cattle grazing was removed in 1989. Although a seed bank for Santa Cruz tarplant still exists on the site, the plant has not been seen since 1994.

The seeded populations of tarplant are also threatened to some extent by competition with non-native species, particularly artichoke thistle and non-native grasses. This thistle, the wild variety of the edible artichoke, modifies habitat for the tarplant by virtue of its large size, its allelopathic properties (chemical inhibition of growth of other plants), and by creating shade (Kelley and Pepper, in press). Other weedy characteristics of the artichoke thistle include its ability to resprout vigorously from a perennial taproot, extended flowering, seed production, and germination seasons, and the ability to germinate and grow rapidly in a variety of environmental conditions (Kelley and Pepper, in press). Apparently, artichoke thistle was introduced to the area around Benicia, only a few miles north of the Regional Park, in the 1880s; by the 1930s, 70,000 acres in the hills around the east and north side of San Francisco Bay were infested with the artichoke thistle (Ball in Thomsen et al. 1986).

Starting in 1996, the Regional Park, with the County of Alameda, initiated an artichoke thistle removal program using herbicides. Although sites that support tarplant are a priority for artichoke thistle removal, the abundance of artichoke thistle in adjacent areas facilitates reestablishment into already treated areas.

Non-native grasses also occur with tarplant at the six seed transplant sites. All six sites are also grazed by cattle. If non-native grasses become too abundant, they outcompete the tarplant. Cattle grazing decreases the abundance of non-native grasses; however, at one of the sites (Big Belgum), an increase in cattle grazing was thought to be the cause of a declining tarplant population (CDFG 1995b).

French broom is another non-native species that threatens *Holocarpha macradenia*. French broom is very aggressive, spreads rapidly, and easily colonizes disturbed areas such as roadsides and recently cleared land. Like artichoke thistle, French broom can eventually form dense thickets that displace native vegetation (Habitat Restoration Group (HRG) n.d.). French broom occurs at the following sites that support *Holocarpha macradenia*—Arana Gulch, Graham Hill Road, Twin Lakes, Tan, and Fairway Drive (CDFG 1997, HRG 1996).

So much of the coastal prairie habitat that supports *Holocarpha macradenia* has been altered, fragmented, or destroyed that most of the remaining habitat supports only very small populations, both in numbers of individuals and in acreage. Species with few populations and individuals are vulnerable to the threat of naturally occurring events causing extinction in several ways. First, the loss of genetic diversity may decrease a species' ability to maintain fitness within the environment, often manifested in depressed reproductive vigor. Secondly, species with few populations or individuals may be subject to forces that affect their ability to complete their life cycle successfully. For example, the loss of pollinators may reduce successful seed set. Thirdly, random, natural events, such as storms, drought, or fire could destroy a significant percentage of a species' individuals or entire populations. Also, the restriction of certain populations to small sites increases their risk of extinction from naturally occurring events. Of the 12

native sites, the Watsonville Airport site is the largest, supporting 200,000 to 400,000 plants on 37 acres. The Struve Slough site formerly supported 400,000 individuals on 4 acres, but had declined to a single individual in 1994. The Spring Hills Golf Course site supports up to 3,500 plants on 13 acres. The Porter Ranch site used to support 43,000 plants on 10 acres, but the population had declined to fewer than 100 plants in 1996. The Arana Gulch site supported 20,000 plants on 5 acres in 1997. The remaining seven native sites support approximately 1 acre or less of occupied habitat; of these, at least two (Twin Lakes, Tan) had no plants in 1997. Of the 6 seed transplant sites in Wildcat Canyon Regional Park in the east San Francisco Bay area, 1 supported a population of 6,000 to 7,000 individuals, and the remaining 5 supported between 17 and 148 individuals. Olsen estimates that each of these sites covers 1 to 3 acres, and that the total area of all six sites is between 10 and 20 acres (B. Olsen, biologist, EBRPD, pers. comm. 1997).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to propose this rule. Based on this evaluation, the preferred action is to list *Holocarpha macradenia* (Santa Cruz tarplant), as threatened. This species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range due to habitat alteration and destruction resulting primarily from urban and commercial development, invasion of its habitat by non-native vegetation due to cattle grazing, limited success of seed transplant populations, competition with non-native plants, and vulnerability to naturally occurring events due to low numbers of individuals. Although a few of the remaining native populations are on City, County, or State-owned lands, most of them are on private lands. Conservation efforts to date have shown that this species may be maintained by applying intensive management techniques. These efforts will be most effective on sites where acreage of remaining habitat is large, support naturally large populations, and are secure from threats. Although conservation efforts have been prescribed as part of mitigation for a number of development projects, the small acreage, small population sizes, and physical proximity of threats lessen the chance that such efforts will lead to secure, self-sustaining populations at these sites. Therefore, the preferred action is to list *Holocarpha macradenia* as threatened. Critical habitat is not being proposed for *Holocarpha macradenia* for the reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3(5)(A)of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12(a)) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat for Santa Cruz tarplant is determinable. Although additional information would be useful, sufficient information concerning the physical and biological features of the tarplant's habitat exists to determine critical habitat (CNDDB 1997, CDFG 1995a, CDFG 1995b, Palmer 1986).

Critical habitat can be designated for suitable, but unoccupied, habitat of listed species. There are no opportunities to do so for the Santa Cruz tarplant because sites where it historically occurred have all been rendered unsuitable. Sites where plants have been regularly seen, but not on the most recent inspection, are assumed to have viable seed banks, and cannot be considered "unoccupied." Similarly, because the six seed transplant populations on park land (owned by East Bay Regional Parks District) have been at best moderately successful, the Service is unable to conclude that these sites are suitable to the plant. The transplant sites thus are not appropriate for designation as critical habitat.

Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat for the Santa Cruz tarplant is not prudent because it would provide no additional benefit to the species beyond that conferred by listing it as threatened. The basis for this conclusion, including the factors considered in weighing the benefits against the risks of designation, is provided below.

As discussed above, 8 out of 12 extant native populations occur predominantly on private land, and 4 are on City, County or State land. Because Santa Cruz tarplant is State-listed, activities occurring on these private and public lands are subject to State regulations. For populations that occur within Santa Cruz County outside of City limits (Graham Hill Road, O'Neill/Tan, Winkle, Fairway Drive, Harkins Slough, Struve Slough, Spring Hills Golf Course), activities are also subject to ordinances through the Local Coastal Program and General Plan. The Porter Ranch population is subject to ordinances through the County of Monterey. Because there is no Federal assistance to, or regulation of activities (i.e., a Federal nexus) on these privately owned sites, designation of critical habitat would provide no benefit to the Santa Cruz tarplant in addition to that provided by listing. Federal involvement, should it occur, would be identified without the designation of critical habitat because interagency coordination requirements (e.g. Fish and Wildlife Coordination Act and the Endangered Species Act) are already in place. Designating critical habitat would not create a management plan for the plant, establish goals for its recovery, nor directly affect areas not designated as critical habitat. Additionally, the designation of critical habitat, which does not affect private landowners, may distract these landowners from, or discourage their participation in State and local conservation programs. Landowner participation in these programs is essential to the long term conservation and recovery of the Santa Cruz tarplant. Designation of critical habitat on private land would therefore not merely provide no benefit to the tarplant, but would actually create a needless risk.

For the 4 native populations on City, County, or State lands, policies of the various agencies involved regarding protection and conservation of sensitive species apply. The Twin Lakes population is on park land owned by CDPR; the Arana Gulch population occurs on park land owned by the City of Santa Cruz. The Apple Hill

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population occurs on land owned by CALTRANS. The Watsonville Airport population is owned by the City of Watsonville. In addition to these four populations, a portion of the O'Neill/Tan population occurs on park land owned by the County of Santa Cruz. All of these populations are currently recognized for conservation purposes by their managers, or progress is being made toward such recognition (as at Watsonville Airport). There is currently no Federal nexus at any of these sites. A Federal nexus could emerge at the airport if federally-funded construction is proposed, but the airport population's importance to the conservation of the species (it is the largest population in existence) assures that virtually any adverse effect at the airport would very likely jeopardize the continued existence of the Santa Cruz tarplant. Thus, designation of critical habitat at any of the publicly-owned sites would provide no additional benefit.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal agency involvement has been identified at this time.

Listing of this plant as threatened will provide for the development of a recovery plan. Such a plan will bring together Federal, State, and local efforts for its conservation. The plan will establish a framework for cooperation and coordination in recovery efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also will describe site-specific management actions necessary to achieve conservation and survival of *Holocarpha macradenia*.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, applies. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to *Holocarpha macradenia* in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because this species is not in cultivation or common in the wild. Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6131, FAX 503/231–6243).

The Service adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is proposed for listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, land use activities that would significantly modify the species' habitat, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility line crossing suitable habitat,) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act; or when such activity does not occur in habitats suitable for the survival and recovery of *Holocarpha macradenia* and does not alter the hydrology or habitat supporting this plant.

(2) Casual, dispersed human activities on foot or horseback (e.g., bird watching, sightseeing, photography, camping, hiking).

(3) Activities on private lands (without Federal funding or involvement), such as grazing management, agricultural conversions, wetland and riparian habitat modification (not including filling of wetlands), flood and erosion control, residential development, road construction, pesticide/herbicide application, and pipelines or utility lines crossing suitable habitat.

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break.

The Service believes that the actions listed below might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of herbicides violating label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Fish and Wildlife Service will follow its current peer review policy (59 FR 34270) in the processing of this rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Constance Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644–1766).

List of Subjects in 50 CFR part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic Range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
.	.	.	.	.	.	.	.
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Holocarpha macradenia	Santa Cruz tarplant	U.S.A. (CA)	Compositae	T	.....	NA	NA
.	.	.	.	.	.	.	.

Dated: March 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–8052 Filed 3–27–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE85

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Cowhead Lake Tui Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the Cowhead Lake tui chub (*Gila bicolor vaccaceps*), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). The Cowhead Lake tui chub is a fish that is found only in Cowhead Slough and connected ditches within the bed of Cowhead Lake in extreme northeastern Modoc County, California. This subspecies is threatened throughout its range by a variety of human impacts, including the dewatering of Cowhead Lake, livestock grazing, agricultural activities, and by random naturally occurring events. This proposal, if made final, would implement Federal protection provided by the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 29, 1998. Public hearing requests must be received by May 14, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Service Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Field Supervisor, at the above address (telephone 916/979–2710).

SUPPLEMENTARY INFORMATION:

Background

The Cowhead Lake tui chub was first recognized as a distinct subspecies by Hubbs and Miller (1948) and was first described by Bills and Bond (1980). The following morphological description is taken from Bills and Bond (1980) and Moyle *et al.* (1989). The Cowhead Lake tui chub is a small fish in the minnow family (Cyprinidae) approximately 85–115 millimeters (3–4.5 inches) from the nose to the middle of the tail and is distinguished from the other subspecies of tui chub by the number of gill rakers (bony projections in the gills). Coloration is silver like other subspecies of tui chub, except for a dark lateral stripe and dark speckles scattered on the cheek, operculum (area behind the eye) and lower body. The pectoral fins usually exhibit a row of melanophores (cells containing dark pigment) along the anterior rays and a few specimens have exhibited a concentration of pigment on the pelvic and anal fins. There have been no formal studies on the life history or habitat of the Cowhead Lake tui chub. The following information refers to tui chubs in general and is taken from Moyle (1976).

Tui chubs occur in a wide variety of habitats, most commonly in the weedy shallows of lakes and quiet waters in sluggish rivers. They do well in a wide variety of water conditions from warm to cold, and clear to eutrophic. In the fall they seek out deeper water and may spend winters in a semi-dormant state on the bottom of lakes. Tui chubs are opportunistic omnivores concentrating on invertebrates associated with bottom or aquatic plants (i.e., clams, insect larvae, insects, crayfish) as well as algae and plant material. Tui chub usually spawn from late April to late June; eggs adhere to plants or the bottom and hatch in 9 days. In large deep lakes, tui chubs tend to form large schools in shallow water frequently associated with beds of aquatic vegetation. In shallow lakes, with heavy aquatic growth, schooling is less noticeable. Tui chubs tend to disperse amongst the vegetation presumably as protection from predators. Tui chubs appear to be able to adapt to the severe long and short-term climatic fluctuations characteristic of the interior basins where they are most common. The family Cyprinidae in general has been successful because they have a well-developed sense of hearing, release a fear scent when injured (a warning signal to others), have pharyngeal teeth (broader diet), and exhibit high fecundity. Despite these advantages, many native minnows are declining in numbers as their environment deteriorates beyond their ability to cope with the changes or they are displaced by more aggressive introduced species.

Cowhead Lake tui chub are found in the vicinity of Cowhead Lake, a Pleistocene lake in the extreme northeastern corner of Modoc County, California, in an area known as the Modoc Plateau. The Modoc Plateau consists of molten basalt that formed approximately 70 million years ago (Young et *al.* 1988). The area is characterized by lava rims, upland plateaus, lava flows and tubes, ancient pluvial lake beds and large-volume springs, and shallow soils (Young *et al.* 1988). Volcanic rock is porous, therefore, most of the rainfall percolates through into the groundwater. Surface water is minimal, but rainfall and snowmelt in the mountains feed the groundwater, which surfaces as springs. The habitat type is sagebrush steppe, which is generally a treeless, shrub-dominated community characterized by sagebrush (*Artemesia* species) with perennial bunch grasses in the understory and some juniper pine (Young *et al.* 1988). The area is characterized by cold, harsh winters, dry summers, and low rainfall.

The lakebed of Cowhead Lake is approximately 1,100 hectares (2,700 acres) based on assessors maps (Modoc County, California, Jan. 1982), with an elevation of 1,597 meters (5,241 feet). Historically, Cowhead Lake and Cowhead Slough are thought to have been marsh habitat, based on the soil type. In its natural state the lake's water levels were probably variable. This habitat type would have retained and stored its water, slowly discharging it via Cowhead Slough to Twelvemile Creek and on into the Warner Basin (Roger Farschon, Bureau of Land Management (BLM), pers. comm., 1997a). Cowhead Slough and Cowhead Lake are fed mainly by snowmelt runoff and springs via Eightmile Creek and other smaller tributaries from the Warner Mountains. There may also be several faults at the upper end of the slough that provide subsurface flow (Sato *in litt.* 1992). Historically the lake was probably shallow and naturally dried up on occasion (Peter Moyle, University of California, Davis, pers. comm., 1997). Approximately 40 percent of the lakebed occurs on private land and 60 percent of the lakebed has unknown title based on a title search done in 1997 (Modoc County Title Co. *in litt.* 1997). The lake went dry sometime in the 1930's. Since the drought ended, and continuing up to the present day, the lake has been mechanically pumped dry so that the lakebed could be used to grow hay. There is a series of irrigation ditches, two reservoirs on nearby creeks, and a mechanical pumping system, which

have modified the hydrology of the Cowhead basin.

Cowhead Lake tui chub were found in a spring and a reservoir adjacent to Cowhead Lake (Miller 1939), in irrigation ditches within Cowhead Lake (Sato *in litt.* 1993), and in Cowhead Slough (Moyle *in litt.* 1974, Sato *in litt.* 1992 and 1993, Olson *in litt.* 1997, Jack Williams, BLM, pers. comm., 1997). The entire current estimated range of this species is approximately 5.4 kilometers (3.4 miles) of Cowhead Slough and connected ditches within the bed of Cowhead Lake. Approximately one half of the range is on public land managed by the Bureau of Land Management (BLM). The other half of the range is on land that has been managed by private ownership since the 1950's. However, the Service has not been able to locate documentation of title in the public records to support this assumption. This portion of the tui chub's range will be referred to as private land in this proposed rule, but the Service is not currently clear on the ownership of this portion of the species range.

There are no population estimates available for the Cowhead Lake tui chub. Surveys in the lake bed and adjacent springs and reservoirs on private lands have been limited because access has been restricted. Surveys on adjacent BLM land have focused on distribution and not estimating population numbers.

Previous Federal Action

On December 30, 1982, the Service published a revised notice of review for vertebrate wildlife in the **Federal Register** (47 FR 58454) designating the Cowhead Lake tui chub as a category 2 candidate. Category 2 was composed of taxa for which the Service had information indicating that threatened or endangered status might be warranted, but for which adequate data on biological vulnerability and threats were not available to support issuance of listing proposals. As a result of additional information obtained, the Service reclassified the Cowhead Lake tui chub as a category 1 candidate in the November 21, 1991, notice of review (56 FR 58804). The Cowhead Lake tui chub was included as a candidate in the February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398), notices of review.

The processing of this proposed rule conforms with the Service's final listing priority guidance for fiscal year 1997, published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond fiscal year 1997. The fiscal year guidance clarifies the order in which the Service will process rulemakings following two related events: (1) The lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Based on biological considerations, this guidance establishes a "multi-tiered approach that assigns relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act" (61 FR 64479). The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for the Cowhead Lake tui chub falls under Tier 3. The guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). The Service has thus begun implementing a more balanced listing program, including processing more Tier 3 activities. The completion of this Tier 3 activity (a proposal for a species with a listing priority of 3 (high-magnitude, imminent threats)) follows those guidelines.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Cowhead Lake tui chub are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The historic range of the Cowhead Lake tui chub is thought to be Cowhead Lake, when it retained water, and the springs and low gradient portions of the creeks draining into Cowhead Lake (P. Moyle, pers. comm., 1997; USDI 1997). The lake was probably shallow and dried up naturally on occasion, periodically confining Cowhead Lake tui chub to the streams and springs (P. Moyle, pers. comm. 1997). The lakebed itself is 1,100 hectares (2,700 acres) with a topographic gradient of 0 to 5 meters (0 to 16 feet) (based on topographic measurements on a 1990 USGS 7.5 minute quadrangle map). The surface flow of water is naturally highly variable in this volcanic, high desert area. The amount of suitable aquatic habitat for this species may vary from year to year based on the water supply. It is unclear precisely what role the tributary springs and creeks currently play in the life history of Cowhead Lake tui chub. It is also unknown what the impact of flooding was when the lakebed was in its natural state.

The diversion of water from Cowhead Lake has eliminated approximately 98 percent of the Cowhead Lake tui chub's historical range and is a threat to the Cowhead Lake tui chub. Before the turn of the century a water diversion ditch (Peterson ditch) was built in the Warner mountains west of Cowhead Lake, which diverts water from Twelvemile Creek and possibly from Eightmile Creek into Surprise Valley, southwest of Cowhead Lake (R. Farschon, pers. comm., 1997a). Another ditch was built in the 1910's (Sato *in litt.* 1992) on the Schadler property that appears to divert water from Peterson ditch into Eightmile Creek. In the 1930's the lake went dry and ranchers started growing hay in the lakebed. When the drought ended, the connection between Cowhead Lake and Cowhead Slough was dredged so that the lake would stay drained to permit continued hay production. Cowhead Slough was dredged 1–1.5 meters (3–5 feet) deep from the lakebed north to the edge of public BLM lands (R. Farschon, 1997a). In the 1960's a privately owned reservoir was built on Eightmile Creek to allow controlled irrigation to two pastures. This water is ultimately collected in a ditch in the lakebed, which runs into Cowhead Slough. Barrel Springs (2 miles to the southeast of Cowhead lake) and its associated tributaries used to contribute water to Cowhead Lake until its water flow was diverted for agricultural uses. Currently the seasonal waters from the Barrel Springs area drain to the northeast of the lake and into Cowhead Slough. The lake usually holds some water during the wet season before pumping begins in the spring. In the mid-1980's and in 1997 there was enough water to fill the lake. Beginning around April each year, water in Cowhead Lake is actively pumped into Cowhead Slough and as a result no water remains in the lakebed outside of the ditches. The historical shallow-water marsh habitat is now maintained as irrigated pasture.

The current distribution of Cowhead Lake tui chub, based on recent surveys (1992 to 1997), is in various pools in Cowhead Slough and in connected ditches within the bed of Cowhead Lake from approximately 1 kilometer (0.5 mile) north of the confluence of Elevenmile Creek to the irrigation ditch in the lakebed of Cowhead Lake, approximately 5.4 kilometers (3.4 miles). Cowhead Lake tui chub have been observed feeding and hiding in filamentous mats of algae in the slough (Sato *in litt* 1993). Mats of *Ranunculus* also appear to provide cover for young of the year in the slough (Sato *in litt* 1993). Cowhead Slough consists of a series of pools (95 percent) and riffles (5 percent) which wind through a lava canyon approximately 50 meters (164 feet) wide and approximately 6.4 kilometers (4 miles) long. The size of the water course itself is far narrower than the canyon and varies according to the amount of runoff and snowmelt each year. The slough ranges from 1–2 meters (4–6 feet) wide (Ken Sanchez, USFWS, pers. comm., 1997) to a trickle, with large pools up to 10 meters (33 feet) wide, 50 meters (164 feet) long and 1 meter (3 feet) deep (Moyle *in litt* 1974). In the mid-1980's pools were reported to be up to 2 meters (6.5 feet) deep due to heavy precipitation in those years (Sato *in litt.* 1992). Moyle *et al.* (1989) reported the bottom of the channel as 80 percent mud, 5 percent sand, and 15 percent boulder/bedrock with abundant rooted and floating vegetation, but little overhanging canopy cover. According to Sato (*in litt.* 1993) the upper end of the slough above the pump on private land has more riparian habitat (willows) and more perennial water than the rest of slough. There is also a difference in topography between the private and public sections of the slough. The private land has a steeper gradient, more cobbles and boulders, deeper pools, and more open water than the reaches on public lands. These factors may account for why there appear to be more Cowhead Lake tui chub in Cowhead Slough on the private land. It has also been hypothesized that as the slough dries up annually, the fish move upstream to the more perennial water.

The banks of Cowhead Slough contain mostly short-cropped annual grasses with minimal riparian vegetation (Sato *in litt.* 1992). The water has been reported as muddy and turbid during surveys from possible erosion of the slough banks caused primarily by cattle grazing and from drainage of ephemeral streams into the slough (Moyle *in litt.* 1974, Sato *in litt.* 1992). Cowhead Slough and the ditches in the lakebed are within either public or private grazing allotments, which are actively grazed (R. Farschon, pers. comm., 1997b). The lack of riparian habitat can reduce the amount of water retained in the slough later in the year (Sato *in litt.* 1993). The degradation of water quality can reduce oxygen levels, visibility and prey abundance for the Cowhead Lake tui chub.

Prior to being drained the lake is thought to have contained the majority of the Cowhead Lake tui chub population. Currently the population appears to be restricted to Cowhead Slough and connected ditches within the lake bed, which have been severely altered from their natural condition. The entire population occurs in one connected drainage within a very confined area 5.4 kilometers (3.4 miles), and there are no additional refugial populations. Protection of the habitat within this very limited range is required to conserve the Cowhead Lake tui chub. Further loss of habitat from agricultural modifications is a threat to the continued existence of the Cowhead Lake tui chub.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Cowhead Lake tui chub has not been documented as a commercial or recreational fish species. It has been little studied and there are only a handful of documented collections. This factor is not considered a threat to the existence of the Cowhead Lake tui chub.

C. *Disease or predation.* Aquatic snakes and birds are likely predators of Cowhead Lake tui chub. This species is most vulnerable to predation during drought periods when much of the drainage dries up and Cowhead Lake tui chub are concentrated in smaller pools. The only other species detected in Cowhead Lake tui chub habitat are speckled dace (*Rhinichthys osculus*) and an occasional trout, which do not appear to pose a threat to the Cowhead Lake tui chub. Introduction of nonnative fish, game fish, or other tui chubs could harm the Cowhead Lake tui chub through increased competition, predation, and hybridization. There have been no documented instances of disease adversely affecting the Cowhead Lake tui chub. If a disease were introduced, the tui chub population would be at great risk because of its small size and confined range.

D. *The inadequacy of existing regulatory mechanisms.* Currently there are no regulatory mechanisms that specifically protect the Cowhead Lake tui chub or its habitat. The current documented range of the Cowhead Lake tui chub is approximately 50 percent on private land and 50 percent on public land. It appears that the majority of the population occurs on private land where there is more perennial water. The Cowhead Lake tui chub is considered a species of special concern by CDFG as Class 1: Endangered. This designation indicates that the species meets the State definition to qualify for official listing, but is not officially listed yet. The Federal status of the Cowhead Lake tui chub is as a candidate species (see section on Previous Federal Action). There is currently no regulatory authority vested in either the State or Federal designations that offers protection or appropriate management for this species. This lack of adequate regulatory protection is a threat to the existence of the Cowhead Lake tui chub.

The National Environmental Policy Act (NEPA) and section 404 of the Clean Water Act (CWA) represent the primary Federal laws that could potentially afford some protection to listed species, however, neither of these laws protect candidate species. The conversion of land to agricultural uses that may adversely affect the Cowhead Lake tui chub is generally unregulated at any level of government. For example, the U.S. Army Corps of Engineers (Corps) has promulgated regulations that exempt some farming, forestry, and maintenance activities from the regulatory requirements of section 404 (33 CFR 323.4).

The California Environmental Quality Act (CEQA) offers some opportunities to protect rare and endangered plants or animals, as well as species that are eligible for listing but are not currently listed. If a proposed project may significantly impact a species, it is possible to require mitigation. However, this protection is at the discretion of the lead agency involved and social and economic considerations can override requirements for mitigation or protection. Proposed revisions to CEQA guidelines, if made final, may weaken the current protections for threatened, endangered and other sensitive species. Section 1603 of California Fish and Game Code authorizes the California Department of Fish and Game (CDFG) to regulate streambed alterations. Such alterations include any work that substantially diverts, alters or obstructs the natural flow or substantially changes the bed, channel or bank of any river, stream or lake. At this time, the Service is not aware of any 1603 permit for the activities occurring in Cowhead Lake and Cowhead Slough.

E. *Other natural or manmade factors affecting its continued existence.* Pest control programs (i.e., USDA–APHIS grasshopper control program) that

introduce pesticides into the drainage are a threat to the Cowhead Lake tui chub. The water supply in this high desert habitat is low and variable and naturally limits the amount of suitable habitat for the Cowhead Lake tui chub. This natural condition offers fewer options for refuge for Cowhead Lake tui chub in the event of drought, harsh winter conditions or human-induced environmental impacts.

The entire population of Cowhead Lake tui chub occurs in less than 2 percent of its historical range and, therefore, is vulnerable to the risks associated with small, restricted populations. Impacts to species populations that can lead to extinction include: the loss or alteration of essential elements (habitat, food), the introduction of limiting factors into the environment (poison, predators), and catastrophic random changes or environmental perturbations (extreme weather, disease) (Gilpin and Soule 1986). Many extinctions are the result of a severe reduction of population size by some deterministic event, followed by a random natural event that extirpates the species. The smaller a population is, the greater its vulnerability to stochastic perturbations (Terbough and Winter 1980, Gilpin and Soule 1986, Shaffer 1987). The elements of risk that are amplified in very small populations include: (1) The impact of high death rates or low births rates; (2) the effects of genetic drift and inbreeding; and (3) deterioration in environmental quality. When the number of individuals in the sole population of a species or subspecies is sufficiently low, the effects of inbreeding may result in the expression of deleterious genes in the population (Gilpin 1987). Deleterious genes reduce individual fitness in various ways, most typically as decreased survivorship of young. Genetic drift in small populations decreases genetic variation due to random changes in gene frequency from one generation to the next.

This reduction of variability within a population limits the ability of that population to adapt to environmental changes.

One scenario where loss of habitat may cause extinction is when the species is a local endemic (because of their isolation and restricted range) (Gilpin and Soule 1986). The Cowhead Lake tui chub is a local endemic, which can be locally abundant, yet lives in a very restricted area. Because the sole population is small and occurs in one single drainage, it is extremely vulnerable to natural or human-made environmental impacts. There are no known populations of Cowhead Lake tui chub outside of Cowhead Slough for recolonization if a catastrophic event were to occur in Cowhead Slough. While the species still occurs within its limited range, we do not know whether the population is declining, how habitat conditions may be affecting the population, and how the small population size may be affecting genetic and behavioral stability. Based on the vulnerability of this small population in its limited range, and the lack of any refugial populations or habitat, the Service believes that threats to current occupied or potential habitat and individuals put this species at risk of being extirpated.

The Service has carefully assessed the best scientific and commercial information available regarding the present and future threats faced by this species in determining this proposed rule. This species is threatened throughout its range by a variety of human impacts, including the dewatering of Cowhead Lake, livestock grazing, agricultural activities, and by random naturally occurring events. Based on this evaluation, the preferred action is to list Cowhead Lake tui chub as endangered based on the risk of extinction throughout all of its range. Critical habitat is not being proposed for this species for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The Service determines that designation of critical habitat for the Cowhead Lake tui chub is not prudent due to lack of benefit to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which the critical habitat has been designated are extremely rare. Also, the designation of critical habitat for the purpose of informing Federal agencies of the locations of occupied Cowhead Lake tui chub habitat is not necessary because the Service can inform Federal agencies through other means. For these reasons, the designation of critical habitat for the Cowhead Lake tui chub would provide no additional benefit to the species beyond that conferred by listing, and therefore, such designation is not prudent.

Cowhead Lake tui chub has an extremely narrow distribution in one small reach (5.4 kilometers (3.4 miles)) of Cowhead Slough. At the present time, no other site is known to be occupied by or suitable for this fish. However, the Service believes that a high level of awareness already exists for this species due to numerous efforts since 1994, between private and public entities, to develop and implement a conservation agreement to conserve and protect this species (J. Danna *in litt.* 1994a and 1994b, J. Schadler *in litt.* 1994 and 1995, S. Stokke *in litt.* 1997). In addition, the Cowhead Lake tui chub has been included in the draft Recovery Plan for Warner Basin fishes and may benefit to some degree from recovery actions specified for the listed species in the plan (USDI 1997). The private

landowners at Cowhead Lake are aware of the Cowhead Lake tui chub's presence and extremely limited habitat, as are the BLM managers and others involved in management of the area. Therefore, designation of critical habitat would provide no benefit with respect to notification. In addition, given the species' narrow distribution and precarious status, virtually any conceivable adverse effect to the species' habitat would very likely jeopardize its continued existence. Designation of critical habitat for Cowhead Lake tui chub would, therefore, provide no benefit to the species apart from the protection afforded by listing the fish as endangered.

Protection of the habitat of Cowhead Lake tui chub will be addressed through the section 4 recovery process and the section 7 consultation process. The Service believes that activities involving a Federal action which may affect Cowhead Lake tui chub can be identified without designating critical habitat by providing Federal agencies with information on the locations of occupied habitats and information on the kinds of activities which could affect the species. For the reasons discussed above, the Service finds that the designation of critical habitat for the Cowhead Lake tui chub is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The Cowhead Lake tui chub has been included in a draft Recovery Plan for the threatened and rare native fishes of the Warner Basin and Alkali (USDI 1997). The Cowhead Lake tui chub was included because it is a rare native endemic that occurs within the Warner Basin that could potentially benefit from recovery actions in the Warner Basin for the other listed native fishes.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat, if any is designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Approximately one-half of the only known population of Cowhead Lake tui chub is on BLM-managed land including grazing allotments within the range of this species. Grazing can decrease water quality by removing vegetation on streambanks and uplands, thereby increasing erosion and sedimentation, and by polluting the water with waste products.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. With respect to the Cowhead Lake tui chub, these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.22. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to: Regional Director, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503/231–6243).

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within a species' range. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9, provided these actions are carried out in accordance with any existing regulations and permit requirements:

(1) Possession of legally acquired Cowhead Lake tui chub;

(2) Actions that may affect Cowhead Lake tui chub which are authorized, funded or carried out by a Federal agency, when the action is conducted in accordance with an incidental take statement issued by the Service pursuant to section 7 of the Act.

(3) Actions that may affect Cowhead Lake tui chub that are not authorized, funded or carried out by a Federal agency, when the action is conducted in accordance with an incidental take statement issued by the Service pursuant to section 10(a)(1)(B) of the Act. Section 10(a)(1)(B) refers to Habitat Conservation Plans (HCP's) that are negotiated after a species has been listed under Section 4 of the Act and are designed to mitigate and minimize impacts to the species to the greatest extent practicable.

Activities that the Service believes could potentially harm the Cowhead Lake tui chub and result in "take" include, but are not limited to:

(1) Take of Cowhead Lake tui chub without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken Cowhead Lake tui chub;

(3) Introduction of nonnative fish species that compete or hybridize with, or prey on Cowhead Lake tui chub;

(4) Destruction or alteration of Cowhead Lake tui chub habitat by dredging, channelization, diversion, instream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, temperature, and corridors used by the species for foraging, cover, and spawning;

(5) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting Cowhead Lake tui chub that result in death or injury of the species; and

(6) Destruction or alteration of riparian or streamside habitat and adjoining uplands of waters supporting Cowhead Lake tui chub by grazing, mining, hydropower development, agriculture or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and corridors used by the species for foraging, cover, and spawning.

The term "significant degradation of habitat", as used in the descriptions of activities above, is that amount of degradation which causes "take" of Cowhead Lake tui chub. Not all of the activities mentioned above will result in violation of section 9 of the Act; only those activities which result in "take" of Cowhead Lake tui chub are considered violations of section 9. Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Services Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Requests for information on permits should be addressed to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Cowhead Lake tui chub;

(2) The location of any additional populations of the Cowhead Lake tui chub and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the Cowhead Lake tui chub;

(4) Any examples of take or vandalism of Cowhead Lake tui chub; and

(5) Current or planned activities in the subject area and their possible impacts on the Cowhead Lake tui chub.

A final determination of whether to list this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final decision document that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments or Environmental Impact Statements , as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Ann Chrisney, Sacramento Field Office (see **ADDRESSES** section), telephone 916/979–2725.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Fish, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Chub, Cowhead Lake tui.	*Gila bicolor vaccaceps.*	U.S.A. (CA)	Entire	E		NA	NA

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Dated: March 17, 1998

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–8051 Filed 3–27–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE76

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Chlorogalum purpureum (Purple Amole), a Plant from the South Coast Ranges of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes threatened status pursuant to the Endangered Species Act of 1973, as amended (Act), for the California plant, *Chlorogalum purpureum* (purple amole). One of the two varieties comprising this species, *C. p.* var. *purpureum*, is known only from the central south coast ranges in Monterey County, on lands managed by the Department of the Army at Fort Hunter Liggett. It is threatened by loss and alteration of habitat and direct loss of plants from construction and use of military training facilities, field training activities, and alteration of fire cycles due to military training. The other variety, *C. p.* var. *reductum*, is known only from two sites in the La Panza region of the coast ranges in San Luis Obispo County, on U.S. Forest Service and private lands. This taxon is threatened by illegal vehicle trespass into the population on Forest Service land. This proposed rule, if made final, would extend the Act's protection to these plants. Although this rule proposes *Chlorogalum purpureum* at the species level, each variety would be treated as a separate taxonomic unit for the purposes of applying the section 7 jeopardy standard and identifying recovery units, if this rule is made final.

DATES: Comments from all interested parties must be received by May 29, 1998. Public hearing requests must be received by May 14, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, at the address above (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Chlorogalum purpureum (purple amole) was first described by Brandegee in 1893 from specimens collected in the Santa Lucia Mountains by William Vortriede a year earlier (Brandegee 1893). In 1904, E.L. Greene (1904) published the new combination *Laothoe purpurea* when he discovered that the genus name *Laothoe* had been published earlier than *Chlorogalum*. However, R.F. Hoover (1940) conserved the name *Chlorogalum* through the rule of *nomen conservandum*. Hoover (1964) described the variety *reductum*, commonly known as Camatta Canyon amole, based on its shorter stature compared to the nominative variety. This nomenclature was retained in the most recent treatment of the genus (Jernstedt 1993). These two varieties comprise the entire species.

Chlorogalum purpureum is a bulb-forming perennial herb in the lily family (Liliaceae). It has a basal rosette of linear leaves 2 to 5 millimeters (mm) (0.1 to 0.2 inches (in)) wide with wavy margins. A widely branching stem supports bluish-purple flowers with six recurved tepals (petals and sepals that have a similar appearance). The stems of *C. p.* var. *purpureum* are 25 to 40 centimeters (cm) (10 to 16 in) high, whereas those of *C. p.* var. *reductum* are only 10 to 20 cm (4 to 8 in) high (Hoover 1964, Jernstedt 1993). *Chlorogalum purpureum* is the only member of the genus with bluish-purple flowers that open during the day (Jernstedt 1993). Reproduction in *Chlorogalum purpureum* is primarily by seed. Hoover (1964) reports that clonal reproduction by longitudinal splitting of the bulbs is rare; some splitting has been noted in one population of *C. p.* var. *reductum* (Alice Koch, California Department of Fish and Game (CDFG), pers. comm. 1997b).

Chlorogalum purpureum occurs in grassland, oak woodland, and oak savannah between 300 and 620 meters (m) (1,000 and 2,050 feet (ft)) in elevation in the south coast ranges of California. *Chlorogalum purpureum* var. *purpureum* is known from oak woodlands and meadows at three sites near Jolon in Monterey County on lands owned and managed by the Department of the Army (Fort Hunter Liggett). Historically, appropriate habitat may have existed east of the base, in Jolon Valley, but most of the flat areas in that valley have been converted to cropland, pasture, or vineyards. At Fort Hunter Liggett, the plant occurs on flat or gently sloping terrain with a gravelly surface underlain by clay soils, where other vegetation is sparse.

Of the three localities of *Chlorogalum purpureum* var. *purpureum*, one is comprised of discontinuous and fragmented patches of plants scattered over an area 7 to 9 kilometers (km) (4 to 6 miles (mi)) long and about 5 km (3 mi) wide in the cantonment (housing and administration area), the Ammunition Supply Point and adjacent Training Area 13, and the boundary of Training Area 10 (U.S. Army Reserve 1997, map provided by U.S. Army Reserve 1997, Painter and Neese 1997). While some of the discontinuities in distribution are due to unsuitable intervening habitat, other patches have been fragmented by roads, the historical settlement of Jolon, and military training facilities. No population counts have been made at this site, but estimates of some areas within it suggest that it supports several thousand plants (U.S. Department of the Army 1997, Painter and Neese 1997). The second locality is about 4 km (2.5 mi) to the southeast in Training Area 25. The taxon is patchily distributed in an area of about 6 square km (2 square mi) that is laced with vehicle tracks and dirt roads. At one location there, 400 to 500 plants have been recorded (Painter and Neese 1997), but the entire site may support several thousand individuals. The third and southernmost locality is at the boundaries of Training Areas 23, 24, and 27. This is the largest known site and contains plants in high densities. Following a fire that may have promoted flowering, this site was estimated to support up to 10,000 plants (Painter and Neese 1997).

The primary threats to *Chlorogalum purpureum* var. *purpureum* are the loss, fragmentation, and alteration of habitat and direct elimination of plants from construction and use of military training facilities, military field training activities, alteration of fire cycles due to military training, and potentially from grazing and associated habitat changes.

About 110 km (70 mi) to the south, *Chlorogalum purpureum* var. *reductum* occurs in one region in the La Panza Range of San Luis Obispo County. It is known from only two sites. One is located just south of Highway 58; a smaller site is located approximately 5 to 8 km (3 to 5 mi) to the south. The

larger locality occurs on lands managed by the U.S. Forest Service (USFS) on Los Padres National Forest (LPNF), extending into a Caltrans right-of-way along the highway. This population is located on a narrow, flat-topped ridge or plateau surrounded by blue oak (*Quercus douglasii*) woodland. The plateau is probably the remains of an ancient elevated alluvial terrace, most of which has been eroded away by surrounding drainages that are now 90 to 120 m (300 to 400 ft) below the plateau (H. Ehrenspeck, *in litt.* 1994). The soils have been described as well-drained red clays with a large component of gravel and pebbles (Hoover 1964, Lopez 1992).

The population is patchily distributed over the plateau and adjacent high areas and has been estimated to occupy just 2 to 3 hectares (ha) (less than 8 acres (ac)) (Lopez 1992; M. Borchert and K. Danielsen, USFS, pers. comm. 1997). A graded dirt road about 10 m (30 ft) wide bisects the population. The road leads to private inholdings and residences on the LPNF and is bounded on either side by a pipe barrier that was installed in 1989 or 1990 to prevent off-highway vehicles (OHVs) from using the site (David Magney, biological consultant, pers. comm. 1997). A removable portion of the barrier and a barbed wire section of fence are still routinely breached by OHVs. Such illegal use has increased in the past two years, particularly during the past year (A. Koch, California Department of Fish and Game (CDFG), *in litt.* 1997a).

The population size at this site has ranged from 1,000 individuals to several hundred thousand individuals (Borchert 1981, Warner 1991, Borchert *et al.* 1997). This variability probably reflects changes in the above-ground presence of plants, since bulbs may remain dormant during years with unfavorable growing conditions. Monitoring along a 100 m (330 ft) transect showed that plant numbers were relatively stable between 1991 and 1997 (Borchert *et al.* 1997). This transect is not located in an area where vehicle trespass has continued to occur and is therefore not representative of the status of the population in areas subject to OHV activity.

The second known locality of *Chlorogalum purpureum* var. *reductum* was first documented by botanists in the mid 1990s. It is located 5 to 8 km (3 to 5 mi) south of the LPNF population in an area with similar soils and topography (David Chipping, California Polytechnic State University, *in litt.* 1997). The taxon has been estimated to occupy less than 0.1 ha (0.25 ac) and consists of several hundred plants in two or more patches on private land. The landowner has expressed an interest in the plant and its protection (D. Chipping, *in litt.* 1997).

Chlorogalum purpureum var. *reductum* is threatened by illegal vehicle trespass into the larger locality on LPNF. In addition, grazing by livestock may potentially pose a threat.

Previous Federal Action

Federal government actions on this species began as a result of section 12 of the Endangered Species Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Doc. No. 94–51) was presented to Congress on January 9, 1975, and included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* as endangered. The Service published a notice on July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4 (b)(3)) of the Act and its intention to review the status of the plant taxa named therein.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list, which included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Endangered Species Act required that all proposals over two years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* were included in that withdrawal notice.

The Service published an updated Candidate Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* as category 2 candidates. Category 2 candidates were formerly defined as taxa for which data on biological vulnerablilty and threats in the Service's possession indicated that listing was possibly appropriate, but was not sufficient to support proposed rules. The two *Chlorogalum* taxa were listed as category 1 candidates in the revised plant notices of review published in the **Federal Register** on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). Category 1 candidates were defined as those taxa for which the Service had on file sufficient information on biological vulnerability and threats to support the preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority. The two *Chlorogalum* taxa were listed as candidates in the Notice of Review published on February 28, 1996 (61 FR 7596), as well as in the Notice of Review published on September 19, 1997 (62 FR 49398). The definition formerly applied to category 1 candidates now applies to candidates as a whole.

The processing of this proposed rule conforms with the Service's final listing priority guidance for fiscal year 1997, published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond fiscal year 1997 until such time as the fiscal year 1998 appropriations bill for the Department of the Interior becomes law and new final guidance is published. The fiscal year 1997 guidance clarifies the order in which the Service will process rulemakings following two related events: (1) The lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Based on biological considerations, this guidance establishes a "multi-tiered approach that assigns relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act" (61 FR 64479). The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for *Chlorogalum purpureum* falls under

Tier 3, since *C. p.* var. *reductum* has a listing priority number of 3; the listing priority number for *C. p.* var. *purpureum* is 9. The guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). The Service has thus begun implementing a more balanced listing program, including processing more Tier 3 activities. The completion of this Tier 3 activity follows those guidelines.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Chlorogalum purpureum* Brandegee (purple amole) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Chlorogalum purpureum* var. *purpureum* is known only from three localities on Fort Hunter Liggett, Monterey County. The northern site comprises discontinuous and fragmented patches over a 7 to 9 km (4 to 6 mi) area in the cantonment (housing and command center), several training areas, the Ammunition Supply point, and near the Jolon entrance gate. Habitat for *C. p.* var. *purpureum* has been destroyed and patches of plants have been isolated and fragmented by the historical settlement of Jolon, roads, and the construction and use of training facilities over the past several decades. In the 1980s, a large group of plants near the Jolon entrance gate was isolated by the addition of a new road (Matthews 1988). Bounded on all sides by roads, this area was used as a vehicle parking area. Representatives from Fort Hunter Liggett and the Monterey Chapter of the California Native Plant Society (CNPS) cooperated in constructing barriers to reduce impacts to the area (Matthews 1988). Although the military has committed to maintaining these protective barriers, this site remains vulnerable due to its proximity to roads. For example, in 1996 a vehicle mishap resulted in a large piece of earth-moving machinery entering the site; its tracks through the population were still evident in September 1997 (Painter and Neese 1997; D. Steeck, U.S. Fish and Wildlife Service, pers. obs. 1997).

In another portion of this northern locality, the Army is expanding training facilities (Holmann 1996). Since 1996, a new obstacle course and two small parking areas have been placed in habitat occupied by *Chlorogalum purpureum* var. *purpureum*. Although the obstacles themselves were placed to avoid some individual plants, foot traffic and use of the training facilities will likely degrade the habitat and eliminate a portion of the population. In addition to the obstacle course and parking areas, the Army has in the past 3 years constructed a confidence course and upgraded a firing range along the stretch of dirt road adjacent to the locality. The existence of some training facilities made this area more attractive for additional construction because the facilities could be located within walking distance of one another (Hormann 1996). For the same reason, this area is likely to be attractive for the siting of future training facilities.

The second locality is in Training Area 25, which is used for bivouacking and is crossed by numerous dirt roads and tracks. Large areas where substantial bivouacking occurred in 1997 were denuded, with much of the herbaceous grassland vegetation among the oaks destroyed. Dirt tracks were evident throughout the site (D. Steeck, pers. obs. 1997). Bivouacking in these areas apparently occurs in summer. Although soils are not as susceptible to compaction at that time, fruiting stalks are destroyed and the loss of vegetation, especially on vehicle tracks, may lead to erosion and the consequent loss of existing seeds and bulbs in the soil. Vehicle tracks were also evident in the third locality of *Chlorogalum purpureum* var. *purpureum* at the boundaries of Training Areas 23, 24, and 27. In 1997, the vegetation of this area appeared to be the least affected by training activities, although military training the previous year had caused a spring fire that burned the site and destroyed most of the year's seed crop (Painter and Neese 1997).

The larger site of *Chlorogalum purpureum* var. *reductum*, located on LPNF and estimated to occupy less than 3 ha (8 ac), is bisected by a dirt road that is currently about 10 m (33 ft) wide and runs the length of the population. Although this road has existed for many decades, grading during the past 5 years has widened it toward the bounds of the pipe barrier fence that lines it, causing direct loss of some individuals of *C. p.* var. *reductum* and additional habitat loss (D. Magney, pers. comm. 1997). Because the roadbed is graded and highly compacted, the loss of habitat due to the roadbed is relatively permanent, barring extensive restoration efforts. In addition, the roadbed is now below the level of the surrounding soil, creating the potential for it to alter local drainage patterns.

In the 1970s and 1980s, most of the LPNF locality of *Chlorogalum purpureum* var. *reductum* was used as a staging area by OHV enthusiasts (McLeod 1987). An established 4-wheel drive route still runs near the population (USFS 1993). A portion of the population was fenced in the early 1980s by the CNPS with help from the USFS to protect it from OHV use. In 1989 or 1990, due to continued OHV use in the area, the USFS installed a pipe barrier along the dirt road to exclude vehicles from most of the population. Two areas, one a gap between the pipe fence and the barbed wire fence and the other a removable section of the pipe barrier, currently allow access by vehicles. Repeated vehicle trespass occurs on the site; vehicles, broken fencing, and recent vehicle tracks have been reported (A. Koch, CDFG, *in litt.* 1997; D. Steeck, pers. obs. 1997). The extent of trespass appears to have increased during the past two years (A. Koch, *in litt.* 1997). Repeated vehicle passes cause soil compaction, altering the soil's water-holding capacity and interfering with the ability of roots to penetrate the soil (Webb and Wilshire 1983). The existing scars of older vehicle tracks in the population are probably partly the result of soil compaction. Biologists attempting to establish seedlings of *C. p.* var. *reductum* in old OHV tracks in the LPNF population found that only 36 percent of the seeds planted in untreated tracks germinated and survived through their first 1.5 years. Survival was 66 percent for seeds planted in old tracks where the top 10 cm (4 in) of soil was scarified (loosened) prior to planting to reduce the effects of soil compaction. Bulbs in unscarified soil of old tracks also had a lower survival rate compared to those in scarified soil (Koch 1997).

The sites of *Chlorogalum purpureum* var. *reductum* on private land are reported to be extremely small (less than 0.1 ha (0.25 ac) with several hundred plants), compared to the population managed by USFS. Because this taxon is so narrowly distributed, the degradation of even an acre or two of the habitat in the LPNF population constitutes a significant portion of this taxon's range.

Most localities of *Chlorogalum purpureum* are, or have been, subject to cattle grazing. Potential negative effects of livestock use of habitat occupied by *C. purpureum* include soil compaction, soil disturbance, introduction or spread

of nonnative aggressive weedy species, direct crushing of the above-ground portion of plants, loss of flowers or fruit, and diminished seedling establishment. It has been suggested, however, that light grazing may benefit *C. purpureum* var. *reductum* by reducing competition from annual grasses (The Nature Conservancy 1987, CDFG 1990). Predation by cattle is discussed below under factor C of the "Summary of Factors Affecting the Species."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor affecting this species.

C. *Disease or predation.* Nearly every locality of *Chlorogalum purpureum* either is or has been subject to cattle grazing. The potential negative effects of grazing in the habitat include the loss of flowers or fruit, which could result in reduced reproduction. All three localities of *C. p.* var. *purpureum* at Fort Hunter Liggett were grazed prior to 1991. A recent grazing assessment of Fort Hunter Liggett states that documented overgrazing occurred there from 1963 to 1977, after which a study of grazing was begun (Stechman 1995). During this time, cattle stocking rates continued to exceed the capacity of the habitats to support them, especially when combined with the drought of the late 1980s and early 1990s (Stechman 1995). No specific information is available on the condition of the localities of *C. p.* var. *purpureum* during the period of overgrazing, as no basewide surveys for sensitive plant species had been conducted and the status of populations was not tracked. Grazing on Fort Hunter Liggett stopped in 1991 (Stechman 1995), but is scheduled to be resumed in the future, although no date has been set. If the recommendations in the grazing assessment are followed, cattle grazing leases would include most of the extended northern locality of this taxon and all of the second locality in Training Area 25. Only the southernmost locality, at the boundaries of Training Areas 23, 24, and 27, would be completely excluded from cattle use.

Chlorogalum purpureum var. *reductum* is within an active grazing allotment on the LPNF that cattle use from February through May (USFS 1997). The permitted level of use of the allotment by livestock is moderate (USFS 1997). The effects of grazing on this taxon are not known. In 1986 livestock use became a problem when cattle congregated within the population behind a fence built to block vehicle access (The Nature Conservancy 1987). A pipe barrier with low sections was later installed to permit cattle movement over the barriers. Because the period of cattle use coincides with that of growth and flowering of *C. p.* var. *reductum*, it is likely that reproduction would be negatively affected if cattle congregated on the plateau within the locality containing the population for extended periods. In 1995 and 1996, cattle appeared to move relatively rapidly from the locality into lower areas (A. Koch, pers. comm. 1997). In 1997, fecal evidence suggests that they spent relatively more time within the locality (D. Steeck, pers. obs. 1997; A. Koch, pers. comm. 1997). Although current monitoring data are insufficient to evaluate the effects of grazing on *C. p.* var. *reductum*, grazing has the potential to negatively affect reproduction and seedling establishment, and may exacerbate damage already caused by vehicles.

D. *The inadequacy of existing regulatory mechanisms.* Pursuant to the Native Plant Protection Act (Div. 2, chapter 10 sec. 1900 *et seq.* of the California Department of Fish and Game Code) and the California Endangered Species Act (Div. 3, chapter 1.5 sec. 2050 *et seq.*), the California Fish and Game Commission listed *Chlorogalum purpureum* var. *reductum* as rare in 1978. California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all measures be capable of successful implementation. These requirements have not been tested; it will take several years before their effectiveness can be evaluated.

Chlorogalum purpureum var. *reductum* occurs primarily on Federal lands managed by the LPNF. State listing provides no consultation or other requirements for protection on Federal lands, although it is USFS policy to work with the State in the conservation of such taxa. The management of sensitive resources on the LPNF is guided by various policies and regulations, including the National Environmental Policy Act (NEPA) of 1969 (Pub.L. 91–109, 42 U.S.C. 4321–4347, 83 Stat. 852), National Forest Management Act (16 U.S.C. 1600 *et seq.*), and the Land and Resource Management Plan for the Los Padres National Forest (1988).

The NEPA requires that the USFS disclose and consider potential environmental impacts of a proposed project. Under new regulations, 10-year grazing permits are subject to the NEPA process. The USFS recently produced an Environmental Assessment (EA) for the grazing allotment where *Chlorogalum purpureum* var. *reductum* occurs (USFS 1997). This EA states that the USFS will monitor the effects of grazing on this taxon. Although NEPA requires disclosure of potential effects of Federal actions, and allows for comment by agencies and the public, it does not, of itself, provide additional protection.

The Land and Resource Management Plan for LPNF (1988) directs the USFS to ensure the viability of sensitive plant species and to emphasize the improvement and protection of habitat for sensitive species in their management activities. These regulations appear to be adequate, but their implementation by the USFS has not been consistent. Unless the points of access are blocked by more permanent means, illegal trespass by vehicles into the habitat of *Chlorogalum purpureum* var. *reductum* is likely to continue. Since the construction of the pipe barriers, it appears that staff and funding have not been adequate to monitor trespassing, repair fencing, or bolster barriers in a timely manner, particularly during the past two years.

Chlorogalum purpureum var. *purpureum* occurs solely on Federal lands managed by Fort Hunter Liggett. The Department of Defense has various policies and directives to guide the management of sensitive natural resources. Army Regulation 200–3 provides for environmental review of projects that might affect sensitive and listed species. Fort Hunter Liggett has had an environmental review process since 1994. *Chlorogalum purpureum* var. *purpureum* is included in this process. In some cases, projects are being modified to reduce impacts to this taxon. For example, an alternative site for a planned bayonet course is being considered to avoid placing it within or directly adjacent to the locality of *C. p.* var. *purpureum*. In other cases, such as the recent construction of the obstacle course and parking areas, projects continue to be sited in occupied habitat and to affect this taxon. In addition, environmental review only occurs for projects that require excavation; bivouacking and vehicle impacts are not covered by this process. The environmental review process does not always allow for assessment surveys to be conducted at the time of year when the plant can be identified (H. Hormann, *in litt.* 1997). For example, surveys for the proposed bayonet course occurred in late summer 1997, when the above-ground portions of the plants were dry and difficult to locate.

Under Army Regulation 200–3, a Species Management Plan for *Chlorogalum purpureum* var.

purpureum has been developed (Hazebrook and Clark 1997). While some of the goals will benefit the taxon if achieved, the actual protection it affords is minimal and based primarily on avoiding impacts to populations "when feasible." To date, no areas where *C. purpureum* var. *purpureum* occurs on the base are off-limits to training. The Service concludes that Army directives, while improving the consideration that this taxon receives on the base, have not yet altered activities to sufficiently reduce the threats posed by military activities.

E. *Other natural or manmade factors affecting its continued existence.* Other factors affecting individuals of this species include military training and changes in fire frequency. Training activities that involve trampling, camping, or driving through occupied habitat are likely to directly crush flowers, fruits, and vegetative parts of *Chlorogalum purpureum* var. *purpureum* and result in diminished reproductive success, lower seedling establishment, and reduced plant vigor. Training activities increase in the spring, around April, and peak in the summer (U.S. Dept. of Army 1997), a period that coincides with flowering and fruiting of the taxon. Seedling establishment may be reduced by direct crushing and also due to changes in soil bulk density and water-holding capacity. Training activities lead to soil compaction and soil disturbance which also encourages the invasion of weedy, nonnative plant species that may compete directly with *C. p.* var. *purpureum*.

Burning at too frequent intervals or during seasons of growth and reproduction may threaten *Chlorogalum purpureum* var. *purpureum* at Fort Hunter Liggett. A spring burn at the southernmost locality on Fort Hunter Liggett in 1995 may have stimulated increased flowering in the spring of 1996. However, the fire destroyed most of the seed crop because it occurred in May, rather than August, when most seeds would have been dispersed (Painter and Neese 1997). Burning at too frequent intervals may damage a population due to the slow growth rate of seedlings, which take from 8 to 15 years to reach reproductive maturity (Judith Jernstedt, University of California at Davis, pers. comm. 1997). In addition, immature plants with small bulbs located near the soil surface may be particularly vulnerable to fires.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the species as threatened. *Chlorogalum purpureum* does not appear to be in danger of extinction throughout all or a significant portion of its range at this time. Threats to the species are primarily associated with unauthorized activity (i.e., vehicle trespass) on USFS lands and military activities due to its location in active training areas and the housing and administration area of an Army base. However, because the Army's environmental directives are increasing the consideration afforded this and other rare plant species on Fort Hunter Liggett and because the USFS has implemented some management actions for this species, the Service determines that threatened status is currently appropriate. The species is not currently in danger of extinction, but is likely to become so if trends of increasing use of its habitat for military training activities continue and if OHV activities increase on USFS lands.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat for *Chlorogalum purpureum* is not prudent. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The largest sites of *Chlorogalum purpureum* are located at Fort Hunter Liggett military base. Military training and support activities comprise the primary threat to the three localities. The Army is aware of the plant's location and is developing a monitoring program. Designation of these areas as critical habitat would provide no additional protection against threats to the species. On Federal lands managed by the LPNF, suitable habitat for *Chlorogalum purpureum* occurs in a discrete, well-defined area. The primary threat to this population is illegal trespass by OHVs. The USFS is aware of the plant's location and has implemented active management, including construction of fences and barriers as well as monitoring. Designation of this area as critical habitat would add no additional protection against the threats faced by the species. The other known localities of *Chlorogalum purpureum* are small and occur only on private lands where there is very little likelihood of Federal involvement. Designation of critical habitat for this species is, therefore, not prudent because of lack of benefit.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition from willing sellers and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities

they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any is designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Although this rule treats *Chlorogalum purpureum* at the specific level (i.e., it is proposed as one species rather than as two separate varieties), each of the varieties would be treated as a separate taxonomic entity for the purposes of section 7 consultation and the recovery process, if the species is listed. In other words, the jeopardy standard could be applied to either *C. p.* var. *purpureum* or *C. p.* var. *reductum* as separately identified recovery units.

Federal agencies that may affect the species proposed in this rule through activities they fund, authorize, or carry out are the USFS (at Los Padres National Forest), the Department of the Army (at Fort Hunter Liggett) and, to a much smaller extent, the Federal Highway Administration through funds provided for State highway construction or maintenance.

Chlorogalum purpureum var. *purpureum* occurs wholly on Federal lands managed by the Department of the Army. Activities the Army funds, authorizes, or carries out that could affect this taxon include, but are not limited to, construction and use of training facilities, field training exercises, road construction and maintenance, prescribed burning, fire suppression activities, livestock grazing, and hunting.

Chlorogalum purpureum var. *reductum* occurs primarily on public lands managed by the USFS on Los Padres National Forest. Activities that the USFS funds, authorizes, or carries out that could affect this taxon include grazing, OHV activities, road maintenance, and special use permits authorizing use and the development of management plans for special use areas.

Listing *Chlorogalum purpureum* as threatened will provide for the development of a recovery plan. The plan will bring together Federal, State, and local efforts for the plant's conservation, establishing a framework for cooperation and coordination. The plan will set recovery priorities and describe site-specific management actions necessary to achieve the conservation of the species. Additionally, pursuant to section 6 of the Act, the Service will be more likely to grant funds to affected states for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because this species is not in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.72.

Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503/231–2063; facsimile: 503/231–6243).

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. *Chlorogalum purpureum* occurs on lands under the jurisdiction of the USFS and Department of the Army. Collection of the species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on areas not under Federal jurisdiction would constitute a violation of section 9 if conducted in knowing violation of California State law or regulations, or in violation of State criminal trespass law. The Service is not currently aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9. The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, military activities, road construction and maintenance, prescribed burning, fire suppression activities, hunting, or other land use activities that would significantly modify the species' habitat), when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., bird-watching, photography, camping, hiking); and

(3) Activities on private lands (without Federal funding or involvement), such as grazing management, residential development, road construction, pesticide/herbicide application, residential landscape maintenance, and pipelines or utility lines crossing suitable habitat.

Questions regarding whether specific activities would constitute a violation of section 9, should this species be listed, should be directed to the Field Supervisor of the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Chlorogalum purpureum*;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

A final determination of whether to list this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final decision-making document that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This proposed rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this proposal is Diane Steeck, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
•	•	•	•	•	•		•
FLOWERING PLANTS							
•	•	•	•	•	•		•
Chlorogalum purpureum.	Purple amole	U.S.A. (CA)	Liliaceae—Lily	T	.....	NA	NA
•	•	•	•	•	•		•

Dated: March 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–8050 Filed 3–27–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE81

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Plants from South Central Coastal California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list *Cirsium loncholepis* (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), *Hemizonia increscens* ssp. *villosa* (Gaviota tarplant), and *Lupinus nipomensis* (Nipomo Mesa lupine) as endangered, pursuant to the Endangered Species Act of 1973, as amended (Act). These plants are in danger of extinction because their habitats have been significantly reduced by residential, commercial, and oil and gas development. Their remaining habitats have been adversely affected by development, military activities, alteration of natural fire cycles and the invasion of alien plant species. The limited distribution and small population sizes of these four taxa also make them more vulnerable to extinction from naturally occurring events. Existing regulations do not

provide adequate protection to prevent further losses from ongoing activities. This proposal, if made final, would extend the Act's protection to these plants.

DATES: Comments from all interested parties must be received by May 29, 1998. Public hearing requests must be received by May 14, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, at the above address (telephone: 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Cirsium loncholepis (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), *Hemizonia increscens* ssp. *villosa* (Gaviota tarplant), and *Lupinus nipomensis* (Nipomo Mesa lupine) occur along the south central California coast. They are restricted to a narrow area in western and northern Santa Barbara County and southern San Luis Obispo County.

These taxa occur in sensitive, declining or altered habitats including central dune scrub, central maritime chaparral, valley needlegrass grassland, coastal freshwater wetlands, and southern bishop pine forest (Holland 1986, Schoenherr 1992). Two of these habitats, central dune scrub and coastal freshwater wetlands, are notable for their geological and biological value. The largest coastal dune system in California is located in southern San Luis Obispo County near Guadalupe, where approximately 47 square kilometers (sq km) (18 sq miles (mi)) of active dunes create a series of back dune lakes. The Department of the Interior added the Guadalupe Dune region to the National Natural Landmark system in 1980, recognizing the biological and physical diversity of the area (Schoenherr 1992). Two of the taxa proposed for listing in this rule (*Lupinus nipomensis* and *Cirsium loncholepis)* are restricted to these dunes. Coastal dune habitats are highly disturbed and all remnants have been invaded by alien plant species. Invasive weeds such as *Ehrharta calycina* (veldt grass), *Ammophila arenaria* (European beach grass), *Carpobrotus edulis* (iceplant), and *Mesembryanthemum crystalinum* (crystalline iceplant) are serious threats to the natural ecological processes of coastal sandy habitats and to the viability of these proposed taxa (Smith 1976, Zedler and Scheid 1988, Schoenherr 1992).

Inland from the active dunes, there are remnants of prehistoric uplifted dunes that have formed a weakly cemented sandstone that has weathered to produce a sandy, extremely well drained, and nearly infertile soil (Davis *et al.* 1988). This substrate has a limited distribution, occurring on the following mesas in the area: Nipomo Mesa, Casmalia Hills, San Antonio Terrace, Burton Mesa, Lompoc Terrace and Purisima Hills. The habitat that occurs on the sand hills has been called the maritime chaparral and has been the focus of several studies (Ferren *et al.* 1984, Davis *et al.* 1988, Philbrick and Odion 1988, Davis *et al.* 1989, Odion *et al.* 1992). Two of the populations of *Eriodictyon capitatum* occur in the maritime chaparral. Seven local endemic plant species that occur in this habitat and at least 16 other uncommon plant species are components of a plant community known as the central coast maritime chaparral. This community type is an exceptional biological resource due to the concentration of rare plants found within it; however most of it has been converted to other land uses or is degraded by weed invasion and habitat fragmentation (Davis *et al.* 1988, Odion *et al.* 1992). Central coast maritime chaparral is considered threatened and sensitive by the California Department of Fish and Game's (CDFG) Natural Heritage Division (Holland 1986). The southern bishop pine forest is scattered in the Purisima Hills and occurs largely as a component of the central coast maritime chaparral (Holland 1986).

Cirsium loncholepis (La Graciosa thistle) was first collected by Eastwood in 1906 near the village site of La Graciosa (razed in 1877) in San Luis Obispo County. The original description was published in 1917 by Petrak, who wrote a monograph on the genus *Cirsium* (Abrams and Ferris 1960). *Cirsium loncholepis* is a short-lived (1–2 years), spreading, mound-like or erect and often fleshy, spiny member of the sunflower family (Asteraceae). Plants are from 1 to 10 decimeters (dm) (4 to 40 inches (in)) in height, with one to several stems. The leaves are wavy-margined. The lower leaves are 10 to 30 centimeters (cm) (4 to 12 in) long with spiny petioles and usually deeply lobed with secondary lobes or teeth. The leaf base of the middle and upper leaves forms short, spiny wings along the petiole. The flower heads are in tight clusters at the tips of the stems. Flowering heads are 2 to 4 cm (0.8 to 1.6 in) wide. The corollas are 25 to 30 mm (1 to 1.2 in) long and more or less white with a purplish tube containing purple anthers. This species closely resembles *Cirsium brevistylum* (Indian thistle), a taller plant with the upper portion covered with cobwebby hairs. The leaves of *C. brevistylum* are shallowly lobed, whereas the leaves of *C. loncholepis* are deeply lobed with secondary lobes (Keil and Turner 1993).

Cirsium loncholepis is restricted to back dune and coastal wetlands of southern San Luis Obispo County and northern Santa Barbara County from the Pismo Dunes lake area and south historically to the Santa Ynez River, a distance of about 32 km (20 mi). The Guadalupe Dune complex, in which it occurs, extends inland only up to 3.2 km (2 mi). Deflation areas behind the foredunes often intersect the water table, creating wetlands and back dune lakes. *Cirsium loncholepis* is found in wet soils surrounding the dune lakes and in the moist dune swales, where it is often associated with rush (*Juncus* spp.), tule (*Scirpus* spp.), willow (*Salix* spp.), poison oak (*Toxicodendron diversilobum*), salt grass (*Distichlis spicata*), and coyote brush (*Baccharis pilularis*). The historic distribution of the species included extensive areas in the Orcutt region that have been converted from wetland habitat to agricultural uses or otherwise developed. It is likely that large populations similar to the existing one at the mouth of the Santa Maria River occurred in these areas prior to their conversion. As early as 1950, Smith studied the lack of suitable habitat for *C. loncholepis* in the vicinity of La Graciosa (Abrams and Ferris 1960, Smith 1976). The town of Orcutt is likely built near the site of La Graciosa and historic maps show the area covered with extensive wetlands which no longer exist (Hendrickson 1990).

The species is now restricted to marshes and the edges of willow thickets in damp swales in the Guadalupe dune system (Hendrickson 1990). The majority of the populations in the dune systems are small and isolated and show a reduced reproductive vigor (Hendrickson 1990). Seven of these populations have fewer than 60 plants each (California Natural Diversity Data Base (CNDDB) 1997). Only one population has a substantial number of plants, fluctuating between 6,000 and 54,000 individuals; however, it is located at the mouth of the Santa Maria River in the floodplain, where it

may be vulnerable to catastrophic floods.

Groundwater pumping, oil field development, and competition from alien plants are ongoing threats to this species (Hendrickson 1990, CDFG 1992). Cattle grazing in the riparian habitat at the mouth of the Santa Maria River may reduce the competition from other species (Hendrickson 1990), but the long term effects of livestock use on the habitat are unknown. All known extant populations of *Cirsium loncholepis* are on private lands. The trend for *Cirsium loncholepis* is one of decline (CDFG 1992, CNDDB 1997).

Eriodictyon capitatum (Lompoc yerba santa) was collected by Hoffman in 1932 near Lompoc growing under *Pinus muricata*, and described the following year (Eastwood 1933). *Eriodictyon capitatum* is a shrub in the waterleaf family (Hydrophyllaceae) with sticky stems up to 3 meters (m) (10 feet (ft)) tall. The sticky leaves are narrowly linear. The head-like inflorescence has lavender corollas that are 6 to 15 mm (0.2 to 0.6 in) long. It is distinguished from related species by its narrow, entire leaves and its head-like inflorescence (Halse 1993).

Eriodictyon capitatum occurs in maritime chaparral with bush poppy (*Dendromecon rigida*), scrub oaks (*Quercus berberidifolia, Q. parvula*), and buck brush (*Ceanothus cuneatus*) and in southern bishop pine forests (*Pinus muricata*) that intergrade with chaparral including manzanita (*Arctostaphylos* spp.) and black sage (*Salvia mellifera*) (Smith 1983). The four known populations of *E. capitatum* occur in western Santa Barbara County. Two of these, composed of three colonies, are on Vandenberg Air Force Base (VAFB). The other two populations are located in the oilfields south of Orcutt (one colony), and at the western end of the Santa Ynez Mountains (three colonies). The latter populations are on private land. Based on isozyme analysis, Elam (1994) determined that all of the Santa Ynez Mountains colonies and two of the VAFB colonies were multiclonal. The other two VAFB colonies are uniclonal. The Orcutt colony was not studied due to inaccessibility. A clone is composed of many stems produced by the vegetative spread of the root system. The three Santa Ynez Mountains colonies had a total of 48 clones. The three VAFB colonies had a total of 19 clones. *Eriodictyon capitatum* is self-incompatible (i.e., it requires pollen from genetically different plants to produce seed) and its fruits are parasitized by an insect (Elam 1994). A study of one of the uniclonal colonies at VAFB showed that *E. capitatum* resprouted successfully from the base of the plant after a prescribed fire. However, several stems died, no seedling recruitment occurred, and there was heavy damage from herbivory (Jacks *et al.* 1984).

Fire management practices, invasive non-native plant species, low seed productivity, and naturally occurring events pose significant threats to the long-term survival of this species. None of the colonies is actively protected. *Eriodictyon capitatum* was listed as rare by the State of California in 1979 (CDFG 1992).

Hemizonia increscens ssp. *villosa* (Gaviota tarplant) is member of the sunflower family. Tanowitz (1982) described this plant from collected material as well as a specimen gathered in 1902 by Elmer from Gaviota. *Hemizonia increscens* ssp. *villosa* is a yellow-flowered, gray-green, soft hairy annual that is 3 to 9 dm (12 to 35 in) tall with stems branching near the base. The lower leaves are 5 to 8.5 cm (2 to 3.4 in) long and gray-green. The inflorescence is rounded to flat-topped with 13 ray flowers and 18 to 31 usually sterile disk flowers. Two other subspecies, *H. i.* ssp. *increscens* and *H. i.* ssp. *foliosa*, differ from *H. i.* ssp. *villosa* by their stiff-bristly, deep green foliage (Keil 1993).

Hemizonia increscens ssp. *villosa* has a highly localized distribution in western Santa Barbara County, where it is associated with needlegrass grasslands dominated by the non-native wild oat (*Avena* spp.) and occasional native purple needle grass (*Nassella* spp.) that intergrade with coastal sage scrub composed of California sagebrush (*Artemisia californica*), coyote bush (*Baccharis pilularis*), and sawtooth golden bush (*Hazardia squarrosa*). Its habitat lies on an uplifted, narrow marine terrace 46 to 60 m (150 to 200 ft) above sea level. The plant is restricted to Conception and Milpitas-Positas soils, which consist of acidic, fine sandy loams (AAPC 1990). A subsurface clay layer 46 to 90 cm (18 to 36 in) deep may serve as a reservoir of soil moisture in an area otherwise characterized by summer drought (Howald 1989).

Hemizonia increscens ssp. *villosa* is known only from a narrow, 3.6 km (2.2 mi) long band of coastal terrace situated between the Santa Ynez Mountains and the ocean near Gaviota, 24 km (15 mi) west of Santa Barbara. Within this band, a total of about 24 hectares (ha) (60 acres (ac)) of habitat occurs with approximately 20 colonies of the taxon. The colonies are often separated by no more than 100 m (330 ft), and represent one extended population (Howald 1989). Other pockets of Conception and Milpitas-Positas soils occur along the coast to the west and east of Gaviota, where the vegetation continues to be altered by development, cattle grazing, and farming. Extensive repeated surveys have been conducted without success in these areas and it is not likely that additional plant populations will be found (Howald 1989). As is typical of annual plant species, the number of individuals present from one year to the next varies dramatically, depending on climatic conditions and other factors. There are some years when colonies may contain few to no individuals (Howald 1989). In 1995, the taxon was not abundant at any location (Kathy Rindlaub, pers. comm. 1995).

The narrow coastal terrace is bisected lengthwise by Highway 101, a railroad, and several pipelines. Most of the habitat for *Hemizonia increscens* ssp. *villosa* lies on the north side of the highway on private lands owned primarily by Texaco and Chevron. A few colonies occur on the south side of Highway 101 on land owned by the California Department of Parks and Recreation (Gaviota State Park) that are leased and managed by Texaco. In 1995, there were no individuals in the colony at the Texaco facility (K. Rindlaub, pers. comm. 1995).

Hemizonia increscens ssp. *villosa* is threatened by destruction of individual plants, habitat loss, and degradation from the development of oil and gas facilities, including pipelines, and competition with alien weeds. The recent trend for this taxon is one of decline (CDFG 1992).

Lupinus nipomensis (Nipomo mesa lupine) was collected in 1937 by Eastwood and Howell from Nipomo Mesa, San Luis Obispo County; Eastwood subsequently published a description of the species (Eastwood 1939). Although Munz (Munz and Keck 1973) submerged *L. nipomensis* as a synonym of *L. concinnus*, other floras, including the most recent treatment, recognize *L. nipomensis* as a species (Abrams 1944, Riggins 1993). *Lupinus nipomensis* is an annual member of the pea family (Fabaceae). It is 1 to 2 dm (4 to 8 in) tall and hairy with decumbent stems. The leaves, with 5 to 7 leaflets, are 10 to 15 mm (0.4 to 0.6 in) long and 5 to 6 mm (0.2 to 0.3 in) wide. The inflorescence is not whorled and the flowers are 6 to 7 mm (0.2 to 0.3 in) long with pink petals. *Lupinus nipomensis* is distinguished from the related *L. concinnus* by its decumbent inflorescence, succulent leaflets, lack of axillary flowers, and its restriction to sand dune habitat (Walters and Walters 1988).

Lupinus nipomensis grows in stabilized back dune habitat of the Guadalupe dunes in the southwestern corner of San Luis Obispo County. The plant occurs as 1 extended population in 5 colonies with fewer than 700 plants. The small patches are spread over 2.4 km (1.5 mi). At least three historical localities have been extirpated, including its type locality (CDFG 1992, CNDDB 1997). The majority of the habitat is considered degraded by either physical disturbance or invasion by non-native weedy species (Walters and Walters 1988). Even the high quality habitat is adversely affected by impacts from non-native invasive species. The occurrences in best condition are situated in dune swales and contain a higher diversity of native annuals in the vicinity of widely spaced individuals of mock heather (*Ericameria ericoides*), a small native subshrub. In both types of habitat, *L. nipomensis* requires pockets of bare sand, suggesting a low tolerance for competition (Walters and Walters 1988).

All known occurrences of *Lupinus nipomensis* are on private lands and remain unprotected. The primary threat to the species is the uncontrolled invasion of aggressive non-native weeds and the subsequent displacement of the species. The plant was listed by the State as endangered in 1987 and the recent trend is one of decline (CDFG 1992).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *Cirsium loncholepis* and *Eriodictyon capitatum* as endangered. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and its intention to review the status of the plant taxa named therein.

On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Cirsium loncholepis* and *Eriodictyon capitatum* were included in the June 16, 1976, **Federal Register** publication. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Lupinus nipomensis* as category 1 candidate species. Category 1 candidates were formerly defined as taxa for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority. On November 28, 1983, the Service published a supplement to the Notice of Review in the **Federal Register** (48 FR 53640), in which *Cirsium loncholepis* and *Lupinus nipomensis* were included as category 2 candidates. Category 2 formerly included taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support proposed rules.

The plant Notice of Review was again revised on September 27, 1985 (50 FR 39526). In this notice, *Eriodictyon capitatum* was included as a category 1 candidate, and *Cirsium loncholepis* and *Lupinus nipomensis* remained category 2 candidates. On February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), revised Notices of Review were published that included *Cirsium loncholepis*, *Eriodictyon capitatum*, *Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis* as category 1 candidates. On February 28, 1996, the Service published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates. That notice included as candidates only those taxa meeting the former definition of category 1, and included the four taxa in this proposed rule. They maintained candidate status in the Notice of Review published on September 19, 1997 (62 FR 49398).

The processing of this proposed rule conforms with the Service's final listing priority guidance for fiscal year 1997, published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond fiscal year 1997 until such time as the fiscal year 1998 appropriations bill for the Department of the Interior becomes law and new final guidance is published. The fiscal year 1997 guidance clarifies the order in which the Service will process rulemakings following two related events: (1) The lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Based on biological considerations, this guidance establishes a "multi-tiered approach that assigns relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act" (61 FR 64479). The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule falls under Tier 3, since the taxa all have listing priority numbers of 2 or 3. The guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). The Service has thus begun implementing a more balanced listing program, including processing more Tier 3 activities. The completion of this Tier 3 activity follows those guidelines.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cirsium loncholepis* Petrak (La Graciosa thistle), *Eriodictyon capitatum* Eastw. (Lompoc yerba santa), *Hemizonia increscens* ssp. *villosa* B.D. Tanowitz (Gaviota tarplant), and

Lupinus nipomensis Eastw. (Nipomo Mesa lupine) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat fragmentation and alteration of species composition and vegetation structure threaten the long term survival of all of the taxa in this rule. The taxa in this rule have extremely limited natural distributions (*Eriodictyon capitatum* and *Hemizonia increscens* ssp. *villosa*) or reduced distributions resulting from loss of habitat (*Cirsium loncholepis* and *Lupinus nipomensis*).

Eriodictyon capitatum is associated with the central maritime chaparral and bishop pine, threatened habitat types with limited distribution, and rich in plant species of limited distribution (Holland 1986). Most central maritime chaparral has been converted to a variety of land uses, and degraded by development, weed invasion, habitat fragmentation and other factors (Hoover 1970, Davis *et al.* 1988, Odion *et al.* 1992, CNDDB 1997). Ice plant invasion threatens to convert the maritime chaparral into a habitat dominated by mats of the exotic succulent (Odion *et al.* 1992). Ice plant was documented as an invasive in habitat occupied by *E. capitatum* following a prescribed fire (Jacks *et al.* 1984). Veldt grass was seeded in controlled burns and used for soil stabilization at VAFB and has become widespread and naturalized (Smith 1976, Jones and Stokes 1997). Comparison of historic and current photographs show no veldt grass in 1973, whereas in 1997 the same site was dominated by veldt grass (Chris Gillespie, VAFB, pers. comm. 1997).

Department of Defense base closures across the nation have resulted in the relocation of activities to those bases that remain operational. Facility maintenance and development for military and private commercial purposes planned at VAFB are likely to result in additional loss and alteration of habitat for *Eriodictyon capitatum* (Al Naydal, VAFB, pers. comm. 1993). There is considerable competition for use of the commercial spaceport on the base (25 to 30 companies) and launches are anticipated to occur every two weeks (C. Gillespie, pers. comm. 1995). Missile launch operations can adversely affect habitats surrounding launch facilities. In 1993, a missile destroyed shortly after launching at VAFB started brush fires caused by burning rocket fuel and also caused physical damage from large fragments of metal blasted downward toward the ground (Wallace 1993). In September 1997, a 200 ha (500 ac) fire ignited near an active missile silo and a 600 ha (1,500 ac) fire burned near occupied habitat of *Eriodictyon capitatum* (Los Angeles Times 1997a; J. Watkins, pers. comm. 1997). Wildfire containment lines in the vicinity of the species were observed after the fire (J. Watkins, pers. comm. 1997). On November 1, 1997, a 495 ha (1,225 ac) fire accidentally set by an explosives disposal team was partially contained by back burning the entire 35th Street population of *E. capitatum* (Los Angeles Times 1997b). Invasion by aggressive alien plant species occurs after fire in the maritime chaparral habitats (see factor E below). The expected increase in launch activities is likely to result in an increase in fires.

Hemizonia increscens ssp. *villosa* occurs within a narrow 3.6 km (2.25 mi) band of coastal terrace grassland about 24 ha (60 ac) in extent. About 40 percent of the coastal terrace habitat within the known range of *H. i.* ssp. *villosa* has been destroyed, altered, or fragmented by the construction of oil and gas facilities and pipelines. Projects during the past five years within the taxon's habitat include the installation of a water pipeline for the relocated Vista del Mar school, and construction of the Pacific pipeline (oil), the Mariposa pipeline (oil/gas), and the Molina drilling station. Molina Energy Company is developing a project to extract petroleum from three offshore natural gas reserves at an onshore drilling and production site. The Molina parcel contains the single largest continuous population of *H. i.* ssp. *villosa* (M. Meyer, pers. comm. 1996). Maintenance of pipelines and facilities will continue to disturb habitat for the taxon and facilitate the establishment of invasive weed species. Because the Santa Ynez Mountains rise sharply only 0.15 km (0.25 mi) inland from the coastline, the relatively flat coastal terrace forms a natural corridor for any utility project passing between the Gaviota Pass to the west and Santa Barbara to the east. All future projects that pass through this corridor are highly likely to adversely affect habitat for *H. i.* ssp. *villosa* by further destroying, degrading, and fragmenting habitat. The highest quality habitat remains unprotected and lies within this pipeline corridor. In attempts to mitigate habitat loss, a mitigation management area has been established by the oil industry; however, it protects less than five percent of the habitat. Because invasive species must be managed intensively to prevent their dominance, it is questionable whether this management area can sustain a colony of *Hemizonia* without ongoing intensive maintenance (K. Rindlaub, pers. comm. 1995). The trend for the taxon is one of decline (CDFG 1992).

The Guadalupe Dunes, which contain occurrences of *Cirsium loncholepis* and *Lupinus nipomensis*, have been extensively developed and altered for petroleum extraction (Rindlaub *et al.* 1985). About one-third of the historic occurrences of *C. loncholepis* have been extirpated (CDFG 1992). While the future extent of development and habitat alteration is unknown at this time, continued energy-related operations, including maintenance activities, hazardous waste clean-up, and other commercial development that result in additional habitat modification, remain a predominant threat (CDFG 1992). Ground water extraction in the Guadalupe Dunes and vicinity is thought to have diminished the total area of suitable habitat of *C. loncholepis* by lowering the water table and drying the wetlands (Smith 1976, Hendrickson 1990, CDFG 1992). Hydrological alterations remain a significant threat to this taxon (CDFG 1992). At least three historic populations of *Lupinus nipomensis*, including the type locality, have been extirpated. Development, along with invasion by alien plant species (see factor E below), are the primary threats to this species (CDFG 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a factor affecting the taxa in this rule.

C. Disease or Predation

Disease is not known to be a factor affecting any of the taxa in this rule. Herbivory by pocket gophers (*Thomomys bottae*) has been documented to consume whole colonies of *Lupinus nipomensis* and is considered a major threat (Walters and Walters 1988). Veldt grass provides a year-round food source for the pocket gopher, thus creating artificially high densities of gophers and increased predation pressure upon *L. nipomensis*. Veldt grass was observed to be increasing during the course of a three-year monitoring program for *L. nipomensis* and is forming pure stands in the backdune habitat of *L. nipomensis* (Walters and Walters 1988). This increase in food source exacerbates the threat posed by pocket gopher predation.

Several invertebrate species have been documented as predators of *Lupinus nipomensis*, reducing the vigor and seed production of this species. The most significant predator is an anthomyid fly

(*Hylemya lupini* Coquillett) whose larvae burrow into the terminal inflorescence, reducing seed production and sometimes killing the entire plant (Walters and Walters 1988). Other invertebrate predators noted are mites, the caterpillars of the common painted lady butterfly (*Vanessa cardui*) and a noctuid moth that feed on leaves, a tent-building microlepidopteran larva (family Pyralidae) that causes leaf damage, and a lupine blue butterfly larva (*Plebejus lupini monticola* Clemence) that feeds on seed pods (Walters and Walters 1988). Predation by these taxa does not threaten the species in and of itself, but because of the limited range and small population size, predation in combination with other threats could adversely affect population viability.

Cattle grazing occurs within the habitats of *Cirsium loncholepis* and *Hemizonia increscens* ssp. *villosa*. Low levels of grazing may enhance the opportunities for both taxa to propagate successfully, as it may serve to reduce competition from other native species. Nevertheless, recent evidence indicates that heavy grazing has affected individuals of *H. increscens* ssp. *villosa* by reducing their stature and reducing the number of seeds that can be produced (AAPC 1990). Similar observations were made in the Guadalupe dunes and along the Santa Maria River where *C. loncholepis* was adversely affected (Hendrickson 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

The California Fish and Game Commission has listed *Eriodictyon capitatum* as rare, *Cirsium loncholepis* as threatened, and *Hemizonia increscens* ssp. *villosa* and *Lupinus nipomensis* as endangered under the Native Plant Protection Act (NPPA) (chapter 1.5 sec. 1900 *et seq.* of the California Fish and Game Code) and the California Endangered Species Act (CESA) (chapter 1.5 sec. 2050 *et seq.*). California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all measures be capable of successful implementation. These requirements have not been tested; it will be several years before their effectiveness can be evaluated. In the past, attempts to mitigate rare plant populations have largely failed (Howald 1993).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

State agencies reviewing requests for large development projects are required by CEQA to conduct surveys of the biological resources of a project site. Most public documents such as Environmental Impact Reports are prepared by the project proponent for the State agency. Sensitive species located during surveys are to be reported to the CNDDB, which is maintained by the CDFG Natural Heritage Division. If, however, the project proponent considers the information proprietary, consulting biologists may not report to the CNDDB.

One of the taxa in this proposal, *Cirsium loncholepis*, could potentially be affected by projects requiring a permit under section 404 of the Clean Water Act. Perennial freshwater emergent marshes and back dune wetlands are generally small and scattered, and treated as isolated wetlands or waters of the United States for regulatory purposes by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (CWA). However, the CWA by itself does not protect *Cirsium loncholepis*. For example, Nationwide Permit No. 26 (33 CFR part 330 Appendix B (26)) was established by the Corps to facilitate issuance of permits for discharge of fill into wetlands up to 3 ac (1.2 ha). For project proposals falling under Nationwide Permit 26, the Corps seldom withholds authorization unless a listed threatened or endangered species' continued existence would likely be jeopardized by the proposed action, regardless of the significance of other wetland resources. Current section 404 regulations require an applicant to obtain an individual permit to fill isolated wetlands or waters larger than 3 ac (1.2 ha). In either case, candidate species receive no special consideration. Additionally and equally important, the upland watersheds that contribute significantly to the hydrology of marshes are not provided any direct protection under section 404. Alterations of hydrology resulting from groundwater pumping are thought to pose the most likely and serious threat to *C. loncholepis*. No permit is required under the CWA for groundwater pumping. As a consequence, the habitat of *C. loncholepis* receives insufficient protection under section 404 of the CWA.

Although several public agencies manage lands with occurrences of these and other sensitive, threatened and endangered species, none of those agencies have specific management plans for the taxa proposed for listing in this rule. Serious threats to the habitats of all of the plants in this rule persist that are not currently being addressed with active management (see factor E below). The CDFG has prepared an unpublished management plan for the State-listed *Cirsium loncholepis* (Morey 1990), but its recommendations have not yet been implemented.

Mitigation performed to satisfy CESA requirements for *Hemizonia increscens* ssp. *villosa* (State-listed endangered) has included salvaging seedbank and topsoil for transfer to a habitat creation site, seeding of areas disturbed by facility and pipeline construction, and enhancement of areas with low density of this taxon (AAPC 1990). These experimental mitigation measures are in progress and the long-term success of treatments will not be known for years. As of 1995, none of the sites showed success (K. Rindlaub, pers. comm. 1995). *Hemizonia increscens* ssp. *villosa* does not compete well with other annual species and long-term survival of relocated plants requires intensive maintenance. These experimental mitigation measures focus on reintroducing the plant and not necessarily reestablishing the other elements of the habitat that would maintain the plant in perpetuity. If the original habitat has been destroyed and the mitigation fails, there is an irretrievable loss of the resource.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Other threats to the taxa in this rule include displacement by non-native weeds, altered fire regimes, facility accidents, small population size, and loss of reproductive vigor. The most severe threat to the taxa in this rule is the active invasion and subsequent

modification or conversion of habitat and displacement of native species by aggressive alien weeds such as European beach grass, iceplant, veldt grass, and crystalline iceplant (Davis *et al.* 1988, Zedler and Schied 1988, Morey 1989, Walters and Walters 1989a, Odion *et al.* 1992, CNDDB 1997). Current research and management approaches are inadequate to provide control for the problem of alien plant invasions (Hobbs and Humphries 1995, Schierenbeck 1995). The California Exotic Pest Plant Council (CalEPPC) has compiled a list of the exotic pest plants of greatest ecological concern in California. The list categorizes the most invasive wildland pest plants that threaten native plants and natural habitats as list A–1, widespread pest plants, and list A–2, regional pest plants. *Ammophila arenaria* and *Carpobrotus edulis* are on list A–1 and *Ehrharta calycina* is on list A–2 (CalEPPC 1994). All of the habitats for the taxa in this rule are fragmented and dissected by roads and pathways that are the principal corridors for introduction of these weedy species (Odion *et al.* 1992).

Carpobrotus edulis, widely disseminated in the feces of deer and rabbits, tends to displace native plant species, particularly after fire or mechanical disturbance. *Carpobrotus edulis* has invaded native vegetation occupied by *Eriodictyon capitatum* after a prescribed fire, resulting in a documented increase in iceplant cover from negligible to 26 percent 3 years after the fire. This increase was attributed to post-fire seedling production of over 7,800 iceplant seedlings per ha (2,800 per ac) the year after the fire, with a survivorship of over 70 percent 3 years later (Zedler and Schied 1988). After establishment, each plant can grow to over 6 m (18 ft) in diameter (Vivrette 1993), virtually replacing all other vegetation. The Air Force is currently conducting prescribed burns on VAFB for fuels management without a program to control the subsequent invasion of weedy species (James Watkins, pers. comm. 1997). There is an effort to occasionally apply herbicides to a burn area; however, it is ineffective without follow-up measures to ensure the control of the invasive species. Because fire is inevitable in natural habitats, and prescribed burns are utilized for hazard fuels reduction, iceplant and other invasive weed invasions will continue to degrade habitat and adversely influence *Eriodictyon capitatum*, *Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis*.

Other invasive plants, including Atriplex semibaccata (Australian saltbush), *Ehrharta calycina*, and *Avena* spp. threaten *Hemizonia increscens* ssp. *villosa* by displacement and the build-up of thatch (accumulated dead leaves and stems). *Hemizonia increscens* ssp. *villosa* requires open habitat in which to germinate and become established. Thatch from the alien grass species that dominate the habitat effectively prevents its establishment (K. Rindlaub, pers. comm. 1995).

Ehrharta calycina is actively invading occupied habitat of *Eriodictyon capitatum*, *Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis* (Zedler and Schied 1988, Morey 1989, Walters and Walters 1989a, Wickenheiser and Morey 1990). This alien grass has a mass of roots that captures the majority of the moisture, effectively outcompeting the native vegetation and dominating habitats as a monoculture (David Chipping, California Native Plant Society, pers. comm. 1997). The density of *E. calycina* continues to increase and displace *L. nipomensis* (Bonnie Walters, California Polytechnic State University, pers. comm. 1997).

Eriodictyon capitatum and *Hemizonia increscens* ssp. *villosa* occupy habitats that experience periodic fires. Fire is an important component of natural ecosystems in California wildland habitats and suppression of natural fires facilitates ecosystem degradation (Schoenherr 1992, Keeley 1995). All recent fires in the central maritime chaparral are human-caused, resulting from arson, prescribed management, or accidental ignition (Philbrick and Odion 1988). The highly fragmented nature of the remaining chaparral habitat has ended the occurrence of large wildland fires that burn under natural conditions in the coastal chaparral areas considered in this rule. Natural fire frequencies and intensities are not known, but estimates of burn intervals exceed 30 years. The use of prescribed burning as a management technique is restricted to periods when environmental conditions are favorable to preventing the spread of escaped fire, thus preventing a normal, wildland fire-spread situation. Wildland fire-spread occurs during high wind events that force the fire quickly through a stand of fuel, resulting in short burn durations and generally cooler ground temperatures. Prescribed fire behavior does not mimic natural conditions, since low wind speed is required for control of the fire. This causes an increase in the duration and intensity of the fire and results in higher mortality of seeds in the soil and reduced post-fire species diversity (Odion *et al.* 1992, Keeley 1995). Additionally, burned habitats are rapidly invaded by non-native species that alter the type and structure of the fuel (Odion et al. 1992).

Petroleum-processing plant catastrophes are rare events but have the potential to threaten the long-term survival of *Hemizonia increscens* ssp. *villosa* and *Lupinus nipomensis*, which have the smallest distributions of the taxa in this rule. All known individuals of *H. i.* ssp. *villosa* are contained within a 3.2 km (2 mi) radius and all known locations for *L. nipomensis* occur within a 1.2 km (0.75 mi) radius of oil and gas refineries and associated storage facilities. The Chevron Gaviota Processing Facility, managed by at least 12 operating companies to consolidate pipelines and treating plants, is at the center of the distribution of *H. i.* ssp. *villosa*. The Santa Maria UNOCAL refinery and storage facilities are near the center of the distribution of *L. nipomensis*. These facilities occur in a tectonically complex and active region that is characterized by moderate to locally high historic seismicity, which can result in facility catastrophes (AAPC 1990). In the event of a facility catastrophe, the resulting habitat modification could destroy populations or cause the extinction of taxa with such extremely limited distribution.

Cirsium loncholepis at Mud Lake has been destroyed by herbicide application on poison oak (Hendrickson 1990, CNDDB 1997). The significance of herbicide application as a threat to the survival of *C. loncholepis is* unknown.

By virtue of the limited number of individuals or range of the existing populations, the taxa proposed in this rule are highly vulnerable to naturally occurring events. Loss of genetic variability may decrease the ability of these taxa to survive within the environment, and is frequently manifested in depressed reproductive vigor (Karron 1991). *Eriodictyon capitatum* is self-incompatible and produces few viable seeds. In two colonies of this species, each composed of a single genetic unit, there is virtually no seed production (Elam 1994). Seeds of *Cirsium loncholepis* have been shown to be of limited viability in its small back dune populations (Hendrickson 1990). Because of the small population size, this vulnerability is exacerbated by natural events such as drought, flooding, fires, earthquakes, outbreaks of insects or disease, or other catastrophic events that could destroy a significant percentage of the individuals of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose

this rule. Based on this evaluation, the preferred action is to propose listing *Cirsium loncholepis, Eriodictyon capitatum, Hemizonia increscens* ssp. *villosa,* and *Lupinus nipomensis* as endangered. The habitats for these taxa have been much reduced due to residential, commercial, and oil and gas development. These taxa continue to face threats from development, military activities, alteration of natural fire cycles, and invasion of non-native species. The limited habitat for the four taxa and their small population sizes make *Cirsium loncholepis, Eriodictyon capitatum, Hemizonia increscens* ssp. *villosa,* and *Lupinus nipomensis* particularly vulnerable to extinction from naturally occurring events. Existing regulations do not provide adequate protection to prevent further losses; many actions adversely affecting these taxa and their habitats are ongoing. Because the four plant taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the Act's definition of endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon the determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

None of the known occurrences of *Cirsium loncholepis* are on Federal land (CNDDB 1997). Critical habitat designation only applies to Federal lands or lands on which there is Federal activity. The primary habitat elements essential for conservation of this species at all other historical sites have been destroyed by development and agriculture (CNDDB 1997). Although *C. loncholepis* is a wetland species and alteration of its habitat may be regulated by the Corps under section 404 of the CWA, current protection under section 404 is inadequate (see factor D in the "Summary of Factors Affecting the Species" section above). The Service believes that activities regulated under section 404 that could impact the habitat of *C. loncholepis* are unlikely to occur, and that this species is primarily threatened by unregulated hydrological alterations, competition from alien plants, and trampling and herbivory by livestock and wildlife. Moreover, the inadequacies of the section 404 permitting process for protecting very small plant populations, discussed in detail under factor D of the "Summary of the Factors" section above, apply to this species. In addition, because of the small size of the populations of this species and the lack of historical habitat elsewhere, any activities that would be regulated under section 404 of the CWA and cause adverse modification of its habitat would also likely jeopardize its continued existence. Designation of critical habitat for *C. loncholepis* is therefore not prudent because it provides no additional benefit to the species beyond that conferred by listing under section 7 of the Act.

Two of the four populations of *Eriodictyon capitatum* occur on private lands with very little likelihood of Federal involvement. Critical habitat designation only applies to Federal lands or lands on which there is Federal activity. The other two populations, consisting of three colonies, occur on VAFB. Two of these three colonies are uniclonal, making them highly vulnerable to naturally occurring events. All populations are extremely small and the Service believes that any adverse modification of designated critical habitat for this species would also be likely to jeopardize the species under section 7 of the Act. Because the Department of Defense is aware of this species and its locations on VAFB, and must consult with the Service on any activities likely to affect these populations once the species is listed, there would be no additional benefits to the species from designation of critical habitat beyond those conferred by listing itself. Designation of critical habitat is therefore not prudent for *Eriodictyon capitatum* because of lack of benefit.

Hemizonia increscens ssp. *villosa* is known only from one population on private land where there is very little likelihood of Federal involvement. Critical habitat designation only applies to Federal lands or lands on which there is Federal activity. Designation of critical habitat for *Hemizonia increscens* ssp. *villosa* is therefore not prudent because of a lack of benefit.

Only a single population of *Lupinus nipomensis* is known to be extant. The only other known occurrence was extirpated by land conversion. The plant occurs only on private lands with very little likelihood of Federal involvement. Critical habitat designation only applies to Federal lands or lands on which there is Federal activity. No Federal lands occur within the historical range of the species. Designation of critical habitat for *Lupinus nipomensis* is therefore not prudent because of a lack of benefit.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition from willing sellers and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat,

if any is designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

VAFB will likely become involved with two of these plant taxa through the section 7 consultation process. While no activities are known at this time, future activities may affect populations of or habitat for *Cirsium loncholepis* and *Eriodictyon capitatum*. The Corps might become involved with *C. loncholepis* through its permitting authority as described under section 404 of the CWA, although the Service believes that activities regulated under section 404 are not a likely threat to this species. As previously discussed, nationwide or individual permits cannot be issued when a federally listed endangered or threatened species would be affected by a proposed project without first completing a section 7 consultation with the Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened and endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction of areas under federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because these species are not in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.62. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is the policy of the Service, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. The Service believes that, based upon the best available information, the following actions would not result in a violation of section 9, provided these activities were carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., military activities, grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction and maintenance, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility line crossing suitable habitat, other land use activities that would significantly modify the habitat of the taxa) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act; or when such activity does not occur in habitats suitable for the survival and recovery of the four taxa proposed in this rule and does not alter the hydrology or habitat supporting those taxa.

(2) Casual, dispersed human activities on foot or horseback (e.g., camping, hiking, bird-watching, sightseeing, photography).

(3) Activities on private lands (without Federal funding or involvement), such as grazing management, agricultural conversions, wetland and riparian habitat modification (not including filling of wetlands), flood and erosion control, residential development, road construction, pesticide/herbicide application, residential landscape maintenance, and pipelines or utility lines crossing suitable habitat.

The Service believes that the actions listed below might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the taxa on Federal lands.

(2) Application of herbicides violating label restrictions.

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, would constitute a violation of section 9, should these taxa be listed, should be directed to the Field Supervisor of the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Fish and Wildlife Service will follow its peer review policy (July 1, 1994; 59 FR 34270) in the processing of this rule. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

A final determination of whether to list these taxa will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final decision-making document that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed

to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This proposed rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Tim Thomas, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Cirsium loncholepis	La Graciosa thistle ..	U.S.A. (CA)	Asteraceae—Sunflower.	E	.....	NA	NA
.	.	.	.	.	.	.	.
Eriodictyon capitatum.	Lompoc yerba santa	U.S.A. (CA)	Hydrophyllaceae—Waterleaf.	E	.....	NA	NA
.	.	.	.	.	.	.	.
Hemizonia increscens ssp. *villosa.*	Gaviota tarplant	U.S.A. (CA)	Asteraceae—Sunflower.	E	.....	NA	NA
.	.	.	.	.	.	.	.
Lupinus nipomensis	Nipomo Mesa lupine	U.S.A. (CA)	Fabaceae—Pea	E	.....	NA	NA
.	.	.	.	.	.	.	.

Dated: March 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–8049 Filed 3–27–98; 8:45 am]

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Notices

Federal Register
Vol. 63, No. 60
Monday, March 30, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[PY–97–007]

United States Grade Standards for Poultry and Rabbits

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is changing the United States Grade Standards for Poultry. Specifically, the changes will revise the existing grade standards for boneless parts, skinless carcasses and parts, and boneless, skinless parts. New grade standards will be added for ready-to-cook (raw), boneless, skinless drumsticks and legs; and raw size-reduced boneless, skinless products. Existing standards for defeathering will be clarified by detailing specific feather tolerances for Grades A-, B-, and C-quality carcasses and parts. Additionally, the authority to grade-identify boneless, skinless products under three tentative standards that were used to develop the new grade standards will be terminated. The standards are being updated to reflect changes in poultry processing technology and marketing.

EFFECTIVE DATE: April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Rex A. Barnes at (202) 720–3271.

SUPPLEMENTARY INFORMATION: Poultry grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, and is offered on a fee-for-service basis.

On December 4, 1995, the Voluntary United States Grade Standards for Poultry and Rabbits were removed from the Code of Federal Regulations (CFR) as part of the National Performance Review program to eliminate unnecessary regulations and to improve those that remain in force. AMS continues to administer the official standards and makes copies available on the Internet or upon request. The United States Grade Standards for Poultry are now referred to as AMS 70.200 *et seq.* and the United States Grade Standards for Rabbits are now referred to as AMS 70.300 *et seq.*

Background and Comments

A notice of proposed changes to the United States Grade Standards for Poultry and Rabbits was published in the **Federal Register** (62 FR 51079) on September 30, 1997. Comments on the proposal were solicited from interested parties until December 1, 1997.

During the 90-day comment period, the Agency received two comments, both from State Departments of Agriculture and Consumer Services. One comment was in agreement with the proposed changes.

The other comment did not oppose the proposed changes, but questioned the Agency's position regarding skin as a defect on skinless carcasses and parts, and boneless, skinless products. As a result of this comment, the Agency is conducting a review of its policy and practices regarding skin on skinless products. If changes or clarifications to the standards appear warranted as a result of this review, a separate notice will be published in the **Federal Register** to advise the industry and public.

The Agency expects the proposed changes to extend the value of the U.S. Grade Standards for Poultry, and will therefore revise the subject standards as proposed. Copies of the revised standards are available from the Standardization Branch, Poultry Programs, AMS, USDA, Room 3944-South Bldg., STOP 0259, 1400 Independence Avenue, SW, Washington, DC 20250–0259, (202) 720–3506; or on the Internet at www.ams.usda.gov/poultry/standards/. The changes are summarized as follows:

Boneless Parts

The standards for boneless parts will be revised to include drumsticks and legs; address boneless, skin-on parts only; and exclude tenderloins. Tenderloins and other boneless, skinless parts and their respective requirements will be covered under a new section. This change will organize requirements for each product type by section and make the standards clearer and more "user friendly."

Boneless, Skinless Parts

A new section for Grade A-quality tenderloins and other whole muscle boneless, skinless parts will be added and the criteria updated by: (1) Including all parts (previously boneless, skinless drumsticks and legs could not be grade identified); (2) allowing only slight discolorations on the flesh; and (3) requiring parts to be free of cartilage, blood clots, bruises, cuts, tears, and holes.

For trimming of boneless, skinless poultry drumsticks and legs, the standard will require at least one-half of the drumstick and leg remain intact, and the part need no longer retain the meat yield of the original part. This change from the tentative standard is based on the Agency's long-standing policy that parts must be in recognizable portions for identification purposes and that the "one-half" requirement provides a minimum relationship to the meat yield.

Size-Reduced Poultry Products

Standards for size-reduced poultry products will be established by the following:

(1) Requirements for Grade A-quality raw size-reduced boneless, skinless products in the form of sliced, diced, and other similarly cut poultry products will be added to the standards.

(2) The section title under the tentative standard will be revised from "Ready-to-Cook, Boneless-Skinless Poultry Products, Without Added Ingredients" to "Size-Reduced Poultry Products." This change clarifies that this section covers size-reduced poultry products exclusively.

(3) The requirements for the "size-reduced" section will be revised from the tentative standard to require uniformity in product size and shape to be dictated by the size-reduction process. This change is necessary because it is improbable that all products of this nature would be uniform, especially since new technology, including slicing and dicing procedures, will constantly be improved, modified, and refined.

(4) Requirements for products labeled "sliced (part)" will be added to the standards. The product, such as breast, thigh, etc., shall: (a) Originate from the slicing of the boneless, skinless part; and (b) collectively approximate the

shape of the original part prior to slicing. Further, the slices need not come from the same part. These requirements are consistent with current guidelines for poultry labeled "whole chicken, cut-up," where all parts need not come from the same chicken.

Feather Criteria

The feather criteria in Grade A-, B-, and C-quality poultry carcasses and parts and Grade A-quality poultry roasts will be updated. Existing standards require that poultry either be "free of feathers" or possess only a few feathers when examined at normal grading speeds. The standards will be revised to specify the number and length of protruding feathers allowed on poultry for each grade, and limit the length of hair and/or down permitted on ducks and geese. These additions reflect the Agency's actual grading interpretation and practices, and do not require a change in existing procedures.

Tentative Grade Standards

The authority for the use of the three tentative grade standards will be terminated for: (1) Ready-to-cook boneless, skinless legs and drumsticks; (2) ready-to-cook boneless, skinless products without added ingredients; and (3) cooked boneless, skinless products, without added ingredients published in the **Federal Register** on March 30, 1995 (60 FR 16428), June 12, 1995 (60 FR 3083), and February 15, 1996 (61 FR 5975), respectively.

Miscellaneous Changes

Additionally AMS will:

(1) Add poultry tenderloins and wing portions to the standards to make each eligible for grade identification. Tenderloins may be identified as Grade A-quality; and wing portions may be identified as Grade A-, B-, or C-quality parts.

(2) Allow the use of clear to semi-clear marinades and sauces for grade-identified products, provided the ingredients do not alter the applicable grade factors or detract from the appearance of the product;

(3) Revise standards for skinless carcasses and parts to include specific labeling options; and

(4) Make additional miscellaneous changes to remove obsolete material and otherwise clarify, update, simplify, and technically correct the standards. These changes are editorial or housekeeping in nature and impose no new requirements.

Dated: March 24, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–8176 Filed 3–27–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Snake River Watershed, Marshall, Pennington, and Polk Counties, MN

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, give notice that the environmental impact statement is being prepared for Snake River Watershed, Marshall, Pennington and Polk Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: William Hunt, State Conservationist, Natural Resources Conservation Service, 375 Jackson Street, Suite 600, St. Paul, MN 55101, Telephone: (612) 602–7854.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, William Hunt, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project's purpose is to provide flood prevention in the watershed. Alternatives under consideration to reach these objectives include conservation land treatment, off-channel floodwater retarding structure, and floodway.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from William Hunt, State Conservationist, at the above address or telephone (612) 602–7854.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: March 20, 1998.

William Hunt,

State Conservationist.

[FR Doc. 98–8226 Filed 3–27–98; 8:45 am]

BILLING CODE 3410–06–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans With Disability Act Accessibility Guidelines for Passenger Vessels

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of intent to establish advisory committee.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) announces its intent to establish a Passenger Vessel Access Advisory Committee (Committee) to make recommendations for accessibility guidelines for passenger vessels covered by the Americans with Disabilities Act of 1990. The Access Board requests applications for representatives to serve on the Committee.

DATES: Applications should be received by May 14, 1998.

ADDRESSES: Applications should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Fax number (202) 272–5447.

Applications may also be sent via electronic mail to the Access Board at the following address: pvaac@access-board.gov.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 19 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request and is also available on the Board's Internet site (http://

www.access-board.gov/notices/pvaac.htm)

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 *et seq.*) to ensure that facilities and vehicles covered by the law are readily accessible to and usable by individuals with disabilities.[1] The ADA is a comprehensive civil rights law that prohibits discrimination on the basis of disability. Title II of the ADA establishes requirements for the purchase, lease, and remanufacture of vehicles operated by State and local government entities to provide designated public transportation. 42 U.S.C. 12141, 12142, 12144. For purposes of title II of the ADA, the term "designated public transportation" means "transportation * * * by bus, rail, or any other conveyance * * * that provides the general public with general or special service (including charter service) on a regular and continuing basis."[2] 42 U.S.C. 12141(2). Passenger vessels such as ferries operated by State and local government entities to provide designated public transportation are thus subject to the transportation vehicle requirements of title II of the ADA.

Title III of the ADA establishes requirements for the purchase and lease of vehicles operated by private entities, who are primarily engaged in the business of transporting people and whose operations affect commerce, to provide specified public transportation. 42 U.S.C. 12184. For purposes of title III of the ADA, the term "specified public transportation" means "transportation by bus, rail, or any other conveyance * * * that provides the general public with general or special service (including charter service) on a regular and continuing basis."[3] 42 U.S.C. 12181(10). Passenger vessels such as cruise ships and excursion boats operated by private entities to provide specified public transportation are thus subject to the transportation vehicle requirements of title III of the ADA.[4] Title III of the ADA also establishes requirements for the purchase and lease of vehicles by private entities who are not primarily engaged in the business of transporting public but operate a demand responsive or fixed route system. 42 U.S.C. 12182(b)(2) (B) and (C). For example, an amusement park or hotel that operates shuttle boats to transport patrons from a parking area to the main attraction area or hotel itself would be subject to the transportation vehicle requirements of title III of the ADA.

In addition to the transportation vehicle requirements, title III of the ADA establishes requirements for new construction and alteration of places of public accommodation operated by private entities. 42 U.S.C. 12183. There are twelve categories of places of public accommodation covered by title III of the ADA, including places of lodging, establishments serving food or drink, and places of exhibition or entertainment. 42 U.S.C. 12181(7) (A)–(L). Passenger vessels or portions of vessels that are within any of the twelve categories of places of public accommodation such as cruise ships, dinner ships, gaming boats, and sightseeing vessels are thus subject to the public accommodation requirements of title III of the ADA.[5]

As discussed above, titles II and III of the ADA cover a variety of passenger vessels. The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles in 1991. 36 CFR part 1192. These guidelines primarily address bus and rail transportation systems and have been adopted as the accessibility standards for transportation vehicles by the Department of Transportation. 49 CFR part 38. When the accessibility guidelines and standards were proposed, the Access Board and the Department of Transportation recognized that passenger vessels present different design issues than buses and trains and requested information on barriers presented by passenger vessels and how to solve them. 56 FR 11848 (March 20, 1991); 56 FR 13866 (April 4, 1991). Based on comments received, the Access Board and the Department of Transportation determined that further study was necessary to develop accessibility guidelines and standards for passenger vessels. 56 FR 45558 (September 6, 1991); 56 FR 45599 (September 6, 1991). The Access Board and the Department of Transportation subsequently sponsored a study to assess the feasibility and impact of providing access to passenger vessels. Volpe National Transportation Systems Center, "Access for Persons with Disabilities to Passenger Vessels and Short Facilities: The Impact of Americans with Disabilities Act of 1990" (July 1996).[6] Project ACTION of the National Easter Seal Society also recently completed a study that examines best practices for providing access to passenger vessels. Katherine McGuiness Associates, "Accessible Water Transportation, A Project ACTION Best Practice Study" (October 1997).[7] Sufficient information is now available to develop accessibility guidelines and standards for passenger vessels.

The Access Board and the Department of Transportation held an informational meeting in April 1996 with organizations representing people with disabilities and the passenger vessels industry to discuss issues related to developing accessibility guidelines and standards for passenger vessels. As a result of the meeting and its experience working with interested organizations to develop accessibility guidelines, the Access Board has decided to establish a Passenger Vessels Access Advisory

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

[2] Designated public transportation does not include public school transportation, transportation by aircraft (which is covered by the Air Carrier Access Act (49 U.S.C. 1374(c))), or intercity or commuter rail transportation (which is covered by other parts of the ADA (42 U.S.C. 12161, 12162)).

[3] Specified public transportation does not include transportation by aircraft (which is covered by the Air Carrier Access Act (49 U.S.C. 1374(c))).

[4] The Department of Transportation is responsible for issuing regulations to implement the transportation vehicle requirements of title III of the ADA. 42 U.S.C. 12186(a)(1). The Department of Transportation has interpreted specified public transportation to include cruise ships. 56 FR 45600 (September 6, 1991). Regarding foreign-flag cruise ships, the Department of Transportation has noted that the United States has jurisdiction over foreign-flag ships in its ports but its ability to enforce its laws and regulations may be limited where the terms of a law or regulation are in conflict with the terms of an international treaty. *Id.* The Department of Transportation has indicated that it would structure any regulatory requirements affecting foreign-flag ships to avoid such conflicts. *Id.*

[5] The Department of Justice is responsible for issuing regulations to implement the public accommodation requirements of title III of the ADA. 42 U.S.C. 12186(b). Under the Department of Justice regulations, places of public accommodation on passenger vessels are covered by the public accommodation requirements of title III of the ADA. 28 CFR part 36, appendix B (see p. 613 of the July 1, 1997 edition). Thus, some passenger vessels such as cruise ships are subject to both the transportation vehicle and public accommodation requirements of title III of the ADA.

[6] The report may be purchased from the National Technical Information Service by calling (703) 605–6000 and requesting publication number PB 97146948.

[7] The report may be obtained from Project ACTION by calling (202) 347–3066 (voice) or (202) 347–7385 (TTY).

Committee (Committee). The Department of Transportation and the U.S. Coast Guard will work with the Committee. The Committee will make recommendations on issues such as:

- Types of passenger vessels to be addressed by the accessibility guidelines;
- Barriers to the use of such vessels by persons with disabilities;
- Solutions to such barriers, if known, categorized by disability (different solutions may be needed for different disabilities) and research on such barriers; and
- Contents of the accessibility guidelines.

The Committee will be expected to present a report with its recommendations within 18 months of the Committee's first meeting.

The Access Board requests applications for representatives of the following interests for membership on the Committee:

- Owners and operators of various passenger vessels;
- Designers or manufacturers of passenger vessels;
- Individuals with disabilities; and
- Others affected by accessibility guidelines for passenger vessels.

The number of Committee members will be limited to effectively accomplish the Committee's work and will be balanced in terms of interests represented. Organizations with similar interests are encouraged to submit a single application to represent their interest.

Applications should be sent to the Access Board at the address listed at the beginning of this notice. The application should include the representative's name, title, address, and telephone number; a statement of the interests represented; and a description of the representative's qualifications, including knowledge of accessible design and any experience making passenger vessels accessible to individuals with disabilities.

Committee members will not be compensated for their service. The Access Board, at its own discretion, may pay travel expenses for a limited number of persons who would otherwise be unable to participate on the Committee. Committee members will serve as representatives of their organizations, not as individuals. They will not be considered special government employees and will not be required to file confidential financial disclosure reports.

After the applications have been reviewed, the Access Board will publish a notice in the **Federal Register** announcing the appointment of Committee members and the first meeting of the Committee. The first meeting of the Committee is tentatively scheduled for September 1998 in Washington, DC. The Committee will operate in accordance with the Federal Advisory Committee Act, 5 U.S.C. app 2. Committee meetings usually will be held in Washington, DC. Each meeting will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen days in advance of the meeting. Records will be kept of each meeting and made available for public inspection. Although the Committee will be limited in size, there will be opportunities for the public to present written information to the Committee, participate through subcommittees, and to comment at Committee meetings.

Thurman M. Davis, Sr.,

Chair, U.S. Architectural and Transportation Barriers Compliance Board.

[FR Doc. 98–8264 Filed 3–27–98; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; New World Transtechnology; Order Denying Permission to Apply for or Use Export Licenses

On December 20, 1996, New World Transtechology was convicted in the United States District Court for the Southern District of Texas of violating the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 1997)) (IEEPA). New World Transtechnology was convicted on one count of knowingly and willfully attempting and causing to be exported, to the People's Republic of China, three Sun Microsystems SPARCstation computers without the required validated export license or other authorization from the U.S. Department of Commerce, and one count of knowingly and willfully attempting to export and attempting to cause to be exported from the United States to the Commonwealth of Hong Kong, for transshipment to the People's Republic of China, a MIPS Magnum 4000 PC–50 Advanced RISC computer without the required validated export license or other authorization from the U.S. Department of Commerce.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. Sections 2401–2420 (1991 & Supp. 1997)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1997)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of New World Transtechnology's conviction for violating IEEPA and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny New World Transtechnology permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of its conviction. The 10-year period ends on December 20, 2006. I have also decided to revoke all licenses issued pursuant to the Act in which New World Transtechnology had an interest at the time of its conviction.

Accordingly, *it is hereby ordered*

I. Until December 20, 2006, New World Transtechnology, 417 Church Street, Apartment 25, Galveston, Texas 77550, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item")

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[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Export Administration Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to New World Transtechnology by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-producted direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 20, 2006.

VI. A copy of this Order shall be delivered to New World Transtechnology. This Order shall be published in the **Federal Register**.

Dated: March 19, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 97–8231 Filed 3–27–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Open Meeting

ACTION: Notice is hereby given of a meeting of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, created pursuant to Executive Order 13038.

SUMMARY: The President established the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (PIAC) to advise the Vice President on the public interest obligations of digital broadcasters. The Committee will study and recommend which public interest obligations should accompany broadcasters' receipt of digital television licenses. The President designated the National Telecommunications and Information Administration as secretariat for the Committee.

AUTHORITY: Executive Order 13038, signed by President Clinton on March 11, 1997.

DATES: The meeting will be held on Tuesday, April 14, 1998 from 8:30 a.m. until 5:00 p.m.

ADDRESSES: The meeting is scheduled to take place in the Auditorium at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. This location is subject to change. If the location changes, another **Federal Register** notice will be issued. Updates about the location of the meeting will also be available on the Advisory Committee's homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm or you may call Karen Edwards at 202–482–8056.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4720; 14th Street and Constitution Avenue, N.W.; Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

MEDIA INQUIRIES: Please contact Paige Darden at the Office of Public Affairs, at 202–482–7002.

AGENDA:

Tuesday, April 14

Opening remarks
Committee deliberations
Closing remarks

This agenda is subject to change. For an updated, more detailed agenda, please check the Advisory Committee homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm.

PUBLIC PARTICIPATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. This meeting is physically accessible to people with disabilities. Any member of the public requiring special services, such as sign language interpretation or other ancillary aids, should contact Karen Edwards at least five (5) working days prior to the meeting at 202–482–8056 or at piac@ntia.doc.gov.

Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. The Secretariat's guidelines for public comment are described below and are available on the Advisory Committee website (www.ntia.doc.gov/pubintadvcom/pubint.htm) or by calling 202–482–8056.

GUIDELINES FOR PUBLIC COMMENT: The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters welcomes public comments.

Oral Comment: In general, opportunities for oral comment will usually be limited to no more than five (5) minutes per speaker and no more than thirty (30) minutes total at each meeting.

Written Comment: Written comments must be submitted to the Advisory Committee Secretariat at the address listed below. Comments can be submitted either by letter addressed to the Committee (please place "Public Comment" on the bottom left of the envelope and submit at least thirty-five (35) copies) or by electronic mail to piac@ntia.doc.gov (please use "Public Comment" as the subject line). Written comments received within three (3) workings days of a meeting and comments received shortly after a meeting will be compiled and sent as briefing material to Committee members prior to the next scheduled meeting.

OBTAINING MEETING MINUTES: Within thirty (30) days following the meeting, copies of the minutes of the meeting may be obtained over the Internet at www.ntia.doc.gov/pubintadvcom/pubint.htm, by phone request at 202–482–8056 or 202–501–6195, by email request at piac@ntia.doc.gov or by written request to Karen Edwards;. Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4720; 14th Street and Constitution Avenue N.W.; Washington, DC 20230.

Shirl Kinney,

Acting Assistant Secretary for Communications and Information.

[FR Doc. 98–8291 Filed 3–27–98; 8:45 am]

BILLING CODE 3510–04–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Mauritius

March 24, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67626, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 24, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on April 1, 1998, you are directed to decrease the limit for Categories 338/339 to 418,893 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–8194 Filed 3–27–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Army National Guard Survey; OMB Number 0702—[to be determined].

Type of Request: New Collection.

Number of Respondents: 6,000.

Responses Per Respondent: 1.

Annual Responses: 6,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 1,500.

Needs And Uses: This research will be a mail survey among Army National Guard members. The research will assist the Army National Guard (ARNG) in making the most effective use of its pubic relations, advertising, and marketing budget for recruiting efforts. The research will help the ARNG and its advertising agency prioritize activities, focus their messages, and understand the various segments of Guard members. The public relations, advertising, and marketing activities can have a significant impact on recruiting and retention of Guard members. Recruiting and retention have been areas of concern in recent years for the Army Nation Guard.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 24, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–8139 Filed 3–27–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Satellite Reconnaissance

ACTION: Notice of Advisory Committee Meetings.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

VOL 63 ISS 60 MR 30 1998 UMI

SUMMARY: The Defense Science Board Task Force on Open Systems will meet in closed session on April 7–8 and May 6–7, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the benefits of, criteria for, and obstacles to the application of an open systems approach to weapon systems, and make recommendations on revisions to DoD policy, practice, or investment strategies that are required to obtain maximum benefit from adopting open systems. The Task Force will examine application to new defense programs, to those that have already made substantial investments in a design, and to those that are already fielded, across the spectrum of weapon systems, not just those heavily dependent on advanced computers and electronics.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: March 24, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–8138 Filed 3–27–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent to Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Tel Med Technologies (hereafter TMT), a Michigan Corporation, an exclusive license under: United States Patent Application Serial No. 08/87,118 filed in the name of Stephen M. Schmitt for a "Digital Imaging System for construction of implant retained restorations."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Randy Heald, Patent Attorney, Secretary of the Air Force, Office of the General Counsel, SAF/GCQ, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9037.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–8228 Filed 3–21–98; 8:45 am]

BILLING CODE 3810–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 29, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 24, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0015–180 SFMR

SYSTEM NAME:

Army Council of Review Boards *(February 22, 1993, 58 FR 10030).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Military Review Boards'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'DD Form 293' to entry.

* * * * *

PURPOSE(S):

Add '(7) Army Grade Determination Review Board, and (8) Army Active Duty Board' to entry.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Review Boards Agency, ATTN: Administrative Support, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.'

* * * * *

A0015–180 SFMR

SYSTEM NAME:

Military Review Boards.

SYSTEM LOCATION:

Office of the Secretary of the Army, 101 Army Pentagon, Washington, DC 20310–0101. The Army Review Boards Agency (ARBA) maintains an automated index of Discharge Review Board cases by alphanumeric code and case summary data by personal identifier. The Army Review Boards Agency, Support Division, St. Louis, MO performs administrative processing of these cases via its on-line terminal to the Army Review Boards Agency. Decisions of the Military Review Boards are incorporated in the Official Military Personnel File of the petitioner at the U.S. Army Reserve Components Personnel and Administration Center, St. Louis, MO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members and/or former members of the active Army; prospective enlistees/inductees separated or pending separation who have cases pending or under consideration by the Military

Review Boards or any of its components.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for review which includes name, Social Security Number, present address; DD Form 293; name and address of counsel, if applicable; type, authority, and reason for discharge; mode of hearing, if desired; issues addressed by the board, findings, conclusions, and decisional documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1214, 1216, 1553, and 1554; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used by the following Boards to determine propriety of action taken or requested, within the purview of the Board's charter: (1) Army Discharge Review Board, (2) Army Board for Review of Elimination, (3) Army Discharge Rating Review Board, (4) Army Physical Disability Appeal Board, (5) Army Security Review Board, (6) Army Ad Hoc Board, (7) Army Grade Determination Review Board, and (8) Army Active Duty Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, magnetic tapes and/or discs, microfiche.

RETRIEVABILITY:

Within individual Board, by Social Security Number or surname of petitioner.

SAFEGUARDS:

Information is privileged, restricted to individuals who have a need in the performance of official duties. Records are retained in locked rooms within buildings having security guards. Automated records are identified as Privacy Act data and further protected by assignment of user ID and passwords.

RETENTION AND DISPOSAL:

Paper records are stored in the Official Military Personnel File. Active cases in automated media are retained for 2 years before being transferred to the historical files where they are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Review Boards Agency, ATTN: SFMR-RBX, Promulgation Team, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Review Boards Agency, ATTN: SFMR-RBX, Promulgation Team, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

Individuals must furnish full name, Social Security Number, home address and telephone number, and sufficient details to permit locating the records in question.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Review Boards Agency, ATTN: SFMR-RBX, Promulgation Team, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

Individuals must furnish full name, Social Security Number, home address and telephone number, and sufficient details to permit locating the records in question.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340 21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; his/her Official Military Personnel File; correspondence, documents, and related information generated as a result of action by the Boards.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–8136 Filed 3–27–98; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.
ACTION: Amendment Notice.

SUMMARY: The Department of the Army proposes to amend the preamble to the Army's compilation of Privacy Act systems of records notices.
EFFECTIVE DATE: March 30, 1998.
ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.
FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.
SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Army proposes to amend the preamble to the Army's compilation of Privacy Act systems of records notices. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 24, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

UNITED STATES ARMY

HOW SYSTEMS OF RECORDS ARE ARRANGED.

Department of the Army records are identified by the directive number which prescribes the records created, maintained and used, and are published in numerical sequence by identification number. For example, a system of records about assignment of military personnel may be found in the 614 series; 'assignments, details and transfers'. Some subjects, such as investigations, are treated as sub-elements of a series, e.g., 'criminal investigations', 'security', and 'military intelligence'.

HOW TO USE THE INDEX GUIDE.

To locate a particular system of records, follow this general guide. The series subject corresponds to the system identification number. For example: medical records for military and civilian

personnel are in the 40 series. The first letter, 'A', represents the Army, the number 40-66 is the prescribing directive, and the suffix letters are internal management devices.

FOR FURTHER ASSISTANCE:

Any questions should be addressed to the Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

POINT OF CONTACT:

Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUBJECT SERIES

SYSTEM IDENTIFICATION SERIES

A0001
Office Administration Housekeeping Files
A0015
Boards, Commissions, and Committees Files
A0020
Inspector General Assistance, Inspections Investigation, and Follow-up Files
A0025
Information Management Files
A0027
Legal Services Files
A0030
Food Program Files
A0037
Financial Administration/ Management Files
A0040
Medical Services Files
A0055
Transportation and Travel Files
A0056
Surface Transportation Files
A0060
Exchange Service Files
A0065
Postal Services Files
A0070
Research, Development, and Acquisition Files
A0095
Aviation Files
A0135
General Army National Guard and Army Reserve Files
A0140
U.S. Army Reserve Files
A0145
Reserve Officers Training Corps (ROTC) Files
A0165
Religious Activity Files
A0190
Military Police Files
A0195
Criminal Investigation Files
A0210
Army Installations Files
A0215
Morale, Welfare, and Recreation/ Nonappropriated Funds (NAF) Files
A0220
Military Personnel Data Files
A0340
Army Privacy Program Files
A0350
Training and Evaluation Files
A0351
Army Schools Files
A0352
Dependent's Education Files
A0360
Army and Public Information Files
A0380
Security Information Files
A0381
Military Intelligence Files
A0385
Safety Files
A0405
Homeowners Assistance/Real Estate Files
A0570
Human Resources Information Files
A0600
General/Military Personnel Management Files
A0601
Military Personnel Procurement Files
A0602
Behavioral and Social Sciences Files
A0608
Personal Affairs Files
A0614
Assignments, Details, and Transfers Files
A0621
Education Files
A0635
Officer/Enlisted Personnel Separation Files
A0640
Personnel Management and Identification of Individuals Files
A0672
Decorations, Awards, and Honors Files
A0680
Personnel Information System Files
A0690
Civilian Personnel Files
A0710
Inventory Management Files
A0715
Procurement Files
A0725
Requisition and Issue of Supplies and Equipment Files
A0735
Library Borrowers'/Users' Files
A0870
Army History Files
A0920
Civilian Marksmanship Program Files
A0930
Army Emergency Relief Transaction Files
A1105
Corps of Engineers Planning Files
A1130
Corps of Engineers Civilian Uniform Files
A1145
Corps of Engineers Regulator Functions Files

ARMY AND AIR FORCE EXCHANGE SERVICE (AAFES)

AAFES 02
Executive Management Records
AAFES 04
Personnel Management Records
AAFES 05
Information and Public Relations Records
AAFES 06
Legal and Legislative Records
AAFES 07
Financial Management Records
AAFES 09
Automated Data Processing Records
AAFES 12
Procurement Records
AAFES 15
Transportation Records
AAFES 16
Pans and Management Records
AAFES 17
Safety and Security Records

IN ADDITION, THE DEPARTMENT OF THE ARMY MAINTAINS SYSTEMS OF RECORDS IN ACCORDANCE WITH GOVERNMENT-WIDE PRIVACY ACT SYSTEMS OF RECORDS NOTICES.

Equal Employment Opportunity Commission

EEOC/GOVT-1
Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

Federal Emergency Management Agency

FEMA/GOVT-1
National Defense Executive Reserve System.

General Services Administration

GSA/GOVT-2
Employment Under Commercial Activities Contracts.
GSA/GOVT-3
Travel Charge Card Program.
GSA/GOVT-4
Contracted Travel Service Program.

Department of Labor

DOL/GOVT-1
Office of Workers' Compensation Programs, Federal Employees' Compensation Act File.
DOL/GOVT-2
Job Corps Student Records.

Merit Systems Protection Board

MSPB/GOVT-1
Appeal and Case Records.

Office of Government Ethics

OGE/GOVT-1
Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.
OGE/GOVT-2
Confidential Statements of Employment and Financial Interests.

Office of Personnel Management

OPM/GOVT-1
General Personnel Records.
OPM/GOVT-2
Employee Performance File System Records.
OPM/GOVT-3
Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers.
OPM/GOVT-4
[Reserved]
OPM/GOVT-5
Recruiting, Examining, and Placement Records.
OPM/GOVT-6
Personnel Research and Test Validation Records.
OPM/GOVT-7
Applicant Race, Sex, National Origin, and Disability Status Records.
OPM/GOVT-8
[Reserved]
OPM/GOVT-9
File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.
OPM/GOVT-10
Employee Medical File System Records.

[FR Doc. 98–8137 Filed 3–27–98; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS); Marble Bluff Fish Passageway Enhancement Project, Lower Truckee River, Nevada

AGENCY: U.S. Army Corp of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), lead agency under the National Environmental Policy Act, and the Pyramid Lake Paiute Tribe (PLPT), non-federal sponsor, intend to prepare a document to evaluate the environmental effects of the proposed fish spawning and passageway enhancement project in the vicinity of Marble Bluff Dam.

The study purpose is to identify and evaluate alternative measures to increase fish passage on the lower Truckee River between Pyramid Lake and Marble Bluff Dam and to increase spawning and rearing habitat for the migratory cui-ui and Lahontan cutthroat trout (LCT) along the Lower Truckee River. The investigation will analyze several measures evaluated in the reconnaissance phase study, and will identify a feasible habitat restoration and fish passage enhancement plan. Operational measures considering changes to river flow regime and reservoir operations and structural measures including a meandering fish channel and dual lock system will be further evaluated.

FOR FURTHER INFORMATION CONTACT: An issues scoping meeting for the investigation is scheduled for April 1, 1998, from 6 to 8 p.m. at the Pyramid Lake Paiute Tribe Council Chambers, 208 Capital Hill, Nixon, NV 89424. Please address any questions regarding the EIS to Mr. Mario Parker, Planning Division, Environmental Resources Branch, Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922. He can also be reached by telephone at (916) 557–6701.

SUPPLEMENTARY INFORMATION:

1. Project Location

(a) The Truckee River system is located in the western Great Basin along the eastern slopes of the Sierra Nevada. The river flows out of Lake Tahoe on the California side and winds its way for about 140 miles through Reno, Nevada and other smaller towns to its terminus in Pyramid Lake. The primary study area is on the PLPT Reservation and includes those reaches of the Truckee River, extending from about the town of Wadsworth to Pyramid Lake. Overall, the Truckee basin consists of approximately 3,600 square miles from Lake Tahoe, California, to Pyramid Lake, Nevada. The area includes nine small reservoirs and Lake Tahoe in the Sierra Nevada mountains, as well as Pyramid Lake and Winemucca Dry Lake in the eastern portion of the basin. The upstream reservoirs and lakes strongly influence downstream hydrology along the lower reaches of the river.

(b) Marble Bluff Dam and fish passageway was constructed in 1975 by the U.S. Bureau of Reclamation (BOR). The dam was constructed by the Bureau for the dual purpose of reducing riverbed downcutting and to help in the passage of fish from Pyramid Lake to the Lower Truckee River. The PLPT and U.S. Fish and Wildlife Service jointly manage the fish facility at Marble Bluff Dam, while the BOI maintains the dam and the fish facility. In the summer of 1997, the BOR modified the existing fish lock to compensate for several on-going facility operations problems. Additional modifications to the existing fish facility appear to be necessary to restore effective cui-ui passage to the lower Truckee River. The migration of Lahontan cutthroat trout is not expected to be significantly inhibited by the fish lock.

2. Proposed Action and Alternatives

(a) The Corps and the PLPT (non-Federal sponsor) are conducting a feasibility study to (1) develop long-term fish passage for cui-ui and LCT at Marble Bluff Dam and (2) develop flow regimes to improve spawning, migratory, and rearing habitat for the cui-ui and LCT, restore native riparian and wetland habitat, and generally optimize Lower Truckee River biota.

(b) The feasibility report and EIS will include the measures analyzed in the 1995 reconnaissance report and carried forward for analysis in the feasibility phase. The report will evaluate the no-action alternative and the following measures: (1) Construction of a meandering channel within the width of the existing fish passageway; (2) construction of a meandering channel along a new alignment that connects Pyramid Lake and the Truckee River upstream of Marble Bluff Dam; (3) elimination of the barrier created by the Pyramid Lake delta and low lake levels; (4) modification of the existing fish passageway; and (5) partial or full removal of Marble Bluff Dam.

3. Environmental Consequences

(a) The lead agencies have identified potential environmental effects of the proposed action in the following areas:

- Riparian habitat.
- Cultural resources.
- Land use.

4. Scoping Process

(a) "Scoping" is process of identifying the range of actions, alternatives, and impacts to be evaluated in an environmental document. The public is invited to assist the lead agency in scoping this EIS. This process provides an opportunity for the public to identify significant resources within the study area that may be affected by the project. To facilitate this involvement, a public scoping meeting will be held April 1, 1998, from 6 to 8 p.m. at the Pyramid Lake Paiute Tribe Council Chambers,

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208 Capital Hill, NV 89424. A summary of the meeting will be made available. Individuals, organizations, and agencies are also encouraged to submit written scoping comments by April 22, 1998.

(b) After the draft EIS is prepared, it will be circulated to all interested parties for review and comment. Public meeting will be held to receive verbal and written comments. All comments will be considered and responded to in the final EIS.

5. Availability

The draft EIS is scheduled to be distributed for public review and comment in late 1998. All persons interested in receiving the draft document should contact Mr. Mario Parker at (916) 557–6701.

Gregory D. Showalter,

Army Federal Register Liqison Officer.

[FR Doc. 98–8253 Filed 3–27–98; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 29, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 24, 1998.

Linda Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: 1998 Study of America Reads Challenge: READ*WRITE*NOW! (ARC:RWN) Summer Sites.

Frequency: On Occasion.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 65.

Burden Hours: 65.

Abstract: ED will use this data collection to generate information that describes ARC:RWN pilot sites providing summer and year-round community literacy programs. The information, collected from up to 65 project coordinators, will be used by ED officials to inform ARC reauthorization and proposed RWN legislation, and by ARC:RWN project coordinators and other community reading initiatives to design new projects.

[FR Doc. 98–8180 Filed 3–27–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 29, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission

of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 24, 1998.

Linda C. Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Technology Literacy Challenge Fund Performance Report.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 2,280.
Abstract: Information is necessary to manage the Technology Literacy Challenge Fund program, to consider the need for future authorizations, and to provide one set of data for evaluation and analysis.

[FR Doc. 98–8179 Filed 3–27–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–26–018]

El Paso Natural Gas Company; Notice of Report of Refunds

March 24, 1998.

Take notice that on March 19, 1998, El Paso Natural Gas Company (El Paso) tendered for filing its Report of Refunds at Docket Nos. RP91–26–016, *et al.*

El Paso states that the Report of Refunds reflects elimination of ineligible take-or-pay costs and related interest previously collected in direct bills and throughout surcharges. El Paso states that refunds were distributed on February 17, 1998.

El Paso states that the refunds totaled $8,898,687.12 inclusive of interest. El Paso states that the refund was comprised of $3,225,311.50 inclusive of interest distributed to customers subject to a direct bill and $5,673,375.62 inclusive of interest distributed to customers subject to a throughput surcharge.

El Paso states that copies of the document were served upon all interstate pipeline system customers who received a refund distribution and affected state regulatory commissions in accordance with the requirements of Section 385.2010 of the Commission's Rules of Practice and Procedure. El Paso states that each customer received its pertinent detail (included in Volume No. 2) when refunds were distributed. El Paso states that it was not furnishing the complete Volume No. 2 to all customers due to the voluminous nature of such material.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 31, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8161 Filed 3–27–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–60–000]

First National Oil, Inc.; Notice of Petition for Adjustment

March 24, 1998.

Take notice that on March 5, 1998, First National Oil, Inc. (National) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting relief from the schedule established by the Commission's September 10, 1997 order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000.[2] National's petition is on file with the Commission and open to public inspection. National files this petition in order to substantiate a contention of underpayment.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988.

National seeks relief based on the following grounds:

1. National no longer owns certain wells (the Eaton and the Langhofer). The working interest owners have died and their heirs have declined to make restitution to National for any overpayment.

2. Overwhelmed with the necessity of finding the old records and calculating the refunds to be requested National's bookkeeper of 15 years resigned in September of 1997.

3. The principal amount due from National, as operator has been tendered to Panhandle Eastern Pipeline Company.

4. That part of the principal amount applicable to National, as operator, has been offered to Enron in escrow. National requests approval of the escrow amount proposed for Enron, ($15,122.65) if accepted by Enron. National contends that certain wells-the #1 Harvey and the #1 Eaton were not receiving the maximum lawful price for the years 1971, 1972, 1973, 1974, and 1979 through 1992 and therefore are obligated for no refund in any event.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8164 Filed 3–27–98; 8:45 am]
BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–1–130–004]

Gas Transport, Inc.; Notice of Report of Billings and Refunds

March 24, 1998.

Taking notice that on March 17, Gas Transport, Inc. (GTI) filed in compliance with a Letter Order issued by the Federal Energy Regulatory Commission (Commission) on March 5, 1998, directing GTI to make refunds to its customers any Annual Charge Adjustment surcharge amounts collected in excess of the Commission approved $0.0020 per Dth rate for the period from October 1, 1996, through March 31, 1997.

GTI states that the Commission observed that, during the period from October 1, 1996 through March 31, 1997, GTI collected 9.0 cents per Dth, including the ACA surcharge of .22 cents per Dth. The Commission concluded that GTI's collection of .22 cents per Dth resulted in an overcharge of .02 cents per Dth when compared to the Commission-approved ACA surcharge.

GTI states that the refunds will be made by a credit to the March 1998 invoices for its IT customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 31, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8174 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–71–000]

Graham-Michaelis Corporation; Notice of Petition for Adjustment and Request for Extension of Time

March 24, 1998.

Take notice that on March 10, 1998, as supplemented on March 13, 1998, the Graham-Michaelis Corporation on behalf of the working interest owners for whom it operated leases (GMC and owners), filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures [15 U.S.C. § 3142(c) (1982)] with respect to the Kansas ad valorem tax refund liability. GMC and owners' petition is on file with the Commission and open to public inspection.

The Commission's September 10, 1997, order on remand from the D.C. Circuit Court of Appeals,[1] in Docket No. RP97–369–000, *et al.*,[2] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its Order Clarifying Procedures [82 FERC ¶ 61,059 (1988)], stating therein that producers [first sellers] could request additional time to establish the uncollectability of royalty refunds, and that first sellers may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

GMC and owners request an extension of 90 days from March 9, 1998, to allow GMC and owners and Colorado Interstate Gas Company (CIG) to resolve any dispute as to the correct amount of refund set forth in the Statement of Refunds Due [SRD] received from CIG and submit any unresolved dispute to FERC for resolution. Additionally, GMC and owners request that the Commission grant an adjustment to its procedures to allow SMC and owners to defer payment of principal and interest attributable to royalties for one year until March 9, 1999. Finally, GMC and owners request that the Commission grant an adjustment to its procedures to allow GMC and owners to place into an escrow account the amount of the refund which appears presently to be in dispute but which may still be resolved by agreement and (i) amounts attributable to royalty refunds which have not been collected from the royalty owners principal and interest; (ii) principal and interest on amounts attributable to production prior to October 4, 1983; (iii) interest on royalty amounts which have been recovered from the royalty owners (the principal of which was refunded); and (iv) interest on all reimbursed principal amounts determined to be refundable as being in excess of maximum lawful prices (excluding interest retained under (i), (ii), and (iii) above).

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8171 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Public Service Company of Colorado v. FERC, 91 F.3d 1478 (D.C. Cir. 1996), *cert. denied*, 65 U.S.L.W. 3751 and 3754 (May 12, 1997) (Nos. 96–954 and 96–1230).

[2] *See* 80 FERC ¶ 61,264 (1997); *order denying reh'g*, 82 FERC ¶ 61,058 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–67–000]

John O. Farmer, Inc.; Notice of Petition for Adjustment

March 24, 1998.

Take notice that on March 11, 1998, John O. Farmer, Inc. (Farmer) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] for KN Interstate Gas Transmission Company with respect to its Kansas ad valorem tax refund liability under the Commission's September 10, 1997 order in Docket Nos

[1] 15 U.S.C. 3142(c) (1982).

RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000.[2]

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

Farmer states that it is an operator of natural gas production and also owns working interests in said wells along with numerous other working interest owners in Kansas, which was subject to that state's ad valorem tax during the period 1983 through 1988.

Farmer requests that the pipeline be directed to tender a revised statement of refunds to Farmer and separate statements to the other individual working interest owners. Farmer states that it will work with the pipeline to provide sufficient information to prepare separate statements. Farmer also requests an adjustment to its procedures to allow Farmer to place in an interest bearing fund over which Farmer would maintain control. Farmer requests that the Commission provide for protective language to clarify that any amounts paid would be refunded with interest.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8169 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[4] 82 FERC ¶ 61,059 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–72–000]

John O. Farmer, Inc.; Notice of Petition for Adjustment

March 24, 1998.

Take notice that on March 11, 1998, John O. Farmer, Inc. (Farmer), as an operator who owns 100 percent working interest in the Ackerman Ratzlaff, and Stewart Leases (First Seller),[1] filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for an adjustment of the Commission's refund procedures [15 U.S.C. § 3142(c) (1982)] with respect to Farmer's Kansas ad valorem tax refund liability to Northern Natural Gas Company. Farmer's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order or remand from the D.C. Circuit Court of Appeals,[2] in Docket No. RP97–369–000, *et al.*,[3] directed first Sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission clarified the refund procedures in its Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)], stating therein that procedures (first Sellers) could request additional time to establish the uncollectability of royalty refunds, and that first Sellers may file requests for NGPA Section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on their individual circumstances.

Farmer requests that the Commission: 1) provide for protective language which would clarify that any amounts paid to the pipelines that are not ultimately required to be paid would be refunded with interest; and 2) permit the disputed amounts to be placed in an interest bearing fund over which Farmer would maintain control.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriation action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8172 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Attachments filed by Farmer indicate 100% ownership.

[2] Public Service Company of Colorado v. FERC, 91 F.3d 1478 (D.C. Cir. 1996), *Cert. denied*, 65 U.S.L.W. 3751 and 3754 (May 12, 1997) (Nos. 96–954 and 96–1230).

[3] *See* 80 FERC ¶ 61,264 (1997); *order denying reh'g*, issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–73–000]

John O. Farmer, Inc.; Notice of Petition for Adjustment

March 24, 1998.

Take notice that on March 11, 1998, John O. Farmer, Inc. (Farmer) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGNP) [15 U.S.C. 3142(c) (1982)], requesting relief from the Commission's refund procedures, with respect to Farmer's Kansas ad valorem tax refund liability, required by the Commission's September 10, 1997 order (in Docket No. RP97–369–000 *et al*).[1] Farmer's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[2] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

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the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Farmer states that it is an operator of natural gas production in Kansas which was subject to that state's ad valorem tax during the period 1983 through 1988. Farmer states that it also owns working interests in said wells along with numerous other working interest owners. With respect to this filing, Farmer states that Williams Natural Gas Company (Williams) has alleged that Farmer is obligated to refund certain amounts in accordance with Commission orders in these proceedings. Farmer states that on November 10, 1997, Williams tendered a schedule or statement of refunds to Farmer which provide the amount which Farmer is allegedly required to pay.

Farmer asserts that Williams has taken the position that Farmer as operator is responsible for the refunds attributable to all working interest owners. Farmer states that this position is contrary to the Commission's 1995 decision [71 FERC ¶ 61,185 (1995)], and therefore, Farmer requests that the pipeline purchaser be directed to tender a revised statement of refunds to Farmer and separate statements to the other individual working interest owners.

In addition, Farmer states that checks tendered by Farmer to the pipeline company for its working interest share contained certain language addressing the refunding to payer with interest any amounts ultimately not required to be paid by payor pursuant to court or Federal Energy Regulatory Commission order. Accordingly, Farmer requests that the conditional nature of the payments be expressly approved and that the Commission issue an order notifying the pipeline recipient that they will be required to refund to Farmer any amounts received, with interest, which are ultimately not required to be paid by Farmer.

Furthermore, Farmer states the Commission's January 28, 1998 "Order Clarifying Procedures", permits Farmer to pay any amounts in dispute into an escrow account "consistent with the types of escrow accounts that the Commission has approved in other proceedings." Farmer states that it has placed the outside working interest amounts, the disputed amounts and all interest in a separate interest bearing account. Farmer also states that because of the substantial expense involved and the complexities in determining the specific amounts in dispute, Farmer requests modification of the escrow requirement to permit it to place the disputed amounts in an interest bearing fund over which it will maintain control. Farmer states that it agrees to disburse the funds solely in accordance with subsequent orders of the Commission in these proceedings. Farmer further states that no party will be harmed or disadvantaged by this approach, and at the same time, Farmer will be relieved of the burden and associated cost of establishing formal escrow accounts.

Lastly, Farmer states that the dispute arises as to the tax reimbursement payments from Williams of $9,278.68 (Wheat Lease) and $3,793.64 (Schiff Lease) made October 26, 1987 with respect to 1986 taxes, and payments of $4,237.06 (Wheat Lease) and $6,337.78 (Schiff Lease) made January 30, 1989 with respect to 1987 taxes and the interest thereon. Farmer states that it is its position that the revenue received for these leases during these years did not exceed the applicable maximum lawful price established by the NGPA. Farmer states that it has enclosed in its filing a worksheet prepared by Williams showing the amounts paid as well as the Orders from the State Corporation Commission of Kansas determining these wells qualify for classification under Section 108 of the NGPA.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8173 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–162–000]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

March 24, 1998.

Take notice that on March 20, 1998, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to become effective April 1, 1998:

Second Revised Sheet No. 141

Kentucky West states that the purpose of this filing is to comply with Order No. 636–C, Kentucky West has revised its General Terms and Conditions Section 24.5 to provide that the longest contract term that a shipper exercising its right of first of refusal must match is five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8162 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–62–000]

Ned E. & Dorothy J. Lowry; Notice of Petition for Adjustment and Dispute Resolution Request

March 24, 1998.

Take notice that on March 10, 1998, Ned E. & Dorothy J. Lowry (The Lowry's) filed a petition for adjustment

under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] and a dispute resolution request, with respect to its Kansas ad valorem tax refund liability under the Commission's September 10, 1997 order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000.[2]

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission issued a January 28, 1998 order in Docket No. RP98–39–001, *et al.* (January 28 Order),[4] clarifying the refund procedures, stating that producers could request additional time to establish the uncollectability of royalty refunds, and that first seller may file requests for NGPA section 502(c) adjustment relief from the refund requirement and the timing and procedures for implementing the refunds, based on the individual circumstances applicable to each first seller.

The Lowry's requests that the Commission resolve any potential dispute between The Lowry's and Anadarko Gathering Company (Anadarko), finding that The Lowry's have no liability for reimbursement of Kansas ad valorem taxes. The Lowry's state that they are only royalty owners, and that those tax reimbursements were made on their royalty interest in lands in the City of Liberal, which were leased to Kennedy & Mitchell. The Lowry's aver that they were never lessee or working interest owners and further state that they made no sales of the gas. The Lowry's state they do not believe the refund orders apply to them, because they are not First Sellers.

The Lowry's indicate that they have advised Anadarko of the information stated above, but that Anadarko has not responded.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8166 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

[4] 82 FERC ¶ 61,059 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–63–000]

Mull Drilling Company, Inc.; Notice of Petition for Adjustment

March 24, 1998.

Take notice that on March 10, 1998, Mull Drilling Company, Inc. (MDC), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) [15 U.S.C. § 3142(c) (1982)], requesting an order from the Commission determining: (1) that MDC is only responsible for Kansas ad valorem tax refund amounts attributable to its working interest; (2) that the payment of Kansas ad valorem tax refunds will create a financial hardship for MDC and, therefore, that MDC should be permitted to amortize its refunds over a reasonable period of time; and (3) that MDC's liability for Kansas ad valorem tax refunds attributable to the Doggett oil and gas lease (Doggett) should be waived, on the basis that MDC has no ability to recoup any refunds from that lease. Absent adjustment relief, the Kansas ad valorem tax refunds are required by the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*[1] MDC's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [2] directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. That order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

MDC states that it was a party to certain gas purchase contracts entered into with Panhandle Eastern Pipe Line Company (Panhandle). MDC explains that, as the operator, of the leases dedicated under those contracts, MDC acted on behalf of itself and, in some cases, third-party working interest owners. MDC adds that it passed along the funds, including the Kansas ad valorem tax reimbursement funds, to the other working interest owners, and only retained those funds attributable to its own working interest.

MDC indicates its intent to tender the undisputed principal amount to Panhandle and to place the remaining funds in an escrow account. MDC states that it was established as an operating company, and that it has limited liquid assets to satisfy these claimed amounts. MDC avers that the payment of amount in dispute to Panhandle, and deposit of the remaining amount into escrow as related to MDC's working interest ownership, creates a profound hardship for MDC. Additionally, MDC request that the refund attributable to the Doggett lease be waived, since MDC states that it has no ability to recoup any of the amounts claimed as refunds from future production for the Doggett lease, because that lease has been abandoned and is no longer operated by MDC.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to be proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8167 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–163–000]

Nora Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 24, 1998.

Take notice that on March 20, 1998, Nora Transmission Company, (Nora) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective April 1, 1998:

Second Revised Sheet No. 141

Nora states that the purpose of this filing is to comply Order No. 636–C, Nora has revised its General Terms and Conditions Section 24.5 to provide that the longest contract term that a shipper exercising its right of first of refusal must match is five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8163 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–65–000]

Pickrell Drilling Company, Inc.; Notice of Petition for Adjustment

March 24, 1998.

Take notice that on March 10, 1998, Pickrell Drilling Company, Inc. (Pickrell) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] with respect to its Kansas ad valorem tax refund liability under Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] Pickrell's petition is on file with the Commission and open to public inspection

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Pickrell states that the Madden and the Barby-Harper are the wells in question. According to the Statement of Refunds Due from Northern Natural Gas Company for the Kansas ad valorem tax refund, Pickrell owes a principal of $18,759.44 and interest of $37,094.76 calculated to December 31, 1997, for a total of $55,854.20. If interest is extended to March 9, 1998, the total amount due would be $56,738.68

Pickrell states that these were low-volume wells and were always economically marginal. Although the Madden produced at rates approximating 100 Mcf per day, the controlled price for its gas was very low and ranged from $0.55 to $0.69 per Mcf. The Barby-Harper was a 103 well and received NGPA maximum lawful prices during 1984, it was more expensive to operate as it was completed at a depth of below $,000 feet and production dropped to 31 and 44 Mcf per day during 1985 and 1986.

The Madden has since been plugged and abandoned. The Barby-Harper is still producing, but actually below its economic limit at 30 Mcf per day. The operator has recently attempted to sell the lease, but has not been successful. Pickrell owned no interest in these leases or wells, but simply operated them for the benefit of the interest owners.

The working interest owners that received tax reimbursements are Barbara Oil Company, Tammie L. Burton Trust #2, Jean Ann Fausser Trust, Pickrell Acquisitions Inc, Carl W. Sebits, David Ruel Sebits Trust, David H. Tripp, James E. Stewart, Jan Lee Stewart and Virginia M. Johnson. They have refunded their proportionate shares of the principal amount under the Statement of Refunds Due, but are requesting relief from any refund of interest. Brenda C. Redfern, J. C. Anderson, Edgar S. Curry, Newport Petroleums Inc, Herschel F. Vaughn and Carless Resources Inc have been mailed notices of their share of the refunds due, but no responses have been received. Cecil Burton, Peter W. John, Dale M. Robinson, Kenton S. Stewart, Edgar C. Stewart and O. H. Stewart are deceased and estates have been closed. Century Exploration filed for bankruptcy in mid 1980's and company was liquidated. Bill J. Porter Trust was dissolved.

Pickrell states that the recovery of interest on these refunds will require years, if it will ever be recovered and that it is inequitable to require a refund of interest.

Pickrell states that the amounts due from deceased and bankrupted working interest owners are uncollectible and should be considered as waived. The amounts due for the working interest owners who are non-responsive should also be waived as uncollectible. To require payment from Pickrell would be an unfair distribution of burdens since it never received any benefit from the ad valorem tax reimbursements that were passed through to the working interest owners.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8168 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado v. FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–70–000]

Pickrell Drilling Company, Inc.; Notice of Petition for Adjustment

March 24, 1998.

Take notice that on March 10, 1998, Pickrell Drilling Company, Inc. (Pickrell), 110 North Market–Suite 205, Wichita, Kansas 67202–1996, on behalf of the working interest owners [1] for whom it operated leases, filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[2] requesting that the Commission, grant them relief from any further refund liability not heretofore paid for the Kansas ad valorem tax reimbursements set forth in the Statement of Refunds Due (SRD) submitted to Pickrell by The Williams Companies (Williams), all as more fully set forth in the petition which is open to the public for inspection.

Pickrell states that the Barbara Oil Company, Burton Oil and Gas Properties, Vera J. Casado, Dane G. Hansen Trust, Dr. John R. Kline, Ralph S. Lightner, Carl W. Sebits, and David H. Tripp have refunded their proportionate shares of the undisputed principal amount set forth in the SRD, but are requesting that they be relieved of any refund liability for the interest. Pickrell further states that considering the low volume, marginal nature of the subject well and its circumstances, it would be a hardship on them and inequitable to require them to refund the interest where there is no chance of recouping anything further from production. Pickrell also states that this would be inequitable in view of the time that elapsed since these reimbursements were received and any request for a refund was made.

Pickrell states that Cecil Burton and Luis A. Casado are deceased and that their estates have been closed. The HWT Corporation has been dissolved. H.A. Mayor, Jr., is elderly and in poor financial condition. Pickrell requests that any amounts attributable to these interest owners should be waived. Pickrell also states that the amounts attributable to these interest owners are not collectible and that Pickrell did not receive the benefit of any portion of the refunds which were passed through to the working interest owners.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8170 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Working interest owners are identified as: Barbara Oil Company, Cecil Burton (deceased), Luis A. Casado (deceased), Vera J. Casado, Dane G. Hansen Trust, Carl W. Sebits, David H. Tripp, HWT Corporation (dissolved), Dr. John R. Kline, Virginia M. Johnson, Ralph S. Lightner, H.A. Mayor, Jr., and Burton Oil and Gas Prop.

[2] 15 U.S.C. 3142(c) (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–283–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

March 24, 1998.

Take notice that on March 17, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP98–283–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new point of delivery for AK Steel Corporation (AK Steel), an industrial end-user, in Warren County, Ohio. Texas Eastern makes such request under its blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Texas Eastern proposes to install, own, operate, and maintain a new point of delivery on its existing Lebanon Lateral [1] to accommodate AK Steel in Middletown, Ohio. Texas Eastern proposes to construct and install a 10-inch tap valve and a 10-inch check valve on the existing Lebanon Lateral facility, at approximately Mile Post 60.62 in Warren County. It is stated that AK Steel will install, or cause to be installed, three 10-inch orifice meter runs plus associated piping, approximately 50 feet of 16-inch pipeline which will extend from the Meter Station to the Tap, and electronic gas measurement equipment.

Texas Eastern states that the transportation service will be rendered pursuant to Texas Eastern's open access Rate Schedules included in Texas Eastern FERC Gas Tariff, Sixth Revised Volume No. 1. It is averred that transportation service to be rendered through the delivery point proposed herein will be performed utilizing existing capacity on Texas Eastern's system, and will have no effect on Texas Eastern's peak day or annual deliveries.

Texas Eastern states that its filing of this request is in response to AK Steel's request to receive natural gas service directly from Texas Eastern. Cincinnati Gas & Electric (CG&E) is the Texas Eastern customer that currently provides interruptible service to AK Steel. AK Steel indicates that it has informed Texas Eastern that the service AK Steel receives from CG&E will terminate on December 31, 1998. The tap proposed in this request is scheduled to be available for service on or after January 1, 1999, Texas Eastern therefore submits that the installation of the tap proposed herein and the provisions of open-access service to AK Steel will not constitute a bypass of CG&E.

Project cost has been estimated to be approximately $87,000, and AK Steel has agreed to reimburse Texas Eastern's cost in full.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request

[1] The Lebanon Lateral facility is jointly owned by Texas Eastern and ANR Pipeline Company.

shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8158 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–30–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

March 24, 1998.

Take notice that on March 20, 1998, Transcontinental Gas Pipe Line Corporation (Transco) filed a report reflecting the flow through of a portion of a refund received from Texas Gas Transmission Corporation (Texas Gas).

On February 26, 1998, in accordance with Section 4 of its Rate Schedule FT–NT, Transco states that it refunded to its FT–NT customers $19,466.83 resulting from a portion of a Texas Gas Refund for the period December 1, 1996 through October 31, 1997. The refund was issued as a result of the termination of Texas Gas' Transportation Cost Adjustment (TCA), as approved in the Stipulation and Agreement filed in Docket No. RP94–423 by the Letter Order issued by the Federal Energy Regulatory Commission on February 20, 1996.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 31, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8159 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–61–000]

Louis Welner and Bruce F. Welner; Notice of Petition for Adjustment

March 24, 1998.

Take notice that on March 10, 1998, Bruce F. Welner on behalf of himself and his father Louis Welner filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of their obligation to make Kansas ad valorem tax refunds to Northern Natural Gas Company, with respect to their working interest in wells operated in Clark County, Kansas otherwise required by the Commission's September 10, 1997 order in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000, and GP97–5–000.[2] The petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals [3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988.

Bruce F. Welner seeks relief for his father regarding his interest in the Bouziden well based on the following grounds:

1. Lewis Welner currently lives in a nursing home in Florida and is suffering from Alzheimer's disease.

2. Lewis Welner has been on Medicaid for the last year because his assets are depleted.

Bruce F. Welner seeks relief for himself regarding his interest in the McMinimy and Bouziden wells based on the following:

1. In May of 1988 Bruce F. Welner and his wife filed for personal bankruptcy. The two wells were used as collateral to secure a loan.

2. As a result of the bankruptcy a bank became owner of Bruce Welner's interest in the two wells.

3. The remaining unsecured oil and gas assets were sold at auction, along with Bruce Welner's personal assets. The proceeds were distributed to unsecured creditors.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in according with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8165 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2226–000, et al.]

PP&L, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 23, 1998.

Take notice that the following filings have been made with the Commission:

1. PP&L, Inc.

[Docket No. ER98–2226–000]

Take notice that on March 18, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 6, 1998, with Virginia Electric and Power Company (VEPC), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds VEPC as an eligible customer under the Tariff.

PP&L requests an effective date of March 18, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to VEPC and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. PP&L, Inc.

[Docket No. ER98–2227–000]

Take notice that on March 18, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated

March 12, 1998, with NESI Power Marketing, Inc. (NESI), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds NESI as an eligible customer under the Tariff.

PP&L requests an effective date of March 18, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NESI and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER98–2228–000]

Take notice that on March 16, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and The Dayton Power and Light Company (DP&L).

Cinergy and DP&L are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Gas and Electric Company

[Docket No. ER98–2229–000]

Take notice that on March 18, 1998, Kansas Gas and Electric Company (KGE), tendered for filing a change in its Federal Power Commission Electric Service Tariff No. 93. KGE states that the change is to reflect the amount of transmission capacity requirements required by Western Resources, Inc., under Service Schedule M to FPC Rate Schedule No. 93, for the period June 1, 1998 through May 31, 1999.

Copies of this filing were served upon the Kansas Corporation Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER98–2230–000]

Take notice that PacifiCorp on March 18, 1998, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Filing of Mutual Netting/Closeout Agreements between PacifiCorp and AIG Trading Corporation, Aquila Power Corporation, Avista Energy, Inc., Cinergy Services, Inc., ConAgra Energy Services, Inc., Duke Energy Trading & Marketing, LLC, Duke/Louis Dreyfus, LLC, Eastern Power Distribution, Inc., Electric Clearinghouse, Inc., El Paso Energy Marketing Company, Enron Power Marketing, Inc., Entergy Power Marketing Corp., Illinova Power Marketing, Inc., NorAm Energy Services, Inc., NP Energy Inc., Southern Company Energy Marketing L.P., USGen Power Services, L.P. and Williams Energy Services Company.

Copies of this filing were supplied the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER98–2231–000]

Take notice that on March 18, 1998, Commonwealth Edison Company (ComEd), submitted for filing five Service Agreements establishing City Water Light & Power (CWLP), Columbia Power Marketing Corp. (CPMC), DTE Energy Trading, Inc. (DTEET), Southern Illinois Power Cooperative (SIPC), and Strategic Energy Ltd. (SE), as non-firm transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of March 17, 1998, for the service agreements and, accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served on CWLP, CPMC, DTEET, SIPC, SE, and the Illinois Commerce Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. People's Utility Corporation

[Docket No. ER98–2232–000]

Take notice that on March 18, 1998, People's Utility Corporation petitioned the Commission for acceptance of People's Utility Corporation Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

People's Utility Corporation intends to engage in wholesale electric power and energy purchases and sales as a marketer. People's Utility Corporation is not in the business of generating or transmitting electric power. People's Utility Corporation is a registered Electric Service Provider in the State of California.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. NGE Generation, Inc.

[Docket No. ER98–2234–000]

Take notice that NGE Generation, Inc. (NGE Gen), on March 18, 1998, tendered for filing a restated Electric Power Sales Tariff. On February 11, 1998, New York State Electric & Gas Corporation (NYSEG), transferred to its affiliate, NGE Gen, NYSEG's Electric Power Sales Tariff, FERC Electric Rate Schedule, Original Volume No. 1 (Tariff). NGE Gen requests that the restated tariff become effective on March 19, 1998, and requests a waiver of the Commission's notice requirements for good cause shown.

NGE Gen served copies of the filing upon the New York State Public Service Commission and the customers under the Tariff.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER98–2235–000]

Take notice that on March 18, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with American Electric Power Service Corp., under its Market-Based Rate Tariff.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER98–2236–000]

Take notice that on March 18, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Illinois Power Company under its Market-Based Rate Tariff.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. MidAmerican Energy Company

[Docket No. ER98–2237–000]

Take notice that on March 18, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with ConAgra Energy Services, Inc. (ConAgra), dated March 6, 1998, and Non-Firm Transmission Service Agreements with ConAgra dated February 27, 1998, and PECO Energy Company (PECO), dated March 12, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of March 6, 1998, for the Firm Transmission Service Agreement with ConAgra, February 27, 1998, for the Non-Firm Transmission Service Agreement with ConAgra, and March 12, 1998, for the Non-Firm Transmission Service Agreement with PECO and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on ConAgra, PECO, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Long Island Lighting Company

[Docket No. ER98–2238–000]

Take notice that on March 18, 1998, Long Island Lighting Company (LILCO), filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between LILCO and PP&L, Inc., (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of LILCO's open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of March 13, 1998, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER98–2239–000]

Take notice that on March 18, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and South Jersey Energy Company under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to South Jersey Energy Company under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of March 18, 1998, for the Service Agreement.

Copies of the filing were served upon South Jersey Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers

Acting Secretary.

[FR Doc. 98–8192 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11509–000 Oregon]

City of Albany, Oregon; Notice of Availability of Draft Environmental Assessment

March 24, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the City of Albany, Oregon Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA) for the project. The project is located on the South Santiam River, Albany-Santiam canal, and Calapooia River in the cities of Lebanon and Albany, Linn County, Oregon. The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Nicholas Jayjack, Environmental Coordinator, at (202) 219–2825.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8160 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–4–000]

Symposium on Process and Reform: Commission Complaint Procedures; Supplemental Notice Organizing Symposium

March 24, 1998.

On March 10, 1998, the Commission announced its intention to host a symposium on March 30, 1998, to discuss the Commission's complaint procedures in order to determine (1) how well the Commission's current procedures are working, (2) whether changes to the current complaint procedures are appropriate, and (3) what type of changes should be made. In this supplemental notice, the Commission announces the format of the round-table discussion to be used at the symposium, and the organization of the participants. All those who have requested to participate are being included.

The Commission's intention is to have a free-flowing discussion unbound by formal, timed statements. The Commission is interested in discussing, among other things, the requirements that should be imposed on parties filing complaints as well as the Commission's internal and formal complaint processes. To make the discussion manageable, there will be two panels. One panel will consist primarily of representatives of the oil pipeline and natural gas industries. The other panel will consist primarily of members of the electric industry, as well as others. The issues addressed by each panel need not be limited to those affecting a particular industry. The Commission has selected two members of each panel to present their views and proposals in order to

open the discussion. All members of each panel, however, are encouraged to fully participate in the discussion. The members of each panel are listed below. The opening presenters for each panel are designated by an asterisk.

The schedule and composition of the panels are as follows:

Panel I 1:00–2:45 p.m.

Fred Moring, Pipeline Customer Coalition *
Peggy Heeg, Interstate Natural Gas Association of America *
Randall Rich, Independent Oil & Gas Association of West Virginia
Representative from Duke Energy Pipelines
David Sweet, Independent Petroleum Association of America
Katherine Edwards, Amoco Energy Trading Corporation, Amoco Production Company, Burlington Resources Oil & Gas Company, and Marathon Oil Company
Representative from the Public Service Commission of the State of New York
Representative from the Association of Oil Pipelines
D. Jane Drennan, Chevron Products Company

Panel II 3:15–5:00 p.m.

Representative of Electric Power Supply Association *
Representative of Edison Electric Institute *
Susan N. Kelly, National Rural Electric Cooperative Association
Representative from the American Public Power Association
Jeffrey D. Watkiss, Coalition for a Competitive Electric Market
Gordon Gooch, Travis & Gooch
Representative of the American Arbitration Association

The symposium will begin at 1:00 p.m. in the Commission Meeting Room, Room 2C, 888 First Street, NE., Washington, DC 20426. Speakers that have audio/visual requirements should contact Wanda Washington at (202) 208–1460, no later than March 26, 1998.

The Capitol Connection will broadcast live the audio from the public conference on its wireless cable system in the Washington, DC area. If there is sufficient interest from those outside the Washington, DC metropolitan area, the Capitol Connection may broadcast the conference live via satellite for a fee. Persons interested in receiving the audio broadcast, or who need more information, should contact Shirley Al-Jarnai or Julia Morelli at the Capitol Connection at (703) 993–3100, no later than noon on March 25, 1998.

In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone. Call (202) 966–2211 for details. Billing is based on time on-line.

The Commission will also afford an opportunity for persons to file written comments in response to discussion at the symposium. Those wishing to file comments should do so by April 14, 1998.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1275.

By direction of the Commission.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8193 Filed 3–27–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5988–8]

National Advisory Council for Environmental Policy and Technology—Total Maximum Daily Load Committee: Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the national Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host one meeting designed to afford the general public greater opportunity to express its views on TMDL and water related issues.

DATES: The three day public meeting will be held on May 4–6, 1998, at the Westin Atlanta North at Perimeter Hotel, Seven Concourse Parkway, Atlanta, Georgia 30328, (770) 395–3940. The full Committee meeting is scheduled to begin Monday, May 4, 1998, at 9 a.m. and conclude at 5:30 p.m. The meeting will reconvene at 8:30 a.m. on Tuesday, May 5, 1998, and is scheduled to adjourn at 5:00 p.m. On Wednesday, May 6, 1998, the meeting will reconvene at 8:30 a.m. and conclude at 3:00 p.m.

The public input session is scheduled in conjunction with the full Committee meeting and will also be held at the Westin Atlanta North at Perimeter. It will occur on Monday, May 4, 1998, from 7:30 p.m. until 9 p.m.

ADDRESSES: Materials or written comments may be transmitted to the Committee through Hazel Groman , Designated Federal Officer, NACEPT/TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Hazel Groman, Designated Federal Officer for the Total Maximum Daily Load Committee at 202–260–8798.

Dated: March 17, 1998.

Hazel Groman,

Designated Federal Officer.

[FR Doc. 98–8217 Filed 3–27–98; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400119; FRL–5752–6]

Methyl Ethyl Ketone; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to remove methyl ethyl ketone (MEK) from the list of chemicals subject to the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA has reviewed the available data on this chemical and has determined that MEK does not meet the deletion criterion of EPCRA section 313(d)(3). Specifically, EPA is denying this petition because EPA's review of the petition and available information resulted in the conclusion that MEK meets the listing criteria of EPCRA section 313(d)(2)(B) and (C) due to its contribution to the formation of ozone in the environment, which causes adverse human health and environmental effects.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions

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Coordinator, 202–260–3882 or e-mail: bushman.daniel@epamail.epa.gov, for specific information regarding this document or for further information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877, or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. MEK was included on the initial list. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compounds categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemical substances from the section 313 list (59 FR 61432, November 30, 1994) (FRL–4922–2).

II. Description of Petition and Regulatory Status of Methyl Ethyl Ketone

MEK is on the list of toxic chemicals subject to the annual release reporting requirements of EPCRA section 313 and PPA section 6607. MEK was among the list of chemicals placed under EPCRA section 313 by Congress. MEK is subject to the Clean Air Act (CAA) as a volatile organic compound (VOC) and a hazardous air pollutant. MEK is also on the Hazardous Waste Constituents List under the Resource Conservation and Recovery Act (RCRA).

On November 26, 1996, EPA received a petition from the Ketones Panel of the Chemical Manufacturers Association (CMA), to delete MEK from the list of chemicals reportable under EPCRA section 313 and PPA section 6607. CMA had submitted a petition to delete MEK and methyl isobutyl ketone (MIBK) from the EPCRA section 313 reporting requirements in September 1988, but this petition was subsequently withdrawn because the petitioner became aware of the Agency's concerns for developmental toxicity and neurotoxicity. The current petitioner states that since that time, EPA's concern for these effects has decreased. Therefore, the petitioner argues that MEK does not meet any of the listing criteria, and should be removed from the reporting requirements of EPCRA section 313.

Specifically, the Panel believes that MEK is not known to cause, nor can it reasonably be anticipated to cause, significant adverse acute health effects at exposure levels that are likely to occur beyond industrial site boundaries as a result of continuous or frequently recurring releases. They also state that MEK "is not known to cause and cannot reasonably be anticipated to cause, significant chronic health effects in humans." They state that EPA's Integrated Risk Information System (IRIS) data base recognizes that MEK "has little if any neurotoxic potential." In addition, the Panel discusses in the petition that based upon several developmental toxicity studies that have been conducted, EPA should use a revised reference concentration (RfC), based upon EPA modified guidance for conducting risk assessments. The petitioner argues that MEK also does not cause the type of adverse environmental effects that warrant reporting under section 313.

Significant to the deliberations surrounding this petition review, is MEK's status as a VOC. The petitioner argues for a revised interpretation of the EPCRA section 313 VOC policy, contending that EPA does not have the statutory authority to list chemicals based upon "indirect" toxicity. The petitioner further contends that: (1) There are more effective ways to gather VOC emissions data; (2) EPA has other, more efficient, tools than the Toxics Release Inventory (TRI) for disseminating VOC emissions data; (3) TRI data are not used to support VOC emissions control programs; (4) the act of including non-toxic VOCs on the TRI may actually be counter productive, by providing disincentives for switching to these less toxic VOCs; and, (5) releases of MEK in ozone non-attainment areas do not justify a nationwide reporting requirement (Ref. 1).

III. EPA's Technical Review of Methyl Ethyl Ketone

The technical review of the petition to delete MEK from the reporting requirements of EPCRA section 313 included an analysis of the available chemistry, health effects, ecological effects, and environmental fate data for MEK.

A. Chemistry and Use

MEK, also known as 2-butanone, ethyl methyl ketone, and methyl acetone, is the largest volume commercially produced ketone other than acetone. It is a clear, colorless, stable, low-boiling (79.6 °C), highly volatile (vapor pressure 90.6 torr at 25 °C) and highly flammable (flash point 1 °C, autoignition temperature 515 °C) liquid with an acetone-like odor. It is very soluble in water (240 grams per liter (g/l) at 20 °C), miscible with organic solvents, and forms azeotropes with water and many organic liquids. MEK has exceptionally high solvent power and is a good solvent for many natural and synthetic resins. It is used as a solvent in the surface coatings industry, specifically in vinyl lacquers, nitrocellulose lacquers, and acrylics. It is used mainly in surface coatings and is also used as a chemical intermediate. It is also used as a solvent for adhesives, printing inks, degreasing and cleaning fluids, smokeless powder,

and as an intermediate in the production of antioxidants, perfumes, and catalysts (Ref. 2).

Most MEK is produced by a two-step process from petroleum derived butene/butane mixtures (Ref. 3). MEK is also available as a by-product from liquid phase oxidation of butane to acetic acid and is produced by direct oxidation of n-butenes.

There were 545 million pounds of MEK produced in the U.S. in 1994 and 16 million pounds were imported. Domestic production capacity is projected to increase to 595 million pounds in 1997. Three producers, Exxon Chemical, Hoechst-Celanese, and Shell Chemical, have been identified. Domestic consumption was 388 million pounds in 1994. More than half of the MEK consumed in the U.S. (60 percent) was used as a solvent for protective coatings, as virtually all natural and synthetic resins used in lacquers are soluble in MEK. The next largest use of MEK (14 percent) was in solvent-based adhesives, such as rubber cement. MEK was employed as a solvent in the manufacture of magnetic tapes (10 percent), and as a dewaxing agent in the refining of lubricating oil (5 percent). As a chemical intermediate (5 percent), MEK was used to produce perfumes, antioxidants, catalysts, peroxides, and diacetal. Three percent of the MEK consumed domestically was for printing ink, while another three percent was used for miscellaneous purposes, such as paint removal (Refs. 1 and 4).

Substitutes for MEK have been investigated by coating formulators with mixed success. Alternative technologies include 100 percent solvent products, water-based resins systems, and reformulated solvent blends. Ethyl acetate in some cases is a drop-in substitute for MEK with no significant change in properties. Butyl acetate and isobutyl acetate can be used in many formulations as partial or full substitutes for MEK. A blend of acetone and MIBK is also used as a MEK substitute. Water-based and 100 percent solid coating systems may also be substituted for MEK solvents. MEK is likely to remain in use, particularly in high quality applications, unless alternative systems are further developed (Ref. 4).

B. Metabolism and Absorption

MEK is well absorbed from the lung, gastrointestinal (GI) tract, and skin. Pulmonary uptake in humans ranged from 41 percent to 56 percent. Case reports in humans and/or studies in rats demonstrate that MEK is absorbed from the GI tract and the skin (Ref. 5).

C. Toxicological Evaluation

1. *Acute toxicity.* Available data indicate that MEK has low acute toxicity. In humans, inhalation of high doses produces irritation of the eyes and upper and lower respiratory system, effects characteristic of solvent exposure (Ref. 6).

2. *Subchronic and chronic toxicity.* Available data indicate that MEK has low chronic toxicity. Although no chronic exposure studies have been found, several well-designed repeated-dose oral and inhalation studies in laboratory animals demonstrate low systemic toxicity with MEK. The Occupational Safety and Health Administration (OSHA) Permissible Exposure Level (PEL) for MEK is 200 parts per million (ppm), or about 589 milligrams per cubic meter (mg/m^3). EPA's current RfC of 1.0 mg/m^3 (or approximately 968 milligrams per kilogram per day (mg/kg/day)) for MEK is based on a developmental toxicity study in mice (Refs. 6 and 7).

a. *Carcinogenicity.* MEK is classified in EPA's IRIS data base (Ref. 8) as category D, not classifiable as to human carcinogenicity, based on no human carcinogenicity data and inadequate animal data (Ref. 6).

b. *Mutagenicity.* There is a wealth of mutagenicity information on MEK submitted pursuant to section 4 of the Toxic Substances Control Act (TSCA). MEK was negative in the Ames assay with and without activation. It induced chromosome mutations (aneuploidy) in yeast cells. It also induced cell transformation in BALB/c cells. It was also negative in the UDS assay, for sister chromatid exchange (SCE's) in Chinese Hamster Ovary (CHO) cells, in the mouse micronucleus assay, for gene mutations in *E. coli*, in the mouse lymphoma assay, and for chromosome aberrations in CHO cells (Ref. 6).

c. *Developmental toxicity.* Not available at the time of the first petition on MEK, is an inhalation developmental toxicity study in Swiss mice. This is the key study, on which the RfC is based (Ref. 7). In the study, four groups of 10 virgin and 33 pregnant mice were exposed to 0, 398, 1,010, or 3,020 ppm (0, 1,174, 2,978, or 8,906 mg/m^3) MEK for 7 hours per day (hr/day) during gestation days 6-15. Neither maternal nor developmental toxicity was observed at the low or mid doses. At 3,020 ppm, there was a decrease in fetal body weight that was significant only in males and a significant trend in the incidence of misaligned sternebrae when measured on a fetus, but not litter basis. At this dose there was also an increase in maternal relative liver and kidney weight, but the biological significance of this effect is not known.

Based on the dose level at which these effects were observed, the concern for developmental toxicity appears to be low. The Lowest Observed Adverse Effect Level (LOAEL) is 3,020 ppm (approximately 2,898 mg/kg/day) and the No Observed Adverse Effect Level (NOAEL) is 1,010 ppm (968 mg/kg/day).

The two inhalation studies in rats that formed the basis of concern at the time of the first petition were both conducted by the same group of researchers and in the same laboratory. In the first study (Ref. 7), animals were exposed to MEK at 0, 1,126, or 2,618 ppm (0, 3,320, or 7,720 mg/m^3). At the low dose, there was a decrease in fetal body weight and crown:rump length; these effects were not seen at the high dose. There was also a significant increase in total number of litters containing fetuses with skeletal anomalies. At the high dose, there was a significant increase in number of fetuses and litters having gross anomalies. Maternal toxicity was not observed. The LOAEL from this study is 1,126 ppm.

The second study (Ref. 9) was conducted to determine the repeatability of the above findings. Exposures to MEK were 0, 412, 1,002, or 3,005 ppm (0, 1,215, 2,955, or 8,861 mg/m^3). No effects were seen at the low or mid dose. At the high dose, there was delayed ossification of bones in the skull and cervical centra and an increase in the incidence of extralumbar ribs. There was also decreased maternal body weight gain and increased water consumption at the high dose. The NOAEL from this study is 1,002 ppm, and the LOAEL is 3,005 ppm (Ref. 6).

d. *Reproductive toxicity.* Reproductive toxicity data on MEK could not be found. There is a two-generation rat study with 2-butanol (a metabolic precursor to MEK) in which Wistar rats (30/sex/group) were given 0, 0.3 percent, 1.0 percent, or 3.0 percent in drinking water (Ref. 10). Because of significant toxicity seen in the high-dose group, treatment of high-dose parents and offspring was reduced to 2.0 percent. The critical effect was decreased fetal birth weight at the 2.0 percent dose.

Based on the dose level at which these effects were observed, the concern for reproductive toxicity appears to be low. The LOAEL for 2-butanol is 2.0 percent (3,122 mg/kg/day) and the NOAEL is 1.0 percent (1,771 mg/kg/day) (Ref. 6).

e. *Neurotoxicity.* According to the latest IRIS report on MEK, which was updated in June 1993, "at present, there is no convincing experimental evidence

that MEK is neurotoxic. . .other than possibly inducing central nervous system depression at high exposure levels" (Ref. 8). The prior neurotoxicity concerns identified for MEK were based on enhancement of the neurotoxicity of other solvents, such as n-hexane, by MEK (Ref. 11).

f. *Toxicity related to ozone formation.* MEK is a volatile organic compound and, as such, has the potential to contribute to the formation of ozone in the troposphere (i.e., the lower atmosphere). As EPA has previously stated, ozone can affect structure, function, metabolism, pulmonary defense against bacterial infection, and extrapulmonary effects (Ref. 12). Among these extrapulmonary effects are: (1) Cardiovascular effects; (2) reproductive and teratological effects; (3) central nervous system effects; (4) alterations in red blood cell morphology; (5) enzymatic activity; and (6) cytogenetic effects on circulating lymphocytes.

3. *Ecotoxicity.* MEK is toxic to aquatic organisms at relatively high concentrations. The fish 96–hour lethal concentration for 50 percent of the testing sample (LC_{50}) range from 2,300 to 3,220 ppm; the daphnid 48–hour LC_{50}s range from 2,200 to 5,091 ppm, and the green algal 96–hour effective concentration for 50 percent of the population (EC_{50}) is 1,200 ppm. The fish chronic values range from 220 to 300 ppm, the daphnid chronic value is 52 ppm, and the algal chronic value is 45 ppm. MEK's calculated bioconcentration factor, 0.640, is low (Ref. 13).

As a VOC, MEK contributes to the formation of ozone in the environment. As EPA has previously stated, ozone's effects on green plants include injury to foliage, reductions in growth, losses in yield, alterations in reproductive capacity, and alterations in susceptibility to pests and pathogens (Ref. 12). Based on the known interrelationships of different components of ecosystems, such effects, if of sufficient magnitude, may potentially lead to irreversible changes of sweeping nature to ecosystems.

D. Exposure Review

1. *Exposure assessment.* The available data indicate that MEK can cause chronic developmental toxicity at moderately high to high doses. Because there is a possibility that the developmental effects associated with exposures to relatively high concentrations of MEK could be caused by short-term exposures, an exposure assessment was conducted. The exposure assessment was conducted only to determine the potential for adverse chronic developmental effects to occur as a result of concentrations of MEK that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases from facility sites (Ref. 14). For a discussion of the use of exposure in EPCRA section 313 listing and delisting decisions, refer to the **Federal Register** of November 30, 1994 (Ref. 12).

MEK releases were retrieved from the Toxics Release Inventory System (TRIS) data base. There were 2,389 TRI reports submitted for MEK in 1994. Most of the industrial releases are to air. Total quantities released to air, water, and land in 1994 were 78,624,939 pounds, 108,163 pounds, and 51,794 pounds, respectively. Thus, since most releases of MEK are to air, only airborne exposures were considered. Furthermore, because the critical effect is developmental toxicity, which can be initiated upon acute exposure, acute ambient concentrations estimated by the Point Plume (PTPLU) model were the exposure concentrations examined.

This procedure generates estimates of concentrations and exposures under three different scenarios that include a variety of wind conditions, one of which is a relatively stagnant situation. These three scenarios have been labeled: (1) The typical scenario, (2) the stagnant scenario, and (3) the maximum scenario. The model does not consider decay of the chemical in the environment.

A combination of both conservative and non-conservative assumptions were used to generate the exposure estimates with the PTPLU model. The conservative assumptions include the use of weather station data known to generate the highest concentrations and therefore potential exposures, as well as the use of a 24–hour exposure duration. Non-conservative assumptions include the assumption that TRI releases are spread over 365 days per year, 24 hours a day, and a 24–hour averaging time for concentration estimates. Given a shorter release period, estimated exposures could be significantly higher.

Estimates of acute ambient concentrations resulting from stack releases from five discharging facilities range from 3.0 to 9.0 mg/m^3 for a "typical" scenario; 6.0 to 17.0 mg/m^3 for a "stagnant" (no wind) scenario; and, 37 to 103 mg/m^3 for the maximum scenario. Acute ambient concentrations resulting from fugitive releases from five discharging facilities range from 5.0 to 12 mg/m^3 for a typical scenario; 40.0 to 110 mg/m^3 for a stagnant scenario; and, 100 to 240 mg/m^3 for the maximum scenario (Ref. 14).

2. *Exposure evaluation.* The exposure estimates illustrated in this assessment utilize release information submitted under TRI and standard modeling techniques to derive ambient air concentrations of MEK under three release scenarios (typical, stagnant, and maximum or peak) for the top releasing facilities for each type of release, fugitive and stack. Release estimate data are evaluated as to whether they exceed an Agency accepted RfC or reference dose (RfD), respectively, or when appropriate, a Margin of Exposure (MOE).

The IRIS RfC for MEK is based on mild, but significant developmental toxicity (decreased fetal body weight and misaligned sternebrae). An RfC represents an estimate of a daily inhalation exposure of the human population that is likely to be without appreciable risk of deleterious effects during a lifetime. The RfC makes adjustments to account for uncertainties about portal of entry and long-term exposure effects. Because developmental effects are an endpoint of concern for this chemical, it would not be appropriate to use the RfC for assessing the potential risk of developmental toxicity associated with acute exposure to MEK because the RfC is set for long-term exposures. It would be appropriate to derive an RfC_{DT} and compare it to the estimated human exposure concentration; however, there is no official Agency RfC_{DT}. Therefore, a MOE approach was used. The rationale for following this approach is that developmental toxicity requires assessment of short-term exposures (Ref. 6).

A MOE calculation is used in instances of non-cancer endpoints and is essentially a ratio of the NOAEL and the estimated exposure to the particular chemical, including any modifying factors on the exposure. The resultant value is then compared to the product of the uncertainty factors which are selected for the chemical of interest. Uncertainty factors are generally factors of 10 with each factor representing a specific area of uncertainty in the available data. For MEK, a factor of 10 was used to account for the possible differences in responsiveness between humans and animals in prolonged exposure studies, and a second factor of 10 was used to account for variation in susceptibility among individuals in the human population. The resultant uncertainty factor of 100 was therefore used in this assessment (Ref. 6).

The calculated MOE includes the NOAEL (ca. 1,380 mg/kg/day) from the mouse developmental study divided by the acute estimated Average Potential

Dose Rates (APDRs). The MOE is greater than 100 for stack releases under all three scenarios typical, stagnant, and maximum. The MOE is greater than 100 for fugitive releases in all three scenarios except one discharging facility under stagnant scenarios. It should be noted that the exposure estimates are based on facility release estimates, which generally are not the result of monitoring studies. Also, the APDRs assume that the target population is exposed to ambient (outdoor) air continuously. Thus, the exposure characterization reflects potential concerns engendered by estimated high exposures. Using these assumptions, the assessment illustrated that exposure concentrations do not exceed the MOE, except for one scenario (Ref. 6).

In summary, based on the concentrations likely to exist beyond facility site boundaries and the resulting MOE calculations, there is low concern for a potential for developmental effects for the general population as a result of direct toxicity following acute inhalation exposures to MEK. Furthermore, based on the developmental effects observed, if the MOE were calculated on the basis of a benchmark dose instead of the apparent NOAEL from the developmental toxicity study, the concern for potential developmental effects would be further weakened, if not eliminated. Therefore, under the exposure conditions described here, there appears to be low potential for developmental effects associated with exposure to MEK (Ref. 6).

IV. Summary of Technical Review

The hazard assessment strongly indicates that, except for VOC concerns, MEK has low acute and chronic (systemic) toxicity in that effects occur only at high doses. Specifically, developmental toxicity for MEK is characterized by high dose effects and lack of consistency between studies for one species. The exposure assessment, conducted only for developmental effects, indicates a low potential for these effects to occur from reported releases of MEK from TRI facilities under the conditions modeled. Thus, based on EPA's modeling, TRI reported releases of MEK are not expected to be sufficient to cause the type of high dose developmental effects associated with MEK. The available data do indicate that MEK can enhance the neurotoxicity of other solvents such as n-hexane; however, at this time EPA has not made a final determination as to the significance of this effect with regard to the EPCRA section 313(d)(2) criterion. MEK has low direct environmental toxicity. MEK is however a high volume VOC that contributes to the formation of tropospheric ozone which can cause significant adverse effects to human health and the environment.

V. Rationale for Denial

EPA is denying the petition submitted by the Ketones Panel of the CMA to delete MEK from the EPCRA section 313 list of toxic chemicals. This denial is based on EPA's conclusion that VOCs, such as MEK, contribute to the formation of tropospheric ozone which is known to cause significant adverse effects to human health and the environment. Therefore, EPA has concluded that MEK meets the listing criteria of EPCRA section 313(d)(2)(B) and (C) because MEK contributes to the formation of ozone which causes serious adverse human health and environmental effects at relatively low doses. EPA has previously stated that ozone meets the listing criteria of EPCRA section 313(d)(2)(B) and (C) (59 FR 61432, November 30, 1994). EPA has stated in prior **Federal Register** notices (54 FR 4072, January 27, 1989; 54 FR 10668, March 15, 1989; 59 FR 49888, September 30, 1994; and 60 FR 31643, June 16, 1995) that because VOCs contribute to the formation of tropospheric ozone they meet the criteria for listing under EPCRA section 313. EPA has also stated (54 FR 4072, January 27, 1989 and 54 FR 10668, March 15, 1989) that while it is not EPA's intention to include all VOC chemicals on the EPCRA section 313 list, those VOCs whose volume of use or emissions are large enough to raise substantial VOC concerns would be retained on the EPCRA section 313 list. MEK is a VOC with both a high production volume and high air emissions. Therefore, EPA has determined that MEK should remain on the EPCRA section 313 list of toxic chemicals. EPA intends to provide further clarification of its EPCRA section 313 VOC policy in a future **Federal Register** notice.

EPA has previously determined (59 FR 61432, November 30, 1994) that ozone has moderately high to high chronic toxicity and high environmental toxicity. Therefore, in accordance with EPA's stated policy on the use of exposure assessments (59 FR 61432, November 30, 1994), EPA does not believe that an exposure assessment is necessary to conclude that MEK, since it contributes to the formation of ozone, meets the toxicity criteria of EPCRA section 313(d)(2)(B) and (C).

EPA disagrees with the petitioner's contention that "indirect toxicity," such as that caused by VOCs, does not meet the EPCRA section 313 listing criteria. The EPCRA section 313(d)(2) listing criteria each state that EPA may list a chemical that it determines "is known to cause or can reasonably be anticipated to cause" the relevant adverse human health or environmental effect. It further provides that "[a] determination under this paragraph shall be based on generally accepted scientific principles." Ultimately, the crux of the issue the petitioner raises lies in interpreting the phrase "cause or can reasonably be anticipated to cause," which Congress chose not to define. In arguing that EPA lacks the statutory authority to base its listing decisions on "indirect toxicity," the petitioner would have the Agency adopt an artificially narrow view of causation that would require a single-step path between exposure to the toxic chemical and the effect. Such a mechanistic approach confuses the mode or mechanism of the chemical's action (i.e., the chain of causation) with the fundamental question of whether, regardless of the number of intervening steps, there is a natural and continuous line, unbroken by any intervening causes, between exposure to the chemical and the toxic effect. By contrast, EPA believes that Congress granted the Agency broad discretion in making listing decisions and directed EPA to rely on generally accepted scientific principles in making determinations to implement this section of EPCRA.

It is a generally accepted scientific principle that causality need not be linear, i.e., a one-step process (e.g., Proposed Guidelines for Ecological Risk Assessment, September 9, 1996, 61 FR 47552 and 47586; Proposed Guidelines for Carcinogen Risk Assessment, April 23, 1996, 61 FR 17960 and 17981). For purposes of EPCRA section 313, the distinction between direct and indirect effects is technically an artificial one. Whether the toxic effect is caused directly by a chemical by a one-step process, or indirectly by a degradation product of the chemical or by a second chemical that is created through chemical reactions involving the first chemical, the toxic effect still occurs as a result of the presence of the chemical in the environment. It makes no difference to the affected organism whether the toxic agent was a result of chemical reactions. Fundamentally, EPCRA section 313 is concerned with adverse effects on humans and the environment, not the chain of causation by which such effects occur. In fact, this type of "indirect" toxicity is not unlike the effects of certain nonlinear carcinogens. Some carcinogens induce

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cancer through a two-step mechanism in which the chemical causes an intervening pathological change, and this pathological change is the direct cause of the cancer, but this does not mean that the chemical is not known or reasonably anticipated to cause cancer. It is therefore reasonable for EPA to consider such effects in light of the broad statutory purpose to inform the public about releases to the environment. Were EPA to exclude indirect effects from consideration, it would dilute the purpose of the statute by precluding public access to information about chemicals that cause a wide range of adverse health and environmental effects.

VI. References

1. CMA. Petition of the Chemical Manufacturers Association Ketones Panel to Delist Methyl Ethyl Ketone Under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986. Chemical Manufacturers Association. (November 27, 1996).
2. USEPA, OPPT. Tou, Jenny; "Chemistry Report on Methyl Ethyl Ketone, EPCRA 313 Delisting Petition." (March 10, 1997).
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4. USEPA, OPPT. Wise, Sherry; "Economic Analysis of the Proposed Deletion of Methyl Ethyl Ketone from the EPCRA 313 List of Toxic Chemicals." (February 10, 1997).
5. USEPA, OPPT. Keifer, Leonard; "Absorption Review for Methyl Ethyl Ketone (MEK)." (January 22, 1997).
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7. Schwetz, B.A., et al., "Developmental Toxicity of Inhaled Methyl Ethyl Ketone in Swiss Mice." Fund. and Appl. Toxicol. v. 16 (1991), pp. 742-748.
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11. USEPA, OPPT. Memorandum from Lois Dicker, Ph.D., Chief, Existing Chemicals Assessment Branch, Risk Assessment Division. Subject: Review of the Interactive Effects of Methyl Ethyl Ketone (MEK) with Neurotoxic Solvents: Response to OSHA/NIOSH Comments. (October 6, 1997).
12. USEPA. "Addition of Certain Chemicals." Proposed rule, (59 FR 1788, January 12, 1994).
13. USEPA, OPPT. Nabholtz, J.V.; "Delisting Petition for Methyl Ethyl Ketone: Environmental Toxicity." (December 10, 1996).
14. USEPA, OPPT. Powers, Mary; "Exposure Assessment for Methyl Ethyl Ketone." (June 2, 1997).

VII. Administrative Record

The record supporting this decision is contained in docket control number OPPTS–400119. All documents, including the references listed in Unit VI. of this document and an index of the docket, are available to the public in the TSCA Non-Confidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

List of Subjects

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: March 19, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–8208 Filed 3–27–98; 8:45 am]
BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank).

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Tuesday, April 14, 1998, at 9:30 a.m. to 3:15 p.m. The meeting will be held at the Export-Import Bank in room 1143, 811 Vermont Avenue, NW, Washington, D.C. 20571.

AGENDA: The meeting will include a discussion of the following: the capacity of commercial banks to step up to some risk in the medium term in order to set the stage for the use of delegated authority; the availability of information from the exporter community on the net employment impact of a change in the foreign content policy; the ability of financial intermediaries in project finance cases to take on operational and risk-sharing roles that neutralize the administrative and program budget implications of offering pre-completion comprehensive cover; and the adequacy of short- and medium-term export credit availability for small and medium sized exporters and what additional delivery mechanisms might expand the availability of such support.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Megan Becher, Room 1284, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3507, no later than April 6, 1998. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to April 6, 1998, Megan Becher Room 1284, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3955 or TDD (202) 565–3377.

FURTHER INFORMATION: For further information, contact Megan Becher, Room 1284, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3507.

Kenneth Hansen,

General Counsel.

[FR Doc. 98–8225 Filed 3–27–98; 8:45 am]
BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

March 23, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty

for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 29, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,650 respondents; 3,531 responses.

Estimated Time Per Response: 1–24 hours (avg).

Frequency of Response: On occasion, annual, quarterly, and semi-annual reporting requirements.

Cost to Respondents: $12,496,760.

Total Annual Burden: 74,089 hours.

Needs and Uses: The information required by 47 CFR Part 61, Part 63 and 47 CFR 1.767 is needed to determine if facilities operations or service initiation or discontinuance by existing or new carriers meets the public interest, convenience and necessity standard of the Communications Act, as amended.

OMB Control No.: 3060–0210.

Form No.: N/A.

Title: Section 73.1930, Political Editorials.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit.

Number of Respondents: 2,758.

Estimated Time Per Response: 3 hours.

Frequency of Response: Third party disclosure.

Cost to Respondents: $0.

Total Annual Burden: 8,274 hours.

Needs and Uses: Section 73.1930 requires that when a commercial licensee, in an editorial, endorses or opposes a candidate, the licensee must notify the other qualified candidate(s) for the same office or the candidate opposed, of the date and time of editorial, provide a script or tape of editorial, and offer reasonable opportunity to respond over the licensee's facility. The information is used to provide a qualified candidate reasonable opportunity to respond to a political editorial.

OMB Control No.: 3060–0179.

Title: Section 73.1590, Equipment Performance Measurements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 13,151 respondents.

Estimated Time Per Response: .5 hours.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: $0.

Total Annual Burden: 12,036 hours.

Needs and Uses: Section 73.1590 requires licensees of AM, FM and TV stations to make audio and video equipment performance measurements for each main transmitter. These measurements and a description of the equipment and procedure used in making the measurements must be kept on file at the transmitter for two years. In addition, this information must be made available to the FCC upon request.

The data is used by FCC staff in field investigations to identify sources of interference.

OMB Control No.: 3060–0630.

Title: Section 73.62, Directional Antenna System Tolerances.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 750.

Estimated Time Per Response: 4.5 hours.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: $0.

Total Annual Burden: 3,375 hours.

Needs and Uses: Section 73.62(b) requires an AM station with a directional antenna system to measure and log every monitoring point at least once for each mode of directional operation within 24 hours of detection of variance of operating parameters from allowed tolerances. Section 73.62(b) also requires a station operating at variance to file a request for special temporary authority to continue operations with parameters at variance and/or with reduced power along with a statement certifying that all monitoring points will be continuously maintained within their specified limits. This requirement is included in the burden hours reported for a request for special temporary authority under Section 73.1635 (OMB Control No. 3060–0386).

The data is used by station engineers to correct the operating parameters of the directional antenna. The data is also used by FCC staff in field investigations to ensure that stations are in compliance with the technical requirements of the Commission's rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8152 Filed 3–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice

FEDERAL REGISTER CITATION OF PREVIOUS NOTICE: 63 FR 13409, March 19, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 A.M., Wednesday, March 25, 1998.

CHANGES IN THE MEETING: The following topics were withdrawn from the open portion of the meeting:

- Office of Finance—Board Compensation Policy Approval
- Office of Finance—Board Appointments

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–8412 Filed 3–26–98; 12:50 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, April 2, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 26, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8354 Filed 3–26–98; 10:11 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 962–3063]

Altmeyer Home Stores, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 29, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker of John C. Hallerud, Chicago Regional Office, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603. (312) 960–5634.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 24, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Altmeyer Home Stores, Inc. ("Altmeyer").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns notification requirements under the Fair Credit Reporting Act, 15 U.S.C. § 1681. That statute required at the time of the alleged violations, among other things, that employment applicants who are denied employment, either in whole or in part, because of information in consumer reports obtained from consumer reporting agencies, be provided with the name and address of the agency making the consumer report. The failure to provide the notice required by the statute lessens consumers' access to information that may have led to the denial of employment. Proper notice assists consumers in discovering inaccurate or obsolete information in consumer reports that the consumers can subsequently dispute and correct. The use of consumer reports to assist in evaluating employment applications has become increasingly popular in recent years and, consequently, the significance of this notification requirement has heightened.

The Commission's complaint alleges that Altmeyer has denied employment applications based, in whole or in part, on information contained in consumer reports, failed to advise such job applicants that the denial was based in whole or in part on information contained in a consumer report, and failed to supply such applicants with the name and address of the agency making the report, as required by Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681m(a), prior to the amendments effective September 30, 1997. The complaint also alleges that the failure to advise these job applicants constitutes a violation of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681m(a). The complaint further alleges that, pursuant to Section 621(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681s, a violation of Section 615(a) constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the consent agreement prohibits violations of the Fair Credit Reporting Act as it existed during the time of the investigation (*i.e.*, October 1, 1995), and prospectively requires compliance with Section 615, pursuant to amendments to the Fair Credit Reporting Act effective September 30, 1997, and as the Fair Credit Reporting Act may be amended in the future. Pursuant to Section 615(c) of the Fair Credit Reporting Act, Part I provides that Altmeyer will not be held liable for violations of Section 615 if it shows by a preponderance of the evidence that it maintained reasonable procedures for complying with Section 615.

Part II is a five year record keeping provision. Part III requires that Altmeyer distribute copies of the order for five years. Part IV requires notice to the Commission of changes in corporate structure for the duration of the consent agreement. Part V provides for compliance reports. Finally, Part VI

terminates the consent agreement after twenty years.

The Fair Credit Reporting Act was extensively amended effective September 30, 1997 and now contains significant additional requirements for employers using consumer reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–8206 Filed 3–27–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following information collection was recently submitted to OMB:

1. Application Packets for Real Property for Public Health Purposes—0937–0191—Reinstatement.

The Department of Health and Human Services administers a program to convey or lease surplus real property to States and their political subdivisions and instrumentalities, to tax-supported institutions, and to nonprofit institutions to be used for health purposes. State and local governments and nonprofit organizations use these applications to apply for excess/surplus, underutilized/unutilized and off-site Government real property. Information in the application is used to determine eligibility to purchase, lease, or use property under the provisions of the surplus property program. The instructions have been reduced from six (6) packets to three (3) to streamline and consolidate the health and homeless application processes. The Environmental information form, used to evaluate potential environmental effects of a proposal as required by the National Environmental Policy Act of 1969, is being revised to provide factual data to support the response to each question and to leave no doubt about what conditions or adverse effects are being considered as well as to make it more user friendly. *Respondents:* State, Local or Tribal Governments; not-for-profit institutions; *Total Number of Respondents:* 55 per calendar year; *Number of Responses per Respondent:* one response per request; *Average Burden per Response:* 200 hours; *Estimated Annual Burden:* 11,000 hours.

OMB Desk officer: Allison Eydt.

Copies of the information collection package listed above can be obtained by calling the PSC Reports Clearance Officer on (301) 443–2045. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Douglas F. Mortl, PSC Reports Clearance Officer, Room 17A–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before April 29, 1998.

Dated: March 23, 1998.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 98–8195 Filed 3–27–98; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Current Status of the Vessel Sanitation Program (VSP) and Experience to Date with Program Operations—Public meeting between CDC and the cruise ship industry, private sanitation consultants, and other interested parties.

Time and Date: 9 a.m.–1 p.m., April 28, 1998.

Place: DoubleTree Grand Hotel, Biscayne Bay Miami, 1717 North Bayshore Drive, Miami, Florida 33132, telephone 305/372–0313, fax 305/539–9228.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 100 people.

Purpose: During the past 12 years, as part of the revised VSP, CDC has conducted a series of public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties.

This meeting is a continuation of that series of public meetings to discuss current status of the VSP and experience to date with program operations.

Matters to be Discussed: Agenda items will include a VSP Program Director Update; 1997 Program Review; Canadian/U.S. Harmonization Update; Revision of the "Final Recommended Shipbuilding Construction Guidelines for Cruise Vessels Destined to Call on U.S. Ports"; Update on Disease Surveillance and Outbreak Investigations; Revision of the VSP Operations Manual; Consultation Fees; and VSP Training Seminars.

For a period of 15 days following the meeting, through May 19, 1998, the official record of the meeting will remain open so that additional materials or comments may be submitted to be made part of the record of the meeting.

Advanced registration is encouraged. Please provide the following information: name, title, company name, mailing address, telephone number, facsimile number and E-mail address to Sharon Dickerson, Program Analyst, facsimile 770/488–4127 or E-mail: shd2@cdc.gov.

Contact Person for More Information: Daniel Harper, Chief, VSP, Special Programs Group, NCEH, CDC, 4770 Buford Highway, NE, M/S F–16, Atlanta, Georgia 30341–3724, telephone 770/488–3524, E-mail: dmh2@cdc.gov, or David Forney, Public Health Advisor, Division of Environmental Hazards and Health Effects, telephone 770/488–7333 or E-mail: dlf1@cdc.gov.

Dated: March 23, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8182 Filed 3–27–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–98–01]

Developmental Disabilities: Request for Public Comments on Proposed Developmental Disabilities Funding Priorities for Projects of National Significance for Fiscal Year 1998

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Notice of request for public comments on developmental disabilities tentative funding priority for Projects of National Significance for Fiscal Year 1998.

SUMMARY: The Administration on Developmental Disabilities (ADD) announced that public comments are

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being requested on tentative funding priorities for Fiscal Year 1998 Projects of National Significance prior to being announced in its final form.

We welcome comments and suggestions on this proposed announcement and funding priority which will assist in bringing about the increased independence, productivity, integration, and inclusion into the community of individuals with developmental disabilities.

DATES: The closing date for submission of comments is May 26, 1998.

ADDRESSES: Comments should be sent to: Reginald F. Wells, Ph.D., Acting Commissioner, Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), Pat Laird, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, 202/690–7447.

SUPPLEMENTARY INFORMATION: This announcement consists of two parts:

Part I

Background

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities is located within the Administration for Children and Families, Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific constituency it serves, ADD shares a common set of goals that promote the economic and social well-being of families, children, individuals and communities. Through national leadership, we see:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access; and
- A strong commitment to working with Native Americans, individuals with developmental disabilities, refugees and migrants to address their needs, strengths and abilities.

Emphasis on these goals and progress toward them will help more individuals, including those with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which ADD promotes the achievement of these goals.

Two issues are of particular concern with these projects. First, there is a pressing need for networking and cooperation among specialized and categorical programs, particularly at the service delivery level, to ensure continuation of coordinated services to people with developmental disabilities. Second, project findings and successful innovative models of projects need to be made available nationally to policy makers as well as to direct service providers.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of individuals with developmental disabilities.

The 1996 Amendments (Pub. L. 104–183) to the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity and integration and inclusion into the community.

The Act points out that:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

The Act further finds that:

- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, and integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and
- It is in the nation's interest for individuals with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.

Toward these ends, ADD seeks to enhance the capabilities of families in assisting individuals with developmental disabilities to achieve their maximum potential, to support the increasing ability of individuals with developmental disabilities to exercise greater choice and self-determination, to engage in leadership activities in their communities, as well as to ensure the protection of their legal and human rights.

Programs funded under the Act are:

- Federal assistance to State developmental disabilities councils;
- State system for the protection and advocacy of individual rights;
- Grants to university affiliated programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

C. Description of Projects of National Significance

Under Part E of the Act, demonstration grants and contracts are awarded for projects of national significance that support the development of national and State

policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through:

- Data collection and analysis;
- Technical assistance to enhance the quality of State developmental disabilities councils, protection and advocacy systems, and university affiliated programs; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for individuals with developmental disabilities, including:

—technical assistance for the development of information and referral systems;
—educating policy makers;
—Federal interagency initiatives;
—the enhancement of participation of racial and ethnic minorities in public and private sector initiatives in developmental disabilities;
—transition of youth with developmental disabilities from school to adult life; and

Section 162(d) of the Act requires that ADD publish in the **Federal Register** proposed priorities for grants and contracts to carry out Projects of National Significance. The Act also requires a period of 60 days for public comment concerning such proposed priorities. After analyzing and considering such comments, ADD must publish in the **Federal Register** final priorities for such grants and contracts, and solicit applications for funding based on the final priorities selected.

The following section presents the proposed priority areas for Fiscal Year 1998 Projects of National Significance. We welcome comments and suggestions. We would also like to receive suggestions on topics which are timely and relate to needs in the developmental disabilities field.

Please be aware that the development of the final funding priority is based on the public comment response to this notice, current agency and Departmental priorities, needs in the field of developmental disabilities and the developmental disabilities network, etc., as well as the availability of funds for this fiscal year.

Part II

Fiscal Year 1998 Proposed Priority Areas for Projects of National Significance

ADD is interested in all comments and recommendations which address areas of existing or evolving national significance related to the field of developmental disabilities.

ADD also solicits recommendations for project activities which will advocate for public policy change and community acceptance of all individuals with developmental disabilities and families so that such individuals receive the culturally competent services, supports, and other assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

ADD is also interested in activities which promote the inclusion of all individuals with developmental disabilities, including individuals with the most severe disabilities, in community life; which promote the interdependent activity of all individuals with developmental disabilities and individuals who are not disabled; and which recognize the contributions of these individuals (whether they have a disability or not), as such individuals share their talents at home, school, and work, and in recreation and leisure time.

No proposals, concept papers or other forms of applications should be submitted at this time. Any such submission will be discarded.

ADD will not respond to individual comment letters. However, all comments will be considered in preparing the final funding solicitation announcement and will be acknowledged and addressed in that announcement.

Please be reminded that, because of possible funding limitations, the proposed priority areas listed below may not be published in a final funding solicitation for this fiscal year.

Comments should be addressed to: Reginald F. Wells, Ph.D, Acting Commissioner, Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

Proposed Fiscal Year 1998 Priority Area 1: Unequal Protection Under the Law, Invisible Victims of Crime—Individuals with Developmental Disabilities

With the passage of the *Americans with Disabilities Act* (ADA) many people in the disability community thought it would bring equality under the law: a final fulfillment of their constitutional rights. However, individuals with a developmental disability who are victims of a crime often find the criminal justice system to be less than fair; and to make matters worse the community services meant to assist victims of crime are ill-prepared to meet their needs.

Persons with developmental disabilities have a significantly higher risk of becoming crime victims than non-disabled persons. Differences in victimization rates are most pronounced for the crimes of sexual assault and robbery. There is also a high probability of repeat victimization, because over time those who victimize individuals with disabilities come to regard them as easy prey—where crimes can be committed against them with little chance of detection or punishment.

A recent analysis combining these victimization probabilities with data from the U.S. National Crime Victimization Survey estimates that roughly 5 million serious crimes are committed against persons with developmental disabilities in the U.S. each year.

Research shows that offenders seek victims with disabilities specifically because they are considered to be vulnerable and unable to seek help or report the crime. More than half of the crimes committed against victims with developmental disabilities are never reported to justice authorities, and when they are reported, they are often handled administratively rather than through criminal prosecution. Administrative actions such as licensing sanctions against a group home or the firing of the suspect are common. Such administrative sanctions represent a separate and unequal "justice" system.

When crimes are reported, there are lower rates of police follow-up, prosecution and convictions. When convictions occur, studies show that sentences for crimes committed against individuals with disabilities are lighter, particularly for sexual assault. Possible explanations offered for this are the difficulty of investigating these cases, lack of special police training, no provision of reasonable accommodations, and the negative stereotype held toward people with developmental disabilities.

The Americans with Disabilities Act is a significant tool that can address these extreme disparities in the treatment of people with developmental disabilities in the criminal justice system. Congress clearly intended the ADA to remove barriers to effective participation in all aspects of American society including the justice system. Title II, Part A of the ADA states that "no otherwise qualified individual with a disability shall, by reason of such a disability, be excluded from participation in or denied the benefits of the services, programs or activities of a public entity, or subjected to discrimination by any such entity." "Public entity" encompasses all police,

probation and law enforcement agencies, correctional facilities, and state and local court systems. Agents of the criminal justice system have a responsibility and obligation to ensure that they do not treat persons with disabilities in a discriminatory manner. However, many of these agents or "public entities" are unsure of the application of ADA to them and/or how to make accommodations for people with physical and mental disabilities. Law enforcement agencies and other entities in the criminal justice system are not alone in their ignorance of their responsibilities under ADA. Many of the victim assistance services programs do not realize their obligations under ADA, thus placing persons with developmental disabilities at a greater risk of harm.

Clearly, more extensive collaboration between the disability community and the criminal justice system is needed to facilitate equal justice for all citizens. ADD would be interested in collaborative projects involving training and education. These two components are critical to the elimination of physical and attitudinal barriers experienced by people with developmental disabilities when they encounter the criminal justice system as victims of crime. Existing curricula need to be tested and further developed; inclusionary methods must be shared. New networks need to be created at the local, state, and national levels allowing for the dissemination of information.

The enormity of this issue will go unknown until there is national data collected on the victimization of people with developmental disabilities. The National Victims Survey collects no data on this population. Research must be conducted identifying the barriers to services. Key to this research would be explanations for why this injustice has continued; what constitutes violence/abuse/neglect in the context of disability; and are the situations for people with disabilities different from the situations in the general population.

ADD would consider projects addressing these areas of concern with the outcome of a criminal justice system that treats its citizens with developmental and other disabilities with equality.

Proposed Fiscal Year 1998 Priority Area 2: Domestic Violence and Women with Developmental Disabilities—The Hidden Violence

In a special report, "Violence Against Women: Estimates from the Redesigned Survey", which presented 1995 data from the National Crime Victimization Survey, it was reported that women were attacked about six times more often by offenders with whom they had an intimate relationship than were male violence victims during 1992 and 1993. During each year women were the victims of more than 4.5 million violent crimes, including approximately 500,000 rapes or other sexual assaults. Women from 19–29 years of age were more likely than women of other ages to be victimized by an intimate party. Women of all races were about equally vulnerable to attacks. However, women in families with incomes below $10,000 per year were more likely than other women to be violently attacked.

Persons with developmental disabilities have a 4 to 10 times higher risk of becoming crime victims than non-disabled persons. Differences in victimization rates are pronounced for the crime of sexual assault.

The rates of sexual assault on this population is very alarming. One study found that 83% of women and 32% of men with developmental disabilities in their sample had been sexually assaulted. Other studies have found from 86%–91% of women in their samples had been sexually assaulted. Another study found that of those who were sexually assaulted, 50% had been assaulted 10 or more times.

One of the few studies conducted specifically on the prevalence of abuse among women with disabilities, found little difference in the occurrence of abuse in comparison with non-disabled women. However, it found that women with disabilities may be at greater risk of abuse from health care providers or caregivers. Another difference identified was that the duration of the abuse experienced was longer than for women without disabilities. The reason suggested for this duration finding was that interventions available to non-disabled women may not be available or accessible to women with physical disabilities. Other reasons included a feeling of powerlessness to escape, lack of opportunity to report the abuse, or dependency on their caregiver. Another recent study confirmed these barriers to services plus additional ones and offered recommendations for their elimination.

For the first time in our nation's history we are finally dealing with the issue of domestic violence at a national level. The *1994 Crime Act* contains the landmark Violence Against Women Act. Implementation of its provisions are under the control of the Violence Against Women Office at the U.S. Department of Justice. Not only does this office provide funding for various programs under the Act but it houses the Advisory Council on Violence Against Women and operates the Domestic Violence Hotline (1–800–799–SAFE, TDD 1–800–787–3224).

Although women with disabilities are at higher risk for all types of violence, there are no dedicated resources being devoted on a Federal level to decrease or eliminate the violence experienced by these women. The U.S. Department of Justice has just begun to consider people with disabilities in general as targets of violence in regard to hate crimes and victim's assistance.

Projects are needed that would partner programs within the criminal justice system with domestic violence service programs to develop strategies and training for assisting women with developmental and other significant disabilities. Public awareness programs must be developed sensitizing communities about the violence experienced by these women. Data collection programs should include data specifically on the prevalence of violence against women with disabilities and the types of services and supports they require to overcome their victimization. The active involvement of women with disabilities in policy making and service provision at the local, state and Federal levels must be a significant effort of such projects. The results of these types of activities should be the full inclusion of women with disabilities in funding streams and criminal justice strategies as administered by local, state and Federal governments.

Proposed Fiscal Year 1998 Priority Area 3: Healthy Lifestyles and Recreation—Factors Contributing Towards A Quality of Life for Persons With Developmental Disabilities

As more and more people with disabilities in general are having increased life spans due to advancements in medical technologies and innovative scientific research attention must be given toward healthy lifestyles and methods to reduce the effects of aging with a disability. Americans with disabilities strive for equal access to opportunities and programs and services that enable them to experience a quality lifestyle comparable to other Americans and to maintain their independence and function. As some individuals with certain disabilities have experienced physical weaknesses, loss of function, and pain, it has raised questions about what constitutes optimal levels of physical activity or exercise, dietary requirements, and therapies that are helpful in sustaining their standard of life.

A recent ADD report, "Aging and Cerebral Palsy: The Critical Needs", based on a roundtable meeting, articles, research papers, and other publications summarized the major issues of concern of people with cerebral palsy. Some of the issues expressed were related to (1) exercise—inability to determine what type of exercise(s) is best suited to maintain cardio-pulmonary conditioning, physical strength, bone density, coordination, joint mobility and weight control; (2) women's issues—inability to find accurate information and competent medical care (including counseling) when they were younger such as reproductive health care and as they are aging on menopause; (3) quality of medical care—few medical professionals, especially dentists, are familiar with cerebral palsy making it difficult to obtain treatment; (4) emotional and psychological issues—the aging process begins early as overstressed muscles and joints wear out relatively quickly, and people in their 30s and 40s are often ill-equipped to deal with problems that their peers will often not encounter for two more decades; and (5) managed care—these organizations have a mixed history of providing appropriate and timely services to individuals with disabilities, have many financial incentives that may not be congruent with the needs of individuals with disabilities or the philosophy of the disability rights movement, and long-term supports and services may be at particular risk in a managed care environment. Some of these issues are transferable to other types of disabilities. For instance, in one study on breast and cervical cancer screening it was reported that women with disabilities tend to be less likely than women without disabilities to receive pelvic exams on a regular basis, and women with more severe functional limitations are significantly less likely to do so. Women with physical disabilities are at a higher risk for delayed diagnosis of breast and cervical cancer, primarily for reasons of environmental, attitudinal, and information barriers. There are few studies on women with mental retardation or other cognitive disabilities.

At this time there is little research that can provide answers to these questions. Yet the concerns cannot be ignored. There are an estimated 54 million people with a disability within the United States, almost half of whom are considered to have a severe disability. An estimated 4% age 5 and over need personal assistance with one or more activities; over 5.8 million people need assistance in instrumental activities of daily living (IADL), while 3.4 million need assistance in "activities of daily living" (ADL). As one ages, activity limitations increase along with the need for assistance. Reviewing this data from a purely economic standpoint it makes sense to dedicate some resources to the prevention or alleviation of regressive symptoms that prevent individuals with developmental and other disabilities from functioning at their maximum level.

ADD would support projects that facilitate working partnerships between people representing the issue of consumers, research foundations, physical education/recreation fields, sports/athletic associations, health care organizations, and others such as aging to develop and test guidelines for exercise regimens, examine alternative forms of medicine, foster training programs for health professionals, coordinate and disseminate consumer education materials, promote model programs plus other activities that would lead to factors or indicators of a quality life.

Serious consideration should be given to how the promotion of "wellness" or "staying healthy" for people with developmental and other significant disabilities supports choice of lifestyle that coincides with the philosophy of self-determination. Specialized sports equipment has been designed for use by serious athletes with disabilities, but little information and equipment exists for those people with disabilities who are non-athletes and want to exercise or play. And how can this information be incorporated into generic fitness centers.

Proposed Fiscal Year 1998 Priority Area 4: Promoting Future Partnerships By Minority Institutions and Consumer Organizations With ADD Through Participation in the Projects of National Significance

"People with disabilities have always been excluded from the bounty of our nation's resources. Minorities with disabilities, in particular, have been the most disenfranchised of the disenfranchised. It is time we bring them into the fold as full, first-class participants in our society." (Hon. Rev. Jesse L. Jackson, National Rainbow Coalition).

A 1993 report from the National Council on Disability (NCD), "Meeting the Unique Needs of Minorities with Disabilities", reinforces this statement. After convening a national conference and a public hearing, NCD found that "Persons with disabilities who are also members of minorities face double discrimination and a double disadvantage in our society. They are more likely to be poor and undereducated and to have fewer opportunities than other members of the population."

The 1990 Census confirmed America's rapidly changing racial profile. According to the census data there are 30 million African Americans (an increase of 13.2% since 1980); 22.4 million Hispanic Americans (an increase of 53%); 7.3 million Asian Americans (an increase of 107.8%); and 2.0 million Native Americans (an increase of 37.9%). In comparison, the European American population grew only 6.0% since 1980. By the year 2000, the nation will have 260 million people, one of every three of whom will be either African-American, Latino, or Asian-American.

As a result of factors such as poverty, unemployment, and poor health status, persons of minority backgrounds are at high risk of disability. Based largely on population projections and substantial anecdotal evidence, it is clear that the number of persons from these minority populations who have disabilities is increasing. Moreover, based on similar projections, the proportion of minority populations with disabling conditions will probably increase at even faster rates than that of the general population.

ADD is determined to build the knowledge and capacity of the organizations and institutions having majority representation of people from diverse ethnic/cultural backgrounds and/or disabilities. In the future, ADD should receive applications that reflect the experiences and perceptions and needs of those diverse populations. To achieve this goal ADD would consider projects that provide training and technical assistance on the grants development process, including developing the financial and managerial capacity to administer a grant; identify and facilitate a network of such organizations or institutions; prepare and disseminate necessary materials; and utilize existing resources. ADD also would support projects that form coalitions of consumer and minority organizations to jointly address this effort.

Proposed Fiscal Year 1998 Priority Area 5: Girl Power! Moving From Despair to Empowerment of Girls with Developmental Disabilities

Unwanted and unplanned teenage pregnancies present a myriad of problems to society, to young parents, and their children. For young mothers who live below the poverty level, as most teenage mothers do, economic

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problems are exacerbated by unplanned births. For teenage girls with disabilities, unplanned births compound problems of disability, poverty, and isolation.

Unplanned and unwanted pregnancies continue to be one of the most prevalent problems of our society, involving social, economic, health, and education issues. When unmarried teenagers become parents, they are unlikely to graduate from high school, their career options are usually decreased, and they often require more community services.

Both teenage mothers and their babies are likely to have greater health problems than non-teenage mothers and their children. Babies born to teenagers are often low birth weight. Low birth weight babies can increase the likelihood of certain disabilities. Teenage girls who have unplanned pregnancies often do not have strong academic backgrounds, sophisticated coping skills, or confidence to believe that they can influence their futures.

The U.S. Department of Health and Human Services/Office of the Assistant Secretary for Planning and Evaluation reports that there are approximately 200,000 births a year to girls age 17 and younger. According to the "National Campaign to Prevent Teen-age Pregnancy", approximately four out of ten girls in the United States becomes pregnant at least once before the age of 20. Teenage pregnancy is not a new problem nor considered a problem in some cultures.

However, today in the U.S. most careers depend on knowledge of technology as well as basic skills, and most young women discontinue their educations when they have unplanned or unwanted pregnancies.

Teachers, parents, and community leaders are aware of the importance of a wide range of developmental experiences for young people. However, young women and young people with disabilities continue to experience isolation, fewer opportunities, and lower expectations from their families and communities. Young women with disabilities are especially likely to be denied, in subtle but significant ways, the experiences that provide them with the tools for self-determination. This very point is raised in the "Report from the National Longitudinal Transition Study of Special Education Students. It was found that female 12th-graders with disabilities were much less likely than males to have competitive employment as their postschool goal, a pattern that reflects in their postschool reality. Despite higher academic performance while in school, young women with disabilities were just as likely as young men to drop out of school, and almost 25% did so because of pregnancy or childrearing responsibilities. Within 3 to 5 years after high school, 30% of young women with disabilities were married and 41% were mothers, a rate that was significantly higher than the reported parenting rate for young men with disabilities (16%) or for young women of the same age in the general population (26%). This raises significant questions about the frequency with which these young women were mothers in their early years after leaving school and why other options such as further schooling or employment were not pursued. School programs chosen by or provided to many young women with disabilities support a postschool path involving home and child care more likely than postsecondary education or employment.

Some studies have shown that people with disabilities and particularly women with disabilities are more likely to be targets of crime and/or abuse. In addition, women with low self-esteem are more vulnerable to relationships that lead to unplanned and unwanted pregnancies.

The Administration on Developmental Disabilities is proposing demonstration projects to address the multiplicity of issues involved with pregnancies among teenagers with developmental and other disabilities. These projects should be collaborative efforts by disability groups, and family planning organizations, and any other public and private community agencies that are addressing this issue. Mentoring models using women with disabilities need to be developed.

(Federal Catalog of Domestic Assistance Number 93.631—Developmental Disabilities—Projects of National Significance)

Dated: March 17, 1998.

Reginald F. Wells,

Acting Commissioner, Administration on Developmental Disabilities.

[FR Doc. 98–8196 Filed 3–27–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review Comment Request; Leukemia and Other Cancers Among Chernobyl Clean-up Workers in Lithuania

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 8, 1997, page 52568, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION:

Title: Leukemia and Other Cancers Among Chernobyl Clean-up Workers in Lithuania. *Type of Information Collection Request:* Reinstatement, with change—OMB No. 0925–0401. *Need and Use of Information Collection:* A cohort study will be conducted to investigate the risk of radiation-induced leukemia and other cancers, and of occupationally related cancers, among 7,000 workers from Lithuania who were sent to Chernobyl to clean-up after the accident there in 1986. The workers will be asked to respond to a mail questionnaire or an interview that collects information about specific duties performed during the Chernobyl clean-up, occupational exposures, other cancer risk factors, and incident cancers. The information will be combined with similar information from Estonia and Latvia and used by the National Cancer Institute to determine site-specific risk estimates for cancer based on various exposure patterns. *Frequency of Response:* One time; *Affected Public:* Individuals or households; *Type of Respondent:* Chernobyl Workers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,867; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 1; and *Estimated Total Annual Burden Hours Requested:* 1,867. There are no Capital Costs, Operating and/or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503. Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the plans and instruments, contact Dr. Gilbert W. BeeBe, Ph.D., National Cancer Institute, EPN 400, 6130 Executive Boulevard, Rockville, MD 20892–7364, or call the non-toll-free number (301) 496–5067.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before April 29, 1998.

Dated: March 23, 1998.

Reesa L. Nichols,

OMB Project Clearance Liaison.

[FR Doc. 98–8240 Filed 3–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMANS SERVICES

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Frederick Cancer Research and Development Center Advisory Committee, April 1, 1998, Frederick Cancer Research and Development Center, Building 549, Executive Board Room, Frederick, Maryland, which was published in the **Federal Register** on March 4, 1998 (63 FR 10643).

The meeting was canceled due to a scheduling conflict.

Dated: March 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–8241 Filed 3–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Subclinical Cardiovascular Disease-Electron Beam Computed Tomography (EBCT) Reading Center.
Date: April 6, 1998.
Time: 8:00 a.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Valerie L. Prenger, Ph.D., Two Rockledge Center, room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.
Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Subclinical Cardiovascular Disease-Coordinating Center.
Date: April 6, 1998.
Time: 10:45 a.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Valerie L. Prenger, Ph.D., Two Rockledge Center, room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.
Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Subclinical Cardiovascular Disease-Ultrasonography Reading Center.
Date: April 6, 1998.
Time: 2:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Valerie L. Prenger, Ph.D., Two Rockledge Center, room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.
Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Subclinical Cardiovascular Disease-Magnetic Resonance Imaging.
Date: April 6, 1998.
Time: 3:45 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Valerie L. Prenger, Ph.D., Two Rockledge Center, room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.
Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Subclinical Cardiovascular Disease-Special Laboratory Center.
Date: April 6, 1998.
Time: 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Valerie L. Prenger, Ph.D., Two Rockledge Center, Room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.
Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Subclinical Cardiovascular Disease-Field Center.
Date: April 7, 1998.
Time: 8:00 a.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Valerie L. Prenger, Ph.D., Two Rockledge Center, Room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.
Purpose/Agenda: To review and evaluate contract proposals.

These notices are being published less than fifteen days prior to these meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–8234 Filed 3–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, May 14–15, 1998, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland.

The Council meeting will be open to the public on May 14 form 8:30 a.m. to approximately 3:00 p.m. for discussion of program polices and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 3:00 p.m. on May 14 to adjournment on May 15, for the review, discussion, and evaluation of individual grant applications. These

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applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–8239 Filed 3–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Division of Extramural Activities; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 17, 1998.

Time: 8:00 a.m.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496-9223.

Purpose/Agenda: To review and evaluate 3 grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: March 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–8235 Filed 3–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee name: National Institute of Mental Health Special Emphasis Panel.

Date: April 3, 1998.

Time: 11 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact person: Sheri L. Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 446–6470.

Committee name: National Institute of Mental Health Special Emphasis Panel.

Date: April 8, 1998.

Time: 3 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–8237 Filed 3–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB B(MI).

Date: April 7–8, 1998.

Time: 6:00 p.m.

Place: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 654–1000.

Contact: Ned Feder, M.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25S, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8890.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–8242 Filed 3–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings of the Board of Regents, the Extramural Programs Subcommittee and the Subcommittee on Outreach and Public Information

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on May 12–13, 1998, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on May 11 in the 5th-Floor Conference Room, Building 38A, from 1 p.m. to 2:45 p.m., and will be closed to the public. The Subcommittee on Outreach and Public Information will meet on May 12 in Conference Room B, Building 38, from 8 a.m. to 9 a.m., and will be open to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 2:30 p.m. on May 12 and from 9 a.m. to adjournment on May 13 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Mrs. Bonnie Kaps at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on May 11 will be closed to the public from 1 p.m. to 2:45 p.m. and the regular Board meeting on May 12 will be closed from approximately 3:30 p.m. to 4 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health)

Dated: March 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–8236 Filed 3–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMANS SERVICES

National Institutes of Health

Office of Research on Women's Health; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Advisory Committee on Research on Women's Health (ACRWH) to be held May 7–8, 1998 at the National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conference Room 10, Bethesda, Maryland. The entire meeting will be open to the public from 8:30 a.m. on May 7, to adjournment on May 8. The purpose of the meeting will be for the Committee to provide advice to the Office of Research on Women's Health (ORWH) on its research agenda and to provide recommendations regarding ORWH activities. Attendance by the public will be limited to space available.

The agenda will include an update on ORWH activities and programs to meet the mandates of the Office. The Committee will also discuss ongoing activities to update the NIH research agenda on women's health, including recommendations from its series of meetings, "Beyond Hunt Valley: Research on Women's Health for the 21st Century." The series of public hearings and scientific workshops were held in Philadelphia, Pennsylvania; New Orleans, Louisiana; Sante Fe, New Mexico; and the National Institutes of Health.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Acting Executive Secretary in advance of the meeting.

Joyce Rudick, Acting Executive Secretary, ACRWH, and Acting Deputy Director, ORWH, Office of the Director, NIH, Building 1, Room 201, Bethesda, Maryland 20892, (301) 402–1770, (301) 402–1798 (Fax), will furnish the meeting agenda, roster of Committee members, and substantive program information upon request.

Dated: March 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–8238 Filed 3–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal/State Compact.

SUMMARY: Pursuant to Section II of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III Gaming between the Nisqually Indian Tribe and the State of Washington, which was executed on May 25, 1995.

DATES: This action is effective March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: March 20, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–8274 Filed 3–27–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1990–00]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the proposed Federal coal planning decisions for the Carbon Basin Area, Carbon County, Wyoming and amendment of the Great Divide Resource Management Plan.

SUMMARY: The Carbon Basin planning review area is located approximately 40 miles east of the town of Rawlins and 12 miles southeast of the town of Hanna, all located in Carbon County,

Wyoming. The planning review was conducted because an application to lease Federal coal in the Carbon Basin area had been submitted and Federal coal planning decisions were not made for the area during development of the Great Divide Resource Management Plan (RMP). The proposed decision would open to further consideration for coal leasing and development 11,928.36 acres of Federal coal lands containing approximately 313 million tons of Federal coal in the Carbon Basin. Upon adoption of the proposed decisions, 11,808.36 acres of these Federal coal lands would be open to consideration for mining by surface and subsurface methods. The remaining 120 acres of Federal coal lands are adjacent to and include the Town of Carbon Cemetery. In order to preserve the historic setting of the cemetery, it was determined that this 120 acres located in SW¼NW¼, N½NW¼, Section 26, T. 22 N., R. 80 W., would be acceptable for coal mining using subsurface mining methods only and with a no-surface-occupancy requirement.

DATES: A 30-day protest period for the proposed planning decisions will begin the day following publication of this notice.

ADDRESSES: Protests should be addressed in writing to the Director (210), Bureau of Land Management, Attention: Brenda Williams, 1849 C Street NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Interested parties may direct questions and concerns to, or obtain further information from, Karla Swanson, Great Divide Resource Area Manager; Brenda Vosika Neuman, Project Leader; or John Spehar, Planning and Environmental Coordinator, at the Bureau of Land Management Office, 1300 N. Third Street, Rawlins, Wyoming 82301, or by telephone at 307–328–4200.

SUPPLEMENTARY INFORMATION: Ark Land Company, St. Louis, Missouri, filed an application with the Bureau of Land Management (BLM) to obtain a coal lease on approximately 4,145 acres of Federal coal lands located in the Carbon Basin area. Ark Land Company, through its affiliate, Arch of Wyoming, Inc., (Arch) has conducted coal mining operations in the Hanna Basin Region of Carbon County since 1972. The depletion of recoverable coal reserves in the Hanna Basin has led Arch to identify additional (local) coal resources in the Carbon Basin area that could utilize the existing infrastructure and meet existing contracts or long-term commitments. The Carbon Basin area is in close proximity to the Hanna Basin coal fields and provides a logical continuation of the Hanna Basin mining operations.

In 1982, a Federal coal lease was issued for approximately 60 percent of the Federal coal lands located in the Carbon Basin. Because this lease was still in effect at the time the current BLM land use plan (the Great Divide Resource Management Plan (RMP–1990)) covering the Carbon Basin area was prepared, it was exempt from the coal screening/planning requirements. Development of this lease was never pursued and the lease expired in 1992. Also, at the time the Great Divide RMP was prepared, there was no other interest expressed by industry in obtaining Federal coal leases in the area. As a result of these two factors, the coal screening/planning process was not conducted on the area and there were no coal planning decisions for any of the Federal coal lands in the Carbon Basin area included in the Great Divide RMP.

The Federal Coal Leasing Amendments Act of 1976 requires that Federal coal lands must first be identified in a comprehensive land use plan before they can be considered for leasing. Thus, any applications to lease coal in the Carbon Basin, could not be given consideration until a planning review was conducted on the Federal coal lands and a determination made that some or all of the lands are open to consideration for coal leasing and development. Because no coal planning decisions were made for the Carbon Basin coal area in the Great Divide RMP, a planning review was conducted on the area. The planning review involved conducting the coal screening/planning process (including application of the coal unsuitability criteria) and an environmental analysis documented in an environmental assessment (EA).

As provided in 43 Code of Federal Regulations, Part 1610.5–2, any person who participated in the planning review process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may concern only those issues which were raised and submitted for the record during the planning review process and by only the party(ies) who raised the issue(s). All parts of the proposed decision may be protested. Protests must be in writing and must be postmarked within 30 days following the date the notice of availability (NOA) of this decision record is published in the **Federal Register**. Protests must include (a) the name, mailing address, telephone number, and interest of the person filing the protest; (b) a statement of the issue or issues submitted during the planning process by the protesting party; (c) a statement of the part, or parts, of the proposed decision being protested; (d) a copy of all documents addressing the issue or issues that were submitted during the planning review process by the protesting party or an indication of the date the issue or issues were discussed for the record; and (e) a concise statement explaining why the State Director's proposed decision is believed to be wrong.

If no protests are received the proposed decision will become final at the end of the 30-day protest period. If protests are received, the decision will not become final until the protests are resolved.

Dated: March 24, 1998.

Alan R. Pierson,

State Director.

[FR Doc. 98–8183 Filed 3–27–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–922–08–1310–00–241A–P; NDM 81533]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease NDM 81533, McKenzie County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as contained in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: March 16, 1998.

Karen L. Johnson, Chief,

Fluids Adjudication Section.

[FR Doc. 98–8227 Filed 3–27–98; 8:45 am]

BILLING CODE 4310–GN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–4210–05; WYN 139935]

Opening of National Forest System Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 1120.00 acres of National Forest System lands which were originally included in an application for exchange in the Medicine Bow National Forest.

EFFECTIVE DATE: March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003–1828, 307–775–6124.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3–2(b), at 9 a.m. on March 30, 1998, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 139935. The remaining lands in the application for exchange will continue to be processed as requested.

Sixth Principal Meridian, Wyoming

T. 44 N., R. 63 W.,
sec. 8, E½SE¼, SE¼NE¼;
sec. 21, SW¼SW¼;
sec. 32, SE¼;
sec. 34, E½;
sec. 35, W½SW¼.
T. 42 N., R. 64 W.,
sec. 12, S½SW¼
sec. 18, E½NW¼, NE¼SW¼;
sec. 29, NE¼SW¼;
sec. 30, NE¼NE¼, SW¼NE¼.
T. 42 N., R. 65 W.,
sec. 24, E½SW¼;

The area described contains 1120.00 acres in Weston County.

At 9 a.m. on March 30, 1998 the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Alan R. Pierson,

State Director.

[FR Doc. 98–7877 Filed 3–27–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–08–1420–00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Principal Meridian, Montana

T. 6 N., R. 35 E.

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines, portions of the adjusted original meanders of the former left bank of the Yellowstone River, in section 22, and the adjusted original meanders of an island (Howreys) that lies within sections 15, 21, and 22, and the subdivision of sections 15 and 22, the survey of a portion of new meanders of the present left bank of the Yellowstone River, in section 22, the new meanders of an island (Howreys) that lies within sections 15, 21, and 22, and certain division of accretion lines in sections 15, 21, and 22, and the survey of a portion of the easterly right-of-way of Montana Secondary Highway No. 311, within sections 21 and 22, Township 6 North, Range 35 East, Principal Meridian, Montana, was accepted March 17, 1998.

This survey was executed at the request of the Bureau of Land Management, Miles City District Office and was necessary to identify and establish property lines caused by a permanent change in the route of the Yellowstone River since the original survey.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: March 18, 1998.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98–8233 Filed 3–27–98; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Trail Study and Final Environmental Impact Statement for the Ala Kahakai Hawai'i Island, Hawaii County, Hawaii; Notice of Availability

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement (FEIS) which provides an analysis of whether the Ala Kahakai is nationally significant and whether it is feasible and desirable to add it to the National Trails System. The FEIS includes Letters of Comment on the Draft Environmental Impact Statement and responses from the National Park Service. To assist Congress in gauging the feasibility, the study analyzes a range of options for managing the trail.

Findings: The study concludes that the Ala Kahakai is significant (1) under the three criteria for national historic trails outlined in the National Trails System Act, as amended; (2) under National Register of Historic Places criteria A, B, C, and D; and (3) as a traditional cultural property. The study concludes that establishing a continuous trail is physically feasible.

The study concludes that desirability of recognizing the trail rests on two key items: first, communities along the trail corridor, native Hawaiians, and landowners all be involved in planning and implementing the trail; and second, adequate funding must be ensured at the time the trail is designated to fully protect cultural and natural resources.

At their November 21, 1997 meeting, the National Park System Advisory Board recommended a finding that the trail does have national historic significance based on the criteria develop under the Historic Sites Act of 1935.

Alternatives and Recommendation: The study examines four alternatives for future protection, interpretation, and management of the Ala Kahakai: a no-action alternative, a national historic trail (continuous), a state historic trail, and a national historic trail (discontinuous). Additional alternatives which were considered but rejected are summarized. The 60-day public review of the draft EIS ended on October 17, 1997. Four public meetings were held on September 3–5, 1997, in Captain Cook, Waimea, and Hilo. The final study concludes that the national historic trail (continuous) is the environmentally preferred alternative.

The environmental consequences and corresponding mitigations of the alternatives are evaluated in the document. It is anticipated that with funding adequate to implement the recommended planning and management, potential adverse environmental impacts of the action alternatives can be minimized or eliminated. After a 30-day no-action period, the National Park Service will prepare a Record of Decision. It will be forwarded along with the final study to the Secretary of the Interior to be transmitted to the Congress of the United States. Congress will decide which alternative is selected.

SUPPLEMENTARY INFORMATION: The no-action period for this document will end 30 days after the Environmental Protection Agency's listing of the FEIS is published in the **Federal Register**. Comments may be submitted during this period and should be addressed to Superintendent, Pacific Great Basin Support Office, National Park Service, 600 Harrison Street, Suite 600, San Francisco, California 94107, Attention: Meredith Kaplan. For additional information, please write the National Park Service at that address or telephone 415–427–1438.

Copies of the study FEIS are available at the Pacific Great Basin Support Office at the above address and at the National Park Service Pacific Island Support Office, 300 Ala Moana Boulevard, Room 6305, Honolulu, HI 96850.

Dated: March 23, 1998.

Holly Bundock,

Acting Regional Director, Pacific West.

[FR Doc. 98–8275 Filed 3–27–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0550.

Form Numbers: AID 1570–13 and AID 1570–14.

Title: Narrative/Time-Line and Report on Commodities (Quarterly Reports).

Type of Submission: Renew.

Purpose: The purpose of this information collection is to properly respond to the annual competition among applicants who apply on behalf of their sponsored overseas institutions, independent reviewers and ASHA need to assess the strength and capability of the U.S. organizations, the overseas institutions and the merits of their proposed projects. Easily accessible historical records on past accomplishments and performance by repeat USOs, would speed the grant making process and provide documented reasons for both successful and unsuccessful applications.

Annual Reporting Burden:

Respondents: 70.

Total annual responses: 1,470.

Total annual hours requested: 735.

Dated: March 20, 1998.

Willette L. Smith,

Chief, Information and Records Division, Bureau for Management, Office of Administrative Services.

[FR Doc. 98–8229 Filed 3–27–98; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–374 and 731–TA–780 (Preliminary)]

Butter Cookies in Tins From Denmark

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Denmark of butter cookies in tins, provided for in subheading 1905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Denmark and sold in the United States at less than fair value (LTFV).

Background

On February 6, 1998, a petition was filed with the Commission and the Department of Commerce by the Hearthside Baking Company, Inc. (D/B/A Maurice Lenell Cooky Company), Chicago, IL, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and LTFV imports of butter cookies in tins from Denmark. Accordingly, effective February 6, 1998, the Commission instituted countervailing duty investigation No. 701–TA–374 (Preliminary) and antidumping investigation No. 731–TA–780 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 17, 1998 (63 FR 7828). The conference was held in Washington, DC, on February 27, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 23, 1998. The views of the Commission are

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Bragg dissenting.

contained in USITC Publication 3092 (March 1998), entitled "Butter Cookies in Tins from Denmark: Investigations Nos. 701–TA–374 & 731–TA–780 (Preliminary)."

Issued: March 24, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–8149 Filed 3–27–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–391]

Overview and Analysis of Current U.S. Unilateral Economic Sanctions

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of public hearing, and notice of opportunity to submit comments.

EFFECTIVE DATE: March 23, 1998.

SUMMARY: Following receipt on February 19, 1998, of a request under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) from the Committee on Ways and Means (the Committee) of the U.S. House of Representatives, the U.S. International Trade Commission (the Commission) instituted investigation No. 332–391, *Overview and Analysis of Current U.S. Unilateral Economic Sanctions*. The Commission plans to submit its report to the Committee by August 19, 1998.

FURTHER INFORMATION CONTACT: James Stamps, Office of Economics (202–205–3227 or e-mail to jstamps@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing-impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Background

As requested by the Committee, the Commission in its report on the investigation will provide:

(1) A description of U.S. unilateral economic sanctions in effect including, to the extent possible, a description of economic sanctions imposed by states and localities;

(2) To the extent possible, a survey of affected U.S. industries on the costs and effects of U.S. unilateral economic sanctions;

(3) A review of recent literature on the economic effects of national-level economic sanctions; and

(4) A proposed methodology to analyze in future studies the short-and long-term costs of U.S. unilateral sanctions and their impact on the U.S. economy.

In its request, the Committee defined the term "unilateral economic sanctions" to mean any unilateral restriction or condition on economic activity with respect to a foreign country or foreign entity that is imposed by the United States for reasons of foreign policy or national security. The Committee said that the Commission should exclude from this definition: (1) U.S. economic sanctions imposed pursuant to a multilateral regime when the other members of that regime have agreed to impose substantially equivalent measures; (2) U.S. measures imposed to remedy unfair trade practices or to enforce United States rights under a trade agreement, including under section 337 of the Tariff Act of 1930, title VII of that Act, title III of the Trade Act of 1974, sections 1374 and 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3103 and 3106), and section 3 of the Act of March 3, 1933 (41 U.S.C. 10b–1); (3) any measure imposed to remedy market disruption or to respond to injury to a domestic injury for which increased imports are a substantial cause or threat thereof, including remedies under sections 201 and 406 of the Trade Act of 1974, and textile import restrictions including those imposed under section 204 of the Agricultural Act of 1956 (7 U.S.C. 1784); (4) any action taken under title IV of the Trade Act of 1974, including the enactment of a joint resolution under section 402(d)(2) of that Act; (5) any measure imposed to restrict imports of agricultural commodities to protect food safety or to ensure the orderly marketing of commodities in the United States, including actions taken under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624); (6) any measures imposed to restrict imports of any other products in order to protect domestic health or safety; (7) any measure authorized by, or imposed under, a multilateral or bilateral trade agreement to which the United States is a signatory, including the Uruguay Round Agreements, the North American Free Trade Agreement, the United States-Israel Free Trade Agreement, and the United States-Canada Free Trade Agreement; and (8) any export control imposed on any item on the United States Munitions List.

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW, Washington, DC 20436, beginning at 9:30 am on May 14 (and May 15 if needed), 1998. All persons will have the right to appear by counsel or in person, to present testimony, and to be heard. Requests to appear at the public hearing should be filed in writing with the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436, on or before April 30, 1998. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is April 30, 1998. The deadline for filing posthearing briefs or statements is May 22, 1998. Any confidential business information included in such briefs or statements or to be submitted at the hearing must be submitted in accordance with the procedures set forth in § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6).

In the event that, as of COB April 30, 1998, no witnesses have filed a request to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after April 30, 1998, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat a confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than COB May 22, 1998. All submissions should be addressed to the Secretary, United States International Trade

Commission, 500 E Street SW, Washington, DC 20436.

Accessibility

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: March 24, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–8150 Filed 3–27–98; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Program Act, Disability Grant Program Funded Under Title III, Section 323 and Title IV, Part D, Section 452

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Application (SGA).

SUMMARY: All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor, Employment and Training Administration (DOL/ETA), announces the availability of approximately $4.17 million to award competitive grants for multi-state employment and training projects serving people with disabilities. This grant program is funded using Job Training and Partnership Act (JTPA) Title IV Research and Demonstration funds and Title III National Reserve funds.

DATES: Applications for this SGA will be accepted commencing April 29, 1998. The closing date for receipt of proposals is 2:00 (Eastern Standard Time) May 14, 1998.

ADDRESSES: Applications should be mailed to: Division of Acquisition and Assistance, Attention: Dr. David Houston, Reference SGA/DAA 98–007, 200 Constitution Avenue, N.W., Rooms S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Dr. David Houston, Division of Acquisition and Assistance, Telephone (202) 219–7300 (not a toll-free number). This solicitation will also be published on the Internet at http://www.doleta.gov.

SUPPLEMENTARY INFORMATION: This announcement consists of five parts: Part I—Application Process, Part II—Background and Purpose, Part III—Statement of Work, Part IV—Government Requirements, and Part V—Selection Criteria.

Part I. Application Process

A. Submission of Proposal

A proposal shall consist of two (2) separate and distinct sections: Section I, the Technical Proposal and Section II, the Financial Proposal. An original and three copies of the proposal shall be submitted. The Catalog of Federal Domestic Assistance number is 17.249.

Section I shall contain a Technical Proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work in Part III of this solicitation. No cost data or reference to costs shall be included in the Technical Proposal. In addition, the Technical Proposal shall be limited to 50 double-spaced, single-side, 8.5 inch × 11 inch pages with 1 inch margins. Appendices shall not exceed 20 pages. Text type shall be 12 point or larger. Applications not meeting these requirements may not be considered. The *Technical Proposal* must also contain participant, activity and outcome information.

Section II, the Financial Proposal shall contain the SF–424, "Application for Federal Assistance", and Budget Information Sheet (Attachments A & B). In addition, the budget shall include on a separate page a detailed cost analysis of each line item. *Administrative costs should not exceed 15 percent of total proposed costs.* Justification must be provided on the need for administrative costs that exceed this limit. Approval of a budget by DOL is not the same as approval of actual costs.

Hand Delivered Proposals

Proposals may be mailed or delivered by hand. A mailed proposal should be mailed no later than five (5) days prior to the closing date for the receipt of applications. Hand delivered grant applications must be received at the designated place by 2:00 p.m. (Eastern Standard Time) on May 29, 1998. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time on the closing date. Grant applications transmitted by electronic mail, telegraph or facsimile will not be considered.

Late Proposals

Any proposals received at the Office designated in the solicitation, after the exact time specified for receipt, will not be considered unless it is received before the award is made or was either:

(1) Sent by U.S. Postal Service registered or Certified mail not later than the fifth (5th) calendar day before the date specified for receipt of application, or

(2) Sent by U.S. Postal Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays. The only acceptable evidence to establish the date of mailing of a late proposal sent by either Express Mail or U.S. Postal Service Registered, Certified Mail is the U.S. Postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing.

Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

B. Eligible Applicants

Private non-profit entities are eligible to receive grant funds under this award. Entities described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this SGA. The Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 *et seq.* prohibits the award of federal funds to 501(c)(4) entities engaged in lobbying activities.

Applicants must operate or propose to operate in two or more states. Applicants should provide documentation of knowledge and/or experience in the following areas:

—Overcoming barriers to employment experienced by individuals with disabilities;

—Ability to conduct training, placement, and follow-up services; and

—Management and accountability structure necessary to ensure the integrity of the funds requested (by meeting the standards for financial management and participant data systems as specified in 29 CFR, Part 95).

Only the proposal per applicant/organization(s) is permitted. A proposal submitted by a consortium of two or more organizations will be accepted.

However, another proposal submitted separately by a member of the consortium will not be accepted.

C. Period of Performance

The period of performance will be twelve (12) months. (Planned dates are July 1, 1998 through June 30, 1999).

D. Option to Extend

Based on the availability of funds, project performance and the needs of the Department, grants may be extended for an additional one or two years of operation. The Department reserves the right to impose additional requirements or refinements in program design if the project is extended for a second and/or third year grant period.

E. Scope of Award

DOL/ETA anticipates making awards that range from $300,000 to $800,000. Proposals with costs exceeding $800,000 will not be considered. Title III funds are included in the total funds available. Therefore, some awards will be funded in whole, or in part, with Title III funds based on the extent to which the proposal is targeted to disabled individuals who also qualify as dislocated worker under Title III (see Definitions). Awards will be made on a competitive basis.

Part II. Background and Purpose

A. Background

DOL/ETA has provided grant awards for approximately twenty years to organizations providing employment and training services to individuals with disabilities. In the past, these grants have been awarded under the authority of Title IV, section 451(c)(5) of the Job Training Partnership Act (JTPA). Ten organizations received grant awards to operate programs under these provisions in Program Year (PY) 1995. These grants end on June 30, 1998. Several changes have occurred since the inception of these national disability grant programs. Societal and systemic changes have directly impacted individuals with disabilities and their opportunities in the workforce. Some of these changes were: the 1990 enactment of the American's with Disabilities Act (ADA), "mainstreaming" of people with disabilities into schools and the workplace, workforce development restructuring and consolidation, decentralizing responsibilities to state and local levels, technological advances, and telecommunicating. Individuals with disabilities continue to experience high levels of unemployment, particularly those with severe disabilities. The Census Bureau Brief (CENBR/97–5) (December 1997) shows that the unemployment rate for those with severe disabilities is 74 percent, compared to 23 percent for those with less severe disabilities. This rate is occurring in a national employment environment where the overall unemployment rate is less than five (5) percent, the lowest level in 25 years. Executive Order 13078, "Increasing Employment of Adults with Disabilities," was issued March 13, 1998 establishing a National Task Force chaired by the Secretary of Labor. The purpose of the task force is to address the significant levels of unemployment faced by individuals with disabilities.

This supports DOL/ETA's decision to reconsider the purpose of ETA's disability grant program. Therefore, the 1998 grants awards will be authorized under the authority of Title IV, section 452(a) of JTPA for research and demonstration grants. "To assist the Nation in expanding work opportunities and assuring access to those opportunities for all who desire it * * *"

B. Purpose

The primary purpose of this award is to implement strategies to improve access to long term quality employment, employment outcomes, and skills that address the needs of the disabled population, particularly those with severe disabilities. In this program, the quality of employment outcomes are more important than the number of placements. Of particular importance are skills and employment training that enable individuals to move to unsubsidized employment.

Innovation, coordination and partnerships, non-duplication of existing services, and leveraging of scarce resources are also important factors. In addition, DOL is interested in identifying successful project designs that can be shared and replicated as state workforce system changes proceed.

DOL is seeking applications that address one or more of the following concerns:

—Strategies for high quality, long term employment of individuals are *severe disabilities*, including those with a specific disabling condition or who also may be members of a subgroup (e.g. minorities, youth, older workers),
—Strategies for *re-employment* of individuals with disabling conditions (e.g., brain/spinal cord injury from accident, emotional/psychiatric conditions, multiple sclerosis) resulting in dislocation from employment and a need for retraining,
—Linkages with public (national, state and local) and/or private delivery systems, disability consumer organizations (e.g., independent living centers), and other entities that address *significant employment barriers* (e.g., lack of medical coverage, transportation needs, personal care requirements),
—Linkages with existing service strategies that build-on and *facilitate workforce development* (e.g., One-Stop Career Centers, School-to-Work,) and other systemic changes impacting individuals with disabilities (e.g., Social Security Return-to-Work programs, Welfare-to-Work implementation, State Medicaid waiver strategies),
—*Innovative approaches* utilizing technology, novel training and workplace strategies or other approaches (e.g., distance learning, out-stationed work sites, entrepreneurship) which result in significant employment outcomes.

DOL expects the awardee to evaluate and refine their proposed project as it progresses Changes impacting the agreed upon Statement of Work must be coordinated with ETA. A primary evaluation function will be performed by DOL. Therefore, proposals need not identify evaluation strategies.

Grant funds are available under both Title III and IV of JTPA and will be used to serve disabled participants who may also qualify as dislocated workers.

Part III. Statement of Work

A. Project Design

Project designs should include demonstration sites in two or more states. Projects should be designed to: (1) test the effectiveness of project strategy in diverse state systems and potential for replication, (2) build on a variety of National efforts involving individual state workforce development systems, and (3) allow for analysis of different state/local service structures. Minimum cost per site shall be $75,000.

Each grant application shall follow the format outlined below providing detailed information pertinent to each demonstration site.

1. Target Population

Participants for proposed project must be individuals with disabilities (i.e., physical, sensory, emotional, or mental functional impairments) as defined in the ADA regulations at 29 CFR, Part 1630.2. Describe characteristics of client population to which proposal is targeted including, where applicable: (1) specific type(s) of disability, e.g., psychiatric disorders, cerebral palsy, (2) specific subgroup of disabled population, e.g., minority, youth, older workers, (3) barriers to employment, e.g., medical

health coverage, (4) how project design proposes to address barriers, (5) why the project design will result in quality career and/or employment outcomes, and (6) what innovative and coordinated approaches will be utilized in serving the target population.

Project designs should address the needs of individuals with disabilities who are unable to obtain or retain employment or who are underemployed. Justifications should be provided for the selected target group that includes specific information on inability to obtain or retain employment and/or underemployment.

Proposals must also provide the following planning information on the participants to be served in project design, in total and by project site:

- The number of participants (identify reenrollments, if applicable),
- The number of participants who satisfy the criteria for JTPA Title III-funded programs,
- The age range of participants (e.g., under 22, 23–50, 51–65),
- The number of participants who receive Supplemental Security Income and/or Social Security Disability Income (SSI/SSDI),
- The number of participants to be referred by Vocational Rehabilitation Agencies.

Applicants may also provide other information about participants considered important such as educational level, number of minority or ethnic, etc.

Recruitment: Describe how target population will be recruited for participation at each site. Describe how outreach and recruitment addresses the overall design of the project. Identify how workforce development systems and consumer organizations are utilized in the recruitment process. In addition, the design should describe the interventions that would be undertaken to minimize periods of unemployment.

Eligibility: Describe the eligibility process for project participants. This includes the process for determining ADA qualification and verification process for Title III eligibility, if target population includes disabled individuals who are also dislocated workers.

Assessment: Describe the process for evaluating participants skill levels, education levels, career interests, accommodation requirements, training and services, and other barriers and needs. Narrative should identify whether assessment will be conducted by the awardee or another service provider.

2. Training and Supportive Services

The design should describe training and services to be provided from the time of selection of participants through placement in unsubsidized employment and follow-up. Description should include a rationale for activities and services in terms of overall project design, overcoming employment, barriers of planned participants, and achieving quality employment outcomes. Narratives should provide a clear understanding of services and supports needed for successful placement and job retention. This description may include the Return-To-Work program, Plan for Achieving Self Support (PASS) program, Medicaid waivers, and other work related incentives. The design should also include information on how training and service design will improve long-term career potential for participants.

DOL/ETA is encouraging program designs utilizing innovative "work-first" strategies providing early entry into integrated and competitive work-settings. This approach may include on-the-job training, immediate job placement, post-placement training, and/or services. Program design should include post-placement follow-up of 30, 60, and 180 days.

The design must provide information on planned activities and services to participants including project total and total per site. This must include the number of participants to be served in job search assistance (only) basic educational training, job skill training, on-the-job training, work readiness and work experience, and post-placement training and job retention services. Planned participation in more than one activity should be noted, where applicable. Identify other sources of funds to be utilized for training or services to participants that is a part of the overall project design but will not be funded by DOL/ETA.

3. Employment Outcomes

Available Jobs: Based on labor market information, project design should describe jobs that are expected to be available to participants upon completion of training and placement services, probable wage levels, the potential for advancement, and career path. The design should, also, identify how and why job placement and retention for participant group will more likely occur as a result of the proposed project. Narrative should indicate what new employers and/or occupations are the focus of project design compared to applicants' current or previous grant programs, if applicable.

Provide information that indicates the availability of suitable jobs for participants, prevailing wage levels, career potential and opportunities for advancement. Include information on the number and type of jobs and the availability of qualified workers. Sources of information should be identified.

Special Wage Waivers Under Fair Labor Standards Act: Employment in jobs, and/or related training, approved for Special Minimum Wage Certificates under Part 525 of the Fair Labor Standards Act (FLSA), as amended, will not be considered as an allowable activity or outcome.

Organizations receiving FLSA special wage certifications must provide assurances and verification that FLSA special wage training and placement are not incorporated within proposed project design.

Planned Placements: The design must indicate how many placements in unsubsidized, competitive employment are expected to result from activities at each site. A description of the quality of these job placements should also be included. Because of project start-up, a high rate of job placement may not be a realistic outcome within the initial grant period. Information on participant flow from intake, assessment through placement should be provided indicating clearly when placement will occur.

Planned outcome information should be provided, including project total and total per site: (1) number of terminees completing program, (2) number of placements in unsubsidized employment, (3) number of placements in full time employment (35 hours per week or more), (4) the number of indirect placement, (5) the average hourly wage, and placements with durations of 180 days and more.

Applicants are also requested to provide an explanation, if applicable, on "temporary job" placements; and the extent to which program participants and/or recipients of SSDI/SSI are expected to transition to economic self-support in the mainstream workforce.

Applicants are requested to describe methods of ongoing assessment of "customer satisfaction" and how results will be used in project operation. The DOL Government Performance and Result's Act (GPRA) Program Year (PY) 1998 goal for the disability grant program is an "entered employment rate" of 47 percent. If applicant does not anticipate achieving this competitive placement level, an explanation should

be provided on why this level may not be reached.

4. Innovation

Describe any innovations in the proposed project, including (but not limited to) innovations relating to the target population, delivery of services, training methods, job development, or job retention strategies. Describe new directions or approaches to address significant unemployment levels of people with disabilities. Explain how the proposed project: (1) will be applicable to disability issues of national scope; (2) is similar to or differs from the applicant's prior and current activities; and (3) does not duplicate existing employment and training program.

Because the information technology industry currently represents close to 50 percent of the nation's economic growth, applicants should consider how they might initiate the development of new collaborative processes at the regional and local levels, thereby leveraging private sector, school, and local government resources in order to expand workplace opportunities for individuals with disabilities.

5. Coordination and Linkages

Describe coordination with state and local utilities, consumer organizations, and/or others in the design and implementation of the proposed project. State/local One-Stop Career Center systems, School-to Work initiatives, Welfare-to Work programs, and Bureau of Apprenticeship Training programs should be included as partners, if applicable. Applications may also identify coordination strategies with Vocational Rehabilitation Agencies, educational institutions, and labor organizations.

Partnership efforts should deal with major employment obstacles of insufficient medical coverage and/or other barriers to employment (e.g., transportation, personal assistance needs, job coach requirements). Describe coordination efforts with Social Security return-to-work incentives (e.g., PASS, Impairment Related Work Expenses) see Social Security Act, section 1619(a) and (b)). Applicants should indicate the impact of proposed project on system changes underway and how non-grant funds are being leveraged. Identify funds are resources to be contributed to the project by the applicant and/or partnership entities. Evidence should be presented that demonstrates cooperation of coordinating entities. The design should include a reasonable method of assessing and reporting on the impact of such coordination. Consultation with and/or review by appropriate labor organizations, where applicable, is encouraged and should be documented.

B. Management and Administration

1. Management Structure

Describe the management structure for the proposed project, including a staffing plan showing each position and the percentage of time assigned to the project. Provide an organizational chart showing the relationship between the management and operational components of the project and the overall organization. Include staff and operations projected for each demonstration site. Include resumes of current key staff. For each of the key staff not identified at the time of application, provide a job description or the qualifications sought for the position. Provide information on business advisory councils, board of directors, or other administrative structures of the organization, including current membership.

2. Program Integrity and Public Accountability

Describe the mechanisms to be used to ensure financial and program accountability in record keeping and reporting. The design must demonstrate oversight of project implementation, and progress benchmarks, for each site. Described how the project will keep records of activities and satisfy the administrative requirements set out under 20 CFR 631.64, and at 29 CFR Part 95, 96, and 98.

The designs must include a comprehensive discussion describing in detail, types of information to be collected, methods and frequency of collections, and ways information will be used to implement and manage the program. The following must be covered:

(1) Program data collection and reporting systems to determine the achievement of project outcomes,

(2) Financial management system to ensure fiscal accountability in accordance with statutory, regulatory, and contractual requirements,

(3) Communications processes and technology which will be utilized,

(4) Administrative process for each project site, and

(5) Grievance procedure.

3. Monitoring

Awardee will be responsible for monitoring and oversight of all activities under the grant. Identify the information on project performance and financial management to be collected on a short-term basis by project staff.

Describe the process, frequency, and rationale for frequency of on-site monitoring of each project site, including employer site visits, if applicable. Also, describe monitoring in terms of on-going evaluation of proposed project design. Describe the process and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided.

4. Grievance Procedure

Describe the grievance procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with requirements at 20 CFR 631.64(c)(1).

5. Previous Project Management Experience

Provide objective evidence of the grant applicant's ability to manage such a project, ensure the integrity of the grant funds, and deliver the proposed performance. Indicate the grant applicant's past management experience, particularly regarding oversight and operating functions including financial management and relevant audit or grant reviews of the organization. Provide references and/or contact persons of former or current funding organizations.

C. Definitions

For the purpose of this demonstration project, the following definitions apply to the specified terms, as used in this SGA.

Dislocated Worker—See regulations as specified in See statutory definition pursuant to JTPA 301(a)1) and the regulatory eligibility requirements at 20 CFR 6311.3 (Federal Register September 2, 1994).

Long-Term Unemployment—includes a period of non-work (except for periodic periods of subsistence jobs) of four months up to five years. Prior employment which does not offer the opportunity for self-sufficiency of the individual or the individual's family will not preclude an individual's participation in this project under the requirement of "limited opportunities for employment or reemployment in the same area in which such individuals reside."

Severe Disability—See Vocational Rehabilitation Act regulations at 34 CFR Ch. III, Section 369.4 (7/1/97 edition).

Basic Education—Training activities designed to enhance the employability of participants by upgrading basic skills (e.g., General Equivalency Diploma (GED), remedial education or training in English language proficiency).

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Job Skills—Training conducted in an institutional setting, and designed to provide individuals with technical skills and information required to perform a specific job or group of jobs (e.g., vocational technical school, community college, etc.).

On-the-Job Training (OJT)—Training provided to an individual hired first by the employer while he/she is engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job (See 20 CFR 632.78(b)).

Work Experience (WE)—A short-term or part-time work activity in the public or not-for-profit sector providing individuals, with opportunities to acquire skills and knowledge necessary to perform a job, including appropriate work habits and behaviors. (See 20 CFR 632.79(B)).

Job Search Assistance—This includes, but is not limited to:

(1) Orientation to the world of work
(2) Training/Job-related counseling and testing
(3) Employability assessment (other than that involved during intake)
(4) Job development
(5) Job search assistance
(6) Job referral and placement

Job Placement—Placement consisting of a minimum of 20 hours during one week of unsubsidized funding.

Post-Employment/Job Retention Services—Supportive services which may include, but is not limited to, post placement follow-up activities, work site evaluation and accommodation assistance, and training services provided following placement in unsubsidized, competitive employment.

Unsubsidized/Competitive Employment—Non-grant or supported employment which includes, entry into the Armed Forces (including entry onto active duty from Reserve and National Guard units), entry into employment in a registered apprenticeship program, self-employment, etc. Employment performed on a full-time or part-time basis in an integrated setting in which wages/salaries are at or above minimum wage. Employment with special wage provisions authorized under Title 29, Part 525 of the Fair Labor Standards Act *are not* considered unsubsidized nor competitive for the purpose of this grant.

Part IV. Government Requirements

A. Reporting Requirements

DOL intends to develop a standard for reporting in conjunction with awardees and general public as required by OMB. Applicants will be required to submit financial, program, and participant reports on a quarterly, semi-annual or annual basis. Grantees will complete Quarterly Financial Reports (OFR) SF–269 and Quarterly Progress Reports (QPR). The QPR shall include both a narrative and statistical format. Specify in the QFR's "remarks" section, the amount spent for Title III. Also include an attachment outlining expenditures in the major categories (e.g., personnel, travel, supplies, equipment, contractual). An original and two copies of the QPR and the QFR will be sent not later than 30 days after the end of each quarter. In addition, Annual Participant and/or Program Service Reports may be required to obtain information on: (a) types of services provided, (b) number of clients served by disability, race, national origin, gender, age, SSI/SSDI, AFDC, and (c) the number of clients with a severe disability served. Detailed requirements for submitting these reports will be included in the grant award document.

B. Evaluation

The Department of Labor plans to conduct a quantitative and qualitative evaluation that provides an in-depth analysis and assessment of the grant program, including: (1) how project addressed barriers to employment by individual participants, e.g., health benefits, transportation, personal assistance needs, (2) improvements or changes to systemic linkages, (3) successful project design components that result in improved outcomes, and (4) the success of the program in achieving program objectives. The evaluation will be coordinated with awardees who must make available records on participants employers, and provide access to personnel and staff.

C. Departmental Oversight

DOL reserves the right to conduct programmatic and financial oversight/monitoring of grant and project sites.

D. Use of Federal Funds

Federal funds cannot be used to support activities which would be provided in the absence of these funds. Grant funds may cover only those costs which are appropriate and reasonable. Federal grant funds may only be used to acquire equipment which is necessary for the operation of the grant.

Grantees must receive prior approval from the DOL/ETA Grant Officer for the purchase and/or lease of any property and/or equipment as defined in "Grants and Agreements with Institutes of Higher Education, Hospitals and Other Non-Profit Organizations", codified at 29 CFR Part 95. Request for prior approval, if applicable, may be included in the grant budget application or submitted after grant award.

Part V. Selection Criteria

Selection of awards will be made after careful evaluation of proposals by a panel of specialists. *Ratings will reflect the quality of documentation, justification, and evidence of activities included in the management and design of the projects.* Panelists will evaluate the proposals for acceptability based on responsiveness to the Statement of Work, with emphasis on the following:

A. Project Design (40 Points)

Proposals will be evaluated based on the extent to which the activities and/or services address the following:

(1) Overcoming barriers to employment experienced by individuals in the target population,
(2) Increasing the likelihood that individuals with disabilities will achieve sustained, quality employment at a living wage,
(3) Providing opportunities for career advancement,
(4) Incorporating "work-first" strategies,
(5) Addressing skill shortages in the information technology industry,
(6) Fulfilling a gap in current services delivery system,
(7) Incorporating advanced skill levels or other approaches leading to long term employment and career potential
(8) Incorporating innovative approaches and linkages with other service providers in the design of the project.

B. Management and Administration (25 Points)

Proposals will be evaluated based upon the following:

(1) Applicants' management structure including a staffing plan, organization chart, operational components, etc.,
(2) A time-line of the proposed schedule for implementing the program,
(3) A description of the mechanism used to ensure financial and program accountability in record keeping and reporting,
(4) A description of the monitoring system,
(5) The qualifications of the persons designated for key executive, managerial, and technical positions,
(6) The applicants capabilities to coordinate and form linkages with other organizations involved in serving the target population.

C. Target Population (20 Points)

Proposals will be evaluated based on the following:

(1) Identification of specific group of individuals to be served who are

disabled and who face significant barriers to employment,

(2) Demonstration that the applicant understands the needs of the group to be served,

(3) Documentation that individuals in the identified target group are available in sufficient numbers,

(4) Recruitment process,

(5) Eligibility verification, and

(6) Assessment processes.

D. Previous Experience (15 Points)

Applicants will be evaluated on their experience in providing education, training and/or other employment-related services for individuals with disabilities. Consideration will be given to information regarding efforts to coordinate and form linkages with other organizations involved Applicants will be evaluated on their experience in providing education, training and/or other employment-related services for individuals with disabilities. Consideration will be given to information regarding efforts to coordinate and form linkages with other organizations involved with the target population. Applicants must demonstrate, providing supporting information, that they have successfully organized, managed, and completed projects, and/or that they have projects with successful audit results, and have received funds from federal or other sources.

Panel results are advisory in nature to the Grant Officer who makes the final decision. Applicants are advised that discussions may be necessary to clarify any inconsistencies in their applications. The final decisions on awards will be based on what is most advantageous to the Federal Government as determined by the Grant Officer. The Department may elect to award a grant without discussion with the applicant. Such award would be based on the applicant's proposal without alteration. The applicant's signature on the SF–424 constitutes a binding offer.

Signed at Washington, DC, March 24, 1998.

James C. De Luca,

Grant Officer, Office of Grants and Contracting Management, Division of Acquisition and Assistance.

Attachments

1. Appendix A—"Application for Federal Assistance" (Standard Form 424)
2. Part II—Budget Information
3. Financial Status Report Form (Standard Form 269)

BILLING CODE 4510–30–M

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipe J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
a. Federal	$ .00	
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

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FINANCIAL STATUS REPORT
(Long Form)
(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report Is Submitted	2. Federal Grant or Other Identifying Number Assigned By Federal Agency	OMB Approval No. 0348-0039	Page of pages
3. Recipient Organization (Name and complete address, including ZIP code)			
4. Employer Identification Number	5. Recipient Account Number or Identifying Number	6. Final Report ☐ Yes ☐ No	7. Basis ☐ Cash ☐ Accrual
8. Funding/Grant Period *(See instructions)* From: (Month, Day, Year)	To: (Month, Day, Year)	9. Period Covered by this Report From: (Month, Day, Year)	To: (Month, Day, Year)

10. Transactions:	I Previously Reported	II This Period	III Cumulative
a. Total outlays			
b. Refunds, rebates, etc.			
c. Program income used in accordance with the deduction alternative			
d. Net outlays *(Line a, less the sum of lines b and c)*			
Recipient's share of net outlays, consisting of:			
e. Third party (in-kind) contributions			
f. Other Federal awards authorized to be used to match this award			
g. Program income used in accordance with the matching or cost sharing alternative			
h. All other recipient outlays not shown on lines e, f or g			
i. Total recipient share of net outlays *(Sum of lines e, f, g and h)*			
j. Federal share of net outlays *(line d less line i)*			
k. Total unliquidated obligations			
l. Recipient's share of unliquidated obligations			
m. Federal share of unliquidated obligations			
n. Total Federal share *(sum of lines j and m)*			
o. Total Federal funds authorized for this funding period			
p. Unobligated balance of Federal funds *(Line o minus line n)*			
Program income, consisting of:			
q. Disbursed program income shown on lines c and/or g above			
r. Disbursed program income using the addition alternative			
s. Undisbursed program income			
t. Total program income realized *(Sum of lines q, r and s)*			

11. Indirect Expense	a. Type of Rate *(Place "X" in appropriate box)* ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed			
	b. Rate	c. Base	d. Total Amount	e. Federal Share

12. *Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

13. Certification: I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

Typed or Printed Name and Title	Telephone (Area code, number and extension)
Signature of Authorized Certifying Official	Date Report Submitted

Previous Edition Usable
NSN 7540-01-012-4285

200-498 P O 139 (Face)

Standard Form 269 (Rev. 7-97)
Prescribed by OMB Circulars A-102 and A-110

[FR Doc. 9
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FINANCIAL STATUS REPORT
(Long Form)

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0039), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET.

Please type or print legibly. The following general instructions explain how to use the form itself. You may need additional information to complete certain items correctly, or to decide whether a specific item is applicable to this award. Usually, such information will be found in the Federal agency's grant regulations or in the terms and conditions of the award (e.g., how to calculate the Federal share, the permissible uses of program income, the value of in-kind contributions, etc.). You may also contact the Federal agency directly.

Item	Entry
1, 2 and 3.	Self-explanatory.
4.	Enter the Employer Identification Number (EIN) assigned by the U.S. Internal Revenue Service.
5.	Space reserved for an account number or other identifying number assigned by the recipient.
6.	Check yes only if this is the last report for the period shown in item 8.
7.	Self-explanatory.
8.	Unless you have received other instructions from the awarding agency, enter the beginning and ending dates of the current funding period. If this is a multi-year program, the Federal agency might require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period."
9.	Self-explanatory.
10.	The purpose of columns I, II, and III is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report *in the same funding period*. If this is the first or only report of the funding period, leave columns I and II blank. If you need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.
10a.	Enter total gross program outlays. Include disbursements of cash realized as program income if that income will also be shown on lines 10c or 10g. Do not include program income that will be shown on lines 10r or 10s. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct costs for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase or decrease in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subgrantees and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.
10b.	Enter any receipts related to outlays reported on the form that are being treated as a reduction of expenditure rather than income, and were not already netted out of the amount shown as outlays on line 10a.
10c.	Enter the amount of program income that was used in accordance with the deduction alternative.
Note:	Program income used in accordance with other alternatives is entered on lines q, r, and s. Recipients reporting on a cash basis should enter the amount of cash income received; on an accrual basis, enter the program income earned. Program income may or may not have been included in an application budget and/or a budget on the award document. If actual income is from a different source or is significantly different in amount, attach an explanation or use the remarks section.
10d,	e, f, g, h, i and j. Self-explanatory.
10k.	Enter the total amount of unliquidated obligations, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an outlay has not yet been recorded. Do not include any amounts on line 10k that have been included on lines 10a and 10j. On the final report, line 10k must be zero.
10l.	Self-explanatory.
10m.	On the final report, line 10m must also be zero.
10n,	o, p, q, r, s and t. Self-explanatory.
11a.	Self-explanatory.
11b.	Enter the indirect cost rate in effect during the reporting period.
11c.	Enter the amount of the base against which the rate was applied.
11d.	Enter the total amount of indirect costs charged during the report period.
11e.	Enter the Federal share of the amount in 11d.
Note:	If more than one rate was in effect during the period shown in item 8, attach a schedule showing the bases against which the different rates were applied, the respective rates, the calendar periods they were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

SF-269 Back (Rev. 7-97)

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10546]

Notice of Proposed Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 97–35 Involving Amalgamated Bank of New York (the Bank) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption to modify andreplace PTE 97–35.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend and replace PTE 97–35 (62 FR 41088, July 31, 1997). PTE 97–35 permits, among other things, the provision of banking services by the Bank to 22 employee benefit plans (the Plans) listed in the exemption, all of which are affiliated with the Union of Needletrades, Industrial and Textile Employees (UNITE), which is the majority and controlling shareholder in the Bank. PTE 97–35 is effective as of July 1, 1995, except for Plan investments in a fund maintained by the Bank designated as the LEI Fund, for which the effective date is January 3, 1998.

If granted, the proposed exemption would replace PTE 97–35 but would incorporate by reference the facts, representations and all of the conditions that are contained in the notice and the final exemption.

DATES: Written comments and requests for a public hearing should be received by the Department on or before May 29, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Application No. D–10546. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ronald Willett, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposal to amend and replace PTE 97–35. PTE 97–35 provides relief, effective July 1, 1995, from the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The request to amend and replace PTE 97–35 was set forth in an exemption application dated December 4, 1997, filed on behalf of the Bank. The Department is proposing the exemption to amend and replace PTE 97–35 pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990).

The applicant requested modifications to sections IV(C) and IV(E) of the exemption. Section IV(C) of PTE 97–35 provides that:

Banking Services means (1) custodial, safekeeping, checking account, trustee services, and (2) investment management services involving (a) fixed income securities (either directly or through a collective investment fund maintained by the Bank), (b) the LongView Fund maintained by the Bank, and, (c) effective January 3, 1998, the LEI Fund maintained by the Bank.

The Bank has requested that this definition be modified to add another investment fund to those covered by PTE 97–35. The Banking Services covered by the exemption include investments by the Plans in the LongView Fund maintained by the Bank. As described in the Written Comments in PTE 97–35, the LongView Fund is a bank collective investment fund that is designed to mirror the S&P 500 Index. The LongView Fund is established and maintained pursuant to Revenue Ruling 81–100 and, accordingly, investments therein are restricted to tax qualified plans. The Bank represents that in response to expressions of interest from several investors, it has developed an additional fund, the LongView 500 Index Fund (the 500 Index Fund), designed to mirror the S&P 500 Index, for investment by tax-qualified plan investors and investors other than tax qualified plans. The Bank represents that except for the fact that the investors will include entities other than tax-qualified plans, the 500 Index Fund will be managed and restructured in a manner identical to the LongView Fund. The proposed addition of the 500 Index Fund to the definition of Banking Services under the exemption and the potential investments by the Plans in the 500 Index Fund have been analyzed and evaluated by U.S. Trust, which is the Independent Fiduciary representing the interests of the Plans under PTE 97–35. Consistent with the approach taken under PTE 97–35, the Bank directed an analysis of the 500 Index Fund by the commercial management consulting firm of Towers Perrin. Utilizing a report by Towers Perrin, the Independent Fiduciary determined that the addition of the 500 Index Fund as an available investment under the exemption would be in the best interests of the Plans. Accordingly, the Bank requests that Section IV(C) of the exemption be amended by adding the LongView 500 Index Fund to the definition of Banking Services.

Section IV(E) of PTE 97–35 identifies the 22 plans which are covered by the exemption. The Bank states that since PTE 97–35 was issued, a new employee benefit plan, the UNITE Staff Retirement Plan, ILGWU Unit (the New Plan), has expressed an interest in using the Bank's services under the exemption. The New Plan covers UNITE employees formerly employed by ILGWU prior to the merger which created UNITE. The Bank represents that the New Plan has no prior investment or other servicing relationship with the Bank but has expressed an interest in investing in the LongView Fund, which is among the Banking Services covered by the exemption. The Independent Fiduciary represents that it has reviewed the proposed provision of Banking Services to the New Plan by the Bank and the addition of the New Plan to those covered by the exemption. The Independent Fiduciary states that it has determined that inclusion of the New Plan under the exemption would be appropriate. Accordingly, the Bank requests that Section IV(E) of the exemption be amended to add the UNITE Staff Retirement Plan, ILGWU Unit to the list of plans covered by the exemption.

The proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to, plans affiliated with UNITE for which the Bank provides Banking Services.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first class mail to each of the Plans, including the New Plan, within 30 days of the publication of the notice of pendency in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 60 days of the publication of the proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notice of proposed exemption relating to PTE 97–35, as amended by this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within 30 days after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I—Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective July 1, 1995, to—

(A) the provision of banking services (Banking Services, as defined in section IV(C)) by the Amalgamated Bank of New York (the Bank) to certain employee benefit plans (the Plans, as defined in section IV(E)), which are maintained on behalf of members of the former International Ladies Garment Workers Union (ILGWU), which merged on July 1, 1995 with the Amalgamated Clothing and Textile Workers Union to form the Union of Needletrades, Industrial and Textile Employees (UNITE);

(B) the purchase by the Plans of certificates of deposit (CDs) issued by the Bank; and

(C) the deposit of Plans' assets in money market or other deposit accounts established by the Bank;

provided that the applicable conditions of Section II and Section III are met.

Section II—Conditions

(A) The terms under which the Banking Services are provided by the Bank to the Plans, and those under which the Plans purchase CDs from the Bank or maintain deposit accounts with the Bank, are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties.

(B) The interests of each of the Plans with respect to the Bank's provision of Banking Services to the Plans, the purchase of CDs from the Bank by any of the Plans, and the deposit of Plan assets in deposit accounts established by the Bank, are represented by an Independent Fiduciary (as defined in section IV(D)).

(C) On a periodic basis, not less frequently than annually, an Authorizing Plan Fiduciary (as defined below in section IV(A)) with respect to each Plan authorizes the representation of the Plan's interests by the Independent Fiduciary and determines that the Banking Services and any CDs and depository accounts utilized by the Plan are necessary and appropriate for the establishment or operation of the Plan.

(D) With respect to the purchase by any of the Plans of certificates of deposit (CDs) issued by the Bank or the deposit of Plan assets in a money market account or other deposit account established at the Bank: (1) Such transaction complies with the conditions of section 408(b)(4) of the Act; (2) Any CD offered to the Plans by the Bank is also offered by the Bank in the ordinary course of its business with unrelated customers; and (3) Each CD purchased from the Bank by a Plan pays the maximum rate of interest for CDs of the same size and maturity being offered by the Bank to unrelated customers at the time of the transaction.

(E) The compensation received by the Bank for the provision of Banking Services to the Plan is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act.

(F) Following the merger of the ILGWU into UNITE, the Independent Fiduciary made an initial written determination that (1) the Bank's provision of Banking Services to the Plans, (2) the deposit of Plan assets in depository accounts maintained by the Bank, and (3) the purchase by the Plans of CDs from the Bank, are in the best interests and protective of the participants and beneficiaries of each of the Plans.

(G) On a periodic basis, not less frequently than quarterly, the Bank provides the Independent Fiduciary with a written report (the Periodic Report) which includes the following items with respect to the period since the previous Periodic Report: (1) a listing of Banking Services provided to, all outstanding CDs purchased by, and deposit accounts maintained for each Plan; (2) a listing of all fees paid by the Plans to the Bank for the Banking Services, (3) the performance of the Bank with respect to all investment management services, (4) a description of any changes in the Banking Services, (5) an explanation of any problems experienced by the Bank in providing the Banking Services, (6) a description of any material adverse events affecting the Bank, and (7) any additional information requested by the Independent Fiduciary in the discharge of its obligations under this exemption.

(H) On a periodic basis, not less frequently than annually, the Independent Fiduciary reviews the Banking Services provided to each Plan by the Bank, the compensation received by the Bank for such services, any purchases by the Plan of CDs from the Bank, and any deposits of assets in deposit accounts maintained by the Bank, and makes the following written determinations:

(1) The continuation of the Bank's provision of Banking Services to the Plan for compensation is in the best interests and protective of the participants and beneficiaries of the Plan;

(2) The Bank is a solvent financial institution and has the capability to perform the services;

(3) The fees charged by the Bank are reasonable and appropriate;

(4) The services, the depository accounts, and the CDs are offered to the Plan on the same terms under which the Bank offers the services to unrelated Bank customers in the ordinary course of business; and

(5) Where the Banking Services include an investment management service, that the rate of return is not less favorable to the Plan than the rates on comparable investments involving unrelated parties.

(I) Copies of the Bank's periodic reports to the Independent Fiduciary are furnished to the Authorizing Plan Fiduciaries on a periodic basis, not less frequently than annually and not later than 90 days after the period to which they apply.

(J) The Independent Fiduciary is authorized to continue, amend, or terminate, without any penalty to any Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), any arrangement involving: (1) the provision of Banking Services by the Bank to any of the Plans, (2) the deposit of Plan assets in a deposit account maintained by the Bank, or (3) any purchases by a Plan of CDs from the Bank;

(K) The Authorizing Plan Fiduciary may terminate, without penalty to the Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), the Plan's participation in any arrangement involving: (1) the representation of the Plan's interests by the Independent Fiduciary, (2) the provision of Banking Services by the Bank to the Plan, (3) the deposit of Plan assets in a deposit account maintained by the Bank, or (4) the purchase by the Plan of CDs from the Bank.

Section III—Recordkeeping

(A) For a period of six years, the Bank and the Independent Fiduciary will maintain or cause to be maintained all written reports and other memoranda evidencing analyses and determinations made in satisfaction of conditions of this exemption, except that: (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Independent Fiduciary and the Bank, the records are lost or destroyed before the end of the six-year period; and (b) no party in interest other than the Bank and the Independent Fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (B) below;

(B)(1) Except as provided in section (2) of this paragraph (B) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (A) of this Section III shall be unconditionally available at their customary location during normal business hours for inspection by: (a) any duly authorized employee or representative of the U.S. Department of Labor or the Internal Revenue Service, (b) any employer participating in the Plans or any duly authorized employee or representative of such employer, and (c) any participant or beneficiary of the Plans or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subsections (b) and (c) of section (1) above shall be authorized to examine trade secrets of the Independent Fiduciary or the Bank, or any of their affiliates, or any commercial, financial, or other information that is privileged or confidential.

Section IV—Definitions

(A) *Authorizing Plan Fiduciary* means, with respect to each Plan, the board of trustees of the Plan or other appropriate plan fiduciary with discretionary authority to make decisions with respect to the investment of Plan assets;

(B) *Bank* means the Amalgamated Bank of New York;

(C) *Banking Services* means (1) custodial, safekeeping, checking account, trustee services, and (2) investment management services involving (a) fixed income securities (either directly or through a collective investment fund maintained by the Bank), (b) the LongView Fund maintained by the Bank, (c) the LongView 500 Index Fund, and (d) effective January 3, 1998, the LEI Fund maintained by the Bank.

(D) *Independent Fiduciary* means a person, within the meaning of section 3(9) of the Act, who (1) is not an affiliate of the Union of Needletrades, Industrial & Textile Employees (UNITE) and any successor organization thereto by merger, consolidation or otherwise, (2) is not an officer, director, employee or partner of UNITE, (3) is not an entity in which UNITE has an ownership interest, (4) has no relationship with the Bank other than as Independent Fiduciary under this exemption, and (5) has acknowledged in writing that it is acting as a fiduciary under the Act. No person may serve as an Independent Fiduciary for the Plans for any fiscal year in which the gross income (other than fixed, non-discretionary retirement income) received by such person (or any partnership or corporation of which such person is an officer, director, or ten percent or more partner or shareholder) from UNITE and the Plans for that fiscal year exceed five (5) percent of such person's annual gross income from all sources for the prior fiscal year. An affiliate of a person is any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual. Initially, the Independent Fiduciary is U.S. Trust Company of California, N.A.

(E) *Plans* means any of the following employee benefit plans, and their

successors by reason of merger, spin-off or otherwise:

International Ladies Garment Workers Union Nation Retirement Fund;
International Ladies Garment Workers Union Death Benefit Fund;
Health Fund of New York Coat, Suit, Dress, Rainwear & Allied Workers Union, ILGWU;
Health & Vacation Fund, Amalgamated Ladies Garment Cutters Union, Local 10;
ILGWU Eastern States Health & Welfare Fund; ILGWU Office, Clerical & Misc. Employee Retirement Fund;
ILGWU Retirement Fund, Local 102; Union Health Center Staff Retirement Fund;
Unity House 134 HREBIU Plan Fund;
Puerto Rican Health & Welfare Fund;
Health & Welfare Fund of Local 99, ILGWU;
Local 99 Exquisite Form Industries, Inc. Severance Fund;
Local 99 K-Mart Severance Fund;
Local 99 Kenwin Severance Fund;
Local 99 Lechters Severance Fund;
Local 99 Eleanor Shops Severance Fund;
Local 99 Monette Severance Fund;
Local 99 Moray, Inc. Severance Fund;
Local 99 Petri Stores, Inc. Severance Fund;
Local 99 Netco, Inc. Severance Fund;
Local 99 Misty Valley, Inc. Severance Fund;
Local 99 Norstan Apparel Shops, Inc. Severance Fund; and
UNITE Staff Retirement Plan, ILGWU Unit.

(F) *UNITE* means the Union of Needletrades, Industrial & Textile Employees and any successor organization thereto by merger, consolidation or otherwise.

EFFECTIVE DATE: This exemption will be effective as of July 1, 1995, except for: (1) Plan investments in the LEI Fund, for which the effective date will be January 3, 1998; (2) Plan investments in the LongView 500 Index Fund, for which the effective date will be the date on which the final amended exemption, if granted, is published in the **Federal Register**; and (3) transactions involving the UNITE Staff Retirement Plan, for which the effective date will be the date on which the final amended exemption, if granted, is published in the **Federal Register**.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 97–35, refer to the proposed exemption and grant notice which are cited above.

Signed at Washington, D.C., this 25th day of March, 1998.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–8198 Filed 3–27–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has submitted the following revised information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. It was originally published on January 15, 1998. No comments relating to the information collection were received.

DATES: Comments will be accepted until April 29, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0004.
Form Number: NCUA 5300.
Type of Review: Revision of a currently approved collection.
Title: Semiannual and Quarterly Financial and Statistical Report.
Description: The financial and statistical information collected is essential to NCUA in carrying out its responsibility for supervising federal credit unions. The information also enables NCUA to monitor all federally insured credit unions whose accounts are insured by the National Credit Union Share Insurance Fund.
Respondents: All credit unions.
Estimated No. of Respondents/ Recordkeepers: 11, 500.
Estimated Burden Hours Per Response: 8 hours.
Frequency of Response: Quarterly and semiannually.
Estimated Total Annual Burden Hours: 204,800.
Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on March 19, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–8175 Filed 3–27–98; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Administrative Assistance

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of one Cooperative Agreement to help assist its Literature Discipline in the fiscal control and administration of payments to readers of applications for literature fellowships. Responsibilities will entail administering approximately 90 payments to up to 90 readers, and preparing financial and final reports. Those interested in receiving the Solicitation should reference Program Solicitation PS 98–04 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 98–04 is scheduled for release approximately April 17, 1998 with proposals due on May 18, 1998.

ADDRESSES: Requests for the Solicitation should be addressed to the National

Endowment for the Arts, Grants and Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants and Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 98–8232 Filed 3–27–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection:
   NRC Form 4, "Cumulative Occupational Exposure History"
   NRC Form 5, "Occupational Exposure Record for a Monitoring Period."
2. Current OMB approval numbers: 3150–0005 and 3150–0006.
3. How often the collection is required: NRC Form 4 is generated for each individual who is likely to receive, in one year, an occupational dose requiring monitoring as described § 20.1502. It is maintained by the licensee until the Commission terminates the license. It is not submitted to the NRC. NRC Form 5 is prepared by all NRC licensees and is submitted only by those licensees listed in 10 CFR 20.2206(a) to the NRC annually.
4. Who is required or asked to report: NRC licensees listed in 10 CFR 20.2206(a).
5. The number of annual respondents:
   NRC Form 4—300 (109 reactor sites and 191 materials licensees)
   NRC Form 5—5,986 licensees maintain records
   —300 (109 reactor sites and 191 materials licensees) are required to submit reports in accordance with 10 CFR 20.2206(a).
6. The number of hours needed annually to complete the requirement or request:
   NRC Form 4—4,469 hours or an average of 0.2 hours per response.
   NRC Form 5—64,104 hours—52,104 recordkeeping hours (an average of 0.33 hours per record × 77 individuals × 5,986 licensees) and 12,000 reporting hours in accordance with 10 CFR 20.2206(a) (an average of 40 hours per licensee × 300 licensees).
7. Abstract: NRC Form 4 is used to record the summary of an individual's cumulative occupational radiation dose for the current year to ensure that dose does not exceed regulatory limits. NRC Form 5 is used to record and report the results of individual monitoring for occupational dose from radiation during a one-year period to ensure regulatory compliance with annual dose limits.

Submit, by May 29, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 24th day of March 1998.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–8188 Filed 3–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Order Approving Application Regarding Restructuring of New York State Electric & Gas Corporation by Establishment of a Holding Company Affecting License No. NPF–69, Nine Mile Point Nuclear Station, Unit No. 2

I

New York State Electric & Gas Corporation (NYSEG) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to own and possess an 18-percent interest in Nine Mile Point Nuclear Station, Unit 2 (NMP2), under Facility Operating License No. NPF–69, issued by the Commission on July 2, 1987. In addition to NYSEG, the other owners who may possess, but not operate, NMP2 are Long Island Lighting Company with an 18-percent interest, Rochester Gas and Electric Corporation with a 14-percent interest, and Central Hudson Gas & Electric Corporation with a 9-percent interest. Niagara Mohawk Power Corporation (NMPC) owns a 41-percent interest in NMP2, is authorized to act as agent for the other owners, and has exclusive responsibility and control over the operation and maintenance of NMP2. NMP2 is located in the town of Scriba, Oswego County, New York.

II

Under cover of a letter dated September 18, 1997, from its counsel, NYSEG submitted an application for consent by the Commission, pursuant to 10 CFR 50.80, regarding a proposed corporate restructuring action that would result in the indirect transfer of the operating license for NMP2 to the extent it is held by NYSEG. As a result of the proposed restructuring, NYSEG would establish a new holding company and become a wholly owned subsidiary of the new holding company, not yet named, to be created as a New York State corporation in accordance with an executed "Agreement Concerning the Competitive Rate and Restructuring Plan of New York State Electric & Gas Corporation" (Settlement Agreement) forwarded as enclosures to supplemental letters to the application, dated October 20 and 27, 1997. Under

cover of a letter dated January 6, 1998, counsel for NYSEG forwarded copies of an order by the Federal Energy Regulatory Commission authorizing the corporate restructuring, subject to certain specified conditions, and finding that the proposed restructuring will not adversely affect competition or have an anticompetitive effect. Similarly, under cover of a letter dated February 9, 1998, counsel for NYSEG forwarded copies of the order, which was issued and effective January 27, 1998, by the State of New York Public Service Commission (NYPSC), adopting the terms of the Settlement Agreement, subject to certain modifications and conditions generally involving retail rate matters, and clarifying that NYSEG will have a reasonable opportunity to recover all prudently incurred NMP2 costs, subject to the duty of the NYPSC to set just and reasonable rates.

According to the application, the outstanding shares of NYSEG's common stock (other than shares for which appraisal rights are properly exercised) would be exchanged on a share-for-share basis for common stock of the holding company, such that the holding company will own all of the outstanding common stock of NYSEG. Under this restructuring, NYSEG would divest its interest in coal-fired power plants but would continue to be an "electric utility" as defined in 10 CFR 50.2 engaged in the transmission, distribution and, in the case of NMP2 and hydroelectric facilities, the generation of electricity. NYSEG would continue to be a licensee of NMP2, and no direct transfer of the operating license or interests in the station would result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of NMPC, which has exclusive responsibility under the operating license for operating and maintaining NMP2 and which is not involved in the proposed restructuring.

Notice of this application for approval was published in the **Federal Register** on December 5, 1997 (62 FR 64407), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on January 16, 1998 (63 FR 2701).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application of September 18, 1997, as supplemented by submittals dated October 20 and 27, 1997, and January 6 and February 9, 1998, the NRC staff has determined that the restructuring of NYSEG by establishment of a holding company will not affect the qualifications of NYSEG as a holder of the license, and that the transfer of control of the license for NMP2, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated March 19, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the Commission approves the application regarding the proposed restructuring of NYSEG by the establishment of a holding company, subject to the following: (1) NYSEG shall inform the Director of the Office of Nuclear Reactor Regulation, 60 days prior to a transfer (excluding grants of security interests or liens) during any twelve month period from NYSEG to the holding company, or any direct or indirect subsidiary of the holding company, of facilities for the production, transmission, or distribution of electric energy (other than the transfer of NYSEG's seven coal-fired power plants) having a depreciated book value exceeding 10 percent (10%) of NYSEG's consolidated net utility plant, as recorded on NYSEG's books of account, and (2) should the restructuring of NYSEG not be completed by March 19, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

By April 29, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of the hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays, by the above date. Copies should be also sent to the Office of the General Counsel, and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Sherwood J. Rafferty, Senior Vice President and Chief Financial Officer, New York State Electric & Gas Corporation, P.O. Box 3287, Ithaca, NY 14852.

For further details with respect to this Order, see the application for approval dated September 18, 1997, as supplemented by letters dated October 20 and 27, 1997, and January 6 and February 9, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 19th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8187 Filed 3–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Augmented Inspection of Pressurized-Water Reactor Class 1 High Pressure Safety Injection Piping (M99226)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter to all holders of operating licenses for pressurized-water reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, to (1) identify a discrepancy in the American Society of Mechanical Engineers (ASME) Code inspection requirements regarding the inservice inspection of those portions of the high-pressure safety injection system piping designated as ASME Code Class 1 with

nominal pipe sizes between 4 inches and 1½ inches, inclusive, (2) emphasize the need for addressees to maintain the integrity of this reactor coolant pressure boundary piping in accordance with the provisions of their current facility licensing bases, and (3) request that addressees report to the NRC their previous actions for verifying the integrity of the subject piping and their plans regarding future inspections.

The proposed generic letter has been endorsed by the Committee to Review Generic Requirements (CRGR). Relevant information that was sent to the CRGR will be placed in the NRC Public Document Room.

The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires April 29, 1998. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Mail Stop T6-D59, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Matthew Mitchell, (301) 415–3303.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 98–XX: Augmented Inspection of Pressurized-Water Reactor Class 1 High-Pressure Safety Injection Piping

Addressees

All holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to:

(1) identify a discrepancy in the American Society of Mechanical Engineers (ASME) Code inspection requirements regarding the inservice inspection (ISI) of those portions of the high-pressure safety injection (HPSI) system piping designated as ASME Code Class 1 with nominal pipe sizes (NPS) between 4 inches and 1½ inches, inclusive. Current ASME Code Section XI requirements only mandate a surface examination for the subject piping while similarly sized sections in the Class 2 portion of the HPSI system are required to have both surface and volumetric examinations.

(2) emphasize the need for addressees to maintain the integrity of this reactor coolant pressure boundary piping in accordance with the provisions of their current licensing basis, particularly given known thermal fatigue degradation mechanisms, and

(3) request addressees report to the NRC their previous actions for verifying the integrity of the subject piping and their plans regarding future inspections.

Background

This generic letter addresses concerns which have arisen based on recent domestic and foreign reactor experience with thermal fatigue degradation in reactor coolant system piping. On April 22, 1997, an event occurred at Oconee 2, a Babcock and Wilcox-designed PWR, which involved the unit being shut down due to cracking and leakage from a weld location in the 2½-inch (NPS 2½), Class 1 portion of a combination makeup and high-pressure injection line (equivalent to a portion of the HPSI system as designated in the ASME Code). Upon metallurgical examination of the weld, the licensee determined that the crack consisted of a 360° inside surface flaw with minimum depth of 30 percent through-wall, with the cracking having penetrated completely through-wall over an arc length of 77°. The licensee attributed the cracking to thermal cycling and flow-induced vibration. Also, recent experience at the Dampierre 1 facility in France has indicated that thermal fatigue degradation (in a safety injection line) may, under certain conditions, initiate and propagate through-wall in a time period less than one ASME Code inspection interval. Additional details on these events are found in NRC Information Notice 97–46.

Similar piping failures have also been recorded at other facilities in the United States (Crystal River 3, Farley 2) and detailed information on these events is available in the references to this GL. The cracking observed at Crystal River 3 (a Babcock and Wilcox-designed PWR) also occurred in a 2½-inch, Class 1 makeup/HPSI line and was attributed to thermal fatigue, much like the Oconee event. The piping failure at Farley 2 (a Westinghouse-designed PWR) also occurred in a small-diameter high-pressure injection line, but was attributed to thermal fatigue caused by relatively cold water leaking through a closed globe valve in a boron injection tank bypass line. Additional foreign experience has also found active degradation in small-diameter Class 1 lines.

As a result of the Oconee 2 event and license renewal issues, the staff reexamined the requirements given in Section XI of the ASME Code for ISI of HPSI piping, using the 1989 Edition and the 1995 Edition for reference. The staff examined the requirements given in both Subsection IWB (for Class 1 piping) and Subsection IWC (for Class 2 piping). The requirements for the Class 2 portions of the HPSI system are delineated in Table IWC–2500–1, Examination Category C–F–1, "Pressure Retaining Welds in Austenitic Stainless Steel or High Alloy Piping," as amended by the exemption criteria of IWC–1221. In combination, these provisions require that Class 2 HPSI piping down to NPS 1½ receive both a volumetric and a surface examination as part of a facility ISI program.

The requirements for the Class 1 portions of the HPSI system are delineated in Table IWB–2500–1, Examination Category B–J, "Pressure Retaining Welds in Piping," as amended by the exemption criteria of IWB–1220. Table-IWB–2500–1 requires only that a surface examination be performed for Class 1 piping less than NPS 4, with the one exemption provision applicable to the subject of this generic letter excluding piping of NPS 1 and smaller from examination.

Therefore, for the HPSI system, the inspection criteria for Class 2 piping between NPS 4 and NPS 1½, inclusive, are more comprehensive than those for Class 1 piping of the same size range.

As a result of these findings, the staff published in the **Federal Register** a proposed rule with the intent of amending the requirements of 10 CFR 50.55a (see 62 FR 63892). In proposed 10 CFR 50.55a(b)(2)(xv), the staff reconciled the differences between Class 1 and Class 2 inspection requirements noted above by requiring volumetric examination of the Class 1 HPSI piping welds. The Rule change would require

licensees to implement these volumetric examinations on a schedule consistent with their current ISI program requirements.

Discussion

The NRC is issuing this generic letter to alert addressees to the discrepancy noted above between Class 1 and Class 2 HPSI ISI requirements and to request that addressees report to the NRC their previous actions for verifying the integrity of the subject piping and their plans regarding future inspection activities. Requirements to ensure the integrity of the reactor coolant pressure boundary are broadly incorporated in the current licensing basis of each reactor facility and General Design Criterion 14 of Appendix A to 10 CFR Part 50, which explicitly states that the reactor coolant pressure boundary must be "designed, fabricated, erected, and tested to have an extremely low probability of abnormal leakage, of rapidly propagating failure, and of gross rupture." Effective inservice inspection activities to monitor known degradation mechanisms and to identify potential new sources of degradation are an integral element in maintaining an extremely low probability of failure.

The staff's concern regarding the implementation of an effective ISI program stems from the nature of the degradation previously observed in some sections of small-diameter, Class 1 HPSI system piping. The initiation and propagation of cracking due to thermal fatigue is directly related to the magnitude of the cyclic thermal stress range. Since thermal stress cycling in these lines is due to changes in the temperature of the fluid in contact with the pipe wall, the magnitude of the thermal stress cycles may be largest at the inside diameter (ID) of the pipe. Therefore an effective ISI program should include a volumetric (ultrasonic) evaluation to be able to detect cracking at the ID before the cracking propagates through-wall. This indicates that the current ASME Code ISI requirements (surface examination only) for the Class 1 portion of this piping are insufficient. In addition, after considering the experience at Dampierre 1 in France (see Information Notice 97–46), requiring volumetric inspections (consistent with the quality standards of Appendix VIII to Section XI) to be conducted on a frequency consistent with the facility's normal ASME Code Section XI ISI program may not be sufficient to ensure reactor coolant pressure boundary integrity, especially if no effective volumetric examination has been conducted within the last ten years.

The staff notes that allowing for the potential failure of the Class 1 portion of a HPSI line, while within a facility's design basis, would unnecessarily challenge the facility's ability to mitigate such an accident. Failure of an unisolable portion of the Class 1 HPSI line could result in a small-break loss-of-coolant accident (SBLOCA) while directly affecting the HPSI system, which is designed to mitigate a SBLOCA. For these reasons, it is the staff's conclusion that volumetric examination of the Class 1 portions of PWR HPSI systems should be performed, at a minimum, consistent with the ASME Code's ISI requirements for components of equivalent significance to reactor safety.

The staff has also formally identified the issue of this discrepancy between Class 1 and Class 2 ISI requirements to the ASME Code via a letter to the Chairman of the ASME Section XI Subcommittee, dated July 18, 1997.

Regulatory Analysis

Under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), this generic letter transmits an information request for the purpose of verifying compliance with the applicable existing regulatory requirements. Specifically, the requested information will enable the staff to determine whether or not the Class 1 sections of PWR HPSI systems are being maintained in accordance with 10 CFR Part 50, Appendix A, Criterion 14, or similar requirements in the licensing bases for these facilities.

Required Information

Within 90 days of the date of this generic letter, each addressee is required to provide a written report that includes the following information for its facility:

(1) A discussion of the program, if any, in place at the facility to perform effective volumetric examinations on those Class 1 portions of the HPSI system which would be subject to the inspection scope of ASME Code Section XI. This discussion should include information on the qualification of the inspection procedure, the frequency of inspection, the date of the last inspection, and the scope of the locations inspected. In addition, the same information should be provided for *any* inspection that has been (or will be) performed on the subject piping but not as part of a defined inspection program.

(2) If the addressee currently has no program in place to volumetrically inspect these portions of the HPSI system, given the potential for the existence of an active degradation mechanism, a discussion of any plans for establishing such a program.

Addressees shall submit the required written reports, pursuant to 10 CFR 50.4, to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555–0001, signed under oath or affirmation under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, addressees should submit a copy of their respective report to the appropriate regional administrator.

Backfit Discussion

This generic letter has been promulgated only as a request for information. No backfit is either intended or approved in the context of issuance of the generic letter. Therefore, the staff has not performed a backfit analysis.

Related Generic Communications

NRC Information Notice 82–09, "Cracking in Piping of Makeup Coolant Lines at B&W Plants," dated March 31, 1982.

NRC Generic Letter 85–20, "Resolution of Generic Issue 69: High Pressure Injection/Makeup Nozzle Cracking in Babcock and Wilcox Plants," dated November 11, 1985.

NRC Bulletin No. 88–08, "Thermal Stresses in Piping Connected to Reactor Coolant Systems," dated June 22, 1988.

NRC Bulletin No. 88–08, Supplement 1, "Thermal Stresses in Piping Connected to Reactor Coolant Systems," dated June 24, 1988.

NRC Bulletin No. 88–08, Supplement 2, "Thermal Stresses in Piping Connected to Reactor Coolant Systems," dated August 4, 1988.

NRC Bulletin No. 88–08, Supplement 3, "Thermal Stresses in Piping Connected to Reactor Coolant Systems," dated April 11, 1989.

NRC Information Notice 97–46, "Unisolable Crack in High-Pressure Injection Piping," dated July 9, 1997.

Dated at Rockville, Maryland, this 25th day of March 1998.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation

[FR Doc. 98–8189 Filed 3–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Human Factors; Notice of Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on April 17, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, April 17, 1998—8:30 a.m. until the conclusion of business

The Subcommittee will review the latest version of the Human Performance and Reliability Plan, and associated activities. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 24, 1998.

Medhat M. El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–8186 Filed 3–27–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given that the fifty-third and fifty-fourth meetings of the Federal Salary Council will be held at the times and places shown below. At the meeting in the morning of April 16, 1998, the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). This will be the fifty-third meeting of the Federal Salary Council.

In the afternoon, the Federal Salary Council will meet with the President's Pay Agent and the Bureau of Labor Statistics (BLS) to discuss the use of BLS salary surveys for future locality pay adjustments. This will be the fifty-fourth meeting of the Federal Salary Council. Both meetings are open to the public.

DATES: April 16, 1998, 10:00 a.m., Room 7310; April 16, 1998, 1:00 p.m., Room 1350.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary and Wage Systems Division, Office Of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Janice R. Lachance,

Director.

[FR Doc. 98–8203 Filed 3–27–98; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 11:00 a.m., Monday, April 6, 1998; 8:30 a.m., Tuesday, April 7, 1998.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: April 6 (Closed); April 7 (Open).

MATTERS TO BE CONSIDERED:

Monday, April 6—11:00 a.m. (Closed)

1. Personnel Matters.
2. Docket No. MC96–1, Experimental First-Class and Priority Mail Small Parcel Automation Rate (Parcel Barcode Experiment).
3. Status Report on Rate Case R97–1.
4. Performance Measurement.
5. Tray Management System.

Tuesday, April 7—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, March 2–3, 1998.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Amendments to BOG Bylaws.
4. SemiPostal Breast Cancer Stamp.
5. Report on the Diversity Study.
6. Capital Investments.

a. Spokane, Washington, Processing and Distribution Center.

b. Inspector General Office Space—Modification Request.

7. Tentative Agenda for the May 4–5, 1998, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–8456 Filed 3–26–98; 2:57 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23073; File No. 812–10920]

The Guardian Insurance and Annuity Company, Inc. et al.

March 23, 1998.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(6)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of The Guardian Cash Fund, Inc. and the other investment company applicants listed below ("Existing Funds") and any other investment company that is designed to fund insurance products and for which

Guardian Investor Services Corporation or Guardian Baillie Gifford Limited, or any of their affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor ("Future Funds," together with Existing Funds, "Funds") to be sold to and held by: (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"); and (b) qualified pension and retirement plans outside the separate account context ("Qualified Plans").

APPLICANTS: The Guardian Insurance & Annuity Company, Inc. ("GIAC"), The Guardian Separate Account B ("Account B"), The Guardian Separate Account C ("Account C"), The Guardian Separate Account K ("Account K"), The Guardian Separate Account M ("Account M") (Accounts B, C, K and M together, the "Accounts"), The Guardian Cash Fund, Inc., The Guardian Bond Fund, Inc., The Guardian Stock Fund, Inc., GIAC Funds, Inc., Gabelli Capital Series Funds, Inc., Guardian Investor Services Corporation ("GISC"), and Guardian Baillie Gifford Limited ("GBGL").

FILING DATE: The application was filed on December 23, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 17, 1998, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Richard T. Potter, Jr., Esq., The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. (tel. (202) 942–8090).

Applicants' Representations

1. GIAC, a wholly owned subsidiary of The Guardian Life Insurance Company of America, is a stock life insurance company organized under the laws of Delaware.

2. The Accounts are separate investment accounts established by GIAC to fund variable life insurance contracts. Each Account is registered under the 1940 Act as a unit investment trust and has several investment divisions each of which invests in a designated investment portfolio of an Existing Fund or other underlying fund or trust.

3. The Existing Funds are Maryland corporations registered under the 1940 Act as open-end diversified management investment companies. The Guardian Cash Fund, Inc., The Guardian Bond Fund, Inc. and The Guardian Stock Fund, Inc. each has authorized capital stock that presently consists of one class of stock, but in the future may create one or more additional classes of stock, each corresponding to a portfolio of securities. GIAC Funds, Inc. is a diversified series company that presently consists of three investment portfolios: The Guardian Small Cap Stock Fund, Baillie Gifford International Fund and Baillie Gifford Emerging Markets Fund Gabelli Capital Series Funds, Inc. is also a diversified series company that presently has one investment portfolio, the Gabelli Capital Asset Fund.

4. GISC is the investment adviser for The Guardian Cash Fund, Inc., The Guardian Bond Fund, Inc., The Guardian Stock Fund, Inc. and the Guardian Small Cap Fund. GISC is a wholly owned subsidiary of GIAC and is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

5. GBGL, an investment management company registered under the laws of Scotland, serves as the investment manager for Baillie Gifford International Fund and Baillie Gifford Emerging Markets Fund. GBGL was formed as a joint venture between GIAC and Baillie Gifford Overseas Limited ("BG Overseas"). GIAC owns 51% and BG Overseas owns 49% of the voting shares of GBGL. GB Overseas is an investment management company incorporated in Scotland. Both GB Overseas and GBGL are registered with the Commission as investment advisers under the Advisers Act.

6. The Existing Funds currently offer their shares to GIAC as the investment vehicle for its separate accounts supporting variable annuity and variable life insurance contracts ("Variable Contracts"). The Existing Funds intends to offer their shares to unaffiliated insurance companies as the investment vehicle for their separate accounts supporting variable annuity and variable life insurance contracts ("Participating Separate Accounts").

7. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law and each has or will enter into a participation agreement with an Existing Fund on behalf of its Participating Separate Account. The Existing Funds will offer shares to the Participating Separate Accounts and fulfills any conditions that the Commission may impose upon granting the order requested in the application.

8. The Funds also wish to increase their respective asset bases by selling shares to qualified pension and retirement plans ("Qualified Plans"). Existing Fund shares sold to the Qualified Plans would be held by the Trustee of said Plans as required by Section 403(a) of the Employee retirement and Security Act ("ERISA"). ERISA does not require pass-through voting to be provided to participants in Qualified Plans.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and depositor. The exemptions provided under Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to as "mixing funding." The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated

insurance companies is referred to as "shared funding." The relief provided under Rule 6e–2(b)(15) is not applicable to a scheduled premium variable life insurance separate account that owns shares of an underlying fund where the underlying fund offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) does not provide exemptive relief for either mixed funding or shared funding.

2. Applicants state that Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans. The use of a common management investment company as the underlying investment medium for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies and Qualified Plans is referred to as "extended mixed and shared funding."

3. In connection with flexible premium variable life insurance contacts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions provided under Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Therefore, Rule 6e–3(T) permits mixed funding, but does not permits shares funding or extended mixed and shares funding.

4. Applicants state that changes in the tax law have created the opportunity for a Fund to increase its asset base through the sale of its shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the assets underlying Variable Contracts. Specifically, the Code provides the Variable Contracts will not be treated as annuity contracts or life insurance contracts for any period in writing the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying Variable Contracts (Treas. Reg. § 1.817–5 (1989), the "Treasury Regulations"). The Treasury Regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The Treasury Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated accounts.

5. Applicants state that the promulgation of Rules 63–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury Regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of the Funds to be offered and sold to Qualified Plans and to variable annuity and variable life separate accounts in connection with both mixed and shared funding and extended mixed and shared funding.

7. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that participate directly in the management or administration of the underlying investment company.

8. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that neither the Participating Insurance Companies nor the Qualified Plans are expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to Qualified Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a) and it is not anticipated that a Qualified Plan would be an affiliated person of a Fund by virtue of its shareholders.

9. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all contractowners so long as the Commission interprets the 1940 Act to require such privileges.

10. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contractowners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Also, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard voting instructions of its contractowners if the contractowners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each rule.

11. Applicants represent that the sale of Fund shares to Qualified Plans does not affect the relief requested in this regard. Shares of the Funds sold to Qualified Plans would be held by the trustees of such Qualified Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustee(s) is (are) subject to the direction of a named

fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Qualified Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with such Qualified Plans. However, Applicants state that some Qualified Plans may provide for the trustee, an investment adviser or other named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, the Applicants see no reason why such participants would vote in a manner that would disadvantage variable contract holders. Applicants submit that the purchase of Fund shares by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

12. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled would require action that is inconsistent with the requirements of insurance regulators in other states in which other insurance companies are domiciled. Applicants submit that the fact that a single insurer and its affiliates offer their insurance products in several states does not create a significantly different or enlarged problem.

13. Applicants further submit that affiliation does not reduce the potential for differences among state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Fund.

14. Applicants also state that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by owners of the Variable Contracts. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard contractowner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of a Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

15. Applicants state that there is no reason why the investment policies of a Fund would or should be materially different from what those policies would or should be if that Fund served as a funding medium for only variable annuity or only variable life insurance contracts. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Variable Contract.

16. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in the portfolios of management investment companies. However, the Treasury Regulation which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and separate accounts to invest in the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, or the Treasury Regulations or the Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

17. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity and variable life insurance contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of a Fund at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan and Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

18. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Participating Separate Account contractowners and to the trustees of Qualified Plans. Applicants represent that the Funds will inform each Participating Insurance Company and Qualified Plan of information necessary for the meeting, including their respective share ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T) and its participation agreement with a fund. Shares held by qualified plans will be voted in accordance with applicable law.

19. Finally, Applicants state that there are no conflicts between contractowners and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. This does not mean that there are inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that an insurance company cannot simply request redemption of shares held in its separate account and have those shares redeemed out of one Fund and the proceeds invested in another Fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. In contrast, trustees of Qualified Plans or participants in participant directed Qualified Plans can make the decision quickly and implement the redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of countractowners and the

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interests of Qualified Plans conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, independently, redeem shares out of the Funds.

20. Applicants state that various factors have limited the number of insurance companies that offer variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management; and the lack of name recognition by the public of certain insurers as investment professions. Applicants contend that use of the Fund as common investment media for the Variable Contracts would ease these concerns. Participating Insurance Companies would benefit not only form the investment and administrative expertise of GISC and GBGL, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer contracts such as the Variable Contracts which may then increase competition with respect to both the design and the pricing of Variable Contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants represent that contractowners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Qualified Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification.

Applicants' Conditions

Applicants have consented to the following conditions if an order is granted:

1. A majority of the Board of Directors of a Fund ("Board") shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the contractowners of all Participating Separate Accounts and of participants of Qualified Plans investing in the Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of plan participants.

3. The Participating Insurance Companies, GISC and GBGL and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the "Participants"), will report any potential or existing conflicts to the applicable Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contractowner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Participant to inform the Board whenever it has determined to disregard plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participants under their agreements governing participation in the Funds and such agreements, in the case of Participating Insurance Companies, shall provide that such responsibilities will be carried out with a view only to the interests of contractowners and for Qualified Plans, that these responsibilities will be carried out with a view only to the interest of Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participants shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Participating Separate Accounts from a Fund and reinvesting such assets in a different investment medium, which may include another portfolio of that Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contractowners or variable life insurance contractowners of one or Variable Contractowners of one or more Participants) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of a Fund, to withdraw its separate account's investment in that Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

5. The responsibility to take remedial action in the event of a Board determination of an material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds and, in the case of Participating Insurance Companies, will be carried out with a view only to the interest of contractowners and, in the case of

Qualified Plans, will be carried out with a view only to the interests of plan participants. A majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event will a Fund, GISC or GBGL be required to establish a new funding medium for any Variable Contract. Further, no Participating Insurance Company shall be required to establish a new funding medium for any Variable Contracts if an offer to do so has been declined by a vote of a majority of contractowners materially and adversely affected by the material irreconcilable conflict. Also, no Qualified Plan will be required to establish a new funding medium for the Plan if: (a) a majority of the plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes each decision without a plan participant vote.

6. A Board's determination of the existence of an irreconcilable material conflict and its implications will be made known promptly and in writing to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all contractowners to the extent that the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for contractowners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from contractowners. Each Participating Insurance Company will vote shares of a Fund held in its separate accounts for which no voting instructions from contractowners are timely received, as well as shares of that Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from contractowners are timely received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Funds. Each Participating Plan will vote as required by applicable Plan documents.

8. All reports received by a Board of potential or existing conflicts, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of the existence of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

9. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Further, each Fund will disclose in its prospectus that (a) shares of the Fund may be offered to insurance company separate accounts funding both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to differences of tax treatment and other considerations, the interest of various contractowners participating in such Fund and the interest of Qualified Plans investing in the Fund may conflict; and (c) the Board will monitor the Fund for any material conflicts and determine what action, if any, should be taken.

10. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of a Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, (although the Fund is not within the type of trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rules 6e–2 and 6e–3(T) under the 1940 Act are amended (or if Rule 6e–3 is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

12. No less frequently than annually, the Participants shall submit to the relevant Board such reports, materials, or data as that Board may reasonably request so that the Board may fully carry out the obligations contained in these express conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board shall be a contractual obligation under the agreements governing their participation in the Fund.

13. A Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Plan an owner of 10% or more of the assets of such Fund unless the Plan executes a fund participation agreement with the relevant Fund including the conditions set forth above to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of Fund shares.

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8200 Filed 3–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (P.T. Riau Andalan Pulp & Paper, 11½% Guaranteed Secured Notes due 2000; 13¼% Guaranteed Secured Notes Due 2005) File No. 1–88604

March 23, 1998.

P.T. Riau Andalan Pulp & Paper ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities

("Securities") from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities are listed for trading on the Luxembourg Stock Exchange and, pursuant to a Registration Statement on Form 8–A that became effective at the time of issuance, the NYSE. Trading in the Securities commenced on the Luxembourg Stock Exchange and the NYSE on December 15, 1995.

In August, 1997, the Company completed a tender offer and consent solicitation for any and all of the Securities at a premium over the price at which they were then trading. Pursuant to the consent solicitation, the Company asked the holders of the Securities to agree to substantial amendments to the Indenture under which the Securities had been issued. Among other things, the amendments removed from the Indenture covenants of the Company (i) to maintain listing of the Securities on the NYSE, and (ii) to continue to file reports with the Commission even if the Company was no longer subject to the Commission's reporting requirements. In its offering/solicitation document, the Company advised holders of the Securities that it intended to delist the Securities from the NYSE if the proposed amendments to the Indenture became operative.

As a result of the Company's tender offer, all but $6 million of the originally issued and outstanding $300 million in Securities were tendered by holders. These holders also consented to the proposed amendments to the Indenture. The Company has been unable to locate the holders who did not tender their Securities and consent to the proposed amendments, and the Company believes it would be impractical to locate them at the present time. Moreover, the Company believes the holders of the Securities are very small in number. In addition, the Company has represented that there is essentially no trading in, and therefore no market for, the Securities that remain outstanding.

On February 11, 1998, the NYSE advised the Company that it is the policy of the NYSE not to object to voluntary applications to delist securities such as the one filed by the Company.

The Company has stated that its application relates solely to the withdrawal from listing of the Securities on the NYSE and shall have no effect upon the continued listing of the Securities on the Luxembourg Stock Exchange.

Any interested person may, on or before April 13, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–8157 Filed 3–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Resorts International Hotel Financing, Inc., 11% Mortgage Notes due September 15, 2003) File No. 1–9762 and (Resorts International Hotel Financing, Inc., and Sun International Hotels Limited, Units, Each Consisting of $1,000 Principal Amount of Resorts International Hotel Financing, Inc. 11.375% Junior Mortgage Notes Due December 15, 2004, and 0.1928 of one Ordinary Share of Sun International Hotels Limited, Par Value $0.001 per Share) File No. 1–4226

March 23, 1998.

Resorts International Hotel Financing, Inc. ("Resorts International") and Sun International Hotels Limited ("Sun International") (collectively the "Companies") have filed a joint application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("11% Mortgage Notes" and "Units," collectively the "Securities") from listing and registration on the American Stock Exchange, Inc. ("Exchange" or "Amex").

Resorts International issued $125 million principal amount of its 11% Mortgage Notes and $35 million principal amount of its 11.375% Junior Mortgage Notes due December 15, 2004 ("Junior Notes"), each under an indenture dated May 3, 1994 (collectively, the "Indentures").

Under the Indentures, the payment of principal and interest on the 11% Mortgage Notes and the Junior Notes is guaranteed by Resorts International Hotel, Inc. ("RIH").

The 11% Mortgage Notes trade independently on the Exchange and the Junior Notes trade as part of the Units, each consisting of $1,000 principal amount of Junior Notes and 0.1928 of one Ordinary Share of Sun International, par value $0.001 per share.

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

(a) As a result of an Offer to Purchase and Consent Solicitation made by Resorts International in February, 1997, approximately $5.35 million in 11% Mortgage Notes and approximately 1,094 Units (consisting of $1.09 million in Junior Notes) remained outstanding as of February 23, 1998.

(b) As of February 23, 1998, there were only 63 registered holders of the 11% Mortgage Notes and 23 registered holders of the Units.

(c) According to the Companies, the Securities are very thinly traded on the Exchange, if traded on the Exchange at all. The Companies believe it is unlikely that the Securities will become actively traded in the future.

(d) In light of the limited trading volume in the Securities on the Exchange, the costs and expenses attendant on maintaining the listings of the Securities are not justified.

(e) Subsequent to the delisting of its Securities and the filing of a Form 15, Resorts International will no longer be subject to reporting requirements under the Act because the number of holders of its Securities is limited. In addition, Resorts International has no other publicly traded debt or equity securities.

(f) The Companies are not obligated under the Indentures or any other document to maintain the listing of the Securities on the Amex or any other exchange.

(g) In its letter dated December 5, 1997, Bear, Stearns & Co. represented that it would act as a market maker for the Securities upon the delisting of the Securities from the Exchange.

The Companies have represented that they complied with Amex Rule 18 by filing with the Exchange certified copies of the resolutions adopted by their respective Boards of Directors authorizing the withdrawal of the Securities from listing and registration

on the Exchange, and by setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal. Furthermore, at the request of the Exchange and pursuant to Amex Rule 18(2)(b), the Companies provided notice of their intent to file this application to holders of the Securities by way of letter dated January 6, 1998.

In its letter dated December 16, 1997, the Exchange informed the Companies that it would not object to the withdrawal of the Securities from listing and registration on the Exchange.

Following the filing of the Form 15 in respect of the Securities, the Companies have represented that they will undertake to provide holders of the Securities with audited annual consolidated financial statements and other relevant information pertaining to RIH. The Companies will also undertake to provide holders of the Securities with notice of any event that materially affects the rights, interests and priority of such holders or the trustees under the Indentures.

Any interested person may, on or before April 13, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–8155 Filed 3–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (The Marquee Group, Inc., Common Stock, $.01 Par Value; Warrants) File No. 1–14594

March 23, 1998.

The Marquee Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities also are listed for trading on the American Stock Exchange ("Amex") pursuant to a Registration Statement on Form 8–A that became effective March 11, 1997. Trading in the Securities commenced on the Amex on September 11, 1997.

The Company has complied with the rules of the BSE by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing and registration on the BSE, and by setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal.

In making the decision to withdraw its Securities from listing and registration on the BSE, the Company considered the costs and expenses attendant on maintaining the dual listing of its Securities on the BSE and the Amex. The Company does not see any particular advantage in maintaining the dual listing of its Securities and believes that such dual listing would fragment the market for its Securities.

By letter dated January 13, 1998, the Exchange informed the Company that it would not object to the withdrawal of the Company's Securities from listing and registration on the BSE.

The Company has represented that its application shall have no effect upon the continued listing of the Securities on the Amex. Furthermore, by reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the Amex.

Any interested person may, on or before April 13, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–8156 Filed 3–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Isssuer Delisting; Notice of Application To Withdraw From Listing and Registration; (VSI Enterprises, Inc., Common Stock, $.00025 Par Value) File NO. 1–10927

March 23, 1998.

VSI Enterprises, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also is listed for trading on the Nasdaq SmallCap Market.

On February 17, 1998, the Board of Directors of the Company determined to withdraw the Security from listing and registration on the BSE. In making the decision to withdraw its Security from listing and registration on the BSE, the Company considered the costs and expenses attendant on maintaining the dual listing of its Security on the Nasdaq SmallCap Market and the BSE. Because a substantial portion of trading in the Security occurs on the Nasdaq SmallCap Market, the Company does not see any particular advantage in continuing the dual trading of the Security.

The Company has represented that it has complied with the rules of the BSE regarding the withdrawal of its Security from listing and registration on the BSE. By letter dated February 27, 1998, the BSE informed the Company that it would not object to the withdrawal of the Company's Security from listing and registration on the BSE.

The Company also has represented that its application shall have no effect upon the continued listing of the Security on the Nasdaq SmallCap Market. Furthermore, by reason of section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports under

section 13 of the Act with the Commission.

Any interested person may, on or before April 13, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–8154 Filed 3–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: To Be Published.

CHANGE IN THE MEETING: Additional Item.

The following item will be added to the closed meeting scheduled for Thursday, March 26, 1998, at 10:00 a.m.:

Settlement of injunctive action.

Commissioner Unger, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: March 25, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8318 Filed 3–25–98; 4:40 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39781; File No. SR–AMEX–98–10]

Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by the American Stock Exchange, Inc. Relating to Market-at-the-Close Order Handling Requirements

March 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 18, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Proposed Rule Change

The Amex proposes to adopt a new policy to (i) modify the order entry and imbalance display procedures for market-at-the-close ("MOC") orders on options expiration and non-expiration days and (ii) provide auxiliary imbalance display procedures for the opening. The test of the proposed conforming amendments to Amex Rules 109 and 131 is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] On February 4, 1998, Amex had filed the current proposal as a non-controversial filing, to be effective upon filing, pursuant to Section 19(b)(3)(A) of the Exchange Act. *See* SR–AMEX–98–06. Pursuant to the request of the Commission staff, on February 18, 1998, Amex simultaneously withdrew that filing and re-submitted it under Section 19(b)(2) of the Act.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange Rule 109 sets forth the procedures to be followed in executing MOC orders. Paragraph (d) of Rule 109 provides that where there is an imbalance between MOC buy and sell orders, the imbalance of buy orders should be executed against the offer, and the imbalance of sell orders against the bid. The remaining buy and sell orders are then paired off and executed at the price of the immediately preceding last sale. The "pair off" transaction is reported to the consolidated last-sale reporting system as "stopped stock."

In May 1995, the Exchange amended Commentary .02 to Exchange Rule 109 to impose a 3:50 p.m. deadline for the entry, cancellation or reduction of MOC orders through the PER system.[3] After the 3:50 p.m. deadline, a member may only enter, modify or cancel MOC orders other than through the PER system. This change was intended to reduce the sometimes disruptive effect on the market of MOC orders entered through the PER system shortly before the close. Prior to the imposition of the 3:50 p.m. deadline, it often took several minutes for a specialist to ascertain whether an imbalance existed and to pair off buyers and sellers, with the result that the executed MOC transactions did not actually print until after the close. When this happened, it was difficult for market participants to ascertain the closing price of the security in question on a timely basis.

Although the 3:50 p.m. deadline has alleviated some of the disruptive impact of MOC orders, further modifications are appropriate in order to both reduce excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products and otherwise, and to provide consistency to member organizations by substantially conforming the Amex's policy to the policy currently in effect at the New York Stock Exchange ("NYSE").[4] The existing NYSE policy, noted below, with respect to MOC orders differs from the current Amex policy in several respects:

[3] *See* Securities and Exchange Act Release No. 35660 (May 2, 1995), 60 FR 22592 (May 8, 1995), (File No. SR–AMEX–95–09).

[4] The NYSE recently submitted a proposed rule change which would make various changes to its policy with respect to MOC and LOC orders (*See* SR–NYSE–97–36).

- An earlier 3:40 p.m. deadline is imposed on expiration days.[5]
- The deadlines are applicable to all MOC orders, whether entered through the automated system (*i.e.*, SuperDot) or otherwise, and MOC orders are irrevocable after that time (*i.e.*, they cannot be entered, canceled or changed) except to correct a *bona fide* error or to offst a published imbalance (see below).
- Specialists are required to disseminate a significant MOC order imbalance in certain stocks as soon as practicable after the applicable deadline.[6] If such an imbalance is disseminated, both MOC and limit-at-the-close ("LOC") orders may then be entered after the deadline to offset the imbalance.[7]
- On each expiration day on which index-related derivative products expire against opening prices, several auxiliary procedures are used to assist in achieving an efficient market opening as close to 9:30 a.m. as possible. Stock orders related to index contracts whose settlement pricing is based upon opening prices must be received by 9:00 a.m. (and labeled "OPG"), but may be canceled or reduced in size. Limit-at-the-opening orders are permitted, as are ordinary limit and market orders. As soon as practicable after 9:00 a.m. imbalances of 50,000 shares or more in both the "pilot stocks" and "mid-capitalized" stocks must be published on the tape.

The NYSE policy was developed in order to minimize the excess market volatility that can develop from the liquidation of stock positions related to trading strategies involving index derivative products or otherwise, without unduly restricting legitimate trading strategies. Due to the influx of orders at the close on expiration days, even MOC orders that are not related to such trading strategies can result in order imbalances and a corresponding decreased liquidity at the close. The 3:40 p.m. deadline enables the NYSE specialist to make a timely and reliable assessment of MOC order flow and its potential impact on the closing price, while providing an opportunity to attract any necessary contra-side interest to alleviate an imbalance and minimize price volatility at the close.[8] This is particularly important on expiration days, but, as noted in the NYSE's pending filing, would also be beneficial on non-expiration days by providing additional time to attract contra-side interest when an imbalance does exist.

The Exchange is proposing to substantially conform its policy to the NYSE policy. However, our policy will differ from the NYSE in several respects. Because of the typically smaller float and capitalization of Amex companies, the Amex policy will require dissemination of order imbalances in any common stock[9] with an imbalance of 25,000 shares or more, or if the specialist (with the concurrence of a Floor Official) either anticipates that the execution price of the MOC orders on the book will be at a price change which exceeds the parameters specified in Commentary .08 to Amex Rule 154, or if he otherwise believes that an imbalance should be published.[10] As discussed, the dissemination requirements will be applicable to all common stocks.[11] Even those stocks which are neither included in an index nor underlie a listed option, can, at times, be subject to order imbalances, and dissemination thereof is beneficial to both the investing public and market professionals. The proposed policy is as follows:

(a) A 3:40 p.m. deadline will be imposed every day for the entry of *all* MOC orders in all common stocks, other than those that trade in units of less than 100 shares, except for those to offset published imbalances. MOC orders will be irrevocable after those times, except to correct an error.

(b) Order imbalances must be published on the tape as soon as practicable after 3:40 p.m. if there is an imbalance of 25,000 shares or more. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution price of the MOC orders on the book will exceed the price change parameters of Rule 154, Commentary .08, or (ii) believes that an order imbalance should otherwise be published.[12]

(c) LOC orders will be now permitted to be entered prior to the applicable deadline, but after the deadline only to offset a published imbalance.

The Exchange is also proposing that the imbalance dissemination requirements described in paragraph (b) and (c) above also be applied to the opening at 9:30 a.m. The proposed policy can be expected to reduce volatility at the close and opening by improving the specialists' ability to accurately assess MOC and opening order flow, and attract contraside interest to help alleviate order imbalances. Further, the policy will provide the investing public with more timely and reliable information regarding likely opening and closing prices, and thus the ability to make more informed trading decisions.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Fedral Register** or within such longer period (i)

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[5] The term *expiration days* refers to both (1) the trading day, usually the third Friday of the month, when stock index options, stock index futures and options on stock index futures expire or settle, and (2) the trading day on which end of calendar quarter index options expire ("QIX options"). The pending NYSE rule change proposal would provide for a 3:40 p.m. deadline every day.

[6] Order imbalances of 50,000 shares or more must be published in "pilot" stocks (the 50 most highly capitalized S & P 500 stocks, any component stocks of the Major Market Index, and the 10 highest weighted S & P Midcap 400 stocks) and in stocks being added to or dropped from an index. In addition, and imbalance may be published in any other stock with the approval of a Floor Official.

[7] The NYSE pilot program for the entry of LOC orders was recently extended until July 31, 1998, and permits LOC orders to be entered at any time during the trading day up until the applicable MOC deadline. Thereafter, as with MOC orders, LOC orders cannot be canceled (except to correct legitimate errors), and can only be entered to offset published imbalances. The Amex does not currently permit the entry of LOC orders.

[8] Even on non-expiration days, there can be an influx of MOC orders related to various trading strategies which utilize closing exchange prices.

[9] This policy will not be applicable to any security whose pricing is based on another security or an index, such as derivatives, warrants and convertible securities.

[10] Commentary .08 requires a specialist to have Floor Official approval before executing a transaction in a stock at a price (i) of $20 or more a share at 2 points or more away from the last sale, (ii) between $10 and $20 a share at one point or more away from the last sale, and (iii) of less than $10 a share at ½ point or more away from the last sale.

[11] The only common stocks which would not be subject to this policy are those that trade in units of less than 100 shares.

[12] Pursuant to Amex Rule 22(d), a specialist may request that a Floor Governor review a determination by a Floor Official not to permit publication of an order imbalance.

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as the Commission may designate up to 90 days of such date if it finds longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–98–10 and should be submitted by April 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—American Stock Exchange, Inc.

Proposed Rule Change

It is proposed that the following Exchange rules be amended as set forth below. Additions are in italics; deletions are bracketed.

Rule 109. "STOPPING" STOCK

(a)–(d) No Change.

. . . Commentary

.01 Each "stopped" transaction shall be reported for printing on the tape in the form and manner prescribed by the Exchange.

[.02 Members entering market-at-the-close orders through the PER system must do so no later than 3:50 p.m. The foregoing shall not limit or restrict the entry of market-at-the-close orders (or their cancellation) other than via such system.]

Rule 131. TYPES OF ORDERS

(a) through (d)—No change.

At the Close Order

(e) An at the close order is a market order which is to be executed at or as near to the close as practicable. *The term "at the close order" shall also include a limit order that is entered for execution at the closing price, on the Exchange, of the stock named in the order pursuant to such procedures as the Exchange may from time to time establish.*

(f) through (t)—No change.

[FR Doc. 98–8201 Filed 3–27–98; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39778; File No. SR–PCX–98–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Book Execution Charges for Options Transactions

March 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its Schedule of Fees and Charges by modifying its Book Execution Charges for options transactions.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the Exchange's Schedule of Fees and Charges, the Exchange currently charges its member firms for book execution [3] based on a tiered structure. Accordingly, the amount of the book execution charge for a given option transaction currently depends upon the amount of the option premium [4] and the number of the option contracts executed.

The Exchange is now proposing to eliminate its current tiered billing structure for options book executions and to replace it with a flat fee of $0.45 per contract. The only exception to the flat fee is that the Exchange will continue to charge $0.10 for accommodation/liquidation transactions.

The Exchange believes that the change to a $0.45 flat fee will result in an overall reduction in rates charged to Exchange member firms for book executions. Accordingly, the purpose of the proposed rule change is to make the Exchange more competitive by reducing costs incurred by its customers in executing transaction on the Exchange, thus making the Exchange a more cost-effective market center to which to send order flow. The Exchange also believes that the change will make it easier for members and member firms to calculate their book execution charges.

This proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.

[3] The term *book execution* refers to transactions executed by the Options Public Limit Order Book. *See generally,* PCX Rules 6.51–6.59.

[4] The *premium* is the price of the option contract that the buyer of the option pays to the option writer for the rights conveyed by the option contract.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act and subparagraph (e) of Exchange Act Rule 19b–4 because it constitutes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–05 and should be submitted by April 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Security.

[FR Doc. 98–8202 Filed 3–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39788; File No. 600–25]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Approving Application for Extension of Temporary Registration as a Clearing Agency

March 24, 1998.

On February 9, 1998, the Participants Trust Company ("PTC") filed [1] with the Securities and Exchange Commission ("Commission") a request pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act") [2] for extension of its temporary registration as a clearing agency under Section 17A of the Act [3] while the Commission completes its review of PTC's request for permanent registration.[4] The Commission is publishing this notice and order to solicit comments from interested persons and to grant PTC's request for an extension of its temporary registration as a clearing agency through March 31, 1999.

On March 28, 1989, the Commission granted PTC's application for registration as a clearing agency pursuant to Sections 17A(b)(2) and 19(a) of the Act [5] on a temporary basis for a period of one year.[6] Subsequently, the Commission issued orders that extended PTC's temporary registration as a clearing agency with the last extending PTC's registration through March 31, 1998.[7]

As discussed in detail in the initial order granting PTC's temporary registration,[8] one of the primary reasons for PTC's registration was to allow it to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association. PTC's services include certificate safekeeping, book-entry deliveries, and other services related to the immobilization of securities certificates. Its participants include twenty-seven banks, twenty-three broker-dealers, two government-sponsored enterprises, and the Federal Reserve Bank of New York.

PTC continues to make significant progress in the areas of financial performance, regulatory commitments, and operational capabilities. For example, the original face value of securities on deposit at PTC as of December 31, 1997, totaled $1.3 trillion, an increase of approximately $130 billion over the amount on deposit as of December 31, 1996. Total pools on deposit, which were held at PTC in a total of 1.3 million participant positions, rose from 350,000 as of December 31, 1996, to more than 374,383 as of December 31, 1997. PTC declared a dividend of $1.05 per share to stockholders of record on December 31, 1998.[9]

In connection with PTC's original temporary registration, PTC committed to the Commission and to the Federal Reserve Bank of New York ("FRBNY") to make a number of operational and procedural changes.[10] During the past year, the FRBNY relieved PTC of the only commitment remaining outstanding, the commitment to make principal and interest advances

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[5] 17 CFR 200.30–3(a)(12).

[1] Letter from John J. Sceppa, President and Chief Executive Officer, PTC (February 9, 1998).

[2] 15 U.S.C. 78s(a).

[3] 15 U.S.C. 78q–1.

[4] On February 7, 1997, PTC filed an amended Form CA–1 with the Commission requesting permanent registration as a clearing agency under Section 17A of the Act. PTC's request is currently under review by the Commission.

[5] 15 U.S.C. 78q–1(b)(2) and 78s(a).

[6] Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[7] Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12614; 29024 (March 28, 1991), 56 FR 13848; 30537 (April 9, 1992), 57 FR 12351; 32040 (March 23, 1993), 58 FR 16902; 33734 (March 8, 1994), 59 FR 11815; 35482 (March 13, 1995), 60 FR 14808; 37024 (March 28, 1996), 61 FR 14357; and 38452 (March 28, 1997), 62 FR 16638.

[8] *Supra* note 6.

[9] Securities Exchange Act Release No. 39509 (December 31, 1997), 63 FR 1523.

[10] The operational and procedural changes PTC committed to make were:

(1) eliminating trade reversals from PTC's procedures to cover a participant default;

(2) phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures;

(3) making principal and interest advances, now mandatory, optional;

(4) allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse transfers because customers may not be able to fulfill financial obligations to the participants;

(5) eliminating the deliverer's security interest and replacing it with a substitute;

(6) reexamining PTC's account structure rules to make them consistent with PTC's lien procedures;

(7) expanding and diversifying PTC's lines of credit;

(8) assuring operational integrity by developing and constructing a back-up facility; and

(9) reviewing PTC rules and procedures for consistency with current operations.

optional.[11] The FRBNY noted that although PTC has not changed its rules as specifically required by its commitment, it has addressed the issue that was the subject of that commitment by eliminating the pro rata charge to participants. In addition, the FRBNY stated that PTC has significantly improved its procedures for collection of principal and interest payments by encouraging issuers to use electronic means of payment and by making other operational improvements to accelerate the collection of principal and interest payments made by check.

PTC has functioned effectively as a registered clearing agency for over 8 years. Accordingly, in light of PTC's past performance and the need for continuity of the services PTC provides to its participants, the Commission believes that it is necessary and appropriate in the public interest and for the prompt and accurate clearance and settlement of securities transactions to extend PTC's temporary registration through March 31, 1999. Any comments received during PTC's temporary registration will be considered in conjunction with the Commission's review of PTC's request for permanent registration as a clearing agency under Section 17A[12] of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the request for extension of temporary registration as a clearing agency that are filed with the Commission, and all written communications relating to the requested extension between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copes of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. 600–25.

On the basis of the foregoing, the Commission finds that PTC's request for extension of temporary registration as a clearing agency is consistent with the Act and in particular with Section 17A of the Act.

It is Therefore Ordered, that PTC's registration as a clearing agency be and hereby is approved on a temporary basis through March 31, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8199 Filed 3–27–98; 8:45 am]

BILLING CODE 8010–01–M

[11] Letter from William Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, to John Sceppa, President and Chief Executive Officer, PTC dated (July 30, 1997).

[12] 15 U.S.C. 78q–1.

[13] 17 CFR 200.30–3(a)(50).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before May 29, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Title VII Study and Report".

Type of Request: New Request.

Form No: N/A.

Description of Respondents: Service-Disabled Veterans who own and operate Small Businesses.

Annual Responses: 1,360.

Annual Burden: 680.

Comments: Send all comments regarding this information collection to Reginald Teamer, Regional Coordination Specialist, Office of the Assistant Administrator for Veterans Affairs Small Business Administration, 409 3rd Street, S.W., Suite 6000, Washington, D.C. 20416. Phone No: 202–205–7278.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–8243 Filed 3–27–98; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Interest Rates: Quarterly Determinations

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5¾ percent for the April–June quarter of FY 98.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 120.801) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. The initial rate for a fixed rate loan shall be the legal rate for the term of the loan.

Jane Palsgrove Butler,

Acting Associate Administrator for Financial Assistance.

[FR Doc. 98–8244 Filed 3–27–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 98–1p; Title XVI: Determining Medical Equivalence in Childhood Disability Claims When a Child Has Marked Limitations in Cognition and Speech

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 98–1p. This Ruling results from the "top-to-bottom" review of the implementation of changes to the Supplemental Security Income childhood disability program necessitated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). It provides a policy interpretation that children who have a "marked" limitation in cognitive functioning and a "marked" limitation in speech have an impairment or combination of impairments that medically equals Listing 2.09. It also provides guidance for determining when a child has a "marked" or an "extreme" limitation in each of these areas.

EFFECTIVE DATE: March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ken Nibali, Social Security Administration,

6401 Security Boulevard, Baltimore, MD, 21235, (410) 965–1250.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program 96.006 Supplemental Security Income)

Dated: March 19, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Policy Interpretation Ruling—Title XVI: Determining Medical Equivalence in Childhood Disability Claims When a Child Has Marked Limitations in Cognition and Speech

Purpose: To provide a policy interpretation that children who have a "marked" limitation in cognitive functioning and a "marked" limitation in speech have an impairment or combination of impairments that medically equals Listing 2.09. Also, to provide guidance for determining when a child has a "marked" or an "extreme" limitation in each of these areas.

Citations (Authority): Section 1614(a) of the Social Security Act, as amended; Regulations No. 16, subpart I, sections 416.902, 416.923, 416.924, 416.925, 416.926; Regulations No. 4, subpart P, appendix 1—Listing of Impairments.

Background: On December 17, 1997, the Commissioner of Social Security issued the Review of SSA's Implementation of New SSI Childhood Disability Legislation (Pub. No. 64–070), a report of a "top-to-bottom" review of the implementation of changes to the Supplemental Security Income (SSI) childhood disability program necessitated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

As a result of the review, the Commissioner directed additional instruction on the evaluation of a combination of cognitive and speech disorders that separates speech disorders from cognitive disorders. Among other things, the Commissioner directed the issuance of a Ruling on the evaluation of speech disorders in combination with cognitive limitations. [1]

Introduction: The regulations at 20 CFR 416.906 explain that, for children claiming SSI benefits under the Social Security Act (the Act), an impairment or combination of impairments must cause "marked and severe functional limitations" in order to be found disabling. The regulations at 20 CFR 416.902 provide that "marked and severe functional limitations," when used as a phrase, is a level of severity that meets, medically equals, or functionally equals the severity of a listing in the Listing of Impairments, appendix 1 of subpart P of 20 CFR part 404 (the listings).

The regulations at 20 CFR 416.925(b)(2) explain that, in general, a child's impairment or combination of impairments is "of listing-level severity" if it causes marked limitation in two broad areas of functioning or extreme limitation in one such area.

The regulations at 20 CFR 416.926 explain that we will decide that a child's impairment or combination of impairments is medically equivalent to a listed impairment if the medical findings are at least equal in severity and duration to the listed findings. We will compare the signs, symptoms, and laboratory findings concerning the child's impairment or combination of impairments, as shown in the medical evidence we have about the claim, with the corresponding medical criteria shown for any listed impairment.

In particular, the regulations at 20 CFR 416.926(a)(2) provide that, if a child has an impairment that is not described in the listings, or a combination of impairments, no one of which meets or is medically equivalent to a listing, we will compare the child's medical findings with those for closely analogous listed impairments. If the medical findings related to the child's impairment or combination of impairments are at least of equal medical significance to those of a listed impairment, we will find that the child's combination of impairments is medically equivalent to the analogous listing.

[1] This Ruling addresses evaluation of speech disorders in combination with cognitive limitations. It does not address evaluation of receptive or expressive language disorders, which can also result in disability. In addition, this Ruling does not address evaluation of the area of Cognition/Communication under the broad areas of functioning of the functional equivalence provision, as discussed in 20 CFR 416.926a(c)(4).

Policy Interpretation

I. Need To Establish a Medically Determinable Impairment

Section 1614(a)(3)(C)(i) of the Act and 20 CFR 416.906 provide that a child's disability must result from a medically determinable physical or mental impairment. Section 1614(a)(3)(D) of the Act and 20 CFR 416.908 further provide that the physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings.

The discussions in this Ruling address the evaluation of the severity of impairments affecting speech and cognition. They presume that the existence of such medically determinable impairments has already been established.

II. Terms and Definitions

A. *Cognition* involves the ability to learn, understand, and solve problems through intuition, perception, auditory and visual sequencing, verbal and nonverbal reasoning, and the application of acquired knowledge. It also involves the ability to retain and recall information, images, events, and procedures during the process of thinking. There are many impairments that can cause limitations in cognition, such as genetic disorders or brain injury.

B. *Speech* is the production of sounds (phonemes) in a smooth and rhythmic fashion for the purposes of oral communication. It includes articulation, voice (pitch, volume, quality), and fluency (the flow, or rate and rhythm, of speech). Understandable speech results from precise neuromuscular functioning of the speech mechanism (e.g., lips, tongue, hard palate, vocal folds, respiratory mechanism), and intact structure and functioning of the speech centers in the brain.

There are many impairments that can cause limitations in speech, such as brain lesions or cortical injury resulting

in apraxia; other neurological abnormalities, such as cerebral palsy producing dysarthria; or structural abnormalities, such as cleft palate producing hypernasality. Speech differs from language (receptive and expressive). Speech is the production of sounds for purposes of oral communication; language provides the message of the communication, and involves the use of semantics (e.g., vocabulary), syntax (e.g., grammar), and pragmatics (i.e., use of language in its social context) in the understanding and expression of messages.

III. Limitations in Cognition and Speech

A. *Mental Retardation and Speech Impairment.* In the childhood disability program, children who have a valid diagnosis of mental retardation ("significantly subaverage general intellectual functioning with deficits in adaptive functioning") have, by definition, at least a "marked" cognitive limitation. However, a child may have a marked limitation in cognitive functioning without being diagnosed with mental retardation. (See B.)

Listing 112.05 is used to evaluate mental retardation, which is demonstrated by significantly subaverage general intellectual functioning with deficits in adaptive functioning. A child's impairment meets Listing 112.05D or 112.05F when the child has a diagnosis of mild mental retardation and a physical or other mental impairment imposing "additional and significant limitation of function" [i.e., more than minimal limitation of function]. In these listings, the significantly subaverage general intellectual functioning needed to establish that component of the diagnosis of mild mental retardation is shown by a valid verbal, performance, or full scale IQ of 60 through 70 (under Listing 112.05D) or "marked" limitation in the area of cognition/communication (under Listing 112.05F, by reference to Listing 112.02B1b or 112.02B2a). Of course, mild mental retardation may be sufficiently severe in itself to meet the criteria of Listing 112.05 A or E. More impairing cases of mental retardation (i.e., moderate, severe, or profound) will meet the criteria of Listing 112.05 B or C.

A speech impairment may satisfy the criterion for a physical or other mental impairment imposing "additional and significant limitation of function" under Listings 112.05D and 112.05F when it causes more than minimal limitation of function. To satisfy this criterion, a child's problems in speech must be separate from his/her mild mental retardation.

- A child with mild mental retardation may have speech problems resulting from an impairment of known etiology that is clearly separate from the mental retardation; e.g., a congenital disorder (as with a congenital brain injury, or a cleft palate resulting in hypernasality) or an acquired disorder (as in a child who already has mental retardation and who suffers a traumatic head injury resulting in a neurological or physical problem affecting the ability to produce speech sounds).
- A child with mental retardation may also have speech problems resulting from an impairment of unknown etiology that nevertheless is clearly separate from the mental retardation; e.g., poorly intelligible speech of unknown etiology.

It is possible for a child with mental retardation to have limitations in speech that do not constitute an impairment separate from the mental retardation. In a child with mental retardation, speech development is often commensurate with the level of cognitive functioning. Therefore, in the absence of an impairment of speech that is separate from the child's mental retardation, a speech pattern that has been and continues to be consistent with the child's general intellectual functioning is not regarded as separate from the mental retardation and will not be found to satisfy the criterion in Listings 112.05D and 112.05F for a physical or other mental impairment imposing additional and significant limitation of function.

On the other hand, if a child's speech development is not even commensurate with his/her general intellectual functioning (i.e., is significantly below that which would be expected given the level of cognitive functioning), then the limitations in speech would be regarded as an impairment separate from the mental retardation that would satisfy the criterion in Listings 112.05D and 112.05F for a physical or other mental impairment imposing additional and significant limitation of function.

B. *"Marked" Limitations in Cognition and Speech.* A child whose impairment does not meet the capsule definition of mental retardation in Listing 112.05 may nevertheless have a marked limitation in cognitive functioning. When such a child also has an impairment that causes a "marked" limitation in speech (see Table 1 and Section VI), the combination of limitations in cognition and speech will be found medically equivalent to Listing 2.09 in part A of the listings.[2]

This policy interpretation regarding the evaluation of a combination of cognition and speech impairments is an exception to the guidance in listings section 2.00B3. That section explains that impairments of speech due to neurologic disorders should be evaluated under 11.00–11.19, the neurological listings generally used to evaluate impairments in individuals age 18 or older. For the purposes of this Ruling only, however, neither the neurological listings in 11.00–11.19, nor those in 111.00 for individuals who have not attained age 18 will be used; only Listing 2.09 will be employed.

C. *"Extreme" Limitations in Cognition and Speech.* An impairment(s) that causes an "extreme" limitation in cognition or in speech is always of listing-level severity and, thus, will always meet or equal the severity of a listing.

1. Cognition. The vast majority of children with "extreme" limitations in cognition will have mental retardation and will have an impairment that meets one of the listings in 112.05. Very infrequently, however, a child with an IQ in the "extreme" range will not have the deficits in adaptive functioning needed to establish the diagnosis of mental retardation. In these rare instances, the validity of the IQ and the assessment of adaptive functioning should be verified. If both appear accurate and a diagnosis of mental retardation is not supportable, the child's impairment will nevertheless medically equal the criteria of a childhood mental disorders listing; e.g., Listing 112.02.

2. Speech. Listing 2.09 recognizes disability on the basis of an "[o]rganic loss of speech due to any cause with inability to produce by any means speech which can be heard, understood, and sustained." This listing applies to children as well as adults, and describes the most extreme limitation of speech. However, children with less serious limitations of speech than are described in Listing 2.09 may still have an "extreme" limitation, as noted in Table 1, and, therefore, may also have impairments that meet or equal the requirements of a listing.

IV. Documenting Limitations in Cognition and Speech

A. *Documentation of Severity.* 1. Evidence of the severity of cognitive

[2] In general, part A of the listings contains medical criteria that apply to persons age 18 and over; part B contains medical criteria that apply to persons under age 18. However, the medical criteria in part A may also be applied in evaluating impairments in persons under age 18 if the disease processes have a similar effect on adults and younger persons, as in Listing 2.09. See 20 CFR 416.925(b).

limitation should generally include the results of psychological testing, with subtest scores, and the psychologist's interpretation of the results, including his/her conclusion regarding the validity of the testing. The psychological test scores must also be sufficiently current for accurate assessment.[3]

Evidence of the severity of cognitive limitation should also include information about learning achievement (e.g., test scores, school performance records) and descriptions (from medical and lay sources) of the child's ability to do age-appropriate, cognitively related tasks and activities at home and school.

2. Evidence of the severity of speech limitation should generally include the results of a comprehensive examination of the child's speech (articulation, voice, fluency), and descriptions of the child's speech in daily circumstances (e.g., the sounds a child produces, the percentage of intelligibility of the child's speech). These descriptions come from persons who have opportunities to listen to the child; i.e., both lay and professional sources (see Section VI.C.). The evidence must be sufficient and recent enough to permit a judgment about the child's current level of functioning. In some instances, it may be necessary to obtain a consultative examination in order to assure recency of the evidence.[4]

B. *Sources of Evidence.* Evidence of a child's cognitive functioning and speech may be available from various sources. For example, if a child is receiving special education services, the school should be able to provide records of testing, clinical observations, and classroom performance. Examples of some sources include the following.

1. Multidisciplinary teams. Children being assessed for possible developmental problems are evaluated by a multidisciplinary team that may include a psychologist, physician, speech-language pathologist, audiologist, special educator, teacher, and other related specialists as needed; information concerning the child's cognitive abilities and speech should be available from the team's comprehensive report(s). The remediation plans for infants and toddlers (birth to age 3) are reviewed every 6 months. School-aged children in the public school system should be reassessed at least every 3 years.

2. Comprehensive evaluations. A child with documented problems in cognition and speech who is already receiving special education services must have had a comprehensive evaluation prior to receiving such services. That evaluation should include results of formal testing and clinical observations.

3. Individualized plans. Children who are cognitively limited, speech-impaired, or limited in both areas, may receive special education services in Early Intervention Programs (infants and toddlers, from birth to age 3 years), or in school-based educational programs in preschool, kindergarten, elementary, and secondary school. Annual goals and objectives for such programs, as well as test results, are documented yearly in individualized plans of intervention: for infants and toddlers, in the Individualized Family Service Plan (IFSP); for children age 3 and older, in the Individualized Education Program (IEP).

4. Speech-language progress notes. For any child receiving speech-language special education services, the speech-language pathologist should have prepared periodic progress notes that document the child's current strengths and weaknesses.

5. Other sources. Other potential sources of evidence of severity include reports from parents, daycare providers, social workers, case managers, teachers, treatment sources, or consultative examinations.

V. Rating Limitations in Cognition and Speech

When the outcome of a disability determination depends on conclusions regarding a child's cognitive and speech limitations, experts in the fields of cognitive assessment and speech-language should participate in the evaluation of the claim whenever possible.

A. *Cognition.* Marked cognitive limitation is usually identified under any of the following circumstances:[5]

1. When standardized intelligence tests provide a valid score that is 2 Standard Deviations (SDs) or more below the norm for the test (but less than 3 SDs), with appropriate consideration of the Standard Error of Measurement.

2. In the absence of valid standardized scores, when a child from birth to attainment of age 3 has an impairment or combination of impairments that results in cognitive functioning at a level that is more than one-half but not more than two-thirds of the child's chronological age.

3. When a child from age 3 to attainment of age 18 has an impairment or combination of impairments that causes "more than moderate" but "less than extreme" limitation in cognitive functioning; i.e., when the limitation interferes seriously with the child's cognitive functioning.

A finding that a limitation in a child's cognitive abilities is "marked" or "extreme," or that it is less than "marked," must be based on all of the relevant evidence in the case record.

B. *Speech.* Marked limitation in speech will be evaluated under the guidelines in Table 1. Section VI explains how to use the table.

VI. Table 1: Guidelines for Evaluating the Severity of Speech Impairments

A. *General.* 1. The guidelines for evaluating severity in Table 1 use age groupings that do not correspond to the age ranges in 20 CFR 416.926a and the childhood mental disorders listings but, rather, are related to the developmental progression of speech; e.g., the aspects of speech development that tend to occur between birth and age 2. The guidelines refer to errors that are not typical or expected for the particular age grouping; e.g., 2 to 3½ years. This principle of evaluation is based on the fact that speech development, like fine and gross motor development, is incremental and follows milestones as predictable as rolling over, crawling, and standing. The upper age category in Table 1 is age 5 and older because, by age 5, almost all sounds are mastered; however, the few age-appropriate sound errors still occurring after age 5 involve sounds (e.g., "r," "th") that may not be completely refined until age 8. Thus, by age 8, a child should have a repertoire of sounds that is complete and accurate; by definition, any misarticulations beginning at age 8 are inappropriate.

A child's speech patterns and misarticulations, and when these occur, can be indicative of whether a child's speech is developing, or has developed, appropriately.

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[3] The interpretation of the psychological testing is primarily the responsibility of the psychologist or other professional who administered the test. When an appropriate medical professional has provided test results that meet the standards in SSA regulations (e.g., that are consistent with the other evidence in the case record, or that note and resolve discrepancies between the test results and the child's customary behavior and daily activities), the adjudicator will ordinarily accept the results, unless contradictory evidence in the case record establishes that the results are incorrect.

[4] The same principles apply here as for psychological testing. When an appropriate medical professional has provided test results that would meet SSA standards (e.g., that are consistent with the other evidence in the case record, or that note and resolve discrepancies between the test results and the child's customary behavior and daily activities), the adjudicator will ordinarily accept the results, unless contradictory evidence in the case record establishes that the results are incorrect.

[5] The basic definitions of "marked" and "extreme" limitation are provided in 20 CFR 416.926a(c)(3). This Ruling provides further interpretation of the definitions of "marked."

2. Table 1 is divided into three columns: Chronological Age or Cognitive Level, Marked Limitation, and Extreme Limitation. Once the appropriate category for chronological age or cognitive level is identified (see Section B), use the second and third columns to determine whether a child with a speech impairment has a "marked" or an "extreme" limitation in speech. The evaluation of the severity of the speech impairment should be based on evidence concerning:

- The sound production and intelligibility of the child's speech in relation to the listener and the topic of conversation (see Section C); and
- The child's speech patterns (see Section D).

A finding that a limitation in speech is "marked" or "extreme," or that it is less than "marked," must be based on all of the relevant evidence in the case record.

3. If the limitation in speech is "marked" and the child also has a "marked" limitation in cognition, or if the limitation is "extreme," consider the duration of the impairment (see Section E).

4. Note on use of terms.

a. The terms used in the Table 1 are typically found in reports of comprehensive speech-language evaluations. However, some reports may not use these terms or may use the terms differently than intended in the table. If the evidence does not use the descriptors employed in the table, or it is not clear how the terms are used, it may be necessary to contact the source to clarify the information.

b. Terms such as "poor," "severe," "mild," or "marked" may be used in the evidence to describe a child's functioning. These terms have different meaning to different people. Therefore, when such terms are not illustrated or explained by the evidence, it may be necessary to contact the source for an explanation of their meaning.

B. *Chronological Age and Cognitive Level.* 1. Cognitive level is the level of a child's thinking. In many instances, cognitive and speech development are highly correlated, so that a child whose cognitive level is below chronological age will often have speech development that is appropriate to the cognitive level rather than the chronological age. Thus, although a child's speech patterns may not be appropriate from the perspective of his/her chronological age, they may be appropriate to his/her cognitive level. For example, a 4-year-old child's cognitive level may be that of a child in the age range 2 to 3½ because of an impairment affecting cognitive functioning. Speech at the 2½-to-3-year level would be considered a function of (related to) the child's cognitive level.

2. Use a child's chronological age for evaluation of severity:

a. When the child is 8 years of age or older; or

b. When the child is less than 8 years of age and the limitations in speech are the result of a congenital or acquired impairment of speech, either structural or neurological (e.g., cleft palate, dysarthria, apraxia of speech).

3. *Use a child's cognitive level for evaluation of severity* in all other cases.

4. Determining the cognitive level.

a. The cognitive level may be determined from information in the case record; e.g., score from the Bayley Scales of Infant Development, Wechsler composite scores (verbal, performance, full scale), or Stanford-Binet score. Most children with "marked" limitation in cognitive functioning will have evidence of testing showing the cognitive level, or from which the cognitive level can be determined. Particularly in the case of young children, the cognitive level is frequently included along with test scores in evaluation reports. See Section IV.B. for a list of examples of sources of evidence.

b. Developmental testing often addresses a child's progress in several areas, and developmental levels may be reported for cognition and at least one other area; e.g., motor or social functioning. For purposes of Table 1, use the level reported for the child's cognitive ability.

c. If the cognitive level is not clearly indicated in the case record or cannot be determined from the evidence, it may be necessary to recontact a source who has already evaluated and provided evidence about the child or to purchase a consultative examination. If a language level based on the total language score is included in the case record, it may be used as a proxy for the cognitive level for children up to age 6. Whether additional information will be needed will depend on the facts of the case.

C. *Sound Production and Intelligibility.* 1. Evidence of sound production and intelligibility.

a. Ideally, to assess a child's sound production and the intelligibility of speech, descriptions are needed from at least two listeners, one lay and one professional. If there is a conflict in the evidence concerning the child's sound production or intelligibility, it may be necessary to obtain a third descriptive statement, preferably from an additional professional source who is familiar with the child.

b. Listeners will either be familiar with the child (i.e., have listened to the child daily or frequently) or unfamiliar (i.e., have listened to the child infrequently). Familiar lay sources are people who know the child well, such as parents, relatives, and neighbors.

c. A professional source is a person who has training and experience in evaluating a child's speech. Examples of professional sources may include, but are not limited to, speech-language pathologists, special education teachers, pediatric neurologists, pediatricians, and occupational therapists. A professional source may also be a familiar listener (e.g., a source who provides regular treatment) or an unfamiliar listener (e.g., a consulting examiner).

2. Sound production refers to a young child's vocalizations (e.g., "cooing") that gradually become more complex and develop into recognizable speech sounds. For example, beginning around 4 to 5 months of age, an infant engages in "babbling," which consists of consonant-vowel sequences (e.g., "ba-ba"). Later, around 10 months of age, an infant begins "jargoning," which is the production of strings of speech sounds having the intonational patterns of adult speech. The variety, pitch, and intensity, of a child's sounds at this stage of development are important factors in the assessment of a child's very early speech development. Eventually, the young child uses his/her repertoire of speech sounds to imitate and produce words; this repertoire should be complete by 8 years of age.

3. Intelligibility (clarity) means the degree to which the child can be understood by the listener. To rate the intelligibility of a child's speech, a listener (regardless of whether a professional or a lay source) must be asked to provide information about how well the child can be understood, preferably in terms of a percentage (e.g., 50% of the time) or fraction (e.g., half the time).

a. The expected degree of intelligibility increases with a child's age, with a typical rate of 50% intelligibility to family members at 2 years of age, and almost full intelligibility to all listeners by attainment of 4 years of age.

b. Intelligibility is also affected by the extent to which the listener is familiar with the child's speech and the topic of conversation.

- Ratings of intelligibility should be evaluated with respect to the familiarity of the listener with the child and the frequency of contact; however, see paragraph c.

• Consideration must also to be given to the familiarity of the listener with the topic (i.e., content) of the speech. When the child's speech is difficult to understand and the topic of the conversation is unknown or not familiar to the listener, the intelligibility of the message is reduced.

c. Ratings of intelligibility by unfamiliar listeners for whom the topic of conversation is unknown assume increasingly greater importance as children age. Young children typically talk about what is immediately present in their environment, and listeners may be able to use external clues to understand such children's speech. As children age, however, the topics of their conversation should become less embedded in the immediate physical context (e.g., they talk about past or future events); the unfamiliar listener, therefore, has fewer clues available for understanding the child's speech. The older a child becomes, the more intelligible he/she needs to be in school and social situations and with infrequent listeners or strangers.[6]

D. *Speech Patterns.* 1. Speech patterns refers to sounds, omissions, distortions, or phonological patterns, and the fluency, or rate and rhythm, of speech.

2. Phonological patterns refers to the selection, sequence, combination, and placement of sounds that the rules of sound production comprise. A child's "phonological development" (the acquisition of sounds and understanding of their use) consists of learning these rules through instinctual experimentation and practice. For example, a child may use "yedow" for "yellow," or "ba-oon" for "balloon," until normal phonological development makes possible his/her use of the "l" sound in a word. A child's phonological patterns are appropriate if they are typical for his/her cognitive level; they are inappropriate if they are not typical for his/her cognitive level. Information about phonological patterns is included in speech-language evaluations.

3. Misarticulations are incorrect productions of speech sounds, and may include various kinds of "speech errors"; e.g., distortions (such as vowel distortions, lateralized "s"), substitutions (such as lisping), or omissions of sounds. Such errors may occur in the beginning, middle, or end of words. As noted previously, certain misarticulations are appropriate because they are typical of various stages of phonological development. As a child grows older, certain misarticulations are not typical of his/her group and are, thus, inappropriate. The nature of the misarticulation and its placement in the word can affect the seriousness of the "speech error" and its effect on intelligibility. For example, the omission of consonant sounds at the beginning of many words can render much of a child's speech unintelligible.

4. Dysfluent speech is a break in the rhythm and rate of speech. Children between ages 2½ and 4 may go through a period in which they produce "normal dysfluencies." The pattern of a child's dysfluencies, and whether it is typical or atypical for the child's cognitive level, can be indicative of whether a child's speech is developing appropriately.

5. Voice refers to the pitch, quality, and intensity of a child's voice. Aberrations in voice are not a function of the child's cognitive level and are usually atypical at any age.

6. Sources of information. Information concerning a child's speech in relationship to his/her cognitive level must be provided by persons who are knowledgeable about the specific milestones of development of speech; e.g., which misarticulations are appropriate or inappropriate to the child's cognitive level. If a child is receiving treatment to remediate a speech impairment, the most likely source of this kind of information will be the speech-language pathologist. However, a preschool or special education teacher may also be able to provide the needed information, as might another health care specialist; e.g., developmental pediatrician, pediatric neurologist, occupational therapist, or a person otherwise qualified by training and experience.

E. *Duration.* Children who exhibit serious speech difficulties will sometimes "outgrow" them. Some speech difficulties will respond to treatment more readily than others. Therefore, when it is determined that a child has a "marked" limitation in cognition together with a "marked" limitation in speech that has not yet lasted at this level for 12 months, it will be necessary to determine whether the limitation in speech is expected to persist at the "marked" level for a continuous period of at least 12 months. The presence of any of the factors in Table 2 makes it less likely that the child will simply "outgrow" the speech impairment, and more likely that a longer period of intervention will be required for remediation of the speech impairment.

The presence of one of the factors in Table 2 will strongly suggest that an impairment has met or will meet the duration requirement. However, the converse is not necessarily true: A child's speech impairment may nevertheless still require extensive speech treatment for a long period of time even though none of the factors in Table 2 is present in the evidence. Whether the impairment has lasted or is expected to last for a continuous period of not less than 12 months is a judgment that must be made based on the evidence particular to each case.

TABLE 1.—GUIDELINES FOR EVALUATING SEVERITY OF SPEECH IMPAIRMENTS

Chronological age or cognitive level (see section VI.B.)	Marked limitation	Extreme limitation
Birth to attainment of 2 years	a. Sound production other than crying (e.g., cooing, babbling, jargoning) occurs infrequently; child is unusually quiet; or b. Limited or otherwise abnormal variation in pitch, intensity, and sound production	a. A criterion for Marked Limitation is met, and b. Consonant-vowel repertoire is not sufficient to support the development of expressive language.
2 to attainment of 3½ years	a. Most messages are not readily intelligible even in context; and b. Sounds, omissions, distortions, or phonological patterns, or fluency (rate, rhythm of speech) not typical for this group; or significant aberrations in vocal pitch, quality, or intensity	a. Criteria for Marked Limitation are met, and b. Gesturing and pointing are used most of the time instead of oral expression, and c. Intelligibility does not improve even with repetition or models, or ability to imitate words is limited.

[6] Although reference is made to the child's topic of conversation, which necessarily involves language, the issue being addressed here is the child's speech and its intelligibility in conversation; the topic of conversation is one of many variables that can affect the intelligibility of the child's speech for the listener.

TABLE 1.—GUIDELINES FOR EVALUATING SEVERITY OF SPEECH IMPAIRMENTS—Continued

Chronological age or cognitive level (see section VI.B.)	Marked limitation	Extreme limitation
3½ to attainment of 5 years	a. Sounds, omissions, distortions, or phonological patterns, or fluency (rate, rhythm of speech) not typical for this group; or significant aberrations in vocal pitch, quality, or intensity; and b. Conversation is intelligible no more than ½ of the time on first attempt; and c. Intelligibility improves with repetitions	a. Criteria a. and b. for Marked Limitation are met, and b. Conversation continues to be intelligible no more than 1/2 of the time despite repetitions and c. Stimulability for production of sounds is limited, or, ability to imitate words is limited.
5 years and older	a. Sounds, omissions, distortions, or phonological patterns, or fluency (rate, rhythm of speech) not typical for this group; or significant aberrations in vocal pitch, quality, or intensity; and b. Conversation is intelligible no more than ½ to ⅔ of the time on first attempt; and c. Intelligibility improves with repetitions	a. Sounds, omissions, distortions, or phonological patterns, or fluency (rate, rhythm of speech) not typical for this group; or significant aberrations in vocal pitch, quality, or intensity; and b. Conversation is intelligible no more than ½ of the time despite repetitions.

TABLE 2.—FACTORS SUGGESTING THAT THE DURATION REQUIREMENT WILL BE MET

1. Neurologically based abnormalities, including—
   - Oral-motor problems at the volitional level (e.g., ability to imitate oral-motor movements is limited); or
   - Oral-motor problems at the automatic level (e.g., drools profusely, exhibits feeding disorder); or
   - Oral hypersensitivity (e.g., limited tolerance of different food textures); or
   - Insufficient breath support for speech.
2. Hearing abnormalities, including—
   - Conductive hearing loss; or
   - Sensorineural hearing loss.
3. Structurally based abnormalities, including—
   - Defect of the oral mechanism (e.g., vocal fold paralysis); or
   - Oral-facial abnormality (e.g., cleft lip/palate).
4. Speech-related behavioral abnormalities, including—
   - Communication-related physical behaviors that are negative (e.g., grimaces or has excessive eye-blinking during stuttering episodes; gestures, such as slapping a surface, to end stuttering block); or
   - Avoidance of speaking because of speech difficulties.

EFFECTIVE DATE: This Ruling is effective March 30, 1998.

Cross-references: Program Operations Manual System DI 25201.001–005, DI 25215.005, DI 34001.000, DI 34005.000.

[FR Doc. 98–8135 Filed 3–27–98; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF STATE

[Public Notice No. 2774]

Renewal of Defense Trade Advisory Group Charter and Notice of Meeting

The updated Charter of the Defense Trade Advisory Group has been renewed for a two-year period. The Charter was revised for clarification. The Defense Trade Advisory Group (DTAG) will meet beginning at 9 a.m. on Friday, April 17, 1998, in the East Auditorium, Room 2925, U.S. Department of State, 2201 C Street, NW, Washington, DC. The membership of this advisory committee consists of private sector defense trade specialists appointed by the Assistant Secretary of State for Political-Military Affairs who advise the Department on policies, regulations, and technical issues affecting defense trade.

The open session will include presentations by guest speakers and representatives of the Department of State and other agencies. Reports will also be presented on DTAG Working Group progress, results, and future projects.

Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instruction.

As access to the Department of State is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Monday, April 13, 1998. If notified after this date, the DTAG Secretariat cannot guarantee that State's Bureau of Diplomatic Security can complete the necessary processing required to attend the April 17 plenary.

Each person should provide his/her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat by fax to (202) 647–4232 (Attention: Mike Slack). This information will be placed on a list for Diplomatic Security and the Reception Desk at the C-Street diplomatic entrance. Attendees must carry a valid photo ID with them. They should enter the building through the C-Street diplomatic entrance (22nd and C Streets, NW) where Department personnel will direct them to the security check point and on to the East auditorium.

A working lunch will be held at the Department. Limits on available seating may require attendance be limited only to DTAG members.

FOR FURTHER INFORMATION CONTACT: Mike Slack, DTAG Secretariat, U.S. Department of State, Office of Arms Transfer and Export Control Policy (PM/ATEC), Room 2422 Main State, Washington, DC 20520–2422. Phone: (202) 647–2882, fax (202) 647–4232.

Dated: March 20, 1998.

John P. Barker,

Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 98–8146 Filed 3–27–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget

(OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 28, 1997 [62 FR 63408].

DATES: Comments must be submitted on or before April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, Office of Motor Carriers,(202) 366–4104, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Emergency Relief Funding Applications.

OMB Number: 2125–0525.

Type of Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: State Highway Agencies.

Abstract: 23 U.S.C. 125 requires States to submit an application for emergency relief (ER) funds to the Federal Highway Administration. The ER funds are established for the repair or reconstruction of Federal-aid highways and Federal roads which are found to have suffered serious damage by natural disasters over a wide area or serious damage from catastrophic failures. The information is needed for the FHWA to fulfill its statutory obligations regarding funding determinations on emergency work to repair highway facilities. The requirements covering the FHWA ER program are contained in 23 CFR part 668.

Estimated Annual Burden Hours: 7,200.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on March 25, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–8265 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–98–013]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of full committee meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. The meeting will open to the public.

DATES: The meeting of HOGANSAC will be held on Thursday, May 7, 1998 from 9 a.m. to approximately 1 p.m. Members of the public may present written or oral statements at the meetings.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Kevin Eldridge, Executive Director of HOGANSAC, telephone (713) 671–5199, or Commander Paula Carroll, Executive Secretary of HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of the Meeting

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Pluta), Executive Director (CAPT Eldridge) and chairman (Tim Leitzel).

(2) Approval of the January 29, 1998 minutes.

(3) Report from the Waterways Subcommittee.

(4) Report from the Navigation Subcommittee.

(5) Status reports on Baytown Tunnel removal, Army Corps of Engineers' dredging projects, HL&P transmission tower protection, NOAA charting, VTS customer satisfaction survey, and comments and discussions from the floor.

Procedural

All meetings are open to the public. Members of the public may make oral presentations during the meetings.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: March 23, 1998.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–8257 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–15–M

DEAPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, Federal Aviation Administration (DOT/FAA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting an immediate emergency clearance by April 20 in accordance with 5 CFR 1320.13. The following information describes the nature of the information collection and its expected burden.

SUPPLEMENTARY INFORMATION:

Title: Survey of Airport Use and Visitor Survey for Supplemental Evaluation Impact Statement (SEIS) associated with Cal Black Memorial Airport, San Juan County, Utah.

Need: In 1990, the Federal Aviation Administration (FAA) completed an Environmental Impact Statement for the Cal Black Memorial Airport, San Juan County, Utah. In 1991, the FAA completed the construction of the airport. The FAA is now responding the 10th Circuit Court of Appeals decision that indicated that the FAA should conduct a Supplemental Environmental

Impact Statement containing more on site survey and monitoring work.

Respondents: A possible 780 individuals.

Frequency: One time.

Burden: 139 hours (depending on number of individuals contacted).

FOR FURTHER INFORMATION CONTACT: Or to submit comments, you may contact Judy Street at the Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Avenue, SW., Washington, DC 20591. You can also submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, Attention FAA Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Issued in Washington, DC on March 24, 1998.

Steven Hopkins,

Manager, Corporate Information Division, ABC–100.

[FR Doc. 98–8266 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98–02–C–00–DCA) To Impose and use the Revenue From a Passenger Facility Charge (PFC) at the National Airport, Arlington, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 29, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Terry Page, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James A. Wilding, General Manager of the Metropolitan Washington Airports Authority, at the following address: Metropolitan Washington Airports Authority, 44 Canal Center Plaza, Alexandria, Virginia 22314.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Washington Airports Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 22, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Metropolitan Washington Airports Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 29, 1998.

The following is a brief overview of the application.

Application number: 98–02–C–00–DCA
Level of the proposed PFC: $3.00
Proposed charge effective date: April 1, 2002
Proposed charge expiration date: May 1, 2008
Total estimated PFC revenue: $120,027,100
Brief description of proposed projects:
—Construct Regional Carrier Concourse
—Rehabilitate Terminal A Apron
—Rehabilitate Terminal A Building
—Expand Terminal Connector
—IAD Concourse A Rehabilitation
—Construct a Pedestrian Tunnel between Main Terminal and B Concourse
—Interim Financing Cost

Class or classes of air carriers which the public agency has requested not be required to collect PGCs: Part 135 On Demand Air Taxis filing FAA Form 1800–31

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application notice and other documents germane to the application in person at the Metropolitan Washington Airports Authority.

Issued in Jamaica, New York on March 18, 1998.

Thomas Felix,

Planning & Programming Branch, Airports Division, Eastern Region.

[FR Doc. 98–8273 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 98–3606]

Notice of Request for Extension of Currently Approved Information Collection; Develop and Submit Utility Accommodation Policies

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c) (2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget(OMB) to renew the information collection that requires State highway agencies to develop and submit to FHWA a policy statement on the authority of utilities to use and occupy highway rights-of-way; the State's authority to regulate such use; and the policies and/or procedures employed for accommodating utilities within the rights-of-way of Federal-aid highway projects.

DATES: Comments must be submitted on or before May 29, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope. Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance

the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, Office Engineering, Federal Highway Administration, U.S. Department of Transportation, HNG–10, Room 3134, 400 7th St., S.W. Washington, DC 20590–0001, telephone (202) 366–4104. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Develop and Submit Utility Accommodation Policies.

OMB Number: 2125–0514.

Background: The FHWA has elected to fulfill its statutory obligations regarding utility accommodation by requiring the State highway agencies to develop and submit to FHWA a policy statement on the authority of utilities to use and occupy highway rights-of-way; the State's authority to regulate such use; and the policies and/or procedures employed for accommodating utilities within the rights-of-way of Federal-aid highway projects. Upon approval of the policy statement, the State highway agency may take any action required in accordance with the approved policy statement without case-by-case review by the FHWA. Utility accommodation policy statements have previously been approved by the FHWA for all the 50 State highway agencies and the highway agencies of the District of Columbia and the Commonwealth of Puerto Rico. Even so, these policy statements must periodically be reviewed to see if updating is necessary, and must periodically be updated to reflect policy changes.

Respondents: State Highway Agencies.

Average Burden Per Response: The average burden for updating an existing policy is 280 hours per response.

Estimated Total Annual Burden: The estimated total annual burden, based upon 10 updates per year, is 2,800 hours.

Frequency: The existing frequency is an initial submission of a utility accommodation policy. Once this is approved, updating is at a State's discretion. The FHWA recommends the State highway agencies periodically review their policies to see if updating is necessary but no specific frequency is mandated.

Authority: 23 U. S. C. 116, 109(l) and 315.

Issued on: March 19, 1998.

George S. Moore,

Associate Administrator for for Administration.

[FR Doc. 98–8140 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 98–3607]

Notice of Request for Extension of Currently Approved Information Collection; Eligibility Statement for Utility Adjustments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget(OMB) to renew the information collection that requires a State or local highway agency to furnish a statement to the FHWA establishing its authority to pay for utility adjustments on Federal-aid projects.

DATES: Comments must be submitted on or before May 29, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope. Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, Office Engineering, Federal Highway Administration, U.S. Department of Transportation, HNG–10, Room 3134, 400 7th St., S.W. Washington, DC 20590–0001, telephone (202) 366–4104. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Eligibility Statement for Utility Adjustments.

OMB Number: 2125–0515.

Background: The FHWA requires State (and in some cases local) highway agencies to submit to the FHWA a statement which establishes the highway agency's legal authority or obligation to pay for utility adjustments. The FHWA reviews this statement for acceptability. If the statement is found to be suitable, it then forms a basis for Federal-aid participation in utility relocation costs under the provisions of 23 U.S.C. 123. The State highway agencies have previously submitted statements covering the extent to which utility adjustments may be legally reimbursed under State law. These statements have previously been reviewed by the FHWA and a determination of suitability has been made. Hence, the only submissions required now would be for those instances where circumstances have modified (for example, a change in State statute) the extent to which utility adjustments are eligible for reimbursement by the State or those instances where a local highway agency's legal basis for payment of utility adjustments differs from that of the State.

Respondents: State highway agencies and local highway agencies.

Average Burden Per Response: The average burden for preparing and submitting an eligibility statement is 36 hours per response.

Estimated Total Annual Burden: The estimated total annual burden, based upon 5 submissions of eligibility statements per year, is 180 hours.

Frequency: The existing frequency is an initial submission of an eligibility statement by the highway agency. Once this is accepted by the FHWA, no further submissions are made unless circumstances change, such as enactment of a new statute. This is a relatively infrequent occurrence.

Authority: 23 U. S. C. 123.

Issued on: March 19, 1998.

George S. Moore,

Associate Administrator for Administration.

[FR Doc. 98–8141 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3458

Applicant: Duluth, Missabe and Iron Range Railway Company, Mr. D.B. Moore, Chief Engineer, Engineering Department, 329 Second Street, Proctor, Minnesota 55810–1091

The Duluth, Missabe and Iron Range Railway Company seeks approval of the proposed modification of the traffic control system, on the single main track, at Bridge 19A, near Milepost 18.2, between BN Saunders and Ambridge, Wisconsin, on the Missabe Division, Interstate Branch, consisting of the replacement of the existing DC coded track circuit with a wheel count-based trap circuit, over the steel decked bridge.

The reasons given for the proposed changes are that the insulated bridge pads are approaching the end of their useful life, and steadily increasing annual costs for maintenance and train delays associated with troubleshooting and repairs. The pads are only available from an Australian supplier and full scale replacement cost is estimated at $65,000.

BS–AP–No. 3459

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed modification of the automatic block and traffic control signal systems, on the single main track and siding, near Washington, Indiana, between milepost BC–169 and milepost BC–174, Illinois/Indiana Subdivisions, Louisville Service Lane, consisting of the discontinuance and removal of absolute control signals 3L, 3R, 5RA, and 5L and automatic block signals 1713A and 1714; installation of new automatic block signals 1718A, 1718B, and 1719 at W.E. Washington; and installation of a new absolute control signal 5L and power-operated switch at the east end of Washington.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation and increase operating efficiency.

BS–AP–No. 3460

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed modification of the automatic block signal system, on the single main track and siding, near Rushville, Indiana, milepost BD–85.5, Indianapolis Subdivision, Louisville Division, consisting of the conversion of absolute control signal E2 to automatic signal 856; and discontinuance and removal of absolute control signals E1, W1, WA2, and WD2 associated with the previous removal of the N.K.P. railroad crossing at grade.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

BS–AP–No. 3461

Applicant: Long Island Railroad, Mr. Frederick E. Smith, P.E., Chief Engineer, Hillside Maintenance Complex, 93–59 183 Street, Hollis, New York 11423

The Long Island Railroad seeks approval of the proposed modification to Brook and Van Interlockings, in Brooklyn, New York, consisting of the discontinuance and removal of Brook Interlocking Signals 12R, 8L, 14R, 10L, and A1, and Van Interlocking Signal 8R, associated with numerous signal aspect changes and installation of a new crossover switch at Brook Interlocking.

The reason given for the proposed changes is to modernize and upgrade the existing facilities.

BS–AP–No. 3462

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track and sidings, between Howell, milepost 00H–323.5 and Mount Vernon, milepost 00H–344.9, Indiana, St. Louis Subdivision, Chicago Service Lane, a distance of approximately 21 miles, operate exclusively by a Direct Traffic Control Block system, and provide for the installation of inoperative approach signals at Howell and the Mt. Vernon rail crossing at grade.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on March 17, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–8230 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub–No. 40X)]

Soo Line Railroad Company; Abandonment Exemption; in Hennepin County, MN

On March 10, 1998, Soo Line Railroad Company, operating under the trade name Canadian Pacific Railway (Soo Line), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its line of railroad known as the Hiawatha/Cedar Avenue Wye, extending from milepost 423.59±, near the eastern edge of Cedar Avenue to mileposts 423.26± and 423.21±, respectively, near the eastern edge of Hiawatha Avenue, a total distance of approximately 1 mile, in Hennepin County, MN. The line traverses U.S. Postal Service Zip Code 55407, and includes the station of Minneapolis at milepost 423.

The line does not contain federally granted rights-of-way. Any documentation in Soo Line's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 26, 1998. [1]

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 20, 1998. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–57 (Sub-No. 40X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Larry D. Starns, Esq., Leonard, Street and Deinard, 150 South 5th St., Suite 2300, Minneapolis, MN 55402.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: March 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–8118 Filed 3–27–98; 8:45 am]

BILLING CODE 4915–00–P

[1] Soo Line requests expedited handling of this petition to enable it to facilitate the removal of rail materials and structures from the right-of-way before the State of Minnesota resumes construction of Highway 55 on July 1, 1998. If the record supports an abandonment, we will attempt to accommodate Soo Line's request.

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of National Customs Automation Program Test: Semi-Monthly Statement Processing Prototype

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to test the semi-monthly filing and statement processing program (semi-monthly processing), and invites all eligible importers to participate. Semi-monthly processing provides for periodic filing of entry summaries and payment of duties, taxes, and fees. Semi-monthly processing allows filers to go to a periodic statement and filing process, whereby all estimated duties, taxes, and fees along with the corresponding entry summaries for a semi-monthly period (fifteen days) are due seven days following the end of a fifteen day period. This notice provides a description of the semi-monthly processing prototype, outlines the evaluation methodology to be used, and sets forth the eligibility requirements to participate.

EFFECTIVE DATES: The semi-monthly processing prototype will commence no earlier than April 1998, will be implemented over an 18-month period, and will end when the periodic payment/statement feature of ACE is available through a NCAP/P test or otherwise in the semi-monthly prototype ports. Evaluations of the semi-monthly processing at the ports will be conducted periodically. All applications to participate in the prototype test must be received within 30 days of the date of this notice.

ADDRESSES: Applications should be addressed to Rosalyn McLaughlin-Nelson, U.S. Customs Service, ACE, 7501 Boston Blvd, Springfield, VA 22153.

FOR INFORMATION CONTACT: For inquiries regarding the specifics of the semi-monthly processing prototype contact Rosalyn McLaughlin-Nelson at (703)921–7494. Individual port contact persons will be provided to the participants at a later date. For inquiries regarding the eligibility of specific importers, contact Margaret Fearon, Process Analysis and Requirements Team (202) 927–1413.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub.L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Pursuant to these provisions, Customs is in the process of developing a new commercial processing system, the Automated Commercial Environment (ACE). The ACE is being designed to support the new Trade Compliance processes. One of the main features of the ACE will be the periodic summary filing and periodic statements function, which will enable each account to pay duties, taxes, fees, and other payments owed using a periodic statement cycle. During the latter development of the NCAP/P the periodic summary filing and periodic statements functional capabilities will be fully integrated into the new ACE system. Semi-monthly processing using the current Automated Commercial System (ACS) will eventually cease as the ACE system is deployed nationwide.

For programs designed to evaluate existing and planned components of the National Customs Automation Program (NCAP), § 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), implements the NCAP testing procedures. This test concerns an existing component of the NCAP relating to the electronic payment of duties, fees, and taxes, and is established pursuant to that regulation.

I. Development Methodology

The semi-monthly processing test will be monitored by an evaluation team consisting of representatives from the Customs Trade Compliance Redesign/ACE Project Team, the Office of Finance, Financial Systems Division, and Entry personnel from the semi-monthly processing prototype ports. This team will conduct periodic evaluations to monitor progress, resolve issues, and evaluate program effectiveness.

II. Eligibility Requirements

Customs will select a limited number of applicants for the semi-monthly

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processing prototype. Applications will be accepted from all volunteers; however, priority consideration will be given to the following ranking factors:

1. Companies ranking within the top 379 companies importing by value (the top 379 represent approximately 50 percent of all imports by value);

2. Importers who are within the top 250 largest importers within each of Customs Primary Focus Industry (PFI) categories, which are:

a. Advanced Displays;
b. Agriculture;
c. Auto/Truck Parts;
d. Automobiles;
e. Bearings;
f. Circuit Boards;
g. Fasteners;
h. Footwear;
i. Manufacturing Equipment;
j. Steel Products;
k. Telecommunications;
l. Textiles and Flatgoods; and
m. Wearing Apparel;

3. Companies whose imports represent at least 50 percent PFI;

4. Companies that indicate they plan to maintain an average of at least 25 entries per month throughout the prototype period;

5. Companies that are scheduled or have completed a Customs Compliance Assessment; and

6. Companies that are capable of transmitting entry and entry summary data via the Automated Broker Interface (ABI) and make payment of estimated duties, taxes, and fees through the ABI/ Automated Clearinghouse (ACH).

III. Procedures and Restrictions

For the semi-monthly processing prototype, the following restrictions will be placed on the importers:

1. Initially, only merchandise entered or withdrawn from a Customs bonded warehouse or Foreign Trade Zone for consumption at the following ports will be eligible for the semi-monthly processing prototype:

a. Seattle, Washington;
b. Detroit and Port Huron, Michigan;
c. Laredo and El Paso, Texas;
d. Buffalo and New York, New York;
e. Charleston, South Carolina;
f. Atlanta, Georgia;
g. Chicago, Illinois;
h. Miami, Florida;
i. Cleveland, Ohio; and
j. Los Angeles and San Francisco, California;

(If an applicant requests that an additional port or ports offer this program, and if Customs accepts the request, an amendment to this **Federal Register** Notice will be published).

2. Importers must have all transactions paid on an importer ACH statement at each semi-monthly prototype port;

3. Importers must pay only estimated duty, taxes, and fees on the semi-monthly statement;

4. Importers must have all entry summaries corresponding to all entries released during the first semi-monthly period placed on an ABI Statement and make payment via ACH on the seventh day following the end of the first semi-monthly period. Payment must be initiated at the same time the ABI statement is submitted to Customs;

5. For quota merchandise, the entry summary data must be filed electronically and any applicable visa must be filed prior to release of the merchandise. The payment must also be placed on the statement prior to release of merchandise;

6. Items deleted from a statement may not be added to another statement if quota status is already obtained and the new statement date is greater than 10 working days past the presentation date;

7. All current Entry requirements associated with quota processing will remain in effect;

8. Importers must have all entry summaries corresponding to all entries released during the second semi-monthly period placed on an ABI Statement and make payment via ACH on the seventh day following the end of the second semi-monthly period. Payment must be initiated at the same time the ABI statement is submitted to Customs;

9. For due dates that fall on a Saturday, Sunday or official federal holidays, importers must make payment on the next federal business day;

10. Importers must have final statements and required entry summaries submitted by the actual payment due date, *i.e.*, seven days after the semi-monthly (fifteen days) period;

11. The statement will only reflect payment of duties, taxes, and fees applicable to the merchandise released for the semi-monthly period. The following activities are examples of what cannot be included on the statement:

a. voluntary tenders;
b. supplemental duties;
c. bill payments resulting from rate advances;
d. protests;
e. refunds; and
f. drawbacks;

(These activities will be processed the way they are currently done, as individual transactions).

12. Payments received after the corresponding due dates will be considered late and will be subject to liquidated damages;

13. When a statement is paid late, the liquidated damages will be issued against all of the entry summaries paid on the statement; and

14. If an entry summary(s) is omitted from the statement and the statement is timely, then liquidated damages will be issued against the omitted entry summary(s). An omitted entry summary(s) cannot be paid individually. It must be placed on the next statement.

Customs Entry personnel at each of the prototype expansion ports will monitor entry activity to ensure that entries are appearing on the appropriate statement; ACH payments are authorized timely; and, entry summary(s) are not submitted late.

This prototype only applies to entries for consumption. Importers may enter merchandise in the semi-monthly processing prototype that is subject to quota, antidumping or countervailing duty, trade preference, or visa requirements. In addition, importers may withdraw such merchandise from a customs bonded warehouse or Foreign Trade Zone and enter it for consumption under the prototype. However, all entry requirements for these types of merchandise will remain in effect.

IV. Application

Importers that wish to participate in the semi-monthly processing prototype port expansion must submit a written application and include the following information:

1. Name(s) of the port(s) listed above where they intend to enter merchandise;

2. The importer of record numbers, including suffix;

3. Name and addresses of any customs brokers who will be filing data at each port on behalf of an importer/ participant;

4. The approximate total number of entries per month expected to be processed at the ports designated; and

5. For applicants not already scheduled for or participating in a Customs Compliance Assessment, a statement in which the applicant indicates agreement to undergo and cooperate fully with a Customs Compliance Assessment.

Customs will notify each applicant in writing of their acceptance or nonselection to participate in this semi-monthly processing prototype, the port or ports where they may enter merchandise under this prototype, and will assign statement filing dates to the applicants. If an applicant is denied participation, the applicant may appeal in writing to Director, ACE Implementation and Outreach Team,

U.S. Customs Service, 7501 Boston Blvd., Springfield, VA 22153, within 10 days from applicant notification from Customs.

V. Semi-Monthly Processing

Under the semi-monthly processing procedures, cargo released during a fifteen day period will have estimated duty, taxes, fees, and summaries due seven days following the end of the period. Cargo released during the second fifteen or sixteen day period will have estimated duty, taxes, fees, and summaries due seven days following the end of the period. A separate statement will be needed for each collection processing port. For entry summaries paid via semi-monthly statement processing, the date used to calculate the interest due or payable pursuant to 19 U.S.C. 1505 will be seven days after the end of the fifteen/sixteen day cycle. Interest cost will be calculated based on the semiannual rate(s) established under sections 6621 and 6622 of the Internal Revenue Code of 1954 (26 U.S.C. 6621, 6622).

Under the prototype, Customs may assign a limited number of due dates for workload management purposes. The due dates that will be assigned are:

1. 1 thru 15, due 22; 16 to end of month, due 7.
2. 2 thru 16, due 23; 17 thru 1, due 8.
3. 3 thru 17, due 24; 18 thru 2, due 9.
4. 4 thru 18 due 25; 19 thru 3, due 10.

The due dates will be indicated in the letter of acceptance sent by Customs to the participant.

VI. Misconduct

If a prototype participant makes late or inadequate payments, or fails to exercise reasonable care in the execution of participant obligations and the filing of information regarding the admissibility of merchandise and declaring the classification, value, and rate of duty applicable to the merchandise, or otherwise fails to follow the procedures (outlined herein) or applicable laws and regulations, then the participant may be suspended from the semi-monthly processing prototype, and/or subjected to penalties, and/or liquidated damages, and/or other administrative sanctions. Customs has the discretion to suspend a prototype participant based on the determination that an unacceptable compliance risk exists. This suspension may be invoked at any time after acceptance in the prototype.

Any decision proposing suspension of a participant may be appealed in writing to the local Trade Compliance Process Owner within 15 days of the decision date. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how he does or will achieve compliance. However, in the case of willfulness or where public health interests or safety are concerned, the suspension may be effective immediately.

VII. Regulatory Provisions Suspended

As applicable, certain provisions within Parts 24, 111, 141, 142, 143, and 159 of the Customs Regulations (19 CFR Parts 24, 111, 141, 142, 143, and 159) will be suspended to allow for the periodic payment of duties, taxes, and fees.

Absent any specified alternate procedure, the current regulations apply.

VIII. Prototype Evaluation

Periodic evaluations will be conducted to determine effectiveness and accrued benefits to internal and external process operations. The following evaluation method has been suggested:

1. Evaluation questionnaire from both the prototype participants and Customs personnel; and
2. Reports to be run through the use of dataqueries.

Customs will request that participants be active in the evaluation of the semi-monthly test.

Dated: March 24, 1998.

Charles W. Winwood,

National Trade Compliance Process Owner.

[FR Doc. 98–8220 Filed 3–27–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Live Entry Requirement for Non-Automated Entry: Determination Not To Proceed

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The U.S. Customs Service has been evaluating the feasibility of requiring "live entry" procedures for non-automated entries, referred to as the "Track One" proposal. After a significant amount of research was done by Customs into the operational and legal issues associated with "Track One" and consideration of comments solicited from Customs personnel and from the trade community, the Customs Trade Compliance Board of Directors has decided against proceeding with the implementation of "Track One" at the present time.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to Ms. Brenda Brockman, 1300 Pennsylvania Avenue, Rm. 6.4B, Washington, DC 20229 (Telephone (202) 927–1507).

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, which gives Customs the flexibility to tailor commercial operations to meet its needs and capabilities, Customs has undertaken an effort to redesign the entry process. Customs has proposed a four track entry process to better address current commercial practices. "Track One" would allow Customs to streamline the process used by non-automated commercial filers by requiring importers who file non-automated entry documents to file them as entry/entry summaries ("live entries"), along with all documentation and estimated duties, fees and taxes, prior to the release of the merchandise.

A significant amount of research was done by Customs into the operational and legal issues associated with adoption of Track One. On October 28, 1997, Customs published a document in the **Federal Register** (62 FR 55847) announcing a public meeting to discuss whether Customs should proceed with publication of a notice of proposed rulemaking to require all non-automated entry documents to be filed as entry/entry summaries before the release of merchandise. The document also solicited comments regarding a possible change. The public meeting was held on November 14, 1997. Upon completion of the research and consideration of the comments, a determination was made by the Customs Trade Compliance Board of Directors to forego steps toward the implementation of "Track One" at the present time.

Dated: March 24, 1998.

Charles W. Winwood,

Assistant Commissioner, Office of Strategic Trade.

[FR Doc. 98–8219 Filed 3–27–98; 8:45 am]

BILLING CODE 4820–02–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Spirits in Steel: The Art of Kalabari Masquerade" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States , are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The American Museum of Natural History, New York City from on or about April 21, 1998, through October 12, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: March 24, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–8247 Filed 3–27–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, "The Arts of Korea" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York City, New York, from on or about June 2, 1998, to on or about January 23, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: March 24, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–8246 Filed 3–27–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Carol Epstein, Assistant General Counsel, at 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Used Development at the VAMC, Long Beach, California

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Veterans Affairs Medical Center at Long Beach, California for an Enhanced-Use lease development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide the most advantageous combination of services and revenue as consideration to the VA while retaining the therapeutic benefit of golf for patients at no cost to the Department.

FOR FURTHER INFORMATION CONTACT: Jacob Gallun, Office of Asset and Enterprise Development (189), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420, (202) 565–4307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Sec 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: March 19, 1998.

Togo D. West, Jr.,

Acting Secretary.

[FR Doc. 98–7892 Filed 3–27–98; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
March 30, 1998

Part II

Department of Education

Authority to Grant Waivers of Certain Federal Programs in the Elementary and Secondary Education; Notice

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DEPARTMENT OF EDUCATION

Authority to Grant Waivers of Certain Federal Programs in the Elementary and Secondary Education

ACTION: Notice of waivers granted by the U.S. Secretary of Education under the waiver authority in the Elementary and Secondary Education Act.

SUMMARY: The Elementary and Secondary Education Act (ESEA), as reauthorized in the Improving America's Schools Act (IASA) (Pub. L. 103–382); the Goals 2000: Educate America Act (Pub. L. 103–227); and the School-to-Work Opportunities Act (Pub. L. 103–329); authorizes the Secretary of Education to grant waivers of certain Federal program requirements in order to further effective innovation and improvements in teaching and learning in accordance with specific local needs. As of December 31, 1997, the U.S. Department of Education had approved 235 waiver requests under these waiver authorities. This notice, published as provided for in section 14401(g) of the ESEA, identifies the 71 waivers approved by the Department of Education from July 1, 1997 through December 31, 1997. All of these waivers were approved under the ESEA waiver authority.

Waivers Approved Under the General Waiver Authority in Section 14401 of the ESEA

(1) Applicant: Hawaii Department of Education on behalf of Iroquois Point Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA .
Duration of Waiver: Three years.
Date Granted: July 8, 1997.

(2) Applicant: Hawaii Department of Education on behalf of Queen Lydia Lili'uokalani Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 8, 1997.

(3) Applicant: Hawaii Department of Education on behalf of Abraham Lincoln Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 9, 1997.

(4) Applicant: Niles Township High Schools District No. 219, Skokie, IL.
Requirements Waived: Sections 1113(a)(2)(B) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 9, 1997.

(5) Applicant: Bond Community Unit No. 2, Greenville, IL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1997.

(6) Applicant: Hawaii Department of Education on behalf of King Kamehameha III Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1997.

(7) Applicant: Rudd, Rockford, Marble Rock Schools, Rockford, IA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 12, 1997.

(8) Applicant: Burrell School District, Lower Burrell, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 15, 1997.

(9) Applicant: Columbia Heights Public Schools, Columbia Heights, MN.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 15, 1997.

(10) Applicant: Cumberland County Schools, Fayetteville, NC
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 15, 1997.

(11) Applicant: Matteson School District 162, Park Forest, IL.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 15, 1997.

(12) Applicant: Pitt County Schools, Greenville, NC.
Requirement Waived: Sections 1113(b)(1)(A) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 15, 1997.

(13) Applicant: School Board of Polk County, Bartow, FL.
Requirement Waived: Section 1113(a)(3)(B) of the ESEA.
Duration of Waiver: Two years.
Date Granted: July 15, 1997.

(14) Applicant: South Dakota Department of Education and Cultural Affairs, Pierre, SD.
Requirements Waived: Sections 2206(b) as applied to 2203(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 15, 1997.

(15) Applicant: Wilson County Schools, Lebanon, TN.
Requirement Waived: Section 1113(a)(4) of the ESEA.
Duration of Waiver: One year.
Date Granted: July 15, 1997.

(16) Applicant: Des Moines Public Schools, Des Moines, IA.
Requirement Waived: Section 1113(a)(4) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 23, 1997.

(17) Applicant: Greensburg Salem School District, Greensburg, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 23, 1997.

(18) Applicant: Hawaii Department of Education on behalf of Pukalani Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 23, 1997.

(19) Applicant: Urbana School District No. 116, Urbana, IL.
Requirement Waived: Section 1113(c)(1) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 23, 1997.

(20) Applicant: School Board of Brevard County, Viera, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 27, 1997.

(21) Applicant: Des Arc Public Schools, Des Arc, AR.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 27, 1997.

(22) Applicant: Granite School District, Salt Lake City, UT.
Requirement Waived: Section 1113(a)(4) of the ESEA.
Duration of Waiver: One year.
Date Granted: July 28, 1997.

(23) Applicant: Lakeland School District, Jermyn, PA.
Requirements Waived: Sections 1113(a)(2)(B) and 1113(c)(1) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 28, 1997.

(24) Applicant: Ligonier Valley School District, Ligonier, PA.
Requirements Waived: Sections 1113(a)(2)(B) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 28, 1997.

(25) Applicant: Paris Special School District, Paris, TN.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 28, 1997.

(26) Applicant: Hawaii Department of Education on behalf of Kaumana School, Honolulu, HI.
Requirement Waived: Section

1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 29, 1997.
(27) Applicant: Hawaii Department of Education on behalf of Waiakeawaena Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 29, 1997.
(28) Applicant: Maine School Administrative District No. 57, Waterboro, ME.
Requirements Waived: Sections 1113(a)(2)(B), 1113(c)(1) and 1113(c)(2) of the ESEA. Duration of Waiver: Three years.
Date Granted: July 29, 1997.
(29) Applicant: Ohio County Schools, Hartford, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: July 29, 1997.
(30) Applicant: Gaston County Schools, Gastonia, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 15, 1997.
(31) Applicant: Hawaii Department of Education on behalf of Waiakea Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B).
Duration of Waiver: Three years.
Date Granted: August 15, 1997.
(32) Applicant: Haywood County Schools, Waynesville, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 15, 1997.
(33) Applicant: Marion Community Schools, Marion, IN.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 15, 1997.
(34) Applicant: Marion County School System, Whitwell, TN.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 15, 1997.
(35) Applicant: Mesa Public Schools, Mesa, AZ.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 15, 1997.
(36) Applicant: Pasco School District, Pasco, WA.
Requirement Waived: 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 15, 1997.
(37) Applicant: School District No. 143, Midlothian, IL.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 15, 1997.
(38) Applicant: Caldwell County Schools, Princeton, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 20, 1997.
(39) Applicant: Laurel County Public School District, London, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 20, 1997.
(40) Applicant: Hawaii Department of Education on behalf of He'eia Elementary School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 22, 1997.
(41) Applicant: Cumberland County School System, Crossville, TN.
Requirement Waived: Section 1114(a)(1)(B).
Duration of Waiver: Three years.
Date Granted: September 22, 1997.
(42) Applicant: Kansas State Department of Education, Topeka, KS.
Requirement Waived: Section 1003(a) of the ESEA.
Duration of Waiver: One year.
Date Granted: September 26, 1997.
(43) Applicant: Moscow School District 281, Moscow, ID.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Two years.
Date Granted: September 29, 1997.
(44) Applicant: Alaska Department of Education, Juneau, AK.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: October 6, 1997.
(45) Applicant: Hawaii Department of Education, Honolulu, HI.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
I21Date Granted: October 6, 1997.
(46) Applicant: Iowa Department of Education, Des Moines, IA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: October 6, 1997.
(47) Applicant: Massachusetts Department of Education, Malden, MA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: October 6, 1997.
(48) Applicant: Missouri Department of Elementary and Secondary Education Jefferson City, MO.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through July 1998.
Date Granted: October 6, 1997.
(49) Applicant: Montana Office of Public Instruction, Helena, MT.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: October 6, 1997.
(50) Applicant: Nebraska Department of Education, Lincoln, NE.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: October 6, 1997.
(51) Applicant: New Jersey Department of Education, Trenton, NJ.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through August 1998.
Date Granted: October 6, 1997.
(52) Applicant: New Mexico Department of Education, Santa Fe, NM.
Requirements Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: October 6, 1997.
(53) Applicant: Wyoming Department of Education, Cheyenne, WY.
Requirement Waived: 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: October 6, 1997.
(54) Applicant: Lampeter Strasburg School District, Lampeter, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 8, 1997.
(55) Applicant: Minnesota Department of Children, Families, and Learning, St. Paul, MN.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: October 21, 1997.
(56) Applicant: North Dakota Department of Public Instruction, Bismarck, ND.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: October 21, 1997.
(57) Applicant: Ritenour School District, St. Louis, MO.
Requirements Waived: Sections

1113(a)(2)(B) and 1113(c)(2) of ESEA.
Duration of Waiver: One year.
Date Granted: October 22, 1997.
(58) Applicant: Pinellas County Schools, Largo, FL.
Requirement Waived: Section 1113(a)(4) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 27, 1997.
(59) Applicant: Fargo Public School District, No. 1, Fargo, ND.
Requirements Waived: Sections 1113(a)(2)(B) and 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: November 23, 1997.
(60) Applicant: Line Mountain School District, Herndon, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: November 23, 1997.
(61) Applicant: Arkansas Department of Education, Little Rock, AR.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: November 24, 1997.
(62) Applicant: Delaware Department of Education, Dover, DE.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: November 24, 1997.
(63) Applicant: Georgia Department of Education, Atlanta, GA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: November 24, 1997.
(64) Applicant: Idaho Department of Education, Boise, ID.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: November 24, 1997.
(65) Applicant: Louisiana Department of Education, Baton Rouge, LA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: November 24, 1997.
(66) Applicant: Nevada Department of Education, Carson City, NV.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through September 1998.
Date Granted: November 24, 1997.
(67) Applicant: Rhode Island Department of Education, Providence, RI.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: November 24, 1997.
(68) Applicant: Michigan Department of Education, Lansing, MI.
Requirements Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: December 17, 1997.
(69) Applicant: Tennessee Department of Education, Nashville, TN.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: December 17, 1997.
(70) Applicant: Virginia Department of Education, Richmond, VA.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: December 17, 1997.
(71) Applicant: Wisconsin Department of Public Instruction, Madison, WI.
Requirement Waived: Section 1111(b)(6) of the ESEA.
Duration of Waiver: Through May 1998.
Date Granted: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Kathryn Doherty at the Department's Waiver Assistance Line, (202) 401–7801. The Department's Waiver Guidance, which provides examples of waivers, explains the waiver authorities in detail, and describes how to apply for a waiver, is also available at this number. The Guidance and other information on waivers and flexibility also are available at the Department's World Wide Web site at http://www.ed.gov/flexibility.

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Note: The official version of a document is the document published in the **Federal Register**.

Dated: March 17, 1998.

Marshall S. Smith,

Acting Deputy Secretary.

[FR Doc. 98–8251 Filed 3–27–98; 8:45 am]
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federal register

Monday
March 30, 1998

Part III

Department of Housing and Urban Development

24 CFR Part 0

Standards of Conduct; Conforming Changes; Final Rule

VOL 63 ISS 60 MR 30 1998 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 0

[Docket No. FR–3331–F–05]

RIN 2501–AB55

Standards of Conduct; Conforming Changes

AGENCY: Office of the Secretary.

ACTION: Final rule.

SUMMARY: This final rule removes §§ 0.2 and 0.3 of 24 CFR, leaving only § 0.1, which provides cross-references to the executive branch-wide requirements at 5 CFR parts 2634 and 2635, and to the Department's supplemental regulation at 5 CFR part 7501. Sections 0.2 and 0.3 are redundant and unnecessary because they repeat requirements contained in 5 CFR 7501.

DATES: *Effective Date:* April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel, Ethics Law Division, at (202) 708–3815, or Sam E. Hutchinson, Associate General Counsel, Office of Human Resources Law, (202) 708–0888; 451 Seventh Street, SW, Washington, DC 20410. Hearing or speech-impaired individuals may call HUD's TTY number (202) 708–3259. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

On April 5, 1996 (61 FR 15350), the Department published a final rule that provided for removal of all of the then-existing provisions in the Department's old Standards of Conduct regulation at 24 CFR part 0, and their replacement with a single section that provides a cross-reference to 5 CFR parts 2634 and 2635, effective May 6, 1996. To prevent an untimely lapse in enforcement authority for the two sections of 24 CFR part 0 that had temporarily remained in effect pursuant to an extended grace period in the Standards—§ 0.735–203 regarding outside employment and other activities, and § 0.735–204 regarding financial interests—the Department published a correction to the final rule on May 1, 1996 (61 FR 19187), effective May 6, 1996, preserving those two sections at 24 CFR 0.2 and 0.3.

On July 9, 1996 (61 FR 36246), HUD issued a final rule establishing uniform standards of ethical conduct at 5 CFR part 7501 for employees of the Department to supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government Ethics (OGE). The preamble to the July 9, 1996 rule stated that upon its effective date, the Department would amend 24 CFR part 0 to remove the temporarily preserved sections regarding outside employment (§ 0.2) and financial interests (§ 0.3). Accordingly, HUD is here removing its superseded Standards of Conduct at 24 CFR 0.2 and 0.3.

II. Findings and Certifications

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. Prior public procedure is unnecessary because this rule only makes a conforming change to 24 CFR part 0 to remove provisions that have been superseded by revised requirements at 5 CFR part 7501.

Regulatory Flexibility Act

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities because it would affect only Federal employees.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(1) of the HUD regulations, the policies and procedures contained in this rule do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction, or construction materials, manufactured housing or occupancy, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule is only directed toward Federal employees and would not alter the established roles of HUD and the States and local governments. As a result, the rule is not subject to review under the order.

List of Subjects in 24 CFR Part 0

Administrative practice and procedure, Conflict of interests.

Accordingly, for the reasons set forth in the preamble, the Department of Housing and Urban Development is amending title 24 of the Code of Federal Regulations by revising part 0, to read as follows:

PART 0—STANDARDS OF CONDUCT

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 7301; 42 U.S.C. 3535(d).

§§ 0.2 and 0.3 [Removed]

2. Sections 0.2 and 0.3 are removed.

Dated: March 23, 1998.

Andrew M. Cuomo,

Secretary.

[FR Doc. 98–8222 Filed 3–27–98; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Monday
March 30, 1998

Part IV

Department of Housing and Urban Development

24 CFR Part 58

Technical Amendments to HUD's Regulations Governing Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; Final Rule

VOL 63 ISS 60 MR 30 1998 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 58

[Docket No. FR–4138–F–01]

RIN: 2501–AC32

Technical Amendments to HUD's Regulations Governing Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: On April 30, 1996 (61 FR 19120), HUD published a final rule streamlining and updating 24 CFR part 58 in its entirety. Part 58 provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting environmental reviews in accordance with: the National Environmental Policy Act of 1969 (NEPA); the NEPA implementing regulations of the Council on Environmental Quality; and other NEPA related Federal laws and authorities. This final rule makes several technical and clarifying amendments to the April 30, 1996 final rule.

DATES: *Effective Date:* April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Community Viability, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. For telephone communication, contact Fred Regetz, Environmental Review Division at (202) 708–1201, extension 4465. (This telephone number is not toll-free.) Hearing or speech-impaired individuals may access this telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The April 30, 1996 Final Rule

On April 30, 1996 (61 FR 19120), HUD published a final rule revising 24 CFR part 58 in its entirety. Part 58 provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting environmental reviews in accordance with: (1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) (NEPA); (2) the NEPA implementing regulations of the Council on Environmental Quality; and (3) other NEPA related Federal laws and authorities. The April 30, 1996 final rule streamlined, updated, and improved these regulations. With the exception of §§ 58.1(b)(6)(i) and 58.2(a)(5)(v)(A), the April 30, 1996 final rule became effective on May 30, 1996. These two paragraphs, which pertain to public housing development and modernization programs, became effective on October 14, 1996. The April 30, 1996 final rule described in detail the amendments to 24 CFR part 58.

II. This Final Rule

This final rule makes several technical and clarifying changes to the April 30, 1996 final rule. These revisions are as follows:

1. This final rule revises the heading to § 58.1 so that it will more accurately reflect the subject matter of the section.

2. The final rule amends § 58.6 (Other requirements) by correcting a typographical error. Section 58.6 erroneously cites the requirements of § 58.34(a)(11). This rule corrects the error by properly citing § 58.34(a)(12). Sections 58.6(a)(1)(ii) and 58.6(a)(2) are revised to indicate that the requirement to purchase flood insurance in a special flood hazard area applies where a community is participating in the National Flood Insurance Program. While community participation and the purchase of flood insurance is a requirement generally, a community's participation in the flood insurance program is not a condition of Federal assistance during the first year after the Federal Emergency Management Agency notifies the community that it contains special flood hazard areas. During this limited period, HUD assistance may be approved for the properties in a special flood insurance area despite the community's initial nonparticipation in the program and the resulting unavailability of flood insurance. A new paragraph (b) is added to state explicitly the limitations on use of HUD disaster assistance that are imposed by section 582 of the National Flood Insurance Reform Act of 1994 when a person who had previously received Federal disaster assistance fails to obtain or maintain flood insurance.

3. The rule removes the last sentence of § 58.10, which redundantly states that the "provisions of the CEQ [Council on Environmental Quality] regulations in 40 CFR parts 1500 through 1508 are applicable to" part 58.

4. Section 58.14 currently permits State, Federal and local agencies to participate or act in a joint lead or cooperating agency capacity in preparing joint environmental impact statements. This final rule provides permissive authority to prepare joint environmental assessments.

5. Section 58.34(a)(10) is revised to clarify that the imminent threats that would trigger the exemption are imminent threats to public safety including those resulting from physical deterioration.

6. Section 58.35(b)(5) is revised to replace an erroneous reference to new dwelling units with a reference to dwelling units under construction. New units not already under construction were never intended to be covered under this categorical exclusion.

7. Sections 58.47(a) and (b) have been revised for clarity. Section 58.47(b)(1) makes clear that, if the stated circumstances are met and a FONSI has already been published, then no further FONSI notice is required to be published.

8. The April 30, 1996 final rule removed several obsolete or unnecessarily codified sections from 24 CFR part 58. For example, several of these sections did not set forth any regulatory requirements, but were merely being held in reserve. The removal of these provisions, however, resulted in the discontinuous numbering of the sections comprising part 58. Since publication of the April 30, 1996 final rule, HUD has received several questions regarding the status of the missing sections. HUD wishes to clarify that 24 CFR part 58 (as amended by this final rule) describes *all* the regulatory requirements for entities assuming HUD environmental responsibilities.

III. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). In addition, part 10 permits publishing an interpretative rule for effect without prior public procedure.

HUD finds that in this case prior public procedure is unnecessary. In general, the amendments made by this final rule update and clarify the policies and procedures contained in the April 30, 1996 final rule. As noted above, § 58.14 has been revised to permit the same type of joint effort among Federal, State, and local agencies in preparing environmental assessments as currently exists in preparing environmental impact statements. Prior public comment is unnecessary for this change because it is clearly consistent with the underlying policy of the current section to further cooperation among these agencies and it is permissive authority.

The new § 58.6(b) is an interpretative rule which explains a limitation imposed by section 582 of the National Flood Insurance Reform Act of 1994 on the use of HUD disaster assistance in a special flood hazard area.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule is concerned solely with the review procedures of entities assuming HUD environmental responsibilities. It effects no changes in the current relationships between the Federal government, the States and their political subdivisions.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes several technical and clarifying changes to the April 30, 1996 final rule. This final rule will have no adverse or disproportionate economic impact on small entities.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

List of Subjects in 24 CFR Part 58

Environmental protection, Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 58 is amended as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

1. The authority citation for 24 CFR part 58 continues to read as follows:

Authority: 12 U.S.C. 1707 *note*; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

2. In § 58.1, revise the section heading to read as follows:

§ 58.1 Purpose and applicability.

* * * * *

3. Amend § 58.6 as follows:

a. In the introductory text, remove the term "§ 58.34(a)(11)" and add, in its place, the term "§ 58.34(a)(12)";

b. Revise paragraph (a)(1)(ii);

c. Revise paragraph (a)(2);

d. Redesignate paragraph (b) and (c) as paragraphs (c) and (d), respectively; and

e. Add a new paragraph (b).

§ 58.6 Other requirements.

* * * * *

(a) * * *

(1) * * *

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

* * * * *

(b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

(1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(2) The person failed to obtain and maintain the flood insurance.

* * * * *

4. Revise § 58.10 to read as follows:

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b), and in doing so must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in § 58.5.

5. Revise § 58.14 to read as follows:

§ 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in § 58.5 and § 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2(b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

6. Revise paragraph (a)(10) of § 58.34 to read as follows:

§ 58.34 Exempt activities.

(a) * * *

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(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

* * * * *

7. Revise paragraph (b)(5) of § 58.35 to read as follows:

§ 58.35 Categorical exclusions.

* * * * *

(b) * * *

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

* * * * *

8. In § 58.47, revise the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental, findings to determine if the original findings are still valid, when:

* * * * *

(b)(1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.

(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

§ 58.60 [Amended]

9. In § 58.60(e), remove the term "1502.2" and add, in its place, the term "1505.2".

Dated: March 13, 1998.

Andrew M. Cuomo,

Secretary.

[FR Doc. 98–8221 Filed 3–27–98; 8:45 am]

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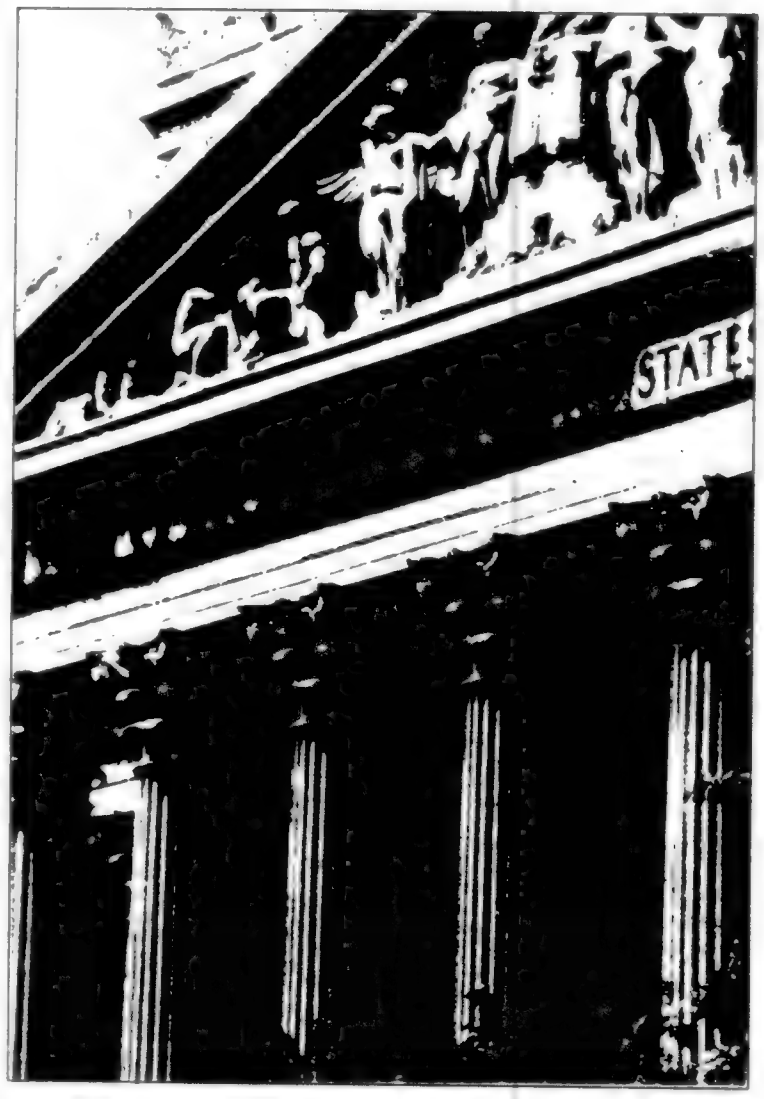

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Federal Register
Vol. 63, No. 61
Tuesday, March 31, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Amendment to Clarify Regulatory Intent on Finality of Review for Complaints Regarding Designation of Positions for Employee Confidential Financial Disclosure Reporting

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; clarifying amendment.

SUMMARY: The Office of Government Ethics is amending the executive branchwide financial disclosure regulation to clarify its original intent that the review provided for therein by an agency head (or his designee) is final for all purposes regarding employee complaints about designation of positions for confidential financial disclosure reporting, and that it constitutes the sole and exclusive means of such review.

EFFECTIVE DATE: March 31, 1998.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attn.: Mr. G. Sid Smith.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics, telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: Six years ago, the Office of Government Ethics issued a regulation at subpart I of 5 CFR part 2634 (under its authority at 5 U.S.C. appendix, section 107(a) and section 201(d) of Executive Order 12674) to govern the confidential financial disclosure reporting system for executive branch employees, effective October 5, 1992. Pursuant to the provisions therein at §§ 2634.904 and 2634.905, each executive branch department and agency designates which positions will require employees to file confidential disclosure reports (primarily OGE Form 450), based on criteria in the regulation. Section 2634.906 established the executive branch procedures for handling employees' complaints about an agency's designation of their positions, whereby review and decision of the agency head or his designee shall be final.

The purpose of this finality, without additional appeals or complaints, is to avoid protracted review of filer designations, which could seriously undermine the effectiveness and orderly administration of the executive branch confidential financial disclosure system. While an agency's decision to require confidential reports by employees in designated positions affects the privacy of employees, there are sufficient safeguards built into the system to adequately minimize privacy intrusions, such that the need for nonpublic financial disclosure clearly outweighs privacy concerns. Therefore, prompt and final decisions about who must file these reports are necessary and appropriate.

The bases for the confidential financial disclosure system and the safeguards that have been built in are described at 5 CFR 2634.901. Specifically, the confidential disclosure system serves the necessary purposes of assisting in the prevention of employee conflicts of interest and maintaining ethical integrity in agency programmatic functions. These reports are strictly confidential, not available to the public under the Freedom of Information Act (5 U.S.C. 552, exemptions (b)(3), (b)(4) and (b)(6)) or otherwise, and protected under the Privacy Act (5 U.S.C. 552a), section 107(a) of the Ethics in Government Act (5 U.S.C. appendix, § 107(a)), and section 201(d) of Executive Order 12674. Additionally, only certain types of positions may be designated, applying the criteria provided, and employees may seek review by the agency head (or designee) of an agency decision to designate their positions for filing, in accordance with the procedure prescribed in § 2634.906.

Given the importance of the confidential reporting system and these built-in protections for employees, OGE determined that it was necessary and appropriate to reach finality as promptly as possible when handling filer designation complaints. That was and continues to be the basis for the statement in the regulatory text at 5 CFR 2634.906 that the decision of the agency head or his designee is final. Because OGE considered the finality language of the regulation to be clear and unambiguous, its meaning was not discussed in the preamble to that regulatory promulgation at 57 **Federal Register** 11800–11830 (April 7, 1992).

It has become apparent, however, that some may be interpreting this finality as limited to the agency's internal decisional mechanism for review, leaving open the possibility of negotiated grievance and arbitration procedures, or other remedies within or outside the agency. See, for example, the Federal Labor Relations Authority's decision in *American Federation of Government Employees, Local 3258 (Union) and U.S. Department of Housing and Urban Development, Boston, Massachusetts (Agency)*, 0–AR–2734 (FLRA, Feb. 19, 1998).

In order to clarify the original intent of the regulation in that regard, OGE is issuing this minor clarifying regulatory amendment, which will state more emphatically that the agency head's (or his designee's) decision upon review of complaints regarding the designation of an employee's position for filing confidential financial disclosure reports is final and conclusive for all purposes, notwithstanding any other provision of law or regulation. Specifically, the amendment to the regulation re-emphasizes, by expressly stating, that this procedure is the sole and exclusive means of seeking such review, and that the final decision by the agency head or designee is intended to preclude administrative or negotiated grievances, arbitration procedures, and any other review or appeal, either within or outside the agency.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, public comment procedures and 30-day delay in effectiveness as to this revision. The notice, comment and delayed effective date are being waived because this minor amendment to OGE financial disclosure regulations concerns a matter of agency

organization, practice and procedure. Furthermore, it is in the public interest that this amendment become effective immediately, in order to preserve the orderly administration of the confidential financial disclosure system. The amendment's sole purpose is to clarify the original intent of the financial disclosure regulation on a discrete matter which has been the subject of recent question.

Executive Order 12866

In promulgating this minor amendment to its regulation, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this rulemaking does not create any additional information collection requirements, but simply clarifies the finality of a procedure for determining which positions require employees to file confidential financial disclosure reports (OGE Form 450), involving an information collection procedure previously approved in February 1996 by the Office of Management and Budget (OMB Control No. 3209–0006).

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: March 17, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of chapter XVI of 5 CFR as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.906 is amended by revising the second sentence and adding a new final sentence and a note at the end to read as follows:

§ 2634.906 Review of confidential filer status.

* * * A decision by the agency head or designee regarding the complaint shall be final and conclusive for all purposes, notwithstanding any other provision of law or regulation. This procedure is the sole and exclusive means of seeking review of an agency's decision to designate positions and the employees therein for filing confidential financial disclosure reports.

Note: The provision in this section for a final decision by the agency head or designee is intended to preclude administrative or negotiated grievances, arbitration procedures, and any other review or appeal, either within or outside the agency. This finality of the agency head's (or designee's) decision is necessary in order to maintain the prompt and orderly administration of the executive branch confidential financial disclosure system.

[FR Doc. 98–8312 Filed 3–30–98; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–97–302]

RIN 0581–AB51

Fees for Destination Market Inspections of Fresh Fruits, Vegetables and Other Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 10 percent the fees charged for the inspection of these products at destination markets. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under the Agricultural Act of 1949 are also affected. This rule also revises the regulations with regard to the disposition of inspection certificates to require that one copy of the certificate be delivered or mailed to the shipper of the inspected product.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Rob Huttenlocker, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 2049 South Building, Washington, DC 20090–6456, (202) 720–0297.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed by the Office of Management and Budget (OMB) and has been determined not significant for purposes of Executive Order 12866.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The Fresh Products Branch (FPB) of the Fruit and Vegetable Programs, AMS, has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. However, even with these efforts, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projections for destination market inspection work during FY 97 are $12.0 million with costs projected at $11.9 million and an end-of-year reserve of $3.0 million. However, FPB's trust fund balance for this program will be approximately $1.0 million under the four-month level of approximately $4.0 million. Further, FPB's costs of operating the destination market program are expected to increase to approximately $12.9 million during FY 98 and to approximately $13.2 million in FY 99. These cost increases will result from both inflationary increases with regard to current FPB operations

and services and the need to improve or expand current services.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 4.66 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase ranging from 2.44 to 6.52 percent became effective in January 1998. In addition, inflation also impacts upon FPB's non-salary costs. These increases will increase FPB's costs of operating this program by approximately $300,000 per year.

Additional revenues are also needed to enable FPB to cover the costs of improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected. FPB estimates that it will cost $200,000 per year for the postage, envelopes and additional staff time to send the approximately 275,000 inspection certificates it issues annually. Additional revenues are also necessary in order that FPB may cover the costs of securing the additional staff ($200,000) needed to increase the timeliness of service delivery in several destination markets which are currently in need of additional staffing (e.g., Dallas, Texas). Finally, FPB needs an additional $200,000 per year for three to four years to cover the costs of securing the equipment (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

This fee increase should result in an estimated $1.2 million in additional revenues per year (only $600,000 during FY 98 since the fee increase will be effective on April 6, 1998) and should enable FPB to cover its costs while maintaining current program reserves (at a level below that provided for by Agency policy).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The action described herein is being taken for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) Providing current program operations and services; (2) improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected (the basis for the change in regulation with regard to the disposition of inspection certificates to include that one copy be delivered or mailed to the shipper of the inspected product); (3) improving the timeliness with which inspection services are provided; and (4) acquiring technological advancements (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) aimed at expanding FPB's services and making them more efficient in the future. This rule should increase user fee revenue generated under the destination market program by approximately $1.2 million or approximately 10 percent per year. This action is authorized under the Agricultural Marketing Act (AMA) of 1946 (see 7 U.S.C. 1622(h)) which states that the Secretary of Agriculture may assess and collect "such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *"

There are more than 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements [1]— inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in part 51 have been approved previously by OMB and assigned OMB No. 0581–0125. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this rule.

Inasmuch as the destination market grading services are voluntary (except when required for imported commodities), and since the fees charged to users of these services vary with usage, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is small (approximately ten percent) and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Action

The AMA authorizes official inspection, grading and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This rule will amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

AMS regularly reviews its user-fee programs to determine if the fees are adequate. While FPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projections for destination market inspection work during FY 97 are $12.0 million with costs projected at $11.9 million and an end-of-year reserve of $3.0 million.

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect.

Currently, there are 15 commodities subject to 8e import regulations: avocados, dates (other than dates for processing), filberts, grapefruit, kiwifruit, limes, olives (other than Spanish-style green olives), onions, oranges, Irish potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR Parts 944, 980 and 999. Section 999.600 establishes minimum quality, identification, certification and safeguard requirements for foreign produced farmers stock, shelled and cleaned in-shell peanuts presented for importation into the United States. Import requirements applicable to peanuts may be found under subparagraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3), as amended November 28, 1990, and August 10, 1993, and section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271).

However, FPB's trust fund balance for this program will be approximately $1.0 million under the four-month level of approximately $4.0 million. Further, FPB's costs of operating the destination market program are expected to increase to approximately $12.9 million during FY 98 and to approximately $13.2 million in FY 99. These cost increases (which are outlined below) will result from both inflationary increases with regard to current FPB operations and services and the need to improve or expand current services.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 4.66 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase ranging from 2.44 to 6.52 percent became effective in January 1998. In addition, inflation also impacts upon FPB's non-salary costs. These increases will increase FPB's costs of operating this program by approximately $300,000 per year.

Additional revenues are also needed to enable FPB to cover the costs of improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected. This is an essential step in FPB's ongoing effort to improve the integrity of the inspection process. This action will assist in preventing industry participants from using falsified inspection certificates to alter the terms of sales between shippers and receivers. In accordance with this effort, the regulations with regard to the disposition of inspection certificates in 7 CFR 51.21 are to be revised to require that one copy of the certificate be provided to the shipper of the inspected product. FPB estimates that it will cost $200,000 per year for the postage, envelopes and additional staff time to send the approximately 275,000 inspection certificates it issues annually.

Additional revenues are also necessary in order that FPB may cover the costs of securing the additional staff ($200,000) needed to increase the timeliness of service delivery in several destination markets which are currently in need of additional staffing (e.g., Dallas, Texas). This action responds to industry feedback to FPB's FY 1996 Customer Service Survey which emphasized the importance of timeliness far more than cost containment.

Finally, FPB needs an additional $200,000 per year for three to four years to cover the costs of securing the equipment (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

This fee increase should result in an estimated $1.2 million in additional revenues per year (only $600,000 during FY 98 since the fee increase will be effective on April 6, 1998) and should enable FPB to cover its costs while maintaining current program reserves. In order to reach a four month reserve, further increases in fees will be likely in future years.

Based on the aforementioned analysis of this program's increasing costs, AMS is hereby increasing the fees for destination market inspection services. The following table compares current fees and charges with the revised fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Revised
Quality and condition inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$78	$86.
—Half carlot equivalent or less of each product	$65	$72.
—For each additional lot of the same product	$13	$14.
Condition only inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$65	$72.
—Half carlot equivalent or less of each product	$60	$66.
—For each additional lot of the same product	$13	$14.
Quality and condition and condition only inspections of five or more products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—For the first five products	$277	$305.
—For each additional product	$39	$43.
—For each additional lot of any of the same product	$13	$14.
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
—For each product	$39	$43.
—For each additional lot of any of the same product	$13	$14.
Dock-side inspections of an individual product unloaded directly from the same ship:		
—For each package weighing less than 15 pounds	1 cent	1.1 cents.
—For each package weighing 15 to 29 pounds	2 cents	2.2 cents.
—For each package weighing 30 or more pounds	3 cents	3.3 cents.
—For each additional lot of any of the same product	$13	$14.
—Minimum charge per individual product	$78	$86.
Inspections performed for other purposes during the grader's regularly scheduled work week	$39 per hour	$43 per hour.
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	$19.50 per hour	21.50 per hour.

A notice of proposed rulemaking was published in the **Federal Register** (62 FR 66033) on December 17, 1997, with a 60-day comment period: The comment period closed on February 17, 1998. Interested persons were invited to participate in this rulemaking by submitting written comments on the proposal to AMS. One comment in opposition to the fee increase was received.

The comment was received from a law firm representing an association (of producers) which exports products into the U.S. The comment opposed the increase in fees for inspections of fresh fruits and vegetables at destination markets. The commentor went on to reiterate its long-standing opposition to mandatory marketing orders based upon general economic principles such as their promotion of anti-competitive practices in restraint of trade and because different inspection criteria are applied to foreign product than are applied to domestic product at comparable points in the distribution chain, thereby violating principles of free trade. Lastly, the commentor went on to conclude that the mandatory inspections and their costs would further enhance unfair trade practices. The comment argued that the increased fees would have a disproportionate impact on commodities such as table grapes and kiwifruit subject to section 8e requirements because foreign shippers cannot elect to discontinue the use of inspections, unlike domestic shippers.

The Agency disagrees with the positions taken in the comment and the conclusions reached therein. Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect. The regulations governing the section 8e program, including requirements for inspections and the fees charged in connection therewith, are consistent with the provisions of its authorizing statute and other applicable law.

Further, the tremendous growth in demand for fruits and vegetables in the U.S. market strongly supports the need to provide consumers with consistent, quality products. Quality standards are in the best interest of both U.S. producers and those who export products to the U.S. market.

Under the marketing order program, fruit and vegetable producers agree in a referendum vote to authorize minimum quality requirements on their products. Domestic shippers subject to marketing order minimum quality requirements must, in fact, have their product inspected and certified, under the supervision of the Agency, meeting the applicable requirements. Under section 8e, comparable quality requirements are simply extended to imported fruits and vegetables.

For most imported commodities subject to minimum quality requirements, U.S. total and per capita consumption has increased significantly. The association's exporter members generally ship products into the U.S. which are produced during a growing season that is different from that of the U.S. Thus, in large measure, such production is complimentary to U.S. production and not subject to mandatory requirements. By making quality product available to U.S. consumers on a consistent basis, the agricultural sectors in both countries benefit.

Accordingly, in light of the continuing need to maintain the AMS grading program on a financially sound basis, the Agency has decided to proceed with the fee increase as set forth in the proposal.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal year 1998 reserve balance of the program's trust fund is projected to be approximately $1 million under the desired level necessary to ensure the program's fiscal viability; (2) the fee changed adopted herein should be implemented as soon as possible to begin replenishing the operating reserve and bring revenue in line with costs; and (3) the first available billing cycle begins April 6, 1998. Accordingly, the effective date is April 6, 1998.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.21 is revised to read as follows:

§ 51.21 Disposition of inspection certificates.

(a) The original certificate, and not to exceed four copies (if requested by applicant prior to issuance), shall be delivered or mailed promptly to the applicant or to a person designated by him. One copy shall be delivered or mailed to the shipper of the inspected product. One copy shall be filed in the office of the inspector when the inspection is made by a Federal Government employee, otherwise, it shall be filed in the appropriate office of the cooperating Federal-State Inspection Agency. Unless otherwise directed by the Administrator, two copies of each official certificate issued on products received in destination markets shall be forwarded to the Administrator to be kept on file in Washington and no copies of official certificates issued at shipping point need be so forwarded. In the case of any product covered by a marketing agreement and/or order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), at least one copy of each certificate covering the inspection of such product shall, on request, be delivered to the administrative agency established thereunder, subject to such terms and conditions as the Administrator may prescribe. Copies may be furnished to other interested parties as outlined in § 51.41.

3. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) For products in quantities of 51 or more packages:

(i) Quality and condition inspection of 1 to 4 products unloaded from the same conveyance:

(A) $86 for over a half carlot equivalent of an individual product.

(B) $72 for a half carlot equivalent or less of an individual product.

(C) $14 for each additional lot of the same product.

(ii) Condition only inspection of 1 to 4 products unloaded from the same conveyance:

(A) $72 for over a half carlot equivalent of an individual product.

(B) $66 for a half carlot equivalent or less of an individual product.

(C) $14 for each additional lot of the same product.

(iii) Quality and condition inspection and/or condition only inspection of 5 or more products unloaded from the same conveyance:

(A) $305 for the first 5 products.

(B) $43 for each additional product.

(C) $14 for each additional lot of any of the same product.

(2) For quality and condition inspection and/or condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $43 for each individual product.

(ii) $14 for each additional lot of any of the same product.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) For each package inspected according to the following rates:

(i) 1.1 cent per package weighing less than 15 pounds;

(ii) 2.2 cents per package weighing 15 to 29 pounds; and

(iii) 3.3 cents per package weighing 30 or more pounds.

(2) $14 for each additional lot of any of the same product.

(3) A minimum charge of $86 for each product inspected.

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dockside, the carlot fees in § 51.38(a) shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in the preceding paragraphs, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $43 an hour: *Provided,* That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections; and

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee.

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $21.50 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: March 25, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–8391 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV98–911–1 FR]

Limes and Avocados Grown in Florida; Establishment of a Continuing Assessment Rate for Limes and a Decrease in the Continuing Assessment Rate for Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes an assessment rate for the Lime Administrative Committee (LAC) under Marketing Order No. 911 for the 1998–99 and subsequent fiscal years and decreases the assessment rate established for the Avocado Administrative Committee (AAC) under Marketing Order No. 915 for the 1998–99 and subsequent fiscal years. The Lime and Avocado Administrative Committees (Committees) are responsible for local administration of the marketing orders which regulate the handling of limes and avocados grown in Florida. Authorization to assess lime and avocado handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal years begin April 1 and end March 31. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, PO Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 126 and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida, and Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in Florida, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, Florida lime and avocado handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable limes and avocados beginning April 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any

district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes an assessment rate for the LAC for the 1998–99 and subsequent fiscal years of $0.16 per bushel container. This rule also deceases the assessment rate established for the AAC for the 1998–99 and subsequent fiscal years from $0.16 per bushel container to $0.08 per bushel container.

The Florida lime and avocado marketing orders provide authority for the Committees, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers of Florida limes and avocados. They are familiar with the Committees' needs and with the costs for goods and services in their local area and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal years, the AAC recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary. The LAC has not assessed handlers since the 1995–96 fiscal year. It has used reserve funds to cover authorized expenses.

The Committees met on December 10, 1997, and the LAC unanimously recommended 1998–99 expenditures of $130,785 and an assessment rate of $0.16 per bushel container of limes. The AAC also met on December 10, 1997, and unanimously recommended 1998–99 expenditures of $166,844 and an assessment rate of $0.08 per bushel container of avocados.

In comparison, last year's budgeted expenditures were $101,630 for the LAC and $123,000 for the AAC. The assessment rate for the LAC of $0.16 is the same as the rate established for the 1995–96 fiscal year, the last year handlers were assessed. The assessment rate for the AAC of $0.08 is $0.08 lower than the rate currently in effect.

In an effort to reduce industry costs and assist with the recovery from Hurricane Andrew which hit southern Florida in August of 1992, the LAC has been operating from its reserve funds for the past two years. With the lime industry beginning to recover and reserve funds reduced, the LAC voted to establish an assessment rate to cover operating expenses.

The AAC has excess reserve funds. They voted to decrease the assessment rate and use reserve funds to cover operating expenses and reduce reserve levels.

The major expenditures recommended by the LAC for the 1998–99 year include $46,000 for salaries, $25,000 for local and national enforcement, $9,448 for employee benefits, $9,000 for research, $8,287 for insurance and bonds, and $4,500 for travel. The LAC budgeted expenses for these items in 1997–98 were $40,000, $15,595, $5,500, $5,000, $0, and $3,000, respectively.

The major expenditures recommended by the AAC for the 1998–99 year include $46,000 for salaries, $34,000 for research, $32,000 for local and national enforcement, $9,778 for employee benefits, $8,516 for insurance and bonds, and $7,000 for travel. The AAC budgeted expenses for these items in 1997–98 were $40,000, $7,000, $26,595, $6,380, $7,937, and $7,000, respectively.

The assessment rates recommended by the Committees were derived by dividing anticipated expenses by expected shipments of Florida limes and avocados. Lime shipments for the year are estimated at 600,000 bushel containers which should provide $96,000 in assessment income. Avocado shipments for the year are estimated at 900,000 bushel containers which should provide $72,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committees' authorized reserves, should be adequate to cover budgeted expenses. Funds in the reserves will be kept within the maximum permitted by the orders (§§ 911.42 and 915.42—three fiscal years' operational expenses, permissible reserves of approximately $392,000 for limes and $501,000 for avocados). Reserves for limes are currently around $100,000, and reserves for avocados stand at around $250,000.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates will be in effect for an indefinite period, the Committees will continue to meet prior to or during each fiscal year to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking will be undertaken as necessary. The Committees' 1998–99 budgets and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 111 producers of limes and 141 producers of avocados in the production area and approximately 33 lime handlers and 49 avocado handlers subject to regulation under the marketing orders. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Florida Agricultural Statistical Service and Committee data, the average price for fresh limes during the 1995–96 season was $8.05 per 88 pound box equivalent and total shipments were 371,413 bushels. Approximately 20 percent of all handlers handled 86 percent of Florida lime shipments. The average price for fresh avocados during the 1996–97 season was $13.20 per 55 pound bushel box equivalent for all domestic

shipments and the total shipments were 917,861 bushels. Approximately 10 percent of all handlers handled 90 percent of Florida avocado shipments. Many lime and avocado handlers ship other tropical fruit and vegetable products which are not included in the Committee data but would contribute further to handler receipts.

Using the average prices, about 90 percent of lime and avocado handlers could be considered small businesses under SBA's definition and about 10 percent of the handlers could be considered large businesses. The majority of Florida lime and avocado handlers and producers may be classified as small entities.

This rule establishes an assessment rate for the LAC and collected from handlers for the 1998–99 and subsequent fiscal years of $0.16 per bushel container. The LAC unanimously recommended 1998–99 expenditures of $130,785 and an assessment rate of $0.16 per bushel container for 1998–99 and subsequent fiscal years. The assessment rate of $0.16 is the same as the rate established for the 1995–96 fiscal year, the last year handlers were assessed. The quantity of assessable limes for the 1998–99 fiscal year is estimated at 600,000 containers. Thus, the $0.16 rate for limes should provide $96,000 in assessment income. The assessment income, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses for 1998–99.

This rule also decreases the assessment rate established for the AAC and collected from handlers for the 1998–99 and subsequent fiscal years from $0.16 per bushel container to $0.08 per bushel container. The AAC unanimously recommended 1998–99 expenditures of $166,844 and an assessment rate of $0.08 per bushel container of avocados. The assessment rate of $0.08 is $0.08 lower than the 1997–98 rate. The quantity of assessable avocados for the 1998–99 fiscal year is estimated at 900,000 containers. Thus, the $0.08 rate for avocados should provide $72,000 in assessment income. The assessment income, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

Due to the devastation of Hurricane Andrew in August of 1992, the LAC has been operating from its reserve funds for the past two years. The industry has now adequately recovered from the loss. In order not to deplete reserve funds further, the LAC voted to establish an assessment rate for 1998–99 and subsequent fiscal years. The assessments, along with interest income and reserves, will cover committee operating expenses.

The AAC has a surplus in its reserve fund. The AAC voted to decrease the assessment rate and use funds from the reserves. The assessments, along with interest income and reserves, will cover committee operating expenses.

The LAC reviewed and unanimously recommended 1998–99 expenditures of $130,785 which include increases in salaries, office space, aerial photo/tree count, and office equipment. The AAC reviewed and unanimously recommended 1998–99 expenditures of $166,844 which include increases in salaries, office space, and aerial photo/tree count. Prior to arriving at this budget, the Committees considered information from various sources, such as the Committees' Budget Subcommittees. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the lime and avocado industries. The LAC budgeted $9,000 and the AAC budgeted $34,000 for research.

The assessment rate of $0.16 per bushel container of assessable limes was then determined by dividing the total recommended budget by the quantity of assessable limes, estimated at 600,000 bushel containers for the 1998–99 fiscal year. This is approximately $35,000 below the anticipated expenses, which the LAC determined to be acceptable. The assessment rate of $0.08 per bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 900,000 bushel containers for the 1998–99 fiscal year. This is approximately $171,000 below the anticipated expenses, which the AAC determined to be acceptable.

A review of historical information indicates that the grower price for the 1998–99 season could range between $4.16 and $9.50 per container of limes. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue could range between 1.6 and 3.8 percent.

A review of historical information indicates that the grower price for the 1998–99 season could range between $13.20 and $14.90 per container of avocados. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue could range between .5 and .6 percent.

This action increases the assessment obligation imposed on lime handlers and decreases the assessment obligation imposed on avocado handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Florida lime and avocado industries and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all LAC and AAC meetings, the December 10, 1997, meetings were public meetings and all entities, both large and small, were able to express views on this issue. In addition, interested persons were invited to submit information on the regulatory and information impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida lime and avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on February 10, 1998 (63 FR 6679). Copies of the proposed rule were also mailed or sent via facsimile to all Florida lime and avocado handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register.

A 30-day comment period ending March 12, 1998, was provided for interested persons to respond to the proposal. No comments were received in response to the proposal.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the crop year begins on April 1, 1998, and the assessment rate applies to all limes and avocados received during the 1998–99 and subsequent seasons. Further, handlers are aware of this rule which was recommended at public meetings. Also, a 30-day comment period was

provided for in the proposed rule, and no comments were received.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

1. The authority citation for both 7 CFR parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

2. A new subpart titled "Assessment Rates" and a new § 911.234 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 911.234 Assessment rate.

On and after April 1, 1998, an assessment rate of $0.16 per bushel container is established for Florida limes.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

3. A new subpart titled "Assessment Rates" is added and § 915.235 is revised to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 915.235 Assessment rate.

On and after April 1, 1998, an assessment rate of $0.08 per bushel container is established for South Florida avocados.

Dated: March 25, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–8392 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 98–016–1]

Brucellosis; Increased Indemnity for Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing Federal indemnity paid under the brucellosis eradication program to increase the amount of indemnity that may be paid for certain cattle and bison destroyed because of brucellosis. This action will accelerate the eradication of brucellosis from the United States by giving owners sufficient financial incentive to destroy brucellosis-exposed cattle and bison by promptly depopulating brucellosis-affected herds. A number of owners of cattle and bison are reluctant to depopulate their affected herds, thereby increasing the risk of disease spread in the eradication program's last scheduled year.

DATES: Interim rule effective March 24, 1998. Consideration will be given only to comments received on or before June 1, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–016–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–016–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R. T. Rollo, Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 36, Riverdale, MD 20737–1231, (301) 734–7709.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans caused by bacteria of the genus *Brucella*. In humans, brucellosis initially causes flulike symptoms, but the disease may develop into a number of chronic conditions, such as arthritis. In cattle and bison, brucellosis causes, among other things, decreased milk production, weight loss, and loss of young through abortion or birth of weak calves. Humans can be treated for brucellosis with antibiotics; there is no feasible means of curing brucellosis in animals.

Brucellosis is commonly transmitted to susceptible animals by direct contact with infected animals. The disease is also transmitted to susceptible animals in contact with an environment that has been contaminated by discharges from infected animals. Infected pregnant cows may discharge billions of *Brucella* bacteria at calving or abortion. Although it is not common, infected bulls can spread the disease to cows during breeding. Because brucellosis is transmitted by sexually intact animals, steers and spayed heifers do not pose a risk of transmitting brucellosis.

The regulations in part 78 of title 9 of the Code of Federal Regulations (CFR) govern the interstate movement of cattle, bison, and swine to help prevent the interstate spread of brucellosis. The regulations are part of a cooperative Federal and State program, administered by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), to eradicate brucellosis from the United States. Program officials are striving to eradicate the field strain of *Brucella abortus* from domestic cattle and bison herds by December 1998. The regulations in part 78 provide, among other things, a system for classifying States or portions of States (areas) according to the rate of *B. abortus* infection present and the general effectiveness of the brucellosis control and eradication program conducted in the State or area. The classifications are Class Free, Class A, Class B, Class C, and quarantined States or areas. Quarantined States or areas indicate States or areas with the highest rates of brucellosis infection, and Class Free States or areas are those in which there have been no findings of brucellosis infection for the 12 months preceding classification. As of March 1998, there were only 9 known affected cattle herds and 1 known affected bison herd, and APHIS had declared 41 States, Puerto Rico, and the U.S. Virgin Islands free of the disease. The nine remaining States are all Class A States.

The basic approach to brucellosis eradication in cattle and bison has been to test cattle and bison for infection and send infected and exposed animals to slaughter. Brucellosis-exposed cattle and brucellosis-exposed bison have a high probability of contracting

brucellosis, and may, in fact, be contagious before they react to an official test for brucellosis. The incubation period varies: Usually, cattle and bison develop a positive reaction to the blood test for brucellosis within 2 to 12 weeks after infection, but some may not do so for 8 months or longer. Meanwhile, any exposed sexually intact cattle and bison are potential transmitters of the disease. Because the continued presence of brucellosis in a herd seriously threatens the health of animals in that herd and other herds, the prompt destruction of brucellosis-affected cattle or bison is critical.

To encourage destruction of sexually intact cattle and bison infected with or exposed to brucellosis, USDA offers indemnity to certain owners. The regulations in 9 CFR part 51 (referred to below as the regulations) provide for payment of Federal indemnity to owners of certain animals destroyed because of brucellosis. Paragraphs (a)(1) through (a)(4) of § 51.3 of the regulations, "Payment to owners for animals destroyed," pertain to cattle and bison. According to § 51.3(a), the APHIS Administrator may authorize the payment of Federal indemnity by the USDA to any owner whose cattle or bison are destroyed as affected with brucellosis. Specifically, in accordance with paragraphs (a)(1) through (a)(4), the APHIS Administrator may authorize the payment of Federal indemnity by the USDA to any owner: Whose cattle or bison are destroyed as brucellosis reactors, whose herd of cattle or bison is destroyed because the Administrator has determined that destruction of all cattle and bison in the herd will contribute to the brucellosis eradication program, whose exposed female calf or calves are destroyed because of brucellosis, and who has brucellosis-exposed cattle or bison destroyed that were previously sold or traded from any herd that has, subsequent to the sale or trade, been found to be affected with brucellosis.

Currently, § 51.3 (a)(1) through (a)(4) allow, with a few exceptions, the following maximum per-head amounts for Federal indemnity:

(1) For reactors that are not part of a whole-herd depopulation: $250 for registered cattle and nonregistered dairy cattle and $50 for bison and nonregistered cattle other than dairy cattle.

(2) For cattle and bison in herds approved for depopulation:

• In States other than Class Free States: $250 for any nonregistered cattle other than dairy cattle; $250 for bison; and the lesser of 95 percent of appraised value, minus salvage value, or $750, for any registered cattle or nonregistered dairy cattle.

• In Class Free States: For any registered cattle, nonregistered dairy cattle, and any cattle or bison from herds affected with brucellosis, the lesser of 95 percent of appraised value, minus salvage value, or $750.

(3) For sexually intact exposed female calves: $50 (except for sexually intact female calves destroyed as part of a whole-herd depopulation, in which case the owners of such calves would receive the amounts listed in (2) above).

(4) For exposed cattle and bison sold or traded from a herd that has subsequently been found to be affected with brucellosis: $250 for registered cattle and nonregistered dairy cattle and $150 for bison and nonregistered cattle other than dairy cattle.

The regulations also include different indemnity rates for certain types of animals approved for indemnity under the brucellosis eradication program in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands because transportation costs to those locations make market prices for replacement animals higher than for animals in the contiguous United States.

Without sufficient financial incentive to destroy exposed animals or depopulate affected herds, many owners prefer to quarantine exposed animals or, when the exposed animals in a herd cannot be isolated, the entire herd. Quarantining is a lengthy and expensive process for both an owner and the USDA. The USDA has to pay to have the quarantined herd tested periodically, until the herd is found to be free of brucellosis, and the owner may not sell or move any animals while they are under quarantine, except for slaughter, which provides less revenue than sales for breeding purposes.

To provide additional financial incentive for owners to choose depopulation when USDA offers to pay indemnity for destruction of a herd, we are amending § 51.3 (a)(1) through (a)(4). The amendments change the method of determining the indemnity to be paid for all cattle and bison destroyed under the program, except for individual reactors and sexually intact exposed female calves that are not part of a whole-herd depopulation. Under this rule, the Administrator may authorize the payment of indemnity by USDA to any owner of the following animals destroyed under the brucellosis eradication program: (1) Cattle and bison identified as reactors as a result of a complete herd test and any sexually intact exposed female calves (defined in § 51.1 as "a female bovine less than 6 months of age that is nursed by a brucellosis reactor at the time such reactor is condemned, and that has not been altered to make it incapable of reproduction"), (2) cattle and bison in a herd that has been approved by APHIS for depopulation, and (3) brucellosis-exposed cattle and bison that were previously sold or traded from any herd that has, subsequent to the sale or trade, been found to be affected with brucellosis. In the case of the brucellosis-exposed cattle and bison, epidemiological information such as test results, herd history, and related evidence would be used to establish a probable date when the herd was first affected with brucellosis. Animals sold after that date would be considered to be exposed; those sold before that date would not.

Also under this rule, all owners of cattle and bison offered Federal indemnity, except owners of cattle and bison reactors and any sexually intact exposed female calves identified as a result of a complete herd test and destroyed other than as part of a whole-herd depopulation, may choose one of two methods, described below, for determining the indemnity amounts. The method chosen must be used for all animals to be destroyed. Owners that destroy cattle and bison reactors and sexually intact exposed female calves other than as part of a whole-herd depopulation are eligible to receive fixed rates for their animals: $250 for any registered cattle and nonregistered dairy cattle and $50 for any bison, nonregistered cattle other than dairy cattle, or sexually intact exposed female calves. Owners that destroy cattle and bison in herds approved for depopulation or brucellosis-exposed cattle and bison that meet the conditions described above may choose the appraisal method or fixed-rate method for determining the indemnity amounts. Under the appraisal method, each eligible animal will be appraised to determine its fair market value, and the indemnity shall be the appraised value minus the salvage value. Under the fixed-rate method, the indemnity will not exceed $250 per animal.

Owners have the option of having an appraisal done prior to choosing the method used. Appraisals will be conducted by an independent appraiser selected by the APHIS Administrator, and the cost of the appraisals will be borne by APHIS. In all cases, the amount of Federal indemnity will be determined in accordance with the regulations in 9 CFR part 51 that were in effect on the date that reactors were found or the date that depopulation or removal of individual exposed animals was approved. Prior to payment of

indemnity, proof of destruction [1] must be furnished to the Veterinarian in Charge.

In accordance with § 51.3 of the regulations, the Administrator shall authorize the maximum per-head amount for animals approved for indemnity under the brucellosis eradication program unless: (1) Sufficient funds are not available, (2) the State or area in which the animal is located is under Federal quarantine, (3) the State does not request payment of Federal indemnity, or (4) the State requests a rate lower than the maximum. The total compensation that APHIS will provide in fiscal year 1998 will be limited by available appropriated funding and will not exceed $3.41 million on a nationwide basis.

We are making these changes to the regulations at this time for many reasons, including accomplishing the regulatory reform goal of simplifying the regulations so that owners of brucellosis-affected animals can easily determine eligibility of their animals for indemnity and the maximum allowable indemnity rates. More importantly, program officials are striving to reach the goal of eradicating brucellosis from domestic cattle and bison herds by the end of 1998. As of March 1998, only 10 herds in the United States (9 cattle herds in Texas and 1 bison herd in South Dakota) remained under quarantine for brucellosis. We believe that depopulation of all affected herds is the most effective way to achieve eradication and prevent spread of the disease to unaffected herds. However, at the current indemnity rates specified in the regulations, some owners of affected herds are reluctant to depopulate their herds. Destruction of all affected animals is especially critical at this time as the program is in its last scheduled year, and severe funding cuts are expected next year. This rule provides an economic incentive for the timely removal of brucellosis-exposed animals from any herd, thus minimizing the risk of those animals spreading brucellosis to a new herd.

[1] The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) a permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

We want to encourage owners to depopulate entire herds when program officials have determined that such action is appropriate. By offering owners of affected herds the opportunity to receive fair market value for their animals, we believe that more owners will choose to depopulate their herds, rather than maintain their herds under quarantine. We are excluding reactors and sexually intact exposed female calves not destroyed as part of a whole-herd depopulation from the new system of determining indemnity rates to encourage owners to depopulate affected herds rather than remove individual reactors and sexually intact exposed female calves for destruction and maintain the rest of the herd under quarantine. Under this rule, owners of reactors and sexually intact exposed female calves destroyed as part of a whole-herd depopulation may choose to receive the appraised value, minus the salvage value realized, for these animals as they could for any other animal in their herd. Owners who choose not to depopulate herds containing reactors or sexually intact exposed female calves, but instead remove and destroy those animals only, will receive the fixed rates described previously in this document: For reactors, $250 for any registered cattle and nonregistered dairy cattle and $50 for any bison, nonregistered cattle other than dairy cattle, and sexually intact exposed female calves.

We are also making provision in this rule to increase the amount of indemnity offered to owners for certain brucellosis-exposed cattle and bison. When an epidemiological investigation reveals that certain animals in a herd were obtained from a herd that was, subsequent to the sale or trade, determined to be affected with brucellosis, a complete herd test is performed of the herd into which the animals from the affected herd were introduced. If the complete herd test reveals negative test results for the entire herd, including the newly introduced animals, program officials generally want to remove those newly introduced animals from the herd anyway because they could be incubating the disease, but program officials might not recommend depopulation of the entire herd at that point. (Whole-herd depopulation could become advisable at a later date if subsequent herd tests reveal brucellosis infection or if so indicated by further epidemiological investigation.) Therefore, we want to be able to offer a financial incentive to the owner to destroy the animals introduced from the affected herd as soon as possible.

We are also adding to § 51.1 definitions for "appraisal" and "complete herd test." These terms are used in § 51.3(a) as revised by this rule, and defining these terms is important for clarity and accuracy in interpreting the regulations.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the spread of brucellosis. The brucellosis eradication program is in its final critical stage with program officials striving for completion by December 1998. Depopulation of all remaining affected herds is the most effective means of achieving eradication. Owners of affected animals must be offered sufficient financial incentive to destroy their affected animals. Under the indemnity rates in effect prior to this interim rule, some owners have been reluctant to depopulate their herds. Maintaining these herds under quarantine is expensive for the Federal Government, which must bear the cost of testing them periodically, and, more importantly, allows the infection to remain in the cattle and bison herds, and potentially to spread to other herds.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604

of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and

(3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 51 is amended as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 51.1 is amended by adding definitions, in alphabetical order, for *Appraisal* and *Complete herd test* to read as follows:

§ 51.1 Definitions.

* * * * *

Appraisal. An estimate of the fair market value of an animal to be destroyed because of brucellosis. The estimate shall be based upon the meat, dairy, or breeding value of the animal.

* * * * *

Complete herd test. An official test for brucellosis (as defined in 9 CFR 78.1) performed under APHIS supervision in a cattle or bison herd on all cattle or bison that are (1) 6 months of age or more and not official vaccinates, except steers and spayed heifers; or (2) Official calfhood vaccinates of any age that are parturient or postparturient; or (3) Official calfhood vaccinates of beef breeds or bison with the first pair of permanent incisors fully erupted (2 years of age or more); or (4) Official calfhood vaccinates of dairy breeds with partial eruption of the first pair of permanent incisors (20 months of age or more).

* * * * *

3. In § 51.3, paragraph (a) is revised to read as follows:

§ 51.3 Payment to owners for animals destroyed.

(a) *Cattle and bison.* The Administrator may authorize the payment of Federal indemnity by the U.S. Department of Agriculture to any owner whose cattle or bison are destroyed after having been approved for destruction by APHIS under the brucellosis eradication program.[3] In all cases, the amount of Federal indemnity will be determined in accordance with the regulations in this part that were in effect on the date that reactors were found or the date that whole-herd depopulation or destruction of individual animals was approved. Prior to payment of indemnity, proof of destruction[4] must be furnished to the Veterinarian in Charge.

(1) *Eligibility for indemnity.* Owners of the following types of animals destroyed because of brucellosis are eligible to receive Federal indemnity for their animals:

(i) Cattle and bison identified as reactors as a result of a complete herd test and any sexually intact exposed female calves;

(ii) Cattle and bison in a herd that has been approved for depopulation; and

(iii) Brucellosis-exposed cattle and brucellosis-exposed bison that were previously sold or traded from any herd that was, subsequent to the sale or trade, found to be affected with brucellosis. Epidemiological information such as test results, herd history, and related evidence will be used to establish a probable date when the herd was first affected with brucellosis. Animals sold after that date will be considered to be exposed; those sold before that date will not.

(2) *Maximum per-head indemnity amounts.* Owners of the types of animals described in § 51.3(a)(1) are eligible to receive Federal indemnity for their animals in the following amounts:

(i) *Brucellosis reactors and sexually intact exposed female calves.* Except for brucellosis reactors and sexually intact exposed female calves destroyed as part of a whole-herd depopulation, the indemnity for cattle and bison that are brucellosis reactors shall not exceed $250 for any registered cattle and nonregistered dairy cattle or $50 for any bison or nonregistered cattle other than dairy cattle, and the indemnity for sexually intact exposed female calves shall not exceed $50.

(ii) *Herd depopulations and individual exposed animals.* Owners of herds that have been approved for depopulation and owners of brucellosis-exposed cattle and brucellosis-exposed bison that meet the conditions of § 51.3 (a)(1)(iii) may choose either of the two methods described in paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of this section, involving fair market value of the animal to be destroyed or a fixed rate, for determining the maximum amounts of indemnity they may receive.[3] The method chosen must be used for all animals to be destroyed. Owners have the option of having an appraisal done prior to choosing the method used. Appraisals will be conducted by anindependent appraiser selected by the Administrator. The cost of the appraisals will be borne by APHIS.

(A) *Appraisal method.* Each eligible animal will be appraised to determine its fair market value. The indemnity shall be the appraised value, minus the salvage value.

(B) *Fixed-rate method.* The indemnity shall not exceed $250 per animal.

* * * * *

Done in Washington, DC, this 24th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–8305 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–34–P

[3] "The Administrator shall authorize payment of Federal indemnity by the U.S. Department of Agriculture at the maximum per-head rates in § 51.3: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

[4] The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) a permit (VS Form 1–27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 97–104–2]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From Regions Where CEM Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On February 6, 1998, the Animal and Plant Health Inspection Service published a direct final rule. (See 63 FR 6063–6064, Docket No. 97–104–1.) The direct final rule notified the public of our intention to amend the animal importation regulations by adding Oklahoma to the lists of States approved to receive certain mares and stallions imported into the United States from regions affected with contagious equine metritis. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as: April 7, 1998.

FOR FURTHER INFORMATION CONTACT:

Dr. David Vogt, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231, (301) 734–8423; or e-mail: dvogt@aphis.usda.gov.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 24th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–8306 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–228–AD; Amendment 39–10413; AD 98–06–34]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: May 5, 1998.

ADDRESSES: Information pertaining to this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64787). That action proposed to require revision of the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, the manufacturer, requests that the proposed rule not be issued specifically against Model ATR airplanes. The commenter states that ATR models already have a "warning" regarding failure of the electro-mechanical gate device. The manufacturer points out that the "warning" contains specific wording that was presented to the FAA during the public meeting held on June 11–12, 1996, in Seattle, Washington. The commenter also states that the proposal appears to indicate that ATR models are particularly affected by the identified unsafe condition. The commenter disagrees, and adds that the in-service experience of these models does not warrant an AD.

The FAA does not concur. The FAA finds that the AFM limitation required by this AD is necessary to prohibit positioning the power levers below the flight idle stop during flight, regardless of the protective features and warnings provided in the design of the affected airplanes. Additionally, although none of the accidents and incidents referenced in the preamble of the proposal involved Model ATR airplanes, the FAA has determined that AD action must be taken against all turbopropeller-powered airplanes (regardless of the design features of the airplane) that are not approved for operation in the beta range during flight. The FAA finds that revising the AFM to prohibit operation below the flight idle stop in flight is necessary in order to correct the identified unsafe condition. The appropriate vehicle for mandating such a requirement is an AD.

This same commenter requests that the wording of the AFM revision that was specified in the proposed rule be revised to reflect the wording of the current AFM revision. The commenter points out that the wording of the proposed AFM change and the wording of the current AFM revision are similar, and that the technical contents are equivalent.

The FAA concurs with the commenter that the wording specified in the proposal is similar to the wording of the current AFM change, and that the technical contents are equivalent. Therefore, the FAA has revised

paragraph (a) of the final rule to remove the proposed AFM wording and has inserted the current AFM change.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 144 Aerospatiale Model ATR–42 and ATR–72 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,640, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–34 Aerospatiale: Amendment 39–10413. Docket 97-NM–228-AD.

Applicability: All Model ATR–42 and ATR–72 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Limitation under Flight Operation: ATR airplanes are protected against a positioning of power levers below the flight idle stop in flight by an IDLE GATE device. It is reminded that any attempt to override this protection is prohibited. Such positioning may lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on May 5, 1998.

Issued in Renton, Washington, on March 12, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–8347 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39538A; File No. S7–16–96 International Series—1111A]

RIN 3235–AG81

Amendments to Beneficial Ownership Reporting Requirements; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rules.

SUMMARY: This document contains corrections to the final regulations which were published on January 16, 1998 [63 FR 2854] relating to the beneficial ownership reporting requirements.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis O. Garris, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission at (202) 942–2920, 450 Fifth Street N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission adopted amendments on January 12, 1998, to its rules relating to the reporting of beneficial ownership in publicly-held companies. As published, the final regulations contain errors with respect to the implementation of the amendments to the existing rules and forms. In this release, the rules and forms containing such errors are being corrected.

Accordingly, the publication on January 16, 1998, of the final regulations

relating to the beneficial ownership reporting requirements which were the subject of FR Doc. 98–1084 is corrected as follows:

§ 240.13d–1 [Corrected]

1. On page 2866, first column, amend the first line in paragraph (d) after the words "Any person who" to add the words ", as of the end of any calendar year,".

§ 240.13d–101 [Corrected]

2. On page 2867, third column, second line, "240.13d–7(b)" is corrected to read "Rule 13d–7".

3. On page 2867, third column, amendment 6a is added preceding amendment 7 to read as follows:

6a. Amend § 240.13d–101 to revise the chart in Instruction (14) for Cover Page and in Item 7 revise the reference to "Rule 13d–1(f) (§ 240.13d–1(f))" to read "Rule 13d–1(k)".

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

* * * * *

Instructions for Cover Page

* * * * *

(14) *Type of Reporting Person* * * *

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan or Endowment Fund.	EP
Parent Holding Company/Control Person.	HC
Savings Association	SA
Church Plan	CP
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

* * * * *

§ 240.13d–102 [Corrected]

4. On page 2867, third column, "[ ] Rule 13d–(c)" following the text that reads "Check the appropriate box to designate the rule pursuant to which this Schedule is filed;" is corrected to read "[ ] Rule 13d–1(c)".

5. On page 2868, second column, amendment 7a is added preceding amendment 8 to read as follows:

7a. Amend § 240.13d–102 by revising the chart in Instruction (12) for Cover Page and revise Item 7 to read as follows:

§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1 (b) and (c) and amendments thereto filed pursuant to § 240.13d–2(d).

* * * * *

Instructions for Cover Page

* * * * *

(12) *Type of Reporting Person* * * *

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan or Endowment Fund.	EP
Parent Holding Company/Control Person.	HC
Savings Association	SA
Church Plan	CP
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

* * * * *

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company or Control Person. If a parent holding company or control person has filed this schedule pursuant to Rule 13d–1(b)(1)(ii)(G), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company or control person has filed this schedule pursuant to Rule 13d–1(c) or Rule 13d–1(d), attach an exhibit stating the identification of the relevant subsidiary.

* * * * *

6. On page 2868, first column, 9th line, "Rule 13d–1(c)" is corrected to read "Rule 13d–1(d)".

7. On page 2868, first column, Item 3, the last sentence which reads "If this statement is filed pursuant to § 240.13d–1(c), check this box. [ ]" is removed.

8. On page 2868, second column, Item 8, the reference to "Item 3(h)" in the third line is corrected to read "Item 3(j)" and in the 7th line, "§ 240.13d–1(d)" is corrected to read "Rule 13d–1(c) or Rule 13d–1(d)".

10. On page 2868, second column, in the 4th line of the Note, "§ 240.13d–7(b)" is corrected to read "Rule 13d–7".

Dated: March 25, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8315 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 145, 173, 174, 178, 181, 191

[T.D. 98–16]

RIN 1515–AB95

Drawback; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: Customs published in the **Federal Register** of March 5, 1998, a document revising the Customs Regulations regarding drawback. This document contains corrections to that document.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Office of Regulations and Rulings, (202–927–1172).

SUPPLEMENTARY INFORMATION:

Background

The final regulations relating to drawback published as T.D. 98–16 in the **Federal Register** (63 FR 10970) on March 5, 1998, contain errors which may prove to be misleading and are in need of clarification. This document corrects those errors.

Correction of Publication

Accordingly, the publication on March 5, 1998, of the final regulations relating to drawback (T.D. 98–16) (rule document 98–5045) is corrected as follows:

1. On page 10971, under the second column, line 61, in the third from the last line of the second "Customs Response", after the words, "so complicated", and before the word, "area", the words, "an already complicated", are added.

2. On page 10974, under the second column, line 7, the word "part" appearing in the first sentence of the first "Customs Response" beginning thereunder is corrected to read "port".

3. On page 10977, under the first column, line 39, in the third sentence of the second paragraph of the second "Customs Response" thereunder, the word "an" is added before the words, "existing drawback "contract" ".

4. Also on page 10977, under the second column, line 44, in the "Customs Response" beginning thereunder, in the second paragraph, at the end of the third sentence, a period is added after the word "accordingly" and before the word "Section".

5. Additionally on page 10977, under the second column, line 64, in the

"Customs Response" beginning thereunder, in the fifth paragraph, first sentence, the section number "191.6(b)" is corrected to read "191.9(b)".

6. Again on page 10977, under the third column, on the last line thereof, after the term "1313(p)" and before the word "included", the word "be" is added.

7. On page 10979, under the second column, line 57, the phrase, "Accordingly to", starting the second sentence of the "Customs Response" beginning under this column, is corrected to read, "According to".

8. On page 10980, under the third column, line 59, in the third sentence of the second paragraph of the "Customs Response" beginning in that column, the phrase, "turn-over method" is corrected to read "turn-over period".

9. On page 10981, under the second column, line 12, the phrase, "receipts into and all withdrawals for", appearing in the second sentence of the "Customs Response" at the top of this column, is corrected to read, "receipts into inventory and all withdrawals therefrom for".

10. On page 10989, under the third column, line 21, the phrase, "consistent § 191.72(a)", appearing in the second paragraph of the initial "Customs Response" thereunder, is corrected to read, "consistent with § 191.72(a)".

11. On page 10991, under the third column, on the first line, the word, "to", is corrected to read, "in".

12. On page 10992, under the first column, line 11, the misspelling of the word, "provisions", is thus corrected.

13. On page 10996, under the third column, line 16, in the first "Customs Response" appearing under the heading "Appendix A", after the word "determined", the word "not" is added.

14. Also on page 10996, under the third column, line 55, regarding the third "Comment" appearing thereunder, the numbers "83–8" and the word "and", appearing on line 11 of this "Comment", are removed; and, on the following line, after the numbers "83–80", and before the semicolon, the following phrase is added: ", and 83–84".

15. On page 10997, under the first column, line 15, in the first full paragraph, a period is added after the phrase "or producers".

16. Also on page 10997, under the second column, line 7, after the word "changes" the words "were proposed" are added.

17. On page 10999, in the second column, under the heading "Paperwork Reduction Act", on line 7 of the first paragraph thereof, the phrase, "control number 1505–", is corrected to read "control number 1515–".

18. On page 11004, in the second column, on the first and third lines under the heading "Amendments to the Regulations", the number "178" is added in appropriate numerical order.

§ 191.2 [Corrected]

19. On page 11008, in the first column, in § 191.2(q)(2), the phrase, "paragraph (p)(1)" appearing therein is corrected to read, "paragraph (q)(1)".

20. Also on page 11008, under the first column, in § 191.2(t), line 4 thereof, the parenthesis appearing after the word "data" is removed.

§ 191.6 [Corrected]

21. On page 11009, under the second column, in § 191.6(c)(6), the reference to "§ 191.93" is corrected to read "§ 191.193".

§ 191.8 [Corrected]

22–24. Also on page 11010, under the third column, in § 191.8(e)(1), in the last sentence of this paragraph, the phrase, "appears in the published synopsis", is corrected to read, "shall appear in the published synopsis".

25. Additionally on page 11010, under the third column, in § 191.8(e)(2), the parenthetical "(Attention: Director, International Trade Compliance Division)" appearing at the end of the last sentence of this section is corrected to read, "(Attention: Director, Commercial Rulings Division)".

§ 191.11 [Corrected]

26. On page 11012, under the third column, in § 191.11(a), the reference to "§ 191.2(s)" appearing therein is corrected to read "§ 191.2(x)(1)".

27. On page 11013, under the first column, the last sentence of § 191.11(c) which reads, "For those users manufacturing under the request should be made by a separate letter.", is corrected to read, "For those users manufacturing under a general manufacturing drawback ruling (§ 191.7), the request should be made by a separate letter.".

§ 191.12 [Corrected]

28. Also on page 11013, under the first column, in the first sentence of § 191.12, the phrase, "a general manufacturing drawback ruling (§ 191.7)," is removed.

§ 191.14 [Corrected]

29. On page 11014, under the third column, in the last line of paragraph (c)(3)(ii)(B) of § 191.14, the figure "$381.00" is corrected to read "$391.00".

30. On page 11015, under the first column, in the last line of paragraph (c)(3)(iii)(D) of § 191.14, the figure "$331.00" is corrected to read "$341.00".

31. Also on page 11015, under the second column, in line 8 of § 191.14(c)(3)(iv)(C), the phrase, "inventory the lowest amount of", is corrected to read, "inventory with the lowest amount of".

32. Again on page 11015, under the second column, in the last line of paragraph (c)(3)(iv)(C) of § 191.14, the figure "$276.50" is corrected to read "$286.50".

§ 191.23 [Corrected]

33. On page 11017, under the first column, in § 191.23(a), line 7 thereof, the word "byproducts" in the second sentence is corrected to read "multiple products".

34. Also on page 11017, under the first column, in § 191.23(b), line 7, the word "byproducts" in the second sentence is corrected to read "multiple products".

35. Again on page 11017, under the first column, in § 191.23(c), line 10, the word "byproducts" in the second sentence is corrected to read "multiple products".

§ 191.31 [Corrected]

36. On page 11019, under the first column, in § 191.31(a), the phrase, "Section 1313(j)(1) of the Act", at the beginning of the sentence, is corrected to read, "Section 313(j)(1) of the Act".

§ 191.32 [Corrected]

37. Also on page 11019, under the first column, in § 191.32(a), on lines 8–9, the phrase "within 3 years after the importation" appearing in the first sentence thereof is corrected to read "before the close of the 3-year period beginning on the date of importation".

§ 191.42 [Corrected]

38. On page 11022, under the second column, in § 191.42(c), line 8 thereof, the phrase "or destroyer" appearing in the second sentence thereof is corrected to read "(for destruction, see § 191.44)".

§ 191.61 [Corrected]

39. On page 11024, under the second column, the heading of § 191.61(d)(1) entitled "Specific manufacturing drawback ruling." is corrected to read "Specific manufacturing drawback ruling; action by port director."; and the

designation for (d)(l)(i) and its heading "Action by port director" are removed.

40. Also on page 11024, under the second column, in § 191.61(d)(1), the word "therefore" where appearing therein is corrected to read "therefor".

§ 191.73 [Corrected]

41. On page 11025, under the first column, in § 191.73(b), the typographical error "AAAA" inserted before the footnote under the sample format for the Chronological Summary of Exports is removed.

§ 191.74 [Corrected]

42. Also on page 11025, under the second column, at the end of § 191.74, the parenthetical "(see § 191.10(e)" set forth is corrected to read "(see § 191.51(a))".

§ 191.81 [Corrected]

43. On page 11026, under the first column, in § 191.81(b)(1), the words "each file" appearing in the first sentence thereof are corrected to read "each files".

44. Also on page 11026, under the second column, in § 191.81(c)(2), the words "each file" appearing in the first sentence thereof are corrected to read "each files".

§ 191.91 [Corrected]

45. On page 11028, under the first column, the heading for § 191.91(f) entitled, "Action by drawback office controlling" is italicized.

§ 191.185 [Corrected]

46. On page 11037, under the first column, in § 191.185(d)(3), under line 8 of the "Transferor's Declaration", the typographical error following the phrase, "located at" is removed, and a blank line, "_____", is added in place thereof, prior to the parenthetical "(City and State)".

Appendix A [Corrected]

47. On page 11039, under the third column, in item "B." under "I.", in the first paragraph, following the term, "83–80,", the term, "83–84,", is added.

48. On page 11040, in the first column, under "J.2.", the last sentence of the parenthetical material is corrected by adding a period at the end thereof.

49. On page 11041, under the first column, in the first line, the phrase, "or producer for the account of the", is corrected to read, "or producer may manufacture or produce for the account of the".

50. Also on page 11041, under the first column, line 4, "T.D."s" is corrected to read "T.D.s".

51. On page 11042, under the first column, the heading for paragraph "H." entitled "Procedures And Records Maintained", is corrected to read "Procedures and Records Maintained".

52. Also on page 11042, under the third column, the second, third and fourth sentences appearing in Footnote "2" at the bottom of the column, are removed from this Footnote, and are added, as a separate paragraph, following the text of item "2." under "H.", in general ruling "VI.".

53. On page 11044, under the third column, for general ruling "VIII.", following the heading for paragraph "A." thereunder entitled "Same Kind and Quality (Parallel Columns)", for editorial clarity, two carriage returns are added thereafter, before the beginning of the parallel columns.

54. On page 11045, under the second column, in item "1." under "F.", the phrase "at the time of separation" appearing in the third sentence thereof is corrected to read "as the time of separation".

55. On page 11049, in "Exhibit C", under the heading for "Residual oils", in the "Bbls." column, the number "180.957" corresponding to the entry for "(14) Domestic Shipments" is corrected to read "180,957".

56. Also on page 11049, in "Exhibit C", under the heading for "Aviation gasoline", the numbers "278, 286" and "4.64041" corresponding to the entry for "(14) Domestic Shipments" are removed from the "Bbls." and "Drawback factor" columns, respectively, and are added under the "Bbls." and "Drawback factor" columns, respectively, corresponding to the entry for "(14) Domestic Shipments" under the heading for "Lubricating oils".

57. On page 11052, "Exhibit E–1" is revised to read as follows:

BILLING CODE 4820–02–P

BILLING CODE 4820–02–C

EXHIBIT E - 1

PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED
ABC OIL CO., INC. - TULSA, OKLAHOMA REFINERY: PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Type and Class of Raw Material Designated - Crude, Class III

(21) Product	(22) Quantity in Barrels	(23) Industry Standard	(24) Quantity of Raw Material Of Type & Class Designated Needed to Produce Product: Separate	Combined	Covered by: 1. Period 2. Refinery	(19) Drawback Factor Per Barrel	(20) Crude allowed For Drawback
Aviation Gasoline	11,394	40%	28,485	29,125		1.00126	11,232
Residual Oils	125,618	83%	151,347	151,347	1. Jan. 1995	1.01300	178
Lubricating Oils	8,774	50%	17,548	17,932	2. Beaumont	.45962	9,754
Petrochemicals, Other	(195)					.43642	45,561
Petrochemicals, Other (Drawback Deliveries)	(1,015)					4.52178	39,674
Petrochemicals, Other (Total)	1,210	29%	4,172	4,503		1.00244	195
[Residual Rights]							
Aviation Gasoline	256	40%	640	29,125		1.01265	259
Lubricating Oils	192	50%	384	17,932	1. Jan. 1995	4.59006	881
Petrochmicals, Other	96	29%	331	4,503	2. Tulsa	1.12412	108
Distillate Oils	3,807	89%	4,278	4,278		.76624	2,917
	151,347					Subtotal:	4,165
						Total:	110,759

A - Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042): 111,801 bbls.
B - Total quantity exported (including drawback deliveries)(column 22): 151,347 "
C - Largest quantity of raw material needed to produce an individual exported product (see col. 24): 151,347
D - The excess of raw material over the largest of line A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): NONE
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347 bbls.

Drawback Computation

4,165* bbls. @ 101/2 =	$437.33
Less 1%	4.37
Amount of Drawback Claim - Net	$432.96

* See subtotal, col.20, for ResidualRights

CERTIFICATE

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc., during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 1995 to January 31, 1995, filed by the Beaumont, Texas refinery of the company from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

58. On page 11053, in "Exhibit E (COMBINATION)", the number "28,485" under column "(24)", corresponding to the entry for "Aviation Gasoline" under Column "(21)", is corrected to read "28,045".

59. On page 11056, under the first column, under "L.6.", the reference to "section 1313(b)" therein is corrected to read "section 1313".

60. On page 11057, under the third column, at the end of item "2." under "X.", the period is removed therefrom, and a semicolon followed by the word "and" is added in place thereof.

61. Also on page 11057, at the bottom of the third column, Footnote "1" is corrected by removing the semicolon appearing at the end thereof.

62. On page 11058, at the bottom of the third column, the second, third and fourth sentences, appearing under Footnote "4", are removed therefrom, and these sentences are added as a separate paragraph following the text appearing in item "3." of paragraph "I." in the third column.

63. On page 11059, under the third column, in item "6." under "L.", of general ruling "XII.", the reference to "section 1313(b)" therein is corrected to read "section 1313".

64. Also on page 11059, under the third column, the third, fourth and fifth sentences appearing as part of the text of the paragraph in item "I.3." of general ruling "XIII." are made into a new paragraph under the same item.

65. On page 11060, under the first column, in item "6." under "L.", the reference to "section 1313(b)" therein is corrected to read "section 1313".

Appendix B [Corrected]

66. On page 11063, in the second column, under the heading "INVENTORY PROCEDURES", the entry entitled "RECORDS OF USE OF DUTY–PAID, DUTY–FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE", is corrected to read, "RECORDS OF USE OF DUTY–PAID, DUTY–FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE".

67. On page 11069, under the second column, line 39, the heading "Inventory Procedures" is capitalized to read "INVENTORY PROCEDURES".

68. On page 11070, under the third column, in the section entitled "PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS", add, in the second sentence, after the words "to bind" and before the word "corporation", the word "the".

69. Also on page 11070, under the third column, in the section entitled "PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS", in the last line, add a closing parenthesis after "rulings" and before the period.

70. On page 11071, under the first column, in the heading "PROCESS OF CONSTRUCTION AND EQUIPMENT", on line 7 thereunder, the words "or drawback" are removed.

71. Also on page 11071, under the first column, in the heading "PROCESS OF CONSTRUCTION AND EQUIPMENT", on line 8 thereunder, after the word "merchandise" and before the word "and", the words "or drawback products" are added.

72. Again on page 11071, under the third column, in the first full paragraph in parentheses thereunder, in line 2 thereof, the word "It", beginning the second sentence of this paragraph, is corrected to read "If".

73. On page 11072, under the second column, under the section entitled "AGREEMENTS", in item "7.", the term "section 1313(g)" appearing therein is corrected to read "section 1313".

Dated: March 25, 1998.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 98–8263 Filed 3–30–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

Hoffmann-La Roche, Inc.; Chlortetracycline; Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is approving two supplemental new animal drug applications (NADA's) filed by Hoffmann-La Roche, Inc. The supplemental NADA's provide for use of chlortetracycline (CTC) Type A medicated articles to make a Type C medicated feed and a calf milk replacer in compliance with the conclusions of the National Academy of Sciences/ National Research Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) review of the effectiveness of the drugs and FDA's conclusions based on that review. Approval of these supplemental NADA's does not require amendment of animal drug regulations.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110–1199, is sponsor of NADA 49–287 that provides for use of PfiChlor® 50, 70, and 100 (CTC) Type A medicated articles to make Type C medicated feeds for chickens, turkeys, sheep, calves, cattle, and swine; and NADA 100–901 that provides for use of PfiChlor® 100S (CTC) Type A medicated articles to make calf milk replacers. The firm filed supplemental applications to reflect concurrence with the conclusions of the NAS/NRC DESI review of the applications and FDA's conclusions based on that review.

CTC was the subject of a NAS/NRC DESI review published in the **Federal Register** of July 21, 1970 (35 FR 11646). The NAS/NRC review concluded, and FDA concurred, that the products were probably effective for growth promotion and feed efficiency and the treatment of animal diseases caused by pathogens sensitive to CTC. FDA reviewed the available data concerning effectiveness of the products and concluded that the data supported claims for control and treatment of certain bacterial diseases susceptible to CTC in chickens, turkeys, ducks, psittacine birds, cattle, sheep, and swine as well as increased rate of weight gain and improved feed efficiency in most of the same species. The sponsor provided revised labeling that complied with the conclusions of the NAS/NRC review.

The firm filed supplemental applications to reflect concurrence with the conclusions of the NAS/NRC DESI review of the applications and FDA's conclusions based on that review.

The supplemental NADA's are approved as of January 21, 1998. The basis of approval is discussed in the freedom of information summaries.

In the **Federal Register** of October 21, 1977 (42 FR 56264), the then Bureau of Veterinary Medicine issued a notice of opportunity for a hearing (NOOH) on a proposal to withdraw approval of certain NADA's listed in 21 CFR 558.15, for most subtherapeutic uses of tetracycline (CTC and oxytetracycline) in animal feed. The NOOH was issued in response to scientific research suggesting that subtherapeutic use of such drugs has contributed to the pool of antibiotic-resistant pathogenic microorganisms in food animals.

Furthermore, research indicated that the drug resistance could be transferred to pathogenic organisms in humans. The NOOH is still pending and approval of these supplements to finalize the DESI review process for CTC Type A medicated articles does not constitute a bar to subsequent action to withdraw approval on the grounds cited in the outstanding NOOH.

The NAS/NRC DESI evaluation concerns only the drug's effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to the safety of the drugs or its metabolites in food products derived from treated animals.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Because the animal drug regulations in 21 CFR 558.128(a)(1) reflect that Hoffmann-La Roche, Inc., is the sponsor of other NADA's providing for use of the same or similar CTC products, amendment of the animal drug regulations is not required.

Dated: March 17, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–8126 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8685]

RIN 1545–AT25

Deposit of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Technical amendment.

SUMMARY: This document contains technical amendments to final regulations (TD 8685), which were published in the **Federal Register** for November 12, 1996, at 61 FR 58004, relating to deposit of excise taxes.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dale Goode, (202) 622–6795 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this technical amendment provide guidance under section 6302 relating to deposit of excise taxes.

Need for Correction

This amendment serves to correct references found in § 40.6302(c)–3. Currently, a number of incorrect references appear in § 40.6302(c)–3(g) of the Code of Federal Regulations (26 CFR part 40). As published in the **Federal Register** on November 12, 1996 (61 FR 58004), paragraph (f) of § 40.6302(c)–3 was redesignated as paragraph (g), and the internal references were not changed to reflect this.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 40 is amended by making the following correcting amendments:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 40.6302(c)–3(g) [Amended]

Par. 2. Section 40.6302(c)–3 is amended by removing the reference "(f)" and adding "(g)" in its place in the following locations:

1. Paragraph (g)(1) introductory text.
2. Paragraphs (g)(2)(i) and (g)(2)(ii).
3. Paragraph (g)(3) introductory text.
4. Paragraph (g)(3), paragraph (b) of the *Example*.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 98–8282 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[TD 8748]

Gasoline and Diesel Fuel Excise Tax; Special Rules for Alaska; Definitions; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (TD 8748), which were published in the **Federal Register** on Friday, January 2, 1998 (63 FR 24). The regulations relate to gasoline and diesel fuel excise tax.

DATES: This correction is effective January 2, 1998.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 6416.

Need for Correction

As published, final regulations (TD 8748) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8748), which are the subject of FR Doc. 97–33988, is corrected as follows:

PART 48—[CORRECTED]

1. On page 26, column 1, amendatory instruction "Par. 6a." is added to read as follows:

§ 48.6416(a)–3 [Amended]

Par. 6a. In § 48.6416(a)–3, paragraph (b)(3)(ii) is amended by removing the last sentence.

2. On page 26, column 1, amendatory instruction "Par. 6b." is added to read as follows:

§ 48.6416(b)(3)–2 [Amended]

Par. 6b. In § 48.6416(b)(3)–2, paragraph (d)(6) is amended by removing the language "and § 48.6416(b)(4)–1".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–8320 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–69–7284a; FRL–5984–7]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves a revision to the Oregon State Implementation Plan. This revision establishes a source specific Reasonable Available Control Technology (RACT) determination for Dura Industries, Inc. at 4466 NW Yeon, Portland, Oregon 97210. This action is taken under Part D of Title I of the Clean Air Act (Act).

DATES: This action is effective on June 1, 1998 unless adverse or critical comments are received by April 30, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and Oregon Department of Environmental Quality (ODEQ) 811 SW Sixth Ave, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 172(a)(2) and (b)(3) of the Act, as amended in 1977, requires sources of volatile organic compounds (VOC) to install, at a minimum, RACT in order to reduce emissions of ozone precursors. EPA has defined RACT as the lowest emission limitation a source is capable of meeting with control technology that is reasonably available, considering technological and economic feasibility (44 FR 53762).

EPA develops Control Technology Guidelines (CTG) to advise state and local agencies of available air pollution control techniques for reducing emissions from various source categories. CTGs establish "presumptive norm" emission levels based on EPA's evaluation of the capabilities and problems associated with control technologies. EPA has recommended that states adopt RACT requirements consistent with these presumptive norm levels.

In Section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas improve their deficient RACT rules for ozone precursors. Areas designated nonattainment before the effective date of the 1990 amendments which retained that designation with a marginal or worse classification were subject to RACT "fix-up." States were mandated to correct their RACT requirements by May 15, 1991. The corrected requirements were to be in compliance with section 172(b), as it existed before the 1990 amendments and as interpreted in the pre-amendment guidance. Oregon was subject to this requirement.

On May 13, 1991, the State of Oregon submitted OAR 340–22–100 through OAR 340–22–220, General Emission Standards for Volatile Organic Compounds, as an amendment to the Oregon SIP. On September 29, 1993, EPA approved these revisions and incorporated the rules by reference into the Oregon SIP (58 FR 50848).

The Portland-Vancouver Air Quality Maintenance Area was designated as a non attainment area for ozone in 1978. On October 7, 1982, EPA approved the Portland-Vancouver area ozone attainment plan, including an extended attainment date of December 31, 1987 (47 FR 44262). On November 15, 1990, the area was redesignated to marginal non-attainment under section 181(a)(1) of the 1990 Act for failing to attain the standard. An attainment deadline of November 15, 1993 was established. Ambient air monitoring data from 1991 through 1997 showed no violations of the ozone standard. On May 19, 1997, EPA redesignated the Portland-Vancouver area to attainment for ozone and approved its maintenance plan.

Section 4.50.3.2.3.4 Industrial Emission Strategies of the approved maintenance plan includes RACT requirements for VOC sources. This includes implementing: (1) Oregon Administrative Rule (OAR) 340–022–0104 which requires VOC emission limits for new and existing sources located within the Portland-Vancouver area; and (2) OAR 340–022–0170 which defines the VOC emission limits for surface coating in manufacturing, consistent with EPA's 1976 CTGs for this source category.

On October 30, 1997, Oregon submitted an alternative RACT determination for Dura Industries, Inc., a high performance architectural coating operation in Portland, Oregon. The alternative RACT determination modifies Dura Industries' Air Contaminant Discharge Permit to allow 6.5 lbs/gal VOC instead of 3.5 lbs/gal VOC, the standard RACT for this source category. The higher VOC content is accompanied by additional requirements on the source to develop compliant coatings. This submission is subject to OAR 340–022–0104 and OAR 340–022–0170.

This **Federal Register** document approves the rule revision as an amendment to the Oregon SIP.

II. Summary of Action

EPA is approving the revision to the Oregon State Implementation Plan submitted on October 30, 1997, as source specific amendment for Dura Industries, Inc. EPA finds the alternative RACT determination meets all of the applicable requirements of the Act and the Oregon SIP.

EPA is not taking action on the entire Air Contaminant Discharge Permit for Dura Industries, Inc., but only the conditions necessary for implementation and enforcement of the RACT requirement in OAR 340–022–0104(4). Because the RACT requirements are contained in the approved SIP, the source specific RACT limits will remain in effect as a matter of state law, even if the Oregon permit expires.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will become effective without further notice unless the Agency receives relevant adverse comment on the parallel notice of

proposed rulemaking on or before April 30, 1998.

Should the Agency receive such comments, it will publish a document withdrawing this rule. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1998 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: March 6, 1998.

Chuck Findley,

Acting Regional Administrator, Region X.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (124) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(124) On October 30, 1997 the director of the Oregon Department of Environmental Quality (ODEQ) submitted a source specific Reasonable Available Control Technology (RACT) determination as a SIP revision for VOC emissions and standards.

(i) Incorporation by reference.

(A) Letter dated October 30, 1997 from the Director of ODEQ submitting a SIP revision for Dura Industries, Inc., an architectural surface coating operation in Portland, Oregon—permit #26–3112 dated September 14, 1995.

[FR Doc. 98–8057 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0022 and CO–001–0023; FRL–5981–4]

Approval and Promulgation of Air Quality Implementation Plan; Colorado; PM10 and NO_x Mobile Source Emission Budget Plans for Denver, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revisions submitted by the Governor of Colorado on July 18, 1995 and April 22, 1996. The PM10 and NO_x emissions budgets contained in these SIP revisions are used to assess the conformity of transportation plans, transportation improvement programs and, where appropriate, federally funded projects for the applicable periods required by EPA's conformity rules. EPA originally proposed approval of the two emissions

budget SIPs on October 3, 1996. Based upon comments received on that proposal, EPA published a second proposal on August 5, 1997, seeking additional input on certain issues. In reaching its final decision to approve the July 18, 1995 and April 22, 1996 PM10 and NO_x SIP submittals, EPA has considered the comments it received on both its October 3, 1996 and August 5, 1997 **Federal Register** documents.

EFFECTIVE DATE: This action is effective on April 30, 1998.

ADDRESSES: Copies of the State's original submittals, copies of comments received on both the October 3, 1996 and August 5, 1997 proposals and other information are available for inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222.

FOR FURTHER INFORMATION CONTACT: Callie Videtich, EPA Region VIII,(303)312–6434.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 1995, the Governor of Colorado submitted a SIP revision for Denver for PM10 that included attainment and maintenance demonstrations. In making that submittal, the Governor requested that EPA not act on the motor vehicle emissions budgets (also referred to as mobile source emissions budgets) for PM10 and NO_x contained in Chapter XI of the PM10 SIP element. Motor vehicle emissions budgets are used under EPA regulations for making transportation related conformity determinations as required by section 176(c) of the Clean Air Act (CAA or Act). EPA's transportation conformity rule provides that these budgets establish a cap on motor vehicle-related emissions which cannot be exceeded by the predicted transportation system emissions in the future unless the cap is amended by the State and approved by EPA as a SIP revision and attainment and maintenance of the standard can be demonstrated.

On July 18, 1995 and April 22, 1996, the Governor submitted SIP revisions for Denver that included additional motor vehicle emissions budgets for PM10 and NO_x. EPA proposed approval of both of these emissions budgets on October 3, 1996 (61 FR 51631) along with the Denver PM10 SIP. Following a 60-day public comment period, EPA finalized approval of the Denver PM10 SIP on April 17, 1997 (62 FR 18716). At that time, EPA did not take final action on the emissions budget submittals in order to more thoroughly consider comments received on the proposals during the public comment period. EPA subsequently decided to seek additional public comment regarding the budget submittals and, on August 5, 1997, published a second notice of proposed rulemaking to take comment on certain issues raised by commentors on the October 3, 1996 notice of proposed rulemaking. Specifically, EPA sought additional comment on the following issues: Whether Colorado met the notice and public hearing requirements of the Clean Air Act in adopting the PM10 emissions budget; whether Colorado adequately considered growth in non-mobile sources in setting the emissions budgets; and whether Colorado should have identified a separate NO_x budget in 1998 (the maintenance year) of 102.7 tons per day, to maintain consistency with the maintenance demonstration. For a more complete description of EPA's request for additional comments, please see EPA's August 5, 1997 notice of proposed rulemaking at 62 FR 42088.

II. Response to Public Comments

In this notice, EPA is taking final action and addressing comments relating to its October 3, 1996 and August 5, 1997 notices of proposed rulemaking. Generally, EPA has addressed comments on each notice separately. Where this is not the case, EPA has so indicated.

A. October 3, 1996 Proposal: The following numbered paragraphs contain summaries of the comments received on the October 3, 1996 notice of proposed rulemaking. Each comment summary is followed by EPA's response.

1. The PM10 budget that the Governor submitted on July 18, 1995 includes permanent budgets of 54 and 60 tons. However, the Colorado Air Quality Control Commission's (AQCC) rule provided that these budgets would expire in 1998. Since the legislature did not eliminate the 1998 expiration of these budgets, rulemaking by the AQCC would have been required to eliminate the 1998 expiration. The AQCC did not conduct such rulemaking, and therefore, the permanent 54 and 60 ton budgets that the Governor submitted are without authority and the notice and hearing requirements of the CAA were not met.

This commentor augmented his comments on this point in response to EPA's August 5, 1997 notice, as follows: The legislature did not even mention, and therefore did not change or delete, the sunset language contained in section C.4. of the AQCC's budget rule. Nor does S.B. 95–110 specify what the text of the rule shall be or repeal or limit the Commission's authority to revise the emission budgets. Because neither the legislature nor the AQCC legally amended section C.4. of the rule submitted to EPA, section C.4. remains a part of the rule, and EPA must approve all or none of the rule. Also, other entities at the State level lack authority to submit part of the AQCC's rule and omit other parts. Only the AQCC or the legislature, following proper notice and hearing procedures, had this authority.

EPA Response: Contrary to the commentor's assertion, EPA believes the Colorado legislature, through its passage of Colorado S.B. 95–110, did eliminate the 1998 expiration (or sunset) of the 54 and 60 ton budgets. In EPA's view, the legislature specifically eliminated the reversion to a 44 ton budget from the SIP revision and designated the 60 ton budget as the budget that would apply in the future for purposes of federal transportation conformity. For example, the language of S.B. 95–110 reads as follows:

> "The revisions to the Denver element of the PM10 State Implementation Plan adopted by the Commission on February 16, 1995, which contain a sixty tons-per-day PM10 mobile source emissions budget which expires January 1, 1998, and reverts to a forty-four tons-per-day budget, are amended to provide that such forty-four tons-per-day reversion shall not be a part of the state implementation plan * * * The sixty tons-per-day emissions budget shall, unless modified by the Commission through rule-making, apply for federal transportation conformity and is included in the State Implementation Plan only as required by the federal Act."

This language makes clear that the legislature intended that there would be no reversion to a budget of 44 tons per day. Given this, the commentor's reading appears to be inconsistent with the legislative intent because such reading would result in the expiration of the 54 and 60 ton budgets on January 1, 1998 and their replacement with the 44 ton budget.

In addition, the legislature was explicit that the 60 ton budget should apply for the purposes of federal transportation conformity. The commentor reads this directive out of the legislation by focusing (in his comments on both of EPA's notices) on the second clause of the statute, which states "and is included in the State Implementation Plan only as required by the federal Act." The commentor

interprets this to mean that the legislature left it to the AQCC to determine whether a budget was necessary to meet Clean Air Act requirements.

Concluding that no budget is required to meet nonattainment area SIP requirements, the commentor concludes that the legislature would not have wanted the budget in the SIP. However, EPA believes the better reading is that the legislature was indicating that the budget would be part of the SIP as necessary for it to be used for federal transportation conformity purposes, and that the legislature was not leaving it to the AQCC to decide whether the budget was required by the CAA. In this regard, it is noteworthy that the legislature used the present tense—the 60 ton budget "*is* included in the State Implementation Plan * * *" (emphasis added.) Under EPA's conformity rule, the budget may not be used unless it is part of a submitted SIP. In this sense, there is a mandate in EPA's rule that the budget be part of the SIP prior to use for conformity purposes, and it is reasonable to read Colorado S.B. 95–110 as mandating the use of the 60 ton budget.

EPA does not believe the legislature had to specify new rule language in order to amend the SIP. The State legislature does not adopt rules, and thus, there was no need for the legislature to specify replacement rule language. It is also irrelevant that the legislature did not repeal or limit the AQCC's authority to revise the emission budgets. The legislature was indicating that the 60 ton budget would apply unless modified by the AQCC through rulemaking at some future date. The legislature was not providing that the 60 ton budget would only apply if endorsed by the AQCC through rulemaking.

Comments submitted by the Colorado Attorney General's Office support EPA's reading of the legislation. See February 13, 1997 letter signed by Frank Johnson. EPA believes it is reasonable to accord the interpretation of the Attorney General's Office some deference given that it is State legislation and not federal law that is at issue.

Although section 25–7–124(1) provides that the AQCC is the regulatory entity under Colorado law with authority to adopt SIP revisions, EPA believes the legislature retains the authority to adopt SIP revisions in a given instance. That is what the legislature did through the passage of S.B. 95–110.

2. Submission of the 54 and 60 ton budgets violates State law because State law prohibits submission to EPA of measures not required by the CAA. Specifically, C.R.S. sections 25–7–105(1)(a)(III) and 25–7–105.1(1) prohibit the submission of rules or requirements not required by the federal act. Motor vehicle emission budgets are not required by the CAA and therefore, the 54 and 60 ton budgets were not lawfully submitted to EPA.

EPA Response: As a preliminary matter, EPA is not convinced that it should or can take cognizance of the State's compliance or lack thereof with C.R.S. section 25–7–105.1(1). It is well-established in case law under the CAA that EPA must approve a SIP submission if it meets the minimum requirements of section 110 and other relevant sections of the CAA and does not otherwise conflict with the CAA. See, *e.g., Union Elec. Co.* v. *E.P.A.*, 96 S.Ct. 2518 (1976). Even if the State should not have submitted the 54 and 60 ton budgets to EPA under State law, nothing in C.R.S. section 25–7–105.1(1) suggests that the State will be unable to implement or enforce the budgets. Thus, there is no apparent conflict with the requirements of section 110(a)(2)(A) or (E) of the CAA. To the extent C.R.S. section 25–7–105.1(1) purports to restrict what constitutes part of the federally enforceable approved SIP, EPA believes the State legislature lacks the authority to amend the relevant sections of the CAA and the Administrative Procedures Act with respect to SIP approval. The burden is on the State to comply with C.R.S. section 25–7–105.1(1), and EPA should not be forced to assume that burden. See *Union Elec. Co.* v. *E.P.A.*, 96 S.Ct. 2518, 2528–2529 (1976). If the commentor believed the State violated C.R.S. section 25–7–105.1(1), EPA believes the commentor's recourse would have been to challenge the State's submission of the budgets in State court. It is not EPA's role to assure compliance with this State law.

Notwithstanding the foregoing, EPA believes the State legislature issued a specific directive in this case that the 60 ton budget would apply for purposes of conformity determinations. See EPA's response to comment II.A.1., above. Thus, even if the commentor is correct that these budgets were not otherwise required by the CAA and thus, normally could not have been properly submitted by the State pursuant to C.R.S. section 25–7–105.1(1), the legislature had the authority to disregard its general restriction on submitting SIPs not required by the CAA (as set forth in C.R.S. section 25–7–105.1(1)) and to adopt and require the use of the 60 ton budget. In EPA's view, the legislature's specific directive regarding the 60 ton budget overrides the more general proscription contained in C.R.S. section 25–7–105.1(1).

3. The motor vehicle emissions budget (MVEB) does not provide for attainment of the NAAQS. Specifically, the 60 ton budget will result in NAAQS violations at numerous receptor areas unless emissions are reduced in those receptor areas below the levels allowed by the 60 ton regional budget. The regional budget should reflect the values necessary to show attainment in areas where the 60 ton budget would result in NAAQS violations. Also, values necessary to show attainment for areas that would otherwise violate should be used to establish subregional budgets for those areas. The CAA does not allow the substitution of future dispersion modeling for the setting of appropriate emissions budgets.

EPA Response: Contrary to the commentor's assertion, the 60 ton budget already reflects the necessary emissions reductions to show attainment in all of the receptor grids. This is described in the SIP itself and the October 19, 1995 Kevin Briggs [1] memo that the commentor provided with his comments. According to the Kevin Briggs memo, the uncontrolled 2015 scenario would result in mobile source emissions of 68 tons per day with NAAQS violations in a number of grids. The State reduced emissions sufficiently in the violating grids to model attainment in those grids. After making these reductions, the State summed the emissions from all grids and arrived at a budget of 60 tons.

For purposes of responding to the comment, EPA will assume that the commentor meant that the State had not adopted control measures in the SIP that would achieve the 8-ton reduction (from 68 to 60 tons per day) in the violating grids in 2015. The Act clearly requires adopted, enforceable control measures as needed to support attainment and maintenance demonstrations required by Part D of the Act. However, as discussed in the preamble to the recently-adopted revisions to the conformity rule (62 FR 43787, August 15, 1997), EPA believes that it has the flexibility to approve budgets for years beyond the required attainment or maintenance SIP for transportation conformity purposes based on less rigorous demonstrations than are required for these SIPs. In particular, EPA believes it has the authority to approve budgets for years beyond the attainment or maintenance SIP based in

[1] Mr. Briggs is a modeler in the Technical Services Program, Air Pollution Control Division, Colorado Department of Public Health and Environment.

part on enforceable commitments in the SIP to adopt specific controls in the future, or on commitments in the SIP to adopt offsetting emission reductions in the future, as necessary to produce the required emissions reductions.

In this case, the MVEB SIP goes beyond a simple commitment to adopt any needed controls or reductions in the future, because the requirement for dispersion modeling carries with it a mandate for adoption of any future controls necessary to provide for attainment of the NAAQS. DRCOG must achieve the adoption of or obtain enforceable commitments for any control measures necessary to ensure that dispersion modeling for each conformity determination shows no violations of the NAAQS prior to making a conformity determination. This approach to the adoption of controls has two advantages: First, it is self-enforcing (if the dispersion modeling shows violations, DRCOG cannot adopt transportation plans and TIPs); second, it requires a reassessment of control strategies each time a conformity determination is carried out, rather than a one-time effort to adopt controls in advance which may later become obsolete due to changes in the location or magnitude of emissions (and thus, modeled violations). EPA believes that the SIP's requirement for dispersion modeling and future adoption of necessary controls satisfactorily complies with the policy options expressed at 62 FR 43787 for budgets for years beyond the attainment or maintenance demonstration, and is approving this requirement and the 60 ton budget for Denver. EPA would not approve the 60 ton budget for Denver without its companion modeling requirement and the associated requirement for adoption of controls prior to each conformity determination. It should also be noted that the State commits in the SIP to adopt any control measures relied on for future conformity determinations into the SIP if necessary to demonstrate continued maintenance of the standard. See EPA's response at II.A.4., below.

The commentor is correct that the State did not establish subregional budgets. However, EPA's regulations do not require that an area establish subregional budgets. The preamble to EPA's November 24, 1993 conformity rule states, "The SIP may specify emissions budgets for subareas of the region, provided that the SIP includes a demonstration that the subregional emissions budget, when combined with all other portions of the emissions inventory, will result in attainment and/or maintenance of the standard." 58 FR 62196 (emphasis added.) This language makes clear that the establishment of subregional budgets is optional.

Regarding the use of dispersion modeling, EPA agrees that the Act precludes the use of dispersion modeling as a substitute for an emissions budget test. However, EPA's conformity rule did not anticipate situations where a regional dispersion modeling analysis would be used in addition to an emissions budget test. EPA does not believe that such an application of dispersion modeling is precluded by either the Act or the conformity rule. As a practical matter, dispersion modeling in conjunction with an emissions test is at least as protective as establishing and using subregional budgets, because in dispersion modeling a certain target level of emissions has to be met in each grid in order for each grid to show attainment.[2] Even if subregional budgets were adopted, it is quite likely that they would not be developed for each grid. In such a case, it might be possible to show conformity using subregional budgets in cases when it would not be possible using dispersion modeling.

The requirement for dispersion modeling in addition to a budget test is certainly more protective of the NAAQS than the budget-only process envisioned by the conformity rule. The conformity rule only requires the identification of and compliance with a region-wide budget. It is conceivable that an area could show conformity to a region-wide budget and still have localized violations of the NAAQS because growth in emissions occurs in different areas than anticipated. In a dispersion modeling approach, these same localized violations of the NAAQS would preclude a conformity finding.

In summary, the SIP's requirement for a region wide budget in combination with dispersion modeling clearly meets the minimum requirements of the conformity rule, and is at least as protective of the NAAQS as subregional budgets would be.

[2] In this case, the SIP requires that the Denver Regional Council of Governments (DRCOG) support each conformity determination with a dispersion modeling analysis that shows that each grid in the modeling domain will be in attainment, considering the emissions expected from implementation of the transportation plan or Transportation Improvement Program (TIP). If the modeling analysis shows that emissions reductions are needed in any locations in order to provide for future maintenance of the NAAQS, it is incumbent upon DRCOG to identify and ensure implementation of any measures needed to provide those reductions. Thus, DRCOG must satisfy two tests to demonstrate conformity: Compliance with the 60 ton budget, and a dispersion modeling analysis showing no violations.

This commentor also included comments indicating that the PM10 SIP does not include necessary and/or enforceable control measures that will lead to attainment and maintenance of the NAAQS. In particular, the commentor indicated that VMT growth was higher than the SIP anticipated and that the SIP contained no measures to ensure VMT would remain at the SIP-anticipated levels. EPA responded to these comments when it approved the PM10 SIP and will not repeat the comments or responses here. See 62 FR 18716 (April 17, 1997). For purposes of this notice, EPA would add that it does not believe Congress intended, through section 176 of the CAA, to change the way in which States must conduct attainment or maintenance demonstrations. As noted in the April 1997 notice, EPA believes that it may allow a reasonable margin of error for VMT estimates in attainment and maintenance demonstrations, and EPA concludes that no different result should be required for purposes of establishing conformity-related motor vehicle emissions budgets. It should also be noted that any increased VMT will have to be taken into account in any future conformity determinations, and will ultimately make it harder to demonstrate conformity.

4. The submitted MVEB unlawfully attempts to transfer authority to adopt and implement control measures. The commentor objects to the 60 ton budget because the SIP gives DRCOG the responsibility for identifying any necessary controls to achieve emission reductions needed to demonstrate conformity. The commentor believes that this is a delegation of responsibility from the AQCC to DRCOG, in violation of the Act and State law. The commentor further states that any such controls are without legal authority and may not be treated as part of the SIP or be given emissions reduction credit for purposes of conformity.

EPA Response: EPA's conformity rule envisions situations where regulatory and non-regulatory control measures may be needed to provide emissions reductions for a conformity determination. Here, the AQCC is not delegating its authority to adopt control measures, only to identify them. If any measures identified as necessary by DRCOG require a State regulation in order to be implemented (for example, a revision to the I/M or oxygenated fuels program regulations), the AQCC would still need to adopt such regulation or regulation revision pursuant to applicable State law, or meet one of the other requirements in 40 CFR 93.122(a)(3), before DRCOG could take

credit for these emissions reductions in its conformity determination.

However, the conformity rule does not require all regulatory control measures needed for a conformity determination to be incorporated into the SIP, as the commentor asserts. Also, not all control measures for conformity purposes require a regulation in order to be implemented, such as changes in localized street sanding and sweeping practices. EPA is satisfied with DRCOG's current practice of obtaining commitments from local entities to implement non-regulatory control measures and incorporating these commitments into its conformity determinations, just as it obtains commitments from local entities to implement transportation improvement projects during the time frame of the plan and TIP.

It is also worth noting that the SIP, at page XI–9, states, "Any control measure relied on for a conformity determination shall be included in a revised attainment or maintenance SIP unless it is not necessary to demonstrate attainment or maintenance of the standard." EPA views this as a commitment on the part of the State to adopt any measures which are necessary to show continued attainment and maintenance of the standard.

5. The mobile source emissions budgets will ensure that future regional transportation plans and programs will continue to help the region attain and maintain the PM10 standard. Additionally, the budgets are entirely consistent with the conformity provisions of the Clean Air Act Amendments of 1990 and EPA guidance.

EPA Response: EPA agrees that the budgets are consistent with the CAA's conformity requirements.

6. Enforceable budgets that would have reduced emissions volumes in the region were agreed to in February 1995, but the intercession by the legislature reduced these to little more than a suggestion.

EPA Response: EPA agrees that the legislature changed the PM10 budgets. However, EPA believes the budgets are consistent with the requirements of the CAA and EPA's conformity rule, as described in more detail above.

B. The Colorado Attorney General's Office submitted comments in a letter dated February 13, 1997, signed by Frank Johnson, Assistant Attorney General, that respond to several of the comments described in Section II.A., above. The following numbered paragraphs contain summaries of the relevant comments from Mr. Johnson's February 13, 1997 letter. Each comment summary is followed by EPA's response.

1. The Colorado legislature amended the SIP to eliminate the reversion to a 44 ton PM10 budget and to specify a 60 ton PM10 budget. The language of C.R.S. section 25–7–105(1)(a)(III) itself and the legislative history of the statute indicate that the legislature intended a 60 ton PM10 budget to apply for purposes of federal conformity. Thus, no further rulemaking action by the AQCC was necessary.

EPA Response: EPA agrees with this interpretation of C.R.S. section 25–7–105(1)(a)(III) and believes the interpretation is entitled to deference.

2. The references to the 60 ton budget in C.R.S. section 25–7–105(1)(a)(III) include the smaller emissions budgets for the years before the 60 ton budget applies. The Colorado legislature used "sixty tons-per-day emissions budget" as a shorthand to describe the interim budgets that apply before 2006 and the 60 ton budget that applies in 2006 and after. The legislature eliminated the provision of the budgets that contained the expiration of the higher budgets and reversion to 44 tons; the legislature did not intend to change the structure of interim budgets leading to a 60 ton budget in 2006.

EPA Response: Although the statute could have been drafted more clearly, EPA believes the interpretation of the Attorney General's Office is reasonable and is entitled to deference. Therefore, EPA concludes that the statute should be interpreted consistent with the letter submitted by the Attorney General's Office.

3. No further rulemaking by the AQCC was necessary to eliminate the expiration of the 60 ton budget. A contrary reading would lead to the result that the 44 ton budget would apply starting in 1998 when the legislature clearly did not want this to happen. The legislature made clear that the 44 ton reversion would only apply for purposes of state law.

EPA Response: EPA agrees with this interpretation and believes it is entitled to deference.

4. No further public hearings by the AQCC were necessary following the Colorado legislature's amendment of the budgets. In addition, no notice and hearing were required before the legislature itself. The adoption of the SIP by the AQCC in February 1995 and the amendment of the SIP by the legislature in May 1995 were steps in the process of developing a single SIP revision. Nothing in EPA's rules requires additional hearings at subsequent steps in the state review process. In addition, the legislative process is open and public and the legislators are accountable to the electorate.

EPA Response: EPA responds to these comments in Section II.C., below.

5. State statutes do not prohibit the submission of the 60 ton budget for inclusion in the SIP. Other commentors' reading of C.R.S. section 25–7-105(1)(a)(III) is not consistent with legislative intent. When the Colorado legislature said the 60 ton budget "is included in the SIP only as required by the federal act", the legislature meant that the budget is included in the SIP only as required in order for such emissions budget to apply for the purposes of transportation conformity. Commentors' reading would negate the 60 ton budget and result in the application of the 44 ton budget, something the legislature clearly did not intend. The argument that C.R.S. section 25–7-105.1 prohibits the inclusion of the 60 ton budget in the SIP because it is not required by the CAA or EPA regulations also fails. The specific provisions of 25-7–105(1)(a)(III), that indicate the 60 ton budget will apply for federal transportation conformity, control over the more general provisions of 25–7–105.1.

EPA Response: See EPA's response to comment II.A.2 above. In addition, EPA believes the interpretation of the Attorney General's Office is entitled to deference on this question of State law.

C. August 5, 1997 Notice: Procedural Issues. Comments on the October 3, 1996 notice of proposed rulemaking raised concerns about the process the State followed in adopting the PM10 budget. EPA sought additional comment on the question whether the State met the CAA's notice and public hearing requirements in adopting the PM10 budget. The following numbered paragraphs contain summaries of the comments received on the August 5, 1997 notice of proposed rulemaking that are related to the notice and public hearing issue. EPA's response follows the last comment summary related to this issue.

1. Hearings held by the AQCC were adequate to satisfy the CAA's notice and hearing requirements. The hearings before the AQCC and the subsequent action by the General Assembly should be viewed as a single process that led to the adoption of the PM10 budgets SIP. There was no requirement to hold additional hearings before the General Assembly. The General Assembly was well aware there were parties opposed to the adoption of the 60 tons-per-day emission budget.

2. The legislative process is open and public and the legislators are

accountable to the electorate. The General Assembly provided an opportunity for public input through a public hearing before a committee of reference and public debate on the floor of each house. Environmental groups were actively involved in the debate. In addition, the public was on notice that the PM10 budgets SIP would be subject to review by the legislature as provided by section 25–7–133(1), C.R.S. Therefore, the legislative session itself complied with the notice and hearing requirements for adoption of the SIP.

3. There was no need for the AQCC to hold a public hearing to confirm actions taken by the General Assembly.

4. The adequacy of the legislative process with regard to satisfying the public hearing requirement of section 110 of the CAA and 40 CFR 51.102 is irrelevant. The legislature, when it passed S.B. 95–110, left discretion with the AQCC to determine the appropriate budget to submit to EPA. (EPA describes and responds to this comment on this issue in Sections II. A. and B., above, and will not respond further in this section.)

5. If EPA decides that the legislature mandated the PM10 budget as submitted, the legislature did not satisfy the requirements of 40 CFR 51.102 for notice and hearing. In addition, notice and hearing granted by the AQCC did not satisfy the requirement for notice and hearing before the legislature.

EPA Response: It has been particularly difficult for EPA to reach a decision on this issue. EPA takes very seriously the CAA's notice and public hearing requirements and believes that legitimate questions have been raised regarding the process the State followed in adopting the PM10 budget SIP. On balance, however, EPA agrees with the commentors who asserted that notice and public hearing before the AQCC in February 1995 satisfied the notice and hearing requirements of the CAA and EPA's regulations.[3] Although the General Assembly reached a different result than the AQCC, relevant issues regarding the appropriate size and applicability of the PM10 budgets were aired in the hearing before the AQCC, and the budgets the General Assembly ultimately adopted appear to be a logical outgrowth of the hearing before the AQCC. As noted by one of the commentors, following the AQCC's February 1995 hearing, the AQCC could have adopted the same budgets the General Assembly ultimately adopted. Therefore, EPA concludes that the budget established in the SIP was the result of adequate notice and hearing.

In finding that notice and public hearing were adequate in this case, EPA wants to make two points. First, EPA is finding that the process the State followed satisfied the minimum requirements for notice and public hearing for purposes of Clean Air Act requirements and EPA regulations; EPA is not making a finding that the State process was ideal or should necessarily serve as a model for future actions. Second, EPA wants to make it clear that legislative amendment of AQCC rulemaking may not always satisfy the CAA's notice and hearing requirements. EPA believes the legislative action must bear some logical relationship to the notice and public hearing previously concluded before the rulemaking agency, or the notice and public hearing requirement must be satisfied by the legislature itself or by subsequent administrative action.

As a prudential matter, EPA would recommend that the State take steps to optimize public participation so that this type of issue does not arise in the future. For example, although more than one commentor suggested the General Assembly was aware of opposition to the 60 ton budget, none of the commentors indicated whether the General Assembly or relevant committees thereof actually considered the testimony and evidence presented to the AQCC; EPA believes it would be prudent to insure that they do so in the future.

EPA does not agree with those commentors who assert that the legislative action standing alone met EPA's notice and public hearing requirements. EPA's regulations are quite specific in their requirements. Among other things, 30 days prior notice is required. See 40 CFR 51.102. No commentor has suggested that the legislature or one of its committees complied with this requirement. Also, EPA does not agree with the commentor who asserts that C.R.S. section 25–7–133(1) satisfied the CAA's notice requirements, in particular since prior to the General Assembly's adoption of the PM10 budget SIP, this statute only provided for the General Assembly to accept or reject a SIP revision adopted by the AQCC, rather than alter the budget SIP as was done in this case.

Because EPA concludes that the CAA's notice and hearing requirements were met in this case, EPA agrees with the commentors who asserted there was no need for the AQCC to hold an additional hearing after the General Assembly had acted. However, it is conceivable that further notice and hearing before the AQCC would have been one way for the State to satisfy EPA's notice and public hearing requirements if the February 1995 AQCC hearing had not been sufficient for this purpose. Another way would have been for the General Assembly itself to comply with EPA's notice and hearing requirements.

Regarding one commentor's assertion that notice and hearing requirements were met because environmental groups were actively involved in the debate regarding the PM10 budgets SIP within the General Assembly, EPA was unable to substantiate this claim through any materials submitted by commentors or through independent research. However, EPA's research revealed that several other parties, including the AQCC's hearing officer for this SIP, did provide testimony before the Legislative Council and/or a committee of reference.

D. August 5, 1997 Notice: Substantive Issues. EPA received comments on its October 3, 1996 notice of proposed rulemaking that raised concerns regarding the adequacy of the emissions budgets. Based on these comments, EPA concluded that it needed additional input from commentors in order to make an informed decision. Thus, in its August 5, 1997 notice, EPA sought additional comment regarding the following two issues: (1) Whether it was appropriate for the budget SIP to include a single NO_X budget from the 1995 attainment demonstration of 119.4 tons per day when the maintenance demonstration NO_X emissions inventory was 102.7 tons per day, and (2) whether potential growth in non-mobile sources was adequately considered in setting the emissions budgets for years beyond the PM10 SIP attainment and maintenance years. The numbered paragraphs below contain summaries of the comments received on these issues. For each issue, EPA's response follows the last comment summary for the particular issue. EPA has noted where the comment summary includes comments on the October 3, 1996 notice.

Issue 1: Whether it was appropriate for the budget SIP to include a single NO_X budget of 119.4 tons per day when the maintenance demonstration NO_X emissions inventory was 102.7 tons per day.

Comment Summaries

1. EPA's analysis of this issue in its August 5, 1997 notice was correct. The NO_X emissions budget of 119.4 tons per day is consistent with the available safety margin, and therefore need not conform to the inventory in the maintenance demonstration.

[3] These notice and public hearing requirements can be found in section 110(a)(2) of the CAA, 42 U.S.C. section 7410(a)(2), and 40 CFR 51.102.

2. The analysis of the 60 ton PM10 budget assumed NO_X emissions of 119.4 tons per day. This analysis showed that the area would continue to attain the standard with these emissions values. Thus, the maintenance year emissions of NO_X are irrelevant.

3. Under EPA's conformity rule, projections of emissions in an attainment SIP beyond the attainment year are not considered emissions budgets unless the SIP explicitly states such an intent. The SIP states no such intent.

4. EPA should consider the fact that the Denver area has not violated the PM10 standard in nearly five years and the highest recorded value in 1996 was well below the standard. Also, EPA's promulgation of a new standard for PM10 may soon render these budget and conformity issues moot.

5. Contrary to EPA's analysis in its August 5, 1997 notice, the NO_X mobile source emissions budget is based on motor vehicle emission estimates in the Denver PM10 SIP, and not a margin of safety. The AQCC did not adopt a margin of safety analysis in the SIP which is why the analysis was not submitted by the State as part of the SIP submission. The NO_X budget submitted by the State offers no basis for the rationale offered by EPA in its August 5, 1997 notice. The conformity rule provides that transportation agencies may not infer additions to budgets not explicitly intended by the SIP; the same rule must apply to EPA. The SIP must quantify the amount by which motor vehicle emissions could be higher while still allowing a demonstration of maintenance and must specifically indicate that the excess emissions are to be allocated to the MPO for transportation conformity purposes. The SIP did not meet either of these requirements. In fact, in the maintenance year there are no excess emissions to allocate. The RAQC staff's analysis, which EPA cites in its August 5, 1997 notice, does not consider emissions from all sources and does not require that emissions be distributed to all grid receptors. The maintenance demonstration approved by the AQCC and submitted as part of the PM10 SIP that EPA has approved shows that motor vehicle NO_X emissions must be no higher than 102.7 tons in order to demonstrate maintenance. The RAQC staff's analysis shows that more emissions could be added in portions of the Metro area not yet developed, but it provides no basis for concluding that more emissions can safely be added where vehicle travel is currently occurring. Since the SIP does not restrict emissions to the undeveloped portions of the Metro area, there is no basis to conclude there are excess emissions to be allocated and there is no basis to rely on the RAQC staff's analysis. Adding 17 additional tons of NO_X in the developed portions of the Metro area in the maintenance year would cause estimated concentrations to exceed the NAAQS. In addition, the RAQC staff's analysis was never officially adopted by anyone. We reiterate comments made on the October 3, 1996 proposal that EPA approve the 119.4 ton per day budget as the applicable budget only for analyses performed up to the attainment year, and that EPA clarify that the applicable budget after the attainment year is the NO_X estimate contained in the maintenance demonstration portion of the approved SIP.

This same commentor also indicated in comments on EPA's October 3, 1996 notice of proposed rulemaking that the use of a 119.4 tons per day NO_X emission budget for years after the attainment year would not be consistent with the obligation to set an emission budget consistent with the demonstration of maintenance. In those comments, the commentor cited to the preamble statement in EPA's November 24, 1993 conformity rule that, "[i]n all situations, the emissions budget in the SIP must be consistent with the attainment or maintenance demonstration * * *" Because the 119.4 ton budget is not consistent with the 102.7 ton inventory in the maintenance year, the commentor argued that the appropriate NO_X budget would be 119.4 tons per day NO_X up to the attainment year, but would be 102.7 tons per day NO_X beyond the attainment year. EPA Response: In its August 5, 1997 supplemental notice, EPA proposed approval of the PM10 and NO_X budgets for Denver based in part on the safety margin analysis conducted by the RAQC. This analysis sought to demonstrate that mobile source emissions in the Denver modeling region could be as high as 221 tons per day of PM10 before violations of the NAAQS would occur. After reviewing all of the comments and carefully considering the requirements of the conformity rule and the Act, EPA has determined that it can no longer endorse the RAQC's suggested approach for defining a safety margin.

The conformity rule, as amended on August 15, 1997, defines safety margin as the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance of the relevant air quality standard. For example, many maintenance plans include maintenance year emission inventories which are lower than the attainment year inventory. The difference between these two levels of emissions could be considered a margin of safety. Some attainment SIPs are submitted with modeled attainment values which are somewhat below the standard; the difference in emissions between the SIP level and the level that would just provide for attainment of the standard could be considered a safety margin.

However, the RAQC's analysis is based on maximizing emissions in all grids in the modeling domain, and as such is more of a "carrying capacity" analysis. It bears no relation to the attainment or maintenance year emission inventory; emissions in all portions of the modeling domain were increased to levels equivalent to downtown Denver, including remote rural regions, even though activity levels in the remote grids in the attainment or maintenance year were not high enough to create such emissions levels. The RAQC's approach to establishing a safety margin would appear to conflict with the requirements of section 176(c)(2)(A) of the CAA.

It would have been more appropriate to calculate a safety margin for Denver by determining the difference in emissions between the modeled 1995 attainment value (147.7 ug/m3) and the standard of 150 ug/m3, by proportionally increasing the 1995 inventory used in the modeling until the standard had been reached. A safety margin calculated in this way would likely only amount to a few tons per day. However, the RAQC did not calculate its safety margin this way, and EPA has decided it cannot rely on the RAQC's analysis for purposes of this action, nor is EPA generally endorsing this approach for the establishment of safety margins in other nonattainment or maintenance areas. Thus, EPA is not relying on the RAQC's safety margin analysis to justify approval of the 119.4 tons per day NO_X budget.

In addition, EPA finds unconvincing the argument that 1998 projections of NO_X emissions would not be a budget for conformity purposes unless the SIP states explicitly states such an intent. The conformity rule is clear that approved attainment and maintenance demonstrations and any required milestone demonstrations establish budgets which must be used for conformity until superseded by subsequent approved SIPs for those same years. In this case, the PM10 SIP's 1998 maintenance demonstration was

required by section 189(c) of the CAA; i.e., it was a required milestone. EPA notes that the State did establish a 1998 PM10 budget, and that 1998 PM10 budgets have been established for other PM10 nonattainment areas within the State of Colorado. Also, EPA does not agree with the approach of establishing a budget for one precursor of PM10 for any given year, but not all of them. Since the PM10 and NO_x inventories work in tandem as part of the attainment and maintenance demonstrations in Denver, it does not make technical sense to regulate one pollutant through conformity but not the other. The conformity rule is clear that these inventories are to be treated as budgets for purposes of conformity; a state may not evade this requirement by merely declaring an intent that a required attainment, maintenance or milestone inventory for a pollutant or pollutant precursor is not to be considered a budget. The conformity rule language cited by the commentors in asserting that the 1998 NO_x budget is not to serve as a budget refers to optional projections of emissions in SIPs that are not otherwise required by the Act or EPA SIP policy. In this case, both PM10 and NO_x motor vehicle emissions inventories were required as part of the maintenance/milestone demonstration in the PM10 SIP.

However, EPA notes that the NO_x budget of 119.4 tons per day from the 1995 attainment demonstration was used in the modeling analysis which the APCD used in adopting the 60 ton PM10 budget. EPA also notes that projected NO_x emissions from the transportation plan and TIP (not to exceed the adopted budget of 119.4 tons per day) are required to be used in the dispersion modeling conducted for each conformity determination. Therefore, since the budgets and their associated dispersion modeling requirement will provide for maintenance of the NAAQS, as discussed in section II. A. 3., above, EPA is also approving the 119.4 tons per day NO_x budget for all future years. EPA views the latest submission which relied on this analysis as setting the valid budget for this period for transportation conformity purposes, which is today approved into the SIP.

Finally, as noted by one commentor, EPA promulgated a revised PM10 NAAQS on July 18, 1997. (See 62 FR 38652.) Specifically, the form of the NAAQS was revised in a way that makes the standard less stringent overall. As a result of the promulgation of the new PM10 NAAQS, EPA may in the near future revoke the old PM10 NAAQS for Denver. However, EPA has not yet decided whether conformity requirements will continue to apply to areas for which the old PM10 NAAQS has been revoked and for which no new nonattainment designation has been made. Furthermore, the old PM10 NAAQS has not yet been revoked for Denver. Therefore, the budgets are not moot, and the mere possibility that the new NAAQS may render the budgets moot is not relevant to EPA's decision to approve the budgets. Also, the fact that the area has been attaining the PM10 NAAQS, while providing an extra measure of comfort regarding the attainment and maintenance/milestone demonstrations in the PM10 SIP, does not by itself provide an adequate technical basis for EPA to approve the budgets.

Issue 2: Whether potential growth in non-mobile sources was adequately considered in setting the emissions budgets for years beyond the PM10 SIP attainment and maintenance years.

Comment Summaries

1. As EPA noted in its August 5, 1997 notice, the conformity rule does not require consideration of growth in non-mobile sources each time a conformity determination is made. EPA's analysis in its August 5, 1997 notice is consistent with the application of conformity requirements in nonattainment areas throughout the country. Further, the conformity rule does not require the mobile source sector to offset projected growth in emissions from non-mobile sources.

2. No growth in non-mobile sources is expected over the next 20 years. Thus, growth in non-mobile sources is a non-issue. This commentor submitted data to support this assertion.

EPA Response: In addition to the comments received above, the preamble to EPA's August 15, 1997 amended conformity rule is relevant to this question and EPA has considered the preamble language in addressing this issue.

In conducting the modeling that led to the establishment of the 60 ton budget, APCD held all non-mobile sources (and mobile source NO_x) constant at 1995 levels. There was concern that the 60 ton budget would not provide for attainment if non-mobile source emissions were to increase in future years.

Normally, EPA would not approve a budget that had been established without considering growth in all source categories. The Act and EPA policy are clear that attainment and maintenance SIPs must consider growth in all sources in demonstrating attainment or maintenance of the NAAQS, and the conformity rule's budget test relies on the fact that SIP budgets do consider growth in all sources to ensure that transportation plans, programs and projects will not cause or contribute to violations of the NAAQS. The preamble to EPA's August 15, 1997 conformity rule establishes that growth in non-mobile sources must be considered in setting motor vehicle emission budgets for years beyond the attainment or maintenance demonstration (62 FR 43787–43788).[4]

However, in response to EPA's request for public comment, the RAQC submitted documentation indicating there will be no growth in non-mobile sources at any time in the near future. The RAQC has been working since 1995 on development of a long-range air quality plan known as the Blueprint for Clean Air for PM10 and two other pollutants. As part of this plan, long-term projections of emissions from all source categories have been developed by the RAQC and the State Air Pollution Control Division. The information submitted to the docket for this rulemaking by the RAQC demonstrates that non-mobile sources will remain below 1995 levels through at least the year 2020, and will be approximately 5 percent below 1995 levels in 2020.

Since it does not appear that there will be any growth in non-mobile sources in the Denver area over the time period for which the budgets were analyzed, EPA is approving the MVEB even though growth in these sources was not assessed for purposes of developing and adopting the MVEB.

In its August 5, 1997 supplemental notice, EPA proposed to approve the budgets in part based on a safety margin analysis prepared by the RAQC. In its analysis, EPA noted that the calculated safety margin of 221 tons per day of PM10 in 2015 was developed assuming 2015 levels of non-mobile source emissions; i.e., growth, or lack thereof, in non-mobile source emissions had been factored into the calculation of the so-called safety margin. As described above, EPA no longer believes the RAQC characterization of safety margin is consistent with the CAA or the conformity rules. Therefore, EPA is not relying on the RAQC safety margin analysis in approving the budgets.

[4] A number of commentors indicated that the conformity rule does not require consideration of growth in non-mobile sources for conformity determinations. This is accurate but should be distinguished from the initial setting of motor vehicle emission budgets in SIPs. The preamble to EPA's August 15, 1997 conformity rule is clear that growth in non-mobile sources must be considered in setting "out-year" budgets. 62 FR 43787–43788.

III. Final Action

EPA is approving the Denver PM10 and NO_X mobile source emissions budget SIP revisions submitted by the Governor of Colorado on July 18, 1995 and April 22, 1996 respectively as revisions to the Colorado SIP. The revisions were submitted in order that they could be used to assess the conformity of transportation plans, transportation improvement programs and, where appropriate, federally funded projects for applicable periods prescribed under conformity requirements within the Denver PM10 nonattainment area.

The current and future year mobile source emissions budgets that comprise part of these SIP revisions are as follows:

PM10: 54 tons per day, for analysis years 1998–2005
60 tons per day, for analysis years 2006 and beyond
NO_X: 119.4 tons per day, for analysis years 1998 and beyond

These budgets are applicable to the PM10 SIP modeling domain.

For these pollutants, these budgets supersede any prior budgets for the Denver PM10 nonattainment area for the same time frames. The metropolitan planning organization for the Denver PM10 nonattainment area will have to demonstrate conformity to these budgets within 18 months of EPA's approval of these budget SIPs, in accordance with 40 CFR 93.104(e)(3).

It should be noted that, in addition to the budgets themselves, the SIP revisions that EPA is approving today contain other provisions that must be followed in making transportation conformity determinations within the Denver PM10 nonattainment area. These provisions include, but are not necessarily limited to, descriptions of relevant inventory categories, definitions of applicability, and requirements related to dispersion modeling.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 26, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraphs (c)(84) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(84) The Governor of Colorado submitted the Denver PM10 mobile source emissions budget State Implementation Plan (SIP) with a letter dated July 18, 1995. The Governor submitted the Denver NO_X mobile source emissions budget State Implementation Plan (SIP) with a letter dated April 22, 1996. The PM10 and NO_X mobile source emissions budgets and other provisions in these SIP

submittals are used to assess conformity of transportation plans, transportation improvement programs, and transportation projects.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission, "Ambient Air Quality Standards" regulation 5CCR 1001–14, Section A.1. Budgets for the Denver Nonattainment Area (Modeling Domain) PM10, Sections A.2. and A.3., and Sections B and C, adopted on February 16, 1995, effective April 30, 1995, as amended by the Colorado General Assembly through enactment of Colorado Senate Bill 95–110, which Bill was enacted on May 5, 1995 and signed by the Governor of Colorado on May 31, 1995. (See paragraph (c)(84)(i)(B) of this section).

(B) Colo. Rev. Stat. section 25–7–105(1)(a)(III), enacted by the Colorado General Assembly on May 5, 1995 as part of Colorado Senate Bill 95–110 and signed by the Governor of Colorado on May 31, 1995.

(C) Colorado Air Quality Control Commission "Ambient Air Quality Standards" regulation 5CCR 1001–14, Section A.1. Budgets for the Denver Nonattainment Area (Modeling Domain) Nitrogen Oxides, as adopted June 15, 1995, effective August 30, 1995.

[FR Doc. 98–8214 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 059–0011; FRL–5988–9]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on February 9, 1998. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of particulate matter (PM) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control PM emissions from residential wood combustion. Thus, EPA is finalizing simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on April 30, 1998.

ADDRESSES: Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue, #201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the Arizona SIP are Maricopa County (Maricopa) Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance (Woodburning Ordinance). These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on August 31, 1995.

II. Background

On February 9, 1998 in 63 FR 6505, EPA proposed granting limited approval and limited disapproval into the Arizona SIP of the following rules: Maricopa Rule 318 and the Woodburning Ordiance. Rule 318 and the Woodburning Ordinance were adopted by Maricopa Environmental Services Department on October 5, 1994. These rules were adopted as part of Maricopa's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for PM–10 and in response to CAA requirements. A detailed discussion of the background for the rules and the nonattainment area is provided in the proposed rule (PR) cited above.

EPA has evaluated the submitted rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of these rules in order to strengthen the SIP. EPA is also finalizing the limited disapproval requiring the correction of the following rule deficiencies: inappropriate discretion by the Control Officer (Director's discretion) in the approval of woodburning devices and reference of non-EPA-approved woodburning device certification procedures. A detailed discussion of the rule provisions and evaluations has been provided in the PR and in the technical support document (TSD) available at EPA's Region IX office (TSD dated January 1998).

III. Response to Public Comments

A 30-day public comment period was provided in 63 FR 6505. EPA received comment letters on the PR from two parties: ADEQ and the Hearth Products Association (HPA). The comments have been evaluated by EPA and a summary of the comments and EPA's responses are set forth below.

Comment

ADEQ comments that the reference in Rule 318 to non-EPA-approved certification procedures for woodburning devices is necessary because EPA's wood heater standards found in 40 CFR Part 60 Subpart AAA do not apply to fireplaces and other woodburning technologies found in Maricopa County. ADEQ believes that EPA cannot disapprove the use of non-EPA procedures when EPA has neither developed federal certification procedures nor approved locally-developed certification procedures for clean woodburning technologies that are not addressed in Subpart AAA. ADEQ states that EPA needs to approve the certification methodology so that air pollution agencies can continue to address woodsmoke emissions from devices not subject to EPA certification.

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Comment

HPA comments that EPA's wood heater certification standards in Subpart AAA do not address all woodburning devices and that the non-EPA-approved testing and certification protocols referenced in submitted Rule 318 are "technically and legally appropriate" for evaluating woodburning devices not addressed by Subpart AAA. HPA notes that EPA has approved Colorado's Regulation No. 4 which provides for the approval of woodburning devices that are not addressed by EPA's certification procedures. HPA states that certification protocols for woodburning devices that are not subject to Subpart AAA provide incentives for the development of clean woodburning technologies and are necessary to avoid denial of access to key markets.

Response

EPA acknowledges that its certification standards in Subpart AAA do not cover all woodburning technologies and that Maricopa's residential wood combustion control program addresses woodburning devices that are not covered by Subpart AAA. Certification standards for woodburning devices can be approved into SIPs if they are submitted for approval to EPA and are found by EPA to meet federal standards and criteria. For example, the pellet stove certification procedure in Colorado Regulation No. 4 adopted on June 24, 1993 was submitted to and approved by EPA. 40 CFR 52.320(c)(82)(i)(A). Rule 318, however, references a certification protocol that has never been submitted to EPA for review and approval. For this reason and the director's discretion deficiency discussed elsewhere in the PR, EPA cannot fully approve Maricopa Rule 318 and the associated Woodburning Ordinance.

IV. EPA Action

EPA is finalizing limited approval and limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing limited disapproval of these rules because they contain deficiencies, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the PR, upon the effective date of this FR, the 18-month clock for sanctions and the 24-month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the FR, either the highway sanction or the offset sanction will be imposed at the 18-month mark. It should be noted that the rules covered by this FR have been adopted by the Maricopa and are currently in effect in Maricopa County. EPA's limited disapproval action will not prevent a Maricopa or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1998.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 20, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(82)(i)(D) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(82) * * *

(i) * * *

(D) Rule 318 and Residential Woodburning Restriction Ordinance, adopted on October 5, 1994.

* * * * *

[FR Doc. 98–8414 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA 041–0067b; FRL–5983–9]

Approval and Promulgation of State Implementation Plans and Redesignation of California's Ten Federal Carbon Monoxide Planning Areas to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on maintenance plans and redesignation requests submitted by the California Air Resources Board (CARB) to redesignate ten of California's federal carbon monoxide planning areas from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO). They are: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving California's maintenance plans and redesignation requests because they meet the requirements set forth in the CAA. In addition, EPA is approving a related State Implementation Plan (SIP) submission by CARB, an Air Quality Attainment Plan for CO for Fresno.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed.

DATES: This rule is effective June 1, 1998 without further notice unless the Agency receives relevant adverse comments by April 30, 1998. If the effective date is delayed timely notice will be published in the **Federal Register**.

ADDRESSES: As indicated in the parallel proposed rule, comments should be addressed to the EPA contact below. The rulemaking docket for this notice, Docket No. 98-XX, may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, DC 20460.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123–1095.

San Joaquin Valley Unified APCD, 1999 Tuolumne St., Suite 200, Fresno, CA 93721.

Placer County, DeWitt Center, 11464 B Avenue, Auburn, CA 95603.

Sacramento Metropolitan APCD, 8411 Jackson Road, Sacramento, CA 95826.

Bay Area Air, Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184.

El Dorado County, 2850 Fairlane Ct., Bldg. C, Placerville, CA 95667–4100.

Yolo-Solano County, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882.

San Diego County, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: Larry A. Biland, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA, 94105–3901. Telephone: (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

A. Areas Requesting Redesignation

The ten areas requesting redesignation were determined to be nonattainment for CO in the November 6, 1991, **Federal Register** (Vol. 56, No. 215, pp. 56723–56725). CARB's emission control programs, including strict motor vehicle emission standards and the clean fuels program, have reduced CO emissions. The decrease in emissions has improved CO air quality so that they now attain the National Ambient Air Quality Standard (NAAQS) and are therefore eligible for redesignation to attainment for the national CO standard. The ten areas are:

Bakersfield Metropolitan Area
Chico Urbanized Area
Fresno Urbanized Area
Lake Tahoe No. Shore Area [1]
Lake Tahoe So. Shore Area [2]
Modesto Urbanized Area
Sacramento Area [3]
San Diego Area [4]
San Francisco-Oakland-San Jose Area [5]
Stockton Urbanized Area

Eight of the areas were classified as moderate nonattainment, while two areas (Lake Tahoe No. Shore Area and Bakersfield Metropolitan Area) were unclassified. Moderate areas are those with an eight-hour average CO design

[1] Placer County part of Lake Tahoe Air Basin.

[2] El Dorado County part of Lake Tahoe Air Basin.

[3] Urbanized parts of Sacramento, Placer, and Yolo Counties.

[4] Western part of County only.

[5] Urbanized parts of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties.

value between 9.1 and 16.4 parts per million (ppm) or less. (The design value is the highest of the second high eight-hour concentrations observed at any site in the area over eight consecutive quarters and is the value on which the determination of attainment or nonattainment is based.) An "unclassified" nonattainment area is one with data showing no violations but, because it had been designated as nonattainment prior to the 1990 CAA Amendments, was continued as nonattainment by operation of law until redesignation requirements are completed.

II. Evaluation Criteria

Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of CAA;
3. The air quality improvement must be permanent and enforceable;
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA;
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

III. Review of State Submittal

EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission. In this instance, a completeness determination was made by operation of law. The redesignation requests for Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area meet the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the CO NAAQS

The State and Local Air Monitoring Stations (SLAMS) form the network of monitoring stations that provide the data used to demonstrate attainment. This network is reviewed annually by the CARB and the U.S. EPA as part of the development of the State and Local Air Monitoring Network Plan, as required by Title 40, Code of Federal Regulations (CFR), Part 58. All CO data reviewed to confirm attainment were retrieved from the Aerometric Information Retrieval System (AIRS) maintained by U.S. EPA. These data were reviewed for completeness, especially for the winter months of November, December, and January, during which concentrations are highest. The data used to confirm attainment are the CO eight-hour design values. The design value is the highest of the second high eight-hour concentrations observed at any site in the area over eight consecutive quarters. Table 1 lists the design value for each nonattainment area. EPA has also reviewed the most recent years' data in AIRS as a further check that the air quality levels in these areas show no violations; these design values are provided in the final column of Table 1.

TABLE 1.—CARBON MONOXIDE DESIGN VALUES

Nonattainment area	Attainment period [6]	Design value (ppm)	1995–1996 Design value (ppm)
Bakersfield	[7] 1992–1994	6.1	5.6
Chico	[8] 1993–1995	5.4	5.3
Fresno	[9] 1993–1995	9.1	8.3
Lake Tahoe North Shore	1993–1994	3.8	[10] 3.2
Lake Tahoe South Shore	1993–1994	7.4	5.3
Modesto	1993–1994	6.6	5.6
Sacramento Area	1993–1995	9.1	7.1
San Diego	1993–1994	7.0	6.0
San Francisco-Oakland-San Jose	1993–1994	7.2	5.8
Stockton	1993–1994	7.5	6.7

[6] Except as otherwise noted, data are from calendar years 1993 and 1994.
[7] *Bakersfield:* The sites used for the attainment demonstration were closed during the third quarter of 1994. Therefore, the eight-hour design value was based on CO data from November 1992 through February 1993 and November 1993 through February 1994.
[8] *Chico:* The 1993–1994 period is missing two of the eight months that have potential for high CO values; therefore, the eight-hour design value was based on CO data from November 1993 through February 1994 and November 1994 through February 1995.
[9] *Fresno:* The site triggering the nonattainment designation, Fresno-Olive, was closed during 1990. Data supporting the attainment demonstration are from Fresno-Fisher, a site determined to be equivalent. CO data from the Fresno-Fisher site are for November 1993 through January of 1994 and December 1994 through February 1995.
[10] 1994–1995 data.

Air quality data show that the ten areas no longer violate the national eight-hour CO standard.

2. Fully Approved SIP Under Section 110(k) of the CAA

As set forth in the CAA, the applicable requirements for redesignation are found in sections 110, part D, and 211 (m)(1). The required SIP elements were submitted by CARB and are being approved below.

a. Attainment Demonstration for Fresno

The CAA requires an attainment demonstration for all CO nonattainment areas that have a design value greater than 12.7 ppm. The only nonattainment area of the ten included in this action that falls under this condition is the Fresno-Clovis urbanized area which had a design value of 13 ppm. The original CO attainment demonstration for the

Fresno Urbanized nonattainment area was submitted by California to EPA on December 28, 1992. Table 2 shows the Rollback Analysis for the Fresno Nonattainment Area. The demonstration uses a direct proportional rollback analysis which assumes a linear correlation between CO emissions and ambient concentrations of CO. The design value was chosen according to EPA's criteria which is the second highest recorded 8-hour concentration of CO during 1988 and 1989. The analysis used a design value of 13.0 ppm and a target of 9.0 ppm (the Federal standard). This analysis was done for the years 1988 through 1995 to compare target emissions levels and to allow for meteorological variations which may have impacted CO levels. Table 2 also lists the wintertime emissions estimates for 1988 through 1995 based on the 1987 base inventory. The analysis used the wintertime on-road mobile source inventory since there are no stationary CO sources near the monitoring sites. The design monitoring site is located in the urban core of the city (Shields and First) and there are no industrial CO sites that impact this location. The vehicle emission estimates, which are based on relatively new speed correction factors, assume the benefits of the CARB regulations prescribing the oxygenate content of gasoline. The estimates do not include the benefits of an Enhanced Inspection and Maintenance program for on-road motor vehicles or District proposed transportation control measures. Table 2 also includes the annual second high ambient CO concentrations for each year used in the rollback calculations and the resulting "emission target". The emission target is an estimate of the maximum amount of emissions that should provide for attainment.

TABLE 2.—ROLLBACK ANALYSIS

[(Data is from the 1992 SIP submittal) Fresno Carbon Monoxide Nonattainment Area [10]]

	1988	1989	1990	1991	1992	1993	1994	1995
On-road mobile emissions (t/d)	402	398	371	356	308	294	280	266
Second highest recorded value (ppm)	[11]13.0	[11]12.6	[12]8.8	[12]9.0	.....	.....	.....	.....
Emission Target (t/d){C=(A×9 ppm)÷B}	278	284	379	356	.....	.....	.....	.....

[10] Carbon monoxide wintertime emission estimates for motor vehicle emissions are calculated using factors (EMFAC7EPSCFCO) and the benefits of CARB's oxygenated fuel regulation.
[11] Monitoring site located at Olive Street.
[12] Monitoring site located at First Street.

The rollback analysis for Fresno projected that attainment would be achieved by 1995, based on a linear projection of reductions required to achieve attainment. The actual 1993–1995 design value for the entire nonattainment area was 9.1 ppm. EPA's review of the 1995–1996 air quality data entered into the AIRS data base indicates that the actual 1995–1996 design value for the Fresno, 1145 Fisher St. CO monitor was 8.3 ppm. This trend is consistent with evidence that the Fresno Area CO emissions continue to drop.

b. New Source Review (NSR) SIP Submittals

Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," EPA is not requiring full approval of a Part D NSR program by California as a prerequisite to redesignation to attainment. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully approved Part D NSR program so long as the program is not relied upon for maintenance. California has stated in their redesignation request that they have not relied on a NSR program for CO sources to maintain attainment.

c. Contingency Measures for VMT Exceedances

CAA Section 187(a)(2)(A) requires CO areas with a design value above 12.7 ppm to submit a forecast of vehicle miles traveled (VMT) through the attainment date, and to provide for annual updates. Fresno's "Federal 1992 Air Quality Attainment Plan for CO" includes the VMT projections through 1995 (Table 2) and a commitment to update the projections. The projections meet applicable EPA guidelines. CAA Section 187(a)(3) requires SIPs for CO areas with a design value above 12.7 ppm to contain contingency measures to be implemented if VMT projected levels are exceeded or the area fails to attain by its CAA deadline. Based on the measures included in the SIP, the Fresno area attained the CO NAAQS by its scheduled date and did not exceed its VMT projected levels through 1995. Therefore, EPA approves the SIP for Fresno with respect to the provisions of Sections 187(a)(2)(A) and 187(a)(3).

d. Improvement in Air Quality Due to Permanent and Enforceable Measures

Improvements in air quality must be shown not to have occurred as a result of temporary economic conditions or favorable meteorology. One approach to assessing whether economic conditions contributed to improved air quality is to review the VMT trends for each CO nonattainment area. Motor vehicle usage has been observed in the past to decrease with poor economic conditions. Because motor vehicles are the primary source of CO, any significant change in VMT should be reflected as changes in CO emissions. Table 3 shows VMT increased, on average, 14 percent, for the areas during the period in which CO air quality was improving. This supports a finding that CO emission reductions did not occur as a result of decreased VMT associated with an economic downturn.

TABLE 3.—VEHICLE MILES TRAVELED [13]

[Thousands]

Area	1990	1993	1995
Bakersfield Metropolitan Area (Kern Co.)	12606	13728	15196
Chico Urbanized Area (Butte Co.)	3988	4196	4394
Fresno Urbanized Area (Fresno Co.)	15150	16744	17897
Lake Tahoe No. Shore (Placer Co.)	383	434	451

TABLE 3.—VEHICLE MILES TRAVELED [13]—Continued

[Thousands]

Area	1990	1993	1995
Lake Tahoe So. Shore (El Dorado Co.)	811	897	923
Modesto Urbanized Area (Stanislaus Co.)	8478	9465	10121
Stockton Urbanized Area (San Joaquin Co)	11508	13084	14139
Placer Co (Sacramento Valley)	5700	6302	7040
Sacramento Co	22202	24811	26550
Yolo Co	3598	3990	4252
San Diego Area (San Diego Co.) [14]	61990	63272	64121
Alameda Co	25345	26601	27857
Contra Costa Co	15883	17146	17989
Marin Co	5201	5332	5420
Napa Co	1791	1965	2080
San Francisco Co	8347	8670	8886
San Mateo Co	12980	13483	13819
Santa Clara Co	28023	29229	30036
Solano Co	5880	6337	6643
Sonoma Co	4909	5265	5504

[13] CARB motor vehicle activity data (BURDEN7F); 1/19/94 run date.
[14] VMT estimates for San Diego based on data supplied by SANDAG in August 1994.

The improved air quality also must not have occurred solely because of favorable meteorology. Stable weather conditions characterized by cold temperatures, very low inversion layers, and very light to no winds contribute to higher CO levels. In contrast, unstable weather conditions characterized by medium to strong, gusty winds provide good mixing and dispersion which contribute to lower CO levels. An indicator that can be used to estimate unstable weather conditions during a season is the number of days with measurable precipitation (>0.01″). Therefore, one method for assessing favorable meteorology is to compare the historical average number of days with measurable precipitation in a CO season (November through February) with the number of days during the attainment period. Table 4 displays data comparing the historical (1961–1995) average number of days with measurable precipitation in a CO season with the number of days in the two CO seasons on which the attainment demonstration is based.

TABLE 4.—MEASURABLE PRECIPITATION (≥0.01″) DURING CO SEASON [15]

Station	35-year average	1992–1993	1993–1994
	Number of days	Number of days	Number of days
Bakersfield	22	30	20
Chico [16]	38	46	34
Fresno	27	32	20
Lake Tahoe [17]	.....	46	32
Modesto [18]	31	45	29
Sacramento	35	47	32
San Francisco	37	46	32
San Diego	23	38	23
Stockton	30	40	28

[15] Precipitation data were obtained from the National Oceanic and Atmospheric Administration.
[16] Chico precipitation data for 1961 through 1990 based on data gathered at Redding; Chico precipitation data were used for 1991–1995.
[17] Historical precipitation data for Lake Tahoe were not available.
[18] Modesto precipitation data for 1961 through 1990 based on data gathered at Stockton; Modesto precipitation data were used for 1991–1995.

As shown in Table 4, the 1992–1993 CO season had more days of measurable precipitation than the 35-year average, while the 1993–1994 CO season had, except for San Diego, fewer days of precipitation than the historical average for all the sites. Although it appears that CO concentrations during the 1992–1993 season may have been influenced by favorable meteorology, the decline in CO design values continued during the 1993–1994 CO season, despite less favorable meteorology. The data support a finding that favorable meteorology did not account solely for the lower CO levels during the attainment period.

e. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. In the event of a CO NAAQS violation, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice EPA is approving the State of California's maintenance plans for the: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North

Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area because EPA finds that California's submittal meets the requirements of section 175A.

(i). Emission Inventory. Clean Air Act sections 172(c)(3) and 187(a)(1) require that CO plans include comprehensive, accurate, and current inventories of actual emissions from all sources. EPA's guidance for preparing emission inventories is discussed and referenced in the General Preamble (57 FR 134988, April 16, 1992). California originally submitted its inventory to EPA on November 13, 1992. The maintenance plan submittal provides more current inventories for each area. See Attachment 2, "Carbon Monoxide Winter Seasonal Emission Inventory (1990–2010). Motor vehicle emissions were determined using California's EMFAC7F, which EPA has accepted for purposes of the California SIP.

EPA is approving these updated CO emission inventories, rather than the initial submission, as meeting the CAA requirements for these areas. For further details on EPA's review of the inventories, the reader is referred to the Technical Support Document.

(ii). Oxygenated Gasoline. Motor vehicles are major contributors of CO emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen, contained within the oxygenate in the fuel, enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter. Section 211(m) of the CAA requires that CO nonattainment areas, with a design value of 9.5 ppm based on data for the 2-year period of 1988 and 1989, submit a SIP revision for an oxygenated fuel program for such area. The oxygenated fuel requirement must apply to all fuel refiners or marketers who sell or dispense gasoline in the Metropolitan Statistical Area (MSA) or Consolidated Statistical Area (CMSA) in which the nonattainment area is located. California submitted its motor vehicle fuels regulations on November 15, 1994. EPA approved the State's fuels regulations, including its requirements for oxygen content, on August 21, 1995 (60 FR 43379). Consistent with that action, EPA approves the SIP with respect to the requirements of sections 211(m) and 187(b)(3) for oxygen content of gasoline.

(iii). Vehicle Inspection and Maintenance (I/M). CAA Section 187(a)(4) requires basic vehicle I/M programs in CO nonattainment areas with design values equal to or less than 12.7 ppm; Section 187(a)(6) requires enhanced I/M programs for CO nonattainment areas with design values above 12.7 ppm. California submitted SIP revisions on June 30, 1995 and January 22, 1996 for both basic and enhanced I/M programs. On January 8, 1997, EPA approved the California I/M regulations for basic and enhanced I/M programs (62 FR 1150). Only Fresno is required to have Enhanced I/M for CO, since at the time of classification Fresno had a design value greater than 12.7 ppm (56 FR 56694, November 16, 1991). Fresno does not rely on emission reductions for CO from Enhanced I/M; however, the State's enhanced I/M Program has received interim approval to satisfy the enhanced I/M requirements of section 187(a)(6). I/M is not required in the Lake Tahoe Air Basin since it did not have an existing I/M program prior to enactment of the 1990 CAA Amendments (section 187(a)(4)).

(iv). Conformity. EPA interprets the conformity requirements as not being an applicable requirement for purposes of evaluating the redesignation request under section 1079d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and Part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of State-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements. Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. Under this policy, EPA believes that the CO redesignation request for the: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area may be approved notwithstanding the lack of approved State transportation and general conformity rules.

(v). Demonstration of Maintenance-Projected Inventories. Maintenance of the standard can be shown by comparing the emissions inventory for the period during which an area attained the standard to emission inventory projections for at least ten years beyond the date of approval by the EPA (see Table 6). The emissions inventory comparison, which includes the years 1990, 1993, 1995, 2000, 2005, and 2010, shows emissions will continue to decline for all ten redesignation areas.

TABLE 6.—CARBON MONOXIDE WINTER SEASONAL EMISSION INVENTORY TRENDS [19]

[Tons per day]

CO nonattainment area	1990	1993	1995	2000	2005	2010
Bakersfield [20]	423	356	348	329	304	286
Chico	229	189	183	167	156	153
Fresno	511	436	414	362	328	321
Lake Tahoe North Shore	32	28	26	22	19	18
Lake Tahoe South Shore	100	89	86	76	66	64
Modesto	311	282	270	239	216	212
Sacramento Area [21]	1214	1026	971	822	690	635
San Diego	1927	1492	1345	1062	904	832
San Francisco-Oakland-San Jose [22]	3731	3019	2786	2258	1896	1716

TABLE 6.—CARBON MONOXIDE WINTER SEASONAL EMISSION INVENTORY TRENDS [19]—Continued

[Tons per day]

CO nonattainment area	1990	1993	1995	2000	2005	2010
Stockton	463	400	380	334	297	285

[19] CARB 1993 base year emission inventory (10/3/95 run date—based on EMFAC7F). Except where noted, emissions data reflect county totals.
[20] Reflects corrected Kern County emission inventory (1/29/96 run date).
[21] Combined emission inventory for Sacramento, Placer, and Yolo Counties.
[22] Emission inventory for San Francisco Bay Area Air Basin.

(vi) Contingency Plan. Maintenance plans for attainment areas must include contingency provisions, or extra measures beyond those needed for attainment, to offset any unexpected increase in emissions and ensure that the standard is maintained (175(A)(d)). Typically, contingency measures are held in reserve and implemented only if an area violates the standard in the future. However, California claims its on-going motor vehicle program creates a unique situation and allows CARB to offer, as contingency, several regulations that will be implemented, regardless of monitored CO levels.

Table 7 shows fully adopted CARB regulations with multi-pollutant benefits which "come on line" from 1996 through 2003.

TABLE 7.—CONTINGENCY MEASURES

Date(s)	Implementation regulation
1996	Improved Basic Inspection and Maintenance Program (Bay Area, Chico, North and South Shore Lake Tahoe) [23]
1996	Enhanced Inspection and Maintenance Program (Bakersfield, Fresno, Modesto, Sacramento Area, San Diego, Stockton)
1996	On-Board Diagnostics II (Statewide).
1996	California Cleaner-Burning Gasoline (Statewide).
1997	Off-Highway Recreational Vehicles (Statewide).
1999	Lawn and Garden Equipment—Tier II (Statewide).
1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and later.	Low-Emission Vehicles and Clean Fuels—Post 1995 Standards (Statewide).

[23] Inspection required upon change of ownership only. There is no biannual vehicle inspection in these areas.

California maintains that these adopted regulations will generate new reductions in CO emissions, above and beyond those needed for attainment and provide sufficient reductions in future years to guarantee an ample margin of safety to ensure maintenance of the standard and to provide adequate additional reductions to cover the contingency requirements. EPA agrees with California's claims and approves its contingency plan.

(vii) Subsequent Maintenance Plan Revisions. In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

f. Meeting Applicable Requirements of Section 110 and Part D

In Section III.2. above, EPA sets forth the basis for its approval of California's SIP as meeting the applicable requirements of Section 110 and Part D of the CAA. EPA is approving this action without prior proposal because the Agency views this as noncontroversial and anticipates no adverse comments. However, if EPA receives relevant adverse comments by April 30, 1998, then EPA will publish a document that withdraws only those portions of the action on which EPA received the adverse comments, informing the public that those portions of the action did not take effect. EPA will then address those comments in a final action based upon this proposed rule. EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1998 and no further action will be taken on the proposed rule.

Final Action

EPA is approving Fresno's attainment plan, a maintenance plan for California's federal carbon monoxide (CO) planning areas, and a request to redesignate these areas. They are: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area. Under the 1990 amendments of the Clean Air Act (CAA) designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving California's request because it meets the maintenance plan and redesignation requirements set forth in the CAA. This action is being taken under sections 107 and 110 of the CAA. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. If EPA receives relevant adverse comments by April 30, 1998, then EPA will publish a document that withdraws only those portions of the action on which EPA received the adverse comments, informing the public that those portions of the action are withdrawn. EPA will then address those comments in a final action based upon this proposed rule. EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals and redesignation to attainment under sections 107, 110, and subchapter I, part D of the Clean Air Act do not create any new requirements. Therefore, because the Federal SIP approval and redesignation to attainment do not impose any new requirements, the Administrator certifies that the actions do not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval and redesignation action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law and redesignates areas to attainment, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Transportation.

40 CFR Part 81

Air pollution control, National parks.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 4, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(252) and (253) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(252) Air Quality Management Plan for the following APCD was submitted on December 28, 1992, by the Governor's designee.

(i) Incorporation by reference. (A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Federal 1992 Air Quality Attainment Plan for Carbon Monoxide and Appendices adopted on November 18, 1992.

(253) Carbon Monoxide Redesignation Request and Maintenance Plan for ten federal planning areas submitted on July 3, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board. (*1*) Carbon Monoxide Redesignation Request and Maintenance Plan for the following areas: Bakersfield Metropolitan Area, Chico Urbanized Area, Fresno Urbanized Area, Lake Tahoe North Shore, Lake Tahoe South Shore, Modesto Urbanized Area, Sacramento Area, San Diego Area, San Francisco-Oakland-San Jose Area, and Stockton Urbanized Area adopted on April 26, 1996.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.305, the table for California—Carbon Monoxide is amended by revising the entries for "Bakersfield Area," "Chico Area," "Fresno Area," "Lake Tahoe North Shore Area," " Lake Tahoe South Shore Area," "Modesto Area," "Sacramento Area," "San Diego Area," "San Francisco-Oakland-San Jose Area," and "Stockton Area" to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Bakersfield Area:				
Kern County (part)	April 30, 1998	Attainment.		
Bakersfield Metropolitan Area (Urbanized part)				
Chico Area:				
Butte County (part)	April 30, 1998	Attainment.		
Chico Urbanized Area (Census Bureau Urbanized part).				
Fresno Area:				
Fresno County (part)	April 30, 1998	Attainment.		
Fresno Urbanized Area				
Lake Tahoe North Shore Area:				
Placer County (part)	April 30, 1998	Attainment.		
. . .	.	.	.	.
Lake Tahoe South Shore Area:				
El Dorado County (part)	April 30, 1998	Attainment.		
Modesto Area:				
Stanislaus County (part)	April 30, 1998	Attainment.		
Modesto Urbanized Area (Census Bureau Urbanized Area).				
Sacramento Area:				
Census Bureau Urbanized Areas	April 30, 1998	Attainment.		
Placer County (part)				
Sacramento County (part)				
Yolo County (part)				
San Diego Area:				
San Diego County (part)	April 30, 1998	Attainment.		
San Francisco-Oakland-San Jose Area:				
Urbanized Areas	April 30, 1998	Attainment.		
Alameda County (part)				
Contra Costa County (part)				
Marin County (part)				
Napa County (part)				
San Francisco County				
San Mateo County (part)				
Santa Clara County (part)				
Solano County (part)				
Sonoma County (part)				
Stockton Area:				
San Joaquin County (part)	April 30, 1998	Attainment.		
Stockton Urbanized Area:				
. . .	.	.	.	.

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 98–8416 Filed 3–30–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5988–5]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; extension of compliance.

SUMMARY: On September 12, 1996, the EPA published the Group IV Polymers and Resins NESHAP (61 FR 48208). This action temporarily extends the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing poly(ethylene terephthalate) (PET) using the continuous terephthalic acid (TPA) high viscosity multiple end finisher process because the EPA is in the process of responding to a request to reconsider relevant portions of the rule (Docket Item: A–92–45; VI–A–1). The EPA is providing this temporary extension to February 27, 2001 to complete reconsideration and any necessary revision to the rule. The EPA is providing this temporary extension pursuant to Clean Air Act section 301(a)(1).

DATES: The direct final rule will become effective May 20, 1998 without further notice unless the Agency receives relevant adverse comments on the parallel notice of proposed rulemaking by April 30, 1998. Should the Agency receive such comments, it will publish a document informing the public that this rule did not take effect. If relevant adverse comments are received on the proposal, they will be addressed in a subsequent final rule. For additional information concerning comments, see the parallel proposal notice found in the Proposed Rules Section of this **Federal Register**.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–45 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C.

20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the SUPPLEMENTARY INFORMATION section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Docket

The official record for this rulemaking has been established under docket number A–92–45 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the ADDRESSES section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION: *Electronic Filing.* Electronic comments and data can be sent directly to EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–45. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see ADDRESSES), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: www.epa.gov/ttn/oarpg/rules.html.

Regulated entities. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities that produce PET using the continuous TPA high viscosity multiple end finisher process.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this direct final rule. If you have questions regarding the applicability of the NESHAP addressed in this direct final rule to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

The information presented in this preamble is organized as follows:

I. Background and Rationale
II. Authority for Temporary Extension of the Compliance Date and Reconsideration
III. Impacts
IV. Administrative Requirements

I. Background and Rationale

On September 12, 1996, the EPA published 40 CFR part 63, subpart JJJ—Group IV Polymers and Resins NESHAP (61 FR 48208). The final rule established a new subcategory for PET manufacture specified as the continuous TPA high viscosity multiple end finisher subcategory. The final rule also established standards for process contact cooling towers (PCCT) contained in 40 CFR 63.1329 for existing affected sources in the new subcategory. The final rule required existing affected sources in the continuous TPA high viscosity multiple end finisher subcategory to comply with 40 CFR 63.1329 beginning September 12, 1999 (*see* 40 CFR 63.1311(c)).

A petition has been submitted to the EPA requesting reconsideration of the technical basis for establishment of the continuous TPA high viscosity multiple end finisher subcategory (Docket Item: A–92–45; VI–A–1). The petition presents new information related to the production processes for the manufacture of PET that the petitioner claims calls into question the need and justification for a separate subcategory for the continuous TPA high viscosity multiple end finisher process. The information presented in the petition has led the EPA to accept the petitioner's request to reconsider the need for the continuous TPA high viscosity multiple end finisher subcategory. When compared to the other PET subcategories, there are two regulatory differences that pertain to affected sources in the continuous TPA high viscosity multiple end finisher subcategory; exemption from the equipment leaks provisions contained in 40 CFR 63.1331 and requirements to limit the concentration of ethylene glycol in PCCTs for existing affected sources under the provisions contained in 40 CFR 63.1329. Because affected sources in the continuous TPA high viscosity multiple end finisher subcategory are exempt from the equipment leaks provisions, no action is required by the EPA with regards to the equipment leaks provisions in response to the request to reconsider. However, as a result of the EPA's need to respond to the request to reconsider the need for the continuous TPA high viscosity multiple end finisher subcategory, existing affected sources in this subcategory cannot be certain of the final standards for PCCTs. If the EPA finds that the continuous TPA high viscosity multiple end finisher subcategory is not justified, existing affected sources in this subcategory will be subject to a PCCT performance standard that has yet to be determined. If the EPA finds that the continuous TPA high viscosity multiple end finisher subcategory is justified, existing affected sources in this subcategory will be subject to the current PCCT standard, but owners or operators will have lost considerable time in preparing for compliance.

At this time, representatives of one existing affected source in the continuous TPA high viscosity multiple end finisher subcategory have informed the EPA in writing (Docket Item: A–92–45; VI–D–8) that they are on the verge of committing to capital expenditures to purchase equipment necessary to comply with the current PCCT standard. Because of the uncertainty of the final standards for PCCTs and the impending need to commit to capital expenditures, representatives of this existing affected source have requested temporary relief from the PCCT standard. For these reasons, the EPA is providing a temporary extension of the compliance date specified in 40 CFR 63.1311(c) from September 12, 1999, until February 27, 2001, for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process to allow the EPA to fully evaluate the petition for reconsideration and take any curative regulatory action necessary. The new compliance date is 3 years from the effective date of the rule. See 63 FR

9944 (February 27, 1998). Following completion of reconsideration, any subsequent curative rulemaking will also include consideration of the appropriate compliance date for any revised standard. This temporary extension applies only to existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process. It does not affect any other provisions of the rule or any other source categories or subcategories.

By this action, the EPA is providing, pursuant to Clean Air Act section 301(a)(1), a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329, only as necessary to complete reconsideration and potential revision of the rule. The EPA intends to complete its reconsideration of the rule and, following the notice and comment procedures of Clean Air Act section 307(d), take appropriate action as expeditiously as practical. The EPA does not believe this temporary extension will, as a practical matter, impact the overall effectiveness of the rule.

Following the EPA's reconsideration of the rule, the EPA will establish a new compliance date for the provisions contained in 40 CFR 63.1329 that is most likely to be beyond the current compliance date of September 12, 1999. Such an extension beyond September 12, 1999 is likely to be necessary for the following reasons. As discussed earlier, if the EPA finds that the continuous TPA high viscosity multiple end finisher subcategory is not justified, existing affected sources in this subcategory will be subject to a PCCT performance standard that has yet to be determined. Development of any such standard will include evaluation of how much time will be needed for compliance. On the other hand, if the EPA finds that the continuous TPA high viscosity multiple end finisher subcategory is justified, existing affected sources in this subcategory will be subject to the current PCCT standard but will have lost considerable time in preparing for compliance by the September 12, 1999 compliance date. In such a case additional time beyond the September 12, 1999 compliance date may be required.

II. Authority for Temporary Extension of the Compliance Date and Reconsideration

The temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process is being undertaken pursuant to Clean Air Act section 301(a)(1). Reconsideration is being undertaken pursuant to Clean Air Act section 307(d)(7)(B). Reconsideration is appropriate if the grounds for an objection arose after the period for public comment and if the objection is of central relevance to the outcome of the rule.

The grounds for reconsideration of this rule arose after publication of the final rule. Therefore, the EPA is providing a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process in order to allow time to reconsider the issues raised by the petitioner. This reconsideration was undertaken pursuant to Clean Air Act section 307(d)(7)(B).

III. Impacts

The extension of the compliance date for PCCTs at existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process will not affect the eventual annual estimated emissions reduction or the control cost for the rule.

IV. Administrative

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR Part 9. The EPA has amended 40 CFR Part 9, Section 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

This action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the regulatory action is "significant" and therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The direct final rule will provide a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process. The direct final rule does not add any additional control requirements. Therefore, this direct final rule was classified "non-significant" under Executive Order 12866 and was not required to be reviewed by OMB.

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant impact on a substantial number of small entities because the temporary compliance extension would not impose any economic burden on any regulated entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, the EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that this direct final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 23, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

2. Section 63.1311 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

* * * * *

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1331 for which compliance is covered by paragraph (d) of this section) no later than September 12, 1999, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section, except that the compliance date for the provisions contained in 40 CFR 63.1329 is temporarily extended from September 12, 1999, to February 27, 2001, for existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET using a continuous terephthalic acid high viscosity multiple end finisher process.

* * * * *

[FR Doc. 98–8212 Filed 3–30–98; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1808–CN]

RIN 0938–AG70

Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy Services; Revised Effective Date and Technical Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; delay of effective date and correction.

SUMMARY: This document delays the effective date of the final rule on salary equivalency guidelines, published in the **Federal Register** (63 FR 5106) on January 30, 1998, from April 1, 1998 to April 10, 1998. In addition, we are making a technical correction in the preamble to the January 30, 1998 final rule.

EFFECTIVE DATES: The effective date of the final rule published at 63 FR 5106 is April 10, 1998. The technical correction is effective April 10, 1998.

FOR FURTHER INFORMATION CONTACT: Jackie Gordon, (410) 786–4517.

SUPPLEMENTARY INFORMATION: On January 30, 1998, we issued a final rule in the **Federal Register** (63 FR 5106) that set forth revisions to the salary equivalency guidelines for Medicare payment for the reasonable costs of physical therapy and respiratory therapy services furnished under arrangements by an outside contractor. This final rule also set forth new salary equivalency guidelines for Medicare payment for the reasonable costs of speech language pathology and occupational therapy services furnished under arrangements by an outside contractor. The guidelines do not apply to inpatient hospital services and hospice services. The guidelines will be used by Medicare fiscal intermediaries to determine the maximum allowable cost of those services. We announced that the effective date for this final rule would be April 1, 1998.

Revised Effective Date

This rule is a major rule as defined in Title 5, United States Code, section 804(2). Pursuant to 5 U.S.C. 801(a)(3), this rule may not take effect until 60 days after the report required by that section is submitted to Congress. The report for this rule was submitted to Congress on February 10, 1998. Therefore, the earliest date this rule can become effective is April 10, 1998.

Technical Correction

In the January 30, 1998 final rule (63 FR 5106) on page 5108, first column, beginning in the sixth line, the phrase "Medicare beneficiaries whose nursing home stays are not paid by Medicare" is corrected to read "Medicare SNF residents who are not in a covered Part A stay".

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C 1302, 1395x(v)(1)(A), and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 26, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–8502 Filed 3–30–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 92–77; FCC 98–6]

Billed Party Preference for InterLATA 0+ Calls; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal**

Register of March 10, 1998, regarding the filing of revised informational tariffs by operator services providers.

DATES: Effective March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Adrien Auger, Enforcement Division, Common Carrier Bureau, (202) 418–0960.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** on March 10, 1998, FCC 98–9 (63 FR 11612) FR Doc. No. 98–6088. This document corrects § 64.709(e)(2) on page 11617, in the third column, to read as follows:

§ 64.709 [Corrected]

* * * * *

(e) * * *

(2) Revised tariffs shall be filled pursuant to the procedures specified in this section.

Dated: March 24, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8184 Filed 3–30–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 212, and 252

[DFARS Case 97–D005]

Defense Federal Acquisition Regulation Supplement; Central Contractor Registration

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractor registration in the DoD Central Contractor Registration database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998. This rule more efficiently implements the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Ms Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D005.

SUPPLEMENTARY INFORMATION:

A. Background

The President's Management Council's Electronic Processes Initiatives Committee recently issued a strategic plan for electronic Federal purchasing and payment. The plan identifies three options currently available to agencies for collecting and managing contractor information: (1) Through a central registry, in which contractors could centrally provide information for multiple contracts; (2) through financial intermediaries (networks), that could collect and maintain information on network members; and (3) on a contract-by-contract basis. At this time, DoD has elected to use a Central Contractor Registration (CCR) database to collect and manage contractor information—including taxpayer identification numbers (TINs) and electronic funds transfer (EFT) information required by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Recognizing that technology and the marketplace are dynamic, DoD will continue to assess its registration policy in light of changes in market conditions and advances in technology.

This final rule requires contractor registration in a DoD CCR database prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998. The rule requires that contractors register on a one-time basis, and confirm on an annual basis that their CCR registration is accurate and complete. The objectives of this rule are (1) to more efficiently comply with Public Law 104–134 by using a central DoD repository to collect statutorily required TINs and EFT information; (2) to simplify and streamline procurement by presenting "one DoD face to industry," and, thereby, eliminate duplicate requirements and processes; and (3) to increase visibility of vendor sources for specific supplies and services.

A proposed rule was published in the **Federal Register** on September 15, 1997 (62 FR 48200). All comments received in response to the proposed rule were considered in the development of the final rule. The final rule differs from the proposed rule in that it (1) revises the date after which prospective contractors must be registered in the CCR database, from March 31, 1998, to May 31, 1998; (2) adds paragraph 204.7303(d) to require the contracting officer to transmit either the Commercial and Government Entity code or the Data Universal Numbering System number to the payment office; and (3) makes editorial changes for clarification.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed. The analysis is summarized as follows:

This final rule requires contractors to register in the CCR database by providing certain business information, including TINs and EFT information required by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Subsequent to the initial registration, contractors will only be required to confirm on an annual basis that their CCR registration is accurate and complete. All small entities will be subject to the rule unless their contract or agreement falls within one of the five exceptions cited in DFARS 204.7302.

An issue raised by one respondent was that the rule will delay the award of contracts to small business vendors that are unaware of the CCR requirements. It is unlikely that a prospective awardee will be unaware of the registration requirement at the time of contract award since the clause requiring CCR registration will be included in solicitations issued after May 31, 1998. In addition, since the goal of DoD is to process each vendor's registration application within 48 hours after receipt, it is unlikely that the registration requirement of the rule will delay a significant number of contract awards.

The one significant alternative that was considered was to exclude small entities from the requirements of this rule. The requirements of Public Law 104–134 would still be accomplished by existing regulations. The conclusion was that this alternative, while fulfilling the objective of Public Law 104–134, does not minimize the economic impact on small entities since existing regulations require a contractor to submit, for every contract, the same information to various contracting or payment offices.

Since this final rule eliminates certain redundant requirements, and their resulting administrative burdens, this alternative of excluding small entities from the requirements of this rule was rejected.

A copy of the FRFA may be obtained from the Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), 3062 Defense Pentagon, Washington, DC 20301–3062. Please cite DFARS Case 97–D005 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) applies, because the

final rule contains information collection requirements. On November 20, 1997, the Office of Management and Budget (OMB) approved the collection requirements under OMB Control No. 0704–0400, which expires on November 30, 2000.

List of Subjects in 48 CFR Part 204, 212, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204, 212, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Subpart 204.73 is added to read as follows:

Subpart 204.73—Central Contractor Registration

Sec.
204.7300 Scope.
204.7301 Definitions.
204.7302 Policy.
204.7303 Procedures.
204.7304 Contract clause.

Subpart 204.73—Central Contractor Registration

204.7300 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the DoD Central Contractor Registration (CCR) database to comply with the Debt Collection Improvement Act of 1996 (31 U.S.C. 3332; 31 U.S.C. 7701), and to increase visibility of vendor sources for specific supplies and services and their geographical locations.

204.7301 Definitions.

Central Contractor Registration (CCR) database, Data Universal Numbering System (DUNS) number, Data Universal Numbering System+4 (DUNS+4) number, and *Registered in the CCR database* are defined in the clause at 252.204–7004, Required Central Contractor Registration.

204.7302 Policy.

After May 31, 1998, prospective contractors must be registered in the CCR database, prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998. This policy applies to all types of awards except the following:

(a) Purchases made with a Governmentwide commercial purchase card.

(b) Awards made to foreign vendors for work performed outside the United States.

(c) Classified contracts or purchases (see FAR 4.401).

(d) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies.

(e) Purchases to support unusual or compelling needs of the type described in FAR 6.302–2.

204.7303 Procedures.

(a)(1) Except as provided in 204.7302, the contracting officer shall require each offeror to provide a DUNS or, if applicable, a DUNS+4 number, with its verbal or written offer, regardless of the dollar amount of the offer.

(2) Prior to making an award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement after May 31, 1998, unless the award results from a solicitation issued on or before May 31, 1998, the contracting officer shall verify that the prospective awardee is registered in the CCR database (but see paragraph (b) of this section). The contracting officer may verify registration using the DUNS number or, if applicable, the DUNS+4 number, by calling toll free: 1–800–841–4431, commercial: 1–616–961–5757, or Defense Switched Network (DSN): 932–5757; via the Internet at http://ccr.edi.disa.mil/ccr/cgi-bin status.pi; or as otherwise provided by agency procedures.

(3) Verification of registration is not required for orders or calls placed under contracts, basic agreements, basic ordering agreements, or blanket purchase agreements.

(4) After May 31, 1998, as part of the annual review of basic agreements, basic ordering agreements, and blanket purchase agreements, contracting officers shall modify these agreements to incorporate the clause at 225.2204–7004, Required Central Contractor Registration.

(b) If the contracting officer determines that a prospective awardee is not registered in the CCR database, the contracting officer shall—

(1) If the needs of the requiring activity allow for a delay, proceed to award after the contractor is registered; or

(2) If the needs of the requiring activity do not allow for a delay, proceed to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(c) Agencies shall protect against improper disclosure of contractor CCR information.

(d) The contracting officer, shall, on contractual documents transmitted to the payment office, provide either the Commercial and Government Entity code or the DUNS number in accordance with agency procedures.

204.7304 Contract clause.

Except as provided in 204.7302, use the clause at 252.204–7004, Required Central Contractor Registration, in—

(a) Solicitations issued after May 31, 1998;

(b) Contracts resulting from solicitations issued after May 31, 1998; and

(c) Basic agreements, basic ordering agreements, and blanket purchase agreements issued after May 31, 1998, unless they resulted from solicitations issued on or before May 31, 1998.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Section 212.301 is amended by adding paragraph (f)(iv) to read as follows:

§ 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(iv) Use the clause at 252.204–7004, Required Central Contractor Registration, as prescribed in 204.7304.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.204–7004 is added to read as follows:

252.204–7004 Required Central Contractor Registration.

As prescribed in 204.7304, use the following clause:

Required Central Contractor Registration (Mar. 1998)

(a) *Definitions.*

As used in this clause—

(1) *Central Contractor Registration (CCR database* means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) *Data Universal Numbering System (DUNS) number* means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) *Data Universal Numbering System +4 (DUNS+4) number* means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) *Registered in the CCR database* means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1–888–227–2423, or via the Internet at http://ccr.edi.disa.mil.

(End of clause)

[FR Doc. 98–8417 Filed 3–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 833 and 852

RIN 2900–AI51

VA Acquisition Regulations: Department Protests

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Acquisition Regulations (VAAR) to delete coverage that duplicates or conflicts with the Federal Acquisition Regulation; to delete internal agency guidance to contracting officers; to delete obsolete references to the General Services Administration Board of Contract Appeals; to incorporate changes made by Federal Acquisition Circular (FAC) 90–40, Item XIII and FAC 90–45, Item XII; to publish VA policy regarding the availability of staff of the VA Board of Contract Appeals to serve as third-party neutrals in alternative dispute resolution proceedings; and to update clauses and references. These changes implement VA policy and are required to ensure that the VAAR corresponds with the requirements of the Federal Acquisition Regulation and public law.

DATES: Effective Date: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC 20420, (202) 273–8819.

SUPPLEMENTARY INFORMATION: On September 9, 1997, we published in the **Federal Register** (62 FR 47411) a proposal to amend the Department of Veterans Affairs Acquisition Regulations to make changes relating to Department protests. Comments were solicited concerning the proposal for 60 days, ending November 10, 1997. We did not receive any comments. The information presented in the proposed rule document still provides a basis for this final rule. Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for nonsubstantive changes to reflect the date of this final rule for each clause and to provide a new clause number for one of the clauses included in the rule.

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule will have minuscule effect, if any, on small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects

48 CFR Part 833

Administrative practices and procedure, Government procurement.

48 CFR Part 852

. Government procurement, Reporting and recordkeeping.

Approved: March 18, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set forth in the preamble, 48 CFR parts 833 and 852 are amended as follows:

1. The authority citation for parts 833 and 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 833—PROTESTS, DISPUTES, APPEALS

Subpart 833.1—Protests

§ 833.102 [Amended]

2. Section 833.102 introductory text is amended by removing "852.233–2" and adding, in its place, "FAR provision 52.233–2". It is further amended by removing "or the GSA Board of Contract Appeals (GSBCA)"; and paragraph (b) is amended by removing "(95B)" and adding, in its place, ", Acquisition Administration Team".

3. In § 833.103, paragraph (a)(1) is revised to read as follows:

§ 833.103 Protests to the Department.

(a) *Filing of protests.* (1) An interested party may protest to the contracting officer or, as an alternative, may request an independent review by filing a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or, for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management. A protest filed with the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

* * * * *

4. In § 833.103, paragraph (a)(2)(ii) is amended by removing "Review Division" and adding, in its place, "Administration Team"; paragraphs (a)(3) and (a)(4) are removed; paragraph (a)(5) is redesignated as paragraph (a)(3); newly redesignated paragraph (a)(3)(vi) is removed; paragraphs (a)(3)(vii) through (a)(3)(ix) are redesignated as paragraphs (a)(3)(vi) through (a)(3)(viii), respectively.

5. In § 833.103, paragraph (c) is removed; paragraph (b) is redesignated as a new paragraph (c) and is revised

and a new paragraph (b) is added to read as follows:

§ 833.103 Protests to the Department.

* * * * *

(b) Where appropriate, alternative dispute resolution (ADR) procedures may be used to resolve protests at any stage in the protest process. The Department of Veterans Affairs Board of Contract Appeals (VABCA) is an independent and neutral entity within the Department of Veterans Affairs and is available to serve as the third-party neutral (Neutral) for bid protests. If ADR is used, the Department of Veterans Affairs will not furnish any documentation in an ADR proceeding beyond what is allowed by the Federal Acquisition Regulation.

(c) *Action upon receipt of protest.* For protests filed with the contracting officer, the head of the contracting activity (HCA) shall be the approving official for the determinations identified in FAR 33.103(f)(1) and (f)(3). If the HCA is also the contracting officer, the approving official shall be the Deputy Assistant Secretary for Acquisition and Materiel Management. For protests filed with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, those individuals shall be the approving officials for the determinations identified in FAR 33.103(f)(1) and (f)(3).

* * * * *

6. In § 833.103, paragraph (d) is amended by removing "lodged" and adding, in its place, "filed"; by removing "he/she" each time it appears and adding, in its place, "the contracting officer"; by removing "Review Division" and adding, in its place, "Administration Team"; and by removing "officer will" and adding, in its place, "officer shall".

7. In § 833.103, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 833.103 Protests to the Department.

* * * * *

(e) *Protest after award.* When a written protest is filed with the contracting officer after contract award:

(1) If FAR 33.103(f)(3) requires suspension of contract performance, the contracting officer shall seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis and, if successful, shall document the suspension with a supplemental agreement. If unsuccessful, the contracting officer shall issue a stop-work order in accordance with contract clause FAR 52.233–3, Protest After Award.

(2) If suspension of contract performance is not required by FAR 33.103(f)(3) and if the contracting officer determines that the award was proper, the contracting officer shall furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer shall advise the protester that the protester may appeal the determination to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, or the Comptroller General, as specified in internal Department guidance.

(3) If suspension of contract performance is not required by FAR 33.103(f)(3) but the contracting officer determines that the award is questionable, the contracting officer may consult with the Office of the General Counsel (025) and shall advise the contractor of the protest and invite the contractor to submit comments and relevant information. The contracting officer shall submit the case promptly to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, who may consult with the Office of the General Counsel (025) and who shall either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for a decision. The contracting officer shall provide interested parties with a copy of the final decision.

(f) *Agency appellate review of contracting officer's protest decision.* An interested party may request an independent review of a contracting officer's protest decision by filing an appeal with the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued by the Office of Facilities Management, with the Chief Facilities Management Officer, Office of Facilities Management. To be considered timely, the appeal must be received by the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued by the Office of Facilities Management, by the Chief Facilities Management Officer, Office of Facilities Management, within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal. Appeals shall be addressed as provided in paragraphs (a)(2)(ii) or (iii) of this section. Appeals shall not extend GAO's timeliness requirements for appeals to GAO. By filing an appeal as provided herein, an interested party may waive its rights to further appeal to the Comptroller General at a later date. Agency responses to appeals submitted to the agency shall be reviewed and concurred in by the Office of the General Counsel (025).

§ 833.105 [Removed]

8. Section 833.105 is removed.

9. Section 833.106 is revised to read as follows:

§ 833.106 Solicitation provision.

(a) The contracting officer shall insert the provision at 852.233–70, Protest Content, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 852.233–71, Alternate Protest Procedure, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

Subpart 833–2—Disputes and Appeals

10. Section 833–214 is added to read as follows:

§ 833.214 Alternative dispute resolution (ADR).

(a) Contracting officers and contractors are encouraged to use alternative dispute resolution (ADR) procedures to resolve contract disputes before they become appealable disputes by using the Department of Veterans Affairs' ADR Program.

(b) Under the Department's ADR Program, the Department of Veterans Affairs Board of Contract Appeals (VABCA or Board) Chair, who is the Department's Dispute Resolution Specialist, will appoint a Board member or hearing examiner (at no cost to either party) to serve as a Neutral to aid in resolving matters before they become appealable disputes. The administrative judges and hearing examiners are trained Neutrals and are available to assist in ADR proceedings.

(c) Under the ADR Program, the parties are able to select the ADR process they believe will help resolve the matter. Everything discussed during the ADR meeting is confidential. In the event a Board member serves as a Neutral in a matter that is not resolved using ADR, that Board member shall keep all discussions confidential and

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shall have no further input or contact with the parties or other Board members in subsequent Board activities (ref. the Administrative Dispute Resolution Act, 5 U.S.C. 571–583; and, Federal Acquisition Regulation, Subpart 33.2).

(d) The Department of Veterans Affairs and contractors are also encouraged to use ADR in disputes appealed to the VABCA.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.2—Texts of Provisions and Clauses

11. Section 852.233–70 is revised to read as follows:

§ 852.233–70 Protest content.

As prescribed in 833.106 of this chapter, insert the following provision in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold:

Protest Content (Jan 1998)

(a) Any protest filed by an interested party shall:

(1) Include the name, address, fax number, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or the protester's representative, and at least one copy;

(4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served;

(6) State the form of relief requested; and

(7) Provide all information establishing the timeliness of the protest.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(End of Provision)

12. Section 852.233–71 is added to read as follows:

§ 852.233–71 Alternate Protest Procedure.

As prescribed in 833.106 of this chapter, insert the following provision in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold:

Alternate Protest Procedure (Jan 1998)

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, or, for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management, 810 Vermont Avenue, NW, Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

§ 852.236–73 [Removed]

13. Section 852.236–73 is removed.

[FR Doc. 98–8004 Filed 3–30–98; 8:45 am]
BILLING CODE 8320–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1842

Revisions to the NASA FAR Supplement on Contract Administration and Audit Services

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to amend the NASA FAR Supplement (NFS) to make minor editorial changes in Part 1842, Contract Administration. These changes result from revisions to FAR Part 42 in Federal Acquisition Circular 97–04, and include new section titles and numbering.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–1279.

SUPPLEMENTARY INFORMATION:

Background

Federal Acquisition Circular 97–04, published in the **Federal Register** on February 23, 1998, contained several changes in section titles and numbering which required changes in the NFS to maintain its consistency with the FAR. These changes include a new title for Part 1842, Contract Administration and Audit Services, and several changes in numbering and titles in Subpart 1842.1, Contract Audit Services, and Subpart 1842.2, Contract Administration Services.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1842

Government procurement.

Deidre Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1842 is amended as follows:

1. The authority citation for 48 CFR Part 1842 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION

2–3. Part heading "Part 1842—Contract Administration" is revised to read "Part 1842—Contract Administration and Audit Services".

Subpart 1842.1 [Amended]

4. Subpart heading "Subpart 1842.1 Interagency Contract Administration and Audit Services" is revised to read "Subpart 1842.1 Contract Audit Services".

1842.101 [Amended]

5. In section 1842.101, the section heading "1842.101 Policy" is revised to read "1842.101 Contract audit responsibilities."

1842.102 [Amended]

6. In section 1842.102, the section heading "1842.102 Procedures" is revised to read "1842.102 Assignment of contract audit services."

Subpart 1842.2 [Amended]

7. Subpart heading "Subpart 1842.2 Assignment of Contract Administration" is revised to read "Subpart 1842.2 Contract Administration Services".

1842.203 [Amended]

8. Section 1842.203 is redesignated as section 1842.202–70.

1842.202–70 [Amended]

9. In the newly designated section 1842.202–70, paragraphs (a) (i) through (v) are redesignated as paragraphs (a) (1) through (5).

[FR Doc. 98–8248 Filed 3–30–98; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

Revision to NASA FAR Supplement Clause—Submission of Vouchers for Payment

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule revising the NASA FAR Supplement (NFS) clause 1852.216–87, "Submission of Vouchers for Payment" in order to administratively clarify the voucher submission procedures.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Horvath, NASA, Office of Procurement, Analysis Division (Code HC), (202) 358–0456.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1997, NASA revised NFS 1842.803 to authorize DCAA to permit direct submission of vouchers to NASA paying offices. At that time, the corresponding revision to NFS 1852.216–87, Submission of Vouchers for Payment, was overlooked. This final rule makes the appropriate administrative revisions to this clause to reflect the voucher procedure.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paper Reduction Act.

List of Subjects in 48 CFR Part 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1852 is amended as follows:

1. The authority citation for 48 CFR Part 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.216–87 [Amended]

2. Section 1852.216–87 is revised to read as follows:

1852.216–87 Submission of vouchers for payment.

As prescribed in 1816.307–70(e), insert the following clause:

Submission for Vouchers for Payment

March 1998

(a) The designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract is indicated below. Public vouchers for payment of costs shall include a reference to the number of this contract.

(b)(1) If the contractor is authorized to submit interim cost vouchers directly to the NASA paying office, the original voucher should be submitted to: [Insert the mailing address for submission of cost vouchers]

(2) For any period that the Defense Contract Audit Agency has authorized the Contractor to submit interim cost vouchers directly to the Government paying office, interim vouchers are not required to be sent to the Auditor, and are considered to be provisionally approved for payment, subject to final audit.

(3) Copies of vouchers should be submitted as directed by the Contracting Officer. (c) If the contractor is not authorized to submit interim cost vouchers directly to the paying office as described in paragraph (b), the contractor shall prepare and submit vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment to: [Insert the appropriate NASA or DCAA mailing office address for submission of cost vouchers]

(2) Five copies of SF 1034, SF 1035A, or equivalent Contractor's attachment to the following offices by insertion in the memorandum block of their names and addresses:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(3) The Contracting Officer may designate other recipients as required.

(d) Public vouchers for payment of fee shall be prepared similarly to the procedures in paragraphs (b) or (c) of this clause, whichever is applicable, and be forwarded to: [insert the mailing address for submission of fee vouchers] This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(e) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

[FR Doc. 98–8249 Filed 3–30–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Notice–4]

[RIN 2137–AD 05]

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Clarification of confirmation of direct final rule.

SUMMARY: A member of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) has expressed concern that the compliance dates for pressure testing are being extended and that the notice confirming the direct final rule on extension did not accurately reflect actions of the committee reviewing the rule. This member requests clarification and the opportunity for public comment on the extension of the compliance deadlines. This document clarifies the actions of the THLPSSC and notes that compliance deadlines may be addressed within a related rulemaking on the risk-based alternative to pressure testing.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this document, or the Dockets Unit (202) 366–4046, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

A final rule issued in 1994 requires certain older hazardous liquid and carbon dioxide pipelines to be pressure tested. Compliance dates for pressure testing have been extended to allow development of a rule to provide an alternative to pressure testing based on an evaluation of the risks the lines pose to safety and the environment. On October 21, 1997, RSPA published a direct final rule [62 FR 54591] to extend for a second time compliance dates for the pressure testing.

The THLPSSC, the federal advisory committee established by statute to review pipeline safety standards, reviewed the direct final rule at a November 18, 1997 meeting in Houston, Texas. At the meeting, two members expressed concerns over delays in the rulemaking to establish a risk-based alternative to pressure testing. These two members voted not to approve the rule. The majority of the THLPSSC members approved the direct final rule as "technically feasible, reasonable, and practicable." Following the committee meeting, the THLPSSC sent a resolution to RSPA's Administrator urging for prompt adoption of a rule providing for a risk-based alternative to pressure testing. A notice of proposed rulemaking to provide a risk-based alternative was published in the **Federal Register** on February 5, 1998 [63 FR 5918] There were no subsequent comments objecting to the direct final rule, and believing that the issues raised in the THLPSSC meeting had been addressed by the publication of the risk-based alternative, RSPA confirmed the direct final rule on January 26, 1998 [63 FR 3653].

In a letter dated February 24, 1998, the member of the THLPSSC

representing the Environmental Defense Fund, who had cast one of the dissenting votes at the November meeting, expressed concern with the direct final rule extending the compliance dates for pressure testing and the process for its issuance. Extension of the compliance dates for pressure testing delays testing of older pipelines, whose integrity may be questionable and which may be prone to leaks and spills from outdated materials, design, and/or construction practices. The member points to previous extension of the compliance dates because of the development of the risk-based alternative and argues that further extension eliminates pressure on the Office of Pipeline Safety to complete the risk-based alternative rulemaking promptly. This member also contends that written comments objecting to the extension were not submitted because RSPA indicated during the THLPSSC meeting that the negative votes of the committee members would be considered adverse comments.[1]

The THLPSSC member encourages clarification of the advisory committee actions (which is done above) and republication of the extension of compliance dates for pressure testing for comment. RSPA does not believe that extension of compliance dates is inconsistent with prompt action on the risk-based alternative. RSPA believes that, without an extension of compliance dates, an operator may be required unnecessarily to plan for pressure testing lines which would likely qualify for alternative testing. The compliance dates for pressure testing established by the direct final rule are the same as those proposed for pipelines which will be required, under the risk-based alternative, to be pressure tested. Continuation of this consonance assures that pressure testing of higher risk lines will not be delayed by an operator's election of the risk-based alternative.

Given these identical dates for completing pressure testing, comments by THLPSSC members or others on the issues of timing of pressure testing may be submitted on the current proposed rule on the risk-based alternative. That comment period is open until April 6, 1998, and RSPA encourages anyone concerned with the timing of the pressure testing to comment on that proposal.

[1] The direct final rule process is designed to allow for immediate issuance of rules for which comment is not deemed necessary because of the lack of controversy. Thus the receipt of adverse comments requires the agency to republish the rule either as a proposal or as a revised direct final rule.

Issued in Washington, DC on March 20, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–7813 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. NHTSA–98–3433]

RIN 2127–AG63

Manufacturing Incentives for Alternative Fuel Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration of the agency's decision to set a 200 mile minimum driving range for dual fueled passenger automobiles other than electric vehicles.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W, Washington, DC 20590.

For non-legal issues: Ms. Henrietta L. Spinner, Consumer Programs Division, Office of Planning and Consumer Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590, (202) 366–4802.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Establishment of a Minimum Driving Range for Dual Fueled Passenger Automobiles

On April 1, 1996, NHTSA published a final rule in the **Federal Register** (61 FR 14507) establishing a minimum driving range for dual fueled passenger automobiles other than electric vehicles. The rule also established gallons equivalent measurements for gaseous fuels other than natural gas and eliminated provisions relating to the granting of alternative range requirements for alternative fueled passenger automobiles not powered by electricity.

The agency promulgated this rule in response to amendments in the Energy Policy Act of 1992 (EPACT) (Pub. L. 102–486) that expanded the number of alternative fuels in the corporate average fuel economy (CAFE) law, now recodified as Chapter 329 of title 49, U.S.C. As amended, section 32901(c) requires dual fueled passenger automobiles to meet specified criteria, including meeting a minimum driving range, in order to qualify for special treatment under sections 32905 and 32906 in the calculation of their fuel economy for purposes of the CAFE standards.

One change made by EPACT concerning driving ranges was that, under section 32901(c), the minimum driving range set by NHTSA for dual fueled passenger automobiles other than electric passenger automobiles could not be less than 200 miles. The EPACT amendments also provided that the agency may not, in response to petitions from manufacturers, set an alternative range for a particular model or models that is lower than 200 miles, except for electric passenger automobiles.

The EPACT amendments necessitated amending part 538. In the final rule, the agency established gallons equivalent measurements for the wider range of alternative fuels included in the EPACT amendments and deleted provisions relating to the establishment of alternative minimum driving ranges for non-electric alternative-fueled passenger automobiles. In regard to the minimum driving range, NHTSA concluded that both the text and the legislative history of these amendments indicated that the agency was required to set a minimum driving range of not less than 200 miles for all dual fueled passenger automobiles other than electric passenger automobiles.

II. Petition for Reconsideration of the Minimum Driving Range

On May 24, 1996, the agency received a petition from the National Biodiesel Board (NBB) requesting reconsideration of NHTSA's decision to set a minimum driving range of 200 miles for all dual fueled passenger automobiles other than electric vehicles.

NBB requested that the agency (1) clarify the status of biodiesel as an alternative fuel, (2) adopt a definition of dual fueled vehicles to include vehicles operating on a mixture of alternative fuel and gasoline or diesel fuel, and (3) find that a passenger vehicle operating on a mixture of alternative fuel and gasoline or diesel fuel has satisfied the minimum driving range requirement of 200 miles if the alternative fuel component of the mixture in the vehicle's fuel system would propel the

passenger automobile a distance of 200 miles.

The agency notes that the three points raised by NBB in its petition are outside of the scope of the rulemaking NBB asks the agency to reconsider. The April 2, 1996 final rule did not address the definition of alternative fuels, alternative fuel vehicle, or prescribe the manner in which an alternative fuel passenger automobile may meet the minimum driving range. Therefore, each of these issues may be more properly viewed as a request for interpretation rather than a request for reconsideration. The agency has, however, examined NBB's requests and will address them below.

III. Response To Petition for Reconsideration

The petitioner's first request essentially asked that the agency confirm that biodiesel is an alternative fuel. NBB contends that biodiesel is an alternative fuel, that its status as an alternative fuel was recognized by Congress when the EPACT amendments were adopted, and that NHTSA should amend Section 538.4(a) to include biodiesel and neat biodiesel as alternative fuels.

Part 538.4(a) reads as follows:

538.4 Definitions.

(a) Statutory terms. (1) The terms alternative fuel, alternative fueled automobile, and dual fueled automobile, are used as defined in 49 U.S.C. 32901(a).

NBB requests that 538.4(a) be amended to repeat the statutory definitions incorporated by reference and further seeks to have an explanatory parenthetical added to the definition of alternative fuel as set forth in section 32901(a)(1)(I), 49 U.S.C. 32901(a)(1)(I). This section defines alternative fuel as "fuels (except alcohol) derived from biological materials * * *" NBB requests that the parenthetical "(including neat biodiesel)" be inserted in this definition following the phrase "biological materials."

NHTSA regards such an amendment as unnecessary. The agency notes that neat biodiesel, which is a fuel entirely derived from biological materials, is already within the definition of an alternative fuel under section 32901(a)(1)(I). The agency also notes that elsewhere in NBB's petition, NBB contends that biodiesel blends such as B20, a mixture of 20% biodiesel and 80% petroleum derived diesel, should be accorded the status of an alternative fuel. Section 32901(a)(1)(K) grants the agency the authority to designate as alternative fuels "any other fuel * * * that is not substantially petroleum and that would yield substantial energy security and environmental benefits." Thus, the agency may, by regulation, establish that certain fuels are alternative fuels when such a determination is appropriate. However, B20 is substantially derived from petroleum. NHTSA concludes that to deem B20 as an alternative fuel would be in direct contravention of Chapter 329. Biodiesel that is derived entirely from organic material (neat biodiesel) is, under section 32901(a)(1)(I), clearly an alternative fuel and NHTSA believes that the existing definition and regulations leave no doubt on this point. Biodiesel blends which are substantially petroleum, such as B20, are not alternative fuels under section 32901(a)(1)(K) and the agency cannot deem them as such. As NBB's petition does not seek clarification regarding other biodiesel blends, NHTSA will not presently exercise its authority to establish the concentration at which these fuels are not substantially derived from petroleum.

The petitioner also requests that NHTSA issue regulations establishing that vehicles operating on a mixture of an alternative fuel and a petroleum based fuel are alternative fuel vehicles. In support of its request, NBB asserts that in regulations issued pursuant to the Alternative Fuel Transportation Program, the Department of Energy (DOE) has recognized that dual fueled vehicles operating on a mixture of alternative and petroleum fuels are dual fueled vehicles.

The agency notes that EPACT broadened the scope of the incentives contained in Chapter 329, encouraging the production of alternative fuel vehicles, as part of a national effort to reduce the dependence of the United States on petroleum based fuels. While other statutory schemes may recognize that vehicles operating on a mixture of alternative fuels and petroleum are alternative fuel vehicles, NHTSA concludes that such vehicles do not qualify as alternative fuel vehicles for the purposes of Chapter 329. Section 32901(a)(2) defines an alternative fuel vehicle as either a dedicated vehicle or a dual fueled vehicle. Dedicated vehicles are defined in section 32901(a)(7) as automobiles that operate only on an alternative fuel. Dual fueled vehicles are defined in section 32901(a)(8) as follows:

(8) *dual fueled automobile* means an automobile that—

(A) is capable of operating on alternative fuel and on gasoline or diesel fuel;

(B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alternative fuel as when operating on gasoline or diesel fuel;

(C) for model years 1993–1995 for an automobile capable of operating on a mixture of an alternative fuel and gasoline or diesel fuel and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on a mixture of alternative fuel and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and

(D) for a passenger automobile, meets or exceeds the minimum driving range prescribed under subsection (c) of this section.

Examination of this section compels the conclusion that Congress intended that for the purposes of Chapter 329's incentive program that dual fueled vehicles are, with one limited exception, vehicles operating either on an alternative fuel or a petroleum fuel but not on a mixture of the two. Subsection (A) describes a vehicle that operates on a petroleum or alternative fuel but not a mixture of both. Subsection (B) limits dual fuel vehicles to those vehicles that offer equal or superior energy efficiency when operating on an alternative fuel, thereby indicating that the two modes of operation are exclusive. Subsection (C) indicates that vehicles operating on a mixture of alternative fuel and gasoline or diesel fuel may only be considered as dual fueled automobiles for the 1993–1995 model years (unless extended by the Administrator of the Environmental Protection Agency to the 2004 model year) when such vehicles offer equal or superior energy efficiency when operating on a 50/50 mix of alternative fuel and diesel fuel or gasoline. Therefore, the statutory text of section 32901(a)(8) indicates that Congress did not intend to make incentives available for dual fueled vehicles operating on a mix of fuels except under the limited circumstances enunciated in 32901(a)(8)(C). As the period set by Congress in which such vehicles could be considered as dual fueled vehicles has expired and the EPA has not extended this period by regulation, NHTSA concludes that under Chapter 329 a dual fueled vehicle is one that is capable of operating on either an alternative fuel or gasoline or diesel fuel but not a mixture of both simultaneously. This is not to say, however, that a vehicle using a fuel that is composed of gasoline or diesel fuel and an alternative fuel cannot be a dual

fueled vehicle; under section 32901(a)(1)(K) a mix of gasoline or diesel fuel and another substance may be an alternative fuel if it is not substantially petroleum and yields substantial environmental and energy benefits.

NBB's petition also requests that NHTSA determine that a vehicle operating on a mix of biodiesel and diesel fuel be deemed to have met the minimum driving range requirement of 200 miles if the biodiesel fuel portion of the mixture in the vehicle's fuel tank would propel the vehicle that distance. As noted above, the agency concludes that Congress did not intend that vehicles operating on a mixture of alternative and petroleum fuel be eligible as alternative fuel vehicles under Chapter 329's incentive program unless that mix is itself an alternative fuel. NBB contends that the energy content of the alternative fuel is the relevant criteria for determining range and further argues that there is no practical difference between a vehicle operating on a 30 percent biodiesel mix and one with two separate fuel systems where the biodiesel tank holds 30 percent of the total fuel capacity. In the latter case, NBB submits, the vehicle would clearly meet the range requirement if the biodiesel propelled it 200 miles. If, according to NBB, the vehicle that mixes the two fuels in one tank cannot be deemed to meet the range requirement, the purposes of the incentive program will be frustrated and lead to an unequitable result. However, NBB's argument fails in that a vehicle operating on a mixture of 30 percent biodiesel and 70 percent diesel is not using an alternative fuel. In the absence of data demonstrating otherwise, such a fuel is substantially petroleum and therefore not an alternative fuel under section 32901(a)(1). The passenger automobile operating with a dual fuel system would, however, qualify as a dual fueled passenger automobile if it could reach 200 miles on 100 percent biodiesel because such a fuel is an alternative fuel.

In response to the petition, the agency has reconsidered its decision to set a 200 mile minimum driving range for non-electric dual fueled passenger automobiles when operating on an alternative fuel. As explained below, the agency is, on reconsideration, reaffirming that decision.

The petition raises points that are beyond the scope of the final rule establishing the 200 mile minimum driving range. The agency has nonetheless examined the merits of the petitioner's requests and concludes that the relief requested would have been denied even if it had been within the scope of the final rule. NHTSA concludes that the existing text of part 538 and the statutory definitions incorporated therein by reference include neat biodiesel as an alternative fuel. The agency also concludes that vehicles operating simultaneously on a mixture of an alternative fuel and gasoline or diesel fuel are not dual fueled vehicles for the purposes of Chapter 329's incentive program unless that mixture qualifies as an alternative fuel under section 32901(a)(1)(K). Similarly, NHTSA also concludes that a dual fueled passenger automobile may not meet the range requirements simply by virtue of having a percentage of alternative fuel that may propel it 200 miles. The range requirement may only be met by passenger automobiles that may travel the required distance while being propelled by a fuel or a fuel mixture that is, by itself, an alternative fuel as defined by Congress or by NHTSA regulation. Accordingly, the agency is denying the petition.

Issued on: March 26, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–8364 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980225048–8059–02; I.D. 030698A]

RIN 0648–AK58

Pacific Halibut Fisheries; Catch Sharing Plans; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule pertaining to Pacific Halibut Fisheries published in the **Federal Register** on March 17, 1998.

DATES: This action becomes effective March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6143.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on March 17, 1998, that published annual management measures for Pacific halibut fisheries and approval of catch sharing plans (63 FR 13000). That document contained two typographical errors.

Corrections

As published, an incorrect date was listed twice in the March 17, 1998, edition of the **Federal Register**. On page 13002, in the first column, under "Comment:," the season start date should read "May 21."

On page 13007, under instruction number 23 in the second column, under (4)(b)(i)(A) the fishing season start date should read "May 21." NMFS is correcting these errors and is making no substantive change to the document in this action.

Dated: March 25, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8430 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980318065–8065–01; I.D. 030698B]

RIN 0648–AK68

Atlantic Sea Scallop Fishery; Area Closures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS amends the regulations implementing the Atlantic Sea Scallop Fishery Management Plan (FMP). This rule closes two areas to scallop fishing to protect concentrations of juvenile scallops, to reduce fishing mortality, and to increase yield per recruit (YPR). The intended effect of this action is to improve the condition of the resource.

DATES: Effective April 3, 1998 through September 27, 1998. Comments must be received on or before April 30, 1998.

ADDRESSES: Comments on the rule should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. ATTN: Paul Jones. Copies of the documents supporting this action may also be obtained from the Northeast Regional Office.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, 978–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Atlantic sea scallops are overfished. The scallop advisory report issued from the 23rd Stock Assessment Workshop (SAW) in March 1997 stated that the current spawning stock biomass (SSB) is at a low level and catches are driven primarily by variations in the number of recruits entering the fishery. On Georges Bank, abundance and fishing mortality are at moderate levels, but this results from approximately half of the region currently being closed to fishing. Stock rebuilding is occurring in those closed areas, but elsewhere on Georges Bank fishing mortality is greater than the overfishing threshold. The report further states that scallops in the Mid-Atlantic region are at a low level of abundance, are being overexploited, and are declining. The large 1990 and 1991 year classes have been overfished and incoming recruitment is among the lowest on record. Based on high fishing mortality rates, low stock size, and lack of significant recruitment, the management advice is that fishing effort should be reduced immediately and significantly in the Mid-Atlantic region to preserve SSB and to improve YPR. Recent results of the 1997 survey confirm that trends in abundance and biomass in both the Mid-Atlantic and Georges Bank regions are decreasing.

The scallop regulations require the Scallop Plan Development Team (PDT) to assess the scallop resource to determine the adequacy of the total allowable days-at-sea (DAS) reduction schedule to achieve the target fishing mortality rate. The PDT completed its 1997 review of scallop management measures in May 1997 and concluded that larger reductions in DAS would be necessary to eliminate overfishing. It concluded that the DAS for full-time scallop vessels should be reduced from 142 to 108 DAS for the March 1, 1998, through February 28, 1999, fishing year.

Overfishing for Atlantic sea scallops is defined as the fishing mortality rate greater than the rate that would maintain a SSB, that is 5 percent of the level that occurs without fishing.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that overfishing be examined on the basis of the ability of the stock to produce maximum sustainable yield on a continuing basis. This overfishing threshold is expected to be one-third of the current overfishing definition. Therefore, major action will be necessary to comply with the new Magnuson-Stevens Act requirements through the submission of an amendment to the FMP (Amendment 7) later this year. Action to slow the fishing mortality rate in the interim will ameliorate the measures necessary in Amendment 7.

In light of the management advice from the PDT, the SAW report, and of the requirements of the Magnuson-Stevens Act, the New England and Mid-Atlantic Fishery Management Councils requested interim action to close an area south of Hudson Canyon and a specific area off Virginia Beach to scallop fishing.

The intent of this action is to afford immediate protection to the resource by protecting high concentrations of juvenile scallops. Although permanent measures by the New England Fishery Management Council (Council) are being developed, it will likely take several months to complete and to implement these measures, if they are approved. Due to the relatively low stock condition in the Mid-Atlantic and the time needed for the Council to develop measures to address this problem, NMFS believes that this interim action is warranted. Interim actions are authorized by section 305(c) of the Magnuson-Stevens Act. Interim actions may remain in effect for 180 days and, subject to certain conditions, may be extended by publication in the **Federal Register** for one additional 180-day period. This interim action will remain in effect for 180 days and is subject to extension. The benefits of the interim action will be evident through a more balanced age structure of the scallop stock. Also, significant reductions in fishing mortality and increases in YPR are possible from the relatively small closures.

If closed areas in the Mid-Atlantic are not established as soon as possible, SSB will continue to decline, increasing the possibility of recruitment failure.

Analyses indicate that implementation of these measures may impose a short-term cost on some harvesters, but they will be able to harvest scallops from the remaining open areas. Fishers pursuing species other than scallops will not be excluded from the closed areas; therefore, there is no economic impact beyond that on the scallop industry. When these areas are reopened, average revenue per DAS should increase because of increased stock abundance and higher prices paid for larger meat counts. The benefits of implementing this action on both the stock, with respect to protecting high concentrations of juvenile scallops, and on the return to the industry, with respect to increased yields, far outweigh these temporary costs. Thus, the biological, economic, and social impacts of implementing these regulations are positive.

Classification

NMFS has determined that this rule is necessary to reduce overfishing of sea scallops and is consistent with the Magnuson-Stevens Act and with other applicable laws. The public is aware that the New England and Mid-Atlantic Fishery Management Councils have requested this action and had an opportunity to comment on it at Council meetings. However, at that time, the coordinates of the Hudson Canyon South area closure were not developed and, therefore, not available for public comment.

A delay in action to reduce overfishing increases the likelihood of a loss of long-term productivity of the sea scallop resource and increases the probable need for more severe restrictions in the future. Accordingly, pursuant to the authority set forth at 5 U.S.C. 553(b)(B), the Assistant Administrator finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for public comment because such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address overfishing of sea scallops constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. However, to provide sufficient notification of the closed areas, particularly to vessels that may be at sea, NMFS makes this rule effective April 3, 1998 through September 27, 1998.

This rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 25, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(104) through (a)(109) are added and reserved, and paragraphs (a)(110) and (a)(111) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(104) through (109) [Reserved].

(110) Fish for, possess or retain sea scallops in or from the areas described in § 648.57.

(111) Transit or be in the areas described in § 648.57 with scallop gear that is not properly stowed as required in § 648.57.

* * * * *

3. Section 648.57 is added to subpart D to read as follows:

§ 648.57 Closed areas.

(a) *Hudson Canyon South Closed Area.* No vessel may fish for, possess, or retain sea scallops in or from the area known as the Hudson Canyon South Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) unless all gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b) and § 648.81(e). Further, vessels not fishing in the scallop DAS program and fishing for species other than scallops or not in possession of scallops in this area must stow scallop dredge gear in accordance with the provisions of §§ 648.23(b) and 648.81(e). The Hudson Canyon South Closed Area is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
H1	39°30′ N.	73°10′ W.
H2	39°30′ N.	72°30′ W.
H3	38°30′ N.	73°30′ W.
H4	38°40′ N.	73°50′ W.

(b) *Virginia Beach Closed Area.* No vessel may fish for, possess, or retain sea scallops in or from the area known as the Virginia Beach Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) unless all gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b) and § 648.81(e). Further, vessels not fishing in the scallop DAS program and fishing for species other than scallops or not in possession of scallops in this area must stow scallop dredge gear in accordance with the provisions of §§ 648.23(b) and 648.81(e). The Virginia Beach Closed Area is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
V1	37°00′ N.	74°55′ W.
V2	37°00′ N.	74°35′ W.
V3	36°25′ N.	74°45′ W.
V4	36°25′ N.	74°55′ W.

[FR Doc. 98–8287 Filed 3–25–98; 4:43 pm]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980318066–8066–01; I.D. 022698A]

RIN 0648–AK77

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 25

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule and 1998 target total allowable catch (TAC) levels.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework 25 to the Northeast Multispecies Fishery Management Plan (FMP). The primary purpose of this action is to significantly reduce fishing effort on Gulf of Maine (GOM) cod through a combination of direct and indirect measures. Direct measures include area closures and trip limits, and indirect measures include an incentive to shift effort from the GOM to Georges Bank with an increased haddock trip limit. This final rule implements management measures that include: 1-month sequential closures for each of four GOM inshore areas starting in Massachusetts Bay and extending to Penobscot Bay and for an offshore area comprising Cashes Ledge; a year-round closure encompassing parts of Stellwagen Bank, Jeffreys Ledge, and Wildcat Knoll; a reduction in the GOM cod landing limit from 1,000 lb/day (453.6 kg/day) to 700 lb/day (317.5 kg/day); an extension of the current 1,000 lb/day (453.6 kg/day) haddock landing limit, with a 10,000 lb (4,536 kg/day) landing cap per trip, for the period May 1 through August 31, and an increase to 3,000 lb/day (1,360.8 kg/day), with a 30,000 lb (13,608 kg/day) cap per trip, beginning September 1; a requirement to use a raised footrope trawl in Small Mesh Area 1 and Small Mesh Area 2; and a 1-year postponement of the Vessel Tracking System (VTS) for multispecies vessels. The intent of this action is to implement measures to achieve the rebuilding goals of Amendment 7 to the FMP for the 1998 multispecies fishing year.

DATES: This final rule and the target total allowable catch levels are effective May 1, 1998.

ADDRESSES: Copies of Amendment 7 to the FMP (Amendment 7), its regulatory impact review (RIR), and the final regulatory flexibility analysis contained with the RIR, its final supplemental environmental impact statement, and Framework Adjustment 25 documents are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION:

Amendment 7, which became effective on July 1, 1996, established a procedure for setting annual TACs for the five primary stocks of cod, haddock, and yellowtail flounder (Georges Bank cod, haddock, and yellowtail flounder, Southern New England yellowtail flounder, and GOM cod), and an aggregate TAC for the combined stocks of the remaining regulated multispecies. Adjustment of target TACs, which are calculated based on the biological reference points of F_{max} for GOM cod and $F_{0.1}$ for the remaining stocks of cod, haddock, and yellowtail flounder, is necessary to attain a fishing mortality rate that would allow cod, haddock, and yellowtail stocks to rebuild over time, and maintain current potential yield for the seven remaining multispecies. Adjustment of annual target TACs provides a measure by which to evaluate the effectiveness of the management program and to make determinations on the need for annual adjustments to this program.

Under Amendment 7, the Multispecies Monitoring Committee (MSMC) was established to review the

best available scientific information, adjust target TACs, and recommend management options to achieve the plan objectives. In response to the MSMC's advice for the 1997 fishing year, the New England Fishery Management Council (Council) developed, and NMFS implemented, Framework Adjustment 20 (62 FR 15381, April 1, 1997, and 62 FR 49144, September 19, 1997), which established a GOM cod landing restriction limiting vessels fishing under a multispecies days-at-sea (DAS) north of 42°00' N. lat. to 1,000 lb (453.6 kg) of cod per day, or any part of a day, for each of the first 4 days of a trip, and up to 1,500 lb (680.4 kg) of cod per day, or any part of a day, in excess of 4 days.

In its report delivered at the December 9–11, 1997, Council meeting, the MSMC found that stock status has generally improved for the primary groundfish species, but that the condition of GOM cod remains poor. The report concluded that, at 0.78, the fishing mortality rate continues to be well above the overfishing definition (0.37) and the Amendment 7 mortality target of F_{MAX} (0.29). Further, recruitment is at record low levels and spawning stock biomass is declining. The MSMC estimated that, after consideration of the fishing mortality reductions to be gained from the DAS reductions previously implemented under Amendment 7 for fishing year 1998, an additional 48 percent fishing mortality reduction is necessary to achieve the target F_{MAX} for GOM cod.

Based on projected 1998 stock sizes and Amendment 7's fishing mortality targets, the target TACs for the 1998 fishing year were set by the MSMC and adopted by the Council as follows:

Based on projected 1998 stock sizes and Amendment 7's fishing mortality targets, the target TACs for the 1998 fishing year were set by the MSMC as follows:

Species/area	1998 Target TACs (metric tons)	1997 Target TACs (metric tons)
Georges Bank cod	4,700	3,646
Georges Bank haddock	4,797	1,608
Georges Bank yellowtail flounder	2,145	776
Gulf of Maine cod	1,783	2,605
Southern New England yellowtail flounder	814	[illegible]
Aggregate for remaining regulated species	25,500	25,500

In addition to setting the target TACs, the MSMC report provided the Council with eight specific management options and several general options and recommendations to keep the target TACs from being exceeded. These options were based on DAS reductions, trip limits, and area closures in various combinations.

At its December 1997 meeting, the Council rejected options based on reducing DAS because they would directly and unnecessarily affect multispecies vessels fishing in areas outside of the GOM. In developing its options, the Council charged its Multispecies Oversight Committee to consider spawning area closure options that incorporate sequential GOM inshore closures, and GOM cod landing limit reductions. Because GOM cod is concentrated in near-shore waters, the Council recognized that measures directed at reducing effort on this stock would have a large impact on small inshore vessels, which account for most of the GOM cod landings. A sequential rolling closure, the Council reasoned, would affect vessels from various ports at different times and, thus, help mitigate inshore closure impacts on small vessels by allowing fishing to occur during the non-closure periods.

Therefore, to address further reductions needed for GOM cod, this framework replaces the current multispecies Massachusetts Bay and Mid-coast Area Closures with a 1-month closure for each of four inshore areas, starting in Massachusetts Bay and extending to Penobscot Bay, Maine, and a 1-month offshore closure in an area known as Cashes Ledge. Additionally, the framework closes, year-round, an area in the western GOM comprising part of Stellwagen Bank, Jeffreys Ledge, and Wildcat Knoll. Exemptions to these new closed areas remain the same as those for the previous Massachusetts Bay and Mid-coast Closure Areas. Also, a vessel may transit through these closure areas provided its gear is stowed properly according to the regulations.

The third and final provision under this action to address needed reductions for GOM cod is a reduction in the current GOM cod landing limit from 1,000 lb/day (453.6 kg/day) to 700 lb/day (317.5 kg/day). A safeguard included in this last measure allows the Administrator, Northeast Region, NMFS (Regional Administrator), to reduce the landing limit to as low as 400 lb/day (181.4 kg/day) when 50 percent of the target TAC is reached through publication of a notification in the **Federal Register**. All GOM cod measures included in this framework will sunset after 3 years.

The GOM cod option selected by the Council and implemented by this rule imposes a short closure period for inshore grounds and provides an opportunity for small vessels to target other species, while achieving the conservation goals of the plan. A no-displacement analysis completed by the Northeast Fisheries Science Center shows that the closure and trip limit would meet the mortality reduction goal. It should be noted, however, that these results are considered optimistic because the analysis assumes that all catch from the closed areas is conserved and no effort is displaced. Nevertheless, the Council rationalized, and NMFS concurs, that the effect of combining the area closures, trip limit (which could be reduced to 400 lbs (181.4 kg)), and current DAS controls, will be sufficient to achieve the fishing mortality reduction goal, while balancing the needs of the industry.

To address the 1998 target TAC increase for Georges Bank haddock, this rule relaxes the current haddock management measures by establishing a 1,000 lb/day (453.6 kg/day) haddock landing limit, up to a maximum of 10,000 lb/trip (4,536 kg/trip), for the period May 1 through August 31, 1998, and by increasing the landing limit to 3,000 lb/day (1,360.8 kg/day), up to a maximum of 30,000 lb/trip (13,608 kg/trip), beginning September 1. Similar to cod, this provision includes a trigger mechanism that authorizes the Regional Administrator to reduce the landing limit to either 1,000 lb/trip (453.6 kg/trip) or 1,000 lb/day (453.6 kg/day), up to a maximum of 10,000 lb (4,536 kg) per trip, when 75 percent of the Georges Bank haddock target TAC is caught,

through publication of a notification in the **Federal Register**.

This rule also requires the use of a raised footrope trawl to ensure that the net remains off of the ocean bottom when towed by trawl vessels fishing in the Small Mesh Area 1 and Small Mesh Area 2 exemption areas. The raised footrope design has been successfully used in experimental fisheries conducted by the Massachusetts Division of Marine Fisheries (MADMF) to reduce the incidental catch of several bottom-dwelling species, including regulated flatfish species, while engaged in the whiting fishery.

Finally, this rule postpones, for the 1998 fishing year only, the mandatory use of VTS by multispecies vessels with an individual DAS allocation. NMFS has completed field testing of the VTS and had informed the Council that the system could be operational by the start of the 1998 fishing year. Under current regulations, a multispecies vessel that possesses an individual DAS permit category (Individual DAS or Combination permit) would be required to install and maintain a VTS unit aboard the vessel to track DAS once the system is operational. The Council has requested an additional year for implementation to address comments and issues raised by members of the public.

Because parts of Small Mesh Area 2 and Stellwagen Bank/Jeffreys Ledge Juvenile Protection Area lie within the year-round Western GOM Area Closure, this rule adjusts the coordinates of these two areas to reflect this change.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

The public was provided the opportunity to express comments on the management of GOM cod at numerous meetings beginning in December, 1996 when the MSMC informed the Council of the severely overfished status of GOM cod. Following development of Framework 20, the Council, through its Multispecies Oversight Committee and Area Closure Subcommittee, continued development of area closure alternatives for the GOM at public meetings held on several occasions during 1997. At the July Council meeting, the Northeast Fisheries Science Center presented results of its 24th Stock Assessment Workshop (SAW), updating the status of cod, haddock, and yellowtail flounder stocks, and advised the Council that fishing mortality on GOM cod be reduced to levels approaching zero.

On December 3, 1997, the MSMC released its annual report. On December 5, the Area Closure Subcommittee and Multispecies Plan Development Team held a public meeting in Saugus, MA to develop an area closure alternative that would meet the 1998 fishing year goals based on information contained in the MSMC report. The first framework meeting was the December 9–11, 1997, Council meeting. The Multispecies Oversight Committee (Groundfish Committee) met on December 15 to finalize options to be included in the framework document. On January 7, 1998, the Groundfish Advisory Panel met to draft comments on the options for consideration by the Council. The final meeting at which public comments were heard was the January 14–15, 1998, Council meeting. Documents summarizing the Council's proposed action, and the analysis of biological and economic impacts of this and alternative actions, were available for public review one week prior to the final meeting, as is required under the framework adjustment process. Written comments were accepted up to, and during, that meeting.

Comments and Responses

Comment 1: Approximately 100 letters and e-mails, as well as several phone calls, were received from members of conservation organizations urging the Council to develop measures necessary to continue achieving the Amendment 7 rebuilding plan goals.

Response: Framework 25 measures, implemented under this rule, are designed to achieve the fishing mortality rate goals for GOM cod in fishing year 1998, and to continue measures which have already achieved those goals for other critical stocks in order to rebuild stock biomass. The framework adjustment process allows the Council to monitor the progress of the plan and make adjustments as necessary to continually meet the plan goals.

Comment 2: Senators Edward Kennedy (MA), John Kerry (MA), Bob Smith (NH), and Judd Gregg (NH), Congressmen John Sununu (NH) and John Tierney (MA), and NH Governor Jeanne Shaheen submitted written comments urging the Council to consider all options, including those presented by industry groups, and to select the one that fairly distributes the impacts of the conservation plan on all groups.

Response: A fishing industry group, the Gulf of Maine Fishermen's Alliance, submitted a proposal (the Alliance proposal) too late, pursuant to statutory deadlines, for consideration by the Council as an option for Framework 25. However, the Alliance proposal will be considered by the Council in a subsequent framework action. See response to comment 4.

The Council did select the framework document option that could be shown to meet the conservation goals of the plan and that distribute the impacts across vessel categories and geographical areas as equitably as possible. As noted previously, however, analyses of this option are considered optimistic in terms of meeting the conservation goal. Despite this, it is believed that the effect of this action in combination with current measures will adequately meet the fishing mortality reductions specified for GOM cod.

The Council recognizes that since GOM cod is concentrated in inshore waters, measures designed to protect that stock will directly impact inshore fleets and their associated communities. All of the options available to the Council would distribute impacts similarly because of the nature and the distribution of the GOM cod resource. The rolling 1-month feature that pertains to most of the closed area is designed to mitigate these impacts.

Comment 3: Several members of the public stated that they felt the Council failed to give adequate public notice for the framework meetings.

Response: The public had been informed of the dire need to address GOM cod on numerous occasions over the past year, e.g, the December 1996 Council meeting when the 1996 MSMC Report was delivered, the July 1997 Council meeting when the results of the 24th SAW were presented, and in December 1997 when the MSMC released its 1997 report. In addition, the Groundfish Committee and its Area Closure Subcommittee have discussed measures to address GOM cod at several public meetings during that time. The public has also known about the annual review and adjustment process since it was instituted by Amendment 7 to the

FMP in 1996. The December 9–11, 1997, Council meeting agenda containing an announcement of the MSMC report and initial framework meeting was mailed to approximately 1,650 interested parties on November 19, 1997, filed for public inspection by the Office of the Federal Register on November 24, 1998, and published in the **Federal Register** on November 28, 1997 (62 FR 63309). Also, adequate public notice was given for the December 15, 1997, Multispecies Committee meeting, and for the final Council meeting on this action, held January 14–15, 1998.

Comment 4: Approximately 90 individuals signed a petition opposing the option adopted by the Council in Framework 25. They contended that an alternative which would have added some offshore grounds to the rolling closure but which would have not closed any areas year round, and saying that Option 3 would do a better job of protecting the resource and the industry. Approximately 80 individuals signed a petition supporting a new alternative, the Alliance proposal, which was not available in time for full consideration by the Council for Framework 25. Numerous individuals also provided oral comment supporting this alternative at the Council's January 14–15, 1998, meeting. Massachusetts State Senator Bruce Tarr and State Representative Tony Verga both urged the Council to consider the proposal.

Response: Because of statutory deadlines, the Alliance proposal was submitted too late to be considered fully by the Council for Framework 25, but is currently being considered for a possible follow-up Framework action. At the time Framework 25 was submitted, the proposal was in the process of being revised by the Alliance members because it could not be shown to meet the biological goal. The Council has, however, given this proposal a high priority for consideration, and will take appropriate action at the earliest opportunity.

Comment 5: Approximately 15 fishers from Maine signed three letters to the Council supporting the rolling closures without exceptions for gears that were purported to not catch cod.

Response: With the exception of certain gear types discussed below, the Council adopted a rolling closure option which did not allow exceptions for gears, such as flounder or monkfish gillnets, that are purportedly able to be fished in a manner that has minimal impact on cod. The Council rejected these proposed gear exceptions due to enforcement difficulty resulting from allowing such fishing in an area closed to other very similar gears. However, vessels fishing in closed areas with gear deemed not capable of catching regulated species, such as lobster pots, are exempted and these vessels are prohibited from possessing regulated species. NMFS concurs in the Council's findings.

Comment 6: Several industry members stated that closing inshore grounds for extended periods would cause small boat fishers to seek alternative fishing grounds beyond the safe range of their vessels.

Response: Framework 25 closes inshore areas for 1-month periods during the spring and summer months. The year-round closure is a narrow strip several miles offshore. Thus, the immediate inshore grounds remain open for 11 months of the year. The Council considered safety and purposefully selected an option that minimizes the closure of inshore grounds and provides opportunity to fish inshore. The safe operation of a vessel is the Captain's responsibility. NMFS concurs in the Council's conclusion.

Comment 7: Several individuals commented in opposition to a proposal to postpone the mandatory VTS only on vessels fishing in the GOM.

Response: NMFS concurs with the Council's decision to reject this proposal in favor of a 1-year postponement extended to all Individual DAS vessels, not just those fishing in the GOM. See discussion of the VTS postponement earlier in this document.

Classification

The Assistant Administrator for Fisheries, NOAA finds there is good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and an opportunity for public comment to be heard and considered; therefore, further notice and opportunity to comment before this rule is effective is unnecessary.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 533, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. As such, none has been prepared. The primary intent for this action is to achieve the conservation goals established by Amendment 7 to the FMP while mitigating its economic impacts. The increased haddock trip limit for 1998 provides economic opportunity, while the postponement of mandatory VTS for one year reduces short-term costs to vessels, thereby mitigating impacts of the FMP without compromising its conservation objectives.

This rule restates information collection requirements subject to the Paperwork Reduction Act (PRA) that have been approved by the Office of Management and Budget (OMB) under control number 0648–0202. Call-in requirements are estimated to take 2 minutes per call, and the transiting notification is estimated to take 3 minutes per notification. Send comments regarding any of these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 25, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.10, paragraphs (d) and (f)(3)(i) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, or other appropriate means. From May 1, 1998, through April 30, 1999, multispecies vessels issued an Individual DAS or Combination Vessel (regarding the

multispecies fishery) permit are temporarily authorized to use the call-in system of notification specified in paragraph (c) of this section.

* * * * *

(f) * * *

(3) * * *

(i) A vessel subject to the cod landing limit restriction specified in § 648.86(b)(1)(i), that has not exceeded the allowable limit of cod based on the duration of the trip, must enter port and call-out of the DAS program no later than 14 DAS after starting a multispecies DAS trip.

* * * * *

3. In § 648.14, paragraphs (a)(101), (c)(7), (c)(10), (c)(24) and (c)(25) are revised, paragraphs (a)(105) through (109) are added and reserved, and paragraph (a)(110) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(101) Enter, fail to remove gear from, or be in the areas described in § 648.81(f)(1) through (i)(1) and in § 648.81(n)(1) during the time period specified, except as provided in § 648.81(d), (f)(2), (g)(2), (h)(2), (i)(2) and (n)(2).

* * * * *

(105) [Reserved].

(106) [Reserved].

(107) [Reserved].

(108) [Reserved].

(109) [Reserved].

(110) Fish for, harvest, possess, or land in or from the EEZ, any of the exempted species specified in § 648.80(a)(8)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(8)(iv).

* * * * *

(c) * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

* * * * *

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.87(a) and (b), except as provided in § 648.81(d), and (f)(2), and in § 648.87(a)(1)(ii).

* * * * *

(24) Fail to enter port and report the hail weight of cod within 14 DAS after starting a multispecies DAS trip, as specified in § 648.10(f)(3), if the vessel exceeds the allowable limit of cod specified in § 648.86(b)(1)(i) and (b)(3)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(2).

(25) Fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(4).

* * * * *

4. In § 648.80, paragraphs (a)(5)(i) and (a)(8) are revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(5) * * *

(i) The SB/JL Juvenile Protection Area (copies of a chart depicting the area are available from the Regional Administrator upon request (see Table 1 to § 600.502)) is defined by straight lines connecting the following points in the order stated:

STELLWAGEN BANK JUVENILE PROTECTION AREA

Point	N. lat.	W. long.
SB1	42°34.0′	70°23.5′
SB2	42°28.8′	70°39.0′
SB3	42°18.6′	70°22.5′
SB4	42°05.5′	70°23.3′
SB5	42°11.0′	70°04.0′
SB6	42°15.0′	70°07.4′
SB7	42°15.0′	70°15.0′
SB8	42°24.0′	70°15.0′
SB1	42°34.0′	70°23.5′

JEFFREYS LEDGE JUVENILE PROTECTION AREA

Point	N. lat.	W. long.
JL1	42°52.0′	70°21.0′
JL2	42°41.5′	70°32.5′
JL3	42°34.0′	70°26.2′
JL4	42°43.1′	70°15.0′
JL5	42°54.3′	70°15.0′
JL1	42°52.0′	70°21.0′

* * * * *

(8) *Small Mesh Area 1/Small Mesh Area 2.* (i) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraph (a)(8)(iv) of this section, from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2, except as specified in paragraph (a)(8)(ii) and (a)(8)(iii) of this section. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part), with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502)):

SMALL MESH AREA 1

Point	N. lat.	W. long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL MESH AREA 2

Point	N. lat.	W. long.
SM13	43°05.6′	69°55.0′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40.0′
SM16	42°41.5′	69°40.0′
SM17	42°36.6′	69°55.0′
SM13	43°05.6′	69°55.0′

(ii) The portion of Small Mesh Area 2 that is north of 43°00.0′ N. lat. shall be closed to all fishing during the period May 1 through May 31 to coincide with Inshore Closure Area I specified in § 648.81(g)(1)(iii). Therefore, during the May 1 through May 31 time period, Small Mesh Area 2 is defined by straight lines connecting the following points in the order stated:

SMALL MESH AREA 2

[May 1–May 31]

Point	N. lat.	W. long.
SM18	43°00.0′	69°41.6′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°36.6′	69°55′
SM19	43°00.0′	69°55′
SM18	43°00.0′	69°41.6′

(iii) The portion of Small Mesh Area 2 that is south of 43°00.0′ N. lat. shall be closed to all fishing during the period April 1 through April 30 to coincide with the Inshore Closure Area II specified in § 648.81(g)(1)(ii). Therefore, during the April 1 through April 30 time period, Small Mesh Area 2 is defined by straight lines connecting the following points in the order stated:

SMALL MESH AREA 2

[April 1–April 30]

Point	N. lat.	W. long.
SM18	43°00.0′	69°41.6′
SM14	43°10.1′	69°43.3′
SM13	43°05.6′	69°55′
SM19	43°00.0′	69°55′
SM18	43°00.0′	69°41.6′

(iv) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(8)(iv) (A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom:

(A) Eight inch (20.3 cm) diameter floats must be attached to the entire length of the headrope with a maximum spacing of 4 feet (12.2 cm) between floats;

(B) The ground gear must all be bare wire not larger than ½-inch (1.2 cm) for the top leg, not larger than ⅝-inch (1.6 cm) for the bottom leg, and not larger than ¾-inch (1.9 cm) for the ground cables. The top and bottom legs must be equal in length with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms from the doors to wingends;

(C) The footrope must be longer than the headrope but not more than 20 feet (6.1 m) longer than the length of the headrope; and

(D) The sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long dropper chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point, and in conjunction with the headrope floatation; this keeps the footrope off the bottom. The sweep and its rigging must be made entirely of 5/16 inch (0.8 cm) diameter bare chain. No wrapping or cookies are allowed on the chain. The total length of the sweep must be at least 7 feet (2.1 m) longer than the total length of the footrope, or 3.5 feet (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep and one drop chain must be hung from each corner (the quarter or, the junction of the bottom wing to the belly at the footrope). The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at 8-foot (2.4 m) intervals from the corners towards the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 feet (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

* * * * *

5. In § 648.81, paragraphs (d), (g), (h) and (i) are revised, and paragraph (n) is added to read as follows:

§ 648.81 Closed areas.

* * * * *

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the NE Closure Area, the GOM Inshore Closure Areas, the Cashes Ledge Closure Area, and the Western GOM Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), and (i)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

* * * * *

(g) *GOM Inshore Closure Areas.* (1) From May 1, 1998, through April 30, 2001, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the GOM Inshore Closure Areas I through IV, as described in paragraphs (g)(1)(i) through (iv) of this section, for the times specified in those paragraphs, except as specified in paragraphs (d) and (g)(2) of this section (a chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502)).

(i) *Inshore Closure Area I.* From March 1 through March 31, the restrictions specified in paragraph (g)(1) of this section apply to Inshore Closure Area I apply to Inshore Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

INSHORE CLOSURE AREA I

[March 1–March 31]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM5	42°30′	70°00′
GM6	42°30′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.

(ii) *Inshore Closure Area II.* From April 1 through April 30, the restrictions specified in paragraph (g)(1) of this section apply to Inshore Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

INSHORE CLOSURE AREA II

[April 1–April 30]

Point	N. lat.	W. long.
GM6	42°30′	(1)
GM7	42°30′	69°30′
GM8	43°00′	69°30′
GM9	43°00′	(2)

[1] Massachusetts shoreline.
[2] New Hampshire shoreline.

(iii) *Inshore Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (g)(1) of this section apply to Inshore Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

INSHORE CLOSURE AREA III

[May 1–May 31]

Point	N. lat.	W. long.
GM9	43°00′	(1)
GM8	43°00′	69°30′
GM10	43°30′	69°30′
GM11	43°30′	(2)

[1] New Hampshire shoreline.
[2] Maine shoreline.

(iv) *Inshore Closure Area IV.* From June 1 through June 30, the restrictions specified in paragraph (g)(1) of this section apply to Inshore Closure Area IV (copies of a chart depicting this area are available from the Regional Administrator upon request (see Table 1 to § 600.502)), which is the area bounded by straight lines connecting the following points in the order stated:

INSHORE CLOSURE AREA IV
[June 1–June 30]

Point	N. lat.	W. long.
GM11	43°30′	(1)
GM12	43°30′	69°00′
GM13	(1)	69°00′

[1] Maine shoreline.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

(h) *Cashes Ledge Closure Area.* (1) From May 1, 1998, through April 30, 2001, during the period June 1 through June 30, no fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Cashes Ledge Closure Area (a chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502)), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

CASHES LEDGE CLOSURE AREA
[June 1–June 30]

Point	N. lat.	W. long.
GM14	42°30′	69°00′
GM15	42°30′	68°30′
GM16	43°00′	68°30′
GM17	43°00′	69°00′
GM14	42°30′	69°00′

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(ii), or (iii) of this section.

(i) *Western GOM Area Closure.* (1) From May 1, 1998, through April 30, 2001, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Area Closure (a chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502)), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (i)(2) of this section:

WESTERN GOM AREA CLOSURE

Point	N. lat.	W. long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′

(2) Paragraph (i)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(ii), or (iii) of this section.

* * * * *

(n) *Area closures beginning May 1, 2001.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Mid-coast Closure Area, as described in § 648.87(a)(1), during the period May 10 through May 30, or in the area known as the Massachusetts Bay Closure Area, as described in § 648.87(a)(3), during the period March 1 through March 30, (copies of a chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502)), except as specified in paragraphs (d) and (n)(2) of this section.

(2) Paragraph (n)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

6. In § 648.86, paragraphs (a)(1)(i), (a)(1)(ii), (b) introductory text, (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), and (b)(3) are revised, and paragraphs (a)(1)(iii) and (b)(4) are added to read as follows:

§ 648.86 Possession restrictions.

(a) * * *

(1) * * *

(i) Except as provided in paragraphs (a)(1)(ii) and (iii) of this section, a vessel that is fishing under a NE multispecies DAS may land or possess on board up to 1,000 lb (453.6 kg) of haddock provided it has at least one standard tote on board. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) During the period May 1, 1998, through August 31, 1998, a vessel may land up to 1,000 lb (453.6 kg) of haddock per DAS fished, or any part of a DAS fished, up to 10,000 lb (4,536.0 kg) per trip. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) Beginning September 1, 1998, through April 30, 1999, unless otherwise specified in this paragraph, a vessel may land up to 3,000 lb (1,360.8 kg) of haddock per DAS fished, or any part of a DAS fished, up to 30,000 lb (13,608 kg) per trip. When the Regional Administrator projects that 7.9 million lb (3,598 mt) will be harvested, NMFS will publish a notification in the **Federal Register** that on a specific date the limit will be reduced to either the 1,000 lb (453.6 kg) per trip possession limit restriction specified in paragraph (a)(1)(i) of this section, or the 1,000 lb (453.6 kg) per DAS fished, 10,000 lb (4,536.0 kg) maximum, landing limit restriction specified in paragraph (a)(1)(ii) of this section, depending on the risk of exceeding the target TAC. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(b) *Cod*—(1) *Landing limit from May 1, 1998, through April 30, 2001.* (i) Except as provided in paragraph (b)(1)(ii) and (b)(2) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land up to 700 lb (317.5 kg) of cod per DAS, or any part of a DAS, unless otherwise specified in this paragraph. Vessels calling-out of the multispecies DAS program under § 648.10(c)(3) that have utilized part of a DAS (less than 24 hours) may land up to an additional 700 lb (317.5 kg) of cod for that part of a DAS; however, such vessels may not end any subsequent trip with cod on board within the 24-hour period following the beginning of the part of the DAS utilized (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 1,400 lb (635.0 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday)). When the Regional Administrator projects that 892 mt will be harvested, NMFS will publish a notification in the **Federal Register** that on a specific date the limit will be reduced to a specified amount between 400 lb (181.4 kg) and 700 lb (317.5 kg) per DAS depending on the risk of exceeding the target TAC. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel subject to the cod landing limit restrictions described in

paragraphs (b)(1)(i) and (b)(1)(3) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(ii), may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

* * * * *

(3) *Landing limit beginning May 1, 2001.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(2) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod per DAS, or any part of a DAS, for each of the first 4 DAS of a trip, and may land up to 1,500 lb (680.4 kg) of cod per DAS for each DAS, or any part of a DAS, in excess of 4 consecutive DAS. Vessels calling-out of the multispecies DAS program under § 648.10(c)(3) that have utilized part of a DAS (less than 24 hours) may land up to an additional 1,000 lb (453.6 kg), or 1,500 lb (680.4 kg) if applicable, of cod for that part of a DAS; however, such vessels may not end any subsequent trip with cod on board within the 24-hour period following the beginning of the part of the DAS utilized (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 2,000 lb (907.2 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday)). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) [Reserved].

(4) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (b)(3) of this section and is, therefore, subject to remain in port for the period of time described in paragraph (b)(1)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502) either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.81(e), and may not have any fish on board the vessel.

* * * * *

7. In § 648.87, paragraph (a) introductory text, and paragraphs (a)(1)(i) and (a)(1)(ii) are revised, and paragraph (a)(3) is added to read as follows:

§ 648.87 Gillnet requirements to reduce or prevent marine mammal takes.

(a) *Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes.* Section 648.81(f) sets forth a closed area restriction to reduce the take of harbor porpoise consistent with the harbor porpoise mortality reduction goals. Further, all persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a)(1), (2) and (3) of this section must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(f)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (a)(1), (2) and (3) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), from the areas and for the times specified in paragraphs (a)(1), (2) and (3) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnets or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)) in the areas and for the times specified in paragraphs (a)(1), (2) and (3) of this section.

(1) * * *

(i) From March 25 through April 25, May 10 through May 30, and from September 15 through December 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Mid-coast Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as provided in paragraph (a)(1)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

MID-COAST CLOSURE AREA

Point	N. lat.	W. long.
MC1	42°30′	(1)′
MC2	42°30′	70°15′
MC3	42°40′	70°15′
MC4	42°40′	70°00′
MC5	43°00′	70°00′
MC6	43°00′	69°30′
MC7	43°15′	69°30′
MC8	43°15′	69°00′
MC9	(2)	69°00′

[1] Massachusetts shoreline.
[2] Maine shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Mid-coast Closure Area, as defined under paragraph (a)(1)(i) of this section, from November 1 through December 31 of each fishing year, provided that an acoustic deterrent device ("pinger") is attached at the end of each string of nets and at the bridle of every net within a string of nets, and is maintained as operational and functioning. Each pinger, when immersed in water, must broadcast a 10kHz +/− 2kHz sound at 132 dB +/− 4dB re 1 micropascal at 1 m. This sound must last 300 milliseconds and repeat every 4 seconds.

* * * * *

(3) *Massachusetts Bay Closure Area.* From March 1 through March 30, the restrictions and requirements specified in paragraph (a) of this section apply to the Massachusetts Bay Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request (see Table 1 to § 600.502)), which is the area bounded by straight lines connecting the following points in the order stated.

MASSACHUSETTS BAY CLOSURE AREA

Point	N. lat.	W. long.
MB1	42°30′	(1)
MB2	42°30′	70°30′
MB3	42°12′	70°30′
MB4	42°12′	70°00′
MB5	(2)	70°00′
MB6	42°00′	(2)
MB7	42°00′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971231319–8070–02; I.D. 112697A]

RIN 0648–AK09

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements a regulatory amendment to establish separate maximum retainable bycatch (MRB) percentages for shortraker rockfish and rougheye rockfish (SR/RE) in the Aleutian Islands Subarea (AI) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE, which will reduce the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective April 30, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review prepared for this action may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species closed to directed fishing (bycatch species) relative to the amount of other species retained onboard the vessel that are open for directed fishing. Amounts of a bycatch species onboard a vessel that are below or equal to the specified MRB percentage for that species may be retained. Amounts that are in excess of the MRB percentage must be discarded. Such discards that are required by the regulations are known as regulatory discards.

MRB percentages serve as a management tool to slow the harvest rates of bycatch species by limiting the amount that can be retained on board a vessel. By not placing the bycatch species on "prohibited" status, thereby prohibiting all retention, MRBs also serve to minimize regulatory discard of bycatch species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between the need to reduce the harvest rate of bycatch species and the desire to minimize regulatory discard of the bycatch species. Although MRB percentages limit the incentive to target on a bycatch species, fishermen can "top off" their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

Currently, MRBs are established for aggregate rockfish species that are closed to directed fishing. As part of the aggregate rockfish MRB, the combined amounts of SR/RE and other rockfish closed to directed fishing must not exceed the following percentages of other species that are open to directed fishing: (a) 15 percent relative to deepwater species (other rockfish species, sablefish, Greenland turbot, and flathead sole), (b) 5 percent relative to shallow water species (Atka mackerel, pollock, yellowfin sole, rock sole, "other flatfish", squid, and other species) and (c) 0 percent relative to arrowtooth flounder.

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by a relatively small total allowable catch (TAC) amount that is fully needed to support bycatch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Nonetheless, bycatch amounts of SR/RE can exceed TAC and approach the specified overfishing level. When the overfishing level of SR/RE is reached, NMFS must close all other fisheries in which SR/RE is taken as bycatch.

In response to this problem, the Council recommended that NMFS establish separate MRB percentages for SR/RE lower than the current MRB percentages for SR/RE. A proposed rule to implement this regulatory amendment was published in the **Federal Register** on January 16, 1998 (63 FR 2654) with comments invited through February 17, 1998. No letters of comment were received.

This action separates SR/RE from the aggregated rockfish bycatch species group and establishes MRB percentages for SR/RE in the AI at 7 percent relative to deepwater complex species and to 2 percent relative to shallow water complex species. The MRB percentage relative to arrowtooth flounder remains at 0 percent.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the measures this rule would implement would not have a significant economic impact on a substantial number of small entities. The basis for this certification was published in the proposed rule, (63 FR 2654, January 16, 1998). No comments were received regarding this certification. Thus, a regulatory flexibility analysis was not prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 25, 1998.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In part 679, Table 11 is revised to read as follows:

Basis Spec
Pollock .....
Pacific cod ...
Atka mackerel
Arrowtooth ...
Yellowfin sole
Other flatfish
Rock sole .....
Flathead sole
Greenland turb
Sablefish .....
Other rockfish
Other red rock
Pacific ocean
Sharpchin/Nor
AI .....
Shortraker/Ro
AI .....
Squid .....
Other species
Aggregated a
non-groundf
species .....

[1] For definiti
[2] Aggregate
egory.
[3] Forage fish
[4] na = not ap

[FR Doc. 98–

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TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rock sole	Flathead sole	Greenland turbot	Sablefish	Shortraker/rougheye (AI)	Aggregated rockfish	Squid	Aggregate forage fish	Other species
Basis Species [1]															
Pollock	na [4]	20	20	35	20	20	20	20	1	1	2	5	20	2	20
Pacific cod	20	na [4]	20	35	20	20	20	20	1	1	2	5	20	2	20
Atka mackerel	20	20	na [4]	35	20	20	20	20	1	1	2	5	20	2	20
Arrowtooth	0	0	0	na [4]	0	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na [4]	35	35	35	1	1	2	5	20	2	20
Other flatfish	20	20	20	35	35	na [4]	35	35	1	1	2	5	20	2	20
Rock sole	20	20	20	35	35	35	na [4]	35	1	1	2	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na [4]	55	15	7	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na [4]	15	7	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	55	na [4]	7	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	na [4]	15	20	2	20
Pacific ocean perch	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Sharpchin/Northern-AI	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Shortraker/Rougheye-AI	20	20	20	35	20	20	20	20	35	15	na [4]	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	2	5	na [4]	2	20
Other species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na [4]
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera *Sebastes* and *Sebastolobus* except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category.
[3] Forage fish are defined at §679.2.
[4] na = not applicable.

[FR Doc. 98–8427 Filed 3–30–98; 8:45 am]
BILLING CODE 3510–22–F

VOL 63 ISS 61 MR 31 1998 UMI

Proposed Rules

Federal Register
Vol. 63, No. 61
Tuesday, March 31, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–98–002]

1998 Proposed Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This adjustment is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

DATES: Comments must be received on or before April 30, 1998.

ADDRESSES: Comments may be mailed to USDA, AMS Cotton Program, STOP 0224, 1400 Independence Ave. S.W., Washington D.C., 20250–0224. All comments received will be available for public inspection at this address during the hours 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Norma McDill, (202) 720–2145.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be "not significant" for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 16,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This proposed rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This proposed rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be lowered, the decrease is small and will not significantly affect small businesses.

The current assessment on imported cotton is $0.012412 per kilogram of imported cotton. The proposed assessment is $0.011850, a decrease of $0.000562 or a 4.5 percent decrease from the current assessment. From January through December 1997 approximately $20 million was collected at the $0.012412 per kilogram rate. Should the volume of cotton products imported into the U.S. remain at the same level in 1998, one could expect the decreased assessment to generate $19.1 million or a 4.5 percent decrease from 1997.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991 and the amended Order was published in the **Federal Register** on September 25, 1997, (62 FR 50244). Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This proposed rule would decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510 (b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied

on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products remain similar. The source for the average price statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (62 FR 46412) on September 2, 1997, for the purpose of calculating supplemental assessments on imported cotton is $1.6005 per kilogram. This number was calculated using the annual average price received by farmers for Upland cotton during the calendar year 1996 which was $0.726 per pound and multiplying by the conversion factor 2.2046. Using the Average Price Received by U.S. farmers for Upland cotton for the calendar year 1997, which is $0.675 per pound, the new value of imported cotton is $1.4881 per kilogram. The amended value is $0.1124 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar Per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500×.453597).

$1 per bale assessment equals $0.002000 per pound (1÷500) or $0.004409 per kg. (1÷226.8)

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 1997 calendar year average price received by producers for Upland cotton is $0.675 per pound or $1.4881 per kg. (0.675×2.2046)=1.4881.

Five tenths of one percent of the average price in kg. equals $0.007441 per kg. (1.4881×.005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.007441 per kg. which equals $0.011850 per kg.

The current assessment on imported cotton is $0.012412 per kilogram of imported cotton. The proposed assessment is $0.011850, a decrease of $0.000562 per kilogram. This decrease reflects the decrease in the Average Price of Upland Cotton Received by U.S. Farmers during the period January through December 1997.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510 (b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

Eight HTS numbers subject to assessment pursuant to this regulation and found in the assessment table have been changed. In order to maintain consistency between the HTS and the assessment table, the changes to these eight numbers have been incorporated into the assessment table. The last two digits of these numbers were changed to provide for statistical reporting purposes and involve no physical change to the products they represent. Therefore, the assessment rate is not affected by the change. The assessment rate for each of the eight numbers has been applied to each of the new replacement numbers in the assessment table. The following table represents the changes:

Old No.	New No.	Conversion factor	Assessment cents/kg.
5208523040	5208523045	1.1455	1.3574
5208524040	5208524045	1.1455	1.3574
5208524060	5208524065	1.1455	1.3574
5208592020	5208592025	1.1455	1.3574
5208592090	5208592095	1.1455	1.3574
5209516030	5209516035	1.1455	1.3574
5209590020	5209590025	1.1455	1.3574
5211590020	5211590025	0.6873	0.8145

A thirty day period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this proposal would lower the value assigned to imported cotton for the purpose of calculating supplemental assessments collected and would lower the assessments paid by importers under the Cotton Research and Promotion Order. Accordingly, the change proposed in this rule, if adopted, should be implemented as soon as possible.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraphs (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on

imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.4881 per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
5201000500	0	1.185
5201001200	0	1.185
5201001400	0	1.185
5201001800	0	1.185
5201002200	0	1.185
5201002400	0	1.185
5201002800	0	1.185
5201003400	0	1.185
5201003800	0	1.185
5204110000	1.1111	1.3167
5204200000	1.1111	1.3167
5205111000	1.1111	1.3167
5205112000	1.1111	1.3167
5205121000	1.1111	1.3167
5205122000	1.1111	1.3167
5205131000	1.1111	1.3167
5205132000	1.1111	1.3167
5205141000	1.1111	1.3167
5205210020	1.1111	1.3167
5205210090	1.1111	1.3167
5205220020	1.1111	1.3167
5205220090	1.1111	1.3167
5205230020	1.1111	1.3167
5205230090	1.1111	1.3167
5205240020	1.1111	1.3167
5205240090	1.1111	1.3167
5205310000	1.1111	1.3167
5205320000	1.1111	1.3167
5205330000	1.1111	1.3167
5205340000	1.1111	1.3167
5205410020	1.1111	1.3167
5205410090	1.1111	1.3167
5205420020	1.1111	1.3167
5205420090	1.1111	1.3167
5205440020	1.1111	1.3167
5205440090	1.1111	1.3167
5206120000	0.5556	0.6584
5206130000	0.5556	0.6584
5206140000	0.5556	0.6584
5206220000	0.5556	0.6584
5206230000	0.5556	0.6584
5206240000	0.5556	0.6584
5206310000	0.5556	0.6584
5207100000	1.1111	1.3167
5207900000	0.5556	0.6584
5208112020	1.1455	1.3574
5208112040	1.1455	1.3574
5208112090	1.1455	1.3574
5208114020	1.1455	1.3574
5208114060	1.1455	1.3574
5208114090	1.1455	1.3574
5208118090	1.1455	1.3574
5208124020	1.1455	1.3574
5208124040	1.1455	1.3574
5208124090	1.1455	1.3574
5208126020	1.1455	1.3574
5208126040	1.1455	1.3574
5208126060	1.1455	1.3574
5208126090	1.1455	1.3574
5208128020	1.1455	1.3574

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
5208128090	1.1455	1.3574
5208130000	1.1455	1.3574
5208192020	1.1455	1.3574
5208192090	1.1455	1.3574
5208194020	1.1455	1.3574
5208194090	1.1455	1.3574
5208196020	1.1455	1.3574
5208196090	1.1455	1.3574
5208224040	1.1455	1.3574
5208224090	1.1455	1.3574
5208226020	1.1455	1.3574
5208226060	1.1455	1.3574
5208228020	1.1455	1.3574
5208230000	1.1455	1.3574
5208292020	1.1455	1.3574
5208292090	1.1455	1.3574
5208294090	1.1455	1.3574
5208296090	1.1455	1.3574
5208298020	1.1455	1.3574
5208312000	1.1455	1.3574
5208321000	1.1455	1.3574
5208323020	1.1455	1.3574
5208323040	1.1455	1.3574
5208323090	1.1455	1.3574
5208324020	1.1455	1.3574
5208324040	1.1455	1.3574
5208325020	1.1455	1.3574
5208330000	1.1455	1.3574
5208392020	1.1455	1.3574
5208392090	1.1455	1.3574
5208394090	1.1455	1.3574
5208396090	1.1455	1.3574
5208398020	1.1455	1.3574
5208412000	1.1455	1.3574
5208416000	1.1455	1.3574
5208418000	1.1455	1.3574
5208421000	1.1455	1.3574
5208423000	1.1455	1.3574
5208424000	1.1455	1.3574
5208425000	1.1455	1.3574
5208430000	1.1455	1.3574
5208492000	1.1455	1.3574
5208494020	1.1455	1.3574
5208494090	1.1455	1.3574
5208496010	1.1455	1.3574
5208496090	1.1455	1.3574
5208498090	1.1455	1.3574
5208512000	1.1455	1.3574
5208516060	1.1455	1.3574
5208518090	1.1455	1.3574
5208523020	1.1455	1.3574
5208523045	1.1455	1.3574
5208523090	1.1455	1.3574
5208524020	1.1455	1.3574
5208524045	1.1455	1.3574
5208524065	1.1455	1.3574
5208525020	1.1455	1.3574
5208530000	1.1455	1.3574
5208592025	1.1455	1.3574
5208592095	1.1455	1.3574
5208594090	1.1455	1.3574
5208596090	1.1455	1.3574
5209110020	1.1455	1.3574
5209110035	1.1455	1.3574
5209110090	1.1455	1.3574
5209120020	1.1455	1.3574
5209120040	1.1455	1.3574
5209190020	1.1455	1.3574

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
5209190040	1.1455	1.3574
5209190060	1.1455	1.3574
5209190090	1.1455	1.3574
5209210090	1.1455	1.3574
5209220020	1.1455	1.3574
5209220040	1.1455	1.3574
5209290040	1.1455	1.3574
5209290090	1.1455	1.3574
5209313000	1.1455	1.3574
5209316020	1.1455	1.3574
5209316035	1.1455	1.3574
5209316050	1.1455	1.3574
5209316090	1.1455	1.3574
5209320020	1.1455	1.3574
5209320040	1.1455	1.3574
5209390020	1.1455	1.3574
5209390040	1.1455	1.3574
5209390060	1.1455	1.3574
5209390080	1.1455	1.3574
5209390090	1.1455	1.3574
5209413000	1.1455	1.3574
5209416020	1.1455	1.3574
5209416040	1.1455	1.3574
5209420020	1.0309	1.2216
5209420040	1.0309	1.2216
5209430030	1.1455	1.3574
5209430050	1.1455	1.3574
5209490020	1.1455	1.3574
5209490090	1.1455	1.3574
5209516035	1.1455	1.3574
5209516050	1.1455	1.3574
5209520020	1.1455	1.3574
5209590025	1.1455	1.3574
5209590040	1.1455	1.3574
5209590090	1.1455	1.3574
5210114020	0.6873	0.8145
5210114040	0.6873	0.8145
5210116020	0.6873	0.8145
5210116040	0.6873	0.8145
5210116060	0.6873	0.8145
5210118020	0.6873	0.8145
5210120000	0.6873	0.8145
5210192090	0.6873	0.8145
5210214040	0.6873	0.8145
5210216020	0.6873	0.8145
5210216060	0.6873	0.8145
5210218020	0.6873	0.8145
5210314020	0.6873	0.8145
5210314040	0.6873	0.8145
5210316020	0.6873	0.8145
5210318020	0.6873	0.8145
5210414000	0.6873	0.8145
5210416000	0.6873	0.8145
5210418000	0.6873	0.8145
5210498090	0.6873	0.8145
5210514040	0.6873	0.8145
5210516020	0.6873	0.8145
5210516040	0.6873	0.8145
5210516060	0.6873	0.8145
5211110090	0.6873	0.8145
5211120020	0.6873	0.8145
5211190020	0.6873	0.8145
5211190060	0.6873	0.8145
5211210025	0.4165	0.4936
5211210035	0.4165	0.4936
5211210050	0.6873	0.8145
5211290090	0.6873	0.8145
5211320020	0.6873	0.8145

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
5211390040	0.6873	0.8145
5211390060	0.6873	0.8145
5211490020	0.6873	0.8145
5211490090	0.6873	0.8145
5211590025	0.6873	0.8145
5212146090	0.9164	1.0859
5212156020	0.9164	1.0859
5212216090	0.9164	1.0859
5509530030	0.5556	0.6584
5509530060	0.5556	0.6584
5513110020	0.4009	0.4751
5513110040	0.4009	0.4751
5513110060	0.4009	0.4751
5513110090	0.4009	0.4751
5513120000	0.4009	0.4751
5513130020	0.4009	0.4751
5513210020	0.4009	0.4751
5513310000	0.4009	0.4751
5514120020	0.4009	0.4751
5516420060	0.4009	0.4751
5516910060	0.4009	0.4751
5516930090	0.4009	0.4751
5601210010	1.1455	1.3574
5601210090	1.1455	1.3574
5601300000	1.1455	1.3574
5602109090	0.5727	0.6786
5602290000	1.1455	1.3574
5602906000	0.526	0.6233
5604900000	0.5556	0.6584
5607902000	0.8889	1.0533
5608901000	1.1111	1.3167
5608902300	1.1111	1.3167
5609001000	1.1111	1.3167
5609004000	0.5556	0.6584
5701104000	0.0556	0.0659
5701109000	0.1111	0.1317
5701901010	1.0444	1.2376
5702109020	1.1	1.3035
5702312000	0.0778	0.0922
5702411000	0.0722	0.0856
5702412000	0.0778	0.0922
5702421000	0.0778	0.0922
5702913000	0.0889	0.1053
5702991010	1.1111	1.3167
5702991090	1.1111	1.3167
5703900000	0.4489	0.5319
5801210000	1.1455	1.3574
5801230000	1.1455	1.3574
5801250010	1.1455	1.3574
5801250020	1.1455	1.3574
5801260020	1.1455	1.3574
5802190000	1.1455	1.3574
5802300030	0.5727	0.6786
5804291000	1.1455	1.3574
5806200010	0.3534	0.4188
5806200090	0.3534	0.4188
5806310000	1.1455	1.3574
5806400000	0.4296	0.5091
5808107000	0.5727	0.6786
5808900010	0.5727	0.6786
5811002000	1.1455	1.3574
6001106000	1.1455	1.3574
6001210000	0.8591	1.018
6001220000	0.2864	0.3394
6001910010	0.8591	1.018
6001910020	0.8591	1.018
6001920020	0.2864	0.3394
6001920030	0.2864	0.3394

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
5001920040	0.2864	0.3394
5002203000	0.8681	1.0287
5002206000	0.2894	0.3429
5002420000	0.8681	1.0287
5002430010	0.2894	0.3429
5002430080	0.2894	0.3429
5002921000	1.1574	1.3715
5002930040	0.1157	0.1371
5002930080	0.1157	0.1371
6101200010	1.0094	1.1961
6101200020	1.0094	1.1961
6102200010	1.0094	1.1961
6102200020	1.0094	1.1961
6103421020	0.8806	1.0435
6103421040	0.8806	1.0435
6103421050	0.8806	1.0435
6103421070	0.8806	1.0435
6103431520	0.2516	0.2981
6103431540	0.2516	0.2981
6103431550	0.2516	0.2981
6103431570	0.2516	0.2981
6104220040	0.9002	1.0667
6104220060	0.9002	1.0667
6104320000	0.9207	1.091
6104420010	0.9002	1.0667
6104420020	0.9002	1.0667
6104520010	0.9312	1.1035
6104520020	0.9312	1.1035
6104622006	0.8806	1.0435
6104622011	0.8806	1.0435
6104622016	0.8806	1.0435
6104622021	0.8806	1.0435
6104622026	0.8806	1.0435
6104622028	0.8806	1.0435
6104622030	0.8806	1.0435
6104622060	0.8806	1.0435
6104632006	0.3774	0.4472
6104632011	0.3774	0.4472
6104632026	0.3774	0.4472
6104632028	0.3774	0.4472
6104632030	0.3774	0.4472
6104632060	0.3774	0.4472
6104692030	0.3858	0.4572
6105100010	0.985	1.1672
6105100020	0.985	1.1672
6105100030	0.985	1.1672
6105202010	0.3078	0.3647
6105202030	0.3078	0.3647
6106100010	0.985	1.1672
6106100020	0.985	1.1672
6106100030	0.985	1.1672
6106202010	0.3078	0.3647
6106202030	0.3078	0.3647
6107110010	1.1322	1.3417
6107110020	1.1322	1.3417
6107120010	0.5032	0.5963
6107210010	0.8806	1.0435
6107220015	0.3774	0.4472
6107220025	0.3774	0.4472
6107910040	1.2581	1.4908
6108210010	1.2445	1.4747
6108210020	1.2445	1.4747
6108310010	1.1201	1.3273
6108310020	1.1201	1.3273
6108320010	0.2489	0.2949
6108320015	0.2489	0.2949
6108320025	0.2489	0.2949
6108910005	1.2445	1.4747

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6108910015	1.2445	1.4747
6108910025	1.2445	1.4747
6108910030	1.2445	1.4747
6108920030	0.2489	0.2949
6109100005	0.9956	1.1798
6109100007	0.9956	1.1798
6109100009	0.9956	1.1798
6109100012	0.9956	1.1798
6109100014	0.9956	1.1798
6109100018	0.9956	1.1798
6109100023	0.9956	1.1798
6109100027	0.9956	1.1798
6109100037	0.9956	1.1798
6109100040	0.9956	1.1798
6109100045	0.9956	1.1798
6109100060	0.9956	1.1798
6109100065	0.9956	1.1798
6109100070	0.9956	1.1798
6109901007	0.3111	0.3687
6109901009	0.3111	0.3687
6109901049	0.3111	0.3687
6109901050	0.3111	0.3687
6109901060	0.3111	0.3687
6109901065	0.3111	0.3687
6109901090	0.3111	0.3687
6110202005	1.1837	1.4027
6110202010	1.1837	1.4027
6110202015	1.1837	1.4027
6110202020	1.1837	1.4027
6110202025	1.1837	1.4027
6110202030	1.1837	1.4027
6110202035	1.1837	1.4027
6110202040	1.1574	1.3715
6110202045	1.1574	1.3715
6110202065	1.1574	1.3715
6110202075	1.1574	1.3715
6110909022	0.263	0.3117
6110909024	0.263	0.3117
6110909030	0.3946	0.4676
6110909040	0.263	0.3117
6110909042	0.263	0.3117
6111201000	1.2581	1.4908
6111202000	1.2581	1.4908
6111203000	1.0064	1.1926
6111205000	1.0064	1.1926
6111206010	1.0064	1.1926
6111206020	1.0064	1.1926
6111206030	1.0064	1.1926
6111206040	1.0064	1.1926
6111305020	0.2516	0.2981
6111305040	0.2516	0.2981
6112110050	0.7548	0.8944
6112120010	0.2516	0.2981
6112120030	0.2516	0.2981
6112120040	0.2516	0.2981
6112120050	0.2516	0.2981
6112120060	0.2516	0.2981
6112390010	1.1322	1.3417
6112490010	0.9435	1.118
6114200005	0.9002	1.0667
6114200010	0.9002	1.0667
6114200015	0.9002	1.0667
6114200020	1.286	1.5239
6114200040	0.9002	1.0667
6114200046	0.9002	1.0667
6114200052	0.9002	1.0667
6114200060	0.9002	1.0667
6114301010	0.2572	0.3048

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6114301020	0.2572	0.3048
6114303030	0.2572	0.3048
6115198010	1.0417	1.2344
6115929000	1.0417	1.2344
6115936020	0.2315	0.2743
6116101300	0.3655	0.4331
6116101720	0.8528	1.0106
6116926420	1.0965	1.2994
6116926430	1.2183	1.4437
6116926440	1.0965	1.2994
6116928800	1.0965	1.2994
6117809510	0.9747	1.155
6117809540	0.3655	0.4331
6201121000	0.948	1.1234
6201122010	0.8953	1.0609
6201122050	0.6847	0.8114
6201122060	0.6847	0.8114
6201134030	0.2633	0.312
6201921000	0.9267	1.0981
6201921500	1.1583	1.3726
6201922010	1.0296	1.2201
6201922021	1.2871	1.5252
6201922031	1.2871	1.5252
6201922041	1.2871	1.5252
6201922051	1.0296	1.2201
6201922061	1.0296	1.2201
6201931000	0.3089	0.366
6201933511	0.2574	0.305
6201933521	0.2574	0.305
6201999060	0.2574	0.305
6202121000	0.9372	1.1106
6202122010	1.1064	1.3111
6202122025	1.3017	1.5425
6202122050	0.8461	1.0026
6202122060	0.8461	1.0026
6202134005	0.2664	0.3157
6202134020	0.333	0.3946
6202921000	1.0413	1.2339
6202921500	1.0413	1.2339
6202922026	1.3017	1.5425
6202922061	1.0413	1.2339
6202922071	1.0413	1.2339
6202931000	0.3124	0.3702
6202935011	0.2603	0.3085
6202935021	0.2603	0.3085
6203122010	0.1302	0.1543
6203221000	1.3017	1.5425
6203322010	1.2366	1.4654
6203322040	1.2366	1.4654
6203332010	0.1302	0.1543
6203392010	1.1715	1.3882
6203399060	0.2603	0.3085
6203422010	0.9961	1.1804
6203422025	0.9961	1.1804
6203422050	0.9961	1.1804
6203422090	0.9961	1.1804
6203424005	1.2451	1.4754
6203424010	1.2451	1.4754
6203424015	0.9961	1.1804
6203424020	1.2451	1.4754
6203424025	1.2451	1.4754
6203424030	1.2451	1.4754
6203424035	1.2451	1.4754
6203424040	0.9961	1.1804
6203424045	0.9961	1.1804
6203424050	0.9238	1.0947
6203424055	0.9238	1.0947
6203424060	0.9238	1.0947

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6203431500	0.1245	0.1475
6203434010	0.1232	0.146
6203434020	0.1232	0.146
6203434030	0.1232	0.146
6203434040	0.1232	0.146
6203498045	0.249	0.2951
6204132010	0.1302	0.1543
6204192000	0.1302	0.1543
6204198090	0.2603	0.3085
6204221000	1.3017	1.5425
6204223030	1.0413	1.2339
6204223040	1.0413	1.2339
6204223050	1.0413	1.2339
6204223060	1.0413	1.2339
6204223065	1.0413	1.2339
6204292040	0.3254	0.3856
6204322010	1.2366	1.4654
6204322030	1.0413	1.2339
6204322040	1.0413	1.2339
6204423010	1.2728	1.5083
6204423030	0.9546	1.1312
6204423040	0.9546	1.1312
6204423050	0.9546	1.1312
6204423060	0.9546	1.1312
6204522010	1.2654	1.4995
6204522030	1.2654	1.4995
6204522040	1.2654	1.4995
6204522070	1.0656	1.2627
6204522080	1.0656	1.2627
6204533010	0.2664	0.3157
6204594060	0.2664	0.3157
6204622010	0.9961	1.1804
6204622025	0.9961	1.1804
6204622050	0.9961	1.1804
6204624005	1.2451	1.4754
6204624010	1.2451	1.4754
6204624020	0.9961	1.1804
6204624025	1.2451	1.4754
6204624030	1.2451	1.4754
6204624035	1.2451	1.4754
6204624040	1.2451	1.4754
6204624045	0.9961	1.1804
6204624050	0.9961	1.1804
6204624055	0.9854	1.1677
6204624060	0.9854	1.1677
6204624065	0.9854	1.1677
6204633510	0.2546	0.3017
6204633530	0.2546	0.3017
6204633532	0.2437	0.2888
6204633540	0.2437	0.2888
6204692510	0.249	0.2951
6204692540	0.2437	0.2888
6204699044	0.249	0.2951
6204699046	0.249	0.2951
6204699050	0.249	0.2951
6205202015	0.9961	1.1804
6205202020	0.9961	1.1804
6205202025	0.9961	1.1804
6205202030	0.9961	1.1804
6205202035	1.1206	1.3279
6205202046	0.9961	1.1804
6205202050	0.9961	1.1804
6205202060	0.9961	1.1804
6205202065	0.9961	1.1804
6205202070	0.9961	1.1804
6205202075	0.9961	1.1804
6205302010	0.3113	0.3689
6205302030	0.3113	0.3689

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6205302040	0.3113	0.3689
6205302050	0.3113	0.3689
6205302070	0.3113	0.3689
6205302080	0.3113	0.3689
6206100040	0.1245	0.1475
6206303010	0.9961	1.1804
6206303020	0.9961	1.1804
6206303030	0.9961	1.1804
6206303040	0.9961	1.1804
6206303050	0.9961	1.1804
6206303060	0.9961	1.1804
6206403010	0.3113	0.3689
6206403030	0.3113	0.3689
6206900040	0.249	0.2951
6207110000	1.0852	1.286
6207199010	0.3617	0.4285
6207210010	1.1085	1.3136
6207210030	1.1085	1.3136
6207220000	0.3695	0.4379
6207911000	1.1455	1.3574
6207913010	1.1455	1.3574
6207913020	1.1455	1.3574
6208210010	1.0583	1.2541
6208210020	1.0583	1.2541
6208220000	0.1245	0.1475
6208911010	1.1455	1.3574
6208911020	1.1455	1.3574
6208913010	1.1455	1.3574
6209201000	1.1577	1.3719
6209203000	0.9749	1.1553
6209205030	0.9749	1.1553
6209205035	0.9749	1.1553
6209205040	1.2186	1.444
6209205045	0.9749	1.1553
6209205050	0.9749	1.1553
6209303020	0.2463	0.2919
6209303040	0.2463	0.2919
6210109010	0.2291	0.2715
6210403000	0.0391	0.0463
6210405020	0.4556	0.5399
6211111010	0.1273	0.1509
6211111020	0.1273	0.1509
6211118010	1.1455	1.3574
6211118020	1.1455	1.3574
6211320007	0.8461	1.0026
6211320010	1.0413	1.2339
6211320015	1.0413	1.2339
6211320030	0.9763	1.1569
6211320060	0.9763	1.1569
6211320070	0.9763	1.1569
6211330010	0.3254	0.3856
6211330030	0.3905	0.4627
6211330035	0.3905	0.4627
6211330040	0.3905	0.4627
6211420010	1.0413	1.2339
6211420020	1.0413	1.2339
6211420025	1.1715	1.3882
6211420060	1.0413	1.2339
6211420070	1.1715	1.3882
6211430010	0.2603	0.3085
6211430030	0.2603	0.3085
6211430040	0.2603	0.3085
6211430050	0.2603	0.3085
6211430060	0.2603	0.3085
6211430066	0.2603	0.3085
6212105020	0.2412	0.2858
6212109010	0.9646	1.1431
6212109020	0.2412	0.2858

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional Factors	Cents/kg.
6212200020	0.3014	0.3572
6212900030	0.1929	0.2286
6213201000	1.1809	1.3994
6213202000	1.0628	1.2594
6213901000	0.4724	0.5598
6214900010	0.9043	1.0716
6216000800	0.2351	0.2786
6216001720	0.6752	0.8001
6216003800	1.2058	1.4289
6216004100	1.2058	1.4289
6217109510	1.0182	1.2066
6217109530	0.2546	0.3017
6301300010	0.8766	1.0388
6301300020	0.8766	1.0388
6302100010	1.1689	1.3851
6302215010	0.8182	0.9696
6302215020	0.8182	0.9696
6302217010	1.1689	1.3851
6302217020	1.1689	1.3851
6302217050	1.1689	1.3851
6302219010	0.8182	0.9696
6302219020	0.8182	0.9696
6302219050	0.8182	0.9696
6302222010	0.4091	0.4848
6302222020	0.4091	0.4848
6302313010	0.8182	0.9696
6302313050	1.1689	1.3851
6302315050	0.8182	0.9696
6302317010	1.1689	1.3851
6302317020	1.1689	1.3851
6302317040	1.1689	1.3851
6302317050	1.1689	1.3851
6302319010	0.8182	0.9696
6302319040	0.8182	0.9696
6302319050	0.8182	0.9696
6302322020	0.4091	0.4848
6302322040	0.4091	0.4848
6302402010	0.9935	1.1773
6302511000	0.5844	0.6925
6302512000	0.8766	1.0388
6302513000	0.5844	0.6925
6302514000	0.8182	0.9696
6302600010	1.1689	1.3851
6302600020	1.052	1.2466
6302600030	1.052	1.2466
6302910005	1.052	1.2466
6302910015	1.1689	1.3851
6302910025	1.052	1.2466
6302910035	1.052	1.2466
6302910045	1.052	1.2466
6302910050	1.052	1.2466
6302910060	1.052	1.2466
6303110000	0.9448	1.1196
6303910000	0.6429	0.7618
6304111000	1.0629	1.2595
6304190500	1.052	1.2466
6304191000	1.1689	1.3851
6304191500	0.4091	0.4848
6304192000	0.4091	0.4848
6304910020	0.9351	1.1081
6304920000	0.9351	1.1081
6505901540	1.181	1.3995
6505902060	0.9935	1.1773
6505902545	0.5844	0.6925

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Dated: March 24, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–8178 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI68

Reservists Education: Monthly Verification of Enrollment and Other Reports

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It proposes to expand the current requirement that some reservists receiving educational assistance under the Montgomery GI Bill—Selected Reserve (MGIB–SR) verify their pursuit of a program of education monthly to include those reservists who are pursuing a standard college degree. At the same time the document proposes reducing the number of reports VA receives from educational institutions. It appears that this would be a cost-effective way to reduce overpayments.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Mail or hand deliver written comments to Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI68." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Comments on the collection of information contained in this proposal should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand delivered to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI68." All written comments to VA will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: VA is required by statute (38 U.S.C. 3680(g)) to withhold payments of educational assistance until VA receives proof of an individual's pursuit of a program of education. The statute goes on to state that VA may accept the individual's monthly certification of enrollment in and satisfactory pursuit of a program of education as satisfactory proof. Currently, regulations governing the MGIB–SR require such a monthly certification from a reservist pursuing a course not leading to a standard college degree, but this is not required from a reservist who is pursuing a standard college degree.

VA analyzes its information collection burdens periodically to see if they are cost-effective. In 1997 an analysis was done of the monthly certification process. The analysis included an examination of the verification process in other VA education programs such as the Montgomery GI Bill—Active Duty (MGIB) where students pursuing a standard college degree are required to verify their continued pursuit monthly.

The analysis found that if monthly verifications were eliminated entirely, the current establishment of debt in the education programs VA administers would increase from $5.6 million to $14 million annually. While the cost of processing verifications would be eliminated, the cost of collecting debts would increase. Conversely, the analysis projected that if monthly verifications were required in all the education programs VA administers, the establishment of debt in those programs would decrease from $5.6 million to $2.4 million annually, while the costs of processing those verifications would increase by $0.3 million annually. Accordingly, it would appear that overpayments of educational assistance

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under MGIB–SR could be effectively reduced by expanding the monthly verification process to include reservists enrolled in courses leading to a standard college degree. This proposed rule would require reservists pursuing a standard college degree to verify pursuit of a program of education each month.

Current regulations provide that if a reservist reduces his or her rate of training, and has mitigating circumstances for such a reduction, the effective date for the corresponding reduction in the monthly rate of the reservist's educational assistance will be the end of the month in which the reduction in the rate of training took place. However, VA is required by statute to make the reduction in the monthly rate of educational assistance on the effective date of the reduction in the rate of training, if the reduction is pursuant to a report received from the reservist as part of his or her monthly verification of training. Thus, it appears that adopting a monthly verification requirement would require a change in the regulation governing the effective dates of reductions in educational assistance. Such a change is included in this proposal.

Current regulations provide that when a reservist interrupts or terminates training or when he or she changes the number of hours of credit or attendance, the educational institution must report this fact to VA. The purpose of this report is to help determine the reservist's training time. VA considers a reservist to be a half-time, three-quarter-time, full-time, etc., student on the basis of the number of his or her credit hours or clock hours of attendance. Payments, in turn, are based on the training time. For example, a full-time student receives twice the monthly educational assistance that a half-time student does. VA needs to know changes in the number of the reservist's hours of credit or attendance so that his or her payments may accurately reflect the training time.

However, occasionally a reservist will enroll in more hours than the minimum needed to be considered a full-time student. The reservist may withdraw from a course or add a course and still be considered a full-time student. It appears that in those instances VA does not need a report of the change in hours, because payment to the student will not be affected. Accordingly, it is proposed that in these instances the educational institution need not report the changes provided the reservist is enrolled in a standard term.

Similarly, VA is proposing that a reservist who is a full-time student and who changes his or her enrollment but remains a full-time student need not report the change on the monthly verification of pursuit.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that the proposed 38 CFR 21.7654 and 21.7656(a) and the proposed 38 CFR 21.7656(b) would constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act VA has submitted a copy of this rulemaking action to OMB for its review.

Title: Monthly Verification of Pursuit of Training under the Montgomery GI Bill—Selected Reserve.

Summary of collection of information: The collection of information in the proposed revisions to §§ 21.7654 and 21.7656(a) in this rulemaking proceeding implements a statutory provision that permits, but does not require, VA to require reports showing a reservist's satisfactory pursuit of a program of education before releasing a payment of educational assistance. The statute specifically allows a monthly certification received from the reservist to satisfy this requirement.

Description of need for information and proposed use of information: The information required in §§ 21.7654 and 21.7656(a) is needed to help VA determine whether educational assistance should continue to be paid to a reservist and to verify the correct monthly rate of educational assistance payable to a reservist. The monthly rate is based on the reservist's training time which in turn is based on the number of credit hours in which the reservist is enrolled.

Description of likely respondents: The respondents will be reservists eligible to receive educational assistance under the Montgomery GI Bill—Selected Reserve.

Estimated number of respondents: 82,400.

Estimated frequency of responses: Monthly while the reservist continues to pursue a program of education.

Estimated total annual reporting and recordkeeping burden: 48,067 hours of reporting burden. VA estimates that there would be no recordkeeping burden.

Estimated average burden per respondent: .58 hour.

Title: Report of Change in Enrollment for Reservists Training under the Montgomery GI Bill—Selected Reserve.

Summary of collection of information: The collection of information in the proposed revisions to § 21.7656(b) in this rulemaking proceeding implements a statutory provision that requires an educational institution to report without delay changes, including interruptions and terminations, in a reservist's enrollment. This proposed rule would reduce the information collection burden currently placed on educational institutions by eliminating some reports that the current regulation requires.

Description of need for information and proposed use of information: The information required in § 21.7656(b) is needed to help VA determine the monthly rate of educational assistance payable to a reservist. The monthly rate is based on the student's training time which in turn is based on the number of credit hours in which the reservist is enrolled.

Description of likely respondents. Educational institutions make this report.

Estimated number of respondents: 7,481.

Estimated frequency of responses: Occasionally, when a reservist changes her or his pursuit of a program of education, unless the reservist was a full-time student both before and after the change.

Estimated total annual reporting and recordkeeping burden: 13,570 hours of reporting burden. VA does not believe that there will be additional recordkeeping burden.

Estimated average burden per respondent: 1.81 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collection(s) of information are necessary for the proposed performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule may affect some educational institutions that are small entities. However, educational institutions are paid a reporting fee for making required reports to VA. Furthermore, VA does not believe that a burden of less than two hours annually would result in a significant economic impact. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from both the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this proposed rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 17, 1998.

Togo D. West, Jr.,

Acting Secretary.

Approved: August 13, 1997.

Al H. Bemis,

Deputy Assistant Secretary of Defense for Reserve Affairs (Manpower and Personnel).

Approved: November 4, 1997.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out above, 38 CFR part 21, subpart L, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L, continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

2. In § 21.7635, paragraph (c)(1) is revised to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(c) * * *

(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the reservist's educational assistance effective on the date the reduction occurred when:

* * * * *

3. In § 21.7654, paragraph (b) is redesignated as paragraph (c); paragraph (a) is revised; and introductory text and a new paragraph (b) are added to read as follows:

§ 21.7654 Pursuit and absences.

Except as provided in this section, a reservist must submit a verification to VA each month of his or her enrollment during the period for which the reservist is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) *Exceptions to the monthly verification requirement.* A reservist does not have to submit a monthly verification as described in the introductory text of this section when the reservist—

(1) Is enrolled in a correspondence course; or

(2) Has received an advance payment for the training completed during a month.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(a), 3680(g))

(b) *Items to be reported on all monthly verifications.* (1) The monthly verification for all reservists will include a report on the following items when applicable:

(i) Continued enrollment in and actual pursuit of the course;

(ii) The date of interruption or termination of training;

(iii) Except as provided in § 21.7656(a), changes in the number of credit hours or in the number of clock hours of attendance;

(iv) Nonpunitive grades; and

(v) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must:

(i) Contain the information required for release of payment;

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the reservist on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period; and

(iii) If submitted on paper, clearly show the date on which it was signed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(g))

* * * * *

4. In § 21.7656, the introductory text is removed, paragraphs (a), (a)(1), (a)(2), (a)(3), and (b) are redesignated as paragraphs (b), (b)(3), (b)(4), (b)(5), and (c), respectively; the section heading, newly redesignated paragraphs (b), (b)(3) and the authority citation at the end of paragraph (b) are revised; and new paragraphs (a), (b)(1), and (b)(2) are added, to read as follows:

§ 21.7656 Other required reports.

(a) *Reports from reservists.* (1) A reservist enrolled full time in a program of education for a standard term, quarter, or semester must report without delay to VA:

(i) A change in his or her credit hours or clock hours of attendance if that change would result in less than full-time enrollment;

(ii) Any change in his or her pursuit that would result in less than full-time enrollment; and

(iii) Any interruption or termination of his or her attendance.

(2) A reservist not described in paragraph (a)(1) of this section must report without delay to VA:

(i) Any change in his or her credit hours or clock hours of attendance;

(ii) Any change in his or her pursuit; and

(iii) Any interruption or termination of his or her attendance.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

(b) *Interruptions, terminations, or changes in hours of credit or attendance.* (1) Except as provided in paragraph (b)(2) of this section, an educational institution must report without delay to VA each time a reservist:

(i) Interrupts or terminates his or her training for any reason; or

(ii) Changes his or her credit hours or clock hours of attendance.

(2) An educational institution does not need to report a change in a reservist's hours of credit or attendance when:

(i) The reservist is enrolled full time in a program of education for a standard term, quarter, or semester before the change; and

(ii) The reservist continues to be enrolled full time after the change.

(3) If the change in status or change in number of credit hours or clock hours of attendance occurs on a day other than one indicated by paragraph (b)(4) or (b)(5) of this section, the educational

institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

* * * * *

[FR Doc. 98–8332 Filed 3–30–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–69–7284b; FRL–5984–8]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Oregon State Implementation Plan. This revision establishes and requires a source specific reasonable available control technology (RACT) volatile organic compound (VOC) emission standard for DURA Industries, at 4466 NW Yeon, Portland, Oregon 97210. This action is authorized under Part D of the Clean Air Act (Act).

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by April 30, 1998.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101 and Oregon Department of Environmental Quality (ODEQ) 811 SW Sixth Ave, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1388.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: March 6, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 98–8058 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA 041–0067a; FRL–5984–1]

Proposed Approval and Promulgation of State Implementation Plans and Redesignation of California's Ten Federal Carbon Monoxide Planning Areas to Attainment Urbanized Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve maintenance plans and redesignation requests submitted by the California Air Resources Board (CARB) to redesignate ten of California's federal carbon monoxide planning areas from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO). They are: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is proposing California's maintenance plans and redesignation requests because they meet the requirements set forth in the CAA. In addition, EPA is proposing a related State Implementation Plan (SIP) submission by CARB, an Air Quality Attainment Plan for CO for Fresno.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. However, if EPA receives relevant adverse comments, then EPA will publish a document that withdraws only those portions of the action on which EPA received the adverse comments, informing the public that those portions of the action are withdrawn. EPA will then address those comments in a final action based upon this proposed rule. EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 30, 1998.

ADDRESSES: Written comments on this action should be addressed to: Larry A. Biland, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901. Telephone: (415) 744–1227.

Copies of the SIP materials and EPA's technical support document are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, DC 20460

California Air Resources Board, 2020 L Street, Sacramento, California 92123–1095

Kern County APCD, 2700 M Street, Suite #290, Bakersfield, CA 93301

San Joaquin Valley Unified APCD, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Placer County, DeWitt Center 11464 B Avenue, Auburn, CA 95603

Sacramento Metropolitan APCD, 8411 Jackson Road, Sacramento, CA 95826

Bay Area Air, Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Butte County, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

El Dorado County 2850, Fairlane Ct., Bldg. C, Placerville, CA 95667–4100
Yolo—Solano County, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882
San Diego County, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095

FOR FURTHER INFORMATION CONTACT: Larry A. Biland, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901, Telephone: (415) 744–1227.

SUPPLEMENTARY INFORMATION: This document concerns Approval and Promulgation of State Implementation Plans submitted to EPA on December 28, 1992; Designation of Areas for Air Quality Planning Purposes; Redesignation of California's Ten Federal Carbon Monoxide Planning Areas to Attainment and Approval of the Area's Maintenance Plan and Emission Inventory; Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area submitted to EPA on July 3, 1996 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 4, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–8415 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5988–4]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of compliance.

SUMMARY: This action proposes a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing poly(ethylene terephthalate) (PET) using the continuous terephthalic acid (TPA) high viscosity multiple end finisher process because the EPA is in the process of responding to a request to reconsider relevant portions of the rule (Docket Item: A–92–45; VI–A–1). The EPA is proposing this temporary extension to February 27, 2001 to complete reconsideration and any necessary revision to the rule. The EPA is proposing this temporary extension pursuant to Clean Air Act section 301(a)(1).

Because these amendments would merely extend the compliance date for the process contact cooling tower (PCCT) provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process, the EPA does not anticipate receiving relevant adverse comments. Consequently, the proposed revisions to the promulgated rule providing the temporary extension of the compliance date are also being issued as a direct final rule in the Final Rules Section of this **Federal Register**.

If no relevant adverse comments are received on this proposal by the due date for comments (see DATES section below), no further action will be taken with respect to this proposal, and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before April 30, 1998, unless a hearing is requested by April 13, 1998. If a hearing is requested, written comments must be received by May 15, 1998.

Public Hearing

Anyone requesting a public hearing must contact the EPA no later than April 13, 1998. If a hearing is held, it will take place on April 15, 1998, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–45 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Public Hearing

If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Marguerite Thweatt, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, N.C. 27711, telephone (919) 541–5673.

Docket

The official record for this rulemaking has been established under docket number A–92–45 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESSES** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION: *Electronic Filing.* Electronic comments and data can be sent directly to EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–45. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–92–45 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a

14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: www.epa.gov/ttn/oarpg/rules.html.

Regulated Entities

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Facilities that produce PET using the continuous TPA high viscosity multiple end finisher process.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this notice. If you have questions regarding the applicability of the NESHAP addressed in this notice to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

If no relevant adverse comments are timely received, no further activity is contemplated in relation to this proposed rule, and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If relevant adverse comments are timely received, the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative

A. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR Part 9. The EPA has amended 40 CFR Part 9, Section 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

This action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the regulatory action is "significant" and therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The proposed rule will provide a temporary extension of the compliance date specified in 40 CFR 63.1311(c) for the provisions contained in 40 CFR 63.1329 for existing affected sources producing PET using the continuous TPA high viscosity multiple end finisher process. The proposed rule does not add any additional control requirements. Therefore, this proposed rule was classified "non-significant" under Executive Order 12866 and was not required to be reviewed by OMB.

C. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an Agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. This proposal would not have a significant impact on a substantial number of small entities because the proposed temporary compliance extension would not impose any economic burden on any regulated entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, the EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that this proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 23, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–8213 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5985–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Southern Shipbuilding Corporation Superfund Site from the National Priorities List and Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Southern Shipbuilding Corporation Superfund Site (the "Site") from the National

Priorities List (NPL) and requests public comment on this proposed action. All public comments regarding this proposed action which are submitted within 30 days of the date of publication of this document, to the address indicated below, will be considered by EPA. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is codified at Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. EPA in consultation with the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), has determined that no further response is appropriate, and that, consequently, the Site should be deleted from the NPL.

DATES: The EPA will consider comments submitted regarding its proposal to delete the Site from the NPL by April 30, 1998.

ADDRESSES: Comments may be mailed to: Mr. Mark Hansen, Remedial Project Manager (6SF–LT), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas TX 75202–2733, (214) 665–7548.

Information repositories.
Comprehensive information on the Site has been compiled in a public deletion docket which may be reviewed and copied during normal business hours at the following Southern Shipbuilding Corporation Superfund Site information repositories:

U.S. EPA Region 6 Library (12th Floor), 1445 Ross Avenue, Dallas TX 75202–2733, 1–800–533–3508.

St. Tammany Parish Public Library, Slidell Branch, 555 Robert Blvd., Slidell, Louisiana 70450, (504) 643–4120.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Hansen, Remedial Project Manager (6SF–LT), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas TX 75202–2733, (214) 665–7548.
or:
Mr. Duane Wilson, Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, LA 70809, (504) 765–0487.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

Appendix:

A. Site Map

I. Introduction

This document was prepared by EPA Region 6 as Notice of Intent to Delete (NOID) the Southern Shipbuilding Corporation Superfund Site, Slidell, St. Tammany Parish, Louisiana (EPA Site Spill No. 066Z; CERCLIS No. LAD008149015), from the National Priorities List (NPL). The NPL is the list, compiled by EPA pursuant to CERCLA Section 105, of uncontrolled hazardous substance release sites in the United States that are priorities for long-term remedial evaluation and response. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will consider comments concerning this NOID which are submitted within thirty days of the date of this NOID. EPA has also published a notice of the availability of this NOID in the New Orleans Times-Picayune (St. Tammany Edition), and the Slidell Sentry News.

Section II of this NOID explains the NCP criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Southern Shipbuilding Corporation Superfund Site and explains that the Site meets the NCP deletion criteria.

II. NPL Deletion Criteria

The NCP, at 40 CFR 300.425(e), provides that Sites may be deleted from the NPL if no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria has been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed [1] response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If, at the site of a release, EPA selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, CERCLA Subsection 121(c), 42 U.S.C. 121(c), requires that EPA review such remedial action no less often than each 5 years to ensure that human health and the environment are being protected by the remedial action. Since hazardous substances will remain at the Site,[2] EPA shall conduct such reviews. In response to community concern regarding potential future residential development of the Site, EPA committed to perform annual inspections of the Site for the next 5 years. EPA will begin annual inspections in the Summer of 1998 and conduct its final annual inspection in 2002. Annual inspections will be coordinated with the Louisiana Department of Environmental Quality and include at a minimum: a Site tour for an inspection of EPA's remedies and contact with City of Slidell officials to discuss current or planned property use and zoning. If new information becomes available which indicates a need for further action, EPA may initiate further remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.[3]

III. Deletion Procedures

EPA followed these procedures regarding the proposed deletion:

(1) EPA Region 6 made a determination that no further response action is necessary and that the Site may be deleted from the NPL;

(2) EPA has consulted with the appropriate environmental agency, the Louisiana Department of Environmental Quality (LDEQ), and LDEQ concurs with EPA's deletion decision;

(3) EPA has published, in a major local newspaper of general circulation at or near the Site, a notice of availability of the NOID, which includes an announcement of a 30-day public comment period regarding the NOID, and EPA distributed the NOID to appropriate State, local and Federal officials, and to other interested parties; and

(4) EPA placed copies of information supporting the proposed deletion (i.e., the public deletion docket) in the Site information repositories (the locations of these repositories are identified above).

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As

[1] The *Fund* referred to here is the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

[2] Treated soil, ash, and marginally contaminated soils remain on the Site under a clay cap which covers approximately nine acres of the Site. EPA considers the cap to be protective; nonetheless, since hazardous substances will remain on the Site, EPA is required to conduct the CERCLA-required five-year reviews.

[3] The Hazardous Ranking System is the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

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mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility of the site for future response actions.

EPA Region 6 will accept and evaluate public comments on this NOID before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received.

IV. Basis for Intended Site Deletion

A. Site Location and Description

The Southern Shipbuilding Corporation (Southern Shipbuilding or SSC) site is situated on approximately 54 acres of land located in Township 9S, Range 14E, Section 44 (30°16'21" north latitude and 89°48'03") as shown in Appendix A. The site is located at 999 Canulette Road in St. Tammany Parish, Slidell, Louisiana and is immediately downstream of the Louisiana Highway 433 bridge. Approximately 1.5 miles upstream of the SSC site is the Bayou Bonfouca Superfund NPL site, which is an abandoned creosote treatment plant that is actively being remediated under the Federal Superfund Program.

As shown in Appendix A, the northern boundary of the SSC property consists of Bayou Bonfouca while the southern portion is defined by Canulette Road. Residential areas surround the site to the west, south, and on portions of the northern shore of Bayou Bonfouca. Directly opposite the active portions of the site on the northern side of Bayou Bonfouca is an active marine service company. The eastern portion of the site is heavily wooded and is bounded by State Highway 433. Approximately half of the western portion of the 54 acre SSC property has been cleared for the plant operations which included operation of two sludge pits that were the primary focus of EPA response actions at the Site. The term *sludge* as used in this document refers to the black, oily material in the pits, whether it is liquid or solid, floating or sinking. These pits were used for the disposal of material pumped from vessels from an undetermined time until 1972 and were the primary source of hazardous substance contamination seeping into Bayou Bonfouca. The oily waste pits were designated by EPA as Operable Unit One (OU1) and the remainder of the site was designated as Operable Unit Two (OU2).

In addition to the pits, the site consisted of a wide range of potential environmental and worker threats, many of which have been addressed as EPA removal actions. Solid waste and hazardous substances were disposed of on the ground surface and in dilapidated buildings located on the Site. Abandoned piles of scrap metal, drums, paint cans, cranes, other heavy equipment, and discarded solid waste were scattered throughout the facility and in the wooded areas immediately adjacent to the operations plant. A paint shed on-site was estimated to have contained over 2,000 cans of paints, solvents and containers that were leaking or in various stages of decay. The majority of these removal actions were completed by the end of June 1996, in conjunction with the investigation and cleanup of contamination on the OU2 property.

Extensive sampling and analysis for a broad range of hazardous substances was completed and compiled in the Remedial Investigation Report, Feasibility Study, and Removal Support Reports 1 and 2. Based on the results of these investigations, EPA determined that several areas within OU2 presented a higher than allowable risk to potential future workers or residents on the Site. As a result, EPA conducted extensive removal actions that addressed contaminated areas and reduced site human health and environmental risks.

Unlike OU1, which contained primarily organic wastes such as polynuclear aromatic hydrocarbons (PAHs), OU2 contaminants included heavy metals such as lead and arsenic, and organics such as polychlorinated biphenyls (PCBs), and PAHs.

Since incineration of OU1 wastes was nearing completion and since the release or threatened release of hazardous substances from the Site constituted an imminent and substantial endangerment to public health and the environment, EPA conducted an expedited removal of the organic compound-contaminated soil areas from OU2 and blended those contaminated soils with the oily wastes from OU1. Blending of the OU1 and OU2 wastes aided in the handling of OU1 wastes by helping to stabilize the liquid oily wastes from the South Impoundment. Approximately 1,072 cubic yards of oily waste from OU2 were blended with OU1 wastes and transported to the Bayou Bonfouca incinerator.

In addition to the incineration of this waste material, EPA disposed of approximately 4,704 cubic yards of soil and debris that were contaminated with metals. Since metals can not be treated by incineration, EPA transported these wastes off-site for disposal. Analysis of the heavy metal-contaminated soils and debris indicated that it contained metals levels below the regulatory threshold for treatment as a hazardous waste. Therefore, because this material was classified as a non-hazardous waste regulated under Subtitle D of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, it was disposed of at the Woodside Landfill in Walker, Louisiana.

The Site also included large quantities of non-hazardous waste and debris. As part of a continuing cooperative effort with EPA, Signal Capital, the secured creditor of the bankrupt Southern Shipbuilding Corporation, has conducted extensive recycling and salvage efforts that have involved removal of most of the Site's salvageable and unsalvageable materials that are not contaminated with hazardous substances.

In addition to the chemicals of concern identified in the RI and FS, asbestos containing materials were detected in several debris piles and small pieces were discovered to be randomly scattered across the surface of OU2. EPA used visual identification and laboratory samples to remove potentially asbestos containing materials from surface soils and debris piles. In several areas, EPA excavated the debris pile to 4" below grade or to the extent of contamination, placed a protective geotextile warning barrier to the limits of excavation, backfilled excavated areas with a minimum of one foot of low permeability clay, revegetated the excavated area to prevent erosion, and transported the asbestos containing debris to an approved asbestos landfill for disposal. The Record of Decision for OU2 and the Administrative Record provide additional information on this response.

B. Site History

The facility was used for the manufacturing and repairing of shipping vessels including the gas freeing (cleaning) of cargo hulls for change of cargo for a period of over 75 years. Chemical compounds such as benzo(a)pyrene (BaP) and other polynuclear aromatic hydrocarbons (PAHs) have been identified at the site that constitute hazardous substances as defined at Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), and further defined at 40 CFR 302.4.

The SSC site began operations in 1919 under the direction of Canulette Shipbuilding. In 1954, Canulette Shipbuilding sold the business to J & S Shipbuilding. Records of site operations for the period of ownership by each of these two companies are unavailable. In 1957, the Southern Shipbuilding

Corporation (SSC) purchased the property from J & S Shipbuilding. SSC ran the facility from 1957 until 1993, during which time it performed gas freeing, ship construction, docking and repairing operations. In 1993, SSC and its operator filed for Chapter 11 bankruptcy protection under the U.S. Bankruptcy Code and ceased all operations. Also in 1993, SSC's secured creditor, Signal Capital Corporation, secured the facility.

EPA has utilized available aerial photographs to interpret site conditions over the operational history of the facility. Those aerial photographs have provided evidence that the facility was well established by the 1940s and have indicated that the two surface impoundments were not constructed until after March 1939. An April 1954 photo shows a railroad running from the north along the Bayou Bonfouca and ending at the bayou in the area between the north and south impoundments, although the use of this railway is undocumented. That 1954 aerial also shows a small island less than 0.25 acres located in the center of Bayou Bonfouca near the graving dock and a maintenance slip along the upstream portion of the Bayou. The island appears to have been constructed with dredge spoils.

The 1954 photo also indicates that there were no residences on the southern portion of Bayou Bonfouca near the SSC facility and that residences were only sparsely located near the opposite bank. A November 1967 aerial photograph revealed extensive dredging of coves along the southern portion of Bayou Bonfouca and the establishment of residences along both shores of the bayou in the vicinity of the site. In addition, the small island within the middle of the bayou and the breakwater for the maintenance slip no longer appear in the 1967 photo. That photo also indicates that the size of the north and south impoundments remained approximately the same over the 13 year period.

Subsequent photographs taken during the 1970s, 1980s, and 1990s indicate growth in residential communities bordering the facility but do not identify any major alterations to the impoundments or the rest of the SSC site. It is also important to note that a review of these historical photos does not show the presence of any impoundments other than the north and south impoundments and associated systems such as the weir system.

C. Characterization of Risk

Due to extensive remedial and removal actions by EPA and LDEQ, the monitoring results of operation and maintenance (O & M) activities to date, and the public health consultation by the Agency for Toxic Substances and Disease Registry (ATSDR), EPA verifies the implemented Site remedy is protective of human health and the environment.

D. Community Involvement

Extensive community relations and community involvement have occurred at the SSC site. Public participation activities have been satisfied as required in CERCLA Subsection 113(k), 42 U.S.C. 9613(k), and in CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket on which EPA relied for recommendation of the Site deletion from the NPL have been made available to the public in the two information repositories, the location of which is identified above.

E. Proposed Action

In consultation with LDEQ, EPA has concluded that all appropriate response actions required at the Site (neither the CERCLA-required five-year reviews, nor operation and maintenance of the constructed remedy is considered further response action for these purposes), that all appropriate Fund-financed response actions under CERCLA have been implemented, and that no further response action is appropriate. Moreover, EPA, in consultation with LDEQ, has determined that Site investigations show that the Site now poses no significant threat to public health or the environment; consequently, EPA proposes to delete the Site from the NPL.

Dated: March 16, 1998.

Lynda F. Carroll,

Acting Regional Administrator, U.S. EPA Region 6.

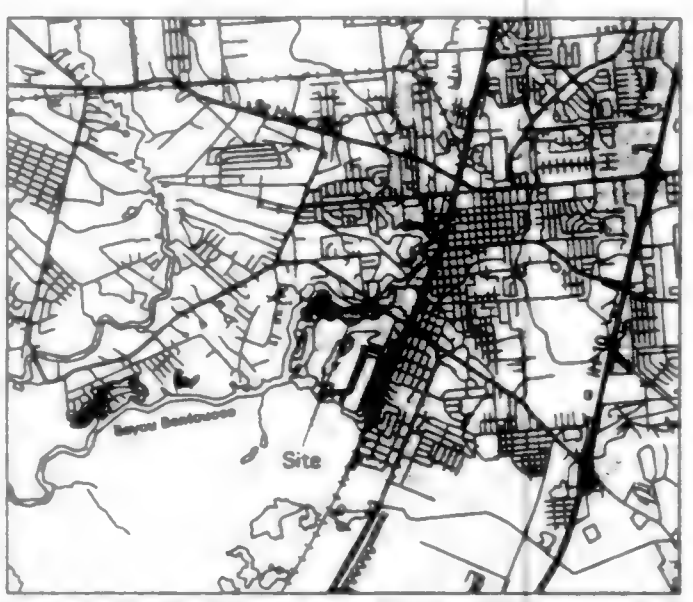
BILLING CODE 6560–60–P

Appendix A—Southern Shipbuilding Corporation Site Map

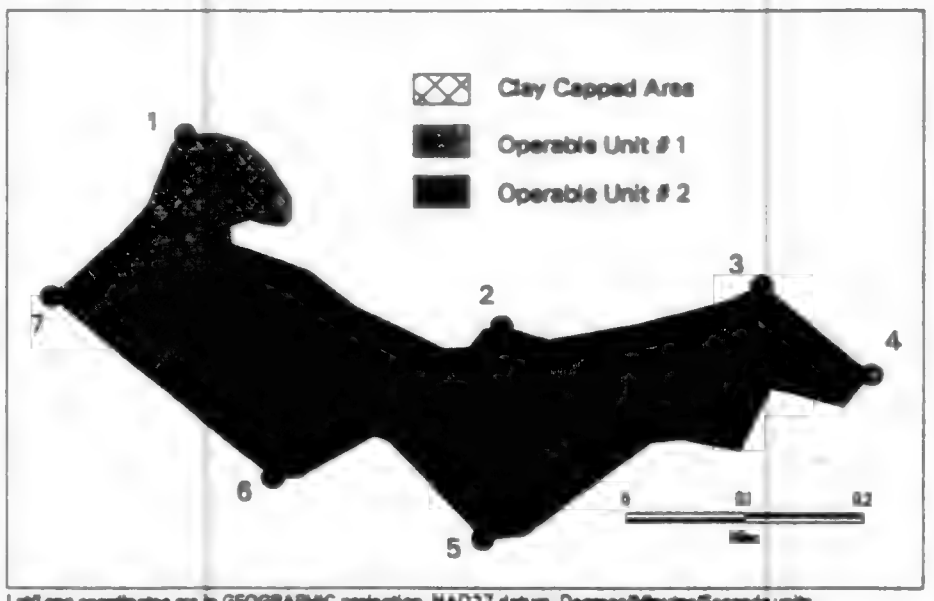
Southern Shipbuilding Corp.
St. Tammany Parish
Slidell, Louisiana

Site Boundary Coordinates (Lat/Long)

1.	N	30°	18'	24.48"	W	89°	48'	04.04"
2.	N	30°	18'	16.01"	W	89°	47'	48.28"
3.	N	30°	18'	15.80"	W	89°	47'	38.18"
4.	N	30°	18'	11.85"	W	89°	47'	30.87"
5.	N	30°	18'	08.03"	W	89°	47'	51.06"
6.	N	30°	18'	08.38"	W	89°	48'	01.11"
7.	N	30°	18'	17.82"	W	89°	48'	11.43"



The 56 acre site is located in the southwestern part of the Slidell, St. Tammany Parish, LA. Section 8, Township 9s, Range 14e. This map shows a 30 square miles surrounding the Southern Shipbuilding Corp. Site. The red shaded area is the city limits of Slidell. The green shaded area is the Southern Shipbuilding Superfund boundary.



Lat/Long coordinates are in GEOGRAPHIC projection, NAD27 datum, Degrees/Minutes/Seconds units.
Site boundaries were digitized from a site map by E&E, R.I. Operable Unit #2.

CDSI
Computer Data Systems, Inc.®

[FR Doc. 98–7768 Filed 3–30–98; 8:45 am]
BILLING CODE 6560–50–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

RIN 0970–AB72

Child Support Enforcement Program; Grants to States for Access and Visitation Programs: Monitoring, Evaluation, and Reporting

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule implements provisions contained in section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and establishes the requirements for State monitoring, reporting and evaluation of Grants to States for Access and Visitation Programs. Access and visitation programs support and facilitate noncustodial parents' access to and visitation of their children by means of activities including mediation (both voluntary and mandatory), counseling, education,,development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup) and development of guidelines for visitation and alternative custody arrangements.

DATES: Consideration will be given to written comments received by June 1, 1998.

ADDRESSES: Comments should be submitted in writing to the Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington, DC 20447. Attention: Director of Automation and Special Projects Division. You also may submit comments by sending electronic mail (e-mail) to "darnaudo@acf.dhhs.gov", or by telefaxing them to (202) 401–5539. This is not a toll-free number. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: David Arnaudo, OCSE, Division of Automation and Special Projects, (202) 401–5364.

Statutory Authority

The proposed regulations are published under the authority of section 469B of the Social Security Act (the Act), as amended by section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) and Section 1102 of the Social Security Act. Section 469B(e)(3) requires that each State to which a grant is made shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

Background

Child support enforcement and access and visitation programs are linked in several important ways. Studies conducted by the U.S. Census Bureau and others have found that: (1) Non-custodial parents with joint custody and visitation rights pay child support at a much higher rate than those without such rights, (2) parental visitation is highly associated with child support compliance, (3) child support payment erodes over time as non-custodial parental involvement lapses, (4) one reason cited for non-payment of child support for those with incomes is that the custodial parent does not permit the non-custodial parent to see the child(ren), (5) lack of non-custodial parent control of child raising and the divorce process is a primary reason for non-payment of child support where such parents are employed, (6) non-custodial parents who pay child support feel empowered to seek post-divorce or post-split involvement with their children, (7) unwed nonresident fathers who established paternity have legally standing to seek visitation and custody, (8) nonresident mothers and fathers have asked that visitation and custody be established and enforced like child support is established and enforced, (9) involvement by nonresident parents is desirable for the well being of the child. Finally, paternity establishment and divorce proceedings are often the gateway to establishing both child support and access and visitation rights. The first Federal legislation to connect access and visitation rights on a formal basis with child support was contained in the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) at Section 23. This act set forth that it was the sense of Congress that—

"State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdiction of such governments * * *"

Later the Family Support Act of 1988 (Pub. L. 100–485) authorized up to $4 million each year for fiscal years 1990 and 1991 for State demonstration projects to develop, improve, or expand activities designed to increase child access provisions of court orders. The legislation required an evaluation of these projects and a Report to Congress on the findings. On October 10, 1996, the Department of Health and Human Services transmitted to Congress the report entitled, "Evaluation of the Child Access Demonstration Projects". The report indicated that requiring both parents to attend mediation sessions and developing parenting plans was successful for cases without extensive long term problems.

In September, 1996, the U.S. Commission on Child and Family Welfare submitted a report to the President and Congress which strongly endorsed additional emphases at all government levels, especially State and local levels, to ensure that each child from a divorced or unwed family have a parenting plan which encourages and enables both parents to stay emotionally involved with the child(ren).

Finally, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) added a new provision at section 391 to award funds annually to States to establish and administer programs to support and facilitate noncustodial parents' (fathers or mothers) access to, and visitation of, their children through activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, neutral drop-off and pickup), development of guidelines for visitation and alternative custody arrangements. Under the new provision, States may administer programs directly or through contracts or grants with courts, local public agencies, or nonprofit private entities; States are not required to operate such programs on a statewide basis.

Under this provision, the amount of the grant to be made to the State shall be the lesser of 90 percent of State expenditures during the fiscal year for activities just described or the allotment to the State for the fiscal year. The allotment would be determined as follows: an amount which bears the same ratio to $10,000,000 for grants as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States. Such allotments are to be adjusted so that no State is allotted less than $50,000 for fiscal years 1997 and 1998 or $100,000 for any succeeding fiscal year. These funds may not be used to supplant expenditures by the State for authorized activities; but, States shall use the grant to supplement such expenditures at the level equal to the level of such expenditures for fiscal year 1995.

There are a number of child access programs operating in the country. Most of these programs offer assistance to both non-custodial fathers and mothers and are gender neutral. The National Center for State Courts estimates that there are currently about 205 programs offering court-based or court-annexed services for divorce disputes. A roster compiled by the Fathers for Equal Rights Inc. of Des Moines, Iowa, identifies 282 parent's rights organizations throughout the United States. These groups offer one-on-one counseling and peer group motivation as well as other relevant advice to assist non-custodial parents to stay involved with their children. Similar programs are operating in cities across the country motivating and counseling parents on a one-to-one basis to stay involved or become involved with their children.

The Parents Fair Share Demonstrations, funded in part by the Administration for Children and Families (ACF), in Kent County, Michigan; Montgomery County, Ohio; Mercer County, New Jersey; Shelby County, Tennessee; Hampden County, Massachusetts; DuVal County, Florida; and Los Angeles County, California, are motivating and enabling fathers to become involved with their children largely through peer group sessions and employment and other social assistance. Other responsible fatherhood demonstration projects, which also address access, visitation and fatherhood involvement issues, have recently been funded by the Office of Child Support Enforcement in California, New Hampshire, Maryland, Colorado, Massachusetts, Wisconsin, Oregon, Missouri, and Washington.

States are at different positions with respect to access and visitation programs. Some States have well developed programs at least for divorced or separated parents; States such as Michigan, California, Massachusetts, Connecticut, Colorado, and Missouri have State programs. Some States have only local programs. Other States are just beginning to talk to practitioners and advocates regarding programs they may want to pursue.

In September 1997, the Office of Child Support Enforcement awarded 54 States and independent jurisdictions access and visitation Grants covering all the activities mentioned in the Act.

Regulatory Philosophy

Historically in the Child Support Enforcement Program, the Federal government specified in detailed regulations how things must be done by States. The Federal Office of Child Support Enforcement (OCSE) has entered an era which necessitates a new philosophy with respect to Federal mandates through regulation. The President is committed to reducing the burden on States and streamlining regulations. OCSE's new watchwords are partnership, results, flexibility, and accountability.

PRWORA provides significant flexibility in terms of access and visitation. The Act allows States, local and non-profit entities, courts, or local public agencies to administer the program, and only requires regulations for the specific functions of monitoring, evaluation and reporting.

Given the funding limitations, we attempted to strike a balance between provision of access and visitation services and the need to gather data to enable States to evaluate and report on their programs. We particularly invite public comment on what the relationship should be between the monitoring, evaluation, and reporting requirements in this regulation.

In developing these rules we elicited input from the National Governors' Association, the American Public Welfare Association, the National Conference of State Legislatures, and the National Association of Counties. We also held a nationwide teleconference with father's and children's rights groups, groups of local public agencies representing minority responsible fatherhood programs, and groups representing concern for women's issues.

A meeting was held with the States' access and visitation contacts or their staff at which 36 States were represented. At this one-day meeting, discussions were held on the need to require a minimum set (or core) of data which would be uniformly collected. All meeting participants were called upon to suggest data elements and approaches, and many suggestions were received.

Description of Regulatory Provisions

Paragraph 303.109(a) would require States to monitor all access and visitation programs to ensure that services funded under these programs are: (1) Authorized under section 469B(a) of the Act and (2) efficiently and effectively provided while complying with reporting and evaluation requirements, as set forth in paragraphs 303.109(b) and 303.109(c).

Paragraph 303.109(b) would allow State programs funded by section 469B of the act to be evaluated using data gathered to measure the effectiveness of program operations. States would also be required to assist in the evaluation of programs deemed significant or promising by the Department, as directed by program memorandum.

Paragraph 303.109(c) would require that States provide a detailed description of each funded program by including such information as: service providers and administrators, service area, population served, program goals, application or referral process, referral agencies, nature of the program, activities provided, and length and features of a 'completed' program. We also would require, with regard to programs which provide services: the number of applicants or referrals for each program, the number of program participants in the aggregate and by eligible activity, and the total number of graduates in the aggregate and by eligible activities (*e.g.*, mediation, education etc.). This information is proposed in order to assess: (1) The demand for the program and effectiveness of outreach and ability of the program to meet demand, (2) the service population served and scope and size of the program, and (3) whether such recipients are completing standard program requirements.

Paragraph 303.109(c)(3) would require States to report information specified in paragraphs 303.109(c)(1) and (c)(2) annually, collected at a date and in a form as the Secretary may prescribe in program instructions from time to time.

Regulatory Procedures

Paperwork Reduction Act

The proposed section 303.109 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

- *Title:* Grants to States for Access and Visitation Programs—Program Description and Participation Data.
- This program description and participation data are being collected so that we may report activities funded to the Congress in the Child Support Annual Report and so that the Federal Government and States can assess program progress. Information to be collected includes: Program descriptions, number of applicants/ referrals, number of total participants, number of participants and graduates by the aggregate and by activity.
- *Likely respondents include:* States and independent jurisdictions reporting data from their own projects or data from grantees/contractees—non-profit entities, local public agencies and/or courts.

• *Number of likely respondents:* 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam will respond. An average of 3 sub-jurisdictions will be anticipated to respond as components of State/jurisdiction efforts.

• *Proposed frequency of response:* annually.

• *Average Burden Per Response:* 24 hours.

• *Estimate of the total annual reporting and record keeping burden:* (54 States and jurisdictions + 3 sub-jurisdictions or 216 responding units) x (1 response per year) x (24 hours average burden per response) = 5,184 hours.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in—

• Evaluating whether the proposed data collection is necessary for proper performance of the functions of ACF, including whether the information will have practical utility.

• Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collection of information of those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington D.C. 20503, Attn: Ms. Wendy Taylor.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the rule is consistent with these priorities and principles. The proposed rule implements statutory provisions that require States that receive grants for child access and visitation programs to monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of more than $100 million in any one year. The Department has determined that this proposed rule is not a significant regulatory action with in the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation would not result in a significant impact on a substantial number of small entities. The primary impact of the proposed rule would be on State governments which are not considered small entities under this Act.

List of Subjects in 45 CFR Part 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.597, Grants to States for Access and Visitation)

Dated: March 13, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For reasons stated in the preamble, we propose to amend 45 CFR part 303 as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation of part 303 continues to read as follows:

Authority: 42 U.S.C. 651 thorough 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k)

2. A new § 303.109 is added to read as follows:

§ 303.109 Procedures for State monitoring, evaluation and reporting on programs funded by Grants to States for Access and Visitation Programs.

(a) *Monitoring.* The State must monitor all programs funded under Grants to States for Access and Visitation Programs to ensure that the programs are providing services authorized in section 469B(a) of the Act, are being conducted in an effective and efficient manner, and are complying with Federal evaluation and reporting requirements.

(b) *Evaluation.* The State:

(1) May evaluate all programs funded under Grants to States for Access and Visitation Programs;

(2) Must assist in the evaluation of significant or promising projects as determined by the Secretary.

(c) *Reporting.* The State must:

(1) Report a detailed description of each program funded by providing the following information, as appropriate: service providers and administrators, service area (rural/urban), population served (race/marital status), program goals, application or referral process (including referral sources), voluntary or mandatory nature of the programs, types of activities, and length and features of a complete program;

(2) Report data including: The number of applicants/referrals for each program, the number of total program participants families and individuals, and the number of program participants and program graduates (families and individuals) by authorized activities (mediation—voluntary and mandatory, counseling, education, development of parenting plans, visitation enforcement—including monitoring, supervision and neutral drop-off and pickup, and development of guidelines for visitation and alternative custody arrangement);

(3) Report the information as required in paragraphs (c)(1) and (c)(2) of this section annually, at such time and in such form as the Secretary may require from time to time.

[FR Doc. 98–8426 Filed 3–30–98; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[MM Docket No. 98–35; FCC: 98–37]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Review of rules; notice of inquiry.

SUMMARY: Pursuant to the requirements of Section 202(h) of the Telecommunications Act of 1996, the Commission issues this Notice of Inquiry soliciting comment on whether any or all of its broadcast ownership rules are no longer in the public interest as the result of competition.

DATES: Comments are due by May 22, 1998, and reply comments are due by June 22, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division (202)418–2134 or Dan Bring, Mass Media Bureau, Policy and Rules Division (202)418–2170.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry in MM Docket No. 98–35, FCC 98–37, adopted March 12, 1998, and released March 13, 1998. The complete text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and may also be purchased from the Commission's copy contractor, International Transcription Service, (202)857–3800, 1231 20th Street, N.W., Washington, D.C. 20036. The Notice of Inquiry is also available on the Internet at the Commission's web site: http://www.fcc.gov.

Synopsis of Notice of Inquiry

I. Introduction

1. This Notice of Inquiry is the first step in our biennial ownership review of the broadcast ownership and other rules as required by section 202(h) of the Telecommunications Act of 1996 ("Telecom Act").[1] That section provides:

> The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

Section 11 of the Communications Act of 1934, as amended,[2] similarly provides that under the statutorily required review, the Commission "shall determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition" and requires that the Commission "shall repeal or modify any regulation it determines to be no longer necessary in the public interest."

2. Once this phase is completed, we will review the comments and issue a report. In the event we conclude there is good reason to believe that any of the rules within the scope of the review, or portions thereof, should be repealed or modified, we will issue the appropriate Notice(s) of Proposed Rule Making.

II. Framework for Review

3. For more than a half century, the Commission's regulation of broadcast service has been guided by the goals of promoting competition and diversity.[3] Competition is an important part of the Commission's public interest mandate because it promotes consumer welfare and the efficient use of resources.[4] Diversity, particularly diversity of viewpoints, is the other important part of the Commission's public interest mandate. The Commission's viewpoint diversity objective promotes a goal the Supreme Court has stated underlies the First Amendment. As the Court has said, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public* * *."[5] Promoting diversity in the number of separately owned outlets has contributed to our goal of viewpoint diversity by assuring that the programming and views available to the public are disseminated by a wide variety of speakers. Moreover, our diversity concerns are separate from our goal of promoting competition. Indeed, the Supreme Court has recently stated that "[f]ederal policy* * *has long favored preserving a multiplicity of broadcast outlets regardless of whether the conduct that threatens it is motivated by anticompetitive animus or rises to the level of an antitrust violation."[6]

4. We also note that the definition of economic markets (i.e., product and geographic markets) is an important step in the assessment of current levels of competition that section 202(h) and section 11 require in order to determine whether such competition has eliminated the need for our broadcast rules. The Commission has previously identified three economic markets in which broadcasters operate: the market for delivered video programming; the advertising market; and the program production market. In addition, we tentatively considered that cable television directly competes with broadcast television stations in each of these markets, and that broadcast radio and newspapers compete with television in the local advertising market. While we also sought comment on whether other suppliers of video programming (*e.g.*, Multichannel Multipoint Distribution Service (MMDS), Direct Broadcast Satellite (DBS), etc.) compete with broadcast television stations, we stated that it may not be appropriate to include them because their current market penetration is so low that they are not relevant substitutes to a majority of Americans.[7] Commenters are invited to address the correctness of these tentative considerations, as well as their applicability to the instant proceedings. After exploring the issue of which media compete with broadcasting in each of the economic markets, the competitive analysis then focuses upon whether and to what extent market power exists and is being exercised, and what effect our ownership rules have on the existence and exercise of market power in each of these markets.

5. Our diversity analysis focuses upon the ability of broadcast and non-broadcast media to advance the three types of diversity (i.e., viewpoint, outlet and source) our broadcast ownership rules have attempted to foster. Viewpoint diversity refers to helping to ensure that the material presented by the media reflect a wide range of diverse and antagonistic opinions and interpretations. Outlet diversity refers to a variety of delivery services (*e.g.*, broadcast stations, newspapers, cable and DBS) that select and present programming directly to the public. Source diversity refers to promoting a variety of program or information

[1] Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56 (1996). Also required by that section is the biennial review of rules adopted pursuant to sections 202(a)–(f) of the Telecommunications Act. These include rules pertaining to cable as well as broadcast cross-ownership.

[2] 47 U.S.C. 161.

[3] For a short history of the Commission's broadcast ownership regulations, *see Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, 10 FCC Rcd 3524, 3526–29 (1995)(hereinafter "TV Ownership Further Notice").

[4] *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992), *recon. granted in part*, 7 FCC Rcd 6387 (1992), *further recon.*, 9 FCC Rcd 7183 (1994).

[5] *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945); *accord Federal Communications Commission* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

[6] *Turner Broadcasting System, Inc.* v. *FCC*, 117 S.Ct. 1174 (1997)(citations omitted).

[7] *TV Ownership Further Notice, supra* at 3538.

producers and owners.[8] In the *TV Ownership Further Notice* we sought comment on whether nonbroadcast outlets contributed to our diversity goals. We tentatively considered that cable television, as well as broadcast television, provides diversity in this market given that cable has the capability for local origination of programming.

6. We propose to apply this framework to evaluate whether our rules continue to be in the public interest as required by the Telecom Act. We seek comment on this proposal. In performing our section 202(h) review, we will consider the effect of meaningful competition that has developed and the extent to which this competition has been furthered by our rules. We also seek comment on the relevance to the framework of the Commission's assessment of the state of competition in the multi-channel video programming delivery services (MVPDs) market contained in the Cable Competition Report,[9] which was released subsequent to our *TV Ownership Further Notice*. Furthermore, we seek comment on how the Commission's assessment of the competitive effects of the Bell Atlantic/NYNEX merger bears on our analysis here.[10] We also seek data, studies and any other information relevant to our consideration of these competition and diversity issues.

III. Rules To Be Reviewed

7. In this Notice of Inquiry we describe each of the rules that are within the scope of our biennial broadcast ownership review. We seek comment on any other rules commenters believe should be included in this review. The rules are grouped into three categories. The first group are those broadcast ownership rules that are currently being examined in pending Commission proceedings. The second group are those broadcast ownership rules that have recently been changed to implement provisions of the Telecom Act of 1996.[11] Finally, the third group are the remaining broadcast ownership rules.

Rules Currently Subject to Outstanding Proceedings

8. Several of the Commission's broadcast ownership rules are currently the subject of open proceedings. They are as follows:

- The television "duopoly" rule, which states that a party may not own, operate or control two or more broadcast television stations with overlapping "Grade B" signal contours.[12]
- The "one-to-a-market" rule, which generally prohibits the common ownership of a television and a radio station in the same market.[13] In 1989, the Commission amended the rule to specify that it would "look favorably" on requests for waiver of the restriction in the Top 25 television markets if, after the merger, at least 30 independently owned broadcast voices remained, or if the merger involved a "failed station." Case-by-case review of waiver requests is also provided for in instances where the presumptive waiver criteria are not present. Section 202(d) of the Telecom Act directed the Commission to extend its presumptive waiver policy to the Top 50 television markets if it finds that doing so would be in the public interest.[14]
- the daily newspaper/radio cross-ownership rule[15] which generally prohibits the common ownership of a daily newspaper and a radio station in the same community. The outstanding proceeding examines whether the Commission should modify the existing waiver policy for this rule.[16]

9. We believe that our ongoing review of these rules in the outstanding proceedings satisfies the requirements of section 202(h) of the Telecom Act.[17] We anticipate taking action in those proceedings during 1998 independently of the instant review. We consequently seek no additional comment on these rules in this Notice of Inquiry. Nor do we seek comment on our attribution standards. Our attribution rules define what the Commission will consider a cognizable interest for purposes of its ownership rules. They do not of themselves establish limits on ownership or restrict cross-ownership combinations. Furthermore, they are currently under consideration in MM Docket Nos. 94–150, 92–51, and 87–154.[18]

Rules Recently Changed by Section 202 of the Telecom Act

10. The Commission modified/eliminated several of its ownership rules in accordance with section 202 of the Telecom Act. Section 202(h) of the Act directs the Commission, without limitation, to review its broadcast ownership rules as part of the biennial ownership review. Parties are invited to provide data or other information which would indicate whether some, or all, of the remaining rules are no longer in the public interest. In this proceeding we will review the impact of the remaining rules on competition and diversity and discuss our analysis in the report we issue.

11. In the course of this review, we will examine the effect these rule changes have had, thus far, on the structure and trends in media markets and their impact on our competition and diversity goals. We propose to make this assessment by developing a record examining the changes in the structure of the industry (horizontal concentration and vertical integration) and financial performance in media markets, as well as changes in diversity. Examining the structure of an industry provides information about the industry's conduct and performance. For example, horizontal concentration can give firms sufficient market power to raise rates above competitive levels or otherwise engage in anti-competitive activity, although it can also result in new efficiencies that accrue to the

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[8] See *TV Ownership Further Notice, supra* at 3547–51.

[9] Fourth Annual Report, in the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket 97–141 (adopted December 31, 1997) ("Video Competition Report").

[10] See *Memorandum Opinion and Order* In the Application of NYNEX Corporation, 12 FCC Rcd 19985 (1997).

[11] We will not be reviewing herein the elimination of national radio ownership limits (*Order*, 11 FCC Rcd 12368 (1996)) or cable/network cross-ownership restrictions (*Order* in CS Docket No. 96–56, 11 FCC Rcd 15115 (1996)) because neither is a "rule adopted pursuant to" section 202(h) or an existing broadcast ownership rule. Additionally, although these subjects are referred to in section 202(f)(2) of the Telecom Act, the Commission has not revised any rules pertaining to ensuring cable carriage, channel positioning, or nondiscriminatory treatment of broadcast stations by cable systems. Accordingly, these subjects, will not be expressly and separately addressed except as set forth.

[12] 47 CFR 73.3555(b). This rule is currently under consideration in MM Docket Nos. 91–221 and 87–8. *See Notice of Proposed Rule Making* in MM Docket No. 91–221, 7 FCC Rcd 4111(1992); *TV Ownership Further Notice, supra; Second Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, 11 FCC Rcd 21655 (1996).

[13] 47 CFR 73.3555(c). This rule is also currently under review in MM Docket Nos. 91–221 and 87–

[14] See note 12, *supra*.

[15] 47 CFR 73.3555(d). The rule applies to all newspaper/broadcast cross-ownership situations. Only the waiver policy with respect to newspaper/radio combinations is currently under review in another proceeding.

[16] See Notice of Inquiry in MM Docket No. 96–197, 11 FCC Rcd 13003 (1996).

[17] In the Conference Report accompanying the Telecom Act, it is stated that the, "conferees are aware that the Commission already has several broadcast deregulation proceedings underway. It is the intention of the conferees that the Commission continue with these proceedings and conclude them in a timely manner." H.R. Rep. 104–458, at 164.

[18] See *Notice of Proposed Rule Making* in MM Docket Nos. 94–150 *et al.*, 10 FCC Rcd 3606 (1995); *Further Notice of Proposed Rule Making* in MM Docket Nos. 94–150 *et al.*, 11 FCC Rcd 19895 (1996).

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benefit of consumers. Examining changes in ownership will provide information on the effects on diversity.

12. Parties are invited to provide us with relevant information, but our review will also be informed by publicly available information, *e.g.*, BIA and Compustat. Toward this end, we include data and a preliminary assessment of some of these effects. We invite parties to comment on the information we present as well as to provide additional data that will shed light on the effects of these rule changes in the media market.

13. *National Television Ownership Rule.* Section 202(c)(1) of the Telecom Act directed the Commission to modify its rules to eliminate the numerical limit on the number of broadcast television stations a person or entity could own nationwide and to increase the audience reach cap on such ownership from 25 percent to 35 percent of television households. The Commission amended section 73.3555(e) of its Rules to reflect this change.[19]

14. It is clear that there has been some consolidation of television stations since the Telecom Act. However, most of the top 25 television group owners remain significantly below the 35 percent reach cap, with only Fox's and CBS's television stations reaching more than 30 percent of U.S. households. The industry continues to be unconcentrated at the national level, with our estimate of the Herfindahl-Hirschman Index (HHI) still below 1000, increasing from 264 in 1996 to 308 in 1997.[20]

15. We seek comment on the effect of this rule on competition and diversity and whether this rule is no longer necessary in the public interest as the result of competition. What effect has it had on competition in the national advertising market or the program production market at the national level? How does the rule affect existing television networks or the formation of new networks? We also seek information on the extent of economies of scale realized as a result of the consolidation permitted by the Telecom Act.

16. *Local Radio Ownership Rules.* Section 202(b) of the Telecom Act directed the Commission to relax its radio multiple ownership rules to allow common ownership of up to eight radio stations on the local level, depending on the number of stations in the market. The Commission has revised its Rules to reflect this mandate.[21]

17. We will include in the record of this proceeding an FCC staff report which reviews the response of the radio industry to the revised rules from March, 1996 to November, 1997. We invite comment on the information set forth in this staff report. As the report documents, the number of commercial radio stations has increased 2.5 percent from 10,222 to 10,475. At the same time, there has been a tremendous increase in the number of station transactions since the passage of the Telecom Act resulting in an increase in industry concentration. At the national level, the number of owners of commercial radio stations has declined by 11.7 percent from 5,105 to 4,507. This decline is primarily due to mergers between existing owners. The result of these mergers has been to change the ranking and composition of the top radio station owners.

18. At the local level, there has been a downward trend in the number of radio station owners in Arbitron radio Metro markets. The average number of radio station owners across all radio Metro markets declined from 12 to 11, a loss of about one owner per market. The top 10 radio Metro markets, experienced an average loss of 3 owners per market, from about 30 owners to about 27 owners per market. The smallest radio Metro markets (markets 101–265) experienced an average loss of about one owner per market, from about 9 owners to 8 owners. Further, the top owners in each Metro market generally account for an increasing share of total radio advertising revenues in these markets. For example, the top four radio owners in each Metro market, on average, account for about 90 percent of their Metro market's total revenues, compared to about 80 percent in March, 1996. The staff report also indicates that the average number of distinct radio formats across all radio Metro markets is 10, remaining unchanged from March, 1996, to March, 1997.

19. At the industry level, the staff report indicates that publicly traded companies whose primary business is radio broadcasting are experiencing robust financial performance. Operating margins have increased slightly, while their profit margins have varied. This is largely a result of their increased debt loads. Advertising revenues have been sufficient, to date, to generate positive cash flow on an industry-wide basis. This health is reflected in stock returns better than those of the typical S&P 500 company. The market's valuation of radio companies suggests that the market is foreseeing future earnings growth in this industry. The observed consolidation of the radio industry appears to have had positive financial consequences for these radio companies.

20. We invite parties to comment on the effect of the local radio ownership limits on competition in radio. What has been the effect on competition in the program delivery market? What has been the effect on competition in the local advertising market? In this regard, the *TV Ownership Further Notice* noted that television (broadcast and cable) and newspapers provided some level of competition to radio in the local advertising market.[22] Is there greater efficiency at the local level due to consolidation? We ask commenters to provide data documenting any economic efficiencies and specific cost savings.

21. We also seek comment on the impact on diversity in radio. Are the current ownership limits set forth in our rules no longer necessary in the public interest? For example, has coverage of news and public affairs been enhanced as a result? We also note that there has been a drop in the number of minority-owned radio broadcast stations, as reported in the annual report released by National Telecommunications and Information Administration.[23] It has been argued that the change in the radio ownership rules has been detrimental to the enhancement of ownership by

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[19] *Order*, 11 FCC Rcd 12374 (1996).

[20] The HHI is a standard measure of economic concentration. The Department of Justice uses the HHI as part of its evaluation of market competition. They generally consider a market to be unconcentrated if the HHI is below 1000. HHIs are calculated by summing the square of each television owner's percentage of total television station revenues. The data for our estimate of the HHI comes from the BIA database which estimates station, owner, and market revenues. The revenue estimate combines national and local advertising revenue for each station, owner, and market. The 1997 HHI uses 1997 ownership data, combined with 1996 revenues, and the 1996 HHI uses 1996 ownership data, combined with 1995 revenues.

[21] Section 202(a) of the Telecom Act directed the Commission to eliminate its national radio ownership restrictions. The Commission amended its rules so that there are now no limits on the number of radio stations that may be owned nationally. *Order*, 11 FCC Rcd 12368 (1996).

[22] The program production market is national in scope and is, thus, unaffected by changes in the local radio rule. We further note that in reviewing radio station mergers under the antitrust laws, the Department of Justice has taken the position that radio stations form a distinct local advertising market and that newspapers, cable, and broadcast television stations are not effective substitutes to radio stations in this market. See Address of Joel I. Klein, Assistant Attorney General, Antitrust Division of the Department of Justice, "DOJ Analysis of Radio Mergers" (Feb. 19, 1997) (available at http://www.usdoj.gov/atr/speeches/jik97219.htm).

[23] Minority Commercial Broadcast Ownership in the U.S., a report of the Minority Telecommunications Development Program, National Telecommunications and Information Administration (August 1997). In this report, the number of minority-owned commercial radio stations declined from 312 in 1995 to 284 in 1996/97. There are no statistics available concerning female ownership of broadcast facilities.

minorities and women in the provision of radio service. The Commission has a statutory obligation under section 309(j) of the Act as well as an historic commitment to encouraging minority participation in the telecommunications industry.[24] We seek comment on the relationship between these ownership limits and the opportunity for minority broadcast station ownership. We also seek comment on any similar effects on female ownership of broadcast facilities. We invite commenters to address judicial considerations in this regard.

22. We invite comment on whether, given the issues raised above, we should modify the local radio ownership rules in any respect. Specifically, we seek comment on whether the way in which we count stations for purposes of applying our local radio ownership rule should remain the same or be modified in order to more realistically account for the number of stations in a market. We ask parties to be specific in any such proposals they advocate.

23. *Dual Network Rule.* Section 202(e) of the Telecom Act directed the Commission to revise its "dual network" rule.[25] Under the prior dual network rule, the Commission generally prohibited a party from affiliating with a network organization that maintained more than one network of television broadcast stations. The Telecom Act directed the Commission to revise the rule to permit a television broadcast station to affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such networks are composed of: 1) two or more persons or entities that were "networks" on the date the Telecom Act was enacted; [26] or 2) any such network and an English-language program distribution service that on the date of the Telecom Act's enactment provided 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television households.[27] The Commission amended its dual network rule to reflect this directive.[28] We believe, at this time, that no broadcast television network has begun to deliver a dual stream of video programming. We seek comment on whether the current dual network rule is no longer in the public interest.

The Remaining Rules

24. *The UHF Television Discount.* The national television ownership rule states that an entity may own any number of television stations (subject to the restrictions of the local ownership rule) so long as the combined audience reach of the stations does not exceed 35 percent, as measured by the number of television households in their respective ADIs. Under our rules, UHF television stations are attributed with 50 percent of the television households in their ADI market.[29] The Commission has stated that it would review the UHF discount in the biennial ownership review.[30]

25. The Commission adopted the UHF discount in 1985 due to concerns that UHF station signals generally cannot reach as large an audience as VHF station signals.[31] Since that time we have observed in other contexts that this UHF signal disparity has been ameliorated over the years.[32] This is due in part to improved television receiver designs, as well as the fact that many households receive broadcast channels via cable rather than by over-the-air transmission. When the UHF discount was adopted in 1985, cable passed approximately 60 percent of all television households [33] and had approximately 32 million subscribers.[34] Today, the pass rate has risen to 97.1 percent with approximately 64.2 million subscribers.[35] Moreover, the Supreme Court has recently upheld the constitutionality of the "must-carry" rules which require cable systems to carry local television broadcast stations.[36] Parties have nonetheless urged us to continue the UHF discount policy given the significant number of television households that do not subscribe to cable.[37]

26. We request comment in this proceeding on whether the UHF discount should be retained, modified, or eliminated. In this regard, commenters may wish to address whether the discount, at its current level, remains appropriate in light of the decreasing disparity between VHF and UHF television due to improvements in transmission and reception technology, cable carriage of UHF television stations under our must-carry rules, and increasing cable penetration. Is there any evidence that the current UHF discount provides a competitive advantage to networks that own UHF stations? While the audience reach of many group owners are unaffected, the reach of several group owners, including Fox and Paxson, would exceed the national reach cap were it not for the discount. Should we decide that the discount be retained in some form for analog television, does it make sense to retain such a discount at all once we have transitioned to digital television transmission? At that time, we expect broadcast television stations will be operating on "core" channels, most of which are currently allotted to UHF television.[38] Finally, if the discount were reduced or eliminated, in what manner should group owners that exceed the new limits be grandfathered?

27. *Daily Newspaper/Broadcast Cross-ownership Rule.* The daily newspaper/broadcast cross-ownership rule prohibits the common ownership of a broadcast station and a daily newspaper in the same locale.[39] The Commission adopted the rule in 1975.[40] Like all of

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[24] For a brief historic overview, see generally Notice of Proposed Rule Making in MM Docket Nos. 94–149 and 91–140, 10 FCC Rcd 2788 (1995).

[25] 47 CFR 73.658(g).

[26] A "network" is defined with reference to 47 CFR 73.3613(a)(1) for this purpose.

[27] The Conference Report stated that the Commission was being directed to revise its dual network rule "to permit a television station to affiliate with a person or entity that maintains two or more networks unless such dual or multiple networks are composed of (1) two or more of the four existing networks (ABC, CBS, NBC, FOX) or, (2) any of the four existing networks and one of the two emerging networks (WBTN, UPN)." S. Rep. No. 230, 104th Cong., 2d Sess. at 163.

[28] *Order*, 11 FCC Rcd 12374 (1996).

[29] 47 CFR 73.3555(e)(2)(i).

[30] *Notice of Proposed Rule Making* in MM Docket Nos. 96–222, 91–221 and 87–8, 11 FCC Rcd 19949, 19956 (1996).

[31] *See Memorandum Opinion and Order* in Gen. Docket No. 83–1009, 100 FCC 2d 74, 92–94 (1985).

[32] See *Report and Order* in MM Docket No. 94–123, 11 FCC Rcd 546, 583–86 (1995) (repealing the prime time access rule); *Report and Order* in MM Docket No. 87–68, 3 FCC Rcd 638 (1988), *clarified* 4 FCC Rcd 2276 (1989) (eliminating the policy under which applications to initiate or improve VHF service were considered contrary to the public interest if they threatened adverse economic impact on existing or potential UHF stations).

[33] Estimate based on data in Television Factbook (Cable and Services volume, 1986 ed.), pp. A39 and A44.

[34] See 1997 Television and Cable Factbook at F–1.

[35] *Fourth Annual Report, supra* at para. 14–15.

[36] *Turner Broadcasting Systems., Inc.* v. *FCC*, 117 S. Ct. 1174 (1997).

[37] See *Notice of Proposed Rule Making* in MM Docket No. 96–222, 11 FCC Rcd 19952–54 (1996) (summarizing comments on issue of whether UHF discount policy should be retained).

[38] See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87–268, FCC 98–24 (released February 23, 1998).

[39] The rule provides that: No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: (1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or (2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or (3) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published. 47 CFR 73.3555(d).

[40] *Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and*

Continued

our multiple ownership rules, the newspaper/broadcast cross-ownership rule rests on the twin goals of promoting diversity and economic competition.[41] The Commission determined that, as a general rule, granting a broadcast license to an entity in the same community as that in which the entity also publishes a newspaper would harm diversity.[42] Although the Commission, in adopting the rule, noted its expectation that there could be meritorious waiver requests, it set forth very stringent waiver criteria.[43] As a result, only two cases, both involving television/newspaper combinations, have been found to warrant permanent waiver of the rule.[44]

28. In 1996, the Commission opened an inquiry to consider amending the waiver policy with respect to newspaper/radio combinations.[45] Since the scope of this biennial ownership review encompasses the issues raised in the outstanding *NOI*, we will place the comments we have already received into the record of this review and take them into account in our review of the broader rule.

29. Additionally, we note that a Petition for Rulemaking seeking elimination of the rule in its entirety was filed by the Newspaper Association of America ("NAA") on April 28, 1997.[46] We will place this filing in the record of this proceeding and invite comment on the merits of the petition.

30. Generally, the NAA Petition argues that in adopting the rule there never was a record of evidence that cross-owned stations engaged in anti-competitive practices. NAA further argues that, whatever the FCC's original reasons for the rule were, "[i]n the abundantly diverse and highly competitive mass media marketplace of the late 1990s, maintenance of these selective cross-ownership restrictions is unnecessary, discriminatory, and unjustifiable."[47] NAA points to relaxation in other Commission ownership rules[48] and argues that the newspaper/broadcast cross-ownership rule unfairly singles out newspaper publishers, denying them the ability to realize efficiencies and synergies while leaving their competitors free to do so.[49] NAA also argues that relaxation of the newspaper/broadcast cross-ownership rule will help preserve newspapers and broadcast stations as viable media outlets and enhance diversity. Finally, NAA asserts that the rule is inconsistent with the First Amendment and that courts today would require a far stronger showing than was made in 1975 to support such a direct limitation on the free speech rights of a particular class of citizens."[50]

31. A number of parties, however, have argued for the continuation of the rule. Supporters of the rule commenting in the Notice of Inquiry on our newspaper/radio waiver policy contend that daily newspapers often dominate the local advertising market and to give a party with such dominance a broadcast outlet would allow it to exercise market power with respect to the local advertising market.[51] Supporters also contend that newspaper/broadcast combinations would give a single entity too much of a voice with respect to forming opinion on public issues. The new media pointed to by opponents of the rule, they state, do not add significant local viewpoints, are not locally based, and do not provide news or information on local issues.[52] Although supporters of the rule agree that cable television and the Internet have the potential to facilitate debate on local issues, they dispute that they yet serve that purpose to any significant degree and argue that these media are costly and do not reach large segments of the community.[53]

32. We invite comment on these competing positions with respect to the newspaper cross-ownership restriction. We specifically ask commenters to address whether the rule should be retained, modified or eliminated.

33. *Competitive Effects on the Market for Delivered Programming.* Since newspapers do not operate in the market for delivered video or audio programming, allowing cross-ownership between television and newspapers in a local market would not appear to harm competition in the market for delivered video or video programming. We invite comment on this view.

34. *Competitive Effects on the Market for Advertising.* In the *TV Ownership Further Notice* we tentatively considered that the local advertising market includes video advertising (broadcast and cable), radio advertising and newspaper advertising.[54] Total local advertising revenue for radio, television, newspaper, and cable was $68 billion in 1996. Local radio accounted for $12 billion (17.2 percent of the total), television accounted for $21 billion (30.3 percent), newspapers accounted for $34 billion (49.7 percent), and cable accounted for $2 billion (2.9 percent).[55] Permitting the owner of a broadcast TV or radio station to own a newspaper, or vice versa, could give the company the market power to raise local radio, television, and/or newspaper advertising rates, depending on the market share of the combined entity. We invite comment and evidence on this issue, and on the levels of local advertising share that might give rise to competitive concern. Commenters may also wish to comment on NAA's views concerning competition in the advertising market. While newspaper local advertising revenue may be as large as combined television and radio local advertising revenues, NAA argues that it includes newspaper classified advertisements, a market in which broadcast stations do not compete with newspapers.

35. *Competitive Effects on the Program Production Market.* Newspapers, being a print medium, are not a participant in the video and audio program production markets. Thus, relaxing this rule would not appear to

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Order, 50 FCC 2d 1046 (1975) ("*Second Report and Order*"), *recon.*, 53 FCC 2d 589 (1975) ("*Recon. Order*"), *aff'd sub nom. Federal Communications Commission v. National Citizens Committee for Broadcasting, supra*. The provisions of 47 CFR 73.3555 do not apply to noncommercial educational FM and TV stations. See 47 CFR 73.3555(f).

[41] *Second Report and Order, supra* at 1074.

[42] *Id.* at 1075.

[43] The criteria are: 1) inability to sell the station; 2) the only possibility of the station's sale would be at an artificially reduced price; 3) separate ownership and operation of the newspaper and the broadcast station could not be supported in the locality; and 4) the purposes of the rule would be disserved by its application or application of the rule would be unduly harsh.

[44] *Field Communications Corp.*, 65 FCC 2d 959 (1977); *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5349 (1993); *aff'd sub nom. Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995). In both cases, the combination had previously been owned by the same or substantially the same parties.

[45] See Notice of Inquiry in MM Docket No. 96–197, *supra*.

[46] See Newspaper Association of America, Petition for Rulemaking in the matter of amendment of section 73.3555 of the Commission's Rules to eliminate restrictions on newspaper/broadcast station cross-ownership (April 28, 1997) ("NAA Petition").

[47] *Id.* at 16.

[48] *Id.* at 40.

[49] *Id.* at 38 *et seq.*

[50] NAA Petition at 46.

[51] See Comments of David E. Hoxeng d/b/a ADX Communications in MM Docket No. 96–197 at 2. Hoxeng provides as an example San Antonio, TX, where, he states, the cost-per-thousand to newspaper advertisers skyrocketed following the buyout and closure of one San Antonio daily by the other. *Id.* at 2–3. See also Comments of Tennessee Association of Broadcasters filed in MM Docket No. 96–197 at 5.

[52] See Joint Comments of Black Citizens for a Fair Media et al. filed in MM Docket No. 96–197 at 18–19.

[53] *Id.*

[54] Allowing such joint ownership should have no effect on competition in the national advertising market because of differences in the geographic dimensions of this market.

[55] "Estimated Annual U.S. Advertising Expenditures 1990—1996," Prepared for Advertising Age by Robert J. Coen, McCann-Erickson.

harm competition in these supply markets. We invite comment on this view.

36. *Other Economic Effects.* Broadcaster and newspaper interests have long made the argument that the quality of news and public affairs programming to the public, a core concern of the Commission, could be enhanced if broadcasters could share in the expertise of a newspaper's operations. We seek comment on this issue. Could the same beneficial results be achieved through non-attributable joint ventures? Studies documenting and comparing the news and public affairs programming of existing newspaper/broadcast combinations with the news and public affairs programming of broadcast facilities that are not owned by a newspaper in the same geographic market would be particularly informative.

37. Similar claims have been made with respect to efficiencies realized as a result of the combination's advertising sales force. While any realized reduction in expenses could make the joint enterprise more economically viable than the separate operations were before the combination took place, we are most interested in whether such efficiencies would produce benefits for broadcast audiences and advertisers. We seek comment on this view.

38. *Effects on Diversity.* The newspaper/broadcast cross-ownership rule is intended to promote media diversity on the local level. The maintenance of such diversity has been a central Commission objective since its establishment. However, there have been changes since the rule was adopted. For example, the Commission now allows some cross-ownership between television and radio stations in the same local market and Congress has directed us to relax our local radio ownership limitations. In addition, there has been an increase in the number of radio and TV stations and local newspapers. We must examine the rule in this context, but with a full recognition of the importance of diversity in local markets. Clearly, combined operations reduce the number of separately owned outlets. We seek comment on the impact of this reduction on the public interest. We also seek comment on whether and to what extent, newspapers and broadcast stations under common ownership express contrasting points of view or cover each other in a critical manner.

39. In this regard, we point out that television, newspapers, and radio continue to be America's major source of news.[56] The Roper survey found that more than two-thirds of Americans usually get their news from television, and 37 percent from newspapers.[57] The survey indicated that Americans also rely on radio as a news source, but to a lesser extent than television and newspapers. We consequently wish to proceed cautiously in this area and seek comment on how the public's reliance on these media for news would be affected if we were to relax this rule.

40. The combination of a large daily newspaper and a large broadcast station could have a significant impact on diversity. We seek comment on whether the impact on diversity depends on the relative size of the newspaper and broadcast facility involved in a potential merger. Commenters should also address NAA's argument that various pay video delivery services and other informational media, together with an increase in broadcast stations and weekly newspapers, sufficient to assure diversity in the absence of the rule? Or, as argued by opponents of relaxation of the rule, are such other informational media too limited in availability or use, or do such media provide insufficient information on issues of local concern to offset the loss of diversity on the local level that would accompany elimination or relaxation of the newspaper/broadcast cross-ownership rule? We also seek comment on how diversity is served in suburban markets where the appropriate outlets to be examined may include metropolitan television and radio stations and community or suburban newspapers rather than newspapers in the major city.

41. *Cable/Television Cross-ownership Rule.* Section 76.501(a) of the Commission's Rules effectively prohibits common ownership of a broadcast television station and cable system in the same local community.[58] The Telecom Act eliminated a similar statutory prohibition.[59]

42. The rule was adopted in 1970 in order to further the Commission's policy of promoting diversity in local mass communications media.[60] In adopting the rule, the Commission made clear that it was avoiding any ban on joint ownership of a television broadcast station and cable system not located in the same area. "It is not our desire to keep television broadcasters out of the CATV industry, but to avoid over-concentrations of media control . . . we should have no objection to exchange of CATV systems among broadcasters which would maintain their involvement in the CATV industry while eliminating local cross-ownerships."[61]

43. This is the first time since adopting the cable/television cross-ownership rule that the Commission has reviewed the rule. Indeed, since 1984, the rule was required by statute.[62] When the Telecom Act eliminated the statutory provision, the Conference Report clarified that repeal of the prohibition should not prejudge the outcome of any review by the Commission of its rules regarding cable/broadcast cross-ownership.[63] The Telecom Act also eliminated our rule prohibiting broadcast television networks from owning or controlling cable systems.[64] While broadcast television networks are now statutorily permitted to buy cable systems, they are still generally precluded from doing so on any significant basis by the cable/broadcast cross-ownership rule, because the networks are also broadcast television licensees. We seek comment on whether this rule should be retained, modified or eliminated.

44. *Effects on the Market for Delivered Programming.* Television stations compete in the market for delivered video programming with cable system operators, wireless cable operators and possibly with DBS operators serving their "local" market. We note that in its *Fourth Annual Report* on the status of competition in the market for the delivery of multichannel video programming, the Commission stated that "local markets for the delivery of

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[56] America's Watching: Public Attitudes Toward Television 1997, Roper Starch Worldwide Inc.

[57] Respondents were permitted to name more than one news source.

[58] The rule prohibits a cable operator from carrying any broadcast television station if it directly or indirectly owns, operates, controls, or has an interest in a television broadcast station whose predicted Grade B signal contour overlaps any part of the area within which its cable system is serving subscribers.

[59] *See* Subsection 202(i) of the Telecom Act.

[60] Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry Into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals, *Second Report and Order*, in Docket No. 18397, 23 F.C.C. 2d 816, 820 (1970).

[61] *Id.* at 821.

[62] The Cable Communications Policy Act of 1984 added section 613 of the Communications Act of 1934, as amended (47 U.S.C. 533). Section 613(a)(1) of the Act provided that "It shall be unlawful for any person to be a cable operator if such person, directly or through 1 or more affiliates, owns or controls, the licensee of a television broadcast station and the predicted grade B contour of such station covers any portion of the community served by such operator's cable system." That provision was eliminated by section 202(i) of the Telecom Act.

[63] House Rep. No. 458, 104th Cong., 2d Sess. at 164.

[64] See Subsection 202(f) of the Telecom Act.

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video programming generally remain highly concentrated and continue to be characterized by some barriers to entry and expansion by potential competitors to incumbent cable systems."[65] While the ability of the broadcast spectrum to compete as a transmission medium with cable is effectively limited by the amount of broadcast spectrum and channels that are assigned to television markets, the *Report* notes that DTV has the potential to allow the broadcasters to become more effective competitors with cable companies in the multichannel video programming distribution market.[66]

45. We seek comment on the relevance of our conclusions in the *Fourth Annual Report* on our consideration of competitors to broadcast television. We seek comment on whether these changed market circumstances render our rule unnecessary. Also, we seek comment on the possible effects that repeal or relaxation of the cable/television cross-ownership rule may have on the market for delivered programming in particular. Would common ownership of a cable system and a television station increase or diminish the program choices, or the preferred programs, available to audiences? Would repeal or relaxation raise competition concerns in this market? Could relaxation of the rule result in public interest benefits? Could the same beneficial results be achieved through non-attributable joint ventures? Should a distinction be made in judging the effect of this rule on local versus national programming?

46. *Effects on the Market for Advertising.* Allowing joint ownership of a television station and a cable system in a local market might give the joint owner the economic power to raise its advertising rates within the local service area if, by virtue of the combination, the local market became concentrated.[67] Evidence on whether significant market power in the local advertising market already exists is mixed. As we stated earlier, total local advertising for these media was $68.5 billion in 1996. Local cable advertising revenues were small ($2.0 billion, 2.9 percent of total local advertising) when compared to local commercial broadcast television station advertising revenues ($20.7 billion, 30.3 percent of total local advertising), but they are increasing in size and importance.[68] Radio local advertising revenues accounted for $11.7 billion (17.2 percent of total local advertising) and newspaper accounted for $34 billion (49.7 percent of total local advertising). Prior studies have found mixed evidence regarding the impact of cable on broadcast TV station advertising revenues.[69] Thus, at this time, it is not clear whether cable system operators offer effective competition to broadcast station operators in providing local advertising.[70]

47. When considering advertising substitutes, we recognize that while many firms use a mix of video, audio, print, and other media to advertise their products and services, some firms may rely on video advertising almost exclusively and are, therefore, most affected by any market power that might be created by a modification to this rule. We have previously noted that it is not clear how substitutable radio and newspaper local advertising is for broadcast television local advertising.[71] We seek information and data about the appropriate scope of the product and geographic advertising market within which television stations and cable systems compete. Statistical evidence supporting fact-based analysis on the substitutability of these media in the local advertising market will especially be welcome.

48. *Effects on the Program Production Markets.* We specifically seek comment on whether the cable/broadcast television rule is no longer necessary in light of the current state of the program production market. The program market could be affected if Commission modification or elimination of the cable/television cross-ownership rule permitted a cable/television combination to exercise market power in the purchase of video programming for delivery in the local market. We seek comment on whether cable/broadcast television combinations could exercise monopsony power—i.e., the ability of the cable/television combination to artificially restrict the price paid for programming. We solicit evidence on the potential market power in the program production market if we were to eliminate or relax the cable/television cross-ownership rule. Specifically, we seek comment on whether other broadcast stations and alternative providers of delivered video programming (e.g., MMDS and DBS) may mitigate a cable/television combination's potential for monopsony power by providing program producers with additional local outlets for their product. We ask commenters to address whether our analysis of this issue is affected by whether the programming in question is network-provided programming, syndicated programming sold on a national basis, or programming produced for particular local markets. We also seek comment on the potential for a cable/television combination to deny alternative providers of delivered video programming access to the programming of the television station involved in the cable/television combination. On a related matter, we seek comment on whether our channel positioning and must-carry rules provide sufficient protection to ensure that if a cable company owns a local television station, the cable company could not discriminate in favor of its owned television station.

49. *Other Economic Effects.* Allowing cable/television cross-ownership within a local market may permit an entity to realize economies of scale, reducing the costs of operations. Joint ownership may permit cost-sharing in administrative and overhead expenses, sharing of personnel, joint advertising sales, and the pooling of resources for local program production (such as news and public affairs programming). The cost savings from these economies could then be used to provide better programming to the public, better coverage of local issues and possibly lower the cost of advertising and/or increase the quality of service available to advertisers. We seek evidence from commenters of the existence and magnitude of such economies and whether they can be reached through alternatives to common ownership, e.g., joint ventures. In addition, we ask commenters to describe how likely such economies are to be passed on to audiences and advertisers.

50. *Effects on Diversity.* Our concern with diversity is most acute with respect to local ownership issues. Both television and competing video outlets are viewed at the local level. We ask

[65] *Fourth Annual Report, supra* at para. 11. Section 628(g) of the Communications Act of 1934, as amended, requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. Congress imposed this annual reporting requirement as one means of obtaining information on the competitive status of markets for the delivery of multichannel video programming delivery that would aid both Congress and the Commission in determining when there was competition sufficient to reduce or eliminate many of the regulatory restraints imposed on the cable industry.

[66] *Fourth Annual Report, supra* at para. 95.

[67] Allowing such joint ownership should have no effect on competition in the national advertising market because of differences in the geographic dimensions of this market.

[68] "Estimated Annual U.S. Advertising expenditures 1990–1996," Prepared for Advertising Age by Robert J. Coen, McCann-Erickson. See also Bernstein Research, Network Television Primer, February 1998 at 6 (showing advertising growth rates for cable networks and television).

[69] TV Ownership Further Notice, supra at 3571.

[70] Id.

[71] Id.

commenters to address the impact on diversity if we were to modify or eliminate the cable/television cross-ownership rule. Would any and all cable/television combinations lead to greater harm to diversity than other ownership combinations that Congress or the Commission permit? Since cable and broadcast television may be the closest substitutes in the video marketplace, should the Commission be especially vigilant in promoting diversity in the context of this rule?

51. *Experimental Broadcast Stations.* Subpart A of part 74 of the Commission's Rules [72] provides for the licensing of experimental broadcast stations. These are stations "licensed for experimental or developmental transmissions of radio telephony, television, facsimile, or other types of telecommunication services intended for reception and use by the general public." [73] A multiple ownership rule pertaining to experimental broadcast stations prohibits any person (or persons under common control) from controlling directly or indirectly two or more experimental broadcast stations unless it can be shown that the research program requires the licensing of two or more separate stations.[74]

52. Because this is an ownership rule pertaining to a type of broadcast station, we believe that section 202(h) of the Telecom Act requires the Commission to review the rule as part of its biennial broadcast ownership review. However, experimental broadcast stations generally are prohibited from providing regular program service.[75] Accordingly, it does not appear that they significantly participate in competitive or diversity markets. Nevertheless, we seek comment on whether this rule remains in the public interest.

IV. Waivers

53. As we begin this first biennial review of our broadcast ownership rules, we believe it is important to review and restate our approach to granting conditional waivers of broadcast ownership rules which are under active consideration by the Commission in a rulemaking or inquiry proceeding. Generally, we have not granted conditional waivers of a broadcast ownership rule simply on the grounds that the rule was the subject of an ongoing rulemaking or inquiry proceeding, believing that such a blanket approach would make our enforcement processes unworkable and would subject our regulatees to undesirable levels of uncertainty. Perhaps more importantly, such an approach would necessarily assume that compliance with the subject rule during the pendency of its review was not in the public interest, an assumption which would ordinarily lack a substantial record basis at the notice of inquiry or notice of proposed rulemaking stage of a proceeding. Nonetheless, there are limited areas of our broadcast ownership waiver practice where we have consciously departed from this general approach.

54. For example, in certain cases in recent years the Commission has granted interim waivers or extensions where a pending proceeding is examining the rule in question, the Commission concludes that the application before it falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the Commission's goals of competition and diversity. This is most likely to occur where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule. An example of this situation involves the TV duopoly rule geographic market standard currently under review in our local ownership rulemaking.[76]

55. In contrast to those situations, in our first biennial review of our broadcast ownership rules, we do not believe it appropriate to provide for conditional waiver of any of the ownership rules under review in this proceeding solely because of the pendency of this review. Here, for example, we do not have a protracted proceeding or substantial record on any of these rules that leads us to initial conclusions about any specific proposals to modify or eliminate any of the rules at issue here. In addition, we do not have substantial waiver experience suggesting an appropriate course of action regarding the rules under review herein. We retain, of course, both the right and the obligation to review any request for waiver of our rules based upon the specific facts in a particular case. What is important is whether the public interest would be served by a grant of the waiver.[77]

56. We are aware that in at least one case a conditional waiver of the radio-newspaper cross-ownership rule has been granted based upon the pendency of a proceeding.[78] To the extent that this decision suggests that the pendency of a proceeding by itself would be sufficient basis for a waiver, it is superseded, although as a matter of equity we do not alter its governance of the situation to which it was addressed.[79]

V. Conclusion

57. By this *Notice*, we solicit comments on these and any other issues pertinent to our review of our broadcast ownership and other rules. Commenters should frame their discussion and analysis in a manner consistent with our framework for addressing our historic competition and diversity concerns. We ask commenters to provide data and evidence to support their positions so as to facilitate objective analysis of the issues raised.

Administrative Matters

58. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 22, 1998, and reply comments on or before June 22, 1998. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. Copies may be obtained through the Commission's contract copier, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20036. ITS can also be reached at (202)857–3800 or by facsimile at (202)857–3805.

59. Subject to the provisions of 47 CFR 1.1203 concerning "Sunshine

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[72] 47 CFR 74.101—74.184.

[73] 47 CFR 74.101.

[74] 47 CFR 74.134.

[75] 47 CFR 74.182.

[76] See Second Further Notice in MM Docket No. 91–221 & 87–7, 11 FCC Rcd 21655, 21681 (1996) (Commission states that granting waivers satisfying the proposed standard would not adversely affect its competition and diversity goals in the interim).

[77] See WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[78] Letter to Joel Rosenbloom from Chief, Mass Media Bureau concerning ABC/Capital Cities-Disney Company merger, dated October 24, 1996, p. 2.

[79] We note that the staff, on March 6, 1998, granted an extension of the Tribune Company's temporary waiver to commonly own a television station and newspaper in the Miami, Florida market. Stockholders of Renaissance Communications Corporation, DA 98–456 (MMB March 6, 1998). That action was based on special circumstances and does not, in our view, stand in contradiction to the conditional waiver standard we articulate here.

Period" prohibitions, this proceeding is exempt from *ex parte* restraints and disclosure requirements pursuant to 47 CFR 1.1204(b)(1).

60. Accordingly, *it is ordered* that pursuant to the authority contained in sections 4, 11, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 161, 303, and 403, and 202(h) of the Telecommunications Act of 1996, this Notice of Inquiry is adopted.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8276 Filed 3–30–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC–96–10; FHWA–97–2334]

Recommendations on Uniform Forms and Procedures for the Transportation of Hazardous Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of report availability; request for comments.

SUMMARY: The FHWA is requesting public comment on the final report and recommendations of the Alliance for Uniform HazMat Transportation Procedures (the Alliance) concerning the implementation of a portion of the former Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The statute requires the Secretary of Transportation (the Secretary) to establish a working group of State and local government officials to establish uniform forms and procedures for the registration of persons that transport hazardous materials by motor vehicle. The working group is required to make recommendations to the Secretary on whether to limit the filing of State registration and permit forms and the collection of filing fees to the State in which the person resides or has its principal place of business. The Alliance is the working group created to fulfill the requirements of the statute, and accordingly, published its final report with recommendations on March 15, 1996.

On July 9, 1996, the FHWA published a notice indicating that the Alliance's report was available and requesting public comments on the report (61 FR 36016). After reviewing the comments received in response to the notice of availability, the FHWA has determined that it should seek additional public comment before the agency makes a decision on whether to implement the recommendations of the Alliance.

DATES: Written comments must be received on or before June 29, 1998.

ADDRESSES: Submit written, signed comments to Docket No. FHWA–97–2334, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, (202) 366–4009; Mr. James D. McCauley, Office of Motor Carrier Safety and Technology, (202) 366–9579; or Mr. Raymond W. Cuprill, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Availability of The Alliance's Report

Electronic Access

The Alliance report has been posted on the Internet. The entire report may be viewed on the Internet, depending on the software being used, and/or downloaded. The report is in WordPerfect 6.1 format while the forms contained in Appendix F of the report are in Graphics Interchange Format (GIF)—a standard format for digitized images. Users will need a graphics viewer to see the GIF file.

There are several ways to access the report on the Internet. The most direct method is as follows: http://www.fhwa.dot.gov/omc/alliance.html.

Alternatively, the report may be accessed through the FHWA's Office of Motor Carriers (OMC) home page located at http://www.fhwa.dot.gov/omc/omchome.html. This site contains general information on the OMC and its programs as well as links to online Federal Motor Carrier Safety Regulations and regulatory guidance, and Federal Hazardous Materials Regulations. When accessing the Alliance report from the OMC home page select the following hyperlinks:

1. Special Program Areas.
2. Final Report: Uniform Program Pilot Project.

Whichever approach is used, users may scroll through the table of contents and access the desired section of the report by clicking on the appropriate heading.

Ordering Copies of the Alliance Report

Copies of the report ("Final Report: Uniform Program Pilot Project," March 15, 1996) may be ordered from the National Governors' Association (NGA) Publications Center at (301) 498–3738. The NGA Publications Center will charge a shipping and handling fee for all orders.

Background

Section 5119 of title 49, United States Code, requires the Secretary to establish a working group of State and local government officials to develop recommendations on uniform forms and procedures that the States can use to register and permit persons that transport, or cause the transportation of, hazardous materials by motor vehicle. The working group is also required to make recommendations as to whether the filing of registration and permit forms, and the collection of related fees, should be limited to the State in which a person resides or has its principal place of business. In developing its recommendations, the group is required to consult with persons who are subject to these registration and permit requirements. The recommendations of the working group are to be included in a final report to the Secretary.[1] Finally, section 5119 requires the issuance of regulations implementing those

[1] The report is to be also submitted to the Committee on Commerce, Science, and Transportation of the U.S. Senate, and the Committee on Public Works and Transportation of the U.S. House of Representatives.

recommendations with which the Secretary agrees.

Section 5119 was originally enacted as section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244; November 16, 1990). The HMTUSA amended the Hazardous Materials Transportation Act of 1974 (HMTA), Pub. L. 93–633, 88 Stat. 2156, which granted regulatory and enforcement authority to the Secretary to provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce. The HMTA was designed to replace a patchwork of State and Federal laws and regulations concerning hazardous materials transportation with a framework of uniform, national regulations. The HMTA and HMTUSA were repealed by Public Law 103–272 (108 Stat. 745, 1379; July 5, 1994) with the statutory provisions applicable to the transportation of hazardous materials recodified at 49 U.S.C. 5101 *et seq.*

Implementation of Section 5119

Creation of the Alliance for Uniform HazMat Transportation Procedures

In 1991, the NGA and the National Conference of State Legislatures (NCSL) were awarded a contract to coordinate the staffing and operations of the working group. The NGA and NCSL presented recommendations to the Secretary for the establishment of a panel to carry out the tasks of the working group. The panel was approved by the Secretary and held its first meeting in January 1992, at which time it selected the title "the Alliance for Uniform HazMat Transportation Procedures" or "the Alliance."

The Alliance authorized the formation of four subgroups to address specific areas of State hazardous materials transportation regulation. Industry representatives were invited to participate in the subgroups. The subgroups were:

1. Shipper and Carrier Registration Subgroup;
2. Shipper and Carrier Permitting and Licensing Subgroup;
3. Operational Issues Subgroup; and,
4. Audit and Enforcement Subgroup.

Each subgroup was asked to examine current State practices, identify the extent to which State practices are uniform, identify barriers to uniformity, and make recommendations for criteria on which a uniform State program would be based.

Pilot Study

In May of 1992, the Alliance proceeded with the design and implementation of a two-year pilot project. The project was based upon the following assumptions/recommendations:

1. Base-state system for registration and collection of fees;
2. Reciprocity between states that require permits;
3. Additional information for hazardous waste transporters;
4. Individual state enforcement authority;
5. Participation by localities; and
6. Establishment of a governing board to manage the pilot project.

The FHWA funded a two-year demonstration program for four States. During the first year, each State would develop the internal administrative procedures and organization to conduct a test of the Alliance's recommended program. During the second year, the States would implement the program for motor carriers involved in the transportation of hazardous materials.

In November of 1992, the Alliance contacted State hazardous materials transportation program administrators to solicit participation in the pilot study. The States of Minnesota, Nevada, Ohio, and West Virginia were chosen based upon the following criteria established by the Alliance:

1. The Governor and State legislature were committed to taking the necessary legislative and administrative actions to conduct the State's hazardous materials transportation programs under the principles and operating procedures of the Alliance's recommendations;
2. The regulated community within the State was committed to supporting participation in the program;
3. The State had experience in the registration and permitting of hazardous materials, and/or in the transportation of radioactive materials;
4. The group of States chosen reflected "geographic diversity;"
5. At least one pilot State had a "major locality" with a hazardous materials transportation registration or permitting program.

Between July 1, 1993, and June 30, 1994, the States completed the legislative and administrative work necessary to participate in the pilot study. On July 1, 1994, the pilot States began registering and permitting motor carriers in accordance with the Alliance's recommendations. Each participating State was given the opportunity to select one of the following three options for implementing the Alliance's Uniform Program:

1. The State could apply the requirements of the Uniform Program to all motor carriers (interstate and intrastate); or
2. The State could apply the requirements only to domiciled, interstate motor carriers that operate in two or more of the pilot States; or,
3. The State could select an even smaller sample of interstate motor carriers. Minnesota, Ohio, and West Virginia used option one while Nevada selected option two for the first round of registration and permitting with the intent of expanding the program to all motor carriers during the second program year.

The Alliance's Conclusions

On March 15, 1996, the Alliance submitted its final report and recommendations to the FHWA. The Alliance concluded that the pilot study met the uniformity mandate of 49 U.S.C. 5119. The report states that all of the pilot States support the program and believe that other States should join the program to increase the benefits provided by this uniform program and to spread the administrative load presented by multi-state carriers. The report also states that industry participants support making the program uniform in all States, although the industry believes that a shorter application form and a simplified formula for calculating fees should be used. The Alliance's report is available for review in the docket and may be viewed and downloaded from the Internet.

Discussion of Comments

The FHWA received 20 comments in response to the July 9, 1996, notice. The commenters were: The Advocates for Highway and Auto Safety (the Advocates); the Alliance for Uniform HazMat Transportation Procedures (the Alliance); the Association of Waste Hazardous Materials Transporters (the AWHMT); Blair America, Inc.; the Coalition for the Advancement of Uniform Hazardous Materials Registration and Permit Forms and Procedures (the Coalition); the Commercial Vehicle Safety Alliance (the CVSA); Du Pont-Sentinel Transportation Company (Du Pont-Sentinel); Idaho Department of Law Enforcement, State Police Division (the Idaho State Police); Institute of Makers of Explosives (the IME); Iowa Department of Transportation (the Iowa DOT); Michigan Department of Environmental Quality (the Michigan DEQ); Michigan Department of State Police (the Michigan State Police); National Customs Brokers and Forwarders Association of America, Inc. (the NCBFAA); National Fire Protection

Association (the NFPA); National Tank Truck Carriers, Inc., (the NTTC); New Jersey Department of Law and Public Safety, Office of the Attorney General (the New Jersey Attorney General); Northeast Waste Management Officials' Association (the NEWMOA); Ohio Public Utilities Commission (the Ohio PUC); Roadway Express, Inc. (Roadway); and, the Wisconsin Department of Transportation (the Wisconsin DOT).

Comments in Support of Implementing the Alliance's Recommendations

The FHWA received 12 comments in support of the Alliance's recommendations. The commenters were: The Alliance, the AWHMT, the Coalition, the CVSA, Du Pont-Sentinel, the Michigan State Police, the NCBFAA, the NFPA, the NTTC, the Ohio PUC, Roadway, and the Wisconsin DOT.

The Alliance discussed its work to develop the Uniform Program and objected to the manner in which the FHWA presented the information contained in the July 9, 1996, notice. The Alliance stated:

> Overall, we are extremely disappointed that the notice misrepresents both the purpose of 49 USC 5119 (formerly referred to as Section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990) and the process by which the Alliance arrived at its recommendations. We are also concerned that the Federal Highway Administration has exceeded its rulemaking authority under 49 USC 5119 under which "the Secretary shall issue regulations implementing those recommendations contained in the report transmitted to the Secretary (c) with which the Secretary agrees," to question the validity of a state hazardous materials program. The Act does not preempt state hazardous materials programs. It relates only to uniformity.
>
> Furthermore, by omitting the words "to the State in which the person resides or has its principle place of business," from the paraphrasing of Section (a)(2), it suggests that the Secretary can somehow limit State fees. The Act specifically states that the Secretary CANNOT limit fees as long as such fees are used to enhance the safe transportation of hazardous materials by motor carriers. The language used by the FHWA in the opening summary suggests that the agency believes it has the authority to determine the value of a state hazardous materials registration program. We strongly object to this representation of 49 USC 5119.
>
> When the Alliance working group was created in January, 1991, thirty-nine states conducted some form of registration and/or permitting program for motor carrier transportation of hazardous materials. At its initial meeting, the Alliance stated that its task was not to reinvent the state programs, but to reconcile the differences among these existing programs. Furthermore, the act required the working group to examine the feasibility of a base state system.

The recommendations contained in the final report submitted by the Alliance accomplish both of these objectives. The findings and recommendations represent two years of hearings and deliberations as well as two years of field testing. Over this four year period the Alliance working group and the Governing Board conducted 24 open meetings in which they heard and considered both state and industry concerns. We recognize that no state or industry association got everything that it wanted out of the Alliance deliberations. That was to be expected. To their credit, many states and many industry representatives supported compromises on very controversial issues that moved the process forward. The Alliance has heard and deliberated on every suggestion brought to its attention. Although the working group and Governing Board rejected some suggestions, it does not mean that they did not listen to them.

The Coalition (a group consisting of the American Trucking Associations, the Association of Waste Hazardous Materials Transporters, National Tank Truck Carriers, National Private Truck Council, Hazardous Materials Advisory Council, Ohio Trucking Association, Minnesota Trucking Association, Nevada Motor Transport Association, and West Virginia Motor Truck Association) indicated transportation of hazardous materials is "highly" regulated due to the dangers associated with these commodities. The Coalition also indicated that the overall safety record for transportation of hazardous materials is "excellent" and incidents are kept to a minimum by strict regulatory requirements enforced by Federal and State personnel. The Coalition stated:

> [M]any states and localities believe that hazardous materials transportation must be even more tightly controlled and have implemented registration and permitting programs within their jurisdictions. In recent years, approximately 49 separate programs with 49 different application requirements have arisen.
>
> The Coalition is concerned that these state and local programs will continue to multiply at an escalating pace. With approximately 33,000 jurisdictions in the United States, it is possible that there could be literally thousands of separate permitting and registration programs in the future with attendant fees. This is especially true when one considers the current misperception that transporters of hazardous materials are prone to accidental releases.

The Coalition also indicated it believes Congress, through 49 U.S.C. 5119, has charged the Secretary with the responsibility to halt the proliferation of non-uniform requirements. The Coalition stated:

> Congress recognized that the states have a legitimate role in registering and permitting motor carriers who transport hazardous materials. One way to strike a balance between eliminating the proliferation of non-uniform requirements and allowing states and localities an appropriate registration and permitting role is through the development of a federally specified and state-run registration and permitting program. To that end, Congress has charged the Secretary of Transportation with investigating that possibility (49 U.S.C. 5119). It was intended that such a uniform and reciprocal program would apply only to those states that wish to register or permit motor carriers. In any such program, states would be required to make use of the latest technologies and systems in order to determine motor carrier fitness for operating as a hazardous materials transporter. That is the essence of the recommendations of the Alliance as set forth in its "Final Report." The Final Report, which describes the Uniform Program pilot project, was submitted to the Secretary by the Alliance Interim Governing Board on March 15, 1996.
>
> The Coalition is very familiar with the contents of the Final Report and supports its general conclusions and approach, even though we do not concur with every technical detail. The Coalition recommends that FHWA move forward with rulemaking on the Alliance recommendations immediately. The Final Report is an accurate account of the pilot project that tested the recommendations of the Alliance in the states of Minnesota, Nevada, Ohio, and West Virginia. The pilot proved that the system can work, if properly structured and administered. Indeed, a number of states are interested in becoming members of the Alliance, especially since the Uniform Program provides them a "safe harbor" from preemption of their registration and permitting laws.

The Coalition argued that the slow pace of the FHWA's decisionmaking process and lack of funding has created confusion and frustration for the States. The Coalition stated:

> [S]tates are unwilling to abandon current programs in return for the existing Uniform Program because of uncertainty about FHWA's commitment to follow through on the congressional directive to implement a state-based uniform hazmat permitting and registration program. The uncertainty is heightened by the slow pace FHWA has set for this rulemaking and the lack of continuing FHWA financial support for those states that are continuing to carry on the Uniform Program. In fact, one of the states presently in the four state alliance is on the verge of implementing a new non-uniform program because of the absence of federal guidelines. Consequently, many states have been left in limbo because of the lack of Federal direction, leading them to either maintain the status quo or proceed on their own with non-uniform programs.
>
> Therefore, the Coalition strongly recommends that FHWA make the rulemaking process for uniform procedures for hazardous materials transportation a top priority. Failure to do so will only result in continued confusion and frustration. Industry and government representatives

worked diligently to devise the Uniform Program and to test its recommendations. While there are still many compromises in the final recommendations, the Coalition endorses the concepts of the Uniform Program.

The AWHMT stated:

Members and staff of the Association have been involved in the development of the Uniform Program since the issue of state authority for qualifying carriers of hazardous materials was debated in Congress prior to the enactment of the 1990 amendments to the Hazardous Materials Transportation Act (HMTA) which authorize this rulemaking. At that time, we recognized that any credible program of credentialing carriers would have to rely on the participation of states because the federal government lacks the manpower to perform this task. However, the duplication and redundancy of unfettered state administration of such programs created intolerable burdens for interstate carriers.

The determination of states to remain major players in the registration and permitting of motor carriers transporting hazardous materials has not abated since the enactment of the 1990 amendments. In fact, the number of permitting and registration programs has grown. Currently, all but 11 states administer some type of hazardous materials registration and/or permitting program.

The AWHMT expressed concern about what it termed "the lack of federal financial support to carry the Uniform Program forward to national implementation." The AWHMT indicated that the FHWA has not continued financial support to the pilot States or other States that would like to participate in the Uniform Program. The AWHMT stated:

Four states are carrying the burden of this program for the nation. It is unclear how long the pilot states are able and willing to support the Uniform Program before other states agree to share the load. Other states are, as outlined in the Coalition comment, waiting for DOT's final rule. Every day implementation of this rule is delayed past the November 17th trigger, we believe FHWA should financially assist its pilot program "state partners." If no support is forthcoming, FHWA owes it to these state partners to finalize, as expeditiously as possible, the Uniform Program.

The CVSA stated:

Congress recognized the role the states play to assure the safe transportation of hazardous materials. States concerned about the quality of such carriers have been unable to effectively ensure compliance of non-domiciled carriers operating in their jurisdictions. The Uniform Program provides a mechanism to reciprocally recognize the reviews performed by other states on non-domiciled carriers. The ability to prequalify hazmat carriers in a reciprocal fashion is necessary to facilitate the "seamless" flow of commerce across state lines that FHWA envisions through other initiatives it is pursuing such as CVISN (Commercial Vehicle Information System Network). States will also realize more efficient use of resources as the burden of regulating the nation's interstate carriers is distributed among the states.

CVSA believes it is critical to move forward with the Uniform Program in an expeditious fashion. States are willing to participate in the Uniform Program. However, Congress empowered the Secretary to issue regulations implementing only those recommendations of the Alliance with which the Secretary agrees. Thus, the possibility that FHWA will not finalize the Uniform Program as recommended in full by the Alliance has a chilling effect on additional state participation.

Three State agencies submitted comments in support of the Alliance's recommendations. One of the State agencies, the Ohio PUC, participated in the negotiations of the original Alliance working group and as a pilot State during the two-year pilot program. The Ohio PUC stated:

The Commission has registered and permitted over three thousand hazardous materials carriers, including over three hundred hazardous waste transporters under the Uniform Program. Based upon its experience during the working group negotiations and as a pilot state, the Commission believes that the Uniform Program represents a consensus between the States and the regulated industry.

The Ohio PUC recommended that the FHWA carefully examine the issue of continued financial support for the Alliance until implementation of the Uniform Program is completed. The Ohio PUC stated:

(T)he Commission's support for reciprocity is conditioned upon adequate financial support from the FHWA for the national repository and the Alliance Interim Governing Board until the Uniform Program is fully implemented. In the Final Report, the Alliance provides a detailed summary of the costs of maintaining the infrastructure necessary for reciprocity. *Final Report: Uniform Program Pilot Project*, March 15, 1996, at 53–54. The experience during the pilot process demonstrates that there is an infrastructure necessary for reciprocity among the States. It is unrealistic to expect that the four states now in the Uniform Program can bear the costs of maintaining the infrastructure necessary for reciprocity without assistance from the FHWA until the Uniform Program is fully implemented.

The Michigan State Police believe implementation of the Uniform Program would improve compliance with hazardous materials regulations and improve safety. The Michigan State Police believe the Alliance's program can be implemented without adversely impacting the State's need to place administrative controls on hazardous materials carriers.

Two motor carriers provided comments in support of the Uniform Program. DuPont-Sentinel stated:

Our organization supports the Alliance recommended Uniform Permitting system. We feel it is a reasonable balance between the effort required of carriers to generate data and the information needed by the states to perform an adequate background check and determine carrier safety history. Critics will argue that the information requirements of the proposed program are somewhat more complex than many existing state permits. While this is true to a certain extent, the additional requirements also mean those states will have more detailed information than they presently use to continue making sound decisions about carrier safety performance and permit qualifications.

We have found the informational burdens imposed by the recommended uniform system are not overly intrusive to us or to our interstate hazardous material/waste carrier industry. When the more complex, but uniform, requirements are weighed against the current disjointed myriad of various state requirements for different information, our company alone will be able to save approximately $8,000 per year in administrative cost under the uniform program. We feel that other carriers handling hazardous materials and wastes in multiple states will see the same effect. Thus any additional complexity of data supplied by the carrier is more than outweighed by the benefit of only having to have the same set of uniform data for each state.

DuPont-Sentinel also indicated that it believes reciprocity between State permitting and registration programs will greatly enhance each State's ability to assess motor carriers' compliance with the hazardous materials regulations. DuPont-Sentinel stated:

Our opinion is that reciprocity would mean all the involved states would each be responsible for determining the safety fitness of a fraction of the present number of carriers, with the same level of state revenues to fund these assessments. Thus the states would have the time and funding to perform a much more intensive investigation of the fewer carriers which are based in their state for permitting purposes. By almost any logic, this should result in a much higher level of highway safety because the carriers which are qualified by the state to handle hazardous materials will be more thoroughly investigated than they are today. Thus only those carriers which can clearly demonstrate to the base state a proven history of safe performance and compliance with existing standards will be allowed to transport hazardous materials.

Roadway stated:

We agree that transporters of hazardous materials should be held to high standards and do not dispute the right of regulators to monitor safe transportation. However, a regulatory scheme that allows more than 30,000 jurisdictions to develop individual programs in a hit-or-miss scheme is detrimental overall to safety.

FHWA Response to Commenters Supporting the Implementation of the Alliance's Recommendations

The FHWA understands the commenters concerns about the need to establish uniformity and reciprocity between the States' permitting and registration programs. However, the agency does not believe that the information provided to date from the States and hazardous materials, substances, and wastes transporters is sufficient to support issuing a notice of proposed rulemaking (NPRM) to adopt the Alliance's recommendations. Prior to issuing an NPRM the agency must assess the costs and benefits (safety and economic) of implementing the Alliance's recommendations. A major factor in assessing the costs is the extent to which the States would be required to modify their existing programs and the development of the information-system infrastructure needed for the States to share information on motor carriers' safety performance. Because of the lack of comments from the State agencies administering permitting and registration programs, the FHWA cannot determine the costs of implementing the Alliance's program.

With regard to benefits, neither the Alliance's final report nor the comments received in response to the July 9, 1996, notice provided information to enable the FHWA to estimate the benefits of implementing the Alliance's Uniform Program. Although several commenters believe the overall costs to motor carriers will be reduced, the agency does not believe it is possible to make such an assertion without determining all of the costs associated with implementing the Uniform Program and identifying the sources of revenues or funding to meet those costs. In the absence of Federal funding, the most likely source would be the registration and permit fees paid by motor carriers. The State agencies did not indicate whether their fees would be adjusted to cover the costs of implementing the Uniform Program. Therefore, it is inappropriate to assume that the costs for the industry would decrease.

Although the Alliance indicated in its comments that 24 "open meetings" were held and the concerns of the States and industry were considered, the comments received to date suggest the Alliance's proposed uniform program does not effectively reconcile the differences among existing State programs. The FHWA notes that only three State agencies submitted comments in support of implementing all of the Alliance's recommendations. Two States and the NEWMOA supported the adoption of the Alliance's uniform program for hazardous materials and substances transporters, but opposed applying the program to the permitting of hazardous waste transporters. Two other States opposed implementing any of the elements of the Alliance's Uniform Program. The comments from the States opposed to some, or all of, the Alliance's recommendations are an indication that certain aspects of the Uniform Program are not, as currently presented, acceptable to those States for incorporation into their permitting and registration programs. A detailed discussion of the comments from States opposed to some, or all of, the Alliance's recommendations is provided in the next section of this notice. This is particularly important because of the preemptive effect that the Alliance's recommendations, if implemented by the FHWA, would have on the jurisdictions that have not adopted the Uniform Program.

Section 5119(c) of title 49 of the United States Code requires that a regulation prescribed under this subsection must take effect one year after it is prescribed. The Secretary may extend the one-year period for an additional year for good cause. After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation. Therefore, if the FHWA implemented the Alliance's recommendations, each State with a permitting and/or registration program that differs from the Alliance's Uniform Program would be required to either modify its program to conform completely to the Alliance's program, or cease its permitting and/or registration program. The FHWA believes there are significant costs associated with having each of the States modify its respective program and it would be inappropriate to initiate a rulemaking action at this time without determining the total economic burden on the States. Section 5119 does not provide Federal funding for the States to make the transition from their current registration and permitting programs to the Uniform Program, and it is not evident to the FHWA that the States are prepared to absorb all the costs associated with implementing the Uniform Program.

The FHWA believes that prior to initiating a rulemaking to implement the Alliance's recommendations, the agency must be assured that the States are prepared to fund all costs associated with entering into the Uniform Program, and have the means to sustain the Uniform Program without support from the FHWA. Federal funding was provided to the four pilot States to participate in the study, but currently no funding has been designated to support the continuation of the Uniform Program in the pilot States or the enrollment of the remaining 46 States and the District of Columbia.

In addition to the costs for each of the States to adopt the Uniform Program, there are costs associated with establishing an information-system infrastructure for nationwide implementation of the Uniform Program and funding the operations of the Governing Board. The Alliance estimates the annual administrative costs (e.g., the Governing Board, maintaining the repository, etc.) of a fully-implemented Uniform Program covering all of the States and the District of Columbia would be approximately $400,000. This amount does not include the annual costs for each of the States to participate in the Uniform Program. Since Congress did not authorize Federal funds for the implementation of the Uniform Program, the administrative costs for the Uniform Program would have to be financed through fees paid by the motor carriers subject to the permitting and registration requirements. Therefore, the registration and permitting fees charged by the States may need to be increased in order to cover both the costs for the States to operate under the new base-State procedures, and the costs for administering a nationwide network.

The FHWA notes several commenters indicated there is a need for continued Federal funding for the pilot States and the Interim Governing Board. The expectation that the FHWA would continue funding for the pilot States proves that the Uniform Program, as tested by the Alliance, is not self-sufficient. Although commenters argue the pilot States are being forced to absorb the costs for maintaining the Uniform Program until it is fully implemented, the FHWA does not believe participation in the Pilot Project should have resulted in an undue financial burden on the participating States. With the exception of West Virginia, each of the participating States had a registration and/or permitting program in effect prior to volunteering to join the Pilot Program. The FHWA did not provide funding for these non-reciprocal programs. Federal funding was provided to assist in making the transition from the old registration and permitting system to the Uniform Program, and in the case of West Virginia, to establish a registration and permitting system under the Pilot Program. Therefore, the pilot States

were responsible for charging the necessary registration and permitting fees to cover the costs associated with their programs, and their respective shares of the administrative costs associated with the four-State information-system infrastructure and the Interim Governing Board.

The FHWA believes the administrative costs for the infrastructure and the Interim Governing Board should be proportional to the number of States and motor carriers covered by the Uniform Program. The Uniform Program only has four States participating at the present time and the costs for administering the current program should not pose a problem for the participating States. The FHWA disagrees with the commenters' inference that there is fixed cost for the nationwide information-system infrastructure and Governing Board for which the pilot States must bear the full burden until other States adopt the Uniform Program. If more States join the Uniform Program, it is reasonable to expect that each State will bear the financial burden for its involvement and its share of the infrastructure. The commenters have not provided details on why the costs for the pilot States' current activities exceed the financial resources available from the fees charged to the hazardous materials, wastes, and substances transporters.

The FHWA must emphasize the fees charged by the pilot States were not limited by the FHWA. Section 5119 does not give the agency authority to limit the registration and permitting fees collected by States from motor carriers. However, 49 U.S.C. 5125(g) requires that if a State, political subdivision of a State, or Indian tribe imposes a fee related to hazardous material transportation, the fee must be "fair" and used for a purpose related to hazardous material transportation, including enforcement and planning, developing, and maintaining a capability for emergency response. Each State has the responsibility of determining the fees it believes are necessary to support its hazardous materials safety programs. The States also have the responsibility for taking into consideration the percentage of those fees that must be distributed to other States in the Uniform Program. Presumably, the State that has the burden of processing a motor carrier's application and performing the investigation of the carrier would take the greatest share of the fees paid by the carrier. The percentage of the fees distributed to other States would be based upon an appropriate assessment of those States' roles in ensuring the safe operation of the carrier. For whatever reason, the fee collection and distribution system used in the Pilot Project did not achieve self-sufficiency.

The FHWA agrees with the Coalition's statement that there is a need to halt what it terms "the proliferation of non-uniform requirements." However, the agency does not believe the States' uncertainty about the outcome of the FHWA's review of the Alliance's recommendations is an obstacle to achieving uniformity or reciprocity. The States have independently developed permitting and registration programs with no apparent movement toward the use of uniform forms and procedures. The States have also been reluctant to implement reciprocity provisions in their permitting and registration programs. The Congress recognized the States' reluctance to establish uniformity and reciprocity and charged the Secretary with the responsibility to establish a working group to study the issue and, upon completion of the working group's final report, implement the recommendations with which the Secretary agrees.

The FHWA reviewed the final report and recommendations of the Alliance and, after considering the complexity of the issues covered in the report and the potential economic impact on the States, issued a notice requesting public comments on the report. The agency concluded that it would have been inappropriate to assume the Uniform Program was acceptable to most of the States, and that the States were prepared to absorb all the costs of implementing the Uniform Program.

In response to comments about one of the four pilot States discontinuing its participation in the Uniform Program, the agency strongly encourages each of the pilot States to maintain the current reciprocal arrangements. The FHWA also encourages other States to examine the potential for achieving reciprocity in permitting and registration programs. If the common goal is to ensure the safe transportation of hazardous materials, there should be a common approach to accomplishing the goal. The States are not prohibited from having reciprocal agreements and there is no readily apparent reason for the States' refusal to cooperate with neighboring jurisdictions to establish reciprocity. Irrespective of whether there is a Federal mandate, the States should establish reciprocal agreements whenever possible.

Comments in Opposition to Implementing All of the Alliance's Recommendations

Eight commenters opposed implementation of some, or all of, the Alliance's Uniform Program. The Advocates, Blair America, Inc., the IME, the Idaho State Police, and the Iowa DOT opposed implementing the Alliance's recommended program. The Michigan DEQ, New Jersey Attorney General, and the NEWMOA support implementing the Alliance's recommendations for hazardous materials transportation, but oppose mandating reciprocity of permitting requirements for hazardous waste transporters.

The NEWMOA [2] stated:

> Generally, our state hazardous waste programs approve of the uniform permit forms that the Alliance and its support staff have developed. However, we continue to have serious reservations about the effects that base-state permitting/permit reciprocity and related issues will have on our state's ability to effectively regulate hazardous wastes. These reservations persist despite a number of major improvements to the model program that were made by the Alliance and its staff to address our, and other states', concerns. We believe that, to a considerable degree, these concerns are rooted in differences between relevant statutory goals that may be difficult to reconcile without additional public airing of the environmental regulatory issues that we raise. Finally, we would like to briefly address DOT's policy concerning preemption of state hazardous waste regulatory requirements. While this policy is not addressed by the Alliance's report it has, in our view, a bearing on your agency's decisions regarding the Alliance's recommendations and their implementation.

The NEWMOA indicated that each of its member States has a rigorous permitting program for hazardous waste transporters and facilities where wastes are stored and transferred. Each of the States requires extensive disclosure of ownership, criminal history, and history of compliance with environmental and safety laws and regulations as a condition for receiving and maintaining a permit. The NEWMOA stated:

> These state programs were created to fill a major gap in the "cradle to grave" regulatory concept for hazardous wastes that was envisioned by congress and is encouraged in RCRA (Resource Conservation and Recovery Act). Our accumulated experience has taught our states that any activities involving wastes require a higher degree of regulatory scrutiny than activities involving commercial commodities which have value. An unfortunate part of this experience is the

[2] The NEWMOA is a non-partisan, nonprofit interstate association that was established by the Governors of the New England States as an official interstate, regional organization, in accordance with section 1005 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.* The membership consists of State environmental agency directors of the hazardous waste, solid waste, waste site cleanup, and pollution prevention programs in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

legacy of soil and groundwater contamination present in each of our states. This contamination, in part, is the result of hazardous wastes discharged prior to current environmental standards being implemented at either the state or federal level. Section 22 of HMTUSA does not mention or address this critical element of our state hazardous waste programs. Thus, it is not surprising that the Alliance and its staff have had difficulty addressing our concerns. While we believe that the Alliance's Model Program should improve the overall regulation of hazardous materials transportation, we fear that it would, as presently proposed, erode adequate cradle to grave control of hazardous waste over time.

The concept of reciprocity appears reasonable enough when applied to the relatively straightforward permit issues involved in transportation safety. However, permit reciprocity becomes more complicated when applied to less quantifiable issues, such as business integrity, that are important considerations when regulating hazardous wastes. The degree of investigation required in such permit reviews is often a matter of judgement, based on experience and knowledge of a transporter's operations, making the overview of such activities by a peer review group difficult to administer and enforce, and unrealistically demanding of resources. Consequently, NEWMOA's directors do not feel confident that the peer review mechanism would ensure consistently adequate permit reviews.

The Michigan DEQ stated:

The program needs to develop flexibility to handle non-Hazardous Materials (HazMat) regulated wastes. Many states have developed programs which take into account historical problems which go beyond the scope of HazMat regulated materials such as hazardous waste managed under the Resource Conservation and Recovery Act. Hazardous waste is a specific subset of the HazMat regulated under the program and has a completely different set of problems associated with it, primarily because it has no inherent value (i.e. it is not a product, but a waste that is normally being transported for disposal). States, therefore, set up specific licensing/permitting programs for dealing with this material that go beyond safety aspects of the carriers and other HazMat concerns to assure that the waste is effectively transported and disposed. The proposed Alliance recommendations for a Uniform program do not take into account the concerns that states have to deal with concerning transportation of hazardous or other wastes. Each state should be allowed to develop licensing/permitting programs that reflect the state's particular needs and historical problems.

State agencies in Idaho and Iowa opposed all aspects of the Alliance's Uniform Program. The Idaho State Police stated:

The Uniform HazMat Transportation Procedures as recommended in the Alliance's final report would negatively impact Idaho's efforts and thus negatively impact transportation safety in our state. The new system would preempt the state fee with no guarantee of replacement funding. The Idaho State Legislature is unlikely to adopt the procedures.

The Alliance's Uniform HazMat Transportation Procedures are more complex and stringent than mandated by Section 22 of HMTUSA. The model creates another regulatory agency at a time when government agencies and regulations are being minimized. The new agency would also have some authority without being a governmental agency or answerable to elected officials.

Due to the complexity of the procedures, administrative costs would increase when the purpose of the mandate is to reduce costs to government and carriers. The state fee collecting agency, now under constraint to consolidate and simplify procedures, will not be supportive of the additional administrative burden. Considerable training and carrier assistance would be required to implement the new system. Carrier fees would also be used to support the Board and national staff functions, a new cost. In the final report, concern was expressed regarding lower revenues to the states. The response was a suggestion to increase the registration fees which nullifies the economic advantage being described in the report.

The Advocates expressed concern that the Alliance's final report did not include an assessment of potential health and safety benefits for implementing the Uniform Program. The Advocates stated:

Our primary concern with the report centers on the findings and recommendations of Section V: Enhancement of Health and Safety. In this section, the report's authors cite a continuing urgency on the part of FHWA officials for a demonstration that the mechanisms of the four state pilot programs actually increase public benefits by improving the consequent health and safety of hazmat transport. The agency wanted assurances that the fundamental concepts of the pilot programs such as base state registration and reciprocity generate verifiable reductions in hazmat incidents. The report, p. 38.

The report responds to this urgent plea for demonstrable health and safety benefits by indicating that safety benefits consist of an overall increased awareness of the need for carriers to augment the quality of their internal oversight processes which can produce better operations through improved compliance with the various requirements of hazmat transport. *Id.*

Advocates agrees that a pilot program cannot by itself produce an uncontested increase in safe hazmat operations, given the small number of states and the lengths of pilot program participation. We seriously doubt that sufficient statistical power could be produced from the small sample sizes in four pilot states' hazmat operations over just a few years.

Nevertheless, we ultimately agree with the FHWA's insistence on "bottom line" health and safety benefits that must be generated from the program if it is to serve as (a) model for federal regulatory action nationwide. There must be a clear and convincing demonstration that the proposed system of registration and reciprocity not only produces improved internal oversight and review by hazmat carriers, and arguably improved compliance with hazmat regulations, but also significant and sustained decreases in hazmat incidents and their severity.

The Advocates also commented about findings in the report that show "widespread, chronic violation of threshold requirements and responsibilities of hazmat carriers, such as insufficient limits on hazmat transportation insurance, partial or non-existent registration and/or permit securement, and unresolved civil forfeiture payments for violations." The Advocates stated:

It is clear that some of the hazmat carriers detected through the pilot program present a danger to public health and safety, and to environmental protection, and, in some cases, an imminent threat to public health and safety. Even casual extrapolation of these findings beyond the four pilot states is a cause of grave concern to national safety organizations such as Advocates and should be a strong motivating factor in the FHWA's resolve to require stringent reforms through the hazmat transportation regulations to verifiably advance public health and safety.

Blair America, Inc., one of the motor carriers that participated in the Alliance's pilot study, opposed implementing the Alliance's Uniform Program. Blair America stated:

Of the four states in the Alliance, we transport HazMat through only two of them (OH and WV), yet we were forced to pay larger fees to the two other states through which we never transport HazMat loads. Of the $275.00 we pay to the Ohio P.U.C. for HazMat registration, $155.00—more than 56% of the total—is distributed to MN and NV, states through which we do not transport hazardous materials. To us, this is just throwing money away because it does us no good, but is a windfall to the states which do nothing to earn it.

FHWA Response to Commenters Opposed to Implementing the Alliance's Recommendations

The FHWA believes the States' concern that the Uniform Program does not provide adequate procedures for ensuring oversight of hazardous wastes transporters can be resolved through further negotiations between the Alliance and the State agencies responsible for regulating the transportation of hazardous wastes. The commenters indicated it is necessary to require extensive disclosure of company ownership, criminal history of company management, and history of compliance with environmental and safety laws and regulations as a condition for receiving and maintaining a permit. The FHWA

understands the States' desire to know as much as possible about hazardous waste transporters, but cannot pinpoint specific reasons why the States cannot achieve reciprocity.

Part III of the model application developed by the Alliance includes questions for transporters of hazardous waste. The form requests the full name, date of birth, driver's license number and all aliases used for individuals who hold, or have held in the last three years, certain management positions. The application form also requests information on parent companies, affiliates and subsidiaries, major contractors and clients. In addition, the form has a legal proceedings section for information on past criminal activities. The commenters did not provide explanations of why the information requested in the Alliance's model application would not, if accurately documented, be satisfactory in identifying high-risk motor carrier operations that should be denied a permit.

The FHWA notes that achieving uniformity and reciprocity requires compromise on the part of all of the States. The agency is concerned that the States have not displayed a willingness to compromise on the specific information requested from motor carriers or the procedures used to verify information provided on registration and permitting forms. The agency strongly recommends that each State make a clear distinction between concerns about the fee collection and distribution process and concerns about the information requested on the registration/permitting form(s) when deciding whether to support or oppose the Alliance's Uniform Program. This will enable the Alliance to more effectively respond to the States' concerns.

With regard to commenters reference to the RCRA, the agency has carefully reviewed the statutory requirements codified at 42 U.S.C. 6901 *et seq.* and does not believe the States' responsibilities under the RCRA preclude implementation of the Uniform Program. The RCRA requires that the Environmental Protection Agency, after consultation with State authorities, promulgate guidelines to assist States in the development of State hazardous waste programs. The State programs could cover the generation, transportation, treatment, storage, or disposal of hazardous waste. Therefore, the States' current permitting and registration activities under the RCRA go far beyond the scope of the Alliance's Uniform Program. However, the FHWA notes the RCRA does not prohibit uniformity or reciprocity among State hazardous waste programs. The assertion that programs developed under the RCRA would be adversely affected by the adoption of the Alliance's recommendations are not supported by the information the commenters provided.

The FHWA agrees with the Advocates that the Alliance's final report does not indicate there will be significant and sustained decreases in hazardous materials incidents. Although Section 5119 does not stipulate that the uniform forms and procedures developed by the working group achieve a certain level of effectiveness at preventing hazardous materials incidents, the FHWA believes the implementation of the Uniform Program should, at a minimum, provide quantitative safety benefits. The Uniform Program, if implemented, would require some States to be more thorough in assessing motor carriers' safety fitness prior to registering and permitting those carriers. At the same time, other States may be forced to rely on less information to assess a carrier's safety fitness. The final report does not provide information on the effectiveness of the current State programs at improving safety, nor does it provide an estimate of how the effectiveness of the individual States' programs may change as a result of adopting the Uniform Program. The report implies that all registration and permitting programs are cost effective tools to improve safety and that the implementation of the Uniform Program will offer improvements over the status quo.

The FHWA acknowledges that a rigorous permitting and registration system can be used to identify motor carriers that may not have sufficient safety management controls to properly handle the transportation of hazardous materials. It is in the best interest of the motoring public that unsafe motor carriers be restricted from transporting hazardous materials, wastes, and substances. However, the final report does not indicate whether each of the current State registration and permitting programs are accomplishing the goal of keeping unsafe carriers from transporting these commodities, or that the implementation of the Uniform Program will accomplish this objective.

Irrespective of the FHWA's views on the merits of the commenters arguments against implementing the Alliance's recommendations, the agency must reiterate that it is inappropriate to initiate rulemaking until it has sufficient information to quantify the costs and the benefits of implementing the Uniform Program. Section 5119 does not exempt the agency from statutes and Executive Orders governing the rulemaking process in general, and the specific statutes concerning preemption of State laws and regulations.

For example, Executive Order 12866 requires Federal agencies to promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as, failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies must assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies are directed to select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) requires agencies to do a qualitative and quantitative assessment of the costs and benefits of the proposed rulemakings that would require expenditures by State, local, and tribal governments. The assessment must include an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance and the extent to which there are available Federal resources to carry out the mandate. Agencies are also required to provide reasonable estimates of future compliance costs and any disproportionate budgetary effects upon a particular region of the country or particular State, local, or tribal government, or particular segment of the private sector.

The FHWA must emphasize that the analyses required by the Executive Orders and statutes must be performed before a proposed rulemaking can be issued. The information provided by the commenters and other information currently available to the agency is not sufficient for conducting the types of analyses required by the Executive Orders and statutes.

Other Issues Discussed by Commenters

Several of the commenters discussed the relationship between the Alliance's Uniform Program and the Federal and

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State initiatives listed in the July 9, 1996, notice and repeated in the appendix to this notice.

Specific Issues

The Michigan State Police believes the Research and Special Programs Administration's (RSPA) registration program should be eliminated if the Uniform Program is implemented. The Michigan State Police argues there is no need to have a dual registration system by both the State and Federal governments. The Michigan State Police indicated the Alliance's Uniform Program will accomplish the same objectives as the RSPA's program.

On the subject of the FHWA's safety permit rulemaking (discussed in the appendix to this notice), the Michigan State Police stated:

> The (Michigan State Police) views the FHWA's proposed Safety Permit Program in the same light as the RSPA [Registration] Program. Permits and registration do little, if anything, to improve safety. Just because a vehicle or a company is operated safety today does not mean it will operate safely tomorrow.
>
> Permit programs do, however, identify the industry to the enforcement agency and give a "snapshot" of how they operate. If used appropriately, they do represent a legitimate revenue collection for training and enforcement funding.
>
> Due to the nature of the national and international trucking industry, including sheer size and ever-changing players, the Federal Government is not in a position to adequately implement and maintain an effective permit program. Any permit system would be infinitely better handled at the state level, as the personnel are much closer to the individuals in the industry. The Alliance Program will allow USDOT access of the information in the system.
>
> The (Michigan State Police) does not support the development of another national-level database, considering the problems with MCMIS (the FHWA's Motor Carrier Management Information System).

The Michigan State Police also offered comments on the potential relationship between the Alliance's Uniform Program and the FHWA's Commercial Vehicle Information System (CVIS) Feasibility Study and motor carrier identification numbers (USDOT numbers). The Michigan State Police agree with the initial SafeStat assessment of fitness and believes that coordinating the SafeStat scores with the Alliance permit is simply an issue of software compatibility. By contrast, the Michigan State Police believe there are problems with the current motor carrier identification numbering system. The Michigan State Police stated:

> The numbering system used by USDOT to identify motor carriers is in definite need of repair. There are far too many mismatches in the system, which creates numerous difficulties in the MCMIS (Motor Carrier Management Information System) and Safetynet systems. As computerized data is becoming increasingly more important, the (Michigan State Police believe) the USDOT numbering system should be reworked to address concerns related by the States and industry. As FHWA is also developing shipper information for hazardous materials violations, a unique identifier must also be developed for them. Logic would dictate that these programs be adaptable to each other to provide consistent, accurate information.

The Iowa DOT believes the Alliance's Uniform Program competes with the RSPA's registration program. The State argues that one registration program is enough. The Iowa DOT stated:

> The USDOT's Hazardous Materials Registration Program should be changed. It should encompass all hazardous materials offered for transportation or transported, which would require the transport vehicle to be marked or placarded. Second, this program should be administered by each state with the USDOT providing guidance. It seems unusual that shippers and carriers send their registration money to Washington, D.C., have RSPA take a processing fee and then return money to the states.

The Iowa DOT also discussed the FHWA's CVIS program. The Iowa DOT stated:

> The Commercial Vehicle Information System (CVIS) feasibility study currently underway should be encouraged to include hazardous material carriers in the SafeStat Identification Algorithm (either by incorporating it into an existing safety evaluation area or creating a separate safety evaluation area relating to HM). This would allow CVIS to identify "at risk" hazardous material carriers.

The Ohio PUC also discussed the CVIS program. The Ohio PUC stated: Although the Commission is supportive of the concept behind the CVIS program as a base-state, reciprocal program, the CVIS program has no specific hazardous materials component and is only in the pilot stage. The purpose of the Uniform Program is to ensure that carriers are qualified to transport hazardous materials. This includes compliance with provisions such as hazmat training and insurance where the carrier must certify compliance prior to transportation; the CVIS program is retrospective in nature, reviewing safety performance only. Moreover, the practicality and effectiveness of revoking vehicle registrations privileges is uncertain at best. In the future, after completion of the CVIS pilot program, there may be a decision by the States to coordinate more closely activities under CVIS and the Uniform Program, such as compliance reviews; however, since the Uniform Program has successfully completed its pilot process, there is no need to further delay implementation of the Uniform Program in order to wait for the completion and review of the CVIS pilot.

The Ohio PUC provided general comments on all of the Federal and State initiatives the FHWA listed in the July 9, 1996, notice. The Ohio PUC stated:

> With respect to the relationship of the Uniform Program with all four programs described in the Request for Comments, the FHWA is not taking advantage of the key lesson learned in studying intelligent vehicle transportation systems. In the CVISN (Commercial Vehicle Information System Network) project, the FHWA recognized that, rather than condensing all databases currently gathered by States into a single, massive database, efficiencies will be achieved through a system of computer pointers and triggers which would create a network of smaller databases. The programs described in the Request for Comments are examples of other databases which should be able to share information with the Uniform Program repository; individual states could then coordinate activities, such as compliance reviews or audits, across these programs in order to create efficiencies, when the states deems appropriate in allocating resources for transportation regulatory activities. It is neither necessary nor desirable to consolidate all of these programs into a single program, administered on the Federal level, with a single massive database.

The Wisconsin DOT stated:

> Although there is some merit in the Alliance's recommendations that uniform program permits supplant federal registration and permits, and that Congress consider eliminating the federal registration program, we believe that these recommendations are premature. Significant differences exist between the two programs. For instance, the federal program covers offerors and carriers using water, air, rail or highway modes to transport certain special categories of hazardous materials. The uniform program covers motor carriers who transport all placarded hazardous materials, as well as bulk-packaged hazardous substances and marine pollutants, and hazardous wastes requiring a uniform manifest. The federal program exempts government agencies, while under the uniform program, they may be subject to registration. These and other discrepancies need to be addressed before considering coordination of the two programs or the elimination of the federal program.

The Coalition presented its recommendation on how the FHWA could satisfy the statutory requirements of 49 U.S.C. 5109 concerning Federal motor carrier safety permits for certain hazardous materials transporters, and 49 U.S.C. 5119 concerning uniform forms and procedures for registration and permitting of hazardous materials transporters. The Coalition stated:

> Congress charged the Secretary of Transportation with developing a permitting program for transporters of certain hazardous materials (49 U.S.C. 5109). However, under the Alliance program those same transporters will already be subject to permitting requirements. Therefore, any Federal permit or registration should focus on and apply

only to motor carriers that operate in those states that do not wish to become a member of the Uniform Program. The Coalition suggests the following:

(1) If the motor carrier operates only in Federal Program states, the motor carrier would be bound by the Federal permit requirements and would not be permitted to operate in Uniform Program States without first obtaining the proper credentials.

(2) If a motor carrier operates only in Uniform Program states or, both Uniform Program and Federal Program states, the Uniform Program registration and permit would be all the motor carrier needs to operate in all jurisdictions.

The Coalition indicated that it believes this type of system would provide for a higher level of regulatory compliance by motor carriers and at the same time would lessen the total regulatory burden on hazardous materials transporters.

FHWA Response to Commenters

The FHWA believes the commenters have identified significant reasons why the Federal and State initiatives and programs described in the July 9, 1996, notice are not, as currently operated, acceptable to the States as tools to help monitor hazardous materials, waste, and substances shippers and transporters. Each of the initiatives was started for a variety of reasons which do not appear to coincide with the reasons the States have developed their registration and permitting programs. As such, the programs do not, in the opinion of the State agencies, provide enough detailed information on all hazardous materials transporters.

For example, the current Federal Hazardous Materials Transportation Registration and Fee Assessment Program covers entities who offer or transport (in commerce) any of the following materials:

1. Any highway route-controlled quantity of a Class 7 (radioactive) material;

2. More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

3. More than one liter (1.06 quarts) per package of a material extremely toxic by inhalation (a material poisonous by inhalation that meets the criteria for "hazard zone A");

4. A hazardous material in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

5. A shipment, in other than a bulk packaging, of 2,268 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class.

The Federal program was established in response to 49 U.S.C. 5108(a)(1) and covers a subset of all hazardous materials shipments. Section 5108(a)(2) gives the Secretary the authority to expand the registration program to cover persons transporting or causing to be transported hazardous materials not included in the list above.

With regards to the comments on the FHWA's SafeStat program, the FHWA notes that SafeStat is a performance-based approach to rank motor carriers for on-site compliance reviews (CRs). The program is intended to more effectively focus the FHWA and State resources on motor carriers who have demonstrated poor safety performance through roadside inspections, prior enforcement actions and, most importantly, accidents. SafeStat uses four broad Safety Evaluation Areas (SEAs): The Accident SEA, the Driver SEA, the Vehicle SEA, and the Safety Management SEA. For each SEA, values are determined for all carriers that have sufficient safety data related to that SEA. If sufficient safety data is not available, a value is not calculated. No assumptions are made based upon a lack of data. Each carrier's SEA value approximates the motor carrier's percentile rank, relative to all other motor carriers having sufficient data to be assessed within that same SEA. By using the percentile rank for each SEA, SafeStat avoids using arbitrary predetermined levels of scoring and provides an easily understood value for each SEA. The SEA values range between 0 and 100. The higher a carrier's SEA value, the worse its safety status. Therefore, an Accident SEA score of 80 indicates that approximately 80 percent of the motor carrier population had a better level of safety performance than the subject carrier with respect to accidents and 20 percent had worse. Similarly, a Vehicle SEA score of 75 indicates that approximately 75 percent of the motor carrier population had a better level of safety performance than the subject motor carrier with respect to their maintenance practices and the operating condition of their vehicles.

SafeStat allows the relative weight for each SEA to be adjusted for purposes of calculating an overall score. Since accident history is the most important measure of safety, SafeStat places double emphasis upon the Accident SEA in calculating an overall SafeStat score. Motor carriers that are identified as being within the worst 25 percent of the ranked population within an individual SEA are deemed an unacceptable performer for that SEA.

The FHWA acknowledges SafeStat does not include an SEA for hazardous materials. The agency understands the concerns that States and the general public have about hazardous materials. The SafeStat program, as currently structured, provides a performance-based approach for prioritizing motor carriers for on-site compliance reviews. The prioritization algorithm does not make a distinction for commodities transported. The mere fact that a motor carrier transports hazardous materials does not mean the carrier should be a higher priority than a carrier that transports nonhazardous materials but performs poorly in the SEAs. The FHWA believes the SafeStat program can be used as part of a hazardous materials permitting framework. Hazardous materials carriers that perform poorly in the current SEAs would be considered ineligible for a permit and carriers for which there is insufficient data would be granted the permit based upon information obtained from company officials and, if necessary, an on-site compliance review.

The FHWA notes that none of the commenters provided information on current State activities to monitor the safety performance of the carriers who are required to register or obtain permits. The States commenting to this docket have emphasized the importance of identifying the hazardous materials shippers and transporters, but have not indicated whether the information is being used to prioritize enforcement actions or compliance reviews.

The FHWA disagrees with the Michigan State Police's statement that registration and permitting programs do not improve safety. The FHWA believes that a carefully structured registration and/or permitting program that focuses on the risks associated with the specific commodities transported, and linked to enforcement activities initiated in response to poor safety performance could have safety benefits. To date, the States have not submitted comments to the FHWA indicating that their programs are based upon any form of risk assessment or linked to specific enforcement activities aimed at hazardous materials carriers with poor overall safety records.

With regard to the Michigan State Police's comments about MCMIS, the FHWA intends to issue a notice of proposed rulemaking to require motor carriers to periodically update the information submitted to the agency on the Motor Carrier Identification Report (Form MCS–150). Section 385.21 of the

Federal Motor Carrier Safety Regulations requires motor carriers conducting operations in interstate commerce to file a Form MCS–150 to the agency within 90 days after beginning operations. Currently, carriers are not required to update the information submitted. The FHWA is aware of problems with the current system and believes the forthcoming rulemaking will provide the States and the motor carrier industry with an opportunity to work with the agency to improve the accuracy of the information in the MCMIS.

The FHWA believes the comments about the capabilities of the States versus those of the Federal government are a strong indication of the need for uniformity and reciprocity. The FHWA agrees with the Ohio PUC that efficiencies can be achieved through a network of databases using a system of computer pointers and triggers. However, the States have apparently refused to embrace this concept. The FHWA must reiterate that there is no prohibition on uniformity and reciprocity. The States need only agree to work together to make uniformity and reciprocity a reality. The Alliance has provided its recommendations on uniform forms and procedures and the States have not shown a willingness to adopt the Alliance's recommendations. Therefore, it is not a question of the FHWA taking advantage of lessons learned from previous Federal-State initiatives, but a question of why the States have not elected to work together for the common goal of ensuring an efficient and effective program to improve the safety of hazardous materials transportation.

The FHWA must emphasize that the Congress directed the Secretary to establish the Federal registration program implemented by the RSPA, and the Federal permitting program proposed by the FHWA on June 17, 1993 (58 FR 33418). These programs are congressional mandates and should not be considered as a form of competition between the Federal and State governments. The States have an important role in highway safety and a right to go beyond the scope of Federal programs if, based upon data, it is clear there are safety issues that need to be resolved. To date, none of the commenters have identified specific safety issues, nor have they provided a clear explanation as to why the States cannot achieve a consensus on the forms and procedures used for the registration and permitting of hazardous materials transporters.

In response to the Coalition's recommendation for implementation of the Federal permitting requirement, the FHWA believes the approach may have merit if most of the States adopt the Alliance's Uniform Program. The FHWA believes this approach could help to minimize the paperwork burden on the motor carrier industry and the FHWA, while providing an effective means to monitor the safety performance of the hazardous materials carriers that would be covered by the proposed Federal permitting requirements. The agency will consider the Coalition's comments along with those of persons commenting in response to the June 17, 1993, NPRM.

Request for Additional Comments

Questions for State Agencies

Generally, the establishment of a permitting requirement means motor carriers that fail to meet the minimum requirements for obtaining the permit would not be allowed to transport certain classes of hazardous materials, substances or wastes. Establishing a permitting requirement also means that motor carriers which are granted a permit, would lose their privileges to transport certain classes of hazardous materials if the terms and conditions of the permit are violated. If there are quantifiable safety benefits to a permitting program, they would come in the form of preventing hazardous materials incidents caused by unqualified motor carriers transporting the materials for which a permit would be required. Given these assumptions, the FHWA requests that State agencies responsible for the permitting of hazardous materials transporters answer the following questions:

1. What types of hazardous materials, wastes, or substances may only be transported in or through your State by motor carriers that have a permit?

2. Why did your State initiate its permitting program and in what year did the program take effect? For example, was there a specific hazardous materials incident(s) that prompted the development of the program?

3. How many motor carriers applied for permits in each of the last 5 calendar/fiscal years (please indicate the period covered in your State's fiscal year)? Of the motor carriers that applied for permits during each of the last 5 calendar/fiscal years, how many were denied a permit and what were the typical reasons for denial of the permit?

4. During each of the last 5 calendar/fiscal years, how many carriers had their permits revoked or suspended and what were the typical reasons for the revocation or suspension? How many of the motor carriers had their privileges to transport hazardous materials, substances, and wastes reinstated?

5. Are motor carriers required to renew the permit? If yes, what is the procedure for renewing the permit and how often is the carrier required to renew the permit?

6. Looking specifically at the number of highway transportation-related hazardous materials incidents (involving a hazardous material, substance, or waste for which the transporter is required to obtain a permit), how many incidents, fatalities, and injuries occurred in each of the last 5 calendar/fiscal years? Also, what was the dollar amount of property damage and environmental restoration associated with the incidents in each of the last 5 calendar/fiscal years.

The following questions are intended to gather information concerning the costs associated with establishing and operating the various State permitting programs and the States' estimates of the economic and information collection burden on motor carriers subject to the States' permitting requirements:

7. How much money was needed to establish your State's permitting program? Please include all costs associated with hiring and training staff, setting up a computer system, etc.

8. How much money did your State spend in each of the last 5 calendar/fiscal years to maintain its permitting program?

9. How much money was collected during each of the last 5 calendar/fiscal years in the form of application and processing fees that motor carriers were required to pay in order to receive a permit?

10. What was the application fee and, if applicable, the processing fee that was charged for each of the last 5 calendar/fiscal years?

11. How much time does your State estimate that the average motor carrier spends completing an application for the State's permit?

12. How much time does your State estimate that the average motor carrier spends renewing the State permit?

13. What types of records or other documents related to the permit or registration requirements are motor carriers required to maintain?

The next series of questions concern reciprocity between State programs. The FHWA is requesting information from States about potential institutional barriers to establishing Federal requirements for uniform forms and procedures for hazardous materials, substances, and wastes transportation.

14. Does your State's permitting or registration program include a

reciprocity agreement with any other State's permitting or registration program? Please identify the State(s).

15. If your State does not have a reciprocity agreement with another State(s), what specific requirements does your State impose on motor carriers that the other States do not cover?

16. If the FHWA implemented a Uniform Program, using a base-State approach that required your State to accept permits issued by other States and to modify your State's forms and procedures, how much money in fees would your State lose? How much money would your State have to spend to modify its current permitting and/or registration system?

Motor Carrier Questions

The next series of questions are intended to gather information from motor carriers about the economic and administrative burden associated with complying with State permitting and registration requirements.

17. How many different State permitting and/or registration programs was your company subject to during each of the last 5 calendar years?

18. What was the total for all State permit application and/or registration fees and, if applicable, processing fees that your company paid for each of the last 5 calendar years?

19. What was the total for all State permit renewal fees that your company paid during each of the last 5 calendar years?

20. On average, how much time does your company spend completing an application for a State permit or completing a State registration form?

21. On average, how much time does your company estimate that it spends renewing each State permit?

22. Are there any instances in which your company was granted a permit to transport specific commodities in a State(s), but denied a permit to operate in another State? Please identify the commodities and the States involved.

Comments Concerning Other Relevant Issues

In addition to the questions listed, commenters are encouraged to discuss other issues that they believe are relevant to the discussion of uniform forms and procedures for hazardous materials, substances, and wastes. The FHWA requests that commenters examine current Federal and State initiatives concerning permitting and registration of motor carriers.

Current Federal And State Initiatives Concerning Registration and Permitting of Motor Carriers and Shippers

There are several major activities underway which could be used as part of the hazardous materials transportation registration and permitting processes. These activities include: (1) The FHWA's motor carrier safety permits and inspection rulemaking; (2) the Research and Special Program Administration's (RSPA) Hazardous Materials Registration and Fee Assessment Program; (3) the Performance Registration Information System Management (PRISM) program (formerly referred to as the Commercial Vehicle Information System or CVIS); and (4) the elimination of the Interstate Commerce Commission (ICC) and the transfer of the ICC's registration (operating authority) and insurance programs to the FHWA. These initiatives, as well as the FHWA's motor carrier registration requirement—the motor carrier identification report (Form MCS-150) required by 49 CFR 385.21 and used by the FHWA to assign USDOT numbers—and the registration and insurance filings of for-hire motor carriers required by many States (Single State Registration System) provide a means for identifying transporters of hazardous materials and, for some of the programs, making certain that the carriers have appropriate levels of financial responsibility. However, each of these programs are commonly administered independently by separate agencies within a State.

These initiatives may have a significant bearing on the public comments offered in response to this notice and on the ultimate direction of any resulting rulemaking actions affecting Federal and State registration and permitting of transporters and shippers of hazardous materials. Each of the initiatives is discussed in the appendix to this notice. The FHWA requests that commenters consider the Alliance's report and recommendations, and the specific types of information that carriers and shippers would be required to provide if the Alliance's recommendations were adopted by the FHWA. Commenters are encouraged to provide suggestions on whether the Alliance's recommended program should be implemented and whether the programs described in the appendix to this notice could be used to support the implementation of any portion of the Alliance's program.

Administrative Notice

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practical. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 5119; 49 CFR 1.48.

Issued on: March 20, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

Appendix—Current Federal and State Initiatives Concerning Registration and Permitting of Motor Carriers and Shippers

I. FHWA Rulemaking on Motor Carrier Safety Permits and the Inspection of Vehicles Transporting Highway-Route-Controlled Quantities of Radioactive Materials [49 U.S.C. 5109(a) and 5105(e)]

Section 5109(a), *Motor Carrier Safety Permits*, (originally enacted as one of the provisions of section 8 of the HMTUSA) provides that a motor carrier shall only transport, or cause the transportation of, hazardous materials in commerce if the carrier holds a safety permit issued by the Secretary and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary is required to prescribe by regulation the hazardous materials and amounts to which the permit requirement applies. However, the list of hazardous materials must include, at a minimum, and in amounts established by the Secretary, the following:

(1) Division 1.1, 1.2, and 1.3 (class A or B explosives);

(2) liquefied natural gas;

(3) hazardous material the Secretary designates as extremely toxic by inhalation; and

(4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.

Section 5105(e), *Inspections of Motor Vehicles Transporting Certain Material*, (originally enacted as section 15 of the HMTUSA) directs the Secretary to issue regulations requiring that each motor vehicle transporting a highway-route-controlled quantity of Class 7 (radioactive) material in commerce be inspected and certified as complying with the Federal hazardous materials and motor carrier safety laws and regulations. The Secretary may require the inspections to be conducted by Federal inspectors or in accordance with appropriate State procedures. The Secretary may allow self-certification by motor carriers using employees that meet minimum qualifications set by the Secretary.

On June 17, 1993, the FHWA published a notice of proposed rulemaking (NPRM) to implement the requirements of 49 U.S.C. 5109 and 5105 (58 FR 33418). The FHWA proposed to amend part 397 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new subpart B, Motor Carrier Safety Permits. The notice proposed to initially limit the safety permit program to the transportation of the four classes of hazardous materials set forth in the statute, with phase-in periods for Division 1.1, 1.2, and 1.3 materials (Class A and B explosives)[3] and limiting the materials considered extremely toxic by inhalation to those that meet the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A (see 49 CFR 173.115 and 173.132) and are transported in quantities of more than 1 liter (1.06 quarts). The proposed permit procedures made extensive use of existing FHWA programs, forms and procedures, and as a result, the agency proposed not to assess permit fees. To obtain a permit, a motor carrier would be required to submit a revised MCS–150 (Motor Carrier Identification Report) to the Regional Director, Office of Motor Carriers, for the region in which the motor carrier has its principal place of business. Determinations on safety permit applications would be based upon a safety fitness finding made pursuant to 49 CFR part 385. A "satisfactory" safety rating would be a prerequisite to the granting of a safety permit. A less than "satisfactory" safety rating would result in a denial of the permit application. The FHWA would have the discretion to issue a temporary safety permit (120 days) to an unrated motor carrier pending a safety fitness determination. Safety permits would be valid for three years and would be renewable. Reviews of the FHWA's determinations on permit issuance would be handled pursuant to the existing procedures applicable to safety rating reviews (49 CFR 385.15 and 385.17). The current safety rating notification letter would be modified to serve as the safety permit. The letter would bear a safety permit number, which would be the motor carrier's identification or census number assigned by the FHWA when the motor carrier submits the MCS–150 required by § 385.21. Motor carriers would be required to display this permit number on the shipping papers and on the commercial motor vehicles used.

With regard to the inspection requirements of 49 U.S.C. 5105, the FHWA proposed that motor carriers transporting highway-route-controlled quantities of Class 7 (radioactive) materials be required to inspect each commercial motor vehicle used before each trip and that a written certification by a qualified inspector be maintained. It was proposed that these vehicles be inspected through the use of the general inspection requirements contained in 49 CFR part 396, "Inspection, Repair, and Maintenance," and the more detailed inspection standards found in appendix G to 49 CFR subchapter B, "Minimum Periodic Inspection Standards." The inspector qualification requirements for the periodic inspection (specified in 49 CFR 396.19) would be used to ensure that inspectors are qualified to perform the vehicle inspections.

The FHWA carefully reviewed the various registration and permitting requirements of the Federal law and decided not to proceed with further rulemaking action to implement the requirements of 49 U.S.C. 5109 and 5105 until it had considered the final report and recommendations of the Alliance for implementing section 5119. This was considered the most effective way to satisfy all of these related statutory requirements, as the Alliance's recommendations would have a significant bearing on the implementation of the Federal safety permit and inspection requirements.

II. Federal Hazardous Materials Registration and Fee Assessment Program and the Hazardous Materials Emergency Preparedness Grant Program

Section 5108(a)(1) (originally enacted as one of the provisions of section 8 of the HMTUSA) requires that each person transporting or causing to be transported in commerce the following hazardous materials must file a "registration statement" with the Secretary:

(1) Highway-route-controlled quantities of Class 7 (radioactive) materials;

(2) More than 25 kilograms of Division 1.1, 1.2, and 1.3 (explosives) materials;

(3) More than 1 liter in each package of a hazardous material which has been designated by the Secretary as extremely toxic by inhalation;

(4) Hazardous material in a bulk package, container, or tank as defined by the Secretary if the package, container, or tank has a capacity of 13,249 or more liters (3,500 or more gallons) or has a volume greater than 13.25 cubic meters (468 cubic feet);

(5) A shipment of at least 2,268 kg (5,000 pounds) (except in a bulk packaging) of a class of hazardous material requiring a placard.

In addition, section 5108(a)(2) provides the Secretary with discretionary authority to require any of the following persons to file a registration statement:

(1) A person transporting or causing to be transported hazardous materials in commerce and not covered by section 5108(a)(1);

(2) A person manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container the person represents, marks or certifies, or sells for use in transporting in commerce hazardous material the Secretary designates.

Paragraph (g) of section 5108 authorizes the Secretary to establish, impose, and collect a fee for the processing of the registration statement, as well as an annual fee.

Implementation of these requirements was delegated by the Secretary to the RSPA. Federal registration of hazardous materials offerors and transporters began in 1992 (57 FR 30620, July 9, 1992). Federal registration is required of persons engaged in certain activities that involve the offering or transporting of hazardous materials in interstate, intrastate, or foreign commerce by highway, rail, air, or water. Less than half of the current registrants have identified themselves as highway carriers. The Federal registration program has no preemptive effect upon State and local hazardous materials registration programs.

The annual fee (currently $300) is used to fund grants to State and Indian tribal governments for hazardous materials planning and training purposes. The funds are allocated through the RSPA's Federal Hazardous Materials Emergency Preparedness (HMEP) Grant Program with the first grants awarded to qualifying State and Indian tribal governments in 1993. By law, 75 percent of the Federal grant monies awarded to the States is further distributed to local emergency response and planning agencies. The FY 1995 funds helped to provide: (1) Training for 121,000 emergency response personnel; (2) approximately 500 commodity flow studies and hazard analyses; (3) 4,500 emergency response plans updated or written for the first time; (4) assistance to 2,150 local emergency planning committees; and (5) 770 emergency exercises.

In cooperation with the Alliance's pilot program, the concept of "one-stop shopping" for Federal and State registration of motor carriers was tested by the Public Utilities Commission of Ohio (PUCO) and the RSPA. Motor carriers required to register with the State of Ohio were provided with the option of also submitting the Federal registration statement and fee to the PUCO for transmittal to the RSPA. For the 1994–95 registration year (from July 1, 1994 to June 30, 1995), approximately 200 persons registered in the Federal program through the PUCO. During the 1995–96 registration year, the number of persons choosing this option decreased sharply to 76 persons. Only 16 of the participants in the 1994–95 registration year elected to use this process for the 1995–96 registration year. The test was completed at the end of the 1995–96 registration year and the results are being evaluated.

III. Performance Registration Information System Management (PRISM)

Performance Registration Information System Management is based upon the Commercial Vehicle Information System (CVIS) feasibility study mandated by 49 U.S.C. 31106—section 31106 was originally enacted by section 4003 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 2144; December 8, 1991). Specifically, PRISM ties commercial motor vehicle registration privileges to a motor carrier's safety performance. For the first time, chronically unsafe motor carriers risk losing their vehicle registration privileges if they prove unable or unwilling to improve their operational safety levels after a designated period. The project is a cooperative effort involving the FHWA and five pilot States: Iowa (the lead State), Oregon, Colorado, Minnesota, and Indiana.

Motor carriers are identified for inclusion in the PRISM improvement process

[3] The proposed phase-in period was to be implemented as follows:

Effective date	Covered quantities of class A and/or B explosives
Nov. 16, 1993	454 kilograms (1,000 pounds) or more.
Nov. 16, 1994	227 kilograms (500 pounds) or more.
Nov. 16, 1995	25 kilograms (55 pounds) or more

(MCSIP—Motor Carrier Safety Improvement Process) through the application of a carrier identification and prioritization algorithm referred to as the Safestat Identification Algorithm (Safestat). Safestat identifies "At Risk" motor carriers by producing a safety score for every interstate motor carrier. Motor carriers are ranked on a worst-first basis. Motor carriers with the lowest scores are considered to be "At Risk" and are scheduled for a compliance review (on-site visit), while motor carriers with less severe safety scores receive "warning letters." Once a motor carrier has been identified for entry into the MCSIP, its safety performance is monitored using a second algorithm called the Safestat Monitoring Algorithm. The MCSIP process has been designed to provide numerous opportunities for motor carriers to improve their safety performance. Failure to improve safety performance, however, will result in progressively more severe penalties leading eventually to suspension or revocation of vehicle registration privileges.

The PRISM could be used to identify hazardous materials (HM) carriers that are "At Risk" by modifying the Safestat Identification Algorithm to include additional information about HM motor carriers. In fact, it has been suggested that a separate safety evaluation area relating to HM be included in the SafeStat Identification Algorithm. Under this proposal, HM carriers that have been identified for entry into the MCSIP process and continue to score poorly may have their HM permits denied or suspended.

IV. Interstate Commerce Commission's (ICC) Carrier Registration and Insurance Requirements

On December 29, 1995, the President signed the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803), which eliminates the ICC and transfers certain motor carrier regulatory functions from the ICC to the FHWA. The principal functions transferred were the licensing and registration activities, insurance tracking, Mexican motor carrier oversight, and responsibilities for brokers, freight forwarders, and household goods carriers. All past operating authority licenses and financial responsibility filings remain valid, and all new applications and financial responsibility filings are processed by the FHWA. The ICCTA provides that registration generally remains in effect for up to five years unless it is suspended, amended, or revoked. Reasons for suspension or revocation may include unsafe operations, lack of the required financial responsibility coverage, or failure to comply with regulatory requirements.

The FHWA's motor carrier programs are intended to ensure that motor carriers are properly identified, have adequate levels of financial responsibility, and operate in a safe manner. Under the present programs, for-hire motor carriers are registered and must show proof of financial responsibility and familiarity with the FHWA's safety regulations. The financial responsibility coverage of for-hire motor carriers is continuously monitored. Policy pre-expiration notices obtained from the insurance companies, as well as internal audits, are used to determine compliance. Prior to an insurance policy lapsing, the carrier is contacted. An enforcement action, including litigation, can be used to stop the carrier from operating without financial responsibility. A motor carrier's operating authority can be revoked if financial responsibility is not obtained. A similar procedure applies to motor carriers that have been authorized to self-insure their operations.

The Single State Registration System (SSRS) program was created to succeed the "bingo card" program administered by the ICC. The SSRS program is a base-State system whereby a motor carrier registers its interstate operating authority with, and provides proof of financial responsibility coverage to one State (a base-State) instead of multiple States. The base-State then distributes the collected fees to other participating States in which the motor carrier's vehicles operate. State participation in the System was limited to those States participating in the bingo card program prior to January 1991. Fee amounts were limited to those imposed prior to November 1991, not to exceed $10 per vehicle.

Under the ICCTA, the SSRS will continue to operate. However, the Department of Transportation (the Department) is required to consolidate the current USDOT identification number system, the SSRS, the former ICC registration system (including financial responsibility registration) into a single, on-line Federal system. The new system will contain information on, and identification of, all foreign and domestic motor carriers, brokers, and freight forwarders (as well as others required to register with the Department) as well as information on safety fitness and compliance with the required levels of financial responsibility coverage. The Secretary may establish fees to fully operate the system, including any personnel to support the overall registration and financial responsibility filing system.

On August 26, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM) requesting comments on the development of the motor carrier replacement information and registration system (61 FR 43816). The agency is preparing a notice of proposed rulemaking for issuance in 1998.

[FR Doc. 98–8367 Filed 3–30–98; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 031898B]

Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH); Preparation Schedule for EFH Provisions of Fishery Management Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of the schedules and updates for amending fishery management plans (FMPs) to incorporate EFH provisions, in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act requires the Secretary of Commerce to set forth a schedule to amend FMPs to identify EFH and to review and update EFH based on new scientific evidence or other relevant information. The Secretary's EFH amendment schedule requires all FMP amendments to be submitted to the Secretary by October 11, 1998. This document announces the availability of the fishery management councils' (Councils) schedules for preparing EFH provisions including the identification, description, conservation, and enhancement of EFH. The FMP amendments will contain the schedule to revise and update the EFH provisions.

ADDRESSES: Requests for copies of these schedules and updates should be made to the Director, Office of Habitat Conservation; Attention: EFH Schedule, NMFS; 1315 East-West Highway, Silver Spring, MD 20910-3282. These schedules and additional information and updates of the schedules will also be available from the Councils or regional NMFS offices (see **SUPPLEMENTARY INFORMATION**) and will be posted on the NMFS Office of Habitat Conservation Internet website at: http://kingfish.ssp.nmfs.gov/rschreib/habitat.html.

FOR FURTHER INFORMATION CONTACT: Lee Crockett, 301/713-2325.

SUPPLEMENTARY INFORMATION: The creation of these schedules is required by section 305(b)(1)(A) of the Magnuson-Stevens Act (16 U.S.C. 1855(b)(1)(A)). Section 303(a) of the

Magnuson-Stevens Act (16 U.S.C. 1853(a)) lists the required provisions of FMPs, including EFH provisions that describe and identify EFH, minimize, to the extent practicable, adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat. NMFS issued interim final regulations (62 FR 66531, December 19, 1997) to assist the Councils in meeting these requirements. Information on the required EFH provisions is included in those regulations. The Councils' schedules for amending FMPs with EFH provisions will inform the public of opportunities for involvement, input, and comment during the preparation of EFH provisions. These schedules are subject to change and will be updated as appropriate.

The statutory deadline for FMP amendments to include EFH provisions, as established by the Sustainable Fisheries Act, is October 11, 1998, and all FMP amendments must be submitted to the Secretary for approval by that date. Within 5 days of submittal, the Secretary will publish a notice of availability for each amendment with a 60-day comment period. Within 30 days of the closure of the comment period, the Secretary will approve or disapprove the amendment. If the amendment contains regulations, the Secretary will also publish the draft regulations as a proposed rule with a 45-day comment period. The Secretary is required to publish a final rule within 30 days of the closure of the comment period.

For further information and copies of the schedule contact the following offices:

NMFS Regional Offices

Northeast Regional Office, Attention: Habitat Conservation Division, One Blackburn Drive, Gloucester, MA 01930–2298; 978/281-9102.

Southeast Regional Office, Attention: Habitat Conservation Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; 813/570-5317.

Southwest Regional Office, Attention: Habitat Conservation Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; 562/980-4041.

Northwest Regional Office, Attention: Habitat Conservation Division, 525 NE. Oregon St., Suite 500, Portland, OR 97232–2737; 503/230-5421.

Alaska Regional Office, Attention: Habitat Conservation Division, 709 West 9th Street, Federal Bldg., Room 461, P.O. Box 21668, Juneau, AK 99802-1668; 907/586-7235.

Regional Fishery Management Council Offices

New England Fishery Management Council; Suntaug Office Park, 5 Broadway (Rte. 1); Saugus, MA 01906; Phone:(781)231–0422; FAX: (781)565–8937.

Mid-Atlantic Fishery Management Council; Federal Bldg., Rm. 2115; 300 S. New St.; Dover, DE 19901; Phone: (302)674–2331; FAX: (302)674–5399.

South Atlantic Fishery Management Council; Southpark Building, Ste. 306; 1 Southpark Circle; Charleston, SC 29407; Phone: (803)571–4366; FAX: (803)769–4520.

Gulf of Mexico Fishery Management Council; Lincoln Center, Ste. 331; 5401 W. Kennedy Blvd.; Tampa, FL 33609; Phone: (813)228–2815; FAX: (813)225–7015.

Caribbean Fishery Management Council; 268 Ave. Munoz Rivera, Ste. 1108; San Juan, PR 00918; Phone: (787)766–5926; FAX: (787)766–6239.

Pacific Fishery Management Council; 2130 SW. 5th Ave., Ste. 224; Portland, OR 97201; Phone: (503)326–6352; FAX: (503)326–6831.

North Pacific Fishery Management Council; 605 W. 4th Ave., Rm. 306; Anchorage, AK 99501; Phone:(907)271–2809; FAX: (907)271–2817.

Western Pacific Fishery Management Council; 1164 Bishop St., Rm. 1405; Honolulu, HI 96813; Phone:(808)522–8220; FAX: (808)522–8226.

Highly Migratory Species Division, NMFS; 1315 East-West Highway; SSMC#3, 14th Floor, F/SF; Silver Spring, MD 20910; Phone:(301)713–2347; FAX: (301)713–1917.

Dated: March 24, 1998.

James P. Burgess,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 98–8289 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 032398B]

RIN 0648–AJ51

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery off Alaska; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 3 to the Fishery Management Plan for the Scallop Fishery off Alaska for Secretarial review. Amendment 3 would delegate to the State of Alaska (State) the authority to manage all aspects of the scallop fishery, except limited access, and would repeal all Federal regulations governing the scallop fishery off Alaska, except for the scallop vessel moratorium program. This action is necessary to eliminate duplicate regulations and management programs for the scallop fishery at the State and Federal levels. Comments from the public are requested.

DATES: Comments on Amendment 3 must be submitted on or before June 1, 1998.

ADDRESSES: Comments on Amendment 3 should be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th. Street, Juneau, AK. Copies of Amendment 3 and the Environmental Assessment/Regulatory Impact Review prepared for the amendment are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document announcing that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment. Public comments on the proposed rule must be received by the end of the comment period on the FMP/amendment to be considered in the approval/disapproval decision on the FMP/amendment.

NMFS will consider the public comments received during the comment

period in determining whether to approve Amendment 3. A proposed rule to implement Amendment 3 is scheduled to be published within 15 days of this document.

Dated: March 25, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8431 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

VOL 63 ISS 61 MR 31 1998 UMI

Notices

Federal Register
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Tuesday, March 31, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Alaska Red Cedar: Export Procedures

AGENCY: Forest Service, USDA.
ACTION: Notice of availability.

SUMMARY: Section 347 of the Department of the Interior and Related Agencies Appropriations Act of 1998 provides a formula under which western red cedar logs that are determined to be surplus to the needs of Alaska manufacturers shall be made available at domestic rates to domestic processors in the contiguous 48 states before the logs may be exported to a foreign country. The Act also stipulates that all Alaska yellow cedar logs may be sold at export rates. To implement the Act, new procedures will be included as part of a Region 10 supplement to the Forest Service Timber Sale Contract Administration Manual. Procedures regarding export of utility grade and chip sawlogs in will be updated as part of the supplement. The Forest Service hereby gives notice that a draft supplement is now available for public review and comment.

DATES: Comments must be received on or before April 30, 1998.

ADDRESSES: Single copies of the draft procedures may be obtained by writing Phil Janik, Regional Forester (2430), Alaska Region, Forest Service, USDA, P.O. Box 21628, Juneau, Alaska 99802–1628. Send written comments on the draft procedures to the same address.

FOR FURTHER INFORMATION CONTACT: Greg Griffith or Bill Wilson, Forest Management Staff, Forest Service, USDA, P.O. Box 21628, Juneau, Alaska 99802–1628, (907) 586–7915/7875.

SUPPLEMENTARY INFORMATION: The Act establishes a process under which western red cedar, surplus to the needs of domestic processors in Alaska, shall be made available at domestic rates to domestic processors in the contiguous 48 states before it may be exported and sold at export rates. The Act also stipulates that all Alaska yellow cedar may be sold at export rates at the election of the timber sale holder.

Specifically, the Act provides that if the total volume from all timber sales sold on the Tongass National Forest is equivalent to the annual average portion of the decadal allowable sale quantity in the Tongass Land Management Plan and if each of these sales meets 60 percent of normal profit and risk at time of sale advertisement, all of the surplus western red cedar will be made available to domestic processors in the contiguous 48 states. If less than the annual average portion of the decadal allowable sale quantity is sold in fiscal year 1998, therefore, meeting the 60 percent of the normal profit and risk standard, then the volume of the surplus western red cedar available to domestic processors in the contiguous 48 states will be limited to the ratio determined by dividing the actual total volume sold in fiscal year 1998 by the annual average allowable sale quantity. The amount of western red cedar determined to be the difference between the amount of western red cedar determined by the Regional Forester to be surplus to Alaskan processors' needs and the calculated western red cedar volume determined to be available to domestic processors in the contiguous 48 States may be exported to a foreign country. All western red cedar not sold to domestic processors in Alaska or the contiguous 48 States may be exported and sold at export rates.

To implement this Act, the Forest Service has developed draft export procedures for fiscal year 1998 sales of western red cedar that would be included in a regional supplemental to the Timber Sale Contract Administration Manual. The procedures will provide estimates for the volumes of western red cedar needed for processing in Alaska, available for domestic processing in the contiguous 48 States, and available for export to foreign markets. The draft procedures also include instructions for the calculation of sales, such as how western red cedar already sold in fiscal year 1998 will be taken into account, and how the fair market value of western red cedar in the three market destinations will be determined; and how western red cedar will be treated in 6-Month and 12-Month Timber Sale Announcements. The draft supplement will also update export procedures for utility grade and chip sawlogs in Alaska, laying out key definitions, appraisal guidelines, and documentation requirements. Procedures will be used by Forest Service employees in Alaska for processing proposed sale of western red cedar.

Copies of the draft procedures have been submitted to the following groups for review and comment: The governors of Alaska, Washington, and Oregon, conservation organizations, forest industry groups, prospective timber sale bidders, and other organizations interested in the draft Alaska export policy on national forest lands in southeast Alaska. The public is also invited to comment on the proposal.

Dated: March 26, 1998.

Phil Janik,

Alaska Regional Forester.

[FR Doc. 98–8506 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of upcoming meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee will meet on March 19 and 20, 1998. The meeting on March 19 will be held at the Chelan Fire Station, 232 E. Wapato Street, Chelan, Washington. The meeting will begin at 9:00 a.m. and end at 3:00 p.m. This meeting will focus on Late Successional Reserves, information sharing, and new developments in implementing the Northwest Forest Plan. The meeting on March 20 will be held at the Wenatchee National Forest Headquarters office, 215 Melody Lane, Wenatchee, Washington. This meeting will begin at 9:00 a.m. and end at 3:30 p.m. The focus of discussion will be management of noxious weeds. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal

Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: February 20, 1998.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 98–8395 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of upcoming meeting.

SUMMARY: The Yakima Provincial Advisory Committee will meet on March 25, 1998, at the Cle Elum Ranger District office, 803 W. 2nd. Street, Cle Elum, Washington. The meeting will begin at 9:00 a.m. and end at 3:00 p.m. The meeting will focus on information sharing and Snoqualmie Pass Adaptive Management Area subcommittee selections. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington, 98801, 509–662–4335.

Dated: February 20, 1998.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 98–8396 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, Livestock Surveys, that expires September 30, 1998.

DATES: Comments on this notice must be received by June 4, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117, South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Livestock Surveys.

OMB Number: 0535–0005.

Expiration Date of Approval: September 30, 1998.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Livestock survey program collects information on livestock numbers and livestock slaughter. Livestock numbers provide data needed to establish livestock counts at the county level while slaughter totals are used to estimate U.S. red meat production. The Livestock program has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11 minutes per response.

Respondents: Farmers and Meat Inspectors.

Estimated Number of Respondents: 117,000.

Estimated Total Annual Burden on Respondents: 21,450 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162, South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., March 19, 1998.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 98–8393 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, the Mink Survey, that expires September 30, 1998.

DATES: Comments on this notice must be received by June 4, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U:S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Mink Survey.

OMB Number: 0535–0212.

Expiration Date of Approval: September 30, 1998.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Mink Survey collects data on the number of mink pelts produced, the number of females bred, and the number of mink farms. Mink estimates are used by the federal government to calculate total value of sales and total cash receipts. Data are used by state governments to administer fur farm programs and health regulations. Universities use the data in research projects. The Mink Survey has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Farmers.

Estimated Number of Respondents: 425.

Estimated Total Annual Burden on Respondents: 71 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., March 19, 1998.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 98–8394 Filed 3–30–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—June 1998 Fertility and Birth Expectations Supplement.

Form Number(s): The automated survey instrument has no form number.

Agency Approval Number: 0607–0610.

Type of Request: Reinstatement, with change, of a previously approved collection.

Burden: 795 hours.

Number of Respondents: 30,000.

Avg. Hours Per Response: 95 seconds (about one and one half minutes).

Needs and Uses: The Current Population Survey (CPS) is a survey conducted in approximately 48,000 households monthly throughout the United States. Data on demographic and labor force characteristics are collected from a sample of households which represent the U.S. population. The Bureau of the Census uses the data to compile monthly averages of household size and composition, age, education, ethnicity, marital status and various other characteristics at the U.S. level. The Bureau of Labor Statistics also uses the data in its monthly calculations of employment and unemployment.

The basic monthly questionnaire is periodically supplemented with additional questions which address specific needs. The Census Bureau is requesting clearance for the collection of data concerning the Fertility and Birth Expectations Supplement to be conducted in conjunction with the June 1998 CPS. The Census Bureau sponsors the supplement questions, which were previously collected in June 1992, and have been asked periodically since 1971. A supplement on Marital History and Fertility was collected in June 1995.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policy makers in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates, family structures, premarital births, and the timing of the first birth. Potential needs for government assistance such as aid to families with dependent children, child care, and maternal health care for single parent households can be estimated using CPS characteristics matched with fertility data. The birth expectations data also assist researchers and analysts who explore issues such as postponement of childbirth because of education or employment responsibilities.

Affected Public: Individuals or households.

Frquency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent on or before April 30, 1998, to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 25, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8440 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Generic Clearance for Questionnaire Pretesting Research

ACTION: Proposed collection; comment request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 1, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Department Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instruction should be directed to Theresa J. DeMaio, U. S. Bureau of the Census, Room 3127, FOB 4, Washington, DC 20233–9150, (301) 457–4894.

SUPPLEMENTARY INFORMATION:

I. Abstract

This research program is used by the Census Bureau and survey sponsors to improve questionnaires and procedures, reduce respondent burden, and ultimately increase the quality of data collected in the Census Bureau censuses and surveys. The clearance is used to conduct pretesting of decennial, demographic, and economic census and survey questionnaires prior to fielding them. Pretesting activities are generally small-scale and involve one of the following methods for identifying measurement problems with the questionnaire or survey procedure: cognitive interviews (that is, intensive, one-on-one interviews in which the respondent is typically asked to think aloud as he or she answers survey questions), focus groups (that is, group sessions guided by a moderator that are focused on a particular issue), respondent debriefing (that is, standardized debriefing questionnaires administered to respondents who have participated in a field test), behavior coding of respondent/interviewer interaction (that is, systematic coding of of the question/answer exchange process to identify situations that reflect problems with the questionnaire), and split sample experiments (that is, testing alternative versions of questionnaires).

This clearance has been in existence since 1991, and many valuable pretesting activities have been conducted. For example, cognitive interviews and respondent debriefing questionnaires have been vital components of the development and pretesting of the Survey of Program Dynamics; a split sample experiment was used to evaluate proposed questionnaire revisions for the Survey of Minority Owned Business Enterprises; focus groups have been used to gather important information as input to the Census Bureau's plans for enumerating American Indians and migrant workers in Census 2000; respondent debriefings have provided valuable data for understanding how respondents understand the concept of residence and interpret the residence rules for the decennial census; behavior coding provided useful information in revising the questionnaire for the Current Population Survey Food Security Supplement.

The clearance operates in the following manner: A block of hours is reserved at the beginning of each year, and the particular activities that will be conducted under the clearance are not specified in advance. The Census Bureau provides information to OMB about the specific pretesting activities on a flow basis throughout the year. OMB is notified of each pretesting activity in a letter that gives specific details about the activity, rather than by means of individual clearance packages. At the end of each year, a report is submitted to OMB that summarizes the number of hours used as well as the nature and results of the activities completed under the clearance.

Some modifications of the clearance from previous years are planned. The number of hours is expanded from 4,500 per year to 10,000 per year to allow for larger-scale questionnaire experiments with increased analytical power. In addition, incentives as a survey procedure may also be the subject of research under the clearance.

II. Method of Collection

Mail, telephone, face-to-face; paper-and-pencil, CATI, CAPI

III. Data

OMB Number: 0607–0725.
Form Number: Various.
Type of Review: Regular.
Affected Public: Individuals or households, farms, business or other for-profit.
Estimated Number of Respondents: 10,000.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 10,000.
Estimated Total Annual Cost: There is no cost to respondents, except for their time to complete the questionnaire.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 USC, Sections 131, 141, 142, 161, 181, 182, 193, and 301.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 25, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8438 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below:

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 02/16/98–03/25/98

Firm name	Address	Date petition accepted	Product
River Ltd.	115 Anawan Street, Fall Rive, MA 02721.	02/17/98	Women's Slacks and Shorts.

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LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 02/16/98–03/25/98—Continued

Firm name	Address	Date petition accepted	Product
Bittersweet Creations	Highway 7, Climax Springs, MO 65324.	02/20/98	Pine Cabinets, Drawers, Benches and Shelves.
Thiel Tool and Engineering Co., Inc.	4622 Bulwer Avenue, St. Louis, MO 63147.	03/06/98	Stamped Steel Engine Cradle Brackets.
J.D. Engineering & Associates, Inc.	905 Dell Avenue, Campbell, CA 95008.	03/06/98	Medical Electro-Surgical Instruments and Parts of Semi-conductor Manufacturing Equipment.
Corwell-Carr Co., Inc	626 Main Street, Monroe, CT 06468.	03/06/98	Marine Doors, Frames and Related Hardware.
Perfection Hy-Test Company	100 Perfection Way, Timmonsville, SC 29161.	03/12/98	Automobile Clutch Sets and Parts, Starters and Water Pumps.
International Crystal Manufacturing Co., Inc.	10 North Lee, Oklahoma City, OK 73102.	03/12/98	Quartz Crystals for Two-Way Radio Equipment.
Coeur d'Alene Fiber Fuels, Inc	3550 West Seltice Way, Coeur d'Alene, ID 83814.	03/12/98	Wood Pellets and Cat Litter.
MRC Technology, Inc	P.O. Box 1287, South Bend, IN 46624.	03/12/98	Battery Chargers, Motor Starters, Toll Road Controls, and Pump Controllers.
Hart Tackle Company, Inc	300 West Main, Stratford, OK 74872.	03/16/98	Fishing Lures and Tackles.
A.J. Murphy Company, Inc	P.O. Box 2669, Syracuse, NY 13220.	03/16/98	Cold Formed Metal Fasteners for Light and Heavy Industrial Applications.
R.N.B. Enterprises, Inc	17816 North 25th Avenue, Phoenix, AZ 85023.	03/25/98	Printed Circuit Boards.
Almega/Tru-Flex, Inc	3917 State Road 106, Bremen, IN 46506.	03/25/98	Power Supply Cords and Electrical Wiring.
Natural Selections, Inc	435 South Norris Avenue, Tucson, AZ 85719.	03/25/98	Wooden Furniture.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 24, 1998

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 98–8341 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Trade Finance Match-Maker Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 1, 1998.

ADDRESSES: Direct all written comments to Linda Englemeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instruction should be directed to: John Shuman, Office of Finance, (202) 482–3277.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Finance assists U.S. firms in identifying trade finance opportunities and promotes the competitiveness of U.S. financial services in international trade. The Office of Finance interacts with private financial institutions in insurance, banking, leasing, factoring, barter, and counter trade; U.S. financing agencies, such as the Export-Import Bank and the Overseas Private Investment Corporation; and multilateral development banks, such as the World Bank, Asian Development Bank, and others. To facilitate contact between exporters and financial institutions, the Office of Finance is developing an interactive INTERNET trade finance match-making program to link exporters seeking trade finance with banks and other financial institutions. The information collected from financial institutions regarding the trade finance products and services they offer will be compiled into a database. An exporter will be able to electronically submit a one page form identifying the potential export transaction and type of financing requested. This information will be electronically matched with the financial institution(s) that meet the requirements of the exporter. After a match has been made, a message will be electronically sent to both the exporter and the financial institution containing information about the match, and

contact information for either party to initiate communication. This program is designed to implement the Department of Commerce's goal of improving access to trade financing for small business exporters.

II. Method of Collection

Electronic submission to the International Trade Administration, Office of Finance.

III. Data

OMB Number: None.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: Business or other for profit.
Estimated Number of Respondents: 1,710.
Estimated Time per Response: Exporters: 10 minutes. Financial institution: 30 minutes.
Estimated Total Annual Burden Hours: 335 hours.
Estimated Total Cost: $5,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 26, 1998

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8439 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 971202287–8077–02]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice supplements the **Federal Register** Notice of January 23, 1998 (63 FR 3540–3543) announcing the availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives (also referred to as "interns") from the Russian Federation. All information in the previous announcement remains current, except for the changes to the closing date and the amount of financial assistance available for the program, as explained herein.

DATES: This Notice extends the closing date of the referenced **Federal Register** Notice for four months to 5 p.m. July 31, 1998 and announces the availability of additional funds. All awards are expected to be made prior to January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training Program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: In the SABIT funding notice of January 23, 1998, FR Doc. 98–1618, on page 63 FR 3540, third column, in the Funding Availability paragraph, remove the second and third sentences regarding funding and insert the following sentence in its place, "The maximum amount of financial assistance available for the program is $675,000.00." This amount includes the $175,000 which was previously announced. On page 63 FR 3541, first column, remove the sixth and seventh full sentences starting on the 21st line and insert the following three sentences in their place, "ITA reserves the right to allow an award to exceed this amount in cases of unusually high costs, such as airfare from remote regions of Russia, with adequate justification in the application and with prior approval of the Department of Commerce. However, maximum costs shall not exceed $6,000.00 per intern. The total payment cannot exceed the award amount."

Liesel Duhon,

Director, Special American Business Internship Training Program.

[FR Doc. 98–8304 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

TITLE: National Marine Sanctuary Permits.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 1, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Helen Golde, Permit Coordinator, National Marine Sanctuary Program, NOAA, 1305 East-West Highway, #11536, Silver Spring, MD 20910 (301–713–3145 x152). E-mail hgolde@ocean.nos.nooa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Persons wishing to conduct otherwise prohibited activities in a National Marine Sanctuary must apply for and receive a permit. Persons issued permits must file reports on the activity conducted. Information is required to ensure that the proposed activity is consistent with the objectives of the sanctuary, and the reports are needed to ensure compliance with permit conditions and to increase knowledge regarding the sanctuary's resources.

II. Method of Collection

The requirement for permits is contained in various parts of Chapter 15 of the Code of Federal Regulations. Persons wanting a permit are sent guidelines for the application process. No forms are currently used. It is anticipated that a form will eventually be made available on the World-Wide-Web for electronic application submissions.

III. Data

OMB Number: 0648–0141.
Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals, businesses, not-for-profit organizations, the Federal government, and state, local, and tribal governments.

Estimated Number of Respondents: 431.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 456.

Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 25, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–8322 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032398A]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Mackerel Advisory Panel (AP) and Scientific and Statistical Committee (SSC).

DATES: The AP meeting is scheduled to begin at 9:00 a.m. on Monday, April 20, 1998, and adjourn at 4:00 p.m. The SSC meeting is scheduled to begin at 8:30 a.m. on Tuesday, April 21, 1998, and adjourn at 3:30 p.m.

ADDRESSES: The meetings will be held at the Wyndham Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, LA 70130; telephone: 504–524–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SSC will review the 1998 stock assessments for both king and Spanish Mackerel, the Mackerel Stock Assessment Panel report, and the report of the Socioeconomic Panel that includes economic and social information related to the range of acceptable biological catch and bag limits for mackerels in the Gulf of Mexico and South Atlantic. Based on this review, the SSC may recommend to the Council levels for total allowable catch, bag limits, size limits, commercial quotas, and other measures for these species for the 1998–99 fishing season. The Mackerel AP will review the same information and formulate their recommendations based on their perspectives as users of these resources.

Copies of the agenda can be obtained by calling 813–228–2815. Although other issues not contained in this agenda may come before this AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 13, 1998.

Dated: March 23, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8290 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032498B]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on April 15 and 16, 1998, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, April 15, 1998, at 9 a.m. and on Thursday, April 16, 1998, at 8:00 a.m.

ADDRESSES: The meeting will be held at the Sheraton Inn Plymouth, 180 Water Street, Plymouth, MA 02360; telephone(508) 747-4900. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (781) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-042 2.

SUPPLEMENTARY INFORMATION:

Wednesday, April 15, 1998

Following introductions by the Council Chairman, the Groundfish Committee will report on and seek Council approval of measures to be discussed at public hearings and in the Draft Supplemental Environmental Impact Statement (DSEIS) for Amendment 9 to the Northeast Multispecies Fishery Management Plan (FMP). Measures to be voted on for purposes of preparing the public hearing document are associated with new overfishing definitions and the specification of optimum yield consistent with the revised National Standards in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), rebuilding winter flounder stocks and conserving Atlantic halibut. Mesh size changes to reduce the bycatch of juvenile flounders, a prohibition on streetsweeper trawl gear, and alternative management strategies for Gulf of Maine cod proposed by the Gulf of Maine Fishermen's Alliance will also be included.

The Aquaculture and Scallop Committees will report during the afternoon session. The Scallop Committee will seek Council approval of measures to be included in a public hearing document and DSEIS for Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan. Measures to be voted on will end overfishing and establish a major sea scallop rebuilding program. They include days-at-sea (DAS) reductions, scallop area management (including closures), and DAS leasing. The Aquaculture Committee will recommend objectives and language for inclusion in all fishery management plans that would provide for approval of aquaculture projects in the EEZ through a framework adjustment process. The Council will also consider initial action on a framework adjustment to the Scallop Fishery Management Plan that would extend the closure of the Westport Scallop Project (renamed the Seastead Site) for 3 years.

Following adjournment of the meeting at 5 p.m., the Council will convene a monkfish public hearing. Proposed monkfish management measures will be discussed for the purpose of seeking additional public comment before the Council approves the final measures to be included in the Monkfish FMP on Thursday, April 16.

Thursday, April 16, 1998

The morning session will begin with a request from the Council's Monkfish Committee to approve final recommendations on management measures for the Monkfish FMP. The Herring Committee will review and ask for approval of measures for purposes of preparing a public hearing document and DSEIS for the Atlantic Herring Fishery Management Plan. Measures to be voted on include controlled access, spawning area closures, vessel/dealer/operator permit requirements, area management, target total allowable catches (TACs) and TACs that trigger a management action, vessel size limits, a prohibition on fishing for the purpose of meal production, limits on fishing time and restrictions on fishing for roe. The Habitat Committee will seek approval of Essential Fish Habitat designations for monkfish, haddock, and yellowtail flounder for purposes of preparing a public hearing document. They also will provide an update on progress to develop alternatives for other Council-managed species. The Whiting Committee will ask for approval of management measures for purposes of preparing a public hearing document for a whiting amendment and DSEIS to the Northeast Multispecies FMP. Measures slated for consideration include a moratorium on commercial permits, whiting trip limits, mesh size restrictions, 3-inch mesh areas, modifications to regulations for the Cultivator Shoal whiting fishery and a limit on the amount of whiting that can be caught with mesh less than the minimum mesh size. Discussion of any other business will take place before the close of the meeting.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 26, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8428 Filed 3–30–98; 8:45 am]

BILLING CODE 3610–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032398E]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, AK.

DATES: The meetings will be held during the week of April 20, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. All meetings are open to the public with the exception of Council executive sessions, which may be held during the noon hour during the meeting week, if necessary, to discuss personnel, international issues, or litigation.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Scientific and Statistical Committee (SSC) will meet beginning at 8:00 a.m. on Monday, April 20, continuing through at least Wednesday, April 22, and possibly into Thursday morning, April 23.

The Advisory Panel (AP) will begin meeting at 8:00 a.m. on Monday, April 20, and continue through Friday, April 24.

The Council's regular plenary session will begin at 8:00 a.m. on Wednesday, April 22, and continue through Monday, April 27, 1998.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the hotel.

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports from NMFS and Alaska Department of Fish and Game on the current status of the fisheries off Alaska, and enforcement reports from the U.S. Coast Guard and NMFS Enforcement.

2. Initial review of analysis for the allocation of pollock between inshore and offshore fisheries and direction to staff before releasing for public review and comment.

3. Initial review of an amendment to the fishery management plans to incorporate essential fish habitat information as required by the Magnuson-Stevens Fishery Conservation and Management Act; release to public comment and review.

4. Initial review of an analysis for an amendment to close a 4–mile by 4–mile area off Sitka (Cape Edgecombe Pinnacles) to protect habitat important for juvenile rockfish and lingcod.

5. Initial review of an amendment to extend the existing vessel moratorium; direction to staff before releasing to public review and comment.

6. Initial review of an amendment to roll over the current pollock community development (CDQ) program in the Bering Sea/Aleutian Islands (BSAI), and a status report on the implementation of the multispecies CDQ program.

7. Council review and comment on NMFS implementation plan for the Fishing Vessel Registration and Fisheries Information Management System.

8. Discussion of Council initiative for social and economic data collection,

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including reports from NMFS, the SSC, Socioeconomic Committee, and direction to staff for a proposed plan amendment for data collection.

9. A report on the progress of the Halibut Guideline Harvest Level Committee.

10. Under the Halibut and Sablefish Individual Fishing Quota (IFQ) Program, the Council will consider several amendments to release for public review, receive a report on the "transfer to heirs" amendment and provide further guidance to NMFS, receive a status report on the IFQ fee and loan program, a proposal for a weighmaster program, and discuss a request from Gulf of Alaska communities for allocation of halibut.

11. Groundfish amendments scheduled for action are as follows:

a. Final action on a regulatory amendment to streamline the annual setting of total allowable catch for the groundfish fisheries.

b. Initial review of revisions to the BSAI chinook prohibited species catch.

c. Initial review of an amendment to ban bottom trawling in the BSAI pollock fishery.

d. Initial review of the amendments for revised overfishing definitions for the groundfish, salmon, scallop, and BSAI crab fisheries.

e. Initial review of an amendment to separate Atka mackerel by season and subarea.

12. Other groundfish issues scheduled for discussion, and possible direction to staff, are:

a. Western/Central Gulf of Alaska management: Committee report and further tasking.

b. NMFS report on pollock density specifications; Council recommendation to NMFS.

c. Implementation issues update for the Improved Retention/Improved Utilization program; Committee report.

d. Status report on the draft groundfish Supplemental Environmental Impact Statement.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: March 25, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–8429 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

March 25, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67827, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on April 1, 1998, you are directed to reduce the limits for the following categories, as provided for under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	695,664 kilograms.
338/339	2,322,334 dozen of which not more than 1,710,282 dozen shall be in Categories 338–S/339–S [2].
434	12,870 dozen.
634	616,473 dozen.
647	1,509,065 dozen.
651	752,440 dozen of which not more than 134,891 dozen shall be in Category 651–B [3].
670–L [4]	15,574,738 kilograms.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,368,204 square meters equivalent.
Level not in a group	
870	32,770,353 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[4] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9025 and 6307.90.9907.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–8433 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage of Import Limits and Visa and Certification Requirements for Certain Part-Categories Produced or Manufactured in Various Countries

March 25, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage for import limits and visa and certification requirements.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

To facilitate implementation of the Uruguay Round Agreement on Textiles and Clothing, and textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), certain HTS classification numbers are being changed for products in part-Categories 369–L and 670–L which are entered into the United States for consumption or withdrawn from warehouse for consumption on and after April 1, 1998, regardless of the date of export.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend all import controls and all visa and certification arrangements for countries with part-Categories 369–L and 670–L.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 25, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all monitoring and import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include cotton and man-made fiber textile products in part-Categories 369–L and 670–L, produced or manufactured in various countries and imported into the United States on and after April 1, 1998, regardless of the date of export.

Also, this directive amends, but does not cancel, all directives establishing visa and certification requirements for part-Categories 369–L and 670–L for which visa arrangements are in place with the Government of the United States.

Effective on April 1, 1998, you are directed to make the changes shown below in the aforementioned directives for products entered in the United States for consumption or withdrawn from warehouse for consumption on and after April 1, 1998 for part-Categories 369–L and 670–L, regardless of the date of export:

Category	HTS change
369–L	Add 6307.90.9905—Cooler bags with an outer surface of textile materials, of cotton.
.....	Replace 4202.92.3015 with 4202.92.3016—definition remains unchanged.
670–L	Add 6307.90.9907—Cooler bags with an outer surface of textile materials, of man-made fibers.
.....	Replace 4209.92.3030 with 4209.92.3031—definition remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–8373 Filed 3–30–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0248]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement, Appendix F, Material Inspection and Receiving Report

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through August 31, 1998, under OMB Control Number 0704–0248. DoD proposes that OMB extend its approval for use through August 31, 2001.

DATES: Consideration will be given to all comments received by June 1, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Acquisition Regulations Council, Attn: Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite OMB Control Number 0704–0248 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0248 in the subject line.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131. A copy of the information collection requirement is available electronically via the Internet at: http://www.dtic.mil/dfars/. Paper copies of the information collection requirement may be obtained from Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and Associated OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; DD Form 250; DD Form 250C; DD Form 250–1; OMB Control Number 0704–0248.

Needs and Uses: The collection of this information is necessary to process inspection and receipt of materials and payments to contractors under Government contracts.

Affected Public: Businesses or other for-profit organizations; and not-for-profit institutions.

Annual Burden Hours: 988,000.

Number of Respondents: 7,800,000.

Responses per Respondent: 1.

Annual Responses: 7,800,000.

Average Burden Hours/Minutes Per Response: 8 minutes.

Frequency: On occasion.

Summary of Information Collection

The information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report; the related clause at DFARS 252.246–7000, Material Inspection and Receiving Report; and the DD Form 250; DD Form 250C; and DD Form 250–1. The clause at DFARS 252.246–7000 is used in contracts that require separate and distinct deliverable. The clause requires the contractor to prepare and furnish to the Government a material inspection and receiving report (DD Form 250) in a manner and to the extent required by DFARs Appendix F. The report is required for material inspection and acceptance, shipping, and payment.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–8418 Filed 3–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0252]

Information Collection Requirements; Use of Government Sources by Contractors

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of the Management and Budget (OMB) for use through August 31, 1998, under OMB Control Number 0704–0252. DoD proposes that OMB extend its approval for use through September 30, 2001.

DATES: Consideration will be given to all comments received by June 1, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Acquisition Regulations Council, Attn: Mr. R. G. Layser, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite OMB Control Number 0704–0252 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0252 in the subject line.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131. A copy of the information collection requirement is available electronically via the Internet at: http://www.dtic.mil/dfars/. Paper copies of the information collection requirement may be obtained from Mr. R. G. Layser, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and Associated OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 251, Use of Government Sources by Contractors, and related clauses in Part 252; OMB Control Number 0704–0252.

Needs and Uses: The collection of this information is necessary to facilitate the use of Government supply sources by contractors. Contractors must provide certain documentation to the Government to verify their authorization to purchase from Government supply sources, or to use Interagency Fleet Management System Vehicles and related services.

Affected Public: Businesses or other for-profit organizations; and not-for-profit institutions.

Annual Burden Hours: 5,250.

Number of Respondents: 3,500.

Responses Per Respondent: 3.

Annual Responses: 10,500.

Average Burden Hours per Response: .5.

Frequency: On occasion.

Summary of Information Collection

The information collection includes the requirements of DFARS 252.251–7000, Ordering from Government Supply Sources, which requires a contractor to provide a copy of an authorization when planing an order under a Federal Supply Schedule or a Personal Property Rehabilitation Price Schedule; and DFARS 252.251–7001, Use of Interagency Fleet Management System Vehicles and Related Services, which requires a contractor to submit a request for use of Government vehicles, when the contractor is authorized to use such vehicles, and specifies the information to be included in the contractor's request.

Michele P. Peterson,

Executive Editor, Defense Acquisitions Regulations Council.

[FR Doc. 98–8419 Filed 3–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Proposed collection; comment request

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 1, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information

collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 25, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Report of Children and Youth with Disabilities Subject to Unilateral Changes in Placement, Change in Placement Based on a Hearing Officer Determination, or Long-Term Suspension/Expulsion.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 149,350.
Abstract: This package provides instructions and a form for States to report the number of children and youth and the number of acts involving students served under the Individuals with Disabilities Education Act involving a unilateral change in placement, change in placement based on a hearing officer determination, or long-term suspension/expulsion. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor state education agencies and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Personnel (In Full-Time Equivalency of Assignment) Employed to Provide Special Education and Related Services for Children and Youth with Disabilities.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 7,685.
Abstract: This package provides instructions and a form necessary for States to report the number of personnel employed and contracted in the provision of special education and related services. Data are obtained from state and local education agencies, and are used to assess the implementation of the Individuals with Disabilities Education Act and for monitoring, planning and reporting to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Report of Infants and Toddlers Receiving Early Intervention Services and of Program Settings Where Services are Provided in Accordance with Part C, and Report on Infants and Toddlers Exiting Part C.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 5,472.
Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities who: (a) are served under the Individuals with Disabilities Education Act (IDEA), Part C; (b) are served in different program settings; and (c) exit Part C because of program completion and for other reasons. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of IDEA and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Report of Early Intervention Services on Individualized Family Service Plan Provided to Infants, Toddlers and Their Families in Accordance with Part C and Report of Number and Type of Personnel Employed and Contracted to Provide Early Intervention Services.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 5,187.
Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities and their families receiving different types of Part C services, and the number of personnel employed and contracted to provide services for infants and toddlers with disabilities and their families. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of the Individuals with Disabilities Education Act (IDEA) and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Report of Children and Youth with Disabilities Exiting Special Education During the 1998–98 School Year.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 53,244.
Abstract: This package provides instructions and a form necessary for States to report the number of students aged 14 and older served under Part B, Individuals with Disabilities Education Act, exiting special education. The form satisfies reporting requirements and is used by Office of Special Education Programs to monitor state education agencies and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Report of Children and Youth with Disabilities Receiving Special Education under Part B of Individuals with Disabilities Education Act (IDEA), As Amended.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 30,624.
Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA–B receiving special education and related

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services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Part B, Individuals with Disabilities Education Act (IDEA) Implementation of Free Appropriate Public Education Requirements 1998–99 School Year.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 257,752.
Abstract: This package provides instructions and a form necessary for States to report the settings in which children with disabilities served under IDEA–B receive special education and related services. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor state education agencies and for Congressional reporting.

Office of Vocational and Adult Education

Type of Review: Extension.
Title: Progress Measures.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Burden:
Responses: 1,157.
Burden Hours: 11,000.
Abstract: The National School-to-Work Office collects information from funded local partnerships to gather evidence on state and local progress in implementing school-to-work. Data elements include student, school, and employer involvement in school-to-work; graduation and postsecondary transition rates for students; and funds leveraged by partnerships to sustain their school-to-work systems. Information is used to provide an annual school-to-work report to Congress, as well as to build state's capacity to collect and analyze information for their own system improvement purposes.

[FR Doc. 98–8331 Filed 3–30–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent arrangement

AGENCY: Department of Energy.
ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the Government of the United States of America and the European Atomic Energy Community (EURATOM).

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following: RTD/RS(EU)–1 for the retransfer of 510 kilograms of zircaloy-4 cladding tubes from Germany to the Elektrostal Nuclear Fuel Fabrication Facility in Moscow, Russia for fabrication of fuel assemblies. The fuel assemblies will be returned to Siemens AG in Germany for distribution to Western European nuclear power stations.

The initial test phase was approved in January of 1995. At that time, the Russian Government provided assurances not only for the test phase but also the follow-on fabrication phase, as proposed in this subsequent arrangement, that these materials will not be used for any military purpose or nuclear explosive device and that the materials will not be retransferred to the jurisdiction of any other nation or group of nations except to Germany without prior consent of the United States.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: March 24, 1998.

For the Department of Energy.

Adam Scheinman,

Acting Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 98–8376 Filed 3–30–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–178]

Application to Export Electric Energy; Citizens Power Sales

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of application.

SUMMARY: Citizens Power Sales (CP Sales), a power marketer, has submitted an application to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 30, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 19, 1998, CP Sales applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico, as a power marketer, pursuant to section 202(e) of the FPA. Specifically, CP Sales has proposed to transmit to Mexico electric energy purchased from electric utilities and other suppliers within the U.S.

CP Sales would arrange for the exported energy to be transmitted to Mexico over the international transmission facilities owned by Comision Federal de Electricidad, the national electric utility of Mexico, Central Power & Light Company, El Paso Electric Company, and San Diego Gas & Electric Company. The construction of each of these transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions, comments and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with Joseph C. Bell, Jolanta Sterbenz, Hogan & Hartson L.L.P., 555 Thirteen Street, N.W., Washington, D.C. 20004–1109 and William Roberts, Vice

President of Utility Contracting, Citizens Power Sales, 160 Federal Street, Boston, Massachusetts 02110.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on March 24, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 98–8374 Filed 3–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Bonneville Power Administration South Oregon Coast Reinforcement Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: Bonneville Power Administration proposes to build a 500-kilovolt (kV) transmission line and new substation to reinforce electrical service to the southern coast of the state of Oregon. Nucor Steel, a division of Nucor Corporation, may build a new steel mill in the Coos Bay/North Bend, Oregon, area. This plant would require a peak load of 150 megawatts (MW) and an instantaneous peak of 225 MW. The existing transmission system to the area does not have the capacity to serve this potential load and other anticipated load growth on the south coast of Oregon. This project will look at providing a transmission path to serve this load. The power supplier for this load is subject to state utility regulations.

The State of Oregon has agreed to provide BPA funding to investigate solutions to reinforce the transmission system to the South Oregon Coast area and to support industrial development. If Nucor Steel decides not to build the steel mill, BPA will stop pre-proposal activities and inform the public and agencies that the environmental process has been suspended.

Potential Federal cooperating agencies include the U.S. Department of Interior, U.S. Bureau of Land Management; the U.S. Department of Agriculture, U.S. Forest Service; and the U.S. Army Corps of Engineers. In accordance with National Environmental Policy Act requirements, BPA and the cooperating agencies will prepare an EIS to inform decisionmakers about potential environmental effects of the proposal. The environmental analysis will cover the proposed transmission line, a new BPA substation, and related actions including: construction of the Nucor Steel plant; a 230-kV transmission line that would connect the new BPA substation to PacifiCorp's Isthmus Substation south of Coos Bay; and two new 230-kV transmission lines connecting the new BPA substation to a new substation at the plant site.

DATES: Interested and affected members of the public such as landowners, special interest groups, tribes, state and local governments, utilities, and community groups are invited to help BPA and the cooperating agencies identify alternatives, environmental resources, and issues to be addressed in the draft EIS. Information to explain the proposal, the environmental process, and how to participate will be sent to interested or potentially affected members of the public at the beginning of the scoping period. Three BPA-sponsored scoping meetings will be held: Tuesday, April 14, at the Creswell Community Center, 99 South First, Creswell, Oregon; Wednesday, April 15, at the Masonic Lodge Hall, 247 First Street, in Elkton, Oregon; and Thursday, April 16, at the North Bend Community Center, 2222 Broadway, North Bend, Oregon. Meetings will be held from 4–8 p.m. Meetings will have an open-house format, with project material available for public review. BPA, the cooperating agencies, the State of Oregon, Nucor Steel, and PacifiCorp staff will answer questions. BPA will accept verbal and written comments. The time and place of scoping meetings will be announced in information being sent to interested members of the public and local newspapers. Written comments before, during, or after scoping meetings should be sent to the Communications Office at the address below. The close of the comment period will be announced in the pre-meeting information and at the public meetings.

BPA, in conjunction with the cooperating agencies, plans to file and distribute a draft EIS for public review in August 1998. BPA, the cooperating agencies, and the State of Oregon will hold public meetings in local communities to give the public an opportunity to review and comment on the draft EIS.

ADDRESSES: BPA invites participation, comments, and suggestions on the proposed scope of the draft EIS. Send comment letters, requests to be placed on the project mail list, and requests for more information to the Communications Office, Bonneville Power Administration—ACS, P.O. Box 12999, Portland, Oregon, 97212, or call 503–230–3478, toll-free 1–800–622–4519, or fax 503–230–3984. Comments may also be sent to the BPA Internet address: comment@bpa.gov. Documents can be requested by calling toll-free 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Laurens Driessen, Project Manager, Bonneville Power Administration—TNF–3, P.O. Box 3621, Portland, Oregon, 97208–3621. E-mail requests or questions should be sent to lcdriessen@bpa.gov, or call toll-free 1–800–662–6963. You may also contact Ken Barnhart, Environmental Project Manager, Bonneville Power Administration—EC, P.O. Box 3621, Portland, Oregon, 97208–3621. E-mail requests or questions should be sent to kabarnhart@bpa.gov, or call toll-free 1–800–662–6963.

SUPPLEMENTARY INFORMATION: The southern Oregon coast (from south of Newport, Oregon, to the California-Oregon border and west of Eugene and Roseburg, Oregon) is served from a 115-kV and a 230-kV transmission line out of Lane Substation (near Eugene, Oregon), a 230-kV transmission line from Santiam Substation (south of Salem, Oregon), and a 230-kV transmission line from Dixonville (near Roseburg, Oregon). The critical operating period for the Oregon coast is winter. Normal winter load forecasts for the southern Oregon coast in the year 2000 show about 720 MW of flow to the coast on these transmission lines to support the area's winter load. With all lines in service, the existing transmission system can support about 835 MW of flow on these lines. If the Dixonville 230-kV transmission line is lost for any reason, the system capacity is about 765 MW. Assuming 1.5 percent annual load growth for this area (without the added load of the steel mill), a transmission project may be required in the year 2004 to support the southern Oregon coast for the loss of the Dixonville-Reston 230-kV transmission line. According to existing BPA planning criteria, all load must be served for the loss of a single

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transmission line or transformer for all load conditions to maintain reliable service.

The proposed Nucor Steel mill would require an instantaneous peak load of 225 MW for its arc furnace. The expected annual load growth with the new mill is about 3 percent. The existing transmission system cannot serve the new plant and the expected load growth. Furthermore, the existing system is not capable of suppressing voltage changes induced by the arc furnace.

Alternatives Proposed for Consideration

BPA has been studying ways to reinforce the transmission system. Several options for adding new 230-kV transmission lines and series compensation were studied. These options cannot provide the system reliability requirements needed, and the costs for adding three 230-kV transmission lines and series compensation are comparable to a new 500-kV transmission line. A new 500-kV line is needed to eliminate flickers induced by the arc furnace.

Potential routes for a 500-kV transmission line have been developed in cooperation with PacifiCorp and Federal, state and local agencies. Three routes that parallel existing transmission lines are being studied. The first route would follow an existing BPA transmission line that begins at BPA's Alvey Substation near Goshen, Oregon, west to near Florence, Oregon, then would follow an existing BPA transmission line south through Reedsport to a proposed new substation site in the hills above Glasgow, Oregon. The second route would follow an existing BPA transmission line from BPA's Alvey Substation south to near Roseburg, Oregon, then west next to an existing BPA transmission line through Fairview, and then north to the proposed substation site. A third route would begin at PacifiCorp's Dixonville Substation and follow PacifiCorp's transmission line west to BPA's Reston Substation, then west following BPA's transmission line through Fairview, then north to the proposed substation site.

Two additional routes would parallel existing lines for part of the route, but would then require new right-of-way. The first route would follow an existing BPA transmission line from BPA's Alvey Substation southwest to near Drain, Oregon. From near Drain, new right-of-way would head southwest, cross the Umpqua River, then turn west and travel to the proposed substation site above Glasgow, Oregon. The second route also starts at BPA's Alvey Substation and again follows the existing BPA transmission line to just south of Creswell, Oregon, then turns southwest on new right-of-way. This corridor heads west to near Elkton, crosses the Umpqua River, and ends at the same substation site.

The routes cross land in Lane, Douglas, and Coos counties, Oregon. A new 500-kV transmission line would be about 120 kilometers (75 miles) long and would require approximately 46 meters (150 feet) of new right-of-way width. A new substation would need to be constructed and would require about 2 hectares (5 acres). At this time, BPA believes the routes using some new right-of-way may be the preferred routes to study. BPA is also considering taking no action.

BPA is mandated by the Northwest Power Act to recover its costs. Each alternative will be evaluated to determine if the revenues generated cover the costs of the alternative, and if the alternative is consistent with sound business principles.

Identification of Environmental Issues

Potential issues presently identified for this proposal include: (1) Effects on fish, wildlife, and vegetation, including threatened and endangered species; (2) effects of economic development and socioeconomic effects of building a line and substation; (3) effects of construction and placement of electrical facilities in floodplains and wetlands; (4) concern over visual effects, noise, and other interference produced by electrical facilities in rural and populated areas; (5) impacts on range, forest, and agricultural resources due to construction and placement of electrical facilities; (6) concern over human exposure to electric and magnetic fields created by electrical facilities; (7) impacts to cultural resources; (8) impacts to recreational resources; (9) conflicting land use; (10) impact to property values; and (11) potential impacts to soils (erosion) and water quality. Additional issues identified through the scoping process may also be examined in the draft EIS.

Issued in Portland, Oregon, on March 23, 1998.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 98–8375 Filed 3–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–292–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

March 25, 1998.

Take notice that on March 20, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–292–000, a request pursuant to Sections 157.205 and 157.216(b) for authorization to abandon approximately .9 of a mile of the 12-inch Ft. Lauderdale Lateral under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that it is required to remove or abandon the 12-inch Ft. Lauderdale Lateral due to the state road department's plan to widen Griffin Road into Ft. Lauderdale where the 12-inch Ft. Lauderdale Lateral is in the road right-of-way. It is further stated that FGT has determined that the 12-inch lateral is no longer needed to serve Florida Power & Light Company (FPL) since the construction of the new metering facilities currently being served through the 24-inch lateral and metering facilities constructed on the north side of the FPL power plant.

FGT proposes to abandon and remove four short sections totaling 45 feet, of the 12-inch Ft. Lauderdale pipeline, and filling the remaining portions with water or nitrogen. FGT states that the proposed abandonment would not result in the abandonment of any existing service to FGT's customers, nor would it disadvantage FGT's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8323 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–366–009]

Florida Gas Transmission Company, Notice of Report of Refunds

March 25, 1998.

Take notice that on March 20, 1998, Florida Gas Transmission Company (FGT) tendered for filing with a supplemental refund report reflecting amounts refunded to its transportation customers on February 20, 1998.

FGT states that on December 15, 1997 FGT refunded amounts to its customers in compliance with Article XI of the rate case settlement in Docket No. RP96–366–005. Subsequently it came to FGT's attention that FGT inadvertently failed to calculate refunds related to: (1) The transportation component of the cash-out price applicable to net delivery point overage imbalances pursuant to the cash-out mechanism of Section 14 of the General Terms and Conditions (GTC) of FGT's Tariff, and (2) reservation charge credits resulting from a one-time shortening of the gas day of April 5, 1997 due to FGT's implementation of Gas Industry Standards Board (GISB) Standard 1.3.1. On January 27, 1998 FGT filed a letter with the Commission stating that FGT would make additional refunds related to both of the above, inclusive of interest, and would file a supplemental refund report within 30 days of the date additional refunds were made.

FGT states that the supplemental refunds, totaling $285,656 inclusive of interest, were mailed to customers on February 20, 1998. FGT is filing the attached supplemental refund report as stated in the January 27 letter.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 1, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8324 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–74–000]

George Grenyo; Notice of Petition for Adjustment

March 25, 1998.

Take notice that on March 16, 1998, George Grenyo (Grenyo) filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 [15 U.S.C. 3142(c) (1982)], requesting to be relieved of his obligation to pay Panhandle Eastern Pipe Line Company (Panhandle) the Kansas ad valorem tax refunds for the royalty interests attributable to Grenyo's working interest in the Ormiston Lease, otherwise required by the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*,[1] on remand from the D.C. Circuit Court of Appeals.[2] Grenyo's petition indicates that he has already paid Panhandle $126.25, and that this sum includes unspecified amounts attributable to royalty interests in the Ormiston Lease. Grenyo's petition is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8330 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2004–073 and 11607–000]

Holyoke Water Power Company, City of Holyoke, Ashburnham Municipal Light Plant, and Massachusetts Municipal Wholesale Electric Company; Notice Granting Extension of Time to File Better Adapted Statements for the Holyoke Project

March 26, 1998.

On October 9, 1997, the Commission issued its Notice Establishing Subsequent Licensing Procedural Schedule and a Deadline for Submission of Final Amendments in the above-captioned proceedings. Among other things, the Notice's schedule established a March 31, 1998 deadline for the competing applicants to file a detailed and complete statement of how its plans are as well, or better, adapted than the plans of each of the other license applications to develop, conserve, and utilize in the public interest, the water resources of the region, per Section 4.36(d)(2)(iii) of the Commission's regulations.

On March 24, 1998, the Holyoke Water Power Company (NWP) filed a motion requesting an extension of time to file its "better adapted" statement for the Holyoke Project. As described below, HWP requested an extension of the March 31 deadline, for a period not to exceed 90 days, or until June 30, 1998. In its motion, HWP cites the deficiencies in the competing applicant's application (herein referred to as the City of Holyoke), as the reason for extending the deadline to file the "better adapted" statements. Most notably, HWP references the City of Holyoke's proposal to install additional capacity at the project.

HWP contends that the City of Holyoke's proposal to install additional capacity is an integral part of the City of Holyoke's application. In light of this, HWP argues that until the aforementioned deficiencies are corrected, it will be unclear as to what the City of Holyoke is proposing in its application with respect to the installation of additional capacity. Moreover, HWP argues that such an emission on the part of the City of

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Holyoke makes it difficult for HWP to compare its proposed project with the City of Holyoke's proposed project, for purposes of the "better adapted" statements.

Based on the foregoing argument, HWP believes that it is premature to require HWP and the City of Holyoke to file their "better adapted" statements prior to correction of the deficiencies in the applications, and acceptance of the applications for filing. HWP does not believe that granting the requested extension of time will unduly delay the proceedings in this docket.

Good cause has been shown, and the deadline for HWP and the City of Holyoke to file their "better adapted" statements is extended to June 30, 1998.[1] As noted in the Commission's October 27, 1997, Notice Granting Extension of Time to File Comments and Requests for Additional Studies, any further requests for extension of deadlines that effect the schedule of these proceedings will be given careful scrutiny.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8371 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–108–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 25, 1998.

Take notice that on March 23, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective April 1, 1998:

Third Revised Sheet No. 197
Third Revised Sheet No. 198
Third Revised Sheet No. 200
Original Sheet No. 200A

MRT states that the purpose of this filing is to comply with the Commission's letter order in this docket issued March 12, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not served to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8327 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2645–029]

Niagara Mohawk Power Corporation; Notice Denying Late Intervention, and Dismissing Requests to Supplement Record and for Further Consideration

March 26, 1998.

By order issued April 2, 1996, the Commission approved a settlement agreement and issued a new license to Niagara Mohawk Power Corporation (Niagara Mohawk) for the continued operation of the Beaver River in Lewis and Herkimer Counties, New York.[1] On January 16, 1998, the Commission issued an order granting in part and denying in part certain requests for rehearing of the April 2, 1996 order.[2]

On February 17, 1998, the Town of Croghan, New York, filed an untimely motion to intervene and to supplement the record, and a request for consideration under Section 10(h) of the Federal Power Act,[3] of Niagara Mohawk's fitness to hold the new license, in view of Niagara Mohawk's plan, filed December 1, 1997, with the New York Public Service Commission, for divesting its "non-nuclear generation assets."

In acting on a late motion to intervene, the Commission may consider whether the movant has shown good cause for the failure to file the motion within the time prescribed, and whether the movant's intervention will disrupt the proceeding.[4] The deadline for filing intervention in this proceeding was April 12, 1993.[5] Moreover, Croghan states in its motion (at p. 2) that Niagara Mohawk has been publicly stating since October 1995 that it would sell its non-nuclear generating facilities. Therefore, Croghan has not shown sufficient reason for the lateness of its filing. Moreover, in light of the issuance of the new license and approval of the related settlement agreement, granting Croghan's request for intervention would unduly disrupt the proceeding. Accordingly, Croghan's motion for late intervention is denied, and consequently its additional requests for relief are dismissed. If, as Croghan suggests, the state divestiture proceeding results in Niagara Mohawk requesting approval to transfer its license for Project No. 2645, Croghan will have the opportunity to intervene and present its arguments in that proceeding.

This notice constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8370 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–291–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

March 26, 1998.

Take notice that on March 20, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–291–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to upgrade two existing delivery points located in Green and Rock Counties, Wisconsin, to accommodate additional natural gas deliveries to Wisconsin Gas Company (WGC), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

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[1] Because, in the absence of this extension, the competing applicant's would be required to file their "better adapted" statements by March 31, 1998, this notice is being issued in advance of the usual 15-day response time that would otherwise apply to a motion for extension of time.

[1] 76 FERC ¶61,152.
[2] 82 FERC ¶61,029.
[3] 16 U.S.C. 803(h).
[4] 18 CFR 385.214(d).

[5] 58 FR 13477 (March 11, 1993).

Northern states that throughput service will be provided to WGC pursuant to currently effective throughput service agreement(s). It is asserted that the proposed incremental volumes to be delivered for WGC are 45 MMBtu on a peak day and 4,599 MMBtu on an annual basis at the Albany #1 delivery point and 390 MMBtu on a peak day and 39,858 MMBtu on an annual basis at the Evansville #1 delivery point.

Northern states that deliveries to the upgraded delivery points will be the result of a realignment of currently contracted volumes. Northern estimates a cost of $75,000 to upgrade the Albany #1 delivery point and $142,000 to upgrade the Evansville #1 delivery point. Northern states that the facilities described herein will be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8369 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–69–000]

Pickrell Drilling Company, Inc.; Notice of Petition for Adjustment

March 25, 1998.

Take notice that on March 10, 1998, Pickrell Drilling Company, Inc. (Pickrell) filed in Docket No. SA98–69–000 a petition for adjustment pursuant to Section 502(c) of the Natural Gas Policy Act 15 U.S.C. 3412(c) and Rules 1101–1117 of the Commission's Rules of Practice and procedure (18 CFR 385.1101–385.1117) requesting that it be released of any refund liability of the Kansas *ad valorem* tax pertaining to the Statement of Refunds Due, all are more fully set forth in the petition which is on file with the Commission and open to public inspection.

Pickrell states that it was simply the operator of the wells for which two tax payments were made and that Pickrell owned no working interest in the leases or wells. Pickrell states that the working interest owners that received tax reimbursements have refunded their proportionate shares of the amount set out in the Statement of Refunds Due, and are requesting that they be relieved of any refund liability for the interest. Pickrell also states that some of the working interest owners are deceased and their estates have been closed, one is elderly and in poor financial condition, and two owners are not locatable. Pickrell believes that it is a hardship on the other owners and inequitable to require them to refund the interest where there is no chance of recouping anything further from production, and that any amounts attributable to these interest owners should be waived.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8328 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–66–000]

R.J. Patrick Operating Company; Notice of Petition for Adjustment

March 25, 1998.

Take notice that on March 10, 1998, R.J. Patrick Operating Company (Patrick), P.O. Box 1157, 326 North Lincoln, Liberal, Kansas 67905–1157, filed in Docket No. SA98–66–000 a petition for adjustment pursuant to Section 502(c) of the Natural Gas Policy Act (NGPA) 15 U.S.C. 3412(c) and Rules 1101–1117 of the Commission's Rules of Practice and Procedure (18 CFR 385.1101–385.1117) requesting to be relieved of all refund requests or obligations to Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is said that the wells were sold to the Federal Government with a reservation of mineral rights for a term of 50 years expiring on November 1, 1987. It is said further that because of the reversion, neither Patrick nor any of the other investors would ever be able to recover or recoup any refund of the *ad valorem* taxes.

Patrick states that to pay the refunds would constitute a considerable burden and as such requests to be relieved of all refund obligations based on the special hardship privileges.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8329 Filed 3–30–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–25–000]

West Texas Gas, Inc.; Notice of Informal Settlement Conference

March 25, 1998.

Take notice than an informal settlement conference will be convened in this proceeding on Thursday, April 2, 1998. The conference will begin at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The purpose of the conference is to explore the possibility of settlement of this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Russell B. Mamone at (202) 208–0744 or Anja M. Clark at (202) 208–2034.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8326 Filed 3–30–98; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–258–006 and RP97–454–002]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 25, 1998.

Take notice that on March 20, 1998, Williams Gas Pipelines Central, Inc., formerly Williams Natural Gas Company (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of May 1, 1998:

First Revised Sheet Nos. 1 and 2
Original Sheet No. 5C
First Revised Sheet Nos. 105, 106, 114, 120, 121, 126, 131, 136, 141, and 144
Original Sheet Nos. 145–148
First Revised Sheet Nos. 210, 211, 229, 232, 260, 456A–456E, and 465–472

Williams states that on December 30, 1997, it filed with the Commission an offer of Settlement in Docket Nos. RP98–258–005 and RP97–454–001. By order issued March 2, 1998, the Commission approved the Settlement to be effective May 1, 1998 with certain modifications. Williams states that the instant filing is being made to file actual tariff sheets to implement the settlement with the modifications, clarifications, and conditions as required by the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–8325 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–31–000, et al.]

Union Electric Company d/b/a AmerenuUE, et al.; Electric Rate and Corporate Regulation Filings

March 24, 1998.

Take notice that the following filings have been made with the Commission:

1. Union Electric Company d/b/a AmerenUE

[Docket No. EC98–31–000]

Take notice that on March 16, 1998, Union Electric Company d/b/a AmerenUE (AmerenUE), filed an application pursuant to Section 203 of the Federal Power Act and the Federal Energy Regulatory Commission's Regulations seeking authorization and approval of the sale of certain portions of its electric transmission facilities and related equipment to the City of Rolla, Missouri.

AmerenUE is a combination electric and gas public utility subject to the jurisdiction of the Commission. AmerenUE provides electric service within parts of the states of Missouri and Illinois and is subject to the jurisdictions of the utility regulatory commissions in both states. AmerenUE is a subsidiary of Ameren Corporation, a registered public utility holding company under the Public Utility Holding Company Act of 1935, as amended, (PUCHA).

Comment date: April 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket Nos. ER97–2800–001, ER97–3127–001, and ER97–2338–001]

Take notice that on January 20, 1998, Montaup Electric Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: April 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Kamps Propane, Inc.

[Docket No. ER98–1148–000]

Take notice that on March 17, 1998, Kamps Propane, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER98–1234–000]

Take notice that on March 19, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) gave notice of the withdrawal of their filing in the above captioned proceeding. The CSW Operating Companies state that the Commission's December 10 order issued in Docket No. OA97–24–000 and the submission of a revised open access transmission tariff on February 17, 1998 in response to that order, renders the submission on their filing in this proceeding unnecessary.

The CSW Operating Companies state that a copy of their Notice of Withdrawal of Filing was served on all parties to this proceeding.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

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5. California Independent System Operator Corporation

[Docket No. ER98–1934–000]

Take notice that on March 9, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Withdrawal of the proposed Scheduling Coordinator Agreement between ISO and the Department of Water and Power of the City of Los Angeles filed in the above-referenced docket.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER98–2113–000]

Take notice that on March 6, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between ISO and Salt River Project Agricultural Improvement and Power District.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER98–2240–000]

Take notice that on March 19, 1998, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Firm and Non-Firm Point-to-Point Transmission Service to The Washington Water Power Company under APS' Open Access Transmission Tariff.

A copy of this filing has been served on The Washington Water Power Company and the Arizona Corporation Commission.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER98–2241–000]

Take notice that on March 19, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a notification indicating its consent to the assignment by Heartland Energy Service, Inc. (Heartland), of its rights and obligations under the Interchange Agreement and Power Sales Agreement between Illinois Power and Heartland to Cargill-IEC, LLC (Cargill).

Illinois Power has requested an effective date of November 1, 1997.

Copies of the filing were served upon Heartland as well as the Illinois Commerce Commission.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER98–2242–000]

Take notice that on March 19, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with PG&E Energy Trading—Power, L.P. (PGET) under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon PG&E Energy Trading—Power, L.P. (PGET), the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER98–2243–000]

Take notice that on March 19, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with PG&E Energy Trading—Power, L.P. (PGET), under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon PG&E Energy Trading—Power, L.P. (PGET), the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER98–2244–000]

Take notice that on March 19, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Avista Energy Inc., for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ER98–2245–000]

Take notice that on March 19, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Municipal Energy Agency of Nebraska for service under its Non-Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER98–2246–000]

Take notice that on February 19, 1998, Illinois Power Compay (Illinois Power), tendered for filing a revised Index of Customers.

Consistent with the requirements of paragraph N of the Commission's July 31, 1997, order in Allegheny Power System, Inc. *et al.*, Docket Nos. OA96–18 *et al.*, 80 FERC ¶ 61,143 (1997), the Index of Customers identifies the status of the service agreement for each indexed customer.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northern Indiana Public Service Company

[Docket No. ER98–2247–000]

Take notice that on March 19, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and EnerZ Corporation (EnerZ).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to EnerZ pursuant to the Open-Access Transmission Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under that Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to EnerZ pursuant to the Wholesale Sales Tariff filed by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public

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Service Company has requested that the Service Agreements be allowed to become effective as of March 31, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Northern Indiana Public Service Company

[Docket No. ER98–2248–000]

Take notice that on March 19, 1998, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Strategic Energy Ltd., (Strategic).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Strategic pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of March 31, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corp.

[Docket No. ER98–2249–000]

Take notice that on March 19, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), filed Service Agreements for transmission and wholesale requirements services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreements for transmission services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; as modified by an Order of the commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Eastern Power Distribution, Inc., (Eastern Power). The Service Agreements for wholesale requirements services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Eastern Power Distribution, Inc., (Eastern Power).

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER98–2250–000]

Take notice that on March 19, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Amoco Energy Trading Corporation.

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER98–2251–000]

Take notice that on March 19, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Illinois Power Cooperative for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER98–2252–000]

Take notice that on March 19, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Illinois Power Cooperative for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. FirstEnergy Trading and Power Marketing, Inc.

[Docket No. ER98–2253–000]

Take notice that on March 19, 1998, FirstEnergy Trading and Power Marketing Inc., (FirstEnergy Trading), filed a Notice of Succession to Rate Schedules of Market Responsive Energy Inc. FirstEnergy Trading has requested waiver of the notice provisions of the Commission's Regulations and any other applicable requirements in order to permit the name change to be made effective as of April 1, 1998.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Green Mountain Power Corp.

[Docket No. ER98–2254–000]

Take notice that on March 19, 1998, Green Mountain Power Corporation (GMP), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service dated January 31, 1998, under which GMP may provide transmission service to Cinergy Capital & Trading, Inc. GMP has prosed to make the service agreement effective as of March 19, 1998.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Entergy Services, Inc.

[Docket No. ER98–2255–000]

Take notice that on March 19, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Amoco Energy Trading Corporation.

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. California Independent System Operator Corporation

[Docket No. ER98–2263–000]

Take notice that on March 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Williams Energy Services Company for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96-19–003 and ER96–1663–003, including

the California Public Utilities Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. California Independent System Operator Corporation

[Docket No. ER98–2264–000]

Take notice that on March 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Williams Energy Services Company for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in Docket Nos. EC96-19–003 and ER96–1663–003, including the California Public Service Commission.

Comment date: April 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Atlantic City Electric Company, Delmarva Power & Light Company, Green Mountain Power Corp.

[Docket Nos. OA97–97–001, OA97–467–001 OA97–181–001]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct[1] under Order Nos. 889 *et seq.*[2] The revised standards were submitted in response to the Commission's January 15, 1998, order on Standards Of Conduct.[3]

Atlantic City Electric Company (Atlantic), and Delmarva Power & Light Company consolidate its consideration of theirrevised standards. This request is based on the merger of the two companies.[4]

Comment date: April 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

[1] The revised standards were submitted between February 13 and February 17, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulation Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

[3] Atlantic City Electric Company, *et al.*, 82 FERC ¶ 61,028 (1998). The Commission granted Atlantic and Delmarva extensions of time to file their revised standards by notices dated January 27, 1998. The Commission granted Green Mountain an extension of time to file its revised standards by notice dated February 9, 1998.

[4] Atlantic City Electric Company and Delmarva Power & Light Company, Docket No. EC97–7–000, 80 FERC ¶ 61,126 (1997).

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–8372 Filed 3–30–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5984–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Requirements for Importation of Nonconforming Marine Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Requirements for Importation of Nonconforming Marine Engines, OMB Control Number 2060–0320, expiration date: 5/31/98. The ICR describes the nature of the information collection and expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 30, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1723.02.

SUPPLEMENTARY INFORMATION:

Title: Information Requirements for Importation of Nonconforming Marine Engines, OMB #2060–0320, expiring 5/31/98. This is a request for extension of a currently approved collection.

Abstract: Individuals and businesses importing marine engines, including outboard engines and personal watercraft, request approval for engine importations. The collection of this information is mandatory in order to ensure compliance of nonconforming engines with Federal emissions requirements. Joint EPA and Customs regulations at 40 CFR 91.701 *et seq.* and 19 CFR 12.74 promulgated under the authority of Clean Air Act Sections 203 and 208 give authority for the collection of information. This authority was extended to nonroad engines under section 213(d). The information is used by program personnel to ensure that all Federal emission requirements concerning imported nonconforming engines are met. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see CFR 2), and the public is not permitted access to information containing personal or organizational identifiers. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 1/6/98 (63 FR 559); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

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information; and transmit or otherwise disclose the information.

Respondents/Affected entities: Individuals and businesses importing marine engines.

Estimated Number of Respondents: 1,000.

Frequency of Response: 3 responses / year.

Estimated Total Annual Hour Burden: 1,550.

Estimated Total Annualized Costs Burden: $77,500.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1723.02 and OMB Control No. 2060–0320 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, PPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs,
Office of Management and Budget,
Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: March 26, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–8421 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140269; FRL–5781–3]

Computer Based Systems, Incorporated and Labat Anderson, Incorporated; Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Computer Based Systems, Incorporated (CBSI), of Fairfax, VA and CBSI's subcontractor, Labat Anderson, Incorporated (LAI), of McLean, VA for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI). CBSI and LAI will assist the Office of Pollution Prevention and Toxics in managing and operating the TSCA Confidential and Nonconfidential Business Information Centers.

DATES: Access to TSCA CBI occurred on March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W–98–045 contractor CBSI, 2750 Prosperity Drive, Suite 300, Fairfax, VA and CBSI's subcontractor, LAI, 8000 Westpark Drive, Suite 400, McLean, VA 22102, will assist OPPT in managing and operating the TSCA Confidential and Nonconfidential Business Information Centers. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–98–045, CBSI and LAI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Contractor and subcontractor personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

CBSI and LAI will be authorized access to TSCA CBI at EPA Headquarters only, under the terms and provisions of the EPA TSCA CBI Security Manual.

Clearance for access to TSCA CBI under this contract may continue until January 31, 2003.

CBSI and LAI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection.

Dated: March 25, 1998.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–8422 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140267; FRL–5780–5]

Access to Confidential Business Information by Lockheed Martin Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Lockheed Martin Technical Services, Incorporated, of Cherry Hill, New Jersey, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than April 10, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W9–8002, contractor Lockheed Martin of 2339 Route 70 West, Cherry Hill, NJ, will assist the Office of Pollution Prevention and Toxics (OPPT) in computer operations and maintenance of TSCA CBI Computer Systems and Communications Network, linking CBI sites.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W9–8002, Lockheed Martin will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract (computer operations and maintenance of TSCA CBI Computer Systems and Communications Network, linking CBI sites). Lockheed Martin personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Lockheed Martin access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

Lockheed Martin will be authorized access to TSCA CBI at EPA Headquarters only, under the EPA

TSCA Confidential Business Information Security Manual.

Clearance for access to TSCA CBI under this contract may continue until December 31, 2002. Lockheed Martin personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: March 24, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–8423 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–2]

Clean Air Act Advisory Committee; Mobile Sources Technical Review Subcommittee Notification of Public Advisory Subcommittee Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notification is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet on April 15, 1 998 from 9:30 am to 3:30 p.m. (Eastern Standard Time) at the Washington Plaza Hotel, 10 Thomas Circle, NW (located at Massachusetts Ave. and 14th St.) Washington, DC 20005, Ph: 202/842–1300. This is an open meeting and seating will be on a first-come basis. During this meeting, the subcommittee will hear progress reports from its workgroups and be briefed on and discuss other current issues in the mobile source program including: National Academy of Sciences/National Research Council study to evaluate the MOBILE model, "green" program from the Partnership For a New Generation of Vehicles, climate change and mobile sources, the Clean Air Act Advisory Committee, Tier II and sulfur in gasoline automotive industry, the national low-emissions vehicle program, and the mobile emissions transient test (METT) and the inspection and maintenance (I/M) programs.

Members of the public requesting technical information should contact:

Mr. Philip A. Lorang, Designated Federal Officer, U.S. EPA—NVFEL, 2565 Plymouth Road, Ann Arbor, MI 48105, Ph: 734/668–4374, Fax: 734/741–7821, email: lorang.phil@epa.gov

or

Mr. John T.White, Alternate Designated Federal Officer, U.S. EPA—NVFEL, 2565 Plymouth Road, Ann Arbor, MI 48105, Ph: 734/668–4353, Fax: 734/741–7821, email: white.johnt@epa.gov

Further information can also be obtained by visiting the FACA website for the Mobile Sources Technical Review Subcommittee and its workgroups at: http://transaq.ce.gatech.edu/epatac/index.htm.

Members requesting administrative information should contact: Ms. Jennifer Criss, FACA Management Officer, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, FACA Help Line: 734/668–4518, Fax: 734/741–7821, email: criss.jennifer@epa.gov.

Written comments of any length (with at least 20 copies provided) should be sent to the subcommittee no later than April 3, 1998.

The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Margo T. Oge,

Director, Office of Mobile Sources.

[FR Doc. 98–8413 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–3]

Announcement of Stakeholders Meeting on Arsenic in Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The Environmental Protection Agency (EPA) will be holding a one-day public meeting on May 5, 1998 in Monterey, California. The purpose of this meeting is to present information on EPA's plans for activities to develop a proposed National Primary Drinking Water Regulation (NPDWR) for arsenic under the Safe Drinking Water Act (SDWA) as amended, and solicit public input on major technical and implementation issues, and on preferred approaches for continued public involvement. This meeting will be similar in content to the arsenic stakeholders meeting EPA held in Washington, DC on September 11–12, 1997 and San Antonio, TX on February 25, 1998. At the upcoming meeting, EPA is again seeking input from State and Tribal drinking water programs, the regulated community (water systems), public health organizations, academia, environmental and public interest groups, engineering firms, and other stakeholders on a number of issues related to developing the NPDWR for arsenic. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholders meeting on arsenic in drinking water will be held on Tuesday, May 5, 1998, from 9:00 a.m. to 5:30 p.m. PDT.

ADDRESSES: The meeting will be held in Fulton 1, 2, and 3, which is located at the Conference Center in Monterey, California. To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 or 703–285–1093 between 9:00 a.m. and 5:30 p.m. EDT. Those registered for the meeting by Friday, April 24, 1998, will receive an agenda, logistics sheet, and discussion papers prior to the meeting. Members of the public who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline by Friday, April 24, 1998, in order to receive copies of the overheads in advance. Please provide your name, organization, title, mailing address, telephone number, facsimile number, e-mail address and telephone number for EPA to connect the caller via conference call (if applicable) for the "Arsenic meeting."

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to developing the NPDWR for arsenic, contact the Safe Drinking Water Hotline at 1–800–426–4791, or visit the EPA Office of Ground Water and Drinking Water's drinking water standards webpage at http://www.epa.gov/OGWDW/standards.html, which contains electronic copies of the discussion papers from the previous stakeholders meeting. Registrants must make their own room reservations for the Doubletree Hotel by Saturday, April 18, by calling 1–800–222–8733 or 408–649–4511 and mention "EPA Arsenic Meeting" to guarantee the special room rate of $132. The hotel is connected to the Convention Center.

SUPPLEMENTARY INFORMATION:

A. Background

Arsenic (As) is a naturally occurring element found in the human body and is present in food, water, and air. Arsenic in drinking water occurs in ground water and surface water and is

associated with certain natural geologic conditions, as well as with contamination from human activities. Arsenic ingestion is linked to skin cancer and arsenic inhalation to lung cancer. In addition, arsenic ingestion seems to be associated with vascular effects, gastrointestional irritation, and cancers of the kidney, bladder, liver, lung, and other organs. Water primarily contains inorganic arsenic species (As^{V+} and As^{III+}), which tend to be more toxic than organic forms.

In 1976 EPA issued a National Interim Primary Drinking Water Regulation for arsenic at 50 parts per billion (ppb; ug/L). Under the 1986 amendments to SDWA, Congress directed EPA to publish Maximum Contaminant Level Goals (MCLGs) and promulgate National Primary Drinking Water Regulations (NPDWRs) for 83 contaminants, including arsenic. When EPA failed to meet the statutory deadline for promulgating an arsenic regulation, a citizens' group filed suit to compel EPA to do so. EPA entered into a consent decree to issue the regulation. EPA held internal workgroup meetings throughout 1994, addressing risk assessment, treatment, analytical methods, arsenic occurrence, exposure, costs, implementation issues, and regulatory options before deciding in early 1995 to defer the regulation in order to better characterize health effects.

On August 6, 1996, Congress amended the SDWA, adding section 1412(b)(12)(A) which requires, in part, that EPA propose an NPDWR for arsenic by January 1, 2000 and issue a final regulation by January 1, 2001. The current maximum contaminant level (MCL) of 50 ug/L remains in effect until the effective date of the revised rule.

The 1996 amendments to the SDWA also directed EPA to develop by February 1997, a comprehensive arsenic research plan to assess health risks associated with exposure to low levels of arsenic. In December 1996, EPA announced the availability of the draft arsenic research plan, and the public had an opportunity to comment on the paper at a scientific peer review meeting in January 1997. EPA reported to Congress in late January that the plan was publicly available and would be revised after consideration of the final report of the scientific peer review group, which was subsequently published May 8, 1997. EPA's Office of Research and Development (ORD) submitted the final arsenic research plan to Congress in February 1998, and the final plan will be available on the ORD webpage in April. In conducting the studies in the arsenic research plan, EPA will consult with the National Academy of Sciences, other Federal agencies, and other interested public and private parties.

B. Request for Stakeholder Involvement

EPA intends for the proposed NPDWR for arsenic to incorporate the best available science, risk assessment, treatment technologies, occurrence data, cost/benefit analyses, and stakeholder input on technical and implementation issues.

The stakeholders meeting will cover a broad range of issues including: (1) Regulatory process, including risk management decisions; (2) arsenic risk assessment (exposure, health assessment, national occurrence); (3) key technical assessments (treatment technologies, treatment residuals, cost, analytical methods, co-occurrence of contaminants); (4) small system concerns; and (5) future stakeholder involvement. Background materials on arsenic in drinking water issues will be sent in advance of the meeting to those who register with the Safe Drinking Water Hotline by Friday, April 24, 1998.

EPA has announced this public meeting to hear the views of stakeholders on EPA's plans for activities to develop an NPDWR for arsenic. The public is invited to provide comments on the issues listed above and other issues related to the arsenic in drinking water regulation during the May 5, 1998 meeting and during future opportunities for stakeholder participation.

Dated: March 26, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 98–8420 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5989–1]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 311 (b)(9)(A), CERCLA Section 311(b)(3); Announcement of Competition for EPA's Brownfields Job Training and Development Demonstration Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency will begin accepting applications for Brownfields Job Training and Development Demonstration Pilots through May 29, 1998. The application period will close May 29, 1998 and the Agency intends to competitively select ten Pilots by July 8, 1998.

DATES: This action is effective as of March 31, 1998. All proposals must be received by the May 29, 1998.

ADDRESSES: Interested applicants must submit both a response to the Brownfields Job Training and Development Demonstration Pilot Guidelines and a grant application package. Application packages can be obtained from the EPA Grants Administration Division by calling (202) 564–5305. Interested applicants MUST complete an application. Job training guidelines can be obtained via the Internet: http://www.epa.gov/brownfields/, or by calling the Superfund Hotline at 1–800–424–9346 (TDD for the hearing impaired at 1–800–553–7672).

FOR FURTHER INFORMATION CONTACT: EPA's Office of Solid Waste and Emergency Response, Myra Blakely, Outreach and Special Projects Staff, (202) 260–4527.

SUPPLEMENTARY INFORMATION: The Brownfields Job Training and Development Demonstration Pilots will each be funded up to $200,000 over two-years. These funds are to be used to bring together community groups, job training organizations, employers, investors, lenders, developers, and other affected parties to address the issue of providing training for residents in communities impacted by brownfields. The goals of the pilots are to facilitate cleanup of brownfields sites contaminated with hazardous substances and prepare the trainees for future employment in the environmental field.

EPA expects to select approximately 10 Brownfields Environmental Job Training and Development pilots by the end of July 1998. Pilot applicants must be located within or near one of the 121 pre-1998 brownfields assessment pilot communities. Colleges, universities, non-profit training centers, community-based job training organizations, states, cities, towns, counties, U.S. Territories, and Federally recognized Indian Tribes are eligible to apply for funds. EPA welcomes and encourages applications from coalitions of such entities, but a single eligible entity must be identified as the legal recipient. Entities with experience in providing environmental job training and placement programs are invited to apply. The deadline for applications is May 29, 1998.

EPA's Brownfields Initiative is an organized commitment to help

communities revitalize abandoned contaminated properties, and to thereby eliminate potential health risks and restore economic vitality to areas where these properties exist. EPA defines brownfields as abandoned, idled or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: March 25, 1998.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 98–8250 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44647; FRL–5780–2]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on alkyl glycidyl ether (CAS No. 120547–52–6). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for alkyl glycidyl ether were submitted by the Society of the Plastics Industry, Inc. (SPI) Epoxy Resin Systems AGE Task Force. The following companies comprise the Task Force: Air Products and Chemicals Inc.; Callaway Chemical Company; Ciba-Geigy Corporation; CVC Specialty Chemicals; and Shell Chemical Company. The submission includes a final report entitled "Alkyl Glycidyl Ether: 13-Week Neurotoxicity Study in Fischer 344 Rats." This report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on February 13, 1998. This chemical is used as an epoxy resin additive and as a modifier for other epoxides in flooring and adhesives.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44647). This record includes a copy of the study reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B-607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: March 20, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–8424 Filed 3–30–98; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5985–3]

The General NPDES Permit for Seafood Processors Operating in Kodiak, AK (General NPDES Permit No. AK–G52–8000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final general NPDES permit.

SUMMARY: The Director, Office of Water, EPA Region 10, is issuing General National Pollutant Discharge Elimination System (NPDES) permit no. AK–G52–8000 for owners and operators of shore-based seafood processing facilities and a by-product recovery facility in Kodiak, Alaska, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et. seq*. The final general NPDES permit authorizes discharges from facilities discharging through outfalls to St. Paul Harbor and Near Island Channel. The existing ten shore-based facilities and a by-product recovery facility are engaged in the processing of fresh, frozen, canned seafood, surimi, and fish meal/powder. Discharges authorized by the proposed permit include processing wastes, process disinfectants, sanitary wastewater and other wastewaters, including domestic wastewater, cooling water, boiler water, freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to a facility, and live tank water. One facility discharges treated domestic and sanitary wastewater to St. Paul Harbor. The final permit authorizes discharges to waters of the United States in and contiguous to the State of Alaska.

The processing facilities are required to collect and route all seafood processing wastes and wastewater to a treatment system consisting of 1 mm screens or equivalent technology. All seafood solid wastes are collected and transported to the by-product recovery facility or are recovered through an in-house fish powder plant.

The final general permit for seafood processors in Kodiak, Alaska, will not authorize discharges of petroleum hydrocarbons, toxic pollutants, or other pollutants not specified in the permit.

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The final general permit contains the same effluent guidelines limitations as the previous individual permits. Separate monitoring of the surimi and fish meal/powder waste streams are new additions to the general permit.

Notice of the draft Kodiak permit was published on December 18, 1997, in the **Federal Register** [62 FR 66367] and the Kodiak Mirror.

The final permit is printed below and establishes effluent limitations, standards, prohibitions, monitoring requirements, and other conditions on discharges from seafood processors and fish meal/powder processors in Kodiak, Alaska.

Changes made in response to public comments are addressed in full in a document entitled "Response to Public Comments on the Proposed Issuance of the Kodiak Seafood Processors General NPDES Permit." This document is being sent to all commenters, current permittees, and applicants and is available to other parties upon request from the address below.

ADDRESSES: Unless otherwise noted in the permit, correspondence regarding this permit should be sent to The Environmental Protection Agency, Region 10, NPDES Compliance Unit (OW–133), 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Florence Carroll, of EPA Region 10, at the address listed above or telephone (206) 553–1760. Copies of the final Kodiak General NPDES Permit are available upon request from the Region 10 Public Environmental Resource Center at the following telephone numbers: 1–800–424–4EPA (4372) for Idaho, Oregon, and Washington; 1–206–553–1200 for Alaska and for all other states.

SUPPLEMENTARY INFORMATION: EPA issues this Kodiak seafood processors general NPDES permit pursuant to its authority under sections 301(b), 304, 306, 307, 401, 403, and 501 of the Clean Water Act. The fact sheet for the draft permit, the response to comments document, the 401 certification issued by the State of Alaska, and the coastal zone management plan consistency determination issued by the State of Alaska set forth the principal facts and the significant factual, legal, and policy questions considered in the development of the terms and conditions of the final permit presented below.

The State of Alaska, Department of Environmental Conservation (ADEC), has issued a Certificate of Reasonable Assurance that the subject discharges comply with the Alaska State Water Quality Standards.

The State of Alaska, Office of Management and Budget, Division of Governmental Coordination, has certified that the Kodiak seafood processors general NPDES permit is consistent with the approved Alaska Coastal Management Program.

Changes have been made from the draft permit to final permit in response to public comments received on the draft permit and the final coastal management plan consistency determination from the State of Alaska.

The following identifies several specific areas of change, among others which have been included in the final permit: (1) Requirements for fish powder in the draft permit were less stringent than is usually required of fish meal production so EPA determined that the production of fish powder and the production of fish meal are essentially the same and has applied the effluent limitation guidelines for fish meal to the two facilities operating fish meal/powder plants, thereby allowing Kodiak Fishmeal Company to be covered by the Kodiak general permit; (2) a new provision allows individual processors to transport solid fish wastes (ground to 0.5 inch particles before discharge) to the ocean dumping site upon notice and approval of ADEC and EPA when the by-product facility cannot take additional wastes; and (3) a map showing the location of the ocean dumping site.

Appeal of Permit: Within 120 days following this service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act. Persons affected by a general permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge the permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual permit.

Dated: March 16, 1998.

Philip G. Milliam,

Director, Office of Water.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Seafood Processors Operating Shorebased Facilities in Kodiak, Alaska

[General NPDES Permit No. AK–G52–8000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, (hereafter, CWA or the Act), the owners and operators of seafood processing facilities and a by-product recovery facility in Kodiak, Alaska, are authorized to discharge seafood processing wastes and the concomitant wastes set out in this Permit to waters of the United States, named St. Paul Harbor and Near Island Channel, Alaska, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The discharge of wastes not specifically set out in this Permit is not authorized under this Permit.

Upon the effective date of this Permit, it is the controlling document for regulation of seafood processing wastes and other designated wastewaters discharged to St. Paul Harbor and Near Island Channel, Alaska. A copy of this Generaly Permit must be kept at the seafood processing facility where the discharge occurs.

This Permit shall become effective 30 days after issuance.

This Permit and the authorization to discharge shall expire at midnight five years from the effective date of the permit.

Signed this 16th day of March, 1998.

Philip G. Millam,

Director, Office of Water, Region 10, U.S. Environmental Protection Agency.

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1 Authorized Facilities

1.1 Existing Facilities

The facilities listed below are authorized to discharge to the designated receiving water under this general Permit and are assigned the following NPDES number:

AK–G52–8110—Alaska Fresh Seafoods, Near Island Channel
AK–G52–8434—Alaska Pacific Seafoods, St. Paul Harbor
AK–G52–8486—Cook Inlet Processing, St. Paul Harbor
AK–G52–8426—East Point Seafoods, Near Island Channel
AK–G52–8353—International Seafoods-Shelikof, St. Paul Harbor
AK–G52–8266—International Seafoods-Marine, Near Island Channel
AK–G52–8234—Kodiak Fish Meal Company, St. Paul Harbor
AK–G52–8493—Ocean Beauty-King Crab, St. Paul Harbor
AK–G52–8361—Tyson Enterprise Seafoods-Alcod, Near Island Channel
AK–G52–8833—Tyson Enterprise Seafoods-Star, Near Island Channel
AK–G52–8825—Western Alaska Fisheries, St. Paul Harbor

1.2 New Facilities

In order to be authorized to discharge any of the pollutants set out in 2.0 of this general NPDES Permit, a seafood processing facility in Kodiak, Alaska, must apply for coverage under this Permit. Any new applicants (other than those listed above) wishing authorization to discharge under this Permit shall submit EPA Form 3510–1 General Information, EPA Form 3510.2C NPDES, and the State of Alaska Coastal Project Questionnaire and Certification Statement.

In compliance with the Paperwork Reduction Act, 44 U.S.C. 1501 *et seq.*, the Office of Management and Budget has approved the collection of information in an NPDES application (OMB No. 2040–0086).

A qualified applicant will be authorized to discharge under this Permit upon its certified receipt from EPA of written notification of inclusion and the assignment of an NPDES permit number.

2 Authorized Discharges

This Permit authorizes the discharge of the following pollutants subject to the limitations and conditions set forth herein.

2.1 Seafood Processing Wastewaters

Seafood processing wastewaters include screened process wastewater from conventional or mechanized butchering of seafood, from the production of surimi and/or fish paste that is washed repeatedly in water then pressed to remove residual water, and from the processing of seafood wastes into fish meal/powder.

2.2 Process Disinfectants

Disinfectants and detergents may be added to wash down water and scrubber water to facilitate the removal of wastes and to maintain sanitary standards during processing. The discharge of residual amounts of process disinfectants used to sanitize seafood processing areas is permitted.

2.3 Domestic and Sanitary Wastewaters

Cook Inlet Processing is the only facility authorized to discharge treated domestic and sanitary wastewater to St. Paul Harbor. Domestic and sanitary wastewaters from all other facilities shall be discharged to the Kodiak municipal wastewater treatment facility.

2.4 Non-Process Wastewaters

Non-process wastewaters include non-contact cooling water, boiler water, freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to the facility, live tank water, and other non-process water (except wastewater from floor drains). These wastewaters may be discharged without treatment to the receiving water through conveyances, provided that the discharges are in compliance with Alaska State Water Quality Standards. Persistent foam or scum generated by the discharge of non-process wastewaters, e.g., water used to transfer seafood, shall be a violation of the Alaska State Water Quality Standards and conditions of this Permit.

2.5 Unauthorized Discharges

Discharge of wastes and pollutants not specifically set out above are not authorized under this Permit.

3 Effluent Conditions and Monitoring Requirements

3.1 Butchering Waste Stream

During the effective term of this Permit, the permittee is authorized to discharge process wastewater from the butchering of seafood to St. Paul Harbor or Near Island Channel. Treatment of the butchering waste stream prior to discharge shall be accomplished through the use of fine mesh screening (1 mm) or equivalent technology. Seafood wastes shall not be pulverized, chopped, ground or otherwise altered prior to screening and discharge through the facility's outfall.

3.1.1 Limitation on pH

The effluent pH shall not be less than 6.5 standard units nor greater than 8.5 standard units.

3.1.2 Mechanized Limitations

If 50% or more of the weight of the solid wastes are generated from the use of one or more automated or mechanized method, then select the mechanized limitations for reporting. (*See* 11.1 and 11.2 for the method of calculating multi-processing limits.)

3.1.3 Specific Limitations

Discharges from the conventional or mechanized butchering of seafood shall be limited as specified below (limitations are based upon the raw products processed on the day samples are collected):

Type of seafood	Conventional/hand-butchered lbs/1000 lbs				Mechanized lbs/1000 lbs			
	Total suspended solids		Oil and grease		Total suspended solids		Oil and grease	
	Daily max	Monthly aver	Daily max	Monthly aver	Daily max	Monthly aver	Daily max	Monthly aver
Bottom Fish	3.1	1.9	4.3	0.56	22	12	9.9	3.9
Salmon	2.6	1.6	0.31	0.19	44	26	29	11
Herring Frozen Whole	2.6	1.6	0.31	0.19				
Shrimp	320	210	51	17				
Scallops	6.6	1.4	7.7	0.24				
Crab, whole/sections	12	3.9	1.3	0.42				

Daily discharges shall be calculated as follows:

lbs pollutant/1000 lbs raw product = (Flow, mgd) × (pollutant, mg/L) × (8.34) ÷ Total lbs processed during the sampling day

Bottom Fish includes Flounder (e.g., Arrowtooth), Rockfish/Red Snapper, Pacific Cod, Halibut, Pollock, Black Cod/Sablefish, Grey Cod, Flatfish/Sole,Whitefish

Salmon includes Pink, Chum, Sockeye, Coho, Silver and others

Crab includes King, Tanner (Opilio and Bairdi), Dungeness

Other incidental seafood, such as sea cucumbers, snails, skates, sea urchins etc.

3.1.4 Monitoring Requirements

Effluent monitoring shall be conducted as follows:

BUTCHERING WASTE STREAM MONITORING

Parameter	Frequency	Sample type
Flow (MGD)	Daily	24-Hour Record.*
Total Suspended Solids (TSS; lbs/1000 lbs, mg/L)	Weekly	Composite/Grab.**
Oil and Grease*** (O&G; lbs/1000 lbs, mg/L)	Weekly	Grab.
Settleable Solids (ml/L)	Weekly	Composite/Grab.**
pH (standard units)	Weekly	Grab.
Production (raw; lbs)	Weekly	Calculated.
Number of Processing Days	Monthly	Measured.
Water Surface and Shoreline	Daily	Visual Inspection.

*Flow may be estimated if there is no dedicated flow meter measuring the flow for the butchering waste stream. The DMR sample type should be filled in to reflect that the flow is estimated.

**Grab samples may be taken during intermittent processing.

***Analyze using the Collins/Tenny test procedure or any other EPA approved method.

3.1.5 Other Monitoring Requirements

Samples shall be taken from the effluent stream after screening and prior to its discharge to the receiving water.

Daily flow used shall be recorded or estimated on the same day effluent samples are taken. The flow measurement shall only include the amount of water used for the butchering process. Flow may be estimated; an explanation of how the flow is estimated shall accompany the first monthly report.

Sampling shall be representative of the waste stream flow. When processing is for short or intermittent periods, samples are to be taken midway during processing, provided the processing period is more than 6 hours.

Monitoring results for the conventional or mechanized butchering wastewater shall be reported on the monthly Discharge Monitoring Reports (DMRs) as both pollutant concentrations (mg/L) and loading values (lbs pollutant parameter per 1000 lbs raw product).

The water surface and shoreline shall be visually inspected daily for floating solids, garbage, grease, foam, and visible oil sheen. Positive results from the water surface or shoreline inspections shall be reported in accordance with "Other Noncompliance" [7.1.3], except in circumstances of persistent conditions.

3.2 Surimi Processing Waste Stream

During the effective term of this Permit, the permittee is authorized to discharge wastewater from processing of fish into surimi.

3.2.1 Effluent Limitations

Surimi wastewater shall be discharged to St. Paul Harbor or Near Island Channel provided that the waste stream is screened to 1 mm or equivalent technology.

3.2.2 Monitoring Requirements

The surimi waste stream shall be sampled prior to screening and commingling with the final effluent discharge waste stream. The surimi waste stream total concentration of TSS and O&G shall be determined by laboratory analysis and subtracted from the final effluent discharge (after screening) waste stream total concentration of TSS and O&G.

Monitoring shall be conducted as follows:

SURIMI WASTE STREAM MONITORING

Parameter	Frequency	Sample Type
Flow (MGD)	Daily	24-hour Record.*
Total Suspended Solids (TSS; mg/L)	Weekly	Composite/Grab.**
Biochemical Oxygen Demand—5 day (BOD_5; mg/L)	Weekly	Composite/Grab.**
Oil and Grease*** (O&G; mg/L)	Weekly	Grab.
Production (lbs of fish into surimi)	Weekly	Calculated.
Number of Processing Days	Monthly	Measured.

*Flow may be estimated if there is no dedicated flow meter measuring the flow for surimi processing. The DMR sample type should be filled in to reflect that the flow is estimated.
**Grab samples may be taken during intermittent processing.
***Analyze using the Collins/Tenny test procedure or any other EPA approved method.

3.2.3 Other Monitoring Requirements

Daily flow of the surimi waste stream shall be recorded or estimated on the same day effluent samples are taken. The flow measurement shall only include the amount of water used for the surimi processing.

Sampling is to be representative of the waste stream flow. When processing is for short periods or intermittent periods, samples are to be taken midway during processing, provided the processing period is more than 6 hours. Monitoring results for surimi processing wastewater shall be reported on the appropriate monthly Discharge Monitoring Reports (DMRs) as pollutant concentrations (mg/L).

3.3 Fish Meal/Powder Waste Stream

During the effective term of this Permit, the permittee is authorized to discharge effluent from the processing of fish wastes into fish meal/powder, including effluents from scrubber, evaporator condensate, separator, cooker, decanter, and dryer.

3.3.1 Effluent Limitations

Wastewater from the processing of fish wastes into fish meal/powder shall be discharged to St. Paul Harbor after screening to one (1) mm or equivalent technology.

3.3.2 Limitations on pH

The instream measurement of pH shall not be less than 6.0 standard units nor greater then 9.0 standard units.

3.3.3 Specific Limitations

Discharges from the processing of fish wastes into fish meal/powder shall be limited as specified below (limitations are based upon the raw product processed on the day samples are collected):

FISH MEAL/POWDER WASTE STREAM LIMITATIONS

Pollutant parameter (units)	Monthly Average*	Daily Maximum*
Biochemical Oxygen Demand—5 day (BOD_5; lbs/1000 lbs, mg/L)	3.8	6.7
Total Suspended Solids (TSS; lbs/1000 lbs, mg/L	1.5	3.7
Oil and Grease (O&G; lbs/1000 lbs, mg/L)	0.76	1.4

*Daily of pounds of pollutants per 1,000 lbs of seafood wastes input will be calculated as follows:
lbs pollutant/1000 lbs raw product = *(Flow, mgd) x (pollutant, mg/L) x (8.34)*—total lbs processed during the sampling day.

3.3.4 Other Limitations

Temperature shall not exceed the Alaska Water Quality Standards.

Color shall not exceed the Alaska Water Quality Standards.

The effluent shall not cause a foam, film, sheen, emulsion, sludge or solid residue on the surface or floor of the receiving water or on the adjoining shorelines.

3.3.5 Monitoring Requirements

The fish meal/powder processing waste stream shall be sampled prior to screening and commingling with the final effluent discharge waste stream. The fish meal/powder processing waste stream total concentration of TSS and O&G shall be determined by laboratory analysis and subtracted from the final effluent discharge (after screening) waste stream total concentration of TSS and O&G. Monitoring shall be conducted as follows:

FISH MEAL/POWDER WASTE STREAM MONITORING

Parameter (units)	Frequency	Sample Type
Flow (mgd)	Daily	24-hour Record*
Biochemical Oxygen Demand—5 day (BOD_5; lbs/ 1000 lbs, mg/L)	Weekly	Composite/Grab**
Total Suspended Solids (TSS; lbs/1000 lbs, mg/L)	Weekly	Composite/Grab**
Oil and Grease*** (O&G; lbs/1000 lbs, mg/L)	Weekly	Grab
pH (standards units)	Monthly	Grab
Temperature (degree F.)	Weekly	Grab
Settleable Solids (ml/L)	Weekly	Composite/Grab**
Number of Processing Days	Monthly	Measured

FISH MEAL/POWDER WASTE STREAM MONITORING—Continued

Parameter (units)	Frequency	Sample Type
Color (color units)	Monthly	Grab

* Flow may be estimated if there is no dedicated meter measuring the flow for fish meal/powder processing. The DMR sample type should be filled in to reflect that the flow is estimated.
**Grab samples may be taken during intermittent processing.
***Analyze using the Collins/Tenny test procedure or any other EPA approved method.

3.3.6 Other Monitoring Requirements

Daily flow of the fish meal/powder processing waste stream shall be recorded or estimated on the same day effluent samples are taken. The flow measurement will only include the amount of water used for the fish meal/powder processing.

Sampling is to be representative of the waste stream flow. When processing is for short periods or intermittent periods, samples are to be taken midway during processing, provided the processing period is more than 6 hours.

Monitoring results for fish meal/powder processing wastewater shall be reported on the appropriate monthly Discharge Monitoring Reports (DMRs) in accordance with the parameter pollutant units noted in the monitoring table at 3.3.3 and 3.3.5 above.

3.3.7 Stickwater Recycling and Monitoring

The discharge of stickwater will be allowed as long as the permittee prevents or minimizes the generation and discharge of stickwater from its facility. Stickwater shall be reduced at the source or recycled in an environmentally safe manner whenever feasible.

The permittee will monitor stickwater recycling and discharge as follows:

Percentage of stickwater recycled per day on a monthly average.

Total gallons of stickwater recycled monthly.

Total gallons of stickwater discharged monthly.

Using grab samples, monitor BOD_5, TSS, and O&G concentrations (mg/L) weekly when fish meal/powder is being produced; when processing is for short periods or intermittent periods, samples are to be taken midway during processing, provided the processing period is more than 6 hours.

3.3.8 Best Management Practices

Through implementation of a BMP Plan a permittee will prevent or minimize the generation and discharge of wastes and pollutants from the facility to the waters of the United States. Pollution shall be prevented or reduced at the source or recycled in an environmentally safe manner whenever feasible. Disposal of wastes into the environment shall be conducted in such a way as to have a minimal environmental impact.

3.4 Domestic and Sanitary Waste Stream

All domestic and sanitary wastes shall be routed through a sanitary waste treatment system and treated prior to discharge to meet the secondary treatment limitations for BOD_5 and TSS of 60 mg/L daily maximum, 45 mg/L weekly average, and 30 mg/L monthly average. Monthly monitoring records are to be kept at the facility and made available for ADEC or EPA inspectors, upon request.

3.5 Waste Disposal Practices

Disposal of all solid seafood processing wastes shall be to a by-product recovery facility. The by-product recovery facility is allowed to dispose of solid seafood processing wastes at the ocean dumping site (See Attachment 11.3 for the location of the ocean dum ping site) when the amount of fish wastes exceeds the by-product facility capacity or other circumstances when the by-product recovery facility is unable to take the solids wastes. The solid seafood processing wastes to be disposed of in the ocean dumping site shall be ground to 0.5 inch particle size prior to discharge.

3.5.1 Permittees' Use of the Ocean Dumping Site

Individual permittee will be allowed to transport solid seafood wastes to the ocean jumping site upon notification and approval of EPA and ADEC. The solid seafood processing wastes to be disposed of in the ocean dumping site shall be ground to 0.5 inch particle size prior to discharge. Logs of any ocean dumping shall be submitted with the monthly DMR (See. 3.5.3 below).

3.5.2 Unsuitable Species for By-Product Recovery

If a species of fish or shellfish is classified as unsuitable for processing at a by-product recovery facility, the permittee may submit a written request to EPA and ADEC to dispose of the seafood waste in the ocean dumping site. The written request must include the reason a species would be considered unsuitable for by-product recovery. If EPA and ADEC approve the permittee's request and classifies a species as unsuitable for processing at a by-product recovery facility, that classification shall remain in effect for the term of this Permit.

3.5.3 Ocean Dumping Log

Any use of the ocean dumping site must be documented in a log with the date, an estimate of the quantity of seafood wastes dumped, the name and address of the company barging the seafood wastes to the dumping zone, and the latitude and longitude of area where the seafood wastes are being disposed of in the dumping site. Notation shall also be made of any marine mammals in the dumping area. Any such dumping must occur while the vessel is underway.

3.6 Discharge Requirements

The permittee shall discharge its process wastewaters through outfalls in the general configuration described in the permittee's NPDES application.

There shall be no discharge if the outfall line is severed, fails, leaks, or is displaced from designed specifications or location.

3.7 Environmental Effects

There shall be no discharge of floating solids, visible foam, or oily wastes which product a sheen on the surface of the receiving water.

There shall be no accumulation of seafood processing wastes on the shoreline.

There shall be no accumulation of wastes on the seafloor of the receiving water.

3.8 Alaska State Water Quality Standards

All discharges shall be in compliance with Alaska State Water Quality Standards.

3.9 Reopening of Permit

If these Permit requirements are insufficient to achieve Alaska State Water Quality Standards, EPA, in consultation with ADEC, may reopen and modify the Permit in accordance with 40 CFR 122.44(d)(1)(C)(4) and 40

CFR 122.62 to include more stringent effluent limitations and/or additional monitoring requirements.

4 Waste Minimization and Monitoring Requirements

4.1 Best Management Practices Plan

4.1.1 Applicability

During the term of this Permit all permittees shall operate in accordance with a Best Management Practices (BMP) Plan.

4.1.2 Purpose

Through implementation of a BMP Plan a permittee shall prevent or minimize the generation and discharge of wastes and pollutants from the facility to the waters of the United States. Pollution shall be prevented or reduced at the source or recycled in an environmentally safe manner whenever feasible. Disposal of wastes into the environment shall be conducted in such a way as to have a minimal environmental impact.

4.1.3 Objectives

A permittee shall develop its BMP Plan consistent with the following objectives:

The number and quantity of wastes and pollutants shall be minimized by a permittee to the extent feasible by managing each effluent waste stream in the most appropriate manner; Standard Operating Procedures (SOPs) shall ensure proper operation and maintenance of the facility; Evaluations for the control of wastes and pollutants shall include the following: Examination of each facility component or system for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to receiving waters due to the failure or improper operation of equipment; Examination of all normal operations, including raw material and product storage areas, in-plant conveyance of product, processing and product handling areas, loading or unloading operations, spillage or leaks from the processing floor and dock, and sludge and waste disposal; Examination of all facility equipment for potential failure and any resulting overflow of wastes and pollutants to receiving waters, including storm water; provision shall be made for emergency measures to be taken in such an event; and Examination of emergency release provision, e.g., ammonia or chlorine discharge.

4.1.4 Requirements

The BMP Plan shall be documented in narrative form, shall include any necessary plot plans, drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and written with the following structure:

Name and location of the facility; Statement of BMP policy; Materials accounting of the inputs, processes and outputs of the facility; Risk identification and assessment of pollutant discharges; Specific management practices and standard operating procedures to achieve the above objectives, including, but not limited to, the modification of equipment, facilities, technology, processes and procedures, and the improvement in management, inventory control, materials handling or general operational phases of the facility; Good housekeeping; Preventative maintenance; Inspections and records; and Employee training.

4.1.5 BMP Review

The BMP Plan shall include the following provisions concerning its review: Be reviewed by the facility manager and appropriate staff; and Include a statement that the above review has been completed and that the BMP Plan fulfills the requirements set forth in this Permit. The statement shall be certified by the dated signature of the facility manager.

4.1.6 Implementation

A permittee shall develop and implement a BMP Plan within six months from the date of issuance of this Permit.

4.1.7 Documentation

No later than six months from the date of issuance of this Permit, a permittee shall submit to EPA and ADEC written certification (*See* 9.5.4) signed by a principal office or a duly appointed representative of the permittee, that a BMP plant has been completed and implemented. A permittee shall maintain a copy of its BMP plan at its facility and shall make the plan available to EPA or ADEC upon request.

4.1.8 BMP Plan Modification

A permittee shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants and their release or potential release to the receiving waters. A permittee shall also amend the Plan, as appropriate, when facility operations covered by the BMP Plan change. Any such changes to the BMP Plan shall be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan shall be reviewed by the facility manager.

4.1.9 Modification for Ineffectiveness

At any time, if a BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or the specific requirements above, this Permit and/or the BMP Plan shall be subject to modification to incorporate revised BMP requirements.

4.2 Seafloor Monitoring

4.2 1 Applicability

All permittees covered under this Permit shall conduct a seafloor monitoring program to determine compliance with Alaska Water Quality Standards for settleable residues in marine waters. Alaska Administrative Code Part 18—70.020 states that "(Settleable residues) shall not * * * cause a sludge, solids, or emulsion to be deposited * * * on the bottom."

4.2.2 Objective

The seafloor monitoring program shall determine the areal extent (in square feet) of any continuous deposit of sludge, solids, or emulsion from seafood processing wastes on the seafloor bottom of St. Paul Harbor or Near Island Channel.

4.2.3 Schedule

Each permittees covered under this Permit shall conduct the seafloor monitoring program by September 30, 2000, and submit the report to EPA and ADEC no later than December 31, 2000.

4.2.4 Method

The seafloor survey shall include the following elements: Location (including distance from shore and company orientation), depth and condition of the outfall line (including presence, size and location of any breaks or cracks; Water depth at the end of the outfall pipe; Inspection of the area at the end of the outfall pipe and documentation of the type, depth, areal extent, estimated volume, and size of particles of any waste accumulation; Description of the methodology used by the surveyor including transects and location devices; Types of substrate and habitat in and adjacent to the outfall area; Dates, time, tidal movements, weather conditions, name and signature of surveyor, name of company, and NPDES permit number(s); and Video and/or other photographic documentation.

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4.2.5 Signatory Requirement

Each permittee shall ensure that the seafloor monitoring report is signed by a principal officer or a duly appointed representative of the permittee. EPA recommends that the permittee require any of its contractors or agents responsible for this monitoring to certify the truth, accuracy, and completeness of the data reported in accordance with the "Signatory Requirements" [9.5] of this Permit.

5 Quality Assurance Requirements

Each permittee covered under this Permit shall ensure the development and written specification of quality assurance provisions in effluent monitoring plans.

5.1 Purpose and Objectives

The purpose of quality assurance and control requirements is to assure the integrity and quality of the data collected in the monitoring required by this Permit and to assist in planning for the collection and analysis of effluent samples and in explaining data anomalies when they occur.

5.2 Requirements

5.2.1 Reference Documents

Throughout all sample collection and analysis activities, each permittee shall use the EPA recommended quality assurance, quality control, and chain-of-custody procedures described in EPA QA/R–5 "Requirements for Quality Assurance Project Plans" and EPA QA/G–5 "Guidance on Quality Assurance Project Plans." The following reference may be helpful in preparing the Quality Assurance Plan for this permit: "The Volunteer Monitors Guide to Quality Assurance Project Plans" (EPA 841–B–96–003, September 1996). [These documents may be found on the Internet at http://www.epa.gov/r10earth/offices/oea/qaindex.htm]

5.2.2 QA/QC Plan

The QA/QC plan shall include sampling techniques, the number of samples, type of sample containers, preservation of samples, holding times, type and number of quality assurance field samples, analytical methods, analytical detection and quantitation limits (or method detection level) for each target compound, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements.

Name(s), address(es), and telephone number(s) of the laboratories, used by or proposed to be used by the permittee, shall be specified in the Plan.

5.2.3 Retention of Laboratory Records

All laboratory bench sheets used in the analyses shall be maintain for inspection by EPA or ADEC for a period of at least five years (*See* "Retention of Records" [6.2]).

5.2.4 Laboratory Director Certification

Each permittee shall require the laboratory director of each laboratory providing measurement results in support of this Permit to sign and submit to EPA the following statement on a monthly basis with the DMR: *I certify that this data is in compliance with requirements under 40 CFR 136 and other analytical requirements specified in this NPDES Permit, AK–G52–8000.*

Signature _____

Date _____

5.2.5 EPA Support of Quality Assurance and Control

Each permittee may obtain copies of all references cited in this part of the Permit from the following address: Quality Assurance and Data Unit, Office of Environmental Assessment, U.S. EPA, Region 10 OEA–095, 1200 Sixth Avenue, Seattle, Washington 98101

5.2.6 Documentation

A permittee shall submit to EPA and ADEC written certification (See 9.5.4), signed by a principal office or a duly appointed representative of the permittee, of the development and implementation of the QA/QC plan not later than 12 months from the date of issuance of this Permit. A permittee shall maintain a copy of its QA/QC plan at its facility and shall make the plan available to EPA or ADEC upon request.

6 General Monitoring and Records Requirements

6.1 General Monitoring

6.1.1 Monitoring Procedures

Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or EPA approved methods, unless other test procedures have been specified in the Permit. The Collins-Tenney test method is allowed for testing of Oil and Grease. EPA Method 1664 for Oil Grease has been approved as an alternative test procedure for Region 10.

6.1.2 Representative Effluent Sampling

Samples taken in compliance with the effluent monitoring requirements of the Permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

6.1.3 Additional Monitoring by the Permittee

If any pollutant is monitored more frequently than the Permit requires, using test procedures approved under 40 CFR 136 or EPA approved methods or as specified in the Permit, the results of this monitoring shall be reported with the data submitted in the report of effluent monitoring.

6.1.4 Submittal of Reports

Monitoring results shall be summarized each month on a Discharge Monitoring Report (DMR). The reports shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of "Signatory Requirements" [9.5] and "Certification" [9.5.4] and submitted to EPA and ADEC at the following addresses:

Original to: U.S. EPA, Region 10, NPDES Compliance Unit OW–133, 1200 Sixth Avenue, Seattle, Washington 98101.

Copy to: Alaska Department of Environmental Conservation, Water Permits 555 Cordova Street, Anchorage, Alaska 99501.

In compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, the Office of Management and Budget has approved the collection of information in a Discharge Monitoring Report (OMB No. 2040–0004).

6.2 Records Requirements

6.2.1 Records Contents

All effluent monitoring records shall bear the hand-written signature of the person who prepared them. In addition, all records of monitoring information shall include: the date, exact place, and time of sampling or measurements; the names of the individual(s) who performed the sampling or measurements; the date(s) analyses were performed; the names of the individual(s) who performed the analyses; the analytical techniques or methods used; and the results of such analyses.

6.2.2 Retention of Records

Each permittee shall retain copies of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Permit, and records of all data used to complete the application for this Permit, for a period of at least five years from

the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC at any time.

6.2.3 On-site Availability of Records and Reports

Copies of this NPDES Permit, monitoring reports, and other technical documents required under the Permit shall be maintained on-site during the duration of activity at the permitted location.

7 Reporting Requirements

7.1 Noncompliance Reporting

7.1.1 Twenty-Four Hour Notice of Noncompliance

The following occurrences of noncompliance shall be reported by telephone to EPA (206–553–1846) and ADEC (907–269–7500) within 24 hours from the time the permittee becomes aware of the circumstances:

Any noncompliance which may endanger health or the environment; Any violation of a maximum daily discharge limitation for any of the pollutants listed in the Permit (See "Effluent Limitations" [3.1.2]); Any unanticipated bypass which exceeds any effluent limitations in the Permit (See "Bypass of Treatment Facilities" [8.6]); Any upset which exceeds any effluent limitation in the Permit (See "Upset Conditions" [8.7]); or Instances of persistent floating solids, visible foam, or oily wastes and shoreline accumulations (See "Environmental Effects [3.1.3 and 3.1.4]).

7.1.2 Written Notice of Noncompliance

A written notice of the preceding occurrences of noncompliance shall also be provided to EPA and ADEC (See "Submittal of Reports" [6.1.4]) within five days of the time that a permittee becomes aware of the circumstances which lead to the noncompliance.

7.1.3 Other Noncompliance

Instances of noncompliance not required to be reported within 24 hours (such as monthly average exceedances) shall be reported at the time that the next discharge monitoring report is submitted. The written submittal shall contain: A description of the noncompliance and its cause; The period of noncompliance, including exact dates and times; The estimated time noncompliance is expected to continue if it has not been corrected; and Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

7.2 Planned Changes

A permittee shall give 60 days advance notice to EPA and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

The alteration of, or addition to, the facility could result in noncompliance with the explicit effluent limitation of the Permit; The alteration of, or addition to, the facility could significantly change the nature or increase the quantity of pollutants discharged which are not limited explicitly in the Permit; or The alteration of, or addition to, the facility may meet one of the criteria for determining whether the facility is a new source as determined in 40 CFR 122.29(b).

7.3 Notice of New Introduction of Pollutants

The permittee shall provide 60 days advance notice to EPA and ADEC of: Any new introduction of pollutants into the treatment works from an indirect discharger which would be subject to Sections 301 or 306 of the Act if it were directly discharging those pollutants; and Any substantial change in the volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the Permit.

7.4 Anticipated Noncompliance

The permittee shall also give advance notice to EPA and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with Permit requirements.

8 General Compliance Responsibilities

8.1 Duty To comply

Each permittee shall comply with all conditions of this Permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

8.2 Penalties for Violations of Permit Conditions

8.2.1 Civil and administrative penalties

Sections 309(d) and 309(g) of the Act provide that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty not to exceed $27,500 per day for each violation or an administrative penalty not to exceed $11,000 per violation.

8.2.2 Criminal Penalties

Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall be subject to a fine of not more than $1,000,000.

False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. Except as provided in permit conditions in "Bypass of Treatment Facilities" [8.6] "Upset Conditions" [8.7], nothing in this Permit shall be construed to relieve a permittee of the civil or criminal penalties for noncompliance.

8.3 Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Permit.

8.4 Duty To Mitigate

A permittee shall take all reasonable steps to minimize or prevent any

discharge in violation of this Permit that has a reasonable likelihood of adversely affecting human health or the environment.

8.5 Proper Operation and Maintenance

A permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by a permittee to achieve compliance with the conditions of this Permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of this Permit.

8.6 Bypass of Treatment Facilities

8.6.1 Bypass Not Exceeding Limitations

Bypass of wastewater treatment is prohibited if such bypass will produce a discharge which exceeds the effluent limitations of the Permit. EPA or ADEC may take enforcement action against a permittee for a bypass, unless: The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment shall have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and A permittee submitted notices as follows:

Notice of an anticipated bypass. If a permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

Notice of an unanticipated bypass. A permittee shall submit notice of an unanticipated bypass as required under "Noncompliance Reporting" [7.1].

8.6.2 Bypass Approval

EPA and ADEC may approve an anticipated bypass, after considering its adverse effects, if EPA and ADEC determine that it will meet the three conditions listed above in 8.6.1 of this Permit.

8.7 Upset Conditions

8.7.1 Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if a permittee meets the requirements of 8.7.2. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

8.7.2 Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that: An upset occurred and that a permittee can identify the cause(s) of the upset; The permitted facility was at the time being properly operated; The permittee submitted notice of the upset as required under "Reporting of Noncompliance" [7.1]; and The permittee complied with any remedial measures as required under "Duty to Mitigate" [8.4].

8.7.3 Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

8.8 Toxic Pollutants

Each permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions.

9 General Provisions

9.1 Permit Actions

This Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by a permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

9.2 Duty To Reapply

If a permittee intends to continue an activity regulated by this Permit after the expiration date of this Permit, a permittee must apply for and obtain a new permit.

9.3 Duty To Provide Information

A permittee shall furnish to EPA and ADEC, within the time specified in the request, any information that EPA or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit, or to determine compliance with this Permit. A permittee shall also furnish to EPA or ADEC, upon request, copies of records required to be kept by this Permit.

9.4 Other Information

When a permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to EPA or ADEC, it shall promptly submit the omitted facts or corrected information.

9.5 Signatory Requirements

All applications, reports, or information submitted to EPA and ADEC shall be signed and certified.

9.5.1 Permit Applications

All permit applications shall be signed as follows: For a corporation: by a responsible corporate officer; For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

9.5.2 Required Reports and Information

All reports required by this Permit and other information requested by EPA or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if: The authorization is made in writing by a person described above and submitted to EPA and ADEC, and the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

9.5.3 Changes to Authorization

If an authorization under "Signatory Requirements" [9.5] is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section must be submitted to EPA and ADEC prior to or

together with any reports, information, or applications to be signed by an authorized representative.

9.5.4 Certification

Any person signing a document required by this Permit shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

9.6 Availability of Reports

Except for data determined to be confidential under 40 CFR 2, all reports prepared in accordance with this Permit shall be available for public inspection at the offices of EPA and ADEC. A permittee may claim certain types of information as business confidential. When the information is submitted in response to a permit requirement, the permittee will need to identify which documents or portions of documents are company confidential (*See* 40 CFR 2.203(b)). As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

9.7 Inspection and Entry

A permittee shall allow EPA, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to: Enter upon a permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit; Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit; Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

9.8 Oil and Hazardous Substance Liability

Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve a permittee from any responsibilities, liabilities, or penalties to which a permittee is or may be subject under Section 311 of the Act.

9.9 Property Rights

The issuance of this Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

9.10 Severability

The provisions of this Permit are severable. If any provision of this Permit, or the application of any provision of this Permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit, shall not be affected thereby.

9.11 Transfers

This Permit may be automatically transferred to a new permittee if: The current permittee notifies EPA at least 30 days in advance of the proposed transfer date; The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and EPA does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in the preceding paragraph.

9.12 State Laws

Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve a permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

10 Definitions and Acronyms

ADEC means Alaska Department of Environmental Conservation.

BMP means best management practices.

Bottom Fish includes Flounder (e.g., arrowtooth), Rockfish/Red Snapper, Pacific and Grey Cod, Halibut, Pollock, Black Cod/Sablefish, Flatfish/Sole, Whitefish.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility (*See* 8.6).

CFR means the Code of Federal Regulations.

Cooling water means once-through non-contact cooling water.

CWA means the Clean Water Act.

Crab includes King, Tanner (Opilio and Bairdi), and Dungeness.

Daily discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Discharge of a pollutant means any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source."

Domestic wastes means materials discharged from showers, sinks, safety showers, eye-wash stations, hand-wash stations, fish-cleaning stations, galleys, and laundries.

EPA means the United States Environmental Protection Agency.

Maximum means the highest measured discharge or pollutant in a waste stream during the time period of interest.

mg/L means milligrams per liter.

Monthly average means the average of *daily discharges* over a monitoring month, calculated as the sum of all *daily discharges* measured during a monitoring month divided by the number of *daily discharges* measured during that month. One sample taken in a monitoring month is not considered a monthly average.

NOI means a "Notice of Intent," that is, an application for authorization to discharge under a general NPDES permit.

Ocean Dumping Site means a area in Chiniak Bay beginning at approximately 150°22′W to approximately 150°11′ W along the 50 fathom line, north of Humpback Rock to the base line from east end of Long Island to Cape Chiniak. Solid seafood wastes are allowed to be dumped within this area provided the dumping vessel is underway and the seafood wastes are ground to a 0.5 inch particle size prior to discharge.

Persistent means that floating solids, visible foam, or oily wastes (including a sheen) on the surface of the receiving water above the outfall terminus and/or

immediately adjacent to a permittee's dock and shoreline are visible longer than one tidal cycle.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Salmon includes Pink, Chum, Sockeye, Coho, Silver, and others.

Sanitary wastes means human body waste discharged from toilets and urinals.

Seafood means the raw material, including freshwater and saltwater fish and shellfish, to be processed, in the form in which it is received at the processing plant.

Seafood process waste means the waste fluids, organs, flesh, bones, woody fiber and chitinous shells produced in the conversion of aquatic animals and plants from a raw form to a marketable form.

Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Sewage means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance due to inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation (*See* 8.7).

U.S.C. means United States Code.

Water depth means the depth of the water between the surface and the seafloor as measured at mean lower low water (0.0).

[FR Doc. 98–7642 Filed 3–30–98; 8:45 am]
BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitment in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: Friday, April 3, 1998, at 2:00 a.m. to 4:00 p.m. The meeting will be held at the Export-Import Bank in room 1143, 811 Vermont Avenue, NW, Washington, D.C. 20571.

AGENDA: The meeting will include a discussion of the upcoming trip to Africa by the Chairman of Ex-Im Bank. The discussion will focus on the best way to achieve the stated objectives of the trip: assuring of U.S. and African communities that Ex-Im Bank is open and active in these market; developing new business; Establishing new relations with government and business leaders; and enabling the Chairman to receive a first-hand perspective of the business and financing opportunities in these three Southern African markets.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Megan Becher, Room 1284, 811 Vermont Ave., NW Washington DC 20571, (202) 565–3507, no later than March 27, 1998. If any person wishes auxiliary aids (such as sign language interpreter) or other special accommodations, please contact, prior to March 27, 1998, Megan Becher Room 1284, Vermont Avenue, NW Washington, DC 20571, Voice: (202) 565–3955 or TDD (202) 565–3377.

FURTHER INFORMATION CONTACT: For further information, contact Megan Becher, Room 1284, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3507.

Kenneth Hansen,
General Counsel.

[FR Doc. 98–8359 Filed 3–30–98; 8:45 am]
BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

March 25, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by June 1, 1998.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0640.

Title: Construction of SMR Stations Request for Additional Information.

Form No.: FCC 800I.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals, Businesses or other for-profit.

Number of Respondents: 300.

Estimated Time Per Response: 2 hours and 30 minutes.

Total Annual Burden: 750 hours.

Total Annual Cost: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: This data collection (letter format) is used as a method of verifying if licensee has placed station into operation and for notifying the Commission of actual number of mobile units placed in operation after license grant. When a licensee provides conflicting information regarding the construction or operational status of radio facilities authorized to it, the Commission requires clarification/validation/explanation to substantiate the facilities' status so that it may enforce its regulatory responsibilities. Such responsibilities include the allocation and assignment of radio frequency spectrum and determining the viability of the underlying radio license authorizations which provide for use of that spectrum.

The data requested in this collection is being revised to include requesting purchase order/invoices for the base station, transmitter(s) and antenna; Work order/invoices demonstrating completion of station construction; Name, address and phone number of individual(s) performing the station construction; model and serial numbers of mobiles in operation; and a list of users and phone numbers on this system at the time of construction.

The Commission's requirement that systems be permanently constructed and placed in operation is contained in 47 CFR, Rule Section 90.155, 90.313, 90.631, 90.633, 90.651, 90.725 and 90.737.

OMB Approval Number: 3060–0767.

Title: Auction Forms and License Transfer Disclosures—Supplement for the 2nd R&O, Order on Reconsideration, and 5th NPRM in CC Docket No. 92–297.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; State, Local or Tribal Government.

Number of Respondents: 44,000 respondents and 180, 000 responses.

Estimated Time Per Response: 30 minutes—4 hours per response.

Total Annual Burden: 773,000 hours.

Total Annual Costs: $47,452,000.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: The auction rules, among other things, require small business applicants to submit ownership information and gross revenues calculations, and all applicants to submit terms of joint bidding agreements (if any). Furthermore, in a case a licensee defaults or loses its license, the Commission retains the discretion to reauction such licenses. If licenses are reauctioned, the new license winner would be required at the close of the reauction, to comply with the same disclosure requirements. Finally, licensees who transfer licenses within three years will be required to maintain certain information to ensure compliance with Commission rules.

Specifically: (1) Small business license winners (and their successors in interest as licensees) will be required to maintain a file over the license term containing ownership and gross revenues information, necessary to determine their business eligibility as a small business and (2) licensees who transfer licenses within three years are required to maintain a file of all documents and contracts pertaining to the transfer. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form, application (FCC Form 175), whichever is earlier.

The Commission also adopted rules to determine the amount of unjust enrichment payments to be assessed upon assignment, transfer, partitioning and disaggregation of licenses. This rule, applicable to all current and future licensees, is based upon the unjust enrichment rule currently applicable to broadband PCS licensees. Additionally, the Commission amended its general anti-collusion rules, permitting the holder of a non-controlling attributable interest in an applicant to obtain an ownership interest in or enter into a consortium arrangement with another applicant for a license in the same geographic area provided that the original applicant has withdrawn from the auction, is no longer placing bids, and has no further eligibility. To meet the requirements of the exception, the attributable interest holder will be required to certify to the Commission that it did not communicate with the new applicant prior to the date the original applicant withdrew from the auction, and that it will not convey bidding information, or otherwise serve as a nexus between the previous and the new applicant.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–8368 Filed 3–30–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

Open Commission Meeting Thursday, April 2, 1998

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 2, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Wireless Telecommunications—Title: Implementation of Section 255 of the Telecommunications Act of 1996; Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities (WT Docket No. 96–198). Summary: The Commission will consider proposed rules and policies concerning improved access to telecommunications services and equipment by persons with disabilities.

2—Office of General Counsel and Office of Public Affairs—Title: Electronic Filing of Documents in Rulemaking Proceedings (GC Docket No. 97–113). SUMMARY: The Commission will consider action that would allow the public to file electronically some pleadings, comments and ex parte filings in informal rulemaking proceedings.

3—Common Carrier—TITLE: Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance (RM–9101). Summary: The Commission will consider action concerning performance measurements and reporting requirements with respect to operations support systems, interconnection, and operator services and directory assistance.

4—Mass Media—Title: 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes. Summary: The Commission will consider a number of proposals intended to streamline the processing of Mass Media Bureau applications, rules, and processes.

5—Office of Engineering and Technology—Title: Amendment of Parts 2, 15, 18 and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment (ET Docket No. 97–94). Summary: The Commission will consider action to 1) simplify existing equipment author- ization processes; 2) deregulate the equipment authorization requirements for certain types of equipment; and 3) provide for electronic filing of applications for equipment authorization.

The following items will be discussed only if specifically requested by the Commissioners.

6—Office of Engineering and Technology—Title: 1998 Biennial Regulatory Review -- Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices. Summary: The Commission will consider reviewing existing regulations for RF lighting devices.

7—Mass Media—Title: Applications of WCCB-TV, Inc., for Renewal of Licenses for Stations WPET(AM)/WKSI-FM, Greensboro, North Carolina. Summary: The Commission will consider (1) a Response to Notice of Apparent Liability filed by WCCB-TV, Inc., licensee of WPET(AM)/WKSI-FM, Greensboro, North Carolina, and (2) a Petition for Reconsideration filed by the Rainbow-PUSH Coalition, regarding a Memorandum Opinion and Order and Notice of Apparent Liability which granted the license renewal applications of WPET(AM)/WKSI-FM subject to reporting conditions and a Notice of Apparent Liability for a $12,000 forfeiture for violations of the Broadcast Equal Employment Opportunity Rule.

8—Mass Media—Title: Applications of Sea-Comm, Inc., for Renewal of Licenses for Stations WSFM(FM) and WKXB-FM Southport and Burgaw, North Carolina. Summary: The Commission will determine (1) whether Sea-Comm, Inc., violated the Commission's Equal Employment Opportunity Rule in connection with the operation of Stations WSFM(FM) and WKXB(FM); (2) whether it violated Section 73.1015 of the Rules by willfully omitting material facts; and (3) whether, in light of the foregoing, the renewal applications should be granted.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418-0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated March 26, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8499 Filed 3–27–98; 10:16; am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act if 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection title "Transfer Agent Registration and Amendment Form."

DATES: Comment must be submitted on or before June 1, 1998.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4022, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to "Transfer Agent Registration and Amendment Form." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number: (202) 898–3838; Internet address: Comments@fdic.gov).

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Transfer Agent Registration and Amendment Form.

OMB Number: 3064–0026.

Form Number: TA–1.

Frequency of Response: As needed.

Affected Public: Any depository institution that seeks to perform transfer agent functions.

Estimated Number of Respondents: 28.

Estimated Time per Response: 1.25 hours (initial registration), .17 hours (amendment).

Estimated Total Annual Burden: 14 hours.

General Description of Collection: Section 17A(c)(1) of the Securities Exchange Act of 1934 (15 USC 78q) requires a bank to register with the appropriate Federal bank regulator prior to performing any transfer agent function. Under FDIC regulation 12 CFR 341, an insured nonmember bank uses form TA–1 to register with the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility: (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C. this 25th day of March, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–8355 Filed 3–30–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Escambia, Franklin, and Lake Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8405 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Gadsden, Glades, and Okeechobee Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8406 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Hall and White Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8399 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 20, 1998.

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FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Monroe County for Public Assistance (already designated for Individual Assistance).

Evans, Lamar, and Tattnall Counties for Public Assistance and Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8400 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Brantley, Carroll, and Grady Counties for Individual Assistance (already designated for Public Assistance).

Bibb County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8401 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Brantley, Carroll, and Grady Counties for Public Assistance.

Seminole and Ware Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8402 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Dawson, Habersham, Hall, Rabun, and White Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8403 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1207–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1207–DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 1998:

The counties of Boyle, Carter, Clark, Clay, Clinton, Elliott, Fleming, Garrard, Greenup, Johnson, Knox, Lawrence, Lee, Madison, Magoffin, Menifee, Montgomery, Morgan, Owsley, Pulaski, Rowan, Russell, Whitley and Wolfe for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–8404 Filed 3–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Inter-Ocean Cargo Group, Inc., 11682 S/W/ 142 Court, Miami, FL 33186, Officers: Ciro Mendez, President, Miguel Angel Martel, Vice President.

H.G. Forwarding 13126 S. Broadway, Los Angeles, CA 90061, Imelda Galindo Post, Sole Proprietor.

J.D. Brokers, & Forwarding Company, 15520 S.W. 169th Lane, Miami, FL 33187, Officer: Joel De La Paz, President.

Fast Star Forwarding, Inc., 10875 N.W. 33rd Street, Miami, FL 33172, Officer: Jorge Victorian, President.

Natural World Products Inc., 11301 Gilpin Ave., Suite 18, Wilmington, DE 19806, Officer: Anabel Panayotti, President.

Foreign Freight Systems Corp., 7904 N.W. 66 Street, Miami, FL 33166, Officers: Juan W. Mieses, President, Sara Gonzales, Vice President.

Dated: March 25, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–8292 Filed 3–30–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–05]

China National Foreign Trade Transportation Corp. dba Sinotrans; Order To Show Cause

This proceeding is instituted pursuant to section 8, 11 and 13 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. sections 1707, 1710 and 1712, and the Commission's regulations governing the the filing of tariffs and service contracts, 46 C.F.R. Part 514.

China National Foreign Trade Transportation Corp. is a tariffed vessel-operating common carrier doing business as SINOTRANS. SINOTRANS maintains offices at the Jiuling Building, No. 21 Xi San Huan Beilu, Beijing, People's Republic of China. According to records filed in the Commission's Automated Tariff Filing and Information System ("ATFI") Liu Fu Lin is President of SINOTRANS.

As relevant herein, SINOTRANS maintains in ATFI an Essential Terms Publication No. 3, FMC No. 000747–003. Pursuant to the Commission's regulations governing the filing and publication by ocean common carriers of the essential terms of service contracts, SINOTRANS has filed with the Commission the terms of service contract No. 96–11 between SINOTRANS and Sino-Am Marine Co. Inc., a tariffed and bonded non-vessel-operating common carrier based in New York City.

By letter dated November 7, 1997, the Commission's Bureau of Enforcement requested, pursuant to 46 C.F.R. 514.7(m), that the Commission be furnished with service contract records relating to SINOTRANS service contract No. 96–11. Under provisions of § 514.7(m)(3), such records must be furnished within thirty (30) days from the date of the request.

By supplemental letter dated February 6, 1998, the Bureau of Enforcement advised SINOTRANS' custodian of records, Norton Lilly International Inc. ("Norton Lilly"), that the above records had not been provided. The Bureau of Enforcement again requested that all subject service contract records be furnished by SINOTRANS on or before February 20. By fax dated Febrfary 12, 1998, the Pricing Manager of Norton Lilly advised that all requested records would be provided by February 20. According to the Bureau of Enforcement, no responsive records have been furnished by SINOTRANS to date.

The Commission's regulations governing tariffs and service contracts, 46 C.F.R. Part 514, provide unambiguously that every common carrier shall submit requested service contract records within thirty (30) days from the date of the request. 46 C.F.R. 514.7(m)(3). In turn, section 13(a) of the 1984 Act, 46 U.S.C. app. section 1712(a), provides that whoever violates a provision of the 1984 Act, a regulation issued thereunder, or an order of the Commission is liable to the United States for a civil penalty. Each day of a continuing violation constitutes a separate offense.

Now therefore, it is-ordered That, pursuant to section 11 of the Shipping Act of 1984, China National Foreign Trade Transportation Corp., doing business as SINOTRANS, show cause why it should not be found to have violated the Commission's regulations at 46 CFR 514.7(m)(3), by failing to furnish requested service contract records with respect to service contract No. 96–11 within thirty (30) days of a written request therefor;

It is further ordered That, China National Foreign Trade Transportation Corp., doing business as SINOTRANS, show cause why civil penalties should be not be assessed for each day in which SINOTRANS has failed to comply with the requirements of 46 CFR 514.7(m)(3), such penalties to being accruing on and after February 21, 1998;

It is further ordered That this proceeding is limited to the submission of facts and memoranda of law;

It is further ordered That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and

Procedure, 46 CFR 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below;

It is further ordered That China National Foreign Trade Transportation Corp., doing business as SINOTRANS, is named a Respondent in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondent and any intervenors in support of Respondent no later than April 27, 1998;

It is further ordered That the Commission's Bureau of Enforcement be made a party to this proceeding;

It is further ordered That reply affidavits and memoranda of law shall be filed by the Bureau of Enforcement and any intervenors in opposition to Respondent no later than May 12, 1998;

It is further ordered That rebuttal memoranda of law shall be filed by Respondent and any intervenors in support of Respondent no later than May 27, 1998;

It is further ordered That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefor and why argument by memorandum is inadequate to present the party's case; and

(c) Any request for evidentiary hearing or oral argument shall be filed no later than May 27, 1998;

It is further ordered That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondent;

It is further ordered That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

Finally, it is ordered That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission in this proceeding shall be issued by November 30, 1998.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–8353 Filed 3–30–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 14, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Charles R. Hall, Perry, Oklahoma; to acquire voting shares of Perry Bancshares, Inc., Perry, Oklahoma, and thereby indirectly acquire voting shares of Exchange Bank and Trust Company, Perry, Oklahoma.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Learner Survivor Trust II, UAT, and Learner Marital Deduction Trust II, UAT, both of Walnut Creek, California; to each retain voting shares of Learner Financial Corporation, Walnut Creek, California and thereby indirectly retain voting shares of Scott Valley Bank, Yreka, California.

In addition, LFC Investors, L.P., and Learner Family 1998 Trust, both of Walnut Creek, California, and Albert H. Newton, Jr., Yreka, California, Trustee of the Learner Family 1998 Trust; also have applied to acquire 100 percent of the voting shares of Learner Financial Corporation, Walnut Creek, California and thereby indirectly acquire voting shares of Scott Valley Bank, Yreka, California.

Board of Governors of the Federal Reserve System, March 25, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8281 Filed 3-30-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Employee Stock Ownership Trust of People's Bank and Trust Company of Pickett County, Byrdstown, Tennessee; to acquire 40 percent of the voting shares of Upper Cumberland Bancshares, Inc., Byrdstown, Tennessee, and thereby indirectly acquire Peoples Bank and Trust Company of Pickett County, Byrdstown, Tennessee.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hall Properties, LP, Perry, Oklahoma; to become a bank holding

company by acquiring 40 percent of the voting shares of Perry Bancshares, Inc., Perry, Oklahoma, and thereby indirectly acquire Exchange Bank & Trust Company, Perry, Oklahoma.

Board of Governors of the Federal Reserve System, March 25, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–8280 Filed 3-30-98; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of April meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a two-day meeting on Thursday, April 16, and Friday, April 17, 1998 from 9:00 A.M. to 4:00 P.M. in Room 7C13 of the General Accounting Office building 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss the following issues: (1) Management Discussion and Analysis, (2) Natural Resources, (3) Credit Reform proposed amendments, and (4) Internal use Software.

Any interested person may attend the meeting as an observer. Board discussions and reviews reopen to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: March 24, 1998.

Wendy M. Comes,

Executive Director.

[FR Doc. 98–8437 Filed 3–30–98; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement With Albert Einstein Medical Center

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of a cooperative agreement with Albert Einstein Medical Center.

The Office of Minority Health (OMH), Office of Public Health and Science, announces that it will extend the established cooperative agreement with Albert Einstein Medical Center in Philadelphia, Pennsylvania, to continue the Cancer Awareness and Prevention Program in North Philadelphia.

The purpose of this cooperative agreements to reduce the cancer incidence,morbidity and mortality of the minority populations living in the North Philadelphia area. The objective of this cooperative agreement is to continue, through a coalition effort, the development of more eff3ctive minority-focused cancer prevention, early detection, and education and treatment programs. The OMH will provide technical assistance and oversight, as necessary, for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation form other Government agencies and non-government agencies.

Authority

This cooperative agreement is authorized under Section 1707(d)(1) of the Public Health Service Act.

Background

During the past three years, the North Philadelphia Cancer Awareness and Prevention Program has been operated by the Albert Einstein Medical Center via a cooperative Agreement with OMH. It has successfully provided comprehensive cancer education, outreach and screening programs targeted at minority populations in the underserved urban areas of North Philadelphia. The fiscal year 1998 Conference Report Language included funds for the North Philadelphia Cancer Awareness and Prevention Program.

Albert Einstein Medical Center is uniquely qualified to continue to accomplish the objectives of this cooperative agreement because it has the following combination of factors:

- The infrastructure and expertise, as demonstrated through past activities, to work with the at-risk, targeted minority populations of North Philadelphia;
- The ability to provide continuity;
- The ability, as demonstrated through past activities, to carry out a program designed to reduce the cancer incidence, morbidity, and mortality of targeted minority populations living in North Philadelphia;
- An economically disadvantaged service area composed of at-risk, minority populations who experience high rates of cancer incidence and mortality;
- Previous experience enlisting neighborhood partners to provide sites for conducting educational seminars and screening programs, and disseminating health-related materials; and
- An established cancer center capable of addressing a variety of issues relevant to this project (i.e., early detection, prevention, diagnoses, treatment, continuity of care, and follow up).

Based on the above considerations, assistance will be provided only to Albert Einstein Medical Center. No other applications are being solicited under this announcement. This cooperative agreement will be awarded for a 3-year period. It is anticipated that funds in the amount of $250,000 (direct and indirect costs) will be available per each 12-month budget period within the 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where to Obtain Additional Information: if you are interested in obtaining information regarding the project, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance: The OMB Catalog of Federal Domestic Assistance number for this cooperative agreement is 93.004.

Dated: March 12, 1998.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 98–8298 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on April 27, 1998, from 8:00 am to 5:00 pm and on April 28, 1998 from 8:00 am to 3:00 pm. The meeting will take place in the Kaleidoscope Room of the Georgetown Holiday Inn, 2101 Wisconsin Ave. N.W., Washington, D.C. 20007. The meeting will be entirely open to the public.

The Committee will consider blood product shortages. On April 27, 1998 the committee will review information presented to it by representatives of consumers, industry and government agencies. At the conclusion of these presentations, the public will be invited to comment. Following these presentations, the Committee will consider what, if any, recommendations to make to the Department on this matter.

Prospective speakers should notify the Executive Secretary of their desire to address the Committee and should plan for no more than 5 minutes of comments.

FOR FURTHER INFORMATION CONTACT:

Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Safety, Department of Health and Human Services, 200 Independence Avenue S.W., Washington, D.C. 20201. Phone (202) 690–5560 FAX (202) 690–6584 e-mail SNIGHTIN@osophs.dhhs.gov.

Dated: March 18, 1998.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 98–8295 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–10–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. National Hospital Ambulatory Medical Care Survey—(0920–0278)—Extension—The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992 by the Division of Health Care Statistics, National Center for Health Statistics, CDC. The NHAMCS is the principal source of data on the approximately 158 million visits to hospital emergency and outpatient departments and is the only source of nationally representative estimates on the demographic characteristics of outpatients, diagnoses, diagnostic services, medication therapy, and the patterns of use of care in hospitals which differ in size, location, and ownership. Additionally, the NHAMCS is the only source of national estimates on non-fatal causes of injury in the emergency department.

These data complement the data on visits to non-Federal physicians in office-based practices collected through the NHAMCS (0920–0234), together providing data on approximately 90 percent of the ambulatory care provided in the U.S. Data collected through the NHAMCS are essential for the planning of health services, for improving medical education, determining health care work force needs and assessing the health status of the population. Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies such as NIH, various private associations such as the American Heart Association, as well as universities and state health departments. Total annual burden hours are 7,062.

Form name	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Hospital-Induction (NHAMCS–101):				
Noneligible	50	1	0.25	13
Eligible	440	1	1	440
Ambulatory Unit Induction (ED) (NHAMCS–101/U)	425	1	1	425
Ambulatory Unit Induction (OPD) (NHAMCS–101/U)	275	4	1	1100
ED Patient Record form	425	50	0.06666	1,417
OPD Patient Record form	275	200	0.066666	3,667

2. National Ambulatory Medical Care Survey—(0920–0234)—Extension—The National Ambulatory Medical Care Survey (NAMCS) was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. It is directed by the Division of Health Care Statistics, National Center for Health Statistics, CDC. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The NAMCS target population consists of all office visits within the United States made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care. The complement portion of data collection consists of the remaining physicians in the AMA and AOA files; that is, physicians who AMA and AOA classify as being federally employed, or in the three specialties excluded from the traditional NAMCS, or as not spending the majority of their professional time in office-based practice. Since more than 80 percent of all direct ambulatory medical care visits occur in physicians' offices, the NAMCS provides data on the majority of ambulatory medical care services. To complement these data, in 1992 NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) to provide data concerning patient visits to hospital outpatient and emergency departments. The NAMCS, together with the NHAMCS constitute the ambulatory component of the National Health Care Survey (NHCS), and will provide coverage of more than 90 percent of ambulatory medical care.

The NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics and medical problems, and the physicians' diagnostic services, therapeutic prescriptions and disposition decisions. These data, together with trend data, may be used to monitor the effects of change in the health care system, provide new insights into ambulatory medical care,

and stimulate further research on the use, organization, and delivery of ambulatory care.

Users of NAMCS data include congressional and other Federal government agencies (e.g. NIMH, NIAAA, NCI, HRSA), State and local governments, medical schools, schools of public health, colleges and universities, private businesses, nonprofit foundations and corporations, professional associations, as well as individual practitioners, researchers, administrators and health planners.

Users vary from the inclusion of a few selected statistics in a large research effort, to an in-depth analysis of the entire NAMCS data set covering several years. Total annual burden hours are 3,350.

Form name	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
NAMCS:				
Induction	2,500	1	0.25	625
Patient Record	2,500	30	0.0333	2,500
COMPLEMENT:				
Induction	500	1	0.25	125
Patient Record	100	30	0.0333	100

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8343 Filed 3–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Safety and Occupational Health Study Section (SOHSS) Second Task Group Session.

Time and Date: 1 p.m.–3 p.m., April 15, 1998.

Place: NIOSH Grants Office, Prete Building, Room B229, 040 University Avenue, Morgantown, West Virginia, 26505, telephone 304/285–6047.

Status: Open: 1 p.m.–1:15 p.m., April 15, 1998; Closed: 1:15 p.m.–3 p.m., April 15, 1998.

Purpose: The SOHSS Task Group Second Session will review, discuss, and evaluate grant application(s) in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas and announcement number 807 entitled, "Mining Occupational Safety and Health Research Grants."

It is the intent of NIOSH to support broad-based research endeavors to keep within the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as, to support more focused research projects that will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote the program goals.

Matters To Be Discussed: Agenda items include welcome and introductions of the SOHSS Task Group instructions, and review of applications. Beginning at 1:15 p.m., through 3 p.m., April 15, the Task Group will meet to consider safety and occupational health related grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone 304/285–5979.

Dated: March 25, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8345 Filed 8–30–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.-5 p.m., April 14, 1998; 8:30 a.m.-12 p.m., April 15, 1998.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include development of new vaccines for TB; discussions on the 1997 TB surveillance report; TB treatment and preventive therapy; prevention activities around global TB; and developing long term priorities for TB elimination. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Beth Wolfe, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

Dated: March 25, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–8346 Filed 3–30–98; 8:45 am]

BILLING CODE 4163–18–P

VOL 63 ISS 61 MR 31 1998 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Native Employment Works (NEW) Program Plan Guidance and Report Requirements.

OMB No.: 0970–0174.

Description: The purpose of this document is to determine whether a NEW program plan is complete and will fulfill its intended purpose, goals and objectives to provide work activities. The plan will provide an outline of how the Tribe's program will be administered and operated and instructions for reporting program characteristics. It is also used to provide the public with information about the NEW program.

Respondents: Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program Plan	78	1	40	3,120
Report	78	1	16	1,248

Estimated Total Annual Burden Hours: 4,368.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 25, 1998

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–8297 Filed 3–30–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community-Based Family Resource and Support Grants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	57	1	40	2,280
Annual Report	57	1	24	1,368

Estimated Total Annual Burden Hours: 3,648.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork

OMB No.: 0970–0155.

Description: Application information is required when a State wishes to receive a Community-Based Family Resource and Support (CBFRS) grant award. This Program Instruction contains information collection requirements that are found in Public Law 104–235 at sections 202(1)(A); 202(b); 203(b)(1)(B); 205; submitted pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, provide training and technical assistance to the grantee, and evaluate State efforts in the prevention of child abuse and neglect.

Respondents: State, Local or Tribal Govt.

Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: March 25, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–8296 Filed 3–30–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–196 Temporary Assistance for Needy Families Financial Reporting Form.

OMB No.: 0970–0165.

Description: The form provides specific data regarding claims and provides a mechanism for States to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. The following citations should be noted in regards to this collection: 405(c)(1); 409(a)(7); and 4–09(a)(1).

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	54	4	8	1,728

Estimated Total Annual Burden Hours: 1,728.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: March 25, 1998.

Robert Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–8299 Filed 3–30–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95C–0211]

Wesley Jessen Corp.; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 5C0246) proposing that the color additive regulations be amended to provide for the safe use of 2-[[2,5-diethoxy-4-[(4-methylphenyl)thio]phenyl]azo]-1,3,5-benzenetriol to tint soft (hydrophilic) contact lenses.

FOR FURTHER INFORMATION CONTACT: John R. Bryce, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3023.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 18, 1995 (60 FR 43157), FDA announced that a color additive petition (CAP 5C0246) had been filed by Pilkington Barnes Hind. The petition proposed to amend the color additive regulations in § 73.3115 2-[[2,5-Diethoxy-4-[(4-methylphenyl)thio]phenyl]azo]-1,3,5-benzenetriol (21 CFR 73.3115) to provide for the safe use of the color additive to tint soft (hydrophilic) contact lenses. Since the publication of the filing notice, Pilkington Barnes Hind has been acquired by Wesley Jessen Corp., 333 East Howard Ave., Des Plaines, IL 60018–5903. Wesley Jessen Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6(c)(2)).

Dated: March 9, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–8303 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0183]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-hydroxy-1-[4-(2-hydroxyethoxy)phenyl]-2-methyl-1-propanone as a photoinitiator for adhesives and pressure-sensitive adhesives intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4589) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY

10591–9005. The petition proposes to amend the food additive regulations to provide for the safe use of 2-hydroxy-1-[4-(2-hydroxyethoxy)phenyl]-2-methyl-1-propanone as a photoinitiator for adhesives complying with § 175.105 *Adhesives* (21 CFR 175.105) and pressure-sensitive adhesives complying with § 175.125 *Pressure-sensitive adhesives* (21 CFR 175.125) intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: March 13, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–8302 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0172]

Amended Procedures for Advisory Panel Meetings; Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Amended Procedures for Advisory Panel Meetings." The purpose of the guidance document is to establish standard operating procedures to be followed by the Center for Devices and Radiological Health (CDRH), the Center for Biologics Evaluation and Research (CBER), FDA personnel, and interested persons outside FDA in carrying out the Federal Food, Drug, and Cosmetic Act (the act), as amended through the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments concerning the draft guidance must be received by June 29, 1998. After the close of the comment period, written comments may be submitted at any time to the contact person listed below.

ADDRESSES: Written comments concerning the draft guidance that are submitted within the 90 days comment period must be addressed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in heading of this document. Submit written requests for singles copies of the draft guidance to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance document entitled "Amended Procedures for Advisory Panel Meetings" was developed to establish standard operating procedures to be followed by the CDRH, CBER, FDA personnel, and interested persons outside FDA in carrying out section 513(b)(6) of the act (21 U.S.C. 360c(b)(6)) as amended by section 208 of FDAMA. Beginning on February 19, 1998, section 513(b)(6)(A) of the act requires that FDA provide to any person whose device is subject to a classification panel review be given the same access to data and information submitted to a classification panel except data and information that are not available for public disclosure under the Freedom of Information Act (5 U.S.C. 552). FDAMA further amended the act to require any person whose device is under review by a classification panel to have the opportunity to submit information based on the data or information provided in the application to the panel for its review. It also provides the same opportunity as the Secretary of Health and Human Services to participate in panel meetings. Section 513(b)(6)(B) of the act requires that adequate time be provided for initial presentations and for response to any differing views by persons whose devices are specifically the subject of a classification panel, and that free and open participation by all interested persons be encouraged.

II. Significance of Guidance

The guidance document represents the agency's current thinking on the amended procedures for advisory panel meetings. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The guidance document entitled "Amended Procedures for Advisory Panel Meetings" is a Level 1 guidance document under FDA's Good Guidance Practices Policy. Public comment prior to implementation of the guidance document is not required because the guidance is needed to implement new statutory requirements enacted by FDAMA.

III. Comments

Interested persons may, on or before June 29, 1998, submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. After June 29, 1998, written comments may be submitted at any time to the contact person listed above.

IV. Electronic Access

In order to receive the draft guidance entitled "Amended Procedures for Advisory Panel Meetings" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 413, followed by the pound sign (#). Then follow the remaining voice prompt to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the guidance document entitled "Amended Procedures for Advisory Panel Meetings," device safety alerts, **Federal Register** reprints, information on premarket submissions

(including lists of approved applications and manufacturers addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The guidance document entitled "Amended Procedures for Advisory Panel Meetings" will be available at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

Dated: March 25, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–8301 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0173]

PMA/510(k) Expedited Review Guidance for Industry and Center for Devices and Radiological Health Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "PMA/510(k) Expedited Review Guidance for Industry and the Center for Devices and Radiological Health (CDRH) Staff." FDA believes it is in the interest of the public health to review premarket approval applications (PMA's) and premarket notifications (510(k)'s) for certain medical devices in an expedited manner. The expedited review will generally be considered when a device offers a potential for clinically meaningful benefit as compared to the existing alternatives (preventive, diagnostic, or therapeutic) or when the new medical device promises to provide a revolutionary advance (not incremental advantage) over currently available alternative modalities.

DATES: Submit written comments concerning this guidance by June 29, 1998. After the close of the comment period, written comments may be submitted at any time to one of the contact persons listed in this document.

ADDRESSES: Written comments concerning this guidance that are submitted within the 90-day comment period must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the guidance on a 3.5" diskette to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

On expedited review for PMA's:
Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

For expedited review for 510(k)'s:
Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

The criteria and procedures under which expedited review would apply to PMA's and Premarket Notifications (510(k)'s) for medical devices were previously identified in General Program Memorandum #G94–2, "PMA/510(k) Expedited Review." In order to reflect the criteria in section 515(d)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(5)), as modified by section 202 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) entitled "Special Review for Certain Devices," the criteria section of the guidance has been modified. These modifications include rearranging the first three criteria and revising the fourth to track the new statutory language more closely. All other sections of the guidance remain the same. This document rescinds and replaces General Program Memorandum #G94–2, "PMA/510(k) Expedited Review."

These procedures are based upon the Management Action Plan initiative paper entitled "PMA/510(k) Expedited Review Process." This guidance embodies the procedures flowing from that issue paper and implements the principles in that document as the policy of the Office of Device Evaluation (ODE). This Blue Book Memorandum will be used by ODE reviewers in applying procedures for the review of incoming PMA's and 510(k)'s.

FDA believes it is in the interest of the public health to review PMA's and 510(k)'s for certain medical devices in an expedited manner. Expedited review will generally be considered when a device offers a potential for clinically meaningful benefit as compared to the existing alternatives (preventative, diagnostic, or therapeutic) or when the new medical device promises to provide a revolutionary advance (not incremental advantage) over currently available alternative modalities.

Granting of expedited review status means that the marketing application would receive priority review before other pending PMA's and 510(k)'s, i.e., the application will be placed at the beginning of the appropriate review queue. If multiple applications for the same type of medical device offering comparable advantage over existing approved alternatives have been granted expedited review, the applications will be reviewed with priority according to their respective submission due dates. Once one of the applications is approved, those of the same type still pending will generally lose their expedited review status with regard to review resources but will retain their place in the review queue.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the procedures to be followed for expedited review of PMA's and (510(k)'s). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

This guidance document entitled "PMA/510(k) Expedited Review Guidance for Industry and CDRH Staff" is a Level 1 guidance under FDA's Good

Guidance Practice Policy. Public comment prior to implementation of the guidance document is not required because the guidance is needed to implement new statutory requirements enacted by FDAMA.

III. Electronic Access

In order to receive the guidance entitled "PMA/510(k) Expedited Review Guidance for Industry and CDRH Staff" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 108, followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the "PMA/510(k) Expedited Review Guidance," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The "PMA/510(k) Expedited Review Guidance" will be available at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLENTIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

IV. Comments

Interested persons may, on or before June 29, 1998, submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Two copies of any comments are be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. After June 29, 1998, written comments may be submitted at any time to one of the contact persons in this document.

Dated: March 25, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–8300 Filed 3–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[PRT–676811]

Notice of Regional Director's Permit Amendment

U.S. Fish and Wildlife Service Endangered Species Permit PRT –676811, issued to the Regional Director—Region 2 is amended by two technical amendments: (1) to extend the expiration date from April 15, 1998, through June 15, 1998, and (2) to conduct scientific research and recovery activities to include "take" for species currently listed in Region 2.

SUMMARY: The expiration date of this permit is being extended to allow for appropriate public comment for the renewal of this permit. The permit is currently being processed for renewal to continue to conduct specific activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 at (505) 248–6649.

Dated: March 25, 1998.

Renne Lohoefener,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–8342 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AK–910–0777–51)

Iditarod Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Iditarod Advisory Council Meeting.

SUMMARY: The Iditarod Advisory Council will conduct an open meeting Wednesday, May 6, 1998, and Thursday, May 7, 1998, from 9 a.m. until 4 p.m. each day. The purpose of the meeting is to discuss the formation of a non-profit organization to assist in the management of the Iditarod National Historic Trail. The meeting will be held at the Seward Museum, 336 Third Avenue, Seward, Alaska.

Public comments pertaining to management of the Iditarod National Historic Trail will be taken from 1—2 p.m. Wednesday, January 6. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: March 23, 1998.

Nick Douglas,

Anchorage District Manager.

[FR Doc. 98–8357 Filed 3–30–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–74]

Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council Meeting.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Thursday, May 7, 1998, from 9 a.m. until 4:30 p.m. and Friday, May 8, 1998, from 8:30 a.m. until 3 p.m. The council will review BLM land management issues and take public comment on those issues. The meeting will be held at the Alaska Resources Library and Information

Service (ARLIS) building located at 3150 "C" Street, Suite 100, Anchorage, Alaska.

Public comment will be taken from 1–2 p.m. Thursday, May 7. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: March 24, 1998.

Tom Allen,

State Director.

[FR Doc. 98–8358 Filed 3–30–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–01]

Temporary Designation of Areas Open to Motor Vehicles Within the Keyesville Special Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of trails open for use by off-highway vehicles and areas closed to the operation of motor vehicles within the Keyesville Special Management Area of the Bakersfield Field Office, CA.

SUMMARY: Off-highway vehicles operating on public land within the Keyesville Special Management Area may utilize designated trails. Other vehicles may access public land using existing roads. All other public lands in Keyesville are closed to motorized vehicles.

SUPPLEMENTARY INFORMATION: Effective May 1, and pursuant to 43 CFR 8341.2(a) and 43 CFR 8360, all motorized vehicles must remain on designated trails, publicly maintained roads or established easement on public land within the Keyesville Special Management Area. Except as noted below, camping sites and other locations on public land within the Keyesville Special Management Area may be accessed by using existing roads. Such travel is limited to use as necessary for access.

Notwithstanding the above, dune buggies, all-terrain vehicles (ATVs), all motorcycles designed or equipped for off-highway travel and any vehicle registered under Section 38010 of the California Motor Vehicle Code, may not be operated off designated trails on public land within the Keyesville Special Management Area. Designated trails are the Dutch Flat Train, designated segments of the Keyesville Classic Trails, Hogeye Ridge Trail, Snake Pit Trail and Kern Canyon Trail.

Nothing herein will restrict or in any way prevent legitimate access to private property within the Keyesville Special Management Area or restrict the use of equipment for any purpose approved either by the Authorized Officer or authorized through an approved plan of operations or unpatented mining claims. This closure does not apply to roads or highways maintained by the State of California or Kern County. Employees of any governmental jurisdiction are exempt from this regulation when employed in the furtherance of their duties.

This closure includes all public lands in T. 26 S., R. 33 E. Section 30 W½, Sec. 31 W½; T.26 S., R.32 E. Sec 25, Sec. 35, Sec 36; and T. 27 S., R. 32 E. Sec 1 and Sec 2, Mount Diablo Base and Meridian.

Any vehicle operated on public land within the Keyesville Special Management Area that is found in violation of any law or regulations relating to the use or operation of off-highway vehicles as defined in 43 CFR 8340.0–5 may be impounded pending an assessment of resource damage or court proceedings.

Trails designated for the use by off-highway vehicles within the Keyesville Special Management Area will be designated by "open" trail signs. A map showing the location of such trails will be made available at the Bakersfiled Field Office.

This order is intended to curtail considerable existing adverse effects upon soil, vegetation and wildlife habitat within the Keyesville Special Management Area. It is in conformance with the May 1997 Caliente Resource Management Plan.

The order will expire upon completion of a special recreation plan applicable to the Keyesville Special Management Area.

Penalties for violation of this order are contained in 43 CFR 8340.0–7. Such punishment may be a fine of not more than $1,000 or imprisonment for not longer than 12 months, or both.

Dated: March 25, 1998.

Ron Fellows,

Field Office Manager.

[FR Doc. 98–8344 Filed 3–30–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Prospective Grant of Exclusive Patent Licenses—Filing Receipt Number: S.N. 08/933, 175—Sept. 18, 1997

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I). The Bureau of Reclamation (Reclamation) is contemplating the granting of a limited exclusive license in the United States to practice the invention embodied in an invention titled "A Water Treatment Chemical Metering and Control System". The exclusive license is to be granted to Turner Designs Inc., having a place of business in Salt Lake City, Utah. The patent rights in this invention have been assigned to the Untied States of America.

The prospective limited exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce Reclamation's intent to grant an exclusive license to practice the invention listed above if it issues as a patent, it also serves to publish the availability of this invention for licensing in accordance with law. The prospective license may be granted unless Reclamation receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S. C. 209 and 37 CFR 404.7.

DATES: Written evidence and arguments against granting the prospective license must be received by June 29, 1998.

ADDRESSES: Inquiries, comments, and other materials relating to the contemplated license may be submitted to Donald E. Ralston, Bureau of Reclamation, Research and Technology Transfer, MS–7621, 1849 C Street, N.W., Washington, D.C. 20240.

A copy of the above-identified patent may be purchased from the National Technical Information Service (NTIS) Sales Desk by telephoning 1–800–553–NTIS, or by writing NTIS at 5285 Port Royal Road, Springfield VA 22161.

FOR FURTHER INFORMATION CONTACT: Donal E. Ralston by telephone at (202) 208–5671.

SUPPLEMENTARY INFORMATION: The invention is capable of automatically controlling the injection of any chemical into any flow stream regardless of the characteristics of the stream or the ability to detect the injected chemical.

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The system was originally developed to control the concentration of pesticides used for weed control in canals with fluctuating flow rates. Generally, aquatic pesticides are most effective if injected at constant concentrations over a period of several days. With many of these pesticides, it is not possible to measure concentrations in real time, and in canals it is not possible to measure the flow rate accurately without expensive construction. This novel technology addresses these problems.

Properly filed competing applications received by Reclamation in response to this notice will be considered as objections to the grant of the contemplated license.

Dated: March 12, 1998.

Donald E. Ralston,

Liaison, Research and Technology Transfer.

[FR Doc. 98–8311 Filed 3–30–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Office of Police Corps and Law Enforcement Education; Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice information collection under review; New Collection; Police Corps Interim Final Regulation.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 4, 1998. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Mr. Dennis Marwich, (202) 395–3122, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Charlotte Grzebien, (202) 514–3750, Assistant General Counsel, Office of Oriented Policy Services, 1100 Vermont Avenue, N.W., Washington, D.C. 20530, or via facsimile at (202) 616–2914.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Brenda Dyer, U.S. Department of Justice, Deputy Clearance Officer (phone number and address listed below). If you have any additional comments, suggestions, or need a copy of the proposed information collection, instrument, or additional information, please contact Brenda Dyer, Department Deputy Clearance Officer, Department of Justice, Justice Management Division, 1001 G Street N.W., Suite 850, Washington, D.C. 20530.

Overview of this information:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Police Corps Interim Final Regulation.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: COPS 17/01. Office of Police Corps and Law Enforcement Education, Office of Community Oriented Policy Services, U.S. Department of Justice.

(4) Affected public who will be as ore required to respond, as well as a brief abstract: Primary: State, Local, or Tribal governments. Other: None. The Police Corps Interim Final Regulation sets forth guidance to interested States and Territories and individual participants on the requirements for participation in the Police Corps, a scholarship program for students willing to provide 4 years of service in return for funding. The Regulation specifics required information on each participant.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Police Corps Interim Final Regulation: Approximately 8 respondents; at 10 hours per response (including record-keeping). Total annual burden hours requested 160.

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 160 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 850, Washington Center, 1001 G Street N.W., Washington, DC 20530.

Dated: March 25, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–8339 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Police Corps and Law Enforcement Education; Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Reinstatement, with change, of a previously approved collection for which approval has expired.

Police Corps Service Agreement

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 4, 1998. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Dennis Marwich, (202) 395–3122, Department of Justice Desk Officer, Washington, D.C. 20530.

During the first 60 days of this same review period, a regular review of this

information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Charlotte Grzebien, (202) 514–3750, Assistant General Counsel, Office of Oriented Policing Services, 1100 Vermont Avenue, N.W., Washington, D.C. 20530, or via facsimile at (202) 616–2914.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Brenda Dyer, U.S. Department of Justice, Deputy Clearance Officer (phone number and address listed below). If you have any additional comments, suggestions, or need a copy of the proposed information collection, instrument, or additional information, please contact Brenda Dyer, Department Deputy Clearance Officer, Department of Justice, Justice Management Division, 1001 G Street N.W., Suite 850, Washington, D.C. 20530.

Overview of this information:

(1) type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expire.

(2) Title of the Form/Collection: Police Corps Service Agreement.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form COPS 17/02. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be required to respond, as well as a brief abstract: Primary: Individuals or households. Other: None. the Police Corps Service Agreement is the written contract between the Office of Police Corps and Law Enforcement Education and selected Police Corps participants, setting forth the participants' agreement to provide 4 years of law enforcement service in exchange for scholarship or reimbursement funds for educational purposes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Police Corps Interim Final Regulation: Approximately 144 respondents, at 24 hours per response (including record-keeping). Total annual burden hours requested 24.

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 24 annual burden hours.

In addition information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 850, Washington Center, 1001 G Street N.W., Washington, DC 20530.

Dated: March 25, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–8340 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Rivers and Harbors Act of 1899

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *PT Marine, Inc. d/b/a Ryder's Cove Board Yard,* Civil No. 98–10368–PBS (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on March 2, 1998. The proposed decree concerns alleged violations of section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403, resulting from the unlawful construction and maintenance of 73 moorings in Ryder's Cove, Chatham, Massachusetts. A total of 53 of the unauthorized moorings were installed and operated since 1994 and the remaining 20 moorings were added in 1996.

The proposed consent decree would require PT Marine, Inc. to pay $8,200 to the United States as disgorgement of all economic gain realized from the rental of the unlawful moorings and would permanently enjoin PT Marine, Inc. from committing future violations of the Rivers and Harbors Act of 1899. The decree would also would require PT Marine, Inc. to apply for a Corps permit to retain the existing structures and to abide by the Corps' permitting decision, to include removal of the structures if such permit is denied.

The U.S. Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Julie S. Schrager, Assistant United States Attorney, District of Massachusetts, 1003 J.W. McCormack Post Office and Courthouse, Boston MA 02109, and should refer to *United States* v. *PT Marine, Inc. d/b/a Ryder's Cove Boat Yard,* Civil No. 98–10368–PBS (D. Mass.)

The proposed consent decree may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, 1003 J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environmental and Natural Resources Division, United States Department of Justice.

[FR Doc. 98–8397 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act (RCRA)

In accordance with the policy of the United States Department of Justice, as provided in 28 CFR 50.7, notice is hereby given that on March 17, 1998, a proposed Consent Decree in *United States* v. *Rail Services, Inc.,* Civil Action No. 3:98CV–194–H, was lodged with the United States District Court for the Western District of Kentucky. The proposed Decree resolves the claims of the Plaintiffs, the United States and the Natural Resources Protection Cabinet of the Commonwealth of Kentucky, contained in the Complaint, which seeks civil penalties and corrective action for Defendants' violations of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.,* and its implementing regulations, at its rail car servicing facility near Calvert City, Kentucky.

The proposed Consent Decree requires Rail Services to undertake various remedial measures and corrective action at its applicable federal

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and state hazardous waste laws and regulations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C., 20044, and should refer to *United States* v. *Rail Services, Inc.*, D.J. Ref. 90–7–1–728B.

The proposed Consent Decree may be examined at any of the following offices: (1) the Office of the United States Attorney for the Western District of Kentucky, 510 West Broadway, Louisville, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (telephone (202) 624–0892).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. Please refer to the referenced case. There is a photocopying charge of $0.25 per page. The total cost for a copy of the proposed Decree and its attachments is $18.00. All checks should be made payable to "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 98–8338 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Rochester Gas & Electric Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the *United States District Court for the Western District of New York in United States* v. *Rochester Gas & Electric Corporation*, 97–CV–6294T. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

On June 24, 1997, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that defendant Rochester Gas and Electric ("RG&E") entered into a contract with the University of Rochester ("University" or "UR"), in which RG&E promised UR a number of benefits, including electricity at reduced rates, in exchange for the University's promise not to compete against RG&E in the sale of electricity to consumers. The complaint alleges that this agreement violated Section 1 of the Sherman Act, 15 U.S.C. 1, and seeks a judgment by the Court declaring the defendant's agreement to be an unlawful restraint of trade. The complaint also seeks an order by the Court to enjoin the defendant from other activities in the future having a similar purpose or effect.

The United States and defendant have stipulated that the proposed consent judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. The Court's entry of the proposed final judgment will terminate this civil action against RG&E, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

The proposed consent judgment contains three principal forms of relief. First, RG&E is enjoined from enforcing an anticompetitive agreement with the University. Second, RG&E is enjoined from entering into future agreements with the University or any other competitor or potential competitor that could have similar anticompetitive effects. Third, the proposed final judgment places affirmative obligations on RG&E to pursue an antitrust compliance program directed toward avoiding a repetition of its anticompetitive behavior.

Public comment is invited within sixty days of the publication of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone: (202) 307–6351). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20430 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court Western District of New York 272 U.S. Courthouse, 100 State Street, Rockester, New York 14614–1368.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement, Antitrust Division.

Stipulation

It is stipulated by and between the undersigned partics, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Western District of New York.

2. The parties consent that a Consent Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Consent Judgment by serving notice thereof on defendant and by filing that notice with the Court.

3. Plaintiff is instructed to file and publish its competitive impact statement pursuant to 15 U.S.C. 16(b) within 30 days of the filing of this stipulation.

4. The parties shall abide by and comply with the provisions of the proposed Consent Judgment pending entry of the Consent Judgment, and from the date of the filing of this Stipulation, shall comply with all the terms and provisions of the Consent Judgment as though they were in full force and effect as an order of the Court.

5. In the event plaintiff withdraws its consent, or if the proposed Consent Judgment is not entered pursuant to this Stipulation, this Stipulation and the Consent Judgment shall be of no effect whatever and shall be without prejudice to any party in this or any other proceeding.

Dated: February 20, 1998

For Plaintiff Untied States of America

Joel I. Klein,

Acting Assistant Attorney General.

A. Douglas Melamed,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Roger W. Fones,

Transportation, Energy & Agriculture Section.

Lade Alice Eaton, Nina Hale, Rebekah J. French, Janet R. Urban,

Attorneys, Department of Justice, Antitrust Division—Suite 500, 325 Seventh Street, N.W., Washington, D.C. 20004, (202) 307–6351.

Donna Kooperstein,

Assistant Chief, Transportation, Energy, & Agriculture Section.

For Defendant Rochester Gas and Electric Corporation

David M. Schraver,

NIXON, Hargrave, Devans & Doylellp, Clinton Square, P.O. Box 1051, Rochester, New York 14603, (716) 263–1341.

Order

It is *so ordered*, this 20th day of February, 1998.

Michael A. Telesca,

United States District Judge.

Consent Judgment

Plaintiff, United States of America, filed it Complaint on June 24, 1997. Plaintiff and defendant, by their respective attorneys, have consent to the entry of this Consent Judgment without trial or find adjudication of any issue of fact or law. This Consent Judgment shall not be evidence against or an admission by any party with respect to any issue of fact of law. Defendant has denied any wrongdoing or violation of law. Therefore, before the taking of any testimony and without trial or find adjudication of any issue of fact of law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed, as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto.

II. Background

Plaintiff's claims in this action are based primarily upon allege conduct related to a provision contained in the Individual Service Agreement between The University of Rochester and Rochester Gas and Electric Corporation, dated March 31, 1994, which provision reads:

6.3 *Study of Alternatives:* The University may, during the term of this Agreement, study alternatives to the acquisition of energy from RG&E as the University deems appropriate; provided, however, that the University shall not solicit or join with other customer of RG&E to participate in any plan designed to provide them with electric power and/or thermal energy from any source other than RG&E.

III. Definitions

As used herein, the term.

(A) "Agreement" means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons;

(B) "Defendant" or "RG&E" means Rochester Gas and Electric Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships, and all directors, officers, employees, agents and representatives of the foregoing; the terms "subsidiary" and "affiliate" refer to any person in which the defendant holds (50 percent or more) ownership or control;

(C) "Document" means all "writings and recordings" as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence;

(D) "Including" means including but not limited to;

(E) "Joint venture" means a unified or integrated method of doing business in which the parties share substantially in the profits, losses and risks of the interprise;

(F) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, or other legal entity;

(G) "Retail marketing agreement" means any agreement pursuant to which RG&E acts as a retailer of electricity at an unregulated price or of other related products of services on behalf of a national or regional providers of such electricity, products or services, so long as the agreement does not result in the provider or RG&E being the only provider or retailer of electricity at an unregulated price or such other products or services in Monroe Country;

(H) "The University" means the University of Rochester in Rochester, NY.

(I) "Unregulated price" means a price of the sale of electricity other than (1) a price which is the result of a regulatory proceeding, order or acceptance of tariff filings, setting or approving specific uniform rates applicable to a class of classes of customers; or (2) a price set by negotiation between a supplier and a customer at a minimum floor price dictated by statute, regulation or order.

IV. Applicability

This Consent Judgment applies to the defendant and to each of its successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Consent Judgment by personal service or otherwise.

V. Injunction

RG&E, by this Consent Judgment, shall be enjoined from:

(A) enforcing any clause in any contract with The University of Rochester containing the language quoted in Section II, above, or from including any provision containing that language, without the reference to the University, in an any other flexible rate contract (entered into pursuant to RG&E's Service Classification No. 10 or any replacement to Service Classification No. 10) for its retail electric services;

(B) enforcing or attempting to enforce Paragraph 10 of the Memorandum of Understanding, dated October 27, 1993, between RG&E and the University;

(C) entering into or enforcing a covenant or agreement not to compete in the retail sale of electricity with any competitor or potential competitor in the retail sale of electricity; provided, however, that such an agreement not to compete that is reasonably ancillary to the following types of agreements shall not be interpreted as a violation of this Consent Judgment:

(1) employment contracts;

(2) personal service contracts;

(3) agreements regarding the sale or purchase of a business;

(4) joint ventures or partnerships;

(5) retail marketing agreements;

(6) consulting agreements; and

(7) portfolio management contracts.

VI. Exception

Nothing in this Consent Judgment shall prohibit RG&E from engaging in any conduct which is exempt from or immune under the antitrust laws.

VII. Term

(A) This Consent Judgment shall expire ten years from the date of initial filing, unless earlier terminated pursuant to this Section.

(B) This Consent Judgment shall terminate upon demonstration by RG&E that less than 50% of the non-residential retail sales of electricity made at unregulated prices in Monroe County, New York, were made by RG&E. The percentage threshold in this Paragraph must be: (1) Satisfied in terms of kilowatt-hours of electricity sold; and (2) measured as an average over a consecutive six month period.

(C) The procedure for making the determination described in Paragraph B, above is as follows:

(1) Defendant RG&E shall notify the United States in writing when it

believes the threshold stated in Paragraph B has been satisfied over the requisite period, and shall submit to the United States all supporting data and information.

(2) The United States shall object to the defendant in writing within 60 days of receiving the notice and supporting data and information if the United States condluces that RG&E has not demonstrated that the condition has been satisfied.

(3) If the United States does not object within 60 days, this Consent Judgment shall terminate without further act of either party or of this Court.

(4) If the United States does object, the termination will not become effective except by order of this Court.

VIII. Compliance Program

(A) The defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Consent Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving compliance with this Consent Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the defendant to ensure that they comply with this Consent Judgment.

(B) The Antitrust Compliance Officer shall:

(1) Distribute, within 60 days of the entry of this Consent Judgment, a copy of this Consent Judgment to all officers and employees with responsibility for making electric power and planning acquisition of electric power and generating capacity;

(2) Distribute in a timely manner a copy of this Consent Judgment to any officer or employee who succeeds to a position described in Section VIII(B)(1);

(3) Brief annually in writing or orally those persons designated in Section VIII(B)(1) on the meaning and requirements of this Consent Judgment and the antitrust laws and advise them that the defendant's legal advisers are available to confer with them regarding compliance with the Consent Judgment and the antitrust laws;

(4) Obtain from each officer or employee designated in Section VIII(B)(1) a written certification that he or she: (a) has read, understands, and agrees to abide by the terms of this Consent Judgment; and (b) has been advised and understands that his or her failure to comply with this Consent Judgment may constitute contempt of court; and

(5) Maintain a record of recipients to whom the Consent Judgment has been distributed and from whom the certification in Section VIII(B)(4) has been obtained.

(C) At any time, if the defendant's Antitrust Compliance Officer learns of any past or future violations of Section V of this Consent Judgment, the defendant shall, within 45 days after such knowledge is obtained or sooner if feasible, take appropriate action to terminate or modify the activity so as to comply with this Consent Judgment.

IX. Certification

Within 75 days after the entry of this Consent Judgment, the defendant shall certify to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the Consent Judgment in accordance with Section VIII above.

X. Plaintiff Access

(A) To determine or secure compliance with this Consent Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant in accordance with Section XI(C) below, be permitted, subject to any legally recognized privilege:

(1) Reasonable access during the defendant's normal business hours to inspect and copy all non-privileged documents in the possession or under the control of the defendant, who may have counsel present, relating to actions enjoined under Section V, termination under Section VII, and the compliance program under Section VIII of this Consent Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, relating to any matters described in Section X(A)(1) as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section X shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Consent Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the defendant to the plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure (relating to trade secret or other confidential research, development or commercial information), and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by the plaintiff to the defendant prior to disclosing such material in any legal proceeding (other than a grand jury proceeding).

XI. Further Elements of the Consent Judgment

(A) Whenever notice must be provided to a party pursuant to the terms of this Consent Judgment, such notice shall be made by first class mail, return receipt requested, addressed to the following:

To RG&F; Michael T. Tomanino, Esq., Senior Vice President and General Counsel, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, New York 14649.

To the United States: Joel I. Klein, Assistant Attorney General, Antitrust Division, United States Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C., Washington, D.C. 20530.

or to such other person whom the parties may designate from time to time.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Consent Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Consent Judgment is in the public interest.

Dated: _____, 1998.

Hon. Michael A. Telesca,
United States District Judge.

Competitive Impact Statement

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b), the United States files this Competitive Impact Statement

relating to the proposed consent judgment in *United States* v. *Rochester Gas and Electric Corporation*, submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

On June 24, 1997, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that defendant Rochester Gas and Electric ("RG&E") entered into a contract with the University of Rochester ("University" or "UR"), in which RG&E promised UR a number of benefits, including electricity at reduced rates, in exchange for the University's promise not to compete against RG&E in the sale of electricity to consumers. The complaint alleges that this agreement violated Section 1 of the Sherman Act, 15 U.S.C. 1, and seeks a judgment by the Court declaring the defendant's agreement to be an unlawful restraint of trade. The complaint also seeks an order by the Court to enjoin the defendant from other activities in the future having a similar purpose or effect.

The United States and defendant have stipulated that the proposed consent judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. The Court's entry of the proposed judgment will terminate this civil action against RG&E, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

II. Description of the Practices Giving Rise to the Alleged violations of the Antitrust Laws

By the early 1990's regulated electricity rates in New York state had become so high that industrial customers were beginning to look for alternatives to high-priced power, either by relocating to other states or by generating their own electricity.[1] In 1993, the New York Public Service Commission ("PSC") adopted new regulations that permitted utilities to negotiate individual prices with certain customers ("flexible rate contracts") rather than charge a uniform tariff. The PSC intended to afford utilities the flexibility to compete with their largest customers' other supply options.

In the meantime, the University of Rochester, a major customer of RG&E, learned that by building a modern, efficient plant to replace the decades-old steam plant used to heat and cool its buildings, it could produce the steam it needed and also produce—or cogenerate—electricity as a byproduct at a negligible cost. The University formed a study group to analyze and evaluate the cogeneration option, and concluded that a 23 Megawatt (MW) plant would be the optimal size for the University's steam and electricity needs. Such a plant would generate up to one-third more electricity that the University needed, but under New York law, the University could sell the excess electricity to other retail customers in competion with RG&E. PSL section 2(13). In addition, such a plant would be cost effective even if the University continued to buy its electric power form RG&E and sold all the power produced by the congeneration plant to others. Thus, the University was a potential competitor from RG&E in the retail electricity market. On July 20, 1993, the University's Board of Trustees authorized construction of a 23 MW plant and allocated $1.3 million to begin the project.

The cogeneration project came to a halt in October 1993, when RG&E induced the University to enter into a Memorandum of Understanding ("MOU"). In part, the MOU resembles an ordinary—and legal— requirements contract between buyer and seller: RG&E agreed to supply the University with electricity at discounted rates, and the University agreed to purchase of all of its power needs from RG&E for seven years.

But the MOU did not stop there—RG&E obtained the University's commitment not to compete for RG&E customers. The bar on competition is unrelated to the electric requirements contract and prohibits the University for seven years for even studying any "alternative sources of electric power and gas supply" unless the "studies and the activities associated with them shall be confined to the service of the University's own needs." This provision was intended to and did prevent the University from meeting its steam requirements—which were wholly separate from its demand for electricity—in a manner that would bring it into competition with RG&E.

RG&E and the University formalized the agreement set forth in the MOU by entering a flexible rate contract (the "Individual Service Agreement" or "ISA") about six months later. Like the MOU, the ISA includes provisions that are not necessary for the respective commitments by the University and RG&E to buy and sell electricity for the University's needs but rather simply prevent UR from competing with RG&E.

- The University may not solicit RG&E customers or seek to supply them with electricity;
- The University may not join in any plan intended to supply electricity to RG&E customers;
- The University may not participate in any plan to provide any RG&E customers with thermal energy; and
- The University may not work with a developer to provide steam to UR and sell electricity to RG&E customers.[2]

As a result of the agreement not to compete, the University abandoned its plans to build the cogeneration plant and enter the retail electric market, depriving RG&E's customers of a competitive alternative. By in effect "paying" the University—a potential competitor—not to build the new cogeneration plant, RG&E was free to demand higher prices from the customers the University's plant otherwise could have served.

III. Explanation of the Proposed Consent Judgment

The United States and the defendants have stipulated that a consent judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. 16(b)–(h). The proposed judgment provides that the entry of the judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed judgment contains three principal forms of relief. First, RG&E is enjoined from enforcing its anticompetitive agreement with the University. Second, RG&E is enjoined from entering into future agreements with the University or any other competitor or potential competitor that could have similar anticompetive effects. Third, the proposed judgment places affirmative obligations on RG&E to pursue an antitrust compliance program directed toward avoiding a repetition of its anticompetitive behavior.

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[1] Re Competitive Opportunities Available to Customers of Electric and Gas Service, 93–M–0229, Order Instituting Proceeding (March 19, 1993) ("March 19 Order").

[2] These restrictions are set forth in Section 6.3 of the ISA, which reads as follows:

"*Study of Alternatives:* The University may, during the term of this Agreement, study alternatives to the acquisition of energy from RG&E as the University deems appropriate; provided, however, that the University shall not solicit or join with other customers of RG&E to participate in any plan designed to provide them with electric power and/or thermal energy from any source other than RG&E."

A. Prohibited Conduct

Section V(A) of the proposed judgment prohibits RG&E from enforcing the non-compete language in the ISA and enjoins RG&E from including that language in any flexible rate contract with any other customer. Section V(B) prevents RG&E from enforcing Paragraph 10 of its Memorandum of Understanding with the University, which confines the University's study of alternative energy sources to the service of the University's own needs. Section V(C) broadly enjoins RG&E from entering into or enforcing any agreement not to compete in the retail sale of electricity with any competitor or potential competitor, except where the agreement not to compete is reasonably necessary to achieve the legitimate purposes of certain, specified, common contractual arrangements.

B. Defendant's Affirmative Obligations

Section VIII requires that within thirty (30) days of entry of the judgment, the defendant adopt an affirmative compliance program directed toward ensuring that its employees comply with the antitrust laws. The program must include the designation of an Antitrust Compliance Officer responsible for compliance with the judgment and reporting any violations of its terms. Section VIII further requires that each defendant furnish a copy of the judgment, within sixty (60) days of the date of its entry, to all officers and employees with responsibility for marketing electric power and planning acquisition of electric power and generating capacity. Section IX requires RG&E to certify within seventy-five (75) days that it has distributed those copies and designated an Antitrust Compliance Officer. Copies of the judgment also must be distributed to anyone who succeeds to a position described above.

Furthermore, Section VIII requires RG&E to brief all officers and employees with responsibility for marketing electric power and planning acquisition of electric power and generating capacity as to the defendant's policy regarding compliance with the Sherman Act and with the judgment, including the advice that his or her violation of the judgment could constitute contempt of court.

Under Section X of the proposed judgment, the Justice Department will have access, upon reasonable notice, to each defendant's records and personnel in order to determine compliance with the judgment.

C. Scope of the Proposed Consent Judgment

(1) Persons Bound

The proposed judgment expressly provides in Section IV that its provisions apply to RG&E, to each of its successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of the terms of the judgment.

(2) Duration

Section VII provides that the judgment will expire on the tenth anniversary of its entry. The judgment may be terminated earlier in the event of a substantial restructuring of the retail electricity industry in RG&E's service area. The decree terminates if RG&E demonstrates that there has been substantial entry by others into retail sales of electricity made at unregulated prices in Monroe County, New York. Section VII establishes the procedure for making this determination.

(3) Exception

The exception set forth in Section VI of the proposed judgment states that the judgment does not alter RG&E's right to engage in conduct that is exempt from or immune under the antitrust laws. The conduct alleged in the compliant, however, is not immune from the antitrust laws,[3] and the proposed judgment prohibits similar anticompetitive conduct by RG&E in the future.

D. Effect of the Proposed Judgment on Competition

The prohibitions in Section V are designed to ensure that the defendant will compete for retail electric customers and will not limit competition by agreement with competitors or potential competitors who may be able to serve RG&E customers. The eliminating of the prohibited language has had an immediate procompetitive effect. The University has issued a request for proposals to build a cogeneration plant.

The general prohibition of Section V (C) ensures that RG&E will not make future agreements in the future with UR or any other firm to pre-empt new competition before it can even occur. Because future competition will likely come from new market entrants who do not currently compete, the proposed consent judgment explicitly enjoins agreements with potential competitors, some of whom like the University may be current customers of RG&E.

Section V(C)'s prohibition on RG&E entering into any agreement not to compete contains some enumerated exceptions. The exceptions include, for example, employment contracts and contracts to sell a business, which often include agreements not to compete for a limited time period that are ancillary to a lawful purpose. Agreements not to compete in the specific types of contracts specified in Section V(C) are not prohibited by the proposed judgment, but remain subject to the antitrust laws.

RG&E continues to be a virtual monopolist for retail sales of electricity in its service area and a broad prohibition on non-compete clauses with potential competitors is particularly important so long as RG&E maintains its current market dominance. If, however, the retail electric market in RG&E's service territory became subject to effective competition, the prohibition of Section V(C) would no longer be necessary to protect consumers of electricity. In a competitive market, an arrangement between RG&E and one of its numerous competitors would not be likely to restrict output or raise price. Moreover, without market power, RG&E will have less incentive or ability to enter into anticompetitive agreements. For these reasons, Section VI provides that the judgment will terminate once RG&E has less than 50% of the retail sales subject to competitive pricing in its present service area (Monroe County). It is RG&E's burden to establish that this threshold of effective retail electric competition has been satisfied. If the threshold is met, it will mean that barriers to entry into this formerly regulated monopoly market have been removed, and that actual entry has occurred on a significant scale. Unless this substantial restructuring of the industry occurs, the judgment remains in effect.

IV. Remedies Available to Potential Private Plaintiffs

After entry of the proposed judgment, any potential plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which that person may have had if the proposed judgment had not been entered. The proposed judgment may not be used, however, as *prima facie* evidence in litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

[3] *See United States* v. *Rochester Gas & Elec. Corp.*, No. 97–CV–6294T (W.D.N.Y. Feb. 17, 1998) (order denying defendant's summary judgment motion seeking state action immunity).

V. Procedures Available for Modification of the Proposed Judgment

The proposed judgment is subject to a stipulation between the government and the defendant which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the judgment is in the public interest. By it's terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the judgment, including the demonstration of retail market conditions outlined in Section VI of the decree.

As provided by the APPA (15 U.S.C. 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Antitrust Division, Attention: Roger W. Fones, 325 Seventh Street, N.W., Washington, D.C. 20530. Such comments and the government's response to them will be filed with the Court and published in the Federal Register. The government will evaluate all such comments to determine whether there is any reason for withdrawal of its content to the proposed judgment.

VI. Alternative to the Proposed Judgment

The alternative to the proposed judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considered the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides all of the relief sought against the violations alleged in the compliant.

VII. Determinative Materials and Documents

No materials or documents were considered determination by the United States in formulating the proposed judgment. Therefore, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Department of Justice Antitrust Division

By: _____

Jade Alice Eaton,

Transportation, Energy, and Agriculture Section, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–6316.

[FR Doc. 98–8398 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on November 19, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: DMR TRECOM, Milford, CT; and Technology & Process Consulting, Inc., Birmingham, AL are Corporate Members. Bouygues Telecom, Velizy, Cedex, France; Call Technologies, Inc., Reston, VA; CELOGIC, Trappes Cedex, France; Clear Communications Corporation, Lincolnshire, IL; CommTech Corporation, Westerville, OH; ILOG, Inc., Mountain View, CA; Infinet Software, Inc., Boulder, CO; ITTI, Ltd., Poznan, Poland; Minacom International, Inc., Montreal, Quebec, Canada; NCR Corporation, Iselin, NJ; O.TEL.O Communications, Koln, Germany; Positron Fiber Systems, Montreal, Quebec, Canada; RTS Limited, Hemel Hempstead, Hertfordshire, England; Scopus Technology, Inc., Emeryville, CA: Spazio ZeroUno S.p.A., Vimodrone, Italy; Sprint PCS, Lenexa, KS; S.W.I.F.T., La Hulpe, Belgium; Sybase, Inc., Dallas, TX; Tellium, Inc., Edison, NJ; Unique Data Ltd. (UDI), Rishon, Letzion; Israel; Vision In Business, London, England; and Worldbridge Broadband Services, Inc., Nashville, TN are Associate Members. Cohen Communications Group, New York, NY; CRIEPI, Tokyo, Japan; DNA Enterprise, Inc., Richardson, TX; GRC International, Inc., Vienna, VA; and National Communications System, Arlington, VA are Affiliate Members.

No other changes have been made since the last notification filed with the Department in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 8, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60531).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–8337 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1910–98; AG Order No. 2146–98]

RIN 1115–AE26

Termination of Designation of Liberia Under Temporary Protected Status Program After Final 6-Month Extension

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice terminates the Attorney General's designation of Liberia under the Temporary Protected Status (TPS) program provided for in section 244 of the Immigration and Nationality Act, as amended (Act). Eligible aliens who are national of Liberia (and eligible aliens who have no nationality and last habitually resided in Liberia) may re-register for TPS and extension of employment authorization for a final 6-month period.

EFFECTIVE DATES: Termination of the Temporary Protected Status designation for Liberia is effective September 28, 1998, and the TPS designation for Liberia is extended for a final 6-month period, from March 29, 1998, to September 28, 1998. The main re-registration procedures become effective on March 31, 1998, and will remain in effect until April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244 of the Act, 8 U.S.C. 1254, the Attorney General is authorized to grant TPS to eligible aliens who are nationals of a foreign state designated by

the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions that prevent nationals or residents of the country from returning to it in safety.

On March 27, 1991, the Attorney General designated Liberia for Temporary Protected Status for a period of 12 months, 56 FR 12746. the Attorney General subsequently extended the designation of Liberia under the TPS program of six additional 12-month periods, with the last extension valid until March 28, 1998, 62 FR 16608. While extending the designation of Liberia under the TPS program, the Attorney General also concurrently redesignated Liberia under the TPS program. This concurrent extension and redesignation, which was published on April 7, 1997, made TPS available to eligible Liberian TPS applicants who have "continuously resided in the United States" since June 1, 1996, and who had been "continuously present in the United states" since April 7, 1997.

Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the initial period of designation or any extended period of designation, the conditions in a foreign state designated under section 244(b)(1) of the Act. The section also requires the Attorney General to determine whether the conditions for such a designation continue to be met, and to terminate the state's designation when the Attorney General determines that the foreign state no longer continues to meet those conditions.

This notice terminates the designation of Liberia under the TPS program. There may be other avenues of immigration relief, such as asylum, withholding of removal, and cancellation of removal, available to Liberians in the United States who believe that their particular circumstances make return to Liberia unsafe. Those Liberians who have not applied for asylum, withholding of removal, or cancellation of removal, or who are not eligible to apply for permanent residence under any of the established employment or family-based categories, must depart the United States to avoid accruing any periods of unlawful presence that would later subject them to the 3- or 10-year bars to admission under section 212(a)(9)(B)(i) of the Act.

In accordance with section 244(B)(3)(B) and (C) of the Act, this termination will be effective on September 28, 1998, following the final 6-month extension granted by this notice. This notice also describes the procedures with which eligible aliens who are nationals of Liberia (or who have no nationality and who last habitually resided in Liberia) must comply in order to re-register for TPS during this final 6-month period.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Liberia's TPS designation, late initial registrations are possible for some Liberians under 8 CFR 244.2(f)(2), formerly 8 CFR 240.2(f)(2). Such late initial registrants must have been "continuously physically present" in the United States since June 1, 1996, must have had a valid immigrant or non-immigrant status during the original registration period, and must register no later than 30 days from the expiration of such status.

The Immigration and Naturalization Service requires all TPS registrants to submit Form I–765, Application for Employment Authorization, for data-gathering purposes. Therefore, a Form I–765 must always be submitted with the Application for Temporary Protected Status, Form I–821, as part of either a re-registration or late initial registration, even if employment authorization is not requested. The appropriate filing fee must accompany Form I–765 unless a properly documented fee waiver request, pursuant to 8 CFR 244.20, is submitted to the Immigration and Naturalization Service or unless the applicant does not request employment authorization.

Notice of Termination of Designation of Liberia Under the TPS Program

By the authority vested in me as Attorney General under section 244 of the Act, as amended (8 U.S.C. 1254), and pursuant to section 244(b)(3) of the Act, I have had consultations with the appropriate agencies of the U.S. Government concerning (a) the conditions in Liberia; and (b) whether permitting nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) to remain temporarily in the United States is contrary to the national interest of the United States.

As a result of these consultations, I have determined that Liberia no longer continues to meet the conditions for designation of TPS under section 244(b)(1) of the Act. This determination has been based on the understanding that the Department of State will review security conditions in Liberia prior to the September 28, 1998, expiration date of the TPS designation for Liberia. The Department of State could, therefore, provide additional information regarding the possible redesignation for Liberia.

According to information supplied to me by the Department of State, I understand that overall security conditions in Liberia have improved during the past year. Elections were held and the new Liberian Government's policy is to welcome back Liberian refugees. Improved stability and security throughout most of Liberia has led the U.S. Government to support the repatriation of Liberian refugees in neighboring countries.

In view of the Department of State's recommendation for termination, I have determined that TPS is no longer appropriate for Liberia in general. Accordingly, it is ordered as follows:

(1) The TPS designation of Liberia under section 244(b)(3) of the Act is extended for a final 6-month period starting March 29, 1998, and terminating September 28, 1998.

(2) I estimate that there are approximately 8,000 nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) who have been granted Temporary Protected Status and are eligible for the final 6-month period of re-registration.

(3) In order to maintain current registration for TPS, a national of Liberia (or an alien having no nationality who last habitually resided in Liberia) who received a grant of TPS based upon the initial March 27, 1991, designation, or based upon the April 7, 1997, redesignation, must comply with the re-registration requirements contained in 8 CFR 244.17, formerly 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Liberia (or an alien having no nationality who last habitually resided in Liberia) who has been granted TPS and wishes to maintain that status must re-register by filing a new Form I–821, Application For Temporary Protected Status, together with a Form I–865, Application for Employment Authorization, within the 30-day period beginning on March 31, 1998, and ending April 30, 1998, in order to be eligible for TPS during the period from March 29, 1998 to September 28, 1998. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c), formerly 8 CFR 240.17(c).

(5) There is no fee for Form I–821 filed as part of the re-registration application. A Form I–765 must be filed at the same time. If the alien requests employment authorization for the 6-month extension period, the fee prescribed in 8 CFR 103.7(b)(1),

currently seventy dollars ($70), must accompany the Form I–765. An alien who does not request employment authorization must nonetheless file Form I–765, together with Form I–821, but in such cases no fee will be charged.

(6) Information concerning the TPS program for nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: March 25, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–8336 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 26, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before April 30, 1998.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Export Price Indexes.

OMB Number: 1220–0025 (Revision).

Affected Public: Business or other for-profit.

Form No.	Frequency	Number of respondents	Average time per respondent (hours)
2854B	Annually	1,613	.75
3008	Annually	1,613	.25
3007D	Monthly/Quarterly	3,235	.53

Total Burden Hours: 22,039.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The International Price Program Indexes, a primary economic indicator, are used as measures of movement in international prices, indicators of inflationary trends in the economy, and sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross Domestic Product.

Agency: Bureau of Labor Statistics.

Title: International Price Program—U.S. Import Price Indexes.

OMB Number: 1220–0026 (Revision).

Affected Public: Businesses and other for-profit.

Form No.	Frequency	Number of respondents	Average time per respondent (hours)
3007B	Annually	1,725	[illegible]
3008	Annually	1,725	.334
3007D	Monthly/Quarterly	3,235	.56

Total Burden Hours: 23,884.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The International Price Program Indexes, a primary economic indicator, are used as measures of movement in international prices, indicators of inflationary trends in the economy, and sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross Domestic Product.

Agency: Employment and Training Administration.

Title: NAFTA Customer Survey Data Request.

OMB Number: 1205–0337 (extension).

Freqency: Three survey submitted.

Affected Public: Businesses and other for-profit.

Total Respondents: 350.

Estimated Time Per Respondent: 2 hours.

Total Burden Hours: 2,100.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Information is required for the Secretary of Labor to make determinations of eligibility for petitioning workers to apply for transitional adjustment assistance in accordance with Subchapter D of the North American Trade Agreement Implementation Act amending the Trade Act of 1974.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–8389 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Job Training Partnership Act, Title IV, Part C, Program Year 1998

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of availability of funds and solicitation for grant application for Job Training Partnership Act, Title IV, Part C, Program Year 1998 (SGA 98–04).

SUMMARY: This notice set forth the procedures for obtaining a solicitation package for the operation of employment and training programs under the Title IV, Part C, of the Job Training Partnership Act (JTPA IVC). The solicitation and all relevant documents, forms, certifications, and assurances is available for download at the Veterans' Employment and Training Service (VETS) Internet Home page *http://www.dol.gov/dol/vets/*. Furthermore, the solicitation is available on diskette from the Director for Veterans' Employment and Training (DVET). USDOL, assigned in your State.

DATES: An application package and instructions for completion will be made available on April 1, 1998. The closing date for receipt of a completed application in response to this SGA will be no later than May 1, 1998.

ADDRESSES: Application shall be mailed to: Lisa Harvey, U.S. Department of Labor, Procurement Service Center, Room N5416, 200 Constitution Ave. NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, U.S. Department of Labor, Procurement Service Center.

SUPPLEMENTARY INFORMATION: A introduction letter will be mailed to all State Governors to be forwarded to the State entity as determined by the Governor. The State as defined by Section 4 of JPA is the eligible applicant for grants to be funded under this SGA. An application for funds under this Solicitation will be accepted only if signed by the Governor of each State or his or her designee. A Governor's designee refers to the administrative head of the agency designated by the Governor to carry out the JTPA IV–C program in the State. Only one application will be accepted from each State. A transmittal letter must contain a statement that the designee is authorized to act on behalf of the Governor and administer the JTPA IV–C program.

Signed at Washington, DC, this 25th day of March 1998.

Lawrence J. Kuss,

Grant Officer, U.S. Department of Labor, Procurement Services Center.

[FR Doc. 98–8390 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,391]

Asher Company, Including Workers of Lewis & Thomas Saltz, Clothiers, Incorporated, Fitchburg, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 29, 1997, applicable to all workers of Asher Company located in Fitchburg, Massachusetts. The notice will be published soon in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers separated from employment at Asher Company had their wages reported under a separate unemployment insurance (UI) tax account at Lewis & Thomas Saltz Clothiers, Incorporated. Workers from Lewis & Thomas Saltz Clothiers, Incorporated produced men's trousers at the Fitchburg, Massachusetts location of Asher Company.

Based on these findings, the Department is amending the certification to include workers from Lewis & Thomas Saltz Clothiers, Incorporated, Fitchburg, Massachusetts who were engaged in the production of men's trousers at Asher Company, Fitchburg, Massachusetts.

The intent of the Department's certification is to include all workers of Asher Company adversely affected by imports.

The amended notice applicable to TA–W–33,391 is hereby issued as follows:

All workers of Asher Company, Fitchburg, Massachusetts and workers of Lewis & Thomas Saltz Clothiers, Incorporated, Fitchburg, Massachusetts engaged in employment related to the production of men's trousers for Asher Company, Fitchburg, Massachusetts who became totally or partially separated from employment on or after March 12, 1996, through April 29, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8383 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–13–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 264]

Charles Navasky & Co., Inc. Philipsburg, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 23, 1998 in response to a petition field on behalf of workers at Charles Navasky & Co., Inc., Philipsburg, Pennsylvania.

This case is being terminated because the petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 16th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8381 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 244 and TA–W–34–244A]

Glenbrook Nickel Company; Riddle and Coos Bay, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Trade Adjustment Assistance on February 25, 1998, applicable to all workers of Glenbrook Nickel Company, located in Riddle, Oregon. The notice will be published soon in the **Federal Register.**

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received from the company shows that worker separations will occur at the Coos Bay, Oregon facility of Glenbrook Nickel Company when it closes at the end of March, 1998. The workers are engaged in the production of ferronickel.

The intent of the Department's certification is to include all workers of Glenbrook Nickel Company who were adversely affected by increased imports of ferronickel.

Accordingly, the Department is amending the certification to cover the workers of Glenbrook Nickel Company, Coos Bay, Oregon.

The amended notice applicable to TA–W–34,244, is hereby issued as follows:

All workers of Glenbrook Nickel Company, Riddle, Oregon (TA–W–34,244), and Coos Bay, Oregon (TA–W–34, 244 A) who became totally or partially separated from employment on or after January 30, 1997 through February 25, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment.

[FR Doc. 98–8387 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,098 and TA–W–34,098A]

Goldtex, Incorporated; Goldsboro, NC and New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 9, 1998, applicable to all workers of Goldtex, Incorporated located in Goldsboro, North Carolina. The notice was published in the **Federal Register** on March 16, 1998 (63 FR 12830).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations have occurred at the New York, New York location of Goldtex, Incorporated. The New York, New York location is the sales office and designing for Goldtex's production facility in Goldsboro, North Carolina. The workers are engaged in the production of dyed, printed and furnished fabrics.

The intent of the Department's certification is to include all workers of Goldtex, Incorporated who were adversely affected by increased imports of finished fabrics. Accordingly, the Department is amending the certification to cover the workers of Goldtex, Incorporated, New York, New York.

The amended notice applicable to TA–W–34,098 is hereby issued as follows:

All workers of Goldtex, Incorporated, Goldsboro, North Carolina (TA–W–34,098), and New York, New York (TA–W–34,098A) engaged in the production of dyed, printed and finished fabrics who became totally or partially separated from employment on or after December 5, 1996 through February 9, 2000 are eligible to apply for adjustment assistance under Section2 23 of the Trade Act of 1974.

Signed at Washington D.C. this 20th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8384 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,991, TA–W–33,991A]

Jetricks Corporation Selmer, Tennessee; Hickory Flatt Manufacturing Savannah, Tennessee, Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 16, 1998 applicable to all workers of Jetricks Corporation, located in Selmer, Tennessee. The notice was published in the **Federal Register** on February 18, 1998 (63 FR 8211).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of boys' tops and bottoms. New information provided by the company shows that worker separation occurred at Hickory Flatt Manufacturing, Savannah, Tennessee when it closed in November, 1997. The workers at Hickory Flatt Manufacturing sewed boys' tops and bottoms for Jetricks Corporation, Selmer, Tennessee which closed December 31, 1997.

The intent of the Department's certification is to include all workers of Jetricks Corporation who were adversely affected by increased imports of boy's tops and bottoms.

Accordingly, the Department is amending the certification to cover the workers of Hickory Flatt Manufacturing, Savannah, Tennessee.

The amended notice applicable to TA–W–33,991 is hereby issued as follows:

All workers of Jetricks Corporation, Selmer, Tennessee (TA–W–33,991) and Hickory Flatt Manufacturing, Savannah, Tennessee (TA–W–33,991A) who became totally or partially separated from employment on or after October 21, 1996 through January 16, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 20th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8386 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,670]

Kimberly-Clark Corporation, Winslow Plant Winslow, ME; Including Leased Workers of Northeast Laboratories, Winslow, ME; Including Workers of Guards-Mark, Boston, MA and Valmet Audiomation, Westbrook, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27, 1997, applicable to all workers of Kimberly-Clark Corporation, Winslow Plant located in Winslow, Maine. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51152).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce bath tissue. New information provided by the State shows that some workers separated from employment at Kimberly-Clark Corporation, Winslow Plant, Winslow, Maine had their wages reported under two separate unemployment insurance (UI) tax accounts, at Guards-Mark, Boston, Massachusetts and Valmet Audiomation, Westbrook, Maine. Workers from Guards-Mark provided security detail for the Winslow, Maine facility. Workers from Valmet Audiomation provided computer support services to the Winslow Maine facility of Kimberly-Clark Corporation. Worker separations occurred at Guards-Mark and Valmet Audiomation as a result of worker separations at Kimberly-Clark Corporation.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Kimberly-Clark Corporation adversely affected by imports.

The amended notice applicable to TA-W-33,670 is hereby issued as follows:

All workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine, and leased workers of Northeast Laboratories, Winslow, Maine engaged in employment related to environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine and all workers of Guards-Mark, Boston, Massachusetts that provided security detail for the Winslow Plant of Kimberly-Clark Corporation, Winslow, Maine and all workers of Valmet Audiomation, Westbrook, Maine that provided computer support services for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation, Winslow, Maine who became totally or partially separated from employment on or after June 23, 1996 through August 27, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of March, 1998.

Grant D. Beal,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-8385 Filed 3-30-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,100]

L.A. Manufacturing, Incorporated, Livingston, Tennessee; Notice of Revised Determination on Reopening

On January 20, 1998, the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of L.A. Manufacturing, Incorporated, located in Livingston, Tennessee. The notice was published in the **Federal Register** on February 18, 1998 (63 FR 8210).

By letter of February 11, 1998, the company requested administrative reconsideration regarding the Department's denial of trade adjustment assistance for workers of the subject firm. Based on new information provided by L.A. Manufacturing officials, the Department reopened the petition investigation.

The initial investigation resulted in a negative determination based on the finding that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The workers produce ladies' and men's denim jeans.

Sales and employment at L.A. Manufacturing declined from 1995 to 1996.

On reopening, a review of United States imports of men's trousers, slacks, jeans and pants, reveals that imports increased absolutely and relative to domestic shipments from 1995 to 1996 and in the twelve months through September 1997 compared to the twelve months through September 1996. The ratio of imports to domestic shipments (I./S.) was more than 100 percent in the twelve months ending September 1997.

United States imports of women's and girls' slacks and shorts increased absolutely and relative to domestic shipments from 1995 to 1996; the I./S. ratio was more than 100 percent. Imports continued to increase in the twelve months through September 1997 compared to the same time period a year earlier; the I./S. ration is not available but is estimated to be more than 100 percent.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with jeans produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of L.A. Manufacturing, Incorporated, Livingston, Tennessee, who became totally or partially separated from employment on or after December 5, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 20th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97-8382 Filed 12-23-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA-01801]

Kimberly-Clark Corporation, Winslow Plant, Winslow, ME; Including Leased Workers of Northeast Laboratories, Winslow, ME; Including Workers of Guards-Mark, Boston, MA and Valmet Audiomation, Westbrook, ME; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 27, 1997, applicable to all workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine.

The notice was published in the **Federal Register** on September 30, 1997 (62 FR 32376).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce bath tissue. New information provided by the State shows that some workers separated from employment at Kimberly-Clark Corporation, Winslow Plant, Winslow, Maine had their wages reported under two separate unemployment insurance (UI) tax accounts, at Guards-Mark, Boston, Massachusetts and Valmet Audiomation, Westbrook, Maine. Workers from Guards-Mark provided security detail for the Winslow, Maine facility. Workers from Valmet Audiomation provided computer support services to the Winslow Maine facility of Kimberly-Clark Corporation. Worker separations occurred at Guards-Mark and Valmet Audiomation as a result of worker separations at Kimberly-Clark Corporation.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Kimberly-Clark Corporation adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–01801 is hereby issued as follows:

All workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine, and leased workers of Northeast Laboratories, Winslow, Maine, engaged in employment related to environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine and all workers of Guards-Mark, Boston, Massachusetts that provided security detail for the Winslow Plant of Kimberly-Clark Corporation, Winslow, Maine and all workers of Valmet Audiomation, Westbrook, Maine that provided computer support services for the production of bath tissue produced by the Winslow, Maine plant of Kimberly-Clark Corporation, Winslow, Maine who became totally or partially separated from employment on or after July 7, 1996 through August 27, 1999 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–8388 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. L–09583, et al.]

Proposed Exemptions; U S West, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, on or before May 15, 1998. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

U S WEST, Inc. Located in Englewood, Colorado

[Application No. L–09583]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions Involving Contributions In-Kind

If the exemption is granted, effective March 31, 1994, the restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act shall not apply to voluntary contributions in-kind by U S WEST, Inc. and/or its affiliates (U S WEST) of certain shares of publicly traded common stock of U S WEST (the Stock) and/or any replacement publicly traded shares of such Stock to certain trusts (the Trusts or Trust) for the purpose of pre-funding post-retirement welfare benefits under one or more employee welfare benefit plans (the Plan or Plans) maintained by U S WEST, provided that:

(a) the Plan provisions explicitly authorize U.S WEST to pre-fund benefits through in-kind contributions of Stock, and all contributions of Stock have been and will be made in conformity with such Plan provisions;

(b) neither the Plans nor the Trusts have paid nor will pay, whether in cash or in other property or in a diminution

of any funding obligation of U S WEST, any consideration for Stock contributed in-kind by U S WEST;

(c) U S WEST has no obligation to pre-fund welfare benefits provided to participants under any of the Plans, either pursuant to the plan documents, the terms of any collective bargaining agreement, or the provisions of the Act;

(d) none of the Plans have ceded, nor will cede, any right to receive cash contributions from U S WEST;

(e) none of the Plans or Trusts have paid, nor will pay, any commissions in connection with the contribution in-kind of Stock by U S WEST; and

(f) each of the conditions, as set forth below in Section III, have been satisfied and at all times will be satisfied.

Section II—Transactions Involving Purchases of Stock in Connection With Rebalancing of a Trust's Holding of Stock

If the exemption is granted, the restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act shall not apply to purchases of classes of Stock by any of the Trusts with all or part of (but no more than) the cash proceeds from prior sales of such Stock; provided that:

(a) all such purchases of Stock will occur in connection with rebalancing of a Trust's holding of Stock as part of the active management of such Stock by an independent, qualified fiduciary (the I/F);

(b) all sales and subsequent purchases of Stock in connection with rebalancing of a Trust's holding of Stock will occur in "blind" transactions with unrelated third parties on the open market at the fair market value of such Stock on the date of such transactions, or where appropriate to minimize any adverse market impact on the value of the Stock remaining in such Trust, in private transactions with persons who are not "parties in interest," as defined in section 3(14) of the Act, at the fair market value of such Stock on the date of such transactions; and

(c) each of the conditions, as set forth in Section III, below, at all times will be satisfied.

Section III—Conditions

The exemption is conditioned upon the adherence by U S WEST to the material facts and representations described in this notice of proposed exemption (the Notice) and upon satisfaction of the following requirements:

(a) all Stock contributed in-kind by U S WEST to any of the Trusts or acquired by such Trusts, as a result of the recapitalization of U S WEST constituted qualifying employer securities (QES), as defined in section 407(d)(5) of the Act; and all Stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing of a Trust's holding of Stock will constitute QES;

(b) stock contributed in-kind by U S WEST or acquired, as a result of the recapitalization of U S WEST have been held in Trusts, which are qualified under section 501(c)(9) of the Code, and which are established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plans, and all stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing will be held in such Trusts;

(c) all Stock contributed in-kind by U S WEST to any Trust or acquired by any Trust as a result of the recapitalization of U S WEST has been held in a separate account (the Account or Accounts) under such Trust, and all Stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing of the holding of Stock by a Trust will be held in an Account under such Trust. Such Accounts under a Trust have been and will be managed by an I/F, who is an independent, qualified investment manager, or any successor independent, qualified investment manager, and who has represented and will represent the interests of the Plans which are funded by such Trusts for all purposes with respect to the Stock for the duration of the Trust's holding of any of such Stock;

(d) the I/F of the Accounts in the Trusts which fund any welfare plan benefits, has accepted Stock from U S WEST through in-kind contributions and recapitalization of U S WEST, and will accept Stock through future in-kind contributions, through any replacement publicly traded shares of such Stock, or through purchases of Stock in connection with rebalancing of a Trust's holding of Stock, only after such I/F determines at the time of the transactions that such transactions are feasible, in the interest of, and protective of participants and beneficiaries of the Plans funded by such Trusts;

(e) the I/F has had sole responsibility and, at all times will have sole responsibility for the ongoing management of the Accounts under the Trusts which hold the Stock and has taken and will take whatever action is necessary to protect the rights of the Plans funded by such Trusts, including but not limited to all decisions regarding the acceptance of contributions in-kind by U S WEST, the sale or retention of such Stock, the exercise of voting rights of such Stock, any purchases of such Stock in connection with rebalancing of a Trust's holding of Stock, and any other acquisition or dispositions of such Stock;

(f) any contributions in-kind of Stock made by U S WEST to any Trust, any acquisitions of Stock in connection with the recapitalization of U S WEST, did not cause immediately after each such transaction, and in the future any contributions in-kind of Stock, any replacement publicly traded shares of such Stock, or any Stock purchases in connection with rebalancing of a Trust's holding of Stock will not cause immediately after each such transaction the aggregate fair market value of such Stock, plus the fair market value of all qualifying employer real property (QERP), as defined by section 407(d)(4) of the Act, and the fair market value of all other QES held by such Trust to exceed 25 percent (25%) of the fair market value of the assets of such Trust as determined on the date of each such transaction;

(g) the percentage limitations, as set forth above in paragraph (f) of this Section III, have been and will be applied without regard to amounts of securities issued by U S WEST that may be held by an unrelated common or collective trust fund maintained by an independent manager in which any of the Plans through the Trusts may have invested or may invest, provided that the fair market value of the securities issued by U S WEST and held in such unrelated common or collective trust fund does not exceed 5 percent (5%) of the fair market value of each such common or collective trust fund; and provided further that the conditions of Prohibited Transaction Class Exemption 91–38 (PTCE 91–38) [1] are satisfied, including the requirement that the interests of the Plans in such unrelated common or collective trust fund does not exceed 10 percent (10%) of the total of all assets in such common or collective trust fund;

(h) nothing in the conditions, as set forth above in paragraph (f) of this Section III, shall preclude, the holding by any Trust of Stock, any other QES

[1] The Notice of Proposed Exemption for exemption application number D–8414 was published at 56 FR 4856 on February 6, 1991. PTCE 91–38 was granted at 56 FR 31966 on July 12, 1991.

and QERP, in amounts in excess of 25 percent (25%) of the assets of such Trust, if the aggregate fair market value of such Stock, other QES and QERP exceeds 25 percent (25%) of the value of the assets of such Trust solely by reason of:

(1) a greater rate of appreciation to the value of such Stock, other QES and QERP relative to the rate of appreciation to the value of the assets in such Trust, other than the Stock, other QES and QERP; or

(2) a greater decline in the value of the other assets of the Trust relative to that of such Stock, other QES and QERP;

(i) none of the assets of any of the Trusts have reverted, nor at any time will any of the assets of such Trusts revert to the use or benefit of U S WEST.

Summary of Facts and Representations

1. U S WEST is a diversified, global telecommunications company with offices located in Englewood Colorado. As of December 31, 1995, it is represented that U S WEST had assets of approximately $25.2 billion, and annual revenues of nearly $10.7 billion. The domestic and international business activities of U S WEST are focused primarily in communications, data solutions, marketing services, and financial services. In this regard, a subsidiary of U S WEST provides communications and data services to more than twenty-five million residential and business customers in fourteen (14) western and mid-western states. Other subsidiaries are engaged in marketing activities, directory publishing, direct-mail listings, cellular mobile communications, paging, cable television, and financial services.

2. It is represented that the proposed exemption would affect a number of employee benefit plans sponsored by U S WEST providing current and post-retirement welfare benefits, including life insurance and health insurance, to employees and retirees of U S WEST.[2] It is represented that the manner in which welfare benefits are provided to U S WEST's current and former employees is subject to periodic restructuring. Thus, the particular Plans affected by this exemption may be amended or terminated from time to time and new Plans may be added. Although U S WEST has reserved the right to amend, modify, or terminate any of the Plans, U S WEST has represented that it intends to provide benefits to employees and retirees under the Plans indefinitely.

It is represented that U S WEST serves as the plan administrator for each of the Plans. In this regard, the Board of Directors of U S WEST has delegated the administrative responsibilities of U S WEST to the U S WEST Employees' Benefit Committee, which has authority to establish and administer the Plans.

None of the Plans or applicable collective bargaining agreements require U S WEST to pre-fund the benefits provided by the Plans, nor does the Act require that the Plans be funded. However, effective on January 1, 1994, amendments to the Plans authorized U S WEST to pre-fund benefits with contributions, including contributions of QES, to one or more trusts that may be established by U S WEST for the benefit of the Plans. In this regard, U S WEST established the following Trusts to pre-fund a portion of the welfare benefits under the Plans: (1) the U S WEST Benefit Assurance Trust (the Assurance Trust); (2) U S WEST Management Benefit Assurance Trust (the Management Trust); and (3) U S WEST Life Insurance and Welfare Trust (the Life Insurance Trust).

It is represented that these three Trusts are voluntary employees' beneficiary associations which are tax-qualified under section 501(c)(9) of the Code. The trust agreement for each of these Trusts provides that such Trust will be administered by U S WEST. U S WEST also has sole responsibility for the investment or reinvestment of the assets of the Trusts, and authority to appoint one or more investment managers to manage any part of the assets of each of the Trusts. The Board of Directors of U S WEST has appointed a Trust Investment Committee to exercise general oversight of the Trusts.

It is represented that no assets of any of the Trusts may be used except for the exclusive purpose of providing life, sickness, accident, and other covered benefits to U S WEST employees, retirees, and their dependents and beneficiaries and for reasonable expenses. It is represented that the trust agreements for all of these Trusts specifically prohibit U S WEST from obtaining any reversion of the assets of the Trusts.

As of December 31, 1992, the Assurance Trust has funded post-retirement medical and dental benefits for approximately 62,300 employees and retirees of U S WEST covered by collective bargaining agreements under various Plans providing medical and dental benefits to employees and retirees of U S WEST. As of the same date, the Management Trust has funded post-retirement medical and dental benefits to approximately 37,700 employees and retirees of U S WEST not covered by collective bargaining agreements under various medical and dental benefits plans for all employees and retirees of U S WEST. As of November 15, 1993, the Life Insurance Trust has funded life insurance benefits for approximately 100,000 current and former employees of U S WEST. It was further represented that the total number of participants covered by these three Trusts, as of December 12, 1996, had not changed materially since the application for exemption was filed.

As of November 30, 1996, the Assurance Trust and the Management Trust, respectively, held assets with a fair market value of approximately $1.4 billion and $200 million. As of November 30, 1996, the Life Insurance Trust held total assets with a fair market value of approximately $529 million. It is represented that none of the assets of any of these Trusts are invested in any leases or loans to U S WEST. However, a small percentage of the assets of each of these Trusts is invested either directly or through certain index funds in securities of U S WEST which are represented to constitute QES. U S WEST maintains that the acquisition and holding of such securities by these Trusts is permitted by section 407(a) of the Act and the statutory exemption provided under section 408(e) of the Act.[3]

3. It is represented that the competitive environment in the telecommunications industry has reduced the cash available to U S WEST for discretionary expenditures. Accordingly, U S WEST does not anticipate at any time in the foreseeable

[2] As of November 15, 1993, the list of the Plans sponsored by U S West included: (a) U S WEST Group Life Insurance Plan; (b) U S WEST Retiree Health Care Medical Plan 1; (c) U S WEST Disability Benefit Plan; (d) U S WEST Retiree Health Care Medical Plan 2; (e) U S WEST Retiree Health Care Medical Plan 3; (f) U S WEST Retiree Health Care Medical Plan; (g) U S WEST Retiree Health Care Dental Plan 1; (h) U S WEST Retiree Health Care Dental Plan 2; (i) U S WEST Retiree Health Care Dental Plan 3; (j) U S WEST Retiree Health Care Dental Plan 4; (k) U S WEST Retiree Health Care Dental Plan 5; (l) U S WEST Business Travel Accident Plan No. 532; (m) U S WEST Business Travel Accident Plan No. 533; (n) U S WEST Health Care Plan; (o) U S WEST Enterprises, Inc, Sickness and Accident Disability Benefit Plan for Non-Salaried Employees. It is represented that the health plans sponsored by U S WEST were merged in December 1993, into a single plan, the U S WEST Health Care Plan, Plan Number 537 (the Health Plan).

[3] The Department expresses no opinion as to whether the securities of U S WEST held by these three Trusts are qualifying employer securities, as defined by section 407(d)(5) of the Act, whether the acquisition or holding of such securities was permitted by 407(a), or whether acquisition or holding was covered by the statutory exemption provided by section 408(e) of the Act. Further, the Department, herein, is offering no relief for transactions other than those proposed.

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future pre-funding welfare benefits by making substantial cash contributions to its Plans. Instead, U S WEST has made in the past and proposes in the future to make in-kind contributions to the Trusts of shares of stock issued by U S WEST. U S WEST believes that such in-kind contributions offer a practical means of pre-funding the welfare benefits under the Plans.

4. It is represented that on March 31, 1994, U S WEST contributed in-kind approximately 4.6 million shares of the Stock to the Assurance Trust that funds part of the benefits provided under the Health Plan. It is represented that, as of the date of the contribution, such shares have been held in an Account under the Assurance Trust. It is represented that at the time of the in-kind contribution the Stock was valued on a per share basis at $39.875 and that the aggregate fair market value for such shares totaled $183,425,000. It is further represented that immediately after such in-kind contribution the aggregate fair market value of such shares constituted 23.71% of the assets of the Health Plan.[4]

Subsequently, on or before March 31, 1995, U S WEST made a second contribution in-kind (the Second Contribution) to the Assurance Trust of approximately 1.5 million shares of the Stock. It is represented that at the time of the Second Contribution the Stock was valued on a per share basis at $40.50 and that the aggregate fair market value of the shares contributed totaled $60,750,000. It is further represented that both contributions in-kind by U S WEST totaled 6.1 million shares with an aggregate value of $244,175,000. It is represented that these shares also have been in an Account under the Assurance Trust. It is further represented that, immediately following the Second Contribution in-kind, no more than 22.8 percent (22.8%) of the aggregate fair market value of the assets of the Assurance Trust were invested in employer securities of any kind. It is further represented that other than the two in-kind contributions to the Assurance Trust described above, U S WEST has made no additional contributions of Stock or other non-cash assets to the Assurance Trust or to any other trust. As of November 30, 1996, it is represented that the Stock comprised approximately 19.5 percent (19.5%) of the total assets of the Assurance Trust. It is further represented that, as of March 9, 1998, the Assurance Trust no longer holds any of the Stock contributed by U S WEST.

The Stock, at the time of each in-kind contribution and at all times thereafter, has been widely held and publicly traded on the New York Stock Exchange (NYSE) and on other major exchanges throughout the world. It is further represented that such Stock, at the time of each in-kind contribution and at all times thereafter, has been an "employer security," as defined by section 407(d)(1) of the Act,[5] which has satisfied each of the requirements for a "qualifying employer security," as defined by section 407(d)(5) of the Act,[6] and also has satisfied the requirements of section 407(f)(1) of the Act.[7] It is represented that approximately 89 percent (89%) of such Stock has been and is held by persons who are independent of U S WEST.

5. Subsequent to the in-kind contributions made by U S WEST in March of 1994 and 1995, U S WEST shareholders voted on October 31, 1995, in favor of a proposal to create two classes of U S WEST securities. Accordingly, effective November 1, 1995, each share of Stock that had been contributed to the Assurance Trust was replaced with two shares which are targeted to specific areas of U S WEST's business (the Targeted Shares). The Targeted Shares are designated: (1) "C" shares (NYSE symbol USW); and (2) "M" shares (NYSE symbol UMG). Specifically, the "C" shares represent an interest in U S WEST Communications Group and reflect the business of U S WEST, primarily in its present 14-state region, involving integrated communications, entertainment, information, and transaction services. The "M" shares represent an interest in U S WEST Media Group and reflect U S WEST businesses involving cable, wireless, directory, interactive, and international services. The "M" shares are not expected to pay dividends, but are anticipated to be growth securities that will be attractive to investors seeking capital appreciation.

6. As described above, U S WEST on two occasions in the past has made voluntary contributions in-kind of Stock to the Assurance Trust the value of which did not exceed 25 percent (25%) of the assets of the Assurance Trust at the time of such contributions. Subsequently, pursuant to the recapitalization of U S WEST, the Assurance Trust acquired "C" shares and the "M" shares in exchange for Stock previously contributed in-kind by U S WEST. Further, subject to the conditions set forth in this exemption, U S WEST anticipates in the future making additional in-kind contributions to any of the Trusts of Stock which will be held in Accounts under such Trusts.

With regard to any past and future in-kind contribution of Stock by U S WEST to the Trusts, it is represented that the I/F has and will be responsible for actively managing of any such Stock. In this regard, it is anticipated that from time to time a Trust may wish to rebalance its holding of Stock. Such "rebalancing," would entail a Trust selling all or a portion of the "C" shares and/or the "M" shares in its portfolio to unrelated third parties in "blind" transactions on the open market at the fair market value of such Stock on the date of such sale. In the alternative, where appropriate to minimize any adverse market impact on the value of the Stock remaining in a Trust, such Trust may sell such Stock in private transactions with persons who are not "parties in interest" at the fair market value of such Stock on the date of such transactions. Thereafter, an I/F with all or part of (but no more than) the cash proceeds from such prior sales of Stock, may purchase "C" shares and/or "M" shares at fair market value in subsequent "blind" transactions on the open market or in subsequent private transactions with persons who are not "parties in interest" at the fair market value of such Stock on the date of such transactions.

In the opinion of U S WEST each of the two prior in-kind contribution of Stock to the Assurance Trust may have resulted or any future contribution in-kind of Stock to any of the Trusts may result in an acquisition of QES where

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[4] The applicant has represented that the assets of the Assurance Trust have been reported as assets of the Health Plan and that such assets have been held solely for the purpose of pre-funding post-retirement health benefits under the Health Plan. For this reason, the representation that the fair market value of the Stock contributed in-kind by U S WEST did not comprise more than 25 percent (25%) of the assets of the Health Plan immediately following each contribution is essentially correct. However, in light of the fact that the assets of the Assurance Trust could be used to fund benefits for any welfare plan established by U S WEST under a collective bargaining agreement, the Department has determined for the purpose of this exemption to apply the 25 percent limitation on the trust level, rather than to a particular welfare plan.

[5] Pursuant to section 407(d)(1) of the Act, an employer security means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.

[6] Section 407(d)(5) of the Act provides that the term qualifying employer security means an employer security which is stock or a marketable obligation (as defined in subsection (e)). After December 17, 1987, in the case of a plan other than an eligible individual account plan, stock shall be considered a qualifying employer security only if such stock satisfies the requirements of subsection 407(f)(1).

[7] Pursuant to section 407(f)(1) of the Act, stock satisfies such requirements if, immediately following the acquisition of such stock—(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and (B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

immediately after such acquisition, the aggregate fair market value of the Stock, any other QES or QERP held by such Trust, exceeds 10 percent (10%) of the fair market value of the assets of such Trust. In order for U S WEST and the I/F to engage in contributions in-kind of Stock to the extent that such transactions have caused or will cause an acquisition of QES in the form of Stock the value of which exceeds the 10 percent (10%) limitation, as set forth under section 407(a)(2) of the Act, U S WEST has requested exemptive relief from the provisions of section 406(a)(1)(E) and 407(a)(2) of the Act. Because immediately after the first in-kind contribution of Stock to the Assurance Trust on March 31, 1994, the fair market value of such Stock constituted more than 10 percent (10%) of the assets of the Assurance Trust, U S WEST has requested retroactive exemptive relief, effective as of March 31, 1994. In addition, to the extent the 10 percent (10%) limit was exceeded as a result of: (1) The recapitalization of U S WEST; and/or (2) the Second Contribution of Stock to the Assurance Trust, U S WEST has also requested relief. Further, to the extent the 10 percent (10%) limit will be exceeded, U S WEST has requested relief: (1) for any future contributions of Stock to any Trust, any replacement publicly traded shares; and (2) for any purchases of Stock in connection with rebalancing of such Trust's holding of "C" shares and "M" shares.

In addition, in the opinion of U S WEST the contributions of QES in the form of Stock to any of the Trusts may be prohibited by section 406(b). Specifically, U S WEST, as the sponsoring employer of Plans, is a fiduciary to such Plans, pursuant to section 3(21) of the Act. Section 406(b)(1) of the Act prohibits a plan fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a plan fiduciary from acting in a transaction involving a plan on behalf of a party whose interests may be adverse to the interests of such plan, including such plan fiduciary's own interests. Thus, in the view of U S WEST, any transaction between it and any of the Plans may be deemed to involve self-dealing or a conflict of interest prohibited by section 406(b)(1) and 406(b)(2) for which relief has been requested.

7. With regard to the past two contributions in-kind, U S WEST represents that the aggregate fair market value of all Stock contributed by U S WEST to the Assurance Trust, or acquired as a result of the recapitalization of U S WEST, plus the fair market value of all Stock, other QES and QERP held by the Assurance Trust did not exceed 25 percent (25%) of the fair market value of the assets of the Assurance Trust immediately after such transactions. Further, U S WEST proposes that it be permitted in the future to contribute amounts of Stock to any of the Trusts; provided that the aggregate fair market value of all Stock contributed by U S WEST, and/or acquired as a result of the replacement of such Stock or of purchases of Stock in connection with rebalancing of a Trust's holding of Stock, plus the fair market value of all Stock, other QES and QERP held by such Trust, does not exceed 25 percent (25%) of the fair market value of the assets of such Trust immediately after such transactions.

A Trust may hold Stock, other QES, and QERP in amounts above 25 percent (25%), if the aggregate fair market value of such Stock and other QES, and QERP exceeds 25 percent (25%) of the assets of such Trust solely by reason of: (1) A greater rate of appreciation to the value of such Stock, other QES and QERP relative to that of assets in that Trust other than such Stock and other QES and QERP; or (2) a greater decline in the value of the other assets of such Trust relative to that of such Stock, other QES, and QERP.

In addition, U S WEST represents that some or all of the Plans may have invested or may invest in one or more unrelated common or collective trust funds which are maintained by independent managers. As it is possible that securities issued by U S WEST, including the Stock, may be held in such funds (particularly in index-type passively managed funds), U S WEST wishes to ensure that the percentage limitations, as set forth in Section III(f) of the exemption, will be applied without regard to amounts of U S WEST securities that may be held by such funds in which a Plan may invest. In this regard, U S WEST estimates that the market value of the securities issued by U S WEST and held in such funds does not exceed 5 percent (5%) of the fair market value of each such fund and that no more than 10 percent (10%) of all interests in each such fund are held by Plans maintained by U S WEST. Further, U S WEST represents that the conditions of PTCE 91–38 have been and will at all times be satisfied. In the opinion of U S WEST, the limited nature of the investment by Plans in such funds demonstrates that the amount of U S WEST securities held by such funds, if any, is not subject to influence by U S WEST or the I/F of the Plans, as appears to be the intent in section I(a)(1)(A) of PTCE 91–38. Accordingly, paragraph (g) of Section III of this exemption provides that the percentage limitations, as set forth above in paragraph (f) of Section III, will be applied without regard to amounts of securities issued by U S WEST that may be held by unrelated common or collective trust funds which are maintained by independent managers and in which any of the Plans may have invested or may invest, provided that the fair market value of the securities issued by U S WEST and held in each such fund does not exceed 5 percent (5%) of the fair market value of such fund; that the interests of Plans maintained by U S WEST in each such fund does not exceed 10 percent (10%) of the total of all assets in such fund; and that the remaining conditions of PTCE 91–38 are satisfied.

8. U S WEST maintains that specific safeguards included in this exemption ensure that the rights of the participants and beneficiaries of the Plans have been and will be fully protected with respect to the transactions. In this regard, neither the Plans nor the Trusts have paid or will pay any consideration for the contributions in-kind of the Stock, either in cash, in other property, or in any diminution of a mandatory funding obligation of U S WEST. Further, neither the Plans nor the Trusts have paid any commissions, nor will the Plans or the Trusts pay any commissions with respect to such in-kind contributions. However, it is represented that the costs of preparing and filing the application for exemption were and will be allocated to the Plans, and the fees of the I/F of such Plans have been and will be borne by the Trusts.

9. U S WEST maintains that the transactions have been and will be administratively feasible and the level of oversight required by the Department has been and will be minimal. In this regard, it is represented that the Guidelines for the Trusts, the documents of the Plans, and the financial statements of the Trusts and of the Plans are readily available for inspection and have been and will be subject to the audit requirements of section 103(a)(3)(A) of the Act. Further, U S WEST represents that the transactions are in the interest of the Plans, as growth in the telecommunications industry will cause any Stock contributed to the Trusts to appreciate in value. For this reason, U S WEST believes the Stock to be a highly desirable investment. Further, U S WEST represents that the exemption is protective of the participants and beneficiaries, in that the transactions

also provide security regarding the continuation of benefits to current and former employees of U S WEST.

10. It is represented that acceptance of the past contributions of Stock on March 31, 1994, and on March 31, 1995, by U S WEST to the Assurance Trust was approved by an I/F. Further, it is represented that an I/F will approve any future in-kind contribution of such Stock into any of the Trusts.

In this regard, U S WEST appointed United States Trust Company of New York (U.S. Trust) to serve as I/F and as equity investment manager of the Account in the Assurance Trust which held the Stock contributed in-kind by U S WEST. U.S. Trust is a bank and trust company organized under the laws of New York. U.S. Trust represents that as an experienced employee benefits trust fiduciary with a large professional staff, it is qualified to serve as independent fiduciary. As of May 12, 1994, U.S. Trust had approximately $393 billion of assets in custody and, as of June 19, 1995, had approximately $40 billion in assets under discretionary management. U.S. Trust is independent in that it is totally unrelated to U S WEST and does not have any directors in common. Further, U.S. Trust represents that it receives less than one percent (1%) of its income from U S WEST.

It is represented that in its capacity as independent investment manager of the Accounts under the Assurance Trust, U.S. Trust acted as a fiduciary with responsibility: (1) For evaluating the appropriateness of accepting any contribution in-kind of Stock; (2) for establishing the value of such Stock contributions; and (3) for managing the Accounts on an ongoing basis, including making all decisions regarding acquisition, retention, or sale of the Stock contributed by U S WEST, including exercising any and all voting rights appurtenant to the Stock in accordance with the U S WEST Trust Investment Proxy Voting Policy. It is represented that U.S. Trust retained the right to delegate these responsibilities to its affiliate, U.S. Trust Company of California, N.A., a national financial institution providing specialized fiduciary services primarily to plans covered by the Act.

It is represented that after its appointment U.S. Trust had full discretion to manage the Accounts, subject to specific investment guidelines (the Guidelines), as mutually agreed between U S WEST and U.S. Trust, which were reevaluated at least annually by both parties. Such Guidelines specify that there would be no short sales, trading on margin, or lending of securities without the prior approval of U S WEST. Further, the Guidelines specify that there are no requirements for or restrictions against realization of net investment gains or losses during the calendar year. It is represented that U.S. Trust has engaged in all transactions on behalf of the Trusts on an agency, rather than principal, basis.

The Guidelines specify that the assets in the Accounts are invested solely in QES, cash, cash equivalents, and/or other derivative financial investments to hedge the Accounts consistent with the Guidelines. In this regard, it is represented that cash equivalents are held for transactional purposes only and average no more than 5% of the portfolio of any of the Accounts. It is anticipated that the Stock will be held in the Accounts for long-term income or appreciation, unless U.S. Trust or its successor deems it imprudent to do so.[8]

It is represented that the emphasis in measurement under the Guidelines is on long-term performance. U.S. Trust or its successor is responsible for achieving a higher return over time than an appropriate market index chosen by U S WEST.[9]

Specifically, the Guidelines state that the ten (10) year average annual returns are expected to meet or exceed the return of U.S. Treasury Bills, plus five (5) percentage points per year. It is represented that returns are measured net of fees and have been and will be reported periodically by Boston Safe Deposit and Trust Company, as trustee of the Assurance Trust. In addition, regularly scheduled meetings between U.S. Trust and U S WEST have been held and information regarding investment results, strategies, and holdings have been reviewed quarterly.

It is represented that U.S. Trust began the process of determining whether and under what circumstances the Assurance Trust should accept the Stock contributed in-kind, by analyzing the investment needs of the Health Plan and the nature of the contribution.[10]

With respect to the investment needs of the Health Plan, it is represented that U.S. Trust in its capacity as I/F: (1) Reviewed the investment allocation policy and investment guidelines of the Health Plan; (2) determined that it was appropriate to rely on such guidelines with respect to the percentage to be committed to the Stock; (3) determined the value of the assets of the Health Plan committed to equities at that time; and (4) determined that the Health Plan could accept the contribution of Stock without exceeding the guidelines relating to equity investments. In this regard, U.S. Trust determined: (1) that the allocation policy and investment guidelines of the Health Plan relating to investments in employer securities were appropriate; (2) that acceptance of the contribution in-kind of the Stock was within such allocation policy and investment guidelines; (3) that the contribution in-kind was not accepted in lieu of any other assets or cash contributions; (4) the contribution was accepted as part of an investment portfolio structured to meet the Health Plan's liquidity needs; and (5) the in-kind contribution of the Stock had no detrimental effect on the ability of the Health Plan to meet its liquidity needs.

With respect to the nature of the contribution in-kind, U.S. Trust represents that it undertook to perform an analysis of the Stock and of U S WEST, to value such Stock, and to analyze the acquisition of such Stock in light of the overall portfolio of the Assurance Trust. In making these analyses, U.S. Trust represents that it had access to all information on U S WEST that it reasonably required, including financial statements, annual reports, materials filed with the Securities and Exchange Commission, and independent research and reports. Based on this information, U.S. Trust concluded that U S WEST will remain a major player in the emerging telecommunications industry and that the near term prospects for the company remain favorable. U.S. Trust stated that the financial performance of U S WEST is likely to continue to improve in light of strong regional demand and the commitment of U S WEST to increasing internal efficiencies. Accordingly, in the opinion of U.S. Trust, the Stock offers good total return potential in a long-term investment horizon.

With respect to the fair market value of the Stock, U.S. Trust noted that such Stock is traded on the NYSE, and like other publicly traded shares, is subject to price fluctuations. In this regard, in order to establish the fair market value of the Stock and to ensure that the value of the Stock contributed on March 31,

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[8] Notwithstanding the fact that U.S. Trust and U S WEST have adopted a long term performance policy for the assets in the Accounts, U.S. Trust and any successor I/F remains subject to the fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects that U.S. Trust and any successor I/F will use its authority to dispose of as much of the Stock as is necessary to comply with its fiduciary responsibilities at the appropriate time regardless of the policy that the assets of the Accounts be held for long term appreciation.

[9] The Department, herein, is not opining on the appropriateness of the index selected by U.S. Trust to evaluate the long term performance of the Accounts under the Guidelines.

[10] At the time U.S. Trust rendered its opinion the assets in the Assurance Trust were being used solely for the purpose of pre-funding post-retirement health benefits under the Health Plan.

1994, did not exceed 25 percent (25%) of the assets of the Health Plan, U.S. Trust determined to accept the value of the Stock at its closing price, as of the previous day, March 30, 1994. It is represented that the price utilized by U.S. Trust in valuing the Stock is verifiable by the publicly disclosed trading prices of such Stock on March 30, 1994. U.S. Trust believes that this method of determining the fair market value of such Stock was reasonable and appropriate.

U.S. Trust determined not to discount the value of the Stock, because the Stock comprised only slightly more than one percent (1%) of the issued and outstanding Stock. As such, in the opinion of U.S. Trust the amount of Stock contributed did not represent such a large block that it would not be possible to dispose of such Stock within a reasonable period of time. It is represented that the 4.6 million shares contributed by U S WEST constituted approximately five (5) days of normal trading volume of such Stock. Given the fluctuation in trading volume of such Stock from day to day, U.S. Trust concluded that a purchase or sale of this amount of Stock over a two to three week period would have little effect on the market price of such Stock.

Prior to the contribution in-kind of the Stock by U S WEST on March 31, 1994, it is represented that U.S. Trust was granted full authority to accept or reject any part of the in-kind contribution of Stock. In this regard, U.S. Trust analyzed the impact of the contribution in-kind on the risk and return characteristics of the Assurance Trust portfolio. In analyzing such impact, U.S. Trust reviewed: (1) The expected return of the portfolio; (2) the overall volatility of the portfolio; (3) the beta risk level or market risk of the portfolio. In addition, U.S. Trust compared the performance of five (5) modeled portfolios that included the Stock with the performance of comparable portfolios which excluded such Stock. Based on the results of its analysis, U.S. Trust concluded that by accepting the in-kind contribution of Stock, the risk/return tradeoff using traditional portfolio analysis was at least as favorable, and possibly more so, to the Health Plan than it would have been without such contribution of such Stock.

U.S. Trust concluded that the contribution in-kind of Stock satisfied two of the three conditions, as set forth in section 408(e) of the Act. Specifically, no commission was charged to the Health Plan or the Assurance Trust as a result of the contribution in-kind of the Stock that occurred on March 31, 1994. Further, the Health Plan did not pay more than "adequate consideration" for such Stock, since no Plan or Trust has paid or will pay any consideration for the contribution, either in cash or other property, or in any diminution of a mandatory funding obligation of U S WEST. Moreover, as discussed above, U.S. Trust ensured that the value assigned to the Stock was the fair market value on the date of the contribution and that such amount represented less than 25 percent (25%) of the assets of the Health Plan, based on a valuation of the assets of the Health Plan performed by Boston Safe Deposit and Trust Company, as trustee of the Assurance Trust.

U.S. Trust also concluded that acquisition of Stock by the Health Plan on March 31, 1994, was not inconsistent with the diversification requirements of section 404(a)(1) of the Act, even though the value of such Stock contributed on March 31, 1994, represented approximately 25 percent (25%) of the assets of the Health Plan on that date. In the opinion of U.S. Trust, the ability of the Health Plan to pay benefits and expenses when due were not impaired by the acquisition of the Stock contributed in-kind on March 31, 1994. It is represented that U.S. Trust reached such conclusion mindful of the fact that U S WEST has no statutory or contractual obligation to pre-fund any of the benefits provided by the Health Plan and that pre-funding through the in-kind contribution of Stock necessarily provides better security to participants and beneficiaries of the Health Plan than would otherwise be required.

Based on its review and examination, it is the conclusion of U.S. Trust that it was in the interest of the Health Plan and protective of the participants and beneficiaries of the Health Plan to accept the contribution in-kind of Stock on March 31, 1994, at a total value of $183,425,000 for the following reasons: (1) The Health Plan did not give up any rights to cash or other property in connection with its acceptance of the contribution of such Stock; (2) the contribution of such Stock will increase the assets available to pay benefits under the Health Plan at no cost to such plan; (3) the I/F is authorized to sell such Stock at any time; (4) as the Stock contributed on March 31, 1994, represents only slightly more than one percent (1%) of the total outstanding shares, such that if cash were needed to pay benefits under the Health Plan, the Stock could be liquidated over a relatively short period of time without adversely impacting the market price; (5) the Health Plan and the Assurance Trust paid no commission in connection with the acquisition of the Stock; (6) the Stock was transferred to the Assurance Trust at fair market value as of the date of the contribution; and (7) the transaction was at least as favorable to the Health Plan as an arm's length transaction with an unrelated third party.

With respect to the Second Contribution of shares of Stock by U S WEST on March 31, 1995, U.S. Trust, in its capacity as independent fiduciary, evaluated the appropriateness of accepting such additional contribution of Stock and assessed the value of such Stock. It is represented that U.S. Trust began the process of determining whether and under what circumstances to accept the Second Contribution by: (1) Reviewing the terms of the Health Plan and the circumstances under which U S WEST made the first contribution in-kind; (2) reviewing the asset allocation policies and investment guidelines of the Health Plan and determining that acceptance of the Second Contribution by the Health Plan did not violate the terms and restrictions of such policies and guidelines; (3) verifying that the Second Contribution consisted of "qualifying employer securities," as defined by the Act; and (4) analyzing the value of the Stock. In fulfilling its responsibility, U.S. Trust represented that it had access to all information about U S WEST that it reasonably required and had sufficient information relating to the Stock to make an appropriate analysis. It was represented that given U S WEST's favorable operating environment, pro-active competitive posture and future growth prospects, combined with its solid earnings base from the regional telephone business, in the opinion of U.S. Trust, the Stock offers good total return potential in a long-term investment horizon.

In order to establish the current fair market value of the Stock contributed on March 31, 1995, and to ensure that the value assigned to such Stock would comprise no more than 25 percent (25%) of the assets of the Assurance Trust, as of the date of the Second Contribution, U.S. Trust determined to accept the value of the Stock at its closing price on the NYSE, as of March 30, 1995, the day before the Second Contribution. U.S. Trust represented that this method of determining the fair market value of the Stock was reasonable and appropriate. It is represented that the price utilized by U.S. Trust in valuing the Stock is verifiable by the publicly disclosed trading prices of such Stock on March 30, 1995.

U.S. Trust determined not to apply a discount to the value of the Stock contributed on March 31, 1995. In this regard, U.S. Trust determined that no minority interest discount was necessary, because such Stock was already valued on a minority interest basis. A marketability discount was not applicable, in the opinion of U.S. Trust, because the Stock is registered and fully tradeable. Further, all of the Stock acquired in both contributions in-kind on March 31, 1994, and March 31, 1995, constituted less than 1.3 percent (1.3%) of the outstanding Stock. In the opinion of U.S. Trust the entire holding of Stock (totaling 6.1 million shares after completion of the Second Contribution) does not represent such a large block that it would not be possible to dispose of such Stock within a reasonable period of time. It is represented that the 6.1 million shares contributed by U S WEST represent approximately nine (9) days of normal trading volume of such Stock. Given the fluctuation in trading volume of the Stock from day to day, U.S. Trust concluded that a purchase or sale of this amount of Stock over a two to three week period would have little effect on the market price of such Stock.

With respect to the liquidity of the Health Plan, U.S. Trust determined that the ability of the Health Plan to pay benefits and expenses when due will not be impaired by the acceptance of the Second Contribution. With respect to diversification, U.S. Trust confirmed that the fair market value of the Stock contributed in-kind on March 31, 1995, comprised 22.8 percent (22.8%) of the assets of the Health Plan, as of that date.[11]

Upon completion of its review of the Second Contribution, U.S. Trust concluded that it would be in the interest of the Health Plan and its participants and beneficiaries to accept the contribution of 1.5 million shares of Stock valued on a per share basis of $40.50 and valued in the aggregate at $60,750,000. In support of its conclusion, U.S. Trust gave the following reasons: (1) The Health Plan did not give up any rights to cash or other property in connection with its acceptance of the Second Contribution; (2) the Second Contribution will increase the assets available to pay benefits under the Health Plan at no cost to such plan; (2) there is no guarantee that U S WEST will make additional attempts to pre-fund the Health Plan in the future; (3) the I/F is authorized to sell the Stock at any time; (4) the combined holdings of the Assurance Trust represent only 1.3 percent (1.3%) of the total outstanding Stock; (5) the Stock could be liquidated over a relatively short period of time if needed to pay benefits under the Health Plan without adversely impacting the market price of such Stock; (6) the Health Plan and the Assurance Trust paid no commissions in connection with the acquisition of the Stock; (7) acceptance of the Stock is consistent with the guidelines and the asset allocation policy applicable to the Assurance Trust; (8) the Stock was transferred to the Assurance Trust at fair market value, as of the date of the Second Contribution; (9) the Second Contribution was at least as favorable to the Health Plan as an arm's length transaction with an unrelated third party.

11. U.S. Trust served as the I/F with respect to the transactions which are the subject of this exemption and investment manager of the assets in the Account in the Assurance Trust from March 31, 1994, through October 31, 1995. However, it is represented that U.S. Trust was replaced by State Street Bank and Trust Company (State Street), headquartered in Boston, Massachusetts. In this regard, it is represented that the replacement of U.S. Trust did not create a gap in independent fiduciary oversight of the Assurance Trust and did not result from any dissatisfaction with the services provided by U.S. Trust. Rather, following its recapitalization, U S WEST made a determination to retain State Street as an independent fiduciary to undertake responsibility for the active management of employer securities in the portfolios of several U S WEST plans, including the Health Plan. U S WEST represents that as a result of the selection of State Street these Plans would receive at more competitive fees the sophisticated analytical ability and experience of State Street in managing employer securities portfolios.

Further, effective November 1, 1995, U S WEST retained State Street to act as the investment manager with respect to the active management of the assets held in the Assurance Trust including the Stock, consisting of the "C" shares and the "M" shares. As investment manager, State Street is responsible for all decisions regarding acquisitions, voting, tenders, conversions, exchanges, sales, and generally for the exercise of all rights, powers, and privileges with respect to the employer securities held by the Assurance Trust. State Street has represented that it understands and acknowledges its duties and responsibilities under the Act as a fiduciary in performing these services with respect to the Assurance Trust.

It is represented that in managing the portfolio of the Assurance Trust of "C" shares and "M" shares, State Street has utilized and will utilize an active management strategy as opposed to a more passive strategy generally utilized in stock accounts consisting of a single employer security. It is represented that the active management approach enables State Street to maximize value while attempting to minimize risk.

In general with regard to its active management strategy, State Street attempts to identify the difference between the underlying value of each stock compared to its market price. Using extensive market analysis tools, research and in-house investment expertise, State Street attempts to take advantage of market opportunities considering the projected growth, financial strength, and the future stream of earnings and dividends of such stock while carefully considering the volatility of each stock and the overall risk associated with the holding of such stock.

The application of the active management strategy would allow State Street to vary the relative mix of "C" shares and "M" shares in the portfolio. The change in the mix is accomplished either by selling "C" shares and reinvesting all or part of (but no more than) the cash proceeds from such sale in "M" shares, or selling "M" shares and reinvesting all or part of (but no more than) the cash proceeds from such sale in "C" shares. For example, if the market price of the "M" shares at a particular time is viewed as over-valued, and the market price of the "C" shares at that time is viewed as under-valued, State Street would sell a portion of the "M" shares and reinvest the proceeds in "C" shares thereby taking advantage of a market opportunity.

It is represented that to accomplish this active management strategy, a communication analyst at State Street monitors daily and analyzes the "C" shares, and a media analyst monitors daily and analyzes the "M" shares to evaluate the performance of each investment, identify any value opportunities, and determine the prudence of those shares as an investment. It is represented that these analysts will compare their conclusions, jointly evaluate the portfolio, present the portfolio performance, and recommend changes to the State Street Trust Investment Committee which in turn reports to the State Street Retirement Investment Services Fiduciary Committee for a final determination.

It is represented that as of March 9, 1998, the Assurance Trust no longer

[11] See footnote 4.

holds any of the shares of Stock contributed in-kind by U S WEST. As of the same date, U S WEST confirms that State Street has not engaged in any "rebalancing" transactions involving the repurchase of Stock. However, with regard to any shares of Stock which may in the future be contributed in-kind by U S WEST to any of the Trusts, it is anticipated that State Street may engage in "rebalancing" transactions for the benefit of such trust. In this regard, it is represented that all sales and subsequent purchases of Stock in connection with rebalancing of the holding of Stock by such Trusts will occur in "blind" transactions on the open market and that all Stock acquired in such transactions will be "qualifying employer securities" within the meaning of section 407(d)(5) of the Act. Further, in accordance with the condition of this exemption, as set forth in Section III(f) above, any acquisition of Stock, including any rebalancing of the holding of Stock by a Trust, must not cause immediately after such acquisition the fair market value of such Stock, plus the fair market value of all Stock and other QERP and QES held by such Trust to exceed 25 percent (25%) of the fair market value of its assets, on the date of such transaction.

It is represented that before accepting any future in-kind contributions of Stock from U S WEST, State Street will identify the other holdings in the Assurance Trust and review asset allocation for such trust as determined by U S WEST. In addition, State Street will review the structural process that U S WEST has in place to monitor the overall investment mix, the manner by which asset allocation determinations are made, and any changes or shifts in the asset allocation policy of U S WEST. Further, State Street will evaluate the Stock being contributed to determine if such contribution is prudent and will evaluate the effect of such contribution on the portfolio of the Assurance Trust. Specifically, State Street will review the impact such contributions have on the volatility of such portfolio and will make any necessary adjustments. It is represented that State Street will monitor the holding of the Stock in the Assurance Trust and will continue to hold the Stock only if such holding continues to be in the best interest of the Assurance Trust.

State Street represents that it is qualified to act as I/F and investment manager with respect to the assets held in the Assurance Trust (consisting of the "C" shares and the "M" shares) in that it has been in the business of serving as a discretionary fiduciary with respect to employer securities since 1985, and in the past two years has created two business units dedicated exclusively to independent fiduciary transactions and the management of employer securities. The experience of State Street includes acting as discretionary fiduciary for more than $30 billion in employer securities held in approximately ninety (90) qualified retirement plans. Further, State Street, as an independent fiduciary, has represented the interests of retirement plan participants in over eighty (80) transactions involving employer securities.

Although State Street currently provides administrative and investment management services to other plans sponsored by U S WEST, State Street represents that it is sufficiently independent of U S WEST to serve as I/F and investment manager for the Assurance Trust with respect to the management of the "C" shares and the "M" shares. In this regard, the total revenue received by State Street from U S WEST and its plans constitutes less than one-tenth of one percent (.1%) of the annual revenues of State Street.

12. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) all Stock contributed in-kind by U S WEST to any of the Trusts or acquired by such Trusts, as a result of the recapitalization of U S WEST constituted QES; and all Stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing of a Trust's holding of Stock will constitute QES;

(b) all purchases of Stock will only occur in connection with rebalancing of a Trust's holding of Stock and in connection with the active management of the Stock by an I/F;

(c) all sales and subsequent purchases of Stock in connection with rebalancing of a Trust's holding of Stock will occur in "blind" transactions with unrelated third parties on the open market at the fair market value of such Stock on the date of such transactions, or where appropriate to minimize any adverse market impact on the value of the Stock remaining in any Trust, will occur in private transactions with persons who are not "parties in interest" at the fair market value of such Stock on the date of such transactions;

(d) the Plan provisions explicitly authorize U S WEST to pre-fund benefits through in-kind contributions of Stock, and all contributions of Stock were, and will be made in conformity with such Plan provisions;

(e) Stock contributed in-kind by U S WEST or acquired as a result of the recapitalization of U S WEST has been held by Trusts which are qualified under section 501(c)(9) of the Code, and which are established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plans; and all Stock contributed in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing will be held in such Trusts;

(f) all Stock contributed in-kind by U S WEST to any Trust or acquired by any Trust as a result of the recapitalization of U S WEST has been held in separate Accounts under such Trusts and all Stock contributed in-kind in the future, any replacement publicly traded shares of such Stock, or any Stock acquired as a result of purchases in connection with rebalancing of a Trust's holding of Stock will be held in separate Accounts under such Trusts;

(g) the Accounts in such Trusts have been and will be managed by an I/F who is an independent, qualified investment manager, or a successor independent, qualified investment manager and who has represented and has represented and will represent the interests of the Plans which are funded by such Trusts for all purposes with respect to the Stock for the duration of the Trust's holding of any of such Stock;

(h) the I/F for the Accounts in any Trust which fund welfare plan benefits, has accepted and will accept contributions in-kind of Stock by U S WEST to any of the Trusts and has accepted acquisitions of Stock in connection with the recapitalization of U S WEST and will accept through future in-kind contributions, through any replacement publicly traded shares of such Stock, or through purchases of such Stock in connection with rebalancing of such Trust's holding of Stock, only after such I/F determines that such transactions are feasible, in the interest of, and protective of participants and beneficiaries of the Plans which are funded by such Trusts;

(i) an I/F has had sole responsibility and at all times will have sole responsibility for the ongoing management of the Accounts under the Trusts which hold the Stock has taken and will take whatever action is necessary to protect the rights of the Plans which are funded by such Trusts;

(j) any contributions in-kind of Stock by U S WEST to any Trust or acquisitions of Stock in connection with the recapitalization of U S WEST did not cause immediately after such

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transactions the aggregate fair market value of such Stock, plus the fair market value of all other QERP and QES held by such Trust to exceed 25 percent (25%) of the fair market value of the assets of such Trust on the date of such transaction; and any future contributions in-kind of Stock by U S WEST to any Trust, any replacement publicly traded shares of such Stock, or any purchases of Stock in connection with rebalancing of any Trust's holding of Stock will not cause immediately after such transactions the aggregate fair market value of such Stock, plus the fair market value of all other QERP and QES held by such Trust to exceed 25 percent (25%) of the fair market value of the assets of such Trust on the date of such transaction;

(k) none of the assets of the Trust have reverted nor will revert to the use or benefit of U S WEST;

(l) neither the Plans nor the Trusts have paid nor will pay, whether in cash or in other property or in a diminution of any funding obligation of U S WEST, any consideration for Stock contributed in-kind by U S WEST;

(m) none of the Plans have ceded nor will cede any right to receive cash contributions from U S WEST;

(n) none of the Plans or the Trusts have paid nor will pay any commissions in connection with the contribution in-kind of Stock by U S WEST; and

(o) U S WEST has no obligation to pre-fund welfare benefits provided to participants under any of the Plans, either pursuant to the plan documents, the terms of any collective bargaining agreement, or the provisions of the Act.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include all active employees of U S WEST and all retirees. It is represented that these two classes of interested persons will be notified through different methods.

In this regard, it is represented that notice will be provided, within sixty (60) calendar days of the date of publication of the Notice in the **Federal Register**, to all active employees of U S WEST by posting at those locations within the principal places of employment of U S WEST which are customarily used for notices regarding labor-management matters for review. Such posting will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

It is represented that notice will be provided to all retirees who participate in the Plans by mailing first class a retiree newsletter within sixty (60) calendar days of the date of publication of the Notice. Such newsletter will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing. It is represented that the newsletter containing the Notice and the Supplemental Statement will be enclosed with the monthly retirement benefit checks to retirees.

It is represented that notice will be provided to all terminated participants in the Plans who are not yet receiving retirement benefits by mailing bulk rate mail within sixty (60) calendar days from the date of publication of the Notice, a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

All written comments and requests for a hearing must be received by the Department no later than thirty (30) days from the date such interested persons receive a copy of the Notice and the Supplemental Statement.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Union Bank of Switzerland (UBS/Swiss) and UBS Securities, LLC (UBS Securities) Located in Zurich, Switzerland and New York, New York, Respectively

[Exemption Application Nos. D–10459 and D–10460]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed (1) lending of securities to UBS/Swiss, UBS Securities, UBS Ltd. (UBS/UK), and UBS Securities Limited (UBS/Japan), which are affiliated domestic or foreign broker-dealers of UBS Securities,[12] by employee benefit plans (the Client Plans or Plans), including commingled investment funds holding plan assets, for which UBS/Swiss, acting through its New York branch in connection with securities lending activities (UBS NY), an affiliate of the proposed UBS Borrowers, may serve as a securities lending agent, sub-agent, or as a custodian or a directed trustee to Client Plans under either of two securities lending arrangements, referred to herein as "Plan A" or "Plan B"; and (2) the receipt of compensation by UBS NY in connection with these transactions.

This proposed exemption is subject to the following conditions:

(a) For each Client Plan, neither UBS NY, any of the UBS Borrowers nor any affiliate of those entities has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) With regard to—

(1) Plan A, under which UBS NY lends securities of a Client Plan to any UBS Borrowers in either an agency or sub-agency capacity, such arrangement is approved in advance by a Plan fiduciary who is independent of UBS NY and the UBS Borrower and is negotiated by UBS NY which acts as a liaison between the lender and the borrower to facilitate the securities lending transaction.[13]

(2) Plan B, under which the UBS Borrower directly negotiates the agreement with the fiduciary of a Client Plan, including a Plan for which UBS NY provides services with respect to the portfolio of securities to be loaned pursuant to an exclusive borrowing arrangement (the Exclusive Borrowing Arrangement), such Client Plan fiduciary is independent of both the UBS Borrower and UBS NY, and UBS NY does not participate in any such negotiations.

[12] For purposes of this proposed exemption, UBS/Swiss, UBS/UK and UBS/Japan are collectively referred to as the UBS Foreign Borrowers. In addition, UBS Securities and the UBS Foreign Borrowers are together referred to herein as the UBS Borrowers or individually as a UBS Borrower.

[13] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than UBS NY, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

(c) The independent fiduciary of a Client Plan approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and the UBS Borrower.

(d) The terms of each loan of securities by a Client Plan to a UBS Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties.

(e) A Client Plan may terminate the agency or sub-agency arrangement under Plan A or an Exclusive Borrowing Agreement under Plan B at any time, without penalty, on five business days notice, whereupon the UBS Borrowers will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and the UBS Borrowers, whichever is less.

(f) The Client Plan or its designee receives from each UBS Borrower by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the UBS Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a U.S. bank, other than UBS NY or an affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981) as it may be amended or superseded.

(g) The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan is initially at least 102 percent of the market value of the loaned securities. The applicable Loan Agreement gives the Client Plan a continuing security interest in and a lien on the collateral. The level of collateral is monitored daily (either by UBS NY under Plan A, or by UBS NY or another designee of the Client Plan under Plan B). If the market value of the collateral, on the close of trading on a business day is less than 100 percent of the market value of the loaned securities at the close of business on that day, the UBS Borrower is required to deliver, by the close of business on the next day, sufficient additional collateral to bring the level to at least 102 percent.

(h) Prior to entering into a Loan Agreement, the applicable UBS Borrower furnishes each Client Plan its most recently available audited and unaudited statements to UBS NY, and in turn, such statements are provided to the Client Plan before the Client Plan approves the terms of the Loan Agreement. The Loan Agreement contains a requirement that the applicable UBS Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, UBS NY does not make any further loans to the UBS Borrower unless an independent fiduciary of the Client Plan is provided notice of any material change and approves the loan in view of the changed financial condition.

(i) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to UBS Borrowers, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(j) All procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of PTEs 81–6 and 82–63 as well as to applicable securities laws of the United States, Switzerland, the United Kingdom or Japan.

(k) UBS NY agrees to indemnify and hold harmless the Client Plan in the United States (including the sponsor and fiduciaries of such Client Plan) for any transactions covered by this exemption with a UBS Borrower so that the Client Plan does not have to litigate, in the case of a UBS Foreign Borrower, in a foreign jurisdiction nor sue the UBS Foreign Borrower to realize on the indemnification. Such indemnification, by UBS NY, is against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer, arising from any impermissible use by the UBS Borrower of the loaned securities or the failure of the UBS Borrower to deliver loaned securities in accordance with the applicable Loan Agreement or to otherwise comply with the terms of such agreement, except to the extent that such losses or damages are caused by the Client Plan's own negligence.

(l) If any event of default occurs, UBS NY, promptly and at its own expense (subject to rights of subrogation in, to the collateral and against such borrower), purchases or causes to be purchased, for the account of the Client Plan, securities identical to the borrowed securities (or their equivalent as discussed above). If the collateral is insufficient to accomplish such purchase, UBS NY indemnifies the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on loans or failure to properly indemnify under this provision). Alternatively, if such replacement securities cannot be obtained on the open market, UBS NY pays the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral on the date of the borrower's breach of its obligation to return the loaned securities.

(2) If, however, the event of default is caused by the UBS Borrower's failure to return the securities within the designated time, the Client Plan has the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

(l) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities, including all interest and dividends on the loaned securities during the loan period.

(m) Prior to any Client Plan's approval of the lending of its securities to any UBS Borrower, a copy of this exemption, if granted, (and the notice of pendency) are provided to the Client Plan.

(n) Each Client Plan receives monthly reports with respect to securities lending transactions, including, but not limited to, the information described in Representation 26, so that an independent fiduciary of a Client Plan may monitor such transactions with the UBS Borrower.

(o) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to UBS Borrowers; provided, however, that —

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization

(the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity

(A) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate;

(B) Has full investment responsibility with respect to Client Plan assets invested therein; and

(C) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

(p) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(q) In addition to the above, all loans involving UBS Foreign Borrowers, have the following requirements:

(1) Such Foreign Borrower is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom (the SFA) in the case of UBS/UK, the Swiss Federal (the Swiss Banking Commission) in the case of UBS/Swiss, and the Ministry of Finance (the MOF), in the case of UBS/Japan;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or U.S. dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and the situs of the securities lending agreements (either the Loan Agreement under Plan A or the Exclusive Borrowing Agreement under Plan B) is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Prior to a transaction involving a UBS Foreign Borrower, the applicable UBS Foreign Borrower to—

(A) Agrees to submit to the jurisdiction of the United States;

(B) Agrees to appoint an agent for service of process in the United States, which may be an affiliate, (the Process Agent);

(C) Consents to service of process on the Process Agent; and

(D) Agrees to be indemnified in the United States for any transactions covered by this exemption.

(r) UBS NY and each UBS Foreign Borrower maintain, or cause to maintain within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (s)(1) to determine whether the conditions of the exemption have been met this exemption have been met, except that —

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UBS NY and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than UBS NY or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (s)(1).

(s)(1) Except as provided in subparagraph (s)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(s)(2) None of the persons described above in paragraphs (s)(1)(B)–(s)(1)(D) of this paragraph (s)(1) are authorized to examine the trade secrets of UBS NY or its affiliates or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

Parties to the Proposed Transactions

1. UBS/Swiss and UBS Securities (together, the Applicants), UBS NY, UBS/UK and UBS/Japan, all of which are the parties to the proposed transactions, are described as follows:

(a) *UBS/Swiss*, a banking organization formed under Swiss law in 1912, is a major global bank. Headquartered in Zurich, Switzerland, an Organization for Economic Cooperation and Development (OECD) member country,[14] UBS/Swiss is subject to regulatory oversight by the Swiss Banking Commission, the Federal Reserve Board and the New York Superintendent of Banking. As of December 31, 1996, UBS/Swiss had total assets that were in excess of $324 billion.

(b) *UBS Securities*, an affiliate of UBS/Swiss, is a New York limited liability company. UBS Securities is registered with and regulated by the SEC as a broker-dealer and by the Commodity Futures Trading Commission as a futures commission merchant. UBS Securities is a member of the New York Stock Exchange, other principal securities exchanges in the United

[14] According to the Applicants, an OECD member country is generally viewed as having a stable and regulated financial market.

States and the National Association of Securities Dealers. As of June 30, 1997, UBS Securities had total assets of approximately $65.3 billion.

Acting as principal, UBS Securities actively engages in the borrowing and lending of securities, with daily outstanding loan volume averaging several billion dollars. UBS Securities uses borrowed securities to satisfy its trading requirements or to re-lend to other broker-dealers and others who need a particular security for various periods of time. All borrowings by UBS Securities must conform to applicable provisions of the Federal Reserve Board's Regulation T.[15]

(c) *UBS NY* is the New York-based affiliate of UBS/Swiss. UBS NY is subject to regulatory oversight by the Federal Reserve Board and the Superintendent of Banking in New York State. It provides a variety of banking services to its clients and it may serve as custodian, clearing agent or as a directed trustee. As of June 30, 1997, UBS NY had total assets of approximately $19.75 billion.

(d) *UBS/UK*, an affiliate of UBS Securities and a wholly owned subsidiary of UBS/Swiss, is located in the United Kingdom, another OECD member country. UBS/UK is regulated by the SFA and is registered thereunder as a broker-dealer. As of June 30, 1997, UBS/UK had total assets of approximately $26.5 billion.

(e) *UBS/Japan*, an affiliate of UBS Securities and a wholly owned subsidiary of UBS/Swiss, is located in Tokyo, Japan, an OECD-member country. UBS/Japan is regulated by the MOF and is registered as a broker-dealer. As of June 30, 1997, UBS/Japan had total assets of approximately $11.6 billion.

Regulation of UBS Foreign Borrowers

2. UBS/UK is authorized to conduct an investment business in and from the United Kingdom as a broker-dealer regulated by the SFA. Although not registered with the SEC, UBS/UK is governed by the rules, regulations and membership requirements of the SFA. In this regard, UBS/UK is subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These rules and regulations set forth by the SFA, share a common objective: the protection of the investor by the regulation of the securities industry. The SFA rules require each firm which employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the SFA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the SFA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements to the effect that required records must be produced at the request of the SFA at any time. Finally, the rules and regulations of the SFA for broker-dealers impose potential fines and penalties which establish a comprehensive disciplinary system.

3. Similarly, UBS/Swiss is regulated by the Swiss Banking Commission whose powers include licensing banks, issuing directives to address violations by or irregularities involving banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses. The Swiss Banking Commission exercises oversight over Swiss banks such as UBS/Swiss, through independent auditors known as "Recognized Auditors" which act on behalf of the Commission under detailed statutory provisions. Each Swiss bank, including UBS/Swiss, must appoint a Recognized Auditor and notify the Swiss Banking Commission of an intent to change its auditor. The Recognized Auditor may take action within a bank as deemed necessary or as instructed by the Swiss Banking Commission and must inform the Swiss Banking Commission of supervisory matters.

The Swiss Banking Commission ensures that UBS/Swiss has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration and financial resources. The Swiss Banking Commission reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the Recognized Auditor.

The Swiss Banking Commission obtains information on the condition of UBS/Swiss and its foreign offices and subsidiaries, by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the Recognized Auditor. The Swiss Banking Commission also receives information regarding capital adequacy, country risk exposure and foreign exchange exposures from UBS/Swiss.

Swiss banking law mandates penalties to ensure correct reporting to the Swiss Banking Commission. Recognized Auditors face penalties for gross violations of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information or failing to report to the Swiss Banking Commission.

In addition to regulation by the Swiss Banking Commission, the Applicants note that in approving UBS/Swiss' establishment of UBS NY, the Federal Reserve Board has concluded that UBS/Swiss is subject to comprehensive supervision and regulation by its home country supervisors. In making this determination, the Applicants represent that the Federal Reserve Board has considered, among other factors, the extent to which the country supervisors have (a) ensured that the bank has adequate procedures for monitoring and controlling its activities, worldwide; (b) obtained information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports or otherwise; (c) obtained information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (d) received from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (e) evaluated prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

4. UBS/Japan is regulated by the MOF which has regulatory authority over both broker-dealers and banks in Japan. In applying the same analysis as that employed with Swiss regulatory authorities, the Applicants represent that the Federal Reserve Board has concluded that the MOF provides comprehensive supervision and regulation through (a) periodic examinations and inspections which focus on capital adequacy, asset quality, management, earnings, liquidity, compliance with applicable laws and risk management; (b) financial reporting requirements; and (c) the use of administrative sanctions to ensure compliance with applicable law or regulations.

5. In addition to the protections afforded by the SFA, the Swiss Banking Commission, the MOF, or for that matter, the Federal Reserve Board, UBS/UK and UBS/Japan will comply with all

[15] Under Regulation T (12 CFR 220.6(h)), permitted borrowing purposes include making delivery of securities in the case of short sales or failures of a broker to receive securities it is required to deliver.

applicable provisions of Rule 15a–6 of the 1934 Act. Rule 15a–6 provides foreign broker-dealers with a limited exemption from SEC registration requirements and, as described below, offers additional protections. Specifically, Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "U.S. major institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (the Act) if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or (b) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term "U.S. major institutional investor" is defined in Rule 15a–6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of $100 million or an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.

6. The Applicants represent that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor must, among other things—

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to Rule 15a–6; and

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); and

(6) Participate in all oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

Securities Lending, Generally

7. As with UBS Securities, UBS/UK, UBS Japan and UBS/Swiss (i.e., the UBS Foreign Borrowers), acting as principals, actively engage in the borrowing and lending of securities, with daily outstanding loan volume averaging several billion United States dollars. The UBS Foreign Borrowers utilize borrowed securities to satisfy their trading requirements, or to re-lend to other broker-dealers and banks who need a particular security for various periods of time.

An institutional investor, such as a pension plan, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to interest, dividends or other distributions paid on these securities. The lender generally requires that the security loans be fully collateralized and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. When cash is the collateral, the lender generally invests the cash and rebates a portion of the earnings on the collateral to the borrower. The "fee" received by the lender will be the difference between the earnings on the collateral and the amount of rebate paid to the borrower. When a loan of securities is collateralized with securities, a fee is paid directly by the borrower to the lender. Institutional investors often utilize the services of an agent in the performance of their securities lending transactions. The lending agent is paid a fee for its services which may be calculated as a percentage of the income earned by the investor from its securities lending activity. The Applicants believe that the essential functions which define a securities lending agent are the identification of appropriate borrowers of securities and the negotiation of the terms of a loan to the borrowers. There are services ancillary to securities lending which may include acting as custodian or directed trustee of the securities being loaned, monitoring the level of collateral and the value of the loaned securities and investing the collateral in some instances.

Request for Exemptive Relief

8. UBS/Swiss and UBS Securities request an exemption for the lending of securities to Client Plans under either of two distinct arrangements—Plan A (permitting UBS Borrowers to borrow securities from those Client Plans for which UBS NY will act as primary lending agent or sub-agent) [16] or Plan B (permitting UBS Borrowers to enter into Exclusive Borrowing Agreements with Client Plans), following disclosure of the relationship between UBS/Swiss and UBS NY as well as UBS NY's affiliation with the UBS Borrowers. In addition, the Applicants request exemptive relief from the Department to allow UBS NY to receive compensation in connection with these transactions.

Because UBS NY is a branch of UBS/Swiss, an intended borrower, and because each of the other UBS Borrowers is an affiliate of UBS/Swiss, the lending of securities to UBS Borrowers by Plans for which UBS NY serves as securities lending agent (or may otherwise be a service provider to the Plans) could be deemed to be prohibited under the Act. Further, because UBS NY, under Plan A, would have discretion to lend Plan securities to UBS Borrowers and receive a fee, and because, under Plan B, the Client Plan

[16] For the sake of simplicity, future references to UBS NY's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to also refer to those Client Plans for which UBS NY is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

will receive a fee for the Exclusive Borrowing Agreement with the UBS Borrower (which may not necessarily be related to the value of the borrowed securities and the duration of the loan) [17], and because all UBS Borrowers are not registered under the 1934 Act, the lending of securities to UBS Borrowers by Client Plans may be outside of the scope of relief provided by PTE 81–6 and PTE 82–63. [18]

Plan A

9. When acting as securities lending agent, UBS NY, pursuant to authorization from its client, will negotiate the terms of loans with borrowers and otherwise act as a liaison between the lender (and its custodian) and the borrower to facilitate the lending transaction. As securities lending agent, UBS NY will also have responsibility for monitoring receipt of all required collateral, marking such collateral to market daily so that adequate levels of collateral can be maintained, monitoring and evaluating on a continuing basis the performance and creditworthiness of the borrowers, and if authorized by the client, holding and investing cash collateral pursuant to investment guidelines established by the client. UBS NY may also act as a custodian or directed trustee for the Client Plan's portfolio of securities available to be lent. All procedures for lending securities will be designed to comply with applicable conditions of PTEs 81–6 and 82–63.

UBS NY may also be retained from time to time by primary lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary lending agents. As securities lending sub-agent, UBS NY's role under the lending transactions would parallel its role under lending transactions for which it acts as a primary lending agent on behalf of its clients.

10. Where UBS NY is the direct securities lending agent, a fiduciary of a Client Plan who is independent of UBS NY and UBS Borrowers, will sign a securities lending agency agreement with UBS NY (the Agency Agreement) before the Client Plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of securities Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be lent, specify the required margin and required daily marking-to-market, and provide a list of permissible borrowers, including UBS Borrowers. The Agency Agreement will also set forth the basis and rate for UBS NY's compensation from the Client Plan for the performance of securities lending services.

The Agency Agreement will contain provisions to the effect that if any UBS Borrower is designated by the Client Plan as an approved borrower (a) the Client Plan will acknowledge the relationship between the UBS Borrower and UBS NY and (b) UBS NY will represent to the Client Plan that each and every loan made to the UBS Borrower on behalf of the Client Plan will be at market rates which are no less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unrelated borrower.

11. When UBS NY is lending securities under a sub-agency arrangement, before the Client Plan participates in the securities program, the primary lending agent will enter into a securities lending agreement (the Primary Lending Agreement) with a fiduciary of a Client Plan who is independent of such primary lending agent, UBS NY and UBS Borrowers. The primary lending agent will be unrelated to UBS NY and UBS Borrowers. The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement relating to the description of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be lent, specification of the required margin and the requirement of daily marking-to-market, and provision of a list of approved borrowers (which will include one or more UBS Borrowers). In addition, the Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents (which may include UBS NY), to facilitate its performance of securities lending agency functions. Under such circumstances, sub-agents may be appointed if the primary lending agent does not have the expertise or adequate systems to conduct securities lending activities or where the Client Plan desires to diversify lending responsibility among multiple entities. If UBS NY is to act as a sub-agent, the Primary Lending Agreement will expressly disclose that UBS NY is to so act. Further, the Primary Lending Agreement will set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains (including UBS NY) pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with UBS NY under which the primary lending agent will retain and authorize UBS NY, as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of Loan Agreement and the list of permissible borrowers under the Sub-Agency Agreement (which will include one or more UBS Borrowers) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

UBS NY represents that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described above in connection with an Agency Agreement in situations where UBS NY is the primary lending agent. In this regard, UBS NY will make the same representation in the Sub-Agency Agreement as described above with respect to arm's length dealing with UBS Borrowers. The Sub-Agency Agreement will also set forth the basis and rate for UBS NY's compensation to be paid by the primary lending agent.

12. In all cases, UBS NY will maintain, in the United States for a period of six years, such records as necessary to assure compliance with its representations that all loans to UBS Borrowers are effectively at arm's length terms. Such records will be provided to the appropriate Client Plan fiduciary in the manner and format agreed to with the lending fiduciary, without charge to the Client Plan.

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[17] The Applicants note that in an exclusive borrowing arrangement, the fee paid by a borrower need not necessarily be computed in the same manner as under a non-exclusive or Plan A arrangement. This is because there is additional value to a borrower in having an assured access to a supply of securities. Accordingly, the lender is able to exact different consideration, be it a premium, some form of a guaranteed return or otherwise.

[18] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities is not prohibited under section 406(a) of the Act.

In addition, UBS NY shall retain for six months tape recordings evidencing all securities loan transactions with UBS Borrowers. This will enable Client Plans and the Department to review UBS NY's adherence to its representation that all loans to UBS Borrowers are at arm's length.

13. A Client Plan may terminate the Agency Agreement (or the Primary Lending Agreement) at any time, without penalty to the Plan, on five business days notice whereupon the UBS Borrowers will deliver certificates for securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities to the Client Plan within (a) the customary delivery period for such securities; (b) five business days; or (c) the time negotiated for such delivery by the Client Plan and the UBS Borrowers, whichever is less.

14. UBS NY will enter into the same form of Loan Agreement with the applicable UBS Borrower on behalf of Client Plans as it does with all other borrowers. An independent fiduciary of the Client Plan will approve the terms of the Loan Agreement. The Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Plan's rights in the event of any default by a UBS Borrower. The Loan Agreement will explain the basis for compensation to the Client Plan for lending securities to the UBS Borrower under each category of collateral. The Loan Agreement also will contain a requirement that the UBS Borrower must pay all transfer fees and transfer taxes related to the security loans.

However, before entering into the Loan Agreement, the applicable UBS Borrower will furnish each Client Plan its most recently available audited and unaudited statements to UBS NY, and in turn, such statements are provided to the Client Plan before the Client Plan approves the terms of the Loan Agreement. The Loan Agreement will contain a requirement that the applicable UBS Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements.[19] If any such changes have taken place, UBS NY will not make any further loans to the UBS Borrower unless an independent fiduciary of the Client Plan approves the loan in view of the changed financial condition. Conversely, if the UBS Borrower fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

15. As noted above, the agreement by UBS NY to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and UBS NY will agree to the arrangement under which UBS NY will be compensated for its services as lending agent. This fee arrangement will generally be a percentage of either the return earned on cash collateral by the Client Plan or, in the case of non-cash collateralized loans, a percentage of the fee paid to the Client Plan by the UBS Borrower. Several factors may impact the fee structures, such as industry practices and changes in the market, as well as the types of securities being lent (e.g., domestic versus foreign securities). Such agreed upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the Client Plan who is independent of the UBS Borrower and UBS NY. In any event, the securities lending fee to be paid to UBS NY will, at all times, comply with PTE 82–63.[20] In addition, an independent fiduciary of the Client Plan may authorize UBS NY to act as custodian or directed trustee of the Client Plan's portfolio of securities available for lending and to receive a reasonable and customary fee for such services.

Similarly, with respect to arrangements under which UBS NY is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of its fee (the portion to be determined by the primary lending agent, in its sole discretion) to any sub-agent, including UBS NY, which is to provide securities lending services to the Client Plan. The Client Plan will be provided with any reasonably available information which is necessary for the Plan fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which the Plan fiduciary may reasonably request.

16. Each time a Client Plan lends securities to a UBS Borrower pursuant to the Loan Agreement, UBS NY will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral and the fee or rebate payable. The terms of the fee or rebate payable for each loan will be at least as favorable to the Client Plan as those of a comparable arm's length transaction between unrelated parties.

17. The Client Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities, including interest and dividends during the loan period.[21] The Loan Agreement will provide that the Client Plan may terminate any loan at any time. Upon a termination, the UBS Borrower will be contractually obligated to return securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within five business days of written notification of termination or, if sooner, within the normal settlement period in the principal market in which the loaned securities are traded (unless a longer period of time permitted pursuant to an applicable Department exemption). The Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. If the UBS Borrower fails to return the securities within the designated time, the Client Plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

[19] With respect to capital adequacy rules, it is represented that UBS NY monitors the creditworthiness of all borrowers and adjusts exposure limits to such UBS Borrowers where necessary. Under the Loan Agreement, the UBS Borrower represents that it will comply, at all times, with all applicable laws and regulations of applicable regulatory and self-regulatory organizations. Noncompliance with required capitalization levels would constitute an event of default under the Loan Agreement, thereby enabling a Client Plan to exercise remedies by terminating the loans, liquidating the collateral and applying the collateral against the purchase of replacement securities.

[20] Conditions (c) and (d) of PTE 82–63 require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in paragraph (f) of PTE 82–63 will be satisfied.

[21] The Applicants represent that dividends and other distributions on foreign securities payable to a lending Client Plan are subject to foreign tax withholdings. Under these circumstances, the applicable UBS Borrower, where necessary, will gross-up the in-lieu-of-payment (in respect of such dividend or distribution it makes) to the Client Plan so that the Client Plan will receive back what it otherwise would have received (by way of dividend or distribution) had it not loaned the securities.

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18. UBS NY will establish each day a written schedule of lending fees [22] and rebate rates [23] with respect to new loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities, in order to assure uniformity of treatment among borrowing brokers and to limit the discretion UBS NY would have in negotiating securities loans to UBS Borrowers. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. It is represented that in no case will loans be made to UBS Borrowers at rates or lending fees that are less advantageous to the Client Plans than those on the schedule. In addition, it is represented that the method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by UBS Borrowers and the maximum rebate payable to UBS Borrowers will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and UBS NY in cases where UBS NY is the direct securities lending agent.

19. The rebate rates with respect to cash-collateralized loans made by Client Plans will also take into account the potential demand for loaned securities, the applicable benchmark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on overnight investments which are permitted by the relevant Client Plan fiduciary. Further, the lending fees with respect to loans made by Client Plans collateralized by other than cash will be set daily to reflect conditions as influenced by potential market demand.

20. UBS NY will negotiate rebate rates for cash collateral payable to each borrower, including UBS Borrowers, on behalf of a Client Plan. Where cash collateral is derived from a loan with an expected maturity date (i.e., a term loan) and is intended to be invested in instruments with maturities corresponding generally to the maturity of the term loan, the aggregate rebate over the life of the loan will be less than the total investment return (assuming no investment default). Where cash collateral is derived from a loan with an overnight maturity or an open maturity (i.e., no specified maturity date), the aggregate rebate will be less than the total investment return (assuming no investment default) for the period during which the securities were outstanding on loan. For example, where cash collateral derived from an overnight loan is intended to be invested in a generic repurchase agreement, any rebate determined with respect to an overnight purchase agreement benchmark will be set below the "ask" quotation therefor.

With respect to any loan to a UBS Borrower, UBS NY, at the inception of such loan, will not negotiate and agree to a rebate rate with respect to such loan which would produce a zero or negative return to the Client Plan over the life of the loan (assuming no default on the investments made by UBS NY where it has investment discretion over the cash collateral or on investments expected to be made by the Client Plan's designee, where UBS NY does not have investment discretion). In this regard, with respect to each designated class of securities, the maximum daily rebate rate will generally be the lower of (a) the overnight repo rate or Federal Funds rate, minus a stated percentage and (b) the actual investment rate for the relevant cash collateral, minus a stated percentage. As noted above, UBS NY will disclose the formula for determining the maximum daily rebate rate to an independent fiduciary of a Client Plan for approval before lending any securities to UBS Borrowers on behalf of the Plan.

21. If UBS NY reduces the lending fee or increases the rebate rate on any outstanding loan to an affiliated borrower (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), UBS NY, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan with notice that it has reduced such fee or increased the rebate rate to such affiliated borrower and that the Client Plan may terminate such loan at any time. In addition, UBS NY will provide the independent fiduciary of the Client Plan with such information as the fiduciary may reasonably request regarding such adjustment.

With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers. Thus, the competitiveness of the loan fee will be continuously tested in the marketplace. Accordingly, the Applicants believe that loans to UBS Borrowers should result in competitive rate income to the lending Client Plan.

22. At all times, UBS NY will effect loans in a prudent and diversified manner. While UBS NY will normally lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance where (a) the credit limit established for such borrower by UBS NY and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different UBS NY representatives at or about the same time with respect to the same security. [24] In situations (a) and (b), loans would normally be effected with the "second in line." In situation (c), securities would be allocated equitably among all eligible borrowers.

23. UBS NY agrees to indemnify and hold harmless the applicable Client Plan (including the sponsor and fiduciaries of such Client Plan) in the United States for any transactions covered by this exemption with the UBS Borrower so that the Client Plan does not have to litigate, in the case of a UBS Foreign Borrower, in a foreign jurisdiction nor sue the UBS Foreign Borrower to realize on the indemnification. Such indemnification by UBS NY will be against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer arising from any impermissible use by the UBS Borrower of the loaned securities. The applicable UBS Borrower

[22] UBS NY will adopt minimum daily lending fees for non-cash collateral payable by UBS Borrowers to UBS NY on behalf of a Client Plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as those identified above. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. UBS NY will submit such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to UBS Borrowers on behalf of such Client Plan.

[23] Separate maximum daily rebate rates will be established with respect to loans of securities within the designated classes identified above.

[24] According to the Applicants, the "first come, first served" allocation would not apply where UBS NY is not acting as a securities lending agent, but rather is acting as, for example, a custodian or directed trustee to a Client Plan that has entered into an exclusive arrangement with the borrower as described under Plan B. In such a situation, the Applicants note that the UBS Borrower would be choosing from whom to borrow and UBS NY has no right or obligation to lend to the UBS Borrower the securities from other clients or lend the securities which are subject to such Exclusive Borrowing Agreements.

will also be liable to the Client Plan for breach of contract for any failure by such UBS Borrower to deliver loaned securities when due in accordance with the provisions of the Loan Agreement or to otherwise comply with the terms of the Loan Agreement.

If any event of default occurs, UBS NY, promptly and at its own expense, will purchase, or cause to be purchased on the open market, for the account of the Client Plan securities identical to the borrowed securities (or their equivalent as discussed above). If the collateral is insufficient to accomplish such purchase, UBS NY will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such replacement securities cannot be obtained on the open market, UBS NY will pay the Client Plan the difference in dollars between the market value [25] of the loaned securities and the market value of the collateral on the date of the borrower's breach of its obligation to return the loaned securities.

If, however, as noted in Representation 17, the event of default is caused by the UBS Borrower's failure to return the securities within the designated time, the Client Plan will have the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

24. The Client Plan, or its designee, will receive collateral from each UBS Borrower by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the UBS Borrower. All collateral will be received by the Client Plan, or its designee, in the United States. The collateral will consist of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a U.S. bank other than UBS NY or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, as amended, modified, supplemented or superseded by Department exemption or promulgation.

The market value (or, in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. UBS NY will monitor the level of the collateral daily. If the market value of the collateral, on the close of trading on a business day, is less than 100 percent (or such greater percentage as agreed to by the parties) of the loaned securities at the close of business on that day, UBS NY will require the UBS Borrowers to deliver by the close of business on the next day sufficient additional collateral to bring the level back to at least 102 percent.

25. UBS NY will maintain the situs of the Loan Agreements (evidencing the Client Plan's right to return of the loaned securities and the Plan's continuing interest in and lien on the collateral) in the United States and, prior to a transaction involving a UBS Foreign Borrower, the applicable UBS Foreign Borrower will (a) agree to submit to the jurisdiction of the courts of the United States; (b) agree to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consent to service of process on the Process Agent; and (d) agree to be indemnified in the United States for any transaction covered by this exemption.

26. Unless otherwise agreed, each Client Plan participating in the lending program will be sent a monthly transaction report. Such report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case my be) at which the security is loaned, and the number of days the security has been on loan. In addition, if requested by the lending customer, UBS NY will provide daily confirmations of securities lending transactions and weekly reports setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties. Further, prior to a Client Plan's approval of a securities lending program, UBS NY will provide a Plan fiduciary with copies of the proposed exemption and notice granting the exemption.

27. In order to provide the means for monitoring lending activity, rates on loans to UBS Borrowers compared with loans to other brokers and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding security loans to UBS Borrowers and to other borrowers as compared to the total collateral held for both categories of loans. Further, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to UBS Borrowers compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

28. To ensure that any lending of securities to a UBS Borrower will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind, only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to UBS Borrowers. However, in the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement will be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, if the fiduciary responsible for making the investment decision on behalf of such master trust

[25] In relevant part, the "market value" of any securities listed on a national securities exchange in the U.S. will be the last sales price on such exchange on the preceding business day (the Business Day) or, if there is no sale on that day, the last sale price on the next preceding Business Day on which there is a sale on such exchange, as quoted on the consolidated tape (the Consolidated Tape). If the principal market for securities to be valued is the over-the-counter market, their market value will be the closing sale price as quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ) on the preceding Business Day or the closing price on such Business Day if the securities are issues for which last sale prices are not quoted on NASDAQ. If the securities to be valued are not quoted on NASDAQ, their market value shall be the highest bid quotation appearing in The Wall Street Journal, National Quotation Bureau pink sheets, Salomon Brothers quotation sheets, quotation sheets of registered market makers and, if necessary, dealers' telephone quotations on the preceding Business Day. (In each case, if the relevant quotation does not exist on such day, then the relevant quotation on the next preceding Business Day in which there is such a quotation would be the market value.)

or other entity is not the employer or an affiliate of the employer, such fiduciary will be required to have total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing $50 million requirement will be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity (a) must not be the sponsoring employer, a member of the controlled group of corporations, the employee organization, or an affiliate; (b) must have full investment responsibility with respect to plan assets invested therein; and (c) must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.

29. The Applicants represent that the conditions set forth in this proposed exemption will subject UBS NY and UBS Borrowers to all of the conditions imposed on broker-dealers under PTE 81–6, other than registration under the 1934 Act with respect to the UBS Foreign Borrowers. The Applicants note that such conditions in PTE 81–6 include requirements relating to daily marking to market, setting collateral at 100 percent of the market value of the securities, the rules for termination of the loan and the return of the borrowed securities.

Plan B

30. UBS Borrowers may directly negotiate Exclusive Borrowing Agreements with fiduciaries of Client Plans, including Plans for which UBS NY will serve as custodian or directed trustee or provide other related services with respect to the portfolio of securities to be loaned, where such fiduciary is independent of the UBS Borrowers and UBS NY. Under such an Agreement, UBS Borrowers will have exclusive access for a specified period of time to borrow certain securities of the Client Plan pursuant to certain conditions. UBS NY will not participate in the negotiation of the Exclusive Borrowing Agreement. The involvement of UBS NY, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the Client Plan with certain reports. The Applicants represent that, under the Exclusive Borrowing Agreement, neither UBS NY nor UBS Borrowers will perform for Client Plans, the functions which constitute the essential functions of a securities lending agent.

31. On or prior to delivery of loaned securities to a UBS Borrower, the Client Plan or its designee, will receive from the UBS Borrower by physical delivery, book entry in a securities depository, wire transfer or similar means. The collateral will consist of those types of collateral permitted under PTE 81–6, as amended, modified, supplemented or superseded by Department exemption or promulgation.

The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. The Exclusive Borrowing Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. UBS NY, or another designee of the Client Plan, will monitor the level of the collateral daily and, if its market value falls below 100 percent, the UBS Borrower will deliver sufficient additional collateral by the following day such that the market value of all collateral will equal at least 102 percent of market value of the loaned securities.

32. The UBS Borrower will maintain, or cause to be maintained, the situs of the Exclusive Borrowing Agreement (evidencing the Client Plan's right to return the loan securities and the Plan's continuing interest in and lien on the collateral) in the United States, and prior to a transaction involving a UBS Foreign Borrower, the applicable UBS Foreign Borrower will (a) agree to submit to the jurisdiction of the courts of the United States; (b) agree to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consent to service of process on the Process Agent; and (d) agree to be indemnified in the United States for any transaction covered by this exemption.

33. Before entering into an Exclusive Borrowing Agreement, the UBS Borrower will furnish to the Client Plan the most recent publicly-available audited and unaudited statements of its financial condition. The Exclusive Borrowing Agreement will also contain a representation by the UBS Borrower that, as of each time it borrows securities, there have been no material adverse changes in its financial condition. Further, all procedures under the Exclusive Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63 (except as otherwise noted herein).

Unless otherwise agreed, the UBS Borrower or, in the case of some Client Plans, UBS NY, will provide a monthly report to the Client Plan showing, on a daily basis, the aggregate market value of all outstanding security loans to each UBS Borrower and the aggregate market value of the collateral.

34. With regard to those Client Plans for which UBS NY provides custodial, trustee, clearing and/or reporting functions relative to securities loans, an independent Plan fiduciary shall review and approve any fees which may be paid to UBS NY for such services. Any such fee would be in addition to any fee UBS NY has negotiated to receive from any such Client Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement to have UBS NY provide such services relative to securities loans to a UBS Borrower under an Exclusive Borrowing Agreement will be terminable by the Client Plan within five business days of receipt of written notice, without penalty to the Client Plan, other than any return to the UBS Borrower of the portion of the fee paid by the UBS Borrower to the Client Plan if the Client Plan also terminates its Agreement with the UBS Borrower. Procedures similar to those described under Plan A (see Representation 13) will be followed.

Before entering into or renewing an Exclusive Borrowing Agreement with a Client Plan to provide such administrative services relative to securities loans to UBS Borrowers, UBS NY will furnish to the Client Plan any publicly available information which it believes is necessary for the Client Plan to determine whether to enter into or renew the Agreement.

35. In exchange for the exclusive right to borrow certain securities from a Client Plan, the UBS Borrower will pay the Client Plan either a flat fee, or a minimum flat fee plus a percentage (to be negotiated at the time the Exclusive Borrowing Agreement is entered into) of the total balance outstanding of borrowed securities, or a percentage of

the total balance outstanding without any flat fee. In light of this arrangement, all earnings generated by cash collateral will be returned to the UBS Borrower.

36. As under Plan A, the Client Plan will be entitled, under Plan B, to the equivalent of all interest, dividends or other distributions on any borrowed securities that the Client Plan would have received had it remained the record owner of the securities (see Representation 17 as well as the representations regarding foreign tax withholdings). In addition, as under Plan A, the same asset limitations and investor sophistication requirements that are set forth in Representation 28 as well as the conditions of PTE 81–6, except as otherwise noted herein, will be applicable.

37. The Exclusive Borrowing Agreement may be terminated by either party to the agreement at any time. Each UBS Borrower will agree that upon termination, it will deliver any borrowed securities back to the Client Plan within five business days of written notification of termination or, if sooner, within the normal settlement period in the principal market in which the loaned securities are traded (unless a longer period is permitted pursuant to an applicable Department exemption). If the UBS Borrower fails to return the securities or the equivalent thereof, the Client Plan will have certain rights under the Agreement to realize upon the collateral.

38. Under the Exclusive Borrowing Agreement, UBS NY will indemnify and hold harmless the Client Plan in the United States (including the sponsor and fiduciaries of such Client Plan) for any transactions covered by this exemption with a UBS Borrower so that the Client Plan does not have to litigate, in the case of a UBS Foreign Borrower, in a foreign jurisdiction nor sue the UBS Foreign Borrower to realize on the indemnification. Such indemnification, by UBS NY, will be against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer, arising from any impermissible use by the UBS Borrower of the loaned securities or the failure of the UBS Borrower to deliver loaned securities in accordance with the applicable Loan Agreement or to otherwise comply with the terms of such agreement, except to the extent that such losses or damages are caused by the Client Plan's own negligence. In the event any default occurs with respect to the borrowed securities, UBS NY will follow the procedures described above in Representation 23.

39. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Plan A requires that the form of the Loan Agreement pursuant to which any loan is effected will be approved by a fiduciary of the Client Plan who is independent of UBS NY and UBS Borrowers before a Client Plan lends any securities to UBS Borrowers, while under Plan B, UBS Borrowers will directly negotiate Exclusive Borrowing Agreements with a Client Plan, the fiduciary of which is also independent of UBS NY and the UBS Borrowers.

(b) The lending arrangements under both Plan A and Plan B will permit Client Plans to lend to UBS Borrowers and will enable such Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive dividends, interest payments and other distributions due on those securities.

(c) With respect to securities lending transactions in which a UBS Foreign Borrower is the borrower, the proposed exemption will enable Client Plans to realize low-risk returns on securities that otherwise would remain idle, as in securities lending transactions executed pursuant to PTE 81–6, by broker-dealers registered in the United States, and the proposed exemption generally imposes terms and conditions upon transactions entered into by UBS Foreign Borrowers which are the same as or comparable to those imposed on U.S. borrowers under PTE 81–6, except as otherwise noted herein.

(d) Under both Plan A and Plan B, the Client Plan will receive sufficient information concerning each UBS Borrower's financial condition before the Client Plan lends any securities to such UBS Borrower.

(e) Under both Plan A and Plan B, the collateral on each loan to a UBS Borrower initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81–6, and the collateral levels will be monitored daily by UBS NY under Plan A and by UBS NY or another custodian under Plan B.

(f) Under both Plan A and Plan B, the Client Plans will receive agreed upon periodic reports (prepared no less frequently than monthly) containing information on loan activity, fees, the level of the collateral and loan return/yield.

(g) Under both Plan A and Plan B, UBS NY and UBS Borrowers will have no discretionary authority or control over the Client Plan's acquisition or disposition of securities available for loan.

(h) Under both Plan A and Plan B, the applicable fee or rebate payable for each loan and other terms of the loan will be at least as favorable to the Client Plans as those of a comparable arm's length transaction between unrelated parties.

(i) Under both Plan A and Plan B, all of the procedures under the proposed transactions will, at a minimum, conform to the applicable provisions of PTE 81–6, PTE 82–63 and Rule 15a–6, except as otherwise noted herein, and also will be in compliance with the applicable securities laws of the United States, the United Kingdom, Switzerland and Japan.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons by UBS NY within five (5) days of the publication of the notice of proposed exemption in the **Federal Register**. Such notice will be provided to appropriate trustees or fiduciaries of Client Plans which have an interest in lending securities to UBS Borrowers by first-class mail or by hand delivery. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within thirty-five (35) days of the publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Beer Nuts, Inc. Profit Sharing Plan (the Plan) Located in Bloomington, Illinois

[Exemption Application No. D–10531]

Proposed Exemption

The Department is considering granting a retroactive exemption under the authority of section 408(a) of the Act and 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan of certain limited partnership interests (the

Interests) to Beer Nuts, Inc. (Beer Nuts), a party in interest and a disqualified person with respect to the Plan, provided that the following conditions were satisfied:

(a) the terms of the Sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) the Sale was a one-time transaction for cash;

(c) the Plan paid no commissions or other expenses relating to the Sale; and

(d) The Sale price was not less than the fair market value of the Interests as determined by a qualified independent appraiser.

Effective Date: If granted, the proposed exemption will be effective as of December 30, 1996.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 59 participants. The Plan is sponsored and administered by Beer Nuts, manufacturer of a specialty line of snack nuts. The trustees (the Trustees) of the Plan are Mr. James A. Shirk, President and CEO of Beer Nuts, and Mr. Russell O. Shirk, Chairman of the Board of Directors for Beer Nuts. As of December 31, 1996, the Plan held assets valued at $5,413,988.

2. Beer Nuts seeks a retroactive exemption for its December 30, 1996 purchase of the Interests from the Plan. The Interests consisted of 100 units of the Balcor Equity Pension Investors I (Balcor I) limited partnership and 200 units of the Balcor Pension Investors VI (Balcor VI) limited partnership. The limited partnerships, established in and subject to the laws of the State of Illinois, were designed to invest in real estate. The general partner is the Balcor Company of Deerfield, Illinois.

According to the applicant, the Plan originally purchased the Balcor I units in 1983 for $50,000, or $500 per unit. While holding the units, the Plan received $37,347, or $373.47 per unit, in total distributions. On December 30, 1996, Beer Nuts purchased the Balcor I units from the Plan for $32,067, or $320.67 per unit. Thus, the Plan received a total of $69,414 ($694.14 per unit) on an investment of $50,000.

The Plan also purchased the 200 Balcor VI units in 1983, paying a total of $50,000, or $250 per unit. While holding these units, the Plan received $48,072, or $240.36 per unit, in total distributions. The Plan sold the Balcor VI units to Beer Nuts on December 30, 1996 for $19,100, or $95.50 per unit. Therefore, the plan received a total of $67,172 ($335.86 per unit) on an investment of $50,000.

3. The Plan's need to sell the Interests arose primarily out of the decision by the Trustees to transfer the Plan's administrative duties to the Principal Mutual Life Insurance Company (the Principal), and to purchase a group annuity contract therefrom. The Interests could not be held under the group annuity contract, but would instead be considered "outside assets" by the Principal, resulting in additional expenses related thereto. Furthermore, the Trustees wanted to liquidate underperforming assets and reinvest in an asset providing for a higher rate of return.

Acting on the advice of their insurance agent, the Trustees decided to obtain an appraisal for the Interests and then purchase them directly from the Plan. Accordingly, the Trustees consulted the September 30, 1996 appraisal which was jointly performed by two firms, Valuation Counselors Group, Inc. and Darby and Associates (VCG-Darby). Each firm has had extensive experience in valuing partnership interests and was independent of Beer Nuts. VCG-Darby had been hired by the Balcor Company to value, on an ongoing basis, partnership interests issued by 16 of the Balcor Company's partnerships, including Balcor I and Balcor VI.

Adjusted for the October 1996 distributions,[26] the Balcor I units had a net value of $320.67 per unit, and the Balcor VI units had a net value of $95.50 per unit. Before undertaking the transaction, however, the Plan received an unsolicited offer for the Balcor I units on December 2, 1996 from an unrelated third party, the First Trust Company, LP (First Trust). First Trust offered to purchase up to 4.9% of the limited partnership interests in Balcor I at a price of $200 per unit. Because the amount of the offer was significantly lower than the VCG-Darby valuation, Beer Nuts opted to purchase the Interests from the Plan using VCG-Darby's figures.

In further support of its claim that it acted in good faith, the applicant points to three subsequent offers for the Interests. On January 1, 1997, First Trust submitted an unsolicited offer to buy up to 4.9% of the Balcor VI units for $61 per unit. On March 6, 1997, Madison Partnership Liquidity Investors CC, LLC (Madison) offered to purchase up to 4.9% of the Balcor I units for $110 per unit, and up to 4.9% of the Balcor VI units for $36 per unit. Beer Nuts believes that the fact it paid an amount significantly in excess of the First Trust and Madison offers demonstrates that it conducted the transaction in a manner designed to protect the interests of the Plan and those of the participants and beneficiaries.

4. According to the applicant, neither the Trustees of the Plan nor the officers of Beer Nuts involved in the transaction were aware of the prohibited nature of the transaction until contacting their accountant, Mr. Bruce Breitweiser, in early 1997 about changing the Plan year to a calendar year in conjunction with the transfer of the Plan's assets to the Principal. While reviewing the Plan's records, Mr. Breitweiser discovered the prohibited transaction. Upon informing the applicant, Mr. Breitweiser learned that the Trustees engaged in the transaction on the advice of their insurance agent. Soon thereafter, he contacted the legal department at the Principal, which agreed with his conclusion as to the prohibited nature of the transaction. At this point, Mr. Breitweiser began obtaining all of the documentation from Beer Nuts and the Principal pertaining to the transaction. After doing so, he contacted the Department about securing retroactive exemptive relief.

5. The applicant represents that the transaction was administratively feasible in that it was a one-time transaction for cash. Furthermore, the applicant states that the transaction was in the interests of the Plan and its participants and beneficiaries because it provided for the consolidation of the Plan's assets, reduced record-keeping costs, ensured that the Plan received a return on the Interests in excess of its original investment, and disposed of illiquid and underperforming assets facilitating the investment of the proceeds in an asset better suited to the needs of the Plan and its participants and beneficiaries. Finally, the applicant represents that the transaction was protective of the rights of the participants and beneficiaries because the Plan received for the Interests an amount determined by a qualified, independent appraiser.

6. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the terms of the Sale were at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Sale was a one-time transaction for cash; (c) the Plan

[26] According to documents submitted by the applicant, the unadjusted September 30, 1996 VCG-Darby valuation for the Interests was $366 per unit for the Balcor I units and $122 per unit for the Balcor VI units. However, adjustments were made for subsequent distributions from the partnership of $45.33 per Balcor I unit and $26.50 per Balcor VI unit.

paid no commissions or other expenses relating to the Sale; and (d) the Sale price was not less than the fair market value of the Interests as determined by a qualified, independent appraiser.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due on or before May 15, 1998.

For Further Information Contact: Mr. James Scott Frazier of the Department, telephone (202) 219–8891 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of March 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–8197 Filed 3–30–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 3:00 p.m., Tuesday, March 17, 1998.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (c)(6) (personnel information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personal matters.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570; Telephone: (202) 273–1940.

Dated: Washington, D.C., March 25, 1998.
By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 98–8511 Filed 3–27–98; 11:38 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

In the Matter of Tennessee Valley Authority; Sequoyah Nuclear Plant Units 1 and 2; Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating License Nos. DPR–77 and DPR–79, which authorize operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in Hamilton County, Tennessee.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at SQN is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at SQN, and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only one fuel assembly is allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U-235 enrichment is limited to 5.0 weight percent.

By letter dated December 5, 1997, the licensee requested an exemption from 10 CFR 70.24. In this request the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittals and has determined that SQN meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at SQN.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the Tennessee Valley Authority an exemption from the requirements of 10 CFR 70.24.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (63 FR 14481).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 25th day of March 1998.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–8407 Filed 3–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 30, April 6, 13, and 20, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 30

Monday, March 30

2:00 p.m.
Briefing by Nuclear Waste Technical Review Board (NWTRB) (PUBLIC MEETING)

Tuesday, March 31

10:00 a.m.
Briefing on Fire Protection (PUBLIC MEETING) (Contact: Tad Marsh, 301–415–2873)

3:00 p.m.
Briefing by Organization of Agreement States and Status of IMPEP Program (PUBLIC MEETING) (Contact: Richard Bangart, 301–415–3340)

Thursday, April 2

1:00 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (PUBLIC MEETING) (Contact: John Larkins, 301–415–7360)

2:30 p.m.
Briefing on Improvements to the Senior Management Meeting Process (PUBLIC MEETING) (Contact: Bill Borchard, 301–415–1257)

Friday, April 3

9:00 a.m.
Briefing on MOX Fuel Fabrication Facility Licensing (PUBLIC MEETING) (Contact: Ted Sherr, 301–415–7218)

11:30 a.m.
Affirmation Session (PUBLIC MEETING): *(PLEASE NOTE: This item will be affirmed immediately following the conclusion of the preceding meeting.) a: Final Amendments to 10 CFR Parts 60, 72, 73, 74, and 75, "Physical Protection for Spent Nuclear Fuel and High-Level Radioactive Waste" (Tentative)

Week of April 6—Tentative

There are no meetings the week of April 6.

Week of April 13—Tentative

There are no meetings the week of April 13.

Week of April 20—Tentative

There are no meetings the week of April 20.

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting over the Internet system is available. If you interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 27, 1998.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–8557 Filed 3–27–98; 1:43 pm]

BILLING CODE 7590–01–M

SECURITES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23076; 812–10768]

Barr Rosenberg Series Trust and Rosenberg Institutional Equity Management; Notice of Application

March 25, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(G)(i)(II).

SUMMARY OF THE APPLICATION: Applicants seek an order that would permit a fund of funds relying on section 12(d)(1)(G) of the Act to invest directly in securities and other instruments.

APPLICANTS: Barr Rosenberg Series Trust (the "Trust") and Rosenberg Institutional Equity Management ("RIEM"). The requested order also would extend to any existing or future open-end management investment company or series thereof advised by RIEM (an "Upper Tier Fund") that wishes to invest in another registered open-end management investment company or series thereof that is advised by RIEM and is part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) (together with the series of the Trust excluding the Barr Rosenberg Double Alpha Market Fund, the "Underlying Funds") as the investing Upper Tier Fund.[1]

FILING DATES: The application was filed on September 2, 1997, and amended on December 24, 1997. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 20, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contest. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W, Washington, DC 20549. Applicants, 4 Orinda Way, Building E, Orinda, CA 94563.

FOR FURTHER INFORMATION CONTACT: Annmarie J. Zell, Staff Attorney, at (202) 942–0532, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W, Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a registered open-end management investment company organized as a Massachusetts business trust, currently consists of five series (collectively, the "Funds").[2] RIEM, an investment adviser registered under the Investment Advisers Act of 1940, is the investment adviser for the Funds.

2. The Barr Rosenberg Double Alpha Market Fund (the "Double Alpha Fund"), a series of the Trust, will seek a total return greater than that of the Standard & Poor's 500 Composite Stock Price Index (the "S & P 500 Index") by investing in shares of the Barr Rosenberg Market Neutral Fund (the "Market Neutral Fund"), while also investing in S & P 500 Index Futures, options on S & P 500 Index Futures, and equity swap contracts (collectively, "S & P Instruments"). The Market Neutral Fund seeks long-term capital appreciation while maintaining minimal exposure to general equity market risk by taking long positions in stocks principally traded in the markets of the United States the RIEM has identified as undervalued and short positions that RIEM has identified as overvalued. By investing in shares of the Market Neutral Fund, the Double Alpha Fund seeks to capture the return generated by the "market neutral strategy" of the Market Neutral Fund. The Double Alpha Fund and the Upper Tier Funds would also like to retain the flexibility to invest in other securities and financial instruments, including financial futures, swaps, reverse repurchase agreements, options on currencies and precious metals.

3. RIEM currently reduces and expects to reduce its management fees and bear certain expenses to the extent that each Fund's total annual operating expenses (excluding nonrecurring account fees and extraordinary expenses) exceed a specified percentage of net assets (the "Voluntary Expense Limit"). Any advisory fee that RIEM charges to the Double Alpha Fund will be for services that are addition to, rather than duplicative of, services provided to the Underlying Funds. Shareholders of the Double Alpha Fund will also pay a proportionate share of the advisory fees and expenses paid by shareholders of the Underlying Funds. Neither the Double Alpha Fund nor the Underlying Funds shares are subject to a sales charge and the Double Alpha Fund intends to invest only in shares of the Underlying Funds that are not subject to distribution or shareholder servicing fees. Applicants believe that the proposed operation of the Double Alpha Fund will benefit investors by lowering transaction and operational costs and providing them with a unique investment alternative.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell it securities to another investment company if the sale will cause the

[1] All existing entities that currently intend to rely on the order are listed as applicants and any Upper Tier Fund that may rely on this order in the future will do so only in accordance with the terms and conditions of the application.

[2] Barr Rosenberg Double Alpha Market Fund, Barr Rosenberg Market Neutral Fund, U.S. Small Capitalization, Japan Series and International Small Capitalization Series.

acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) the acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G).

3. Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that the Double Alpha Funds' investment policies contemplate that it will invest in S & P 500 Instruments and other securities and financial instruments.

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors. Applicants believe that permitting the Double Alpha Fund or other Upper Tier Funds to invest in securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Double Alpha Fund or Upper Tier Fund, including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. The finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Double Alpha Fund or Upper Tier Fund.

2. Applicants will comply with all provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Double Alpha Fund or Upper Tier Fund from investing in securities as described in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8319 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Columbus Energy Corp., Common Stock, Par Value $0.20) File No. 1–9872

March 25, 1998.

Columbus Energy Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Exchange, Inc. ("Exchange" or "PCX").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also is listed for trading on the American Stock Exchange ("Amex") where it trades under the symbol EGY.

The Company has represented that the volume of trading in the Security conducted on the PCX has always been low compared to trading in the Security effected elsewhere. The Company has further represented that in one or more recent months there was no trading in the Security conducted on the PCX.

The Company stated that it has approximately 470 Security holders of record. Of those, about 20 Security holders reside in California and hold a small portion of the outstanding Security (12,000 shares out of 4,257,715 shares outstanding).

In the opinion of the Company's management, maintaining the Security's listing on the Exchange is no longer cost effective in light of the annual listing fee and any future additional listing fee charges.

At its regular meeting held on February 12, 1998, the Company's Board of Directors authorized the Company's management to proceed with the voluntary delisting of the Security from the Exchange.

In its letter dated March 4, 1998, the Exchange informed the Company that it would not object to the withdrawal of the Security from listing and registration of the Exchange.

The Company has represented that the Security will continue to trade on the Amex.

Any interested person may, on or before April 15, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–8316 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39799; File No. SR–NASD–97–26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 Relating to an Extension of the Pilot for the NASD's Rule Permitting Market Makers To Display Their Actual Quotation Size

March 25, 1998.

I. Background

On March 5, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 4 to a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] to amend NASD Rule 4613(a)(1)(C), seeking to extend through June 30, 1998, the pilot program in which market makers may quote their actual size (*i.e.*, one normal unit of trading) in 150 Nasdaq stocks ("Actual Size Rule").

The Commission is publishing this notice to solicit comments from interested persons and is approving Amendment No. 4 on an accelerated basis.

II. Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(a)(1)(C) to extend the Actual Size Rule through June 30, 1998. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

4613. Character of Quotations

(a) Two-Sided Quotations.

(1) No Change.

(A)–(B) No Change.

(C) As part of a pilot program implemented by The Nasdaq Stock Market, during the period January 20, 1997 through at least [March 27, 1998] *June 30, 1998*, a registered market maker in a security listed on The Nasdaq Stock Market that became subject to mandatory compliance with SEC Rule 11Ac1–4 on January 20, 1997 or identified by Nasdaq as being otherwise subject to the pilot program as expanded and approved by the Commission must display a quotation size for a least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

* * * * *

III. Discussion

On August 29, 1996, the Commission promulgated a new rule, the Limit Order Display Rule[3] and adopted amendments to the Quote Rule,[4] which together are designed to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (collectively, the "Order Execution Rules").[5] To facilitate implementation of the Order Execution Rules, the Commission later approved a variety of amendments to NASD Rules concerning Nasdaq's Small Order Execution System ("SOES") and the SelectNet Service ("SelectNet").[6]

In particular, the Commission temporarily approved a pilot program[7] whereby Nasdaq market makers in the first 50 stocks subject to the Commission's Limit Order Display Rule were only required to display a minimum quotation size of one normal unit of trading when quoting solely for their own proprietary account.[8] For non-pilot Nasdaq stocks, the minimum quotation rise requirements of 1,000, 500, or 200 shares remained the same.[9]

Although the first 50 stocks were chosen to provide a broad cross section of the most liquid Nasdaq stocks, on October 29, 1997, the Commission approved a NASD filing to amend NASD Rule 461(a)(1)(C) to expand the pilot program to 150 Nasdaq stocks. The Commission also extended the pilot until March 28, 1998.[10] The additional 100 stocks were part of an enhanced sample designed to better represent the entire Nasdaq Market.[11] The Commission approved the expansion in response to comment letters suggesting that the first 50 stocks did not sufficiently represent the Nasdaq market because all 20 of the largest Nasdaq stocks were subject to the 100 share minimum. Thus, some commenters suggested that it was difficult to gauge the Actual Size Rule's effect on large Nasdaq stocks since there were no sufficiently large non-pilot stocks with which to compare.

The NASD has concluded an analysis of an expanded pilot, and on March 5, 1998, it filed with the Commission a proposed rule change to apply permanently the Actual Size Rule to all Nasdaq Stocks ("Expansion Proposal").[12] As part of that filing, the NASD published a 127 page economic study of the 150 stock pilot ("March 1998 Study").[13]

In the March 1998 Study, the NASD concluded that:

- The Actual Size Rule did not affect the market quality—in terms of spreads, volatility, depth, or liquidity—of pilot stocks.
- The Actual Size Rule has not altered the ability of investors to access market maker capital. For pilot stocks, retail investors continue to have substantial and reasonable access to dealer capital via both SOES and marker maker proprietary autoexecution systems.
- There was no evidence of any material difference in market quality of pilot stocks and peer non-pilot stocks during the market stress on October 27 and 28, 1997.

In order to provide the Commission and public commenters an opportunity to review the March 1998 Study and its proposal to expand the Actual Size Rule to all Nasdaq stocks on a permanent basis, the NASD proposes to extend the current 150 stock pilot through June 30, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change

The Commission approved the Actual Size Rule on a pilot basis so that its effects could be assessed. In doing so, the Commission stated that it believed that a reduction in the quotation size requirement could reduce the risks that market makers must take, produce accurate and informative quotations, and encourage market makers to maintain competitive prices even in the changing market conditions resulting from the Order Execution Rules.

As discussed above, the NASD has produced an extensive economic analysis of the pilot. The data appears to suggest that the pilot has not resulted in harm to the Nasdaq market. Indeed, as discussed above, the Actual Size Rule appears to be an appropriate adjustment of market making obligations in light of the changing market dynamics resulting from the Order Execution Rules. Nevertheless, the pilot report is lengthy and the Commission would like to receive informed comment on both the report and the NASD's proposal to adopt permanently the Actual Size Rule. Extending the pilot through June 30, 1998, should provide the Commission and the public with adequate time to examine the report and comment more

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[1] 15 U.S. 78s(b)(1).

[2] 17 FR 240.19b–4.

[3] 17 CFR 240.11Ac1–4.

[4] 17 CFR 240.11Ac1–1.

[5] See Securities Exchange Act Release No. 37619A (September 6, 1997) 61 FR 48290 (September 12, 1996) ("Order Execution Rules Adopting Release").

[6] See Securities Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order partially approving SR–NASD–96–43) ("Actual Size Rule Approval Order").

[7] *Id.*

[8] The Actual Size Rule does not affect a market maker's obligation to display the full size of a customer limit order. If a market maker is required to display a customer limit order for 200 or more shares, it must display a quote size reflecting the size of the customer's order, absent an exception from the Limit Order Display Rule. Market makers may display a greater quotation size if they so choose or if required by the Limit Order Display Rule.

[9] See NASD Rule 4613(a)(2).

[10] See SEC Release No. 34–39285 (October 29, 1997), 62 FR 59932 (November 5, 1997).

[11] See Securities Exchange Act Release No. 39285 (October 29, 1997) 62 FR 59932 (November 5, 1997).

[12] See Securities Exchange Act Release No. 39760 (March 16, 1998) 63 FR 13894 (March 23, 1998).

[13] This report is available on the NASD's world wide web site (http://www.nasd.com).

fully the possible impact of the Actual Size Rule on the Nasdaq market. The Commission also believes that approving Amendment No. 4 to the proposed rule change will provide it with greater time to review the public comments before determining whether to expand the Actual Size Rule to all Nasdaq stocks on a permanent basis.

For the reasons discussed above, the Commission finds that the NASD's proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities association and has determined to approve the extension of the pilot through June 30, 1998, on an accelerated basis.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in order to continue the pilot on an uninterrupted basis for an additional brief period of time.

Accordingly, the Commission believes that the proposed rule change (SR–NASD–97–26) is consistent with Sections 15A(b)(6) and (b)(9) of the Exchange Act [14] and *it is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[15] that the proposed rule change, SR–NASD–97–26, be and hereby is approved through June 30, 1998.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–26 and should be submitted by April 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8361 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

[14] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change will provide the Commission and public commenters with additional time to evaluate the March 1998 Study. Since the Commission believes that the data discussed above indicates that the pilot has not harmed the Nasdaq market thus far, the net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23077; 812–11060]

Piper Funds Inc., et al.; Notice of Application

March 25, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act.

Summary of the Application: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory and sub-advisory agreements ("Interim Agreements") for a period of up to 120 days following consummation of the merger between Piper Jaffray Companies Inc. ("Piper Jaffray") and U.S. Bancorp ("USB") (but in no event later than August 31, 1998) (the "Interim Period"). The order also would permit Piper Capital Management Incorporated (the "Adviser"), Edinburgh Fund Managers plc ("Edinburgh"), Federated Advisers ("Federated"), and Salmon Brothers Asset Management Inc ("Salomon") (Edinburgh, Federated, and Salomon collectively, the "Sub-Advisers) to receive all fees earned under the Interim Agreements following shareholder approval.

Applicants: Piper Funds Inc. ("PFI"), Piper Funds Inc.–II ("PFI–II"), Piper Global Funds Inc. ("PGF"), Piper Institutional Funds Inc. ("PIF"), each on behalf of its separate investment portfolios, American Government Income Fund Inc. ("AGF"), American Government Income Portfolio, Inc. ("AAF"), American Opportunity Income Fund Inc. ("OIF"), American Municipal Term Trust Inc. ("AXT"), American Municipal Term Trust Inc.–II ("BXT"), American Municipal Term Trust Inc.–III ("CXT"), Minnesota Municipal Term Trust Inc. ("MNA"), Minnesota Municipal Term Trust Inc.–II ("MNB"), American Municipal Income Portfolio Inc ("XAA"), Minnesota Municipal Income Portfolio Inc. ("MXA"), American Strategic Income Portfolio Inc. ("ASP"), American Strategic Income Portfolio Inc.–II ("BSP"), American Strategic income Portfolio Inc.–III ("CSP"), American Select Portfolio Inc. ("SLA"), The Americans Income Trust Inc. ("XUS"), Highlander Income Fund Inc. ("HLA"), (collectively, "Piper Funds"), the Adviser, and the Sub-Advisers.

Filing Dates: The application was filed on March 12, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 20, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Piper Funds, 222 Sought Ninth Street, Minneapolis, MN 55402–3204; Edinburgh Fund Managers plc, Donaldson House, 97 Haymarket Terrace, Edinburgh, Scotland EH12, 5HD; Federated Advisers, Federated Investors Tower, Pittsburgh, PA 15222–3779; Salomon Brothers Asset Management Inc, Seven World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Piper Funds are each organized as a Minnesota corporation. PFI, PFI–II,

PGF, and PIF are each registered under the Act as an open-end management investment company. PFI is organized as a series investment company and currently offers twelve separate portfolios. PFI–II offers a single portfolio, PGF is organized as a series company and currently offers two portfolios. PIF offers a single portfolio. The Piper Funds also include the following closed-end investment companies, each of which is registered under the Act: AGF, AAF, OIF, AXT, BXT, CXT, MNA, MNB, XAA, MXA, ASP, BSP, CSP, SLA, XUS, and HLA.

2. The Adviser, a wholly-owned subsidiary of Piper Jaffray, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser serves as investment adviser to the Piper Funds. The Adviser also serves as sub-adviser to The Monitor Mortgage Securities Fund (the "Monitor Fund") (Monitor Fund, together with the Piper Funds, the "Funds"), under a sub-advisory agreement with the Huntington Trust Company ("Huntington").

3. Edinburgh, a wholly-owned subsidiary of Edinburgh Fund Managers Group plc and an investment adviser registered under the Advisers Act, serves as sub-adviser to the Pacific-European Growth Fund and Emerging Markets Growth Fund series of PGF. Federated, a subsidiary of Federated Investors and an investment adviser registered under the Advisers Act, serves as sub-adviser to HLA. Salomon, an indirect subsidiary of Travelers Group Inc. and an investment adviser registered under the Advisers Act, serves as sub-adviser to XUS.

4. On December 14, 1997, USB and Piper Jaffray entered into an agreement and plan of merger pursuant to which USB will acquire Piper Jaffray and its direct and indirect subsidiaries (the "Merger"). On the date and at the time when the Merger becomes effective (the "Effective Date"), a wholly-owned subsidiary of USB, organized for the purpose of participating in the Merger, will merge into Piper Jaffray and Piper Jaffray will continue as the surviving corporation and a wholly-owned subsidiary of USB. The consummation of the Merger is subject to certain closing conditions, including the approval of the shareholders of Piper Jaffray and the receipt of certain regulatory approvals. Piper Jaffray and USB anticipate that the Merger will occur during the second quarter of 1998.

5. Applicants believe that the Merger may result in the assignment and thus automatic termination of the existing investment advisory agreements between the Piper Funds and the Adviser, the sub-advisory agreements between the Adviser and the Sub-Advisers, and the sub-advisory agreement between the Adviser and Huntington (collectively, the "Existing Agreements"). Applicants request an exemption to permit (i) the implementation prior to obtaining shareholder approval, of the Interim Agreements, and (ii) the Adviser and the Sub-Advisers to receive, upon approval of the Fund shareholders, any and all fees earned under the relevant Interim Agreement during the Interim Period. Applicants state that the terms and conditions of the corresponding Existing and Interim Agreements will be the same, except with respect to their effective and termination dates and the inclusion of escrow arrangements described below.

6. Applicants state that the board of directors of each Fund (collectively, the "Boards") will convene regular or special meetings on a date prior to the Effective Date to discuss the Merger and its implications for the respective Funds. Applicants represent that in connection with these meetings the Boards will receive from representatives of the Adviser, the Sub-Advisers, and USB such information as they may request as reasonably necessary to evaluate, among other things, the terms of the proposed Interim Agreements and to determine whether the Interim Agreements are in the best interests of the respective Funds and their shareholders. Applicants state that each Interim Agreement will not be implemented unless (i) the respective Board, including in each case a majority of the Board members who are not "interested persons," as that term is defined in section 2(a)(19) of the Act, of the Fund (the "Independent Directors"), after a full evaluation, with the advice and assistance of independent counsel, votes, in the manner prescribed in section 15(c) of the Act, to approve the Interim Agreement; and (ii) the Board votes to recommend that shareholders of the Fund approve the Interim Agreement during the 120-day period commencing on the Effective Date.[1]

7. Fees earned under the Interim Agreements during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank. The escrow agent will release the amounts held in the escrow account (including any interest earned): (i) to the Adviser and, if applicable, any Sub-Adviser, only upon approval of the Interim Agreements by the shareholders of the relevant Fund; or (ii) to the relevant Fund, in the absence of approval by its shareholders. Before amounts are released from the escrow account, the Board will be notified.

[1] To the extent that the Board of any Fund cannot meet prior to the Effective Date, applicants acknowledge that such Fund may not rely on the exemptive relief requested in the application.

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the registered investment company. Section 15(a) further requires that the written contract provides for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, as a result of the Merger, Piper Jaffray will become a wholly-owned subsidiary of USB. Applicants believe, therefore, that the Merger may result in the "assignment" of the Existing Agreements, thus terminating the Agreements pursuant to their terms.

3. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) the new contract is approve by that company's board of directors (including a majority of non-interested directors); (ii) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (iii) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that they may not be entitled to rely on rule 15a–4 because of the benefits that Piper Jaffray and the Adviser will receive from the Merger.

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of

the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the timing of the Merger was determined in response to a number of business concerns substantially unrelated to the Funds or the Adviser. Applicants state that the pending Effective Date and the form of transaction deemed most appropriate by Piper Jaffray and USB do not permit an opportunity to secure prior approval of the Interim Agreements by the Funds' shareholders. Applicants state that, in addition, because it is likely that many of the Funds will be merged into corresponding funds of the First American family of funds during the Interim Period ("Family Fund Combination"), the granting of the requested order will allow the Funds to undertake a single proxy solicitation for obtaining shareholder approval of the Merger, the Interim Agreements, and any Family Fund Combination. Applicants believe a single proxy solicitation will, by eliminating unnecessary burdens and reducing shareholder confusion, be in the best interests of the Funds and their shareholders.

6. Applicants submit that they will take all appropriate actions to prevent any diminution in the scope or quality of services provided to the Funds during the Interim Period.

Applicants state that the Existing Agreements were approved by the Board and the shareholders of the Funds. Applicants represent that the Interim Agreements will have the same terms and conditions as the Existing Agreements, except for the dates of commencement and termination and the inclusion of escrow arrangements. Accordingly, applicants assert that each Fund will receive, during the Interim Period, substantially identical investment advisory and/or sub-advisory services, provided in the same manner, as it received prior to the Effective Date. Applicants state that, in the event there is any material change in the personnel of the Adviser or Sub-Adviser providing services under the Interim Agreements during the Interim Period, the Adviser or Sub-Adviser, as the case may be, will apprise and consult the Boards to assure that the Boards, including a majority of Independent Directors, are satisfied that the services provided by the Adviser or Sub-Adviser will not be diminished in scope or quality.

7. Applicants contend that to deprive the Adviser and the Sub-Advisers of their customary fees during the Interim Period would be an unduly harsh and unreasonable penalty. Applicants note that the fees payable to the Adviser and the Sub-Advisers under the Interim Agreements will not be released to the Adviser or, if applicable, any Sub-Adviser, by the escrow agent without the approval of the Fund shareholders.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. Each Interim Agreement will have the same terms and conditions as the respective Existing Agreement, except for the effective and termination dates and the inclusion of the escrow arrangements.

2. Fees earned by the Adviser or any Sub-Adviser during the Interim Period in accordance with an Interim Agreement will be maintained in an interest-bearing escrow account with an unaffiliated bank, and amounts in such account (including interest earned on such paid fees) will be paid to the Adviser and, if applicable, any Sub-Adviser, only upon approval of the related Fund shareholders or, in the absence of such approval, to the related Fund.

3. Each Fund will hold a meeting of shareholders to vote on approval of the related Interim Agreement or Interim Agreements on or before the 120th day following termination of the Existing Agreements, but in on event later than August 31, 1998.

4. Piper Jaffray, USB and/or one or more subsidiaries of the foregoing, but not the Funds, will pay the costs of preparing and filing the application and the costs relating to the solicitation of the approval of the Funds' shareholders of the Interim Agreements.

5. The Adviser and the Sub-Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the respective Boards, including a majority of the Independent Directors, to the scope and quality of services provided under the Existing Agreements. In the event of any material change in personnel providing services pursuant to the Interim Agreements, the Adviser or a Sub-Adviser, as the case may be, will apprise and consult the Boards of the affected Funds to assure that such Boards, including a majority of the Independence Directors, are satisfied that the services provided by the Adviser or such Sub-Adviser will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8363 Filed 3–31–98; 8:45 a.m.]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39794; File No. SR–NASD–98–17]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Integrated Order Delivery and Execution System

March 25, 1998.

On February 19, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a series of proposed rule changes.[1] The NASD is proposing new rules and amendments to existing NASD rules to establish an integrated order delivery and execution system ("System").

As proposed, the new System will have three types of registered executing participants (as it does currently): market makers, electronic communication networks ("ECNs"), and UTP exchange specialists. Executing participants' quotes will be displayed on Nasdaq workstations, disseminated through information vendors, and accessible by System participants. Registered NASD members, and certain customers they sponsor, will be able to deliver various sized orders (up to 999,999 shares, if the Actual Size Rule is expanded to all Nasdaq stocks [2] through the new System to electronically access the displayed quotations.

The System features a voluntary central limit order file that all market participants will be able to access either directly or through a System participant. System participants will be able to send

[1] Exchange Act Release No. 39718 (March 4, 1998) 63 FR 12124 (March 12, 1998) (File No. SR–NASD–98–17). As originally noticed, the comment period ran through April 2, 1998.

[2] The Actual Size Rule allows market makers to quote their actual size by reducing the minimum quotation size requirement to one normal unit of trading (*i.e.*, 100 shares). The Actual Size Rule currently applies to 150 Nasdaq stocks on a pilot basis. The NASD has filed a proposal to expand the pilot program to cover all Nasdaq stocks permanently. *See* Exchange Act Release No. 39760 (March 16, 1998) 63 FR 13894 (March 23, 1998).

directed (*i.e.*, to a particular market maker) or non-directed orders. Orders will remain anonymous until they are executed. The System will replace the Small Order Execution System ("SOES") and SelectNet (and related NASD rules), while maintaining features of each. Primary market makers will be able to sponsor other firms (*e.g.*, institutions), giving them System access.

As proposed, the System would operate differently depending on whether the Commission approves the NASD's request to permit Market Makers to quote their actual size for all Nasdaq stocks.[3] If the Actual Size Rule is not extended to all Nasdaq stocks, the Nasdaq proposes that nonmarket makers will not be permitted to enter orders larger than 1,000 shares for non-directed orders, and that the SOES prohibition on splitting orders and the Five Minute Rule (*i.e.*, any orders sent within a five minute period are considered part of one order) will be retained. Also, if Actual Size is not expanded to cover all Nasdaq stocks, the NASD proposes that non-market makers be prohibited from entering principal orders. Finally, if Actual Size is approved for all Nasdaq stocks, the order splitting and Five Minute Rules will not apply.

Under the proposal, market makers will no longer be "SOESed-Out-of-the-Box" when they allow their quote size to be diminished to zero.[4] Instead, the NASD proposes that after three (rather than the current five) minutes, a firm that is effectively out of the market (*i.e.*, has not refreshed its quote) will be automatically reestablished at the lowest ranked bid and offer for 1,000 shares.

Given the proposal's complexity and the Commission's desire to give the public sufficient time to consider the proposal, the NASD has consented to extend the comment period to May 8, 1998.[5]

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–17 and should be submitted by May 8, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8317 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

[3] *Id*

[4] See Exchange Act Release No. 39423 (December 10, 1997) 62 FR 66160 (December 17, 1997).

[5] See letter from Richard G. Ketchum, President and Chief Operating Officer, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated March 24, 1998.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39787; File No. SR–PCX–98–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval, of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto, Relating to a Supervisory Specialist Pilot Program

March 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On March 12, 1998, the PCX filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marc McKayle, Attorney, Division of Market Regulation, Commission (March 12, 1998) ("Amendment No. 1"). In Amendment No. 1 PCX provides a basis for accelerated effectiveness of the proposal pursuant to Section 19(b)(2) of the Act. PCX explains that seats are trading at record prices making it increasingly difficult to operate a specialist post on the equities floor. PCX maintains that accelerated effectiveness of the proposed rule will permit specialist firms greater control over the impact of seat prices, and preserve the quality of the Exchange's markets and services provided to the public and its members.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to adopt a temporary program, effective ninety days, under which PCX specialist firms may operate two specialist posts based upon one Exchange membership.[4] The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In an effort to streamline the way business is conducted on the Exchange's Equities Floors, and to provide Exchange Specialist Firms with greater control over the management and costs of their operations, the Exchange is proposing to adopt the Supervisory Specialist Pilot Program ("Program"). Under the Program, the Exchange's Executive Committee will permit qualified specialist Firms to participate in the Program during a limited, ninety day period. Throughout the course of the Program, the Executive Committee will seek to assure an orderly transition of Specialist Firms into the Program. The Program will apply to trading on the Equities Floors only and will not apply to trading on the Options Floor.

Under the Program, a Specialist Firm may operate two specialist posts based upon one Exchange membership, provided that both posts will be staffed by Specials who have been qualified by the Exchange as Register Specialists

[4] The Commission notes that the Exchange also has filed a proposed rule change to implement a one year Supervisory Specialist Pilot Program to become effective upon the termination of the instant ninety day program ("Companion Filing"). See SR–PCX–98–13.

under the rules of the Exchange.[5] The Program will permit one specialist post to be staffed by a Member who is registered as the supervising specialist (the "Supervisory Specialist"), while the other post is staffed by an Associated Person of the Specialist Firm who is otherwise qualified to act as a Registered Specialist (the "Associate Specialist"). Under the Program, the Supervisory Specialist will act as supervising specialist over the Associate Specialist.

Under the Program, both the Supervisory Specialist and the Associate Specialist will be obligated to pay the dues, fees and charges as specified in the Exchange's Schedule of Fees and Charges for Exchange Services.

Specialist Firms may apply to participate in the Program by submitting an application to the Executive Committee. The Executive Committee will take into account certain relevant factors including those specified below. The Executive Committee may, at its discretion, approve a Specialist Firm to participate in the Program based on the following primary factors: the applicant Specialist Firm's current cost of operating its specialist posts, including the rental cost (if any) of each seat; whether the value and revenue stream from existing specialist posts will be retained if the application is approved; and whether the long-term viability of the business and trading volume of a specialist post will be retained if the application is approved. The Executive Committee will also take into account the following secondary factors in reviewing an application: the past experience of individuals who are proposed to serve as Specialists under the Program; recent specialist performance ratings of individuals who are proposed to serve as Specialists under the Program (these ratings should include evaluation scores for the last eight quarters, if they are available);[6] the disciplinary history of the Specialist Firm and the individuals who are proposed to serve as Specialists under the Program; and other relevant factors that the applicant wishes the Executive Committee to consider.

The Executive Committee will oversee the implementation of the Program and will study the impact of the Program on the quality of markets at specialist posts operating under the Program. Based on this study, the Executive Committee may adopt more specific standards and procedures for operating the Program. The Executive Committee is not required to approve any number of applicants, and there are no limits on the number of applicants who may be approved under the Program. Applicants, however, are restricted to Exchange Members with seats on the Equity floor, and no more than two specialist posts may be operated per membership.[7]

Under the Program, a Specialist Firm may operate two trading posts based upon one membership, provided that the following conditions are met:

a. The two trading posts must be contiguous.

b. Each post must be operated by a person who meets all of the qualifications of a Registered Specialist. Specifically, each Associate Specialist must achieve a passing grade of at least 80% on a written examination for Registered Specialists prepared by the Exchange. This is the same examination and the same passing score required for all Registered Specialists, as provided in PCX Rule 5.27(c)(ii).

c. The Associate Specialist must be an "Associated Person" of the Specialist Firm as defined PCX Rule 1.1(d). Associate Specialists may consummate transactions on the Equity Floors of the Exchange, provided that they do so under the supervision of a Supervisory Specialist.

d. The Supervisory Specialist must be registered with the Exchange as a "Member" as defined in PCX Rule 1.1(i). The Supervisory Specialist will act as supervising specialist over the Associate Specialist. A Supervisory Specialist is a member who has been qualified by the Exchange to act as a specialist and who is responsible for supervising the trading activities of an Associate Specialist.

e. The performance of the Supervising Specialist and the Associate Specialist will be evaluated individually pursuant to PCX Rule 5.37 ("Evaluation of Specialist Performance").

Under the Program, an Associate Specialist will be deemed to be a Registered Specialist for all purposes under the rules of the Exchange, unless otherwise specified herein.[8]

[5] See e.g., PCX Rule 5.27.

[6] Supervisory and Associate Specialists will be evaluated pursuant to the criteria set forth in PCX Rule 5.37(a). The five separate measures of performance are (1) Executions, (2) Specialist Evaluation Questionnaire Survey, (3) Book Display Time, (4) Post 1 P.M. Parameters and (5) Quote Performance.

[7] Telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, and Marc McKayle, Attorney, Division of Market Regulation, Commission (March 23, 1998).

[8] In addition to the Exchange requirements as discussed above, the Associate Specialist (as well as the Supervisory Specialist) must comply with all applicable federal securities law requirements. See e.g., Exchange Act Section 14 (requiring broker-dealers to register with the Commission).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)[9] of the Act, in general, and Section 6(b)(5),[10] in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on the competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendment, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–14 and should be submitted by April 21, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Commission believes the proposal is consistent with the Exchange Act Section 6(b)(5) [11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. The proposal is designed to reduce the cost of operations for PCX Specialist firms, while ensuring that the Specialist firms maintain managerial control over the posts they supervise. The Program could enhance liquidity in equity securities traded on the Exchange and reduce costs to Exchange members by giving Specialist firms the opportunity to become specialists in more stocks without incurring additional membership costs.

In addition, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The PCX has represented that seat prices on the Exchange are trading at record prices, thus making it increasingly difficult for equity specialists to operate at a profit.[12] Accordingly, the Commission believes it is appropriate for the PCX to implement the Supervisory Specialist Pilot Program without delay. Moreover, the Commission notes that the Program is effective only for ninety days, and that the companion filing will be published for the full twenty-one day comment period.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–98–14) is hereby approved on an accelerated basis through June 22, 1998. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8360 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

[11] *Id*

[12] See Amendment No. 1, *supra*, note 3.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3 (a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39802; File No. SR–PHLX 98–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Continuing Education Requirements of Registered Persons

March 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 11, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commision is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, in support of the recommendations of The Securities Industry/Regulatory Council on Continuing Education, proposes to amend both the regulatory and firm element requirements of Rule 640.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and statutory basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has already published for comment rule proposals by four other self-regulatory organizations which are virtually identical to this Phlx filing. See Securities Exchange Act Release Nos. 39574 (January 23, 1998), 63 FR 4510 (January 29, 1998)(SR–NASD–98–03); 39575 (January 23, 1998), 63 FR 4507 (January 29, 1998) (SR–CBOE–97–68); 39576 (January 23 1998), 63 FR 4509 (January 29, 1998) (SR–MSRB–98–02); and 39577 (January 23, 1998), 63 FR 4513 (January 29, 1998) (SR–NYSE–97–33). The Commission received 5 comment letters, which were discussed in the order approving the other proposals. See Securities Exchange Act Release No. 39712 (March 3, 1998).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Rule 640 to strengthen the Continuing Education Requirements for registered persons and implement a new program specifically designed for managers and supervisors. Exchange Rule 640 provides for a continuing education program for registered persons of Exchange members and member organizations. The program, which is uniform within the industry, consists of two parts—a Regulatory Element and a Firm Element. The Regulatory Element requires registered persons to participate in interactive computer-based training at specified intervals and encompasses regulatory and compliance issues, sale practice concerns and business ethics.

The Regulatory Element program applies generally to all registered persons and currently does not discern between registration types or categories. The existing program contains content common to registered representatives, supervisory persons as well as other registration categories. The Securities Industry/Regulatory Council on Continuing Education (a council of broker-dealer and Self-Regulatory Organization ("SRO") [3] representatives that oversees and provides ongoing development and operation of the program) has recommended development of a new program component specifically for supervisors. In addition, it is contemplated that in the future, specific programs may be implemented for other registration categories. The proposed amendments to Rule 640 will allow for the Exchange to require specific new programs as appropriate with customized training for various registration categories, with the supervisor's program, being the first such initiative. For purposes of Exchange rules, the following registration categories shall de deemed to be included in the supervisory category: Series 4 (Registered Options Principal Examination); Series 8 (General Securities Sales Supervisor Examination); Series 27 (Financial and Operations Principal Examination); Series 28 (Introducing Broker-Dealer Financial and Operational Principal Examination); the Series 53 (Municipal

[3] SROs represented on the Council include the American Stock Exchange, Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, New York Stock Exchange, and the Phlx.

Securities Principal Qualification Examination).

The proposed amendments also address the time-frames at which registered persons must participate in the Regulatory Element computer-based training. Rule 640 currently requires all registered persons to complete the training on three occasions, *i.e.*, their second, fifth and tenth registration anniversaries, and also when they are the subject of significant disciplinary action(s). Once persons are registered for more than ten years they are currently graduated from the program and are not required to participate further in the Regulatory Element unless they become subject to significant disciplinary action. The Council has recommended that the requirement be revised to require ongoing participation in the program by registered persons. In accordance with that recommendation, the proposed amendments to Rule 640 will require participation in the Regulatory Element throughout a registered person's career, specifically, on the second registration anniversary and every three years thereafter (*i.e.*, the fifth, eighth, eleventh, etc. anniversaries), with no graduation from the program.

Proposed amended Rule 640 will allow a one-time exemption for persons currently graduated from the program by providing that those persons who have been registered for more than ten years as of the effective date of the rule amendments, and who have not been the subject of a disciplinary action during the past ten years, will continue to be excluded from required ongoing participations in the Regulatory Element. However, persons registered in a supervisory capacity will have to have been registered in a supervisory capacity for more than 10 years in order to be covered by this one-time provision for graduation from participation in the program. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date, but who have not completed 10 years as a supervisor, will be required to re-enter the program to participate in the supervisory program.

The Firm Element requires that each member and member organization conduct annually an analysis of their training needs and administer such training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis in topics specifically related to their business such as new products, sales practices, risk disclosure and new regulatory requirements and concerns. The proposed amendments to Rule 640 will required members and member organizations to additionally focus on supervisory training needs in conducting their analysis of training needs and, if it is determined that there is a specific need for supervisory training, address such training needs in the Firm Element training plan.

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(c)(3) of the Act.[4] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has proposed this rule change in order to enhance the establishment continuing education program for registered persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed ruled change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number SR–Phlx–98–13 and should be submitted by April 21, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission further believes that the proposed rule change is consistent with the provisions of Section 6(c)(3)(B) of the Act,[6] which makes it the responsibility of an exchange to prescribe standards of training, experience, and competence for persons associated with SRO members.

The Commission also believes that the proposed rule change is consistent with the purposes underlying Section 15(b)(7) of the Act, which generally prohibits a registered person from effecting any transaction in, or inducing the purchase or sale of, any security unless such registered person meets the standard of training, competence and other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission believes that the Exchange's proposed rule change is an appropriate means of maintaining and reinforcing the initial qualification standards required of a registered person and will significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element throughout their securities industry careers.[7]

The Commission therefore finds good cause for approving the proposed rule change (SR–Phlx–98–13) prior to the

[4] 15 U.S.C. 78f(c)(3).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(c)(3)(B).

[7] These amendments proposed by the Phlx on continuing education have been uniformly adopted by the other SRO Council members. *See* Securities Exchange Act Release Nos. 39711 (March 3, 1998) and 39712 (March 3, 1998).

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thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Phlx–98–13) be, and hereby is, approved. The rule change shall become effective on July 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–8362 Filed 3–30–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Submissions for OMB Review

This notice lists information collection packages that have been sent to the Office of Management and Budget (OMB) for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. *Government Pension Questionnaire—0960–0160.* The Social Security Act and Regulations provide that an individual receiving spouse's benefits and concurrently receiving a Government pension, based on the individual's own earnings, may have the Social Security benefit amount reduced by two-thirds of the pension amount. The data collected on Form SSA–3885 is used by the Social Security Administration (SSA) to determine if the individual's Social Security benefit will be reduced, the amount of reduction, the effective date of the reduction and if one of the exceptions in 20 CFR 404.408a applies. The respondents are individuals who are receiving (or will receive) Social Security spouse's benefits and also receive their own Government pension.

Number of Respondents: 76,000.

Frequency of Response: 1.

Average Burden Per Response: 12.5 minutes.

Estimated Annual Burden: 15,833 hours.

2. *Telephone Replacement Card Interview Script—0960–0570.* SSA will conduct a pilot study by telephone to obtain information from individuals who need a duplicate Social Security Number (SSN) card. The information collected will be used to properly identify an individual prior to releasing a replacement SSN card, thus eliminating the need for the respondent to take or mail his/her identity documents to a Social Security office. The information provided, which should be known by the true Social Security number holder, will be compared to information available in our current electronic systems. The respondents are U.S. Citizens applying for a replacement SSN card.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 4 minutes.

Estimated Average Burden: 6,667 hours.

3. *Reconsideration Report for Disability Cessation—0960–0350.* Form SSA–782-BK will be used by claimants and SSA field offices to document new developments on the claimant's condition (as perceived by the claimant), since the prior continuing disability interview was conducted. The form will also be used by the SSA interviewer to provide his/her observations of the claimant. The respondents are claimants for Old-Age, Survivors and Disability Insurance and Supplemental Security Income, who file a Request for Reconsideration—Disability Cessation.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 50,000 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: March 25, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–8277 Filed 3–30–98; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter TE covers the Deputy Commissioner for Communications. Notice is given that Chapter TE, the Office of Communications is being amended to reflect the establishment of subordinate components within the Office of Communications Policy and Technology (TEB) and the retitling of the component. The changes are as follows:

Section TE.10 *Office of Communications*—(Organization):

Retitle:

D. The "Office of Communications Policy and Technology" (TEB) to the "Office of Communications Planning and Technology" (TEB).

Establish:

1. The Office of Media Development (TEBA).

2. The Office of Media Technologies(TEBB).

Section TE.20 *The Office of Communications*—(Functions):

Retitle:

D. The "Office of Communications Policy and Technology" (TEB) to the "Office of Communications Planning and Technology" (TEB).

Establish:

1. The Office of Media Development (TEBA).

a. Directs the Agency's overall internal and external communications and public information activities.

b. Oversees the development, implementation and monitoring of national policies, standards, guidelines, objectives and measures related to all SSA PI/PA activities.

c. Directs a comprehensive program of internal SSA communication activities for employees at all levels in all headquarters and field locations.

d. Directs the dissemination of PI/PA material ranging from program pamphlets and information packets for external consumption to broadcast quality video productions.

e. Provides Agency leadership in the identification of the special communications needs of the non-English speaking population and directs and/or coordinates related PI/PA activities for this population.

f. Provides ongoing consultative advice and support to other SSA headquarters and field components regarding program specific, regional and/or local PI/PA activities.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

g. Conducts evaluation and assessment of the results and effects of PI/PA activities and assesses the effectiveness of PI/PA material produced by the Office of Communications (OCOMM) or other SSA components.

2. The Office of Media Technologies (TEBB).

a. Directs the Agency's overall communications technology design, development, procurement and implementation activities and applications.

b. Directs the development of Agency-level strategies and policies for the effective use of a wide variety of communications technologies in support of SSA-wide PI/PA activities.

c. Directs the design, development, production and distribution of all PI/PA audiovisual and graphics material within and external to SSA.

d. Evaluates media proposal, products or productions intended for internal or external use in SSA's PI/PA activities.

Dated: March 13, 1998.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 98–8278 Filed 3–30–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending March 20, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3636
Date Filed: March 17, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC3 Telex Mail Vote 918
Malaysia–TC3 Reso 010u
Intended effective date: July 1, 1998

Docket Number: OST–98–3645
Date Filed: March 19, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Mail Vote 917
Childrens/Youth Charges from Germany
Telex TW858—Amendment to Mail Vote
r–1—010t r–4—078c r–7—074kk r–10—080j
r–2—076q r–5—074aa r–8—078d r–11—080tt
r–3—076jj r–6—076w r–9—080ff r–12—074w
Intended effective date: April 1, 1998

Docket Number: OST–98–3646
Date Filed: March 19, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 Telex Mail Vote 919
New Guinea to Europe/Middle East/Africa Reso 010v
Telex TW866—Technical Correction
Intended effective date: April 1, 1998

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–8365 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 20, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3633.
Date Filed: March 16, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 13, 1998.

Description: Amendment No. 2 to the Application of Uzbekistan Airways, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, for a foreign air carrier permit, requesting that the permit, when issued, contain all of the rights available to UZB pursuant to the recently concluded Open Skies agreement between the United States and the Republic of Uzbekistan; and Motion for leave to amend.

Docket Number: OST–98–3654.
Date Filed: March 20, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 17, 1998.

Description: Application of DHL Airways, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, request an amendment to its certificate of public convenience and necessity for all-cargo foreign air transportation to Mexico on Route 725 to add Austin, Texas as a coterminal point so that it would be authorized without limitation of time, to perform foreign air transportation of property and mail between the coterminal points Cincinnati, Ohio, Houston, Texas, and Austin, Texas, on the one hand, and the coterminal points Mexico City, Guadalajara, and Monterrey, Mexico, on the other hand.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–8366 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Vintage Props & Jets, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 98–3–24, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Vintage Props & Jets, Inc., fit, willing, and able to provide commuter air service under 49 U.S.C. 41738.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC, 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 8, 1998.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366–2340.

Dated: March 25, 1998.

Charles A. Hunnicutt.

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–8307 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–62–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–5]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 20, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 25, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29127.

Petitioner: National Aeronautics and Space Administration.

Sections of the Far Affected: Section 40102(a)(37)(B) of Title 49.

Description of Relief Sought: To permit NASA to operate its KC–135 aircraft as a public aircraft in support of scientific, aerospace, and aeronautical programs in cooperation with State and foreign Governments, universities, and private industry while carrying certain passengers or receiving reimbursement for these operations.

Docket No.: 29139.

Petitioner: Helicopter Association International.

Sections of the FAR Affected: 14 CFR 61.197(a)(2)(iii).

Description of Relief Sought: To permit each graduate of an HAI-sponsored Federal Aviation Administration-approved flight instructor refresher course to renew his or her flight instructor certificate more than 90 days preceding the expiration month of that certificate.

Docket No.: 29032.

Petitioner: Lake Area Technical Institute.

Sections of the FAR Affected: Part A of subtitle VII of Title 49.

Description of Relief Sought: To permit LATI to operate its Beechcraft U–21A aircraft as a public aircraft.

Docket No.: 29143.

Petitioner: Honeywell, Inc.

Sections of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought: To permit Honeywell, a Federal Aviation Administration (FAA)-certificated repair station (No. HWOY904N), to substitute the instrument calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial, Brazil's national standards laboratory, and the pressure standards of France's Bureau National de Metrologie, Laboratoire Primarire du Temps et des Frequences, for the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment.

Dispositions of Petitions

Docket No.: 28569.

Petitioner: Rocky Mountain Holdings, L.L.C.

Sections of the FAR Affected: 14 CFR 133.1(d), 133.35(a), and 133.45(e)(1).

Description of Relief Sought: To permit RMH to conduct external-hoist, high-altitude rescue operations using two Agusta A109K2 (A109K2) helicopters type certificated in the normal category and not capable of maintaining a hover with one engine inoperative.

GRANT, March 19, 1998, Exemption No. 6740.

Docket No.: 23869.

Petitioner: The Uninsured Relative Workshop, Inc.

Sections of the FAR Affected: 14 CFR 105.43(c).

Description of Relief Sought/ Disposition: To permit TURWI to allow its employees, representatives, and other volunteer experimental parachute test jumpers under its direction and control to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one auxiliary parachute packed in accordance with § 105.43(a). It also permits pilots in command of aircraft involved in these operations to allow such persons to make these parachute jumps.

GRANT, March 13, 1998, Exemption No. 4943I.

Docket No.: 29130.

Petitioner: Trans-Exec Air Services, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit TEAS to operate its Gulfstream III aircraft under part 135 without it being equipped with the digital flight data recorder currently required.

GRANT, March 18, 1998, Exemption No. 6739.

Docket No.: 28582.

Petitioner: Atlas Air, Inc.

Sections of the FAR Affected: 14 CFR 121.583(a)(8).

Description of Relief Sought/ Disposition: To permit up to three dependents of Atlas employees who are accompanied by an employee sponsor traveling on official business only and are trained and qualified in the operation of emergency equipment on Atlas' Boeing 747 cargo aircraft to be added to the list of persons specified in § 121.583(a)(8) that Atlas is authorized to transport without complying with the passenger-carrying operation requirements in §§ 121.309(f), 121.310, 121.391, 121.571, and 121.587; the passenger-carrying operations requirements in §§ 121.157(c), 121.161. and 121.291; and the requirements pertaining to passengers in §§ 121.285, 121.313(f), 121.317, 121.547, and 121.573.

GRANT, March 10, 1998, Exemption No. 6487A.

Docket No.: 27258.
Petitioner: Air Methods Corporation.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit AMC to operate the aircraft listed in Attachment A under the provisions of part 135 without a TSO–C112 transponder installed.
GRANT, March 10, 1998, Exemption No. 5720B.

Docket No.: 28419.
Petitioner: United Parcel Service.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.440(a), 121.441(a)(1), and (b)(1), and appendix F.
Description of Relief Sought/ Disposition: To permit UPS to combine recurrent flight and ground training and proficiency checks for UPS's pilots in command, seconds in command, and flight engineers in a single annual training and proficiency evaluation program (i.e., a single-visit training program).
GRANT, March 10, 1998, Exemption No. 6434A.

Docket No.: 25060.
Petitioner: Douglas Aircraft Company.
Sections of the FAR Affected: 14 CFR 21.197.
Description of Relief Sought/ Disposition: To permit DAC to conduct training of DAC's pilot flight crewmembers while operating under special flight permits issued for the purpose of production flight testing.
GRANT, March 3, 1998, Exemption No. 4936C.

Docket No.: 28861.
Petitioner: Vertical Flite.
Sections of the FAR Affected: 14 CFR 91.119(b).
Description of Relief Sought/ Disposition: To permit Vertical Flite to operate Air and Space 18A gyroplanes (AS–18A) in visual meteorological conditions below the minimum altitudes specified in § 91.119(b) and (c) while conducting aerial photography or contracted "police and highway" flights.
DENIAL, March 3, 1998, Exemption No. 6738.

Docket No.: 27170.
Petitioner: Minuteman Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit MAI to operate its helicopters without a TSO–C112 (Mode S) transponder installed.
GRANT, March 3, 1998, Exemption No. 6737.

Docket No.: 25242.
Petitioner: Experimental Aircraft Association.
Sections of the FAR Affected: 14 CFR 61.58(c) and 91.5.
Description of Relief Sought/ Disposition: To permit EAA members to complete an approved training course in lieu of a pilot proficiency check. The exemption applies to training courses for the following aircraft: Boeing B–17; North American B–25; Douglas B–26, C–47, and C–54; Consolidated PBY; Martin PBM; Grumman S–2–F; Curtiss C–46; and Ford Tri-Motor.
GRANT, March 5, 1998, Exemption No. 4941E.

Docket No.: 26696.
Petitioner: Ryan International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.503(b) and 121.511(a).
Description of Relief Sought/ Disposition: To permit pilots and flight engineers employed by Ryan to complete certain scheduled coast-to-coast, all-cargo, transcontinental flights with no more than one intermediate stop and a maximum of 11 hours of flight time during any 24 consecutive hours before being provided with at least 16 hours of rest.
GRANT, March 3, 1998, Exemption No. 5461C.

Docket No.: 28172.
Petitioner: Helicopter Services, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit HSI to operate without a TSO–C112 (Mode S) transponder installed in its aircraft operating under the provisions of part 135.
GRANT, March 3, 1998, Exemption No. 6109A.

Docket No.: 28479.
Petitioner: Strong Enterprises.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To permit employees, representatives, and other volunteer experimental parachute test jumpers under Strong's control to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack that has at least one main parachute and one approved auxiliary parachute. The exemption also permits pilots in command of aircraft involved in these operations to allow such persons to make these parachute jumps.
GRANT, March 11, 1998, Exemption No. 6474B.

[FR Doc. 98–8378 Filed 3–30–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[RTCA Special Committee 172]

Future Air-Ground Communications In The VHF Aeronautical Data Band (118–137 MHz

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held April 14–17, 1998, starting at 9:00 a.m. The first two days of the meeting will be held at the Army and Navy Club (coat and tie required), 901 17th Street, NW., Washington, DC 20006, phone (202) 628–8400; the last two days will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: Tuesday, April 14: (1) Plenary Convenes at 9:00 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and Approval of the Agenda; (4) Working Group (WG)–2, VHF Data Radio Signal-in-space MASPS, Complete Work on VDL Mode 2 and Continue Work on VDL Mode 3. Wednesday, April 15: (a.m.) (5) WG–2 Continues; (p.m.) (6) WG–3, Review of Activities in VHF Digital Radio MOPS Document Program and Further Work. Thursday, April 16 (at RTCA): (a.m.) (7) Plenary Reconvenes at 9:00 a.m.; (8) Review Summary Minutes of Previous Plenary of SC–172; (9) Reports from WG's 2 & 3 Activities; (10) Report on VDL Activities and Prepartion for AMCP; (11) EUROCAE WG–47 Report and Discussion of Schedule for Further Joint Meetings with WG–3; (12) Review Issues List and Address Future Work; (13) Other Business; (14) Dates and Places of Next Meetings; (p.m.) (15) WG's Continue as Necessary. Friday, April 17: (16) WG's Continue as Necessary.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 25, 1998.

Jane P. Caldwell,

Designated Official.

[FR Doc. 98–8377 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3658]

Notice of Receipt of Petition for Decision That Nonconforming 1992–1996 Ducati 600SS Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992–1996 Ducati 600SS motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992–1996 Ducati 600SS motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 30, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1992–1996 Ducati 600SS motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1992–1996 Ducati 750SS motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1992–1996 Ducati 600SS motorcycles to 1992–1996 Ducati 750SS motorcycles, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1992–1996 Ducati 600SS motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1992–1996 Ducati 750SS motorcycles, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1992–1996 Ducati 600SS motorcycles are identical to 1992–1996 Ducati 750SS motorcycles with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR Part 565 will be affixed to 1992–1996 Ducati 600SS motorcycles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 25, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–8308 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3660]

Notice of Receipt of Petition for Decision That Nonconforming 1995 Bentley Turbo R Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Bentley Turbo R passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1995 Bentley Turbo R that was not originally manufactured to comply with all applicable Federal

motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 30, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Bayway Auto of Newark, New Jersey ("Bayway") (Registered Importer 98–166) has petitioned NHTSA to decide whether 1995 Bentley Turbo R passenger cars are eligible for importation into the United States. The vehicle which Bayway believes is substantially similar is the 1995 Bentley Turbo R that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Bentley Turbo R to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Bentley Turbo R, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Bentley Turbo R is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems* 104 *Windshield Wiping and Washing Systems* 105 *Hydraulic Brake Systems* 106 *Brake Hoses* 109 *New Pneumatic Tires* 113 *Hood Latch Systems* 116 *Brake Fluid* 124 *Accelerator Control Systems* 201 *Occupant Protection in Interior Impact* 202 *Head Restraints* 204 *Steering Control Rearward Displacement* 205 *Glazing Materials* 206 *Door Locks and Door Retention Components* 207 *Seating Systems* 209 *Seat Belt Assemblies* 210 *Seat Belt Assembly Anchorages* 212 *Windshield Retention* 216 *Roof Crush Resistance* 219 *Windshield Zone Intrusion* and 302 *Flammability of Interior Materials.*

The petitioner contends that the vehicle meets the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims* installation of a tire information placard.

Standard No. 111 *Rearview Mirror* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1995 Bentley Turbo R must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 25, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–8309 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3661]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1998 Mercedes-Benz E320 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for a decision that nonconforming 1994–1998 Mercedes-Benz E320 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1998 Mercedes-Benz E320 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 30, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer No. R–90–009) has petitioned NHTSA to decide whether 1994–1998 Mercedes-Benz E320 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1994–1998 Mercedes-Benz E320 passenger cars that were manufactured for importation into and sale in the United States and that were certified by their manufacturer, Daimler-Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner contends that it carefully compared non-U.S. certified 1994–1998 Mercedes-Benz E320 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1998 Mercedes-Benz E320 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1998 Mercedes-Benz E320 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1994–1998 Mercedes-Benz E320 passenger cars comply with the Bumper Standard found in 49 CFR Part 581 and the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate headlamps with a DOT marking; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rear view mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window

system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams. NHTSA understands that Daimler Benz did not certify the 1994 Mercedes-Benz E320 as meeting the dynamic performance requirements of this standard, but that it did certify 1995 through 1998 models as meeting those requirements.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 25, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–8310 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3572]

Uniroyal Goodrich Tire Manufacturing; Grant of Application for Decision of Inconsequential Noncompliance

Uniroyal Goodrich Tire Manufacturing (Uniroyal) of Greenville, South Carolina, which is an operating unit of Michelin North America, Inc., has determined that some of its tires fail to comply with the labeling requirements of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Uniroyal has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on November 4, 1997, in the **Federal Register** (62 FR 59755). NHTSA received no comments on this application during the 30-day comment period.

In FMVSS No. 109, paragraph S4.3.5 requires that "if the maximum inflation pressure of a tire is 420 kPa (60 psi), the tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high, the words 'Inflate to 60 psi or Inflate to 420 kPa (60 psi)' ".

From the 30th through the 37th week of 1997, the Uniroyal plant located in Woodburn, Indiana, produced approximately 4,800 temporary spare tires (T115/70D14 Uniroyal Hideaway tires) with a minor omission of the markings required by 49 CFR 571.109 S4.3.5 on one side of the tire. Instead of "INFLATE TO 60 PSI" these tires were marked "NFLATE TO 60 PSI." A total of 2,750 of the 4,800 tires were delivered to Original Equipment Manufacturers (OEM) customers, the remaining 2,050 have been isolated in Uniroyal's warehouses and will be brought into full compliance with the marking requirements of FMVSS No. 109 or scrapped.

Uniroyal supports its application for inconsequential noncompliance with the following four statements:

1. All performance requirements of FMVSS No. 109 are met or exceeded.

2. The correct marking appears on one side of the tire.

3. It is reasonable to expect that the consumer will interpret "NFLATE TO 60 PSI" as "INFLATE TO 60 PSI," especially when it is used in reference to a pressure of 60 PSI.

4. The vehicle placard, as required by 49 CFR 571.110 S4.3, [specifies] the proper inflation pressure to use.

The primary safety purpose of requiring "INFLATE TO 60 PSI" on this motor vehicle tire is to ensure that the end-user selects the appropriate inflation pressure. The absence of this labeling would likely result in an improper tire inflation pressure selection by the tire dealer or vehicle owner. In this case, Uniroyal stated the correct inflation pressure of 60 PSI; however, on one side of the tire, the letter "I" was omitted from the word "INFLATE." The agency agrees with Uniroyal's rationale that it is reasonable to expect that the consumer will interpret "NFLATE TO 60 PSI" as "INFLATE TO 60 PSI," especially when it is used in reference to a pressure of 60 PSI.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120. (49 U.S.C. 30118; 49 U.S.C. 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: March 26, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–8411 Filed 3–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33566]

City of Tacoma and Beltline Division of Tacoma Public Utilities; Change in Operator Exemption; Tacoma Eastern Railway Company

City of Tacoma (City),WA,[1] has filed a verified notice of exemption under 49 CFR 1150.41 for Beltline Division of Tacoma Public Utilities to operate approximately 131.5 miles of City rail line in Pierce, Thurston, and Lewis Counties, WA: (1) between milepost 2192.0, at Tacoma, and milepost 17.7, at Chehalis; and (2) between milepost 2192.0, at Tacoma, and milepost 64.2, at Morton. The lines have been operated previously by Tacoma Eastern Railway Company.

Because the projected revenues of the rail lines to be operated will exceed $5 million, City has certified to the Board that the required notice of its change in operators was posted at the workplace of the employees on the affected lines on March 11, 1998. See 49 CFR 1150.42(e). The earliest the transaction can be consummated is May 18, 1998, the effective date of the exemption (60 days after City's March 19, 1998 certification to the Board).[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33566, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on City of Tacoma, Office of City Attorney, 747 Market Street, Room 1120, Tacoma, WA 98402–3767.

Decided: March 23, 1998.

[1] Applicant represents that the Charter of the City divides its operations into Public Utilities and General Government. The General Government portion of the City evidently owns the lines discussed in this notice and is negotiating with the Public Utilities portion of the City, which is evidently responsible for operations.

[2] The City's representative has acknowledged by telephone that the earliest the transaction can go forward is May 18, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–8116 Filed 3–30–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notice of Change in Status of Plant.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Jim Ficaretta, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Notice of Change in Status of Plant.

OMB Number: 1512–0202.

Form Number: ATF F 5110.34.

Abstract: ATF F 5110.34 is necessary to show the use of distilled spirits plant premises for other activities or by alternating proprietors. It describes the proprietor's use of plant premises and other information to show that the change in plant status is in conformity with laws and regulations.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 24, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–8293 Filed 3–30–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tax Deferral Bond—Distilled Spirits (Puerto Rico).

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).

OMB Number: 1512–0209.

Form Number: ATF F 5110.50.

Abstract: A manufacturer who ships distilled spirits from Puerto Rico to the U.S. may either choose to pay the tax prior to shipment or file a bond and defer payment of taxes. ATF F 5110.50 is the bond form which a manufacturer in Puerto Rico must file if such manufacturer elects to defer the taxes for payment on a semi-monthly tax return system. The form may be destroyed 5 years after discontinuance of business or after all outstanding liabilities have been satisfied, or after elimination of the requirement for the bond.

Current Actions: The filing address has been changed and the title of Regional Director (Compliance) has been deleted on the form.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 10.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 24, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–8294 Filed 3–30–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6118

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6118, Claim of Income Tax Return Preparers.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim of Income Tax Return Preparers.

OMB Number: 1545–0240.

Form Number: 6118.

Abstract: Form 6118 is used by tax return preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 59 min.

Estimated Total Annual Burden Hours: 9,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8283 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6197

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

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other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6197, Gas Guzzler Tax.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Gas Guzzler Tax.

OMB Number: 1545–0242.

Form Number: 6197.

Abstract: Internal Revenue Code section 4064 imposes a gas guzzler tax on the sale, use, or first lease by a manufacturer or importer of automobiles whose fuel economy does not meet certain standards for fuel economy. The tax is computed on Form 6197. The IRS uses the information to verify computation of the tax and compliance with the law.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 485.

Estimated Time Per Respondent: 5 hr., 58 min.

Estimated Total Annual Burden Hours: 2,892.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8284 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6497

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6497, Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

OMB Number: 1545–0232.

Form Number: 6497.

Abstract: Section 6050D of the Internal Revenue Code requires an information return to be made by any person who administers a Federal, state, or local program providing nontaxable grants or subsidized energy financing. Form 6497 is used for making the information return. The IRS uses the information from the form to ensure that recipients have not claimed tax credits or other benefits with respect to the grants or subsidized financing.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and federal, state, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 3 hr., 2 min.

Estimated Total Annual Burden Hours: 760.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8285 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 8860

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8860, Qualified Zone Academy Bond Credit.

DATES: Written comments should be received on or before June 1, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Zone Academy Bond Credit.

OMB Number: To be assigned later.

Form Number: Form 8860.

Abstract: Under Internal Revenue Code section 1397E, a qualified zone academy bond is a taxable bond issued after 1997 by a state or local government, with the proceeds used to improve certain eligible public schools. In lieu of receiving interest payments from the issuer, an eligible holder of the bond is generally allowed an annual income tax credit. Eligible holders of qualified zone academy bonds use Form 8860 to figure and claim this credit.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Business or other for-profit organizations and state, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 5 hours, 16 minutes.

Estimated Total Annual Burden Hours: 5,260.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 24, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–8286 Filed 3–30–98; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors.

TIME AND DATE: 10 a.m., Thursday, April 2, 1998.

PLACE: Telephonic Meeting.

STATUS: The Board meeting will be closed to the public.

MATTER TO BE CONSIDERED: Issues relating to the privatization of the Corporation and other commercial, financial and operational issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Joseph Tomkowicz 301/564–3345.

Dated: March 26, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–8491 Filed 3–26–98; 5:08 pm]

BILLING CODE 8720–01–M

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Corrections

Federal Register
Vol. 63, No. 61
Tuesday, March 31, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy and Regulatory Commission

[Docket No. RP94-43-017]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 98–7752 beginning on page 14440, in the issue of Wednesday, March 25, 1998, make the following correction:

On page 14440, in the first column, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98-266-000, CP98-267-000, CP98-268-000]

Enogex Interstate Transmission L.L.C. and Ozark Gas Transmission, L.L.C.; Notice of Application

Correction

In notice document 98–7254 beginning on page 13646, in the issue of Friday, March 20, 1998, make the following correction:

On page 13646, in the second column, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy and Regulatory Commission

[Docket No. SA98-43-000]

Leo Heizel; Notice of Petition for Adjustment

Correction

In notice document 98–7544 beginning on page 14079, in the issue of Tuesday, March 24, 1998, make the following correction:

On page 14079, in the first column, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

Proposed Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense (DoD)

Correction

In notice document 98–7486 beginning on page 14254, in the issue of Tuesday, March 24, 1998, make the following correction:

On page 14327, in the third column, in the file line, "43–23–98" should read "3–23–98".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3053; Amendment #2]

State of North Carolina

Correction

In notice document 98–5328 appearing on page 10255, in the issue of Monday, March 2, 1998, the heading should read as set forth above.

BILLING CODE 1505-01-D

federal register

Tuesday
March 31, 1998

Part II

Department of Housing and Urban Development

Super Notice of Funding Availability (SuperNOFA) for Housing and Community Development Programs; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4340–N–01]

Super Notice of Funding Availability (SuperNOFA) for Housing and Community Development Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for Housing and Community Development Programs.

SUMMARY: This Super NOFA of Funding Availability (SuperNOFA) announces the availability of approximately $1,247,906,870 in HUD program funds covering nineteen (19) Housing and Community Development Programs operated and managed by the following HUD Offices: Community Planning and Development (CPD), Public and Indian Housing (PIH), Housing, Policy Development and Research (PD&R), Office of Lead Hazard Control, and Fair Housing and Equal Opportunity (FHEO). The General Section of this SuperNOFA contains the procedures and requirements applicable to all 19 programs. The applications for funding for these programs have been consolidated into 6 applications. The Programs Section of this SuperNOFA contains a description of the specific programs for which funding is made available under this SuperNOFA and additional procedures and requirements that are applicable to each.

APPLICATION DUE DATES: The information contained in this "APPLICATION DUE DATES" section applies to all programs contained in this SuperNOFA. Completed applications must be submitted to HUD no later than the deadline established for the program for which you are seeking funding. Applications may not be sent by facsimile (FAX). See the Program Chart for specific application due dates.

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES: *Addresses.* Completed applications must be submitted to the location specified in the Programs Section of this SuperNOFA. When submitting your application, please refer to the program name for which you are seeking funding.

For Applications to HUD Headquarters. Applications to be submitted to HUD Headquarters are due at: Department of Housing and Urban Development, 451 Seventh Street, SW, Room _____ (See Program Chart or Programs Section for room location), Washington DC 20410.

For Applications to HUD Field Offices. For those programs for which applications are due to the HUD Field Offices, please see the Programs Section for the exact locations for submission.

Applications Procedures. Mailed Applications. Applications will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within ten (10) days of the application due date.

Applications Sent by Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. For applications submitted to HUD Headquarters, hand carried applications delivered before and on the application due date must be brought to the specified location and room number between the hours of 8:45 am to 5:15 pm, Eastern time. Applications hand carried on the application due date will be accepted in the South Lobby of the HUD Headquarters Building at the above address from 5:15 pm until 12:00 midnight, local time. Applications due to HUD Field Office locations must be delivered to the appropriate HUD Field Office in accordance with the instructions specified in the Programs Section of the SuperNOFA.

For applications submitted to the HUD Field Offices, hand carried applications will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 pm. (Please see the Appendix A to this SuperNOFA listing the hours of operations for the HUD Field Offices.)

COPIES OF APPLICATIONS TO HUD OFFICES: The Programs Section of this SuperNOFA may specify that to facilitate processing and review of your submission a copy of the application also be sent to an additional HUD location (for example, a copy to the HUD Field Office if the original application is to be submitted to HUD Headquarters, or a copy to HUD Headquarters, if the original application is to be submitted to a HUD Field Office). Please follow the requirements of the Programs Section to ensure that you submit your application to the proper location. HUD requests additional copies in order to expeditiously review your application and appreciates your assistance in providing the copies. Please note that for those applications for which copies are being submitted to the Field Offices and HUD Headquarters, timeliness of submission will be based on the time the application is received at HUD Headquarters.

FOR APPLICATION KITS, FURTHER INFORMATION AND TECHNICAL ASSISTANCE: The information contained in this section is applicable to all programs contained in this SuperNOFA.

For Application Kits and SuperNOFA User Guide. HUD is pleased to provide you with application kits and/or a guidebook to all HUD programs. When requesting an application kit, please refer to the program name of the application kit you are interested in receiving. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

Requests for application kits should be made immediately to ensure sufficient time for application preparation. We will distribute application kits as soon as they become available.

The SuperNOFA Information Center (1–800–HUD–8929) can provide you with assistance, application kits, and guidance in determining which HUD Office(s) should receive a copy of your application.

Consolidated Application Submissions. Where an applicant can apply for funding under more than one program in this SuperNOFA, the applicant need only submit one originally signed SF–424 and one set of original signatures for the other required assurances and certifications, accompanied by the matrix contained in each application kit. As long as the applicant submits one originally signed set of these documents with an application, only copies of these documents may be submitted with any additional application submitted by the applicant.

For Further Information. For answers to your questions about this SuperNOFA, you have several options. You may call the HUD Office or Processing Center serving your area at the telephone number listed in your program area section to this SuperNOFA, or you may contact the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairment may call the Center's TTY number at 1–800–483–2209. Information on this SuperNOFA also may be obtained through the HUD web site on the Internet at http://www.HUD.gov.

For Technical Assistance. Before the application due date, HUD staff will be available to provide general guidance

and technical assistance about this SuperNOFA. Current law does not permit HUD staff to assist in preparing the application. Following selection of applicants, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or Annual Contributions Contract (ACC) by HUD.

Introduction to the SuperNOFA Process

To further HUD's objective, under the direction of Secretary Andrew Cuomo, of improving customer service and providing the necessary tools for revitalizing communities and improving the lives of people within those communities, HUD will publish three SuperNOFAs in 1998, which coordinate program funding for 39 programs and cut across traditional program lines.

(1) The first is this SuperNOFA and consolidated application process for Housing and Community Development Programs, published in today's **Federal Register**, covering 19 Housing and Community Development Programs.

(2) The second is the SuperNOFA and consolidated application process for Economic Development and Empowerment Programs. This second SuperNOFA includes funding for the following programs and initiatives: Brownfields; Youthbuild; Economic Development Initiative; Neighborhood Initiatives; Tenant Opportunity Program, Economic Development and Supportive Services; and the Section 8 Family Self-Sufficiency Service Coordinators.

(3) The third is the SuperNOFA and consolidated application process for Targeted Housing and Homeless Assistance Programs. This third SuperNOFA includes the following programs and initiatives: Housing Opportunities for Persons with AIDS; Continuum of Care Assistance; Section 202 Elderly Housing; Section 811 Disabled Housing; Service Coordinators; Section 8 Designated Housing; Section 8 Mainstream Housing Opportunities; Family Unification; and Elderly Housing Revitalization.

All three SuperNOFAs and consolidated applications, to the greatest extent possible, given statutory, regulatory and program policy distinctions, will have one set of rules that, together, offer a "menu" of approximately 39 programs. From this menu, communities will be made aware of funding available for their jurisdictions. Nonprofits, public housing agencies, local and State governments, tribal governments and tribally designated housing entities, veterans service organizations, faith-based organizations and others will be able to identify the programs for which they are eligible for funding. HUD is anticipating publishing all three SuperNOFAs before May 1, 1998.

The National Competition NOFA. In addition to the three SuperNOFAs, HUD also will publish a single NOFA for three national competitions: the Fair Housing Initiatives Program National Competition; the Lead-Based Paint Hazard Control National Competition; and the Housing Counseling National Competition. HUD also anticipates publishing this national competition NOFA before May 1, 1998.

The Housing and Community Development SuperNOFA. This first SuperNOFA announces the availability of approximately $1,247,906,870 in HUD program funds covering nineteen (19) Housing and Community Development Programs operated and managed by the following HUD Offices: Community Planning and Development (CPD), Public and Indian Housing (PIH), Housing, Policy Development and Research (PD&R), Office of Lead Hazard Control, and Fair Housing and Equal Opportunity (FHEO).

Assisting Communities To Make Better Use of Available Resources

This first SuperNOFA represents a marked departure from, and HUD believes a significant improvement over, HUD's past approach to the funding process. In the past, HUD has issued as many as 40 separate NOFAs, all with widely varying rules and application processing requirements. This individual program approach to funding, with NOFAs published at various times throughout the fiscal year, did not encourage and, at times, unintentionally impeded local efforts directed at comprehensive planning and development of comprehensive local solutions. Additionally, the old approach seemed to require communities to respond to HUD's needs rather than HUD responding to local needs. Secretary Cuomo brings to the leadership of HUD the experience of successfully implementing a consolidated planning process in HUD's community development programs. As Assistant Secretary for Community Planning and Development, Secretary Cuomo consolidated the planning, application, and reporting requirements of several community development programs. The Consolidated Plan rule, published in 1995, established a renewed partnership among HUD, State, and local governments, public and private agencies, tribal governments, and the general citizenry by empowering field staff to work with other entities in fashioning creative solutions to community problems.

The SuperNOFA approach builds upon Consolidated Planning implemented by the Secretary Cuomo in HUD's community development programs, and also reflects the Secretary's organizational changes for HUD, as described in the Secretary's management reform plan. On June 26, 1997, Secretary Cuomo released the HUD 2020 Management Reform Plan, which provides for significant management reforms at HUD. This plan calls for significant consolidation of like programs to maximize efficiency and dramatically improve customer service. The plan also calls for HUD to improve customer service by adopting a principle of "menus not mandates."

By announcing the funding of these nineteen programs in one NOFA, HUD hopes to assist communities in making better use of available resources to address their needs and the needs of those living within the communities in a holistic and effective fashion. These funds are available for eligible applicants to support individual program objectives, as well as cross-cutting and coordinated approaches to improving the overall effective use of available HUD program funds.

To date, HUD has been consolidating and simplifying the submission requirements of many of its formula grant and discretionary grant programs to offer local communities a better opportunity to shape available resources into effective and coordinated neighborhood housing and community development strategies that will help revitalize and strengthen their communities, physically, socially and economically. To complement this overall consolidation and simplification effort, HUD designed this process to increase the ability of applicants to consider and apply for funding under a wide variety of HUD programs in response to a single NOFA. Everyone interested in HUD's housing and community development assistance programs can benefit from having this information made available in one NOFA.

Coordination, Flexibility, and Simplicity in the HUD Funding Process

This SuperNOFA places heavy emphasis on the coordination of activities to provide (1) greater flexibility and responsiveness in meeting local housing and community development needs, and (2) greater flexibility to eligible applicants to determine what HUD program resources best fit the community's needs, as identified in local Consolidated Plans

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and Analysis of Impediments to Fair Housing Choice ("Analysis of Impediments" (AI)).

This SuperNOFA will simplify the application process; promote effective and coordinated use of program funds in communities; reduce duplication in the delivery of services and housing and community development programs; allow interested applicants to seek to deliver a wider, more integrated array of services; and improve the system for potential grantees to be aware of, and compete for program funds.

HUD encourages applicants to work together to coordinate and, to the maximum extent possible, join their activities to form a seamless and comprehensive program of assistance to meet identified needs in their communities, and address barriers to fair housing and equal opportunity that have been identified in the community's Consolidated Plan and Analysis of Impediments in the geographic area(s) in which they are seeking assistance.

As part of the simplification of this funding process, and to avoid duplication of effort, the SuperNOFA provides for consolidated applications for several of the programs for which funding is available under this NOFA. HUD programs that provide assistance for similar activities, e.g., technical assistance, drug elimination, modernization and revitalization, have a consolidated application that reduces the administrative and paperwork burden applicants may otherwise encounter in submitting an application for each program. The Program Chart in this introductory section of the SuperNOFA identifies the programs that have been consolidated and for which a consolidated application is made available to eligible applicants.

The funding of these nineteen programs through this SuperNOFA will not affect the ability of eligible applicants to seek HUD funding. *Eligible applicants are able, as they have been in the past, to apply for funding under as few as one or as many as all programs for which they are eligible.*

The specific statutory and regulatory requirements of each of the nineteen separate programs continue to apply to each programs. The SuperNOFA reflects, where necessary, the statutory requirements and differences applicable to the specific programs. *Please pay careful attention to the individual program requirements that are identified for each program. Also, you will note that not all applicants are eligible to receive assistance under all nineteen programs identified in this SuperNOFA.*

The SuperNOFA contains two major sections. The General Section of the SuperNOFA contains the procedures and requirements applicable to all applications. The Programs Section of the SuperNOFA describes each program for which funding is made available in the NOFA. As in the past, each program provides a description of eligible applicants, eligible activities, factors for awards, and any additional requirements or limitations that apply to the program. Please read carefully both the General Section and the Programs Section of the SuperNOFA for the program(s) to which you are applying. This will ensure that you apply for program funding for which your organization is eligible to receive funds and you fulfill all the requirements for that program(s).

The Programs of This SuperNOFA and the Amount of Funds Allocated

The nineteen programs for which funding availability is announced in this SuperNOFA are identified in the following chart. The approximate available funds for each program are listed as expected funding levels based on appropriated funds. Should recaptured or other funds become available for any program, HUD reserves the right to increase the available program funding amounts by the amount available.

The chart also includes the application due date for each program, the OMB approval number for the information collection requirements contained in the specific program, and the Catalog of Federal Domestic Assistance (CFDA) number.

Program name	Funding available	Due date	Submission location and room
Community Development Technical Assistance Programs	$82,395,140	6–24–98	HUD Headquarters Processing and Control Branch, Room 7251 and copies to appropriate CPD Field Offices.
Community Development Block Grant (CDBG) Technical Assistance. CFDA No.: 14.227 OMB Approval No.: pending	5,000,000		
Community Housing Development Organization (CHDO) Technical Assistance. CFDA No: 14.239 OMB Approval No.: pending	42,000,000		
HOME Technical Assistance CFDA No: 14.239 OMB Approval No.: pending	31,000,000		
Supportive Housing Program (SHP) Technical Assistance CFDA No.: 14.235 OMB Approval No.: pending	4,395,140		
University and College Programs	13,500,000	7–8–98	HUD Headquarters, Processing and Control Branch, Room 7251, and Appropriate Field Offices where noted in Programs Section.
Community Outreach Partnership Centers (COPCs) CFDA No.: 14.511 OMB Approval No.: 2528–0180	7,000,000		
Historically Black Colleges and Universities (HBCUs) Program. CFDA No.: 14.237 OMB Approval No.: 2506–0122	6,500,000		
Fair Housing Initiatives and Assisted Housing Counseling Programs.	29,500,000	6–1–98	HUD Headquarters Room 5234, except if only applying for Assisted Housing Counseling.
Education and Outreach Initiative (EOI)	1,000,000		

Program name	Funding available	Due date	Submission location and room
CFDA No.: 14.409 OMB Approval No.: 2529–0033 Private Enforcement Initiative (PEI)	9,300,000		
CFDA No.: 14.410 OMB Approval No.: 2529–0033 Fair Housing Organizations Initiative (FHOI)	1,200,000		
CFDA No.: 14.413 OMB Approval No.: 2529–0033 Housing Counseling Program • Local Housing Counseling Agencies ($5,000,000) • National, Regional and Multi-State Intermediaries ($6,000,000) • State Housing Finance Agencies ($7,000,000)	18,000,000		Appropriate HUD Field Office.
CFDA No.: 14.169 OMB Approval No: 2502–0261 Lead-Based Paint Hazard Control Program	50,000,000	6–1–98	Postal Service: HUD Headquarters, Office of Lead Hazard Control, Room B–133 Courier Service or Hand Carried: HUD Office of Lead Hazard Control, 490 East L'Enfant Plaza, S.W., Suite 3206, Washington, DC 20024.
CFDA No.: 14.900 OMB Approval No.: 2539–0005 Modernization and Revitalization Programs	745,762,796	6–29–98	HUD Headquarters, Room 4138, and copies to appropriate Local HUD Field Office, where noted in the Programs Section.
Comprehensive Improvement Assistance Program (CIAP) CFDA No.: 14.852 OMB Approval No.: 2577–0044	304,000,000		
HOPE VI Public Housing Revitalization CFDA No.: 14.866 OMB Approval No.: 2577–0208	441,762,796		
Drug Elimination in Public and Assisted Housing Programs	326,748,934	6–15–98	Appropriate local Field Office except if only applying for Drug Elimination TA.
Public Housing Drug Elimination Program (Including Youth Sports Eligible Activities). CFDA No.: 14.854 OMB Approval No.: 2577–0124	*288,498,934		
Public Housing Drug Elimination Program—New Approaches (Formerly Safe Neighborhood Grant). CFDA No.: 14.854 OMB Control No.: 2577–0124	20,000,000		
Drug Elimination Grants for Multifamily Low Income Housing. CFDA No.: 14.193 OMB Approval No.: 2502–0476	16,250,000		
Public Housing Drug Elimination Program-Technical Assistance. CFDA No.: 14.854 OMB Approval No: 2577–0124	2,000,000		HUD Headquarters, Room 4112.

*This amount includes $44,935,934 in FY 97 funds for applicants not funded in 1997.

Paperwork Reduction Act Statement. For those programs listed in the chart above which have OMB approval numbers, the information collection requirements contained in this SuperNOFA for those programs have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). For those programs listed in the chart for which an OMB approval number is pending, the approval number when received will be announced by HUD in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

General Section of the SuperNOFA

I. Authority; Purpose; Amount Allocated; Eligible Applicants and Eligible Activities

(A) Authorities

The authority for Fiscal Year 1998 funding availability under this SuperNOFA is the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997) (FY 1998 HUD Appropriations Act). Where applicable, additional authority for each program in this SuperNOFA is identified in the Programs Section.

(B) Purpose

The purpose of this SuperNOFA is to:

(1) Make funding available through a variety of programs to empower communities and their residents, particularly the poor and disadvantaged, to develop viable communities, provide decent housing and a suitable living environment for all citizens, without discrimination in order to improve themselves both as individuals and as a community.

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(2) Simplify and streamline the application process for funding under HUD programs. By making available to State and local governments, public housing agencies, tribal governments, non-profit organizations and others, the application requirements for HUD housing and community development programs in one NOFA, HUD hopes that the result will be a less time consuming and less complicated application process. This new process also allows an applicant to submit one application for funds for several programs. Except where statutory or regulatory requirements or program policy mandate differences, the SuperNOFA strives to provide for one set of rules, standardized rating factors, and uniform and consolidated application procedures.

(3) Enhance the ability of applicants to make more effective and efficient use of housing and community development funding when addressing community needs and implementing coordinated housing and community development strategies established in local Consolidated Plans, which is the single application for HUD housing and community development and other formula funds submitted by the local or State government. Through this SuperNOFA process, applicants are encouraged to: (i) create opportunities for strategic planning and citizen participation in a comprehensive context at the local level in order to establish a full continuum of housing and services; and (ii) promote methods for developing more coordinated and effective approaches to dealing with urban, suburban, and rural problems by recognizing the interconnections among the underlying problems and ways to address them through layering of available HUD programs;

(4) Promote the ability of eligible non-profit organizations to participate in many of the programs contained in this SuperNOFA; provide an increased opportunity to assist communities in maintaining, rehabilitating, and constructing affordable housing for low and moderate income families; improve the quality of life for residents of public housing; develop and implement programs which promote fair housing practices and open housing opportunities within a community or geographic area; and provide technical assistance and services to improve program results and increase the productivity of HUD programs in meeting community needs; and

(5) Recognize and make better use of the expertise that each of the programs, and organizations eligible for funding under this SuperNOFA, can contribute when developing and implementing local housing and community development plans, the Consolidated Plan, and the HUD required Analysis of Impediments to Fair Housing Choice.

(C) Amounts Allocated

The amounts allocated to specific programs in this SuperNOFA are based on appropriated funds. Should recaptured funds become available in any program, HUD reserves the right to increase the available funding amounts by the amount of funds recaptured.

(D) Eligible Applicants and Eligible Activities

The eligible applicants and eligible activities for each program are identified and described for the program in the Programs Section of the SuperNOFA.

II. Requirements and Procedures Applicable to All Programs

Except as may be modified in the Programs Section of this Super NOFA, or as noted within the specific provisions of this Section II, the following principles apply to all programs. Please be sure to read the program area section of the SuperNOFA for additional requirements or information.

(A) Statutory Requirements

All applicants must meet and comply with all statutory and regulatory requirements applicable to the program for which they are seeking funding in order to be awarded funds. Copies of the regulations are available from the SuperNOFA Information Center or through the Internet at http://www.HUD.gov. HUD may reject an application from further funding consideration if the activities or projects proposed are ineligible, or HUD may eliminate the ineligible activities from funding consideration and reduce the grant amount accordingly.

(B) Threshold Requirements—Compliance With Fair Housing and Civil Rights Laws

All applicants, with the exception of Federally recognized Indian tribes, must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR § 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act. If an applicant (1) has been charged with a violation of the Fair Housing Act by the Secretary; (2) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (3) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this SuperNOFA until the applicant resolves such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(C) Additional Nondiscrimination Requirements

Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(D) Affirmatively Furthering Fair Housing

Unless otherwise specified in the Programs Section of this SuperNOFA, each successful applicant will have a duty to affirmatively further fair housing. Applicants should include in their work plans the specific steps that they will take to (1) address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (2) remedy discrimination in housing; or (3) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses to the rating factors that address affirmatively furthering fair housing in the Programs Section of this SuperNOFA.

(E) Economic Opportunities for Low and Very Low-Income Persons (Section 3)

Certain programs in this SuperNOFA require recipients of HUD assistance to comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u (Economic Opportunities for Lower Income Persons in Connection with Assisted Projects), and the HUD regulations at 24 CFR part 135, including the reporting requirements in subpart E. Section 3 provides that recipients shall ensure that training, employment and other economic opportunities, to the greatest extent feasible, be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low and very low income persons. Section 3 is applicable to the following programs in this SuperNOFA: HOPE VI Revitalization; CIAP; and Lead-Based Paint Hazard Reduction, and may be applicable to certain activities of other programs of this SuperNOFA.

(F) Relocation

Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property as a direct result of a written notice to acquire or the acquisition of the real property, in whole or in part, for a HUD-assisted activity is covered by acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing governmentwide regulation at 49 CFR part 24. Any person who moves permanently from real property or moves personal property from real property as a direct result of rehabilitation or demolition for an activity undertaken with HUD assistance is covered by the relocation requirements of the URA and the governmentwide regulation.

(G) Forms, Certifications and Assurances

Each applicant is required to submit signed copies of the standard forms, certifications, and assurances, listed in this section, unless the program funding in the Programs Section specifies otherwise. Additionally, the Programs Section may specify additional forms, certifications or assurances that may be required for particular program in this SuperNOFA.

(1) Standard Form for Application for Federal Assistance (SF–424);

(2) Standard Form for Budget Information—Non-Construction Programs (SF–424A) or Standard Form for Budget Information-Construction Programs (SF–424C), as applicable;

(3) Standard Form for Assurances—Non-Construction Programs (SF–424B) or Standard Form for Assurances—Construction Programs (SF–424D), as applicable;

(4) Drug-Free Workplace Certification (HUD–50070);

(5) Certification and Disclosure Form Regarding Lobbying (SF–LLL); (Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are not required to submit this certification. Tribes and TDHEs established under State law are required to submit this certification.)

(6) Applicant/Recipient Disclosure Update Report (HUD–2880);

(7) Certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients also must certify to compliance with section 109 of the Housing and Community Development Act. Federally recognized Indian tribes must certify that they will comply with the requirements of the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act.

(8) Certification required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required.)

(H) OMB Circulars

The policies, guidances, and requirements of OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments) apply to the award, acceptance and use of assistance under the programs of this SuperNOFA, and to the remedies for noncompliance, except when inconsistent with the provisions of the FY 1998 HUD Appropriations Act, other Federal statutes or the provisions of this SuperNOFA. Compliance with additional OMB Circulars may be specified for a particular program in the Programs Section of the SuperNOFA. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number).

(I) Environmental Requirements

For programs under this SuperNOFA that assist physical development activities or property acquisition, grantees are generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property, or committing or expending HUD or non-HUD funds for these program activities, until one of the following has occurred:

(1) HUD has completed an environmental review in accordance with 24 CFR part 50; or (2) for programs subject to 24 CFR part 58, HUD has approved a grantee's Request for Release of Funds (HUD Form 7015.15) following a Responsible Entity's completion of an environmental review. Applicants should consult the Programs Section for the applicable program to determine the procedures for, timing of, and any exclusions from environmental review under a particular program.

III. Application Selection Process

(A) General

To review and rate applications, HUD may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies.

(1) *Rating.* All applications for funding in each program listed in this SuperNOFA will be evaluated and rated against the criteria in this SuperNOFA. The rating of the "applicant" or the "applicant's organization and staff" for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project.

(2) *Ranking.* Applicants will be ranked within each program. Applicants will be ranked only against others that applied for the same program funding and where there are set-asides within the competition, the applicant would only compete against applicants in the same set-aside competition.

(B) Threshold Requirements

HUD will review each application to determine whether the application meets all of the threshold criteria described for program funding made available under this SuperNOFA. Applications that meet all of the threshold criteria will be eligible to be rated and ranked, based on the criteria described, and the total number of points to be awarded.

(C) Factors For Award Used To Evaluate and Rate Applications

For all of the programs for which funding is available under this SuperNOFA, the points awarded for the factors total 100. The maximum number of points to be awarded, however, total 102. The SuperNOFA provides for two bonus points.

(1) *Bonus Points.* The SuperNOFA provides for the award of two bonus points for eligible activities/projects that are proposed to be located in federally designated Empowerment Zones, Enterprise Communities, Enterprise Communities, or Urban Enhanced Enterprise Communities, and serve the EZ/EC residents, and are certified to be consistent with the strategic plan of the EZs and ECs. The application kit contains a certification which must be

completed for the applicant to be considered for EZ/EC bonus points. A listing of the federally designated EZs, EZs, Enhanced ECs are available from the SuperNOFA Information Center, or through the HUD web site on the Internet at http://www.HUD.gov.

(2) *The Five Standard Rating Factors.* The factors for rating and ranking applicants are listed in this Section III(c)(2) and maximum points for each factor, are provided in the Programs Section of the SuperNOFA. Each applicant should carefully read the factors for award as described in the program area section that they are seeking funding. While HUD has established the following basic factors for award, these may have been modified or adjusted to take into account specific program needs, or statutory or regulatory limitations imposed on a program. The standard factors for award, except as modified in the program area section are:

Factor 1: Capacity of the Applicant and Relevant Organizational Staff
Factor 2: Need/Extent of the Problem
Factor 3: Soundness of Approach
Factor 4: Leveraging Resources
Factor 5: Comprehensiveness and Coordination

(D) Negotiation

After all applications have been rated and ranked and a selection has been made, in several programs, HUD requires that all winners participate in negotiations to determine the specific terms of the grant agreement and budget. In cases where HUD cannot successfully conclude negotiations or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

(E) Adjustments to Funding

HUD reserves the right to fund less than the full amount requested in any application to ensure the fair distribution of the funds and to ensure the purposes of the programs contained in this SuperNOFA are met. HUD may choose not to fund portions of the applications that are ineligible for funding under applicable program statutory or regulatory requirements, or which do not meet the requirements of this General Section of this SuperNOFA or the requirements in the Programs Section for the specific program, and fund eligible portions of the applications.

If funds remain after funding the highest ranking applications, HUD may fund part of the next highest ranking application in a given program area. If the applicant turns down the award offer, HUD will make the same determination for the next highest ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions for each program area where there is a balance of funds.

Additionally, in the event of a HUD procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this SuperNOFA, HUD may select that applicant when sufficient funds become available.

(F) Performance and Compliance Actions of Grantees

Performance and compliance actions of grantees will be measured and addressed in accordance with applicable standards and sanctions of their respective programs.

IV. Application Submission Requirements

As discussed earlier in the introductory section of this SuperNOFA, part of the simplification of this funding process, is to reduce the duplication effort involved in completing and submitting similar applications for HUD funded programs. As the Program Chart shows above, this SuperNOFA provides for consolidated applications for several of the programs for which funding is available under this SuperNOFA.

V. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. *Examples* of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

VI. Promoting Comprehensive Approaches to Housing and Community Development

(A) General

HUD believes the best approach for addressing community problems is through a community-based process that provides a comprehensive response to identified needs. By making HUD's Housing and Community program funding available in one NOFA, applicants may be able to relate the activities proposed for funding under this SuperNOFA to the recent and upcoming NOFAs and the community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice. A complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html.

(B) Linking Program Activities With AmeriCorps

Applicants are encouraged to link their proposed activities with AmeriCorps, a national service program engaging thousands of Americans on a full or part-time basis to help communities address their toughest challenges, while earning support for college, graduate school, or job training. For information about AmeriCorps, call the Corporation for National Service at (202) 606–5000.

(C) Encouraging Visitability in New Construction and Substantial Rehabilitation Activities

In addition to applicable accessible design and construction requirements, applicants are encouraged to incorporate visitability standards where feasible in new construction and substantial rehabilitation projects. Visitability standards allow a person with mobility impairments access into the home, but does not require that all features be made accessible. Visitability means at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; the entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space. Allowing use of 2'10" doors is consistent with the Fair Housing Act (at least for the interior doors), and may be more acceptable than requiring the 3 foot doors that are required in fully accessible areas under the Uniform

Federal Accessibility Standards for a small percentage of units. A visitable home also serves persons without disabilities, such as a mother pushing a stroller, or a person delivering a large appliance. Copies of the UFAS are available from the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Room 5230, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–5404 or the TTY telephone number, 1–800–877 8399 (Federal Information Relay Service).

(D) Developing Healthy Homes

HUD's Healthy Homes Initiative is one of the initiatives developed by the White House Task Force on Environmental Health Risks and Safety Risks to Children that was established under Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks"). HUD encourages the funding of activities (to the extent eligible under specific programs) that promote healthy homes, or that promote education on what is a healthy home. These activities may include, but are not limited to the following: educating homeowners or renters about the need to protect children in their home from dangers that can arise from items such as curtain cords, electrical outlets, hot water, poisons, fire, and sharp table edges, among others; incorporating child safety measures in the construction, rehabilitation or maintenance of housing, which include but are not limited to: child safety latches on cabinets, hot water protection devices, properly ventilated windows to protect from mold, window guards to protect children from falling, proper pest management to prevent cockroaches which can cause asthma, and activities directed to control of lead-based paint hazards. The National Lead Information Hotline is 1–800–424–5323.

VII. Findings and Certifications

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

(B) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this SuperNOFA will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the SuperNOFA solicits applicants to expand their role in addressing community development needs in their localities, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the SuperNOFA is not subject to review under the Order.

(C) Prohibition Against Lobbying Activities

Applicants for funding under this SuperNOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.)

(D) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this SuperNOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this SuperNOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(E) Section 103 HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees

involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

VIII. The FY 1998 SuperNOFA Process and Future HUD Funding Processes

In FY 1997, Secretary Cuomo took the first step at changing HUD's funding process to better promote comprehensive, coordinated approaches to housing and community development. In FY 1997, the Department published related NOFAs on the same day or within a few days of each other. In the individual NOFAs published in FY 1997, HUD advised that additional steps on NOFA coordination may be considered for FY 1998. The three SuperNOFAs to be published for FY 1998 represent the additional step taken by HUD to improve HUD's funding process and assist communities to make better use of available resources through a coordinated approach. This new SuperNOFA process was developed based on comments received from HUD clients and the Department believes it represents a significant improvement over HUD's approach to the funding process in prior years. For FY 1999, HUD may take even further steps to enhance this process. HUD welcomes comments from applicants and other members of the public on this process, and how it may be improved in future years.

The description of program funding available under this first SuperNOFA for Housing and Community Development programs follows.

Dated: March 23, 1998.

Saul N. Ramirez, Jr.,

Acting Deputy Secretary.

Table of Contents of HUD Programs in This SuperNOFA

Community Development Technical Assistance Programs

Community Development Block Grant (CDBG) Technical Assistance
Community Housing Development Organization (CHDO) Technical Assistance
HOME Technical Assistance
Supportive Housing Program (SHP) Technical Assistance

University and College Programs

Community Outreach Partnership Centers
Historically Black Colleges and Universities (HBCUs) Program

Fair Housing Initiatives & Assisted Housing Counseling Programs

Fair Housing Initiative Program (FHIP)—Education and Outreach Initiative (EOI)
FHIP Private Enforcement Initiative (PEI)
FHIP Fair Housing Organizations Initiative (FHOI)
Housing Counseling Program

Lead Based Paint Hazard Control Program Modernization and Revitalization Programs

Comprehensive Improvement Assistance Program (CIAP)
HOPE VI Public Housing Revitalization

Drug Elimination in Public and Assisted Housing

Public Housing Drug Elimination Program (Including Youth Sports Eligible Activities)
Public Housing Drug Elimination Program—New Approaches
Drug Elimination Grants for Multifamily Low-Income Housing
Public Housing Drug Elimination Program Technical Assistance

Appendix A—List of HUD Offices and Hours of Operation

BILLING CODE 4210-32-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS

Community Development Block Grant (CDBG) Technical Assistance

Community Housing Development Organization (CHDO) Technical Assistance

HOME Technical Assistance

Supportive Housing Program (SHP) Technical Assistance

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Funding Availability for Community Development Technical Assistance (TA) Programs—CDBG, CHDO, Home and Supportive Housing

Program Description: Approximately $82.4 million in technical assistance (TA) funds is available from four separate technical assistance programs: Community Development Block Grant (CDBG) TA, Community Housing Development Organization (CHDO) TA, HOME TA and Supportive Housing TA (collectively "CD–TA").

The funding of these four CD–TA programs through a single funding availability announcement will not affect the ability of eligible applicants to seek CD–TA funding. Eligible applicants are able to apply for funding under as few as one, and as many as four, separate CD–TA programs, individually or collectively, singularly or in combination. The specific provisions of the four separate CD–TA programs have not been changed. This Community Development Technical Assistance Programs section of the SuperNOFA reflects the statutory requirements and differences in the four different CD–TA programs.

Application Due Date: Completed applications (an original and one copy) must be submitted no later than 12:00 midnight, Eastern time, on June 24, 1998. The original application submitted to Headquarters is considered the official application. A copy of the application also should be sent to the HUD CPD Field Office or Field Offices in which you are seeking to provide services. The application kit contains the addresses and hours of operation for the HUD CPD Field Offices. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications: The completed original application to be submitted to HUD Headquarters should be submitted to U.S. Department of Housing and Urban Development, CPD Processing and Control Branch, Room 7251, 451 Seventh Street, SW, Washington, DC 20410. The copy of the application to be submitted to the appropriate CPD Field Office should be sent to the address shown on the list of HUD CPD Field Offices included in the application kit. When submitting your application, please refer to the Community Development Technical Assistance Program. Be sure to include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. When requesting an application kit, please refer to "Community Development Technical Assistance Programs." Please be sure to provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you have several options. You may call the HUD CPD Office serving your area at the telephone number listed in the list of HUD CPD Field Offices included in the application kit, or you may contact the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. Information on this SuperNOFA may also be obtained through the HUD web site on the Internet at http://www:HUD.gov.

Additional Information

I. Authority; Purpose; Amount Allocated; Program Award Period; Eligible Applicants; Eligible and Ineligible Activities; and Sub-Grants/ Pass-Through Funds.

The Authority, Purpose of the Program, Amount Allocated, Eligible Applicants, Eligible Activities, Ineligible Activities, and *Additional* Program Requirements, as applicable, are delineated under each technical assistance program area for which funding is being made available. Applicants should take care in reviewing this section to ensure they are eligible to apply for funds and that they meet the additional program requirements and limitations described for each program.

(A) Authority

CDBG Technical Assistance: The Community Development Block Grant Technical Assistance Program is authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320; 24 CFR 570.402).

CHDO Technical Assistance: The CHDO Technical Assistance Program is authorized by the Home Investment Partnerships Act (42 U.S.C. 12773) 24 CFR part 92.

HOME Technical Assistance. The HOME Technical Assistance Program is authorized by the Home Investment Partnerships Act (42 U.S.C. 12781–12783) 24 CFR part 92.

Supportive Housing Program Technical Assistance. The Supportive Housing Program is authorized under 42 U.S.C. 11381 *et seq.*; 24 CFR 583.140.

(B) Purpose of the Program

The purposes of the technical assistance programs in this SuperNOFA are:

Community Development Block Grant Technical Assistance. To increase the effectiveness with which States and units of general local government plan, develop and administer their Community Development Block Grant (CDBG) Programs, including assistance to aid non-profits and other recipients of CDBG funds.

CHDO Technical Assistance. To provide educational and organizational support assistance to Community Housing Development Organizations (CHDOs) to promote their ability to maintain, rehabilitate and construct housing for low-income and moderate-income families; to facilitate the education of low-income homeowners and tenants; and to help women who reside in low- and moderate-income neighborhoods to rehabilitate and construct housing in the neighborhoods.

HOME Technical Assistance. To help HOME participating jurisdictions design and implement HOME programs, including: improving their ability to design and implement housing strategies and incorporate energy efficiency into affordable housing; facilitating the exchange of information to help participating jurisdictions carry out their programs; facilitating the establishment and efficient operation of employer-assisted housing programs and of land bank programs; and encouraging private lenders and for-profit developers of low-income housing to participate in public-private partnerships.

Supportive Housing Program Technical Assistance. To provide HUD-funded supportive housing projects with technical assistance to promote the development of supportive housing and supportive services as part of a Continuum of Care approach, including innovative approaches to assist homeless persons in the transition from homelessness, and promoting the provision of supportive housing to homeless persons to enable them to live as independently as possible.

(C) Amount Allocated

(1) The amounts allocated for each CD–TA program are as follows:
CDBG TA funds: $5,000,000

CHDO TA funds: $42,000,000
HOME TA funds: $31,000,000
SHP TA funds: $4,395,140

(2) Each HUD/CPD Field Office has been allocated a "fair-share" of CD–TA funds for purposes of this competition. (See CD–TA Appendix A for the fair share allocations) The amounts are based on workload allocations of HOME, CDBG and SHP entitlement funds and competitive programs for which Field Offices have management oversight. These amounts are only for guidance purposes to applicants in developing their program budgets by Field Office jurisdiction and are not the exact amounts to be awarded in each area or to each provider.

The total amount to be awarded to any provider will be determined by HUD based upon the size and needs of the provider's service area within each Field Office jurisdiction in which the provider is selected to operate, the funds available for that area, the number of other awardees selected in that area, and the scope of the technical assistance to be provided. Additionally, HUD may reduce the amount of funds allocated for Field Office jurisdictions to fund national CD–TA providers and other CD–TA providers for activities which cannot be budgeted or estimated by Field Office jurisdiction. HUD may require selected applicants, as a condition of funding, to provide coverage on a geographically broader basis than applied for in order to supplement or strengthen the intermediary network in terms of the location (service area), types and scope of technical assistance proposed.

(3) To the extent permitted by funding constraints, HUD intends to provide coverage for as full a range, as possible, of eligible CD–TA activities of each CD–TA program in each Field Office jurisdiction. To achieve this objective, HUD will fund the highest ranking providers that bring the required expertise in one or more specialized activity areas, and fund portions of providers' proposed programs in which they have the greatest skill and capability for given geographic areas or on a national basis. HUD also may require national, multi-jurisdictional, or other providers to provide coverage to Field Office jurisdictions which cannot otherwise receive cost-effective support from a CD–TA provider. In selecting applicants for funding, in addition to the rating factors, HUD will apply program policy criteria identified in Section III of this CD–TA Program section of SuperNOFA to select a range of providers and activities that would best serve program objectives for each program serviced by the CD–TA funded under this SuperNOFA.

(D) Program Award Period

(1) Cooperative Agreements will be for a period of up to 36 months. HUD, however, reserves the right to:

(a) Terminate awards in accordance with provisions contained in OMB Circular A–102, and 24 CFR parts 84 and 85 anytime after 12 months;

(b) Withdraw funds from a specific provider, if HUD determines that the urgency of need for the assistance is greater in other Field Office jurisdictions or the need for assistance is not commensurate with the award for assistance;

(c) Extend the performance period of individual awardees up to a total of 12 additional months.

(2) In cases where an applicant selected for funding under this program section of the SuperNOFA currently is providing CD technical assistance under an existing CD–TA grant/cooperative agreement, HUD reserves the right to adjust the start date of funding under this program to coincide with the conclusion of the previous award, or to incorporate the remaining activities from the previous award into the new agreement, adjusting the funding levels as necessary.

(E) Eligible Applicants

(1) *General.* The eligible applicants for each of the four CD–TA programs are listed in paragraphs (2), (3), and (4) of this Section (E). This paragraph (1) lists requirements applicable to all applicants.

(a) Many organizations are eligible to apply for more than one CD–TA program and are encouraged to do so to the extent they have the requisite experience, expertise and capability.

(b) All applicant organizations must have demonstrated ability to provide CD–TA in a geographic area larger than a single city or county and must propose to serve an area larger than a single city or county.

(c) An organization may not provide assistance to itself, and any organization funded to assist CHDOs under this CD–TA Program section of the SuperNOFA may not act as a CHDO itself within its service area while under award with HUD.

(d) A consortium of organizations may apply for one or more CD–TA programs, but HUD will require that one organization be designated as the legal applicant, where legally feasible. Where one organization cannot be so designated for all proposed activities, HUD may execute more than one cooperative agreement with the members of a consortium.

(e) All applicants must meet minimum statutory eligibility requirements for each CD–TA program for which they are chosen in order to be awarded a cooperative agreement. Copies of the Technical Assistance program regulations will be provided with the application kit.

(f) All eligible CD–TA providers may propose assistance using in-house staff, consultants, sub-contractors and sub-recipients, networks of private consultants and/or local organizations with requisite experience and capabilities. Whenever possible, applicants should make use of technical assistance providers located in the Field Office jurisdiction receiving services. This draws upon local expertise and persons familiar with the opportunities and resources available in the area to be served while reducing travel and other costs associated with delivering the proposed technical assistance services.

(2) *CDBG and Supportive Housing Eligible Applicants.*

(a) States and units of general local government.

(b) Public and private non-profit or for-profit groups, including educational institutions and area-wide planning organizations, qualified to provide technical assistance on CDBG programs or Supportive Housing projects. With respect to the CDBG program, an applicant group must be designated as a technical assistance provider to a unit of government's CDBG program by the chief executive officer of each unit to be assisted, unless the assistance is limited to conferences/workshops attended by more than one unit of government.

(3) *CHDO Eligible Applicants.* Public and private non-profit intermediary organizations that customarily provide services (in more than one community) related to affordable housing or neighborhood revitalization to CHDOs, or similar organizations that engage in community revitalization, including all eligible organizations under section 233 of the Cranston-Gonzalez National Affordable Housing Act, as amended.

An intermediary will be considered as a primarily single State technical assistance provider if it can document that more than 50% of its past activities in working with CHDOs or similar nonprofit and other organizations (on the production of affordable housing or revitalization of deteriorating neighborhoods and/or the delivery of technical assistance to these groups) was confined to the geographic limits of a single State.

(4) *HOME Eligible Applicants.*

(a) A for-profit or non-profit professional and technical services company or firm that has demonstrated capacity to provide technical assistance services;

(b) A HOME participating jurisdiction (PJ) or agency thereof;

(c) A public purpose organization responsible to the chief elected official of a PJ and established pursuant to State or local legislation;

(d) An agency or authority established by two or more PJs to carry out activities consistent with the purposes of the HOME program;

(e) A national or regional non-profit organization that has membership comprised predominantly of entities or officials of entities of PJs or PJs' agencies or established organizations.

(F) Eligible and Ineligible Activities

Eligible and ineligible activities as appropriate for each of the four CD–TA programs are listed below:

(1) *Community Development Block Grant Technical Assistance.*

(a) *Eligible Activities.* Activities performed with CDBG funds must meet the substantive nexus test contained in 24 CFR 570.402(a)(2) and may include:

(i) The provision of technical or advisory services;

(ii) The design and operation of training projects such as workshops, seminars, conferences, or computer-based training;

(iii) The development and distribution of technical materials and information;

(iv) Other methods of demonstrating and making available skills, information and knowledge to assist States, units of general local government, in planning, developing, administering or assessing assistance under CDBG programs in which they are participating or seeking to participate.

(b) *Ineligible Activities.* Activities for which costs are ineligible for funding under the Community Development Block Grant Technical Assistance Program include:

(i) In the case of technical assistance for States, the cost of carrying-out the administration of the State CDBG program for non-entitlement communities;

(ii) The cost of carrying out the activities authorized under the CDBG Program, such as the provision of public services, construction, rehabilitation, planning and administration for which the technical assistance is to be provided;

(iii) The cost of acquiring or developing the specialized skills or knowledge to be provided by a group funded under this section;

(iv) Research activities;

(v) The cost of identifying units of governments needing assistance (except the cost of selecting recipients of technical assistance under the provision of 24 CFR 570.402(j) is eligible); or

(vi) Activities designed primarily to benefit HUD, or to assist HUD, in carrying out the Department's responsibilities; such as research, policy analysis of proposed legislation, training or travel of HUD staff, or development and review of reports to Congress.

(2) *CHDO Technical Assistance.* CHDO Technical Assistance funds may be used only for the following eligible activities:

(a) Organizational Support—Organizational support assistance may be made available to community housing development organizations to cover operational expenses and to cover expenses for training and technical, legal, engineering and other assistance to the board of directors, staff, and members of the community housing development organization;

(b) Housing Education—Housing education assistance may be made available to community housing development organizations to cover expenses for providing or administering programs for educating, counseling, organizing homeowners and tenants who are eligible to receive assistance under other provisions of the HOME Program;

(c) Program-Wide Support of Nonprofit Development and Management—Technical assistance, training, and continuing support may be made available to eligible community housing development organizations for managing and conserving properties developed under the HOME Program;

(d) Benevolent Loan Funds—Technical assistance may be made available to increase the investment of private capital in housing for very low-income families, particularly by encouraging the establishment of benevolent loan funds through which private financial institutions will accept deposits at below-market interest rates and make those funds available at favorable rates to developers of low-income housing and to low-income homebuyers;

(e) Community Development Banks and Credit Unions—Technical assistance may be made available to establish privately owned, local community development banks and credit unions to finance affordable housing;

(f) Community Land Trusts—Organizational support, technical assistance, education, training and continuing support under this subsection may be made available to community land trusts (as such term is defined in section 233(f) of the Cranston-Gonzalez National Affordable Housing Act) and to community groups for the establishment of community land trusts; and

(g) Facilitating Women in Homebuilding Professions—Technical assistance may be made available to businesses, unions, and organizations involved in construction and rehabilitation of housing in low- and moderate-income areas to assist women residing in the area to obtain jobs involving such activities, which may include facilitating access by helping such women develop nontraditional skills, recruiting women to participate in such programs, providing continuing support for women at job sites, counseling and educating businesses regarding suitable work environments for women, providing information to such women regarding opportunities for establishing small housing construction and rehabilitation businesses, and providing materials and tools for training such women (in an amount not exceeding 10% of any assistance provided under this paragraph). The Secretary shall give priority under this paragraph to providing technical assistance for organizations rehabilitating single family or multifamily housing owned or controlled by the Secretary pursuant to title II of the National Housing Act and which have women members in occupations in which women constitute 25% or less of the total number of workers in the occupation (in this section referred to as "nontraditional occupations").

(3) *HOME Technical Assistance Program.* HUD will provide assistance to:

(a) Facilitate the exchange of information that would help participating jurisdictions carry out the purposes of the HOME statute, including information on program design, housing finance, land use controls, and building construction techniques;

(b) Improve the ability of States and units of local government to design and implement housing strategies, particularly those States and units of local government that are relatively inexperienced in the development of affordable housing;

(c) Encourage private lenders and for-profit developers of low-income housing to participate in public-private partnerships to achieve the purposes of the HOME statute;

(d) Improve the ability of States and units of local government, community

housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the planning, design, financing, construction and operation of affordable housing;

(e) Facilitate the establishment and efficient operation of employer-assisted housing programs, through research, technical assistance, and demonstration projects; and

(f) Facilitate the establishment and efficient operation of land bank programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of the HOME statute.

(4) *Supportive Housing Program Technical Assistance.* Funds are available to provide technical assistance to HUD-funded Supportive Housing projects. Funds may be used to provide technical assistance to prospective applicants, applicants, recipients or other providers (project sponsors) of Supportive Housing or SHP-funded services for homeless persons. The assistance may include, but is not limited to, written information such as papers, monographs, manuals, guides and brochures; person-to-person exchanges; and training and related costs.

(G) Sub-Grants/Pass-Through Funds

Applicants may propose to make sub-grants to achieve the purposes of their proposed CD–TA programs in accordance with program requirements in Section II of this CD–TA Program section of the SuperNOFA. In the case of CHDO TA, these sub-grants (also called "pass-through" funds) may be made for eligible activities and to eligible entities as identified in Section 233(b)(1), (2), and (7) of the Cranston-Gonzalez National Affordable Housing Act. When CHDO TA sub-grants are made to CHDOs, two statutory provisions apply:

(1) The sub-grant amount, when combined with other capacity building and operating support available through the HOME program, cannot exceed the greater of 50% of the CHDO's operating budget for the year in which it receives the funds, or $50,000 annually;

(2) An amount not exceeding 10% of the total funds awarded for the "Women in the Homebuilding Professions" eligible activity may be used to provide materials and tools for training such women.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Profit/Fee

No increment above cost, no fee or profit, may be paid to any recipient or subrecipient of an award under this CD–TA Program section of the SuperNOFA.

(B) Demand/Response Delivery System

(1) All awardees must operate within the structure of the demand/response system described in this section. They must coordinate their plans with, and operate under the direction of, each HUD Field Office within whose jurisdiction they are operating. When so directed by a Field Office, they will coordinate their activities instead through a lead CD–TA provider or other organization designated by the Field Office.

(2) If selected as the lead CD–TA provider in any Field Office jurisdiction, the awardee must coordinate the activities of other CD–TA providers selected under this CD–TA Program section of the SuperNOFA under the direction of the HUD Field Office. Joint activities by CD–TA providers may be required.

(3) Under the demand/response system, CD–TA providers will be required to:

(a) When requested by a Field Office or GTR, market the availability of their services to existing and potential clients to include local jurisdictions in which the assistance will be delivered.

(b) Respond to requests for assistance from the HUD Field Office(s) with oversight of the geographic service area for which the technical assistance will be delivered, including responding to priorities established by the Field Office in its Grants Management System. CHDOs, HOME PJs, CDBG and Supportive Housing grantees may request assistance from the CD–TA provider directly, but such requests must be approved by the local HUD Field Office.

(c) When requested by a Field Office or GTR, conduct a Needs Assessment to identify the type and nature of the assistance needed by the recipients of the assistance. Such needs assessments should typically identify the nature of the problem to be addressed by the technical assistance services; the plan of action to address the need including the type of technical assistance services to be provided, the duration of the service, the staff assigned to provide the assistance, anticipated products and/or outcomes, and the estimated cost for the provision of services; and the relationship of the proposed services to the planned or expected Consolidated Plan submission to HUD and to other technical assistance providers providing service within the locality.

(d) Obtain approval for the Technical Assistance Delivery Plan (TADP) from the HUD Field Office(s) with oversight for the area in which service will be provided. (See Section C below).

(e) Work cooperatively with other CD–TA providers in their geographic areas to ensure that clients are provided with the full range of CD–TA services needed and available. CD–TA providers are expected to be knowledgeable about the range of services available from other providers, make referrals and arrange visits by other CD–TA providers when appropriate, and carry out CD–TA activities concurrently when it is cost-effective and in the interests of the client to do so. HUD Field Offices may direct CD–TA providers to conduct joint activities.

(C) Technical Assistance Delivery Plan (TADP)

(1) After selection for funding but prior to award, each applicant must develop a TADP for each Field Office jurisdiction or National Program for which it has been selected, in consultation with the Field office and/or GTR.

(2) In developing the TADP, the applicant shall be guided by the Field Office's management strategies/workplans for each community/State in the Field Office's jurisdiction. It shall use these management strategies/workplans in determining its priority work activities, location of activities, and organizations to be assisted during the cooperative agreement performance period.

(3) The grantee management strategies/workplans are part of the Field Office's Grants Management Process (GMP) and should indicate the issues to be addressed by CD–TA, the improved performance expected as a result of CD–TA, and methods for measuring the success of the CD–TA.

(4) The TADP must delineate all the tasks and sub-tasks for each CD program the applicant will undertake in each Field Office jurisdiction. It shall show the location of the community/State in which the CD–TA activities will occur, the level of CD–TA funding and proposed activities by location, the improved program performance or other results expected from the CD–TA and the methodology to be used for measuring the success of the CD–TA. A

time schedule for delivery of the activities, budget-by-task and staffing plan shall be included in the TADP.

(D) Negotiation

After all applications have been rated and ranked and a selection has been made, HUD requires that all winners participate in negotiations to determine the specific terms of the TADP and the budget. HUD will follow the negotiation procedures described in Section III(D) of the General Section of the SuperNOFA.

(E) Forms, Certifications and Assurances

Each applicant must submit (1) the forms, certifications and assurances listed in the General Section of this SuperNOFA, and after selection for funding but prior to award (2) the CDBG Nexus Statement (where applicable).

(F) Financial Management and Audit Information

After selection for funding but prior to award, each applicant must submit a certification from an Independent Public Accountant or the cognizant government auditor, stating that the financial management system employed by the applicant meets prescribed standards for fund control and accountability required by 24 CFR part 84 for Institutions of Higher Education and other Non-Profit Institutions, 24 CFR part 85 for States and local governments, or the Federal Acquisition Regulations (for all other applicants). The information should include the name and telephone number of the independent auditor, cognizant Federal auditor, or other audit agency as applicable.

(G) Designation for CDBG/CHDO Technical Assistance Providers

CDBG TA providers will be expected to obtain designation as technical assistance providers by the chief executive officers of each community within which they are working as required by 24 CFR 570.402(c)(2). CHDO TA providers will be responsible for securing a technical assistance designation letter from a PJ stating that a CHDO or prospective CHDO to be assisted by the provider is a recipient or intended recipient of HOME funds and indicating, at its option, subject areas of assistance that are most important to the PJ.

(H)) Training Sessions

When conducting training sessions as part of its CD–TA activities, CD–TA providers are required to:

(1) Design the course materials as "step-in" packages (also called "train-the trainer" packages) so that a Field Office or other CD–TA provider may separately give the course on its own;

(2) Arrange for joint delivery of the training with Field Office participation when so requested by the Field Office; and

(3) When requested by a Field Office and/or Government Technical Representative (GTR), make provision for professional videotaping of the workshops/courses and ensure their production in a professional and high quality manner suitable for viewing by other CD clients (if this requirement is implemented, additional funds may be requested).

(I) Reports to Field Offices and/or GTRs

CD–TA providers will be required to report to the HUD Field Office(s) with oversight of the geographic area(s) in which CD–TA services are provided or to Headquarters GTRs in the case of national providers. At a minimum, this reporting shall be on a quarterly basis unless otherwise specified in the approved TADP.

(J) Active Participation

HUD Field Offices will be active participants in the delivery of all technical assistance by funded providers throughout the term of the cooperative agreement.

(K) CHDO Pass-Through Funds

CD–TA providers proposing pass-through grants are required to:

(1) Establish written criteria for selection of CHDOs receiving pass-through funds which includes the following:

(a) Participating jurisdictions (PJs) must designate the organizations as CHDOs.

(b) Generally, the organizations should not have been in existence more than 3 years.

(2) Enter into an agreement with the CHDO that the agreement and pass-through funding may be terminated at the discretion of the Department if no written legally binding agreement to provide assistance for a specific housing project (for acquisition, rehabilitation, new construction or tenant-based rental assistance) has been made by the PJ with the CHDO within 24 months of receiving the pass-through funding.

(L) Affirmatively Furthering Fair Housing

Section II(D) of the General Section of the SuperNOFA does not apply to these technical assistance programs.

III. Application Selection Process

(A) Rating and Ranking

(1) Applications will be evaluated competitively and ranked against all other applicants that have applied for the same CD–TA program (CDBG, HOME, CHDO and Supportive Housing) within each Field Office or as a National Provider. There will be separate rankings for each CD–TA program, and applicants will be ranked only against others that have applied for the same CD–TA program.

(2) Once scores are assigned, all applications will be listed in rank order for each CD–TA program for which they applied by Field Office jurisdiction and/or National Program. In each Field Office jurisdiction or National Program area, all applications for the CDBG TA program will be listed in rank order on one list, all applications for the CHDO TA program will be listed in rank order on a second list, all applications for the HOME TA program will be listed in rank order on a third list, and all applications for the Supportive Housing TA program will be listed in rank order on a fourth list. Under this system, a single application from one organization for all four CD–TA programs could be assigned different scores and different rankings for each program in different Field Offices.

(3) Applications will be funded in rank order for each CD–TA program by Field Office jurisdiction, except for national providers and others which cannot be ranked by Field Office jurisdiction. National providers and others will be ranked separately and funded in rank order for each CD–TA program. Irrespective of final scores, HUD may apply program policy criteria to select no more than one applicant per Field Office among all four CD–TA programs in this section of the SuperNOFA, to ensure diversity of methods, approaches, or kinds of projects. HUD will apply these program policy criteria to provide coverage of CD–TA services for minorities; women, particularly women in the homebuilding professions under section 233(b)(7) of the Cranston-Gonzalez National Affordable Housing Act; the disabled; homeless; persons with special needs; and rural areas.

(4) In addition to the authority in the General Section to adjust funding, HUD reserves the right to adjust funding levels for each applicant for each CD–TA program as follows:

(a) Pursuant to section 233(d)(1) and (2) of the Cranston-Gonzalez National Affordable Housing Act, funding to any single eligible nonprofit intermediary organization seeking to provide CHDO

CD–TA, whether as an independent or joint applicant, is limited to the lesser of 20% of all funds, or an amount not to exceed 20% of the organization's operating budget for any one year (not including funds sub-awarded or passed through the intermediary to CHDOs);

(b) Award additional funds to organizations designated as lead CD–TA providers as discussed in Section II.(B) of this CD–TA Program section of the SuperNOFA;

(c) Adjust funding levels for any provider based upon the size and needs of the provider's service area within each Field Office jurisdiction in which the provider is selected to operate, the funds available for that area, the number of other awardees selected in that area, funds available on a national basis for providers that will be operating nationally, or the scope of the technical assistance to be provided;

(d) To negotiate increased grant awards with applicants approved for funding if HUD requests them to offer coverage to geographic areas for which they did not apply or budget, or if HUD receives an insufficient amount of applications.

(5) If funds remain after all selections have been made, remaining funds may be:

(a) Distributed among all HUD Field Offices (in proportion to their fair-share awards) and/or the National Program, or

(b) Made available for other CD–TA program competitions.

(B) Factors for Award Used to Evaluate and Rate Applications

The factors and maximum points for each factor are provided below. The maximum number of points to be awarded for a CD–TA application is 100. The CD–TA program is not an eligible program for the EZ/EC bonus points, as described in Section III(C) of the General Section of the SuperNOFA.

Rating of the "applicant" or the "applicant's organization and staff", unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project.

When addressing the Factors for Award, the applicant should discuss the specific TA projects, activities, tasks, etc. that are suggested to be carried out by the applicant during the term of the cooperative agreement.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

In rating this factor, HUD will consider the extent to which the application demonstrates:

(1) (4 points) Recent, relevant and successful experience of the applicant's organization and staff in providing technical assistance in all eligible activities and to all eligible entities for the CD–TA program(s) applied for, as described in the regulations;

(2) (4 points) The experience and competence of key personnel in managing complex, multi-faceted or multi-disciplinary programs which require coordination with other CD–TA entities or multiple, diverse units in an organization;

(3) (4 points) The applicant has the skills and knowledge to aid grantees in the development of Consolidated Submissions for CD programs, comprehensive plans and planning processes and citizen participation activities, or in the case of SHP TA applicants, aid grantees in the development of supportive housing and supportive services as part of a Continuum of Care approach;

(4) (4 points) The applicant has a working knowledge of, and established relationships with, key public bodies and private organizations involved in CD programs in the geographic or national areas in which it proposes to serve;

(5) (4 points) The applicant has sufficient personnel or access to qualified experts or professionals to deliver the proposed level of technical assistance in each proposed service area in a timely and effective fashion.

Rating Factor 2: Potential Effectiveness of the Application in Meeting Needs of Target Groups/Localities and Accomplishing Project Objectives for Each CD–TA Program for which Funds Are Requested (20 Points)

In rating this factor, HUD will consider the extent to which the application:

(1) (4 points) Identifies high priority needs and issues to be addressed for each CD–TA program for which funding is requested;

(2) (4 points) Outlines a clear and effective plan of suggested TA activities for addressing those needs and aiding a broad diversity of eligible grantees and/or beneficiaries, including those which traditionally have been under-served;

(3) (4 points) Identifies creative and promising ways of carrying out eligible activities which will result in better or less costly service to CD–TA program grantees and/or program beneficiaries;

(4) (4 points) Identifies creative activities to assist eligible grantees in participating in the development of, and improving, local Consolidated Plans and comprehensive strategies;

(5) (4 points) Identifies creative ways to assist grantees in achieving the economic development and continuum of care objectives of local consolidated plans and comprehensive strategies or of creating linkages between activities they are assisting and activities to achieve these objectives.

Rating Factor 3: Soundness of Approach (40 Points)

In rating this factor, HUD will consider the extent to which the application:

(1) (20 points) Provides a technically and cost effective plan for designing, organizing, and carrying out the suggested technical assistance activities within the framework of the Demand/Response System;

(2) (10 points) Demonstrates an effective and creative plan for coordinating and conducting activities to be carried out jointly by the applicant and other entities it has partnered with in each Field Office jurisdiction in which it will operate; and/or demonstrates an effective and creative plan for working in partnership with all other CD TA providers in each Field Office jurisdiction;

(3) (5 points) Provides for full geographic coverage, including urban and rural areas, (directly or through a consortium of providers) of a single State or Field Office jurisdiction or is targeted to address the needs of rural areas, minority groups or other under-served groups;

(4) (5 points) Proposes a feasible, creative plan, which uses state of the art or new promising technology, to transfer models and lessons learned in each of its CD–TA program's activities to grantees and/or program beneficiaries in other CD–TA programs.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (note: financing is a community resource) which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private

organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to work with recipients of technical assistance services become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/ activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements

In addition to the forms, certifications and assurances listed in Section II(G) of the General Section of the SuperNOFA, all applications must, at a minimum, contain the following items:

(A) Transmittal Letter which identifies the SuperNOFA, the CD–TA programs for which funds are requested and the dollar amount requested for each program, and the applicant or applicants submitting the application.

(B) Narrative statement addressing the Factors for Award described in Section III(B) of this CD–TA Program section of this SuperNOFA. The narrative response should be numbered in accordance with each factor for award. This narrative statement will be the basis for evaluating the application. It should include a plan of suggested TA activities as described in Factors 2(b), 3(a), and elsewhere. These suggested TA activities may form a starting point for negotiating the TADP described in Section II(C) of this CD–TA Program section of the SuperNOFA.

(C) Statement which identifies the Field Office jurisdictions in which the applicant proposes to offer services. If services will not be offered throughout the full jurisdictional area of the Field Office, the statement should identify the service areas involved (e.g., States, counties, etc.), as well as the communities in which services are proposed to be offered.

(D) A matrix which summarizes the amount of funds requested for each CD–TA program in each Field Office jurisdiction or National Program for which funding is requested. (See CD–TA Appendix B for a copy of the matrix to be submitted.)

(E) A statement as to whether the applicant proposes to use pass-through funds for CHDOs under the CHDO TA program, and, if so, the amount and proposed uses of such funds.

(F) If applying for the CHDO TA program, a statement as to whether the applicant qualifies as a primarily single-State provider under section 233(e) of the Cranston-Gonzalez Affordable Housing Act and as discussed in Section I(E)(3) of the CD–TA Program section of this SuperNOFA.

(G) A statement as to whether the applicant proposes to be considered for the role of lead CD–TA provider in one or more specific program areas in a Field Office jurisdiction, and if so, the capabilities and attributes of the organization that qualify it for the role.

(H) For applicants for national program funds in one or more specific program areas, a statement as to the capabilities and attributes of the organization that qualify it to operate on a national basis. The statement should also include the nature of the suggested TA activities that make them inappropriate for funding under Field Office jurisdictions.

(I) Budget identifying costs for implementing the plan of suggested TA activities by cost category for each CD–TA program for which funds are requested by Field Office or as a National Provider (in accordance with the following):

(1) Direct Labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) Fringe Benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material Costs indicating the item, quantity, unit cost per item, estimated cost per item, and the total estimated material costs;

(4) Transportation Costs, as applicable.

(5) Equipment charges, if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(6) Consultant Costs, if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(7) Subcontract Costs, if applicable. Indicate each individual subcontract and amount;

(8) Other Direct Costs listed by item, quantity, unit cost, total for each item listed, and total other direct costs for the award;

(9) Indirect Costs should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs.

These line items should total the amount requested for each CD–TA program area. The grand total of all CD–TA program funds requested should reflect the grand total of all funds for which application is made.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9) and 58.34(a)(9), the assistance provided

by these programs relates only to the provision of technical assistance and is categorically excluded from the requirements of the National Environmental Policy Act and not subject to environmental review under the related laws and authorities. This determination is based on the ineligibility of real property acquisition, construction, rehabilitation, conversion, leasing or repair for HUD assistance under these technical assistance programs.

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Appendix A to CD-TA Program: "Fair-Share" Amounts Allocated to Each HUD CPD Office

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Alabama State Office	$50,000	$442,750	$322,000	$40,000
Alaska State Office	$50,000	$250,250	$182,000	$40,000
Arkansas State Office	$50,000	$377,300	$274,400	$40,000
California State Office	$318,360	$2,644,950	$1,923,600	$345,858
Los Angeles Area Office	$325,920	$2,710,400	$1,971,200	$364,434
Caribbean Office	$83,580	$693,000	$504,000	$40,000
Colorado State Office	$174,300	$1,447,600	$1,052,800	$63,192
Connecticut State Office	$68,040	$565,950	$411,600	$40,000
District of Columbia Office	$68,040	$565,950	$411,600	$118,989

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HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Florida State Office	$76,020	$631,400	$459,200	$100,379
Jacksonville Area Office	$91,140	$754,600	$548,800	$70,657
Georgia State Office	$91,140	$754,600	$548,800	$44,616
Hawaii State Office	$50,000	$250,250	$182,000	$40,000
Illinois State Office	$189,420	$1,574,650	$1,145,200	$208,258
Indiana State Office	$91,140	$754,600	$548,800	$55,762
Kansas/Missouri State Office	$83,580	$693,000	$504,000	$40,000
St. Louis Area Office	$50,000	$377,300	$274,400	$52,047
Kentucky State Office	$50,000	$442,750	$322,000	$52,047

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Louisiana State Office	$68,040	$565,950	$411,600	$63,192
Maryland State Office	$50,000	$377,300	$274,400	$52,047
Massachusetts State Office	$189,420	$1,574,650	$1,145,200	$260,305
Michigan State Office	$159,180	$1,324,400	$963,200	$197,078
Minnesota State Office	$68,040	$565,950	$411,600	$74,372
Mississippi State Office	$50,000	$377,300	$274,400	$40,000
Nebraska State Office	$60,480	$504,350	$366,800	$44,616
New Jersey State Office	$159,180	$1,324,400	$963,200	$74,372
New Mexico State Office	$50,000	$250,250	$182,000	$40,000

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HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
New York State Office	$204,540	$1,701,700	$1,237,600	$342,198
Buffalo Area Office	$363,720	$3,026,100	$2,200,800	$81,803
North Carolina State Office	$91,140	$754,600	$548,800	$40,000
Ohio State Office	$181,860	$1,513,050	$1,100,400	$148,745
Oklahoma State Office	$50,000	$442,750	$322,000	$40,000
Oregon State Office	$60,480	$504,350	$366,800	$40,000
Pennsylvania State Office	$159,180	$1,324,400	$963,200	$152,461
Pittsburgh Area Office	$91,140	$754,600	$548,800	$81,803
South Carolina State Office	$76,020	$631,400	$459,200	$40,000

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Tennessee Knoxville Area Office	$76,020	$631,400	$459,200	$48,332
Texas State Office	$219,660	$1,828,750	$1,330,000	$126,384
San Antonio Area Office	$60,480	$504,350	$366,800	$40,901
Virginia State Office	$68,040	$565,950	$411,600	$40,000
Washington State Office	$98,700	$820,050	$596,400	$96,664
Wisconsin State Office	$83,580	$693,000	$504,000	$78,088
National	$300,420	$3,507,700	$3,005,600	$395,540
Total	$5,000,000	$42,000,000	$31,000,000	$4,395,140

Appendix B to CD-TA Program - Matrix of Amount of Funds Requested

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Alabama State Office	$	$	$	$
Alaska State Office	$	$	$	$
Arkansas State Office	$	$	$	$
California State Office	$	$	$	$
Los Angeles Area Office	$	$	$	$
Caribbean Office	$	$	$	$
Colorado State Office	$	$	$	$
Connecticut State Office	$	$	$	$
District of Columbia Office	$	$	$	$

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Florida State Office	$	$	$	$
Jacksonville Area Office	$	$	$	$
Georgia State Office	$	$	$	$
Hawaii State Office	$	$	$	$
Illinois State Office	$	$	$	$
Indiana State Office	$	$	$	$
Kansas/Missouri State Office	$	$	$	$
St. Louis Area Office	$	$	$	$
Kentucky State Office	$	$	$	$

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HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Louisiana State Office	$	$	$	$
Maryland State Office	$	$	$	$
Massachusetts State Office	$	$	$	$
Michigan State Office	$	$	$	$
Minnesota State Office	$	$	$	$
Mississippi State Office	$	$	$	$
Nebraska State Office	$	$	$	$
New Jersey State Office	$	$	$	$
New Mexico State Office	$	$	$	$

HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
New York State Office	$	$	$	$
Buffalo Area Office	$	$	$	$
North Carolina State Office	$	$	$	$
Ohio State Office	$	$	$	$
Oklahoma State Office	$	$	$	$
Oregon State Office	$	$	$	$
Pennsylvania State Office	$	$	$	$
Pittsburgh Area Office	$	$	$	$
South Carolina State Office	$	$	$	$

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HUD Field Office	CDBG TA	CHDO TA	HOME TA	SHP TA
Tennessee Knoxville Area Office	$	$	$	$
Texas State Office	$	$	$	$
San Antonio Area Office	$	$	$	$
Virginia State Office	$	$	$	$
Washington State Office	$	$	$	$
Wisconsin State Office	$	$	$	$
National	$	$	$	$
Total	$	$	$	$
Grand Total*	$			

* Grand Total must equal total amount of funds requested

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

UNIVERSITY AND COLLEGE PROGRAMS

Community Outreach Partnership Centers (COPCs)

Historically Black Colleges and Universities (HBCUs) Program

BILLING CODE 4210-33-C

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Funding Availability for Community Outreach Partnership Centers

Program Description: Approximately $7 million is available to establish and operate Community Outreach Partnership Centers (COPCs) to assist in outreach and applied research activities addressing the problems of urban areas.

Application Due Date: Completed applications must be submitted no later than 12:00 midnight, Eastern time on July 8, 1998 at HUD Headquarters. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (one original and two copies) must be submitted to: Processing and Control Branch, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC 20410. When submitting your application, please refer to COPC, and include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information and Technical Assistance

For Application Kits. For an application kit and supplemental information please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to COPC and provide your name, address (including zip code), and telephone number (including area code).

For Further Information. Jane Karadbil, Office of University Partnerships in the Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 8110, Washington, DC 20410, telephone (202) 708–5918, ext. 218. Persons with speech or hearing impairments may call HUD's TTY number (202) 708–0770, or 1–800–877 8399 (the Federal Information Relay Service TTY). Other than the "800" number, these numbers are not toll-free. Ms. Karadbil can also be reached via the Internet at Jane_R._Karadbil@HUD.GOV.

For Technical Assistance. An information broadcast via satellite will be held for potential applicants to learn more about the program and preparation of an application. For more information about the date and time of this broadcast, please consult the HUD web site at the web address listed above.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

This program is authorized under the Community Outreach Partnership Act of 1992 (42 U.S.C. 5307 note; hereafter referred to as the "COPC Act"). The COPC Act is contained in section 851 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992) (HCD Act of 1992). Section 801(c) of the HCD Act of 1992 authorizes $7.5 million for each year of the 5-year demonstration to create Community Outreach Partnership Centers as authorized in the COPC Act.

(B) Purpose

The purpose of this COPC Program is to assist in establishing or carrying out outreach and applied research activities addressing the problems of urban areas. Funding under this demonstration program shall be used to establish and operate Community Outreach Partnership Centers (COPC).

The six key concepts of the COPC Program are:

(1) The program should provide outreach, technical assistance, applied research, and empowerment to neighborhoods and neighborhood-based organizations based on what the residents decide is needed, not based on what the institution thinks is appropriate for that neighborhood;

(2) Community-based organizations should be partners with the institutions throughout the life of the project, from planning to implementation;

(3) Components of the program may address metropolitan or regional strategies. The applicant must clearly demonstrate how:

(a) Those strategies are directly related to what the targeted neighborhoods and neighborhood-based organizations have decided is needed; and

(b) Neighborhoods and neighborhood organizations are involved in the development and implementation of the metropolitan or regional strategies;

(4) The applied research should be related to the outreach activities and be usable in these activities within the grant period or shortly after it ends, rather than research without practical application;

(5) Assistance through the grant should be provided primarily by faculty, students, or to a limited extent, by neighborhood residents or community-based organizations funded by the university; and

(6) The program should be part of the institution's broader effort to meet its urban mission, and be supported by senior officials, rather than just the work of a few faculty members. Proposed activities should not duplicate those of other entities in the community and should be appropriate for an institution of higher education to undertake in light of its teaching, research, and service missions.

The statute states that grants under the COPC Program must focus on the following specific problems: "problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, community organizing, and other areas deemed appropriate by the Secretary." Furthermore, the COPC Act states: "The Secretary shall give preference to institutions of higher education that undertake research and outreach activities by bringing together knowledge and expertise in the various social science and technical disciplines that relate to urban problems."

(C) Amount Allocated

The competition in this program is for up to $7.0 million to fund the fifth year of the COPC Program to fund New Grants. Institutionalization Grants will not be funded under this funding announcement for COPC. COPC grantees that have previously received a New or Institutionalization grant are not eligible to apply under this COPC funding announcement, nor are institutions of higher education that received Joint Community Development Program grants.

New Grants will be awarded to institutions of higher education to begin or expand their applied research and outreach activities. Each New Grant will be for a three-year period of performance (i.e., applicants must complete their proposed activities within three years). In order to ensure that as many eligible applicants are funded as possible, HUD has set the maximum size of any new grant at $400,000. Because these projects are quite complex, HUD has also set the minimum grant size at $250,000. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed budget and grant request, and in the interest of fairness to all applicants, HUD will not accept an application that is under $250,000 or over $400,000.

(D) Eligible Applicants

Eligible applicants are public or private nonprofit institutions of higher education granting two-or four-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education. Consortia of eligible institutions may apply, as long as one institution is designated the lead applicant. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed staffing, and in order to fund as many eligible applicants as possible, HUD has determined that each institution may be part of only one consortium or submit only one application or it will be disqualified. HUD will hold an institution responsible for ensuring that neither it nor any part of the institution, including specific faculty, participates in more than one application.

Different campuses of the same university system are eligible to apply, even if one campus has already received COPC funding. Such campuses are eligible as separate applicants only if they have administrative and budgeting structures independent of other campuses in the system.

(E) Eligible Activities

COPC Programs must combine research with outreach, work with communities and local governments and address the multidimensional problems that beset urban areas. To meet the threshold requirements, applications should be multifaceted and address three or more urban problems. Single purpose applications are not eligible.

To be most effective during the term of the demonstration, the funded research must have a clear near-term potential for solving specific, significant urban problems. The selected institutions must have the capacity to apply their research results and to work with communities and local institutions, including neighborhood groups and other appropriate community stakeholders, in applying these results to specific real-life urban problems.

Eligible activities include:

(1) Research activities which have practical application for solving specific problems in designated communities and neighborhoods, including evaluation of the effectiveness of the outreach activities. In order to ensure that the primary focus of local projects is on outreach, research may not total more than one-quarter of the total project costs contained in any grant made under this COPC funding announcement (including the required 50% match).

(2) Outreach, technical assistance and information exchange activities which are designed to address specific urban problems in designated communities and neighborhoods. Such activities must total no less than three-quarters of the total project costs (including the required 25% match). Examples of outreach activities include, but are not limited to:

(a) Job training and other training projects, such as workshops, seminars and one-on-one and on-the-job training;

(b) Design of community or metropolitan strategies to resolve urban problems of communities and neighborhoods;

(c) Innovative use of funds to provide direct technical expertise and assistance to local community groups, residents, and other appropriate community stakeholders to assist them in resolving local problems such as homelessness, housing discrimination, and impediments to fair housing choice;

(d) Technical assistance in business start-up activities for low-and moderate-income individuals and organizations, including business start-up training and technical expertise and assistance, mentor programs, assistance in developing small loan funds, business incubators, etc;

(e) Technical assistance to local public housing authorities on welfare-to-work initiatives and physical transformations of public or assisted housing;

(f) Assistance to communities to improve consolidated housing and community development plans and remove impediments to design and implementation of such plans;

(g) Assistance to communities to improve the fair housing planning process; and

(h) Regional projects that maximize the interaction of targeted inner city distressed neighborhoods with suburban opportunities similar to HUD's Bridges-to-Work or Moving to Opportunity programs, or projects that link inner-city and suburban youth with leadership training that focuses on the needs of the distressed targeted neighborhoods.

(3) Funds for faculty development including paying for course time or summer support to enable faculty members to work on the COPC.

(4) Funds for stipends for students (which cannot cover tuition and fees) when they are working on the COPC.

(5) Activities to carry out the "Responsibilities" listed under Section II.(A) below. These activities may include leases for office space in which to house the Community Outreach Partnership Center, under the following conditions:

(a) The lease must be for existing facilities;

(b) No repairs or renovations of the property may be undertaken with Federal funds; and

(c) Properties in the Coastal Barrier Resource System designated under the Coastal Barrier Resources Act (16 U.S.C. 3501) cannot be leased with Federal funds.

(F) Ineligible Activities

(1) Research activities which have no clear and immediate practical application for solving urban problems or do not address specific problems in designated communities and neighborhoods.

(2) Any type of construction, rehabilitation, or other physical development costs.

(3) Costs used for routine operations and day-to-day administration of regular programs of institutions of higher education, local governments or neighborhood groups.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, grantees must meet the following program requirements:

(A) Responsibilities

In accordance with section 851(h) of the HCD Act of 1992, each COPC shall:

(1) Employ the research and outreach resources of its sponsoring institution of higher education to solve specific urban problems identified by communities served by the Center;

(2) Establish outreach activities in areas identified in the grant application as the communities to be served;

(3) Establish a community advisory committee comprised of representatives of local institutions and residents of the communities to be served to assist in identifying local needs and advise on the development and implementation of strategies to address those issues;

(4) Coordinate outreach activities in communities to be served by the Center;

(5) Facilitate public service projects in the communities served by the Center;

(6) Act as a clearinghouse for dissemination of information;

(7) Develop instructional programs, convene conferences, and provide training for local community leaders, when appropriate; and

(8) Exchange information with other Centers.

The clearinghouse function in (6) above refers to a local or regional clearinghouse for dissemination of information and is separate and distinct from the functions in (8) above, which

relate to the provision of information to the University Partnerships Clearinghouse, which is the national clearinghouse for the program.

(B) Cap on Research Costs

No more than 25% of the total project costs (Federal share plus match) can be spent on research activities.

(C) Match

This non-Federal share may include cash or the value of non-cash contributions, equipment and other allowable in-kind contributions as detailed in 24 CFR part 84, and in particular § 84.23 entitled "cost sharing or matching." Applicants must meet the match requirements identified below:

(1) *Research Activities.* 50% of the total project costs of establishing and operating research activities.

(2) *Outreach Activities.* 25% of the total project costs of establishing and operating outreach activities.

An example of how to calculate the match is included in the application kit.

(D) Administrative

The grant will be governed by the provisions of 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–122 (Cost Principles for Nonprofit Organizations), and A–133 (Audits of States, Local Governments and Nonprofit Organizations).

III. Application Selection Process

Two types of reviews will be conducted: a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this Section III.

(A) Additional Threshold Criteria for Funding Consideration

Under the threshold review, the applicant will be rejected from the competition if the applicant is not in compliance with the requirements of the General Section of the SuperNOFA and if the following additional standards are not met:

(1) The applicant has met the statutory match requirements.

(2) The applicant has proposed a program in which no more than 25% of the total project costs will be for research activities.

(3) The applicant has requested a Federal grant that is no less than $250,000 and no more than $400,000 over the three-year grant period.

(4) The application addresses at least three urban issues, such as affordable housing, fair housing, economic development, neighborhood revitalization, infrastructure, health care; job training, education, crime prevention, planning, and community organizing.

(5) The applicant, and any part of the applicant's organization, does not participate in more than one application.

(B) Factors for Award Used To Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicant's organization and staff" for technical merit or threshold compliance, unless otherwise specified, will include any faculty, sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) (10 points) The knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. In rating this factor, HUD will consider the extent to which the applicant's organization and staff have recent, relevant, and successful experience in:

(a) Undertaking research activities in specific communities that have a clear near-term potential for practical application to significant urban issues, such as affordable housing, fair housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, and community organizing;

(b) Undertaking outreach activities in specific communities to solve or ameliorate significant urban issues;

(c) Undertaking projects with community-based organizations or local governments; and

(d) Providing leadership in solving community problems and making national contributions to solving long-term and immediate urban problems.

(2) (3 points) The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program.

(3) (2 points) The applicant has demonstrated experience in managing programs, and carrying out *grant management* responsibilities for programs, similar in scope or nature directly relevant to the work activities proposed. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include the information in the response.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the urgency of meeting the need in the target area. In responding to this factor, applicants will be evaluated on:

(1) (10 points) The extent to which they document the level of need for the proposed activity: and

(2) (5 points) The urgency in meeting the need. Applicants should use statistics and analyses contained in a data source(s) that:

(a) Is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, Census reports, Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Five Year Comprehensive Plan, and other sound and reliable sources appropriate for the specific program and activities for which an applicant is applying for funding. Applicants may also address

needs in terms of fulfilling court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements. For technical assistance programs, input from HUD State and Area Office(s) and assessments are included among the data sources that may be used to identify need.

(b) To the extent possible, specific to the area where the proposed activity will be carried out. Specific attention must be paid to documenting need as it applies to the area where activities will be targeted, rather than the entire locality or state. If the target area is an entire locality or state, then documenting need at this level is appropriate.

The applicant should discuss how it took into account existing and planned efforts of government agencies, community-based organizations, faith-based institutions, for-profit firms and other entities to address such needs in the community(ies) to be served, how the proposed program compliments or supplements these existing efforts, and why additional funds are being requested.

Rating Factor 3: Soundness of Approach (50 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor. The factor will be evaluated based on the extent to which the proposed activities will:

(1) (4 points) Help solve or address an urgent need or problem as identified under Rating Factor 2—Need/Extent of the Problem. The impact of the activity will be evaluated, including the tangible benefits to be attained by the community and by the target population including affirmatively furthering fair housing for classes protected under the Fair Housing Act. The applicant should demonstrate a strong familiarity with the existing and planned efforts of government agencies, community-based organizations, faith-based organizations, for-profit firms and other entities to address such needs in the communities to be served, and should demonstrate that the applicant can cost-effectively complement any such efforts to attain measurable results.

(2) (8 points) The extent to which the proposed work program identifies the specific services or activities to be performed. In reviewing this subfactor HUD will consider the extent to which:

(a) The applicant's proposal outlines a clear research agenda, based on a thorough familiarity with existing research on the subject. The applicant should demonstrate that the proposed research does not duplicate research previously completed or currently underway by others.

(b) The applicant demonstrates how the research will fit into and strengthen the outreach strategy and activities. For example, an applicant proposing to study the extent of housing abandonment in a neighborhood and then designing a plan for reusing this housing would be able to demonstrate the link between the proposed research and outreach strategies.

(c) The applicant's plan outlines a clear outreach agenda;

(d) There is a plan for involving the university as a whole in the execution of the outreach strategy.

(e) The extent to which grant funds will pay for activities conducted by the grantee, rather than passed through to other entities.

(3) (7 points) The extent to which the proposed program of activities involves the communities to be served in implementation of these activities. In reviewing this subfactor, HUD will look at the extent to which:

(a) One or more Community Advisory Committees, comprised of representatives of local institutions and a balance of the race, ethnic, disability status, gender, and income of the residents of the communities to be served, has been or will be formed to work in partnership with the COPC to develop and implement strategies to address the needs identified in Factor 2. Applicants will be expected to demonstrate that they have already formed such a committee(s) or secured the commitment of the appropriate persons to serve on the committee(s), rather than just describing generally the types of people whose involvement they will seek.

(b) A wide range of neighborhood organizations and local government entities participated in the identification of the research and outreach activities.

(c) The outreach program provides for on-site or a frequent presence in the targeted communities and neighborhoods.

(d) The outreach agenda includes training projects for local community leaders, for example, to increase their capacity to direct their organizations or undertake various kinds of community development projects.

(4) (6 points) The extent to which the proposed activities will achieve the purposes of the program from which funding is requested within the grant period. The applicant should identify specific time phased and measurable objectives to be accomplished during the period of performance; the proposed short and long term program objectives to be achieved as a result of the proposed activitfes; the tangible and measurable impacts the work program will have on the community in general and the target area or population in particular; and the relationship of the proposed activities to other on-going or proposed efforts to improve the economic, social or living environment in the impact area.

(5) (4 points) The extent to which the proposed project will potentially yield innovative strategies or "best practices" that can be replicated and disseminated to other organizations, including nonprofit organizations, State and local governments. In reviewing this factor, HUD will assess the demonstrated ability of the applicant to disseminate results of research and outreach activities to other COPCs and communities. HUD will evaluate the past experience of the applicant and the scope and quality of the applicant's concrete plan to disseminate information on COPC results, strategies, and lessons learned through such means as conferences, cross-site technical assistance, publications, etc.

(6) (3 points) The extent to which the proposed application will further and support the policy priorities of HUD including:

(a) Promoting healthy homes;

(b) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs;

(c) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through program policy efforts such as "One Strike and You're Out" or the "Officer Next Door" initiative;

(d) Providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners and linking to AmeriCorps activities.

(7) (5 points) The extent to which the applicant's work will include activities that affirmatively further fair housing, for example:

(a) Overcoming impediments to fair housing, such as discrimination in the sale or rental of housing or in advertising, provision of brokerage services, or lending;

(b) Promoting fair housing through the expansion of homeownership opportunities and improved quality of city services for minorities, families with children, and persons with disabilities; or

(c) Providing mobility counseling.

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(8) (13 points) The extent to which the proposed COPC will result in the COPC function and activities being sustained by becoming part of the urban mission of the institution and being funded in the future by sources other than HUD. In reviewing this subfactor, HUD will consider the extent to which:

(a) COPC activities relate to the institution's urban mission; are part of a climate that rewards faculty work on these activities through promotion and tenure policies; benefit students because they are an overall part of a service learning program at the institution; and are reflected in the curriculum. HUD will look at the institution's commitment to faculty and staff continuing work in COPC neighborhoods or replicating successes in other neighborhoods and to its longer term commitment (e.g., five years after the start of the COPC) of hard dollars to COPC work.

(b) The applicant has received commitments for funding from sources outside the university for related non-COPC-funded projects and activities in the targeted neighborhood or other distressed neighborhoods. Funding sources to be considered include, but are not limited to, local governments, neighborhood organizations, private businesses, and foundations.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with the funding recipients in other grant programs to coordinate the use of resources in the target area.

Because COPC has a matching requirement, rating points for this factor will be allocated based upon the extent to which an applicant has exceeded the program's minimum match requirement. Up to a total of 5 points will be awarded for a match that is 50% over the statutorily-required match.

The Department is concerned that applicants should be providing hard dollars as part of their matching contributions in order to enhance the tangible resources going into targeted neighborhoods. Thus, while indirect costs can count towards meeting the statutorily required match, they will not be used in calculating match overage. Only direct costs can count in this factor.

In addition, because HUD is interested in promoting the institutionalization of COPC projects and activities, up to an additional 5 points will be awarded for the extent to which matching funds are provided from eligible sources other than the applicant (e.g., funds from the city, including CDBG, other State or local government agencies, public or private organizations, or foundations).

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) (4 points) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) (3 points) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) (3 points) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

(C) Selections

In order to be funded under COPC, an applicant must receive a minimum score of 70. It is HUD,s intent to fund at least one eligible applicant that serves colonias, as defined by section 916(d) of the Cranston-Gonzalez National Affordable Housing Act, as long as the applicant receives a minimum score of 70.

If two or more applications have the same number of points, the application with the most points for Factor 3, Soundness of Approach shall be selected. If there is still a tie, the application with the most points for Factor 4, Leveraging Resources shall be selected.

HUD reserves the right to make selections out of rank order to provide for geographic distribution of funded COPCs. The approach HUD will use, if it decides to implement this option, will be based on combining two adjacent standard HUD regions (e.g., Southwest and Southeast Regions, Great Plains and Midwest Regions, etc.). If the rank order does not yield at least one fundable COPC within each combined region, then HUD may select the highest ranking application from such a combination, as long as the minimum score of 70 points is achieved.

After all applications have been rated and ranked and selections have been made, HUD may require that all winners participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully conclude negotiations, or a selected applicant fails to provide HUD with requested information, awards will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

After award but before grant execution, winners will be required to

provide a certification from an Independent Public Accountant or the cognizant government auditor, stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by OMB Circular A–133, Uniform Administrative Requirements for Grant Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, Revised OMB Circular A–110, or 24 CFR part 85 for States and local governments, or the Federal Acquisition Regulations (for all other applicants). This information should contain the name and telephone number of the Independent Auditor, cognizant Federal auditor, or other audit agency, as applicable.

IV. Application Submission Requirements

The application should include an original and two copies of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form; binder clips or loose leaf binders are acceptable. Also, please, do not use colored paper. Please note the page limits below for some of the items listed below and do not exceed them.

In addition to the forms, certifications and assurances listed in Section II(G) of the General Section, all applications must, at a minimum, contain the following items:

(A) *Transmittal Letter* which must be signed by the Chief Executive Officer of the institution or his or her designee. If a designee signs, the application must include the official delegation of signatory authority;

(B) *A Statement of Work* (25 page limit) which incorporates all activities to be funded in the application and details how the proposed work will be accomplished. Following a task-by-task format, the Statement of Work must:

(1) Arrange the presentation of related major activities by project functional category (e.g., economic development, affordable housing, capacity building), summarize each activity, identify the primary persons involved in carrying out the activity, and delineate the major tasks involved in carrying it out.

(2) Indicate the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously.

(3) Identify specific numbers of quantifiable intermediate and end products and objectives the applicant aims to deliver by the end of the award agreement period as a result of the work performed.

(C) *Narrative statement addressing the Factors for Award in Section III. (B) (2) above.* (30 page limit, not including tables, maps, and letters of matching commitments). Your narrative response should be numbered in accordance with each factor and subfactor. Please do not repeat material in your Statements of Work or Need; instead focus on how you meet each factor.

(D) *Budget.* The budget presentation should be consistent with the Statement of Work and include:

(1) Budget Form—The sample budget form included in the application kit should be used to prepare the budget.

(2) A narrative explanation of how the applicant arrived at its cost estimates, for any line item over $1,000.

(3) A statement of compliance with the 20% limitation on "Planning and Administration" Costs.

(4) An explanation of compliance with the requirement that not more than 25% of the total budget be allocated to research activities.

(5) An explanation of compliance with the matching requirements. More guidance on all of these items is included in the application kit.

(E) *Abstract.* (1 page limit) An abstract describing the goals and activities of the program.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b) of the HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities.

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Funding Availability for the Historically Black Colleges and Universities Program

Program Description: Approximately $6,500,000 is available in funding for the Historically Black Colleges and Universities (HBCU) Program. The HBCU Program assists HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development.

Application Due Date: Completed applications must be submitted no later than 12:00 midnight, Eastern time on July 8, 1998, at HUD Headquarters with a copy to the appropriate HUD CPD Field Office. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: An original signed application and one copy shall be submitted to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC 20410. When submitting your application, please refer to the HBCU Program, and include your name, mailing address (including zip code) and telephone number (including area code).

Copies of Applications to HUD Offices. To facilitate processing and review of an application, one copy of the application also should be sent to the Community Planning and Development (CPD) Director in the appropriate HUD Field Office for the HBCU. The list of HUD Field Offices is included in the application kit.

HUD will accept only *one* application per HBCU. If more than one application is received from a single HBCU, the application from that HBCU that was received earliest will be considered for funding, and the application(s) submitted later will be ineligible. If more than one application is received simultaneously from an HBCU then all such applications will be considered ineligible for funding. Applicants should take these policies into account and take steps to ensure that multiple applications are not submitted.

For Application Kits, Further Information, and Technical Assistance:

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–843–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to the HBCU Program and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you have several options. You may call Ms. Delores Pruden, Historically Black Colleges and Universities Program, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh St, SW, Washington, DC 20410; telephone (202) 708–1590. (This is not a toll-free number.) Persons with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. Information may also be obtained from the HUD Field Office located in the applicant's geographic area. The application kit contains the names, addresses and telephone numbers of the HUD Field Offices. For general information and information regarding training on this HBCU Program section of the SuperNOFA, applicants can call the SuperNOFA Information Center at 1–800–HUD–8929.

Additional Information:

I. Authority; Purpose; Amount Allocated; and Eligibility.

(A) Authority

This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act) (42 U.S.C. 5307(b)(3)), which was added by section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235). The HBCU Program is governed by regulations contained in 24 CFR 570.400 and 570.404, and in 24 CFR part 570, subparts A, C, J, K, and O.

(B) Purpose

The purpose of the HBCU Program is to assist HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, consistent with the purposes of Title I of the Housing and Community Development Act of 1974, as amended.

(1) For the purposes of this program, the term "locality" includes any city, county, town, township, parish, village, or other general political subdivision of a State or the U.S. Virgin Islands within which an HBCU is located.

(2) An HBCU located in a metropolitan statistical area (MSA), as established by the Office of Management and Budget, may consider its locality to be one or more of these entities within the entire MSA. The nature of the locality for each HBCU may differ, therefore, depending on its location.

(3) A "target area" is the locality or area within the locality that the HBCU will implement its proposed HUD grant activities.

(C) Amount Allocated

(1) In order to ensure that some previously unfunded HBCUs will receive awards in this competition, approximately one-third of the available funds will be awarded to applicants that have not previously been funded under the HUD HBCU program. (The FY 1991 competition was the first funded under the current HBCU Program authorization, section 107(b)(3) of the 1974 Act.) Therefore, of the $6.5 million in FY 1998 funds made available under this SuperNOFA for the HBCU Program:

(a) Approximately $2.2 million will be awarded to HBCUs that have not received funding in past HUD HBCU competitions under section 107(b)(3) of the Housing and Community Development Act of 1974, as amended, which includes competitions for Fiscal Years 1991 through 1997 ("Previously-unfunded HBCUs").

(b) The remaining approximately $4.3 million of FY 1998 funds will be awarded to HBCUs that have received funding under such competitions ("Previously-funded HBCUs") (Previously funded HBCUs are listed in HBCU Appendix A to this HBCU Program section of the SuperNOFA. Previously-unfunded HBCUs are listed in HBCU Appendix B section of the SuperNOFA.).

If recaptured funds are made available, those funds will also be divided proportionately between the two types of applicant i.e. one third to Previously-unfunded HBCUs and two-thirds to Previously-funded HBCUs.

(2) The maximum period for performance of a proposed program under this SuperNOFA for the HBCU Program is 24 months. The performance period will commence on the effective date of the grant agreement. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in a particular application. The awards will be made in the form of grants. The

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maximum amount awarded to any applicant will be $400,000.

(D) Eligible Applicants

Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12876, dated November 1, 1993, are eligible for funding under the HBCU Program. As indicated above, funds available under this program will be split between two classes of HBCU applicant.

(1) The first category, previously-funded HBCUs, includes HBCUs that have received funding in past HUD HBCU competitions under section 107(b)(3) of the Housing and Community Development Act of 1974, which includes competitions for Fiscal Years 1991 through 1997.

(2) The second category of eligible applicant, Previously-unfunded HBCUs, includes HBCUs that *have not* received funding under such competitions. Lists of Previously-funded HBCUs and Previously-unfunded HBCUs appear as Appendices A and B to the HBCU Program section of the SuperNOFA. HUD will use these lists to determine in which category the application should be considered.

(E) Eligible Activities

(1) *General.* Each activity proposed for funding must meet both a Community Development Block Grant (CDBG) Program national objective AND the CDBG eligibility requirements, which are described in Section III of the HBCU Program section of the SuperNOFA. Eligible activities that may be funded under this HBCU Program section of the SuperNOFA are those activities eligible for CDBG funding. The activities are listed in 24 CFR part 570, subpart C, particularly §§ 570.201 through 570.206. Ineligible activities are listed at § 570.207. Additionally, an activity which otherwise is eligible under §§ 570.201 through 570.206 may not be funded if State or local law requires that it be carried out by a governmental entity.

(2) *Examples of Eligible Activities.* Examples of activities that generally can be carried out with these funds include, but are not limited to:

(a) Acquisition of real property;

(b) Clearance and demolition;

(c) Rehabilitation of residential structures to increase housing opportunities for low- and moderate-income persons and rehabilitation of commercial or industrial buildings to correct code violations or for certain other purposes; e.g., making accessibility and visitability modifications to housing. Applicants proposing to undertake this activity will be required to provide reasonable estimates, from a *qualified* entity other than the applicant, of the cost to complete projects. Such an entity must be involved in the business of housing rehabilitation, construction and/or management;

(d) Direct homeownership assistance to low- and moderate-income persons, as provided in section 105(a)(25) of the Housing and Community Development Act of 1974;

(e) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, such as water and sewer facilities and streets. Applicants proposing to undertake this activity will be required to provide reasonable estimates, from a *qualified* entity other than the applicant, of the cost to complete projects. Such an entity must be involved in the business of housing rehabilitation, construction and/or management;

(f) Special economic development activities described at 24 CFR 570.203;

(g) Eligible public service activities, including activities that provide a continuum of care for the homeless; adult basic education classes; GED preparation and testing; job and career counseling and assessment; citizen participation academies, and public access telecommunications centers including "Campus of Learners" (COL) and "Neighborhood Networks" (NN); social and medical services; other support activities for youth, senior citizens, and other low- and moderate-income residents; and/or fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex, national origin, family status and/or disability aware of the range of housing opportunities available to them;

(h) Assistance to facilitate economic development by providing technical or financial assistance for the establishment, stabilization, and expansion of microenterprises, including minority enterprises;

(i) Establishment of a Community Development Corporation (CDC) to undertake eligible activities;

(j) Assistance to a community based development organization (CBDO) to carry out a CDBG neighborhood revitalization, community economic development, or energy conservation project, in accordance with 24 CFR 570.204. This could include activities in support of a HUD approved local CDBG Neighborhood Revitalization Strategy (NRS) or HUD approved State CDBG Community Revitalization Strategy (CRS). HBCUs proposing a Community Development Corporation (CDC) component may qualify for CBDO activities; and

(k) Program administration costs related to the planning and execution of community development activities assisted in whole or in part with grant funds. In order to expand the capacity of HBCUs eligible under this SuperNOFA, applicants may propose to use up to 10% of the award funds to acquire technical assistance (TA) from a qualified TA provider to assist in implementing the proposed activities. While applicants are responsible for ensuring that potential TA providers are qualified, HUD would expect that the most qualified providers would be entities/organizations that have demonstrated the expertise and capacity to successfully conceptualize, develop and implement community and economic development projects and initiatives similar to those proposed by the applicant. Although pre-award technical assistance costs may not be paid out of grant funds (not including matching funds, if any), applicants expecting to need technical assistance are encouraged, nonetheless, to choose a TA provider as early as possible, to ensure that the TA provider is involved in the early stages of proposal development. Previously-unfunded HBCUs are particularly encouraged to consider acquiring technical assistance from a qualified HBCU TA provider.

(3) *Activities Designed to Promote Training and Employment Opportunities.* In selecting proposed eligible activities, applicants are urged to propose undertaking activities designed to promote opportunities for training and employment of low-income residents in connection with HUD initiatives such as "Campus of Learners" (COL) in public housing and "Neighborhood Networks" (NN) in other Federally-assisted or insured housing. Applicants are also encouraged, whenever feasible, to propose implementing activities in a Federally-designated Urban or Rural (HUD or Department of Agriculture) Empowerment Zone, Urban or Rural Enterprise Community (EZ or EC), or a HUD-approved local CDBG Neighborhood Revitalization Strategy Area or HUD-approved State CDBG Community Revitalization Strategy Area.

(4) *Use of Grant Funds for Acquisition of Computer Hardware and Software.* Although acquisition of equipment is not generally an eligible activity (subject to the exceptions provided in 24 CFR

570.207(b)(1)), applicants are encouraged to propose the use of grant funds, at reasonable levels, for the acquisition of computer hardware and software compatible with Internet access and HUD's Community Planning 2020 Software , if they do not currently have such capability. More information on the Community 2020 Software can be obtained from the local HUD Community Planning and Development Office.

(5) *Use of Grant Funds for the Provision of Public Services.* Those applicants planning to use grant funds for the provision of public services are bound by the statutory requirement that not more than 15% of the total grant amount be used for public service activities. Therefore, at least 85% of the grant amount must be proposed to be used for activities qualifying under an eligibility category other than public services (as described at 24 CFR 570.201(e)).

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Submission of a Budget

The budget should include:

(1) A budget summary covering the Federal and non-Federal share of costs proposed, by cost category, and a budget justification which includes assumptions used to determine the costs of budget items in each category. The proposed cost estimates should be reasonable for the work to be performed and consistent with rates established for the level of expertise required to perform the work in the proposed geographic area.

The application kit includes Budget Forms which must be completed in full. The Federal Share Budget Summary Forms should indicate the use of funds the applicant will receive from HUD under this HBCU funded program. In addition, funds received from other HUD programs, awarded under a locality's CDBG Program, or through other Federal agencies should be identified on the non-Federal share portion of the budget summary sheets. The non-Federal share should also identify other public or private sector funds which will be used to implement the proposed program activities.

While HUD recognizes that the costs are based upon estimates, the summary should include information such as quotes from various vendors or historical data relied upon in determining projected costs. All direct labor or salaries must be supported with mandated city/state pay scales or other documentation. Indirect costs must be substantiated and approved by the cognizant Federal agency or the applicant must provide an indirect cost rate plan.

Particular attention should be paid to:

(a) Accurately estimating costs;

(b) The necessity and reasonableness of costs; and

(c) Accurate computation of all budget items and totals.

(2) A budget-by-task, which will include a listing of tasks to be completed for each activity necessary to be performed to implement the program, the overall costs for each task, and the cost for each funding source. The budget-by-task should clearly indicate the HUD grant amount and identify the source and dollar amount of the matching funds, if any. HUD will award points on the extent to which the budget documents clearly demonstrate a cost-effective use of resources based on reasonable assumptions.

This form of the budget will show the total budget by line item for the program activities to be carried out with the proposed HUD HBCU grant. This will be a functional budget. Each line item represents the task to be done, not the person who will do it. Producing the budget in this format provides both financial and reporting information that will allow the program to be more easily evaluated.

Since one person may be assigned to do several tasks, that person's salary may be prorated to the various tasks for which he or she is responsible. For example, the Program Manager may spend some of his or her time in outreach and recruitment, some time developing leadership training, and some time in evaluation or other administrative tasks. His or her time may be divided between those activities to come up with the budget. However, if the Manager and other staff are primarily engaged in program management and oversight, the HUD funded salary cost should be budgeted as an administrative cost.

Each dollar amount on this budget must represent an actual cost of the program. Do not include the value of any in-kind goods and/or services contributions to the tasks. For example, if a social service organization is donating staff time to do social work, do not enter the value of that time for a task. If a fee is to be paid for counseling work, however, enter that amount for the appropriate task. Although the dollar value of in-kind goods and/or service contributions should not be included in the budget, remember to state this information on the Match Form.

The Line Item for Administrative costs covers salaries (except to the extent that they are attributed to other tasks) and related costs, and other costs for goods and services required for the program such as rental or purchase of office equipment, utilities, insurance, legal, staff training, office supplies, rental and maintenance of office space, mailing, advertising, and technical assistance.

Applicants proposing to undertake: rehabilitation of residential, commercial and industrial structures; *and/or* acquisition, construction, or installation of public facilities and improvements must submit reasonable cost estimates supplied by a *qualified* entity other than the applicant. Such an entity must be involved in the business of housing rehabilitation, construction and/or management. Guidance for securing these estimates can be obtained from the CPD Director in the HUD field office or the local government.

A format for the budget summary and the budget-by-task is included in the application kit.

(B) Leveraging

Although a match is not required to qualify for funding, if applicants claim a match, they must provide letters or other documentation evidencing the extent and firmness of commitments of a match from other Federal (e.g., Americorps Programs), State, local, and/or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published SuperNOFA. An Applicant which has evidence in support of its proposed match commitment is eligible for more rating points than those applicants not having a firm commitment for a match.

Potential Sources of Assistance

- State and local governments.
- Housing Authorities.
- Local or national nonprofit organizations.
- Banks and private businesses.
- Foundations.
- Faith Communities.

Documentation Requirements

For each match, the applicant must submit a letter from the provider on the provider's letterhead. Number each letter as a page in the application. Each Match must be supported by a letter from the provider that addresses the following:

- The dollar amount or dollar value of the in-kind goods and/or services committed. For each cash match, the

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dollar amount in the commitment letter must be consistent with the dollar amount indicated by the applicant on the SF–424 and in the Budget-By-Task;

- How the Match is to be used;
- The date the Match will be made available and a statement that it will be for the duration of the grant period;
- Any terms and conditions affecting the commitment, other than receipt of a HUD HBCU Grant; and
- The signature of the appropriate executive officer authorized to commit the funds and/or goods and/or services. (See the application kit for a sample commitment letter.)

(C) Environmental Review

If the applicant proposes activities (such as physical development activities) that are not excluded from environmental review under 24 CFR 50.19(b), an environmental review by HUD is required in accordance with 24 CFR part 50, as indicated by 24 CFR 570.404(i) before HUD approves the proposal (i.e., releases CDBG funds). Before any grant funds are released, environmental approval must be secured. If the requirements of part 50 are not met, HUD reserves the right to terminate all or portions of the award. The grantee is not authorized to proceed with any activity requiring such approval until written approval is received from the appropriate HUD Field Environmental Clearance Officer in its area certifying that the project has been approved and released from all environmental conditions.

(D) Forms, Certifications and Assurances

HBCU applicants are required to submit the following forms, certifications and assurances:

(1) Standard Form (SF) 424 Application for Federal Assistance;

(2) Standard Form (SF) 424 B for Non-Construction Programs;

(3) Applicant Certification;

(4) Certification of Consistency with the Local Consolidated Plan; and

(5) Letter Certifying Local Approval.

(6) Certification Form for EZ/EC bonus points. These bonus points will only be awarded when the HBCU is located within the geographic boundaries of the EZ/EC.

III. Application Selection Process

(A) Rating and Ranking

(1) *Threshold Review; National Objectives.* HUD will evaluate applications for funding under the HBCU Program competitively and will award points based on responses to the Factors For Award identified in this section. Applications must be complete and consistent with the requirements of this for the HBCU Program section in this SuperNOFA, the application kit, and the HBCU Program regulations (24 CFR 570.404) in order for the application to be eligible to compete in this competition.

To be considered for funding, applicants must receive a minimum score of 70 out of the total of 100 points possible for Factors 1 through 5. HUD will not fund specific proposed activities that do not meet eligibility requirements (see, particularly, 24 CFR part 570, subpart C), or that do not meet a national objective in accordance with 24 CFR 570.208. The CDBG Publication entitled "Everything You Wanted to Know About CDBG" discusses the regulations, and a copy can be ordered from HUD's Community Connections Information Clearinghouse at 1–800–998–9999. Each activity that may be funded under this SuperNOFA for the HBCU Program must meet one of the three national objectives of the Community Development Block Grant program:

(a) Benefit to low- or moderate-income persons;

(b) Aid in the prevention or elimination of slums or blight; or

(c) Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community, and other financial resources are not available to meet such needs.

Criteria for determining whether an activity addresses one or more of these objectives are provided at 24 CFR 570.208. (It is not necessary for applicants to comply with the primary objective requirement of 24 CFR 570.200(a)(3), which requires recipients to ensure that not less than 70% of the grant expenditures be for activities benefiting low and moderate income persons)

(2) *Funding of Applications.* Within each category of eligible applicant, HUD will fund applications in rank order, until it has awarded all available funds for that category of applicant, or until there are no fundable applications remaining in that category. If there is a tie in the point scores of two applications, the rank order will be determined by the applicant's scores on Factor 2. HUD will give the higher rank to the application with the most points on Factor 2. If there is still a tie, the rank order will be determined by the applicant's scores on Factor 3. HUD will give the higher rank to the application with the most points for Factor 3. If funds remain after approving all fundable applications within a category of applicants, HUD may choose to add those funds to the funds available for the other category of applicants.

(3) *Leveraging.* Although a match is not required to qualify for funding, HUD encourages HBCUs to participate in public/private partnerships, i.e., with local or national nonprofit organizations, the local banking and real estate community, local builders/developers, faith communities, etc., to secure matches of cash and/or in-kind goods or services. The maximum number of rating points an applicant can receive for leveraging is 10 points for Factor 4 below. Applicants having a cash match will receive a higher number of points than those providing in-kind goods or services of the same value. To be recognized as leveraging, contributions must be made available for the duration of the grant period, regardless of the form of investment provided to the project. Applicants *without* evidence of leveraging will receive *zero (0) points.*

(4) *After Selection.* After selection, but prior to award, an applicant will be required to:

(a) Negotiate. After all applications have been rated and ranked and a selection of competition winners has been made, HUD requires that all winners participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. HUD will follow the negotiation procedures described in Section III(D) of the General Section of the SuperNOFA.

(b) Provide Financial Management and Audit Information. After selection for funding but prior to award, each successful applicant will be required to submit a certification from an Independent Public Accountant, or the cognizant government auditor, stating that the financial management system employed by the applicant meets prescribed standards for fund control and accountability required by OMB Circular A–133, as codified at 24 CFR part 84.

(B) Factors for Award Used To Evaluate and Rate Applications

HUD will use the Factors For Award set forth below to evaluate applications. Each application must contain sufficient information to be reviewed for its merits. The score for each factor will be based on the qualitative and quantitative aspects of the applicant's response to that factor. Applicants may use up to a total of thirty (30) pages to respond to Factor 1 through 5. Limitation applies to the applicant's

narrative response and NOT to tables, maps and firm commitment letters.

The maximum number of points that may be awarded is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which the proposal demonstrates:

(1) (10 points) The knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. In rating this factor, HUD will consider the extent to which the applicant's organization and staff have recent, relevant, and successful experience in:

(a) Undertaking outreach activities in specific communities to solve or ameliorate significant housing and community development issues;

(b) Undertaking projects with community-based organizations or local governments; and

(c) Providing leadership in solving community problems and making national contributions to solving long-term and immediate housing and community development problems.

(2) (3 points) The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program.

(3) (2 points) The applicant has demonstrated experience in managing programs, and carrying out *grant management* responsibilities for programs, similar in scope or nature directly relevant to the work activities proposed. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include the information in the response.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the importance of meeting the need in the target area. In responding to this factor, applicants will be evaluated on:

(1) (10 points) The extent to which they document the level of need for the proposed activity: and

(2) (5 points) The importance of meeting the need.

Applicants should use statistics and analyses contained in a data source(s) that:

(a) Is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, Census reports, Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Five Year Comprehensive Plan, and other sound and reliable sources appropriate for the specific SuperNOFA program and activities for which an applicant is applying. Applicants may also address needs in terms of fulfilling court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements. For technical assistance programs, input from HUD State and Area Office(s) and assessments are included among the data sources that may be used to identify need.

(b) To the extent possible, specific to the area where the proposed activity will be carried out. Specific attention must be paid to documenting need as it applies to the area where activities will be targeted, rather than the entire locality or state. If the target area is an entire locality or state, then documenting need at this level is appropriate.

Rating Factor 3: Soundness of Approach (50 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. There must be a clear relationship between the proposed activities, community needs and the purpose of the HUD HBCU Program for an applicant to receive points for this factor.

HUD will consider the effectiveness/impact and feasibility of the applicant's work plan in addressing the needs described in the applicant's response to Factor 2 including the extent to which the applicant will provide geographic coverage for the target area and describes how each proposed activity meets both a CDBG Program national objective and the CDBG eligibility requirements described above. HUD will also consider the extent to which the proposed activities will yield innovative strategies or "best practices" that can be readily disseminated to other organizations and State and local governments.

(1) *Work Plan* (40 Points). The applicant's work plan must incorporate all proposed activities, describing in detail how the activities will alleviate and/or fulfill the needs identified in Factor 2, including how the activities will benefit low-income and elderly residents, welfare recipients, and the working poor in the target area to be served, and how the activities will be implemented. In evaluating this factor, HUD will consider:

(a) (10 points) The extent to which the proposed work program identifies the specific services or activities to be performed. In reviewing this subfactor, HUD will consider the extent to which:

(i) The applicant's proposal outlines a clear agenda based on a thorough familiarity with existing work/activities in the target area. The applicant should demonstrate that the proposed activities do not duplicate work/activities previously completed or work/activities currently underway by others;

(ii) The applicant demonstrates how the activities will fit into and strengthen their role in addressing community development needs in their locality;

(iii) The applicant's plan outlines a clear agenda for citizen involvement in the planning and implementation.

(b) (10 points) The extent to which the proposed work/activities involve the communities to be served in implementation of these activities. In reviewing this subfactor, HUD will look at the extent to which:

(i) Representatives of the local communities are involved and have a balance of race, ethnic, disability, status, gender and income of the residents of the community to be served, or will be involved to address the needs identified in Factor 2;

(ii) Evidence is provided that neighborhood organizations and local government entities were invited to, or participated in, the identification of activities to be undertaken;

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(iii) The methodology employed to outreach to the community during the development and implementation of the proposed program.

(c) (10 points) The extent to which the proposed activities will achieve the purposes of the program from which funding is requested within the grant period. The applicant should identify specific time phased and measurable objectives to be accomplished during the period of performance; the proposed short and long term program objectives to be achieved as a result of the proposed activities; the tangible and measurable impacts the work program will have on the community in general and the target area or population in particular; and the relationship of the proposed activities to other on-going or proposed efforts to improve the economic, social, or living environment in the impact area.

(d) (6 points) The extent to which the proposed project will potentially yield innovative strategies or "best practices" that can be duplicated and disseminated to other organizations.

(e) (4 points) The extent to which the proposed application will further and support the policy priorities of HUD including:

(i) Promoting healthy homes;

(ii) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through program policy efforts such as "One Strike and You Are Out" or the "Officer Next Door" initiative; and

(iii) Providing educational, job training, and homeownership opportunities through such initiatives as High Hopes, Neighborhood Networks, Campus of Learners, Local Homeownership Partnerships and linking programs to Americorps activities.

The High Hopes initiative promotes partnerships between colleges and middle or junior high schools in low-income communities, to help teach students how they should go to college by informing them about college options, academic requirements, costs, and financial aid, and by providing support services—including tutoring, counseling, and mentoring;

The Neighborhood Networks (NN) initiative enhances the self-sufficiency, employability, and economic self-reliance of low-income families and the elderly living in HUD-insured and HUD-assisted properties by providing such residents with on-site access to computer and training resources;

The Campus of Learners (COL) initiative is designed to transform public housing into safe and livable communities where families undertake training in new telecommunications and computer technology and partake in educational opportunities and job training initiatives; and/or

Local Homeownership Partnerships (LPs) recognized by the National Partners in Homeownership. Local Homeownership Partnerships are local manifestations of the National Homeownership Strategy and are designed to increase homeownership opportunity through public-private collaboration.

If relocation is to be a part of the work activities the applicant should discuss the plan for temporary or permanent relocation of occupants of units affected, including storage or moving of household goods, stipends and/or incentives. The work plan must delineate tasks and subtasks for each activity, and indicate the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously.

To the maximum extent feasible, the applicant should provide HUD with measurable results to be achieved with the requested funds, i.e., the number of persons to be trained, number of persons to be employed, number of houses to be built (pursuant to 24 CFR 570.207) or rehabilitated, number of minority owned businesses to be started, etc., in the target area as a result of the implementation of the proposed activities.

(2) *Affirmatively Furthering Fair Housing* (5 Points)

If an applicant has designed activities to affirmatively further fair housing, for example:

(a) Overcoming impediments to fair housing, such as discrimination in the sale or rental of housing or in advertising, provision of brokerage services, or lending;

(b) Promoting fair housing through the expansion of homeownership opportunities and improved quality of city services for minorities, families with children, and persons with disabilities; or (c) providing mobility counseling, 5 points will be awarded.

(3) *Products Deliverable Schedule* (5 Points)

As a result of the implementation of the proposed activities, describe products to be delivered in 6 month intervals, up to 24 months. Indicate which of the staff described under Factor 1 will be responsible and accountable for deliverables. This sub-factor will be evaluated on the extent to which the schedule represents an efficient and feasible plan for implementation of the proposed activities.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (note: financing is a community resource) which can be combined with HUD program funds to achieve the program objective to assist HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development.

In evaluating this factor, HUD will consider the extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

Applicants must provide letters or other documentation evidencing the extent and firmness of commitments of a match from other Federal (e.g., Americorps Programs), State, local, and/or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published SuperNOFA. An applicant which has evidence in support of its proposed match commitment is eligible for more rating points than those applicants not having a firm commitment for a match.

The maximum number of rating points an applicant can receive for leveraging is 10 points. Applicants having a cash match will receive a higher number of points than applicants receiving in-kind goods or services of the same value. To be recognized as leveraging, contributions must be made available for the duration of the grant period, regardless of the form of investment provided to the project. Applicants without evidence of leveraging will receive zero (0) points for this Factor.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's

Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) (4 points) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities, and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) (3 points) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) (3 points) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements

Applicants must complete and submit applications for HBCU grants in accordance with instructions contained in the FY 1998 Historically Black Colleges and Universities Program Application Kit. The application kit will request information in sufficient detail for HUD to determine whether the proposed activities are feasible and meet all the requirements of applicable statutes, regulations, and this SuperNOFA for the HBCU Program. Following is a list of items required for HBCU applications:

(A) Transmittal Letter

A transmittal letter shall accompany the application. This cover letter shall be signed by the *Chief Executive Officer* (usually the President or Provost) of the applicant institution. If the Chief Executive Officer has delegated this responsibility to another official, that person may sign, but a copy of the delegation must also be included.

(B) Application Checklist

(C) Abstract

(D) Budget Documents

(E) Narrative Statement Responding to the Factors for Award

(F) Certifications

Certification forms signed by the Chief Executive Officer of the applicant institution.

Appendices are not permitted. General support letters and resumes shall not be submitted. Letters of commitment and other documentation shall be included with responses to the appropriate Factors for Award.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

HBCU Program Appendix A

Historically Black Colleges and Universities

(Previously Funded By HUD During Fiscal Years 1991–1997)

Alabama

Alabama A&M University
Alabama State University
Oakwood College
Stillman College
Talladega College
Tuskegee University

Arkansas

Arkansas Baptist College
Philander Smith College
University of Arkansas at Pine Bluff

District of Columbia

Howard University
University of the District of Columbia

Florida

Florida A&M University

Georgia

Albany State University
Clark Atlanta University
Fort Valley State University
Morris Brown College
Spelman College

Kentucky

Kentucky State University

Louisiana

Grambling State University
Southern University
Southern University at Shreveport/Bossier City
Xavier University of New Orleans

Maryland

Bowie State University
Coppin State College
Morgan State University

Mississippi

Alcorn State University
Jackson State University
Mississippi Valley State University
Rust College
Tougaloo College

Missouri

Harris-Stowe State College
Lincoln University

North Carolina

Bennett College
Elizabeth City State University
Fayetteville State University
Johnson C. Smith University
North Carolina A&T State University
North Carolina Central University
St. Augustine's College
Shaw University
Winston-Salem State University

Ohio

Central State University

Oklahoma

Langston University

Pennsylvania

Lincoln University

South Carolina

Benedict College
Claflin College
South Carolina State University
Voorhees College

Tennessee

Fisk University
Lemoyne-Owen College

Texas

Prairie View A&M University
Saint Phillip's College
Texas Southern University
Wiley College

Virginia

Hampton University
Norfolk State University
Saint Paul's College

HBCU Program Appendix B

Historically Black Colleges and Universities

(Previously Unfunded By HUD During Fiscal Years 1991–1996)

Alabama

Bishop State Community College
Concordia College
Fredd State Technical College
Lawson State Community College
Miles College
Selma University
J.F. Drake Technical College
Trenholm State Technical College

Arkansas

Shorter College

Delaware

Delaware State University

Florida

Bethune-Cookman College
Edward Waters College
Florida Memorial College

Georgia

Interdenominational Theological Center
Morehouse College
Morehouse School of Medicine
Paine College
Savannah State College

Louisiana

Dillard University

Southern University at
Maryland
University of Maryland Eastern Shore
Michigan
Lewis College of Business
Mississippi
Coahoma Community College
Hinds Community College
Mary Holmes College
North Carolina
Barber-Scotia College
Livingstone College
Ohio
Wilberforce University
Pennsylvania
Cheyney University of Pennsylvania
South Carolina
Allen University
Clinton Junior College
Denmark Technical College
Morris College
Tennessee
Knoxville College
Lane College
Meharry Medical College
Tennessee State University
Texas
Huston-Tillotson College
Jarvis Christian College
Paul Quinn College
Southwestern Christian College
Texas College
Virginia
Virginia State University
Virginia Union University
West Virginia
Bluefield State College
West Virginia State University
U.S. Virgin Islands
University of the Virgin Islands

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FAIR HOUSING INITIATIVES AND ASSISTED HOUSING COUNSELING PROGRAMS

Education and Outreach Initiative (EOI)

Private Enforcement Initiative (PEI)

Fair Housing Organizations Initiative (FHOI)

Housing Counseling Program

- Local Housing Counseling Agencies
- National, Regional and Multi-State Intermediaries
- State Housing Finance Agencies

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Funding Availability for the Fair Housing Initiatives Program

Program Description: Approximately $11,500,000 of funding is available for the Fair Housing Initiatives Program (FHIP) from the $15,000,000 appropriation. The availability of the remaining $3.5 million will be announced under a separate NOFA. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Under this competition, HUD will fund projects undertaken through the Private Enforcement Initiative (PEI), Education and Outreach Initiative (EOI), and Fair Housing Organizations Initiative (FHOI).

Application Due Date: Completed applications for all Initiatives/Components are due no later than 12:00 midnight, Eastern time on June 1, 1998 at HUD Headquarters. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (one original and two copies) should be submitted to: FHIP/FHAP Support Division, Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5234, Washington, DC 20410. When submitting your application, please refer to FHIP and provide your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance:

For Application Kits. For an application kit and supplemental information please call the HUD SuperNOFA Information Clearinghouse at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY at 1–800–483–2209. The application kit also will be available on the Internet at: http://www.HUD.gov. When requesting an application kit, please refer to FHIP, and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you have several options. You may contact Ivy L. Davis, Director, FHIP/FHAP Support Division at 202–708–0800 (this is not a toll-free number), or persons who use a text telephone (TTY) may call 1–800–290–1617. You may also call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209.

Additional Information

I. Authority; Purpose; Amount Allocated; Ineligible Activities; and Eligibility

(A) Authority

Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP)) and the implementing regulations are found at 24 CFR part 125.

(B) Purpose

The purpose of the FHIP is to assist projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Eligible applicants may apply to carry out private enforcement activities, educational activities and projects that establish or build the capacity of organizations to provide fair housing services.

(1) In September 1997, HUD announced a "crackdown on housing discrimination" and pledged to double its enforcement actions. The projects funded under this NOFA are expected to contribute to the accomplishment of this goal and applications will be evaluated based upon their responsiveness to this objective in Rating Factor 3.

(2) As immigrants settle in the U.S., there is a concern that they may encounter actual or perceived discriminatory housing practices. As such, it is critical that fair housing efforts be directed to educating these individuals about their fair housing rights as well as ensuring that enforcement mechanisms address the specific type of discrimination they, in particular, encounter. Therefore, activities under this NOFA should be particularly focused on addressing both the fair housing educational and enforcement needs of these new immigrant groups, as well as other underserved populations. Applicants will be evaluated on this objective in Rating Factor 2.

(3) Although almost ten years have passed since the enactment of the Fair Housing Act amendments affecting persons with disabilities, it appears that in many areas of the country, much of the covered housing still fails to comply with the Fair Housing Act requirements and persons with disabilities are still often discriminated against and are refused reasonable accommodations. HUD recognizes the critical role that disability advocacy groups have in addressing the unique needs of persons with disabilities. For this funding round, under the Fair Housing Organizations Initiative (FHOI)—Continued Development Component (CDC), applications must include the participation of disability advocacy organizations.

(C) Amount Allocated

Of the funds appropriated for the Fair Housing Initiatives Program in FY 1998, approximately $11,500,000 is being made available on a competitive basis to eligible organizations that submit timely applications and are selected in response to this SuperNOFA.

HUD retains the right to shift funds among the FHIP Initiatives and Components listed below, within statutorily prescribed limitations. The amounts included in this SuperNOFA are subject to change based on funds availability. The amount of FY 1998 funding available for the FHIP is divided among three Initiatives as follows:

(1) *Education and Outreach Initiative (EOI).* This SuperNOFA makes available $1,000,000 for EOI projects under the Regional, local, and community-based component. Under this component, 18-month projects, with an award cap of $100,000, will be funded that support regional, local and community-based education and outreach efforts. An additional $3,500,000 will be made available for projects which are national in scope through a separate NOFA.

(2) *Private Enforcement Initiative (PEI).* The amount of $9,300,000 is being used for the PEI for the following components:

(a) *General Component.* Of the $9,300,000, $7,800,000 is available for 24-month projects, with an award cap of $350,000. Recipients of FHIP PEI grants awarded based upon applications submitted under the FY 1997 NOFA—RFA–97–1, FY 1996 FHIP NOFA—RFA–96–1, and the FY 1995 FHIP NOFA—RFA–95–1, are ineligible to apply under the FY 1998 competition for multi-year PEI—General Component awards unless their above-referenced PEI award will expire by 3/31/99. Regardless of when their awards expire, those recipients are eligible to apply for PEI—Joint Enforcement Project Component awards, as well as FHOI and EOI awards.

(b) *Joint Enforcement Project component.* Of the $9,300,000, $1,500,000 is available for 18-month projects, with an award cap of $300,000, that promote partnerships between private fair housing enforcement

organizations, FHAP agencies and/or traditional civil rights organizations to focus on systemic investigations of housing discrimination.

(3) *Fair Housing Organizations Initiative (FHOI).* The amount of $1,200,000 is available for the FHOI for single and multi-year projects, to be used for the establishment of a new fair housing enforcement organization and for supporting the fair housing enforcement capacity development of eligible organizations to address the fair housing needs of persons with disabilities, under the following two components.

(a) *Establishing New Organizations Component (ENOC).* Of the FHOI total of $1,200,000, $400,000 is available for a 24–36 month project to fund the creation of a new fair housing enforcement organization in an underserved area, with an award cap of $400,000.

(b) *Continued Development Component (CDC).* HUD is reserving $800,000 of the $1,200,000 under the FHOI for 18-month projects, with an award cap of $200,000, to utilize the capacity of organizations to assist persons with disabilities in developing fair housing enforcement programs to address this protected class.

(D) Definitions

The definitions that apply to this FHIP section of the SuperNOFA are as follows:

Fair Housing Assistance Program Agencies means State and local agencies funded by the Fair Housing Assistance Program (FHAP), as described in 24 CFR part 115.

Fair Housing Enforcement Organization (FHO) means an organization engaged in fair housing activities as defined in 24 CFR 125.103.

Meritorious Claims means enforcement activities by an organization as defined in 24 CFR 125.103.

Qualified Fair Housing Enforcement Organization (QFHO) means an organization engaged in fair housing activities as defined in 24 CFR 125.103.

Regional/Local/Community-Based Activities are defined at 24 CFR 125.301(d).

(E) Ineligible Activities/Applications for All Components

(1) *Fair Housing and Free Speech.* None of the amounts made available under this NOFA may be used to investigate or prosecute under the Fair Housing Act any otherwise lawful activity engaged in by one or more persons, including the filing or maintaining of a nonfrivolous legal action, that is engaged in solely for the purpose of achieving or preventing action by a government official or entity, or a court of competent jurisdiction.

(2) *Research Activities.* Projects to be aimed solely or primarily at research or dependent upon such data-gathering, including but not limited to surveys and questionnaires, are not eligible for funding under this NOFA.

(3) *Award Caps.* In order to maximize the number of grants awarded and to allow HUD to fairly assess the quality of an applicant's proposed program, applications that request FHIP funding in excess of the award cap will be deemed ineligible.

(4) *Litigation.* In accordance with 24 CFR 125.104(f), no recipient of assistance under the FHIP may use any funds provided by HUD for the payment of expenses in connection with litigation against the United States.

(F) Eligibility for Education and Outreach Initiative—Regional/Local/Community-Based Component

(1) *Eligible Applicants.* HUD particularly encourages the submission of applications from traditional civil rights organizations, which are defined as private non-profit organizations or institutions and/or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices and which have a history and primary mission of engaging in programs designed to secure Federal civil rights protections for groups and individuals. The following organizations are eligible to receive funding under the EOI—Regional/Local/Community-Based Component: QFHOs; FHOs; public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices; State or local governments; and FHAP Agencies.

(2) *Eligible Activities.* All projects funded under this competition must be focused on addressing the fair housing needs of underserved populations and/or new immigrant populations in geographic areas to be specified in the grant application. EOI activities must be designed to increase the referral of fair housing complaints and other information to HUD and to educate the public about their fair housing rights and the procedures for filing complaints with HUD. The application must outline the referral process and projected referrals to HUD expected in the proposed Statement of Work. The final performance measures for deliverables will be negotiated between the grantee and HUD as part of the executed grant agreement and will be based upon the applicant's proposal.

Activities may include holding educational forums, duplication of existing fair housing materials for distribution throughout the project area, providing fair housing counseling services, conducting outreach and providing information on fair housing through printed and electronic media, developing or implementing Fair Housing Month activities, and informing persons with disabilities and/or their support organizations and service providers, housing providers, and the general public on the rights of persons with disabilities under the Fair Housing Act. Activities may not include the development of new fair housing materials except as a supplement to existing materials, but instead must use existing approved materials available locally or through the Fair Housing Information Clearinghouse.

(3) *Additional Requirements.* The following requirements are applicable to all applications under the EOI:

(a) All projects must address or have relevance to housing discrimination based on race, color, religion, sex, disability, familial status, or national origin.

(b) All proposals must contain a description of how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(c) Each non-governmental applicant for funding under the EOI Regional, Local and Community-Based Component that is located within the jurisdiction of a FHAP agency must provide, with its application, documentation (such as letters between the two organizations) that it has consulted with the agency or agencies to coordinate activities to be funded under the EOI. This coordination will minimize duplication and fragmentation of activities.

(G) Eligibility for Private Enforcement Initiative (PEI)

(1) *Eligible applicants.*

(a) Organizations that are eligible to receive FY 1998 funding assistance under the PEI are QFHOs and FHOs with at least one year of experience in complaint intake, complaint investigation, testing for fair housing violations, and enforcement of meritorious claims.

(b) Current recipients of FHIP PEI grants awarded based upon applications submitted under the FY 97, FY 96 and FY 95 NOFAs that will not expire by March 31, 1999 are ineligible to apply

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for multi-year PEI—General Component awards. However they are eligible to apply for PEI—Joint Enforcement Project Component awards, as well as FHOI and EOI awards.

(2) *Eligible Activities.*

(a) *General Component projects.* Project applications must include more than one type of activity and address more than one fair housing issue. All projects must include a description of and the estimated amount of projected enforcement referrals to HUD. Eligible activities may include, but are not limited to, the following:

(i) Conducting complaint intake of allegations of housing discrimination;

(ii) Conducting testing, evaluating testing results or providing other investigative support for administrative and judicial enforcement of fair housing laws;

(iii) Conducting preliminary investigations of individual and systemic housing discrimination for further enforcement processing by HUD;

(iv) Building the capacity to investigate, through testing and other investigative methods, housing discrimination complaints covering all protected classes;

(v) Conducting mediations or other voluntary resolutions of allegations of fair housing discrimination;

(vi) Providing funds for the costs and expenses of litigating fair housing cases, including expert witness fees.

(b) *Joint Enforcement Project (JEP) Component Projects.* The objective of the FHIP JEP project is that partnerships between private fair housing enforcement organizations, FHAP agencies and/or traditional civil rights organizations will focus on systemic investigations of housing discrimination. Grantee activities will result in either complaints being filed with HUD or in information being provided to HUD sufficient for the filing of Secretary-Initiated Complaints. Funding under this component is for investigative/enforcement activities producing outcomes/deliverables that are provided to HUD for determination of appropriate actions/use of data. These deliverables must meet or exceed the annual performance measures outlined in the application and agreed to in the executed grant agreement. It is anticipated that the majority of the project activities would be related to cases involving allegations of systemic discrimination as defined in 24 CFR 103.205.

Through frequent and regular contact with HUD, applicants will carry out activities to be performed in conjunction with a FHAP agency/agencies, private fair housing enforcement organization(s), and/or traditional civil rights organization(s), in order to achieve the objective outlined above. Project proposals must contain a strategy for achieving project deliverables, with related timelines and annual milestones. The activities to be performed to achieve project deliverables must include, but are not limited to:

(i) Sharing of data analyses for use in developing the investigations;

(ii) Conducting joint preliminary investigative activities through testing, review of property records, development of strategies, interviews, etc.;

(iii) Development of investigative materials for referral to HUD for action;

(iv) Regular meetings among organizations and with HUD to share information about potential violations for investigation based upon complaints, data, or other sources; and

(v) Regular contact with HUD to ensure project activities conform with planned deliverables and that deliverables meet grant agreement requirements.

All PEI–JEP applications must be submitted by a QFHO/FHO as the sole recipient, but must contain detailed letter(s) of commitment from all FHAP agencies and traditional civil rights organizations identified as part of the JEP. The project budget should include any costs related to subcontract(s) with FHAP agencies and traditional civil rights organizations which account for activities related to the subcontractor's role in the project. A separate detailed budget for each subcontract should be included in the application.

(3) *Other Provisions.*

(a) Successful multi-year PEI projects will receive incremental funding during the life of the award subject to periodic performance reviews. Applications that request FHIP funding in excess of the award cap will be deemed ineligible.

(b) Neither the grantee nor any subcontractors are permitted to charge or claim credit for any activities performed under the JEP grant toward any other Federal project/funds. For example, FHAP agencies will not be able to count any cases/referrals arising under this project toward their FHAP case processing calculations.

(c) All applicants proposing to conduct testing must include as initial tasks in their Statement of Work that they will provide to HUD for review and approval the testing methodology to be used and the training to be provided to testers. These tasks, as well as any others identified during grant negotiations, must be completed and accepted by HUD prior to HUD's disbursement of FHIP funds.

(H) Eligibility for the Fair Housing Organizations Initiative (FHOI)

(1) *Eligible Applicants.* (a) *Establishing New Organizations Component (ENOC).* Eligible applicants for funding under this component of the FHOI are limited to QFHOs.

(b) *Continued Development Component (CDC).* The following organizations are eligible to receive funding under the FHOI—CDC: QFHOs; FHOs; and non-profit groups organizing to build their capacity to provide fair housing enforcement.

(2) *Eligible activities.* (a) *Establishing New Organizations Component.* Eligible for funding under this purpose of the FHOI are 24–36 month projects that help establish, organize and build the capacity of a fair housing enforcement organizations in underserved areas. "Underserved areas" is defined as areas which are currently underserved or not served by one or more fair housing enforcement organizations as well as those areas where large concentrations of protected classes exist. Applicants must provide a justification for the selection of the geographic jurisdiction to be served by the proposed new organization and describe how the jurisdiction is underserved by any existing public or private fair housing organizations, including FHAP agencies. Applications must propose the establishment of a new fair housing enforcement organization in an underserved area. Applicants must provide a justification for the selection of the geographic jurisdiction to be served by the proposed new organization and how the jurisdiction is underserved by any existing public or private fair housing organizations, including FHAP agencies. This justification must include data and studies that indicate the presence of housing discrimination, segregation, and new immigrant groups, and/or other indices of discrimination in the locality based upon race, color, religion, sex, national origin, familial status, or disability. Project applications must include more than one type of activity and address more than one fair housing issue. Additionally, all projects must include a basis for the specific activities relating to referral of enforcement proposals to HUD.

(b) *Continued Development Component.* (i) Applications in this category are for 18-month projects that propose to expand eligible applicants' capacity to provide fair housing enforcement services that address the needs of persons with disabilities.

Project applications must include more than one type of activity and address more than one fair housing issue. For purposes of this competition, "disability advocacy groups" are defined as organizations that traditionally have provided for the civil rights of persons with disabilities, including organizations such as Independent Living Centers and cross-disability legal services groups. These organizations must: be organized as a private, tax-exempt, non-profit, charitable organization; be established with a primary purpose to assist persons with a broad range of disabilities, including physical, cognitive and psychiatric/mental disabilities, in exercising or protecting their fair housing and/or other civil rights (persons with disabilities need not be the only class served by the organization and fair housing and/or civil rights protection need not be the only activity of the organization); and demonstrate actual involvement of persons with disabilities throughout their activities, including on staff and board levels. Recognizing the critical role that disability advocacy groups have addressing the unique needs of persons with disabilities, HUD is requiring that proposals follow one of the approaches described below:

(1) Disability advocacy groups may apply to carry out activities that will expand their organization's capacity to provide the full-range of fair housing enforcement services to its clientele; or

(2) Fair housing enforcement organizations may apply to expand their capacity to provide fair housing services to persons with disabilities, through the utilization of subcontract(s) with disability advocacy groups (preferably with groups located within the local jurisdiction to be served).

(i) Eligible activities for funding under this purpose of the FHOI are any of the activities listed as eligible under the PEI in Section I(F)(2) of this FHIP section of the SuperNOFA, as long as they meet the focus on disability issues as outlined in Section I(F)(2)(b)(i) of this FHIP section of the SuperNOFA. Additionally, all projects must include a basis for the specific activities relating to enforcement proposal referrals to HUD and the projected number of enforcement proposal referrals to HUD.

(ii) Funding under the FHOI–CDC may not exceed more than 50 percent of the operating budget of the recipient organization for any one year. For purposes of the limitation of this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the 18 months for which funding is sought.

II. Program Requirements

(A) FHIP Specific Requirements

(1) Through the Private Enforcement Initiative (PEI) and Fair Housing Organizations Initiative (FHOI) components of this SuperNOFA, HUD will fund only full service and broad-based fair housing enforcement projects that address discrimination against persons protected by the Fair Housing Act and contribute in measurable ways to HUD's commitment to double its enforcement actions. Enforcement projects must include more than one type of activity. Full-service projects must include more than one of the following enforcement-related activities: interviews with potential victims of discrimination, analysis of housing-related issues; complaint intake; testing; evaluation of testing results; preliminary investigation; mediation; enforcement of meritorious claims through litigation or referral to administrative enforcement agencies; and dissemination of information about fair housing laws. "Broad-based" means not limited to a single fair housing issue, but rather covering multiple issues related to discrimination in the provision of housing covered under the Fair Housing Act, such as: rental, sales and financing of housing.

(2) *Applicants Limited to a Single Award.* Applicants may apply for funding for more than one project or activity under one or more Initiatives. However, applicants are limited to one award under this FHIP section of the SuperNOFA. If more than one eligible application is submitted by an applicant and both are within funding range, HUD will select the application which the applicant has indicated as its preference for award should more than one application submitted be within funding range. One exception is for applicants that submit a successful application under the FHOI–ENOC, which is targeted at creating new fair housing enforcement organizations. In such cases, FHOI recipients will also be eligible to receive one additional award under either the EOI or PEI.

(3) *Independence of Awards.* There are no limits on the number of applications that can be submitted by a single applicant. However, each project or activity proposed in an application must be independent and capable of being implemented without reliance on the selection of other applications submitted by the applicant or other applicants. This provision does not preclude an applicant from submitting a proposal which includes other organizations as subcontractors to the proposed project or activity.

(4) *Project Starting Period.* HUD has determined that all applications must propose that the project will begin no later than October 1, 1998.

(5) *Page Limitation.* Applicants will be limited to 10 pages of narrative responses for each of the five selection criteria (this does not include forms or documents which are required under each criterion). Furthermore, unrequested items such as brochures and news articles, will not be considered in the evaluation process. Applicants that exceed the 10-page limit for each criterion will only have the first 10 pages evaluated for each criterion. Failure to provide narrative responses to all selection criteria will result in an applicant not receiving points for the information omitted. Failure to receive points for a factor may significantly impact an applicant's ability to receive an award.

(6) *Training.* All applications must include a training set-aside of $3,000 for single-year projects and $6,000 (total) for multi-year projects in all project budgets. HUD will permit grantees to use these funds to attend both HUD-sponsored and HUD-approved training.

(7) *Payment Contingent on Completion.* Payment to grantees will be contingent on the satisfactory completion of all project activities on an annual basis, including the successful achievement of tasks relating to enforcement proposals and/or complaint referrals to HUD.

(8) *Mandatory Referrals.* All PEI/FHOI recipients are required to refer to HUD all cases arising out of audit testing under FHIP grants.

(9) *Accessibility Requirements.* All activities and materials funded by FHIP must be reasonably accessible to persons with disabilities.

(10) *Outreach Expenses.* Applications may designate up to 5% of requested funds to conduct education and outreach to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project.

(11) *Tester Requirements.* Testers in testing activities funded with PEI and FHOI funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques. Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(a) Have an economic interest in the outcome of the test, without prejudice to

the right of any person or entity to recover damages for any cognizable injury;

(b) Be a relative of any party in a case;

(c) Have had any employment or other affiliation, within one year, with the person or organization to be tested; or

(d) Be a licensed competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

(12) *Review and Approval of Testing Methodology.* HUD reserves the right to require applicants proposing to conduct testing to include as initial tasks in their Statement of Work that they will provide to HUD for review and approval the testing methodology to be used and the training to be provided to testers. These tasks, as well as any others identified during grant negotiations, must be completed and accepted by HUD prior to HUD's disbursement of FHIP funds.

(13) *Enforcement Log.* Recipients of funds under the PEI and FHOI shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of possible discrimination received; the protected basis of these complaints; the issue, test type, and number of tests utilized in the investigation of each allegation; the respondent type and testing results; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; to whom the case was referred; and the resolution and type of relief sought and received. The recipient must agree to make this log available to HUD.

(14) *Certifications.* (a) All PEI and FHOI proposals must certify that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of FHIP funded testing by the applicant during the 12 month period following the test. This does not preclude settlement based on investigative findings.

(b) All PEI and FHOI proposals must certify that an applicant which receives any compensation, directly or indirectly from a settlement, conciliation or award of damages as a result of activities funded under this SuperNOFA, will use such monies only to carry out activities eligible under the FHIP and specifically authorized by the grant agreement provision addressing the use of such funds. Such provision will be part of the cooperative/grant agreement. HUD reserves the right to negotiate with successful applicants provisions addressing potential conflicts of interest.

(B) General Requirements

The program requirements listed in the General Section of this SuperNOFA are applicable to applicants applying for FHIP funding under this SuperNOFA.

III. Application Selection Process

(A) Rating and Ranking

(1) *General.* Each application for funding will be evaluated competitively under one of the five categories: PEI-General Component; PEI-Joint Enforcement Project Component; EOI-Regional, local and community-based component; FHOI-Establishing New Organizations Component; or FHOI-Continued Development Component. Then, in each category, they will be awarded points and assigned a score based on the Selection Criteria for Rating Applications for Assistance identified in Section III(B) of this FHIP section of the SuperNOFA. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. Awards for each category listed above will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications, with the exception described in Section III(A) (2) and (3), immediately below, which is designed to achieve geographic distribution of awards and to achieve full service and broad-based fair housing enforcement projects. The final decision rests with the selecting official, the Assistant Secretary for Fair Housing and Equal Opportunity or her designee.

(2) *Achieving Geographic Distribution of Awards.* The Assistant Secretary, or designee, will have the discretion to make awards out of rank order and fund or not fund applications in order to provide broader geographic representation in accordance with the following procedure. For each Initiative and component, awards will be funded in rank order, except as follows: only the highest ranking application under any Initiative or component for activities to be conducted in a Metropolitan Statistical Area (MSA), as defined by the Bureau of the Census, will be selected. No other application proposing activities in the same MSA under the same Initiative or component will be selected, unless there are not enough applications of sufficient quality to permit the awarding of all funds in an Initiative or component. If the Assistant Secretary determines that there are not enough applications of sufficient quality in any Initiative or component, then the next highest ranked application(s) that had previously been passed over may be funded in the same MSA.

(3) *Tie Breaking.* When there is a tie in the overall total score, the award will be made to the applicant that has the higher score under Rating Factor 3 (Soundness of Approach). If these applications are equal in this respect, the application that receives a total higher number of points under Rating Factor 1 (Capacity of the Applicant and Relevant Organizational Experience) will receive the award. If these scores are identical then the award will be made to the applicant with the lower request for FHIP funding.

(B) Factors for Award Used to Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points to be awarded is 102. This includes two EZ/EC bonus points, as described in the General Section of the NOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

The rating of the "applicant" or the "applicant's organization and staff" for technical merit will include any sub-contractors, consultants, sub-recipients, and members of consortia that are identified as participants in the project.

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) (10 points) The knowledge and experience of the proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. To demonstrate that the applicant has sufficient personnel, the applicant must submit the proposed number of staff years by the employees and experts to be allocated to the project, the titles and

relevant professional background and experience of each employee and expert proposed to be assigned to the project, and the roles to be performed by each identified employee and expert.

(2) (10 points) for either (a) or (b):

(a) The applicant's past experience in terms of its ability to attain demonstrated measurable progress in the implementation of its most recent activities where performance has been assessed as measured by expenditures and measurable progress in achieving the purpose of the activities. HUD will also consider any documented evidence of the grantee's failure under past awards to comply with grant award provisions; or

(b) If the FHIP applicant has not received funding in the past, the applicant's demonstrated experience in managing programs, and carrying out grant management responsibilities for programs similar in scope or nature directly relevant to the work activities proposed. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include the information in the response.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed activities and an indication for the urgency of meeting the need in the target area. In responding to this factor, applicants will be evaluated on the Statement of Need, which addresses the following:

(1) (10 points) The extent to which applicants document a level of need for the project activities in the target area, including a focus on the targeted groups of new immigrant and other underserved populations, and the urgency in meeting the need using statistics and analyses contained in a data source(s) that is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identify the level of the problem and urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable. If the project activity is not covered under the scope of the AI, applicants should indicate such, and use other reliable data sources to identify the level of need and the urgency in meeting the need. Types of other data sources include, but are not limited to, HUD reports and analyses, relevant economic and/or demographic data including indices of segregation in areas by race or national origin, government or foundation reports and studies, news articles, and other information which relate to the project activities.

(2) (10 points) To the extent possible, is specific to the area where the project activity will be carried out. Specific attention must be paid to documenting need as it applies to the area where activities will be targeted, rather than the entire locality or State. If the target area is an entire locality or State, then documenting need at this level is appropriate. The Statement of Need must demonstrate how specific community or neighborhood needs can be resolved through the activities proposed. The applicant should discuss how it took into account existing and planned efforts of government agencies, community-based organizations, faith-based institutions, for-profit firms, and other entities to address such needs in the community(ies) to be served, how the proposed program compliments or supplements existing efforts and why additional funds are being requested.

Rating Factor 3: Soundness of Approach (40 Points)

This criterion addresses the quality and cost-effectiveness of the applicant's proposed work plan. There must be a clear relationship between the project activities, community needs and the purpose of the program funding for the applicant to receive points for this factor.

(1) (15 points) For all projects, applicants must describe how their project activities will result in the referral of enforcement proposals to HUD and projected number of enforcement proposal referrals expected. Specifically, the applicant must describe the project activities that specifically relate to complaints being referred to HUD during the period of performance of the grant. In responding to this factor, the applicant should describe the methods to be developed or used to identify and refer enforcement actions to HUD. Applicants to the extent that their past activities have resulted in successful enforcement proposals being referred to HUD should describe these actions and the outcome of such referrals. "Enforcement proposals" is defined as well-developed information which could be considered to be timely, jurisdictional, potential complaints under the Fair Housing Act and which can reasonably be expected to become an enforcement action if an impartial investigation finds evidence supporting the allegations and the case proceeds to a resolution with HUD involvement.

(a) Examples of enforcement proposals include:

(i) Allegations that are supported by evidence that meet the requirements for a filed complaint under the Fair Housing Act, including prima facie evidence, with or without related testing evidence;

(ii) Results of testing or audits demonstrating potential housing discrimination;

(iii) Well-developed analysis of data including Home Mortgage Disclosure Act (HMDA)/CRA Analysis/Census data, current studies of residential segregation, or other similar documentation supporting allegations of discrimination; and

(iv) Referrals of complaints to HUD on behalf of individuals or groups other than the grant recipient.

(b) Specifically, the applicant should provide the following:

(i) All PEI and FHOI applications must provide a basis for the specific activities relating to enforcement proposal referrals to HUD and the projected number of enforcement referral proposals that are described in the Statement of Work. The final performance measures for enforcement proposal referrals will be negotiated between the grantee and HUD as part of the executed grant agreement and will be based upon the proposal.

(ii) All EOI applications must provide a basis for the specific activities relating to the referral of individuals with fair housing complaints to HUD, the procedures for filing complaints of discrimination, and outline the projected referrals to HUD and the projected number of enforcement referral proposals in the proposed Statement of Work. The final performance measures for complaint referrals will be negotiated between the grantee and HUD as part of the executed grant agreement and will be based upon the proposal.

(2) (15 points) Additionally, HUD is looking for efficient, effective and feasible Statements of Work that:

(a) Meet the needs articulated in response to Factor 2 including the extent to which the applicant is providing geographic coverage, specific protected class focus, as well as serving persons traditionally underserved. Efforts to increase community awareness in a culturally sensitive manner through education and outreach efforts will also be evaluated;

(b) Provide clarity with regard to the specific, sequential tasks and subtasks to be performed, noting those which should occur simultaneously and the feasibility that tasks can be completed within the grant period;

(c) Describe immediate benefits of the project and indicators by which the benefits will be measured;

(d) Provide for proposed tasks and sub-tasks that clearly provide technically competent methodologies for conducting the work to be performed;

(e) Describe the extent to which the proposed design and size of project or activity is appropriate to the achievement of program funding purposes articulated for the FHIP section in this SuperNOFA; and

(f) Identify specific numbers of quantifiable end products and program improvements the applicant aims to deliver by the end of the award agreement period as a result of the work performed.

(g) The extent to which the project activities will affirmatively further fair housing (AFFH). The applicant can best demonstrate its commitment to affirmatively further fair housing by describing how proposed activities will assist the jurisdiction in overcoming impediments to fair housing choice identified in the jurisdiction's AI (Analysis of Impediments to Fair Housing Choice), which is a component of the jurisdiction's Consolidated Plan, or other planning document that addresses fair housing issues. Additional examples may be obtained from Chapter 5 of the "Fair Housing Planning Guide, Vol. 1" which may be ordered from HUD's Fair Housing Information Clearinghouse by calling (800) 343–3442.

(3) (10 points) HUD also will assess the soundness of the applicant's approach by assessing the following:

(a) The quality, thoroughness and reasonableness of the cost estimates provided. As part of the applicant's response, a summary budget should be provided which identifies costs by cost category in accordance with the following:

(i) *Direct Labor* by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(ii) *Fringe Benefits* by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(iii) *Material Costs* indicating the item, unit cost per item, the number of items to be purchased, estimated cost per item, and the total estimated material costs;

(iv) *Transportation Costs*, as applicable. Where local private vehicle is proposed to be used, costs should indicate the proposed number of miles, rate per mile of travel identified by item, and estimated total private vehicle costs. Where Air transportation is proposed, costs should identify the destination(s), number of trips per destination, estimated air fare and total estimated air transportation costs. If other transportation costs are listed, the applicant should identify the other method of transportation selected, the number of trips to be made and destination(s), the estimated cost, and the total estimated costs for other transportation costs. In addition, applicants should identify per diem or subsistence costs per travel day and the number of travel days included, the estimated costs for per diem/subsistence and the total estimated transportation costs;

(v) *Equipment charges*, if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(vi) *Consultant Costs*, if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(vii) *Subcontract Costs*, if applicable. Indicate each individual subcontract and amount. Each proposed subcontract should include a separate budget which identifies costs by cost categories;

(viii) *Other Direct Costs* listed by item, quantity, unit cost, total for each item listed, and total direct costs for the award;

(ix) *Indirect Costs* should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs. The submission should include:

(b) The rationale used to determine costs and validation of fringe and indirect cost rates, if the applicant is not using an accepted, Federally negotiated indirect cost rate;

(c) The extent to which the program is cost effective in achieving the anticipated results of the proposed activities as well as in achieving significant community impact; and

(d) The extent to which the applicant demonstrates capability in handling financial resources with adequate financial control procedures and accounting procedures. In addition, considerations will include findings identified in their most recent audits, internal consistency in the application of numeric quantities, accuracy of mathematical calculations and other available information on financial management capability.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (Note: financing is a community resource) which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

(1) (5 points) The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed project activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

(2) (5 points) Applicants must provide evidence of leveraging partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization. Applicants for funding under the FHOI-Continued Development Component must describe efforts undertaken to obtain the participation of disability advocacy organizations and indicate the disability advocacy organizations that participated and describe their participation.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning (including Analysis of Impediments to Fair Housing Choice) process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its project activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community(ies) served.

(C) Applicant Notification and Award Procedures

(a) *Notification.* No information will be available to applicants during the period of HUD evaluation, approximately 90 days, except for notification in writing or by telephone to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(b) *Negotiations.* After HUD has ranked the applications and provided notifications to applicants whose scores are within the funding range, HUD will require that applicants in this group participate in negotiations to determine the specific terms of the cooperative or grant agreement. HUD will follow the negotiation procedures described in Section II(D) of the General Section of the SuperNOFA.

(c) *Funding Instrument.* HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(d) *Adjustments to Grant Amounts.* As provided in Section III(E) of the General Section of the SuperNOFA, HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement, in accordance with 24 CFR 84.14, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The applicant has proposed an ineligible activity in an otherwise eligible project;

(iii) Insufficient amounts remain in that funding round to fund the full amount requested in the application, and HUD determines that partial funding is a viable option; or

(iv) The applicant has demonstrated an inability to manage HUD grants, particularly FHIP grants.

(e) *Performance Sanctions.* A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, and denial of further participation in programs of HUD or any Federal agency.

IV. Application Submission Requirements

In addition to the forms, certifications and assurances required in Section II(G) of the General Section of the SuperNOFA and the applicant's responses to the five rating factors in Section III(B) of this FHIP section of the SuperNOFA, all applications must, at a minimum, contain the following items:

(A) Transmittal Letter

This letter identifies the NOFA, the program under the NOFA for which funds are requested, the specific FHIP Initiative and component under which the application is submitted, and the dollar amount requested for each program, and the applicant submitting the application.

(B) Narrative Statement

The narrative statement addresses the Factors for Award in Section III(B) of this FHIP section of the SuperNOFA. Your narrative response should be numbered in accordance with each factor for award identified under Section III(B) of this FHIP section of the SuperNOFA.

(C) Financial Management and Audit Information

Each applicant must submit a certification from an Independent Public Accountant or the cognizant government auditor, stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by: OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations; OMB Circular A–110 (as codified at 24 CFR part 84), Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; and/or OMB Circular A–102 (as codified at 24 CFR Part 85) Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. This information should contain the name and telephone number of the Independent Auditor, cognizant Federal auditor, or other audit agency, as applicable.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9) and (12) of HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under related laws and authorities.

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Funding Availability for the Housing Counseling Program

Program Description: Approximately $18.0 million is available for the Housing Counseling Program. HUD's Housing Counseling Program is directed to promoting and protecting the interests of housing consumers participating in HUD and other housing programs, as well as, to protecting the interests of HUD and mortgage lenders.

Application Due Date: Completed applications must be received no later than 6:00 pm local time, on June 1, 1998, at the appropriate address shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications:

For Local and State Housing Finance Agencies. For local housing counseling agency and state housing finance agency applicants: an original and two copies of the completed application must be submitted to the respective HUD Homeownership Center having jurisdiction over the locality, area or state in which the proposed program is located. These copies should be sent to the attention of the Marketing and Outreach Division Director, and the envelope should be clearly marked, "FY 1998 Counseling Application." A list of Marketing and Outreach Division Directors, HUD Homeownership Centers and jurisdictions appears in the application kit.

For National, Regional and Multi-State Housing Agencies. For national, regional, and multi-state housing counseling intermediaries: an original and two copies of the completed application must be submitted to the Director, Marketing and Outreach Division, Office of Single Family Housing, HUD Headquarters. (See the Application Kit for name and address.) The envelope should be clearly marked, "FY 1998 Intermediary Application." Failure to submit an application to HUD Headquarters in accordance with the above procedures may result in disqualification of the application.

For Application Kits, Further Information and Technical Assistance:

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to the Housing Counseling Program. The SuperNOFA Information Center can provide you with assistance in determining which HUD locations should receive a copy of your application.

For Further Information and Technical Assistance. For local housing counseling agencies or State housing finance agencies, you may call the HUD Homeownership Center serving your area. For national, regional, or multi-state intermediaries, you may call HUD Headquarters. Please see your application kit for a list of offices and telephone numbers you can call to receive assistance. Before the application deadline, HUD staff will be available to provide general guidance.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

HUD's Housing Counseling Program is authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), and is generally governed by HUD Handbook 7610.1, REV–4, dated August 9, 1995.

(B) Purpose and Background

Section 106 of the Housing and Urban Development Act of 1968 authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and meeting the responsibilities of tenancy and homeownership.

In addition, HUD-approved housing counseling agencies are encouraged by HUD to conduct community outreach activities and provide counseling to individuals with the objective of increasing awareness of homeownership opportunities and improving access of low and moderate income households to sources of mortgage credit. HUD believes that this activity is key to the revitalization and stabilization of low income and minority neighborhoods. In FY 1998, HUD encourages applicants to focus on:

(1) The counseling needs of first-time homebuyers by offering Homebuyer Education and Learning Program (HELP) training sessions;

(2) The counseling needs of eligible persons 62 or older who desire to use the Home Equity Conversion Mortgage (HECM) in order to convert their equity into a lump sum payment or an income stream that can be used for home improvements, medical costs, and/or pay living expenses.

(C) Amount Allocated and Funding Levels

(1) *Amount Allocated.* Under this SuperNOFA, $18 million is made available for eligible applicants for three (3) programs under Housing Counseling.

(a) The estimated amount of funds available for sub-allocation is as follows:

(i) *Local Housing Counseling Agencies.* Approximately $5 million has been made available for grants to local HUD-approved housing counseling agencies. Funding allocated to each of the HUD Homeownership Centers by a formula that reflects the increased emphasis on the expansion of homeownership opportunities for first-time homebuyers and its intent to ensure appropriate geographical distribution of program funds. For FY 1998, no individual local housing counseling agency may be awarded more than $100,000.

A local, HUD-approved housing counseling agency may apply for a sub-grant to a State housing finance agency, whether or not the local agency has a housing counseling grant from HUD. The local agency, however, shall disclose all funding sources to HUD.

Allocations for use in local agency programs by HUD Homeownership Center are estimated as follows:

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HUD Field Office		Default Data		First Time H	Homebuyer Data		
HUD Homeownership Center/Jurisdiction	No. of Defaults	% of Nat'l Defaults	Allocation Amount	No. of 1st Timer	% of Nat'l 1st Timers	Allocation Amount	Total Allocation
PHILADELPHIA HOC							
Albany	2892	1.43%	35,731	6,209	1.16%	28,977	64,709
Baltimore	5222	2.58%	64,519	12,850	2.40%	59,971	124,490
Boston	1077	0.53%	13,307	6,854	1.28%	31,987	45,294
Buffalo	3212	1.59%	39,685	5,411	1.01%	25,253	64,938
Camden	5106	2.52%	63,086	6,880	1.28%	32,109	95,195
Charleston	143	0.07%	1,767	1,030	0.19%	4,807	6,574
Cincinnati	1454	0.72%	17,965	6,305	1.18%	29,425	47,390
Cleveland	3596	1.78%	44,430	7,269	1.36%	33,924	78,354
Columbus	2085	1.03%	25,761	5,722	1.07%	26,704	52,465
Detroit	3346	1.65%	41,341	11,415	2.13%	53,274	94,614
Flint	551	0.27%	6,808	1,836	0.34%	8,569	15,376
Grand Rapids	1058	0.52%	13,072	5,021	0.94%	23,433	36,505
Hartford	1821	0.90%	22,499	8,108	1.51%	37,840	60,339
Manchester *	533	0.26%	6,585	5,126	0.96%	23,923	30,508
*(NH, MA, VT)			0		0.00%	0	0
New York	5232	2.59%	64,643	10,345	1.93%	48,280	112,923
Newark	2855	1.41%	35,274	9,094	1.70%	42,441	77,716
Philadelphia *	7186	3.55%	88,785	14,161	2.64%	66,089	154,874
(* DE)			0		0.00%	0	0
Pittsburgh	1492	0.74%	18,434	4,977	0.93%	23,228	41,662
Providence	298	0.15%	3,682	1,849	0.35%	8,629	12,311
Richmond	5037	2.49%	62,233	11,405	2.13%	53,227	115,460
Washington DC	5683	2.81%	70,215	13,674	2.55%	63,816	134,031
Phil. HOC Subotal	59879		739,821	155,541		725,906	1,465,726
ATLANTA HOC							
Atlanta	8431	4.17%	104,167	15,173	2.83%	70,812	174,979
Birmingham	2792	1.38%	34,496	6,143	1.15%	28,669	63,165
Caribbean	4134	2.04%	51,077	8,814	1.65%	41,135	92,211
Chicago & Spring.	10090	4.99%	124,665	21,137	3.95%	98,646	223,310
Coral Gables	8164	4.03%	100,868	14,289	2.67%	66,686	167,555

Columbia	2161	1.07%	26,700	4,048	0.76%	18,892	45,592
Greensboro	3291	1.63%	40,661	10,633	1.99%	49,630	90,291

Chicago & Springf.	10090	4.99%	124,665	21,137	3.95%	98,646	223,310
Coral Gables	8164	4.03%	100,868	14,289	2.67%	66,686	167,555

Columbia	2161	1.07%	26,700	4,048	0.76%	18,892	45,592
Greensboro	3291	1.63%	40,661	10,633	1.98%	49,624	90,285
Indianapolis	3832	1.89%	47,345	10,420	1.95%	48,630	95,975
Jackson	2275	1.12%	28,108	3,880	0.72%	18,108	46,216
Jacksonville	2099	1.04%	25,934	4,915	0.92%	22,938	48,872
Knoxville	1247	0.62%	15,407	3,554	0.66%	16,586	31,993
Louisville	1004	0.50%	12,405	4,682	0.87%	21,851	34,255
Memphis	5820	2.88%	71,908	6,347	1.18%	29,621	101,529
Nashville	1821	0.90%	22,499	4,393	0.82%	20,502	43,001
Orlando	3851	1.90%	47,580	7,537	1.41%	35,175	82,755
Tampa	3330	1.65%	41,143	6,494	1.21%	30,307	71,450
Atlanta HOC Subtotal	64342		794,962	132,459		618,183	1,413,145
DENVER HOC							
Albuquerque	700	0.35%	8,649	3,005	0.56%	14,024	22,673
Denver *	3028	1.50%	37,412	20,626	3.85%	96,261	133,673
*(WY, ND, SD)							
Des Moines	494	0.24%	6,103	2,489	0.46%	11,616	17,720
Ft Worth & Dallas	8075	3.99%	99,769	17,715	3.31%	82,675	182,444
Helena	429	0.21%	5,300	1,590	0.30%	7,420	12,721
Houston	3760	1.86%	46,456	7,753	1.45%	36,183	82,639
Kansas City/Topeka	2358	1.17%	29,134	8,406	1.57%	39,231	68,364
Little Rock	2161	1.07%	26,700	5,182	0.97%	24,184	50,884
Lubbock	1544	0.76%	19,077	4,051	0.76%	18,906	37,982
Milwaukee	757	0.37%	9,353	2,957	0.55%	13,800	23,153
Minneapolis	3417	1.69%	42,218	12,828	2.39%	59,868	102,086
New Orleans	2438	1.20%	30,122	6,218	1.16%	29,019	59,141
Oklahoma City	1401	0.69%	17,310	4,904	0.92%	22,887	40,197
Omaha	716	0.35%	8,846	5,147	0.96%	24,021	32,867
Salt Lake City	1292	0.64%	15,963	6,829	1.27%	31,871	47,834
San Antonio	3475	1.72%	42,935	11,021	2.06%	51,435	94,369
Shreveport	1225	0.61%	15,135	1,649	0.31%	7,696	22,831
St Louis	2086	1.03%	25,773	6,085	1.14%	28,399	54,172
Tulsa	923	0.46%	11,404	2,981	0.56%	13,912	25,316
Denver HOC Subtotal	40279		497,657	131,436		613,408	1,111,066
SANTA ANA HOC							

Anchorage	223	0.11%	2,755	1,708	0.32%	7,971	10,726
Boise	683	0.34%	8,439	2,900	0.54%	13,534	21,973
Fresno	3849	1.90%	47,555	10,896	2.03%	50,851	98,407
Honolulu	447	0.22%	5,523	851	0.16%	3,972	9,494
Las Vegas & Reno	2177	1.08%	26,897	7,199	1.34%	33,598	60,495
Los Angeles	7447	3.68%	92,010	21,589	4.03%	100,755	192,765
Phoenix	4044	2.00%	49,965	11,547	2.16%	53,890	103,854
Portland	698	0.34%	8,624	5,313	0.99%	24,796	33,420
Sacramento	2436	1.20%	30,097	8,139	1.52%	37,985	68,082
San Diego	969	0.48%	11,972	4,433	0.83%	20,689	32,661
San Francisco	1356	0.67%	16,754	6,029	1.13%	28,137	44,891
Santa Ana	10857	5.37%	134,141	24,858	4.64%	116,012	250,153
Seattle & Spokane	2003	0.99%	24,748	8,915	1.66%	41,606	66,354
Tucson	654	0.32%	8,080	1,866	0.35%	8,709	16,789
Santa Ana HOC Subtotal	37843		467,560	116,243		542,503	1,010,063
GRAND TOTAL	202343	100.00%	2,500,000	535,679	100.00%	2,500,000	5,000,000

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(ii) *Nonparticipating Jurisdictions.* *State Intermediaries.* Approximately $1 million is available for the approved intermediary in each state interested in funding nationally intermediated activities. $1 million is available for each intermediary approved and awarded $100,000 or more. A State housing agency that is grant which received funds from approved intermediaries in state interested in funding

(iii) *State Intermediaries.* Approximately $1 million is set aside to fund approved intermediary agencies. Each approved intermediary counseling activities intermediated by housing counseling agencies in the amount of funds in the four HUD jurisdictions

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Denver, Co
Philadelph
Santa Ana

No State receive m affiliate o agency, a awarded $100,000. agency m HUD-app agencies, regional, (iv) *Re Funds/Re* after HUD grant appl Homeown Headquar available amount sh keeping w manner th of housing nationwid (b) *Fund* Award wi successfu requires th participate the specifi of the gran the negoti Section III the Superv (i) *Local Agencies.*

(ii) *National, Regional, and Multi-State Intermediaries.* Approximately $6 million is being set aside to fund HUD-approved national, regional and multi-state intermediaries that apply for funding under this SuperNOFA. No national, regional, or multi-state intermediaries may receive more than $1 million. No affiliate of an intermediary, as a sub-grantee, can be awarded a sub-grant more than $100,000. An affiliate may apply to a State housing finance agency for a sub-grant whether or not the affiliate received a sub-grant from a HUD-approved national, regional, or multi-state intermediary.

(iii) *State Housing Finance Agencies.* Approximately $7 million is being set aside to fund State housing finance agencies, that have a role as a housing counseling agency and/or as an intermediary to affiliates, offering housing counseling services. The amount of funding available to each of the four HUD Homeownership Center jurisdictions is as follows:

Homeownership center	Funding allocation
Atlanta, GA	$1,978,375.00
Denver, CO	1,555,575.00
Philadelphia, PA	2,051,875.00
Santa Ana, CA	1,414,175.00

No State housing finance agency may receive more than $500,000, and no affiliate of a State housing finance agency, as a sub-grantee, can be awarded a sub-grant more than $100,000. A State housing finance agency may provide a sub-grant to local, HUD-approved housing counseling agencies, and to affiliates of national, regional, or multi-state intermediaries.

(iv) *Remaining and Deobligated Funds/Reallocations.* If funds remain after HUD has funded all approvable grant applications in its Homeownership Center jurisdictions, or Headquarters, or if any funds become available due to deobligation, that amount shall be reallocated and used in keeping with the statute and in a manner that will improve the delivery of housing counseling service nationwide.

(b) *Funding Levels.* The Factors for Award will be used to determine successful applicants for funding. HUD requires that successful applicants participate in negotiations to determine the specific grant amount and the terms of the grant agreement. HUD will follow the negotiation procedures described in Section III(D) of the General Section of the SuperNOFA.

(i) *Local Housing Counseling Agencies.* HUD will fund local housing counseling agencies according to the budget submitted with the application, in an amount not to exceed $100,000. Amounts requested by local housing counseling agencies should reflect anticipated operating needs for housing counseling activities, based upon counseling experience during the previous fiscal year and current agency capacity.

(ii) *National, Regional, or Multi-State Intermediaries.* The intermediaries will distribute the majority of funds awarded to their proposed local housing counseling affiliates. HUD will give the selected intermediaries wide discretion to implement the housing counseling program with their affiliates. The intermediary may decide how to allocate funding among its affiliates, and may determine funding levels at or below $100,000 for individual affiliates with the understanding that a written record will be kept of how this determination is made. This record shall be made available to the agencies affiliated with the intermediary and to HUD. Affiliates are not eligible for capacity building costs. Intermediaries should budget an amount which reflects their best estimate of cost to oversee and fund these housing counseling efforts, as well as, funding the needs of their affiliates.

(iii) *State Housing Finance Agencies.* HUD will fund State housing finance agencies according to the budget submitted with the application, in an amount not to exceed $500,000. State housing finance agencies have two roles. The agency can operate as a housing counseling agency and/or as an intermediary for affiliates that perform housing counseling functions in their respective States or territories.

(c) *Capacity Building and Capacity Building Costs.* In FY 1998, the following amounts of housing counseling grant funds may be used by each grantee for "capacity building" and/or upgrading "capacity building", as defined in this Housing Counseling Program section of the SuperNOFA (see capacity building costs in the application kit).

Local Housing Counseling Agencies—up to $4,000

National, Regional, or Multi-State Intermediaries—up to $5,000

State Housing Finance Agencies—up to $5,000

(i) Capacity building costs are: purchasing computer equipment and housing counseling case management and tracking software capable of exporting the HUD–9902 data into a database file, such as Data Now; enhancing telephone service, such as purchasing telecommunications equipment for the hearing-impaired (TTY) to serve persons with hearing impairments (as an alternative to using the TTY relay service); installing FAX machines.

(ii) For local housing counseling agencies, intermediaries and state housing finance agencies that do not have an adequate computer system or need to upgrade computer equipment, HUD requires that up to $4,000 of the grant, for local housing counseling agencies, and up to $5,000 of the grant, for intermediaries and State housing finance agencies, be used to acquire items defined as capacity building costs. Affiliates of State housing finance agencies and intermediaries are not eligible for capacity building costs. Any equipment purchased must meet HUD specifications. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E. Computer training for one staff person may be paid from the capacity building cost set-aside, as may training on how to use a TTY.

(d) *Use of Counseling Funds and Supplementing HUD Funding.*

(i) *Housing Counseling Role.* Amounts requested by the State housing finance agency should reflect anticipated operating needs for housing counseling activities, based upon the counseling experience during FY 1997 and current agency capacity. To the maximum extent possible, State housing finance agencies must seek other private and public sources of funding to supplement HUD funding. HUD never intends for its counseling grant funds to cover all costs incurred by an agency participating in the program. State finance housing agencies may use the HUD grant to undertake any of the eligible counseling activities described in the Housing Counseling Program section of the SuperNOFA.

(ii) *Intermediary Role.* Amounts requested by the State housing finance agency should reflect their best estimates of costs to oversee and fund its housing counseling affiliates. In this intermediary role, the agency will distribute HUD funds to its affiliates. Note that HUD housing counseling funding is not intended to fully fund either the agency in its intermediary role or the housing counseling programs of their affiliates. To the maximum extent possible, the State housing finance agency and its affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding.

(e) *Program Award Period.* Housing Counseling grants are fundable for a

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period of twelve (12) calendar months. This period may begin from the date that the award is executed by HUD, or not more than 90 days prior thereto.

(D) Eligible Applicants

Under the housing counseling program, HUD contracts with qualified public or private nonprofit organizations to provide the services authorized by the statute. Currently there are approximately 1250 HUD-approved local housing counseling agencies, including branch offices, and approximately 13 HUD-approved intermediary organizations. Annually, all HUD-approved agencies and intermediaries are eligible to apply for housing counseling grants. *However, an agency or intermediary that is approved by HUD, or a state housing finance agency does not automatically receive HUD funding. HUD expects that all agencies, intermediaries and state housing finance agencies will continually work to develop other funding resources.* In FY 1997, 350 HUD-approved local housing counseling agencies and 5 HUD-approved national, regional, and multi-state intermediaries received funding from HUD. For the first time, under this SuperNOFA, HUD is encouraging State housing finance agencies, that perform housing counseling functions either as a practitioner and/or as an intermediary to local or statewide housing counseling affiliates, to apply for funding.

(1) Three types of organizations are eligible to submit applications in accordance with this Housing Counseling Program section to this SuperNOFA:

(a) HUD-approved national, regional, or multi-state housing counseling organizations (also known as "intermediaries" or "umbrella groups");

(b) HUD-approved local housing counseling agencies; and,

(c) State housing finance agencies.

(2) National, regional, and multi-state intermediaries; and State housing finance agencies must identify all their proposed affiliates in their application.

Note: National, regional, and multi-state intermediaries must assure that their proposed affiliates are unique to their team, and will *not* undertake a separate application for funds, either as an affiliate of another intermediary or State housing finance agency, or directly as a HUD-approved local housing counseling agency. Should any duplication occur, both the intermediary and the local housing counseling agency involved will automatically be ineligible for further consideration to receive FY 1998 housing counseling funds.

(a) An intermediary and State housing finance agency applicant must also assure that it will execute a sub-grant agreement with its affiliates that clearly delineates their mutual responsibilities for program management, and includes appropriate time frames for reporting results to HUD. Once funded, the national, regional, and multi-state intermediaries and state housing finance agencies will be given broad discretion in implementing their housing counseling programs.

(b) On behalf of HUD, the intermediaries and State housing finance agencies will act as managers in the housing counseling process, and as such, may determine funding levels and counseling activity for each of their affiliates, except that no single affiliate may receive more than $100,000. HUD will hold the intermediary and State housing finance agency accountable for the performance of its affiliates.

(c) Local housing counseling agencies may apply either directly to HUD for funding, or as a part of an affiliated intermediary or state housing finance agency network. Continuation of funding for housing counseling activities, as a separate and discrete program for FY 1999, and thereafter, is not guaranteed. Therefore, HUD encourages local housing counseling agencies to consider affiliating with a larger entity as one avenue of possible future funding and support for local programs.

(d) Local housing counseling agencies that are not currently HUD-approved, may receive FY 1998 funding only as an affiliate of a HUD-approved national, regional, or multi-state intermediary; or State housing finance agency. In this instance, the intermediary or State housing finance agency must certify that the quality of services provided will meet, or exceed, standards for local HUD-approved housing counseling agencies.

(E) Eligible Activities

Eligible activities will vary depending upon whether the applicant is a HUD-approved local housing counseling agency; a HUD-approved national, regional, or multi-state housing counseling intermediary, or affiliate; or, a State housing finance agency, or affiliate.

(1) *Comprehensive Housing Counseling.* Local Housing Counseling Agencies funded under this SuperNOFA may use HUD funds to deliver comprehensive housing counseling, or to specialize in the delivery of particular housing counseling services, according to the housing needs they identified for their target area in the plan that is part of its application. HUD recognizes that local housing counseling agencies may offer a wide range of services, including:

(a) *Homebuyer Education Programs* where HUD's Homebuyer Education and Learning Program (HELP) materials are used in sessions that consist of approximately sixteen (16) hours of training. Completion of the training may allow graduates to receive first-time homebuyer incentives, such as, the reduction in the FHA insurance premium. Marketing and Outreach personnel at each HUD Homeownership Center will be available to assist agencies in this endeavor.

(b) *Pre-purchase Homeownership Counseling* covering such issues as purchase procedures, mortgage financing, down payment/closing cost fund accumulation, accessibility requirements of the property, and if appropriate, credit improvement, and debt consolidation.

(c) *Post-purchase Counseling* including such issues as property maintenance, and personal money management.

(d) *Mortgage delinquency and default resolution counseling* including restructuring debt, arrangement of reinstatement plans, loan forbearance, and loss mitigation.

(e) *Home Equity Conversion Mortgage (HECM) counseling* that assist clients, who are 62 years old or older, with the complexities of converting the equity in their home to income that is used to pay living expenses or medical expenses.

(f) *Loss Mitigation Counseling* for clients who may be facing default and foreclosure, and need mortgage default resolution and foreclosure avoidance counseling.

(g) *Outreach Initiatives* including providing general information about housing opportunities within the community and providing appropriate information to persons with disabilities.

(h) *Renter Assistance* including information about rent subsidy programs, rights and responsibilities of tenants, and lease and rental agreements.

(2) *Housing Counseling Clients.* HUD-funded local housing counseling agencies may elect to offer their services to a wide range of clients, or may elect to serve a more limited audience, provided limitations do not violate the requirements of the Fair Housing Act. Potential clients include: first-time homebuyers, homebuyers and homeowners eligible for, and applying for, HUD, VA, FmHA (or its successor agency), State, local, or conventionally financed housing or housing assistance; or persons who occupy such housing and seek the assistance of a HUD-approved housing counseling agency to

resolve a housing need. This includes accessible housing needs for persons with disabilities, renters, or, persons age 62 or older, who wish to convert the equity in their home to avoid default/foreclosure, pay medical expenses or create an income stream that can be used to pay living expense. Local housing counseling agencies may elect to offer this assistance in conjunction with any HUD housing program; however, they must be familiar with FHA's single family and multifamily housing programs.

(3) *National, Regional, or Multi-State Counseling Intermediaries.* The primary activity of HUD-approved national, regional, or multi-state intermediaries will be to manage the use of HUD housing counseling funds. This includes the distribution of housing counseling funding to affiliated local housing counseling agencies. Local affiliates of the selected national, regional, or multi-state intermediaries are eligible to undertake any or all of the housing counseling activities, described herein for the HUD-approved local housing counseling agencies. The local affiliates receiving funding through intermediaries do not need to be HUD-approved in order to receive these funds from the intermediary. However, the national, regional, or multi-state intermediary organization must be HUD-approved, as of this SuperNOFA publication date.

(4) *State Housing Finance Agencies.* The primary activity of State housing finance agencies will be to provide housing counseling services as a local housing counseling agency and/or manage the use of HUD housing counseling funds, including the distribution of counseling funding to its affiliated local housing counseling organizations. The State housing finance agency, and its local affiliates, are eligible to undertake any or all of the housing counseling activities, described herein, for the HUD-approved local housing counseling agencies. The State housing finance agencies, as either a housing counseling agency or intermediary, and it local affiliates do not need to be HUD-approved in order to receive these funds.

II. Program Requirements

In addition to the requirements listed in the General Section of the SuperNOFA. In addition, the following requirements apply.

Requirements Applicable to Religious Organizations. Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate a housing counseling program, the organization must undertake its responsibilities under the counseling program in accordance with the following principles:

(1) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for counseling under the program on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion; and

(3) It will provide no religious instruction or religious counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the Housing Counseling Program.

III. Application Selection Process

(A) General

Applications will be evaluated competitively, and ranked against all other applicants that have applied for the same funding program. However, after selection, the actual amount funded will be based on successful completion of negotiations. There will be separate rankings for each program, and applicants will be ranked only against others that applied for the same program. National, regional, and multi-State applications will be rated and ranked in HUD Headquarters, and selected for funding in rank order. Local agency applications will be rated and ranked by the HUD Homeownership Centers and selected for funding in rank order.

(B) Competitive Categories/Selection Parameters

All applications meeting the requirements of this SuperNOFA will be rated/ranked/selected for funding within their competitive category. The competitive categories are:

(1) HUD-approved housing counseling agency applicants within the HUD Homeownership Center's jurisdiction;

(2) HUD-approved national, regional, or multi-state intermediaries; and

(3) State housing finance agencies.

Intermediaries and State housing finance agencies, in their role as intermediary, will award sub-grants to affiliates.

(C) Factors for Award Used To Rate and Rank Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for each applicant is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which the proposal demonstrates:

The rating of the "applicant" or the "applicant's organization and staff" for technical merit will include any subcontractors, consultants, subrecipients, and members of consortia that are identified as participants in the project.

(a) (10 points) The knowledge and experience of the proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. To demonstrate that the applicant has sufficient personnel, the applicant must submit the proposed number of staff years by the employees and experts to be allocated to the project, the titles and relevant professional background and experience of each employee and expert proposed to be assigned to the project, and the roles to be performed by each identified employee and expert.

(b) (10 points) The applicant's past experience in terms of its ability to attain demonstrated measurable progress in the implementation of its most recent activities where performance has been assessed as measured by expenditures and measurable progress in achieving the purpose of the activities. HUD will also consider any documented evidence of the grantee's failure under past awards to comply with grant award provisions.

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Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area. To the extent that the community served by the housing counseling organization has documented the need in the community's Consolidated Plan or Analysis of Impediments to Fair Housing Choice (AI), or requirements of court orders or consent decrees, settlements and voluntary compliance agreements. References to these documents should be included in the response. If the proposed activities are not covered under the scope of the Consolidated Plan or AI, applicants should indicate such and use other sound data sources to identify the level of need for the proposed activity.

In responding to this factor, applicants will be evaluated on the extent to which they document a critical level of need for the proposed activities in the area where activities will be carried out.

The documentation of need should demonstrate the extent of the problem being addressed by the proposed activities. Examples of data that might be used to demonstrate need, include, but is not limited to, economic and demographic data relevant to the target area. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and effectiveness of the applicant's proposed work plan. In rating this factor, HUD will consider the following:

(1) The extent to which the proposed design and scope of the activities provide for geographic coverage for target areas as well as persons traditionally underserved, including identification of immediate benefits to be achieved and indicators by which these benefits will be measured;

(2) The extent to which the applicant has a clear agenda of the work activities to be performed;

(3) Proposed tasks that use technically competent methodologies that have been documented for conducting the work to be performed. HUD will make an evaluation of the applicant's soundness of approach by assessing the extent to which the proposed work plan identifies documented methodologies for the types of services to be performed.

(4) Relationship between the proposed activities, community needs and the purpose of the program funding.

(5) Affirmatively furthering fair housing may be undertaken in a variety of ways, as appropriate to the community. Making counseling offices and services accessible to persons with a wide range of disabilities and helping such persons to locate suitable housing in locations throughout the metropolitan or community area are suggested for both national, regional, or multi-state housing counseling organization, as well as for local counseling agencies. The following are additional suggestions:

(a) *For National, Regional, or Multi-State Intermediaries and State Housing Finance Agencies.*

(i) Implement affirmative marketing strategies to attract all segments of the population listed as prohibited bases in the Fair Housing Act, who are least likely to apply for housing counseling to purchase or retain their homes.

(ii) Taking actions to reduce concentrations of poverty and/or minority populations. This could include working with, or adopting the counseling practices of, agencies which conduct opportunity counseling to encourage low-income and minority persons to move to low-concentration areas and helping to locate suitable housing in such areas. It could also include working with local lenders to develop alternative lending criteria: For instance, the counseling agency may make referrals to the lenders of clients with good credit and payment histories, but who do not fit the standard profiles for lending practices or of clients with financial patterns which reflect cultural differences (such as family savings pools common among some Asian populations). Such activity should also focus on finding appropriate housing, free from environmental hazards, for all segments of the population in neighborhoods with good transportation, schools, employment opportunities, and other services.

(b) *For Local Housing Counseling Agencies.* Participate in local fair housing strategies with major emphasis on remedying the effects of past discrimination and limitations in the community. This could include: working with CPD Entitlement Jurisdictions to help to identify impediments to fair housing choice which have been identified in the process of working with clients; becoming familiar with the jurisdiction's identified impediments and adjusting its counseling activities to help overcome these impediments; and/or working with other public and private resources to develop fair housing strategies applicable to the counseling activities, on a community-wide or metropolitan-wide basis. HUD also will evaluate the extent to which the proposed work plan contains community awareness, education and outreach programs.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources which can be combined with HUD's program resources to achieve program purposes.

In evaluating this factor HUD will consider:

(1) The extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

(2) Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memoranda of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

To the maximum extent possible, local counseling agencies also must seek other private and public sources of funding to supplement HUD funding. HUD never intends for its counseling grant funds to cover all costs incurred by an agency participating in the program.

Local housing counseling agencies may use the HUD grant to undertake any of the eligible housing counseling activities described in this Housing Counseling Program section of the SuperNOFA and included in their HUD-approved plan.

Note: HUD housing counseling funding is not intended to fully fund, either the intermediary's housing counseling program, or the housing counseling programs of the its local affiliates. To the maximum extent possible, intermediaries and their local affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements or memoranda of understanding in place should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/ activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community(s) served.

IV. Application Submission Requirements

(A) General

Contents of an application will differ somewhat for: local housing counseling agencies; national, regional, or multi-state intermediaries; and, State housing finance agencies. However, all applicants are expected to submit the forms, certifications and assurances set forth in the General Section of the NOFA. Copies of all form/documents required to be completed by an applicant can be found in the application kit. In addition to these certifications and assurances the following are required to be part of the housing counseling application:

(1) Form HUD–9902, Housing Counseling Agency Fiscal Year Activity Report, for fiscal year October 1, 1996 through September 30, 1997. Where an applicant did not participate in HUD's Housing Counseling Program during FY 1997, this report should be completed to reflect the agency's counseling workload during that period. This form must be fully completed and submitted by every applicant for FY 1998 HUD funding;

(2) Computer Equipment Inventory (if applicable);

(3) Budget Work Sheet. A realistic, proposed budget for use of HUD funds, if awarded. This should be broken down into two categories (i) direct housing counseling costs and (ii) capacity building costs:

(4) Exhibits for national, regional, multi-state, or agencies and State housing finance agencies as described in (2)(a)–(2)(c) below and in the application kit;

(5) Evidence of Housing Counseling Funding Sources (required by all applicants);

(6) Descriptive Narrative—Each applicant is to provide a descriptive narrative that sets forth the prior fiscal year's performance as related to its goals, objectives and mission. The narrative describes the most recent operational and program activities of the organization;

(7) Current Housing Counseling Plan. The plan describes the applicant's housing counseling needs, goals, and objectives as related to the scope of services it will provide, including a description of counseling activities to be performed.

(8) A description of organization capability;

(9) Direct-labor and Hourly-labor rate and Counseling Time Per Client;

(10) Congressional District Information;

(11) State housing finance agencies must submit their statutory background that created the respective agency, and sets forth its authorities to operate as a State housing finance agency.

(B) National, Regional, and Multi-State Intermediaries; and State Housing Finance Agencies

National, regional, and multi-state intermediaries; and, State housing finance agencies; must submit an application which covers both their network organization and their affiliated agencies. This application must include:

(1) *Description of affiliated agencies.* For each, list the following information:

(a) Organization name;

(b) Address;

(c) Director and contact person (if different);

(d) Phone/FAX numbers (including TTY, if appropriate);

(e) Federal tax identification number;

(f) ZIP code service areas;

(g) Number of staff providing counseling;

(h) Type of services offered (defined by homebuyer education programs, pre-purchase counseling, post-purchase counseling, mortgage default and delinquency counseling, HECM counseling, outreach initiatives, renter assistance, and other);

(i) Number of years of housing counseling experience.

(2) *Relationship with Affiliates.* Briefly describe the intermediary's, or State housing finance agency's, relationship with affiliates (i.e. membership organization, field or branch offices, subsidiary organizations, etc.).

(3) *Oversight System.* Describe the process that will be used for determining affiliate funding levels, distributing funds, and monitoring affiliate performance.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9) and (12) of the HUD regulations, activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Lead-Based Paint Hazard Control Program

BILLING CODE 4210–32–C

Funding Availability for the Lead-Based Paint Hazard Control Program

Program Description: Approximately $50 million is available in funding for the Lead-Based Paint Hazard Control Program. Lead-Based Paint Hazard Control grants assist State and local governments in undertaking programs for the identification and control of lead-based paint hazards in eligible privately-owned housing units for rental occupants and owner-occupants.

Application Due Date: An original and two copies of the completed application must be received by HUD no later than 12:00 midnight, Eastern time on June 1, 1998 at HUD Headquarters. See the General Section of this SuperNOFA of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: The completed application (original and two copies) must be submitted to: Office of Lead Hazard Control, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW, Washington, DC 20410. Hand carried applications should be delivered to Suite 3206, 490 East L'Enfant Plaza, Washington, DC, 20024.

For Application Kits, Further Information, and Technical Assistance:

For Application Kits: For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. When requesting an application kit, please refer to the Lead-Based Paint Hazard Control Grant Program. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

For Further Information: Ellis G. Goldman, Director, Program Management Division, Office of Lead Hazard Control, at the address above; telephone (202) 755–1785, extension 112 (this is not a toll-free number). Hearing- and speech-impaired persons may access the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For Technical Assistance: Please refer to the General Section of this SuperNOFA for information regarding the provision of technical assistance. The HUD staff that will provide technical assistance for the Lead-Based Paint Hazard Control Program is in HUD's Office of Lead Hazard Control. Please see the "For Further Information" section above for the address and phone number.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The Lead-Based Paint Hazard Control Program is authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992) (Title X).

(B) Purpose

(1) Lead-Based Paint Hazard Control (LBPHC) grants are to assist State and local governments in undertaking programs for the identification and control of lead-based paint hazards in eligible privately-owned housing units for rental occupants and owner-occupants. The application kit for this LBPHC Program section of the SuperNOFA lists HUD-associated housing programs that may have housing units meeting the definition of eligible housing. Because lead-based paint is a national problem, these funds are awarded in a manner that:

(a) Maximizes the number of housing units where lead-hazards have been controlled;

(b) Stimulates cost-effective State and local approaches that can be replicated in as many settings as possible;

(c) Disperses the grants as widely as possible across the nation to ensure the capacity developed is geographically distributed;

(d) Builds local capacity; and

(e) Affirmatively furthering fair housing and environmental justice.

(2) The objectives of this program include:

(a) Implementation of a national strategy, as defined in Title X, to build the infrastructure necessary to eliminate lead-based paint hazards in all housing, as widely and expeditiously as possible;

(b) Encouragement of effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard identification and control;

(c) Mobilization of public and private resources, involving cooperation among all levels of government and the private sector, to develop the most promising, cost-effective methods for identifying and controlling lead-based paint hazards;

(d) Integration of lead-safe work practices into housing maintenance, repair, and improvements;

(e) Integration of lead hazard control into rehabilitation, weatherization, and other related programs;

(f) Development of sustainable lead-safe programs (beyond the life of the grant);

(g) Establishment of a publicly accessible registry of lead-safe housing; and

(h) To the greatest extent feasible, promoting job training, employment, and other economic opportunities for low-income and minority residents and businesses which are owned by and/or employ low-income and minority residents as defined in 24 CFR 135.5 (See 59 FR 33881, June 30, 1994).

(C) Amount Allocated

(1) Fifty million dollars ($50 million) will be made available for the grant program from the appropriations made for the Lead-Based Paint Hazard Reduction Program.

(2) Approximately 15–25 grants of $1 million–$4 million each will be awarded. Previously unfunded applicants are eligible to apply for grants of $1 million–$4 million. Existing grantees are eligible to apply for grants of $1 million–$3 million. A maximum of 50% of the Funds under this LBPHC Program section of the SuperNOFA shall be available to current Lead-Based Paint Hazard Control grantees. Applications of existing grantees will be evaluated and scored as a separate class and will not be in direct competition with previously unfunded applicants.

(3) In the selection process, once available funds have been allocated to meet the requested or negotiated amounts of the top eligible applicants, HUD reserves the right, in successive order, to offer any residual amount as partial funding to the next eligible applicant provided HUD, in its sole judgment, is satisfied that the residual amount is sufficient to support a viable, though reduced effort, by such applicant(s). Such applicant(s) shall have a maximum of seven (7) calendar days to accept such a reduced award, or shall be considered to have declined the award. Applicant(s) may reapply in a future round.

(D) Eligible Applicants

(1) Applicants must be a State or unit of local government that has a currently approved Consolidated Plan to be eligible to apply for a grant. Applicants under this LBPHC Program section of the SuperNOFA must submit documentation that HUD has approved their current program year Consolidated Plan. Applicants must submit, as an appendix, a copy of the lead-based paint element included in the approved Consolidated Plan.

(2) Applicants that do not have a currently approved Consolidated Plan,

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but are otherwise eligible for this grant program, must include their abbreviated Consolidated Plan which includes a lead-based paint hazard control strategy developed and submitted in accordance with 24 CFR 91.235.

(3) Applicants that were funded under Category A of the FY 1997 LBPHC NOFA issued June 3, 1997 (61 FR 30380) are not eligible for this round of funding.

(E) Eligible Activities

(1) Funds shall be available only for projects conducted by contractors, risk assessors, inspectors, workers and others engaged in lead-based paint activities who meet the requirements of a State Lead-Based Paint Contractor Certification and Accreditation Program that is at least as protective as the Federal certification program standards outlined in the application kit to this LBPHC Program section of the SuperNOFA or which meets the requirements of a State program authorized by EPA under the requirements of section 404 of the Toxic Substances Control Act (TSCA).

(2) HUD is interested in promoting lead hazard control approaches that result in the reduction of this health threat for the maximum number of low-income residents, and that demonstrate replicable techniques which are cost-effective and efficient. The following direct and support activities are eligible under this grant program.

(a) *Direct Project Elements* (activities of the grantee and all sub-grantees):

(i) Performing risk assessments, inspections and testing of eligible housing constructed prior to 1978 to determine the presence of lead-based paint, lead dust, or leaded soil through the use of acceptable testing procedures.

(ii) Conducting pre-hazard control blood lead testing of children under the age of six residing in units undergoing risk assessment, inspection or hazard control.

(iii) Conducting lead hazard control which may include any combination of the following: interim control of lead-based paint hazards in housing (which may include intensive cleaning techniques to address lead dust); hazard abatement for programs that apply a differentiated set of resources to each unit (dependent upon conditions of the unit and the extent of hazards); and abatement of lead-based paint hazards, including soil and dust, by means of removal, enclosure, encapsulation, or replacement methods. *Complete abatement of all lead-based paint is not recommended as a cost effective strategy except under exceptional circumstances.*

(iv) Carrying out temporary relocation of families and individuals during the period in which hazard control is conducted and until the time the affected unit receives clearance for reoccupancy.

(v) Performing blood lead testing and air sampling to protect the health of the hazard control workers, supervisors, and contractors.

(vi) Undertaking minimal housing rehabilitation activities that are specifically required to carry out effective hazard control, and without which the hazard control could not be completed and maintained. Grant funds under this program may also be used for the lead-based paint hazard control component in conjunction with other housing rehabilitation programs.

(vii) Conducting pre-hazard control and clearance dust-wipe testing and analysis.

(viii) Carrying out engineering and architectural costs that are necessary to, and in direct support of, lead hazard control.

(ix) Providing lead-based paint worker or contractor certification training and/or licensing to low-income persons.

(x) Providing training on lead-safe maintenance practices to homeowners, renters, painters, remodelers, and apartment maintenance staff working in low income housing.

(xi) Providing cleaning supplies for lead-hazard control to community/neighborhood-based organizations, homeowners, and renters in low income housing.

(xii) Conducting general or targeted community awareness or education programs on lead hazard control and lead poisoning prevention. This activity would include educating owners of rental properties on the provisions of the Fair Housing Act and training on lead-safe maintenance and renovation practices. It would also include making all materials available in alternative formats for persons with disabilities (e.g.; Braille, audio, large type), upon request.

(xiii) Securing liability insurance for lead-hazard control activities.

(xiv) Supporting data collection, analysis, and evaluation of grant program activities. This includes compiling and delivering such data as may be required by HUD. This activity is separate from administrative costs.

(xv) Applied research activities directed at demonstration of cost effective methods for lead hazard control as described in Section III of this LBPHC Program section of the SuperNOFA.

(xvi) Preparing a final report at the conclusion of grant activities.

(b) *Support Elements.*

(i) Administrative costs of the grantee. There is a 10% maximum for administrative costs.

(ii) Program planning and management costs of sub-grantees and other sub-recipients.

(3) *Ineligible Activities.* Grant funds shall not be used for:

(a) Purchase of real property.

(b) Purchase or lease of capital equipment having a per unit cost in excess of $5,000, except for X-ray fluorescence analyzer (XRF). If purchased, capital equipment (under $5,000) and the XRF analyzers shall remain the property of the grantee at the conclusion of the project. Funds may be used, however, to lease equipment specifically for the Lead-Based Paint Hazard Control Grant Program. If leased equipment becomes the property of the grantee as the result of a lease arrangement, it may remain the property of the grantee at the end of the grant period; and

(c) Chelation or other medical treatment costs related to children with elevated blood lead levels. Non-Federal funds used to cover these costs may be counted as part of the required matching contribution.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) General

Grantees will be afforded considerable latitude in designing and implementing the methods of lead-based paint hazard control to be employed in their jurisdictions. Experience and data from past and ongoing evaluations has identified effective approaches. HUD is interested in promoting lead hazard control approaches that result in the reduction of this health threat for the maximum number of low-income residents, and that demonstrate replicable techniques which are cost-effective and efficient. Flexibility will be allowed within the parameters established below.

(B) Budgeting

(1) *Matching Contribution.* Each grantee shall provide a matching contribution of at least 10% of the requested grant sum. This may be in the form of a cash or in-kind contribution or a combination of both. Federal funds from other programs cannot constitute matching funds, with the exception of Community Development Block Grant (CDBG) funds. Applicants who do not

show a 10% match will be required to provide the matching contribution during grant negotiations.

(2) *Applied Research Activities.* A maximum of five (5%) percent of the total grant request may be identified for applied research activities.

(3) *Administrative Costs.* There is a 10% maximum for administrative costs.

(C) Period of Performance

The period of performance cannot exceed 36 months.

(D) Certified Performers

Funds shall be available only for projects conducted by certified contractors, risk assessors, inspectors, workers and others engaged in lead-based paint activities. An applicant must provide the documents listed in Section IV(A)(4) of this LBPHC section of the SuperNOFA to demonstrate its compliance with this requirement.

(E) Coastal Barrier Resources Act

Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), grant funds may not be used for properties located in the Coastal Barrier Resources System.

(F) Flood Disaster Protection Act

Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), grant funds may not be used for construction, reconstruction, repair or improvement or lead-based paint hazard control of a building or mobile home which is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the applicable regulations (44 CFR 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). Applicants are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(G) National Historic Preservation Act

The National Historic Preservation Act of 1966 (16 U.S.C. 470) (NHPA) and the regulations at 36 CFR part 800 apply to the lead-based paint hazard control activities that are undertaken pursuant to this program. HUD and the Advisory Council for Historic Preservation have developed an optional Model Agreement (See the application kit for this program) for use by grantees and State Historic Preservation Officers in carrying out activities under this program.

(H) Waste Disposal

Waste disposal will be handled according to the requirements of the appropriate local, State or Federal regulatory agency. Disposal of wastes from hazard control activities that contain lead-based paint but are not classified as hazardous will be handled in accordance with the HUD *Guidelines for the Evaluation and Control of Lead-Based Hazards in Housing* (HUD *Guidelines*).

(I) Worker Protection Procedures

The applicant shall observe the procedures for worker protection established in the HUD Guidelines, as well as the requirements of the Occupational Health and Safety Administration (OSHA) (29 CFR 1926.62—Lead Exposure in Construction), or the State or local occupational safety and health regulations, whichever are most stringent. If other applicable OSHA requirements contain more stringent requirements than the HUD *Guidelines*, the OSHA standards shall govern.

(J) Prohibited Practices

Lead hazard control methods which are considered prohibited practices are not allowed. The applicant is cautioned that methods that generate high levels of lead dust, such as abrasive sanding, shall be undertaken only with requisite worker protection, containment of dust and debris, suitable clean-up, and clearance. Prohibited practices are practices which are not allowed because of the risks to health. Prohibited practices include:

(1) Open flame burning or torching;

(2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) exhaust control;

(3) Uncontained hydroblasting or high pressure wash;

(4) Abrasive blasting or sandblasting without HEPA exhaust control;

(5) Heat guns operating above 1100 degrees Fahrenheit;

(6) Chemical paint strippers containing methylene chloride; and

(7) Dry scraping or dry sanding, except scraping in conjunction with heat guns or around electrical outlets or when treating no more than two (2) square feet in any one interior room or space, or totaling no more than 20 square feet on exterior surfaces.

(K) Proposed Modifications From Current Procedures

Proposed methods requiring a variance from currently approved standards or procedures will be considered on their merits through a separate HUD review and approval process after the grant award is made and a specific justification has been presented. When such a request is made, either in the application or during the planning phase, HUD may consult with experts from both the public and private sector as part of its final determinations and will document its findings in an environmental assessment. Proposed modifications which involve a lowering of standards with potential to adversely affect the health of residents, contractors or workers, or the quality of the environment will not be approved.

(L) Written Policies and Procedures

Written policies and procedures for all phases of lead hazard control, including risk assessment, inspection, development of specifications, pre-hazard control blood lead testing, financing, relocation and clearance testing must be clearly established in writing and adhered to by all grantees, subcontractors, sub-grantees, sub-recipients, and their contractors.

(M) Continued Availability of Lead Safe Housing to Low-Income Families

Units in which lead hazards have been controlled under this program shall be occupied by and/or continue to be available to low-income residents as required by Title X. Grantees are required to maintain a registry of units in which lead hazards have been controlled for distribution and marketing to agencies and families as suitable housing for children under six.

(N) Development of Application Cost Proposal

In developing the application cost proposal, applicants shall include costs for the pre- and post-hazard control testing for each dwelling that will undergo either a lead-based paint risk assessment and/or inspection and hazard control according to HUD *Guidelines*, as follows:

(1) *XRF on-site (or supplementary laboratory) testing.* Such testing must be conducted according to the HUD *Guidelines, with particular attention to the 1997 revision of its chapter 7 on lead-based paint inspection.* The applicant must pretest every room or area in each dwelling unit planned for hazard control, using each XRF analyzer in accordance with its manufacturer's operating instructions and its

Performance Characteristics Sheet (PCS);

(2) *Blood lead testing.* Before lead hazard control work begins, the applicant must test each occupant who is a child under six years old according to the recommendations contained in *Preventing Lead Poisoning in Young Children* (1991), published by the Centers for Disease Control and Prevention (CDC).

(3) *Dust testing.* Such testing must be conducted according to the HUD *Guidelines.* Specifically, the applicant must pre-test before lead hazard control work begins, and conduct a clearance test before reoccupying a unit or area.

(4) *Testing.*

(a) *General.* All testing and sampling shall conform to the HUD *Guidelines.* It is particularly important to provide this full cycle of testing for hazard control, including interim controls.

(b) *Required Thresholds for Hazard Control.* While the HUD *Guidelines* employ two hazard control thresholds, one milligram per square centimeter (1.0 mg/cm²) or 0.5% by weight, applicants may use other thresholds, provided that the alternative threshold is justified adequately and is accepted by HUD. The justification must state why the applicant believes the proposed threshold will provide satisfactory health protection for occupants, and cost savings and benefits expected to result from using the proposed approach.

(c) *Surfaces which require lead hazard control.* The HUD *Guidelines* identify hazards considered to be of greatest threat to young children which require hazard control. Friction surfaces are subject to abrasion and may generate lead-contaminated dust in the dwelling; chewable surfaces are protruding surfaces that are easily chewed on by young children; and impact surfaces may become deteriorated through forceful contact. The applicant may choose to treat fewer surfaces or apply other hazard control techniques, provided that an adequate rationale, including periodic monitoring, is presented to and accepted by HUD. The rationale must state why the proposed approach will provide satisfactory health protection for occupants and at the same time, provide cost savings or other benefits.

(d) *Clearance thresholds.* Grantees are required to meet the post-hazard control dust-wipe test clearance thresholds contained in the HUD *Guidelines.* Wipe tests shall be conducted by a certified inspector who is independent of the lead hazard control contractor. Dust-wipe and soil samples, and any paint samples to be analyzed by a laboratory, must be analyzed by a laboratory recognized by the Environmental Protection Agency's National Lead Laboratory Accreditation Program (NLLAP). Units shall not be reoccupied until clearance levels are achieved.

(O) Cooperation With Related Research and Evaluation

Applicants shall cooperate fully with any research or evaluation sponsored by HUD and associated with this grant program, including preservation of the data and records of the project and compiling requested information in formats provided by the researchers, evaluators or HUD. This cooperation may also include the compiling of certain relevant local demographic, dwelling unit, and participant data not contemplated in the applicant's original proposal. Participant data shall be subject to Privacy Act protection.

(P) Data Collection

Grantees will be required to collect and maintain the data necessary to document the various lead hazard control methods used in order to determine the effectiveness and relative cost of these methods.

(Q) Environmental Requirements

(1) In accordance with HUD regulations in 24 CFR part 58 recipients of lead-based paint hazard control grants will assume Federal environmental review responsibilities. Recipients of a grant under this program will be given guidance in these responsibilities.

(R) Section 3 Employment Opportunities

Please see Section II(E) of the General Section of this SuperNOFA. The requirements of Section 3 are applicable to the Lead-Based Paint Hazard Control Program.

(S) Forms, Certifications and Assurances

In addition to the forms, certifications and assurances listed in the General Section of this SuperNOFA, applicants are required to submit signed copies of the following:

(1) A certification of compliance with the environmental laws and authorities described in 24 CFR part 58.

(2) A certification of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 49 CFR 24; and HUD Handbook 1378 (Tenant Assistance, Relocation and Real Property Acquisition).

(3) An assurance that the applicant's financial management system meets the standards for fund control and accountability described in 24 CFR 85.20.

(4) An assurance that pre-hazard control and clearance testing will be conducted by certified performers.

(5) An assurance that, to the extent possible, the blood lead testing, blood lead level test results, and medical referral and follow up will be conducted for children under six years of age occupying affected units according to the recommendations of the Centers for Disease Control and Prevention (CDC) publication *Preventing Lead Poisoning in Young Children* (1991).

(6) An assurance that Lead-Based Paint Hazard Control Grant Program funds will not replace existing resources dedicated to any ongoing project.

(7) An assurance that the housing units in which lead hazards have been controlled under this program shall be occupied by and/or continue to be available to low-income residents as required by Title X. Grantees are required to maintain a registry of units in which lead hazards have been controlled for distribution and marketing to agencies and families as suitable housing for children under six.

(8) A certification that the applicant will carry out its lead hazard control program under an operational State program established pursuant to lead-based paint contractor certification and accreditation legislation that is at least as protective as the training and certification program requirements cited in the application kit for this LBPHC Program section of the SuperNOFA.

III. Application Selection Process

(A) Rating and Ranking

HUD intends to fund the highest ranked applications within the limits of funding, but reserves the right to advance other eligible applicants in funding rank based on the following considerations which will: foster either local approaches or lead hazard control methods which have not been employed before, or provide lead hazard control services to populations or communities that have high need (as measured by the "Need" factor for award) and have never received funding under this grant program.

(B) Factors for Award Used to Evaluate and Rate Applications

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points to be awarded is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

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Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (15 Points for Previously Unfunded Applicants; 25 Points for Existing Grantees)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicant's staff" for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor, HUD will consider the extent to which the proposal demonstrates:

(1) Recent, relevant and successful experience of the applicant's staff to undertake eligible program activities. Applicants must describe the knowledge and experience of the proposed overall project director and day-to-day program manager in planning and managing large and complex interdisciplinary programs, especially involving housing rehabilitation, public health, or environmental programs. As an appendix, the applicant should include a clearly identified organizational chart for the lead hazard control grant program effort, as well as resumes, position descriptions, and salaries of key personnel identified to carry out the requirements of this grant program. Applicants must indicate the percentage of time that key personnel will devote to the project and any salary costs to be paid by the grant. A full-time day-to-day program manager is highly recommended.

(2) That the applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to immediately begin the proposed work program and to deliver the proposed activities in each proposed service area in a timely and effective fashion. The application must describe how other principal components of the applicant agency or other organizations will participate in or otherwise support the grant program. The institutional capacity of the applicant may be demonstrated by prior experience in initiating and implementing lead hazard control efforts and/or related environmental, health, or housing projects and should be thoroughly described. The applicant should indicate how this prior experience will be used in carrying out its planned comprehensive Lead-Based Paint Hazard Control Grant Program.

(3) If the applicant received HUD Lead Hazard Control Grant funding in previous years, the applicant's past experience will be evaluated in terms of its progress in achieving the purpose of its previous grant. An existing grantee applicant must provide a description of its progress in implementing its most recent grant award within the period of performance, including the total number of housing units completed as of the latest calendar quarter.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area.

(1) The applicant must document a critical level of need for the proposed activities in the area where activities will be carried out. Specific attention must be paid to documenting need as it applies to the area where activities will be targeted, rather than the entire locality or state. If the target area is an entire locality or state, then documenting need at this level is appropriate.

(2) The documentation of need should demonstrate the extent of the problem being addressed by the proposed activities. Examples of data that might be used to demonstrate need, include, but are not limited to:

(a) Economic and demographic data relevant to the target area, including poverty and unemployment rates;

(b) Levels of homelessness;

(c) Lead poisoning rates;

(d) Housing market data available from HUD or other data sources including the Public Housing Authority's Five Year Comprehensive Plan, State or local Welfare Department's Welfare Reform Plan; or

(e) Lack of other Federal, State or local funding that could be, or is used, to address the problem HUD program funds are designed to address.

(3) To the extent that statistics and other data contained in the community's Consolidated Plan or Analysis of Impediments to Fair Housing Choice (AI) supports the extent of the problem, references to the Consolidated Plan and the AI should be included in the response.

(4) It is also desirable that the applicant provide information on the following for the applicant's jurisdiction, or more preferably, the areas targeted for the lead hazard control activities (data may be available in the applicant jurisdiction's currently approved Consolidated Plan, or derived from 1990 Census Data):

(a) The age and condition of housing;

(b) The number and percentage of very-low and low income families whose incomes do not exceed 80% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families;

(c) The number and proportion of children under six years of age (72 months) at risk of lead poisoning;

(d) The magnitude of the lead poisoning problem in children under six years of age in target areas;

(e) The health and economic impacts of Superfund or Brownfields sites on the targeted neighborhoods or communities; and

(f) Other socioeconomic or environmental factors that document a need to establish or continue lead hazard control work in the applicant's jurisdiction.

(5) The applicant must also provide documentation of the priority that the community's Consolidated Plan has placed on addressing the needs described by the applicant.

(6) Applicants that address needs that are in the Consolidated Plan, Analysis of Impediments to Fair Housing Choice, court orders or consent decrees, settlements, conciliation agreements, and voluntary compliance agreements will receive a greater number of points than applicants that do not relate their program to identified needs.

(7) There must be a clear relationship between the proposed activities, community needs, and the purpose of the program funding for an applicant to receive points for this factor.

Rating Factor 3: Soundness of Approach (45 Points for Previously Unfunded Applicants and 35 Points for Existing Grantees)

This factor addresses the quality and cost-effectiveness of the applicant's proposed work plan. This factor will allow applicants to present information on the proposed lead-based paint hazard control program and how it will satisfy the identified needs. The work plan and budget should include the following elements:

(1) *Lead Hazard Control Strategy* (30 points for previously unfunded applicants; 20 points for existing grantees). A description of the strategy to be used in planning and executing the lead hazard control grant program effort. Applicants should provide information on:

(a) *Implementing a Lead Hazard Control Program* (10 points for previously unfunded applicants; 5 points for existing grantees). The applicant must describe the overall strategy for the proposed lead hazard

control program. The description must include a discussion of:

(i) The applicant's previous experience in reducing or eliminating lead-based paint hazards in conjunction with other Federal, State or locally funded programs.

(ii) The applicant's overall strategy for the identification, selection, prioritization, and enrollment of units of eligible privately-owned housing in which lead hazard control will be undertaken.

(iii) The total number of owner occupied and/or rental units in which lead hazard control activities will be conducted.

(iv) The degree to which the work plan focuses on eligible privately-owned housing units with children under 6 years old. The applicant must describe the planned approach to control lead hazards before children are poisoned and/or to control lead hazards in units where children have already been identified with an elevated blood lead level. The applicant must also describe the process for the referral of children with elevated blood lead levels for medical case management.

(v) The financing mechanism, including eligibility criteria, terms, conditions, and amounts available, to be employed in carrying out lead hazard control activities. The applicant must discuss the way these funds will be administered (e.g. use of grants, deferred loans, forgivable loans, other resources, private sector financing, etc.) as well as the agency which will administer the process. The applicant should describe how the proposed program will satisfy the needs articulated or will assist in addressing the impediments in the AI. The applicant should describe how the proposed program will further and support the policy priorities of the Department, including promoting healthy homes; providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs; or providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners, and linking to AmeriCorps activities.

(b) *Lead Hazard Control Outreach and Community Involvement* (5 points). The applicant must describe:

(i) Proposed community awareness, education, training, and outreach programs in support of the work plan and objectives. This should include general and/or targeted efforts undertaken to assist the program in reducing lead poisoning. To the extent possible, programs should be culturally sensitive, targeted, and linguistically appropriate.

(ii) Proposed involvement of community or neighborhood based organizations in the performance of activities proposed by the applicant. These activities could include outreach, community education, marketing, inspection, and the actual conduct of lead hazard control activities.

(iii) Outreach strategies and methodologies to affirmatively further fair housing and provide lead-safe housing to all segments of the population: homeowners, owners of rental properties, and tenants; especially for occupants least likely to receive its benefits. Once the population to which outreach will be "targeted" is identified, (e.g.; homeowners who are racial minorities living in minority-concentrated areas or owners of properties with under-served tenants such as minority renters with young children), outreach strategies directed specifically to them should be multifaceted. This criterion goes beyond testing and hazard control; it concerns what happens to the units after the lead hazard control and tries to ensure that all families will have adequate, lead-safe housing.

(c) *Technical Approach for Conducting Lead Hazard Control Activities* (15 points for previously unfunded applicants; 10 points for existing grantees)

(i) The applicant must describe the process for the risk assessment and/or inspection of units of eligible privately-owned housing in which lead hazard control will be undertaken. Housing having a risk assessment or inspection already performed by certified inspectors or risk assessors in accordance with the HUD *Guidelines* and identified with lead-based paint hazards may be included in the inventory.

(ii) The applicant must describe the testing methods, schedule, and costs for performing blood lead testing, risk assessments and/or inspections to be used. If the applicant plans to use a standard more restrictive than the HUD thresholds (e.g. 0.5% or 1.0 mg/cm ^{2}), the applicant must identify the lead-based paint threshold for undertaking lead hazard control which will be used. All testing methods shall be performed in accordance with the HUD *Guidelines*.

(iii) The applicant must describe the lead hazard control methods to be undertaken and the number of units to be treated for each method selected (interim controls, hazard abatement, and complete abatement). The applicant must provide an estimate of the per unit costs (and a basis for those estimates) for each method the applicant plans to use in conducting lead hazard control activities. The applicant must also provide a schedule for initiating and conducting lead hazard control work in the selected units. The applicant should discuss efforts to incorporate cost-effective lead hazard control methods. If complete abatement is proposed, the applicant must describe the rationale for that decision, and explain why hazard control approaches were not proposed.

(iv) The applicant must describe its process for the development of work specifications for the selected lead hazard control method. The applicant must describe the management processes which will be used to ensure the cost-effectiveness of the lead hazard control methods. The application must include a discussion of the contracting process that will be used to obtain contractors to conduct lead hazard control activities in the selected units.

(v) The applicant must describe its plan for the temporary relocation of occupants of units selected for lead hazard control work. This discussion should address the use of safe houses and other housing arrangements, storage of household goods, stipends, incentives, etc.

(vi) Existing grantees must describe how the lead hazard control work being proposed in the application will occur concurrently with ongoing HUD lead hazard control grants.

(vii) Existing grantees must describe their progress in implementing their most recent lead hazard control grant award. If the production achieved is low and no changes are proposed, the applicant should explain why the strategy in the earlier grant remains appropriate.

(2) *Coordination with housing rehabilitation, housing and health codes, and other related housing programs* (7 points).

(a) The applicant must describe the degree to which lead hazard control work will be done in conjunction with other housing-related activities (i.e., rehabilitation, weatherization, removal of code violations, and other similar work), and the applicant's plan for the integration and coordination of lead hazard control activities into those activities.

(b) The applicant must describe how it plans to incorporate lead-based paint maintenance and hazard control standards with the applicable housing codes and health regulations.

(c) The applicant must describe how it plans to generate and use public subsidies or other resources (such as revolving loan funds) to finance future lead hazard control activities.

(d) The applicant must describe how it plans to develop public-private

lending partnerships to finance lead hazard control as part of acquisition and rehabilitation financing.

(e) The applicant must describe how it plans to develop and ensure the continued availability of a registry of publicly available information on lead-safe units, so that families (particularly those with children under age six) can make informed decisions regarding their housing options.

(f) Evidence of firm commitments from participating organizations should include:

(i) The name of each organization;

(ii) The capabilities or focus of each organization;

(iii) The proposed level of effort of each organization; and

(iv) The resources and responsibilities of each organization, including the applicant's clearly proposed plans for the training and employment of low-income residents.

(g) The applicant must describe its plan for the coordination of lead-based paint hazard control activities under this grant with lead-related Superfund or Brownfields efforts.

(h) The applicant must detail the extent to which the policy of fair housing for minorities and the disabled is furthered by the proposed activities. Detail how the applicant's work plan will support the community's efforts to further housing choices. Applicants with existing grants should discuss activities which have contributed to enhanced lead-hazard free housing opportunities to all segments of the population.

(3) *Economic Opportunity* (5 points). The applicant must describe the methods to be used which will result in economic opportunities for residents and businesses in the community. This discussion should include information on how employment, business development, and contract opportunities will be promoted as part of the lead hazard control program. The applicant should also describe how they will satisfy the requirements of Section 3 of the Housing and Community Development Act of 1992 to give preference to hiring of low and very low-income persons or contracting with businesses owned by or employing low- and very-low-income persons.

(4) *Program Evaluation and/or Data Collection* (3 Points) The applicant must identify the specific methods to be used (in addition to HUD reporting or data collection forms) to measure progress, evaluate program effectiveness, and make program changes to improve performance. The applicant should describe how the information will be obtained, documented, and reported. In addition, the applicant should provide a detailed description of any proposed applied research activities.

(5) *Budget* (Not Scored) The applicant's proposed budget (for the maximum 36 month period of performance) will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. HUD is not required to approve or fund all proposed activities. Applicants may devote up to 36 months for the planning, execution, and completion of lead hazard control activities. The applicant must thoroughly document and justify all budget categories and costs (Part B of Standard Form 424A) and all major tasks. The applicant must describe in detail the budgeted costs for each program element (major task) included in the overall plan (administrative costs, program management, lead hazard control strategy, community awareness, education and outreach, program evaluation, and data collection).

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure other community resources (financing is a community resource) which can be combined with HUD's program resources to achieve program purposes.

(1) In evaluating this factor, HUD will consider the extent to which the applicant has partnered with other entities to secure additional resources to increase the effectiveness of the proposed program activities. Resources may include funding or in-kind contributions (such as services or equipment) allocated to the purpose(s) of the award the applicant is seeking. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the target area.

(2) Funding from any Federally funded programs (except the CDBG program) may not be included as part of the required 10% match. Other resources committed to the program that exceed the required 10% match will provide points for this rating factor and may include match from Federally funded programs. Each source of contributions, cash or in-kind, both for the required minimum and additional amounts, shall be supported by a letter of commitment from the contributing entity, whether a public or private source, which shall describe the contributed resources that will be used in the program. Staff in-kind contributions should be given a monetary value. The absence of letters providing specific details and the amount of the actual contributions will result in those contributions not being counted.

(3) Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name and the proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant's program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD funding resources and other resources available to the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations in order to best complement, support and coordinate all known activities and, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD funded projects/ activities outside the scope of those covered by the Consolidated Plan; and

(b) Other HUD, Federal, State or locally funded activities, including those proposed or on-going in the community(s) served.

IV. Application Submission Requirements

(A) Applicant Information

(1) *Application Format.* The applicant's narrative response to the Rating Factors is limited to a maximum of 25 pages. Responses must be typewritten on one (1) side only on 8½" × 11" paper using a 12 point (minimum) font with not less than ¾" margins on all sides. Appendices should be referenced and discussed in the narrative response. Materials provided in the appendices should directly apply to the rating factor narrative.

(2) *Application Checklist.* In addition to the forms, certifications and assurances listed in the General Section of the SuperNOFA, the applicant must submit the following:

(a) Transmittal Letter that identifies what the program funds are requested for, the dollar amount requested, and the applicant or applicants submitting the application.

(b) The name, mailing address, telephone number, and principal contact person of the applicant. If the applicant has consortium associates, sub-grantees, partners, major subcontractors, joint venture participants, or others contributing resources to the project, similar information shall also be provided for each of these partners. (c)(i) For State applicants, copies of existing statutes, regulations or other appropriate documentation regarding the State's Lead-Based Paint Contractor Certification and Accreditation Program must be included.

(ii) A State applicant which has an existing statute that is acceptable to HUD, but which has not implemented an acceptable lead-based paint contractor certification program, shall furnish assurances from the Governor that an acceptable certification program will be implemented within one (1) year from the date of the application deadline date and that the designated agency implementing the certification program shall offer training sessions leading to certification within six (6) months of the effective date of implementing regulations.

(iii) If legislative approval of proposed regulations is also required, a similar assurance must be provided by the chairs of committees having jurisdiction.

(iv) Local government applicants in States which have not implemented an acceptable contractor certification program must provide assurances that only certified contractors and trained workers from State certification programs acceptable to HUD will be used in conducting lead hazard control work.

(d) Evidence of the applicant's commitment and experience in eliminating or reducing significant lead-based paint hazards in privately-owned eligible housing as detailed in the applicant's work plan for lead-based paint hazard control.

(e) A detailed description of the funding mechanism, selection process, and other proposed activities that the applicant plans to use to assist any sub-grantees or sub-recipients under this grant.

(f) A detailed budget with supporting cost justifications for all budget categories of the grant request. There shall be a separate estimate for the overall grant management element (Administrative Costs), which is more fully defined in the application kit for this LBPHC Program section of the SuperNOFA. The budget shall include not more than 10% for administrative costs and not less than 90% for direct project elements.

(g) An itemized breakout (using the SF–424A) of the applicant's required matching contribution, including:

(i) Values placed on donated in-kind services;

(ii) Letters or other evidence of commitment from donors; and

(iii) The amounts and sources of contributed resources.

(h) Memoranda of Understanding or Agreement, letters of commitment or other documentation describing the proposed roles of agencies, local broad-based task forces, participating community or neighborhood-based groups or organizations, local businesses, and others working with the program.

(i) A copy of the applicant's approval notification for the current program year for its Consolidated Plan. The applicant should also include a copy of the applicant's lead hazard control element included in the current program year Consolidated Plan.

(B) Proposed Activities

All applications must, at a minimum, contain the following items:

(1) *A description of the affected housing and population to be served.*

(a) The applicant shall describe the size and general characteristics of the target housing within its jurisdiction, including a description of the housing's location, condition, and occupants, and a current estimate of the number of children under the age of six in these units. Other characteristics described in Rating Factor 2 (Need) should be provided. If specific area(s) (neighborhoods, census tracts, etc.) within an applicant's jurisdiction are specifically targeted for lead hazard control activities, the applicant shall describe these same characteristics for the area. Vacant housing that subsequently will be occupied by low-income renters or owners should also be included in this description. Maps may be included as an appendix.

(b) To the extent practical, preference shall be given to occupied eligible housing units with children under the age of six. In addition, as a measure of its ongoing commitment to lead-based paint programs, the applicant shall provide information on the magnitude and extent of the childhood lead poisoning problem within its jurisdiction and for any area(s) to be included in the lead hazard control program. Current efforts undertaken to provide health care services for children with elevated blood lead levels and efforts to address lead-based paint hazards shall be described.

(2) *Discussion of program activities.* The applicant shall provide a discussion of the overall proposed hazard control program, including, but not limited to, information on the following:

(a) *Needs Assessment.* Each applicant is required to submit a statement of the extent of need for the program funds they are seeking. The statement of need must demonstrate how specific community or neighborhood needs can be resolved through the activities proposed to be undertaken with the funds being applied for. This statement may be integrated into the response to Rating Factor 2 (Need). The statement must identify:

(i) The population to be served;

(ii) How these needs were determined;

(iii) How the needs identified are consistent with the needs identified in the community's Consolidated Plan; and

(iv) Barriers that have been identified in the community's AI.

(b) *Program Work Plan and Budget.* The work plan and budget must include:

(i) A description of:

(*1*) The applicant's program management methods;

(*2*) The applicant's lead hazard control strategy;

(*3*) The number of eligible housing units in the target jurisdiction;

(*4*) The applicant's hazard control methods;

(*5*) The applicant's blood lead and environmental testing methods;

(6) The applicant's costs;
(7) The applicant's financing mechanisms;
(8) The applicant's relocation plans; and
(9) A description of the community's lead hazard awareness and education efforts.

(ii) A Statement of Work that describes all of the activities proposed for funding and details how the proposed work will be accomplished. Following a task-by-task format, the Statement of Work must:

(1) Discuss the tasks and sub-tasks involved in the program. The discussion must identify how the tasks meet the rating factors for award.

(2) Indicate the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously.

(3) Include a project management and staff allocation plan for carrying out the activities proposed in the Statement of Work. The project management plan and staff allocation submission should cover the proposed number of staff years by employee allocated to the project, the titles and relevant professional background and experience of each employee proposed to be assigned to the project, and the roles to be performed by each identified staff member. The project management and staff allocation plan must cover the proposed period of performance. The applicant may make use of in-house staff, consultants, sub-contractors and sub-recipients and networks of private consultants and/or local organizations with requisite experience and capabilities. To the maximum extent practicable, applicants should make use of local expertise and persons familiar with the opportunities and resources available in the area to be served. Regardless of the type of staffing resources identified, the plan should identify activities to be undertaken by the staff indicated in the plan.

(iii) A summary budget identifying costs by cost category in accordance with the following:

(1) Direct labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) Fringe benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material costs indicating the item, unit cost per item, the number of items to be purchased, estimated cost per item, and the total estimated material costs;

(4) Transportation costs, as applicable. Where local private vehicles are proposed to be used, costs should indicate the proposed number of miles, rate per mile of travel identified by item, and estimated total private vehicle costs. Where air transportation is proposed, costs should identify the destination(s), number of trips per destination, estimated air fare and total estimated air transportation costs. If other transportation costs are listed, the applicant should identify the other method of transportation selected, the number of trips to be made and destination(s), the estimated cost, and the total estimated costs for other transportation costs. In addition, applicants should identify per diem or subsistence costs per travel day and the number of travel days included, the estimated costs for per diem/subsistence and the total estimated transportation costs;

(5) Equipment charges, if any. Equipment charges should identify the type of equipment, quantity, unit costs and total estimated equipment costs;

(6) Consultant costs, if applicable. The applicant must indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant and total estimated costs for all consultants;

(7) Subcontract costs, if applicable. The applicant must identify proposed subcontracts and provide estimated costs.

(8) Other direct costs listed by item, quantity, unit cost, total for each item listed, and total direct costs for the award.

(9) Indirect costs should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs. These line items should total the amount requested for each cost category. The grand total of all program funds requested should reflect the grand total of all funds for which the applicant is applying. The submission should include the rationale used to determine costs and validation of fringe and indirect cost rates.

(c) Narrative statement addressing the rating factors for award listed in Section III of this LBPHC section of the SuperNOFA. The narrative statement must be numbered in accordance with each factor for award (Factor 1 through 5).

V. Corrections to Deficient Applications

The General Section to this SuperNOFA provides the procedures for corrections to this NOFA.

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MODERNIZATION AND REVITALIZATION PROGRAMS

Comprehensive Improvement Assistance Program (CIAP)

HOPE VI Public Housing Revitalization

BILLING CODE 4210-32-C

Funding Availability for the Comprehensive Improvement Assistance Program (CIAP)

Program Description: Approximately $304,000,000 is available in funding for the Comprehensive Improvement Assistance Program (CIAP). The CIAP provides modernization funds to housing authorities (HAs) that own or operate less than 250 units of public housing, to enable them to improve the physical condition and upgrade the management and operations of existing public housing developments to assure their continued availability for low-income families.

Application Due Date: The CIAP Application is due on or before 6:00 p.m., local time on June 29, 1998. An original CIAP Application and two copies must be received at the HUD Field Office with jurisdiction over the HA, Attention: Director, Office of Public Housing (OPH). See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Emergency Modernization Applications. The HA may submit a CIAP Application for Emergency Modernization whenever needed. See Sections III(A)(3)(a) and III(A)(9) of this CIAP section of the SuperNOFA.

Address for Submitting Applications: CIAP applications must be delivered by the application due date to the HUD Field Office with jurisdiction over the HA, Attention: Director, Office of Public Housing (OPH).

For Application Kits, Further Information, and Technical Assistance:

For Application Kits. A CIAP Application Kit will automatically be transmitted under separate cover to every eligible HA to supplement the policies and procedures set forth in this CIAP section of the SuperNOFA. The application kit will include copies of forms needed for application submission. Application kits and any supplementary information also may be obtained by contacting the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to CIAP and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. William J. Flood, Director, Office of Capital Improvements, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4134, Washington, D.C. 20410. Telephone (202) 708–1640. (This is not a toll free number.) Applicants also may contact the SuperNOFA Information Center at the telephone listed, above.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

Section 14, U. S. Housing Act of 1937 (42 U.S.C. 14371); and the CIAP regulations in 24 CFR part 968, subparts A and B.

(B) Purpose

The CIAP provides modernization funds to HAs that own or operate less than 250 units of public housing, to enable them to improve the physical condition and upgrade the management and operations of existing public housing developments to assure their continued availability for low-income families.

(C) Amount Allocated

(1) In FY 1998, a total of $2.5 billion is available for the Modernization Program (CIAP and CGP), of which approximately $304 million will be available to HAs with fewer than 250 housing units.

(2) Modernization funds are allocated between CIAP and CGP agencies based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%), as determined by the field inspections conducted for the HUD-funded Abt Associates study of modernization needs. This allocation results in CIAP agencies receiving approximately *11*% and CGP agencies receiving approximately *89*% of the total funds available.

(a) *Backlog needs* are needed repairs and replacements of existing physical systems, items that must be added to meet the HUD modernization and energy conservation standards and State or local codes, and items that are necessary for the long-term viability of a specific housing development.

(b) *Accrual needs* are needs that arise over time and include needed repairs and replacements of existing physical systems and items that must be added to meet the HUD modernization and energy conservation standards and State or local codes.

(3) *Assignment of Funds to Field Offices of Public Housing (OPH).* In past years, the distribution of Public Housing CIAP funds for each Field OPH has been based solely on the relative shares of backlog and accrual needs for CIAP PHAs. In order to obtain a more equitable distribution of available funds relative to historical demand within each Field Office (FO) jurisdiction, Headquarters has determined that the FY 1998 distribution of Public Housing CIAP funds for each Field Office of Public Housing (Field OPH) will be based on the relative shares of backlog and accrual needs for CIAP PHAs (weighted at 50%) and the relative demand for CIAP funds, as evidenced by the CIAP funds requested in FY 1997 (weighted at 50%). However, to ensure that the relative demand side of the allocation formula does not give undue weight to FOs that were able to fund a higher percentage of funds requested in prior years, each Field OPH was capped by Headquarters in FFY 1997 to an allocation amount that would fund no more than 30% of funds requested by PHAs in that FOs jurisdiction in FFY 96. Those same percentages are being used in FFY 98.

(a) The Field OPH Director shall have authority to make Joint Review selections and CIAP funding decisions.

(b) If additional funds for Public Housing CIAP become available, Headquarters will allocate the funds to each Field OPH based on the table below.

(c) If a Field OPH does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more Field OPHs that have the highest unfunded demand, as evidenced by approvable applications.

The following table shows the percentage distribution of CIAP funds for PHAs assigned by Headquarters to each Field OPH. The percentage distributions for the Texas State and Houston Area Offices have been further broken down to indicate what percentage of their distribution will be allocated to HAs involved in the East Texas civil rights case (i.e., *Young* v. *Cuomo*) to meet the requirements of the settlement agreement, which is subject to judicial oversight, along with other modernization needs.

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OFFICE OF PUBLIC HOUSING (OPH)	PERCENT OF THE CIAP ALLOCATION
NEW ENGLAND	
Massachusetts State Office	2.4560
Connecticut State Office	.8107
New Hampshire State Office	1.5676
Rhode Island State Office	.4361
NEW YORK/NEW JERSEY	
Buffalo Area Office	2.0783
New Jersey State Office	2.3160
New York State Office	1.4892
MID-ATLANTIC	
Maryland State Office	.4214
West Virginia State Office	1.3081
Pennsylvania State Office	.6837
Pittsburgh Area Office	.9155
Virginia State Office	.4234
District of Columbia Office	.1672

SOUTHEAST	
Georgia State Office	8.2709
Alabama State Office	5.0915
South Carolina State Office	1.2749
North Carolina State Office	2.9244
Mississippi State Office	1.6542
Jacksonville Area Office	2.5183
Knoxville Area Office	1.0628
Kentucky State Office	4.7477
Tennessee State Office	2.7438
Florida State Office	1.0793
MIDWEST	
Illinois State Office	3.9655
Cincinnati Area Office	.4645
Cleveland Area Office	.5422
Ohio State Office	1.1608
Michigan State Office	1.8521

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Grand Rapids Area Office	2.6617
Indiana State Office	1.1643
Wisconsin State Office	2.5429
Minnesota State Office	3.7183
SOUTHWEST	
New Mexico State Office	1.3046
Texas State Office East Texas HAs Non-East Texas HAs	7.2209 (0.361045 or 5% of 7.2209) (6.859855 or 95% of 7.2209)
Houston Area Office East Texas HAs Non-East Texas HAs	1.7024 (0.817152 or 48% of 1.7024) (0.885248 or 52% of 1.7024)
Arkansas State Office	2.1839
Louisiana State Office	3.9607
Oklahoma State Office	2.3203
San Antonio Area Office	3.1643

GREAT PLAINS	
Iowa State Office	.5858
Kansas/Missouri State Office	2.7413
Nebraska State Office	1.0943
St. Louis Area Office	1.0715
ROCKY MOUNTAIN	
Colorado State Office	3.1227
PACIFIC/HAWAII	
Los Angeles Area Office	.2670
Arizona State Office	.9903
Sacramento Area Office	.0808
California State Office	1.7445
NORTHWEST/ALASKA	
Oregon State Office	.6706
Washington State Office	1.2608
TOTAL	**100.0000**

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(D) Eligible Applicants

Public Housing Agencies (HAs) that own or operate fewer than 250 public housing units are eligible to apply and compete for CIAP funds. HAs with 250 or more public housing units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are *not* eligible to apply for CIAP funds. Entities other than HAs are not eligible to apply for CIAP funds. Indian Housing Authorities are not eligible to apply for these funds.

(E) Eligible Activities

(1) An HA may use financial assistance received under this CIAP section of the SuperNOFA for activities including, but not limited to:

(a) Physical improvements, e.g., alterations, betterments, additions, and accessibility features;

(b) Demolition and conversion costs;

(c) General management improvements, e.g., management, financial and accounting control systems;

(d) Economic development costs;

(e) Resident management costs;

(f) Drug elimination costs;

(g) Lead-based paint abatement costs;

(h) Administrative costs;

(i) Salaries and employee benefit contributions; and

(j) Architectural/engineering and consultant fees.

(2) *Repeal of the Expansion of Eligible Activities.* The FY 1998 Appropriations Act did *not* continue the expanded eligible activities that could be funded, with prior HUD approval, as provided in section 14(q) of the U.S. Housing Act of 1937, as amended in section 201 of the HUD FY 1996 Appropriations Act. These activities include: new construction or acquisition of additional public housing units, including replacement units; modernization activities related to the public housing portion of housing developments held in partnership or cooperation with non-public housing entities; other activities related to public housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI), such as community services; and operating subsidy purposes (not to exceed 10 percent of the grant amount). Therefore, funds approved under this CIAP section of the SuperNOFA, i.e., Fiscal Year (FY) 98 funds, may not be used for the above purposes. However, HAs may still use previously apposed grant funds (FFY 97 and prior years) that are unobligated for the above activities with prior HUD approval, where applicable. Relief from this prohibition is pending in Congress.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Forms, Certifications and Assurances

In addition to the forms, certifications and assurances listed in the General Section of this SuperNOFA, applicants are required to submit signed copies of Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements.

(B) Departmental Priority

The transformation of public housing is one of the Department's major priorities. To facilitate the modernization of public housing so that it is integrated in the broader community, the Department encourages HAs to consider the following:

(1) *Design.* When identifying physical improvement needs to meet the modernization standards, HAs are encouraged to consider a design which supports the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant, substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing. The HA should pay particular attention to design, which is sensitive to traditional cultural values, and be receptive to creative, but cost-effective approaches suggested by architects, residents, HA staff, and other local entities. Such approaches may complement the planning for basic rehabilitation needs. It should be noted that there will be no increase in operating subsidy as a result of any modernization activities.

(2) *Physical Accessibility and Visitability.* In addition to the design considerations set forth in Section II(C)(1) of this CIAP section of the SuperNOFA, HAs must comply with accessibility requirements and are encouraged to provide units that are "visitable" by persons with mobility impairments. Visitability gets the person into the home, but does not require that all features be made accessible throughout the home.

(a) *Accessibility.* An accessible home means that the home is located on an accessible route (36" clear passage) and, when designed, constructed, altered or adapted, can be approached, entered, and used by an individual with physical disabilities.

(b) *Visitability.* Visitability restricts itself to two areas of a home; i.e., at least one entrance is at grade (no-step); and all doors inside provide a 32" clear passage. A visitable home serves not only persons with disabilities, but also persons without disabilities. (For example, a mother pushing a stroller; person delivering large appliances, etc.). One difference between "visitability" and "accessibility" is that accessibility requires that *all* features of a dwelling unit be made accessible for mobility impaired persons. A visitable home provides less accessibility than an accessible home. Examples of actions that HAs may take to support visitability include:

(i) When conducting a "needs assessment," the HA may identify some single family scattered site homes and make those units visitable.

(ii) When undertaking substantial alterations as defined in 24 CFR 8.23(a), the HA may identify some units in an elderly development not subject to the new construction requirements of 24 CFR 8.22 and make those units visitable.

(iii) The HA may target the first floor of an existing 3-story family apartment complex and make those units visitable.

(3) *Provision of Community Space for Welfare-to-Work Initiatives.* HAs are encouraged to provide community space for Welfare-to-Work initiatives, which include, but are not limited to, services coordination/case management, training, child care, health care, transportation, and economic development. Where community space is not otherwise available, CIAP funds may be used to convert existing dwelling space, renovate existing nondwelling space, or construct or acquire nondwelling space for this purpose. Where CIAP funds will be used to provide community space, HAs are required to submit written evidence from a qualified local agency or provider that the agency or provider agrees to furnish, equip, operate and maintain the community space, as well as provide insurance coverage. Where HAs themselves intend to operate the community space, they must submit written evidence of the continuing funding sources to furnish, equip, operate, maintain and insure the community space.

(4) *Elimination of Vacant Units.* HAs are encouraged to apply for CIAP funds to address vacant units where the work does not merely involve routine maintenance, but will result in reoccupancy.

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(C) Accessibility Requirements

In carrying out modernization work, HAs are required to comply with the requirements of 24 CFR 8.23(a) regarding substantial alterations and 24 CFR 8.23(b) regarding other alterations, as well as with Title II of the Americans with Disabilities Act and 28 CFR part 35. Title II is applicable to HAs established under State law. Also, the HA shall comply with the requirements of 24 CFR 8.22 and 24 CFR 100.205 (the Fair Housing Act) regarding new construction.

(D) Expediting the Program

HAs must obligate approved funds within two years and expend within three years of program approval (Annual Contributions Contract (ACC) Amendment execution) unless a longer implementation schedule (Part III of the CIAP Budget) is approved by the Field Office due to the size or complexity of the program. However, HUD strongly encourages the minimum amount of time feasible for program completion and contends that an 18 month timeframe for fund obligation is generally reasonable. Failure to obligate funds in a timely manner may result in the termination of the program and recapture of the funds.

(E) Planning

In preparing its CIAP Application, the HA is encouraged to assess all its physical and management improvement needs. Physical improvement needs should be reviewed against the modernization standards as set forth in HUD Handbook 7485.2, as revised, physical accessibility requirements as set forth in 24 CFR part 8, and 28 CFR part 35, and any cost-effective energy conservation measures identified in updated energy audits. The modernization standards include development specific work to ensure the long-term viability of the developments, such as amenities and design changes to promote the integration of low-income housing into the broader community. In addition, the HA is strongly encouraged to contact the Field Office to discuss its modernization needs and obtain information.

(F) Resident Involvement and Local Official Consultation Requirements

(1) *Residents/Homebuyers.* The CIAP regulations at 24 CFR 968.215 require the HA to establish a Partnership Process to ensure full resident participation in the planning, implementation and monitoring of the modernization program, as follows:

(a) Before submission of the CIAP Application, consultation with the residents, resident organization, and resident management corporation (herein referred to as residents) of the development(s) being proposed for modernization regarding its intent to submit an application and to solicit resident comments;

(b) Reasonable opportunity for residents to present their views on the proposed modernization and alternatives to it, and full and serious consideration of resident recommendations;

(c) Written response to residents indicating acceptance or rejection of resident recommendations, consistent with HUD requirements and the HA's own determination of efficiency, economy and need, with a copy to the Field Office at Joint Review. If the Joint Review is conducted off-site, a copy shall be mailed to the Field Office;

(d) After HUD funding decisions, notification to residents of the approval or disapproval and, where requested, provision to residents of a copy of the HUD-approved CIAP Budget; and

(e) During implementation, periodic notification to residents of work status and progress and maximum feasible employment of residents in the modernization effort.

(2) *Local Officials.* Before submission of the CIAP Application, consultation with appropriate local/tribal officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development, drug elimination and expenditure of local funds, such as Community Development Block Grant funds.

(G) Environmental Requirements

Under 24 CFR part 58, the responsible entity, as defined in 24 CFR 58.2(a)(7), must assume the environmental responsibilities for projects being funded under the CIAP. If the HA objects to the responsible entity conducting the environmental review, on the basis of performance, timing or compatibility of objectives, the Field OPH Director will review the facts to determine who will perform the environmental review. At any time, the Field OPH Director may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if the Field OPH Director determines that the responsible entity should not perform the environmental review, the Field OPH Director may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. After selection by the Field Office for Joint Review, the HA shall provide any documentation to the responsible entity (or Field Office, where applicable) that is needed to perform the environmental review.

(1) Where the environmental review is completed before Field Office approval of the CIAP budget and the HA has submitted its request for release of funds (RROF), the budget approval letter shall state any conditions, modifications, prohibitions, etc. as a result of the environmental review.

(2) Where the environmental review is not completed and/or the HA has not submitted the RROF before Field Office approval of the CIAP budget, the budget approval letter shall instruct the HA to refrain from undertaking, or obligating or expending funds on, physical activities or other choice-limiting actions, until the Field PH Director approves the HA's RROF and the related certification of the responsible entity (or the Field Office has completed the environmental review). The budget approval letter also shall advise the HA that the approved budget may be modified on the basis of the results of the environmental review.

(H) Declaration of Trust

Where the Field Office determines that a Declaration of Trust is not in place or is not current, the HA shall execute and file for the record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the HA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

(I) HA Submission of Additional Documents

After the Field Office Public Housing Director's funding decisions, the HA shall submit the following documents within the time frame prescribed by the Field Office:

(a) Form HUD–52825, CIAP Budget/Progress Report, which includes the implementation schedule(s), in an original and two copies.

(b) Form HUD–52820, HA Board Resolution Approving CIAP Budget, in an original only.

(J) ACC Amendment

After HUD approval of the CIAP Budget, the Field Office and the HA shall enter into an ACC amendment in order for the HA to draw down modernization funds. The ACC

amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The HA Executive Director, where authorized by the Board of Commissioners and permitted by State law, may sign the ACC amendment on behalf of the HA. HUD has the authority to condition an ACC amendment (e.g., to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

(K) Use of Dwelling Units for Economic Self-Sufficiency Services and/or Drug Elimination Activities

CIAP funds may be used to convert dwelling units for purposes related to economic self-sufficiency services and/or drug elimination activities. Regarding the eligibility for funding under the Performance Funding System of dwelling units used for these purposes, refer to 24 CFR 990.108(b)(2).

(L) Duplication of Funding

The HA shall not receive duplicate funding for the same work item or activity under any circumstance and shall establish controls to assure that an activity, program, or project that is funded under any other HUD program shall not be funded by CIAP.

(M) Conflict of Interest

In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this grant, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(N) Wage Rates

The wage rate requirements at 24 CFR 968.110(e) and (f) apply to assistance under this program.

III. Application Selection Process

(A) Rating and Ranking

(1) *General.* The rating and ranking of applications, the grouping of applications, the technical review process and funding decisions will be in accordance with HUD's regulations in 24 CFR 968.210.

(2) *Eligibility Review.* After the HA's CIAP application is determined to be complete and accepted for review, the Field Office eligibility review shall determine if the application is eligible for full processing or processing on a reduced scope, and shall assess the applicant's management and modernization capability.

(a) *Full Eligibility.* To be eligible for full processing, the applicant must be in compliance with the program requirements listed in Section II of the CIAP section of the SuperNOFA, and additionally must be in compliance with the following:

(i) Each eligible development for which work is proposed has reached the Date of Full Availability (DOFA) and is under ACC at the time of CIAP application submission; and

(ii) Where funded under Major Reconstruction of Obsolete Projects (MROP) after FY 1988, the development/building has reached DOFA or, where funded during FYs 1986–1988, all MROP funds for the development/building have been expended.

(b) *Reduced Eligibility.* When the following conditions exist, the HA's application will be reviewed on a reduced scope in accordance with HUD's regulations in 24 CFR 968.210.

(i) An HA that has been Not designated as Troubled under 24 CFR part 901, Public Housing Management Assessment Program (PHMAP), or

(ii) Designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under 24 CFR 901.140 or has obtained alternative oversight of its management functions.

(iii) An HA that has been designated as Modernization Troubled under 24 CFR part 901, PHMAP is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under 24 CFR 901.140 or has obtained alternative oversight of its modernization functions. Where an HA does not have a funded modernization program in progress, the Field Office shall determine whether the HA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(3) *Long-Term Viability and Reasonable Cost.* On Form HUD–52822, CIAP application, the HA certifies whether the developments proposed for modernization have long-term physical and social viability, including prospects for full occupancy. During Joint Review, the Field Office will review with the HA the determination of reasonable cost for the proposed modernization to ensure that unfunded hard costs do not exceed 90 percent of the computed total development cost (TDC) for a new development with the same structure type and number and size of units in the market area. The Field Office shall make a final viability determination. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required.

(a) If the Field Office determines that completion of the improvements and replacements will not reasonably ensure the long-term physical and social viability of the development at a reasonable cost, the Field Office shall only approve Emergency Modernization or non-emergency funding for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(b) Where the Field Office wishes to fund a development with hard costs exceeding 90 percent of computed TDC, the Field Office shall submit written justification to Headquarters for final decision. Such justification shall include:

(i) Any special or unusual conditions have been adequately explained, all work has been justified as necessary to meet the modernization and energy conservation standards, including development specific work necessary to provide a modest, non-luxury development; and

(ii) Reasonable cost estimates have been provided, and every effort has been made to reduce costs; and

(c) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; or

(d) There are no practical alternatives for replacement housing.

(4) *"Fast Tracking" Emergency Applications.* Emergency applications do not have to be processed within the normal processing time allowed for other applications. Where an immediate hazard must be addressed, HA emergency applications may be submitted and processed at any time during the year when funds are

available. The Field Office shall "fast track" the processing of these emergency applications so that fund reservation may occur as soon as possible. An emergency application is comprised of the forms, certifications and assurances listed in the General Section of the SuperNOFA, and also the following documents:

(a) *Form HUD–52825, CIAP Budget/Progress Report,* which includes the implementation schedule(s), in an original and two copies.

(b) *Form HUD–52820, HA Board Resolution Approving CIAP Budget,* in an original only.

(c) At the option of the HA, photographs or video cassettes showing the physical condition of the developments.

(B) Factors for Award Used To Evaluate and Rate Applications.

The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points to be awarded is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicant's organization and staff" for technical merit or threshold compliance, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor HUD will consider the extent to which the proposal demonstrates:

(1) The knowledge and experience of the overall proposed project director and staff, including the day-to-day program manager, consultants and contractors in planning and managing programs for which funding is being requested. Experience will be judged in terms of recent, relevant and successful experience of the applicant's staff to undertake eligible program activities.

(2) The applicant has sufficient personnel or will be able to quickly access qualified experts or professionals, to deliver the proposed activities in each proposed service area in a timely and effective fashion, including the readiness and ability of the applicant to immediately begin the proposed work program. The adequacy of the personnel for an HA will be determined on the basis of the amount of funding and the complexity of the proposed activities.

(3) The applicant has demonstrated experience in managing programs, and carrying out grant management responsibilities for programs, similar in scope or nature directly relevant to the work activities proposed. If the applicant has managed large, complex, interdisciplinary programs, the applicant should include that information in the response.

(4) If the applicant received funding in previous years in the program area for which they are currently seeking funding, the applicant's past experience will be evaluated in terms of their ability to attain demonstrated measurable progress in the implementation of their *most recent grant award* as measured by obligation and expenditures and measurable progress in achieving the purpose for which funds are provided.

(5) The Field Office shall evaluate the HA's management capability. Particular attention shall be given to the adequacy of the HA's maintenance in determining the HA's management capability. This assessment shall be based on the compliance aspects of on-site monitoring, such as audits, reviews or surveys which are currently available within the Field Office, and on performance reviews. The HA has management capability if it is:

(a) Not designated as Troubled under 24 CFR part 901, Public Housing Management Assessment Program (PHMAP), or

(b) Designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support.

(6) The Field Office shall evaluate the HA's modernization capability, including the progress of previously approved modernization and the status of any outstanding findings from CIAP monitoring visits. The HA has modernization capability if it is:

(a) Not designated as Modernization Troubled under 24 CFR part 901, PHMAP, or

(b) Designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the urgency of meeting the need in the target area. In responding to this factor, applicants will be evaluated on:

(1) The extent to which they document the level of need for the proposed activity and the urgency in meeting the need using statistics and analyses contained in a data source(s) that:

(a) Is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. HUD will review more favorably those applicants who used these documents to identify need, when applicable.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, law enforcement agency crime reports, an HA's assessment of its physical and management needs, HUD review reports, and other sound and reliable sources appropriate for the specific SuperNOFA program and activities for which an applicant is applying. For technical assistance programs, input from HUD State and Area Office(s) and assessments are included among the data sources that may be used to identify need.

(b) Is specific to the development where the proposed activity will be carried out or where applicable, documents the need for an HA-wide activity(s). Specific attention must be paid to documenting need which has a direct impact on the surrounding community, e.g., where a design change facilitates the integration of public housing into the surrounding community.

(2) The extent of vacancies based on the HA-wide vacancy rate, where the vacancies are not due to insufficient demand.

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost effectiveness of the applicant's proposed work plan. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor. In evaluating this factor, HUD will consider the following:

(1) (5 Points) The quality of the cost estimates for the proposed work.

(2) (25 Points) The extent to which the proposed physical improvement needs meet the modernization standards, and support the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant, substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, to the extent possible, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing.

(3) (5 Points) Degree to which the PHA Affirmatively Furthers Fair Housing. Actions that assist the jurisdiction in overcoming impediments to fair housing choice identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice, which is a component of the jurisdiction's Consolidated Plan, or any other planning document that addresses fair housing issues. Examples of actions that can be taken may include, but are not limited to: neighborhood revitalization efforts that encourage fair housing choice (such as schools, grocery stores, transportation and the quality of services); implementing site selection policies which give priority to sites located outside of minority and low-income areas; participating in mobility counseling programs and clearing houses which offer housing opportunities both within and outside of high-poverty areas; increasing the supply of accessible housing available to low-income persons with disabilities; and ensuring accessibility and visitability for persons with disabilities to aspects of the program. Additional examples may be obtained from Chapter 5 of the "Fair Housing Planning Guide, Vol. 1" which may be ordered from HUD's Fair Housing Clearinghouse by calling (800–343–3442).

(5 Points for Subfactors (4) through (8))

(4) The degree of resident involvement in HA operations as described in the Narrative Statement and supported by FO file evidence.

(5) The degree of HA activity in coordinating/providing resident services related to Welfare-to-Work initiatives in community facilities at or near HA developments based on FO file evidence. Such services include, but are not limited to services coordination/ case management, training, child care, health care, transportation, and economic development.

(6) The degree of HA activity in resident initiatives, including resident management, economic development, homeownership, and drug elimination efforts or other resident initiatives for non-elderly as described in the Narrative Statement and supported by FO file evidence.

(7) The degree of non-elderly resident employment through direct hiring or contracting/subcontracting or job training initiatives as described in the Narrative Statement and supported by FO file evidence.

(8) Further and support the policy priorities of HUD including:

(a) Promoting healthy homes;

(b) Providing opportunities for self-sufficiency, particularly for persons enrolled in welfare to work programs;

(c) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through program policy efforts such as "One Strike and You're Out" or the "Officer Next Door" initiative;

(d) Providing educational and job training opportunities through such initiatives as Neighborhood Networks, Campus of Learners and linking to AmeriCorps activities.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure community resources (note: financing is a community resource) which can be combined with HUD's program resources to achieve program purposes. In evaluating this factor HUD will consider:

(1) To the extent possible, the applicant has taken the initiative to partner with other entities to secure additional resources to increase the effectiveness of the proposed program activities, e.g., CDBG funds may be committed for infrastructures. Resources may include funding or in-kind contributions, such as services or equipment, allocated to the purpose(s) of the award the applicant is seeking, e.g., an educational institution may provide training in conjunction with a management improvement activity. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities willing to partner with the applicant. Applicants may also partner with other program funding recipients to coordinate the use of resources in the area of the public housing development.

(2) Where applicable, applicants should provide evidence of other resources by including in the application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

(3) The local government support for proposed modernization, through either funding or in-kind contributions, over and above what is required under the Cooperation Agreement for municipal services, such as police and fire protection and refuse collection, within the last 12 months, that will *directly benefit* the public housing or the neighborhood surrounding the public housing.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates that it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/ activities outside the scope of those covered by the Consolidated Plan; and

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(b) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements.

The HA shall submit the CIAP Application to the Field Office, with a copy to appropriate local officials, e.g., the mayor, City Manager. The HA may obtain the necessary forms from the Field Office. The CIAP Application is comprised of the following documents:

(A) *Form HUD–52822, CIAP Application,* in an original and two copies, which includes:

(1) A general description of HA development(s), in priority order, (including the current physical condition, for each development for which the HA is requesting funds, or for all developments in the HA's inventory) and physical and management improvement needs to meet the Secretary's standards in 24 CFR 968.115; description of work items required to correct identified deficiencies, including accessibility work; and the estimated cost. Where the HA has not included some of its developments in the CIAP Application, the Field Office may not consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. Therefore, to provide maximum flexibility, the HA may wish to include all of its developments in the CIAP Application, even though there are no known current needs. Following is an example of the general description:

Development 1–1: 50 units of low-rent; 25 years old; physical needs are: new roofs; storm windows and doors; and electrical upgrading at estimated cost of $150,000.

Development 1–2: 40 units of low-rent; 20 years old; physical needs are: physical accessibility for kitchens, bathrooms and doors in 2 units and common laundry room; visitability in 4 ground floor units; kitchen floors; shower/bathtub surrounds; fencing; and exterior lighting at estimated cost of $130,000.

Development 1–3: 35 units of Turnkey III; 15 years old; physical needs are: physical accessibility in 3 units; and roof insulation at estimated cost of $50,000.

Development 1–4: 20 units of low-rent; 5 years old; no physical needs; no funding requested.

(2) Where funding is being requested for management improvements, an identification of the deficiency, a description of the work required for correction, and estimated cost. Examples of management improvements include, but are not limited to, the following areas:

(a) The management, financial, and accounting control systems of the HA;

(b) The adequacy and qualifications of personnel employed by the HA in the management and operation of its developments by category of employment; and

(c) The adequacy and efficacy of resident programs and services, resident and development security, resident selection and eviction, occupancy and vacant unit turnaround, rent collection, routine and preventive maintenance, equal opportunity, and other HA policies and procedures.

(3) A certification that the HA has met the requirements for consultation with local officials and residents/homebuyers and that all developments included in the application have long-term physical and social viability, including prospects for full occupancy. If the HA cannot make this certification with respect to long-term viability, the HA shall attach a narrative, explaining its viability concerns.

(B) *A Narrative Statement,* in an original and two copies, addressing each of the rating factors in Section III(B) of this CIAP section of the SuperNOFA. In addressing the affirmatively furthering fair housing technical review factor, actions that the HA has taken, or plans to take, to accomplish this objective may include, but are not limited to the following:

(1) Actions that contribute toward the reduction of concentration of low-income-persons who are protected under the Fair Housing Act and Title VI of the Civil Rights Act. Such actions may include housing programs/activities that provide information regarding housing opportunities outside of minority concentrated areas within the HA's jurisdictional boundaries, or efforts that encourage landlords/owners to make available housing opportunities outside of minority concentrated areas. For example, the HA may refer applicants to other available housing as part of an established housing counseling service or assist applicants in getting on other waiting lists.

(2) Actions that overcome the consequences of prior discriminatory practices or usage which may have tended to exclude persons of a particular race, color or national origin; or that overcome the effects of past discrimination against persons with disabilities. Such actions may include those actions taken without any kind of legally binding order, but which have changed previous discriminatory management, tenant selection and assignment or maintenance practices.

(3) Actions that assist the jurisdiction in overcoming impediments to fair housing choice identified in the jurisdiction's AI (Analysis of Impediments to Fair Housing Choice), which is a component of the jurisdiction's Consolidated Plan, or any other planning document that addresses fair housing issues. Examples of actions that can be taken may include, but are not limited to: neighborhood revitalization efforts that encourage fair housing choice (such as schools, grocery stores, transportation, and the quality of services); implementing site selection policies which give priority to sites located outside of minority and low-income areas; participating in mobility counseling programs and clearinghouses which offer housing opportunities both within and outside of high-poverty areas; increasing the supply of accessible housing available to low-income persons with disabilities; and ensuring accessibility and visitability for persons with disabilities to aspects of the program. Additional examples may be obtained from Chapter 5 of the Fair Housing Planning Guide, Vol 1" which may be ordered from HUD's Fair Housing Clearinghouse by calling (800) 343–3442.

(C) *Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements,* in an original only, required of HAs established under State law, applying for grants exceeding $100,000.

(D) *Evidence of Physical Condition of the Developments.* At the option of the HA, photographs or video cassettes showing the physical condition of the developments.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

Funding Availability for Revitalization of Severely Distressed Public Housing (Hope VI Revitalization)

Program Description: Approximately $441 million is available in funding for the Revitalization of Severely Distressed Public Housing (the "HOPE VI Revitalization Program"), as provided in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998. The continued funding of the HOPE VI Program is to enable revitalization and transformation of the physical site of severely distressed public housing developments and the social dynamics of life for low-income residents at that site, or in any off-site replacement housing.

Application Due Date: Applications must be received at HUD Headquarters on or before 12:00 pm. Eastern time on June 29, 1998, at HUD Headquarters. See the General Section of this SuperNOFA for specific procedures governing the form of application of submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications: One copy of the completed application must be received at HUD Headquarters, 451 Seventh Street, SW, Room 4138, Washington, DC 20410, Attention: Deputy Assistant Secretary for Public Housing Investments. In addition, two copies of the completed application also must be received at the appropriate HUD Field Office HUB.

For Application Kits, Further Information, Technical Assistance:

For Application Kits. A copy of the application kit will be mailed to every eligible PHA. Application kits and any supplementary information also may be obtained by contacting the SuperNOFA Information Center at 1–800-HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. The application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to HOPE VI and provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions, you may call Mr. Milan Ozdinec, Director, Office of Urban Revitalization, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4142, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

I. Additional Information

(A) Authority

The funding for HOPE VI Revitalization grants under this SuperNOFA is provided by the FY 1998 HUD Appropriations Act under the heading "Revitalization of Severely Distressed Public Housing (HOPE VI)."

(B) Purpose

The purpose of the HOPE VI Program is to enable revitalization and transformation of the physical site of severely distressed public housing developments and the social dynamics of life for low-income residents at that site, or in any off-site replacement housing. The HOPE VI Revitalization Program provides for grants to public housing agencies to assist in:

(1) The demolition of severely distressed public housing projects or portions of these projects;

(2) The revitalization (where appropriate) of sites (including remaining public housing units) on which such projects are located;

(3) The provision of replacement housing which will avoid or lessen concentration of very low-income families;

(4) Tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937;

(5) Assisting tenants displaced by demolition.

The FY 1998 HOPE VI appropriation also provides for grant funds to be used for the demolition of severely distressed elderly public housing projects and the replacement, where appropriate, and revitalization of the elderly public housing as new communities for the elderly designed to meet the special needs and physical requirements of the elderly.

(C) Amount Allocated

(1) *Revitalization grants.* Approximately $416 million of the FY 1998 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants.

(2) *Elderly Housing grants.* In accordance with the FY 1998 HUD Appropriations Act, $26 million of the HOPE VI appropriation has been allocated to fund projects proposing demolition of severely distressed elderly public housing projects and the replacement, where appropriate, and revitalization of the elderly public housing as new communities for the elderly designed to meet the special needs and physical requirements of the elderly.

(a) Targeted developments may be either:

(i) Housing designated for the elderly, persons with disabilities, or mixed-populations, in accordance with section 7 of the U.S. Housing Act of 1937; or

(ii) Projects of a PHA designated as elderly by HUD in accordance with requirements in effect prior to enactment of the Housing and Community Development Act of 1992.

(iii) A PHA may, after revitalization, designate the targeted development through a HUD-Approved allocation plan.

(b) Applications targeting elderly developments will be rated in a separate competition, and will be ranked only with other elderly applications.

(c) Of the $26 million made available for elderly housing, the FY 1998 HUD Appropriation Act included up to $10 million for Heritage House in Kansas City, Missouri. HUD awarded $6,570,500 to Heritage House under the FY 1997 HOPE VI NOFA, therefore the full $10 million will not be needed. After funding the needs of Heritage House, the balance of the $10 million set-aside will be made available for Elderly Housing grants eligible for funding under this SuperNOFA.

(3) *HOPE VI Demolition-Only Grants.* Up to $60 million in HOPE VI funds will be made available for the demolition of obsolete public housing without revitalization. Those funds will be distributed through a separate NOFA.

(4) *Section 8.* Up to $91 million (approximately 10,000 units) has been allocated for Section 8 tenant-based certificates and vouchers for public housing relocation or public housing replacement (including units selected for the HOPE VI Program). The Section 8 funds will be allocated by HUD after HUD approval of the applicant's demolition/disposition application or distressed public housing conversion plan submitted in lieu of a demolition/disposition application in conformance with the statutory requirements for the mandatory conversion of distressed public housing units as required by section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. These section 8 funds will be distributed through a separate notice.

(D) Eligible Applicants

PHAs that own public housing units are eligible to apply. Indian Housing Authorities are not eligible to apply.

(E) Eligible Activities and Program Authority

Eligible activities are those eligible under sections 5 and 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f, 1437l) (1937 Act). Revitalization activities using HOPE VI funds must be for public housing developments. Accordingly, certain activities under the revitalization plan are subject to statutory requirements applicable to public housing developments under the U.S. Housing Act of 1937 (the 1937 Act), other statutes, and the ACC. Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed developments.

In order to satisfy any particular statutory requirement, a Grantee may take measures as described in implementing regulations, or upon request to HUD for a different approach, as otherwise approved in writing by HUD. As of the date of publication of this SuperNOFA, the provisions of section 14(q) of the U.S. Housing Act of 1937, as amended by section 201 of the FY 1996 HUD Appropriation Act, including provisions in sections 14(q)(2), (3), and (4) of the U.S. Housing Act of 1937 concerning mixed-income development, have not been extended to cover FY 1998 HOPE VI or section 14 Modernization Funding.)

The recipient must conduct the following activities, which may be undertaken with HOPE VI grant funds, in accordance with the cited program requirements or otherwise with HUD's written approval, consistent with the 1998 Appropriations Act and this SuperNOFA. Activities which may be funded with HOPE VI grant funds include but are not limited to:

(1) Total or partial demolition of buildings, in accordance with 24 CFR part 970;

(2) Disposition of property, in accordance with 24 CFR part 970;

(3) Public housing development through the acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941;

(4) Major rehabilitation and other physical improvements of housing and community facilities primarily intended to facilitate the delivery of self-sufficiency, economic development, or other supportive service opportunities for residents of the targeted development, in accordance with 24 CFR 968.112(b), (d), (e), and (g)–(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d);

(5) Construction of replacement rental housing, both on-site and off-site, and community facilities primarily intended to facilitate the delivery of self-sufficiency, economic development, or other supportive service opportunities for residents of the targeted development and off-site replacement housing, in accordance with 24 CFR part 941, including mixed-finance development in accordance with subpart F;

(6) Homeownership units will be deemed Replacement Units only as specified in the Urban Revitalization heading of the 1993 Appropriations Act (Pub.L. 102–389; approved October 6, 1992); that is, if they meet the statutory requirements of the Section 5(h) Program (42 U.S.C. 1437c(h)); the HOPE II program (42 U.S.C. 12871–80; Pub. L. 101–625, secs. 421–31; 104 Stat. 4079, 4162–72); the HOPE III program (42 U.S.C. 12891–98; Pub.L. 101–625, secs. 441–48; 104 Stat. 4079, 4172–80); or are made available through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as the Nehemiah Program.

(7) Management improvements;

(8) Administration, planning, and technical assistance;

(9) Programs designed to help residents gain employment and attain self-sufficiency;

(10) Programs designed to meet the special needs and physical requirements of the elderly and/or disabled and enable the elderly and/or disabled to live where one chooses with dignity, control, and independence.

(11) Relocation, conducted in accordance with 24 CFR 970.5 (demolition) or 24 CFR 968.108 (rehabilitation), as appropriate.

(F) Waivers

PHAs may request, for the revitalized development, a waiver of HUD regulations (that are not statutory requirements) governing rents, income eligibility, or other areas of public housing management to permit a PHA to undertake measures that enhance the long-term viability of a development revitalized under this program.

(G) Limitations on Use of Funds

No funds awarded for the HOPE VI Revitalization Program under this SuperNOFA shall be used for any purpose that is *not* provided for under the: FY 1998 HUD Appropriations Act; United States Housing Act of 1937; the Appropriations Acts for the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies, for the Fiscal Years 1993, 1994, 1995, and 1997; and the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Additionally, no funds awarded for the HOPE VI Program under this SuperNOFA shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgements.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Severely Distressed

In order to be eligible for HOPE VI funding, a public housing development, or portion of the development, must be severely distressed as to physical condition, location, or other factors, making the development, in its current condition, unusable for housing purposes. Major problems indicative of severe distress are:

(1) *Physical Condition:* structural deficiencies (e.g. settlement of earth below the building caused by inadequate structural fills, faulty structural design, or settlement of floors), substantial deterioration (e.g., severe termite damage or damage caused by extreme weather conditions), or other design or site problems (e.g., severe erosion or flooding).

(2) *Location:* physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review, which was previously conducted in accordance with 24 CFR part 50, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use.

(3) Other factors which have seriously affected the marketability, usefulness, or management of the property, such as significant numbers of families living in poverty, significant incidence of serious crime, high vacancy rate, high turnover rate, low rent collections, etc.

(B) Grant Limitations

The following grant amount limits apply to HOPE VI grants under this SuperNOFA. The grant amount shall be limited by the total amount determined by addition of paragraphs (1), (2), (3), and (4) below, as applicable.

(1) *Total Development Cost (TDC).* TDC is limited to the sum of:

(a) TDCs up to, but not to exceed 100% of, HUD's published TDC limits for the costs of demolition and new construction multiplied by the number of public housing Replacement Units; and/or

(b) 90% of such TDC limits multiplied by the number of public housing units to be substantially rehabilitated.

Total Development Cost (TDC) is limited by the HUD-published TDC Cost Tables, which are issued for each fiscal year for the building type and bedroom distribution for the public housing replacement units. Duplicative funding is prohibited for any replacement units previously funded by HOPE VI or other HUD funds. This requirement does not prohibit any non-HUD funds to be used to supplement HUD funds for any project cost. Disclosure of all prior HUD grant assistance is required for the targeted development. The only exception to this rule is that the receipt of Section 8 relocation assistance does not affect the eligibility of the applicant to receive subsequent HOPE VI Revitalization funding for replacement of the same units.

The Department has developed a new TDC policy and cost control which applies to 1998 grants. A HUD Notice and rule describing this policy will be issued in the near future.

(2) *Community and Supportive Services Programs.* Applicants may request up to $5,000 per household for community and supportive services, including self-sufficiency programs, based on:

(a) The number of households in occupied units in the project to be revitalized at the time of application submission, and

(b) The estimated number of new households that are expected to occupy replacement units after revitalization; or

(3) *Services to Assist the Elderly.* Applicants may request up to $5,000 per household for human services programs to address quality of life and other social needs, as opposed to self-sufficiency programs of family HOPE VI projects, rewarding innovative objectives and programs, particularly as related to aging in place and assisted living.

(4) *Relocation.* Applicants may request no more than $3,000 per occupied unit at the time of HOPE VI application submission for relocation services and expenses.

(5) *Total Grant Amount.*

(a) Revitalization Applications.

(i) A PHA may submit one or two separate Revitalization applications. The *total* amount requested in one or both applications may not exceed $35 million. If a PHA submits two applications, each application will be reviewed separately, subject to the grant limitation amounts above, and if both applications are selected, the total amount the applicant may receive may not exceed $35 million.

(ii) Notwithstanding the fact that a PHA may submit one or two Revitalization applications, each individual application may include a request for funds for only one public housing development. Developments that are contiguous, immediately adjacent to one another, or within four city blocks from each other will be considered one development for the purposes of the HOPE VI Program under this SuperNOFA. There is no minimum or maximum number of housing units for which funds may be requested in a single application.

(b) Elderly Housing Grant Applications.

(i) A PHA may submit only one application under the Elderly Housing grant requesting no more than $5 million.

(ii) A PHA may not submit an application for an Elderly Housing grant that targets the same units targeted in a Revitalization application.

(iii) Each application will be evaluated independently and must be viable regardless of whether a PHA applies for funds under the Revitalization grant.

(C) Public Meeting

The application must include a certification that at least one public meeting was held to notify residents and community members of the proposed activities described in the application. The meeting must be held after the publication date of this SuperNOFA. Issues that must be covered in the public meeting include:

(a) The extent of proposed demolition;

(b) Relocation issues; and

(c) Other revitalization activities.

(D) Replacement Units

(1) Rental units will be deemed Replacement Units and qualify for operating subsidy only if they are to be placed under Annual Contributions Contract and operated as Public Housing.

(2) Homeownership units will be deemed Replacement Units only as specified in the Urban Revitalization heading of the 1993 Appropriations Act (Pub. L. 102–389; approved October 6, 1992); that is, if they meet the statutory requirements of the Section 5(h) program (42 U.S.C. 1437c(h)); the HOPE II program (42 U.S.C. 12871–80; Pub. L. 101–625, secs. 421–31; 104 Stat. 4079, 4162–72); the HOPE III program (42 U.S.C. 12891–98; Pub.L. 101–625, secs. 441–48; 104 Stat. 4079, 4172–80); or are made available through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as the Nehemiah program.

(3) HOPE VI funds may not directly support mixed-finance units which are not themselves to be placed under ACC or be sold as homeownership units as specified above.

(E) Section 3 Economic Opportunities

Please see Section II(E) of the General Section of this SuperNOFA. The requirements of Section 3 are applicable to HOPE VI.

(F) Flood Insurance

In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), HUD will not approve applications for grants providing financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of approval of the application.

(G) Coastal Barrier Resources Act

In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), HUD will not approve grant applications for properties in the Coastal Barrier Resources System.

(H) OMB Circulars

Please see Section II(H) of the General Section of this SuperNOFA.

(I) Conflict of Interest

(1) In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official and who exercises or has exercised any functions or responsibilities with respect to activities assisted by HOPE VI funds, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom her or she has family or business ties, during his or her tenure or for one year thereafter.

(2) HUD may grant an exception to the exclusion in paragraph (1) of this section on a case-by-case basis when it determines that such an exception will serve to further the proposes of the program and the effective and efficient administration of the revitalization activities. HUD will consider an exception only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made, and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD will consider the cumulative effect of the following factors, as applicable:

(a) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the revitalization program that would otherwise not be available;

(b) Whether an opportunity was provided for open competitive bidding or negotiation;

(c) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity, and the exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class;

(d) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(e) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (1) of this section;

(f) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighted against the public interest served by avoiding the prohibited conflict; and

(g) Any other relevant considerations.

(J) Labor Standards

Where HOPE VI funds provide assistance with respect to low-income housing that will be subject to a contract for assistance under the U.S. Housing Act of 1937, Davis-Bacon or HUD-determined wage rates apply to development or operation of the housing to the extent required under section 12 of the Act. Under section 12, the wage rate requirements do not apply to individuals who: perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not otherwise employed in the work involved (24 CFR part 70). In addition, if other Federal programs are used in connection with the revitalization program, labor standards requirements apply to the extent required by such other Federal programs, on portions of the development that are not subject to Davis-Bacon rates under the Act.

(K) Lead-Based Paint Testing and Abatement

Any property assisted under the HOPE VI Program is covered by the Lead-Based Paint Poisoning Prevention Act (24 U.S.C. 4821 *et seq.*) and is therefore subject to 24 CFR part 35; 24 CFR part 965, subpart H; and 24 CFR 968.110(k).

(L) Building Standards

All activities that include construction, rehabilitation, lead-based paint removal, and related activities:

(1) Must meet or exceed local building codes; and

(2) Must comply with the 1992 Model Energy Code issued by the Council of American Building Officials.

(M) Program Income

Where a plan contemplates the receipt of program-related income prior to grant closeout (e.g., from sale of homeownership Replacement Units, or the disposition of improved land), such income must be reflected in the HOPE VI budget and used for program purposes.

III. Application Selection Process

(A) Threshold Criteria for Funding Consideration

(1) The applicant must be an eligible Public Housing Agency.

(2) The targeted public housing development or portion thereof must be severely distressed, as defined in Section II(A) of this HOPE VI Program section of the SuperNOFA.

(3) The application must include all required forms, certifications and assurances, properly signed and executed, after any period provided for the curing of deficiencies consistent with section V below.

(4) Applications that propose new construction of replacement housing must comply with the requirements of section 6(h) of the 1937 Act by submitting the information described in either paragraphs (a) or (b) of this section:

(a) A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or acquisition and rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement), or

(b) A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or acquisition and rehabilitation.

(B) Application Rating Factors

The factors for rating and ranking applications and the maximum points for each factor, are provided below. The maximum number of points for each application is 102. This includes two EZ/EC bonus points, as described in the General Section of this SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has the organizational resources necessary to successfully implement the proposed activities in a timely manner. In order to ensure that revitalization efforts take place without delays attributable to administration and management, applications that demonstrate the highest degree of capability to implement revitalization in an expeditious manner upon grant award will be awarded the most points under this rating factor.

The rating of the "applicant" or the "applicant's organization and staff," unless otherwise specified, will include any sub-contractors, consultants, subrecipients, and members of consortia which are firmly committed to the project.

In rating this factor, HUD will consider the extent to which:

(1) The applicant and/or its proposed partners, including the overall proposed project director and staff, the day-to-day program manager, consultants, and contractors, have knowledge and recent, successful experience in planning, implementing, adapting, and managing:

(a) Revitalization activities;

(b) Self-sufficiency programs;

(c) Supportive services for the elderly, if applicable;

(d) Other programs similar in scope or nature to the proposed activities.

HUD does not require that the applicant have its program manager and/or developer selected prior to submission of the application, although the PHA may elect to do so. Rather, the PHA must demonstrate its capacity or its ability to identify needs in its current staffing to successfully implement its program, and/or describe in detail its proposed method for securing a program manager and/or development partner to implement the plan.

(2) The applicant has adequate experience in management and marketing. The applicant has thoroughly evaluated the obstacles that prevented good management, as well as other problems that contributed to the obsolescence of the targeted development, and the new management plan will protect against such obstacles and problems and will improve the efficiency and economy of management. PHAs may propose private management or self-management, but in the latter case *must* demonstrate its capacity to self-manage; or

(3) The applicant has sufficient personnel or will be able to procure partners quickly to implement the revitalization plan in a timely and effective fashion immediately after grant award;

(4) The applicant proposes an appropriate balance of oversight and autonomy in its use of partners and/or contractors;

(5) The applicant has satisfactory managerial experience with resident initiatives;

(6) If the applicant received HOPE VI funding in previous years, HUD will evaluate its ability to demonstrate progress through its expenditure rate and achievement of program objectives.

Rating Factor 2: Need/Extent of the Problem (20 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area.

In rating this factor, HUD will consider:

(1) The extent to which the applicant has documented a critical level of need for the proposed activities at the targeted development. Documentation of need must demonstrate that:

(a) There is a significant level of physical deterioration of buildings and sites, as supported by information and data which shows the extent of physical problems at the site such as major structural deficiencies, electrical systems under code, poor site conditions, leaking roofs, deteriorated infrastructure, high levels of deferred maintenance, number of units that do not meet Housing Quality Standards, levels of lead based paint, and other factors;

(i) The level of distress at the site is urgent and threatens to become imminently greater without immediate intervention;

(ii) The PHA lacks the funds to revitalize the development to provide decent, safe, and sanitary housing at the site;

(b) The level of physical distress in the surrounding community is extreme and contributes to the obsolescence of the site, as evidenced by information and data addressing such factors as housing density, housing deterioration, and lack of adequate infrastructure or utilities;

(c) The community as a whole has a demonstrated level of social distress, as evidenced by indicators such as significant incidence of criminal activity, a high vacancy rate, high rates of housing turnover, truancy, and unemployment, low rates of rent collections, graduation, and other objective, measurable indicators;

(d) The distress at the site was caused or exacerbated by obsolescence, not factors within the applicant's control;

(2) The extent to which the level of need for the proposed activity and the urgency in meeting the need are documented with statistics and analyses contained in a data source(s) that is sound and reliable. To the extent that the applicant's community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI) identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

If the proposed activity is not covered under the scope of the Consolidated Plan and Analysis of Impediments to Fair Housing Choice (AI), applicants should indicate such, and use other sound data sources to identify the level of need and the urgency in meeting the need. Types of other sources include, but are not limited to, Census reports, Continuum of Care gaps analysis, law enforcement agency crime reports, Public Housing Authorities' Five Year Comprehensive Plan, and other sound and reliable sources appropriate for the specific SuperNOFA program and activities for which an applicant is applying. For technical assistance programs, input from HUD State and Area Office(s) and assessments are included among the data sources that may be used to identify need.

(3) The PHA agrees that they are subject to the provisions found at 24 CFR part 971 and that they are required to submit a conversion plan, i.e., a plan for removal of the distressed development from the public housing inventory, in accordance with the requirements at 24 CFR 971.7(b).

Rating Factor 3: Soundness of Approach (40 Points)

This factor addresses the quality and cost-effectiveness of the applicant's proposed revitalization plan. There must be a clear relationship between the proposed activities, community needs and the purpose of the program funding for an applicant to receive points for this factor. In rating this factor, HUD will consider the extent to which:

(25 Points for Subfactors (1) through (7))

(1) There is a demonstrated considerable market for the revitalized and/or replacement units of the type and size proposed;

(2) The purposes and goals of the program for which funding is requested will be achieved within an appropriate and reasonable timeframe and program activities will result in measurable accomplishments consistent with the purposes of the program.

(3) The cost estimates of program activities:

(a) Are financially sustainable over the long run;

(b) Are developed through the use of technically competent methodologies

(c) Represent a cost-effective plan for designing, organizing and carrying out the proposed activities;

(d) Are reasonable for the work to be performed and consistent with rates established for the level of expertise required to perform the work in the proposed geographic area;

(e) Are projected to be within HUD TDC and Community and Supportive Service limits;

(f) Are reasonable relative to the cost of providing section 8 tenant-based assistance.

(4) The information and strategies described are coherent and internally consistent.

(5) The proposal will lessen concentration of low-income residents and create desegregation opportunities:

(a) The physical design of the proposed housing will significantly reduce the isolation of low-income residents and/or significantly promote mixed-income communities in well-functioning neighborhoods;

(b) Access to municipal services, job information, mentoring opportunities, transportation, and educational facilities will be increased;

(c) Operational and management principles will promote economic and social diversity;

(d) Intensive counseling will be provided to section 8 certificate or voucher holders to find housing in non-poor areas and prepare these residents for self-sufficiency;

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(6) The revitalization plan proposes innovative approaches to public housing transformation.

(a) Applicants are encouraged to design forward-thinking programs that incorporate the most current sound research on planning, implementation, financing, partnerships, management, and operation of public housing and self-sufficiency and educational programs. Conventional approaches should be reserved for HUD's formula-based capital programs.

(b) Applications should have the potential to yield innovative strategies or "best practices" that can be replicated and disseminated to other organizations, including nonprofit organizations, State and local governments. HUD will assess the transferability of results in terms of model programs or lessons learned from the work performed under the award. Applicants will be required to prepare an analysis of best practices as part of their reports to HUD that may be used by HUD to inform others who may be interested in learning from the experiences gained from the work performed under awards funded through this SuperNOFA.

(7) The design of the revitalized development demonstrates an achievable effort to blend into and enrich the urban landscape;

(10 Points for Subfactors (8) through (11))

(8) Applications for Elderly Housing grants:

(a) Will create new communities for the elderly and disabled designed to meet the special needs and physical requirements of the elderly and disabled. Applicants' elderly program strategies complement their overall HOPE VI revitalization strategy.

(b) Address the issues of transportation, access to health care, security, and affordability with innovative approaches.

(c) Propose demonstration programs based on recent research and program innovations. Applicants are free, however, to propose programs that address elderly and disabled needs in the manner most appropriate for their locality.

(d) Include provisions for sustainability beyond the proposed program period.

(10 points for Subfactors (9) through (11))

(9) Applications targeted toward families propose opportunities for self-sufficiency, particularly for persons enrolled in welfare-to-work programs. The self-sufficiency plan:

(a) Demonstrates objectives that are results-oriented, with measurable goals and outcomes;

(b) Demonstrates consistency with state and local welfare reform goals;

(c) Is financially and programmatically sustainable over the long run;

(d) Is well integrated with the development process;

(e) Proposes a program that is of an appropriate scale, type, and variety of services to meet the needs of residents;

(f) Proposes resident training, self-motivation, employment, and education;

(g) Includes opportunities for economic and retail development at or near the public housing site, as appropriate.

(h) Provides commitments by service providers to provide services and/or funding;

(i) Demonstrates that relationships have been forged with local Boards of Education, institutions of higher learning, non-profit or for-profit educational institutions and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of children of PHA residents from birth through higher education;

(j) Identifies employers and potential employment opportunities for residents who complete community and supportive service training: and

(k) Demonstrates an effective use of technology.

(10) Residents and members of the communities to be affected by the proposed activities have had and will continue to have full and meaningful involvement in the planning and implementation of the revitalization effort:

(a) In addition to meeting the requirement for at least one public meeting to inform residents and members of the surrounding community of the revitalization plan as presented in the application submitted to HUD, the PHA has provided meaningful opportunities for participation to residents and members of the surrounding community of the meeting(s) through:

(i) Clear information about the application;

(ii) Prominent posting of information about the application and scheduled meetings in locations likely to attract notice; and

(iii) Posting of the information in adequate time to allow participants to plan to attend meetings.

(b) Residents and non-resident members of the surrounding community:

(i) Have had the opportunity to participate in the shaping of the application;

(ii) Support the activities proposed in the submitted application;

(iii) Will have opportunities for continued involvement and participation as program activities proceed.

(11) The proposed operation and management principles will accomplish all of the following goals:

(a) Achieve efficient and effective property management and maintenance through private or PHA management;

(b) Lead to a range of incomes in the targeted development including substantial numbers of working residents through effective self-sufficiency programs;

(c) Reward work and promote family stability through positive incentives such as income disregards and ceiling rents. PHAs may establish ceiling rents and may institute earned income disregards for FY 1998;

(d) Provide greater safety and security by:

(i) Instituting tough screening requirements;

(ii) Enforcing tough lease and eviction provisions;

(iii) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with local law enforcement agencies and local United States Attorneys and program policy efforts such as "One Strike and You're Out," the "Officer Next Door" initiative, or Department of Justice "Weed and Seed" programs;

(iv) Promoting healthy homes, i.e., improving the safety and security of residents through anti-crime measures and the installation of physical security or design enhancements.

(e) Promote economic and demographic diversity through a system of local preferences; and

(f) Encourage self-sufficiency by including lease requirements that promote resident involvement in the tenants association, community service, self-sufficiency, and transition from public housing.

(12) (5 Points) The Revitalization Plan will affirmatively further fair housing by actively ensuring that marketing, locations of housing, and structural accessibility of housing will encourage natural integration and discourage inappropriate concentrations of minorities in undesirable neighborhoods.

(a) Developments constructed or rehabilitated with HOPE VI funds must meet the accessibility requirements contained in various civil rights statutes

and regulations, and may receive points under this factor if they meet the visitability standards adopted by the Department that apply to those units not otherwise covered by the accessibility requirements.

(b) PHAs are encouraged to promote greater opportunities for housing choice by making at least 5% of for-sale units accessible to individuals with mobility disabilities and 2% of for-sale units accessible to individuals who have visual or hearing disabilities.

(c) Innovative designs are encouraged, particularly with respect to for-sale house configurations, which simultaneously meet accessibility requirements and achieve marketability for non-disabled households.

(d) Program activities should aid a broad diversity of eligible residents, including those that have been traditionally underserved. Efforts to increase community awareness in a culturally sensitive manner through education and outreach will also be evaluated, if applicable.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses the ability of the applicant to secure additional resources for the proposed activities which can be combined with HUD's program resources to achieve program purposes. Resources include in-kind contributions such as staff or supplies; grants, loans, and other financing; or other types of contributions to the program activities. This factor emphasizes the importance of a PHA not just seeking endorsements and vendor relationships with others, but actively enlisting other stakeholders who are vested in the revitalization effort, including public and private non-profit and for-profit entities with experience in the development and/or management of low- and moderate-income housing, those that are skilled in the delivery of services to residents of public housing, educational institutions, foundations, banks, and other organizations. HUD will evaluate the strength of commitment articulated in letters of support.

If a PHA is also a redevelopment agency or otherwise has citywide responsibilities, HUD will consider the city's redevelopment or other functional area to be a separate partner with which the housing authority function is partnering, where appropriate.

In rating this factor, HUD will consider the extent to which:

(1) The PHA has initiated strong partnerships with entities that will provide significant, *firm* funding and other commitments if HOPE VI funds are awarded. Applicants must provide evidence of leveraging and partnerships by including in the application letters of firm commitments, memoranda of understanding, agreements to participate, or letters of support if firm commitments cannot be secured. All such documentation must include the organization's name, proposed level of commitment, and proposed responsibilities as they relate to the revitalization plan. The commitment must be signed by an official of the organization legally authorized to make commitments on behalf of the organization.

(2) The infusion of HOPE VI dollars will leverage additional resources after grant award, including municipal funds, charitable contributions, private debt and equity, and other partnerships which may not have a dollar value but are critical to the successful transformation of the development and the lives of its residents.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In rating this factor, HUD will consider the extent to which the applicant demonstrates that it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described;

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(i) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan;

(ii) Civil rights organizations;

(iii) Local Area Agency on Aging, if applicable;

(iv) Local agency serving persons with disabilities, if applicable;

(v) Local Weed and Seed task force, if the targeted development is located in a designated Weed and Seed area; and

(vi) Other Federal, State or locally funded activities, including those proposed or on-going in the community.

(vii) Local law enforcement agencies and the local United States Attorney.

(C) Application Evaluation.

Awards under this HOPE VI Program section of the SuperNOFA will be made through a selection process that will award grants to the most meritorious applications.

(1) *Revitalization Applications.*

(a) HUD will preliminarily review, rate and rank each eligible application on the basis of the evaluation factors set forth in Section III(B) of this HOPE VI Program section of the SuperNOFA, above, excluding Factor 3(8), which is specific to applications proposing revitalization of elderly housing.

(b) A final review panel will assess each of the applications advanced to final review and will assign the final scores. The final review panel will review the scores of all applications:

(i) Whose preliminary score is above a base score established by HUD. HUD intends to set the base scores so that applications requesting a total of approximately $900 million are advanced to the final review stage.

(ii) That proposed revitalization activities at sites for which HOPE VI revitalization implementation applications were submitted to HUD in the FY 1997 HOPE VI revitalization competition but were not selected for funding.

(c) HUD will select for funding the most highly-rated eligible applications up to available funding, except that HUD, in its discretion, may choose to select a lower-rated approvable application over a higher-rated application in order to increase the level of national geographic diversity of applications selected under this HOPE VI Program section of the SuperNOFA.

(2) *Elderly Housing Grant Applications.*

(a) HUD will preliminarily review, rate and rank each eligible application on the basis of the evaluation factors set forth in Section III(B), above, excluding Factor 3(9), which is specific to applications proposing revitalization of family housing.

(b) A final review panel will assess each application and will assign the final scores;

(c) HUD will select for funding the most highly-rated eligible applications up to available funding.

(D) Notification of Funding Decisions.

(1) In accordance with the HUD Reform Act, HUD may not notify applicants as to whether or not they have been selected to participate until the announcement of the selection of all recipients for this HOPE VI Program under this SuperNOFA. HUD will provide written notification to all applicants.

(2) HUD's notification of award to a selected applicant will constitute a preliminary approval by HUD subject to:

(a) The completion of a subsidy layering review pursuant to 24 CFR 941.10(b);

(b) The execution by HUD and the recipient of a Grant Agreement; and

(c) A HUD environmental review. Selection for participation (preliminary approval) does not constitute approval of the proposed site. Each preliminarily-selected PHA must assist HUD in complying with environmental review procedures, conducted by HUD in accordance with 24 CFR part 50. The PHA may not acquire, rehabilitate, convert, lease, repair, or construct a property, or commit HUD or local funds to these activities, until written approval is received from the appropriate HUD Environmental Clearance Officer in its area, certifying that the proposed activities have been approved and the PHA is released from all environmental conditions. The results of the environmental review may require that proposed activities be modified or the proposed site rejected.

(E) Grant Agreement.

Because the HOPE VI Program does not have Federal regulations, upon selection for funding, HUD and the recipient will execute a Grant Agreement setting forth the amount of the grant and applicable rules, terms, and conditions, including sanctions for violation of the agreement. The Grant Agreement will set forth the precise schedules of the HOPE VI Program, provide program requirements, describe requirements for implementation of the revitalization plan, and provide any special conditions on the Grantee, as applicable. Among other things, the Grant Agreement will provide that the recipient agrees to:

(1) Carry out the program in accordance with the provisions of this NOFA, applicable law, the approved application, and all other applicable requirements, including requirements for mixed finance development, and section 202 of OCRA;

(2) Comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner, including full cooperation with HUD's program oversight contractor;

(3) Assemble a team to implement the HOPE VI Program that has a strong management and development track record and has the capability to commence and carry out a quality HOPE VI program. If the Grantee fails to make this demonstration to the satisfaction of HUD and its program oversight manager, HUD will direct corrective actions as a condition of retaining the grant;

(4) Execute a construction contract within 18 months (or a period specified in the Grant Agreement). Failure to obligate funds will result in the enforcement of default remedies up to and including withdrawal of funding; and

(5) Establish interim performance goals and complete the physical component of the HOPE VI revitalization within 48 months of execution of the grant agreement. The Secretary shall enforce this requirement through default remedies up to and including withdrawal of funding that the PHA has not obligated. HUD will take into consideration those delays caused by factors beyond the control of the Grantee when enforcing these schedules; and

(6) Execute an ACC Amendment for Mixed-Finance development.

(F) Failure to Proceed

In the event that an applicant selected to receive HOPE VI funding does not proceed in a manner consistent with its application, HUD may withdraw any unobligated balances of funding and make this funding available, subject to applicable law, in HUD's discretion, to the next highest ranked applicant that was not selected for funding in the most recently conducted HOPE VI selection process or combined with funding under an upcoming competitive selection process. Failure to proceed with respect to obligated funds will be governed by the terms of the Grant Agreement or ACC amendment, as applicable.

IV. Application Submission Requirements.

Each HOPE VI revitalization application must conform to the requirements of the HOPE VI Revitalization Application Kit, both in format and content. In addition to the forms, certifications and assurances required by Section II of the General Section of this SuperNOFA, each application must include the following, as directed by the application kit:

(A) A description of existing conditions that describes the extent of need for the program funds requested;

(B) Revitalization Plan which describes all revitalization activities to be funded in the application and details how the proposed work will be accomplished;

(C) For Revitalization applications, a description of plans for resident Self-Sufficiency Programs, including plans for resident consultation and documentation of resident involvement in the planning process;

(D) For Elderly Housing grant applications, a description of plans for resident services, including plans for resident consultation and documentation of resident involvement in the planning process;

(E) A proposed Management Plan which describes the capacity of the applicant and partners to carry out the plan, and proposed management principles which will be implemented to support revitalization efforts;

(F) Documentation of program financing and resources;

(G) A description of any capital funds received by the PHA within the past five years for improvement of the project, including but not limited to Modernization funding under section 14 and MROP funding.

(H) A program schedule.

(I) A certification that at least one public meeting was held to notify residents and community members of the proposed activities described in the application.

V. Corrections to Deficient Applications

The General Section of this SuperNOFA provides the procedures for corrections to deficient applications.

BILLING CODE 4210–32–P

billing code 4

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DRUG ELIMINATION IN PUBLIC AND ASSISTED HOUSING PROGRAMS

Public Housing Drug Elimination Program (Including Youth Sports Eligible Activities)

Public Housing Drug Elimination Program -- New Approaches (Formerly Safe Neighborhood Grant Program)

Drug Elimination Grants for Multifamily Low Income Housing

Public Housing Drug Elimination Technical Assistance

billing code 4210-32-C

Funding Availability for the Public Housing Drug Elimination Program

Program Description: Approximately $288,498,934 is available in FY 1998 for the Public Housing Drug Elimination Program (PHDEP). The PHDEP provides funds for public housing authorities and tribally designated housing entities to develop and finance drug and drug-related crime elimination efforts in their developments. Funds may be used for enhancing security within the developments, making physical improvements to improve security or developing and implementing prevention, intervention and treatment programs to help curtail the use of drugs in public and Indian housing. Approximately $44.9 million in FY 1997 funds is available only for public and Indian housing authorities that have not already received an award of FY 1997 PHDEP funds.

Application Due Date: Completed applications (an original and two copies) must be submitted no later than 6:00 pm local time on June 15, 1998 at the address shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: An original and two copies of the application must be received by the application due date at the local Field Office with delegated public or assisted housing responsibilities attention: Director, Office of Public or Assisted Housing, or, in the case of the Native American population, to the local HUD Administrator, Area Office of Native American Programs (AONAP), as appropriate.

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209, or, from the local HUD Field Office HUB with delegated housing responsibilities over an applying housing agency, or from the AONAPs with jurisdiction over the Tribally Designated Housing Entity preparing an application or by calling HUD's Drug Information and Strategy Clearinghouse (DISC) at 800–578–3472. When requesting an application kit, please refer to the Public Housing Drug Elimination Program (PHDEP). Please be sure to provide your name, address (including zip code, and telephone number (including area code). The application kit contains information on all exhibits, forms, and certifications required for the PHDEP under this SuperNOFA.

For Further Information and Technical Assistance. For further information or technical assistance, please contact the local HUD Field Office HUB with delegated housing responsibilities over an applying housing agency, or from the AONAPs with jurisdiction over the Tribally Designated Housing Entity preparing an application or by calling HUD's Drug Information and Strategy Clearinghouse (DISC) at 800–578–3472.

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 ((42 U.S.C. 11901 et. seq), as amended by section 581 of the National Affordable Housing Act of 1990 (Pub.L. 101–625, approved November 28, 1990) (NAHA), and section 161 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992 (HCDA 1992). The regulations for this program are found in 24 CFR part 761, Drug Elimination Programs.

(B) Purpose

HUD is making FY 1997 PHDEP funds available to public housing agencies (PHAs) and former Indian Housing Authorities (IHAs) (PHAs and IHAs are collectively referred to as HAs) that have not already received an award of FY 1997 PHDEP funds, and FY 1998 PHDEP funds available to PHAs and Tribally Designated Housing Entities (TDHEs) for use in eliminating drug-related crime. In FY 1998, HUD is not announcing a separate competition for the Youth Sports Program, although youth sports-type activities are eligible under "Programs to Reduce/Eliminate Drug Activities."

HUD strongly encourages housing agencies to work closely with law-enforcement agencies and target the drug elimination resources to improve safety and security in public and Indian housing communities. These resources shall be made available and leveraged with other resources focusing on violent crime and drug-related crime within public housing authorities through programs such as the Operation Safe Home Program and Operation Weed and Seed. Operation Weed and Seed, conducted through the Department of Justice, is a comprehensive multi-agency approach to combating violent crime, drug use, and gang activity in high crime neighborhoods. Through Operation Weed and Seed, the approach is to "weed" out crime from targeted neighborhoods and then "seed" the sites with a wide range of crime and drug prevention programs.

HUD encourages grantees to establish collaborative relationships with, and increase over and above existing levels, the efforts of local municipal police departments and/or other law enforcement agencies, local social and/or religious organizations, and other public and private nonprofit organizations who provide community-wide services to offer substance abuse prevention, intervention, treatment, aftercare, education, assessment, and referral programs and services for residents of public housing. The applicants shall include "One Strike and You're Out" activities underway to ensure the broadest range of tools for making and maintaining a safe residential community.

(C) Amount Allocated

(1) *FY 1998 Funding.* FY 1998 HUD Appropriations Act appropriated $310,000,000 for the Public Housing Drug Elimination Program. Of the total $310,000,000 appropriated, approximately $243,563,000 is being made available for Public Drug Elimination grants through this SuperNOFA.

(2) *FY 1997 Funding.* The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, (Pub.L. 104–204, approved September 26, 1996, (the FY 1997 HUD Appropriations Act) appropriated $290 million for the Public Housing Drug Elimination Program to remain available until expended. Approximately $250,649,052 was made available for competitive funding in a NOFA published on May 23, 1997 (62 FR 28538). HUD made 533 awards for a total of approximately $205,714,118 under that FY 1997 NOFA.

In this SuperNOFA, approximately $50 million of FY 1997 funds is being made available to housing authorities that did not receive an award under the May 23, 1997, PHDEP NOFA. Any housing authority that has already received an FY 1997 PHDEP award is not eligible to apply under this PHDEP notice for these FY 1997 funds. Housing authorities applying for FY 1997 PHDEP funding shall complete a separate proposal and budget and submit these documents in order to be considered for funding.

(3) *Maximum Grant Award Amounts.* HUD is distributing grant funds for

PHDEP under this SuperNOFA on a national competition basis. Maximum grant award amounts are computed for the Public Housing Drug Elimination Program on a sliding scale, using an overall maximum cap, depending upon the number of housing authority units.

(a) PHAs: The unit count includes rental, Turnkey III Homeownership and Section 23 leased housing bond-financed projects,

(b) IHAs and TDHEs: The unit count includes rental, Turnkey III and Mutual Help units which have not been conveyed to a homebuyer, and Section 23 lease housing bond-financed projects. Such units must be counted as Current Assisted Stock under the Indian Housing Block Grant Program.

Eligible units are those units which are under management, fully developed, and occupied. However, applicants should note that in determining the unit count for PHA-owned or Native American rental housing, a long-term vacancy unit, as defined in 990.102 or 24 CFR 950.102 (as revised May 1, 1996), is still included in the count. Applicants for Native American housing developments must certify that the targeted units were covered by an Annual Contributions Contract (ACC) on September 30, 1997. Eligible PHA projects must be covered by an ACC during the period of the grant award.

(c) *Minimum and Maximum FY 1998 grant awards.*

(i) For housing authorities and TDHEs with 1–1,250 units: the *minimum* grant award amount is $50,000 or a *maximum* grant award cap of $300.00 per unit;

(ii) For housing authorities and TDHEs with 1,251–24,999 units; the *maximum* grant award is a maximum grant award cap of $260.00 per unit;

(iii) For housing authorities and TDHEs with 24,000–49,999 units the *maximum* grant award is a maximum grant cap of $230.00 per unit; and

(iv) For housing authorities and TDHEs with 50,000 or more units; the *maximum* grant award is a maximum cap of $200.00 per unit up to, but not to exceed, a *maximum* grant award of $30 million.

(d) *Minimum and Maximum FY 1997 grant awards.*

(i) For HAs with 1–499 units: the maximum grant award amount is either $50,000 or a grant award cap of $500.00 per unit, whichever is greater;

(ii) For HAs with 500–1,249 units: the maximum grant award is either $250,000 or a maximum grant award cap of $300.00 per unit, whichever is greater;

(iii) For HAs with 1,250–49,999 units: the maximum grant award is either $375,000 or a maximum grant award cap of $250,000 per unt, whichever is greater; and

(iv) For HAs with 50,000 or more units: the maximum grant award is $200.00 per unit, not to exceed a maximum grant award of $12 million.

(D) Eligible Applicants.

Eligible entities qualified to receive grants include for FY 1998 funding public housing agencies and Tribally Designated Housing Entities (TDHEs); and for FY 1997 funding, public housing agencies and Indian housing authorities. IHAs applying for FY 1997 funding must have been eligible to apply for funding as September 30, 1997 and continue to own and/or manage the targeted developments. Resident Management Corporations (RMCs) may continue to receive funding from housing authority grantees as sub-grantees, to develop security programs and substance abuse prevention programs involving site residents as they have in the past.

(E) Eligible Activities

The following is a listing of eligible activities under this program and guidance as to their parameters (the term TDHEs includes those IHAs applying for FY 1997 funding:

(1) *Physical Improvements to Enhance Security.*

(a) Physical improvements that are specifically designed to enhance security are permitted under this program. These improvements may include (but are not limited to) the installation of barriers, speed bumps, lighting systems, fences, surveillance equipment (e.g., Closed Circuit Television (CCTV), software, fax, cameras, monitors, components and supporting equipment) bolts, locks; and the landscaping or reconfiguration of common areas so as to discourage drug-related crime in the housing authorities and development(s) proposed for funding.

(b) An activity cost that is funded under any other HUD program, such as the modernization program at 24 CFR part 968, shall not also be funded by this program. Housing authorities are encouraged to fund physical security improvements under their approved modernization programs whenever possible since the PHDEP program is designed essentially to fund "soft" costs rather than "hard" costs. The applicant must demonstrate program compliance, accountability, financial and audit controls of PHDEP funds and prevent duplication of funding any activity. Housing authorities shall not co-mingle funds of HUD multiple programs such as: CIAP, CGP, OTAR, ED/SS, TOP, IHBG, HOPE projects, Family Investment, Elderly Service Coordinator, and Operating Subsidy.

(c) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(d) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(e) Funding is not permitted for the acquisition of real property.

(f) Funding is permitted for purchase or lease of house trailers used for eligible community policing, educational, employment, and youth activities.

(g) All physical improvements must also be accessible to persons with disabilities. For example, some types of locks, buzzer systems, etc. are not accessible to persons with limited strength or mobility or to persons who have hearing impairments, and should not be utilized. Accessible alternatives should be utilized. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(2) *Programs to Reduce/Eliminate the Use of Drugs (Prevention, Intervention, Treatment, Short/Long Range Structured Aftercare and Individual Support Systems).* Programs that reduce/eliminate drug-related crime "in and around" the premises of the housing authority/development(s), including substance abuse prevention, intervention, and referral programs, and programs of local social and/or religious and other organizations that provide treatment services [contractual or otherwise] for dependency/remission, and structured aftercare/support system programs, *are permitted* under this program.

The applicant must establish a confidentiality policy regarding medical and disability-related information. For purposes of this section, the goals of this program are best served by focusing resources directly upon housing authority residents and families. Successful strategies (best practices) have incorporated substance abuse prevention, intervention and treatment (dependency/remission and short and long term aftercare) activities into a "continuum of care" approach that assists persons that are using or are at-risk of using drugs and/or committing drug-related crime by providing alternative activities, such as education, training and employment development opportunities.

The applicant's goal must be to reduce/eliminate drug-related crime through a program designed to provide education, training and employment

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opportunities for residents. Such programs create a prime opportunity for housing authorities to leverage resources and bring additional Federal, State, local and Tribal resources into the housing authority community. While housing authorities provide space and other infrastructure, other public or private agencies can provide staff and other resources with limited cost or no cost. Applicants are encouraged to use the PHDEP resources in this fashion.

A community-based approach requires a culturally appropriate strategy. Curricula, activities, and staff should address the cultural issues of the local community, which requires familiarity and facility with the language and cultural norms of the community. As applicable, this strategy should discuss cultural competencies associated with Hispanic, African-American, Asian, Native American or other racial or ethnic communities. Applicants are encouraged to develop a substance abuse/sobriety (remission)/ treatment (dependency) strategy to facilitate substance abuse prevention, intervention, treatment, and structured aftercare efforts, that include outreach to community resources, youth activities, and that facilitate bringing these resources onto the premises, or providing resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises.

Funding Is Permitted for reasonable, necessary and justified purchasing or leasing (whichever can be documented as the most cost effective) of vehicles for grant administration, resident youth and adult education, and training and employment opportunity activities directly related to reducing/eliminating drug-related crime. Based upon the current Diagnostic and Statistical Manual (DSM) of Mental Disorders of the American Psychiatric Association dated May 1994, as it applies to substance abuse, dependency and structured aftercare, related activities and programs *are eligible* for funding under this program. For additional information regarding the DSM Manual contact APPI, 1400 K. Street, NW, Suite 1100, Washington, DC 20005 on 1 (800) 368–5777 or World Wide Web site at http://www.appi.org.

Funding Is Permitted for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred only for training, education and employment activities, as set forth in OMB Circular A–87, directly related to reducing/ eliminating drug-related crime.

(a) *Prevention.* Prevention programs that will be considered for funding under this notice should provide a comprehensive prevention approach for the housing authority resident(s) that addresses the individual resident and his or her relationship to family, peers, and the community and that reduces/ eliminates drug-related crime. Prevention programs should include activities designed to identify and change the factors present in housing authorities that lead to drug-related crime, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug, substance abuse/ dependency, and family counseling, may already be available in the community of the applicant's housing developments.

(i) *Educational Opportunities.* Providing young people with the working knowledge and skills they need to reject illegal drugs has been identified by the Office of National Drug Control Policy as one of the top five goals and objectives to address in its 10-Year Strategy Commitment. The causes and effects of illegal drug/substance abuse must be discussed in a culturally appropriate and structured setting. Grantees may contract (in accordance with 24 CFR 85.36) with professionals to provide such knowledge and skills with training programs or workshops. The professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(ii) *Family and Other Support Services.* For purposes of this section, the term "supportive services" means services to provide housing authority families with access to prevention, educational and employment opportunities, such as: child care; employment training; computer skills training; remedial education; substance abuse counseling; assistance in the attainment of certification of high school equivalency; and other services to reduce drug-related crime. In addition, substance abuse and other prevention programs must demonstrate that they will provide directly, or otherwise make available, services designed to distribute substance/drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the housing development or the community for housing authority families.

(iii) *Adult and Youth Services.* Prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups should be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving housing authority youth. The dissemination of information designed to reduce drug-related crime, such as prevention programs, employment opportunities; employment training; literacy training; computer skills training; remedial education; substance abuse and dependency/ remission counseling; assistance in the attainment of certification of high school equivalency; and other appropriate services and the development of peer leadership skills and other prevention activities must be a component of youth services.

(iv) *Economic and Educational Opportunities for Resident Adult and Youth Activities.* Prevention programs must demonstrate a capacity to provide housing authority residents the opportunities for interaction with, or referral to, established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. Programs such as computer learning centers for both adults and youth, employment service centers coordinated with Federal, Tribal, State and local employment offices, and micro-business centers *are eligible* under this program.

The application should demonstrate that the proposed activities will provide housing authority residents the opportunity to interact with private sector businesses in their immediate and surrounding communities for the same desired goals. Economic and educational opportunities for residents and youth activities should be discussed in the context of "welfare to work" and related Federal, Tribal, State and local government efforts for employment training, education and employment opportunities related to "welfare to work" goals.

Limited educational scholarships *are permitted* under this section. No one individual award may exceed $500.00, and there is a total maximum scholarship program cap of $25,000. Educational scholarship FY 1997 PHDEP funds must be obligated and expended during the term of the grant. The applicant must demonstrate in its plan and timetable the scholarship strategy; the financial and audit controls that will be used; and projected outcomes. Student financial assistance

is permitted for individual public and Indian housing scholarship activities. These activities must be reasonable, necessary and justified.

(b) *Intervention.* The aim of intervention is to provide housing authority residents substance abuse/dependency remission services, and assist them in modifying their behavior and maintaining remission, and in obtaining early substance abuse, treatment and structured aftercare, if necessary.

(c) *Substance Abuse/Dependency Treatment.*

(i) Treatment funded under this program should be "in and around" the premises of the housing authority/development(s) proposed for funding. HUD has defined the term "in and around" to mean within, or adjacent to, the physical boundaries of a public or Indian housing development. The intent of this definition is to make certain that program funds and program activities are targeted to benefit, as directly as possible, public and Indian housing developments, the intended beneficiaries of PHDEP. The goals of this program are best served by focusing its resources directly upon the residents of housing authorities and development(s). The applicant must establish a confidentiality policy regarding medical and disability-related information.

(ii) Funds awarded under this program shall be targeted towards the development and implementation of sobriety maintenance, substance-free maintenance support groups, substance abuse counseling, referral treatment services and short or long range structured aftercare, or the improvement of, or expansion of, such program services for housing authority residents.

(iii) Each proposed drug program must address, but is not limited to, the following goals:

(*1*) Increase resident accessibility to treatment services;

(*2*) Decrease drug-related crime "in and around" the housing authority/development(s) by reducing and/or eliminating drug use among residents; and

(*3*) Provide services designed for youth and/or adult drug abusers and recovering addicts, e.g., prenatal and postpartum care, specialized family and parental counseling, parenting classes, or other supportive services such as domestic or youth violence counseling.

(iv) Independent approaches that have proven effective with similar populations will be considered for funding. Applicants must consider in the overall strategy the following criteria:

(*1*) Formal referral arrangements to other treatment programs in cases where the resident is able to obtain treatment costs from sources other than this program.

(*2*) Family/youth counseling.

(*3*) Linkages to educational and vocational training and employment counseling.

(*4*) Coordination of services from and to appropriate local substance abuse/treatment agencies, HIV-related service agencies, mental health and public health programs.

(v) As applicable, applicants must demonstrate a working partnership with the Single State Agency or local, Tribal or State license provider or authority with substance abuse program(s) coordination responsibilities to coordinate, develop and implement the substance dependency treatment proposal.

(vi) Applicants must demonstrate that counselors (contractual or otherwise) meet Federal, State, Tribal, and local government licensing, bonding, training, certification and continuing training re-certification requirements.

(vii) The Single State Agency or authority with substance abuse and dependency programs coordination responsibilities must certify that the proposed program is consistent with the State plan; and that the service(s) meets all Federal, State, Tribal and local government medical licensing, training, bonding, and certification requirements.

(viii) Funding is permitted for drug treatment of housing authority residents at local in-patient medical (contractual or otherwise) treatment programs and facilities. PHDEP funding for structured in-patient drug treatment under PHDEP funds is limited to 60 days, and structured drug out-patient treatment, which includes individual/family aftercare, is limited to 6 months. The applicant must demonstrate how individuals that complete drug treatment will be provided employment training, education and employment opportunities related to "welfare to work," if applicable.

(ix) Funding is permitted for detoxification procedures designed to reduce or eliminate the short-term presence of toxic substances in the body tissues of a patient.

(x) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a short/long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(xi) All activities described in this section I.(E)(8) of this PHDEP notice to reduce/eliminate the use of drugs and reduce/eliminate drug-related crime should demonstrate efforts to coordinate with Federal, Tribal, State and local employment training and development services, "welfare to work" efforts, or other new "welfare reform" efforts related to education, training and employment of housing authority residents receiving Federal, Tribal, State or local assistance, in public and Indian housing authorities/development(s).

(xii) Funding is permitted to contractually hire organizations and/or consultant(s) to conduct independent assessments and evaluations of the effectiveness of the PHDEP program.

(3) *Resident Management Corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs).* Funding under this program is permitted for housing authorities' RMCs and incorporated RCs and ROs to develop security and substance abuse prevention programs involving site residents. Such programs may include (but are not limited to) voluntary tenant patrol activities, substance abuse education, intervention, and referral programs, youth programs, and outreach efforts. For the purposes of this Section I(E)(9) of this PHDEP section of the SuperNOFA. The elimination of drug-related crime within housing authorities/developments requires the active involvement and commitment of public housing residents and their organizations.

To enhance the ability of housing authorities to combat drug-related crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake program management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR parts 1000 and 964. In order to implement the approved activity, the housing authority shall be the grantee and enter into a sub-contract with the RMC/RC/RO setting forth the amount of funds, applicable terms, conditions, financial controls, payment mechanism schedule, performance and financial report requirements, special conditions, including sanctions for violation of the agreement, and monitoring.

Expenditures for activities under this section will not be incurred by the housing authority (grantee) and/or funds will not be released by the local HUD Field Office until the grantee has met all of the above requirements. Activities described in this PHDEP section of the SuperNOFA should demonstrate efforts to coordinate with Federal, Tribal, State and local employment training and development services, "welfare to

work" efforts, or other new but related "welfare reform" efforts related to education, employment training and employment of housing authority residents receiving Federal, Tribal, State or local assistance.

(4) *Employment of HA Security Personnel.* Employment of HA security personnel *is permitted* under this section. Employment of security personnel is divided into two categories: security personnel services, and housing authority police departments. The following requirements apply to all employment of security personnel activities funded under this PHDEP section of the SuperNOFA:

(a) *Compliance.* Security guard personnel and public housing authority police departments funded under this PHDEP section of the SuperNOFA must meet, and demonstrate compliance with, all relevant Federal, State, Tribal or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(b) *Law Enforcement Service Agreement.* The applicant and the local law enforcement agency, and if relevant, the contract provider of security personnel services, are required to enter into a law enforcement service agreement, in addition to the housing authority's cooperation agreement, that describes the following:

(i) The activities to be performed by security guard personnel or the public housing authority police department; the scope of authority, written policies, procedures, and practices that will govern security personnel or public housing authority police department performance (i.e., a policy manual and how security guard personnel or the public housing authority police department shall coordinate activities with the local law enforcement agency;

(ii) The types of activities that the approved security guard personnel or the public housing authority police department are expressly prohibited from undertaking.

(c) *Policy Manual.* Security guard personnel services and public housing authority police departments funded under this PHDEP section of the SuperNOFA shall be guided by a policy manual that directs the activities of its personnel and contains the policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed. The policy manual must exist before execution of the grant agreement. The housing authority shall ensure all security guard personnel and housing authority police officers are trained, at a minimum, in the following areas that must be covered in the policy manual: use of force, resident contacts, enforcement of HA rules, response criteria to calls, pursuits, arrest procedures, reporting of crimes and workload, feedback procedures to victims, citizens' complaint procedures, internal affairs investigations, towing of vehicles, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, reports to be completed, record keeping and position descriptions on all personnel, post assignments, monitoring, and self-evaluation program requirements.

(d) *Data Management.* A daily activity and incident complaint form approved by the housing authority must be used by security personnel and officers funded under this PHDEP section of the SuperNOFA for the collection and analysis of criminal incidents and responses to service calls. Security guard personnel and housing authority police departments funded under this PHDEP section of the SuperNOFA must establish and maintain a system of records management for the daily activity and incident complaint forms that appropriately ensures the confidentially of personal criminal information. Management Informational Systems (MIS) (computers, software, and associated equipment) and management personnel in support of these activities are eligible for funding.

(5) *Security Personnel Services.* Contracting for, or direct housing authority employment of, security personnel services in and around housing development(s) *is permitted* under this program. Contracts for security personnel services must be awarded on a competitive basis.

(a) *Eligible Services—Over and Above.* Security guard personnel funded by this program must perform services that are over and above those usually performed by local municipal law enforcement agencies on a routine basis. Eligible services may include patrolling inside buildings, providing personnel services at building entrances to check for proper identification, or patrolling and checking car parking lots for appropriate parking decals.

(b) *Employment of Residents.* Housing authorities *are permitted* and encouraged to demonstrate in plans the employment of qualified resident(s) as security guard personnel, and/or to contract with security guard personnel firms that demonstrate in a proposed contract a program to employ qualified residents as security guard personnel. An applicant's program of eliminating drug-related crime should promote "welfare to work" in housing authorities and development(s).

(6) *Employment of Personnel and Equipment for HUD Authorized Housing Authority Police Departments.* Funding for equipment and employment of housing authority police department personnel *is permitted* for housing authorities that already have their own public housing authority police departments. The below-listed twelve (12) housing authorities have been identified by HUD as having eligible public housing police departments/agencies under the FY 1998 PHDEP:

Baltimore Housing Authority and Community Development, Baltimore, MD
Boston Housing Authority, Boston, MA
Buffalo Housing Authority, Buffalo, NY
Chicago Housing Authority, Chicago, IL
Cuyahoga Metropolitan Housing Authority, Cleveland, OH
Housing Authority of the City of Los Angeles, Los Angeles, CA
Housing Authority of the City of Oakland, Oakland, CA
Philadelphia Housing Authority, Philadelphia, PA
Housing Authority of the City of Pittsburgh, Pittsburgh, PA
Waterbury Housing Authority, Waterbury, CT
Virgin Islands Housing Authority, Virgin Islands
District of Columbia Housing Authority, Washington, DC

(a) On September 22, 1995, HUD issued Notice PIH 95–58 (Guidelines for Creating, Implementing and Managing Public Housing Authority Police Departments in Public Housing Authorities). This notice identifies the prerequisites for creating public housing police departments and provides guidance regarding technical assistance to housing authorities to assist in making decisions regarding public housing security, analysis of security needs, and performance measures and outcomes.

(b) Housing authorities that have established their own public housing authority police departments, but are not included on this list, shall file a written request to be recognized by HUD as a public housing authority police department by contacting the Office of the Deputy Assistant Secretary for Assisted Housing Delivery, Public and Indian Housing, Department of Housing and Urban Development, Room 4126, 451 Seventh Street, SW, Washington, D.C. 20410. This request must be submitted and approved by HUD prior to the submission of the FY 1998 PHDEP application.

(c) An applicant seeking funding for this activity must describe the current level of local law enforcement agency baseline services being provided to the housing authority/development(s) proposed for assistance. Local law enforcement baseline services are defined as ordinary and routine services provided to the residents as a part of the overall city and county-wide deployment of police resources, to respond to crime and other public safety incidents, including: 911 communications, processing calls for service, routine patrol officer responses to calls for service, and investigative follow-up of criminal activity.

(d) Applicants for funding of housing authority public housing authority police department officers must have car-to-car (or other vehicles) and portable-to-portable radio communications links between public housing authority police officers and local municipal law enforcement officers to assure a coordinated and safe response to crimes or calls for services. The use of scanners (radio monitors) is not sufficient to meet the requirements of this section. Applicants that do not have such links must submit a plan and timetable for the implementation of such communications links, which is an activity eligible for funding. A housing authority funded under the FY 1994, 1995, 1996 and/or 1997 PHDEP for public housing police departments shall demonstrate in its plan what progress has been made in implementing its communications links. HUD will monitor results of the housing authority's plan and timetable.

(e) Public housing authority police departments funded under this program that are not employing a community policing concept must submit a plan and timetable for the implementation of community policing. A housing authority funded under the FY 1994, 1995, 1996 or 1997 PHDEP for public housing police departments shall demonstrate in its plan what progress has been made in implementing its community policing program. HUD will monitor results of the housing authority's plan and timetable.

(i) Community policing has a variety of definitions; however, for the purposes of this program, it is defined as follows: Community policing is a method of providing law enforcement services that stresses a partnership among residents, police, schools, churches, government services, the private sector, and other local, State, Tribal, and Federal law enforcement agencies to prevent crime and improve the quality of life by addressing the conditions and problems that lead to crime and the fear of crime.

(ii) This method of policing involves a philosophy of proactive measures, such as foot patrols, bicycle patrols, motor scooters patrols, KOBAN activities (community police officers who operate through community-based facilities in housing authorities (e.g., community center, police mini-station) providing human resource activities with inner-city youth who demonstrate high risk behaviors which can lead to drug-related crime), and citizen contacts. For additional information regarding KOBAN community policing contact Marvin Klepper, (202) 708–1197, extension 4229. This concept empowers police officers at the beat and zone level and residents in neighborhoods in an effort to: reduce crime and fear of crime; assure the maintenance of order; provide referrals of residents, victims, and the homeless to social services and government agencies; assure feedback of police actions to victims of crime; and promote a law enforcement value system on the needs and rights of residents.

(f) Housing authority police departments funded under this program that are not nationally or state accredited must submit a plan and timetable for such accreditation. Housing authorities may use either their State accreditation program, if one exists, or the Commission on Accreditation for Law Enforcement Agencies (CALEA) for this purpose. Use of grant funds for public housing police department accreditation activities *is permitted*. Housing authorities receiving grants for funding (public housing police departments) are required to hire a public housing police department accreditation specialist to manage the accreditation program. Housing authority police departments must submit a plan and timetable in order to be funded for this activity. Any public housing police department funded under the FY 1994, 1995, 1996 or 1997 PHDEP shall demonstrate in its plan what progress has been made in implementing its accreditation program and the projected date of accreditation. HUD will monitor results of the housing authority's plan and timetable. Future funding will be based on an evaluation its accreditation status and accomplishments to maintain its accreditation status.

(g) Housing authorities that have been identified by HUD as having authorized public housing police departments *are permitted* to use PHDEP funds to purchase or lease any law enforcement clothing or equipment, such as, vehicles, uniforms, ammunition, firearms/weapons, police vehicles; including cars, vans, buses, and protective vests, or any other equipment that supports their crime prevention and security mission. Housing authorities not identified by HUD as having an authorized public housing police department *are not permitted to use PHDEP funds* to directly purchase any clothing or equipment for use by local municipal police departments and/or other law enforcement agencies.

(7) *Reimbursement of Local Law Enforcement Agencies for Additional (Supplemental—Over and Above Local Law Enforcement Baseline Services) Security and Protective Services.* Additional (supplemental) security and protective services *are permitted* under this program, but such services must be over and above the local police department's current level of baseline services. Housing authorities and TDHEs are required to identify the level of local law enforcement services that they are required to receive pursuant to their local cooperation agreements, as well as the current level of services being received. For purposes of PHDEP section of the SuperNOFA, local police department baseline services are defined as ordinary and routine services, including patrols, police officer responses to 911 communications and other calls for service, and investigative follow-up of criminal activity, provided to housing authority residents as a part of the overall deployment of police resources by the local jurisdiction in which the housing authority is located.

(8) *Employment of Investigators.* Employment of and equipment for one or more individuals *is permitted* under this program to investigate drug-related crime "in and around" the real property comprising any housing authority's development(s) and provide evidence relating to any such crime in any administrative or judicial proceedings.

(a) Housing authorities that employ investigators funded by this program must meet and demonstrate compliance with all relevant Federal, Tribal, State or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(b) The housing authority and TDHE (grantee), and the provider of the investigative services are required to enter into and execute a written agreement that describes the following:

(i) The nature of the activities to be performed by the housing authority investigators, their scope of authority, reports to be completed, established policies, procedures, and practices that will govern their performance (i.e., a Policy Manual and how housing authority investigators will coordinate their activities with local, State, Tribal,

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and Federal law enforcement agencies); and

(ii) The types of activities that the housing authority investigators are expressly prohibited from undertaking.

(c) Under this section, reimbursable costs associated with the investigation of drug-related crimes (e.g., travel directly related to the investigator's activities, or costs associated with the investigator's testimony at judicial or administrative proceedings) may only be those directly incurred by the investigator.

(d) Housing authority and TDHE investigator(s) shall report on drug-related crime and other part I and part II crimes in the housing authority and developments. Housing authorities shall establish, implement and maintain a system of records management that ensures confidentiality of criminal records and information. Housing authority-approved activity forms must be used for the collection, analysis and reporting of activities by housing authority investigators funded under this section. Management Information Systems (MIS) (Computers, software, hardware, and associated equipment) and management personnel are encouraged and are eligible program expenses in support of a housing authority's crime and workload data collection activity and its crime prevention and security mission.

(e) Funding is permitted for housing authority investigator(s) to use PHDEP funds to purchase or lease any law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, or vehicles; including cars, vans, buses, protective vests, and any other supportive equipment, to support the activities of the investigators.

(f) Expenditures for activities under this section will not be incurred by the housing authority (grantee) and funds will not be released by the local HUD Field Office until the grantee has met all of the above requirements.

(9) *Voluntary Tenant Patrols.* Active voluntary tenant patrol activities, to include purchase of uniforms, equipment and related training, *are permitted* under this section. For the purposes of this section, the elimination of drug-related crime within and around the housing authority/development(s) requires the active involvement and commitment of residents and their organizations.

(a) The provision of training and equipment (including uniforms) for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted under this program. Members must be volunteers and must be residents of the housing authority's development(s). Voluntary tenant patrols established under this program are expected to patrol in the housing authority's development(s) proposed for assistance, and to report illegal activities to appropriate housing authority staff, and local, State, Tribal, and Federal law enforcement agencies, as appropriate. Housing authorities are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance is an eligible program expense.

(b) The housing authority (grantee) and cooperating local law enforcement agency, and the members of the voluntary tenant patrol are required, prior to expending any grant funds, to enter into and execute a written housing authority/local municipal police department agreement that describes the following:

(i) The nature of the activities to be performed by the voluntary tenant patrol, the patrol's scope of authority, assignment, the established policies, procedures, and practices that will govern the voluntary tenant patrol's performance and how the patrol will coordinate its activities with the law enforcement agency;

(ii) The types of activities that a voluntary tenant patrol is expressly prohibited from undertaking, including, but not limited to, the carrying or use of firearms or other weapons, nightstick, clubs, handcuffs, or mace in the course of their duties under this program;

(iii) The initial and follow-up voluntary tenant patrol training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the voluntary tenant patrol into effect); and

(iv) Voluntary tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a housing authority's liability insurance.

(c) Uniforms, communication and related equipment eligible for funding under this program shall be reasonable, necessary, justified and related to the operation of the voluntary tenant patrol and must be otherwise permissible under local, State, Tribal, or Federal law.

(d) Under this program, bicycles, motor scooters, all season uniforms and associated equipment to be used, exclusively, by the members of the housing authority's voluntary tenant patrol *are eligible items.* Voluntary tenant patrol uniforms and equipment must be identified with specific housing authority/development(s) identification and markings.

(e) PHDEP grant funds shall not be used for any type of financial compensation, such as any full-time wages or salaries for voluntary tenant and/or patrol participants. Funding for housing authority personnel or resident(s) to be hired to coordinate this activity is permitted.

(F) Ineligible Activities

PHDEP funding *is not permitted* for any of the activities listed below, unless otherwise specified in this PHDEP section of the SuperNOFA.

(1) Costs incurred before the effective date of the grant agreement (Form HUD–1044), including, but not limited to, consultant fees related to the development of an application or the actual writing of the application.

(2) The purchase of controlled substances for any purpose. Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

(3) Compensation of informants, including confidential informants. These should be part of the baseline services provided and budgeted by local law enforcement agencies.

(4) Direct purchase or lease of any law or military enforcement clothing or equipment, such as vehicles, including cars, vans, buses, uniforms, ammunition, firearms/weapons, protective vests, and any other supportive equipment. Exceptions are public housing police departments, and investigator activities listed in this NOFA.

(5) Wages or salaries for voluntary tenant patrol participants. Housing authorities and TDHEs *are permitted* to fund housing authority/resident coordinator(s) to be hired for this activity. Staffing must be reasonable, necessary and justified. Excessive staffing *is not permitted.*

(6) Construction of any facility space in a building or unit, although *funding is permitted* for the costs of retrofitting/modifying existing building space owned by the housing authorities and TDHEs for eligible activities/programs such as: community policing mini-station operations, adult/youth education, and employment training facilities. The goal of this funding is to reduce/eliminate drug-related crime and form partnerships with Federal, Tribal, State and local government resources.

Program costs *are permitted* if shared among other HUD programs. The applicant must demonstrate the use of program compliance, accountability, financial and audit controls of PHDEP funds and controls to prevent duplicate funding of any activity. Housing authorities shall not co-mingle funds of multiple programs such as CIAP, CGP, OTAR, TOP, EDSS, IHBG, Family Investment Center, Elderly Service Coordinators, and Operating Subsidy. House trailers of any type that are not designated as a building *are eligible items* for purchase or lease for specific community policing, educational, employment, and youth activities.

(7) Organized fund raising, advertising, financial campaigns, endowment drives, solicitation of gifts and bequests, rallies, marches, community celebrations and similar expenses.

(8) Costs of entertainment, amusements, or social activities and for the expenses of items such as meals, beverages, lodgings, rentals, transportation, and gratuities related to these ineligible activities. However, under Section I.(E)(8) of this PHDEP notice, funding *is permitted* for reasonable, necessary and justified program costs, as defined in OMB Circular A–87, such as meals, beverages and transportation, incurred only for prevention programs, employment training, education and youth activities directly related to reducing/eliminating drug-related crime.

(9) Costs (such as court costs and attorneys fees) related to screening or evicting residents for drug-related crime. However, housing authority and TDHE investigators funded under this program may participate in judicial and administrative proceedings as provided in and listed under section I.(E)(5) (Employment of Investigator(s)), of this NOFA.

(10) Although participation in activities with Federal drug interdiction or drug enforcement agencies *is encouraged*, the transfer of PHDEP grant funds to any Federal agency.

(11) Establishment of councils, resident associations, resident organizations, and resident corporations since HUD funds these activities under a separate NOFA.

(12) Indirect costs as defined in OMB Circular A–87 *are not permitted under this program* (only direct costs are permitted).

(13) Supplant existing positions/activities. For purposes of the PHDEP, supplanting is defined as "taking the place of or to supersede".

(14) The PHDEP is targeted by statute at controlled substances as defined at section 102 of the Controlled Substances Act (21 U.S.C. 802). Since alcohol is a legal substance, alcohol-exclusive activities and programs *are not eligible* for funding under this NOFA, although activities and programs may address situations of multiple abuse involving controlled substances and alcohol.

Eligible Activities for the Youth Sports Program. (1) Any qualified entity that receives a grant may use the funds to assist in carrying out a youth sports program in the following manner:

(2) Provision of public services, including salaries and expenses for staff or youth sports programs and cultural activities, educational programs relating to drug abuse, and sports and recreation equipment.

(a) Non-profit programs that have partnered with housing authorities that provide scheduled organized sports competitions, cultural, educational, recreational, or other activities designed to involve public housing youth as alternatives to drug related criminal activity are eligible activities. Examples include but are not limited to professional sports and/or national prevention organizations for youth, nationally and locally recognized youth programs such as Boys and Girls Clubs, YMCAs, YWCAs, Scouts, National Association of Midnight Basketball Leagues, national or local sports figures, etc.

(b) The purchase of recreational equipment to be used by program participants is permitted under this program.

(c) Cultural and recreational activities, such as ethnic heritage classes, art, dance, drama and music appreciation and instruction programs are eligible Youth Sports Program activities.

(d) Youth leadership skills training for program participants is permitted under this program. These activities must be designed to involve youth in peer leadership roles in the implementation of program activities, for example, as team or activity captains, counselors to younger program participants, assistant coaches, and equipment or supply managers. Grantees may contract with youth trainers to provide services which may include training in peer pressure reversal, resistance or refusal skills, life skills, goal planning, parenting skills, and other relevant topics.

(e) Transportation costs directly related to youth sports activities (for example, leasing a vehicle to transport a youth sports team to a game) are eligible program expenses and liability insurance costs directly related to youth sports activities are eligible program expenses.

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the following requirements:

(A) Threshold Requirements

Housing authorities applying for PHDEP funds are required to submit the following threshold information:

(1) Applicants must submit a program plan/evaluation specifically demonstrating how the activities under this program will be evaluated. This is an eligible expense.

(2) A description of how PHDEP resources will be used to establish collaborative relationships with, and increase over and above existing levels, the efforts of local municipal police departments and/or other law enforcement agencies, local social and/or religious organizations, and other public and private nonprofit organizations who provide community-wide services to offer substance abuse prevention, intervention, treatment, aftercare, education, assessment, and referral programs and services.

(3) A discussion, in their comprehensive anti-crime strategies, of how the proposed PHDEP drug and crime prevention activities will be coordinated with larger Empowerment and Enterprise Zone strategies and Welfare Reform efforts, especially in the areas of training and employment of PHA residents. The PHDEP application may include specific opportunities for resident employment and training with such activities as contracting or hiring of residents as security guard personnel, housing authority police officers, and for referrals to employment and training opportunities. The applicant must demonstrate how the employment and training qualifies as an eligible activity. PHDEP applicants should coordinate with Federal, Tribal, State and local agencies to increase employment and training opportunities for low-income residents, and thereby decrease drug-related crime. Many communities are already developing and providing such services, and housing authorities are strongly encouraged to provide community facility space to allow the provision of these services for residents living "in and around" housing authorities.

(4) A description of how the applicant plans to increase the use of housing authority community facilities, and bring back a community focus to housing authority properties. Expenses related to community policing; police mini-stations; and resident training,

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substance abuse prevention, intervention, treatment, structured aftercare, and other human resources programs that comply with the requirements of this program are eligible program expenses. HUD encourages applicants to use housing authority community facilities in all eligible PHDEP activities. Community policing, resident training, substance abuse prevention, intervention and treatment (dependency, structured aftercare, and support systems) are all activities most effectively implemented in housing authority community facilities. While all PHDEP activities must be carried out "in and around" housing authorities, often the use of the community facilities is taken for granted, and not considered when planning effective implementation of PHDEP activities. HUD encourages applicants to consider current and future use of their community facilities for eligible activities, and to incorporate a strategy regarding facilities for on-site service delivery.

(5) As applicable, incorporate "One Strike and You're Out" elements in applications to ensure PHAs have available the broadest range of tools for making and maintaining a safe residential community. "One Strike and You're Out" activities in applications may be eligible program expenses but to qualify as eligible activities, they must be included in the plan to address the crime problem in public and Indian housing developments required by this PHDEP section of the SuperNOFA. Factors related to the One Strike initiative, such as screening applicants and lease enforcement, are addressed in this PHDEP section of the SuperNOFA. As a part of the Public Housing Management Assessment Program (PHMAP), PHA performance will be measured, in part, by PHMAP indicator #8, "Security", which was included in the revised PHMAP rule published on December 30, 1996, (61 FR 68894). Any successful, comprehensive anti-crime strategy in public housing only (PHMAP does not apply to Indian housing) should address the elements of the PHMAP security indicator: tracking and reporting crime-related problems, screening applicants, enforcing lease requirements, and stating and achieving anti-crime strategies/goals in appropriate HUD grant programs.

(B) Affirmatively Furthering Fair Housing

The first two sentences of the requirement in Section II(D) of the General Section of this SuperNOFA do not apply to this program.

III. Application Selection Process.

(A) Rating and Ranking

Applications will be evaluated competitively and ranked against all other applicants that have applied for Drug Elimination grants. HUD will review each application to determine that it meets the requirements of this SuperNOFA and to assign points in accordance with the rating factors.

HUD will select and fund the highest ranking applications based on score, and continue the process until all funds allocated to it have been awarded or to the point where there are insufficient acceptable applications for which to award funds.

In the event of a tie, HUD will select the highest ranking application that can be fully funded. In the event that two eligible applications receive the same score, and both cannot be funded because of insufficient funds, the applicant with the highest score in rating factor two will be funded. If rating factor two is scored identically, the scores in rating factors one and four will be compared in that order, until one of the applications receives a higher score. If both applications still score the same then the application which requests the least funding will be selected in order to promote the more efficient use of resources. Each application submitted will be evaluated on the basis of the selection criteria set forth below.

(B) Factors for Award to Evaluate and Rank Applications

The factors for rating and ranking applicants and maximum points for each factor, are provided below. The maximum number of points for this program is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points).

This factor addresses the extent to which the applicant has proper organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the "applicant" or the "applicants organization and staff" for technical merit or threshold compliance, unless otherwise specified, will include any subcontractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. In rating this factor, HUD will consider the following:

(1) The knowledge and experience of the staff and administrative capability to manage grants, including administrative support functions, procurement, lines of authority, and fiscal management capacity.

(a) For PHAs (and TDHEs that had previously applied as IHAs), HUD will consider such measurement tools as PHMAP, uniform crime index, physical inspections, agency monitoring of records, Line of Credit Control System Reports (LOCCS), audits and such other relevant information available to HUD on the capacity of the owner or manager to undertake the grant.

(b) For owners of multifamily housing, HUD will consider the most recent Management Review (including Rural Development Management Review), HQS review, State Agency review and such other relevant information available to HUD on the capacity of the owner or manager to undertake the grant.

(c) A description of established performance goals to define the results expected to be achieved by all major grant activities proposed in the grant application, and a description of the goals expressed in an objective, quantifiable, and measurable form. The goals must be outcome or result-oriented and not out-put related. Outcomes include accomplishments, results, impact and the ultimate effects of the program on the drug or crime problem in the target/project area.

(2) The applicant's performance in administering Drug Elimination funding in the previous 5 years.

(a) For PHAs the applicant's past experience will be evaluated in terms of their ability to attain demonstrated measurable progress in tracking drug related crime, enforcement of screening and lease procedures in implementation of the "One Strike and You're Out Initiative" (as applicable), the extent to which the applicant has formed a collaboration with Tribal, State and local law enforcement agencies and courts to gain access to criminal conviction records of applicants to determine their suitability for residence in public housing. Such data will be measured and evaluated based on the Public Housing Management Assessment Program at 24 CFR part 901.

(b) The applicant must identify their participation in HUD grant programs within the preceding three years and discuss the degree of the applicant's success in implementing and managing program implementation, timely drawdown of funds, timely submission of required reports with satisfactory outcomes related to the plan and timetable, audit compliance, whether there are any unresolved findings from prior HUD reports (e.g. performance or finance) reviews of audits undertaken

by HUD, the Office of Inspector General, the General Accounting Office or independent public accountants.

(3) Submission of evidence that applicants have initiated other efforts to reduce drug-related crime by working with Operation Safe Home, SNAP, Weed and Seed, or tenant and/or law enforcement groups.

(4) The applicant's performance in administering other Federal, State or local grant programs.

Rating Factor 2: Need/Extent of the Problem (25 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area (i.e., the degree of the severity of the drug-related crime problem in the project proposed for funding). In responding to this factor, applicants will be evaluated on the extent to which a critical level of need for the proposed activities is explained and an indication of the urgency of meeting the need in the target area. Applicants must include a description of the extent and nature of drug-related crime "in or around" the housing units or developments proposed for funding.

Applicants will be evaluated on the following:

(1) (15 points) "Objective Crime Data" relevant to the target area. For objective crime data, an applicant can be awarded up to 15 points. Such data should consist of verifiable records and not anecdotal reports. Where appropriate, the statistics should be reported both in real numbers and as an annual percentage of the residents in each development (e.g., 20 arrests in a two-year period for distribution of heroin in a development with 100 residents reflects a 20% occurrence rate). Such data may include:

(a) Police records or other verifiable information from records on the types or sources of drug related crime in the targeted developments and surrounding area;

(b) The number of lease terminations or evictions for drug-related crime at the targeted developments; and

(c) The number of emergency room admissions for drug use or that result from drug-related crime. Such information may be obtained from police departments and/or fire departments, emergency medical service agencies and hospitals. The number of police calls for service from housing authorities developments that include resident initiated calls, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

For PHAs, such data should include housing authority police records on the types and sources on drug related crime "in or around" developments as reflected in crime statistics or other supporting data from Federal, State, Tribal or local law enforcement agencies.

(2) (10 Points) Other Crime Data: *Other supporting data on the extent of drug-related crime.* For this section, an applicant can receive up to 10 points. To the extent that objective data as described above may not be available, or to complement that data, the assessment must use data from other verifiable sources that have a direct bearing on drug-related crime in the developments proposed for assistance under this program. However, if other relevant information is to be used in place of objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it and what efforts will be made during the grant period to begin obtaining the data. Examples of the data should include (but are not necessarily limited to):

(a) Surveys of residents and staff in the targeted developments surveyed on drug-related crime or on-site reviews to determine drug/crime activity; and government or scholarly studies or other research in the past year that analyze drug-related crime activity in the targeted developments.

(b) Vandalism cost at the targeted developments, to include elevator vandalism (where appropriate) and other vandalism attributable to drug-related crime.

(c) Information from schools, health service providers, residents and Federal, State, local, and Tribal officials, and the verifiable opinions and observations of individuals having direct knowledge of drug-related crime and the nature and frequency of these problems in developments proposed for assistance. (These individuals may include Federal, State, Tribal, and local government law enforcement officials, resident or community leaders, school officials, community medical officials, substance abuse, treatment (dependency/remission) or counseling professionals, or other social service providers).

(d) The school dropout rate and level of absenteeism for youth that the applicant can relate to drug-related crime. If crime or other statistics are not available at the development or precinct level the applicant must use other verifiable, reliable and objective data.

(e) To the extent that the applicant community's Consolidated Plan identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

Rating Factor 3: Soundness of Approach—(Quality of the Plan) (35 Points)

This factor addresses the quality and effectiveness of the applicant's proposed work plan. In rating this factor, HUD will consider the impact of the activity; if there are tangible benefits that can be attained by the community and by the target population.

An application must include a detailed narrative describing each proposed activity for crime reduction and elimination efforts for each development proposed for assistance, the amount and extent of resources committed to each activity or service proposed, and process used to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The process must include the collection of police workload data such as, but not limited to, all calls for service at the housing authority by individual development, pattern over a period of time, type of crime, and plans to improve data collection and reporting.

In evaluating this factor, HUD will consider the following:

(1) (15 Points) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime in the developments proposed for funding, the resources allocated, and how well the proposed activities fit with the plan.

(2) (10 Points for (2) and (3)) The anticipated effectiveness of the plan and proposed activities in reducing or eliminating drug-related crime problems immediately and over an extended period, including whether the proposed activities enhance and are coordinated with on going or proposed programs sponsored by HUD such as Neighborhood Networks, Campus of Learners, Computerized Community Connections, Operation Safe Home, "One Strike and You're Out," Department of Justice Weed and Seed Efforts, or any other prevention intervention treatment activities.

(3) The rationale for the proposed activities and methods used including evidence that proposed activities have

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been effective in similar circumstances in controlling drug-related crime. Applicants that are proposing new methods for which there is limited knowledge of the effectiveness, should provide the basis for modifying past practices and rationale for why they believe the modification will yield more effective results.

(4) (10 Points for (4) and (5)) The process it will use to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The applicant's proposed analysis of the data collected should include a method for assessing the impact of activities on the collected crime statistics on an on-going basis during the award period.

(5) Specific steps the applicant will take to share and coordinate information on solutions and outcomes with other law-enforcement and governmental agencies, and a description of any written agreements in place or that will be put in place.

(6) The extent to which the applicant's elimination of crime in a development or neighborhood will expand fair housing choice and will affirmatively further fair housing.

Rating Factor 4: Leveraging Resources—(Support of Residents, the Local Government and the Community in Planning and Implementing the Proposed Activities) (10 Points)

This factor addresses the ability of the applicant to secure community and government resources which can be combined with HUD's program resources to achieve program purposes.

(1) In assessing this factor, HUD will consider the following:

Evidence of commitment of funding, staff, or in-kind resources, partnership agreements, and on-going or planned cooperative efforts with law enforcement agencies, memoranda of understanding, or agreements to participate. Such commitments must be signed by an official of the organization legally able to make commitments for the organization. This evidence of commitment must include organization name, resources, and responsibilities of each participant. This also includes interagency activities already undertaken, participation in local, state, Tribal or Federal anti-drug related crime efforts such as: education, training and employment provision components of Welfare Reform efforts, Operation Weed and Seed, Operation Safe Home, local law enforcement initiatives and/or successful coordination of its law enforcement, or other activities with local, state, Tribal or Federal law enforcement agencies.

(2) In evaluating this factor, HUD will also consider the extent to which these initiatives are used to leverage resources for the housing authority community, and are part of the comprehensive plan and performance measures outlines in Rating Factor 3, Soundness of Approach—Quality of the Plan.

(a) An application must describe what role residents in the targeted developments, applicable community leaders and organizations, and law enforcement agencies have had in planning the activities described in the application and what role they will have in carrying out such activities.

(b) The application must include a discussion of the extent to which community representatives and Tribal, local, state and Federal Government officials, including law enforcement agency officials were actively involved in the design and implementation of the applicant's plan and will continue to be involved in implementing such activities during and after the period of PHDEP funding.

(c) The application must demonstrate the extent to which the relevant governmental jurisdiction has met its local law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantees Annual Contributions Contract with HUD). The applicant must describe the current level of baseline local law enforcement services being provided to the housing authority/developments proposed for assistance.

Rating Factor 5: Comprehensiveness and Coordination (10 Points).

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a Community's Consolidated Planning Process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community. In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State, or locally funded activities, including those proposed, or on-going in the community.

IV. Application Submission Requirement

Each applicant must comply with the submission requirements listed in Section IV of the General Section of the SuperNOFA. In addition, each application must specify whether it is for the FY 1997 or the FY 1998 funding competition. To qualify for a grant under this program, the application submitted to HUD shall also include those requirements listed under Section III of the PHDEP section of this SuperNOFA, including the plan to address the problem of drug-related crime in the developments proposed for funding. The applicant must accurately complete the form for HUD's application database entry. The form, with examples, is provided in the application kit.

V. Corrections to Deficient Applications

The General Section of this SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

It is anticipated that activities under the PHDEP will be categorically excluded under 24 CFR 50.19(b)(4)(b)(12), or (b)(13). If grant funds will be used to cover the cost of any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant awards.

Funding Availability for the New Approach Anti-Drug Program (Formerly Known as the Safe Neighborhood Grant Program)

Program Description: Approximately $20 million is available for funding for the New Approach Anti-Drug Program (formerly known as the Safe Neighborhood Grant Program). The purpose of these competitive grants under the New Approach Anti-Drug Program is to assist owners or managers of certain housing developments to: (1) augment security; (2) assist in the investigation and prosecution of drug-related criminal activity in and around the housing developments; and (3) provide for the development of capital improvements directly relating to the security of the developments.

Application Due Date: Applications must be physically received on or before 6:00 pm, local time June 15, 1998 at the address shown below. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: An original and two copies of the application must be physically received by the deadline at the local Field Office with delegated public or assisted housing responsibilities attention: Director, Office of Public or Assisted Housing, or, in the case of the Native American population, to the local HUD Administrator, Area Offices of Native American Programs (AONAPs), as appropriate.

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–2209. An application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to the New Approach Anti-Drug Program, and provide your name, address (including zip code) and telephone number (including area code).

For Further Information and Technical Assistance. For program, policy, and other guidance, contact Henry Colonna, Department of Housing and Urban Development, Virginia State Office, 3600 West Broad Street, Richmond, VA 23230–4920, telephone (804) 278–4505, x 3027, or (804) 278–4501 (the TTY number).

Additional Information

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The FY 1998 HUD Appropriations Act.

(B) Purpose of the New Approach Anti-Drug Program (Formerly the Safe Neighborhood Grant Program)

(1) The purpose of these competitive grants is to assist entities managing or operating Federally assisted multifamily housing developments, public and Indian housing developments (including those Indian housing units formerly defined as public housing under section 3 of the U.S. Housing Act of 1937 and now counted as current assisted stock under the Indian Housing Block Grant Program), or other multifamily-housing developments for low-income families supported by non-Federal governmental housing entities or similar housing developments supported by nonprofit private sources, to augment security (including personnel costs), assist in the investigation and/or prosecution of drug-related criminal activity in and around such developments, and provide for the development of capital improvements at such developments directly relating to the security of such developments. Housing authorities shall form partnerships as sub-grantees to be eligible for assistance.

(2) With these grants, HUD is taking a comprehensive neighborhood/community-based approach to crime. Crime fighting efforts are most effective when partnering takes place with law-enforcement agencies at various levels and with a full range of community stakeholders (such as public housing agencies (PHAs) and Tribally Designated Housing Entities (TDHEs)). Applicants who are owners/operators of eligible housing will be required to have as a subgrantee the unit of general local government (city or county—preferably with the local police department and the local district attorney or prosecutor's office) and other community stakeholders including the owners and residents of assisted housing developments in the benefitting neighborhoods to address crime in an entire neighborhood (a neighborhood may include more than one assisted housing development). Applicants shall also form partnerships with the following entities, if applicable: community residents; neighborhood businesses; and non-profit providers of support services, including spiritually-based organizations and their affiliates.

(C) Amount Allocated

(1) *Available Funding.* Twenty million dollars ($20 million) is available for funding under the New Approach Anti-Drug Program, as provided in the FY 1998 Appropriations Act.

(2) *Maximum Grant Award.* The maximum grant award amount is limited to $250,000 per application.

(3) *Reduction of Requested Grant Amounts.* HUD may award an amount less than requested if:

(a) HUD determines the amount requested for an eligible activity and/or any budget line item is unreasonable;

(b) Insufficient amounts remain under the allocation to fund the full amount requested by the applicant, and HUD determines that partial funding is a viable option;

(c) HUD determines that some elements of the proposed plan are suitable for funding and others are not; or

(d) HUD determines that a reduced grant would prevent duplicative Federal funding.

(4) *Distribution of Funds.* HUD is allocating funds to the highest scoring applications that have met all program threshold requirements and have been ranked by HUD or it's agent.

(5) *Grant Reductions After Award.* HUD may rescind and/or recapture grant funds based on the failure of the grantees or the grantee's' partners to perform in accordance with the Grant Agreement, including the project application that will be incorporated in the Grant Agreement by reference. In addition, grant funds not expended for eligible purposes and in accordance with OMB cost principles by the end of the grant term will be recaptured by HUD.

(D) Eligible Applicants

(1) *General.* Grants may be made to a lead applicant that must be an owner/operator of one or more housing developments that have received some form of financial support from a unit of government or from a private non-profit entity. Unless the lead applicant is a unit of general local government which operates the assisted project, the lead applicant must own an assisted housing development in the neighborhood to be assisted. Housing authorities shall form partnerships as sub-grantees to be eligible for assistance. Indian tribes or Tribally Designated Housing Entities may apply for assistance if they have eligible project areas and eligible assisted housing (see Section I(H) of this New Approach Anti-Drug Program section of the SuperNOFA). New Approach Anti-Drug Program grants

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may be awarded to entities that manage or operate Federally assisted multifamily housing.

(2) *Lead Applicant.*

(a) The lead applicant, which if the application is selected for funding will be the grantee, must be an owner/operator of one or more housing developments that has received some form of financial support from a unit of government or from a private nonprofit entity. Housing Authorities shall form partnerships as sub-grantees to be eligible for assistance. Such support must be designated and assigned by the funding source specifically for the housing rather than for any specific resident household which may, however, benefit from the support in the form of reduced rent. The housing support may be provided on a one-time or periodic basis to pay for or waive: project development costs; costs of financing; operating costs (which include but are not limited to utilities, taxes, fees, and debt service payments); (iv) owner taxes; (v) unit rent levels; or (vi) tenant rent payments.

(b) Unless the lead applicant is a unit of general local government which owns the assisted project, the lead applicant must also own an assisted housing development (as defined in Section I(H) of this New Approach Anti-Drug Program section of the SuperNOFA) in the neighborhood to be assisted. The lead applicant may not have any outstanding findings of civil rights violations.

(c) Housing authorities may not be the lead applicant; housing authorities must form partnerships as sub-grantees to be eligible for assistance.

(3) *Subgrantees and Partnerships.*

(a) *Memorandum of Understanding.* The application must include a number of subgrantees. The chief executive officer or empowered designee of each subgrantee must enter into a Memorandum of Understanding (MOU) with the applicant. The MOU must describe the subgrantee's commitment to serve as a subgrantee, and must specify the expertise and/or resources that the subgrantee will contribute towards the success of the grant activity. The MOU must be included as part of the application.

(b) *Required Subgrantees.* The following entities must be included as subgrantees in the application:

(i) The unit(s) of general local government with primary law enforcement and community development jurisdiction over the project. The MOU of this entity must commit the local police department, prosecutor's office, and community development office to actively support the grant project in partnership with the grantee. The MOU must also describe the level of current services being provided by these entities, and the level of services above this baseline which the entities are committed to providing in support of the grant.

(ii) The owners of assisted housing developments in the neighborhood that will benefit from grant funding. HUD is inclined to reward applications in neighborhoods which have demonstrated that more than one assisted housing development will benefit, and where owners have agreed to participate in the grant activities.

(iii) Residents of each assisted low income project in the neighborhood that will benefit from grant funding. The residents' commitment must include the extent to which they are involved in the planning, and will be participating in and support the Action Plan. This commitment must be signed either by individuals from a majority of project resident households, or by one or more organized resident groups that, combined, have been endorsed by a majority of project resident households or recognized by a governmental entity as representing a majority of project residents.

(c) *Encouraged Partnerships.* In addition to the required subgrantees specified above, applicants are encouraged to partner with other appropriate neighborhood and community stakeholders, including: Neighborhood businesses and business associations; Nonprofit service providers; Neighborhood resident associations; and faith communities or religious institutions.

(E) Eligible Activities

The following is a listing of eligible activities under this program and guidance as to their parameters (the term TDHEs includes those IHAs applying for FY 1997) funding:

(1) *Augmenting Security (Including Personnel).*

(a) *General.* Subject to a Cost Reimbursement Agreement, the grantee may reimburse local law enforcement entities for the costs of additional police presence (police salaries and other expenses directly related to such presence or security) in and around assisted housing developments in the neighborhood over and above baseline services currently provided.

(b) *Baseline Services.* Additional/supplemental security services are permitted but must be over and above the local police department's current level of baseline services. An applicant seeking funding for augmenting security must describe the local police department's current level of baseline services to the neighborhood (including ordinary and routine services, patrols, police officer responses to 911 communications and other calls for services, and investigative follow-up of criminal activity). The description of baseline services must include the number of officers and the actual percent of their time assigned to the development(s) proposed for funding. The applicant must then demonstrate to what extent the proposed funded activity will represent an increase over and above this baseline.

(c) *Police Presence.* For any grant, at least 70 percent of such reimbursed costs must be for police presence in or immediately adjacent to the premises of assisted housing developments and the remainder of such reimbursed costs must be for police presence within the project area.

(d) *Crime Fighting Strategy.*

(i) In its criteria for awarding points in the funding competition, HUD is strongly encouraging that additional law enforcement in the assisted housing developments and surrounding neighborhoods be targeted to implementing an overall crime fighting strategy, rather than merely responding to crime emergencies. Two potentially effective anti-crime strategies that can benefit from additional police presence are:

(*1*) Combined multi-agency task force initiatives, in which local and Federal law enforcement agencies pool resources, first, to infiltrate organizations that promote violent and/or drug-related crime in the neighborhood and, second, to initiate strategic and coordinated mass arrests to break up these organizations; and

(*2*) Community policing (i.e., sustained proactive police presence in the development or neighborhood, often conducted from an on site substation or mini-station, that involves crime prevention, citizen involvement, and other community service activities, as well as traditional law enforcement).

(ii) If reimbursement is provided for community policing activities that are committed to occur over a period of at least 3 years and/or are conducted from a police substation or administration within the neighborhood, the costs during the grant period of constructing such a station or of equipping the substation with communications and security equipment to improve the collection, analysis and use of information about criminal activities in the properties and the neighborhood may be reimbursed.

(iii) Federal law enforcement activities may not be funded by the New Approach Program Grant.

(2) *Security Services Provided by Other Entities (such as the Owner of an Assisted Housing Development).*

(a) *General.*

(i) *Coordination.* The activities of any contract security personnel funded under this grant must be coordinated with other law enforcement and crime prevention efforts under the plan approved by HUD. Efforts to achieve such coordination must be described in the plan. The coordination efforts must include frequent periodic scheduled meetings of security personnel with housing project management and residents, local police and, as appropriate, with other public law enforcement personnel, neighboring residents, landlords, and other neighborhood stakeholders.

(ii) *Proven Ability to Address Crime Problems.* HUD is inclined, as stated elsewhere in this New Approach Anti-Drug Program section of the SuperNOFA, to reward applicants that partner with entities that have a proven ability to address crime problems.

(b) *Reimbursement of State and Local Law Enforcement Agencies.*

(i) Subject to a Cost Reimbursement Agreement, the grantee may reimburse local or State prosecuting offices and related public agencies for the prosecution or investigation of crime committed in the neighborhood related to the Action Plan. Such reimbursement must be for costs over and above what the office or agency incurred for such purposes for crimes committed in the same geographic area during the period equal in length and immediately prior to the period of reimbursement.

(ii) For any grant, at least 70 percent of such reimbursed costs must be in connection with crimes committed in or immediately adjacent to the premises of Assisted Housing developments and the remainder of such reimbursed costs directly related to crime committed elsewhere in the neighborhood.

(c) *Hiring of Private Investigator Services.* Subject to appropriate justification, grantees and subgrantees are permitted to use grant funds to hire private investigator services to investigate crime in and around the premises of an assisted housing development and/or the surrounding neighborhood. Based on HUD's inclination to reward applicants that partner with entities that have a proven ability to address crime problems, HUD is strongly inclined to provide more points under the rating factors entitled "Quality of Plan" and "Strength of Partnerships" to applications that propose reimbursing municipal police departments or prosecutor offices than those reimbursing private operators, for investigative or prosecutorial services (See Section III of this New Approach Anti-Drug Program section of this SuperNOFA).

(3) *Capital Improvements to Enhance Security.* Grantees and subgrantees may use grant funds for capital improvements to enhance security. All such improvements must be accessible to persons with disabilities. For example, locks or buzzer systems that are not accessible to people with restricted or impaired strength, mobility, or hearing may not be funded by the grant. Defensible space improvements must comply with civil rights requirements and cannot exclude or segregate persons based upon their race, color, or national origin from benefits, services, and other terms and conditions of housing. Under the selection criterion entitled "Quality of Plan," HUD is generally inclined to reward capital improvements to enhance the security of an entire neighborhood as opposed to specific projects at the expense of other dwellings in the neighborhood. The capital improvements may include, but are not limited to:

(a) The new construction or rehabilitation of structures housing police substations or mini-stations;

(b) The installation of barriers, speed bumps, the installation of fences, barriers, and appropriate use of close circuit television (CCTV);

(c) Improved door or window security such as locks, bolts, or bars; and

(d) The landscaping or other reconfiguration of common areas to discourage drug-related criminal activities.

(F) Eligible Project Areas

(1) The project area must be a "neighborhood." For purposes of the New Approach Anti-Drug Program, the term "neighborhood" means:

(a) A geographic area within a jurisdiction of a unit of general local government (but not the entire jurisdiction unless the population is less than 25,000) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or

(b) The entire jurisdiction of a unit of general local government with a population of less than 25,000 persons.

(2) The project area must include at least one assisted low-income housing project under:

(a) Section 221(d)(3), section 221(d)(4), or section 236 of the National Housing Act (12 U.S.C. 1715*l*, 1715z–1), provided that such project has been provided a Below Market Interest Rate mortgage, interest reduction payments, or project-based assistance under Rent Supplement, Rental Assistance Payments (RAP) or Section 8 programs.

(b) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

(c) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). This includes housing with project-based Section 8 assistance, whether or not the mortgage was insured by HUD–FHA, but does not include projects which receive only Section 8 tenant-based assistance (i.e., certificates or vouchers).

(3) HUD will award only one grant per project area.

(G) Ineligible Project Areas

FHA-insured projects which have no project-based subsidy but have tenants receiving housing vouchers or Section 8 tenant certificates are not considered Federally assisted housing and would not qualify an area for eligibility.

(H) Eligible Assisted Housing

The following definitions apply to this program.

(1) *Assisted Housing Development.*

(a) For purposes of this program, the term "assisted housing development" means four or more adjoining, adjacent, or scattered site (within a single neighborhood) housing units, developed simultaneously or in stages, having common ownership and project identity, and receiving a project-based financial subsidy from a unit of government at the Federal, State, or local level, or from a private nonprofit entity.

(b) Such subsidy must be associated with a requirement and/or contractual agreement that all or a portion of the units be occupied by households with incomes at or below those of families at the low income limit defined by the U.S. Housing Act of 1937, or by households at or below an alternative limit that falls below this statutory low income limit, at rents which the public or nonprofit entity determines to be affordable.

(2) *Assisted Housing Unit.* For purposes of this program, the term "assisted housing unit" means a unit within an assisted housing development for which occupancy is restricted to households with incomes at or below that of "low income families" as defined by the U.S. Housing Act of 1937 or to households meeting an income standard below that defined as "low income;" and rents are restricted to amounts that

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the public or nonprofit entity determines to be affordable.

(3) *Project Based Subsidies.* For purposes of this program, the term "project based subsidies" is defined as financial assistance that is initially designated and assigned by the funding source specifically for the project rather than to eligible assisted resident households which might also benefit from these subsidies, and provided on a one time up-front or on a periodic basis to the project or its owner to write down, subsidize, or waive: project development costs; costs of financing; project operating costs (including but are not limited to: utilities, taxes, fees, maintenance and debt service payments); owner taxes; unit rent levels; or tenant rent payments.

(I) Ineligible Activities

New Approach Anti-Drug Program Grant funding is not permitted for any of the activities listed below, unless otherwise specified in this New Approach Anti-Drug Program section of this SuperNOFA.

(1) Crime prevention, treatment, or intervention activities are not permitted in this program.

(2) Costs incurred before the effective date of the grant agreement, including but not limited to consultant fees related to the development of an application or the actual writing of the application.

(3) Purchase of controlled substances for any purpose. Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

(4) Compensating informants, including confidential informants. These should be part of the baseline services provided and budgeted by local law enforcement agencies.

(5) Although participation in activities with Federal drug interdiction or drug enforcement agencies is encouraged, these grant funds shall not be transferred to any Federal agency.

(J) Implementation Principles

HUD has established the following principles in its plan for implementing these New Approach Anti-Drug Program Grants:

(1) *Drug- and crime-fighting activities, if only directed to a single assisted housing development, may have the unfortunate effect of simply moving the problem to nearby housing and businesses.* With these grants, HUD is taking a comprehensive neighborhood/community-based approach to crime. Applicant owners/operators of eligible housing will be required to partner with the unit of general local government (city or county) and other stakeholders to address crime in an entire neighborhood (which may include more than one assisted housing development). (Units of local government that are owners/operators of eligible housing may also be designated grantees whether or not the neighborhood designated for assistance includes housing that they own.)

(2) *Crime fighting efforts are most effective when partnerships are formed with law-enforcement agencies and with a full range of community stakeholders.* Applicants will be required to demonstrate that they have formed a partnership with units of general local government, preferably with the local police department and the local district attorney or prosecutor's office playing key roles in this partnership. Applicants shall also form partnerships with the following entities, if applicable:

(a) Federal law enforcement agencies (such as the HUD Office of Inspector General (OIG), the U.S. Attorney's Office, the FBI, the Drug Enforcement Administration (DEA), and the U.S. Marshal's Office) and State and local law enforcement agencies;

(b) All owners of assisted housing developments in the targeted neighborhood; and

(c) Residents of these assisted housing developments and of the community.

(d) Neighborhood businesses; and

(e) Non-profit providers of support services, including spiritually-based organizations and their affiliates.

(3) *Law enforcement strategies, however effective in the short run, need to be combined with efforts to address the underlying causes of crime and deter its reappearance.* The long term solution to the crime problems of assisted housing developments and their surrounding neighborhoods rest in changing the conditions—and the culture that exists.

(4) *Encouraging Partnerships.*

(a) HUD encourages the use of effective working partnerships in new locations to leverage the many Federal resources that are available to eliminate crime in and around public and assisted housing developments through the Drug Elimination Grant, Operation Safe Home, and Weed and Seed programs. HUD now wishes to encourage these successful partnerships to address similar problems in and around privately-owned, Federally assisted housing. In addition to rewarding partnerships, HUD is requiring that at least one project in each targeted neighborhood be multifamily housing with either:

(i) A HUD-insured, held, or direct mortgage and Rental Assistance Payments (RAP), Rent Supplement, or interest reduction payments; or

(ii) Section 8 project-based assistance with or without HUD interest in the project mortgage.

(b) This emphasis on HUD assisted privately-owned housing does not negate the eligibility of other low-income housing developments assisted by Federal, State, and local government, and not-for-profit sources to apply for the New Approach Anti-Drug Program. By awarding points for neighborhoods with high concentrations of assisted housing, HUD is encouraging applicants to address the needs of multiple assisted housing developments which may feature a mix of ownership types and subsidy sources.

(5) *Complying with Civil Rights Requirements.* With the very real need to protect occupants of HUD-sponsored housing and the areas around the housing, the civil rights of all citizens must be protected. Proposed strategies should be developed to ensure that crime-fighting and drug prevention activities are not undertaken in such a manner that civil rights or fair housing statutes are violated. Profiling on any prohibited bases may not be allowed. In addition, all segments of the population should be represented in developing and implementing these crime-fighting strategies.

(6) *Coordination with Other Law Enforcement Efforts.* In addition to working closely with residents and local governing bodies, it is critically important that owners establish ongoing working relationships with Federal, State, and local law enforcement agencies in their efforts to address crime and violence in and around their housing developments. HUD firmly believes that the war on crime and violence in assisted housing can only be won through the concerted and cooperative efforts of owners and law enforcement agencies working together in cooperation with residents and local governing bodies. As such, HUD encourages owners to participate in Departmental and other Federal law enforcement agencies' programs, as described below:

(7) *Safe Neighborhood Action Program (SNAP).*

(a) The Safe Neighborhood Action Program (SNAP) initiative, announced June 12, 1994 by HUD, the National Assisted Housing Management Association (NAHMA), and the U.S. Conference of Mayors (USCM), is an anti-crime and empowerment strategies initiative in HUD-assisted housing neighborhoods in 14 SNAP cities. The major thrust of SNAP is the formation of local partnerships in 14 targeted

cities where ideas and resources from government, owners and managers of assisted housing, residents, service providers, law enforcement officials, and other community groups meet to work on innovative, neighborhood anti-crime strategies.

(b) There is no funding associated with SNAP, which relies on existing ideas and resources of the participants. Some common initiatives from these SNAP teams have included the following: community policing; crime watch programs; tenant selection policies; leadership training; individual development or job skills training; expansion of youth activities; police tip line or form; community centers; anti-gang initiatives; police training for security officers; environmental improvements; and a needs assessment survey to determine community needs.

(c) In addition, a HUD-sponsored initiative to increase the presence of AmeriCorps' VISTAs in assisted housing units has led to the placement of 25 VISTAs on 12 SNAP teams. The AmeriCorps VISTA program, which incorporates a theme of working within the community to find solutions to community needs, has provided additional technical assistance to the SNAP teams.

(d) The cities participating in the SNAP initiative include: Atlanta, GA; Boston, MA; Denver, CO; Houston, TX; Newark, NJ; Philadelphia, PA; Baltimore, MD; Columbus, OH; Detroit, MI; Los Angeles, CA; New Orleans, LA; Little Rock, AR; Richmond, VA; and Washington, DC.

(e) For more information on SNAP, contact Henry Colonna, National SNAP Coordinator, Virginia State Office, 3600 West Broad Street, Richmond, VA 23230–4920; telephone (804) 278–4505, extension 3027; or (804) 278–4501 (TTY). For more information on AmeriCorps' VISTAs in Assisted Housing, contact Deanna E. Beaudoin, National VISTAs in Assisted Housing Coordinator, Colorado State Office, First Interstate Tower North, 633 17th Street, Denver, CO 80202; telephone (303) 672–5291, extension 1068; or (303) 672–5248 (TTY). These numbers are not toll-free.

II. Program Requirements

The following requirements apply to all activities, programs, or functions used to plan, budget, implement, and evaluate the work funded under this program.

(A) Grant Agreement

After applications have been ranked and selected, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant, the physical improvements or other eligible activities to be undertaken, financial controls, and special conditions, including sanctions for violation of the agreement. The Grant Agreement will incorporate the HUD approved applications, as may be amended by any special condition in the Grant Agreement. HUD will monitor grantees, utilizing the Grant Agreements to ensure that grantees have achieved commitments set out in their HUD approved grant application. Failure to honor such commitments would be the basis for HUD determining a default of the Grant Agreement, and exercising available sanctions, including grant suspension, termination, and/or the recapture of grant funds.

(B) Requirements Governing Grant Administration, Audits and Cost Principles

The policies, guidelines, and requirements of this New Approach Anti-Drug Program section of the SuperNOFA, 48 CFR part 31, 24 CFR parts 44, 45, 84 and/or 85, OMB Circulars A–87 and/or A–122, other applicable administrative, audit, and cost principles and requirements, and the terms of grant/special conditions and subgrant agreements apply to the acceptance and use of assistance by grantees. The requirements cited above, as applicable, must be followed in determining procedures and practices related to the separate accounting of grant funds from other grant sources, personnel compensation, travel, procurement, the timing of drawdowns, the reasonableness and allocability of costs, audits, reporting and closeout, budgeting, and preventing conflict of interests or duplicative charging of identical costs to two different funding sources. All costs must be reasonable and necessary.

(C) Term of Grant

Grant funds must be expended within 24 months after HUD executes a Grant Agreement. There will be no extensions or waivers of this grant term.

(D) Subgrants and Subcontracting

(1) In accordance with an approved application, a grantee may directly undertake any of the eligible activities under this New Approach Anti-Drug Program section of the SuperNOFA, it may contract with a qualified third party, or it may make a subgrant to any entity approved by HUD as a member of the partnership, provided such party is a unit of government, is incorporated as a not-for-profit organization, or is an incorporated for-profit entity that owns and/or manages an assisted housing project benefiting from the grant. Resident groups that are not incorporated may share with the grantee in the implementation of the program, but may not receive funds as subgrantees. For-profit organizations other than owners or managers of an Assisted Housing project benefiting from the grant that have been approved by HUD as part of the partnership may only receive grant funds subject to the applicable Federal procurement procedures (See 24 CFR parts 84 or 85).

(2) Subgrants may be made only under a written agreement executed between the grantee and the subgrantee. The agreement must include a program budget that is acceptable to the grantee, and that is otherwise consistent with the grant application budget. The agreement must require the subgrantee to permit the grantee to inspect the subgrantee's work and to follow applicable OMB and HUD administrative requirements, audit requirements, and cost principles, including those related to procurement, drawdown of funds for immediate use only, and accounting to the grantee for the use of grant funds and implementation of program activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, the scope of the subgrantee's authority, and the amount of any insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

(3) The grantee shall be responsible for monitoring, and for providing technical assistance to, any subgrantee to ensure compliance with applicable HUD and OMB requirements. The grantee must also ensure that subgrantees have appropriate insurance liability coverage.

(E) Environmental Requirements

Prior to the award of grant funds under the program, HUD will perform an environmental review to the extent required under the provisions of 24 CFR part 50. Should the environmental review indicate adverse environmental impacts, the application may be downgraded or rejected.

(F) Ineligible Contractors

The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status apply to this grant.

(G) Employment Preference

A grantee under this program shall give preference to the employment of residents of Assisted Housing projects

in the neighborhood to be assisted by this grant, and shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and 24 CFR part 135, to carry out any of the eligible activities under this program, so long as residents provided such preferences have comparable qualifications and training as nonresident applicants.

(H) Drawdown of Grant Funds

All grantees will access the grant funds through HUD's Line of Credit Control System-Voice Response System in accordance with procedures for minimizing the time lapsing between drawdowns and use of funds for eligible purposes as described in 24 CFR parts 84 and/or 85, as applicable.

(I) Reports and Closeout

Each grantee receiving a grant shall submit to HUD a semiannual progress report in a format prescribed by HUD that indicates program expenditures and measures performance in achieving goals. At grant completion, the grantee shall participate in a closeout process as directed by HUD which shall include a final report in a format prescribed by HUD that reports final program expenditures and measures performance in achieving program goals. Closeout will culminate in a closeout agreement between HUD and the grantee and, when appropriate, in the return of grant funds which have not been expended in accordance with applicable requirements.

(J) Suspension or Termination of Funding

HUD may suspend or terminate funding if the grantee fails to undertake the approved program activities on a timely basis in accordance with the grant agreement, adhere to grant agreement requirements or special conditions, or submit timely and accurate reports.

(K) Affirmatively Furthering Fair Housing

The first two sentences of the requirement in Section II(D) of the General Section of the SuperNOFA do not apply to this program.

III. Application Selection Process

(A) Rating and Ranking

(1) HUD will evaluate all eligible applications based on the factors for award identified in this Section III.

(2) After the applications have been scored, HUD will rank by Field Office on a national basis. Awards will be made in ranked order until all funds are expended.

HUD will select the highest ranking applications whose eligible activities can be fully funded. Where there is insufficient funds to fully fund all applicants by Field Office, HUD will award remaining funds, regardless of Field Office, to the next highest ranking applicant. HUD will continue the process until all funds allocated to it have been awarded or to the point where there are insufficient acceptable applications for which to award funds.

(3) In the event of a tie, HUD will select the applicant with the highest score in Factor 1. If Factor 1 is scored identically, the scores in Factors 2, 3 and 4 will be compared in that order, until one of the applications receives a higher score. If both applications still score the same then the application which requests the least funding will be selected in order to promote the more efficient use of resources. In the event of a tie and there is not sufficient funds to fully fund an applicant, HUD will offer remaining funds to the highest ranking applicant following the procedures above.

(B) Factors for Award To Evaluate and Rank Applications

The maximum number of points for this program is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA. An application must receive a score of at least 70 points to be eligible for funding.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses the extent to which the applicant has proper organizational resources necessary to successfully implement the proposed New Approach Anti-Drug Program activities in an effective, efficient, and timely manner. In rating this factor, HUD will consider the extent to which the application demonstrates the capabilities described below:

(1) (7 Points) *The applicants' successful experience combined with its subgrantees' successful experience in utilizing similar strategies to alleviate crime.* To receive maximum points under this section, the applicant must have worked in partnership with one or more of its subgrantees (or, under some circumstances, two or more of the subgrantees may have worked together in partnership) using a similar strategy that reduced crime in and/or around Assisted Housing developments. The applicant must demonstrate the reduction in the occurrence of crime as indicated in Selection Factor 3 of this component of the SuperNOFA. Examples of other Federal programs which promote such partnerships are HUD's Operation Safe Home Program, Safe Neighborhood Action Program and, to some extent, the Drug Elimination Grant Program. In the absence of previous partnerships, the experience of the applicant will weigh more heavily than the experience of any single subgrantee in HUD's assignment of partial points under this subfactor.

(2) (6 Points) *The strength of the applicants' partnership as it relates to eliminating the crime problem identified in Factor 2.* Points in this area will be awarded based on the strength of resource commitments by subgrantees (both in terms of the amount of resources committed and the firmness of the commitments); evidence of the subgrantees' (including project tenants') pre-application role in the development of the plan and prospective role in program implementation; indications of the capacity of the Assisted Housing developments' ownership and management (based on available management reviews by governing public entities) to undertake their share of responsibilities in the partnership (including evidence of whether project management carefully screens applicants for units and takes appropriate steps to deal with tenants known to exhibit or suspected of exhibiting criminal behavior) and to cooperate with law enforcement actions by other partners on their project premises; the willingness of the unit of general local government (lead applicant) to use its prosecutor's office as its lead agency in implementing the grant; utilization of additional partners other than those required under the heading "Eligible Applicants" (for example, neighborhood business organizations); and the effectiveness of the partnership structure (synergistic arrangements of collective action will receive more points than a simple advisory committee of subgrantees).

(3) *The applicants' administrative capacity to implement the grant.* Points will be awarded based on the quality and amount of staff allocated to the grant activity by the grantee; the anticipated effectiveness of the grantee's systems for budgeting, procurement, drawdown, allocation, and accounting for grant funds and matching resources in accordance with OMB administrative requirements; and the lines of accountability for implementing the grant activity, coordinating the partnership, and assuring that the applicant's and subgrantees' commitments will be met. In assessing this factor, HUD will consider the following factors with the indicated total available points:

(a) (4 Points) The applicant must identify their participation in HUD grant programs within the preceding three years, and discuss the degree of the applicant's success in implementing and managing (program implementation, timely drawdown of funds, timely submission of required drawdown of funds, timely submission of required reports with satisfactory outcomes related to the plan and timetable, audit compliance and other HUD reviews) these grant programs.

(b) (3 Points) The local HUD Field Office shall evaluate the extent of the applicant's success or failure in implementing and managing an effective program under previous grants (prior three years). This evaluation will be based on, but not limited to, the relationship between the extent of the crime detailed in Factor 2 during the preceding years, and outcomes regarding reducing/eliminating drug-related crime described in the plans and achievements of proposed strategies regarding crime reduction goals outlined in HUD program performance outcome measurements relating to reducing drugs and crime activities, and HUD reviews, audits, and other monitoring methods.

Rating Factor 2: Need/Extent of the Problem (25 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area (i.e., the degree of the severity of the drug-related crime problem in the project proposed for funding). In responding to this factor, applicants will be evaluated on the extent to which a critical level of need for the proposed activities is explained and an indication of the urgency of meeting the need in the target area. Applicants must include a description of the extent and nature of drug-related crime "in or around" the housing units or developments proposed for funding.

Applicants will be evaluated on the following:

(1) (15 points) "Objective Crime Data" relevant to the target area. For objective crime data, an applicant can be awarded up to 15 points. Such data should consist of verifiable records and not anecdotal reports. Where appropriate, the statistics should be reported both in real numbers and as an annual percentage of the residents in each development (e.g., 20 arrests in a two-year period for distribution of heroin in a development with 100 residents reflects a 20% occurrence rate). Such data may include:

(a) Police records or other verifiable information from records on the types or sources of drug related crime in the targeted developments and surrounding area;

(b) The number of lease terminations or evictions for drug-related crime at the targeted developments; and

(c) The number of emergency room admissions for drug use or that result from drug-related crime. Such information may be obtained from police Departments and/or fire departments, emergency medical service agencies and hospitals. The number of police calls for service from housing authorities developments that include resident initiated calls, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

For PHAs, such data should include housing authority police records on the types and sources on drug related crime "in or around" developments as reflected in crime statistics or other supporting data from Federal, State, Tribal or local law enforcement agencies.

(2) (10 Points) Other Crime Data: *Other supporting data on the extent of drug-related crime.* For this section, an applicant can received up to 10 points. To the extent that objective data as described above may not be available, or to complement that data, the assessment must use data from other verifiable sources that have a direct bearing on drug-related crime in the developments proposed for assistance under this program. However, if other relevant information is to be used in place of objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it and what efforts will be made during the grant period to begin obtaining the data. Examples of the data should include (but are not necessarily limited to):

(a) Surveys of residents and staff in the targeted developments surveyed on drug-related crime or on-site reviews to determine drug/crime activity; and government or scholarly studies or other research in the past year that analyze drug-related crime activity in the targeted developments.

(b) Vandalism cost at the targeted developments, to include elevator vandalism (where appropriate) and other vandalism attributable to drug-related crime.

(c) Information from schools, health service providers, residents and Federal, State, local, and Tribal officials, and the verifiable opinions and observations of individuals having direct knowledge of drug-related crime and the nature and frequency of these problems in developments proposed for assistance. (These individuals may include Federal, State, Tribal, and local government law enforcement officials, resident or community leaders, school officials, community medical officials, substance abuse, treatment (dependency/remission) or counseling professionals, or other social service providers.)

(d) The school dropout rate and level of absenteeism for youth that the applicant can relate to drug-related crime. If crime or other statistics are not available at the development or precinct level the applicant must use other verifiable, reliable and objective data.

(e) To the extent that the applicant's community's Consolidated Plan identifies the level of the problem and the urgency in meeting the need, references to the Consolidated Plan should be included in the response. The Department will review more favorably those applicants who used the Consolidated Plan to identify need, when applicable.

Rating Factor 3: Soundness of Approach (Quality of the Plan) (35 Points)

This factor addresses the quality and effectiveness of the applicant's proposed work plan. In rating this factor, HUD will consider the impact of the activity; if there are tangible benefits that can be attained by the community and by the target population.

An application must include a detailed narrative describing each proposed activity for crime reduction and elimination efforts for each development proposed for assistance, the amount and extent of resources committed to each activity or service proposed, and process used to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The process must include the collection of police workload data such as, but not limited to, all calls for service at the housing authority by individual development, pattern over a period of time, type of crime, and plans to improve data collection and reporting.

In evaluating this factor, HUD will consider the following:

(1) (15 Points) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime in the developments proposed for funding, the resources allocated, and how well the proposed activities fit with the plan.

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(2) (10 Points for (2) and (3)) The anticipated effectiveness of the plan and proposed activities in reducing or eliminating drug-related crime problems immediately and over an extended period, including whether the proposed activities enhance and are coordinated with on going or proposed programs sponsored by HUD such as Neighborhood Networks, Campus of Learners, Computerized Community Connections, Operation Safe Home, "One Strike and You're Out," Department of Justice Weed and Seed Efforts, or any other prevention intervention treatment activities.

(3) The rational for the proposed activities and methods used including evidence that proposed activities have been effective in similar circumstances in controlling drug-related crime. Applicants that are proposing new methods for which there is limited knowledge of the effectiveness, should provide the basis for modifying past practices and rationale for why they believe the modification will yield more effective results.

(4) (10 Points for (4) and (5)) The process it will use to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The applicant's proposed analysis of the data collected should include a method for assessing the impact of activities on the collected crime statistics on an on-going basis during the award period.

(5) Specific steps the applicant will take to share and coordinate information on solutions and outcomes with other law-enforcement and governmental agencies, and a description of any written agreements in place or that will be put in place.

(6) The extent to which the applicant's elimination of crime in a development or neighborhood will expand fair housing choice and will affirmatively further fair housing.

Rating Factor 4: Leveraging Resources (Support of Residents, the Local Government and the Community in Planning and Implementing the Proposed Activities) (10 Points)

This factor addresses the ability of the applicant to secure community and government resources, in-kind services from local governments, non-profit or for-profit entities, private organizations be combined with HUD's program resources to achieve program purposes. In assessing this factor, HUD will consider the following:

(1) Evidence of commitment of funding, staff, or in-kind resources, partnership agreements, and on-going or planned cooperative efforts with law enforcement agencies, memoranda of understanding, or agreements to participate. Such commitments must be signed by an official of the organization legally able to make commitments for the organization. This evidence of commitment must include organization name, resources, and responsibilities of each participant. This also includes interagency activities already undertaken, participation in local, state, Tribal or Federal anti-drug related crime efforts such as: education, training and employment provision components of Welfare Reform efforts, Operation Weed and Seed, Operation Safe Home, local law enforcement initiatives and/or successful coordination of its law enforcement, or other activities with local, state, Tribal or Federal law enforcement agencies.

In evaluating this factor, HUD will also consider the extent to which these initiatives are used to leverage resources for the housing authority community, and are part of the comprehensive plan and performance measures outlines in Rating Factor 3, Soundness of Approach—Quality of the Plan.

(2) An application must provide a description of the Neighborhood and the Assisted Housing Developments in the Neighborhood, and the extent to which the community organizations, and law enforcement agencies have had in planning the activities described in the application and what role they will have in carrying out such activities.

(3) The application must include a discussion of the extent to which community representatives and Tribal, local, State and Federal Government officials, including law enforcement agency officials were actively involved in the design and implementation of the applicant's plan and will continue to be involved in implementing such activities during and after the period of PHDEP funding.

(4) The application must demonstrate the extent to which the relevant governmental jurisdiction has met its local law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantees Annual Contributions Contract with HUD). The applicant must describe the current level of baseline local law enforcement services being provided to the housing authority/developments proposed for assistance.

Rating Factor 5: Comprehensiveness and Coordination (10 points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participants or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrated it has:

(1) Coordinated its proposed activities with those of either groups of organizations prior to submission in order to best complement, support and coordinate all known activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded project/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State, or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements

Each New Approach Anti-Drug application must conform to the requirements of the applicable application kit, both in format and content. Each New Approach Anti-Drug application must provide the following items in addition to the submission requirements listed in Section III of the New Approach Anti-Drug Program section of the SuperNOFA and Section IV of the General Section of this NOFA:

(A) Application Cover Letter;

(B) Congressional Summary—Summary of the proposed program activities in five (5) sentences or less:

(C) The neighborhood description must include a basic description (e.g., boundaries and size), population, number of housing units in the neighborhood, a map, a population profile (e.g., relevant census data on the socio-economic, ethnic and family makeup of neighborhood residents), and the basis on which the area meets the definition of "neighborhood" as

described in this notice (i.e., describe and include a copy of the comprehensive plan, ordinance or other official local document which defines the area as a neighborhood, village, or similar geographical designation). If the entire jurisdiction is defined as a neighborhood by virtue of having a population at less than 25,000, indicate the jurisdiction's population under the 1990 census and describe/include more recent information which gives the best indication as to the current population.

(D) The description of the Assisted Housing development(s) in the neighborhood. This must include the name of the project; the name of the project owner; the nature, sources, and program titles of all project based subsidies or other assistance provided to the project by units of government or private nonprofit entities (any names of public or nonprofit programs other than programs sponsored by HUD should be accompanied by a description of the program and the name and business phone number of a contact person responsible for administering the program for the subsidy provider); the number of housing units in the project; and the number of housing units in the project that meet the definition of "assisted housing units" in this notice, and a description of the restrictions on rents and resident incomes that, in combination with the subsidy provided to the project, qualify the units as assisted/affordable in accordance with the definition in this New Approach Anti-Drug Program section of the SuperNOFA; and the number, geographic proximity (adjoining, adjacent, or scattered site, and if scattered site, the distance between the two buildings which are furthest apart), and type (single family detached, townhouse, garden, elevator) of buildings in the project.

(E) Application for Federal Assistance form (Standard Form SF–424) signed by the chief executive officer of the lead applicant organization.

(F) A description of the subgrantees. The description must include the names of the subgrantees' relative roles and contributions of each subgrantee in implementing grant activities; structures for partnership coordination and joint decision making, e.g., form of partnership interaction (task force, advisory group or corporate entity), lines of accountability, degree of grant decision making power conferred by the applicant/grantee to its partners, frequency of meetings, etc.; the roles, if any, of subgrantees, especially project tenants) in designing the Action Plan; which subgrantees (if any) will be designated to receive and dispense grant funds for grant activities; and how the applicant (grantee) proposes to direct and monitor its partners to account for funds received or expended and to ensure that commitments are met; and a profile of each subgrantee including governmental or nonprofit status (copies of official up-to-date IRS verification of status must be provided for all nonprofit institutions), a detailed description of their experience and success in similar or related anti-crime initiatives, roles in and financial or in-kind contributions to the partnership, and the approximate value of any in-kind contributions.

(G) Accompanying the description must be letters from each subgrantee signed by their respective chief executive officers, describing their role if any in designing the application and, especially, the Action Plan; detailing the amounts and types of financial and other contributions to be made by the subgrantee firmly committing the subgrantee to such contributions; affirming the specific role(s) that the subgrantee will undertake in implementing Plan activities, including its agreement to act as subgrantee, and summarizing the subgrantee's experience in undertaking similar or related activities.

(H) With respect to subgrantees that are owners of Assisted Housing development(s), the application should include external assessment or evidence of the quality of the development's ownership or management (e.g., available management reviews by governing public entities) that relates to the capacity of the ownership and management to undertake their share of responsibilities in the partnership; and such related concerns as whether project management carefully screens applicants for units and takes appropriate steps to deal with tenants known to exhibit or suspected of exhibiting criminal behavior) and cooperates with law enforcement actions by other partners on their project premises.

(I) Overall budget and timetable that includes separate budgets, goals, milestones, and timetables for each activity and addresses milestones towards achieving the goals described above; and indicates the contributions and implementation responsibilities of each partner for each activity, goal, and milestone.

(J) *Staffing.* The number of staff years, the titles and professional qualifications, and respective roles of staff assigned full or part-time to grant implementation by the applicant/grantee.

(K) *Coordination.* The applicant/grantee's plan and lines of accountability (including an organization chart) for implementing the grant activity, coordinating the partnership, and assuring that the applicant's and subgrantees' commitments will be met. There must be a discussion of the various agencies of the unit of government that will participate in grant implementation (which must include the prosecutor's office and at least one, but preferably both, of the following: the police department and an agency dealing with community development), their respective roles (i.e., which has the lead), and their lines of communication.

V. Corrections to Deficient Applications

The General Section of this SuperNOFA provides the procedures for corrections to deficient applications.

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Funding Available for Drug Elimination Grants for Federally Assisted Low-Income Housing (Multifamily Housing Drug Elimination)

Program Description: Approximately $16,250,000 in funding is available for Federally Assisted Low Income Housing Drug Elimination Grants. This Multifamily Housing Drug Elimination Program section of the SuperNOFA does not apply to the funding available under Public and Indian Housing.

Application Due Dates: Completed applications (an original and two copies) must be received no later than 6:00 pm local time in the HUD Office with jurisdiction over the applicant project June 15, 1998. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Address for Submitting Applications: Completed applications (an original and two copies) must be submitted no later than close of business to the HUD Office with jurisdiction over the applicant project. The application kit contains a list of the HUD Offices to which applications must be sent.

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments, may call the Center's TTY number at 1–800–843–2209. An application kit also will be available on the Internet through the HUD web site at http://www.HUD.gov. When requesting an application kit, please refer to Multifamily Housing Drug Elimination Grants, and provide your name, address (including zip code) and telephone number (including area code).

For Further Information and Technical Assistance. Policy questions of a general nature may be referred to Carissa Janis, Housing Project Manager, Office of Portfolio Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; (202) 708–3291, extension 2487. (This number is not toll free). Hearing or speech impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. HUD will notify all applicants whether or not they were selected for funding.

Additional Information

I. Authority; Purpose; Amounts Allocated; and Eligibility

(A) Authority

This program is authorized under Chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.), as amended by section 581 of the National Affordable Housing Act of 1990 (Pub. L. 102–550, approved October 28, 1992). The regulations for the program are found in 24 CFR part 761, Drug Elimination Programs.

(B) Purpose

The purpose of this Multifamily Housing Drug Elimination Grant Program is to:

(1) Enable owners of federally assisted low-income housing projects to deal effectively with drug-related criminal activity in and around the project.

(2) Improve the physical structure and the surrounding environment to enhance security designed to discourage drug-related criminal activity.

(3) Develop programs and security measures designed to reduce the use of drugs in and around federally assisted low-income housing projects, including drug-abuse prevention, intervention, referral, and treatment programs.

(C) Amounts Allocated

The maximum grant award amount is limited to $125,000 per project. Any grant funds under this Multifamily Drug Elimination Grant Program of the SuperNOFA that are allocated, but that are not reserved for grantees, must be released to HUD Headquarters for reallocation. If the Award Office determines that an application cannot be partially funded and there are insufficient funds to fund the application fully, any remaining funds after all other applications have been selected will be released to HUD Headquarters for reallocation. Amounts that may become available due to deobligation will also be reallocated to Headquarters.

All reallocated funds will be awarded in the following manner: HUD Award Office will submit to Headquarters a list of applications, with their scores and amount of funding requested, that would have been funded had there been sufficient funds in the appropriate allocation to do so. Headquarters will select applications from those submitted by the HUD Award Offices, using a random number lottery overseen by the Offices of Housing, General Counsel, and Inspector General, and make awards from any available reallocated funds.

Distribution of Funds. Each Award Office may recommend a total number of awards up to the amount allocated for the area covered by the Award Office. The Award Offices will receive the scores from each HUD Office which has received, rated, ranked, and scored its applications. The Award Offices will, in turn, request Headquarters to fund those properties with the highest score from each HUD Office. If sufficient funds remain, the next highest scored applications, regardless of HUD Office, will be awarded funds. HUD is allocating grant funds under this Multifamily Drug Elimination Grant Program section of the SuperNOFA to the four Award Offices, in accordance with the following schedule:

Award office	Covered	Allocation
Buffalo	Vermont, Massachusetts, Connecticut, Rhode Island, New York, Maine, New Hampshire, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, West Virginia, Virginia.	$4,015,000
Knoxville	Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Puerto Rico, Mississippi, Florida, Iowa, Kansas, Missouri, Nebraska.	4,110,000
Minneapolis	Illinois, Minnesota, Indiana, Wisconsin, Michigan, Ohio,	3,919,000
Little Rock	Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, Arizona, California, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington.	4,206,000

(D) Eligible Applicants

Eligible applicants include owners of the following low-income housing projects: Section 221(d)(3), Section 221(d)(4), or Section 236 of the National Housing Act with project-based assistance. (Note: Section 221(d)(3) and Section 221(d)(4) market rate projects with tenant-based assistance are not eligible for funding); Section 101 of the Housing and Urban Development Act of 1965; or Section 8 of the United States Act of 1937. This includes State Housing Agency projects, Rural Housing and Community Development projects, and Moderate Rehabilitation projects with project-based Section 8 assistance. This does not include Section 8 tenant-

based assistance. Owners of Section 8 tenant-based projects are also ineligible.

(E) Eligible Activities

Programs which foster interrelationships among the residents, the housing owner and management, the local law enforcement agencies, and other community groups impacting on the housing are greatly desired and encouraged. Resident participation in the determination of programs and activities to be undertaken is critical to the success of all aspects of the program. Working jointly with community groups, the neighborhood law enforcement precinct, residents of adjacent properties and the community as a whole can enhance and magnify the effect of specific program activities and should be the goal of all applicants.

(1) *Physical improvements to enhance security.* The improvement may include but are not limited to systems designed to limit building access to project residents, the installation of barriers, lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas to discourage drug-related crime; and other physical improvements designed to enhance security and discourage drug-related activities. In particular, HUD is seeking plans that provide successful, proven, and cost-effective deterrents to drug-related crime that are designed to address the realities of federally assisted low-income housing environments. All physical improvements must also be accessible to persons with disabilities. For example, some types of locks or buzzer systems are not accessible to persons with limited strength, or mobility, or to persons who have hearing impairments and should not be utilized. Accessible alternatives should be utilities. All physical improvements must meet the accessibility requirements of 24 CFR part 8, Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.

(2) *Programs to Reduce the Use of Drugs.* Programs to reduce the use of drugs in and around the project, including drug-abuse prevention, intervention, referral, and treatment programs are eligible for funding under this program. The program should facilitate drug prevention, intervention, and treatment efforts, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or provide resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. Funding is permitted for reasonable, necessary, and justified leasing of vehicles for resident youth and adult education and training activities directly related to "Programs to reduce the use of drugs" under this section. Alcohol-related activities and programs are not eligible for funding under this Multifamily Housing Drug Elimination Grant Program section of the SuperNOFA.

(3) *Drug Prevention.* Drug prevention programs that will be considered for funding under this Multifamily Housing Drug Elimination Grant Program section of the SuperNOFA must provide a comprehensive drug prevention approach for residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in federally assisted low-income housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of the applicant's housing projects, and the applicant must act to bring those available program components onto the premises. Activities that should be included in these programs are:

(a) *Drug Education Opportunities for Residents.* The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR Part 85.36) with drug education professionals to provide training or workshops. The drug education professional contracted to provide these services shall be required to base their services upon the program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of residents.

(b) *Family and Other Support Services.* Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for federally-assisted low-income housing families.

(c) *Youth Services.* Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services.

(4) *Economic/Educational Opportunities for Resident Youth.* Drug prevention programs should demonstrate a capacity to provide residents the opportunity for referral to established higher education or vocational institutions with the goal of developing or building on the resident's skills to pursue educational, vocational, and economic goals. The program must also demonstrate the ability to provide residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(5) *Intervention.* The aim of intervention is to identify federally-assisted low-income housing resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug problems from continuing once detected.

(6) *Drug Treatment.* Treatment funded under this program shall be in or around the premises of the project. Funds awarded under this program shall be targeted towards the development and implementation of new drug referral treatment services and/or aftercare, or the improvement of, or expansion of such program services for residents. Each proposed drug treatment program should address the following goals:

(a) Increase resident accessibility to drug treatment services;

(b) Decrease criminal activity in and around the project by reducing illicit drug use among residents;

(c) Provide services designed for youth and/or maternal drug abusers, e.g., prenatal/postpartum care, specialized counseling in women's issues; parenting classes, or other drug treatment supportive services. Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(i) Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the project when the resident is able to obtain treatment costs from sources other than this program. Applicants may also provide transportation for residents to out-patient treatment and/or support programs.

(ii) Provide family/collateral counseling.

(iii) Provide linkages to educational/vocational counseling.

(iv) Provide coordination of services to appropriate local drug agencies, HIV-related service agencies, and mental health and public health programs.

(7) *Working Partnerships.* Applicants must demonstrate a working partnership with the Single State Agency or State license provider or authority with drug program coordination responsibilities to coordinate, develop and implement the drug treatment proposal. In particular, applicants must review and determine with the Single State Agency or State license provider or authority with drug program coordination responsibilities whether: A) the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years; and B) the drug treatment proposal is consistent with the State treatment plan and the treatment service meets all State licensing requirements.

(8) *Resident Councils.* Providing funding to resident councils to develop security and drug abuse programs.

(E) Ineligible Activities

The following activities are not eligible for funding:

(1) Any activity or improvement that is normally funded from project operating revenues for routine maintenance or repairs, or those activities or improvements that may be funded through reasonable and affordable rent increases;

(2) The acquisition of real property or physical improvements that involve the demolition of any units in the project or displacement of tenants;

(3) Costs incurred prior to the effective date of the grant agreement, including, but not limited to, consultant fees for surveys related to the application or its preparation;

(4) Reimbursement of local law enforcement agencies for additional security and protective services;

(5) The employment of one or more individuals to investigate drug-related crime on or about the real property comprising any federally-assisted low-income project and/or to provide evidence relating to such crime in any administrative or judicial proceeding;

(6) The provision of training, communications equipment and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials;

(7) Treatment of residents at any in-patient medical treatment programs or facilities;

(8) Detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient;

(9) Maintenance drug programs. [Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g., methadone maintenance), rather than for immediate control of a disorder.]

II. Program Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, applicants are subject to the additional requirements in this Section II. These requirements apply to all activities, programs, and functions used to plan, budget, and evaluate the work funded under this program. After applications have been ranked and selected, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant, the physical improvements or other eligible activities to be undertaken, financial controls, and special conditions, including sanctions for violation of the agreement.

(A) General

The policies, guidelines, and requirements of this NOFA, along with applicable HUD program regulations, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements apply to the acceptance and use of assistance by grantees and will be followed in determining the reasonableness and allocability of costs. All costs must be reasonable and necessary.

(B) Term of Funded Activities

The term of funded activities may not exceed 12 months. Owners must ensure that any funds received under this program are not commingled with other HUD or project operating funds. To avoid duplicate funding, owners must establish controls to assure that any funds from other sources, such as Reserve for Replacement, Rent increases, etc., are not used to fund the physical improvements to be undertaken under this program.

HUD may terminate funding if the grantee fails to undertake the approved program activities on a timely basis in accordance with the grant agreement. Grantees must adhere to grant agreement requirements and/or special conditions, and must submit timely and accurate reports.

(C) Subgrants—Subcontracting

A grantee may directly undertake any of the eligible activities under this Multifamily Drug Elimination Program section of the SuperNOFA or it may contract with a qualified third party, including incorporated Resident Councils. Resident groups that are not incorporated may share with the grantee in the implementation of the program, but may not receive funds as subgrantees. Subgrants to incorporated Resident Councils may be made only for eligible statutory activities and only under a written agreement executed between the grantee and the Resident Council. The agreement must include a program budget that is acceptable to the grantee, and that is otherwise consistent with the grant application budget. The agreement must obligate the incorporated Resident Council to permit the grantee to inspect and audit the Resident Council's financial records related to the agreement, and to account to the grantee on the use of grant funds, and on the implementation of program activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, the scope of the subgrantee's authority, and the amount of insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

The grantee shall be responsible for monitoring and for providing technical assistance to any subgrantee to ensure compliance with HUD program requirements, including the regulations at 24 CFR part 84, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. The procurement requirements of Part 84 also apply to Resident Councils. The grantee must also ensure that subgrantees have appropriate insurance.

(D) Forms, Certifications and Assurances

See General Section of the SuperNOFA for the applicable forms, certifications and assurances to be submitted.

(E) Affirmatively Furthering Fair Housing

The first two sentences of the requirement of Section II(D) of the General Section of the SuperNOFA do not apply to this program.

III. Application Selection Process

(A) Rating and Ranking

Applications will be evaluated competitively and ranked against all other applicants that have applied for these Drug Elimination Grants.

The maximum number of points for this program is 102. This includes two EZ/EC bonus points, as described in the General Section of the SuperNOFA.

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(B) Factors for Award Used to Evaluate and Rate Applications. The five factors in this section total 100 points. An application must receive a score of at least 51 points out of the total of 100 points provided for the five factors to be eligible for funding under this competition. The Award Office will select the highest ranking application from each HUD Office whose eligible activities can be fully funded. The Award Office will then select the highest scored unfunded application submitted to it regardless of Field Office and continue the process until all funds allocated to it have been awarded or to the point where there are insufficient acceptable applications for which to award funds. Each application submitted will be evaluated on the basis of the selection criteria set forth below.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points).

This factor addresses the extent to which the applicant has proper organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which the application demonstrates the capabilities described below. In rating this factor, HUD will consider the following:

(1) The knowledge and experience of the staff and administrative capability to manage grants, including administrative support functions, procurement, lines of authority, and fiscal management capacity.

(a) For PHAs (and TDHEs that had previously applied as IHAs), HUD will consider such measurement tools as PHMAP, uniform crime index, physical inspections, agency monitoring of records, Line of Credit Control System Reports (LOCCS), audits and such other relevant information available to HUD on the capacity of the owner or manager to undertake the grant.

(b) For owners of multifamily housing, HUD will consider the most recent Management Review (including Rural Development Management Review), HQS review, State Agency review and such other relevant information available to HUD on the capacity of the owner or manager to undertake the grant.

(c) A description of established performance goals to define the results expected to be achieved by all major grant activities proposed in the grant application, and a description of the goals expressed in an objective, quantifiable, and measurable form. The goals must be outcome or result-oriented and not out-put related. Outcomes include accomplishments, results, impact and the ultimate effects of the program on the drug or crime problem in the target/project area.

(2) The applicant's performance in administering Drug Elimination funding in the previous 5 years.

(a) For PHAs the applicant's past experience will be evaluated in terms of their ability to attain demonstrated measurable progress in tracking drug related crime, enforcement of screening and lease procedures in implementation of the "One Strike and You're Out Initiative" (as applicable), the extent to which the applicant has formed a collaboration with Tribal, State and local law enforcement agencies and courts to gain access to criminal conviction records of applicants to determine their suitability for residence in public housing. Such data will be measured and evaluated based on the Public Housing Management Assessment Program at 24 CFR part 901.

(b) The applicant must identify their participation in HUD grant programs within the preceding three years and discuss the degree of the applicant's success in implementing and managing (program implementation, timely drawdown of funds, timely submission of required reports with satisfactory outcomes related to the plan and timetable, audit compliance, whether there are any unresolved findings from prior HUD reports (e.g. performance or finance) reviews of audits undertaken by HUD, the Office of Inspector General, the General Accounting Office or independent public accountants.

(3) Submission of evidence that applicants have initiated other efforts to reduce drug-related crime by working with Operation Safe Home, SNAP, Weed and Seed, or tenant and/or law enforcement groups.

(4) The applicant's performance in administering other Federal, State or local grant programs.

Rating Factor 2: Need/Extent of the Problem (25 Points)

This factor addresses the extent to which there is a need for funding the proposed program activities to address a documented problem in the target area (i.e., the degree of the severity of the drug-related crime problem in the project proposed for funding). In responding to this factor, applicants will be evaluated on the extent to which a critical level of need for the proposed activities is explained and an indication of the urgency of meeting the need in the target area. Applicants must include a description of the extent and nature of drug-related crime "in or around" the housing units or developments proposed for funding.

Applicants will be evaluated on the following:

(1) (15 points) "Objective Crime Data" relevant to the target area. For objective crime data, an applicant can be awarded up to 15 points. Such data should consist of verifiable records and not anecdotal reports. Where appropriate, the statistics should be reported both in real numbers and as an annual percentage of the residents in each development (e.g., 20 arrests in a two-year period for distribution of heroin in a development with 100 residents reflects a 20% occurrence rate). Such data may include:

(a) Police records or other verifiable information from records on the types or sources of drug related crime in the targeted developments and surrounding area;

(b) The number of lease terminations or evictions for drug-related crime at the targeted developments; and

(c) The number of emergency room admissions for drug use or that result from drug-related crime. Such information may be obtained from police Departments and/or fire departments, emergency medical service agencies and hospitals. The number of police calls for service from housing authorities developments that include resident initiated calls, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

For PHAs, such data should include housing authority police records on the types and sources on drug related crime "in or around" developments as reflected in crime statistics or other supporting data from Federal, State, Tribal or local law enforcement agencies.

(2) (10 Points) Other Crime Data: *Other supporting data on the extent of drug-related crime.* For this section, an applicant can received up to 10 points. To the extent that objective data as described above may not be available, or to complement that data, the assessment must use data from other verifiable sources that have a direct bearing on drug-related crime in the developments proposed for assistance under this program. However, if other relevant information is to be used in place of objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it and what efforts will be made during the grant period to begin obtaining the data. Examples of

the data should include (but are not necessarily limited to):

(a) Surveys of residents and staff in the targeted developments surveyed on drug-related crime or on-site reviews to determine drug/crime activity; and government or scholarly studies or other research in the past year that analyze drug-related crime activity in the targeted developments.

(b) Vandalism cost at the targeted developments, to include elevator vandalism (where appropriate) and other vandalism attributable to drug-related crime.

(c) Information from schools, health service providers, residents and Federal, State, local, and Tribal officials, and the verifiable opinions and observations of individuals having direct knowledge of drug-related crime and the nature and frequency of these problems in developments proposed for assistance. (These individuals may include Federal, State, Tribal, and local government law enforcement officials, resident or community leaders, school officials, community medical officials, substance abuse, treatment (dependency/remission) or counseling professionals, or other social service providers.)

(d) The school dropout rate and level of absenteeism for youth that the applicant can relate to drug-related crime. If crime or other statistics are not available at the development or precinct level the applicant must use other verifiable, reliable and objective data.

(e) To the extent that the applicant's community's Consolidated Plan identifies the level of the problem and the urgency in meeting the need, references to these documents should be included in the response. The Department will review more favorably those applicants who used these documents to identify need, when applicable.

Rating Factor 3: Soundness of Approach—(Quality of the Plan) (35 Points)

This factor addresses the quality and effectiveness of the applicant's proposed work plan. In rating this factor, HUD will consider the impact of the activity; if there are tangible benefits that can be attained by the community and by the target population.

An application must include a detailed narrative describing each proposed activity for crime reduction and elimination efforts for each development proposed for assistance, the amount and extent of resources committed to each activity or service proposed, and process used to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The process must include the collection of police workload data such as, but not limited to, all calls for service at the housing authority by individual development, pattern over a period of time, type of crime, and plans to improve data collection and reporting.

In evaluating this factor, HUD will consider the following:

(1) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime in the developments proposed for funding, the resources allocated, and how well the proposed activities fit with the plan.

(2) The anticipated effectiveness of the plan and proposed activities in reducing or eliminating drug-related crime problems immediately and over an extended period, including whether the proposed activities enhance and are coordinated with on going or proposed programs sponsored by HUD such as Neighborhood Networks, Campus of Learners, Computerized Community Connections, Operation Safe Home, "One Strike and You're Out," Department of Justice Weed and Seed Efforts, or any other prevention intervention treatment activities.

(3) The rational for the proposed activities and methods used including evidence that proposed activities have been effective in similar circumstances in controlling drug-related crime. Applicants that are proposing new methods for which there is limited knowledge of the effectiveness, should provide the basis for modifying past practices and rationale for why they believe the modification will yield more effective results.

(4) The process it will use to collect, maintain, analyze and report Part I and II crimes as defined by the Uniform Crime Reporting (UCR System), as well as police workload data. The applicant's proposed analysis of the data collected should include a method for assessing the impact of activities on the collected crime statistics on an on-going basis during the award period.

(5) Specific steps the applicant will take to share and coordinate information on solutions and outcomes with other law-enforcement and governmental agencies, and a description of any written agreements in place or that will be put in place.

(6) The extent to which the applicant's elimination of crime in a development or neighborhood will expand fair housing choice and will affirmatively further fair housing.

Rating Factor 4: Leveraging Resources (10 Points)

In assessing this factor, HUD will consider the following:

(1) The extent to which the owner is participating in programs that are available from local governments or law enforcement agencies.

(2) The level of participation and support by the local government or law enforcement agency for the applicant's proposed activities. This may include letters of support to the owner, documentation that the owner participates in town hall type meetings to develop strategies to combat crime, or any other form of partnership with local government or law enforcement agencies.

(3) The level of assistance received from local government and/or law enforcement agencies.

(4) The extent to which an applicant has sought the support of residents in planning and implementing the proposed activities.

- Evidence that comments and suggestions have been sought from residents to the proposed plan for this program and the degree to which residents will be involved in implementation.
- Evidence of resident support for the proposed plan.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which the applicant coordinated its activities with other known organizations, participates or promotes participation in a community's Consolidated Planning process, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which the applicant demonstrates it has:

(1) Coordinated its proposed activities with those of other groups or organizations prior to submission in order to best complement, support and coordinate all know activities and if funded, the specific steps it will take to share information on solutions and outcomes with others. Any written agreements, memoranda of understanding in place, or that will be in place after award should be described.

(2) Taken or will take specific steps to become active in the community's Consolidated Planning process (including the Analysis of Impediments to Fair Housing Choice) established to identify and address a need/problem

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that is related to the activities the applicant proposes.

(3) Taken or will take specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the Consolidated Plan; and

(b) Other Federal, State, or locally funded activities, including those proposed or on-going in the community.

IV. Application Submission Requirements

An applicant is allowed to submit only one application for funding under this program. A separate application must be submitted for each project. If the grant is to serve connecting or adjacent properties, an applicant may submit one application that will serve all properties. In such a case, the applicant must describe in detail in its application how the grant will serve the properties. Only one project would receive the funding even though the grant would be serving several properties. The application includes the forms, certifications and assurances listed in the General Section of the SuperNOFA.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

It is anticipated that activities under this program are categorically excluded under 24 CFR 50.19 (b)(4), (b)(12), or (b)(13). If grant funds will be used to cover the cost of any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

Funding Availability for Public and Indian Housing Drug Elimination Technical Assistance Program

Program Description: Approximately $2 million is available for funding short-term, technical assistance services for the Public and Indian Housing Drug Elimination Technical Assistance (PHDE–TA) Program. The purpose of this program is to provide short-term (90 days for completion) technical assistance consultant services to assist public housing agencies (PHAs), Tribes and Tribally Designated Housing Entities (TDHEs), resident management corporations (RMCs), incorporated resident councils (RCs) and resident organizations (ROs) in responding immediately to drug and drug-related crime in public and Tribal housing communities.

Application Due Date: One original application must be received at the Office of Community Safety and Conservation (OCSC), Room 4112 at the HUD Headquarters Building at 451 Seventh Street, SW, Washington DC, 20410, no later than 12:00 midnight on June 15, 1998. See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mailed applications, express mail, overnight delivery, or hand carried).

A copy of the application must be submitted to the appropriate HUD Field Office HUB with delegated housing responsibilities over an applying housing entity, or from the AONAPs with jurisdiction over the Tribes and Tribally Designated Housing Entities.

Applicants will also be required to submit with their applications to OCSC, a Confirmation Form documenting that the appropriate HUD Field Office received the TA application (this form is a threshold requirement).

PHDE–TA applications will be reviewed on a continuing basis until June 15, 1998, or until funds available under this program are expended. Due to the reduced availability of funds in FY 1998, HUD encourages early submission of applications. There is no application deadline for consultants or for HUD initiated Public Housing Drug Elimination Technical Assistance (PHDE–TA).

Address for Submitting Applications: Office of Community Safety and Conservation, Department of Housing and Urban Development, Room 4112, 451 Seventh Street, SW, Washington DC, 20410.

For Application Kits, Further Information, and Technical Assistance

For Application Kits. For an application kit and any supplemental information, please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–843–2209. An application kit also will be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to the Public Housing Drug Elimination Technical Assistance Program, and provide your name, address (including zip code) and telephone number (including area code).

For Further Information and Technical Assistance. For answers to your questions or for technical assistance, please call the local HUD Field Office HUB with delegated housing responsibilities over an applying housing entity, or the AONAPs with jurisdiction over the Tribes and Tribally Designated Housing Entities. The list of local HUD Field Office with jurisdiction over the applicant is provided in the application kit.

Additional Information

I. Authority; Purpose; Amount Allocated; Eligibility

(A) Authority

The FY 1998 HUD Appropriations Act under the heading, "Drug Elimination Grants for Low-Income Housing (Including Transfer of Funds)."

(B) Purpose

The funds for the Drug Elimination Technical Assistance (TA) Program are strictly used to hire HUD-registered consultants, whose fields of expertise address the strategies requested to eliminate drugs and drug-related crimes in public housing authorities (PHAs), Tribes, and tribally-designated housing entities (TDHEs), resident management corporations (RMCs), resident councils (RCs) or resident organizations (ROs) nationwide.

(C) Amount Allocated

For FY 1998, up to $2 million in funding is available for Public Housing Drug Elimination Technical Assistance.

(D) Eligible Applicants

Public housing agencies (PHAs), Tribes and Tribally Designated Housing Entities (TDHEs), incorporated resident councils (RCs), resident organizations (ROs) in the case of Tribes and TDHEs, and resident management corporations (RMCs) are eligible to receive short-term technical assistance services under this PHDE–TA Program section of the SuperNOFA. More specific eligibility requirements follow:

(1) An eligible RC or RO must be an incorporated nonprofit organization or association that meets all seven of the following requirements:

(a) It must be representative of the residents it purports to represent.

(b) It may represent residents in more than one development or in all of the developments of a PHA or Tribe or TDHE, but it must fairly represent residents from each development that it represents.

(c) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every 3 years).

(d) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represents.

(e) It must be supported in its application by a public housing authority or a Tribe or TDHE.

(f) It must provide evidence of incorporation.

(g) It must provide evidence of adopted written procedures for electing officers.

(2) An eligible RMC must be an entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964, or a management contract with a Tribe or TDHE. An RMC must have all seven of the following characteristics:

(a) It must be a nonprofit organization incorporated under the laws of the State or Indian tribe where it is located.

(b) It may be established by more than one resident organization or resident council, so long as each: approves the establishment of the corporation; and has representation on the Board of Directors of the corporation.

(c) It must have an elected Board of Directors.

(d) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(e) Its voting members must be residents of the development or developments it manages.

(f) It must be approved by the resident council. If there is no council, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development.

(g) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of 24 CFR part 964 for a resident council.

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(In the case of a resident management corporation for a Tribe or TDHE, it may serve as both the RMC and the RO, so long as the corporation meets the requirements of this PHDE–TA Program section of the SuperNOFA for a resident organization.)

(3) Applicants can only submit one application per award period. Applicants are eligible to apply to receive technical assistance if they are already receiving technical assistance under this program, as long as the request creates no scheduling conflict with other PHDE–TA requests. For HUD-initiated TA, the recipient may receive more than one type of technical assistance concurrently unless HUD, in consultation with the recipient, determines that it may negatively affect the quality of the PHDE–TA.

(4) Applicants are eligible to apply to receive technical assistance whether or not they are already receiving drug elimination funds under the Public and Indian Housing Drug Elimination Program.

(5) The applicant must have substantially complied with the laws, regulations, and Executive Orders applicable to the Drug Elimination TA Program, including applicable civil rights laws.

(E) Eligible Consultants

(1) HUD is seeking individuals or entities who have experience working with public or Tribal housing or other low-income populations to provide short-term technical assistance under this PHDE–TA Program section of the SuperNOFA. Consultants who have previously been deemed eligible and are part of the TA Consultant Database need not reapply, but are encouraged to update their file with more recent experience and rate justification. To qualify as eligible consultants, individuals or entities should have experience in one or more of the following general areas:

(a) PHA/Tribe or TDHE-related experience with: agency organization and management; facility operations; program development; and experience working with residents and community organizations.

(b) Anti-crime- and anti-drug-related experience with: prevention/intervention programs; and enforcement strategies.

(c) Experience as an independent consultant, or as a consultant working with a firm with related experience and understanding of on-site work requirements, contractual, reporting and billing requirements.

(2) HUD is especially interested in encouraging TA consultant applications from persons who are qualified and have extensive experience planning, implementing, and/or evaluating the following professional areas:

(a) Lease, screening and grievance procedures;

(b) Defensible space, security and environmental design;

(c) Parenting, peer support groups and youth leadership;

(d) Career planning, job training, tutoring and entrepreneurship;

(e) Community policing, neighborhood watch and anti-gang work;

(f) Strengthening resident organizing, involvement, and relations with management; and

(g) "One Strike You're Out" programs.

(3) Additional requirements for consultants include the following:

(a) In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, officer, or appointed official of the applicant may be funded as a consultant to the applicant by this Drug Elimination Technical Assistance Program.

(b) Consultants who wish to provide drug elimination technical assistance services through this program shall not have had any involvement in the preparation or submission of any PHDE–TA proposal. Any involvement of the consultant is considered a conflict of interest, making the consultant ineligible for providing consulting services to the applicant and will disqualify the consultant from future consideration. This prohibition shall also be invoked for preparing and distributing prepared generic or sample applications, when HUD determines that any application submitted by a PHA, Tribe or TDHE, RC, RO or RMC duplicates a sufficient amount of any prepared sample to raise issues of possible conflict of interest.

(4) HUD-registered consultants are eligible to receive funds to be reimbursed for up to $15,000 for conducting the short-term technical assistance, but long-term results are expected from each job. After the work is completed, evaluations are submitted from the housing authorities on the consultants' work performance. The evaluations are carefully reviewed to make sure the housing authorities are satisfied with the services provided through HUD. Afterwards, the consultants are reimbursed by HUD, which completes the PHDE–TA. In extreme cases of technical assistance needs, staff members of HUD headquarters and field offices may recommend specialized technical assistance for which HUD-registered consultants can receive up to $25,000 in funds. HUD encourages housing authorities/agencies and eligible resident organizations with or without a drug elimination grant in their communities to use this resource.

(F) Ineligible Consultants

Consultants and/or companies currently debarred or suspended by HUD are not eligible to perform services under this program.

(G) Eligible Activities

(1) Funding is limited to technical assistance for carrying out activities authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.), as amended by section 581 of the National Affordable Housing Act of 1990 (Pub. L. 101–625, approved November 28, 1990) (NAHA), and section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (HCDA 1992).

(2) The PHDE–TA program is intended to provide *short-term, immediate assistance* to PHAs, Tribes and TDHEs, RMCs, RCs, and ROs in developing and/or implementing their strategies to eliminate drugs and drug-related crime. Short-term technical assistance means that consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in less than 90 days from the date of the approved statement of work. The program will fund the use of consultants who can provide the necessary consultation and/or training for the types of activities outlined below. HUD will fund the use of consultants to assist the applicant undertaking tasks including preparing a proposed strategic or long range plan for reducing drugs and drug-related crime, or conducting a needs assessment or comprehensive crime survey. The PHDE–TA program also funds efforts in:

(a) Assessing, quantifying and establishing performance measurement systems (including gathering baseline statistics) relating to drug and drug-related crime problems in public or Tribal housing development(s) and surrounding community(ies);

(b) Designing and identifying appropriate anti-crime and anti-drug-related practices and programs in the following areas:

(i) Law enforcement strategies, including negotiating with the local police, working with Federal law enforcement, Operation Safe Home, Weed and Seed, and other Federal anti-crime efforts;

(ii) Crime data collection for establishing baseline performance measurements;

(iii) Youth leadership development; youth anti-gang, anti-violence, anti-drug initiatives; youth peer mediation and conflict resolution to deal directly with anger/violence to prevent future violent episodes;

(iv) Resident Patrols;

(v) Security and physical design.

(c) Training for housing authority staff and residents in anti-crime and anti-drug prevention practices and programs;

(d) Evaluating current anti-crime and anti-drug-related crime programs.

(3) The following are activities which are eligible for HUD-Initiated Technical Assistance under the Public and Indian Housing Drug Elimination Technical Assistance Program. Eligible parties may receive technical assistance initiated and approved by HUD in circumstances determined by HUD to require immediate attention because of severe drug and crime issues and the presence of one of the following circumstances:

(a) HAs that were unsuccessful in gaining Drug Elimination Program Grants;

(b) Applicants having demonstrated an inability to explain the nature and extent of local drug or crime activities;

(c) Applicants with a demonstrated inability to identify or develop potential solutions to their local drug or crime problem;

(d) Applicants unable to develop local anti-drug, anti-crime partnerships;

(e) Applicants lacking the capability to carry out a plan due to a lack of anti-drug, anti-crime-related training;

(f) Applicants with an inability to effectively make progress to address pervasive drug-related violence;

(g) Applicants where there is an inability between tenants, and/or between tenants and management to effectively communicate about drug-and crime-related issues;

(h) Applicants that need an evaluation performed on their "One Strike You're Out" program; and

(i) Applicants lacking the capability to perform a program evaluation of current anti-drug, anti-crime activities.

(H) Ineligible Activities

Funding is not permitted for:

(1) Any type of monetary compensation for residents.

(2) Any activity that is funded under any other HUD program, including TA and training for the incorporation of resident councils or RMCs, and other management activities.

(3) Salary or fees to the staff of the applicant, or former staff of the applicant within a year of his or her leaving the housing authority or resident organization.

(4) Underwriting conferences.

(5) Conference speakers.

(6) Program implementation, proposal writing, the financial support of existing programs, or efforts requiring more than 30 billable days of technical assistance over a 90 day period; the purchase of hardware or equipment, or any activities deemed ineligible in the Drug Elimination Program, excluding consultant's fees.

II. Program Requirements

(A) Individual Award Amounts

Applications received from HAs and qualified RCs, ROs, and RMCs; and Tribes and their Tribally Designated Housing Entities (TDHEs) are eligible for a maximum amount of Technical Assistance (TA) no greater than $15,000. HUD-initiated TA is eligible for a maximum of $25,000 where HUD determines the circumstances require levels of assistance greater than $15,000, such as more than 30 billable days are required over a 90-day period for the technical assistance, as one example.

(1) Applications for short-term technical assistance may be funded up to $15,000, with HUD providing payment directly to the authorized consultant for the consultant's fee, travel, room and board, and other approved costs at the approved government rate.

(2) For technical assistance initiated by HUD, the TA may be for any amount up to $25,000 when HUD staff determine that more than 30 billable days of technical assistance over a 90-day period is justified.

(B) Receipt of More Than One Application

If HUD receives more than one application from a HA, or group of RCs, ROs, or RMCs in proximity to one another, HUD may exercise discretion to consider any two or more applications as one, recommending one or more consultants and executing contracts for any combination of applications.

(C) Forms, Certifications and Assurances

In addition to the forms, certifications and assurances listed in Section IV of the General Section of the SuperNOFA, the following, as directed by the application kit, must be complied with:

(1) Applications must be signed and certified by both the Executive Director or Tribal Council or authorized TDHE official and a resident leader, certifying the following:

(a) That a copy of the application was sent to the local HUD Field Office, Director of Public Housing Division, or Administrator, Office of Native American Programs; and

(b) That the application was reviewed by both the housing authority Executive Director or Tribal Council or authorized TDHE official, and a resident leader of the organization that is applying for the PHDE–TA and contains the following:

(i) A four page (or fewer) application letter responding to each of the threshold criteria listed below in Section III(C) of the PHDE–TA section of the SuperNOFA, or the completed application forms available in the application kit; and

(ii) A certification statement, or the form provided in the application kit, signed by the executive director of the housing authority and the authorized representative of the RMC or incorporated RC or RO, certifying that any technical assistance received will be used in compliance with all requirements in the SuperNOFA.

(D) Affirmatively Furthering Fair Housing

Section II(D) of the General Section does not apply to this technical assistance program.

III. Application Selection Process

(A) General

Applications will be reviewed on a continuing first-come, first-served basis, until funds under this PHDE–TA Program section of the SuperNOFA are no longer available or until the application deadline noted in this PHDE–TA Program section of the SuperNOFA. Applications for PHDE–TA will be reviewed as they are received. Applicants are encouraged to submit their applications as early as possible in the fiscal year to ensure that they avoid situations where applications are not eligible for funding. Consultant applications will be received throughout the year with no deadline. Eligible applications will be funded in the order in which negotiations for a statement of work are completed between the consultant and the PHDE–TA program administrator until all funds are expended.

(B) Threshold Criteria for Funding Consideration

(1) The applicant must meet the requirements outlined in this PHDE–TA Program section of the SuperNOFA.

(2) The application must not request an ineligible activity.

(3) The application must answer the following questions:

(a) What is the nature of the drug-related crime problem in your

community in terms of the extent of such crime, the types of crime, and the types of drugs being used? This should include quantifiable or qualitative data on drug problems or criminal activity.

(b) What is the nature of the housing authority's working relationships with law enforcement agencies, particularly local agencies? How will PHDE–TA be used to improve those relationships?

(c) Are housing authority residents selling or using drugs, or committing the crimes?

(d) What about non-residents?

(e) What are the problem(s) you need technical assistance to address and how will you know that the technical assistance provided was successful in addressing the problem?

Applicants cannot request PHDE–TA by answering "to conduct a needs assessment or survey;" they must be able to answer the above questions, and discuss what prevents them from identifying, describing and/or measuring the problems.

(4) The application must answer the following questions:

(a) Describe what type of technical assistance you need and how you will know it has been successful?

(b) What specific output, outcome, results, or deliverables do you expect from the consultant?

(5) The application must describe the steps you and your organization are currently taking to measure, understand or address the drug-related crime problem in your development or housing authority.

(6) The application must describe how the proposed assistance will allow you to develop an anti-drug, anti-crime strategy; or describe how the proposed assistance fits into your current strategy.

(7) The application must describe and provide documentation evidencing commitment to providing continued support of anti-drug and anti-crime activities. This must include the community's recommendations in developing and implementing the grant application and in working cooperatively in ensuring success occurs. Applications must include a description of how the community was involved in developing the application and resolutions of support from law enforcement officials and community service providers. The application must include a memorandum of understanding or other written agreement between the parties involved (e.g., housing authority, applicant, law enforcement officials and community service providers).

(8) The application must include a form, "HUD Field Office/AONAP Confirmation Form."

(C) Application Awards

(1) If the application is deemed eligible for funding and sufficient funds are available, the applicant will be contacted by HUD or its agent to confirm the work requirements.

(2) If HUD receives more than one application from a HA or TDHE; or group of RCs, ROs or RMCs in proximity to one another, HUD may exercise discretion to consider any two or more applications as one, assuming that the applications are received at the same time, or before approval by the Office of Finance and Accounting and the Office of Procurement and Contracts, executing the contract, and providing notification to the consultant to proceed to work. The TA Consultant Database is then searched for at least three consultants who have:

(a) A principal place of business or residence located within a reasonable distance from the applicant, as determined by HUD or its agent;

(b) The requisite knowledge and skills to assist the applicant in addressing its needs; and

(c) The most reasonable fees.

A list of the suggested consultants is forwarded to the applicant from the consultant data base which is updated annually. From this list, the applicant recommends a consultant to provide the requested technical assistance.

(3) The applicant must contact at least three TA consultants from the list provided. HUD may request confirmation from each recommended consultant. If HUD determines that any consultant was not contacted, HUD may consider the recommendation by the applicant void, and can choose a consultant independent of the applicant. After contacting each consultant, the applicant must send a written justification to HUD with a list of the consultants in order of preference, indicating any that are unacceptable, and stating the reasons for its preference. If the applicant finds that all referred consultants lack the requisite expertise, they must provide written documentation justifying this decision. If after HUD review, it is determined that the justification provided is adequate, the applicant will be provided with a second list of potential consultants. If the applicant does not provide HUD the written justification of consultant choice within 30 calendar days, HUD reserves the right to cancel the Technical Assistance. There is no guarantee that the applicant's first preference will be approved. Consultants will only be approved for the PHDE–TA if the request is not in conflict with other requests for the consultant's services.

(4) HUD or its agent will work with the consultant and applicant to develop a "statement of work." The statement of work should include: a time line and estimated budget; a discussion of the kind of technical assistance and skills needed to address the problem, and how the technical assistance requested will address these needs; and a description of the current crime and drug elimination strategy, and how the requested technical assistance will assist that strategy. If the applicant does not currently have a strategy, there should be a statement of how the technical assistance will help them develop a crime and drug elimination strategy. When HUD has completed the authorization to begin work, the consultant is contacted to start work. The consultant must receive written authorization from HUD or its authorized agent before beginning to provide technical assistance under this PHDE–TA Program section of the SuperNOFA. The applicant and the relevant Field Office or Area Office of Office of Native American Programs will also be notified. Consultants will only be reimbursed for a maximum of 30 days of work, which must be completed in fewer than 90 days from the date of the approved statement of work. Work begun before the authorized date will be considered unauthorized work and may not be compensated by HUD.

(D) Application Process for Consultants

(1) Individuals or entities interested in being listed in the PHDE–TA Consultant Database should prepare their applications and send them to the address specified in the application kit. Before they can be entered into the Consultant Database, consultants must submit an application that includes the following information:

(a) The Consultant Resource Inventory Questionnaire, including at least three written references, all related to the general areas listed in this PHDE–TA Program section of the SuperNOFA. One or two of the written references must relate to work for a public housing authority, Tribe or TDHE, RC, RO or RMC;

(b) A resume;

(c) Evidence submitted by the consultant to HUD that documents the standard daily fee previously paid to the consultant for technical assistance services similar to those requested under this PHDE–TA Program section of the SuperNOFA.

(i) For consultants who can justify up to the equivalent of ES–IV, or $462.00 per day, this evidence may include an

accountant's statement, W–2 Wage Statements, or payment statements, and it should be supplemented with a signed statement or other evidence from the employer of days worked in the course of the particular project (for a payment statement) or the tax year (for a W–2 Statement).

(ii) For consultants who can justify above the equivalent of ES–IV, or $462.00 per day, there must be three forms of documentation of the daily rate: (*1*) A previous invoice and payment statement showing the daily rate charged and paid, or the overall amount paid and the number of days for work of a similar nature to that offered in this PHDE–TA program;

(*2*) A certified accountant's statement outlining the daily rate with an explanation of how the rate was calculated by the accountant. This should include at a minimum the total number of jobs of a similar nature completed by the consultant in the past 12 months, an explanation of the specific jobs used to calculate the rate, and the daily rates for each of the jobs used to justify the rate; and

(*3*) A signed statement from the consultant that the certified daily rate was charged for work of a nature similar to that being provided for the Drug Elimination Technical Assistance Program. The accountant must be able to demonstrate independence from the consultant's business.

(2) No one individual may have active at one time any more than three contracts or purchase orders nor be involved with more than one company at a time that has active Technical Assistance contracts. If an individual is working as a member of a multi-person firm, the key individual for the specific contract must be listed on the contract as the key point of contact. The key point of contact must be on-site more hours than any other contracted staff billing to the purchase order, and that individual may have no more than three purchase orders active at the same time.

(3) HUD will determine a specific fee to pay a consultant based upon the evidence submitted under this PHDE–TA Program section of this SuperNOFA.

(4) Consultants may not be requested by name in any application. HUD or its agent will recommend consultants considering at least three elements including previous experience, proximity and cost. Section I of this PHDE–TA section of this SuperNOFA explains this further.

(5) An employee of a housing agency (HA), Tribe, or TDHE may not serve as a consultant to his or her employer. A HA employee who serves as a consultant to other than their employer must be on annual leave to receive the consultant fee.

IV. Application Submission Requirements

In addition to the program requirements listed in the General Section of this SuperNOFA, each TA application must conform to the requirements of the Public and Indian Housing Drug Elimination Technical Assistance Application Kit, both in format and content. A PHDE–TA application must include both the descriptive letter (or form provided in the application kit) and certification statement (or form provided in the application kit) to be eligible for funding.

V. Corrections to Deficient Applications

The General Section of the SuperNOFA provides the procedures for corrections to deficient applications.

VI. Environmental Requirements

In accordance with 24 CFR 50.19(b)(9), the assistance provided under this program relates only to the provision of technical assistance and therefore is categorically excluded from the requirements of the National Environmental Policy Act and is not subject to environmental review under the related laws and authorities. This determination is based on the ineligibility of real property acquisition, construction, rehabilitation, conversion, leasing, or repair for HUD assistance under this program.

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Appendix A to SuperNOFA—HUD Field Office Contact Information

Not all Field Offices listed handle all of the programs contained in the SuperNOFAs. Applicants should look to the SuperNOFAs for contact numbers for information on specific programs. Office Hour listings are local time. Persons with hearing or speech impediments may access any of these numbers via TTY by calling the Federal Relay Service at 1–800–877–8339.

New England

Connecticut State Office, One Corporate Center, 19th Floor, Hartford, CT 06103–3220, 860–240–4800, Office Hours: 8:00 AM–4:30 PM

Maine State Office, 99 Franklin Street, Third Floor, Suite 302, Bangor, ME 04401–4925, 207–945–0467, Office Hours: 8:00 AM–4:30 PM

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, 617–565–5234, Office Hours: 8:30 AM–5:00 PM

New Hampshire State Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, 603–666–7681, Office Hours: 8:00 AM–4:30 PM

Rhode Island State Office, Sixth Floor, 10 Weybosset Street, 6th floor, Providence, RI 02903–2808, 401–528–5230, Office Hours: 8:00 AM–4:30 PM

Vermont State Office, U.S. Federal Building, Room 237, 11 Elmwood Avenue, P.O. Box 879, Burlington, VT 05402–0879, 802–951–6290, Office Hours: 8:00 AM–4:30 PM

New York/New England

Albany Area Office, 52 Corporate Circle, Albany, NY 12203–5121, 518–464–4200, Office Hours: 7:30 AM–4:00 PM

Buffalo Area Office, Lafayette Court, 465 Main Street, Fifth Floor, Buffalo, NY 14203–1780, 716–551–5755, Office Hours: 8:00 AM–4:30 PM

Camden Area Office, Hudson Building, 800 Hudson Square, Second Floor, Camden, NJ 08102–1156, 609–757–5081, Office Hours: 8:00 AM–4:30 PM,

New Jersey State Office, One Newark Center, 13th Floor, Newark, NJ 07102–5260, 973–622–7900, Office Hours: 8:00 AM–4:30 PM

New York State Office, 26 Federal Plaza, New York, NY 10278–0068, 212–264–6500, Office Hours: 8:30 AM–500 PM

Mid Atlantic

Delaware State Office, 824 Market Street, Suite 850, Wilmington, DE 19801–3016, 302–573–6300, Office Hours: 8:00 AM–4:30 PM

District of Columbia Office, 820 First Street, N.E., Suite 450, Washington, DC 20002–4205, 202–275–9200, Office Hours: 8:30 AM–4:30 PM

Maryland State Office, City Crescent Building, 10 South Howard Street, Fifth Floor, Baltimore, MD 21201–2505, 410–962–2520, Office Hours: 8:30 AM–4:30 PM

Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0600, Office Hours: 8:30 AM–4:30 PM

Pittsburgh Area Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, 412–644–6428, Office Hours: 8:30 AM–4:30 PM

Virginia State Office, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4539, Office Hours: 8:30 AM–430 PM

West Virginia State Office, 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, 304–347–7000, Office Hours: 8:00 AM–430 PM

Southeast/Caribbean

Alabama State Office, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7617, Office Hours: 8:00 AM–430 PM

Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, 787–766–5201, Office Hours: 8:00 AM–430 PM

Florida State Office, Gables One Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2926, 305–662–4500, Office Hours: 8:30 AM–5 PM

Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, 404–331–5136, Office Hours: 8:00 AM–430 PM

Jacksonville Area Office, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, 904–232–2627, Office Hours: 8:00 AM–4:30 PM

Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, 502–582–5251, Office Hours: 8:00 AM–4445 PM

Knoxville Area Office, John J. Duncan Federal Building, 710 Locust Street, 3rd Floor, Knoxville, TN 37902–2526, 423–545–4384, Office Hours: 7:30 AM–4:15 PM

Memphis Area Office, One Memphis Place, 200 Jefferson Avenue, Suite 1200, Memphis, TN 38103–2335, 901–544–3367, Office Hours: 8:00 AM–4:30 PM

Mississippi State Office, Doctor A. H. McCoy Federal Building, 100 West Capital Street, Room 910, Jackson, MS 39269–1096, 601–965–4738, Office Hours: 8:00 AM–4:45 PM

North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, 910–547–4000, Office Hours: 8:00 AM–4:45 PM

Orlando Area Office, Langley Building, 3751 Maguire Blvd, Suite 270, Orlando, FL 32803–3032, 407–648–6441, Office Hours: 8:00 AM–4:30 PM

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, 803–765–5592, Office Hours: 8:00 AM–4:45 PM

Tampa Area Office, Timberlake Federal Building Annex, 501 East Polk Street, Suite 700, Tampa, FL 33602–3945, 813–228–2501, Office Hours: 8:00 AM–4:30 PM

Tennessee State Office, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, 615–736–5213 Office Hours: 8:00 AM–4:30 PM

Midwest

Cincinnati Area Office, 525 Vine Street, 7th Floor, Cincinnati, OH 45202–3188, 513–684–3451, Office Hours: 8:00 AM–4:45 PM

Cleveland Area Office, Renaissance Building, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, 216–522–4065, Office Hours: 8:00 AM–4:40 PM

Flint Area Office, The Federal Building, 605 North Saginaw, Suite 200, Flint, MI 48502–2043, 810–766–5108, Office Hours: 8:00 AM–4:30 PM

Grand Rapids Area Office, Trade Center Building, 50 Louis Street, NW, 3rd Floor, Grand Rapids, MI 49503–2648, 616–456–2100, Office Hours: 8:00 AM–4:30 PM

Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd, Chicago, IL 60604–3507, 312–353–5680, Office Hours: 8:15 AM–4:45 PM

Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, 317–226–6303, Office Hours: 8:00 AM–4:45 PM

Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–7900, Office Hours: 8:00 AM–4:30 PM

Minnesota State Office, 220 Second St., South, Minneapolis, MN 55401–2195, 612–370–3000, Office Hours: 8:00 AM–4:30 PM

Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, 614–469–5737, Office Hours: 8:00 AM–4:45 PM

Wisconsin State Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2289, 414–297–3214, Office Hours: 8:00 AM–4:30 PM

Southwest

Arkansas State Office, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–5931, Office Hours: 8:00 AM–4:30 PM

Dallas Area Office, Maceo Smith Federal Building, 525 Griffin Street, Room 860, Dallas, TX 75202–5007, 214–767–8359, Office Hours: 8:00 AM–4:30 PM

Houston Area Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, TX 77098–4096, 713–313–2274, Office Hours: 7:45 AM–4:30 PM

Louisiana State Office, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7201, Office Hours: 8:00 AM–4:30 PM

Lubbock Area Office, George H. Mahon Federal Building and United States Courthouse, 1205 Texas Avenue, Lubbock, TX 79401–4093, 806–472–7265, Office Hours: 8:00 AM–4:45 PM

New Mexico State Office, 625 Truman Street, N.E., Albuquerque, NM 87110–6472, 505–262–6463, Office Hours: 7:45 AM–4:30 PM

Oklahoma State Office, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7401, Office Hours: 8:00 AM–4:30 PM

San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–472–6800, Office Hours: 8:00 AM–4:30 PM

Shreveport Area Office, 401 Edwards Street, Suite 1510, Shreveport, LA 71101–3289, 318–676–3385, Office Hours: 7:45 AM–4:30 PM

Texas State Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, 817–978–9000, Office Hours: 8:00 AM–4:30 PM

Tulsa Area Office, 50 East 15th Street, Tulsa, OK 74119–4030, 918–581–7434, Office Hours: 8:00 AM–4:30 PM

Great Plains

Iowa State Office, Federal Building, 210 Walnut Street, Room 239, Des Moines, IA 50309–2155, 515–284–4512, Office Hours: 8:00 AM–4:30 PM

Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, 913–551–5462, Office Hours: 8:00 AM–4:30 PM

Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, 402–492–3100, Office Hours: 8:00 AM–4:30 PM

St. Louis Area Office, Robert A. Young Federal Building, 1222 Spruce Street, 3rd Floor, St. Louis, MO 63103–2836, 314–539–6583, Office Hours: 8:00 AM–4:30 PM

Rocky Mountains

Colorado State Office, 633–17th Street, Denver, CO 80202–3607, 303–672–5440, Office Hours: 8:00 AM–4:30 PM

Montana State Office, Federal Office Building, 301 South Park, Room 340, Drawer 10095, Helena, MT 59626–0095, 406–441–1298, Office Hours: 8:00 AM–4:30 PM

North Dakota State Office, Federal Building, P. O. Box 2483, Fargo, ND 58108–2483, 701–239–5136, Office Hours: 8:00 AM–4:30 PM

South Dakota State Office, 2400 West 49th Street, Suite I–201, Sioux Falls, SD 57105–6558, 605–330–4223, Office Hours: 8:00 AM–4:30 PM

Utah State Office, 257 Tower Building, 257 East-200 South, Suite 550, Salt Lake City, UT 84111–2048, 801–524–3323, Office Hours: 8:00 AM–4:30 PM

Wyoming State Office, Federal Office Building, 100 East B Street, Room 4229, Casper, WY 82601–1918, 307–261–6250, Office Hours: 8:00 AM–4:30 PM

Pacific/Hawaii

Arizona State Office, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, AZ 85004, 602–379–4434, Office Hours: 8:00 AM–4:30 PM

California State Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102–3448, 415–436–6550, Office Hours: 8:15 AM–4:45 PM

Fresno Area Office, 2135 Fresno Street, Suite 100, Fresno, CA 93721–1718, 209–487–5033, Office Hours: 8:00 AM–4:30 PM

Hawaii State Office, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 500, Honolulu, HI 96813–4918, 808–522–8175, Office Hours: 8:00 AM–4:00 PM

Los Angeles Area Office, 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3127, 213–894–8000, Office Hours: 8:00 AM–4:30 PM

Nevada State Office, 333 North Rancho Drive, Suite 700, Las Vegas, NV 89106–3714, 702–388–6525, Office Hours: 8:00 AM–4:30 PM

Reno Area Office, 1575 Delucchi Lane, Suite 114, Reno, NV 89502–6581, 702–784–5356, Office Hours: 8:00 AM–4:30 PM

Sacramento Area Office, 777–12th Street, Suite 200, Sacramento, CA 95814–1997, 916–498–5220, Office Hours: 8:00 AM–4:30 PM

San Diego Area Office, Mission City Corporate Center, 2365 Northside Drive, Suite 300, San Diego, CA 92108–2712, 619–557–5310, Office Hours: 8:00 AM–4:30 PM

Santa Ana Area Office, 3 Hutton Centre Drive, Suite 500, Santa Ana, CA 92707–5764, 714–957–3745, Office Hours: 8:00 AM–4:30 PM

Tucson Area Office, Security Pacific Bank Plaza, 33 North Stone Avenue, Suite 700, Tucson, AZ 85701–1467, 520–670–6237, Office Hours: 8:00 AM–4:30 PM

Northwest/Alaska

Alaska State Office, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, AK 99508–4135, 907–271–4170, Office Hours: 8:00 AM–4:30 PM

Idaho State Office, Plaza IV, 800 Park Boulevard, Suite 220, Boise, ID 83712–7743, 208–334–1990, Office Hours: 8:00 AM–4:30 PM

Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, 503–326–2561, Office Hours: 8:00 AM–4:30 PM

Spokane Area Office, Farm Credit Bank Building, Eighth Floor East, West 601 First Avenue, Spokane, WA 99204–0317, 509–353–2510, Office Hours: 8:00 AM–4:30 PM

Washington State Office, Seattle Federal Office Building, 909 1st Avenue, Suite 200, Seattle, WA 98104–1000, 206–220–5101, Office Hours: 8:00 AM–4:30 PM

[FR Doc. 98–8102 Filed 3–30–98; 8:45 am]

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Tuesday
March 31, 1998

Part III

Environmental Protection Agency

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5987–2]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permit reissuance for storm water discharges from construction activities.

SUMMARY: Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA) which requires the Environmental Protection Agency (EPA) to develop a phased approach to regulating storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on November 16, 1990, (55 FR 47990) establishing permit application requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. In the permit application regulations, EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. This definition greatly expanded the number of industrial facilities subject to the NPDES program. Construction activities that disturb at least five acres of land and have point source discharges to waters of the U.S. are defined as an "industrial activity," 40 CFR 122.26(b)(14)(x).

The following provides notice for a final NPDES general permit, accompanying response to comments, and fact sheets for storm water discharges from construction activities in the following areas of Region 4:

Indian Country Lands within the State of Alabama
The State of Florida
Indian Country Lands within the State of Florida
Indian Country Lands within the State of Mississippi
Indian Country Lands within the State of North Carolina

ADDRESSES: Notices of Intent (NOIs) submitted in accordance with this permit to receive coverage under this permit and Notices of Termination (NOTs) to terminate coverage under this permit must be sent to Storm Water Notice of Intent (4203), 401 M Street, SW, Washington, DC 20460. The complete administrative record is available from the U.S. Environmental Protection Agency, Region 4, Freedom of Information Officer, 61 Forsyth St. SW., Atlanta, GA 30303. A reasonable fee may be charged for copying.

DATES: This general permit shall be effective on April 3, 1998. Deadlines for submittal of NOIs are provided in Part II.A. of today's permit.

FOR FURTHER INFORMATION CONTACT: Mr. Floyd Wellborn, telephone number (404) 562–9296, or Ms. Gina Fonzi, telephone number (404) 562–9301, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, Surface Water Permits Section, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, GA 30303.

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I. Introduction

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutants to waters of the Untied States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NDPES) permit. In 1987, section 402(p) was added to the CWA to establish a comprehensive framework for addressing storm water discharges under the NPDES program. Section 402(p)(4) of the CWA clarifies the requirements for EPA to issue NPDES permits for storm water discharges associated with industrial activity. On November 16, 1990 (55 FR 47990), EPA published final regulations which define the term "storm water discharge associated with industrial activity."

In 1992, EPA issued a general permit for discharges of storm water from construction activities "associated with industrial activity" to reduce the administrative burden of issuing an individual NDPES permit to each construction activity.

II. Quick Answers to Common Questions

In this section, EPA provides answers to some of the more common questions on the construction storm water permitting program. It is intended to help you get started in understanding the permit. Be aware these answers are fairly broad and may not take into account all scenarios possible at construction sites.

How Do I Know If I Need a Permit?

You need a storm water permit if you can be considered an "operator" of the construction activity that would result in the "discharge of storm water associated with construction activity." You must become a permittee if you meet either of the following two criteria:

- You have operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or
- You have day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., you are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

There may be more than one party at a site performing the tasks relating to "operational control" as defined above. Depending on the site and the relationship between the parties (e.g., owner, developer), there can either be a single party acting as site operator and consequently be responsible for obtaining permit coverage, or there can be two or more operators with all needing permit coverage. The following are three general operator scenarios (variations on any of the three are possible as the number of "owners" and contractors increases):

- Owner as sole permittee. The property owner designs the structures for the site, develops and implements the SWPPP, and serves as general contractor (or has an on-site representative with full authority to direct day-to-day operations). He may be the only party that needs a permit, in which case everyone else on the site may be considered subcontractors and not need permit coverage.
- Contractor as sole permittee. The property owner hires a construction company to design the project, prepare the SWPPP, and supervise implementation of the plan and compliance with the permit (e.g., a "turnkey" project). Here, the contractor

would be the only party needing a permit. It is under this scenario that an individual having a personal residence built for his own use (e.g., not those to be sold for profit or used as rental property) would not be considered an operator. EPA believes that the general contractor, being a professional in the building industry, should be the entity rather than the individual who is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing a SWPPP. However, individuals would meet the definition of "operator" and require permit coverage in instances where they perform general contracting duties for construction of their personal residences.

• Owner and contractor as co-permittees. The owner retains control over any changes to site plans, SWPPPs, or storm water conveyance or control designs; but the contractor is responsible for overseeing actual earth disturbing activities and daily implementation of SWPPP and other permit conditions. In this case, both parties may need coverage.

However, you are probably not an operator and subsequently do not need permit coverage if:

• You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (i.e., if the contractor directs your activities on-site, you probably are not an operator); or

• your activities on site result in earth disturbance and you are not legally a subcontractor, *but* a SWPPP specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities may have on storm water quality (i.e., another operator has assumed responsibility for the impacts of your construction activities).

In addition, for purposes of this permit and determining who is an operator, "owner" refers to the party that owns the structure being built. Ownership of the land where construction is occurring does not necessarily imply the property owner is an operator (e.g., a landowner whose property is being disturbed by construction of a gas pipeline). Likewise, if the erection of a structure has been contracted for, but possession of the title or lease to the land or structure is not to occur until after construction, the would-be owner may not be considered an operator (e.g., having a house built by a residential homebuilder).

My Project Will Disturb Less Than Five Acres, But It May Be Part of a "Larger Common Plan of Development or Sale." How Can I Tell and What Must I Do?

If your smaller project is part of a larger common plan of development or sale that collectively will disturb five or more acres (e.g., you are building on six half-acre residential lots in a 10-acre development or are putting in a parking lot in a large retail center) you need permit coverage. The "plan" in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit.

For some situations where less than five acres of the original common plan of development remain undeveloped, a permit may not be needed for the construction projects "filling in" the last parts of the common plan of development. A case in which a permit would not be needed is where several empty lots totaling less than five acres remain after the rest of the project had been completed, providing stabilization had also been completed for the entire project. However, if the total area of all the undeveloped lots in the original common plan of development was more than five acres, a permit would be needed.

When Can You Consider Future Construction on a Property To Be Part of a Separate Plan of Development or Sale?

In many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five (5) or more acres of total disturbed land. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction occurs. After this initial plan is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development, and would then be subject to the five-acre cutoff for storm water permitting.

What Must I Do To Satisfy the Permit Eligibility Requirements Related to Endangered Species?

In order to be eligible for this permit, you must follow the procedures and examples found in Appendix C for the protection of endangered species. You cannot submit your NOI until you are able to certify your eligibility for the permit. Enough lead time should be built into your project schedule to accomplish these procedures. If another operator has certified eligibility for the project (or at least the portion of the project you will be working on) in his NOI, you will usually be able to rely on his certification of project eligibility and not have to repeat the process. EPA created this "coat tail" eligibility option for protection of endangered species to allow the site developer/owner to obtain up-front "clearance" for a project, thereby avoiding duplication of effort by his contractors and unnecessary delays in construction.

What Does the Permit Require Regarding Historic Preservation?

In order to be eligible for this permit, you must not adversely affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of the Interior. You cannot submit your NOI until you are able to certify your eligibility for the permit. Enough lead time should be built into your project schedule to accomplish these procedures. If another operator has certified eligibility for the project (or at least the portion of the project you will be working on) in his NOI, you will usually be able to rely on his certification of project eligibility and not have to repeat the process. EPA created this "coat tail" eligibility option for protection of historic places to allow the site developer/owner to obtain up-front "clearance" for a project, thereby avoiding duplication of effort by his contractors and unnecessary delays in construction.

How Many Notices of Intent (NOIs) Must I Submit? Where and When Are They Sent?

You only need to submit one NOI to cover all activities on any one common plan of development or sale. The site map you develop for the storm water pollution prevention plan identifies which parts of the overall project are under your control. For example, if you are a homebuilder in a residential development, you need submit only one

NOI to cover all your lots, even if they are on opposite sides of the development.

The NOI must be postmarked two days before you begin work on site. The address for submitting NOIs is found in the instruction portion of the NOI form and in Part II.C. of the Construction General Permit (CGP).

Do I Have Flexibility in Preparing the Storm Water Pollution Prevention Plan (SWPPP) and Selecting Best Management Practices (BMPs) for My Site?

Storm water pollution prevention plan requirements were designed to allow maximum flexibility to develop the needed storm water controls based on the specifics of the site. Some of the factors you might consider include: More stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby water bodies; safety concerns of the storm water controls (e.g., potential hazards of water in storm water retention ponds to the safety of children; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

Must Every Permittee Have His Own Separate SWPPP or Is a Joint Plan Allowed?

The only requirement is that there be at least one SWPPP for a site which incorporates the required elements for all operators, but there can be separate plans if individual permittees so desire. EPA encourages permittees to explore possible cost savings by having a joint SWPPP for several operators. For example, the prime developer could assume the inspection responsibilities for the entire site, while each homebuilder shares in the installation and maintenance of sediment traps serving common areas.

If a Project Will not Be Completed Before This Permit Expires, How Can I Keep Permit Coverage?

If the permit is reissued or replaced with a new one before the current one expires, you will need to comply with whatever conditions the new permit requires in order to transition coverage from the old permit. This usually includes submitting a new NOI. If the permit expires before a replacement permit can be issued, the permit will be administratively "continued." You will be required to submit an NOI for coverage under the continued permit, until the earliest of:

- The permit being reissued or replaced;
- Submittal of a Notice of Termination (NOT);
- Issuance of an individual permit for your activity; or
- The Director issues a formal decision not to reissue the permit, at which time you must seek coverage under an alternative permit.

When Can I Terminate Permit Coverage? Can I Terminate Coverage (i.e., Liability for Permit Compliance) Before the Entire Project Is Finished?

You can submit an NOT for your portion of a site providing: (1) You have achieved final stabilization of the portion of the site for which you are a permittee (including, if applicable, returning agricultural land to its pre-construction agricultural use); (2) another operator/permittee has assumed control according to Part VI.G.2.c. of the permit over all areas of the site that have not been finally stabilized which you were responsible for (for example, a developer can pass permit responsibility for lots in a subdivision to the homebuilder who purchases those lots, providing the homebuilder has filed his own NOI); or (3) for residential construction only, you have completed temporary stabilization and the residence has been transferred to the homeowner.

III. Coverage of General Permit

Section 402(p) of the Clean Water Act (CWA) clarifies that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. On November 16, 1990, EPA published regulations under the NPDES program which defined the term "storm water discharge associated with industrial activity" to include storm water discharges from construction activities (including clearing, grading, and excavation activities) that result in the disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)) [1]. The term "storm water discharge from construction activities" will be used in this document to refer to storm water discharges from construction sites that meet the definition of a storm water discharge associated with industrial activity.

This general permit may authorize storm water discharges from existing construction sites (facilities where construction activities began before the effective date of this permit, and final stabilization is to occur after the effective date of this permit) and new construction sites. New construction sites are those facilities where disturbances associated construction activities commence after the effective date of this permit. To obtain authorization under today's permit, a discharger must submit a complete NOI and comply with the terms of the permit. The terms of the permit, including the requirements for submitting an NOI, are discussed in more detail below.

The following discharges are not authorized by this final general permit:

- Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;
- Non-storm water discharges (except certain non-storm water discharges specifically listed in today's general permit). However, today's permit can authorize storm water discharges from construction activities where such discharges are mixed with non-storm water discharges that are authorized by a different NPDES permit;
- Storm water discharges from construction sites that are covered by an existing NPDES individual or general permit. However, storm water discharges associated with industrial activity from a construction site that are authorized by an existing permit may be authorized by today's general permit after the existing permit expires, provided the expired permit did not establish numeric limitations for such discharges;
- Storm water discharges from construction sites that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard; and
- Storm water discharges from construction sites if the discharges are likely to adversely affect a listed endangered or threatened species or a species that is proposed to be listed as endangered or threatened or its critical habitat.

IV. Summary of Options for Controlling Pollutants

Most controls for construction activities can be categorized into two groups: (1) Sediment and erosion controls; and (2) storm water

[1] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking (*Natural Resources Defense Council v. EPA*, Nos. 90–70671 and 91–70200, slip op. at 6217 (9th Cir. June 4, 1992).

management measures. Sediment and erosion controls generally address pollutants in storm water generated from the site during the time when construction activities are occurring. Storm water management measures generally are installed during and before competition of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures include housekeeping best management practices.

A. Sediment and Erosion Controls

Erosion controls provide the first line of defense in preventing offsite sediment movement and are designed to prevent erosion through protection and preservation of soils. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: Stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. A more complete description of these practices is given in "Florida Development Manual: A Guide to Sound Land and Water Management" or in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992.

1. Sediment and Erosion Controls: Stabilization Practices

Stabilization, as discussed here, refers to covering or maintaining an existing cover over soils. The cover may be vegetation, such as grass, trees, vines, or shrubs. Stabilization measures can also include nonvegetative controls such as geotextiles, riprap, or gabions (wire mesh boxes filed with rock). Mulches, such as straw or bark, are most effective when used in conjunction with establishing vegetation, but can be used without vegetation. Stabilization of exposed and denuded soils is one of the most important factors in minimizing erosion while construction activities occur. A vegetation cover reduces the erosion potential of a site by absorbing the kinetic energy of raindrops that would otherwise disturb unprotected soil; intercepting water so that it infiltrates into the ground instead of running off the surface; and slowing the velocity of runoff, thereby promoting deposition of sediment in the runoff. Stabilization measures are often the most important measures taken to prevent offsite sediment movement and can provide large reductions suspended sediment levels in discharges and receiving waters.[2] Examples of stabilization measures are summarized below.

a. *Temporary Seeding.* Temporary seeding provides for temporary stabilization by establishing vegetation at areas of the site where activities will temporarily cease until later in the construction project. Without temporary stabilization, soils at these areas are exposed to precipitation for an extended time period, even though work is not occurring on these areas. Temporary seeding practices have been found to be up to 95 percent effective in reducing erosion.[3]

b. *Permanent Seeding.* Permanent seeding involves establishing a sustainable ground cover at a site. Permanent seeding stabilizes the soil to reduce sediment in runoff from the site by controlling erosion and is typically required at most sites for aesthetic reasons.

c. *Mulching.* Mulching is typically conducted as part of permanent and temporary seeding practices. Where temporary and permanent seeding is not feasible, exposed soils can be stabilized by applying plant residues or other suitable materials to the soil surface. Although generally not as effective as seeding practices, mulching by itself, does provide some erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of vegetation growth. In addition, mulching protects seeding activities, providing a higher likelihood of successful establishment of vegetation. To maintain optimum effectiveness, mulches must be anchored to resist wind displacement.

d. *Sod Stabilization.* Sod stabilization involves establishing long-term stands of grass with sod on exposed surfaces. When installed and maintained properly, sodding can be more than 99 percent effective in reducing erosion,[4] making it the most effective vegetation practice available. The cost of sod stabilization (relative to other vegetative controls) typically limits its use to exposed soils where a quick vegetative cover is desired and sites which can be maintained with ground equipment. In addition, sod is sensitive to climate and may require intensive watering and fertilization.

e. *Vegetative Buffer Strips.* Vegetative buffer strips are preserved or planted strips of vegetation at the top and bottom of a slope, outlining property boundaries, or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff flows at critical areas, decreasing erosion and allowing sediment deposition.

f. *Protection of Trees.* This practice involves preserving and protecting selected trees that exist on the site prior to development. Mature trees provide extensive canopy and root systems which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

2. Sediment and Erosion Controls: Structural Practices

Structural practices involve the installation of devices to divert flow, store flow, or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from crossing disturbed areas where sediment may be removed. This involves diverting runoff from undisturbed upslope areas through use of earth dikes, temporary swales, perimeter dike/swales, or diversions to stable areas. A second objective of structural practices can be to remove sediment from site runoff before the runoff leaves the site. Approaches to removing sediment from site runoff include diverting flows to a trapping or storage device or filtering diffuse flow through silt fences before it leaves the site. All structural practices require proper maintenance (removal of sediment) to remain functional.

a. *Earth Dike.* Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation.

b. *Silt Fence.* Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. They must be carefully maintained to ensure structural stability and to remove excess sediment.

c. *Drainage Swales.* A drainage swale is a drainage channel lined with grass, riprap, asphalt, concrete, or other materials. Drainage swales are installed to convey runoff without causing erosion.

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[2] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

[3] "Guides for Erosion and Sediment Control in California," USDA, Soil Conservation Service, Davis CA, Revised 1985.

[4] "Guides for Erosion and Sediment Control in California", USDA—Soil Conservation Service, Davis CA, Revised 1985.

d. *Sediment Traps.* Sediment traps can be installed in a drainage way, at a storm drain inlet, or other points of discharge from a disturbed area.

e. *Check Dams.* Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff flows, thereby reducing erosion of the swale or ditch. Check dams should not be used in a live stream. Check dams reduce the need for more stringent erosion control practices in the swale due to the decreased velocity and energy of runoff.

f. *Level Spreader.* Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse runoff and release it onto areas stabilized by existing vegetation.

g. *Subsurface Drain.* Subsurface drains transport water to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.

h. *Pipe Slope Drain.* A pipe slope drain is a temporary structure placed from the top of a slope to the bottom of a slope to convey surface runoff down slopes without causing erosion.

i. *Temporary Storm Drain Diversion.* Temporary storm drain diversions are used to re-direct flow in a storm drain to discharge into a sediment trapping device.

j. *Storm Drain Inlet Protection.* Storm drain inlet protection can be provided by a sediment filter or an excavated impounding area around a storm drain inlet. These devices prevent sediment from entering storm drainage systems prior to permanent stabilization of the disturbed area.

k. *Rock Outlet Protection.* Rock protection placed at the outlet end of culverts or channels can reduce the depth, velocity, and energy of water so that the flow will not erode the receiving downstream reach.

l. *Other Controls.* Other controls include temporary sediment basins, sump pits, entrance stabilization measures, waterway crossings, and wind breaks.

B. Storm Water Management Measures

Storm water management measures are installed during and prior to completion of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Construction activities often result in significant changes in land use. Such changes typically involve an increase in the overall imperviousness of the site, which can result in dramatic changes to the runoff patterns of a site. As the amount within a drainage area increases, the amount of pollutants carried by the runoff increases. In addition, activities such as automobile travel on roads can result in higher pollutant concentrations in runoff compared to preconstruction levels. Traditional storm water management controls attempt to limit the increases in the amount of runoff and the amount of pollutants discharged from a site associated with the change in land use.

Major classes of storm water management measures include infiltration of runoff onsite; flow attenuation by vegetation or natural depressions; outfall velocity dissipation devices; storm water retention structures and artificial wetlands; and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in "Florida Development Manual: A Guide to Sound Land and Water Management" or in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices" Metropolitan Washington Council of Governments, March 1992.

1. Onsite Infiltration

A variety of infiltration technologies, including infiltration trenches and infiltration basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration devices tend to mitigate changes to predevelopment hydrologic conditions. Properly designed and installed infiltration devices can reduce peak discharges, provide ground water recharge, augment low flow conditions of receiving streams, reduce storm water discharge volumes and pollutant loads, and protect downstream channels from erosion. Infiltration devices are a feasible option where soils are permeable and the water table and bedrock are well below the surface. Infiltration basins can also be used as sediment basins during construction.[5] Infiltration trenches can be more easily placed into under-utilized areas of a development and can be used for small sites and infill developments. However, trenches may require regular maintenance to prevent clogs, particularly where grass inlets or other pollutant removing inlets are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

2. Flow Attenuation by Vegetation or Natural Depressions

Flow attenuation provided by vegetation or natural depressions can provide pollutant removal and infiltration and can lower the erosive potential of flows.[6] In addition, these practices can enhance habitat values and the appearance of a site. Vegetative flow attenuation devices include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Typically the costs of vegetative controls are less than other storm water practices. The use of check dams incorporated into flow paths can provide additional infiltration and flow attenuation.[7] Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, vegetative controls should usually be used in combination with other storm water devices.

Grass swales are typically used in areas such as low or medium density residential development and highway medians as an alternative to curb and gutter drainage systems.[8]

3. Outfall Velocity Dissipation Devices

Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. Outfall velocity dissipation devices slow the flow of water discharged from a site to lessen erosion caused by the discharge.

4. Water Quality, Detention and Wetland Systems

a. Storm water detention practices include wet detention and wetlands systems. These systems are designed to manage both storm water quantity and quality. They are designed to maintain a permanent pool of water and include a littoral zone vegetated with suitable aquatic plants. They also may include wetland storm water treatment systems as allowed by Florida Statutes and Florida storm water or environmental

[5] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", July, 1987, Metropolitan Washington Council of Governments.

[6] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[7] "Standards and Specifications for Infiltration Practices", 1984, Maryland Water Resources Administration.

[8] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, July 1987.

resource permitting regulations. Properly designed, constructed, and maintained wet detention systems, wetland storm water systems, and constructed wetlands can achieve a high removal rate of sediments, BOD, organic nutrients and metals. They are most appropriate and cost effective when used to control runoff at sites with high water tables and a minimum drainage area of 8 acres. These practices rely on settling and biological processes to remove pollutants. They can also create wildlife habitat, recreation, and landscape amenities as well as corresponding higher property values.

a. *Retention Structures/Artificial Wetlands.* Retention structures include ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands[9] can achieve a high removal rate of sediment, BOD, organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed sites.[10]

b. *Water Quality Detention Structures.* Storm water detention structures include extended detention ponds, which control the rate at which the pond drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 40 hours, and will remain dry at other times. They can provide pollutant removal efficiencies that are similar to those of retention ponds.[11] Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.[12]

C. Housekeeping BMPs

Pollutants that may enter storm water from construction sites because of poor housekeeping include oils, grease, paints, gasoline, concrete truck washdown, raw materials used in the manufacture of concrete (e.g., sand, aggregate, and cement), solvents, litter, debris, and sanitary wastes. Construction site management plans can address the following to prevent the discharge of these pollutants:

- Designate areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and provide regular collection of wastes;
- Locate equipment washdown areas on site, and provide appropriate control of washwaters;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, and other potentially toxic materials; and
- Provide adequately maintained sanitary facilities.

V. Changes From the April 16, 1997 Proposed Permit (Amended June 27, 1997)

- Facilities located on Indian country lands in South Carolina will not be covered by this permit. Coverage for these facilities can be obtained under a State issued NPDES construction general permit.
- References to the applicability of this permit to utility companies have been deleted from Part I.B.3 of the permit.
- Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site (where disturbances associated with the construction project commence before the effective date of this permit), including unpaved rural roads, must submit a Notice of Intent (NOI), if they have not already done so, in accordance with the requirements of Part II within 30 days of the effective date of this permit.
- The NOI submission requirements of Part II.E. and Part VII.B. have been changed. Facilities that have submitted an NOI for coverage under the administratively continued previous general permit do not have to submit an NOI for coverage under today's permit. Facilities who will seek coverage under today's permit if it is administratively continued after its expiration, must submit an NOI for coverage during the post expiration continuance.
- Facilities that have submitted an NOI for coverage under the administratively continued general permit or have submitted since the general permit's expiration, will get automatic coverage under today's permit.
- Facilities located on Indian country lands are exempted from obtaining a State storm water or environmental resource permit.
- The currently approved NOI (EPA form 3510–9) published in the March 6, 1998 **Federal Register** (63 FR 11253) is authorized for use.
- Part III.A.2.b. has been changed to clarify what discharges may be authorized under today's permit.
- Part IV.B language has been changed to eliminate references to the Silviculture BMP manual. The language now requires applicable facilities to be consistent with the requirements of the State Water Policy, the applicable State storm water or environmental resource permit, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management. In addition, erosion and sediment control performance standards are deleted from the permit.
- Part V language has been changed to limit the application of nutrients to rates necessary to maintain vegetation and not cause water quality standards violations. In additions the language has been updated to ensure that the application, generation and migration of toxic substances is limited and that toxic materials are properly stored and disposed.
- References to arid and semi-arid regions have been eliminated from the permit.
- Facilities terminating coverage must submit the NOT within 14 days of final stabilization.
- NOTs are to be sent to the processing center in Washington, DC. at the address indicated in Part IX of the permit.
- The current endangered and threatened species list is included.
- References are made to the State of Florida environmental resource permits where applicable.

VI. Summary of Permit Conditions

This general permit contain Notice of Intent requirements, a prohibition on discharging sources of non-storm water, requirements for releases of hazardous substances or oil in excess of reporting quantities, requirements for developing and implementing storm water pollution prevention plans, and requirements for site inspections.

A. Notice of Intent Requirements

NPDES general permits for storm water discharges associated with industrial activity require that dischargers submit a Notice of Intent (NOI) to be covered by the permit prior to the authorization of their discharges under such permit (see 40 CFR 122.28(b)(2)). Consistent with these regulatory requirements, today's permit proposes NOI requirements. These requirements are consistent with the previously issued general permit. Dischargers that submit a complete NOI are not required to submit an individual permit application for such discharge, unless the Director specifically notifies the discharger that an individual permit application must be submitted.

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[9] See "Wetland basins for Storm Water Treatment: Discussion and Background", Maryland Sediment and Storm water Division, 1987 and "The Value of Wetlands for Non-point Source Control—Literature Summary", Strecker, E., et.al., 1990.

[10] "Controlling Urban Runoff, A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, 1987.

[11] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[12] "Urban Surface Water Management", Walesh, S.G., Wiley, 1989.

Dischargers who want to obtain coverage under this permit must submit NOIs using the form provided by EPA (or a photocopy thereof). The NOI form referenced in Appendix A of this document and can be photocopied for use in submittals. NOI forms are also available from the EPA Region 4 Office (see the ADDRESSES section of today's document). Completed NOI forms must be submitted to the following address: Storm Water Notices of Intent (4203), 401 M Street, SW., Washington, DC 20460.

Dischargers operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans, must, in addition to filing copies of the NOI with EPA, submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated below.

1. Deadlines for Submitting NOIs

Deadlines for submittal of NOIs to be authorized to discharge under this permit are as follows:

- Applicants who have submitted a completed NOI for coverage under the administratively continued previous general permit (57 FR 44412) or applicants who have submitted a completed NOI for coverage under the general permit after its expiration shall automatically receive coverage under today's permit. If the applicant cannot certify that they meet all applicable eligibility requirements of Part I.B of today's permit or cannot be covered by, or comply with, the terms and conditions of this permit, then the applicant shall notify the director, in accordance with the requirements of Part IX of this permit, within 90 days of the effective date of this permit.
- On or before the effective date of this permit, for storm water discharges from construction sites where disturbances associated with a construction project occur on or before the effective date of this permit, and final stabilization [13] is completed at the site after the effective date of this permit;
- At least 2 days prior to the commencement of construction activities (e.g., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities), where such activities commence after the effective date of this permit; and
- For storm water discharges from construction sites where the operator changes, (including projects where an operator is selected after an NOI has been submitted), an NOI shall be submitted at least 2 days prior to when the operator commences work at the site.

EPA will accept an NOI at a later date. However, in such instances, EPA may bring appropriate enforcement actions.

2. Authorization

Dischargers who submit a complete NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked, unless notified by EPA.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, etc.). Where EPA requires a discharger authorized under the general permit to apply for an individual NPDES permit or an alternative general permit, EPA will notify the discharger in writing that a permit application is required. Coverage under this general permit will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

3. Contents of the NOI

A photocopy of the NOI in Appendix A of today's document may be completed and submitted to EPA's central address to obtain authorization to discharge under today's permit. The NOI form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter;
- The site owner's name, address, and telephone number;
- The name, address, and telephone number of the operator(s) with day-to-day operational control who have been identified at the time of the NOI submittal, and their status as a Federal, State, private, public, or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a preexisting NPDES permit, the NOI of the additional operator must indicate the preexisting NPDES permit number for discharge(s) from the site;
- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s);
- The permit number of any NPDES permit(s) for any other discharge(s) (including any other storm water discharges or any non-storm water discharges) from the site;
- An indication of whether the operator has existing sampling data that describe the concentration of pollutants in storm water discharges. Existing data should not be included as part of the NOI and should not be submitted unless and until requested by EPA; and
- An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with the permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits. A copy of the plans or permits should not be included with the NOI submission, and should not be submitted unless and until requested by EPA.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOI (see Appendix A).

4. Additional Notification

In addition to submitting the NOI to EPA, facilities operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans are required to submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated above. Failure to do so constitutes a violation of the permit.

[13] The term "final stabilization" is defined in today's permits and is discussed in more detail in the Notice of Termination section of today's fact sheet.

B. Special Conditions

1. Prohibition on Non-Storm Water Discharges

Today's permit does not authorize non-storm water discharges that are mixed with storm water except for specific classes of non-storm water discharges specified in the permit. Non-storm water discharges that can be authorized under today's permit include discharges from firefighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with permit requirements; potable water sources including waterline flushings; irrigation drainage; routine external building washdown that does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents.[14]

To be authorized under the final issued permit, sources of non-storm water (except flows from firefighting activities) must be specifically identified in the storm water pollution prevention plan prepared for the facility. (Plan requirements are discussed in more detail below). Where such discharges occur, the plan must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water components of the discharge. For example, to reduce pollutants in irrigation drainage, a plan could identify low maintenance lawn areas that do not require the use of fertilizers or biocides; for higher maintenance lawn areas, a plan could identify measures such as limiting fertilizer use based on seasonal and agronomic considerations, decreasing biocide use with an integrated pest management program, introducing natural vegetation or more hearty species, and reducing water use (thereby reducing the volume of irrigation drainage).

This permit will not require pollution prevention measures to be identified and implemented for non-storm water flows from firefighting activities since these flows will usually occur as unplanned emergency situations where it is necessary to take immediate action to protect the public.

The general prohibition on non-storm water discharges in today's permit ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized) are not inadvertently authorized by this permit. Where a storm water discharge is mixed with process wastewaters or other sources of non-storm water prior to discharge, and the discharge is currently not authorized by an NPDES permit, the discharge cannot be covered by today's permit and the discharger should (1) submit the appropriate application forms (Forms 1 and 2C) to obtain permit coverage or (2) discontinue the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

Today's permit provides that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR part 110, 40 CFR part 117, or 40 CFR part 302, during a 24-hour period, today's permit requires the following actions:

- The permittee must notify the National Response Center (NRC) (800–424–8802; or in Region 4, 404–562–8702) in accordance with the requirements of 40 CFR part 110, 40 CFR part 117, and 40 CFR part 302, as soon as they have knowledge of the discharge;
- The permittee must modify the storm water pollution prevention plan for the facility within 14 calendar days of knowledge of the release to provide (1) a description of the release, (2) the date of the release and (3) the circumstances leading to the release. In addition, the permittee must modify the plan, as appropriate, to identify measures to prevent the reoccurrence of such releases and to respond to such releases.
- Within 14 calendar days of the knowledge of the release, the permittee must submit to EPA (1) a written description of the release (including the type and estimated amount of material released), (2) the date that such release occurred, (3) the circumstances leading to the release, and (4) any steps to be taken to modify the storm water pollution prevention plan for the facility.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), the spill is not authorized by this permit. The discharger must report the spill as required under 40 CFR part 110. In the event of a spill, the requirements of section 311 of the CWA and otherwise applicable provisions of sections 301 and 402 of the CWA continue to apply.

This approach is consistent with the requirements for reporting releases of hazardous substances and oil-requirements that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

C. Unpaved Rural Roads

Part IV of the permit and its conditions are intended to eliminate, prevent or minimize the discharge of pollutants to waters of the U.S. from the construction of unpaved roads. EPA believes that the discharge of storm water runoff from the construction of unpaved roads could be a significant source of pollutants to waters of the United States. Therefore, the discharge of storm water from the construction of unpaved roads greater than five (5) acres is not exempt from the requirements of 40 CFR 122.26(a)(1)(ii) and (b)(14)(x) under the Intermodal Surface Transportation Efficiency Act of 1991. This action is in accordance with section 402(p)(2)(E) of the Clean Water Act (1987, as amended). If five (5) acres equals 217,800 ft^2 and area equals length times width, then the approximate length of road equal to five (5) acres would be 217,800 ft^2 divided by the road width. For example, assuming a road construction area width of 25 feet, five (5) acres of road would be approximately 1.65 miles.

The principle component of the Part IV requirements for facilities in the State of Florida is consistency with the requirements set forth in State Water Policy (Chapter 62-40, FAC), the applicable storm water or environmental resource permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments. All relevant portions of the pollution prevention plan requirements of Part V of the permit shall be applied to discharges of storm water from unpaved roads.

D. Storm Water Pollution Prevention Plan Requirements

The pollution prevention plans required by today's permit focuses on two major tasks: (1) Providing a site description that identifies sources of pollution to storm water discharges

[14] These discharges are consistent with the allowable classes of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(iv)(D)).

associated with industrial activity from the facility and (2) identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of this permit.

In developing this permit, the Agency reviewed a significant number of existing State and local sediment and erosion control and storm water management requirements. State and local data were reviewed for a wide range of climates and varying types of construction activities.

1. Contents of the Plan

Storm water pollution prevention plans must include a site description; a description of controls that will be used at the site (e.g., erosion and sediment controls, storm water management measures); a description of maintenance and inspection procedures; and a description of pollution prevention measures for any non-storm water discharges that exist.

a. *Site Description.* Storm water pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at a specific construction site. The plan must identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the source identification components for pollution prevention plans must provide a description of the site and the construction activities. This information is intended to provide a better understanding of site runoff and major pollutant sources. At a minimum, plans must include the following:

- A description of the nature of the construction activity. This would typically include a description of the ultimate use of the project (e.g., low-density residential, shopping mall, highway).
- A description of the intended sequence of major activities that disturb soils for major portions of the site (e.g., grubbing, excavation, grading).
- Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities. Where the construction activity is to be staged, it may be appropriate to describe areas of the site that will be disturbed at different stages of the construction process.
- Estimates of the runoff coefficient of the site after construction activities are completed as well as existing data describing the quality of any discharge from the site or the soil. The runoff coefficient is defined as the fraction of total rainfall that will appear at the conveyance as runoff. Runoff coefficients can be estimated from site plan maps, which provide estimates of the area of impervious structures planned for the site and estimates of areas where vegetation will be precluded or incorporated. Runoff coefficients are one tool for evaluating the volume of runoff that will occur from a site when construction is completed. These coefficients assist in evaluating pollutant loadings, potential hydraulic impacts to receiving waters, and flooding impacts. They are also used for sizing of post-construction storm water management measures.
- A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance; an outline of areas that will not be disturbed; the location of major structural and nonstructural controls identified in the plan; the location of areas where stabilization practices are expected to occur; the location of surface waters (including wetlands); and locations where storm water is discharged to a surface water. Site maps should also include other major features and potential pollutant sources, such as the location of impervious structures and the location of soil piles during the construction process.
- The name of the receiving water(s), and areal extent of wetland acreage at the site.

b. *Controls to Reduce Pollutants.* The storm water pollution prevention plan must describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges from the site and assure compliance with the terms and conditions of the permit. Permittees are required to develop a description of four classes of controls appropriate for inclusion in the facility's plan, and implement controls identified in the plan in accordance with the plan. The description of controls must address (1) erosion and sediment controls, (2) storm water management, (3) a specified set of other controls, and (4) any applicable procedures and requirements of State and local sediment and erosion plans or storm water management plans.

The pollution prevention plan must clearly describe the intended sequence of major activities and when, in relation to the construction process, the control will be implemented. Good site planning and preservation of mature vegetation are primary control techniques for controlling sediment in storm water discharges during construction activities as well as for developing a strategy for storm water management that controls pollutants in storm water discharges after the completion of construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls. The description of the intended sequence of major activities will typically describe the intended staging of activities on different parts of the site.

Permittees must develop and implement four classes of controls in the pollution prevention plan, each of which is discussed below.

i. *Erosion and Sediment Controls.* The requirements for erosion and sediment controls for construction activities in this permit have three goals: (1) To divert upslope water around disturbed areas of the site; (2) to limit the exposure of disturbed areas to the shortest duration possible; and (3) to remove sediment from storm water before it leaves the site. Erosion and sediment controls include both stabilization practices and structural practices.

Stabilization Practices. Pollution prevention plans must include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as quickly as possible. Stabilization practices are the first line of defense for preventing erosion; they include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetative buffer strips, and other appropriate measures. Temporary stabilization practices are often cited as the single most important factor in reducing erosion at construction sites.[15]

Stabilization also involves preserving and protecting selected trees that were on the site prior to development. Mature trees have extensive canopy and root systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

[15] "New York Guidelines for Urban Erosion and Sediment Control", USDA, Soil Conservation Service, March 1988.

Since stabilization practices play such an important role in preventing erosion, it is critical that they are rapidly employed in appropriate areas. This permit provides that, except in three situations, stabilization measures be initiated on disturbed areas as soon as practicable, but no more than 14 days after construction activity on a particular portion of the site has temporarily or permanently ceased. The three exceptions to this requirement are the following:

- Where construction activities will resume on a portion of the site within 21 days from when the construction activities ceased.
- Where the initiation of stabilization measures is precluded by snow cover, in which case, stabilization measures must be initiated as soon as practicable.

Structural Practices. The pollution prevention plan must include a description of structural practices to the degree economically attainable, to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls are necessary because vegetative controls cannot be employed at areas of the site that are continually disturbed and because a finite time period is required before vegetative practices are fully effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural measures should be placed on upland soils to the degree possible.

For sites with more than 10 disturbed acres at one time that are served by a common drainage location, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures (such as suitably sized dry wells or infiltration structures), must be provided where economically attainable until final stabilization of the site has been accomplished. Flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization may be diverted around both the sediment basin and the disturbed area. The requirement to provide 3,600 cubic feet of storage area per acre drained does not apply to such diverted flows.

For the drainage locations which serve more than 10 disturbed acres at one time and where a sediment basin providing storage or equivalent controls for 3,600 cubic feet per acre drained is not economically attainable, smaller sediment basins or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

For drainage locations serving 10 or less acres, smaller sediment basins or sediment traps should be used and at a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Alternatively, the permittee may provide a sediment basin providing storage for 3,600 cubic feet of storage per acre drained. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

ii. *Storm Water Management.* The plan must include a description of "storm water management" measures.[16] This permit addresses only the installation of storm water management measures and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures prior to final stabilization of the site and are not responsible for maintenance after storm water discharges associated with construction activities have been eliminated from the site. However, this does not release a facility from responsibilities to operate and maintain storm water management systems in perpetuity after final stabilization in accordance with the requirements set forth by local environmental permitting actions such as the State of Florida storm water or environmental resource permit issued for the site.

Land development can significantly increase storm water discharge volumes and peak velocities where appropriate storm water management measures are not implemented. In addition, storm water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients, and oxygen demanding constituents.[17]

Storm water management measures that are installed during the construction process can control the volume of storm water discharged and peak discharge velocities, as well as reduce the amount of pollutants discharged after the construction operations have been completed. Reductions in peak discharge velocities and volumes can also reduce pollutant loads, as well as reduce physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to predevelopment runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be placed on upland soils to the degree attainable. The installation of such devices may be subject to section 404 of the CWA if the devices are placed in wetlands (or other waters of the United States).

Options for storm water management measures that are to be evaluated in the development of plans include infiltration of runoff on site; flow attenuation by use of open vegetated swales and natural depressions; storm water retention structures and storm water detention structures (including wet ponds); and sequential systems that combine several practices.

The pollution prevention plan must include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. The explanation of the technical basis for selecting practices should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, the costs of the measure, site specific factors that will affect the application of the measures, the economic achievability of the measure at a particular site, and other relevant factors.

EPA anticipates that storm water management measures at many sites will be able to provide for the removal of at least 80 percent of total suspended solids (TSS).[18] A number of storm water management measures can be used to achieve this level of control, including properly designed and installed wet ponds, infiltration trenches, infiltration basins, sand filter system, manmade storm water wetlands, and multiple pond systems. The pollutant removal efficiencies of various storm water management measures can be estimated

[16] For the purpose of the special requirements for construction activities, the term "storm water management" measures refers to controls that will primarily reduce the discharge of pollutants in storm water from sites *after* completion of construction activities.

[17] See "Nationwide Urban Runoff Program", EPA, 1984.

[18] TSS can be used as an indicator parameter to characterize the control of other pollutants, including heavy metals, oxygen demanding pollutants, and nutrients, commonly found in storm water discharges.

from a number of sources, including "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practice," prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992. Proper selection of a technology depends on site factors and other conditions.

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, EPA encourages facilities to avoid creating ground water pollution problems. For example, if the water table is unusually high in an area or soils are especially sandy and porous, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed predevelopment levels can be based on hydrologic models which consider conditions such as the natural vegetation which is typical for the area.

Increased discharge velocities can greatly accelerate erosion near the outlet of onsite structural measures. To mitigate these effects, this permit requires that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course. Velocity dissipation devices maintain and protect the natural physical and biological characteristics and functions of the watercourse, e.g., hydrologic conditions, such as the hydroperiod and hydrodynamics, that were present prior to the initiation of construction activities.

iii. *Other Controls.* Other controls to be addressed in storm water pollution prevention plans for construction activities require that no non-storm water solid materials, including building material wastes shall be discharged at the site, except as authorized by a Section 404 permit.

This final permit requires that offsite vehicle tracking of sediments and the generation of dust be minimized. This can be accomplished by measures such as providing gravel or paving at access entrance and exit drives, parking areas, and unpaved roads on the site carrying significant amounts of traffic (e.g., more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and/or providing street sweeping.

In addition, this permit requires that the plan shall ensure and demonstrate compliance with applicable State and/or local sanitary sewer, septic system, and waste disposal regulations.[19]

iv. *State and Local Controls.* Many municipalities and States have developed sediment and erosion control requirements for construction activities. A significant number of municipalities and States have also developed storm water management controls. This general permit requires that storm water pollution prevention plans for facilities that discharge storm water associated with industrial activity from construction activities include procedures and requirements of State and local sediment and erosion control plans or storm water management plans. Permittees are required to provide a certification that their storm water pollution prevention plan reflects requirements related to protecting water resources that are specified in State or local sediment and erosion plans or storm water management plans.[20] In addition, permittees are required to amend their storm water pollution prevention plans to reflect any change in a sediment and erosion site plan or site permit or storm water management site plan or site permit approved by State or local officials for which the permittee receives written notice. Where such amendments are made, the permittee must provide a recertification that the storm water pollution prevention plan has been modified. This provision does not apply to provisions of master plans, comprehensive plans, nonenforceable guidelines, or technical guidance documents, but rather to site-specific State or local permits or plans.

c. *Maintenance.* Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. Maintenance of controls has been identified as a major part of effective erosion and sediment programs. Plans must contain a description of prompt and timely maintenance and repair procedures addressing all erosion and sediment control measures (e.g., sediment basins, traps, silt fences), vegetation, and other measures identified in the site plan to ensure that such measures are kept in good and effective operating condition.

d. Inspections. Procedures in a plan must provide that specified areas on the site are inspected by qualified personnel provided by the discharger a minimum of once every seven calendar days and within 24 hours after any storm event of greater than 0.25 inches. Areas of the site that must be observed during such inspections include disturbed areas, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site. Where sites have been temporarily or finally stabilized, the inspection must be conducted at least once every month.

Disturbed areas and areas used for storage of materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering the runoff from the site. Erosion and sediment control measures identified in the plan must be observed to ensure that they are operating correctly. Observations can be made during wet or dry weather conditions. Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. This can be done by inspecting receiving waters to see whether any signs of erosion or sediment are associated with the discharge location. Locations where vehicles enter or exit the site must be inspected for evidence of offsite sediment tracking.

Based on the results of the inspection, the site description and the pollution prevention measures identified in the plan must be revised as soon as possible after an inspection that reveals

[19] In rural and suburban areas that are served by septic systems, malfunctioning septic systems can contribute pollutants to storm water discharges. Malfunctioning septic tanks may be a more significant surface runoff pollution problem than a ground water problem. This is because a malfunctioning septic system is less likely to cause ground water contamination where a bacterial mat in the soil retards the downward movement of wastewater. Surface malfunctions are caused by clogged or impermeable soils, or when stopped up or collapsed pipes force untreated wastewater to the surface. Surface malfunctions can vary in degree from occasional damp patches on the surface to constant pooling or runoff of wastewater. These discharges have high bacteria, nitrate, and nutrient levels and can contain a variety of household chemicals. This permit does not establish new criteria for septic systems, but rather addresses existing State or local criteria.

[20] Operators of storm water discharges from construction activities which, based on an evaluation of site specific conditions, believe that State and local plans do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by submitting to the Director an . individual application with a detailed explanation of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate.

inadequacies. The inspection and plan review process must provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

An inspection report that summarizes the scope of the inspection, name(s) and qualifications of personnel conducting the inspection, the dates of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken must be retained as part of the storm water pollution prevention plan for at least three years after the date of inspection. The report must be signed in accordance with the signatory requirements in the Standard Conditions section of this permit.

Diligent inspections are necessary to ensure adequate implementation of onsite sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of the sediment basins has been reduced.[21]

e. Non-Storm Water Discharges. The final issued permit may authorize storm water discharges from construction activities that are mixed with discharges from firefighting activities, fire hydrant flushings, waters used to wash vehicles or control dust in accordance with efforts to minimize offsite sediment tracking, potable water sources including waterline flushings, irrigation drainage from watering vegetation, routine exterior building washdown that does not use detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, air conditioning condensate, springs, and foundation or footing drains where flows are not contaminated with process materials such as solvents, provided the non-storm water component of the discharge is specifically identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge.[22]

EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified, and implemented, they generally pose low risks to the environment. The Agency also notes that it can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges coupled with their low probability and the unpredictability of their occurrence.

2. Deadlines for Plan Preparation and Compliance

The final issued permit will establish the following deadlines for storm water pollution prevention plan development and compliance:

- The plan must be completed prior to the submittal of an NOI to be covered under this permit and updated as appropriate.
- For construction activities that have begun on or before the effective date of this permit, except the plan shall provide for compliance with the terms and schedule of the plan beginning on the effective date of this permit.
- For construction activities that have begun after the effective date of this permit, the plan must provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

3. Signature and Plan Review

Signature and plan review requirements are as follows:

- The plan must be signed by all permittees for a site in accordance with the signatory requirements in the Standard Permit Conditions section of the permit, and must be retained on site at the facility that generates the storm water discharge.
- The permittee must make plans available, upon request, to EPA, and State or local agency approved sediment and erosion plans, grading plans, or storm water management plans. In the case of a storm water discharge associated with industrial activity that discharges through a municipal separate storm sewer system with an NPDES permit, permittees must make plans available to the municipal operator of the system upon request.
- EPA may notify the permittee at any time that the plan does not meet one or more of the minimum requirements. Within 7 days of such notification from EPA (or as otherwise requested by EPA), the permittee must make the required changes to the plan and submit to EPA a written certification that the requested changes have been made.

4. Keeping Plans Current

The permittee must amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or to municipal separate storm sewer systems. The plan must also be amended if it proves to be ineffective in eliminating or significantly minimizing pollutants in the storm water discharges from the construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan. Amendments to the plan will be reviewed by EPA as described above.

5. Additional Requirements

This permit authorizes a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, only under the following conditions:

- The industrial source other than construction is located on the same site as the construction activity; and
- Storm water discharges from where the construction activities are occurring are in compliance with the terms of this permit.

6. Contractors

The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement presented below before conducting any professional service at the site identified in the pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

All certifications must be included in the storm water pollution prevention plan.

E. Retention of Records

The permittee is required to retain records or copies of all reports required by this permit, including storm water pollution prevention plans and records of all data used to complete the NOI to be covered by the permit, for a period of at least three years from the date of

[21] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

[22] This is consistent with the allowable types of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(2)(iv)(A)).

final stabilization. This period may be extended by request of the Director.

F. Notice of Termination

A discharger may submit a Notice of Termination (NOT) to EPA in two sets of circumstances: (1) After a site has undergone final stabilization and the facility no longer discharges storm water associated with industrial activity from a construction site and (2) when the permittee has transferred operational control to another permittee and is no longer an operator for the site. NOTs must be submitted using the form provided by the Director (or a photocopy thereof). A copy of the NOT form is in Appendix B and can be photocopied for use. NOTs will assist EPA in tracking the status of the discharger.

Today's permit define final stabilization for the purpose of submitting an NOT as occurring when all soil disturbing activities are completed and a uniform perennial vegetative cover with a density of 70 percent for the unpaved areas and areas not covered by permanent structures has been established or equivalent stabilization measures have been employed. Equivalent stabilization measures include permanent measures other than establishing vegetation, such as the use of rip-rap, gabions, and/or geotextiles.

A copy of the NOT, and instructions for completing the NOT, are provided in Appendix B of today's document. The NOT form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter.
- The site owner's name, address, and telephone number.
- The name, address, and telephone number of the operator addressed by the NOT, and operator status as a Federal, State, private, public, or other entity.
- The NPDES permit for the storm water discharge identified by the NOT.
- The following certification:

"I certify under penalty of law that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the construction activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water by the general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit."

Notices of Termination are to be sent to the following address: Storm Water Notice of Termination (4203), 401 M Street, S.W., Washington, DC 20460.

The NOT must be signed by the appropriate individual in accordance with the signatory requirements of 40 CFR 122.22. A description of these signatory requirements is provided in the instructions accompanying the NOT (see Appendix B).

Submittal of a NOT, by itself, does not relieve permittees from the obligations of the permit, such as the requirement to stabilize the site. Appropriate enforcement actions may still be taken for permit violations where a permittee submits a NOT but the permittee has not transferred operational control to another permittee or the site has not undergone final stabilization.

G. Regional Offices

Notices of Intent to be authorized to discharge under this permit should be sent to: Storm Water Notice of Intent (4203), 401 M Street, SW., Washington, DC 20460.

Other submittals of information required under this permit or individual permit applications should be sent to the appropriate EPA Regional Office: United States EPA, Region IV, Water Management Division, (SWPFB–15), Surface Water Permits Section, 100 Alabama Street, S.W., Atlanta, GA 30303–3104, Contact: Floyd Wellborn, (404) 562–9296.

H. Special Conditions in Specified States

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA.

VII. Cost Estimates

The two major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 1) and the costs of storm water management measures (see Table 2). Today's permit provide flexibility in developing controls for construction activities. Typically, most construction sites will employ several types of sediment and erosion controls and storm water management controls, but not all the controls listed in Tables 1 and 2. In general, sites that disturb a large area will incur higher pollution prevention costs.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS

Temporary seeding	$1.00 per square foot.
Permanent seeding	1.00 per square foot.
Mulching	1.25 per square foot.
Sod stabilization	4.00 per square foot.
Vegetative buffer strips	1.00 per square foot.
Protection of trees	30.00 to $200.00 per tree set.
Earth dikes	5.50 per linear foot.
Silt fences	6.00 per linear foot.
Drainage swales-grass	3.00 per square yard.
Drainage swales-sod	4.00 per square yard.
Drainage swales-asphalt	35.00 per square yard.
Drainage swales-concrete	65.00 per square yard.
Check dams-rock	100 per dam.
Check dams-covered straw bales	50 per dam.
Level spreader-earthen	4.00 per square yard.
Level spreader-concrete	65.00 per square yard.
Subsurface drain	2.25 per linear foot.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS—Continued

Pipe slope drain	5.00 per linear foot.
Temporary storm drain diversion	variable.
Storm drain inlet protection	300 per inlet.
Rock outlet protection	45 per square yard.
Sediment traps	500 to $7,000 per trap.
Temporary sediment basins	5,000 to $50,000 per basin.
Sump pit	500 to $7,000.
Entrance stabilization	1,500 to $5,000 per entrance.
Entrance wash rack	2,000 per rack.
Temporary waterway crossing	500 to $1,500.
Wind breaks	2.50 per linear foot.

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.
Sources: "Means Site Work Cost Data," 9th edition, 1990, R.S. Means Company. "Sediment and Erosion Control, An Inventory of Current Practices," prepared by Kamber Engineering for U.S. EPA, April 1990.

TABLE 2.—ANNUALIZED COSTS OF SEVERAL STORM WATER MANAGEMENT OPTIONS FOR CONSTRUCTION SITES

Option	Annualized cost for 9-acre developed area	Annualized cost for 20-acre developed area
Wet Ponds	$5,872	$9,820
Dry Ponds	3,240	5,907
Dry Ponds with Extended Detention	3,110	5,413
Infiltration Trenches	4,134	6,359

Estimates based on methodology presented in "Cost of Urban Runoff Quality Controls," Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality-Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbonas and L.A. Roesner.

Costs are presented in 1992 dollars and were reviewed by the Office of Management and Budget during the previous issuance of this permit, September 25, 1992. Annualized costs are based on a 10 year period and 10 percent discount rate. Estimates include a contingency cost of 25 percent of the construction cost and operation and maintenance costs of 5 percent of the construction cost. Land costs are not included.

VIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

A. UMRA Section 202 and the Construction General Permit

UMRA section 202 requires a written statement containing certain assessments, estimates and analyses prior to the promulgation of certain general notices of proposed rulemaking (2 U.S.C. 1532). UMRA section 421(10) defines "rule" based on the definition of rule in the Regulatory Flexibility Act. Section 601 of the Regulatory Flexibility Act defines "rule" to mean any rule for which an agency publishes a general notice of proposed rulemaking pursuant to section 553 of the Administrative Procedure Act. EPA does not propose to issue NPDES general permits based on APA section 553. Instead, EPA relies on publication of general permits in the **Federal Register** in order to provide "an opportunity for a hearing" under CWA section 402(a), 33 U.S.C. 1342(a). Nonetheless, EPA has evaluated permitting alternatives for regulation of storm water discharges associated with construction activity. The general permit that EPA proposes to re-issue would be virtually the same NPDES general permit for construction that many construction operators have used over the past five years. Furthermore, general permits provide a more cost and time efficient alternative for the regulated community to obtain NPDES permit coverage than that provided through individually drafted permits.

B. UMRA Section 203 and the Construction General Permit

Agencies are required to prepare small government agency plans under UMRA section 203 prior to establishing any regulatory requirement that might significantly or uniquely affect small governments. "Regulatory requirements" might, for example, include the requirements of this NPDES general permit for discharges associated with construction activity, especially if

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a municipality sought coverage under one of the general permit. EPA envisions that some municipalities—those with municipal separate storm sewer systems serving a population over 100,000—may elect to seek coverage under this general permit. For many municipalities, however, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality with a population of less than 100,000. (See 40 CFR 122.26(e)(1)(ii)&(g)).

In any event, any such permit requirements would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as today's general permit. Permit requirements also would not uniquely affect small governments because compliance with the permit's conditions affects small governments in the same manner as any other entity seeking coverage under the permit. Thus, UMRA section 203 would not apply.

IX. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* EPA did not prepare an Information Collection Request (ICR) document for today's permit because the information collection requirements in this permit have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et. seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's permit provides small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permit reduces significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

XI. Responses to Comments

The following is a summary of the issues identified by EPA that were raised regarding the general permit for storm water from construction activities and EPA's response to those issues.

Comments were submitted wanting language added to the permit to require applicants to conduct a cultural resource assessment to determine if permitted activities will impact areas which have been previously undisturbed other than by agriculture. EPA believes that it would not be feasible to review all applications for an assessment due to the volume of applicants and the short time requirement, prior to construction, that a facility must submit a Notice of Intent (NOI) to receive coverage under the general permit. Under the previous permit, there were 2844 NOIs submitted and the permit only requires an NOI to be submitted two (2) days prior to construction beginning. However; EPA maintains a database tracking system of all NOI submittals. Copies of this database are available upon request. One could then screen the database based on the location of the facility in relation to an area of concern. The permit only allows coverage under the general permit for facilities which do not affect property that is listed or proposed to be listed in the National Historic Register. Should screening of the database identify a facility that is not eligible for coverage under the general permit in accordance with Part I.B.3.g., EPA would require the facility to apply for an individual permit.

Comments were submitted requesting that the requirements for utility companies to apply for general permit coverage be taken out of Parts I.B.3. and II.B of the permit. The references to utility companies have been deleted from Part I.B.3. in today's permit. Although utility companies in Region 4 will not be required to obtain coverage under the above referenced permit by virtue of the fact that they are a utility company, it should be noted that if the utility company has day to day operational control of the construction site. They would be required to submit an NOI under the provisions of Part II.B.2.

One Indian tribe submitted comments requesting deletion of the requirement for facilities to obtain a Florida Department of Environmental Protection (FDEP) or a Florida Water Management District (FWMD) permit (see Part II.A.2.). Since the tribes are not under the jurisdiction of either the FDEP nor the FWMD, this provision is not applicable. Today's permit exempts facilities on Indian country lands from that permit requirement.

One commenter requested the name, number and address of the Historic Preservation Officer for the State of Florida. The name, address and phone number of the State Historic Preservation Officer (SHPO) for the State of Florida is the Director, Division of Historical Resources, Florida Department of State, R. A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399–0250, 850/487–2333.

One commenter suggested that EPA's requirement to consider impacts to threatened resources is overly broad and ambiguous. The commenter expressed a concern over being responsible for an entire watershed. A facility discharging to a watershed with many contributors of pollution would not be solely responsible for impacts downstream from the discharge point where the other sources have contributed to the impact. However, the facility would be held responsible for their particular contribution to a downstream impact. In the case of the Endangered Species Act, the permit does specifically limit the consideration of impact on species to the immediate area or vicinity of the discharge authorized by the permit and the Best Management Practices (BMPs) required by the permit (see Appendix C, step 2). The flexibility of "immediate area or vicinity" is intentional. Any more specific definition of the area of effects would be inappropriate due to the variation and complexity of conditions (e.g. size, slope, soil, etc.) from site to site. This language is intended to encourage coordination with local resource protection agencies and not to provide a cutoff distance beyond which a facility is absolved from responsibility. In the case of the National Historic Preservation Act, the language reflects the Act itself. EPA believes that an addition to this language in this case would compromise the intent of NHPA consultation requirements of the permit.

One commenter said that EPA, Region 4, has created a burden since they are issuing a separate permit from HQ therefore requiring a single company with multiple facilities in different states to potentially keep up with many different permits. A concern was also expressed regarding burdens on facilities which potentially adversely affect protected resources since consultants will have to be hired and potential changes to industrial processes

will have to be made. As in the previous national permit, different requirements for facilities in different states will be incorporated in a reissued national permit due to the Clean Water Act section 401 certification of the permit by each state. Therefore, consolidation of the Region 4 permit into the national permit will not eliminate the differences in permit requirements on a state by state basis. The requirements to consult on the potential adverse effects on protected resources comes from the ESA and the NHPA requirement for consistency with the Acts in all federal actions, such as a permit. The NPDES permit simply makes the permittee aware that the NPDES permit cannot and does not authorize or require an activity that would violate the ESA or the NHPA. A facility adversely affecting a protected resource would only be ineligible for coverage under the general permit. An individual permit would still be an option and the specific requirements would have to be determined at that time.

XII. Section 401 Certification

Certification of the proposed permit was requested from the State of Florida by letter dated June 23, 1997. The Florida Department of Environmental Protection (FDEP) issued certification of the proposed permit with conditions via a letter dated August 18, 1997. Certification of the proposed permit was requested from the Miccosukee Tribe of Indians of Florida by letter dated June 23, 1997. Certification of the proposed permit is deemed waived in accordance with the provisions of 40 CFR 124.53(c). Certification of the proposed permit was requested from the Seminole Tribe of Florida by letter dated June 23, 1997. The Seminole Tribe of Florida provided certification of the proposed permit via a letter dated December 18, 1997.

XIII. Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: February 17, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Appendix A

From the effective date of this permit, applicants are to use the existing Notice of Intent form (EPA 3510–9, published in the March 6, 1998 **Federal Register**, 63 FR 11253) referenced in this Addendum to obtain permit coverage. According to the provisions in Part II.B. of this permit, applicants are reminded that they are certifying that they meet all eligibility requirements of Part I.B. of this permit and are informing the Director of their intent to be covered by, and comply with, those terms and conditions. These conditions include certifications that the applicant's storm water discharges and storm water-related discharge activities will not adversely affect listed endangered or threatened species, their critical habitat, or places either listed or eligible for listing on the National Register of Historic Places.

Appendix B

From the effective date of this permit, permittees are to use the existing Notice of Termination form (EPA Form 3510–7) contained in this Addendum until they are instructed by the Director (EPA) to use a revised version. Permittees are to complete, sign and submit the form in accordance with Part VII.G of the permit when terminating permit coverage at a construction project when one or more of the conditions contained in Part IX have been met.

Appendix C—Endangered Species Guidance

I. Instructions

A list of species that EPA has determined may be affected by the activities covered by the construction general permit will be included in the final issued permit. These species will be listed by county. In order to get construction general permit coverage, applicants must:

- Indicate in box provided on the NOI whether any species listed in this Appendix are in proximity to the facility, and
- Certify pursuant to Section I.B.3.e. of the construction general permit that their storm water discharges, and BMPs constructed to control storm water runoff, are not likely, and will not be likely to adversely affect species identified in Addendum H of this permit.

To do this, please follow steps 1 through 4 below.

Step 1: Review the County Species List Below To Determine if Any Species Are Located in the Discharging Facility County

If the facility is within one (1) mile of the county line, a review of the bordering county's list must be made as well to determine the presence of species. If no species are listed in a facility's county, or adjacent county as mentioned in the previous sentence, or if a facility's county is not found on the list, an applicant is eligible for construction general permit coverage and may indicate in the NOI that no species are found in proximity and provide the necessary certification. If species are located in the county, or in the adjacent county as mentioned above, follow step 2 below. Where a facility is located in more than one county, the lists for all counties should be reviewed.

Step 2: Determine if Any Species May Be Found "In Proximity" to the Facility

A species is in proximity to a facility's storm water discharge when the species is:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from industrial activities to the point of discharge into the receiving water.
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters.
- Located in the area of a site where storm water BMPs are planned or are to be constructed.

The area in proximity to be searched/surveyed for listed species will vary with the size of the facility, the nature and quantity of the storm water discharges, and the type of receiving waters. Given the number of facilities potentially covered by the construction general permit, no specific method to determine whether species are in proximity is required for permit coverage under the construction general permit. Instead, applicants should use the method or methods which best allow them to determine to the best of their knowledge whether species are in proximity to their particular facility. These methods may include:

- *Conducting visual inspections:* This method may be particularly suitable for facilities that are smaller in size, facilities located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no nature habitat; and facilities that discharge directly into municipal storm water collection systems. For other facilities, a visual survey of the facility site and storm water drainage areas may be insufficient to determine whether species are likely to be located in proximity to the discharge.
- *Contacting the nearest State Wildlife Agency or U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) offices.* Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies. FWS has offices in every state. NMFS has regional offices in: Gloucester, Massachusetts; St. Petersburg, Florida; Long Beach, California; Portland, Oregon; and Juneau, Alaska.
- *Contacting local/regional conservation groups.* These groups inventory species and their locations and maintain lists of sightings and habitats.
- *Conducting a formal biological survey.* Larger facilities with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in proximity and whether there are likely adverse effects.

If no species are in proximity, an applicant is eligible for construction general permit coverage and may indicate that in the NOI and provide the necessary certification. If listed species are found in proximity to a facility, applicants must follow step 3 below.

Step 3: Determine if Species Could Be Adversely Affected by the Facility's Storm Water Discharges or by BMPS To Control Those Discharges

Scope of Adverse Effects: Potential adverse effects from storm water include:

- *Hydrological.* Storm water may cause siltation, sedimentation or induce other changes in the receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the

total volume of the receiving water, adverse hydrological effects are less likely.

• *Habitat.* Storm water may drain or inundate listed species habitat.

• *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. Applicants must also consider the likelihood of adverse effects on species from any BMPs to control storm water. Most adverse impacts from BMPs are likely to occur from the construction activities.

Using earlier ESA authorizations for construction general permit eligibility: In some cases, a facility may be eligible for construction general permit coverage because actual or potential adverse affects were addressed or discounted through an earlier ESA authorization. Examples of such authorization include:

• An earlier ESA section 7 consultation for that facility.

• A section 10(a) permit issued for the facility.

• An area-wide Habitat Conservation Plan applicable to that facility.

• A clearance letter from the Services (which discounts the possibility of an adverse impacts from the facility).

In order for applicants to use an earlier ESA authorization to meet eligibility requirements: (1) The authorization must adequately address impacts for storm water discharges and BMPs from the facility on endangered and threatened species, (2) it must be current because there have been no subsequent changes in facility operations or circumstances which might impact species in ways not considered in the earlier authorization, and (3) the applicant must comply with any requirements from those authorizations to avoid or mitigate adverse effects to species. Applicants who wish to pursue this approach should carefully review documentation for those authorizations ensure that the above conditions are met.

If adverse effects are not likely, an applicant is eligible for construction general permit coverage and may indicate in the NOI that species are found in proximity and provide the necessary certification. If adverse effects are likely, follow step 4 below.

Step 4: Determine if Measures Can Be Implemented To Avoid Any Adverse Effects

If an applicant determines that adverse effects are likely, it can receive coverage if appropriate measures are undertaken to avoid or eliminate any actual or potential adverse affects prior to applying for permit coverage. These measures may involve relatively simple changes to facility operations such as re-routing a storm water discharge to bypass an area where species are located.

At this stage, applicants may wish to contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate adverse impacts to species.

If applicants adopt these measures, they must continue to abide by them during the course of permit coverage.

If appropriate measures are not available, the applicant is not eligible at that time for coverage under the construction general permit. Applicants should contact the appropriate EPA regional office about either:

• Entering into Section 7 consultation in order to obtain construction general permit coverage, or

• Obtaining an individual NPDES storm water permit.

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING

Scientific name	Common name	Status
ALABAMA		
Escambia County		
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Pseudemys alabamensis	Turtle, Alabama redbelly	E
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
FLORIDA		
Alachua County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Crustaceans:		
Palaemonetes cummingi	Shrimp, Squirrel Chimney Cave (or Florida Cave)	T
Baker County		
Mammals:		
Myotis grisescens	Bat, Gray	E
Ursus americanus floridanus	Bear, Florida Black	C
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Bay County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Peromyscus polionotus allophrys (critical habitat in this County).	Choctawhatchee beach mouse	E
Peromyscus polionotus peninsularis	St. Andrew beach mouse	C
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Euphorbia telephioides	Telephus spurge	T
Macbridea alba	White birds-in-a-nest	T
Paronychia chartacea	Papery whitlow-wort	T
Pinguicula ionantha	Godfrey's (violet) butterwort	T
Bradford County		
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Brevard County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Peromyscus polionotus niveiventris	Mouse, Southeastern Beach	T
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Nerodia clarkii (=fasciata) taeniata	Snake, Atlantic Salt Marsh	T
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Plants:		
Warea carteri	Carter's Mustard	E
Dicerandra cornutissima	Mint, Longspurred	E
Broward County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Ammodramus maritima	Cape Sable seaside sparrow	E
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougallii	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Arecaceae		
Jacquemontia reclinata	Beach jacquemontia	E
Calhoun County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants:		
Spigelia gentianoides	Gentian pinkroot	E
Charlotte County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae		
Deeringothamnus pulchellus	Beautiful pawpaw	E
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Citrus County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E/CH
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Plants:		
Verbena tampensis	Vervain, Tampa	C
Clay County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser brevirostrum	Sturgeon, Shortnose	E
Plants:		
Rhododendron chapmanii	Rhododendron, Chapman's	E
Collier County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Crocodylus acutus	American crocodile	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Ammodramus maritima	Cape Sable seaside sparrow	E/CH
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Apiaceae:		
Eryngium cuneifolium	Snakeroot	E
Columbia County:		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Dade County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Crocodylus acutus	American crocodile	E/CH
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Ammodramus maritima	Cape Sable seaside sparrow	E/CH
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougallii	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Eumops glaucinus floridanus	Florida Mastiff bat	C
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Convolvulaceae		
Jacquemontia reclinata	Beach jacquemontia	E
Family Euphorbiaceae		
Euphorbia deltoidea var. deltoidea	Deltoid spurge	E
Euphorbia garberi	Garber's spurge	T
Family Fabaceae		
Amorpha crenulata	Crenulate lead plant	E
Galactia smallii	Small's milkpea	E
Family Polygalaceae		
Polygala smallii	Tiny polygala	E
Desoto County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostrus	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Dixie County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Duval County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser brevirostrum	Sturgeon, Shortnose	E
Escambia County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		

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FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Peromyscus polionotus trissyllepsis	Perdido Key beach mouse	E/CH
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Flagler County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Birds:		
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Franklin County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Euphorbia telephioides	Telephus spurge	T
Harperocallis flava	Harper's beauty	E
Macbridea alba	White birds-in-a-nest	T
Pinguicula ionantha	Godfrey's (violet) butterwort	T
Scutellaria floridana	Florida skullcap	T
Gadsden County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants		
Rhododendron chapmanii	Chapman's rhododendron	E
Schwalbea americana	American chaffseed	E
Silene polypetala	Fringed campion	E
Spigelia gentianoides	Gentian pinkroot	E
Torreya taxifolia	Florida torreya	E
Gilchrist County		
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Glades County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Arecaceae		
Cucurbita okeechobeensis ssp. okeechobeensis	Okeechobee gourd	E
Gulf County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Peromyscus polionotus peninsularis	St. Andrew beach mouse	C
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Euphorbia telephioides	Telephus spurge	T
Macbridea alba	White birds-in-a-nest	T
Pinguicula ionantha	Godfrey's (violet) butterwort	T
Rhododendron chapmanii	Chapman's rhododendron	E
Scutellaria floridana	Florida skullcap	T
Hamilton County		
Mammals;		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Hardee County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Rosaceae		
Prunus geniculata	Scrub plum	E
Hendry County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Hernando County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Plants:		
Nolina brittoniana	Beargrass, Britton's	E
Campanula robinsiae	Bellflower, Brooksville	E
Justicia cooleyi	Water-willow, Cooley's	E
Highlands County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Eumeces egregius lividus	Blue-tailed mole skink	T
Neoseps reynoldsi	Sand skink	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Agavaceae		
Nolina brittoniana	Britton's beargrass	E
Family Apiaceae		
Eryngium cuneifolium	Snakeroot	E
Family Asteraceae		
Chrysopsis floridana	Florida golden aster	E
Liatris ohlingerae	Scrub blazing star	E
Family Brassicaceae		
Warea carteri	Carter's mustard	E
Family Caryophyllaceae		
Paronychia chartacea	Papery whitlow-wort	T
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Fabaceae		
Clitoria fragrans	Pigeon wing	T
Crotalaria avonensis	Avon Park harebells	E
Family Hypericaceae		
Hypericum cumulicola	Highlands scrub hypericum	E
Family Lamiaceae		
Conradina brevifolia	Short-leaved rosemary	E
Dicerandra frutescens	Scrub mint	E
Dicerandra christmanii	Garrett's mint	E
Family Oleaceae		
Chionanthus pygmaeus	Pygmy fringetree	E
Family Polygalacea		
Polygala lewtonii	Lewton's polygala	E
Family Polygonaceae		
Eriogonum longifolium var. gnaphalifolium	Scrub buckwheat	T
Polygonella basiramia	Wireweed	E
Polygonella myriophylla	Sandlace	E
Family Rhamnaceae		
Ziziphus celata	Florida ziziphus	E
Family Rosaceae		
Prunus geniculata	Scrub plum	E
Cladonia perforata	Florida perforate cladonia (Deer moss)	E
Hillsborough County		
Mammals:		
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	E
Charadrius melodus	Plover, Piping	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Plants:		
Chrysopsis floridana = Heterotheca	Aster, Florida Golden	E
Holmes County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Mycteria americana	Wood stork	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Myotis grisescens	Gray bat	E
Ursus americanus floridanus	Florida black bear	C
Indian River County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Nerodia fasciata taeniata	Atlantic salt marsh snake	T
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougalli dougalli	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Peromyscus polionotus niveiventris	Southeastern beach mouse	T
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Cactaceae		
Cereus eriophorus var. fragrans	Fragrant wool-bearing cereus	E
Family Lamiaceae		
Dicerandra immaculata	Lakela's mint	E
Jackson County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Myotis grisescens	Gray bat	E
Myotis sodalis	Indiana bat	E
Plants:		
Silene polypetala	Fringed campion	E
Spigelia gentianoides	Gentian pinkroot	E
Torreya taxifolia	Florida torreya	E
Jefferson County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Ursus americanus floridanus	Florida black bear	C
Plants:		
Ribes echinellum	Miccosukee gooseberry	T
Layfayette County		
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Lake County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Neoseps reynoldsi	Skink, Sand	T
Drymarchon corais couperi	Snake, Eastern Indigo	T
Plants:		
Nolina brittoniana	Beargrass, Britton's	E
Bonamia grandiflora	Bonamia, Florida	T
Chionanthus pygmaeus	Fringetree, Pygmy	E
Prunus geniculata	Plum, Scrub	E
Polygala lewtonii	Polygala, Lewton's	E
Warea amplexifolia	Warea, Wide-leaf	E
Paronychia chartacea = Nyachia pulvinata	Whitlow-wort, Papery	T
Eriogonum longifolium var. g. = Eriogonum floridanum	Wild Buckwheat, Scrub	T
Clitoria fragrans	Wings, Pigeon	T
Lee County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Crocodylus acutus	American crocodile	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	E
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae		
Deeringothamnus pulchellus	Beautiful pawpaw	E
Leon County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T

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FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Myotis grisescens	Gray bat	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Schwalbea americana	American chaffseed	E
Levy County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	ECH
Microtus pennsylvanicus dukecampbelli	Vole, Florida Salt Marsh	E
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Liberty County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants:		
Conradina glabra	Apalachicola rosemary	E
Harperocallis flava	Harper's beauty	E
Macbridea alba	White birds-in-a-nest	T
Pinguicula ionantha	Godfrey's (violet) butterwort	T
Rhododendron chapmanii	Chapman's rhododendron	E
Scutellaria floridana	Florida skullcap	T
Spigelia gentianoides	Gentian pinkroot	E
Torreya taxifolia	Florida torreya	E
Madison County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Manatee County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus lotirostris	Manatee, West Indian	E/CH
Birds:		
Polyborus plancu audubonii	Caracara, Audubon's Crested	T
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E

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FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Caretta carretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Marion County		
Mammals:		
Ursus americanus floridanus	Bear, Florida Black	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Neoseps reynoldsi	Skink, Sand	T
Drymarchon corais couperi	Snake, Eastern Indigo	T
Plants:		
Bonamia grandiflora	Bonamia, Florida	T
Dicerandra cornutissima	Mint, Longspurred	E
Polygala lewtonii	Polygala, Lewton's	E
Eriogonum longifolium var. g. = Eriogonum floridanum	Wild Buckwheat, Scrub	T
Martin County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Sterna dougalli dougalli	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae		
Asimina tetramera	Four-petal pawpaw	E
Family Cladoniaceae		
Cladonia perforata	Florida perforate cladonia	E
Family Convolvulaceae		
Jacquemontia reclinata	Beach jacquemontia	E
Monroe County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Crocodylus acutus	American crocodile	E/CH
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Nerodia fasciata taeniata	Atlantic salt marsh snake	T
Birds:		
Ammodramus maritima	Cape Sable seaside sparrow	E/CH
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Sterna dougallii	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Neotoma floridana smalli	Key Largo woodrat	E
Odocoileus virginianus clavium	Key deer	E
Oryzomys argentatus	Silver rice rat	E/CH
Peromyscus gossypinus allapaticola	Key Largo cotton mouse	E
Sylvilagus palustris hefneri	Lower keys marsh rabbit	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Invertebrates:		
Orthalicus reses	Stock Island tree snail	T
Heraclides (=Papilio) aristodemus ponceanus	Schaus swallowtail butterfly	E
Plants:		
Family Cactaceae		
Pilosocereus robinii	Key tree-cactus	E
Family Euphorbiaceae		
Euphorbia garberi	Garber's spurge	T
Nassau County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Okaloosa County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Etheostoma okaloosae	Okaloosa darter	E
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Cladonia perforata	Perforate reindeer lichen	E
Okeechobee County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E

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FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Cucurbitaceae		
Cucurbita okeechobeensis	Okeechobee gourd	E
Family Polygonaceae		
Eriogonum longifolium var. gnaphalifolium	Scrub buckwheat	T
Orange County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Polyborus plancus audubonii	Caracara, Audubon's Crested	T
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Neoseps reynoldsi	Skink, Sand	T
Drymarchon corais couperi	Snake, Eastern Indigo	T
Plants:		
Nolina brittoniana	Bear-grass, Britton's	E
Bonamia grandiflora	Bonamia, Florida	T
Lupinus aridorum	Lupine, Scrub	E
Deeringothamnus pulchellus	Pawpaw, Beautiful	E
Polygonella myriophylla	Sandlace	E
Paronychia chartacea = Nyachia pulvinata	Whitlow-wort, Papery	T
Eriogonum longifolium var. g. = Eriogonum floridanum	Wild Buckwheat, Scrub	T
Osceola County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Agavaceae		
Nolina brittoniana	Scrub beargrass	E
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Fabaceae		
Clitoria fragrans	Pigeon wing	T
Family Oleaceae		
Chionanthus pygmaeus	Pygmy fringetree	E
Family Polygalaceae		
Polygala lewtonii	Lewton's polygala	E
Family Polygonaceae		
Eriogonum longifolium var. gnaphalifolium	Scrub buckwheat	T
Polygonella myriophylla	Sandlace	E
Palm Beach County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Nerodia fasciata taeniata	Atlantic salt marsh snake	T
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougallii	Roseate tern	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Felis concolor	Mountain lion	T(S/A)
Felis concolor coryi	Florida panther	E
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae		
Asimina tetramera	Four-petal pawpaw	E
Family Convolvulaceae		
Jacquemontia reclinata	Beach jacquemontia	E
Family Cucurbitaceae		
Cucurbita okeechobeensis	Okeechobee gourd	E
Pasco County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Lepidochelys kempii	Turtle, Kemp's Ridley Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Pinellas County		
Mammals:		
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Lepidochelys kempii	Turtle, Kemp's Ridley Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Plants:		
Chrysopsis floridana=Heterotheca floridana	Aster, Florida Golden	E
Polk County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Eumeces egregius lividus	Blue-tailed mole skink	T
Neoseps reynoldsi	Sand skink	T
Birds:		
Ammodramus savannarum floridanus	Florida grasshopper sparrow	E
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Agavaceae		
Nolina brittoniana	Britton's beargrass	E
Family Asteraceae		
Liatris ohlingerae	Scrub blazing star	E
Family Brassicaceae		
Warea amplexifolia	Clasping warea	E
Warea carteri	Carter's mustard	E
Family Caryophyllaceae		
Paronychia chartacea	Papery whitlow-wort	T
Family Convolvulaceae		
Bonamia grandiflora	Florida bonamia	T
Family Fabaceae		
Clitoria fragrans	Pigeon wing	T
Crotalaria avonensis	Avon Park harebells	E
Lupinus aridorum	Scrub lupine	E
Family Hypericaceae		
Hypericum cumulicola	Highlands scrub hypericum	E
Family Lamiaceae		
Conradina brevifolia	Short-leaved rosemary	E
Family Oleaceae		
Chionanthus pygmaeus	Pygmy fringetree	E
Family Polygalaceae		
Polygala lewtonii	Lewton's polygala	E
Family Polygonaceae		
Eriogonum longifolium var. *gnaphalifolium*	Scrub buckwheat	T
Polygonella basiramia	Wireweed	E
Polygonella myriophylla	Sandlace	E
Family Rhamnaceae		
Ziziphus celata	Florida ziziphus	E
Family Rosaceae		
Prunus geniculata	Scrub plum	E
Cladonia perforata	Florida perforate cladonia (Deer moss)	E
Putnam County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Plants:		
Conradina etonia	Rosemary, Etonia	E
Fish:		
Acipenser brevirostrum	Sturgeon, Shortnose	E
Sarasota County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E/CH

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Ursus americanus floridanus	Florida black bear	C
Santa Rosa County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Seminole County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
St. Johns County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Peromyscus polionotus phasma	Mouse, Anastasia Island Beach	E
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Mycteria americana	Stork, Wood	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Mycteria americana	Stork, Wood	E
St. Lucie County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta	Loggerhead sea turtle	T
Chelonia mydas	Green sea turtle	E
Dermochelys coriacea	Leatherback sea turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill sea turtle	E
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Birds:		
Aphelocoma coerulescens coerulescens	Florida scrub jay	T
Campephilus principalis principalis	Ivory-billed woodpecker	E
Charadrius melodus	Piping plover	T
Dendroica kirtlandii	Kirtland's warbler	E
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Polyborus (=Caracara) plancus audubonii	Audubon's crested caracara	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E/CH
Sterna dougalli dougalli	Roseate tern	T

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FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Vermivora bachmanii	Bachman's warbler	E
Mammals:		
Peromyscus polionotus niveiventris	Southeastern beach mouse	T
Trichechus manatus latirostris	West Indian manatee	E/CH
Ursus americanus floridanus	Florida black bear	C
Plants:		
Family Anonaceae:		
Asimina tetramera	Four-petal pawpaw	E
Family Cactaceae:		
Cereus eriophorus var. *fragrans*	Fragrant prickly-apple	E
Family Lamiaceae:		
Dicerandra frutescens	Scrub mint	E
Dicerandra immaculata	Lakela's mint	E
Sumter County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Suwanee County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Taylor County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian E/CH.	
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Charadrius melodus	Plover, Piping	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Chelonia mydas	Turtle, Green Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Fish:		
Acipenser oxyrhynchus desotoi	Sturgeon, Gulf	T
Union County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Birds:		
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T
Volusia County		
Mammals:		
Ursus americanus floridanus	Florida black bear	C
Trichechus manatus latirostris	Manatee, West Indian	E/CH
Birds:		
Haliaeetus leucocephalus	Eagle, Bald	T
Rostrhamus sociabilis plumbeus	Kite, Everglade Snail	E
Charadrius melodus	Plover, Piping	T
Aphelocoma coerulescens	Scrub-jay, Florida	T
Mycteria americana	Stork, Wood	E
Picoides borealis	Woodpecker, Red-cockaded	E
Reptiles:		
Drymarchon corais couperi	Snake, Eastern Indigo	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Chelonia mydas	Turtle, Green Sea	E
Eretmochelys imbricata	Turtle, Hawksbill Sea	E
Dermochelys coriacea	Turtle, Leatherback Sea	E
Caretta caretta	Turtle, Loggerhead Sea	T
Plants:		
Deeringothamus rugelii	Pawpaw, Rugel's	E
Wakulla County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Walton County		
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T
Etheostoma okaloosae	Okaloosa darter	E
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Caretta caretta caretta	Loggerhead turtle	T
Chelonia mydas mydas	Green turtle	E
Dermochelys coriacea	Leatherback turtle	E
Drymarchon corais couperi	Eastern indigo snake	T
Eretmochelys imbricata	Hawksbill turtle	E
Lepidochelys kempi	Atlantic ridley	E
Birds:		
Charadrius melodus	Piping plover	T
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Peromyscus polionotus allophrys	Choctawhatchee beach mouse	E/CH
Trichechus manatus latirostris	West Indian manatee	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Thalictrum cooleyi	Cooley's meadowrue	E
Washington County		
Amphibians and Reptiles:		
Alligator mississippiensis	American alligator	T(S/A)
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Falco peregrinus tundrius	Arctic peregrine falcon	E(S/A)
Haliaeetus leucocephalus	Bald eagle	T
Mycteria americana	Wood stork	E
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Myotis grisescens	Gray bat	E
Ursus americanus floridanus	Florida black bear	C
Plants:		
Paronychia chartacea	Papery whitlow-wort	T
Spigelia gentianoides	Gentian pinkroot	E
MISSISSIPPI		
Statewide on potential habitat		
Potamilus carpax	Fat pocketbook	E
Birds:		
Haliaeetus leucocephalus	Bald eagle	T
Fish:		
Acipenser oxyrinchus desotoi	Gulf sturgeon	T

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Scaphirhynchus albus	Pallid sturgeon	E
Plants:		
Isoetes louisianensis	Louisiana quillwort	DE
Attala County		
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Jackson County		
Birds:		
Picoides borealis	Red-cockaded woodpecker	E
Pelecanus occidentalis	Brown Pelican	E
Grus canadensis pulla	Mississippi sandhill crane	E
Charadrius melodus	Piping plover	T
Reptiles:		
Drymarchon corais couperi	Eastern indigo snake	T
Gopherus polyphemus	Gopher tortoise	T
Graptemys flavimaculata	Yellow-blotched map turtle	T
Caretta caretta	Loggerhead turtle	T
Lepidochelys kempii	Kemp's (=Atlantic) ridley sea turtle	E
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Jones County		
Reptiles:		
Gopherus polyphemus	Gopher tortoise	T
Graptemys flavimaculata	Yellow-blotched map turtle	T
Drymarchon corais couperi	Eastern indigo snake	T
Birds:		
Picoides borealis	Red-cockaded woodpecker	E
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Leake County		
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Reptiles:		
Graptemys oculifera	Ringed map turtle	T
Neshobo County		
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Reptiles:		
Graptemys oculifera	Ringed map turtle	T
Newton County		
Mammals:		
Ursus americanus luteolus	Louisiana black bear	T
Winston County		
Birds:		
Picoides borealis	Red-cockaded woodpecker	E
NORTH CAROLINA		
Graham County		
Mammals:		
Glaucomys sabrinus coloratus	Carolina nothern flying squirrel	E
Plants:		
Spiraea virginiana	Virginia spiraea	T
Gymnoderma lineare	Rock gnome lichen	E
Mollusk:		
Alasmidonta raveneliana	Appalachian elktoe	E
Jackson County		
Birds:		
Falco peregrinus	Peregrine falcon	E
Mammals:		
Glaucomys sabrinus coloratus	Carolina nothern flying squirrel	E
Myotis sodalis	Indiana bat	E
Plants:		
Helonias bullata	Swamp pink	T
Gymnoderma lineare	Rock gnome lichen	E
Isotria medeoloides	Small-whorled pogonia	T
Mollusk:		
Alasmidonta raveneliana	Appalachian elktoe	E
Swain County		
Mammals:		
Glaucomys sabrinus coloratus	Carolina nothern flying squirrel	E

FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES AND CANDIDATES FOR FEDERAL LISTING—Continued

Scientific name	Common name	Status
Myotis sodalis	Indiana bat	E
Felis concolor couguar	Eastern cougar	E
Plants:		
Gymnoderma lineare	Rock gnome lichen	E
Fish:		
Cyprinella monacha	Spotfin chub	T
Mollusk:		
Mesodon clarki nantahala	Noonday snail	T
Pegias fabula	Little-wing pearlymussel	E
Alasmidonta raveneliana	Appalachian elktoe	E
Spiders:		
Microhexura montivaga	Spruce-fir moss spider	E

*E=Endangered—T=Threatened—C=Candidate—CH=Critical Habitat—(S/A)=due to similar appearance.

Final NPDES General Permit for Storm Water Discharges From Construction Activities

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Preface

The Clean Water Act (CWA) provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The terms "storm water discharge associated with industrial activity", "point source" and "waters of the United States" are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part X) of this permit.

Part I. Coverage Under This Permit

A. Permit Area

The permit, except the parts listed below, covers all areas administered by EPA, Region 4:

All Indian Country Lands within the State of Alabama, except Part IV and Part V.D.2.a.(1), NPDES Permit No. ALR10*##I

State of Florida, excluding Indian lands, NPDES Permit No. FLR10*###

All Indian Country Lands within the State of Florida, except Part IV and Part V.D.2.a.(1), NPDES Permit No. FLR10*##I

All Indian Country Lands within the State of Mississippi, except Part IV and Part V.D.2.a.(1), NPDES Permit No. MSR10*##I

All Indian Country Lands within the State of North Carolina, except Part IV and Part V.D.2.a.(1), NPDES Permit No. NCR10*##I

B. Eligibility

1. This permit may authorize all discharges identified in the pollution prevention plan of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale, including unpaved roads, that will result in the disturbance of five or more acres total land area or less than five acres if the Director designates the site),[23] (henceforth referred to as storm water discharges from construction activities) occurring after the effective date of this permit (including discharges occurring after the effective date of this permit where the construction activity was initiated before the effective date of this permit), except for discharges identified under paragraph I.B.3.

2. This permit may authorize storm water discharges from construction sites that are mixed with storm water discharges associated with industrial activity from industrial sources other than construction, where:

a. the industrial source other than construction is located on the same site as the construction activity;

b. storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and

c. storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants at the construction site)

[23] On June 4, 1992, the United State Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200). Section 402(p)(2)(E) of the Clean Water Act shall be used as a bases for any designations.

are in compliance with the terms, including applicable NOI or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

3. *Limitations on Coverage.* The following storm water discharges from construction sites are not authorized by this permit:

a. storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;

b. discharges that are mixed with sources of non-storm water, other than discharges identified in Part III.A of this permit which are in compliance with Part V.D.5 (non-storm water discharges) of this permit;

c. storm water discharges associated with construction activity that are subject to an existing NPDES individual or general permit or which are issued a permit in accordance with paragraph VII.N (requiring an individual permit or an alternative general permit) of this permit. Such discharges may be authorized under this permit after an existing permit expires, provided the existing permit did not establish numeric limitations for such discharges;

d. storm water discharges from construction sites that the Director (EPA) has determined to be or may reasonably be expected to be causing or contributing to a violation of a water quality standard;

e. storm water discharges from construction sites if the discharges may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat;

(1) a discharge of storm water associated with construction activity may be covered under this permit only if the applicant certifies that they meet at least one of the following criteria. Failure to continue to meet one of these criteria during the term of the permit will result in the storm water discharges associated with construction ineligible for coverage under this permit.

(a) the storm water discharge(s), and the construction and implementation of Best Management Practices (BMPs) to control storm water runoff, are not likely to adversely affect species identified in Appendix C of this permit or critical habitat for a listed species; or

(b) the applicant's activity has received previous authorization under Section 7 or section 10 of the Endangered Species Act and that authorization addressed storm water discharges and/or BMPS to control storm water runoff (e.g., developer included impact of entire project in consultation over a wetlands dredge and fill permit under Section 7 of the Endangered Species Act); or

(c) the applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered species under Section 7 or Section 10 of the Endangered Species Act that which accounts for storm water discharges and BMPs to control storm water runoff (e.g., where an area-wide habitat conservation plan and Section 10 permit is issued which addresses impacts from construction activities including those from storm water, or a National Environmental Policy Act (NEPA) review is conducted which incorporates ESA Section 7 procedures); or

(d) consultation under Section 7 of the Endangered Species Act is conducted for the applicant's activity which results in either a no jeopardy opinion or a written concurrence on a finding of not likely to adversely affect; or

(e) the applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered species by the owner or other operator of the site and that permittee certified eligibility under item (a), (b), (c), or (d) above (e.g. owner was able to certify no adverse impacts for the project as a whole under item (a), so the contractor can then certify under item (e)).

(2) All applicants must follow the procedures provided at Appendix C of this permit when applying for permit coverage.

(3) The applicant must comply with any terms and conditions imposed under the eligibility requirements of paragraphs (1)(a), (b), (c), (d), or (e) above to ensure that storm water discharges or BMPs to control storm water runoff are protective of listed endangered and threatened species and/or critical habitat. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

(4) For the purposes of conducting consultation to meet the eligibility requirements of paragraph (1)(d) above, applicants are designated as non-Federal representatives. See 50 CFR 402.08. However, applicants who choose to conduct consultation as a non-Federal representative must notify EPA and the appropriate Office of the Fish and Wildlife Service office in writing of that decision.

(5) This permit does not authorize any "taking" (as defined under Section 9 of the Endangered Species Act) of endangered or threatened species.

(6) This permit does not authorize any storm water discharges, nor require any BMPs to control storm water runoff, that are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the Endangered Species Act or result in the adverse modification or destruction of habitat that is designated as critical under the Endangered Species Act.

f. discharges of storm water associated with industrial activity from construction sites not specifically identified in the pollution prevention plan in accordance with Part V of this permit. Such discharges not identified in the plan are subject to the upset and bypass rules in Part VII of this permit.

g. storm water discharges that would affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior may be in violation of the National Historic Preservation Act. A discharge of storm water associated with construction activity may be covered under this permit only if the applicant certifies that either:

(1) the storm water discharge(s), and the construction and implementation of BMPs to control storm water runoff, do not affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior; or,

(2) the applicant consults with the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) on the potential for adverse effects which results in a no effect finding; or

(3) the applicant has obtained and is in compliance with a written agreement between the applicant and the SHPO or THPO that outlines all measures to be undertaken by the applicant to mitigate or prevent adverse effects to the historic property; or

(4) the applicant agrees to implement and comply with the terms of a written agreement between another owner/operator (e.g., subdivision developer, property owner, etc.) and the SHPO or THPO that outlines all measures to be undertaken by operators on the site to mitigate or prevent adverse effects to the historic property; or

(5) the applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of effects on historic properties by the owner or other operator of the site and that permittee certified eligibility under item (1), (2), (3), or (4) above.

C. Authorization

1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using an NOI form provided by the Director (or a photocopy thereof), in

order for storm water discharges from construction sites to be authorized to discharge under this general permit.[24]

2. Where a new operator is selected after the submittal of an NOI under Part II, a new NOI must be submitted by the operator in accordance with Part II, using an NOI form provided by the Director (or a photocopy thereof).

3. Unless notified by the Director to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VII.L of this permit).

Part II. Notice of Intent Requirements

A. Deadlines for Notification.

1. Except as provided in paragraphs II.A.2, II.A.3, II.A.4, and II.A.5. individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site (where disturbances associated with the construction project commence before the effective date of this permit), including unpaved rural roads, shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part within 30 days of the effective date of this permit;

2. Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site, including unpaved rural roads, where disturbances associated with the construction project commence after April 3, 1998, shall submit an NOI in accordance with the requirements of this Part, at least 2 days prior to the commencement of construction activities (e.g. the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities). Prior to submitting this NOI, except for owners of facilities located within Indian country, as defined in 18 USC 1151, the owner of a storm water management system must receive a State of Florida storm water or environmental resource permit from either the Florida Department of Environmental Protection (FDEP) or a Florida Water Management District (FWMD);

3. For storm water discharges from construction sites, including unpaved rural roads, where the operator changes (including projects where an operator is selected after an NOI has been submitted under Parts II.A.1 or II.A.2), an NOI in accordance with the requirements of this Part shall be submitted at least 2 days prior to when the operator commences work at the site; and

4. EPA will accept an NOI in accordance with the requirements of this Part after the dates provided in Parts II.A.1, 2 or 3 of this permit. EPA shall, in such instances, use its discretion in initiating any appropriate enforcement actions.

5. Applicants who have submitted a completed NOI for coverage under the administratively continued previous general permit, issued September 25, 1992 (57 FR 44412), or applicants who have submitted a completed NOI for coverage under the general permit after its expiration shall automatically receive coverage under today's permit. If the applicant cannot certify that they meet all applicable eligibility requirements of Part I.B of today's permit or cannot be covered by, or comply with, the terms and conditions of this permit, then the applicant shall notify the Director, in accordance with the requirements of Part IX of this permit, within 90 days of the effective date of this permit.

B. Contents of Notice of Intent.

Operators must use EPA's current NOI form [EPA Form 3510–9 which replaces EPA Form 3510–6] to apply for permit coverage. (Note: the revised NOI form was published in the March 6, 1998 **Federal Register**, 63 FR 11253). By completing and signing the current NOI form to obtain permit coverage, operators are certifying that they meet all applicable eligibility requirements of Part I.B of today's permit and are informing the Director of their intent to be covered by, and comply with, the terms and conditions of this permit. The Notice of Intent shall be signed in accordance with Part VII.G of this permit by all of the entities identified in Part II.B.2. The NOI shall include the following information:

1. The mailing address, and location (including the county) of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator(s) with day to day operational control that have been identified at the time of the NOI submittal, and operator status as a Federal, State, private, public or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a existing NPDES permit, the NOI for the additional operators must indicate the number for the existing NPDES permit;

3. The location of the first outfall in latitude and longitude to the nearest 15 seconds and the name of the receiving water(s) into which that outfall discharges, or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s). (All other outfalls must be listed in the pollution prevention plan as required by Part V.);

4. The permit number of any NPDES permit(s) for any discharge(s) (including any storm water discharges or non-storm water discharges) from the site;

5. An indication of whether the owner or operator has existing quantitative data which describes the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI); and

6. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with Part V of this permit. (A copy of the plans or permits should not be included with the NOI submission). For activities located in the State of Florida, the applicant shall submit a narrative statement certifying that the storm water pollution prevention plan for the facility provides compliance with approved State of Florida issued permits, erosion and sediment control plans and storm water management plans. The applicant shall also submit a copy of the cover page of the State permit issued by FDEP or a FWMD to the facility for the storm water discharges associated with construction activity.

7. A certification that a storm water pollution prevention plan, including both construction and post-construction controls, has been prepared for the site in accordance with Part IV of this permit, and such plan provides compliance with approved State/Tribal and/or local sediment and erosion plans or permits and/or storm water management plans or permits in accordance with Part IV.D.2.d of this permit. (A copy of the plans or permits should not be included with the NOI

[24] A copy of the approved NOI form is provided in Appendix A of this notice.

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submission). The applicant shall also submit a copy of the cover page of the State permit issued by FDEP or a FWMD to the facility for the storm water discharges associated with construction activity.

8. Whether, based on the instructions in Appendix C, any species identified in Appendix C are in proximity to the storm water discharges covered by this permit or the BMPs to be used to comply with permit conditions.

9. Under which section(s) of Part I.B.3.e.(1)(Endangered Species) and Part I.B.3.f. (Historical Preservation) the applicant is certifying eligibility.

10. The following certifications shall be signed in accordance with Part VI.G.

"I certify under penalty of law that I have read and understand the Part I.B. eligibility requirements for coverage under the general permit for storm water discharges from construction activities, including those requirements relating to the protection of endangered species identified in Appendix C."

"To the best of my knowledge the discharges covered under this permit, and the construction and operation of BMPs to control storm water runoff, are not likely to adversely affect any species identified in Appendix C of this permit, or are otherwise eligible for coverage under this permit, in accordance with Part I.B.3.e of the permit, due to previous authorization under the Endangered Species Act, or agreement to implement protective measures required by the Director as a condition of eligibility."

"I further certify, to the best of my knowledge, that such discharges, and construction of BMPs to control storm water runoff, do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage , in accordance with Part I.B.3.f. of the permit, due to a previous agreement under the National Historic Preservation Act."

"I understand that continued coverage under this storm water general permit is contingent upon maintaining eligibility as provided for in Part I.B."

C. Where to Submit.

1. Facilities which discharge storm water associated with industrial activity must use an NOI form provided by the Director (or photocopy thereof). Currently, applicants may use the NOI form published in the September 29, 1995 **Federal Register** (60 FR 51265). The final version of the NOI form proposed in the June 2, 1997 **Federal Register** (62 FR 29785) shall be used when published in the **Federal Register**. Forms are also available by calling (404)562–9296. NOIs must be signed in accordance with Part VII.G of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent (4203) 401 M Street, S.W. Washington, DC 20460

2. A copy of the NOI or other indication that storm water discharges from the site are covered under an NPDES permit, and a brief description of the project shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit).

D. Additional Notification

Facilities which are operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans shall also submit signed copies of the Notice of Intent to the State or local agency approving such plans in accordance with the deadlines in Part II.A of this permit (or sooner where required by State or local rules). Facilities which discharge storm water associated with construction activities to a municipal separate storm water system within Broward, Dade, Duval, Escambia, Hillsborough, Lee, Leon, Manatee, Orange, Palm Beach, Pasco, Pinellas, Polk, Sarasota or Seminole Counties shall submit a copy of the NOI to the operator of the municipal separate storm sewer system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and Chapter 298 Special Districts shall also be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

E. Permit Renewal

If this general permit is not reissued prior to its expiration date, all facilities desiring to retain continued coverage shall submit another NOI form prior to the expiration of this permit. This submittal shall also satisfy the notification requirement to be covered under the reissued permit.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Non-storm Water Discharges

1. Except as provided in paragraph I.B.2 and III.A.2, all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.(b), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph V.D.5 and the storm water management system is designed to accept these discharges and provide treatment of the non-storm water component sufficient to meet Florida water quality standards: discharges from fire fighting activities; fire hydrant flushings; waters used to spray off loose solids from vehicles (waste waters from a more thorough cleaning, including the use of detergents or other cleaners is not authorized by this part) or control dust in accordance with Part V.D.2.c.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents. Discharges resulting from ground water dewatering activities at construction sites are not covered by this permit. Applicants in the State of Florida seeking coverage for these discharges must contact the Florida Department of Environmental Protection.

B. Releases in Excess of Reportable Quantities.

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

a. The permittee is required to notify the National Response Center (NRC) (800–424–8802 or for Region 4, 404–562–8702) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to EPA Region

4 Office at the address provided in Part VI.C (addresses) of this permit; and

c. The storm water pollution prevention plan required under Part V of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. Unpaved Rural Roads

A. Applicability

The provisions of this part are applicable to the construction of roads, except roads constructed and associated with silviculture and agricultural activities as defined by 40 CFR Part 122, that disturb five (5) acres or more and will remain unpaved after construction is complete.

B. Construction

In the State of Florida, construction of unpaved rural roads where the possibility of a point source discharge to surface waters exists, must all erosion and sediment controls and storm water management practices as needed to be consistent with the requirements set forth in State Water Policy (Chapter 62–40, FAC), the applicable storm water or environmental resource permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments.

C. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit.

Part V. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

The plan shall:

1. Be completed (including certifications required under Part V.E) prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. The plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VII.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (retention of records) of this permit.

2. The permittee shall submit plans to the State agency which issued the storm water or environmental resource permit referenced in Part II.B.6. and shall make plans available upon request to the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

3. The Director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this Part. Within 7 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States, including the addition of or change in location of storm water discharge points, and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part V.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part V.E). Amendments to the plan shall be prepared, dated, and kept as separate documents from the original plan. The amendments to the plan may be reviewed by EPA in the same manner as Part V.B above. Amendments to the plan must be submitted to the State agency which issued the State storm water or environmental resource permit.

D. Contents of Plan

The storm water pollution prevention plan shall include the following items:

1. *Site Description.* Each plan shall provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site before, during and after construction activities are completed using "C" from the Rational Method, and existing data describing the soil or the quality of any discharge from the site and an estimate of the size of the drainage area for each outfall;

e. A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which may not be disturbed, the location of major structural and nonstructural controls

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identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and,

f. The location in terms of latitude and longitude, to the nearest 15 seconds, of each outfall, the name of the receiving water(s) for each outfall and the amount of any wetland acreage at the site.

2. *Controls.* Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part V.D.1.b appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). All controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62–40, Florida Administrative Code), the applicable storm water or environmental resource permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments. The description and implementation of controls shall address the following minimum components:

a. Erosion and Sediment Controls. (1) Stabilization Practices. A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site and when stabilization measures are initiated shall be included in the plan. Stabilization measures shall be initiated as soon as practicable, but in no case more than 14 days, in portions of the site where construction activities have temporarily or permanently ceased.

(2) Structural Practices. A description of structural practices, to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site; and in the State of Florida, in accordance with the requirements set forth in Section 62–40, 420, FAC, and the applicable storm water or environmental resource regulations of the FDEP or appropriate FWMD. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils unless a State of Florida wetland resource management permit or environmental resource permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with more than 10 disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage locations which serve more than 10 disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. Storm Water Management. A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. In the State of Florida, the description of controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62–40, FAC), the applicable storm water or environmental resource permitting regulations of the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988), and any subsequent amendments. Structural measures should be placed on upland soils unless a State of Florida wetland resource management permit or environmental resource permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA. This NPDES permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site. However, all storm water management systems shall be operated and maintained in perpetuity after final stabilization in accordance with requirements set forth in the State of Florida storm water or environmental resource permit issued for the site.

(1) Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). In the State of Florida, pursuant to the requirements of section 62–40.432, FAC, the storm water management system shall be designed to remove at least 80 percent of the average annual load of pollutants which cause or contribute to violations of water quality standards (95 percent if the system discharges to an Outstanding Florida Water). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control

pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water). Equalization of the predevelopment and post-development storm water peak discharge rate and volume shall be a goal in the design of the post-development storm water management system.

c. *Other Controls.* (1). *Waste Disposal.* No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit and by a State of Florida wetland resource management permit or environmental resource permit issued pursuant to chapters 373 or 403, FS, and the applicable regulations of the FDEP or FWMD.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The plan shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.

(4) The plan shall address the proper application rates and methods for the use of fertilizers and pesticides at the construction site and set forth how these procedures will be implemented and enforced. Nutrients will be applied only at rates necessary to establish and maintain vegetation such that discharges will not cause or contribute to violations of State surface or ground water quality standards.

(5) The plan shall ensure that the application, generation, and migration of toxic substances is limited and that toxic materials are properly stored and disposed.

d. *Approved State or Local Plans.* (1) Facilities which discharge storm water associated with construction activity must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials. Permittees shall provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials. Permittees shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(2) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes.

(3) Dischargers seeking alternative permit requirements shall submit an individual permit application in accordance with Part VII.L of the permit at the address indicated in Part V.C of this permit for the appropriate Regional Office, along with a description of why requirements in approved State or local plans or permits, or changes to such plans or permits should not be applicable as a condition of an NPDES permit.

3. Maintenance. A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating conditions.

4. Inspections. Qualified personnel (provided by the discharger) shall inspect all points of discharge into waters of the United States or to a municipal separate storm sewer system and all disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.25 inches or greater. Where sites have been finally stabilized; such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the storm water system. The storm water management system and erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. In the State of Florida, where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in meeting the performance standards set forth in State Water Policy (chapter 62–40, FAC) and the applicable storm water or environmental resource permitting regulations of the FDEP or appropriate FWMD. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with paragraph V.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph V.D.2 of this permit shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph V.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G of this permit.

5. Non-Storm Water Discharges— Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 of this permit that are combined with storm water discharges associated with construction activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

E. Contractors

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part V.E.2 of this permit in accordance with Part VII.G of this permit. All certifications must be included in the storm water pollution prevention plan.

2. Certification Statement. All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part V.E.1 of this permit shall sign a copy of the following certification statement before conducting any professional service identified in the storm water pollution prevention plan:

I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.

The certification must include the name and title of the person providing the signature in accordance with Part VII.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

Part VI. Retention of Records

A. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. The permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization.

C. Addresses. Except for the submittal of NOIs (Part II.C) and NOTs (Part IX), all written correspondence directed to the U.S. Environmental Protection Agency concerning discharges in the State of Florida or an Indian lands located in Region 4, and subject to coverage under this permit, including the submittal of individual permit applications, shall be sent to the address listed below:

U.S. EPA, Region 4, Surface Water Permits Section, Water Management Division, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303

Part VII. Standard Permit Conditions

A. Duty To Comply

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions.

a. Criminal. (1) Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4). False Statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

b. Civil Penalties—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. Administrative Penalties—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) Class I penalty. Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2) Class II penalty. Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. Continuation of the Expired General Permit

This permit expires at midnight 5 years from April 3, 1998. If this general permit is not reissued prior to its expiration date, all facilities desiring to retain continued coverage shall submit another NOI form prior to the expiration of this permit. This submittal shall also satisfy the notification requirement to be covered under the reissued permit. Facilities that have not obtained coverage under this permit by the expiration date of this permit cannot become authorized to discharge under the continued permit.

The authorization to discharge under the continued previous general permit, issued on September 25, 1992 (57 FR 44412), expires 90 days from April 3, 1998.

C. Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty To Provide Information

The permittee shall furnish within a reasonable time to the Director; an authorized representative of the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a

storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system, any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. Changes to authorization. If an authorization under paragraph II.B.3. is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new notice of intent satisfying the requirements of paragraph II.B. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing documents under paragraph VI.G shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. Penalties for Falsification of Monitoring Systems

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

M. Transfers

Coverage under this permit is not transferable to any person except after notice to the Director. The Director may require termination of permit coverage by the current permittee in accordance with Part IX of this permit; and the subsequent submission a Notice of Intent to receive coverage under the permit by the new applicant in accordance with Part II of this permit.

N. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief

statement of the reasons for this decision, an application form, a statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

O. State/Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

P. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

Q. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment); and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameter at any location on the site.

R. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. Planned Changes

The permittee shall amend the pollution prevention plan as soon as possible identifying any planned physical alterations or additions to the permitted facility.

T. Twenty-Four Hour Reporting

(1) the permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause: the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

U. Bypass

(1) Definitions.

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property which causes them to become inoperable or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs S(3) and S(4).

(3) Notice.

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph R. of this section (24-hour notice).

(4) Prohibition of bypass.

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) the permittee submitted notices as required under paragraph S(3) of this section.

(ii) The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph S(4)(i) of this section.

Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

C. This permit may be modified, or alternatively, revoked and reissued, to comply with any applicable provisions of the Phase II storm water regulations once they are issued.

Part IX. Termination of Coverage

A. Notice of Termination. Where a site has been finally stabilized and all storm water discharges from construction sites that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit within 14 days of final stabilization of the site. The Notice of Termination shall include the following information:

1. The mailing address, and location of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location can be described in terms of the latitude and longitude of the approximate center of the facility to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address, and telephone number of the operator seeking termination of permit coverage;

3. The NPDES permit number for the storm water discharge identified by this Notice of Termination;

4. An identification of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VII.G (signatory requirements) of this permit:

I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have otherwise been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity by the general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated.

B. Where to Submit. Currently, applicants may use the NOT form published in the September 29, 1995 **Federal Register** (60 FR 51265). The final version of the NOT form proposed in the June 2, 1997 **Federal Register** (62 FR 29785) shall be used when published in the **Federal Register**. All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof) [25], to the following address: Storm Water Notice of Termination (4203), 401 M Street, SW, Washington, DC 20460.

C. Additional Notification. A copy of the Notice of Termination shall be sent to the State agency which issued the State storm water or environmental resource permit for the site and, if the storm water management system discharges to a municipal separate storm sewer system within Broward, Dade, Duval, Escambia, Hillsborough, Lee, Leon, Manatee, Orange, Palm Beach, Pasco, Pinellas, Polk, Sarasota or Seminole Counties, to the owner of that system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and chapter 298 Special Districts also shall be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

Part X. Definitions

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Commencement of Construction—The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

CWA means Clean Water Act or the Federal Water Pollution Control Act.

Dedicated portable asphalt plant—A portable asphalt plant that is located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR Part 443.

Dedicated portable concrete plant—A portable concrete plant that is located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

Director means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

Final Stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent

[25] A copy of the approved NOT form is provided in Appendix A of this notice.

stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Large and Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit).

NOT means notice of termination (see Part IX of this permit).

Operator means any party associated with the construction project that meets either of the following 2 criteria: (1) The party has operational control over project specifications (including the ability to make modifications in specifications), or (2) the party has day-to-day operational control of those activities at a project site which are necessary to ensure compliance with the storm water pollution prevention plan or other permit conditions (e.g., they are authorized to direct workers at the site to carry out activities identified in the storm water pollution prevention plan or comply with other permit conditions).

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment

cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)–(vii) or (ix)–(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)).[26]

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

[26] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200).

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Part IV

Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts Notice of Data Availability; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–5988–7]

National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts Notice of Data Availability

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of data availability; request for comments.

SUMMARY: In 1994 USEPA proposed a Stage 1 Disinfectants/Disinfection Byproducts Rule (D/DBP) to reduce the level of exposure from disinfectants and disinfection byproducts (DBPs) in drinking water (USEPA, 1994a). This Notice of Data Availability summarizes the 1994 proposal and a subsequent Notice of Data Availability in 1997 (USEPA, 1997a); describes new data that the Agency has obtained and analyses that have been completed since the 1997 Notice of Data Availability; requests comments on the regulatory implications that flow from the new data and analyses; and requests comments on several issues related to the simultaneous compliance with the Stage 1 DBP Rule and the Lead and Copper Rule. USEPA solicits comment on all aspects of this Notice and the supporting record. The Agency also solicits additional data and information that may be relevant to the issues discussed in the Notice.

The Stage 1 D/DBP rule would apply to community water systems and nontransient noncommunity water systems that treat their water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide would apply to transient noncommunity water systems because of the short-term health effects from high levels of chlorine dioxide.

Key issues related to the Stage 1 D/DBP rule that are addressed in this Notice include the establishment of Maximum Contaminant Level Goals for chloroform, dichloroacetic acid, chlorite, and bromate and the Maximum Residual Disinfectant Level Goal for chlorine dioxide.

DATES: Comments should be postmarked or delivered by hand on or before April 30, 1998. Comments must be received or post-marked by midnight April 30, 1998.

ADDRESSES: Send written comments to DBP NODA Docket Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to owdocket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For general information contact, the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Dr. Vicki Dellarco, Office of Science and Technology (MC 4304) or Mike Cox, Office of Ground Water and Drinking Water (MC 4607), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460; telephone (202) 260–7336 (Dellarco) or (202) 260–1445 (Cox).

SUPPLEMENTARY INFORMATION:

Regulated entities. Entities potentially regulated by the Stage 1 D/DBP rule are public water systems that add a disinfectant or oxidant. Regulated categories and entities include:

Category	Examples of regulated entities
Public Water System.	Community and nontransient noncommunity water systems that add a disinfectant or oxidant.
State Governments.	State government offices that regulate drinking water.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility may be regulated by this action, you should carefully examine the applicability criteria in § 141.130 of the proposed rule (USEPA, 1994a). If you have questions regarding the applicability of this action to a particular entity, contact one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Additional Information for Commenters. Please submit an original and three copies of your comments and enclosures (including references). The Agency requests that commenters follow the following format: Type or print comments in ink, and cite, where possible, the paragraph(s) in this Notice to which each comment refers. Commenters should use a separate paragraph for each method or issue discussed. Electronic comments must be submitted as a WP5.1 or WP6.1 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in WordPerfect in 5.1 or WP6.1 or ASCII file format. Electronic comments on this Notice may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Availability of Record. The record for this Notice, which includes supporting documentation as well as printed, paper versions of electronic comments, is available for inspection from 9 to 4 p.m. (Eastern Time), Monday through Friday, excluding legal holidays, at the Water Docket, U.S. EPA Headquarters, 401 M. St., S.W., East Tower Basement, Washington, D.C. 20460. For access to docket materials, please call 202/260–3027 to schedule an appointment.

Abbreviations Used in This Notice

AWWA: American Water Works Association
AWWARF: AWWA Research Foundation
BAT: Best Available Technology
BDCM: Bromodichloromethane
CMA: Chemical Manufacturers Association
CWS: Community Water System
DBCM: Dibromochloromethane
DBP: Disinfection Byproducts
D/DBP: Disinfectants and Disinfection Byproducts
DCA: Dichloroacetic Acid
ED_{10}: Maximum likelihood estimate on a dose associated with 10% extra risk
EPA: United States Environmental Protection Agency
ESWTR: Enhanced Surface Water Treatment Rule
FACA: Federal Advisory Committee Act
GAC: Granular Activated Carbon
HAA5: Haloacetic Acids (five)
HAN: Haloacetonitrile
ICR: Information Collection Rule
ILSI: International Life Sciences Institute
IESTWR: Interim Enhanced Surface Water Treatment Rule
IRFA: Initial Regulatory Flexibility Analysis
LCR: Lead and Cooper Rule
LED_{10}: Lower 95% confidence limit on a dose associated with 10% extra risk
LMS: Linear Multistage Model
LOAEL: Lowest Observed Adverse Effect Level
LTESTWR: Long-Term Enhanced Surface Water Treatment Rule

MCL: Ma
MCLG: M
Goal
M–DBP: I
Disinfe
mg/L: Mi
MoE: Mar
MRDL: M
Level
MRDLG: I
Disinfe
MTD: Ma
NIPDWR:
Drinkin
NOAEL: N
Level
NODA: N
NPDWR:
Water R
NTNCWS
Water S
NTP: Nati
PAR: Popu
PQL: Prac
PWS: Pub
q1 *: Canc
RFA: Regu
RfD: Refer
RIA: Regu
RSC: Relat
SAB: Scie
SBREFA:
Enforce
SDWA: Sa
"Act," a
SWTR: Su
TCA: Trich
TOC: Tota
TTHM: To
TWG: Tech

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MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
M–DBP: Microbial and Disinfectants/Disinfection Byproducts
mg/L: Milligrams per liter
MoE: Margin of Exposure
MRDL: Maximum Residual Disinfectant Level
MRDLG: Maximum Residual Disinfectant Level Goal
MTD: Maximum Tolerated Dose
NIPDWR: National Interim Primary Drinking Water Regulation
NOAEL: No Observed Adverse Effect Level
NODA: Notice of Data Availability
NPDWR: National Primary Drinking Water Regulation
NTNCWS: Nontransient Noncommunity Water System
NTP: National Toxicology Program
PAR: Population Attributable Risk
PQL: Practical Quantitation Limit
PWS: Public Water System
q1 *: Cancer Potency Factor
RFA: Regulatory Flexibility Act
RfD: Reference Dose
RIA: Regulatory Impact Analysis
RSC: Relative Source Contribution
SAB: Science Advisory Board
SBREFA: Small Business Regulatory Enforcement Fairness Act
SDWA: Safe Drinking Water Act, or the "Act," as amended in 1986 and 1996
SWTR: Surface Water Treatment Rule
TCA: Trichloroacetic Acid
TOC: Total Organic Carbon
TTHM: Total Trihalomethanes
TWG: Technical Working Group

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I. Introduction and Background

A. 1979 Total Trihalomethane MCL

USEPA set an interim maximum contaminant level (MCL) for total trihalomethanes (TTHMs) of 0.10 mg/L as an annual average in November 1979 (USEPA, 1979). There are four trihalomethanes (chloroform, bromodichloromethane, chlorodibromomethane, and bromoform). The interim TTHM standard applies to any PWS (surface water and/or ground water) serving at least 10,000 people that adds a disinfectant to the drinking water during any part of the treatment process. At their discretion, States may extend coverage to smaller PWSs. However, most States have not exercised this option. About 80 percent of the PWSs, serving populations of less than 10,000, are served by ground water that is generally low in THM precursor content (USEPA, 1979) and which would be expected to have low TTHM levels even if they disinfect.

B. Statutory Authority

In 1996, Congress reauthorized the Safe Drinking Water Act. Several of the 1986 provisions were renumbered and augmented with additional language, while other sections mandate new drinking water requirements. As part of the 1996 amendments to the Safe Drinking Water Act, USEPA's general authority to set a Maximum Contaminant Level Goal (MCLG) and a National Primary Drinking Water Regulation (NPDWR) was modified to apply to contaminants that "may have an adverse effect on the health of persons", that are "known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern", and for which "in the sole judgement of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems' (1986 SDWA Section 1412 (b)(3)(A) stricken and amended with 1412(b)(1)(A)).

The Act also requires that at the same time USEPA publishes an MCLG, which is a non-enforceable health goal, it also must publish a NPDWR that specifies either a maximum contaminant level (MCL) or treatment technique (Sections 1401(1), 1412(a)(3), and 1412 (b)(4)B)). USEPA is authorized to promulgate a NPDWR "that requires the use of a treatment technique in lieu of establishing a MCL," if the Agency finds that "it is not economically or technologically feasible to ascertain the level of the contaminant" (1412(b)(7)(A)).

The 1996 Amendments also require USEPA to promulgate a Stage 1 disinfectants/disinfection byproducts (D/DBP) rule by November 1998. In

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addition, the 1996 Amendments require USEPA to promulgate a Stage 2 D/DBP rule by May 2002 (Section 1412(b)(2)(C)).

C. Regulatory Negotiation Process

In 1992 USEPA initiated a negotiated rulemaking to develop a D/DBP rule. The negotiators included representatives of State and local health and regulatory agencies, public water systems, elected officials, consumer groups and environmental groups. The Committee met from November 1992 through June 1993.

Early in the process, the negotiators agreed that large amounts of information necessary to understand how to optimize the use of disinfectants to concurrently minimize microbial and DBP risk on a plant-specific basis were unavailable. Nevertheless, the Committee agreed that USEPA should propose a D/DBP rule to extend coverage to all community and nontransient noncommunity water systems that use disinfectants. This rule proposed to reduce the current TTHM MCL, regulate additional disinfection byproducts, set limits for the use of disinfectants, and reduce the level of organic compounds from the source water that may react with disinfectants to form byproducts.

One of the major goals addressed by the Committee was to develop an approach that would reduce the level of exposure from disinfectants and DBPs without undermining the control of microbial pathogens. The intention was to ensure that drinking water is microbiologically safe at the limits set for disinfectants and DBPs and that these chemicals do not pose an unacceptable risk at these limits.

Following months of intensive discussions and technical analysis, the Committee recommended the development of three sets of rules: a staged D/DBP Rule (proposal: 59 FR 38668, July 29, 1994), an "interim" Enhanced Surface Water Treatment Rule (IESWTR) (proposal: 59 FR 38832, July 29, 1994), and an Information Collection Rule (final 61 FR 24354, May 14, 1996). The IESWTR would only apply to systems serving 10,000 people or more. The Committee agreed that a "long-term" ESWTR (LTESWTR) would be needed for systems serving fewer than 10,000 people when the results of more research and water quality monitoring became available. The LTESWTR could also include additional refinements for larger systems.

D. Overview of 1994 DBP Proposal

The proposed D/DBP Stage 1 rule addressed a number of complex and interrelated drinking water issues. The proposal attempted to balance the control of health risks from compounds formed during drinking water disinfection against the risks from microbial organisms (such as *Giardia lamblia, Cryptosporidium,* bacteria, and viruses) to be controlled by the IESWTR.

The proposed Stage 1 D/DBP rule applied to all community water systems (CWSs) and nontransient noncommunity water systems (NTNCWSs) that treat their water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide would apply to transient noncommunity water systems because of the short-term health effects from high levels of chlorine dioxide. Following is a summary of key components of the 1994 proposed Stage 1 D/DBP rule.

1. MCLGs/MCLs/MRDLGs/MRDLs

EPA proposed MCLGs of zero for chloroform, bromodichloromethane, bromoform, bromate, and dichloroacetic acid and MCLGs of 0.06 mg/L for dibromochloromethane, 0.3 mg/L for trichloroacetic acid, 0.04 mg/L for chloral hydrate, and 0.08 mg/L for chlorite. In addition, EPA proposed to lower the MCL for TTHMs from 0.10 to 0.080 mg/L and added an MCL for five haloacetic acids (i.e., the sum of the concentrations of mono-, di-, and trichloroacetic acids and mono-and dibromoacetic acids) of 0.060 mg/L. EPA also, for the first time, proposed MCLs for two inorganic DBPs: 0.010 mg/L for bromate and 1.0 mg/L for chlorite.

In addition to proposing MCLGs and MCLs for several DBPs, EPA proposed maximum residual disinfectant level goals (MRDLGs) of 4 mg/L for chlorine and chloramines and 0.3 mg/L for chlorine dioxide. The Agency also proposed maximum residual disinfectant levels (MRDLs) for chlorine and chloramines of 4.0 mg/L, and 0.8 mg/L for chlorine dioxide. MRDLs protect public health by setting limits on the level of residual disinfectants in the distribution system. MRDLs are similar in concept to MCLs—MCLs set limits on contaminants and MRDLs set limits on residual disinfectants in the distribution system. MRDLs, like MCLs, are enforceable, while MRDLGs, like MCLGs, are not enforceable.

2. Best Available Technologies

EPA identified the best available technology (BAT) for achieving compliance with the MCLs for both TTHMs and HAA5 as enhanced coagulation or treatment with granular activated carbon with a ten minute empty bed contact time and 180 day reactivation frequency (GAC10), with chlorine as the primary and residual disinfectant. The BAT for achieving compliance with the MCL for bromate was control of ozone treatment process to reduce formation of bromate. The BAT for achieving compliance with the chlorite MCL was control of precursor removal treatment processes to reduce disinfectant demand, and control of chlorine dioxide treatment processes to reduce disinfectant levels. EPA identified BAT for achieving compliance with the MRDL for chlorine, chloramine, and chlorine dioxide as control of precursor removal treatment processes to reduce disinfectant demand, and control of disinfection treatment processes to reduce disinfectant levels.

3. Treatment Technique

EPA proposed a treatment technique that would require surface water systems and groundwater systems under the direct influence of surface water that use conventional treatment or precipitative softening to remove DBP precursors by enhanced coagulation or enhanced softening. A system would be required to remove a certain percentage of total organic carbon (TOC) (based on raw water quality) prior to the point of continuous disinfection. EPA also proposed a procedure to be used by a PWS not able to meet the percent reduction, to allow them to comply with an alternative minimum TOC removal level. Compliance for systems required to operate with enhanced coagulation or enhanced softening was based on a running annual average, computed quarterly, of normalized monthly TOC percent reductions.

4. Preoxidation (Predisinfection) Credit

The proposed rule did not allow PWSs to take credit for compliance with disinfection requirements in the SWTR/IESWTR prior to removing required levels of precursors unless they met specified criteria. This provision was modified by the 1997 Federal Advisory Committee (see below).

5. Analytical Methods

EPA proposed nine analytical methods (some of which can be used for multiple analyses) to ensure compliance with proposed MRDLs for chlorine, chloramines, and chlorine dioxide. EPA proposed methods for the analysis of TTHMs, HAA5, chlorite, bromate and total organic carbon.

6. Effect on Small Public Water Systems

The Regulatory Flexibility Act (RFA), as amended by the Small Business

Regulatory Enforcement Fairness Act (SBREFA), requires federal agencies, in certain circumstances, to consider the economic effect of proposed regulations on small entities. The agency must assess the economic impact of a proposed rule on small entities if the proposal will have a significant economic impact on a substantial number of small entities. Under the RFA, 5 U.S.C. 601 *et seq.*, an agency must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of a rule on small entities unless the agency certifies that the rule will not have a significant impact.

In the 1994 D/DBP and IESWTR proposals, EPA defined small entities as small PWSs—serving 10,000 or fewer persons—for purposes of its regulatory flexibility assessments under the RFA. EPA certified that the IESWTR will not have a significant impact on a substantial number of small entities, and prepared an IRFA for the DBP proposed rule. EPA did not, however, specifically solicit comment on that definition. EPA will use this same definition of small PWSs in preparing the final RFA for the Stage 1 DBP rule. Further, EPA plans to define small entities in the same way in all of its future drinking water rulemakings. The Agency solicited public comment on this definition in the proposed National Primary Drinking Water Regulations: Consumer Confidence Reports, 63 FR 7606, at 7620–21, February 13, 1998.

E. Formation of 1997 Federal Advisory Committee

In May 1996, the Agency initiated a series of public informational meetings to exchange information on issues related to microbial and D/DBP regulations. To help meet the deadlines for the IESWTR and Stage 1 D/DBP rule established by Congress in the 1996 SDWA Amendments and to maximize stakeholder participation, the Agency established the Microbial and Disinfectants/Disinfection Byproducts (M–DBP) Advisory Committee under the Federal Advisory Committee Act (FACA) on February 12, 1997, to collect, share, and analyze new information and data, as well as to build consensus on the regulatory implications of this new information. The Committee consists of 17 members representing USEPA, State and local public health and regulatory agencies, local elected officials, drinking water suppliers, chemical and equipment manufacturers, and public interest groups.

The Committee met five times, in March through July 1997, to discuss issues related to the IESWTR and Stage 1 D/DBP rule. Technical support for these discussions was provided by a Technical Work Group (TWG) established by the Committee at its first meeting in March 1997. The Committee's activities resulted in the collection, development, evaluation, and presentation of substantial new data and information related to key elements of both proposed rules. The Committee reached agreement on the following major issues that were discussed in the 1997 NODA (USEPA, 1997a): (1) Maintaining the proposed MCLs for TTHMs, HAA5 and bromate; (2) modifying the enhanced coagulation requirements as part of DBP control; (3) including a microbial bench marking/profiling to provide a methodology and process by which a PWS and the State, working together, assure that there will be no significant reduction in microbial protection as the result of modifying disinfection practices in order to meet MCLs for TTHM and HAA5; (4) credit for compliance with applicable disinfection requirements should continue to be allowed for disinfection applied at any point prior to the first customer, consistent with the existing Surface Water Treatment Rule; (5) modification of the turbidity performance requirements and requirements for individual filters; (6) issues related to the MCLG for *Cryptosporidium*; (7) requirements for removal of *Cryptosporidium*; and (8) provision for conducting sanitary surveys.

II. Significant New Epidemiology Information for the Stage 1 Disinfectant and Disinfection Byproducts Rule

The preamble to the 1994 proposed rule provided a summary of the health criteria documents for the following DBPs: Bromate; chloramines; haloacetic acids and chloral hydrate; chlorine; chlorine dioxide, chlorite, and chlorate; and trihalomethanes (USEPA, 1994a). The information presented in 1994 was used to establish MCLGs and MRDLGs. On November 3, 1997, the EPA published a Notice of Data Availability (NODA) summarizing new information that the Agency has obtained since the 1994 proposed rule (USEPA, 1997a). The following sections briefly discuss additional information received and analyzed since the November 1997 NODA. This new information concerns the following: (1) Recently published epidemiology studies examining the relationship between exposure to contaminants in chlorinated surface water and adverse health outcomes; (2) an assessment of the Morris et. al. (1992) meta-analysis of the epidemiology studies published prior to 1996; (3) recommendations made by an International Life Science Institute (ILSI) expert panel on the application of the USEPA Proposed Guidelines for Carcinogen Assessment (USEPA, 1996b) to data sets for chloroform and dichloroacetic acid; and (4) new laboratory animal studies on bromate and chlorite (also applicable to chlorine dioxide risk). This Notice presents the conclusions of these supplemental analyses as well as their implications for MCLGs, MCLs, MRDLGs, and MRDLs. The new documents are included in the Docket for this action.

As a result of this new information, the EPA requests comment on the following: (1) Revisions to estimates of potential cancer cases that can be attributed to exposure from DBPs in chlorinated surface water (USEPA, 1998a); (2) revisions to the noncancer assessment for chlorite and chlorine dioxide (USEPA, 1998b); (3) revisions to the cancer quantitative risks for chloroform (USEPA, 1998c); (4) updates on the cancer assessment for bromate (USEPA, 1998d); and (5) updates on the hazard characterization for dichloroacetic acid (USEPA, 1998e).

As in 1994, the assessment of public health risks from chlorination of drinking water currently relies on inherently difficult and incomplete empirical analysis. On one hand, epidemiologic studies of the general population are hampered by difficulties of design, scope, and sensitivity. On the other hand, uncertainty is involved in using the results of high dose animal toxicological studies of a few of the numerous byproducts that occur in disinfected drinking water to estimate the risk to humans from chronic exposure to low doses of these and other byproducts. In addition, such studies of individual byproducts cannot characterize the entire mixture of disinfection byproducts in drinking water. Nevertheless, while recognizing the uncertainties of basing quantitative risk estimates on less than comprehensive information regarding overall hazard, EPA believes that the weight-of-evidence represented by the available epidemiological and toxicological studies on DBPs and chlorinated surface water continues to support a hazard concern and a protective public health approach to regulation.

A. Epidemiologic Associations Between Exposure to DBPs in Chlorinated Water and Cancer

The preamble to the 1994 proposed rule discussed several cancer epidemiology studies that had been conducted over the past 20 years to

examine the association between exposure to chlorinated water and cancer (USEPA, 1994a). At the time of the 1994 proposed rule, there was disagreement among the members of the Negotiating Committee on the conclusions that could be drawn from these studies. Some members of the Committee felt that the cancer epidemiology data, taken in conjunction with the results from toxicological studies, provided ample and sufficient weight of evidence to conclude that exposure to DBPs in drinking water could result in increased cancer risk at levels encountered in some public water supplies. Other members of the Committee concluded that the cancer epidemiology studies on the consumption of chlorinated drinking water to date were insufficient to provide definitive information for the regulation. As a response, EPA agreed to pursue additional research to reduce the uncertainties associated with these data and to better characterize and project the potential human cancer risks associated with the exposure to chlorinated water. To implement this commitment, EPA sponsored an expert panel to review the state of cancer epidemiology research (USEPA, 1994b). As discussed in the 1997 NODA, EPA has implemented several of the panel's recommendations for short-and long-term research to improve the assessment of risks, using the results from cancer epidemiology studies.

The 1994 proposed rule also presented the results of a meta-analysis that pooled the relative risks from ten cancer epidemiology studies in which there was a presumed exposure to chlorinated water and its byproducts (Morris *et al.*, 1992). A conclusion of this meta-analysis was a calculated upper bound estimate of approximately 10,000 cases of rectal and bladder cancer cases per year that could be associated with exposure to chlorinated water and its byproducts in the United States. The ten studies included in the meta-analysis had methodological issues and significant design differences. There was considerable debate among the members of the Negotiating Committee on the extent to which the results of this meta-analysis should be considered in developing benefit estimates associated with the proposed rule. Negotiators agreed that the range of possible risks attributed to chlorinated water should consider both toxicological data and epidemiological data, including the Morris *et al.* (1992) estimates. No consensus, however, could be reached on a single likely risk estimate.

For purposes of estimating the potential benefits from the proposed rule, EPA used a range of estimated cancer cases that could be attributed to exposure to chlorinated waters of less than 1 cancer case per year up to 10,000 cases per year. The less than 1 cancer case per year was based on toxicology (the maximum likelihood cancer risk estimate calculated from animal assay data for THMs). The 10,000 cases per year was based on epidemiology (estimates from the Morris *et al.* (1992) meta-analysis).

1. Assessment of the Morris et al. (1992) Meta-Analysis

Based on the recommendations from the 1994 expert panel on cancer epidemiology, EPA completed an assessment of the Morris *et al.* (1992) meta-analysis which comprises three reports: (1) A Report completed for EPA which evaluated the Morris *et al.* (1992) meta-analysis (Poole, 1997); (2) EPA's assessment of the Poole report (USEPA, 1998f); and (3) a peer review of the Poole report and EPA's assessment of the Poole report (USEPA, 1998g). Each of these documents is briefly discussed below. The full reports together with Dr. Morris's comments on the Poole Review (Morris, 1997) can be found in the docket for this Notice.

a. Poole Report. A report was prepared for EPA which made recommendations regarding whether the data used by Morris *et al.* (1992) should be aggregated into a single summary estimate of risk. The report also commented on the utility of the aggregated estimates for risk assessment purposes (Poole, 1997). This report was limited to the studies available to Morris *et al.* (1992) plus four additional studies that EPA requested to be included (Ijsselmuiden *et al.*, 1992; McGeehin *et al.*, 1993; Vena *et al.*, 1993; and King and Marrett, 1996). Poole observed that there was considerable heterogeneity among the data and that there was evidence of publication bias within the body of literature. When there is significant heterogeneity among studies, aggregation of the results into a single summary estimate may not be appropriate. Publication bias refers to the situation where the literature search and inclusion criteria for studies used for the meta-analysis indicate that the sample of studies used is not representative of all the research (published and unpublished) that has been done on a topic. In addition, Poole found that the aggregate estimates reported by Morris *et al.* (1992) were sensitive to small changes in the analysis (e.g., addition or deletion of a single study). Based on these observations, Poole recommended that the cancer epidemiology data considered in his evaluation should not be combined into a single summary estimate and that the data had limited utility for risk assessment purposes. Many of the reasons cited by Poole for why it was not appropriate to combine the studies into a single point estimate of risk were noted in the 1994 proposal (Farland and Gibb, 1993; Murphy, 1993; and Craun, 1993).

b. EPA's Evaluation of Poole Report. EPA reviewed the conclusions from the Poole report and generally concurred with Poole's recommendations (USEPA, 1998f). EPA concluded that Poole presented reasonable and supportable evidence to suggest that the work of Morris *et al.* (1992) should not be used for risk assessment purposes without further study and review because of the sensitivity of the results to analytical choices and to the addition or deletion of a single study. EPA agreed that the studies were highly heterogeneous, thus undermining the ability to combine the data into a single summary estimate of risk.

c. Peer Review of Poole Report and EPA's Evaluation. The Poole report and EPA's evaluation were reviewed by five epidemiologic experts from academia, government, and industry (EPA, 1998g). Overall, these reviewers agreed that the Poole report was of high quality and that he had used defensible assumptions and techniques during his analysis. Most of the reviewers concluded that the report was correct in its assessment that these data should not be combined into a single summary estimate of risk.

2. New Cancer Epidemiology Studies

Several cancer epidemiological studies examining the association between exposure to chlorinated surface water and cancer have been published subsequent to the 1994 proposed rule and the Morris *et al.* (1992) meta-analysis (McGeehin *et al.*, 1993; Vena *et al.* 1993; King and Marrett, 1996; Doyle *et al.*, 1997; Freedman *et al.*, 1997; Cantor *et al*, 1998; and Hildesheim *et al.*, 1998). These studies, with the exception of Freedman *et al.* (1997), were described in the "Summaries of New Health Effects Data" (USEPA, 1997b) that was included in the docket for the 1997 NODA.

In general, the new studies cited above are better designed than the studies published prior to the 1994 proposal. The newer studies generally include incidence cases of disease, interviews with the study subjects and better exposure assessments. Based on the entire cancer epidemiology database, bladder cancer studies provide

better evidence than other types of cancer for an association between exposure to chlorinated surface water and cancer. EPA believes the association between exposure to chlorinated surface water and colon and rectal cancer cannot be determined at this time because of the limited data available for these cancer sites (USEPA, 1998a).

3. Quantitative Risk Estimation for Cancers From Exposure to Chlorinated Water

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must conduct a regulatory impact analysis (RIA). In the 1994 proposal, EPA used the Morris *et al.* (1992) meta-analysis in the RIA to provide an upper-bound estimate of 10,000 possible cancer cases per year that could be attributed to exposure to chlorinated water and its associated byproducts. EPA also estimated that an upper bound of 1200–3300 of these cancer cases per year could be avoided if the requirements for the Stage 1 DBP rule were implemented (USEPA, 1994a). EPA acknowledged the uncertainty in these estimates, but believed they were the best that could be developed at the time.

Based on the evaluations cited above, EPA does not believe it is appropriate to use the Morris *et al.* (1992) study as the basis for estimating the potential cancer cases that could be attributed to exposure to DBPs in chlorinated surface water. Instead, EPA is providing for comment an analysis based on a more traditional approach for estimating the potential cancer risks from exposure to DBPs in chlorinated surface water that does not rely on pooling or aggregating the epidemiologic data into a single summary estimate. Based on a narrower set of improved studies, this approach utilizes the population attributable risk (PAR) concept and presents a range of potential risks and not a single point estimate. As discussed below, there are a number of uncertainties associated with the use of this approach for estimating potential risks. Therefore, EPA requests comments on both the PAR methodology as well as on the assumptions upon which it is based.

Epidemiologists use PAR to quantify the fraction of the disease burden in a population (e.g., cancer) that could be eliminated if the exposure was absent (e.g., DBPs in chlorinated water) (Rockhill, *et al.*, 1998). PARs provide a perspective on the potential magnitude of risk associated with various exposures. The concept of PAR is known by many names (e.g, attributable fraction, attributable proportion, etiologic fraction). For this Notice, the term PAR will be used to avoid confusion. A range of PARs better captures the heterogeneity of the risk estimates than a single point estimate.

In the PAR analysis of the cancer epidemiology data and the development of the range of potential cancer cases attributable to exposure to DBPs in chlorinated surface water, EPA recognizes that a causal relationship between chlorinated surface water and bladder cancer has not yet been demonstrated by epidemiology studies. However, several studies have suggested a weak association in various subgroups. EPA presents potential cancer case estimates as upper bounds of suggested risk as part of the Agency's analysis of potential costs and benefits associated with this rule. EPA focused its current evaluation on bladder cancer because the number of quality studies that are available for other cancer sites such as colon and rectal cancers are very limited.

EPA estimated PARs for the best bladder cancer studies that provided enough information to calculate a PAR (USEPA, 1998a). In addition, EPA selected studies for inclusion in the quantitative analysis if they met all three of the following criteria: (1) The study was a population based case-control or cohort study conducted to evaluate the relationship between exposure to chlorinated drinking water and incidence cancer cases, based on personal interviews (no cohort studies were found that met all 3 criteria); (2) the study was of high quality and well designed (e.g., good sample size, high response rate, and adjusted for confounding factors); and (3) the study had adequate exposure assessments (e.g., residential histories, actual THM data). Based on the above selection criteria, five bladder cancer studies were selected for estimating PARs: Cantor *et al.*, 1985; McGeehin *et al.* 1993; King and Marrett, 1996; Freedman *et al.*, 1997; and Cantor *et al.*, 1998. PARs were derived for two exposure categories: years of exposure to chlorinated surface water; and THM levels and years of chlorinated surface water exposure.

The PARs from the five bladder cancer studies for the two exposure categories ranged from 2–17%. The uncertainties associated with these PAR estimates are large as expected, due to the common prevalence of both the disease (bladder cancer) and exposure (chlorinated drinking water). Based on 54,500 expected new bladder cancer cases in the U.S., as projected by NCI (1998) for 1997, the upper bound estimate of the number of potential bladder cancer cases per year potentially associated with exposure to DBPs in chlorinated surface water was estimated to be 1100–9300.

EPA made several important assumptions when evaluating the application of the PAR range of estimated bladder cancer cases from these studies to the U.S. population. They include the following: (i) The study population selected for each of the cancer epidemiology studies are reflective of the entire U.S. population that develops bladder cancer; (ii) the percentage of bladder cancer cases exposed to DBPs in the reported studies are reflective of the bladder cancer cases exposed to DBPs in the U.S. population; (iii) the levels of DBP exposure in the bladder studies are reflective of the DBP exposure in the U.S. population; and (iv) the possible relationship between exposure to DBPs in chlorinated surface water and bladder cancer is causal.

EPA believes that these assumptions would not be appropriate for estimating the potential upper bound cancer risk for the U.S. population based on a single study. However, the Agency believes that these assumptions are appropriate given the number of studies used in the PAR analysis and for gaining a perspective on the range of possible upper bound risks that can be used in establishing a framework for further cost-benefit analysis. In addition, EPA believes these assumptions are appropriate given the SDWA mandate that "drinking water regulations be established if the contaminant may have an adverse effect on the health of persons" (SDWA—Section 1412(b)(1)A). Because of this mandate, EPA believes that when the scientific data indicates there may be causality, such an analytical approach is appropriate. EPA believes the assumption of a potential causal relationship is supported by the weight-of-evidence from toxicology and epidemiology. Toxicology studies have shown several individual DBPs to be carcinogenic and mutagenic, while the epidemiology data have shown weak associations between several cancer sites and exposure to chlorinated surface water.

EPA notes and requests comment on the following additional issues associated with basing an estimate of the potential bladder cancer cases that can be attributed to DBPs in chlorinated surface water from the five studies selected for this analysis. The results generally showed weak statistical significance and were not always consistent among the studies. For example, some reviewers believe that two studies showed statistically significant effects only for male smokers, while two other studies showed higher effects for non-smokers.

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One study showed a significant association with exposure to chlorinated surface water but not chlorinated ground water, while another showed the opposite result. Furthermore, two studies which examined the effects of exposure to higher levels of THMs failed to find a significant association between level of THMs and cancer. The Agency notes that it is not necessary that statistical significance be shown in order to conduct a PAR analysis as was stated by peer-reviewers of this analysis.

4. Peer-Review of Quantitative Risk Estimates

The quantitative cancer risks estimated from the five epidemiology studies derived through the calculation of individual PARs has undergone external peer review by three expert epidemiologists (USEPA, 1998a). Two peer reviewers concurred with the decision to derive a PAR range. This approach was deemed more appropriate than the selection of a single study or aggregation of study results. One reviewer indicated significant reservations with this approach based not on the method, but the inconclusivity of the epidemiology database and stated that it was premature to perform a PAR analysis because it would suggest that the epidemiological information is more consistent and complete than it actually is. To better present the degree of variability, this reviewer suggested an alternative approach that involves a graphical presentation of the individual odds ratios and their corresponding confidence intervals. Two reviewers agreed that there is not enough information to present an estimate of the PAR for colon and rectal cancer.

EPA understands the issues raised regarding the use of PARs and recognizes there may be controversy on using this approach with the available epidemiology data. However, as stated above, EPA believes the PAR approach is a useful tool for estimating the potential upper bound risk for use in developing the regulatory impact analysis. EPA agrees with two of the reviewers that there is not enough information to present an estimate of colon and rectal risk at this time using a PAR approach.

5. Summary of Key Observations

The 1994 proposal included a meta-analysis of 10 cancer epidemiology studies that provided an estimate of the number of bladder and rectal cancer cases per year that could be attributed to consumption of chlorinated water and its associated byproducts (Morris *et al.*, 1992). Based on the evaluations previously described, EPA does not believe it is appropriate to use the Morris *et al.* (1992) study as the basis for estimating the potential cancer cases that could be attributed to exposure to DBPs in chlorinated surface water. Instead, EPA has focused on a smaller set of higher quality studies and performed a PAR analysis to estimate the potential cancer risks from exposure to DBPs in chlorinated surface water that does not rely on pooling or aggregating the data into a single summary estimate, as was done by Morris *et al.* (1992). EPA focused the current evaluation on bladder cancer because there are more appropriate studies of higher quality available upon which to base this assessment than for other cancer sites. It was decided to present the potential number of cancer cases as a range instead of a single point estimate because this would better represent the uncertainties in the risk estimates. The number of potential bladder cancer cases per year that could be associated with exposure to DBPs in chlorinated surface water is estimated to be an upper bound range of 1100–9300 per year.

In the PAR analysis of the cancer epidemiology data and the development of the range of potential cancer cases attributable to exposure to DBPs in chlorinated surface water, EPA presents the estimates as upper bounds of any suggested risk. As was debated during the 1992–1993 M/DBP Regulatory Negotiation process, EPA believes that there are insufficient data to conclusively demonstrate a causal association between exposure to DBPs in chlorinated surface water and cancer. EPA recognizes the uncertainties of basing quantitative estimates using the current health database on chlorinated surface waters and has identified a number of issues that must be considered in interpreting the results of this analysis. Nonetheless, the Agency believes that the overall weight-of-evidence from available epidemiologic and toxicologic studies on DBPs and chlorinated surface water continues to support a hazard concern and thus, a prudent public health protective approach for regulation.

6. Requests for Comments

EPA is not considering any changes to the recommended regulatory approach contained in the 1994 proposal, and discussed further in the 1997 NODA, based on the upper bound risk analysis issues discussed above. Nonetheless, EPA requests comments on the conclusions from the Poole report (Poole, 1997), EPA's assessment of the Poole report (EPA, 1998f), the peer-review of the Poole report and EPA's assessment of the Poole report (EPA, 1998g); and Dr. Morris comments on the Poole review (Morris, 1997). EPA also requests comments on its quantitative analysis (PAR approach) to estimate the upper bound risks from exposure to DBPs in chlorinated surface water, the methodology for estimating the number of cancer cases per year that could be attributed to exposure to DBPs in chlorinated surface water, and any alternative approaches for estimating the upper bound estimates of risk. In particular, EPA requests comment on the extent to which the approach used in the PAR analysis addresses the concerns identified by Poole and others regarding the earlier Morris meta-analysis. EPA also requests comments on the peer review of the PAR analysis.

B. Epidemiologic Associations Between Exposure to DBPs in Chlorinated Water and Adverse Reproductive and Developmental Effects

The 1994 proposed rule discussed several reproductive epidemiology studies. At the time of the proposal, it was concluded that there was no compelling evidence to indicate a reproductive and developmental hazard due to exposure to chlorinated water because the epidemiologic evidence was inadequate and the toxicological data were limited. In 1993, an expert panel of scientists was convened by the International Life Sciences Institute to review the available human studies for developmental and reproductive outcomes and to provide research recommendations (USEPA/ILSI, 1993). The expert panel concluded that the epidemiologic results should be considered preliminary given that the research was at a very early stage (USEPA/ILSI, 1993; Reif *et al.*, 1996). The 1997 NODA and the "Summaries of New Health Effects Data" (USEPA, 1997b) presented several new studies (Savitz *et al.*, 1995; Kanitz *et al.* 1996; and Bove *et al.*, 1996) that had been published since the 1994 proposed rule and the 1993 ILSI panel review. Based on the new studies presented in the 1997 NODA, EPA stated that the results were inconclusive with regard to the association between exposure to chlorinated waters and adverse reproductive and developmental effects (62 FR 59395)

1. EPA Panel Report and Recommendations for Conducting Epidemiological Research on Possible Reproductive and Developmental Effects of Exposure to Disinfected Drinking Water

EPA convened an expert panel in July 1997 to evaluate epidemiologic studies of adverse reproductive or developmental outcomes that may be associated with the consumption of disinfected drinking water published since the 1993 ILSI panel review. A report was prepared entitled "EPA Panel Report and Recommendations for Conducting Epidemiological Research on Possible Reproductive and Developmental Effects of Exposure to Disinfected Drinking Water" (USEPA, 1998h). The 1997 expert panel was also charged to develop an agenda for further epidemiological research. The 1997 panel concluded that the results of several studies suggest that an increased relative risk of certain adverse outcomes may be associated with the type of water source, disinfection practice, or THM levels. The panel emphasized, however, that most relative risks are moderate or small and were found in studies with limitations of their design or conduct. The small magnitude of the relative risk found may be due to one or more sources of bias, as well as to residual confounding (factors not identified and controlled). Additional research is needed to assess whether the observed associations can be confirmed. The panel considers a recent study by Waller *et al.* (1998), discussed below, to provide a strong basis for further research. This study was funded in part by EPA as an element of the research program agreed to as part of the 1992/1993 negotiated M/DBP rulemaking.

2. New Reproductive Epidemiology Studies

Three new reproductive epidemiology studies have been published since the 1997 NODA. The first study (Klotz and Pyrch, 1998) examined the potential association between neural tube defects and certain drinking water contaminants, including some DBPs. In this case-control study, births with neural tube defects reported to New Jersey's Birth Defects Registry in 1993 and 1994 were matched against control births chosen randomly from across the State. Birth certificates were examined for all subjects, as was drinking water data corresponding to the mother's residence in early pregnancy. The authors reported elevated odds ratios (ORs), generally between 1.5 and 2.1, for the association of neural tube defects with TTHMs. However, the only statistically significant results were seen when the analysis was isolated to those subjects with the highest THM exposures (greater than 40 ppb) and limited to those subjects with neural tube defects in which there were no other malformations (odds ratio 2.1; 95% confidence interval 1.1–4.0). Neither HAAs or haloacetonitriles (HANs) showed a clear relationship to neural tube defects but monitoring data on these DBPs were more limited than for THMs. Nitrates were not observed to be associated with neural tube defects. Certain chlorinated solvent contaminants were also studied but occurrence levels were too low to assess any relationship to neural tube defects. This study is available in the docket for this NODA. Although EPA has not completed its review of the study, the Agency is proceeding on the premise that this study will add to the weight-of-evidence concerning the potential adverse reproductive health effects from DBPs, but will not by itself provide sufficient evidence for further regulatory actions.

Two studies looked at early term miscarriage risk factors. The first of these studies (Waller *et al.*, 1998) examined the potential association between early term miscarriage and exposure to THMs. The second study (Swan *et al.*, 1998) examined the potential association between early term miscarriage and tap water consumption. Both studies used the same group of pregnant women (5,144) living in three areas of California. They were recruited from the Santa Clara area, the Fontana area in southern California, or the Walnut Creek area. The women were all members of the Kaiser Permanente Medical Care Program and were offered a chance to participate in the study when they called to arrange their first prenatal visit. In the Waller *et al.* (1998) study, additional water quality information from the women's drinking water utilities were obtained so that THM levels could be determine. The Swan *et al.* (1998) study provided no quantitative measurements of THMs (or DBPs), and thus, provided no additional information on the risk from chlorination byproducts. Because of this, only the Waller *et al.* (1998) study is summarized below.

In the Waller *et al.* (1998) study, utilities that served the women in this study were identified. Utilities' provided THM measurements taken during the time period participants were pregnant. The TTHM level in a participant's home tap water was estimated by averaging water distribution system TTHM measurements taken during a participants first three months of pregnancy. This "first trimester TTHM level" was combined with self reported tap water consumption to create a TTHM exposure level. Exposure levels of the individual THMs (e.g., chloroform, bromoform, etc.) were estimated in the same manner. Actual THM levels in the home tap water were not measured.

Women with high TTHM exposure in home tap water (drinking five or more glasses per day of cold home tap water containing at least 75 ug per liter of TTHM) had an early term miscarriage rate of 15.7%, compared with a rate of 9.5% among women with low TTHM exposure (drinking less than 5 glasses per day of cold home tap water or drinking any amount of tap water containing less than 75 ug per liter of TTHM). An adjusted odds ratio for early term miscarriage of 1.8 (95% confidence interval 1.1–3.0) was determined.

When the four individual trihalomethanes were studied, only high bromodichloromethane (BDCM) exposure, defined as drinking five or more glasses per day of cold home tap water containing ≥18 ug/L bromodichloromethane, was associated with early term miscarriage. An adjusted odds ratio for early term miscarriage of 3.0 (95% confidence interval 1.4–6.6) was determined.

3. Summary of Key Observations

The Waller *et al.* (1998) study reports that consumption of tapwater containing high concentrations of THMs, particularly BDCM, is associated with an increased risk of early term miscarriage. EPA believes that while this study does not prove that exposure to THMs causes early term miscarriages, it does provide important new information that needs to be pursued and that the study adds to the weight-of-evidence which suggests that exposure to DBPs may have an adverse effect on humans.

EPA has an epidemiology and toxicology research program that is examining the relationship between DBPs and adverse reproductive and developmental effects. In addition to conducting scientifically appropriate follow-up studies to see if the observed association in the Waller *et al.* (1998) study can be replicated elsewhere, EPA will be working with the California Department of Health Services to improve estimates of exposure to DBPs in the existing study population. A more complete DBP exposure data base is being developed by asking water utilities in the study area to provide additional information, including levels of other types of DBPs (e.g., haloacetic

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acids). These efforts will help further assess the significance of the Waller *et al.* (1998) study, associated concerns, and how further follow-up work can best be implemented. EPA will collaborate with the Centers for Disease Control and Prevention (CDC) in a series of studies to evaluate if there is an association between exposure to DBPs in drinking water and birth defects. The Agency is also involved in a collaborative testing program with the National Toxicology Program (NTP) under which several individual DBPs have been selected for reproductive and developmental screening tests. Finally, EPA is conducting several toxicology studies on DBPs other endpoints of concern including examining the potential effects of BDCM on male reproductive endpoints. This information will be used in developing the Stage 2 DBP rule. In the meantime, the Agency plans to proceed with the 1994 D/DBP proposal for tightening the control for DBPs.

4. Requests for Comments

EPA is not considering any changes to the recommended regulatory approach contained in the 1994 proposal, and discussed further in the 1997 NODA, based on the new reproductive epidemiology studies discussed above. Nonetheless, EPA requests comments on the findings from the Klotz, *et al.* (1998) and Waller *et al.* (1998) study and EPA's conclusions regarding the studies.

III. Significant New Toxicological Information for the Stage 1 Disinfectants and Disinfection Byproducts

The 1997 NODA reviewed new toxicological information that became available for several of the DBPs after the 1994 proposal (USEPA, 1997a and b). In that Notice, it was pointed out that several forthcoming reports were not available in time for consideration during the 1997 FACA process. Reports now available include a two-generation reproductive rat study of sodium chlorite sponsored by the Chemical Manufacturer Association (CMA, 1996); an EPA two-year cancer rodent study of bromate (DeAngelo *et al.*, 1998); and the *International Life Sciences Institute* (ILSI) expert panel report of chloroform and dichloroacetic acid (ILSI, 1997). These reports are discussed below, as well as EPA's analyses and conclusions based on this new information.

A. Chlorite and Chlorine Dioxide

The 1994 proposal included an MCLG of 0.08 mg/L and an MCL of 1.0 mg/L for chlorite. The proposed MCLG was based on an RfD of 3 mg/kg/d estimated from a lowest-observed-adverse-effect-level (LOAEL) for neurodevelopmental effects identified in a rat study by Mobley *et al.* (1990). This determination was based on a weight of evidence evaluation of all the available data at that time (USEPA, 1994a). An uncertainty factor of 1000 was used to account for inter- and intra-species differences in response to toxicity (a factor of 100) and a factor of 10 for use of a LOAEL. The EPA proposed rule also included an MRDLG of 0.3 mg/L and an MRDL of 0.8 mg/L for chlorine dioxide. The proposed MRDLG was based on a RfD of 3 mg/kg/d estimated from a no-observed-adverse-effect-level (NOAEL) for developmental neurotoxicity identified from a rat study (Orme *et al.*, 1985; see USEPA, 1994a). This determination was based on a weight of evidence evaluation of all the available data at that time (USEPA, 1994a). An uncertainty factor of 300 was applied that was composed of a factor of 100 to account for inter- and intra-species differences in response to toxicity and a factor of 3 for lack of a two-generation reproductive study necessary to evaluate potential toxicity associated with lifetime exposure. To fill this important data gap, the Chemical Manufacturers Associations (CMA) agreed to conduct a two-generation reproductive study in rats. Sodium chlorite was used as the test compound. It should be noted that data on chlorite are relevant to assessing the risks of chlorine dioxide because chlorine dioxide rapidly disassociates to chlorite (and chloride) (USEPA, 1998b). Therefore, the new CMA two-generation reproductive chlorite study will be considered in assessing the risks for both chlorite and chlorine dioxide.

Since the 1994 proposal, CMA has completed the two-generation reproductive rat study (CMA, 1996). EPA has reviewed the CMA study and has completed an external peer review of the study (EPA, 1997c). In addition, EPA has reassessed the noncancer health risk for chlorite and chlorine dioxide considering the new CMA study (USEPA, 1998b). This reassessment has been peer reviewed (USEPA, 1998b). Based on this reassessment, EPA is considering changing the proposed MCLG for chlorite from 0.08 mg/L to 0.8 mg/L based on the NOAEL identified from the new CMA study. Since data on chlorite are considered relevant to chlorine dioxide risks and the two generation reproduction data gap has been filled, EPA is also considering changing the proposed MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L. The basis for these changes are discussed below.

1. 1997 CMA Two-Generation Reproduction Rat Study

The CMA two-generation reproductive rat study was designed to evaluate the effects of chlorite (sodium salt) on reproduction and pre- and post-natal development when administered orally via drinking water for two successive generations (CMA, 1996). Developmental neurotoxicity, hematological, and clinical effects were also evaluated in this study.

Sodium chlorite was administered at 0, 35, 70, and 300 ppm in drinking water to male and female Sprague Dawley rats (F_0 generation) for ten weeks prior to mating. Dosing continued during the mating period, pregnancy and lactation. Reproduction, fertility, clinical signs, and histopathology were evaluated in F_0 and F_1 (offspring from the first generation of mating) males and females. F_1 and F_2 (offspring from the second generation of mating) pups were evaluated for growth and development, clinical signs, and histopathology. In addition, F_1 animals from each dose group were assessed for neurotoxicity (e.g., neurohistopathology, motor activity, learning ability and memory retention, functional observations, auditory startle response). Limited neurotoxicological evaluations were conducted on F_2 pups.

The CMA report concluded that there were no treatment related effects at any dose level for systemic, reproductive/developmental, and developmental neurological end points. The report indicates that there were small statistically significant decreases in the maximum response to auditory startle response in the F_1 animals at the mid and high dose (70 and 300 ppm); this neurological effect was not considered to be toxicologically significant. A reduction in pup weight and decreased body weight gain through lactation in the F_1 and F_2 animals and a decrease in body weight gain in the F_2 males at 300 ppm were noted. Decreases in liver weight in F_0 and F_1 animals, as well as reductions in red blood cell indices in F_1 animals at 300 ppm and 70 ppm were noted. Minor hematological effects were found in F_1 females at 35 ppm. CMA concluded that the effects noted above were not clinically or toxicologically significant. A NOAEL of 300 ppm was identified in the CMA report for reproductive toxicity and for developmental neurotoxic effects, and a NOAEL of 70 ppm for hematological effects. EPA disagrees with the CMA conclusions regarding the NOAEL of 300 ppm for the reproductive and

developmental neurological effects for this study as discussed below.

2. External Peer Review of the CMA Study

EPA has evaluated the CMA 2-generation reproductive study and concluded that the study design was consistent with EPA testing guidelines (USEPA, 1992). Additionally, an expert peer review of the CMA study was conducted and indicated that the study design and analyses were adequate (USEPA, 1997c). Although the study design was considered adequate and consistent with EPA guidelines, the peer review pointed out some limitations in the study (USEPA, 1997c). For example, developmental neurotoxicity evaluations were conducted after exposure ended at weaning. This is consistent with EPA testing guidelines and should potentially detect effects on the developing central nervous system. Nevertheless, the opportunity to detect neurological effects due to continuous or lifetime exposure may be reduced. The peer review generally questioned the CMA conclusions regarding the NOAELs for this study and indicated that the NOAEL should be lower than 300 ppm. The majority of peer reviews recommended that the NOAEL for reproductive/developmental toxicity be reduced to 70 ppm given the treatment related effects found at 300 ppm, and that the NOAEL for neurotoxicity be reduced to 35 ppm based on significant changes in the maximum responses in startle amplitude and absolute brain weight at 70 and 300 ppm. The reviewers indicated that a NOAEL was not observed for hematological effects and noted that the CMA conclusion for selecting the 70 ppm NOAEL for the hematology variables needs to be explained further.

3. MCLG for Chlorite: EPA's Reassessment of the Noncancer Risk

EPA has determined that the NOAEL for chlorite should be 35 ppm (3 mg/kg/d chlorite ion, rounded) based on a weight of evidence approach. The data considered to support this NOAEL are summarized in USEPA (1998b) and included the CMA study as well as previous reports on developmental neurotoxicity (USEPA, 1998b). The NOAEL of 35 ppm (3 mg/kg/d chlorite ion) is based on the following effects observed in the CMA study at 70 and 300 ppm chlorite: Decreases in absolute brain and liver weight, and lowered auditory startle amplitude. Decreases in pup weight were found at the 300 ppm and thus a NOAEL of 70 ppm for reproductive effects is considered appropriate (USEPA, 1998b). Although 70 ppm appears to be the NOAEL for hemolytic effects, the NOAEL and LOAEL are difficult to discern for this endpoint given that minor changes were reported at 70 and 35 ppm. EPA considers the basis of the NOAELs to be consistent with EPA risk assessment guidelines (USEPA, 1991, 1998i, 1996a). Furthermore, a NOAEL of 35 ppm is supported by effects (particularly neurodevelopmental effects) found in previously conducted studies of chlorite and chlorine dioxide (USEPA, 1998b).

An RfD of 0.03 mg/kg/d is estimated using a NOAEL of 3 mg/kg/d and an uncertainty factor of 100 to account for inter- and intra-species differences. The revised MCLG for chlorite is calculated to be 0.8 mg/L by assuming an adult tap water consumption of 2 L per day for a 70 kg adult and using a relative source contribution of 80% (because most exposure to chlorite is likely to come from drinking water):

$$\text{MCLG for chlorite} = \frac{0.03\ \text{mg/kg/d} \times 70\ \text{kg} \times 0.8}{2\text{L/day}} = 0.84\ \text{mg/L}$$

MCLG for chlorite = 0.8 mg/L (Rounded)

Therefore, EPA is considering an increase in the proposed MCLG for chlorite from 0.08 mg/L to 0.8 mg/L. A more detailed discussion of this assessment is included in the docket for this Notice (USEPA, 1998b).

4. MRDLG for Chlorine Dioxide: EPA's Reassessment of the Noncancer Risk

EPA believes that data on chlorite are relevant to assessing the risk of chlorine dioxide because chlorine dioxide rapidly disassociates to chlorite (and chloride) (USEPA, 1998b). Therefore, the findings from the 1997 CMA two-generation reproductive study on sodium chlorite should be considered in a weight of evidence approach for establishing the MRDLG for chlorine dioxide. Based on all the available data, including the CMA study, a dose of 3 mg/kg/d remains as the NOAEL for chlorine dioxide (USEPA, 1998b). The MRDLG for chlorine dioxide is increased 3 fold from the 1994 proposal since the CMA 1997 study was a two-generation reproduction study. Using a NOAEL of 3 mg/kg/d and applying an uncertainty factor of 100 to account for inter- and intra-species differences in response to toxicity, the revised MRDLG for chlorine dioxide is calculated to be 0.8 mg/L. This MRDLG takes into account an adult tap water consumption of 2 L per day for a 70 kg adult and applies a relative source contribution of 80% (because most exposure to chlorine dioxide is likely to come from drinking water):

$$\text{MRDLG for Chlorine dioxide} = \frac{0.03\ \text{mg/kg/d} \times 70\ \text{kg} \times 0.8}{2\text{L/day}} = 0.84\ \text{mg/L}$$

MRDLG for Chlorine dioxide = 0.8 mg/L (Rounded)

EPA is considering revising the MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L. A more detailed discussion of this assessment can be found in the docket for this Notice (USEPA, 1998b).

5. External Peer Review of EPA's Reassessment

Three external experts have reviewed the EPA reassessment for chlorite and chlorine dioxide (see USEPA, 1998b). Two of the three reviewers generally agreed with EPA conclusions regarding the identified NOAEL of 35 ppm for neurodevelopmental toxicity. The other reviewer indicated that the developmental neurological results from the CMA study were transient, too inconsistent, and equivocal to identify a NOAEL. EPA believes that although different responses were found for startle response (as indicated by measures of amplitude, latency, and habituation), this is not unexpected given that these measures examine different aspects of the nervous system, and thus can be differentially affected. Although no neuropathology was observed in the CMA study, neurofunctional (or neurochemical)

changes such as startle responses can indicate potential neurotoxicity without neuropathological effects. Furthermore, transient effects are considered an important indicator of neurotoxicity as indicated in EPA guidelines (USEPA, 1998i). EPA maintains that the NOAEL is 35 ppm (3 mg/kg/d) from the CMA chlorite study based on neurodevelopmental effects as well as changes in brain and liver weight. This conclusion is supported by previous studies on chlorite and chlorine dioxide (USEPA, 1998b). Other comments raised by the peer reviewers concerning improved clarity and completeness of the assessment were considered by EPA in revising the assessment document on chlorite and chlorine dioxide.

6. Summary of Key Observations

EPA continues to believe that chlorite and chlorine dioxide may have an adverse effect on the public health. EPA identified a NOAEL of 35 ppm for chlorite based on neurodevelopmental effects from the 1997 CMA two-generation reproductive study, which is supported by previous studies on chlorite and chlorine dioxide. In addition, EPA identified a NOAEL of 70 ppm for reproductive/developmental effects and hemolytic effects. EPA considers this study relevant to assessing the risk to chlorine dioxide. Based on the EPA reassessment, EPA is considering adjusting the MCLG for chlorite from 0.08 mg/L to 0.8 mg/L. Because data on chlorite are considered relevant to chlorine dioxide risks, EPA is considering adjusting the MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L. The MRDL for chlorine dioxide would remain at 0.8 mg/L. The MCL for chlorite would remain at 1.0 mg/L because as noted in the 1994 proposal, 1.0 mg/L for chlorite is the lowest level achievable by typical systems using chlorine dioxide and taking into consideration the monitoring requirements to determine compliance. In addition, given the margin of safety that is factored into the estimation of the MCLG, EPA believes that 1.0 mg/L will be protective of public health. It should be noted that the MCLG and MRDLG presented for chlorite and chlorine dioxide are considered to be protective of susceptible groups, including children given that the RfD is based on a NOAEL derived from developmental testing, which includes a two-generation reproductive study. A two-generation reproductive study evaluates the effects of chemicals on the entire developmental and reproductive life of the organism. Additionally, current methods for developing RfDs are designed to be protective for sensitive populations. In the case of chlorite and chlorine dioxide a factor of 10 was used to account for variability between the average human response and the response of more sensitive individuals.

7. Requests for Comments

Based on the recent two-generation reproductive rat study for chlorite (CMA, 1996), EPA is considering revising the MCLG for chlorite from 0.08 mg/L to 0.8 mg/L and the MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L. EPA requests comments on these possible changes in the MCLGs and on EPA's assessment of the CMA report.

B. Trihalomethanes

The 1994 proposed rule included an MCL for TTHM of 0.08 mg/L. MCLGs of zero for chloroform, BDCM and bromoform were based on sufficient evidence of carcinogenicity in animals. The MCLG of 0.06 mg/L for dibromochloromethane (DBCM) was based on observed liver toxicity from a subchronic study and limited animal evidence for carcinogenicity. As stated in the 1997 NODA, several new studies have been published on bromoform, BDCM, and chloroform since the 1994 proposal. The 1997 NODA concluded that the new studies on THMs contribute to the weight-of-evidence conclusions reached in the 1994 proposed rule, and that the new studies are not anticipated to change the proposed MCLGs for BDCM, DBCM, and bromoform. Since the 1997 NODA, the EPA has evaluated the significance of an ILSI panel report on the cancer risk assessment for chloroform. EPA has conducted a reassessment of chloroform (USEPA, 1998c), considering the ILSI report. The EPA reassessment of chloroform has been peer reviewed (USEPA, 1998c). Based on EPA's reassessment, the Agency is considering changing the proposed MCLG for chloroform from zero to 0.3 mg/L.

1. 1997 International Life Sciences Institute Expert Panel Conclusions for Chloroform

In 1996, EPA co-sponsored an ILSI project in which an expert panel was convened and charged with the following objectives: (i) Review the available database relevant to the carcinogenicity of chloroform and DCA, excluding exposure and epidemiology data; (ii) consider how end points related to the mode of carcinogenic action can be applied in the hazard and dose-response assessment; (iii) use guidance provided by the 1996 EPA Proposed Guidelines for Carcinogen Assessment to develop recommendations for appropriate approaches for risk assessment; and (iv) provide a critique of the risk assessment process and comment on issues encountered in applying the proposed EPA Guidelines (ILSI, 1997). The panel was made up of 10 expert scientists from academia, industry, government, and the private sector. It should be emphasized that the ILSI report does not represent a risk assessment, per se, for chloroform (or DCA) but, rather, provides recommendations on how to proceed with a risk assessment for these two chemicals.

To facilitate an understanding of the ILSI panel recommendations for the dose-response characterization of chloroform, the EPA 1996 Proposed Guidelines for Carcinogen Risk Assessment must be briefly described. For a more detail discussion of these guidelines, refer to USEPA (1996b).

The EPA 1996 Proposed Guidelines for Carcinogen Risk Assessment describes a two-step process to quantifying cancer risk (USEPA, 1996b). The first step involves modeling response data in the empirical range of observation to derive a point of departure. The second step is to extrapolate from this point of departure to lower levels that are within the range of human exposure. A standard point of departure was proposed as the lower 95% confidence limit on a dose associated with 10% extra risk (LED_{10}). Based on comments from the public and the EPA's Science Advisory Board, the central or maximum likelihood estimate (i.e., ED_{10}) is also being considered as a point of departure. Once the point of departure is identified, a straight-line extrapolation to the origin (i.e., zero dose, zero extra risk) is conducted as the linear default approach. The linear default approach would be considered for chemicals in which the mode of carcinogenic action understanding is consistent with low dose linearity or as a science policy choice for those chemicals for which the mode of action is not understood.

The EPA 1996 Proposed Guidelines for Carcinogen Risk Assessment are different from the 1986 guidelines approach that applied the linearized multi-stage model (LMS) to extrapolate low dose risk. The LMS approach under the 1986 guidelines was the only default for low dose extrapolation. Under the 1996 proposed guidelines both linear and nonlinear default approaches are available. The nonlinear approach applies a margin of exposure (MoE) analysis rather than estimating the probability of effects at low doses. In order to use the nonlinear default, the agent's mode of action in causing tumors must be reasonably understood.

The MoE analysis is used to compare the point of departure with the human exposure levels of interest (i.e., MoE = point of departure divided by the environmental exposure of interest). The key objective of the MoE analysis is to describe for the risk manager how rapidly responses may decline with dose. A shallow slope suggests less risk reduction at decreasing exposure than does a steep one. Information on factors such as the nature of response being used for the point of departure (i.e., tumor data or a more sensitive precursor response) and biopersistence of the agent are important considerations in the MoE analysis. A numerical default factor of no less than 10-fold each may be used to account for human variability and for interspecies differences in sensitivity when humans may be more sensitive than animals.

The ILSI expert panel considered a wide range of information on chloroform including rodent tumor data, metabolism/toxicokinetic information, cytotoxicity, genotoxicity, and cell proliferation data. Based on its analysis of the data, the panel concluded that the weight of evidence for the mode of action understanding indicated that chloroform was not acting through a direct DNA reactive mechanism. The evidence suggested, instead, that exposure to chloroform resulted in recurrent or sustained toxicity as a consequence of oxidative generation of highly tissue reactive and toxic metabolites (i.e., phosgene and hydrochloric acid (HCl)), which in turn would lead to regenerative cell proliferation. Oxidative metabolism was considered by the panel to be the predominant pathway of metabolism for chloroform. This mode of action was considered to be the key influence of chloroform on the carcinogenic process. The ILSI report noted that the weight-of-evidence for the mode of action was stronger for the mouse kidney and liver responses and more limited, but still supportive, for the rat kidney tumor responses.

The panel viewed chloroform as a likely carcinogen to humans above a certain dose range, but considered it unlikely to be carcinogenic below a certain dose range. The panel indicated that "This mechanism is expected to involve a dose-response relationship which is nonlinear and probably exhibits an exposure threshold." The panel, therefore, recommended the nonlinear default or margin of exposure approach as the appropriate one for quantifying the cancer risk associated with exposure to chloroform.

2. MCLG for Chloroform: EPA's Reassessment of the Cancer Risk

In the 1994 proposed rule, EPA classified chloroform under the 1986 EPA Guidelines for Carcinogen Risk Assessment as a Group B2, probable human carcinogen. This classification was based on sufficient evidence of carcinogenicity in animals. Kidney tumor data in male Osborne-Mendel rats reported by Jorgenson *et al.* (1985) was used to estimate the carcinogenic risk. An MCLG of zero was proposed. Because the mode of carcinogenic action was not understood at that time, EPA used the linearized multistage model and derived an upper bound carcinogenicity potency factor for chloroform of 6×10^{-3} mg/kg/d. The lifetime cancer risk levels of 10^{-6}, 10^{-5}, and 10^{-4} were determined to be associated with concentrations of chloroform in drinking water of 6, 60, and 600 µg/L.

Since the 1994 rule, several new studies have provided insight into the mode of carcinogenic action for chloroform. EPA has reassessed the cancer risk associated with chloroform exposure (USEPA, 1998c) by considering the new information, as well as the 1997 ILSI panel report. This reassessment used the principles of the 1996 EPA Proposed Guidelines for Carcinogen Risk Assessment (USEPA, 1996b), which are considered scientifically consistent with the Agency's 1986 guidelines (USEPA, 1986). Based on the current evidence for the mode of action by which chloroform may cause tumorgenesis, EPA has concluded that a nonlinear approach is more appropriate for extrapolating low dose cancer risk rather than the low dose linear approach used in the 1994 proposed rule. Because tissue toxicity is key to chloroform's mode of action, EPA has also considered noncancer toxicities in determining the basis for the MCLG. After evaluating both cancer risk and noncancer toxicities as the basis for the MCLG, EPA concluded that the RfD for hepatoxicity should be used. Hepatotoxicity, thus, serves as the basis for the MCLG given that this is the primary effect of chloroform and the more sensitive endpoint. Therefore, EPA is considering changing the proposed MCLG for chloroform from zero to 0.3 mg/L based on the RfD for hepatoxicity. The basis for these conclusions are discussed below.

a. Weight of the Evidence and Understanding of Mode of Carcinogenic Action. EPA has fully considered the 1997 ILSI report and the new science that has emerged on chloroform since the 1994 proposed rule. Based on this new information, EPA considers chloroform to be a likely human carcinogen by all routes of exposure (USEPA, 1998c). Chloroform's carcinogenic potential is indicated by animal tumor evidence (liver tumors in mice and renal tumors in both mice and rats) from inhalation and oral exposures, as well as metabolism, toxicity, mutagenicity and cellular proliferation data that contribute to an understanding of mode of carcinogenic action. Although the precise mechanism of chloroform carcinogenicity is not established, EPA agrees with the ILSI panel that a DNA reactive mutagenic mechanism is not likely to be the predominant influence of chloroform on the carcinogenic process. EPA believes that there is a reasonable scientific basis to support a mode of carcinogenic action involving cytotoxicity produced by the oxidative generation of highly reactive metabolites, phosgene and HCl, followed by regenerative cell proliferation as the predominant influence of chloroform on the carcinogenic process (USEPA, 1998c). EPA, therefore, agrees with the ILSI report that the chloroform dose-response should be considered nonlinear.

A recent article by Melnick *et al.* (1998) was published after the 1997 ISLI panel report and concludes that cytotoxicity and regenerative hyperplasia alone are not sufficient to explain the liver carcinogenesis in female B6C3F1 mice exposed to trihalomethanes, including chloroform. Although this article raises some interesting issues, EPA views the results for chloroform supportive of the role that toxicity and compensatory proliferation may play in chloroform carcinogenicity because statistically significant increases ($p<0.05$) in hepatoxicity and cell proliferation are found for chloroform in this study.

b. Dose-Response Assessment. EPA has used several different approaches for estimating the MCLG for chloroform: the LED_{10} for tumor response; the ED_{10} for tumor response; and the RfD for hepatoxicity. Each of these approaches are described below. EPA believes the RfD based on hepatotoxicity serves as the most appropriate basis for the MCLG for the reasons discussed below.

EPA has presented the linear and nonlinear default approaches to estimating the cancer risk associated with drinking water exposure to chloroform (USEPA, 1998c). EPA considered the linear default approach because of remaining uncertainties associated with the understanding of chloroform's mode of carcinogenic action: for example, lack of data on

cytotoxicity and cell proliferation responses in Osborne-Mendel rats, lack of mutagenicity data on chloroform metabolites, and the lack of comparative metabolic data between humans and rodents. Although these data deficiencies raise some uncertainty about how chloroform may influence tumor development at low doses, EPA views the linear dose-response extrapolation approach as overly conservative in estimating low-dose risk.

EPA concludes that the nonlinear default or margin of exposure approach is the preferred approach to quantifying the cancer risk associated with chloroform exposure because the evidence is stronger for a nonlinear mode of carcinogenic action. The tumor kidney response data in Osborne-Mendel rats from Jorgenson *et al.* (1985) are used as the basis for the point of departure (i.e., LED_{10} and ED_{10}) because a relevant route of human exposure (i.e., drinking water) and multiple doses of chloroform (i.e., 5 doses including zero) were used in this study (USEPA, 1998c). The animal data were adjusted to equivalent human doses using body weight raised to the ¾ power as the interspecies scaling factor, as proposed in the 1996 EPA Proposed Guidelines for Carcinogen Risk Assessment. The ED_{10} and LED_{10} were estimated to be 37 and 23 mg/kg/d, respectively.

As part of the margin of exposure analysis, a 100 fold factor was applied to account for the variability and uncertainty associated with intra- and interspecies differences in the absence of data specific to chloroform. An additional factor of 10 was applied to account for the remaining uncertainties associated with the mode of carcinogenic action understanding and the nature of the tumor dose response relationship being relatively shallow. EPA believes 1000 fold represents an adequate margin of exposure that addresses inter- and intra-species differences and uncertainties in the database. Other factors considered in determining the adequacy of the margin of exposure include the size of the human population exposed, duration and magnitude of human exposure, and persistence in the environment. Taking these factors into consideration, a MoE of 1000 is still regarded as adequate. Although a large population is chronically exposed to chlorinated drinking water, chloroform is not biopersistent and humans are exposed to relatively low levels of chloroform in the drinking water (generally under 100 µg/L), which are below exposures needed to induce a cytotoxic response. Furthermore, EPA believes that a MoE of 1000 is protective of susceptible groups, including children. The mode of action understanding for chloroform's cytotoxic and carcinogenic effects involves a generalized mechanism of toxicity that is seen consistently across different species. Furthermore, the activity of the enzyme (i.e., CYP2E1) involved in generating metabolites key to chloroform's mode of action is not greater in children than in adults, and probably less (USEPA, 1998c). Therefore, the ED_{10} of 37 mg/kg-d and the LED_{10} of 23 mg/kg-d is divided by a MoE of 1000 giving dose estimates of 0.037 and 0.023 mg/kg/d for carcinogenicity, respectively. These estimates would translate into MCLGs of 1.0 mg/L and 0.6 mg/L, respectively.

The underlying basis for chloroform's carcinogenic effects involve oxidative generation of reactive and toxic metabolites (phosgene and HCl) and thus are related to its noncancer toxicities (e.g., liver or kidney toxicities). It is important, therefore, to consider noncancer outcomes in the risk assessment (USEPA, 1998c). The electrophilic metabolite phosgene would react with macromolecules such as phosphotidyl inositols or tyrosine kinases which in turn could potentially lead to interference with signal transduction pathways (i.e., chemical messages controlling cell division), thus, leading to carcinogenesis. Likewise, it is also plausible that phosgene reacts with cellular phospholipids, peptides, and proteins resulting in generalized tissue injury. Glutathione, free cysteine, histidine, methionine, and tyrosine are all potential reactants for electrophilic agents. Hepatoxicity is the primary effect observed following chloroform exposure, and among tissues studied for chloroform-oxidative metabolism, the liver was found to be the most active (ILSI, 1997). In the 1994 proposed rule, data from a chronic oral study in dogs (Heywood *et al.*, 1979) were used to derive the RfD of 0.01 mg/kg/d (USEPA, 1994a). This RfD is based on a LOAEL for hepatotoxicity and application of an uncertainty factor of 1000 (100 was used to account for inter-and intra-species differences and a factor of 10 for use of a LOAEL). The MCLG is calculated to be 0.3 mg/L by assuming an adult tap water consumption of 2 L of tap water per day for a 70 kg adult, and by applying a relative source contribution of 80% (EPA assumes most exposure is likely to come from drinking water):

$$\text{MCLG for Chloroform Based on RfD for Hepatoxicity} = \frac{0.01\ \text{mg/kg/d} \times 70\ \text{kg} \times 0.8}{2\text{L/day}} = 0.3\ \text{mg/L (rounded)}$$

Therefore, 0.3 mg/L based on hepatoxicity in dogs (USEPA, 1994a) is being considered as the MCLG because liver toxicity is a more sensitive effect of chloroform than the induction of tumors. Even if low dose linearity is assumed, as it was in the 1994 proposed rule, a MCLG of 0.3 mg/L would be equivalent to a 5×10^{-5} cancer risk level. EPA concludes that an MCLG based on protection against liver toxicity should be protective against carcinogenicity given that the putative mode of action understanding for chloroform involves cytotoxicity as a key event preceding tumor development. Therefore, the recommended MCLG for chloroform is 0.3 mg/L. The assessment that forms the basis for this conclusion can be found in the docket for this Notice (USEPA, 1998c).

3. External Peer Review of EPA's Reassessment

Three external experts reviewed the EPA reassessment of chloroform (USEPA, 1998c). The peer review generally indicated that the nonlinear approach used for estimating the carcinogenic risk associated with exposure to chloroform was reasonable and appropriate and that the role of a direct DNA reactive mechanism unlikely. Other comments concerning improved clarity and completeness of the assessment were considered by EPA in revising the chloroform assessment document.

4. Summary of Key Observations

Based on the available evidence, EPA concludes that a nonlinear approach should be considered for estimating the carcinogenic risk associated with lifetime exposure to chloroform via drinking water. It should be noted that the margin of exposure approach taken for chloroform carcinogenicity is consistent with conclusions reached in a recent report by the World Health

Organization for Chloroform (WHO, 1997). The 1994 proposed MCLG was zero for chloroform. EPA believes it should now be 0.3 mg/L given that hepatic injury is the primary effect following chloroform exposure, which is consistent with the mode of action understanding for chloroform. Thus, the RfD based on hepatoxicity is considered a reasonable basis for the chloroform MCLG. EPA believes that the RfD used for chloroform is protective of sensitive groups, including children. Current methods for developing RfDs are designed to be protective for sensitive populations. In the case of chloroform a factor of 10 was used to account for variability between the average human response and the response of more sensitive individuals. Furthermore, the mode of action understanding for chloroform does not indicate a uniquely sensitive subgroup or an increased sensitivity in children.

EPA continues to conclude that exposure to chloroform may have an adverse effect on the public health. EPA also continues to believe the MCL of 0.080 mg/L for TTHMs is appropriate despite the increase in the MCLG for chloroform. EPA believes that the benefits of the 1994 proposed MCL of 0.080 mg/L for TTHMs will result in reduced exposure to chlorinated DBPs in general, not solely THMs. EPA considers this a reasonable assumption at this time given the uncertainties existing in the current health and exposure databases for DBPs in general. Moreover, the MCLGs for BDCM and bromoform remain at zero and thus, a TTHM MCL of 0.080 mg/L is appropriate to assure that levels of these two THMs are kept as low as possible. In addition, the MCL for TTHMs is used as an indicator for the potential occurrence of other DBPs in high pH waters. The MCL of 0.080 mg/L for TTHMs to control DBPs in high pH waters (in conjunction with the MCL of 0.060 mg/L for HAA5 to control DBPs in lower pH waters) and enhanced coagulation treatment technique remains a reasonable approach at this time for controlling chlorinated DBPs in general and protecting the public health. There is ongoing research being sponsored by the EPA, NTP, and the American Water Works Research Foundation to better characterize the health risks associated with DBPs.

5. Requests for Comments

Based on the information presented above, EPA is considering revising the MCLG for chloroform from zero to 0.30 mg/L. EPA requests comments on this possible change in the MCLG and on EPA's cancer assessment for chloroform based on the results from the ILSI report (1997) and new data.

C. Haloacetic Acids

The 1994 proposed rule included an MCL of 0.060 mg/L for the haloacetic acids (five HAAs-monobromoacetic acid, dibromoacetic acid, monochloroacetic acid, dichloroacetic acid, and trichloroacetic acid). An MCLG of zero was proposed for dichloroacetic acid (DCA) based on sufficient evidence of carcinogenicity in animals, and an MCLG of 0.3 mg/L for trichloroacetic acid (TCA) was based on developmental toxicity and possible carcinogenicity. As pointed out in the 1997 NODA, several toxicological studies have been identified for the haloacetic acids since the 1994 proposal (also see USEPA, 1997b).

Since the 1997 NODA, the EPA has evaluated the significance of the 1997 ILSI panel report on the cancer assessment for DCA. EPA has conducted a reassessment of DCA (USEPA, 1998e) using the principles of the EPA 1996 Guidelines for Carcinogen Risk Assessment (USEPA, 1996b), which are considered scientifically consistent with the Agency's 1986 guidelines (USEPA, 1986). This reassessment has been peer reviewed (USEPA, 1998e). Based on the scope of the ILSI report, EPA's own assessment and comments from peer reviewers, the Agency believes that the MCLG for DCA should remain as proposed at zero. This conclusion is discussed in more detail below.

1. 1997 International Life Sciences Institute Expert Panel Conclusions for Dichloroacetic Acid (DCA)

ILSI convened an expert panel in 1996 (ILSI, 1997) to explore the application of the USEPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment (USEPA, 1996a) to the available data on the potential carcinogenicity of chloroform and dichloroacetic acid (as described under the chloroform section). The panel considered data on DCA which included chronic rodent bioassay data and information on mutagenicity, tissue toxicity, toxicokinetics, and other mode of action information.

The ILSI panel concluded that the tumor dose-response (liver tumors only) observed in rats and mice was nonlinear (ILSI, 1997). The panel noted that the liver was the only tissue consistently examined for histopathology. It further concluded that all the experimental doses that produced tumors in mice also produce hepatoxicity (i.e., most doses used exceeded the maximally tolerated dose). Although the mode of carcinogenic action for DCA was unclear, the ISLI panel concluded that DCA does not directly interact with DNA. It speculated that the hepatocarcinogenicity was related to hepatotoxicity, cell proliferation, and inhibition of program cell death (apoptosis). The panel concluded that the potential human carcinogenicity of DCA "cannot be determined" given the lack of adequate rodent bioassay data, as well as human data. This conclusion is in contrast to the 1994 EPA proposal in which it was concluded that DCA was a Group B_2 probable human carcinogen. In its current reevaluation of DCA carcinogenicity, EPA disagrees with the panel's conclusion that the human carcinogenic potential of DCA can not be determined. EPA's more recent assessment of DCA data includes published information not available at the time of the ILSI panel assessment. Based on the current weight of the evidence EPA concludes that DCA is a likely human carcinogen as it did in the 1994 proposed rule for the reasons discussed below.

2. MCLG for DCA: EPA's Reassessment of the Cancer Hazard

In the 1994 proposed rule, DCA was classified as a Group B2, probable human carcinogen in accordance with the 1986 EPA Guidelines for Carcinogen Risk Assessment (USEPA, 1986). The DCA categorization was based primarily on findings of liver tumors in rats and mice, which was regarded as "sufficient" evidence in animals. No lifetime risk calculation was conducted at that time; EPA proposed an MCLG of zero (USEPA, 1994a).

EPA has prepared a new hazard characterization regarding the potential carcinogenicity of DCA in humans (USEPA, 1998e). The objective of this report was to develop a weight-of-evidence characterization using the principles of the EPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment (USEPA, 1996), as well as to consider the issues raised by the 1997 ILSI panel report. The EPA hazard characterization relies on information available in existing peer-reviewed source documents. Moreover, this hazard characterization considers published information not available to the ILSI panel (e.g., mutagenicity studies). This new characterization addresses issues important to interpretation of rodent cancer bioassay data, in particular, mechanistic information pertinent to the etiology of DCA-induced rodent liver tumors and their relevance to humans.

Based on the hepatocarcinogenic effects of DCA in both rats and mice in multiple studies, and mode of action

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related effects (e.g., mutational spectra in oncogenes, elevated serum glucocorticoid levels, alterations in cell replication and death), EPA concludes that DCA should be considered as a "likely" cancer hazard to humans (USEPA, 1998e). This is similar to the 1994 view of a B2, probable human carcinogen, in the proposed rule.

DCA concentrations as low as 0.5 g/L have been observed to cause a tumor incidence in mice of about 80% and in rats of about 20% in a lifetime bioassays, as well as inducing multiple tumors per animal (USEPA, 1998e). Higher doses of DCA are associated with up to 100% tumor incidence and as many as four tumors per animal in a number of studies. Time-to-tumor development in mice is relatively short and decreases with increased dose. The ILSI panel concluded that doses of 1 g/L or greater in mice produced severe hepatotoxicity, and thus exceeded the MTD. They further indicated that there was marked hepatoxicity at 0.5 g/L of DCA, (albeit not as severe as the higher doses). EPA agrees that there was hepatoxicity at all the doses wherein there was a tumor response in mice. It should be noted that the MTD selected for the DeAngelo et al. (1991) mouse study was a dose that results in a 10% inhibition of body weight gain when compared to controls. This is within the limits designated in EPA guidelines (USEPA, 1998e). Furthermore, no hepatoxicity was seen in the rat studies, where DCA induced liver tumors of approximately 20% at the lowest dose, 0.5g/L (USEPA, 1998e). It appears that the ILSI report did not give full consideration to the rat tumor results as part of the overall weight-of-the-evidence for potential human carcinogenicity. EPA agrees with the ILSI panel, that the rodent assay data are not complete for DCA; for example, full histopathology is lacking for both sexes in two rodent species. This deficiency results in uncertainty concerning the potential of DCA to be tumorgenic at lower doses and at tissue sites other than liver. Nevertheless, the finding of increased tumor incidences as well as multiplicity at DCA exposure levels (0.5 g/L) in both rats and mice where minimal hepatotoxicity and no compensatory replication was seen supports the belief that observed tumors are related to chemical treatment.

Although DCA has been found to be mutagenic and clastogenic, responses generally occur at relatively high exposure levels (USEPA, 1998e). EPA acknowledges that a mutagenic mechanism may not be as important influence of DCA on the carcinogenic process at lower exposure levels as it might be at higher exposures. Evidence is still accumulating that suggests a mode of carcinogenic action for DCA through modification of cell signaling systems, with down-regulation of control mechanisms in normal cells giving a growth advantage to altered or initiated cells (USEPA, 1998e). The tumor findings in rodents and the mode of action information contributes to the weight-of-evidence concern for DCA (USEPA, 1998e; ILSI, 1997). EPA considers that a contribution of cytotoxicity and compensatory proliferation at high doses cannot be ruled out at this time; however, these effects were inconsistently observed in mice at lower exposure levels, and not at all in mice at 0.5 g/L, or in rats, at all exposure doses. Although the shape of the tumor dose responses are nonlinear, there is, however, an insufficient basis for understanding the possible mechanisms that might contribute to DCA tumorigenesis at low doses, as well as the shape of the dose response below the observable range of tumor responses.

In summary, EPA considers the mode of action through which DCA induces liver tumors in both rats and mice to be unclear. As discussed above, EPA considers the overall weight of the evidence to support placing DCA in the "likely" group for human carcinogenicity potential. This hazard potential is indicated by tumor findings in mice and rats, and other mode of action data using the 1996 guideline weight-of-evidence process. The remaining uncertainties in the data base include incomplete bioassay studies for full histopathology and information on an understanding of DCA's mode of carcinogenic action. The likelihood of human hazard associated with low levels of DCA usually encountered in the environment or in drinking water is not understood. Although DCA tumor effects are associated with high doses used in the rodent bioassays, reasonable doubt exists that the mode of tumorgenesis is solely through mechanisms that are operative only at high doses. Therefore, as in the 1994 proposed rule, EPA believes that the MCLG for DCA should remain as zero to assure public health protection. NTP is implementing a new two year rodent bioassay that will include full histopathology at lower doses than those previously studied. Additionally, studies on the mode of carcinogenic action are being done by various investigators including the EPA health research laboratory.

3. External Peer Review of EPA's Reassessment

Three external experts reviewed the EPA reassessment of DCA (USEPA, 1998e). The review comments were generally favorable. There was a range of opinion on the issue of whether DCA should be considered a likely human cancer hazard. One reviewer agreed that the current data supported a human cancer concern for DCA, while another reviewer believed that it was premature to judge the human hazard potential. The third reviewer did not specifically agree or disagree with EPA's conclusion of "likely" human hazard. Other issues raised by the peer review concerned the dose response for DCA carcinogenicity. The peer review generally concluded on the one hand that the mode of action was incomplete to support a nonlinear approach, but on the other hand, the mutagenicity data did not support low dose linearity. One reviewer believed that the possibility of a low dose risk could not be dismissed. Other comments concerning improved clarity and completeness of the assessment were considered by EPA in revising the DCA assessment document.

4. Summary of Key Observations

EPA continues to believe that exposure to DCA may have an adverse effect on the public health. Based on the above discussion, EPA considers DCA to be a "likely" cancer hazard to humans. This conclusion is similar to the conclusion reached in the 1994 proposed rule that DCA was a probable human carcinogen (i.e., Group B_2 Carcinogen). EPA considers the DCA data inadequate for dose-response assessment, which was the view in the 1994 proposed rule. EPA, therefore, believes at this time that the MCLG should remain at zero to assure public health protection. The assessment that this conclusion is based on can be found in the docket for this Notice (USEPA, 1998e).

5. Requests for Comments

Based on the information presented above, EPA is considering maintaining the MCLG of zero for DCA. EPA requests comments on maintaining the zero MCLG for DCA and on EPA's cancer assessment for DCA in light of conclusions from the ILSI report (1997) and new data.

D. Bromate

The 1994 proposed rule included an MCL of 0.010 mg/L and an MCLG of zero for bromate. Since the 1994 proposed rule, EPA has completed and analyzed a new chronic cancer study in male rats and mice for bromate

(DeAngelo *et al.*, 1998). EPA has reassessed the cancer risk associated with bromate exposure and had this reassessment peer reviewed (USEPA, 1998d). Based on this reassessment, EPA believes that the MCLG for bromate should remain as zero.

1. 1998 EPA Rodent Cancer Bioassay

In the cancer bioassay by DeAngelo *et al.* (1998), 78 male F344 rats were administered 0, 20, 100, 200, 400 mg/L potassium bromate ($KBrO_3$) in the drinking water, and 78 male B6C3F1 mice were administered 0, 80, 400, 800 mg/L $KBrO_3$. Exposure was continued through week 100. Although a slight increase in kidney tumors was observed in mice, there was not a dose-response trend. In rats, dose-dependent increases in tumors were found at several sites (kidney, testicular mesothelioma, and thyroid). This study confirms the findings of Kurokawa *et al.* (1986a and b) in which potassium bromate was found to be a multi-site carcinogen in rats.

2. MCLG for Bromate: EPA's Reassessment of the Cancer Risk

In the 1994 proposal, EPA concluded that bromate was a probable human carcinogen (Group B2) under the 1986 EPA Guidelines for Carcinogen Risk Assessment weight of evidence classification approach. Combining the incidence of rat kidney tumors reported in two rodent studies by Kurokawa *et al.* (1986a), lifetime risks of 10^{-4} 10^{-5}, and 10^{-6} were determined to be associated with bromate concentrations in water at 5, 0.5, and 0.05 ug/L, respectively.

The new rodent cancer study by DeAngelo *et al.* (1998) contributes to the weight of the evidence for the potential human carcinogenicity of $KBrO_3$ and confirms the study by Kurokawa *et al.* (1986a, b). Under the principles of the 1996 EPA Proposed Guidelines for Carcinogen Risk Assessment weight of evidence approach, bromate is considered to be a likely human carcinogen. This weight of evidence conclusion is based on sufficient experimental findings that include the following: Tumors at multiple sites in rats; tumor responses in both sexes; and evidence for mutagenicity including point mutations and chromosomal aberrations *in vitro*. It has been suggested that bromate causes DNA damage indirectly via lipid peroxidation, which generates oxygen radicals which in turn induce DNA damage. There is insufficient evidence, however, to establish lipid peroxidation and free radical production as key events responsible for the induction of the multiple tumor responses seen in the bromate rodent bioassays. The assumption of low dose linearity is considered to be a reasonable public health protective approach for extrapolating the potential risk for bromate because of limited data on its mode of action.

Cancer risk estimates were derived from the DeAngelo *et al.* (1998) study by applying the one stage Weibull model for the low dose linear extrapolation (EPA, 1998d). The Weibull model, which is a time-to-tumor model, was considered to be the preferred approach to account for the reduction in animals at risk that may be due to the decreased survival observed in the high dose group toward the end of the study. However, mortality did not compromise the results of this study (USEPA, 1998d). The animal doses were adjusted to equivalent human doses using body weight raised to the ¾ power as the interspecies scaling factor as proposed in the 1996 EPA cancer guidelines (USEPA, 1996b). The incidence of kidney, thyroid, and mesotheliomas in rats were modeled separately and then the risk estimates were combined to represent the total potential risk to tumor induction. The upper bound cancer potency (q_1^*) for bromate ion is estimated to be 0.7 per mg/kg/d (USEPA, 1998d). Assuming a daily water consumption of 2 liters for a 70 kg adult, lifetime risks of 10^{-4}, 10^{-5} and 10^{-6} are associated with bromate concentrations in water of 5, 0.5 and 0.05 ug/L, respectively. This estimate of cancer risk from the DeAngelo *et al.* study is similar with the risk estimate derived from the Kurokawa *et al.* (1986a) study presented in the 1994 proposed rule. The cancer risk estimation presented for bromate is considered to be protective of susceptible groups, including exposures during childhood given that the low dose linear default approach was used as a public health conservative approach.

3. External Peer Review of the EPA's Reassessment

Three external expert reviewers commented on the EPA assessment report for bromate (USEPA, 1998d). The reviewers generally agreed with the key conclusions in the document. The peer review indicated that it is a reasonable default to use the rat tumor data to estimate the potential human cancer risk. The peer review also indicated that the mode of carcinogenic action for bromate is not understood at this time, and thus it is reasonable to use a low dose linear extrapolation as a default. One reviewer indicated that it was not appropriate to combine tumor data from different sites unless it is shown that similar mechanisms are involved. EPA modeled the three tumor sites separately to derive the cancer potencies, and thus did not assume a similar mode of action. The slope factors from the different tumor response were combined in order to express the total potential tumor risk of bromate. Other comments raised by the peer reviewers concerning improved clarity and completeness of the assessment were considered by EPA in revising this document.

4. Summary of Key Observations

EPA continues to believe that exposure to bromate may have an adverse effect on the public health. The DeAngelo *et al.* (1998) study confirms the tumor findings reported in the study by Kurokawa *et al.* (1986a) and contributes to the weight of the carcinogenicity evidence for bromate. EPA believes that the an MCL of 0.010 mg/L and an MCLG of zero should remain for bromate as proposed in 1994. The assessment that this conclusion is based on can be found in the docket for this Notice (USEPA, 1998d).

5. Requests for Comments

Based on the recent two-year cancer bioassay on bromate by DeAngelo *et al.* (1998), EPA is considering maintaining the MCLG of zero for bromate. EPA requests comments on maintaining the zero MCLG for bromate and on EPA's cancer assessment for bromate.

IV. Simultaneous Compliance Considerations: D/DBP Stage 1 Enhanced Coagulation Requirements and the Lead and Copper Rule

EPA received comment on the November 3, 1997 **Federal Register** Stage 1 D/DBP Notice of Data Availability that expressed concern regarding utilities' ability to comply with the Stage 1 D/DBP enhanced coagulation requirements and Lead and Copper Rule (LCR) requirements simultaneously. Commentors stated that enhanced coagulation will lower the pH and alkalinity of the water during treatment. They indicated concern that the lower pH and alkalinity levels may place utilities in noncompliance with the LCR by causing violations of optimal water quality control parameters and/or an exceedence of the lead or copper action levels. EPA is not aware of data that suggests that low pH and alkalinity levels cannot be adjusted upward following enhanced coagulation to meet LCR compliance requirements. However, as discussed below, the Agency solicits further comment and data on this issue.

The LCR separates public water systems into three categories: large

(>50,000), medium (≤50,000 but >3,300) and small (<3,300). Small and medium systems that do not exceed the lead and copper action levels (90th percentile levels of 0.015 mg/L and 1.3 mg/L, respectively) during the required monitoring are deemed to have optimized corrosion control. These systems do not have to operate under optimal water quality control parameters. Optimal water quality control parameters consist of pH, alkalinity, calcium concentration, and phosphate and silicate corrosion inhibitors. They are designated by the State. Small and medium systems exceeding the action limits must operate under State specified optimal water quality parameters. Large systems must operate under optimal water quality parameters specified by the State unless the difference in lead levels between the source and tap water samples is less than the Practical Quantification Limit (PQL) of the prescribed method (0.005 mg/L).

Maintenance of each optimal water quality control parameter mentioned above (except for calcium concentration) is directly related to meeting specified pH and alkalinity levels at the entry point to the distribution system and in tap samples to establish LCR compliance. In treatment trains that EPA is aware of, utilities have the technological capability to raise the pH (by adding caustic—NaOH, $Ca(OH)_2$) and alkalinity (by adding Na_2CO3 or $NaHCO_3$) of the water following enhanced coagulation and before it enters the distribution system. Although certain utilities may need to add chemical feed points to provide chemical adjustment, pH and alkalinity can be maintained at the values used prior to the implementation of enhanced coagulation. Systems that operate with pH and alkalinity optimal water quality control parameters should be able to meet the State-prescribed values by providing pH and alkalinity adjustment prior to entry to the distribution system. Systems that operate without pH and alkalinity optimal water quality control parameters can raise the pH and alkalinity to the levels they were at before enhanced coagulation by providing chemical adjustment prior to distribution system entry.

The goal of calcium carbonate stabilization is to precipitate a layer of $CaCO_3$ scale on the pipe wall to protect it from corrosion. As the pH of a water decreases, the concentration of bicarbonate increases and the concentration of carbonate, which combines with calcium to form the desired $CaCO_3$, decreases. At the lower pH used during enhanced coagulation, it will generally be more difficult to form calcium carbonate. However, post—coagulation pH adjustment will increase the pH and hence the concentration of carbonate available to form calcium carbonate scale. Systems that must meet a specific calcium concentration to remain in compliance with optimal water quality control parameters should not experience an increase in LCR violations due to the practice of enhanced coagulation provided the pH is adjusted prior to distribution system entry and the calcium level in the water prior to and after implementation of enhanced coagulation remains the same.

EPA recognizes that the inorganic composition of the water may change slightly due to enhanced coagulation. For example, small amounts of anions and compounds that can affect corrosion rates ($Cl-$, SO_4^{-2}) may be removed or added to the water. The effect of these constituents is difficult to predict, but EPA believes they should be minimal for the great majority of systems due to the generally modest changes in the water's inorganic composition and because alkalinity and pH levels have a greater influence on corrosion rates. Increases in sulfate concentration due to increased alum addition during enhanced coagulation can actually lower the corrosion rates of lead pipe. EPA requests comment on whether changes in the inorganic matrix can be quantified to allow States to easily assess potential impacts to corrosion control.

EPA requests comment on how lowering the pH and alkalinity during enhanced coagulation may cause LCR compliance problems, given that both pH and alkalinity levels can be adjusted to meet optimal water quality parameters prior to entry to the distribution system. EPA also requests comment on whether decreasing the pH and alkalinity during enhanced coagulation, and then increasing it prior to distribution system entry, may increase exceedences of lead and copper action levels.

EPA is currently developing a simultaneous compliance guidance document working with stakeholders. The document will provide guidance to States and systems on maintaining compliance with other regulatory requirements (including the LCR) during and after the implementation of the Stage 1 D/DBP rule and the Interim Enhanced Surface Water Treatment Rule. EPA requests comment on what issues should be addressed in the guidance to mitigate concerns about simultaneous compliance with enhanced coagulation and LCR requirements. Further, the Agency requests comment on whether the proposed enhanced coagulation requirements and the existing LCR provisions that allow adjustment of corrosion control plans are flexible enough to address simultaneous compliance issues. Is additional regulatory language necessary to address this issue, or is guidance sufficient to mitigate potential compliance problems?

V. Compliance With Current Regulations

EPA reaffirms its commitment to the current Safe Drinking Water Act regulations, including those related to microbial pathogen control and disinfection. Each public water system must continue to comply with the current regulations while new microbial and D/DBP rules are being developed.

VI. Conclusions

This Notice summarizes new health information received and analyzed for DBPs since the November 3, 1997 NODA and requests comments on several issues related to the simultaneous compliance with the Stage 1 D/DBP Rule and the Lead and Copper Rule. Based on this new information, EPA has developed several new documents. EPA is requesting comments on this new information and EPA's evaluation of the information included in the new documents. Based on an assessment of the new toxicology information, EPA believes the MCLs and MRDLs in the 1994 proposal, and confirmed in the 1997 FACA process, will not change. Based on the new information, EPA is considering increasing the proposed MCLG of zero for chloroform to 0.30 mg/L and the proposed MCLG for chlorite from 0.080 mg/L to 0.80 mg/L. EPA is also considering increasing the MRDLG for chlorine dioxide from 0.3 mg/L to 0.8 mg/L.

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National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts Notice of Data Availability page 86 of 86.

Dated: March 24, 1998.

Robert Perciasepe,

Assistant Administrator for Office of Water.

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Tuesday
March 31, 1998

Part V

Department of Education

34 CFR Part 200
Title I—Helping Disadvantaged Children Meet High Standards; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810—AA89

Title I—Helping Disadvantaged Children Meet High Standards

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The U. S. Secretary of Education (Secretary) proposes to amend the regulations implementing programs under Title I of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act of 1994. These proposed amendments would provide additional flexibility to local educational agencies (LEAs) operating Title I programs.

DATES: Written comments must be received on or before June 1, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, room 4400, Washington, DC 20202–6132.

Comments may also be sent through the Internet: comments Title I_LEA@ed.gov.

FOR FURTHER INFORMATION CONTACT: Wendy Jo New, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW., Portals Building, room 4400, Washington, DC 20202–6132. Telephone: (202)260–0982. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On July 3, 1995, the Secretary published final regulations under Title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act. The following are the specific provisions for which the Secretary is proposing regulatory amendments.

Schoolwide Programs and the Individuals With Disabilities Education Act

Under § 1114 of Title I, Title I schoolwide program schools may combine funds from most other Federal education programs in their schoolwide programs. If they do, the schools are exempt from most of the statutory and regulatory provisions of these programs as long as they meet the intent and purposes of the programs. Section 1114 specifically prohibits an exemption for programs under the Individuals with Disabilities Education Act (IDEA). The recent reauthorization of the IDEA, however, provides additional flexibility regarding IDEA funds. It allows a percentage of the Part B IDEA funds received by an LEA to be combined with other Federal, State, and local education funds to carry out any activities in a schoolwide program. However, it does not exempt a schoolwide program school from meeting the other requirements of IDEA. In other words, a schoolwide program school combining IDEA funds must comply with all other requirements of IDEA to the same extent it would if it did not combine IDEA funds in its schoolwide program. In addition, LEAs and SEAs are not relieved of their obligations under IDEA to ensure that children with disabilities in schoolwide program schools have all of the rights they would have if they were in a non-schoolwide school.

No-wide Variance

Under prior legislation and regulations, LEAs had the discretion, in selecting school attendance areas or schools to receive Chapter 1 (Title I's predecessor) funding, to designate as eligible and serve all attendance areas and schools within a grade span grouping or in the entire LEA if all attendance areas and schools fell within a range that was no more than 5 percentage points above and 5 percentage points below the grade span or LEA poverty average. This option, referred to as the "no-wide variance" provision, recognized that in LEAs with a uniform distribution of children from low-income families, making a selection of only those areas or schools above the districtwide average of poverty has a less meaningful distinction than in other LEAs. The Title I statute does not contain this option. However, upon reflection, the Secretary has decided to propose reinstituting this flexibility through regulations because it makes little educational sense to differentiate among areas or schools that fall within a close span of poverty. Therefore, the Secretary proposes to amend § 200.28 to include a "no-wide variance" provision. Under the proposed regulations, an LEA may designate as eligible and serve all areas and schools within a grade span or the entire LEA if the poverty rates of all areas and schools do not vary more than 10 percentage points.

Alteration or Renovation

Section 76.533 of the Education Department General Administrative Regulations prohibits a State or subgrantee from using its grant for construction or acquisition of real property unless specifically permitted by the authorizing statute or implementing regulations for the program. Although construction and acquisition of real property were previously authorized by statute under Chapter 1 of Title I of the ESEA, they are not specifically authorized now, and thus are prohibited under § 76.533. Yet, the Secretary has been made aware of situations where the prohibition against construction, which was defined under previous law to include alteration and remodeling of real property, has constrained LEAs from providing cost effective Title I services. For example, an LEA was offered a building to house a Title I preschool program because existing facilities were inadequate. Because of the renovation necessary to make the donated building meet the architectural guidelines for serving young children and the lack of local funding to make such renovations, the LEA could not accept the donation. A similar situation occurred in another LEA that was donated a building for a Title I parent resource center. The Even Start Family Literacy Program has experienced similar situations, where donated facilities did not meet architectural guidelines for serving young children. The Secretary is proposing to allow, through regulations, the authority to alter or remodel real property if such alteration or remodeling is reasonable and necessary to carry out a Title I program.

Exclusion From Supplement, Not Supplant and Comparability Determinations

The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134) amended section 1120A of Title I to allow a State or LEA to exclude supplemental State and local funds that are expended in any school attendance area or school from both supplement, not supplant and comparability determinations under Parts A and C, as long as the supplemental State and local expenditures are for programs that meet the intent and purposes of Part A.

Section 200.63(c)(1) of these proposed regulations would implement this provision and clarify the characteristics of State and local programs that would enable them to meet the intent and purposes of Part A.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential benefits associated with the proposed regulations are clear. The proposed regulations would provide additional flexibility for SEAs and LEAs to implement their Title I programs. Moreover, the potential costs associated with these proposed regulations would be minimal; they would result from specific statutory requirements or have been determined by the Secretary to be necessary for administering Title I programs effectively and efficiently.

There are no additional burdens specifically associated with information collection requirements that were addressed in the Title I regulations published on July 3, 1995. The Secretary has also determined that this regulatory action does not interfere unduly with State and local governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand.

The Secretary invites comment on how to make these regulations easier to understand, including answers to the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interfere with the clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example "§ 200.68 Schoolwide program requirements.") (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FOB–10), Washington, DC 20202–2241.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs, institutions of higher education, and public or nonprofit private agencies receiving Federal funds under the Title I programs. The proposed regulations would not have a significant economic impact on the small entities affected because the proposed regulations would not impose excessive regulatory burden or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4400, Portals Building, 1250 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202)205–8113 or (202)260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirement of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of individuals with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs—education, Indians—education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

VOL 63 ISS 61 MR 31 1998 UMI

Dated: March 24, 1998.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84:010, Improving Programs Operated by Local Educational Agencies: 84.011, Migrant Education Basic State Formula Grant Programs; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.144, Migrant Education Coordination Program; 84.213, Even Start Family Literacy Program)

The Secretary proposes to amend part 200 of Title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

2. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301–6514, unless otherwise noted.

3. In § 200.8, paragraph (c)(1) is revised and paragraph (c)(3)(ii)(B)(*3*) is added to read as follows:

§ 200.8 Schoolwide program requirements.

* * * * *

(c) *Availability of other Federal funds.* (1) In addition to funds under this subpart, a school may use in its schoolwide program Federal funds under any program administered by the Secretary that is included in the most recent notice published by the Secretary in the **Federal Register** or is addressed in paragraph (c)(3) (ii)(B)(*3*) of this section.

* * * * *

(3) * * *

(ii) * * *

(B) * * *

(*3*) *Special Education.* (*i*) A school may combine funds received under Part B of the Individuals with Disabilities Education Act (IDEA) in a schoolwide program, except that the amount so used in any schoolwide program may not exceed the amount received by the LEA under Part B of IDEA for that fiscal year; divided by the number of children with disabilities in the jurisdiction of the LEA; and multiplied by the number of children with disabilities participating in the schoolwide program.

(*ii*) A school may also combine funds received under section 8003(d) of the Act (Impact Aid funds for children with disabilities) in a schoolwide program.

(*iii*) A school that combines funds under Part B of IDEA or section 8003(d) of the Act in its schoolwide program may use those funds for any activities under its schoolwide program plan but shall comply with all other requirements of Part B of IDEA to the same extent it would if it did not combine funds under Part B of IDEA or section 8003(d) of the Act in its schoolwide program.

* * * * * *

4. Section 200.28 is amended by removing paragraph (a)(2)(iii) and adding a new paragraph (a)(4) to read as follows:

§ 200.28 Allocation of funds to school attendance areas and schools.

(a) * * *

(4) An LEA may designate as eligible and serve all school attendance areas or schools within a grade span grouping or within the entire LEA if within the grade span or LEA, as applicable, the variation between the percentage of children from low-income families in the attendance area or school with the highest concentration of such children and the percentage of children from low-income families in the attendance area or school with the lowest concentration of such children does not exceed 10 percentage points.

* * * * * *

5. Section 200.62 is added to read as follows.

§ 200.62 Use of funds for construction of real property.

(a) Title I funds may be used to construct real property if reasonable and necessary to carry out a Title I program.

(b) The term *construction* means the alteration or renovation of a building, structure, or facility, including—

(1) The concurrent installation of equipment; and

(2) The complete or partial replacement of an existing facility, but only if such replacement is less expensive and more cost-effective than alteration, renovation, or repair of the facility.

(Authority: 20 U.S.C. 6511(a))

6. Section 200.63 is revised to read as follows:

§ 200.63 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the Act, a grantee or subgrantee under parts A or C of Title I may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is not less than 50 percent;

(ii) Is designed to upgrade the entire educational program in the school to support students in their achievement toward meeting the State's challenging student performance standards;

(iii) Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student performance standards; and

(iv) Uses the State's system of assessment to review the effectiveness of the program; or

(2)(i) Serves only children who are failing, or most at risk of failing, to meet the State's challenging student performance standards;

(ii) Provides supplementary services designed to meet the special educational needs of the children who are participating to support their achievement toward meeting the State's student performance standards that all children are expected to meet; and

(iii) Uses the State's system of assessment to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under sections 1113(b)(1)(C) and 1113(c)(2)(B) of the Act.

(Authority: 20 U.S.C. 6322(d))

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March 31, 1998

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 21
Migratory Bird Special Canada Goose Permit; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AE46

Migratory Bird Special Canada Goose Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The United States Fish and Wildlife Service (Service) proposes, in cooperation with State wildlife agencies (States), to establish a Canada goose damage management program. This program is designed to provide a biologically sound and more cost-effective and efficient method for the control of locally-breeding (resident) Canada geese that pose a threat to health and human safety and are responsible for damage to personal and public property.

DATES: The comment period for this proposed rule closes June 1, 1998.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Numbers of Canada geese that nest and reside predominantly within the conterminous United States have increased exponentially in recent years (Rusch et al., 1995; Ankney, 1996). These geese are sometimes collectively referred to as "resident" Canada geese. These increasing populations of locally-breeding geese are resulting in increasing numbers of conflicts with human activities, and concerns related to human health and safety are increasing (Ankney, 1996). To date, the Service has attempted to address this growing problem through existing annual hunting season frameworks and issuance of control permits on a case-by-case basis. While this approach has provided relief in some areas, the Service realizes that sport harvest will not completely address the problem and that the current permit-issuance system has become a time-consuming and burdensome process for both applicants and the Service. Therefore, the Service is proposing changes to the way permits for control and management of resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property are issued under the Migratory Bird Treaty Act by the Service. Presently, the regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are authorized by the Migratory Bird Treaty Act and are promulgated in 50 CFR parts 13 and 21.

The geographic scope of this proposed rule is restricted to the conterminous United States and to the two subspecies of Canada geese (*Branta canadensis*) that nest and reside predominately within the conterminous United States (*B. c. maxima* and *B.c. moffitti*), the "giant" and "western" Canada geese, respectively. Nesting geese within the conterminous United States are considered members of these two subspecies or hybrids between the various subspecies originating in captivity and artificially introduced into numerous areas throughout the conterminous United States. No evidence presently exists documenting breeding between Canada geese nesting within the conterminous United States and those subspecies nesting in northern Canada and Alaska. The geese nesting and residing within the conterminous United States in the months of June, July, and August will be collectively referred to in this proposed rule as "resident" Canada geese.

The remaining 9 subspecies of Canada geese recognized in North America nest, for the most part, in arctic and sub-arctic regions of Canada and Alaska (Lack 1974). These subspecies are encountered in the conterminous United States only during the fall, winter and spring of the year, or as a result of human placement.

Generally, the Service has stressed the need to manage geese on a population basis, guided by cooperatively-developed management plans. However, resident Canada goose populations and the development of a resident Canada goose damage management program present several potential problems with this approach. Because resident goose populations interact and overlap with other Canada goose populations during the fall and winter, these other goose populations could potentially be affected by any management action or program targeted at resident Canada geese during the fall and winter. Therefore, to avoid potential conflicts with existing management plans for other goose populations, the temporal scope of this proposed rule is restricted to the period March 11 through August 31 each year. These dates encompass the period when sport hunting is prohibited throughout the conterminous United States by the Migratory Bird Treaty (1916) and resulting regulations promulgated under the Migratory Bird Treaty Act (1918). Injury/damage complaints occurring during the period September 1 to March 10, the period open to sport hunting, are outside the scope of this proposed rule and will continue to be addressed through either migratory bird hunting regulations or the existing migratory bird permit process.

Population Status/Public Conflicts

In the early 1960's Hanson (1965) rediscovered the giant Canada goose, then believed to be extinct (Delacour 1954). Hanson (1965) estimated there were about 50,000 of this subspecies left in both Canada and the United States at the time of his survey. In recent years, however, the numbers of these Canada geese that nest predominantly within the conterminous United States have increased tremendously. Recent surveys in the Atlantic, Mississippi, and Central Flyways (Nelson and Oetting, 1991; Sheaffer and Malecki, 1991; Wood et al., 1994; Caithamer and Dubovsky, 1997) suggest that the resident breeding population now exceeds 1 million individuals in both the Atlantic and Mississippi Flyways and is increasing exponentially.

Information from the 1997 Waterfowl Status Report (Caithamer and Dubovsky, 1997) shows that in the Atlantic Flyway, the resident population has increased an average of 17 percent per year since 1989 and currently exceeds 1 million geese. In the Mississippi Flyway, the resident population of Canada geese has increased at a rate of about 6 percent per year during the last 10 years and also currently exceeds 1 million birds. In the Central and Pacific Flyways, populations of resident Canada geese have similarly increased over the last few years. In some areas, numbers of resident Canada geese have increased to record high levels. The Service is concerned about the rapid growth rate and large sizes of resident goose populations, especially in parts of the Atlantic and Mississippi Flyways.

Further, in some regions, the management of these large populations of resident canada geese is confounded by the presence of migratory Canada goose populations that are considered to be below management objectives. A case in point is the migratory Atlantic Population (AP) of Canada geese which

nests in northern Quebec and winters in the Atlantic Flyway. The number of breeding pairs of migratory AP geese declined from 118,000 in 1988 to only 29,000 in 1995. While numbers of this migratory population have since increased to 63,000 in 1997, as stated above, Atlantic Flyway resident Canada geese are estimated to have a population now exceeding 1 million. Traditional methods of dealing with the growing resident Canada goose population in the Atlantic Flyway, such as hunting, are not available in areas with migrating and wintering AP geese. The difficulty and challenge faced by the Service and State wildlife management agencies is one of striving to increase the migratory population while simultaneously addressing the problems caused by the growing resident population.

In many areas of the country, these burgeoning populations of resident Canada geese are increasingly coming into conflict with human activities. The urban/suburban populations have a relative abundance of preferred habitat provided by current landscaping techniques (i.e., open areas with short grass adjacent to small bodies of water), and this habitat availability combined with the lack of natural predators, the absence of waterfowl hunting in many of these areas, and free handouts of food by some people has served to increase resident Canada goose populations exponentially. Problem habitat examples include public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, amusement parks, cemeteries, hospitals, residential subdivisions, and along or between highways. As a consequence, injury complaints related to agricultural damage and other public conflicts are increasing as resident Canada goose populations increase.

To date, the Service has attempted to address injurious resident Canada goose problems through existing hunting seasons, the creation of new special Canada goose seasons designed to target resident populations, and issuance of permits allowing specific control activities.

The overall guidance for all existing and special hunting seasons is provided in a 1975 Environmental Impact Statement and a 1988 Supplemental Environmental Impact Statement (U.S. Department of Interior 1975, 1988). In general, the Service's approach has been to support special seasons, and as experience and information are gained, to allow expansion and simplification consistent with established criteria.

Special seasons targeting resident Canada geese were first initiated in 1977 in the Mississippi Flyway with an experimental late season in Michigan. Following these early experiments in Michigan and several other Midwestern States, the Service gave notice of pending criteria for special Canada goose seasons in the June 6, 1986, **Federal Register** (51 FR 20681). Criteria for special early seasons were finalized in the August 9, 1988, **Federal Register** (53 FR 29905) and later were expanded to include special late seasons in September 26, 1991, **Federal Register** (56 FR 49111). The original intent of these special seasons was to provide additional harvest opportunities on resident Canada geese while minimizing impacts to migrant geese. The criteria were necessary to control harvests of non-target populations and required States to conduct annual evaluations. Initially, all seasons were considered experimental, pending a thorough review of the data gathered by the participating State. Early seasons are generally held during early September, with late seasons occurring only after the regular season, but no later than February 15.

Special seasons for resident Canada geese are presently offered in all four Flyways, with 29 States participating. They are most popular among States when regular Canada goose seasons are restricted to protect migrant populations of Canada geese. Currently restrictive harvest regimes are in place for the Atlantic, Southern James Bay, Dusky, Cackling and Aleutian Canada goose populations.

Harvest of Canada geese during these special seasons has increased substantially over the last 8 years. In the Atlantic Flyway, 16 of 17 States hold special Canada goose seasons, with harvest rising from about 2,300 in 1988 to almost 124,000 in 1995 (MBMO, 1997). In the Mississippi Flyway, 10 of 14 States hold special Canada goose seasons, and harvest has increased from less than 10,000 birds in 1986 to almost 150,000 in 1995. Michigan currently harvests in excess of 50,000 locally-breeding Canada geese per year. While the opportunities are not as significant in the Central and Pacific Flyways, as areas and seasons have expanded, harvest has increased from approximately 1,300 in 1989 to over 20,000 in 1995.

While creation of special harvest opportunities has helped to limit the problem in some areas, many resident Canada geese remain in urban and suburban areas throughout the fall and winter where these areas afford them almost complete protection from sport harvest. The Service realizes that harvest management will never completely address this problem and permits to conduct otherwise prohibited control activities will continue to be necessary to balance human needs with expanding resident Canada goose populations.

Complex Federal and State responsibilities are involved with Canada goose control activities. All State and private activities, except techniques intended to either scare geese out of or preclude them from a specific area, such as harassment, habitat management, or repellents, require a Federal permit, issued by the Service. Additionally, permits to alleviate migratory bird depredations are issued by the Service in coordination with the Wildlife Services (formerly Animal Damage Control) program of the Animal and Plant Health Inspection Service (APHIS/WS). APHIS/WS is the Federal Agency with lead responsibility for dealing with wildlife damage complaints. In most instances, State permits are required as well.

A brief summary of the complaints/requests for control permits placed with APHIS/WS indicates the increasing number of public conflicts. In 1996, the APHIS/WS received 3,265 complaints of injurious goose activity (APHIS/WS, 1996). In response to those complaints, APHIS/WS dispersed 513,585 Canada geese. In addition, those 3,265 complaints resulted in APHIS/WS recommending the Service issue 321 permits. Those recommendations included 93 for take, 5 for capture/relocation, and 238 for egg/nest destruction.

In 1995, APHIS/WS received 2,884 complaints of injurious goose activity which resulted in the dispersal of 525,000 Canada geese (APHIS/WS, 1995). In addition, during that same period, the APHIS/WS program reviewed 2,224 permit requests dealing with the control of injurious Canada geese (APHIS/WS, 1995). Of those 2,224 requests, APHIS/WS recommended the Service issue 250 permits. Those recommendations included 68 for take, 5 for capture/relocation, and 195 for egg/nest destruction.

Comparing these figures with previous years' data shows a steady increase in complaints since 1991. For example, in 1991 APHIS/WS received 1,698 complaints of injurious goose activity (APHIS/WS, 1991). In 1993, there were 2,802 complaints (APHIS/WS, 1993). In response to those complaints, APHIS/WS dispersed 730,692 and 862,809 geese, respectively, and recommended the Service issue 92 and 192 permits, respectively.

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Permit issuance by the Service has also increased in recent years as resident Canada goose populations have grown to high levels in some areas. In Region 5 (the Northeastern/New England area), the Service issued 26 site-specific permits to kill resident Canada geese and 54 permits to addle eggs in 1994. In 1995, Region 5 issued 56 site-specific permits to kill resident Canada geese, 2 permits to relocate geese, and 109 permits to addle eggs. These permits resulted in the reported take of 291 geese, the relocation of 0 geese, and the addling of eggs in 833 nests. In 1996, Region 5 issued 70 site-specific permits to kill resident Canada geese, 1 permit to relocate geese, and 151 permits to addle eggs. These permits resulted in the reported take of 807 geese, the relocation of 0 geese, and the addling of eggs in 1,235 nests.

In addition to the site-specific permits, from 1994–96, Region 5 issued 10 statewide permits for the relocation of resident Canada geese to three government agencies: APHIS/WS, Delaware Division of Fisheries and Wildlife, and the Virginia Department of Agriculture (VDA). APHIS/WS and VDA were also authorized to addle eggs under these permits. From all statewide permits combined, in 1994, 2,573 resident Canada geese were relocated and eggs were addled in 24 nests. In 1995, 1,900 geese were relocated and eggs were addled in 45 nests. In 1996, 1,764 resident Canada geese were relocated and eggs were addled in 165 nests.

In the Service's Region 3, the Upper Midwest/Great Lakes area, the number and extent of permits issued to manage and control resident Canada geese has increased significantly in the past few years. In 1994, the Service issued 53 permits to trap and relocate, 84 permits to destroy nests/eggs and 12 permits allowing take of adults. These permits resulted in the relocation of 6,821 resident Canada geese, 176 nests and 1,300 eggs destroyed, and 31 adult geese killed. In 1995, Region 3 authorized 111 permits to either trap and relocate birds, destroy nests/eggs, or allow take of adults in Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. These 111 permits resulted in the relocation of 1,015 resident Canada geese, the destruction of 1,797 nests sites, and the take of 616 adult geese. In addition to the above site-specific permits, Region 3 issued Statewide permits in 1995 to the Michigan Department of Natural Resources, the Minnesota Department of Natural Resources, and the Ohio Department of Natural Resources allowing Statewide trapping and relocation activities. Michigan reported relocating over 4,000 resident Canada geese, Minnesota moved between 5,000 and 7,000 birds, and Ohio conducted goose roundups at approximately 1,000 sites across the state. In 1996, Region 3 issued 226 permits authorizing resident Canada goose control activities. Permit holders, including APHIS/WS, airports, and state wildlife agencies, reported taking 6,922 eggs and 827 geese, and trapped and relocated over 15,300 resident Canada geese. States in which control activities were conducted included Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Since 1995, the Service's Region 3 has also issued permits to the Michigan Department of Natural Resources and the Minnesota Department of Natural Resources (MDNR) authorizing the capture and processing of resident Canada geese as food for local food-shelf programs. Minnesota's permit was a part of the MDNR's Urban Goose Management Program for the Minneapolis-St. Paul Metropolitan Area (initiated in 1982). In 1995, under these permits, Michigan and Minnesota were authorized to take up to 2,000 and 325 geese, respectively. Michigan reported taking 24 birds with Minnesota taking its full allotment of 325 birds. In 1996, Michigan and Minnesota were again authorized to take up to 1,000 and 2,500 resident Canada geese, respectively, for the food-shelf programs. Michigan reported taking 490 birds and Minnesota 1,847. In 1997, the Service again issued Michigan and Minnesota permits authorizing the take up to 1,000 and 2,500 resident Canada geese, respectively, for the food-shelf programs.

In Region 1, the Pacific Northwest/West Coast area, the Service has primarily limited permits for the control of resident Canada geese to the addling of eggs. In 1995, the Region issued permits authorizing the take of 900 eggs in the Puget Sound Area of Washington. In 1996, this number was increased to 2,000 eggs and 200 adult birds. APHIS/WS subsequently reported taking 911 and 1,570 eggs in 1995 and 1996, respectively, and 6 geese in 1996. For 1997, the Region has again authorized the take of 2,000 eggs in the Puget Sound Area and another 500 eggs in the City of Fremont, California.

The Service realizes that APHIS/WS has limited personnel and resources to respond to requests for assistance. Likewise, as the number of complaints continue to increase, greater demand will be placed on the Service and the States to assist in damage-management programs. With the increase in complaints, the current system is becoming time-consuming, cumbersome and inefficient. The Service, with its State and other Federal partners, believe development of an alternative method of issuing permits to control problem resident Canada geese, beyond those presently employed, is needed so that agencies can provide responsible, cost-effective, and efficient assistance. The proposed special Canada goose permit provides the States that opportunity while maintaining protection of our migratory bird resources.

Proposed Special Canada Goose Permit

The Service proposes to add a new permit option available to State conservation agencies specifically for resident Canada goose control and damage management. The special permit would only be available to a State conservation or wildlife management agency responsible for migratory bird management. Under this permit, States and their designated agents could initiate resident goose damage management and control injury problems within the conditions/restrictions of the program. Those States not wishing to obtain this new permit would continue to operate under the current permitting process.

Applications for the special permit would require a detailed statement from the State estimating the size of the resident Canada goose population in the State, requesting the number of resident Canada geese, including eggs and nests, to be taken, and showing that such damage-control action will either provide for human health and safety, protect personal property, or provide compelling justification that the permit is needed to allow resolution of other conflicts between people and resident Canada geese. The permit holder (i.e., State Agency) would also be required to inform all designated agents of the permit conditions that apply to the implementation of resident Canada goose damage management.

The special resident Canada goose damage-management permit would be subject to the following conditions/restrictions:

1. Take of injurious resident Canada geese as a management tool could be utilized only after applicable non-lethal alternative means of eliminating the damage problem have been proven to be unsuccessful or not feasible.

2. No other migratory birds or any species designated under the Endangered Species Act as threatened or endangered may be affected by the action.

3. Actions under the State permit are limited to the period between March 11

and August 31. Permits will be issued annually. In California, Oregon and Washington, in areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years, lethal control activities are restricted to the period May 1 through August 31, inclusive. Delisting of this subspecies would result in a review of this provision.

4. Control activities must be conducted clearly as such and cannot be set up so as to be in fact a "hunt."

5. The permit cannot be used to limit or initiate management actions on Federal land within a State without concurrence of the Federal Agency with jurisdiction.

6. Canada geese killed in control programs must be properly disposed of or utilized. Canada geese killed under this permit may be donated to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes or given to charities for human consumption, or buried or incinerated. This permit does not, however, allow for Canada geese taken pursuant to this section, nor their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

7. Methods of take are at the discretion of the permittee responsible for the control action. Methods may include, but are not limited to, firearms, alpha-chloralose, traps, egg and nest manipulation and other control techniques that are consistent with accepted wildlife-damage management programs.

8. States may designate agents who must operate under the conditions of the permit.

9. Any employee/designated agent authorized by the State to carry out control measures under the special permit must retain in their possession a copy of the State's permit, and designation, in the case of an agent, while carrying out any control activity.

10. Any State agency, when exercising the privileges of this permit, must keep records of all activities, including those of designated agents, carried out under the authority of the special permit. An annual report detailing activities conducted under the permit will be required by the Service prior to any permit renewal.

11. The Service will annually review reports submitted by permit holders and will periodically assess the overall impact of this permit program to ensure compatibility with long-term conservation of this resource.

12. Nothing in the permit should be construed to authorize the killing of Canada geese contrary to any State law or regulation or on any Federal land without written authorization by the appropriate management authority, and none of the privileges granted under the permit shall be exercised without any State permit that may be required for such activities.

13. The Service reserves the authority to immediately suspend or revoke any permit if it finds that the terms and conditions set forth have not been adhered to as specified in 50 CFR 13.27 and 13.28.

Currently, nearly all permits for resident Canada goose control activities are handled, evaluated, and issued on a case-by-case specific basis. However, with the increasing numbers of requests for permits, the permit-issuance process has become time-consuming and lengthy in some instances. Thus, the Service believes that it is likely that some injury to people and property from resident Canada geese are tolerated rather than go through the lengthy permit-issuance process. With the proposed special resident-goose damage-management permit, the Service expects that the use of resident Canada goose control and management activities, particularly lethal control methods such as egg/nest destruction, would increase. Lethal control methods associated with hazing techniques of adult birds would also be expected to initially increase. However, following this initial increase, continual use of hazing methods should become more effective and may result in fewer overall lethal control activities. Such lethal and non-lethal activities would be expected to decrease the number of injurious resident Canada geese in localized areas, especially urban/suburban areas. Regionally, little overall impact on the resident Canada goose population would be expected because many goose populations have demonstrated the ability to sustain harvest rates in excess of 20 percent. The Service anticipates the magnitude of any lethal control activities will be well below 20 percent of any State's resident Canada goose breeding population.

Little impact on sport hunting would be expected under the proposed special permit. Resident Canada goose populations in areas that are targeted for management/control activities are generally those that provide little or no sport hunting opportunities due to restricted access within urban/suburban areas where hunting is either precluded or severely restricted. Areas and resident Canada goose populations already open to sport hunting would be expected to remain open, as special Canada goose season frameworks and guidelines would not change. However, due to the increased availability of control measures, there could be the removal of some open hunting areas due to public use/safety considerations. Further, some potential hunting areas under consideration as open hunting areas might lose some justification and basis for opening hunting.

The Service also expects that this approach would result in more aggressive resident Canada goose-control activities. By allowing injurious resident Canada goose problems to be dealt with on the State/local level, instead of the Service's Regional level, it is expected that control activities would be more responsive and timely to the problem(s) than is currently the case. Consequently, it is expected that with reduced injurious populations and more effective hazing programs, fewer complaints would be likely to occur and less resident Canada goose damage would be likely.

With State fish and wildlife agencies responding to individual resident Canada goose problems within their respective jurisdictions, Service administrative responsibilities for each individual control activity that currently necessitate the determination and/or issuance of a permit would be expected to decrease significantly. Currently, the Service, in most instances, must decide on a case-by-case basis whether a permit should be issued. This new permit would greatly lessen the number of these permits.

Summary of Comments

On September 3, 1996, the Service issued in the **Federal Register** (61 FR 46431) a notice of availability of a Draft Environmental Assessment (DEA) on Permits for Control of Injurious Canada Geese and Request for Comments on Potential Regulations. The notice advised the public that a DEA had been prepared and was available for public comment. The notice also announced the Service's intent to consider regulatory changes to the process for issuance of permits to control injurious resident Canada geese. The Service subsequently extended the public comment period on November 12, 1996 (61 FR 58084).

As a result of this invitation for public comment, the Service received 101 comments including two from Federal agencies, 28 from State wildlife agencies, 24 from private organizations and 47 from private citizens. Comments included a wide range of topics; however, several patterns emerged that indicated key points of concern.

To summarize, the August 1996 DEA offered the following three permit alternatives: first, to continue the

existing permit procedure; second, to provide a special Canada goose permit to APHIS/WS and State wildlife agencies with the added authority of allowing subpermits to be issued by APHIS/WS and the States to others; and thirdly, to develop a more restrictive permit procedure. The DEA identified the second option as the preferred alternative, describing a procedure for issuing special resident Canada goose permits and providing the additional option of subpermitting resident Canada goose damage management activities to designated agents. After consideration of the comments received, the Service has revised the preferred alternative as described below in the discussion of comments. This change will provide the Service with more direct control but does not alter the conclusions or analyses displayed in the EA.

Many commenters expressed support for "cleaning up" the process and making it more responsive to the needs of the public. However, some comments challenged the need for any type of resident Canada goose damage-management activities. For purposes of this proposed rule, the following review combines comments into general categories. The issues and the Service response to each are summarized below:

Issue 1: Several commenters expressed concern that the Service did not have the authority under the Migratory Bird Treaty Act (Act) and subsequent regulations to allow non-Service entities (APHIS/WS, States) to issue permits. This theme was repeated throughout and many saw this as an attempt by the Service to abrogate their goose-management responsibility.

Service Response: With regard to the issues raised by these comments, the Service has decided to utilize a process whereby permits would only be issued to State conservation or wildlife management agencies. The Service proposes a system whereby State employees or designated agents may carry out resident Canada goose damage management and control injurious problems within the conditions/restrictions of the permit program.

Issue 2: Several comments suggested that the special permit be replaced by a depredation order, arguing that this approach would be a more cost-effective/efficient means to manage resident Canada Geese.

Service Response: The Service has included this alternative in the revised EA. However, while the Service agrees that depredation orders in other circumstances have proven to be valuable tools in wildlife damage management, the Service believes that management of resident Canada geese deserves special attention and consideration which can best be provided by the proposed special Canada goose permit. The Service believes that a special Canada goose permit will provide the management flexibility needed to address this serious problem and at the same time simplify the procedures needed to administer this program. A special Canada goose permit will satisfy the need for an efficient/cost-effective program while allowing the Service to maintain management control.

Issue 3: Several comments challenged the notion that there are in fact "injurious" Canada geese and that the entire concept of "resident" Canada geese is invalid.

Service Response: The Service strongly disagrees with both these assertions and has included data in the revised EA that demonstrate the impact of resident Canada goose populations on personal property, agricultural commodities, and health and human safety. In addition, data are available that clearly point out that Canada goose populations do, in fact, nest in parts of the conterminous United States during the spring and summer and that these birds are causing injury to people and property. These data are presented in the revised EA. Furthermore, the Service is not redefining what is or is not a migratory bird under the Treaty. We are using the term "resident" to identify those commonly injurious Canada geese that will be the subject of control activities within the scope of the Treaty.

Issue 4: A number of comments included in the August 1996 DEA addressed the procedures that dealt with the implementation of a resident Canada goose damage-management program. These comments expressed concern that the methods of take were too restrictive, that no mention was made of egg and nest management, that the time period associated with damage control was too restrictive, that the 25 percent population figure was unrealistic and virtually impossible to ascertain, and the directions for disposition of geese were incomplete.

Service Response: The Service carefully considered all these comments and has made modifications in the proposed regulation to address the concerns expressed. Information specific to the applicant State's population of resident geese and the numbers expected to be taken annually will now be required in the application. The Service will utilize this information and other pertinent biological and population-specific data as the basis for determining the premitted take. The Service made major changes to expand the methods of take to include the use of alpha-chloralose when warranted and to allow the on-site biologist more flexibility. The Service also made provisions to include egg-addling and nest destruction as viable damage-management tools. The Service agrees that the 25 percent population figure on which to determine allowable take is nebulous and does not provide a legitimate guideline for identifying a population level.

Issue 5: A large number of commenters indicated that they were philosophically opposed to the killing of Canada geese and any other "inhumane" treatments of these birds. They expressed preferences for non-lethal solutions to all resident Canada goose/human conflicts and pointed out that people need to be more tolerant of wildlife. Some commenters also opposed the removal of geese on the grounds that these management actions were only short-term solutions.

Service Response: The Service is also opposed to the inhumane treatment of any birds, but does not believe the capture and relocation, or processing for human consumption, of resident Canada geese from human conflict areas is by definition "inhumane." Over the past few years, thousands of problem resident Canada geese have been rounded up by wildlife managers and relocated to unoccupied sites. However, few such sites remain. Therefore, the Service believes that humane lethal control of some geese is an appropriate part of an integrated resident Canada goose damage/control management program.

The Service also prefers non-lethal control activities, such as habitat modification, as the first means of eliminating resident Canada goose conflict/damage problems and has specified language to this effect in the proposed regulations. However, habitat modification and other harassment tactics do not always work satisfactorily and lethal methods are sometimes necessary to increase the effectiveness of non-lethal management methods.

There are many situations where resident Canada geese have created injurious situations and damage problems that few people would accept if they had to directly deal with the problem situation. The Service continues to encourage state wildlife management agencies to work with not only the local citizens impacted by the management actions but all citizens.

While it is unlikely that all resident Canada goose/human conflicts can be eliminated in all urban settings, implementation of broad-scale resident Canada goose management activities may result in an overall reduced need for other management actions, such as large-scale goose round-ups and lethal control.

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NEPA Considerations

The Service has prepared an Environmental Assessment (EA), as defined under the authority of the National Environmental Policy Act of 1969, in connection with this proposed regulation. The EA is available for review at the above address.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "ensure that any action authorized, funded or carried out ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat ..." Consequently, the Service initiated Section 7 consultation under the ESA for this proposed rulemaking. Completed results of the Service's consultation under Section 7 of the ESA may be inspected by the public in, and will be available to the public from, the Office of Migratory Bird Management at the above address.

Paperwork Reduction Act and Information Collection

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Service is submitting the necessary paperwork to OMB for approval to collect this information. The Service will not collect any information until approved by OMB and a final regulation is published. Additionally, no person may be required to respond to a collection of information unless it displays a currently valid OMB number. The proposed information collection requirement will be used to administer this program and, particularly in the issuance and monitoring of these special Canada goose permits. The information requested will be required to obtain a special Canada goose permit, and to determine if the applicant meets all the permit issuance criteria, and to protect migratory birds.

The applicants will be State wildlife agencies responsible for migratory bird management that wish to initiate a resident Canada goose control and damage management program within the guidelines provided by the Service. The annual number of applicants is estimated to be less than 45. The public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information, yielding an annual burden of 360 hours.

Comments are invited from the public on: (1) Whether the collection of information is necessary for the proper performance of the function of the Service, including whether the information will have practical utility; (2) The accuracy of the Service's burden of the collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) How to minimize the burden of the collection of information on those who are to respond, including the use of electronic, mechanical, or other forms of information technology. Comments and suggestions on the requirement should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer, Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 224—ARLSQ, 1849 C Street NW., Washington, DC 20204.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. The Service has determined that this proposed rulemaking would not have a significant effect on a substantial number of small entities, which include small businesses, organizations and small governmental jurisdiction. This proposed rule will only effect State wildlife agencies responsible for migratory bird management that wish to initiate a resident Canada goose control and damage management program within the guidelines provided by the Service. The Service anticipates that the annual number of applicants will be less than

45. Therefore, this proposed rule will have minimal effect on small entities.

Executive Order 12866

The Service has determined that this proposed rule is not significant under the definition in Executive Order 12866. Therefore, this proposed rule was not subject to review by the Office of Management and Budget.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Public Comment Invited

The policy of the Department of the Interior is, whenever practical, to afford the public the opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposal to the location identified in the address section above. Comments must be received on or before June 1, 1998. Following review and consideration of the comments, the Service will issue a final rule on these proposed amendments.

The Service is also requesting comments on the proposed information collection requirements. Comments should be submitted to the Service's Information Collection Clearance Officer at the U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 224—ARLSQ, Washington, D.C. 20240; or by calling 703/358–1943.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—[AMENDED]

1. The authority for part 21 continues to read as follows:

AUTHORITY: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend § 21.3 by adding alphabetically a definition for "Resident Canada geese."

§ 21.3 Definitions.

* * * * *

Resident Canada geese means Canada geese that nest and reside within the conterminous United States in the months of June, July, and August.

3. Add a new § 21.26 to read as follows:

* * * * *

§ 21.26. Special Canada goose permit.

The Service may issue to State wildlife agencies a special permit authorizing resident Canada goose damage management actions, when issuance of such a permit will contribute to human health and safety, or will protect personal property, or when presented with compelling justification in the permit application that issuance of the permit will allow resolution or prevention of injury to people or property. The privileges granted under this section are intended to relieve or prevent injurious situations only, and shall not be construed by the permittee as opening, reopening, or extending any hunting season contrary to regulations promulgated pursuant to Section 3 of the Migratory Bird Treaty Act.

(a) *Permit requirement.* The Director may, upon receipt of an application from a State wildlife agency, and in accordance with the criteria of this section, issue a permit to any such agency to undertake various methods of control, including lethal control, of injurious resident Canada geese in accordance with the above requirements. Only employees or designated agents of a permitted State wildlife agency may take injurious resident Canada geese in accordance with conditions specified in the permit, conditions set forth in 50 CFR part 13, and as specified in (c) below.

(b) *Application procedures.* A State wildlife agency must submit an application to the appropriate Regional Director (see section 13.11(b) of this subchapter). Each such application must contain the general information and certification required by section 13.12(a) of this subchapter plus the following information:

(1) A detailed statement which makes a sufficient showing that the control action will provide for human health and safety, or will protect personal property, or provides other compelling justification that the permit is needed to allow resolution of other injury to people or property.

(2) An estimate of the size of the resident Canada goose population in the State and the annual number of resident Canada geese, including eggs and nests, for which authorization to take is requested.

(3) A statement that indicates that the permit holder (State Agency) will inform and brief all employees/designated agents of the requirements of these regulations and permit conditions that apply to the implementation of resident Canada goose control measures.

(c) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B and elsewhere in this section and unless otherwise specifically authorized on the permit, the special resident Canada goose permits shall be subject to the following conditions:

(1) *Limitations and methods of take.*

(i) Take of resident Canada geese as a management tool pursuant to this section may be utilized only after applicable non-lethal alternative means of eliminating the damage problem have been proven to be unsuccessful or are not feasible and may not exceed the number authorized by the permit.

(ii) Method of take for the control of resident Canada geese is at the discretion of the permittee responsible for the action. Methods may include, but are not limited to, firearms, alpha-chloralose, traps, egg and nest manipulation and other damage control techniques that are consistent with accepted wildlife damage-management programs.

(2) *Time frame.* Permittees and their employees and agents may take only injurious resident Canada geese pursuant to this section between March 11 and August 31 in any year. In California, Oregon and Washington, in areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years, lethal control activities are restricted to the period May 1 through August 31, inclusive.

(3) *Disposal and utilization.* The permittee and its employees and agents may possess, transport, and otherwise dispose of by donation to public museums or public institutions for scientific or educational purposes, injurious resident Canada geese killed pursuant to this section. Additionally, geese taken under authority of a permit issued under this section may be processed for human consumption and distributed free of charge to charitable organizations or buried or incinerated. A permit issued under this section shall not allow for resident Canada geese

taken pursuant to this section, nor their plumage or eggs, to be sold, offered for sale, bartered, or shipped for the purpose of sale or barter.

(4) *State law.* Nothing in this section shall be construed to authorize the killing of injurious resident Canada geese contrary to any State law or regulation, nor on any Federal land without specific authorization by the agency responsible for the management of these lands. None of the privileges granted under this section shall be exercised unless the person possesses any permits as may be required for such activities by any State or by any Federal land manager.

(5) *Inspection.* Any State employee/designated agent authorized to carry out control measures under a permit granted under this section shall retain in their possession a copy of the permit and designation while carrying out any activity under the permit. The permit holder shall require the property owner or occupant on whose premises activities are carried out to allow, at all reasonable times, including during actual operations, any Service special agent, refuge officer or State wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted, and shall furnish promptly to such officer whatever information may be required concerning said operations.

(6) *Reporting.* Any State employee or designated agents exercising the privileges granted by this section shall keep records of all activities carried out under the authority of this special-purpose permit, including the number of Canada geese killed pursuant to this section and their disposition. The State must submit an annual report detailing activities conducted under this section, including the time, numbers and location of birds, eggs, and nests taken and non-lethal techniques utilized on or before December 31 of each year. The annual report shall be provided to the appropriate Assistant Regional Director - Refuges and Wildlife (see section 10.22 of this chapter).

(7) *Limitations.* The following limitations shall apply:

(i) Nothing in this section applies to any Federal land within a State's boundaries without written permission of the Federal Agency with jurisdiction.

(ii) No action under any special permit issued under this section may be undertaken if other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act are or will be affected by the control activity.

(iii) Permits will only be issued to State wildlife agencies in the conterminous United States.

(iv) States may designate agents who must operate under the conditions of the permit.

(v) Term of permit—a special Canada goose permit issued or renewed under this section expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years form the date of issuance or renewal.

(vi) Permit revocation—the Service reserves the right to suspend or revoke any permit, as specified in 50 CFR 13.27 and 13.28.

* * * * *

Dated: March 4, 1998.

Donald Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–8151 Filed 3–30–98; 8:45 am]

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Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Fatigue Evaluation of Structure; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 27358; Amdt. No. 25–96]

RIN 2120–AD42

Fatigue Evaluation of Structure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the fatigue requirements for damage-tolerant structure on transport category airplanes to require a demonstration using sufficient full-scale fatigue test evidence that widespread multiple-site damage will not occur within the design service goal of the airplane; and inspection thresholds for certain types of structure based on crack growth from likely initial defects. This change is needed to ensure the continued airworthiness of structures designed to the current damage tolerance requirements, and to ensure that should serious fatigue damage occur within the design service goal of the airplane, the remaining structure can withstand loads that are likely to occur, without failure, until the damage is detected and repaired.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Yarges, FAA, Airframe and Airworthiness Branch (ANM–115), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton Washington 98055–4056; telephone (425) 227–2143, facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

This document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation rulemaking Advisory Committee Bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may access the FAA web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gop.gov/su__—docs to download recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591 or by calling 202–267–9680. Communications must reference the amendment or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) 93–9, which was published in the **Federal Register** on July 19, 1993 (58 FR 38642). The notice was issued because of the need: (1) To ensure that widespread, multiple site fatigue cracking will not occur during the period of service for which the airplane is designed to operate; and (2) to prescribe criteria for establishing the thresholds for damage-tolerance based inspections.

In addition three minor changes requested by both U.S. and European manufacturers of transport category airplanes, aimed at harmonizing the U.S. and European certification requirements, were also proposed in this notice.

Section 25.571 of 14 CFR part 25 requires that applicants for an airplane type certificate address the technical issue of structural fatigue (other than sonic fatigue) in one of two ways: (1) A damage-tolerance evaluation of the structure; or (2) a safe-life fatigue evaluation of the structure.

Of the two methods of evaluation, the first is preferred and the second may only be used if the applicant establishes that it is impractical to use a damage-tolerance approach. Even so, several in-service incidents and accidents resulting from structural fatigue failures have demonstrated the need to improve the damage-tolerance evaluation requirements of part 25.

A damage-tolerance evaluation consists of engineering calculations and tests aimed at establishing what kind of inspections are needed, and how often they need to be repeated on an airplane's structure while in service. The inspection frequency is set to assure that, should serious fatigue damage begin to develop before the design service goal of the airplane is reached, it will be found and repaired before it grows to proportions that represent a hazard to the airplane.

This methodology has proven to be successful in many applications and, in fact, is part of the reason for the excellent overall safety record that has been achieved in the U.S. Nevertheless, there are two issues that have been debated within the technical community that are not clearly dealt with by the damage-tolerance methodology:

1. When in an airplane's life should the first inspection in the inspection cycle be conducted (the threshold inspection)?

2. When in an airplane's life can safety no longer be effectively maintained by the damage tolerance inspection program prescribed at the time of certification of the airplane type (the onset of widespread cracking)?

These are complex issues that are discussed at some length in Notice 93–9. This rulemaking attempts to incorporate into part 25 some technical judgments on these issues that offer a high degree of safety to the flying public, without overburdening the air transportation system with unnecessary inspections or tests. To this end, the FAA proposed that § 25.571 of the FAR, "Damage-tolerance and fatigue evaluation of structure," be revised:

1. To require sufficient full-scale fatigue testing to ensure that widespread, multiple-site fatigue damage does not occur within the design service goal of the airplane; and

2. To require that thresholds for inspections be based on anaylses and tests considering the damage-tolerance concept, manufacturing quality, and susceptibility to in-service damage. (The idea of basing the time of the threshold inspection on the time it takes a crack to grow from a manufacturing defect that is likely to escape manufacturing

quality control inspection to the time the crack represents a hazard to the airplane is known as the "rogue flaw" concept for establishing inspection thresholds.)

A revision to companion draft Advisory Circular (AC) 25.571–1A was prepared for the proposed rulemaking, to provide guidance on means that the FAA would accept as showing compliance with the regulation. As with all advisory circulars, this draft was intended only to provide guidance on acceptable means of compliance, without eliminating the flexibility for future applicants to identify other means of compliance with the proposed rule. That draft revision (AC 25.571–1X) was not available at the time that Notice 93–9 was issued and was subsequently made available to the public for comment on October 19, 1993 (58 FR 53987). As a result, the FAA has received two sets of comments from the public, one in response to the draft AC and one in response to the proposed rule. Some of the earlier comments were made without the benefit of the commenter knowing the contents of the draft AC. Because of this, the FAA has considered both sets of comments in preparing the final rule contained herein, and in revising the AC. The announcement of the FAA's issuance of the revised AC will be published in the **Federal Register** once it is available to the public.

Interested persons have been given an opportunity to participate in this rulemaking, and due consideration has been given to all matters presented. Comments received in response to Notice 93–9 are discussed below.

Discussion of Comments

The FAA received many comments in response to Notice 93–9, most of which state support for the added requirement for full-scale fatigue testing of new airplane types. Commenters included airplane manufacturers, the National Transportation Safety Board, the Airline Pilots Association, the Aerospace Industries Association, the General Aviation Manufacturers Association, airplane operators, and others. Only a few commenters state that full-scale fatigue testing should not be required.

One commenter states that full-scale fatigue tests should not be mandated because these tests do not adequately account for actual conditions experienced in service and therefore cannot accurately predict in-service problems. The commenter further states that such tests have never predicted widespread fatigue damage that later became a problem in the fleet. The FAA does not concur with this comment. It is widely recognized in the aviation engineering community that "scatter factors" need to be applied to fatigue test results, because such tests cannot account for the individual construction variations and the individual service experience of each airplane. Nevertheless, important results have been, and will continue to be, obtained from such tests, including the prediction of widespread fatigue damage. The FAA, airplane manufacturers, and others have come to recognize that full-scale fatigue testing provides an indispensable, although admittedly incomplete, source of information about what to expect in service from airframe structures. As was pointed out by another commenter who favors the new requirement, full-scale fatigue test evidence must be coupled with prudent exploratory fleet inspections to ensure continued airworthiness.

The FAA received several comments about the full-scale fatigue testing of derivative or modified type designs. These commenters point out that full-scale fatigue test data generated during the original certification of an airplane type, and other data, can sometimes be used to determine when widespread multiple-site fatigue damage will, or will not, occur on the modified designs. These commenters state that additional full-scale fatigue testing would not be necessary in all cases. The FAA concurs with these comments. The working of § 25.571(b) in the final rule has been changed along the lines of one comment that had been jointly developed by the Aerospace Industries Association, the Association Europeenne des Constructeurs de Materiel Aerospatial, and the FAA's Technical Oversight Group for Aging Airplanes. This change uses the words "sufficient full-scale fatigue test evidence" in place of "sufficient full-scale testing."

The same commenters also state that guidance should be provided in the form of an advisory circular (AC) on the subject of when and how much fatigue testing would be necessary for modification and derivative certification programs. The FAA concurs. In fact, draft AC 25.571–1X does contain some guidance. Based on comments provided to the docket for this rulemaking and in response to the draft AC, the FAA has revised and expanded the guidance regarding the relevant factors in determining whether, and to what extent, fatigue testing may be necessary for derivatives and modifications of type designs. Generally, these factors relate to the applicability and reliability of previously developed test evidence for determining that the airplane will remain free of widespread fatigue damage until its design service goal is reached.

Another commenter points out that two lifetimes of fatigue testing cannot "ensure" that widespread multiple-site damage will not occur within the design lifetime of an airplane (since no fatigue test can duplicate the exact configuration and operating history of each airplane). The commenter states that the requirement of the rule should be to ensure hat widespread multiple-site damage will not "normally" occur. The FAA agrees that two lifetimes of fatigue testing cannot ensure that widespread fatigue damage will not occur within the design lifetime of an airplane; however, guidance on this statistical fact is best addressed in the AC. Therefore, as a result of this comment, the FAA has revised the AC in this regard.

The FAA also received comments that full-scale fatigue testing represents a prohibitive expense for small entities that perform modifications of type designs produced by others and would put them out of business. These commenters note that the FAA has certificated airplane modifications for damage tolerance in the past, relying on analytical methods that are based upon test data and using conservative assumptions, but without full-scale fatigue testing. They state that they are small entities that the FAA did not consider.

As discussed previously, the objective of this rulemaking is to ensure that transport category airplanes will remain free of widespread fatigue damage within their design service goals. For reasons discussed below, the FAA considers that most modifications can be found to meet this objective without additional full-scale testing. However, it is true that in some cases involving extensive structural modification (such as a cargo conversion project) it may be necessary for the FAA to require a modifier to conduct full-scale fatigue testing to demonstrate freedom from widespread fatigue damage within the design service goal of an airplane type. The FAA acknowledges that such testing may be expensive. In these cases, the FAA has determined that the safety interests of the flying public must take precedence over the economic interests of airplane modifiers. This final rule does not preclude modifiers from conducting such projects, but, if they cannot otherwise meet the objectives of this rule, they will need to consider the costs of full-scale fatigue testing along with the other compliance costs when they evaluate the economic viability of a particular modification project.

The FAA does not, however, concur that the overall economic impact of this final rule on these small entities is significant. First, as discussed in the preceding paragraphs, the full-scale fatigue testing requirement of the proposed rule has been revised such that it is not always necessary to conduct one for a modification project, and most modifications would not necessitate one. The companion AC to the rule has been expanded to provide guidance on acceptable means of showing compliance for modifications. This guidance discusses how small, simple design changes, using a design comparable to the original structure, could be analytically determined to be equivalent to the original structure in their propensity for widespread fatigue damage (e.g., modification of the fuselage structure for mounting an antenna using a design that is similar to the original airplane in that area). In addition, the amendment will not impose any additional costs on these small entities on projects for which they have already applied for supplemental type certificates; nor will it impose any additional costs on projects for which they would apply for supplemental type certificates in the near future, since the designs that would be affected by this amendment would probably not enter service until at least 5 to 10 years after its adoption. This is because, in general, in accordance with § 21.101 of 14 CFR part 21, modifiers of type designs need only comply with the regulations that were used to certificate the original model.

One other commenter states that the rule could be interpreted to require full-scale fatigue testing of modifications specified in service bulletins, which would actually impede safety by delaying the issuance of needed service bulletins. The FAA does not concur with this comment. Service bulletin modifications are in the same general category as other modifications, and most would not necessitate full-scale fatigue testing. Further, if circumstances necessitate airworthiness directive (AD) action to mandate a modification specified in a manufacturer's service bulletin before fatigue testing of the modification is complete, there is nothing in the rule that prevents the FAA from doing so.

One commenter also suggested replacing the sentence in current § 25.571(b) that states, "Damage at multiple sites due to prior fatigue exposure must also be included where the design is such that this type of damage is expected to occur," with the following sentence: "Special consideration for WFD must be included where the design is such that this type of damage could occur." Although the commenter provided no explanation of this suggestion, the FAA considers that it has merit. The FAA concurs that requiring "special consideration for WFD" emphasizes that, in addition to demonstrating that WFD will not occur within the design service goal, the applicant for type certificate must also consider ways to prevent or control the effects of WFD that may occur beyond the design service goal. This is necessary to fulfill the objective of § 25.571(a) to avoid catastrophic failure due to fatigue throughout the operational life of the airplane.

Many commenters object to basing all inspection thresholds on the so-called "rogue flaw" concept, as would be required by the proposed amendment to § 25.571(a)(3). These commenters state that indiscriminately applying this approach to all airplane structures would result in an exorbitant increase in airplane inspection costs, because it would necessitate detailed inspections earlier in an airplane's life and would not significantly enhance safety. Although most of these commenters aknowledge the necessity of using the "rogue flaw" concept to establish inspection thresholds for certain types of airframe design details, it was argued that the current industry practice for establishing the inspection thresholds (consisting of predicting the onset of cracking from fatigue testing and service experience) is adequate for most commonly used airframe designs. Some commenters endorsed a proposal that had previously been jointly submitted by the Aerospace Industries Association, the Association Europeene des Constructeurs De Material Aerospatial (AECMA), and the Technical Oversight Group for Aging Airplanes (hereinafter referred to as the AIA/AECMA/TOGAA comment). This group proposed that rogue flaw based inspection thresholds be limited to single load path structure, or other structure where it cannot be demonstrated that load path failure, partial failure, or crack arrest will be detected and repaired prior to failure of the remaining structure. The FAA concurs with these comments. These criteria have been incorporated into the final rule, and will ensure that the rogue flaw method of establishing inspection thresholds is not applied indiscriminately, but will be applied where necessary.

Following close of the comment period, and after the FAA had reviewed these comments and decided to incorporate the language proposed by AIA/AECMA/TOGAA into the final rule, Boeing, which had participated in the development of the AIA/AECMA/TOGAA comment, became aware of the FAA's decision. (This resulted from a series of communications between Boeing and the FAA regarding an ongoing program to determine the appropriate criteria for establishing fatigue inspection thresholds for the Model 757 and 767 airplanes; the communications were otherwise unrelated to this rulemaking.) At Boeing's request, AIA filed an additional comment, objecting to inclusion of this language in the final rule, and recommending instead that it be incorporated into AC 25.571–1X. AIA stated that the FAA's decision was in conflict with the AIA/AECMA/TOGAA comments, which had been based on the commenters' conclusion that the general requirement of § 25.571(a)(3) that inspections be established "as necessary to prevent catastrophic failure" was sufficient to ensure that rogue flaws would be considered appropriately, as described in their proposed revision to the AC.

Although the FAA concurs with the commenter's position that rogue flaws in certain types of structure must be considered, the FAA does not concur that revising the AC alone, and relying on the general language of § 25.571(a)(3), is sufficient to ensure adequate consideration. Advisory circulars are not mandatory and explicitly describe "one means, but not the only means," of complying with the relevant regulations. Therefore, because the FAA considers it essential that rogue flaws be considered, the final rule has been amended, as described previously.

One commenter states that the sentence added to § 25.571(a)(3) should be revised to state that thresholds for inspection should also be based on service experience and fatigue testing, followed by a "tear-down" examination of the test article. Although the FAA agrees that there may be important factors, it is more appropriate to discuss them as acceptable means of compliance in the companion advisory circular, and not in the rule itself. This will provide maximum flexibility for future applicants to identify means of fulfilling the rule's objectives.

One manufacturer asks for confirmation that its particular method of establishing thresholds for inspection be allowed under the current rulemaking. The FAA considers it inappropriate, in the context of this rulemaking, to evaluate any one manufacturer's particular methodology. Such an evaluation would normally be

accomplished during the certification process for an airplane type.

One commenter states that the proposed rule implies that simulated manufacturing defects must be inflicted on the full-scale fatigue test from the start. The FAA disagrees. As proposed, the purpose of the full-scale fatigue test requirement is to establish that the structure will be substantially free from widespread fatigue damage at least until its design service goal is reached. In contrast, the purpose for the consideration of manufacturing defects is to establish thresholds for inspection (or other procedures) for certain types of structure. Although the latter could involve full-scale fatigue testing in which the test article is inflicted with simulated manufacturing defects, and, in fact, the FAA's certification evaluation of a model type design may reveal that this is the necessary way of establishing a threshold in exceptional cases, it is not the FAA's intent to require this in general.

One commenter states that it is not normally possible to complete a full-scale fatigue test prior to issuance of a type certificate. The commenter recommends that AC 25.571–1A be revised to allow completion of the full-scale fatigue test after type certification. The FAA agrees with this comment. As noted by the commenter, taken literally, the proposed rule would have required that the testing be completed prior to issuance of a type certificate. However, as reflected in the preamble of the NPRM, the FAA recognized that this may not be realistic and would have allowed completion of testing after issuance of the type certificate. In light of the comment, the FAA has reconsidered this issue and determined that the rule must be revised to address this potential conflict. As revised, the rule allows testing to be completed after issuance of the type certificate, provided:

1. Before issuance of the type certificate the Administrator has approved a plan for completing the required tests, and

2. The Type Certificate contains an airworthiness limitation in the airworthiness limitations section of the instructions for continued airworthiness required by § 25.1529 that no airplane may be operated beyond a number of cycles equal to one-half the number of cycles accumulated on the fatigue test article, until such testing is completed.

The FAA considers that the first condition is necessary to ensure that, at the time of type certification, the TC holder has at least identified an acceptable method of complying with this rule's requirements. The FAA considers that the second condition is necessary to ensure that, following type certification, the testing proceeds so that the affected airplanes receive the safety benefits that this rule is intended to provide. Although these conditions were not specified in the NPRM, the final rule actually provides relief from the literal requirement of the NPRM to complete testing prior to issuance of a TC. It is also a logical outgrowth of the proposal in that it resolves the conflict between the proposed rule language and the preamble discussion in a way that ensures that the rule's objectives are fulfilled.

Several commenters recommend that the words "within the design lifetime of the airplane," used in the sentence added to § 25.571(b), be changed to "within the design service goal of the airplane." It was pointed out that it is difficult for manufacturers to know at the time an airplane is first certificated exactly how long it will be used. The expected service period is set as a goal for fatigue design at that time; therefore, the words "design service goal" are more appropriate. Furthermore, it was pointed out that the term "lifetime" implies a fixed service period for an airplane, after which it would be retired. These commenters state that this does not represent the intent of the proposed rule. The FAA concurs with this comment, and the words "design service goal" have been substituted for "design lifetime."

Several commenters state that the proposed requirements for operating past the original design service goal are not clear. They note that an industry team, the Structural Audit Evaluation Task Group (SAETG) of the Airworthiness Assurance Working Group (AAWG), conducted an extensive activity to determine possible actions for airplane models that reach that point. (The SAETG and AAWG are sub-groups of the Aviation Rulemaking Advisory Committee (ARAC), which submits rulemaking recommendations to the FAA). The commenters state that the recommendations of the SAETG should be addressed concurrently with the present change to § 25.571. The FAA does not agree with this comment. Although the FAA is addressing the recommendations of the SAETG at this time, that action covers only 11 specific models of airplanes whose fleet leaders have already exceeded their design service goal. These recommendations consist of suggested actions on how to implement the guidance material they generated. Although the FAA agrees that additional guidance may be appropriate for airplanes affected by the present rulemaking on the subject considered by the SAETG, the urgency of that action is not great because the design service goal of these airplanes would not be reached for at least another 20 years. Furthermore, one of the SAETG recommendations is that their guidance should not be extended beyond the 11 specific models it covers until it has actually been tried. To attempt to establish guidance for airplanes affected by the present rulemaking based on the SAETG recommendations at this time would only serve to delay the issuance of the present rulemaking. Therefore, the most expeditious manner of obtaining the benefits of the proposed refinement for the damage-tolerance evaluations is to adopt the present rule change and to continue discussions with the ARAC and others on how best to address the SAETG recommendations.

One commenter states support for the new requirement for full-scale testing, provided the companion Advisory Circular (AC 25.571–1X) follows the Certification Maintenance Requirements (CMR) guidelines (AC 25–19 dated 11/28/94). The CMR guidelines referred to by this commenter are guidelines on how inspection programs for airplane systems should be established at the time of certification. The FAA does not agree with this comment. There are presently fundamental differences in methodology between the way inspection programs are established for airplane systems and airplane structures. Attempts at resolving those differences have not been fruitful in the past, and there is no guarantee that they will be any more fruitful in the future. Therefore, evaluation of the appropriateness of using the CMR guidelines to establish structural inspection programs as part of the present rulemaking would result in a delay that the FAA considers unacceptable.

Several commenters state that the rule should specify the size of the initial manufacturing flaw or fatigue scatter factor criteria, either in the rule itself or in the accompanying AC. Although the FAA does not concur that an absolute size should be specified for the initial manufacturing flaw, guidance on acceptable means of compliance has been provided in the revised version of the AC on both subjects.

Regulatory Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the

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intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs as defined in the Executive Order; (2) is significant as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) could affect international trade. These analyses, available in the docket, are summarized below.

Estimated Costs and Benefits

Based on the opinions of industry and agency experts, the FAA estimates that development and certification costs associated with the requirement for an inspection threshold based on initial manufacturing defects will be negligible. However, this provision could affect operating costs, depending on the degree to which it impinges on the timing of initial inspections. This evaluation conservatively estimates that an additional 500,000 work hours will be required to inspect a fleet of 1,000 airplanes as result of the requirement to base inspection thresholds on assumed manufacturing defects. Assuming a fully burdened compensation rate of $65 per hour, this provision will increase operating costs by approximately $32.5 million over the life of a 1,000 airplane fleet.

The cost of a full-scale fatigue test for a representative transport category airplane design is statistically estimated using a sample of four different airplane models, ranging from a 45-seat airplane to a large widebody transport. In its comments on NPRM 93–9, the Aerospace Industries Association (AIA) notes that certification requirements could double the number of work hours for such testing. To account for this, full-scale fatigue test costs for each airplane model were inflated by multiplying the labor cost component by a factor of two. The relationship between these adjusted fatigue test costs and airplane size—measured by the number of seats—was then estimated using ordinary least squares. This yields a cost estimate of $540,000 for each seat in a proposed model. The cost of a full-scale fatigue test for a 162-seat airplane design, for example, would be approximately 162 times $540,000 or $87.5 million. for a 1,000 airplane fleet, this would equal $87,500 per airplane.

Total costs are estimated for a representative type certification using the following assumptions: (1) The hypothetical airplane model is assumed to have 162 seats; (2) 50 percent of testing costs are incurred in the year 2000, one-third of the remaining costs are incurred in each of the years 2001, 2002, and 2003; (3) production commences in the year 2002; (4) 100 airplanes are produced per year for 10 years; (5) the first airplanes enter service in 2002; (6) for each airplane, inspection costs related to the "rogue flaw" requirement are uniformly distributed in the interval bounded by one-fourth and one-half the design service goal (i.e., between the 5th and 9th years of operation); (7) total burdened cost per work hour is $65; (8) the discount rate is 7 percent; and (9) each airplane is retired at the end of its 20-year design service goal.

Under these assumptions, undiscounted fleet certification and operating costs—including the costs of a full-scale fatigue test and the inspection threshold provision—equal $120.0 million or $120,000 per airplane. On a discounted (1997 dollar) basis, fleet costs equal $78.6 million or $78,600 per airplane.

The benefits of the rule depend on the inherent variability of structural fatigue analysis and on the efficacy of actions taken in response to the results of such analysis. For example, the "rogue-flaw" inspection threshold requirement will prevent an accident only if: (1) The threshold occurs before an accident would otherwise occur; and (2) the resulting inspection identifies the damaged structure. Nevertheless, based on the accident history and the likelihood of ancillary benefits, the FAA finds that the benefits of the rule justify its costs.

An examination of the service history identified 39 domestic accidents or incidents involving structural fatigue during the period 1974–1990. The National Transportation Safety Board (NTSB) identified improper maintenance and/or corrosion as important contributing factors in 17 of the events. Of the remaining 22 events, 12 involved the landing gear and 10 involved the wing, fuselage, or other structure.

Although only two of these 10 events resulted in fatalities, several other events had catastrophic potential (in one case a wing spar failed, and in five other cases passenger cabin decompression occurred). In at least one case, the NTSB concluded that the accident was the probable result of a manufacturing defect.

During the same period, air carriers accumulated approximately 148 million flight hours. Thus, between 1974 and 1990, the overall event rate was (10/148)=0.0676 per million flight hours. The historical fatal accident rate was (2/148)=0.014.

Assuming that the average air carrier airplane has 162 seats, 69 percent of which are occupied; the airplane replacement cost is $30 million; and the value of an averted fatality is $2.7 million; then the economic value of one accident in which an airplane is destroyed and there are no survivors is approximately $345.9 million. If the rule prevents one such accident, its undiscounted benefits will exceed its undiscounted costs by a ratio of $345.9 million/$120.0 million or 2.88. Assuming that the probability of an avoided accident is proportional to the size of the complying fleet in any given year, then the expected discounted benefits of such an avoided accident will exceed discounted costs by a ratio of approximately 1.34.

Prevented accidents, however, do not exhaust the benefits of this rule. Full-scale fatigue testing is already industry practice. This reflects, in part, benefits such as timely correction of deficiencies to prevent early cracking, and verification of inspection and maintenance procedures. In addition to obvious safety implications, early identification of premature cracking will allow repairs to be accomplished during scheduled maintenance visits, thus lessening the economic impact of withdrawing an airplane from revenue service. While it is difficult to account for these ancillary benefits, the accident history gives some indication of their potential.

A review of records on accidents that occurred between 1974 and 1989 shows that at least five fleetwide inspections involving approximately 900 airplanes were ordered as a result of accidents involving failure of airplane structure. During these inspections, at least 72 airplanes were found to have fatigue cracks. Cost information specifically related to these inspections is unavailable. However, a review of some recent Airworthiness Directives (AD) and Service Bulletin data indicates that a minimum of 20 work hours (10 hours elapsed time) are necessary to carry out the required inspections. Minimum out-of-service time is 15–20 hours—approximately one day. If the cracking is predicted by full-scale fatigue testing and planned for in normal maintenance, unscheduled downtime may be averted. The number of required work hours (and downtime) would be much greater of the examination reveals extensive

cracking since this finding would necessitate additional inspections and structural repair. If cracking is predicted from a full-scale fatigue test, it can be detected at an earlier stage of development in the operating airplanes, resulting in less costly repairs, requiring less downtime to accomplish.

The cost of the unscheduled downtime for a fleetwide inspection, in which each airplane is withdrawn from revenue service for one day, can be estimated using the same production, operating history, and discount rate assumptions listed above. Assuming that the probability of an unscheduled inspection is uniformly distributed over each airplane's service life and that the revenue lost per airplane per day out of service is $40,000, the FAA estimates that the expected discounted savings from averting an average of one unscheduled inspection/repair day per airplane (over the service life of the fleet) is approximately $12.1 million. Thus, regardless of the number of accidents avoided, if the rule averts an average of 6.5 days of downtime per airplane over the life of the fleet, the expected discounted benefits of the rule will equal the discounted costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." Entities potentially affected by the rule include manufacturers of transport category airplanes and aircraft modification firms.

While manufacturers of transport category airplanes generally support full scale fatigue testing, some aircraft modifiers—including some small firms—object to this requirement on the grounds that it constitutes and excessive burden. As noted previously, however, the final rule may require full-scale fatigue testing—covering, when applicable, modifications to future transport airplane designs—for four reasons.

First, the rule will not affect existing airplane types. The amendment will not impose additional costs on existing applications for supplemental type certification, nor will it affect applications made in the near future. The airplanes that would be affected by this amendment would not enter service for at least 5 to 10 years after its adoption.

Second, in the case of future type designs, it is difficult to predict whether anyone would seek approval for subsequent modifications, and, if so, how extensive the modifications would be and whether full-scale testing would be necessary for them (based on experience, the FAA concludes that most modifications of future designs will not require full-scale fatigue testing). Thus, it is impossible to conclude that there will be a significant effect on a substantial number of small entities.

Third, even assuming that small entities would propose such modifications, the FAA has determined that the safety interests of the flying public take precedence over the economic interests of airplane modifiers. The FAA finds, that, under the circumstances where existing test evidence is insufficient to meet the objectives of this rule, there are no alternatives to full-scale testing that would enable small entities to meet these objectives.

Fourth, the FAA remains open to considering technical innovations that provide alternatives to full scale testing. Such innovations could form the basis for finding that sufficient full-scale test evidence exists based on testing performed during initial type certification.

International Trade Impact Assessment

The Office of Management and Budget directs Federal Agencies to assess whether or not a rule or regulation will affect any trade-sensitive activity. The FAA has assessed the potential for this rule to affect domestic transport category airplane manufacturers, aircraft modification firms, and air carriers.

The FAA determines that the rule will have little or no effect on trade for either U.S. firms marketing transport category airplanes in foreign markets or foreign firms marketing transport category airplanes in the U.S. This follows since full scale fatigue testing for such airplanes is already industry practice, both domestically and abroad. Also, domestic and foreign manufactured airplanes would both be subject to the inspection threshold provision of the rule if they are certificated in the U.S.

Similarly, the FAA determines that the rule will have little or no effect on foreign firms competing for U.S. aircraft modification work, or U.S. firms competing for foreign aircraft modification work.

The FAA recognizes that the rule could affect the competition for international air travel by imposing more conservative inspection requirements on U.S. carriers. However, it is unlikely that, in validating the FAA's certification of a future airplane design, another civil aviation authority would escalate the inspection threshold required by this rule. Nevertheless, if a foreign civil aviation authority determines that the inspection threshold is too conservative and, thus, chooses not to impose this requirement, U.S. carriers operating future airplane models subject to this rule could incur larger inspection costs relative to foreign carriers operating foreign registered airplanes of the same models. The FAA estimates that the discounted 20-year cost of the inspection threshold provision is approximately $12,000 per airplane. Under the average passenger capacity and load factor assumptions described above, and assuming an average of 1,600 departures per airplane per year, this equals approximately $0.003 per enplaned passenger.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no reporting or recordkeeping requirements associated with this rule.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such

regulatory distinctions as he or she considers appropriate. Because this final rule applies to the certification of future designs of transport category airplanes and their subsequent operation, it could affect intrastate aviation in Alaska. The Administrator has considered the extent to which Alaska is not served by transportation modes other than aviation, and how the final rule could have been applied differently to intrastate operations in Alaska. However, the Administrator has determined that airplanes operated solely in Alaska would present the same safety concerns as all other affected airplanes; therefore, it would be inappropriate to establish a regulatory distinction for the intrastate operation of affected airplanes in Alaska.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate meeting that criterion, therefore the requirements of the Act do not apply.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends 14 CFR part 25 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Section 25.571 is amended by revising the introductory text of paragraph (a), and paragraph (a)(3), the introductory text of paragraph (b), and paragraphs (b)(1), (b)(5)(ii), and (e)(1) to read as follows:

§ 25.571 Damage-tolerance and fatigue evaluation of structure.

(a) *General.* An evaluation of the strength, detail design, and fabrication must show that catastrophic failure due to fatigue, corrosion, manufacturing defects, or accidental damage, will be avoided throughout the operational life of the airplane. This evaluation must be conducted in accordance with the provisions of paragraphs (b) and (e) of this section, except as specified in paragraph (c) of this section, for each part of the structure that could contribute to a catastrophic failure (such as wing, empennage, control surfaces and their systems, the fuselage, engine mounting, landing gear, and their related primary attachments). For turbojet powered airplanes, those parts that could contribute to a catastrophic failure must also be evaluated under paragraph (d) of this section. In addition, the following apply:

* * * * * *

(3) Based on the evaluations required by this section, inspections or other procedures must be established, as necessary, to prevent catastrophic failure, and must be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness required by § 25.1529. Inspection thresholds for the following types of structure must be established based on crack growth analyses and/or tests, assuming the structure contains an initial flaw of the maximum probable size that could exist as a result of manufacturing or service-induced damage:

(i) Single load path structure, and

(ii) Multiple load path "fail-safe" structure and crack arrest "fail-safe" structure, where it cannot be demonstrated that load path failure, partial failure, or crack arrest will be detected and repaired during normal maintenance, inspection, or operation of an airplane prior to failure of the remaining structure.

(b) *Damage-tolerance evaluation.* The evaluation must include a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage. Repeated load and static analyses supported by test evidence and (if available) service experience must also be incorporated in the evaluation. Special consideration for widespread fatigue damage must be included where the design is such that this type of damage could occur. It must be demonstrated with sufficient full-scale fatigue test evidence that widespread fatigue damage will not occur within the design service goal of the airplane. The type certificate may be issued prior to completion of full-scale fatigue testing, provided the Administrator has approved a plan for competing the required tests, and the airworthiness limitations section of the instructions for continued airworthiness required by § 25.1529 of this part specifies that no airplane may be operated beyond a number of cycles equal to ½ the number of cycles accumulated on the fatigue test article, until such testing is completed. The extent of damage for residual strength evaluation at any time within the operational life of the airplane must be consistent with the initial detectability and subsequent growth under repeated loads. The residual strength evaluation must show that the remaining structure is able to withstand loads (considered as static ultimate loads) corresponding to the following conditions:

(1) The limit symmetrical maneuvering conditions specified in § 25.337 at all speeds up to V_c and in § 25.345.

* * * * * *

(5) * * *

(ii) The maximum value of normal operating differential pressure (including the expected external aerodynamic pressures during 1 g level flight) multiplied by a factor of 1.15, omitting other loads.

* * * * * *

(e) * * *

(1) Impact with a 4-pound bird when the velocity of the airplane relative to the bird along the airplane's flight path is equal to V_c at sea level or $0.85V_c$ at 8,000 feet, whichever is more critical;

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Issued in Washington, D.C. on March 26, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–8379 Filed 3–30–98; 8:45 am]

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Part VIII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 413

Medicare Program; Schedule of Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1905–FC]

RIN 0938–AI84

Medicare Program; Schedule of Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period sets forth, in accordance with section 4602 of the Balanced Budget Act of 1997, a new schedule of limitations on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1997. These limitations are in addition to the per-visit limitations that were set forth in our January 2, 1998 notice with comment period.

DATES: *Effective Date:* This rule is effective October 1, 1997.

Applicability Date: The schedule of per-beneficiary limitations is applicable for cost reporting periods beginning on or after October 1, 1997.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 1, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1905–FC, P.O. Box 7517, Baltimore, Maryland 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201, or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Comments may also be submitted electronically to the following E-mail address: HCFA1905FC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the E-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1905–FC.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 786–4602.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program History

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limitations on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. Under this authority, we have maintained limitations on home health agency (HHA) per-visit costs since 1979. Additional statutory provisions specifically governing the limitations applicable to HHAs are contained at section 1861(v)(1)(L) of the Act. These limits will be replaced by the establishment of a prospective payment system for home health services. However, section 1861(v)(1)(L)(v) of the Act, as added by section 4602(c) of the Balanced Budget Act of 1997 (BBA '97), Pub. L. 105–33, requires the Secretary to establish an interim system of payment limitations prior to implementation of the prospective payment system. Payments by Medicare under this interim system of payment limitations must be the lower of an HHA's actual reasonable allowable costs, per-visit limitations in the aggregate, or a per-beneficiary limitation in the aggregate as described in sections 1861(v)(1)(L)(v)(I) and (v)(1)(L)(vi)(I) of the Act.

Section 1861(v)(1)(L)(v)(I) requires the per-beneficiary annual limitation be a blend of: (1), an agency-specific per-beneficiary limitation based on 75 percent of 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during Federal fiscal year (FY) 1994, and (2), a census region division per-beneficiary limitation based on 25 percent of 98 percent of the regional average of such costs for the agency's census division for cost reporting periods ending during FY 1994, standardized by the hospital wage index. The reasonable costs used in the per-beneficiary limitation calculations in 1 and 2 above will be updated by the home health market basket excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996. This per-beneficiary limitation based on the blend of the agency-specific and census region division per-beneficiary limitations will then be multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) to calculate the HHA's aggregate per-beneficiary limitation for the cost reporting period subject to the limitation.

For new providers and providers without a 12-month cost reporting period ending in Federal fiscal year 1994, the per-beneficiary limitation will be equal to the median of these limitations applied to other HHAs as determined under section 1861(v)(1)(L)(v) of the Act.

B. Relevant Provisions of the Balanced Budget Act of 1997

The BBA '97 made several changes that affect the amount of costs to be paid under Medicare for services provided by HHAs. The provisions of BBA '97 that we are implementing in this final rule with comment period are as follows.

1. Additions to Cost Limitations

Section 1861(v)(1)(L)(v) was added to the Act by section 4602(c) of BBA '97 and requires the establishment of an interim system of limitations for services furnished by home health agencies.

Payment will not exceed the lesser of reasonable costs or the aggregate effect of the per-visit limitations published on January 2, 1998 (63 FR 89) or if lower, the aggregate per-beneficiary limitation as described in this final rule with comment.

A per-beneficiary limitation for agencies with a 12-month cost reporting period ending during Federal FY 1994 is determined as follows: (1), an agency-specific per-beneficiary limitation based on 75 percent of 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during Federal fiscal year (FY) 1994, and (2), a census region division per-beneficiary limitation based on 25 percent of 98 percent of the regional average of such costs for the agency's census division for cost reporting periods ending during FY 1994, standardized by the hospital wage index. The reasonable costs used in the per-beneficiary limitation calculations in 1 and 2 above will be updated by the home health market basket excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996. This per-beneficiary limitation based on the blend of the agency-specific and census region division per-beneficiary limitations will then be multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) to calculate the HHA's aggregate per-beneficiary limitation for the cost reporting period subject to the limitation.

How these per-beneficiary limitations are determined is explained further in section V of this document.

2. New Providers and Providers Without a 12-Month Cost Reporting Period Ending in FY 1994

Section 1861(v)(1)(L)(vi) was added to the Act by section 4602(c) of BBA '97 and requires the per-beneficiary limitation for new providers and those providers without a 12-month cost reporting period ending in FY 1994 be equal to the median of the section 1861(v)(1)(L)(v) per-beneficiary limitations applied to other HHAs.

Also, an HHA that had a 12-month cost reporting period ending during Federal FY 1994 and had altered its corporate structure or name will not be considered a new provider for purposes of determining the per-beneficiary limitation. Examples of an HHA that has altered its corporate structure but has kept its operational structure as a freestanding or provider-based HHA would be an agency that has gone from being a non-profit entity to a profit entity or an agency that has gone from being a subchapter S corporation to a proprietary individual. The most common occurrence of an agency changing its name would be a change in ownership whereby the new owners change the name of the agency but continue operating as a freestanding or provider-based HHA. The per-beneficiary limitation that applies to these types of changes will be determined under section 1861(v)(1)(L)(v).

3. Reduction in Market Basket Updates

Section 1861(v)(1)(L)(iv) was added to the Act by section 4601(a) of BBA '97 and requires the Secretary not to take into account any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996 in establishing the section 1861(v)(1)(L) limitations for cost reporting periods beginning after September 30, 1997. This, in effect, reduces the factors for increasing the costs in the data base used in calculating the per-beneficiary limitations. These factors are set forth in section IV. of this document.

4. Application of the Wage Index Based on Site of Service Rendered

Section 1861(v)(1)(L)(iii) was amended by section 4604(b) of BBA '97 to require that the utilization of the area wage index applicable under section 1886(d)(3)(E) of the Act be determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health services are furnished. In effect, the regional component of the per-beneficiary limitation that will apply for the beneficiary receiving services from the HHA will be the appropriate census region per-beneficiary limitation and adjusted by the appropriate wage index for the geographic area where the beneficiary received home health services. A Program Memorandum (Rev. AB–97–18), published in September 1997, outlined the billing changes that are needed to properly implement this provision.

5. Effective Date

Section 1861(v)(1)(L)(vii) of the Act was added by section 4602(c) of BBA '97.

Beginning in FY 1998, the Secretary is required to establish the per-beneficiary limitations by August 1 of each year. However, for cost reporting periods beginning on or after October 1, 1997, the Secretary need only establish those limitations by April 1, 1998. In accordance with section 1861(v)(1)(L)(vii)(I), we are establishing by April 1, 1998, the per-beneficiary limitations for cost reporting periods beginning on or after October 1, 1997.

II. Per-Beneficiary Limitations

The cost report data used to develop the schedule of per-beneficiary limitations set forth in this final rule are for cost reporting periods ending in Federal FY 1994, as required by section 4602(c) of BBA '97. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1998 (excluding, as required by statute, any changes in the home health market basket for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996).

The interim payment sets limitations according to two different methodologies. For agencies with cost reporting periods ending during Federal FY 1994, the limitation is based on 75 percent of 98 percent of the agencies' own reasonable costs and 25 percent of 98 percent of the average census region division costs. At the end of the agency's cost reporting period subject to the per-beneficiary limitations, the labor component of the census region division per-beneficiary limitation is adjusted by a wage index based on where the home health services are rendered.

For new providers and providers without a cost reporting period ending during Federal FY 1994, the per-beneficiary limitation is based on the standardized national median of the blended agency-specific and census region division per-beneficiary limitations described above. This is done by simply arraying the agencies' per-beneficiary limitations and selecting the median case. This national per-beneficiary limitation is then standardized for the effect of the wage index. The wage index is applied to the

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labor component of the national per-beneficiary limitation at the end of the cost reporting period beginning on or after October 1, 1997, and is based on where the home health services are rendered.

The detailed methodologies for calculating the per-beneficiary limitations and how they are applied to agencies' costs for cost reporting periods beginning on or after October 1, 1997 are described below.

A. Agency-Specific Rates

Section 1861(v)(1)(L)(v)(I) of the Act requires that 75 percent of the per-beneficiary limitation be based on 98 percent of the reasonable costs for the agency's 12-month cost reporting period that ended during FY 1994. Reasonable costs are the lesser of the actual Medicare costs of the discipline services or the aggregate discipline limitation, plus nonroutine medical supplies. This amount is multiplied by 98 percent and divided by the HHA's Federal FY 1994 unduplicated census count of beneficiaries to calculate the agency-specific per-beneficiary amount. An intricate and important part of the agency-specific per-beneficiary computation is the use of the Federal FY 1994 unduplicated census count of beneficiaries. After BBA '97 was enacted, many HHAs and their trade association representatives asserted that the unduplicated census counts of beneficiaries, as reported on the Federal FY 1994 Medicare cost report, was frequently an incorrect figure. Even though this number was a statistic required to be reported to Medicare, it was apparently not carefully monitored by HHAs because it did not impact Medicare payments at that time.

Through an analysis of our database to be used in establishing the regional per-beneficiary limitations, which includes the same cost reporting period used in establishing the agency-specific per-beneficiary limitation, we confirmed that the unduplicated census count was not reliable. Based upon this determination, we generated a more accurate unduplicated census count from HCFA's Standard Analytical File (SAF), which is generated from our National Claims History File. The unduplicated census count was created from the SAF by matching all claims to each agency's cost reporting period ending in Federal FY 1994 and identifying individual beneficiaries represented in the claims. Each beneficiary was counted only once for all the claim(s) identified for that cost reporting period for each agency. A list of HHAs and associated unduplicated census counts from the SAF has been disseminated to the intermediaries for calculating the agency-specific per-beneficiary limitations. If the intermediary has an HHA that has a 12-month cost reporting period that ended in Federal FY 1994 and that agency was not on the list for an unduplicated census count from SAF, the intermediary must contact HCFA so that an unduplicated census count can be generated from SAF.

B. Regional Rates by Census Division

Section 1861(v)(1)(L)(v)(I) of the Act requires that 25 percent of the per-beneficiary limitation be based on 98 percent of the standardized regional average of reasonable costs for the agency's census division for cost reporting periods ending during Federal FY 1994. To develop the schedule of per-beneficiary limitations by census region, we extracted the totals of the Medicare allowable costs, the aggregate cost per-visit limitation, and the Medicare nonroutine medical supply costs from settled Medicare cost reports of all HHAs for cost reporting periods ending in Federal FY 1994. How this data was used in calculating the regional rates by census division is explained further in section V.B..

Section 1861(v)(1)(L)(v)(I) requires that the costs used in calculating the per-beneficiary limitations be updated using the home health market basket index. However, section 1861(v)(1)(L)(iv) prohibits the Secretary from taking into account any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. Therefore, we adjusted the database used in calculating the regional per-beneficiary limitations by the market basket index excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996.

C. Wage Index

A wage index is used to adjust the labor-related portion of the standardized regional average per-beneficiary limitation to reflect differing wage levels among areas. In establishing the regional average per-beneficiary limitation, we used the FY 1998 hospital wage index, which is based on 1994 hospital wage data.

Each HHA's labor market area is determined based on the definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L)(iii) of the Act requires us to use the current hospital wage index (that is, the FY 1998 hospital wage index, which was published in the **Federal Register** on August 29, 1997 (62 FR 46070)) without regard to whether such hospitals have been reclassified to a new geographic area, to establish the HHA cost limitations. Therefore, the schedule of standardized regional average per-beneficiary limitations reflects the MSA definitions that are currently in effect under the hospital prospective payment system.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limitations for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–11). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA
- Newport County, RI in the Providence Fall-Warwick, RI MSA

We are continuing to grant these urban exceptions for the purpose of applying the Medicare hospital wage index to the HHA standardized regional average per-beneficiary limitations. These exceptions result in the same New England County Metropolitan Area definitions for hospitals, skilled nursing facilities, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, these four counties are urban under either definition, New England County Metropolitan Area or MSA.

Section 1861(v)(1)(L)(iii), amended by section 4604(b) of BBA '97, requires the use of the area wage index applicable under section 1886(d)(3)(E) of the Act and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the

geographic area in which the home health service is furnished without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1886(d)(8)(B) of the Act. Effective with cost reporting periods beginning on or after October 1, 1997, the wage-index, as applied to the labor portion of the regional per-beneficiary limitation, must be based on the geographic location in which the home health service is actually furnished rather than the physical location of the HHA itself.

III. Determination of Old or New Home Health Agencies

The per-beneficiary limitation determined under section 1861(v)(1)(L)(v)("clause v" HHAs) will apply to all HHAs that have a 12-month cost reporting period ending during FY 1994. There are, however, HHAs that had a 52/53 week cost reporting cycle that ended in Federal FY 1994, or a 13-month cost reporting period that ended during Federal FY 1994 (as allowed in accordance with Medicare principles of reimbursement). For purposes of determining the per-beneficiary limitation, these HHAs will be deemed to be "clause v" HHAs. Also, an HHA that had a 12-month cost reporting period ending in Federal FY 1994 and altered its corporate structure or name is a "clause v" HHA for purposes of determining the per-beneficiary limitation.

Section 1861(v)(1)(L)(vi) of the Act states that for new HHAs and agencies without a 12-month cost reporting that ended in FY 1994 ("clause vi" HHAs), the per-beneficiary limitation is the median of these limitations applied to other HHAs, as determined by the Secretary.

A. Less Than a Twelve-Month Cost Reporting Period During Federal FY 1994

Without exception, all HHAs that did not have a 12-month cost reporting period that ended in Federal FY 1994 will have the national per-beneficiary limitation applied to the agency's unduplicated census count of Medicare beneficiaries for the cost reporting period beginning on and after October 1, 1997. The national per-beneficiary limitation that applies to the unduplicated census count of Medicare beneficiaries for "clause vi" HHAs is in Table 3b.

B. HHAs Entering the Medicare Program After Federal FY 1994

New HHAs that entered the Medicare program after Federal FY 1994 will have the national per-beneficiary limitation applied to the unduplicated census count of Medicare beneficiaries for cost reporting periods beginning on or after October 1, 1997. A new HHA is one that did not have approval to participate in the Medicare program under present or previous ownership prior to October 1, 1993.

C. Other

There are cases in which there could be changes in a "clause v" type HHA's operational structure, after Federal FY 1994, that could have an impact on the determination of the per-beneficiary limitation that is applicable to the HHA for cost reporting periods beginning on or after October 1, 1997. Examples of such changes are mergers, consolidations, and changes in ownership resulting in a change in the operational structure. The policies that apply when there are changes in the operational structure of an HHA after its cost reporting ended after FY 1994 are as follows:

1. Mergers or Consolidations of Like HHAs (Two or More Freestanding or Two or More Provider-Based Agencies) With Cost Reporting Periods Ending in Federal Fiscal Year 1994

There could be cases in which the merger or consolidation of two or more like HHAs (freestanding or provider-based) would not alter the surviving HHA's corporate structure, but applying the surviving HHA's per-beneficiary limitation to the combined operational structure would not be appropriate. Therefore, if two or more like HHAs (two or more freestanding agencies or two or more provider-based agencies) that had cost reporting periods that ended in Federal FY 1994 merge or consolidate after Federal FY 1994, the per-beneficiary limitation will be recalculated based on an average of the agencies' Medicare costs weighted by their unduplicated census counts in Federal FY 1994. If the agencies have different cost reporting period year ends, the costs must be inflated to common year end dates. For example, HHA 1, with a cost reporting period that ended March 31, 1994, merged on December 1, 1996 with HHA 2, with a cost reporting period that ended November 30, 1993. HHA 2's corporate structure did not change, but the operational structure changed with the inclusion of HHA 1. The Medicare allowable reasonable costs, the aggregate per-visit limitation, and the nonroutine medical supply costs of HHA 1 will be updated to November 30, 1996. The Medicare allowable costs, the aggregate per-visit limitation, and the nonroutine medical supply costs of HHA 2 will be updated to November 30, 1996. The lesser of the combined updated Medicare allowable reasonable costs or the combined updated aggregate per-visit limitation, plus the combined updated nonroutine medical supply costs will be divided by the combined unduplicated patient census counts. The weighted average per-beneficiary amount will then be further updated to October 31, 1998 to derive the per-beneficiary limitation that applies to the HHA's cost reporting period which began November 1, 1997. The same procedures would apply if HHA 1 and HHA 2 were subunits in Federal FY 1994.

2. Mergers or Consolidations When Only One of the HHAs Had a Cost Report That Ended in Federal Fiscal 1994

There could be situations in which two or more HHAs merge or consolidate into one after Federal FY 1994 and only one of the HHAs had a cost reporting period ending in Federal FY 1994. The statute is specific as to what per-beneficiary limitation applies to agencies with cost reporting periods ending in Federal FY 1994 and what per-beneficiary limitation applies to agencies that do not have a cost reporting period ending in Federal FY 1994. The two methodologies do not interrelate sufficiently to allow the application of a methodology similar to the methodology described in section III. C.1. above. Because the two methodologies do not interrelate, we have taken a position that we believe is equitable within the constraints of the statute. If HHAs merge or consolidate after Federal FY 1994 and only one of the HHAs had a cost reporting period that ended in Federal FY 1994, the agency will be considered a "clause vi" agency with respect to applying the per-beneficiary limitation. That is, the per-beneficiary limitation will be the national per-beneficiary limitation that applies to new agencies.

3. Complete Changes in the Operational Structure of the HHA

There are situations when the costs of operations of the HHA could change either through a change of ownership or an internal reconfiguration of the operational structure within the same HHA after Federal FY 1994. Examples of this would be a freestanding agency becoming a provider-based agency or vice-versa. Even though this could be construed as an agency which has merely altered its corporate structure, the costs of operations are significantly different between a freestanding agency and a provider-based agency. We do not

believe the statute was intended to advantage or disadvantage different classes of agencies whose means of determining overhead costs are completely different. Generally, a freestanding agency has control over the overhead costs it incurs while a provider-based agency has little, if any, control over the overhead costs it incurs. Therefore, if "clause v" freestanding HHAs become provider-based, and vice versa, through a change in ownership or other means, after Federal FY 1994, these agencies will be considered "clause vi" agencies with respect to applying the per-beneficiary limitation. We also noted that branches within HHAs generally do not have direct overhead costs specifically identified to them on the Medicare cost report. HHAs that have branches report costs on the Medicare cost report as a single agency. As such, the branch does not exist as an independent agency certified by Medicare. The branch is encompassed in the parent agency's certification. Therefore, when branches within HHAs that have a cost reporting period ending in Federal FY 1994 become subunits after Federal fiscal 1994, whereby they are certified under Medicare to operate as a freestanding HHA, these new subunits will be considered "clause vi" agencies with respect to applying the per-beneficiary limitation.

IV. Market Basket

The 1993-based cost categories and weights are listed in Table 1 below.

TABLE 1.—1993-BASED COST CATEGORIES, BASKET WEIGHTS, AND PRICE PROXIES

Cost category	1993-based market basket weight	Price proxy
Compensation, including allocated Contract Services' Labor	77.668	
Wages and Salaries, Including allocated Contract Services' Labor.	64.226	HHA Occupational Wage Index.
Employee benefits, including allocated Contract Services' Labor.	13.442	HHA Occupational Benefits Index.
Operations & Maintenance	0.832	CPI–U Fuel & Other Utilities.
Administrative & General, including allocated Contract Services' Non-Labor	9.569	
Telephone	0.725	CPI–U Telephone.
Paper & Printing	0.529	CPI–U Household Paper, Paper Products & Stationery Supplies.
Postage	0.724	CPI–U Postage.
Other Administrative & General, including Allocated Contract Services Non-Labor.	7.591	CPI–Services.
Transportation	3.405	CPI–U Private Transportation.
Capital-Related	3.204	
Insurance	0.560	CPI–U Household Insurance.
Fixed Capital	1.764	CPI–U Household Insurance.
Movable Capital	0.880	PPI Machinery & Equipment.
Other Expenses, including allocated Contract Services' Non-Labor..	5.322	CPI–U All Items Less Food & Energy.
Total	100.000	

V. Methodology for Determining Per-Beneficiary Limitation

A. Agency-Specific Per-Beneficiary Limitation

Section 1861(v)(1)(L)(v) of the Act, in part, requires that 75 percent of the per-beneficiary limitation be based on 98 percent of the reasonable costs for the agency's 12-month cost reporting period during Federal FY 1994. Reasonable costs are defined as the lesser of the actual Medicare aggregate costs of discipline services or the aggregate discipline per-visit limitation. The Medicare allowable costs of nonroutine supplies is added to this amount and multiplied by 98 percent. The result of this computation is then divided by the HHA's Federal FY 1994 unduplicated census count of Medicare beneficiaries to derive the agency-specific limitation which will be 75 percent of the per-beneficiary limitation.

The computation of the agency-specific per-beneficiary limitation is performed by the HHA's intermediary. For provider-based HHAs, the reasonable costs are the lesser of line 7, columns 8 and 9, or line 14 columns 8 and 9, plus line 15, columns 8 and 9, as reported on Supplemental Worksheet H–5 (Form HCFA–2552–92-H (4/93)), of the Medicare cost report for the cost reporting period ending in Federal fiscal 1994, multiplied by 98 percent. The results are divided by the unduplicated census count of Medicare beneficiaries, as provided by HCFA. For freestanding HHAs, the reasonable costs are the lesser of line 7, column 9, or line 14, column 9, plus line 17, columns 7 and 8, as reported on Worksheet C (Form HCFA–1728–86 (6/76)) of the Medicare cost report for the cost reporting period ending during Federal FY 1994, multiplied by 98 percent. The results are divided by the unduplicated census count for Medicare beneficiaries, as provided by HCFA.

The agency-specific per-beneficiary limitation must also be adjusted using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting period ending during Federal FY 1994 and the cost reporting period ending during FY 1998. The factors for inflating the agency-specific per-beneficiary limitation are provided on Tables 2 and 5 or determined using Table 6.

In establishing the agency-specific per-beneficiary limitation, it is important that the amount determined is an accurate reflection of the home health services provided to Medicare beneficiaries in Federal FY 1994. Because the per-beneficiary limitation required by section 1861(v)(1)(L)(v)(I) of the Act is established, in part, using agency-specific cost report data during Federal FY 1994, and the unduplicated census count of Medicare beneficiaries

as may have been reported on the cost report is not being used in the computation, we are allowing HHAs to request a review of the calculation of the agency-specific limitation which includes the number of unduplicated counts of Medicare beneficiaries used in the computation. HHAs will have 180 days from the notification date of the agency-specific per-beneficiary limitation to request a review from its intermediary that the number of unduplicated census counts of Medicare beneficiaries as provided by HCFA is incorrect or other data from the Federal FY 1994 cost report used in the calculation of the agency-specific amount is/are incorrect. The HHA would bear the burden of proof to document its proffer of the appropriate number of unduplicated census counts of Medicare beneficiaries or the other appropriate data used in the calculation. An unduplicated census count of Medicare beneficiaries is a count of one for each Medicare patient receiving home health services from an HHA during its cost reporting period, regardless of the number of services or the number of different plans of care that the patient may have been under during the HHA's cost reporting period. If the agency can demonstrate to the satisfaction of the intermediary that a change should be made, the intermediary would appropriately recalculate the agency-specific per-beneficiary limitation. The intermediary must provide to the HHA its determination, in writing, whether or not an adjustment is provided.

B. Census Division Standardized Regional Average Per-Beneficiary Limitations

Section 1861(v)(1)(L)(v)(I) of the Act requires, in part, that 25 percent of the per-beneficiary limitation be based on 98 percent of the standardized regional average of such costs for the agency's census division for cost reporting periods ending during Federal FY 1994 and such costs updated by the home health market basket index.

The standardized regional average per-beneficiary limitations by census region were determined by extracting settled actual data from Medicare cost reports ending in Federal FY 1994 for freestanding and provider-based HHAs. The unduplicated census counts in the data file were replaced with the unduplicated census counts of Medicare beneficiaries generated using the SAF. Section 1861(v)(1)(L)(iii) of the Act, as amended by section 4604 of BBA '97, requires that we base the payments for home health services on the location where the services are provided. The file created from the SAF accumulated the number of beneficiaries in each MSA/non-MSA area serviced by each HHA. This file was created by matching all claims to each agency's cost reporting period to determine the unduplicated census counts by MSA/non-MSA area. This file was merged with the cost report file and replaced the unduplicated census counts reported by the HHAs on the Medicare cost report. HHAs were grouped within their appropriate census region based on the HHAs' State and county code. Agencies not located in a census region, e.g. Puerto Rico, were grouped separately rather than arbitrarily assigned to a census region.

In order to account for the statutory requirement that the wage index used in calculating the limitations be based on the location where the home health service was furnished rather than the location of the HHA, it was necessary to develop a wage-index weighted by the number of beneficiaries in each MSA/non-MSA in each census region. The unduplicated census counts of Medicare beneficiaries for each MSA/non-MSA serviced by the HHA were multiplied by the appropriate wage index that applied to that MSA/non-MSA. The product of these computations were totaled for each HHA to yield a wage index adjusted unduplicated census count of Medicare beneficiaries. The lesser of the Medicare reasonable costs or aggregate per-visit limitation plus nonroutine medical supplies for each HHA were totaled for each census region. The total costs in each census region was divided by the total wage index adjusted unduplicated census counts of Medicare beneficiaries in each region to arrive at a standardized average cost per-beneficiary for the labor component. This approximates the same effect as though each HHA in the census region had its average costs per-beneficiary adjusted by its average wage-index for the beneficiaries serviced in its service areas. We then adjusted the average per-beneficiary limitations using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods that ended in Federal FY 1994 and September 30, 1998 excluding any changes in the home health market basket with respect to cost reporting periods which began on or after, July 1, 1994 and before July 1, 1996 as shown in Table 2 below.

The statute is silent with respect to the regional per-beneficiary limitation that would apply to Puerto Rico and Guam. Neither of these areas fall within the census divisions referred in the statute. We do not believe it was the intent of Congress to have HHAs in Puerto Rico and Guam subject to a blend of 75 percent agency-specific per beneficiary limitation and 25 percent of zero since they do not fall within the census divisions. Therefore, based on the HHAs in our data base that are located in Puerto Rico and Guam, we have developed regional per-beneficiary limitations specific to Puerto Rico and Guam using the same methodology as we used for the census divisions. These per-beneficiary limitations for which 25 percent of the per-beneficiary limitation will be based can be found on Table 3c.

C. National Per-Beneficiary Limitation

Section 1861(v)(1)(L)(vi)(I) of the Act, as added by section 4602(c) of BBA '97, requires that for new HHAs and HHAs without a 12-month cost reporting period ending in Federal FY 1994, the per-beneficiary limitation will be the median of these limitations applied to other HHAs. This means that we must establish a national per-beneficiary limitation based on "the median of these limits (or the Secretary's best estimates thereof) applied to other HHAs as determined by the Secretary", referring back to the per-beneficiary limitations that apply to HHAs that have a cost reporting period ending in Federal FY 1994. This required us to calculate the per-beneficiary limitation for each HHA in our data base, blending the 75 percent agency-specific per-beneficiary component with the 25 percent census region per-beneficiary component. Because the wage index will be applied to the labor component of the census region per-beneficiary limitation for "clause v" HHAs in determining the aggregate per-beneficiary limitation, we adjusted the census region per-beneficiary limitations for the varying effects of the wage indexes. This adjustment methodology used a beneficiary-weighted wage adjustment factor based on the geographic location of beneficiaries in our data base as described in B. above. We blended the agency-specific per-beneficiary component with the standardized census region per-beneficiary component, arrayed the results, and established the median per-beneficiary amount. This is the "unadjusted median per-beneficiary limitation". In order to apply a wage index adjustment factor to the national per-beneficiary limitation, the median per-beneficiary limitation had to be adjusted to standardize the agency-specific per-beneficiary component in the same fashion as the census region per-beneficiary limitation component so that the final labor component to which the new agencies

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would apply their appropriate wage indexes would be uniformly standardized in both its agency-specific per-beneficiary limitation component and its census region per-beneficiary component. To standardize the agency-specific per-beneficiary component of the median per-beneficiary limitation, we calculated an adjustment factor to apply to the median per-beneficiary limitations. The adjustment factor was determined by calculating the ratio of the fully standardized per-beneficiary median (standardized for both the agency specific and the census region amounts) and the unadjusted blended median of the "clause v" agencies. It is the labor component of this adjusted median of the per-beneficiary limitations for the agencies in our data base, standardized in both the 75 percent agency-specific per beneficiary limitation and the 25 percent census region per-beneficiary limitation components to which new agencies will apply their appropriate wage indexes.

In summary, we calculated a national per-beneficiary limitation based on the median of the per-beneficiary limitations that apply to HHAs that have a cost reporting period ending during Federal FY 1994. To establish this national per-beneficiary limitation, we blended 75 percent agency-specific per-beneficiary component with the 25 percent census region division per-beneficiary component for each agency in our data base, arrayed the results and determined the median. The application of this median per-beneficiary limitation requires that we apply a wage index to the labor component of the national per-beneficiary limitation. In calculating the median to be used as the national per-beneficiary limitation for new agencies and agencies without a 12-month cost reporting period ending during Federal FY 1994, we recognized that the agency-specific component was not standardized for the effects of area wage differences. In order to apply a wage index, we determined an appropriate adjustment factor to apply to the national per-beneficiary limitation that effectively took out any differences in area wages for the agency-specific component of the median per-beneficiary limitation. The result is a fully standardized national per-beneficiary limitation.

D. Update of Data Base

The data used to develop the per-beneficiary limitations and the national per-beneficiary limitation was adjusted using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 1998, excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. The following inflation factors were used in calculating the Census region and national per-beneficiary limitations:

TABLE 2.—FACTORS FOR INFLATING DATABASE DOLLARS TO SEPTEMBER 30, 1998

[Inflation adjustment factors [1]]

Fiscal Year End	1993	1994
October 31	1.08619	
November 30	1.08349	
December 31	1.08080	
January 31		1.07813
February 28		1.07550
March 31		1.0729
April 30		1.07046
May 31		1.06800
June 30		1.06565
July 31		1.06354
August 31		1.06165
September 30		1.05993

[1] Source: The Home Health Agency Price Index, produced by HCFA. The forecasts are from Standard and Poor's DRI 3rd QTR 1997; @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

Multiplying nominal dollars for a given FY end by their respective inflation adjustment factor will express those dollars in the dollar levels for the FY ending September 30, 1998.

The procedure followed to develop these tables, based on requirements from BBA '97, was to hold the June 1994 level for input price index constant through June 1996. From July 1996 forward, we trended the revised index forward using the percentage gain each month from the HCFA Home Health Agency Input Price Index.

Thus, the monthly trend of the revised index is the same as that of the HCFA market basket for the period from July 1996 forward.

E. Short Period Adjustment Factors for Cost Reporting Periods Consisting of Fewer Than 12 Months

HHAs with cost reporting periods beginning on or after October 1, 1997 may have cost reporting periods that are less than 12 months in length. This may happen, for example, when a new provider enters the Medicare program after its selected FY has already begun, or when a provider experiences a change of ownership before the end of the cost reporting period. As explained in section V. of this preamble, the data used in calculating the census region and the national per-beneficiary limitations were updated to September 30, 1998. Therefore, the cost limitations published in this document are for a 12-month cost reporting period beginning October 1, 1997 and ending September 30, 1998. For 12-month cost reporting periods beginning after October 1, 1997 and before October 1, 1998, cost reporting period adjustment factors are provided in Table 5. However, when a cost reporting period consists of fewer than 12 months, adjustments must be made to the data that have been developed for use with 12-month cost reporting periods. To promote the efficient dissemination of cost limitations to agencies with cost reporting periods of fewer than 12 months, we are publishing an example and tables to enable intermediaries to calculate the applicable adjustment factors.

Cost reporting periods of fewer than 12 months may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process in calculating "short

period" adjustment factors, if the short cost reporting period begins before the sixteenth of the month, we will consider the period to have begun on the first of that month. If the start period begins on or after the sixteenth of the month, it will be considered to have begun at the beginning of the next month. Also, if the short period ends before the sixteenth of the month, we will consider the period to have ended at the end of the preceding month; if the short period ends on or after the sixteenth of the month, it will be considered to have ended at the end of that month.

Example

1. After approval by its intermediary, a "clause v" HHA changed its FY end from June 30 to December 31. Therefore, the HHA had a short cost reporting period beginning on July 1, 1998 and ending on December 31, 1998. The cost reporting period ending during Federal FY 1994 would have been the cost reporting period ending on June 30, 1994. The per visit limitation that applies to this short period must be adjusted as follows:

Step 1—From Table 6, sum the index levels for the months of July 1998 through December 1998: 6.63687

Step 2—Divide the results from Step 1 by the number of months in short period: 6.6387 ÷ =1.106145

Step 3—From Table 6, sum the index levels for the months in the common period of October 1997 through September 1998: 13:06926

Step 4—Divide the results in Step 3 by the number of months in the common period: 13.06926 ÷ 12 = 1.089105

Step 5—Divide the results from Step 2 by the results from Step 4. This is the adjustment factor to be applied to the published per-beneficiary limitations: 1.106145 ÷ 1.1089106 = 1.015646

Step 6—Apply the results from Step 5 to the published per-beneficiary limitations in the same manner as shown in the example in VIII.C.

VI. Exceptions or Adjustments to Per-beneficiary Limitation

The Medicare regulations at 42 CFR 413.30 contain the general rules under which HCFA may establish limitations on provider costs, including provisions under which a provider may request a reclassification, exception, or exemption from the cost limitations under that section.

We do not believe that the Congress intended these general rules to apply to the establishment of the per-beneficiary limitations. First, we note that unlike other provisions of the statute that provide specific language for exceptions or exemptions to the limitations on costs, the statute is silent with respect to providing exceptions or exemptions to the per-beneficiary limitations. Section 1861(v)(1)(L)(ii) of the Act, which addresses the application of the per-visit limitations, is very specific that the Secretary may provide exemptions or exceptions to the per-visit limitations that are applied on a discipline basis. There is no similar language under sections 1861(v)(1)(L)(v) and 1861(v)(1)(L)(vi) of the Act, which provides for the establishment of the per-beneficiary limitations. Moreover, it seems unlikely that Congress intended for exceptions or exemptions to apply to the per-beneficiary limitations since in establishing the mid-session budget, there were no monies earmarked from the projected Medicare savings to pay for exemptions or exceptions to the per-beneficiary limitation.

Therefore, we are not allowing agencies to file for exceptions or exemptions to the per-beneficiary limitations.

We are revising section 413.30(a) to recognize the addition of the per-beneficiary cost limitation as a limitation on costs. Also, we are revising section 413.30(c) to state that HHAs may not request a reclassification, an exception, or an exemption from the per-beneficiary cost limitation.

VII. Review of the Agency-Specific Per-Beneficiary Limitation

For HHAs with a cost reporting period ending during Federal FY 1994, 75 percent of the per-beneficiary limitation is based on the Medicare data contained in that cost report.

We recognize that for most HHAs, that cost report has been settled and unless the HHA has an appeal with respect to the cost settlement pending for that FY, the data contained within the agency-specific per-beneficiary calculation has been settled. HHAs that have pending appeals (for example, an outstanding cost limitation exception to the per-visit limitation or appeals of adjustments resulting from Medicare principles of reimbursement) that may impact the cost reporting data used in calculation of the agency-specific portion of the per-beneficiary limitation, will have the agency-specific per-beneficiary limitation recalculated when the appeal is favorably resolved on behalf of the HHA.

There are, however, certain data used from the cost report in calculating the per-beneficiary limitations that do not impact the settlement of the cost report, that is, the use of the number of unduplicated census counts of Medicare beneficiaries whereby a reopening request of the cost report would not be warranted. This is particularly of concern since the unduplicated census counts on the Medicare cost reports have been alleged to be incorrect and HCFA will be providing the unduplicated census counts to be used by the intermediaries in calculating the agency-specific per-beneficiary limitation.

Given the importance of the calculation of the agency-specific per-beneficiary limitation, we are allowing HHAs 180 days after the date of the notice by the intermediary of the HHA's agency-specific per-beneficiary limitation to request a review of the agency-specific per-beneficiary calculation. The request may address the specific data used in calculating the agency-specific per-beneficiary limitation as shown on the Medicare cost report (that is, the lesser of Medicare reasonable costs or the aggregate per-visit limitation), the costs of nonroutine medical supplies, the unduplicated census count provided by HCFA, or the appropriate market basket increases, as provided in this document. This request for review may also address the calculation such as addition, subtraction, multiplication, or division. This request for review is not applicable to those cost report settlement appeals, which may have an impact on the data used in calculating the agency-specific per-beneficiary limitation and are pending under another authority under the Medicare regulations or statute. The agency's request must include sufficient documentation for the intermediary to determine that a recalculation of the agency-specific per-beneficiary limitation is warranted.

After receipt of all the necessary documentation needed to make a sound determination on the agency's request, the intermediary must respond to the request within 90 days of receiving the fully documented request.

VIII. Computing the Per-Beneficiary Limitation

A. Agency-Specific Per-Beneficiary Limitation

To arrive at the agency-specific limitation, which will represent 75 percent of the total per-beneficiary limitation that is to apply to the unduplicated census count of the Medicare beneficiaries for cost reporting periods beginning on or after October 1, 1997, the intermediary will calculate as follows from data on the Medicare cost report for the cost reporting period ending during Federal FY 1994:

For provider-based HHAs, the lesser of line 7, columns 8 and 9, or line 14, columns 8 and 9 plus line 15 columns 8 and 9, as reported on Supplemental Worksheet H–5 (Form HCFA–2552–92–H(4/93) OMB approval number 0938–0050, expiration date 08/31/2000), multiplied by 98 percent and the product divided by the unduplicated census count of Medicare beneficiaries,

as provided by HCFA, times the appropriate market basket increases from Tables 2 and 5; determined using Table 6.

For freestanding HHAs, the lesser of line 7, column 9, or line 14, column 9, plus line 17, columns 7 and 8, as reported on Worksheet C (Form HCFA–1728–86 (6/76)), multiplied by 98 percent and the product divided by the unduplicated census count of Medicare beneficiaries, as provided by HCFA, times the appropriate market basket increases from Tables 2 and 5 or determined using Table 6.

The product of the calculation of the agency-specific limitation is multiplied by 75 percent to arrive at the agency-specific portion of the per-beneficiary limitation.

To arrive at the regional census division per-beneficiary limitation, which will represent 25 percent of the overall per-beneficiary limitation, the HHA's intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the appropriate regional census division per-beneficiary limitation where the beneficiary(s) received HHA services by the appropriate wage index based on where the beneficiary(s) received HHA services. The nonlabor component of the appropriate regional census division per-beneficiary limitation is added to the adjusted labor component and multiplied by 98 percent. The results are then multiplied by 25 percent. The 75 percent agency-specific portion is added to the 25 percent adjusted regional census division portion to arrive at the adjusted per-beneficiary limitation, which will be multiplied by the total unduplicated patient census count of patients for whom services were furnished in that area.

A separate per-beneficiary limitation has to be calculated for each MSA and/or nonMSA serviced by the HHA.

The aggregate limitation for all MSA and/or non-MSA areas for each HHA will be compared to the lower of the Medicare reasonable costs or the aggregate per-visit limitation and the lowest amount after this comparison is the allowable Medicare reasonable costs for payment purposes. The following is an example of how the per-beneficiary limitations are calculated for "clause v" type agencies which provide services to Medicare beneficiaries in more than one MSA area. The aggregate per-beneficiary limitation calculation example is given at section IX.

Example: Calculation of Per-Beneficiary Limitations for an HHA Furnishing Services to Patients Both in Dallas, Texas and Patients in Rural Texas

Blended Per-Beneficiary Limitation for Services in Dallas MSA

Agency-Specific Component

1. Agency-Specific Per-beneficiary Limitation $6,000. (As calculated by the intermediary)
2. Adjusted Agency-Specific Per-beneficiary Limitation (Line 1 × .75)=$4,500.

Census Region Division Component

3. Labor Portion of West South Central Region Per-beneficiary Limitation $4,456.47. (From Table 3a)
4. Dallas, TX Wage Index .9703. (From Table 4a)
5. Adjusted Labor Portion (Line 3 Times Line 4)= $4,324.11.
6. Nonlabor Portion of West South Central Region Per-beneficiary Limitation $1,281.37. (From Table 3a)
7. Adjusted West South Central Region Per-beneficiary Limitation (((Line 5 Plus Line 6)X .98) X .25)= $1,373.34.

Agency-Specific/Census Region Division Blended Per-Beneficiary Limitation

8. Blended Per-beneficiary Limitation for HHA services furnished to Medicare beneficiaries in Dallas, Texas(Line 2 Plus Line 7) = $5,873.34.

Per-Beneficiary Limitation for Services in Rural Texas/Census Region Division Component

9. Labor Portion of West South Central Region Per-beneficiary = $4,456.47. (From Table 3a)
10. Rural Texas Wage Index = .7404. (From Table 4b)
11. Adjusted Labor Portion (Line 9 X Line 10) = $3,299.57.
12. Nonlabor portion of West South Central Region Per-beneficiary Limitation = $1,281.37. (From Table 3a)
13. Adjusted Per-beneficiary Limitation (((Line 11 Plus Line 12)X .98) X.25) = $1,122.33.

Agency-Specific/Census Region Division Blended Per-Beneficiary Limitation

14. Blended Rural Per-beneficiary Limitation for HHA services furnished to Medicare beneficiaries in rural Texas (Line 2 Plus Line 13) = $5,622.33.

The process shown in the above examples would have to be repeated for each MSA and/or non-MSA where the HHA has an unduplicated census count of Medicare beneficiaries which received HHA services.

B. National Per-Beneficiary Limitation

New HHAs, HHAs without a 12-month cost reporting period ending during Federal FY 1994, and certain other HHAs described in section III.C. will be subject to a national per-beneficiary limitation.

As with the census region division per-beneficiary limitations, the national per-beneficiary limitation has a labor-related component and a nonlabor component. To arrive at the adjusted national per-beneficiary limitation, which is to apply to each unduplicated census count of Medicare beneficiary based on where the HHA services were furnished, the intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the national per-beneficiary limitation by the appropriate wage index based on where the beneficiary received the HHA services.

The sum of the adjusted labor-related component and nonlabor component is the adjusted national per-beneficiary limitation applicable to the unduplicated census count of Medicare beneficiaries in the area for which the wage index was used. The following is an example of the calculation of the per-beneficiary limitations for a new HHA providing services to Medicare beneficiaries in more than one MSA area.

Example: Calculation of Adjusted National Per-Beneficiary Limitations for a Provider-Based HHA Providing HHA Services to an Unduplicated Census Count of Medicare Beneficiaries of in Dallas, Texas, and an Unduplicated Census Count of Medicare Beneficiaries in Rural Texas

National Per-Beneficiary Limitation for Dallas, Texas

1. Labor component of national per-beneficiary limitation = $2,607.07. (From Table 3b)
2. Wage-index applicable to Dallas, Texas = .9703 (From Table 4a)
3. Adjusted labor component (Line 1 X Line 2) = $2,529.64.
4. Nonlabor component of national per-beneficiary limitation $749.62. (From Table 4b)
5. Adjusted national per-beneficiary limitation (Line 3 Plus Line 4) X .98 = $3,213.67.

National Per-Beneficiary Limitation for Rural Texas

6. Labor component of national per-beneficiary limitation = $2,607.07. (From Table 4b)
7. Wage index applicable to rural Texas = .7404. (From Table 4b)
8. Adjusted labor component of national per-beneficiary (Line 6 X Line 7) = $1,930.27.
9. Nonlabor component of national per-beneficiary limitation = $749.62. (From Table 3b)
10. Adjusted national per-beneficiary limitation ((Line 8 Plus Line 9) X .98) = $2,626.29.

C. Adjustment Factor for Reporting Year Beginning After October 1, 1997 and Before October 1, 1998

If an HHA has a 12-month cost reporting period beginning on or after November 1, 1997, the adjusted census region division per-beneficiary

limitation or the adjusted national per-beneficiary limitation is again revised by an adjustment factor from Table 5 that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the per-beneficiary limitations become effective.

In adjusting the agency-specific per-beneficiary limitation for the market basket increases since the end of the cost reporting period ending during Federal year 1994, the intermediary should increase the agency-specific per-beneficiary limitation to September 30, 1998. Thus, when the per-beneficiary limitation needs to be further adjusted for the cost reporting period, the adjusted blended per-beneficiary limitation can be adjusted by the same factor. For example, if the HHAs in the examples above had a cost reporting period beginning January 1, 1998, its per-beneficiary limitations would be further adjusted as follows:

Computation of Revised Per-Beneficiary Limitations Blended per-beneficiary limitation for Dallas MSA = $5,873.34.

Adjustment factor from Table 5. 1.00781

Adjusted blended per-beneficiary limitation for Dallas MSA $5,919.21

National per-beneficiary limitation for Dallas, Texas = 3,213.67

Adjustment factor from Table 5. 1.00781

Adjusted national per-beneficiary limitation = $3,238.77

IX. Schedule of Per-Beneficiary Limitations

The schedule of per-beneficiary limitations set forth below applies to cost reporting periods beginning on or after October 1, 1997. The intermediaries will compute the adjusted per-beneficiary limitations using the wage index(s) published in Tables 4a and 4b of section X. for each MSA and/or non MSA for which the HHA provides services to Medicare beneficiaries. The intermediary will notify each HHA it services of its applicable per-beneficiary limitation(s) for the area(s) where the HHA furnishes HHA services to Medicare beneficiaries. Each HHA's aggregate per-beneficiary limitation cannot be determined prospectively, but depends on each HHA's unduplicated census count of Medicare beneficiaries by location of the HHA services furnished for the cost reporting periods subject to this document.

Section 1861(v)(1)(L)(vi)(II) of the Act as added by section 4602(c) of BBA '97, requires the per-beneficiary limitations to be prorated among HHAs for Medicare beneficiaries who use services furnished by more than one HHA. The per-beneficiary limitation will be prorated based on a ratio of the number of visits furnished to the individual beneficiary by the HHA during its cost reporting period to the total number of visits furnished by all HHAs to that individual beneficiary during the same period.

The proration of the per-beneficiary limitation will be done based on the fraction of services the beneficiary received from the HHA. For example, if an HHA furnished 100 visits to an individual beneficiary during its cost reporting period ending September 30, 1998, and that same individual received a total of 400 visits during that same period, the HHA would count the beneficiary as a .25 unduplicated census count of Medicare patient for the cost reporting period ending September 30, 1998.

The HHA costs that are subject to the per-beneficiary limitations include the costs of nonroutine medical supplies furnished in conjunction with patient care. Durable medical equipment and drugs directly identifiable as services to an individual patient are excluded from the per-beneficiary limitations and are paid without regard to this schedule of per-beneficiary limitations.

The intermediary will determine the aggregate per-beneficiary limitation for each HHA by multiplying the unduplicated census count of Medicare beneficiaries according to the location where the services are furnished by the HHA, by the respective per-beneficiary limitation. The sum of these amounts is compared to the lesser of the HHA's total allowable costs or the aggregate per-visit limitation plus the allowable Medicare costs of nonroutine medical supplies. An example of how the aggregate per-beneficiary limitation is computed for an HHA providing HHA services to Medicare beneficiaries in both Dallas, Texas and rural Texas is as follows:

Example: HHA X, a HHA located in Dallas, TX, has unduplicated census count of 400 Medicare beneficiaries in the Dallas MSA and an unduplicated census count of 200 Medicare beneficiaries in rural Texas during its 12-month cost reporting period ending September 30, 1998. For simplicity, we are using the same blended per-beneficiary limitation that is used in the example under VIII. A above. The aggregate per-beneficiary limitation is calculated as follows:

DETERMINING THE AGGREGATE PER-BENEFICIARY LIMITATION

MSA/non-MSA area	Per beneficiary limitation [1]	Unduplicated census count of Medicare beneficianes	Total limitation
Dallas, TX	$5,873.34	400	$2,349,336
Rural, TX	5,622.33	200	1,124,466
Aggregate Limitation			3,473,802

[1] Blended per-beneficiary limitation adjusted by the appropriate wage index.

TABLE 3A.—STANDARDIZED PER-BENEFICIARY LIMITATION BY CENSUS REGION DIVISION, LABOR/NONLABOR

Census region division	Labor component	Nonlabor component
New England (CT, ME, MA, NH, RI, VT)	$2,670.73	$ 767.92
Middle Atlantic (NJ, NY, PA)	1,979.21	569.08
South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,985.69	858.48
East North Central (IL, IN, MI, OH, WI)	2,421.00	696.11

TABLE 3A.—STANDARDIZED PER-BENEFICIARY LIMITATION BY CENSUS REGION DIVISION, LABOR/NONLABOR—Continued

Census region division	Labor component	Nonlabor component
East South Central (AL, KY, MS, TN)	4,590.61	1,319.94
West North Central (IA, KS, MN, MO, NE, ND, SD)	2,325.36	660.62
West South Central (AR, LA, OK, TX)	4,456.47	1,281.37
Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,936.88	844.44
Pacific (AK, CA, HI, OR, WA)	2,275.12	654.17

TABLE 3B.—STANDARDIZED PER-BENEFICIARY LIMITATION FOR NEW AGENCIES AND AGENCIES WITHOUT A 12-MONTH COST REPORT ENDING DURING FEDERAL FY 1994

	Labor component	Nonlabor component
National	$2,607.07	$ 749.62

TABLE 3C.—STANDARDIZED PER-BENEFICIARY LIMITATIONS FOR PUERTO RICO AND GUAM

	Labor component	Nonlabor component
Puerto Rico	$1,940.26	$ 557.88
Guam	$1,873.76	$ 538.76

X. Wage Indexes

TABLE 4A.—WAGE INDEX FOR URBAN AREAS

	Urban area (constituent counties or county equivalents)	Wage index
0040	Abilene, TX; Taylor, TX	0.8287
0060	Aguadilla, PR; Aguada, PR; Aguadilla, PR; Moca, PR	0.4188
0080	Akron, OH; Portage, OH; Summit, OH	0.9772
0120	Albany, GA; Dougherty, GA; Lee, GA	0.7914
0160	Albany-Schenectady-Troy, NY; Albany, NY; Montgomery, NY; Rensselaer, NY; Saratoga, NY; Schenectady, NY; Schoharie, NY.	0.8480
0200	Albuquerque, NM; Bernalillo, NM; Sandoval, NM; Valencia, NM	0.9309
0220	Alexandria, LA; Rapides, LA	0.8162
0240	Allentown-Bethlehem-Easton, PA; Carbon, PA; Lehigh, PA; Northampton, PA	1.0086
0280	Altoona, PA; Blair, PA	0.9137
0320	Amarillo, TX; Potter, TX; Randall, TX	0.9425
0380	AK Anchorage, AK; Anchorage	1.2842
0440	Ann Arbor, MI; Lenawee, MI; Livingston, MI; Washtenaw, MI	1.1785
0450	Anniston, AL; Calhoun, AL	0.8266
0460	Appleton-Oshkosh-Neenah, WI; Calumet, WI; Outagamie, WI; Winnebago, WI	0.8996
0470	Arecibo, PR; Arecibo, PR; Camuy, PR; Hatillo, PR	0.4218
0480	Asheville, NC; Buncombe, NC; Madison, NC	0.9072
0500	Athens, GA; Clarke, GA; Madison, GA; Oconee, GA	0.9087
0520	Atlanta, GA; Barrow, GA; Bartow, GA; Carroll, GA; Cherokee, GA; Clayton, GA; Cobb, GA; Coweta, GA; DeKalb, GA; Douglas, GA; Fayette, GA; Forsyth, GA; Fulton, GA; Gwinnett, GA; Henry, GA; Newton, GA; Paulding, GA; Pickens, GA; Rockdale, GA; Spalding, GA; Walton, GA.	0.9823
0560	Atlantic City-Cape May, NJ; Atlantic City, NJ; Cape May, NJ	1.1155
0500	Augusta-Aiken, GA–SC; Columbia, GA; McDuffie, GA; Richmond, GA; Aiken, SC; Edgefield, SC	0.9333
0640	Austin-San Marcos, TX; Bastrop, TX; Caldwell, TX; Hays, TX; Travis, TX; Williamson, TX	0.9133
0680	Bakersfield, CA; Kern, CA	1.0014
0720	Baltimore, MD; Anne Arundel, MD; Baltimore, MD; Baltimore City, MD; Carroll, MD; Harford, MD; Howard, MD; Queen Anne, MD.	0.9689
0733	Bangor, ME; Penobscot, ME	0.9478
0743	Barnstable-Yarmouth, MA; Barnstable, MA	1.4291
0760	Baton Rouge, LA; Ascension, LA; East Baton Rouge, LA; Livingston, LA; West Baton Rouge, LA	0.8382
0840	Beaumont-Port Arthur, TX; Hardin, TX; Jefferson, TX; Orange, TX	0.8593
0860	Bellingham, WA; Whatcom, WA	1.1221
0870	Benton Harbor, MI; Berrien, MI	0.8634
0875	Bergen-Passaic, NJ; Bergen, NJ; Passaic, NJ	1.2156
0880	Billings, MT; Yellowstone, MT	0.9783
0920	Biloxi-Gulfport-Pascagoula, MS; Hancock, MS; Harrison, MS; Jackson, MS	0.8415
0960	Binghamton, NY; Broome, NY; Tioga, NY	0.8914
1000	Birmingham, AL; Blount, AL; Jefferson, AL; St. Clair, AL; Shelby, AL	0.9005
1010	Bismarck, ND; Burleigh, ND; Morton, ND	0.7695
1020	Bloomington, IN; Monroe, IN	0.9128
1040	Bloomington-Normal, IL; McLean, IL	0.8733

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
1080	Boise City, ID; Ada, ID; Canyon, ID	0.8856
1123	Boston-Worcester Lawrence-Lowell-Brockton, MA–NH; Bristol, MA; Essex, MA; Middlesex, MA; Norfolk, MA; Plymouth, MA; Suffolk, MA; Worcester, MA; Hillsborough, NH; Merrimack, NH; Rockingham, NH; Strafford, NH.	1.1506
1125	Boulder-Longmont, CO; Boulder, CO	1.0015
1145	Brazoria, TX; Brazoria, TX	0.9341
1150	Bremerton, WA; Kitsap, WA	1.0999
1240	Brownsville-Harlingen-San Benito, TX; Cameron, TX	0.8740
1260	Bryan-College Station, TX; Brazos, TX	0.8571
1280	Buffalo-Niagara Falls, NY; Erie, NY; Niagara, NY	0.9272
1303	Burlington, VT; Chittenden, VT; Franklin, VT; Grand Isle, VT;	1.0142
1310	Caguas, PR; Caguas, PR; Cayey, PR; Cidra, PR; Gurabo, PR; San Lorenzo, PR	0.4459
1320	Canton-Massillon, OH; Carroll, OH; Stark, OH	0.8961
1350	Casper, WY; Natrona, WY	0.9013
1360	Cedar Rapids, IA; Linn, IA	0.8529
1400	Champaign-Urbana, IL; Champaign, IL	0.8824
1440	Charleston-North Charleston, SC; Berkeley, SC; Charleston, SC; Dorchester, SC	0.8807
1450	Charleston, WV; Kanawha, WV; Putnam, WV	0.9142
1520	Charlotte-Gastonia-Rock Hill, NC–SC; Cabarrus, NC; Gaston, NC; Lincoln, NC; Mecklenburg, NC; Rowan, NC; Union, NC; York, SC.	0.9710
1540	Charlottesville, VA; Albemarle, VA; Charlottesville City, VA; Fluvanna, VA; Greene, VA	0.9051
1560	Chattanooga, TN–GA; Catoosa, GA; Dade, GA; Walker, GA; Hamilton, TN; Marion, TN	0.8658
1580	Cheyenne, WY; Laramie, WY	0.7555
1600	Chicago, IL; Cook, IL; DeKalb, IL; DuPage, IL; Grundy, IL; Kane, IL; Kendall, IL; Lake, IL; McHenry, IL; Will, IL	1.0860
1620	Chico-Paradise, CA; Butte, CA	1.0429
1640	Cincinnati, OH-KY-IN; Dearborn, IN; Ohio, IN; Boone, KY; Campbell, KY; Gallatin, KY; Grant, KY; Kenton, KY; Pendleton, KY; Brown, OH; Clermont, OH; Hamilton, OH; Warren, OH.	0.9474
1660	Clarksville-Hopkinsville, TN–KY; Christian, KY; Montgomery, TN	0.7852
1680	Cleveland-Lorain-Elyria, OH; Ashtabula, OH; Cuyahoga, OH; Geauga, OH; Lake, OH; Lorain, OH; Medina, OH	0.9804
1720	Colorado Springs, CO; El Paso, CO	0.9316
1740	Columbia, MO; Boone, MO	0.9001
1760	Columbia, SC; Lexington, SC; Richland, SC	0.9192
1800	Columbus, GA-AL; Russell, AL; Chattanoochee, GA; Harris, GA; Muscogee, GA	0.8288
1840	Columbus, OH; Delaware, OH; Fairfield, OH; Franklin, OH; Licking, OH; Madison, OH; Pickaway, OH	0.9793
1880	Corpus Christi, TX; Nueces, TX; San Patricio, TX	0.8945
1900	Cumberland, MD-WV; Allegany, MD; Mineral, WV	0.8822
1920	Dallas, TX; Collin, TX; Dallas, TX; Denton, TX; Ellis, TX; Henderson, TX; Hunt, TX; Kaufman, TX; Rockwall, TX	0.9703
1950	Danville, VA; Danville City, VA; Pittsylvania, VA	0.8146
1960	Davenport-Rock Island-Moline, IA–IL; Scott, IA; Henry, IL; Rock Island, IL	0.8405
2000	Dayton-Springfield, OH; Clark, OH; Greene, OH; Miami, OH; Montgomery, OH	0.9584
2020	Daytona Beach, FL; Flagler, FL; Volusia, FL	0.8375
2030	Decatur, AL; Lawrence, AL; Morgan, AL	0.8286
2040	Decatur, IL; Macon, IL	0.7915
2080	Denver, CO; Adams, CO; Arapahoe, CO; Denver, CO; Douglas, CO; Jefferson, CO	1.0386
2120	Des Moines, IA; Dallas, IA; Polk, IA; Warren, IA	0.8837
2160	Detroit, MI; Lapeer, MI; Macomb, MI; Monroe, MI; Oakland, MI; St. Clair, MI; Wayne, MI	1.0825
2180	Dothan, AL; Dale, AL; Houston, AL	0.8070
2190	Dover, DE; Kent, DE	0.9303
2200	Dubuque, IA; Dubuque, IA	0.8088
2240	Duluth-Superior, MN–WI; St. Louis, MN; Douglas, WI	0.9779
2281	Dutchess County, NY; Dutchess, NY	1.0632
2290	Eau Claire, WI; Chippewa, WI; Eau Claire, WI	0.8764
2320	El Paso, TX; El Paso, TX	1.0123
2330	Elkhart-Goshen, IN; Elkhart, IN	0.9081
2335	Elmira, NY; Chemung, NY	0.8247
2340	Enid, OK; Garfield, OK	0.7962
2360	Erie, PA; Erie, PA	0.8862
2400	Eugene-Springfield, OR; Lane, OR	1.1435
2440	Evansville-Henderson, IN-KY; Posey, IN; Vanderburgh, IN; Warrick, IN; Henderson, KY	0.8641
2520	Fargo-Moorhead, ND-MN; Clay, MN; Cass, ND	0.8837
2560	Fayetteville, NC; Cumberland, NC	0.8734
2580	Fayetteville-Springdale-Rogers, AR; Benton, AR; Washington, AR	0.7461
2620	Flagstaff, AZ-UT; Coconino, AZ; Kane, UT	0.9115
2640	Flint, MI; Genesee, MI	1.1171
2650	Florence, AL; Colbert, AL; Lauderdale, AL	0.7551
2655	Florence, SC; Florence, SC	0.8711
2670	Fort Collins-Loveland, CO; Larimer, CO	1.0248
2680	Ft. Lauderdale, FL; Broward, FL	1.0448
2700	Fort Myers-Cape Coral, FL; Lee, FL	0.8788
2710	Fort Pierce-Port St. Lucie, FL; Martin, FL; St. Lucie, FL	1.0257
2720	Fort Smith, AR–OK; Crawford, AR; Sebastian, AR; Sequoyah, OK	0.7769
2750	Fort Walton Beach, FL; Okaloosa, FL	0.8765
2760	Fort Wayne, IN; Adams, IN; Allen, IN; DeKalb, IN; Huntington, IN; Wells, IN; Whitley, IN	0.8901

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
2800	Forth Worth-Arlington, TX; Hood, TX; Johnson, TX; Parker, TX; Tarrant, TX	0.9979
2840	Fresno, CA; Fresno, CA; Madera, CA	1.0607
2880	Gadsden, AL; Etowah, AL	0.8815
2900	Gainesville, FL; Alachua, FL	0.9616
2920	Galveston-Texas City, TX; Galveston, TX	1.0564
2960	Gary, IN; Lake, IN; Porter, IN	0.9633
2975	Glens Falls, NY; Warren, NY; Washington, NY	0.8386
2980	Goldsboro, NC; Wayne, NC	0.8443
2985	Grand Forks, ND–MN; Polk, MN; Grand Forks, ND	0.8745
2995	Grand Junction, CO; Mesa, CO	0.9090
3000	Grand Rapids-Muskegon-Holland, MI; Allegan, MI; Kent, MI; Muskegon, MI; Ottawa, MI	1.0147
3040	Great Falls, MT; Cascade, MT	0.8503
3060	Greeley, CO; Weld, CO	1.0097
3080	Green Bay, WI; Brown, WI	0.9097
3120	Greensboro-Winston-Salem-High Point, NC; Alamance, NC; Davidson, NC; Davie, NC; Forsyth, NC Guilford, NC; Randolph, NC; Stokes, NC; Yadkin, NC.	0.9351
3150	Greenville, NC; Pitt, NC	0.9064
3160	Greenville-Spartanburg-Anderson, SC; Anderson, SC; Cherokee, SC; Greenville, SC; Pickens, SC; Spartanburg, SC.	0.9059
3180	Hagerstown, MD; Washington, MD	0.9581
3200	Hamilton-Middletown, OH; Butler, OH	0.8767
3240	Harrisburg-Lebanon-Carlisle, PA; Cumberland, PA; Dauphin, PA; Lebanon, PA; Perry, PA	1.0187
3283	Hartford, CT; Hartford, CT; Litchfield, CT; Middlesex, CT; Tolland, CT	1.2562
3285	Hattiesburg, MS; Forrest, MS; Lamar, MS	0.7192
3290	Hickory-Morganton-Lenoir, NC; Alexander, NC; Burke, NC; Caldwell, NC; Catawba, NC	0.8686
3320	Honolulu, HI; Honolulu, HI	1.1816
3350	Houma, LA; Lafourche, LA; Terrebonne, LA	0.7854
3360	Houston, TX; Chambers, TX; Fort Bend, TX; Harris, TX; Liberty, TX; Montgomery, TX; Waller, TX	0.9855
3400	Huntington-Ashland, WV–KY–OH; Boyd, KY; Carter, KY; Greenup, KY; Lawrence, OH; Cabell, WV; Wayne, WV	0.9160
3440	Huntsville, AL; Limestone, AL; Madison, AL	0.8485
3480	Indianapolis, IN; Boone, IN; Hamilton, IN; Hancock, IN; Hendricks, IN; Johnson, IN; Madison, IN; Marion, IN; Morgan, IN; Shelby, IN.	0.9848
3500	Iowa City, IA; Johnson, IA	0.9413
3520	Jackson, MI; Jackson, MI	0.9052
3560	Jackson, MS; Hinds, MS; Madison, MS; Rankin, MS	0.7760
3580	Jackson, TN; Madison, TN; Chester, TN	0.8522
3600	Jacksonville, FL; Clay, FL; Duval, FL; Nassau, FL; St. Johns, FL	0.8969
3605	Jacksonville, NC; Onslow, NC	0.6973
3610	Jamestown, NY; Chautaqua, NY	0.7552
3620	Janesville-Beloit, WI; Rock, WI	0.8824
3640	Jersey City, NJ; Hudson, NJ	1.1412
3660	Johnson City-Kingsport-Bristol, TN–VA; Carter, TN; Hawkins, TN; Sullivan, TN; Unicoi, TN; Washington, TN; Bristol City, VA; Scott, VA; Washington, VA.	0.9114
3680	Johnstown, PA; Cambria, PA; Somerset, PA	0.8378
3700	Jonesboro, AR; Craighead, AR	0.7443
3710	Joplin, MO; Jasper, MO; Newton, MO	0.7510
3720	Kalamazoo-Battlecreek, MI; Calhoun, MI; Kalamazoo, MI; Van Buren, MI	1.0668
3740	Kankakee, IL; Kankakee, IL	0.8653
3760	Kansas City, KS–MO; Johnson, KS; Leavenworth, KS; Miami, KS; Wyandotte, KS; Cass, MO; Clay, MO; Clinton, MO; Jackson, MO; Lafayette, MO; Platte, MO; Ray, MO.	0.9564
3800	Kenosha, WI; Kenosha, WI	0.9196
3810	Killeen-Temple, TX; Bell, TX; Coryell, TX	1.0252
3840	Knoxville, TN; Anderson, TN; Blount, TN; Knox, TN; Loudon, TN; Sevier, TN; Union, TN	0.8831
3850	Kokomo, IN; Howard, IN; Tipton, IN	0.8416
3870	La Crosse, WI–MN; Houston, MN; La Crosse, WI	0.8749
3880	Lafayette, LA; Acadia, LA; Lafayette, LA; St. Landry, LA; St. Martin, LA	0.8206
3920	Lafayette, IN; Clinton, IN; Tippecanoe, IN	0.9174
3960	Lake Charles, LA; Calcasieu, LA	0.7776
3980	Lakeland-Winter Haven, FL; Polk, FL	0.8806
4000	Lancaster, PA; Lancaster, PA	0.9481
4040	Lansing-East Lansing, MI; Clinton, MI; Eaton, MI; Ingham, MI	1.0088
4080	Laredo, TX; Webb, TX	0.7325
4100	Las Cruces, NM; Dona Ana, NM	0.8646
4120	Las Vegas, NV–AZ; Mohave, AZ; Clark, NV; Nye, NV	1.0592
4150	Lawrence, KS; Douglas, KS	0.8608
4200	Lawton, OK; Comanche, OK	0.9045
4243	Lewiston-Auburn, ME; Androscoggin, ME	0.9536
4280	Lexington, KY; Bourbon, KY; Clark, KY; Fayette, KY; Jessamine, KY; Madison, KY; Scott, KY; Woodford, KY	0.8390
4320	Lima, OH; Allen, OH; Auglaize, OH	0.9185
4360	Lincoln, NE; Lancaster, NE	0.9231
4400	Little Rock-North Little Rock, AR; Faulkner, AR; Lonoke, AR; Pulaski, AR; Saline, AR	0.8490
4420	Longview-Marshall, TX; Gregg, TX; Harrison, TX; Upshur, TX	0.8613
4480		
4520		
4600		
4640		
4680		
4720		
4800		
4840		
4880		
4890		
4900		
4920		
4940		
5000		
5015		
5080		
5120		
5160		
5170		
5190		
5200		
5240		
5280		
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5345		
5360		
5380		
5483		
5523		
5560		
5600		
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6483		
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6560		
6580		
6600		

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TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
4480	Los Angeles-Long Beach, CA; Los Angeles, CA	1.2232
4520	Louisville, KY–IN; Clark, IN; Floyd, IN; Harrison, IN; Scott, IN; Bullitt, KY; Jefferson, KY; Oldham, KY	0.9507
4600	Lubbock, TX; Lubbock, TX	0.8400
4640	Lynchburg, VA; Amherst, VA; Bedford, VA; Bedford City, VA; Campbell, VA; Lynchburg City, VA	0.8228
4680	Macon, GA; Bibb, GA; Houston, GA; Jones, GA; Peach, GA; Twiggs, GA	0.9227
4720	Madison, WI; Dane, WI	1.0055
4800	Mansfield, OH; Crawford, OH; Richland, OH	0.8639
4840	Mayaguez, PR; Anasco, PR; Cabo Rojo, PR; Hormigueros, PR; Mayaguez, PR; Sabana Grande, PR; San German, PR.	0.4475
4880	McAllen-Edinburg-Mission, TX; Hidalgo, TX	0.8371
4890	Medford-Ashland, OR; Jackson, OR	1.0354
4900	Melbourne-Titusville-Palm Bay, FL; Brevard, Fl	0.8819
4920	Memphis, TN–AR–MS; Crittenden, AR; DeSoto, MS; Fayette, TN; Shelby, TN; Tipton, TN	0.8589
4940	Merced, CA; Merced, CA	1.0947
5000	Miami, FL; Dade, FL	0.9859
5015	Middlesex-Somerset-Hunterdon, NJ; Hunterdon, NJ; Middlesex, NJ; Somerset, NJ	1.1059
5080	Milwaukee-Waukesha, WI; Milwaukee, WI; Ozaukee, WI; Washington, WI; Waukesha, WI	0.9819
5120	Minneapolis-St. Paul, MN–WI; Anoka, MN; Carver, MN; Chisago, MN; Dakota, MN; Hennepin, MN; Isanti, MN; Ramsey, MN; Scott, MN; Sherburne, MN; Washington, MN; Wright, MN; Pierce, WI; St. Croix, WI.	1.0733
5160	Mobile, AL; Baldwin, AL; Mobile, AL	0.8455
5170	Modesto, CA; Stanislaus, CA	1.0794
5190	Monmouth-Ocean, NJ; Monmouth, NJ; Ocean, NJ	1.0934
5200	Monroe, LA; Ouachita, LA	0.8414
5240	Montgomery, AL; Autauga, AL; Elmore, AL; Montgomery, AL	0.7671
5280	Muncie, IN; Delaware, IN	0.9173
5330	Myrtle Beach, SC; Horry, SC	0.8072
5345	Naples, FL; Collier, FL	1.0109
5360	Nashville, TN; Cheatham, TN; Davidson, TN; Dickson, TN; Robertson, TN; Rutherford TN; Sumner, TN; Williamson, TN; Wilson, TN.	0.9182
5380	Nassau-Suffolk, NY; Nassau, NY; Suffolk, NY	1.3807
5483	New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT; Fairfield, CT; New Haven, CT	1.2618
5523	New London-Norwich, CT; New London, CT	1.2013
5560	New Orleans, LA; Jefferson, LA; Orleans, LA; Plaquemines, LA; St. Bernard, LA; St. Charles, LA; St. James, LA; St. John Baptist, LA; St. Tammany, LA.	0.9566
5600	New York, NY; Bronx, NY; Kings, NY; New York, NY; Putnam, NY; Queens, NY; Richmond, NY; Rockland, NY; Westchester, NY.	1.4449
5640	Newark, NJ; Essex, NJ; Morris, NJ; Sussex, NJ; Union, NJ; Warren, NJ	1.1980
5660	Newburgh, NY–PA; Orange, NY; Pike, PA	1.1283
5720	Norfolk-Virginia Beach-Newport News, VA–NC; Currituck, NC; Chesapeake City, VA; Gloucester, VA; Hampton City, VA; Isle of Wight, VA; James City, VA; Mathews, VA; Newport News City, VA; Norfolk City, VA; Poquoson City, VA; Portsmouth City, VA; Suffolk City, VA; Virginia Beach City VA; Williamsburg City, VA; York, VA.	0.8316
5775	Oakland, CA; Alameda, CA; Contra Costa, CA	1.5068
5790	Ocala, FL; Marion, FL	0.9032
5800	Odessa-Midland, TX; Ector, TX; Midland, TX	0.8660
5880	Oklahoma City, OK; Canadian, OK; Cleveland, OK; Logan, OK; McClain, OK; Oklahoma, OK; Pottawatomie, OK	0.8481
5910	Olympia, WA; Thurston, WA	1.0901
5920	Omaha, NE–IA; Pottawattamie, IA; Cass, NE; Douglas, NE; Sarpy, NE; Washington, NE	0.9421
5945	Orange County, CA; Orange, CA	1.1605
5960	Orlando, FL; Lake, FL; Orange, FL; Osceola, FL; Seminole, FL	0.9397
5990	Owensboro, KY; Daviess, KY	0.7480
6015	Panama City, FL; Bay, FL	0.8337
6020	Parkersburg-Marietta, WV–OH; Washington, OH; Wood, WV	0.8046
6080	Pensacola, FL; Escambia, FL; Santa Rosa, FL	0.8193
6120	Peoria-Pekin, IL; Peoria, IL; Tazewell, IL; Woodford, IL	0.8571
6160	Philadelphia, PA–NJ; Burlington, NJ; Camden, NJ; Gloucester, NJ Salem, NJ; Bucks, PA; Chester, PA; Delaware, PA; Montgomery, PA; Philadelphia, PA.	1.1398
6200	Phoenix-Mesa, AZ; Maricopa, AZ; Pinal, AZ	0.9606
6240	Pine Bluff, AR; Jefferson, AR	0.7826
6280	Pittsburgh, PA; Allegheny, PA; Beaver, PA; Butler, PA; Fayette, PA; Washington, PA; Westmoreland, PA	0.9725
6323	Pittsfield, MA; Berkshire, MA	1.0960
6340	Pocatello, ID; Bannock ID	0.9586
6360	Ponce, PR; Guayanilla, PR; Juana Diaz, PR; Penuelas, PR; Ponce, PR; Villalba, PR; Yauco, PR	0.4589
6403	Portland, ME; Cumberland, ME; Sagadahoc, ME; York, ME	0.9627
6440	Portland-Vancouver, OR–WA; Clackamas, OR; Columbia, OR; Multnomah, OR; Washington, OR; Yamhill, OR; Clark, WA.	1.1344
6483	Providence-Warwick-Pawtucket, RI; Bristol, RI; Kent, RI; Newport, RI; Providence, RI; Washington, RI; Statewide, RI.	1.1049
6520	Provo-Orem, UT; Utah, UT	1.0073
6560	Pueblo, CO; Pueblo, CO	0.8450
6580	Punta Gorda, FL; Charlotte, FL	0.8725
6600	Racine, WI; Racine, WI	0.8934

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TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
6640	Raleigh-Durham-Chapel Hill, NC; Chatham, NC; Durham, NC; Franklin, NC; Johnston, NC; Orange, NC; Wake, NC.	0.9818
6660	Rapid City, SD; Pennington, SD	0.8345
6680	Reading, PA; Berks, PA	0.9516
6690	Redding, CA; Shasta, CA	1.1790
6720	Reno, NV; Washoe, NV	1.0768
6740	Richland-Kennewick-Pasco, WA; Benton, WA; Franklin, WA	0.9918
6760	Richmond-Petersburg, VA; Charles City County, VA; Chesterfield, VA; Colonial Heights City, VA; Dinwiddie, VA; Goochland, VA; Hanover, VA; Henrico, VA; Hopewell City, VA; New Kent, VA; Petersburg City, VA; Powhatan, VA; Prince George, VA; Richmond City, VA.	0.9152
6780	Riverside-San Bernardino, CA; Riverside, CA; San Bernardino, CA	1.1307
6800	Roanoke, VA; Botetourt, VA; Roanoke, VA; Roanoke City, VA; Salem City, VA	0.8402
6820	Rochester, MN; Olmsted, MN	1.0502
6840	Rochester, NY; Genesee, NY; Livingston, NY; Monroe, NY; Ontario, NY; Orleans, NY; Wayne, NY	0.9524
6880	Rockford, IL; Boone, IL; Ogle, IL; Winnebago, IL	0.9081
6895	Rocky Mount, NC; Edgecombe, NC; Nash, NC	0.9029
6920	Sacramento, CA; El Dorado, CA; Placer, CA; Sacramento, CA	1.2202
6960	Saginaw-Bay City-Midland, MI; Bay, MI; Midland, MI; Saginaw, MI	0.9564
6980	St. Cloud, MN; Benton, MN; Stearns, MN	0.9544
7000	St. Joseph, MO; Andrews, MO; Buchanan, MO	0.8366
7040	St. Louis, MO–IL; Clinton, IL; Jersey, IL; Madison, IL; Monroe, IL; St. Clair, IL; Franklin, MO; Jefferson, MO; Lincoln, MO; St. Charles, MO; St. Louis, MO; St. Louis City, MO; Warren, MO.	0.9130
7080	Salem, OR; Marion, OR; Polk, OR	0.9935
7120	Salinas, CA; Monterey, CA	1.4513
7160	Salt Lake City-Ogden, UT; Davis, UT; Salt Lake, UT; Weber, UT	0.9857
7200	San Angelo, TX; Tom Green, TX	0.7780
7240	San Antonio, TX; Bexar, TX; Comal, TX; Guadalupe, TX; Wilson, TX	0.8499
7320	San Diego, CA; San Diego, CA	1.2193
7360	San Francisco, CA; Marin, CA; San Francisco, CA; San Mateo, CA	1.4180
7400	San Jose, CA; Santa Clara, CA	1.4332
7440	San Juan-Bayamon, PR; Aguas Buenas, PR; Barceloneta, PR; Bayamon, PR; Canovanas, PR; Carolina, PR; Catano, PR; Ceiba, PR; Comerio, PR; Corozal, PR; Dorado, PR; Fajardo, PR; Florida, PR; Gueynabo, PR; Humacao, PR; Juncos, PR; Los Piedras, PR; Loiza, PR; Luguillo, PR; Manati, PR; Morovis, PR; Naguabo, PR; Naranjito, PR; Rio Grande, PR; San Juan, PR; Toa Alta, PR; Toa Baja, PR; Trujillo Alto, PR; Vega Alta, PR; Vega Baja, PR; Yabucoa, PR.	0.4625
7460	San Luis Obispo-Atascadero-Paso Robles, CA; San Luis Obispo, CA	1.1374
7480	Santa Barbara-Santa Maria-Lompoc, CA; Santa Barbara, CA	1.0688
7485	Santa Cruz-Watsonville, CA; Santa Cruz, CA	1.4187
7490	Santa Fe, NM; Los Alamos, NM; Santa Fe, NM	1.0332
7500	Santa Rosa, CA; Sonoma, CA	1.2815
7510	Sarasota-Bradenton, FL; Manatee, FL; Sarasota, FL	0.9757
7520	Savannah, GA; Bryan, GA; Chatham, GA; Effingham, GA	0.8638
7560	Scranton—Wilkes-Barre—Hazleton, PA; Columbia, PA; Lackawanna, PA; Luzerne, PA; Wyoming, PA	0.8539
7600	Seattle-Bellevue-Everett, WA; Island, WA; King, WA; Snohomish, WA	1.1339
7610	Sharon, PA; Mercer, PA	0.8783
7620	Sheboygan, WI; Sheboygan, WI	0.7862
7640	Sherman-Denison, TX; Grayson, TX	0.8499
7680	Shreveport-Bossier City, LA; Bossier, LA; Caddo, LA; Webster, LA	0.9381
7720	Sioux City, IA–NE; Woodbury, IA; Dakota, NE	0.8031
7760	Sioux Falls, SD; Lincoln, SD; Minnehaha, SD	0.8712
7800	South Bend, IN; St. Joseph, IN	0.9868
7840	Spokane, WA; Spokane, WA	1.0486
7880	Springfield, IL; Menard, IL; Sangamon, IL	0.8713
7920	Springfield, MO; Christian, MO; Greene, MO; Webster, MO	0.7989
8003	Springfield, MA; Hampden, MA; Hampshire, MA	1.0740
8050	State College, PA; Centre, PA	0.9635
8080	Steubenville-Weirton, OH–WV; Jefferson, OH; Brooke, WV; Hancock, WV	0.8645
8120	Stockton-Lodi, CA; San Joaquin, CA	1.1496
8140	Sumter, SC; Sumter, SC	0.7842
8160	Syracuse, NY; Cayuga, NY; Madison, NY; Onondaga, NY; Oswego, NY	0.9464
8200	Tacoma, WA; Pierce, WA	1.1016
8240	Tallahassee, FL; Gadsden, FL; Leon, FL	0.8832
8280	Tampa-St. Petersburg-Clearwater, FL; Hernando, FL; Hillsborough, FL; Pasco, FL; Pinellas, FL	0.9103
8320	Terre Haute, IN; Clay, IN; Vermillion, IN; Vigo, IN	0.8614
8360	Texarkana, AR-Texarkana, TX; Miller, AR; Bowie, TX	0.8564
8400	Toledo, OH; Fulton, OH; Lucas, OH; Wood, OH	1.0390
8440	Topeka, KS; Shawnee, KS	0.9438
8480	Trenton, NJ; Mercer, NJ	1.0380
8520	Tucson, AZ; Pima, AZ	0.9180
8560	Tulsa, OK; Creek, OK; Osage, OK; Rogers, OK; Tulsa, OK; Wagoner, OK	0.8074
8600	Tuscaloosa, AL; Tuscaloosa, AL	0.8187
8640	Tyler, TX; Smith, TX	0.9567

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Wage index
8680	Utica-Rome, NY; Herkimer, NY; Oneida, NY	0.8398
8720	Vallejo-Fairfield-Napa, CA; Napa, CA; Solano, CA	1.3754
8735	Ventura, CA; Ventura, CA	1.0946
8750	Victoria, TX; Victoria, TX	0.8474
8760	Vineland-Millville-Bridgeton, NJ; Cumberland, NJ	1.0110
8780	Visalia-Tulare-Porterville, CA; Tulare, CA	0.9924
8800	Waco, TX; McLennan, TX	0.7696
8840	Washington, DC–MD–VA–WV; District of Columbia, DC; Calvert, MD; Charles, MD; Frederick, MD; Montgomery, MD; Prince Georges, MD; Alexandria City, VA; Arlington, VA; Clarke, VA; Culpepper, VA; Fairfax, VA; Fairfax City, VA; Falls Church City, VA; Fauquier, VA; Fredericksburg City, VA; King George, VA; Loudoun, VA; Manassas City, VA; Manassas Park City, VA; Prince William, VA; Spotsylvania, VA; Stafford, VA; Warren, VA; Berkeley, WV; Jefferson, WV.	1.0911
8920	Waterloo-Cedar Falls, IA; Black Hawk, IA	0.8640
8940	Wausau, WI; Marathon, WI	1.0545
8960	West Palm Beach-Boca Raton, FL; Palm Beach, FL	1.0372
9000	Wheeling, OH–WV; Belmont, OH; Marshall, WV; Ohio, WV	0.7707
9040	Wichita, KS; Butler, KS; Harvey, KS; Sedgwick, KS	0.9403
9080	Wichita Falls, TX; Archer, TX; Wichita, TX	0.7646
9140	Williamsport, PA; Lycoming, PA	0.8548
9160	Wilmington-Newark, DE–MD; New Castle, DE; Cecil, MD	1.1538
9200	Wilmington, NC; New Hanover, NC; Brunswick, NC	0.9322
9260	Yakima, WA; Yakima, WA	1.0102
9270	Yolo, CA; Yolo, CA	1.1431
9280	York, PA; York, PA	0.9415
9320	Youngstown-Warren, OH; Columbiana, OH; Mahoning, OH; Trumbull, OH	0.9937
9340	Yuba City, CA; Sutter, CA; Yuba, CA	1.0324
9360	Yuma, AZ; Yuma, AZ	0.9732

TABLE 4B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage Index
Alabama	0.7260
Alaska	1.2302
Arizona	0.7989
Arkansas	0.6995
California	0.9977
Colorado	0.8129
Connecticut	1.2617
Delaware	0.8925
Florida	0.8838
Georgia	0.7761
Hawaii	1.0229
Idaho	0.8221
Illinois	0.7644
Indiana	0.8161
Iowa	0.7391
Kansas	0.7203
Kentucky	0.7772
Louisiana	0.7383
Maine	0.8468
Maryland	0.8617
Massachusetts	1.0718
Michigan	0.8923
Minnesota	0.8179
Mississippi	0.6911
Missouri	0.7205
Montana	0.8302
Nebraska	0.7401
Nevada	0.8914
New Hampshire	0.9717
New Jersey [1]	
New Mexico	0.8070
New York	0.8401
North Carolina	0.7937
North Dakota	0.7360
Ohio	0.8434
Oklahoma	0.7072
Oregon	0.9975

TABLE 4B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage Index
Pennsylvania	0.8421
Puerto Rico	0.3939
Rhode Island [1]	
South Carolina	0.7921
South Dakota	0.6983
Tennessee	0.7353
Texas	0.7404
Utah	0.8926
Vermont	0.9314
Virginia	0.7782
Washington	1.0221
West Virginia	0.7938
Wisconsin	0.8471
Wyoming	0.8247

[1] All counties within the State are classified urban.

TABLE 5.—COST REPORTING YEAR—ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins	The adjustment factor is
November 1, 1997	1.00260
December 1, 1997	1.00521
January 1, 1998	1.00781
February 1, 1998	1.01042
March 1, 1998	1.01302
April 1, 1998	1.01563
May 1, 1998	1.01823
June 1, 1998	1.02086
July 1, 1998	1.02353
August 1, 1998	1.02626

TABLE 5.—COST REPORTING YEAR—ADJUSTMENT FACTOR [1]—Continued

If the HHA cost reporting period begins	The adjustment factor is
September 1, 1998	1.02901

[1] Based on compounded projected market basket inflation rates.

Source: The Home Health Agency Input Price Index, produced by HCFA for the period between 1983:1 and 2008:4. The forecasts are from Standard and Poor's DRI 3rd QTR 1997: @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

TABLE 6.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY

Per-beneficiary limitations—Month	Index level
October 1992	.98566
November 1992	.98800
December 1992	.99099
January 1993	.99399
February 1993	.99700
March 1993	.99933
April 1993	1.00166
May 1993	1.00400
June 1993	1.00666
July 1993	1.00933
August 1993	1.01200
September 1993	1.01400
October 1993	1.01600
November 1993	1.01800
December 1993	1.02099
January 1994	1.02399

TABLE 6.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY—Continued

Per-beneficiary limitations—Month	Index level
February 1994	1.02700
March 1994	1.02866
April 1994	1.03033
May 1994	1.03200
June 1994	1.03499
July 1994	1.03499
August 1994	1.03499
September 1994	1.03499
October 1994	1.03499
November 1994	1.03499
December 1994	1.03499
January 1995	1.03499
February 1995	1.03499
March 1995	1.03499
April 1995	1.03499
May 1995	1.03499
June 1995	1.03499
July 1995	1.03499
August 1995	1.03499
September 1995	1.03499
October 1995	1.03499
November 1995	1.03499
December 1995	1.03499
January 1996	1.03499
February 1996	1.03499
March 1996	1.03499
April 1996	1.03499
May 1996	1.03499
June 1996	1.03499
July 1996	1.03720
August 1996	1.03941
September 1996	1.04162
October 1996	1.04383
November 1996	1.04604
December 1996	1.04856
January 1997	1.05108
February 1997	1.05361
March 1997	1.05582
April 1997	1.05803
May 1997	1.06024
June 1997	1.06276
July 1997	1.06528
August 1997	1.06781
September 1997	1.07064
October 1997	1.07348
November 1997	1.07633

XI. Regulatory Impact Statement

A. Introduction

HCFA has examined the impacts of this final rule with comment period as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. However, most providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of 5 million or less annually. Approximately 25 percent of HHAs are identified as Visiting Nurse Associations, combined in government and voluntary, and official health agency, and therefore, are considered small entities. Since the aggregate per-beneficiary limitation will reduce payments by approximately nine percent, we anticipate this rule will have a significant impact on a substantial number of small entities. We have examined the options for lessening the burden on small entities, however, the statute does not allow for any exceptions to the aggregate per-beneficiary limitation based on size of entity. Therefore, we are unable to provide any regulatory relief for small entities.

Section 202 of the Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million (adjusted annually for inflation). We believe that the costs associated with this final rule with comment fall below $100 million both in the governmental and private sectors. Therefore, we are not preparing an assessment.

We estimate that the impact of this final rule with comment period will be to decrease payments to home health agencies by approximately $1.06 billion in Federal FY 1998 and $2.14 billion in FY 1999, compared to the payment that would have been made in Federal FY 1998 if BBA '97 had not been enacted. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2) and is a significant rule under Executive Order 12866.

It is clear that the changes being made in this document will affect both a substantial number of small HHAs as well as other classes of HHAs, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule with comment period, constitutes a combined regulatory impact analysis and regulatory flexibility analysis. Nevertheless, in some markets new agency limits may be higher than the limit for older agencies as a result of the per-beneficiary limitation methodology required by the statute.

B. Explanation of Aggregate Beneficiary Limit

HHA limits are set forth at sections 1861(v)(1)(A) and 1861(v)(1)(L)of the Act. Section 1861(v)(1)(L)(v), as added to the Act by section 4602 of BBA '97, requires the Secretary to establish an interim system of limits before the implementation of a prospective payment system for home health services. Payments by Medicare under this interim system of limits will be the lower of an HHA's actual reasonable allowable costs, per visit limits in the aggregate, or a per-beneficiary limit as described in sections 1861(v)(1)(L)(v)(I) and 1861(v)(1)(L)(vi)(I) of the Act.

Section 1861(v)(1)(L)(v)(I) requires that the aggregate per-beneficiary annual limit be determined as follows: blend of 75 percent on 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during Federal FY 1994, and 25 percent on 98 percent of the standardized regional average of such costs for the agency's census division for cost reporting periods ending during Federal FY 1994 (both updated by the home health market basket excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996). The results will be multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) for the cost reporting period subject to the limit. As stated in section II.A. of this preamble, we determined the unduplicated census count as reported on the Medicare cost report by HHA providers was not reliable. As a result, we generated an unduplicated census count from our Standard Analytical File which is generated from our National Claims History File.

In regards to the home health market basket, section 1861(v)(1)(L)(iv) was added to the Act by section 4601(a) of BBA '97, and requires the Secretary not to take into account any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996 in establishing the limitations for cost reporting periods beginning after September 30, 1997.

In regards to the wage index, the appropriate census region per-beneficiary limitation will be the applicable census region where the beneficiary received services from the HHA and the applicable wage index will be the geographic area where the beneficiary received home health services.

For new providers and providers without a 12-month cost reporting period ending in Federal FY year 1994, the per-beneficiary limitation will be equal to the median of these limits applied to other HHAs as determined in this document.

For Medicare beneficiaries using more than one HHA, the per-beneficiary limitation will be prorated among the agencies.

C. Effect on Home Health Agencies

The following quantitative analysis presents the projected effects of the statutory changes effective for Federal FY 1998. As discussed below, the impact of this final rule with comment period will decrease payments to HHAs by approximately $1.06 billion in Federal FY 1998 compared to payment that would have been made in Federal FY 1998 if BBA '97 had not been enacted. This is a reduction of approximately nine percent. This final rule with comment period is necessary to implement the provisions of section 1861(v)(1)(L) of the Act, as amended by BBA '97.

The settled cost report data that we are using have been adjusted by the most recent market basket factors, excluding market basket increases for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996, to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1998.

The cost limits for HHAs are statutorily driven and the impact of decreases in payments to HHAs have been reflected in the current law baseline of the mid-session review of the President's Federal FY 98 budget.

We are unable to identify the effects of the changes to the cost limits on individual HHAs. However, Table 7 below illustrates the proportion of HHAs that are likely to be affected by the limits. This table is a model of our estimate of the effects of the aggregate per-beneficiary limit. The total number of HHAs in this table—6,414—is based on HHA cost reports with a Federal FY ending in 1994 and for new providers whose cost reports end on either December 31, 1994 or December 31, 1995. For both old and new providers, the length of the cost report is 12 months.

This table takes into account the behaviors that we believe HHAs will engage in order to reduce the adverse effects of section 4602 of BBA '97 on their allowable costs. We believe these behavioral offsets might include an increase in the number of low cost beneficiaries served, a general decrease in the number of visits provided, and earlier discharge of patients who are not eligible for Medicare home health benefits because they no longer need skilled services but have only chronic, custodial care needs. We believe that, on average, these behavioral offsets will result in a 65-percent reduction in the effects these limits might otherwise have on an individual HHA.

Our projected savings of $1.06 billion in Federal FY 1998 and $2.14 billion in Federal FY 1999 are the savings that occur as a result of implementing section 4602 of the BBA including the behavioral offsets noted above. Column one of this table divides HHAs by a number of characteristics including their ownership, whether they are old or new agencies, whether they are located in an urban or rural area, and the census region they are located in.

Column two shows the number of agencies that fall within each characteristic or group of characteristics, for example, there are 1,197 rural freestanding HHAs in our database. Column three shows the percent of HHAs within a group that are projected to exceed the aggregate per-beneficiary limit before the behavioral offsets are taken into account. Column four shows the average percent of costs over the limits for an agency in that cell, including behavioral offsets.

TABLE 7.—HHA LIMITS EFFECTIVE 10/1/97; EFFECTS OF THE PER–BENEFICIARY LIMIT

Area	Number of agencies	Percent exceeding per-beneficiary limit	Average percent of costs exceeding limit
BY: AGENCY TYPE			
ALL AGENCIES	6414	57.9	9.3
FREESTANDING	4308	65.8	10.8
HOSPITAL BASED	2106	41.8	6.2
OLD AGENCIES	5256	60.0	8.9
FREESTANDING	3245	71.3	10.4
HOSPITAL BASED	2011	41.8	6.1
NEW AGENCIES	1158	48.2	12.6
FREESTANDING	1063	48.8	12.8
HOSPITAL BASED	95	41.1	9.4
BY: GEOGRAPHIC AREA			
ALL URBAN	4137	62.3	9.5
FREESTANDING	3111	68.2	10.8
HOSPITAL BASED	1026	44.3	6.2
OLD AGENCIES	3272	65.5	9.1
FREESTANDING	2292	74.6	10.5
HOSPITAL BASED	980	44.4	6.2
NEW AGENCIES	865	49.9	12.4
FREESTANDING	819	50.3	12.6
HOSPITAL BASED	46	43.5	9.4
ALL RURAL	2277	49.9	8.8
FREESTANDING	1197	59.5	10.6
HOSPITAL BASED	1080	39.4	6.0
OLD AGENCIES	1984	51.0	8.3
FREESTANDING	953	63.5	10.1
HOSPITAL BASED	1031	39.4	5.9
NEW AGENCIES	293	43.0	13.3
FREESTANDING	244	43.9	13.6
HOSPITAL BASED	49	38.8	9.5
BY REGION:			

TABLE 7.—HHA LIMITS EFFECTIVE 10/1/97; EFFECTS OF THE PER–BENEFICIARY LIMIT—Continued

Area	Number of agencies	Percent exceeding per-beneficiary limit	Average percent of costs exceeding limit
OLD AGENCIES	5256	60.0	8.9
NEW ENGLAND	291	84.5	12.3
MIDDLE ATLANTIC	443	71.3	9.0
SOUTH ATLANTIC	739	62.7	9.2
EAST NORTH CENTRAL	966	65.4	9.6
EAST SOUTH CENTRAL	431	58.2	8.7
WEST NORTH CENTRAL	728	52.9	8.0
WEST SOUTH CENTRAL	936	54.1	8.2
MOUNTAIN	354	48.3	7.0
PACIFIC	428	52.3	6.9
NEW AGENCIES	1158	48.2	12.6
NEW ENGLAND	44	90.9	15.6
MIDDLE ATLANTIC	51	35.3	4.7
SOUTH ATLANTIC	44	40.9	7.1
EAST NORTH CENTRAL	151	23.2	4.4
EAST SOUTH CENTRAL	25	56.0	14.8
WEST NORTH CENTRAL	117	28.2	10.3
WEST SOUTH CENTRAL	484	60.3	16.6
MOUNTAIN	103	49.5	8.5
PACIFIC	138	41.3	10.4

D. Percent of Costs Exceeding Limit (Column Four)

Results from this column indicate that the average percent of costs exceeding the aggregate per-beneficiary limit for an HHA in the "all agencies" cell is 9.3 percent after the behavioral offset. This should not be surprising since the intent of section 4602 of the BBA is to control the soaring expenditures of the Medicare home health benefit which have been driven largely by increased utilization.

For the old agencies cell (HHAs that filed a 12-month cost report that ended during Federal FY 1994), the average percent of costs exceeding the aggregate per-beneficiary limit is 8.9 percent. For the new agencies cell (HHAs that did not have a 12-month cost reporting period ended in Federal FY 1994 or that entered the Medicare program after Federal FY 1994), the average percent of costs exceeding the aggregate per-beneficiary limit is 12.6 percent. Old agencies will not be affected as much as the new agencies, on average, because the new agencies have, in general, reported higher costs related to higher levels of utilization. Moreover, the statutory provision basing ¾ of old provider limits on their own cost experience would implicitly result in less of an impact than experienced by the new providers whose limits are based on a national median.

For the urban areas HHA cell, the average percent of costs exceeding the aggregate per-beneficiary limit is 9.5 percent, while the rural areas HHA cell is 8.8 percent. For the old agency census division cells the average percent of costs exceeding the aggregate per-beneficiary limit ranges from a low of 6.9 percent in the Pacific census region to a high of 12.3 percent in the New England census region. The other census regions fall between 7.0 percent and 9.2 percent. The differences between census regions reflect the pattern of highly disparate costs that have been reported historically between geographic areas which cannot be explained by differences in patient characteristics but appear related to patterns of HHA practices.

For the new agency census region cells the average percent of costs exceeding the aggregate per-beneficiary limit ranges from a low of 4.4 percent in the East North Central census region to a high of 16.6 percent in the West South Central census region. The other census regions fall between 4.7 percent and 15.6 percent. In general, newer agencies in census regions that have exceptionally high cost histories are more impacted by their being limited to the national median.

Although there is considerable variation in these limits, we believe this is a natural reflection of the wide variation in payments that have been recognized under the present cost reimbursement system. Moreover, we believe the differing impacts of these limits is an inherent result of beginning to draw unexplained variation among providers closer to national norms which existed prior to the rapid increase in home health expenditures of the post '93–'94 period.

Because this rule limits payments to HHAs to the lesser of actual cost, the per-visit limitations, or the aggregate per-beneficiary limitation, we have estimated the combined impact of these limitations. (We note, that these estimates differ from those published on January 2, 1998 in our per-visit limitation notice (63 FR 89) because of the interaction of the two limitations, which we could not calculate until we developed the database used in this rule.)

We estimate that in both 1998 and 1999, 35 percent of the HHAs will be limited by the per-visit limitation and 58 percent of the HHAs will be limited by the per-beneficiary limitation. The estimated combined savings for 1998, however, will be $1.4 billion, of which $370 million is attributable to the per-visit limitation, and $1.06 billion is attributable to the per-beneficiary limitation. The estimated combined savings for 1999 will be $2.9 billion, of which $740 million is attributable to the per-visit limitation, and $2.14 billion is attributable to the per-beneficiary limitation.

For FY 1998, 15 percent of the Medicare savings are attributable to payments to managed care plans and for FY 1999, 20 percent of the savings will be from payments to managed care plans.

The per-beneficiary limitation may impact some State Medicaid programs. However, because of variation in State Medicaid policies and service delivery systems, it is impossible to predict which States will be affected or the magnitude of the impact, if any.

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comments before a collection of information requirement is submitted to the Office of Management and Budget for review and approval. We do not believe this final rule has any collection of information issues associated with it. Any collection of information requirements would be associated with modifications to the Home Health Agency Cost Report (HCFA Form 1728–94). These modifications are being handled in a separate collection of information.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

XII. Other Required Information

A. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of the rule take effect. However, pursuant to 5 U.S.C. (United States Code) 553(b)(B) we may waive a notice of proposed rulemaking if we find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest. For good cause we find that it was impracticable to undertake notice and comment procedures between the date of enactment of the BBA '97 (August 5, 1997) and the statutory deadline for establishing the per-beneficiary limitations (April 1, 1998). The BBA '97 required the per-beneficiary calculations be based on data obtained from HHA Medicare cost reports for cost reporting periods ending during the Federal FY '94. To comply with this statutory requirement we had to perform a special data collection from our fiscal intermediaries to obtain these cost report data.

In addition, the BBA '97 required HCFA to use an unduplicated census count to calculate the aggregate per-beneficiary limitations. The primary source for this count was also the provider cost report for Federal FY 1994. Because the unduplicated census count on the provider cost report was determined to be unreliable, it was necessary to generate an unduplicated census count from the National Claims History Standard Analytical File. In addition, we preformed a special data collection because a significant number of FY 1994 cost reports were not available. The internal calculation of unduplicated beneficiary counts from 17 million records was a time-consuming effort that was necessary to generate the information needed to calculate these limitations. These counts could not be performed prior to the completion of the special data collection effort and verification of the existing database. An extraordinary amount of resources was necessary to construct an entirely new database to compute the new per-beneficiary limitations. Significant programming efforts were necessary to match the individual beneficiaries to their applicable MSA areas. Specific matching efforts were also necessary to eliminate duplicate beneficiaries. These beneficiaries were then matched to the provider cost reports for each agency in the database.

These lengthy procedures could not be completed before February 1, 1998. Therefore, we believe in this instance, it was impracticable to publish a proposed rule and for good cause waive publication of a proposed regulation. We are however, providing a 60-day period for public comment.

B. Waiver of 30-Day Delay in Effective Date

Generally, the Administrative Procedure Act, 5 U.S.C. 553(d), requires us to provide a 30-day delay before effectuation of a final rule, unless we find good cause to dispense with that delay. To the extent this requirement applies to this final rule, for good cause we waive the 30-day delay in effective date.

As noted previously, these per-beneficiary limitations are effective for cost reporting periods beginning on or after October 1, 1997. Section 1861(v)(1)(L)(vii) of the Act requires the Secretary to establish these per-beneficiary limitations by April 1, 1998 and requires that they apply to cost reporting periods beginning on or after October 1, 1997. That statutory requirement is clear. A 30-day delay in implementing these per-beneficiary limitations is impracticable. Therefore, we find that it is impracticable to provide for a 30-day delay in effective date and for good cause we waive the delay in effective date.

C. Effect of the Contract with America Advancement Act, Pub. L. 104–121

Normally, under 5 U.S.C. 801, as added by section 251 of Pub. L. 104–121, the effective date of a major rule is delayed 60 days for Congressional review. This has been determined to be a major rule under 5 U.S.C. 804(2). However, as indicated in section XI.A. of the preamble to this final rule, for good cause, we find that prior notice and comment procedures are impracticable. Pursuant to 5 U.S.C. 808(2), a major rule shall take effect at such time as the Federal agency promulgating the rule determines if for good cause it finds that notice and public procedure is impracticable. Accordingly, under the exemption provided in 5 U.S.C. 808(2), these per-beneficiary limitations are effective for cost reporting periods beginning on or after October 1, 1997.

D. Public Comments

Because of the large number of items of correspondence we normally receive on a rule with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this rule that we receive by the date and time specified in the **DATES** section of this rule, and we will respond to those comments in a subsequent document.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 42 CFR, chapter IV, subchapter B, part 413 is amended as set forth below.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 413.30 [Amended]

2. In § 413.30, the following amendments are made:

a. In paragraph (a)(1), in the first sentence, the reference to "section 1861 (v)(1)(A)" is revised to read "sections 1861(v)(1)(A) and (v)(1)(L)".

b. In paragraph (a)(2), in the last sentence, after "may be calculated on a" add "per beneficiary,".

c. In paragraph (c), in the first sentence, revise "A provider" to read "Except for the per-beneficiary limitation that applies to HHAs, a provider".

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Authority: Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)).

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Dated: March 15, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 24, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–8480 Filed 3–30–98; 8:45 am]

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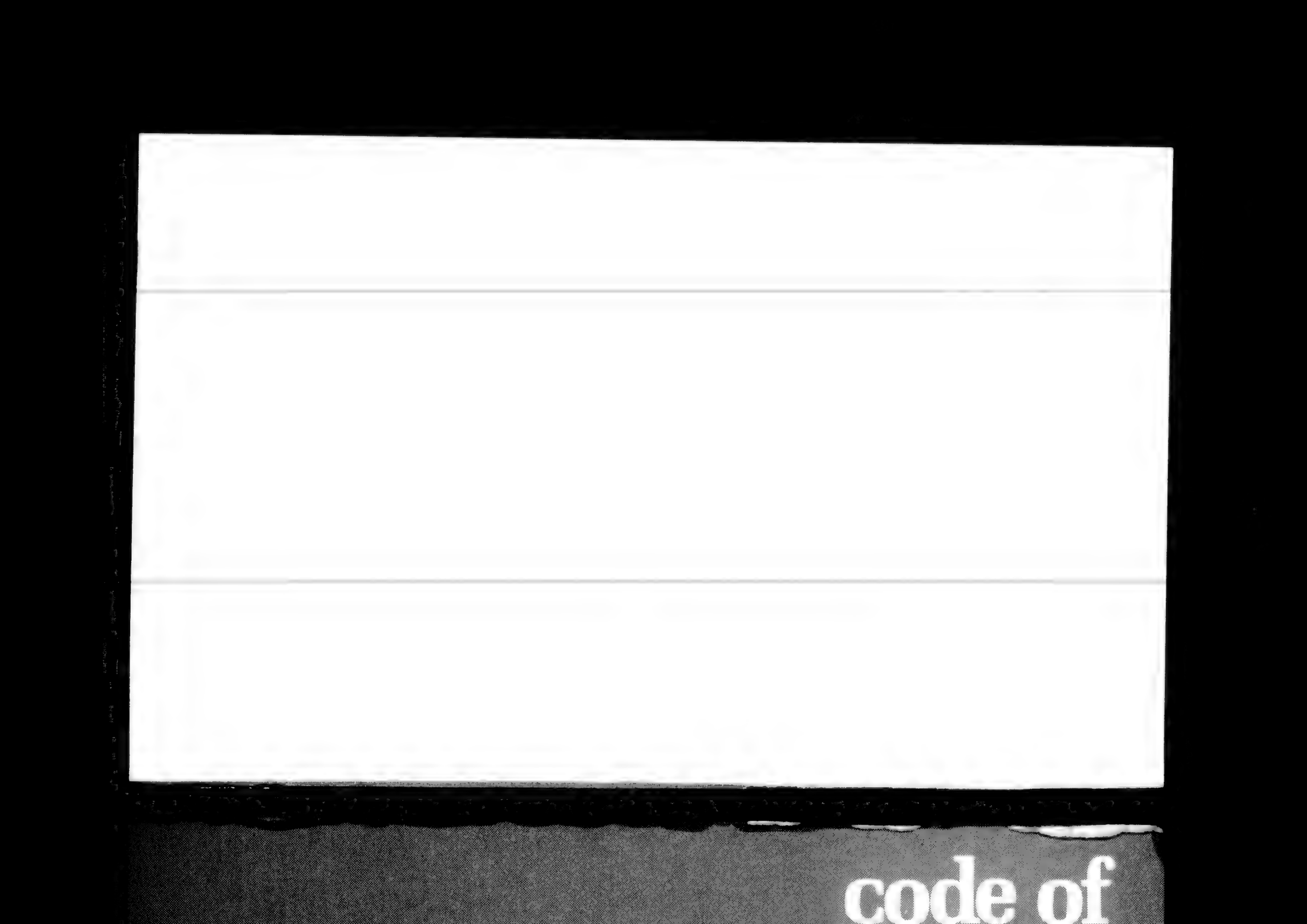
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Title 42–50
Changes October 1, 1997
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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1–16—as of Jan. 1
17–27—as of April 1
28–41—as of July 1
42–50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

The page numbers listed to the right of each LSA entry indicate where the specific amendments begin in the Federal Register. **Boldface** page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (62 FR for 1997, 63 FR for 1998) and the page number. Example: 24727 cite as 62 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1–16; the MARCH issue is the ANNUAL for Titles 17–27; the JUNE issue is the ANNUAL for Titles 28–41; the SEPTEMBER issue is the ANNUAL for Titles 42–50. ANNUAL ISSUES to be saved are clearly designated on the cover.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Brian Swidal. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Jim Wickliffe. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Acting Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–032–00001–8)	$5.00	Feb. 1, 1997
3 (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
4	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
1–699	(869–032–00004–2)	34.00	Jan. 1, 1997
700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
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1950–1999	(869–032–00020–4)	42.00	Jan. 1, 1997
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8	(869–032–00022–1)	30.00	Jan. 1, 1997
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300–499	(869–032–00033–6)	27.00	Jan. 1, 1997
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13	(869–032–00036–1)	23.00	Jan. 1, 1997
14 Parts:			
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60–139	(869–032–00038–7)	38.00	Jan. 1, 1997
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20 Parts:			
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§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
2–29	(869–032–00089–1)	36.00	Apr. 1, 1997

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266–299	(869–032–00150–2)	24.00	July 1, 1997
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90–139	(869–028–00176–9)	20.00	Oct. 1, 1996
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166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
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CFR Index and Findings Aids	(869–032–00047–6)	45.00	Jan. 1, 1997
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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Yearly subscription	27.00		
Federal Register Index:			
Yearly subscription	25.00		
CFR Index and Finding Aids	45.00		1997

CHANGES JANUARY 2, 1998 THROUGH JANUARY 30, 1998

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925 Nomenclature change 658
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982.245 Marketing percentages 3254
989.156 Regulation at 62 FR 60768 confirmed 4372
997.30 (a) revised; interim 2850
997.40 (c) introductory text, (d) and (e) amended; interim 2851
997.101 Regulation at 62 FR 48751 confirmed 3255
998.100 Heading amended; (g) removed; (h) and (i) redesignated as (g) and (h); interim 2851
998.200 Heading, (a), (h)(1) and (2) revised; (h)(3) added; interim 2851
998.409 Regulation at 62 FR 48751 confirmed 3255

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1703.102 Amended 3637

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1703.103 (a)(3) amended 3637
1703.107 (a)(5) revised 3637
1703.109 (h) introductory text amended 3637
1703.113 (b) amended; (c) revised 3637
1703.122 (e) introductory text amended 3637
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103.1 Regulation at 58 FR 69210 confirmed 1334
103.7 Regulation at 58 FR 69210 confirmed 1334
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207.8 Redesignated as 207.9; new 207.8 redesignated from 207.7 3795
207.9 Redesignated from 207.8 3795
208.9 (b), (c), (d) and (f) revised 3796
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214.2 Regulation at 58 FR 69210 confirmed; (e)(22) revised 1334
214.6 (b) revised 1335
235.1 Regulation at 58 FR 69217 confirmed 1334
274a.12 Regulation at 58 FR 69217 confirmed 1334
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299.5 Table amended 3797

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3.102 (c) Footnote 5 redesignated as Footnote 7.....2
3.104 (b)(1)(i) Footnote 2 redesignated as Footnote 8.....2
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147.7 Footnote 5, (b)(1)(vii), (d)(2) introductory text and (viii) amended.....3
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560.210 (b)(2) introductory text, (viii) and (ix) revised; (b)(2)(x) removed; (b)(2)(xi), (xii) and (xiii) redesignated as (b)(2)(x), (xi) and (xii); interim 1053

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932 Authority citation revised 3455
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744 Authority citation revised 2455
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16.00 (a)(5) revised 24031
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16.06 Revised 24032
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17.00 (a), (d), (e) and (g) revised 24032
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30 Appendix C amended 16690
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200.30–1 (m) removed 36455
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200.30–5 (j) removed; (k) and (l) redesignated as (j) and (k) 36455
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228.601 (a) amended; (c)(1)(ii) note designated as (c)(1)(ii) Note 1; (c)(1)(ii) Note 2 and (2)(iii) note added; (c)(1)(v) revised 36455
228.701 Heading revised; (f) added 39761
229 Technical correction 43581
229.601 (a) amended; (c)(1)(ii) note designated as (c)(1)(ii) Note 1; (c)(1)(ii) Note 2 and (2)(iii) note added; (c)(1)(v) revised 36456
229.701 Heading revised; (f) added 39762
230 Authority citation amended 24573
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230.135e Added 53954
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230.401 (c) revised 39762
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230.485 (b)(1)(i) and (ii) removed; (b)(1)(iii) through (ix) redesignated as (b)(1)(i) through (vii); (b)(2) introductory text and (d)(2)(ii)(B) and (ii) undesignated text amended 47938
230.497 (f) amended 39763
230.502 (c)(2) amended 53954
230.901 Note 7 amended 53954
230.902 (b)(8) added 53954
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232.13 (a)(1)(iii) amended 47938
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232.101 (a)(1)(ii), (iii), (iv), (2)(ii), (b)(1), (c)(6) and (7) revised; (c)(19) removed; (d) added 36456
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232.307 Revised 36458
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232.601 Undesignated center heading and section added 36458
232.901—232.908 Undesignated center heading removed 36458
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239.9 Form SB-1 amended 39763
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239.13 (b)(1) and Form S-3 amended 26388
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239.15A Form N-1A amended 47939, 64986
239.16 Form S-6 amended 47938
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239.17a Form N-3 amended 47939, 64986
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239.18 Form S-11 amended 39764
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239.61 Removed; Form SR removed 39766
239.144 (c) and Form 144 amended 35340
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240.13d-2 (c) revised 36459
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240.13d-3 (d)(1)(ii) revised 2866
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240.14d-100 Amended 35341
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249.208a (c) revised; (d) added; Form 8–A amended 39768
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249.220f Form 20–F amended 39769
249.308a Form 10–Q amended 39769
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249.310 Form 10–K amended 26389
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270.17a–9 Introductory text amended 64986
270.17f–5 Revised 26932
270.18f–3 (c) and (e)(2)(iii) revised 51765
270.24e–1 Amended 47938
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275 Authority citation revised 28132
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11 Appendix A revised 61228
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4.20 (c) table amended 51769
4.22 Amended 66522
4.80 (a)(3) amended 51769
7 Authority citation revised 46439
7.2 Added 46439
7.3 Added 46439
7.4 Redesignated from 10.181; (b), (g) and (h) amended 46441
7.8 Removed 46441
10 Authority citation amended 42211, 46441, 51769
10.1 (i) amended 51769
10.7 (d) amended 51769
10.11 (b) amended 51769
10.31 (a)(1) and (2) amended 4167
10.39 (d)(2) amended 4167
10.41a (f) revised; (g), (h) and (i) redesignated as (h), (i) and (j); new (g) added 42211
(f)(1) and (g)(1) corrected 46553
10.41b (b) introductory text, (7) and (d)(1) introductory text amended 51769
10.46 Amended 51769
10.63 Amended 51769
10.67 (c) amended 51769
10.75 Amended 51769
10.90 (a) amended 51769
10.100 Amended 51769
10.151 Amended 51769
10.180 (a) amended 51769
10.181 Redesignated as 7.4 46553

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11 Authority citation revised....51770
11.9 (b) amended....51770
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12.33 (e) amended....51770
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18 Authority citation amended....4167
18.1 (a)(3) amended....4167
18.6 (d) amended....51770
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19 Authority citation amended....15834
19.1 (a)(9) amended; (c) removed....15834
19.2 Heading, (b)(2) and (g) revised; (a) amended....15834
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19.6 (a)(1) and (d)(2) amended; (d)(1) revised; (d)(4) redesignated as (d)(5); new (d)(4) added....15836
19.11 (h) revised....15836
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19.13 (g) amended....15839
19.13a Introductory text amended; (b) revised....15839
19.35 (c) introductory text, (2), (e)(2) and (f) revised....15839
19.36 (e) and (g) amended....15840
19.37 (a) amended....15840
19.39 (c)(2) and (3) amended; (c)(4)(ii), (iii) and (iv) redesignated as (c)(4)(iii), (iv) and (v); new (c)(4)(ii) added; (c)(5) and (e) revised....15840
24.23 (b)(1)(i)(A), (B), (2)(i)(B) and (C) amended....51770
24.24 (b)(1) amended; interim....30449
(b)(1) corrected....45157
(b)(1) table corrected....51774
54 Authority citation amended....68165
54.5 (a)(2) revised....68165
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103.11 (b)(2)(xii) amended....51770
111 Notice....56073
112.26 Amended....51770
113.63 (a)(4) redesignated as (a)(5); new (a)(4) and (b)(4) added; (b)(2), (3) and (d) amended....15840
114 Authority citation revised....4168
114.1 (b) and (c) amended; (g) added....4168
114.2 Heading and introductory text amended; (d) added....4168
114.3 (a) introductory text and (2) amended....4168
114.11 Amended....4168
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144.36 (c) and (f) revised; (g)(4) and (5) amended; (g)(6) added....15841
144.37 (h)(2)(v) revised; (h)(3) concluding text amended....15842

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TITLE 19 Chapter I—Con.

144.39 Amended 15842
144.41 (c) revised 15842
148.2 (b) amended 46441
148.12 (b)(1)(i) revised 46441
148.17 (b) and (c) amended 46441
148.31 (a) and (b) amended 46441
148.32 (d)(2) amended 46441
148.33 (a), (b), (d) and (f) revised 46441
148.34 (a) amended 46442
148.35 (a) and (b) revised 46442
148.36 Amended 46442
148.37 Amended 46442
148.38 Amended 46442
148.41 Amended 51771
148.51 (a)(2) revised 46442
148.64 (a) amended 46442
148.74 (c)(3) amended 46442
148.101 Amended 46442
148.102 (a) and (b) revised 46442
148.104 (c) amended 46443
148.110—148.116 (Subpart K) Heading amended 46443
148.110 Amended 46443
148.111 (a) amended 46443
148.113 (a) amended 46443
151.4 (b)(2) removed 51771
152 Authority citation amended 51771
152.102 (j)(2) and (k) amended 51771
159 Authority citation revised 51771
159.33 Amended 51771
159.35 Amended 51771
159.43 Amended 51771
171 Appendix C amended 51771
177 Authority citation amended 51771
177.2 (b)(2)(iii) amended 51771
178.2 Table amended (OMB numbers) 46443, 49150
191.91 Amended 51771
191.131 (a) amended 51771
191.161 Amended 51771

Chapter II—United States International Trade Commission (Parts 200—299)

201.7 Correctly revised; CFR correction 39438
201.201—201.208 (Subpart H) Added; interim 38019

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

351 Added 27379
353 Removed 27379
355 Removed 27379

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351 ..... 19719, 25874, 38948, 41322, 46445

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

200.8 (g)(12) added 2141
222.55 Amended 47138
229.42 (f) amended; (g) added 47138
255 Revised 64163
261 Added 45713
295.5 (e)(1) amended 67724
335.3 (a)(8) and (9) amended; (a)(10) added 44408
340.13 Amended; interim 41271
Regulation at 62 FR 41271 confirmed 64273
367 Technical correction 49049
367.1 Revised; interim 19220
Regulation at 62 FR 19220 confirmed 44409

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367.2 (a), (f) introductory text, (2) and (j) revised; (f)(3) and (k) added; interim 19220
Regulation at 62 FR 19220 confirmed 44409
367.3 (a) and (b) revised; (c) amended; interim 19220
Regulation at 62 FR 19220 confirmed 44409

Chapter III—Social Security Administration (Parts 400—499)

404.1 (q) amended 38450
404.2 (b) revised; (c)(1) amended 38450
404.3 (b) amended 38450
404.143 (a)(2) amended 38450
404.101—404.146 (Subpart B) Appendix amended 38450
404.203 (a) amended 38450
404.403 (d)(2) amended 38450
404.408 (a)(1)(ii), (e)(2), (f), (k), (l)(2)(ii) amended 38450
404.430 (c)(1)(ii)(A)(*1*), (*2*) and (2) amended 38450
404.452 (a)(1), (2) and (d) revised; (b) amended 15610
404.460 (b)(4)(ii) and (7) introductory text amended 38450
404.464 (a) and (c) amended 38450
404.468 (d) amended 38450
404.501—404.526 (Subpart F) Authority citation revised 64277
404.520 (a) amended 38450
Revised 64277
404.521 Introductory text revised; (b) amended 64278
505.522 (b) amended 64278
404.523 (a)and (c) amended 64278
404.525 Amended 64278
404.526 Revised 64278
404.527 Added 64278
404.900—404.999d (Subpart J) Authority citation revised 64278
404.903 (r) and (s) amended; (t) and (u) added 64278
404.942 (g) revised 35074
404.966 Added 49602
404.983 Amended 38450
404.984 (a), (b)(2), (3), (c) and (d) amended 38450
404.985 (c)(2) amended 38450
404.1200 (a) amended 38450
404.1202 (b) amended 38450
404.1206 (d) amended 38451
404.1211 (a) amended 38451
404.1214 (a), (c)(1), (2), (d)(3), (4), (e) and (f) amended 38451
404.1215 (b) and (d) amended 38451
404.1216 (b)(3) amended 38451
404.1225 (a)(4) amended 38451
404.1232 (a) and (b) amended 38451
404.1249 (b)(2)(i), (ii) and (iv) amended 38451
404.1267 Amended 38451
404.1282 (a) amended 38451
404.1283 (a)(1), (2), (b) introductory text and (1) amended 38451
404.1285 (a) amended 38451
404.1286 (a) and (b) amended 38451
404.1287 (a)(1), (2) introductory text and (b) through (e) amended 38451
404.1289 Introductory and concluding text amended 38451
404.1290 (a) and (b) designation removed 38451
404.1296 Amended 38451
404.1297 (a) amended 38451
404.1413 Introductory text amended 38451
404.1502 Amended 38451
404.1503 (a), (b) introductory text, (1), (c) introductory text and (e) amended 38451
404.1526 (b) and (c) amended 38451
404.1527 (e) heading and (2) amended 38451
404.1529 (b) amended 38451
404.1546 Amended 38451
404.1597a (j)(1) and (2) amended 38451
404.1599 (a) and (b) amended 38451
404.1501—404.1599 (Subpart P) Appendix 1 amended 30747
Appendix 1 amended 4571
404.1601 Introductory text, (a), (b), (c), (e), (f) and (h) amended 38452
404.1602 Amended 38452
404.1613 (a) amended 38452
404.1615 (d) amended 38452
404.1616 (b)(2) amended 38452
404.1626 (e) amended 38452
404.1627 (b) heading and (1) amended 38452
404.1641 (a) amended 38452
404.1682 Amended 38452
404.1691 (a) amended 38452
404.1694 Amended 38452
404.1735 Amended 38452

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404.1745 Introductory text amended 38452
404.1750 (a) and (d) amended 38452
404.1765 (a) and (e) amended 38452
404.1799 (c) and (e) amended 38452
404.1902 Amended 38452
404.2102 Introductory text amended 38452
404.2103 Amended 38452
404.2117 Amended 38452
404.2120 (c) amended 38452
404.2127 (a), (b) and (c) amended 38452
410.101—410.130 (Subpart A) Authority citation amended 38452
410.110 (c) removed; (d) through (r) redesignated as (c) through (q); new (d), new (e) and new (f) amended 38452
410.120 Amended 38452
410.130 Amended 38453
410.200—410.250 (Subpart B) Authority citation revised 38453
410.300—410.395 (Subpart C) Authority citation revised 38453
410.400—410.490 (Subpart D) Authority citation revised 38453
410.401 (c) amended 38453
410.474 Amended 38453
410.490 (a) amended 38453
410.501—410.591 (Subpart E) Authority citation revised 38453
410.601—410.699a (Subpart F) Authority citation revised 38453
410.601 (a) and (b) amended 38453
410.629a (a) and (d) amended 38453
410.629d (a)(1), (b)(2) and (5) amended 38453
410.629e Amended 38453
410.629f Amended 38453
410.634 Amended 38453
410.635 Amended 38453
410.639 Amended 38453
410.644 Amended 38453
410.650 (a) amended 38453
410.669 (b) amended 38453
410.670b (a), (b)(1) and (4) amended 38453
410.670c (c)(2) amended 38453
410.686e Amended 38453
410.687 (d) amended 38453
410.688 Revised 38453
410.689 Amended 38453
410.690 Amended 38453
410.691 Amended 38453
410.692 (a), (b), (d) and (e) amended 38454
410.693 (a)(2) amended 38454
410.697 Amended 38454
410.699 (a) and (c) amended 38454
410.700—410.707 (Subpart G) Authority citation revised 38454
410.700 (b) amended 38454
410.704 (a)(1) amended 38454
416.101 (j) amended 38454
416.105 Amended 38454
416.110 (f)(1) amended 38454
416.120 (b) and (d) amended; (b)(1) removed; (b)(2) and (3) redesignated as (b)(1) and (2) 38454
416.211 Regulation at 62 FR 1055 confirmed 42412
416.212 Regulation at 62 FR 1055 confirmed 42412
416.250 (a) and (b) amended 38454
416.414 Regulation at 62 FR 1056 confirmed 42412
416.420 (a) revised; (c) redesignated as (d); new (c) added 30751
416.501—416.571 (Subpart E) Authority citation revised 49439
416.537 (a) amended 38454
416.580 Added 49439
416.581 Added 49439
416.582 Added 49439
416.583 Added 49439
416.584 Added 49439
416.585 Added 49440
416.586 Added 49440
416.903 (a), (b) introductory text, (1), (c) introductory text and (e) amended 38454
416.927 (e) heading and (2) amended 38454
416.929 (b) amended 38454
416.946 Amended 38454
416.994a (e)(1) and (f)(4) correctly revised; CFR correction 36460
416.1001 Introductory text, (a), (b), (c), (e), (f) and (h) amended 38454
416.1002 amended 38454
416.1013 (a) introductory text amended 38455
416.1015 (d) amended 38455
416.1016 (b)(2) amended 38455
416.1026 (e) amended 38455
416.1027 (b) heading and (1) amended 38455
416.1041 (a) amended 38455

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416.1082 Amended 38455
416.1091 (a) heading amended 38455
416.1100—416.1182 (Subpart K) Appendix amended 30982
416.1149 Regulation at 62 FR 1056 confirmed 42412
416.1165 Regulation at 62 FR 1056 confirmed 42412
416.1167 (c) added 42411
416.1180 Amended 59813
416.1202 Regulation at 62 FR 1056 confirmed 42412
416.1236 (a)(2) revised; (a)(12) amended; (a)(13), (16) and (19) removed; (a)(14), (15), (17), (18) and (20) redesignated as (a)(13) through (17); new (a)(18) added 30983
416.1245 (b)(3)(ii) introductory text revised 30983
416.1400—416.1499 (Subpart N) Authority citation revised 49440
416.1403 (a)(15) and (16) amended; (a)(17) added 49440
416.1442 (g) revised 35075
416.1453 (b)(2)(ii) amended 38455
416.1466 Added 49603
416.1483 Amended 38455
416.1484 (a), (b)(2), (3), (c) and (d) amended 38455
416.1485 (c)(2) amended 38455
416.1503 Amended 38455
416.1535 Amended 38455
416.1550 (a) and (d) amended 38455
416.1565 (a) and (e) amended 38455
416.1599 (c) and (e) amended 38455
416.1603 (b) revised 59813
416.1610 (a)(2) revised 59813
416.1902 Amended 38455
416.2001 (c) amended 38455
416.2030 (a) amended 38455
416.2035 (b)(1) amended 38455
416.2065 Introductory text amended 38455
416.2070 (a) introductory text amended 38455
416.2075 (a) and (b) amended 38455
416.2095 (a)(5) amended 38455
416.2096 (c)(6) added 30984
(a)(1) introductory text and (d) amended 38455
416.2099 (a) introductory text, (b), (c) and (d) amended 38455
416.2176 (b) amended 38456
416.2202 Introductory text amended 38456
416.2203 Amended 38456
416.2217 Amended 38456
416.2220 (c) amended 38456
416.2227 (a), (b) and (c) amended 38456
422.1 (a) amended 38456
422.107 (a) amended 38456
422.210 (a), (c) and (d) amended 38456
422.301—422.317 (Subpart D) Added 64278
422.602 Amended 38456
429 Added 24329
430 Added 39935

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

645 Added; interim 61603

Chapter VI—Employment Standards Administration, Department of Labor (Parts 700—799)

702 Authority citation revised 53956
702.204 Revised 53956
702.236 Revised 53956
702.271 (a) revised 53956

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TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

Chapter I Comment response **49881**
1 Authority citation revised **51512**
1.31 Removed **39440**
1.35 Removed **39440**
2 Authority citation revised **51512**
3 Authority citation revised **51512**
5 Authority citation revised **51512**
5.10 (a)(38) added **28628**
(a)(39) added **33349**
5.20 (f)(4) added **48757**
5.22 (a)(10)(i), (ii), (iv) and (v) revised **67270**
5.23 (c)(1) and (4) revised **67270**
5.25 (a)(2) and (b) revised **67270**
5.26 (c) revised **67270**
5.28 Revised **67270**
5.30 (b) and (c)(4) revised **67270**
5.31 (h) added **19493**
(c)(3) and (e)(5) revised **67271**
5.33 (b) revised **67271**
5.37 (a)(2)(i), (ii) and (iii) and (b)(1), (2) and (3) revised; (a)(2)(iv) and (b)(4) removed **67271**
5.40 Added **43471**
5.45 (b) introductory text, (c)(1), (2) and (e)(1)(i), (ii) and (iii) revised **67271**
5.46 Revised **67271**
5.47 (a)(1) and (2) revised **67271**
5.49 (a) revised **67271**
5.50 (a) revised **67271**
5.51 (a)(1) and (b)(1) revised **67271**
5.52 (a) revised **67271**
5.53 (a)(1), (b)(1)(i) and (c) revised **67271**
5.54 (a) revised **67272**
5.55 (a) revised **67272**
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5.57 (a), (b) and (c) revised **67272**
5.59 (a)(1) revised **67272**
5.60 (a)(1) through (4) and (6) redesignated as (b)(1) through (5) **67272**
5.78 (b) revised **67272**
5.86 (a) and (b) revised; (c) removed **67272**
5.87 (a) and (b) revised; (c) removed **67272**
5.88 Revised **67272**
5.89 (a) introductory text and (b) introductory text revised **67272**
5.90 Revised **67273**
5.91 Revised **67273**
5.92 Revised **67273**
5.100 Added **48757**
7 Authority citation revised **51512**
10 Technical correction **47760**
Authority citation revised **51512**
10.30 (b) amended **40592**
10.40 (b)(1)(ix) revised **40592**
11 Authority citation revised **51512**
12 Authority citation revised **51512**
13 Authority citation revised **51512**
14 Authority citation revised **51512**
15 Authority citation revised **51512**
16 Authority citation revised **51513, 55976,**
Authority citation corrected **60614**
16.1 (b)(2) amended **40444**
(b)(2) amended; eff. 4–28–99 ..... **55976**
17 Authority citation revised **51513**
19 Authority citation revised **51513**
20 Technical correction **47760**
Authority citation revised **51513**
20.100 (c)(3) revised **40592**
20.112 (a) amended; eff. 4–6–98 ..... **52249**
21 Authority citation revised **51513**
25 Revised **40592**
Technical correction **47760**
Authority citation revised **51513**
50 Meeting **46198**
Authority citation revised **51513**
50.3 (j) removed; (k) through (n) redesignated as (j) through (m) **39440**
50.21 Removed **39440**
50.40—50.48 (Subpart C) Removed **39440**
56 Meeting **46198**
Authority citation revised **51513**
58 Authority citation revised **51513**
60 Authority citation revised **51513**
70 Authority citation revised **51513**
71 Technical correction **47760**
Authority citation revised **51513**
71.1 (c) amended **40598**
73 Authority citation revised **51513**
74 Authority citation revised **51513**
74.2101 (a) correctly revised; CFR correction **15389**
80 Authority citation revised **51513**
81 Authority citation revised **51513**
82 Authority citation revised **51513**
100 Authority citation revised **51513**

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101 Technical correction.....47760, 55331
Authority citation revised.....51513
101.2 (b) and (f) amended; (c)(1), (2), (3) and (5)(iii) removed; (c)(5)(iv) redesignated as (c)(5)(iii); (c)(4) and (5) redesignated as (c)(1) and (2).....43074
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101.3 (g) added; eff. 3-23-99.....49847
101.4 (a)(1) revised; (g) and (h) added; eff. 3-23-99.....49847
(h)(1) corrected.....64634
101.8 Removed.....43074
101.9 (k)(2) and (5) removed; (k)(3), (4) and (6) redesignated as (k)(2), (3) and (4); (c)(8)(iii), (v), (d)(7)(i), (j)(6) and new (k)(4) revised; eff. 3-23-99.....49848
101.12 (h)(12) revised.....40598
(b) Table 2 amended; eff. 3-23-99.....49848
(b) Table 2 amended; eff. 1-1-00.....63653
(b) Table 2 corrected.....66275
101.13 (j)(1)(i)(B) amended.....31339
(a) and (b) introductory text revised; (q)(3) redesignated as (q)(3)(i); (q)(3)(ii) added; eff. 3-23-99.....49867
101.14 (a)(4) removed; (a)(5) and (6) redesignated as new (a)(4) and (5); (b)(3)(i) and (d)(3) revised; eff. 3-23-99.....49867
101.29 Removed.....43074
101.36 Revised; eff. 3-23-99.....49849
101.54 (e)(1) introductory text and (2) introductory text amended.....31339
(b)(1), (c)(1) and (e)(1) introductory text revised; eff. 3-23-99.....49867
Heading revised; (f) and (g) added; eff. 3-23-99.....49880
101.60 (c)(1)(iii)(A) revised; eff. 3-23-99.....49881
101.65 (d)(2)(ii)(C) and (4)(ii)(B) stayed; eff. 4-1-97 through 1-1-00.....15391
(b)(4) revised; eff. 3-23-99.....49858
101.69 (h) revised; (m)(1), (n)(1) and (o)(1) amended.....40598
101.70 (j)(4) added.....28232
(f) amended.....40599
101.80 (c)(2)(ii)(B) revised.....63655
101.93 (b) through (e) added; eff. 3-23-99.....49867
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102 Authority citation revised.....51513
105 Authority citation revised.....51513
106 Authority citation revised.....51513
107 Authority citation revised.....51513
108 Authority citation revised.....51513
109 Authority citation revised.....51514
110 Authority citation revised.....51514
111 Authority citation revised.....51514
113 Authority citation revised.....51514
113.40 (b)(10)(ii) amended.....31722
114 Authority citation revised.....51514
123 Authority citation revised.....51514
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164 Authority citation revised.....51514
165 Authority citation revised.....51514
165.110 (b)(4)(i)(A) table corrected; CFR correction.....36460
166 Authority citation revised.....51515
168 Authority citation revised.....51515
169 Authority citation revised.....51515
170 Technical correction.....47760
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170.35 (c)(1)(viii) revised.....40599
170.39 (c)(6) and (e) amended.....40599
171 Technical correction.....47760
Authority citation revised.....51515
171.1 (c) amended.....40599
172 Authority citation revised.....51515
172.712 Added.....26228
172.841 (c) revised.....30985
173 Authority citation revised.....51515
173.150 (a)(5) added.....59284
174 Authority citation revised.....51515
175 Authority citation revised.....51515
175.105 (c)(5) table amended.....33996, 39937

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175.125 (a)(7) added; (b)(1) revised 3463
175.300 (b)(3)(viii)(*b*) 43076
176 Authority citation revised 51515
176.170 (a)(5) table amended 39939
176.200 (d)(3) table amended 39772
177 Authority citation revised 51515
177.1345 (d) amended 34628
177.1395 (b)(4) table amended 53958
177.1500 (c) redesignated as (d); new (c) added; new (d)(5)(ii) amended 22886
177.1520 (b) table corrected; CFR correction 42050, 49908
178 Authority citation revised 51515
178.2010 (b) table amended 29009, 30455, 34629, 34630, 36983, 39441, 41272
178.3130 (b) table amended 31511
178.3297 (e) table amended 19221, 25476
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178.3400 (c) table amended 33997, 42051
179 Authority citation revised 51515
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179.26 (b) table amended 64121
180 Authority citation revised 51515
181 Authority citation revised 51515
182 Authority citation revised 51515
184 Authority citation revised 51515
184.1472 Revised 30756
186 Authority citation revised 51515
189 Authority citation revised 51515
190 Added 49891
200 Authority citation revised 51515
201 Authority citation revised 51515
201.57 (f)(10) added; eff. 8–27–98 45325
201.64 (a) through (h) stayed; (i) revised 19925
202 Authority citation revised 51515
205 Authority citation revised 51515
206 Authority citation revised 51515
207 Authority citation revised 51515
210 Authority citation revised 51516
211 Compliance date extension 40447
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291 Authority citation revised 51516
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310 Authority citation revised 51516
310.305 (a) and (f)(1) revised; (b)(5) and (c)(4) removed; (c)(5) and (6) redesignated as (c)(4) and (5); new (c)(4) amended 34167
(a), (d)(2), (3) introductory text and (i) amended; (b), (c), (d)(1), (3)(ii) and (4) revised; eff. 4–6–98 52249
312 Meeting 46198
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Authority citation revised 51516
312.20 (c) amended 32479
312.23 (a)(7)(iv)(*e*) revised 40599
312.32 (a), (b), (c)(1)(i), (2) and (d)(3) revised; (c)(3) and (e) amended; eff. 4–6–98 52250
312.70 (a) and (b) amended 46876
314 Meeting 44891, 46198
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Authority citation revised 51516
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314.50 (d)(1)(iii) revised 40599
314.70 (g) added 39900
314.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text, (d)(1) and (l) amended; (f)(1) revised 34168
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314.101 (d)(4) revised 40599
314.110 (a)(3) and (b) amended 43639
314.120 (a)(3) amended 43639
314.440 (a)(3) amended 43639
316 Authority citation revised 51516
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331 Authority citation revised 51516
331.10 (a) correctly revised; CFR correction 52659
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349 Authority citation revised 51517
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355 Authority citation revised 51517
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431 Authority citation revised 51517
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433 Authority citation revised 51517
436 Authority citation revised 51517
436.215 (c)(16)(iv) and (18)(iv) corrected; CFR correction 52659
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500 Authority citation revised 51518
500.80 (b) amended 66983
501 Authority citation revised 51518
502 Authority citation revised 51518
509 Authority citation revised 51518
510 Technical correction 23534
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510.515 (c) table corrected; CFR correction 52659
510.600 Regulation at 62 FR 14300 eff. date corrected to 4–7–97 15751
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511.1 (b)(10) revised 40599
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514.1 (b)(14) revised 40599
514.8 (a)(1) amended 40600
514.110 (b)(10) revised 40600
514.111 (a)(9) revised 40600
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520.23 (a)(2) amended 35075
520.82a (b) amended 61624
520.82b (b) amended 61624
520.100a (b) amended 63270
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520.100c (b) amended 63270
520.222 (c) amended 61624
520.300a (b) amended 63270
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520.300c (b) amended 63270
520.390a (a)(2) amended 35076
520.420c (a)(2) amended 63270
520.445b (b) amended 27691, 35076, 60656
520.447 (b) revised 46669
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520.580 (b)(2) amended 35076, 61624
520.600 (c) amended 35076
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520.622b (c)(2) amended 35076
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520.622c (b)(6) amended 35076
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520.763b (c) amended 35076
520.763c (b) amended 35076
520.784 (b) amended 61624
520.804 (b) amended 63270
520.812 (c) redesignated as (d); new (d) revised 38906
520.863 (b) amended 61624
520.1010a (b) amended 35076
520.1044a (b) amended 34169
520.1044b (b) amended 29011
520.1044c (b) amended 29013
520.1120a (c) amended 61624
520.1120b (c) amended 61625
520.1192 (b) amended 63270
520.1193 (b) amended 63270
520.1194 (b) amended 63270
520.1195 (b) amended 63270
520.1196 (b) amended 63270
520.1197 (b) amended 63270
520.1242a (c)(2) amended 61625
520.1242b (c) amended 61625
520.1242g (e) amended 55160
(c) amended 61625
520.1263c (b) amended 65020
520.1320 (c) amended 61625
520.1326a (b) amended 61625
520.1326b (b) amended 61625
520.1408 (b) amended 35076
520.1446 Added 28629
520.1451 Added 37713

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520.1452 Added 42902
520.1484 (b) and (c)(3) amended 55160
520.1485 (d)(3) amended 60657
520.1616 Added 29012
(d)(1) heading and (iii) amended 61626
520.1660d (a)(8) and (b)(6) added 23356
(b)(3), (e)(1)(ii)(A)(*3*), (B)(*3*) and (C)(*3*) amended 35076
520.1696b (b) amended 55160
520.1720a (b)(1) amended 61625
520.1720b (b) amended 61625
520.1720c (b) amended 61625
520.1805 (b) amended 61625
520.1880 (a) amended 148
520.1900 (b) amended 35076
520.2043 (b)(2) revised 37712
520.2098 Added 34632
(d) heading and (2) corrected 55159
520.2170 (c) amended 63270
520.2220a (b) amended 23357, 40932
520.2220b (b)(3) amended 61625
520.2220c (c) amended 61625
520.2260b (f)(1) and (h)(1) amended 35076
520.2325a (a)(4) added 37712
520.2345d (a)(1), (d)(1)(iii) and (2)(iii) amended 35076
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(a)(1), (4), (d)(1)(iii) and (2)(iii) amended 55160
520.2362 (c) amended 61625
520.2380a (c)(2) amended 63271
520.2380b (c) amended 63271
520.2380c (b) amended 63271
520.2380d (b) amended 63271
520.2380f (b) amended 63271
520.2455 (b) amended 35076
520.2456 (b) amended 35076
520.2481 (b) amended 35076
520.2610 (b) amended 61625
520.2611 (b) amended 61625
520.2612 (b) amended 61625
520.2640 (e)(1)(iii), (2)(iii) and (3)(iii) amended 39443
522 Authority citation revised 51518
522.23 (c) amended 35076
522.56 (b) amended 23357
522.82 (b) amended 61625
522.150 (b) amended 61625
522.518 (b) amended 28630
522.540 (a)(2) amended 37713
522.770 (d)(2) revised 44410
(d) heading revised; (d)(1), (2) and (3) redesignated as (d)(1)(i), (ii) and (iii); (d)(2) added 62242
522.784 (b) amended 61625
522.812 (c) redesignated as (d); new (d)(2) revised 38907
522.863 (b) amended 61625
522.970 (b) revised 22888
522.1002 (b)(2) amended 62242
522.1010 (b) amended 35076
522.1044 (b)(3) amended 35076
(b)(3) and (4) added 45157
522.1044b (b) amended 22889
522.1150 (b) amended 63271
522.1155 (b) amended 61625
522.1156 Added 66984
522.1182 (b)(2)(i) amended 35076
522.1183 (e)(1) amended 35076
522.1192 (b) amended 63271
522.1193 (b) amended 63271
522.1222a (c) amended 22888, 35076
522.1244 (b) amended 61625
522.1410 (b) amended 35076
522.1452 (b) amended 63271
522.1503 (b) amended 61625
522.1660 (c) redesignated as (d); new (d)(1) heading, new (ii), new (iii) and new (2)(ii) amended 27692
522.1662a (a)(2), (g)(2) and (h)(2) amended 35076
522.1680 (b) amended 35076, 38906
522.1704 (a)(2) amended 61625
522.1720 (b)(2) amended 38906
(b)(1) amended 61625
522.1850 (d) added 45158
522.1885 (b) amended 63271
522.2005 (b) amended 61625
522.2220 (a)(2)(iii) added 23128
(c)(2) amended 35076
522.2424 (b) amended 35076
522.2476 (b) amended 29013
522.2477 (a) revised 28629
522.2483 (b) amended 35077
522.2610 (b)(2) corrected; CFR correction 41272
(a)(2) amended 61625
522.2640a (b)(2) amended 35077
522.2662 (b) amended 35077
522.2680 (b) amended 61625
524 Authority citation revised 51518
524.154 (a)(2) amended 61625
524.155 (a)(1) amended 61626
524.575 (c)(2) revised 48940
524.770 Added 65753

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524.814 Added 33997
524.900 (e) amended 55161
(c) amended 61626
524.981a (b) amended 40932
524.981b (b) amended 40932
524.981c (b) amended 40932
524.1193 (d)(2) amended 38908
(b) amended 63271
524.1240 (b) amended 61626
524.1443 (b) revised 55161
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524.1484g (b) amended 63271
524.1580b (b) amended 35077
524.1580c (b) amended 35077
524.1742 (b) amended 61626
524.1883 (b) amended 63271
526 Authority citation revised 51518
529 Authority citation revised 51518
529.50 (b) amended 23358
529.1044a (b) amended 35077
529.1115 (b) amended 29014
530 Authority citation revised 51518
530.41 Revised 27947
556 Authority citation revised 51518
556.52 Revised 40933
556.75 Corrected 15391
556.225 Revised 62242
556.227 Added 33998
556.273 Added 55161
558 Technical correction 23534, 44892
Authority citation revised 51518
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558.4 (d) table amended 25477, 60657
558.55 (a) amended 63271
558.58 (d)(1)(iii) table amended 60658, 61627
(d)(1) table amended 63271, 66987
558.78 (a) revised; (d)(1) table amended 55162
558.95 (d)(1)(ii)(*b*), (iii)(*b*), (iv)(*b*), (v)(*b*) and (xiii)(*b*) amended 63271
558.120 (c) redesignated as (d); new (d)(1)(iii)(*b*) amended 61011
558.128 (a)(4) and (d)(1) table amended 27692
(d)(1) table and (2) amended 61628
558.155 (a)(1) and (2) amended 35077
(a)(1) amended 67725
(a)(2) amended 2307
558.175 (c)(1)(iii)(*b*) and (iv)(*b*) amended 61626
(c) redesignated as (d); new (d)(1)(iv)(*b*) amended 61912
(d)(1)(iii)(*b*) amended 62243
558.195 (c)(2) added; (d) table amended 23129
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(d) table amended 66523, 67273
(a) and (d) table amended 67725
558.205 (a) amended 35077
558.235 (a) amended 63271
558.254 (c) amended 55161
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558.274 Regulation at 62 FR 14301 eff. date corrected to 4-7-97 15751
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(a)(8), (c)(1)(i) table and (ii) table amended 55160
558.300 (a)(1) and (2) amended 63271
558.311 (e)(3)(i) table amended 28630
(e)(1)(ii) table amended 61626
(f)(1)(xv)(*b*) and (xvi)(*b*) amended 61912
558.366 (a) and (c) table amended 29011
558.485 Regulation at 62 FR 14301 eff. date corrected to 4-7-97 15751
(a)(11) amended 27692
(a)(28) added 46444
558.515 (d)(1)(vi)(*b*) amended 61626, 66985
558.530 (a) amended 67725
558.550 (b) redesignated as (d); (d)(1)(xvii) added 29014
(b)(1)(vii)(*c*) amended 60781
(b)(1)(ix)(*c*) amended 66985
558.555 (b)(4) amended 66985
558.600 (a) amended 35077
558.615 (a) amended 63271
558.618 (d)(1) corrected 15391
558.625 Regulation at 62 FR 14301 eff. date corrected to 4-7-97 15751
(b)(10) and (52) amended 27692
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564 Authority citation revised 51518
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570.35 (c)(1)(viii) revised 40600
571 Technical correction 47760
Authority citation revised 51518
571.1 (c) amended 40600
573 Authority citation revised 51518
573.920 Regulation at 60 FR 53703 confirmed 44894
579 Authority citation revised 51518

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582 Authority citation revised 51518
584 Authority citation revised 51518
589 Authority citation revised 30976, 51519
589.2000 Added (OMB number pending) 30976
600 Meeting 44891
Authority citation revised 51519
600.3 (ff) and (gg) added 39901
600.10 (a) removed; (b) heading revised 53538
600.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text, (d)(1) and (m) amended; (f)(1) revised 34168
(a), (c)(1) and (f)(1) revised; (b) and (g) amended; (j) removed; (k), (l) and (m) redesignated as (j), (k) and (l); eff. 4–6–98 52252
601 Meeting 44891, 46198
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601.2 (a) and (c)(2) amended 40600
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601.12 Revised 39901
601.25 (b)(3) amended 53538
606 Authority citation revised 51519
606.20 (a) removed 53538
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610 Meeting 44891
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660 Authority citation revised 51519
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801 Authority citation revised 51519
801.435 Added 50501
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803 Authority citation revised 51519
804 Authority citation revised 51519
805 Authority citation revised 51519
806 Added 27191
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807 Authority citation revised 51519
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809 Authority citation revised 51520
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810 Authority citation revised 51520
812 Authority citation revised 26229, 51520
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812.18 (b) revised 26229
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866 Authority citation revised 51520
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872.6730 (c) amended 31512

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888 Authority citation revised 51520
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898 Added 25497
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1310.02 Regulation at 62 FR 5917 confirmed 52256
1310.04 Regulation at 62 FR 5917 confirmed 52256
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40.66 Revised; interim.....67567
40.67 Added; interim.....67568
40.68 Added; interim.....671
40.91 Revised; interim.....67568
40.92 Revised; interim.....67568
40.93 Revised; interim.....67568
40.104 Revised; interim.....67568
40.105 Revised; interim.....67568
41 Authority citation revised.....48154
41.2 (l) revised; interim.....51031
41.51 Revised.....48154
41.101 (a)(1)(ii) and (2) amended; (b) redesignated as (e); (a)(1)(iii), new (b), (c) and (d) added; interim.....671
41.107 Regulation at 59 FR 25325 confirmed.....24334
41.112 (b) revised.....24332
41.113 (c), (h) and (k) removed; (d) through (g), (i) and (j) redesignated as (c) through (h); (a), (b) and new (c) through new (f) revised.....24333
41.121 (a) amended; interim.....671
42.32 (d)(1)(ii) revised.....4394
42.72 (a) and (e)(4) amended; (e)(1) revised.....27694
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42.74 (a) and (b) revised.....4393

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51 Authority citation revised.....62695
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51.61 Revised.....5103
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51.63 Redesignated as 51.62; new 51.63 redesignated from 51.64; (a) and (f) amended.....5103
51.64 Redesignated as 51.63; new 51.64 redesignated from 51.65.....5103
51.65 Redesignated as 51.64; new 51.65 redesignated from 51.66.....5103
51.66 Redesignated as 51.65.....5103
51.70 (a)(7) amended; (a)(8) added.....62695
51.80 Revised.....62695
53 Heading and authority citation revised.....5103
120 Authority citation revised.....67275
120.7 (a) revised.....67275
120.9 Revised.....67275
122.3 (a) revised.....27497
123 Authority citation revised.....67275
123.15 Revised.....67275
124.4 Revised.....67276
124.11 Revised.....67276
126 Authority citation revised.....67276
126.1 (a) amended.....37133
126.10 (b) revised.....67276
127 Authority citation revised.....67276
127.10 (a) revised.....67276
129 Added.....67276
135.26 (a), (b) introductory text and (1) revised.....45939, 45941
145.26 (a), (b) and (c) revised.....45939, 45941
171 Authority citation revised.....48758
171.12 Revised; interim.....48758

Chapter II—Agency for International Development, International Development Cooperation Agency (Parts 200—299)

201 Nomenclature change.....38027
201.11 (b), (e) and (j) revised.....38027
201.12 (d) revised; (e) added.....38027
201.13 (a), (b) and (c) revised.....38027
201.14 Amended.....38027
226.26 (a), (b) and (c) revised.....45939, 45941

Chapter IV—International Joint Commission, United States and Canada (Parts 400—499)

430 Added.....39935

Chapter V—United States Information Agency (Parts 500—599)

514 Policy statement.....19925
514.31 (c) through (j) revised; interim.....34633
Regulation at 62 FR 34633 confirmed.....46876
514.44 (g) revised; (h) removed.....19222
(c) revised.....28803
518.26 (a), (b) and (c) revised.....45939, 45941

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

606 Revised.....27948

Proposed Rules:

22.....32558, 63478
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53.....63478
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TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

140.904 (b)(1) revised; interim.....45328
140.922 (b) revised; interim.....45328
470 Authority citation revised.....33355
470.101—470.115 (Subpart A) Revised; interim.....33355
625 Revised; eff. 5-1-97.....15397
646 Authority citation revised.....45328
646.200 (c) revised; (f) removed; interim.....45328
646.202 Removed; interim.....45328
646.204 Amended; interim.....45328
646.208 Revised; interim.....45328
646.212 (b) revised; interim.....45328
646.214 (a)(2) revised; interim.....45328
646.216 (d)(3)(ii) amended; (e)(1) revised; interim.....45328
646.200—646.220 (Subpart B) Appendix amended; interim.....45328

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TITLE 23 Chapter I—Con.

657 Authority citation revised; OMB number 62261
658 Appendix A amended 30758
772.13 Regulation at 61 FR 45321 confirmed 42904

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1200 Revised; interim 34402
1200.4 Revised; interim 34405
1205.5 Removed; interim 34405
1260 Removed 3812

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1327 Authority citation revised 63657
1327.3 (a) through (w) redesignated as (b) through (x); new (a) added 63657
1327.5 (c)(2) introductory text amended 63657
1327.6 (f) and (g) redesignated as (g) and (h); new (f) added; interim 27195
(e)(1) introductory text revised 63657
Regulation at 62 FR 27195 confirmed; (f)(2) amended 153

Proposed Rules:

655 ..... 54598, 64324
777 33047

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.107 Added; interim 61617
5.410 (d)(1)(i) amended 27125
5.609 Regulation at 61 FR 54502 confirmed 24337
5.617 (b)(3) revised 27125
24.110 (a)(3)(ii) revised 20081
25.2 Amended 20081
25.3 Amended 20081
25.9 (x) and (cc) revised 20081
30.320 (k) revised 20081
44 Removed; interim 61617
45 Removed; interim 61617
50.19 (a), (b)(14), (17) and (c) revised; (b) heading and (24) added 15802
55.12 (b)(3) revised; (b)(4) added 15802
81.2 Regulation at 62 FR 63947 confirmed; (b) amended 28977
81.91—81.99 (Subpart H) Regulation at 62 FR 63948 confirmed 28977
81.92 (a) revised 28977
81.93 (c)(1) amended 28977
81.94 (a) and (b)(2) amended 28977
81.96 (d) amended 28977
84.26 (a), (b) and (c) revised; interim 61617
84.82 (e)(1), (2) and (3) revised; interim 61617
85.26 (a), (b) introductory text and (1) revised; interim 61617
92.50 (d)(1) revised 28928
92.202 (b) revised 28928
92.203 (a)(1) introductory text, (b)(1) and (c) revised 28928
92.205 (d) amended 28928
92.206 (a)(5) added 28928
92.209 (c)(2) and (j)(5) revised 28928
92.214 (a)(6) revised 28929
92.219 (b)(1)(i) and (2)(iv) revised 28929
92.220 (a)(10) amended; (b)(4) revised 28929
(a)(1)(iii)(B)(*2*) and (*3*) revised; (a)(1)(iii)(B)(*4*) added 44840
92.250 (a) revised 28929
92.251 (a) revised 28929
92.252 (h) amended 28929
(i)(2) amended 44840
92.300 (a)(1) amended; (f) heading revised 28930
92.350 Revised 28930
92.353 (c)(2)(i)(C)(*1*)(*ii*) revised 28930
92.355 Revised 28930
92.356 (f)(1) revised 28930
92.358 Added 28930
92.453 Revised 44840
92.500 (d) revised 28930
92.505 (c) added 28930
92.507 Revised 44840
92.552 (b) revised 44840

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Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.140 Added 66432
100.141 Added 66432
100.142 Added 66432
100.143 Added 66432
100.144 Added 66432
100.145 Added 66432
100.146 Added 66433
100.147 Added 66433
100.148 Added 66433
103.1 (c) amended 66433
103.215 Regulation at 61 FR 41482 confirmed 15797
(b) amended 66433
103.230 (a)(1) amended 66433
103.405 (b)(2) and (3) amended 66433

Chapter II—Office of Assistant Secretary for Housing–Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200.10 Revised 20081
200.926 (a)(2)(i) revised 30225
200.926d (c)(4)(vii) revised 30225
201 Authority citation revised 65181
201.10 (g) amended 20082
201.20 (a)(3) added 20082
(a)(3) removed; interim 65181
201.26 (a)(1)(iii) revised 20082
(a)(1) revised; interim 65181
202 Revised 20082
202.2 Amended; interim 65181
202.3 (c)(2)(v)(A) revised 30225
(c)(2)(ii)(A) and (v)(C) revised; (c)(2)(iii) amended; interim 65181
202.5 (i) amended; (n)(1)(i) revised; interim 65181
202.7 (b)(4)(i)(A) revised; interim 65182
202.8 (b)(9) revised 30225
203 Authority citation revised 65182
203.1—203.7 Undesignated center heading revised 30225
203.1 Revised 30225
203.3 (d)(1)(iii) revised 20088
(d)(2)(iv) added; interim 65182
203.4 Added 30226
(d) amended; interim 65182
203.5 (c) amended 20088
(b) revised 30226
203.6 Added 30226
203.7 Introductory text revised 30226
203.43i (d) introductory text, (g) introductory text and (2) revised 30226
203.50 (h) revised 30226
203.249 Revised 30226
203.255 (a) revised; (f) added (OMB number pending) 30227
203.257 Revised 30227
203.341 Added 60129
203.342 Regulation at 61 FR 35017 confirmed; revised 60129
203.350 Regulation at 61 FR 35017 confirmed 60129
203.355 Regulation at 61 FR 35018 confirmed; (a), (c), (g) introductory text and (h) revised; (i) added 60129
203.370 Regulation at 61 FR 35018 confirmed 60129
203.371 Regulation at 61 FR 35018 confirmed 60129
(b)(1) and (5) revised 60130
203.402 Regulation at 61 FR 35018 confirmed 60129
(f) revised 60130
203.402a Regulation at 61 FR 35019 confirmed 60129
203.404 Regulation at 61 FR 35019 confirmed 60129
203.412 Regulation at 61 FR 35019 confirmed 60129
203.414 Regulation at 61 FR 35019 confirmed 60129
(a) revised 60130
203.415 (b) revised 30227
203.438 Regulation at 61 FR 35019 confirmed 60129
203.471 Regulation at 61 FR 35019 confirmed 60129
203.473 Regulation at 61 FR 35019 confirmed 60129
203.499 Revised 30227
203.500 Regulation at 61 FR 35019 confirmed 60129
203.501 Regulation at 61 FR 35019 confirmed 60129
203.552 Regulation at 61 FR 35019 confirmed 60129
(a) introductory text revised 60130
203.604 Regulation at 61 FR 35019 confirmed 60129

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TITLE 24 Chapter II—Con.

203.605 Regulation at 61 FR 35019 confirmed 60129
203.606 Regulation at 61 FR 35020 confirmed 60129
203.614 Regulation at 61 FR 35020 confirmed 60129
203.616 Revised 60130
Regulation at 61 FR 35020 confirmed 60129
203.640 Regulation at 61 FR 35020 confirmed 60129
203.641 Regulation at 61 FR 35020 confirmed 60129
203.642 Regulation at 61 FR 35020 confirmed 60129
203.643 Regulation at 61 FR 35020 confirmed 60129
203.644 Regulation at 61 FR 35020 confirmed 60129
203.645 Regulation at 61 FR 35020 confirmed 60129
203.646 Regulation at 61 FR 35020 confirmed 60129
203.647 Regulation at 61 FR 35020 confirmed 60129
203.648 Regulation at 61 FR 35020 confirmed 60129
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203.658 Regulation at 61 FR 35020 confirmed 60129
203.659 Regulation at 61 FR 35020 confirmed 60129
203.660 Regulation at 61 FR 35020 confirmed 60129
203.664 Regulation at 61 FR 35020 confirmed 60129
203.665 Regulation at 61 FR 35020 confirmed 60129
203.666 Regulation at 61 FR 35020 confirmed 60129
206.3 Amended 30227
206.7 Revised 30227
206.9 (b) revised 20088
206.15 Revised 30227
206.129 Regulation at 61 FR 35020 confirmed 60129
207.252e Added 1303
241.1040 Revised 20088
251.6 Added 1303
252.6 Added 1303
255 Authority citation revised 1303
255.6 Added 1303
266.100 (a) amended 20088
266.610 Added 1303

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

Chapter V Notice 47344
570 Authority citation revised 62914
Technical correction 64634
570.416 Added 17493
570.420—570.432 (Subpart F) Revised 62914
572.5 Amended 34145
572.100 (a)(2) amended 34145
572.135 (d) revised 34145
572.210 Revised 34145
572.230 Revised 34145
572.300 Revised 34145
572.305 Removed 34145
572.310 Removed 34145
572.320 Removed 34145
572.420 (a)(1) amended 34145
573.3 (i) revised 24574
585.100—585.107 (Subpart B) Removed 31955
Regulation at 62 FR 31955 eff. date corrected to 7-11-97 33156
586 Revised 37479

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

888 Fair market rent schedules 50724, 64521

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Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

941.103 Amended 27125
950 Authority citation revised 27126
950.102 Regulation at 61 FR 46346 confirmed 24337
950.660 (a)(3) revised 27126
954 Regulation at 61 FR 32295 confirmed 58906
968.102 (b) revised 27126
968.112 (d)(3)(ii) amended 27126
968.335 (a)(3) revised 27126
971 Added; interim 49576

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

3280 Policy statement 24337
3280.305 (c)(3)(i) table and (4) table amended 54547
3282 Policy statement 24337
3500 Authority citation revised 3236
3500.2 Amended 20088
3500.17 (a), (b) and (i)(1) introductory text amended; (c)(2), (3), (i)(1)(iv) and (k) revised; (f)(2)(iii) added 3236
3500 Appendixes A and C amended 3237

Proposed Rules:

0—99 (Ch. I) 18306
5 ..... 55324, 62928
81 ..... 68060, 1997
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200 27486
201 36194
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950 35718
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1005 ..... 35718, 43131, 47783, 54399
3500 ..... 25740, 38489, 53912

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

12 Revised 15611
46 Added 44081
142 Revised 18516
151 Determination 19927
181 Added 55331
247 Added; interim 50868

Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.801—700.843 (Subpart R) Revised 35078

Proposed Rules:

11 61057
41 15446
181 27000
248 55767
291 3289
502 46227
514 65775

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Authority citation amended 25506, 37492, 38028, 41273, 50503, 50505, 53416, 53500, 68166, 68175
Technical correction 40270
Authority citation amended 13, 1056, 1742, 1918, 4170
Technical correction 3186

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TITLE 26 Chapter I—Con.

1.42–15 Added **50505**
1.42–16 Added **50503**
1.42–16T Removed **50503**
1.61–4 Amended **44546**
1.61–12 (c) revised **68175**
1.103–8 (a)(5) revised **25506**
1.103–8T Removed **25506**
1.125–4T Added; eff. 12–31–98 ..... **60166**
1.141–0 Amended 3259
1.141–2 (d)(3)(ii)(B) amended 3260
1.141–7 Removed 3260
1.141–8 Removed 3260
1.141–7T Added 3260
1.141–8T Added 3264
1.141–15 Revised 3265
1.141–15T Added 3266
1.142–4 Added **25506**
1.142(f)(4)–1T Added 3266
1.148–0 (c) amended **25506**
1.148–1 (b) amended; (c)(4)(ii)(A) revised; (e) added **25507**
1.148–1T Redesignated as 1.148–1A **25507**
1.148–2 (b)(2)(ii) revised **25507**
1.148–2T Redesignated as 1.148–2A **25507**
1.148–3 (h)(3) amended **25507**
1.148–3T Redesignated as 1.148–3A **25507**
1.148–4 (h)(2)(vi) and (vii) removed; (h)(2)(ii) through (v), (viii) and (ix) redesignated as (h)(2)(iii) through (viii); (b)(5), (g), (h)(1), (2) introductory text, (i), new (iv), new (v), new (vi), new (viii), (3), (4) and (5) revised; new (h)(2)(ii) and (6) added **25507**
1.148–4T Redesignated as 1.148–4A **25507**
1.148–5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii), (e)(2)(ii)(B) and (iii) revised **25511**
1.148–5T Redesignated as 1.148–5A **25507**
1.148–6 (d)(3)(iii)(C) revised **25512**
1.148–6T Redesignated as 1.148–6A **25507**
1.148–9 (c)(2)(ii)(B) and (h)(4)(vi) revised **25512**
1.148–9T Redesignated as 1.148–9A **25507**
1.148–10 (b)(2), (c)(2)(viii), (ix) and (e) revised; (c)(2)(x) added **25512**
1.148–10T Redesignated as 1.148–10A **25507**
1.148–11 (a), (b)(1), (c)(1) and (g) revised; (b)(3) added; (h) and (i) removed **25512**
1.148–11T Redesignated as 1.148–11A **25507**
1.149(d)–1 (f)(3) revised; (g)(3) added **25513**
1.149(d)–1T Redesignated as 1.149(d)–1A **25513**
1.150–1 (a)(2), (c)(1), (4)(iii) revised; (c)(6) added **25513**
1.150–1T Redesignated as 1.150–1A **25513**
1.150–5T Added 3266
1.148–1A—1.150–1A Undesignated center heading added **25507**
1.148–1A Redesignated from 1.148–1T; heading amended **25507**
1.148–2A Redesignated from 1.148–2T; heading amended **25507**
1.148–3A Redesignated from 1.148–3T; heading amended **25507**
1.148–4A Redesignated from 1.148–4T; heading amended **25507**
1.148–5A Redesignated from 1.148–5T; heading amended **25507**
1.148–6A Redesignated from 1.148–6T; heading amended **25507**
1.148–9A Redesignated from 1.148–9T; heading amended **25507**
1.148–10A Redesignated from 1.148–10T; heading amended **25507**
1.148–11A Redesignated from 1.148–11T; heading amended **25507**
(i) revised **25513**
1.149(d)–1A Redesignated from 1.149(d)–1T; heading amended **25513**
1.150–1A Redesignated from 1.150–1T; heading amended **25513**
1.162–12 (a) amended **44546**
1.163–5 (c)(2)(i)(B)(*5*) amended; eff. 1–1–99 ..... **53416**
1.163–8T (c)(2)(e) redesignated as (c)(3) **40270**
1.163–13 Added **68176**
1.165–12 (a), (c)(1)(i), (2)(iv) and (3)(iv) amended; (c)(1)(iii) removed; (c)(1)(iv) and (v) redesignated as (c)(1)(iii) and (iv); (c)(1)(ii) and new (iii) revised; eff. 1–1–99 ..... **53416**
Corrected **55849**
1.166–3 (a)(3) added 4396

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1.166–3T Removed 4396
1.171–1 Revised 68177
1.171–2 Revised 68178
1.171–3 Revised 68180
1.171–4 Revised 68182
1.171–5 Added 68182
1.249–1 (c) revised; (d)(2) amended 68182
1.263A–0 Amended 42054
1.263A–0T Added 44546
1.263A–1 (a)(2)(i) amended 42054
(b)(3) and (4) amended 44546
1.263A–4T Revised 44546
1.263A–7 Added 42054
1.263A–7T Removed 42062
1.263A–15 Amended 42062
1.280B–1 Added 67726
1.302–2 (c) introductory text amended 38028
1.338–2 (c)(3)(ii) revised; (c)(3)(iv)(B) amended 4178
1.354–1 (d) amended; (d) Example 4 added; (e) revised 410
1.355–1 (b) amended; (c) added 410
1.356–3 (b) redesignated as (c); new (b) added; new (c) amended 410
1.356–6T Added 411
1.368–1 (d)(1) removed; (d)(2), (3) and (4) redesignated as (d)(1), (2) and (3); (a), (b), new (d)(1), (5) introductory text and Examples 1 through 5 amended; new (d)(4) and (5) Examples 6 through 12 added 4178
1.368–1T Added 4185
1.368–2 (j)(3)(ii) revised; (j)(3)(iv) and (k) added; (j)(4) removed; (j)(5), (6) and (7) redesignated as (j)(4), (5) and (6); (a), (f), (j)(1), (3)(iii) and new (6) Examples 1 through 9 amended 4182
1.401(b)–1 (c), (d) and (e) redesignated as (d), (e) and (f); new (d)(2) undesignated text designated as (d)(3) and (4); (a), (b)(1), new (d)(1)(ii), (iii), (2) introductory text, (3), (4), (e)(1)(ii)(C), (2)(ii)(C), (3) introductory text, (4), (5) introductory text and (iii) amended 41273
(b)(2)(iii) removed; (b)(3), (c) and (d)(1)(iv) added 41274
1.401(b)–1T Added 41274
1.446–1 (e)(3)(i) amended 26741
(e)(3)(i) amended; (e)(3)(iii) revised 68169
1.446–1T Added 26741
(e)(3)(i)(B) corrected 28631
Removed 68169
1.453–11 Added 4170
1.460–0 Amended 1918
1.460–6T Added 1919
1.468A–2 (f)(3) redesignated as (f)(3)(i); (f)(3)(ii) added 2894
1.483A–3 (a)(4), (i)(1)(ii)(A), (iii)(A)(*3*) and (B) revised; (e)(5) and (i)(1)(iii)(C) added 2894
1.468A–8 (b)(12) added 2894
1.471–6 (c), (d) and (f) amended 44551
1.501(c)(5)–1 (b) redesignated as (c); new (b) added 40449
1.704–1 (b)(2)(iv)(*d*)(*1*), (*l*) and (5) Example 13 amended 25499
1.704–2 (m) Example 1 reinstated; CFR correction 34634
1.704–3 (a)(2) and (3)(i) amended 25500
(a)(11) added; (f) revised 44215
1.704–4 (a)(4)(ii) and (c)(3) revised 25500
1.708–1 (b)(1)(ii) amended; (b)(1)(iv) revised; (b)(1)(v) added 25500
1.737–2 (a) revised; (d)(1) amended 25501
1.743–1 (d) added 25501
1.761–1 (e) added 25501
1.861–2 (a)(1) amended; (a)(7) added; (e) revised 53500
1.861–3 (a)(1) and (d) amended; (a)(6) added 53501
1.864–5 (b)(2)(ii) redesignated as (b)(2)(iii); new (b)(2)(ii) added 53501
1.871–6 Revised; eff. 1–1–99 53416
1.871–7 (b) amended; eff. 1–1–99 53416
(b) redesignated as (b)(1); (b)(1) heading and (2) added; (f) amended 53501
1.871–14 Added; eff. 1–1–99 53416
1.881–2 (b) redesignated as (b)(1); (b)(1) heading and (2) added; (e) amended 53501
1.894–1 (c) revised; (d) added 53502
1.894–1T Added 35676
(d)(1), (6) Example 11 corrected 46877
1.905–2 (a)(2) amended 3813

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TITLE 26 Chapter I—Con.

1.1001–4 Added 4396
1.1001–4T Removed 4396
1.1016–5 (b) revised **68183**
1.1016–9 Removed **68183**
1.1059(e)–1 Added **38028**
1.1202–0 Added **68166**
1.1202–2 Added **68166**
1.1245–1 (e)(2) revised **44216**
1.1271–0 Amended 1057
1.1275–1 (b)(2) redesignated as (b)(3); new (b)(2) added **68183**
(d) amended; (j) added 1057
1.1291–0 Amended 13
1.1291–0T Amended 13
1.1291–1T Added 13
1.1291–9 (i)(1) removed 13
1.1293–0 Added 13
1.1293–1T Added 14
1.1294–0 Heading and introductory text added 13
1.1295–0 Added 14
1.1295–1T Added 15
1.1295–3T Added 19
1.1297–0 Heading and introductory text added 13
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1.1396–1 Undesignated center heading and section added **67727**
1.1397E–1T Added 673
1.1441–0 Added; eff. 1–1–99 ..... **53421**
1.1441–1 Revised; eff. 1–1–99 ..... **53424**
1.1441–2 Revised; eff. 1–1–99 ..... **53444**
1.1441–3 Heading, (a) through (f) and (h) revised; (g), (i) and authority citation removed; (j) redesignated as (g); new (g)(1) and (2) amended; eff. 1–1–99 ..... **53424**
1.1441–4 Heading, (a), (b)(1)(i), (ii), (2)(ii) heading, introductory text, (A), (v) and (c) through (g) revised; (b)(1)(vi) (2)(ii)(B), (C), (K) and (6) added; (b)(2)(ii)(B) through (H) redesignated as (b)(2)(ii)(D) through (J); (b)(1)(iii), (iv), (v), (2)(i), new (b)(2)(ii)(D) through (J), (iii) and (3) amended; (b)(2)(iv)(C) concluding text, (h), (i), authority citation removed; OMB number; eff. 1–1–99 ..... **53450**
1.1441–4T Removed; eff. 1–1–99 ..... **53452**
1.1441–5 Revised; eff. 1–1–99 ..... **53452**
1.1441–6 Revised; eff. 1–1–99 ..... **53458**
1.1441–7 (a), (b) and (c) revised; (d) redesignated as (f); new (d), (e) and (g) added; new (f)(1), (2)(i) and (3) amended; authority citation removed; eff. 1–1–99 ..... **53462**
1.1441–8T Redesignated as 1.1441–8; eff. 1–1–99 ..... **53458**
1.1441–8 Redesignated from 1.1441–8T; heading and (b) revised; (c) through (f) added; eff. 1–1–99 ..... **53458**
1.1441–9 Added; eff. 1–1–99 ..... **53465**
1.1442–1 Revised; eff. 1–1–99 ..... **53466**
1.1442–2 Revised; eff. 1–1–99 ..... **53466**
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1.1443–1 Revised; eff. 1–1–99 ..... **53466**
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1.1461–1 Revised; eff. 1–1–99 ..... **53467**
1.1461–2 Revised; eff. 1–1–99 ..... **53470**
1.1461–3 Removed; eff. 1–1–99 ..... **53471**
1.1461–4 Removed; eff. 1–1–99 ..... **53471**
1.1462–1 Revised; eff. 1–1–99 ..... **53471**
1.1463–1 Revised; eff. 1–1–99 ..... **53471**
1.1502–3 (d) redesignated as (d)(1); (c)(3), (d)(2) and (e)(3) added 1742
1.1502–3T Added 1742
1.1502–4 (f)(3) and (g)(3) added 1744
1.1502–4T Added 1744
1.1502–5 (b)(5) corrected **23657**
1.1502–9 (a) amended 1744
1.1502–9T Added 1745
1.1502–21T (c)(1)(iii) Example 5 amended 1745
1.1502–23T (b) and (c) redesignated as (c) and (d); new (b) added 1745
1.1502–55T Added 1745
1.6013–2 (b)(1) amended **39117**
1.6038–2 (j)(2)(ii) redesignated as (j)(2)(iii); new (j)(2)(ii) added; eff. 1–1–99 ..... **53385**
1.6041–1 (a)(1), (d)(1) introductory text and (3) revised; (a)(2), (d)(2) heading, (4) heading and (5) added; eff. 1–1–99 ..... **53471**
1.6041–2 (c) revised **53472**
1.6041–3 (c) and (l) removed; (d), (e), (f), (h), (i), (j) and (o) amended; (d) through (k) and (m) through (p) redesignated as (c) through (n); introductory text, (a), (b), new (f) and

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new (j) revised; new (o), new (p) and (q) added; eff. 1–1–99 ..... **53472**
1.6041–4 Revised; eff. 1–1–99 ..... **53473**
1.6041–7 Heading revised; (a) amended; eff. 1–1–99 ..... **53473**
1.6041–8 Added; eff. 1–1–99 ..... **53474**
1.6041A–1 Added; eff. 1–1–99 ..... **53474**
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1.6042–3 (a) introductory text, (2) and (b) revised; (a)(2) concluding text and authority citation removed; (a)(3) added; eff. 1–1–99 ..... **53475**
1.6042–4 (d)(2)(i)(F) and (f) revised; eff. 1–1–99 ..... **53476**
1.6043–2 (a) amended; eff. 1–1–99 ..... **53476**
1.6044–2 Heading, (e) and (f) heading revised; (a)(1) and (f) amended; eff. 1–1–99 ..... **53476**
1.6044–3 (c) revised; eff. 1–1–99 ..... **53476**
1.6044–5 (c) revised; eff. 1–1–99 ..... **53476**
1.6045–1 (a) heading, introductory text, (1), (d)(4), (6), (g), (j), (k) and (l) revised; (a)(12) and authority citation removed; (a)(13), (b) Examples (1) through (8), (c)(5)(i)(*a*) through (c)(5)(i)(*f*), (ii), (ii) Examples (1) through (4), (6)(i)(*a*), (*b*), (ii)(*a*), (*b*), and and (h)(2) Examples (1) and (2) redesignated as (a)(12) and (b) Examples 1 through 8, (c)(5)(1)(A) through (F), (iii), (iii) Examples 1 through 4, (6)(i)(A), (B), (ii)(A) and (B) and (h)(2) Examples 1 and 2; (a)(13) and new (c)(5)(ii) added; (b) new Example 1 and (f)(2)(3) introductory text amended; eff. 1–1–99 ..... **53476**
1.6045–1T Removed; eff. 1–1–99 ..... **53480**
1.6045–2 (b)(2)(i)(A) through (F) amended; (b)(2)(i)(G) and (g)(4) added; (g)(2) revised; eff. 1–1–99 ..... **53480**
1.6045–2T Removed; eff. 1–1–99 ..... **53480**
1.6046–1 (g) amended; eff. 1–1–99 ..... **53385**
1.6049–4 (a), (b)(1), (3), (c)(1), (d)(3) and (7) heading revised; (b)(2) introductory text, (iv), (4), (5)(i), (c)(2)(i), (ii) concluding text, (d)(2), (7), (8), (9)(ii) introductory text, (e)(4), (5)(iv), (f)(4)(i) and (ii) amended; (g)(3) added; eff. 1–1–99 ..... **53480**
1.6049–5 (a)(6) amended; (b) revised; (c) redesignated as (f); new (c), (d), (e) and (g) added; eff. 1–1–99 ..... **53483**
1.6049–6 (d) amended; (e)(3) revised; eff. 1–1–99 ..... **53491**
1.6049–7 (c)(4) revised; eff. 1–1–99 ..... **53491**
1.6049–8 (a) amended; eff. 1–1–99 ..... **53491**
1.6050A–1 (a) introductory text, concluding text, (b) and (c)(1) amended; (d) added; eff. 1–1–99 ..... **53492**
1.6050H–1 (d)(2)(ii)(A) and (B) amended; eff. 1–1–99 ..... **53492**
1.6050N–1 Heading, (c) and (d) revised; (e) added; eff. 1–1–99 ..... **53492**
1.6071–1 (c)(7), (8), (11), (13) and (15) revised; eff. 1–1–99 ..... **53492**
1.6091–1 (b)(15) revised; eff. 1–1–99 ..... **53493**
1.6302–1 (b) heading revised; (b) redesignated as (b)(1); new (b)(1) heading and (2) added; OMB number **37492**
1.6302–1T Removed **37492**
1.6302–2 (b) heading revised; (c) redesignated as (b)(6); new (c) added; OMB number **37492**
1.6302–2T Removed **37492**
1.6302–3 (c) revised **37492**
1.6302–3T Removed **37492**
1.6302–4 Added **37492**
1.6302–4T Removed **37492**
1.6662–6 (d)(2)(ii)(E) amended **46877**
1.7701(l)–1 (a) designation, heading and (b) removed **53502**
20.2041–3 (d)(6)(i) amended; (d)(6)(iii) added **68184**
20.2046–1 Revised **68184**
20.2056(d)–2 (a) amended; (b) revised; (c) added **68184**
25 Authority citation amended **68185**
25.2511–1 (c)(1) amended; (c)(3) added **68185**

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25.2514–3 (c)(5) amended; (c)(7) added 68185
25.2518–1 (a)(1) revised; (a)(2) Example amended; (a)(3) added 68185
25.2518–2 (c)(3) existing text, (5) Examples (9) and (10) redesignated as (c)(3)(i) and (5) Examples (12) and (11); new (c)(3)(i) and (5) Example 11 amended; (c)(3)(ii), (5) Examples (8), new (9), new (10), (13) and (14) added; (c)(4), (5) Examples (7) and new (12) revised; (5) Examples (8) removed 68185
26.2652–1 (a)(4) and (5) Examples 9 and 10 removed; (a)(5), (6) and Example 11 redesignated as (a)(4), (5) and Example 9 27498
25.2702–5 (a) redesignated as (a)(1); (a)(2) and (c)(9) added; (b)(1) amended; (c)(5)(ii)(C) revised 66988
25.2702–7 Amended 66989
31 Authority citation amended 33009, 37492, 53493
31.0–1 (a) amended 37492
31.0–3 (f) amended 37493
31.3401(a)(6)–1 Heading, revised; (e) amended; (f) added; authority citation removed; eff. 1–1–99 53493
31.3406–0 Table amended; eff. 1–1–99 53493
31.3406(d)–3 (a) and (b) amended; (c) revised; eff. 1–1–99 53493
31.3406(g)–1 (e) added; eff. 1–1–99 53493
31.3406(h)–2 (a)(3)(i) revised; (d) amended; (e)(1) designation, heading and (2) removed; eff. 1–1–99 53493
31.3406(j)–1 Added 33009
31.6302–1 (h) redesignated as (i); new (h) added 37493
31.6302–1T Removed 37494
31.6302(c)–3 (b) heading and (c) revised; (d) added 37494
31.6302(c)–3T Removed 37494
31.6413(a)–3 (a)(1)(ii) and (iii) amended; (a)(1)(iv) added; (a)(2) and (b)(2) revised; eff. 1–1–99 53494
31.9999–0 Added; eff. 10–14–97 through 1–1–99 53494
35a Authority citation amended 33009, 53494
35a.3406–3 Removed 33009
35a.9999–0 Added; eff. 10–14–97 through 1–1–99 53494
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35a.9999–1 Removed; eff. 1–1–99 53494
35a.9999–2 Removed; eff. 1–1–99 53494
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35a.9999–3A Removed; eff. 1–1–99 53494
35a.9999–4T Removed; eff. 1–1–99 53494
35a.9999–5 Removed; eff. 1–1–99 53494
40 Authority citation amended 37494
40.0–1T Added 67569
40.6011(a)–1 (b)(2)(vi) amended 25
40.6011(a)–1T Added 67569
40.6302(c)–1 (d) redesignated as (d)(1); (d)(1) heading and (2) added 37494
40.6302(c)–1T Removed 37494
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40.6302(c)–2T Added 67569
48 Authority citation amended 25
48.4081–1 (b) and (c)(1)(i) amended; (d) revised 25
48.4082–5T Redesignated as 48.4082–5 25
48.4082–5 Redesignated from 48.4082–5T; Heading and (b) amended; (f) and (g) redesignated as (g) and (h); new (f) added; new (h) revised 25
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48.6421–3 (d)(2) amended 26
48.6427–3 (d)(2) amended 26
48.6715–1 (a)(3) revised 26
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53.6071–1 (f) redesignated from 53.6071–1T(f) 52257
53.6071–1T (f) redesignated as 53.6071–1(f); removed 52257
54 Authority citation amended 16927, 66952
Technical correction 17004
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54.9801–1T Added; interim 16927
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54.9801–2T Added; interim 16928
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54.9801–3T Added; interim 16929
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54.9801–4T Added; interim 16930
(a)(2) and (b)(2)(iv) corrected 31669
(b)(2)(iv) Examples 6 and 7 and (v)(B) Example corrected 31691
(a)(2) revised; interim 66952
54.9801–5T Added; interim 16932
(a)(6) and (b)(2) corrected 31669
(a)(1)(i), (iv)(B)(*1*), (*2*) Example, (2)(iv) Examples 4 and 5 and (5)(i)(A) corrected 31691
(a)(5)(i)(B) Example, (6)(ii), (c)(2)(ii) and (d)(3) Example 3 corrected 31692
(a)(3)(vi) amended; interim 66952
54.9801–6T Added; interim 16937
(a)(3) corrected 31669
(b)(2), (4) introductory text and (6) corrected 31692
54.9802–1T Added; interim 16938
54.9804–1T Added; interim 16939
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Redesignated as 54.9831–1T; interim 66952
54.9806–1T Added; interim 16940
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54.9812–1T Added; interim 66953
54.9831–1T Redesignated from 54.9804–1T; (b)(1) revised; interim 66952
54.9833–1T Redesignated from 54.9806–1T; (a)(1) revised; (a)(2) amended; interim 66952
301 Authority citation amended 53494
301.6109–1 (d)(2)(iii) added 25502
(b)(2)(iv), (v) and (c) revised; (b)(2)(vi) added; eff. 1–1–99 53494
(h)(2)(iii) added 62520
301.6109–1T Added 62520
301.6109–3T Added 62520
301.6114–1 (a)(1)(ii), (b)(4)(ii) introductory text and (c)(1)(i) revised; (b)(4)(ii)(B)(*7*) amended; (b)(4)(ii)(C), (D) and (c)(6) added; eff. 1–1–99 53495
301.6114–1 (b)(4) introductory text, (5) introductory text, (6) and (7) amended; (c) introductory text, (1) through (6), (7) introductory text, (i), (ii) and (iii) redesignated as (c)(1) introductory text, (i) through (vi), (vii) introductory text, (A), (B) and (C); (c) concluding text removed; (b)(8) and new (c)(2) through (5) added; new (c)(1)(ii) and (d) revised 53385
301.6334–1 (a)(2) and (e) revised; (a)(3) and (11)(i) amended; (f) added 39117
301.6402–3 (e) revised; authority citation removed; eff. 1–1–99 53495
301.6601–1 (f)(3) and (4) revised; (f)(5) redesignated as (f)(6); new (f)(5) added 39117
301.6651–1 (a)(3) revised; (g) added 39117
301.6656–3 Added 39118
301.6721–0 Table amended; eff. 1–1–99 53496
301.6724–1 (g) revised; eff. 1–1–99 53496
301.7122–1 (e) revised 39118
301.7430–0 Amended 39118
301.7430–1 (b)(4) added 39118
301.7430–2 (b)(2), (c)(3) introductory text and (ii)(C) amended; (c)(3)(i)(B) revised 39118
301.7430–4 (b)(3)(i), (iii)(B), (C), (D) and (c)(2)(ii) amended; (b)(3)(ii) revised 39118
301.7430–5 (a) revised; (c)(3) added 39119
301.7430–6 Revised 39119
301.7623–1 (g) added 53231
301.7623–1T Added (temporary) 53231
301.7701(b)–0 Amended 53386
301.7701(b)–3 (b)(3) and (4) revised 53386
301.7701(b)–7 (c)(1) revised; (c)(2) added 53387
301.7701(b)–8 (b)(1) and (2) revised 53387
301.9100–0 Added 68169
301.9100–1 Revised 68169
301.9100–1T (h) amended 26741
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301.9100–2 Added 68170
301.9100–2T Removed 68173
301.9100–3 Added 68171
301.9100–3T (c)(2)(i) revised 26741
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502 Removed; eff. 1–1–99 53497

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503 Removed; eff. 1–1–99 53497
509 Authority citation added 53497
509.1—509.10 (Subpart) Removed; eff. 1–1–99 53497
509.103 (e) removed; eff. 1–1–99 53497
509.117 (a) removed; eff. 1–1–99 53497
509.119 Removed; eff. 1–1–99 53497
509.122 Removed; eff. 1–1–99 53497
513 Authority citation revised 53497
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513.5 Revised; eff. 1–1–99 53498
514 Authority citation added 53498
514.1—514.32 (Subpart) Authority citation removed 53498
514.1—514.10 Undesignated center heading removed; eff. 1–1–99 53498
514.20 Removed; eff. 1–1–99 53498
514.21 Removed; eff. 1–1–99 53498
514.22 (c) removed; eff. 1–1–99 53498
514.23 Removed; eff. 1–1–99 53498
514.24 Removed; eff. 1–1–99 53498
514.25 Removed; eff. 1–1–99 53498
514.26 Removed; eff. 1–1–99 53498
514.27 Removed; eff. 1–1–99 53498
514.28 Removed; eff. 1–1–99 53498
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514.30 Removed; eff. 1–1–99 53498
514.31 Removed; eff. 1–1–99 53498
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514.101—514.117 (Subpart) Undesignated center heading and sections removed; eff. 1–1–99 53498
516 Removed; eff. 1–1–99 53498
517 Removed; eff. 1–1–99 53498
520 Removed; eff. 1–1–99 53498
521 Authority citation revised 53498
521.1—521.8 (Subpart) Removed; eff. 1–1–99 53498
521.103 (d) removed; eff. 1–1–99 53498
601.204 (b) amended 26741, 68173
601.204T Added 26741
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602.101 (c) table amended (OMB numbers) 25514, 35905, 53232, 53387, 53498, 62521, 66989, 68173, 68183
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TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

4.28 (e) added 16490
(e)(2) corrected 33747
9.158 Added 55516
24.148 Revised 29666
24.278 Revised; OMB number 29666
24.279 Revised; OMB number 29667
47.52 (a) revised; (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added; new (f) amended 61234
47.57 (c) amended 61235
178.11 Amended 19444, 34638
178.32 (e) added 34639
178.124 (c) introductory text and (f) amended; (c)(1), (d) and (e) revised 19444
178.125 (f) introductory text amended; (f)(1), (2) and (3) added 19445
178.130 (a)(2) revised 19445*

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TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.64–5 Added 63453
0.100—0.104 (Subart R) Appendix amended 38029, 52492, 52493
2.56 Heading, (a), (f) and (g) amended; (b)(1) and (i) added 51602
2.62 (a)(6) and (h)(5) amended 40270
16.99 (i) and (j) added 44083
17 Revised 36984
32.1—32.2 (Subpart A) Heading revised 37715
32.1 (a) amended 37715
32.2 (a) introductory text amended 37715
32.3—32.9 (Subpart B) Heading removed 37715
32.3—32.9 Undesignated center heading added 37715
32.10—32.15 (Subpart C) Heading removed 37715
32.10—32.15 Undesignated center heading added 37715
32.10 (a) introductory text amended 37715
32.16—32.18 (Subpart D) Heading removed 37715
32.16—32.18 Undesignated center heading added 37715
32.16 (a) amended 37715
32.19—32.22 (Subpart E) Heading removed 37715
32.19—32.22 Undesignated center heading added 37715
32.23—32.24 (Subpart F) Heading removed 37715
32.23—32.24 Undesignated center heading added 37715
32.25 (Subpart G) Heading removed 37716
32.25 Undesignated center heading added 37716
32.31—32.40 (Subpart B) Added 37716
32.35 (b) corrected 39120
50.22 Regulation at 61 FR 49260 confirmed 61629
58 Authority citation revised 51750
58.6 Added 51750
66.26 (a), (b) introductory text and (1) revised 45939, 45942
70.26 (a), (b) and (c) revised; (d) added 45939, 45942

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523 Authority citation revised 50787
523.20 (Subpart C) Added; interim 50787
524 Authority citation revised 53690
524.31 (a)(3) revised; interim 53691
540 Authority citation revised 65185
540.14 (b) and (c) revised 65186
540.18 (c) and (d) revised 65185
541.13 (a)(1) through (4) revised; Tables 3 through 6 amended 50789
541.14 (a) amended 50791
541.63 (a) amended 5218
541.65 (c) revised 5218
541.67 (e) revised 5218
544.42 (d) revised 39916
544.70—544.75 (Subpart H) Revised; interim 50793
548.12 Revised 44836
548.16 (c) amended 44836
548.20 (a) and (b) amended 44836
550.30—550.31 (Subpart D) Revised 45292
550.58 Introductory text, (a) heading and (c)(3) revised; (a)(1) and (2) redesignated as (a)(2) and (3); new (a)(1) added; interim 53691
551.10 Amended 5218
571.50 Revised 4357
571.51 (b) revised 4357
571.52 Revised 4357
571.53 Removed; new 571.53 redesignated from 571.54 and revised 4357
571.54 Redesignated as 571.53; new 571.54 redesignated from 571.55 and revised 4357
571.55 Redesignated as 571.54 4357
571.56 Removed 4357

Proposed Rules:

2 40316
16 45184
50 45184
79 45774
540 47894

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TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

95.26 (a), (b) and (c) revised **45939, 45942**

97.26 (a), (b) introductory text and (1) revised **45939, 45942**

Chapter I—National Labor Relations Board (Parts 100—199)

101.39 (a) correctly designated **52381**
102.119 (Subpart L) Revised **58907**
102.156—102.167 (Subpart U) Revised **55164**
102.168—102.176 (Subpart V) Revised **55166**

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

520 Revised **64959**
521 Removed **64958**
522 Removed **64958**
523 Removed **64958**
527 Removed **64958**

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

697.1 (a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (2), (k)(1), (l)(1), (m)(1) and (n)(1) revised; (o) and (p) added **52945**
697.3 Revised **52946**

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1404.17—1404.21 (Subpart D) Added **48949**
1470.26 (a), (b) introductory text and (1) revised **45939, 45942**

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1600.101 Regulation at 61 FR 7067 confirmed **36447**
1600.735–101—1600.735–106 (Subpart A) Regulation at 61 FR 7067 confirmed **36447**
1600.735–201—1600.735–206 (Subpart B) Regulation at 61 FR 7067 confirmed **36447**
1600.735–301 (Subpart C) Regulation at 61 FR 7067 confirmed **36447**
1600.735–401—1600.735–406 (Subpart D) Regulation at 61 FR 7067 confirmed **36447**
1600.735–501—1600.735.519 (Subpart E) Regulation at 61 FR 7067 confirmed **36447**
1610 Authority citation revised 1341
1610.4 (a) and (c) amended; interim 1341
1610.5 (c) amended; interim 1341
1610.8 Revised; interim 1341
1610.9 Heading revised; (a) introductory text and (b) revised; (c) added; interim 1341
1610.10 (a) introductory text amended; (b) introductory text revised; (c) redesignated as (c); new (c) added; interim 1342
1610.11 (a), (b) and (f) amended; (c) revised; interim 1342
1610.14 (a) amended; interim 1342
1610.15 (f) amended; interim 1342
1610.18 (a) amended; interim 1342
1610.21 Revised; interim 1342
1610.34 (a) amended; interim 1342
1614.204 (d)(1) corrected; CFR correction **63847**
1650.101—1650.119 (Subpart A) Regulation at 61 FR 7067 confirmed **36447**

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1904.30 Added (OMB numbers) **44552**
1910.8 Table amended **42666, 65203**
Table corrected **43581**
1910.11—1910.19 (Subpart B) Authority citation revised **40195**
1910.16 (a), (b) and (c)(4) revised **40195**
1910.94—1910.98 (Subpart G) Authority citation revised 1269
1910.94 (a)(1)(ii), (5)(i), (iii) introductory text, (iv), (6),

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(c)(6)(iii)(a) and (d)(9)(vi) revised 1269
1910.101—1910.120 (Subpart H) Authority citation revised 1269
1910.111 (a)(2)(x) and (b)(10)(ii) revised 1269
1910.132—1910.138 (Subpart I) Authority citation revised 1270
1910.134 Redesignated as 1910.139; new 1910.134 added 1270
1910.139 Redesignated from 1910.134; heading revised; introductory text added 1270
1910.155—1910.165 (Subpart L) Authority citation revised 1284
1910.156 (f)(1)(i) and (v) revised 1284
1910.251—1910.255 (Subpart Q) Authority citation revised 1284
1910.252 (c)(4)(ii), (iii), (7)(iii), (9)(i) and (10) revised 1284
1910.261—1910.272 (Subpart R) Authority citation revised 1285
1910.261 (b)(2), (g)(10), (h)(2)(iii) and (iv) revised 1285
1910.1000—1910.1450 (Subpart Z) Authority citation amended 42666
Authority citation amended 1285
1910.1000 Table Z–1 and Z–3 corrected 42018
1910.1001 (g) revised; Appendix C removed 1285
1910.1003 (c)(4)(iv) and (d)(1) revised 1286
1910.1017 (g) revised 1286
1910.1018 (h) revised 1286
1910.1025 (f) revised; Appedixes B and D amended 1287
1910.1027 (g) revised; Appendix G removed 1288
1910.1028 (g) revised; Appendix E removed 1289
1910.1029 (g) revised 1290
1910.1043 (f) revised 1290
1910.1044 (h) revised 1291
1910.1045 (h) revised; Appendix A amended 1291
1910.1047 (g) revised; (h)(2) table removed; Appendix A amended 1292
1910.1048 (g) revised; Appendix E amended 1292
1910.1050 (h) revised; Appendix A amended 1293
1910.1051 (h) revised; Appendix E amended 1294
1910.1052 (n)(2)(i)(C) revised 42667
(n)(2)(iii)(C) revised 48176
(n)(2)(i)(B) and (iii)(C) revised 54383
(o) note added 66277
(g) revised 1295
1917 Authority citation revised 40195
1917.1 (a) introductory text and (2)(i) through (x) revised; (a)(2)(xi), (xii), (xiii) and (b) added 40196
1917.2 Amended 40196
1917.3 Added 40196
1917.11 (d) added 40196
1917.13 (g) revised; (h) and (i) added 40197
1917.17 (i), (j) and (k) revised 40197
1917.20 Revised 40197
1917.23 Heading, (b)(1) and (d) introductory text revised 40197
1917.24 (a) revised 40197
1917.25 (a) and (c) revised; (g) added 40197
1917.26 (c) and (d) revised 40197
1917.27 (a)(2) revised; note added 40197
1917.28 Heading revised; text removed 40198
1917.30 Added 40198
1917.42 (b)(4), (c)(1), (d), (h)(4), (5) and (j)(1) revised; (g)(2)(vi) added 40198
1917.43 (e)(1)(i) and (6)(iii) revised; (f)(3) added 40198
1917.44 (a), (i), (o)(3)(i), (ii) introductory text and (o)(4) introductory text revised 40198
1917.45 Heading, (f)(4)(iii), (5), (7), (13)(ii), (iii)(A), (i)(5)(i) introductory text, (j)(1)((iii)(D) and (2) revised; (g)(11), (j)(9) and (10) added 40199
1917.46 Heading, (a)(1)(ii) and (viii)(A) revised 40199
1917.48 (d)(2) revised 40200
1917.50 (i) redesignated as (j); heading, (c)(5) and new (j) revised; new (i) added 40200
1917.71 (b)(6), (7), (c), (e) and (f)(1)(i) revised; (b)(8), (f)(4) and (5) added 40200
1917.73 Heading revised 40201

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1917.91 Heading and (a)(1) revised 40201
1917.93 (a) and (b) revised 40201
1917.94 Revised 40201
1917.95 (b)(2) revised 40201
1917.112 (a)(1) revised 40201
1917.118 (d)(2)(i) and (f)(2) revised 40201
1917.119 (b)(1), (c), (d)(2) and (f)(4) revised 40201
1917.121 (b)(3) revised 40201
1917.123 Footnote 7 redesignated as footnote 9 40201
1917.124 Heading and (d)(1) revised; (c)(5), (6) and (d)(5) added 40201
1917.126 (b) revised 40201
1917.152 Heading revised; footnote 8 redesignated as footnote 12 40202
1917.153 Heading revised 40202
1917.156 (b)(3)(iii)(D) revised 40202
1917.157 (n) revised 40202
1918 Revised 40202
1926 Meeting and signing ceremony 37134
Technical correction; CFR correction 1919
1926.5 Table amended 3814
1926.50—1926.66 (Subpart D) Authority citation revised 1295
1926.57 (f)(1)(ii), (5)(i), (iii), (6), (h)(6)(iii)(A) and (i)(9)(vi) revised 1296
1926.60 (i) revised; Appendix E removed 1296
1926.62 (f) revised; Appendix B amended; Appendix D removed 1296
1926.95—1926.107 (Subpart E) Authority citation revised 1297
1926.103 Revised 1297
1926.800—1926.804 (Subpart S) Authority citation revised 1297
1926.800 (g)(2) revised 1297
1926.1100—1926.1152 (Subpart Z) Authority citation revised 1298
1926.1101 (h) revised; Appendix C removed 1298
1926.1127 (g) revised; Appendix C removed 1298
1952.105 (a) revised 49909
1952.107 (f) added 49910
1952.365 Revised 49911
1952.367 (b) added 49911

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.7 (g) revised 35963
2200.8 (d)(2) revised 35963
2200.11 Amended 35963
2200.40 (a) amended 35963
2200.57 Amended; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 35963
2200.60 Amended 35963
2200.67 Amended 35963
2200.90 (b)(2) amended 35963
2200.91 (b) amended; (h) revised 35963
2200.93 (h) revised 35963
2200.101 Amended 35963
2200.201 (a) designation and (b) removed 40934
2200.202 Revised 40934
2200.203 (a) correctly removed; CFR correction 58650
(a) added 61012
2200.206 (a) revised 40934
2200.207 (a) revised 40934
2200.209 (a) revised 40934
2203.3 (b)(10) amended 35963
2204 Nomenclature change 59569
2204.105 (f) added 59569
2204.107 (b) amended 35964
2204.301 Revised 35964

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2510.3-102 (b) revised 62936
2520.102-3 OMB number 36205
2520.104b-1 OMB number 36205
2520.104b-3 OMB number 36205
2570 Authority citation revised 40699
2570.100—2570.502c-3 (Subpart E) Added 40699
2590 Authority citation revised 66953
Clarification 67688, 67689
2590.701-3 OMB number 35905
2590.701-4 OMB number 35905
2590.701-5 OMB number 35905
2590.701-6 OMB number 35905
2590.712 Revised; interim 66957

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Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2702 Authority citation revised 55334
2702.1 Revised 55334
2702.2 Revised 55335
2702.3 Revised 55335
2702.4 Revised 55336
2702.5 (e) revised 55336
2702.6 (a) amended; (b) and (c) revised 55336
2702.7 (b) revised 55336

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4000.1 Table amended 67728
4000.2 Table amended 36994, 67728
4001.2 Amended 35342, 60428, 67728
4006.5 (f)(3) amended 60428
4007 Authority citation revised 36663
4007.10 Heading revised; (a) amended; (c) and (d) added 36663
4010.13 Amended 36994
4011.3 (c) amended 36994
4011 Appendix B amended 65608
4022.1 Amended 67728
4022.24 (e) amended 67728
4022.26 (a) amended 67729
4022.61 (a) amended 60428
4041 Revised 60428
4043.3 (e) amended 36994
4044.13 (a) amended 67729
4044 Appendix B amended 37718, 43640, 48176, 53539, 61012, 65609
Appendix D amended 65611
Appendix B amended 2308
4050 Revised 60440
4071 Added 36994
4302 (Subchapter K) Added 36995
4901—4907 (Subchapter K) Redesignated as Subchapter L 36994

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71 40406
1910 ..... 41002, 52671, 54160, 65388
1915 4426
1917 52671
1918 52671
1926 3813
2204 42957
2550 66908
2560 47262
2580 49894
4022 66319

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

47.10 Revised 60985
47.50 Revised 60985

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

203.0—203.4 (Subpart A) Revised 2615
203.50—203.91 (Subpart B) Revised 2618
206.152 (b)(1)(i) amended; (b)(1)(iv) added 65761
(i) revised 65762
Corrected 3618
206.153 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65762
206.157 (f) removed; (g) redesignated as (h); new (f) and new (g) added 65762
206.172 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
206.173 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
(b)(1)(i) corrected 3618
206.177 (f) removed; (g) redesignated as (h); new (f) and new (g) added 65763
210 Comment period extension 52016
210.55 Revised; interim 42066
218 Comment period extension 52016
218.52 Revised; interim 42066
227 Added 43084
228 Authority citation revised 43091
228.3 Added 43091
229 Authority citation revised 43091
229.3 Added 43091
250.1 (c)(5) and (d)(1) revised 42671
250.126 Revised 42671
250.160 (a) amended 39775
250.163 (b) amended 39775
250.200—250.209 (Subpart N) Revised 42668
250.209 (c) revised 67284

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TITLE 30 Chapter II—Con.

250.209—250.233 (Subpart O) Redesignated as 250.210—250.34 (Subpart O)....67284
251 Revised....67284
256.53 Corrected....36995
256.64 (a)(8) amended....39775
260.102 Amended....2629
260.110 (d) revised....2629

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

723 Authority citation revised....63276
723.14 Table revised....63276
723.15 (b) amended....63276
724 Authority citation revised....63276
724.14 (b) amended....63276
845 Authority citation revised....63276
845.14 Table revised....63276
845.15 (b) amended....63277
846 Authority citation revised....63277
846.14 (b) amended....63277
870 Authority citation revised....60142
870.5 Amended....60142
870.18 Revised....60142
870.19 Added....60143
870.20 Added....60146
901 Technical correction....4529
901.15 Table amended....66821
901.16 Removed....66822
902.15 Regulation at 62 FR 15116 eff. date corrected to 4-7-97....35342
904 Technical correction....44894
913.15 Table amended....54769
913.16 (o) removed....54769
914 Technical correction....49049
914.15 Table amended....44896, 44898, 47140, 59578
914.16 (cc) and (dd) removed....47330
917.15 Table amended....45717
924.15 Added....1361
924.16 Revised....1362
924.17 Added....1362
925.15 Table amended....41844
934.15 Table amended....44900
935.15 Table amended....53234
935.16 (a)(3) removed....53234
938.15 Table amended....60177
938.16 (g), (l), (q), (s) through (v), (x) through (gg), (ii), (jj) and (ddd) removed; (ppp) through (uuu) added....60177
944.15 Table amended....41850
944.16 (e), (f)(1), (g), (h) and (i) removed....41850
944.25 Table amended....41850
946 Technical correction....52181
946.15 Table amended....48765, 60660
946.25 (a) table amended....35968

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50....60673
56....65777, 67013, 68468....290, 2642
57....64789, 65777, 67013, 68468....290, 2642
62....65777, 67013, 68468....290, 2642
70....65777, 67013, 68468....290, 2642
71....65777, 67013, 68468....290, 2642
75....50541, 62732, 64789
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202....38509
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707....55365, 59639
773....47617, 56139, 63044
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926....63685, 64327
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938....67590
943....67592, 67596, 67598....3508

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944 2192
946 ..... **44924, 53275, 67014**

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 Heading revised; (g) redesignated as (l); new (g) through (k) added **58908**
(b)(1) table amended **60782**

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

27 Added; interim **42213**
27.7 (c)(3)(ii)(F) corrected **44036**
103 Meeting **58909**
Conditional exceptions grant 3640
103.11 (n)(8) and (9) redesignated as (n)(9) and (10); (n)(7)(iii) and new (8) added; eff. 8–1–98 1923
103.22 Regulation at 61 FR 18209 confirmed; (a)(1) amended; (h) revised **47147**
103.36 (b)(11) added; eff. 8–1–98 1924

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

202 Authority citation revised **45520**
202.1 Revised **45520**
202.2 (a)(1) revised; (a)(2) removed; (a)(3) and (4) redesignated as (a)(2) and (3); authority citation removed **45521**
202.3 (a), (b)(1) introductory text, (2) introductory text and (i) revised; authority citation removed **45521**
202.4 Heading, introductory text, (c), (d) and (e) revised; authority citation removed **45521**
202.6 (b) and (e)(1) revised; authority citation removed **45521**
202.7 (a) revised; authority citation removed **45521**
285 Authority citation revised **36210**
285.1 Added; interim **36210**
343 Revised **49914**
344.1 (f) through (j) redesignated as (g) through (k); new (f) added; new (g)(3) revised **46445**
344.3 (b)(3)(iii) revised **46446**
356.12 (c)(1)(i) revised **43093**
(b)(2) revised 4187
356.13 (a) revised **43093**
356 Appendix B and Exhibit A amended **43094**
357 Determination **61912**
357.22 (b) through (e) redesignated as (c) through (f); new (b) added **46861**
357 Appendix B amended **43284**

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500 Authority citation revised **45101**
500.101 (Subpart A) Heading revised **45101**
500.101 (a) amended **45101**
500.201 (e) added **45101**
500.306 Note amended **45101**
500.508 (f) removed; note added **45101**
500.601 (Subpart F) Revised **45101**
500.602 Added **64721**
500.701 (a) introductory text amended **45101**
500.801 Revised **45101**
500.802 Removed; new 500.802 redesignated from 500.807 ..... **45101**
500.803 Removed; new 500.803 redesignated from 500.808 ..... **45101**
500.804 Removed **45101**
500.805 Removed **45101**
500.806 Removed **45101**
500.807 Redesignated as 500.802 ..... **45101**
500.808 Redesignated as 500.803 ..... **45101**
500.809 Removed **45101**
500.901 Revised **45101**
Amended; OMB number **64722**
501 Added **45101**
501.101 Revised **52494**
501.601 Note added **52494**
501.602 Amended **52494**
501.603 Note added **52495**
501.806 (b) revised **52495**
501.807 (a) revised **52495**
505 Authority citation revised **45106**
505.40 Amended **45106**
505.60 Revised **45106**
515 Authority citation revised **45106**
515.101 (a) amended **45106**
515.201 (e) added **45106**

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TITLE 31 Chapter V—Con.

515.306 Note amended 45106
515.508 (f) removed; note added 45106
515.601 (Subpart F) Revised 45106
515.701 (a) introductory text amended 45106
515.801 Revised 45106
515.802 Removed; new 515.802 redesignated from 515.807 45106
515.803 Removed; new 515.803 redesignated from 515.808 45106
515.804 Removed 45106
515.805 Removed 45106
515.806 Removed 45106
515.807 Redesignated as 515.802 45106
515.808 Redesignated as 515.803 45106
515.901 Revised 45106
535 Authority citation revised 45106
535.101 (a) amended 45107
535.508 (f) removed; note added 45107
535.601 (Subpart F) Revised 45107
535.701 (a) introductory text amended 45107
535.801 (Subpart H) Revised 45107
535.905 Revised 45107
536 Authority citation revised 45107
536.101 (a) amended 45107
536.201 Existing text designated as (a); (b) added 45107
536.312 Note added 45107
536.503 (a) revised; note added 45107
536.601 (Subpart F) Revised 45107
536.801 Revised 45107
536.802 Removed; new 536.802 redesignated from 536.805 45108
536.803 Removed 45108
536.804 Removed 45108
536.805 Redesignated as 536.802 45108
536.806 Removed 45108
536.901 Revised 45108
550 Authority citation revised 45108
550.101 (a) amended 45108
550.209 (c) added 45108
550.304 Note amended 45108
550.511 (g) removed; (h) redesignated as (g); new (g) amended; note added 45108
550.601 (Subpart F) Revised 45108
550.701 (a) introductory text amended 45108
550.801 Revised 45108
550.802 Removed; new 550.802 redesignated from 550.805 45108
550.803 Removed; new 550.803 redesignated from 550.807 45108
550.804 Removed 45108
550.806 Removed 45108
550.805 Redesignated as 550.802 45108
550.807 Redesignated as 550.803 45108
550.901 Revised 45108
560 Authority citation revised 41852, 45108
560.101 (a) amended 45109
560.510 (d) introductory text, (1) and (2) revised 41852
560.525 (a)(3) and (5)(i) revised 41852
560.601 Revised 45109
560.602 Removed 45109
560.701 (a) introductory text amended 45109
560.801 Revised 45109
560.802 Removed; new 560.802 redesignated from 560.805 45109
560.803 Removed; new 560.803 redesignated from 560.806 45109
560.804 Removed 45109
560.807 Removed 45109
560.805 Redesignated as 560.802 45109
560.806 Redesignated as 560.803 45109
560.901 Revised 45109
575 Authority citation revised 45109
575.101 (a) amended 45109
575.201 (c) added 45109
575.306 Note amended 45109
575.503 (h) removed; note added 45109
575.601 (Subpart F) Revised 45109
575.701 (a) introductory text amended 45109
575.801 Revised 45109
575.802 Removed; new 575.802 redesignated from 575.805 45109
575.803 Removed 45109
575.804 Removed 45109
575.805 Redesignated as 575.802 45109
575.806 Removed 45109
575.901 Revised 45110
585 Authority citation revised 45110
585.101 (a) amended 45110
585.201 (c) note amended; (e) added 45110
585.311 Note amended 45110
585.503 (a) revised; note added 45110
585.601 (Subpart F) Revised 45110
585.701 (a) introductory text amended 45110
585.801 Revised 45110
585.802 Removed; new 585.802 redesignated from 585.805 45110
585.803 Removed 45110
585.804 Removed 45110

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585.805 Redesignated as 585.802 45110
585.806 Removed 45110
585.901 Revised 45110
590 Authority citation revised 45110
590.101 (a) amended 45111
590.601 (Subpart F) Revised 45111
590.701 (a) introductory text amended 45111
590.801 Revised 45111
590.802 Removed; new 590.802 redesignated from 590.805 45111
590.803 Removed 45111
590.804 Removed 45111
590.805 Redesignated as 590.802 45111
590.806 Removed 45111
590.901 Revised 45111
595 Authority citation revised 45111
595.101 (a) amended 45111
595.201 Existing text designated as (a); (b) added 45111
595.311 Note amended 45111
595.503 (a) revised; note added 45111
595.601 (Subpart F) Revised 45111
595.701 (a) introductory text amended 45111
595.801 Revised 45111
595.802 Removed; new 595.802 redesignated from 595.805 45111
595.803 Removed 45111
595.804 Removed 45111
595.805 Redesignated as 595.802 45111
595.806 Removed 45111
595.901 Revised 45111
596 Authority citation revised 45112
596.101 (a) amended 45112
596.601 (Subpart F) Revised 45112
596.801 Revised 45112
596.802 Removed; new 596.802 redesignated from 596.805 45112
596.803 Removed 45112
596.804 Removed 45112
596.805 Redesignated as 596.802 45112
596.806 Removed 45112
596.901 Revised 45112
597 Added 52495
Chapter V Appendixes A and B amended 41851, 48178
Appendix A amended 67729, 67730
Appendix B amended 67732

Proposed Rules:

1 42443
27 42220
103 ..... 36475, 38511, 40778, 40779, 45365, 47156, 63298
208 ..... 48714, 51618, 55773
212 46428
285 62458
356 64528
900—999 (Chapter IX) 68476

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

Subchapter A Heading added 40734
33.26 (a), (b) introductory text and (1) revised 45939, 45943
67 Revised 55517
104 Added 3466
147 Added 4573
148 Added 4580
149 Added 4583
175.3 (l) added 66525
175.4 Revised 66525
175.5 Revised 66525
175.6 Revised 66525
175.7 (a)(13)(i) and (d)(3)(i) revised; (k) added 66525
176 Revised 35346
199 Technical correction 42905
199.2 (b) amended 46878
(b) amended; interim 54384
199.4 (c)(2) heading, (xiii), (xvi), (3)(xi), (g)(37) and (47) revised 46878
(g)(48) revised; interim 54384
199.5 (b)(1)(iii), (e)(2), (3) and (4) revised 42904
199.8 (b)(3)(iii) and (iv) revised; (b)(3)(v) added; interim 54384
199.13 (i) added; interim 39941
199.21 Revised 66990
199.22 Added 66993
247 Revised 42905
270 Added; interim 39942
Revised 3472
285 Revised 61013
286 Revised 35351
286.3 Amended 42916
286.4 (b), (h)(1), (5) and (n)(2) corrected 38197
286.12 (a)(1) and (2) corrected 38197
286.28 (d)(3)(i)(A) corrected 38197
(d)(3)(ii)(A) amended 42916
311.7 (c)(10)(i), (ii) and (iii) added 46446
(c)(11)(i) and (iii) added 59579
318.9 Redesignated as 318.11 67291
Added 67292
318.11 Redesignated from 318.9 67291

NOTE: Boldface page numbers indicate 1997 changes.

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TITLE 32 Chapter I—Con.

318.10 Added 67292
320 Heading revised 65020
320.1 (a)(1)(i) and (2) amended 65020
320.2 Amended 65020
320.3 (a), (b), (c) introductory text, (2) and (d) amended; (e) revised 65020
320.4 (a), (b) introductory text, (1), (2), (3), (c)(2) and (d) amended 65020
(c) heading, (1) introductory text and (iv) revised 65021
320.5 (b) amended 65021
320.6 (a) and (b) revised 65021
320.7 (b), (c) introductory text, (1) and (d) amended 65021
320.8 (a), (c)(3), (5) and (7) amended 65021
320.9 (b)(2)(i) and (3) amended 65021
320.10 Amended 65021
320.11 Amended 65021

Chapter V—Department of the Army (Parts 400—699)

505.5 (e)(20) removed 48480

Chapter VI—Department of the Navy (Parts 700—799)

701.118 (r) introductory text revised 61914
706.2 Table Five amended 37719, 40450
Tables Four and Five amended 47945
721 Removed 3860
Technical correction 4694
722 Removed 3860
Technical correction 4694

Proposed Rules:

178 50796
199 ..... 45196, 61058, 64191, 67018
311 41323
318 51821
901 63485
989 67305

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

27.3 Table correctly revised 35385
Table corrected 39313
96 Added 67506
100 Temporary regulations lists 42671, 60178
Regulation at 61 FR 33032 eff. delayed to 1–1–99 67569
100.35T–05–043 Added (temporary) 35391
100.35–T05–055 Added (temporary) 39776
100.35T–05–065 Added (temporary) 45718
100.35T–05–069 Added (temporary) 48768
100.35T–05–074 Added (temporary) 52501
100.35T–07–047 Added (temporary) 60178
100.35T–07–054 Added (temporary) 61630
100.35T–07–062 Added (temporary) 65022
100.35–T08–026 Added (temporary) 44410
100.35–T08–027 Added (temporary) 44411
100.35–T08–028 Added (temporary) 44411
Heading correctly revised 46553
100.35–T08–034 Added (temporary) 48767
100.35–T08–035 Added (temporary) 48766
100.35–T08–038 Added (temporary) 50506
100.35–T08–039 Added (temporary) 50507
100.01 Regulation at 61 FR 33032 eff. delayed to 1–1–99 67569
100.05 Regulation at 61 FR 33032 eff. delayed to 1–1–99 67569
100.15 Regulation at 61 FR 33032 eff. delayed to 1–1–99 67569
100.17 Regulation at 61 FR 33032 eff. delayed to 1–1–99 67569
100.18 Regulation at 61 FR 33033 eff. delayed to 1–1–99 67569
100.19 Regulation at 61 FR 33033 eff. delayed to 1–1–99 67569
100.25 Regulation at 61 FR 33033 eff. delayed to 1–1–99 67569
100.30 Regulation at 61 FR 33033 eff. delayed to 1–1–99 67569
100.35 Regulation at 61 FR 33033 eff. delayed to 1–1–99 67569

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100.50 Regulation at 61 FR 33033 eff. delayed to 1-1-99 67569
100.100 Regulation at 61 FR 33033 eff. delayed to 1-1-99 67569
100.102 Revised; eff. 7-26-97 35388
100.114 Implementation (temporary) 35388, 35391, 45158, 48766, 66996
100.201 Implementation (temporary) 43284
100.501 (c) revised; Table 1 added 46670
100.508 Implementation (temporary) 45718
100.509 Implementation (temporary) 35390
100.510 (b)(1) and (c) revised; Table 1 added 42067
100.728 Added 43641
100.1101 Implementation (temporary) 45158
100.1102 Amended 3037
100.1301 (a) stayed; (j) added; eff. 8-7-97 through 8-11-97 39444
110.157 (b)(11) added; eff. 10-2-97 through 10-20-97 55168
117 Temporary drawbridge operation regulations 46879, 46880, 50253, 52946, 62262, 63847, 66006
Temporary drawbridge operation regulations 1746, 2141
117.491 (a)(3) removed 52502
117.559 Revised 38909
117.603 Revised 50510
117.604 Removed 50510
117.609 Revised 2896
117.633 (b) and (c) revised 43098
117.637 (a)(1) revised 43931
117.663 Revised 4584
117.720 Added 2312
117.733 Revised 2311
117.753 Revised 45160
117.771 Revised 54385
117.833 Existing text designated as (a); (b) added 66006
117.1045 (a) revised 43097
144.01-15 (d) correctly revised 35392
151 Effective date confirmation 46446
151.19 (c) revised 67532
151.37 (a), (b) and (c) amended 67532
155 Compliance date delay 37134
Compliance date extension 48769
Authority citation and note revised 48773
155.100 (a) introductory text revised; (c) added 48773
155.480 (b) introductory text and (f) revised 48773
157.455 Regulation at 61 FR 60189 stay lifted; revised 49608
160 Authority citation revised 65206
160.207 (d) and (e) revised; interim 65206
162.138 (a)(1)(i) suspended; (a)(1)(iv) added; eff. 7-25-97 through 12-15-97 45720
164.72 (a)(1)(iv) redesignated as (a)(1)(v); (a)(1)(iii), new (v), (c) and table revised; new (a)(1)(iv) added 40272
165 Effective date confirmation 35392, 65022
Temporary regulations lists 42671, 60178
165.T01-040 Added (temporary) 35395
165.T01-041 Added (temporary) 35404
165.T01-042 Added (temporary) 35403
165.T01-047 Added (temporary) 35681
165.T01-048 Added (temporary) 35969
165.T01-063 Added (temporary) 42677
165.T01-082 Added (temporary) 45721
165.T01-085 Added (temporary) 45722
165.T01-089 Added (temporary) 46671
165.T02-050 Added (temporary) 43100
165.T05-058 Added (temporary) 39446
165.T05-063 Added (temporary) 42676
165.T05-076 Added (temporary) 55168
165.T07-035 Added (temporary) 41275
165.T08036 Added (temporary) 35401
165.T08037 Added (temporary) 35401
165.T08038 Added (temporary) 35402
165.T08-041 Added (temporary) 38457
165.T11-040 Added (temporary); interim 51781
165.T11-060 Added (temporary) 43099
165.T13006 Added (temporary) 35394
165.T13007 Added (temporary) 35396
165.T13009 Added (temporary) 35397
165.T13010 Added (temporary) 35399
165.T13-011 Added (temporary) 37136
165.T13-014 Added (temporary) 42674
165.T13-015 Added (temporary) 42675
165.T13008 Added (temporary) 35400
165.T13-016 Added (temporary) 40277
165.T13020 Added (temporary) 51779
165.T13-022 Added (temporary) 50511
165.T96-073 Removed 35406
165.T14-002 Added (temporary) 46672
165.140 (a)(1) and (4) removed; (a)(2) and (3) redesignated as

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TITLE 33 Chapter I—Con.

(a)(1) and (2); new (a)(1), new (2) and (b) amended 51782
165.510 Revised 40275
165.709 Removed 51780
165.726 Added 50512
165.810 (a) and (b) introductory text revised; (e) and (f) added; interim 58653
165.1110 Revised; interim 61631
165.1307 (a) revised 39445
187 Comment period reopening 54385

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

334.1125 Added; interim 40278
Regulation at 62 FR 40278 confirmed 53754

Proposed Rules:

62 67031
66 67031
84 36037
95 45197
100 ..... 38042, 45197, 45198, 50544, 60197, 62733
110 ..... 38511, 62734
117 ..... 35453, 38043, 43131, 43958, 46697, 53770, 66039, 68245
148 45774
149 45774
150 45774
154 3861
155 52057
..... 3861
165 ..... 41324, 45775, 55366
..... 1089
167 44428
173—187 (SubCh. S) 55199
173 45197
174 45197
175 ..... 45197, 50280
177 45197
179 45197
181 45197
183 ..... 45197, 52673
334 ..... 47166, 51618, 55367

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

74.26 (a), (b) and (c) revised 45939, 45943
75.253 (c) revised 40424
75.261 (a) and (b) redesignated as (c) and (d); new (a) and (b) added; new (c) introductory text revised; new (c)(4)(iii)(C) and (d) amended 40424
75.263 Added 40425
75.264 Added 40425
80.26 (a), (b) introductory text and (1) revised 45939, 45943
80 Appendix removed 45943
97 Authority citation revised 63221
97.101—97.124 (Subpart A) Sections designated as Subpart A; heading added 63220
97.101 Authority citation added 63221
97.102 Authority citation added 63221
97.103 Authority citation added 63221
97.107 Authority citation added 63221
97.124 Authority citation added 63221
97.401—97.409 (Subpart D) Added 63221

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

222.4 Revised; eff. 7-31-97 35412
222.7 Authority citation amended; eff. 7-31-97 35412
222.9 Authority citation amended; eff. 7-31-97 35412
222.10 Authority citation amended; eff. 7-31-97 35412
222.11 Introductory text and authority citation amended; eff. 7-31-97 35412
222.12 Added; eff. 7-31-97 35412
222.13 Redesignated as 222.19; eff. 7-31-97 35412

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Added; eff. 7–31–97 35413
222.14 Added; eff. 7–31–97 35413
222.15 Added; eff. 7–31–97 35413
222.16 Added; eff. 7–31–97 35413
222.17 Added; eff. 7–31–97 35413
222.18 Added; eff. 7–31–97 35414
222.19 Redesignated from 222.13; eff. 7–31–97 35412
222.22 (c) and (d) revised; eff. 7–31–97 35414
222.23 Added; eff. 7–31–97 35414
222.36 (b)(1) and (2) revised; eff. 7–31–97 35415
222.50 Authority citation amended; eff. 7–31–97 35412
222.80—222.85 (Subpart F) Added; eff. 7–31–97 35415
222.94 Authority citation amended; eff. 7–31–97 35412
222.95 Authority citation amended; eff. 7–31–97 35412
(g) introductory text revised; OMB number 35416
222.103 Authority citation amended; eff. 7–31–97 35412
222.104 Authority citation amended; eff. 7–31–97 35412
222.108 Authority citation amended; eff. 7–31–97 35412
222.109 Authority citation amended; eff. 7–31–97 35412
222.110 Authority citation amended; eff. 7–31–97 35412
222.111 Authority citation amended; eff. 7–31–97 35412
222.112 Authority citation amended; eff. 7–31–97 35412
222.113 Authority citation amended; eff. 7–31–97 35412
222.114—222.122 Undesignated center heading added; eff. 7–31–97 35416
222.114 Added; eff. 7–31–97 35416
222.115 Added; eff. 7–31–97 35416
222.116 Added; eff. 7–31–97 35416
222.117 Added; eff. 7–31–97 35417
222.118 Added; eff. 7–31–97 35417
222.119 Added; eff. 7–31–97 35418
222.120 Added; eff. 7–31–97 35418
222.121 Added; eff. 7–31–97 35418
222.122 Added; eff. 7–31–97 35418
222.150 (b)(1) amended; eff. 7–31–97 35418
222.151 Heading and (b)(1) revised; eff. 7–31–97 35418
222.152 (b) and (c) revised; eff. 7–31–97 35418
222.154 (e) revised; eff. 7–31–97 35419
222.156 (g) amended; eff. 7–31–97 35419
222.157 Heading, (a) and (b)(1) revised; eff. 7–31–97 35419
225.158 Heading, introductory text and (b) revised; eff. 7–31–97 35419
222.161 (c) amended; eff. 7–31–97 35419
222.162 (a) revised; eff. 7–31–97 35419
222.164 (a)(2) and (b) revised; OMB number; eff. 7–31–97 35419
222.165 (e), (f) and (h) revised; eff. 7–31–97 35420

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

668.13 (d) and (e) removed; (f) redesignated as (d) 62876
668.23 (f) removed; (g) and (h) redesignated as (f) and (g) 62876
668.162 (a)(1) revised; (e) added 62876
668.167 (f) added 62877
668.171—668.175 (Subpart L) Added 62877
668 Appendix F added 62882
Appendix G added 62885
674.6 (a)(1) and (2) amended; (a)(3) removed 50847
674.9 (a) amended 50847
674.19 (b) amended 50847
674.31 (b)(2)(i)(D) revised 50848
674.33 (b)(6)(ii) amended; (d)(8) added 50848
674.34 (h) revised 50848
674.35 (c)(1), (3) and (4) amended; (g) removed; (h) and (i) redesignated as (i) and (g); new (h) added 50848
674.36 (c)(1), (2), (3) and (f) amended 50848
674.37 (c)(1), (2), (3) and (d) amended 50848
674.45 (c)(1)(ii)(A) amended 50848
674.52 (d)(2) amended 50848
675.9 (a) amended 50848
675.19 (a)(3) amended 50848
675.20 (b)(1) amended 50848
675.22 Heading amended 50848
675.26 (d) revised 63439

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TITLE 34 Chapter VI—Con.

675.27 Authority citation revised 50848
676.9 (a) amended 50848
676.19 (a)(2) amended 50848
682.201 (a) introductory text through (3) amended 63433
682.202 (c)(5) revised 63434
682.209 (i)(1) revised 63434
682.401 (b)(10)(vi)(B) introductory text amended; (b)(10)(vi)(B)(*1*) and (*2*) revised 63434
682.402 (c)(1) revised; (k)(2)(iii) amended 63434
682.604 (g)(2)(i) revised 63434
685.202 (c)(4) revised 63434
685.212 (b) revised 63435
685.301 (a)(6) and (7) redesignated as (a)(7) and (8); new (a)(6) added 63435
685.304 (b)(2)(i) revised 63435
685 Appendix A revised 35602

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

701 Added 61430

Proposed Rules:

5b 62670
300 ..... 48924, 50435, 55026
301 ..... 48924, 50435, 55026
303 ..... 48924, 50435, 55026
682 50462
685 50462

TITLE 35—PANAMA CANAL

Chapter I—Panama Canal Regulations (Parts 1—299)

104 Revised 48179
115 Authority citation revised 2142
115.1 Revised 2142
115.2 (b) revised; (c) removed; (d) redesignated as (c); (a) introductory text and new (c) amended 2142
117 Authority citation revised 2142
117.1 (b), (c) introductory text and (d)(2) amended 2142
117.3 Revised 2142
119 Nomenclature change 2142

Proposed Rules:

133 186
135 186

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

4.15 Revised 61633

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

212 Authority citation revised 58654
212.2 Revised 58654
212.3 Removed; new 212.3 redesignated from 212.5 58654
212.4 Removed; new 212.4 redesignated from 212.6 58654
212.5 Redesignated as 212.3; new 212.5 redesignated from 212.7 58654
212.6 Redesignated as 212.4; new 212.6 redesignated from 212.8 58654
212.7 (c) amended; redesignated as 212.5; new 212.7 redesignated from 212.9 58654
212.8 Redesignated as 212.6; new 212.8 redesignated from 212.10 58654
212.9 (d) amended; redesignated as 212.7; new 212.9 redesignated from 212.11 58654
212.10 (a)(2) amended; redesignated as 212.8; new 212.10 redesignated from 212.12 58654
212.11 (f) amended; redesignated as 212.9 58654
212.12 Redesignated as 212.10 58654
215.11 (c) revised; (d) added; interim 4188
242.24 (a)(1) table amended 45725
242.25 (k)(6)(iii) table amended 45725
(k)(7)(iii) table, (10)(ii) table, (11)(i) table, (12)(i) table, (13)(iii) table, (15)(iii) table, (20)(iii) table and (22)(ii) table, amended 45726
(k)(23)(iii) table, (24)(iii) table, (25)(iii) and (26)(iii) table amended 45727

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Chapter VII—Library of Congress (Parts 700—799)

701.8 Revised 64280
703 Revised 50254

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

1151 Revised 1924
1153 Removed 1926
1155 Removed 1926
1191 Appendix A amended 2016, 2071

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1207 Authority citation revised 45943
1207.26 (a), (b) introductory text and (1) revised 45939, 45943
1210.26 (a), (b) and (c) revised 45939, 45943
1228.188 Revised 54584
1234.30 (a)(4) revised 54585

Proposed Rules:

1 63488
4 40317
7 60815
13 ..... 54409, 58932
14 63488
212 ..... 4350, 4351
242 ..... 39987, 66216
292 47167
327 64192
1190 ..... 43133, 62275, 67320
1191 ..... 43133, 62275, 67320

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1 Technical correction 43100
1.4 (d) revised; (g) added 53180
1.6 (d)(3), (6) and (e) revised; (f) added 53180
1.8 (a)(2)(i)(A) and (b) revised 53181
1.9 (d) and (f) revised 53181
1.10 (d) and (e) revised 53181
1.11 (b) revised 53181
1.14 (a) revised; (f) added 53182
1.16 (a), (b), (d) and (f) through (i) revised 40452
(d) and (l) revised 53182
1.17 (b) through (g), (j), (m) through (p), (r) and (s) revised 40452
(a) through (d), (h), (i) and (q) revised; (e), (f) and (g) removed 53182
(q) correctly revised 61235
1.18 Revised 40452
1.19 (a)(2) and (3) revised 40452
1.20 (c), (e), (f), (g), (i)(1), (2), (j)(1) (2) and (3) revised 40453
1.21 (a)(1)(ii), (6) and (j) revised 40453
(l) and (n) revised 53183
1.26 (a) revised 53183
1.27 Revised 53183
1.28 (a) and (c) revised 53183
1.33 (a) and (b) revised 53184
1.41 (a) revised 53184
1.47 Revised 53184
1.48 Revised 53185
1.51 Revised 53185
1.52 (a), (c) and (d) revised 53186
1.53 Revised 53186
1.54 Revised 53188
1.55 (a) revised 53188
1.59 Revised 53188
1.60 Removed 53188
1.62 Removed 53188
1.63 (a) and (d) revised; (e) added 53188
1.67 (b) revised 53189
1.69 (b) revised 53189
1.78 (a) revised 53189
1.84 (a)(2)(i). (b), (c) and (g) revised 53190
1.91 Revised 53190
1.92 Removed 53190
1.97 (c), (d) and (e) revised 53190
1.101 Removed 53190
1.102 (a) revised 53191
1.103 (a) revised 53191
1.104 Revised 53191
1.105 Removed 53192
1.106 Removed 53192
1.107 Removed 53192
1.108 Removed 53192
1.109 Removed 53192
1.111 (b) revised 53192
1.112 Revised 53192
1.113 Revised 53192
1.115 Removed 53192

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TITLE 37 Chapter I—Con.

1.116 Heading and (a) revised 53192
1.117 Removed 53192
1.118 Removed 53192
1.119 Removed 53192
1.121 Revised 53192
(a)(4) correctly removed 61235
1.122 Removed 53193
1.123 Removed 53193
1.124 Removed 53193
1.125 Revised 53193
1.126 Revised 53194
1.133 (b) revised 53194
1.134—1.139 Undesignated center heading revised 53194
1.134 Revised 53194
1.135 Revised 53194
1.136 Revised 53194
1.137 Revised 53194
1.139 Removed 53195
1.142 (a) revised 53195
1.144 Revised 53195
1.146 Revised 53195
1.152 Revised 53195
1.154 Heading and (a)(3) revised 53196
1.155 Revised 53196
1.163 Heading and (b) revised 53196
1.167 Revised 53196
1.171 Revised 53196
1.172 (a) revised 53196
1.175 Revised 53196
1.182 Revised 53196
1.184 Removed 53196
1.191 (a) and (b) revised 53196
1.192 (a) revised 53196
1.193 Revised 53197
1.194 Revised 53197
1.196 (b) and (d) revised 53197
1.197 (a) and (b) revised 53198
1.291 (c) revised 53198
1.293 (c) revised 53198
1.294 (b) revised 53198
1.304 (a)(1) revised 53198
1.312 (b) revised 53198
1.316 Revised 53198
1.317 Revised 53198
1.318 Removed 53198
1.324 Revised 53199
1.352 Removed 53199
1.366 (b), (c) and (d) revised 53199
1.377 (c) revised 53199
1.378 (d) revised 53199
1.425 Revised 53199
1.445 (a) revised 40453
1.482 (a)(1)(i), (ii) and (2)(ii) revised 40453
1.484 (d), (e) and (f) revised 53199
1.485 (a) revised 53200
1.488 (b)(3) revised 53200
1.492 (a), (b) and (d) revised 40453
(g) added 53200
1.494 (c) revised 53200
1.495 (c) revised 53200
1.510 (e) revised 53200
1.530 Heading and (d) revised; (e) removed 53200
1.550 (a), (b) and (e) revised 53201
1.770 Revised 53201
1.785 (d) revised 53201
1.804 (b) revised 53202
1.805 (c) revised 53202
2 Technical correction 43100
2.6 (b)(4) and (10) revised 40453
3.11 Revised 53202
3.21 Revised 53202
3.26 Revised 53202
3.27 Revised 53202
3.31 (c) added 53202
3.41 Revised 53202
3.51 Revised 53203
3.58 Added 53203
3.71—3.73 Undesignated center heading revised 53203
3.73 Heading and (b) revised 53202
5.1 Revised 53203
5.2 (b) revised; (c) and (d) removed 53203
5.3 (c) revised 53203
5.4 (a) and (d) revised 53204
5.5 (b) and (e) revised 53204
5.6 Removed 53204
5.7 Removed 53204
5.8 Removed 53204
5.11 (b), (c) and (e)(3) revised 53204
5.12 (b) revised 53204
5.13 Revised 53204
5.14 (a) revised 53204
5.15 (a), (b), (c) and (e) revised 53204
5.16 Removed 53205
5.17 Removed 53205
5.18 Revised 53205
5.19 Revised 53205
5.20 Revised 53205
5.25 (c) removed 53206
5.31 Removed 53206
5.32 Removed 53206
5.33 Removed 53206
7 Removed 53206
10.18 Revised 53206
10.23 (c)(15) revised 53206

NOTE: Boldface page numbers indicate 1997 changes.

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Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201 Authority citation revised 55739
201.1 (a) and (b) amended 35420
(c) and (d) amended 35421
(b) amended 40457
201.2 (b)(5) amended 35421
201.5 (c)(2) amended 35421
201.34 Added; interim 55739
202.3 (b)(2) amended 35421
(b)(5)(ii) amended 63657
(b)(5)(iii) amended 66822
202.20 (c)(2)(vii)(A)(*2*) and (D)(*1*) amended 35421
202 Appendix B amended 51603
203 Authority citation revised 55742
Authority citation revised 1926
203.2 (a) amended 35421
203.3 (i) revised; interim 55742
Regulation at 62 FR 55742 confirmed 1926
203.4 (f) revised; (i) added; interim 55742
Regulation at 62 FR 55742 confirmed; (f) and (i)(2) amended 1926
203.6 (b)(6) amended; interim 55742
Regulation at 62 FR 55742 confirmed 1926
253.1 Amended 2144
253.4 Introductory text and (a)(1) through (8) revised; (c) amended 2144
253.5 (c)(1), (2) and (3) revised 2145
253.6 (c) revised 2145
253.7 (a) revised; (b)(1)(i), (ii), (2), (4) and (5) amended 2145
253.8 (b)(1) revised; (f)(1) amended 2145
253.10 (a) amended 2145
258 Technical correction 62262, 62404
258.3 Revised 55759

Proposed Rules:

2 59640
3 59640
201 40780
..... 3685
253 ..... 51619, 63502, 65777
255 ..... 63506, 65778

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

1 Nomenclature change 35970
Nomenclature correction 47532
1.621 (a) and (b)(2) revised; (c) amended; (e) redesignated as (d) 51783
3 Nomenclature change 35970
Nomenclature correction 47532
3.2 (f) revised 35422
3.7 Heading and introductory text revised; (x)(29) and (30) added 413
3.20 (c) added 35422
3.27 (c) redesignated as (d); new (c) added; new (d) and authority citation revised 51278
3.57 Cross reference amended 51281
3.105 (g) and (h) redesignated as (h) and (i); (d), (e), (f) and new (h), (i)(1), (i)(2) introductory text, (ii) and (iii) amended; new (g) added 51278
3.158 (a) and (c) amended 51278
3.261 (a)(40) added 51278
3.262 (y) added 51278
3.263 (g) added 51279
3.272 (u) added 51279
3.275 (i) added 51279
3.307 (a)(6)(i) and (iii) amended; (a)(6)(i) authority citation added; (a)(6)(iii) authority citation revised 35422
3.403 Introductory text and (a) through (e) redesignated as new (a) introductory text and (1) through (5); new (b) added 51279
3.503 Introductory text and (a) through (j) redesignated as (a) introductory text and (1) through (10); new (b) added 51279
3.659 Cross reference amended 51281
3.703 Cross reference amended 51281
3.707 Cross reference amended 51281
3.807 Cross reference amended 51281
3.810 (a) amended; (d) added 35422
3.811 Added; interim 35971
Revised 412
3.814 Added 51279

NOTE: **Boldface page numbers indicate 1997 changes.**

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TITLE 38 Chapter I—Con.

3.1000 (a) introductory text amended; authority citation added 35423
3.1600 (c) amended 35423
4.100 Removed 65219
4.101 Removed 65219
4.102 Removed 65219
4.104 Revised 65219
9 Nomenclature change 35970
Nomenclature corrected 47533
9.2 (a) and (b)(1) revised 35970
9.8 (b) amended 35970
17.32 Revised 53961
17.149 Regulation at 62 FR 30239 confirmed 64722
17.150—17.154 Regulation at 62 FR 30239 confirmed 64722
17.212 (d) added; authority citation revised 60783
17.900—17.905 Undesignated center heading and sections added 51284
19.9 Revised 52503
20.611 Revised 55170
20.1302 Revised 55170
21.3021 (l) redesignated as (m); new (l) added 51784
21.3041 (e)(3) and (4) amended 55760
21.3045 (f) revised; (i)(3)(ii) amended 55760
21.3046 (e) removed 51784
(c)(1) and (d)(6)(ii) amended 59579
21.3047 Added 51784
21.4001—21.4279 (Subpart D) Authority citation revised 40280, 55760, 63849
21.4009 (b)(1) introductory text amended 55760
21.4200 (g) revised 55760
21.4201 (h) introductory text and (2) amended 55760
21.4233 (c) revised; (d) amended 40280
(b)(3) introductory text amended, (ii), (4) introductory text and (ii) amended 55760
21.4250 (a)(1), (2), (c)(1), (2) introductory text, (ii), (iii) and (iv) amended 55760
21.4253 (d)(1) revised 35424
21.4256 Revised 63849
21.4267 (a) authority citation, (b) authority citation and (i) revised; (f) added 40280
21.4270 (c) heading and Footnote 2 revised 55760
21.4279 (a) introductory text and (4) revised; (a)(5) added 63850
21.4501 (b)(1), (2)(iv), (v)(A), (B), (c)(1) and (3) amended 51785
21.5001—21.5300 (Subpart G) Authority citation revised 55760
21.5270 (a), (g) and (i) amended 55760
21.5701—21.5901 (Subpart H) Authority citation revised 55761
21.5820 (b)(1), (2)(ii) introductory text, (A), (B), (C), (3)(ii) introductory text, (A), (B) and (C) amended 63848
21.5822 (b)(1)(i), (ii), (2)(i) and (ii) amended 63848
21.5901 (a) and (b) amended 55761
21.7000—21.7320 (Subpart K) Authority citation revised 40280, 55761
21.7020 Introductory text, (a)(1)(i) and (2)(i) amended; (b)(25)(i)(G) revised 55761
21.7044 (c) removed; (d) and (e) redesignated as (c) and (d) 55761
21.7112 (c) revised 40280
21.7131 (k) added 55519
21.7135 (bb) redesignated as (cc); new (bb) added 55519
21.7136 (d) introductory text and (e)(1) amended; (e) introductory text revised; (g) added 55519
(b), (c)(1), (2) and (3) revised 58655
21.7137 (b) introductory text revised; (e) and (f) redesignated as (f) and (g); new (e) added 55519
(a) revised; (c)(2) introductory text and (i) through (iv) amended 58655
21.7139 (a), (g) and (h) removed; (b) through (f), (i) and (j) redesignated as (a) through (g); new (g)(2) redesignated as (g)(3); introductory text and new (b) authority citation, (c) authority citation, (d)(2)(iii), (d) authority citation, (e)(2)(ii), (iii), (3)(iii), (e) authority citation and (g)(3)(ii) amended; heading and new (g)(1) revised; new (g)(2) added 55520
21.7140 (c)(1)(iii) removed; (c)(1)(i), (ii), (d)(1) and (e)(2)

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amended; (c)(1) authority citation, (d) authority citation, (e) authority citation and (g) authority citation revised 55761
21.7144 Revised 55761
21.7170 Revised 55761
21.7172 (a)(3)(ii) revised 55761
21.7305 Revised 55761
21.7307 Revised 55761
21.7310 Revised 55761
21.7612 (b) revised 40280
21.7622 (c) revised 55762
21.7631 (h) added 55520
21.7635 (x) redesignated as (y); new (x) added 55520
21.7636 (b) redesignated as (c); new (b) added 55520
(a)(1), (2)(i) and (3) revised 66278
21.7639 (c)(2)(ii), authority citation, (f)(1), authority citation revised; (f)(2) redesignated as (f)(3); new (f)(2) added 55521
(b) introductory text amended 55762
21.7659 Revised 55762
21.7670 (d) amended 55762
21.7720 (b)(9), (10) and (11) redesignated as (b)(11), (12) and (13); (b)(5) and new (11) amended; new (b)(9) and new (10) added 55762
21.8010—21.8410 (Subpart M) Added 51288
36.4232 (e)(1), (2), (3) amended; (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number 63278
36.4254 (d)(4) and (5) redesignated as (d)(5) and (6); new (d)(4) added; OMB number 63278
36.4306a (a)(3), (4) and (5) revised; (a)(6) and (7) added 52505
(a)(6) and (7) removed; (a)(3), (4) and (5) revised 63454
36.4312 (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number 63278
36.4337 (a) revised 52505
Heading, (c) through (h), (j), (k), (l), (n) and authority citation revised 53965
(a) revised 63454
43.26 (a), (b) introductory text and (1) revised 45939, 45943

Proposed Rules:

17 ..... 39197, 40492
19 36038
20 ..... 55200, 64790
21 ..... 35454, 45596, 48969, 60464, 62736, 66320
36 37824
47 52519

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

3 Authority citation amended 41853
3.3 (v) redesignated as (w); new (v) added 41853
(e)(3) added 43642
3.4 (h) added 41853
4 Authority citation revised 61914
4.5 Revised 61914
4.6 Removed; new 4.6 redesignated from 4.7 61914
4.7 Redesignated as 4.6 61914
20 IMM amended; incorporation by reference; interim 45163, 47559, 49917, 56074, 58915
IMM amended; incorporation by reference 3645, 3815
111 DMM amended; incorporation by reference 39947, 51372, 53540, 60181, 61015
DMM amended; incorporation by reference 155
111.3 (f) table amended 63851
111.5 Revised 63852
255.1 (c)(1) amended; (c)(2) removed; (c)(3) through (6) redesignated as (c)(2) through (5); new (c)(2) revised 66996
(c)(3) amended; (c)(4) and (5) revised 66997
255.2 (a)(1) amended; (a)(2)(i), (iv) and (b)(2) revised; (c) removed 66997
255.3 (a)(1) and (b)(2) revised; (a)(2) introductory text amended; (a)(3), (4), (5) and (c) removed 66997
(a)(3) correctly removed 2145
262 Authority citation revised 64280
262.2 (a) revised; interim 64280
262.4 Introductory text revised; interim 64280
265.3 (a) revised; interim 64280
265.5 Revised; interim 64280

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TITLE 39 Chapter I—Con.

265.6 (a) revised; interim 64281
(e)(1) amended; interim 64282
265.7 (a)(2) amended; (b), (c), (d)(1), (e)(1), (f)(1) and (2) revised; (d)(3) and (g) added; interim 64282
265.10 Revised 64283
265 Appendix A revised 64283
954 Heading amended 66998
954.2 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.3 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.5 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.6 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.8 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.10 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.12 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.13 (a) and (c) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.14 (b)(6) and (8) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.16 (d)(1) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.17 (b) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.18 (a) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.19 (a) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.25 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
966 Revised 63279

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.7 (a)(1)(iii) amended 45530
3001.12 (e) amended 45530
3001.31 (k)(2)(i) through (iv) redesignated as (k)(2)(ii) through (v); new (k)(2)(i) added; new (k)(2)(ii) and (3)(i)(i) amended; (k)(3)(i)(e) revised 45729
3001.43 (f)(1) amended 45530
3001.61—3001.69c (Subpart C) Appendix A amended 35425
3002 Auhority citation revised 45530
3002.4 Heading revised; (a) amended 45530
3002.5 Removed 45530

Proposed Rules:

20 47394
111 ..... 45366, 47178, 48191, 62540
232 61481
775 42958
777 42958
778 42958

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

3 Removed 43269
9.1 Table amended (OMB number) 37722, 44413, 47119, 52398, 54715, 55474
Regulation at 61 FR 52295 eff. date corrected to 12–30–97 673
Table amended (OMB numbers) 964, 1060, 1320
30.26 (a), (b) and (c) revised 45939, 45944
31.26 (a), (b) introductory text and (1) revised 45939, 45944
32.105 Amended 47149
32.335 (a) through (d) amended 47149
32.430 (a) through (d) amended 47149
50 Announcement 38762
Comment period extendsion 43642
50.3 Revised 38711
50.6 Heading revised; (d) added 38711
50.7 Added 38711
50.9 Revised 38894
50.10 Added 38894
50 Appendix K revised 38712
Appendix L added 38714
Appendix M added 38753
Appendix N added 38755

NOTE: Boldface page numbers indicate 1997 changes.

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Appendixes D and H amended; Appendix E removed; Appendix I added **38895**
51 Authority citation revised **43801, 44903**
51.100 (s) introductory text and (1) revised **44903**
51.212 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
51.353 (c)(3) and (4) revised 1368
51.390 (Subpart T) Revised **43801**
52 Technical correction **37724, 61016**
State implementation plan determinations **43647, 45531, 52946, 54769, 61914, 64522**
Notice **61236**
State implementation plan determinations 26, 3650
52.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.33 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.50 (c)(71) added 676
52.66 Added **49158**
52.120 (c)(73), (74)(i)(B), (77)(i)(A)(*1*) removed; (c)(74)(i)(A) revised; (c)(74)(i)(A)(*2*) redesignated as (c)(77)a(i)(A)(*1*); (c)(88) added **41864**
(c)(83) and (85) removed **63458**
52.123 (f) added **41864**
52.124 (b) added **41864**
52.220 (c)(196)(i)(D), (202)(i)(F) and (245) added **36216**
(c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*) and (225)(i)(B)(*3*) added **37138**
(c)(239)(i)(D) added **41867**
(c)(197)(i)(B)(*2*) added **44909**
(c)(224)(i)(D) added **44912**
Regulation at 62 FR 41867 withdrawn **47369**
(c)(26)(ix)(B), (xvi)(E), (27)(vii)(C), (39)(viii)(D), (ix)(C), (x)(C) and (246) added **48483**
(c)(229)(i)(A)(*2*) added **48485**
(c)(224)(i)(E) added **53544**
(c)(243) added **54588**
(c)(224)(i)(D) removed **54769**
(c)(197)(i)(D) and (241)(i)(A)(*2*) added **59287**
(c)(184)(i)(B)(*5*) and (225)(i)(A)(*2*) added **60785**
(c)(250) added **62951**
(c)(239)(i)(E) added **65613**
(c)(239)(i)(E)(*2*) added **67000**
(c)(239)(i)(A)(*2*) **67004**
52.222 (a)(2) and (3) added **40937**
(b)(2) added **43647**
52.320 (c)(76) added **68195**
(c)(71) added **67009**
52.329 (a) revised **68195**
52.332 (b) and (e) redesignated as (b)(1) and (e)(1); (b)(2) and (e)(2) added **66008**
(g) and (h) added **68195**
52.370 (c)(72) added **52020**
(c)(74) added **55340**
(c)(72)(i)(B) and (K) corrected **65224**
52.384 Added **55340**
52.385 Added **52022**
Table corrected **65224**
52.420 (c)(58) added **37724**
Regulation at 62 FR 37722 eff. date corrected to 8–14–97 ..... **40139**
52.424 (b) introductory text revised 1368
52.470 (c)(37) added **40937**
52.520 (c)(98) added **38919**
52.570 (c)(50) added; interim **42918**
52.720 (c)(106(i)(D) added; (c)(109) revised **43102**
(c)(139) added **62953**
(c)(137) added **67001**
52.726 (p), (q) and (r) added **37506**
Regulation at 62 FR 37506 withdrawn **46447**
(p), (q) and (r) added **66294**
52.770 (c)(109) added **38922**
(c)(121) added 2147
52.776 (q) added **45171**
52.777 (k) added **38464**
(q) added **55176**
(s) added **64735**
52.820 (c)(64) added **55173**
(c)(65) added **63455**
52.870 (c)(33) added **36213**
52.920 (c)(86) added 1929
52.930 Regulation at 62 FR 28637 withdrawn **40281**
(e) added **55176**
(d) added **61246**
52.970 (c)(64) introductory text and (i) revised **51604**
(c)(68) added **52951**
(c)(74) added **63661**

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TITLE 40 Chapter I—Con.

52.975 (f) added 64286
52.994 Existing text designated as (a); (b) added 63662
52.996 Added 61634
Correctly designated 4397
52.1020 (c)(44) added 49611
52.1031 Table amended 49611
52.1036 (e) added 41277
52.1070 (c)(122), (123) and (124) added 41856
(c)(126) and (127) added 46201
(c)(125) added 53548
52.1072 Added 40944
(b) added 49616
(c) added 52666
52.1076 Added 40458
52.1120 (c)(114) added; interim 37509
(c)(113) added 37514
52.1125 Added 37514
52.1170 (c)(109) added 59996
52.1174 (p) added 50514
52.1219 (b) added 39123
52.1220 (c)(44) added 53242
52.1237 (b) added 55172
52.1270 Redesignated as 52.1281; new 52.1270 added 35442
(c) table amended 37726
(c) table corrected 40139
52.1281 Redesignated from 52.1270; heading and (a) revised 35442
52.1320 (c)(99) added 44221
(c)(96) revised 45166
(c)(100) added 45167
(c)(101) added 46881
(c)(98) added 52660
(c)(102) added 3039
52.1323 (k) added 46881
(l) added 52661
52.1391 Added 65616
52.1520 (c)(52) added 55525
52.1533 Added 55525
52.1570 (c)(63) added 42413
52.1605 Table amended 42414
52.1620 (c)(66) added 50518
52.1670 (c)(91) added 49619
(c)(93) added 67006
52.1679 Table amended 67006
52.1683 (c), (d) and (e) added; interim 55344
(f) added 66825
52.1770 (c)(94) added 41280
52.1870 (c)(115) added 49442
52.1885 Regulation at 62 FR 28637 withdrawn 40281
Regulation at 62 FR 26399 eff. date delayed to 1–9–98 43109
(a)(6) added 44907
(bb) added 61246
(a)(7) added 1062
Regulation at 62 FR 26399 withdrawn 1368
(z) added 4195
52.1890 Added 47947
52.1970 (c)(122) added 46210
52.2020 (c)(125) added 38917
(c)(127) added 43104
(c)(119) added 44415
(c)(126) added 50871
(c)(128) added 50873
(c)(107) added 64725
52.2026 (a) introductory text and (1) revised 59998
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415
(a)(2) revised 1368
(d) and (e) added 2153
52.2036 (j) added 38917
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415
52.2070 (c)(48) and (49) added 46207
52.2081 Table amended 46207
52.2120 Redesignated as 52.2134; new 52.2120 added 35444
(c) table amended 44219, 47761
52.2134 Redesignated fron 52.2120; heading and (a) revised 35444
52.2220 (c)(147) added 35683
(c)(156) added 38912
(c)(158) added 40460
(c)(155) added 40735
(c)(151) added 42070
(c)(154) added 43108
(c)(157) added 43645
(c)(159) and (160) added 62698
52.2270 (c)(102) added 44087
(c)(91) removed 49154
52.2303 (a) revised 44088
52.2310 Added; interim 37144
52.2320 (c)(38) added 38216
52.2348 Regulation at 62 FR 31351 eff. date corrected to 12–30–97 414
52.2350 Added 38217
52.2351 Added 38217
52.2370 (c)(23) added 41282
(c)(24) added 41869
52.2375 Table revised 41869
52.2381 Table amended 41282, 41870
52.2420 (c)(115) and (116) added 38914
(c)(121) added 53239

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(c)(120) added 53245
(c)(118) added 54587
(c)(119) added 61240
52.2424 Existing text designated as (a); (b) added 61240
52.2428 Existing text designated as (a); (b) added 38932
Removed 43472
Added 52032
52.2450 (b)(1) and (3) amended; (b)(2) revised 49152
(b)(2) revised 1368
52.2454 Added 52638
52.2470 (c)(73) added 42217
(c)(75) added 49444
(c)(75) revised 68187
52.2479 Amended 68188
52.2585 (l) added 39448
53.1—53.16 (Subpart A) Revised 38784
53.30—53.34 (Subpart C) Revised 38792
53.50—53.59 (Subpart E) Added 38799
53.60—53.66 (Subpart F) Added 38814
55.2 Amended 46408
55.3 (c) revised 46408
55.6 (d)(2) revised 46408
55.11 (a) revised; (j) added 46408
55.14 (e)(2)(i)(A) revised 41871
55 Appendix A amended 41871
58.1 Amended 38830
58.13 (b) and (d) revised; (e) and (f) added 38831
58.14 Revised 38832
58.20 Heading, (d) and (e) introductory text revised; (f) redesignated as (h); concluding text designated as (i); new (f) and (g) added; new (i) amended 38832
58.23 Introductory text revised; (c) added 38832
58.26 Heading and (b) introductory text revised; (d) and (e) added 38833
58.30 (a) introductory text revised 38833
58.31 (f) revised 38833
(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
58.34 Introductory text revised 38833
(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
58.35 (b) amended 38833
58.41 (b) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
58 Appendix A revised 38833
Appendix C amended 38843
Appendix D amended 38844, 59816
Appendixes E and F amended 38854
Appendixes E and G amended 59818
Appendix D regulation at 62 FR 59816 withdrawn 67010
60 Determinations 36664
Authority citation revised 48379
Authority delegation notices 53245
Clarification 62953
Guidance availability 63662
Authority delegation notices 1746
60.1 (d) added 52641
60.11 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
60.17 (b)(1) amended; (k) and (l) added 48379
(a)(22) amended 52399
60.30 Revised 48379
60.30b—60.39b (Subpart Cb) Heading revised 45119
60.31b Amended 45119, 45121
60.32b (a) and (b) introductory text revised; (b)(2) amended; (m) added 45119
(b)(1), (d), (e), (f)(1) and (i)(1) amended 45125
60.33b (a)(1)(i), (iii), (2)(i), (iii), (3), (b)(1)(i), (2)(i), (c)(1) introductory text, (d) Table 1 and (1)(i) amended; (a)(1)(ii), (2)(ii), (iv), (b)(1)(ii), (2)(ii) and (c)(2) removed 45119
(a)(4), (b)(3) and (d)(3) added; (d) Table 2 amended; (d)(1)(i)(B) revised 45120
(a)(3) amended 45125
60.34b (a) amended 45120, 45125
60.35b Amended 45120
60.38b (b) amended; (c) removed 45120
60.39b (b), (c)(1) introductory text, (2), (4)(ii), (iii) introductory text and (5) amended; (c)(3) and (4)(i) removed; (d) revised; (e) and (f) added 45120
(c)(4)(iii)(B) amended 45125

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60.30e—60.39e (Subpart Ce) Added 48379
60.49b (u) added 52641
60.50b—60.59b (Subpart Eb) Heading revised 45120
60.50b (b)(2) amended 45120
(a) and (b) introductory text revised; (p) added 45121
(b)(1), (e), (f), (g)(1) and (i)(1) amended 45125
(j) introductory text amended 45126
60.51b Amended 45121, 45126
60.52b (c)(1) amended 45121
(a)(1) through (5), (b)(1), (2) and (c)(2) amended 45126
60.53b (a) introductory text, Table 1, (b) introductory text and (c) introductory text amended 45126
60.54b (a), (b), (c) introductory text, (d), (e) introductory text and (f) introductory text amended; (c)(i) and (ii) redesignated as (c)(1) and (2) 45126
60.55b (a) amended 45126
60.56b Amended 45126
60.57b (a) introductory text, (b) introductory text and (c) amended 45126
60.58b (b) introductory text, (3), (6)(i), (c)(2), (4), (7), (9), (11), (d)(1)(ii), (v), (vii), (2)(ii), (vii), (viii), (ix), (e)(3), (12)(i)(B), (f)(4), (7), (g)(2), (5) introductory text, (i), (iii), (8), (h)(2), (3), (4), (10) introductory text, (i)(B), (i)(3)(ii)(B), (5), (j)(1) introductory text, (i), (2) and (m)(3) introductory text amended; (b)(7), (h) introductory text and (k) introductory text revised; (c)(10), (d)(1)(viii), (ix), (2)(x), (f)(8) and (g)(5)(ii) removed; (k)(4) added 45126
60.59b (a) introductory text and (b) introductory text amended 45121
(b)(4), (d) introductory text, (2)(i)(C), (ii)(B), (3), (6)(ii), (8), (11), (12)(ii), (f) introductory text, (g) introductory text, (h) introductory text and (l) amended 45127
60.50c—60.58c (Subpart Ec) Added 48382
60.112b (c) added 52641
60.190 (b) revised; (c) added 52399
60 Appendix A amended 52399
61 Authority delegation notices 53245
authority delegation notices 1746
61.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
62.1110—62.1112 Undesignated center heading and sections added 2156
62.2350 (b)(5) and (c)(3) added 60787
62.2355 Undesignated center heading and section added 60787
62.3350 Undesignated center heading and section added 67572
62.3912 Undesignated center heading and section added 41873
62.4177 Undesignated center heading and section added 41874
62.4620 (b)(4) added 45732
62.4631—62.4632 Undesignated center heading and sections added 54589
62.4931—62.4932 Undesignated center heading and sections added 45732
62.6356 Undesignated center heading and section added 41874
62.6912 Undesignated center heading and section added 41874
62.7855—62.7856 Undesignated center heading and sections added 54589
62.8600—62.8602 (Subpart JJ) Added 65619
62.9350 (b)(4) and (c)(4) added 36997
62.9505 Undesignated center heading and section added 36997
(b) correctly removed 48950
63 Authority delegation notices 36460
authority delegation notices 1746
Notice 2630
63.14 (d)(1) revised 65024
63.99 (a)(5)(ii) introductory text and (A) introductory text revised; (a)(5)(ii)(B) added 65025
63.342 (f)(3)(i) introductory text amended 42920

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63.343 (b)(1) revised; (c)(1)(ii), (2)(ii), (4)(ii), (5)(ii) introductory text and (6)(ii) introductory text amended 42920
63.347 (e)(4) revised 42921
63.360—630.367 (Subpart O) Stayed; eff. 12–4–97 to 12–6–98 64738
63.485 (o) introductory text revised 37722
63.502 (a) revised; (j) added 37722
63.840—63.859 (Subpart LL) Added 52407
63.1331 (a) introductory text revised; (a)(10) added 37722
63 Appendix A amended 52418
64 Added 54940
68 Interpretation 45134
68.3 Amended 644
68.10 (f) added 645
68.115 (b) introductory text and (2) revised; (b)(3) removed; (b)(4), (5) and (6) redesignated as new (b)(3), (4) and (5) 645
68.130 Tables 1 and 2 amended 45132
(a) removed; (b) and (c) redesignated as new (a) and (b) 645
68 Appendix A amended 45132
69.11 (d) added 44416
69.41 Added 61205
70 Guidance availability 63662
70.6 (a)(3)(i)(A), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed 54946
70 Appendix A amended 37516, 45167, 45734, 62951
71 Guidance availability 63662
71.6 (a)(3)(i)(A), (iii)(C), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed 54947
72 Authority citation revised 55475
72.1 (b) amended 55475
72.2 Amended 55475
72.6 (b)(9) added; (c)(1) and (2) revised 55475
72.7 Revised 55476
72.8 Revised 55477
(b)(2) corrected 66279
72.9 (b)(1), (2), (3), (c)(6), (f)(1)(ii), (g)(1), (6) and (h) introductory text amended 55478
72.13 (a)(1), (5), (6), (7), (9) and (10) removed; (a)(2), (3), (4) and (8) redesignated as (a)(1) through (4) 55478
72.14 Added 55478
72.22 (e) added 55480
72.24 (a)(3), (5), (10) and (11) revised 55480
72.25 (a) amended 55480
72.30 (b)(3) removed; (e) added 55480
72.31 (b) amended 55480
72.32 (b) and (c) revised; (d) added 55480
72.33 (b)(3) amended 55481
72.40 (a)(2), (b)(1), (c) introductory text, (1) and (d)(1) amended 55481
72.41 (b)(3) and (e)(1)(ii) amended 55481
72.43 (b)(2)(iii)(B), (4) and (f)(1)(i) amended 55481
72.44 (g)(1)(i), (2) introductory text, (iii) and (h)(1)(ii) amended 55481
72.51 Amended 55481
72.60 Revised 55481
72.61 (a) and (b)(2)(i) revised; (b)(3) added 55481
72.65 (b)(1)(ii), (iii) and (2) revised; (b)(1)(iv) removed 55482
72.69 (a) revised 55482
72.70 Revised 55482
72.71 Revised 55482
72.72 Heading, introductory text, (b) introductory text, (1)(ii) through (vi), (5)(vi) and (6) revised; (b)(1)(i)(C), (vii), (viii), (xi), (xiii), (5)(ii), (vii), (7) and (8) removed; (b)(1)(ix), (x), (xii) and (xiv) redesignated as (b)(1)(vii) through (x); (b)(5)(i) and (v) amended 55482
72.73 Revised 55483
72.74 Revised 55483
72.80 (a), (b) and (d) through (g) revised 55484
72.81 (c)(1)(ii) amended; (c)(2) revised 55485
72.82 (a) and (d) revised 55485
72.83 (a)(10) amended; (a)(12) and (b) revised; (a)(13), (14), (c) and (d) added 55485
72.85 (a) and (c) revised 55485
72.91 (b)(1)(i), (iii) introductory text, (B), (C), (3), (4) introductory text and (i) amended; (b)(1)(iv) and (4)(iv) added; (b)(5), (6) and (7) revised 55485

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72.95 Introductory text amended; (d) added 55485
73.10 Heading revised; (b)(3) added 55486
73.90 (a)(1), (2) and (3) revised; (c)(3) amended 55486
74.2 Amended 55487
75 Authority citation revised 55487
75.67 (a) removed 55487
77.3 (d)(3), (5) and (6) revised 55487
77.4 (b)(1), (c)(2)(i), (f)(2)(i), (g)(2)(i)(B), (C) and (k)(2) revised; (k)(1) amended 55487
(g)(2)(i)(D) correctly removed 66279
77.6 (a) revised 55487
78.1 (a) and (b)(1)(v) revised 55488
78.3 (b)(1), (3)(ii), (c)(6) and (7) amended; (c)(8) and (d)(1) removed; (d)(2), (3) and (4) redesignated as (d)(1), (2) and (3) 55488
78.4 (c)(1) amended 55488
(c)(1) corrected 66279
78.5 (a) amended 55488
78.7 Removed 55488
78.11 (a) amended 55488
78.12 (a)(2) amended 55488
78.14 (a) introductory text, (10) and (c)(1) amended 55488
78.15 (c) amended 55488
78.16 (d)(1) and (2) amended 55488
78.17 Amended 55488
78.18 (b) introductory text amended 55488
78.20 (b) amended 55488
80 Decision 63853
80.2 (nn) removed 60135
(ss) revised 68205
80.28 (g)(1)(iii) added 68205
80.30 (g)(1)(i) revised 68205
80.41 (d) introductory text, tables, (f) introductory text, tables and (m) revised 68205
80.45 (c)(1)(iv)(B), (D)(*12*), (*13*), (d)(1)(iv)(B) and (f)(1)(ii) revised 68206
80.65 (d)(2)(iii) removed 60135
80.67 (f)(2)(ii), (h)(1)(v)(A)(*3*), (*4*) and (B) removed; (h)(1)(v)(A)(*1*) and (*2*) revised 60135
(e)(4) removed 68207
80.68 (b)(1)(iv), (c)(3), (13)(v)(H) and (L) revised 68207
80.69 (f) removed 60135
80.72 (a) and (c) revised 54558
80.75 (f)(2)(ii)(A)(*1*), (*2*), (h)(2)(i)(A) and (B) revised; (f)(2)(ii)(A)(*3*), (*4*), (h)(2)(i)(C), (D) and (ii) removed 60135
80.77 (g)(1)(ii) removed 60136
(g)(2)(iv)(B) revised 68207
80.78 (a)(6) revised 60136
(a)(1)(v)(C) revised 68207
80.79 (c) introductory text and (1) revised; (c)(3) added 68207
80.91 (e)(1)(iii) revised; (f)(2)(ii) added 68207
80.94 Added 45563
80.101 (b)(3), (f)(3), (4) and (g)(3) revised; (g)(8) and (j) added 68207
80.104 (a)(2)(xi) added 68208
80.128 (d)(2) revised 60136
80.129 (d)(3)(v) revised 60136
80.158 (a)(5) removed; (a)(6) through (10) redesignated as (a)(5) through (9) 60001
80.171 (a)(5) removed; (a)(6) through (12) redesignated as (a)(5) through (11) 60001
81 Attainment status determinations 51604
81.301 Amended 2728
81.302 Amended 2729
81.303 Amended 60011
Amended 2730
81.304 Amended 2733
81.305 Amended 65030
Amended 2734
81.306 Amended 68195
Amended 2741
81.307 Amended 2742
81.308 Amended 2742
81.309 Amended 2743
81.310 Amended 2743
81.311 Amended 2744
81.312 Amended 2746
81.313 Amended 2747
81.314 Amended 2748
81.315 Amended 45171, 55178, 64736
Amended 2749
81.316 Amended 2751
81.317 Amended 2753
81.318 Regulation at 62 FR 28637 withdrawn 40281
Amended 55177, 61247
Amended 2754
81.319 Amended 64286
Amended 2758

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81.320 Corrected; CFR correction 61916
81.320 Amended 2760
81.321 Amended 2760
81.322 Amended 2761
81.323 Amended 2761
81.324 Amended 2763
81.325 Amended 2765
81.326 Amended 2766
81.327 Amended 2768
81.328 Amended 2770
81.329 Amended 2771
81.330 Amended 2772
81.331 Amended 35972
Amended 2773
81.332 Amended 2773
81.333 Amended 2774
81.334 Amended 2776
81.335 Amended 2777
81.336 Regulation at 62 FR 28638 withdrawn 40281
Amended 61247
Amended 2778
81.337 Amended 2780
81.338 Amended 46210
Amended 2782
81.339 Amended 2783
81.340 Amended 2784
81.341 Amended 2784
81.342 Amended 2785
81.343 Amended 62698
Amended 2786
81.344 Amended 44088
Amended 2788
81.345 Amended 38217
Amended 2792
81.346 Amended 41283, 41870
Amended 2793
81.347 Amended 61241
Amended 2793
81.348 Amended 2796
81.349 Amended 2798
81.350 Amended 39448
Amended 2799
81.351 Amended 2800
81.352 Amended 2801
81.353 Amended 2801
81.354 Amended 2801
81.355 Amended 2802
81.356 Amended 2803
82 Revocation notice 1927
82.4 (r)(2) revised; interim 4363
82.30 (a) revised 68046
82.32 (e) heading, (3), (4), (5) and (i) added; (e)(1) and (h) revised 68046
82.34 Heading and (a) revised; (b) amended; (d) added 68047
82.36 (a)(2) and (b) revised; (a)(3) and (7) revised 68047
82.38 (a) and (b)(1)(iii) revised 68048
82.40 (a)(2)(i) revised 68048
82.30——82.42 (Subpart B) Appendix C added 68048
Appendix D added 68052
Appendix E added 68053
Appendix F added 68055
85 Heading and authority citation revised 67736
85.1515 (c) revised 964
85.1603 (b), (c) and (d) revised 67736
85.1604 (a) revised 67736
85.1606 Introductory text revised 67736
86 Authority citation revised 44875, 47119
86.1 (b)(1) table and (2) table amended 47119
(b)(1) table amended 54715
(b)(1) table and (4) table amended 965
86.001–23 (a) through (b)(1), (3) through (e)(1) and (f) through (m) revised 54720
86.001–30 (a)(4)(iv)(A) through (9) revised 54720
86.004–2 Added 54720
86.004–11 Added 54721
86.004–15 Added 54722
86.004–21 Added 54724
86.004–25 Added 54725
86.004–28 (c) and (d) revised 54726
86.004–30 (a)(3), (4)(i), (ii) and (iv)(A) through (12) revised 54727
86.004–38 Added 54728
86.004–40 Added 54729
86.094–8 (c) revised 47120
86.094–9 (a)(1)(i) introductory text, (ii) introductory text, (iii) and (c) revised 47120
86.094–11 (b)(1) introductory text revised 47120
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended 44875
86.094–26 (a)(2), (b)(2)(i) and (ii) amended 44875
86.096–8 (c) revised 47120
86.096–11 (a) introductory text and (c) revised 47120
86.096–30 (a)(23) and (24) added 965

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86.097–1 Redesignated as 86.099–1 965
86.098–3 Revised 54716
86.098–10 (a)(1)(i)(C)(*2*), (*3*), (ii)(C)(*2*), (*3*), (iii)(C)(*2*), (iv)(C)(*2*), (v)(C)(*2*) and (vi)(C)(*2*) amended 54716
86.098–11 (a)(3)(ii) and (4)(iii) introductory text amended 54716
86.098–15 Added 54716
86.098–23 (a), (b)(1), (3), (4)(i), (ii), (c), (d), (e)(1), (2), (f) through (l), (m)(2)(i) and (iv) revised; (m)(1) amended 54717
86.098–30 (a)(4)(iv)(A) through (12) revised 54719
86.099–1 Redesignated from 86.097–1 and revised 965
86.099–11 (a)(3)(ii) amended; (a)(4)(iii) introductory text revised 54720
86.101 (c) revised 965
86.113–94 (b)(2) table and (3) table revised 47120
86.119–90 (b)(3) revised; (b)(8) added 47121
86.144–94 (c)(8)(ii)(B) revised 47122
86.884–7 (a)(2)(i), (3) and (4) revised 47122
86.884–8 (c) revised 47122
86.884–9 (b)(2)(i) through (iv) and (c)(1) revised 47122
86.884–10 (a)(8) revised 47123
86.884–13 (b)(6)(ii) and (iii) revised 47123
86.884–14 Revised 47123
86.1008–90 (a)(1)(iii) added 47123
86.1008–96 (a)(1) revised 47123
86.1008–2001 (a)(1)(iii) added 47123
86.1111–87 (a)(4) redesignated as (a)(5); new (a)(4) added 47123
86.1310–90 (b)(1)(iv)(C), (3)(v), (vi), (b)(6) introductory text and (7)(iv) revised 47124
86.1311–94 (b)(3) revised 54730
86.1312–88 (a) revised 47124
86.1313–91 (b)(2) revised 47125
86.1313–94 (b)(2) revised 47125
86.1313–98 Added 47126
86.1316–90 (b)(1) revised; (f) added 47126
86.1316–94 (b)(1) revised; (f) added 47126
86.1319–84 (d)(3) revised; (d)(8) added 47127
86.1319–90 (d)(3) revised; (d)(8) added 47127
86.1321–90 (a) and (b)(3) revised 47128
86.1321–94 (a) and (b)(3) revised 47128
86.1322–84 (b)(3) revised 47128
86.1323–84 (b)(3) revised 47129
86.1324–84 (c) revised 47129
86.1325–94 (c) revised 47129
86.1327–90 (b), (f)(1), (2) introductory text and (i) revised 47129
86.1327–94 (b), (f)(1), (2) introductory text and (i) revised 47129
86.1327–96 (b), (f)(1), (2) introductory text and (i) revised 47130
86.1327–98 Added 47130
86.1330–84 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added 47131
86.1330–90 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added 47131
86.1333–90 (c), (d) introductory text, (d)(1), (2) and (e)(2) revised; (d)(3) and (4) removed 47131
86.1334–84 (a)(2) revised 47131
86.1335–90 Revised 47131
86.1337–90 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed 47132
86.1337–96 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed 47133
86.1338–84 Revised 47133
86.1339–90 Revised 47134
86.1341–90 (b), (c) and (d) revised; (e) through (h) removed 47134
86.1341–98 Added 47135
86.1342–90 (h)(2)(i) through (vii) removed; (i) added 47135
86.1342–94 (e) through (h) revised; (i) added 47135
86.1343–88 (b) introductory text revised; (b)(2)(i) through (v) ans (b)(2)(ii) through (vi); new (b)(2)(i) added 47135
86.1344–94 (e)(22) revised 54728
86.1701–97 Redesignated as 86.1701–99 966
86.1701–99 Redesignated from 86.1701–97; (a) and (c) revised; (d) added 966
86.1702–97 Redesignated as 86.1702–99 966
86.1702–99 Redesignated from 86.1702–97; (b) amended 966
86.1703–97 Redesignated as 86.1703–993 967

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86.1703–99 Redesignated from 86.1703–97; (b) amended 967
86.1704–97 Redesignated as 86.1704–99 967
86.1704–99 Redesignated from 86.1704–97 967
86.1705–97 Redesignated as 86.1705–99 967
86.1705–99 Redesignated from 86.1705–97; heading, (a) introductory text, (2), (3) and (b) through (g) revised 967
86.1706–97 Redesignated as 86.1706–99 969
86.1706–99 Redesignated from 86.1706–97 and revised 969
86.1707–99 Added 970
86.1708–97 Redesignated as 86.1708–99 976
86.1708–99 Redesignated from 86.1708–97; Heading, (b)(1)(i), (iii)(B) and (c) amended; tables amended; (e) added 976
86.1709–97 Redesignated as 86.1709–99 979
86.1709–99 Redesignated from 86.1709–97; heading, (b)(1)(i), (iii)(B) and (c) revised; tables amended; (e) added 979
86.1710–97 (c)(7) corrected **45289**
Redesignated as 86.1710–99 983
86.1710–99 Redesignated from 86.1710–97; amended; (a) introductory text and (c)(9) added; (a)(1), (3)(i), (iii)(A), (B), (4)(i), (iii)(A), (B), (5)(ii), (b)(4), (c)(1), (2), (6), (7), (8), (d), (e)(2) and (4)(ii) revised 983
86.1711–97 Redesignated as 86.1711–99 985
86.1711–99 Redesignated from 86.1711–97; (b) removed 985
86.1712–97 Redesignated as 86.1712–99 985
86.1712–99 Redesignated from 86.1712–97; (a)(2)(iii), (b)(1) and (3)(vi) revised 985
86.1713–97 Redesignated as 86.1713–99 986
86.1713–99 Redesignated from 86.1713–97 986
86.1714–97 Redesignated as 86.1714–99 986
86.1714–99 Redesignated from 86.1714–97 986
86.1716–97 Redesignated as 86.1716–99 986
86.1716–99 Redesignated from 86.1716–97; (b) removed 986
86.1717–97 Redesignated as 86.1717–99 986
86.1717–99 Redesignated from 86.1717–97; heading revised 986
86.1721–97 Redesignated as 86.1721–99 986
86.1721–99 Redesignated from 86.1721–97 986
86.1723–97 Redesignated as 86.1723–99 986
86.1723–99 Redesignated from 86.1723–97; revised 986
86.1724–97 Redesignated as 86.1724–99 986
86.1724–99 Redesignated from 86.1724–97; (b) introductory text revised; (b)(2) added 986
86.1725–97 Redesignated as 86.1725–99 986
86.1725–99 Redesignated from 86.1725–97; (d) added 986
86.1726–97 Redesignated as 86.1726–99 986
86.1726–99 Redesignated from 86.1726–97; (c)(1) revised 986
86.1728–97 Redesignated as 86.1728–99 987
86.1728–99 Redesignated from 86.1728–97 987
86.1734–97 Redesignated as 86.1734–99 987
86.1734–99 Redesignated from 86.1734–97 987
86.1735–97 Redesignated as 86.1735–99 987
86.1735–99 Redesignated from 86.1735–97 987
86.1770–97 Redesignated as 86.1770–99 987
86.1770–99 Redesignated from 86.1770–97; (a)(2) revised 987
86.1771–97 Redesignated as 86.1771–99 987
86.1771–99 Redesignated from 86.1771–97 987
86.1772–97 Redesignated as 86.1772–99 987
86.1772–99 Redesignated from 86.1772–97; heading revised 987
86.1773–97 Redesignated as 86.1773–99 987

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86.1773–99 Redesignated from 86.1773–97; (d) added 987
86.1774–97 Redesignated as 86.1774–99 987
86.1774–99 Redesignated from 86.1774–97 987
86.1775–97 Redesignated as 86.1775–99 987
86.1775–99 Redesignated from 86.1775–97 987
86.1776–97 Redesignated as 86.1776–99 987
86.1776–99 Redesignated from 86.1776–97 987
86.1777–97 Redesignated as 86.1777–99 987
86.1777–99 Redesignated from 86.1777–97 987
86.1778–97 Redesignated as 86.1778–99 987
86.1778–99 Redesignated from 86.1778–97 987
86.1779–97 Redesignated as 86.1779–99 987
86.1779–99 Redesignated from 86.1779–97 987
86.1780–97 Redesignated as 86.1780–99 987
86.1780–99 Redesignated from 86.1780–97 987
86 Appendix XVIII corrected 45289
Appendix I amended 47136
Appendix XVIII amended 987
89.1—89.7 (Subpart A) Appendix A revised 67736
90.103 (a)(3) revised 42643
90.107 (h) added 42643
90.1003 (b)(5) added 42644
91.1103 (b)(4) added 42644
93.100—93.128 (Subpart A) Revised 43801
112 Petition denial 54508
123 NPDES State program approval 61170
131.33 Added 41183
131.36 (d)(13)(i) and (ii) amended; (d)(13)(iii) removed 52927
(d)(12)(ii) amended 53214
132 Table 3 amended 52924
136.3 (a) Table 1C amended 48403
(b)(1) and (e) Table II amended 48404
136 Appendix A amended 48405
140 Authority citation revised 1320
140.4 (a) introductory text, (b) introductory text and (1) amended; (d)(1), (2), (3), and (4) introductory text added; (b)(1)(ii) redesignated as (c)(4)(i) 1320
148 Notice 43109
156 Notice 56075
159 Added 49388
167.90 (b) amended 49620
170 Decision 51994, 53688
170.112 (e)(7)(iv) added 52003
180 Technical correction 56089
Nomenclature change 66023
Technical correction 1379
180.106 Revised 2164
180.108 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2164
180.110 Revised 49924
180.111 Existing text designated as (a)(1); (a) heading added; new (a)(1) amended 66023
(a)(2) introductory text, (i), (ii), (iii) and (3) amended redesignated from 185.3850 existing text 66025
180.142 (a) introductory text (1), (2), (b) introductory text, (1) introductory text, (i), (ii), (2) and (c) through (k) redesignated as (a)(1) introductory text, (i), (ii) (2) introductory text, (i) introductory text, (A), (B), (ii), and (3) through (11); (a) heading, (12), and new (b) added 46907
180.145 (c) removed; (a) and (b) redesignated as (a)(1) and new (c); (a) heading revised; new (c) heading added 64301
180.153 (a) and (b) redesignated as (a)(1) and (c); (a) heading and new (c) heading added 2165
(a)(2) introductory text, (i) introductory text, (A) through (D) and (ii), (3) introductory text, (i) introductory text, (A) through (D) and (ii) redesignated from 185.1750 introductory text, (a) introductory text, (1) through (4), (b), 186.1750 introductory text, (a) introductory text, (1) through (4) and (b) 2167
180.173 Existing text designated as (a); (a) heading added; (a) table amended 2165

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180.175 Revised **64293**
180.183 Revised 2165
180.200 Existing text designated as (a); (a) heading and (b) added 162
180.205 (b) table amended **45754**
Amended **66023**
180.206 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.213 Revised 2165
180.213a Removed 2166
180.242 (a) and (b) redesignated as (a)(1) and (2); (a)(1) heading added; (a)(1) table amended 2166
180.254 (a) heading added; (a) table amended; (b) removed 2166
180.275 (b) redesignated as (c); (a) heading and new (c) heading added **65376**
180.284 Regulation at 62 FR 7684 eff. date corrected to 1–6–98 416
180.288 Revised **66024**
180.293 Existing text designated as (a)(1); (a) heading and (b) added; (a)(2) designated from 185.2650 text **49931**
180.294 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2167
180.301 (a) heading added; (b) revised 4586
180.314 Amended; existing text designated as (a); new (a) heading added **66024**
180.330 (a) amended; (b) redesignated as (c); (a) heading and new (c) heading added **66024**
180.332 Amended; existing text designated as (a) **66024**
(a) table transferred in part from 186.250 ..... **66025**
180.353 Existing text redesignated as (a); new (a) heading and (b) added **45747**
180.364 (b) amended **42927**
180.368 (a) amended **66024**
180.379 (a) existing text designated as (a)(1); new (a)(1) table amended; (a)(2) introductory text, (i), (ii) and (iii) redesignated from 185.1300 (a) introductory text, (1), (2) and (3); (b) redesignated as (c); (a) heading and new (c) heading added **63026**
(a)(3) redesignated from 186.1300 existing text **63027**
(a)(3) table amended **66024**
180.380 Revised **38474**
180.383 Existing text redesignated as (a); new (a) heading and (b) added **39974**
180.407 Revised **44595**
180.408 Revised **66024**
180.410 Heading, (b) and (c) revised; (a) heading added; (a) table transferred in part from 185.800 table and 186.800 table **47568**
180.412 (b) added **44565**
180.414 Revised **45741**
(a)(4) added; (b) table amended **54789**
(b) table amended **65036**
180.416 Existing text designated as (a); (b) added **66014**
180.417 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (a)(2); (b) added **46894**
180.418 Revised **63235**
(a)(2) added **63243**
180.421 (a) and (b) redesignated as (a)(1) and (2); (a) heading and new (b) added; (a)(1) table transferred in part from 186.3200(a) table; (a)(2) table transferred in part from 185.3200 table and 186.3200(b) table **49937**
(b) table amended **61447**
180.422 Revised **63001**
(a)(3) added **66025**
180.430 Revised 1377
180.433 Existing text designated as (a); (a) heading and (b) added **36684**
(b) table amended **61645**
180.434 (b) table amended **43291**
180.435 Revised **63001**
180.436 (a) existing text designated as (a)(1); new (a)(1) table revised; (b) redesignated as (a)(2) **63018**
(a)(3) introductory text, (i), (ii) and (iii) and (4) introductory

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text, (i), (ii) and (iii) redesignated from 185.1250(c) introductory text (1), (2) and (3) and 186.1250(c) introductory text, (1), (2) and (3) **63019**
180.438 Revised **36671**
(b) added **56102**
(a) revised **63010**
Regulation at 62 FR 63010 eff. date corrected to 1-28-98 ..... **64048**
180.440 Revised **62961**
180.442 (b) table amended **46900**
(a) revised; (b) table amended **62969**
(b) table amended 1379, **2163**
180.443 (b) introductory text revised; (b) table amended **36678**
Introductory text revised; table amended **42690**
(b) table amended **65369**
180.448 Existing text designated as (a); new (a) heading and (b) added **62992**
(b) table amended **68216**
180.449 Revised **44095**
(b) table amended **56088**
180.452 Existing text designated as (a); heading and (b) added **66020**
180.462 Existing text redesignated as (a); (b) added **44558**
180.466 Existing text designated as (a); (a) heading and (b) added **37521**
Revised **63034**
180.472 (b) added **36697**
(a) table amended **65367**
180.474 (b)(1) table corrected **56095**
180.482 (a) heading added; (b) introductory text revised; (b) table amended **35689**
(b) amended **62985**
180.487 Revised **54783**
180.493 (b) introductory text revised; (b) table amended **39961**
Corrected **47560**
180.495 (a) heading and (b) heading added; (b) table amended **54778**
180.501 Added **61647**
180.503 (b) introductory text revised; (b) table amended **39956**
180.507 (a) added **36690**
180.509 Added **42684**
180.510 Added **39967**
180.511 Added **40741**
180.512 Added **41292**
180.513 Added **44571**
180.514 Added **49163**
180.515 Added **51037**
180.516 Added **56082**
180.517 Added **62979**
180.518 Added **63669**
180.1001 (b)(1) amended **41286**
180.1020 Existing text designated as (a); (b) added **63863**
180.1164 (c) added **60661**
180.1176 Regulation at 61 FR 67473 eff. date corrected to 1-6-98 417
180.1177 Regulation at 61 FR 67473 eff. date corrected to 1-6-98 417
180.1181 Added **41877**
180.1182 Added **43657**
180.1183 Added **43653**
180.1184 Added **44582**
180.1185 Added **44575**
180.1186 Added **44579**
180.1187 Added **46884**
Revised 682
180.1188 Added **46887**
Revised 679
180.1189 Added **61639**
180.1190 Added **52509**
180.1191 Added **56105**
185 Authority citation revised **66025**
185.100 Removed 2167
185.350 Removed 2167
185.600 Removed 2167
185.800 Table transferred in part to 180.410(a) table; removed **47568**
185.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed **63019**
185.1300 (a) introductory text, (1),(2) and (3) redesignated as 180.379(a)(2) introductory text, (i), (ii) and (iii); removed **63026**
185.1580 Removed **63001**
185.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(2) introductory text, (i) introductory text, (A) through (D) and (ii); removed 2167
185.1850 Removed **38474**

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185.2650 Existing text designated as 180.293(a)(2); removed 49931
185.2750 Removed 2167
185.3200 Table transferred in part to 180.421(a)(2) table; removed 49937
185.3225 Removed 63035
185.3625 Removed 61647
185.3765 Removed 63010
Regulation at 62 FR 63010 eff. date corrected to 1-28-98 64048
185.3850 Existing text redesignated as 180.111 (a)(2) introductory text, (i), (ii), (iii) and (3); removed 66025
185.3900 Removed 64294
185.4700 Removed 45754
185.5450 Removed 63002
185.5550 Removed 2167
186 Authority citation revised 66025
Technical correction 1379
186.100 Removed 2167
186.250 Table transfered in part to 180.332(a) table 66025
Removed 66026
186.350 Amended 66026
Removed 2167
186.450 Amended 66026
186.600 Removed 66026
186.800 Table transferred in part to 180.410(a) table; removed 47568
186.1000 (a) table amended 66026
186.1075 (a) table amended 66026
186.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed 63019
186.1300 Existing text redesignated as 180.379(a)(3) 63026
186.1350 Table amended 66026
186.1400 Removed 54790
186.1450 Removed 46907
186.1650 Revised 66026
186.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(3) introductory text, (i) introductory text, (A) through (D) and (ii) 2167
186.1850 Removed 38474
186.1950 Removed 2167
186.2000 Table amended 66026
186.2400 Removed 66026
186.2550 Removed 2167
186.2700 (a) table amended 66026
186.2750 Removed 2167
186.2950 Table amended 66026
186.3050 Removed 66026
186.3200 (a) table transferred in part to 180.421(a)(1) table; (b) table transferred in part to 180.421(a)(2); removed 49937
186.3225 Removed 63035
186.3250 Revised 66026
186.3350 Removed 66026
186.3375 Removed 2167
186.3450 Removed 66026
186.3550 (a) table amended 66026
186.3750 Table amended 66026
186.3765 Removed 63010
Regulation at 62 FR 63010 eff. date corrected to 1-28-98 64048
186.4000 Removed 66026
186.4700 Removed 45754
186.4750 Removed 2167
186.4800 Removed 66026
186.4975 Revised 66026
186.5000 Table amended 66026
186.5350 Removed 2167
186.5450 Removed 66026
186.5550 Removed 2167
186.5650 Removed 44595
228.15 (d)(6) revised 46149
Regulation at 61 FR 68970 eff. date corrected to 12-30-97 682
244 Regulation at 61 FR 69034 eff. date corrected to 12-30-97 683
245 Regulation at 61 FR 69034 eff. date corrected to 12-30-97 683
247.2 (d) added 60973
247.3 Amended; eff. 11-13-98 60973
247.12 (f) and (g) added; eff. 11-13-98 60974
247.13 Existing text designated as (a); (b) through (e) added; eff. 11-13-98 60974
247.14 Existing text designated as (a); (b) added; eff. 11-13-98 60974
247.15 (c) and (d) added; eff. 11-13-98 60974
247.16 (f) and (g) added; eff. 11-13-98 60974
247.17 Revised; eff. 11-13-98 60974
258 Effective date confirmation 51606
258.21 (d) added 40713
258.23 (e) added 40713
258.60 (b)(3) added 40713
260.31 (d) added 59290

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Regulation at 62 FR 59290 withdrawn 67736
261 Appendix IX amended 55347, 63463
264.15 (b)(4) revised 64656
264.73 (b)(6) revised 64656
264.1030 (d) added 52641
(b)(3) and (c) revised; (e) added 64656
264.1031 Amended 64657
264.1033 (a)(2) revised 64657
264.1050 (g) added 52641
(b)(3), (c) and (f) revised 64657
264.1060 Revised 64657
264.1062 (b)(2) and (3) revised 64658
264.1064 (g)(6) and (m) revised 64658
264.1080 (e) added 52642
(b)(1) and (c) revised 64658
264.1082 (b), (c)(2)(ix)(A), (B), (3) and (4)(ii) revised 64658
264.1083 (a)(2) and (b)(1) revised 64658
264.1084 (c)(2)(iii) introductory text, (B), (f)(3)(i)(D)(*4*) and (iii) revised; (e)(4), (f)(4) and (j)(2)(iii) added 64659
264.1085 (b)(2), (d)(1)(iii), and (2)(i)(B) revised; (e)(2)(iii) added 64659
264.1086 (c)(2), (4)(i), (d)(2), (4)(i) and (g) introductory text revised 64659
264.1087 (c)(3)(ii) and (7) revised 64660
264.1089 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added 64660
265.15 (b)(4) revised 64661
265.73 (b)(6) revised 64661
265.1030 (c) added 52642
(b)(3) revised; (d) added 64661
265.1033 (a)(2) and (f)(2)(vi)(B) revised 64661
265.1050 (f) added 52642
(b)(3) and (e) revised 64661
265.1060 Revised 64662
265.1062 (b)(2) and (3) revised 64662
265.1064 (g)(6) and (m) revised 64662
265.1080 (e) added 52642
(b)(1) and (c) introductory text revised 64662
265.1081 Amended 64662
265.1082 Revised 64662
265.1083 (b), (c)(2)(i), (ix)(A), (B), (3) and (4)(ii) revised 64663
265.1084 (a)(3)(v) and (b)(3)(v) added; (a)(2), (3)(ii)(B), (iii) introductory text, (A), (F) introductory text, (G) introductory text, (*I*), (iv), (4)(iv), (b)(1), (3)(ii)(B), (iii) introductory text, (F) introductory text, (G) introductory text, (iv), (8)(iii), (9)(iv) and (d)(5)(ii) revised 64664
265.1085 (c)(2)(iii) introductory text, (B) and (f)(3)(i)(D)(*4*) revised; (e)(4), (f)(4) and (j)(2)(iii) added 64666
265.1086 (b)(2), (d)(1)(iii) and (2)(i)(B) revised; (e)(2)(iii) added 64666
265.1087 (c)(4)(i), (d)(4)(i) and (g) introductory text revised 64666
265.1088 (c)(3)(ii) and (7) revised 64667
265.1090 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added 64667
265 Appendix VI revised 64668
268.39 (c) revised 37699
268.40 (g) amended 45572
268.44 (a) and (h) revised; (m) added; (p) removed 64509
268.48 (a) table amended 45572
270.14 (b)(5) revised 64671
271 State hazardous waste management program authorizations 43111, 47947, 49163, 52951, 61175, 62262, 62521, 67572
Regulation at 62 FR 29301 eff. date corrected to 12–30–97 683
State hazardous waste management program authorizations 2167, 4587
271.1 (j) Table 1 amended 45572
272.501 Added 2898
272.951 Added 67583
272.2201 Added 49169
272 Appendix A added 49170
Appendix A amended 67584
Appendix A amended 2899
281 State underground storage tank program authorizations 36698, 49620
State underground storage tank program authorizations 4589
282.102 Added 4593
282 Appendix A amended 4594
300 Notice 42414, 62524
300 Appendix B amended 35447, 35690, 35974, 36997, 37522, 41292, 46211, 48950, 48951, 49445, 49621, 50446,

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50518, 50874, 52033, 53247, 55179, 56106, 65224, 67737, 68216
Appendix B amended 4398
403 Authority citation revised 38414
403.8 (c) and (f)(6) revised 38414
403.11 (b)(1)(i)(A) and (B) revised 38414
403.12 (i)(4) redesignated as (i)(5); (i)(3) revised; new (i)(4) added 38414
403.18 Revised 38414
712.30 Regulation at 61 FR 55787 eff. date corrected to 12–30–97 684
716.120 Regulation at 61 FR 55787 eff. date corrected to 12–30–97 684
721.325 Removed 51608
721.370 Removed 51608
721.390 Removed 51608
721.400 Removed 51608
721.405 Added 3419
721.415 Removed 51608
721.460 Removed 51608
721.470 Removed 51608
721.490 Removed 51608
721.524 Added 3419
721.526 Added 3419
721.528 Added 3419
721.537 Added 3419
721.538 Added 3420
721.539 Added 3420
721.567 Added 3420
721.637 Added 3421
721.640 Added 3421
721.641 Added 3421
721.643 Added 3421
721.655 Added 3421
721.658 Added 3421
721.720 Added 3422
721.723 Added 3422
721.977 Added 3422
721.980 Added 3422
721.981 Added 3422
721.1105 Added 3422
721.1155 Added 3422
721.1175 Removed 51608
721.1575 Removed 51608
721.1660 Regulation at 61 FR 52295 eff. date corrected to 12–30–97 673
721.1705 Added 3423
721.1805 Added 3423
721.1930 Added 3423
721.2050 Removed 51608
721.2082 Added 3423
721.2091 Added 3423
721.2094 Added 3424
721.2122 Added 3424
721.2145 Added 3425
721.2170 Removed 51608
721.2222 Added 3425
721.2280 Added 3425
721.2345 Added 3425
721.2350 Added 3425
721.2535 Added 3425
721.2650 Removed 51608
721.2750 Removed 51608
721.2805 Added 3426
721.2815 Removed 35692
Regulation at 62 FR 35692 eff. date corrected to 12–30–97 686
721.2925 Added 3426
721.2930 Removed 51608
721.3020 Removed 35691
Regulation at 62 FR 35691 eff. date corrected to 12–30–97 685
721.3028 Removed 51608
721.3040 Removed 35691
Regulation at 62 FR 35691 eff. date corrected to 12–30–97 685
721.3060 Correctly removed 40742
721.3085 Added 3426
721.3120 Removed 51608
721.3155 Added 3426
721.3465 Added 3426
721.3485 Added 3427
721.3488 Added 3427
721.3550 Added 59583
(a) corrected 63035
721.3565 Added 3427
721.3640 Removed 51608
721.3764 Revised 42692
721.3870 Removed 51608
721.4020 Removed 51608
721.4085 Added 3427
721.4090 Added 3427
721.4095 Added 3428
721.4158 Added 3428
721.4220 Removed 51608
721.4257 Added 3428
721.4259 Added 3428
721.4400 Removed 51608
721.4462 Added 3428
721.4464 Added 3428
721.4465 Added 3428
721.4467 Added 3429
721.4468 Added 3429
721.4469 Added 3429
721.4476 Added 3429
721.4589 Added 3429
721.4780 Removed 51608

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721.4790 Removed 51608
721.4800 Removed 51608
721.4885 Added 3430
721.5225 (a)(2)(v) revised 42692
721.5255 Added 3430
721.5279 Added 3430
721.5280 Added 3430
721.5281 Added 3430
721.5547 Added 3431
721.5549 Added 3431
721.5645 Added 3431
721.5650 Added 3431
721.5705 Removed 51608
721.5708 Added 3431
721.5725 Added 3432
721.5730 Added 3432
721.5910 Removed 51608
721.5913 Added 3432
721.5995 Added 3432
721.6045 Added 3432
721.6075 Added 3432
721.6078 Added 3433
721.6165 Added 3433
721.6170 Added 3433
721.6193 Added 64740
721.6197 Added 3433
721.6475 Added 3433
721.6477 Added 3434
721.6485 Added 3434
721.6490 Added 3434
721.6495 Added 3434
721.6500 Removed 51608
721.6505 Added 3434
721.6580 Removed 51608
721.6640 Removed 51608
721.6700 Removed 51608
721.6720 Removed 51608
721.6740 Removed 51608
721.6760 Removed 51608
721.6780 Removed 51608
721.6840 Removed 51608
721.6880 Removed 51608
721.6940 Removed 51608
721.6960 Removed 51608
721.7040 Removed 51608
721.7046 (a)(1) revised 42692
721.7080 Removed 51608
721.7100 Removed 51608
721.7140 Removed 51608
721.7180 Removed 51608
721.7210 (a)(1) revised 42692
721.7240 Removed 51608
721.7300 Removed 51608
721.7320 Removed 51608
721.7340 Removed 51608
721.7370 Removed 51608
721.7375 Added 3434
721.7378 Added 3434
721.7400 Removed 51608
721.7420 Removed 51608
721.7460 Removed 51608
721.7540 Removed 51608
721.7560 Removed 51608
721.7580 Removed 51608
721.7660 Removed 51608
721.7680 Removed 51608
721.7740 Removed 51608
721.7760 Removed 51608
721.8075 Removed 51608
721.8079 Added 3435
721.8095 Added 3435
721.8265 Removed 51608
721.8275 Removed 51608
721.8290 Removed 51608
721.8300 Removed 51608
721.8325 Removed 51608
721.8335 Removed 51608
721.8350 (a)(2)(iv) added 42692
721.8375 Removed 51608
721.8400 Removed 51608
721.8425 Removed 51608
721.8475 Removed 51608
721.8525 Removed 51608
721.8550 Removed 51608
721.8575 Removed 51608
721.8600 Removed 51608
721.8650 Removed 51608
721.8780 Added 3435
721.9005 Added 3435
721.9010 Added 3436
721.9080 Added 3436
721.9240 Removed 51608
721.9265 Added 3436
721.9270 Added 3436
721.9285 Added 3436
721.9320 Removed 51608
721.9360 Removed 51608
721.9420 Removed 51608
721.9488 Added 3437
721.9492 Added 3437
721.9497 Added 3437
721.9499 Added 3437
721.9503 Added 3437
721.9510 Removed 51608
721.9515 Added 3437
721.9525 Removed 51608
721.9545 Added 3437
721.9575 Added 3438
721.9576 Added 3438
721.9577 Added 3438
721.9635 Added 3438
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721.9659 Added 3438
721.9662 Added 3439
721.9664 Added 3439
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721.9840 Added 3440
721.9870 Removed 51608
721.9928 Added 3440
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799.9135—799.9780 (Subpart H) Added 43824

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51–6.12 (c) revised.....66529
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57.1104 (c)(1) amended 51374
57.1105 Revised 51374
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405 Technical correction 4595
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405.535 (b) amended 59098
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410.33 Added 59099
410.34 (d) introductory text and (4) revised 59100
410.37 Added 59100
410.56 Added 59101
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411.388 Added 1657
411.389 Added 1657
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413 Authority citation revised 310
413.92 Added 310
413.106 (f)(1) removed; (c)(5), (f)(2), (3) and (4) redesignated as (c)(6), (f)(1), (2) and (3); new (c)(5) added 5139
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414.21 Added 59101
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20 Revised 53720
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64 Authority citation revised 55716
64.3 (a)(1) table amended; (b) revised 55716
64.6 Table amended 54387, 59291, 60663, 62268
65 Authority citation revised 55717
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1304.22 OMB number 2313
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1304.40 (a)(2) and (3) amended; OMB number 2313
1304.41 (b) amended; OMB number 2314
1304.50 (b)(3), (d)(1)(iii), (e)(3) and Appendix A amended; (d)(1)(ix) removed; (d)(1)(x), (xi) and (xii) redesignated as (d)(1)(ix), (x) and (xi); OMB number 2314
1304.51 (a)(1)(iii) amended; OMB number 2314
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1.724 (a), (b) and (c) revised; (f) through (j) added 1037
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15.205 (d)(5) added **58658**
15.209 (g) revised **58658**
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22.369 Heading revised; (d) added **55530**
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24.18 Added **55531**
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24.309 (b) and (f) revised 2348
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24.711 (b) and (c) revised 2349
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25.115 (c) amended (effective date pending) **64172**
25.130 (d) amended (effective date pending) **64172**
25.131 (b) and (j) revised (effective date pending) **64172**
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25.210 (b) and (c) through (j) redesignated as (c) and (e) through (l); new (b) and new (d) added **61457**
25.212 (c) correctly revised **51378**
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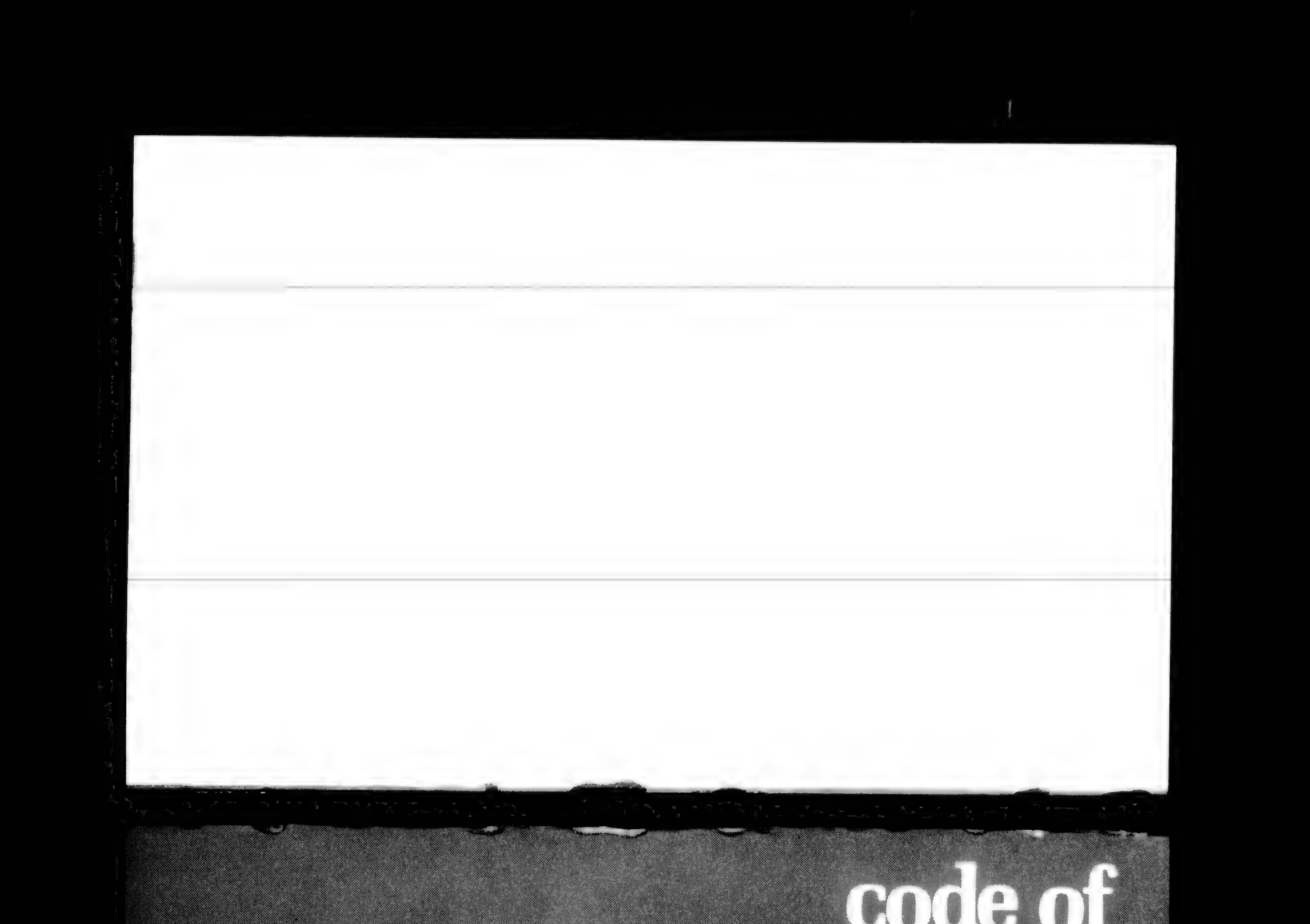
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Rob Sheehan was Chief Editor of the LSA, assisted by Brian Swidal. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Jim Wickliffe. INQUIRIES, telephone 202–523–5227.

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[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

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228.601 (a) amended; (c)(1)(ii) note designated as (c)(1)(ii) Note 1; (c)(1)(ii) Note 2 and (2)(iii) note added; (c)(1)(v) revised 36455
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230.144 (a)(3) and (e)(3)(vii) revised; eff. 4–27–98 9642
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239.17b Form N–4 amended **47939, 47940, 64986, 64987**
239.18 Form S–11 amended **39764**
239.20 Form S–20 amended; eff. 10–1–98 6386
239.23 Form N–14 amended **47938**
239.25 Form S–4 amended **39764**
Form S–4 amended; eff. 10–1–98 6386
239.31 Form F–1 amended **39765**
239.32 (b)(2)(i) and Form F–2 amended **26388**
Form F–2 amended **36459, 39765**

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Form F-2 amended; eff. 10-1-98 6387
239.33 (b)(1) and Form F-3 amended 26388
Form F-3 amended 36459
Form F-3 amended; eff. 10-1-98 6387
239.34 Form F-4 amended 39766
Form F-4 corrected 43581
239.61 Removed; Form SR removed 39766
239.144 (c) and Form 144 amended 35340
239.500 Form D amended 39766
240 Compliance dates 18514
Authority citation amended 35340
Compliance dates revision 40732
Technical correction 43581, 45289
Authority citation amended 8102
240.0-1 (a)(5) revised 36459
240.0-12 Added 8102
240.12a-8 Added 39766
240.12b-2 Amended 26389
240.12d1-1—240.12d2-2 Undesignated center heading revised 39766
240.12d1-2 (b) revised; (c) added 39766
240.12g-3 Revised 39767
240.13a-1 Revised 39767
240.13a-2 Removed 39768
240.13d-1 (b)(3) and (4) removed; (c) through (f) redesignated as (d), (i), (j) and (k); (a), (b)(1) introductory text, (ii), (2) and new (d) revised; new (c) and new (e) through (f) added 2865
240.13d-2 (c) revised 36459
(a), (b) and note revised; (c) redesignated as (e); new (c) and (d) added 2866
240.13d-3 (d)(1)(ii) revised 2867
240.13d-7 Added 2867
240.13d-101 Amended 35340
Amended 2867
240.13d-102 Amended 35340
Amended; heading revised 2867
240.13e-4 (f)(12) amended 36459
240.14a-101 Amended 36459
240.14d-1 (c) and (d) redesignated as (e) and (f); new (c) and new (d) added 53955
240.14d-100 Amended 35341
240.14e-1 (e) revised 36459
240.15d-3 Revised 39768
240.15d-5 (a) revised 39768
240.16a-1 (a)(1)(i) through (vii) revised; (a)(1)(viii) redesignated as (a)(1)(xi); new (a)(1)(viii), (ix) and (x) added 2868
240.17a-5 (g)(1) correctly revised; CFR correction 42664
240.17a-24 Added 52236
240.17Ad-7 (i) added 52237
240.17Ad-17 Added 52237
(a)(3)(i) corrected 1884
249 Technical correction 43581
249.103 Amended 35341
249.104 Amended 35341
249.105 Amended 35341
249.208a (c) revised; (d) added; Form 8-A amended 39768
249.208b Removed; Form 8-B removed 39769
249.210 Form F-10 amended 39769
249.220f Form 20-F amended 39769
249.308 Form 8-K amended; eff. 1-1-99 9647
249.308a Form 10-Q amended 39769
Form 10-Q amended; eff. 1-1-99 9647
249.308b Form 10-QSB amended 39770
Form 10-QSB amended; eff. 1-1-99 9647
249.310 Form 10-K amended 26389
Form 10-K amended 39770
Form 10-K amended; eff. 1-1-99 9647
249.310b Form 10-KSB amended 26389, 39770
Form 10-KSB amended; eff. 1-1-99 9647
249.501 Form BD amended 9416
249.1100 Form MSD amended 35341
249b.100 Form TA-1 amended 35341
249b.102 Form TA-2 amended 52237
250.45 (b)(7) added 9741
250.52 (a) and (b) revised; (e) added 9741
260.0-2 (g) revised 36459
269.2 Amended; Form T-2 amended 35342
270 Authority citation amended 47938, 64978
270.2a-7 Revised 64978
270.2a41-1 (a) introductory text revised 64985
270.2a51-1 Added 17526
270.2a51-2 Added 17526

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TITLE 17 Chapter II—Con.

270.2a51-3 Added 17528
270.3c-1 Added 17529
270.3c-5 Added 17529
270.3c-6 Added 17529
270.10f-3 Revised 42408
270.12b-1 (g) revised 51765
270.12d3-1 (d)(7)(v) revised 64986
270.17a-9 Introductory text amended 64986
270.17f-5 Revised 26932
270.18f-3 (c) and (e)(2)(iii) revised 51765
270.24e-1 Amended 47938
270.24e-2 Removed 47938
270.24f-1 Removed 47938
270.24f-2 Revised 47938
270.31a-1 (b)(1) amended 64986
270.34b-1 (b) revised 64986
274.11a Form N-1A amended 47939, 64986
274.11a-1 Form N-2 amended; eff. 10-1-98 6388
274.11b Form N-3 amended 47939, 64986
274.11c Form N-4 amended 47939, 47940, 64987
274.24 Form 24F-2 revised 47940
Form 24F-2 amended 64688
275 Authority citation revised 28132
275.203(b)(3)-1 Revised 28132
275.203A-1 Added 28133
275.203A-2 Added 28133
275.203A-3 Added 28134
275.203A-4 Added 28134
275.203A-5 Added 28134
275.204-1 Revised 28135
275.204-2 (a) introductory text revised; (k) added 28135
275.205-3 Heading and (a) revised 28135
275.206(3)-2 (a) introductory text revised 28135
275.206(4)-1 (a) introductory text revised 28135
275.206(4)-2 (a) introductory text revised 28135
275.206(4)-3 (a)(1)(ii)(C) amended 28135
275.206(4)-4 (a) introductory text revised 28135
275.222-1 Added 28135
275.222-2 Added 28136
279.1 Form ADV amended 28136
(d) corrected 33008
279.3 Revised 28136

Proposed Rules:

1 ..... 47612, 66569
..... 695, 2188, 3492, 6112, 9977
3 59624
30 47612
32 ..... 31375, 33379, 59624
33 ..... 47612, 59624, 66569
..... 6112, 9977
140 3285
190 ..... 19530, 47612
200—399 (Ch. II) 451
200 67940
202 38495
228 9648
229 9648
230 ..... 24160, 32705, 38495, 45359, 61933, 62273
..... 9648
232 ..... 36467, 38495
239 ..... 24160, 38495
..... 9648
240 ..... 30485, 36467, 40316, 50682, 61933, 62732, 67940, 67996, 68011, 68018
..... 9661
249 ..... 36467, 67940
270 ..... 24160, 24161, 38495, 61933
274 ..... 24160, 38495
275 ..... 61866, 61882
279 61866

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2 Order 33341
Authority citation revised 15830
2.500 Undesignated center heading and section added 15830
4.34 Heading revised; (i) added 59810
11 Appendix A revised 61228
35 Order 36657, 64688
35.32 Revised 33348
35.33 Revised 33348
37 Order 64715
101 Amended 6851
116 Removed 6851
153 Revised 30446
157.208 (d) Table I revised 6477
157.215 (a) Table II revised 6477
201 Amended 6851, 6852
216 Removed 6852

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284 Order 19921, 25842
352 Amended 6852
375.314 (u) added 59812
381.302 (a) amended 36982
381.303 (a) amended 36982
381.304 (a) amended 36982
381.305 (a) amended 36982
381.402 Removed 36982
381.403 Amended 36982
381.505 (a) amended 36982
381.801 Amended 36982
388 Authority citation revised 5453
388.106 (a) and (b)(19) redesignated as (a)(1) and (b)(23); (a)(2) and (b)(19) through (22) added; (b) introductory text and (c)(1) revised 5453
388.107 (a)(1) amended 5453
388.108 (b) and (c) redesignated as (c) and (e); (a)(1) introductory text, (iii), (2), (3), (4), new (c) and new (d) revised; (a)(5), new (b) and (d) added 5453
388.109 (b)(2)(iii) amended; (b)(5)(iii) removed; (b)(6), (7), (8)(i) and (ii) redesignated as (c), (d), (e)(1) and (2); (b)(2)(iv), (vii), (5)(ii) and new (c) revised 5454
388.110 Heading, (a)(2) and (b) revised; (a)(1) amended 5455
388.112 (c)(1)(i) and (ii) amended 5455

Chapter III—Delaware River Basin Commission (Parts 400—499)

401.0 Revised 64154
401.1—401.9 (Subpart A) Revised 64154
401.31—401.41 (Subpart C) Revised 64155
401.51—401.67 (Subpart D) Removed 64158
401.71—401.78 (Subpart E) Revised 64158
401.81—401.90 (Subpart F) Revised 64159
430.13 (h) through (m) added 6477

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1314.2 (g), (h), (t) and (v) revised; (i) amended 29288
1314.3 (a)(3) amended 29288
1314.4 (a) introductory text, (b) and (d) amended 29288

Proposed Rules:

1—399 (Ch. I) 22897
4 25874
101 40987
116 40987
154 ..... 24853, 34187
201 40987
216 40987
284 61459
352 40987
375 25874
388 51610
401 45766
430 25569

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4.20 (c) table amended 51769
4.22 Amended 66522
4.80 (a)(3) amended 51769
7 Authority citation revised 46439
7.2 Added 46439
7.3 Added 46439
7.4 Redesignated from 10.181; (b), (g) and (h) amended 46441
7.8 Removed 46441
10 Authority citation amended 42211, 46441, 51769
10.1 (i) amended 51769
10.7 (d) amended 51769
10.11 (b) amended 51769
10.31 (a)(1) and (2) amended 4167
10.39 (d)(2) amended 4167
10.41a (f) revised; (g), (h) and (i) redesignated as (h), (i) and (j); new (g) added 42211
(f)(1) and (g)(1) corrected 46553
10.41b (b) introductory text, (7) and (d)(1) introductory text amended 51769
10.46 Amended 51769
10.63 Amended 51769
10.67 (c) amended 51769
10.75 Amended 51769
10.90 (a) amended 51769
10.100 Amended 51769
10.151 Amended 51769
10.180 (a) amended 51769
10.181 Redesignated as 7.4 46553

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TITLE 19 Chapter I—Con.

11 Authority citation revised 51770
11.9 (b) amended 51770
(b) corrected 55512
12.29 (d) amended 51770
12.33 (e) amended 51770
12.104g (a) amended 19492
(a) and (b) amended 31721
(a) table amended 49596, 51774
(b) table amended 49597
18 Authority citation amended 4167
18.1 (a)(3) amended 4167
18.6 (d) amended 51770
18.8 (e)(3) amended 4167
19 Authority citation amended 15834
19.1 (a)(9) amended; (c) removed 15834
19.2 Heading, (b)(2) and (g) revised; (a) amended 15834
19.4 Revised 15834
19.6 (a)(1) and (d)(2) amended; (d)(1) revised; (d)(4) redesignated as (d)(5); new (d)(4) added 15836
19.11 (h) revised 15836
19.12 Revised 15836
19.13 (g) amended 15839
19.13a Introductory text amended; (b) revised 15839
19.35 (c) introductory text, (2), (e)(2) and (f) revised 15839
19.36 (e) and (g) amended 15840
19.37 (a) amended 15840
19.39 (c)(2) and (3) amended; (c)(4)(ii), (iii) and (iv) redesignated as (c)(4)(iii), (iv) and (v); new (c)(4)(ii) added; (c)(5) and (e) revised 15840
24.23 (b)(1)(i)(A), (B), (2)(i)(B) and (C) amended 51770
24.24 (b)(1) amended; interim 30449
(b)(1) corrected 45157
(b)(1) table corrected 51774
54 Authority citation amended 68165
54.5 (a)(2) revised 68165
101.3 (b)(1) amended 37133
Regulation at 62 FR 37133 eff. date delayed to 5–1–98 60164
103.11 (b)(2)(xii) amended 51770
111 Notice 56073
112.26 Amended 51770
113.63 (a)(4) redesignated as (a)(5); new (a)(4) and (b)(4) added; (b)(2), (3) and (d) amended 15840
114 Authority citation revised 4168
114.1 (b) and (c) amended; (g) added 4168
114.2 Heading and introductory text amended; (d) added 4168
114.3 (a) introductory text and (2) amended 4168
114.11 Amended 4168
114.22 (d) redesignated as (e); new (d) added 4168
114.23 (c) added 4168
114.24 Amended 4168
114.25 Amended 4168
114.26 (a) and (b) amended 4168
114.31 (b) amended 4168
114.32 Amended 4168
114.33 Amended 4168
114.34 (b) amended 4168
122 Authority citation revised 51770
122.15 (b) amended 37133
Regulation at 62 FR 37133 eff. date delayed to 5–1–98 60164
122.24 (b) amended 24815
122.152 Amended 51770
123.1 (a) and (b) amended 32031
127.33 Amended 51770
133.21 (d) amended 51770
133.23 (b)(3) amended 51770
133.25 Added; interim 61232
133.42 (c) amended 19493
133.44 (a) amended 19493
133.47 Removed 19493
133.52 (c) revised; interim 61232
134 Policy statement 49597
134.36 Heading revised; (a) designation, heading and (b) removed 44214
134.46 Revised 44214
141 Authority citation amended 51770
141.1 (f) amended 51770
141.4 (c) introductory text amended 51770
141.11 (b) amended 51770
141.61 (a)(1) and (e)(3) amended 51770
141.69 (a) amended 51771
141.83 (d)(1) removed 51771
141.89 (a) amended 51771
141.112 (f) amended 51771
143.1 (b) amended 51771
144.34 (c) added 15840

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144.36 (c) and (f) revised; (g)(4) and (5) amended; (g)(6) added 15841
144.37 (h)(2)(v) revised; (h)(3) and concluding text amended 15842
144.39 Amended 15842
144.41 (c) revised 15842
148.2 (b) amended 46441
148.12 (b)(1)(i) revised 46441
148.17 (b) and (c) amended 46441
148.31 (a) and (b) amended 46441
148.32 (d)(2) amended 46441
148.33 (a), (b), (d) and (f) revised 46441
148.34 (a) amended 46442
148.35 (a) and (b) revised 46442
148.36 Amended 46442
148.37 Amended 46442
148.38 Amended 46442
148.41 Amended 51771
148.51 (a)(2) revised 46442
148.64 (a) amended 46442
148.74 (c)(3) amended 46442
148.101 Amended 46442
148.102 (a) and (b) revised 46442
148.104 (c) amended 46443
148.110—148.116 (Subpart K) Heading amended 46443
148.110 Amended 46443
148.111 (a) amended 46443
148.113 (a) amended 46443
151.4 (b)(2) removed 51771
152 Authority citation amended 51771
152.102 (j)(2) and (k) amended 51771
159 Authority citation revised 51771
159.33 Amended 51771
159.35 Amended 51771
159.43 Amended 51771
171 Appendix C amended 51771
177 Authority citation amended 51771
177.2 (b)(2)(iii) amended 51771
178.2 Table amended (OMB numbers) 46443, 49150
191.91 Amended 51771
191.131 (a) amended 51771
191.161 Amended 51771

Chapter II—United States International Trade Commission (Parts 200—299)

201.7 Correctly revised; CFR correction 39438
201.201—201.208 (Subpart H) Added; interim 38019

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

351 Added 27379
353 Removed 27379
355 Removed 27379

Proposed Rules:

4 40992
10 31383
..... 4601, 5329
12 5329
18 5329
24 19704
..... 5329
101 37526
111 ..... 19704, 24374
..... 5329
113 5329
114 5329
118 44102
122 40992
123 ..... 31383, 40992, 61251, 67765
125 5329
128 31383
134 43958
..... 5329
141 31383
142 ..... 19534, 67765
143 ..... 19704, 31383
145 31383
..... 5329
148 ..... 31383, 40992
162 19704
..... 5329
163 ..... 19704, 24374
171 5329
172 5329
192 ..... 40992, 55764
201 ..... 55185, 61252
..... 3505
207 55185
..... 3505
351 ..... 19719, 25874, 38948, 41322, 46445

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

200.8 (g)(12) added 2141
220.10—220.21 (Supart C) Heading revised 7541
220.10 Revised 7541
220.11 Revised 7541

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TITLE 20 Chapter II—Con.

220.12 Removed; new 220.12 redisignated from 220.14 7541
220.13 Heading, introductory text and (b) revised 7542
220.14 Redesignated as 220.12 7541
Added 7542
220 Appendix 3 added 7543
222.55 Amended 47138
229.42 (f) amended; (g) added 47138
255 Revised 64163
261 Added 45713
295.5 (e)(1) amended 67724
335.3 (a)(8) and (9) amended; (a)(10) added 44408
340.13 Amended; interim 41271
Regulation at 62 FR 41271 confirmed 64273
367 Technical correction 49049
367.1 Revised; interim 19220
Regulation at 62 FR 19220 confirmed 44409
367.2 (a), (f) introductory text, (2) and (j) revised; (f)(3) and (k) added; interim 19220
Regulation at 62 FR 19220 confirmed 44409
367.3 (a) and (b) revised; (c) amended; interim 19220
Regulation at 62 FR 19220 confirmed 44409

Chapter III—Social Security Administration (Parts 400—499)

404.1 (q) amended 38450
404.2 (b) revised; (c)(1) amended 38450
404.3 (b) amended 38450
404.143 (a)(2) amended 38450
404.101—404.146 (Subpart B) Appendix amended 38450
404.203 (a) amended 38450
404.403 (d)(2) amended 38450
404.408 (a)(1)(i), (e)(2), (f), (k), (l)(2)(ii) amended 38450
404.430 (c)(1)(ii)(A)(1), (2) and (2) amended 38450
404.452 (a)(1), (2) and (d) revised; (b) amended 15610
404.460 (b)(4)(ii) and (7) introductory text amended 38450
404.464 (a) and (c) amended 38450
404.468 (d) amended 38450
404.501—404.526 (Subpart F) Authority citation revised 64277
404.520 (a) amended 38450
Revised 64277
404.521 Introductory text revised; (b) amended 64278
404.522 (b) amended 64278
404.523 (a)and (c) amended 64278
404.525 Amended 64278
404.526 Revised 64278
404.527 Added 64278
404.900—404.999d (Subpart J) Authority citation revised 64278
404.903 (r) and (s) amended; (t) and (u) added 64278
404.942 (g) revised 35074
404.966 Added 49602
404.983 Amended 38450
404.984 (a), (b)(2), (3), (c) and (d) amended 38450
404.985 (c)(2) amended 38450
404.1200 (a) amended 38450
404.1202 (b) amended 38450
404.1206 (d) amended 38451
404.1211 (a) amended 38451
404.1214 (a), (c)(1), (2), (d)(3), (4), (e) and (f) amended 38451
404.1215 (b) and (d) amended 38451
404.1216 (b)(3) amended 38451
404.1225 (a)(4) amended 38451
404.1232 (a) and (b) amended 38451
404.1249 (b)(2)(i), (ii) and (iv) amended 38451
404.1267 Amended 38451
404.1282 (a) amended 38451
404.1283 (a)(1), (2), (b) introductory text and (1) amended 38451
404.1285 (a) amended 38451
404.1286 (a) and (b) amended 38451
404.1287 (a)(1), (2) introductory text and (b) through (e) amended 38451
404.1289 Introductory and concluding text amended 38451
404.1290 (a) and (b) designation removed 38451
404.1296 Amended 38451
404.1297 (a) amended 38451
404.1413 Introductory text amended 38451
404.1502 Amended 38451
404.1503 (a), (b) introductory text, (1), (c) introductory text and (e) amended 38451
404.1526 (b) and (c) amended 38451
404.1527 (e) heading and (2) amended 38451
404.1529 (b) amended 38451
404.1546 Amended 38451

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404.1597a (j)(1) and (2) amended 38451
404.1599 (a) and (b) amended 38451
404.1501—404.1599 (Subpart P) Appendix 1 amended 30747
Appendix 1 amended 4571
404.1601 Introductory text, (a), (b), (c), (e), (f) and (h) amended 38452
404.1602 Amended 38452
404.1613 (a) amended 38452
404.1615 (d) amended 38452
404.1616 (b)(2) amended 38452
404.1626 (e) amended 38452
404.1627 (b) heading and (1) amended 38452
404.1641 (a) amended 38452
404.1682 Amended 38452
404.1691 (a) amended 38452
404.1694 Amended 38452
404.1735 Amended 38452
404.1745 Introductory text amended 38452
404.1750 (a) and (d) amended 38452
404.1765 (a) and (e) amended 38452
404.1799 (c) and (e) amended 38452
404.1902 Amended 38452
404.2102 Introductory text amended 38452
404.2103 Amended 38452
404.2117 Amended 38452
404.2120 (c) amended 38452
404.2127 (a), (b) and (c) amended 38452
410.101—410.130 (Subpart A) Authority citation amended 38452
410.110 (c) removed; (d) through (r) redesignated as (c) through (q); new (d), new (e) and new (f) amended 38452
410.120 Amended 38452
410.130 Amended 38453
410.200—410.250 (Subpart B) Authority citation revised 38453
410.300—410.395 (Subpart C) Authority citation revised 38453
410.400—410.490 (Subpart D) Authority citation revised 38453
410.401 (c) amended 38453
410.474 Amended 38453
410.490 (a) amended 38453
410.501—410.591 (Subpart E) Authority citation revised 38453
410.601—410.699a (Subpart F) Authority citation revised 38453
410.601 (a) and (b) amended 38453
410.629a (a) and (d) amended 38453
410.629d (a)(1), (b)(2) and (5) amended 38453
410.629e Amended 38453
410.629f Amended 38453
410.634 Amended 38453
410.635 Amended 38453
410.639 Amended 38453
410.644 Amended 38453
410.650 (a) amended 38453
410.669 (b) amended 38453
410.670b (a), (b)(1) and (4) amended 38453
410.670c (c)(2) amended 38453
410.686e Amended 38453
410.687 (d) amended 38453
410.688 Revised 38453
410.689 Amended 38453
410.690 Amended 38453
410.691 Amended 38453
410.692 (a), (b), (d) and (e) amended 38454
410.693 (a)(2) amended 38454
410.697 Amended 38454
410.699 (a) and (c) amended 38454
410.700—410.707 (Subpart G) Authority citation revised 38454
410.700 (b) amended 38454
410.704 (a)(1) amended 38454
416.101 (j) amended 38454
416.105 Amended 38454
416.110 (f)(1) amended 38454
416.120 (b) and (d) amended; (b)(1) removed; (b)(2) and (3) redesignated as (b)(1) and (2) 38454
416.211 Regulation at 62 FR 1055 confirmed 42412
416.212 Regulation at 62 FR 1055 confirmed 42412
416.250 (a) and (b) amended 38454
416.414 Regulation at 62 FR 1056 confirmed 42412
416.420 (a) revised; (c) redesignated as (d); new (c) added 30751
416.501—416.571 (Subpart E) Authority citation revised 49439
416.537 (a) amended 38454
416.580 Added 49439
416.581 Added 49439
416.582 Added 49439
416.583 Added 49439
416.584 Added 49439
416.585 Added 49440
416.586 Added 49440

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TITLE 20 Chapter III—Con.

416.903 (a), (b) introductory text, (1), (c) introductory text and (e) amended **38454**
416.927 (e) heading and (2) amended **38454**
416.929 (b) amended **38454**
416.946 Amended **38454**
416.994a (e)(1) and (f)(4) correctly revised; CFR correction **36460**
416.1001 Introductory text, (a), (b), (c), (e), (f) and (h) amended **38454**
416.1002 amended **38454**
416.1013 (a) amended **38455**
416.1015 (d) amended **38455**
416.1016 (b)(2) amended **38455**
416.1026 (e) amended **38455**
416.1027 (b) heading and (1) amended **38455**
416.1041 (a) amended **38455**
416.1082 Amended **38455**
416.1091 (a) heading amended **38455**
416.1100—416.1182 (Subpart K) Appendix amended **30982**
416.1149 Regulation at 62 FR 1056 confirmed **42412**
416.1165 Regulation at 62 FR 1056 confirmed **42412**
416.1167 (c) added **42411**
416.1180 Amended **59813**
416.1202 Regulation at 62 FR 1056 confirmed **42412**
416.1236 (a)(2) revised; (a)(12) amended; (a)(13), (16) and (19) removed; (a)(14), (15), (17), (18) and (20) redesignated as (a)(13) through (17); new (a)(18) added **30983**
416.1245 (b)(3)(ii) introductory text revised **30983**
416.1400—416.1499 (Subpart N) Authority citation revised **49440**
416.1403 (a)(15) and (16) amended; (a)(17) added **49440**
416.1442 (g) revised **35075**
416.1453 (b)(2)(ii) amended **38455**
416.1466 Added **49603**
416.1483 Amended **38455**
416.1484 (a), (b)(2), (3), (c) and (d) amended **38455**
416.1485 (c)(2) amended **38455**
416.1503 Amended **38455**
416.1535 Amended **38455**
416.1550 (a) and (d) amended **38455**
416.1565 (a) and (e) amended **38455**
416.1599 (c) and (e) amended **38455**
416.1603 (b) revised **59813**
416.1610 (a)(2) revised **59813**
416.1902 Amended **38455**
416.2001 (c) amended **38455**
416.2030 (a) amended **38455**
416.2035 (b)(1) amended **38455**
416.2065 Introductory text amended **38455**
416.2070 (a) introductory text amended **38455**
416.2075 (a) and (b) amended **38455**
416.2095 (a)(5) amended **38455**
416.2096 (c)(6) added **30984**
(a)(1) introductory text and (d) amended **38455**
416.2099 (a) introductory text, (b), (c) and (d) amended **38455**
416.2176 (b) amended **38456**
416.2202 Introductory text amended **38456**
416.2203 Amended **38456**
416.2217 Amended **38456**
416.2220 (c) amended **38456**
416.2227 (a), (b) and (c) amended **38456**
422.1 (a) amended **38456**
422.107 (a) amended **38456**
422.210 (a), (c) and (d) amended **38456**
422.301—422.317 (Subpart D) Added **64278**
422.602 Amended **38456**
429 Added **24329**
430 Added **39935**

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

645 Added; interim **61603**

Chapter VI—Employment Standards Administration, Department of Labor (Parts 700—799)

702 Authority citation revised **53956**
702.204 Revised **53956**
702.236 Revised **53956**
702.271 (a) revised **53956**

Proposed Rules:

10 ..... **40418, 67120**
25 ..... **67120**
200 ..... **43295**
..... **34**
209 ..... **2914**

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211 64188
216 55196
220 50056
222 27989
229 27989
255 7088
295 40995
335 19072
402 43489
404 ..... 26997, 42439, 46682, 48963, 49636, 50266, 50270, 60672
416 ..... 26997, 33778, 48963, 50266, 50270
422 ..... 42439, 63681
702 35715
718 ..... 27000, 27562, 28760, 33043
722 ..... 27000, 27562, 28760, 33043
725 ..... 27000, 27562, 28760, 33043
726 ..... 27000, 27562, 28760, 33043
727 ..... 27000, 27562, 28760, 33043

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

Chapter I Comment response 49881
1 Authority citation revised 51512
1.31 Removed 39440
1.35 Removed 39440
2 Authority citation revised 51512
3 Authority citation revised 51512
5 Authority citation revised 51512
5.10 (a)(38) added 28628
(a)(39) added 33349
5.20 (f)(4) added 48757
5.22 (a)(10)(i), (ii), (iv) and (v) revised 67270
5.23 (c)(1) and (4) revised 67270
5.25 (a)(2) and (b) revised 67270
5.26 (c) revised 67270
5.28 Revised 67270
5.30 (b) and (c)(4) revised 67270
5.31 (h) added 19493
(c)(3) and (e)(5) revised 67271
5.33 (b) revised 67271
5.37 (a)(2)(i), (ii) and (iii) and (b)(1), (2) and (3) revised; (a)(2)(iv) and (b)(4) removed 67271
5.40 Added 43471
5.45 (b) introductory text, (c)(1), (2) and (e)(1)(i), (ii) and (iii) revised 67271
5.46 Revised 67271
5.47 (a)(1) and (2) revised 67271
5.49 (a) revised 67271
5.50 (a) revised 67271
5.51 (a)(1) and (b)(1) revised 67271
5.52 (a) revised 67271
5.53 (a)(1), (b)(1)(i) and (c) revised 67271
5.54 (a) revised 67272
5.55 (a) revised 67272
5.56 (a) and (b) revised 67272
5.57 (a), (b) and (c) revised 67272
5.59 (a)(1) revised 67272
5.60 (a)(1) through (4), (6) and (b)(1) through (5) revised 67272
5.78 (b) revised 67272
5.86 (a) and (b) revised; (c) removed 67272
5.87 (a) and (b) revised; (c) removed 67272
5.88 Revised 67272
5.89 (a) introductory text and (b) introductory text revised 67272
5.90 Revised 67273
5.91 Revised 67273
5.92 Revised 67273
5.100 Added 48757
7 Authority citation revised 51512
10 Technical correction 47760
Authority citation revised 51512
10.30 (b) amended 40592
10.40 (b)(1)(ix) revised 40592
11 Authority citation revised 51512
12 Authority citation revised 51512
13 Authority citation revised 51512
14 Authority citation revised 51512
15 Authority citation revised 51512
16 Authority citation revised 51513, 55976
Authority citation corrected 60614
16.1 (b)(2) amended 40444
(b)(2) amended; eff. 4-28-99 55976
17 Authority citation revised 51513
19 Authority citation revised 51513
20 Technical correction 47760
Authority citation revised 51513
20.100 (c)(3) revised 40592
20.112 (a) amended; eff. 4-6-98 52249
21 Authority citation revised 51513
25 Revised 40592
Technical correction 47760
Authority citation revised 51513
50 Meeting 46198
Authority citation revised 51513
50.3 (j) removed; (k) through (n) redesignated as (j) through (m) 39440

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TITLE 21 Chapter I—Con.

50.21 Removed 39440
50.40—50.48 (Subpart C) Removed 39440
54 Added; eff. 2–2–99 5250
56 Meeting 46198
Authority citation revised 51513
58 Authority citation revised 51513
60 Authority citation revised 51513
70 Authority citation revised 51513
71 Technical correction 47760
Authority citation revised 51513
71.1 (c) amended 40598
73 Authority citation revised 51513
74 Authority citation revised 51513
74.2101 (a) correctly revised; CFR correction 15389
80 Authority citation revised 51513
81 Authority citation revised 51513
82 Authority citation revised 51513
100 Authority citation revised 51513
101 Technical correction 47760, 55331
Authority citation revised 51513
101.2 (b) and (f) amended; (c)(1), (2), (3) and (5)(iii) removed; (c)(5)(iv) redesignated as (c)(5)(iii); (c)(4) and (5) redesignated as (c)(1) and (2) 43074
(b), (d)(1) and (f) revised; eff. 3–23–99 49847
101.3 (g) added; eff. 3–23–99 49847
101.4 (a)(1) revised; (g) and (h) added; eff. 3–23–99 49847
(h)(1) corrected 64634
101.8 Removed 43074
101.9 (k)(2) and (5) removed; (k)(3), (4) and (6) redesignated as (k)(2), (3) and (4); (c)(8)(iii), (v), (d)(7)(i), (j)(6) and new (k)(4) revised; eff. 3–23–99 49848
101.12 (h)(12) revised 40598
(b) Table 2 amended; eff. 3–23–99 49848
(b) Table 2 amended; eff. 1–1–00 63653
(b) Table 2 corrected 66275
101.13 (j)(1)(i)(B) amended 31339
(a) and (b) introductory text revised; (q)(3) redesignated as (q)(3)(i); (q)(3)(ii) added; eff. 3–23–99 49867
101.14 (a)(4) removed; (a)(5) and (6) redesignated as new (a)(4) and (5); (b)(3)(i) and (d)(3) revised; eff. 3–23–99 49867
101.17 (f) added 8118
101.29 Removed 43074
101.36 Revised; eff. 3–23–99 49849
101.54 (e)(1) introductory text and (2) introductory text amended 31339
(b)(1), (c)(1) and (e)(1) introductory text revised; eff. 3–23–99 49867
Heading revised; (f) and (g) added; eff. 3–23–99 49880
101.60 (c)(1)(iii)(A) revised; eff. 3–23–99 49881
101.65 (d)(2)(ii)(C) and (4)(ii)(B) stayed; eff. 4–1–97 through 1–1–00 15391
(b)(4) revised; eff. 3–23–99 49858
101.69 (h) revised; (m)(1), (n)(1) and (o)(1) amended 40598
101.70 (j)(4) added 28232
(f) amended 40599
101.80 (c)(2)(ii)(B) revised 63655
101.81 Heading, (a) heading, (b) heading, (3), (b)(2), (c)(1), (2)(i) introductory text, (A), (E), (F), (iii)(A), (d)(2), (3) and (e) revised; (c)(2)(i)(G) and (ii)(B) added; (d)(6) removed; (d)(7) and (8) redesignated as (d)(6) and (7) 8119
101.93 (b) through (e) added; eff. 3–23–99 49867
Added 49886
102 Authority citation revised 51513
105 Authority citation revised 51513
106 Authority citation revised 51513
107 Authority citation revised 51513
108 Authority citation revised 51513
109 Authority citation revised 51514
110 Authority citation revised 51514
111 Authority citation revised 51514
113 Authority citation revised 51514
113.40 (b)(10)(ii) amended 31722
114 Authority citation revised 51514
123 Authority citation revised 51514
129 Authority citation revised 51514
130 Authority citation revised 51514
131 Authority citation revised 51514
133 Authority citation revised 51514
135 Authority citation revised 51514
136 Authority citation revised 51514
137 Authority citation revised 51514
139 Authority citation revised 51514
145 Authority citation revised 51514
146 Authority citation revised 51514
150 Authority citation revised 51514
152 Authority citation revised 51514

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155 Authority citation revised **51514**
156 Authority citation revised **51514**
158 Authority citation revised **51514**
160 Authority citation revised **51514**
161 Authority citation revised **51514**
163 Authority citation revised **51514**
164 Authority citation revised **51514**
165 Authority citation revised **51514**
165.110 (b)(4)(i)(A) table corrected; CFR correction **36460**
166 Authority citation revised **51515**
168 Authority citation revised **51515**
169 Authority citation revised **51515**
170 Technical correction **47760**
Authority citation revised **51515**
170.35 (c)(1)(viii) revised **40599**
170.39 (c)(6) and (e) amended **40599**
171 Technical correction **47760**
Authority citation revised **51515**
171.1 (c) amended **40599**
172 Authority citation revised **51515**
172.712 Added **26228**
172.824 (b)(3) removed 7069
172.841 (c) revised **30985**
173 Authority citation revised **51515**
173.150 (a)(5) added **59284**
173.315 Heading and (c) revised; (a)(3) redesignated as (a)(4); new (a)(3) added; introductory text, (a)(2) table and new (4) amended 7069
174 Authority citation revised **51515**
175 Authority citation revised **51515**
175.105 (c)(5) table amended **33996, 39937**
175.125 (a)(7) added; (b)(1) revised 3463
175.300 (b)(3)(viii)(*b*) **43076**
176 Authority citation revised **51515**
176.170 (a)(5) table amended **39939**
176.200 (d)(3) table amended **39772**
177 Authority citation revised **51515**
177.1345 (d) amended **34628**
177.1395 (b)(4) table amended **53958**
177.1500 (c) redesignated as (d); new (c) added; new (d)(5)(ii) amended **22886**
(b) table amended 6854
177.1520 (b) table corrected; CFR correction **42050, 49908**
(a)(1) redesignated as (a)(1)(i); (a)(1)(ii) added; (c) amended 6853
177.2460 (c)(1) amended 8852
177.2600 (c)(4)(i) amended 8572
178 Authority citation revised **51515**
178.2010 (b) table amended **29009, 30455, 34629, 34630, 36983, 39441, 41272**
(b) table amended 8853
178.3130 (b) table amended **31511**
178.3297 (e) table amended **19221, 25476**
(e) table amended 3464
178.3400 (c) table amended **33997, 42051**
179 Authority citation revised **51515**
Effective date confirmation **64102**
179.26 (b) table amended **64121**
180 Authority citation revised **51515**
181 Authority citation revised **51515**
182 Authority citation revised **51515**
184 Authority citation revised **51515**
184.1472 Revised **30756**
186 Authority citation revised **51515**
189 Authority citation revised **51515**
190 Added **49891**
200 Authority citation revised **51515**
201 Authority citation revised **51515**
201.57 (f)(10) added; eff. 8–27–98 ..... **45325**
201.64 (a) through (h) stayed; (i) revised **19925**
202 Authority citation revised **51515**
205 Authority citation revised **51515**
206 Authority citation revised **51515**
207 Authority citation revised **51515**
210 Authority citation revised **51516**
211 Compliance date extension **40447**
Authority citation revised **51516**
211.1 (d) added **19497**
(d) removed **66522**
225 Authority citation revised **51516**
226 Authority citation revised **51516**
250 Authority citation revised **51516**
290 Authority citation revised **51516**
291 Authority citation revised **51516**
299 Authority citation revised **51516**
300 Authority citation revised **51516**
310 Authority citation revised **51516**
310.305 (a) and (f)(1) revised; (b)(5) and (c)(4) removed; (c)(5) and (6) redesignated as (c)(4) and (5); new (c)(4) amended **34167**
(a), (d)(2), (3) introductory text and (i) amended; (b), (c), (d)(1), (3)(ii) and (4) revised; eff. 4–6–98 ..... **52249**
312 Meeting **46198**
Technical correction **47760**
Authority citation revised **51516**
312.20 (c) amended **32479**
312.23 (a)(7)(iv)(*e*) revised **40599**
(a)(2) revised; eff. 8–10–98 6862

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312.32 (a), (b), (c)(1)(i), (2) and (d)(3) revised; (c)(3) and (e) amended; eff. 4–6–98 ..... **52250**
312.53 (c)(4) added; eff. 2–2–99 5252
312.57 (b) and (c) redesignated as (c) and (d); new (b) added; eff. 2–2–99 5252
312.64 (d) added; eff. 2–2–99 5252
312.70 (a) and (b) amended **46876**
314 Meeting **44891, 46198**
Technical correction **47760**
Authority citation revised **51516**
Clarification **63268**
314.50 (d)(1)(iii) revised **40599**
(k) redesignated as (l); new (k) added; eff. 2–2–99 5252
(d)(5)(v) and (vi)(*a*) amended; eff. 8–10–98 6862
314.60 (a) amended; eff. 2–2–99 5252
314.70 (g) added **39900**
314.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text, (d)(1) and (l) amended; (f)(1) revised **34168**
(a), (c) introductory text, (1), (f)(1), (3)(ii) and (4) revised; (b), (c)(2)(ii)(*b*), (d)(2), (f) heading, (2) and (3) amended; (j) removed; (k) and (l) redesignated as (j) and (k); eff. 4–6–98 ..... **52251**
314.94 (a)(13) added; eff. 2–2–99 5252
314.101 (d)(4) revised **40599**
314.110 (a)(3) and (b) amended **43639**
314.120 (a)(3) amended **43639**
314.200 (d)(3) amended; eff. 2–2–99 5252
314.300 (b)(6) introductory text amended; eff. 2–2–99 5252
314.440 (a)(3) amended **43639**
316 Authority citation revised **51516**
320 Authority citation revised **51516**
320.36 Existing text designated as (a); (b) added; eff. 2–2–99 5252
329 Authority citation revised **51516**
330 Authority citation revised **51516**
330.10 (f) added; eff. 2–2–99 5253
331 Authority citation revised **51516**
331.10 (a) correctly revised; CFR correction **52659**
332 Authority citation revised **51516**
333 Authority citation revised **51516**
336 Authority citation revised **51516**
338 Authority citation revised **51516**
340 Authority citation revised **51516**
341 Authority citation revised **51516**
344 Authority citation revised **51517**
346 Authority citation revised **51517**
347 Authority citation revised **51517**
348 Authority citation revised **51517**
349 Authority citation revised **51517**
352 Announcement **23350**
355 Authority citation revised **51517**
357 Authority citation revised **51517**
358 Authority citation revised **51517**
361 Authority citation revised **51517**
369 Authority citation revised **51517**
429 Authority citation revised **51517**
430 Authority citation revised **51517**
431 Authority citation revised **51517**
432 Authority citation revised **51517**
433 Authority citation revised **51517**
436 Authority citation revised **51517**
436.215 (c)(16)(iv) and (18)(iv) corrected; CFR correction **52659**
440 Authority citation revised **51517**
441 Authority citation revised **51517**
442 Authority citation revised **51517**
443 Authority citation revised **51517**
444 Authority citation revised **51517**
446 Authority citation revised **51517**
448 Authority citation revised **51517**
449 Authority citation revised **51517**
450 Authority citation revised **51518**
452 Authority citation revised **51518**
453 Authority citation revised **51518**
455 Authority citation revised **51518**
460 Authority citation revised **51518**
500 Authority citation revised **51518**
500.80 (b) amended **66983**
501 Authority citation revised **51518**
502 Authority citation revised **51518**
509 Authority citation revised **51518**
510 Technical correction **23534**
Authority citation revised **51518**
Technical correction 408
510.515 (c) table corrected; CFR correction **52659**
510.600 Regulation at 62 FR 14300 eff. date corrected to 4–7–97 ..... **15751**
(c)(1) table and (2) table amended ... **22887, 27691, 29010, 34631, 35075, 38906, 39442, 40931, 48939, 55159, 60781, 61624, 61626, 62241, 63270**
(c)(1) table and (2) table amended 5254, 7700, 8122, 8348, 8349
511 Technical correction **47760**

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Authority citation revised **51518**
511.1 (b)(10) revised **40599**
514 Technical correction **47760**
Authority citation revised **51518**
514.1 (b)(14) revised **40599**
514.8 (a)(1) amended **40600**
514.110 (b)(10) revised **40600**
514.111 (a)(9) revised **40600**
520 Authority citation revised **51518**
Technical correction 408
520.23 (a)(2) amended **35075**
520.82a (b) amended **61624**
520.82b (b) amended **61624**
520.100a (b) amended **63270**
520.100b (b) amended **63270**
520.100c (b) amended **63270**
520.222 (c) amended **61624**
520.300a (b) amended **63270**
520.300b (b) amended **63270**
520.300c (b) amended **63270**
520.390a (a)(2) amended **35076**
520.390b (b)(1) amended 5255
520.420 (a)(2) amended **63270**
520.445b (b) amended **27691, 35076, 60656**
520.447 (b) revised **46669**
520.462 (b) amended **63270**
520.580 (b)(2) amended **35076, 61624**
520.600 (c) amended **35076**
520.622a (a)(6) amended **35076**
520.622b (c)(2) amended **35076**
(a)(2) amended **38906**
520.622c (b)(6) amended **35076**
(b)(6) corrected **40932**
(b)(5) amended **61624**
520.645 Added 8123
520.763a (c) amended **35076**
520.763b (c) amended **35076**
520.763c (b) amended **35076**
520.784 (b) amended **61624**
520.804 (b) amended **63270**
520.812 (c) redesignated as (d); new (d) revised **38906**
520.863 (b) amended **61624**
520.1010a (b) amended **35076**
520.1044a (b) amended **34169**
520.1044b (b) amended **29011**
520.1044c (b) amended **29013**
520.1120a (c) amended **61624**
520.1120b (c) amended **61625**
520.1192 (b) amended **63270**
520.1193 (b) amended **63270**
520.1194 (b) amended **63270**
520.1195 (b) amended **63270**
520.1196 (b) amended **63270**
520.1197 (b) amended **63270**
520.1242a (c)(2) amended **61625**
520.1242b (c) amended **61625**
520.1242g (e) amended **55160**
(c) amended **61625**
520.1263c (b) amended **65020**
520.1320 (c) amended **61625**
520.1326a (b) amended **61625**
520.1326b (b) amended **61625**
520.1408 (b) amended **35076**
520.1446 Added **28629**
520.1448b Removed 6862
520.1451 Added **37713**
520.1452 Added **42902**
520.1484 (b) and (c)(3) amended **55160**
520.1485 (d)(3) amended **60657**
520.1616 Added **29012**
(d)(1) heading and (iii) amended **61627**
520.1660d (a)(8) and (b)(6) added **23356**
(b)(3), (e)(1)(ii)(A)(*3*), (B)(*3*) and (C)(*3*) amended **35076**
520.1696b (b) amended **55160**
520.1720a (b)(1) amended **61625**
520.1720b (b) amended **61625**
520.1720c (b) amended **61625**
520.1805 (b) amended **61625**
520.1806 (b) amended 8348
520.1880 (a) amended 148
520.1900 (b) amended **35076**
520.2043 (b)(2) revised **37712**
520.2098 Added **34632**
(d) heading and (2) corrected **55159**
520.2170 (c) amended **63270**
520.2220a (b) amended **23357, 35076, 40932**
520.2220b (b)(3) amended **61625**
520.2220c (c) amended **61625**
520.2260b (f)(1) and (h)(1) amended **35076**
520.2325a (a)(4) added **37712**
520.2345d (a)(1), (d)(1)(iii) and (2)(iii) amended **35076**
(a)(1) amended **46668**
(a)(1), (4), (d)(1)(iii) and (2)(iii) amended **55160**
(b)(4) amended 5255
520.2362 (c) amended **61625**
520.2380a (c)(2) amended **63271**
520.2380b (c) amended **63271**
520.2380c (b) amended **63271**
520.2380d (b) amended **63271**
520.2380f (b) amended **63271**
520.2455 (b) amended **35076**
520.2456 (b) amended **35076**

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520.2481 (b) amended **35076**
520.2610 (b) amended **61625**
520.2611 (b) amended **61625**
520.2612 (b) amended **61625**
520.2640 (e)(1)(iii), (2)(iii) and (3)(iii) amended **39443**
522 Authority citation revised **51518**
522.23 (c) amended **35076**
522.56 (b) amended **23357**
522.82 (b) amended **61625**
522.150 (b) amended **61625**
522.518 (b) amended **28630**
522.540 (a)(2) amended **37713**
522.770 (d)(2) revised **44410**
(d) heading revised; (d)(1), (2) and (3) redesignated as (d)(1)(i), (ii) and (iii); (d)(2) added **62242**
522.778 Added 8349
522.784 (b) amended **61625**
522.812 (c) redesignated as (d); new (d)(2) revised **38907**
522.863 (b) amended **61625**
522.970 (b) revised **22888**
522.1002 (b)(2) amended **62242**
522.1010 (b) amended **35076**
522.1044 (b)(3) amended **35076**
(b)(3) and (4) added **45157**
522.1150 (b) amended **63271**
522.1155 (b) amended **61625**
522.1156 Added **66984**
522.1182 (b)(2)(i) amended **35076**
522.1183 (e)(1) amended **35076**
522.1192 (b) amended **63271**
(a)(2) heading revised; (d)(6) added 7702
522.1193 (b) amended **63271**
522.1222a (c) amended **22888, 35076**
522.1244 (b) amended **61625**
522.1410 (b) amended **35076**
522.1452 (b) amended **63271**
522.1462 (b) amended 7701
522.1503 (b) amended **61625**
522.1642 (b) amended 7701
522.1660 (c) redesignated as (d); new (d)(1) heading revised; new (d)(1), (ii), new (iii) and new (2)(ii) amended **27692**
522.1662a (a)(2), (g)(2) and (h)(2) amended **35076**
(h)(2) amended 6644
522.1680 (b) amended **35076, 38906**
522.1704 (a)(2) amended **61625**
522.1720 (b)(2) amended **38906**
(b)(1) amended **61625**
522.1850 (d) added **45158**
522.1885 (b) amended **63271**
522.2005 (b) amended **61625**
522.2220 (a)(2)(iii) added **23128**
(c)(2) amended **35076**
522.2424 (b) amended **35076**
522.2471 (d)(1)(iii) amended 7701
522.2476 (b) amended **29013**
522.2477 (a) revised **28629**
522.2483 (b) amended **35077**
522.2610 (b)(2) corrected; CFR correction **41272**
(a)(2) amended **61625**
522.2640a (b)(2) amended **35077**
522.2662 (b) amended **35077**
522.2680 (b) amended **61625**
524 Authority citation revised **51518**
524.154 (a)(2) amended **61625**
524.155 (a)(1) amended **61626**
524.575 (c)(2) revised **48940**
524.770 Added **65753**
524.814 Added **33997**
524.900 (e) amended **55161**
(c) amended **61626**
524.981a (b) amended **40932**
524.981b (b) amended **40932**
524.981c (b) amended **40932**
524.1193 (d)(2) amended **38908**
(b) amended **63271**
524.1240 (b) amended **61626**
524.1443 (b) revised **55161**
(b) amended **61626**
524.1484g (b) amended **63271**
524.1580b (b) amended **35077**
524.1580c (b) amended **35077**
524.1742 (b) amended **61626**
(b) amended 5255
524.1883 (b) amended **63271**
526 Authority citation revised **51518**
526.365 Redesignated from 529.365 8349
529 Authority citation revised **51518**
529.50 (b) amended **23358**
529.365 Redesignated to 526.365 8349
529.1044a (b) amended **35077**
(b) amended 6644
529.1044b (b) amended **22889**
529.1115 (b) amended **29014**
529.1186 (b) revised 8122
529.2503 (b) amended 7702
530 Authority citation revised **51518**
530.41 Revised **27947**
556 Authority citation revised **51518**
556.52 Revised **40933**
556.75 Corrected **15391**
556.225 Revised **62243**
556.227 Added **33998**

NOTE: Boldface page numbers indicate 1997 changes.

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556.273 Added 55161
556.344 Revised 7702
558 Technical correction 23534, 44892
Authority citation revised 51518
Technical correction 408
558.4 (d) table amended 25477, 60657
558.55 (a) amended 63271
558.58 (d)(1)(iii) table amended 60658, 61627
(d)(1) table amended 63271, 66987
558.78 (a) revised; (d)(1) table amended 55162
Regulation at 62 FR 55162 eff. date corrected to 10–23–98 9310
558.95 (d)(1)(ii)(*b*), (iii)(*b*), (iv)(*b*), (v)(*b*) and (xiii)(*b*) amended 63271
558.120 (c) redesignated as (d); new (d)(1)(iii)(*b*) amended 61011
558.128 (a)(4) and (d)(1) table amended 27692
(d)(1) table and (2) amended 61628
558.155 (a)(1) and (2) amended 35077
(a)(1) amended 67725
(a)(2) amended 2307
558.175 (c)(1)(iii)(*b*) and (iv)(*b*) amended 61626
(c) redesignated as (d); new (d)(1)(iv)(*b*) amended 61912
(d)(1)(iii)(*b*) amended 62243
558.195 (c)(2) added; (d) table amended 23129
(d) amended 61626
(d) table amended 66523, 67273
(a) and (d) table amended 67725
558.205 (a) amended 35077
558.235 (a) amended 63271
558.254 (c) amended 55161
(a) amended 61626
Regulation at 62 FR 55162 eff. date corrected to 10–23–98 9310
558.274 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 15751
(a)(7) and (c)(1) table amended 27692
(a)(8), (c)(1)(i) table and (ii) table amended 55160
(a)(6) removed; (c)(1)(i) table amended 5255
558.300 (a)(1) and (2) amended 63271
558.311 (e)(3)(i) table amended 28630
(e)(1)(ii) table amended 61626
(f)(1)(xv)(*b*) and (xvi)(*b*) amended 61912
558.366 (a) and (c) table amended 29011
558.485 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 15751
(a)(11) amended 27692
(a)(28) added 46444
(a)(21) and (25) removed 5255
558.515 (d)(1)(vi)(*b*) amended 61626, 66986
558.530 (a) amended 67725
558.550 (b) redesignated as (d); (d)(1)(xvii) added 29014
(b)(1)(vii)(*c*) amended 60781
(b)(1)(ix)(*c*) amended 66985
(a)(1) amended 6644
558.555 (b)(4) amended 66985
558.600 (a) amended 35077
558.615 (a) amended 63271
558.618 (d)(1) corrected 15391
558.625 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 15751
(b)(10) and (52) amended 27692
(b)(84) removed 5255
558.630 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 15751
(b)(3), (8) and (10) amended 27692
564 Authority citation revised 51518
570 Technical correction 47760
Authority citation revised 51518
570.35 (c)(1)(viii) revised 40600
571 Technical correction 47760
Authority citation revised 51518
571.1 (c) amended 40600
573 Authority citation revised 51518
573.280 Revised 8573
573.920 Regulation at 60 FR 53703 confirmed 44894
579 Authority citation revised 51518
582 Authority citation revised 51518
584 Authority citation revised 51518
589 Authority citation revised 30976, 51519
589.2000 Added (OMB number pending) 30976
600 Meeting 44891
Authority citation revised 51519
600.3 (ff) and (gg) added 39901
600.10 (a) removed; (b) heading revised 53538
600.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text,

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TITLE 21 Chapter I—Con.

(d)(1) and (m) amended; (f)(1) revised 34168
(a), (c)(1) and (f)(1) revised; (b) and (g) amended; (j) removed; (k), (l) and (m) redesignated as (j), (k) and (l); eff. 4–6–98 52252
601 Meeting 44891, 46198
Technical correction 47760
Authority citation revised 51519
601.2 (a) and (c)(2) amended 40600
(a) introductory text amended; (c)(6) added 53538
(a) introductory text amended; eff. 2–2–99 5253
601.12 Revised 39901
601.25 (b)(3) amended 53538
606 Authority citation revised 51519
606.20 (a) removed 53538
607 Authority citation revised 51519
610 Meeting 44891
Authority citation revised 51519
610.9 Revised 39903
610.12 (f) revised 48175
640 Meeting 44891
Authority citation revised 51519
640.120 (a) revised 39903
660 Authority citation revised 51519
680 Authority citation revised 51519
700 Authority citation revised 51519
701 Authority citation revised 51519
710 Authority citation revised 51519
720 Authority citation revised 51519
730 Removed 43074
Authority citation revised 51519
740 Authority citation revised 51519
800 Authority citation revised 51519
801 Authority citation revised 51519
801.435 Added 50501
801.437 Added; eff. 9–30–98 51029
803 Authority citation revised 51519
804 Authority citation revised 51519
805 Authority citation revised 51519
806 Added 27191
Authority citation revised 51519
806.10 Regulation at 62 FR 27191 stayed 67274
806.20 Regulation at 62 FR 27191 stayed 67274
807 Authority citation revised 51519
807.31 (d)(3) added; eff. 2–2–99 5253
807.87 (i), (j) and (k) redesignated as (j), (k) and (l); new (i) added; eff. 2–2–99 5253
807.100 (a)(4) redesignated as (a)(5); new (a)(4) added; eff. 2–2–99 5253
808 Authority citation revised 51519
808.51 Added 63274
808.52 Added 63274
808.94 Added 63274
809 Authority citation revised 51520
809.10 (a) amended; (e) added; eff. 11–23–98 62259
809.30 Added; eff. 11–23–98 62259
810 Authority citation revised 51520
812 Authority citation revised 26229, 51520
Meeting 46198
Technical correction 47760
812.18 (b) revised 26229
812.20 (b)(9) revised 40600
812.36 Added 48947
812.43 (c)(5) added; eff. 2–2–99 5253
812.110 (d) redesignated as (e); new (d) added; eff. 2–2–99 5253
812.140 (b)(3) revised; eff. 2–2–99 5253
812.150 (b)(5) revised 48948
814 Meeting 46198
Technical correction 47760
Authority citation revised 51520
814.20 (b)(11) revised 40600
(b)(12) redesignated as (b)(13); new (b)(12) added; eff. 2–2–99 5253
814.42 (e)(5) added; eff. 2–2–99 5254
814.44 (d) revised 4572
814.45 (d) revised 4572
814.102 Reinstated 38026
814.104 Reinstated 38026
814.106 Reinstated 38026
814.108 Reinstated 38026
814.110 (a) reinstated 38026
814.112 (b) reinstated 38026
(a)(4) added; eff. 2–2–99 5254
814.116 (b) reinstated 38026
814.118 (d) reinstated 38026
814.120 (b) reinstated 38026
860.123 (a)(10) added; eff. 2–2–99 5254
814.124 (b) reinstated 38026
814.126 (b)(1) reinstated 38026
820 Authority citation revised 51520
Meeting 3465
821 Authority citation revised 51520
860 Authority citation revised 51520
861 Authority citation revised 51520
862 Authority citation revised 51520
864 Authority citation revised 51520

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864.4010 (a) revised; eff. 11–23–98 62260
864.4020 Added; eff. 11–23–98 62260
866 Authority citation revised 51520
866.6010 Revised 66005
868 Authority citation revised 51520
870 Authority citation revised 51520
872 Authority citation revised 51520
872.6730 (c) amended 31512
874 Authority citation revised 51520
876 Authority citation revised 51520
878 Authority citation revised 51520
878.5040 Added 7705
880 Authority citation revised 51520
880.5130 Revised 33350
882 Authority citation revised 51520
882.5800 (c) revised 30457
884 Authority citation revised 51520
886 Authority citation revised 51520
886.5918 Revised 30987
886.5928 Revised 30988
886.5933 Removed 30988
888 Authority citation revised 51520
890 Authority citation revised 51520
892 Authority citation revised 51520
895 Authority citation revised 51520
897 Authority citation revised 51520
898 Added 25497
Authority citation revised 51521
898.14 Stayed 25498
900 Authority citation revised 51521
Revised; eff. in part 4–28–99 55976
(c)(4) corrected 60614
900.12 (b)(8)(i), (e)(4)(iii)(B) and (5)(i)(B) revised; eff. 10–28–02 55984
(a)(2)(iv), (b)(6)(ii), (8)(i), (e)(1)(ii), (iii), (2)(ii), (4)(iii)(B), (5)(i)(B), (ii), (iii), (x)(A), (12) and (h) heading corrected; effective date corrected in part 60614
900.18 (a)(1) corrected 60614
1000 Authority citation revised 51521
1002 Authority citation revised 51521
1003 Authority citation revised 51521
1004 Authority citation revised 51521
1005 Authority citation revised 51521
1010 Authority citation revised 51521
1020 Authority citation revised 51521
1030 Authority citation revised 51521
1040 Authority citation revised 51521
1050 Authority citation revised 51521
1210 Authority citation revised 51521
1220 Authority citation revised 51521
1230 Authority citation revised 51521
1240 Authority citation revised 51521
1250 Authority citation revised 51521
1270 Revised 40444
Authority citation revised 51521

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1300.02 (b)(28)(i)(D)(*1*), (*2*) and (29) correctly revised 15392
1308 Controlled substance schedules 29288, 29289, 51774, 51776
1308.14 (f)(2) added 51371
(e)(10) redesignated as (e)(11); new (e)(10) added 6864
1309 Waiver 53958
1309.29 Regulation at 62 FR 5916 confirmed 52256
Revised 53960
1309.43 Regulation at 62 FR 5916 confirmed 52256
1309.44 Regulation at 62 FR 5916 confirmed 52256
1309.62 Regulation at 62 FR 5916 confirmed 52256
1310.01 Regulation at 62 FR 5917 confirmed 52256
1310.02 Regulation at 62 FR 5917 confirmed 52256
1310.04 Regulation at 62 FR 5917 confirmed 52256
1310.09 Reinstated 15392
Revised; interim 27693
Regulation at 62 FR 27693 confirmed 52256
Existing text designated as (a); (b) added 53960
1313.02 Regulation at 62 FR 5917 confirmed 52256

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TITLE 21

Chapter III—Office of National Drug Control Policy (Parts 1400—1499)

1403.26 (a), (b) introductory text and (1) revised **45939, 45941**

Proposed Rules:

1—1299 (Ch. I) **24619, 33781, 36243**
50 ..... **40996**
101 ..... **28234, 29313, 36749, 52057, 61476, 67771, 67775**
..... 1078
111 ..... **30678, 44247, 48968**
120 ..... **45593**
161 ..... **29313, 52057**
170 ..... **18938**
184 ..... **18938**
186 ..... **18938**
200 ..... **49638, 64048**
201 ..... **33379, 43900, 51071, 61041, 67770**
..... 176, 7331
207 ..... **40765**
211 ..... **40489**
225 ..... **40765**
310 ..... **46223, 47532**
312 ..... **43900, 49946, 51071**
314 ..... **43900, 51071**
330 ..... **33379, 67770**
..... 7331
333 ..... **61710**
334 ..... **46223**
336 ..... **45767**
338 ..... **45767**
341 ..... **45767**
347 ..... **61710**
348 ..... **45767, 61710**
349 8888
358 ..... **33379, 67770**
..... 7331
501 ..... **29313, 52057**
510 ..... **40765**
511 ..... **25152**
514 ..... **25152, 25153, 40765, 59830**
515 ..... **40765**
558 ..... **40765**
570 ..... **18938**
589 ..... **18728**
600 ..... **49642, 59386**
601 ..... **43900, 51071**
..... 5338
606 ..... **49642, 59386**
801 ..... **67011**
803 ..... **67011**
804 ..... **67011**
806 ..... **67011**
807 ..... **67011**
808 ..... **33783, 65384, 66179**
810 ..... **67011**
812 ..... **31023**
814 ..... **34680**
820 ..... **67011**
821 ..... **67011**
868 ..... **33044**
872 ..... **38231**
876 ..... **65770**
878 ..... **31771**
884 ..... **33044, 46682**
890 ..... **33044**
917 ..... **63684**
926 ..... **63685**
1002 ..... **67011**
1020 ..... **65235, 67011**
1240 ..... **54398**
1300 ..... **52294, 53688**
1308 ..... **24620, 27214, 28923, 37004, 64526**
1309 ..... **52294, 53688**
1310 ..... **51072, 52294, 53059, 53688**

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

22 Authority citation revised **42666**
Authority citation revised 5100
22.1 Amended **42666**
Revised 5100
22.8 Removed 5103
40 Authority citation revised **67562**
40.11 (b) revised; (c) added; interim **67567**
40.22 (b) removed; (c) through (f) redesignated as (b) through (e); interim **67567**
40.41 Revised; interim **67562**
40.52 Amended; interim **67567**
40.61 Revised; interim **67567**
40.62 Revised; interim **67567**
40.66 Revised; interim **67567**
40.67 Added; interim **67568**
40.68 Added; interim 671
40.91 Revised; interim **67568**
40.92 Revised; interim **67568**
40.93 Revised; interim **67568**
40.104 Revised; interim **67568**
40.105 Revised; interim **67568**
41 Authority citation revised **48154**
41.2 (l) revised; interim **51031**
41.51 Revised **48154**
41.101 (a)(1)(ii) and (2) amended; (b) redesignated as (e);

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(a)(1)(iii), new (b), (c) and (d) added; interim 671
41.107 Regulation at 59 FR 25325 confirmed **24334**
41.112 (b) revised **24332**
41.113 (c), (h) and (k) removed; (d) through (g), (i) and (j) redesignated as (c) through (h); (a), (b) and new (c) through new (f) revised **24333**
41.121 (a) amended; interim 671
42.32 (d)(1)(ii) revised 4394
42.72 (a) and (e)(4) amended; (e)(1) revised **27694**
(e)(4) corrected **32196**
42.74 (a) and (b) revised 4393
51 Authority citation revised **62695**
Authority citation revised 5103
51.4 (b) revised 7285
51.61 Revised 5103
51.62 Removed; new 51.62 redesignated from 51.63 5103
51.63 Redesignated as 51.62; new 51.63 redesignated from 51.64; (a) and (f) amended 5103
51.64 Redesignated as 51.63; new 51.64 redesignated from 51.65 5103
51.65 Redesignated as 51.64; new 51.65 redesignated from 51.66 5103
51.66 Redesignated as 51.65; new 51.66 redesignated from 51.67; (a) and (c) revised 5103
51.67 Redesignated as 51.66 5103
Correctly redesignated as 51.66 6479
51.70 (a)(7) amended; (a)(8) added **62695**
51.80 Revised **62695**
53 Heading and authority citation revised 5103
72.14 Revised 6480
72.52 Revised 6480
72.53 (a) revised 6480
92.43 Amended 6480
92.44 Removed 6480
92.48 Removed 6480
120 Authority citation revised **67275**
120.7 (a) revised **67275**
120.9 Revised **67275**
122.3 (a) revised **27497**
123 Authority citation revised **67275**
123.15 Revised **67275**
124.4 Revised **67276**
124.11 Revised **67276**
126 Authority citation revised **67276**
126.1 (a) amended **37133**
126.10 (b) revised **67276**
127 Authority citation revised **67276**
127.10 (a) revised **67276**
129 Added **67276**
135.26 (a), (b) introductory text and (1) revised **45939, 45941**
145.26 (a), (b) and (c) revised **45939, 45941**
171 Authority citation revised **48758**
171.12 Revised; interim **48758**

Chapter II—Agency for International Development, International Development Cooperation Agency (Parts 200—299)

201 Nomenclature change **38027**
201.11 (b), (e) and (j) revised **38027**
201.12 (d) revised; (e) added **38027**
201.13 (a), (b) and (c) revised **38027**
201.14 Amended **38027**
226.26 (a), (b) and (c) revised **45939, 45941**

Chapter IV—International Joint Commission, United States and Canada (Parts 400—499)

430 Added **39935**

Chapter V—United States Information Agency (Parts 500—599)

514 Policy statement **19925**
514.31 (c) through (j) revised; interim **34633**
Regulation at 62 FR 34633 confirmed **46876**
514.44 (g) revised; (h) removed **19222**
(c) revised **28803**
518.26 (a), (b) and (c) revised **45939, 45941**

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

606 Revised **27948**

Proposed Rules:

22 ..... **32558, 63478**
51 ..... **63478**
53 ..... **63478**
201 ..... **42712**

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TITLE 22 *Proposed Rules:—Con.*

228 3506

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

140.904 (b)(1) revised; interim **45328**
140.922 (b) revised; interim **45328**
470 Authority citation revised **33355**
470.101—470.115 (Subpart A) Revised; interim **33355**
625 Revised; eff. 5-1-97 ..... **15397**
646 Authority citation revised **45328**
646.200 (c) revised; (f) removed; interim **45328**
646.202 Removed; interim **45328**
646.204 Amended; interim **45328**
646.208 Revised; interim **45328**
646.212 (b) revised; interim **45328**
646.214 (a)(2) revised; interim **45328**
646.216 (d)(3)(ii) amended; (e)(1) revised; interim **45328**
646.200—646.220 (Subpart B) Appendix amended; interim **45328**
655.601 (a) revised 8351
657 Authority citation revised; OMB number **62261**
658 Appendix A amended **30758**
772.13 Regulation at 61 FR 45321 confirmed **42904**

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1200 Revised; interim **34402**
1200.4 Revised; interim **34405**
1205.5 Removed; interim **34405**
1260 Removed 3812

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1327 Authority citation revised **63657**
1327.3 (a) through (w) redesignated as (b) through (x); new (a) added **63657**
1327.5 (c)(2) introductory text amended **63657**
1327.6 (f) and (g) redesignated as (g) and (h); new (f) added; interim **27195**
(e)(1) introductory text revised **63657**
Regulation at 62 FR 27195 confirmed; (f)(2) amended 153

Proposed Rules:

655 ..... **54598, 64324**
668 8377
777 ..... **33047**

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.107 Added; interim **61617**
5.410 (d)(1)(i) amended **27125**
5.609 Regulation at 61 FR 54502 confirmed **24337**
5.617 (b)(3) revised **27125**
24.110 (a)(3)(ii) revised **20081**
25.2 Amended **20081**
25.3 Amended **20081**
25.9 (x) and (cc) revised **20081**
30.35 (a)(4) correctly revised 9742
44 Removed; interim **61617**
45 Removed; interim **61617**
50.19 (a), (b)(14), (17) and (c) revised; (b) heading and (24) added **15802**
55.12 (b)(3) revised; (b)(4) added **15802**
81.2 Regulation at 62 FR 63947 confirmed; (b) amended **28977**
81.91—81.99 (Subpart H) Regulation at 62 FR 63948 confirmed **28977**
81.92 (a) revised **28977**
81.93 (c)(1) amended **28977**
81.94 (a) and (b)(2) amended **28977**
81.96 (d) amended **28977**
84.26 (a), (b) and (c) revised; interim **61617**
84.82 (e)(1), (2) and (3) revised; interim **61617**
85.26 (a), (b) introductory text and (1) revised; interim **61617**
92.50 (d)(1) revised **28928**
92.202 (b) revised **28928**

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92.203 (a)(1) introductory text, (b)(1) and (c) revised **28928**
92.205 (d) amended **28928**
92.206 (a)(5) added **28928**
92.209 (c)(2) and (j)(5) revised **28928**
92.214 (a)(6) revised **28929**
92.219 (b)(1)(i) and (2)(iv) revised **28929**
92.220 (a)(10) amended; (b)(4) revised **28929**
(a)(1)(iii)(B)(*2*) and (*3*) revised; (a)(1)(iii)(B)(*4*) added **44840**
92.250 (a) revised **28929**
92.251 (a) revised **28929**
92.252 (h) amended **28929**
(i)(2) amended **44840**
92.300 (a)(1) amended; (f) heading revised **28930**
92.350 Revised **28930**
92.353 (c)(2)(i)(C)(*1*)(*ii*) revised **28930**
92.355 Revised **28930**
92.356 (f)(1) revised **28930**
92.358 Added **28930**
92.453 Revised **44840**
92.500 (d) revised **28930**
92.505 (c) added **28930**
92.507 Revised **44840**
92.552 (b) revised **44840**

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.140 Added **66432**
100.141 Added **66432**
100.142 Added **66432**
100.143 Added **66432**
100.144 Added **66432**
100.145 Added **66432**
100.146 Added **66433**
100.147 Added **66433**
100.148 Added **66433**
103.1 (c) amended **66433**
103.215 Regulation at 61 FR 41482 confirmed **15797**
(b) amended **66433**
103.230 (a)(1) amended **66433**
103.405 (b)(2) and (3) amended **66433**

Chapter II—Office of Assistant Secretary for Housing–Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200.10 Revised **20081**
200.926 (a)(2)(i) revised **30225**
200.926d (c)(4)(vii) revised **30225**
200.929 (b)(2) revised 5423
200.931 Revised 5423
200.935 (d)(4)(ii) revised 5423
200.938 Removed 5423
200.939 Removed 5423
200.941 Removed 5423
200.943 Revised 5423
200.952 Added 5424
200.954 Added 5424
200.955 Added 5424
201 Authority citation revised **65181**
201.10 (g) amended **20082**
201.20 (a)(3) added **20082**
(a)(3) removed; interim **65181**
201.26 (a)(1)(iii) revised **20082**
(a)(1) revised; interim **65181**
202 Revised **20082**
202.2 Amended; interim **65181**
202.3 (c)(2)(v)(A) revised **30225**
(c)(2)(ii)(A) and (v)(C) revised; (c)(2)(iii) amended; interim **65181**
202.5 (i) amended; (n)(1)(i) revised; interim **65181**
(i) corrected 9742
202.7 (b)(4)(i)(A) revised; interim **65182**
(a) corrected 9742
202.8 (b)(9) revised **30225**
202.9 (a) corrected 9742
203 Authority citation revised **65182**
203.1—203.7 Undesignated center heading revised **30225**
203.1 Revised **30225**
203.3 (d)(1)(iii) revised **20088**
(d)(2)(iv) added; interim **65182**
203.4 Added **30226**
(d) amended; interim **65182**
203.5 (c) amended **20088**
(b) revised **30226**
203.6 Added **30226**
203.7 Introductory text revised **30226**
203.43i (d) introductory text, (g) introductory text and (2) revised **30226**
203.50 (h) revised **30226**
203.249 Revised **30226**

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203.255 (a) revised; (f) added (OMB number pending) **30227**
203.257 Revised **30227**
203.341 Added **60129**
203.342 Regulation at 61 FR 35017 confirmed; revised **60129**
203.350 Regulations at 61 FR 35017 and 35018 confirmed **60129**
203.355 Regulation at 61 FR 35018 confirmed; (a), (c), (g) introductory text and (h) revised; (i) added **60129**
203.370 Regulation at 61 FR 35018 confirmed **60129**
203.371 Regulation at 61 FR 35018 confirmed **60129**
(b)(1) and (5) revised **60130**
203.402 Regulation at 61 FR 35018 confirmed **60129**
(f) revised **60130**
203.402a Regulation at 61 FR 35019 confirmed **60129**
203.404 Regulation at 61 FR 35019 confirmed **60129**
203.412 Regulation at 61 FR 35019 confirmed **60129**
203.414 Regulation at 61 FR 35019 confirmed **60129**
(a) revised **60130**
203.415 (b) revised **30227**
203.438 Regulation at 61 FR 35019 confirmed **60129**
203.471 Regulation at 61 FR 35019 confirmed **60129**
203.473 Regulation at 61 FR 35019 confirmed **60129**
203.499 Revised **30227**
203.500 Regulation at 61 FR 35019 confirmed **60129**
203.501 Regulation at 61 FR 35019 confirmed **60129**
203.552 Regulation at 61 FR 35019 confirmed **60129**
(a) introductory text revised **60130**
203.604 Regulation at 61 FR 35019 confirmed **60129**
203.605 Regulation at 61 FR 35019 confirmed **60129**
203.606 Regulation at 61 FR 35020 confirmed **60129**
203.614 Regulation at 61 FR 35020 confirmed **60129**
203.616 Regulation at 61 FR 35020 confirmed **60129**
Revised **60130**
203.640 Regulation at 61 FR 35020 confirmed **60129**
203.641 Regulation at 61 FR 35020 confirmed **60129**
203.642 Regulation at 61 FR 35020 confirmed **60129**
203.643 Regulation at 61 FR 35020 confirmed **60129**
203.644 Regulation at 61 FR 35020 confirmed **60129**
203.645 Regulation at 61 FR 35020 confirmed **60129**
203.646 Regulation at 61 FR 35020 confirmed **60129**
203.647 Regulation at 61 FR 35020 confirmed **60129**
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203.654 Regulation at 61 FR 35020 confirmed **60129**
203.656 Regulation at 61 FR 35020 confirmed **60129**
203.658 Regulation at 61 FR 35020 confirmed **60129**
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203.660 Regulation at 61 FR 35020 confirmed **60129**
203.664 Regulation at 61 FR 35020 confirmed **60129**
203.665 Regulation at 61 FR 35020 confirmed **60129**
203.666 Regulation at 61 FR 35020 confirmed **60129**
206.3 Amended **30227**
206.7 Revised **30227**
206.9 (b) revised **20088**
206.15 Revised **30227**
206.129 Regulation at 61 FR 35020 confirmed **60129**
207.252e Added 1303
241.1040 Revised **20088**
251.6 Added 1303
252.6 Added 1303
255 Authority citation revised 1303
255.6 Added 1303

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266.100 (a) amended **20088**
266.610 Added 1303

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

Chapter V Notice 47344
570 Authority citation revised 62914
Technical correction 64634
570.416 Added 17493
(b) amended; interim 9683
570.420—570.432 (Subpart F) Revised 62914
572.5 Amended 34145
572.100 (a)(2) amended 34145
572.135 (d) revised 34145
572.210 Revised 34145
572.230 Revised 34145
572.300 Revised 34145
572.305 Removed 34145
572.310 Removed 34145
572.320 Removed 34145
572.420 (a)(1) amended 34145
573.3 (i) revised 24574
585.100—585.107 (Subpart B) Removed 31955
Regulation at 62 FR 31955 eff. date corrected to 7-11-97 33156
586 Revised 37479

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

888 Fair market rent schedules 50724, 64521

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

941.103 Amended 27125
950 Authority citation revised 27126
950.102 Regulation at 61 FR 46346 confirmed 24337
950.660 (a)(3) revised 27126
954 Regulation at 61 FR 32295 confirmed 58906
968.102 (b) revised 27126
968.112 (d)(3)(ii) amended 27126
968.335 (a)(3) revised 27126
971 Added; interim 49576

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

3280 Policy statement 24337
Interpretation 8339
3280.305 (c)(3)(i) table and (4) table amended 54547
3282 Policy statement 24337
3500 Authority citation revised 3236
3500.2 Amended 20088
3500.17 (a), (b) and (i)(1) introductory text amended; (c)(2), (3), (i)(1)(iv) and (k) revised; (f)(2)(iii) added 3236
3500 Appendixes A and C amended 3237

Proposed Rules:

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5 ..... 55324, 62928
81 68060
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180 66488
200 27486
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202 36194
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TITLE 24 *Proposed Rules:—Con.*

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TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

12 Revised 15611
46 Added 44081
142 Revised 18516
151 Determination 19927
181 Added 55331
247 Added; interim 50868

Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.801—700.843 (Subpart R) Revised 35078

Proposed Rules:

11 61057
41 15446
181 27000
248 55767
291 3289
502 46227
514 65775
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TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Authority citation amended 25506, 37492, 38028, 41273, 50503, 50505, 53416, 53500, 68166, 68175
Technical correction 40270
Authority citation amended ... 13, 1056, 1742, 1918, 4170
Technical correction 3186
1.42–15 Added 50505
1.42–16 Added 50503
1.42–16T Removed 50503
1.61–4 Amended 44546
1.61–12 (c) revised 68175
1.103–8 (a)(5) revised 25506
1.103–8T Removed 25506
1.125–4T Added; eff. 12–31–98 60166
(c)(3)(i), (ii), Examples 5, 6 and 9 corrected 8528
1.141–0 Amended 3259
1.141–2 (d)(3)(ii)(B) amended 3260
1.141–7 Removed 3260
1.141–8 Removed 3260
1.141–7T Added 3260
1.141–8T Added 3264
1.141–15 Revised 3265
1.141–15T Added 3266
1.142–4 Added 25506
1.142(f)(4)–1T Added 3266
1.148–0 (c) amended 25506
1.148–1 (b) amended; (c)(4)(ii)(A) revised; (e) added 25507
1.148–1T Redesignated as 1.148–1A 25507
1.148–2 (b)(2)(ii) revised 25507
1.148–2T Redesignated as 1.148–2A 25507
1.148–3 (h)(3) amended 25507
1.148–3T Redesignated as 1.148–3A 25507
1.148–4 (h)(2)(vi) and (vii) removed; (h)(2)(ii) through (v), (viii) and (ix) redesignated as (h)(2)(iii) through (viii); (b)(5), (g), (h)(1), (2) introductory text, (i), new (iv), new (v), new (vi), new (viii), (3), (4) and (5) revised; new (h)(2)(ii) and (6) added 25507
1.148–4T Redesignated as 1.148–4A 25507
1.148–5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii), (e)(2)(ii)(B) and (iii) revised 25511
1.148–5T Redesignated as 1.148–5A 25507
1.148–6 (d)(3)(iii)(C) revised 25512
1.148–6T Redesignated as 1.148–6A 25507
1.148–9 (c)(2)(ii)(B) and (h)(4)(vi) revised 25512
1.148–9T Redesignated as 1.148–9A 25507
1.148–10 (b)(2), (c)(2)(viii), (ix) and (e) revised; (c)(2)(x) added 25512
1.148–10T Redesignated as 1.148–10A 25507

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1.148–11 (a), (b)(1), (c)(1) and (g) revised; (b)(3) added; (h) and (i) removed **25512**
1.148–11T Redesignated as 1.148–11A **25507**
1.149(d)–1 (f)(3) revised; (g)(3) added **25513**
1.149(d)–1T Redesignated as 1.149(d)–1A **25513**
1.150–1 (a)(2), (c)(1), (4)(iii) revised; (c)(6) added **25513**
1.150–1T Redesignated as 1.150–1A **25513**
1.150–5T Added 3266
1.148–1A—1.150–1A Undesignated center heading added **25507**
1.148–1A Redesignated from 1.148–1T; heading amended **25507**
1.148–2A Redesignated from 1.148–2T; heading amended **25507**
1.148–3A Redesignated from 1.148–3T; heading amended **25507**
1.148–4A Redesignated from 1.148–4T; heading amended **25507**
1.148–5A Redesignated from 1.148–5T; heading amended **25507**
1.148–6A Redesignated from 1.148–6T; heading amended **25507**
1.148–9A Redesignated from 1.148–9T; heading amended **25507**
1.148–10A Redesignated from 1.148–10T; heading amended **25507**
1.148–11A Redesignated from 1.148–11T; heading amended **25507**
(i) revised **25513**
1.149(d)–1A Redesignated from 1.149(d)–1T; heading amended **25513**
1.150–1A Redesignated from 1.150–1T; heading amended **25513**
1.162–12 (a) amended **44546**
1.163–5 (c)(2)(i)(B)(*5*) amended; eff. 1–1–99 ..... **53416**
1.163–8T (c)(2)(e) redesignated as (c)(3) **40270**
1.163–13 Added **68176**
1.165–12 (a), (c)(1)(i), (2)(iv) and (3)(iv) amended; (c)(1)(iii) removed; (c)(1)(iv) and (v) redesignated as (c)(1)(iii) and (iv); (c)(1)(ii) and new (iii) revised; eff. 1–1–99 ..... **53416**
Corrected **55849**
1.166–3 (a)(3) added 4396
Regulation at 63 FR 4396 eff. date corrected to 1–29–98 5834
1.166–3T Removed 4396
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1.171–1 Revised **68177**
1.171–2 Revised **68178**
1.171–3 Revised **68180**
1.171–4 Revised **68182**
1.171–5 Added **68182**
1.249–1 (c) revised; (d)(2) amended **68182**
1.263A–0 Amended **42054**
1.263A–0T Added **44546**
1.263A–1 (a)(2)(i) amended **42054**
(b)(3) and (4) amended **44546**
1.263A–4T Revised **44546**
1.263A–7 Added **42054**
1.263A–7T Removed **42062**
1.263A–15 Amended **42062**
1.280B–1 Added **67726**
1.302–2 (c) introductory text amended **38028**
1.338–2 (c)(3)(ii) revised; (c)(3)(iv)(B) amended 4178
1.354–1 (d) amended; (d) Example 4 added; (e) revised 410
1.355–1 (b) amended; (c) added 410
1.356–3 (b) redesignated as (c); new (b) added; new (c) amended 410
1.356–6T Added 411
1.368–1 (d)(1) removed; (d)(2), (3) and (4) redesignated as (d)(1), (2) and (3); (a), (b), new (d)(1), (5) introductory text and Examples 1 through 5 amended; new (d)(4) and (5) Examples 6 through 12 added 4178
1.368–1T Added 4185
1.368–2 (j)(3)(ii) revised; (j)(3)(iv) and (k) added; (j)(4) removed; (j)(5), (6) and (7) redesignated as (j)(4), (5) and (6); (a), (f), (j)(1), (3)(iii) and new (6) Examples 1 through 9 amended 4182
1.401(b)–1 (c), (d) and (e) redesignated as (d), (e) and (f); new (d)(2) undesignated text designated as (d)(3) and (4); (a), (b)(1), new (d)(1)(ii), (iii), (2) introductory text, (3), (4),

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(e)(1)(ii)(C), (2)(ii)(C), (3) introductory text, (4), (5) introductory text and (iii) amended **41273**
(b)(2)(iii) removed; (b)(3), (c) and (d)(1)(iv) added **41274**
1.401(b)–1T Added **41274**
1.446–1 (e)(3)(i) amended **26741**
(e)(3)(i) amended; (e)(3)(iii) revised **68169**
1.446–1T Added **26741**
(e)(3)(i)(B) corrected **28631**
Removed **68169**
1.453–11 Added 4170
1.460–0 Amended 1918
1.460–6T Added 1919
1.468A–2 (f)(3) redesignated as (f)(3)(i); (f)(3)(ii) added 2894
1.483A–3 (a)(4), (i)(1)(ii)(A), (iii)(A)(3) and (B) revised; (e)(5) and (i)(1)(iii)(C) added 2894
1.468A–8 (b)(12) added 2894
1.471–6 (c), (d) and (f) amended **44551**
1.501(c)(5)–1 (b) redesignated as (c); new (b) added **40449**
1.704–1 (b)(2)(iv)(*d*)(*1*), (*l*) and (5) Example 13 amended **25499**
1.704–2 (m) Example 1 reinstated; CFR correction **34634**
1.704–3 (a)(2) and (3)(i) amended **25500**
(a)(11) added; (f) revised **44215**
1.704–4 (a)(4)(ii) and (c)(3) revised **25500**
1.708–1 (b)(1)(ii) amended; (b)(1)(iv) revised; (b)(1)(v) added **25500**
1.737–2 (a) revised; (d)(1) amended **25501**
1.743–1 (d) added **25501**
1.761–1 (e) added **25501**
1.861–2 (a)(1) amended; (a)(7) added; (e) revised **53500**
1.861–3 (a)(1) and (d) amended; (a)(6) added **53501**
1.864–5 (b)(2)(ii) redesignated as (b)(2)(iii); new (b)(2)(ii) added **53501**
1.871–6 Revised; eff. 1–1–99 ..... **53416**
1.871–7 (b) amended; eff. 1–1–99 ..... **53416**
(b) redesignated as (b)(1); (b)(1) heading and (2) added; (f) amended **53501**
1.871–14 Added; eff. 1–1–99 ..... **53416**
1.881–2 (b) redesignated as (b)(1); (b)(1) heading and (2) added; (e) amended **53501**
1.894–1 (c) revised; (d) added **53502**
1.894–1T Added **35676**
(d)(1), (6) Example 11 corrected **46877**
1.905–2 (a)(2) amended 3813
1.1001–4 Added 4396
Regulation at 63 FR 4396 eff. date corrected to 1–29–98 5834
1.1001–4T Removed 4396
Regulation at 63 FR 4396 eff. date corrected to 1–29–98 5834
1.1016–5 (b) revised **68183**
1.1016–9 Removed **68183**
1.1059(e)–1 Added **38028**
1.1202–0 Added **68166**
1.1202–2 Added **68166**
1.1245–1 (e)(2) revised **44216**
1.1271–0 Amended 1057
1.1275–1 (b)(2) redesignated as (b)(3); new (b)(2) added **68183**
(d) amended; (j) added 1057
1.1291–0 Amended 13
1.1291–0T Amended 13
1.1291–1T Added 13
1.1291–9 (i)(1) removed 13
1.1293–0 Added 13
1.1293–1T Added 14
1.1294–0 Heading and introductory text added 13
1.1295–0 Added 14
1.1295–1T Added 15
1.1295–3T Added 19
1.1297–0 Heading and introductory text added 13
1.1297–3T (c) added 24
1.1396–1 Undesignated center heading and section added **67727**
1.1397E–1T Added 673
(e)(1) corrected 8528
1.1441–0 Added; eff. 1–1–99 ..... **53421**
1.1441–1 Revised; eff. 1–1–99 ..... **53424**
1.1441–2 Revised; eff. 1–1–99 ..... **53444**
1.1441–3 Heading, (a) through (f) and (h) revised; (g), (i) and authority citation removed; (j) redesignated as (g); new (g)(1) and (2) amended; eff. 1–1–99 ..... **53424**
1.1441–4 Heading, (a), (b)(1)(i), (ii), (2)(ii) heading, introductory text, (A), (v) and (c) through (g) revised; (b)(1)(vi) (2)(ii)(B), (C), (K) and (6)

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added; (b)(2)(ii)(B) through (H) redesignated as (b)(2)(ii)(D) through (J); (b)(1)(iii), (iv), (v), (2)(i), new (b)(2)(ii)(D) through (J), (iii) and (3) amended; (b)(2)(iv)(C) concluding text, (h), (i), authority citation removed; OMB number; eff. 1–1–99 ..... **53450**

1.1441–4T Removed; eff. 1–1–99 ..... **53452**

1.1441–5 Revised; eff. 1–1–99 ..... **53452**

1.1441–6 Revised; eff. 1–1–99 ..... **53458**

1.1441–7 (a), (b) and (c) revised; (d) redesignated as (f); new (d), (e) and (g) added; new (f)(1), (2)(i) and (3) amended; authority citation removed; eff. 1–1–99 ..... **53462**

1.1441–8T Redesignated as 1.1441–8; eff. 1–1–99 ..... **53458**

1.1441–8 Redesignated from 1.1441–8T; heading and (b) revised; (c) through (f) added; eff. 1–1–99 ..... **53458**

1.1441–9 Added; eff. 1–1–99 ..... **53465**

1.1442–1 Revised; eff. 1–1–99 ..... **53466**

1.1442–2 Revised; eff. 1–1–99 ..... **53466**

1.1442–3 Added; eff. 1–1–99 ..... **53466**

1.1443–1 Revised; eff. 1–1–99 ..... **53466**

1.1445–5 (b)(1) amended; eff. 1–1–99 ..... **53467**

1.1461–1 Revised; eff. 1–1–99 ..... **53467**

1.1461–2 Revised; eff. 1–1–99 ..... **53470**

1.1461–3 Removed; eff. 1–1–99 ..... **53471**

1.1461–4 Removed; eff. 1–1–99 ..... **53471**

1.1462–1 Revised; eff. 1–1–99 ..... **53471**

1.1463–1 Revised; eff. 1–1–99 ..... **53471**

1.1502–3 (d) redesignated as (d)(1); (c)(3), (d)(2) and (e)(3) added 1742

1.1502–3T Added 1742

1.1502–4 (f)(3) and (g)(3) added 1744

1.1502–4T Added 1744

1.1502–5 (b)(5) corrected **23657**

1.1502–9 (a) amended 1744

1.1502–9T Added 1745

1.1502–21T (c)(1)(iii) Example 5 amended 1745

1.1502–23T (b) and (c) redesignated as (c) and (d); new (b) added 1745

1.1502–55T Added 1745

1.6013–2 (b)(1) amended **39117**

1.6038–2 (j)(2)(ii) redesignated as (j)(2)(iii); new (j)(2)(ii) added; eff. 1–1–99 ..... **53385**

1.6041–1 (a)(1), (d)(1) introductory text and (3) revised; (a)(2), (d)(2) heading, (4) heading and (5) added; eff. 1–1–99 ..... **53471**

1.6041–2 (c) revised **53472**

1.6041–3 (c) and (l) removed; (d), (e), (f), (h), (i), (j) and (o) amended; (d) through (k) and (m) through (p) redesignated as (c) through (n); introductory text, (a), (b), new (f) and new (j) revised; new (o), new (p) and (q) added; eff. 1–1–99 ..... **53472**

1.6041–4 Revised; eff. 1–1–99 ..... **53473**

1.6041–7 Heading revised; (a) amended; eff. 1–1–99 ..... **53473**

1.6041–8 Added; eff. 1–1–99 ..... **53474**

1.6041A–1 Added; eff. 1–1–99 ..... **53474**

1.6042–2 Heading, (a)(1)(i), (ii), (d) and (e) heading; (a)(1) introductory text added; (a)(1)(iii), (4) and (e) amended; eff. 1–1–99 ..... **53474**

1.6042–3 (a) introductory text, (2) and (b) revised; (a)(2) concluding text and authority citation removed; (a)(3) added; eff. 1–1–99 ..... **53475**

1.6042–4 (d)(2)(i)(F) and (f) revised; eff. 1–1–99 ..... **53476**

1.6043–2 (a) amended; eff. 1–1–99 ..... **53476**

1.6044–2 Heading, (e) and (f) heading revised; (a)(1) and (f) amended; eff. 1–1–99 ..... **53476**

1.6044–3 (c) revised; eff. 1–1–99 ..... **53476**

1.6044–5 (c) revised; eff. 1–1–99 ..... **53476**

1.6045–1 (a) heading, introductory text, (1), (d)(4), (6), (g), (j), (k) and (l) revised; (a)(12) and authority citation removed; (a)(13), (b) Examples (1) through (8), (c)(5)(i)(*a*) through (c)(5)(i)(*f*), (ii), (ii) Examples (1) through (4), (6)(i)(*a*), (*b*), (ii)(*a*), (*b*), and and (h)(2) Examples (1) and (2) redesignated as (a)(12) and (b) Examples 1 through 8, (c)(5)(1)(A) through (F), (iii), (iii) Examples 1 through 4, (6)(i)(A), (B), (ii)(A) and (B) and (h)(2) Examples 1 and 2; (a)(13) and new (c)(5)(ii) added; (b) new Example 1 and

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(f)(2)(3) introductory text amended; eff. 1–1–99 53476
1.6045–1T Removed; eff. 1–1–99 53480
1.6045–2 (b)(2)(i)(A) through (F) amended; (b)(2)(i)(G) and (g)(4) added; (g)(2) revised; eff. 1–1–99 53480
1.6045–2T Removed; eff. 1–1–99 53480
1.6046–1 (g) amended; eff. 1–1–99 53385
1.6049–4 (a), (b)(1), (3), (c)(1), (d)(3) and (7) heading revised; (b)(2) introductory text, (iv), (4), (5)(i), (c)(2)(i), (ii) concluding text, (d)(2), (7), (8), (9)(ii) introductory text, (e)(4), (5)(iv), (f)(4)(i) and (ii) amended; (g)(3) added; eff. 1–1–99 53480
1.6049–5 (a)(6) amended; (b) revised; (c) redesignated as (f); new (c), (d), (e) and (g) added; eff. 1–1–99 53483
1.6049–6 (d) amended; (e)(3) revised; eff. 1–1–99 53491
1.6049–7 (c)(4) revised; eff. 1–1–99 53491
1.6049–8 (a) amended; eff. 1–1–99 53491
1.6050A–1 (a) introductory text, concluding text, (b) and (c)(1) amended; (d) added; eff. 1–1–99 53492
1.6050H–1 (d)(2)(ii)(A) and (B) amended; eff. 1–1–99 53492
1.6050N–1 Heading, (c) and (d) revised; (e) added; eff. 1–1–99 53492
1.6071–1 (c)(7), (8), (11), (13) and (15) revised; eff. 1–1–99 53492
1.6091–1 (b)(15) revised; eff. 1–1–99 53493
1.6302–1 (b) heading revised; (b) redesignated as (b)(1); new (b)(1) heading and (2) added; OMB number 37492
1.6302–1T Removed 37492
1.6302–2 (b) heading revised; (c) redesignated as (b)(6); new (c) added; OMB number 37492
1.6302–2T Removed 37492
1.6302–3 (c) revised 37492
1.6302–3T Removed 37492
1.6302–4 Added 37492
1.6302–4T Removed 37492
1.6662–6 (d)(2)(ii)(E) amended 46877
1.7701(l)–1 (a) designation, heading and (b) removed 53502
20.2041–3 (d)(6)(i) amended; (d)(6)(iii) added 68184
20.2046–1 Revised 68184
20.2056(d)–2 (a) amended; (b) revised; (c) added 68184
25 Authority citation amended 68185
25.2511–1 (c)(1) amended; (c)(3) added 68185
25.2514–3 (c)(5) amended; (c)(7) added 68185
25.2518–1 (a)(1) revised; (a)(2) Example amended; (a)(3) added 68185
25.2518–2 (c)(3) existing text, (5) Examples (9) and (10) redesignated as (c)(3)(i) and (5) Examples (12) and (11); new (c)(3)(i) and (5) Example 11 amended; (c)(3)(ii), (5) Examples (8), new (9), new (10), (13) and (14) added; (c)(4), (5) Examples (7) and new (12) revised; (5) Examples (8) removed 68185
26.2652–1 (a)(4) and (5) Examples 9 and 10 removed; (a)(5), (6) and Example 11 redesignated as (a)(4), (5) and Example 9 27498
25.2702–5 (a) redesignated as (a)(1); (a)(2) and (c)(9) added; (b)(1) amended; (c)(5)(ii)(C) revised 66988
25.2702–7 Amended 66989
31 Authority citation amended 33009, 37492, 53493
31.0–1 (a) amended 37492
31.0–3 (f) amended 37493
31.3401(a)(6)–1 Heading, revised; (e) amended; (f) added; authority citation removed; eff. 1–1–99 53493
31.3406–0 Table amended; eff. 1–1–99 53493
31.3406(d)–3 (a) and (b) amended; (c) revised; eff. 1–1–99 53493
31.3406(g)–1 (e) added; eff. 1–1–99 53493
31.3406(h)–2 (a)(3)(i) revised; (d) amended; (e)(1) designation, heading and (2) removed; eff. 1–1–99 53493
31.3406(j)–1 Added 33009

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31.6302–1 (h) redesignated as (i); new (h) added 37493
31.6302–1T Removed 37494
31.6302(c)–3 (b) heading and (c) revised; (d) added 37494
31.6302(c)–3T Removed 37494
31.6413(a)–3 (a)(1)(ii) and (iii) amended; (a)(1)(iv) added; (a)(2) and (b)(2) revised; eff. 1–1–99 53494
31.9999–0 Added; eff. 10–14–97 through 1–1–99 53494
35a Authority citation amended 33009, 53494
35a.3406–3 Removed 33009
35a.9999–0 Added; eff. 10–14–97 through 1–1–99 53494
35a.9999–0T Removed 53494
35a.9999–1 Removed; eff. 1–1–99 53494
35a.9999–2 Removed; eff. 1–1–99 53494
35a.9999–3 Removed; eff. 1–1–99 53494
35a.9999–3A Removed; eff. 1–1–99 53494
35a.9999–4T Removed; eff. 1–1–99 53494
35a.9999–5 Removed; eff. 1–1–99 53494
40 Authority citation amended 37494
40.0–1T Added 67569
40.6011(a)–1 (b)(2)(vi) amended 25
40.6011(a)–1T Added 67569
40.6302(c)–1 (d) redesignated as (d)(1); (d)(1) heading and (2) added 37494
40.6302(c)–1T Removed 37494
Added 67569
40.6302(c)–2T Added 67569
48 Authority citation amended 25
48.4081–1 (b) and (c)(1)(i) amended; (d) revised 25
48.4082–5T Redesignated as 48.4082–5 25
48.4082–5 Redesignated from 48.4082–5T; Heading and (b) amended; (f) and (g) redesignated as (g) and (h); new (f) added; new (h) revised 25
48.6416(b)(4)–1 Removed 26
48.6421–3 (d)(2) amended 26
48.6427–3 (d)(2) amended 26
48.6715–1 (a)(3) revised 26
48.6715–2T Removed 26
53.6071–1 (f) redesignated from 53.6071–1T(f) 52257
53.6071–1T (f) redesignated as 53.6071–1(f); removed 52257
54 Authority citation amended 16927, 66952
Technical correction 17004
Clarification 67688, 67689
54.9801–1T Added; interim 16927
(c) corrected 31691
(a) revised; interim 66952
54.9801–2T Added; interim 16928
Corrected 31691
Amended; interim 66952
54.9801–3T Added; interim 16929
(a)(1)(iii) and (b)(1)(ii) Example corrected 31691
54.9801–4T Added; interim 16930
(a)(2) and (b)(2)(iv) corrected 31669
(b)(2)(iv) Examples 6 and 7 and (v)(B) Example corrected 31691
(a)(2) revised; interim 66952
54.9801–5T Added; interim 16932
(a)(6) and (b)(2) corrected 31669
(a)(1)(i), (iv)(B)(*1*), (*2*) Example, (2)(iv) Examples 4 and 5 and (5)(i)(A) corrected 31691
(a)(5)(i)(B) Example, (6)(ii), (c)(2)(ii) and (d)(3) Example 3 corrected 31692
(a)(3)(vi) amended; interim 66952
54.9801–6T Added; interim 16937
(a)(3) corrected 31669
(b)(2), (4) introductory text and (6) corrected 31692
54.9802–1T Added; interim 16938
54.9804–1T Added; interim 16939
(a) and (b)(4) corrected 31670
Redesignated as 54.9831–1T; interim 66952
54.9806–1T Added; interim 16940
(a)(1), (2), (d), (e)(1)(i) and (iv) corrected 31692
Redesignated as 54.9833–1T; interim 66952
54.9812–1T Added; interim 66953
54.9831–1T Redesignated from 54.9804–1T; (b)(1) revised; interim 66952
54.9833–1T Redesignated from 54.9806–1T; (a)(1) revised; (a)(2) amended; interim 66952
301 Authority citation amended 53494
301.6109–1 (d)(2)(iii) added 25502
(b)(2)(iv), (v) and (c) revised; (b)(2)(vi) added; eff. 1–1–99 53494
(h)(2)(iii) added 62520

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301.6109–1T Added 62520
301.6109–3T Added 62520
301.6114–1 (a)(1)(ii), (b)(4)(ii) introductory text and (c)(1)(i) revised; (b)(4)(ii)(B)(7) amended; (b)(4)(ii)(C), (D) and (c)(6) added; eff. 1–1–99 53495
301.6114–1 (b)(4) introductory text, (5) introductory text, (6) and (7) amended; (c) introductory text, (1) through (6), (7) introductory text, (i), (ii) and (iii) redesignated as (c)(1) introductory text, (i) through (vi), (vii) introductory text, (A), (B) and (C); (c) concluding text removed; (b)(8) and new (c)(2) through (5) added; new (c)(1)(ii) and (d) revised 53385
301.6334–1 (a)(2) and (e) revised; (a)(3) and (11)(i) amended; (f) added 39117
301.6402–3 (e) revised; authority citation removed; eff. 1–1–99 53495
301.6601–1 (f)(3) and (4) revised; (f)(5) redesignated as (f)(6); new (f)(5) added 39117
301.6651–1 (a)(3) revised; (g) added 39117
301.6656–3 Added 39118
301.6721–0 Table amended; eff. 1–1–99 53496
301.6724–1 (g) revised; eff. 1–1–99 53496
301.7122–1 (e) revised 39118
301.7430–0 Amended 39118
301.7430–1 (b)(4) added 39118
301.7430–2 (b)(2), (c)(3) introductory text and (ii)(C) amended; (c)(3)(i)(B) revised 39118
301.7430–4 (b)(3)(i), (iii)(B), (C), (D) and (c)(2)(ii) amended; (b)(3)(ii) revised 39118
301.7430–5 (a) revised; (c)(3) added 39119
301.7430–6 Revised 39119
301.7623–1 (g) added 53231
301.7623–1T Added (temporary) 53231
301.7701(b)–0 Amended 53386
301.7701(b)–3 (b)(3) and (4) revised 53386
301.7701(b)–7 (c)(1) revised; (c)(2) added 53387
301.7701(b)–8 (b)(1) and (2) revised 53387
301.9100–0 Added 68169
301.9100–1 Revised 68169
301.9100–1T (h) amended 26741
Removed 68173
301.9100–2 Added 68170
301.9100–2T Removed 68173
301.9100–3 Added 68171
301.9100–3T (c)(2)(i) revised 26741
Removed 68173
502 Removed; eff. 1–1–99 53497
503 Removed; eff. 1–1–99 53497
509 Authority citation added 53497
509.1—509.10 (Subpart) Removed; eff. 1–1–99 53497
509.103 (e) removed; eff. 1–1–99 53497
509.117 (a) removed; eff. 1–1–99 53497
509.119 Removed; eff. 1–1–99 53497
509.122 Removed; eff. 1–1–99 53497
513 Authority citation revised 53497
513.1 Removed; eff. 1–1–99 53497
513.2 Revised; eff. 1–1–99 53497
Corrected 2723
513.3 Revised; eff. 1–1–99 53497
513.4 Revised; eff. 1–1–99 53498
513.5 Revised; eff. 1–1–99 53498
514 Authority citation added 53498
514.1—514.32 (Subpart) Authority citation removed 53498
514.1—514.10 Undesignated center heading removed; eff. 1–1–99 53498
514.20 Removed; eff. 1–1–99 53498
514.21 Removed; eff. 1–1–99 53498
514.22 (c) removed; eff. 1–1–99 53498
514.23 Removed; eff. 1–1–99 53498
514.24 Removed; eff. 1–1–99 53498
514.25 Removed; eff. 1–1–99 53498
514.26 Removed; eff. 1–1–99 53498
514.27 Removed; eff. 1–1–99 53498
514.28 Removed; eff. 1–1–99 53498
514.29 Removed; eff. 1–1–99 53498
514.30 Removed; eff. 1–1–99 53498
514.31 Removed; eff. 1–1–99 53498
514.32 Removed; eff. 1–1–99 53498
514.101—514.117 (Subpart) Undesignated center heading and sections removed; eff. 1–1–99 53498
516 Removed; eff. 1–1–99 53498
517 Removed; eff. 1–1–99 53498
520 Removed; eff. 1–1–99 53498
521 Authority citation revised 53498
521.1—521.8 (Subpart) Removed; eff. 1–1–99 53498

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521.103 (d) removed; eff. 1-1-99 ..... **53498**
601.204 (b) amended **26741, 68173**
601.204T Added **26741**
(b)(2) corrected **28631**
Removed **68173**
602.101 (c) table amended (OMB numbers) **25514, 35905, 53232, 53387, 53498, 62521, 66989, 68173, 68183**
(c) table amended (OMB numbers) 24, 1919, 2723, 2894

Proposed Rules:

1 ..... **17572, 18730, 19072, 19957, 19958, 23408, 26755, 27563, 30785, 32054, 35752, 35755, 37818, 37819, 38197, 40316, 41322, 43295, 44103, 44607, 49183, 52953, 53503, 53504, 53588, 55768, 60196, 64190, 66575, 67780** 35, 39, 42, 453, 707, 1803, 1932, 1933, 3057, 3296, 3677, 4204, 4205, 4408, 8154, 8528, 8890
25 ..... **19072, 44103, 53588**
31 ..... **67304** 3688
40 ..... **67589**
52 ..... **67013**
54 ..... **16977, 66967** 708
301 ..... **26755, 30785, 30796, 37819, 38197, 40316, 50533, 53274, 55768, 62538, 68241, 68242** 1086, 3186, 8890
601 ..... **26755**

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

4.28 (e) added **16490**
(e)(2) corrected **33747**
9.158 Added **55516**
24.148 Revised **29666**
24.278 Revised; OMB number **29666**
24.279 Revised; OMB number **29667**
47.52 (a) revised; (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added; new (f) amended **61234**
47.57 (c) amended **61235**
53.3 Regulation at 61 FR 37005 confirmed 5728
53.131 Regulation at 61 FR 37005 confirmed 5728
53.132 Regulation at 61 FR 37005 confirmed 5728
53.133 Regulation at 61 FR 37006 confirmed 5728
53.134 Regulation at 61 FR 37006 confirmed 5728
53.135 Regulation at 61 FR 37006 confirmed 5728
53.179 Regulation at 61 FR 37007 confirmed 5728
178.11 Amended **19444, 34638**
178.32 (e) added **34639**
178.124 (c) introductory text and (f) amended; (c)(1), (d) and (e) revised **19444**
178.125 (f) introductory text amended; (f)(1), (2) and (3) added **19445**
178.130 (a)(2) revised **19445**

Proposed Rules:

9 ..... **16502, 24622, 34027, 39984, 54398, 59029**
24 ..... **29681**
178 ..... **19446, 45364** 8379
179 8379

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TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.64–5 Added 63453
0.100—0.104 (Subart R) Appendix amended 38029, 52492, 52493
2.56 Heading, (a), (f) and (g) amended; (b)(1) and (i) added 51602
2.62 (a)(6) and (h)(5) amended 40270
16.99 (i) and (j) added 44083
17 Revised 36984
32.1—32.2 (Subpart A) Heading revised 37715
32.1 (a) amended 37715
32.2 (a) introductory text amended 37715
32.3—32.9 (Subpart B) Heading removed 37715
32.3—32.9 Undesignated center heading added 37715
32.10—32.15 (Subpart C) Heading removed 37715
32.10—32.15 Undesignated center heading added 37715
32.10 (a) introductory text amended 37715
32.16—32.18 (Subpart D) Heading removed 37715
32.16—32.18 Undesignated center heading added 37715
32.16 (a) amended 37715
32.19—32.22 (Subpart E) Heading removed 37715
32.19—32.22 Undesignated center heading added 37715
32.23—32.24 (Subpart F) Heading removed 37715
32.23—32.24 Undesignated center heading added 37715
32.25 (Subpart G) Heading removed 37716
32.25 Undesignated center heading added 37716
32.31—32.40 (Subpart B) Added 37716
32.35 (b) corrected 39120
50.22 Regulation at 61 FR 49260 confirmed 61629
58 Authority citation revised 51750
58.6 Added 51750
66.26 (a), (b) introductory text and (1) revised 45939, 45942
70.26 (a), (b) and (c) revised; (d) added 45939, 45942

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

523 Authority citation revised 50787
523.20 (Subpart C) Added; interim 50787
524 Authority citation revised 53690
524.31 (a)(3) revised; interim 53691
524.41 (e) revised 7604
540 Authority citation revised 65185
540.14 (b) and (c) revised 65186
540.18 (c) and (d) revised 65185
541.13 (a)(1) through (4) revised; Tables 3 through 6 amended 50789
541.14 (a) amended 50791
541.63 (a) amended 5218
541.65 (c) revised 5218
541.67 (e) revised 5218
544.42 (d) revised 39916
544.70—544.75 (Subpart H) Revised; interim 50793
548.12 Revised 44836
548.16 (c) amended 44836
548.20 (a) and (b) amended 44836
550.30—550.31 (Subpart D) Revised 45292
550.58 Introductory text, (a) heading and (c)(3) revised; (a)(1) and (2) redesignated as (a)(2) and (3); new (a)(1) added; interim 53691
551.10 Amended 5218
571.50 Revised 4357
571.51 (b) revised 4357
571.52 Revised 4357
571.53 Removed; new 571.53 redesignated from 571.54 and revised 4357
571.54 Redesignated as 571.53; new 571.54 redesignated from 571.55 and revised 4357
571.55 Redesignated as 571.54 4357
571.56 Removed 4357

Proposed Rules:

2 40316
16 45184
50 45184
79 45774
540 47894

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TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

24 Revised 6621
95.26 (a), (b) and (c) revised **45939, 45942**
97.26 (a), (b) introductory text and (1) revised **45939, 45942**

Chapter I—National Labor Relations Board (Parts 100—199)

101.39 (a) correctly designated **52381**
102.119 (Subpart L) Revised **58907**
102.156—102.167 (Subpart U) Revised **55164**
102.168—102.176 (Subpart V) Revised **55166**

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

520 Revised **64959**
521 Removed **64958**
522 Removed **64958**
523 Removed **64958**
527 Removed **64958**

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

697.1 (a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (2), (k)(1), (l)(1), (m)(1) and (n)(1) revised; (o) and (p) added **52945**
697.3 Revised **52946**

Chapter X—National Mediation Board (Parts 1200—1299)

1200 Removed 6645

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1404.17—1404.21 (Subpart D) Added **48949**
1470.26 (a), (b) introductory text and (1) revised **45939, 45942**

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1600.101 Regulation at 61 FR 7067 confirmed **36447**
1600.735–101—1600.735–106 (Subpart A) Regulation at 61 FR 7067 confirmed **36447**
1600.735–201—1600.735–206 (Subpart B) Regulation at 61 FR 7067 confirmed **36447**
1600.735–301 (Subpart C) Regulation at 61 FR 7067 confirmed **36447**
1600.735–401—1600.735–406 (Subpart D) Regulation at 61 FR 7067 confirmed **36447**
1600.735–501—1600.735.519 (Subpart E) Regulation at 61 FR 7067 confirmed **36447**
1610 Authority citation revised 1341
1610.4 (a) and (c) amended; interim 1341
1610.5 (c) amended; interim 1341
1610.8 Revised; interim 1341
1610.9 Heading revised; (a) introductory text and (b) revised; (c) added; interim 1341
1610.10 (a) introductory text amended; (b) introductory text revised; (c) redesignated as (c); new (c) added; interim 1342
1610.11 (a), (b) and (f) amended; (c) revised; interim 1342
1610.14 (a) amended; interim 1342
1610.15 (f) amended; interim 1342
1610.18 (a) amended; interim 1342
1610.21 Revised; interim 1342
1610.34 (a) amended; interim 1342
1614.204 (d)(1) corrected; CFR correction 63847
1650.101—1650.119 (Subpart A) Regulation at 61 FR 7067 confirmed **36447**

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1904.30 Added (OMB numbers) **44552**
1910.8 Table amended **42666, 65203**
Table corrected **43581**

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1910.11—1910.19 (Subpart B) Authority citation revised **40195**
1910.16 (a), (b) and (c)(4) revised **40195**
1910.94—1910.98 (Subpart G) Authority citation revised 1269
1910.94 (a)(1)(ii), (5)(i), (iii) introductory text, (iv), (6), (c)(6)(iii)(*a*) and (d)(9)(vi) revised 1269
1910.101—1910.120 (Subpart H) Authority citation revised 1269
1910.111 (a)(2)(x) and (b)(10)(ii) revised 1269
1910.132—1910.138 (Subpart I) Authority citation revised 1270
1910.134 Redesignated as 1910.139; new 1910.134 added 1270
1910.139 Redesignated from 1910.134; heading revised; introductory text added 1270
1910.155—1910.165 (Subpart L) Authority citation revised 1284
1910.156 (f)(1)(i) and (v) revised 1284
1910.251—1910.255 (Subpart Q) Authority citation revised 1284
1910.252 (c)(4)(ii), (iii), (7)(iii), (9)(i) and (10) revised 1284
1910.261—1910.272 (Subpart R) Authority citation revised 1285
1910.261 (b)(2), (g)(10), (h)(2)(iii) and (iv) revised 1285
1910.1000—1910.1450 (Subpart Z) Authority citation amended **42666**
Authority citation amended 1285
1910.1000 Table Z–1 and Z–3 corrected **42018**
1910.1001 (g) revised; Appendix C removed 1285
1910.1003 (c)(4)(iv) and (d)(1) revised 1286
1910.1017 (g) revised 1286
1910.1018 (h) revised 1286
1910.1025 (f) revised; Appedixes B and D amended 1287
1910.1027 (g) revised; Appendix G removed 1288
1910.1028 (g) revised; Appendix E removed 1289
1910.1029 (g) revised 1290
1910.1043 (f) revised 1290
1910.1044 (h) revised 1291
1910.1045 (h) revised; Appendix A amended 1291
1910.1047 (g) revised; (h)(2) table removed; Appendix A amended 1292
1910.1048 (g) revised; Appendix E amended 1292
1910.1050 (h) revised; Appendix A amended 1293
1910.1051 (h) revised; Appendix E amended 1294
1910.1052 (n)(2)(i)(C) revised **42667**
(n)(2)(iii)(C) revised **48176**
(n)(2)(i)(B) and (iii)(C) revised **54383**
(o) note added **66277**
(g) revised 1295
1917 Authority citation revised **40195**
1917.1 (a) introductory text and (2)(i) through (x) revised; (a)(2)(xi), (xii), (xiii) and (b) added **40196**
1917.2 Amended **40196**
1917.3 Added **40196**
1917.11 (d) added **40196**
1917.13 (g) revised; (h) and (i) added **40197**
1917.17 (i), (j) and (k) revised **40197**
1917.20 Revised **40197**
1917.23 Heading, (b)(1) and (d) introductory text revised **40197**
1917.24 (a) revised **40197**
1917.25 (a) and (c) revised; (g) added **40197**
1917.26 (c) and (d) revised **40197**
1917.27 (a)(2) revised; note added **40197**
1917.28 Heading revised; text removed **40198**
1917.30 Added **40198**
1917.42 (b)(4), (c)(1), (d), (h)(4), (5) and (j)(1) revised; (g)(2)(vi) added **40198**
1917.43 (e)(1)(i) and (6)(iii) revised; (f)(3) added **40198**
1917.44 (a), (i), (o)(3)(i), (ii) introductory text and (o)(4) introductory text revised **40198**
1917.45 Heading, (f)(4)(iii), (5), (7), (13)(ii), (iii)(A), (i)(5)(i) introductory text, (j)(1)((iii)(D) and (2) revised; (g)(11), (j)(9) and (10) added **40199**
1917.46 Heading, (a)(1)(ii) and (viii)(A) revised **40199**
1917.48 (d)(2) revised **40200**

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TITLE 29 Chapter XVII—Con.

1917.50 (i) redesignated as (j); heading, (c)(5) and new (j) revised; new (i) added **40200**
1917.71 (b)(6), (7), (c), (e) and (f)(1)(i) revised; (b)(8), (f)(4) and (5) added **40200**
1917.73 Heading revised **40201**
1917.91 Heading and (a)(1) revised **40201**
1917.93 (a) and (b) revised **40201**
1917.94 Revised **40201**
1917.95 (b)(2) revised **40201**
1917.112 (a)(1) revised **40201**
1917.118 (d)(2)(i) and (f)(2) revised **40201**
1917.119 (b)(1), (c), (d)(2) and (f)(4) revised **40201**
1917.121 (b)(3) revised **40201**
1917.123 Footnote 7 redesignated as footnote 9 ..... **40201**
1917.124 Heading and (d)(1) revised; (c)(5), (6) and (d)(5) added **40201**
1917.126 (b) revised **40201**
1917.152 Heading revised; footnote 8 redesignated as footnote 12 ..... **40202**
1917.153 Heading revised **40202**
1917.156 (b)(3)(iii)(D) revised **40202**
1917.157 (n) revised **40202**
1918 Revised **40202**
1926 Meeting and signing ceremony **37134**
Technical correction; CFR correction 1919
1926.5 Table amended 3814
1926.50—1926.66 (Subpart D) Authority citation revised 1295
1926.57 (f)(1)(ii), (5)(i), (iii), (6), (h)(6)(iii)(A) and (i)(9)(vi) revised 1296
1926.60 (i) revised; Appendix E removed 1296
1926.62 (f) revised; Appendix B amended; Appendix D removed 1296
1926.95—1926.107 (Subpart E) Authority citation revised 1297
1926.103 Revised 1297
1926.800—1926.804 (Subpart S) Authority citation revised 1297
1926.800 (g)(2) revised 1297
1926.1100—1926.1152 (Subpart Z) Authority citation revised 1298
1926.1101 (h) revised; Appendix C removed 1298
1926.1127 (g) revised; Appendix C removed 1298
1952.105 (a) revised **49909**
1952.107 (f) added **49910**
1952.365 Revised **49911**
1952.367 (b) added **49911**

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.7 (g) revised **35963**
2200.8 (d)(2) revised **35963**
2200.11 Amended **35963**
2200.40 (a) amended **35963**
2200.57 Amended; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added **35963**
2200.60 Amended **35963**
2200.67 Amended **35963**
2200.90 (b)(2) amended **35963**
2200.91 (b) amended; (h) revised **35963**
2200.93 (h) revised **35963**
2200.101 Amended **35963**
2200.201 (a) designation and (b) removed **40934**
2200.202 Revised **40934**
2200.203 (a) correctly removed; CFR correction **58650**
(a) added **61012**
2200.206 (a) revised **40934**
2200.207 (a) revised **40934**
2200.209 (a) revised **40934**
2203.3 (b)(10) amended **35963**
2204 Nomenclature change **59569**
2204.105 (f) added **59569**
2204.107 (b) amended **35964**
2204.301 Revised **35964**

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2510.3-102 (b) revised **62936**
2520.102-3 OMB number **36205**
2520.104b-1 OMB number **36205**
2520.104b-3 OMB number **36205**
2570 Authority citation revised **40699**
2570.100—2570.502c-3 (Subpart E) Added **40699**
2590 Authority citation revised **66953**
Clarification **67688, 67689**
2590.701-3 OMB number **35905**

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2590.701-4 OMB number 35905
2590.701-5 OMB number 35905
2590.701-6 OMB number 35905
2590.712 Revised; interim 66957

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2702 Authority citation revised 55334
2702.1 Revised 55334
2702.2 Revised 55335
2702.3 Revised 55335
2702.4 Revised 55336
2702.5 (e) revised 55336
2702.6 (a) amended; (b) and (c) revised 55336
2702.7 (b) revised 55336

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4000.1 Table amended 67728
4000.2 Table amended 36994, 67728
4001.2 Amended 35342, 60428, 67728
4006.5 (f)(3) amended 60428
4007 Authority citation revised 36663
4007.10 Heading revised; (a) amended; (c) and (d) added 36663
4010.13 Amended 36994
4011.3 (c) amended 36994
4011 Appendix B amended 65608
4022.1 Amended 67728
4022.24 (e) amended 67728
4022.26 (a) amended 67729
4022.61 (a) amended 60428
4041 Revised 60428
4043.3 (e) amended 36994
4044.13 (a) amended 67729
4044 Appendix B amended 37718, 43640, 48176, 53539, 61012, 65609
Appendix D amended 65611
Appendix B amended 2308, 7286
4050 Revised 60440
4071 Added 36994
4302 (Subchapter K) Added 36995
4901—4907 (Subchapter K) Redesignated as Subchapter L 36994

Proposed Rules:

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2550 66908
2560 47262
2580 49894
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TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

47.10 Revised 60985
47.50 Revised 60985

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

203.0—203.4 (Subpart A) Revised 2615
203.50—203.91 (Subpart B) Revised 2618
206.152 (b)(1)(i) amended; (b)(1)(iv) added 65761
(i) revised 65762
Corrected 3618
206.153 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65762
206.157 (f) removed; (g) redesignated as (h); new (f) and new (g) added 65762
206.172 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
206.173 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
(b)(1)(i) corrected 3618
206.177 (f) removed; (g) redesignated as (h); new (f) and new (g) added 65763
210 Comment period extension 52016
210.55 Revised; interim 42066
218 Comment period extension 52016
218.52 Revised; interim 42066
227 Added 43084
228 Authority citation revised 43091
228.3 Added 43091
229 Authority citation revised 43091

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TITLE 30 Chapter II—Con.

229.3 Added **43091**
250.1 (c)(5) and (d)(1) revised **42671**
250.126 Revised **42671**
250.160 (a) amended **39775**
250.163 (b) amended **39775**
250.200—250.209 (Subpart N) Revised **42668**
250.209 (c) revised **67284**
250.209—250.233 (Subpart O) Redesignated as 250.210—250.34 (Subpart O) **67284**
251 Revised **67284**
256.53 Corrected **36995**
256.64 (a)(8) amended **39775**
260.102 Amended 2629
260.110 (d) revised 2629

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

723 Authority citation revised **63276**
723.14 Table revised **63276**
723.15 (b) amended **63276**
724 Authority citation revised **63276**
724.14 (b) amended **63276**
845 Authority citation revised **63276**
845.14 Table revised **63276**
845.15 (b) amended **63277**
846 Authority citation revised **63277**
846.14 (b) amended **63277**
870 Authority citation revised **60142**
870.5 Amended **60142**
870.18 Revised **60142**
870.19 Added **60143**
870.20 Added **60146**
901 Technical correction 4529
901.15 Table amended **66821**
901.16 Removed **66822**
902.15 Regulation at 62 FR 15116 eff. date corrected to 4–7–97 ..... **35342**
904 Technical correction **44894**
913.15 Table amended **54769**
913.16 (o) removed **54769**
914 Technical correction **49049**
914.15 Table amended **44896, 44898, 47140, 59578**
914.16 (cc) and (dd) removed **47330**
917.15 Table amended **45717**
924 Technical correction 6796
924.15 Added 1361
924.16 Revised 1362
924.17 Added 1362
925.15 Table amended **41844**
934.15 Table amended **44900**
935.15 Table amended **53234**
Table amended 9139
935.16 (a)(3) removed **53234**
Removed 9139
936.25 Table amended 8126
938.15 Table amended **60177**
938.16 (g), (l), (q), (s) through (v), (x) through (gg), (ii), (jj) and (ddd) removed; (ppp) through (uuu) added **60177**
944.15 Table amended **41850**
944.16 (e), (f)(1), (g), (h) and (i) removed **41850**
944.25 Table amended **41850**
946 Technical correction **52181**
946.15 Table amended **48765, 60660**
946.25 (a) table amended **35968**
(a) table amended 5891

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56 ..... **65777, 67013, 68468**
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57 ..... **64789, 65777, 67013, 68468**
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62 ..... **65777, 67013, 68468**
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71 ..... **65777, 67013, 68468**
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206 ..... **36030, 38509, 49460, 50544, 52518, 55198**
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901 ..... **53996**
904 ..... 1396, 6286
913 ..... **63045, 67014**

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TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 Heading revised; (g) redesignated as (l); new (g) through (k) added.....58908
(b)(1) table amended.....60782

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

27 Added; interim.....42213
27.7 (c)(3)(ii)(F) corrected.....44036
103 Meeting.....58909
Conditional exceptions grant.....3640
103.11 (n)(8) and (9) redesignated as (n)(9) and (10); (n)(7)(iii) and new (8) added; eff. 8–1–98.....1923
103.22 Regulation at 61 FR 18209 confirmed; (a)(1) amended; (h) revised.....47147
103.36 (b)(11) added; eff. 8–1–98.....1924

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

202 Authority citation revised.....45520
202.1 Revised.....45520
202.2 (a)(1) revised; (a)(2) removed; (a)(3) and (4) redesignated as (a)(2) and (3); authority citation removed.....45521
202.3 (a), (b)(1) introductory text, (2) introductory text and (i) revised; authority citation removed.....45521
202.4 Heading, introductory text, (c), (d) and (e) revised; authority citation removed.....45521
202.6 (b) and (e)(1) revised; authority citation removed.....45521
202.7 (a) revised; authority citation removed.....45521
203 Revised.....5650
285 Authority citation revised.....36210
285.1 Added; interim.....36210
343 Revised.....49914
344.1 (f) through (j) redesignated as (g) through (k); new (f) added; new (g)(3) revised.....46445
344.3 (b)(3)(iii) revised.....46446
356.12 (c)(1)(i) revised.....43093
(b)(2) revised.....4187
356.13 (a) revised.....43093
356 Appendix B and Exhibit A amended.....43094
357 Determination.....61912
357.22 (b) through (e) redesignated as (c) through (f); new (b) added.....46861
357 Appendix B amended.....43284

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500 Authority citation revised.....45101
500.101 (Subpart A) Heading revised.....45101
500.101 (a) amended.....45101
500.201 (e) added.....45101
500.306 Note amended.....45101
500.508 (f) removed; note added.....45101
500.601 (Subpart F) Revised.....45101
500.602 Added.....64721
500.701 (a) introductory text amended.....45101
500.801 Revised.....45101
500.802 Removed; new 500.802 redesignated from 500.807.....45101
500.803 Removed; new 500.803 redesignated from 500.808.....45101
500.804 Removed.....45101

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TITLE 31 Chapter V—Con.

500.805 Removed 45101
500.806 Removed 45101
500.807 Redesignated as 500.802 45101
500.808 Redesignated as 500.803 45101
500.809 Removed 45101
500.901 Revised 45101
Amended; OMB number 64722
501 Added 45101
501.101 Revised 52494
501.601 Note added 52494
501.602 Amended 52494
501.603 Note added 52495
501.806 (b) revised 52495
501.807 (a) revised 52495
505 Authority citation revised 45106
505.40 Amended 45106
505.60 Revised 45106
515 Authority citation revised 45106
515.101 (a) amended 45106
515.201 (e) added 45106
515.306 Note amended 45106
515.508 (f) removed; note added 45106
515.601 (Subpart F) Revised 45106
515.701 (a) introductory text amended 45106
515.801 Revised 45106
515.802 Removed; new 515.802 redesignated from 515.807 45106
515.803 Removed; new 515.803 redesignated from 515.808 45106
515.804 Removed 45106
515.805 Removed 45106
515.806 Removed 45106
515.807 Redesignated as 515.802 45106
515.808 Redesignated as 515.803 45106
515.901 Revised 45106
535 Authority citation revised 45106
535.101 (a) amended 45107
535.508 (f) removed; note added 45107
535.601 (Subpart F) Revised 45107
535.701 (a) introductory text amended 45107
535.801 (Subpart H) Revised 45107
535.905 Revised 45107
536 Authority citation revised 45107
536.101 (a) amended 45107
536.201 Existing text designated as (a); (b) added 45107
536.312 Note added 45107
536.503 (a) revised; note added 45107
536.601 (Subpart F) Revised 45107
536.801 Revised 45107
536.802 Removed; new 536.802 redesignated from 536.805 45108
536.803 Removed 45108
536.804 Removed 45108
536.805 Redesignated as 536.802 45108
536.806 Removed 45108
536.901 Revised 45108
550 Authority citation revised 45108
550.101 (a) amended 45108
550.209 (c) added 45108
550.304 Note amended 45108
550.511 (g) removed; (h) redesignated as (g); new (g) amended; note added 45108
550.601 (Subpart F) Revised 45108
550.701 (a) introductory text amended 45108
550.801 Revised 45108
550.802 Removed; new 550.802 redesignated from 550.805 45108
550.803 Removed; new 550.803 redesignated from 550.807 45108
550.804 Removed 45108
550.806 Removed 45108
550.805 Redesignated as 550.802 45108
550.807 Redesignated as 550.803 45108
550.901 Revised 45108
560 Authority citation revised 41852, 45108
560.101 (a) amended 45109
560.510 (d) introductory text, (1) and (2) revised 41852
560.525 (a)(3) and (5)(i) revised 41852
560.601 Revised 45109
560.602 Removed 45109
560.701 (a) introductory text amended 45109
560.801 Revised 45109
560.802 Removed; new 560.802 redesignated from 560.805 45109
560.803 Removed; new 560.803 redesignated from 560.806 45109
560.804 Removed 45109
560.807 Removed 45109
560.805 Redesignated as 560.802 45109
560.806 Redesignated as 560.803 45109
560.901 Revised 45109
575 Authority citation revised 45109
575.101 (a) amended 45109
575.201 (c) added 45109
575.306 Note amended 45109
575.503 (h) removed; note added 45109
575.601 (Subpart F) Revised 45109
575.701 (a) introductory text amended 45109
575.801 Revised 45109

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575.802 Removed; new 575.802 redesignated from 575.805 45109
575.803 Removed 45109
575.804 Removed 45109
575.805 Redesignated as 575.802 45109
575.806 Removed 45109
575.901 Revised 45110
585 Authority citation revised 45110
585.101 (a) amended 45110
585.201 (c) note amended; (e) added 45110
585.311 Note amended 45110
585.503 (a) revised; note added 45110
585.601 (Subpart F) Revised 45110
585.701 (a) introductory text amended 45110
585.801 Revised 45110
585.802 Removed; new 585.802 redesignated from 585.805 45110
585.803 Removed 45110
585.804 Removed 45110
585.805 Redesignated as 585.802 45110
585.806 Removed 45110
585.901 Revised 45110
590 Authority citation revised 45110
590.101 (a) amended 45111
590.601 (Subpart F) Revised 45111
590.701 (a) introductory text amended 45111
590.801 Revised 45111
590.802 Removed; new 590.802 redesignated from 590.805 45111
590.803 Removed 45111
590.804 Removed 45111
590.805 Redesignated as 590.802 45111
590.806 Removed 45111
590.901 Revised 45111
595 Authority citation revised 45111
595.101 (a) amended 45111
595.201 Existing text designated as (a); (b) added 45111
595.311 Note amended 45111
595.503 (a) revised; note added 45111
595.601 (Subpart F) Revised 45111
595.701 (a) introductory text amended 45111
595.801 Revised 45111
595.802 Removed; new 595.802 redesignated from 595.805 45111
595.803 Removed 45111
595.804 Removed 45111
595.805 Redesignated as 595.802 45111
595.806 Removed 45111
595.901 Revised 45111
596 Authority citation revised 45112
596.101 (a) amended 45112
596.601 (Subpart F) Revised 45112
596.801 Revised 45112
596.802 Removed; new 596.802 redesignated from 596.805 45112
596.803 Removed 45112
596.804 Removed 45112
596.805 Redesignated as 596.802 45112
596.806 Removed 45112
596.901 Revised 45112
597 Added 52495
Chapter V Appendixes A and B amended 41851, 48178
Appendix A amended 67729, 67730
Appendix B amended 67732

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1 42443
27 42220
103 ..... 36475, 38511, 40778, 40779, 45365, 47156, 63298
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212 46428
285 62458
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TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

Subchapter A Heading added 40734
33.26 (a), (b) introductory text and (1) revised 45939, 45943
67 Revised 55517
104 Added 3466
147 Added 4573
148 Added 4580
149 Added 4583
175.3 (l) added 66525
175.4 Revised 66525
175.5 Revised 66525
175.6 Revised 66525
175.7 (a)(13)(i) and (d)(3)(i) revised; (k) added 66525
176 Revised 35346
199 Technical correction 42905
199.2 (b) amended 46878
(b) amended; interim 54384
(b) amended 9141
199.4 (c)(2) heading, (xiii), (xvi), (3)(xi), (g)(37) and (47) revised 46878
(g)(48) revised; interim 54384
(a)(9) introductory text, (i)(B) and (ii) revised; (a)(9)(i)(C),

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TITLE 32 Chapter I—Con.

(v)(B) and (vi) note removed; (a)(9)(i)(D) and (v)(A) redesignated as (a)(9)(i)(C) and (v); (a)(10)(vi)(E) added 9141
199.5 (b)(1)(iii), (e)(2), (3) and (4) revised 42904
199.8 (b)(3)(iii) and (iv) revised; (b)(3)(v) added; interim 54384
199.13 (i) added; interim 39941
199.14 (h)(1)(i)(D) added 7287
199.17 (a)(7) added; (d)(1) and (o)(3) revised 9142
199.18 (d)(2)(i) and (f) revised; (c)(3) added 9143
199.21 Revised 66990
199.22 Added 66993
203 Added 5261
247 Revised 42905
270 Added; interim 39942
Revised 3472
285 Revised 61013
286 Revised 35351
286.3 Amended 42916
286.4 (b), (h)(1), (5) and (n)(2) corrected 38197
286.12 (a)(1) and (2) corrected 38197
286.28 (d)(3)(i)(A) corrected 38197
(d)(3)(ii)(A) amended 42916
311.7 (c)(10)(i), (ii) and (iii) added 46446
(c)(11)(i) and (iii) added 59579
318.9 Redesignated as 318.11 67291
Added 67292
318.11 Redesignated from 318.9 67291
318.10 Added 67292
320 Heading revised 65020
320.1 (a)(1)(i) and (2) amended 65020
320.2 Amended 65020
320.3 (a), (b), (c) introductory text, (2) and (d) amended; (e) revised 65020
320.4 (a), (b) introductory text, (1), (2), (3), (c)(2) and (d) amended 65020
(c) heading, (1) introductory text and (iv) revised 65021
320.5 (b) amended 65021
320.6 (a) and (b) revised 65021
320.7 (b), (c) introductory text, (1) and (d) amended 65021
320.8 (a), (c)(3), (5) and (7) amended 65021
320.9 (b)(2)(i) and (3) amended 65021
320.10 Amended 65021
320.11 Amended 65021
397 Removed 6864

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505.5 (e)(20) removed 48480

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701.118 (r) introductory text revised 61914
706.2 Table Five amended 37719, 40450
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721 Removed 3860
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27.3 Table correctly revised 35385
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80.501 (d) revised 5731
80.520 (a) revised 5731
80.1495 Revised 5731
82 Authority citation revised 5731
82.5 Added 5731
82.7 Added 5731
84.01 (b) and (c) redesignated as (c) and (d); new (b) added 5731
84.05 (a) revised; (b), (c) and (d) redesignated as (e), (b) and (c); new (d) added 5731
84.17 (c) added 5731
84.27 Added 5731
87.1 (o) revised 5732

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88.13 Heading, (b) and (c) revised; (d) redesignated as (e); new (d) added 5732
90.5 Added 5732
90.7 Added 5732
96 Added **67506**
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100.35T-05-043 Added (temporary) **35391**
100.35-T05-055 Added (temporary) **39776**
100.35T-05-065 Added (temporary) **45718**
100.35T-05-069 Added (temporary) **48768**
100.35T-05-074 Added (temporary) **52501**
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100.35T-07-047 Added (temporary) **60178**
100.35T-07-054 Added (temporary) **61630**
100.35T-07-062 Added (temporary) **65022**
100.35-T08-026 Added (temporary) **44410**
100.35-T08-027 Added (temporary) **44411**
100.35-T08-028 Added (temporary) **44411**
Heading correctly revised **46553**
100.35-T08-034 Added (temporary) **48767**
100.35-T08-035 Added (temporary) **48766**
100.35-T08-038 Added (temporary) **50506**
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100.201 Implementation (temporary) **43284**
100.501 (c) revised; Table 1 added **46670**
100.508 Implementation (temporary) **45718**
100.509 Implementation (temporary) **35390**
100.510 (b)(1) and (c) revised; Table 1 added **42067**
100.728 Added **43641**
100.1101 Implementation (temporary) **45158**
100.1102 Amended 3037
100.1301 (a) stayed; (j) added; eff. 8-7-97 through 8-11-97 ..... **39444**
110.157 (b)(11) added; eff. 10-2-97 through 10-20-97 ..... **55168**
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117.549 Implementation (temporary) 6073
117.559 Revised **38909**
117.603 Revised **50510**
117.604 Removed **50510**
117.609 Revised 2896
117.633 (b) and (c) revised **43098**
117.637 (a)(1) revised **43931**
117.663 Revised 4584
117.720 Added 2312
117.733 Revised 2311
117.753 Revised **45160**
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117.821 Revised 9419

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117.833 Existing text designated as (a); (b) added **66006**
117.1045 (a) revised **43097**
144.01–15 (d) correctly revised **35392**
151 Effective date confirmation **46446**
151.19 (c) revised **67532**
151.37 (a), (b) and (c) amended **67532**
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155.100 (a) introductory text revised; (c) added **48773**
155.480 (b) introductory text and (f) revised **48773**
155.1050 (k)(3) suspended; eff. 2–12–98 through 2–12–2001 7071
155.1052 (f) suspended in part; eff. 2–12–98 through 2–12–2001 7071
157.455 Regulation at 61 FR 60189 stay lifted; revised **49608**
160 Authority citation revised **65206**
160.207 (d) and (e) revised; interim **65206**
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165.T01–041 Added (temporary) **35404**
165.T01–042 Added (temporary) **35403**
165.T01–047 Added (temporary) **35681**
165.T01–048 Added (temporary) **35969**
165.T01–063 Added (temporary) **42677**
165.T01–082 Added (temporary) **45721**
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165.T01–135 Added (temporary) 9941
165.T02–050 Added (temporary) **43100**
165.T05–058 Added (temporary) **39446**
165.T05–063 Added (temporary) **42676**
165.T05–076 Added (temporary) **55168**
165.T07–035 Added (temporary) **41275**
165.T08036 Added (temporary) **35401**
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165.T08038 Added (temporary) **35402**
165.T08–041 Added (temporary) **38457**
165.T11–018 Added (temporary) 9942
165.T11–040 Added (temporary); interim **51781**
165.T11–043 Added (temporary) 7706
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165.T13006 Added (temporary) **35394**
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165.T13009 Added (temporary) **35397**
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165.T13–011 Added (temporary) **37136**
165.T13–014 Added (temporary) **42674**
165.T13–015 Added (temporary) **42675**
165.T13008 Added (temporary) **35400**
165.T13–016 Added (temporary) **40277**
165.T13020 Added (temporary) **51779**
165.T13–022 Added (temporary) **50511**
165.T17–001 Added (temporary) 7707
165.T96–073 Removed **35406**
165.T14–002 Added (temporary) **46672**
165.140 (a)(1) and (4) removed; (a)(2) and (3) redesignated as (a)(1) and (2); new (a)(1), new (2) and (b) amended **51782**
165.503 Removed 9942
165.510 Revised **40275**
165.709 Removed **51780**
165.726 Added **50512**
165.810 (a) and (b) introductory text revised; (e) and (f) added; interim **58653**
165.1110 Revised; interim **61631**
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668.23 (f) removed; (g) and (h) redesignated as (f) and (g) 62876
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668 Appendix F added 62882
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674.6 (a)(1) and (2) amended; (a)(3) removed 50847
674.9 (a) amended 50847
674.19 (b) amended 50847
674.31 (b)(2)(i)(D) revised 50848
674.33 (b)(6)(ii) amended; (d)(8) added 50848
674.34 (h) revised 50848
674.35 (c)(1), (3) and (4) amended; (g) removed; (h) and (i) redesignated as (i) and (g); new (h) added 50848
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674.52 (d)(2) amended 50848
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675.19 (a)(3) amended 50848
675.20 (b)(1) amended 50848
675.22 Heading amended 50848
675.26 (d) revised 63439
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676.19 (a)(2) amended 50848
682.201 (a) introductory text through (3) amended 63433
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682.401 (b)(10)(vi)(B) introductory text amended; (b)(10)(vi)(B)(*1*) and (*2*) revised 63434
682.402 (c)(1) revised; (k)(2)(iii) amended 63434
682.604 (g)(2)(i) revised 63434
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5.17 Removed 53205
5.18 Revised 53205
5.19 Revised 53205
5.20 Revised 53205
5.25 (c) removed 53206
5.31 Removed 53206
5.32 Removed 53206
5.33 Removed 53206
7 Removed 53206
10.18 Revised 53206
10.23 (c)(15) revised 53206

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201 Authority citation revised 55739
201.1 (a) and (b) amended 35420
(c) and (d) amended 35421
(b) amended 40457
201.2 (b)(5) amended 35421
201.5 (c)(2) amended 35421
201.34 Added; interim 55739
202.3 (b)(2) amended 35421
(b)(5)(ii) amended 63657
(b)(5)(iii) amended 66822
202.20 (c)(2)(vii)(A)(*2*) and (D)(*1*) amended 35421
202 Appendix B amended 51603
203 Authority citation revised 55742
Authority citation revised 1926
203.2 (a) amended 35421
203.3 (i) revised; interim 55742
Regulation at 62 FR 55742 confirmed 1926
203.4 (f) revised; (i) added; interim 55742
Regulation at 62 FR 55742 confirmed; (f) and (i)(2) amended 1926
203.6 (b)(6) amended; interim 55742
Regulation at 62 FR 55742 confirmed 1926
251 CARP arbitration list 9419
253.1 Amended 2144

NOTE: Boldface page numbers indicate 1997 changes.

CHANGES JULY 1, 1997 THROUGH FEBRUARY 27, 1998

TITLE 37 Chapter II—Con.

253.4 Introductory text and (a)(1) through (8) revised; (c) amended 2144
253.5 (c)(1), (2) and (3) revised 2145
253.6 (c) revised 2145
253.7 (a) revised; (b)(1)(i), (ii), (2), (4) and (5) amended 2145
253.8 (b)(1) revised; (f)(1) amended 2145
253.10 (a) amended 2145
255.3 (a) through (h) amended; (i) through (m) added 7289
258 Technical correction **62262, 62404**
258.3 Revised **55759**

Proposed Rules:

2 ..... **59640**
3 ..... **59640**
201 ..... **40780**
..... 3685
253 ..... **51619, 63502, 65777**
255 ..... **63506, 65778**

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

1 Nomenclature change **35970**
Nomenclature correction **47532**
1.621 (a) and (b)(2) revised; (c) amended; (e) redesignated as (d) **51783**
3 Nomenclature change **35970**
Nomenclature correction **47532**
3.2 (f) revised **35422**
3.7 Heading and introductory text revised; (x)(29) and (30) added 413
3.20 (c) added **35422**
3.27 (c) redesignated as (d); new (c) added; new (d) and authority citation revised **51278**
3.57 Cross reference amended **51281**
3.105 (g) and (h) redesignated as (h) and (i); (d), (e), (f) and new (h), (i)(1), (i)(2) introductory text, (ii) and (iii) amended; new (g) added **51278**
3.158 (a) and (c) amended **51278**
3.261 (a)(40) added **51278**
3.262 (y) added **51278**
3.263 (g) added **51279**
3.272 (u) added **51279**
3.275 (i) added **51279**
3.307 (a)(6)(i) and (iii) amended; (a)(6)(i) authority citation added; (a)(6)(iii) authority citation revised **35422**
3.403 Introductory text and (a) through (e) redesignated as new (a) introductory text and (1) through (5); new (b) added **51279**
3.503 Introductory text and (a) through (j) redesignated as (a) introductory text and (1) through (10); new (b) added **51279**
3.659 Cross reference amended **51281**
3.703 Cross reference amended **51281**
3.707 Cross reference amended **51281**
3.807 Cross reference amended **51281**
3.810 (a) amended; (d) added **35422**
3.811 Added; interim **35971**
Revised 412
3.814 Added **51279**
3.1000 (a) introductory text amended; authority citation added **35423**
3.1600 (c) amended **35423**
4.100 Removed **65219**
4.101 Removed **65219**
4.102 Removed **65219**
4.104 Revised **65219**
9 Nomenclature change **35970**
Nomenclature corrected **47533**
9.2 (a) and (b)(1) revised **35970**
9.8 (b) amended **35970**
17.32 Revised **53961**
17.149 Regulation at 62 FR 30239 confirmed **64722**
17.150—17.154 Regulation at 62 FR 30239 confirmed **64722**
17.212 (d) added; authority citation revised **60783**
17.900—17.905 Undesignated center heading and sections added **51284**
19.9 Revised **52503**
20.611 Revised **55170**
20.1302 Revised **55170**
21.3021 (l) redesignated as (m); new (l) added **51784**
21.3041 (e)(3) and (4) amended **55760**
21.3045 (f) revised; (i)(3)(ii) amended **55760**
21.3046 (e) removed **51784**
(c)(1) and (d)(6)(ii) amended **59579**
21.3047 Added **51784**

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21.4001—21.4279 (Subpart D) Authority citation revised 40280, 55760, 63849
21.4009 (b)(1) introductory text amended 55760
21.4200 (g) revised 55760
21.4201 (h) introductory text and (2) amended 55760
21.4233 (c) revised; (d) amended 40280
(b)(3) introductory text amended, (ii), (4) introductory text and (ii) amended 55760
21.4250 (a)(1), (2), (c)(1), (2) introductory text, (ii), (iii) and (iv) amended 55760
21.4253 (d)(1) revised 35424
21.4256 Revised 63849
21.4267 (a) authority citation, (b) authority citation and (i) revised; (f) added 40280
21.4270 (c) heading and Footnote 2 revised 55760
21.4279 (a) introductory text and (4) revised; (a)(5) added 63850
21.4501 (b)(1), (2)(iv), (v)(A), (B), (c)(1) and (3) amended 51785
21.5001—21.5300 (Subpart G) Authority citation revised 55760
21.5270 (a), (g) and (i) amended 55760
21.5701—21.5901 (Subpart H) Authority citation revised 55761
21.5820 (b)(1), (2)(ii) introductory text, (A), (B), (C), (3)(ii) introductory text, (A), (B) and (C) amended 63848
21.5822 (b)(1)(i), (ii), (2)(i) and (ii) amended 63848
21.5901 (a) and (b) amended 55761
21.7000—21.7320 (Subpart K) Authority citation revised 40280, 55761
21.7020 Introductory text, (a)(1)(i) and (2)(i) amended; (b)(25)(i)(G) revised 55761
21.7044 (c) removed; (d) and (e) redesignated as (c) and (d) 55761
21.7112 (c) revised 40280
21.7131 (k) added 55519
21.7135 (bb) redesignated as (cc); new (bb) added 55519
21.7136 (d) introductory text and (e)(1) amended; (e) introductory text revised; (g) added 55519
(b), (c)(1), (2) and (3) revised 58655
21.7137 (b) introductory text revised; (e) and (f) redesignated as (f) and (g); new (e) added 55519
(a) revised; (c)(2) introductory text and (i) through (iv) amended 58655
21.7139 (a), (g) and (h) removed; (b) through (f), (i) and (j) redesignated as (a) through (g); new (g)(2) redesignated as (g)(3); introductory text and new (b) authority citation, (c) authority citation, (d)(2)(iii), (d) authority citation, (e)(2)(ii), (iii), (3)(iii), (e) authority citation and (g)(3)(ii) amended; heading and new (g)(1) revised; new (g)(2) added 55520
21.7140 (c)(1)(iii) removed; (c)(1)(i), (ii), (d)(1) and (e)(2) amended; (c)(1) authority citation, (d) authority citation, (e) authority citation and (g) authority citation revised 55761
21.7144 Revised 55761
21.7170 Revised 55761
21.7172 (a)(3)(ii) revised 55761
21.7305 Revised 55761
21.7307 Revised 55761
21.7310 Revised 55761
21.7612 (b) revised 40280
21.7622 (c) revised 55762
21.7631 (h) added 55520
21.7635 (x) redesignated as (y); new (x) added 55520
21.7636 (b) redesignated as (c); new (b) added 55520
(a)(1), (2)(i) and (3) revised 66278
21.7639 (c)(2)(ii), authority citation, (f)(1), authority citation revised; (f)(2) redesignated as (f)(3); new (f)(2) added 55521
(b) introductory text amended 55762
21.7659 Revised 55762
21.7670 (d) amended 55762
21.7720 (b)(9), (10) and (11) redesignated as (b)(11), (12) and (13); (b)(5) and new (11) amended; new (b)(9) and new (10) added 55762

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21.8010—21.8410 (Subpart M) Added **51288**
36.4232 (e)(1), (2), (3) amended; (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number **63278**
36.4254 (d)(4) and (5) redesignated as (d)(5) and (6); new (d)(4) added; OMB number **63278**
36.4306a (a)(3), (4) and (5) revised; (a)(6) and (7) added **52505**
(a)(6) and (7) removed; (a)(3), (4) and (5) revised **63454**
36.4312 (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number **63278**
36.4337 (a) revised **52505**
Heading, (c) through (h), (j), (k), (l), (n) and authority citation revised **53965**
(a) revised **63454**
43.26 (a), (b) introductory text and (1) revised **45939, 45943**

Proposed Rules:

17 ..... **39197, 40492**
..... 9990
19 ..... **36038**
20 ..... **55200, 64790**
21 ..... **35454, 46596, 48969, 60464, 62736, 66320**
35 ..... **37824**
47 ..... **52519**

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

3 Authority citation amended **41853**
3.3 (v) redesignated as (w); new (v) added **41853**
(e)(3) added **43642**
3.4 (h) added **41853**
4 Authority citation revised **61914**
4.5 Revised **61914**
4.6 Removed; new 4.6 redesignated from 4.7 ..... **61914**
4.7 Redesignated as 4.6 ..... **61914**
20 IMM amended; incorporation by reference; interim **45163, 47559, 49917, 56074, 58915**
IMM amended; incorporation by reference 3645, 3815
IMM amended; incorporation by reference; interim 5459, 9421
111 DMM amended; incorporation by reference **39947, 51372, 53540, 60181, 61015**
DMM amended; incorporation by reference 155
111.3 (f) table amended **63851**
111.5 Revised **63852**
222.5 (a)(7) amended 9943
255.1 (c)(1) amended; (c)(2) removed; (c)(3) through (6) redesignated as (c)(2) through (5); new (c)(2) revised **66996**
(c)(3) amended; (c)(4) and (5) revised **66997**
255.2 (a)(1) amended; (a)(2)(i), (iv) and (b)(2) revised; (c) removed **66997**
255.3 (a)(1) and (b)(2) revised; (a)(2) introductory text amended; (a)(3), (4), (5) and (c) removed **66997**
(a)(3) correctly removed 2145
262 Authority citation revised **64280**
Authority citation revised 6481
262.2 (a) revised; interim **64280**
(a) revised 6481
262.4 Introductory text revised; interim **64280**
Introductory text revised 6481
265.3 (a) revised; interim **64280**
(a) revised 6481
265.5 Revised; interim **64280**
Revised 6481
265.6 (a) revised; interim **64281**
(e)(1) amended; interim **64282**
(a) revised 6481
265.7 (a)(2) amended; (b), (c), (d)(1), (e)(1), (f)(1) and (2) revised; (d)(3) and (g) added; interim **64282**
(b), (c), (d)(1), (e)(1), (f)(1), (2) and (g) revised 6482
265.10 Revised **64283**
Revised 6483
265 Appendix A revised **64283**
Appendix A revised 6483
946.6 (a)(2) revised 8126
954 Heading amended **66998**
954.2 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.3 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.5 Amended **66998**

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Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.6 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.8 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.10 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.12 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.13 (a) and (c) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.14 (b)(6) and (8) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.16 (d)(1) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.17 (b) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.18 (a) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.19 (a) amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
954.25 Amended 66998
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 68364
966 Revised 63279

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.7 (a)(1)(iii) amended 45530
3001.12 (e) amended 45530
3001.31 (k)(2)(i) through (iv) redesignated as (k)(2)(ii) through (v); new (k)(2)(i) added; new (k)(2)(ii) and (3)(i)(*i*) amended; (k)(3)(i)(*e*) revised 45729
3001.43 (f)(1) amended 45530
3001.61—3001.69c (Subpart C) Appendix A amended 35425
3002 Auhority citation revised 45530
3002.4 Heading revised; (a) amended 45530
3002.5 Removed 45530

Proposed Rules:

20 47394
111 ..... 45366, 47178, 48191, 62540
..... 8154
232 61481
501 8893
775 42958
777 42958
778 42958

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

3 Removed 43269
9.1 Table amended (OMB number) 37722, 44413, 47119, 52398, 54715, 55474
Regulation at 61 FR 52295 eff. date corrected to 12–30–97 673
Table amended (OMB numbers) 964, 1060, 1320, 7269, 7710
Regulation at 61 FR 48229 eff. date corrected to 2–27–98 9944
30.26 (a), (b) and (c) revised 45939, 45944
31.26 (a), (b) introductory text and (1) revised 45939, 45944
32.105 Amended 47149
32.335 (a) through (d) amended 47149
32.430 (a) through (d) amended 47149
35.105 Amended 7270
35.205 (c), (d) and (e) added 7270
35.210 (c) added 7270
35.215 Revised 7270
35.220 Added 7271
49 Added 7271
50 Announcement 38762
Comment period extension 43642
Notice 6032
Authority citation revised 7274
50.1 (i) added 7274
50.2 (c) and (d) revised 7274
50.3 Revised 38711
50.6 Heading revised; (d) added 38711
50.7 Added 38711
50.9 Revised 38894
50.10 Added 38894
50 Appendix K revised 38712
Appendix L added 38714
Appendix M added 38753
Appendix N added 38755

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TITLE 40 Chapter I—Con.

Appendixes D and H amended; Appendix E removed; Appendix I added **38895**
Appendix L corrected 7710
51 Authority citation revised **43801, 44903**
Technical correction 6483
51.100 (s) introductory text and (1) revised **44903**
(o)(3) revised 9151
51.103 (a) amended; (a)(1) and (2) removed 9151
51.212 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
51.353 (c)(3) and (4) revised 1368
51.361 Regulation at 61 FR 49682 eff. date corrected to 2–10–98 6645
51.390 (Subpart T) Revised **43801**
52 Technical correction **37724, 61016**
State implementation plan determinations **43647, 45531, 52946, 54769, 61914, 64522**
Notice **61236**
State implementation plan determinations 26, 3650, 8573, 9423
Technical correction 6483
52.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.33 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.50 (c)(71) added 676
52.66 Added **49158**
52.120 (c)(73), (74)(i)(B), (77)(i)(A)(*1*) removed; (c)(74)(i)(A) revised; (c)(74)(i)(A)(*2*) redesignated as (c)(77)a(i)(A)(*1*); (c)(88) added **41864**
(c)(83) and (85) removed **63458**
(c)(83)(i)(B) added 6489
(c)(78)(i)(C), (82)(i)(C), (83) and (85) added 6491
(c)(89) and (90) added 6659
52.123 (f) added **41864**
52.124 (b) added **41864**
52.220 (c)(196)(i)(D), (202)(i)(F) and (245) added **36216**
(c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*) and (225)(i)(B)(*3*) added **37138**
(c)(239)(i)(D) added **41867**
(c)(197)(i)(B)(*2*) added **44909**
(c)(224)(i)(D) added **44912**
Regulation at 62 FR 41867 withdrawn **47369**
(c)(26)(ix)(B), (xvi)(E), (27)(vii)(C), (39)(viii)(D), (ix)(C), (x)(C) and (246) added **48483**
(c)(229)(i)(A)(*2*) added **48485**
(c)(224)(i)(E) added **53544**
(c)(243) added **54588**
(c)(224)(i)(D) removed **54769**
(c)(197)(i)(D) and (241)(i)(A)(*2*) added **59287**
(c)(184)(i)(B)(*5*) and (225)(i)(A)(*2*) added **60785**
(c)(250) added **62951**
(c)(239)(i)(E) added **65613**
(c)(239)(i)(E)(*2*) added **67000**
(c)(239)(i)(A)(*2*) **67004**
(c)(231)(i)(B)(*2*), (239)(i)(D)(*1*) and (244) added 6075
(c)(239)(i)(E)(*3*) added 8128
52.222 (a)(2) and (3) added **40937**
(b)(2) added **43647**
52.320 (c)(76) added **68195**
(c)(71) added **67009**
52.329 (a) revised **68195**
52.332 (b) and (e) redesignated as (b)(1) and (e)(1); (b)(2) and (e)(2) added **66008**
(g) and (h) added **68195**
52.370 (c)(72) added **52020**
(c)(74) added **55340**
(c)(72)(i)(B) and (K) corrected **65224**
(c)(60) added 6487
52.384 Added **55340**
52.385 Added **52022**
Table corrected **65224**
Table amended 6487
52.420 (c)(58) added **37724**
Regulation at 62 FR 37722 eff. date corrected to 8–14–97 ..... **40139**
52.424 (b) introductory text revised 1368
52.470 (c)(37) added **40937**
52.520 (c)(98) added **38919**
52.570 (c)(50) added; interim **42918**
52.720 (c)(106(i)(D) added; (c)(109) revised **43102**
(c)(139) added **62953**
(c)(137) added **67001**
(c)(135) added 8858
(c)(136) added 8859
52.726 (p), (q) and (r) added **37506**

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Regulation at 62 FR 37506 withdrawn **46447**
(p), (q) and (r) added **66294**
52.770 (c)(109) added **38922**
(c)(121) added 2147
52.776 (q) added **45171**
52.777 (k) added **38464**
(q) added **55176**
(s) added **64735**
52.820 (c)(64) added **55173**
(c)(65) added **63455**
(c)(66) added 5269
52.870 (c)(33) added **36213**
52.920 (c)(86) added 1929
52.930 Regulation at 62 FR 28637 withdrawn **40281**
(e) added **55176**
(d) added **61246**
Regulation at 62 FR 61246 eff. date corrected to 2–10–98 6664
52.970 (c)(64) introductory text and (i) revised **51604**
(c)(68) added **52951**
(c)(74) added **63661**
52.975 (f) added **64286**
52.994 Existing text designated as (a); (b) added **63662**
Regulation at 62 FR 61634 eff. date corrected to 2–13–98 7290
52.996 Added **61634**
Correctly designated 4397
52.1020 (c)(44) added **49611**
52.1031 Table amended **49611**
52.1036 (e) added **41277**
52.1070 (c)(122), (123) and (124) added **41856**
(c)(126) and (127) added **46201**
(c)(125) added **53548**
52.1072 Added **40944**
(b) added **49616**
(c) added **52666**
52.1076 Added **40458**
52.1120 (c)(114) added; interim **37509**
(c)(113) added **37514**
52.1125 Added **37514**
52.1170 (c)(109) added **59996**
(c)(110) added 6651
52.1174 (p) added **50514**
52.1219 (b) added **39123**
52.1220 (c)(44) added **53242**
52.1237 (b) added **55172**
Regulation at 62 FR 55172 eff. date corrected to 2–10–98 6647
52.1270 Redesignated as 52.1281; new 52.1270 added **35442**
(c) table amended **37726**
(c) table corrected **40139**
52.1281 Redesignated from 52.1270; heading and (a) revised **35442**
52.1320 (c)(99) added **44221**
(c)(96) revised **45166**
(c)(100) added **45167**
(c)(101) added **46881**
(c)(98) added **52660**
(c)(102) added 3039
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
Regulation at 61 FR 39335 eff. date corrected to 2–10–98 6648
52.1323 (k) added **46881**
(l) added **52661**
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
52.1391 Added **65616**
52.1520 (c)(52) added **55525**
52.1533 Added **55525**
52.1570 (c)(63) added **42413**
52.1605 Table amended **42414**
52.1620 (c)(66) added **50518**
52.1670 (c)(91) added **49619**
(c)(93) added **67006**
52.1679 Table amended **67006**
52.1683 (c), (d) and (e) added; interim **55344**
(f) added **66825**
52.1770 (c)(94) added **41280**
52.1870 (c)(115) added **49442**
52.1885 Regulation at 62 FR 28637 withdrawn **40281**
Regulation at 62 FR 26399 eff. date delayed to 1–9–98 ..... **43109**
(a)(6) added **44907**
(bb) added **61246**
(a)(7) added 1062
Regulation at 62 FR 26399 withdrawn 1368
(z) added 4195
Regulation at 62 FR 44907 eff. date corrected to 2–10–98 6649
Regulation at 62 FR 61246 eff. date corrected to 2–10–98 6664
52.1890 Added **47947**
Regulation at 62 FR 47947 eff. date corrected to 2–10–98 6646
52.1970 (c)(122) added **46210**
52.2020 (c)(125) added **38917**
(c)(127) added **43104**
(c)(119) added **44415**
(c)(126) added **50871**
(c)(128) added **50873**
(c)(107) added **64725**

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52.2026 (a) introductory text and (1) revised **59998**
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415
(a)(2) revised 1368
(d) and (e) added 2153
52.2036 (j) added **38917**
Regulation at 62 FR 31349 eff. date corrected to 12–30–97 415
52.2070 (c)(48) and (49) added **46207**
52.2081 Table amended **46207**
52.2120 Redesignated as 52.2134; new 52.2120 added **35444**
(c) table amended **44219, 47761**
52.2134 Redesignated fron 52.2120; heading and (a) revised **35444**
52.2220 (c)(147) added **35683**
(c)(156) added **38912**
(c)(158) added **40460**
(c)(155) added **40735**
(c)(151) added **42070**
(c)(154) added **43108**
(c)(157) added **43645**
(c)(159) and (160) added **62698**
52.2270 (c)(102) added **44087**
(c)(91) removed **49154**
(c)(108) added 6493
(c)(107) added 6663
52.2303 (a) revised **44088**
52.2308 (f) added 7072
52.2309 (d) added 6663
52.2310 Added; interim **37144**
52.2311 Added 6653
52.2320 (c)(38) added **38216**
52.2348 Regulation at 62 FR 31351 eff. date corrected to 12–30–97 414
52.2350 Added **38217**
52.2351 Added **38217**
52.2370 (c)(23) added **41282**
(c)(24) added **41869**
52.2375 Table revised **41869**
52.2381 Table amended **41282, 41870**
52.2420 (c)(115) and (116) added **38914**
(c)(121) added **53239**
(c)(120) added **53245**
(c)(118) added **54587**
(c)(119) added **61240**
52.2424 Existing text designated as (a); (b) added **61240**
52.2428 Existing text designated as (a); (b) added **38932**
Removed **43472**
Added **52032**
52.2450 (b)(1) and (3) amended; (b)(2) revised **49152**
(b)(2) revised 1368
52.2454 Added **52638**
52.2470 (c)(73) added **42217**
(c)(75) added **49444**
(c)(75) revised **68187**
(c)(76) added 5272
Regulation at 61 FR 49690 eff. date corrected to 2–10–98 6648
52.2479 Amended **68188**
52.2585 (l) added **39448**
(m) added 5464
53.1—53.16 (Subpart A) Revised **38784**
53.3 (b)(5) corrected 7714
53.30—53.34 (Subpart C) Revised **38792**
53.34 (c)(2)(i), (3) and (5) corrected 7714
53.30—53.34 (Subpart C) Table C–4 corrected 7714
53.50—53.59 (Subpart E) Added **38799**
53.51 (a)(3) corrected 7714
53.54 (f)(7) corrected 7714
53.56 (f)(5) corrected 7714
53.57 (g) corrected 7714
53.50—53.59 (Subpart E) Tables E–1 and E–2 corrected 7714
53.60—53.66 (Subpart F) Added **38814**
53.61 (g)(1)(ii) corrected 7714
53.64 (g)(4)(ii) corrected 7714
55.2 Amended **46408**
55.3 (c) revised **46408**
55.6 (d)(2) revised **46408**
55.11 (a) revised; (j) added **46408**
55.14 (e)(2)(i)(A) revised **41871**
55 Appendix A amended **41871**
58.1 Amended **38830**
Corrected 7714
58.13 (b) and (d) revised; (e) and (f) added **38831**
(d) corrected 7714
58.14 Revised **38832**
58.20 Heading, (d) and (e) introductory text revised; (f) redesignated as (h); concluding text designated as (i); new (f) and (g) added; new (i) amended **38832**
58.23 Introductory text revised; (c) added **38832**
58.26 Heading and (b) introductory text revised; (d) and (e) added **38833**
(d)(2) and (e) corrected 7714
58.30 (a) introductory text revised **38833**
58.31 (f) revised **38833**

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(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
(f) corrected 7714
58.34 Introductory text revised 38833
(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
58.35 (b) amended 38833
58.41 (b) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
58 Appendix A revised 38833
Appendix C amended 38843
Appendix D amended 38844, 59816
Appendixes E and F amended 38854
Appendixes E and G amended 59818
Appendix D regulation at 62 FR 59816 withdrawn 67010
Appendix A corrected 7714
Appendixes A and D corrected 7715
60 Determinations 36664
Authority citation revised 48379
Authority delegation notices 53245
Clarification 62953
Guidance availability 63662
Authority delegation notices 1746, 5891
Technical correction 7199
60.1 (d) added 52641
60.11 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
60.17 (b)(1) amended; (k) and (l) added 48379
(a)(22) amended 52399
Regulation at 61 FR 18262 eff. date corrected to 2–9–98 6493
60.30 Revised 48379
60.30b—60.39b (Subpart Cb) Heading revised 45119
60.31b Amended 45119, 45121
60.32b (a) and (b) introductory text revised; (b)(2) amended; (m) added 45119
(b)(1), (d), (e), (f)(1) and (i)(1) amended 45125
60.33b (a)(1)(i), (iii), (2)(i), (iii), (3), (b)(1)(i), (2)(i), (c)(1) introductory text, (d) Table 1 and (1)(i) amended; (a)(1)(ii), (2)(ii), (iv), (b)(1)(ii), (2)(ii) and (c)(2) removed 45119
(a)(4), (b)(3) and (d)(3) added; (d) Table 2 amended; (d)(1)(i)(B) revised 45120
(a)(3) amended 45125
60.34b (a) amended 45120, 45125
60.35b Amended 45120
60.38b (b) amended; (c) removed 45120
60.39b (b), (c)(1) introductory text, (2), (4)(ii), (iii) introductory text and (5) amended; (c)(3) and (4)(i) removed; (d) revised; (e) and (f) added 45120
(c)(4)(iii)(B) amended 45125
60.30e—60.39e (Subpart Ce) Added 48379
60.49b (u) added 52641
60.50b—60.59b (Subpart Eb) Heading revised 45120
60.50b (b)(2) amended 45120
(a) and (b) introductory text revised; (p) added 45121
(b)(1), (e), (f), (g)(1) and (i)(1) amended 45125
(j) introductory text amended 45126
60.51b Amended 45121, 45126
60.52b (c)(1) amended 45121
(a)(1) through (5), (b)(1), (2) and (c)(2) amended 45126
60.53b (a) introductory text, Table 1, (b) introductory text and (c) introductory text amended 45126
60.54b (a), (b), (c) introductory text, (d), (e) introductory text and (f) introductory text amended; (c)(i) and (ii) redesignated as (c)(1) and (2) 45126
60.55b (a) amended 45126
60.56b Amended 45126
60.57b (a) introductory text, (b) introductory text and (c) amended 45126
60.58b (b) introductory text, (3), (6)(i), (c)(2), (4), (7), (9), (11), (d)(1)(ii), (v), (vii), (2)(ii), (vii), (viii), (ix), (e)(3), (12)(i)(B), (f)(4), (7), (g)(2), (5) introductory text, (i), (iii), (8), (h)(2), (3), (4), (10) introductory text, (i)(B),

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(i)(3)(ii)(B), (5), (j)(1) introductory text, (i), (2) and (m)(3) introductory text amended; (b)(7), (h) introductory text and (k) introductory text revised; (c)(10), (d)(1)(viii), (ix), (2)(x), (f)(8) and (g)(5)(ii) removed; (k)(4) added **45126**

60.59b (a) introductory text and (b) introductory text amended **45121**

(b)(4), (d) introductory text, (2)(i)(C), (ii)(B), (3), (6)(ii), (8), (11), (12)(ii), (f) introductory text, (g) introductory text, (h) introductory text and (l) amended **45127**

60.50c—60.58c (Subpart Ec) Added **48382**

60.112b (c) added **52641**

60.190 (b) revised; (c) added **52399**

60 Appendix A amended **52399**

Regulation at 61 FR 18262 eff. date corrected to 2–9–98 6493

61 Authority delegation notices **53245**

Authority delegation notices 1746, 5891

Technical correction 7199

61.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414

61 Regulations at 61 FR 18278 and 18280 eff. date corrected to 2–9–98 6493

62.1110—62.1112 Undesignated center heading and sections added 2156

62.2350 (b)(5) and (c)(3) added **60787**

62.2355 Undesignated center heading and section added **60787**

62.3350 Undesignated center heading and section added **67572**

62.3912 Undesignated center heading and section added **41873**

62.4177 Undesignated center heading and section added **41874**

62.4620 (b)(4) added **45732**

62.4631—62.4632 Undesignated center heading and sections added **54589**

Regulation at 62 FR 54591 eff. date corrected to 2–10–98 6664

62.4931—62.4932 Undesignated center heading and sections added **45732**

62.6356 Undesignated center heading and section added **41874**

62.6912 Undesignated center heading and section added **41874**

62.7855—62.7856 Undesignated center heading and sections added **54589**

Regulation at 62 FR 54591 eff. date corrected to 2–10–98 6664

62.8600—62.8602 (Subpart JJ) Added **65619**

62.9350 (b)(4) and (c)(4) added **36997**

62.9505 Undesignated center heading and section added **36997**

(b) correctly removed **48950**

63 Authority delegation notices **36460**

Authority delegation notices 1746

Notice 2630

63.14 (d)(1) revised **65024**

63.99 (a)(5)(ii) introductory text and (A) introductory text revised; (a)(5)(ii)(B) added **65025**

63.342 (f)(3)(i) introductory text amended **42920**

63.343 (b)(1) revised; (c)(1)(ii), (2)(ii), (4)(ii), (5)(ii) introductory text and (6)(ii) introductory text amended **42920**

63.347 (e)(4) revised **42921**

63.360—630.367 (Subpart O) Stayed; eff. 12–4–97 to 12–6–98 ..... **64738**

63.485 (o) introductory text revised **37722**

63.502 (a) revised; (j) added **37722**

63.840—63.859 (Subpart LL) Added **52407**

63.1310—63.1335 (Subpart JJJ) Regulation at 61 FR 48229 eff. date corrected to 2–27–98 9944

63.1311 (b), (d) introductory text and (1) introductory text revised 9945

63.1331 (a) introductory text revised; (a)(10) added **37722**

63 Appendix A amended **52418**

64 Added **54940**

68 Interpretation **45134**

68.3 Amended 644

68.10 (f) added 645

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68.115 (b) introductory text and (2) revised; (b)(3) removed; (b)(4), (5) and (6) redesignated as (b)(3), (4) and (5) 645
68.130 Tables 1 and 2 amended **45132**
(a) removed; (b) and (c) redesignated as new (a) and (b) 645
68 Appendix A amended **45132**
69.11 (d) added **44416**
69.41 Added **61205**
70 Guidance availability **63662**
70.6 (a)(3)(i)(A), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed **54946**
70 Appendix A amended **37516, 45167, 45734, 62951**
Regulation at 61 FR 31443 eff. date corrected to 2–9–98 6494
71 Guidance availability **63662**
71.6 (a)(3)(i)(A), (iii)(C), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed **54947**
72 Authority citation revised **55475**
72.1 (b) amended **55475**
72.2 Amended **55475**
72.6 (b)(9) added; (c)(1) and (2) revised **55475**
72.7 Revised **55476**
72.8 Revised **55477**
(b)(2) corrected **66279**
72.9 (b)(1), (2), (3), (c)(6), (f)(1)(ii), (g)(1), (6) and (h) introductory text amended **55478**
72.13 (a)(1), (5), (6), (7), (9) and (10) removed; (a)(2), (3), (4) and (8) redesignated as (a)(1) through (4) **55478**
72.14 Added **55478**
72.22 (e) added **55480**
72.24 (a)(3), (5), (10) and (11) revised **55480**
72.25 (a) amended **55480**
72.30 (b)(3) removed; (e) added **55480**
72.31 (b) amended **55480**
72.32 (b) and (c) revised; (d) added **55480**
72.33 (b)(3) amended **55481**
72.40 (a)(2), (b)(1), (c) introductory text, (1) and (d)(1) amended **55481**
72.41 (b)(3) and (e)(1)(ii) amended **55481**
72.43 (b)(2)(iii)(B), (4) and (f)(1)(i) amended **55481**
72.44 (g)(1)(i), (2) introductory text, (iii) and (h)(1)(ii) amended **55481**
72.51 Amended **55481**
72.60 Revised **55481**
72.61 (a) and (b)(2)(i) revised; (b)(3) added **55481**
72.65 (b)(1)(ii), (iii) and (2) revised; (b)(1)(iv) removed **55482**
72.69 (a) revised **55482**
72.70 Revised **55482**
72.71 Revised **55482**
72.72 Heading, introductory text, (b) introductory text, (1)(ii) through (vi), (5)(vi) and (6) revised; (b)(1)(i)(C), (vii), (viii), (xi), (xiii), (5)(ii), (vii), (7) and (8) removed; (b)(1)(ix), (x), (xii) and (xiv) redesignated as (b)(1)(vii) through (x); (b)(5)(i) and (v) amended **55482**
72.73 Revised **55483**
72.74 Revised **55483**
72.80 (a), (b) and (d) through (g) revised **55484**
72.81 (c)(1)(ii) amended; (c)(2) revised **55485**
72.82 (a) and (d) revised **55485**
72.83 (a)(10) amended; (a)(12) and (b) revised; (a)(13), (14), (c) and (d) added **55485**
72.85 (a) and (c) revised **55485**
72.91 (b)(1)(i), (iii) introductory text, (B), (C), (3), (4) introductory text and (i) amended; (b)(1)(iv) and (4)(iv) added; (b)(5), (6) and (7) revised **55485**
72.95 Introductory text amended; (d) added **55485**
73.10 Heading revised; (b)(3) added **55486**
73.70 (c)(3) revised 5735
73.90 (a)(1), (2) and (3) revised; (c)(3) amended **55486**
74.2 Amended **55487**
75 Authority citation revised **55487**
75.67 (a) removed **55487**
77.3 (d)(3), (5) and (6) revised **55487**
77.4 (b)(1), (c)(2)(i), (f)(2)(i), (g)(2)(i)(B), (C) and (k)(2) revised; (k)(1) amended **55487**
(g)(2)(i)(D) correctly removed 66279
77.6 (a) revised **55487**
78.1 (a) and (b)(1)(v) revised **55488**

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78.3 (b)(1), (3)(ii), (c)(6) and (7) amended; (c)(8) and (d)(1) removed; (d)(2), (3) and (4) redesignated as (d)(1), (2) and (3) **55488**
78.4 (c)(1) amended **55488**
(c)(1) corrected **66279**
78.5 (a) amended **55488**
78.7 Removed **55488**
78.11 (a) amended **55488**
78.12 (a)(2) amended **55488**
78.14 (a) introductory text, (10) and (c)(1) amended **55488**
78.15 (c) amended **55488**
78.16 (d)(1) and (2) amended **55488**
78.17 Amended **55488**
78.18 (b) introductory text amended **55488**
78.20 (b) amended **55488**
80 Decision **63853**
80.2 (nn) removed **60135**
(ss) revised **68205**
80.28 (g)(1)(iii) added **68205**
80.30 (g)(1)(i) revised **68205**
80.41 (d) introductory text, tables, (f) introductory text, tables and (m) revised **68205**
80.45 (c)(1)(iv)(B), (D)(*12*), (*13*), (d)(1)(iv)(B) and (f)(1)(ii) revised **68206**
80.65 (d)(2)(iii) removed **60135**
80.67 (f)(2)(ii), (h)(1)(v)(A)(*3*), (*4*) and (B) removed; (h)(1)(v)(A)(*1*) and (*2*) revised **60135**
(e)(4) removed **68207**
80.68 (b)(1)(iv), (c)(3), (13)(v)(H) and (L) revised **68207**
80.69 (f) removed **60135**
80.72 (a) and (c) revised **54558**
80.75 (f)(2)(ii)(A)(*1*), (*2*), (h)(2)(i)(A) and (B) revised; (f)(2)(ii)(A)(*3*), (*4*), (h)(2)(i)(C), (D) and (ii) removed **60135**
80.77 (g)(1)(ii) removed **60136**
(g)(2)(iv)(B) revised **68207**
80.78 (a)(6) revised **60136**
(a)(1)(v)(C) revised **68207**
80.79 (c) introductory text and (1) revised; (c)(3) added **68207**
80.91 (e)(1)(iii) revised; (f)(2)(ii) added **68207**
80.94 Added **45563**
80.101 (b)(3), (f)(3), (4) and (g)(3) revised; (g)(8) and (j) added **68207**
80.104 (a)(2)(xi) added **68208**
80.128 (d)(2) revised **60136**
80.129 (d)(3)(v) revised **60136**
80.158 (a)(5) removed; (a)(6) through (10) redesignated as (a)(5) through (9) **60001**
80.171 (a)(5) removed; (a)(6) through (12) redesignated as (a)(5) through (11) **60001**
81 Attainment status determinations **51604**
Authority citation revised 7274
81.1 (a) revised; (c), (d) and (e) added 7274
81.300—81.356 (Subpart C) Authority citation revised 7274
81.300 (a) amended 7274
81.301 Amended 2728
81.302 Amended 2729, 9948
81.303 Amended **60011**
Amended 2730
Regulation at 62 FR 60011 eff. date corrected to 2–13–98 7290
81.304 Amended 2733
81.305 Amended **65030**
Amended 2734
81.306 Amended **68195**
Amended 2741
81.307 Amended 2742
81.308 Amended 2742
81.309 Amended 2743
81.310 Amended 2743
81.311 Amended 2744
81.312 Amended 2746
81.313 Amended 2747
81.314 Amended 2748
81.315 Amended **45171, 55178, 64736**
Amended 2749
81.316 Amended 2751
81.317 Amended 2753
81.318 Regulation at 62 FR 28637 withdrawn **40281**
Amended **55177, 61247**
Amended 2754
Regulation at 62 FR 61247 eff. date corrected to 2–10–98 6664
81.319 Amended **64286**
Amended 2758
81.320 Corrected; CFR correction **61916**
81.320 Amended 2760
81.321 Amended 2760
81.322 Amended 2761
81.323 Amended 2761
81.324 Amended 2763
81.325 Amended 2765

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81.326 Amended 2766
81.327 Amended 2768
81.328 Amended 2770
81.329 Amended 2771
81.330 Amended 2772
81.331 Amended 35972
Amended 2773
81.332 Amended 2773
81.333 Amended 2774
81.334 Amended 2776
81.335 Amended 2777
81.336 Regulation at 62 FR 28638 withdrawn 40281
Amended 61247
Amended 2778
Regulation at 62 FR 61247 eff. date corrected to 2–10–98 6664
81.337 Amended 2780
81.338 Amended 46210
Amended 2782
81.339 Amended 2783
81.340 Amended 2784
81.341 Amended 2784
81.342 Amended 2785
81.343 Amended 62698
Amended 2786
81.344 Amended 44088
Amended 2788, 8133
81.345 Amended 38217
Amended 2792
81.346 Amended 41283, 41870
Amended 2793
81.347 Amended 61241
Amended 2793
81.348 Amended 2796
81.349 Amended 2798
81.350 Amended 39448
Amended 2799
81.351 Amended 2800
81.352 Amended 2801
81.353 Amended 2801
81.354 Amended 2801
81.355 Amended 2802
81.356 Amended 2803
82 Revocation notice 1927
Determination 6008
Notice of acceptability 9151
82.4 (r)(2) revised; interim 4363
82.30 (a) revised 68046
82.32 (e) heading, (3), (4), (5) and (i) added; (e)(1) and (h) revised 68046
82.34 Heading and (a) revised; (b) amended; (d) added 68047
82.36 (a)(2) and (b) revised; (a)(3) and (7) revised 68047
82.38 (a) and (b)(1)(iii) revised 68048
82.40 (a)(2)(i) revised 68048
82.30——82.42 (Subpart B) Appendix C added 68048
Appendix D added 68052
Appendix E added 68053
Appendix F added 68055
85 Heading and authority citation revised 67736
85.1515 (c) revised 964
85.1603 (b), (c) and (d) revised 67736
85.1604 (a) revised 67736
85.1606 Introductory text revised 67736
86 Authority citation revised 44875, 47119
Authority citation revised 7719
86.1 (b)(1) table and (2) table amended 47119
(b)(1) table amended 54715
(b)(1) table and (4) table amended 965
86.001–23 (a) through (b)(1), (3) through (e)(1) and (f) through (m) revised 54720
86.001–30 (a)(4)(iv)(A) through (9) revised 54720
86.004–2 Added 54720
86.004–11 Added 54721
86.004–15 Added 54722
86.004–21 Added 54724
86.004–25 Added 54725
86.004–28 (c) and (d) revised 54726
86.004–30 (a)(3), (4)(i), (ii) and (iv)(A) through (12) revised 54727
86.004–38 Added 54728
86.004–40 Added 54729
86.094–8 (c) revised 47120
86.094–9 (a)(1)(i) introductory text, (ii) introductory text, (iii) and (c) revised 47120
86.094–11 (b)(1) introductory text revised 47120
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended 44875
86.094–17 (i) revised 7719
86.094–26 (a)(2), (b)(2)(i) and (ii) amended 44875
86.096–8 (c) revised 47120
86.096–11 (a) introductory text and (c) revised 47120
86.096–30 (a)(23) and (24) added 965
86.097–1 Redesignated as 86.099–1 965
86.098–3 Revised 54716

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86.098–10 (a)(1)(i)(C)(*2*), (*3*), (ii)(C)(*2*), (*3*), (iii)(C)(*2*), (iv)(C)(*2*), (v)(C)(*2*) and (vi)(C)(*2*) amended **54716**
86.098–11 (a)(3)(ii) and (4)(iii) introductory text amended **54716**
86.098–15 Added **54716**
86.098–23 (a), (b)(1), (3), (4)(i), (ii), (c), (d), (e)(1), (2), (f) through (l), (m)(2)(i) and (iv) revised; (m)(1) amended **54717**
86.098–30 (a)(4)(iv)(A) through (12) revised **54719**
86.099–1 Redesignated from 86.097–1 and revised 965
86.099–11 (a)(3)(ii) amended; (a)(4)(iii) introductory text revised **54720**
86.101 (c) revised 965
86.113–94 (b)(2) table and (3) table revised **47120**
86.119–90 (b)(3) revised; (b)(8) added **47121**
86.144–94 (c)(8)(ii)(B) revised **47122**
86.884–7 (a)(2)(i), (3) and (4) revised **47122**
86.884–8 (c) revised **47122**
86.884–9 (b)(2)(i) through (iv) and (c)(1) revised **47122**
86.884–10 (a)(8) revised **47123**
86.884–13 (b)(6)(ii) and (iii) revised **47123**
86.884–14 Revised **47123**
86.1008–90 (a)(1)(iii) added **47123**
86.1008–96 (a)(1) revised **47123**
86.1008–2001 (a)(1)(iii) added **47123**
86.1111–87 (a)(4) redesignated as (a)(5); new (a)(4) added **47123**
86.1310–90 (b)(1)(iv)(C), (3)(v), (vi), (b)(6) introductory text and (7)(iv) revised **47124**
86.1311–94 (b)(3) revised **54730**
86.1312–88 (a) revised **47124**
86.1313–91 (b)(2) revised **47125**
86.1313–94 (b)(2) revised **47125**
86.1313–98 Added **47126**
86.1316–90 (b)(1) revised; (f) added **47126**
86.1316–94 (b)(1) revised; (f) added **47126**
86.1319–84 (d)(3) revised; (d)(8) added **47127**
86.1319–90 (d)(3) revised; (d)(8) added **47127**
86.1321–90 (a) and (b)(3) revised **47128**
86.1321–94 (a) and (b)(3) revised **47128**
86.1322–84 (b)(3) revised **47128**
86.1323–84 (b)(3) revised **47129**
86.1324–84 (c) revised **47129**
86.1325–94 (c) revised **47129**
86.1327–90 (b), (f)(1), (2) introductory text and (i) revised **47129**
86.1327–94 (b), (f)(1), (2) introductory text and (i) revised **47129**
86.1327–96 (b), (f)(1), (2) introductory text and (i) revised **47130**
86.1327–98 Added **47130**
86.1330–84 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added **47131**
86.1330–90 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added **47131**
86.1333–90 (c), (d) introductory text, (d)(1), (2) and (e)(2) revised; (d)(3) and (4) removed **47131**
86.1334–84 (a)(2) revised **47131**
86.1335–90 Revised **47131**
86.1337–90 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed **47132**
86.1337–96 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed **47133**
86.1338–84 Revised **47133**
86.1339–90 Revised **47134**
86.1341–90 (b), (c) and (d) revised; (e) through (h) removed **47134**
86.1341–98 Added **47135**
86.1342–90 (h)(2)(i) through (vii) removed; (i) added **47135**
86.1342–94 (e) through (h) revised; (i) added **47135**
86.1343–88 (b) introductory text revised; (b)(2)(i) through (v) ans (b)(2)(ii) through (vi); new (b)(2)(i) added **47135**
86.1344–94 (e)(22) revised **54728**
86.1701–97 Redesignated as 86.1701–99 966
86.1701–99 Redesignated from 86.1701–97; (a) and (c) revised; (d) added 966
86.1702–97 Redesignated as 86.1702–99 966
86.1702–99 Redesignated from 86.1702–97; (b) amended 966
86.1703–97 Redesignated as 86.1703–993 967
86.1703–99 Redesignated from 86.1703–97; (b) amended 967
86.1704–97 Redesignated as 86.1704–99 967

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86.1705–97 Redesignated as 86.1705–99 967
86.1705–99 Redesignated from 86.1705–97; heading, (a) introductory text, (2), (3) and (b) through (g) revised 967
86.1706–97 Redesignated as 86.1706–99 969
86.1706–99 Redesignated from 86.1706–97 and revised 969
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86.1708–97 Redesignated as 86.1708–99 976
86.1708–99 Redesignated from 86.1708–97; Heading, (b)(1)(i), (iii)(B) and (c) amended; tables amended; (e) added 976
86.1709–97 Redesignated as 86.1709–99 979
86.1709–99 Redesignated from 86.1709–97; heading, (b)(1)(i), (iii)(B) and (c) revised; tables amended; (e) added 979
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Redesignated as 86.1710–99 983
86.1710–99 Redesignated from 86.1710–97; amended; (a) introductory text and (c)(9) added; (a)(1), (3)(i), (iii)(A), (B), (4)(i), (iii)(A), (B), (5)(ii), (b)(4), (c)(1), (2), (6), (7), (8), (d), (e)(2) and (4)(ii) revised 983
86.1711–97 Redesignated as 86.1711–99 985
86.1711–99 Redesignated from 86.1711–97; (b) removed 985
86.1712–97 Redesignated as 86.1712–99 985
86.1712–99 Redesignated from 86.1712–97; (a)(2)(iii), (b)(1) and (3)(vi) revised 985
86.1713–97 Redesignated as 86.1713–99 986
86.1713–99 Redesignated from 86.1713–97 986
86.1714–97 Redesignated as 86.1714–99 986
86.1714–99 Redesignated from 86.1714–97 986
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86.1716–99 Redesignated from 86.1716–97; (b) removed 986
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86.1723–99 Redesignated from 86.1723–97; revised 986
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86.1724–99 Redesignated from 86.1724–97; (b) introductory text revised; (b)(2) added 986
86.1725–97 Redesignated as 86.1725–99 986
86.1725–99 Redesignated from 86.1725–97; (d) added 986
86.1726–97 Redesignated as 86.1726–99 986
86.1726–99 Redesignated from 86.1726–97; (c)(1) revised 986
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86.1734–99 Redesignated from 86.1734–97 987
86.1735–97 Redesignated as 86.1735–99 987
86.1735–99 Redesignated from 86.1735–97 987
86.1770–97 Redesignated as 86.1770–99 987
86.1770–99 Redesignated from 86.1770–97; (a)(2) revised 987
86.1771–97 Redesignated as 86.1771–99 987
86.1771–99 Redesignated from 86.1771–97 987
86.1772–97 Redesignated as 86.1772–99 987
86.1772–99 Redesignated from 86.1772–97; heading revised 987
86.1773–97 Redesignated as 86.1773–99 987
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86.1777–97 Redesignated as 86.1777–99 987
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86.1778–99 Redesignated from 86.1778–97 987
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86.1780–97 Redesignated as 86.1780–99 987
86.1780–99 Redesignated from 86.1780–97 987
86 Appendix XVIII corrected **45289**
Appendix I amended **47136**
Appendix XVIII amended 987
89.1—89.7 (Subpart A) Appendix A revised **67736**
90.103 (a)(3) revised **42643**
90.107 (h) added **42643**
90.1003 (b)(5) added **42644**
91.1103 (b)(4) added **42644**
93.100—93.128 (Subpart A) Revised **43801**
112 Petition denial **54508**
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131.33 Added **41183**
131.36 (d)(13)(i) and (ii) amended; (d)(13)(iii) removed **52927**
(d)(12)(ii) amended **53214**
132 Table 3 amended **52924**
136.3 (a) Table 1C amended **48403**
(b)(1) and (e) Table II amended **48404**
136 Appendix A amended **48405**
140 Authority citation revised 1320
140.4 (a) introductory text, (b) introductory text and (1) amended; (c)(1), (2), (3), and (4) introductory text added; (b)(1)(ii) redesignated as (c)(4)(i) 1320
148 Notice **43109**
156 Notice **56075**
156.10 (h)(2)(iii) revised; (i)(2)(x)(D) added 9082
157 Grant of exemption 8577
159 Added **49388**
167.90 (b) amended **49620**
170 Decision **51994, 53688**
170.112 (e)(7)(iv) added **52003**
180 Technical correction **56089**
Nomenclature change **66023**
Technical correction 1379
180.106 Revised 2164
180.108 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2164
180.110 Revised **49924**
180.111 Existing text designated as (a)(1); (a) heading added; new (a)(1) amended **66023**
(a)(2) introductory text, (i), (ii), (iii) and (3) amended redesignated from 185.3850 existing text **66025**
180.142 (a) introductory text (1), (2), (b) introductory text, (1) introductory text, (i), (ii), (2) and (c) through (k) redesignated as (a)(1) introductory text, (i), (ii) (2) introductory text, (i) introductory text, (A), (B), (ii), and (3) through (11); (a) heading, (12), and new (b) added **46907**
180.145 (c) removed; (a) and (b) redesignated as (a)(1) and new (c); (a) heading revised; new (c) heading added **64301**
180.153 (a) and (b) redesignated as (a)(1) and (c); (a) heading and new (c) heading added 2165
(a)(2) introductory text, (i) introductory text, (A) through (D) and (ii), (3) introductory text, (i) introductory text, (A) through (D) and (ii) redesignated from 185.1750 introductory text, (a) introductory text, (1) through (4), (b), 186.1750 introductory text, (a) introductory text, (1) through (4) and (b) 2167
180.173 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.175 Revised **64293**

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180.183 Revised 2165
180.200 Existing text designated as (a); (a) heading and (b) added 162
180.205 (b) table amended 45754
Amended 66023
180.206 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.209 (b) table amended 5737
180.213 Revised 2165
180.213a Removed 2166
180.242 (a) and (b) redesignated as (a)(1) and (2); (a)(1) heading added; (a)(1) table amended 2166
(b) text amended 9441
180.254 (a) heading added; (a) table amended; (b) removed 2166
180.275 (b) redesignated as (c); (a) heading and new (c) heading added 65376
180.284 Regulation at 62 FR 7684 eff. date corrected to 1–6–98 416
180.288 Revised 66024
180.293 Existing text designated as (a)(1); (a) heading and (b) added; (a)(2) designated from 185.2650 text 49931
180.294 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2167
180.301 (a) heading added; (b) revised 4586
180.314 Amended; existing text designated as (a); new (a) heading added 66024
180.330 (a) amended; (b) redesignated as (c); (a) heading and new (c) heading added 66024
180.332 Amended; existing text designated as (a) 66024
(a) table transferred in part from 186.250 66025
180.353 Existing text redesignated as (a); new (a) heading and (b) added 45747
180.356 (b) table amended 9427
180.364 (b) amended 42927
180.368 (a) amended 66024
180.379 (a) existing text designated as (a)(1); new (a)(1) table amended; (a)(2) introductory text, (i), (ii) and (iii) redesignated from 185.1300 (a) introductory text, (1), (2) and (3); (b) redesignated as (c); (a) heading and new (c) heading added 63026
(a)(3) redesignated from 186.1300 existing text 63027
(a)(3) table amended 66024
180.380 Revised 38474
(a) revised 7308
180.381 (b) table amended 5739
180.383 Existing text redesignated as (a); new (a) heading and (b) added 39974
180.407 Revised 44595
Regulation at 62 FR 44595 eff. date corrected to 2–10–98 6665
180.408 Revised 66024
180.410 Heading, (b) and (c) revised; (a) heading added; (a) table transferred in part from 185.800 table and 186.800 table 47568
180.412 (b) added 44565
180.414 Revised 45741
(a)(4) added; (b) table amended 54789
(b) table amended 65036
180.416 Existing text designated as (a); (b) added 66014
180.417 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (a)(2); (b) added 46894
180.418 Revised 63235
(a)(2) added 63243
180.421 (a) and (b) redesignated as (a)(1) and (2); (a) heading and new (b) added; (a)(1) table transferred in part from 186.3200(a) table; (a)(2) table transferred in part from 185.3200 table and 186.3200(b) table 49937
(b) table amended 61447
180.422 Revised 63001
(a)(3) added 66025
180.430 Revised 1377
180.433 Existing text designated as (a); (a) heading and (b) added 36684
(b) table amended 61645
180.434 (b) table amended 43291
180.435 Revised 63001
180.436 (a) existing text designated as (a)(1); new (a)(1)

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table revised; (b) redesignated as (a)(2) 63018
(a)(3) introductory text, (i), (ii) and (iii) and (4) introductory text, (i), (ii) and (iii) redesignated from 185.1250(c) introductory text (1), (2) and (3) and 186.1250(c) introductory text, (1), (2) and (3) 63019
180.438 Revised 36671
(b) added 56102
(a) revised 63010
Regulation at 62 FR 63010 eff. date corrected to 1-28-98 64048
(a)(1) table amended 7299
180.440 Revised 62961
180.442 (b) table amended 46900
(a) revised; (b) table amended 62969
(b) table amended 1379, 2163
Regulation at 61 FR 29678 eff. date corrected to 2-9-98 6495
180.443 (b) introductory text revised; (b) table amended 36678
Introductory text revised; table amended 42690
(b) table amended 65369
180.445 Revised 9435
180.448 Existing text designated as (a); new (a) heading and (b) added 62992
(b) table amended 68216
180.449 Revised 44095
(b) table amended 56088
180.452 Existing text designated as (a); heading and (b) added 66020
180.460 Revised 7305
180.462 Existing text redesignated as (a); (b) added 44558
180.466 Existing text designated as (a); (a) heading and (b) added 37521
Revised 63034
180.472 (b) added 36697
(a) table amended 65367
180.474 (b)(1) table corrected 56095
180.482 (a) heading added; (b) introductory text revised; (b) table amended 35689
(b) amended 62985
180.487 Revised 54783
180.493 (b) introductory text revised; (b) table amended 39961
Corrected 47560
(b) table amended 8139
180.495 (a) heading and (b) heading added; (b) table amended 54778
180.501 Added 61647
180.503 (b) introductory text revised; (b) table amended 39956
180.507 (a) added 36690
180.509 Added 42684
180.510 Added 39967
180.511 Added 40741
180.512 Added 41292
180.513 Added 44571
180.514 Added 49163
180.515 Added 51037
180.516 Added 56082
180.517 Added 62979
180.518 Added 63669
180.1001 (b)(1) amended 41286
180.1020 Existing text designated as (a); (b) added 63863
180.1163 Regulation at 62 FR 58332, eff. date corrected to 2-17-98 7720
180.1164 (c) added 60661
180.1176 Regulation at 61 FR 67473 eff. date corrected to 1-6-98 417
180.1177 Regulation at 61 FR 67473 eff. date corrected to 1-6-98 417
180.1180 (a) heading and (b) revised; (c) and (d) removed 9430
180.1181 Added 41877
180.1182 Added 43657
180.1183 Added 43653
180.1184 Added 44582
180.1185 Added 44575
180.1186 Added 44579
180.1187 Added 46884
Revised 682
180.1188 Added 46887
Revised 679
180.1189 Added 61639
180.1190 Added 52509
180.1191 Added 56105
185 Authority citation revised 66025
185.100 Removed 2167
185.350 Removed 2167
185.600 Removed 2167
185.800 Table transferred in part to 180.410(a) table; removed 47568
185.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory

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text, (i), (ii) and (iii); removed **63019**
185.1300 (a) introductory text, (1),(2) and (3) redesignated as 180.379(a)(2) introductory text, (i), (ii) and (iii); removed **63026**
185.1580 Removed **63001**
185.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(2) introductory text, (i) introductory text, (A) through (D) and (ii); removed 2167
185.1850 Removed **38474**
185.2650 Existing text designated as 180.293(a)(2); removed **49931**
185.2750 Removed 2167
185.3200 Table transferred in part to 180.421(a)(2) table; removed **49937**
185.3225 Removed **63035**
185.3625 Removed **61647**
185.3765 Removed **63010**
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185.3850 Existing text redesignated as 180.111 (a)(2) introductory text, (i), (ii), (iii) and (3); removed **66025**
185.3900 Removed **64294**
185.4700 Removed **45754**
185.5450 Removed **63002**
185.5550 Removed 2167
186 Authority citation revised **66025**
Technical correction 1379
186.100 Removed 2167
186.250 Table transfered in part to 180.332(a) table **66025**
Removed **66026**
186.350 Amended **66026**
Removed 2167
186.450 Amended **66026**
186.600 Removed **66026**
186.800 Table transferred in part to 180.410(a) table; removed **47568**
186.1000 (a) table amended **66026**
186.1075 (a) table amended **66026**
186.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed **63019**
186.1300 Existing text redesignated as 180.379(a)(3) **63026**
186.1350 Table amended **66026**
186.1400 Removed **54790**
186.1450 Removed **46907**
186.1650 Revised **66026**
186.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(3) introductory text, (i) introductory text, (A) through (D) and (ii) 2167
186.1850 Removed **38474**
186.1950 Removed 2167
186.2000 Table amended **66026**
186.2400 Removed **66026**
186.2550 Removed 2167
186.2700 (a) table amended **66026**
186.2750 Removed 2167
186.2950 Table amended **66026**
186.3050 Removed **66026**
186.3200 (a) table transferred in part to 180.421(a)(1) table; (b) table transferred in part to 180.421(a)(2); removed **49937**
186.3225 Removed **63035**
186.3250 Revised **66026**
186.3350 Removed **66026**
186.3375 Removed 2167
186.3450 Removed **66026**
186.3550 (a) table amended **66026**
186.3750 Table amended **66026**
186.3765 Removed **63010**
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186.4000 Removed **66026**
186.4700 Removed **45754**
186.4750 Removed 2167
186.4800 Removed **66026**
186.4975 Revised **66026**
186.5000 Table amended **66026**
186.5350 Removed 2167
186.5450 Removed **66026**
186.5550 Removed 2167
186.5650 Removed **44595**
Regulation at 62 FR 44595 eff. date corrected to 2–10–98 6665
228.15 (d)(6) revised **46149**
Regulation at 61 FR 68970 eff. date corrected to 12–30–97 682
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247.2 (d) added 60973
247.3 Amended; eff. 11–13–98 60973
247.12 (f) and (g) added; eff. 11–13–98 60974
247.13 Existing text designated as (a); (b) through (e) added; eff. 11–13–98 60974
247.14 Existing text designated as (a); (b) added; eff. 11–13–98 60974
247.15 (c) and (d) added; eff. 11–13–98 60974
247.16 (f) and (g) added; eff. 11–13–98 60974
247.17 Revised; eff. 11–13–98 60974
258 Effective date confirmation 51606
258.21 (d) added 40713
258.23 (e) added 40713
258.60 (b)(3) added 40713
260.31 (d) added 59290
Regulation at 62 FR 59290 withdrawn 67736
261 Appendix IX amended 55347, 63463
264.15 (b)(4) revised 64656
264.73 (b)(6) revised 64656
264.1030 (d) added 52641
(b)(3) and (c) revised; (e) added 64656
264.1031 Amended 64657
264.1033 (a)(2) revised 64657
264.1050 (g) added 52641
(b)(3), (c) and (f) revised 64657
264.1060 Revised 64657
264.1062 (b)(2) and (3) revised 64658
264.1064 (g)(6) and (m) revised 64658
264.1080 (e) added 52642
(b)(1) and (c) revised 64658
264.1082 (b), (c)(2)(ix)(A), (B), (3) and (4)(ii) revised 64658
264.1083 (a)(2) and (b)(1) revised 64658
264.1084 (c)(2)(iii) introductory text, (B), (f)(3)(i)(D)(*4*) and (iii) revised; (e)(4), (f)(4) and (j)(2)(iii) added 64659
264.1085 (b)(2), (d)(1)(iii), and (2)(i)(B) revised; (e)(2)(iii) added 64659
264.1086 (c)(2), (4)(i), (d)(2), (4)(i) and (g) introductory text revised 64659
264.1087 (c)(3)(ii) and (7) revised 64660
264.1089 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added 64660
265.15 (b)(4) revised 64661
265.73 (b)(6) revised 64661
265.1030 (c) added 52642
(b)(3) revised; (d) added 64661
265.1033 (a)(2) and (f)(2)(vi)(B) revised 64661
265.1050 (f) added 52642
(b)(3) and (e) revised 64661
265.1060 Revised 64662
265.1062 (b)(2) and (3) revised 64662
265.1064 (g)(6) and (m) revised 64662
265.1080 (e) added 52642
(b)(1) and (c) introductory text revised 64662
265.1081 Amended 64662
265.1082 Revised 64662
265.1083 (b), (c)(2)(i), (ix)(A), (B), (3) and (4)(ii) revised 64663
265.1084 (a)(3)(v) and (b)(3)(v) added; (a)(2), (3)(ii)(B), (iii) introductory text, (A), (F) introductory text, (G) introductory text, (*I*), (iv), (4)(iv), (b)(1), (3)(ii)(B), (iii) introductory text, (F) introductory text, (G) introductory text, (iv), (8)(iii), (9)(iv) and (d)(5)(ii) revised 64664
265.1085 (c)(2)(iii) introductory text, (B) and (f)(3)(i)(D)(*4*) revised; (e)(4), (f)(4) and (j)(2)(iii) added 64666
265.1086 (b)(2), (d)(1)(iii) and (2)(i)(B) revised; (e)(2)(iii) added 64666
265.1087 (c)(4)(i), (d)(4)(i) and (g) introductory text revised 64666
265.1088 (c)(3)(ii) and (7) revised 64667
265.1090 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added 64667
265 Appendix VI revised 64668
268.39 (c) revised 37699
268.40 (g) amended 45572
268.44 (a) and (h) revised; (m) added; (p) removed 64509
268.48 (a) table amended 45572
270.14 (b)(5) revised 64671
271 State hazardous waste management program authorizations 43111, 47947, 49163, 52951, 61175, 62262, 62521, 67572
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271.1 (j) Table 1 amended....**45572**
272.501 Added....2898
272.951 Added....**67583**
272.2201 Added....**49169**
272 Appendix A added....**49170**
Appendix A amended....**67584**
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281 State underground storage tank program authorizations....**36698, 49620**
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282.102 Added....4593
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51–4.3 (b)(6) and (c)(1) revised **66529**
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60–1 Authority citation revised **44188**
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60–1.5 (b)(1), (2), (c) and (d) amended **66971**
60–1.7 (a)(1), (2), (3), (4), (b)(1) and (2) amended **66971**
60–1.8 Revised **44188**
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60–1.10 Amended **66971**
60–1.12 Added **44188**
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60–1.20 Heading, (a) and (d) revised; (e), (f) and (g) added **44189**
60–1.21 Amended **66971**
60–1.23 (b) amended **66971**

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60–1.24 (c)(3), (4), (5), (d) heading, (1) and (2) amended 66971
60–1.25 Amended 66971
60–1.26 Revised 44190
(a)(1)(vii), (c)(1) and (3) amended 66971
60–1.27 Revised 44191
60–1.28 Amended 66971
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60–1.34 (a)(4) added 44192
60–1.40 (c) amended 66971
60–1.41 (b) amended 66971
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101–37.100 Amended 43472
101–37.600—101–37.610 (Subpart 101–37.6) Added 43472
101–42—101–49 (Subchapter H Appendix) Regulation at 62 FR 2022 eff. date extended to 1–15–99 68217
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101–43.000 Regulation at 62 FR 41353 eff. date extended to 12–31–98 68217
101–43.600—101–43.603 (Subpart 101–43.6) Regulation at 62 FR 41353 eff. date extended to 12–31–98 68217
101–43.4801 Regulation at 62 FR 41354 eff. date extended to 12–31–98 68217
101–46 Revised 5893
101–46.201–2 Regulation at 62 FR 41355 eff. date extended to 12–31–98 68217

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105–60.402 Revised 64741
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105–60.402–2 Revised 64741
105–71.126 (a), (b) introductory text and (1) revised 45939, 45944
105–72.306 (a), (b) and (c) revised 45939, 45944

Chapter 301—Travel Allowances (Parts 301–1—301–99)

301–8.3 (b)(1)(ii) revised; (c) removed; (d) redesignated as (c); (a)(1), (b)(1)(i) and new (c) amended 42928
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51.10 OMB number pending **53567**
51.23 OMB number pending **53567**
51.25 OMB number pending **53568**
57.1104 (c)(1) amended **51374**
57.1105 Revised **51374**
57.1106 Revised **51374**
61.30—61.38 (Subpart B) Authority citation revised 9950
61.30 Revised; interim 9950
61.33 Revised; interim 9950
61.34 Revised; interim 9950
61.35 Revised; interim 9950
61.36 Revised; interim 9950
61.37a (b)(3) concluding text designated as (b)(4); (a), (b) introductory text and (4) revised; interim 9950
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400 Technical correction 4595
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405 Technical correction 4595
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410.33 Added **59099**
410.34 (d) introductory text and (4) revised **59100**
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411.15 (a)(1) revised; (k)(6), (7) and (8) added **59101**
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411.384 Added 1657
411.386 Added 1657
411.387 Added 1657
411.388 Added 1657
411.389 Added 1657
412.2 (c)(5) revised 6868
412.108 Corrected **52034**
413 Authority citation revised 310
413.40 (c)(2) revised 6868
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413.134 (b)(1), (ii)(A), (f)(1) and (2) heading revised; (g)(4) redesignated as (g)(5); (f)(2) introductory text and new (g)(4) added 1382
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433.68 (e)(2)(iv) amended **53572**
440.70 (d) revised 310
441.10 (h) through (k) redesignated as (i) through (l); new (h) added 310
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483.20 (d) through (f) redesignated as (k) through (m); (b) and (c) revised; new (d) through (j) added **67211**
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489.1 (e) added 312
489.10 (e) and (f) added 312
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489.53 (a)(14) added **56111**
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11.33 (a) amended 60459
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20 Revised 53720
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5511.1–2 Removed; eff. 10–31–97 51377
5511.1–4 Removed; eff. 10–31–97 51377
5511.2–1 (a) and (b) designation removed; eff. 10–31–97 51377
5511.2–5 Removed; eff. 10–31–97 51377
5511.4 (b)(2) removed; eff. 10–31–97 51377
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11 Authority citation revised 1066
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59 Authority citation revised 55715
59.1 Amended 55715
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61 Appendixes A(1), A(2) and A(3) amended **66029**
64 Authority citation revised **55716**
64.3 (a)(1) table amended; (b) revised **55716**
64.6 Table amended **54387, 59291, 60663, 62268**
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65 Authority citation revised **55717**
65.4 Tables amended **51786, 54388, 54391, 61248, 67738, 67741**
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206.226 (b)(3) revised 5897

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61 ..... **52304, 53589**
67 ..... **51822, 54410, 61259, 67819** 3063
206 ..... **62540, 62542**

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

Subtitle A Clarification **67688, 67689**
74.44 Corrected **51377**
144 Clarification **67688, 67689**
146 Authority citation revised **66961**
Clarification **67688, 67689**
146.136 (Subpart C) Added; interim **66961**

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205.40 Removed **64303**
205.41 Removed **64303**
205.42 Removed **64303**
205.43 Removed **64303**
232 Removed **64303**
233.120 Removed **64303**
235.111 Removed **64303**
235.112 Removed **64303**
235.113 Removed **64303**
250 Removed **64303**
251 Removed **64303**
255 Removed **64303**
256 Removed **64303**
257 Removed **64303**

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1110.1 Revised **66826**
1110.2 Amended **66826**
1110.13 (a), (b) and (c) revised **66826**
1156 Added 6876
1180—1199 (Subchapter E) Heading revised **66530**

Chapter XII—Corporation for National and Community Service (Parts 1200—1299)

Chapter XII Heading revised 4598
1201 Revised 4598

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1301.31 OMB number 2313
1304.20 (b) heading, (1), (c)(4) and (f)(1) amended; OMB number 2313
1304.21 (b)(1) amended 2313
1304.22 OMB number 2313
1304.23 OMB number 2313
1304.40 (a)(2) and (3) amended; OMB number 2313
1304.41 (b) amended; OMB number 2314

NOTE: **Boldface page numbers indicate 1997 changes.**

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TITLE 45 Chapter XIII—Con.

1304.50 (b)(3), (d)(1)(iii), (e)(3) and Appendix A amended; (d)(1)(ix) removed; (d)(1)(x), (xi) and (xii) redesignated as (d)(1)(ix), (x) and (xi); OMB number 2314
1304.51 (a)(1)(iii) amended; OMB number 2314
1304.52 (j)(1) amended; OMB number 2314
1304.60 OMB number 2314
1305.3 (b) and (d) amended; OMB number 2314
1306.30 (c) amended 2314

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1630 Revised **68224**
Authority citation corrected 1532
1630.2 (e) and (f) corrected 1532
1630.3 (c) introductory text corrected 1532
1630.12 (b) corrected 1532
1643 Added **67749**
Technical correction 9310

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270 ..... **62124**
271 ..... **62124**
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275 ..... **62124**
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303 ..... **52306**
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1644 8387

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.03–15 (h)(4) added **67532**
2 Authority citation revised **67514**
2.01–25 (a)(1)(ix) added; (a)(2) revised **67514**
8 Revised **67532**
31 Authority citation revised **67514**
31.01–3 Revised **67536**
31.40–30 Added **67514**
31.40–40 (b) revised **67514**
69.27 (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (b)(3) added **67536**
71 Authority citation revised **67514**
71.15–5 Revised **67536**
71.75–13 Added **67514**
71.75–20 (a) revised **67514**
91 Authority citation revised **67514**
91.15–5 Revised **67536**
91.60–30 Added **67514**
91.60–40 (b) revised **67515**
107 Authority citation revised **67515**
107.205 Revised **67536**
107.415 Added **67515**
114.400 (b) amended **64305**
115 Authority citation revised **67515**
115.925 Added **67515**
116.439 (e) amended **64305**
116.500 (h) amended **64305**
117.130 (b) amended **64305**
117.150 (a) amended **64305**
117.175 (f)(4) amended **64305**
117.200 (a)(1) through (4) amended **64305**
117.210 (c) amended **64305**
118.320 (c)(1) amended **64305**
121.710 Amended **64306**
122.604 (a) introductory text, (d) and (e) introductory text amended **64306**
126 Authority citation revised **67515**
126.480 Added **67515**
153.12 Introductory text revised **67537**
154.19 (a) introductory text revised **67537**
175 Authority citation revised **67515**
175.400 Amended **64306**
Corrected **65739**
175.540 (d) added **67515**
176 Authority citation revised **67515**
176.925 Added **67515**
176.930 Revised **67515**
177.500 (j)(1) amended; (o)(1) revised **64306**
178.330 (a)(4)(v) amended **64306**
180.130 (b) amended **64306**
180.210 (d) amended **64306**
185.604 (a) introductory text, (d) and (e) introductory text amended **64306**
189 Authority citation revised **67515**
189.60–30 Added **67515**
189.60–40 (b) revised **67515**

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Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

201 Authority citation revised 9157
201.2 Amended 9157
201.21 Removed 9157
201.85 Amended 9157
201.86 Added 9157
201.87 Amended 9157
201.186 (Subpart U) Removed 9158
221.1 (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (b) amended 6880
221.3 (f), (k) and (t)(2) removed; (t)(1) redesignated as (t); (g) through (j) and (l) through (w) redesignated as (f) through (u) 6880
221.7 (b)(1)(ii) amended; (b)(1)(v) and (2)(iv) removed 6880
221.11 (a) introductory text and (1) amended 6880
221.13 (a)(1) amended 6880
221.13 (a)(1)(iii) removed; (a)(1)(iv) redesignated as (a)(1)(iii); (a)(3) amended 6881
221.15 (c)(4)(i) amended 6881
221.17 Amended 6881
221.19 Amended 6881
221.21—221.37 (Subpart C) Removed 6881
221.61 Note amended 6881
382 Revised 3828
383 Removed **61648**

Chapter IV—Federal Maritime Commission (Parts 500—599)

514.7 (g)(1) revised **63463**
586 Petition denial **54396**
586.2 Suspended **61649**

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15 ..... **55548, 60122**
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27 ..... **52057, 60939**
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298 7744

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Chapter I Order **56111**
0.291 (d) revised 1035
0.408 Revised (OMB numbers) **52257**
0.441 Revised **51797**
0.443 Revised **51797**
0.453 Introductory text revised **51797**
0.455 Introductory text revised **51797**
0.460 (a) revised **51797**
0.461 (a), (h) and (i) redesignated as (a)(1), (i) and (j); (a)(2) and new (h) added; (d)(1), (3), (g) introductory text, (3), concluding text, new (i), (j), (k) introductory text and (3) revised **51797**
0.467 (a)(1) table and (2) revised 8140
1 Deadline establishment 2170
1.47 (b) and (d) revised; (h) added 1035
1.720 Introductory text and (h) revised; (j) added 1035
1.721 (a)(5) through (8) revised; (a)(9) through (14), (c) and (d) added 1035
1.722 Revised 1036
1.724 (a), (b) and (c) revised; (f) through (j) added 1037
1.725 Revised 1037
1.726 Revised 1037
1.727 (b) thorugh (e) revised; (g) and (h) added 1038
1.729 Revised 1038
1.730 Removed 1039
1.731 Heading and (a) revised 1039
1.732 (a) through (d) and (f) revised; (h) added 1039
1.733 (a) introductory text, (2), (4), (5), (6) and (b) through (e) revised; (f), (g) and (h) added 1039
1.734 (c) revised; (d) added 1040
1.735 (b), (d), (e) and (f) revised 1040
1.736 Added 1041
1.767 Regulation at 60 FR 15726 eff. 6-13-96 ..... **51378**
1.1105 Table amended 1041
1.1157 (d) added **59825**
1.1159 (e) added **59825**

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TITLE 47 Chapter I—Con.

1.1162 (c)(1) and (2) added **59825**
1.1307 (b)(4) introductory text correctly revised **61448**
1.2101 Revised 2340
1.2102 (a) and (b) revised; note added 2340
(a)(10) added; (b)(4) introductory text revised 6103
1.2103 (a) revised; (d) added 2341
1.2104 (d) and (g) revised 2341
1.2105 Revised 2341
1.2107 (b) and (c) revised 2342
1.2108 (b) and (c) revised 2343
1.2109 (a), (b) and (c) revised 2343
1.2110 (e)(4)(i) revised **55356**
Revised 2343
1.2111 (c) and (d) revised; (e) added 2346
1.2112 Added 2347
1.2113 Added 2348
2.106 Table amended 6674
5.70 Added **55529**
15.205 (d)(5) added **58658**
15.209 (g) revised **58658**
15.242 Added **58658**
20.3 Amended 2637
20.18 Revised 2637
20.20 Added **63871**
21.113 Heading revised; (d) added **55530**
21.959 (a)(2) revised 2348
21.960 (b)(4) and (d)(1) revised 2348
22.369 Heading revised; (d) added **55530**
22.903 Revised **63872**
23.20 (f) added **55530**
24 Deadline establishment 2170
24.18 Added **55531**
24.304 (a)(2) revised 2348
24.309 (b) and (f) revised 2348
24.704 (a)(2) revised 2349
24.709 (b)(9) added **55356**
24.711 (b) and (c) revised 2349
24.712 (c) added 2349
24.716 (c) and (d) revised 2349
24.717 (c) revised 2349
25.113 (b) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.115 (c) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.130 (d) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.131 (b) and (j) revised (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.137 Added (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.142 (d) and (e) added **59295**
25.143 Corrected **51378**
25.145 Added (OMB number pending) **61456**
25.201 Amended **59296**
25.203 (i) added **55531**
25.204 (g) added **61457**
25.210 (b) and (c) through (j) redesignated as (c) and (e) through (l); new (b) and new (d) added **61457**
25.212 (c) correctly revised **51378**
25.259 Added **59296**
25.260 Added **59296**
26.105 Added **55531**
27.62 Added **55532**
27.203 (b) revised 2349
27.209 (d) revised 2349
36.125 (a)(5) revised 2124
36.601 (c) revised 2124
36.612 (a) introductory text revised 2124
36.613 (a) introductory text amended 2124
36.621 (a)(1) and (4) introductory text amended; (a)(2), (3), (4)(ii)(A) and (C) revised 2124
36.622 (a) introductory text and (b) introductory text revised 2125
36.631 (a) through (d) revised 2125
42.10 Removed **59604**
42.11 (a) revised; (c) removed **59604**
43.51 Regulation at 61 FR 59200 eff. 10-1-97 ..... **51378**
(d) revised **64751**
43.61 (c) added (effective date pending) **64752**
Regulation at 62 FR 64752 eff. 2-9-98; corrected 5743
Regulation at 62 FR 45761 eff. 1-23-98 8578
52 Order **55762**
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52.7 (b) revised; (f) added **55180**

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52.11 (c) and (g) revised; (h) and (i) added **55180**
52.12 Added **55180**
52.13 (b) revised; (c) through (g) added **55181**
52.15 (d) and (e) added **55182**
52.16 Added **55183**
54 Agency practice and procedure rules 162
54.101 (a) introductory text and (b) revised; (a)(1) amended 2125
54.201 Heading revised; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added 2125
54.301 Revised 2126
54.303 Revised 2128
54.307 (a)(4) revised 2128
54.400 (a) and (d) revised 2128
54.401 (d) amended 2128
54.403 (d) added 2128
54.500 Revised 2128
54.501 Revised 2129
54.502 Revised 2129
54.503 Revised 2129
54.504 Heading, (a), (b) heading, (1), (2) introductory text and (v) revised; (b)(3) and (c) redesignated as (b)(4) and (d); new (b)(3) and new (c) added; new (b)(4) amended 2129
54.505 (b)(4) and (f) added; (d) removed 2130
54.506 Added 2130
54.507 (c) amended **56120**
(e) and (f) revised; (g)(4) amended 2130
(a) amended 3832
54.511 (b) and (c) revised; (d) added 2130
54.517 (a) revised 2131
54.518 Added 2131
54.519 Added 2131
54.603 Heading, (b)(1) introductory text, (2) and (3) revised 2131
54.604 Added 2131
54.605 (d) revised; (e) added 2131
54.609 (a) revised; (c) added 2131
54.619 (b) and (d) revised 2132
54.623 (c) amended **56120**
(e) revised 2132
(a) amended 3832
54.625 Added 2132
54.703 (b) and (c) amended 2132
54.705 Revised 2132
54.709 (a)(4) revised; (a)(5) added **65038**
(a) introductory text and (3) revised 2132
61.20 Regulation at 60 FR 15726 eff. 6-13-96 ..... **51378**
Revised **59604**
61.21 Regulation at 60 FR 15726 eff. 6-13-96 ..... **51378**
61.22 Regulation at 60 FR 15727 eff. 6-13-96 ..... **51378**
61.72 (a) introductory text revised **59604**
63.01 Regulation at 60 FR 15727 eff. 6-13-96 ..... **51378**
63.02 Regulation at 60 FR 15727 eff. 6-13-96 ..... **51378**
63.05 Regulation at 60 FR 15727 eff. 6-13-96 ..... **51378**
63.10 Regulation at 60 FR 15727 eff. 6-13-96 ..... **51378**
Revised (effective date pending) **64752**
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63.11 Regulation at 60 FR 15727 eff. 6-13-96 ..... **51378**
Revised (effective date pending) **64753**
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63.12 Regulation at 60 FR 15728 eff. 6-13-96 ..... **51378**
Revised (effective date pending) **64753**
Regulation at 62 FR 64753 eff. 2-9-98 5743
63.13 Regulation at 60 FR 15728 eff. 6-13-96 ..... **51378**
Revised (effective date pending) **64754**
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63.14 Regulation at 60 FR 15728 eff. 6-13-96 ..... **51378**
Revised (effective date pending) **64754**
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63.15 Regulation at 60 FR 15728 eff. 6-13-96 ..... **51378**
63.17 Regulation at 60 FR 15728 eff. 6-13-96 ..... **51378**
(b) revised (effective date pending) **64754**

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Regulation at 62 FR 64754 eff. 2–9–98 5743
63.18 Regulation at 60 FR 15729 eff. 6–13–96 ..... **51378**
(e), (h) and (i) revised; (k) added (effective date pending) **64755**
Regulation at 62 FR 64755 eff. 2–9–98 5743
63.19 Regulation at 60 FR 15732 eff. 6–13–96 ..... **51378**
63.20 Regulation at 60 FR 15732 eff. 6–13–96 ..... **51378**
63.21 Regulation at 60 FR 15732 eff. 6–13–96 ..... **51378**
(a) revised; (e) redesignated as (h); new (e), (f) and (g) added (effective date pending) **64758**
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64 Order **55762**
Waiver **58686, 60034, 64759**
Authority citation revised **64758**
64.1001 (b), (c) and (d) revised (effective date pending in part) **64758**
64.1002 Revised (effective date pending) **64758**
64.1300 (c) and (d) revised **58686**
68.2 (l)(1) and (2) corrected **54790**
(a)(3), (d) introductory text and (j) revised; (d)(4) added **61654**
68.3 Amended **61654**
68.222 Removed **61664**
68.300 Revised **61664**
68.302 Revised **61664**
68.304 Revised **61667**
68.306 Revised **61667**
68.308 Revised **61671**
68.310 Revised **61682**
68.312 Revised **61689**
68.314 Revised **61690**
68.316 Heading revised **61691**
68.317 Heading revised **61691**
68.318 Revised **61691**
69 Waiver **56120**
69.4 (a) revised; (h)(6) removed **56132**
69.30 (c) revised; (d) added **65622**
69.111 (c) revised **56132**
69.124 Correctly revised **66030**
69.153 (c)(1) and (d) revised; (g) added **56132**
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69.155 (c) revised **56133**
69.612 (a)(3) amended 2133
69.616 (d) amended 2133
69.619 (b) revised 2133
73 Petition denial **61692**
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73.202 (b) table amended ..... **51799, 51800, 53973, 54791, 55763, 59605, 63674, 63675, 65764—65766, 66030, 66031, 66295, 66530, 66826**
(b) table amended ..... 164, 165, 2350—2352, 3832—3835, 4195, 4398, 5464, 5744, 6077—6079, 7308, 8579—8581
73.606 (b) table amended 6079
73.1030 (a) redesignated as (a)(1); (a)(2) added **55532**
74.24 (j) added **55532**
74.32 Added **55537**
76.5 (mm)(2) revised; (mm)(3) and (4) added **61031**
76.613 Heading, (b), (c) and (d) revised (effective date pending) **61031**
76.620 Added **61031**
76.701 Regulation at 62 FR 28373 eff. 10–31–97 ..... **61034**
76.702 Regulation at 62 FR 28373 eff. 10–31–97 ..... **61034**
76.800 Added (effective date pending) **61031**
76.802 (a) and (g) revised; (l) added (effective date pending) **61031**
76.804 Added **61032**
76.805 Added **61033**
76.806 Added **61034**
76.922 Regulation at 62 FR 15127 eff. 9–4–97 ..... **52952**
(b)(5)(i) introductory text revised **53576**
76.934 (h)(5)(i) and (9) revised; (h)(11) added **53576**
78.19 (c) redesignated as (c)(1); (c)(2) added **55533**
78.19 (f) added **55538**
80.21 (f) added **55533**
87.23 (a) redesignated as (a)(1); (a)(2) added **55534**
90.7 Amended **52044**
90.129 (e) revised **55534**
90.155 (d) revised **52044**
90.177 Introductory text revised; (f) added **55534**
90.210 (k)(3) revised; (k)(6) added **52044**

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90.350—90.363 (Subpart M) Heading revised 52043
90.350 Amended 52044
90.353 (d), (e) and (f) revised; (i) added 52044
90.359 Revised 52044
90.361 Introductory text and (c)(2)(ii)(B) revised 52044
90.805 (c) revised 2349
90.812 (a) and (b) revised 2349
95.42 Added 55534
95.192 (d) added 55535
95.206 (c) added 55535
95.405 (d) added 55535
95.816 (c)(6) and (e) revised 2350
95.840 Added 55535
95.1003 (c) added 55536
97.13 (c)(1) correctly revised 61448
97.203 (h) added 55536
97.205 (h) added 55536
101.13 (d) revised 6103
101.15 (c) revised 6103
101.17 Added 6103
101.31 (b)(3) introductory text and (e)(1)(v) revised; (b)(6) added 55538
101.45 (d) revised 6103
101.51 (a) introductory text revised 6104
101.53 (g) added 6104
101.55 (a) introductory text and (b)(2) revised 6104
101.56 Added 6104
101.57 (a)(1) revised 9448
101.63 (a) and (d) revised 6104
101.64 Added 6104
101.103 (i)(1) and (2) added 6105
(b)(3) added 9448
101.107 Table amended 6105
(a) amended 9448
101.109 Table amended 6105
101.113 (a) amended 9448
101.115 (c)(2) table amended 6105
101.123 Heading revised; (e) added 55536
(d) added 55538
(e) correctly designated 60664
101.147 (v) redesignated as (v)(1); new (v)(1) revised; (v)(2) added 6105
(a) amended; (u) introductory text revised 9448
101.803 (a) and (d) amended 9448
101.1201—101.1209 (Subpart N) Added 6106

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TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular No. 97-03 64912
Small entity compliance guide 64952
Federal Acquisition Circular No. 97-04 9048
Small entity compliance guide 9069
1.106 Table amended (OMB numbers) 9050, 9051

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TITLE 48 Chapter 1—Con.

1.201–1 (a) amended **64940**
(b)(2) amended 9069
1.402 Amended **64914**
2.101 Regulation at 61 FR 41468 confirmed **64914**
Amended **64915**
4.602 Regulation at 61 FR 67412 confirmed 9050
4.603 Regulation at 61 FR 67412 confirmed; (a) revised 9050
4.703 (b)(3) amended **64915**
4.800 Amended **64917**
4.803 (a)(42) removed 9052
5.207 Regulation at 61 FR 41468 confirmed **64914**
6.001 (a) amended **64917**
7.403 Regulation at 61 FR 41468 confirmed **64914**
8.002 Regulation at 61 FR 41468 confirmed **64914**
8.402 Regulation at 61 FR 41468 confirmed **64914**
8.404 (b)(4) amended **64917**
8.901—8.904 (Subpart 8.9) Regulation at 61 FR 41468 confirmed **64914**
9.103 Regulation at 62 FR 44819 confirmed 9053
9.104 Regulation at 62 FR 44820 confirmed 9053
9.508 Regulation at 61 FR 41469 confirmed **64914**
11.001 Amended 9051
12.102 (d)(2) and (3) revised **64917**
12.203 Amended **64917**
12.206 Amended **64917**
12.214 Revised 9054
12.301 (c)(2) amended **64917**
12.602 (a) and (b) amended **64917**
12.603 Regulation at 61 FR 41469 confirmed **64914**
13 Revised **64917**
13.103 Regulation at 61 FR 41469 confirmed **64914**
13.202 Regulation at 61 FR 41469 confirmed **64914**
15.209 (b)(3) revised 9055
15.805–1 Regulation at 61 FR 41469 confirmed **64914**
16 Technical correction 1532
16.402–1 (b) introductory text revised **51379**
16.500 Regulation at 61 FR 41469 confirmed **64914**
16.701 Amended **64926**
16.703 (c)(1)(vi) amended **64926**
17.200 Regulation at 61 FR 41469 confirmed **64914**
17.204 Regulation at 61 FR 41470 confirmed **64914**
19.001 Regulation at 62 FR 44820 confirmed 9053
19.201 Regulation at 62 FR 44820 confirmed 9053
19.302 Regulation at 621 FR 44820 confirmed; (d) introductory text amended 9053
(a), (i) and (j) revised; (c)(1), (d)(1)(i), (e)(1), (g)(1), (2) and (h)(4) amended 9055
19.303 Heading and (c) revised 9056
19.502–1 Regulation at 61 FR 41470 confirmed **64914**
19.508 Regulation at 62 FR 44820 confirmed 9053
19.601 Regulation at 62 FR 44820 confirmed 9053
19.602–1 Regulation at 62 FR 44820 confirmed 9053
19.602–2 Regulation at 62 FR 44820 confirmed 9053
19.602–3 Regulation at 62 FR 44821 confirmed 9053
19.811–1 (c) introductory text amended **64940**
19.1001 Revised 9057
19.1003 Introductory text revised; (a) amended 9057
19.1006 (c)(1)(i) amended **64926**
(b)(1) amended 9057
22.1006 Regulation at 61 FR 41470 confirmed **64914**
22.1300—22.1308 (Subpart 22.13) Heading revised 9058
22.1300 Revised 9058
22.1301 Revised 9058
22.1302 (b) amended 9058
22.1303 (a) introductory text, (b)(1), (2) and (d) amended 9058
22.1304 (a) and (b) amended 9058
22.1305 Amended 9058
22.1306 Amended 9058
22.1307 Introductory text amended 9038
22.1308 (a)(1) introductory text amended; (a)(1)(i) and (b) revised 9058
23.1004 (b) amended 9051
23.1000—23.1005 (Subpart 23.10) Regulation at 62 FR 12697 confirmed 9051
25.402 (b) revised 9060

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25.1000 Revised **64930**
25.1002 (c)(2) revised **64930**
29.401–6 (b) introductory text and (c)(1) amended **64930**
30.101 (c) revised 9060
31.109 (f)(3) amended 9061
31.205–6 Regulation at 62 FR 270 confirmed; (p)(1) revised **64931**
(p) revised; interim 9067
31.205–10 (a)(5) revised 9067
31.205–18 (a) amended; (c) and (d) heading revised; (e)(3) added **64932**
31.205–46 (a)(3)(iv) revised **64933**
31.205–52 Revised 9068
32.502–12 (c) amended 9061
32.503–3 (b)(2) amended 9061
32.602 Regulation at 61 FR 41470 confirmed **64914**
32.603 Regulation at 61 FR 41470 confirmed **64914**
32.1103 (a)(1) and (b)(2) amended **64926**
33.101 (b)(1) amended; (c) removed **64933**
33.102 Regulation at 61 FR 41470 confirmed **64914**
33.104 Regulation at 61 FR 41470 confirmed **64914**
(a)(3)(iii) redesignated as (a)(3)(iv); new (a)(3)(iii) added; new (a)(3)(iv)(C) removed; new (a)(3)(iv)(D) redesignated as (a)(3)(iv)(C); new (a)(3)(iv)(B) and (h) revised (a)(4)(ii)(A), (B), (6) and (e) amended **64933**
(h)(5) corrected 1532
33.105 Regulation at 61 FR 41470 confirmed **64914**
34.001 Regulation at 61 FR 41470 confirmed **64914**
36.602–1 (a)(6) correctly removed; (a)(7) correctly redesignated as new (a)(6) **51379**
37.103 Corrected **51379**
37.202 Regulation at 61 FR 41470 confirmed **64914**
38.000 Regulation at 61 FR 41470 confirmed **64914**
39 Regulation at 61 FR 41470 confirmed **64914**
39.002 Amended 9068
39.103 Added 9068
41.202 (c)(1) amended **64926**
42 Heading revised 9062
42.000 Revised 9062
42.001 Revised 9062
42.002 Revised 9062
42.003 Revised 9062
42.101—42.103 (Subpart 42.1) Revised 9062
42.201—42.203 (Subpart 42.2) Revised 9062
42.203 (a) amended **64940**
42.301 Revised 9063
42.302 (a) introductory text, (11) introductory text, (iv), (13), (20), (32), (61) and (63) revised 9063
42.602 (c)(2) and (d) revised 9064
42.603 (a) introductory text and (b)(1) introductory text amended 9064
42.701 Amended 9064
42.703–1 (a) amended; (c) revised 9064
42.703–2 (d) amended 9064
42.704 (a), (b) and (c) revised 9064
42.705–1 (b)(1) revised **64915**
(a) introductory text, (3), (4), (b)(1), (2) and (3) revised 9064
42.705–2 (b)(1) revised **64916**
(a)(2) introductory text, (iv) and (b) revised 9065
42.705–3 (a)(2) revised 9065
42.1001—42.1008 (Subpart 42.10) Removed **64932**
42.1203 (b) and (c) revised; (d), (e) and (f) redesignated as (f), (g) and (h); new (d) and new (e) added **64934**
(c) corrected 1533
42.1204 (b) through (e) redesignated as (c), (e), (h) and (i); heading, (a) introductory text, (1), (2) introductory text and new (e) revised; new (b), new (d), (f) and (g) added **64935**
(g) corrected 1533
43.301 (a)(2)(iii) amended **64926**
44.204 (b) amended 9069
45.608–1 Regulation at 61 FR 41471 confirmed **64914**
45.608–5 Regulation at 61 FR 41471 confirmed **64914**
46.103 (d) revised 9065
46.104 (f) revised 9065
46.502 Amended 9065
46.801 Regulation at 61 FR 41471 confirmed **64914**

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47.301–3 (c) introductory text amended 9065
47.303–17 (d)(1), (2) and (e) amended **64936**
49.002 (a) amended **64927**
49.501 Amended **64927**
51.103 Regulation at 61 FR 41471 confirmed **64914**
52.101 (e)(2)(i) amended **64927**
52.102 Revised **64927**
52.102–1 Removed **64927**
52.102–2 Removed **64927**
52.204–5 Regulation at 61 FR 67413 confirmed 9050
52.204–6 Regulation at 61 FR 67413 confirmed; amended 9050
52.212–1 Amended 9050
52.212–4 Amended 9052
52.212–5 Regulation at 61 FR 41471 confirmed **64914**
Amended 9052, 9058
52.213–1 Revised **64927**
52.213–2 Introductory text amended **64928**
52.213–3 Introductory text amended **64928**
52.213–4 Added **64928**
Amended 9052, 9058
52.215–2 Amended 9054
52.216–7 Amended **64916**
Amended 9065
52.216–13 Amended **64916**
Corrected 1533
Amended 9065
52.216–15 Amended **64916**
Amended 9065
52.219–1 Amended 9069
52.222–35 Amended 9059
52.222–37 Amended 9059
52.222–48 Regulation at 61 FR 41471 confirmed **64914**
52.223–5 Regulation at 62 FR 12697 confirmed 9051
Amended 9052
52.230–1 Amended 9061
52.230–2 Amended 9054
52.230–3 Amended 9054
52.230–5 Amended 9061
52.233–2 Regulation at 61 FR 41471 confirmed **64914**
52.233–3 Regulation at 61 FR 41472 confirmed **64914**
52.239–1 Regulation at 61 FR 41472 confirmed **64914**
52.244–6 Amended 9059
52.247–64 (f) corrected **51379**
52.252–1 Revised **64928**
52.252–2 Revised **64929**
53 Technical correction 648
53.204–2 (a) amended **64940**
53.209–1 (d) amended **64937**
53.213 (a) through (e), (f)(1) and (2) amended **64929**
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53.214 (c) amended **64940**
53.215–1 (c) amended **64940**
53.219 Regulation at 61 FR 67413 confirmed 9050
53.242–1 Amended **64935**
53.243 Amended **64929, 64936**
53.245 Regulation at 61 FR 41472 confirmed **64914**
53.249 (a)(2), (3) and (4) amended **64940**
53.301–33 Revised **64941**
53.301–279 Revised **64942**
53.301–294 Regulation at 61 FR 67413 confirmed 9050
53.301–1406 Revised **64938**
53.301–1435 Revised **64943**
53.301–1436 Revised **64947**
53.301–1437 Revised **64951**

Chapter 2—Department of Defense (Parts 200—299)

225.872–1 (d) removed; interim 5745
225.7005 Revised; interim 5745
225.7007–1 Revised; interim 5745
225.7007–3 Revised; interim 5745
225.7007–4 Revised; interim 5745
225.7010–1 Introductory text revised; interim 5745
225.7010–2 Revised; interim 5745
225.7010–3 Revised; interim 5745
225.7016–1 Revised; interim 5745
225.7016–2 (b) amended; interim 5746
225.7016–3 Revised; interim 5746
225.7019–1 (a) revised; interim 5746
225.7019–3 (a)(1)(iii) and (iv) removed; (a)(1)(v), (vi), (vii) and (b) redesignated as (a)(1)(iii), (iv), (v) and (c); new (b) added; interim 5746
225.7022–1 (b) amended; interim 5746
225.7022–2 (b) revised; interim 5746
225.7022–3 Revised; interim 5746
231.205–6 (f)(1) revised; interim **63036**
231.205–70 Revised; interim 7309
246.703 Revised 6109

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246.704 (1) removed; (2) through (5) redesignated as (1) through (4) 6109
246.770 Removed 6109
246.770–1 Removed 6109
246.770–2 Removed 6109
246.770–3 Removed 6109
246.770–4 Removed 6109
246.770–5 Removed 6109
246.770–6 Removed 6109
246.770–7 Removed 6109
246.770–8 Removed 6109
252.225–7016 Amended; interim 5746
252.225–7029 Revised; interim 5746

Chapter 4—Department of Agriculture (Parts 400—499)

Chapter 4 Policy statement 9158

Chapter 9—Department of Energy (Parts 900—999)

901.601 Existing text designated as (a); (b) added **53756**
903.104–10 Redesignated from 903.104–11 ..... **53756**
903.104–11 Redesignated as 903.104–10 ..... **53756**
904.804–1 Heading and (b) revised **53757**
912 Added **53757**
913.505–1 Revised **53757**
915.804–1 Redesignated from 915.804–3 ..... **53757**
915.804–3 Redesignated as 915.804–1 ..... **53757**
915.804–6 Revised **53757**
915.806–2 Added **53757**
915.1003 (Subpart 915.10) Removed **53757**
916.504 Added **53757**
916.505 Added **53757**
932.006–4 Added 5273
932.402—932.407 (Subpart 932.4) Heading revised **53758**
933.102 Added **53758**
939 Revised **53758**
944 Removed **53758**
952.204–70 Amended; heading revised **51803**
970.0404–1 Amended **51803**
970.0404–2 (e) added **51803**
970.0404–4 (a)(1) revised; (a)(2) added **51803**
970.1508–1 Revised **53758**
970.2201 (b)(1)(ii) revised **51803**
970.2501 (Subpart 970.25) Added 5274
970.2602–2 Heading revised; existing text designated as (a); (b) added **63425**
970.3101–3 (b), (c) and (d) added 5274
970.3101–7 Added 5274
970.3102 Exhisting text designated as (a); new (a) amended; (b) added 5274
970.3102–2 (i)(2) introductory text amended; (i)(2)(iv), (v), (vi) and (p) added 5275
970.3102–5 Revised 5275
970.3102–7 Revised 5275
970.3102–17 (b) heading revised; (b)(3) added 5275
970.3103 (b) revised 5276
970.3272 Added 5276
970.5204–1 Revised **51804**
970.5204–13 (d)(8)(iv), (e)(11) and (31) revised; (e)(37) and (38) added 5276
970.5204–14 (d)(8)(iv), (e)(9) and (29) revised; (e)(35) and (36) added 5276
970.5204–17 Amended; heading revised 5276
970.5204–22 Amended **53758**
970.5204–24 Removed **53758**
970.5204–44 Amended **53759**
970.5204–60 Amended **53759**
970.5204–81 Added **63425**
970.5204–84 Added 5276
970.5204–85 Added 5276

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.105–2 (b)(1)(i) amended **67750**
1201.105–3 Existing text designated as (a); (b) added **67750**
1201.106 (a) amended **67750**
1202.1 (b) through (j) redesignated as (c) through (k); (b) added; new (i), (j)(1) and (7) revised **67750**
1202.7000 (Subpart 1202.70) Added **67750**
1202 Appendix A added **67750**
1203.104–11 Heading revised **67750**
1205.9000 (Subpart 1205.90) Added **67750**
1206.9000 (Subpart 1206.90) Added **67751**
1209.408–70 (Subpart 1209.4) Added **67751**

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1214.303 Removed **67751**
1216.405 Redesignated as 1216.406 ..... **67751**
1216.406 Redesignated from 1216.405; (a), (b) and (c) redesignated as (e)(1)(i), (ii) and (iii) **67751**
1217.102—1217.102–1 (Subpart 1217.1) Removed **67751**
1222.608—1222.6080–4 (Subpart 1222.6) Removed **67751**
1224.202 Redesignated as 1224.203 ..... **67751**
1224.203 Redesignated from 1224.202 ..... **67751**
1225 Removed **67751**
1236.602–1 (a) and (c) removed **67751**
1237.104–90 Revised **67751**
1237.104–91 Added **67751**
1246.705 (a)(3) revised **67752**
1252.223–70 Revised **67752**
1252.225–90 Removed **67752**
1252.225–91 Removed **67752**
1252.228–70 Revised **67752**
1252.228–72 Revised **67752**
1253.303 (Subpart 1253.3) Appendix amended **67752**

Chapter 14—Department of the Interior (Parts 1400—1499)

1401.106 Table amended (OMB numbers) **52266**
1425 Removed **52266**
1452.225–70 Removed **52266**

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1505.405 (Subpart 1505.4) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1514.201–6 Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1515.900—1515.970–2 (Subpart 1515.9) Revised **60665**
Regulation at 62 FR 60665 eff. date corrected to 2–10–98 6675
1535.007 Regulation at 62 FR 38477 eff. date corrected to 12–30–97 418
1537.200—1537.205 (Subpart 1537.2) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1548.102 (Subpart 1548.1) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1552.209–74 Regulation at 62 FR 5348 eff. date corrected to 12–30–97 691
Amended 692
1552.210–79 Regulation at 61 FR 33693 eff. date corrected to 2–10–98 6676
1552.214–70 Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1552.217–73 Amended **60667**
Regulation at 62 FR 60667 eff. date corrected to 2–10–98 6675
1552.217–74 Amended **60667**
Regulation at 62 FR 60667 eff. date corrected to 2–10–98 6675
1552.235–72 Regulation at 62 FR 38478 eff. date corrected to 12–30–97 418
1552.235–74 Regulation at 62 FR 38478 eff. date corrected to 12–30–97 418
1552.235–77 Regulation at 62 FR 38478 eff. date corrected to 12–30–97; amended 418
1552.235–78 Regulation at 62 FR 38478 eff. date corrected to 12–30–97; amended 418

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.106 (1) revised (OMB numbers); interim 9953
1802.101 Amended; interim 9953
1803.104–5 (a)(i) amended; interim 9966
1804.570—1804.570–2 (Subpart 1804.5) Added; interim 9954
1805.201 Removed; interim 9954
1805.207 (a) added; interim 9954
1807.105 (b)(19) redesignated as (b)(20) **58687**
1807.7205 Revised **58687**
1814.201–670 (d) amended; interim 9966
1815 Revised; interim 9954
1816.402–270 (a) amended **58687**
(e)(1) revised; interim 9965
1816.404 Added **58687**
1816.405–270 (b)(2)(ii) amended; interim 9966

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1816.406–70 (a), (b) and (e) amended **58687**
1817.503 Existing text designated as (2); (a) added **58687**
(a)(2) amended; interim 9967
1817.7001 (a)(1) redesignated as (a); (a)(2) removed **58687**
1817.7201 (Subpart 1817.72) Added **58687**
1827.301 Amended **58688**
1827.303–70 (b)(6) amended **58688**
1832.409–170 (d) amended; interim 9967
1832.412 (f) redesignated as (f)(1); (f)(2) added **58688**
1834.7003–1 (c) amended; interim 9965
1835.016–70 (d)(1), (2), (3), (5) and (7) amended; interim 9967
1837.110–70 (c) removed **58688**
1842.101 (a)(i) and (ii) amended 3652
1842.102–70 (b) introductory text revised 3652
1842.803 (b)(1)(D) added **58688**
1842.7301 Revised 3652
1844.201–2 (c)(2) amended; interim 9967
1845.7101–3 (b) amended **58688**
1852.215–73 Removed; interim 9965
1852.215–74 Removed; interim 9965
1852.215–75 Removed; interim 9965
1852.215–77 Amended; interim 9965
1852.215–78 Amended; interim 9965
1852.215–79 Amended; interim 9966
1852.215–81 Amended; introductory text revised; interim 9966
1852.215–82 Removed; interim 9966
1852.216–87 Amended **58688**
1852.237–72 Removed **58688**
1852.243–70 Amended; interim 9966
1853.215–2 Redesignated as 1853.215–70; interim 9966
1853.215–70 Redesignated from 1853.215–2; (a) amended; interim 9966
1853.232 Redesignated as 1853.232–70; interim 9966
1853.232–70 Redesignated from 1853.232–2; interim 9966
1853.242–70 (g) amended; interim 9967
1853.245 Redesignated as 1853.245–70; interim 9966
1853.245–70 Redesignated from 1853.245; interim 9966
1853.249 Redesignated as 1853.249–70; interim 9966
1853.249–70 Redesignated from 1853.249; interim 9966
1871.103 (b) amended; interim 9966
1871.104 (a) removed; (b) through (e) redesignated as (a) through (d); new (c) amended; interim 9966
1871.105 (a) revised; interim 9966
(f) amended; interim 9967
1871.301—1871.302 (Subpart 1871.3) Removed; interim 9966
1871.401–3 (a)(3) added; interim 9966
(a)(2) and (b)(4) amended; interim 9967
1871.401–4 (a)(4) added; interim 9966
(a)(2) amended; interim 9967
1871.401–5 (b)(2) revised; interim 9966
1871.402 (d) amended; interim 9967
1871.403 Removed; interim 9966
1871.505 Introductory text amended; interim 9967
1871.604–2 (a) amended; (d) revised; interim 9966
1871.604–3 (a) amended; interim 9967
1872.302 (b)(1) revised; interim 9966
1872.403–2 (c)(2) amended; interim 9966
1872.505 Introductory text amended; interim 9967
1872.702 (b)(1) amended; interim 9967
1872.705–1 Amended; interim 9967

Chapter 52—Department of the Navy Acquisition Regulations (Parts 5200—5299)

5231 Added **66827**

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1.22 (a) revised.....51804
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1.26 (a)(8) revised.....55357
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10.13 (a) and (b) revised.....51804
10 Appendix amended.....2172, 4197
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107.105 (a) introductory text revised.....51556
107.117 (d)(5) amended.....51556
107.301—107.339 (Subpart D) Appendix A amended.....51556
171.5 (a)(1)(i), (iii)(B) and (C)(3) revised.....65194
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171.6 (b)(2) table revised.....51557
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171.7 (a)(3) table and (b) table amended.....51558
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171.12 (d)(1) amended.....51558
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172.101 Table amended.....51559
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172.203 (k)(3) amended.....51560
172.204 (b)(1) introductory text amended.....51560
172.801—172.807 (Subpart I) Reinstated.....66899
172.807 Revised.....66902
173.5 (b) introductory text and (3) revised.....8142
173.6 (c)(3) amended.....51560
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173.8 (d)(1) amended; (d)(5) revised.....8142
173.9 (e) amended.....51560
173.32 (e)(2)(i) amended.....51560
173.56 (b)(1) and (f) amended.....51560
173.62 (b) table amended.....51560
(c)(5) table corrected.....1884
173.125 (a) amended.....51560
173.166 (b)(1) and (3)(i) amended.....51560
173.202 (b) amended.....51560
173.221 Amended.....51560
173.225 (e)(4) amended.....51560
173.242 (b)(1) amended.....51560
173.243 (b)(1) amended.....51560
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177.840 (e) amended.....51561
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178.68 (f)(1)(ii) revised.....51561
178.270–14 (b)(13) revised.....51561
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179.15 (b) heading and (f)(1) revised; (e) introductory text amended **51561**
179.100–19 (a) amended **51561**
179.100–23 (a) amended **51561**
179.100–24 Amended **51561**
179.221–1 Table amended **51561**
180 Authority citation revised **51561**
180.509 (j) redesignated as (j)(1); (j)(2) added **51561**
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190.203 (a) revised 7722
190.209 Revised 7722
191.1 (b)(3) added **61695**
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191.21 Amended 7723
192.1 (b)(5) added **61695**
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192.10 Added **61695**
192.16 (b)(5) revised 7723
192.107 (b)(2) revised 7723
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192.614 (c)(4) removed; (b) and (c) redesignated as (c) and (d); (a) and new (c)(2) introductory text revised; new (b) and (e) added **61699**
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192 Appendix A amended 7723
193.2059 (d)(1)(i) revised 7723
194.121 (a) revised **67293**
195 Effective date confirmation 3653
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195.1 Regulation at 62 FR 31367 withdrawn **52511**
(b)(6), (7) and (8) redesignated as (b)(7), (8) and (9); new (b)(6) added **61695**
195.2 Amended **61695**
195.3 (c)(5)(i) and (ii) revised 7723
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195.56 (a) revised 7723
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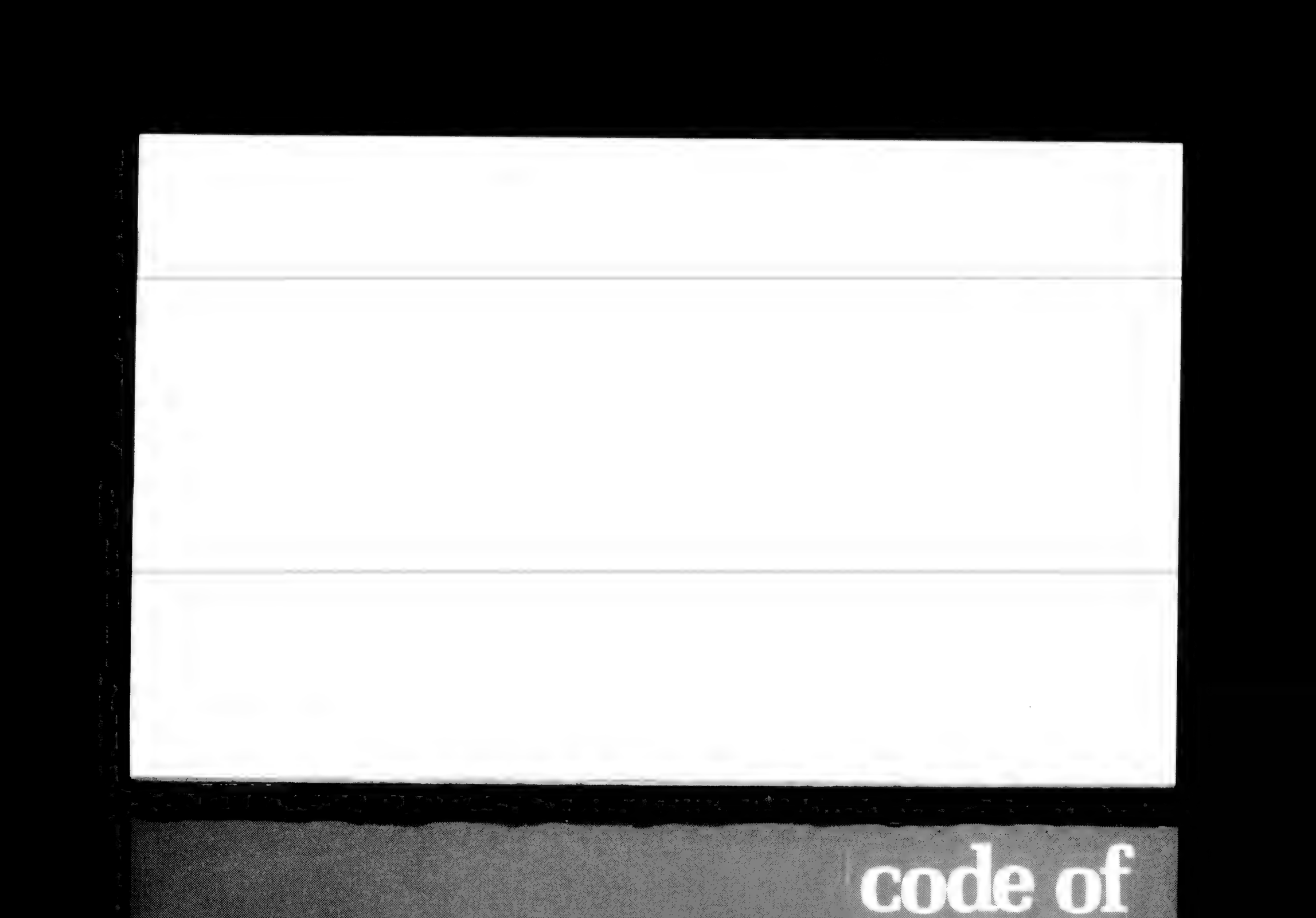
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An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Brian Swidal. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Jim Wickliffe. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Acting Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[6] Jan. 1, 1998
3 (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
4	(869–034–00003–7)	7.00	[6] Jan. 1, 1998
5 Parts:			
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700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
1–26	(869–034–00007–0)	24.00	Jan. 1, 1998
27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
400–699	(869–032–00012–5)	28.00	Jan. 1, 1997
700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
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11	(869–034–00029–1)	19.00	Jan. 1, 1998
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200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
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Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
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Complete set (one-time mailing)		264.00	1996

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 to March 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5]No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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CFR Index and Finding Aids	45.00		1997

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581.202 (a) and (b) revised 14758
581.303 (a) revised 14759
581.305 (d) and (e) revised 14759
581.402 Revised 14759
581.501 Revised 14759
581 Appendix A revised 14759
581 Appendix B revised 14777
582.305 (c) and (g) revised; (m) added 14787
582.402 (a) revised 14788
582.501 Revised 14788
733 Revised 4558
831 Authority citation revised 9401
831.201 (b)(1) revised 9402
842 Authority citation revised 9402
842.105 (b) revised 9402
870 Authority citation revised 9402
870.301 (c) added 9402
880 Added 10291
890.102 (g) added 9402

Chapter VI—Federal Retirement Thrift Investment Board (Parts 1600—1699)

1605.2 (c)(5) revised; interim 4366

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TITLE 5 Chapter VI—Con.

1605.4 (c)(1) revised; interim 4366

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2610.102 Amended 13116
2610.105 (b)(4) and (5) amended; (b)(6) added 13116
2610.106 (b) and (c) redesignated as (c) and (d); new (b) added; new (d) revised 13116
2610.107 (b) amended 13116
2610.108 Heading revised; (a) and (b) amended 13116
2610.201 (a) and (b) introductory text revised; (f) amended 13116
2610.204 (a) revised; (c) amended 13116
2634.906 Amended 15274

Proposed Rules:

300 13564
890 446
930 8874

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

2.28 (b)(17) added 11101
6.25 (b)(1)(i) and (ii) suspended 13481
6.20—6.36 (Subpart) Appendix 3 amended 5233

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

51.21 Revised 15277
51.38 Revised 15277
56 Heading revised 13330
56.17 (a)(2) and (3) removed; new (a)(2) through (5) added 13330
56.36 Revised 13330
56.37 Amended 13331
56.40 (a) revised 13331
56.76 (e)(5) amended 13331

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

Chapter II Heading revised; nomenclature change; interim 9727
210.9 Regulation at 62 FR 901 confirmed; (b)(20) revised 9104
210.19 Regulation at 62 FR 901 confirmed; (f) revised 9104
226.2 Regulation at 62 FR 901 confirmed; amended 9104
Amended; interim 9727
226.4 Regulation at 62 FR 902 confirmed 9104
(e) and (f) amended; interim 9728
226.6 Regulation at 62 FR 902 confirmed; (f)(9) amended 9104
(c)(3) and (k) introductory text amended; interim 9728
226.7 (h) and (j) amended; interim 9728
226.12 (b) through (e) removed; (a) heading and new (b) added; interim 9728
226.13 Regulation at 62 FR 902 confirmed 9104
(d)(3)(ii) and (iii) amended 9105
226.14 Regulation at 62 FR 903 confirmed 9104
226.15 Regulation at 62 FR 903 confirmed 9104
(e)(3) revised; (f) amended 9105
226.16 (k) added; interim 9729
226.17 (b)(7) amended; interim 9729
226.18 Regulation at 62 FR 903 confirmed 9104
(b)(11) amended 9105
(a) introductory text revised; interim 9729
226.23 Regulation at 62 FR 903 confirmed 9104
(e)(1)(i) and (h)(6) amended; (e)(1)(iv) and (h)(1) revised; (e)(1)(vi) added 9105
(d), (e)(1)(i) and (ii)(F) amended; interim 9729

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.64 Regulation at 62 FR 61214 confirmed 12603

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301.64–3 Regulation at 62 FR 61214 confirmed 12613
301.81–3 (e) amended; interim 4152
301.89–3 (f) amended; interim 1
301.89–14 (f)(2) amended; (d), (e) and (f) redesignated as (f), (g) and (h); new (d), new (e) and (i) added 1329
301.93–3 (c) revised; interim 8836
319.34 (Subpart) Removed 13484
319.37–1 Amended 13484
319.37–2 (a) table amended 13484
319.40–2 (c) amended 13485
319.56–2t Table amended 13485
319.56–2w Revised 12396

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

401.114 Regulation at 62 FR 63633 confirmed 14334
401.120 Regulation at 62 FR 63633 confirmed 14334
454.7 Regulation at 62 FR 63633 confirmed 14334
457.104 Regulation at 62 FR 63633 confirmed 14334
457.105 Regulation at 62 FR 63633 confirmed 14334
457.108 Regulation at 62 FR 63633 confirmed 14334
457.109 Regulation at 62 FR 63633 confirmed 14334
457.113 Regulation at 62 FR 63633 confirmed 14334
457.150 Regulation at 62 FR 63633 confirmed 14334

Chapter VII—Farm Service Agency, Department of Agriculture (Parts 700—799)

723 Regulation at 62 FR 15600 confirmed 9128
Nomenclature change 11585
723.103 Regulation at 62 FR 15600 confirmed; (d) amended 9128
723.104 Amended 11582
723.209 Regulation at 62 FR 15600 confirmed; heading revised; (c) amended 9128
723.210 (d) added 11582
723.213 (c) removed; (d) redesignated as new (c) 11582
723.216 (a) introductory text, (2)(ii)(A) and (iii)(A) revised 11582
723.308 Amended 11582
723.309 Introductory text amended 11582
723.409 Heading, (a), (b), (e)(1), (2) introductory text and (f) revised; (g) removed 11582
723.410 Introductory text revised 11583
723.501—723.504 (Subpart E) Revised 11583
783.8 (c) revised 3791

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

900.600 Revised 10492
900.601 Revised (OMB numbers) 10492
905.306 (a) Table 1 amended; interim 3250
911.234 (Subpart) Added 15281
912 Removed 10493
913 Removed 10493
915.235 (Subpart) Added 15281
925 Nomenclature change 658
925.215 (Subpart) Regulation at 62 FR 68152 confirmed 14602
925.304 (b)(1) introductory text amended; (b)(1)(i) through (vii) removed; (b)(1)(viii) and (ix) redesignated as (b)(1)(ii) and (iii); new (b)(1)(i) added; interim 658
929.16 Removed 10493
930.59 (b) suspended in part through 6–30–98; interim 404
930.141 (a) revised; (b) removed 14024
930.159 Added; interim 404
930.162 Added; interim 405
930.200 Revised 14024
944.106 (a) table amended; interim 3250
959.322 Introductory text amended; (f)(5) revised 9130
966.323 (a)(1), (2)(i), (iii) and (d)(3) revised 146
(a)(1) revised 12401
979.219 Amended; interim 4368
980.212 (b)(1) revised 146

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TITLE 7 Chapter IX—Con.

(b)(1) revised 12401
982 Marketing percentages 3254
982.340 Regulation at 62 FR 53227 confirmed 9133
982.432 Removed 10493
982.457 Removed 10493
984.347 (Subart) Regulation at 62 FR 58644 confirmed 9135
985 Marketing percentages 8562, 14334
989 Marketing percentages 11585
989.6 Removed 10493
989.156 Regulation at 62 FR 60768 confirmed 4372
989.211 Removed 10493
997.30 (a) revised; interim 2850
997.40 (c) introductory text, (d) and (e) amended; interim 2851
997.101 Regulation at 62 FR 48751 confirmed 3255
998.100 Heading amended; (g) removed; (h) and (i) redesignated as (g) and (h); interim 2851
998.200 Heading, (a), (h)(1) and (2) revised; (h)(3) added; interim 2851
998.409 Regulation at 62 FR 48751 confirmed 3255
999.600 Regulation at 62 FR 50243 confirmed 12979

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

1301 Referendum results notice 10111
1301.13 (e) added 10110

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1496 Authority citation revised 11104
1496.5 (b)(1) and (f) revised 11104
1499.8 (b)(4) and (c)(2) amended; interim 8837

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

1703.102 Amended 3637
1703.103 (a)(3) amended 3637
1703.107 (a)(5) revised 3637
1703.109 (h) introductory text amended 3637
1703.113 (b) amended; (c) revised 3637
1703.122 (e) introductory text amended 3637
1728 Authority citation revised 11590
1728.97 (b) amended 11591
1730 Added 3450

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1930 Authority citation revised 2135
1930.122 (b)(4)(i)(A)(*1*) amended 2135
1948 Authority citation revised 6052
1948.101—1948.150 (Subpart C) Removed 6052
1951 Authority citation revised 6052
1951.852 (b) amended 6052
1951.853 (a) amended; (b)(2)(ix) revised 6053
1951.883 (a)(2) revised 6053
1951.901 Amended 6628
1951.909 (e)(2)(vii), (viii) introductory text, (A), (h)(3)(viii) and (j) revised; (k), (l) and (m) removed 6628
1951.914 Revised 6629
1951.950 OMB number 6629
1951 Exhibit D removed 6629
2003.10 (c) table corrected 3255

Chapter XLII—Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Part 4200—4299)

4274 Added 6053

Proposed Rules:

28 14839
205 ..... 5285, 6498, 9975
301 4198
319 ..... 3844, 4198
406 4399
457 4399
610 446

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723 5285
800 .....14840, 15104
868 2353
911 6679
915 6679
930 3048
932 7732
958 5472
980 5472
993 9160
1001 .....3667, 4802, 9686, 9689, 12417
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1004 .....3667, 4802, 9689, 12417
1005 .....3667, 4802, 9689, 12417
1006 .....3667, 4802, 9689, 12417
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1065 .....3667, 4802, 9689, 12417
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1137 .....3667, 4802, 9689, 12417
1138 .....3667, 4802, 9689, 12417
1139 .....3667, 4802, 9689, 12417
1205 15336
1209 3848
1301 .....1396, 3267
1499 8879
1755 8582
3015 7734
3016 7734
3019 7734
3200 3481
4284 5474

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

103.1 Regulation at 58 FR 69210 confirmed 1334
(f)(3)(iii)(MM) amended; (f)(3)(iii)(NN) removed; interim 12984
103.7 Regulation at 58 FR 69210 confirmed 1334
103.2 (a)(1), (7), (b)(9), (10) heading, (i), (13), (14) and (e) revised; interim 12984
103.7 (b)(1) amended; interim 12986
204 Authority citation revised 12986
204.3 (c)(1)(iii) amended; (c)(1)(iv) and (vi) removed; (c)(1)(v) redesignated as (c)(1)(iv); (c)(3) added; interim 12986
204.4 (f)(1)(iv) removed; (d)(1) amended; interim 12986
207.7 Redesignated as 207.8; new 207.7 added 3795
207.8 Redesignated as 207.9; new 207.8 redesignated from 207.7 3795
207.9 Redesignated from 207.8 3795
208.7 (a)(2) revised; interim 12986
208.9 (b), (c), (d) and (f) revised 3796
208.10 Revised; interim 12986
208.14 (b)(2) revised; interim 12986
209.1 (b) amended; interim 12986
209.2 (c) amended; interim 12986
212.1 Regulation at 58 FR 69210 confirmed 1334
214.2 Regulation at 58 FR 69210 confirmed; (e)(22) revised 1334
214.6 (b) revised 1335
235.1 Regulation at 58 FR 69217 confirmed 1334
244.6 Revised; interim 12987
245.7 (a) revised; interim 12987
264.2 (c)(1)(iii) and (2)(iii) removed; (c)(3) amended; (d) through (h) redesignated as (e) through (i); new (d) added; interim 12987
264.5 (e)(1)(v) removed; (e)(3)(i) and (ii) redesignated as (e)(3)(ii) and (iii); new

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TITLE 8 Chapter I—Con.

(e)(3)(i) added; new (e)(3)(iii) amended; interim 12987
274a.12 Regulation at 58 FR 69217 confirmed 1334
299.1 Table amended 3797
Table amended; interim 12987
299.5 Table amended 3797
Table amended; interim 12987
316.4 (a)(2) amended; (a)(3) removed; (a)(4) and (b) redesignated as (a)(3) and (c); new (b) added; interim 12987
332.2 Amended; interim 12987
335.2 (b) through (e) redesignated as (c) through (f); interim 12988
(b) added; interim 12988

Proposed Rules:

3 2901
103 1775
274a 5287
292 2901
299 5287

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

1 Policy statement 3017
2 Policy statement 3017
2.131 (d) added 10498
3 Policy statement 3017
3 Authority citation revised 10498
3.2 (a) amended 10498
3.3 (a) amended 10498
3.5 (a) amended 10498
3.6 (a)(2)(x) and (xi) amended; (a)(2)(xii) added 3023
3.11 (a) amended 3023
3.14 (a)(9) amended 3023
3.15 (d) amended 10498
(e) amended 10499
3.18 (d) amended 10499
3.19 (a)(1) and (3) amended 10499
3.100—3.118 (Subpart E) Authority citation removed 2
3.100 (a) Footnote 1 redesignated as Footnote 6 2
3.102 (c) Footnote 5 redesignated as Footnote 7 2
3.104 (b)(1)(i) Footnote 2 redesignated as Footnote 8 2
3.125—3.142 (Subpart F) Authority citation removed 2
3.136—3.142 Authority citation removed 2
51.1 Amended; interim 15284
51.3 (a) revised; interim 15284
77.1 Amended; interim 8840
78.4 Regulation at 62 FR 53532 confirmed 3638
78.41 (a) and (b) amended; interim 14336
92 Technical correction 1889
93 Technical correction 1889
Effective date confirmation 15285
93.301 (h)(6) and (7) amended 6064
93.308 (a)(1) amended 3640
93.324 Amended 3640
93.326 Amended 3640
94 Technical correction 1889
94.9 Regulation at 62 FR 43925 confirmed 12604
94.10 Regulation at 62 FR 43925 confirmed 12604
94.18 Heading, (a) and (b) revised; interim 408
(a)(2), (3) and (b) corrected 4347
95 Technical correction 1889
96 Technical correction 1889
96.2 Heading and (b) revised; interim 408
97 Technical correction 1889
98 Technical correction 1889
130 Technical correction 1889
145.14 (a)(1), (b)(1) and (3) amended 3
145.23 (b)(2)(iii), (c)(1)(ii)(C), (e)(1) introductory text, (ii)(B), (3), (f)(3), (f)(5) and (g)(3) amended 3
145.33 (b)(2)(iii), (c)(1)(ii)(C), (d)(1)(vi), (e)(1) introductory text, (ii)(B), (3), (f)(3), (g)(3) and (i)(1)(v) amended 3
145.43 (b)(2)(iii), (d)(2) and (e)(2) amended 3
145.53 (b)(2)(iii) amended 3
147.5 (b) amended 3
147.6 Introductory text amended 3
147.7 Footnote 5, (b)(1)(vii), (d)(2) introductory text and (viii) amended 3
147.8 Introductory text amended 3
147.11 (b)(1), (4), (5) and (7) amended 3

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147.12 (a)(3) Footnote 11 and (b)(3)(ii)(a) Footnote 12 amended 3
147.22 (c) amended 3
147.24 (b)(3) and (c) amended 3

Chapter III—Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—599)

310.25 Regulation at 62 FR 61009 withdrawn 1735
317.363 (b)(3) introductory text and (i) amended; interim 7281
319.104 (d) amended 148
381.118 (f) added 11360
381.463 (b)(3) introductory text and (i) amended; interim 7281
417 Notice of compliance 4560, 4562, 11104

Proposed Rules:

54 3671
71 3849
79 3671
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93 12700
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95 12700
96 12700
97 12700
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130 12700
145 12036
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305 1797
308 7319
310 1800
318 7319
327 1797
335 1797
381 ..... 1797, 7319
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TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

9.8 (b) revised 2876
9.11—9.45 (Subpart A) Revised 2876
9.21 (b), (c) introductory text and (f) corrected 12988
9.45 Heading and (b) corrected 12988
30 Technical correction 13773
30.1 Revised 1895
30.10 Revised 1896
32 Technical correction 13773
32.1 (b) revised 1896
40 Technical correction 13773
40.2 Revised 1896
40.10 Revised 1896
50 Technical correction 1335, 13773
50.1 Revised 1897
50.5 Revised 1897
50.68 Removed 9403
52 Authority citation revised 1897
Technical correction 13773
52.1 Revised 1897
52.9 Added 1897
60 Technical correction 13773
60.1 Revised 1898
60.11 Revised 1898
61 Technical correction 13773
61.1 (c) revised 1898
61.9b Revised 1898
70 Technical correction 13773
70.2 Revised 1898
70.10 Revised 1899
70.24 (d) revised 9403
71 Technical correction 13773
71.0 (f) added 1899
71.11 Added 1899
72 Technical correction 13773
72.2 (f) revised 1900
72.12 Revised 1900
110 Technical correction 13773
110.1 (a) revised 1900
110.7b Revised 1900
150 Technical correction 13773
150.2 Revised 1901

Chapter II—Department of Energy (Parts 200—699)

430.2 Amended 13315
430.21—430.27 (Subpart B) Regulation at 62 FR 53510 confirmed 9390
430.22 (b)(6) added 13316
430.23 Heading revised; (s) through (v) added 13316
430.24 (s) through (v) amended 13316
430.27 (a)(1), (b)(1)(iii) and (l) amended 13316
430.21—430.27 (Subpart B) Appendix S added 13316
Appendix T added 13317
430.31—430.33 (Subpart C) Heading revised 13317
430.31 Revised 13317

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TITLE 10 Chapter II—Con.

430.32 Heading and introductory text revised; (o) through (r) added 13317
430.33 Revised 13318
430.40 Revised 13318
430.41 Revised 13318
430.47 (a)(1) amended 13319
430.49 (a) amended 13319
430.50 (a) and (b) amended 13319
430.60 Revised 13319
430.61 (a)(4) amended 13319
430.62 Revised; eff. in part 3–18–99 13319
430.63 (a) amended 13321
430.70 (a)(1) introductory text (3) and (6)(i) revised 13321
430.73 Introductory text amended 13321
430.60—430.75 (Subpart F) Appendixes A and B revised 13321
600.27 (b)(2)(i)(A) revised; (b)(2)(i)(B) amended; (b)(2)(i)(C) removed; (b)(2)(i)(D) redesignated as (b)(2)(i)(C) 10503

Chapter XV—Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)

Chapter XV Removed 13486

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1 11169
2 5315
33 14381
50 ..... 3052, 3673
71 8362
72 ..... 12040, 13372
430 ..... 2186, 3053, 9975, 10571
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TITLE 11—FEDERAL ELECTIONS

Proposed Rules:

1—9099 (Ch. I) 4404
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TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

9.101 Added 6473

Chapter II—Federal Reserve System (Parts 200—299)

204.3 (c) revised 15071
205.4 (c) added; interim 14532
207 Removed 2820
OTC margin stock lists 3804
220 OTC margin stock lists 3804
220.1 Revised 2820
220.2 Revised 2821
220.3 Revised 2822
220.4 Revised 2823
220.5 Revised 2824
220.6 Revised 2824
220.7 Revised 2824
220.8 Revised 2825
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220.10 Revised 2826
220.11 Revised 2826
220.12 Revised 2827
220.13 Removed 2827
220.14 Removed 2827
220.15 Removed 2827
220.16 Removed 2827
220.17 Removed 2827
220.18 Removed 2827
220.126 Removed 2827
221 Revised 2827
OTC margin stock lists 3804
224 Authority citation revised 2839
OTC margin stock lists 3804
224.1 (a) and (b)(1) amended 2839
224.2 Introductory text amended 2839
224.3 Revised 2839
225.200 (b)(4)(i) revised 14804
226 Dollar amount adjustment notice 6474
226 Appendix H corrected 2723
265.11 (f) revised 2839

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

329.3 Added 8342
357 Authority citation revised 10295
357.1 (b) revised 10295

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Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

560.210 (b)(2) introductory text, (viii) and (ix) revised; (b)(2)(x) removed; (b)(2)(xi), (xii) and (xiii) redesignated as (b)(2)(x), (xi) and (xii); interim....1053
575.2 (h) and (o) revised; (q) added....11365
575.6 (c) through (i) redesignated as (d) through (j); new (c) added....11365
575.10 (a)(2) introductory text, (3), (4) and (b)(1) amended; (a)(6)(i)(B) revised....11365
575.11 (b)(1) introductory text (2), (c) introductory text, (1), (3) and (e) revised; (b)(1)(ii) redesignated as (b)(1)(iii); new (b)(1)(ii) added....11365
575.12 (a)(2), (b)(1)(ii), (iii) and (2) revised....11366
575.14 Added....11366

Chapter VI—Farm Credit Administration (Parts 600—699)

614.4000 (b) amended (effective date pending)....5723
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614.4010 (b) amended (effective date pending)....5723
Regulation at 63 FR 5723 eff. 3–13–98....12401
614.4120 Revised (effective date pending)....5724
Regulation at 63 FR 5724 eff. 3–13–98....12401
614.4125 Added (effective date pending)....5724
Regulation at 63 FR 5724 eff. 3–13–98....12401
614.4130 Revised (effective date pending)....5724
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614.4155 Regulation at 62 FR 66818 eff. 3–4–98....10515
614.4160 Regulation at 62 FR 66818 eff. 3–4–98....10515
614.4280 Regulation at 62 FR 66818 eff. 3–4–98....10515
614.4270—614.4320 (Subpart G) Regulation at 62 FR 66818 eff. 3–4–98....10515
614.4321 Regulation at 62 FR 66818 eff. 3–4–98....10515
614.4335 Regulation at 62 FR 63646 eff. 3–4–98....10515
614.4336 Regulation at 62 FR 63647 eff. 3–4–98....10515
614.4367 Regulation at 62 FR 63647 eff. 3–4–98....10515
615.5450 Regulation at 62 FR 53229 eff. 1–27–98....5223
615.5451 Regulation at 62 FR 53229 eff. 1–27–98....5223
615.5452 Regulation at 62 FR 53229 eff. 1–27–98....5223
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615.5457 Regulation at 62 FR 53230 eff. 1–27–98....5223
615.5460 Regulation at 62 FR 53230 eff. 1–27–98....5223
627 Heading and authority citation revised (effective date pending)....5724
Regulation at 63 FR 5724 eff. 3–13–98....12401
627.2700 Revised (effective date pending)....5724
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627.2720 (a) removed; (b) through (f) redesignated as (a) through (e); new (b) revised (effective date pending)....5724
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627.2730 (b) removed; (c) redesignated as (b); new (b) revised (effective date pending)....5724
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627.2795—627.2797 (Subpart D) Added (effective date pending)....5725
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Chapter VII—National Credit Union Administration (Parts 700—799)

701.1 Revised....4373
701.19 (a) amended; interim....14026

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TITLE 12 Chapter VII—Con.

701.26 (a) designation and (b) removed 10756
701.27 Removed 10756
701.36 (a)(4)(iv) amended 10756
704.11 (e) amended 10756
708a Heading and authority citation revised 10517
708a Appendix A amended 10517
708b.301 (a)(1) and (b)(1) amended 10519
708b.302 (a)(1), (2), (b)(1) and (2) amended 10519
712 Added 10756
724 Authority citation revised 14026
724.1 Amended; heading revised; interim 14026
791.5 (a)(2) revised 5859
791.6 (a) amended 5859
792 Authority citation revised 14338
792.01—792.32 (Subpart A) Revised 14338
792.20—792.37 (Subpart B) Redesignated as 792.52—792.69 (Subpart E) 14338
792.52—792.69 (Subpart E) Redesignated from 792.20—792.37 (Subpart B) 14338

Chapter IX—Federal Housing Finance Board (Parts 900—999)

900 Authority citation revised 3455
900.1—900.5 (Subpart A) Appendix A amended 3455
910.3 Revised 8059
912 Revised 8059
932 Authority citation revised 3455
932.11 (b) revised 3455
933 Authority citation revised 3455
933.1 (cc) revised 3455

Chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1701—1799)

1720 Added; interim 8844

Proposed Rules:

10 2640
202 ..... 12326, 14552
203 ..... 9453, 12329
205 14555
210 12700
213 14538
220 2840
221 2840
224 2840
226 ..... 6112, 14548
229 12700
230 14532
309 29
357 10349
563 1044
563b 1044
563f 14844
574 14844
611 13564
708a 5898
708b 5898
933 8364
937 5315

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

107 Authority citation revised 5865
107.50 Amended 5865
107.110 Removed 5865
107.120 Revised 5865
107.150 (a)(1) introductory text revised 5866
107.210 Revised 5866
107.220 Removed 5866
107.230 (d)(4) introductory text revised 5866
107.503 (a), (b) and (e) revised; (c) amended 5866
107.660 (d) redesignated as (e); new (d) added 5866
107.710 (b) and (c) revised; (e) amended 5866
107.720 (b)(2) and (c)(1) introductory text revised; (b)(3) added 5867
107.730 (d)(3)(iv) revised 5867
107.740 (a) revised 5867
107.855 (c)(1), (4)(i) and (d)(4) revised; (g)(1) through (10) redesignated as (g)(2) through (11); new (g)(1) added 5867
107.865 (c)(2) amended; (d)(1) revised 5867
107.1100 Revised 5868
107.1110 Removed 5868
107.1120 (c) revised; (d), (e) and (f) redesignated as (e), (f) and (g); new (d) added 5868

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107.1130 Heading, (a), (b) and (c) revised; (d) added 5868
107.1160 Introductory text added 5868
107.1200 (c) and (d) revised 5868
107.1210 Revised 5868
107.1230 (a) and (b) revised 5868
107.1240 (a)(1), (b), (c) and (d) revised 5868
107.1350 Undesignated center heading removed 5869
107.1350 Redesignated as 107.1585 5869
107.1585 Redesignated from 107.1350 and revised 5869
107.1400 Heading and introductory text revised 5869
107.1420 Revised 5869
107.1430 Amended 5869
107.1500 (b)(1), (4) and (f)(2) revised; (e) amended 5869
107.1505 (a) introductory text amended; (a)(1), (2) and (3) added; (b) revised 5869
107.1510 Introductory text and (d)(1)(ii) revised; (c) amended 5870
107.1520 Revised 5870
107.1530 (c), (e)(2) and (h) revised; (e)(3) and (4) removed 5871
107.1540 Introductory text amended 5871
107.1550 Introductory text amended; (a)(1), (b) and (c)(3) revised 5871
107.1560 Introductory text and (e) table amended; (a)(1), (4) and (b) revised 5872
107.1570 Introductory text amended; (b)(1) heading, (i) and (ii) revised 5872
107.1575 Added 5872
107.1580 (a) heading and introductory text revised 5872
107.1590 (a)(1) revised; (c) removed; (d) redesignated as (c) 5873
107.1600 (a) amended; (b) revised 5873
107.1720 Added 5873
107.1820 (e)(9) revised 5873
107.1830 (a) revised 5873
115 Authority citation revised 12605
115.61 Amended 12605
123.18 Added 15072
123.19 Added 15072
123.20 Added 15073

Proposed Rules:

121 5480

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

1.2 Amended 8318
21 Effective date confirmation 6808
23 Special FAA conditions 4563
23.901 (d)(2) revised 14797
23.903 (a)(2) revised 14798
25 Special FAA conditions 3023, 13773
25.101 (i) added 8318
25.105 (c)(1) revised 8318
25.107 (a)(2) revised 8318
(a)(1) and (e) amended 8848
25.109 (b), (c), (d) redesignated as (e), (g) and (h); (a) and new (e) introductory text revised; new (b), new (c), new (d), (f) and (i) added; new (h) amended 8318
25.111 (a) amended 8848
25.113 (b) redesignated as (c); (a) introductory text, (1) and new (c) revised; new (b) added 8320
25.115 (a) revised 8320
25.119 Heading amended 8848
25.233 (a) amended 8848
25.349 Introductory text amended 8848
25.481 (a)(3) amended 8848
25.571 (a) introductory text, (3), (b) introductory text, (1), (5)(ii) and (e)(1) revised 15714
25.735 (f) introductory text and (2) revised; (h) added 8320
25.807 (f)(4) and (j) added 8848
(f)(4) corrected 12862
25.832 (a) introductory text and (2) amended 8848
25.855 (c) revised 8048
25.857 (c)(2) revised; (d) removed 8048
25.858 Heading and introductory text revised 8048
25.903 (c) amended 8848
(a)(2) revised 14798

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TITLE 14 Chapter I—Con.

25.1185 (a) amended 8848
25.1533 (a)(3) revised 8321
25 Appendix F amended 8848
33.77 (c) and (e) revised 14798
33.78 Added 14799
33 Appendix B added 14799
39.13 ..... 660, 1336, 1339, 1736, 1737, 1740, 1902, 1905, 1907, 1909, 1910, 1912—1914, 2594, 2597, 3031, 3457, 3459, 3809, 4156, 4158, 4161, 4162, 4375, 4564, 4567, 4569, 5224, 5226, 5227, 5726, 5875—5877, 5879, 5780, 5782, 6065, 6068, 6070, 6630, 6634, 6636—6638, 6641, 6643, 6840, 6841, 6843, 6845, 7639, 7641, 7643, 7645, 7647, 7651, 7655, 7659, 7663, 7667, 7671, 7675, 7679, 7683, 7687, 7688, 7692, 7695, 7697, 8065, 8069, 8073, 8077, 8081, 8085, 8089, 8093, 8849, 8851, 9404, 9406, 9408, 9731, 9733, 9735, 9926, 9927, 9929, 9931, 9933, 9934, 9936, 9937, 9939, 10296, 10298, 10301, 10302, 10522, 10526, 10528, 11107, 11110, 11111, 11112, 11114, 11115, 11117, 11820, 11821, 11822, 11824, 11986, 11988, 12402, 12404, 12406, 12407, 12409, 12606, 12608, 12610, 12612, 12613, 12615, 12616, 12618, 13118, 13332, 13334, 13336, 13488, 13490, 13492, 13494, 13496, 13498, 13499, 13501, 13504, 13506, 13508, 13510, 13511, 13513, 13515, 13776, 13777, 14028, 14603, 14806, 15074, 15076, 15077, 15079, 15286
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61 SFAR No. 73 revised 666
71.1 ..... 1915—1917, 2136—2138, 2599, 2601, 2885—2890, 4165, 4377—4392, 5228—5232, 7058—7062, 7064, 7282—7284, 8094, 8096, 8098—8100, 8343, 8344, 8346, 8563—8565, 9135, 9410—9413, 10759, 11990—11992, 12619—12621, 12623—12626, 12628—12631, 12633—12636, 12638—12641, 12989, 12991, 12992, 13779, 13780, 14346—14348, 14344, 14345, 14348, 14604, 14606, 14607, 14608, 15080—15083
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91 Technical correction 1917, 2304
SFAR 79 amended 8017
Policy statement 10123
91.605 (b)(3) revised 8321
93 Technical correction 1917
95 ..... 5883, 13119
97.21—97.35 ..... 667, 2140, 2602, 2604, 2605, 2892, 5448, 5886, 7065, 7067, 10761, 10762, 10764, 11993, 11994, 11996
119 Notice 4
121 Notice 4
Technical correction 1917, 2304
121.189 (e) revised 8321
121.314 Revised 8048
121 Appendix L amended 8049
135 Notice 4
Technical correction 1917
135.379 (e) revised 8321
142 Technical correction 2304
198 Revised 13740

Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

243 Added 8280
243.15 (b) corrected 9413
382.7 (c) added 10535
382.38 Added 10535
(k) corrected 11954
382.41 (b), (e) introductory text, (2), (3) and (f) amended; (g) revised; (h) added 10536

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1274.105 (b)(8) added 12993
1274.202 (c)(6) amended; (f) added 12993
1274.204 (b)(1) revised; (b)(3) and (d)(2) amended 12993
1274.301 Amended 12993
1274.901 Amended 12993
1274.933 Added 12993

Proposed Rules:

25 2186
39 ..... 167, 169, 171, 172, 174, 1070, 1072, 1074, 1076, 1930, 2911, 3054, 3056, 3267, 3270, 3272, 3273, 3275, 3276, 3278, 3483, 3852, 4404, 4406, 5318, 5320, 5322, 5324, 5325, 5327, 5763, 5765, 5766, 5898, 5900, 5902, 5904, 6499, 6500, 6501, 6682, 6683, 6685, 6689, 6882, 7076, 7078, 7080, 7082, 7083,

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7085, 7322, 7324, 7739, 8149, 8369, 8371, 8373, 8374, 8881, 8883, 8885, 8886, 9163, 10156, 10157, 10349, 10572, 10573, 10576, 10579, 10783, 11169, 11171, 11381, 11631, 12042, 12418, 12419, 12706, 12708, 13013, 13151, 13374, 13376, 13378, 13379, 13381, 13566, 13569, 13570, 13572, 13574, 13576, 13577, 13579, 13581, 13800, 13801, 14043, 14044, 14047, 14049, 14051, 14055, 14383, 14385, 14651, 14652, 14654, 14656, 14658, 14660, 14849, 14850, 14851, 14853, 14855, 14857, 14859, 14861, 14863, 15105
71 ..... 2913, 3673—3675, 3854—3859, 6818, 7326—7328, 7330, 8151—8153, 9459, 9461, 9462, 11382, 11853, 12043, 12044, 12045, 12047—12055, 12710, 12711, 13015, 13016, 13153, 13803—13805, 13807—13809, 14387, 14388, 15107, 15108, 15110, 15111
91 ..... 126, 8324
121 ..... 126, 8324
125 ..... 126, 8324
129 126
135 ..... 6826, 8324, 9912
255 3491
259 5329

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce (Parts 30—199)

70 Nomenclature change 10303
70.2 Amended 10303

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

303.6 (a) amended 5888
303.14 (e) amended 5888

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

732 Authority citation revised 2455
Technical correction 7699
732.4 (b)(3)(iv) added 2456
740 Authority citation revised 2455, 5450
Technical correction 7699
740.2 (a)(5) and (c) added 2456
740.3 (f) added 2456
740.4 Revised 2456
740.5 Amended 2456
740.6 (b) added 2456
740.7 (f) revised 2456
(d)(4) added; (e)(2) amended; (f) revised; interim 5450
740.11 (a)(2), (b)(2)(iii) and (iv) revised; Supplement No. 1 added 2456
742 Authority citation revised 2455, 5451
Technical correction 7699
742.6 (a)(1) amended 2458
742.12 (a)(3) revised; (a)(4) removed 2458
(b)(3)(i)(C) and (iv) added; interim 5451
743 Added 2458
Technical correction 7699
744 Authority citation revised 2455
Technical correction 7699
744.8 (b) amended 2459
746 Authority citation revised 2455
Technical correction 7699
746.8 (b)(1)(ii) amended 2459
762 Authority citation revised 2455
Technical correction 7699
770.4 Removed 14030
774 Supplement No. 1 revised 2459
Technical correction 7699
Supplement No. 1, Category 1 amended (ECCN 1C350) 14030

Chapter VIII—Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

806.17 Revised 3461

Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

902.1 (b) table amended (OMB numbers); interim 669
(b) table amended (OMB numbers) 11593, 14033
922.131 Amended 15087
922.132 (a)(1), (4) introductory text, (d) and (f) revised; (a)(4)(iv) and (v) amended; (a)(4)(vi) added 15087
922.133 (a) and (c) revised 15088

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TITLE 15 Chapter IX—Con.

990 Reconsideration 6846

Proposed Rules:

922 6883
960 10785
2004 10159
2300—2399 (Ch. XXIII) 8826

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

1.31—1.34 (Subpart D) Removed 7516
3.11A Revised 7527
300.1 (h) revised; (j) and (k) added 7516
300.3 (b) revised 7516
300.4 Heading, (c) and (e) revised 7516
300.5 (b) revised 7516
300.8 (g) amended 7516
300.10 Revised 7517
300.21 Removed; new 300.21 redesignated from 300.22 7517
300.22 Redesignated as 300.21; new 300.22 redesignated from 300.23 7517
300.23 Redesignated as 300.22; new 300.23 redesignated from 300.24 7517
300.24 Redesignated as 300.23; new 300.24 redesignated from 300.25 7517
300.25 Redesignated as 300.24; new 300.25 redesignated from 300.25a; (a)(3), (4) introductory text and (i) revised 7517
300.25a Redesignated as 300.25; new 300.25a redesignated from 300.25b 7517
300.25b Redesignated as 300.25a 7517
300.33 (b) revised 7517
301.26 Heading, (b)(2) and (d) revised 7517
301.39 (a) amended; (c) revised 7517
301.48 Heading and (a)(3) revised 7517
303.1 Footnote 1 removed; (h) and (u) revised 7517
303.3 Revised 7518
303.7 Introductory text revised 7518
303.8 (a) introductory text revised 7518
303.15 (b) revised 7518
303.16 (a) introductory text, (1), (b) and (c) revised 7518
303.20 (b)(3) added; (d) revised 7518
303.33 Heading, (a)(3), (4) introductory text and (i) revised 7521
303.38 (b) revised 7521
303.40 Revised 7523
302.42 (a) amended 7523
305 Notice 14034

Chapter II—Consumer Product Safety Commission (Parts 1000—1799)

1203 Revised; eff. 3–10–99 11729

Proposed Rules:

0—999 (Ch. I) 1802
243 14865
303 ..... 447, 449
1000—1799 (Ch. II) 3280, 13017
1210 1077
1700 13019

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TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

1 Interpretation **25470**
Fee schedules **26384**
Advisory **31507, 32859, 34165**
Fee schedules 11368
1.10 (c) amended **33007**
1.23 Revised **42400**
1.25 Revised **42400**
1.27 (a)(4) and (b)(2) revised **42401**
1.31 (c)(1)(iii) and (3) revised **24031**
1.41a (a)(2) and (3) revised **17701**
1.55 (a)(1) revised; (a)(1)(iii) removed; (f) redesignated as (g); new (f) added; eff 4–21–98 8570
1.65 (a)(3)(ii) redesignated as (a)(3)(iii); new (a)(3)(ii) added; eff 4–21–98 8571
4.1 (c) and (d) added **39115**
4.2 (a) revised **18268**
4.21 (b) revised **39115**
4.26 (d) revised **18268**
4.31 (b) revised **39115**
4.36 (d) revised **18268**
5 Fee schedules **26384**
Fee schedules 11368
11 Authority citation revised **17702**
11.1 Revised **17702**
Correctly revised 5233
11.2 (a) revised **17702**
(a) correctly revised 5233
12 Advisory **43930**
Technical correction **45702**
15.00 (b) and (l) revised **24031**
(l) correctly designated **27659**
15.03 Revised **61227**
Table corrected **65203**
16.00 (a)(5) revised **24031**
16.01 Heading and (d) revised; (a)(5) and (6) removed; (a)(7) and (c) redesignated as (a)(5) and (b)(3); new (c) added **24032**
16.06 Revised **24032**
16.07 Revised **24032**
17.00 (a), (d), (e) and (g) revised **24032**
17.02 (a) revised **24033**
17.03 Revised **24034**
17.04 (a) and (b) introductory text revised **24034**
30 Appendix C amended **16690**
30.6 (a) revised; eff 4–21–98 8571
31 Fee schedules **26384**
Fee schedules 11368
33.7 (a)(1) introductory text revised; eff 4–21–98 8571
145 Authority citation revised **17069**
145.0 Revised **17069**
145.2 Revised **17069**
145.7 Introductory text added; (a) revised **17069**
190.10 (c)(1) revised; eff 4–21–98 8571
190 Appendix B amended **31710**

Chapter II—Securities and Exchange Commission (Parts 200—399)

200 Authority citation amended 8101
200.30–1 (m) removed **36455**
(b) and (g)(2) removed; (g)(3) redesignated as (g)(2); (c) through (l) redesignated as (b) through (k) **47368**
200.30–3 (a)(63) added 8101
200.30–5 (j) removed; (k) and (l) redesignated as (j) and (k) **36455**
200.30–6 (a), (b) and (c) removed; (d) through (h) redesignated as (a) through (e) **47368**
202 Policy statement **15604**
Authority citation amended **16079**
202.3a Introductory text amended **47938**
202.9 Added **16079**
210 Policy statement 9135
211 Staff Accounting Bulletin No. 98 added 6474
Policy statement 9135
228 Authority citation revised **36455, 39761**
Technical correction **43581**
228.10 (a)(1) amended **26388**
228.101 (c) and (d) added; eff. 10–1–98 6379
228.501 Revised; eff. 10–1–98 6379
228.502 Revised; eff. 10–1–98 6380
228.503 Revised; eff. 10–1–98 6380
228.508 (a) amended; (j) revised; eff. 10–1–98 6380
228.601 (a) amended; (c)(1)(ii) note designated as (c)(1)(ii) Note 1; (c)(1)(ii) Note 2 and (2)(iii) note added; (c)(1)(v) revised **36455**

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TITLE 17 Chapter II—Con.

228.701 Heading revised; (f) added **39761**
229 Technical correction **43581**
229.101 (e), (f) and (g) added; eff. 10–1–98 6381
229.501 Revised; eff. 10–1–98 6381
229.502 Revised; eff. 10–1–98 6383
229.503 Revised; eff. 10–1–98 6383
229.508 Revised; eff. 10–1–98 6384
229.601 (a) amended; (c)(1)(ii) note designated as (c)(1)(ii) Note 1; (c)(1)(ii) Note 2 and (2)(iii) note added; (c)(1)(v) revised **36456**
229.701 Heading revised; (f) added **39762**
230 Authority citation amended **24573**
Technical correction **43581**
Authority citation corrected; CFR correction **65019**
Authority citation amended 6384, 13943, 13984
230.135e Added **53954**
230.144 (a)(3) and (e)(3)(vii) revised; eff. 4–27–98 9642
230.146 Added **24573**
Heading revised; introductory text, (a) and (b) redesignated as (a) introductory text, (1) and (2); (b) added 3035
230.401 (c) revised **39762**
230.404 (a) amended **39763**
230.405 Amended **26388**, **36456**
230.421 (b) revised; (d) added; eff. 10–1–98 6384
230.424 (d) amended **39763**
230.431 (a) introductory text revised; eff. 6–1–98 13984
230.461 (b)(1) revised; eff. 10–1–98 6385
230.462 (d) added **39763**
230.463 (a) and (b) revised **39763**
230.480 Note amended; eff. 6–1–98 13943
230.481 Revised; eff. 10–1–98 6385
230.482 (d) revised **64978**
(a) introductory text, (3), (5) and (7); (d)(1)(ii) amended; (d)(1)(iii) added; eff. 6–1–98 13984
230.483 Form N–1A amended; eff. 6–1–98 13943
230.485 (b)(1)(i) and (ii) removed; (b)(1)(iii) through (ix) redesignated as (b)(1)(i) through (vii); (b)(2) introductory text and (d)(2)(ii)(B) and (ii) undesignated text amended **47938**
(b) introductory text amended; eff. 6–1–98 13943
230.495 (a) amended; eff. 6–1–98 13943
230.497 (f) amended **39763**
(d) and (e) amended; eff. 6–1–98 13943
(a) revised; (k) added; eff. 6–1–98 13984
230.498 Added; eff. 6–1–98 13985
230.502 (c)(2) amended **53954**
230.901—230.905 Note 7 amended **53954**
Note 5 amended; eff. 4–27–98 9642
230.901 Note 7 amended **53954**
230.902 (b)(8) added **53954**
Revised; eff. 4–27–98 9642
230.903 Revised; eff. 4–27–98 9645
230.904 Revised; eff. 4–27–98 9646
230.905 Added; eff. 4–27–98 9647
231 Interpretive releases 14806
232 Technical correction **16891**, **43581**
232.10 (b) note revised **36456**
232.11 (e) and (m) revised **36456**
232.13 (a)(1)(iii) amended **47938**
232.14 Added **58649**
232.100 Added **36456**
232.101 (a)(1)(ii), (iii), (iv), (2)(ii), (b)(1), (c)(6) and (7) revised; (c)(19) removed; (d) added **36456**
(c)(5) removed; (c)(6) through (18) redesignated as (c)(5) through (17) **39763**
232.102 (d) amended **36457**
232.201 (b) note designated as (b) Note 1; (b) Note 2 added **36457**
232.202 (d) note designated as (d) Note 1; (d) Notes 2 and 3 added **36457**
232.301 Revised **41842**
Revised 3463
232.303 (a)(2) and (b) revised **36457**
232.304 (b)(2) and (d) revised **36458**
(d) amended; eff. 6–1–98 13944
232.307 Revised **36458**
232.311 (i) added **36458**
232.601 Undesignated center heading and section added **36458**
232.901—232.903 Undesignated center heading removed **36458**
232.901 Removed **36458**
232.902 Removed **36458**
232.903 Removed **36458**
239 Authority citation amended 13944

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239.9 Form SB–1 amended **39763**
239.10 Form SB–2 amended **39763**
239.11 Form S–1 amended **39764**
239.12 Form S–2 amended **36458, 39764**
Form S–2 amended; eff. 10–1–98 6386
239.13 (b)(1) and Form S–3 amended **26388**
Form S–3 amended **36458, 39764**
Form S–3 amended; eff. 10–1–98 6386
239.15A Form N–1A amended **47939, 64986**
Form N–1A revised; eff. 6–1–98 13944
Form N–1A corrected; OMB number 14814
239.16 Form S–6 amended **47938**
239.16b Form S–8 amended **36458**
239.17a Form N–3 amended **47939, 64986**
239.17b Form N–4 amended **47939, 47940, 64986, 64987**
239.18 Form S–11 amended **39764**
239.20 Form S–20 amended; eff. 10–1–98 6386
239.23 Form N–14 amended **47938**
Form N–14 amended; eff. 6–1–98 13944
239.25 Form S–4 amended **39764**
Form S–4 amended; eff. 10–1–98 6386
239.31 Form F–1 amended **39765**
239.32 (b)(2)(i) and Form F–2 amended **26388**
Form F–2 amended **36459, 39765**
Form F–2 amended; eff. 10–1–98 6387
239.33 (b)(1) and Form F–3 amended **26388**
Form F–3 amended **36459**
Form F–3 amended; eff. 10–1–98 6387
239.34 Form F–4 amended **39766**
Form F–4 corrected **43581**
Form F–4 amended 6387
239.61 Removed; Form SR removed **39766**
239.144 (c) and Form 144 amended **35340**
239.500 Form D amended **39766**
240 Compliance dates **18514**
Authority citation amended **35340**
Compliance dates revision **40732**
Technical correction **43581, 45289**
Authority citation amended 8102, 13944
240.0–1 (a)(5) revised **36459**
240.0–12 Added 8102
240.12a–8 Added **39766**
240.12b–2 Amended **26389**
240.12d1–1—240.12d2–2 Undesignated center heading revised **39766**
240.12d1–2 (b) revised; (c) added **39766**
240.12g–3 Revised **39767**
240.13a–1 Revised **39767**
240.13a–2 Removed **39768**
240.13d–1 (b)(3) and (4) removed; (c) through (f) redesignated as (d), (i), (j) and (k); (a), (b)(1) introductory text, (ii), (2) and new (d) revised; new (c) and new (e) through (f) added 2865
(d) corrected 15287
240.13d–2 (c) revised **36459**
(a), (b) and note revised; (c) redesignated as (e); new (c) and (d) added 2866
240.13d–3 (d)(1)(ii) revised 2867
240.13d–7 Added 2867
240.13d–101 Amended **35340**
Amended 2867
Corrected 15287
240.13d–102 Amended **35340**
Amended; heading revised 2867
Corrected 15287
240.13e–4 (f)(12) amended **36459**
240.14a–101 Amended **36459**
(a)(1)(i) and (3)(iv) amended; eff. 6–1–98 13944
240.14d–1 (c) and (d) redesignated as (e) and (f); new (c) and new (d) added **53955**
240.14d–100 Amended **35341**
240.14e–1 (e) revised **36459**
240.15d–3 Revised **39768**
240.15d–5 (a) revised **39768**
240.16a–1 (a)(1)(i) through (vii) revised; (a)(1)(viii) redesignated as (a)(1)(xi); new (a)(1)(viii), (ix) and (x) added 2868
240.17a–5 (g)(1) correctly revised; CFR correction **42664**
240.17a–24 Added **52236**
240.17Ad–7 (i) added **52237**
240.17Ad–17 Added **52237**
(a)(3)(i) corrected 1884
241 Interpretive releases 14806
249 Technical correction **43581**

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TITLE 17 Chapter II—Con.

249.103 Amended **35341**
249.104 Amended **35341**
249.105 Amended **35341**
249.208a (c) revised; (d) added; Form 8–A amended **39768**
249.208b Removed; Form 8–B removed **39769**
249.210 Form F–10 amended **39769**
249.220f Form 20–F amended **39769**
249.308 Form 8–K amended; eff. 1–1–99 9647
249.308a Form 10–Q amended **39769**
Form 10–Q amended; eff. 1–1–99 9647
249.308b Form 10–QSB amended **39770**
Form 10–QSB amended; eff. 1–1–99 9647
249.310 Form 10–K amended **26389**
Form 10–K amended **39770**
Form 10–K amended; eff. 1–1–99 9647
249.310b Form 10–KSB amended **26389, 39770**
Form 10–KSB amended; eff. 1–1–99 9647
249.501 Form BD amended 9416
249.1100 Form MSD amended **35341**
249b.100 Form TA–1 amended **35341**
249b.102 Form TA–2 amended **52237**
250.45 (b)(7) added 9741
250.52 (a) and (b) revised; (e) added 9741
260.0–2 (g) revised **36459**
269.2 Amended; Form T–2 amended **35342**
270 Authority citation amended **47938, 64978**
Authority citation amended 13987
270.2a–7 Revised **64978**
270.2a41–1 (a) introductory text revised **64985**
270.2a51–1 Added **17526**
270.2a51–2 Added **17528**
270.2a51–3 Added **17528**
270.3c–1 Added **17529**
270.3c–5 Added **17529**
270.3c–6 Added **17529**
270.8b–11 (c) amended; (e) revised; eff. 6–1–98 13944
270.10f–3 Revised **42408**
270.12b–1 (g) revised **51765**
270.12d3–1 (d)(7)(v) revised **64986**
270.17a–9 Introductory text amended **64986**
270.17f–5 Revised **26932**
270.18f–3 (c) and (e)(2)(iii) revised **51765**
270.24e–1 Amended **47938**
270.24e–2 Removed **47938**
270.24f–1 Removed **47938**
270.24f–2 Revised **47938**
270.31a–1 (b)(1) amended **64986**
270.34b–1 (b) revised **64986**
(b)(1)(ii)(B) revised; eff. 6–1–98 13987
271 Interpretive releases 14806
274.11A Form N–1A amended **47939, 64986**
Form N–1A revised; eff. 6–1–98 13944
Form N–1A corrected; OMB number 14814
274.11a–1 Form N–2 amended; eff. 10–1–98 6388
274.11b Form N–3 amended **47939, 64986**
274.11c Form N–4 amended **47939, 47940, 64987**
274.24 Revised **47940**
Form 24F–2 amended **64688**
275 Authority citation revised **28132**
275.203(b)(3)–1 Revised **28132**
275.203A–1 Added **28133**
275.203A–2 Added **28133**
275.203A–3 Added **28134**
275.203A–4 Added **28134**
275.203A–5 Added **28134**
275.204–1 Revised **28135**
275.204–2 (a) introductory text revised; (k) added **28135**
275.205–3 Heading and (a) revised **28135**
275.206(3)–2 (a) introductory text revised **28135**
275.206(4)–1 (a) introductory text revised **28135**
275.206(4)–2 (a) introductory text revised **28135**
275.206(4)–3 (a)(1)(ii)(C) amended **28135**
275.206(4)–4 (a) introductory text revised **28135**
275.222–1 Added **28135**
275.222–2 Added **28136**
276 Interpretive releases 14806
279.1 Form ADV amended **28136**
(d) corrected **33008**
279.3 Revised **28136**

Proposed Rules:

1 ..... **47612, 66569**
.... 695, 2188, 3492, 6112, 9977, 12713, 13025

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3 ..... **59624**
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140 ..... 3285, 14866
190 ..... **19530, 47612**
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200 ..... **67940**
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202 ..... **38495**
228 9648
229 9648
230 ..... **24160, 32705, 38495, 45359, 61933, 62273**
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239 ..... **24160, 38495**
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240 ..... **30485, 36467, 40316, 50682, 61933, 62732, 67940, 67996, 68011, 68018**
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249 ..... **36467, 67940**
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270 ..... **24160, 24161, 38495, 61933**
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274 ..... **24160, 38495**
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275 ..... **61866, 61882**
279 ..... **61866**

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2 Order **33341**
Authority citation revised **15830**
2.500 Undesignated center heading and section added **15830**
4.34 Heading revised; (i) added **59810**
11 Appendix A revised **61228**
35 Order **36657, 64688**
35.32 Revised **33348**
35.33 Revised **33348**
37 Order **64715**
101 Amended 6851
116 Removed 6851
153 Revised **30446**
157.208 (d) Table I revised 6477
157.215 (a) Table II revised 6477
201 Amended 6851, 6852
216 Removed 6852
284 Order **19921, 25842**
352 Amended 6852
375.314 (u) added **59812**
381.302 (a) amended **36982**
381.303 (a) amended **36982**
381.304 (a) amended **36982**
381.305 (a) amended **36982**
381.402 Removed **36982**
381.403 Amended **36982**
381.505 (a) amended **36982**
381.801 Amended **36982**
388 Authority citation revised 5453
388.106 (a) and (b)(19) redesignated as (a)(1) and (b)(23); (a)(2) and (b)(19) through (22) added; (b) introductory text and (c)(1) revised 5453
388.107 (a)(1) amended 5453
388.108 (b) and (c) redesignated as (c) and (e); (a)(1) introductory text, (iii), (2), (3), (4), new (c) and new (d) revised; (a)(5), new (b) and (d) added 5453
388.109 (b)(2)(iii) amended; (b)(5)(iii) removed; (b)(6), (7), (8)(i) and (ii) redesignated as (c), (d), (e)(1) and (2); (b)(2)(iv), (vii), (5)(ii) and new (c) revised 5454
388.110 Heading, (a)(2) and (b) revised; (a)(1) amended 5455
388.112 (c)(1)(i) and (ii) amended 5455

Chapter III—Delaware River Basin Commission (Parts 400—499)

401.0 Revised **64154**
401.1—401.9 (Subpart A) Revised **64154**
401.31—401.41 (Subpart C) Revised **64155**
401.51—401.67 (Subpart D) Removed **64158**
401.71—401.78 (Subpart E) Revised **64158**
401.81—401.90 (Subpart F) Revised **64159**
430.13 (h) through (m) added 6477

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1314.2 (g), (h), (t) and (v) revised; (i) amended **29288**

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TITLE 18 Chapter XIII—Con.

1314.3 (a)(3) amended **29288**
1314.4 (a) introductory text, (b) and (d) amended **29288**

Proposed Rules:

1—399 (Ch. I) **22897**
4 ..... **25874**
101 ..... **40987**
116 ..... **40987**
154 ..... **24853, 34187**
201 ..... **40987**
216 ..... **40987**
284 ..... **61459**
352 ..... **40987**
375 ..... **25874**
388 ..... **51610**
401 ..... **45766**
430 ..... **25569**

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4.20 (c) table amended **51769**
4.22 Amended **66522**
4.80 (a)(3) amended **51769**
7 Authority citation revised **46439**
Authority citation amended 11004
7.1 (a) amended; eff. 4-6-98 11004
7.2 Added **46439**
7.3 Added **46439**
7.4 Redesignated from 10.181; (b), (g) and (h) amended **46441**
7.8 Removed **46441**
10 Authority citation amended **42211, 46441, 51769**
10.1 (i) amended **51769**
10.7 (d) amended **51769**
10.11 (b) amended **51769**
10.31 (a)(1) and (2) amended 4167
10.38 (f) amended; eff. 4-6-98 11004
10.39 (d)(2) amended 4167
10.41a (f) revised; (g), (h) and (i) redesignated as (h), (i) and (j); new (g) added **42211**
(f)(1) and (g)(1) corrected **46553**
10.41b (b) introductory text, (7) and (d)(1) introductory text amended **51769**
10.46 Amended **51769**
10.63 Amended **51769**
10.67 (c) amended **51769**
10.75 Amended **51769**
10.90 (a) amended **51769**
10.100 Amended **51769**
10.151 Amended **51769**
10.180 (a) amended **51769**
10.181 Redesignated as 7.4 ..... **46553**
11 Authority citation revised **51770**
11.9 (b) amended **51770**
(b) corrected **55512**
12.29 (d) amended **51770**
12.33 (e) amended **51770**
12.104g (a) amended **19492**
(a) and (b) amended **31721**
(a) table amended **49596, 51774**
(b) table amended **49597**
18 Authority citation amended 4167
18.1 (a)(3) amended 4167
18.6 (d) amended **51770**
18.8 (e)(3) amended 4167
19 Authority citation amended **15834**
19.1 (a)(9) amended; (c) removed **15834**
19.2 Heading, (b)(2) and (g) revised; (a) amended **15834**
19.4 Revised **15834**
Amended 11825
19.6 (a)(1) and (d)(2) amended; (d)(1) revised; (d)(4) redesignated as (d)(5); new (d)(4) added **15836**
19.11 (h) revised **15836**
19.12 Revised **15836**
19.13 (g) amended **15839**
19.13a Introductory text amended; (b) revised **15839**
19.29 Amended 11825
19.35 (c) introductory text, (2), (e)(2) and (f) revised **15839**
19.36 (e) and (g) amended **15840**
19.37 (a) amended **15840**
19.38 (a) amended 11825
19.39 (c)(2) and (3) amended; (c)(4)(ii), (iii) and (iv) redesignated as (c)(4)(iii), (iv) and (v); new (c)(4)(ii) added; (c)(5) and (e) revised **15840**
24.23 (b)(1)(i)(A), (B), (2)(i)(B) and (C) amended **51770**
24.24 (b)(1) amended; interim **30449**
(b)(1) corrected **45157**
(b)(1) table corrected **51774**
54 Authority citation amended **68165**
54.5 (a)(2) revised **68165**
101 Authority citation amended 11825

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101.2 (c) added 11825
101.3 (b)(1) amended 37133
Regulation at 62 FR 37133 eff. date delayed to 5-1-98 60164
(b)(1) amended; eff. 4-16-98 12994
101.4 (c) amended; eff. 4-16-98 12994
103.11 (b)(2)(xii) amended 51770
111 Notice 56073
112.26 Amended 51770
113.63 (a)(4) redesignated as (a)(5); new (a)(4) and (b)(4) added; (b)(2), (3) and (d) amended 15840
114 Authority citation revised 4168
114.1 (b) and (c) amended; (g) added 4168
114.2 Heading and introductory text amended; (d) added 4168
114.3 (a) introductory text and (2) amended 4168
114.11 Amended 4168
114.22 (d) redesignated as (e); new (d) added 4168
114.23 (c) added 4168
114.24 Amended 4168
114.25 Amended 4168
114.26 (a) and (b) amended 4168
114.31 (b) amended 4168
114.32 Amended 4168
114.33 Amended 4168
114.34 (b) amended 4168
122 Authority citation revised 51770
122.15 (b) amended 37133
Regulation at 62 FR 37133 eff. date delayed to 5-1-98 60164
122.24 (b) amended 24815
122.152 Amended 51770
123.1 (a) and (b) amended 32031
127.33 Amended 51770
133 Authority citation amended 11999
133.21 (d) amended 51770
133.22 (b) and (c) redesignated as (d) and (e); heading, (a) and new (d) heading revised; new (b) and new (c) added; eff. 4-13-98 11999
133.23 (b)(3) amended 51770
133.23a Heading revised; (c) redesignated as (e); new (c) and (d) added; new (e) amended; eff. 4-13-98 11999
133.25 Added; interim 61232
133.42 (c) amended 19493
(d) redesignated as (f); new (d) and (e) added; eff. 4-13-98 12000
133.43 (b) revised; (c) and (d) redesignated as (d) and (e); new (c) added; eff. 4-13-98 12000
(b)(6) and (c) correctly revised 15088
133.44 (a) amended 19493
133.47 Removed 19493
133.52 (c) revised; interim 61232
134 Policy statement 49597
134.36 Heading revised; (a) designation, heading and (b) removed 44214
134.46 Revised 44214
141 Authority citation amended 51770
141.1 (f) amended 51770
141.4 (c) introductory text amended 51770
141.11 (b) amended 51770
141.61 (a)(1) and (e)(3) amended 51770
141.69 (a) amended 51771
141.83 (d)(1) removed 51771
141.89 (a) amended 51771
141.112 (f) amended 51771
142.3a (c) and (d) redesignated as (d) and (e); new (c) added; new (e) amended; eff. 4-16-98 12996
143.1 (b) amended 51771
144.34 (c) added 15840
144.36 (c) and (f) revised; (g)(4) and (5) amended; (g)(6) added 15841
144.37 (h)(2)(v) revised; (h)(3) and concluding text amended 15842
144.39 Amended 15842
144.41 (c) revised 15842
145.72 (e) amended; eff. 4-6-98 11005
146.3 (b) amended 11826
148.2 (b) amended 46441
148.12 (b)(1)(i) revised 46441
148.17 (b) and (c) amended 46441
148.31 (a) and (b) amended 46441
148.32 (d)(2) amended 46441
148.33 (a), (b), (d) and (f) revised 46441
148.34 (a) amended 46442
148.35 (a) and (b) revised 46442
148.36 Amended 46442
148.37 Amended 46442
148.38 Amended 46442
148.41 Amended 51771
148.51 (a)(2) revised 46442
148.64 (a) amended 46442
148.74 (c)(3) amended 46442

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TITLE 19 Chapter I—Con.

148.101 Amended **46442**
148.102 (a) and (b) revised **46442**
148.104 (c) amended **46443**
148.110—148.116 (Subpart K) Heading amended **46443**
148.110 Amended **46443**
148.111 (a) amended **46443**
148.113 (a) amended **46443**
151.4 (b)(2) removed **51771**
152 Authority citation amended **51771**
152.102 (j)(2) and (k) amended **51771**
159 Authority citation revised **51771**
159.33 Amended **51771**
159.35 Amended **51771**
159.43 Amended **51771**
161 Authority citation amended 11826
161.0 Revised 11826
161.1 Removed 11826
161.3 Removed 11826
161.4 Removed 11826
161.11 Removed 11826
161.12 Revised 11826
161.13 Removed 11826
161.16 Revised 11826
171 Appendix C amended **51771**
173.4 (c) amended; eff. 4–6–98 11005
174.13 (a)(9) added; eff. 4–6–98 11005
177 Authority citation amended **51771**
177.2 (b)(2)(iii) amended **51771**
178.2 Table amended (OMB numbers) **46443, 49150**
Table amended (OMB numbers); eff. 4–6–98 11005
181.44 (d) and (f) example amended; eff. 4–6–98 11005
181.45 (b)(2)(i) revised; eff. 4–6–98 11005
181.46 (b) amended; eff. 4–6–98 11005
181.47 (b)(2)(i)(C), (ii)(A), (D), (G) and (iii)(A) amended; eff. 4–6–98 11005
181.47 (b)(2)(v) amended; eff. 4–6–98 11006
181.49 Amended; eff. 4–6–98 11006
181.50 (c) amended; eff. 4–6–98 11006
191 Revised; eff. 4–6–98 11006
191.2 (q)(2) and (t) corrected 15288
191.6 (c)(6) corrected 15288
191.8 (e)(1) and (2) corrected 15288
191.11 (a) and (c) corrected 15288
191.12 Corrected 15288
191.14 (c)(3)(ii)(B), (iii)(D) and (iv)(C) corrected 15288
191.23 (a), (b) and (c) corrected 15288
191.31 (a) corrected 15288
191.32 (a) corrected 15288
191.42 (c) corrected 15288
191.61 (d)(1) corrected 15288, 15289
191.73 (b) corrected 15289
191.74 Corrected 15289
191.81 (b)(1) and (c)(2) corrected 15289
191.91 Amended **51771**
(f) heading corrected 15289
191.131 (a) amended **51771**
191.161 Amended **51771**
191.185 (d)(3) corrected 15289
191 Appendix A corrected 13105
Appendix A corrected 15289, 15291
Appendixes A and B corrected 15291

Chapter II—United States International Trade Commission (Parts 200—299)

201.7 Correctly revised; CFR correction **39438**
201.201—201.208 (Subpart H) Added; interim **38019**

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

351 Added **27379**
351.102 Amended; interim 13520
351.218 (d) and (e) revised; (f) added; interim 13520
351.221 (c)(5)(i) revised; interim 13523
351.222 (i) revised; interim 13523
351.308 (f) added; interim 13524
351.309 (c)(1)(i) and (iii) revised; (e) added; interim 13524
351.312 (b) revised; interim 13524
351 Annex VIII added; interim 13524
353 Removed **27379**
355 Removed **27379**

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10 ..... **31383**
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141 31383
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145 31383
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148 ..... 31383, 40992
162 19704
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163 ..... 19704, 24374
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192 ..... 40992, 55764
201 ..... 55185, 61252
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351 ..... 19719, 25874, 38948, 41322, 46445

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

200.8 (g)(12) added 2141
220.10—220.21 (Supart C) Heading revised 7541
220.10 Revised 7541
220.11 Revised 7541
220.12 Removed; new 220.12 redesignated from 220.14 7541
220.13 Heading, introductory text and (b) revised 7542
220.14 Redesignated as 220.12 7541
Added 7542
220 Appendix 3 added 7543
222.55 Amended 47138
229.42 (f) amended; (g) added 47138
255 Revised 64163
261 Added 45713
295.5 (e)(1) amended 67724
335.3 (a)(8) and (9) amended; (a)(10) added 44408
340.13 Amended; interim 41271
Regulation at 62 FR 41271 confirmed 64273
367 Technical correction 49049
367.1 Revised; interim 19220
Regulation at 62 FR 19220 confirmed 44409
367.2 (a), (f) introductory text, (2) and (j) revised; (f)(3) and (k) added; interim 19220
Regulation at 62 FR 19220 confirmed 44409
367.3 (a) and (b) revised; (c) amended; interim 19220
Regulation at 62 FR 19220 confirmed 44409

Chapter III—Social Security Administration (Parts 400—499)

404.1 (q) amended 38450
404.2 (b) revised; (c)(1) amended 38450
404.3 (b) amended 38450
404.143 (a)(2) amended 38450
404.101—404.146 (Subpart B) Appendix amended 38450
404.203 (a) amended 38450
404.403 (d)(2) amended 38450
404.408 (a)(1)(ii), (e)(2), (f), (k), (l)(2)(ii) amended 38450
404.430 (c)(1)(ii)(A)(*1*), (*2*) and (2) amended 38450
404.452 (a)(1), (2) and (d) revised; (b) amended 15610
404.460 (b)(4)(ii) and (7) introductory text amended 38450
404.464 (a) and (c) amended 38450
404.468 (d) amended 38450
404.501—404.526 (Subpart F) Authority citation revised 64277
404.520 (a) amended 38450
Revised 64277
404.521 Introductory text revised; (b) amended 64278
404.522 (b) amended 64278
404.523 (a)and (c) amended 64278
404.525 Amended 64278
404.526 Revised 64278
404.527 Added 64278
404.900—404.999d (Subpart J) Authority citation revised 64278
404.903 (r) and (s) amended; (t) and (u) added 64278
404.942 (g) revised 35074
404.966 Added 49602
404.983 Amended 38450

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TITLE 20 Chapter III—Con.

404.984 (a), (b)(2), (3), (c) and (d) amended **38450**
404.985 (c)(2) amended **38450**
404.1200 (a) amended **38450**
404.1202 (b) amended **38450**
404.1206 (d) amended **38451**
404.1211 (a) amended **38451**
404.1214 (a), (c)(1), (2), (d)(3), (4), (e) and (f) amended **38451**
404.1215 (b) and (d) amended **38451**
404.1216 (b)(3) amended **38451**
404.1225 (a)(4) amended **38451**
404.1232 (a) and (b) amended **38451**
404.1249 (b)(2)(i), (ii) and (iv) amended **38451**
404.1267 Amended **38451**
404.1282 (a) amended **38451**
404.1283 (a)(1), (2), (b) introductory text and (1) amended **38451**
404.1285 (a) amended **38451**
404.1286 (a) and (b) amended **38451**
404.1287 (a)(1), (2) introductory text and (b) through (e) amended **38451**
404.1289 Introductory and concluding text amended **38451**
404.1290 (a) and (b) designation removed **38451**
404.1296 Amended **38451**
404.1297 (a) amended **38451**
404.1413 Introductory text amended **38451**
404.1502 Amended **38451**
404.1503 (a), (b) introductory text, (1), (c) introductory text and (e) amended **38451**
404.1526 (b) and (c) amended **38451**
404.1527 (e) heading and (2) amended **38451**
404.1529 (b) amended **38451**
404.1546 Amended **38451**
404.1597a (j)(1) and (2) amended **38451**
404.1599 (a) and (b) amended **38451**
404.1501—404.1599 (Subpart P) Appendix 1 amended **30747**
Appendix 1 amended 4571
404.1601 Introductory text, (a), (b), (c), (e), (f) and (h) amended **38452**
404.1602 Amended **38452**
404.1613 (a) amended **38452**
404.1615 (d) amended **38452**
404.1616 (b)(2) amended **38452**
404.1626 (e) amended **38452**
404.1627 (b) heading and (1) amended **38452**
404.1641 (a) amended **38452**
404.1682 Amended **38452**
404.1691 (a) amended **38452**
404.1694 Amended **38452**
404.1735 Amended **38452**
404.1745 Introductory text amended **38452**
404.1750 (a) and (d) amended **38452**
404.1765 (a) and (e) amended **38452**
404.1799 (c) and (e) amended **38452**
404.1902 Amended **38452**
404.2102 Introductory text amended **38452**
404.2103 Amended **38452**
404.2117 Amended **38452**
404.2120 (c) amended **38452**
404.2127 (a), (b) and (c) amended **38452**
410.101—410.130 (Subpart A) Authority citation amended **38452**
410.110 (c) removed; (d) through (r) redesignated as (c) through (q); new (d), new (e) and new (f) amended **38452**
410.120 Amended **38452**
410.130 Amended **38453**
410.200—410.250 (Subpart B) Authority citation revised **38453**
410.300—410.395 (Subpart C) Authority citation revised **38453**
410.400—410.490 (Subpart D) Authority citation revised **38453**
410.401 (c) amended **38453**
410.474 Amended **38453**
410.490 (a) amended **38453**
410.501—410.591 (Subpart E) Authority citation revised **38453**
410.601—410.699a (Subpart F) Authority citation revised **38453**
410.601 (a) and (b) amended **38453**
410.629a (a) and (d) amended **38453**
410.629d (a)(1), (b)(2) and (5) amended **38453**
410.629e Amended **38453**
410.629f Amended **38453**
410.634 Amended **38453**
410.635 Amended **38453**
410.639 Amended **38453**
410.644 Amended **38453**
410.650 (a) amended **38453**
410.669 (b) amended **38453**
410.670b (a), (b)(1) and (4) amended **38453**
410.670c (c)(2) amended **38453**

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410.686e Amended 38453
410.687 (d) amended 38453
410.688 Revised 38453
410.689 Amended 38453
410.690 Amended 38453
410.691 Amended 38453
410.692 (a), (b), (d) and (e) amended 38454
410.693 (a)(2) amended 38454
410.697 Amended 38454
410.699 (a) and (c) amended 38454
410.700—410.707 (Subpart G) Authority citation revised 38454
410.700 (b) amended 38454
410.704 (a)(1) amended 38454
416.101 (j) amended 38454
416.105 Amended 38454
416.110 (f)(1) amended 38454
416.120 (b) and (d) amended; (b)(1) removed; (b)(2) and (3) redesignated as (b)(1) and (2) 38454
416.211 Regulation at 62 FR 1055 confirmed 42412
416.212 Regulation at 62 FR 1055 confirmed 42412
416.250 (a) and (b) amended 38454
416.414 Regulation at 62 FR 1056 confirmed 42412
416.420 (a) revised; (c) redesignated as (d); new (c) added 30751
416.501—416.571 (Subpart E) Authority citation revised 49439
416.537 (a) amended 38454
416.580 Added 49439
416.581 Added 49439
416.582 Added 49439
416.583 Added 49439
416.584 Added 49439
416.585 Added 49440
416.586 Added 49440
416.903 (a), (b) introductory text, (1), (c) introductory text and (e) amended 38454
416.927 (e) heading and (2) amended 38454
416.929 (b) amended 38454
416.946 Amended 38454
416.994a (e)(1) and (f)(4) correctly revised; CFR correction 36460
416.1001 Introductory text, (a), (b), (c), (e), (f) and (h) amended 38454
416.1002 amended 38454
416.1013 (a) amended 38455
416.1015 (d) amended 38455
416.1016 (b)(2) amended 38455
416.1026 (e) amended 38455
416.1027 (b) heading and (1) amended 38455
416.1041 (a) amended 38455
416.1082 Amended 38455
416.1091 (a) heading amended 38455
416.1100—416.1182 (Subpart K) Appendix amended 30982
416.1149 Regulation at 62 FR 1056 confirmed 42412
416.1165 Regulation at 62 FR 1056 confirmed 42412
416.1167 (c) added 42411
416.1180 Amended 59813
416.1202 Regulation at 62 FR 1056 confirmed 42412
416.1236 (a)(2) revised; (a)(12) amended; (a)(13), (16) and (19) removed; (a)(14), (15), (17), (18) and (20) redesignated as (a)(13) through (17); new (a)(18) added 30983
416.1245 (b)(3)(ii) introductory text revised 30983
416.1400—416.1499 (Subpart N) Authority citation revised 49440
416.1403 (a)(15) and (16) amended; (a)(17) added 49440
416.1442 (g) revised 35075
416.1453 (b)(2)(ii) amended 38455
416.1466 Added 49603
416.1483 Amended 38455
416.1484 (a), (b)(2), (3), (c) and (d) amended 38455
416.1485 (c)(2) amended 38455
416.1503 Amended 38455
416.1535 Amended 38455
416.1550 (a) and (d) amended 38455
416.1565 (a) and (e) amended 38455
416.1599 (c) and (e) amended 38455
416.1603 (b) revised 59813
416.1610 (a)(2) revised 59813
416.1902 Amended 38455
416.2001 (c) amended 38455
416.2030 (a) amended 38455
416.2035 (b)(1) amended 38455
416.2065 Introductory text amended 38455
416.2070 Introductory text and (a) amended 38455
416.2075 (a) and (b) amended 38455
416.2095 (a)(5) amended 38455
416.2096 (c)(6) added 30984
(a)(1) introductory text and (d) amended 38455

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TITLE 20 Chapter III—Con.

416.2099 (a) introductory text, (b), (c) and (d) amended **38455**
416.2176 (b) amended **38456**
416.2202 Introductory text amended **38456**
416.2203 Amended **38456**
416.2217 Amended **38456**
416.2220 (c) amended **38456**
416.2227 (a), (b) and (c) amended **38456**
422.1 (a) amended **38456**
422.107 (a) amended **38456**
422.210 (a), (c) and (d) amended **38456**
422.301—422.317 (Subpart D) Added **64278**
422.602 Amended **38456**
429 Added **24329**
430 Added **39935**

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

645 Added; interim **61603**
656.3 Amended; eff. 5-4-98 13767
656.40 (b) introductory text amended; (c) redesignated as (d); new (c) added; eff. 5-4-98 13767
656.50 (Subpart E) Added; eff. 5-4-98 13767

Chapter VI—Employment Standards Administration, Department of Labor (Parts 700—799)

702 Authority citation revised **53956**
702.204 Revised **53956**
702.236 Revised **53956**
702.271 (a) revised **53956**

Proposed Rules:

10 ..... **40418, 67120**
25 ..... **67120**
200 ..... **43295**
..... 34
209 2914
211 ..... **64188**
216 ..... **55196**
220 ..... **50056**
222 ..... **27989**
229 ..... **27989**
255 7088
295 ..... **40995**
335 19072
402 ..... **43489**
404 ..... **26997, 42439, 46682, 48963, 49636, 50266, 50270, 60672**
..... 11854
416 ..... **26997, 33778, 48963, 50266, 50270**
422 ..... **42439, 63681**
..... 11856
702 ..... **35715**
718 ..... **27000, 27562, 28760, 33043**
722 ..... **27000, 27562, 28760, 33043**
725 ..... **27000, 27562, 28760, 33043**
726 ..... **27000, 27562, 28760, 33043**
727 ..... **27000, 27562, 28760, 33043**

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

Chapter I Comment response **49881**
1 Authority citation revised **51512**
1.31 Removed **39440**
1.35 Removed **39440**
2 Authority citation revised **51512**
3 Authority citation revised **51512**
5 Authority citation revised **51512**
5.10 (a)(38) added **28628**
(a)(39) added **33349**
5.20 (f)(4) added **48757**
5.22 (a)(10)(i), (ii), (iv) and (v) revised **67270**
5.23 (c)(1) and (4) revised **67270**
5.25 (a)(2) and (b) revised **67270**
5.26 (c) revised **67270**
5.28 Revised **67270**
5.30 (b) and (c)(4) revised **67270**
5.31 (h) added **19493**
(c)(3) and (e)(5) revised **67271**
5.33 (b) revised **67271**
5.37 (a)(2)(i), (ii) and (iii) and (b)(1), (2) and (3) revised; (a)(2)(iv) and (b)(4) removed **67271**
5.40 Added **43471**
5.45 (b) introductory text, (c)(1), (2) and (e)(1)(i), (ii) and (iii) revised **67271**
5.46 Revised **67271**
5.47 (a)(1) and (2) revised **67271**
5.49 (a) revised **67271**
5.50 (a) revised **67271**
5.51 (a)(1) and (b)(1) revised **67271**
5.52 (a) revised **67271**

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5.53 (a)(1), (b)(1)(i) and (c) revised 67271
5.54 (a) revised 67272
5.55 (a) revised 67272
5.56 (a) and (b) revised 67272
5.57 (a), (b) and (c) revised 67272
5.59 (a)(1) revised 67272
5.60 (a)(1) through (4), (6) and (b)(1) through (5) revised 67272
5.78 (b) revised 67272
5.86 (a) and (b) revised; (c) removed 67272
5.87 (a) and (b) revised; (c) removed 67272
5.88 Revised 67272
5.89 (a) introductory text and (b) introductory text revised 67272
5.90 Revised 67273
5.91 Revised 67273
5.92 Revised 67273
5.100 Added 48757
7 Authority citation revised 51512
10 Technical correction 47760
Authority citation revised 51512
10.30 (b) amended 40592
10.40 (b)(1)(ix) revised 40592
11 Authority citation revised 51512
12 Authority citation revised 51512
13 Authority citation revised 51512
14 Authority citation revised 51512
14.100 (c)(18) added 11597
15 Authority citation revised 51512
16 Authority citation revised 51513, 55976
Authority citation corrected 60614
16.1 (b)(2) amended 40444
(b)(2) amended; eff. 4-28-99 55976
17 Authority citation revised 51513
19 Authority citation revised 51513
20 Technical correction 47760
Authority citation revised 51513
20.100 (c)(3) revised 40592
20.112 (a) amended; eff. 4-6-98 52249
21 Authority citation revised 51513
25 Revised 40592
Technical correction 47760
Authority citation revised 51513
50 Meeting 46198
Authority citation revised 51513
50.3 (j) removed; (k) through (n) redesignated as (j) through (m) 39440
50.21 Removed 39440
50.40—50.48 (Subpart C) Removed 39440
54 Added; eff. 2-2-99 5250
56 Meeting 46198
Authority citation revised 51513
58 Authority citation revised 51513
60 Authority citation revised 51513
70 Authority citation revised 51513
71 Technical correction 47760
Authority citation revised 51513
71.1 (c) amended 40598
73 Authority citation revised 51513
73.75 (c)(1)(i) amended; (c)(3) added; (d) revised; eff. 4-28-98 14817
74 Authority citation revised 51513
74.2101 (a) correctly revised; CFR correction 15389
80 Authority citation revised 51513
81 Authority citation revised 51513
82 Authority citation revised 51513
100 Authority citation revised 51513
101 Technical correction 47760, 55331
Authority citation revised 51513
Nomenclature change 14035
101.2 (b) and (f) amended; (c)(1), (2), (3) and (5)(iii) removed; (c)(5)(iv) redesignated as (c)(5)(iii); (c)(4) and (5) redesignated as (c)(1) and (2) 43074
(b), (d)(1) and (f) revised; eff. 3-23-99 49847
(c)(1)(ii)(B)(*3*)(*i*) removed; (c)(1)(ii)(B)(*3*)(*ii*), (c)(1)(ii)(B)(*3*)(*iii*) and (c)(1)(ii)(B)(*3*)(*iv*) redesignated as (c)(1)(ii)(B)(*3*)(*i*), (c)(1)(ii)(B)(*3*)(*ii*) and (c)(1)(ii)(B)(*3*)(*iii*) 14818
101.3 (g) added; eff. 3-23-99 49847
101.4 (a)(1) revised; (g) and (h) added; eff. 3-23-99 49847
(h)(1) corrected 64634
101.8 Removed 43074
101.9 (k)(2) and (5) removed; (k)(3), (4) and (6) redesignated as (k)(2), (3) and (4); (c)(8)(iii), (v), (d)(7)(i), (j)(6) and new (k)(4) revised; eff. 3-23-99 49848
101.12 (h)(12) revised 40598
(b) Table 2 amended; eff. 3-23-99 49848
(b) Table 2 amended; eff. 1-1-00 63653
(b) Table 2 corrected 66275
(e)(2) amended 14818
101.13 (j)(1)(i)(B) amended 31339

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(a) and (b) introductory text revised; (q)(3) redesignated as (q)(3)(i); (q)(3)(ii) added; eff. 3–23–99 ..... **49867**
(q)(8) amended 14818
101.14 (a)(4) removed; (a)(5) and (6) redesignated as new (a)(4) and (5); (b)(3)(i) and (d)(3) revised; eff. 3–23–99 ..... **49867**
101.17 (f) added 8118
101.22 (i)(4) amended 14818
101.29 Removed **43074**
101.36 Revised; eff. 3–23–99 ..... **49849**
101.54 (e)(1) introductory text and (2) introductory text amended **31339**
(b)(1), (c)(1) and (e)(1) introductory text revised; eff. 3–23–99 ..... **49867**
Heading revised; (f) and (g) added; eff. 3–23–99 ..... **49880**
101.60 (c)(1)(iii)(A) revised; eff. 3–23–99 ..... **49881**
101.65 (d)(2)(ii)(C) and (4)(ii)(B) stayed; eff. 4–1–97 through 1–1–00 ..... **15391**
(b)(4) revised; eff. 3–23–99 ..... **49858**
(d)(2)(iv) revised 14355
101.69 (h) revised; (m)(1), (n)(1) and (o)(1) amended **40598**
101.70 (j)(4) added **28232**
(f) amended **40599**
101.80 (c)(2)(ii)(B) revised **63655**
101.81 Heading, (a) heading, (3), (b) heading, (b)(2), (c)(1), (2)(i) introductory text, (A), (E), (F), (iii)(A), (d)(2), (3) and (e) revised; (c)(2)(i)(G) and (ii)(B) added; (d)(6) removed; (d)(7) and (8) redesignated as (d)(6) and (7) 8119
101.93 (b) through (e) added; eff. 3–23–99 ..... **49867**
Added **49886**
102 Authority citation revised **51513**
Nomenclature change 14035
104 Authority citation revised 11597
104.5 (e) amended 14818
105 Authority citation revised **51513**
106 Authority citation revised **51513**
Nomenclature change 14035
107 Authority citation revised **51513**
108 Authority citation revised **51513**
109 Authority citation revised **51514**
110 Authority citation revised **51514**
111 Authority citation revised **51514**
113 Authority citation revised **51514**
113.40 (b)(10)(ii) amended **31722**
114 Authority citation revised **51514**
Nomenclature change 14035
123 Authority citation revised **51514**
129 Authority citation revised **51514**
130 Authority citation revised **51514**
Nomenclature change 14035
131 Authority citation revised **51514**
Nomenclature change 14035
133 Authority citation revised **51514**
Nomenclature change 14035
135 Authority citation revised **51514**
Nomenclature change 14035
135.110 (f)(3)(i) amended 14818
136 Authority citation revised **51514**
Nomenclature change 14035
137 Authority citation revised **51514**
Nomenclature change 14035
139 Authority citation revised **51514**
Nomenclature change 14035
145 Authority citation revised **51514**
Nomenclature change 14035
146 Authority citation revised **51514**
Nomenclature change 14035
150 Authority citation revised **51514**
Nomenclature change 14035
152 Authority citation revised **51514**
155 Authority citation revised **51514**
Nomenclature change 14035
156 Authority citation revised **51514**
Nomenclature change 14035
158 Authority citation revised **51514**
160 Authority citation revised **51514**
Nomenclature change 14035
161 Authority citation revised **51514**
Nomenclature change 14035
163 Authority citation revised **51514**
Nomenclature change 14035
164 Authority citation revised **51514**
Nomenclature change 14035
165 Authority citation revised **51514**
165.110 (b)(4)(i)(A) table corrected; CFR correction **36460**
166 Authority citation revised **51515**
Nomenclature change 14035
168 Authority citation revised **51515**
Nomenclature change 14035
169 Authority citation revised **51515**
Nomenclature change 14035
170 Technical correction **47760**
Authority citation revised **51515**
170.35 (c)(1)(viii) revised **40599**
170.39 (c)(6) and (e) amended **40599**
171 Technical correction **47760**
Authority citation revised **51515**

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171.1 (c) amended **40599**
172 Authority citation revised **51515**
172.712 Added **26228**
172.824 (b)(3) removed 7069
172.841 (c) revised **30985**
173 Authority citation revised **51515**
173.150 (a)(5) added **59284**
173.315 Heading and (c) revised; (a)(3) redesignated as (a)(4); new (a)(3) added; introductory text, (a)(2) table and new (4) amended 7069
173.325 (b) revised; (c) and (d) added 11119
174 Authority citation revised **51515**
175 Authority citation revised **51515**
175.105 (c)(5) table amended **33996**, **39937**
175.125 (a)(7) added; (b)(1) revised 3464
175.300 (b)(3)(viii)(*b*) amended **43076**
176 Authority citation revised **51515**
176.170 (a)(5) table amended **39939**
176.200 (d)(3) table amended **39772**
177 Authority citation revised **51515**
177.1345 (d) amended **34628**
177.1395 (b)(4) table amended **53958**
177.1500 (c) redesignated as (d); new (c) added; new (d)(5)(ii) amended **22886**
(b) table amended 6854
177.1520 (b) table corrected; CFR correction **42050**, **49908**
(a)(1) redesignated as (a)(1)(i); (a)(1)(ii) added; (c) amended 6853
177.2460 (c)(1) amended 8852
177.2600 (c)(4)(i) amended 8572
178 Authority citation revised **51515**
178.2010 (b) table amended **29009**, **30455**, **34629**, **34630**, **36983**, **39441**, **41272**
(b) table amended 8853
178.3130 (b) table amended **31511**
178.3297 (e) table amended **19221**, **25476**
(e) table amended 3464
178.3400 (c) table amended **33997**, **42051**
179 Authority citation revised **51515**
Effective date confirmation **64102**
179.26 (b) table amended **64121**
180 Authority citation revised **51515**
181 Authority citation revised **51515**
182 Authority citation revised **51515**
184 Authority citation revised **51515**
184.1444 (a) amended; (b)(3) added 14611
184.1472 Revised **30756**
186 Authority citation revised **51515**
189 Authority citation revised **51515**
190 Added **49891**
200 Authority citation revised **51515**
201 Authority citation revised **51515**
201.57 (f)(10) added; eff. 8–27–98 ..... **45325**
201.64 (a) through (h) stayed; (i) revised **19925**
202 Authority citation revised **51515**
205 Authority citation revised **51515**
206 Authority citation revised **51515**
207 Authority citation revised **51515**
210 Authority citation revised **51516**
211 Compliance date extension **40447**
Authority citation revised **51516**
211.1 (d) added **19497**
(d) removed **66522**
211.84 (c)(5) amended 14356
225 Authority citation revised **51516**
226 Authority citation revised **51516**
250 Authority citation revised **51516**
290 Authority citation revised **51516**
291 Authority citation revised **51516**
299 Authority citation revised **51516**
300 Authority citation revised **51516**
310 Authority citation revised **51516**
310.305 (a) and (f)(1) revised; (b)(5) and (c)(4) removed; (c)(5) and (6) redesignated as (c)(4) and (5); new (c)(4) amended **34167**
(a), (d)(2), (3) introductory text and (i) amended; (b), (c), (d)(1), (3)(ii) and (4) revised; eff. 4–6–98 ..... **52249**
310.547 Added; eff. 4–20–98 13528
312 Meeting **46198**
Technical correction **47760**
Authority citation revised **51516**
312.20 (c) amended **32479**
312.23 (a)(7)(iv)(*e*) revised **40599**
312.32 (a), (b), (c)(1)(i), (2) and (d)(3) revised; (c)(3) and (e) amended; eff. 4–6–98 ..... **52250**
312.33 (a)(2) revised; eff. 8–10–98 6862
312.53 (c)(4) added; eff. 2–2–99 5252
312.57 (b) and (c) redesignated as (c) and (d); new (b) added; eff. 2–2–99 5252
312.64 (d) added; eff. 2–2–99 5252
312.70 (a) and (b) amended **46876**
314 Meeting **44891**, **46198**
Technical correction **47760**
Authority citation revised **51516**
Clarification **63268**

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314.50 (d)(1)(iii) revised **40599**
(k) redesignated as (l); new (k) added; eff. 2–2–99 5252
(d)(5)(v) and (vi)(*a*) amended; eff. 8–10–98 6862
314.60 (a) amended; eff. 2–2–99 5252
314.70 (g) added **39900**
314.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text, (d)(1) and (l) amended; (f)(1) revised **34168**
(a), (c) introductory text, (1), (f)(1), (3)(ii) and (4) revised; (b), (c)(2)(ii)(*b*), (d)(2), (f) heading, (2) and (3) amended; (j) removed; (k) and (l) redesignated as (j) and (k); eff. 4–6–98 ..... **52251**
(k) corrected 14611
314.94 (a)(13) added; eff. 2–2–99 5252
314.101 (d)(4) revised **40599**
314.110 (a)(3) and (b) amended **43639**
314.120 (a)(3) amended **43639**
314.200 (d)(3) amended; eff. 2–2–99 5252
314.300 (b)(6) introductory text amended; eff. 2–2–99 5252
314.440 (a)(3) amended **43639**
316 Authority citation revised **51516**
320 Authority citation revised **51516**
320.36 Existing text designated as (a); (b) added; eff. 2–2–99 5252
329 Authority citation revised **51516**
330 Authority citation revised **51516**
330.10 (f) added; eff. 2–2–99 5253
331 Authority citation revised **51516**
331.10 (a) correctly revised; CFR correction **52659**
332 Authority citation revised **51516**
333 Authority citation revised **51516**
336 Authority citation revised **51516**
338 Authority citation revised **51516**
340 Authority citation revised **51516**
341 Authority citation revised **51516**
344 Authority citation revised **51517**
346 Authority citation revised **51517**
347 Authority citation revised **51517**
348 Authority citation revised **51517**
349 Authority citation revised **51517**
352 Announcement **23350**
355 Authority citation revised **51517**
357 Authority citation revised **51517**
358 Authority citation revised **51517**
361 Authority citation revised **51517**
369 Authority citation revised **51517**
429 Authority citation revised **51517**
430 Authority citation revised **51517**
431 Authority citation revised **51517**
432 Authority citation revised **51517**
433 Authority citation revised **51517**
436 Authority citation revised **51517**
436.215 (c)(16)(iv) and (18)(iv) corrected; CFR correction **52659**
440 Authority citation revised **51517**
441 Authority citation revised **51517**
442 Authority citation revised **51517**
443 Authority citation revised **51517**
444 Authority citation revised **51517**
446 Authority citation revised **51517**
448 Authority citation revised **51517**
449 Authority citation revised **51517**
450 Authority citation revised **51518**
452 Authority citation revised **51518**
453 Authority citation revised **51518**
455 Authority citation revised **51518**
460 Authority citation revised **51518**
500 Authority citation revised **51518**
500.80 (b) amended **66983**
501 Authority citation revised **51518**
502 Authority citation revised **51518**
509 Authority citation revised **51518**
510 Technical correction **23534**
Authority citation revised **51518**
Technical correction 408
510.515 (c) table corrected; CFR correction **52659**
510.600 Regulation at 62 FR 14300 eff. date corrected to 4–7–97 15751
(c)(1) table and (2) table amended ... **22887, 27691, 29010, 34631, 35075, 38906, 39442, 40931, 48939, 55159, 60781, 61624, 61626, 62241, 63270**
(c)(1) table and (2) table amended 5254, 7700, 8122, 8347, 8349, 11598, 14612
511 Technical correction **47760**
Authority citation revised **51518**
511.1 (b)(10) revised **40599**
514 Technical correction **47760**
Authority citation revised **51518**
514.1 (b)(14) revised **40599**
514.8 (a)(1) amended **40600**
514.110 (b)(10) revised **40600**
514.111 (a)(9) revised **40600**
(a)(5) revised; eff. 4–6–98 10770
514.117 Added; eff. 4–6–98 10770
520 Authority citation revised **51518**

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Technical correction 408
520.23 (a)(2) amended **35075**
520.82a (b) amended **61624**
520.82b (b) amended **61624**
520.88g (c)(1)(ii) amended 13121
520.88h (c)(1)(ii) amended 13121
520.100a (b) amended **63270**
520.100b (b) amended **63270**
520.100c (b) amended **63270**
520.222 (c) amended **61624**
520.300a (b) amended **63270**
520.300b (b) amended **63270**
520.300c (b) amended **63270**
520.390a (a)(2) amended **35076**
520.390b (b)(1) amended 5255
520.420 (a)(2) amended **63270**
520.445b (b) amended **27691, 35076, 60656**
520.447 (b) revised **46669**
520.462 (b) amended **63270**
520.580 (b)(2) amended **35076, 61624**
520.600 (c) amended **35076**
520.622a (a)(6) amended **35076**
520.622b (c)(2) amended **35076**
(a)(2) amended **38906**
520.622c (b)(6) amended **35076**
(b)(6) corrected **40932**
(b)(5) amended **61624**
520.645 Added 8123
520.763a (c) amended **35076**
520.763b (c) amended **35076**
520.763c (b) amended **35076**
520.784 (b) amended **61624**
520.804 (b) amended **63270**
520.812 (c) redesignated as (d); new (d) revised **38906**
520.863 (b) amended **61624**
520.1010a (b) amended **35076**
520.1044a (b) amended **34169**
520.1044b (b) amended **29011**
520.1044c (b) amended **29013**
520.1120a (c) amended **61624**
520.1120b (c) amended **61625**
520.1192 (b) amended **63270**
520.1193 (b) amended **63270**
520.1194 (b) amended **63270**
520.1195 (b) amended **63270**
520.1196 (b) amended **63270**
520.1197 (b) amended **63270**
520.1242a (c)(2) amended **61625**
520.1242b (c) amended **61625**
520.1242g (e) amended **55160**
(c) amended **61625**
520.1263c (b) amended **65020**
520.1320 (c) amended **61625**
520.1326a (b) amended **61625**
520.1326b (b) amended **61625**
520.1408 (b) amended **35076**
520.1446 Added **28629**
520.1448b Removed 6862
520.1451 Added **37713**
520.1452 Added **42902**
520.1484 (b) and (c)(3) amended **55160**
520.1485 (d)(3) amended **60657**
520.1616 Added **29012**
(d)(1) heading and (iii) amended **61627**
520.1660d (a)(8) and (b)(6) added **23356**
(b)(3), (e)(1)(ii)(A)(*3*), (B)(*3*) and (C)(*3*) amended **35076**
520.1696b (b) amended **55160**
520.1720a (b)(1) amended **61625**
520.1720b (b) amended **61625**
520.1720c (b) amended **61625**
520.1805 (b) amended **61625**
520.1806 (b) amended 8348
520.1880 (a) amended 148
520.1900 (b) amended **35076**
520.2043 (b)(2) revised **37712**
520.2098 Added **34632**
(d) heading and (2) corrected **55159**
520.2170 (c) amended **63270**
520.2220a (b) amended **23357, 35076, 40932**
520.2220b (b)(3) amended **61625**
520.2220c (c) amended **61625**
520.2260b (f)(1) and (h)(1) amended **35076**
520.2325a (a)(4) added **37712**
520.2345a (b)(4) removed 5255
520.2345d (a)(1), (d)(1)(iii) and (2)(iii) amended **35076**
(a)(1) amended **46668**
(a)(1), (4), (d)(1)(iii) and (2)(iii) amended **55160**
520.2362 (c) amended **61625**
520.2380a (c)(2) amended **63271**
520.2380b (c) amended **63271**
520.2380c (b) amended **63271**
520.2380d (b) amended **63271**
520.2380f (b) amended **63271**
520.2455 (b) amended **35076**
520.2456 (b) amended **35076**
520.2481 (b) amended **35076**
520.2610 (b) amended **61625**
520.2611 (b) amended **61625**
520.2612 (b) amended **61625**
520.2640 (e)(1)(iii), (2)(iii) and (3)(iii) amended **39443**
522 Authority citation revised **51518**

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522.23 (c) amended **35076**
522.56 (b) amended **23357**
522.82 (b) amended **61625**
522.150 (b) amended **61625**
522.468 Added 13123
522.518 (b) amended **28630**
522.535 Added 13122
522.540 (a)(2) amended **37713**
522.770 (d)(2) revised **44410**
(d) heading revised; (d)(1), (2) and (3) redesignated as (d)(1)(i), (ii) and (iii); (d)(2) added **62242**
522.778 Added 8349
522.784 (b) amended **61625**
522.812 (c) redesignated as (d); new (d)(2) revised **38907**
522.863 (b) amended **61625**
522.970 (b) revised **22888**
522.1002 (b)(2) amended **62242**
522.1010 (b) amended **35076**
522.1044 (b)(3) amended **35076**
(b)(3) and (4) added **45157**
522.1125 Added 11598
522.1150 (b) amended **63271**
522.1155 (b) amended **61625**
522.1156 Added **66984**
522.1182 (b)(2)(i) amended **35076**
522.1183 (e)(1) amended **35076**
522.1192 (b) amended **63271**
(a)(2) heading revised; (d)(6) added 7702
522.1193 (b) amended **63271**
522.1222a (c) amended **22888, 35076**
522.1244 (b) amended **61625**
522.1410 (b) amended **35076**
522.1452 (b) amended **63271**
522.1462 (b) amended 7701
522.1503 (b) amended **61625**
522.1642 (b) amended 7701
522.1660 (c) redesignated as (d); new (d)(1) heading revised; new (d)(1)(ii), new (iii) and new (2)(ii) amended **27692**
522.1662a (a)(2), (g)(2) and (h)(2) amended **35076**
(h)(2) amended 6644
522.1680 (b) amended **35076, 38906**
522.1704 (a)(2) amended **61625**
522.1720 (b)(2) amended **38906**
(b)(1) amended **61625**
522.1850 (d) added **45158**
522.1885 (b) amended **63271**
522.2005 (b) amended **61625**
522.2220 (a)(2)(iii) added **23128**
(c)(2) amended **35076**
522.2424 (b) amended **35076**
522.2471 (d)(1)(iii) amended 7701
Corrected 14818
522.2476 (b) amended **29013**
522.2477 (a) revised **28629**
522.2483 (b) amended **35077**
522.2610 (b)(2) corrected; CFR correction **41272**
(a)(2) amended **61625**
522.2640a (b)(2) amended **35077**
522.2662 (b) amended **35077**
522.2680 (b) amended **61625**
524 Authority citation revised **51518**
524.154 (a)(2) amended **61625**
524.155 (a)(1) amended **61626**
524.575 (c)(2) revised **48940**
524.770 Added **65753**
524.814 Added **33997**
524.900 (e) amended **55161**
(c) amended **61626**
524.981a (b) amended **40932**
524.981b (b) amended **40932**
524.981c (b) amended **40932**
524.1193 (d)(2) amended **38908**
(b) amended **63271**
524.1240 (b) amended **61626**
524.1443 (b) revised **55161**
(b) amended **61626**
524.1451 Added 14036
524.1484g (b) amended **63271**
524.1580b (b) amended **35077**
524.1580c (b) amended **35077**
524.1742 (b) amended **61626**
(b) amended 5255
524.1883 (b) amended **63271**
526 Authority citation revised **51518**
526.365 Redesignated from 529.365 8349
529 Authority citation revised **51518**
529.50 (b) amended **23358**
529.365 Redesignated to 526.365 8349
529.1044a (b) amended **35077**
(b) amended 6644
529.1044b (b) amended **22889**
529.1115 (b) amended **29014**
529.1186 (b) revised 8122
529.2503 (b) amended 7702
530 Authority citation revised **51518**
530.41 Revised **27947**
556 Authority citation revised **51518**
556.52 Revised **40933**
556.75 Corrected **15391**
556.100 Revised 13337
556.167 Added 13123
556.225 Revised **62243**
556.227 Added **33998**

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556.273 Added **55161**
556.344 Revised 7702
556.426 Added 14036
558 Technical correction **23534, 44892**
Authority citation revised **51518**
Technical correction 408
Determination 15292
558.4 (d) table amended **25477, 60657**
(d) table amended 11599
(a) amended 63271
558.58 (d)(1)(iii) table amended **60658, 61627, 66987**
(d)(1) table amended **63271**
558.76 (d)(1) table amended 10304
558.78 (a) revised; (d)(1) table amended **55162**
Regulation at 62 FR 55162 eff. date corrected to 10–23–98 9310
(a)(3) corrected 14613
558.95 (d)(1)(ii)(*b*), (iii)(*b*), (iv)(*b*), (v)(*b*) and (xiii)(*b*) amended **63271**
(d)(5)(iii) added 13124
(a) revised 14356
558.120 (c) redesignated as (d); new (d)(1)(iii)(*b*) amended **61011**
558.128 (a)(4) and (d)(1) table amended **27692**
(d)(1) table and (2) amended **61628**
(d)(3)(xiv) redesignated as (d)(3)(iii) 10304
558.155 (a)(1) and (2) amended **35077**
(a)(1) amended **67725**
(a)(2) amended 2307
(a)(2) corrected 11599
558.175 (c)(1)(iii)(*b*) and (iv)(*b*) amended **61626**
(c) redesignated as (d); new (d)(1)(iv)(*b*) amended **61912**
(d)(1)(iii)(*b*) amended **62243**
558.195 (c)(2) added; (d) table amended **23129**
(d) table amended ... **61626, 66523, 67273**
(a) and (d) table amended **67725**
558.205 (a) amended **35077**
558.235 (a) amended **63271**
558.254 (c) amended **55161**
(a) amended **61626**
558.274 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 ..... **15751**
(a)(7) and (c)(1) table amended **27692**
(a)(8), (c)(1)(i) table and (ii) table amended **55160**
(a)(6) removed; (c)(1)(i) table amended 5255
558.300 (a)(1) and (2) amended **63271**
558.311 (e)(3)(i) table amended **28630**
(e)(1)(ii) table amended **61626**
558.355 (f)(1)(xv)(*b*) and (xvi)(*b*) amended **61912**
(c) removed 14035
558.363 (a) revised; (c) redesignated as (d); new (d)(1)(vii) added 13124
558.366 (a) and (c) table amended **29011**
(c) table amended 13124
558.485 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 ..... **15751**
(a)(11) amended **27692**
(a)(28) added **46444**
(a)(21) and (25) removed 5255
558.515 (d)(1)(vi)(*b*) amended **61626, 66986**
558.530 (a) amended **67725**
558.550 (b) redesignated as (d); (d)(1)(xvii) added **29014**
(d)(1)(vii)(*c*) amended **60781**
(d)(1)(ix)(*c*) amended **66985**
(a)(1) amended 6644
558.555 (b)(4) added **66985**
558.600 (a) amended **35077**
558.615 (a) amended **63271**
558.618 (d)(1) corrected **15391**
558.625 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 ..... **15751**
(b)(10) and (52) amended **27692**
(b)(84) removed 5255
558.630 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 ..... **15751**
(b)(3), (8) and (10) amended **27692**
564 Authority citation revised **51518**
570 Technical correction **47760**
Authority citation revised **51518**
570.35 (c)(1)(viii) revised **40600**
571 Technical correction **47760**
Authority citation revised **51518**
571.1 (c) amended **40600**
573 Authority citation revised **51518**
573.280 Revised 8573
573.920 Regulation at 60 FR 53703 confirmed **44894**
579 Authority citation revised **51518**
582 Authority citation revised **51518**
584 Authority citation revised **51518**

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589 Authority citation revised **30976, 51519**
589.2000 Added (OMB number pending) **30976**
600 Meeting **44891**
Authority citation revised **51519**
600.3 (ff) and (gg) added **39901**
600.10 (a) removed; (b) heading revised **53538**
600.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text, (d)(1) and (m) amended; (f)(1) revised **34168**
(a), (c)(1) and (f)(1) revised; (b) and (g) amended; (j) removed; (k), (l) and (m) redesignated as (j), (k) and (l); eff. 4–6–98 ..... **52252**
(l) correctly revised 14612
601 Meeting **44891, 46198**
Technical correction **47760**
Authority citation revised **51519**
601.2 (a) and (c)(2) amended **40600**
(a) introductory text amended; (c)(6) added **53538**
(a) introductory text amended; eff. 2–2–99 5253
601.12 Revised **39901**
601.25 (b)(3) amended **53538**
606 Authority citation revised **51519**
606.20 (a) removed **53538**
607 Authority citation revised **51519**
610 Meeting **44891**
Authority citation revised **51519**
610.9 Revised **39903**
610.12 (f) revised **48175**
640 Meeting **44891**
Authority citation revised **51519**
640.120 (a) revised **39903**
660 Authority citation revised **51519**
680 Authority citation revised **51519**
700 Authority citation revised **51519**
701 Authority citation revised **51519**
710 Authority citation revised **51519**
720 Authority citation revised **51519**
730 Removed **43074**
Authority citation revised **51519**
740 Authority citation revised **51519**
800 Authority citation revised **51519**
801 Authority citation revised **51519**
801.435 Added **50501**
801.437 Added; eff. 9–30–98 ..... **51029**
803 Authority citation revised **51519**
804 Authority citation revised **51519**
805 Authority citation revised **51519**
806 Added **27191**
Authority citation revised **51519**
806.10 Regulation at 62 FR 27191 stayed **67274**
806.20 Regulation at 62 FR 27191 stayed **67274**
807 Authority citation revised **51519**
807.31 (d)(3) added; eff. 2–2–99 5253
807.87 (i), (j) and (k) redesignated as (j), (k) and (l); new (i) added; eff. 2–2–99 5253
807.100 (a)(4) redesignated as (a)(5); new (a)(4) added; eff. 2–2–99 5253
808 Authority citation revised **51519**
808.51 Added **63274**
808.52 Added **63274**
808.94 Added **63274**
809 Authority citation revised **51520**
809.10 (a) amended; (e) added; eff. 11–23–98 ..... **62259**
809.30 Added; eff. 11–23–98 ..... **62259**
810 Authority citation revised **51520**
812 Authority citation revised **26229, 51520**
Meeting **46198**
Technical correction **47760**
812.18 (b) revised **26229**
812.20 (b)(9) revised **40600**
812.36 Added **48947**
812.43 (c)(5) added; eff. 2–2–99 5253
812.110 (d) redesignated as (e); new (d) added; eff. 2–2–99 5253
812.140 (b)(3) revised; eff. 2–2–99 5253
812.150 (b)(5) revised **48948**
814 Meeting **46198**
Technical correction **47760**
Authority citation revised **51520**
814.20 (b)(11) revised **40600**
(b)(12) redesignated as (b)(13); new (b)(12) added; eff. 2–2–99 5253
814.42 (e)(5) added; eff. 2–2–99 5254
814.44 (d) revised 4572
814.45 (d) revised 4572
814.102 Reinstated **38026**
814.104 Reinstated **38026**
814.106 Reinstated **38026**
814.108 Reinstated **38026**
814.110 (a) reinstated **38026**
814.112 (b) reinstated **38026**
(a)(4) added; eff. 2–2–99 5254
814.116 (b) reinstated **38026**
814.118 (d) reinstated **38026**

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814.120 (b) reinstated **38026**
814.124 (b) reinstated **38026**
814.126 (b)(1) reinstated **38026**
820 Authority citation revised **51520**
Meeting 3465
821 Authority citation revised **51520**
860 Authority citation revised **51520**
860.123 (a)(10) added; eff. 2–2–99 5254
861 Authority citation revised **51520**
862 Authority citation revised **51520**
864 Authority citation revised **51520**
864.4010 (a) revised; eff. 11–23–98 ..... **62260**
864.4020 Added; eff. 11–23–98 ..... **62260**
866 Authority citation revised **51520**
866.6010 Revised **66005**
868 Authority citation revised **51520**
870 Authority citation revised **51520**
872 Authority citation revised **51520**
872.6730 (c) amended **31512**
874 Authority citation revised **51520**
876 Authority citation revised **51520**
878 Authority citation revised **51520**
878.5040 Added 7705
880 Authority citation revised **51520**
880.5130 Revised **33350**
882 Authority citation revised **51520**
882.5800 (c) revised **30457**
884 Authority citation revised **51520**
886 Authority citation revised **51520**
886.5918 Revised **30987**
886.5928 Revised **30988**
886.5933 Removed **30988**
888 Authority citation revised **51520**
890 Authority citation revised **51520**
892 Authority citation revised **51520**
895 Authority citation revised **51520**
897 Authority citation revised **51520**
898 Added **25497**
Authority citation revised **51521**
898.14 Stayed **25498**
900 Authority citation revised **51521**
Revised; eff. in part 4–28–99 ..... **55976**
(c)(4) corrected **60614**
900.12 (b)(8)(i), (e)(4)(iii)(B) and (5)(i)(B) revised; eff. 10–28–02 ..... **55984**
(a)(2)(iv), (b)(6)(ii), (8)(i), (e)(1)(ii), (iii), (2)(ii), (4)(iii)(B), (5)(i)(B), (ii), (iii), (x)(A), (12) and (h) heading corrected; effective date corrected in part **60614**
900.18 (a)(1) corrected **60614**
1000 Authority citation revised **51521**
1002 Authority citation revised **51521**
1003 Authority citation revised **51521**
1004 Authority citation revised **51521**
1005 Authority citation revised **51521**
1010 Authority citation revised **51521**
1020 Authority citation revised **51521**
1030 Authority citation revised **51521**
1040 Authority citation revised **51521**
1050 Authority citation revised **51521**
1210 Authority citation revised **51521**
1220 Authority citation revised **51521**
Removed; eff. 4–17–98 12996
1230 Authority citation revised **51521**
1240 Authority citation revised **51521**
1250 Authority citation revised **51521**
1270 Revised **40444**
Authority citation revised **51521**

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1300.02 (b)(28)(i)(D)(*1*), (*2*) and (29) correctly revised **15392**
1308 Controlled substance schedules **29288, 29289, 51774, 51776**
1308.14 (f)(2) added **51371**
(e)(10) redesignated as (e)(11); new (e)(10) added 6864
1309 Waiver **53958**
1309.29 Regulation at 62 FR 5916 confirmed **52256**
Revised **53960**
1309.43 Regulation at 62 FR 5916 confirmed **52256**
1309.44 Regulation at 62 FR 5916 confirmed **52256**
1309.62 Regulation at 62 FR 5916 confirmed **52256**
1310.01 Regulation at 62 FR 5917 confirmed **52256**
1310.02 Regulation at 62 FR 5917 confirmed **52256**

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1310.04 Regulation at 62 FR 5917 confirmed **52256**
1310.09 Reinstated **15392**
Revised; interim **27693**
Regulation at 62 FR 27693 confirmed **52256**
Existing text designated as (a); (b) added **53960**
1313.02 Regulation at 62 FR 5917 confirmed **52256**

Chapter III—Office of National Drug Control Policy (Parts 1400—1499)

1403.26 (a), (b) introductory text and (1) revised **45939, 45941**

Proposed Rules:

1—1299 (Ch. I) **24619, 33781, 36243**
50 ..... **40996**
101 ..... **28234, 29313, 36749, 52057, 61476, 67771, 67775**
..... 1078, 13154, 14390
111 ..... **30678, 44247, 48968**
120 ..... **45593**
161 ..... **29313, 52057**
170 ..... **18938**
184 ..... **18938**
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186 ..... **18938**
200 ..... **49638, 64048**
201 ..... **33379, 43900, 51071, 61041, 67770**
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211 ..... **40489**
225 ..... **40765**
310 ..... **46223, 47532**
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330 ..... **33379, 67770**
..... 7331
333 ..... **61710**
334 ..... **46223**
336 ..... **45767**
338 ..... **45767**
341 ..... **45767**
347 ..... **61710**
348 ..... **45767, 61710**
349 8888
358 ..... **33379, 67770**
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501 ..... **29313, 52057**
510 ..... **40765**
511 ..... **25152**
514 ..... **25152, 25153, 40765, 59830**
515 ..... **40765**
558 ..... **40765**
570 ..... **18938**
589 ..... **18728**
600 ..... **49642, 59386**
601 ..... **43900, 51071**
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606 ..... **49642, 59386**
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803 ..... **67011**
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804 ..... **67011**
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806 ..... **67011**
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807 ..... **67011**
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808 ..... **33783, 65384, 66179**
809 10792
810 ..... **67011**
..... 14390
812 ..... **31023**
814 ..... **34680**
820 ..... **67011**
..... 14390
821 ..... **67011**
..... 14390
864 10792
868 ..... **33044**
872 ..... **38231**
876 ..... **65770**
878 ..... **31771**
880 11632
884 ..... **33044, 46682**
890 ..... **33044**
917 ..... **63684**
926 ..... **63685**
1002 ..... **67011**
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1020 ..... **65235, 67011**
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1240 ..... **54398**
1300 ..... **52294, 53688**
1308 ..... **24620, 27214, 28923, 37004, 64526**
1309 ..... **52294, 53688**
1310 ..... **51072, 52294, 53059, 53688**

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

22 Authority citation revised **42666**
Authority citation revised 5100

NOTE: **Boldface page numbers indicate 1997 changes.**

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22.1 Amended **42666**
Revised 5100
22.8 Removed 5103
40 Authority citation revised **67562**
40.11 (b) revised; (c) added; interim **67567**
40.22 (b) removed; (c) through (f) redesignated as (b) through (e); interim **67567**
40.41 Revised; interim **67562**
40.52 Amended; interim **67567**
40.61 Revised; interim **67567**
40.62 Revised; interim **67567**
40.66 Revised; interim **67567**
40.67 Added; interim **67568**
40.68 Added; interim 671
40.91 Revised; interim **67568**
40.92 Revised; interim **67568**
40.93 Revised; interim **67568**
40.104 Revised; interim **67568**
40.105 Revised; interim **67568**
41 Authority citation revised **48154**
41.2 (l) revised; interim **51031**
41.51 Revised **48154**
41.59 (c) revised 10305
41.101 (a)(1)(ii) and (2) amended; (b) redesignated as (e); (a)(1)(iii), new (b), (c) and (d) added; interim 671
41.107 Regulation at 59 FR 25325 confirmed **24334**
41.112 (b) revised **24332**
41.113 (c), (h) and (k) removed; (d) through (g), (i) and (j) redesignated as (c) through (h); (a), (b) and new (c) through new (f) revised **24333**
41.121 (a) amended; interim 671
42.32 (d)(1)(ii) revised 4394
42.72 (a) and (e)(4) amended; (e)(1) revised **27694**
(e)(4) corrected **32196**
42.74 (a) and (b) revised 4393
51 Authority citation revised **62695**
Authority citation revised 5103
51.4 (b) revised 7285
51.61 Revised 5103
51.62 Removed; new 51.62 redesignated from 51.63 5103
51.63 Redesignated as 51.62; new 51.63 redesignated from 51.64; (a) and (f) amended 5103
51.64 Redesignated as 51.63; new 51.64 redesignated from 51.65 5103
51.65 Redesignated as 51.64; new 51.65 redesignated from 51.66 5103
51.66 Redesignated as 51.65; new 51.66 redesignated from 51.67; (a) and (c) revised 5103
51.67 Redesignated as 51.66 5103
Correctly redesignated as 51.66 6479
51.70 (a)(7) amended; (a)(8) added **62695**
51.80 Revised **62695**
53 Heading and authority citation revised 5103
72.14 Revised 6480
72.52 Revised 6480
72.53 (a) revised 6480
92.43 Amended 6480
92.44 Removed 6480
92.48 Removed 6480
120 Authority citation revised **67275**
120.7 (a) revised **67275**
120.9 Revised **67275**
122.3 (a) revised **27497**
123 Authority citation revised **67275**
123.15 Revised **67275**
124.4 Revised **67276**
124.11 Revised **67276**
126 Authority citation revised **67276**
126.1 (a) amended **37133**
126.10 (b) revised **67276**
127 Authority citation revised **67276**
127.10 (a) revised **67276**
129 Added **67276**
135.26 (a), (b) introductory text and (l) revised **45939, 45941**
145.26 (a), (b) and (c) revised **45939, 45941**
171 Authority citation revised **48758**
171.12 Revised; interim **48758**

Chapter II—Agency for International Development, International Development Cooperation Agency (Parts 200—299)

201 Nomenclature change **38027**
201.11 (b), (e) and (j) revised **38027**
201.12 (d) revised; (e) added **38027**
201.13 (a), (b) and (c) revised **38027**
201.14 Amended **38027**
226.26 (a), (b) and (c) revised **45939, 45941**

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TITLE 22

Chapter V—United States Information Agency (Parts 500—599)

514 Policy statement 19925
Notice 13337
514.31 (c) through (j) revised; interim 34633
Regulation at 62 FR 34633 confirmed 46876
514.44 (g) revised; (h) removed 19222
(c) revised 28803
518.26 (a), (b) and (c) revised 45939, 45941

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

606 Revised 27948

Proposed Rules:

22 ..... 32558, 63478
41 13026
51 63478
53 63478
201 42712
228 3506

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

140.904 (b)(1) revised; interim 45328
140.922 (b) revised; interim 45328
470 Authority citation revised 33355
470.101—470.115 (Subpart A) Revised; interim 33355
625 Revised; eff. 5-1-97 15397
646 Authority citation revised 45328
646.200 (c) revised; (f) removed; interim 45328
646.202 Removed; interim 45328
646.204 Amended; interim 45328
646.208 Revised; interim 45328
646.212 (b) revised; interim 45328
646.214 (a)(2) revised; interim 45328
646.216 (d)(3)(ii) amended; (e)(1) revised; interim 45328
646.200—646.220 (Subpart B) Appendix amended; interim 45328
655.601 (a) revised 8351
657 Authority citation revised; OMB number 62261
658 Appendix A amended 30758
772.13 Regulation at 61 FR 45321 confirmed 42904

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1200 Revised; interim 34402
1200.4 Revised; interim 34405
1205.5 Removed; interim 34405
1260 Removed 3812

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1327 Authority citation revised 63657
1327.3 (a) through (w) redesignated as (b) through (x); new (a) added 63657
1327.5 (c)(2) introductory text amended 63657
1327.6 (f) and (g) redesignated as (g) and (h); new (f) added; interim 27195
(e)(1) introductory text revised 63657
Regulation at 62 FR 27195 confirmed; (f)(2) amended 153

Proposed Rules:

655 ..... 54598, 64324
668 8377
777 33047

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

0.2 Removed; eff. 4-29-98 15268
0.3 Removed; eff. 4-29-98 15268
5.107 Added; interim 61617
5.410 (d)(1)(i) amended 27125
5.609 Regulation at 61 FR 54502 confirmed 24337
5.617 (b)(3) revised 27125
24.110 (a)(3)(ii) revised 20081

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25.2 Amended **20081**
25.3 Amended **20081**
25.9 (x) and (cc) revised **20081**
30.35 (a)(4) correctly revised 9742
44 Removed; interim **61617**
45 Removed; interim **61617**
50.19 (a), (b)(14), (17) and (c) revised; (b) heading and (24) added **15802**
55.12 (b)(3) revised; (b)(4) added **15802**
58.1 Heading revised; eff. 4–29–98 15268
58.6 Introductory text amended; (a)(1)(ii) and (2) revised; (b) and (c) redesignated as (c) and (d); new (b) added; eff. 4–29–98 15271
58.10 Revised; eff. 4–29–98 15271
58.14 Revised; eff. 4–29–98 15271
58.34 (a)(10) revised; eff. 4–29–98 15271
58.35 (b)(5) revised; eff. 4–29–98 15272
58.47 (a) introductory text and (b) revised; eff. 4–29–98 15272
58.60 (e) amended; eff. 4–29–98 15272
81.2 Regulation at 62 FR 63947 confirmed; (b) amended **28977**
81.91—81.99 (Subpart H) Regulation at 62 FR 63948 confirmed **28977**
81.92 (a) revised **28977**
81.93 (c)(1) amended **28977**
81.94 (a) and (b)(2) amended **28977**
81.96 (d) amended **28977**
84.26 (a), (b) and (c) revised; interim **61617**
84.82 (e)(1), (2) and (3) revised; interim **61617**
85.26 (a), (b) introductory text and (1) revised; interim **61617**
92.50 (d)(1) revised **28928**
92.202 (b) revised **28928**
92.203 (a)(1) introductory text, (b)(1) and (c) revised **28928**
92.205 (d) amended **28928**
92.206 (a)(5) added **28928**
92.209 (c)(2) and (j)(5) revised **28928**
92.214 (a)(6) revised **28929**
92.219 (b)(1)(i) and (2)(iv) revised **28929**
92.220 (a)(10) amended; (b)(4) revised **28929**
(a)(1)(iii)(B)(*2*) and (*3*) revised; (a)(1)(iii)(B)(*4*) added **44840**
92.250 (a) revised **28929**
92.251 (a) revised **28929**
92.252 (h) amended **28929**
(i)(2) amended **44840**
92.300 (a)(1) amended; (f) heading revised **28930**
92.350 Revised **28930**
92.353 (c)(2)(i)(C)(*1*)(*ii*) revised **28930**
92.355 Revised **28930**
92.356 (f)(1) revised **28930**
92.358 Added **28930**
92.453 Revised **44840**
92.500 (d) revised **28930**
92.505 (c) added **28930**
92.507 Revised **44840**
92.552 (b) revised **44840**

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.140 Added **66432**
100.141 Added **66432**
100.142 Added **66432**
100.143 Added **66432**
100.144 Added **66432**
100.145 Added **66432**
100.146 Added **66433**
100.147 Added **66433**
100.148 Added **66433**
103.1 (c) amended **66433**
103.215 Regulation at 61 FR 41482 confirmed 15797
(b) amended **66433**
103.230 (a)(1) amended **66433**
103.405 (b)(2) and (3) amended **66433**

Chapter II—Office of Assistant Secretary for Housing–Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200.10 Revised **20081**
200.926 (a)(2)(i) revised **30225**
200.926d (c)(4)(vii) revised **30225**
200.929 (b)(2) revised 5423
200.931 Revised 5423
200.935 (d)(4)(ii) revised 5423
200.938 Removed 5423
200.939 Removed 5423
200.941 Removed 5423
200.943 Revised 5423
200.952 Added 5424
200.954 Added 5424

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TITLE 24 Chapter II—Con.

200.955 Added 5424
201 Authority citation revised 65181
201.10 (g) amended 20082
201.20 (a)(3) added 20082
(a)(3) removed; interim 65181
201.26 (a)(1)(iii) revised 20082
(a)(1) revised; interim 65181
202 Revised 20082
202.2 Amended; interim 65181
202.3 (c)(2)(v)(A) revised 30225
(c)(2)(ii)(A) and (v)(C) revised; (c)(2)(iii) amended; interim 65181
202.5 (i) amended; (n)(1)(i) revised; interim 65181
(i) corrected 9742
202.7 (b)(4)(i)(A) revised; interim 65182
(a) corrected 9742
202.8 (b)(9) revised 30225
202.9 (a) corrected 9742
203 Authority citation revised 65182
203.1—203.7 Undesignated center heading revised 30225
203.1 Revised 30225
203.3 (d)(1)(iii) revised 20088
(d)(2)(iv) added; interim 65182
203.4 Added 30226
(d) amended; interim 65182
203.5 (c) amended 20088
(b) revised 30226
203.6 Added 30226
203.7 Introductory text revised 30226
203.43i (d) introductory text, (g) introductory text and (2) revised 30226
203.50 (h) revised 30226
203.249 Revised 30226
203.255 (a) revised; (f) added (OMB number pending) 30227
203.257 Revised 30227
203.341 Added 60129
203.342 Regulation at 61 FR 35017 confirmed; revised 60129
203.350 Regulations at 61 FR 35017 and 35018 confirmed 60129
203.355 Regulation at 61 FR 35018 confirmed; (a), (c), (g) introductory text and (h) revised; (i) added 60129
203.370 Regulation at 61 FR 35018 confirmed 60129
203.371 Regulation at 61 FR 35018 confirmed 60129
(b)(1) and (5) revised 60130
203.402 Regulation at 61 FR 35018 confirmed 60129
(f) revised 60130
203.402a Regulation at 61 FR 35019 confirmed 60129
203.404 Regulation at 61 FR 35019 confirmed 60129
203.412 Regulation at 61 FR 35019 confirmed 60129
203.414 Regulation at 61 FR 35019 confirmed 60129
(a) revised 60130
203.415 (b) revised 30227
203.438 Regulation at 61 FR 35019 confirmed 60129
203.471 Regulation at 61 FR 35019 confirmed 60129
203.473 Regulation at 61 FR 35019 confirmed 60129
203.499 Revised 30227
203.500 Regulation at 61 FR 35019 confirmed 60129
203.501 Regulation at 61 FR 35019 confirmed 60129
203.552 Regulation at 61 FR 35019 confirmed 60129
(a) introductory text revised 60130
203.604 Regulation at 61 FR 35019 confirmed 60129
203.605 Regulation at 61 FR 35019 confirmed 60129
203.606 Regulation at 61 FR 35020 confirmed 60129
203.614 Regulation at 61 FR 35020 confirmed 60129
203.616 Regulation at 61 FR 35020 confirmed 60129
Revised 60130
203.640 Regulation at 61 FR 35020 confirmed 60129
203.641 Regulation at 61 FR 35020 confirmed 60129
203.642 Regulation at 61 FR 35020 confirmed 60129
203.643 Regulation at 61 FR 35020 confirmed 60129
203.644 Regulation at 61 FR 35020 confirmed 60129
203.645 Regulation at 61 FR 35020 confirmed 60129
203.646 Regulation at 61 FR 35020 confirmed 60129
203.647 Regulation at 61 FR 35020 confirmed 60129
203.648 Regulation at 61 FR 35020 confirmed 60129
203.649 Regulation at 61 FR 35020 confirmed 60129

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203.650 Regulation at 61 FR 35020 confirmed **60129**
203.651 Regulation at 61 FR 35020 confirmed **60129**
203.652 Regulation at 61 FR 35020 confirmed **60129**
203.653 Regulation at 61 FR 35020 confirmed **60129**
203.654 Regulation at 61 FR 35020 confirmed **60129**
203.656 Regulation at 61 FR 35020 confirmed **60129**
203.658 Regulation at 61 FR 35020 confirmed **60129**
203.659 Regulation at 61 FR 35020 confirmed **60129**
203.660 Regulation at 61 FR 35020 confirmed **60129**
203.664 Regulation at 61 FR 35020 confirmed **60129**
203.665 Regulation at 61 FR 35020 confirmed **60129**
203.666 Regulation at 61 FR 35020 confirmed **60129**
206.3 Amended **30227**
206.7 Revised **30227**
206.9 (b) revised **20088**
206.15 Revised **30227**
206.129 Regulation at 61 FR 35020 confirmed **60129**
207.252e Added 1303
241.1040 Revised **20088**
251.6 Added 1303
252.6 Added 1303
255 Authority citation revised 1303
255.6 Added 1303
266.100 (a) amended **20088**
266.610 Added 1303

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

Chapter V Notice **47344**
570 Authority citation revised **62914**
Technical correction **64634**
570.416 Added **17493**
(b) amended; interim 9683
570.420—570.432 (Subpart F) Revised **62914**
572.5 Amended **34145**
572.100 (a)(2) amended **34145**
572.135 (d) revised **34145**
572.210 Revised **34145**
572.230 Revised **34145**
572.300 Revised **34145**
572.305 Removed **34145**
572.310 Removed **34145**
572.320 Removed **34145**
572.420 (a)(1) amended **34145**
573.3 (i) revised **24574**
585.100—585.107 (Subpart B) Removed **31955**
Regulation at 62 FR 31955 eff. date corrected to 7-11-97 ..... **33156**
586 Revised **37479**
597 Heading revised; eff. 4-3-98 10715
597.3 Amended; eff. 4-3-98 10715
597.4 (a) amended; eff. 4-3-98 10715
597.302 Removed; eff. 4-3-98 10715

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

888 Fair market rent schedules **50724, 64521**
Fair market rent schedules 11956

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1099)

941.103 Amended **27125**
950 Authority citation revised **27126**
Removed; eff. 4-13-98 12349
950.102 Regulation at 61 FR 46346 confirmed **24337**
950.660 (a)(3) revised **27126**
953 Redesignated as 1003; eff. 4-13-98 12349
954 Regulation at 61 FR 32295 confirmed **58906**
955 Redesignated as 1005; eff. 4-13-98 12349
968.102 (b) revised **27126**
968.112 (d)(3)(ii) amended **27126**
968.335 (a)(3) revised **27126**
971 Added; interim **49576**
1000 Added; eff. 4-13-98 12349

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TITLE 24 Chapter IX—Con.

1000 Appendixes A and B corrected 13105
1003 Redesignated from 953; eff. 4–13–98 12349
1005 Redesignated from 955; eff. 4–13–98 12349
1005.101 Revised; eff. 4–13–98 12372
Corrected 13105
1005.103 Amended; heading revised; eff. 4–13–98 12372
1005.104 Added; eff. 4–13–98 12372
1005.105 Heading, (b) and (d)(3) revised; (f) added; eff. 4–13–98 12372
1005.107 Heading, (a) introductory text, (2) and (b) introductory text revised; (b)(3) and (4) redesignated as (b)(4) and (5); new (b)(3) added; eff. 4–13–98 12373
1005.109 Heading revised; eff. 4–13–98 12373
1005.111 Heading revised; eff. 4–13–98 12373
1005.112 Added; eff. 4–13–98 12373
1005.113 Added; eff. 4–13–98 12373

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

3280 Policy statement 24337
Interpretation 8339
3280.305 (c)(3)(i) table and (4) table amended 54547
3282 Policy statement 24337
3500 Authority citation revised 3236
3500.2 Amended 20088
3500.17 (a), (b) and (i)(1) introductory text amended; (c)(2), (3), (i)(1)(iv) and (k) revised; (f)(2)(iii) added 3236
3500 Appendixes A and C amended 3237

Proposed Rules:

0—99 (Ch. I) 18306
5 ..... 55324, 62928
81 68060
..... 1997
180 65458
200 27486
..... 6798
201 36194
202 36194
203 5661
206 12930
207 35716
251 35716
252 35716
255 35716
266 35716
291 32251
570 31944
888 23552
904 9747
950 35718
953 35718
955 35718
960 ..... 25728, 55324
964 55324
966 25728
968 47740
984 55324
990 55324
1000 ..... 35718, 43131, 47783, 54399
1003 ..... 35718, 43131, 47783, 54399
1005 ..... 35718, 43131, 47783, 54399
3500 ..... 25740, 38489, 53912

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

12 Revised 15611
46 Added 44081
142 Revised 18516
151 Determination 19927
181 Added 55331
247 Added; interim 50868
256 Revised 10134

Chapter III—National Indian Gaming Commission (Parts 500—599)

514.1 (a) introductory text, (4), (b) introductory text, (4), (c) introductory text, (1), (2), (5) introductory text, (8) and (d) introductory text revised; (a)(6) added; (g) removed; eff. 4–13–98 12316

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Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.801—700.843 (Subpart R) Revised 35078

Proposed Rules:

11 61057
41 15446
181 27000
248 55767
291 3289
500—599 (Chapter III) 10798, 12323
502 46227
514 65775
518 12319
1000 7202

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Authority citation amended 25506, 37492, 38028, 41273, 50503, 50505, 53416, 53500, 68166, 68175
Technical correction 40270
Authority citation amended ... 13, 1056, 1742, 1918, 4170, 10306
Technical correction 3186
1.42–15 Added 50505
1.42–16 Added 50503
1.42–16T Removed 50503
1.61–4 Amended 44546
1.61–12 (c) revised 68175
1.103–8 (a)(5) revised 25506
1.103–8T Removed 25506
1.125–4T Added; eff. 12–31–98 60166
(c)(3)(i), (ii), Examples 5, 6 and 9 corrected 8528
1.141–0 Amended 3259
1.141–2 (d)(3)(ii)(B) amended 3260
1.141–7 Removed 3260
1.141–8 Removed 3260
1.141–7T Added 3260
1.141–8T Added 3264
1.141–15 Revised 3265
1.141–15T Added 3266
1.142–4 Added 25506
1.142(f)(4)–1T Added 3266
1.148–0 (c) amended 25506
1.148–1 (b) amended; (c)(4)(ii)(A) revised; (e) added 25507
1.148–1T Redesignated as 1.148–1A 25507
1.148–2 (b)(2)(ii) revised 25507
1.148–2T Redesignated as 1.148–2A 25507
1.148–3 (h)(3) amended 25507
1.148–3T Redesignated as 1.148–3A 25507
1.148–4 (h)(2)(vi) and (vii) removed; (h)(2)(ii) through (v), (viii) and (ix) redesignated as (h)(2)(iii) through (viii); (b)(5), (g), (h)(1), (2) introductory text, (i), new (iv), new (v), new (vi), new (viii), (3), (4) and (5) revised; new (h)(2)(ii) and (6) added 25507
1.148–4T Redesignated as 1.148–4A 25507
1.148–5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii), (e)(2)(ii)(B) and (iii) revised 25511
1.148–5T Redesignated as 1.148–5A 25507
1.148–6 (d)(3)(iii)(C) revised 25512
1.148–6T Redesignated as 1.148–6A 25507
1.148–9 (c)(2)(ii)(B) and (h)(4)(vi) revised 25512
1.148–9T Redesignated as 1.148–9A 25507
1.148–10 (b)(2), (c)(2)(viii), (ix) and (e) revised; (c)(2)(x) added 25512
1.148–10T Redesignated as 1.148–10A 25507
1.148–11 (a), (b)(1), (c)(1) and (g) revised; (b)(3) added; (h) and (i) removed 25512
1.148–11T Redesignated as 1.148–11A 25507
1.149(d)–1 (f)(3) revised; (g)(3) added 25513
1.149(d)–1T Redesignated as 1.149(d)–1A 25513
1.150–1 (a)(2), (c)(1), (4)(iii) revised; (c)(6) added 25513
1.150–1T Redesignated as 1.150–1A 25513
1.150–5T Added 3266
1.148–1A—1.150–1A Undesignated center heading added 25507
1.148–1A Redesignated from 1.148–1T; heading amended 25507
1.148–2A Redesignated from 1.148–2T; heading amended 25507

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TITLE 26 Chapter I—Con.

1.148–3A Redesignated from 1.148–3T; heading amended **25507**
1.148–4A Redesignated from 1.148–4T; heading amended **25507**
1.148–5A Redesignated from 1.148–5T; heading amended **25507**
1.148–6A Redesignated from 1.148–6T; heading amended **25507**
1.148–9A Redesignated from 1.148–9T; heading amended **25507**
1.148–10A Redesignated from 1.148–10T; heading amended **25507**
1.148–11A Redesignated from 1.148–11T; heading amended **25507**
(i) revised **25513**
1.149(d)–1A Redesignated from 1.149(d)–1T; heading amended **25513**
1.150–1A Redesignated from 1.150–1T; heading amended **25513**
1.162–12 (a) amended **44546**
1.163–5 (c)(2)(i)(B)(*5*) amended; eff. 1–1–99 ..... **53416**
1.163–8T (c)(2)(e) redesignated as (c)(3) **40270**
1.163–13 Added **68176**
1.165–12 (a), (c)(1)(i), (2)(iv) and (3)(iv) amended; (c)(1)(iii) removed; (c)(1)(iv) and (v) redesignated as (c)(1)(iii) and (iv); (c)(1)(ii) and new (iii) revised; eff. 1–1–99 ..... **53416**
Corrected **55849**
1.166–3 (a)(3) added 4396
Regulation at 63 FR 4396 eff. date corrected to 1–29–98 5834
1.166–3T Removed 4396
Regulation at 63 FR 4396 eff. date corrected to 1–29–98 5834
1.171–1 Revised **68177**
1.171–2 Revised **68178**
1.171–3 Revised **68180**
1.171–4 Revised **68182**
1.171–5 Added **68182**
1.249–1 (c) revised; (d)(2) amended **68182**
1.263A–0 Amended **42054**
1.263A–0T Added **44546**
1.263A–1 (a)(2)(i) amended **42054**
(b)(3) and (4) amended **44546**
1.263A–4T Revised **44546**
1.263A–7 Added **42054**
1.263A–7T Removed **42062**
1.263A–15 Amended **42062**
1.280B–1 Added **67726**
1.302–2 (c) introductory text amended **38028**
1.338–2 (c)(3)(ii) revised; (c)(3)(iv)(B) amended 4178
1.354–1 (d) amended; (d) Example 4 added; (e) revised 410
1.355–1 (b) amended; (c) added 410
1.356–3 (b) redesignated as (c); new (b) added; new (c) amended 410
1.356–6T Added 411
1.368–1 (d)(1) removed; (d)(2), (3) and (4) redesignated as (d)(1), (2) and (3); (a), (b), new (d)(1), (5) introductory text and Examples 1 through 5 amended; new (d)(4) and (5) Examples 6 through 12 added 4178
1.368–1T Added 4185
1.368–2 (j)(3)(ii) revised; (j)(3)(iv) and (k) added; (j)(4) removed; (j)(5), (6) and (7) redesignated as (j)(4), (5) and (6); (a), (f), (j)(1), (3)(iii) and new (6) Examples 1 through 9 amended 4182
1.401(b)–1 (c), (d) and (e) redesignated as (d), (e) and (f); new (d)(2) undesignated text designated as (d)(3) and (4); (a), (b)(1), new (d)(1)(ii), (iii), (2) introductory text, (3), (4), (e)(1)(ii)(C), (2)(ii)(C), (3) introductory text, (4), (5) introductory text and (iii) amended **41273**
(b)(2)(iii) removed; (b)(3), (c) and (d)(1)(iv) added **41274**
1.401(b)–1T Added **41274**
1.446–1 (e)(3)(i) amended **26741**
(e)(3)(i) amended; (e)(3)(iii) revised **68169**
1.446–1T Added **26741**
(e)(3)(i)(B) corrected **28631**
Removed **68169**
1.453–11 Added 4170
1.460–0 Amended 1918
1.460–6T Added 1919
1.468A–2 (f)(3) redesignated as (f)(3)(i); (f)(3)(ii) added 2894
1.483A–3 (a)(4), (i)(1)(ii)(A), (iii)(A)(*3*) and (B) revised; (e)(5) and (i)(1)(iii)(C) added 2894
1.468A–8 (b)(12) added 2894

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1.471–6 (c), (d) and (f) amended **44551**
1.501(c)(5)–1 (b) redesignated as (c); new (b) added **40449**
1.704–1 (b)(2)(iv)(*d*)(*1*), (*l*) and (5) Example 13 amended **25499**
1.704–2 (m) Example 1 reinstated; CFR correction **34634**
1.704–3 (a)(2) and (3)(i) amended **25500**
(a)(11) added; (f) revised **44215**
1.704–4 (a)(4)(ii) and (c)(3) revised **25500**
1.708–1 (b)(1)(ii) amended; (b)(1)(iv) revised; (b)(1)(v) added **25500**
1.737–2 (a) revised; (d)(1) amended **25501**
1.743–1 (d) added **25501**
1.761–1 (e) added **25501**
1.861–2 (a)(1) amended; (a)(7) added; (e) revised **53500**
1.861–3 (a)(1) and (d) amended; (a)(6) added **53501**
1.864–5 (b)(2)(ii) redesignated as (b)(2)(iii); new (b)(2)(ii) added **53501**
1.871–6 Revised; eff. 1–1–99 ..... **53416**
1.871–7 (b) amended; eff. 1–1–99 ..... **53416**
(b) redesignated as (b)(1); (b)(1) heading and (2) added; (f) amended **53501**
1.871–14 Added; eff. 1–1–99 ..... **53416**
1.881–2 (b) redesignated as (b)(1); (b)(1) heading and (2) added; (e) amended **53501**
1.894–1 (c) revised; (d) added **53502**
1.894–1T Added **35676**
(d)(1), (6) Example 11 corrected **46877**
1.904–5 (o) amended 14615
1.904–5T Added 14615
1.905–2 (a)(2) amended 3813
1.925(a)–1T (c)(8)(i) and (e)(4) amended 10306
1.925(b)–1T (b)(3)(i) amended 10306
1.927(e)–1T Revised 10306
1.954–0 Amended 14615
1.954–1 (c)(1)(iv) added 14615
1.954–1T Added 14616
1.954–2T Added 14616
1.954–9T Added 14617
1.985–1 (b)(2)(ii)(C) redesignated as (b)(2)(ii)(C)(*1*); new (b)(2)(ii)(C)(*1*) revised; (b)(2)(ii)(D) amended; (b)(2)(ii)(E) added; eff. 4–6–98 10774
Corrected 15760
1.985–5 (a) amended; eff. 4–6–98 10774
1.985–7 Added; eff. 4–6–98 10774
1.1001–4 Added 4396
Regulation at 63 FR 4396 eff. date corrected to 1–29–98 5834
1.1001–4T Removed 4396
Regulation at 63 FR 4396 eff. date corrected to 1–29–98 5834
1.1016–5 (b) revised **68183**
1.1016–9 Removed **68183**
1.1059(e)–1 Added **38028**
1.1202–0 Added **68166**
1.1202–2 Added **68166**
1.1245–1 (e)(2) revised **44216**
1.1271–0 Amended 1057
1.1275–1 (b)(2) redesignated as (b)(3); new (b)(2) added **68183**
(d) amended; (j) added 1057
1.1291–0 Amended 13
1.1291–0T Amended 13
1.1291–1T Added 13
1.1291–9 (i)(1) removed 13
1.1293–0 Added 13
1.1293–1T Added 14
1.1294–0 Heading and introductory text added 13
1.1295–0 Added 14
1.1295–1T Added 15
1.1295–3T Added 19
1.1297–0 Heading and introductory text added 13
1.1297–3T (c) added 24
1.1396–1 Undesignated center heading and section added **67727**
1.1397E–1T Added 673
(e)(1) corrected 8528
1.1441–0 Added; eff. 1–1–99 ..... **53421**
1.1441–1 Revised; eff. 1–1–99 ..... **53424**
1.1441–2 Revised; eff. 1–1–99 ..... **53444**
1.1441–3 Heading, (a) through (f) and (h) revised; (g), (i) and authority citation removed; (j) redesignated as (g); new (g)(1) and (2) amended; eff. 1–1–99 ..... **53446**
1.1441–4 Heading, (a), (b)(1)(i), (ii), (2)(ii) heading, introductory text, (A), (v) and (c) through (g) revised; (b)(1)(vi) (2)(ii)(B), (C), (K) and (6) added; (b)(2)(ii)(B) through (H) redesignated as

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(b)(2)(ii)(D) through (J); (b)(1)(iii), (iv), (v), (2)(i), new (b)(2)(ii)(D) through (J), (iii) and (3) amended; (b)(2)(iv)(C) concluding text, (h), (i), authority citation removed; OMB number; eff. 1–1–99 ..... **53450**
1.1441–4T Removed; eff. 1–1–99 ..... **53452**
1.1441–5 Revised; eff. 1–1–99 ..... **53452**
1.1441–6 Revised; eff. 1–1–99 ..... **53458**
1.1441–7 (a), (b) and (c) revised; (d) redesignated as (f); new (d), (e) and (g) added; new (f)(1), (2)(i) and (3) amended; authority citation removed; eff. 1–1–99 ..... **53462**
1.1441–8T Redesignated as 1.1441–8; eff. 1–1–99 ..... **53464**
1.1441–8 Redesignated from 1.1441–8T; heading and (b) revised; (c) through (f) added; eff. 1–1–99 ..... **53458**
1.1441–9 Added; eff. 1–1–99 ..... **53465**
1.1442–1 Revised; eff. 1–1–99 ..... **53466**
1.1442–2 Revised; eff. 1–1–99 ..... **53466**
1.1442–3 Added; eff. 1–1–99 ..... **53466**
1.1443–1 Revised; eff. 1–1–99 ..... **53466**
1.1445–5 (b)(1) amended; eff. 1–1–99 ..... **53467**
1.1461–1 Revised; eff. 1–1–99 ..... **53467**
1.1461–2 Revised; eff. 1–1–99 ..... **53470**
1.1461–3 Removed; eff. 1–1–99 ..... **53471**
1.1461–4 Removed; eff. 1–1–99 ..... **53471**
1.1462–1 Revised; eff. 1–1–99 ..... **53471**
1.1463–1 Revised; eff. 1–1–99 ..... **53471**
1.1502–3 (d) redesignated as (d)(1); (c)(3), (d)(2) and (e)(3) added 1742
(c)(3), (d)(2) and (e)(3) revised 12642
1.1502–3T Added 1742
(c)(3) and (d)(2) revised; (c)(4) added 12642
1.1502–4 (f)(3) and (g)(3) added 1744
(f)(3) and (g)(3) revised 12642
1.1502–4T Added 1744
(f) and (g)(3) revised 12643
1.1502–5 (b)(5) corrected **23657**
1.1502–9 (a) amended 1744, 12642
1.1502–9T Added 1745
(b)(1)(v) revised 12642
1.1502–21T (c)(1)(iii) Example 5 amended 1745
1.1502–23T (b) and (c) redesignated as (c) and (d); new (b) added 1745
1.1502–55T Added 1745
(h)(4)(iii)(C) revised 12642
1.6013–2 (b)(1) amended **39117**
1.6038–2 (j)(2)(ii) redesignated as (j)(2)(iii); new (j)(2)(ii) added; eff. 1–1–99 ..... **53385**
1.6041–1 (a)(1), (d)(1) introductory text and (3) revised; (a)(2), (d)(2) heading, (4) heading and (5) added; eff. 1–1–99 ..... **53471**
1.6041–2 (c) revised **53472**
1.6041–3 (c) and (l) removed; (d), (e), (f), (h), (i), (j) and (o) amended; (d) through (k) and (m) through (p) redesignated as (c) through (n); introductory text, (a), (b), new (f) and new (j) revised; new (o), new (p) and (q) added; eff. 1–1–99 ..... **53472**
1.6041–4 Revised; eff. 1–1–99 ..... **53473**
1.6041–7 Heading revised; (a) amended; eff. 1–1–99 ..... **53473**
1.6041–8 Added; eff. 1–1–99 ..... **53474**
1.6041A–1 Added; eff. 1–1–99 ..... **53474**
1.6042–2 Heading, (a)(1)(i), (ii), (d) and (e) heading; (a)(1) introductory text added; (a)(1)(iii), (4) and (e) amended; eff. 1–1–99 ..... **53474**
1.6042–3 (a) introductory text, (2) and (b) revised; (a)(2) concluding text and authority citation removed; (a)(3) added; eff. 1–1–99 ..... **53475**
1.6042–4 (d)(2)(i)(F) and (f) revised; eff. 1–1–99 ..... **53476**
1.6043–2 (a) amended; eff. 1–1–99 ..... **53476**
1.6044–2 Heading, (e) and (f) heading revised; (a)(1) and (f) amended; eff. 1–1–99 ..... **53476**
1.6044–3 (c) revised; eff. 1–1–99 ..... **53476**
1.6044–5 (c) revised; eff. 1–1–99 ..... **53476**
1.6045–1 (a) heading, introductory text, (1), (d)(4), (6), (g), (j), (k) and (l) revised; (a)(12) and authority citation removed; (a)(13), (b) Examples (1) through (8), (c)(5)(i)(*a*) through (c)(5)(i)(*f*), (ii), (ii) Examples (1) through (4), (6)(i)(*a*), (*b*), (ii)(*a*), (*b*), and and (h)(2) Examples (1) and (2) redesignated as (a)(12) and (b) Examples 1 through

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8, (c)(5)(1)(A) through (F), (iii), (iii) Examples 1 through 4, (6)(i)(A), (B), (ii)(A) and (B) and (h)(2) Examples 1 and 2; (a)(13) and new (c)(5)(ii) added; (b) new Example 1 and (f)(2)(3) introductory text amended; eff. 1-1-99....53476
(c)(3) amended....12410
1.6045-1T Removed; eff. 1-1-99....53480
1.6045-2 (b)(2)(i)(A) through (F) amended; (b)(2)(i)(G) and (g)(4) added; (g)(2) revised; eff. 1-1-99....53480
1.6045-2T Removed; eff. 1-1-99....53480
1.6046-1 (g) amended....53385
1.6049-4 (a), (b)(1), (3), (c)(1), (d)(3) and (7) heading revised; (b)(2) introductory text, (iv), (4), (5)(i), (c)(2)(i), (ii) concluding text, (d)(2), (7), (8), (9)(ii) introductory text, (e)(4), (5)(iv), (f)(4)(i) and (ii) amended; (g)(3) added; eff. 1-1-99....53480
1.6049-5 (a)(6) amended; (b) revised; (c) redesignated as (f); new (c), (d), (e) and (g) added; eff. 1-1-99....53483
1.6049-6 (d) amended; (e)(3) revised; eff. 1-1-99....53491
1.6049-7 (c)(4) revised; eff. 1-1-99....53491
1.6049-8 (a) amended; eff. 1-1-99....53491
1.6050A-1 (a) introductory text, concluding text, (b) and (c)(1) amended; (d) added; eff. 1-1-99....53492
1.6050H-1 (d)(2)(ii)(A) and (B) amended; eff. 1-1-99....53492
1.6050N-1 Heading, (c) and (d) revised; (e) added; eff. 1-1-99....53492
1.6071-1 (c)(7), (8), (11), (13) and (15) revised; eff. 1-1-99....53492
1.6091-1 (b)(15) revised; eff. 1-1-99....53493
1.6302-1 (b) heading revised; (b) redesignated as (b)(1); new (b)(1) heading and (2) added; OMB number....37492
1.6302-1T Removed....37492
1.6302-2 (b) heading revised; (c) redesignated as (b)(6); new (c) added; OMB number....37492
1.6302-2T Removed....37492
1.6302-3 (c) revised....37492
1.6302-3T Removed....37492
1.6302-4 Added....37492
1.6302-4T Removed....37492
1.6662-6 (d)(2)(ii)(E) amended....46877
1.7701(l)-1 (a) designation, heading and (b) removed....53502
20.2041-3 (d)(6)(i) amended; (d)(6)(iii) added....68184
20.2046-1 Revised....68184
20.2056(d)-2 (a) amended; (b) revised; (c) added....68184
25 Authority citation amended....68185
25.2511-1 (c)(1) amended; (c)(3) added....68185
25.2514-3 (c)(5) amended; (c)(7) added....68185
25.2518-1 (a)(1) revised; (a)(2) Example amended; (a)(3) added....68185
25.2518-2 (c)(3) existing text, (5) Examples (9) and (10) redesignated as (c)(3)(i) and (5) Examples (12) and (11); new (c)(3)(i) and (5) Example 11 amended; (c)(3)(ii), (5) Examples (8), new (9), new (10), (13) and (14) added; (c)(4), (5) Examples (7) and new (12) revised; (5) Example (8) removed....68185
25.2702-5 (a) redesignated as (a)(1); (a)(2) and (c)(9) added; (b)(1) amended; (c)(5)(ii)(C) revised....66988
25.2702-7 Amended....66989
26.2652-1 (a)(4) and (5) Examples 9 and 10 removed; (a)(5), (6) and Example 11 redesignated as (a)(4), (5) and Example 9....27498
31 Authority citation amended....33009, 37492, 53493
31.0-1 (a) amended....37492
31.0-3 (f) amended....37493
31.3401(a)(6)-1 Heading, revised; (e) amended; (f) added; authority citation removed; eff. 1-1-99....53493
31.3406-0 Table amended; eff. 1-1-99....53493
31.3406(d)-3 (a) and (b) amended; (c) revised; eff. 1-1-99....53493
31.3406(g)-1 (e) added; eff. 1-1-99....53493

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31.3406(h)–2 (a)(3)(i) revised; (d) amended; (e)(1) designation, heading and (2) removed; eff. 1–1–99 ..... **53493**
31.3406(j)–1 Added **33009**
31.6302–1 (h) redesignated as (i); new (h) added **37493**
31.6302–1T Removed **37494**
31.6302(c)–3 (b) heading and (c) revised; (d) added **37494**
31.6302(c)–3T Removed **37494**
31.6413(a)–3 (a)(1)(ii) and (iii) amended; (a)(1)(iv) added; (a)(2) and (b)(2) revised; eff. 1–1–99 ..... **53494**
31.9999–0 Added; eff. 10–14–97 through 1–1–99 ..... **53494**
35a Authority citation amended **33009, 53494**
35a.3406–3 Removed **33009**
35a.9999–0 Added; eff. 10–14–97 through 1–1–99 ..... **53494**
35a.9999–0T Removed **53494**
35a.9999–1 Removed; eff. 1–1–99 ..... **53494**
35a.9999–2 Removed; eff. 1–1–99 ..... **53494**
35a.9999–3 Removed; eff. 1–1–99 ..... **53494**
35a.9999–3A Removed; eff. 1–1–99 ..... **53494**
35a.9999–4T Removed; eff. 1–1–99 ..... **53494**
35a.9999–5 Removed; eff. 1–1–99 ..... **53494**
40 Authority citation amended **37494**
40.0–1T Added **67569**
40.6011(a)–1 (b)(2)(vi) amended 25
40.6011(a)–1T Added **67569**
40.6302(c)–1 (d) redesignated as (d)(1); (d)(1) heading and (2) added **37494**
40.6302(c)–1T Removed **37494**
Added **67569**
40.6302(c)–2T Added **67569**
40.6302(c)–3 (g)(1) introductory text, (2)(i), (ii), (3) introcuctory text and Example amended 15292
48 Authority citation amended 25
48.4081–1 (b) and (c)(1)(i) amended; (d) revised 25
48.4082–5T Redesignated as 48.4082–5 25
48.4082–5 Redesignated from 48.4082–5T; Heading and (b) amended; (f) and (g) redesignated as (g) and (h); new (f) added; new (h) revised 25
48.6416(a)–3 (b)(3)(ii) corrected 15292
48.6416(b)(3)–2 (d)(6) corrected 15292
48.6416(b)(4)–1 Removed 26
48.6421–3 (d)(2) amended 26
48.6427–3 (d)(2) amended 26
48.6715–1 (a)(3) revised 26
48.6715–2T Removed 26
53.6071–1 (f) redesignated from 53.6071–1T(f) **52257**
53.6071–1T (f) redesignated as 53.6071–1(f); removed **52257**
54 Authority citation amended **16927, 66952**
Technical correction **17004**
Clarification **67688, 67689**
54.9801–1T Added; interim **16927**
(c) corrected **31691**
(a) revised; interim **66952**
54.9801–2T Added; interim **16928**
Corrected **31691**
Amended; interim **66952**
54.9801–3T Added; interim **16929**
(a)(1)(iii) and (b)(1)(ii) Example corrected **31691**
54.9801–4T Added; interim **16930**
(a)(2) and (b)(2)(iv) corrected **31669**
(b)(2)(iv) Examples 6 and 7 and (v)(B) Example corrected **31691**
(a)(2) revised; interim **66952**
54.9801–5T Added; interim **16932**
(a)(6) and (b)(2) corrected **31669**
(a)(1)(i), (iv)(B)(*1*), (2) Example, (2)(iv) Examples 4 and 5 and (5)(i)(A) corrected **31691**
(a)(5)(i)(B) Example, (6)(ii), (c)(2)(ii) and (d)(3) Example 3 corrected **31692**
(a)(3)(vi) amended; interim **66952**
54.9801–6T Added; interim **16937**
(a)(3) corrected **31669**
(b)(2), (4) introductory text and (6) corrected **31692**
54.9802–1T Added; interim **16938**
54.9804–1T Added; interim **16939**
(a) and (b)(4) corrected **31670**
Redesignated as 54.9831–1T; interim **66952**
54.9806–1T Added; interim **16940**
(a)(1), (2), (d), (e)(1)(i) and (iv) corrected **31692**
Redesignated as 54.9833–1T; interim **66952**
54.9812–1T Added; interim **66953**

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54.9831–1T Redesignated from 54.9804–1T; (b)(1) revised; interim 66952
54.9833–1T Redesignated from 54.9806–1T; (a)(1) revised; (a)(2) amended; interim 66952
301 Authority citation amended 53494, 62520
301.6109–1 (d)(2)(iii) added 25502
(b)(2)(iv), (v) and (c) revised; (b)(2)(vi) added; eff. 1–1–99 53494
(h)(2)(iii) added 62520
(h)(2)(iii) corrected 13124
301.6109–1T Added 62520
(h) corrected 13124
301.6109–3T Added 62520
301.6114–1 (b)(4) introductory text, (5) introductory text, (6) and (7) amended; (c) introductory text, (1) through (6), (7) introductory text, (i), (ii) and (iii) redesignated as (c)(1) introductory text, (i) through (vi), (vii) introductory text, (A), (B) and (C); (c) concluding text removed; (b)(8) and new (c)(2) through (5) added; new (c)(1)(ii) and (d) revised 53385
(a)(1)(ii), (b)(4)(ii) introductory text and (c)(1)(i) revised; (b)(4)(ii)(B)(7) amended; (b)(4)(ii)(C), (D) and (c)(6) added; eff. 1–1–99 53495
301.6334–1 (a)(2) and (e) revised; (a)(3) and (11)(i) amended; (f) added 39117
301.6402–3 (e) revised; authority citation removed; eff. 1–1–99 53495
301.6601–1 (f)(3) and (4) revised; (f)(5) redesignated as (f)(6); new (f)(5) added 39117
301.6651–1 (a)(3) revised; (g) added 39117
301.6656–3 Added 39118
301.6721–0 Table amended; eff. 1–1–99 53496
301.6724–1 (g) revised; eff. 1–1–99 53496
301.7122–1 (e) revised 39118
301.7430–0 Amended 39118
301.7430–1 (b)(4) added 39118
301.7430–2 (b)(2), (c)(3) introductory text and (ii)(C) amended; (c)(3)(i)(B) revised 39118
301.7430–4 (b)(3)(i), (iii)(B), (C), (D) and (c)(2)(ii) amended; (b)(3)(ii) revised 39118
301.7430–5 (a) revised; (c)(3) added 39119
301.7430–6 Revised 39119
301.7623–1 (g) added 53231
301.7623–1T Added (temporary) 53231
301.7701(b)–0 Amended 53386
301.7701(b)–3 (b)(3) and (4) revised 53386
301.7701(b)–7 (c)(1) revised; (c)(2) added 53387
301.7701(b)–8 (b)(1) and (2) revised 53387
301.7701–3 (f)(1) amended 14619
301.7701–3T Added 14619
301.9100–0 Added 68169
301.9100–1 Revised 68169
301.9100–1T (h) amended 26741
Removed 68173
301.9100–2 Added 68170
301.9100–2T Removed 68173
301.9100–3 Added 68171
301.9100–3T (c)(2)(i) revised 26741
Removed 68173
502 Removed; eff. 1–1–99 53497
503 Removed; eff. 1–1–99 53497
509 Authority citation added 53497
509.1—509.10 (Subpart) Removed; eff. 1–1–99 53497
509.103 (e) removed; eff. 1–1–99 53497
509.117 (a) removed; eff. 1–1–99 53497
509.119 Removed; eff. 1–1–99 53497
509.122 Removed; eff. 1–1–99 53497
513 Authority citation revised 53497
513.1 Removed; eff. 1–1–99 53497
513.2 Revised; eff. 1–1–99 53497
Corrected 2723
513.3 Revised; eff. 1–1–99 53497
513.4 Revised; eff. 1–1–99 53498
513.5 Revised; eff. 1–1–99 53498
514 Authority citation added 53498
514.1—514.32 (Subpart) Authority citation removed 53498
514.1—514.10 Undesignated center heading removed; eff. 1–1–99 53498
514.20 Removed; eff. 1–1–99 53498
514.21 Removed; eff. 1–1–99 53498
514.22 (c) removed; eff. 1–1–99 53498
514.23 Removed; eff. 1–1–99 53498
514.24 Removed; eff. 1–1–99 53498
514.25 Removed; eff. 1–1–99 53498
514.26 Removed; eff. 1–1–99 53498
514.27 Removed; eff. 1–1–99 53498

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514.28 Removed; eff. 1–1–99 ..... **53498**
514.29 Removed; eff. 1–1–99 ..... **53498**
514.30 Removed; eff. 1–1–99 ..... **53498**
514.31 Removed; eff. 1–1–99 ..... **53498**
514.32 Removed; eff. 1–1–99 ..... **53498**
514.101—514.117 (Subpart) Undesignated center heading and sections removed; eff. 1–1–99 ..... **53498**
516 Removed; eff. 1–1–99 ..... **53498**
517 Removed; eff. 1–1–99 ..... **53498**
520 Removed; eff. 1–1–99 ..... **53498**
521 Authority citation revised **53498**
521.1—521.8 (Subpart) Removed; eff. 1–1–99 ..... **53498**
521.103 (d) removed; eff. 1–1–99 ..... **53498**
601.204 (b) amended **26741, 68173**
601.204T Added **26741**
(b)(2) corrected **28631**
Removed **68173**
602.101 (c) table amended (OMB numbers) **25514, 35905, 53232, 53387, 53498, 62521, 66989, 68173, 68183**
(c) table amended (OMB numbers) 24, 1919, 2723, 2894

Proposed Rules:

1 ..... **17572, 18730, 19072, 19957, 19958, 23408, 26755, 27563, 30785, 32054, 35752, 35755, 37818, 37819, 38197, 40316, 41322, 43295, 44103, 44607, 49183, 52953, 53503, 53504, 53588, 55768, 60196, 64190, 66575, 67780** 35, 39, 42, 453, 707, 1803, 1932, 1933, 3057, 3296, 3677, 4204, 4205, 4408, 8154, 8528, 8890, 10351, 11177, 11954, 12717, 13383, 14391, 14669
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40 ..... **67589**
52 ..... **67013**
54 ..... **16977, 66967** 708
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TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

4.28 (e) added **16490**
(e)(2) corrected **33747**
9.155 Added; eff. 5–11–98 11828
9.158 Added **55516**
24.148 Revised **29666**
24.278 Revised; OMB number **29666**
24.279 Revised; OMB number **29667**
47.52 (a) revised; (b), (c) and (d) redesignated as (d), (e) and (f); new (b) and new (c) added; new (f) amended **61234**
47.57 (c) amended **61235**
53.3 Regulation at 61 FR 37005 confirmed 5728
53.131 Regulation at 61 FR 37005 confirmed 5728
53.132 Regulation at 61 FR 37005 confirmed 5728
53.133 Regulation at 61 FR 37006 confirmed 5728
53.134 Regulation at 61 FR 37006 confirmed 5728
53.135 Regulation at 61 FR 37006 confirmed 5728
53.179 Regulation at 61 FR 37007 confirmed 5728
178.11 Amended **19444, 34638**
178.25a Amended; eff. 5–15–98 12646
178.32 (e) added **34639**
178.92 (c)(1)(iii) amended; eff. 5–15–98 12646
178.124 (c) introductory text and (f) amended; (c)(1), (d) and (e) revised **19444**
178.125 (f) introductory text amended; (f)(1), (2) and (3) added **19445**
178.130 (a)(2) revised **19445**
178.132 Revised; eff. 5–15–98 12646
179.11 Amended; eff. 5–15–98 12647

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9 ..... **16502, 24622, 34027, 39984, 54398, 59029** 13583
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0.64–5 Add
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2.56 Head
amend
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2.62 (a)(6)
16.99 (i) ar
17 Revised
32.1—32.2
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32.1 (a) am
32.2 (a) in
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32.3—32.9
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32.10—32.1
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32.16—32.1
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32.16—32.1
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32.16 (a) ar
32.19—32.2
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32.19—32.2
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32.23—32.2
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32.23—32.2
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32.25 Und
ing ad
32.31—32.4
32.35 (b) co
50.22 Regu
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58 Author
58.6 Added
60.3 (a)(8)
61 Append
. . . . . .

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TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.64–5 Added **63453**
0.100—0.104 (Subart R) Appendix amended **38029, 52492, 52493**
2.56 Heading, (a), (f) and (g) amended; (b)(1) and (i) added **51602**
2.62 (a)(6) and (h)(5) amended **40270**
16.99 (i) and (j) added **44083**
17 Revised **36984**
32.1—32.2 (Subpart A) Heading revised **37715**
32.1 (a) amended **37715**
32.2 (a) introductory text amended **37715**
32.3—32.9 (Subpart B) Heading removed **37715**
32.3—32.9 Undesignated center heading added **37715**
32.10—32.15 (Subpart C) Heading removed **37715**
32.10—32.15 Undesignated center heading added **37715**
32.10 (a) introductory text amended **37715**
32.16—32.18 (Subpart D) Heading removed **37715**
32.16—32.18 Undesignated center heading added **37715**
32.16 (a) amended **37715**
32.19—32.22 (Subpart E) Heading removed **37715**
32.19—32.22 Undesignated center heading added **37715**
32.23—32.24 (Subpart F) Heading removed **37715**
32.23—32.24 Undesignated center heading added **37715**
32.25 (Subpart G) Heading removed **37716**
32.25 Undesignated center heading added **37716**
32.31—32.40 (Subpart B) Added **37716**
32.35 (b) corrected **39120**
50.22 Regulation at 61 FR 49260 confirmed **61629**
58 Authority citation revised **51750**
58.6 Added **51750**
60.3 (a)(8) revised 11120
61 Appendix A amended; interim 11121
66.26 (a), (b) introductory text and (1) revised **45939, 45942**
70.26 (a), (b) and (c) revised; (d) added **45939, 45942**

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

511.10–511.16 (Subpart B) Heading revised; eff. 4–9–98 11818
511.12 (d) revised; eff. 4–9–98 11818
523 Authority citation revised **50787**
523.20 (Subpart C) Added; interim **50787**
524 Authority citation revised **53690**
524.31 (a)(3) revised; interim **53691**
524.41 (e) revised 7604
540 Authority citation revised **65185**
540.14 (b) and (c) revised **65186**
540.18 (c) and (d) revised **65185**
541.13 (a)(1) through (4) revised; Tables 3 through 6 amended **50789**
541.14 (a) amended **50791**
541.63 (a) amended 5218
541.65 (c) revised 5218
541.67 (e) revised 5218
544.42 (d) revised **39916**
544.70—544.75 (Subpart H) Revised; interim **50793**
548.12 Revised **44836**
548.16 (c) amended **44836**
548.20 (a) and (b) amended **44836**
550.30—550.31 (Subpart D) Revised **45292**
550.58 Introductory text, (a) heading and (c)(3) revised; (a)(1) and (2) redesignated as (a)(2) and (3); new (a)(1) added; interim **53691**
551.10 Amended 5218
571.50 Revised 4357
571.51 (b) revised 4357
571.52 Revised 4357
571.53 Removed; new 571.53 redesignated from 571.54 and revised 4357
571.54 Redesignated as 571.53; new 571.54 redesignated from 571.55 and revised 4357
571.55 Redesignated as 571.54 4357
571.56 Removed 4357

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TITLE 29—LABOR

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24 Revised.....6621
95.26 (a), (b) and (c) revised.....**45939, 45942**
97.26 (a), (b) introductory text and (1) revised.....**45939, 45942**

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101.39 (a) correctly designated.....**52381**
102.119 (Subpart L) Revised.....**58907**
102.156—102.167 (Subpart U) Revised.....**55164**
102.168—102.176 (Subpart V) Revised.....**55166**

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

520 Revised.....**64959**
521 Removed.....**64958**
522 Removed.....**64958**
523 Removed.....**64958**
527 Removed.....**64958**

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

697.1 (a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (2), (k)(1), (l)(1), (m)(1) and (n)(1) revised; (o) and (p) added.....**52945**
697.3 Revised.....**52946**

Chapter X—National Mediation Board (Parts 1200—1299)

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Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1404.17—1404.21 (Subpart D) Added.....**48949**
1470.26 (a), (b) introductory text and (1) revised.....**45939, 45942**

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1600.101 Regulation at 61 FR 7067 confirmed.....**36447**
1600.735–101—1600.735–106 (Subpart A) Regulation at 61 FR 7067 confirmed.....**36447**
1600.735–201—1600.735–206 (Subpart B) Regulation at 61 FR 7067 confirmed.....**36447**
1600.735–301 (Subpart C) Regulation at 61 FR 7067 confirmed.....**36447**
1600.735–401—1600.735–406 (Subpart D) Regulation at 61 FR 7067 confirmed.....**36447**
1600.735–501—1600.735.519 (Subpart E) Regulation at 61 FR 7067 confirmed.....**36447**
1610 Authority citation revised.....1341
1610.4 (a) and (c) amended; interim.....1341
1610.5 (c) amended; interim.....1341
1610.8 Revised; interim.....1341
1610.9 Heading revised; (a) introductory text and (b) revised; (c) added; interim.....1341
1610.10 (a) introductory text amended; (b) introductory text revised; (c) redesignated as (c); new (c) added; interim.....1342
1610.11 (a), (b) and (f) amended; (c) revised; interim.....1342
1610.14 (a) amended; interim.....1342
1610.15 (f) amended; interim.....1342
1610.18 (a) amended; interim.....1342
1610.21 Revised; interim.....1342
1610.34 (a) amended; interim.....1342
1614.204 (d)(1) corrected; CFR correction.....**63847**
1650.101—1650.119 (Subpart A) Regulation at 61 FR 7067 confirmed.....**36447**

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1904.30 Added (OMB numbers).....**44552**

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1910.8 (b) table amended **42666, 65203**
(b) table corrected **43581**
(b) table amended (OMB numbers) 13340
1910.11—1910.19 (Subpart B) Authority citation revised **40195**
1910.16 (a), (b) and (c)(4) revised **40195**
1910.94—1910.98 (Subpart G) Authority citation revised 1269
1910.94 (a)(1)(ii), (5)(i), (iii) introductory text, (iv), (6), (c)(6)(iii)(a) and (d)(9)(vi) revised 1269
1910.101—1910.120 (Subpart H) Authority citation revised 1269
1910.111 (a)(2)(x) and (b)(10)(ii) revised 1269
1910.132—1910.138 (Subpart I) Authority citation revised 1270
1910.134 Redesignated as 1910.139; new 1910.134 added 1270
1910.139 Redesignated from 1910.134; heading revised; introductory text added 1270
1910.155—1910.165 (Subpart L) Authority citation revised 1284
1910.156 (f)(1)(i) and (v) revised 1284
1910.251—1910.255 (Subpart Q) Authority citation revised 1284
1910.252 (c)(4)(ii), (iii), (7)(iii), (9)(i) and (10) revised 1284
1910.261—1910.272 (Subpart R) Authority citation revised 1285
1910.261 (b)(2), (g)(10), (h)(2)(iii) and (iv) revised 1285
1910.1000—1910.1450 (Subpart Z) Authority citation amended **42666**
Authority citation amended 1285
1910.1000 Table Z–1 and Z–3 corrected **42018**
1910.1001 (g) revised; Appendix C removed 1285
1910.1003 (c)(4)(iv) and (d)(1) revised 1286
1910.1017 (g) revised 1286
1910.1018 (h) revised 1286
1910.1025 (f) revised; Appedixes B and D amended 1287
1910.1027 (g) revised; Appendix G removed 1288
1910.1028 (g) revised; Appendix E removed 1289
1910.1029 (g) revised 1290
1910.1043 (f) revised 1290
1910.1044 (h) revised 1291
1910.1045 (h) revised; Appendix A amended 1291
1910.1047 (g) revised; (h)(2) table removed; Appendix A amended 1292
1910.1048 (g) revised; Appendix E amended 1292
1910.1050 (h) revised; Appendix A amended 1293
1910.1051 (h) revised; Appendix E amended 1294
1910.1052 (n)(2)(i)(C) revised **42667**
(n)(2)(iii)(C) revised **48176**
(n)(2)(i)(B) and (iii)(C) revised **54383**
(o) note added **66277**
(g) revised 1295
1915.8 Table amended (OMB numbers) 13340
1917 Authority citation revised **40195**
1917.1 (a) introductory text and (2)(i) through (x) revised; (a)(2)(xi), (xii), (xiii) and (b) added **40196**
1917.2 Amended **40196**
1917.3 Added **40196**
1917.11 (d) added **40196**
1917.13 (g) revised; (h) and (i) added **40197**
1917.17 (i), (j) and (k) revised **40197**
1917.20 Revised **40197**
1917.23 Heading, (b)(1) and (d) introductory text revised **40197**
1917.24 (a) revised **40197**
1917.25 (a) and (c) revised; (g) added **40197**
1917.26 (c) and (d) revised **40197**
1917.27 (a)(2) revised; note added **40197**
1917.28 Heading revised; text removed **40198**
1917.30 Added **40198**
1917.42 (b)(4), (c)(1), (d), (h)(4), (5) and (j)(1) revised; (g)(2)(vi) added **40198**
1917.43 (e)(1)(i) and (6)(iii) revised; (f)(3) added **40198**
1917.44 (a), (i), (o)(3)(i), (ii) introductory text and (o)(4) introductory text revised **40198**
1917.45 Heading, (f)(4)(iii), (5), (7), (13)(ii), (iii)(A), (i)(5)(i) introductory text, (j)(1)((iii)(D)

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and (2) revised; (g)(11), (j)(9) and (10) added 40199
1917.46 Heading, (a)(1)(ii) and (viii)(A) revised 40199
1917.48 (d)(2) revised 40200
1917.50 (i) redesignated as (j); heading, (c)(5) and new (j) revised; new (i) added 40200
1917.71 (b)(6), (7), (c), (e) and (f)(1)(i) revised; (b)(8), (f)(4) and (5) added 40200
1917.73 Heading revised 40201
1917.91 Heading and (a)(1) revised 40201
1917.93 (a) and (b) revised 40201
1917.94 Revised 40201
1917.95 (b)(2) revised 40201
1917.112 (a)(1) revised 40201
1917.118 (d)(2)(i) and (f)(2) revised 40201
1917 119 (b)(1), (c), (d)(2) and (f)(4) revised 40201
1917.121 (b)(3) revised 40201
1917.123 Footnote 7 redesignated as footnote 9 40201
1917.124 Heading and (d)(1) revised; (c)(5), (6) and (d)(5) added 40201
1917.126 (b) revised 40201
1917.152 Heading revised; footnote 8 redesignated as footnote 12 40202
1917.153 Heading revised 40202
1917.156 (b)(3)(iii)(D) revised 40202
1917.157 (n) revised 40202
1918 Revised 40202
1926 Meeting and signing ceremony 37134
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1926.5 Table amended (OMB numbers) 3814, 13340
1926.50—1926.66 (Subpart D) Authority citation revised 1295
1926.57 (f)(1)(ii), (5)(i), (iii), (6), (h)(6)(iii)(A) and (i)(9)(vi) revised 1296
1926.60 (i) revised; Appendix E removed 1296
1926.62 (f) revised; Appendix B amended; Appendix D removed 1296
1926.95—1926.107 (Subpart E) Authority citation revised 1297
1926.103 Revised 1297
1926.800—1926.804 (Subpart S) Authority citation revised 1297
1926.800 (g)(2) revised 1297
1926.1100—1926.1152 (Subpart Z) Authority citation revised 1298
1926.1101 (h) revised; Appendix C removed 1298
1926.1127 (g) revised; Appendix C removed 1298
1952.105 (a) revised 49909
1952.107 (f) added 49910
1952.365 Revised 49911
1952.367 (b) added 49911

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.7 (g) revised 35963
2200.8 (d)(2) revised 35963
2200.11 Amended 35963
2200.40 (a) amended 35963
2200.57 Amended; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 35963
2200.60 Amended 35963
2200.67 Amended 35963
2200.90 (b)(2) amended 35963
2200.91 (b) amended; (h) revised 35963
2200.93 (h) revised 35963
2200.101 Amended 35963
2200.201 (a) designation and (b) removed 40934
2200.202 Revised 40934
2200.203 (a) correctly removed; CFR correction 58650
(a) added 61012
2200.206 (a) revised 40934
2200.207 (a) revised 40934
2200.209 (a) revised 40934
2203.3 (b)(10) amended 35963
2204 Nomenclature change 59569
2204.105 (f) added 59569
2204.107 (b) amended 35964
2204.301 Revised 35964

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2510.3-102 (b) revised 62936
2520.102-3 OMB number 36205
2520.104b-1 OMB number 36205
2520.104b-3 OMB number 36205

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2570 Authority citation revised 40699
2570.100—2570.502c-3 (Subpart E) Added 40699
2590 Authority citation revised 66953
Clarification 67688, 67689
2590.701-3 OMB number 35905
2590.701-4 OMB number 35905
2590.701-5 OMB number 35905
2590.701-6 OMB number 35905
2590.712 Revised; interim 66957

Chapter XXVII—Federal Mine Safety and Health Review Commission (Parts 2700—2799)

2702 Authority citation revised 55334
2702.1 Revised 55334
2702.2 Revised 55335
2702.3 Revised 55335
2702.4 Revised 55336
2702.5 (e) revised 55336
2702.6 (a) amended; (b) and (c) revised 55336
2702.7 (b) revised 55336

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4000.1 Table amended 67728
4000.2 Table amended 36994, 67728
4001.2 Amended 35342, 60428, 67728
4006.5 (f)(3) amended 60428
4007 Authority citation revised 36663
4007.10 Heading revised; (a) amended; (c) and (d) added 36663
4010.13 Amended 36994
4011.3 (c) amended 36994
4011 Appendix B amended 65608
4022.1 Amended 67728
4022.24 (e) amended 67728
4022.26 (a) amended 67729
4022.61 (a) amended 60428
4041 Revised 60428
4043.3 (e) amended 36994
4044.13 (a) amended 67729
4044 Appendix B amended 37718, 43640, 48176, 53539, 61012, 65609
Appendix D amended 65611
Appendix B amended 2308, 7286, 12411
4050 Revised 60440
4071 Added 36994
4302 (Subchapter K) Added 36995
4901—4907 (Subchapter K) Redesignated as Subchapter L 36994

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2560 47262
2580 49894
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TITLE 30—MINERAL RESOURCES

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47.10 Revised 60985
47.50 Revised 60985
75.1906 (g) correctly revised 12647

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

203.0—203.4 (Subpart A) Revised 2615
203.50—203.91 (Subpart B) Revised 2618
203.61 OMB number pending 2619
206.152 (b)(1)(i) amended; (b)(1)(iv) added 65761
(i) revised 65762
Corrected 3618
206.153 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65762
206.157 (f) removed; (g) redesignated as (h); new (f) and new (g) added 65762
206.172 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
206.173 (b)(1)(i) amended; (b)(1)(iv) added; (i) revised 65763
(b)(1)(i) corrected 3618

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TITLE 30 Chapter II—Con.

206.177 (f) removed; (g) redesignated as (h); new (f) and new (g) added **65763**
210 Comment period extension **52016**
210.55 Revised; interim **42066**
218 Comment period extension **52016**
218.52 Revised; interim **42066**
227 Added **43084**
228 Authority citation revised **43091**
228.3 Added **43091**
229 Authority citation revised **43091**
229.3 Added **43091**
250.1 (c)(5) and (d)(1) revised **42671**
250.126 Revised **42671**
250.160 (a) amended **39775**
250.163 (b) amended **39775**
250.200—250.209 (Subpart N) Revised **42668**
250.209 (c) revised **67284**
250.209—250.233 (Subpart O) Redesignated as 250.210—250.34 (Subpart O) **67284**
251 Revised **67284**
256.53 Corrected **36995**
256.64 (a)(8) amended **39775**
260.102 Amended 2629
260.110 (d) revised 2629

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

723 Authority citation revised **63276**
723.14 Table revised **63276**
723.15 (b) amended **63276**
724 Authority citation revised **63276**
724.14 (b) amended **63276**
845 Authority citation revised **63276**
845.14 Table revised **63276**
845.15 (b) amended **63277**
846 Authority citation revised **63277**
846.14 (b) amended **63277**
870 Authority citation revised **60142**
870.5 Amended **60142**
870.17 Removed 10309
870.18 Revised **60142**
870.19 Added **60143**
870.20 Added **60146**
901 Technical correction 4529
901.15 Table amended **66821**
901.16 Removed **66822**
902.15 Regulation at 62 FR 15116 eff. date corrected to 4–7–97 ..... **35342**
904 Technical correction **44894**
913.15 Table amended **54769**
913.16 (o) removed **54769**
914 Technical correction **49049**
914.15 Table amended **44896, 44898, 47140, 59578**
914.16 (cc) and (dd) removed **47330**
914.25 (a) table amended 12652
916.15 Table amended 10317
917.15 Table amended **45717**
918.15 Table amended 11830
920.15 Table amended 13784
920.16 (k), (m) and (o) removed 13784
924 Technical correction 6796
924.15 Added 1361
924.16 Revised 1362
924.17 Added 1362
925.15 Table amended **41844**
934.15 Table amended **44900**
935.15 Table amended **53234**
Table amended 9139
935.16 (a)(3) removed **53234**
Removed 9139
936.25 Table amended 8126
938.15 Table amended **60177**
938.16 (g), (l), (q), (s) through (v), (x) through (gg), (ii), (jj) and (ddd) removed; (ppp) through (uuu) added **60177**
943.15 Table amended 10320
943.25 Table amended 10320
944.15 Table amended **41850**
944.16 (e), (f)(1), (g), (h) and (i) removed **41850**
944.25 Table amended **41850**
946 Technical correction **52181**
946.15 Table amended **48765, 60660**
946.25 (a) table amended **35968**
(a) table amended 5891

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57 ..... **64789, 65777, 67013, 68468**
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70 ..... **65777, 67013, 68468**
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250 ..... **37819, 51614, 68244**
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707 ..... **55365, 59639**
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901 ..... **53996**
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935 ..... **36248, 38509**
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TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

1.36 Heading revised; (g) redesignated as (l); new (g) through (k) added **58908**
(b)(1) table amended **60782**

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

2 Authority citation revised 14357
2.2 Revised 14357
2.9 Revised 14357
27 Added; interim **42213**
27.7 (c)(3)(ii)(F) corrected **44036**
103 Meeting **58909**
Conditional exceptions grant 3640
103.11 (n)(8) and (9) redesignated as (n)(9) and (10); (n)(7)(iii) and new (8) added; eff. 8–1–98 1923
103.22 Regulation at 61 FR 18209 confirmed; (a)(1) amended; (h) revised **47147**
103.36 (b)(11) added; eff. 8–1–98 1924

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

202 Authority citation revised **45520**
202.1 Revised **45520**
202.2 (a)(1) revised; (a)(2) removed; (a)(3) and (4) redesignated as (a)(2) and (3); authority citation removed **45521**
202.3 (a), (b)(1) introductory text, (2) introductory text and (i) revised; authority citation removed **45521**
202.4 Heading, introductory text, (c), (d) and (e) revised; authority citation removed **45521**
202.6 (b) and (e)(1) revised; authority citation removed **45521**
202.7 (a) revised; authority citation removed **45521**
203 Revised 5650
285 Authority citation revised **36210**
285.1 Added; interim **36210**
343 Revised **49914**
344.1 (f) through (j) redesignated as (g) through (k); new (f) added; new (g)(3) revised **46445**
344.3 (b)(3)(iii) revised **46446**
356.12 (c)(1)(i) revised **43093**
(b)(2) revised 4187
356.13 (a) revised **43093**
356 Appendix B and Exhibit A amended **43094**
357 Determination **61912**

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357.22 (b) through (e) redesignated as (c) through (f); new (b) added 46861
357 Appendix B amended 43284
358 Revised 11355

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500 Authority citation revised 45101
Authority citation revised 10323
500.101 (Subpart A) Heading revised 45101
500.101 (a) amended 45101
500.201 (e) added 45101
500.306 Note amended 45101
500.508 (f) removed; note added 45101
500.601 (Subpart F) Revised 45101
500.602 Added 64721
500.701—500.718 (Subpart G) Revised 10324
500.701 (a) introductory text amended 45101
500.801 Revised 45101
500.802 Removed; new 500.802 redesignated from 500.807 45101
500.803 Removed; new 500.803 redesignated from 500.808 45101
500.804 Removed 45101
500.805 Removed 45101
500.806 Removed 45101
500.807 Redesignated as 500.802 45101
500.808 Redesignated as 500.803 45101
500.809 Removed 45101
500.901 Revised 45101
Amended; OMB number 64722
501 Added 45101
501.101 Revised 52494
501.601 Note added 52494
501.602 Amended 52494
501.603 Note added 52495
501.806 (b) revised 52495
501.807 (a) revised 52495
505 Authority citation revised 45106
Authority citation revised 10331
505.40 Amended 45106
505.50 Revised 10331
505.60 Revised 45106
515 Authority citation revised 45106
Authority citation revised 10331
515.101 (a) amended 45106
515.201 (e) added 45106
515.306 Note amended 45106
515.508 (f) removed; note added 45106
515.601 (Subpart F) Revised 45106
515.701—515.718 (Subpart G) Revised 10331
515.701 (a) introductory text amended 45106
515.801 Revised 45106
515.802 Removed; new 515.802 redesignated from 515.807 45106
515.803 Removed; new 515.803 redesignated from 515.808 45106
515.804 Removed 45106
515.805 Removed 45106
515.806 Removed 45106
515.807 Redesignated as 515.802 45106
515.808 Redesignated as 515.803 45106
515.901 Revised 45106
535 Authority citation revised 45106
535.101 (a) amended 45107
535.508 (f) removed; note added 45107
535.601 (Subpart F) Revised 45107
535.701 (a) introductory text amended 45107
535.801 (Subpart H) Revised 45107
535.905 Revised 45107
536 Authority citation revised 45107
536.101 (a) amended 45107
536.201 Existing text designated as (a); (b) added 45107
536.312 Note added 45107
536.503 (a) revised; note added 45107
536.601 (Subpart F) Revised 45107
536.801 Revised 45107
536.802 Removed; new 536.802 redesignated from 536.805 45108
536.803 Removed 45108
536.804 Removed 45108
536.805 Redesignated as 536.802 45108
536.806 Removed 45108
536.901 Revised 45108
550 Authority citation revised 45108
550.101 (a) amended 45108
550.209 (c) added 45108
550.304 Note amended 45108
550.511 (g) removed; (h) redesignated as (g); new (g) amended; note added 45108
550.601 (Subpart F) Revised 45108
550.701 (a) introductory text amended 45108
550.801 Revised 45108
550.802 Removed; new 550.802 redesignated from 550.805 45108
550.803 Removed; new 550.803 redesignated from 550.807 45108
550.804 Removed 45108

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550.806 Removed 45108
550.805 Redesignated as 550.802 45108
550.807 Redesignated as 550.803 45108
550.901 Revised 45108
560 Authority citation revised 41852, 45108
560.101 (a) amended 45109
560.510 (d) introductory text, (1) and (2) revised 41852
560.525 (a)(3) and (5)(i) revised 41852
560.601 Revised 45109
560.602 Removed 45109
560.701 (a) introductory text amended 45109
560.801 Revised 45109
560.802 Removed; new 560.802 redesignated from 560.805 45109
560.803 Removed; new 560.803 redesignated from 560.806 45109
560.804 Removed 45109
560.807 Removed 45109
560.805 Redesignated as 560.802 45109
560.806 Redesignated as 560.803 45109
560.901 Revised 45109
575 Authority citation revised 45109
575.101 (a) amended 45109
575.201 (c) added 45109
575.306 Note amended 45109
575.503 (h) removed; note added 45109
575.601 (Subpart F) Revised 45109
575.701 (a) introductory text amended 45109
575.801 Revised 45109
575.802 Removed; new 575.802 redesignated from 575.805 45109
575.803 Removed 45109
575.804 Removed 45109
575.805 Redesignated as 575.802 45109
575.806 Removed 45109
575.901 Revised 45110
585 Authority citation revised 45110
585.101 (a) amended 45110
585.201 (c) note amended; (e) added 45110
585.311 Note amended 45110
585.503 (a) revised; note added 45110
585.601 (Subpart F) Revised 45110
585.701 (a) introductory text amended 45110
585.801 Revised 45110
585.802 Removed; new 585.802 redesignated from 585.805 45110
585.803 Removed 45110
585.804 Removed 45110
585.805 Redesignated as 585.802 45110
585.806 Removed 45110
585.901 Revised 45110
590 Authority citation revised 45110
590.101 (a) amended 45111
590.601 (Subpart F) Revised 45111
590.701 (a) introductory text amended 45111
590.801 Revised 45111
590.802 Removed; new 590.802 redesignated from 590.805 45111
590.803 Removed 45111
590.804 Removed 45111
590.805 Redesignated as 590.802 45111
590.806 Removed 45111
590.901 Revised 45111
595 Authority citation revised 45111
595.101 (a) amended 45111
595.201 Existing text designated as (a); (b) added 45111
595.311 Note amended 45111
595.503 (a) revised; note added 45111
595.601 (Subpart F) Revised 45111
595.701 (a) introductory text amended 45111
595.801 Revised 45111
595.802 Removed; new 595.802 redesignated from 595.805 45111
595.803 Removed 45111
595.804 Removed 45111
595.805 Redesignated as 595.802 45111
595.806 Removed 45111
595.901 Revised 45111
596 Authority citation revised 45112
596.101 (a) amended 45112
596.601 (Subpart F) Revised 45112
596.801 Revised 45112
596.802 Removed; new 596.802 redesignated from 596.805 45112
596.803 Removed 45112
596.804 Removed 45112
596.805 Redesignated as 596.802 45112
596.806 Removed 45112
596.901 Revised 45112
597 Added 52495
Chapter V Appendixes A and B amended 41851, 48178
Appendix A amended 67729, 67730
Appendix B amended 67732

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1 42443
27 42220
103 ..... 36475, 38511, 40778, 40779, 45365, 47156, 63298
208 ..... 48714, 51618, 55773
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212 46428
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TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

Subchapter A Heading added 40734
Subchapter B Heading revised 12160
21 Added 12160
22 Added 12164
23 Removed 12188
28.500 Revised 12188
32 Added 12188
34 Added 12204
33.26 (a), (b) introductory text and (1) revised 45939, 45943
40a Removed 11831
67 Revised 55517
104 Added 3466
147 Added 4573
148 Added 4580
149 Added 4583
175.3 (l) added 66525
175.4 Revised 66525
175.5 Revised 66525
175.6 Revised 66525
175.7 (a)(13)(i) and (d)(3)(i) revised; (k) added 66525
176 Revised 35346
199 Technical correction 42905
199.2 (b) amended 46878
(b) amended; interim 54384
(b) amended 9141
199.4 (c)(2) heading, (xiii), (xvi), (3)(xi), (g)(37) and (47) revised 46878
(g)(48) revised; interim 54384
(a)(9) introductory text, (i)(B) and (ii) revised; (a)(9)(i)(C), (v)(B) and (vi) note removed; (a)(9)(i)(D) and (v)(A) redesignated as (a)(9)(i)(C) and (v); (a)(10)(vi)(E) added 9141
199.5 (b)(1)(iii), (e)(2), (3) and (4) revised 42904
199.8 (b)(3)(iii) and (iv) revised; (b)(3)(v) added; interim 54384
199.13 (i) added; interim 39941
199.14 (h)(1)(i)(D) added 7287
199.17 (a)(7) added; (d)(1) and (o)(3) revised 9142
199.18 (d)(2)(i) and (f) revised; (c)(3) added 9143
199.21 Revised 66990
199.22 Added 66993
203 Added 5261
220.9 (d) added 11600
247 Revised 42905
270 Added; interim 39942
Revised 3472
285 Revised 61013
286 Revised 35351
286.3 Amended 42916
286.4 (b), (h)(1), (5) and (n)(2) corrected 38197
286.12 (a)(1) and (2) corrected 38197
286.28 (d)(3)(i)(A) corrected 38197
(d)(3)(ii)(A) amended 42916
311.7 (c)(10)(i), (ii) and (iii) added 46446
(c)(11)(i) and (iii) added 59579
318.9 Redesignated as 318.11 67291
Added 67292
318.11 Redesignated from 318.9 67291
318.10 Added 67292
320 Heading revised 65020
320.1 (a)(1)(i) and (2) amended 65020
320.2 Amended 65020
320.3 (a), (b), (c) introductory text, (2) and (d) amended; (e) revised 65020
320.4 (a), (b) introductory text, (1), (2), (3), (c)(2) and (d) amended 65020
(c) heading, (1) introductory text and (iv) revised 65021
320.5 (b) amended 65021
320.6 (a) and (b) revised 65021
320.7 (b), (c) introductory text, (1) and (d) amended 65021
320.8 (a), (c)(3), (5) and (7) amended 65021
320.9 (b)(2)(i) and (3) amended 65021
320.10 Amended 65021
320.11 Amended 65021
397 Removed 6864

Chapter V—Department of the Army (Parts 400—699)

505.5 (e)(20) removed 48480

Chapter VI—Department of the Navy (Parts 700—799)

701.118 (r) introductory text revised 61914
706.2 Table Five amended 37719, 40450
Tables Four and Five amended 47945

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Tables One and Four amended 9744
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199....**45196, 61058, 64191, 67018**
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TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

27.3 Table correctly revised **35385**
Table corrected....**39313**
80.501 (d) revised....5731
80.520 (a) revised....5731
80.1495 Revised 5731
82 Authority citation revised....5731
82.5 Added 5731
82.7 Added 5731
84.01 (b) and (c) redesignated as (c) and (d); new (b) added 5731
84.05 (a) revised; (b), (c) and (d) redesignated as (e), (b) and (c); new (d) added 5731
84.17 (c) added 5731
84.27 Added....5731
87.1 (o) revised....5732
88.13 Heading, (b) and (c) revised; (d) redesignated as (e); new (d) added 5732
90.5 Added 5732
90.7 Added 5732
96 Added....**67506**
100 Temporary regulations lists **42671, 60178**
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100.35-T05-013 Added (temporary) 14819
100.35T-05-043 Added (temporary) **35391**
100.35-T05-055 Added (temporary) **39776**
100.35T-05-065 Added (temporary) **45718**
100.35T-05-069 Added (temporary) **48768**
100.35T-05-074 Added (temporary) **52501**
100.35T-07-002 Added (temporary) 5456
100.35T-07-047 Added (temporary) **60178**
100.35T-07-054 Added (temporary) **61630**
100.35T-07-062 Added (temporary) **65022**
100.35-T08-026 Added (temporary) **44410**
100.35-T08-027 Added (temporary) **44411**
100.35-T08-028 Added (temporary) **44411**
Heading correctly revised....**46553**
100.35-T08-034 Added (temporary) **48767**
100.35-T08-035 Added (temporary) **48766**
100.35-T08-038 Added (temporary) **50506**
100.35-T08-039 Added (temporary) **50507**
100.01 Regulation at 61 FR 33032 eff. delayed to 1-1-99....**67569**
100.05 Regulation at 61 FR 33032 eff. delayed to 1-1-99....**67569**
100.15 Regulation at 61 FR 33032 eff. delayed to 1-1-99....**67569**
100.17 Regulation at 61 FR 33032 eff. delayed to 1-1-99....**67569**
100.18 Regulation at 61 FR 33033 eff. delayed to 1-1-99....**67569**
100.19 Regulation at 61 FR 33033 eff. delayed to 1-1-99....**67569**
100.25 Regulation at 61 FR 33033 eff. delayed to 1-1-99....**67569**
100.30 Regulation at 61 FR 33033 eff. delayed to 1-1-99....**67569**

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100.35 Regulation at 61 FR 33033 eff. delayed to 1-1-99 ..... **67569**
100.50 Regulation at 61 FR 33033 eff. delayed to 1-1-99 ..... **67569**
100.100 Regulation at 61 FR 33033 eff. delayed to 1-1-99 ..... **67569**
100.102 Revised; eff. 7-26-97 ..... **35388**
100.114 Implementation (temporary) **35388, 35391, 45158, 48766, 66996**
100.201 Implementation (temporary) **43284**
100.501 (c) revised; Table 1 added **46670**
100.508 Implementation (temporary) **45718**
100.509 Implementation (temporary) **35390**
100.510 (b)(1) and (c) revised; Table 1 added **42067**
100.511 Implementation (temporary) 14036
100.728 Added **43641**
100.730 Added 15091
100.731 Added 15090
100.1101 Implementation (temporary) **45158**
100.1102 Amended 3037
100.1301 (a) stayed; (j) added; eff. 8-7-97 through 8-11-97 ..... **39444**
110.157 (b)(11) added; eff. 10-2-97 through 10-20-97 ..... **55168**
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117.5 Implementation (temporary) 6073
117.205 Revised 10140
117.491 (a)(3) removed **52502**
117.549 Implementation (temporary) 6073
117.559 Revised **38909**
117.603 Revised **50510**
117.604 Removed **50510**
117.609 Revised 2896
117.633 (b) and (c) revised **43098**
117.637 (a)(1) revised **43931**
117.663 Revised 4584
117.720 Added 2312
117.733 Revised 2311
117.753 Revised **45160**
117.771 Revised **54385**
117.821 Revised 9419
117.833 Existing text designated as (a); (b) added **66006**
117.1045 (a) revised **43097**
117.1061 (c) and (d) removed 10777
144.01-15 (d) correctly revised **35392**
151 Effective date confirmation **46446**
151.19 (c) revised **67532**
151.37 (a), (b) and (c) amended **67532**
155 Compliance date delay **37134**
Compliance date extension **48769**
Authority citation and note revised **48773**
155.100 (a) introductory text revised; (c) added **48773**
155.140 (b) amended **51194**
155.235 Revised **51194**
155.480 (b) introductory text and (f) revised **48773**
155.1050 (k)(3) suspended; eff. 2-12-98 through 2-12-2001 7071
155.1052 (f) suspended in part; eff. 2-12-98 through 2-12-2001 7071
157.455 Regulation at 61 FR 60189 stay lifted; revised **49508**
159.3 Amended **51194**
159.5 Revised **51194**
159.7 Revised **51194**
159.201 Revised **51194**
159.205 Removed **51194**
160 Authority citation revised **65206**
160.207 (d) and (e) revised; interim **65206**
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162.138 (a)(1)(i) suspended; (a)(1)(iv) added; eff. 7-25-97 through 12-15-97 ..... **45720**
164.72 (a)(1)(iv) redesignated as (a)(1)(v); (a)(1)(iii), new (v), (c) and table revised; new (a)(1)(iv) added **40272**
165 Effective date confirmation **35392, 65022**
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165.T01-040 Added (temporary) **35395**
165.T01-041 Added (temporary) **35404**
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165.T01-047 Added (temporary) **35681**
165.T01-048 Added (temporary) **35969**
165.T01-063 Added (temporary) **42677**
165.T01-082 Added (temporary) **45721**
165.T01-085 Added (temporary) **45722**
165.T01-089 Added (temporary) **46671**
165.T01-135 Added (temporary) 9941

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165.T05–058 Added (temporary).....39446
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165.T05–076 Added (temporary).....55168
165.T07–035 Added (temporary).....41275
165.T08036 Added (temporary).....35401
165.T08037 Added (temporary).....35401
165.T08038 Added (temporary).....35402
165.T08–041 Added (temporary).....38457
165.T11–018 Added (temporary).....9942
165.T11–040 Added (temporary); interim.....51781
165.T11–043 Added (temporary).....7706
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165.T13020 Added (temporary).....51779
165.T13–022 Added (temporary).....50511
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165.T14–002 Added (temporary).....46672
165.140 (a)(1) and (4) removed; (a)(2) and (3) redesignated as (a)(1) and (2); new (a)(1), new (2) and (b) amended.....51782
165.503 Removed.....9942
165.510 Revised.....40275
165.709 Removed.....51780
165.726 Added.....50512
165.810 (a) and (b) introductory text revised; (e) and (f) added; interim.....58653
165.1110 Revised; interim.....61631
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TITLE 34—EDUCATION

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74.26 (a), (b) and (c) revised.....45939, 45943
75.253 (c) revised.....40424
75.261 (a) and (b) redesignated as (c) and (d); new (a) and (b) added; new (c) introductory text revised; new (c)(4)(iii)(C) and (d) amended.....40424
75.263 Added.....40425
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97.101—97.124 (Subpart A) Sections designated as Subpart A; heading added.....63220
97.101 Authority citation added.....63221

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97.102 Authority citation added 63221
97.103 Authority citation added 63221
97.107 Authority citation added 63221
97.124 Authority citation added 63221
97.401—97.409 (Subpart D) Added 63221

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208.32 (b)(2) removed; (b)(1)(i) through (iv) redesignated as (b)(1) through (4) 8020
222.4 Revised; eff. 7–31–97 35412
222.7 Authority citation amended; eff. 7–31–97 35412
222.9 Authority citation amended; eff. 7–31–97 35412
222.10 Authority citation amended; eff. 7–31–97 35412
222.11 Introductory text and authority citation amended; eff. 7–31–97 35412
222.12 Added; eff. 7–31–97 35412
222.13 Redesignated as 222.19; eff. 7–31–97 35412
Added; eff. 7–31–97 35413
222.14 Added; eff. 7–31–97 35413
222.15 Added; eff. 7–31–97 35413
222.16 Added; eff. 7–31–97 35413
222.17 Added; eff. 7–31–97 35413
222.18 Added; eff. 7–31–97 35414
222.19 Redesignated from 222.13; eff. 7–31–97 35412
222.22 (c) and (d) revised; eff. 7–31–97 35414
222.23 Added; eff. 7–31–97 35414
222.36 (b)(1) and (2) revised; eff. 7–31–97 35415
222.50 Authority citation amended; eff. 7–31–97 35412
222.80—222.85 (Subpart F) Added; eff. 7–31–97 35415
222.94 Authority citation amended; eff. 7–31–97 35412
222.95 Authority citation amended; eff. 7–31–97 35412
(g) introductory text revised; OMB number 35416
222.103 Authority citation amended; eff. 7–31–97 35412
222.104 Authority citation amended; eff. 7–31–97 35412
222.108 Authority citation amended; eff. 7–31–97 35412
222.109 Authority citation amended; eff. 7–31–97 35412
222.110 Authority citation amended; eff. 7–31–97 35412
222.111 Authority citation amended; eff. 7–31–97 35412
222.112 Authority citation amended; eff. 7–31–97 35412
222.113 Authority citation amended; eff. 7–31–97 35412
222.114—222.122 Undesignated center heading added; eff. 7–31–97 35416
222.114 Added; eff. 7–31–97 35416
222.115 Added; eff. 7–31–97 35416
222.116 Added; eff. 7–31–97 35416
222.117 Added; eff. 7–31–97 35417
222.118 Added; eff. 7–31–97 35417
222.119 Added; eff. 7–31–97 35418
222.120 Added; eff. 7–31–97 35418
222.121 Added; eff. 7–31–97 35418
222.122 Added; eff. 7–31–97 35418
222.150 (b)(1) amended; eff. 7–31–97 35418
222.151 Heading and (b)(1) revised; eff. 7–31–97 35418
222.152 (b) and (c) revised; eff. 7–31–97 35418
222.154 (e) revised; eff. 7–31–97 35419
222.156 (g) amended; eff. 7–31–97 35419
222.157 Heading, (a) and (b)(1) revised; eff. 7–31–97 35419
225.158 Heading, introductory text and (b) revised; eff. 7–31–97 35419
222.161 (c) amended; eff. 7–31–97 35419
222.162 (a) revised; eff. 7–31–97 35419
222.164 (a)(2) and (b) revised; OMB number; eff. 7–31–97 35419
222.165 (e), (f) and (h) revised; eff. 7–31–97 35420

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

668.13 (d) and (e) removed; (f) redesignated as (d) 62876

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668.23 (f) removed; (g) and (h) redesignated as (f) and (g) **62876**
668.162 (a)(1) revised; (e) added **62876**
668.167 (f) added **62877**
668.171—668.175 (Subpart L) Added **62877**
668 Appendix F added **62882**
Appendix G added **62885**
674.6 (a)(1) and (2) amended; (a)(3) removed **50847**
674.9 (a) amended **50847**
674.19 (b) amended **50847**
674.31 (b)(2)(i)(D) revised **50848**
674.33 (b)(6)(ii) amended; (d)(8) added **50848**
674.34 (h) revised **50848**
674.35 (c)(1), (3) and (4) amended; (g) removed; (h) and (i) redesignated as (i) and (g); new (h) added **50848**
674.36 (c)(1), (2), (3) and (f) amended **50848**
674.37 (c)(1), (2), (3) and (d) amended **50848**
674.45 (c)(1)(ii)(A) amended **50848**
674.52 (d)(2) amended **50848**
675.9 (a) amended **50848**
675.19 (a)(3) amended **50848**
675.20 (b)(1) amended **50848**
675.22 Heading amended **50848**
675.26 (d) revised **63439**
675.27 Authority citation revised **50848**
676.9 (a) amended **50848**
676.19 (a)(2) amended **50848**
682.201 (a) introductory text through (3) amended **63433**
682.202 (c)(5) revised **63434**
682.209 (i)(1) revised **63434**
682.401 (b)(10)(vi)(B) introductory text amended; (b)(10)(vi)(B)(*1*) and (*2*) revised **63434**
682.402 (c)(1) revised; (k)(2)(iii) amended **63434**
682.604 (g)(2)(i) revised **63434**
685.202 (c)(4) revised **63434**
685.212 (b) revised **63435**
685.301 (a)(6) and (7) redesignated as (a)(7) and (8); new (a)(6) added **63435**
685.304 (b)(2)(i) revised **63435**
685 Appendix A revised **35602**

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701 Added **61430**

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TITLE 35—PANAMA CANAL

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104 Revised **48179**
115 Authority citation revised 2142
115.1 Revised 2142
115.2 (b) revised; (c) removed; (d) redesignated as (c); (a) introductory text and new (c) amended 2142
117 Authority citation revised 2142
117.1 (b), (c) introductory text and (d)(2) amended 2142
117.3 Revised 2142
119 Nomenclature change 2142

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TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

4.15 Revised **61633**
7.15 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c) 13353
7.67 (a) revised 9147

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Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

212 Authority citation revised 58654
212.2 Revised 58654
212.3 Removed; new 212.3 redesignated from 212.5 58654
212.4 Removed; new 212.4 redesignated from 212.6 58654
212.5 Redesignated as 212.3; new 212.5 redesignated from 212.7 58654
212.6 Redesignated as 212.4; new 212.6 redesignated from 212.8 58654
212.7 (c) amended; redesignated as 212.5; new 212.7 redesignated from 212.9 58654
212.8 Redesignated as 212.6; new 212.8 redesignated from 212.10 58654
212.9 (d) amended; redesignated as 212.7; new 212.9 redesignated from 212.11 58654
212.10 (a)(2) amended; redesignated as 212.8; new 212.10 redesignated from 212.12 58654
212.11 (f) amended; redesignated as 212.9 58654
212.12 Redesignated as 212.10 58654
215.11 (c) revised; (d) added; interim 4188
242.24 (a)(1) table amended 45725
242.25 (k)(6)(iii) table amended 45725
(k)(7)(iii) table, (10)(ii) table, (11)(i) table, (12)(i) table, (13)(iii) table, (15)(iii) table, (20)(iii) table and (22)(ii) table, amended 45726
(k)(23)(iii) table, (24)(iii) table, (25)(iii) and (26)(iii) table amended 45727
292.60—292.70 (Subpart G) Added 15059

Chapter VII—Library of Congress (Parts 700—799)

701.8 Revised 64280
701.35 Revised 8854
703 Revised 50254

Chapter XI—Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

1151 Revised 1924
1153 Removed 1926
1155 Removed 1926
1191 Appendix A amended 2016, 2071
1193 Added 5630

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1207 Authority citation revised 45943
1207.26 (a), (b) introductory text and (1) revised 45939, 45943
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1234.30 (a)(4) revised 54585

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TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

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1 Technical correction 43100
1.4 (d) revised; (g) added 53180
1.6 (d)(3), (6) and (e) revised; (f) added 53180
1.8 (a)(2)(i)(A) and (b) revised 53181
1.9 (d) and (f) revised 53181
1.10 (d) and (e) revised 53181
1.11 (b) revised 53181
1.14 (a) revised; (f) added 53182

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1.16 (a), (b), (d) and (f) through (i) revised 40452
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1.17 (b) through (g), (j), (m) through (p), (r) and (s) revised 40452
(a) through (d), (h), (i) and (q) revised; (e), (f) and (g) removed 53182
(q) correctly revised 61235
1.18 Revised 40452
1.19 (a)(2) and (3) revised 40452
1.20 (c), (e), (f), (g), (i)(1), (2), (j)(1) (2) and (3) revised 40453
1.21 (a)(1)(ii), (6) and (j) revised 40453
(l) and (n) revised 53183
1.26 (a) revised 53183
1.27 Revised 53183
1.28 (a) and (c) revised 53183
1.33 (a) and (b) revised 53184
1.41 (a) revised 53184
1.47 Revised 53184
1.48 Revised 53185
1.51 Revised 53185
1.52 (a), (c) and (d) revised 53186
1.53 Revised 53186
(d)(1)(i) revised; interim 5732
1.54 Revised 53188
1.55 (a) revised 53188
1.59 Revised 53188
1.60 Removed 53188
1.62 Removed 53188
1.63 (a) and (d) revised; (e) added 53188
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1.84 (a)(2)(i), (b), (c) and (g) revised 53190
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1.102 (a) revised 53191
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1.111 (b) revised 53192
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1.163 Heading and (b) revised 53196
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1.192 (a) revised 53196
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1.194 Revised 53197
1.196 (b) and (d) revised 53197
1.197 (a) and (b) revised 53198
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1.318 Removed 53198
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1.352 Removed 53199
1.366 (b), (c) and (d) revised 53199
1.377 (c) revised 53199
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1.445 (a) revised 40453
1.482 (a)(1)(i), (ii) and (2)(ii) revised 40453

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1.484 (d), (e) and (f) revised 53199
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1.488 (b)(3) revised 53200
1.492 (a), (b) and (d) revised 40453
(g) added 53200
1.494 (c) revised 53200
1.495 (c) revised 53200
1.510 (e) revised 53200
1.530 Heading and (d) revised; (e) removed 53200
1.550 (a), (b) and (e) revised 53201
1.770 Revised 53201
1.785 (d) revised 53201
1.804 (b) revised 53202
1.805 (c) revised 53202
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2.6 (b)(4) and (10) revised 40453
3.11 Revised 53202
3.21 Revised 53202
3.26 Revised 53202
3.27 Revised 53202
3.31 (c) added 53202
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3.73 Heading and (b) revised 53202
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5.5 (b) and (e) revised 53204
5.6 Removed 53204
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5.11 (b), (c) and (e)(3) revised 53204
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5.14 (a) revised 53204
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201 Authority citation revised 55739
201.1 (a) and (b) amended 35420
(c) and (d) amended 35421
(b) amended 40457
201.2 (b)(5) amended 35421
201.5 (c)(2) amended 35421
201.34 Added; interim 55739
202.3 (b)(2) amended 35421
(b)(5)(ii) amended 63657
(b)(5)(iii) amended 66822
202.20 (c)(2)(vii)(A)(*2*) and (D)(*1*) amended 35421
202 Appendix B amended 51603
203 Authority citation revised 55742
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203.2 (a) amended 35421
203.3 (i) revised; interim 55742
Regulation at 62 FR 55742 confirmed 1926
203.4 (f) revised; (i) added; interim 55742
Regulation at 62 FR 55742 confirmed; (f) and (i)(2) amended 1926
203.6 (b)(6) amended; interim 55742
Regulation at 62 FR 55742 confirmed 1926
251 CARP arbitration list 9419
253.1 Amended 2144
253.4 Introductory text and (a)(1) through (8) revised; (c) amended 2144
253.5 (c)(1), (2) and (3) revised 2145
253.6 (c) revised 2145
253.7 (a) revised; (b)(1)(i), (ii), (2), (4) and (5) amended 2145
253.8 (b)(1) revised; (f)(1) amended 2145
253.10 (a) amended 2145
255.3 (a) through (h) amended; (i) through (m) added 7289
258 Technical correction 62262, 62404
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TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

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1 Nomenclature change 35970
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1.621 (a) and (b)(2) revised; (c) amended; (e) redesignated as (d) 51783
2.6 (e)(6) revised 11122
3 Nomenclature change 35970
Nomenclature correction 47532
3.2 (f) revised 35422
3.7 Heading and introductory text revised; (x)(29) and (30) added 413
3.20 (c) added 35422
3.27 (c) redesignated as (d); new (c) added; new (d) and authority citation revised 51278
3.57 Cross reference amended 51281
3.105 (g) and (h) redesignated as (h) and (i); (d), (e), (f) and new (h), (i)(1), (i)(2) introductory text, (ii) and (iii) amended; new (g) added 51278
3.158 (a) and (c) amended 51278
3.261 (a)(40) added 51278
3.262 (y) added 51278
3.263 (g) added 51279
3.272 (u) added 51279
3.275 (i) added 51279
3.307 (a)(6)(i) and (iii) amended; (a)(6)(i) authority citation added; (a)(6)(iii) authority citation revised 35422
3.317 Regulation at 62 FR 23139 confirmed 11122
3.403 Introductory text and (a) through (e) redesignated as new (a) introductory text and (1) through (5); new (b) added 51279
3.503 Introductory text and (a) through (j) redesignated as (a) introductory text and (1) through (10); new (b) added 51279
3.659 Cross reference amended 51281
3.703 Cross reference amended 51281
3.707 Cross reference amended 51281
3.807 Cross reference amended 51281
3.810 (a) amended; (d) added 35422
3.811 Added; interim 35971
Revised 412
3.814 Added 51279
3.1000 (a) introductory text amended; authority citation added 35423
3.1600 (c) amended 35423
4.100 Removed 65219
4.101 Removed 65219
4.102 Removed 65219
4.104 Revised 65219
9 Nomenclature change 35970
Nomenclature corrected 47533
9.2 (a) and (b)(1) revised 35970
9.8 (b) amended 35970
17.32 Revised 53961
17.85 Undesignated center heading and section added 11124
17.149 Regulation at 62 FR 30239 confirmed 64722
17.150—17.154 Regulation at 62 FR 30239 confirmed 64722
17.212 (d) added; authority citation revised 60783
17.900—17.905 Undesignated center heading and sections added 51284
19.9 Revised 52503
20.611 Revised 55170
20.1302 Revised 55170
21.3021 (l) redesignated as (m); new (l) added 51784
21.3041 (e)(3) and (4) amended 55760
21.3045 (f) revised; (i)(3)(ii) amended 55760
21.3046 (e) removed 51784
(c)(1) and (d)(6)(ii) amended 59579
21.3047 Added 51784
21.4001—21.4279 (Subpart D) Authority citation revised 40280, 55760, 63849
21.4009 (b)(1) introductory text amended 55760
21.4200 (g) revised 55760
21.4201 (h) introductory text and (2) amended 55760
21.4233 (c) revised; (d) amended 40280
(b)(3) introductory text amended, (ii), (4) introductory text and (ii) amended 55760
21.4250 (a)(1), (2), (c)(1), (2) introductory text, (ii), (iii) and (iv) amended 55760
21.4253 (d)(1) revised 35424
21.4256 Revised 63849

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21.4267 (a) authority citation, (b) authority citation and (i) revised; (f) added 40280
21.4270 (c) heading and Footnote 2 revised 55760
21.4279 (a) introductory text and (4) revised; (a)(5) added 63850
21.4501 (b)(1), (2)(iv), (v)(A), (B), (c)(1) and (3) amended 51785
21.5001—21.5300 (Subpart G) Authority citation revised 55760
21.5270 (a), (g) and (i) amended 55760
21.5701—21.5901 (Subpart H) Authority citation revised 55761
21.5820 (b)(1), (2)(ii) introductory text, (A), (B), (C), (3)(ii) introductory text, (A), (B) and (C) amended 63848
21.5822 (b)(1)(i), (ii), (2)(i) and (ii) amended 63848
21.5901 (a) and (b) amended 55761
21.7000—21.7320 (Subpart K) Authority citation revised 40280, 55761
21.7020 Introductory text, (a)(1)(i) and (2)(i) amended; (b)(25)(i)(G) revised 55761
21.7044 (c) removed; (d) and (e) redesignated as (c) and (d) 55761
21.7112 (c) revised 40280
21.7131 (k) added 55519
21.7135 (bb) redesignated as (cc); new (bb) added 55519
21.7136 (d) introductory text and (e)(1) amended; (e) introductory text revised; (g) added 55519
(b), (c)(1), (2) and (3) revised 58655
21.7137 (b) introductory text revised; (e) and (f) redesignated as (f) and (g); new (e) added 55519
(a) revised; (c)(2) introductory text and (i) through (iv) amended 58655
21.7139 (a), (g) and (h) removed; (b) through (f), (i) and (j) redesignated as (a) through (g); new (g)(2) redesignated as (g)(3); introductory text and new (b) authority citation, (c) authority citation, (d)(2)(iii), (f) authority citation, (e)(2)(ii), (iii), (3)(iii), (e) authority citation and (g)(3)(ii) amended; heading and new (g)(1) revised; new (g)(2) added 55520
21.7140 (c)(1)(iii) removed; (c)(1)(i), (ii), (d)(1) and (e)(2) amended; (c)(1) authority citation, (d) authority citation, (e) authority citation and (g) authority citation revised 55761
21.7144 Revised 55761
21.7154 (a) and (b) redesignated as (b) and (c); new (a) added; new (b) heading, (1) revised; new (b)(2)(i) and (ii) amended; OMB number 14038
21.7156 Introductory text and (a) introductory text removed; (a)(1), (2), (3), (b) and (c) redesignated as (b)(3), (4), (5), (c) and (d); heading and new (b)(3) revised; new (a), (b) heading, (1) and (2) added; new (c)(2) amended; OMB number 14038
21.7170 Revised 55761
21.7172 (a)(3)(ii) revised 55761
21.7305 Revised 55761
21.7307 Revised 55761
21.7310 Revised 55761
21.7612 (b) revised 40280
21.7622 (c) revised 55762
21.7631 (h) added 55520
21.7635 (x) redesignated as (y); new (x) added 55520
21.7636 (b) redesignated as (c); new (b) added 55520
(a)(1), (2)(i) and (3) revised 66278
21.7639 (c)(2)(ii) authority citation, (f)(1) authority citation revised; (f)(2) redesignated as (f)(3); new (f)(2) added 55521
(b) introductory text amended 55762
21.7659 Revised 55762
21.7670 (d) amended 55762
21.7720 (b)(9), (10) and (11) redesignated as (b)(11), (12) and (13); (b)(5) and new (11) amended; new (b)(9) and new (10) added 55762
21.8010—21.8410 (Subpart M) Added 51288
36.4232 (e)(1), (2), (3) amended; (e)(4) redesignated as (e)(5);

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new (e)(4) added; OMB number **63278**
36.4254 (d)(4) and (5) redesignated as (d)(5) and (6); new (d)(4) added; OMB number **63278**
36.4303 Revised 12002
36.4306a (a)(3), (4) and (5) revised; (a)(6) and (7) added **52505**
(a)(6) and (7) removed; (a)(3), (4) and (5) revised **63454**
36.4312 (e)(4) redesignated as (e)(5); new (e)(4) added; OMB number **63278**
36.4330 Revised 12004
36.4335 (a) and (b) removed; (c) through (h) redesignated as new (a) through (f); new (e) authority citation removed 12004
36.4337 (a) revised **52505**
Heading, (c) through (h), (j), (k), (l), (n) and authority citation revised **53965**
(a) revised **63454**
36.4348 (d), (e) and (f) redesignated as (e), (f) and (g); (b), (c) and new (e) revised; new (d) added 12004
36.4349 (a)(2) revised (OMB number) 12007
43.26 (a), (b) introductory text and (1) revised **45939, 45943**

Proposed Rules:

17 ..... **39197, 40492**
..... 9990
19 ..... **36038**
20 ..... **55200, 64790**
21 ..... **35454, 45596, 48969, 60464, 62736, 66320**
..... 15341
36 ..... **37824**
47 ..... **52519**

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

3 Authority citation amended **41853**
3.3 (v) redesignated as (w); new (v) added **41853**
(e)(3) added **43642**
3.4 (h) added **41853**
4 Authority citation revised **61914**
4.5 Revised **61914**
4.6 Removed; new 4.6 redesignated from 4.7 ..... **61914**
4.7 Redesignated as 4.6 ..... **61914**
20 IMM amended; incorporation by reference; interim **45163, 47559, 49917, 56074, 58915**
IMM amended; incorporation by reference 3645, 3815
IMM amended; incorporation by reference; interim 5459, 9421, 13125
111 DMM amended; incorporation by reference **39947, 51372, 53540, 60181, 61015**
DMM amended; incorporation by reference 155, 14820
111.3 (f) table amended **63851**
111.5 Revised **63852**
222.5 (a)(7) amended 9943
255.1 (c)(1) amended; (c)(2) removed; (c)(3) through (6) redesignated as (c)(2) through (5); new (c)(2) revised **66996**
(c)(3) amended; (c)(4) and (5) revised **66997**
255.2 (a)(1) amended; (a)(2)(i), (iv) and (b)(2) revised; (c) removed **66997**
255.3 (a)(1) and (b)(2) revised; (a)(2) introductory text amended; (a)(3), (4), (5) and (c) removed **66997**
(a)(3) correctly removed 2145
262 Authority citation revised **64280**
Authority citation revised 6481
262.2 (a) revised; interim **64280**
(a) revised 6481
262.4 Introductory text revised; interim **64280**
Introductory text revised 6481
265.3 (a) revised; interim **64280**
(a) revised 6481
265.5 Revised; interim **64280**
Revised 6481
265.6 (a) revised; interim **64281**
(e)(1) amended; interim **64282**
(a) revised 6481
265.7 (a)(2) amended; (b), (c), (d)(1), (e)(1), (f)(1) and (2) revised; (d)(3) and (g) added; interim **64282**
(b), (c), (d)(1), (e)(1), (f)(1), (2) and (g) revised 6482
265.10 Revised **64283**
Revised 6483
265 Appendix A revised **64283**

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TITLE 39 Chapter I—Con.

Appendix A revised 6483
946.6 (a)(2) revised 8126
954 Heading amended **66998**
954.2 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.3 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.5 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.6 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.8 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.10 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.12 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.13 (a) and (c) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.14 (b)(6) and (8) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.16 (d)(1) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.17 (b) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.18 (a) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.19 (a) amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
954.25 Amended **66998**
Regulation at 62 FR 66998 eff. date corrected to 12–23–97 ..... **68364**
966 Revised **63279**

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.7 (a)(1)(iii) amended **45530**
3001.12 (e) amended **45530**
3001.31 (k)(2)(i) through (iv) redesignated as (k)(2)(ii) through (v); new (k)(2)(i) added; new (k)(2)(ii) and (3)(i)(*i*) amended; (k)(3)(i)(*e*) revised **45729**
3001.43 (f)(1) amended **45530**
3001.61—3001.69c (Subpart C) Appendix A amended **35425**
3002 Auhority citation revised **45530**
3002.4 Heading revised; (a) amended **45530**
3002.5 Removed **45530**

Proposed Rules:

20 ..... **47394**
111 ..... **45366, 47178, 48191, 62540**, 8154, 11199, 12864
232 ..... **61481**
501 8893
775 ..... **42958**
777 ..... **42958**
778 ..... **42958**

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

3 Removed **43269**
9.1 Table amended (OMB number) **37722, 44413, 47119, 52398, 54715, 55474**
Regulation at 61 FR 52295 eff. date corrected to 12–30–97 673
Table amended (OMB numbers) 964, 1060, 1320, 7269, 7710, 15016
Regulation at 61 FR 48229 eff. date corrected to 2–27–98 9944
30.26 (a), (b) and (c) revised **45939, 45944**
31.26 (a), (b) introductory text and (1) revised **45939, 45944**
32.105 Amended **47149**
32.335 (a) through (d) amended **47149**
32.430 (a) through (d) amended **47149**
35.105 Amended 7270
35.205 (c), (d) and (e) added 7270
35.210 (c) added 7270
35.215 Revised 7270
35.220 Added 7271
49 Added 7271
50 Announcement **38762**
Comment period extension **43642**
Notice 6032
Authority citation revised 7274
50.1 (i) added 7274
50.2 (c) and (d) revised 7274
50.3 Revised **38711**

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50.6 Heading revised; (d) added **38711**
50.7 Added **38711**
50.9 Revised **38894**
50.10 Added **38894**
50 Appendix K revised **38712**
Appendix L added **38714**
Appendix M added **38753**
Appendix N added **38755**
Appendixes D and H amended; Appendix E removed; Appendix I added **38895**
Appendix L corrected 7710
51 Authority citation revised **43801**, **44903**
Technical correction 6483
51.100 (s) introductory text and (1) revised **44903**
(o)(3) revised 9151
51.103 (a) amended; (a)(1) and (2) removed 9151
51.212 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
51.353 (c)(3) and (4) revised 1368
51.361 Regulation at 61 FR 49682 eff. date corrected to 2–10–98 6645
51.390 (Subpart T) Revised **43801**
52 Technical correction **37724**, **61016**
State implementation plan determinations **43647**, **45531**, **52946**, **54769**, **61914**, **64522**
Notice **61236**
State implementation plan determinations 26, 3650, 8573, 9423, 15094
Technical correction 6483
52.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.33 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
52.50 (c)(71) added 676
52.66 Added **49158**
52.70 (c)(27) added 11840
52.120 (c)(73), (74)(i)(B), (77)(i)(A)(*1*) removed; (c)(74)(i)(A) revised; (c)(74)(i)(A)(*2*) redesignated as (c)(77)a(i)(A)(*1*); (c)(88) added **41864**
(c)(83) and (85) removed **63458**
(c)(83)(i)(B) added 6489
(c)(78)(i)(C), (82)(i)(C), (83) and (85) added 6491
(c)(89) and (90) added 6659
(c)(82)(i)(D) added 15305
52.123 (f) added **41864**
52.124 (b) added **41864**
52.220 (c)(196)(i)(D), (202)(i)(F) and (245) added **36216**
(c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*) and (225)(i)(B)(*3*) added **37138**
(c)(239)(i)(D) added **41867**
(c)(197)(i)(B)(*2*) added **44909**
(c)(224)(i)(D) added **44912**
Regulation at 62 FR 41867 withdrawn **47369**
(c)(26)(ix)(B), (xvi)(E), (27)(vii)(C), (39)(viii)(D), (ix)(C), (x)(C) and (246) added **48483**
(c)(229)(i)(A)(*2*) added **48485**
(c)(224)(i)(E) added **53544**
(c)(243) added **54588**
(c)(224)(i)(D) removed **54769**
(c)(197)(i)(D) and (241)(i)(A)(*2*) added **59287**
(c)(184)(i)(B)(*5*) and (225)(i)(A)(*2*) added **60785**
(c)(250) added **62951**
(c)(239)(i)(E) added **65613**
(c)(239)(i)(E)(*2*) added **67000**
(c)(239)(i)(A)(*2*) **67004**
(c)(231)(i)(B)(*2*), (239)(i)(D)(*1*) and (244) added 6075
(c)(239)(i)(E)(*3*) added 8128
(c)(6)(i)(C), (21)(vi)(C), (121)(ii)(C), (173)(i)(E), (182)(i)(E), (194)(i)(E)(*2*), (244)(i)(B) and (245)(i)(B) added 11833
(c)(230)(i)(B)(*2*) added 13531
(c)(252) and (253) added 15311
52.222 (a)(2) and (3) added **40937**
(b)(2) added **43647**
52.320 (c)(76) added **68195**
(c)(71) added **67009**
(c)(8), (15) and (72)(i)(D) revised 14360
(c)(84) added 15302
52.329 (a) revised **68195**
52.332 (b) and (e) redesignated as (b)(1) and (e)(1); (b)(2) and (e)(2) added **66008**
(g) and (h) added **68195**
52.370 (c)(72) added **52020**
(c)(74) added **55340**
(c)(72)(i)(B) and (K) corrected **65224**

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(c)(60) added 6487
52.384 Added 55340
52.385 Added 52022
Table corrected 65224
Table amended 6487
52.420 (c)(58) added 37724
Regulation at 62 FR 37722 eff. date corrected to 8–14–97 40139
52.424 (b) introductory text revised 1368
52.470 (c)(37) added 40937
52.520 (c)(98) added 38919
52.570 (c)(50) added; interim 42918
52.720 (c)(106(i)(D) added; (c)(109) revised 43102
(c)(139) added 62953
(c)(137) added 67001
(c)(135) added 8858
(c)(136) added 8859
(c)(138) added 11838
(c)(141) added 11846
(c)(142) added 13787
52.725 (e) added 11846
52.726 (p), (q) and (r) added 37506
Regulation at 62 FR 37506 withdrawn 46447
(p), (q) and (r) added 66294
52.770 (c)(109) added 38922
(c)(121) added 2147
52.776 (q) added 45171
52.777 (k) added 38464
(q) added 55176
(s) added 64735
52.820 (c)(64) added 55173
(c)(65) added 63455
(c)(66) added 5269
52.834 Added 13345
52.870 (c)(33) added 36213
52.920 (c)(86) added 1929
52.930 Regulation at 62 FR 28637 withdrawn 40281
(e) added 55176
(d) added 61246
Regulation at 62 FR 61246 eff. date corrected to 2–10–98 6664
(f) added 14625
52.970 (c)(64) introductory text and (i) revised 51604
(c)(68) added 52951
(c)(74) added 63661
(c)(75) added 11374
52.975 (f) added 64286
52.994 Existing text designated as (a); (b) added 63662
Regulation at 62 FR 61634 eff. date corrected to 2–13–98 7290
Removed 11374
52.996 Added 61634
Correctly designated 4397
52.1020 (c)(44) added 49611
52.1031 Table amended 49611
52.1036 (e) added 41277
52.1070 (c)(122), (123) and (124) added 41856
(c)(126) and (127) added 46201
(c)(125) added 53548
52.1072 Added 40944
(b) added 49616
(c) added 52666
52.1076 Added 40458
52.1120 (c)(114) added; interim 37509
(c)(113) added 37514
52.1125 Added 37514
52.1170 (c)(109) added 59996
(c)(110) added 6651
52.1174 (p) added 50514
52.1219 (b) added 39123
52.1220 (c)(44) added 53242
52.1237 (b) added 55172
Regulation at 62 FR 55172 eff. date corrected to 2–10–98 6647
52.1270 Redesignated as 52.1281; new 52.1270 added 35442
(c) table amended 37726
(c) table corrected 40139
52.1281 Redesignated from 52.1270; heading and (a) revised 35442
52.1320 (c)(99) added 44221
(c)(96) revised 45166
(c)(100) added 45167
(c)(101) added 46881
(c)(98) added 52660
(c)(102) added 3039
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
Regulation at 61 FR 39335 eff. date corrected to 2–10–98 6648
52.1323 (k) added 46881
(l) added 52661
Regulation at 62 FR 46881 eff. date corrected to 2–10–98 6645
52.1391 Added 65616
52.1520 (c)(52) added 55525
(c)(51) added 11604
52.1525 Table amended 11604
52.1533 Added 55525
52.1570 (c)(63) added 42413
52.1605 Table amended 42414
52.1620 (c)(66) added 50518
52.1670 (c)(91) added 49619
(c)(93) added 67006

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52.1679 Table amended **67006**
52.1683 (c), (d) and (e) added; interim **55344**
(f) added **66825**
52.1770 (c)(94) added **41280**
52.1870 (c)(115) added **49442**
(c)(117) added 13789
(c)(116) added 15093
52.1881 (a)(4) and (8) revised 15093
52.1885 Regulation at 62 FR 28637 withdrawn **40281**
Regulation at 62 FR 26399 eff. date delayed to 1-9-98 ..... **43109**
(a)(6) added **44907**
(bb) added **61246**
(a)(7) added 1062
Regulation at 62 FR 26399 withdrawn 1368
(z) added 4195
Regulation at 62 FR 44907 eff. date corrected to 2-10-98 6649
Regulation at 62 FR 61246 eff. date corrected to 2-10-98 6664
(cc) added 14626
52.1890 Added **47947**
Regulation at 62 FR 47947 eff. date corrected to 2-10-98 6646
52.1970 (c)(122) added **46210**
(c)(124) added 15294
52.2020 (c)(125) added **38917**
(c)(127) added **43104**
(c)(119) added **44415**
(c)(126) added **50871**
(c)(128) added **50873**
(c)(107) added **64725**
(c)(130) added 11372
(c)(129) added 13794
52.2023 (k) added 13794
52.2026 (a) introductory text and (1) revised **59998**
Regulation at 62 FR 31349 eff. date corrected to 12-30-97 415
(a)(2) revised 1368
(d) and (e) added 2153
(e) added 13794
52.2036 (j) added **38917**
Regulation at 62 FR 31349 eff. date corrected to 12-30-97 415
52.2070 (c)(48) and (49) added **46207**
52.2081 Table amended **46207**
52.2120 Redesignated as 52.2134; new 52.2120 added **35444**
(c) table amended **44219, 47761**
52.2134 Redesignated fron 52.2120; heading and (a) revised **35444**
52.2220 (c)(147) added **35683**
(c)(156) added **38912**
(c)(158) added **40460**
(c)(155) added **40735**
(c)(151) added **42070**
(c)(154) added **43108**
(c)(157) added **43645**
(c)(159) and (160) added **62698**
52.2270 (c)(102) added **44087**
(c)(91) removed **49154**
(c)(108) added 6493
(c)(107) added 6663
(c)(106) added 11835
52.2303 (a) revised **44088**
52.2308 (f) added 7072
52.2309 (d) added 6663
52.2310 Added; interim **37144**
52.2311 Added 6653
52.2320 (c)(38) added **38216**
52.2348 Regulation at 62 FR 31351 eff. date corrected to 12-30-97 414
52.2350 Added **38217**
52.2351 Added **38217**
52.2370 (c)(23) added **41282**
(c)(24) added **41869**
52.2375 Table revised **41869**
52.2381 Table amended **41282, 41870**
52.2420 (c)(115) and (116) added **38914**
(c)(121) added **53239**
(c)(120) added **53245**
(c)(118) added **54587**
(c)(119) added **61240**
(c)(122) added 11842
(c)(123) added 13798
52.2424 Existing text designated as (a); (b) added **61240**
52.2428 Existing text designated as (a); (b) added **38932**
Removed **43472**
Added **52032**
52.2450 (b)(1) and (3) amended; (b)(2) revised **49152**
(b)(2) revised 1368
52.2451 Revised 13798
52.2454 Added **52638**
52.2470 (c)(73) added **42217**
(c)(75) added **49444**
(c)(75) revised **68187**
(c)(76) added 5272
Regulation at 61 FR 49690 eff. date corrected to 2-10-98 6648
52.2479 Amended **68188**
52.2585 (l) added **39448**
(m) added 5464
53.1—53.16 (Subpart A) Revised **38784**
53.3 (b)(5) correctly removed 7714

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53.30—53.34 (Subpart C) Revised 38792
53.34 (c)(2)(i), (3) and (5) corrected 7714
53.30—53.34 (Subpart C) Table C–4 corrected 7714
53.50—53.59 (Subpart E) Added 38799
53.51 (a)(3) corrected 7714
53.54 (f)(7) corrected 7714
53.56 (f)(5) corrected 7714
53.57 (g) corrected 7714
53.50—53.59 (Subpart E) Tables E–1 and E–2 corrected 7714
53.60—53.66 (Subpart F) Added 38814
53.61 (g)(1)(ii) corrected 7714
53.64 (g)(4)(ii) corrected 7714
55.2 Amended 46408
55.3 (c) revised 46408
55.6 (d)(2) revised 46408
55.11 (a) revised; (j) added 46408
55.14 (e)(2)(i)(A) revised 41871
55 Appendix A amended 41871
58.1 Amended 38830
Corrected 7714
58.13 (b) and (d) revised; (e) and (f) added 38831
(d) corrected 7714
58.14 Revised 38832
58.20 Heading, (d) and (e) introductory text revised; (f) redesignated as (h); concluding text designated as (i); new (f) and (g) added; new (i) amended 38832
58.23 Introductory text revised; (c) added 38832
58.26 Heading and (b) introductory text revised; (d) and (e) added 38833
(d)(2) and (e) corrected 7714
58.30 (a) introductory text revised 38833
58.31 (f) revised 38833
(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
(f) corrected 7714
58.34 Introductory text revised 38833
(a) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
58.35 (b) amended 38833
58.41 (b) revised 59816
Regulation at 62 FR 59816 withdrawn 67010
58 Appendix A revised 38833
Appendix C amended 38843
Appendix D amended 38844, 59816
Appendixes E and F amended 38854
Appendixes E and G amended 59818
Appendix D regulation at 62 FR 59816 withdrawn 67010
Appendix A corrected 7714
Appendixes A and D corrected 7715
60 Determinations 36664
Authority citation revised 48379
Authority delegation notices 53245
Clarification 62953
Guidance availability 63662
Authority delegation notices 1746, 5891
Technical correction 7199
60.1 (d) added 52641
60.11 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
60.17 (b)(1) amended; (k) and (l) added 48379
(a)(22) amended 52399
Regulation at 61 FR 18262 eff. date corrected to 2–9–98 6493
60.30 Revised 48379
60.30b—60.39b (Subpart Cb) Heading revised 45119
60.31b Amended 45119, 45121
60.32b (a) and (b) introductory text revised; (b)(2) amended; (m) added 45119
(b)(1), (d), (e), (f)(1) and (i)(1) amended 45125
60.33b (a)(1)(i), (iii), (2)(i), (iii), (3), (b)(1)(i), (2)(i), (c)(1) introductory text, (d) Table 1 and (1)(i) amended; (a)(1)(ii), (2)(ii), (iv), (b)(1)(ii), (2)(ii) and (c)(2) removed 45119
(a)(4), (b)(3) and (d)(3) added; (d) Table 2 amended; (d)(1)(i)(B) revised 45120
(a)(3) amended 45125
60.34b (a) amended 45120, 45125
60.35b Amended 45120
60.38b (b) amended; (c) removed 45120

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60.39b (b), (c)(1) introductory text, (2), (4)(ii), (iii) introductory text and (5) amended; (c)(3) and (4)(i) removed; (d) revised; (e) and (f) added 45120
(c)(4)(iii)(B) amended 45125
60.30e—60.39e (Subpart Ce) Added 48379
60.49b (u) added 52641
60.50b—60.59b (Subpart Eb) Heading revised 45120
60.50b (b)(2) amended 45120
(a) and (b) introductory text revised; (p) added 45121
(b)(1), (e), (f), (g)(1) and (i)(1) amended 45125
(j) introductory text amended 45126
60.51b Amended 45121, 45126
60.52b (c)(1) amended 45121
(a)(1) through (5), (b)(1), (2) and (c)(2) amended 45126
60.53b (a) introductory text, Table 1, (b) introductory text and (c) introductory text amended 45126
60.54b (a), (b), (c) introductory text, (d), (e) introductory text and (f) introductory text amended; (c)(i) and (ii) redesignated as (c)(1) and (2) 45126
60.55b (a) amended 45126
60.56b Amended 45126
60.57b (a) introductory text, (b) introductory text and (c) amended 45126
60.58b (b) introductory text, (3), (6)(i), (c)(2), (4), (7), (9), (11), (d)(1)(ii), (v), (vii), (2)(ii), (vii), (viii), (ix), (e)(3), (12)(i)(B), (f)(4), (7), (g)(2), (5) introductory text, (i), (iii), (8), (h)(2), (3), (4), (10) introductory text, (i)(B), (i)(3)(ii)(B), (5), (j)(1) introductory text, (i), (2) and (m)(3) introductory text amended; (b)(7), (h) introductory text and (k) introductory text revised; (c)(10), (d)(1)(viii), (ix), (2)(x), (f)(8) and (g)(5)(ii) removed; (k)(4) added 45126
60.59b (a) introductory text and (b) introductory text amended 45121
(b)(4), (d) introductory text, (2)(i)(C), (ii)(B), (3), (6)(ii), (8), (11), (12)(ii), (f) introductory text, (g) introductory text, (h) introductory text and (l) amended 45127
60.50c—60.58c (Subpart Ec) Added 48382
60.112b (c) added 52641
60.190 (b) revised; (c) added 52399
60 Appendix A amended 52399
Regulation at 61 FR 18262 eff. date corrected to 2–9–98 6493
61 Authority delegation notices 53245
Authority delegation notices 1746, 5891
Technical correction 7199
61.12 Regulation at 62 FR 8328 eff. date corrected to 12–30–97 414
61 Regulations at 61 FR 18278 and 18280 eff. date corrected to 2–9–98 6493
62 Authority citation revised 11608
62.850 (b)(3) and (4) added; (c) revised 11608
82.852 Removed 11608
62.854 Revised 11608
62.855 Revised 11608
62.865 (a)(3), (4) and (6) revised 11608
62.1110—62.1112 Undesignated center heading and sections added 2156
62.2350 (b)(5) and (c)(3) added 60787
62.2355 Undesignated center heading and section added 60787
62.3350 Undesignated center heading and section added 67572
62.3912 Undesignated center heading and section added 41873
62.4177 Undesignated center heading and section added 41874
62.4178 Undesignated center heading and section added 13532
62.4620 (b)(4) added 45732
62.4631—62.4632 Undesignated center heading and sections added 54589
Regulation at 62 FR 54591 eff. date corrected to 2–10–98 6664

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62.4931—62.4932 Undesignated center heading and sections added **45732**
62.6356 Undesignated center heading and section added **41874**
62.6912 Undesignated center heading and section added **41874**
62.7855—62.7856 Undesignated center heading and sections added **54589**
Regulation at 62 FR 54591 eff. date corrected to 2–10–98 6664
62.8600—62.8602 (Subpart JJ) Added **65619**
62.9350 (b)(4) and (c)(4) added **36997**
62.9505 Undesignated center heading and section added **36997**
(b) correctly removed **48950**
63 Authority delegation notices **36460**
Authority delegation notices 1746
Notice 2630
63.14 (d)(1) revised **65024**
63.99 (a)(5)(ii) introductory text and (A) introductory text revised; (a)(5)(ii)(B) added **65025**
63.342 (f)(3)(i) introductory text amended **42920**
63.343 (b)(1) revised; (c)(1)(ii), (2)(ii), (4)(ii), (5)(ii) introductory text and (6)(ii) introductory text amended **42920**
63.347 (e)(4) revised **42921**
63.360—630.367 (Subpart O) Stayed; eff. 12–4–97 to 12–6–98 ..... **64738**
63.485 (o) introductory text revised **37722**
63.502 (a) revised; (j) added **37722**
63.640 (k)(2)(vii), (n)(1), (3) and (6) and (o)(2) revised; (n)(8), (9) and (r) added 13537
63.641 Amended 13539
63.644 (a) introductory text amended 13539
63.645 (f)(4) amended; (f)(5) revised 13539
63.648 (e) revised 13539
63.654 (a), (g)(3)(i) introductory text and (h)(6) introductory text amended; (d)(1), (f) introductory text, (1)(i)(A), (ii) and (h)(1) revised; (f)(6) and (i)(5) added; (g)(3)(i)(B) removed; (g)(3)(i)(C) and (D) redesignated as (g)(3)(i)(B) and (C) 13539
63.640—63.654 (Subpart CC) Appendix amended 13540
63.741 (b) revised; (c) introductory text, (2), (3) and (4) revised; (f) amended; (c)(7), (h), (i) and (j) added 15016
63.742 Amended 15017
63.743 (a) introductory text, (b) introductory text and (c) revised; (a)(10) and (d) added 15017
63.744 (e)(12) amended; (e)(13) added; Table 3 redesignated as Table 1; (a) introductory text, (1), (2), (b) introductory text, (1), (c)(1)(ii), (2), (4), (d), (e)(1), (2) (9), (10), (11) and new Table 1 revised 15018
63.745 (f)(2) (g)(4)(viii) and (ix) amended; (g)(2)(iv) removed; (g)(2)(v) and (vi) redesignated as (g)(2)(iv) and (v); (e)(1), (2), (f) introductory text, (1) introductory text, (g)(2)(i), (ii), (iii), new (iv) and (v) revised; (g)(4)(x) added 15019
63.746 (a) introductory text and (b)(4)(v) amended; (b)(1), (3), (4)(i), (ii), (iii)(C), (4)(iv) and (c)(1) revised; (c)(2) and (3) added 15020
63.747 (c)(1), (2) and (e)(2) revised 15021
63.749 (a), (b), (d)(3)(iii)(B), (4)(iii), (f)(3)(ii)(A) and (h)(3)(i) revised 15021
63.750 (b)(2), (e)(2) amended; (c)(1), (e)(1), (g)(3)(ii), (9)(i), (i)(1), (2)(iii), (j) introductory text, (1), (3), (k) introductory text, (1), (l)(4) and (n)(3) revised; (i)(2)(iv) and (o) added 15021
63.751 (b)(6)(ii)(A) and (iii)(A)(2) introductory text amended; (b)(6)(iii) introductory text, (D), (c)(1), (2) and (d) revised 15023
63.752 (b)(1), (e)(1)(ii), (6) and (f) introductory text revised; (d)(4) removed 15023
63.753 (a)(1) introductory text and (d)(2)(i) revised 15023

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63.741—63.759 (Subpart GG) Table 1 added 15024
Appendix A added 15026
63.840—63.859 (Subpart LL) Added 52407
63.1310—63.1335 (Subpart JJJ) Regulation at 61 FR 48229 eff. date corrected to 2–27–98 9944
63.1311 (b), (d) introductory text and (1) introductory text revised 9945
(c) introductory text revised 15315
63.1331 (a) introductory text revised; (a)(10) added 37722
63 Appendix A amended 52418
Appendix A amended 15027
64 Added 54940
68 Interpretation 45134
68.3 Amended 644
68.10 (f) added 645
68.115 (b) introductory text and (2) revised; (b)(3) removed; (b)(4), (5) and (6) redesignated as (b)(3), (4) and (5) 645
68.130 Tables 1 and 2 amended 45132
(a) removed; (b) and (c) redesignated as new (a) and (b) 645
68 Appendix A amended 45132
69.11 (d) added 44416
69.41 Added 61205
70 Guidance availability 63662
70.6 (a)(3)(i)(A), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed 54946
70 Appendix A amended 37516, 45167, 45734, 62951
Regulation at 61 FR 31443 eff. date corrected to 2–9–98 6494
Appendix A amended 13346
71 Guidance availability 63662
71.6 (a)(3)(i)(A), (iii)(C), (c)(5)(iii) and (iv) revised; (c)(5)(v) removed 54947
72 Authority citation revised 55475
72.1 (b) amended 55475
72.2 Amended 55475
72.6 (b)(9) added; (c)(1) and (2) revised 55475
72.7 Revised 55476
72.8 Revised 55477
(b)(2) corrected 66279
72.9 (b)(1), (2), (3), (c)(6), (f)(1)(ii), (g)(1), (6) and (h) introductory text amended 55478
72.13 (a)(1), (5), (6), (7), (9) and (10) removed; (a)(2), (3), (4) and (8) redesignated as (a)(1) through (4) 55478
72.14 Added 55478
72.22 (e) added 55480
72.24 (a)(3), (5), (10) and (11) revised 55480
72.25 (a) amended 55480
72.30 (b)(3) removed; (e) added 55480
72.31 (b) amended 55480
72.32 (b) and (c) revised; (d) added 55480
72.33 (b)(3) amended 55481
72.40 (a)(2), (b)(1), (c) introductory text, (1) and (d)(1) amended 55481
72.41 (b)(3) and (e)(1)(ii) amended 55481
72.43 (b)(2)(iii)(B), (4) and (f)(1)(i) amended 55481
72.44 (g)(1)(i), (2) introductory text, (iii) and (h)(1)(ii) amended 55480
72.51 Amended 55481
72.60 Revised 55481
72.61 (a) and (b)(2)(i) revised; (b)(3) added 55481
72.65 (b)(1)(ii), (iii) and (2) revised; (b)(1)(iv) removed 55482
72.69 (a) revised 55482
72.70 Revised 55482
72.71 Revised 55482
72.72 Heading, introductory text, (b) introductory text, (1)(ii) through (vi), (5)(vi) and (6) revised; (b)(1)(i)(C), (vii), (viii), (xi), (xiii), (5)(ii), (vii), (7) and (8) removed; (b)(1)(ix), (x), (xii) and (xiv) redesignated as (b)(1)(vii) through (x); (b)(5)(i) and (v) amended 55482
72.73 Revised 55483
72.74 Revised 55483
72.80 (a), (b) and (d) through (g) revised 55484
72.81 (c)(1)(ii) amended; (c)(2) revised 55485
72.82 (a) and (d) revised 55485
72.83 (a)(10) amended; (a)(12) and (b) revised; (a)(13), (14), (c) and (d) added 55485
72.85 (a) and (c) revised 55485
72.91 (b)(1)(i), (iii) introductory text, (B), (C), (3), (4) introductory text and (i) amended; (b)(1)(iv) and (4)(iv)

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added; (b)(5), (6) and (7) revised **55485**
72.95 Introductory text amended; (d) added **55485**
73.10 Heading revised; (b)(3) added **55486**
73.70 (c)(3) revised 5735
73.90 (a)(1), (2) and (3) revised; (c)(3) amended **55486**
74.2 Amended **55487**
75 Authority citation revised **55487**
75.67 (a) removed **55487**
77.3 (d)(3), (5) and (6) revised **55487**
77.4 (b)(1), (c)(2)(i), (f)(2)(i), (g)(2)(i)(B), (C) and (k)(2) revised; (k)(1) amended **55487**
(g)(2)(i)(D) correctly removed **66279**
77.6 (a) revised **55487**
78.1 (a) and (b)(1)(v) revised **55488**
78.3 (b)(1), (3)(ii), (c)(6) and (7) amended; (c)(8) and (d)(1) removed; (d)(2), (3) and (4) redesignated as (d)(1), (2) and (3) **55488**
78.4 (c)(1) amended **55488**
(c)(1) corrected **66279**
78.5 (a) amended **55488**
78.7 Removed **55488**
78.11 (a) amended **55488**
78.12 (a)(2) amended **55488**
78.14 (a) introductory text, (10) and (c)(1) amended **55488**
78.15 (c) amended **55488**
78.16 (d)(1) and (2) amended **55488**
78.17 Amended **55488**
78.18 (b) introductory text amended **55488**
78.20 (b) amended **55488**
80 Decision **63853**
80.2 (nn) removed **60135**
(ss) revised **68205**
80.28 (g)(1)(iii) added **68205**
80.30 (g)(1)(i) revised **68205**
80.41 (d) introductory text, tables, (f) introductory text, tables and (m) revised **68205**
80.45 (c)(1)(iv)(B), (D)(*12*), (*13*), (d)(1)(iv)(B) and (f)(1)(ii) revised **68206**
80.65 (d)(2)(iii) removed **60135**
80.67 (f)(2)(ii), (h)(1)(v)(A)(*3*), (*4*) and (B) removed; (h)(1)(v)(A)(*1*) and (*2*) revised **60135**
(e)(4) removed **68207**
80.68 (b)(1)(iv), (c)(3), (13)(v)(H) and (L) revised **68207**
80.69 (f) removed **60135**
80.72 (a) and (c) revised **54558**
80.75 (f)(2)(ii)(A)(*1*), (*2*), (h)(2)(i)(A) and (B) revised; (f)(2)(ii)(A)(*3*), (*4*), (h)(2)(i)(C), (D) and (ii) removed **60135**
80.77 (g)(1)(ii) removed **60136**
(g)(2)(iv)(B) revised **68207**
80.78 (a)(6) revised **60136**
(a)(1)(v)(C) revised **68207**
80.79 (c) introductory text and (1) revised; (c)(3) added **68207**
80.91 (e)(1)(iii) revised; (f)(2)(ii) added **68207**
80.94 Added **45563**
80.101 (b)(3), (f)(3), (4) and (g)(3) revised; (g)(8) and (j) added **68207**
80.104 (a)(2)(xi) added **68208**
80.128 (d)(2) revised **60136**
80.129 (d)(3)(v) revised **60136**
80.158 (a)(5) removed; (a)(6) through (10) redesignated as (a)(5) through (9) **60001**
80.171 (a)(5) removed; (a)(6) through (12) redesignated as (a)(5) through (11) **60001**
81 Attainment status determinations **51604**
Authority citation revised 7274
81.1 (a) revised; (c), (d) and (e) added 7274
81.300—81.356 (Subpart C) Authority citation revised 7274
81.300 (a) amended 7274
81.301 Amended 2728
Regulation at 63 FR 2728 withdrawn 12652
81.302 Amended 2729, 9948
Regulation at 63 FR 2729 withdrawn 12652
81.303 Amended **60011**
Amended 2730
Regulation at 62 FR 60011 eff. date corrected to 2-13-98 7290
Regulation at 63 FR 2730 withdrawn 12652
81.304 Amended 2733
Regulation at 63 FR 2733 withdrawn 12652
81.305 Amended **65030**
Amended 2734, 15312
Regulation at 63 FR 2734 withdrawn 12652

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81.306 Amended **68195**
Amended 2741
Regulation at 63 FR 2741 withdrawn 12652
81.307 Amended 2742
Regulation at 63 FR 2742 withdrawn 12652
81.308 Amended 2742
Regulation at 63 FR 2742 withdrawn 12652
81.309 Amended 2743
Regulation at 63 FR 2743 withdrawn 12652
81.310 Amended 2743
Regulation at 63 FR 2743 withdrawn 12652
81.311 Amended 2744
Regulation at 63 FR 2744 withdrawn 12652
81.312 Amended 2746
Regulation at 63 FR 2746 withdrawn 12652
81.313 Amended 2747
Regulation at 63 FR 2747 withdrawn 12652
81.314 Amended 2748, 11847
Regulation at 63 FR 2748 withdrawn 12652
81.315 Amended **45171, 55178, 64736**
Amended 2749
Regulation at 63 FR 2749 withdrawn 12652
81.316 Amended 2751, 13345
Regulation at 63 FR 2751 withdrawn 12652
81.317 Amended 2753
Regulation at 63 FR 2753 withdrawn 12652
81.318 Regulation at 62 FR 28637 withdrawn **40281**
Amended **55177, 61247**
Amended 2754, 14626
Regulation at 62 FR 61247 eff. date corrected to 2-10-98 6664
Regulation at 63 FR 2754 withdrawn 12652
81.319 Amended **64286**
Amended 2758
Regulation at 63 FR 2758 withdrawn 12652
81.320 Corrected: CFR correction **61916**
Amended 2760
Regulation at 63 FR 2760 withdrawn 12652
81.321 Amended 2760
Regulation at 63 FR 2760 withdrawn 12652
81.322 Amended 2761
Regulation at 63 FR 2761 withdrawn 12652
81.323 Amended 2761
Regulation at 63 FR 2761 withdrawn 12652
81.324 Amended 2763
Regulation at 63 FR 2763 withdrawn 12652
81.325 Amended 2765
Regulation at 63 FR 2765 withdrawn 12652
81.326 Amended 2766
Regulation at 63 FR 2766 withdrawn 12652
81.327 Amended 2768
Regulation at 63 FR 2768 withdrawn 12652
81.328 Amended 2770
Regulation at 63 FR 2770 withdrawn 12652
81.329 Amended 2771
Regulation at 63 FR 2771 withdrawn 12652
81.330 Amended 2772
Regulation at 63 FR 2772 withdrawn 12652
81.331 Amended **35972**
Amended 2773
Regulation at 63 FR 2773 withdrawn 12652
81.332 Amended 2773
Regulation at 63 FR 2773 withdrawn 12652
81.333 Amended 2774
Regulation at 63 FR 2774 withdrawn 12652
81.334 Amended 2776
Regulation at 63 FR 2776 withdrawn 12652
81.335 Amended 2777
Regulation at 63 FR 2777 withdrawn 12652
81.336 Regulation at 62 FR 28638 withdrawn **40281**
Amended **61247**
Amended 2778, 14626
Regulation at 62 FR 61247 eff. date corrected to 2-10-98 6664
Regulation at 63 FR 2778 withdrawn 12652
81.337 Amended 2780
Regulation at 63 FR 2780 withdrawn 12652

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81.338 Amended **46210**
Amended 2782
Regulation at 63 FR 2782 withdrawn 12652
81.339 Amended 2783
Regulation at 63 FR 2783 withdrawn 12652
81.340 Amended 2784
Regulation at 63 FR 2784 withdrawn 12652
81.341 Amended 2784
Regulation at 63 FR 2784 withdrawn 12652
81.342 Amended 2785
Regulation at 63 FR 2785 withdrawn 12652
81.343 Amended **62698**
Amended 2786
Regulation at 63 FR 2786 withdrawn 12652
81.344 Amended **44088**
Amended 2788, 8133
Regulation at 63 FR 2788 withdrawn 12652
81.345 Amended **38217**
Amended 2792
Regulation at 63 FR 2792 withdrawn 12652
81.346 Amended **41283, 41870**
Amended 2793
Regulation at 63 FR 2793 withdrawn 12652
81.347 Amended **61241**
Amended 2793
Regulation at 63 FR 2793 withdrawn 12652
81.348 Amended 2796, 12012
Regulation at 63 FR 2796 withdrawn 12652
81.349 Amended 2798
Regulation at 63 FR 2798 withdrawn 12652
81.350 Amended **39448**
Amended 2799
Regulation at 63 FR 2799 withdrawn 12652
81.351 Amended 2800
Regulation at 63 FR 2800 withdrawn 12652
81.352 Amended 2801
Regulation at 63 FR 2801 withdrawn 12652
81.353 Amended 2801
Regulation at 63 FR 2801 withdrawn 12652
81.354 Amended 2801
Regulation at 63 FR 2801 withdrawn 12652
81.355 Amended 2802
Regulation at 63 FR 2802 withdrawn 12652
81.356 Amended 2803
Regulation at 63 FR 2803 withdrawn 12652
82 Revocation notice 1927
Determination 6008
Notice of acceptability 9151
82.4 (r)(2) revised; interim 4363
82.30 (a) revised **68046**
82.32 (e) heading, (3), (4), (5) and (i) added; (e)(1) and (h) revised **68046**
82.34 Heading and (a) revised; (b) amended; (d) added **68047**
82.36 (a)(2) and (b) revised; (a)(3) and (7) revised **68047**
82.38 (a) and (b)(1)(iii) revised **68048**
82.40 (a)(2)(i) revised **68048**
82.30——82.42 (Subpart B) Appendix C added **68048**
Appendix D added **68052**
Appendix E added **68053**
Appendix F added **68055**
82.250—82.270 (Subpart H) Added 11096
85 Heading and authority citation revised **67736**
Authority citation revised 14635
85.1403 (c)(1)(iii)(B) introductory text, (C) introductory text and (1)(iv) revised; (c)(1)(iii)(C)(*6*) removed; (c)(1)(iii)(D) added 14635
85.1515 (c) revised 964
85.1603 (b), (c) and (d) revised **67736**
85.1604 (a) revised **67736**
85.1606 Introductory text revised **67736**
86 Authority citation revised **44875, 47119**
Authority citation revised 7719
National Low Emmission Vehicle Program finding 11374
86.1 (b)(1) table and (2) table amended **47119**
(b)(1) table amended **54715**
(b)(1) table and (4) table amended 965
86.001–23 (a) through (b)(1), (3) through (e)(1) and (f) through (m) revised **54720**

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86.001–30 (a)(4)(iv)(A) through (9) revised **54720**
86.004–2 Added **54720**
86.004–11 Added **54721**
86.004–15 Added **54722**
86.004–21 Added **54724**
86.004–25 Added **54725**
86.004–28 (c) and (d) revised **54726**
86.004–30 (a)(3), (4)(i), (ii) and (iv)(A) through (12) revised **54727**
86.004–38 Added **54728**
86.004–40 Added **54729**
86.094–8 (c) revised **47120**
86.094–9 (a)(1)(i) introductory text, (ii) introductory text, (iii) and (c) revised **47120**
86.094–11 (b)(1) introductory text revised **47120**
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended **44875**
86.094–17 (i) revised 7719
86.094–26 (a)(2), (b)(2)(i) and (ii) amended **44875**
86.096–8 (c) revised **47120**
86.096–11 (a) introductory text and (c) revised **47120**
86.096–30 (a)(23) and (24) added 965
86.097–1 Redesignated as 86.099–1 965
86.098–3 Revised **54716**
86.098–10 (a)(1)(i)(C)(*2*), (*3*), (ii)(C)(*2*), (*3*), (iii)(C)(*2*), (iv)(C)(*2*), (v)(C)(*2*) and (vi)(C)(*2*) amended **54716**
86.098–11 (a)(3)(ii) and (4)(iii) introductory text amended **54716**
86.098–15 Added **54716**
86.098–23 (a), (b)(1), (3), (4)(i), (ii), (c), (d), (e)(1), (2), (f) through (l), (m)(2)(i) and (iv) revised; (m)(1) amended **54717**
86.098–30 (a)(4)(iv)(A) through (12) revised **54719**
86.099–1 Redesignated from 86.097–1 and revised 965
86.099–11 (a)(3)(ii) amended; (a)(4)(iii) introductory text revised **54720**
86.101 (c) revised 965
86.113–94 (b)(2) table and (3) table revised **47120**
86.119–90 (b)(3) revised; (b)(8) added **47121**
86.144–94 (c)(8)(ii)(B) revised **47122**
86.402–98 Added 11849
86.406–78 (d) revised 11849
86.518–78 (c) revised 11849
86.529–98 Added 11849
86.884–7 (a)(2)(i), (3) and (4) revised **47122**
86.884–8 (c) revised **47122**
86.884–9 (b)(2)(i) through (iv) and (c)(1) revised **47122**
86.884–10 (a)(8) revised **47123**
86.884–13 (b)(6)(ii) and (iii) revised **47123**
86.884–14 Revised **47123**
86.1008–90 (a)(1)(iii) added **47123**
86.1008–96 (a)(1) revised **47123**
86.1008–2001 (a)(1)(iii) added **47123**
86.1111–87 (a)(4) redesignated as (a)(5); new (a)(4) added **47123**
86.1310–90 (b)(1)(iv)(C), (3)(v), (vi), (b)(6) introductory text and (7)(iv) revised **47124**
86.1311–94 (b)(3) revised **54730**
86.1312–88 (a) revised **47124**
86.1313–91 (b)(2) revised **47125**
86.1313–94 (b)(2) revised **47125**
86.1313–98 Added **47126**
86.1316–90 (b)(1) revised; (f) added **47126**
86.1316–94 (b)(1) revised; (f) added **47126**
86.1319–84 (d)(3) revised; (d)(8) added **47127**
86.1319–90 (d)(3) revised; (d)(8) added **47127**
86.1321–90 (a) and (b)(3) revised **47128**
86.1321–94 (a) and (b)(3) revised **47128**
86.1322–84 (b)(3) revised **47128**
86.1323–84 (b)(3) revised **47129**
86.1324–84 (c) revised **47129**
86.1325–94 (c) revised **47129**
86.1327–90 (b), (f)(1), (2) introductory text and (i) revised **47129**
86.1327–94 (b), (f)(1), (2) introductory text and (i) revised **47129**
86.1327–96 (b), (f)(1), (2) introductory text and (i) revised **47130**
86.1327–98 Added **47130**
86.1330–84 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added **47131**
86.1330–90 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added **47131**
86.1333–90 (c), (d) introductory text, (d)(1), (2) and (e)(2) revised; (d)(3) and (4) removed **47131**
86.1334–84 (a)(2) revised **47131**
86.1335–90 Revised **47131**

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86.1337–90 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed **47132**
86.1337–96 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed **47133**
86.1338–84 Revised **47133**
86.1339–90 Revised **47134**
86.1341–90 (b), (c) and (d) revised; (e) through (h) removed **47134**
86.1341–98 Added **47135**
86.1342–90 (h)(2)(i) through (vii) removed; (i) added **47135**
86.1342–94 (e) through (h) revised; (i) added **47135**
86.1343–88 (b) introductory text revised; (b)(2)(i) through (v) ans (b)(2)(ii) through (vi); new (b)(2)(i) added **47135**
86.1344–94 (e)(22) revised **54728**
86.1701–97 Redesignated as 86.1701–99 966
86.1701–99 Redesignated from 86.1701–97: (a) and (c) revised; (d) added 966
86.1702–97 Redesignated as 86.1702–99 966
86.1702–99 Redesignated from 86.1702–97: (b) amended 966
86.1703–97 Redesignated as 86.1703–993 967
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86.1704–97 Redesignated as 86.1704–99 967
86.1704–99 Redesignated from 86.1704–97 967
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86.1705–99 Redesignated from 86.1705–97: heading, (a) introductory text, (2), (3) and (b) through (g) revised 967
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86.1709–97 Redesignated as 86.1709–99 979
86.1709–99 Redesignated from 86.1709–97: heading, (b)(1)(i), (iii)(B) and (c) revised; tables amended; (e) added 979
86.1710–97 (c)(7) corrected **45289**
Redesignated as 86.1710–99 983
86.1710–99 Redesignated from 86.1710–97: amended; (a) introductory text and (c)(9) added; (a)(1), (3)(i), (iii)(A), (B), (4)(i), (iii)(A), (B), (5)(ii), (b)(4), (c)(1), (2), (6), (7), (8), (d), (e)(2) and (4)(ii) revised 983
86.1711–97 Redesignated as 86.1711–99 985
86.1711–99 Redesignated from 86.1711–97: (b) removed 985
86.1712–97 Redesignated as 86.1712–99 985
86.1712–99 Redesignated from 86.1712–97: (a)(2)(iii), (b)(1) and (3)(vi) revised 985
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86.1723–97 Redesignated as 86.1723–99 986
86.1723–99 Redesignated from 86.1723–97: revised 986
86.1724–97 Redesignated as 86.1724–99 986
86.1724–99 Redesignated from 86.1724–97: (b) introductory text revised; (b)(2) added 986
86.1725–97 Redesignated as 86.1725–99 986
86.1725–99 Redesignated from 86.1725–97: (d) added 986

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90.107 (h) added....42643
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93.100—93.128 (Subpart A) Revised....43801
112 Petition denial....54508
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131.33 Added....41183
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157 Grant of exemption....8577
159 Added....49388
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180 Technical correction....56089
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180.1 (k) revised; (o) added....10720
180.4 Revised....10720
180.106 Revised....2164
180.108 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added....2164
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180.110 Revised **49924**
180.111 Existing text designated as (a)(1); (a) heading added; new (a)(1) amended **66023**
(a)(2) introductory text, (i), (ii), (iii) and (3) amended redesignated from 185.3850 existing text **66025**
180.142 (a) introductory text (1), (2), (b) introductory text, (1) introductory text, (i), (ii), (2) and (c) through (k) redesignated as (a)(1) introductory text, (i), (ii) (2) introductory text, (i) introductory text, (A), (B), (ii), and (3) through (11); (a) heading, (12), and new (b) added **46907**
180.145 (c) removed; (a) and (b) redesignated as (a)(1) and new (c); (a) heading revised; new (c) heading added **64301**
180.153 (a) and (b) redesignated as (a)(1) and (c); (a) heading and new (c) heading added 2165
(a)(2) introductory text, (i) introductory text, (A) through (D) and (ii), (3) introductory text, (i) introductory text, (A) through (D) and (ii) redesignated from 185.1750 introductory text, (a) introductory text, (1) through (4), (b), 186.1750 introductory text, (a) introductory text, (1) through (4) and (b) 2167
180.173 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.175 Revised **64293**
180.183 Revised 2165
180.200 Existing text designated as (a); (a) heading and (b) added 162
180.205 (b) table amended **45754**
Amended **66023**
180.206 Existing text designated as (a); (a) heading added; (a) table amended 2165
180.209 (b) table amended 5737
180.213 Revised 2165
180.213a Removed 2166
180.242 (a) and (b) redesignated as (a)(1) and (2); (a)(1) heading added; (a)(1) table amended 2166
(b) text amended 9441
180.254 (a) heading added; (a) table amended; (b) removed 2166
180.275 (b) redesignated as (c); (a) heading, (b) and new (c) heading added **65376**
180.277 Removed **66023**
180.284 Regulation at 62 FR 7684 eff. date corrected to 1–6–98 416
180.288 Revised **66024**
180.293 Existing text designated as (a)(1); (a) heading and (b) added; (a)(2) designated from 185.2650 text **49931**
180.294 (a) table amended; (b) redesignated as (c); (a) heading and new (c) heading added 2167
180.301 (a) heading added; (b) revised 4586
180.314 Amended; existing text designated as (a); new (a) heading added **66024**
180.330 (a) amended; (b) redesignated as (c); (a) heading and new (c) heading added **66024**
180.332 Amended; existing text designated as (a) **66024**
(a) table transferred in part from 186.250 ..... **66025**
180.353 Existing text redesignated as (a); new (a) heading and (b) added **45747**
180.356 (b) table amended 9427
180.361 (b) table amended 10546
180.364 (b) amended **42927**
180.368 (a) amended **66024**
180.379 (a) existing text designated as (a)(1); new (a)(1) table amended; (a)(2) introductory text, (i), (ii) and (iii) redesignated from 185.1300 (a) introductory text, (1), (2) and (3); (b) redesignated as (c); (a) heading and new (c) heading added **63026**
(a)(3) redesignated from 186.1300 existing text **63027**
(a)(3) table amended **66024**
180.380 Revised **38474**
(a) revised 7308
180.381 (b) table amended 5739
180.383 Existing text redesignated as (a); new (a) heading and (b) added **39974**

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180.395 Heading revised; existing text designated as (a); (a) heading and (b) added 10543
180.407 Revised **44595**
Regulation at 62 FR 44595 eff. date corrected to 2–10–98 6665
180.408 Revised **66024**
180.410 Heading, (b) and (c) revised; (a) heading added; (a) table transferred in part from 185.800 table and 186.800 table **47568**
180.412 (b) added **44565**
180.414 Revised **45741**
(a)(4) added; (b) table amended **54789**
(b) table amended **65036**
180.416 Existing text designated as (a); (b) added **66014**
180.417 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (a)(2); (b) added **46894**
180.418 Revised **63235**
(a)(2) added **63243**
180.421 (a) and (b) redesignated as (a)(1) and (2); (a) heading and new (b) added; (a)(1) table transferred in part from 186.3200(a) table; (a)(2) table transferred in part from 185.3200 table and 186.3200(b) table **49937**
(b) table amended **61447**
180.422 Revised **63001**
(a)(3) added **66025**
180.425 (b) table amended 13130
180.430 Revised 1377
180.433 Existing text designated as (a); (a) heading and (b) added **36684**
(b) table amended **61645**
180.434 (b) table amended **43291**
180.435 Revised **63001**
180.436 (a) existing text designated as (a)(1); new (a)(1) table revised; (b) redesignated as (a)(2) **63018**
(a)(3) introductory text, (i), (ii) and (iii) and (4) introductory text, (i), (ii) and (iii) redesignated from 185.1250(c) introductory text (1), (2) and (3) and 186.1250(c) introductory text, (1), (2) and (3) **63019**
180.438 Revised **36671**
(b) added **56102**
(a) revised **63010**
Regulation at 62 FR 63010 eff. date corrected to 1–28–98 ..... **64048**
(a)(1) table amended 7299
180.440 Revised **62961**
180.442 (b) table amended **46900**
(a) revised; (b) table amended **62969**
(b) table amended 1379, 2163
Regulation at 61 FR 29678 eff. date corrected to 2–9–98 6495
180.443 (b) introductory text revised; (b) table amended **36678**
Introductory text revised; table amended **42690**
(b) table amended **65369**
(b) table amended 10545
180.445 Revised 9435
180.448 Existing text designated as (a); new (a) heading and (b) added **62992**
(b) table amended **68216**
180.449 Revised **44095**
(b) table amended **56088**
180.452 Existing text designated as (a); heading and (b) added **66020**
180.460 Revised 7305
180.462 Existing text redesignated as (a); (b) added **44558**
180.466 Existing text designated as (a); (a) heading and (b) added **37521**
Revised **63034**
180.472 (b) added **36697**
(a) table amended **65367**
(a) table amended 14371, 14378
180.474 (b)(1) table corrected **56095**
180.482 (a) heading added; (b) introductory text revised; (b) table amended **35689**
(b) amended **62985**
(b) table amended 13128
180.487 Revised **54783**
180.493 (b) introductory text revised; (b) table amended **39961**
Corrected **47560**
(b) table amended 8139
180.495 (a) heading and (b) heading added; (b) table amended **54778**
180.501 Added **61647**
180.503 (b) introductory text revised; (b) table amended **39956**
180.507 (a) added **36690**

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180.509 Added **42684**
180.510 Added **39967**
180.511 Added **40741**
180.512 Added **41292**
Removed 13128
180.513 Added **44571**
180.514 Added **49163**
180.515 Added **51037**
180.516 Added **56082**
Heading and (a) revised 13128
180.517 Added **62979**
180.518 Added **63669**
180.1001 (b)(1) amended **41286**
180.1020 Existing text designated as (a); (b) added **63863**
180.1163 Regulation at 62 FR 58332, eff. date corrected to 2-17-98 7720
180.1164 (c) added **60661**
180.1176 Regulation at 61 FR 67473 eff. date corrected to 1-6-98 417
180.1177 Regulation at 61 FR 67473 eff. date corrected to 1-6-98 417
180.1180 (a) heading and (b) revised; (c) and (d) removed 9430
180.1181 Added **41877**
180.1182 Added **43657**
180.1183 Added **43653**
180.1184 Added **44582**
180.1185 Added **44575**
180.1186 Added **44579**
180.1187 Added **46884**
Revised 682
180.1188 Added **46887**
Revised 679
180.1189 Added **61639**
180.1190 Added **52509**
180.1191 Added **56105**
180.1195 Added 14363
185 Authority citation revised **66025**
185.100 Removed 2167
185.350 Removed 2167
185.600 Removed 2167
185.800 Table transferred in part to 180.410(a) table; removed **47568**
185.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed **63019**
185.1300 (a) introductory text, (1),(2) and (3) redesignated as 180.379(a)(2) introductory text, (i), (ii) and (iii); removed **63026**
185.1580 Removed **63001**
185.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(2) introductory text, (i) introductory text, (A) through (D) and (ii); removed 2167
185.1850 Removed **38474**
185.2650 Existing text designated as 180.293(a)(2); removed **49931**
185.2750 Removed 2167
185.3200 Table transferred in part to 180.421(a)(2) table; removed **49937**
185.3225 Removed **63035**
185.3625 Removed **61647**
185.3765 Removed **63010**
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185.3850 Existing text redesignated as 180.111 (a)(2) introductory text, (i), (ii), (iii) and (3); removed **66025**
185.3900 Removed **64294**
185.4700 Removed **45754**
185.5450 Removed **63002**
185.5550 Removed 2167
186 Authority citation revised **66025**
Technical correction 1379
186.100 Removed 2167
186.250 Table transfered in part to 180.332(a) table **66025**
Removed **66026**
186.350 Amended **66026**
Removed 2167
186.450 Amended **66026**
186.600 Removed **66026**
186.800 Table transferred in part to 180.410(a) table; removed **47568**
186.1000 (a) table amended **66026**
186.1075 (a) table amended **66026**
186.1250 (c) introductory text, (1), (2) and (3) redesignated as 180.436(a)(4) introductory text, (i), (ii) and (iii); removed **63019**
186.1300 Existing text redesignated as 180.379(a)(3) **63026**
186.1350 Table amended **66026**
186.1400 Removed **54790**
186.1450 Removed **46907**
186.1650 Revised **66026**

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186.1750 Introductory text, (a) introductory text, (1) through (4) and (b) redesignated as 180.153 (a)(3) introductory text, (i) introductory text, (A) through (D) and (ii) 2167
186.1850 Removed 38474
186.1950 Removed 2167
186.2000 Table amended 66026
186.2400 Removed 66026
186.2550 Removed 2167
186.2700 (a) table amended 66026
186.2750 Removed 2167
186.2950 Table amended 66026
186.3050 Removed 66026
186.3200 (a) table transferred in part to 180.421(a)(1) table; (b) table transferred in part to 180.421(a)(2); removed 49937
186.3225 Removed 63035
186.3250 Revised 66026
186.3350 Removed 66026
186.3375 Removed 2167
186.3450 Removed 66026
186.3550 (a) table amended 66026
186.3750 Table amended 66026
186.3765 Removed 63010
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186.4000 Removed 66026
186.4700 Removed 45754
186.4750 Removed 2167
186.4800 Removed 66026
186.4975 Revised 66026
186.5000 Table amended 66026
186.5350 Removed 2167
186.5450 Removed 66026
186.5550 Removed 2167
186.5650 Removed 44595
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228.15 (d)(6) revised 46149
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244 Regulation at 61 FR 69034 eff. date corrected to 12-30-97 683
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245 Regulation at 61 FR 69034 eff. date corrected to 12-30-97 683
Clarification 5739
247.2 (d) added 60973
247.3 Amended; eff. 11-13-98 60973
247.12 (f) and (g) added; eff. 11-13-98 60974
247.13 Existing text designated as (a); (b) through (e) added; eff. 11-13-98 60974
247.14 Existing text designated as (a); (b) added; eff. 11-13-98 60974
247.15 (c) and (d) added; eff. 11-13-98 60974
247.16 (f) and (g) added; eff. 11-13-98 60974
247.17 Revised; eff. 11-13-98 60974
258 Effective date confirmation 51606
258.21 (d) added 40713
258.23 (e) added 40713
258.60 (b)(3) added 40713
260.31 (d) added 59290
Regulation at 62 FR 59290 withdrawn 67736
261 Appendix IX amended 55347, 63463
264.15 (b)(4) revised 64656
264.73 (b)(6) revised 64656
264.1030 (d) added 52641
(b)(3) and (c) revised; (e) added 64656
264.1031 Amended 64657
264.1033 (a)(2) revised 64657
264.1050 (g) added 52641
(b)(3), (c) and (f) revised 64657
264.1060 Revised 64657
264.1062 (b)(2) and (3) revised 64658
264.1064 (g)(6) and (m) revised 64658
264.1080 (e) added 52642
(b)(1) and (c) revised 64658
(f) and (g) added 11131
264.1082 (b), (c)(2)(ix)(A), (B), (3) and (4)(ii) revised 64658
264.1083 (a)(2) and (b)(1) revised 64658
264.1084 (c)(2)(iii) introductory text, (B), (f)(3)(i)(D)(4) and (iii) revised; (e)(4), (f)(4) and (j)(2)(iii) added 64659
264.1085 (b)(2), (d)(1)(iii), and (2)(i)(B) revised; (e)(2)(iii) added 64659
264.1086 (c)(2), (4)(i), (d)(2), (4)(i) and (g) introductory text revised 64659
264.1087 (c)(3)(ii) and (7) revised 64660
264.1089 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added 64660
265.15 (b)(4) revised 64661
265.73 (b)(6) revised 64661
265.1030 (c) added 52642

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(b)(3) revised; (d) added 64661
265.1033 (a)(2) and (f)(2)(vi)(B) revised 64661
265.1050 (f) added 52642
(b)(3) and (e) revised 64661
265.1060 Revised 64662
265.1062 (b)(2) and (3) revised 64662
265.1064 (g)(6) and (m) revised 64662
265.1080 (e) added 52642
(b)(1) and (c) introductory text revised 64662
(f) and (g) added 11139
265.1081 Amended 64662
265.1082 Revised 64662
265.1083 (b), (c)(2)(i), (ix)(A), (B), (3) and (4)(ii) revised 64663
265.1084 (a)(3)(v) and (b)(3)(v) added; (a)(2), (3)(ii)(B), (iii) introductory text, (A), (F) introductory text, (G) introductory text, (I), (iv), (4)(iv), (b)(1), (3)(ii)(B), (iii) introductory text, (F) introductory text, (G) introductory text, (iv), (8)(iii), (9)(iv) and (d)(5)(ii) revised 64664
265.1085 (c)(2)(iii) introductory text, (B) and (f)(3)(i)(D)(4) revised; (e)(4), (f)(4) and (j)(2)(iii) added 64666
265.1086 (b)(2), (d)(1)(iii) and (2)(i)(B) revised; (e)(2)(iii) added 64666
265.1087 (c)(4)(i), (d)(4)(i) and (g) introductory text revised 64666
265.1088 (c)(3)(ii) and (7) revised 64667
265.1090 (a), (b)(1)(ii)(B) and (f)(1) revised; (j) added 64667
265 Appendix VI revised 64668
268.39 (c) revised 37699
268.40 (g) amended 45572
268.44 (a) and (h) revised; (m) added; (p) removed 64509
268.48 (a) table amended 45572
270.14 (b)(5) revised 64671
271 State hazardous waste management program authorizations 43111, 47947, 49163, 52951, 61175, 62262, 62521, 67572
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271.1 (j) Table 1 amended 45572
272.501 Added 2898
272.951 Added 67583
272.2201 Added 49169
272 Appendix A added 49170
Appendix A amended 67584
Appendix A amended 2899
281 State underground storage tank program authorizations 36698, 49620
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282.102 Added 4593
282 Appendix A amended 4594
300 Notice 42414, 62524
300 Appendix B amended 35447, 35690, 35974, 36997, 37522, 41292, 46211, 48950, 48951, 49445, 49621, 50446, 50518, 50874, 52033, 53247, 55179, 56106, 65224, 67737, 68216
Appendix B amended 4398, 9949, 11337, 11376
302.6 (c) revised 13475
310 Revised; interim 8286
355.40 (a)(2)(vi) revised 13475
372.65 Regulation at 61 FR 38605 eff. date corrected to 2–10–98 6668
403 Authority citation revised 38414
403.8 (c) and (f)(6) revised 38414
403.11 (b)(1)(i)(A) and (B) revised 38414
403.12 (i)(4) redesignated as (i)(5); (i)(3) revised; new (i)(4) added 38414
403.18 Revised 38414
712.30 Regulation at 61 FR 55787 eff. date corrected to 12–30–97 684
716.120 Regulation at 61 FR 55787 eff. date corrected to 12–30–97 684
721.325 Removed 51608
721.370 Removed 51608
721.390 Removed 51608
721.400 Removed 51608
721.405 Added 3419
721.415 Removed 51608
721.460 Removed 51608
721.470 Removed 51608
721.490 Removed 51608
721.524 Added 3419
721.526 Added 3419
721.528 Added 3419
721.537 Added 3419
721.538 Added 3420

NOTE: Boldface page numbers indicate 1997 changes.

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721.539 Added 3420
721.567 Added 3420
721.637 Added 3421
721.640 Added 3421
721.641 Added 3421
721.643 Added 3421
721.655 Added 3421
721.658 Added 3421
721.700 Removed 9443
721.720 Added 3422
721.723 Added 3422
721.977 Added 3422
721.980 Added 3422
721.981 Added 3422
721.1105 Added 3422
721.1155 Added 3422
721.1175 Removed **51608**
721.1575 Removed **51608**
721.1660 Regulation at 61 FR 52295 eff. date corrected to 12–30–97 673
721.1705 Added 3423
721.1805 Added 3423
721.1907 Added 5742
721.1930 Added 3423
721.2050 Removed **51608**
721.2082 Added 3423
721.2091 Added 3423
721.2094 Added 3424
721.2122 Added 3424
721.2145 Added 3425
721.2170 Removed **51608**
721.2222 Added 3425
721.2225 Regulation at 61 FR 33374 eff. date corrected to 2–10–98 6668
721.2280 Added 3425
721.2345 Added 3425
721.2350 Added 3425
721.2535 Added 3425
721.2650 Removed **51608**
721.2750 Removed **51608**
721.2805 Added 3426
721.2815 Removed **35692**
Regulation at 62 FR 35692 eff. date corrected to 12–30–97 686
721.2840 Removed 9443
721.2860 Removed 9443
721.2880 Removed 9443
721.2925 Added 3426
721.2930 Removed **51608**
721.2940 Removed 9443
721.3020 Removed **35691**
Regulation at 62 FR 35691 eff. date corrected to 12–30–97 685
721.3028 Removed **51608**
721.3040 Removed **35691**
Regulation at 62 FR 35691 eff. date corrected to 12–30–97 685
721.3060 Correctly removed **40742**
721.3085 Added 3426
721.3120 Removed **51608**
721.3155 Added 3426
721.3200 Removed 9443
721.3240 Removed 11609
721.3254 Regulation at 61 FR 33375 eff. date corrected to 2–9–98 6496
721.3465 Added 3426
721.3485 Added 3427
721.3488 Added 3427
721.3550 Added **59583**
(a) corrected **63035**
721.3565 Added 3427
721.3640 Removed **51608**
721.3764 Revised **42692**
721.3870 Removed **51608**
721.4020 Removed **51608**
721.4085 Added 3427
721.4090 Added 3427
721.4095 Added 3428
721.4158 Added 3428
721.4220 Removed **51608**
721.4257 Added 3428
721.4259 Added 3428
721.4400 Removed **51608**
721.4462 Added 3428
721.4464 Added 3428
721.4465 Added 3428
721.4467 Added 3429
721.4468 Added 3429
721.4469 Added 3429
721.4476 Added 3429
721.4589 Added 3429
721.4640 Removed 9443
721.4780 Removed **51608**
721.4790 Removed **51608**
721.4800 Removed **51608**
721.4885 Added 3430
721.5225 (a)(2)(v) revised **42692**
721.5255 Added 3430
721.5279 Added 3430
721.5280 Added 3430
721.5281 Added 3430
721.5547 Added 3431
721.5549 Added 3431
721.5645 Added 3431
721.5650 Added 3431
721.5705 Removed **51608**
721.5708 Added 3431
721.5725 Added 3432
721.5730 Added 3432

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Correctly removed 9441
721.5910 Removed 51608
721.5913 Added 3432
721.5990 Removed 9443
721.5995 Added 3432
721.6045 Added 3432
721.6075 Added 3432
721.6078 Added 3433
721.6165 Added 3433
721.6170 Added 3433
721.6193 Added 64740
721.6197 Added 3433
721.6475 Added 3433
721.6477 Added 3434
721.6485 Added 3434
721.6490 Added 3434
721.6495 Added 3434
721.6500 Removed 51608
721.6505 Added 3434
721.6580 Removed 51608
721.6640 Removed 51608
721.6700 Removed 51608
721.6720 Removed 51608
721.6740 Removed 51608
721.6760 Removed 51608
721.6780 Removed 51608
721.6840 Removed 51608
721.6880 Removed 51608
721.6940 Removed 51608
721.6960 Removed 51608
721.7040 Removed 51608
721.7046 (a)(1) revised 42692
721.7080 Removed 51608
721.7100 Removed 51608
721.7140 Removed 51608
721.7180 Removed 51608
721.7210 (a)(1) revised 42692
721.7240 Removed 51608
721.7300 Removed 51608
721.7320 Removed 51608
721.7340 Removed 51608
721.7370 Removed 51608
721.7375 Added 3434
721.7378 Added 3434
721.7400 Removed 51608
721.7420 Removed 51608
721.7460 Removed 51608
721.7540 Removed 51608
721.7560 Removed 51608
721.7580 Removed 51608
721.7660 Removed 51608
721.7680 Removed 51608
721.7740 Removed 51608
721.7760 Removed 51608
721.8075 Removed 51608
721.8079 Added 3435
721.8095 Added 3435
721.8125 Removed 9443
721.8265 Removed 51608
721.8275 Removed 51608
721.8290 Removed 51608
721.8300 Removed 51608
721.8325 Removed 51608
721.8335 Removed 51608
721.8350 (a)(2)(iv) added 42692
721.8375 Removed 51608
721.8400 Removed 51608
721.8425 Removed 51608
721.8475 Removed 51608
721.8525 Removed 51608
721.8550 Removed 51608
721.8575 Removed 51608
721.8600 Removed 51608
721.8650 Removed 51608
721.8780 Added 3435
721.9005 Added 3435
721.9010 Added 3436
721.9080 Added 3436
721.9240 Removed 51608
721.9260 Removed 9443
721.9265 Added 3436
721.9270 Added 3436
721.9285 Added 3436
721.9320 Removed 51608
721.9360 Removed 51608
721.9420 Removed 51608
721.9488 Added 3437
721.9492 Added 3437
721.9497 Added 3437
721.9499 Added 3437
721.9503 Added 3437
721.9510 Removed 51608
721.9515 Added 3437
721.9525 Removed 51608
721.9545 Added 3437
721.9575 Added 3438
721.9576 Added 3438
721.9577 Added 3438
721.9635 Added 3438
721.9657 Added 3438
721.9659 Added 3438
721.9662 Added 3439
(a)(2)(i) corrected 9441
721.9664 Added 3439
721.9668 Added 9450
721.9717 Added 3439
721.9780 Removed 9443
721.9825 Added 3439
721.9830 Added 3440
721.9840 Added 3440
721.9870 Removed 51608
721.9928 Added 3440

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721.9940 Removed **51608**
721.9962 Removed **9443**
721.9975 Removed **51608**
799.1 (d) added **43824**
799.9135—799.9780 (Subpart H) Added **43824**

Proposed Rules:

1—799 (Ch. I) **3686**
9 ..... **46937, 50152, 61482**
22 ..... **9464**
50 ..... **55201**
51 ..... **41138, 44926, 49184, 55202, 64532, 66841**
52 ..... **35756, 36249, 37007, 37172, 37175, 37526, 37527, 37832, 38949—38951, 39199, 39202, 39795, 40493, 40783, 41002, 41004, 41325, 41326, 41905, 41906, 42079, 42087, 42088, 42221, 43133, 43134, 43139, 43140, 43679, 43681, 43684, 43959, 44104, 44247, 44429, 44928, 44929, 45199, 46228, 46229, 46451, 46938, 47399, 47784, 48026, 48027, 48033, 48586, 48587, 48972, 49184, 49188, 49462, 49648, 49649, 50545, 50890, 52071, 52959, 53277, 53588, 53589, 53997, 54409, 54598, 54601, 55203, 55368, 55544, 59311, 60052, 60318, 61483, 61942, 61948, 62739, 63047, 63687, 64329, 64543, 64794, 65046, 65634, 66040, 66042, 66043, 66046, 66576, 66843, 67034, 67035, 67320, 68246**
.....456, 714, 1091, 1804, 1935, 2194, 3687, 3693, 4205, 4206, 5339, 5484, 5489, 5834, 6143, 6504, 6505, 6690, 6691, 8156, 8894, 11386, 11387, 11643, 11862—11865, 13154, 13385, 13587, 13810, 13811, 14673, 15116, 15118, 15344
55 ..... **38047, 45604**
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58 ..... **59840**
59 ..... **67784**
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60 ..... **36948, 44929, 44931, 45369, 46453, 61065, 61483, 67788**
..... 2194, 13587
61 ..... **45369, 61483**
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62 ..... **37008, 41906, 45777, 54601, 60817, 65635, 67601**
.....2195, 3509, 5834, 11643, 13154, 13589
63 ..... **38053, 44608, 44614, 45369, 46804, 49052, 54410, 60566, 60674, 61065, 61483, 65049, 66049, 67788**
..... 2194, 6288, 14182, 15034, 15345
70 ..... **36039, 37533, 46451**
..... 7109, 14392
73 ..... 714, 5773
74 ..... **50456**
79 ..... **47400, 60675**
80 ..... **37338, 60052, 63918**
81 ..... **38237, 41326, 41906, 42717, 44104, 45199, 46229, 46234, 46238, 48972, 52071, 52674, 55203, 62739, 63687, 66578, 68246**
.....2804, 11865, 13385, 14673, 15344
82 ..... **36428**
.....5491, 5906
85 ..... **66841, 67818**
86 ..... **38053, 44754, 46937, 49649, 50152, 61482**
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89 ..... **50152, 61482, 67818**
90 ..... **42645**
.....3950
91 ..... **42645**
112 ..... **63812**
122 1536
123 1536
131 ..... **38512, 42160**
..... 10799
136 ..... **51621**
141 ..... **36100, 42221, 43492, 59388, 59486, 61953**
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142 ..... **36100, 42221, 59388, 59486, 61953**
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144 ..... **67035**
.....5907
146 ..... **67035**
.....5907
170 ..... **47544**
180 ..... **35760, 38513, 45377, 51397, 51994**
..... 3057, 5907, 9494, 10352, 10722, 13156
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186 ..... **35760**
.....3057, 5907
194 ..... **58792, 64334**
.....3863
258 ..... **40714**
260 ..... **37183, 47401, 59332**
261 ..... **37183, 41005, 47401, 47402**
262 ..... **62740**
263 ..... **62740**
264 11200
265 11200
268 ..... **60465**
271 ..... **67601**
272 ..... **67601**
273 ..... **37183, 47401**

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TITLE 40 *Proposed Rules:—Con.*

281 ..... **41326, 42222**
300 ..... **38239, 40029, 40033, 40784, 43684, 44430, 44619, 46938, 47619, 47784, 50450, 52072, 52074, 52674, 52961, 60058, 60199, 61715**
.....3061, 6507, 10582, 11340, 13385, 13816, 15125, 15346
372 ..... **39797**
..... 6691
439 ..... **42720**
440 2646
441 ..... **66182, 67323**
..... 7359
444 ..... 6392, 8386
445 ..... 6426, 8387
721 ..... **42090, 42732, 43297, 64795**
..... 9169, 11643
745 ..... **44621, 51622**
799 ..... **37833, 50546, 63299, 67036, 67038, 67466**
..... 5915, 14866, 14869, 14871, 15128, 15130

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 51—Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51-1—51-99)

51-2.4 (a)(4)(C) removed; (b) amended **66529**
51-4.3 (b)(6) and (c)(1) revised **66529**
51-4.4 (c) revised **66529**
51-6.12 (c) revised **66529**
51-6.14 Revised **66529**

Chapter 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)

60-1 Authority citation revised **44188**
60-1.2 Amended **66971**
60-1.3 Amended **44188, 66971**
60-1.4 (d) amended **66971**
60-1.5 (b)(1), (2), (c) and (d) amended **66971**
60-1.7 (a)(1), (2), (3), (4), (b)(1) and (2) amended **66971**
60-1.8 Revised **44188**
60-1.9 (a) through (d) amended **66971**
60-1.10 Amended **66971**
60-1.12 Added **44188**
(a) and (d) amended **66971**
60-1.20 Heading, (a) and (d) revised; (e), (f) and (g) added **44189**
60-1.21 Amended **66971**
60-1.23 (b) amended **66971**
60-1.24 (c)(3), (4), (5), (d) heading, (1) and (2) amended **66971**
60-1.25 Amended **66971**
60-1.26 Revised **44190**
(a)(1)(vii), (c)(1) and (3) amended **66971**
60-1.27 Revised **44191**
60-1.28 Amended **66971**
60-1.29 (a) and (b) amended **66971**
60-1.30 Revised **44191**
60-1.31 Revised **44192**
60-1.32 Revised **44192**
60-1.34 (a)(4) added **44192**
60-1.40 (c) amended **66971**
60-1.41 (b) amended **66971**
60-1.42 (a) revised **44192**
(a) amended **66971**
60-1.43 Revised **44192**
60-1.46 Amended **66971**
60-60 Removed **44192**
60-999.2 Table revised (OMB numbers) **66971**

Chapter 101—Federal Property Management Regulations (Parts 101-1—101-99)

101-11 (Subpart B) Regulation at 61 FR 41001 eff. date extended to 12-31-98 ..... **58922**
101-17—101-21 (Subchapter D Appendix) Amended; interim **42070**
101-37.100 Amended **43472**
101-37.600—101-37.610 (Subpart 101-37.6) Added **43472**
101-42—101-49 (Subchapter H Appendix) Regulation at 62 FR 2022 eff. date extended to 1-15-99 ..... **68217**
Temporary Reg. H-30 added; eff. to 2-21-2000 8352
101-43.000 Regulation at 62 FR 41353 eff. date extended to 12-31-98 ..... **68217**
101-43.600—101-43.603 (Subpart 101-43.6) Regulation at 62 FR 41353 eff. date extended to 12-31-98 ..... **68217**

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101-43.4801 Regulation at 62 FR 41354 eff. date extended to 12-31-98 68217
101-46 Revised 5893
101-46.201-2 Regulation at 62 FR 41355 eff. date extended to 12-31-98 68217

Chapter 105—General Services Administration (Parts 105-1—105-999)

105-60 Revised 60016
105-60.402 Revised 64741
105-60.402-1 Revised 64741
105-60.402-2 Revised 64741
105-71.126 (a), (b) introductory text and (1) revised 45939, 45944
105-72.306 (a), (b) and (c) revised 45939, 45944

Chapter 301—Travel Allowances (Parts 301-1—301-99)

301-8.3 (b)(1)(ii) revised; (c) removed; (d) redesignated as (c); (a)(1), (b)(1)(i) and new (c) amended 42928
Chapter 301 Appendix A revised 63798
Appendix A corrected 68217
Appendix A corrected 8352, 8353

Chapter 302—Relocation Allowances (Parts 302-1—302-99)

302-10.200 Heading and (b) revised 5742
302-10.201 (d) and (e) revised 5743
302-10.202 Heading, (a), (b) and (c) revised 5743
302-11 Authority citation revised 14637
302-11 Appendixes A through D amended 14637

Proposed Rules:

51-2 50547
51-4 50547
51-5 3530
51-6 50547
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51-8 3530
51-9 3530
51-10 3530
101-1 47179
101-16 42444
101-46 47179

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TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

51 Added **53564**
51.8 OMB number pending **53567**
51.10 OMB number pending **53567**
51.23 OMB number pending **53567**
51.25 OMB number pending **53568**
57.1104 (c)(1) amended **51374**
57.1105 Revised **51374**
57.1106 Revised **51374**
61.30—61.38 (Subpart B) Authority citation revised 9950
61.30 Revised; interim 9950
61.33 Revised; interim 9950
61.34 Revised; interim 9950
61.35 Revised; interim 9950
61.36 Revised; interim 9950
61.37a (b)(3) concluding text designated as (b)(4); (a), (b) introductory text and (4) revised; interim 9950
61.38 Revised; interim 9951

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400 Technical correction 4595, 11417
400.202 Amended **59098**
405 Technical correction 4595
405.502 (g) and (h) revised; interim 689
405.535 (b) amended **59098**
409 Technical correction 11417
410 Technical correction 4595, 11417
410.32 (e)(1) corrected **52034**
Revised **59098**
410.33 Added **59099**
410.34 (d) introductory text and (4) revised **59100**
410.37 Added **59100**
410.56 Added **59101**
410.160 (b)(5) and (6) added **59101**
411 Technical correction 4595, 11417
411.15 (a)(1) revised; (k)(6), (7) and (8) added **59101**
411.370 Added 1655
411.372 Added 1655
411.373 Added 1656
411.375 Added 1656
411.377 Added 1657
411.378 Added 1657
411.379 Added 1657
411.380 Added 1657
411.382 Added 1657
411.384 Added 1657
411.386 Added 1657
411.387 Added 1657
411.388 Added 1657
411.389 Added 1657
412 Technical correction 11417
412.2 (c)(5) revised 6868
412.108 Corrected **52034**
413 Authority citation revised 310, 15737
Technical correction 11417
413.30 (a)(1), (2) and (c) amended 15737
413.40 (c)(2) revised 6868
413.92 Added 310
413.106 (f)(1) removed; (c)(5), (f)(2), (3) and (4) redesignated as (c)(6), (f)(1), (2) and (3); new (c)(5) added 5139
Regulation at 63 FR 5139 eff. date corrected to 4-10-98 15315
413.134 (b)(1), (ii)(A), (f)(1) and (2) heading revised; (g)(4) redesignated as (g)(5); (f)(2) introductory text and new (g)(4) added 1382
414 Technical correction 4595
414.20 Revised **59101**
414.21 Added **59101**
414.22 (b)(4) added **59102**
414.32 (b) revised **59102**
414.48 (b) revised **59102**
414.62 Added **59102**
417.470 (a) revised; interim **63673**
417.472 (h) added; interim **63673**
418 Technical correction **52034**
424 Decision **59818**
Technical correction 11417
433.68 (e)(2)(iv) amended **53572**
440 Technical correction 11417
440.70 (d) revised 310
441.10 (h) through (k) redesignated as (i) through (l); new (h) added 310
441.15 (d) added 310
441.16 Redesignated as 441.17; new 441.16 added 310
(i)(1)(i) revised 10731
441.17 Redesignated from 441.16 310
483.20 (d) through (f) redesignated as (k) through (m); (b)

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TITLE 42 Chapter IV—Con.

and (c) revised; new (d) through (j) added **67211**
483.315 (Subpart F) Added **67212**
485 Technical correction 11417
488 Technical correction 11417
489 Technical correction 11417
489.1 (e) added 312
489.10 (e) and (f) added 312
489.23 Added **56111**
489.28 Added 312
489.53 (a)(14) added **56111**
489.60—489.73 (Subpart F) Added 313
489.67 (a)(1) revised 10731
498 Technical correction 11417

Proposed Rules:

50 9499
84 ..... **53998**
400—499 (Ch. IV) **55773**
..... 2920, 7359, 10732, 13590
401 14506
403 14506
405 14506
410 14506
411 ..... 1659, 11649, 14506
413 14506
414 ..... **59267**
416 ..... **66726**
..... 7743
421 13590
424 ..... 1659, 2926, 11649
435 ..... 1659, 11649
447 14506
455 ..... 1659, 11649
466 14506
473 14506
482 ..... **66726**
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485 ..... **66726**
..... 7743
489 ..... **66726**
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1001 ..... **63689, 65049**
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1005 14393
1006 14393

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

11.18 (a)(4) and (5) revised **60459**
11.33 (a) amended **60459**
11.40 (a) amended **60459**
20 Revised **53720**
36.2 (h) revised **52510**

Chapter I—Bureau of Reclamation, Department of the Interior (Parts 200—499)

418 Revised **66467**

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1862.0–3—1862.6 (Subpart 1860) Removed **59821**
2090 Authority citation revised **51376, 52036**
2091.8 Redesignated from 2111.4 and revised **52036**
2093.0–3—2093.5–1 (Subpart 2093) Removed; eff. 10–31–97 ..... **51376**
2110 Removed **52034**
2111.4 Redesignated as 2091.8 ..... **52034**
2130 Removed **52034**
2760 Removed **62267**
3715.0–5 Amended **59822**
3715.7–1 (a)(2)(ii) revised **59822**
3744.1—3744.2 (Subpart 3744) Removed **65378**
3745.1 (Subpart 3745) Removed **65378**
3811.2–7 Removed **65378**
3824.1 (Subpart 3824) Removed **65378**
3825.0–3—3825.1 (Subpart 3825) Heading revised; nomenclature change **65378**
5040 Revised 13132
5511.1–2 Removed; eff. 10–31–97 ..... **51377**
5511.1–4 Removed; eff. 10–31–97 ..... **51377**
5511.2–1 (a) and (b) designation removed; eff. 10–31–97 ..... **51377**
5511.2–5 Removed; eff. 10–31–97 ..... **51377**
5511.4 (b)(2) removed; eff. 10–31–97 ..... **51377**
8372 Notice 6075
8560 Notice 6075

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Proposed Rules:

4 ..... **51822, 64544, 68244**
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2620 14874
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3106 ..... 1936, 9171
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TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

11 Authority citation revised 1066
11.43 Revised; interim 1066
11.44 Removed; interim 1067
11.48 Revised; interim 1067
11.61 Revised; interim 1068
11.62 Revised; interim 1069
11.63 Revised; interim 1069
11.64 Revised; interim 1069
11.65 Revised; interim 1069
59 Authority citation revised **55715**
59.1 Amended **55715**
59.24 (a) revised **55715**
60 Authority citation revised **55716**
60.2 (a) revised **55716**
60.3 (f) revised **55716**
61 Appendixes A(1), A(2) and A(3) amended **66029**
64 Authority citation revised **55716**
64.3 (a)(1) table amended; (b) revised **55716**
64.6 Table amended **54387, 59291, 60663, 62268**
Table amended 6870, 6872, 9951, 13544
65 Authority citation revised **55717**
65.4 Tables amended **51786, 54388, 54391, 61248, 67738, 67741**
Tables amended; interim **51789**
Table amended; interim 3040, 10145, 14824, 15096
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65.14 Revised **55717**
67.11 Flood elevation determinations **51792, 54393, 61249, 67743**
Flood elevation determinations 3044, 10150, 14827, 15099
70 Authority citation revised **55718**
70.1 Revised **55718**
70.3 (a) revised **55719**
70.4 (a) and (b) revised **55719**
70.5 (c) revised **55719**
75 Authority citation revised **55719**
75.1 Revised **55719**
75.10 Revised **55719**
75.11 (a)(4), (5) and (7) revised **55719**
75.13 (c) Revised **55719**
206 Waiver **52952**
206.226 (b)(3) revised 5897

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61 ..... **52304, 53589**
67 ..... **51822, 54410, 61259, 67819**
..... 3063, 10168, 14874, 15133
206 ..... **62540, 62542**
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TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

Subtitle A Clarification **67688, 67689**
74.44 Corrected **51377**
144 Clarification **67688, 67689**
146 Authority citation revised **66961**
Clarification **67688, 67689**
146.136 (Subpart C) Added; interim **66961**

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205.40 Removed **64303**
205.41 Removed **64303**
205.42 Removed **64303**
205.43 Removed **64303**
232 Removed **64303**
233.120 Removed **64303**
235.111 Removed **64303**
235.112 Removed **64303**
235.113 Removed **64303**
250 Removed **64303**

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251 Removed **64303**
255 Removed **64303**
256 Removed **64303**
257 Removed **64303**

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1110.1 Revised **66826**
1110.2 Amended **66826**
1110.13 (a), (b) and (c) revised **66826**
1156 Added 6876
1180—1199 (Subchapter E) Heading revised **66530**

Chapter XII—Corporation for National and Community Service (Parts 1200—1299)

Chapter XII Heading revised 4598
1201 Revised 4598

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1301.31 OMB number 2313
1304.20 (b) heading, (1), (c)(4) and (f)(1) amended; OMB number 2313
1304.21 (b)(1) amended 2313
1304.22 OMB number 2313
1304.23 OMB number 2313
1304.40 (a)(2) and (3) amended; OMB number 2313
1304.41 (b) amended; OMB number 2314
1304.50 (b)(3), (d)(1)(iii), (e)(3) and Appendix A amended; (d)(1)(ix) removed; (d)(1)(x), (xi) and (xii) redesignated as (d)(1)(ix), (x) and (xi); OMB number 2314
1304.51 (a)(1)(iii) amended; OMB number 2314
1304.52 (j)(1) amended; OMB number 2314
1304.60 OMB number 2314
1305.2 (k) through (r) redesignated as (l) through (s); (g), (i) and new (m) revised; new (k) added 12657
1305.3 (b) and (d) amended; OMB number 2314
(a) revised; (b) through (f) redesignated as (c) through (g); new (b) added 12657
1305.4 (a) amended; (b) revised 12657
1305.6 (b) revised; (c) amended 12658
1305.7 (c) revised 12658
1306.30 (c) amended 2314

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1611 Appendix A revised 11376
1630 Revised **68224**
Authority citation corrected 1532
1630.2 (e) and (f) corrected 1532
1630.3 (c) introductory text corrected 1532
1630.12 (b) corrected 1532
1643 Added **67749**
Technical correction 9310

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272 ..... **62124**
273 ..... **62124**
274 ..... **62124**
275 ..... **62124**
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304 ..... 187, 14402
307 ..... 10173, 14402
1215 12068
1302 ..... **65778**
1602 11393
1644 8387
2507 12068

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.03–15 (h)(4) added **67532**
2 Authority citation revised **67514**
2.01–25 (a)(1)(ix) added; (a)(2) revised **67514**
8 Revised **67532**
31 Authority citation revised **67514**
31.01–3 Revised **67536**
31.40–30 Added **67514**

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31.40–40 (b) revised **67514**
56 Policy statement 10547
69.27 (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (b)(3) added **67536**
71 Authority citation revised **67514**
Policy statement 10777
71.15–5 Revised **67536**
71.75–13 Added **67514**
71.75–20 (a) revised **67514**
91 Authority citation revised **67514**
91.15–5 Revised **67536**
91.60–30 Added **67514**
91.60–40 (b) revised **67515**
107 Authority citation revised **67515**
107.205 Revised **67536**
107.415 Added **67515**
114.400 (b) amended **64305**
115 Authority citation revised **67515**
115.925 Added **67515**
116.439 (e) amended **64305**
116.500 (h) amended **64305**
117.130 (b) amended **64305**
117.150 (a) amended **64305**
117.175 (f)(4) amended **64305**
117.200 (a)(1) through (4) amended **64305**
117.210 (c) amended **64305**
118.320 (c)(1) amended **64305**
121.710 Amended **64306**
122.604 (a) introductory text, (d) and (e) introductory text amended **64306**
126 Authority citation revised **67515**
126.480 Added **67515**
153.12 Introductory text revised **67537**
154.19 (a) introductory text revised **67537**
175 Authority citation revised **67515**
175.400 Amended **64306**
Corrected **65739**
175.540 (d) added **67515**
176 Authority citation revised **67515**
176.925 Added **67515**
176.930 Revised **67515**
177.500 (j)(1) amended; (o)(1) revised **64306**
178.330 (a)(4)(v) amended **64306**
180.130 (b) amended **64306**
180.210 (d) amended **64306**
185.604 (a) introductory text, (d) and (e) introductory text amended **64306**
189 Authority citation revised **67515**
189.60–30 Added **67515**
189.60–40 (b) revised **67515**

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

201 Authority citation revised 9157
201.2 Amended 9157
201.21 Removed 9157
201.85 Amended 9157
201.86 Added 9157
201.87 Amended 9157
201.186 (Subpart U) Removed 9158
221.1 (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2); (b) amended 6880
221.3 (f), (k) and (t)(2) removed; (t)(1) redesignated as (t); (g) through (j) and (l) through (w) redesignated as (f) through (u) 6880
221.7 (b)(1)(ii) amended; (b)(1)(v) and (2)(iv) removed 6880
221.11 (a) introductory text and (1) amended 6880
221.13 (a)(1) amended 6880
221.13 (a)(1)(iii) removed; (a)(1)(iv) redesignated as (a)(1)(iii); (a)(3) amended 6881
221.15 (c)(4)(i) amended 6881
221.17 Amended 6881
221.19 Amended 6881
221.21—221.37 (Subpart C) Removed 6881
221.61 Note amended 6881
382 Revised 3828
383 Removed **61648**

Chapter IV—Federal Maritime Commission (Parts 500—599)

514.7 (g)(1) revised **63463**
586 Petition denial **54396**
586.2 Suspended **61649**

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10 ..... **55548, 60122, 61585**
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TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

Chapter I Order 56111
0.291 (d) revised 1035
0.408 Revised (OMB numbers) 52257
0.441 Revised 51797
0.443 Revised 51797
0.453 Introductory text revised 51797
0.455 Introductory text revised 51797
0.460 (a) revised 51797
0.461 (a), (h) and (i) redesignated as (a)(1), (i) and (j); (a)(2) and new (h) added; (d)(1), (3), (g) introductory text, (3), concluding text, new (i), (j), (k) introductory text and (3) revised 51797
0.467 (a)(1) table and (2) revised 8140
1 Deadline establishment 2170
Order 10153
1.47 (b) and (d) revised; (h) added 1035
1.720 Introductory text and (h) revised; (j) added 1035
1.721 (a)(5) through (8) revised; (a)(9) through (14), (c) and (d) added 1035
1.722 Revised 1036
1.724 (a), (b) and (c) revised; (f) through (j) added 1037
1.725 Revised 1037
1.726 Revised 1037
1.727 (b) thorugh (e) revised; (g) and (h) added 1038
1.729 Revised 1038
1.730 Removed 1039
1.731 Heading and (a) revised 1039
1.732 (a) through (d) and (f) revised; (h) added 1039
1.733 (a) introductory text, (2), (4), (5), (6) and (b) through (e) revised; (f), (g) and (h) added 1039
1.734 (c) revised; (d) added 1040
1.735 (b), (d), (e) and (f) revised 1040
1.736 Added 1041
1.767 Regulation at 60 FR 15726 eff. 6–13–96 51378
1.1105 Table amended 1041
1.1157 (d) added 59825
1.1159 (e) added 59825
1.1162 (c)(1) and (2) added 59825
1.1307 (b)(4) introductory text correctly revised 61448
1.1402 (c) revised; (i) through (m) added 12024
1.1403 Heading revised; (e) added (effective date pending) 12025
1.1404 (g)(12) and (h) through (k) redesignated as (g)(13) and (k) through (n); new (g)(12), (h), (i) and (j) added (effective date pending) 12025
1.1409 (e) revised; (f) added (effective date pending) 12025
1.1417 Added (effective date pending) 12026
1.1418 Added (effective date pending) 12026
1.2101 Revised 2340
1.2102 (a) and (b) revised; note added 2340
(a)(10) added; (b)(4) introductory text revised 6103
Correctly revised 10780
1.2103 (a) revised; (d) added 2341
1.2104 (d) and (g) revised 2341
1.2105 Revised 2341
1.2107 (b) and (c) revised 2342
(c) corrected 12659
1.2108 (b) and (c) revised 2343
1.2109 (a), (b) and (c) revised 2343
1.2110 (e)(4)(i) revised 55356
Revised 2343
(f)(2) corrected 12659
1.2111 (c) and (d) revised; (e) added 2346
1.2112 Added 2347
1.2113 Added 2348
2.106 Table amended 6674
5.70 Added 55529
15.205 (d)(5) added 58658
15.209 (g) revised 58658
15.242 Added 58658
20.3 Amended 2637
20.18 Revised 2637
20.20 Added 63871
21.113 Heading revised; (d) added 55530
21.959 (a)(2) revised 2348
21.960 (b)(4) and (d)(1) revised 2348
22.137 (a)(1) and (2) added; (b) amended 10344

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22.369 Heading revised; (d) added **55530**
22.903 Revised **63872**
23.20 (f) added **55530**
24 Deadline establishment 2170
Order 10153
24.18 Added **55531**
24.304 (a)(2) revised 2348
24.309 (b) and (f) revised 2348
24.439 (a)(3) added 10344
24.704 (a)(2) revised 2349
24.709 (b)(9) added **55356**
24.711 (b) and (c) revised 2349
24.712 (b) added 2349
(c) correctly designated as (b) 12659
24.716 (c) and (d) revised 2349
24.717 (c) revised 2349
24.839 (a)(1) and (2) added 10344
25.113 (b) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.115 (c) amended (effective date pending) **64172**
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25.130 (d) amended (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.131 (b) and (j) revised (effective date pending) **64172**
Regulation at 62 FR 64172 eff. 2-9-98 6497
25.137 Added (effective date pending) **64172**
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25.142 (d) and (e) added **59295**
25.143 Corrected **51378**
25.145 Added (OMB number pending) **61456**
25.201 Amended **59296**
25.203 (i) added **55531**
25.204 (g) added **61457**
25.210 (b) and (c) through (j) redesignated as (c) and (e) through (l); new (b) and new (d) added **61457**
25.212 (c) correctly revised **51378**
25.259 Added **59296**
25.260 Added **59296**
26.105 Added **55531**
27.62 Added **55532**
27.203 (b) revised 2349
27.209 (d) revised 2349
27.324 (a)(3) added; (b)(3) revised 10344
36.125 (a)(5) revised 2124
36.601 (c) revised 2124
36.612 (a) introductory text revised 2124
36.613 (a) introductory text amended 2124
36.621 (a)(1) and (4) introductory text amended; (a)(2), (3), (4)(ii)(A) and (C) revised 2124
36.622 (a) introductory text and (b) introductory text revised 2125
36.631 (a) through (d) revised 2125
42.10 Removed **59604**
42.11 (a) revised; (c) removed **59604**
43.51 Regulation at 61 FR 59200 eff. 10-1-97 ..... **51378**
(d) revised **64751**
43.61 (c) added (effective date pending) **64752**
Regulation at 62 FR 64752 eff. 2-9-98; corrected 5743
Regulation at 62 FR 45761 eff. 1-23-98 8578
52 Order **55762**
Waiver **64759**
52.7 (b) revised; (f) added **55180**
52.11 (c) and (g) revised; (h) and (i) added **55180**
52.12 Added **55180**
52.13 (b) revised; (c) through (g) added **55181**
52.15 (d) and (e) added **55182**
52.16 Added **55183**
54 Agency practice and procedure rules 162
54.101 (a) introductory text and (b) revised; (a)(1) amended 2125
54.201 Heading revised; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added 2125
54.301 Revised 2126
54.303 Revised 2128
54.307 (a)(4) revised 2128
54.400 (a) and (d) revised 2128
54.401 (d) amended 2128
54.403 (d) added 2128
54.500 Revised 2128
54.501 Revised 2129
54.502 Revised 2129
54.503 Revised 2129
54.504 Heading, (a), (b) heading, (1), (2) introductory text and

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(v) revised; (b)(3) and (c) redesignated as (b)(4) and (d); new (b)(3) and new (c) added; new (b)(4) amended 2129
54.505 (b)(4) and (f) added; (d) removed 2130
54.506 Added 2130
54.507 (c) amended **56120**
(e) and (f) revised; (g)(4) amended 2130
(a) amended 3832
54.511 (b) and (c) revised; (d) added 2130
54.517 (a) revised 2131
54.518 Added 2131
54.519 Added 2131
54.603 Heading, (b)(1) introductory text, (2) and (3) revised 2131
54.604 Added 2131
54.605 (d) revised; (e) added 2131
54.609 (a) revised; (c) added 2131
54.619 (b) and (d) revised 2132
54.623 (c) amended **56120**
(e) revised 2132
(a) amended 3832
54.625 Added 2132
54.703 (b) and (c) amended 2132
54.705 Revised 2132
54.709 (a)(4) revised; (a)(5) added **65038**
(a) introductory text and (3) revised 2132
61.20 Regulation at 60 FR 15726 eff. 6–13–96 ..... **51378**
Revised **59604**
61.21 Regulation at 60 FR 15726 eff. 6–13–96 ..... **51378**
61.22 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
61.58 (e)(1) and (2) correctly redesignated as (f)(1) and (2); (e) reinstated; CFR correction 13133
61.72 (a) introductory text revised **59604**
63.01 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
63.02 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
63.05 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
63.10 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
Revised (effective date pending) **64752**
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63.11 Regulation at 60 FR 15727 eff. 6–13–96 ..... **51378**
Revised (effective date pending) **64753**
Regulation at 62 FR 64753 eff. 2–9–98 5743
63.12 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
Revised (effective date pending) **64753**
Regulation at 62 FR 64753 eff. 2–9–98 5743
63.13 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
Revised (effective date pending) **64754**
Regulation at 62 FR 64754 eff. 2–9–98 5743
63.14 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
Revised (effective date pending) **64754**
Regulation at 62 FR 64754 eff. 2–9–98 5743
63.15 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
63.17 Regulation at 60 FR 15728 eff. 6–13–96 ..... **51378**
(b) revised (effective date pending) **64754**
Regulation at 62 FR 64754 eff. 2–9–98 5743
63.18 Regulation at 60 FR 15729 eff. 6–13–96 ..... **51378**
(e), (h) and (i) revised; (k) added (effective date pending) **64755**
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63.19 Regulation at 60 FR 15732 eff. 6–13–96 ..... **51378**
63.20 Regulation at 60 FR 15732 eff. 6–13–96 ..... **51378**
63.21 Regulation at 60 FR 15732 eff. 6–13–96 ..... **51378**
(a) revised; (e) redesignated as (h); new (e), (f) and (g) added (effective date pending) **64758**
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64 Order **55762**
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Authority citation revised **64758**

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64.703 (a)(2) and (3)(iii) amended; (a)(4) added; eff. 10–1–99 11617
64.709 Added 11617
(e)(2) correctly added 15316
64.710 Added; eff. 10–1–99 11617
64.1001 (b), (c) and (d) revised (effective date pending in part) **64758**
64.1002 Revised (effective date pending) **64758**
64.1150 Regulation at 62 FR 43481 eff. 3–23–98 13798
64.1300 (c) and (d) revised **58686**
68.2 (l)(1) and (2) corrected **54790**
(a)(3), (d) introductory text and (j) revised; (d)(4) added **61654**
68.3 Amended **61654**
68.222 Removed **61664**
68.300 Revised **61664**
68.302 Revised **61664**
68.304 Revised **61667**
68.306 Revised **61667**
68.308 Revised **61671**
68.310 Revised **61682**
68.312 Revised **61689**
68.314 Revised **61690**
68.316 Heading revised **61691**
68.317 Heading revised **61691**
68.318 Revised **61691**
69 Waiver **56120**
69.4 (a) revised; (h)(6) removed **56132**
69.30 (c) revised; (d) added **65622**
69.111 (c) revised **56132**
69.124 Correctly revised **66030**
69.153 (c)(1) and (d) revised; (g) added **56132**
(h) added 2132
69.155 (c) revised **56133**
69.612 (a)(3) amended 2133
69.616 (d) amended 2133
69.619 (b) revised 2133
73 Petition denial **61692**
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73.202 (b) table amended ..... **51799, 51800, 53973, 54791, 55763, 59605, 63674, 63675, 65764—65766, 66030, 66031, 66295, 66530, 66826**
(b) table amended ..... 164, 165, 2350—2352, 3832—3835, 4195, 4398, 5464, 5744, 6077—6079, 7308, 8579—8581, 10346, 11378—11380, 12412, 12413, 13545, 13546
73.606 (b) table amended 6079
73.622 (b) through (h) revised 13552
73.623 (c) through (f) revised 13552
73.625 (c)(5) added 13562
73.1030 (a) redesignated as (a)(1); (a)(2) added **55532**
73.3572 (a)(2) revised 13562
74.24 (j) added **55532**
74.32 Added **55537**
74.706 (d) revised 13563
76.5 (mm)(2) revised; (mm)(3) and (4) added **61031**
76.613 Heading, (b), (c) and (d) revised (effective date pending) **61031**
Regulation at 62 FR 61031 eff. 3–13–98 15103
76.620 Added **61031**
76.701 Regulation at 62 FR 28373 eff. 10–31–97 ..... **61034**
76.702 Regulation at 62 FR 28373 eff. 10–31–97 ..... **61034**
76.800 Added (effective date pending) **61031**
76.802 (a) and (g) revised; (l) added (effective date pending) **61031**
Regulation at 62 FR 61031 eff. 3–13–98 15103
76.804 Added (effective date pending) **61032**
Regulation at 62 FR 61031 eff. 3–13–98 15103
76.805 Added **61033**
76.806 Added **61034**
76.922 Regulation at 62 FR 15127 eff. 9–4–97 ..... **52952**
(b)(5)(i) introductory text revised **53576**
76.934 (h)(5)(i) and (9) revised; (h)(11) added **53576**
78.19 (c) redesignated as (c)(1); (c)(2) added **55533**
78.19 (f) added **55538**
80.21 (f) added **55533**
87.23 (a) redesignated as (a)(1); (a)(2) added **55534**
90.7 Amended **52044**
90.129 (e) revised **55534**
90.153 (a)(1) and (2) added; (b) amended 10345
90.155 (d) revised **52044**
90.177 Introductory text revised; (f) added **55534**

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90.210 (k)(3) revised; (k)(6) added **52044**
90.350—90.363 (Subpart M) Heading revised **52043**
90.350 Amended **52044**
90.353 (d), (e) and (f) revised; (i) added **52044**
90.359 Revised **52044**
90.361 Introductory text and (c)(2)(ii)(B) revised **52044**
90.805 (c) revised 2349
90.812 (a) and (b) revised 2349
95.42 Added **55534**
95.192 (d) added **55535**
95.206 (c) added **55535**
95.405 (d) added **55535**
95.816 (e)(2) redesignated as (d)(5); (c)(6) and (e) revised 2350
Corrected 12659
95.840 Added **55535**
95.1003 (c) added **55536**
97.13 (c)(1) correctly revised **61448**
97.203 (h) added **55536**
97.205 (h) added **55536**
101 Technical correction 14039
101.13 (d) revised 6103
101.15 (c) revised 6103
101.17 Added 6103
101.31 (b)(3) introductory text and (e)(1)(v) revised; (b)(6) added **55538**
(e)(1)(vi) and (vii) revised; (e)(1)(viii) added 10779
101.45 (d) revised 6103
101.51 (a) introductory text revised 6104
101.53 (g) added 6104
(a)(1) and (2) added 10345
101.55 (a) introductory text and (b)(2) revised 6104
101.56 Added 6104
101.57 (a)(1) revised 9448
(a)(1)(ii)(B) corrected 14039
101.63 (a) and (d) revised 6104
101.64 Added 6104
101.103 (i)(1) and (2) added 6105
(b)(3) added 9448
(b)(3) corrected 14039
101.107 Table amended 6105
(a) amended 9448
(a) Footnote 8 corrected 14039
101.109 Table amended 6105
101.113 (a) amended 9448
(a) Footnote 8 corrected 14039
101.115 (c)(2) table amended 6105
101.123 Heading revised; (e) added **55536**
(d) added **55538**
(e) correctly designated **60664**
101.147 (v) redesignated as (v)(1); new (v)(1) revised; (v)(2) added 6105
(a) amended; (u) introductory text revised 9448
(a) Footnote 16 and (u) introductory text corrected 14039
101.803 (a) and (d) amended 9448
(a) Footnote 7 and (d) Footnote 9 corrected 14039
101.1201—101.1209 (Subpart N) Added 6106
101.1209 Corrected 10781

Proposed Rules:

0—199 (Ch. I) 15353
1 ..... **55204, 55375, 60025, 60750, 65780, 66321**
..... 460, 770, 10180, 13610
2 ..... **58932**
15 ..... **52677**
20 ..... **53772, 58700, 60199**
21 ..... **60025, 65780**
..... 770
22 ..... **58700**
24 ..... **55375, 58700, 60750**
..... 770
25 ..... **58932**
..... 11202
26 770
27 770
32 ..... **65053**
36 ..... **59842**
51 9749
52 ..... **54817, 56140, 63301**
53 9749
54 ..... **51622, 65389**
64 ..... **54817, 56140, 63301, 63302**
..... 1943, 9749
73 ..... **51824, 52677, 54006, 54007, 54819, 55561, 58935—58937, 61719—61721, 61953, 63690, 65392, 65781, 65782, 66323, 66324**
..... 193, 194, 2354, 2355, 4206, 6144, 6698, 6699, 7360, 7361, 8606, 10354, 10355, 11400, 11401, 12426, 12427, 13027, 13158, 13612, 13818
74 ..... **52677, 60025, 60750, 65392, 65780**
76 ..... **51824, 52677, 61065**
..... 1943
79 3070
90 ..... **52078, 58700, 60199**

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95 770
95 770
100 11202
101 3075

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular No. 97-03 64912
Small entity compliance guide 64952
Federal Acquisition Circular No. 97-04 9048
Small entity compliance guide 9069
1.106 Table amended (OMB numbers) 9050, 9051
1.201-1 (a) amended 64940
(b)(2) amended 9069
1.402 Amended 64914
2.101 Regulation at 61 FR 41468 confirmed 64914
Amended 64915
4.602 Regulation at 61 FR 67412 confirmed 9050
4.603 Regulation at 61 FR 67412 confirmed; (a) revised 9050
4.703 (b)(3) amended 64915
4.800 Amended 64917
4.803 (a)(42) removed 9052
5.207 Regulation at 61 FR 41468 confirmed 64914
6.001 (a) amended 64917
7.403 Regulation at 61 FR 41468 confirmed 64914
8.002 Regulation at 61 FR 41468 confirmed 64914
8.402 Regulation at 61 FR 41468 confirmed 64914
8.404 (b)(4) amended 64917
8.901—8.904 (Subpart 8.9) Regulation at 61 FR 41468 confirmed 64914
9.103 Regulation at 62 FR 44819 confirmed 9053
9.104 Regulation at 62 FR 44820 confirmed 9053
9.508 Regulation at 61 FR 41469 confirmed 64914
11.001 Amended 9051
12.102 (d)(2) and (3) revised 64917
12.203 Amended 64917
12.206 Amended 64917
12.214 Revised 9054
12.301 (c)(2) amended 64917
12.602 (a) and (b) amended 64917
12.603 Regulation at 61 FR 41469 confirmed 64914
13 Revised 64917
13.103 Regulation at 61 FR 41469 confirmed 64914
13.202 Regulation at 61 FR 41469 confirmed 64914
15.209 (b)(3) revised 9055
15.805-1 Regulation at 61 FR 41469 confirmed 64914
16 Technical correction 1532
16.402-1 (b) introductory text revised 51379
16.500 Regulation at 61 FR 41469 confirmed 64914
16.701 Amended 64926
16.703 (c)(1)(vi) amended 64926
17.200 Regulation at 61 FR 41469 confirmed 64914
17.204 Regulation at 61 FR 41470 confirmed 64914
19.001 Regulation at 62 FR 44820 confirmed 9053
19.201 Regulation at 62 FR 44820 confirmed 9053
19.302 Regulation at 621 FR 44820 confirmed; (d) introductory text amended 9053
(a), (i) and (j) revised; (c)(1), (d)(1)(i), (e)(1), (g)(1), (2) and (h)(4) amended 9055
19.303 Heading and (c) revised 9056
19.502-1 Regulation at 61 FR 41470 confirmed 64914
19.508 Regulation at 62 FR 44820 confirmed 9053
19.601 Regulation at 62 FR 44820 confirmed 9053
19.602-1 Regulation at 62 FR 44820 confirmed 9053
19.602-2 Regulation at 62 FR 44820 confirmed 9053
19.602-3 Regulation at 62 FR 44821 confirmed 9053
19.811-1 (c) introductory text amended 64940
19.1001 Revised 9057
19.1003 Introductory text revised; (a) amended 9057
19.1006 (c)(1)(i) amended 64926
(b)(1) amended 9057

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TITLE 48 Chapter 1—Con.

22.1006 Regulation at 61 FR 41470 confirmed **64914**
22.1300—22.1308 (Subpart 22.13) Heading revised 9058
22.1300 Revised 9058
22.1301 Revised 9058
22.1302 (b) amended 9058
22.1303 (a) introductory text, (b)(1), (2) and (d) amended 9058
22.1304 (a) and (b) amended 9058
22.1305 Amended 9058
22.1306 Amended 9058
22.1307 Introductory text amended 9038
22.1308 (a)(1) introductory text amended; (a)(1)(i) and (b) revised 9058
23.1004 (b) amended 9051
23.1000—23.1005 (Subpart 23.10) Regulation at 62 FR 12697 confirmed 9051
25.402 (b) revised 9060
25.1000 Revised **64930**
25.1002 (c)(2) revised **64930**
29.401–6 (b) introductory text and (c)(1) amended **64930**
30.101 (c) revised 9060
31.109 (f)(3) amended 9061
31.205–6 Regulation at 62 FR 270 confirmed; (p)(1) revised **64931**
(p) revised; interim 9067
31.205–10 (a)(5) revised 9067
31.205–18 (a) amended; (c) and (d) heading revised; (e)(3) added **64932**
31.205–46 (a)(3)(iv) revised **64933**
31.205–52 Revised 9068
32.502–12 (c) amended 9061
32.503–3 (b)(2) amended 9061
32.602 Regulation at 61 FR 41470 confirmed **64914**
32.603 Regulation at 61 FR 41470 confirmed **64914**
32.1103 (a)(1) and (b)(2) amended **64926**
33.101 (b)(1) amended; (c) removed **64933**
33.102 Regulation at 61 FR 41470 confirmed **64914**
33.104 Regulation at 61 FR 41470 confirmed **64914**
(a)(3)(iii) redesignated as (a)(3)(iv); new (a)(3)(iii) added; new (a)(3)(iv)(C) removed; new (a)(3)(iv)(D) redesignated as (a)(3)(iv)(C); new (a)(3)(iv)(B) and (h) revised (a)(4)(ii)(A), (B), (6) and (e) amended **64933**
(h)(5) corrected 1532
33.105 Regulation at 61 FR 41470 confirmed **64914**
34.001 Regulation at 61 FR 41470 confirmed **64914**
36.602–1 (a)(6) correctly removed; (a)(7) correctly redesignated as new (a)(6) **51379**
37.103 Corrected **51379**
37.202 Regulation at 61 FR 41470 confirmed **64914**
38.000 Regulation at 61 FR 41470 confirmed **64914**
39 Regulation at 61 FR 41470 confirmed **64914**
39.002 Amended 9068
39.103 Added 9068
41.202 (c)(1) amended **64926**
42 Heading revised 9062
42.000 Revised 9062
42.001 Revised 9062
42.002 Revised 9062
42.003 Revised 9062
42.101—42.103 (Subpart 42.1) Revised 9062
42.201—42.203 (Subpart 42.2) Revised 9062
42.203 (a) amended **64940**
42.301 Revised 9063
42.302 (a) introductory text, (11) introductory text, (iv), (13), (20), (32), (61) and (63) revised 9063
42.602 (c)(2) and (d) revised 9064
42.603 (a) introductory text and (b)(1) introductory text amended 9064
42.701 Amended 9064
42.703–1 (a) amended; (c) revised 9064
42.703–2 (d) amended 9064
42.704 (a), (b) and (c) revised 9064
42.705–1 (b)(1) revised **64915**
(a) introductory text, (3), (4), (b)(1), (2) and (3) revised 9064
42.705–2 (b)(1) revised **64916**
(a)(2) introductory text, (iv) and (b) revised 9065
42.705–3 (a)(2) revised 9065
42.1001—42.1008 (Subpart 42.10) Removed **64932**
42.1203 (b) and (c) revised; (d), (e) and (f) redesignated as (f), (g)

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and (h); new (d) and new (e) added 64934
(c) corrected 1533
42.1204 (b) through (e) redesignated as (c), (e), (h) and (i); heading, (a) introductory text, (1), (2) introductory text and new (e) revised; new (b), new (d), (f) and (g) added 64935
(g) corrected 1533
43.301 (a)(2)(iii) amended 64926
44.204 (b) amended 9069
45.608–1 Regulation at 61 FR 41471 confirmed 64914
45.608–5 Regulation at 61 FR 41471 confirmed 64914
46.103 (d) revised 9065
46.104 (f) revised 9065
46.502 Amended 9065
46.801 Regulation at 61 FR 41471 confirmed 64914
47.301–3 (c) introductory text amended 9065
47.303–17 (d)(1), (2) and (e) amended 64936
49.002 (a) amended 64927
49.501 Amended 64927
51.103 Regulation at 61 FR 41471 confirmed 64914
52.101 (e)(2)(i) amended 64927
52.102 Revised 64927
52.102–1 Removed 64927
52.102–2 Removed 64927
52.204–5 Regulation at 61 FR 67413 confirmed 9050
52.204–6 Regulation at 61 FR 67413 confirmed; amended 9050
52.212–1 Amended 9050
52.212–4 Amended 9052
52.212–5 Regulation at 61 FR 41471 confirmed 64914
Amended 9052, 9058
52.213–1 Revised 64927
52.213–2 Introductory text amended 64928
52.213–3 Introductory text amended 64928
52.213–4 Added 64928
Amended 9052, 9058
52.215–2 Amended 9054
52.216–7 Amended 64916
Amended 9065
52.216–13 Amended 64916
Corrected 1533
Amended 9065
52.216–15 Amended 64916
Amended 9065
52.219–1 Amended 9069
52.222–35 Amended 9059
52.222–37 Amended 9059
52.222–48 Regulation at 61 FR 41471 confirmed 64914
52.223–5 Regulation at 62 FR 12697 confirmed 9051
Amended 9052
52.230–1 Amended 9061
52.230–2 Amended 9054
52.230–3 Amended 9054
52.230–5 Amended 9061
52.233–2 Regulation at 61 FR 41471 confirmed 64914
52.233–3 Regulation at 61 FR 41472 confirmed 64914
52.239–1 Regulation at 61 FR 41472 confirmed 64914
52.244–6 Amended 9059
52.247–64 (f) corrected 51379
52.252–1 Revised 64928
52.252–2 Revised 64929
53 Technical correction 648
53.204–2 (a) amended 64940
53.209–1 (d) amended 64937
53.213 (a) through (e), (f)(1) and (2) amended 64929
Corrected 1532
53.214 (c) amended 64940
53.215–1 (c) amended 64940
53.219 Regulation at 61 FR 67413 confirmed 9050
53.242–1 Amended 64935
53.243 Amended 64929, 64936
53.245 Regulation at 61 FR 41472 confirmed 64914
53.249 (a)(2), (3) and (4) amended 64940
53.301–33 Revised 64941
53.301–279 Revised 64942
53.301–294 Regulation at 61 FR 67413 confirmed 9050
53.301–1406 Revised 64938
53.301–1435 Revised 64943
53.301–1436 Revised 64947
53.301–1437 Revised 64951

Chapter 2—Department of Defense (Parts 200—299)

201.107 Added 11528
201.201–1 (c) revised; (d) amended 11528
201.304 Amended 11528
202.101 Amended 11528

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204.805 Amended 11528
204.7300—204.7304 (Subpart 204.73) Added 15317
209.104–1 (g)(iii) added; interim 11851
(g)(i)(A) introductory text and (*1*) revised; interim 14837
209.104–70 (c) added; interim 11851
(a) revised; interim 14837
209.403 Amended 11528
209.405–2 Added; interim 14837
209.409 Added; interim 14837
212.301 Amended 11528
(f)(iv) added 15317
212.503 (a)(xii) added; interim 11851
213.005 Added; interim 11851
214.205–5 (d) amended 11528
215.608 (a)(1) amended 11528
215.805–5 (a)(1)(A)(*1*) and (*2*) amended 11528
216.203–4 (d)(xvi) amended 11529
216.301 Removed 11529
216.301–3 Removed 11529
216.403–70 Removed 11529
216.404 Revised 11529
216.404–1 Redesignated as 216.405–1 11529
216.404–2 Redesignated as 216.405–2 11529
216.405–1 Redesignated from 216.404–1 11529
216.405–2 Redesignated from 216.404–2 11529
216.405 Added 11529
216.501 (a)(i) and (ii) amended 11529
216.505 Revised 11529
216.506 Revised 11529
217.103—217.174 (Subpart 217.1) Revised 11529
217.207 Added; interim 11851
217.503—217.504 (Subpart 217.5) Revised 11530
219.702 (a)(i) and (ii) amended 14640
219.703 (a) introductory text revised 11530
219.7104 (b) and (d) amended 11530
222.1304 Added; interim 11851
223.404 (b)(3) introductory text and (4) revised 11531
225.000–70 (c), (j) and (m) revised 11531
225.000–71 (a)(1)(i) and (c)(2) revised 11531
225.102 (a)(3)(A) revised; (a)(3)(B) and (C) redesignated as (a)(3)(C) and (D); new (a)(3)(B) added 11531
225.105 Amended 11531
225.109 (a) and (d) introductory text amended; (d)(i) added 11532
225.109–70 Revised 11532
225.302 (a)(iii) and (iv) revised; (a)(v) added; (b)(i) amended 11532
225.402 (a)(1) revised 11532
225.408 Revised 11532
225.602 (3) introductory text revised 11533
225.603 (1) redesignated as (a); new (a) revised; (b)(i)(D), (E) and (ii) amended 11533
225.605–70 Revised 11534
225.872–1 (d) removed; interim 5745
225.872–4 (c) introductory text and (2) amended 11534
225.7005 Revised; interim 5745
225.7007–1 Revised; interim 5745
225.7007–3 Revised; interim 5745
225.7007–4 Revised; interim 5745
225.7010–1 Introductory text revised; interim 5745
225.7010–2 Revised; interim 5745
225.7010–3 Revised; interim 5745
225.7011–4 (b)(3) amended 11534
225.7016–1 Revised; interim 5745
225.7016–2 (b) amended; interim 5746
225.7016–3 Revised; interim 5746
225.7019–1 (a) revised; interim 5746
225.7019–3 (a)(1)(iii) and (iv) removed; (a)(1)(v), (vi), (vii) and (b) redesignated as (a)(1)(iii), (iv), (v) and (c); new (b) added; interim 5746
225.7022–1 (b) amended; interim 5746
225.7022–2 (b) revised; interim 5746
225.7022–3 Revised; interim 5746
225.7303–4 Regulation at 62 FR 30831 confirmed 11527
Revised 11534
225 Appendix A amended 11622
226.103 Revised 11534
226.104 Added 11534
227.676 (b) revised 11534
229.101 (d)(i) amended 11535
231.205–6 (f)(1) revised; interim **63036**
(a)(2)(i)(A) through (ii)(B) removed 14641
231.205–70 Revised; interim 7309
(b)(4) corrected 12862

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231.205–71 Removed 11535
231.303 (3) removed; (4) redesignated as new (3) 14641
231.603 (1) and (2) designation removed 14641
231.703 (1) and (2) designation removed 14641
232.006 Added 11535
232.006–5 Added 11535
232.070 Added 11535
232.071 Added 11535
232.072 Added 11535
232.072–1 Added 11535
232.072–2 Added 11535
232.072–3 Added 11536
232.102—232.108 (Subpart 232.1) Revised 11536
232.202–4—232.207 (Subpart 232.2) Revised 11537
232.502–1–71 (b)(3) amended 11537
232.970 Removed 11537
232.970–1 Removed 11537
232.970–2 Removed 11537
232.1001—232.1007 (Subpart 232.10) Added 11537
233.204–70 Added 11537
234.005–70 Amended 11537
234.005–70 Regulation at 62 FR 9991 confirmed 11527
234.005–71 Regulation at 62 FR 9991 confirmed 11527
235.001 Revised 11537
235.002 Removed 11538
235.7006 Regulation at 62 FR 37147 confirmed 11527
236.102 (3) and (4) redesignated as (4) and (5); new (3) added; interim 11538
236.274 (a) revised; interim 11538
236.570 (c) revised; interim 11538
236.602–2 Revised 11538
236.602–4 Revised 11538
236.609–70 (b) revised 11539
237.102 Removed 11539
237.104 (f)(1) amended 11539
237.170 Removed 11539
237.170–1 Removed 11539
237.170–2 Removed 11539
237.170–3 Removed 11539
237.201 Added 11539
237.203 Revised 11539
237.203–70 Redesignated as 237.270 11539
237.205 Redesignated as 237.271 11539
237.206 Redesignated as 237.272 11539
237.270 Redesignated from 237.203–70; amended 11539
237.271 Redesignated from 237.205 11539
237.272 Redesignated from 237.206 11539
239.7405 Revised 11539
239.7406 (c) introductory text amended 11539
241 Revised 11539
242.302 Regulation at 62 FR 9991 confirmed 11527
(a)(4)(A) and (19) revised 11541
242.1107–70 Regulation at 62 FR 9991 confirmed 11527
Revised 11541
243.204–70 Regulation at 62 FR 37147 confirmed 11527
(b) amended; (c) added 11541
243.205–72 Regulation at 62 FR 37147 confirmed 11527
246.703 Revised 6109
246.704 (1) removed; (2) through (5) redesignated as (1) through (4) 6109
246.770 Removed 6109
246.770–1 Removed 6109
246.770–2 Removed 6109
246.770–3 Removed 6109
246.770–4 Removed 6109
246.770–5 Removed 6109
246.770–6 Removed 6109
246.770–7 Removed 6109
246.770–8 Removed 6109
250.102–70 Added 11541
250.201 (b) amended 11541
252.204–7004 Added 15317
252.209–7001 Amended; interim 14837
252.209–7003 Added; interim 11852
252.209–7004 Added; interim 14837
252.212–7001 Regulation at 62 FR 37147 confirmed 11527
Amended 11541
252.212–7002 Regulation at 62 FR 37147 confirmed 11527
252.225–7001 Revised 11541
252.225–7003 Revised 11542
252.225–7006 Amended 11542
252.225–7007 Revised 11542
252.225–7008 Revised 11543
252.225–7009 Amended 11544
252.225–7010 Amended 11544
252.225–7014 Amended 11544
252.225–7016 Amended; interim 5746
252.225–7020 Added 11545
252.225–7021 Added 11545

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252.225–7026 Amended 11546
252.225–7027 Revised 11546
252.225–7029 Revised; interim 5746
252.225–7035 Revised 11546
252.225–7036 Revised 11547
252.225–7037 Revised 11548
252.229–7004 Amended 11548
252.232–7006 Removed 11548
252.234–7000 Regulation at 62 FR 9991 confirmed 11527
Amended 11548
252.234–7001 Regulation at 62 FR 9992 confirmed 11527
Revised 11548
252.234–7005 Regulation at 62 FR 9992 confirmed 11527
252.234–7006 Regulation at 62 FR 9992 confirmed 11527
252.236–7010 Amended; interim 11549
252.236–7012 Added; interim 11549
252.237–7019 Removed 11549
252.241–7000 Introductory text amended 11549
252.241–7001 Introductory text amended 11549
252.241–7005 Amended 11549
252.242–7005 Amended 11549
252.243–7002 Revised 11549
252.7027 Regulation at 62 FR 30832 confirmed 11527
253.204–70 (c)(4)(xi)(A) and (C) revised 11550
Chapter 2 Appendix G amended 11550
Appendix I amended 11552

Chapter 4—Department of Agriculture (Parts 400—499)

Chapter 4 Policy statement 9158

Chapter 5—General Services Administration (Parts 500—599)

Chapter 5 Small entity compliance guide 12969
532.902 Added; interim 12966
532.905 (c) added; interim 12966
532.908 (a) revised; interim 12966
552.212–71 Amended; interim 12967
552.232–25 Added; interim 12967
552.232–70 Revised; interim 12969

Chapter 8—Department of Veterans Affairs (Parts 800—899)

833.102 Introductory text and (b) amended 15318
833.103 (a)(1) revised; (a)(2)(ii) amended; (a)(3) and (4) removed; (a)(5) redesignated as (a)(3); new (a)(3)(vi) removed; new (a)(3)(vii), (viii) and (ix) redesignated as (a)(3)(vi), (vii) and (viii) 15318
833.103 (c) removed; (b) redesignated as new (c); new (b) and (f) added; (e) revised 15319
833.105 Removed 15319
833.106 Revised 15319
833.214 Added 15319
852.233–70 Revised 15320
852.233–71 Added 15320
852.236–73 Removed 15320

Chapter 9—Department of Energy (Parts 900—999)

901.601 Existing text designated as (a); (b) added **53756**
903.104–10 Redesignated from 903.104–11 ..... **53756**
903.104–11 Redesignated as 903.104–10 ..... **53756**
904.804–1 Heading and (b) revised **53757**
912 Added **53757**
913.505–1 Revised **53757**
915.207–70 Added 10503
915.305 (Subpart 915.3) Added 10504
915.804–1 Redesignated from 915.804–3 ..... **53757**
915.804–3 Redesignated as 915.804–1 ..... **53757**
915.804–6 Revised **53757**
915.806–2 Added **53757**
915.1003 (Subpart 915.10) Removed **53757**
916.504 Added **53757**
916.505 Added **53757**
927.300 (b) amended 10505
927.303 (b) amended 10505
927.370 Removed 10505
927.401 Removed 10505
927.402–1 (b) revised; (c) through (g) removed; (h) redesignated as (c) 10505
927.402–3 Removed 10505
927.403 Revised 10505
927.404 Added 10505
927.408 Added 10506
927.409 Added 10506
927.7000—927.7005 (Subpart 927.70) Removed 10507
932.006–4 Added 5273

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932.402—932.407 (Subpart 932.4) Heading revised **53758**
933.102 Added **53758**
939 Revised **53758**
944 Removed **53758**
952.204–70 Amended; heading revised **51803**
952.227–13 Amended 10507
952.227–14 Added 10507
952.227–73 Removed 10508
952.227–75 Removed 10508
952.227–76 Removed 10508
952.227–77 Removed 10508
952.227–78 Removed 10508
952.227–79 Removed 10508
952.227–83 Removed 10508
952.227–84 Revised 10508
970.0404–1 Amended **51803**
970.0404–2 (e) added **51803**
970.0404–4 (a)(1) revised; (a)(2) added **51803**
970.1508–1 Revised **53758**
970.2201 (b)(1)(ii) revised **51803**
970.2501 (Subpart 970.25) Added 5274
970.2602–2 Heading revised; existing text designated as (a); (b) added **63425**
970.2705 Revised 10508
970.2706 Revised 10508
970.2707 Added 10509
970.3101–3 (b), (c) and (d) added 5274
970.3101–7 Added 5274
970.3102 Exhisting text designated as (a); new (a) amended; (b) added 5274
970.3102–2 (i)(2) introductory text amended; (i)(2)(iv), (v), (vi) and (p) added 5275
970.3102–5 Revised 5275
970.3102–7 Revised 5275
970.3102–17 (b) heading revised; (b)(3) added 5275
970.3103 (b) revised 5276
970.3272 Added 5276
970.5204–1 Revised **51804**
970.5204–13 (d)(8)(iv), (e)(11) and (31) revised; (e)(37) and (38) added 5276
970.5204–14 (d)(8)(iv), (e)(9) and (29) revised; (e)(35) and (36) added 5276
970.5204–17 Amended; heading revised 5276
970.5204–22 Amended **53758**
970.5204–24 Removed **53758**
970.5204–44 Amended **53759**
970.5204–60 Amended **53759**
970.5204–81 Added **63425**
970.5204–82 Added 10509
970.5204–83 Added 10511
970.5204–84 Added 5276
970.5204–85 Added 5276

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.105–2 (b)(1)(i) amended **67750**
1201.105–3 Existing text designated as (a); (b) added **67750**
1201.106 (a) amended **67750**
1202.1 (b) through (j) redesignated as (c) through (k); (b) added; new (i), (j)(1) and (7) revised **67750**
1202.7000 (Subpart 1202.70) Added **67750**
1202 Appendix A added **67750**
1203.104–11 Heading revised **67750**
1205.9000 (Subpart 1205.90) Added **67750**
1206.9000 (Subpart 1206.90) Added 67751
1209.408–70 (Subpart 1209.4) Added 67751
1214.303 Removed 67751
1216.405 Redesignated as 1216.406 67751
1216.406 Redesignated from 1216.405; (a), (b) and (c) redesignated as (e)(1)(i), (ii) and (iii) 67751
1217.102—1217.102–1 (Subpart 1217.1) Removed 67751
1222.608—1222.6080–4 (Subpart 1222.6) Removed 67751
1224.202 Redesignated as 1224.203 67751
1224.203 Redesignated from 1224.202 67751
1225 Removed 67751
1236.602–1 (a) and (c) removed 67751
1237.104–90 Revised 67751
1237.104–91 Added 67751
1246.705 (a)(3) revised 67752
1252.223–70 Revised 67752
1252.225–90 Removed 67752
1252.225–91 Removed 67752
1252.228–70 Revised 67752
1252.228–72 Revised 67752
1253.303 (Subpart 1253.3) Appendix amended 67752

NOTE: **Boldface page numbers indicate 1997 changes.**

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TITLE 48

Chapter 14—Department of the Interior (Parts 1400—1499)

1401.106 Table amended (OMB numbers) **52266**
1425 Removed **52266**
1452.225–70 Removed **52266**

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1505.405 (Subpart 1505.4) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1511.011–70 Revised 10549
1514.201–6 Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1515.612 (a)(1) introductory text revised 10549
1515.900—1515.970–2 (Subpart 1515.9) Revised **60665**
Regulation at 62 FR 60665 eff. date corrected to 2–10–98 6675
1535.007 Regulation at 62 FR 38477 eff. date corrected to 12–30–97 418
1537.200—1537.205 (Subpart 1537.2) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1548.102 (Subpart 1548.1) Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1552.209–74 Regulation at 62 FR 5348 eff. date corrected to 12–30–97 691
Amended 692
1552.210–79 Regulation at 61 FR 33693 eff. date corrected to 2–10–98 6676
1552.211–70 Amended 10549
1552.214–70 Regulation at 61 FR 55118 eff. date corrected to 12–30–97 690
1552.217–73 Amended **60667**
Regulation at 62 FR 60667 eff. date corrected to 2–10–98 6675
1552.217–74 Amended **60667**
Regulation at 62 FR 60667 eff. date corrected to 2–10–98 6675
1552.235–72 Regulation at 62 FR 38478 eff. date corrected to 12–30–97 418
1552.235–74 Regulation at 62 FR 38478 eff. date corrected to 12–30–97 418
1552.235–77 Regulation at 62 FR 38478 eff. date corrected to 12–30–97; amended 418
1552.235–78 Regulation at 62 FR 38478 eff. date corrected to 12–30–97; amended 418

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.106 (1) revised (OMB numbers); interim 9953
1802.101 Amended; interim 9953
1803.104–5 (a)(i) amended; interim 9966
1804.570—1804.570–2 (Subpart 1804.5) Added; interim 9954
1805.201 Removed; interim 9954
1805.207 (a) added; interim 9954
1806.302–470 (b) removed; (c) redesignated as (b) 12997
1807.105 (b)(19) redesignated as (b)(20) **58687**
Introductory text amended 12997
1807.7205 Revised **58687**
1814.201–670 (d) amended; interim 9966
1815 Revised; interim 9954
1816.104—1816.104–70 (Subpart 1816.1) Added 12997
1816.402 Revised 12997
1816.402–2 Revised 12997
1816.402–70 (a) amended 12997
1816.402–270 (a) amended **58687**
(e)(1) revised; interim 9965
1816.404 Added **58687**
1816.405–270 (b)(2)(ii) amended; interim 9966
Revised 12998
1816.405–271 (a) revised 13133
1816.405–272 (a) amended 13133
1816.405–273 Revised 13133
1816.405–274 (e) revised 12998
1816.405–275 (b)(2) revised 13134
1816.405–276 Added 13134
1816.406–70 (a), (b) and (e) amended **58687**
(a) amended 13134
1817.503 Existing text designated as (2); (a) added **58687**
(a)(2) amended; interim 9967
1817.7001 (a)(1) redesignated as (a); (a)(2) removed **58687**

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1817.7201 (Subpart 1817.72) Added **58687**
1819.602—1819.602–370 (Subpart 1819.6) Heading revised 12998
1827.301 Amended **58688**
1827.303–70 (b)(6) amended **58688**
1832.409–170 (d) amended; interim 9967
1832.402 (e)(1) revised 14040
1832.412 (f) redesignated as (f)(1); (f)(2) added **58688**
Revised 14040
1832.412–70 Added 14040
1832.501–2 Revised 14040
1832.502–2 Revised 14040
1832.702–70 (e) revised 14040
1833.210 Added 14041
1834.7003–1 (c) amended; interim 9965
1835.016–70 (d)(1), (2), (3), (5) and (7) amended; interim 9967
1837.102 Removed 12998
1837.102–70 Removed 12998
1837.110–70 (c) removed **58688**
1842 Heading revised 15320
1842.101—1842.170 (Subpart 1842.1) Heading revised 15320
1842.101 (a)(i) and (ii) amended 3652
Heading revised 15320
1842.102 Heading revised 15320
1842.102–70 (b) introductory text revised 3652
1842.202—1842.271 (Subpart 1842.2) Heading revised 15320
1842.202–70 Redesignated from 1842.203; (a)(i) through (v) redesignated as (a)(1) through (5) 15320
1842.203 Redesignated as 1842.202–70 15320
1842.803 (b)(1)(D) added **58688**
1842.7301 Revised 3652
1844.201–2 (c)(2) amended; interim 9967
1845.7101–3 (b) amended **58688**
1852.215–73 Removed; interim 9965
1852.215–74 Removed; interim 9965
1852.215–75 Removed; interim 9965
1852.215–77 Amended; interim 9965
1852.215–78 Amended; interim 9965
1852.215–79 Amended; interim 9966
1852.215–81 Amended; introductory text revised; interim 9966
1852.215–82 Removed; interim 9966
1852.216–76 Amended 13134
1852.216–87 Amended **58688**
Revised 15321
1852.232–70 Added 14040
1852.237–72 Removed **58688**
1852.243–70 Amended; interim 9966
Corrected 11480
1853.215–2 Redesignated as 1853.215–70; interim 9966
1853.215–70 Redesignated from 1853.215–2; (a) amended; interim 9966
1853.232 Redesignated as 1853.232–70; interim 9966
1853.232–70 Redesignated from 1853.232–2; interim 9966
1853.242–70 (g) amended; interim 9967
1853.245 Redesignated as 1853.245–70; interim 9966
1853.245–70 Redesignated from 1853.245; interim 9966
1853.249 Redesignated as 1853.249–70; interim 9966
1853.249–70 Redesignated from 1853.249; interim 9966
1871.103 (b) amended; interim 9966
1871.104 (a) removed; (b) through (e) redesignated as (a) through (d); new (c) amended; interim 9966
1871.105 (a) revised; interim 9966
(f) amended; interim 9967
1871.301—1871.302 (Subpart 1871.3) Removed; interim 9966
1871.401–3 (a)(3) added; interim 9966
(a)(2) and (b)(4) amended; interim 9967
1871.401–4 (a)(4) added; interim 9966
(a)(2) amended; interim 9967
1871.401–5 (b)(2) revised; interim 9966
1871.402 (d) amended; interim 9967
1871.403 Removed; interim 9966
1871.505 Introductory text amended; interim 9967
1871.604–2 (a) amended; (d) revised; interim 9966
1871.604–3 (a) amended; interim 9967
1872.302 (b)(1) revised; interim 9966
1872.403–2 (c)(2) amended; interim 9966
1872.505 Introductory text amended; interim 9967
1872.702 (b)(1) amended; interim 9967

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TITLE 48 Chapter 18—Con.

1872.705–1 Amended; interim 9967

Chapter 52—Department of the Navy Acquisition Regulations (Parts 5200—5299)

5231 Added 66827

Proposed Rules:

4 5714
6 55678
7 5714
8 5714
15 5714
16 5714
17 5714
22 5714
24 55678
27 5714
28 5714
31 ..... 5714, 13771
32 ..... 5714, 11074
33 55678
35 5714
42 5714
43 5714
44 ..... 649, 5714
45 5714
46 13770
49 5714
51 5714
52 55678
..... 4074, 5714, 11074
53 5714
203 51623
204 65782
214 63047
215 ..... 63047, 63050
216 54008
225 59641
228 14885
232 11074
245 54008
252 ..... 51623, 54008, 54017, 59641, 63050
..... 11074, 14885
426 52081
452 52081
806 11865
922 386
952 386
970 386
1843 64545
1852 64545
2800—2899 (Ch. 28) 1399

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.22 (a) revised 51804
1.23 (q) added 51804
1.26 (a)(8) revised 55357
1.46 (mmm) and (nnn) added 10782
1.52 (d) and (e) removed 10782
1.72 Added 51804
10.13 (a) and (b) revised 51804
10 Appendix amended 2172, 4197
Regulation at 63 FR 4197 eff. date corrected to 2–15–98 7311

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

107.105 (a) introductory text revised 51556
107.117 (d)(5) amended 51556
107.301—107.339 (Subpart D) Appendix A amended 51556
171.5 (a)(1)(i), (iii)(B) and (C)(3) revised 65194
(a) introductory text, (1)(ii) and (c) amended 65195
171.6 (b)(2) table revised 51557
(a) and (b) introductory text amended 51558
171.7 (a)(3) table and (b) table amended 51558
171.8 Amended 51558
171.12 (d)(1) amended 51558
171.15 (a)(2) amended 51558
172.101 Table amended 51559
Table and Appendix A amended 51560
172.203 (k)(3) amended 51560
172.204 (b)(1) introductory text amended 51560
172.801—172.807 (Subpart I) Reinstated 66899
172.807 Revised 66902
173.5 (b) introductory text and (3) revised 8142
173.6 (c)(3) amended 51560
(c)(2) revised 8142
173.8 (d)(1) amended; (d)(5) revised 8142
173.9 (e) amended 51560
173.32 (e)(2)(i) amended 51560
173.56 (b)(1) and (f) amended 51560

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173.62 (b) table amended **51560**
(c)(5) table corrected 1884
173.125 (a) amended **51560**
173.166 (b)(1) and (3)(i) amended **51560**
173.202 (b) amended **51560**
173.221 Amended **51560**
173.225 (e)(4) amended **51560**
173.242 (b)(1) amended **51560**
173.243 (b)(1) amended **51560**
173.247 (g)(1)(iii)(C) amended **51560**
173.320 (a)(3) revised **51561**
173.422 (b)(2) amended **51561**
174.705 Reinstated **66900**
175.700 (b) amended **51561**
175.706 Reinstated **66900**
176.340 (c) amended **51561**
176.703 Reinstated **66900**
177.810 Amended **51561**
177.827 Reinstated **66900**
177.840 (e) amended **51561**
178.36 (a)(2)(iii) amended **51561**
178.44 (b) Table 1 amended **51561**
178.50 (i) introductory text amended **51561**
178.68 (f)(1)(ii) revised **51561**
178.270–14 (b)(13) revised **51561**
178.338–19 (b) amended **51561**
178.503 (a)(1) amended **51561**
179.15 (b) heading and (f)(1) revised; (e) introductory text amended **51561**
179.100–19 (a) amended **51561**
179.100–23 (a) amended **51561**
179.100–24 Amended **51561**
179.221–1 Table amended **51561**
180 Authority citation revised **51561**
180.509 (j) redesignated as (j)(1); (j)(2) added **51561**
190.7 (a) revised 7722
190.203 (a) revised 7722
190.209 Revised 7722
191 Effective date confirmation 12659
191.1 (b)(3) added **61695**
191.3 Amended **61695**
191.21 Amended 7723
192 Effective date confirmation 12659
192.1 (b)(5) added **61695**
192.3 Amended **61695**
192.10 Added **61695**
192.16 (b)(5) revised 7723
192.107 (b)(2) revised 7723
192.383 Added 5471
192.614 (c)(4) removed; (b) and (c) redesignated as (c) and (d); (a) and new (c)(2) introductory text revised; new (b) and (e) added **61699**
(c)(5) revised 7723
192 Appendix A amended 7723
193.2059 (d)(1)(i) revised 7723
194 Effective date confirmation 10347
194.121 (a) revised **67293**
195 Effective date confirmation 3653
Response to petitions 6677
Effective date confirmation 12659
Clarification 15321
195.1 Regulation at 62 FR 31367 withdrawn **52511**
(b)(6), (7) and (8) redesignated as (b)(7), (8) and (9); new (b)(6) added **61695**
195.2 Amended **61695**
195.3 (c)(5)(i) and (ii) revised 7723
195.9 Added **61695**
195.56 (a) revised 7723
195.302 (c)(1) introductory text, (2)(i) introductory text and (ii) revised **54592**
195.442 (b) and (c) redesignated as (c) and (d); (a) and new (c)(2) introductory text revised; new (b) added **61699**
199 Notice **59297**
Authority citation revised **67294**
199.1 (d) revised **67294**
Regulation at 62 FR 67294 eff. date confirmed 14041
199.3 Amended 13000
199.11 (e) revised; (f) added 13000
199.15 (d)(2) revised; (e) and (f) added 13000
199.17 (a) revised 7723

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

209 Authority citation revised 11619
209.103 Amended 11619
209.335 (b) amended 11619
209.409 Amended 11619
209 Appendix A amended 11619
213 Authority citation revised 11620
213.15 Amended 11620
214 Authority citation revised 11620
214.5 Amended 11620
214 Appendix A amended 11620
215 Authority citation revised 11620
215.7 Amended 11620

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TITLE 49 Chapter II—Con.

215 Appendix B amended 11620
216 Authority citation revised 11620
216.7 Amended 11620
217 Authority citation revised 11620
217.5 Amended 11620
217 Appendix A amended 11620
218 Authority citation revised 11621
218.9 Amended 11621
218 Appendix A amended 11621
219 Determination 8142
Authority citation revised 11621
219.5 Amended **63466, 63676**
219.9 (a) amended 11621
219.19 Removed **63466**
219.101 (a)(5) added; (c) amended **63466**
219.104 (a)(3)(ii) amended **63466**
219.201 (b) amended **63466**
(a)(1) introductory text, (2) introductory text and (4) revised **63676**
219.203 (d)(2) amended **63467**
219.205 (c)(1) amended **63467**
219.207 (b) revised **63467**
219.209 (a)(1) amended **63467**
219.303 (c), (d) and (e) removed **63467**
219.601 (b)(2)(i) amended; (b)(2)(ii) and (iii) removed **63467**
219.603 Amended **63467**
219.703 (d) removed **63467**
219.709 Removed **63467**
219.803 (a) amended **63467**
219 Appendix B amended **63467**
Appendix A amended 11621
220 Authority citation revised 11621
220.7 Amended 11621
220 Appendix C amended 11621
221 Authority citation revised 11621
221.17 Amended 11621
221 Appendix A amended 11621
223 Authority citation revised 11621
223.7 Amended 11621
223 Appendix B amended 11621
225 Authority citation revised 11621
225.19 (c) amended; (e) revised **63676**
225.29 Amended 11622
225 Appendix B revised **63676**
228 Authority citation revised 11622
228.21 Amended 11622
228 Appendix A amended 11622
229 Authority citation revised 11622
229.7 (b) amended 11622
229 Appendix A amended 11622
230.0 Amended 11622, 11623
231 Authority citation revised 11623
231.0 (e) amended 11623
231 Appendix A amended 11623
232 Authority citation revised 11623
232.0 (e) amended 11623
232 Appendix A amended 11623
233 Authority citation revised 11623
233.11 Revised 11623
233 Appendix A amended 11623
234 Authority citation revised 11623
234.6 (a) amended 11623
234 Appendix A amended 11623
235 Authority citation revised 11623
235.9 Revised 11623
235 Appendix A amended 11624
236 Authority citation revised 11624
236.0 (f) amended 11624
236 Appendix A amended 11624
240 Authority citation revised 11624
240.11 Amended 11624
240.119 (d)(3) amended; (d)(4) and (5) removed; (d)(6) redesignated as (d)(4) **63467**
240 Appendix A amended 11624

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

377.101—377.105 (Subpart A) Authority citation removed 11624
377.201—377.217 (Subpart B) Authority citation removed 11624
382 Controlled substances and alcohol testing rates 2172
385.3 Amended **60042**
385.9 Revised **60042**
385.11 Revised **60042**
385.13 Revised **60042**
385.15 Revised **60043**
385.17 Revised **60043**
385.19 Revised **60043**
385 Appendix B revised **60043**
386 Authority citation revised 12414
386 Appendix A amended; Appendix B added 12414
393.5 Amended 8339
393.60 Revised 1387
393.75 (f) revised; (g) and (h) added; authority citation removed 8339

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

538 Petition denied 15322

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541 Appendixes A and A-I amended **52045**
571.105 Amended; eff. 3-1-99 12664
571.108 Amended 8145
571.121 Amended 7727
571.201 Amended 28
571.208 Corrected **51379**
Amended **62441**
Amended 3666
571.223 Amended 3662
571.224 Amended 3662
572.31 (a)(3) revised 5747
572.35 (c)(1) and (2)(iv) revised 5748
593 Appendix A revised **52267**
595 Added **62442**
595.5 (b)(3) introductory text and (i) revised **67754**

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

653 Notice 418
654 Notice 418

Chapter VII—National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

701 Revised 7311

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002.1 (a), (e)(1) and (f)(6) table revised 8146
1002.2 (f) revised 8146
1111 Authority citation revised 2639
1111.1 (a) amended; (a)(1) through (10) and (d) added 2639
1111.8 Amended 2639
1111.9 Redesignated as 1111.10; new 1111.9 added 2639
1111.10 Redesignated from 1111.9; (a) revised 2639
1241 Authority citation revised **51380**
Policy statement **65378**
1241.14 Removed **51380**

Proposed Rules:

10 ..... **55380, 63304**
37 14560
38 14571
171 ..... **63306**
172 ..... **63306, 66903**
174 ..... **66903**
175 ..... **63306, 66903**
176 ..... **66903**
177 ..... **66903**
191 ..... **67602**
192 ..... **51624, 62543, 67602, 67608**, 5339
193 ..... **67602**, 5918
194 ..... **67602**
195 ..... **56141, 62543, 65635, 67602, 67608**, 5339, 5918, 9993
213 ..... **65401**
216 ..... **55204**
223 ..... **55204**
229 ..... **55204**
231 ..... **55204**
232 ..... **55204**, 195, 1418, 2647
238 ..... **55204**
243 ..... **65478**
350 ..... **60817**
365 7362
376 ..... **67821**
383 10180
384 10180
385 7362
387 7362
393 8606
397 15362
531 5774
571 ..... **55562, 63306**, 46, 6144, 10355, 14674
572 ..... **64546**
653 10183
654 10183
701 ..... **61070**
1000—1399 (Ch. X) **54820, 64193**

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

17 Critical habitat designation 9967
17.3 Amended 8870
17.11 (h) table amended **59622, 64320, 66303**
(h) table amended 694, 1763, 3843, 12686, 13150, 14379

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TITLE 50 Chapter I—Con.

17.12 (h) table amended **54807, 61925**
17.22 (b)(5) and (6) added 8871
17.32 (b)(5) and (6) added 8871
17.42 (f) added **59622**
17.84 (k) added 1763
17.95 (b) and (e) amended 14379
17.108 (a)(7) added **63037**
20.134 (b) revised; (c) removed **63611**
21.47 Added 10560
32.70 Amended 2182
38 Added 11626

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

216.111—216.118 (Subpart J) Revised; eff. 2-2-98 through 12-31-02 5283
222 Authority citation revised 8872
222.3 Added 8872
222.22 (g) and (h) added 8872
222.34 Added; eff. 11-27-97 through 7-31-98 ..... **63470**
226 Critical habitat designation 9967
226.22 Introductory text amended 1393
226.23 Added 1393
226 Table 4 added 1394
Figure 9 added 1395
227 Authority citation revised 13371
227.4 (m) and (n) added 13371
229 Fishery list 5748
229.31 Added **51813**
260 Inspection fees **67585**
285 Inseason adjustments **51608, 53247, 66828**
Temporary regulations **52666**
Fishery opening **53577**
285.2 Amended; interim 669
285.3 (a) revised; interim 669
285.9 Added; interim 669
285.31 (a)(22) revised; interim 669

Chapter III—International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

300 Technical correction 15324
300.63 (b) revised 13009

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

600 Specifications 419
Heading revised 7073
Technical correction 10677
600.5 (a) and (b) amended 7075
600.10 Amended; interim **66551**
Amended 7073, 7075
600.15 (b)(7) removed; (b)(8) through (13) redesignated as (b)(7) through (12) 7073
600.105 (a), (b) and (c) amended 7075
600.115 (a) and (b) amended 7075
600.205 (a) and (b) amended 7075
600.210 (a) amended 7073
600.215 (a)(4) amended 7073
(a)(3) amended 7075
600.225 (b)(2) amended 7075
600.230 Amended 7073
600.235 (c) amended 7073
(a) amended 7075
600.245 (a) amended 7075
600.305 (a)(2), (3), (c)(1) and (3) amended 7075
600.310 (b) and (f)(3) introductory text amended 7073
(c)(7)(i), (iii), (f)(1), (2) introductory text, (5) and (h) introductory text amended 7075
600.320 (c) amended 7075
600.325 (c)(3)(ii) amended 7075
600.330 (c)(2) amended 7073
(c) introductory text, (1) and (2) amended 7075
600.340 (b)(1) and (2)(iii) amended 7075
600.405 Amended 7075
600.415 (c)(2) amended 7075
600.501 (a)(1), (b), (e)(1)(i), (v) and (i) amended 7075
600.502 (f)(1) amended; (g), Table 1 and Table 2 revised 7073
600.504 (a)(1) and (b)(5) amended 7075
600.505 (a)(1), (2), (4), (5), (6), (8), (28) and (b)(1) amended 7075
600.506 (a), (b)(1), (2), (c)(2), (g)(2) and (j)(1) introductory text revised; (f), (h)(1), (2)(iii), (3)(ii) and (j)(2)(i) amended 7074

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(b) introductory text and (h)(3) introductory text amended 7075
600.507 (a)(4) and (i) amended 7075
600.511 (c)(1) amended 7075
600.512 (a) amended 7075
600.515 Amended 7075
600.516 (c) amended 7075
600.518 (b)(3) and (e)(1)(iv) amended 7075
600.520 (b)(2)(ii), (iii) and (3) amended 7075
600.610 (a)(1) amended 7075
600.615 (d)(2) revised 7075
600.725 (a), (b), (d), (f), (g), (h), (j), (k) and (p) amended 7075
600.730 (a) amended 7075
600.735 Amended 7075
600.740 (a) introductory text text, (4), (b) and (c) amended 7075
600.745 (a), (b)(1), (2) introductory text, (viii), (3)(i) introductory text, (ii), (iii) introductory text, (iv), (v), (c)(2), (d)(1), (2) introductory text, (2)(x), (3)(i) and (ii) introductory text amended 7075
600.750 Amended 7075
600.805—600.815 (Subpart J) Added; interim **66551**
600.905—600.930 (Subpart K) Added; interim **66555**
622 Temporary regulations **52045, 61700, 63677, 66304, 67010**
Temporary regulations 1772, 6109, 10154, 11628
Fishery opening 9158
622.1 Table 1 amended 10565
622.2 Amended 10565
622.4 (d) and (p) revised **67721**
(a) introductory text, (2) heading, (ix), (g) and (i) through (l) revised **67722**
Regulation at 62 FR 67721 eff. date corrected to 12–30–97 290
(a)(2)(iv), (v), (vi) and (g) revised; (a)(2)(iii) and (q) added; (d) amended 10565
(a)(2)(ii), (o) heading, (1) and (2) amended 10569
622.5 (a)(1)(i) revised 10567
622.6 (b) revised; (c) and (d) removed 10567
622.7 (a), (b) and (c) revised **67722**
Regulation at 62 FR 67722 eff. date corrected to 12–30–97 290
622.31 (d) removed; (e) through (k) redesignated as (d) through (j) 10567
622.32 (c)(1) revised 10567
622.34 (c), (g) introductory text and (1) amended; (l) revised **67722**
Regulation at 62 FR 67723 eff. date corrected to 1–1–98 290
622.35 (e)(2)(i) revised 10567
622.36 Introductory text through (c) redesignated as (b) introductory text through (3); (a) added **67723**
622.37 Regulation at 62 FR 47766 eff. date extended **67715**
(d)(3) revised 444
(c)(1) revised 10567
622.38 (a) revised; (h) added 10567
622.39 (a)(2)(iv) added; (b)(1)(ii) and (v) revised **67723**
(c)(1)(ii) revised 8356
622.40 (b)(3)(i) introductory text amended 10568
622.41 (c), (d)(1) and (3) revised 10568
622.42 (a)(1)(i) revised **67723**
(c)(1)(i) and (2)(ii) revised 8356
(c) introductory text amended 10569
622.43 (a)(5) amended; (e) revised **67723**
(a)(3)(i) and (ii) revised; (c) added 10569
622.44 (a)(1) introductory text added; (a)(1)(iii) and (2)(i) revised; (b)(2) amended 8356
(a)(2)(ii)(B) introductory text revised 10569
(a)(2)(ii)(A)(*2*)(*i*), (b)(1)(i) and (ii) introductory text amended 10569
622.45 (d)(2) amended; (h) added 10569
622.48 (d)(1) amended; (c) revised 10569
622 Appendix A amended **67723**
630 Temporary regulations 12687
630.1 (b) revised **55361**
630.2 Amended **55361**
630.4 (a) revised **55361**
630.7 (c) revised; (bb) and (cc) added **55361**
630.21 Revised **55361**

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630.23 (a) and (b) amended **55362**
630.24 (a) redesignated as (a)(1); (a)(2) and (b)(5) added; (b)(1), (2), (3), (c), (d)(4) and (e) revised **55362**
630.25 Heading and (a)(1) revised; (b) amended **55362**
644.5 Suspended; eff. 3–27–98 through 9–23–98; interim 14033
644.10 Added; eff. 3–27–98 through 9–23–98; interim 14033
644.21 (a) and (d) suspended; (e) added; eff. 3–27–98 through 9–23–98 14034
648 Quotas **52277, 55362, 67754**
Temporary regulations **64765**
Quotas 445, 3478, 13563
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Technical correction 2184
Certification 11852
648.2 Corrected **51381**
Amended 11593
648.4 (c)(2)(3)(B) corrected **51381**
(a)(3)(i)(B)(*2*) removed; (a)(3)(i)(C), (5)(i)(A)(*2*), (C), (ii)(A)(*2*), (C), (6)(i)(A)(*2*) and (C) revised **63875**
(a)(1) introductory text revised 11593
648.10 (f)(2) correctly revised **51381**
(c)(5) revised; (f)(3) added 11593
(d) and (f)(3)(i) revised 15329
648.13 (d) added **63875**
648.14 (a)(89) correctly revised **52274**
(j)(9) added **63875**
(u)(1) revised **66310**
(a)(13), (31)(iii), (33), (35), (36), (37), (47), (55), (b), (c) introductory text, (d) introductory text, (e), (g) introductory text, (t) and (x)(4) revised; (a)(31)(ii) amended; (a)(31)(iv), (104) and (c)(22) through (25) added 11594
(a)(110) and (111) added; interim 15326
(a)(101), (c)(7), (10), (24) and (25) revised; (a)(110) added 15330
648.17 Added 11595
648.23 (a) introductory text revised 1774
648.53 (d) revised 11595
648.57 Added; interim 15326
648.80 (d)(2) and (3) revised; (d)(5) added 7730
Introductory text revised 11595
(a)(5)(i) and (8) revised 15330
648.81 (a)(2)(ii), (b)(2) introductory text, (c)(2)(i) and (f)(2)(ii) revised; (a)(2)(iii) added 7730
(a)(2)(i), (c)(2)(ii) and (f)(2)(ii) revised 11595
(d), (g), (h) and (j) revised; (n) added 15331
648.82 (a) revised 11595
648.83 (a)(1) introductory text revised 11595
648.86 Introductory text and (b)(3) added; (b)(1) heading, (i), (ii) and (2) revised 11595
(a)(1)(i), (ii), (b) introductory text, (1) introductory text, (i), (ii) and (3) revised; (a)(1)(iii) and (b)(4) added 15332
648.87 Heading, (a) and (b) correctly revised **52274**
(a) introductory text, (1)(i) and (ii) revised; (a)(3) added 15333
648.100 (a) revised **66310**
648.103 (c) revised **63875**
648.104 (a)(1) revised; (f) added **63876**
648.143 (a) amended **66310**
648.144 (a)(1)(i) amended **66310**
648.145 (c) amended 11160
660 Restrictions **51381, 51814**
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Inseason adjustments **60788, 63876**
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678 Temporary regulations 14837
679 Reallocation **51609, 53973, 55539**
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679.1 (d)(2) revised **59298**
679.2 Amended **63890, 66831**
Amended 8360, 11168, 13011
679.5 (l)(2) revised **59299**
(l)(1)(iv) revised **50669**

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(c)(3)(ii)(G) and (e)(2)(ii)(F) added **63890**
679.7 (g)(1) revised **67760**
(b) added 8360
679.20 (g)(5)(ii) revised **63890**
(a)(8) redesignated as (a)(9); new (a)(8) and (c)(6) added **68228**
(b)(1)(iii) and (iv) redesignated as (b)(1)(iv) and (v); new (b)(1)(iii) added; (c)(1)(iii), (2)(ii), (3)(iii) and (f)(2) revised 8360
(c)(5) amended; (i) added 13011
679.21 (e)(1)(iii) through (vi) and (7)(iv) through (vii) redesignated as (e)(1)(iv) through (vii) and (e)(7)(v) through (viii); (e)(3)(ii)(A), (C) and (6) revised; new (e)(1)(iii) and new (7)(iv) added **66831**
(e)(3) through (8) redesignated as (e)(4) through (9); new (e)(3) added; new (e)(7)(i) revised 8361
(e)(3)(iv)(D) revised 11168
679.22 (c) revised 13011
679.23 (d)(1) revised 11168
679.24 (e)(2)(iv) introductory text ad (A) through (D) redesignated as (e)(3) introductory text, and (i) through (iv); (e)(1), (2)(ii) and new (3) introductory text revised 11167
679.27 Added **63890**
(a) and (b) revised **65381**
679.28 Added (effective date pending in part) 5843
679.31 Revised 8361
679.40 (a)(5)(ii)(B) revised **59299**
679.42 (c) revised **60669**
(c)(2)(iii) corrected **66311**
(b) revised 11167
679.50 (i)(2)(xiv)(E)(*4*) revised **60182**
(c)(1)(i), (ii), (3) introductory text, (d)(1) and (2) revised **63891**
Heading, (c)(1)(vi), (vii), (i)(1)(i), (iii), (2)(xiv) introductory text, (G) and (j)(7)(iv) revised; (h)(2)(i)(A)(*4*) removed; (h)(2)(i)(A)(*5*) redesignated as (h)(2)(i)(A)(*4*) **67760**
(c)(2)(iv) revised 11168
679.64 Revised **68231**
679 Tables 1 and 3 amended **60670**
Appendix A added 5845
Appendix A correctly designated 8361
Tables 3 and 10 amended 11168
Table 2 amended 13011
Tables 10 and 11 amended 13012
Table 11 revised 15335
697.2 Amended; interim 10155
697.7 (c) added; interim 10155
Corrected 14042

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